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Title 3—

The President

Proclamation 7310 of May 19, 2000

World Trade Week, 2000

By the President of the United States of America

A Proclamation

The prosperity the United States enjoys today is due, in no small part, to our strong trading relationships with other nations. The World Trade Organization, the North American Free Trade Agreement, and 270 other agreements have helped us to open new markets for U.S. products and services, create thousands of new jobs, and keep our economy growing without inflation. The African Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act that I signed into law this week will build on this progress by lowering trade barriers and strengthening our economic partnership with nations in sub-Saharan Africa and the Caribbean basin.

The theme of World Trade Week this year, "Working the Web of Trade," reflects the particular importance of the Internet as a new and rapidly accelerating factor in world trade. The Internet holds enormous commercial potential and brings extraordinary opportunities directly into homes and workplaces across the United States and around the world. Linking businesses and consumers more quickly and directly than ever before, the worldwide web is a powerful tool, available 24 hours a day, 7 days a week, that allows even the smallest company to conduct business on a global scale.

My Administration has worked hard to encourage America's businesses and workers to embrace this worldwide web of opportunity and its potential to enhance productivity at home and access to markets abroad. By investing in research and development, improving the quality of science and mathematics education in our schools, teaching workers new skills to fill jobs in the technology sector, and keeping e-commerce fair, safe, and competitive, we can stimulate our export industries, sustain this remarkable period of growth and prosperity, and ensure America's continued leadership in the global economy.

This week, when the Congress takes up legislation to grant Permanent Normal Trade Relations status to the People's Republic of China, it will have an opportunity to further the progress we have made in building strong trading relationships. PNTR for China will increase America's competitiveness in the global marketplace, reduce tariffs, and give American workers and farmers unprecedented access to China's more than one billion consumers.

World trade, whether conducted in person, on paper, or on line, remains a cornerstone of American economic growth. But even more important, trade plays a vital role in improving opportunity and prosperity around the globe. Free and fair international trade is one of the most effective tools we have to bring people together, raise living standards in developed and developing nations alike, promote human dignity, and improve long-term prospects for democracy, stability, and world peace.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 21 through May 27, 2000, as World Trade Week. I invite the people of the United States

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to observe this week with events, trade shows, and educational programs that celebrate the benefits of international trade to our economy and our world.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–13162
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Presidential Documents

Proclamation 7311 of May 19, 2000

Small Business Week, 2000

By the President of the United States of America

A Proclamation

The men and women who own and operate our Nation's 25 million small businesses have made, and continue to make, an indispensable contribution to America's economic strength and success. These entrepreneurs possess many of the characteristics that have always defined the American spirit: a fierce independence, an extraordinary work ethic, and an uncompromising commitment to building a better life. Taking risks to fulfill their dreams, they have made a profound and positive impact on the lives and futures of their fellow citizens.

America's small business owners represent more than 99 percent of all employers, and they employ more than half of the private sector workforce. They create 80 percent of the new jobs in our economy, and last year they generated 51 percent of our Nation's gross national product—more than $16 trillion. Small business owners are leaders in innovation, creating a wellspring of new technology, new products, and more effective business processes.

Recognizing the important role small businesses play in the life of our Nation and in the vitality of our economy, my Administration is committed to continuing and expanding their success so that more Americans have the opportunity for prosperity and a secure future for themselves and their families. By balancing the Federal budget, we freed up capital for starting and expanding small businesses. We have put in place policies and programs that grant tax and regulatory relief and expand access to capital and overseas markets for small businesses. And we have strengthened America's workforce through investment in education, training, and improved benefits.

Through the Small Business Administration, we guaranteed more than $12 billion in loans to nearly 50 thousand companies last year alone; opened the door to $4.2 billion in venture capital investment for 2,000 companies; and provided management and technical assistance to more than 900,000 small businesses. Through our New Markets Initiative and our efforts to bridge the digital divide, my Administration is helping to create opportunities for small businesses by promoting public and private sector investment in underserved communities and expanding e-commerce capability.

During Small Business Week, we salute America's millions of small business owners; men and women of courage and initiative whose future is limited only by their imagination and whose success has created better lives for us all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 21 through May 27, 2000, as Small Business Week. I call upon government officials and all the people of the United States to observe this week with appropriate ceremonies, activities, and programs that celebrate the achievements of small business owners and encourage the development of new enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–13190
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 274 and 277

[Amdt. No. 385]

RIN 0584–AB66

Food Stamp Program: Payment of Certain Administrative Costs of State Agencies

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Food Stamp Program Regulations to implement a reduction of the Federal reimbursement rate for fraud control, automatic data processing development and Systematic Alien Verification for Entitlements costs incurred by State agencies in administering the Food Stamp Program. These changes are mandated by the Mickey Leland Childhood Hunger Relief Act of 1993. In addition, this rule limits the period that a State agency may retroactively claim Federal funding of administrative costs for Food Stamp Program activities and allows the incremental costs of certifying Temporary Assistance for Needy Families households for food stamps to be charged to the Food Stamp Program for Federal reimbursement purposes.

DATES: This rule is effective June 23, 2000, except that 7 CFR 277.11(d) is effective October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Chief, State Administration Branch, Program Accountability Division, Food and Nutrition Service (FNS), USDA, 3101 Park Center Drive, Room 905, Alexandria, Virginia, 22302, (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under 10.551. For the reasons set forth in the final rule and related notice to 7 CFR 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Dates" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows:

(1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15;

(2) For State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-QC liabilities) or Part 283 (for rules related to QC liabilities);

(3) For program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary of the Food, Nutrition and Consumer Services, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule will affect the State and local agencies which administer the Food Stamp Program, by modifying the recordkeeping and reporting requirements applicable to them, and modifying the rates of Federal funding reimbursement for certain Food Stamp Program activities.

Executive Order 13132/Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. FNS has considered the impact on State agencies. This rule deals with reimbursements of State agency costs and codifies a cut in the reimbursement rate that was effective April 1, 1994, by law. This rule is intended to have preemptive effect with respect to any State law which conflicts with its provisions or which would otherwise impede its full implementation. FNS is not aware of any case where any of these provisions would in fact preempt State law and no comments were made to that effect.

Prior Consultation With State Officials

Prior to drafting this final rule, we received input from State agencies at various times. Since the Food Stamp Program is a State administered, federally funded program, our regional offices are having informal and formal discussions with State and local officials on an ongoing basis regarding funding and implementation issues. This arrangement allows State agencies to provide feedback that form the bases for many discretionary decisions in this and other Food Stamp Program rules. In addition, we send representatives to regional, national, and professional conferences to discuss our issues and receive feedback on funding issues, fraud control, and State information systems. Lastly, the comments on the proposed rule from State and local officials were carefully considered in the drafting of this final rule.

Nature of Concerns and the Need To Issue This Rule

States were concerned that the cut in the funding rate would put a burden on State funding for the Food Stamp Program and may result in reduced State effort to combat fraud and upgrade State information systems. Concern was also raised that the cutback in the funding rate while States would need to continue to submit a fraud control plan would represent an unfunded mandate.

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Finally, there was concern regarding the proposed deadline for filing retroactive claims for reimbursement.

While the cutback in the funding rate in 1994 had an impact on State agencies, the reduced reimbursement rate is mandated by law and does not involve Department discretion. The rule is necessary to codify the cut in the reimbursement rate. The deadline on retroactive claims is necessary to direct State and Federal resources toward the present operation of the program.

Extent to Which We Meet These Concerns

With the increase in recipient claim collections since FY 1994, States are receiving additional funds through the retention of a part of those increased collections. In response to State concerns, FNS did eliminate the requirement for a fraud control plan based on State comments in this rule but will consider what information, if any, should be required as part of a separate overall revision to State Plan requirements. That will be done outside this rule. We clarified the wording regarding the deadline and the process for submitting prior year claims to FNS.

While FNS did not seek State agency comment in advance regarding the change in payment systems and the change in reporting form (from the SF–270, Request for Advance or Reimbursement, to the SF–269, Financial Status Report) for prior year administrative cost reporting, FNS does believe the change benefits States because it streamlines the payment process. States benefit because the electronic form SF–269 minimizes rekeying data in the event of a revised report and reduces the processing time to make funds available to the State. Faster payment processing benefits States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service is submitting for Office of Management and Budget (OMB) approval the proposed information collection resulting from implementing the provisions contained in this rule. The proposed information collection is for a change in use of the SF–269.

The reporting requirements relating to the FCS–366A, Budget Projection, are approved under OMB No. 0584–0083. The reporting requirements relating to the use of the Standard Form (SF)-269, Financial Status Report, and the SF–269A, Financial Status Report Addendum, are approved under OMB No. 0348–0039. The reporting requirements for the SF–270, Request for Advance or Reimbursement, are approved under OMB No. 0348–0004.

Comments on this information collection must be received by July 24, 2000 to be assured of consideration.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Manish Desai, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503.

Send requests for additional information or copies of this information collection to: Barbara Hallman, Chief, State Administration Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302 or call (703) 305–2383.

Title: Uniform Administrative Requirements for Grants and Cooperative Agreements—7 CFR Parts 3016 and 3019.

OMB Number: 0348–0039.

Expiration Date: Three years from date of approval.

Type of Request: Revision of a currently approved collection.

Abstract: Section 16(a) of the Food Stamp Act of 1977 (7 U.S.C. 2011 et. seq.) authorizes the Secretary to pay each State agency an amount equal to 50 percent of all allowable administrative costs involved in each State agency's operation of the Food Stamp Program. State agencies draw the funds for administrative costs from the United States Treasury through a Letter of Credit. Under corresponding Food Stamp Program regulations at 7 CFR 277.11(c) State agencies are required to use the standard Financial Status Report (Form SF–269) on a quarterly basis to report program administrative costs to FNS and to support the claims made for Federal funding. Final reports are due December 30 for the preceding Federal fiscal year which runs from October 1 through September 30 or 90 days after termination of Federal financial support.

Beginning in FY 1998, State agencies were required to use the SF–269, rather than the SF–270, to revise prior year expenditure reports. The SF–269 is used with a Letter of Credit payment system. Prior to FY 1996, under FNS' previous payment system, the Letter of Credit closed after the end of the fiscal year. In FY 1996 FNS changed to the Department of Treasury's new payment system, Automated Standard Application for Payments (ASAP), which kept the Letter of Credit system open after the end of the fiscal year. As a result, the SF–269 could continue to be used after close-out in the event it was necessary for a State to revise a prior year's report.

The use of the SF–269 and the ASAP for prior years is much more efficient both for States and FNS. With the electronic SF–269 reporting and new payment system, States get their reimbursement faster. The SF–270 process is a manual process that is not tied into State electronic reporting to FNS. Therefore, FNS believes it would require more State resources to complete the SF–270 form compared to electronic SF–269 reporting. The SF–270 process would also require more FNS resources to process the request.

These changes were done at the time without public comment. The use of the Letter of Credit system as the payment system when there is a continuing relationship with the State agency and the use of the SF–269 by State agencies as the reporting form for such systems are required respectively by 7 CFR 3015.102 and 3015.82. In accordance with 7 CFR 3015.1(b), Part 3015 provisions take precedence over any individual agency regulations which may be inconsistent with Part 3015 unless the inconsistency is based on a statutory provision or an exception has been obtained. Because these changes were in accordance with 7 CFR 3015, which takes precedence over agency rules, and because these procedures have been in effect since FY 1998, the Department believes requesting public comment on the procedural change to use the SF–269 for prior year costs that is being codified in this final rule would cause unnecessary delay which is contrary to the public interest. However, the Department is interested in comments regarding the change in the burden estimate for the SF–269 due to its continued use as necessary after fiscal year close-out.

The Financial Status Report Addendum (SF–269A) is used by State agencies to report on a quarterly basis

outlays of program cash-out benefits where FNS has approved the issuance of checks in lieu of food coupons. Final reports are due December 30 for the preceding Federal fiscal year.

Beginning June 1995, State agencies were allowed to submit the SF–269 and SF–269A data electronically to the national database files stored in FNS' Food Stamp Program Integrated Information system in lieu of a paper report. The voluntary changeover from paper to electronic reporting of SF–269 and SF–269A data by States was done as part of FNS' State Cooperative Data Exchange (SCDEX) Project. This project is being expanded each year as more FNS forms are transformed to electronic formats for State data entry. As of January 2000, 47 State agencies submit the SF–269 (and SF–269A if appropriate) data electronically and 6 State agencies continue to submit paper reports.

For FY 1995 and prior fiscal years, the SF–270 continues to be used until the funding fiscal year has been canceled because the Letter of Credit is no longer open for those years. OMB requires the use of the Form SF–270 when a State agency wants to adjust the program's financial status when the Letter of Credit is not used. The Department regulations at 7 CFR 3015.84(b) implemented this mandatory use of the SF–270. The SF–269 is authorized under 7 CFR 3015.82(a) and 7 CFR 277.11.

Section 277.11(d) of this final rule contains a deadline for filing claims for Federal reimbursement. Thus, State agencies will no longer be able to claim reimbursement for Fiscal Years 1998 and before effective October 1, 2000.

Section 277.11(d) of this final rule contains an information collection and reporting requirement. It requires the State agency to use a reporting form specified by FNS to request retroactive funding. With the time limit on filing claims, this form will be the SF–269.

Respondents: State agencies that administer the Food Stamp Program.

Number of Respondents: 53.

Estimated Number of Responses per Respondent:

Form SF–269: 53 State agencies five times a year for current year (required) and three times a year for prior years (estimated based on an as-needed basis).

Form SF–269A: 12 State agencies five times a year.

Estimate of Burden:

Form SF–269: The 53 State agencies submit Form SF–269 for the current year at an estimate of 16.8 hours per respondent, or 4,452 hours. The 53 State agencies submit revised SF–269 (for prior years) three times annually at an estimate of 1 hour per respondent for an additional 159 hours annually. The use of the electronic SF–269 in FNS information system will minimize the amount of information to be rekeyed by States for a revised SF–269 since States only need to rekey information that has changed. Because the additional 159 hour burden had not been previously approved by OMB, this represents an increase of 159 hours.

Form SF–269A: Approximately 12 State agencies submit Form SF–269A at an estimate of 1 hour per respondent or 60 total hours.

Estimated Total Annual Burden on Respondents: FNS use of the SF–269, SF–269A, and SF–270 was previously approved under OMB No. 0505–0008; however, this package was eliminated. The SF–269 and SF–269A are approved under OMB No. 0348–0039. The SF–270 is approved under OMB No. 0348–0004. Consequently, we are requesting approval of the burden increase for FNS use of the SF–269 form. The revised annual reporting and recordkeeping burden for the Food Stamp Program for this form is estimated to be 4,671 hours. This estimate represents an increase of 159 hours from the previously approved burden of 4,512 hours.

The remaining provisions of this rule do not contain reporting or recordkeeping requirements subject to approval by OMB.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Section 13961 of the Mickey Leland Childhood Hunger Relief Act of 1993 (Leland Act) (Pub. L. 103–66, 107 Stat. 679), signed on August 10, 1993, amended Section 16 of the Food Stamp Act (Act) (7 U.S.C. 2025) to reduce the Federal reimbursement rate for fraud control from 75 percent to 50 percent, the rate for automatic data processing (ADP) development from 75 or 63 percent to 50 percent, and the rate for Systematic Alien Verification for Entitlements (SAVE) costs from 100 percent to 50 percent. The change in rates was effective by law April 1, 1994.

In October and November 1993, the Food and Nutrition Service (FNS) regional offices briefed State agencies administering the Food Stamp Program (FSP) on how to implement the new Federal funding rates for reporting and payment purposes effective April 1, 1994. The prompt implementation was necessary to comply with the Leland Act's mandate to reduce the Department's share of State agency administrative costs to the mandated rate as of April 1, 1994, and to minimize the need for revised reporting by State agencies related to budget projections for FY 1994 and actual cost reporting on or after April 1, 1994. Beginning April 1, 1994, State agencies began drawing down Federal funds for expenditures based on the new funding rate for these activities. Effective with the SF–269 Financial Status Report for the third quarter Fiscal Year 1994, State agencies began reporting costs using the new funding rate for these activities.

On November 22, 1994, the Department published in the **Federal Register** (59 FR 60079) a proposed rule which proposed changes in the Federal reimbursement rates for certain activities as required by the Leland Act and a limit on retroactive claiming of Federal funding for State administrative costs. Five comment letters were received which addressed provisions of the proposed rule. FNS has given careful consideration to all comments received. The major concerns of the commenters are discussed below.

Elimination of Enhanced Funding for Fraud Control

The proposed rule reduced the Federal reimbursement rate for fraud control activity from 75 percent to 50 percent in accordance with Section 13961 of the Leland Act, which amended Section 16 of the Act. In the FSP regulations, Federal reimbursement is also referred to as Federal Financial Participation (FFP). The new FFP rate was effective by law April 1, 1994.

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FNS received 4 comments on this part of the proposed rule, all from State agencies. All commenters objected to the cutback in the FFP rate for fraud control activity.

One commenter stated that fraud control activity was an important activity that more than paid for itself in FSP (Federal) savings and that the reduction in the Federal reimbursement rate will result in a reduced level of effort. The commenter pointed out that the unprecedented growth in the FSP demonstrates the need for increased fraud control activities, but that some States lack adequate staff to address the need for fraud control programs. Another commenter stated that activities like front-end investigations to catch fraudulent applicants before the benefits go out the door, prosecutions of violators, and claim recovery work are costly and time consuming activities that were feasible for States to perform due to the enhanced Federal funding. Reinstating the 75 percent FFP rate would help States combat food stamp fraud and would recognize the extra effort that is required to ensure that benefits go only to the truly needy. Another commenter stated that the drop in the funding rate was a step backwards in efforts to combat fraud and that it puts a burden on State funding.

The reduction in the Federal reimbursement rate for fraud control activity is mandated by the Leland Act and does not involve Departmental discretion. Because the reimbursement rate is mandated by law, the final regulation retains the new funding rate as specified in the proposed rule.

The reduction in the Federal reimbursement rate for fraud control reflects a shift in emphasis from up-front funding to performance-based funding through the retention of claims collections. State agencies currently retain 35 percent of claims collected for intentional program violations and 20 percent of inadvertent household error claim collections. The Federal Tax Refund Offset Program provides an additional fiscal incentive for anti-fraud activity by making available to State agencies a new cost-effective means of claims collection. The Department encourages State agencies to use this new tool to boost claims collection and create additional State funding through increased retentions. The increase in retentions would replace some of the lost Federal administrative funding, and could be used to do front-end investigations.

With the elimination of enhanced fraud funding, the detailed requirements for funding investigations has been removed and Section 277.15 has been removed and reserved. However, the requirement to conduct investigations of alleged intentional FSP violations in § 273.16, and to operate fraud detection units in all project areas of 5,000 or more participating households in § 272.4(h) remain in effect.

In the proposed rule, specific reference to prosecution activity of intentional program violations as being an allowable cost would be eliminated because the regular 50 percent funding rate would apply to food stamp prosecutions, thereby eliminating the need for the reference. However, since the proposed rule was published, a revised OMB Circular A–87 has been issued. The revised circular provides that prosecution activities are an unallowable cost unless treated as a direct cost to a specific program when authorized by program regulations. Section 16(a) of the Act authorizes payment of FSP prosecution costs. Consequently, the final rule includes additional specific wording in Appendix A of 7 CFR part 277 that reflects that prosecution of FSP intentional program violations is an allowable cost of FSP administration. This wording is intended to continue the current practice of classifying such costs as allowable, and ensures that program regulations continue to reflect this, consistent with the requirements of the revised OMB Circular A–87. However, the provision on prosecutions will now be found in Appendix A of 7 CFR Part 277, along with other general cost principles applicable to State agencies administering the FSP.

The proposed rule retained the requirement for a fraud control plan in 7 CFR 272.2 and 277.15 but changed the timing of the submission of the plan. Two State agencies commented on this provision. One pointed out that the fraud control plan was originally required as part of the request for enhanced funding and that to require the plan without providing the enhanced funding was akin to placing an unfunded mandate on the States. The commenter stated that States are struggling to control costs and reduce budgets where possible and that removing the fraud control plan requirement would be helpful. The other commenter indicated that the fraud control plan was for Federal benefit, not for State benefit.

As a result of these comments, the Department is dropping its proposal to continue to require a fraud control plan although the availability of 75 percent funding no longer exists. The previous requirement for a fraud control plan in conjunction with 75 percent funding assisted FNS in ensuring that the enhanced funding was used for appropriate fraud control activities. FNS proposed maintaining the fraud control plan because of the importance of fraud detection and prevention to FSP management. However, based on comments, FNS has decided to defer consideration on the amount of information States should routinely provide FNS regarding State anti-fraud activity. FNS is currently revising all regulations governing the State Plan of Operation and will consider what, if any, specific information States should provide on organization structures, staffing, activities, and budget for fraud control as part of the overall revisions to regulations governing the State Plan of Operations. Therefore, this rule drops the requirement for a fraud control plan. Accordingly, the final rule revises 7 CFR 272.2 to eliminate the reference to a fraud control plan.

ADP Development

The proposed rule proposed to eliminate enhanced funding for automated data processing (ADP) development by reducing the funding rate for system development from either 75 or 63 percent to 50 percent in accordance with the Leland Act. We received one comment on this section.

The commenter stated that States are burdened when required to update their current ADP systems due to Federal rule changes or to develop an electronic benefit transfer (EBT) system. The commenter suggested that enhanced funding should be available for a particular window period so States can update their automated systems.

The reduction in the Federal reimbursement rate for ADP development is mandated in the Leland Act and does not involve Departmental discretion. Because the reimbursement rate is mandated by law, this final rule retains the new funding rate as proposed.

The proposed rule also proposed to eliminate section 274.12(k)(3) which states that enhanced funding for coupon issuance activities occurring on Indian Reservations and enhanced funding for the development of EBT systems would both be accommodated within the issuance cap for EBT systems. However, only enhanced funding for the development of EBT and other automated systems under 7 CFR 277.18 is eliminated. Enhanced funding for coupon issuance activities on Indian Reservations remains available under Section 16(a) of the Food Stamp Act and 7 CFR 281.9, and thus such enhanced funding for coupon issuance costs shall continue to be accommodated within the EBT issuance cap. In this final rule the Department is retaining a portion of the provision in § 274.12(k)(3) (redesignated as § 274.12(k)(2)). The portion that is being retained is the current wording that enhanced funding for coupon issuance activities that a State agency incurs on Indian Reservations shall still be accommodated within the EBT issuance cap. Only the reference in the current 7 CFR 274.12(k)(3) to enhanced funding for the development of EBT systems is being removed.

Prior to the elimination of enhanced funding there were different cost thresholds for prior FNS approval for systems funded with enhanced funding than for systems funded with regular 50 percent funding. The proposed rule proposed to apply the cost thresholds that were applicable to the regular funding requirements to all ADP systems. Thus, the proposed rule eliminated references to enhanced funding but retained in the proposed regulatory text the dollar thresholds under standard funding that were in effect at that time. After the publication of the proposed rule on which this rulemaking is based, the Department published on July 31, 1995, another proposed rule proposing increases in the cost thresholds upon which prior Federal approval is required for Federal financial participation in State ADP equipment acquisition. The final rule raising the cost thresholds for ADP systems was published June 28, 1996. Because the new cost thresholds are now in effect, the final rule drops the proposed text citing the old cost thresholds, thus retaining the current higher cost thresholds. The Department is modifying the proposed text for § 277.18(e)(1), which deletes the reference to enhanced funding, to reflect the new $5 million cost threshold for the submittal of an APD Update. The references to the standard funding rate are retained where necessary in the final text.

In the final rule the Department is also making a technical correction to Appendix A, paragraph b(1), which was inadvertently omitted from the proposed rule, to remove the reference to 63 percent ADP development funding in that paragraph.

SAVE

The Department proposed eliminating enhanced funding for the Systematic Alien Verification for Entitlements (SAVE) Program by dropping the funding rate for SAVE activity from 100 percent to 50 percent funding in accordance with the Leland Act. We received no comments on this section. Because the reimbursement rate is mandated by law, the final rule retains the new funding rate as previously proposed.

Delaying the Effective Date

The proposed rule announced the Department's proposed policy for reviewing and approving requests to delay the April 1, 1994 effective date for the elimination of enhanced funding for certain States which qualified for such an extension under the criteria provided in section 13971 of the Leland Act. For a full discussion of this issue, the reader is referred to the proposed rule.

As the proposed rule noted, FNS had advised States in October/November 1993 of the criteria for a delay of the effective date and the procedure for requesting such a delay if States believed they qualified. To allow adequate time for review, States were to submit their requests by December 31, 1993, but FNS indicated it would consider requests filed after that date. The proposed rule noted that it was the Department's intent that State agencies submit their requests for a delay of the effective date early, and not wait for the completion of the rulemaking process. Four State agencies received approval of a delay in March 1994. They were Arkansas, Texas, Montana, and North Dakota.

One State agency submitted a comment requesting a delay of the April 1, 1994 effective date, but did not submit a formal request demonstrating that it met the criteria for such a delay. The Department emphasizes that States were required to apply, and to demonstrate that they met the criteria in order to be granted a delay. The Department has no authority to grant a delay of the effective date except under the specific circumstances specified in the Leland Act as described in the proposed rule.

The Department notes that the elimination of enhanced funding was effective April 1, 1994 for all but the four approved States. The four approved States received enhanced funding through June 30, 1995, based on their legislative calendars. All States were notified by letter and by the proposed rule of the opportunity to apply for a delay. Further, the April 1, 1994 effective date has well passed. Therefore, the Department believes that the issue of granting delays is now moot and need not be addressed in regulatory text.

Enhanced Funding for Low Payment Error Rates

As stated in the proposed rule, with the reduction in the funding rate to 50 percent for fraud control, ADP development, and SAVE, these three activities now become eligible along with other costs funded at the 50 percent rate for the increased Federal reimbursement rate of up to 60 percent if the State agency achieves a low payment error rate as specified in § 277.4 and 275.23. The incentive funding for a low error rate is provided after the end of the Federal fiscal year.

Two State agencies commented on this policy. One was in favor of this policy as it rewards State agencies that achieve a low payment error rate. The other State agency pointed out that fraudulent applications make it difficult for State agencies to attain a low payment error rate. By denying enhanced funding to States with a demonstrated need for additional support, the State agency believed that such action will ensure that States with a disproportionate share of fraudulent applications will never attain a low payment error rate to qualify for enhanced funding. The State agency believed that moving the reimbursement rate back to 75 percent, rather than incentive funding for a low payment error rate, would assist States in combating food stamp fraud and help to ensure that benefits only go to the truly needy.

The reduction in the funding rate for fraud control is mandated by the Leland Act and the payment of enhanced incentive funding for a low payment error rate is mandated in Section 16(c) of the Act. Neither involves Departmental discretion. The enhanced funding is available as an incentive to encourage States to achieve a low payment error rate and is paid after the end of the fiscal year as a reward. The Department has no authority to pay either enhanced fraud funding or the incentive funding for a low payment error rate to States that have not attained a low payment error rate in order to help them to do so. Accordingly, the proposed regulatory text is adopted as final.

Deadline for Filing Claims for Retroactive Funding

The proposed rule provided that, subject to the availability of funds, FNS would reimburse State agencies for an allowable expenditure only if the State agency files a claim with FNS for that expenditure within two years after the calendar quarter in which the State agency obligated the funds.

One State agency pointed out that a similar Department of Health and Human Services (DHHS) limitation was instituted as a result of legislation enacted by Congress. The State agency

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recommended that the Department seek an amendment to the Act.

Section 4(c) of the Act allows the Department to promulgate administrative rules that are necessary or appropriate for the effective administration of the FSP. As the proposed rule noted, in Fiscal Years (FYs) 1991 through 1993, FNS had received requests from State agencies for retroactive funding going back to FY 1981 even though the Federal record retention requirement for State agencies is 3 years. While the Department recognizes that State laws may require retention of records that exceed Federal requirements, the Department believes it is not efficient administration for State agencies to manage, store, and retain financial records well past the 3 years required by Federal regulations and in particular to be actively reviewing stale financial records more than 3 years old. This is especially the case because FNS pays 50 percent of State administrative costs. The intended effect of the proposed limitation on claiming costs is to direct State agency and Federal resources toward the present operation of the program. The Department believes State agencies have a responsibility to properly claim Federal funding on a timely basis.

The commenter noted that the deadline in the proposed rule was calculated based on the quarter in which the State agency *obligated* the funds, and suggested using another baseline such as date of payment, which is used by DHHS.

In the final rule the Department has based the deadline calculation on the quarter in which the cost was incurred by the State or local agency, whichever first incurred the cost. It is at that point that the cost should have been reported on the SF–269, Financial Status Report, for that report period.

One commenter suggested that the definition of the term "audit exception" which was provided in the preamble of the proposed rule be included in the regulatory text. The commenter noted that the deadline does not apply to an audit exception and suggested that the rule clarify what would happen if an audit were performed by non-Department Federal auditors or State or private auditors. The commenter also asked whether any procedures will be established to permit the State to provide such audits to Department audit staff in order to gain approval to claim additional costs.

In the final rule, the Department has included a definition of the term "audit exception" in § 277.11(d)(5)(ii) of the regulatory text. It has also clarified in the same paragraph that the term "audit" includes Federal and State-initiated audits. This includes audits performed by Department auditors, non-Department Federal auditors, State auditors, or private auditors as long as the audit complies with Department audit requirements in 7 CFR 277.17 and 7 CFR part 3015. It also specifies that the audit must have been started within 3 years of the date of submission of the final SF–269 report of the relevant fiscal year to which it applies. Once the audit is resolved, any claim for retroactive Federal funding arising from such an audit should be submitted promptly to FNS with a copy of the relevant audit findings. This procedure will supplement but not replace any other Federal reporting requirements to the cognizant agency for audits in § 277.17 and 7 CFR part 3015. Finally, the final rule makes minor modifications to the proposed wording in § 277.11(d)(4) to improve clarity. The change has no substantive effect.

At the time of the proposed rule and in accordance with 7 CFR 277.4 and 7 CFR 3015.82, State agencies used the SF–269, Financial Status Report, to report costs during the fiscal year as well as final obligations and expenditures in a final (or closeout) SF–269 due December 30 following the fiscal year. At that time, the Letter of Credit, which was the payment method, was closed for that fiscal year. After that, as the proposed rule noted, the SF–270 would be used to request funds for prior year expenditures. Thus, the proposed rule would have required that States use the Form SF–270, Request for Advance or Reimbursement, to request payment for prior year expenditures. OMB requires the use of the SF–270 when a State agency wants to adjust the program's financial status when the Letter of Credit is not used. However, reporting forms follow payment systems and subsequently FNS' payment system was changed.

7 CFR 3015.102 provides that Letters of Credit are to be used to pay Department recipients (i.e., State agencies) when all the following conditions exist:

(i) There is or will be a continuing relationship between the recipient and the USDA awarding agency for at least a 12 month period and the total amount of advances to be received within that period from the awarding agency is $120,000 or more per year.

(ii) The recipient has established or demonstrated to the USDA awarding agency the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the recipient.

(iii) The recipient's financial management system meets the standards for fund control and accountability prescribed in 7 CFR 3015 subpart H.

After the proposed rule was issued, FNS in 1996 started using the Department of Treasury's ASAP payment system as a funding mechanism. This grantee-initiated payment system, which also uses the Letter of Credit as the payment vehicle, has allowed FNS to continue to pay by Letter of Credit well after the end of the fiscal year. It allowed FNS to streamline its payment process. In addition, the extension of the Letter of Credit system for prior years has allowed FNS to continue to use the SF–269 for prior year expenditures.

As a result of this payment system change, in February 1997 FNS issued revised procedures for post-close-out payments and adjustments in Agency Financial Management System procedure number 678 (AFMS–678). Under those procedures, starting in FY 1998, rather than use the SF–270, State agencies were to revise their "final" or close-out SF–269's to report the outlay of funds for prior FYs 1997 and 1996. State agencies may request funds for newly identified prior year expenses on a revised SF–269 for that year not more than quarterly. This change in the Letter of Credit system is gradually being phased in year by year. However, for FY 1995 and prior years, the SF–270 continues to be used until the funding fiscal year has been canceled because the Letter of Credit is no longer open for those years.

The change in reporting forms coupled with the use of the new system, ASAP, for prior years is significantly more efficient. The SF–270 process is a manual process that is not tied into State electronic reporting. Thus, it would have required more State resources to complete the paper SF–270 compared to the electronic SF–269. The continued use of the SF–269 after close-out will allow States to continue to use the stored electronic SF–269 form (and its data) to revise their SF–269 reports for prior years through FNS' State Cooperative Data Exchange (SCDEX) with minimal rekeying. Only data that has changed would need to be rekeyed for a revised report. Because the SF–269 data can be transmitted electronically to FNS, the use of the electronic form by States will reduce the processing time to make the funds available to the State agency. Finally, it means State agencies do not need to switch reporting forms after the end of the fiscal year but may continue to use the SF–269.

The Department notes that under 7 CFR 3015.1(b), Part 3015 supersedes and takes precedence over any individual agency regulations to the extent such regulations are inconsistent with the Department regulation. The proposed use of the SF–270 when the Letter of Credit system is operating would be inconsistent with Part 3015. Because Part 3015 is an existing Department rule which governs and takes precedence over the proposed agency rule, the agency's final rule is being changed to comply with the Department rule. Further, this change has been in effect since FY 1998 and affects only 53 State agencies. The Department believes seeking public comment on the continued use of the SF–269, which is based on a provision of the existing Department rule, would cause unnecessary delay which is contrary to the public interest.

As a result of these procedural changes and to conform to current practice, FNS has revised Section 277.11 in the final rule to drop the reference to the SF–270 and in its place to specify that States use the form specified by FNS to report prior year expenditures. This more general wording gives necessary flexibility to an area that may be subject to change over time as payment systems and electronic reporting procedures evolve.

In addition, because of the continued use of the SF–269 after the final or closeout SF–269 (which is due December 30 immediately following the fiscal year), it was necessary to add text to the regulatory language to make it clear that the audit must have been started within 3 years of the "*final*" (or closeout) SF–269 (which is due December 30 immediately following the end of the Federal fiscal year) to get reimbursement. A revision of the "final" SF–269 after the final or closeout SF–269 would not start a new 3-year audit clock.

AFDC/Food Stamp Certification Costs

The Department proposed to amend the current regulations to correspond to current practice which allows food stamp certification costs for Aid to Families with Dependent Children (AFDC) cases to be charged to the FSP. As the proposed rule noted, the current practice of charging the incremental cost of certifying AFDC households for food stamps to the FSP has been in effect since October 1, 1983, and is based on a 1983 Memorandum of Understanding between the Department and DHHS. Thus, the FSP is only picking up the incremental costs related to the certifying AFDC households for FSP benefits. The incremental cost is the cost for certification questions which are FSP specific. One State agency commented on this provision, agreeing with the change in wording to reflect current practice. The final rule retains the proposed wording as it reflects current practice.

However, since the proposed rule was issued, the Personal Responsibility and Work Opportunity Reconciliation Act (Pub.L. 104–193) replaced the AFDC program with a Temporary Assistance for Needy Families (TANF) block grant. This change is effective July 1, 1997, or sooner if a State agency's request is approved earlier by DHHS. This change does not materially affect the charging of the incremental costs from that proposed in the proposed rule. The final rule retains the proposed wording except for changing the reference from AFDC to TANF in the final rule.

Effective Date

The provisions in § 277.11(d) regarding time limits for State agencies to file claims to amend a prior expenditure report to request retroactive funding for costs previously incurred are effective October 1, 2000.

Pursuant to Section 13971 of the Leland Act, the reduction in FFP rates mandated by Section 13961 of the Leland Act was effective on April 1, 1994, except for those State agencies for which the Department has granted in writing a delay of the April 1, 1994 effective date.

The conforming amendments to FSP regulations in §§ 272.1, 272.2, 272.11, 274.12, 277.4, 277.9, 277.15, 277.18, 277.19, and Appendix A to Part 277 will be effective June 23, 2000.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Fraud, Grant Programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procedure, Grant programs—social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 272, 274 and 277 are amended as follows:

1. The authority citation for Parts 272, 274 and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(159) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(159) *Amendment (385).* The provisions in § 277.11(d) regarding time limits for State agencies to file claims to amend a prior expenditure report to request retroactive funding for costs previously incurred are effective October 1, 2000. The conforming amendments to Food Stamp Program regulations in §§ 272.1(g), 272.2(c)(3), 272.11(d) and (e), 274.12(k), 277.4(b) and (g), 277.9(b), 277.18(b), (d), (e), (g) and (p)(5), and Appendix A to Part 277 and the removal of §§ 277.15 and 277.19 are effective June 23, 2000.

3. In § 272.2, paragraph (c)(3) is revised to read as follows:

§ 272.2 Plan of operation.

* * * * *

(c) * * *

(3) *Additional attachments.* Attached for informational purposes (not subject to approval as part of the plan submission procedures) to the Program Activity Statement and submitted as required in paragraph (e)(3) of this section shall be the agreements between the State agency and the United States Postal Service for coupon issuance, and between the State agency and the Social Security Administration for supplemental income/food stamp joint application processing and for routine user status.

* * * * *

§ 277.11 [Amended]

4. In § 272.11:

a. Paragraph (d)(1)(iii) is amended by removing the reference to "§ 277.19" and adding in its place a reference to "§ 277.18 and Appendix A to Part 277".

b. Paragraph (e)(2) is amended by removing from the first sentence the words ", as outlined in § 277.19(e)".

PART 274—ISSUANCE AND USE OF COUPONS

§ 274.12 [Amended]

5. In § 274.12:

a. Paragraph (k)(2) is removed and paragraphs (k)(3) through (k)(6) are redesignated as paragraphs (k)(2) through (k)(5) respectively.

b. Newly redesignated paragraph (k)(2) is amended by removing the words "and the enhanced funding provided in accordance with this

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paragraph for development of an EBT system".

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

6. In § 277.4:

a. Paragraphs (b)(1), (b)(10), (b)(11), and (b)(12) are removed;

b. Paragraphs (b)(2) through (b)(9) are redesignated as paragraphs (b)(1) through (b)(8) respectively;

c. The second sentence in newly redesignated paragraph (b)(7) is revised; and

d. New paragraph (g) is added.

The revision and addition reads as follows:

§ 277.4 Funding.

* * * * *

(b) * * *

(7) * * * The rates of Federal funding for the activities identified in paragraphs (b)(2) and (b)(3) of this section shall not be reduced based upon the agency's payment error rate.

* * * * *

(g) Investigations of authorized retail or wholesale food concerns when performed in coordination with the USDA Office of Inspector General and FNS shall be funded at the 50 percent Federal reimbursement rate.

7. In § 277.9, paragraph (b) is revised to read as follows:

§ 277.9 Administrative costs principles.

* * * * *

(b) The incremental cost of certifying TANF households for Food Stamp Program benefits are allowable costs for FNS reimbursement.

* * * * *

8. In § 277.11, a new paragraph (d) is added to read as follows:

§ 277.11 Financial reporting requirements.

* * * * *

(d) *Time limit for State agencies to file claims.* (1) After the deadline in paragraph (c)(4) of this section for the final SF–269 report, State agencies shall use the form specified by FNS as needed within three years of the end of the Federal fiscal year to amend a prior expenditure report pertaining to such Federal fiscal year. The three-year reporting deadline may be extended by FNS if litigation, an audit, or a claim is unresolved at the end of the three-year period. The reporting form shall be used to amend prior expenditure reports, and to request reimbursement for any additional funding due, or to pay back to FNS any inadvertent prior overclaim. Requests for reimbursement will only be honored if the claim is filed within the timeframe in paragraph (d)(2) of this section. FNS reserves the right to bill State agencies for amounts due FNS resulting from an overclaim, even if no reporting form has been submitted.

(2) Subject to the availability of funds from the appropriation for the year in which the expenditure was incurred, FNS may reimburse State agencies for an allowable expenditure only if the State agency files a claim with FNS for that expenditure within two years after the calendar quarter in which the State agency (or local agency) incurred the cost. FNS will consider non-cash expenditures such as depreciation to have been made in the quarter the expenditure was recorded in the accounting records of the State agency in accordance with generally accepted accounting principles.

(3) For Automated Data Processing (ADP) expenditures approved under § 277.18(c), subject to the availability of funds and required FNS approval related to the Advance Planning Document, FNS may reimburse State agencies for allowable expenditures at the appropriate rate in effect at the time the equipment or service was received only if the State agency files for a claim with FNS within two years after the calendar quarter in which the cost was incurred. FNS will consider non-cash expenditures such as depreciation to have been made in the quarter the expenditure was recorded in the accounting records of the State agency in accordance with generally accepted accounting principles.

(4) States wishing to request an extension of the deadline in paragraphs (d)(2) and (d)(3) of this section must submit the request in writing to FNS prior to the applicable deadline. The State agency's request for an extension must include a specific explanation, justification, and documentation of why the claim will be late and when the claim will be filed.

(5) The time limits in paragraphs (d)(2) and (d)(3) of this section will not apply to any of the following:

(i) Any claim for an adjustment to prior year costs previously claimed under an interim rate concept;

(ii) Any claim arising from an audit exception as defined in this section. An audit exception means a proposed adjustment by the Department to any expenditure claimed by a State agency by virtue of a Federal-or State-initiated audit. The audit must comply with the requirements of § 277.17 and 7 CFR part 3015, and must have been started within 3 years of the date of submission of the final SF–269 of the relevant Federal fiscal year to which it applies.

(iii) Any claim resulting from a court-ordered retroactive payment. However, this provision does not bind FNS to a State or Federal court decision when FNS was not a party to the action;

(iv) Any claim for which FNS determines there was good cause for the State agency's not filing it within the time limit. Good cause is lateness due to circumstances beyond the State agency's control such as Acts of God or documented action or inaction of the Federal Government. It does not include neglect or administrative inadequacy on the part of the State, State agency, legislature, or any of their offices or employees.

§ 277.15 [Removed and Reserved]

9. Section 277.15 is removed and reserved.

10. In § 277.18:

a. Paragraph (b) is amended by removing the definition of *Enhanced funding or enhanced FFP rate*, and by revising the definition of *Regular funding or regular FFP rate;*

b. The introductory text of paragraphs (d)(1) and (d)(2) are amended by removing the words "at the regular or enhanced funding rate" in the first sentence;

c. Paragraph (d)(1)(ii) is amended by removing the last sentence;

d. The third sentence of paragraph (d)(1)(v) is amended by removing the words "thresholds of § 277.18(c)(1) are met" and adding the words "threshold of § 277.18(c)(1) is met" in their place;

e. The first sentence of paragraph (e)(1) is revised;

f. Paragraph (g) is revised; and

g. Paragraph (p)(5) is revised.

The revisions read as follows:

§ 277.18 Establishment of an Automated Data Processing (ADP) and Information Retrieval System.

* * * * *

(b) * * *

Regular funding or regular FFP rate means any Federal reimbursement rate authorized by § 277.4(b).

* * * * *

(e) *APD Update.*—(1) *General submission requirements.* The State agency shall submit an APD Update for FNS approval for all approved Planning and Implementation APD's when total acquisition costs exceed $5 million.

* * *

* * * * *

(g) *Conditions for receiving FFP.*—(1) A State agency may receive FFP at the 50 percent reimbursement rate for the costs of planning, design, development or installation of ADP and information retrieval systems if the proposed system will:

(i) Assist the State agency in meeting the requirements of the Food Stamp Act;

(ii) Meet the program standards specified in § 272.10(b)(1), (b)(2), and (b)(3) of this chapter, except for the requirements in § 272.10(b)(2)(vi), (b)(2)(vii), and (b)(3)(ix) of this chapter to eventually transmit data directly to FCS;

(iii) Be likely to provide more efficient and effective administration of the program; and

(iv) Be compatible with such other systems utilized in the administration of State agency plans under the program of Temporary Assistance for Needy Families (TANF).

(2) State agencies seeking FFP for the planning, design, development or installation of automated data processing and information retrieval systems shall develop Statewide systems which are integrated with TANF. In cases where a State agency can demonstrate that a local, dedicated, or single function (issuance or certification only) system will provide for more efficient and effective administration of the program, FNS may grant an exception to the Statewide integrated requirement. These exceptions will be based on an assessment of the proposed system's ability to meet the State agency's need for automation. Systems funded as exceptions to this rule, however, should be capable to the extent necessary, of an automated data exchange with the State agency system used to administer TANF. In no circumstances will funding be available for systems which duplicate other State agency systems, whether presently operational or planned for future development.

* * * * *

(p) * * *

(5) *Costs.* Costs incurred for complying with the provisions of paragraphs (p)(1) through (p)(3) of this section are considered regular administrative costs which are funded at the regular FFP level.

§ 277.19 [Removed]

11. Section 277.19 is removed.

12. In part 277, Appendix A, in the section titled "Standards for Selected Items of Cost":

a. Paragraphs A.(25) through A.(28) are redesignated as paragraphs A.(26) through A.(29) respectively;

b. A new paragraph A.(25) is added;

c. Paragraph B.(1) is amended by removing from the second sentence the words "to be funded at the 63 percent rate or".

The addition reads as follows:

Appendix A to Part 277—Principles for Determining Costs Applicable to Administration of the Food Stamp Program by State Agencies

* * * * *

Standards for Selected Items of Cost

A. * * *

(25) *Prosecution activities.* The costs of investigations and prosecutions of intentional Food Stamp Program violations are allowable. Costs of investigation, prosecution, or claims collection which are performed by agencies other than the State agency shall be based on a formal agreement between the State or local agency and provider agency. These interagency agreements shall meet the requirements of this part in regard to allowable charges. Funding under these interagency agreements shall be provided by the State agency from their funds and funds made available by FNS.

* * * * *

Dated: May 17, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 00–13005 Filed 5–23–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–56–AD; Amendment 39–11725; AD 2000–10–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2, A300–B2K, A300 B4–2C, A300 B4–100, and A300 B4–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A300 B2, A300 B2K, A300 B2–200, A300 B4, A300 B4–100, and A300 B4–200 series airplanes, that currently requires certain structural inspections and modifications. This amendment requires that those inspections be accomplished on additional airplanes. This action also requires new repetitive inspections for airplanes in certain configurations at revised thresholds and intervals. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct corrosion and cracking of the wings and fuselage, which could result in reduced structural integrity of the airplane.

DATES: Effective June 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 13, 1992 (57 FR 8257, March 3, 1992), and as of May 29, 1996 (61 FR 18661, April 29, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–08–08, amendment 39–9574 (61 FR 18661, April 29, 1996), which is applicable to all Airbus Model A300 B2, A300 B2K, A300 B2–200, A300 B4, A300 B4–100, and A300 B4–200 series airplanes, was published in the Federal Register on December 21, 1999 (64 FR 71333). The action proposed to continue to require certain structural inspections and modifications. The action proposed to require that those inspections be accomplished on additional airplanes. The action also proposed to require new repetitive inspections for airplanes in certain configurations at revised thresholds and intervals.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Additional Affected Airbus Models

One commenter suggests that the applicability of the proposed AD be

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revised to include Airbus Model A300C4–200 and A300F4–200 series airplanes. The FAA does not concur that the applicability should be revised to include these airplane models, since they are not type certificated in the U.S. No change is made to the final rule.

Reference to French Airworthiness Directive

One commenter suggests that the proposed AD be revised to include a reference to a related French airworthiness directive. The commenter states that the proposed AD correctly refers to French airworthiness directive 90–222–116(B)R4, which references service bulletins for certain inspections also addressed in this proposed AD, but does not mention 93–154–149(B), which references service bulletins for the modifications addressed by this AD.

The FAA acknowledges that the modifications required by existing FAA AD 96–08–08 were also addressed in related French airworthiness directive 93–154–149(B), dated September 15, 1993. The FAA has no objection to including this reference in this final rule, which continues to require those modifications, and has revised the AD accordingly. However, although the FAA generally references the latest pertinent airworthiness directive issued by another airworthiness authority as an informational NOTE in the AD, this information is not intended to be an exhaustive list of all related mandatory continuing airworthiness information, and should not be considered as such.

Changes Made to Proposed AD

To improve the readability of the AD, the FAA has added certain headings to the text of the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 13 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 96–08–08, and retained in this AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

The new inspection that is required by this new AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9574 (61 FR 18661, April 29, 1996), and by adding a new airworthiness directive (AD), amendment 39–11725, to read as follows:

2000–10–01 Airbus Industrie: Amendment 39–11725. Docket 98–NM–56–AD. Supersedes AD 96–08–08, Amendment 39–9574.

Applicability: All Model A300 B2, A300 B2K, A300 B2–200, A300 B4–2C, A300 B4–100, and A300 B4–200 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and cracking of the wings and fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 92–02–09

Inspections and Modifications

(a) Accomplish the inspections and modifications contained in the Airbus service bulletins listed below prior to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after April 13, 1992 (the effective date of AD 92–02–09, amendment 39–8145), whichever occurs later, except as provided in paragraph (d) of this AD for the service bulletin identified in paragraph (a)(8) of this AD. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection. After April 13, 1992, the actions shall only be accomplished in accordance with the latest revision of the service bulletins specified.

(1) Airbus Service Bulletin A300–53–103, Revision 4, dated June 30, 1983; or Revision 5, dated February 23, 1994;

(2) Airbus Service Bulletin A300–53–126, Revision 7, dated November 11, 1990; or Revision 8, dated September 18, 1991;

(3) Airbus Service Bulletin A300–53–146, Revision 7, dated April 26, 1991;

Note 2: Airbus Service Bulletin A300–53–146 provides for a compliance threshold of within 5 years after the date of issuance of French airworthiness directive 90–222–116(B), issued on December 12, 1990, the accomplishment of which is required by AD 85–07–09, amendment 39–5033.

(4) For Configuration 1 airplanes identified in Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996: Airbus Service Bulletin A300–53–162, Revision 4, dated November 12, 1990; Revision 5, dated March 17, 1994; or Revision 6, dated March 20, 1996. After the effective date of this new AD, only Revision 6 of the service bulletin shall be used;

(5) Airbus Service Bulletin A300–53–196, Revision 1, dated November 12, 1990; as amended by Service Bulletin Change Notice 1.A., dated February 4, 1991, or Revision 2, dated March 17, 1994;

Note 3: Airbus Service Bulletin A300–53–196 provides for a compliance threshold of within 6,000 landings after accomplishment of Airbus Service Bulletin A300–53–194, accomplishment of which is required by AD 87–04–12, amendment 39–5536.

(6) Airbus Service Bulletin A300–53–225, Revision 2, dated May 30, 1990;

(7) Airbus Service Bulletin A300–53–226, Revision 4, dated November 12, 1990; or Revision 5, dated September 7, 1991;

Note 4: Airbus Service Bulletin A300–53–226 provides for a compliance threshold of within 5 years after the issuance of French airworthiness directive 90–222–116(B), issued on December 12, 1990; but not later than 20 years after first delivery; the accomplishment of which is required by AD 90–03–08, amendment 39–6481.

(8) For Configuration 1 and 2 airplanes identified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995: Airbus Service Bulletin A300–53–278, dated November 12, 1990; or Revision 1, dated March 17, 1994;

(9) Airbus Service Bulletin A300–54–045, Revision 4, dated January 31, 1990; or Revision 6, dated February 25, 1994;

(10) Airbus Service Bulletin A300–54–060, Revision 2, dated September 7, 1988, and Change Notice 2.A., dated February 13, 1990; or Revision 3, dated February 25, 1994;

(11) Airbus Service Bulletin A300–54–063, Revision 1, dated April 22, 1987, and Change Notice 1.A., dated February 13, 1990; or Revision 2, dated February 25, 1994;

(12) Airbus Service Bulletin A300–54–066, Revision 1, dated February 15, 1989, and Change Notice 1.A., dated February 13, 1990; or Revision 2, dated February 25, 1994.

Restatement of Certain Requirements of AD 96–08–08

(b) Accomplish the inspections and modifications contained in the Airbus service bulletins listed below prior to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after March 29, 1996 (the effective date of AD 96–08–08, amendment 39–9574), whichever occurs later. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection.

(1) Airbus Service Bulletin A300–57–0194, Revision 2, including Appendix 1, dated August 19, 1993;

(2) Airbus Service Bulletin A300–57–166, Revision 3, including Appendix 1, dated July 12, 1993;

(3) Airbus Service Bulletin A300–57–0167, Revision 1, including Appendix 1, dated May 25, 1993;

(4) Airbus Service Bulletin A300–57–0168, Revision 3, including Appendix 1, dated November 22, 1993;

(5) Airbus Service Bulletin A300–57–0180, Revision 1, dated March 29, 1993;

(6) Airbus Service Bulletin A300–57–0185, Revision 1, including Appendix 1, dated March 8, 1993; and

(7) Airbus Service Bulletin A300–54–0084, dated April 21, 1994.

New Requirements of This AD

Inspections

(c) For Configuration 2 airplanes identified in Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996: Accomplish the inspections contained in Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996, prior to or at the thresholds identified in the service bulletin; or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the service bulletin for the inspection.

(d) For Configuration 1 and 2 airplanes identified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995: Accomplish the inspections contained in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995; at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Repeat the inspections thereafter at intervals not to exceed 3,600 flight cycles. Accomplishment of the inspections required by this paragraph constitutes terminating action for the inspections required by paragraph (a)(8) of this AD.

(1) For airplanes that have not been inspected in accordance with paragraph (a) and (a)(8) of this AD prior to the effective date of this AD: Inspect at the time specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable.

(i) For Configuration 1 airplanes: Prior to the accumulation of 18,300 total landings, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later.

(ii) For Configuration 2 airplanes: At the earlier of the times specified in paragraphs (d)(1)(ii)(A) or (d)(1)(ii)(B) of this AD.

(A) At the time specified in paragraphs (a) and (a)(8) of this AD.

(B) Prior to the accumulation of 22,000 total landings, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have been inspected in accordance with paragraph (a) and (a)(8) of this AD prior to the effective date of this AD: Perform the next inspection within 3,600 landings after accomplishing the last inspection, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later.

(e) For Configuration 3 airplanes identified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995: Accomplish the inspections contained in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995, prior to the accumulation of 26,000 total flight cycles; or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles.

Note 5: Accomplishment of the inspections specified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995, is considered acceptable for compliance with the significant structural details (SSD) inspection 536206 of "Airbus Industrie A300 Supplemental Structural Inspection Document" (SSID), Revision 2, dated June 1994, required by AD 96–13–11, amendment 39–9679 (61 FR 35122, July 5, 1996).

Corrective Actions for All Inspections

(f) If any discrepant condition identified in any service bulletin referenced in this AD is found during any inspection required by this AD, prior to further flight, accomplish the corresponding corrective action specified in the service bulletin, except as specified in paragraph (g) of this AD.

(g) If any crack is found during any inspection required by this AD; and the applicable service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as required by paragraph (g) of this AD, the actions shall be done in accordance with the Airbus service bulletins listed in paragraphs (j)(1), (j)(2), and (j)(3) of this AD.

(1) The incorporation by reference of Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996, and Airbus

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Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of the Airbus service bulletins listed in Table 1 was approved previously by the Director of the **Federal Register** as of April 13, 1992 (57 FR 8257, March 9, 1992).

TABLE 1

Airbus service bulletin No.	Revision level	Service bulletin date
A300–53–103	4	June 30, 1983.
A300–53–126	7	November 11, 1990.
A300–53–146	7	April 26, 1991.
A300–53–162	4	November 12, 1990.
A300–53–196	1	November 12, 1990.
A300–53–225	2	May 30, 1990.
Service Bulletin Change Notice 1.A. to A300–53–196	(Original)	February 4, 1991.
A300–53–226	4	November 12, 1990.
A300–53–226	5	September 7, 1991.
A300–53–278	(Original)	November 12, 1990.
A300–54–045	4	January 31, 1990.
A300–54–060	2	September 7, 1988.
Change Notice 2.A. to A300–54–060	(Original)	February 13, 1990.
A300–54–063	1	April 22, 1987.
Change Notice 1.A. to A300–54–063	(Original)	February 13, 1990.
A300–54–066	1	February 15, 1989.
Change Notice 1.A. to A300–54–066	(Original)	February 13, 1990.

(3) The incorporation by reference of the Airbus service bulletins listed in Table 2 was approved previously by the Director of the Federal Register as of May 29, 1996 (61 FR 18661, April 29, 1996).

TABLE 2

Airbus service bulletin No.	Revision level	Service bulletin date
A300–53–103	5	February 23, 1994.
A300–53–126	8	September 18, 1991.
A300–53–162	5	March 17, 1994.
A300–53–278	1	March 17, 1994.
A300–54–045	6	February 25, 1994.
A300–54–060	3	February 25, 1994.
A300–54–063	2	February 25, 1994.
A300–54–066	2	February 25, 1994.
A300–57–0194	2	August 19, 1993.
A300–57–166	3	July 12, 1993.
A300–57–0167	1	May 25, 1993.
A300–57–0168	3	November 22, 1993.
A300–57–0180	1	March 29, 1993.
A300–57–0185	1	March 8, 1993.
A300–54–0084	(Original)	April 21, 1994.

(4) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 7: The subject of this AD is addressed in French airworthiness directives 93–154–149(B), dated September 15, 1993, and 90–222–116(B)R4, dated March 27, 1996.

(k) This amendment becomes effective on June 28, 2000.

Issued in Renton, Washington, on May 8, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–11948 Filed 5–23–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–75–AD; Amendment 39–11736; AD 2000–10–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes. This action requires repetitive inspections to detect damage or deflection of the crew rest heat exchanger, and follow-on actions, if necessary. This amendment is prompted by reports of cracking and buckling of the front edge of the crew rest heat exchanger on several airplanes. The actions specified in this AD are intended to detect and correct damage or deflection of the crew rest heat exchanger, which could result in jamming of the rudder or elevator control cables, and consequent reduced controllability of the airplane.

DATES: Effective June 8, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 8, 2000.

Comments for inclusion in the Rules Docket must be received on or before July 24, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that cracking and buckling of the forward edge of the crew rest heat exchanger has been found on several airplanes. Investigation revealed that certain heat exchangers were manufactured with material that is too thin. On one airplane, the heat exchanger buckled and bulged enough to make contact with the rudder and elevator cables located below the heat exchanger. Such contact between the heat exchanger and the rudder and elevator control cables could eventually dislodge pieces of the heat exchanger or adjacent fasteners. Dislodged pieces or fasteners could cause a jam of the rudder or elevator control cables. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–21A2412, dated January 20, 2000. The alert service bulletin describes procedures for repetitive general visual inspections to detect damage or deflection of the crew rest heat exchanger, and follow-on actions, if necessary. If damage or deflection is found, follow-on actions include replacement of the affected heat exchanger with a new heat exchanger, and measurement of the thickness of material of the discrepant heat exchanger. If the thickness of the material is within certain limits, the alert service bulletin specifies that the discrepant heat exchanger should be returned to Boeing.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct cracking or buckling of the crew rest heat exchanger, which could result jamming of the rudder or elevator control cables, and consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Difference Between This AD and the Alert Service Bulletin

Operators should note that there is a typographical error in the Accomplishment Instructions on page 10 of the alert service bulletin. Item G. under the heading "Inspection and Replacement of the Heat Exchanger (All Airplanes)" reads, "If the material thickness is between 0.028—0.034 inches[,] send the damaged heat exchanger and your inspection results to Boeing." The number "0.034" should read "0.038." "NOTE 3" has been included in this AD for clarification of this point.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane, per inspection cycle.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must

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submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–75–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–10–12 Boeing: Amendment 39–11736. Docket 2000–NM–75–AD.

Applicability. Model 747–400 series airplanes, line numbers 1 through 1205 inclusive, certificated in any category, and equipped with dual crown skin heat exchangers.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage or deflection of the crew rest heat exchanger, which could result in jamming of the rudder or elevator control cables, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Within 1,200 flight hours or 90 days after the effective date of this AD, whichever occurs first, perform a general visual inspection of the crew rest heat exchanger to detect deflection or damage, in accordance with Boeing Alert Service Bulletin 747–21A2412, dated January 20, 2000. Repeat the inspection thereafter at intervals not to exceed 2,500 flight hours.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Action

(b) If any damage or deflection is detected during any inspection required by paragraph (a) of this AD, prior to further flight, replace the discrepant heat exchanger with a new heat exchanger, and measure the thickness of the material of the discrepant heat exchanger, in accordance with Boeing Alert Service Bulletin 747–21A2412, dated January 20, 2000. If the material is greater than or equal to 0.028 inches thick but less than or equal to 0.038 inches thick (≥ 0.028 but ≤ 0.038 inches thick), send the damaged heat exchanger and inspection results to the Manager of Service Bulletin Engineering, Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124.

Note 3: There is a typographical error in the Accomplishment Instructions on page 10 of the alert service bulletin. Item G. under the heading "Inspection and Replacement of the Heat Exchanger (All Airplanes)" reads, "If the material thickness is between 0.028—0.034 inches[,] send the damaged heat exchanger and your inspection results to Boeing." The number "0.034" should read "0.038."

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–21A2412, dated January 20, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on June 8, 2000.

Issued in Renton, Washington, on May 15, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–12671 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket No. RM00–8–000; Order No. 640]

Revision of Public Reference Room Procedures for Record Requests

May 17, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is updating its regulation at part 388 governing fees for paper copies of records available in its Public Reference Room. Until now, to enable requesters to determine whether they wished to order lengthy Commission documents before having to pay for their entire request, the Commission would provide paper copies of up to ten pages free of charge. Now, however, because Commission documents may be previewad electronically over the Internet and in the Public Reference Room, the Commission is eliminating its existing rule providing for up to ten pages without charge. The Commission is also providing that the schedule of fees for finding and duplicating records from the Public Reference Room will be available on the Commission's Web site.

EFFECTIVE DATE: This Final Rule is effective June 23, 2000.

FOR FURTHER INFORMATION CONTACT:

Katherine Waldbauer (Legal Information) Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426 Telephone: (202) 208–0232

Katherina Quijada-Cusack (Technical Information), Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426, Telephone: (202) 208–1748

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (the Commission) is updating its regulation at Part 388 [1] governing fees for paper copies of records available in its Public Reference Room. The Commission is eliminating its existing rule that, as to documents from the Commission's Records and Management Information System (RIMS) which may be viewed electronically, requesters may obtain requests consisting of ten or fewer pages without charge. The Commission is also providing that the schedule of fees for finding and duplicating records from the Public Reference Room will be available on the Commission's Web site.[2]

II. Background and Discussion

Section 388.109(a)(4) of the Commission's regulations currently states that "[t]he public may purchase hard copies of certain documents from the Commission's Records Management and Information System (RIMS). The fee is 15 cents per page. There will be no charge for requests consisting of ten or fewer pages." RIMS is a database containing the indexes and images of documents submitted to and issued by the Commission since November 16, 1981. It consists of (a) an electronic database consisting of the scanned-in images of the majority of documents submitted to and issued by the Commission since November 1995 and (b) the majority of documents from 1981 until November 1995 which are available only on microform, a data storage system which includes microfilm and aperture cards. All RIMS documents designated as "public documents" are available to the general public, and the majority of RIMS public documents are accessible for viewing and printing through the Commission's Web site free of charge. This rule will eliminate the practice of providing, without charge, paper copies of ten or fewer pages from documents that are available electronically from RIMS.

Beginning in July 1994, the Commission began scanning images of selected documents into the RIMS electronic database, gradually phasing in additional documents. Since July, 1994, the Commission has accumulated a sizeable library of imaged documents. As of February 2000, RIMS contained 470,753 documents comprised of 7,945,632 pages. In addition, the Commission recently enhanced RIMS further to include an improved print capability which allows easier printing of large blocks of pages and higher quality output. Until April 1998, the general public could only obtain documents from RIMS by contacting or going to the Public Reference Room. Since that date the RIMS electronic database has been available through the Commission's Web site, and all of the documents scanned into the RIMS electronic database are now available for viewing and printing through that means. Users with computers who are able to access the Internet are able to view images and print images to their personal printers at no cost.

Before the Commission made access to the RIMS electronic database available through the Internet, the documents could not be viewed prior to being printed. The Commission's regulations, therefore, allowed individuals to request up to ten pages of a document to be printed from microform without charge to determine if the document, or a portion thereof, was what was actually needed by the requester. Now, however, in addition to having RIMS available in the Public Reference Room, the majority of documents requested from RIMS—namely, those available on the RIMS electronic database—can be viewed by the public on the Commission's Web site without charge. Images of scanned documents may now be previewed, and users can print scanned documents directly to their own printers. Alternatively, users still may come to the Public Reference Room to view images on publicly-available computers. Given that previewing of documents can now be done electronically, the Commission is eliminating the practice of printing ten or fewer pages for free for documents that are available for preview in the RIMS electronic database.

The elimination of the current procedure allowing requesters to obtain print requests of ten or fewer pages without charge will have a minimal effect on the public's ability to obtain public records from the Commission, since it will affect only requests which under the revised rule would cost at most $1.50 per request. Elimination of this procedure will also prevent requesters using the Public Reference Room from submitting multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees.

Certain documents (from 1981 until approximately November 1995) are available only on microform. Because documents stored on microform cannot be viewed via the Internet, requesters of documents from RIMS that are only available on microform will not be charged for requests consisting of ten or fewer pages.

The fee schedule is available upon request from staff of the Public Reference Room. The Commission will also publish the fee schedule on the Commission's Web site.

III. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA) [3] requires rulemakings to contain either a description and analysis of the effect that the Final Rule will have on small entities [4] or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

This Final Rule eliminates a requester's ability to obtain from the Commission documents that can be previewed from RIMS without charge if the request consists of ten or fewer pages, and provides that the Public Reference Room will publish its fee

[1] 18 CFR Part 388.

[2] The fee schedule will be available at www.ferc.fed.us/public/pubref1.htm.

[3] 5 U.S.C. 601–612.

[4] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

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schedule on the Commission's Web site. The majority of requesters of documents who will be affected by this Final Rule, both large and small entities, are already able to view and print documents from RIMS from the Commission's Web site without charge, and those requesters without Internet access are free to use the computers in the Public Reference Room without charge to preview RIMS documents. The Commission will continue not to charge requesters of documents only available from RIMS microform for requests consisting of ten or fewer pages.

Publishing the fee schedule on the Web site makes it more readily available to requesters and is consistent with the current practice of publishing the fee schedule of the contractor who provides photocopying and other services to the public in the Public Reference Room on the Commission's Web site.[5] These fee schedules are also available upon request from the staff of the Public Reference Room.

The Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[6] No environmental consideration is necessary for the promulgation of a rule that is procedural, ministerial, or related to internal administrative and management actions.[7] The Final Rule changes are procedural in nature and do not substantially change the effect of the underlying legislation or regulations being amended. Accordingly, no environmental consideration is necessary.

V. Information Collection Statement

Regulations promulgated by the Office of Management and Budget (OMB) require that OMB approve certain information collection requirements imposed by agency rule.[8] This Final Rule contains no information reporting requirements, and is not subject to these OMB regulations.

VI. Administrative Findings Statement

The Administrative Procedure Act (APA)[9] generally requires agencies to provide notice of proposed rules and opportunity of public comment thereon, but the notice and comment requirement does not apply to "rules of agency organization, procedure, or practice."[10] This Final Rule does not substantially alter the right of members of the public to obtain documents. Therefore, this is a rule of agency organization, procedure or practice for which notice and comment is not required.

VII. Congressional Notification and Effective Date

The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule because the rule concerns agency procedure and practice. The Final Rule will not substantially affect the rights and obligations of non-agency parties.[11] Therefore, this Final Rule is effective June 23, 2000.

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Web site (http://www.ferc.fed.us) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

- CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994. CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.
- RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Web site during normal business hours from our Help Line at (202) 208–2222 (E-Mail to web.master@ferc.fed.us) or the Public Reference Room at (202) 208–1371 (E-Mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Web site are available. User assistance is also available.

List of Subjects in 18 CFR Part 388

Confidential business information, Freedom of information

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends part 388, title 18, of the Code of Federal Regulations as follows:

PART 388—INFORMATION AND REQUESTS

1. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended); 553–557; 42 U.S.C. 7101–7352.

2. In § 388.109, paragraph (a)(4) is revised and paragraph (a)(6) is added as follows:

§ 388.109 Fees for record requests.

(a) * * *

(4)(i) The public may purchase hard copies of documents available in electronic form from the Commission's Records and Information Management System (RIMS) for 15 cents per page.

(ii) The public may purchase hard copies of documents that are available on microform from RIMS for 15 cents per page. There will be no fee for requests for RIMS microform documents consisting of ten or fewer pages.

* * * * *

(6) The fee schedule for Commission documents is available on the Commission's Web site at *www.ferc.fed.us.*

* * * * *

[FR Doc. 00–13006 Filed 5–23–00; 8:45 am]

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[5] When this rule goes into effect, the Web page will display a fee schedule for services provided by FERC staff at *www.ferc.fed.us/public/pubref1.htm* The Web site currently lists the fee schedule for additional services provided by the Commission's on-site photocopying contractor, RVI International, Inc., including self-service photocopying at 25 cents per page, at *www.ferc.fed.us/public/isd/rvj.htm*

[6] Order No. 486, 52 FR 47897 (Dec. 17, 1987). FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,783 (Dec. 10, 1984) (*codified* at 18 CFR Part 380).

[7] 18 CFR 380.4(a)(1).

[8] 5 CFR part 1320.

[9] 5 U.S.C. 551–706.

[10] 5 U.S.C. 553(b)(A).

[11] 5 U.S.C. 804(3)(C).

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA81

Federal Government Participation in the Automated Clearing House; Correction

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim Rule with request for comment; correction.

SUMMARY: The Financial Management Service published in the **Federal Register** on Friday, April 7, 2000 (65 FR 18866) a rule concerning the use of the Automated Clearing House (ACH) system by Federal agencies. This document corrects an inadvertent error in amendatory instruction 4 of that rule.

DATES: This correction is effective April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist, at (202) 874–6705 or walt.henderson@fms.treas.gov; Natalie H. Diana at (202) 874–6590 or natalie.diana@fms.treas.gov; Adam Martin, Financial Program Specialist, at (202) 874–6881 or adam.martin@fms.treas.gov; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590 or cindy.johnson@fms.treas.gov; or Margaret Marquette, Deputy Chief Counsel, at (202) 874–6681.

SUPPLEMENTARY INFORMATION:

Background

The interim regulations that are the subject of this correction were published in the **Federal Register** on Friday April 7, 2000 (65 FR 18866). Amendatory instruction 4 of those regulations inadvertently referred to § 210.5 rather than § 210.5(a). This correction makes clear that § 210.5(b) remains unchanged from the rule as published on April 9, 1999 (64 FR 17472).

In rule FR Doc. 00–8626 published on April 7, 2000 (65 FR 18866) make the following correction:

PART 210—[CORRECTED]

§ 210.5 [Corrected]

1. On page 18869, column 3, correct amendatory instruction 4 to read:

4. Revise § 210.5(a) to read as follows:

Dated: May 17, 2000.

Bettsy H. Lane,

Assistant Commissioner–Federal Finance.

[FR Doc. 00–12988 Filed 5–23–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–134]

Drawbridge Operation Regulations: Hackensack River, NJ.

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District has issued a temporary deviation from the existing drawbridge regulations for the AMTRAK Portal Bridge, mile 5.0, across the Hackensack River at Little Snake Hill, New Jersey. This deviation allows the bridge owner to keep the bridge in the closed position from 7 a.m. June 3 through 7 a.m. June 4 and from 7 a.m. June 10 through 7 a.m. June 11, 2000. This deviation is necessary to facilitate necessary repairs to the bridge.

DATES: This deviation is effective at 7 a.m. on June 3, 2000 through 7 a.m. on June 11, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Yee, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION: The AMTRAK Portal Bridge has a vertical clearance of 23 feet at mean high water and 28 feet at mean low water. The existing regulations for the bridge in 33 CFR 117.723(c) require the bridge need not be opened Monday through Friday, except federal holidays, from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m. At all other times, openings may not be delayed for more than 10 minutes, unless the drawtender and the vessel operator communicating by radiotelephone, agree to a longer delay.

The bridge owner, AMTRAK, asked the Coast Guard to allow the bridge to remain closed from 7 a.m. on June 3, 2000 through 7 a.m. on June 4, 2000 and from 7 a.m. June 10, 2000 through 7 a.m. June 11, 2000. This deviation is necessary to facilitate repairs to the brakes at the bridge.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation is authorized under 33 CFR 117.35.

Dated: May 16, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 00–13043 Filed 5–23–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD08–00–010]

RIN 2115–AE84

Termination of Regulated Navigation Area: Monongahela River, Mile 81.0 to 83.0

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is terminating the regulated navigation area on the Monongahela River from mile 81.0 to mile 83.0. The regulated navigation area had been established to ensure the safety of vessel traffic and workers during the construction of Grays Landing Lock. Now that all construction on Grays Landing Lock has been completed and the river's width is no longer restricted in this area, the regulated navigation area is no longer required.

DATES: This rule is effective April 28, 2000.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of CGD08–00–010 and are available for inspection or copying at Marine Safety Office Pittsburgh between 8 a.m. and 3:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT M. D. Evanish, Project Manager, telephone number (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 7, 2000 the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Termination of Regulated Navigation Area: Monongahela River, Mile 81.0 to 83.0 in the **Federal Register** (65 FR 005). The Coast Guard received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The regulated navigation area was established on November 29, 1991 to

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ensure the safety of vessel traffic and workers during the construction of Grays Landing Lock. The need for the Regulated Navigation Area no longer exists because all construction on Grays Landing Lock has been completed and the river's width is no longer restricted in this area. Therefore, since the safety concerns that necessitated the regulation no longer exist, this rule removes the regulation establishing this Regulated Navigation Area in § 165.819.

Discussion of Comments and Changes

No comments were received.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be minimal therefore a full regulatory evaluation is unnecessary. The impact on routine navigation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Safety measures, Vessels, Waterways.

PART 165—[AMENDED]

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

§ 165.819 [Removed]

2. Section 165.819 is removed in its entirety.

Dated: April 28, 2000.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 00–13013 Filed 5–23–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–00–129]

RIN 2115–AA97

Safety Zone: Maine Yankee Steam Generator and Pressurizer Removal Wiscasset, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in a 200-yard radius from position 43°56′55″N, 069°41′53″ W, the southeast corner of the Maine Yankee Barge slip. This safety zone precludes entry into the cove between Bailey's point and Foxbird Island and portions of the Eastern Shore of Bailey Cove, Wiscasset, ME. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the handling, loading, and transportation of four major components of the Maine Yankee Nuclear Plant which are classified as Class 7 Hazardous Waste.

EFFECTIVE DATE: This rule is effective from May 22, 2000 through July 22, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. V. Timme, Chief of Response and Planning, Captain of the Port, Portland at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Under 5 U.S.C 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less that 30 days after publication in the **Federal Register**. Due to the complex planning and coordination involved final details for the closure were not provided to the Coast Guard until April 30, 2000, making it impossible to publish a NPRM or a final rule 30 days in advance. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to close this section of the waterway and protect the maritime public from the hazards associated with the handling, loading and transportation of major components containing class 7 hazardous waste from a nuclear power plant onto a barge.

Background and Purpose

Beginning May 22 and ending July 22, 2000, Stone and Webster, the decommissioning contractor, will load and transport four major components from the Maine Yankee Nuclear Plant to a barge in the Maine Yankee barge slip in Wiscasset, Maine. This regulation establishes a temporary safety zone within 200-yard radius around the southeast corner of the Maine Yankee Barge slip located at position 43°56′55″ N, 069°41′53″ W. This would effectively preclude entry into the cove between Bailey's Point and Foxbird Island and portions of the Eastern Shore of Bailey Cove. This rule is necessary to protect the maritime public from hazards associated with the loading of components of a nuclear power plant, which contain class 7 hazardous waste, onto a barge.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the proposal has no significant effect on shipping, and its impact on fishing is minimal as it removes a small portion (less than one square mile) of the available fishing grounds from active fishing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of smali entities. "Small entities" may include (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The commercial fishing community intending to fish portions of Wiscasset restricted by the safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: it only affects a very small portion of the waterway and commercial fishing community will be able to utilize other areas of waterway for commercial purposes.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and have determined that this rule does not have sufficient federalism implications for Federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An Unfunded Mandate is a regulation that requires a state, local or tribal government or the private sector to incur costs without the Federal government's having first provided the funds to pay those costs. This rule will not impose an Unfunded Mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis Checklist is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary section, 165.T01–129, to read as follows:

§ 165.T01–129 Maine Yankee Steam Generator and Pressurizer Removal Wiscasset, ME

(a) *Location.* The following area is a safety zone: All waters within a 200-yard radius around the position 43°56′55″ N, 069°41′53″ W.

(b) *Effective date.* This section is effective from May 22, 2000 through July 22, 2000.

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(c) *Regulations.* (1) The general regulations contained in § 165.23 and § 165.20 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or designated personnel. U.S. Coast Guard representatives of the Captain of the Port include commissioned, warrant and petty officers of the Coast Guard. Upon being hailed by U.S. Coast Guard personnel or an U.S. Coast Guard vessel, via siren, radio, flashing light, or other means, those hailed shall proceed as directed.

(3) Entry or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, ME.

Dated: May 15, 2000.

R.A. Nash

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 00–13042 Filed 5–23–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 99100008272–0123–02]

RIN 0651–AB07

Changes to Permit Payment of Patent and Trademark Fees by Credit Card

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is amending the rules of practice to provide for the payment of any patent process or trademark process fee by credit card. The Office previously limited payment by credit card to the fees required for information products or for an electronic submission of or in a trademark application. The Office will now accept payment of any patent process fee, trademark process fee, or information product fee by credit card.

EFFECTIVE DATES: The amendment to § 1.21 is effective July 24, 2000. Section 1.23 is effective June 5, 2000.

FOR FURTHER INFORMATION CONTACT:

Concerning this final rule: Robert W. Bahr, by telephone at (703) 308–6906, or by facsimile to (703) 308–6916 marked to the attention of Robert W. Bahr.

Concerning the payment of fees (by credit card or otherwise) in general: Matthew Lee, by telephone at (703) 305–8051, by e-mail at matthew.lee@uspto.gov, or by facsimile at (703) 305–8007 marked to the attention of Matthew Lee.

SUPPLEMENTARY INFORMATION: It has been the practice of the United States Patent and Trademark Office (Office) to accept payment of fees for information products by credit card, but not to accept patent process fees or trademark process fees by credit card. The Office recently revised 37 CFR 1.23 to expressly permit payment of fees by credit card "in an electronically filed trademark application or electronic submission in a trademark application." *See Trademark Law Treaty Implementation Act Changes*, Final Rule, 64 FR 48989, 48917 (September 8, 1999), 1226 *Off. Gaz. Pat. Office* 103, 120 (September 23, 1999) (TLTIA Final Rule). As explained in the TLTIA Final Rule:

> Section 1.23 is also amended to add a paragraph (b), providing that payments of money for fees in electronically filed trademark applications, or electronic submissions in trademark applications, may also be made by credit card. The Office previously limited fee payment by credit card to the fees required for information products, and will continue to accept payment of information product fees by credit card.
>
> Section 1.23(b) will also provide that payment of a fee by credit card must specify the amount to be charged and such other information as is necessary to process the charge, and is subject to collection of the fee.
>
> Section 1.23(b) will further provide that the Office will not accept a general authorization to charge fees to a credit card. The Office cannot accept an authorization to charge "all required fees" or "the filing fee" to a credit card, because the Office cannot determine with certainty the amount of an unspecified fee (the amount of the "required fee" or the applicable "filing fee") within the time frame for reporting a charge to the credit card company. Also, the Office cannot accept charges to credit cards that require the use of a personal identification number (PIN) (*e.g.*, certain debit cards or check cards).
>
> Section 1.23(b) also contains a warning that if credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number is made public. The Office currently provides an electronic form for use when paying a fee in an electronically filed trademark application or electronic submission in a trademark application. This form will not be included in the records open to public inspection in the file of a trademark matter. However, the inclusion of credit card information on forms or documents other than the electronic form provided by the Office may result in the release of credit card information.

See Trademark Law Treaty Implementation Act Changes, 64 FR at 48906–07 (September 8, 1999), 1226 *Off. Gaz. Pat. Office* at 110.

The Office is now amending the rules of practice to permit payment of any patent process fee, trademark process fee, or information product fee by credit card, subject to actual collection of the fee. The Office will provide a Credit Card Payment Form (PTO–2038) for use when paying a patent process or trademark process fee (or the fee for an information product) by credit card. The Office will not require customers to use this form when paying a patent process or trademark process fee by credit card. If, however, a customer provides a credit card charge authorization in another form or document (*e.g.*, a communication relating to the patent or trademark), the credit card information may become part of the record of an Office file that is open to public inspection. Information concerning fees in general is posted on the Office's Web site at http://www.uspto.gov, and information on completing the Credit Card Payment Form will be posted on the Office's Web site.

The Office will not include the Credit Card Payment Form (PTO–2038) among the records open to public inspection in the file of a patent, trademark registration, or other proceeding. The Credit Card Payment Form (PTO–2038) is the only form the Office uses to collect credit card information during a patent, trademark, or other proceeding. The Credit Card Payment Form (PTO–2038) is the only form the Office will not make available to the public as part of the file of a patent, trademark, or other proceeding. As discussed above, failure to use the Credit Card Payment Form (PTO–2038) when submitting a credit card payment may result in your credit card information becoming part of the record of an Office file that is open to public inspection. If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the Office will not be liable in the event that the credit card number becomes public knowledge.

35 U.S.C. 42(d) and § 1.26 (which concern refund of patent and trademark fees) also apply to requests for refund of fees paid by credit card. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged. The Office will not refund a fee paid by credit card by Treasury check, electronic funds transfer, or credit to a deposit account (§ 1.25).

Finally, any payment of a patent process or trademark process fee by credit card must be in writing (*see* § 1.2), preferably on the Credit Card Payment Form (PTO–2038). If a Credit Card Payment Form or other document authorizing the Office to charge a patent process or trademark process fee to a credit card does not contain the information necessary to charge the fee to the credit card, the customer must submit a revised Credit Card Payment Form or document containing the necessary information. Office employees will not accept oral (telephonic) instructions to complete the Credit Card Payment Form or otherwise charge a patent process or trademark process fee (as opposed to information product or service fees) to a credit card.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.21: Section 1.21(m) is amended to make the $50.00 fee for processing a check returned "unpaid" by a bank applicable to any payment refused or charged back by a financial institution. The burden of processing any payment refused or credit card transaction charged back by a financial institution is the same as the burden of processing a check returned "unpaid" by a bank. The phrase "payment refused * * * by a financial institution" includes a check returned "unpaid" by a bank but also applies to the refusal by a financial institution of a payment by other means.

Section 1.23: Section 1.23(a) is amended to add the phrase "national bank notes" in the first sentence. This phrase was inadvertently deleted in the TLTIA Final Rule.

Section 1.23(b) is amended by revising the first sentence to eliminate the restriction that the payment of money required for United States Patent and Trademark Office fees by credit card be limited to fees "in an electronically filed trademark application or electronic submission in a trademark application."

Response to Comments

The Office published a notice (Notice of Proposed Rulemaking) proposing changes to the rules of practice to implement payment of patent and trademark fees by credit card. *See Changes to Permit Payment of Patent and Trademark Office Fees by Credit Card*, Notice of Proposed Rulemaking, 64 FR 59701 (November 3, 1999), 1228 *Off. Gaz. Pat. Office* 163 (November 23, 1999). The Office received fifteen written comments in response to the Notice of Proposed Rulemaking. Most of the comments supported changing the rules of practice to permit payment of all patent and trademark fees by credit card. Other comments and the Office's responses to the comments follow.

Comment (1): One comment suggested that the Office revise § 1.23 to permit customers to designate their deposit account as overdraft protection for check and credit card payments. The comment further suggested that the charge in § 1.21(m) should be less for those customers designating their deposit account as overdraft protection for check and credit card payments.

Response: Section 1.25 currently permits customers to provide a general authorization to charge fees to a deposit account. Therefore, no change to § 1.23 is necessary to permit customers to authorize the charging of any fee deficiency (*e.g.*, due to a returned check or refused charge) to a deposit account. Since the Office's cost of processing the returned check (or refused charge) is not decreased because a customer has authorized the charging of the fee deficiency resulting from the returned check or refused charge to a deposit account, the Office is not providing a lower fee for processing a returned check or refused charge in such a situation. Nevertheless, customers may still wish to provide an authorization to charge fee deficiencies (*e.g.*, due to a returned check or refused charge) to a deposit account to avoid the adverse results of non-payment of a fee (*e.g.*, loss of a filing date in a trademark application or abandonment of a patent or trademark application).

Comment (2): One comment suggested that the Office permit use of direct bank debit cards.

Response: The Office currently does not accept payment by bank debit cards, since these cards usually require the use of a personal identification number (or PIN). The Office will add other methods of payment (including bank debit cards) as soon as the systems and procedures for implementing them have been developed.

Comment (3): Another comment suggested that the Office permit the use of a "re-chargeable" credit card (*i.e.*, a card having a pre-applied balance against which charges may be made).

Response: A "re-chargeable" credit card program would operate in a manner similar to the existing deposit account program. Thus, a "re-chargeable" credit card program in addition to the current deposit account program does not have sufficient benefit to justify the administrative burden of maintaining these two duplicative programs.

Comment (4): Several comments suggested that the Office permit use of an AMERICAN EXPRESS® card because it has no upper limit. Another comment suggested that the Office permit use of all major credit cards, including AMERICAN EXPRESS® cards and DINER'S CLUB® cards. Another comment suggested that if the Office intends to accept AMERICAN EXPRESS® cards, the language of § 1.23 must be changed since AMERICAN EXPRESS does not consider its card to be a credit card.

Response: The Office desires to maximize convenience to its customers and is committed to adding additional credit cards and other methods of payments as soon as the systems and procedures for implementing them have been developed. In the meantime, the Office currently accepts charges to the following credit cards: AMERICAN EXPRESS®, DISCOVER®, MASTER CARD®, and VISA®. The Office considers each of these cards to be a "credit card" within the meaning of § 1.23.

Comment (5): One comment suggested that the Office should retain the Credit Card Form (PTO–2038) in the file of the patent or trademark proceeding (simply redacting the credit card number) so that third parties may determine whether the proper fee was actually authorized and paid.

Response: The Office file of a patent or trademark proceeding in which a fee was paid by credit card will contain a printout from the Office's Revenue Accounting and Management (RAM) system of the fee authorized and paid. When a fee is paid by check in a patent or trademark proceeding, the Office file includes only a printout from the RAM system of the fee paid and an indication that it was paid by check. A copy of the check used to pay the fee is not retained in the file for review by third parties. There is no need to have a different practice for credit card payments.

Comment (6): One comment suggested that the proposed change to permit patent and trademark payments by credit card is an excellent idea, especially if the Office permits the Credit Card Form (PTO–2038) to be submitted by facsimile.

Response: Credit card payments by facsimile will be permitted except in situations in which facsimile submission of correspondence is not permitted in § 1.6(d). Customers will be responsible for transmitting the credit card form to the correct organization within the Office by use of the correct facsimile number.

Comment (7): One comment suggested that the Office should permit a general authorization to charge fees to a credit card, rather than requiring customers to specify an exact amount. Another comment suggested that the Office permit customers to specify a charge

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amount of "up to and including XX" (the top estimated fee due).

Response: The Office currently does not have systems and procedures in place to accept authorization to charge an unspecified amount to a credit card. However, the Office desires to maximize convenience to its customers and is looking into ways for customers to pay by credit card without specifying the exact dollar amount.

Comment (8): One comment suggested that if a customer uses his or her own form containing the same information as the Credit Card Form (PTO–2038), the Office should accept and treat such information with the same liability as with the Credit Card Form (PTO–2038).

Response: When a customer uses his or her own form containing the same information as the Credit Card Form (PTO–2038) in a patent or trademark proceeding, the Office will attempt to redact the credit card number (except for the last four digits) from the form before it is placed in the file of the patent or trademark proceeding. Nevertheless, the Office strongly encourages customers to use the Office's Credit Card Form (PTO–2038) when paying fees by credit card. The Office will not accept liability for release of credit card information when a customer chooses to use his or her own form rather than the Office's Credit Card Form (PTO–2038).

Comment (9): One comment suggested that the Office could avoid including credit card information in a file open to public inspection (as an alternative to the Credit Card Form (PTO–2038)) by assigning a number or other identifier to a credit card and permitting the customer/cardholder to charge fees to that credit card by reference to the pre-assigned number or identifier.

Response: The Office currently does not store credit card information within any financial systems or databases for access by fee-processing personnel. The Office desires to maximize convenience to its customers and is looking into ways to assign and maintain numbers or identifiers for each credit card number. The Office will implement such a practice as soon as the necessary systems and procedures have been developed.

Comment (10): One comment suggested that the fees charged by credit card institutions for use of a credit card should be borne solely by customers who pay fees by credit card. The comment specifically suggested that the Office impose a surcharge in excess of the given patent or trademark fee on all credit card payments.

Response: Merchant fees charged for credit card transactions are paid by the Department of the Treasury. Processing credit card transactions results in lower costs to the Federal Government when compared to processing payments made by checks. Therefore, there is no need to impose a surcharge for credit card transactions.

Comment (11): One comment suggested that the Office does not always properly expunge information that should not be part of a record open to public inspection, so the Office should inform the public of its expected compliance rate in another notice of proposed rulemaking before adopting a final rule change. Alternatively, the comment suggests that the Office should accept liability for any erroneous disclosure of credit card information included on the Credit Card Form (PTO–2038).

Response: In view of the overwhelming support for the proposed change to permit payment of patent and trademark fees by credit card (and for the prompt adoption of such change), the Office considers it to be contrary to the public interest to delay the adoption of this final rule. The incidental situations in which confidential information was inadvertently released to the public do not warrant delay particularly since use of a credit card is optional.

Classification

Administrative Procedure Act

Pursuant to the authority at 5 U.S.C. 553(d)(1), the amendment to § 1.23 is excepted from the thirty-day advance publication requirement of 5 U.S.C. 553(d) because it relieves a restriction.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this final rule will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The Office did not previously permit patent or trademark fees (except in an electronically filed trademark application or electronic submission in a trademark application) to be paid by credit card. The changes in this final rule will permit small entities as well as non-small entities the option of paying any patent or trademark fee by credit card. Small entities as well as non-small entities will continue to have the option of paying any patent or trademark fee by check, treasury note, national bank note, money order, or charge to a deposit account. Based upon the number of small entities who pay fees to the Office each year and the percentage of fee payments that are by credit card (where currently permitted), the Office expects 16,000 small entities to pay a patent or trademark fee by credit card each year. Thus, the changes in this final rule will not have a significant economic impact on any business.

Executive Order 13132

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act

This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Office has submitted an information collection package to OMB for its review and approval. The title, description, and respondent description for this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0043.

Title: United States Patent and Trademark Office Fees.

Form Number: PTO–2038.

Type of Review: Approved through January of 2003.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, state, local or tribal governments, and the Federal Government.

Estimated Number of Respondents: 100,000 responses per year.

Estimated Time Per Response: 12 minutes.

Estimated Total Annual Respondent Burden Hours: 20,000 hours per year.

Needs and Uses: Persons submitting fees to the Office need to provide information concerning the purpose for the fee so that the Office is able to: (1) apply the fee to the particular application, patent, trademark registration, or other proceeding, service or product; and (2) determine whether the person has submitted the fee(s) required by law or regulation. The Credit Card Form provides the public with a convenient manner of paying a patent application or service fee, trademark application or service fee, or information product fee by credit card.

Interested persons are requested to send comments regarding the burden estimate or any other aspects of the information requirements, including suggestions for reducing the burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.21 is amended by revising paragraph (m) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(m) For processing each payment refused (including a check returned "unpaid") or charged back by a financial institution—$50.00.

* * * * *

3. Section 1.23 is revised to read as follows:

§ 1.23 Methods of payment.

(a) All payments of money required for United States Patent and Trademark Office fees, including fees for the processing of international applications (§ 1.445), shall be made in U.S. dollars and in the form of a cashier's or certified check, Treasury note, national bank notes, or United States Postal Service money order. If sent in any other form, the Office may delay or cancel the credit until collection is made. Checks and money orders must be made payable to the Director of the United States Patent and Trademark Office. (Checks made payable to the Commissioner of Patents and Trademarks will continue to be accepted.) Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent to the Office by mail will be at the risk of the sender, and letters containing money should be registered with the United States Postal Service.

(b) Payments of money required for United States Patent and Trademark Office fees may also be made by credit card. Payment of a fee by credit card must specify the amount to be charged to the credit card and such other information as is necessary to process the charge, and is subject to collection of the fee. The Office will not accept a general authorization to charge fees to a credit card. If credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number becomes public knowledge.

Dated: May 15, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–12992 Filed 5–23–00; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM39–1–7462; FRL–6703–8]

Approval and Promulgation of Implementation Plans; State of New Mexico; Approval of Revised Maintenance Plan and Motor Vehicle Emissions Budgets; Albuquerque/Bernalillo County, New Mexico; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Albuquerque/Bernalillo County carbon monoxide (CO) State Implementation Plan (SIP) under the Federal Clean Air Act as Amended in 1990 (the Act). On February 4, 1999, the Governor requested EPA approval of a revision to the CO maintenance plan and motor vehicle emissions budgets covering 1996 to 2006, and the establishment of a CO motor vehicle emissions budget for the year 2010. The EPA initiated the approval process in two rule makings, the first for revisions to the CO maintenance plan and motor vehicle emissions budgets covering 1996 to 2006, and the second action to establish a CO motor vehicle emissions budget for the year 2010. This action is a final approval of both actions; revisions to the CO maintenance plan, and the CO Motor Vehicle Emissions Budget for 1996, 1999, 2002, 2005, 2006, and 2010. These CO Motor Vehicle Emissions Budgets are for transportation conformity purposes.

EFFECTIVE DATE: This rule is effective on May 24, 2000.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Witosky of the EPA Region 6 Air Planning Section, at (214) 665–7214, or WITOSKY.MATTHEW@EPA.GOV.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

1. What Action Is EPA Taking?

The EPA is promulgating final approval of revisions to the Albuquerque CO maintenance plan. The original plan was approved in 1996 (61 *FR* 29970). In a document published December 20, 1999, the EPA published a direct final approval of revisions to the CO maintenance plan and related conformity budgets (64 *FR* 71027), with a companion proposed rule (64 *FR* 71086). The companion proposed rule was published in the event we received adverse comments, which we did. The direct final rule was withdrawn on February 14, 2000 (65 *FR* 7290). That document indicated that final action would be forthcoming.

The EPA also proposed approval of a Motor Vehicle Emissions Budget

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(MVEB) for 2010 for the CO maintenance area. That notice was published on February 29, 2000, beginning a 30 day public comment period (65 *FR* 10437). No comments were received on this proposed action.

Today's action is final approval and promulgation of both actions.

2. What Is Being Approved?

First, we are approving revisions to the CO maintenance plan's emission inventory for the nonattainment area. The following table summarizes the emission inventory for Albuquerque.

ALBUQUERQUE MAINTENANCE PLAN

[Carbon monoxide emissions in tons per day (tpd): revised maintenance plan]

Category	1996	1999	2002	2005	2006
Highway Mobile	266.99	229.09	209.01	205.67	205.86
Off-Road Mobile	50.90	52.68	54.46	56.25	56.84
Area	67.19	69.87	72.60	75.25	76.09
Stationary	3.92	27.40	27.54	27.68	27.72
Total	389.00	379.04	363.61	364.85	366.51

The EPA is also approving a series of MVEB's for the region, including a MVEB for the year 2010, which is beyond the current 10 year maintenance plan. These approved MVEB's are as follows:

TABLE 2.—ALBUQUERQUE CO MAINTENANCE PLAN

[Motor vehicle emissions budget (in tpd)]

Year	1996	1999	2002	2005	2006	2010
MVEB	266.99	229.09	209.01	205.67	205.86	222.46

3. How Will These MVEB's Be Used?

These MVEB's will be used for transportation conformity purposes, replacing the budgets in the original maintenance plan. The five year Transportation Improvement Program (TIP) and 20 year transportation plans for the Albuquerque region and corresponding emissions from on-road vehicles cannot surpass the above budgets.

4. When Is EPA's Approval Effective?

This action concerns only approval of the revised maintenance plan and MVEB's. Since December of 1999, the Albuquerque area has been in a conformity lapse, during which time certain transportation projects cannot be approved, accepted, or funded. The EPA is making this action effective upon publication to facilitate the conformity process.

The EPA reminds all parties that this document does not end the conformity lapse. The EPA, FHWA, State, and local planning agencies are working to complete the conformity process. The final conformity determination will be made by the FHWA.

Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), agency rule makings may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. It's the EPA's position that approving the necessary budgets as soon as possible, in the interest of facilitating the end of the conformity lapse, is cause to support making this action taking effect on publication.

5. What Comments Did EPA Receive to the Direct Final Notice?

Comment 1

Several parties stated that the Albuquerque Environmental Health Department (AEHD) is inverting the conformity process by setting a MVEB budget to fit a transportation plan. One party stated that the AEHD elected to revise the maintenance plan budget when the transportation plans could not conform. The party further stated that there is no data to show that the increase in VMT being incorporated into the budget is due solely to the unexpected growth in population.

Response

The Clean Air Act as Amended in 1990, hereafter referred to as "the Act," does not prohibit that maintenance areas review and revise their maintenance plans. As long as areas demonstrate continued maintenance, areas may revise them at their discretion, in accordance with the requirements of the Act, EPA's rules, and applicable guidance. Many areas revise them to estimate, more accurately, emissions that have grown at a rate different than the rate assumed in the original maintenance plan. All maintenance plans are revised after eight years, extending them an additional ten years. The AEHD elected to revise several elements of the inventory to make it more accurate. All of the emissions categories were revised as a result of this review.

Similarly, the Act allows areas to revise their Motor Vehicle Emissions Budget, so long as the area demonstrates they will maintain the standard. The revision submitted to the EPA shows total emissions in the area will remain at or below the emissions quantified in the attainment year. This constitutes an acceptable demonstration of continued attainment of the CO standard. (See the Act section 110, see also the preamble to the conformity rule at 58 *FR* 62196 on how to revise the budget and see 40 CFR 93.118).

Comment 2

The party alleged that the AEHD incorporated inappropriate assumptions used in the transportation model into the mobile modeling used to support the SIP revision. The party objected to straight-line interpolation of VMT levels as an inappropriate technique to estimate emissions.

Response

The EPA provided for interpolation as an acceptable method of estimating emissions for regulatory purposes in guidance documents for completing SIP's. Specifically, the EPA guided planning agencies to use interpolation to estimate emissions for projected inventories, where it would be too costly and time-consuming to generate

analyses for the interim years within a specified time period. The EPA issued this guidance for VMT growth factors (Procedures for Preparing Emissions Projections, 1991, page 29), and speeds (Procedures for Emission Inventory Preparation, 1992, page 31), and therefore, emissions.

In the case of Albuquerque, the MPO projected VMT for 1995, 2000, 2005, and 2010 using their transportation model, and per EPA guidance, calibrated the model using Highway Performance Measurement System (HPMS)-based factors. Since the maintenance plan was required to begin in 1996 and conclude in 2006, the AEHD used interpolation to determine the appropriate emissions for interim years. This is acceptable under EPA guidance.

The EPA reviewed the other Mobile5a inputs that represent assumptions about local conditions. It is EPA's position that these assumptions are reasonable and represent the best information currently available.

Comment 3

The party stated that the AEHD incorrectly estimated the impact of Big-I construction on vehicle speeds during construction, and VMT on alternative routes due to construction.

Response

The AEHD is not required to quantify and incorporate the impact of construction in their MVEB in the SIP, because the impact of such construction is considered temporary. Emission inventory guidance does not instruct areas to quantify mobile emissions at the level of discrete construction projects.

We would point out that we cannot make an exception for a violation of the standard that could be attributed to temporary traffic conditions related to construction. While the MVEB does not have to include these temporary emissions, we do support the efforts of the AEHD and other agencies to mitigate them during the construction phase to avoid possible violations.

Comment 4

The party alleged that the AEHD used the 2010 roadway network to calculate emissions for the 2006 projections.

Response

The proposed revision does not use the 2010 road network as the basis for determining VMT and then emissions in 2006. The projections for 2006 were based on interpolation between the two years for which the AEHD conducted VMT and emissions analysis using the more direct method of estimation. This method used complete street inventories, as they are expected to be in 2005 and 2010. Interpolation between these years allocates growth in VMT and emissions to each year during the period being studied. This does not mean that the impact of all road improvements scheduled to take place between 2005 and 2010 are being used to calculate emissions in 2006. As mentioned in a previous response, this interpolation technique is acceptable under EPA guidance.

Comment 5

The party stated that the AEHD used travel demand management programs (TDM's) or transportation control measures (TCM's) to reduce VMT used to set the emissions budget, even though the TDM's and TCM's do not have designated sources of funding and are not in the federally approved SIP.

Response

The AEHD did not use any TCM's or TDM's to calculate the base emission inventory, project future inventories, or set the corresponding MVEB's. The AEHD used VMT projections provided to them by the Middle Rio Grand Council of Governments, the authorized MPO in the area. In a letter dated March 26, 1997, the AEHD specifically requested that the MPO not use any VMT reduction programs in the analysis they were to submit. The City's revision package submitted to the EPA included a summary of the VMT calculation methodology written by the MPO, dated September 11, 1997. That summary stated that the MPO did not use any VMT mitigation programs in the VMT estimates that they were providing. These estimates were then used in the inventory process.

The party referred to measures used to mitigate VMT growth in the effort to meet the MVEB. Those measures were not in the SIP revision, but were incorporated into the conformity analysis, as permitted under the transportation conformity rule. The conformity analysis is under review by the EPA. After review and comment by the EPA, FHWA issues its determination on conformity.

Comment 6

The party alleged that population was attributed to areas that will not have road access until after 2020.

Response

The EPA would remind the party that the action is for approval of the maintenance plan to 2006, and the MVEB to 2010. The EPA reviewed maps available to the general public ("tiger" maps generated on April 28, 2000, from http://www.census.gov) at the U.S. Census Bureau web site of the referenced areas, and found road access to these areas.

Comment 7

The party stated that the road improvements from the Big I project would induce changes in trip patterns, traffic patterns, and speed that were not adequately captured in the modeling.

Response

The model used by the MPO is appropriate and able to represent these changes. It is EPA's position that the MPO followed appropriate guidance in using the model to project changes in VMT and speed that result from transportation system improvements, the kind of changes in VMT the model was designed to measure.

Comment 8

The party alleged that compliance with the Inspection and Maintenance (I/M) program and anti-tampering enforcement rates were too high. The party said that a 95 percent compliance rate was too high, and the AEHD should have used 90 percent compliance.

Response

The AEHD based their assumption on the national default rate, 96 percent, for approved I/M programs. The AEHD reduced the compliance rate from 96 to 95 percent to be slightly more conservative than the national compliance factor. The EPA receives and reviews periodic summary reports for the program, and finds the assumption reasonable.

Comment 9

The party stated that the AEHD used national default fleet mix and national default mileage accrual rates, when they should have developed their own fleet mix and mileage rates from the I/M program.

Response

Agencies using the Mobile model may use EPA's national default values for these model inputs (See Mobile 5 Users manual). Although the EPA acknowledges that data generated locally is likely to reflect local conditions more accurately, this is at the discretion of the planning agencies. EPA's default values are acceptable for areas that elect not to develop their own, until the EPA can update the model and related default values.

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Comment 10

The party objected to setting urban and rural local road speeds to a constant 25 and 20 miles per hour.

Response

The modeling does reflect that the MPO set traffic speed on all urban local roads to an average of 25 miles per hour, and traffic on rural local roads to average 20 miles per hour. An assumption had to be made because the HPMS does not provide data on local roads. For all other road categories, the model employs actual field data to calibrate speeds. The assumption of 20 and 25 miles per hour on local roads was reasonable, and resulted in higher emission factors than such factors for any other road class. The proportion of all traffic on local roads was about ten percent. Local planning agencies are left to make reasonable judgments to estimate speed on these roads. In EPA's opinion, these are reasonable assumptions.

The EPA further analyzed this issue by comparing the VMT and speed data used in the SIP to the data used in the transportation plans now under conformity review. The MPO used the same projected VMT and speed estimates for this SIP, and the corresponding transportation plan and TIP. Since the MPO used identical numbers for both analyses, the impact of the traffic speed assumption vis-a-vis another assumption is minimal.

Comment 11

The party alleges that the AEHD modeled lower speeds and lower emissions by using a speed enforcement program, without documentation to support including such a program.

Response

The projected speeds used to compute the emissions in the SIP revision decreased slightly over time. The EPA reviewed the emission projections in detail and concluded that lower speeds are more a product of increased VMT. Speed estimates on such roadway segments are the product of the transportation model. As pointed out above, the Albuquerque MPO appropriately employed an endorsed model that, under an assumption of continued VMT growth, would induce lower speeds in future years.

Comment 12

The Party contends that the Albuquerque vehicle fleet is not as clean as the national average. The party also stated that the model runs did not differentiate the fleet mix by roadway class.

Response

Under EPA guidance, the AEHD can rely on national default values for vehicle fleet mix and vehicle mileage accrual rates. When the model uses defaults for the mix and mileage rates, the fleet mix by roadway class also becomes an implicit default variable. (Mobile 5 Users Guide, sec. 2.2.2, and 2.2.3).

Comment 13

The Party contends that the goal for decreasing reliance on the Single Occupant Vehicle (SOV) was relaxed from the 2015 plan to the 2020 plan.

Response

Beyond a demonstration of continued maintenance, the issue is not germane to this action. Local agencies have the discretion to elect how they will maintain the standard. The EPA encourages areas to take actions to reduce reliance on the SOV. However, AEHD's revision demonstrates continued attainment with credible analysis, which meets the requirements of the Act.

Comment 14

The Party contends that the 1.4 billion dollars needed to implement the 2020 Plan has not been secured, because the Regional Transit Authority was not granted taxing authority. The Party claims that a line item of $100 million dollars in the 2000 to 2005 plan to purchase busses was deleted, but remained in the first five years of the 2020 plan.

Response

The comment is not germane to this SIP action, because transit improvements were not employed in generating the VMT projections used by the AEHD to project emissions for the inventory and MVEB. The issues of fiscal constraint are beyond the scope of this SIP approval action and should be addressed in the transportation conformity process.

Comment 15

The Party alleges that building additional road capacity produces more VMT, but that the model is inadequate to capture this. The party contends that the model predicts lower emissions as a result of road expansion, when the model should predict more emissions.

Response

The MPO used an endorsed transportation model, currently the best tool available to planning agencies. All areas that employ models must show that their model predicts, with reasonable accuracy, the impact of transportation improvements. This process, called calibration and validation, was performed in order for the modeling results to be acceptable. The EPA encourages the party to bring their concerns into the conformity process through the established public participation process.

Comment 16

The Party states that they regularly commute by bicycle, and observes fewer bicycles on the road despite the increase in facilities. The party says this observation contradicts the assumption of the MPO that increased bicycle ridership will reduce VMT.

Response

The assumption of increased bicycle ridership was not used to estimate VMT, and therefore did not affect emissions in the SIP MVEB.

Comment 17

The Party asked if recent ozone readings presage nonattainment of ozone, that would result through a greater allowance for CO emissions.

Response

The AEHD is not required to demonstrate maintenance of the ozone standard in order to revise their CO maintenance plan in the CO SIP. The concept of conformity was created in the Act to insure that the growth of VMT and on-road emissions did not interfere with attainment and maintenance of national standards. Any actions that AEHD or EPA might take to continue ozone maintenance must be under the legal framework established for control of ozone precursors. Currently there is no monitoring data that indicate ozone violations. If evidence ever shows there are violations, the EPA can issue a SIP call for the area to submit an ozone SIP. An EPA SIP call and/or a designation to ozone nonattainment would, in fact, compel the area to perform conformity analysis for ozone precursors.

The EPA is acting on a revision to the CO SIP, which meets the requirements for such a revision.

Comment 18

The Party asked what would prevent the AEHD from asking for another revision to the MVEB, in three or four years?

Response

The AEHD could request another revision to the MVEB at a later date. The AEHD must extend the initial maintenance plan an additional ten years before the initial maintenance plan expires in 2006. However, basin-wide emissions must remain below 389 tons per day as established in the maintenance plan.

Comment 19

The Party asks that the EPA issue a conditional approval, with the condition that the transportation model be improved. The Party also requested that approval be conditioned on a commitment from the MPO to a balanced transportation system.

Response

The EPA's review and approval is based on whether the Albuquerque area can maintain the CO standard and prevent violations of the CO standard with a revised MVEB (see section 110 of the Act). It's EPA's opinion that AEHD successfully demonstrated that Albuquerque will continue to maintain the CO standard with a revised MVEB.

6. What Comments Did EPA Receive to the February 28, 2000, Proposed Rule?

The EPA received no comments to that proposed rule.

7. Will Albuquerque have to Revise the Inventory and MVEB's Again?

Albuquerque must revise the maintenance plan again by 2004, to extend the maintenance plan an additional 10 years from the final year of the current plan, 2006. This will cover the years from 2006 to 2016. This may result in changes to the 2006, and 2010 budgets established today. Regardless, the area must remain below the total level of CO emissions established in the maintenance plan to demonstrate continued attainment of the standard.

II. Final Action

The EPA is approving revisions to the Albuquerque/ Bernalillo County carbon monoxide (CO) State Implementation Plan (SIP). This action is a final approval of revisions to each of the categories of the CO emissions inventory, the basin-wide total of CO emissions for the area, and the CO Motor Vehicle Emissions Budgets for 1996, 1999, 2002, 2005, 2006, and 2010. The CO Motor Vehicle Emissions Budgets must be used for transportation conformity purposes once this approval is effective.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Executive 13132, entitled "Federalism" (64 *FR* 43255, August 10, 1999) revokes and replaces Executive Order 12612, "Federalism," and Executive Order 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 *FR* 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rule making requirements unless the agency certifies that the rule will not have a significant

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economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective May 24, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 24, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental Relations, Carbon Monoxide.

Dated: May 12, 2000.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

2. In § 52.1620(e) the table at the end of the paragraph is amended by adding a new entry to the end of the table as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) EPA approved nonregulatory provisions.

* * * * *

EPA APPROVED NEW MEXICO STATUTES IN THE CURRENT NEW MEXICO SIP

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
. . . . .				
City of Albuquerque request for redesignation.	Carbon monoxide maintenance plan and motor vehicle emission budgets.	June 22, 1998.	[Insert date of publication and FR page number].	

[FR Doc. 00–12792 Filed 5–23–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–6603–5]

RIN 2060–ZA03

Federal Plan Requirements for Large Municipal Waste Combustors Constructed On or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on the "Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994." The amendments in this document clarify the final compliance date, update the list of which large municipal waste combustor (MWC) units are affected by the Federal plan, and add a site-specific compliance schedule for one MWC unit.

On November 12, 1998, the EPA adopted the Federal plan to implement emission guidelines for large MWC units located in areas that are not covered by an approved and currently effective State plan. We are updating the MWC Federal plan to identify large MWC units for which a State plan was approved and became effective since adoption of the Federal plan (November 12, 1998). We are also amending certain regulations to reflect receipt of negative declarations from States that have certified that there are no large MWC units located in the State that would be subject to the Federal plan. We are also amending a table in the Federal plan to clarify that in all cases for all large MWC units, final compliance with all emission limits including the mercury (Hg) and dioxins/furans emission limits must be achieved by December 19, 2000. Finally, we are amending a table to add the site-specific compliance schedule for one additional MWC unit. Today's action does not change the emission limits for large MWC units nor does it change the level of health protection that the Federal plan provides.

DATES: These amendments to part 62 are effective on July 24, 2000, without further notice unless we receive significant material adverse comments by June 23, 2000. If we receive such comments, we will publish, on or before this rule's effective date, a document in the **Federal Register** withdrawing this direct final rule and informing the public that this direct final rule will not take effect.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attn: Docket No. A–97–45/Category V–D, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Comments may also be submitted electronically. For information on submitting comments electronically, see the **SUPPLEMENTARY INFORMATION** section. Address all comments and data for this action, whether on paper or in electronic form, such as through e-mail or disk, to Docket No. A–97–45/Category V–D.

FOR FURTHER INFORMATION CONTACT: For procedural and implementation information regarding these amendments, contact Ms. Julie Andresen McClintock at (919) 541–5339, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For State-specific information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 1) as shown in

SUPPLEMENTARY INFORMATION:

Docket. Docket No. A–97–45 contains information considered by EPA in developing the MWC Federal plan and this action. You can inspect the docket and copy materials from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7548 or fax (202) 260–4400. A reasonable fee may be charged for copying.

SUPPLEMENTARY INFORMATION: We are publishing these amendments without prior proposal because we view these amendments as noncontroversial and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to these amendments if adverse comments are filed. These amendments will be effective on July 24, 2000, without further notice unless we receive adverse comment on the parallel proposal by June 23, 2000. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** informing the public that these amendments will not take effect. We will address all public comments in a subsequent final amendment package based on the proposed amendments. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no comments are received, the public is advised that these amendments will be effective on July 24, 2000, and no further action will be taken on these amendments.

Regulated Entities

Entities regulated by this action are existing MWC units with the capacity to combust greater than 250 tons per day of municipal solid waste (MSW) (large MWC units) unless the unit is subject to a section 111(d)/129 State plan that has been approved by EPA and is currently in effect. Regulated categories and entities include the following North American Industrial Classification System (NAICS) codes and Standard Industrial Classification System (SIC) codes.

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry and local government agencies.	562213 92411	4953 9511	Waste-to-energy plants that generate electricity or steam from the combustion of garbage by feeding municipal waste into large furnaces. Incinerators that combust trash but do not recover energy from the waste.

The foregoing table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the MWC Federal plan. For specific applicability criteria, see 40 CFR 62.14100 and 62.14102.

Electronic Submittal of Comments

Comments may be submitted electronically. Send electronic submittals to: "A-and-R-Docket@epamail.epa.gov". Submit

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electronic comments in American Standard Code for Information Interchange (ASCII) format. Avoid the use of special characters and any form of encryption. Electronic comments on the proposed amendments to the Federal plan may be filed online at any Federal Depository Library. Comments and data will also be accepted on disks in WordPerfect® version 5.1 or 6.1 file format (or ASCII file format). Address all comments and data for the proposal, whether on paper or in electronic form, such as through e-mail or disk, to Docket No. A–97–45/ Category V–D.

Regional Office Contacts

For information regarding the implementation of the MWC Federal plan, contact the appropriate EPA Regional Office as shown in table 1. This table has been updated since published on November 12, 1998 (63 FR 63193).

TABLE 1.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS

Regional contact	Phone No.	Fax No.
John Courcier, U.S. EPA, Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), 1 Congress Street, Suite 1100 (CAP) Boston, MA 02114–2023	(617) 918–1659	(617) 918–1505
Kirk Wieber	(212) 637–3381	(212) 637–3901
Argie Cirillo	(212) 637–3203	
Craig Flamm	(212) 637–4021	
U.S. EPA, Region II (New Jersey, New York, Puerto Rico, Virgin Islands), 290 Broadway, New York, NY 10007–1866		
James B. Topsale, U.S. EPA/3AP22, Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), 1650 Arch Street Philadelphia, PA 19103–2029	(215) 814–2190	(215) 814–2114
Scott Davis, U.S. EPA/APTMD, Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303	(404) 562–9127	(404) 562–9095
Douglas Aburano (MN)	(312) 353–6960	(312) 886–5824
Mark Palermo (IL, IN, OH)	(312) 886–6082	
Charles Hatten (MI, WI)	(312) 886–6031	
U.S. EPA/AT18J, Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), 77 W. Jackson Blvd., Chicago, IL 60604		
Mick Cote, U.S. EPA, Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733	(214) 665–7219	(214) 665–7263
Wayne Kaiser, U.S. EPA, Region VII (Iowa, Kansas, Missouri, Nebraska), 726 Minnesota Ave., Kansas City, KS 66101	(913) 551–7603	(913) 551–7065
Mike Owens, U.S. EPA, Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th Street, Suite 500, Denver, CO 80202–2466	(303) 312–6440	(303) 312–6064
Patricia Bowlin, U.S. EPA/Air 4, Region IX (American Samoa, Arizona, California, Guam, Hawaii, Northern Mariana Islands, Nevada), 75 Hawthorne Street, San Francisco, CA 94105	(415) 744–1188	(415) 744–1076
Catherine Woo, U.S. EPA, Region X (Alaska, Idaho, Oregon, Washington), 1200 Sixth Ave., Seattle, WA 98101	(206) 553–1814	(206) 553–0110

Outline

The information presented in this preamble is organized as follows:

I. Amendments to Part 62—Negative Declarations
II. Amendments to Part 62, Subpart FFF
A. Amendment to Table 1
B. Amendment to Table 5
C. Amendment to Table 6
D. Amendment to Table 6
III. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866—Regulatory Planning and Review
D. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments
E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act
F. Unfunded Mandates Reform Act of 1995
G. Congressional Review Act
H. National Technology Transfer and Advancement Act
I. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
J. Executive Order 13132—Federalism

I. Amendments to Part 62—Negative Declarations

We are amending part 62 to reflect the receipt of negative declaration letters. A negative declaration letter is a letter from a State authority certifying that there are no designated facilities (MWC units with a capacity to combust greater than 250 tons per day of municipal solid waste) in the State. The negative declaration letter is submitted in lieu of a State plan. We are documenting the receipt of negative declarations by amending 40 CFR part 62, subparts C (Alaska), D (Arizona), E (Arkansas), G (Colorado), I (Delaware), J (District of Columbia), N (Idaho), S (Kentucky), T (Louisiana), Z (Mississippi), BB (Montana), DD (Nevada), GG (New Mexico), JJ (North Dakota), NN (Pennsylvania), QQ (South Dakota), SS (Texas), TT (Utah), XX (West Virginia), YY (Wisconsin), ZZ (Wyoming), BBB (Puerto Rico), and CCC (Virgin Islands).

II. Amendments to Part 62, Subpart FFF

We published in the **Federal Register** of November 12, 1998 (63 FR 63191) the final rule establishing a Federal plan to implement emission guidelines for large MWC units located in areas not covered by an approved and currently effective State plan. We are making the following technical amendments and updates to the MWC Federal plan.

A. Amendments to Table 1

We are amending table 1 of subpart FFF (40 CFR part 62) to add MWC units for which a State plan was approved and became effective since the final MWC Federal plan was published in November 1998. MWC units covered by the State plans for Alabama, Maine, Maryland, Oklahoma, Pennsylvania and Washington are added to table 1 of subpart FFF.

B. Amendment to Table 5

We are amending table 5 of subpart FFF (40 CFR part 62) by adding footnote e to clarify that in all cases for all large MWC units, final compliance with all emission limits including the mercury and dioxins/furans emission limits must be achieved no later than December 19, 2000. This footnote was inadvertently omitted from the final MWC Federal plan. The addition of this footnote makes table 5 consistent with the requirements of the Clean Air Act, the emission guidelines, and tables 4 and 6 of subpart FFF. Sections 129(b)(2) and (3) of the Clean Air Act require State and Federal plans to ensure that each unit subject to the emission guidelines is in compliance with all requirements of the guidelines not later than 5 years after the guidelines are promulgated. Section 60.39b(d) of the emission guidelines requires each unit subject to the emission guidelines to be in compliance with the mercury and dioxins/furans emission limits no later than 5 years after promulgation of the guidelines. The emission guidelines, which are implemented by either the Federal or a State plan, were promulgated on December 19, 1995, making the final compliance date for mercury and dioxins/furans for all large MWC units December 19, 2000. The emission guidelines require that the owner or operator of an affected facility that began construction, modification or reconstruction after June 26, 1987 achieve final compliance with the mercury and dioxins/furans emission limits within 1 year after promulgation of subpart FFF (*i.e.*, by November 12, 1999) or 1 year after permit issuance.

C. Amendment to Table 6

We are amending table 6 of subpart FFF (40 CFR part 62) by adding footnote c to clarify that the owner or operator of an affected facility that began construction, modification, or reconstruction after June 26, 1987 must achieve final compliance with the mercury and dioxins/furans emission limits within 1 year after promulgation of subpart FFF (*i.e.*, by November 12, 1999) or 1 year after permit issuance. Permit issuance is issuance of a revised construction permit or revised operating permit, if a permit modification is required to retrofit controls. Consistent with § 60.39b(c)(5), we included the provision pertaining to permit modification in the Federal plan in recognition of the fact that some owners or operators of affected facilities would need to obtain a permit modification before they could retrofit controls. We never intended for this accommodation to be construed as relieving an owner or operator of the obligation to be in compliance with all emission limits by no later than 5 years after promulgation of the emission guidelines (*i.e.*, December 19, 2000). The addition of this footnote makes table 6 consistent with table 5 of subpart FFF and the emission guidelines. The emission guidelines (§ 60.39b(c)(5)) require MWC units that commenced construction, reconstruction, or modification after June 26, 1987 to achieve compliance with the mercury and dioxins/furans emission limits within 1 year after State plan approval (or permit modification).

The footnote also clarifies that in all cases for all large MWC units, final compliance must be achieved no later than December 19, 2000. (See explanation in Section II.B above.) This footnote was not originally included in the final MWC Federal plan. The addition of this footnote makes it clear that table 6 is consistent with the requirements of the Clean Air Act and the emission guidelines. Sections 129(b)(2) and (3) of the Clean Air Act require State and Federal plans to ensure that each unit subject to the emission guidelines is in compliance with all requirements of the guidelines not later than 5 years after the guidelines are promulgated. Section 60.39b(d) of the emission guidelines requires each unit subject to the emission guidelines to be in compliance with the mercury and dioxins/furans emission limits no later than 5 years after promulgation of the guidelines (*i.e.*, by December 19, 2000).

D. Amendment to Table 6

We are amending table 6 of subpart FFF (40 CFR part 62) by adding a site-specific compliance schedule and increments of progress for unit 3A at the New Hanover County Waste-to-Energy Conversion facility in Wilmington, North Carolina. Unit 3A at the New Hanover County MWC facility had not been identified as a large MWC unit (capacity greater than 250 tpd) when subpart FFF was promulgated in November 1998. Prior to November 1998, the State of North Carolina submitted a negative declaration letter to certify that there were no large MWC units in North Carolina. Subsequently, the State obtained new information and notified EPA that it believed that Unit 3A at the New Hanover County MWC facility might be a large MWC unit and thus subject to subpart FFF. We confirmed that Unit 3A at the New Hanover County MWC facility is a large unit, and thus subject to subpart FFF. The negative declaration letter is, therefore, no longer applicable. Unit 3A is larger than 250 tons per day (tpd) and is covered by subpart FFF.

Due to the confusion over the size of Unit 3A, the owner/operator of the New Hanover County MWC did not have the opportunity to submit a site-specific compliance schedule. In developing the promulgated Federal plan, EPA provided the owner or operator of a large MWC unit the opportunity to submit a site-specific compliance schedule. Unit 3A at the New Hanover County MWC facility is already equipped with an air pollution control system incorporating a spray dryer/fabric filter, and selective noncatalytic reduction. Subpart FFF will only require the addition of carbon injection (or some other mechanism for meeting the applicable dioxins/furans and mercury emission limits), upgrading the continuous emissions monitoring system, and other less extensive changes. For these reasons, we determined that it was appropriate to allow the owner/operator of the New Hanover County MWC facility to submit a site-specific schedule for Unit 3A. The owner/operator of the New Hanover County MWC facility has since submitted such a schedule and we are amending table 6 to add that site-specific schedule for unit 3A. The site-specific compliance schedule achieves final compliance with all applicable requirements no later than December 19, 2000, the same date as required for all other MWC units subject to subpart FFF.

III. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rule and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (see 42 U.S.C. 7607(d)(7)(A)). Docket numbers A–89–08 and A–90–45 contain the supporting information for the December 19, 1995 emission guidelines. Because the MWC Federal plan implements the emission guidelines, these dockets also contain the supporting information for the MWC Federal plan. Public comments received on the MWC Federal plan are included in docket number A–97–45.

B. Paperwork Reduction Act

The information collection requirements in the MWC Federal plan have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1847.01) and a copy may be obtained from Sandy Farmer by mail at

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the U.S. Environmental Protection Agency; Office of Environmental Information, Collection Strategies Division (2822); 1200 Pennsylvania Avenue, NW, Washington, DC 20460; by e-mail at "farmer.sandy@epa.gov", or by calling (202) 260–2740. A copy may also be downloaded off the internet at "http://www.epa.gov/icr". OMB approved ICR 1847.01 in December 1998 and the OMB approval number is #20600390.

Today's direct final rule will have no effect on the estimates of the information collection burden. The technical changes clarify requirements and do not impose additional requirements. Therefore, we have not revised the ICR.

C. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's direct final rule includes only minor amendments. Therefore, we have determined that this action is not significant and OMB has waived review. OMB determined that the promulgated Federal plan was "not significant" under Executive Order 12866. The promulgated Federal plan simply implements the 1995 MWC emission guidelines (as amended in 1997) and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1995 MWC emission guidelines. The EPA considered the 1995 emission guidelines and standards to be significant and the rules were reviewed by OMB in 1995 (*see* 60 FR 65405).

D. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's direct final rule does not significantly or uniquely affect the communities of Indian tribal governments. The Federal plan adopted on November 12, 1998 does not significantly or uniquely affect communities of Indian tribal governments. We believe that no large MWC units are located in Indian country. In addition, we have determined that the promulgated Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 MWC emission guidelines. (See the discussion above on Executive Order 12875 in this section.) Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this direct final rule.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires EPA to prepare a regulatory flexibility analysis of any rule subject to notice and comment under the Administrative Procedure Act or any other statute unless EPA certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business in this industry with a gross annual revenue less than $6 million; (2) a small governmental jurisdiction that is a government of a city, county, town school district or special district or a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

Today's action is not subject to the requirements of the RFA as modified by SBREFA because it only makes minor technical amendments to some of the rule's requirements and it does not impose any additional requirements. During the 1995 MWC emission guidelines rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (see 60 FR 65413). The EPA has concluded that these amendments to the MWC Federal plan will not have a significant impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this direct final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any 1 year. Therefore, the requirements of sections 202 and 205 of the UMRA do not apply to this action. The EPA has likewise determined that today's amendments to the rule do not include regulatory requirements that would significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the UMRA.

G. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule, its amendments, and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 24, 2000.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards.

Today's action does not amend or modify technical standards, therefore, the requirements of the NTTAA do not apply.

I. Executive Order 13045—Protection of Children and Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) for which the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

Today's action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. Further, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the order has the potential to influence the regulation. This rule is based on technology performance and not on health or safety risks.

J. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This direct final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule clarifies the final compliance date, updates the status of which MWC units are affected by the Federal plan, and adds a site-specific compliance schedule for one MWC unit. These amendments would primarily affect private industry, and do not impose significant economic costs on State or local governments.

Although section 6 of Executive Order 13132 does not apply to these proposed amendments, EPA consulted with representatives of State and local governments during development of the Federal plan to enable them to provide meaningful and timely input (see 63 FR 63201, November 12, 1998).

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List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 2, 2000.

Carol M. Browner,

Administrator.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671 *et seq.*

Subpart C—Alaska

2. Amend subpart C by adding an undesignated center heading and § 62.354 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.354 Identification of plan—negative declaration.

Letter from the Department of Environmental Conservation submitted June 30, 1997 certifying that there are no existing municipal waste combustor units in the State of Alaska that are subject to part 60, subpart Cb, of this chapter.

Subpart D—Arizona

3. Amend subpart D by adding an undesignated center heading, and adding § 62.620 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.620 Identification of plan—negative declaration.

Letter from the Department of Environmental Quality submitted June 7, 1996 certifying that there are no existing municipal waste combustor units in the State of Arizona that are subject to part 60, subpart Cb, of this chapter.

Subpart E—Arkansas

4. Amend subpart E by adding an undesignated center heading and adding § 62.875 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.875 Identification of plan—negative declaration.

Letter from the Department of Pollution Control and Ecology submitted July 1, 1997 certifying that there are no existing municipal waste combustor units in the State of Arkansas that are subject to part 60, subpart Cb, of this chapter.

5. Amend subpart G by adding a title, adding an undesignated center heading, and adding § 62.1370 to read as follows:

Subpart G—Colorado

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.1370 Identification of plan—negative declaration.

Letter from the Department of Public Health and Environment submitted July 30, 1996 certifying that there are no existing municipal waste combustor units in the State of Colorado that are subject to part 60, subpart Cb, of this chapter.

Subpart I—Delaware

6. Amend subpart I by adding an undesignated center heading and adding § 62.1960 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.1960 Identification of plan—negative declaration.

Letter from the Department of Natural Resources and Environmental Control submitted March 26, 1996 certifying that there are no existing municipal waste combustor units in the State of Delaware that are subject to part 60, subpart Cb, of this chapter.

Subpart J—District of Columbia

7. Amend subpart J by adding an undesignated center heading and adding § 62.2130 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.2130 Identification of plan—negative declaration.

Letter from the Department of Consumer and Regulatory Affairs submitted July 6, 1992 certifying that there are no existing municipal waste combustor units in the District of Columbia that are subject to part 60, subpart Cb, of this chapter.

Subpart N—Idaho

8. Amend subpart N by adding an undesignated center heading and adding § 62.3130 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.3130 Identification of plan—negative declaration.

Letter from the Department of Health and Welfare submitted October 28, 1996 certifying that there are no existing municipal waste combustor units in the State of Idaho that are subject to part 60, subpart Cb, of this chapter.

Subpart S—Kentucky

9. Amend subpart S by adding an undesignated center heading and adding § 62.4370 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.4370 Identification of plan—negative declaration.

Letter from the Department for Environmental Protection submitted December 18, 1996 certifying that there are no existing municipal waste combustor units in the State of Kentucky that are subject to part 60, subpart Cb, of this chapter.

Subpart T—Louisiana

10. Amend subpart T by adding an undesignated center heading and adding § 62.4650 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.4650 Identification of plan—negative declaration.

Letter From the Department of Environmental Quality submitted May 21, 1996 certifying that there are no existing municipal waste combustor units in the State of Louisiana that are subject to part 60, subpart Cb, of this chapter.

Subpart Z—Mississippi

11. Amend subpart Z by adding § 62.6125 to read as follows:

§ 62.6125 Identification of plan—negative declaration.

Letter from the Department of Environmental Quality submitted September 24, 1997 certifying that there are no existing municipal waste combustor units in the State of Mississippi that are subject to part 60, subpart Cb, of this chapter.

Subpart BB—Montana

12. Amend subpart BB by adding an undesignated center heading, and adding § 62.6620 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.6620 Identification of plan—negative declaration.

Letter from the Department of Environmental Quality submitted June 3, 1997 certifying that there are no existing municipal waste combustor units in the State of Montana that are subject to part 60, subpart Cb, of this chapter.

Subpart DD—Nevada

13. Amend subpart DD by adding an undesignated center heading, and adding § 62.7120 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.7120 Identification of plan—negative declaration.

Letter from the Nevada Division of Environmental Protection submitted March 26, 1997 certifying that there are no existing municipal waste combustor units in the State of Nevada that are subject to part 60, subpart Cb, of this chapter.

14. Amend subpart GG by adding an undesignated center heading and adding § 62.7857 to read as follows:

Subpart GG—New Mexico

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.7857 Identification of plan—negative declaration.

Letter from the Environment Department submitted January 10, 1997 certifying that there are no existing municipal waste combustor units in the State of New Mexico that are subject to part 60, subpart Cb, of this chapter.

Subpart JJ—North Dakota

15. Amend subpart JJ by adding an undesignated center heading and adding § 62.8620 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.8620 Identification of plan—negative declaration.

Letter from the Department of Health submitted May 1, 1996 certifying that there are no existing municipal waste combustor units in the State of North Dakota that are subject to part 60, subpart Cb, of this chapter.

Subpart NN—Pennsylvania

16. Amend subpart NN by adding an undesignated center heading and adding § 62.9643 and 62.9644 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.9643 Identification of plan—negative declaration.

Letter from the Allegheny County Health Department submitted March 14, 1996 certifying that there are no existing municipal waste combustor units in Allegheny County that are subject to part 60, subpart Cb, of this chapter.

§ 62.9644 Identification of plan—negative declaration.

Letter from the City of Philadelphia Department of Public Health submitted February 14, 1997 certifying that there are no existing municipal waste combustor units in the City of Philadelphia that are subject to part 60, subpart Cb, of this chapter.

Subpart QQ—South Dakota

17. Amend subpart QQ by adding an undesignated center heading, and adding § 62.10370 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.10370 Identification of plan—negative declaration.

Letter from the Department of Environment and Natural Resources submitted June 20, 1997 certifying that there are no existing municipal waste combustor units in the State of South Dakota that are subject to part 60, subpart Cb, of this chapter.

Subpart SS—Texas

18. Amend subpart SS by adding an undesignated center heading and adding § 62.10890 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.10890 Identification of plan—negative declaration.

Letter from the Texas Natural Resource Conservation Commission submitted May 13, 1997 certifying that there are no existing municipal waste combustor units in the State of Texas that are subject to part 60, subpart Cb, of this chapter.

Subpart TT—Utah

19. Amend subpart TT by adding an undesignated center heading and adding § 62.11130 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.11130 Identification of plan—negative declaration.

Letter from the Department of Environmental Quality submitted June 16, 1997 certifying that there are no existing municipal waste combustor units in the State of Utah that are subject to part 60, subpart Cb, of this chapter.

Subpart XX—West Virginia

20. Amend subpart XX by adding an undesignated center heading and adding § 62.12110 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.12110 Identification of plan—negative declaration.

Letter from the Division of Environmental Protection submitted March 11, 1996 certifying that there are no existing municipal waste combustor units in the State of West Virginia that are subject to part 60, subpart Cb, of this chapter.

Subpart YY—Wisconsin

21. Amend subpart YY by adding an undesignated center heading and adding § 62.12360 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.12360 Identification of plan—negative declaration.

Letter from the Department of Natural Resources submitted September 26, 1997 certifying that there are no existing

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municipal waste combustor units in the State of Wisconsin that are subject to part 60, subpart Cb, of this chapter.

Subpart ZZ—Wyoming

22. Amend subpart ZZ by adding an undesignated center heading and adding § 62.12620 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.12620 Identification of plan—negative declaration.

Letter from the Department of Environmental Quality submitted October 29, 1996 certifying that there are no existing municipal waste combustor units in the State of Wyoming that are subject to part 60, subpart Cb, of this chapter.

Subpart BBB—Puerto Rico

23. Amend subpart BBB by adding an undesignated center heading and adding § 62.13104 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.13104 Identification of plan—negative declaration.

Letter from the Office of the Governor submitted December 12, 1996 certifying that there are no existing municipal waste combustor units in the Territory of Puerto Rico that are subject to part 60, subpart Cb, of this chapter.

Subpart CCC—Virgin Islands

24. Amend subpart CCC by adding an undesignated center heading and adding § 62.13354 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.13354 Identification of plan—negative declaration.

Letter from the Department of Planning and Natural Resources submitted September 29, 1997 certifying that there are no existing municipal waste combustor units in the Territory of Virgin Islands that are subject to part 60, subpart Cb, of this chapter.

25. Amend table 1 of subpart FFF by adding the following five entries in alphabetical order.

TABLE 1 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR UNITS (MWC UNITS) EXCLUDED FROM SUBPART FFF[1]

State	MWC units
Alabama	Existing facilities with an MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC sites: (a) Solid Waste Disposal Authority of the City of Huntsville, Alabama.
. . . . .	. . . . .
Maine	Existing facilities with an MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC sites: (a) Penobscot Energy Recovery Company, Orrington, Maine. (b) Maine Energy Recovery Company, Biddeford, Maine. (c) Regional Waste Systems, Inc., Portland, Maine.
Maryland	Existing MWC facilities with an MWC unit capacity greater than 250 tons per day of municipal solid waste.
. . . . .	. . . . .
Oklahoma	Existing MWC facilities with an MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC site: Ogden-Martin Systems of Tulsa, Incorporated, 2122 South Yukon Avenue, Tulsa, Oklahoma.
. . . . .	. . . . .
Pennsylvania	Existing MWC facilities with an MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC site: (a) American Ref-fuel of Delaware Valley, LP (formerly Delaware County Resource Recovery facility), City of Chester, PA. (b) Harrisburg Materials, Energy, Recycling and Recovery Facility, City of Harrisburg, PA. (c) Lancaster County Solid Waste Management Authority, Conoy Township, Lancaster County, PA. (d) Montenay Montgomery Limited Partnership, Plymouth Township, Montgomery County, PA. (e) Wheelabrator Falls, Inc., Falls Township, Bucks County, PA. (f) York County Solid Waste and Refuse Authority, York, PA.
. . . . .	. . . . .

[1] Notwithstanding the exclusions in table 1 of this subpart, this subpart applies to affected facilities not regulated by an EPA-approved and currently effective State or Tribal plan.

26. Amend table 5 of subpart FFF by revising entry number 1 "Emission limits for Hg, dioxins/furans" to read as follows:

TABLE 5 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS (POST-1987 MWCs)[a, b]

Affected facilities	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
Affected facilities that commenced construction, modification, or reconstruction after June 26, 1987					
1. Emission limits for Hg, dioxin/furan.	NA[c]	NA[c]	NA[c]	NA[c]	11/12/99 or 1 year after permit issuance[d, e]
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .

[a] Table 4 or 5 of this subpart applies to MWC units subject to the Federal plan except those with site-specific compliance schedules shown in table 6 of this subpart.
[b] As an alternative to this schedule, the unit may close by December 19, 2000, complete retrofit while closed, and achieve final compliance upon restarting. See §§ 62.14108(c), 62.14108(d), and 62.14109(i) of this subpart.
[c] Because final compliance is achieved in 1 year, no increments of progress are required.
[d] Permit issuance is issuance of a revised construction permit or revised operating permit, if a permit modification is required to retrofit controls.
[e] Final compliance must be achieved no later than December 19, 2000, even if the date "1 year after permit issuance" exceeds December 19, 2000.

27. Amend table 6 of subpart FFF by revising the table headings, adding a footnote "c" and adding a new entry at the end of the table to read as follows:

TABLE 6 OF SUBPART FFF—SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS[a]

Affected facilities at the following MWC sites	City, State	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance[c]
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
New Hanover County, Unit 3A	Wilmington, North Carolina	09/15/99	03/01/00	07/01/00	11/19/00	12/19/00

[a] These schedules have been reviewed and determined to be acceptable by EPA.
[b] This schedule applies to HCl, SO2, PM, Pb, Cd, CO, and NO_x. However, owners and operators of large MWC units in New Jersey have the option of reserving the portion of their control plan that addresses NO_x. Owners and operators must submit the reserved portion to EPA by December 15, 1999.
[c] The owner or operator of an affected facility that began construction, modification, or reconstruction after June 26, 1987 must achieve final compliance with the mercury and dioxins/furans limits within 1 year after promulgation of subpart FFF (i.e., by 11/12/99) or 1 year after permit issuance. Permit issuance is issuance of a revised construction permit or revised operating permit if a permit modification is required to retrofit controls. Final compliance must be achieved no later than December 19, 2000, even if the date "1 year after permit issuance" exceeds December 19, 2000.

[FR Doc. 00–11811 Filed 5–23–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301001; FRL–6556–9]

RIN 2070–AB78

Mancozeb; Re-establishment of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for combined residues of the fungicide mancozeb, calculated as zinc ethylenebisdithiocarbamate (EBDC), and its metabolite ethylenethiourea (ETU) in or on ginseng at 2.0 part per million (ppm) for an additional 20–month period. This tolerance will expire and is revoked on December 31, 2001. This action is in response to EPA's receipt of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) seeking use of the pesticide on ginseng. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective May 24, 2000. Objections and requests for hearings, identified by docket control number OPP–301001, must be received by EPA on or before July 24, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301001 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dan Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9375; and e-mail address: rosenblatt.dan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected

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categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301001. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of October 9, 1998 (63 FR 54362) (FRL–6029–5), which announced that on its own initiative under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of mancozeb and ETU in or on ginseng at 2.0 ppm, with an expiration date of December 31, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of mancozeb on ginseng for this year's growing season due to continued disease pressure on the crop from leaf and stem blight. After having reviewed the submission, EPA concurs that emergency conditions exist and has determined that it is appropriate to re-establish the time-limited tolerance.

EPA assessed the potential risks presented by residues of mancozeb and ETU in or on ginseng. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of October 9, 1998 (63 FR 54362). Based on that data and information considered, the Agency reaffirms that re-establishment of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 20–month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on ginseng after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301001 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 24, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301001, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule re-establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final

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rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 5, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.176 [Amended]

2. In § 180.176, amend the table in paragraph (b) by revising the date "12/31/99" to read "12/31/01".

[FR Doc. 00–12524 Filed 5–23–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300999; FRL–6555–1]

RIN 2070–AB78

Tebufenozide; Benzoic Acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tebufenozide [benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide], in or on the tree nut crop group (including pistachios) at 0.1 part per million (ppm) and on almond hulls at 25 ppm. Rohm and Haas Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective May 24, 2000. Objections and requests for hearings, identified by docket control number OPP–300999, must be received by EPA on or before July 24, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300999 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–6411 and e-mail address: tavano.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing
Agricultural Stakeholders		Growers/Agricultural Workers, Contractors (Certified/Commercial Applicators, Handlers, Advisors, etc.), Commercial Processors, Pesticide Manufacturers, User Groups, Food Consumers
Food Distributors		Wholesale Contractors, Retail Vendors, Commercial Traders/Importers
Inter governmental Stakeholders		State, Local, and/or Tribal Government Agencies
Foreign Entities		Governments, Growers, Trade Groups, Exporters

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300999. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 19, 1998 (63 FR 44439) (FRL 6019–6), and February 17, 1999 (64 FR 7883) (FRL 6060–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) 7F4815 for a tolerance by Rohm and Haas Company, 100 Independence Mall West, Philadelphia, 19106–2399. This notice included a summary of the petition prepared by Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.482 be amended by establishing tolerances for residues of the insecticide tebufenozide in or on the tree nut crop group (including pistachios) at 0.1 ppm and on almond hulls at 25 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish tolerances (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through food and drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of tebufenozide on the tree nut crop group (including pistachios) at 0.1 ppm and on almond hulls at 25 ppm. EPA's assessment of the exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide are discussed in this unit.

B. Toxicological Endpoints

1. *Acute toxicity*— i. Acute toxicity studies with technical grade: Oral LD_{50} in the rat is > 5 grams for males and females—Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 milligrams/kilogram (mg/kg) for males and females—Toxicity Category III; inhalation LC_{50} in the rat is >4.5 milligram/Liter (mg/L) - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit >5 mg/kg—Toxicity Category IV. Tebufenozide is not a sensitizer.

ii. In a 21–day dermal toxicity study, Crl:CD rats (6/sex/dose) received repeated dermal administration of either the technical (96.1%) product (RH–75,992) at 1,000 (mg/kg/day) (Limit-Dose) or the formulation (23.1% active ingredient (a.i.)) product (RH–755,992 2F) at 0, 62.5, 250, or 1,000 milligram/kilogram/day (mg/kg/day), 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH–75,992 Technical or RH–75,992 2F demonstrated no systemic toxicity or dermal irritation at the highest dose tested (HDT) 1,000 mg/kg during the 21–day study. Based on these results, the no-observed adverse effect level (NOAEL) for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day HDT. A lowest-observed

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adverse effect level (LOAEL) for systemic toxicity and dermal irritation was not established.

iii. A 1–year dog feeding study with a LOAEL of 250 ppm (9 mg/kg/day for male and female dogs) based on decreases in RBC, HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The NOAEL for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

iv. An 18–month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

v. A 2–year rat carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively)

vi. In a prenatal developmental toxicity study in Sprague-Dawley rats (25/group), tebufenozide was administered on gestation days 6–15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

vii. In a prenatal developmental toxicity study conducted in New Zealand white rabbits (20/group), tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7–19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

viii. In a 1993 2-generation reproduction study in Sprague-Dawley rats, tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the LOAEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for males and females, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystopia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

ix. In a 1995 2-generation reproduction study in rats, tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

x. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

xi. The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3–6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH–5992, ^{14}C labeled in one of three positions (A-ring, B-ring or N-butylcarbon). The extent of absorption was not established. The majority of the radio labeled material was eliminated or excreted in the feces within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioaccumulation. Absorption and excretion were rapid. A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons, two methyl groups on the B-ring and an ethyl group on the A-ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be cleaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

xii. The absorption and metabolism of tebufenozide were studied in a group of males and female bile-duct cannulated rats. Over a 72–hour period, biliary excretion accounted for 30% females to 34% males of the administered dose while urinary excretion accounted for ≈55% of the administered dose and the carcass accounted for <0.5% of the administered dose for both males and females. Thus, systemic absorption (percent of dose recovered in the bile, urine and carcass) was 35% females to 39% males. The majority of the radioactivity in the bile (20% females to 24% males of the administered dose) was excreted within the first 6 hours postdosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours postdosing. A large amount (67% males to 70% females) of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified (i.e. - unabsorbed compound) nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded by primary oxidation of the benzylic carbons to alcohols, aldehydes or acids. Bile contained most of the other highly oxidized products found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (males and/or females). Bile also contained the previously undetected (in the pharmacokinetics study) "A" Ring ketone and the "B" Ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for >5% of the total administered dose. Total bile radioactivity accounted for ≈17% of the total administered dose. No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

2. *Short- and intermediate-term toxicity.* No dermal or systemic toxicity was seen in rats receiving 15 repeated dermal applications of the technical (97.2%) product at 1,000 mg/kg/day (Limit-Dose) as well as a formulated (23% active ingredient (a.i)) product at 0, 62.5, 250, or 1,000 mg/kg/day over a 21–day period. The Agency noted that in spite of the hematological effects seen in the dog study, similar effects were not seen in the rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or rabbit studies. This risk is considered to be negligible.

3. *Chronic toxicity.* EPA has established the chronic population adjusted dose (cPAD) for tebufenozide at 0.018 mg/kg/day. This reference dose (RfD) is based on a NOAEL of 1.8 mg/kg/day and an uncertainty factor (UF) of 100. The NOAEL was established from the chronic toxicity study in dogs where the NOAEL was 1.8 mg/kg/day based on growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver at 8.7 mg/kg/day. EPA determined that the 10x factor to protect children and infants (as required by FQPA) should be reduced to 1x. Therefore, the cPAD is the same as the RfD: 0.018 mg/kg/day.

4. *Carcinogenicity.* Tebufenozide has been classified as a Group E, "no evidence of carcinogenicity for humans," chemical by EPA.

C. Exposures and Risks

1. *Dietary*— i. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. In today's action tolerances will be established for the residues of tebufenozide in or on the tree nut crop group including pistachios at 0.1 ppm, and on almond hulls at 25.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures from tebufenozide as follows:

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not under estimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

a. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Neither neurotoxicity nor systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rabbits. This risk is considered to be negligible.

b. *Chronic exposure and risk.* In conducting the DEEM (Dietary Exposure Evaluation Model) analysis for chronic exposure to and risk from tebufenozide residues in food, the Agency used tolerance level residues and some PCT (Tier 2). For the subject crops, the tolerances used are: 0.1 ppm for tree nuts (including pistachios) and 25.0 ppm for almond hulls. The analysis evaluates individual food consumption as reported by respondents in the USDA, Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. Summaries of the exposures and their representations as percentages of the cPAD for the general population and subgroups of interest are presented in Table 1.

TABLE 1. CHRONIC EXPOSURE ANALYSIS BY THE DEEM SYSTEM FOR TEBUFENOZIDE

Population subgroup	Exposure (mg/kg/day)	cPAD%
U.S. population (48 contiguous states).	0.0026	14%
Non-nursing infants (<1 years old).	0.0097	54%
Females (13+/nursing).	0.0024	13%

In the table, "cPAD%" means cPAD% = Exposure x 100% divide by cPAD.

The subgroups listed above are: (1) The U.S. population (48 continguous states); (2) highest exposed population subgroup that includes infants and children; and (3) females 13+.

This chronic dietary (food only) risk assessment should be viewed as conservative. Further refinement using anticipated residue values and additional PCT information would result in a lower estimate of chronic dietary exposure from food.

The estimates of PCT were used as follows. In all cases the maximum estimates were used.

Crop	Average	Maximum
Almonds	<1%	<1%
Apples	1%	2%
Beans/Peas, Dry	0%	1%
Cabbage, Fresh	2%	3%
Cole Crops	1%	2%
Cotton	1%	4%
Spinach, Fresh	2%	3%
Spinach, Processed.	20%	29%
Sugarcane	3%	5%
Walnuts	10%	16%

ii. *From drinking water*— a. *Acute exposure and risk.* Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

b. *Chronic exposure and risk.* The Agency calculated the Tier I Estimated Environmental Concentrations (EECs) for tebufenozide using generic expected environmental concentration (GENEEC) (surface water) and screening concentration in ground water (SCI–GROW) (ground water) models for use in the human health risk assessment. For chronic exposure, the worst case EECs for surface water and ground water

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were 16.5 parts per billion (ppb) and 1.04 ppb, respectively. These values represent upper-bound estimates of the concentrations that might be found in surface and ground water. These modeling data were compared to the chronic drinking water levels of comparison (DWLOC) for tebufenozide in ground and surface water (SOP for Drinking Water Exposure and Risk Assessments, November 20, 1997).

For purposes of chronic risk assessment, the estimated maximum concentration for tebufenozide in surface and ground waters (16.5 ppb=16.5 µg/L) was compared to the back-calculated human health DWLOCs for the chronic (non-cancer) endpoint. These DWLOCs for various population categories are summarized in Table 2.

TABLE 2. DRINKING WATER LEVELS OF COMPARISON FOR CHRONIC EXPOSURE TO TEBUFENOZIDE[1]

Population Category[2]	Chronic RfD (mg/kg/day)	Food exposure (mg/kg/day)	Max. water exposure[3] (mg/kg/day)	DWLOC[4,5,6] (µg/L)	EEC[7] calc. max. (µg/L)
U.S. population (48 continguous states)	0.018	0.0026	0.0154	540	16.5
Females (13+ years)	0.018	0.0024	0.0156	470	16.5
Non-nursing infants (<1 year)	0.018	0.0097	0.0083	83	16.5

[1]Values are expressed to 2 significant figures.
[2]Within each of these categories, the subgroup with the highest food exposure was selected.
[3]Maximum water exposure (chronic) (mg/kg/day) = Chronic PAD (mg/kg/day)—Food exposure (mg/kg/day).
[4]DWLOC(µg/L) = Max. water exposure (mg/kg/day) x body wt (kg) ÷ [(10^{-3} mg/µg) x water consumed daily (L/day)].
[5]HED Default body weights are: General U.S. population, 70 kg; females (13+ years old), 60 kg; other adult populations, 70 kg; and, all infants/children, 10 kg.
[6]HED Default daily drinking rates are 2 L/day for adults and 1 L/day for children.
[7]EEC: Estimated Environmental Concentration. (Chronic 56-day value).

2. *From non-dietary exposure.* There is a potential for occupational exposure to tebufenozide during mixing, loading, and application activities. However, the Agency did not identify dermal or inhalation endpoints for tebufenozide and determined that risks from these routes of exposure are negligible.

3. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The Agency did not identify an acute dietary toxicological endpoint, therefore, the risk from this route of exposure is negligible.

2. *Chronic risk.* Using the exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, the Agency has concluded that dietary (food only) exposure to tebufenozide will utilize 14% of the cPAD for the U.S. population, and 54% of the cPAD for the most highly exposed population subgroup (non- nursing infants <1 yr). EPA generally has no concern for exposures below 100% of the cPAD. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than the Agency's DWLOCs. There are no chronic non- occupational/ residential exposures expected for tebufenozide. Therefore, the Agency concludes that there is a reasonable certainty that no harm will result to adults, infants and children from chronic aggregate exposure to tebufenozide residues.

3. *Short- and intermediate-term risk.* There are potential non-occupational/ residential short-term post application exposures (incidental non-dietary ingestion) to toddlers from the use of tebufenozide on ornamentals. However, since the Agency did not identify acute dietary endpoint, the short-term post application exposure risk assessment is expected to be negligible. Intermediate-term incidental non-dietary exposures are not expected.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

2. *Conclusion.* There is a complete toxicity data base for tebufenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. For the reasons summarized above, the Agency concludes that an additional safety factor is not needed to protect the safety of infants and children.

3. *Acute risk.* Since no acute toxicological endpoints were established, it is unlikely that acute aggregate risk exists.

4. *Chronic risk.* Using the exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, the Agency has concluded that dietary (food only) exposure to tebufenozide will utilize 14% of the cPAD for the U.S. population, and 54% of the cPAD for the most highly exposed population subgroup (non-nursing infants <1 yr). EPA generally has no concern for exposures below 100% of the cPAD. Despite the potential for exposure to tebufenozide in drinking water and from non-dietary, non- occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

5. *Short- or intermediate-term risk.* Short- and intermediate-term risks are judged to be negligible due to the lack of significant toxicological effects observed.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

1. Nature of the residue—Plants. The qualitative nature of the residue in plants is adequately understood based upon acceptable apple, sugar beet, and rice metabolism studies. The Agency has concluded that the residue of regulatory concern is tebufenozide *per se.*

2. Nature of the residue—Animal. The results of the ruminant and poultry metabolism studies have been reviewed by the Agency and the determination was made that the tebufenozide residues of regulatory concern in animals are the parent tebufenozide and the four metabolites designated: RH–2703 [benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl)benzoyl)hydrazide], RH–9886 [benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide], the stearic acid conjugate of RH–9886, and RH–0282 [benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1- dimethylethyl)-2-(4-(1-hydroxyethyl) benzoyl)hydrazide].

B. Analytical Enforcement Methodology

1. *Analytical methods—Plant tissues.* The Rohm and Haas method TR 34–95–20, with minor modifications, was used to determine tebufenozide residue levels in/on pecans and almonds (MRID 44414304). This method has been validated by EPA and was submitted to the Food and Drug Administration (FDA) for inclusion in PAM II. The method limit of quantitation (LOQ) and limit of detection (LOD) for tebufenozide are 0.01 ppm and 0.003 ppm, respectively.

2. *Analytical methods—Animal tissues.* A submitted HPLC/UV Method, Rohm and Haas Method TR 34–96–109, has been determined to be adequate for collecting data on residues of tebufenozide in animal tissues. The validated LOQ for tebufenozide in animal tissue is 0.02 ppm. The LOQ for each of the metabolites studied are as follows: RH–2703 in liver, 0.02 ppm; RH–9886 and RH–0282 in meat, 0.02 ppm; RH–9526 in fat, 0.02 ppm. The LODs for the analytes are 0.006 ppm in tissues.

3. *Multi-residue methods.* Rohm and Haas has previously submitted data involving multi-residue method testing.

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

C. Magnitude of Residues

1. The petitioner submitted data from tests on pecans, almonds, and almond hulls. A bridging study was also submitted showing that there were no differences in the amount of RH–5992 residues on pecans (nutmeat) from the two formulations. Residues of tebufenozide were determined in/on nuts harvested 11–14 days following the last of 4 foliar applications of tebufenozide for a total of ~2.0 lbs ai/ acre per season (1x the proposed seasonal rate). Tebufenozide residues in/on pecans were below the LOQ of 0.01 ppm: values ranged from <0.003 ppm (the LOD) to 0.0058 ppm. Tebufenozide residues in/on almonds were < 0.003–0.052 ppm, and in/on almond hulls were 7.880–19.9 ppm.

2. The inclusion of pistachios into the tree nut crop group without a change in the representative crops, pecans and almonds, has been recommended but has not as yet been published. The submitted pecan, almond, and almond hull field trial residue studies are adequate to support the proposed 0.1 ppm tolerance for the tree nut crop group including pistachios and the 25.0 ppm tolerance for almond hulls.

3. *Processed food/feed.* There are no tree nut (including pistachio) processed commodities of regulatory interest.

D. International Residue Limits

Codex MRLs have been established for residues of tebufenozide in/on pome fruit (1.0 ppm), husked rice (0.1 ppm) and walnuts (0.05 ppm). Tebufenozide is registered in Canada, and a tolerance for residues in/on apples is established at 1.0 ppm. EPA has set the pome fruit tolerance at 1.0 ppm to harmonize with the Codex and Canadian levels.

E. Rotational Crop Restrictions

Since tree nuts and pistachios are perennial crops, rotational crop restrictions are not required for the tree nut crop group and pistachios.

V. Conclusion

Therefore, the tolerances are established for residues of tebufenozide, in or on the tree nut crop group (including pistachios) at 0.1 ppm, and on almond hulls at 25 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an

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exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300999 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 24, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300999, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.482, by alphabetically adding the following entries to the table in paragraph (a)(1) to read as follows.

§ 180.482 Tebufenozide; tolerances for residues.

* * * * *

(a) *General.* (1) ***

Commodity	Parts per million
• • • •	•
Almond hulls	25
• • • •	•
Tree nut crop group including pistachios	0.1
• • • •	•

[FR Doc. 00–13071 Filed 5–23–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Part 515, 545

[Docket No. 00–06]

Interpretations and Statements of Policy Regarding Ocean Transportation Intermediaries

AGENCY: Federal Maritime Commission.

ACTION: Interpretive rule.

SUMMARY: The Federal Maritime Commission amends its regulations for interpretive statements of policy to interpret a section of its regulations regarding ocean transportation intermediaries to clarify the claim settlement procedures.

DATES: This rule is effective June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol St. NW, Room 1018, Washington, DC 20573–0001; (202) 523–5740.

SUPPLEMENTARY INFORMATION: On March 8, 1999, the Federal Maritime Commission published a final rule and interim final rule to add new regulations at 46 CFR part 515 to implement changes made by the Ocean Shipping Reform Act of 1998 ("OSRA"), Public Law 105–258, 112 Stat. 1902, to the Shipping Act of 1984 ("Shipping Act"), 46 U.S.C. app. 1701 *et seq.*, relating to ocean transportation intermediaries ("OTIs"). 64 FR 11156–11183. Section 515.23(b) sets forth the claim settlement procedure for claimants seeking to pursue a claim against an OTI. The Interpretive Rule seeks to clarify the Commission's intention with respect to this procedure, as there have been reported misunderstandings in the industry as to the responsibilities inherent in this requirement.

Section 515.23(b)(1) sets forth the claim settlement procedures and provides, in part, that:

If a party does not file a complaint with the Commission pursuant to section 11 of the Act, but otherwise seeks to pursue a claim against an ocean transportation intermediary bond, insurance or other surety for damages arising from its transportation-related activities, it shall attempt to resolve its claim with the financial responsibility provider prior to seeking payment on any judgment for damages obtained.

It is the Commission's intention that a claimant seeking to settle a claim in accordance with this section should promptly provide to the financial responsibility provider all documents and information relating to and supporting its claim for the purpose of evaluating the validity and subject matter of the claim. The information relevant to the claim settlement procedure includes documents such as bills of lading, as well as the existence of pending court claims or judgments obtained.

In addition, the financial responsibility provider is allowed to evaluate the validity of the claim during the settlement process in § 515.23(b)(1). However, if the parties do not reach a settlement of the claim, the financial responsibility provider, in accordance with section 19 of the Shipping Act, 46 U.S.C. app. 1718 (1999), and 46 CFR 515.23(b)(2), must pay on a final judgment and may only inquire into the extent that the damages claimed arise from the transportation-related activities of the OTI, under section 3(17) of the Shipping Act, 46 U.S.C. app. 1702(17).

Furthermore, if settlement of the claim is not reached, the financial responsibility provider may not unilaterally reduce the amount awarded in a final court judgment; Congress has determined that, at that point, a financial responsibility provider must pay on a final judgment for damages arising from the transportation-related activities of the OTI, and the Commission cannot nullify that statutory requirement. However, the financial responsibility provider and the claimant are not precluded from mutually agreeing to compromise the amount awarded in a final judgment. In the event that the financial responsibility provider believes that a judgment against its OTI bond principal was obtained fraudulently, or that the claim underlying the judgment is itself fraudulent, the financial responsibility provider is not precluded from challenging a judgment if permitted in the jurisdiction where it was obtained.

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Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the New Rule.

The Commission is not aware of any other federal rules that duplicate, overlap, or conflict with the final rulemaking.

List of Subjects

46 CFR Part 515

Exports, Freight, Freight forwarders, Maritime carriers, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reporting and recordkeeping requirements.

46 CFR Part 545

Antitrust, Exports, Freight forwarders, Maritime carriers, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Maritime Commission amends 46 CFR chapter IV, subchapter B, as set forth below:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

2. In § 515.23, revise the introductory text to read as follows:

§ 515.23 Claims against an ocean transportation intermediary.

The Commission or another party may seek payment from the bond, insurance, or other surety that is obtained by an ocean transportation intermediary pursuant to this section. (*See also* § 545.3 of this chapter.)

* * * * *

PART 545—INTERPRETATIONS AND STATEMENTS OF POLICY

1. The authority citation for part 545 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1706, 1707, 1709, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 46 CFR 515.23.

2. Add § 545.3 to read as follows:

§ 545.3 Interpretation of § 515.23(b) of this chapter—Payment pursuant to a claim against an ocean transportation intermediary.

A claimant seeking to settle a claim in accordance with § 515.23(b)(1) of this chapter should promptly provide to the financial responsibility provider all documents and information relating to and supporting its claim for the purpose of evaluating the validity and subject matter of the claim.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–13088 Filed 5–23–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 54

[CC Docket No. 95–20, FCC 99–387]

Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; Clarification

AGENCY: Federal Communications Commission.

ACTION: Clarification of final rule.

SUMMARY: This document grants in part and denies in part a petition to reconsider the Commission's Computer III Remand Order, stating that the Bell Operating Companies (BOCs) should no longer be required to file service-specific Comparably Efficient Interconnection (CEI) plans for information services that are offered on an integrated basis through the regulated entity and obtain approval of those plans prior to initiating or altering their intraLATA information services. This document clarifies that BOCs are obligated to post on their websites a complete copy of all their CEI plans.

EFFECTIVE DATE: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Ann Stevens, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted December 9, 1999, and released December 17, 1999. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Room CY–A257, Washington, DC. The complete text also may be obtained through the World Wide Web, at *http://www.fcc.gov/Bureaus/CommonCarrier/Orders/fcc99–387.wp*, or may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Regulatory Flexibility Certification

Bell Atlantic and SBC submitted comments on July 12, 1999 and CIX and BellSouth Corporation filed replies to the comments to the Commission's request for comment on its certification. In this present Order , the Commission promulgates no additional final rules, and our action does not affect the previous analysis.

Synopsis of Order on Reconsideration

1. In this Order, we address a petition for reconsideration or clarification of the Computer III Remand Order, CC Docket No. 95–20, FCC 99–387, filed by Commercial Internet eXchange Association (CIX).

2. The Commission concluded in that order that although the BOCs must continue to comply with their CEI obligations, they should no longer be required to file or obtain pre-approval of CEI plans and plan amendments before initiating or altering their intraLATA information services. Instead, we required the BOCs to "post on their publicly accessible Internet page, linked to and searchable from the BOCs main Internet page, their CEI plan for any new or altered intraLATA information service offering, and to notify the Common Carrier Bureau upon such posting.

3. CIX filed a petition for reconsideration or clarification of two aspects of two aspects of the Computer III Report and Order, 64 FR 14141 (3/24/99). CIX first asks that the Commission establish that incumbent LECs must disclose in advance and via their web sites the planned deployment of digital subscriber line access multiplexers (DSLAMs) on a wire-center basis, and provide adequate prior notice on the status of line conditioning for a given customer or group of customers. Information on the deployment of broadband telecommunications, CIX continues, should be available to all competing information services providers (ISPs), and should not be used as a means to favor the incumbent's affiliated ISP. CIX also asks that the Commission clarify that the BOCs are obligated to post a complete copy of all their CEI plans on their websites, so that all ISPs have ready information available concerning interconnection with the BOC's "last mile" network.

II. Discussion

4. The Commission has reviewed the initial request made by CIX in its petition—that we clarify our network information disclosure rules to require incumbent local exchange carriers to provide information regarding DSLAMs and line conditioning to ISPs. CIX essentially asks the Commission to clarify that section 251(c)(5) of the Communications Act and the rules implementing that section require disclosure of such information. We decline to do so. The Commission did not raise this issue in the Further Notice of Proposed Rulemaking in these dockets. Thus, the CIX request for clarification with regard to information on deployment of DSLAMs and line conditioning is beyond the scope of this proceeding. Accordingly, we deny that request for clarification on reconsideration.

5. CIX next requests that the Commission clarify that the BOCs are obligated to post on their websites a complete copy of all their CEI plans—rather than merely a copy of "new or altered" plans. We grant this request. It was not our intention in the Computer III Report and Order to exclude from the CEI posting requirement the BOCs' existing plans. As CIX notes in its petition, it is important for all CEI plans to be available on the BOCs' websites, including those previously filed plans. Otherwise, it would be difficult for the ISPs to get information regarding plans filed with the Commission under the prior CEI regime. Moreover, we do not believe that requiring the BOCs to post all their plans and plan amendments—both old and new—is unduly burdensome, especially given the benefit of having all these plans in one, easily accessible place. Accordingly, we clarify that the BOCs must post all their existing and new CEI plans and plan amendments on their Internet websites and notify the Common Carrier Bureau at the time of the posting.

III. Ordering Clause

6. The petition for reconsideration and clarification filed by the Commercial Internet eXchange Association IS GRANTED IN PART and IS DENIED IN PART, to the extent discussed above.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13039 Filed 5–23–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 00–7364]

RIN 2127–AG96

Consumer Information Regulations: Uniform Tire Quality Grading Test Procedures

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the treadwear testing procedures under the Uniform Tire Quality Grading Standards (UTQGS). To ensure the consistency of the treadwear grades from one year to the next, the agency monitors the changing roughness of the test course, periodically calculates a base course wear rate (BCWR), and uses it to adjust the measured wear rates of tires driven over the course. To monitor the test course, the agency uses special tires designated as course monitoring tires (CMTs).

The agency is amending the UTQGS to change the computation of the BCWR used in calculating the treadwear grade of passenger car tires. These amendments establish a direct comparison of the wear rates of CMTs used as the control standard with the wear rates of the candidate tires, *i.e.*, the tires being tested for the purposes of grading. This direct comparison will result in more consistent treadwear ratings by compensating for any changes or variations in CMT characteristics. NHTSA will measure the wear rate of CMTs 4 times per year and use the average wear rate from the last 4 quarterly CMT tests as a basis for the BCWR. NHTSA is further requiring that CMTs used to determine wear rate be not more than 1 year old at the commencement of the test and that the CMTs used in the test must be used within 2 months after removal from storage.

DATES: Effective date: The amendments in this final rule are effective July 24, 2000.

Petitions for reconsideration of this final rule must be received by NHTSA not later than July 10, 2000.

ADDRESSES: Petitions for reconsideration should be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Mr. Sanjay Patel, Safety Standards Engineer, Office of Planning and Consumer Programs, Office of Safety Performance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–0307.

For legal issues: Mr. Stephen P. Wood, Assistant Chief Counsel for Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–2992.

SUPPLEMENTARY INFORMATION:

A. Background

1. Current Provisions.

Section 30123(e) of title 49, United States Code (U.S.C.) requires the Secretary of Transportation to prescribe a uniform system for grading motor vehicle tires to assist consumers in making informed choices when purchasing tires. In response to that congressional mandate, NHTSA established the Uniform Tire Quality Grading Standards (UTQGS) in 49 CFR 575.104.

The UTQGS require tire manufacturers and tire brand name owners to grade their tires with respect to the tires' relative performance with respect to treadwear, traction, and temperature resistance. Treadwear grades are shown by numbers, such as 100, 160, and 200, with the higher numbers indicating greater treadwear performance. The traction grades are indicated by AA, A, B, and C, with AA representing the highest performance characteristics and C the lowest. The temperature resistance grades are indicated by the letters A, B, and C, with A representing the best performance and C indicating the minimum level of performance necessary to comply with Federal motor vehicle safety standards.

The UTQGS provide that treadwear grades are developed first by running the tires being graded, called "candidate tires," over a selected 400-mile segment of public highway outside San Angelo, Texas. After an 800-mile "break-in" run, the candidate tires are driven over the test course for a total of 6,400 miles in test convoys composed of 4 passenger cars and/or light trucks. Each driver remains in the same position within the convoy. The vehicles are regularly rotated among the 4 positions in the convoy as are the positions of the tires on the test vehicles so that each candidate tire gets equal time with each driver, each vehicle, and each wheel position.

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Special tires known as "course monitoring tires" (CMT) are used as the control in grading candidate tires. CMTs are specially designed and built to American Society for Testing and Materials (ASTM) standard E1136 to have particularly narrow limits of variability.[1] Until the amendments to the UTQGS published in a final rule on September 9, 1996 (61 FR 4737), whenever the agency procured a new batch, or lot, of CMTs, we established a new base course wear rate (BCWR) for that lot. We established the BCWR, measured in mils per thousand miles, by running tires from the new lot of CMTs over the 6,400-mile test course, in the same manner as candidate tires, with tires from the previous batch of CMTs. We determined a course severity adjustment factor (CSAF) for the new CMTs by dividing the BCWR for the old CMTs by the average wear rate of the old CMTs in the test. The wear rate of the new CMTs was then multiplied by the CSAF to determine the adjusted wear rate (AWR) of the new CMTs. That value then became the BCWR for the new CMTs.

Once the BCWR for the new CMTs was established, the new CMTs were used to grade candidate tires. Upon completion of the 6,400-mile test, the BCWR was divided by the average wear rate of the CMTs to determine the CSAF for the candidate tires. That factor was then applied to the wear rates of the candidate tires to obtain the AWR of the candidate tires. That AWR was then extrapolated to the point of wearout (considered to be 1/16th inch of remaining tread depth). The resultant value was then converted to the treadwear rating of the tire.

The BCWR was originally intended to provide a common baseline by which to grade candidate tires by relating all new CMTs to the original lot of CMTs. We noted, however, that the BCWRs of successive new lots of CMTs steadily declined over the years. The trend has been that every time a fresh CMT of the new lot was tested in the same convoy with an old CMT, the fresh CMT consistently experienced a lower wear rate than the old CMT. The first lot of CMTs that we procured in 1975 were commercially-available Goodyear Custom Steelguards that yielded a BCWR of 4.44. The lot of ASTM E–1136 CMTs that we procured in 1995, on the other hand, produced a BCWR of 1.34. Table I shows the consistent decline in wear rate for each new lot of CMTs.

CMT WEAR RATE AND BASE COURSE WEAR RATE ADJUSTMENT FACTORS

Year	Manufacturer	Series	Measured wear rate	CSAF	Adj. wear rate	BCWR
1975	Goodyear	Batch 1	4.44	1.0	4.44	4.44
1979	Goodyear	Batch 1	4.08	1.09	4.44	
1979	Goodyear	Batch 2	3.82	1.09	4.16	4.16
1980	Goodyear	Batch 2	5.29	0.79	4.16	
1980	Goodyear	Batch 3	4.76	0.79	3.74	3.74
1984	Goodyear	Batch 3	4.22	0.89	3.74	
1984	Uniroyal	4000	3.27	0.89	2.90	2.90
1987	Uniroyal	4000	5.96	0.49	2.90	
1987	Uniroyal	71000	4.56	0.49	2.22	2.22
1989	Uniroyal	71000	5.01	0.44	2.22	
1989	Uniroyal	91000	4.84	0.44	2.14	2.14
1991	Uniroyal	91000	6.24	0.34	2.14	
1991	ASTM E1136	010000	4.94	0.34	1.70	1.70
1991	ASTM E1136	010000	6.96	0.24	1.70	
1992	ASTM E1136	110000	6.65	0.24	1.62	1.62
1992	ASTM E1136	110000	5.83	0.28	1.62	
1992	ASTM E1136	210000	5.60	0.28	1.56	1.56
1993	ASTM E1136	210000	7.21	0.22	1.56	
1993	ASTM E1136	310000	6.80	0.22	1.47	1.47
1995	ASTM E1136	310000	6.47	0.23	1.47	
1995	ASTM E1136	410000	5.91	0.23	1.34	1.34

In replacing CMTs from the original lot procured in 1975, we note that the greatest difference in the AWR between nominally identical CMTs of different ages was about 30 percent. This occurred in 1987 when the old CMTs had been stored for about 3 years. The least difference in the AWR between nominally identical CMTs of different ages was about 4 percent that occurred in the second 1992 replacement. At that time, the old CMTs had been stored less than a year. Table I also shows that the treadwear rate disadvantage of the aged CMTs at replacement varied considerably from a linear relationship with age. This could suggest that the rate may have been exacerbated by actual batch differences of the commercial tires used as CMTs prior to 1991.

The significance of the decrease in the BCWR rate is that as the BCWR decreased, the treadwear grades of candidate tires increased. Consequently, the newer treadwear grades have increased to the point that they are no longer a reliable indicator of actual treadwear performance when compared to tires tested with higher BCWRs.

To correct this problem, we froze the BCWR at 1.34 mils in the final rule of September 9, 1996 (61 FR 47437), believing that freezing the BCWR at that figure would significantly reduce, if not eliminate, any variation in the grading between lots. We also believed that the use of ASTM E1136 tires that are produced with strict quality control would also contribute to reduction of any lot-to-lot variations. We stated, however, that we had requested the assistance of the ASTM F9 committee in devising a better treadwear test and that we would request data in a future rulemaking on the effects of tire aging on treadwear performance and storage procedures to reduce aging.

[1] The designation "E1136" refers to the standard specification of materials and construction practices codified by ASTM as suitable for control tires for scientific experimentation.

(2) Notice of Proposed Rulemaking

On June 5, 1998, we published a Notice of Proposed Rulemaking (NPRM) proposing to revise the treadwear testing procedures of the UTQGS to ensure the consistency of treadwear grades from one year to the next.[2] To achieve that result, we proposed to revise the procedure for calculating the BCWR by directly comparing the wear rates of CMTs with the wear rates of the candidate tires. Specifically, we proposed to measure the wear rates of CMTs 4 times per year, then use the average wear rate from the last 4 quarterly CMT tests as a basis for the BCWR. We also proposed that CMTs used to determine the wear rate be no more than 6 months old at the commencement of the test and that the difference in production dates of the CMTs being tested be not greater than 3 months. If CMTs being tested were more than 6 months old, we proposed that the average wear rate be reduced by 10 percent.

B. Comments on the NPRM

We received 2 comments on the NPRM, one from the Rubber Manufacturers Association (RMA), and the other from Uniroyal Goodrich Tire Manufacturing (Uniroyal).

1. General

RMA opposed the proposals in the NPRM, stating that our action in freezing the BCWR at 1.34 in the final rule of September 9, 1996 was sufficient to solve the treadwear inflation problem. Uniroyal generally supported the agency's intent in trying to ensure the consistency of the treadwear grades from year to year, but believed that this can be accomplished more efficiently than by the procedures that we proposed.

Both opposed our proposal to require that CMTs be not more than 6 months old when tested to determine the BCWR, arguing that that requirement would increase the costs of production, shipping, and storage for all manufacturers with no additional benefit for consumers. Uniroyal, the sole current manufacturer of E–1136 tires, stated that having to test CMTs that are 6-months old and within 3 months' production dates of each other would mean that testers would specify the most recent CMTs rather than take a chance on reducing their wear rates by 10 percent. This would require that CMTs be produced on a quarterly basis. Uniroyal stated that E–1136 tires are already produced in extremely small quantities and that more frequent production would be logistically impossible. RMA stated that the complexities associated with coordination, production, shipping, storage, and testing of CMTs and candidate tires within a 6-month period is not realistic. Both commenters agreed that the cost and logistical problems of producing E–1136 tires so frequently and in such small quantities would increase the unit cost of such tires by a factor of 3 to 4 and could result in less lot-to-lot consistency.

Both commenters supported a requirement that CMTs be tested within 1 year after production. RMA stated that if the proposals in the NPRM are not withdrawn, it requested that no penalties be applied to tires tested within 1 year of production. RMA argued that the aging characteristics of CMTs and candidate tires would contribute to a "leveling effect" which, together with the logistical restrictions of production, shipping, and storage, would minimize any difference in tread life during the first year. RMA stated, however, that for CMTs older than 1 year, any penalty should be no more than 5 percent. Uniroyal recommended that E–1136 CMTs be utilized for testing up to 1 year after production, with no more than 3 months' difference in production dates between the tires tested.

2. Additional Uniroyal Comments

a. Uniroyal suggested using a linear relationship to adjust for aging of CMTs rather the "step" function that the agency proposed. Uniroyal referred to NHTSA study DOT HS 808–701, Critical Evaluation of UTQG Treadwear Testing & Methodology, which found an aging effect of approximately 5 percent per year for cave-stored tires and about 10 percent for non-cave-stored tires. Thus, Uniroyal encouraged the continued use of cave storage for CMTs.

Uniroyal recommended that tires used in NHTSA's tests be used as soon as they are received from the cave and the BCWR calculated as follows:

$$ABCWR = BCWR * \left[1 - \frac{TESTWK - DOTWK}{52} CMT * AAF\,c\right]$$

Where:

ABCWR=Adjusted Base Course Wear Rate

BCWR=Base Course Wear Rate

$TESTTWK - DOTWK_{CMT}$=Difference, in weeks, between date at start of test and CMTDOT

AAF c=Age Adjustment Factor for cave-stored tires=0.05

The new adjusted base course wear rate will be obtained by using average wear rate from the last 4 quarterly tests conducted by NHTSA.

(b) Since NHTSA showed in its study that CMTs that were not continually cave-stored aged at twice the rate of those that were, Uniroyal proposed the following calculation for the adjustment factor if the production date of the CMT is older than that of the candidate tire:

$$1 - \frac{DOTWK_{TST} - DOTWK_{CMT}}{52} * AAF\,o$$

Thus, the grade (P) would be computed as follows:

[2] The NPRM originally called for a comment closing date of August 4, 1998. At the request of the Rubber Manufacturers Association, however, we extended the comment period until October 5, 1998 (63 FR 41538, August 4, 1998).

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$$P = \frac{Projected\ Mileage\ 1 - \left[\frac{DOTWK_{TST} - DOTWK_{CMT}}{52} * AAF_o\right] * ABCWR}{402}$$

Where:

ABCWR=Adjusted Base Course Wear Rate (from a. above)

$DOTTWK_{TST}$ –

$DOTWK_{CMT}$=Difference, in weeks, between candidate tire and CMT

AAF_o=Age Adjustment Factor for tires stored at test site after leaving cave=0.10

If the candidate tire is equal to or older than the CMT tire, no adjustment is made.

c. NHTSA should measure the CMT wear rate at least 4 times per year and include CMTs approximately one year old in their measurements. The inclusion of older CMTs in these measurements would result in a long term record of the aging effect and verify (or not) the approximately 5 percent per year age effect reported in DOT HS 808–701.

C. Discussion

For the past few years, NHTSA has been studying various ways to arrest the consistent decline in the BCWR that we believe has been the primary cause of the inflation that has plagued the treadwear grading system almost from the beginning. That treadwear grade inflation was the basis on which we froze the BCWR at 1.34 mils in the final rule of September 9, 1996 (61 FR at 47441), which became effective March 9, 1998. The elapsed time since then has not given us sufficient data on which to determine whether the freezing of the BCWR has had the desired effect of arresting the treadwear grade inflation altogether, although preliminary indications are that it has had a very positive effect on the problem. In addition to contributing to the arrest of the treadwear grade inflation, however, the procedures specified in this final rule are intended to provide CMT replacement procedures that would be valid in all circumstances. We could use these procedures, for example, if ASTM changed its design specifications of the E–1136 tires; if E–1136 tires became unavailable and we were required to substitute other tires for use as CMTs; or in the event of a significant change in the surface of the test road course. Finally, these procedures will enable us to test the assumption of batch uniformity of ASTM-specification tires.

NHTSA is persuaded by the comments of the RMA and Uniroyal that it is not logistically feasible to produce E–1136 tires as frequently and in such small lots as would be necessary to consistently provide CMTs that are less than 6 months old. We have historically procured about 200 CMTs per year, retaining 12 for our own use and providing the remainder to other testers. In making the CMT test runs 4 times per year, we will now consume 64 CMTs per year, but the other testers are expected to consume about the same number as before. Therefore, the increase in the number of CMTs consumed per year is relatively small and not enough to justify Uniroyal's having to make more production runs of CMTs than before, with the additional logistical problems of lot-to-lot consistency, storage, and shipping.

Because of Uniroyal's production and logistical constraints on the manufacture of E–1136 tires, we have decided that the most practical solution would be to require that CMTs used in establishing the BCWR be less than 1 year old, instead of not more than 6-months old as we proposed. Further, we will not require that the CMTs used in the testing have production dates within 3 months of each other, nor will we require the 10 percent adjustment for tires over the prescribed age since this could create a demand for newer tires that would disrupt Uniroyal's production schedule. We are, however, requiring that CMTs be cave-stored until used [3] and that, in addition to being not more than 1 year old, the CMTs must be used within 2 months after being removed from cave storage. The 2-month requirement is intended to minimize any degradation while in uncontrolled storage conditions. The aging of up to 1 year in the cave could result in a degradation of up to 5 percent, an amount that we have decided to accept under the circumstances as the best compromise available within the economic constraints of the CMT supply system.

Although the rate of treadwear degradation due to aging is not an exact science, our experience has been that tires stored outside the cave degrade at approximately 10 percent per year, while tires stored under the controlled climatic conditions of the cave degrade at a significantly lower rate, no more than a nominal 5 percent. The above computations that Uniroyal suggested would compensate for that possible 5 percent aging degradation, if meticulous records were kept of the amount of time each CMT spent in the cave and in uncontrolled storage and if our estimate of the aging effect were accurate. We believe that the proposed Uniroyal computation is too complicated in relation to the small increase in accuracy. Therefore, for the sake of simplicity and, as stated above, considering that the treadwear measurement is not a precision test, we are willing to accept the possibility of tire degradation of up to 5 percent, which might result in the slight overgrading of candidate tires. Accordingly, we adhere to the formula

P = Projected mileage*BCWRn/402

that we proposed in the NPRM.

In summary, this final rule revises the procedure for measuring the wear rate of CMTs by running them over the test course 4 times per year, then using the average wear rate from the last 4 quarterly CMT test runs as a basis for the BCWR. The CMTs used in the test runs must be not more than 1 year old at the commencement of the test and must be used within 2 months after being withdrawn from storage.

This final rule makes one additional change. NHTSA has been leasing a warehouse to store the CMTs for sale to other testers. Given the amendments made by this final rule, NHTSA need no longer store the CMTs for the testers. They can purchase tires directly from the manufacturer for less than what NHTSA was charging. Accordingly, we are amending 575.104(e)(1)(ii) to delete the sentence stating that CMTs are available from NHTSA.

Rulemaking Analyses and Notices

a. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document was not reviewed under Executive Order 12866,

Regulatory Planning and Review

NHTSA has analyzed the impact of this rulemaking action and has determined that it is not "significant" under the DOT's regulatory policies and

[3] Uniroyal ships its E–1136 tires immediately after production to a storage facility located in a cave in the Ozark mountains. This facility has a constant temperature of about 60 °F. and is remote from ozone-producing electrical equipment.

procedures. This action changes the calculation for determining the base course wear rate of course monitoring tires which is, in turn, used to determine the treadwear grade of candidate tires under the Uniform Tire Quality Grading Standards. This action does not impose any additional costs on motor vehicle or tire manufacturers, distributors, or dealers. Instead, it permits tire manufacturers greater flexibility in their testing programs and could result in slightly lower costs by permitting them to procure course monitoring tires directly from the manufacturer rather than through NHTSA, as has been the practice in the past. Specifically, NHTSA has been leasing a warehouse to store the CMTs for sale to other testers. We have charged them a markup on each tire to cover our storage and handling expenses. Given the amendments made by this final rule, NHTSA need no longer store the CMTs for the testers. They can purchase tires directly from the manufacturer for less than what NHTSA was charging, which also saves NHTSA the time, trouble, and expense of storage and handling. We estimate that this will save the tire companies approximately $24,000 per year. Accordingly, because the cost savings are minimal, the agency did not prepare a full regulatory evaluation.

b. Regulatory Flexibility Act

The agency has considered the effects of this rulemaking action under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* I hereby certify that this rulemaking action will not have a significant impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The amendments proposed herein will primarily affect manufacturers of passenger car tires. The Small Business Administration (SBA) regulation at 13 CFR part 121 defines a small business in part as a business entity "which operates primarily within the United States" (13 CFR 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification (SIC) codes. SIC code No. 3711, *Motor Vehicles and Passenger Car Bodies*, has a small business size standard of 1,000 or fewer employees. SIC code No. 3714, Motor Vehicle Parts and Accessories, has a small business size standard of 750 or fewer employees.

The amendments in this rulemaking action merely change the testing procedure for and calculation of the treadwear grade under the Uniform Tire Quality Grading Standards. The purpose of this new procedure is to arrest the treadwear grade inflation that has been experienced over the past several years. The amendments will make it necessary for NHTSA to conduct additional testing to determine the base course wear rate from which treadwear grades are calculated by tire manufacturers. The amendments, however, will not impose any additional requirements or burdens on tire manufacturers, most of which do not qualify as small businesses under SBA guidelines. Thus, the new procedures will not result in any increase in costs for tire manufacturers, small businesses, or consumers. Accordingly, there will not be any significant impact on small businesses, small organizations, or small governmental units by the amendments in this final rule. Thus, the agency has not prepared a final regulatory flexibility analysis. Annual expenditures from this final rule will not exceed the $100 million threshold.

c. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

d. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that this rulemaking action will not have any significant impact on the quality of the human environment.

e. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, Pub.L. 96–511, NHTSA states that there are no information collection requirements associated with this rulemaking action.

f. Civil Justice Reform

The amendments made by this final rule will not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision thereof may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States government or a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. Section 30161 of Title 49, U.S. Code sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

List of Subjects in 49 CFR Part 575

Consumer information, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 575 is amended as follows:

PART 575—CONSUMER INFORMATION REGULATIONS

1. The authority citation for Part 575 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 575.104 is amended by revising paragraph (e)(1)(ii), paragraph (e)(2)(ix)(C), and paragraph (e)(2) (ix)(F), to read as follows:

§ 575.104 Uniform tire quality grading standards.

* * * * *

(e) * * *

(1) * * *

(ii) Treadwear grades are evaluated by first measuring the performance of a candidate tire on the government test course, and then correcting the projected mileages obtained to account for environmental variations on the basis of the performance of the course monitoring tires run in the same convoy.

* * * * *

(2) * * *

(ix) * * *

(C) Determine the course severity adjustment factor by dividing the base course wear rate for the course monitoring tires (see *Note* to this paragraph) by the average wear rate for the four course monitoring tires.

Note to paragraph (e)(2)(ix)(C): The base wear rate for the course monitoring tires will be obtained by the government by running ASTM E–1136 course monitoring tires for 6,400 miles over the San Angelo, Texas, UTQGS test route 4 times per year, then using the average wear rate from the last 4 quarterly CMT tests for the base course wear rate calculation. Each new base course wear rate will be filed in the DOT Docket

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Management section. This value will be furnished to the tester by the government at the time of the test. The course monitoring tires used in a test convoy must be no more than one year old at the commencement of the test and must be used within two months after removal from storage.

* * * * *

(F) Compute the grade (P) of the NHTSA nominal treadwear value for each candidate tire by using the following formula:

P = Projected mileage × base course wear rate$_n$/402

Where base course wear rate$_n$ = new base course wear rate, *i.e.*, average treadwear of the last 4 quarterly course monitoring tire tests conducted by NHTSA.

Round off the percentage to the nearest lower 20-point increment.

* * * * *

Issued on May 11, 2000.

Rosalyn G. Millman,

Acting Administrator.

[FR Doc. 00–12873 Filed 5–23–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. No. 112399C]

RIN 0648–AM48

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2000 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, final specifications, and commercial quota adjustment for the 2000 summer flounder, scup, and black sea bass fisheries; notification of commercial quota harvest.

SUMMARY: NMFS issues the final specifications for the 2000 summer flounder, scup, and black sea bass fisheries. The annual specifications for the scup fishery include a new provision to restrict fishing in certain areas during certain time periods to reduce discards of scup in small-mesh fisheries. This action contains preliminary adjustments to the 2000 commercial quotas for the summer flounder, scup, and black sea bass fisheries. This action also prohibits federally permitted commercial vessels from landing summer flounder in the State of Delaware for the year 2000. The intent of this document is to comply with implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of these fisheries.

DATES: Effective 0001 hours, May 24, 2000, through 2400 hours, December 31, 2000.

ADDRESSES: Copies of the Environmental Assessment (EA)/Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), including the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is accessible via the Internet at http://www.nero.gov/ro/doc/nr.htm.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (978)281–9221, fax (978)281–9135, e-mail regina.l.spallone@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed jointly by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. latitude (the latitude of Cape Hatteras Light, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

Pursuant to §§ 648.100 (summer flounder), 648.120 (scup), and 648.140 (black sea bass), the Regional Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the fishing year to assure that the target fishing mortality (F) or exploitation rate for each fishery, as specified in the FMP is not exceeded. The target F or exploitation rate and management measures are summarized below by species. Detailed background information regarding the development of the proposed specifications was provided in the proposed specifications for the 2000 summer flounder, scup and black sea bass fisheries (65 FR 4547, January 28, 2000), and is not repeated here. NMFS will publish a proposed and final rule for the 2000 recreational management measures for these fisheries in the **Federal Register** at a later date.

On April 25, 2000, during the last stages of review of this final rule, the United States Court of Appeals for the District of Columbia Circuit (Court) issued an opinion on a challenge to the 1999 summer flounder specifications by a number of environmental groups. The Court noted that the 1999 quota, when adopted, had only an 18-percent likelihood of meeting the conservation goals of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Court invalidated the 1999 quota and remanded the case to NMFS for further proceedings. The Court set a minimum standard for harvest quotas to comply with the Magnuson-Stevens Act, namely that quotas must have at least a 50-percent probability of achieving the target fishing mortality rate.

Given the timing of the opinion and the urgency of regulating the ongoing fishery that began in January, after careful consideration, NMFS has concluded that it must have some measures in place establishing quotas for these fisheries. Therefore, rather than leaving the fisheries unregulated while it addresses the Court's remand, NMFS is proceeding with publication of the rule as drafted at this time. In addition, the specifications for summer flounder are intimately linked to the specifications for the scup and black sea bass fisheries, which were not part of the litigation. All of these specifications must be in place immediately in order to manage effectively the recreational fishery, to monitor the state-by-state commercial quotas, and to restrict landings by Federal permit holders upon attainment of those quotas—measures necessary to control the overall mortality on the summer flounder stock.

NMFS considers it a matter of the highest urgency to address the remand of the Court and will work with its partners in the Council and the Commission. NMFS intends to revise the 2000 summer flounder quota by August 1, 2000, to a level with at least a 50-percent chance of not exceeding the F target. State fisheries agencies and fishery participants are hereby notified that the specifications for the 2000 commercial and recreational summer flounder fisheries will be revised accordingly. Participants are also reminded that any quota overages in the 2000 commercial summer flounder fishery will be deducted from 2001 quotas, as provided under the FMP.

Summer Flounder

The FMP for summer flounder specifies a target F for 2000 of the level of fishing that produces maximum yield per recruit (F_{MAX}). Best available data indicate that F_{MAX} is currently equal to 0.26. The total allowable landings (TAL) are allocated to the commercial (60 percent) and the recreational (40 percent) sectors in the proportion required by the FMP. The commercial sector's quota is allocated to the coastal states based on percentage shares specified in the FMP, and those allocations are detailed in this document.

A summer flounder stock assessment was completed by the Northeast Fisheries Science Center's (NEFSC) Southern Demersal Working Group in the Spring of 1999 and reviewed by the Council's Scientific and Statistical Committee in July 1999. This assessment is summarized in the EA/RIR/IRFA. The assessment was the basis of the Summer Flounder Monitoring Committee's (Monitoring Committee) recommendation of a TAL of 16.815 million lb (7.627 million kg). The Council and Commission (hereinafter, referred to as "the Council") reviewed this recommendation and did not adopt it. Instead, the Council recommended, and NMFS proposed, a 2000 TAL level of 18.518 million lb (8.4 million kg). Based on stochastic projection results, this TAL has a 25-percent probability of achieving (*i.e.*, not exceeding) the target F of 0.26 in 2000. NMFS notes that the Commission has measures in place to decrease discards of sublegal fish in the commercial fishery and reduce regulatory discards that occur as the result of landings limits in individual states. Specifically, the Commission has measures in place whereby 15 percent of each state's quota would be voluntarily set aside each year for vessels to land an incidental catch allowance (usually implemented as trip limits) after the directed fishery has closed. The intent of this voluntary incidental catch set-aside is to reduce discards by allowing fishermen to land a certain amount of summer flounder they catch incidentally after their state's fishery has closed, while trying to ensure that the state's overall quota is not exceeded. NMFS anticipates that these measures will improve the probability of not exceeding the target. Thus, this rule will implement the following summer flounder measures for 2000: (1) A TAL of 18.52 million lb (8.40 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.039 million kg); and (3) a coastwide recreational harvest limit of 7.41 million lb (3.361 million kg).

The preliminary final commercial quotas by state for 2000 are presented in Table 1; the total quotas are divided into the recommended allocation between directed and incidental catch fisheries for purposes of illustration. These preliminary quotas are subject to downward adjustment dependant upon overages of a state's 1999 quota.

TABLE 1.—PRELIMINARY FINAL 2000 SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent share	Directed		Recommended 15 percent as incidental catch		Total	
		Lb	Kg[1]	Lb	Kg[1]	Lb	Kg[1]
Maine	0.04756	4,492	2,037	793	360	5,284	2,397
New Hampshire	0.00046	43	20	8	3	51	23
Massachusetts	6.82046	644,159	292,186	113,675	51,562	757,834	343,748
Rhode Island	15.68298	1,481,181	671,852	261,385	118,562	1,742,566	79,041
Connecticut	2.25708	213,170	96,692	37,618	17,063	250,788	113,756
New York	7.64699	722,221	327,594	127,451	57,811	849,672	385,405
New Jersey	16.72499	1,579,594	716,492	278,752	126,440	1,858,346	842,931
Delaware	0.01779	1,680	762	297	134	1,977	897
Maryland	2.03910	192,583	87,354	33,985	15,514	226,568	102,770
Virginia	21.31676	2,013,264	913,201	355,282	161,153	2,368,546	1,074,354
North Carolina	27.44584	2,592,126	1,175,768	457,434	207,489	3,049,560	1,383,257
Total	100.00000	9,444,512	4,283,959	1,666,679	755,993	11,111,192	5,039,951

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year. This document contains: (1) Final specifications and (2) associated preliminary adjustments to each state's 2000 quotas as a result of known 1999 overages. The adjustment in this document is preliminary because it is likely that additional data will be received from the states that would alter the figures, including late landings reported from either federally permitted dealers or state statistical agencies reporting landings by non-federally permitted dealers. This document utilizes preliminary 1999 landings data that have been provided to NMFS through December 31, 1999.

Based on dealer reports and other available information, NMFS has determined that the States of Maine, Massachusetts, New Jersey, Delaware, and Virginia exceeded their 1999 quotas. Thus far, the remaining States of New Hampshire, Rhode Island, Connecticut, New York, Maryland, and North Carolina are not known to have exceeded their 1999 quotas. The preliminary 1999 landings and resulting overages for all states are given in Table 2. The resulting adjusted 2000 commercial quota for each state is given in Table 3. In Table 4, the adjustment has been made to illustrate the voluntary incidental catch component of the commercial quota at 15 percent of the total, as recommended.

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TABLE 2.—SUMMER FLOUNDER PRELIMINARY 1999 LANDINGS BY STATE

State	1999 Quota [1]		Preliminary 1999 landings		1999 Overage	
	Lb	Kg [2]	Lb	Kg [2]	Lb	Kg [2]
Maine	4,450	2,018	5,778	2,621	1,328	602
New Hampshire	51	23	0	0		
Massachusetts	757,842	343,751	804,964	365,126	47,122	21,374
Rhode Island	1,742,583	790,422	1,636,528	742,317		
Connecticut	238,516	108,189	232,047	105,255		
New York [3]	860,006	390,099	793,287	359,829		
New Jersey	1,853,926	840,927	1,897,952	860,897	44,026	19,970
Delaware	[4](25,739)	(11,675)	7,976	3,618	(33,715)	(15,293)
Maryland	202,354	91,786	198,866	90,204		
Virginia	2,120,696	961,932	2,130,553	966,403	9,857	4,471
North Carolina [3]	2,974,589	1,349,274	2,800,749	1,270,398		
Total [5]	10,755,013	4,866,746	10,508,700	4,766,666		

[1] Reflects quotas as published on August 26, 1999 (64 FR 46596), except as noted.
[2] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[3] Reflects quota transfer (64 FR 71687, December 22, 1999).
[4] Parentheses indicate a negative number.
[5] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

TABLE 3.—SUMMER FLOUNDER FINAL ADJUSTED QUOTAS

State	2000 Initial quota		2000 Adjusted quota	
	Lb	Kg [1]	Lb	Kg [1]
Maine	5,284	2,397	3,956	1,794
New Hampshire	51	23	51	23
Massachusetts	757,834	343,748	710,712	322,374
Rhode Island	1,742,566	790,041	1,742,566	790,041
Connecticut	250,788	113,756	250,788	113,756
New York	849,672	385,405	849,672	385,405
New Jersey	1,858,346	842,931	1,814,320	822,962
Delaware	1,977	897	[2](31,738)	(14,396)
Maryland	226,568	102,770	226,568	102,770
Virginia	2,368,546	1,074,354	2,358,689	1,069,883
North Carolina	3,049,560	1,383,257	3,049,560	1,383,257
Total [3]	11,109,214	5,039,055	11,006,882	4,992,638

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.
[3] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0).

TABLE 4.—FINAL SUMMER FLOUNDER 2000 STATE COMMERCIAL QUOTAS AND RECOMMENDED INCIDENTAL CATCH ALLOCATIONS

State	Percent share	Directed		Recommended 15 percent as incidental catch		Total	
		Lb	Kg [1]	Lb	Kg [1]	Lb	Kg [1]
Maine	0.04756	3,363	1,525	593	269	3,956	1,794
New Hampshire	0.00046	43	19	8	4	51	23
Massachusetts	6.82046	604,105	274,017	106,607	48,356	710,712	322,374
Rhode Island	15.68298	1,481,181	671,852	261,385	118,562	1,742,566	790,041
Connecticut	2.25708	213,170	96,692	37,618	17,063	250,788	113,756
New York	7.64699	722,221	327,594	127,451	57,811	849,672	385,405
New Jersey	16.72499	1,542,172	699,517	272,148	123,444	1,814,320	822,962
Delaware [2]	0.01779	0	0	00		[2](31,738)	
(14,396)							
Maryland	2.03910	192,583	87,354	33,985	15,415	226,568	102,770
Virginia	21.31676	2,004,886	909,401	353,803	160,482	2,358,689	1,069,883
North Carolina	27.44584	2,592,126	1,175,769	457,434	207,489	3,049,560	1,383,257
Total [3]	100.00000	9,355,850	4,243,742	1,651,032	748,896	11,006,882	4,992,638

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.
[2] A state with a negative number has an allocation of zero (0).
[3] Total includes recommended directed and incidental catch allocations as calculated from the total, and may not add.

Delaware Closure

In 1999, NMFS prohibited Federal permit holders from landing summer flounder in the State of Delaware in the light of deductions from the 1999 quota for overages in 1998 (64 FR 5196, February 3, 1999). As a result of those deductions and further quota reductions published in the **Federal Register** on August 26, 1999 (64 FR 46596), the 1999 quota allocation to the State of Delaware was −25,739 lb (−11,675 kg). An additional 7,976 lb (3,618 kg) of summer flounder were landed in Delaware in 1999. The 2000 quota for Delaware is not sufficient to offset this negative 2000 allocation and the additional landings in 1999. Consequently, Delaware has no commercial quota available for 2000. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available for harvest. Therefore, effective 0001 hours, May 24, 2000, landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the remainder of the 2000 calendar year, or until additional quota becomes available through a transfer. If additional landings were to be reported for 1999, the commercial quota for the State of Delaware will be re-adjusted pursuant to § 648.100(d)(2).

Scup

The FMP established a target exploitation rate for scup in 2000 of 33 percent. The total allowable catch (TAC) associated with that rate is allocated 78 percent to the commercial sector and 22 percent to the recreational sector. Discard estimates are deducted from both TACs to establish TALs for both sectors. The commercial TAL is allocated to three different periods.

Scup was most recently assessed at the 27th Northeast Regional Stock Assessment Workshop in June 1998 (SAW 27). This assessment indicates that scup are overexploited and at a record low biomass level. SAW 27 concluded that spawning stock biomass is less than one-tenth of the biomass threshold—the maximum NEFSC indices of spawning stock biomass observed, or 2.77 kg/tow during 1977–1979. The assessment is summarized in the EA/RIR/IRFA.

NMFS disapproved both the rebuilding schedule and the bycatch provision for scup in Amendment 12 to the FMP. Despite that, for the reasons explained in the proposed rule, these final specifications for fishing year 2000 are based on the current exploitation rate associated with the overfishing definition, pending submission and approval of a rebuilding schedule that complies with the Magnuson-Stevens Act. The disapproval of the bycatch provision is discussed in "Gear Restricted Areas." Failure to take any action at all pending the submission of the revised rebuilding schedule could imperil the stock.

The Monitoring Committee reviewed available data and assumed the 1999 exploitation target of 47 percent would be achieved. The Monitoring Committee recommended that the TAC be reduced in proportion to the reduction in exploitation rates from 1999 to 2000, *i.e.*, a 30-percent reduction. As such, the Monitoring Committee recommended a TAC for 2000 of 4.15 million lb (1.88 million kg) resulting in a 3.243 million-lb (1.47 million-kg) commercial TAC, and a 0.915 million-lb (0.415 million-kg) recreational TAC.

The Monitoring Committee also noted the need to reduce discards in the commercial fishery. Specifically, SAW 27 noted that F should be reduced "substantially and immediately" and that, while estimates are uncertain, most mortality in recent years was "clearly attributable to discards, particularly when incoming recruitment is strong." The report noted that reductions "in discards from small-mesh fisheries" would be particularly effective for this stock. Thus, the Monitoring Committee recommended that the Council implement regulations to close areas to fishing by trawl gear with codend mesh sizes less than 4.5 inches (11.43 cm) to reduce discards of scup.

In preparing data for the Monitoring Committee deliberations, Council staff cited data indicating that, based on the average biomass estimates for 1998 and 1999, the 1999 exploitation rate could be well below its target of 47 percent. Specifically, the staff felt that it was possible that exploitation in 1999 could be as low as 30 percent, provided certain assumptions were met regarding biomass estimates. A 30-percent exploitation rate is equal to the target in 2000. Thus, the staff recommended maintaining the TAC as the status quo level.

The Council reviewed the recommendations and adopted its staff's recommendation, a TAC of 5.922 million lb (2.686 million kg) for 2000. Discard estimates for the commercial and recreational sectors are subtracted from the commercial (4,619,160 lb (2,095,215 kg)) and recreational (1,302,840 lb (590,958 kg)) TACs, respectively, to derive the commercial quota and the recreational harvest limit for the year. Assuming the same proportion of discards to catch in 2000 as 1997 (45.1 percent), the commercial discards would be 2.085 million lb (0.946 million kg), and the quota would be 2.534 million lb (1.149 million kg). Based on the proportion of recreational discards to catch in 1997 (4.96 percent), the recreational discards would be 0.065 million lb (0.029 million kg) and the harvest limit would be 1.238 million lb (0.562 million kg). The commercial allocation is shown in Table 5. As with summer flounder, these allocations are preliminary and are subject to a downward adjustment for any overages in a period's harvest in 1999. Preliminary data indicate that the Winter I and Summer period allocations have been exceeded in 1999, which requires a corresponding reduction in those periods in 2000. The resulting adjusted 2000 commercial quota for each period is given in Table 7.

TABLE 5.—PERCENT ALLOCATIONS OF COMMERCIAL SCUP QUOTA

Period	Percent	TAC [1]	Discards [2]	Quota Allocation		Landing limits	
				Lb	Kg [3]	Lb	Kg
Winter I	45.11	2,083,703	940,543	1,143,160	518,529	[4]10,000	4,536
		(945,168)	(426,630)				
Summer	38.95	1,799,163	812,108	987,055	447,721	*n/a	
		(816,100)	(368,372)				
Winter II	15.94	736,294	332,349	403,945	183,226	4,000	1,814

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TABLE 5.—PERCENT ALLOCATIONS OF COMMERCIAL SCUP QUOTA—Continued

Period	Percent	TAC[1]	Discards[2]	Quota Allocation		Landing limits	
				Lb	Kg[3]	Lb	Kg
	.....	(333,983)	(150,754)	.....	.....	.....	.....
Total[5]	100.00	4,619,160 (2,095,215)	2,085,000 (945,740)	2,534,160	1,149,476	.....	.....
	.....	.....	.....	.....	.....	.....	.....

[1] Total allowable catch, in pounds (kilograms in parentheses).
[2] Discard estimates, in pounds (kilograms in parentheses).
[3] Kilograms are as converted from pounds and may not add to converted total due to rounding.
[4] The Winter I landing limit will drop to 1,000 pounds (454 kg) upon attainment of 85 percent of the seasonal allocation.
[5] Totals subjects to rounding error.
n/a—Not applicable.

TABLE 6.—SCUP PRELIMINARY 1999 LANDINGS BY PERIOD

Period	1999 Quota		1999 Landings		1999 Overages	
	Lb	Kg[1]	Lb	Kg[1]	Lb	Kg[1]
Winter I	1,143,160	518,529	1,249,234	566,643	106,174	48,114
Summer	987,055	447,721	1,288,482	584,446	301,427	136,725
Winter II	403,945	183,226	700,907	317,926	296,962	134,700
Total	2,534,160	1,149,476	3,238,623	1,469,015	.....	.....

[1] Kilograms are as converted from pounds and may not add to converted total due to rounding.

TABLE 7.—SCUP FINAL ADJUSTED QUOTAS

Period	2000 Initial quota		2000 Adjusted quota[1]	
	Lb	Kg[1]	Lb	Kg[2]
Winter I	1,143,160	518,529	1,037,986	470,369
Summer	987,055	447,721	685,628	310,996
Winter II	403,945	183,226	106,983	48,527
Total	2,534,160	1,149,476	1,830,597	830,345

[1] Trip limits specified in Table 5 are unchanged.
[2] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

To achieve the commercial quotas, the Council recommended a landing limit of 10,000 lb (4,536 kg), with a reduction to 1,000 lb (454 kg) when 85 percent of the quota allocation is harvested for Winter I (January-April). A 4,000-lb (1,814-kg) landing limit will be in place for the entire Winter II (November-December) period.

Gear Restricted Areas (GRAs)

The Council noted NMFS's disapproval of the scup bycatch provision and rebuilding schedule in Amendment 12 to the FMP and heeded the advice of the Monitoring Committee and SAW 27 that scup discards must be decreased. To reduce discards of small scup, the Council voted to recommend seasonal GRAs in which commercial vessels would be prohibited from fishing with midwater trawl or other trawl gear with codend nets of mesh size less than 4.5 inches (11.3 cm), unless they were participating in an exempted fishery (identified by the Council to have less than a 10-percent bycatch of scup). The Council proposed GRAs that were identified by an ad hoc advisory panel consisting of Council and Commission members, industry advisors, and the public. The areas comprise a series of small restricted areas, each approximately 2-weeks in duration, within Northeast statistical areas 537, 539, 613, 616, and 622.

NMFS believes that the adoption of GRAs is a critical measure to ensure the attainment of the target exploitation rate and to rehabilitate the deficiencies in the FMP with respect to bycatch provisions as noted in the disapproval of Amendment 12. For the reasons noted in the proposed rule, NMFS did not support the areas and times identified in the Council's alternative. Instead, NMFS proposed an alternative analyzed by the Council that would have established larger GRAs that would remain closed to small-mesh fisheries for longer periods of time (see Alternative 6, as described in the EA/RIR/IRFA). This action would have established two GRAs, a Southern and a Northern GRA. The Southern GRA, defined as Federal waters off New Jersey and Delaware, would have restricted fishing with small mesh from January 1 through April 30. The Northern Gear Restricted Area, defined as Federal waters off Massachusetts, Rhode Island, and New York, would have restricted fishing with small mesh from November 1 through December 31. In light of public comments received on the GRAs, the Southern area has been modified in this final rule. The area has been reduced by moving the Eastern (seaward) boundary inshore to approximate the 100-fathom line. The modified area better incorporates areas in which scup are generally found (depths of 40–100 fathoms), as noted in the FMP's Essential Fish Habitat Source Document (NOAA Technical Memorandum. In press, September, 1999). Specific public comments related to these, and other, measures, are responded to in the "Comments and Responses" section of this final rule. Both of these areas encompass the areas proposed by the ad hoc advisory panel.

During the time periods implementing both GRAs, midwater trawl and other trawl gear fishing vessels with nets on board that have a mesh size less than a 4.5-inch (11.3-cm) diamond mesh in the codend would be prohibited from fishing for, or possessing black sea bass, *Loligo* squid, mackerel, and silver hake when in the Southern GRA. The fishery for Atlantic herring has been determined to be exempt from both restricted areas. Copies of a chart depicting these areas are available in the EA/RIR/IRFA and from the Regional Administrator upon request (see **ADDRESSES**).

The modification of the area will not substantially alter the impact on scup harvest or discards, because scup are not found outside the 100-fathom (183-m) curve to any great extent. However, this modification will substantially reduce the impact on other small-mesh fisheries that are prosecuted outside the 100-fathom (183-m) curve. Analyses indicate that this revision will reduce economic losses in exvessel revenue by an estimated 20–33 percent from the original proposed alternative. This change responds to public comments expressing concern about the size of the proposed GRA, and also incorporates the points on enforceability raised by the U.S. Coast Guard (USCG). The areas will be in place until revised by the Council.

Lastly, vessels with exempted experimental fishing permits will be allowed to conduct experiments with small-mesh gear in the regulated areas. The Council is working with industry members to identify gear modifications that would reduce the catch of scup in small-mesh fisheries for squid. Once this experimental work is completed and an effective gear design is identified, NMFS may authorize its use in the regulated mesh areas, provided other experimental fishery requirements are met.

Black Sea Bass

The FMP specifies a target exploitation rate of 48 percent for 2000. This target is to be attained through specification of a TAL level that is allocated to the commercial (49 percent) and recreational (51 percent) fisheries. The commercial quota is specified on a coastwide basis, by quarter. The most recent assessment on black sea bass, SAW 27, indicates that black sea bass are over-exploited and at a low biomass level. Although data limitations make this estimate uncertain, F for 1998 may be equal to, or even less than, the target (48-percent exploitation). The NEFSC Spring Survey results for 1998 and 1999 indicate that there may have been a significant increase in black sea bass biomass in 1999 (although the 1999 index is high mainly because of a single tow). This assessment is summarized in the EA/RIR/FRFA.

To achieve the goals for 2000, this final rule implements a black sea bass TAL equal to the 1999 level and reduces the quarterly trip limits as recommended by the Council. The commercial quota and corresponding trip limits are shown in Table 8. The Council had recommended that trip limits be reduced in an attempt to prevent overages in each of the quarters from reoccurring. Preliminary data indicate overages occurred in Quarters 2, 3, and 4 (See, Table 9), which requires a corresponding reduction in those quarters in 2000. The resulting adjusted 2000 commercial quota for each quarter is given in Table 10. Status quo is retained on other related management measures, such as the minimum fish size and possession limit.

TABLE 8.—2000 BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND QUARTERLY TRIP LIMITS

Quarter	Percent	Lb	Kg[1]	Trip limits	
				Lb	Kg[1]
1 (Jan–Mar)	38.64	1,168,760	530,141	9,000	4,082
2 (Apr–Jun)	29.26	885,040	401,447	3,000	1,361
3 (Jul–Sep)	12.33	372,951	169,168	2,000	907
4 (Oct–Dec)	19.77	597,991	271,244	3,000	1,361
Total	100.00	3,024,742	1,372,000	.....	.....

[1] Subject to rounding error.

TABLE 9.—BLACK SEA BASS PRELIMINARY 1999 LANDINGS BY QUARTER

Quarter	1999 quota[1]		Preliminary 1999 landings		1999 overage	
	Lb	Kg[2]	Lb	Kg[1]	Lb	Kg[2]
1	1,168,860	530,186	708,235	321,250	.....	.....
2	885,115	401,481	1,031,318	467,798	146,203	66,317
3	372,983	169,182	472,779	214,449	99,796	45,267
4	598,043	271,268	655,864	297,495	57,821	26,227
Total[3]	3,025,000	1,372,117	2,868,196	1,300,992	.....	.....

[1] Reflects quotas as published on August 26, 1999 (64 FR 46596)
[2] Kilograms are as converted from pounds, and may not necessarily add due to rounding
[3] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

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TABLE 10.—BLACK SEA BASS FINAL ADJUSTED QUOTAS

[Trip limits specified in Table 8 are not changed.]

Quarter	2000 Initial quota		2000 adjusted quota	
	Lb	Kg [1]	Lb	Kg [1]
1	1,168,760	530,141	1,168,760	530,141
2	885,040	401,447	738,837	335,131
3	372,951	169,168	273,155	123,901
4	597,991	271,244	540,170	245,017
Total [3]	3,024,742	1,372,000	2,720,922	1,234,189

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

Changes From the Proposed Rule

In an Opinion and Order, dated June 24, 1998, the U.S. District Court for the District of Massachusetts voided the portion of the scup regulations found at §§ 648.120 and 648.121 implementing a state-by-state allocation of the commercial scup fishing quota during the summer period. NMFS is prohibited from enforcing the voided portion of the regulations, including the calculation of overages. While NMFS has complied with the order and has not enforced the regulations, the codified language has remained intact. To make clear that NMFS has, in fact, complied with the order, NMFS by this final rule suspends regulations relative to the state-by-state management of the scup summer quota period. As a result, language in §§ 648.120 and 648.121 has been removed. The summer period will continue to be managed under a coastwide quota until such time that new regulations are promulgated that are consistent with the order.

In § 648.122(a)(1), the parenthetical phrase regarding availability of a map of the Southern GRA is corrected to indicate that a chart of the area is available. In that same section, a typographical error indicating the latitude of point SGA2 is corrected, and the points describing the eastern boundary of the area are revised to reflect the modification as previously described in the preamble.

In § 648.122(b)(1), the parenthetical phrase regarding availability of a map of the Northern GRA is corrected to indicate that a chart of the area is available. In that same section, points NGA2 through NGA6 are revised to reflect that Federal permit holders are bound by the northern GRA surrounding Block Island, RI, up to and including state waters. Subsequent points are renumbered, the northernmost latitude of the GRA is revised to read 41°10′ so that the northern boundary of the GRA lies south of Nantucket Island, MA.

In § 648.122(b)(2), Atlantic herring is removed from the list of non-exempt species. It was incorrectly placed on the list in the proposed rule. Historical sea sample data from the EA indicate that the herring fishery qualifies for exempted status under both the GRAs.

In § 648.122, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added. The new paragraph includes the process by which additional fisheries could be made exempt from the GRAs, which was inadvertently omitted from the proposed rule.

Comments and Responses

Twelve comments were received on the proposed specifications from the public during the comment period that ended on February 28, 2000. Specific comments related to the proposed annual specifications and the EA/RIR/IRFA for the 2000 summer flounder, scup, and black sea bass fisheries are discussed and responded to as follows.

Scup GRAs (GRAs)

Comment 1: Three commenters do not support the scup GRAs because of the negative impact the areas would have on industry, the contention that the underlying data are outdated, and the belief that current data indicate that there is no need to reduce incidental catch of scup in small-mesh fisheries. Two of these commenters feel NMFS "callously rejected" and "discarded" the advice of industry. One questions the rationale for the areas.

Response 1: NMFS values the hard work of industry in developing advice for the Council's recommendation. The advice of the ad hoc working group that developed those areas is clearly reflected in the adopted GRAs, particularly where industry members noted the prevalence of Loligo and scup interactions in Northeast Statistical area 537 (south of Nantucket and Martha's Vineyard Islands, MA). In addition, NMFS acknowledges the impacts that these areas may have on industry and has taken action to mitigate these impacts by modifying the southern GRA to resemble more closely the working group's recommendations. To the extent practicable and consistent with the goals of the GRAs, the revisions modify the seaward border of the Southern GRA to better approximate the 100-fathom (183-m) line. These modifications should minimize impacts on industry by affording industry more areas in which to conduct fisheries. The northern GRA has also been revised slightly to increase enforceability as discussed in the preamble. NMFS anticipates that these revisions will better comply with the guidance of national standard 9, as well as incorporate important enforcement concerns. In light of the disapproval of the scup rebuilding and bycatch provisions in Amendment 12 to the FMP, it is incumbent upon NMFS to meet its statutory requirements to reduce discards and to rebuild the fishery. NMFS cannot ignore its obligations to both the FMP and the Magnuson-Stevens Act.

In reviewing the latest scientific information, the Monitoring Committee recommended that the Council implement a scup discard rate of 90 percent in 2000, unless some other measures, such as time and area closures for the scup fishery, were implemented. The discard rate would be applied to the commercial TAC in setting the TAL (that is, 90 percent of the commercial TAC would be allocated to discards, and the remaining 10 percent would be available as landings). The Council rejected the 90-percent estimate and passed a motion to accept the recommendation as GRAs beginning in the year 2000, with the inclusion of the development of an exempted fishery program to allow fisheries to continue that do not exceed a 10-percent scup bycatch. Adoption of these GRAs allowed the Council to estimate discards at 45 percent. In developing alternatives to the recommendation, the Council analyzed the best available data, 1997 and 1998 vessel trip report (VTR) data and January 1989-April 1999 NMFS sea sample data. The limitations of these data were thoroughly described in the EA. If additional data are made available that would revise the need for, or the specific boundaries of, the GRAs (either spatially or temporally) the Council may implement such changes by way of the annual specifications or framework adjustment processes.

Comment 2: Two commenters, although not specifically supporting or opposing the GRAs, questioned the data used, specifically the data that did not exempt the *Loligo* fishery. One commenter stated that recent data show there is no scup discard problem in the *Loligo* fishery, and another commenter wished to have these data incorporated into the development of the areas.

Response 2: The *Loligo* fishery has long been identified as a primary source of scup discards. However, the magnitude of the discards is unknown. Assuming that the areas and times in which scup and *Loligo* are caught together are probably also the areas and times in which scup discards occur, the Council examined 1997 VTR data to determine possible times and locations for scup/*Loligo* overlap. The Council further analyzed NMFS sea sample data from January 1989 through April 1999 to assess the level of scup discarding in other small-mesh fisheries. These best available data indicate that the scup discards in the November through December *Loligo* fishery were 48 percent, by weight, of total catch, and in the January through April period were 78 percent. Consequently, the *Loligo* fishery does not qualify for exempted status in these areas and time periods. An exemption for *Loligo* may be added in the future if sufficient data or new information become available to result in an estimation that the amount of scup bycatch is less than 10 percent, by weight, of the total catch, and if the Regional Administrator, after consultation with the Council, determines that the percentage of scup caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. NMFS recommends that the commenters work with the Council to exempt this fishery through the existing mechanisms in the regulations.

Comment 3: Two commenters support the GRAs, believing that the areas will greatly reduce scup discards, thereby reducing scup mortality. One of these commenters did not support any modification to the areas.

Response 3: NMFS agrees that these areas will greatly reduce scup discards. The need for measures in the FMP to reduce discards in the scup fishery was stressed in the disapproval of the bycatch provision in Amendment 12 to the FMP. Current measures in the FMP do not adequately reduce bycatch (including discards, as stated in the Magnuson-Stevens Act) or minimize bycatch mortality. Consequently, measures such as these GRAs will begin to rehabilitate the deficiencies in the FMP and will encourage the Council to address this issue in a more comprehensive way, e.g., either through closed/restricted areas or gear modifications. The rationale for modifications to the GRAs described in the proposed rule is further explained in the response to Comment 1.

Comment 4: One commenter questioned the process and use of the proposed rule and specifications as a vehicle for implementation of such measures as GRAs.

Response 4: NMFS is confident that these specifications are an appropriate vehicle to implement these measures. The regulations implementing the FMP contemplates a broad range of action for annual specifications. The regulations at § 648.120(b) specifically provide that the Council may recommend the following measures for the commercial fishery to assure that the specified exploitation rate will not be exceeded: (1) A commercial quota allocated into three periods, (2) landing limits for the Winter I and Winter II periods, (3) the percent of landings attained at which the landing limit for the Winter I period will be reduced, (4) commercial minimum fish size, (5) minimum mesh size, (6) restrictions on gear, and (7) season and area closures in the commercial fishery. The regulations also contemplate a range of opportunities to receive public input on the proposed measures.

Comment 5: Two commenters had questions related to the 10-percent threshold used to exempt fisheries from the GRA regulations. Specifically, the commenters wanted to know how the threshold is determined (i.e., how a fishery is to be exempted, by one trip or many), why a 5-percent threshold was not used as in the case in the Northeast Multispecies FMP, and what would be the observer coverage. An additional commenter supported the 10 percent exemption threshold and wanted to know why the threshold was not proposed by NMFS.

Response 5: The threshold to exempt fisheries was determined by a Council motion to include a process for exempting fisheries within the GRAs. The exempted fishery program will allow fisheries to continue that do not exceed a 10 percent, by weight, of total catch as long as such exemptions will not jeopardize fishing mortality objectives. An exemption based on a 10-percent bycatch criteria was selected because that percentage threshold is the one used in the summer flounder small-mesh exemption program. This precedent, then, exists in the FMP for the establishment of that percentage for exempting a fishery. The exemption is based on the all available data. No observer coverage is required, although it is strongly encouraged and supported by NMFS. This exemption program was included in the proposed rule. However, the process by which the Council could add or eliminate exemptions was inadvertently omitted from the proposed regulatory language. This oversight is corrected in this final rule.

Comment 6: Three commenters noted that, based on data presented in the EA/RIR/IRFA, the Atlantic herring fishery should be exempt from the GRAs for both periods and in both areas.

Response 6: NMFS agrees. NMFS proposed to exempt Atlantic herring from the Southern GRA. An error in the interpretation of the data presented in the EA/RIR/IRFA resulted in the herring fishery being added to the list of non-exempt species for the Northern GRA. Based on public comments and a reexamination of sea sample data, NMFS notes that the herring fishery does qualify for an exemption under both GRAs. The regulations in § 648.122(b)(2) have been revised to account for that correction.

Comment 7: Two commenters supported exempting Atlantic mackerel from the GRAs as data become available.

Response 7: NMFS agrees that, if data become available to support such an exemption, Atlantic mackerel could be listed as exempt from these GRAs following the procedures outlined in the regulations.

Comment 8: The Council recommended that NMFS postpone implementation of any GRAs to work on perfecting the modified areas that the Council included as part of its comment. This comment was supported by one other commenter. However, two other commenters did not support the modified areas and instead indicated that such a change should be considered under a separate rulemaking.

Response 8: NMFS feels that implementation of the GRAs is consistent with the mandate of national standard 9 to reduce discards. In addition, since the Council's proposal is not perfected and does not have widespread industry support and input, it is better dealt with in a separate rulemaking. NMFS encourages such action. Note that implementation of the

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Council's alternative differs from the action taken by NMFS to modify the proposed GRAs in this final rule. This modification represents a revision to the proposed measure based, in part, on public comments. The modified GRAs proposed by the Council represent substantially different areas and times, which require further public examination and analysis. Further, since the GRAs were proposed by the Council as part of the 2000 specifications for scup, and given the conservation imperative to effect needed reductions in scup discard, NMFS feels it would be inappropriate to delay implementation. NMFS notes that the decision to deny a petition for rulemaking to implement measures to reduce scup discard was based on the inclusion of these provisions in the 2000 specifications for summer flounder, scup and black sea bass (65 FR 4546, January 28, 2000).

Comment 9: One commenter questioned why the possession of *Loligo* is prohibited in GRAs, even if harvested with 4.5-inch (11.4-cm) mesh.

Response 9: The regulations prohibit permit holders to fish for, possess, or land *Loligo* squid, silver hake, black sea bass or Atlantic mackerel in or from the GRAs during the appropriate time periods when in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh restrictions. However, a vessel *may* fish for, possess, or land those species in or from the GRAs when in possession of nets that do meet the minimum mesh requirements. These vessels may have nets or nettings on board that do not meet the minimum size, if those nets or netting are stowed in accordance with the regulations. Harvest Levels

Comment 10: One commenter did not support the summer flounder TAL and instead recommended that the Summer Flounder Monitoring Committee's recommendation of 16.815 million lb (7.627 million kg) be implemented. The commenter stated that this lower TAL has a higher probability of achieving the target (50 percent, versus the 25-percent estimate of the adopted TAL) and that NMFS should set a TAL that has "a 50/50 chance of meeting the target." The commenter also believes that the stock rebuilding schedule is inadequate, because the 1999 stock assessment indicates the stock won't rebuild until 2017.

Response 10: NMFS approved the Council recommendation that the 2000 TAL be 18.518 million lb (8.4 million kg). Based on stochastic projection results, this TAL has a 25-percent probability of achieving the target F of 0.26 in 2000 and a 50-percent probability of achieving F = 0.29. These same stochastic projections indicate that the current rebuilding plan is on target, and this rebuilding plan was approved by NMFS under Amendment 12 to the FMP. NMFS also notes that the Commission has recommended that states implement measures to reduce incidental catch and regulatory discards that occur as the result of commercial landings limits in individual states. Specifically, the Commission has instituted voluntary management measures whereby 15 percent of each state's quota would be set aside each year for vessels to land an incidental catch allowance (usually implemented as trip limits) after the directed fishery has closed. The intent of this incidental catch set-aside is to reduce discards by allowing fishermen to land a certain amount of summer flounder they catch incidentally after their state's fishery has closed, while trying to ensure that the state's overall quota is not exceeded. It is anticipated that these measures will improve the probability of achieving the target. This measure is also consistent with a state-by-state quota system which allows states the flexibility to manage their individual allocations to best reflect their industry. This allows the states to more tightly control their fishery and prevent overfishing. Consequently, it may be expected that individual states would implement slightly different programs.

The recent assessment for summer flounder notes that "[b]ecause the effects of density dependence, future environmental conditions, and expansion of stock age structure on growth and recruitment at higher stock sizes are unknown, these projected levels of stock biomass and landings should be considered with caution." If recent low levels of recruitment persist, the projections may be optimistic. Conversely, if recruitment is underestimated or improves, the projections may be conservative. These projections are updated with the best scientific information available each time the an assessment is made on the fishery.

In addition, the BMSY target noted is subject to revision based on changes in the input data that change the partial recruitment pattern for the fishery. That is to say, the rebuilding target is BMSY, not necessarily 106,000 mt. Such changes to the partial recruitment would be influenced by changes in future management action, including minimum sizes and seasonal landing patterns in the fishery.

Comment 11: Two commenters did not support the scup harvest levels. One supported a reduction of the discard estimate to eliminate overages and increase the commercial quota, and the other expressed concern that the proposed TAC is too high in light of the record low biomass level.

Response 11: In making its recommendation to NMFS, the Council considered a recommendation by the Monitoring Committee to use a 90-percent discard-to-landings ratio in establishing the TAL. The Committee noted that the discard-to-landings ratio had doubled in recent years (1998 versus 1997), based on the limited data available, including survey, VTR, and sea sampling. Such a recommendation, if adopted, would have, for all intents and purposes, eliminated the commercial fishery for 2000, particularly after deduction for overages in the 1999 quota periods. The Council, however, assumed the same proportion of discards to catch in 2000 as 1997 (45.1 percent), and recommended a lower discard estimate—coupled with the GRAs. Such a measure would achieve the goals of the FMP while maintaining some economic opportunity for the industry participants. NMFS agrees with this approach.

Comment 12: One commenter did not support the black sea bass trip limits, and specifically requested an 11,000-pound (4,990-kg) trip limit in Quarter 1 (Jan–Mar).

Response 12: The reduced trip limits are an attempt to prevent overages in each of the quarters from occurring or reoccurring. These reductions are particularly relevant in light of the fact that deductions are made for 1999 overages in this final rule, thus reducing the overall quota per quarter.

Comment 13: One commenter objected to the late publication date of the proposed rule, saying it rendered portions of the 2000 specifications "meaningless." The commenter questioned whether NMFS provided meaningful opportunity to comment on the proposed regulations, as they would already be "in effect on the water."

Response 13: NMFS agrees that the late publication of this final rule is problematic. This delay will prevent several regulatory provisions from being implemented. However, since this is a joint FMP, states have already implemented several provisions of the recommendations under compliance criteria specified in the Commission's FMP. That fact, of course, did not preclude due consideration of public comments on the proposed measures. In fact, several changes have been made in direct response to comments. In addition, since certain provisions of the specifications are regulatory in nature (such as the reduction of future quotas due to overages), states must implement any changes to the quotas identified in this final rule. States routinely make such changes in response to quota adjustments which, because of the publication delay, are presented in this final rule. In previous years, this adjustment had been published as a separate action. EA/RIR/IRFA

Comment 14: One commenter felt that the EA for summer flounder falls short of National Environmental Policy Act (NEPA) requirements in that it does not provide adequate discussion of impacts, there are no long-term or cumulative impacts (of continued summer flounder overfishing) examined, and no explanation of why any of the alternatives were accepted or rejected.

Response 14: NMFS determined that the EA fully and adequately analyzes impacts of the alternatives considered. Still, NMFS realizes that there may be cumulative impacts as a result of annual specifications. Although overall impacts of the management programs were examined in detail as part of the environmental impact statements (EISs) prepared for each of the three fisheries (Amendment 2 for summer flounder (1992), Amendment 8 for scup (1996), and Amendment 9 for black sea bass (1997)), NMFS revised the EA for the 2000 specifications to more fully discuss potential cumulative impacts of the annual specifications.

Comment 15: One commenter felt that the EA/RIR/IRFA is "flawed" due to the failure to consider the full range of economic benefits and costs associated with the summer flounder quota specifications. The commenter stated that the "errors in the analysis * * * incorrectly bias the analysis in favor of higher quotas at the expense of rebuilding * * *"

Response 15: NMFS disagrees. The economic analysis conducted for this action responded to the requirements of the National Environmental Policy Act, E.O. 12866, and the Regulatory Flexibility Act. The economic analysis performed used the best scientific information available in describing the expected economic impacts for each quota specification option as required by law.

Comment 16: One commenter felt that the IRFA fails to consider economic benefits to scup fishermen from reduced discards in small-mesh fisheries, and resultant stock recovery; and does not analyze costs saved for trips not taken in the GRAs.

Response 16: NMFS feels that the IRFA addresses adequately the economic impacts of the scup specifications. The economic benefits of reduced discards and resultant stock recovery are addressed in the EIS for Amendment 8 to the FMP, which implemented management measures for scup. As these specifications are not expected to result in the immediate recovery of the stock, it would be inappropriate for this final rule to analyze such impacts. Ultimately, a recovered stock would have obvious benefits to industry in a more balanced age structure of the scup stock, increased spawning stock, and increased yield as fish are allowed to grow larger before harvest.

Comment 17: One commenter felt that the use of a relative performance index (RPI) misleads one to believe that the proposed GRA alternative is least efficient. The commenter felt that the analysis should instead take the difference between the benefits and costs (rather than divide, as the RPI did) to determine net benefits. Under that calculation, the proposed alternative would have the greatest net benefits.

Response 17: The RPI provides a relative comparison among the various proposed alternatives and is used as a mechanism to rank them. The commenter appears to have incorrectly characterized the RPI as a benefit/cost ratio. The index was never intended to be, nor was it purported to be, a measure of benefits and costs. The RPI simply provides a ranking mechanism to show how the various proposed alternatives compare in terms of percent reduction in scup discards to reduction in gross revenues.

Comment 18: One commenter stated that the revenue reductions in the scup GRA analysis failed to account for the proposed significant reductions in the 2000 *Loligo* quota. The commenter felt that reductions in revenues in the *Loligo* fishery, therefore, were not solely associated with the GRAs.

Response 18: NMFS notes that impacts associated with the *Loligo* reductions were fully and adequately considered in the specifications for that fishery. An analysis of that action (See proposed initial specifications for the Atlantic mackerel, squid and butterfish fisheries, 65 FR 431, January 5, 2000) indicated that the *Loligo* quota represents an 18-percent reduction in landings compared to the average last 3 (1996–98) years, and may result in a 5- to 10-percent revenue reduction (all species combined) for 121 of 443 vessels that reported landing Loligo in 1997. The remaining vessels (322) are expected to experience a reduction of less than 5 percent. Since trimester management of the *Loligo* specifications is newly implemented in 2000, the EA/RIR/IRFA for scup, then, examines to the extent practicable, estimated impacts of the GRAs based on historical performance of the *Loligo* fleet, and assumes that the *Loligo* quota would not have been fully harvested and would continue unrestrained by other actions. Such assumptions in the document are credible. If the *Loligo* quota were harvested, of course, then actual impacts may vary significantly from the estimated—either towards greater impacts, or lesser. A closure may result in those vessels ceasing fishing, eliminating impacts of the GRAs on their activity.

Comment 19: Three commenters noted that, based on data presented in the EA/RIR/IRFA, the Atlantic herring fishery should be exempt from the GRAs for both periods, and in both areas.

Response 19: This comment was addressed in the response to Comment 6.

Enforceability

Comment 20: The USCG submitted a comment expressing its preference for closed areas with no exemptions, as opposed to GRAs, which require boardings for compliance checks. The USCG feels GRAs are "an enforcement compromise." The USCG agreed with NMFS's contention that the Council's preferred areas were too small and too short in duration, but notes that the NMFS proposed areas were large and equally burdensome to enforce, since they allow entry by exempted vessels. The USCG recommended that, for law enforcement purposes only, areas be restricted for a minimum of 60 days, and be plainly shaped squares or rectangles whose sides conform to a minimum 30 minutes of latitude or longitude on a side. The USCG also supports the national vessel monitoring systems for all vessels within the GRAs to help the USCG locate them to see if they are complying with the regulations.

Response 20: NMFS understands the USCG comments. Partially in response to this comment, these areas have been modified in shape. The areas conform to the USCG request in that they are restricted for a minimum of 60 days and have plainly shaped sides. At its narrowest points, the Southern area is approximately 20 nautical miles wide and the Northern area 15 nautical miles wide. Both of these sections of area are narrower than ideal for enforcement purposes. However, given the expected interaction of scup with small-mesh species (including *Loligo*, Atlantic mackerel, whiting, and black sea bass) in the vicinity of those areas at those times, and given industry testimony to that effect, these areas are, to the extent practicable, the most workable compromise.

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Classification

This action is authorized by 50 CFR part 648.

These specifications have been determined to be not significant for purposes of E.O. 12866.

Because §§ 648.120 and 648.121 pertaining to the scup summer period state-by-state quota allocation are contravened by judicial order, providing prior notice and opportunity for public comment on their removal from the regulations would serve no useful purpose and is therefore unnecessary. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice and opportunity for public comment. Likewise, providing a 30-day delay in effective date would be inconsistent with the intent of the judicial order and is unnecessary. The AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period.

This action establishes annual quotas and related management measures for the summer flounder, scup, and black sea bass fisheries which are used to control harvest of these fisheries and to restrict landings when their quotas are harvested. Action to restrict landings must be taken immediately upon attainment of the quota to conserve fishery resources. The State of Delaware's summer flounder allocation has been harvested. It would be contrary to the public interest to provide prior notice to implement these restrictions, since the allocations have already been harvested and the regulations require the publication of this action. Failure to implement this provision would result in overfishing. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice and opportunity for public comment. Likewise, because the remaining quota provisions reduce overfishing of the summer flounder, scup, and black sea bass resources in the remaining states and periods, it would be impracticable and contrary to the public interest to delay implementation of the remaining quota provisions. Therefore, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for both the quotas and related management measures, including the landings restrictions.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The request for an experimental fishing exemption has been approved by the Office of Management and Budget under Control Number 0648–0309. Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, must be sent to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS completed a final regulatory flexibility analysis (FRFA) that contains the items specified in 5 U.S.C. 604(a) as follows:

Final Regulatory Flexibility Analysis for Summer Flounder, Scup, and Black Sea Bass 2000 Specifications

Need for and Objectives of the Rule

This final rule is necessary to establish annual specifications for the summer flounder, scup, and black sea bass fisheries. The intent of this final rule is to comply with the regulations for summer flounder, scup, and black sea bass that require NMFS to publish specifications for each fishing year to conserve and manage the resources in compliance with the regulations, the fishery management plan (FMP), and the Magnuson-Stevens Fishery Conservation and Management Act.

Public Comments

There were three (3) public comments submitted in response to the initial regulatory flexibility analysis (IRFA). NMFS responded to these comments in the Comments and Responses section to this final rule No comments were submitted specifically on the Item of Particular Concern noted in the proposed rule. As a result of these comments, changes were made to the rule regarding the exemption for the herring fishery from requirements of the gear restricted areas (GRAs), the size and location of the GRAs, and methods for exempting species from the GRA restrictions. These changes are noted in the responses to comments as well as in the preamble to this final rule.

Number of Small Entities

In 1998, a total of 1056 permitted vessels landed summer flounder, scup, and/or black sea bass and would be impacted by the quota specifications. Those most likely to be impacted by the GRAs would be those vessels permitted under several different FMPs, including the Northeast Multispecies FMP (whiting), the Atlantic Mackerel, Squid and Butterfish FMP (Loligo squid, Atlantic mackerel), and the Summer Flounder, Scup and Black Sea Bass FMP (black sea bass), and fishing with trawl gear with codend mesh less than 4.5 inches (11.3 cm) in the GRAs. An analysis of these areas indicates that 59 vessels used small mesh gear that would be restricted in the northern GRA. The total prohibited trips were valued at $0.8 million. In the southern GRA, 116 vessel would be impacted by the GRAs. The total value of these restricted trips were valued at $9.7 million. All of these vessels readily fall within the definition of a small business.

Cost of Compliance

No additional costs of compliance including those associated with recordkeeping and reporting would result from the implementation of this final rule.

Minimizing Significant Economic Impact on Small Entities

An analysis of the harvest level alternatives indicated that the levels adopted in this final rule minimized significant economic impacts while achieving the stated objectives of the FMP. No other alternative considered met the objectives while minimizing significant economic impacts on small entities. Although one alternative resulted in less impact on small entities, the harvest level proposed under it was found inconsistent with the requirements to end overfishing and rebuild the stocks. Other alternatives had higher probabilities of achieving the rebuilding goals of the FMP.

A review of the impacts of the proposed GRA alternative, as well as the comments received, indicated that impacts could be minimized while still accomplishing the stated objectives of the measures. Consequently, NMFS modified the proposed GRAs by reducing the size of the Southern GRA. This modification will (1) Provide for increase fishing opportunities for vessels otherwise restricted under the proposed alternative, (2) better accommodate seasonal variations in the migrations of scup, (3) reflect information on areas of noted scup/Loligo interaction, and (4) maintain or increase enforceability. The other significant alternatives to the GRAs were rejected as each did not provide for enforceable conservation benefits.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 18, 2000.

Bruce C. Morehead,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraphs (a)(122) and (a)(123) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(122) Fish for, possess or land *Loligo* squid, silver hake, black sea bass or Atlantic mackerel in or from the area, and during the time period, described in § 648.122(a) while in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh requirements specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

(123) Fish for, possess or land *Loligo* squid, silver hake, black sea bass, or Atlantic mackerel in or from the area, and during the time period, described in § 648.122(b), while in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh requirements specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

* * * * *

3. In § 648.120, paragraphs (d)(2), (d)(4) and (d)(6) are revised to read as follows, paragraph (d)(3) is removed and reserved, and paragraphs (d)(7) and (e) are removed.

§ 648.120 Catch quotas and other restrictions.

* * * * *

(d) * * *

(2) The commercial quotas for each period will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(3) [Reserved]

(4) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested.

* * * * *

(6) Any overages of the commercial quota landed during the Summer period will be deducted from that period's allocation for the following year. Any overages of the commercial quota landed in any Winter period will be subtracted from the period's allocation for the following year.

4. In § 648.121, paragraph (a) is revised to read as follows, and paragraph (b) is removed and reserved.

§ 648.121 Closures.

(a) *Period closures.* The Regional Administrator will monitor the harvest of commercial quota for each quota period based on dealer reports, state data, and other available information and shall determine the date when the commercial quota for a period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the **Federal Register** advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(b) [Reserved]

5. Section 648.122 is revised to read as follows:

§ 648.122 Season and area restrictions.

(a) *Southern Gear Restricted Area.* (1) From January 1 through April 30, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
SGA1	38°00′	74°20′
SGA2	38°40′	74°00′
SGA3	40°00′	72°30′
SGA4	40°00′	71°20′
SGA5	39°10′	72°47′
SGA6	38°00′	73°55′
SGA7	38°00′	74°20′

(2) *Non-exempt species.* Unless otherwise specified in paragraph (c) of this section, the restrictions specified in paragraph (a)(1) of this section apply to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: Black sea bass, *Loligo* squid, Atlantic mackerel, and silver hake (whiting). Vessels fishing for or in possession of all other species of fish and shellfish are exempt from these restrictions.

(b) *Northern Gear Restricted Area.* (1) From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
NGA1	40°00′	72°50′
NGA2	41°10′	71°40′
NGA3	41°10′	70°00′
NGA4	41°00′	70°00′
NGA5	41°00′	70°40′
NGA6	40°00′	71°30′
NGA7	40°00′	72°50′

(2) *Non-exempt species.* Unless otherwise specified in paragraphs (c) of this section, the restrictions specified in paragraph (b)(1) of this section apply to vessels in the Northern Gear Restricted Area that are fishing for, or in possession of, the following non-exempt species: Black sea bass, *Loligo* squid, Atlantic mackerel, and silver hake (whiting). Vessels fishing for or in

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possession of all other species of fish and shellfish are exempt from these restrictions.

(c) *Transiting.* Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a) and (b) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a) and (b) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

(d) *Addition or deletion of exemptions.* (1) An exemption may be added in an existing fishery for which there is sufficient information to ascertain the amount of scup bycatch, if the Regional Administrator, after consultation with the MAFMC, determines that the percentage of scup caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives for scup, the Regional Administrator may take into consideration factors such as, but not limited to, juvenile mortality. A fishery may be restricted or exempted by area, gear, season, or other means determined to be appropriate to reduce bycatch of scup. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of scup is equal to or greater than 10 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the **Federal Register**.

(2) The MAFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.108(a), additions or deletions to exemptions for fisheries other than scup.

(e) *Exempted experimental fishing.* The Regional Administrator may issue an exempted experimental fishing permit (EFP) under the provisions of § 600.745(b), consistent with paragraph (d)(2) of this section, to allow any vessel participating in a scup discard mitigation research project to engage in any of the following activities: Fish in the applicable gear restriction area, use fishing gear that does not conform to the regulations, possess non-exempt species specified in paragraphs (a)(2) and (b)(2) of this section, or engage in any other activity necessary to project operations for which an exemption from regulatory provision is required. Vessels issued an EFP must comply with all conditions and restrictions specified in the EFP.

(1) A vessel participating in an exempted experimental fishery in the Scup Gear Restriction Area(s) must carry an EFP authorizing the activity and any required Federal fishery permit on board.

(2) The Regional Administrator may not issue an EFP unless s/he determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(i) Have a detrimental effect on the scup resource and fishery;

(ii) Cause the quotas for any species of fish for any quota period to be exceeded;

(iii) Create significant enforcement problems; or

(iv) Have a detrimental effect on the scup discard mitigation research project.

6. In § 648.123, the first sentence of paragraph (a)(3), paragraph (a)(4), and the first sentence of paragraph (a)(5) are revised to read as follows:

§ 648.123 Gear restrictions.

(a) * * *

(3) *Net modification.* The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.122 and paragraph (a)(1) of this section shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net.* * *

(4) *Mesh obstruction or constriction.* (i) The owner or operator of a fishing vessel subject to the minimum mesh restrictions in § 648.122 and in paragraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on, in, or attached to the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs or constricts the meshes of the net in any manner.

(ii) The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.122 and in paragraph (a)(1) of this section may not use a net capable of catching scup if the bars entering or exiting the knots twist around each other.

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 4,000 lb or more (1,814 kg or more) of scup and subject to the minimum mesh requirement in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum mesh requirement in § 648.122, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. * * *

* * * * *

[FR Doc. 00–12993 Filed 5–23–00; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 65, No. 101

Wednesday, May 24, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1070]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing amendments to Regulation Z, which implements the Truth in Lending Act, to revise the disclosure requirements for credit and charge card solicitations and applications. The annual percentage rate (APR) and other cost information must be provided in direct mail and other applications and solicitations to open card accounts. The amendments are intended to enhance consumers' ability to notice and understand cost information that generally must be provided in the form of a table. The APR disclosed for purchase transactions would be subject to a type size requirement, and the requirement that disclosures be "clear and conspicuous" would be more strictly construed. Additional guidance would be given on the requirement that the table be prominently located, and on the level of detail about cost information required or permitted in the table.

DATES: Comments must be received on or before July 18, 2000.

ADDRESSES: Comments, which should refer to Docket No. R–1070, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC. 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 in the Board's Martin Building between 9 a.m. and 5 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor, Counsel, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only,* contact Janice Simms at (202) 872–4984.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping.

The Fair Credit and Charge Card Disclosure Act of 1988 (1988 Act) amended TILA to require that the APR and certain other terms (primarily applicable to purchase transactions) be disclosed in certain direct mail and other solicitations and applications to open credit and charge card accounts. The purpose of the 1988 Act was to ensure that consumers receive key cost information about credit and charge cards early enough to have the opportunity to comparison shop for such cards. The 1988 Act generally requires that card application and solicitation disclosures be provided in the form of a table (commonly referred to as the "Schumer box" after the law's chief sponsor) with headings for each item of information. The terms required to be in the table include: the name of the method used for calculating finance charges on an outstanding balance, any minimum finance charge per billing cycle, transaction fee, annual fee, grace period, and the APR for purchase transactions. The card issuer also must disclose any cash advance fee, late payment fee, or fee for exceeding a credit limit. These items may be either in the required table or clearly and conspicuously elsewhere. The applicable disclosures must also be provided for charge cards that do not use a periodic rate to compute a finance charge.

As with all TILA disclosures, the table is subject to the "clear and conspicuous" standard. Currently, the table meets the "clear and conspicuous" standard if the disclosures are in a "readily understandable form." There are no type size requirements associated with this standard. The table is also required to be in a "prominent location" on or with the application or solicitation. Under the existing rules, this requirement is met if the table is "readily noticeable to the consumer." The table need not be in any particular location to satisfy the requirement.

Over the years, the pricing of credit card programs has changed, and the cost disclosures accompanying card issuers' solicitations and applications have become more complex. Multiple APRs may apply to a single program. There may be a temporary introductory rate, a fixed or variable rate for all purchases after the introductory period expires, and one or more "penalty rates" that apply if, for example, the consumer makes late payments.

As interest rates and other account features have become more complex, and disclosures longer, some card issuers have compensated by using reduced type sizes for the table instead of allocating additional space for the disclosures. In such cases, consumers may have difficulty in using the table to readily identify key costs and terms. In contrast, the promotional materials that accompany the credit card application or solicitation may highlight a low introductory APR in a large, easy to read type size; oftentimes without the expiration date in close proximity. The APR in effect after the introductory rate expires typically is disclosed much less prominently—in a smaller type size—and it may only appear in the disclosure table and not at all in the promotional materials. The table may be in a location that is less likely to capture the consumer's attention, for example, on the reverse side of an application or on the last page of a multi-page solicitation.

Even with the format requirements, there is substantial flexibility in the current regulatory framework. While some card issuers' disclosures are fairly

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straightforward, other card issuers have created disclosures that are difficult for consumers to use. Changes to the current regulatory scheme appear necessary to ensure that consumers receive meaningful disclosures on a more consistent basis, for comparison shopping.

The 1988 Act authorizes the Board to require disclosure of additional information, or to modify the disclosures required by the statute if the Board determines that such action is necessary to carry out the purposes of, or prevent evasions of the 1988 Act. See 15 U.S.C. 1637(c)(5). This is in addition to the Board's authority under section 105(a) of TILA to prescribe regulations to effectuate the purposes of TILA, to prevent circumvention or evasion, or to facilitate compliance. See 15 U.S.C. 1604(a).

II. Summary of Proposed Revisions

The Board is proposing amendments to Regulation Z in order to effectuate the purposes of the 1988 Act and promote more effective disclosure of the costs and terms in credit and charge card applications and solicitations.

Under the proposal, the APR for purchase transactions is subject to a type-size requirement, to highlight this information. It would be in at least 18-point type and would appear under a separate heading from other APRs, such as penalty rates. The requirement that disclosures be "clear and conspicuous" would be more strictly construed for purposes of the disclosure table required for credit and charge card applications and solicitations. These disclosures would have to be "readily noticeable," as well as in a "reasonably understandable form." As to type size, disclosures in at least 12-point type would be deemed readily noticeable.

Additional guidance is provided on satisfying the current requirement that the table be prominently located. The Staff Commentary would be revised to provide that the table is sufficiently prominent, for example, if it is on the same page as an application or solicitation reply form, or on a separate insert with a reference to the insert on the application or reply form.

Guidance also would be issued on the level of detail required or permitted in the table. This is intended to reduce clutter and promote the use of more concise language. For example, the table must include any increased penalty APR that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit exceeding the credit limit. The card issuer must also provide a description of the specific events that can trigger an increase. Currently, card issuers have the option of including this description inside the table or elsewhere. In order to simplify the table, the existing staff interpretations would be revised so that only the penalty rates could appear inside the table; the explanatory information would have to appear outside the table.

Legislation

During 1999, bills were introduced in the Congress that also would add new disclosure requirements for credit card applications and solicitations. Some bills would require card issuers that offer temporary introductory rates to provide more conspicuous information in their promotional materials about the expiration date and the rate that will apply after that date. The provisions in these bills would address some of the same concerns that are the basis for the Board's regulatory proposal. In light of the pending legislation, however, the scope of the Board's regulatory proposal does not address the rates and terms disclosed in card issuer's promotional materials. Such matters may be the subject of future regulatory proposals once the Congress acts on the proposed legislation or otherwise clarifies its intent.

III. Section-by-Section Analysis

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of Disclosures

Section 226.5(a) states the general rule that TILA disclosures for open-end credit plans must be made clearly and conspicuously. Comment 5(a)(1)–1 interprets this standard to require disclosures to be in a "reasonably understandable form." Under the proposal, this standard would be more strictly construed for purposes of the disclosures required under § 226.5a for credit and charge card applications and solicitations. Accordingly, comment 5(a)(1)–1 would be revised to reflect this fact, and include a cross-reference to proposed comments 5a(a)(2)–1 and 2 concerning the special format and location rules for § 226.5a disclosures.

Section 226.5a—Credit and Charge Card Applications and Solicitations

5a(a) General Rules

5a(a)(2) Form of Disclosures

Disclosures required by § 226.5a(a)(2) must be clear and conspicuous and prominently located on or with an application or solicitation, or other applicable document. Certain of these disclosures are also required to be in a tabular format. A new comment 5a(a)(2)–1 would be added to establish a stricter standard for satisfying the "clear and conspicuous" standard with respect to the tabular disclosures. Proposed comment 5a(a)(2)–2 would provide additional interpretative guidance on the location of the table. Because the proposed interpretations differ from those currently provided, they are intended to have prospective application only.

Currently, information provided in the table meets the "clear and conspicuous" requirement if the disclosures are reasonably understandable. Although the tabular format assists consumers by providing key cost information in a single location, consumers may have difficulty using the table due to the amount of information provided in the table and the small type size used by some card issuers to compensate for the amount of information. To ensure that consumers receive meaningful disclosures on a consistent basis, proposed comment 5a(a)(2)–1 would provide that disclosures are clear and conspicuous if the disclosures are both reasonably understandable and readily noticeable. Comment 5a(a)(2)–1 would also provide that as to type size, disclosures in at least 12-point type would be deemed to be readily noticeable. Disclosures printed in less than 12-point type would not automatically violate the standard, but would be judged on a case-by-case basis. For example, disclosures in 10- or 11-point type would probably satisfy the standard, but disclosures in 6-point type would likely be too small to satisfy the standard.

Existing comment 5a(a)(2)–1 addresses the requirement that the table be prominently located. The comment would be redesignated as comment 5a(a)(2)–2, and would be revised to address concerns about the location of tabular disclosures. Currently, some card issuers locate the table on the reverse side of an application or reply form or on the last page of a multi-page solicitation. Consumers may see the promotional materials and fill out the application without being aware that there is additional cost information following the application, on the reverse side of the page or at the end of the promotional materials. Proposed comment 5a(a)(2)–2 would provide additional interpretative guidance; the table would be deemed to be prominently located, for example, if it appears on the same page as the application or solicitation reply form, or the first page of any other applicable document, or on an insert with a reference to the insert on the application or reply form.

5a(b) Required Disclosures

The table required under § 226.5a provides consumers with key cost information, grouped together in one place to facilitate consumers' use of the information for comparison shopping. These disclosures are not intended to be as detailed as disclosures provided to consumers at account opening; at the time the 1988 Act was adopted, the primary focus was on cost disclosures for purchase transactions. For example, the APR and transaction fees for purchases must be disclosed in the table, but not the APR for cash advances.

Because the services and features offered with credit and charge cards have evolved in recent years, the disclosures required by the 1988 Act may not capture costs commonly assessed on such cards. For example, the periodic rate of interest assessed on a balance transfer (which the card issuer may characterize as a cash advance) is not disclosed in the table. The 1988 Act expressly authorizes the Board to add disclosures to the table, or modify the existing requirements. Accordingly, the Board solicits comment on whether consumers could be aided in comparison shopping by having additional rates and fees disclosed in the table. In particular, commenters should address whether the APR and transaction fees for balance transfers and the APR for cash advances should be included in the table; commenters are requested to specify why the benefits to consumers from the additional information would not outweigh the burden of compliance.

5a(b)(1) Annual Percentage Rate

Section 226.5a(b)(1) requires card issuers to disclose in the table each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, expressed as an APR. This section would be revised to require the APR for purchases to be disclosed in the table in at least 18-point type. The type-size requirement would not apply to temporary initial rates that are lower than the APR that will apply after the temporary rate expires, or to penalty rates that may increase upon the occurrence of one or more specific events (such as a late payment or an extension of credit that exceeds the credit limit).

The use of this larger type size is intended to highlight the significance of this information, particularly in light of the larger type sizes typically used by card issuers to promote introductory rates. Although the tabular format generally draws consumers' attention to the table, under existing rules the APR information is often obscured due to the amount of other information provided in the table and the small type size used by some card issuers. The APR for purchase transactions would also be highlighted by requiring that it be listed under a separate heading.

In September 1999, the Board published a proposal that would amend Regulation Z to authorize creditors to use electronic communication to deliver required disclosures. 64 FR 49722 (September 14, 1999). Accordingly, comment is also requested on any specific guidance that may be needed for applying the type size requirements to disclosures made using electronic communication.

Comment 226.5a(b)(1)–6 provides that where there is a temporary initial APR that is higher than the rate that will apply after the temporary rate expires, the card issuer must disclose the higher initial rate. The comment would be revised to clarify that in such cases, the initial rate must be disclosed in at least 18-point type, unless the card issuer also discloses the permanently applicable rate in the table, which would have to be in at least 18-point type.

Comment 226.5a(b)(1)–7 requires card issuers to disclose "penalty rates" in the table, along with a description of the specific events that can trigger a rate increase and any index or margin used to determine the penalty rate. Currently, card issuers have the option of including this information inside the table or elsewhere. To simplify the table, the comment would be revised so that only the penalty rates would appear inside the table and the additional information would appear outside the table. Card issuers would be required to use an asterisk or other means to direct the consumer to the additional information.

Appendices G and H to Part 226—Open-End and Closed-End Model Forms and Clauses

Comment App. G and H–1 would be revised to clarify that there are special rules for disclosures required under § 226.5a for applications and solicitations for credit and charge cards.

Appendix G to Part 226—Open-End Model Forms and Clauses

The Board provides three model forms to aid compliance with the disclosure requirements of § 226.5a(b). See Appendix G–10(A)–(C). Under the proposal, Appendix G–10(A) would be revised, and a new sample form G–10(D) would be added to illustrate an account with a lower introductory rate and a penalty rate.

Comment G–5 would be revised to clarify that there are format and sequence requirements for certain § 226.5a disclosures.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1070, and, when possible, should use a standard typeface with a font size of 10 or 12. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 ½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation Z. Although the proposal would require creditors to use a specific type size for the APR; require creditors to provide supplemental information about penalty rates outside the table; and require that the table be located on the same page as the application or solicitation reply form, on the first page of any other applicable document, or on a separate insert with a reference to the insert on the application or reply form, the proposed amendments are not expected to have any significant impact on small entities beyond these initial revisions. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of Regulation Z and the

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Truth in Lending Act (TILA). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would require creditors to revise disclosures for credit card solicitations and applications by: (1) Requiring the use of a specific type size for the APR, (2) requiring creditors to provide supplemental information about penalty rates outside the table, and (3) requiring that such table be located on the same page as the application or solicitation reply form, on the first page of any other applicable document, or on a separate insert with a reference to the insert on the application or reply form. Although the proposal adds these requirements, it is expected that these revisions would not significantly increase the paperwork burden of creditors. With respect to state member banks, it is estimated that there are 988 respondent/recordkeepers and an average frequency of 136,294 responses per respondent each year. Therefore, the current amount of annual burden is estimated to be 1,863,754 hours. Because these proposed revisions modify preexisting tables, there is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between creditors and the customer.

The Federal Reserve requests comments from creditors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) The cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the text of the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 would continue to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.5a would be amended by revising paragraph (b)(1) introductory text.

Subpart B—Open-End Credit

* * * * *

§ 226.5a Credit and charge card applications and solicitations.

* * * * *

(b) *Required disclosures.* * * *

(1) Annual percentage rate. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies, the range of balances to which each rate is applicable shall also be disclosed. ❱The annual percentage rate disclosed pursuant to this paragraph shall be in at least 18-point type, except for the following: a temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate which is one that will apply upon the occurrence of one or more specific events.❰

* * * * *

3. Appendix G to Part 226 would be amended by:

a. Revising the table of contents at the beginning of the appendix;

b. Revising Model G–10(A); and

c. Adding new Sample G–10(D).

Appendix G to Part 226—Open-End Model Forms and Clauses

G–1 Balance-Computation Methods Model Clauses (§§ 226.6 and 226.7)
G–2 Liability for Unauthorized Use Model Clause (§ 226.12)
G–3 Long-Form Billing-Error Rights Model Form (§§ 226.6 and 226.9)
G–4 Alternative Billing-Error Rights Model Form (§ 226.9)
G–5 Rescission Model Form (When Opening an Account) (§ 226.15)
G–6 Rescission Model Form (For Each Transaction) (§ 226.15)
G–7 Rescission Model Form (When Increasing the Credit Limit) (§ 226.15)
G–8 Rescission Model Form (When Adding a Security Interest) (§ 226.15)
G–9 Rescission Model Form (When Increasing the Security) (§ 226.15)
G–10 (A)–(B) Applications and Solicitations Model Forms (Credit Cards) (§ 226.5a(b))
G–10(C) Applications and Solicitations Model Form (Charge Cards) (§ 226.5a(b))
❱G–10(D) Applications and Solicitations Sample (Credit Cards) (§ 226.5a(b))❰
G–11 Applications and Solicitations Made Available to General Public Model Clauses (§ 226.5a(e))
G–12 Charge Card Model Clause (When Access to Plan Offered by Another) (§ 226.5a(f))
G–13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))
G–13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))
G–14A Home Equity Sample
G–14B Home Equity Sample
G–15 Home Equity Model Clauses

* * * * *

G–10(A)—Applications and Solicitations Model Form (Credit Cards)

Annual percentage rate ❱(APR)❰ for purchases	❱_____% until (*expiration date*) after that, _____[%] ❱%❰.

G–10(A)—Applications and Solicitations Model Form (Credit Cards)—Continued

❱Other APRs❰	❱Penalty rate: _____%. See explanation below.*❰
Variable-rate information	Your annual percentage rate may vary. The rate is determined by [(*explanation*).] ❱_____. See explanation below.**❰
Grace period for repayment of balances for purchases	You have [____ days] [until _____] [not less than ____ days] [between____ and____ days] [____ days on average] to repay your balance [for purchases] before a finance charge on purchases will be imposed. [You have no grace period in which to repay your balance for purchases before a finance charge will be imposed.]
Method of computing the balance for purchases	
Annual fees	[Annual] [Membership] fee: $_____ per year] [(*type of fee*): $_____ per year] [(*type of fee*): $_____]
Minimum finance charge	$_____
Transaction fee for purchases	[$_____] [____% of _____]
Transaction fee for cash advances: [$_____] [____% of _____]	
Late-payment fee: [$_____] [____% of _____]	
Over-the-credit-limit fee: $2	

❱*Explanation of penalty.
**Explanation of variable rate.❰

* * * * *

❱G–10(D)—Applications and Solicitations Sample (Credit Cards)

Annual percentage rate (APR) for purchases	2.9% until October 1, 2000 after that, **14.90%**.
Other APRs	Penalty rate: 23.90% See explanation below.*
Variable-rate information	Your annual percentage rate may vary. The rate is determined monthly by adding 5.9% to the Prime Rate. See explanation below.**
Grace period for repayment of balances for purchases	25 days on average.
Method of computing the balance for purchases	Average daily balance (excluding new purchases).
Annual fees	No annual fee.
Minimum finance charge	$.50.
Transaction fee for cash advances. 3% of the amount advanced.	
Late-payment fee: $25.	
Over-the-credit-limit fee: $ 25.	

* Explanation of penalty.
** The Prime Rate used to determine your APR is the rate published in _____ on the __day of the prior month.❰

4. In Supplement I to Part 226, the following amendments would be made:

a. Under *Section 226.5—General Disclosure Requirements, under Paragraph 5(a)(1),* paragraph 1. introductory text would be revised;

b. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations, under 5a(a)(2) Form of Disclosures,* paragraph 1. through paragraph 6. would be redesignated as paragraph 2. through paragraph 7. respectively, a new paragraph 1. would be added, and newly designated paragraph 2. would be revised.

c. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations,* under 5a(b)(1) Annual Percentage Rate, paragraphs 6. and 7. would be revised.

d. Under *Appendixes G and H—Open-End and Closed-End Model Forms and Clauses,* a new sentence would be added after the second sentence in paragraph 1.

e. Under *Appendix G—Open-end Model Forms and Clauses,* paragraph 5. would be revised.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of disclosures.

Paragraph 5(a)(1).

1. *Clear and conspicuous.* The *clear and conspicuous* standard requires that disclosures be in a reasonably understandable form. ❱Except where otherwise provided, the standard❰ ❬It❭ does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. ❱(See comments 5a(a)(2)–1 and –2 for special rules concerning § 226.5a disclosures.)❰ The standard does not prohibit: * * *

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General Rules.

5a(a)(2) Form of Disclosures.

1. ❱*Clear and conspicuous standard.* For purposes of § 226.5a(a)(2) disclosures, "clear and conspicuous" means in a reasonably understandable form, and readily noticeable to the consumer. As to type size, disclosures in at least 12-point type are deemed to be readily noticeable for purposes of § 226.5a(a)(2).

2. ❱*Prominent location.* Certain of the required disclosures provided on or with an application or solicitation must be prominently located. Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form, on the first page of any other applicable document, or on a separate insert with a reference to the insert on the application or reply form. Disclosures in other than a tabular format need not begin and end on the same page.❰ that is, readily noticeable to the consumer. There are, however, no requirements that the disclosures be in any particular location or in any particular type size or typeface.❬

* * * * *

5a(b) Required Disclosures.

5a(b)(1) Annual Percentage Rate.

* * * * *

6. *Introductory rates—premium rates.* If the initial rate is temporary and is higher than the permanently applicable rate, the card

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issuer must disclose ♦in the table♦ the initial rate. ♦The initial rate must be in at least 18-point type unless the issuer also discloses in the table the permanently applicable rate.♦ The issuer may disclose in the table the♦ permanently applicable♦ rate that would otherwise apply if the issuer also discloses the time period during which the initial rate will remain in effect. ♦In that case, the permanently applicable rate must be in at least 18-point type.♦

7. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose in the table the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must also disclose in the table the index and the margin. The issuer must also disclose the specific event or events that may result in imposing the increased rate, such as "22% APR, if 60 days late." If the penalty rate cannot be determined at the time disclosures are given, the issuer must provide an explanation of the specific event or events that may result in imposing an increased rate. In describing the specific event or events that may result in an increased rate, issuers need not be as detailed as for the disclosures required under § 226.6(a)(2). [Alternatively] For issuers using a tabular format, the specific event or events ♦must♦ [may] be located outside of the table♦ and an asterisk or other means shall be used to direct the consumer to the additional information.♦ [if the conditions are noted with an asterisk or other means that direct the consumer to the explanation.] At its option, the issuer may ♦include in the explanation of the penalty rate♦ [disclose] the period for which the increased rate will remain in effect, such as "until you make three timely payments." The issuer need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* * * *♦ (But see comment G–5 for special rules concerning certain disclosures required under § 226.5a for credit and charge card applications and solicitations).♦ * * *

Appendix G—Open-End Model Forms and Clauses

* * * * *

5. *Models G–10(A) through G–10(C)♦ and Sample G–10(D)* ♦Models G–10(A) and G-10(B) illustrate the tabular format for providing the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Model G–10(A) illustrates the permissible inclusionin the tabular format of all of the disclosures. Model G–10(B) contains only the disclosures required to be included in the table, while the three additional disclosures are shown outside of the table. The two forms also illustrate two different levels of detail in disclosing the grace period, and different arrangements of the disclosures. Model G–10(C) illustrates the tabular format disclosure for charge card applications and solicitations and reflects all of the disclosures in the table. ♦Sample G–10(D) illustrates an account with a lower introductory rate and a penalty rate. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms G–10(A), (B), and (C). The disclosures may, however, be arranged vertically or horizontally and need not be highlighted aside from being included in the table.♦ [Disclosures may be arranged in an order different from that in model forms G–10(A), (B), and (C); may be arranged vertically or horizontally; need not be highlighted aside from being included in the table; and are not required to be in any particular type size.] Various features from different model forms may be combined; for example, the shorter grace period disclosure in model form G–10(B) may be used in any disclosure. While proper use of the model forms will be deemed in compliance with the regulation, card issuers are permitted to use headings and disclosures other than those in the forms (with an exception relating to the use of "grace period") if they are clear and concise and are substantially similar to the headings and disclosures contained in model forms. For further discussion of requirements relating to form, see the commentary to § 226.5a(a)(2).

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 17, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–12911 Filed 5–23–00; 8:45 am]

BILLING CODE 6210–11–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103882–99]

RIN 1545–AX06

Depletion; Treatment of Delay Rental; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations which contain proposed amendments conforming regulations relating to delay rental to the requirements of section 263A, relating to capitalization and inclusion in inventory of costs of certain expenses.

DATES: The public hearing originally scheduled for Friday, May 26, 2000, at 10 a.m., is canceled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on February 8, 2000, (65 FR 6090), announced that a public hearing was scheduled for May 26, 2000, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 612 of the Internal Revenue Code. The deadline for outlines of oral comments and requests to speak expired on May 5, 2000.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of May 17, 2000, no one has requested to speak. Therefore, the public hearing scheduled for May, 26, 2000, is canceled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 00–12987 Filed 5–23–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–6603–4]

RIN 2060–ZA03

Federal Plan Requirements for Large Municipal Waste Combustors Constructed On or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take action on the "Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994." This action would clarify the final compliance date, update the list of which large municipal waste combustor (MWC) units are affected by the Federal plan, and add a site-specific compliance schedule for one MWC unit.

On November 12, 1998, the EPA adopted the Federal plan to implement emission guidelines for large MWC units located in areas that are not covered by an approved and currently effective State plan. In a direct final rule published elsewhere in the issue of the **Federal Register**, we are updating the MWC Federal plan to identify large MWC units for which a State plan was approved and became effective since adoption of the Federal plan (November 12, 1998). We are also amending part 62 of title 40 of the Code of Federal Regulations (CFR) to reflect receipt of negative declarations from States that have certified that there are no large MWC units located in the State that would be subject to the Federal plan. We are also amending a table in the Federal plan to clarify that in all cases for all large MWC units, final compliance with all emission limits including the mercury and dioxins/furans emission limits must be achieved by December 19, 2000. Finally, we are amending a table to add a site-specific compliance schedule for one additional MWC unit. Today's action does not change the emission limits for large MWC units nor does it change the level of health protection that the Federal plan provides.

In the "Rules and Regulations" section of the **Federal Register**, we are amending part 62 as a direct final rule without prior proposal because we view the amendments as noncontroversial and anticipate no adverse comment. The amendments to the regulatory text appear in the direct final rule and are not published as proposed amendments with this proposed rule. We have explained our reasons for the amendments in the preamble to the direct final rule. If we receive no adverse comment on this rule, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by June 23, 2000.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attn: Docket No. A–97–45/Category V-D, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania, NW, Washington, DC 20460. Comments may also be submitted electronically. For information on submitting comments electronically, see the **SUPPLEMENTARY INFORMATION** section. Address all comments and data for this proposal, whether on paper or in electronic form, such as through e-mail or disk, to Docket No. A–97–45/Category V-D.

FOR FURTHER INFORMATION CONTACT: For procedural and implementation information regarding these amendments, contact Ms. Julie Andresen McClintock at (919) 541–5339, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For State-specific information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 1) as shown in **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION: This document concerns amendments to "Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994." For further information, the detailed rationale, the administrative requirements, and the specific amendments being made, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication. We are publishing the amendments as a direct final rule because we view the amendments as noncontroversial and anticipate no adverse comment.

Electronic Submittal of Comments. Comments may be submitted electronically. Send electronic submittals to: "A-and-R-Docket@epamail.epa.gov". Submit electronic comments in American Standard Code for Information Interchange (ASCII) format. Avoid the use of special characters and any form of encryption. Electronic comments on these proposed emission guidelines may be filed online at any Federal Depository Library. Comments and data will also be accepted on disks in WordPerfect® version 5.1 or 6.1 file format (or ASCII file format). Address all comments and data for this action, whether on paper or in electronic form, such as through e-mail or disk, to Docket No. A–97–45/ Category V-D.

Regional Office Contacts. For information regarding the implementation of the MWC Federal plan, contact the appropriate EPA Regional Office as shown in table 1. This table has been updated since it was published on November 12, 1998 (63 FR 63193).

TABLE 1.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS

Regional contact	Phone No.	Fax No.
John Courcier, U.S. EPA, Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), 1 Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023.	(617) 918–1659	(617) 918–1505
Kirk Wieber, Argie Cirillo, Craig Flamm, U.S. EPA, Region II (New Jersey, New York, Puerto Rico, Virgin Islands) 290 Broadway, New York, NY 10007–1866.	(212) 637–3381 (212) 637–3203 (212) 637–4021	(212) 637–3901
James B. Topsale, U.S. EPA/3AP22, Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia) 1650 Arch Street, Philadelphia, PA 19103–2029.	(215) 814–2190	(215) 814–2114
Scott Davis, U.S. EPA/APTMD, Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee) Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303.	(404) 562–9127	(404) 562–9095

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TABLE 1.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS—Continued

Regional contact	Phone No.	Fax No.
Douglas Aburano (MN), Mark Palermo (IL, IN, OH), Charles Hatten (MI, WI), U.S. EPA/AT18J, Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), 77 W. Jackson Blvd., Chicago, IL 60604.	(312) 353–6960 (312) 886–6082 (312) 886–6031	(312) 886–5824
Mick Cote, U.S. EPA, Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733.	(214) 665–7219	(214) 665–7263
Wayne Kaiser, U.S. EPA, Region VII (Iowa, Kansas, Missouri, Nebraska), 726 Minnesota Ave., Kansas City, KS 66101	(913) 551–7603	(913) 551–7065
Mike Owens, U.S. EPA, Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th Street, Suite 500, Denver, CO 80202–2466.	(303) 312–6440	(303) 312–6064
Patricia Bowlin, U.S. EPA/Air 4, Region IX (American Samoa, Arizona, California, Guam, Hawaii, Northern Mariana Islands, Nevada), 75 Hawthorne Street, San Francisco, CA 94105.	(415) 744–1188	(415) 744–1076
Catherine Woo, U.S. EPA, Region X (Alaska, Idaho, Oregon, Washington), 1200 Sixth Ave., Seattle, WA 98101	(206) 553–1814	(206) 553–0110

Administrative Requirements

Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires EPA to prepare a regulatory flexibility analysis of any rule subject to notice and comment under the Administrative Procedure Act or any other statute unless EPA certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business in this industry with a gross annual revenue less than $6 million; (2) a small governmental jurisdiction that is a government of a city, county, town school district or special district or a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

This action is not subject to the requirements of the RFA as modified by SBREFA because it only makes minor technical amendments to some of the rule's requirements and it does not impose any additional requirements. During the 1995 MWC emission guidelines rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (see 60 FR 65413). Therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that the amendments to the MWC Federal plan will not have a significant impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 2, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–11812 Filed 5–23–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 00–1091]

Wireless E911; New Implementation Deadline for TTY Access to Digital Wireless Systems for 911 Calls

AGENCY: Federal Communications Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission, in this document, seeks comment on a proposed revised deadline for compliance with the Commission's rule requiring transmitting of text telephone (TTY) 911 calls on digital wireless systems. The Commission also seeks information on other aspects of the various TTY/digital wireless systems compatibility solutions, including consumer impacts, technical issues, etc. The temporary waivers of the rule previously granted by the Commission will remain in place pending the Commission's establishment of an implementation schedule based on the information received in response to this document. The action is needed to establish a strong, inclusive record on TTY issues that the Commission may use in making well-informed decisions in this critical enhanced 911 (E911) proceeding.

DATES: Submit comments on or before June 19, 2000; submit reply comments on or before July 19, 2000.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patrick Forster, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in CC Docket No. 94–102, DA 00–1091, released May 17, 2000. The complete text of the Public Notice is available on the Commission's Internet site, at www.fcc.gov. It is also available

for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY–B400, 445 12th Street SW., Washington, D.C. Comments may be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html, or by e-mail to ecfs@fcc.gov.

Synopsis of the Public Notice

1. The Commission seeks comment on a proposed revised deadline for compliance with the Commission's rule requiring transmitting of text telephone (TTY) 911 calls on digital wireless systems, pursuant to 47 CFR 20.18(c). The Commission also seeks information on other aspects of the various TTY/digital wireless systems compatibility solutions, including consumer impacts, technical issues, etc. The temporary waivers of the rule previously granted by the Commission will remain in place pending the Commission's establishment of an implementation schedule based on the information received in response to this Public Notice.

2. The First Report and Order in this proceeding (61 FR 40348, August 2, 1996) required that, as of October 1, 1997, all covered wireless carriers be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.*, through the use of TTY devices. To date, however, carriers operating digital wireless systems have been unable to comply with this requirement because digital systems have been unable to accurately pass the Baudot-encoded audio tones produced by TTY devices. The Commission suspended enforcement of the TTY requirements until December 1998 and issued over 100 temporary waivers of the rule, which remain pending, while the industry worked on a solution. Recent technological developments now lead the Commission to request further comment regarding an implementation deadline for compliance with § 20.18(c).

3. The Commission first seeks comment on its tentative view that December 31, 2001, represents a reasonable deadline for implementation of a digital wireless TTY solution. The Commission proposes that all wireless carriers begin complying with § 20.18(c) on or before this date, and invites comment on whether this deadline would permit equipment manufacturers and carriers sufficient time to complete the tasks associated with implementing a system solution of this kind. Commenters are asked to identify the specific tasks they expect to be required to implement a TTY solution and to provide estimates of how long each task is expected to take.

4. In addition, the Commission seeks comment on a possible program for monitoring the progress of TTY compatibility. Specifically, the Commission invites comment on what type of monitoring program might be appropriate, whether additional regulation is needed to facilitate monitoring progress, and how the Commission might best monitor the progress of technological developments and the adoption of standards.

5. The Commission solicits comment regarding enforcement of compliance with § 20.18(c). The Commission seeks comment on the relationship of section 255(b) of the Communications Act of 1934 (which requires manufacturers to ensure the accessibility of equipment) and section 251(a)(2) of the Act (which requires that carriers not install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255) to implementation of § 20.18(c). The Commission also seeks comment on whether and how the Commission might use its equipment authorization process to enforce compliance with § 20.18(c).

6. The Commission further invites comment on the impact of TTY/digital wireless compatibility solutions on consumers. The Commission emphasizes that carriers are expected to make their digital wireless systems compatible with TTY devices without causing potential adverse impacts to consumers. Thus, the Commission invites comment on what negative impacts to consumers might result from TTY compatibility efforts, the extent and nature of costs and/or inconveniences to consumers, and, to the extent that any additional costs or inconveniences are identified, what steps carriers can take to eliminate or mitigate such adverse impacts, especially those that could affect safety of life.

7. The Commission also seeks comment on Ericsson's proposed solution for TTY/GSM compatibility, which will apparently involve a "smart cable" that itself operates to convert the Baudot tones to a new signal that is suited for transfer over a digital voice path without the need for software changes in the handset. The Commission requests comment on whether this type of solution for GSM, or any other similar cable, will be acceptable to TTY users, and whether this type of solution will impose additional costs and/or inconveniences on consumers.

8. Finally, the Commission seeks comment on the impact the international use of GSM air interface has on development and implementation of a TTY solution.

Procedural Matters

9. Pursuant to § 1.45 of the Commission's Rules, 47 CFR 1.45, interested parties may file comments on the proposed implementation deadline no later than June 19, 2000. Replies shall be filed no later than July 19, 2000. All comments shall reference the docket number of this proceeding. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the docket number of this proceeding. Parties filing electronically should also e-mail a copy of their comments to pforster@fcc.gov. Parties who choose to file by paper must file an original and four copies of each filing with the Commission's Secretary (Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554) and a diskette copy to the Commission's copy contractor (International Transcription Service, Inc. (ITS), CY–B400, (202) 857–3800).

10. Pursuant to § 1.1206 of the Commission's Rules, 47 CFR 1.1206, this proceeding is a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

11. Copies of this Public Notice in alternative formats (computer diskette, large print, audio-cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or at bmillin@fcc.gov. The Public Notice also will be available at: http://www.fcc.gov/cib/dro/.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13033 Filed 5–23–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 00–7381]

RIN 2127–AH66

Federal Motor Vehicle Safety Standards; Side Impact Protection; Grant in Part, Denial in Part of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant in part, denial in part of petition for rulemaking.

SUMMARY: This document responds to a petition for rulemaking from the Association of International Automobile Manufacturers, the Insurance Institute for Highway Safety, and the American Automobile Manufacturers Association. Petitioners asked us first to determine that dynamic side impact provisions of a European regulation (consisting of performance requirements, crash test barrier, test barrier face, and test procedures) are at least "functionally equivalent" to those in the U.S. side impact standard. Based on the assumption that that determination will be made, the petitioners then asked that we add the dynamic provisions of the European regulation to the U.S. standard as a compliance alternative in the short run. Based on their belief that the European dynamic provisions are superior to those in the U.S. standard in some respects, they want us to replace the current dynamic provisions of the U.S. standard with those of the European regulation (slightly modified) in the long run.

This document grants the portion of the petition requesting that we open a rulemaking proceeding to consider replacing the side impact test dummy currently specified in the U.S. standard with an improved version of the dummy specified in the European regulation. We are denying the remainder of the petition.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Dr. William Fan, Office of Crashworthiness Standards, Light Duty Vehicle Division (telephone 202–366–4922). For legal issues: Deirdre Fujita, Esq., Office of Chief Counsel (202–366–2992). Both of these officials can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION:

Background

NHTSA estimates that about 4,500 fatalities occur annually to occupants of motor vehicles resulting from contact between the side interior of the vehicle and the abdomen, chest, pelvis and upper extremities. To address the problems of side impact deaths and injuries, NHTSA issued Federal Motor Vehicle Safety Standard No. 214, "Side Impact Protection" (49 CFR 571.214). The standard specifies both quasi-static performance requirements, as well as dynamic performance requirements, for protection of occupants in side impact crashes. Under the dynamic requirements, a vehicle must provide protection to occupants' thoracic and pelvic regions, as measured by the accelerations registered on an instrumented side impact dummy in a full-scale crash test. In the test, the vehicle (known as the "target" vehicle) is struck in the side by a moving deformable barrier (MDB) simulating another vehicle.

The European Union also has a side impact safety regulation, EU Directive 96/27/EC [1] (hereinafter EU 96/27/EC), that has a dynamic test requirement. Similar to the U.S. standard, EU 96/27/EC incorporates an anthropomorphic test dummy, called EuroSID–1 (a second-generation test dummy derived from its predecessor, "EuroSID"). Crash test forces experienced by the dummy must not exceed specified limits when the target vehicle is struck by a moving deformable barrier simulating a striking vehicle. Limits are specified for head injury criterion, rib deflection criterion, viscous criterion, abdominal force, and pubic symphysis force.

Petition

In December 1997, the Association of International Automobile Manufacturers (AIAM), the Insurance Institute for Highway Safety (IIHS), and the American Automobile Manufacturers Association (AAMA) [2] petitioned us to "harmonize" Standard 214 with EU 96/27/EC. Petitioners asked us to take several actions. First, they asked us to determine that dynamic side impact provisions of a European regulation (consisting of performance requirements, crash test barrier, test barrier face, and test procedures) are at least "functionally equivalent" to those in the U.S. side impact standard.

[1] This directive is identical to Economic Commission for Europe Regulation (ECE) 95/01. The directive was approved by the EU in October 1996. It applies to new or redesigned models of passenger vehicles introduced after October 1, 1998, and will apply to all vehicles manufactured after October 1, 2003.

[2] This association has since ceased to exist.

Second, based on the assumption that that determination will be made, the petitioners asked that we add the dynamic provisions of the European regulation to the U.S. standard as a compliance alternative in the short run. Third, based on their belief that the European dynamic provisions are superior to those in the U.S. standard in some respects, they asked us to replace the current dynamic provisions of the U.S. standard with those of the European regulation in the long run. [3]

Supporting Argument, Data and Analysis

The petitioners conceded that when NHTSA adopted its side impact dummy (SID) in 1990, SID and TTI(d) [4] were more fully developed than other dummies and injury assessment criteria. They recited the reasons given by NHTSA then, and over the next several years, for not adopting EuroSID or even allowing it as an alternative dummy.

In its 1990 final rule adopting SID, NHTSA said:

> One of the problems discovered in NHTSA's EuroSID sled tests was that the ribs were bottoming out, which may have invalidated the V*C [5] measurements being made. This condition was characterized by a flat spot on the displacement-time history curve, while the acceleration-time history curve showed an increase with time until the peak g was reached. Although considerable attempts were made to correlate V*C and TTI(d), the deflection data collected continued to be questionable.
>
> (October 30, 1990; 55 FR 45757)

[3] Specifically, the petitioners requested that we issue a final rule— (a) Immediately giving manufacturers the option of meeting Standard 214 by certifying to either: (1) The existing dynamic requirements, assessment criteria and test procedures of Standard 214; or (2) Those of European Directive 96/27/EC or the United Nations/Economic Commission for Europe (ECE) Regulation 95/01, as modified; and (b) Requiring, beginning at the end of the first 7 full model years after the final rule, compliance with a modified version of European regulation.

That version, referred to by the petitioners as the "modified European regulation," would differ from the existing European regulation in two respects. First, it would specify the use of an upgraded version of EuroSID–1. Second, it would provide placing a dummy in the front and rear outboard seating positions, as specified in the test procedures of the U.S. standard. The existing European regulation specifies that a test dummy is positioned in only the front outboard seating position on the struck side of the test vehicle.

[4] TTI(d), which stands for thoracic trauma index, is a measure of side impact injury. TTI(d) correlates measurements on the test dummy with thoracic injury severity observed in cadaver testing conducted for the agency. TTI(d) is essentially a statistical estimate of probability of various injury severity levels derived from data on age, body weight, and peak accelerations measured at specific locations on the test dummy.

[5] V*C, viscous criterion, another way of measuring thoracic injury, is based on combined rib displacement and velocity. [Footnote added.]

In the final rule amending Standard 214 itself, the agency said:

> NHTSA also notes that there are a number of characteristics associated with the European test procedure that make it inappropriate, at this time, for a U.S. safety standard. The European test dummy (EuroSID), while capable of assessing injury potential and providing insight into side impact crash occupant protection, needs further refinement before it can be used as a regulatory tool.
>
> These ongoing efforts include the development of biofidelity response corridors to assure the EuroSID responds in a human-like manner, the evaluation of the repeatability and reproducibility of the test dummy, and the demonstration of its durability in full-scale crash tests. The EuroSID is progressing in all of these areas. Additionally, the urethane foam face of the European barrier appears to break down and bottom out, creating unexpectedly high dummy acceleration responses due to the unrealistic crash conditions it imposes.
> * * *
>
> (October 30, 1990; 55 FR 45722, at 45740)

These problems led NHTSA to conclude in the dummy final rule that the best dummy available for incorporation into Standard 214 was the U.S. side impact dummy (SID), which had been developed between 1979 and 1982:

> NHTSA recognizes that BioSID and EuroSID have potential advantages over SID to the extent that they can measure V*C or other compression-based injury criteria in addition to TTI(d). Specification of EuroSID as an alternate test device could also promote international harmonization.
>
> However, the agency does not believe that these potential advantages should lead to a delay in this rulemaking for further consideration of alternate dummies. NHTSA believes that TTI(d) is a reliable predictor for thoracic injury and that SID is fully developed and validated. Since SID is ready now, and a final rule specifying SID can result in significant safety benefits, the agency believes it is appropriate to now go to a final rule using the SID.
>
> Assuming that NHTSA's review of the BioSID is satisfactory, the agency intends to propose the use of the BioSID as an alternate test device. Europe is continuing to work on the EuroSID. If the agency obtains data showing that EuroSID compares satisfactorily with SID, it may also propose that dummy as an alternate test device.
>
> (October 30, 1990; 55 FR 45757)

The petitioners argued that much has changed since the early 1990s. EuroSID has evolved since 1993. There is now a EuroSID–1 which incorporates enhancements to improve the biofidelity of the dummy and to make assembly, disassembly and certification of the dummy easier. They noted that various governments and regional and international standards organizations have concluded since then that SID/TTI(d) are no longer the best dummy/injury assessment criterion to help reduce the risk of injury to vehicle occupants in side impacts. Instead, those governments and organizations have adopted a side impact regulation that incorporates EuroSID–1 and its deflection-based injury criteria, chest compression and V*C. It is that side impact regulation that petitioners asked NHTSA to adopt.

Petitioners believe that their argument that EuroSID–1, its associated injury criteria, and 96/27/EC's test procedure are suitable as alternatives to the current requirements of Standard 214 is supported by data from biomechanical and other research programs. First, they cited unspecified technical data from NHTSA's continuing biomechanical research. Second, they cited AAMA's comparisons of EuroSID–1 and SID performance. The petitioners believe that EuroSID–1 and its deflection-based injury criteria correlate better than SID with cadaver data. More specifically, they stated that research studies sponsored by AAMA have shown that, while cadavers were sensitive to both padding stiffness and padding type and that softer padding would help further reduce the risk of injury, [6] TTI(d) (the injury criterion used by SID) did not show the benefits of softer over stiffer padding. [7] In contrast, the study found that chest compression and V*C (the injury criteria used by EuroSID) were good predictors of thoracic injury. *Id.* Petitioners also referred to a report comparing the responses of cadavers to that of EuroSID in full-scale side impact crash tests. Petitioners stated that the authors of the report concluded that EuroSID showed a good correlation between several dummy protection criteria and cadaver injury severity. (The petition did not provide information comparing SID with cadaver responses in full scale tests.) Petitioners further stated: "From all of this we conclude, EuroSID–1 and its deflection-based injury criteria correlate better [than SID] with the cadaver data." They also cited several AAMA-sponsored studies of side impact dummy performance in full vehicle impact tests.

Next, the petitioners cited several comparative assessments of SID and EuroSID–1, and one comparative assessment of EU 96/27/EC and Standard 214. First, they cited the Monash University report (Side Impact Regulations Benefits) prepared for the Federal Office of Road Safety of the Government of Australia. That report "documents the study that determined both * * * [ECE] Regulation 95 and FMVSS No. 214 would lead to vehicles designs that, though different in approach, are essentially equivalent in performance, i.e., functionally equivalent."

Second, the petitioners cited comparisons by the International Organization for Standardization (ISO), a worldwide voluntary federation of ISO member bodies. The petitioners said that EuroSID–1 is acceptable to ISO because of its biofidelity and repeatability, while SID is not because it is insufficiently biofidelic. The petitioners based these statements on resolutions adopted by the ISO Working Group on Anthropomorphic Test Devices in 1990 and on ISO's adoption of a side impact test procedure incorporating EuroSID as an international standard in 1997. The petitioners said that the ISO test is patterned after EU 96/27/EC.

The petitioners then referred to comparisons by Transport Canada to support their view that EuroSID–1 and its associated injury criteria are superior to SID and its criteria because they can measure more or more complete injury-causing force mechanisms than SID and its criteria. They said that Transport Canada has expressed dissatisfaction with SID and has stated that there is a need for a dummy that is capable of supporting deflection and force criteria and that can measure abdominal loading. Petitioners stated:

> In 1991, Transport Canada concluded that the SID, with its arm down position, "has the potential of masking the effects of changes in the loading introduced through design countermeasures." They went on to conclude, based on their testing, that "Similar TTI values can be produced by completely different loadings * * *. [Test data showed] a relatively high TTI value with almost no deformation of the chest (i.e., principally as a result of rigid-body accelerations)." [8]

According to petitioners, Transport Canada has also indicated that:

> Side interior designs or changes which provide low TTI values are not necessarily consistent with those required to minimize injury potential to the abdomen * * * [T]he absence of any performance criterion addressing abdominal injury clearly represents a major deficiency in the current requirements of Standard 214. The problem could be remedied by replacing the US SID

[6] Cavanaugh, *et al.*, "SID Response Data in a Side Impact Sled Test Series," Society of Automotive Engineers 920350.

[7] Cavanaugh, *et al.*, "Injury Response of the Thorax in Side Impact Cadaveric Tests."

[8] Dalmotas, *et al.*, "Side Impact Occupant Protection Technologies," SAE SP–851, February 1991.

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with * * * Eurosid 1 * * *. Given current biomechanical knowledge, to base regulations on a dummy capable only of supporting acceleration-based measurements serves only as a disincentive to manufacturers to seek out more effective means of reducing injury within the constraints imposed by the regulation.[9]

In addition, petitioners stated that Transport Canada has also stated in a report that:

> [I]n its tests, "vehicle models * * * showed exceptionally low TTI values when tested with the US SID but exceptionally high abdominal deflection, V*C, and force values when tested with either the Eurosid or BIOSID under identical test conditions. The need for a regulatory dummy capable of supporting deflection and force criteria will become all the more important in the near future as competitive pressures are likely to force vehicle manufacturers to accelerate the development and fitment of side air bag systems." [10]

The petitioners argued that their petition provides "a means to not only harmonize safety standards and take a step toward a single harmonized side impact test procedure and test dummy, but to further improve safety for the American public." Petitioners said that NHTSA itself has cited the side impact standards and regulations as a prime example of the need to harmonize, especially given their different test dummies and injury criteria. They further stated:

> The agency has correctly stated that people in Europe are exposed to the same causes of injury in side crashes as are vehicle occupants in the U.S. People all over the world are essentially the same and there is no compelling reason to measure their potential for injury using different test dummies and different injury criteria.

The petitioners noted that the dummy, injury criteria, and test procedures of the EU side impact directive were adopted by the ECE prior to their adoption by the EU and have since been accepted or announced for future acceptance in Japan, Australia and the Gulf Cooperation Council. In addition, the Russian Federation and Israel are said to "have acted to adopt ECE Regulation 95."

The petitioners acknowledged that the European dummy needs to be improved and that improvements are being planned for the dummy, and in fact base their petition on the making of those improvements. Petitioners stated that TNO, the supplier of EuroSID–1, is working on an "upgrade package" that includes possible improvements to the dummy's rib modules, back plate, pelvis, proximal femur, shoulder and abdominal instrumentation. Improvements may also be made to the procedure for calibrating the abdomen, neck and lumbar spine. The petitioners concluded by urging NHTSA

> * * * to adopt the upgraded Eurosid-1 and to work jointly with the Commission of the European Union for adoption of an upgrade package in both the EU Directive and the ECE Regulation.

Similarities and Differences Between the U.S. Standard and the ECE Regulation

a. *Test procedure*

Standard 214's dynamic test is designed to simulate what would happen in the real world if a vehicle were traveling 48 kilometers per hour (km/h) (30 miles per hour, mph) at a 90 degree angle to a second vehicle traveling 24.2 km/h (15 mph) and struck that second vehicle in the side, i.e., a typical intersection crash involving cross traffic. While a test involving two moving vehicles could be used, it is more difficult to conduct tests yielding repeatable results when testing in that manner.

The simulation is achieved by "crabbing" the front and rear wheels of the MDB at an angle of 27 degrees to the right of its longitudinal centerline in a left side impact and to the left of that centerline in a right side impact. The MDB moves at that angle into the side of the target car. The closing speed of the MDB is 54 km/h (33.5 mph). These aspects of the procedure were selected so that the test simulates the typical intersection crash discussed above. The agency determined that the 30 mph/15 mph combination is a representative of the threshold of serious chest injury. The orientation of 90 degrees was selected because it is the one most frequently seen in field data. Instrumented side impact dummies are placed in the outboard front and rear seating positions on the side of the vehicle which is being struck.

Under EU 96/27/EC's test procedure, the wheels of the barrier are aligned straight ahead, not crabbed to the side. The barrier moves straight ahead at a 90 degree angle to the target vehicle at 50 km/h (31 mph). EU 96/27/EC specifies only one dummy be used in the compliance test. This dummy is placed in the front seat of the struck side of the test vehicle.

b. *Barrier*

The moving deformable barrier (MDB) used in Standard 214 tests has a total mass of 1,367 kg (3,015 lb). The barrier face is aluminum honeycomb in design. Its contact face is 559 mm (22 in) high and 1,676 mm (66 in) wide. The top of the barrier face is 838 mm (33 in) above the ground and the bottom edge is 280 mm (11 in) above the ground. The protruding portion of the barrier simulates a bumper. The bottom surface of the "bumper" is 330 mm (13 in) above the ground, and the top surface is 533 mm (21 in) above the ground.

The European barrier has a mass of 950 kg (2,095 lb), compared to 1,367 kg (3,015 lb) for the U.S. barrier. The face of the European moving deformable barrier is smaller than that of the U.S. barrier. The European barrier is narrower, 1,500 mm (59 inches), compared to 1,676 mm (66 inches) for the U.S. barrier. The bottom edge is the most forward part of the European barrier and is 300 mm (11.8 in) above the ground. In comparison, the bottom edge of the U.S. barrier face is 280 mm (11.0 in) above the ground and the bottom edge of the U.S. "bumper" is 330 mm (13.0 in) above the ground. The top edge of the European "bumper" is 550 mm (21.7 in) above the ground, while the top edge of the U.S. "bumper" is 533 mm (21 in) above the ground. The face of the European barrier is divided vertically into thirds with the center third representing the area of the engine block. The right 1/3 of the barrier face and the left 1/3 of the barrier face, simulating the fender areas, are softer than the corresponding portions of the U.S. barrier face.

c. *Injury Criteria*

Standard 214 requires that the dummies must exhibit rib, spine and pelvic accelerations below specified thresholds in order for the vehicle to pass the test. The rib and spine accelerations are combined into a single metric called the Thoracic Trauma Index (TTI(d)) which has an 85g limit for 4-door vehicles and a 90g limit for 2-door vehicles. There also is a pelvic acceleration limit of 130g.

EU 96/27/EC measures five dummy parameters to determine vehicle performance. The head injury criterion (HIC) is derived from head accelerations and is computed only if head contact occurs, and must remain below 1000. A rib deflection criterion (RDC) of 42 mm (1.7 in.) is allowed in the thorax along with a viscous criterion (V*C) of 1 m/s. The viscous criterion is calculated from combined rib displacement and velocity. The abdominal force is limited to 2.5 kN (562 lb). Finally, the pubic symphysis force, which is in the pelvic region, must be less than 6 kN (1350 lb).

[9] Dalmotas, *et al.*, "Side Impact Occupant Protection Technologies," SAE SP–851, February 1991.

[10] Dalmotas, *et al.*, "Side Impact Opportunities," Fifteenth International Technical Conference on the Enhanced Safety of Vehicles, May 1996.

Congressional Mandate to Explore Harmonization Possibilities

On September 16, 1996, in Congressional Conference Report 104–785 for the Department of Transportation and Related Agencies Appropriations Act for fiscal year 1997, the conferees directed NHTSA to study the differences between the U.S. and then-proposed European side impact regulations and to develop a plan for achieving harmonization of these regulations. In response to this directive, NHTSA submitted a side impact harmonization plan to Congress in April 1997 ("Report to Congress NHTSA Plan for Achieving Harmonization of the U.S. and European Side Impact Standards," April 1997, see docket NHTSA 1998–3935–1 of the Department's docket management system.)

In the report, we described how we would follow our functional equivalence process in determining whether Standard 214 and the modified European regulation are functionally equivalent.[11] This process is used to determine whether the vehicles or equipment manufactured under a foreign standard produce more or at least as many safety benefits as those produced by the vehicles or equipment manufactured under a similar U.S. standard.

The first step in the process is to obtain and assess any available industry and government research data comparing the two regulations, especially full-scale vehicle compliance tests. We stated in the report that in parallel with this assessment of outside data, the agency would carry out an initial phase of testing to the EU regulation.[12] The vehicles tested would be identical to vehicles which successfully completed U.S. compliance testing. We anticipated that completion of this initial phase of testing and data analysis would place NHTSA at a major decision point in the functional equivalence process. That is, we would have to determine whether there were sufficient data to assess the functional equivalency of the two standards, or if not, whether additional research could be conducted to generate data. We recognized that any non-trivial problems with the test procedure or dummy must be identified as part of the determination of the acceptability of the EU regulation as an alternative or replacement for the U.S. regulation. We further stated:

> If the EU regulation is found to be an acceptable alternative or replacement, rulemaking in the U.S. could be initiated and the functional equivalence/harmonization process would be complete. *However, it may be that there is not sufficient information for this determination or that functional equivalence is clearly not possible.* If it is only a matter of conducting additional vehicle tests and analyses, NHTSA would continue such an effort and iterate through the Functional Equivalence Process steps. *However, if other problems are apparent in performing the EU tests * * * or if each standard indicates unrelated safety performance for the same vehicle, the harmonization plan will need to proceed in a different direction * * *.* The next steps in this different direction would be to determine what additional information is needed to accept or exclude functional equivalence and any other potential harmonization solutions.
> (Emphases added.)

Agency Test Results

As a first step in assessing the functional equivalence of the two regulations, we tested vehicles that were certified to Standard 214 using the procedures and criteria of EU 96/27/EC (as modified, with a test dummy placed in the rear outboard seating position in addition to the front outboard position). The following eight vehicles were tested: a MY 1997 Lexus SC300, 1997 Ford Mustang, 1997 Mitsubishi Eclipse, 1995 Geo Metro, 1996 Ford Taurus (the EU test was performed by Ford Motor Company), 1995 Volvo 850 SW, 1997 Hyundai Sonata, and a 1997 Nissan Sentra. The vehicles provided a range of marginal to good performers relative to Standard 214 and represented a wide range of manufacturers. The results indicated that the ranking of the eight vehicles, according to their relative performance, was not the same when tested under EU 96/27/EC and Standard 214. Additionally, a measurement anomaly in the European test dummy (EuroSID–1) related to the rib displacement was present in most, if not all, tests. This anomaly, along with the limited amount of comparative test data, did not allow a positive determination of functional equivalence of the two side impact regulations. We could not conclude from this set of testing whether vehicles designed to meet the EU regulation will meet the U.S. regulation. (Results of the vehicle testing were discussed in NHTSA's report to Congress on the agency's progress in assessing the functional equivalence of the two regulations. "Status of NHTSA Plan for Side Impact Regulation Harmonization and Upgrade, Report to Congress, March 1999." See docket NHTSA–98–3935–10.)

Discussion and Analysis

Short Run

Available data and analyses do not support a finding of functional equivalence. Petitioners provided no data supporting their request. The data generated by our eight vehicle tests are insufficient to enable us to determine whether EU 96/27/EC is functionally equivalent to Standard 214.

NHTSA believes that there is no point in continuing the test program and generating additional data in an effort to assess whether the European regulation is functionally equivalent to Standard 214. To be adopted as or added to a U.S. standard, a non-U.S. standard must meet the statutory criteria of our safety statute, 49 U.S.C. 30101 *et seq.*, apart from its functional equivalency to a U.S. standard. Those criteria specify that each motor vehicle safety standard must be practicable, meet the need for motor vehicle safety, and be stated in objective terms (49 U.S.C. 30111(a)).

We conclude that the results of the testing, in particular the measurement anomalies in the EuroSID–1, do not support a finding that EU 96/27/EC is appropriate for addition in the short run as a compliance alternative. There are several reasons for this conclusion.

First, EuroSID–1 is not biofidelic. It has a displacement measurement anomaly that is depicted as plateaus or "flat-tops" on the test data plots. The flat-tops were present in the data generated by the dummy in the driver position for all the vehicles tested and by the dummy in the rear seat of three of the six vehicles.

A test dummy that is not biofidelic is unsuitable as a compliance test device. The less biofidelic a test device is, the less likely its results are reasonable and useful as a measure of the protection a vehicle provides to a real occupant. A test dummy that is not representative of a human could lead to vehicle designs that provide little or no benefit to real occupants.

Second, the agency believes that the EU barrier is less representative than the Standard 214 barrier of the side impact crash environment in this country. Due to the increased market share of light

[11] The functional equivalence process was described in a November 14, 1996 **Federal Register** document and later incorporated as Appendix B to our rulemaking procedures (49 CFR Part 553) by a May 13, 1998 final rule (63 FR 26508).

[12] This series of tests was only one part of a general matrix that we had prepared to assess the comparative performance of vehicles relative to the two regulations. The general matrix was to include testing of European production vehicles to determine how well such vehicles perform relative to Standard 214. The matrix also was to include testing of vehicles designed for both U.S. and European markets to the requirements of both regulations. Vehicles equipped with side air bag systems was also part of this matrix as they are becoming prevalent in both the U.S. and European fleet.

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trucks, vans and sport utility vehicles (LTVs), a large portion of the current U.S. side impact casualties results from impacts with the LTV class of vehicles. The EU moving deformable barrier is lighter and less stiff than the barrier used in Standard 214 testing. Side impact countermeasures based on the EU barrier may lead to fewer safety benefits than those resulting from use of the Standard 214 barrier. NHTSA notes further that the specifications for the EU barrier allow non-metallic faces that disintegrate in some impacts.

Further, we are unable to agree with Petitioners that an analysis by Monash University for the Government of Australia ("Side Impact Regulations Benefits," June 1995)[13] furnishes an adequate basis for our making a finding of functional equivalence. The outcome of the Monash harm reduction analyses is highly dependent on assumptions. Thus, the assumptions must be carefully grounded in real world crash data and in crash test data. We believe that the assumptions of the Monash analysis were not so grounded.

The first assumption was that a regulation based on SID and TTI(d) would result in a 2 AIS reduction in injury, while EuroSID and V*C measures would result in a 3 AIS injury reduction. In other words, if the baseline vehicle injury level were an AIS 4, the Monash report estimates that the injury level of a vehicle meeting Standard 214 would be an AIS 2 and a vehicle meeting EU 96/27/EC would be an AIS 1.

We do not believe that an effectiveness estimate can be made without knowing the current compliance with the injury criteria and how much improvement is needed to meet the injury criteria.[14] There is no logic provided that would lead one to conclude that EU 96/27/EC is more effective than, or even as effective as, Standard 214. The report does not include data or analysis to support the estimates about the difference in effectiveness between Standard 214 and the ECE Regulation 95. It does not discuss current compliance with the injury criteria of EU 96/27/EC criteria or how much improvement is needed in the fleet to meet the injury criteria.

The second assumption made by the authors of the report was that an overall injury reduction of 1 AIS is expected for SID and 3 AIS for EuroSID, assuming an abdominal injury criterion is applied when using the latter dummy, because SID cannot measure abdominal loads while EuroSID can. The report does not discuss or analyze injury criteria or baseline test data, nor explain how use of EuroSID would necessarily lead to the greater reduction in AIS injury level.

The third assumption was that EuroSID will have an additional benefit of a 2 AIS injury reduction for head contacts with the side rails. We have never seen the head of the dummy in the front seat of a vehicle strike the side rail in any of our side impact tests. Accordingly, it is unclear why the authors concluded that use of EuroSID in the test would lead to improvements of the side rail.

Long run

The agency has further determined that EU 96/237/EC is unacceptable as a replacement of Standard 214. As noted from real world crash data, the side impact crash environment in this country is changing. While the current moving deformable barrier used in Standard 214's dynamic test may be too small and too light to represent the future U.S. fleet, the barrier used in EU 96/27/EC is even smaller in size and mass. Instead of adopting the smaller ECE barrier, NHTSA plans to consider adopting a more representative barrier than the current barrier used in Standard 214. The agency's resources would be better utilized upgrading Standard 214 to address the changing U.S. side impact crash environment than adopting the smaller ECE barrier.

However, it does not appear that the problems with EuroSID–1 are insurmountable. NHTSA tested EuroSID–1 with prototype modification to the ribs utilizing ball bearing cylinders in the posterior piston cylinders. This modification was developed by Advanced Safety Technologies Corporation, a dummy manufacturer in this country, to reduce the flat-topping phenomenon. Results to date indicate a significant reduction in the flat-tops and a subsequent increase in maximum rib displacements. With further development to cure continuing biofidelity problems, a newer version of EuroSID–1 might become acceptable as a replacement for SID.

Near Term Agency Research

NHTSA is carrying out the research plan set forth in the March 1999 Report to Congress. Current activities include evaluating ES–2 (a modified EuroSID–1), conducting out-of-position testing with side air bags, and conducting an in-depth evaluation of field crash data so that the Standard 214 barrier can be upgraded to be more representative of current and future striking vehicles.

Agency Decision

Based on the foregoing, we are denying the portion of the petition requesting us to conclude that EU 96/27/EC is functionally equivalent to Standard 214 and to add the ECE regulation to Standard 214 as a short run compliance alternative. We are also denying the portion of the petition requesting us to replace Standard 214 in its entirety with the ECE regulation.

However, we are granting the petition to the extent that it requests us to examine replacing SID with an enhanced side impact dummy. If the biofidelity problems with EuroSID–1 can be solved, the greater measurement capabilities of the dummy would make its adoption attractive as a way of upgrading Standard 214. Thus, our first steps will be to work with the Europeans to cure the dummy's biofidelity problems. Once that is accomplished, we will consider issuing a proposal to replace SID with the improved side impact dummy. (Adopting a more advanced test dummy means that we will also be considering the appropriate injury criteria to adopt with the dummy into our side impact protection standard. If we eventually propose to replace SID with an improved EuroSID–1, we might propose adopting the injury criteria now in EU 96/27/EC as well.) There is a reasonable possibility that a test dummy that is technically superior to SID could be incorporated into Standard 214 in place of SID.

This grant of the petition is consistent with other agency side impact protection initiatives. It is consistent with our grant of a July 1998 rulemaking petition from Advocates for Highway and Auto Safety (Advocates) requesting us to upgrade Standard 214. Advocates petitioned us to increase the safety of occupants of passenger cars and LTVs in side crashes with larger, heavier and stiffer vehicles. Among other suggestions, they suggested using EuroSID–1 instead of SID. Today's granting of the petition is also consistent with our support of the development of a next-generation side impact dummy called WorldSID. That dummy is being developed by industry representatives from the U.S., Europe and Japan, and the European and Japanese governments. It is anticipated for prototype completion in the fall of 2000. WorldSID is expected to be technically superior to all other predecessor side impact dummies, including EuroSID–1. We have been and continue to be highly interested in the development of WorldSID. A future upgrade of Standard 214 could involve the adoption of a technically superior dummy such as WorldSID.

In accordance with 49 CFR Part 552, this completes our review of the petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50

Issued on May 18, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–13051 Filed 5–23–00; 8:45 am]

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[13] Petitioners state: The Monash University analysis utilized the concept of "harm," first developed by NHTSA in 1982 and subsequently used in several NHTSA reports. Monash considered both car-to-car and fixed object impacts. Their analysis was thorough and considered "harm" to the head, face, thorax, abdomen, pelvis and upper and lower limbs. The Australian Government report actually showed that the potential benefit of ECE Regulation 95 as estimated to be 8 percent *higher* than that of FMVSS 214. Nevertheless, the report advocated acceptance of *either* standard. This appears to be the type of comparative study that the NHTSA concluded was needed when it terminated the alternative side impact dummy rulemaking.

[14] The report itself recognizes that "Unlike the US standard, there was little or no information available on the likely effects of ECE Regulation 95 in reducing injuries" (p. ix). It further states (p. 1) that "* * * (incidental reports by Wall, 1992, and Lowne, 1994 provide some crude estimates of the overall reductions in injury likely for ECE95 but were by no means, definitive)."

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000515139-0139-01; I.D. 041200D]

RIN 0648–AO03

Atlantic Highly Migratory Species (HMS); Atlantic Bluefin Tuna Specifications and HMS Regulatory Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed annual quota specifications and regulatory amendment; public hearings; request for comments.

SUMMARY: NMFS proposes specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quota and General category effort control specifications for the 2000 fishing year. NMFS also proposes to amend the regulations governing the Atlantic HMS fisheries to adjust the date on which the BFT General category fishing season ends; adjust the date on which BFT allocations become available to Atlantic tunas Purse Seine category vessel owners; authorize NMFS to add the underharvest to, or subtract the overharvest from, individual Purse Seine category vessels' allocations for the following fishing year on a per vessel basis; revise text regarding restricted fishing days (RFDs) in the General category BFT fishery; and revise text regarding authorized gear in the North Atlantic swordfish fishery. The proposed specifications and regulatory amendment are necessary to implement the 1998 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) as required by the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding the proposed specifications and regulatory amendment.

DATES: Written comments must be received on or before June 19, 2000.

The public hearings dates are:

1. Tuesday, May 30, 2000, 7–9 p.m., Gloucester, MA.

2. Wednesday, May 31, 2000, 9–11 a.m., Silver Spring, MD.

ADDRESSES: Written comments on the proposed specifications and regulatory amendment should be sent to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282. Comments also may be sent via facsimile (fax) to (301) 713–1917. Comments will not be accepted if submitted via e-mail or the Internet.

The public hearing locations are:

1. Silver Spring–NMFS, SSMC III—Room 4527, 1315 East-West Highway, Silver Spring, MD 20910.

2. Gloucester–Milton Fuller School, 4 School House Road, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Sarah McLaughlin, (978) 281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) that was adopted and made available to the public in April 1999. The HMS FMP and the implementing regulations established percentage quota shares for each of the domestic fishing categories of the ICCAT-recommended U.S. BFT landings quota of 1,387 metric tons (mt). These percentage shares were based on allocation procedures that had been developed by NMFS in recent years.

The HMS FMP also established a new fishing year for the Atlantic tunas fisheries, beginning June 1 each calendar year and continuing until May 31 of the subsequent calendar year. NMFS specified the 1999 fishing year BFT quota allocations in June 1999, reflecting underharvests or overharvests from the 1998 calendar year, as appropriate for each fishing category (64 FR 29806, June 3, 1999). Subsequently, NMFS made inseason quota adjustments to account for underharvest or overharvest for the period from January 1, 1999, through May 31, 1999; these adjustments were required to make the transition to the new fishing year (64 FR 48111, September 2, 1999).

NMFS then amended the HMS regulations to remove the 250–mt limit on allocating BFT landings quota to the Purse Seine category (64 FR 58793, November 1, 1999). This rulemaking also reinstated the transferability of partial purse seine vessel quota allocations from one vessel to another, which was inadvertently omitted from the consolidated regulations to implement the HMS FMP.

NMFS proposes the fishing year 2000 BFT quota specifications under the annual adjustment procedures of the HMS FMP. Also in accordance with the HMS FMP, NMFS proposes the General category effort control schedule, including time-period subquotas and RFDs, for the upcoming fishing season. After consideration of public comment, NMFS will issue final specifications and publish them in the **Federal Register**.

Domestic Quota Allocation

NMFS proposes fishing category allocations for the 2000 fishing year, beginning June 1, 2000, consistent with the HMS FMP and the 1,387 mt U.S. allocation. The percentage quota shares established in the HMS FMP for fishing years beginning June 1, 1999, as amended by the Purse Seine category adjustment discussed above, are as

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follows (tonnage in parentheses corresponds to 1,387 mt total quota): General category — 47.1 percent (653.3 mt); Harpoon category—3.9 percent (54.1 mt); Purse Seine category—18.6 percent (258.0 mt); Angling category—19.7 percent (273.2 mt); Longline category—8.1 percent (112.3 mt); Trap category—0.1 percent (1.4 mt); and Reserve—2.5 percent (34.7 mt).

The current ICCAT BFT quota recommendation allows, and U.S. regulations require, the addition or subtraction, as appropriate, of any underharvest or overharvest in a fishing year to the appropriate quota category for the following year, provided that such carryover does not result in overharvest of the total annual quota and is consistent with all applicable ICCAT recommendations, including restrictions on landings of school BFT. Therefore, NMFS proposes to adjust the 2000 fishing year quota specifications for the BFT fishery to account for underharvest and overharvest in the 1999 fishing year.

The General, Harpoon, and Purse Seine category fisheries for BFT have been closed for the 1999 fishing year, but landings figures are still preliminary and may be updated before the 2000 specifications are finalized. For the 1999 fishing year, NMFS has preliminarily determined that General category landings exceeded the adjusted General category quota by 50.9 mt; Harpoon category landings exceeded the adjusted Harpoon category quota by 4.9 mt; and Purse Seine category landings were 13.8 mt less than the adjusted Purse Seine category quota. Based on the estimated amount of Reserve that NMFS is maintaining for the landing of BFT taken during ongoing scientific research projects, NMFS estimates that 44.7 mt of Reserve remains unharvested from the 1999 fishing year.

Given estimated catch rates and available quota, the Angling and Longline category fisheries will remain open through May 31, 2000. As NMFS anticipates publication of final BFT quota specifications for the 2000 fishing year prior to the availability of final 1999 landings figures for these two categories, best estimates will be used to determine carryover amounts, if any. To date, the Angling category has the following underharvests for the 1999 fishing year: School BFT—45.8 mt; large school/small medium BFT—145.0 mt; and large medium/giant BFT—1.6 mt. In addition, 17.8 mt remains in the school reserve. To date, 48.8 mt remain in the Longline category. Should adjustments to the final 2000 BFT quota specifications be required based on the final 1999 BFT landings figures, NMFS will publish a **Federal Register** notice updating the 2000 fishing year quota specifications.

NMFS proposes to allocate the remaining 1999 Reserve to the Harpoon and General categories to account for the overharvests in those categories. Of the estimated 44.7 mt carryover from the Reserve, NMFS would allocate 4.9 mt to the Harpoon category and 39.8 mt to the General category. The balance of the 1999 General category overharvest would be deducted from the 2000 General category allocation determined by the percentage share set in the HMS FMP.

In accordance with the regulations regarding annual adjustments at § 635.27(a)(9)(ii), NMFS proposes specifications for the 2000 fishing year that include carryover adjustments. The proposed quotas are: General category—642.2 mt; Harpoon category—54.1 mt; Purse Seine category—271.8 mt; Angling category—483.4 mt; Longline category—161.1 mt; and Trap category—2.4 mt. Additionally, 34.7 mt would be reserved for inseason allocations or to cover potential overharvest in any category. These initial specifications may be adjusted during the 2000 fishing year, when final Angling category and Longline category landings for the 1999 fishing year are determined. If necessary, updates to the 2000 fishing year specifications for the Angling and Longline categories, including size class and geographic subquota specifications, will be made. As required, adjustments to the amount held in the Reserve will also be made.

Based on the proposed specifications, the Angling category quota of 483.4 mt would be divided as follows: School BFT—136.3 mt, with 72.9 mt to the northern area (north of 38° 47′ N. latitude), 63.4 mt to the southern area (south of 38° 47′ N. latitude), and an additional 38.3 mt held in reserve; large school/small medium BFT—300.9 mt, with 163.9 mt to the northern area and 137.0 mt to the southern area; and large medium/giant BFT—7.9, with 3.4 mt to the northern area and 4.5 mt to the southern area. The Longline category quota of 161.1 mt would be subdivided as follows: 30.8 mt to longline vessels landing BFT north of 34° N. latitude and 130.3 mt to longline vessels landing BFT south of 34° N. latitude.

General Category Effort Controls

For the last several years, NMFS has implemented General category time-period subquotas to increase the likelihood that fishing would continue throughout the summer and fall. The subquotas are consistent with the objectives of the HMS FMP and are designed to address concerns regarding allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to allow for a late season fishery, and to improve market conditions and scientific monitoring.

The HMS FMP divides the annual General category quota into three time-period subquotas as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. Given the overharvest of the 1999 fishing year General category quota, these percentages would be applied to the adjusted coastwide quota for the General category of 632.2 mt, with the remaining 10.0 mt being reserved for the New York Bight fishery. Therefore, coastwide, 379.3 mt would be available in the period beginning June 1 and ending August 31; 189.7 mt would be available in the period beginning September 1 and ending September 30; and 63.2 mt would be available in the period beginning October 1.

For the last several years, NMFS has also implemented RFDs in the General category. In 1997, NMFS amended the Atlantic tunas regulations to prohibit persons aboard General category vessels from fishing for (including tag-and-release fishing), retaining, possessing, or landing all sizes of BFT on designated RFDs. The intent of RFDs is to prolong fishing activity within each General category subperiod to increase fishing opportunities and to improve market conditions.

For the 2000 fishing year, NMFS proposes a schedule of RFDs that is similar to that implemented for the 1999 fishing year, adjusted as necessary to coordinate with Japanese market holidays, but that also includes RFDs for the month of October. NMFS has received comment from General category fishermen that NMFS should implement RFDs during October to help lengthen this late season fishery. NMFS proposes RFDs for October intended to balance the interests of various General category fishery participants, and specifically requests comments on these proposed October RFDs.

Persons aboard vessels permitted in the General category would be prohibited from fishing, including tag-and-release, for BFT of all sizes on the following days: July 12, 16, 17, 19, 23, 24, 26, 30, and 31; August 2, 6, 7, 9, 11, 12, 13, 14, 16, 20, 21, 23, 27, 28, and 30; September 3, 4, 6, 10, 11, 13, 17, 18, 20, 24, 25, and 27; and October 1, 4, 6, 7, 10, 11, 14, 15, 18, 19, 22, 23, 26, 27, 30, and 31. These proposed RFDs would improve distribution of fishing opportunities without increasing BFT mortality and are consistent with the objectives of the HMS FMP.

Changes to Regulatory Text

In consolidating the HMS regulations into one CFR part (64 FR 29090, May 28, 1999), NMFS inadvertently stated certain provisions incorrectly, and included regulatory text that, in some instances, was not consistent with the HMS FMP or the regulatory text as it existed prior to consolidation. Therefore, several changes to the regulatory text are proposed to clarify the regulations and to achieve consistency with the FMP objectives. These changes include specification of fishing seasons, quota adjustments, effort controls, and authorized gear.

General Category Season

Prior to implementation of the HMS FMP in 1999, the Atlantic tunas fishing year coincided with the calendar year, with the General category BFT fishing season ending December 31. The General category quota was split into three time-period subquotas: June through August, the month of September, and October through December. These time-period subquotas were selected as the preferred alternative and final action in the HMS FMP. The FMP established the Atlantic tunas fishing year as June 1 through May 31 of the following year. As specified in the HMS FMP, the change to the new fishing year was not intended to authorize new fishing seasons or to change fishing patterns, but was necessary to accommodate notice and comment rulemaking after management recommendations of ICCAT are received, usually in November. However, the consolidated regulations implementing the HMS FMP erroneously indicated that the third time-period subquota is October 1 through May 31 of the following calendar year, rather than ending December 31 of the same calendar year, as previously specified.

NMFS has stated its intent clearly in the HMS FMP and several other NMFS documents, including the 1999 final BFT quota and effort control specifications and the Atlantic tunas regulations brochure, which indicate an end date of December 31 for the General category season. Specifying May 31 as the end of the third time-period subquota in the consolidated HMS regulations was not intended to establish a new fishing season. NMFS, therefore, proposes to amend the subject regulatory text to indicate December 31 as the end date for the General category BFT fishing season.

Purse Seine Category Season

The HMS regulations state that, from August 15 through December 31, vessels issued Purse Seine category allocations may fish for BFT. The regulations also state that upon reaching its individual allocation of BFT, a Purse Seine category vessel may not participate in a directed fishery for Atlantic tunas or in any fishery in which BFT might be caught for the remainder of the fishing year. This regulation is necessary because any incidental catch of BFT during fishing operations for other species (*e.g.*, yellowfin or skipjack tunas or herring) must be deducted from the vessel's BFT allocation. In some years, certain purse seine vessels have conducted a yellowfin/skipjack fishery in late spring/early summer prior to commencement of the directed BFT fishery on August 15.

When the HMS regulations were consolidated under 50 CFR part 635, it was inadvertently stated in § 635.27(a)(4)(ii) (Purse Seine category quota section) that the BFT allocation "becomes available August 15." NMFS intended for the August 15 date to refer specifically to the opening of the directed fishery for BFT, not to preclude purse seine fisheries from targeting other species from the beginning of the tunas fishing year (June 1) to August 15 due to lack of a BFT allocation from which to deduct incidental catch. This proposed amendment corrects the subject regulatory text to indicate that the purse seine vessel allocation of BFT is available starting June 1, and that any BFT caught incidental to fishing operations for other species will be deducted from the vessel's BFT allocation for that fishing year. This proposed amendment also clarifies the regulatory text to indicate that it is the directed purse seine fishery for BFT that commences on August 15 each year.

Purse Seine Quota Carryover

Implementing regulations at § 635.27(a)(4)(iii) indicate that, on or about May 1, NMFS will make equal allocations of the available size classes of BFT among Atlantic tunas Purse Seine category permit holders so requesting (limited to five authorized vessels). In situations where a fishing year quota is exceeded or is not entirely taken, regulations at § 635.27(a)(9) state that NMFS shall subtract the overharvest from, or add the underharvest to, the appropriate quota category for the following fishing year. Therefore, in accordance with the regulations, any Purse Seine category underharvest or overharvest would be divided equally among the authorized vessels regardless of the individual vessels' contribution to the carryover amount.

NMFS has received comments from Purse Seine category participants that, because the category is managed via individual vessel quotas (IVQs), any vessel's underharvest or overharvest during a fishing year should be added to or deducted from that vessel's IVQ for the following fishing year, rather than the Purse Seine category quota as a whole. Also, commenters noted that a provision for individual vessel carryover would enhance the intent of the IVQ system by providing individual vessel owners the responsibility and incentive to remain within their allocated quotas, since overharvests would be deducted from that particular vessel's IVQ for the following year, and, conversely, any underharvest would be added.

NMFS, therefore, proposes to amend the regulations regarding annual adjustment of quotas and subquotas to authorize NMFS to add the underharvest to, or subtract the overharvest from, individual Purse Seine category vessels' allocations for the following fishing year if NMFS determines that a vessel's individual quota has been exceeded or has not been reached.

Restricted Fishing Days

For several years, NMFS has implemented RFDs in the BFT General category fishery, along with other General category effort controls. RFDs are consistent with the objectives of the HMS FMP and are designed to address concerns regarding allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to ensure a late season fishery, to improve market conditions, and to improve data collection for scientific monitoring purposes.

Prior to publication of the consolidated regulations implementing the HMS FMP, the Atlantic tunas regulations (50 CFR part 285) indicated that, on RFDs, persons aboard a vessel permitted in the General category could not fish for, possess, or retain BFT. In the final consolidated regulations, the term "fish for" was inadvertently omitted. Prohibiting persons on board General category vessels from fishing for BFT on an RFD (including fishing under a tag and release program) is important to facilitate enforcement of the RFD. This proposed amendment would correct the subject regulatory text to indicate that persons on board a vessel permitted in the General category cannot fish for BFT on an RFD.

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In addition, this amendment would remove language included in the final consolidated regulations indicating that RFDs apply only when the General category fishery is open. If a time-period subquota is filled and if the fishery is closed before the end of the time period (e.g., by September 15 for the September time period), an automatic waiver of the remaining RFDs for the time period allows for tag-and-release fishing by persons aboard General category vessels until the beginning of the next time period fishery. Removing the provision for automatic waiver of RFDs would allow NMFS the discretion to implement RFDs during a closure of a General category time period on days immediately prior to the beginning of the following time-period subquota (e.g., September 29 and 30).

In issuing a closure notification for any General category subperiod, NMFS would indicate the specific RFDs that would be waived and/or added prior to reopening the fishery. Because fishing for BFT, including tag-and-release fishing, is prohibited on RFDs, retaining or adding RFDs immediately prior to reopening a new sub-period would facilitate enforcement of the closure and reduce the potential for accumulated catch to be landed on the day of the reopening. This proposed amendment is consistent with the intent of RFDs, as well as other General category effort controls and the HMS FMP.

Authorized Gear

Finally, NMFS proposes to correct text that prohibits the use of bandit gear in the north Atlantic swordfish fishery. In the table appearing at 50 CFR 600.725(v), bandit gear is authorized in the swordfish handgear fishery. Likewise, 50 CFR 635.21(d)(4) authorizes the use of bandit gear to fish for north Atlantic swordfish from vessels issued limited access permits. When the final consolidated HMS regulations were published, the prohibition at 50 CFR 635.71(e)(8) inadvertently omitted bandit gear from the list of authorized gears.

Public Hearings and Special Accommodations

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (*e.g.*, alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Special Accommodations

The public hearing sites are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah McLaughlin (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

Classification

These proposed specifications and regulatory amendment are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* Preliminarily, the AA has determined that the specifications and the regulations contained in the proposed regulatory amendment are consistent with the FMP, the Magnuson-Stevens Act, and the 1998 ICCAT recommendation (ICCAT Rebuilding Program).

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed regulatory amendment, if implemented, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed specifications would set Atlantic BFT tuna quota allocations and General category effort controls for the 2000 fishing year; these proposed specifications are similar to those set for the 1999 fishing year and are in accordance with the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (Highly Migratory Species (HMS) FMP). The proposed regulatory amendments would allow Purse Seine vessel owners to carry over unharvested BFT quota between fishing years on a per vessel basis, change the date on which BFT allocations become available to Atlantic tunas Purse Seine category vessel owners, change the end date of the BFT General category season, and modify language regarding restricted fishing days in the General category BFT fishery and authorized gear in the Atlantic swordfish fishery. Because the overall U.S. BFT landings quota and fishing patterns would remain the same, there is no anticipated change in revenues that would accrue to small businesses in the fishery overall. Specifically regarding the Purse Seine category fishery, the ability to carry over unharvested BFT quota between fishing years on a per vessel basis could result in additional revenues accruing to small businesses associated with the purse seine fishery without directly affecting any other fishing category. The other proposed regulatory amendments would serve to correct or clarify the regulatory text and would not alter current fishing practices in any significant way.

Because of this certification, an Initial Regulatory Flexibility Analysis was not prepared.

This proposed regulatory amendment has been determined to be not significant for purposes of E.O. 12866.

The proposed specifications would set 2000 fishing year BFT fishing category quotas and General category effort controls. The specifications are similar to those set for the 1999 fishing year as established by the HMS FMP. The proposed regulatory amendments would not significantly change the operations of any HMS fishery. Taken together, the quota and effort control specifications and the proposed regulatory amendments are not expected to increase endangered species or marine mammal interaction rates. NMFS reinitiated formal consultation for all Atlantic HMS commercial fisheries on November 19, 1999, under section 7 of the Endangered Species Act. Pending the issuance of a Biological Opinion and the determination of reasonable and prudent measures to avoid jeopardizing the continued existence of any protected species, these proposed measures, if implemented, would not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures to reduce adverse impacts on protected resources.

The area in which this proposed action is planned has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, and the Highly Migratory Species Division of NMFS. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: May 18, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; and 16 U.S.C. 1801 *et seq.*

2. In § 635.23, paragraphs (a)(2) and (a)(4) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(a) * * *

(2) On an RFD, no person aboard a vessel that has been issued a General category Atlantic Tunas permit may fish for, possess, retain, land, or sell a BFT of any size class, and tag-and-release fishing for BFT under § 635.26 is not authorized from such vessel. On days other than RFDs, and when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the **Federal Register**.

* * * * *

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26.

* * * * *

3. In § 635.26, paragraph (a)(1) is revised to read as follows:

§ 635.26 Catch and release.

(a) *BFT.* (1) Notwithstanding the other provisions of this part, a person aboard a vessel issued a permit under this part, other than a person aboard a vessel permitted in the General category on a designated restricted fishing day, may fish with rod and reel or handline gear for BFT under a tag and release program, provided the person tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging and, if the BFT was previously tagged, the information on the previous tag. If NMFS-issued or NMFS-approved conventional tags are not on board a vessel, all persons aboard that vessel are ineligible to fish under the tag-and-release program.

* * * * *

4. In § 635.27, paragraph (a)(1)(i)(C), the second sentence of (a)(4)(i), the second sentence of (a)(4)(ii), the first sentence of paragraph (a)(4)(iii), and paragraph (a)(9)(i) are revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(1) * * *

(i) * * *

(C) October 1 through December 31—10 percent.

* * * * *

(4) * * *

(i) * * * The directed purse seine fishery for BFT commences on August 15 each year.

(ii) * * * The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on June 1.

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting, adjusted as necessary to account for underharvest or overharvest by each participating vessel or the vessel it replaces from the previous fishing year, consistent with paragraph (a)(9)(i) of this section. * * *

* * * * *

(9) *Annual adjustments.* (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, with the exception of the Purse Seine category, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted category quotas and the reserve is consistent with a recommendation of ICCAT regarding country quotas, the take of school BFT, and the allowance for dead discards. For the Purse Seine category, if NMFS determines, based on landings statistics and other available information, that a purse seine vessel's allocation, as adjusted, has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that vessel's allocation for the following fishing year.

* * * * *

5. In § 635.71, paragraph (e)(8) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(e) * * *

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline or handgear.

* * * * *

[FR Doc. 00–13056 Filed 5–19–00; 4:21 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000511133–0146–02; I.D. 051600B]

RIN 0648–AN52

Atlantic Highly Migratory Species; Trade Restrictions for Bluefin Tuna and Swordfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing the Atlantic highly migratory species (HMS) fisheries to remove a prohibition on the importation of Atlantic bluefin tuna (BFT) from Panama; to prohibit the importation of BFT and its products from Equatorial Guinea; and to prohibit the importation of Atlantic swordfish and its products from Belize and Honduras. These restrictions would implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The intent of these actions is to improve conservation and management of the Atlantic swordfish and bluefin tuna resources, while allowing harvests consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

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DATES: NMFS will hold public hearings in June, 2000 to receive comments from fishery participants and other members of the public regarding these proposed regulations. See **SUPPLEMENTARY INFORMATION** for hearing dates and times. For individuals unable to attend a hearing, NMFS also solicits written comments on the proposed rule. To be considered in developing the final rule, written comments on the proposed rule must be received at the appropriate address or fax number (see **ADDRESSES**) by 5 p.m. on July 18, 2000.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for public hearing locations. Comments on the proposed rule should be sent to and copies of the Draft Environmental Assessment/ Regulatory Impact Review supporting this action may be obtained from Rebecca Lent, Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. These documents may be viewed on the NMFS website at www.nmfs.gov/sfa/ hmspg.html. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or on the Internet.

FOR FURTHER INFORMATION CONTACT: Rachel Husted, 301–713–2347; fax: 301–713–1917 or by email at rachel.husted@noaa.gov. The NMFS HMS website is www.nmfs/gov/sfa/ hmspg.html.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery and the BFT fishery are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; codified at 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; codified at 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

Proposed Import Restrictions

On August 21, 1997 (62 FR 44422), NMFS prohibited the importation of BFT and its products from Panama, Honduras, and Belize, to implement a 1996 ICCAT recommendation. At that time, vessels of those countries had been determined by ICCAT to be fishing in a manner inconsistent with ICCAT conservation and management measures for bluefin tuna. In recognition of Panama's new status as a Contracting Party and the notable steps that country has taken and is taking to control its fleet and address ICCAT's concerns, ICCAT recommended in 1999 that its members lift the trade ban on bluefin tuna products from Panama. Therefore, consistent with the 1999 ICCAT recommendation, NMFS proposes to lift the import restriction on Panama and allow for the importation of BFT from that country.

In contrast to the efforts of the Government of Panama, information available to ICCAT indicates that Honduras and Belize continue to have vessels fishing in a manner that diminishes the effectiveness of ICCAT's conservation and management measures for both BFT and Atlantic swordfish. (Background on the original BFT determination can be found at 62 FR 44422, August 21, 1997.) In recent years, significant increases in exports of swordfish by Belize and Honduras have been recorded, although no catch data have been reported to ICCAT. This activity is occurring while other countries have reduced their catches of swordfish to comply with ICCAT conservation measures for the overfished north Atlantic swordfish population. ICCAT has repeatedly contacted the governments of Belize and Honduras, but has never received a satisfactory response from either government regarding actions to rectify the situation. Therefore, consistent with the 1999 ICCAT recommendation, NMFS proposes to prohibit the importation of Atlantic swordfish and its products from Honduras and Belize. The prohibition on imports of BFT and its products from these countries would also remain in effect.

In 1999, ICCAT also recommended that its members prohibit the import of BFT from Equatorial Guinea (a Contracting Party to ICCAT). ICCAT took this step as a last resort to address non-compliance with BFT quota limits. Import data from 1997–1999 reveal significant exports of BFT by Equatorial Guinea despite the fact that, for those years, this country received no catch allocation from ICCAT for BFT. The Government of Equatorial Guinea has not responded to repeated correspondence from ICCAT regarding the BFT fishing activities of its vessels and Equatorial Guinea has reported no BFT catch data. Therefore, consistent with the 1999 ICCAT recommendation, NMFS proposes to prohibit the importation of BFT and its products from Equatorial Guinea.

Public Hearings

NMFS will hold public hearings in June 2000 to receive comments from fishery participants and other members of the public regarding these proposed amendments at the following times and locations:

Monday, June 5, 2000—Houma, LA, 7–9:30 p.m.

Holiday Inn Holidome, Houma, LA.

Tuesday, June 6, 2000—Fairhaven, MA, 7–9:30 p.m.

The Seaport Inn, 110 Middle Street, Fairhaven, MA 02719.

Thursday, June 8, 2000—Pompano, FL, 7–9:30 p.m.

Pompano Beach Civic Center, 1801 NE 6th Street, Pompano Beach, FL 33060.

Thursday, June 22, 2000—Panama City, FL, 7–9:30 p.m.

National Marine Fisheries Service, Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408.

Thursday, June 22, 2000—Barnegat Light, NJ, 7–9:30 p.m. Barnegat Light Firehouse, Barnegat, NJ 08006.

Special Accommodations

These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel Husted at (301) 713–2347 at least 5 days prior to the hearing date.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA has preliminarily determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed regulatory amendment, if implemented, would not have a significant economic impact on a substantial number of small entities as follows:

Implementing trade restrictions on Atlantic BFT and Atlantic swordfish and Atlantic BFT and Atlantic swordfish products from Belize and Honduras, and Atlantic BFT and Atlantic BFT products from Equatorial Guinea would not have a significant economic impact on a substantial number of small entities because these countries currently do not export these fish or fish products to the United states and there are sufficient alternative sources of supply for United States importers and processors. The proposed restrictions would not alter current domestic fishing or marketing practices in any significant way.

Because of this certification, an Initial Regulatory Flexibility Analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The proposed action would not impose any additional reporting or recordkeeping requirements subject to OMB approval under the Paperwork Reduction Act.

On November 19, 1999, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A new Biological Opinion will be issued in June 2000. In the interim, no irretrievable commitments of resources are expected from this proposed action.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Imports, Treaties.

Dated: May 18, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. Section 635.45 is revised to read as follows:

§ 635.45 Products denied entry.

(a) All shipments of BFT or BFT products, or swordfish or swordfish products, in any form, harvested by a vessel under the jurisdiction of Belize or Honduras will be denied entry into the United States.

(b) All shipments of BFT or BFT products, in any form, harvested by a vessel under the jurisdiction of Equatorial Guinea will be denied entry into the United States.

3. The heading of § 635.46 is revised to read as follows:

§ 635.46 Import requirements for swordfish.

* * * * *

[FR Doc. 00–13057 Filed 5–19–00; 4:21 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000511133–0133–01; I.D. 120999B]

RIN 0648–AN52

Atlantic Highly Migratory Species; Atlantic Swordfish Quotas; Northern Albacore Tuna Rebuilding

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend regulations governing the Atlantic swordfish fishery to reduce the annual landings quota for the north Atlantic swordfish stock to 2,219 metric tons (mt) dressed weight (dw) for each of the next three fishing years (2000, 2001, 2002), with 300 mt dw allocated for incidental catch and the remainder allocated equally to each of the two semi-annual directed fishery seasons (June 1 through November 30 and December 1 through May 31). NMFS also proposes to establish an allowance for dead discards of 320 mt whole weight (ww) in 2000, 240 mt ww in 2001, and 160 mt ww in 2002. Finally, NMFS requests comments on alternatives to rebuild the stock of northern albacore tuna.

The intent of these actions is to improve conservation and management of the Atlantic swordfish and northern albacore tuna resources, while allowing harvests consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: NMFS will hold public hearings in June, 2000 to receive comments from fishery participants and other members of the public regarding these proposed regulations. See **SUPPLEMENTARY INFORMATION** for hearing dates and times. For individuals unable to attend a hearing, NMFS also solicits written comments on the proposed rule. To be considered in developing the final rule, written comments on the proposed rule must be received at the appropriate address or fax number (see **ADDRESSES**) by 5 p.m. on July 18, 2000.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for meeting and hearing locations. Comments on the proposed rule and copies of the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) supporting this action may be obtained from Rebecca Lent, Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. These documents may be viewed on the NMFS website at www.nmfs.gov/sfa/ hmspg.html. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or on the Internet.

FOR FURTHER INFORMATION CONTACT: Rachel Husted, 301–713–2347; fax: 301–713–1917 or by email at rachel.husted@noaa.gov. The NMFS website is www.nmfs/gov/sfa/ hmspg.html.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; codified at 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; codified at 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

Swordfish Rebuilding Program

The total weight of the north Atlantic swordfish stock at the beginning of 1999, according to the 1999 ICCAT stock assessment, was estimated to be at 65 percent of that needed to produce maximum sustainable yield (MSY). The biomass at MSY is the target stock size of the rebuilding program for north Atlantic swordfish. The 1998 fishing mortality rate was estimated to be 1.34 times F_{MSY}. Because NMFS is committed to rebuilding north Atlantic swordfish, consistent with the recent ICCAT program, reductions in quotas are required in the immediate future to rebuild the stock to levels that would support MSY.

North Atlantic swordfish landings for all nations combined for 1998 were estimated to be 12,175 mt ww. At the November 1999 ICCAT meeting, a recommendation was adopted to establish a rebuilding program for north Atlantic swordfish and to reduce the total allowable catch for all countries fishing on that stock to 10,600 mt ww (7,970 mt dw) for 2000, 10,500 mt ww (7,895 mt dw) for 2001, and 10,400 mt ww (7,820 mt dw) for 2002. Although the ICCAT recommendation specifies the quota in whole weight, this document refers to the quota in dressed

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weight (dw = 0.7519 ww) for the purposes of monitoring U.S. harvests, as swordfish are processed at sea and landed in dressed form (head, fins, viscera and tails removed). This proposed rule implements the ICCAT recommendations for rebuilding north Atlantic swordfish.

Under the ICCAT recommendation, the United States is allocated 29 percent of the North Atlantic swordfish landings quota for major harvesting nations (total allowable catch minus the total dead discard allowance) in 2000, 2001, and 2002. This amounts to 2951 mt ww for each year and represents a 5-percent decrease from the U.S. landings quota recommended by ICCAT for 1998. Under the proposed rule, and consistent with the FMP, each year, the quota would be divided between a directed fishery quota and an incidental quota (1919 mt dw directed, 300 mt dw incidental). Consistent with the FMP, the directed fishery quota of 1919 mt dw would be divided into two semi-annual quotas: June 1–November 30 and December 1–May 31 (959.5 mt dw for each season). The incidental quota is needed to allow for incidental landings, at levels stated in 50 CFR 635.27, during possible directed fishery closures and for swordfish taken incidental to other fisheries such as the highly migratory species recreational fishery or the pelagic longline fishery for tunas (by incidental swordfish permit holders).

In addition to the landings quota, ICCAT allocated to the United States 80 percent of the dead discard allowance (i.e., the U.S. share is 320 mt ww in 2000, 240 mt ww in 2001, and 160 mt ww in 2002). The dead discard allowance would be phased out by 2004. The United States would deduct any amount over its dead discard allowance from the U.S. landings quota in the following year. If the United States discards less than its share of the dead discard allowance, the remainder would be added to the total quota available for all fishing nations in subsequent years, and would be reallocated by ICCAT.

In 1998, the United States reported discarding 433 mt ww of dead swordfish in the North Atlantic Ocean. Assuming dead discards occur in proportion to landings, dead discards in 2000 might decrease to 411 mt ww commensurate with the decrease in landings quota (i.e., 5 percent less than 433 mt reported for 1998). This would result in an expected overharvest of the 2000 dead discard allowance by 91 mt ww. If discard rates remain proportional to the adjusted quota in 2001 and 2002, the dead discard allowance would be exceeded by 158 and 230 mt ww, respectively. These overages would require further reductions in the landings quotas and, combined with the initial quota reduction recommended by ICCAT (5 percent), might result in an actual decrease in landings of up to 10 percent by 2002 if the rate of discarding is not reduced (refer to the EA/RIR/IRFA for more details). However, NMFS has published a proposed rule that is designed to reduce dead discards, which should minimize the effects of the phase-out of the dead discard allowance.

The proposed regulatory changes in this rule would further ICCAT's international management objectives for the Atlantic swordfish fishery. NMFS has evaluated the proposed annual quota and the dead discard allowance in accordance with the procedures and factors specified in 50 CFR 635.27(c)(3), and has determined that the proposed measures are consistent with the latest stock assessment and recommendations of ICCAT.

Northern Albacore Rebuilding

In the October 1999 Report to Congress on the Status of U.S. Fisheries, NMFS identified the northern albacore tuna stock as overfished. Alternatives for developing a rebuilding plan for northern albacore are discussed in the EA/RIR/IRFA prepared for this proposed rule. The alternatives considered included no action, a ten-year international rebuilding program negotiated through ICCAT, and a unilateral U.S. action plan. NMFS requests comment on the albacore rebuilding alternatives.

Other ICCAT Issues

ICCAT adopted a number of other recommendations and resolutions at the 1999 meeting that will not require rulemaking but will require management action on the part of NMFS. These include a recommendation reiterating the limitation on fishing capacity of commercial vessels fishing for northern albacore, and a recommendation calling for the United States to endeavor to limit its total catch of southern albacore to no more than 4 percent by weight of its total catch of south Atlantic swordfish. Several other recommendations include provisions that request Contracting Parties to provide catch data or information related to vessel registration. ICCAT also adopted a non-binding resolution encouraging all parties to participate actively in efforts to combat illegal, unregulated and unreported fishing. NMFS intends to implement these measures through actions outside of the regulatory process and to provide ICCAT with all possible information that has been requested by the Commission.

Summary

NMFS proposes to implement ICCAT's 1999 recommendation of a North Atlantic swordfish U.S. quota of 2,219 mt dw for each year 2000, 2001, and 2002. The U.S. landings quota will remain constant for 2000, 2001, and 2002, but it is subject to adjustment between years (consistent with ICCAT recommendations) if the directed or incidental quota, or the dead discard allowance are exceeded or are not reached.

Consistent with the FMP, the directed fishery quota of 1919 mt dw would be divided into two semi-annual quotas: June 1—November 30 and December 1–May 31 (959.5 mt dw for each season). Following a closure of the directed longline fishery, any overharvest or underharvest would be added to, or subtracted from, the incidental quota of 300 mt dw for that year. Any cumulative overharvest/underharvest that occurs during any year would then be subtracted from/added to the following year's quota, consistent with the ICCAT recommendations.

A dead discard allowance would be established. Any discards in excess of the dead discard allowance would be subtracted from the directed quota for the following year.

Public Hearings

NMFS will hold public hearings in June 2000 to receive comments from fishery participants and other members of the public regarding these proposed amendments at the following times and locations:

Monday, June 5, 2000—Houma, LA, 7–9:30 p.m.

Holiday Inn Holidome, Houma, LA.

Tuesday, June 6, 2000—Fairhaven, MA, 7–9:30 p.m.

The Seaport Inn, 110 Middle Street, Fairhaven, MA 02719.

Thursday, June 8, 2000—Pompano, FL, 7–9:30 p.m.

Pompano Beach Civic Center, 1801 NE 6th Street, Pompano Beach, FL 33060.

Thursday, June 22, 2000—Panama City, FL, 7–9:30 p.m.

National Marine Fisheries Service, Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408.

Thursday, June 22, 2000—Barnegat Light, NJ, 7–9:30 p.m. Barnegat Light Firehouse, Barnegat, NJ 08006.

Special Accommodations

These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel Husted at (301) 713–2347 at least 5 days prior to the hearing date.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA (AA) has preliminarily determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

NMFS has prepared an IRFA for this proposed rule. A summary of the IRFA follows (see **ADDRESSES** for a copy of the IRFA):

The IRFA assumes that the population of small entities that would be affected by the rule are those fishermen issued limited access permits for swordfish. As of December 31, 1999, there were 450 directed and incidental swordfish permit holders and 118 swordfish handgear permit holders. The proposed quota reductions and implementation of the dead discard allowance would, in the short term, reduce ex-vessel swordfish revenues for a substantial portion of the swordfish fleet.

Assuming the lower quotas would result in equal reductions in swordfish catch for all vessels, the majority of the fleet would experience declines in revenue of between 1 and 4 percent by 2001. By 2002, about 78 percent of vessels would experience declines in gross revenues of between 1 and 4 percent, and about 30 percent of the fleet would experience revenue decreases of 5 percent or more. Several more vessels would be affected, and to a greater degree, if dead discards exceed the allowance, thereby making further reductions to the landings quota necessary. However, even without compensatory actions by vessel operators (e.g., increased yellowfin tuna fishing), no vessels are expected to experience revenue declines of 10 percent or more. To the extent that swordfish dead discards can be reduced and vessels can switch to tuna fishing, the projected revenue declines may be overestimated. Additionally, a current decrease in swordfish mortality is expected to contribute to stock rebuilding within a 10-year time frame. Thus, negative short-term impacts would yield revenue gains in the long run.

No mitigating measures specific to small businesses are considered feasible. Not implementing the quota reductions and the dead discard allowance at this time would maintain current catch levels only in the short term. Eventually, further decline in swordfish abundance would increase fishing costs (lower catch per unit effort/increased discards) and decrease revenues (lower total swordfish catch); thus, greater economic impacts would likely result from maintaining the status quo.

The other alternatives considered include only the status quo for the landings quota and not accounting for dead discards. No other alternatives were considered, because NMFS is required under ATCA to implement ICCAT recommendations upon acceptance by the United States. Although the status quo might have lesser short-term economic impacts on participants in the swordfish fishery, those alternatives do not support the rebuilding plan established by the FMP for Atlantic Tunas, Swordfish, and Sharks. The IRFA provides further discussion of the economic effects of the alternatives considered.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The proposed action would not impose any additional reporting or recordkeeping requirements subject to OMB approval under the Paperwork Reduction Act.

On November 19, 1999, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A new Biological Opinion (BO) will be issued in May 2000. The existing BO, dated May 29, 1999 concludes that continued operation of the longline component of the swordfish fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. A reduced landings quota could result in decreased fishing effort targeting swordfish, primarily by pelagic longline vessels. Depending on where and how that displaced effort shifts to other fisheries, interactions with protected species may be reduced. No irretrievable commitments of resources are expected from the proposed action.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Treaties.

Dated: May 18, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.27, paragraphs (c)(1)(i)(A) and (c)(3)(i) are revised, and paragraphs (c)(1)(i)(C) and (c)(3)(iii) are added to read as follows:

§ 635.27 Quotas.

* * * * *

(c) *Swordfish.* (1) * * *

(i) *North Atlantic swordfish stock.* (A) The directed fishery quota for the North Atlantic swordfish stock is 1919 mt dw for each fishing year beginning June 1, 2000. The annual directed fishery quota is subdivided into two equal semiannual quotas of 959.5 mt dw, one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

* * * * *

(C) The dead discard allowance for the north Atlantic swordfish stock is: 320 mt ww for the fishing year beginning June 1, 2000; 240 mt ww for the fishing year beginning June 1, 2001; and 160 mt ww for the fishing year beginning May 1, 2001. All swordfish discarded dead, regardless of whether discarded from vessels permitted under this part, shall be counted against the allowance.

* * * * *

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. NMFS will provide at least 30 days opportunity for public comment.

* * * * *

(iii) The dressed weight equivalent of the amount of dead discards exceeding the allowance specified at paragraph (c)(1)(i)(C) of this section shall be subtracted from the landings quota in the following fishing year. NMFS will file with the Office of the Federal Register for publication notification of any adjustment made under this paragraph.

[FR Doc. 00–13058 Filed 5–19–00; 4:21 pm]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 65, No. 101
Wednesday, May 24, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development, One Hundred and Thirty Second Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and thirty second meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:30 a.m. to 4:00 p.m. on June 8th, 2000, and from 9 a.m. to 12:40 p.m. on June 9th, 2000, in the Hemisphere A room in the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC.

As part of its agenda, BIFAD will look at the coming crisis in water and its implications for agriculture. BIFAD will also examine the food security crisis in the Horn of Africa, its political and agroclimatic underpinnings, food aid, post crisis development, and medium-term climate prediction. BIFAD will also hear about building new coalitions for foreign aid.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Mr. Charles Uphaus, the Acting Designated Federal Officer for BIFAD. He can be reached at the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–01, Washington DC, 20523–2110, by telephone at (202) 712–1172, by fax (202) 216–3060, or by e-mail at cuphaus@usaid.gov.

Charles Uphaus,

USAID Acting Designated Federal Officer for BIFAD, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs.

[FR Doc. 00–12999 Filed 5–23–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–380, Worksheet for Food Stamp Program Quality Control Reviews

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection of the FNS–380, Worksheet for Food Stamp Program Quality Control Reviews.

DATES: Written comments must be submitted on or before July 24, 2000.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Retha Oliver, Chief, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Retha Oliver, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Worksheet for Food Stamp Program Quality Control Reviews.

OMB Number: 0584–0074.

Form Number: FNS–380.

Expiration Date: January 31, 2003.

Type of Request: Revision of a currently approved collection.

Abstract: The Food Stamp Act of 1977, as amended, ("the Act") requires a measurement system that provides for State agencies to share in the costs of high error rates. Section 16 of the Act provides the legislative basis for the operation of the quality control (QC) system. Part 275, Subpart C of the Food Stamp Program (FSP) regulations provides the regulatory requirements for QC reporting. The Form FNS–380 is a worksheet used in the FSP to determine eligibility and benefits for households selected for review in the QC sample of active cases.

Burden Estimate: The reporting and record keeping burden for the Form FNS–380 includes the time for analyzing the household case record; planning and carrying out the field investigation; gathering, comparing, analyzing and evaluating the review data and filing any documents. The Office of Management and Budget (OMB) approved the burden for Form FNS–380 through January 31, 2003, under OMB number 0584–0074. An automated version of Form FNS–380, which will be optional for States to use, is scheduled to be completed October 1, 2000. The format and information gathered by the automated version of Form FNS–380 will be the same as the paper version of this form; therefore, there will be only a minimal difference in the burden for the electronic version from that of the paper version. We are requesting a three-year approval from OMB of the paper and automated versions of Form FNS–380.

Affected Public: Individuals or households; State or local governments.

Estimated Number of State Respondents: 53 State agencies.

Estimated Number of Affected Households: 54,663 households.

Estimated Total Number of Responses Per Year: 54,663 responses.

Estimated Time per Response for Information Collection: 9 hours.

Total Annual Burden: 491,967 hours.

Dated: May 14, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–13017 Filed 5–23–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Salt Lake City, Utah, June 22–24, 2000. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held June 22–24, 2000.

ADDRESSES: The meeting will be held at the Little America Hotel & Towers, 500 South Main Street, Salt Lake City, Utah. A tour of local projects will be held on June 22 from 9 a.m. to 2 p.m.

Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonora, CA 95370.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536–9201.

SUPPLEMENTARY INFORMATION: The Challenge Cost-Share Grant categories, identified by the Council, are advertised annually to solicit proposals for projects to advance the knowledge of, and promote interest in, urban and community forestry. Pursuant to 5 U.S.C. 552b(c)(9)(B), the meeting will be closed from approximately 8:30 a.m. to 10:30 a.m. on June 24 in order for the Council to determine the categories for the 2001 Challenge Cost-Share grant program. Otherwise, the meeting is open to the public.

Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by June 9 will have the opportunity to address the Council at those sessions. Council discussion is limited to Forest Service staff and Council members.

Dated: May 15, 2000.

Dan Glickman,

Secretary.

[FR Doc. 00–13073 Filed 5–23–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 051900A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Logbook Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0271.

Type of Request: Extension of currently approved collection.

Burden Hours: 1,705.

Number of Respondents: 86.

Average Hours Per Response: 13 minutes per day for logbooks from catcher and mothership vessels, 26 minutes per day for catcher-processor vessels, 30 minutes or 4.3 minutes per day for a weekly/daily production report, 20 minutes for a product transfer/offloading logbook, and 1.25 minutes for a start/stop notification.

Needs and Uses: The information is needed for the management of the Pacific Coast Groundfish Fishery in the Exclusive Economic Zone off the states of Washington, Oregon, and California. NOAA had proposed a regulation that would require logbooks and other reports from vessels participating in this fishery. Currently the vessels are asked to voluntarily submit much of the information. The information is used to monitor the status of the fishery.

Affected Public: Business and other for-profit institutions.

Frequency: Daily, weekly, quarterly, and on occasion (prior to certain events).

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 18, 2000.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–13080 Filed 5–23–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

May 18, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70222, published on December 16, 1999.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 18, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

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Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 24, 2000, you are directed to reduce the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
338	437,003 dozen.
339	1,810,088 dozen.
340	424,078 dozen.
341	272,561 dozen.
347/348/847	1,011,466 dozen.
351/851	94,415 dozen.
638/639/838	2,221,340 dozen.
647/648	738,104 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–12995 Filed 5–23–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974: System of Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of revised system of records, CFTC–35, Interoffice and Internet E-Mail.

SUMMARY: This notice revises CFTC–35, the Commission's systems of records under the Privacy Act of interoffice and Internet e-mail. The revisions reflect the changes in the maintenance of e-mail records brought about by a change in the agency's computer network. The changes are technical in nature and do not significantly affect the privacy expectations of the individuals on whom records are retrievable.

DATES: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Stacy Dean Yochum, Office of the Executive Director, (202) 418–5157, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, syochum@cftc.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 522a, and the Commission's implementing regulations, 17 CFR part 146, the Commission is publishing revisions to its system of records, CFTC–35, Interoffice and Internet E-Mail. The Commission's recent change in operating networks affected the location of the records and the categories of records in the systems, as well as the storage, safeguards, and retention and disposal of the records.

Accordingly, the Commission is giving notice of the following revisions to CFTC–35:

CFTC–35

SYSTEM NAME:

Interoffice and Internet E-Mail

SYSTEM LOCATION:

Mail servers in each system location (Washington, DC, Chicago, New York, and Los Angeles) retain records. Records are backed up nightly onto magnetic tape in all locations. In Washington, DC, the most recent two weeks of tapes are kept in locked boxes and tapes with information covering the prior two weeks are kept at an off-site storage facility. Tapes with information covering the most recent four-week period are kept on-site, in a secured area, in the Chicago, New York and Los Angeles locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees and on-site contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on the use of the interoffice and Internet e-mail system, including the mailbox name, number of objects in the mailbox, and aggregate size of the mailbox.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and section 12(b)(3) of the Commodity Exchange Act, 7 U.S.C. 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

The records are used by CFTC network administrators who have a need for the records in the performance of their duties. See also the Commission's "General Statement of Routine Uses," Nos. 1. and 2, Privacy Act Issuances, 1991 Comp., Vol. IV, p. 144. In addition, the records and data, other than the content of individual mailboxes, may also be disclosed as necessary to contractors as necessary for assessment, modification, or maintenance of the e-mail system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are stored on the mail servers in each CFTC location. Servers are backed up nightly to magnetic tape. In Washington, DC, the most recent two weeks of magnetic tape are kept in a locked box in the Computer Room and the prior two weeks are kept at an off-site storage facility. The entire four weeks of magnetic tape information is kept in unlocked boxes in a secured area in the Chicago, New York and Los Angeles locations.

RETRIEVABILITY:

The information can be retrieved by assigned interoffice or Internet mail address.

SAFEGUARDS:

Network administrators have access to the e-mail information. This access is generally limited to the "header" information described under "Categories of Records." In addition, the mailbox owner can grant access to objects in the mailbox to others. The tapes are kept in locked storage boxes in Washington, DC, and only network administrators and OIRM management have keys to the locked boxes. In the Chicago, New York and Los Angeles locations, tapes are kept in a secured area. Only designated office personnel have access to the secured area.

RETENTION AND DISPOSAL:

Records on magnetic tape are retained for four weeks, then destroyed as the tape is written over with new information. Records are retained on the mail servers until the sender and receiver delete the information from the e-mail system. Internet e-mail information that is received by the postmaster due to an error in delivery is considered temporary and is destroyed after the problem is corrected. When an employee leaves the Commission, the employee's mailbox is deleted unless the employee or the employee's administrative officer requests that the mailbox be retained in order to recover work-related information.

SYSTEM MANAGER AND ADDRESS:

Network Manager, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCESS:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORDS PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Internet e-mail, interoffice e-mail.

Issued in Washington, DC, on May 17, 2000.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–12920 Filed 5–23–00; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Rule Declaring Natural Rubber Latex a Strong Sensitizer; Extension of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of extension of comment period.

SUMMARY: The Commission is extending its comment period to receive information concerning a petition asking the Commission to declare natural rubber latex a strong sensitizer under the Federal Hazardous Substances Act ("FHSA"). In response to seven requests, the Commission is extending the comment period to allow submission of comments 30 days after the original comment period of May 22, 2000.

DATES: The Office of the Secretary should receive comments on the petition by June 21, 2000.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800; or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "Petition HP 00–2, Petition on Natural Rubber Latex." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the substance of the petition call or write to Suzanne Barone, Ph.D., Directorate for Health Sciences, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, extension 1196. For information about submitting comments call or write to Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: On March 21, 2000, the Commission published a notice announcing that it has docketed a petition asking that the Commission declare natural rubber latex ("NRL") a strong sensitizer and requesting comments on the petition. 65 FR 15133. The petitioner, Debi Adkins, editor of Latex Allergy News, asserts that a portion of the population is allergic to NRL and can become seriously ill after contact with consumer products that contain NRL. The March 21 **Federal Register** notice provided for a 60-day comment period to end May 22, 2000. The Commission has received seven requests to extend the comment period. Four letters requested a 30-day extension, two letters requested 60 days, and another asked for 90 days. After considering these requests, the Commission has decided to extend the comment period 30 days until June 21, 2000.[1]

The Commission will consider the comments received on the petition, as well as information presented by the staff, and will decide whether to grant or deny the petition. Should the Commission decide to grant the petition and begin a rulemaking proceeding, there would be another opportunity for the public to comment before the Commission could issue a rule declaring NRL a strong sensitizer.

Dated: May 18, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–12994 Filed 5–23–00; 8:45 am]

BILLING CODE 6355–01–P

[1] Chairman Ann Brown and Commissioner Mary Gall voted to extend the comment period 30 days. Commissioner Thomas Moore voted for a 60-day extension.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the revision of its AmeriCorps National Referral Card (OMB Control Number 3045–0004, with an expiration date of 8/31/2000). Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by July 24, 2000.

ADDRESSES: Send comments to the Corporation for National and Community Service, Attn: Noel McCaman, Director, AmeriCorps Recruitment Office, 1201 New York Avenue, NW., Suite 8711, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Noel McCaman, (202) 606–5000, ext. 443, or by e-mail at NMccaman@cns.gov.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including

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whether the information will have practical utility;

• Evaluate the accuracy of the agency?s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

The AmeriCorps National Referral Card is submitted by potential AmeriCorps members to the Corporation for National Service for input into a national recruitment referral database and the information provided is distributed to approved AmeriCorps programs. The programs then contact individuals who have completed the form and ask them to formally apply for AmeriCorps member positions.

Current Action

The Corporation seeks to revise the current AmeriCorps National Referral Card in order to determine:

(1) Citizenship or if applicant is a lawful permanent resident alien of the United States (a statutory requirement for participation in AmeriCorps);

(2) Knowledge of foreign languages. (The current card asks only about Spanish language skills);

(3) If the individual is interested in serving in a summer program; and

(4) The geographic area(s) in which the individual would prefer to serve.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps National Referral Card.

OMB Number: 3045–0004.

Agency Number: None.

Affected Public: Individuals and households.

Total Respondents: 100,000 (50,000 through the Corporation's 1–800 number, and 50,000 through the Corporation's website).

Frequency: One response per individual (optional collection).

Average Time Per Response: 3 minutes.

Estimated Total Burden Hours: 5,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $42,900—(1–800 number costs and $0.00 for the website).

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 19, 2000.

Noel V. McCaman,

Director of AmeriCorps Recruitment, Corporation for National and Community Service.

[FR Doc. 00–13082 Filed 5–23–00; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Navy

Availability of Government-Owned Inventions for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, VA 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

The following patents and patent applications are available for licensing:

Patent 5,926,507: QUOTIENT CODING MODEM; filed 8 July 1997; patented 20 July 1999.//

Patent 5,951,757: METHOD FOR MAKING SILICON GERMANIUM ALLOY AND ELECTRIC DEVICE STRUCTURES; filed 6 May 1997; patented 14 September 1999.//

Patent 5,960,732: LINE CHARGE DEPLOYMENT APPARATUS; filed 19 December 1997; patented 5 October 1999.//

Patent 5,961,661: CERAMIC STRUCTURE WITH BACKFILLED CHANNELS; filed 16 September 1998; patented 5 October 1999.//Patent 5,961,895: MULTI-STAGE-SYSTEM FOR MICROBUBBLE PRODUCTION; filed 19 June 1997; patented 5 October 1999.//

Patent 5,963,169: MULTIPLE TUBE PLASMA ANTENNA; filed 29 September 1997; patented 5 October 1999.//Patent 5,963,591: SYSTEM AND METHOD FOR STOCHASTIC CHARACTERIZATION OF A SIGNAL WITH FOUR EMBEDDED ORTHOGONAL MEASUREMENT DATA ITEMS; filed 13 September 1996; patented 5 October 1999.//Patent 5,963,887: APPARATUS FOR OPTIMIZING THE ROTATIONAL SPEED OF COOLING FANS; filed 12 November 1996; patented 5 October 1999.//

Patent 5,964,018: BELT REPAIR SYSTEM AND METHOD; filed 15 August 1997; patented 12 October 1999.//Patent 5,964,175: CONFORMAL DETACHABLE PLATFORM ARRAY; filed 25 September 1997; patented 12 October 1999.//

Patent 5,965,199: CORROSION-RESISTANT COATING PREPARED BY THE THERMAL DECOMPOSITION OF LITHIUM PERMANGANATE; filed 29 September 1997; patented 12 October 1999.//Patent 5,965,268: CARBON-BASED COMPOSITES DERIVED FROM PHTHALONITRILE RESINS; filed 26 June 1998; patented 12 October 1999.//

Patent 5,966,414: SYSTEM AND METHOD FOR PROCESSING SIGNALS TO DETERMINE THEIR STOCHASTIC PROPERTIES; filed 28 March 1995; patented 12 October 1999.//Patent 5,966,858: BAFFLED MUZZLE BRAKE AND SEAL SYSTEM FOR SUBMERGED GUN OPERATION; filed 23 March 1998; patented 19 October 1999.//

Patent 5,967,012: WASTE AEROSOL CONTAINER PROCESSOR; filed 19 November 1996; patented 19 October 1999.//

Patent 5,969,072: SILYL AND SILOXYL SUBSTITUTED CARBORANES WITH UNSATURATED ORGANIC END GROUPS; filed 27 February 1998; patented 19 October 1999.//Patent 5,969,244: SWITCH ASSEMBLY FOR WITHSTANDING SHOCK AND VIBRATION; filed 13 April 1998; patented 19 October 1999.//Patent 5,969,429: BREATHING APPARATUS HAVING ELECTRICAL POWER SUPPLY ARRANGEMENT WITH TURBINE-GENERATOR ASSEMBLY; filed 15 August 1997; patented 19 October 1999.//Patent 5,969,581: OPTO-ELECTRONICALLY CONTROLLED RF WAVEGUIDE; filed 28 May 1998; patented 19 October 1999.//Patent 5,969,608: MAGNETO-

INDUCTIVE SEISMIC FENCE; filed 23 February 1998; patented 19 October 1999.//Patent 5,969,978: READ/WRITE MEMORY ARCHITECTURE EMPLOYING CLOSED RING ELEMENTS; filed 30 September 1998; patented 19 October 1999.//

Patent 5,970,779: SYSTEM AND METHOD FOR CALIBRATING ACCELEROMETER OVER LOW(OCEAN WAVE) FREQUENCIES; filed 15 September 1997; patented 26 October 1999.//Patent 5,970,899: DIAGONAL HATCH SYSTEM FOR SHIPS; filed 14 August 1997; patented 26 October 1999.//

Patent 5,972,136: LIQUID PROPELLANT; filed 9 May 1997; patented 26 October 1999.//Patent 5,972,714: ATMOSPHERIC OZONE CONCENTRATION DETECTOR; filed 29 March 1996; patented 26 October 1999.//

Patent 5,973,051: MASS LOADED COATING AND METHOD FOR REDUCING THE RESONANT FREQUENCY OF A CERAMIC DISC; filed 27 September 1993; patented 26 October 1999.//Patent 5,973,653: INLINE COAXIAL BALUN-FED ULTRAWIDEBAND CORNU FLAREDORN ANTENNA; filed 31 July 1997; patented 26 October 1999.//Patent 5,973,824: AMPLIFICATION BY MEANS OF DYSPROSIUM DOPED LOW PHONON ENERGY GLASS WAVEGUIDES; filed 29 August 1997; patented 26 October 1999.//Patent 5,973,994: SURFACE LAUNCHED SONOBUOY; filed 20 April 1998; patented 26 October 1999.//

Patent 5,975,942: MECHANICAL STRAIN RELIEF; filed 19 September 1997; patented 2 November 1999.//

Patent 5,976,444: NANOCHANNEL GLASS REPLICA MEMBRANES; filed 24 September 1996; patented 2 November 1999.//

Patent 5,977,918: EXTENDIBLE PLANAR PHASED ARRAY MAST; filed 25 September 1997; patented 2 November 1999.//

Patent 5,978,646: METHOD AND APPARATUS FOR SIMULATING A LOFARGRAM IN A MULTIPATH SONAR SYSTEM; filed 10 July 1997; patented 2 November 1999.//Patent 5,978,647: METHOD AND APPARATUS FOR SIMULATING AUTOCORRELATION COEFFICIENTS IN A MULTIPATH SONAR SYSTEM; filed 10 July 1997; patented 2 November 1999.//Patent 5,978,834: PLATFORM INDEPENDENT COMPUTER INTERFACE SOFTWARE RESPONSIVE TO SCRIPTED COMMANDS; filed 30 September 1997; patented 2 November 1999.//

Patent 5,980,853: AROMATIC ACETYLENES AS CARBON PRECURSORS; filed 8 October 1998; patented 9 November 1999.//

Patent 5,981,297: BIOSENSOR USING MAGNETICALLY-DETECTED LABEL; filed 5 February 1997; patented 9 November 1999.//Patent 5,981,678: POLYMER PRECURSOR COMPOSITION, CROSSLINKED POLYMERS, THERMOSETS AND CERAMICS MADE WITH SILYL AND SILOXYL SUBSTITUTED CARBORANES WITH UNSATURATED ORGANIC END GROUPS; filed 27 February 1998; patented 9 November 1999.//

Patent 5,982,420: AUTOTRACKING DEVICE DESIGNATING A TARGET; filed 21 January 1997; patented 9 November 1999.//

Patent 5,983,067: METHOD AND APPARATUS FOR SIMULATING CROSS-CORRELATION COEFFICIENTS IN A MULTIPATH SONAR SYSTEM; filed 10 July 1997; patented 9 November 1999.//Patent 5,983,821: MULTILINE TOW CABLE ASSEMBLY INCLUDING SWIVEL AND SLIP RING; filed 12 August 1998; patented 16 November 1999.//

Patent 5,985,173: PHOSPHORS HAVING A SEMICONDUCTOR HOST SURROUNDED BY A SHELL; filed 18 November 1997; patented 16 November 1999.//Patent 5,985,523: METHOD FOR IRRADIATING PATTERNS IN OPTICAL WAVEGUIDES CONTAINING RADIATION SENSITIVE CONSTITUENTS; filed 9 September 1996; patented 16 November 1999.//

Patent 5,986,032: LINEAR METALLOCENE POLYMERS CONTAINING ACETYLENIC AND INORGANIC UNITS AND THERMOSETS AND CERAMICS THEREFROM; filed 14 March 1997; patented 16 November 1999.//Patent 5,986,757: CORRECTION OF SPECTRAL INTERFERENCES ARISING FROM CN EMISSION IN CONTINUOUS AIR MONITORING USING INDUCTIVELY COUPLED PLASMA ATOMIC EMISSION SPECTROSCOPY; filed 17 September 1997; patented 16 November 1999.//Patent 5,986,784: ADAPTIVE POLARIZATION DIVERSITY DETECTION SCHEME FOR COHERENT COMMUNICATIONS AND INTERFEROMETRIC FIBER SENSORS; filed 12 December 1994; patented 16 November 1999.//

Patent 5,987,362: FINAL APPROACH TRAJECTORY CONTROL WITH FUZZY CONTROLLER; filed 6 October 1997; patented 16 November 1999.//Patent 5,987,397: NEURAL NETWORK SYSTEM FOR ESTIMATION OF HELICOPTER GROSS WEIGHT AND CENTER OF GRAVITY LOCATION; filed 13 March 1998; patented 23 November 1999.//Patent 5,987,962: COPPER CRUSHER GAUGE HOLDER; filed 15 September 1997; patented 23 November 1999.//

Patent 5,989,087: LIDAR DETECTION USING SHADOW ENHANCEMENT; filed 18 March 1998; patented 23 November 1999.//

Patent 5,990,679: METHOD USING CORRECTIVE FACTORS FOR DETERMINING A MAGNETIC GRADIENT; filed 22 October 1997; patented 23 November 1999.//Patent 5,990,829: SPINNING FOCAL PLANE ARRAY CAMERA PARTICULARLY SUITED FOR REAL TIME PATTERN RECOGNITION; filed 3 July 1998; patented 23 November 1999.//

Patent 5,991,036: TWO-DIMENSIONAL OPTO-ELECTRONIC IMAGER FOR MILLIMETER AND MICROWAVE ELECTRO-MAGNETIC RADIATION; filed 30 September 1997; patented 23 November 1999.//Patent 5,991,537: VXI TEST EXECUTIVE; filed 16 September 1997; patented 23 November 1999.//Patent 5,991,815: METHOD OF SUPPLYING MULTIPLE LOADS FROM MULTIPLE SOURCES OVER AN INTERCONNECTED NETWORK OF DEFINED PATHS; filed 19 June 1997; patented 23 November 1999.//Patent 5,991,829: METHOD OF SENSING TARGET STATUS IN A LOCAL AREA NETWORK; filed 29 March 1994; patented 23 November 1999.//

Patent 5,992,077: NOSE CONE AND METHOD FOR ACOUSTICALLY SHIELDING AN UNDERWATER VEHICLE SONAR ARRAY; filed 18 March 1998; patented 30 November 1999.//Patent 5,992,226: APPARATUS AND METHOD FOR MEASURING INTERMOLECULAR INTERACTIONS BY ATOMIC FORCE MICROSCOPY; filed 8 May 1998; patented 30 November 1999.//Patent 5,992,584: DASHPOT FOR POWER CYLINDER; filed 26 March 1996; patented 30 November 1999.//

Patent 5,994,610: METHOD OF SUPPRESSING THERMITE REACTIONS IN PLASMA ARC WASTE DESTRUCTION SYSTEM; filed 8 May 1998; patented 30 November 1999.//Patent 5,994,884: BOOSTER CIRCUIT FOR FOLDBACK CURRENT LIMITED POWER SUPPLIES; filed 27 August 1998; patented 30 November 1999.//

Patent 5,995,803: METHOD AND APPARATUS FOR SIMULATING A

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MULTIPATH SONAR SYSTEM; filed 10 July 1997; patented 30 November 1999.//

Patent 5,996,401: LEAK TEST ADAPTER SYSTEM; filed 27 August 1998; patented 7 December 1999.// Patent 5,996,503: REUSABLE GAS-POWERED HAND GRENADE; filed 27 April 1998; patented 7 December 1999.//Patent 5,996,525: BELLMOUTH EXIT ANGLE ADAPTER; filed 6 July 1998; patented 7 December 1999.//Patent 5,996,630: SYSTEM FOR SUPPRESSING CAVITATION IN A HYDRAULIC COMPONENT; filed 18 March 1998; patented 7 December 1999.//

Patent 5,997,138: DIVER'S FACE MASK HAVING ASPHERIC, AFOCAL LENS SYSTEM PROVIDING UNIT MAGNIFICATION FOR USE AS A WINDOW BETWEEN AIR AND WATER; filed 20 July 1998; patented 7 December 1999.//

Patent 5,998,874: ULTRAHIGH DENSITY CHARGE TRANSFER DEVICE; filed 13 October 1994; patented 7 December 1999.//

Patent 5,999,212: METHOD AND APPARATUS FOR INFRARED DETECTION OF A MOVING TARGET IN THE PRESENCE OF SOLAR CLUTTER; filed 31 July 1997; patented 7 December 1999.//Patent 5,999,292: SAGNAC INTERFEROMETER AMPLITUDE MODULATOR BASED DEMULTIPLEXER; filed 20 February 1998; patented 7 December 1999.// Patent 5,999,893: CLASSIFICATION SYSTEM AND METHOD USING COMBINED INFORMATION TESTING; filed 2 May 1997; patented 7 December 1999.//

Patent 6,000,851: ADJUSTABLE ELECTRIC MOTOR BEARING SYSTEM; filed 10 December 1997; patented 14 December 1999.//

Patent 6,001,237: ELECTROCHEMICAL FABRICATION OF CAPACITORS; filed 2 December 1997; patented 14 December 1999.//Patent 6,001,587: CHEMICALLY SPECIFIC PATTERNING ON SOLID SURFACES USING SURFACE IMMOBILIZED ENZYMES; filed 8 April 1997; patented 14 December 1999.//Patent 6,001,715: NON-THERMAL PROCESS FOR ANNEALING CRYSTALLINE MATERIALS; filed 26 June 1996; patented 14 December 1999.//Patent 6,001,926: FIBER-REINFORCED PHTHALONITRILE COMPOSITE CURED WITH LOW-REACTIVITY AROMATIC AMINE CURING AGENT; filed 2 October 1997; patented 14 December 1999.//

Patent 6,002,649: TAPERED CYLINDER ELECTRO-ACOUSTIC TRANSDUCER WITH REVERSED TAPERED DRIVER; filed 16 September 1997; patented 14 December 1999.//Patent 6,002,914: METHOD AND APPARATUS FOR SIMULATING REVERBERATION IN A MULTIPATH SONAR SYSTEM; filed 10 July 1997; patented 14 December 1999.//

Patent 6,005,568: COMPUTER SYSTEM PROVIDING PLATFORM INDEPENDENT UNIVERSAL CLIENT DEVICE; filed 30 September 1997; patented 21 December 1999.//

Patent 6,006,145: METHOD AND APPARATUS FOR DIRECTING A PURSUING VEHICLE TO A TARGET WITH INTELLIGENT EVASION CAPABILITIES; filed 30 June 1997; patented 21 December 1999.//

Patent 6,007,278: DEVICE FOR MACHINING AN INTERIOR SURFACE OF A TUBULAR OBJECT; filed 5 September 1996; patented 28 December 1999.//Patent 6,007,926: PHASE STABILIZATION OF ZIRCONIA; filed 30 January 1997; patented 28 December 1999.//

Patent 6,008,641: METHOD USING CORRECTIVE FACTORS FOR ALIGNING A MAGNETIC GRADIOMETER; filed 22 October 1997; patented 28 December 1999.//

Patent 6,009,045: ADVANCED VERTICAL ARRAY BEAMFORMER; filed 13 August 1998; patented 28 December 1999.//Patent 6,009,185: NEURAL NETWORK BASED CONTACT STATE ESTIMATOR; filed 7 May 1996; patented 28 December 1999.//

Patent application 09/111,370: CLASSIFICATION OF IMAGES USING A DICTIONARY OF COMPRESSED TIME-FREQUENCY ATOMS; filed 30 June 1998.//

Patent application 09/287,170: FLOW RELEASE ELASTOMERIC EJECTION SYSTEM; filed 2 April 1999.//

Patent application 09/332,407: PRECISION HINGE MOUNTING STOPS; filed 14 June 1999.//Patent application 09/337,222: FLEXIBLE CABLE PROVIDING EMI SHIELDING; filed 7 June 1999.//Patent application 09/379,210: SYSTEM AND METHOD FOR DETECTION OF WHITE NOISE IN SPARSE DATA SETS; filed 20 August 1999.//

Patent application 09/435,832: OPTICAL FILTERS BASED ON UNIFORM ARRAYS OF METALLIC WAVEGUIDES; filed 8 November 1999.//

Patent application 09/448,765: INTEGRATED OBJECT-ORIENTED FRAMEWORK FOR MULTIPLE DATA TYPES; filed 24 November 1999.//

Patent application 09/450,439: PRODUCTION OF HOLLOW METAL MICROCYLINDERS FROM LIPIDS; filed 30 November 1999.//Patent application 09/451,718: ZEUS++ CODE TOOL, A METHOD FOR IMPLEMENTING SAME, AND STORAGE MEDIUM STORING COMPUTER READABLE INSTRUCTIONS FOR INSTANTIATING THE ZEUS++CODE TOOL; filed 1 December 1999.//Patent application 09/457,007: A TECHNIQUE FOR ESTIMATING THE POSE OF SURFACE SHAPES USING TRIPOD OPERATORS; filed 8 December 1999.//Patent application 09/457,521: METHOD AND DESIGN FOR THE SUPPRESSION OF SINGLE EVENT UPSET FAILURES IN DIGITAL CIRCUITS MADE FROM GAAS AND RELATED COMPOUNDS; filed 9 December 1999.//

Patent application 09/464,090: PENTACENE DERIVATIVES AS RED EMITTERS IN ORGANIC LIGHT EMITTING DEVICES; filed 16 December 1999.//

Patent application 09/476,332: AUTONOMOUS SURVEY SYSTEM (AUTO SURVEY); filed 3 January 2000.//Patent application 09/477,147: ENERGY ABSORBING COUNTERMASS ASSEMBLY; filed 5 January 2000.//Patent application 09/477,149: ROCKET MOTOR WITH DESENSITIZER INJECTOR; filed 4 January 2000.//Patent application 09/477,941: CHEMICAL AND BIOLOGICAL WARFARE DECONTAMINATING SOLUTION USING BLEACH ACTIVATORS; filed 5 January 2000.//

Patent application 09/480,422: DUAL ADJUSTING OVERRIDE PRECISION SWITCH ACTIVATOR; filed 10 January 2000.//Patent application 09/480,535: PARTICLE SIZING TECHNIQUE; filed 10 January 2000./ /Patent application 09/504,396: AIR SUPPLY SYSTEM PARTICULARLY SUITED TO REMOVE CONTAMINANTS CREATED BY CHEMICAL, BIOLOGICAL OR RADIOLOGICAL CONDITIONS; filed 15 February 2000.//

FOR FURTHER INFORMATION CONTACT: Mr. John G. Wynn, Associate Counsel, Intellectual Property, Office of Naval Research (Code 00CC), Arlington, VA 22217–5660, telephone (703) 696–4004.

(Authority: 35 U.S.C. 207; 37 CFR Part 404)

Dated: May 12, 2000.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–12999 Filed 5–23–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–355–002]

Baltimore Gas and Electric Company; Notice of Filing

May 18, 2000.

Take notice that on May 1, 2000, Baltimore Gas and Electric Company (BGE), and Columbia Gas Transmission Corporation (Columbia) separately filed reports to comply with a Commission order issued July 29, 1999, in Docket No. RP99–355–000. The filings report on the parties' efforts to develop an unbundling program with BGE that does not require waiver of the Commission's shipper must have title policy.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13011 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF00–2011–000]

United States Department of Energy—Bonneville Power Administration; Order Approving Rates on an Interim Basis and Providing Opportunity for Additional Comments

Issued May 19, 2000.

In this order, we approve the Bonneville Power Administration's (Bonneville) proposed rates on an interim basis, pending our full review for final approval. We also provide for an additional period of time for the parties to file comments.

Background

On March 21, 2000, the Bonneville Power Administration (Bonneville) filed a request for interim and final approval of an adjustment of its Firm Power Products and Services rate schedule (FPS–96R) in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)[1] and Subpart B of Part 300 of the Commission's regulations.[2] FPS–96R was previously approved by the Commission for a ten-year period through September 30, 2006.[3] The filing incorporates into FPS–96R seasonally and diurnally adjusted rates for the capacity without energy product; the rates were inadvertently omitted when the rate schedule was originally adopted. Bonneville contends that the purpose of this filing is to allow Bonneville to recover the costs that are incurred by Bonneville offering this product, as the inadvertent omission could distort the revenue requirements already adopted by the Commission. Bonneville states that no other aspect of FPS–96R is being adjusted, and it otherwise continues in full force and effect through September 30, 2006.

In accordance with the statutory procedure,[4] Bonneville seeks interim approval of its rates, effective May 1, 2000, pending Commission consideration of whether to approve the rates on a final basis. Bonneville requests approval of the modification of the FPS–96R rate for the period beginning May 1, 2000, through September 30, 2006.

Notice of Filing and Interventions

Notice of Bonneville's filing was published in the Federal Register, 65 Fed. Reg. 19,370 (2000), with comments, protests, or motions to intervene due on or before April 20, 2000.

Goldendale Aluminum Company, Northwest Aluminum Company, Reynolds Metals Company, Kaiser Aluminum & Chemical Corporation, and Elf Atochem, North America (the Aluminum Companies) jointly filed a timely motion to intervene, raising no substantive issues.

Southern California Edison Company (SoCal Edison) filed a timely motion to intervene and protest. SoCal Edison requests that Bonneville's filing be rejected and that interim approval of the rate be denied. SoCal Edison argues that there is no evidence supporting the filing and that Bonneville has failed to comply with the applicable provisions of the Northwest Power Act. SoCal Edison further opposes Bonneville's request for waiver of the filing requirements and the 60-day prior notice requirement of the Commission's regulations. In the alternative, SoCal Edison requests that the Commission deny Bonneville interim approval of the proposed rate, suspend the proposed rate and set this matter for an evidentiary hearing.

SoCal Edison disputes both the procedure by which Bonneville developed the rate and the procedures it has followed in this processing. SoCal Edison states that the methodology used by Bonneville in developing the proposed rate is inconsistent with Bonneville's general obligations to set rates having regard to the recovery of the cost of generation and transmission, to encourage the most widespread use of Bonneville power, and to set rates at the lowest possible rates to consumers. SoCal Edison asserts that the proposed rate is not based upon the actual costs of generation and transmission incurred by Bonneville. Instead, SoCal Edison asserts, Bonneville has proposed a rate supposedly based upon the market even though, by the testimony of its own witness, no market exists.[5] SoCal Edison argues that Bonneville's methodology used in developing this market rate is not supported by credible data or analyses and is inconsistent with the methodology used in developing either market-based rates or cost-based rates in both the 1996 general rate proceeding and the general rate proceeding that

[1] Sections 7(a)(2) and 7(i)(6) of the Northwest Power Act, 16 USC §§ 839e(a)(2) and 839e(i)(6) (1994).

[2] 18 C.F.R. Part 300 (1999).

[3] *See* United States Department of Energy—Bonneville Power Administration, 80 FERC ¶ 61,118 (1997).

[4] Sections 7(a)(2) and 7 (i)(6), 16 U.S.C. §§ 839e(a)(2) and 839e(i)(6) (1994).

[5] SoCal Edison cites to the Cross-Examination Testimony of Gary Bolden, Tr. at 146, lines 6–11.

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Bonneville initiated concurrently with the FPS–96R expedited proceeding.

Bonneville filed an answer to SoCal Edison's motion to intervene and protest. Bonneville states, among other things, that it has no objection to a proposed effective date of May 22, 2000. SoCal Edison filed a reply to Bonneville's answer on May 12, 2000.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (1996), the timely and unopposed motions to intervene to the Aluminum Companies and SoCal Edison serve to make them parties to this proceeding.

Rule 213 of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2), (1999), prohibits answers unless otherwise permitted by decisional authority. We find good cause to allow part of Bonneville's answer, that pertaining to the issue of the effective date, because it provides additional information that assists us in the decision-making process. We will, however, reject that the remainder of Bonneville's answer and SoCal Edison's reply as an impermissible answer to a protest and an answer to an answer, respectively, because they deal with issues other than the effective date.

Standard of Review

Under the Northwest Power Act, the Commission's review of Bonneville's regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2):

(1) They must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs;

(2) They must be based upon the Administrator's total system costs; and

(3) Insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.[6]

Commission review of Bonneville's non-regional, nonfirm rates also is limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Power Act,[7] which requires that they comply with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act (Transmission System Act). Taken together, those statutes require Bonneville to design its non-regional, nonfirm rates:

(1) To recover the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period;

(2) To encourage the most widespread use of Bonneville power; and

(3) To provide the lowest possible rates to consumers consistent with sound business principles.

Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under sections 7(a) and 7(k) of the Northwest Power Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville's Administrator. The rates are then submitted to the Commission for approval or disapproval. In this regard, the Commission's role can be viewed as an appellate one: to affirm or remand the rates submitted to it for review.[8]

Moreover, review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before the Commission in this filing, and the limited period in advance of the requested effective date in which to review the application,[9] the Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation. Thus, the proposed rates, if not patently deficient, generally are approved on an interim basis and the parties are afforded an additional opportunity in which to raise issues with regard to Bonneville's filing.[10]

Interim Approval

SoCal Edison argues that Bonneville violated the procedural requirements of section 7(i) of the Northwest Power Act in proposing these rates. The Commission, however, does not review purported deficiencies in the Administrator's compliance with the procedural requirements of the Act.[11]

In addition, we are unpersuaded that the arguments of SoCal Edison justify summary rejection of the filing or refusal to approve these rates on an interim basis. We believe, rather, that these issues should be addressed in the course of our final review of these rates. At that time, intervenors may challenge the assumptions underlying Bonneville's filing. Moreover, intervenors will be protected by an express condition that the interim rates will be collected subject to refund with interest.[12]

In its transmittal letter, Bonneville requests interim approval of its proposed FPS-96R rate adjustment effective May 1, 2000; however, the transmittal letter does not include a request for waiver of the Commission's 60-day prior notice requirement to permit a May 1, 2000 effective date or any justification for such waiver. SoCal Edison points out that the draft notice filed by Bonneville with the Commission states that Bonneville is requesting an effective date of May 19, 2000, which date is 60 days after the date of Bonneville's transmittal letter, and which appears to be Bonneville's attempt to design an effective date that complies with the 60-day prior notice requirement. SoCal Edison requests that Bonneville's request for a May 19, 2000 effective date be rejected because the 60th day would be May 20, 2000, and a request for waiver should be filed for any date prior to May 21, 2000. SoCal Edison adds that Bonneville did not request such a waiver, nor did Bonneville show any good cause for the waiver. In its answer, Bonneville states that it simply miscalculated the number of days, and inadvertently requested to have the effective date occur on the 59th day. Bonneville states that it has no objection to changing the proposed effective date to Monday, May 22, 2000. Accordingly, we will accept Bonneville's proposed rate schedule to become effective on May 22, 2000.

The Commission's preliminary review indicates that the filing appears to meet the minimum threshold filing requirements of Part 300 of the Commission's regulations and the statutory standards. Because the Commission's preliminary review of Bonneville's submittal indicates that it does not contain any patent deficiencies, the proposed rates will be approved on an interim basis pending our full review for final approval.

In addition, we will provide an additional period of time for the parties to file comments and reply comments on all issues related to final confirmation and approval of Bonneville's proposed rates.

The Commission Orders:

(A) SoCal Edison's request to reject Bonneville's request for interim approval of the proposed rates is hereby denied.

(B) SoCal Edison's motion for summary rejection of the filing is hereby denied.

(C) Interim approval of Bonneville's proposed FPS–96R rate schedule is hereby granted, to become effective on May 22, 2000, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations, 18 CFR 300.20(c) (1999), pending final action on either its approval or disapproval.

(D) Within thirty (30) days of the date on the date of this order, all parties who wish to do so may file additional comments regarding final confirmation and approval of Bonneville's proposed rates. All parties who wish to do so may file reply comments within twenty (20) days thereafter.

(E) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13050 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–M

[6] 16 U.S.C. § 839e(a)(2) (1994). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

[7] 16 U.S.C. § 839e(k) (1994).

[8] *E.g.*, United States Department of Energy—Bonneville Power Administration, 67 FERC ¶ 61,351 at 62,216–17 (1994); *see also, e.g.*, Aluminum Company of America v. Bonneville Power Administration, 903 F.2d 585, 592–93 (9th cir. 1989), and cases cited therein.

[9] *See* 18 CFR § 300.10(a)(3)(ii) (1996).

[10] *See, e.g.*, United States Department of Energy—Bonneville Power Administration, 64 FERC ¶ 61,375 at 63,606 (1993); United States Department of Energy—Bonneville Power Administration, 40 FERC ¶ 61,351 at 62,059–60 (1987).

[11] *See* U.S. Department of Energy—Bonneville Power Administration, 28 FERC ¶ 61,078 at 61,146–47 and 61,148 n.2 (1984).

[12] 18 CFR § 300a.20(c) (1999).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–364–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Application

May 18, 2000.

Take notice that on May 11, 2000, Kinder Morgan Interstate Transmission LLC (Kinder Morgan), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP00–364–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline compression facilities located in Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Kinder Morgan proposes to abandon by removal a 500 horsepower compressor unit at the Stockton Compressor Station in Rooks County, Kansas. Kinder Morgan states that this unit has not been used since 1985 because of declining gas reserves in the area. Kinder Morgan proposes to abandon by removal 6 compressor units totaling 6,950 horsepower at the Palco Compressor Station also located in Rooks County, Kansas. It is asserted that the compressor station has not been used since February 1988, also due to declining gas reserves in the area. Kinder Morgan proposes to abandon in place 3 compressor units at the Lakin Compressor Station located in Kearny County, Kansas. It is stated that these units, one 1,100 horsepower unit, and two 1,600 horsepower units, have not been utilized since July 1995 because of reduced gas production in the Hugoton Field.

Kinder Morgan estimates the cost of retiring the facilities at $716,000 and the salvage value at $25,000. It is asserted that the proposed abandonments will not negatively impact gas flows or the ability to render transportation service on Kinder Morgan's system. It is further asserted that the abandonments will not require any change in Kinder Morgan's FERC Gas Tariff.

Any questions regarding the application should be directed to B.J. Becker, Assistant General Counsel, at (303) 763–3496, Kinder Morgan Interstate Gas LLC, P.O. Box 281304, Lakewood, Colorado 80228–8304.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 14, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Kinder Morgan to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13009 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–285–000]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 18, 2000.

Take notice that on May 15, 2000 Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, Forty-Eighth Revised Sheet No. 5, proposed to be effective July 1, 2000.

Northwest Alaskan states that the instant filing is submitted pursuant to Section 4 of the Natural Gas Act, Section 9 of the Alaskan Natural Gas Transportation Act of 1976 and Part 154 of the Federal Energy Regulatory Commission's Regulations. Northwest Alaskan is submitting this filing pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Pan-Alberta Gas (U.S.), Inc. (PAG–US), and pursuant to Rate Schedules X–1, X–2, and X–3, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 2000 through December 31, 2000) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that included in Appendix B attached to the filing are the workpapers supporting the derivation of the revised demand charge adjustment reflected on the tariff sheet included therein.

Northwest Alaskan states that it is serving copies of the instant filing to its affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

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Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13012 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1499–003, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Regulation Filings

May 15, 2000.

Take notice that the following filings have been made with the Commission:

1. California Independent System Operator Corporation

[Docket No. ER98–1499–003]

Take notice that on May 11, 2000, the California Independent System Operator Corporation, tendered for filing numerous Meter Service Agreements for acceptance by the Commission. The purpose of the filing is to comply with the Commission's Letter Order of February 24, 2000.

The ISO states that this filing has been served on the persons listed on the official service list in Docket Nos. ER98–1499–000, et al. and the California Public Utilities Commission.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. California Power Exchange Corporation

[Docket No. ER00–1642–001]

Take notice that on May 10, 2000, California Power Exchange Corporation (CalPX), on behalf of its CalPX Trading Services Division (CTS), tendered for filing revised pages of the CTS Rate Schedule FERC No. 1 in compliance with the April 25, 2000 order in this docket. The April 25, 2000 order (1) permitted CTS to add delivery locations and delivery periods on an experimental basis for one year without making a Section 205 filing and (2) required CTS to limit the scope of its filing to ancillary services as opposed to a broader range of services called "energy related products."

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. New Century Services, Inc.

[Docket No. ER00–2421–000]

Take notice that on May 5, 2000, New Century Services, Inc., on behalf on Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (the companies), tendered for filing a service agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and PPL Montana LLC.

Comment date: May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER00–2446–000]

Take notice that on May 8, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Louisiana, Inc. (Entergy Louisiana), Entergy Mississippi Inc. (Entergy Mississippi), Entergy New Orleans, Inc. (Entergy New Orleans), tendered for filing nineteen Notices of Cancellation for certain service schedules of affected agreements as well as for the agreements in their entirety. These agreements were established in the following Docket Numbers: OA97–270–000, OA97–327–000, OA97–328–000, OA97–329–000, OA97–331–000, OA97–332–000, OA97–335–000, OA97–336–000, OA97–338–000, OA97–339–000, OA97–340–000, OA97–344–000, OA97–345–000, OA97–349–000, OA97–350–000, OA97–351–000, OA97–354–000, OA97–528–000 and OA97–555–000.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Indianapolis Power & Light Company

[Docket No. ER00–2447–000]

Take notice that on May 9, 2000, Indianapolis Power & Light Company tendered for filing a Remote Control Operating Agreement between West Fork Land Development Company, L.L.C., and Indianapolis Power & Light Company in the above-captioned docket.

Copies of this filing were served on West Fork Land Development Company, L.L.C.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. LSP-Nelson Energy, LLC

[Docket No. ER00–2448–000]

Take notice that on May 9, 2000, LSP-Nelson Energy, LLC (LSP-Nelson) tendered for filing an initial rate schedule and request for certain waivers and authorizations pursuant to Section 35.12 of the regulations of the Federal Energy Regulatory Commission (the Commission). The initial rate schedule provides for the sale to wholesale purchasers at market-based rates of the output of an electric power generation facility to be developed by LSP-Nelson in Nelson Township, Lee County, Illinois (the Facility).

LSP-Nelson requests that the Commission accept the rate schedule for filing, to become effective as of the date that service commences at the Facility.

A copy of the filing was served upon the Illinois Commerce Commission.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Services Company

[Docket No. ER00–2449–000]

Take notice that on May 10, 2000, Ameren Services Company (ASC), tendered for filing an Interconnection Agreement between ASC and Ameren Energy Generating Company (AEGC). ASC asserts that the purpose of the Agreement is to establish terms and conditions under which AEGC must operate its facility in Jasper County, Illinois in parallel with Ameren's transmission system.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Ameren Services Company

[Docket No. ER00–2450–000]

Take notice that on May 10, 2000, Ameren Services Company (ASC), tendered for filing an Interconnection Agreement between ASC and Ameren Energy Generating Company (AEGC). ASC asserts that the purpose of the Agreement is to establish terms and conditions under which AEGC must operate its facility in Crawford County, Illinois in parallel with Ameren's transmission system.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER00–2451–000]

Take notice that on May 10, 2000, Ameren Services Company (ASC), tendered for filing an Interconnection Agreement between ASC and Ameren Energy Generating Company (AEGC). ASC asserts that the purpose of the Agreement is to establish terms and conditions under which AEGC must operate its facility in Morgan County, Illinois in parallel with Ameren's transmission system.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER00–2452–000]

Take notice that on May 10, 2000, Ameren Services Company (ASC), tendered for filing an Interconnection Agreement between ASC and Ameren Energy Generating Company (AEGC). ASC asserts that the purpose of the Agreement is to establish terms and conditions under which AEGC must operate its facility in Jackson County, Illinois in parallel with Ameren's transmission system.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER00–2453–000]

Take notice that on May 10, 2000, Ameren Services Company (ASC), tendered for filing an Interconnection Agreement between ASC and Ameren Energy Generating Company (AEGC). ASC asserts that the purpose of the Agreement is to establish terms and conditions under which AEGC must operate its facility in Montgomery County, Illinois in parallel with Ameren's transmission system.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER00–2454–000]

Take notice that on May 10, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing unexecuted firm Transmission Service Agreements between: (1) Wisconsin Electric and Wisconsin Public Service Corporation (WPSC); and (2) Wisconsin Electric and Madison Gas & Electric Company (MG&E) (MG&E and WPSC are individually referred to as the Transmission Customer). The Transmission Service Agreements provide firm point-to-point transmission service to the Transmission Customer under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with the commercial in-service date of MG&E's M34 generating resource. Wisconsin Electric also requests waiver of the Commission's notice requirements because the in-service date of the M34 generating resource is anticipated to be in early May, 2000. Additionally, Wisconsin Electric has filed a motion to consolidate the above-referenced docket with Docket No. ER00–2158–000.

Copies of the filing have been served on Madison Gas & Electric, Wisconsin Public Service Corporation, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. New Century Services, Inc.

[Docket No. ER00–2455–000]

Take notice that on May 10, 2000, New Century Services, Inc. (NCS), on behalf of Southwestern Public Service Company (SPS), tendered for filing the Interconnection Agreement between Sunflower Electric Power Corporation (Sunflower) and SPS. NCS states that the primary purpose of the Interconnection Agreement is to set out the terms and conditions governing an interconnection to be constructed between the SPS and Sunflower systems.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. The Detroit Edison Company

[Docket No. ER00–2456–000]

Take notice that on May 10, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and Conectiv Energy Supply, Inc.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Consumers Energy Company

[Docket No. ER00–2457–000]

Take notice that on May 10, 2000, Consumers Energy Company (Consumers), tendered for filing executed service agreements for unbundled wholesale power service with Coral Power, L.L.C. and British Columbia Power Exchange Corporation pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000.

Copies of the filing have been served on the Michigan Public Service Commission and the customers under the respective service agreements.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Carolina Power & Light Company

[Docket No. ER00–2458–000]

Take notice that on May 10, 2000, Carolina Power & Light Company (CP&L), tendered for filing an executed Power Sales Agreement with Duke Power under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4.

CP&L is requesting an effective date of July 1, 2000 for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. PPL Utilities

[Docket No. ER00–2459–000]

Take Notice that on May 10, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.)(PPL), tendered for filing a Service Agreement dated April 26, 2000, with City of Vineland, New Jersey (Vineland) under PPL's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Vineland as an eligible customer under the Tariff.

PPL requests an effective date of May 10, 2000, for the Service Agreement.

PPL states that copies of this filing have been supplied to Vineland and to the Pennsylvania Public Utility Commission.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk

[Docket No. ER00–2460–000]

Take notice that on May 10, 2000, Niagara Mohawk, tendered for filing with the Federal Energy Regulatory Commission an executed letter agreement as a supplement to a Transmission Service Agreement between Niagara Mohawk and American Municipal Power-Ohio, Inc., designated

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as Rate Schedule No. 140. This letter agreement extends the termination date of Rate Schedule No. 140.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and American Municipal Power-Ohio, Inc.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company and Commonwealth Edison Company of Indiana

[Docket No. ER00–2461–000]

Take notice that on May 10, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing an amendment to ComEd's OATT so as to remove time frames set forth in ComEd's Form of Service Agreement for Short-Term Firm Point-to-Point Transmission Service (Form of Service Agreement) that are inconsistent with the reservation timing requirements adopted by the Commission on February 25, 2000 in its "Open Access Same-Time Information System and Standards of Conduct, Order No. 638," Docket No. RM95–9–003, FERC Regulations Preambles ¶ 31,093 (Order No. 638). Accordingly, ComEd is amending the Form of Service Agreement to provide that Transmission Customers must confirm accepted requests for service within the reservation timing requirements found in the Business Practice Standards for Open Access Same-Time Information System (OASIS) Transactions document adopted by the Commission. ComEd is also updating the Form of Service Agreement to reflect personnel changes.

ComEd requests an effective date of May 30, 2000 to coincide with the effective date of Order No. 638 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served upon ComEd's jurisdictional customers and interested state commissions.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Cleco Utility Group Inc.

[Docket No. ER00–2462–000]

Take notice that on May 10, 2000, Cleco Utility Group Inc. (Cleco), tendered for filing proposed changes in its Rate Schedule FERC No. 13, which would amend its Electric System Interconnection Agreement with Louisiana Generating LLC.

The proposed rate change amends and adds stated points of delivery under the Electric System Interconnection Agreement between Cleco and Louisiana Generating LLC.

Copies of the filing were served upon the Louisiana Generating LLC and the Louisiana Public Service Commission.

21. Entergy Services, Inc.

[Docket Nos. OA97–337–001, OA97–342–001, OA97–346–001, OA97–348–001, OA97–570–001, OA97–574–001, OA97–614–001, OA97–625–001, OA97–627–001, OA97–632–001 and OA97–646–001]

Take notice that on May 8, 2000, Entergy Services, Inc. filed with the Federal Energy Regulatory Commission (Commission) a compliance report in compliance with the Commission's order in Allegheny Power Service Co., et al., 90 FERC ¶ 61,224 (2000).

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13007 Filed 5–23–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–86–000, et al.]

DTE Energy Company, et al.; Electric Rate and Corporate Regulation Filings

May 16, 2000.

Take notice that the following filings have been made with the Commission:

1. DTE Energy Company, The Detroit Edison Company, International Transmission Company

[Docket No. EC00–86–000]

Take notice that on May 4, 2000, DTE Energy Company, The Detroit Edison Company and International Transmission Company filed a joint application for authorization to transfer jurisdictional transmission assets pursuant to Section 203 of the Federal Power Act.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Adirondack Hydro Development Corporation, Hudson Falls, LLC

[Docket No. EC00–88–000]

Take notice that on May 8, 2000, Adirondack Hydro Development Corporation and Hudson Falls, LLC, tendered for filing a joint application under Section 203 of the Federal Power Act for authorization to sell half of their limited and general partnership interests in Northern Electric Power Co., L.P. (Northern) to Bloomfield Hudson Falls, Inc. Northern is a public utility that owns a 36.1 MW qualifying facility located in upstate New York.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. LSP-Nelson Energy, LLC

[Docket No. EG00–147–000]

Take notice that on May 9, 2000, LSP-Nelson Energy, LLC (Applicant), a Delaware limited liability company with a principal place of business at Two Tower Center, 20th Floor, East Brunswick, New Jersey 08816, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The Applicant will begin constructing a natural gas-fired combined cycle electric generation facility with a nominal capacity of approximately one thousand one hundred (1,100) megawatts in Nelson Township, Lee County, Illinois (the Facility). The Facility is scheduled to commence commercial operation in the Spring of 2003. The Applicant is engaged directly, or indirectly through one or more affiliates as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy from the Facility at wholesale.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Midwest Electric Power, Inc.

[Docket No. EG00–149–000]

Take notice that on May 11, 2000, Midwest Electric Power, Inc. (MEP), 2100 Portland Road, P.O. Box 165, Joppa, IL 62953 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

MEP is a wholly-owned subsidiary of Electric Energy, Inc. (EEInc.), which owns and operates a coal-fired generating plant in Joppa, IL. MEP intends to own and/or operate combustion turbines with a total generating capacity of approximately 260 MW to be located at the site of the existing EEInc. generating facilities. All of the capacity and energy available from those units will be sold at wholesale.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Williams Flexible Generation, LLC

[Docket No. EG00–150–000]

Take notice that on May 11, 2000, Williams Flexible Generation, LLC (WFG) tendered for filing pursuant to Part 365 of the Commission's Regulations (18 CFR 365), its application for determination of exempt wholesale generator status.

WFG is a wholly owned subsidiary of Williams Distributed Power Services, Inc. and initially will own the "Georgia Project," which consists of generating units at eighteen separate sites, as follows: DeWitt, located in Brooks County, Georgia; Bryant, located in Tift County, Georgia; Farmer's Gin, located in Colquitt County, Georgia; Doerun, located in Colquitt County, Georgia; Moultrie Station, located in Colquitt County, Georgia; Dublin, located in Laurens County, Georgia; Danville, located in Twiggs County, Georgia; Wrens, located in Jefferson County, Georgia; Louisville, located in Jefferson County, Georgia; Hammonds Crossing, located in Gwinnett County, Georgia; Highway 141, located in Gwinnett County, Georgia; Highway 20, located in Gwinnett County, Georgia; Baker Highway, located in Coffee County, Georgia; Pine Grove, located in Appling County, Georgia; Hawkinsville #1, located in Pulaski County, Georgia; Bratcher Creek, located in Dooly County, Georgia; Smith, located in Barrow County, Georgia; and Walnut Grove, located in Walton County, Georgia.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Ameren Energy Development Company

[Docket No. EG00–151–000]

Take notice that on May 11, 2000, Ameren Energy Development Company (Development Co.), c/o Ameren Services, 1901 Chouteau Avenue, St. Louis, MO 63166, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Development Co. is the corporate parent of Ameren Energy Generating Company (Generating Co.), a generation-only company which recently acquired five electric generating stations from Central Illinois Public Service Company (AmerenCIPS) with approximately 2900 MW of generating capacity. In addition to owning the common stock of Generating Co., Development Co. will acquire and finance certain new combustion turbine generators to be owned and operated by Generating Co. All of the capacity and energy available to Generating Co. is sold exclusively to wholesale purchasers.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Ameren Services Company

[Docket No. ER00–1762–001]

Take notice that on May 11, 2000, Ameren Services Company (ASC), tendered for filing an executed Network Integration Transmission Service Agreement and an executed Network Operating Agreement, between ASC and the City of Fredericktown. ASC asserts that the purpose of the agreements is to permit ASC to provide service over its transmission and distribution facilities to the City of Fredericktown pursuant to the Ameren Open Access Tariff. The executed agreements supersede an unexecuted Network Service Agreement and an unexecuted Network Operating Agreement previously filed on March 1, 2000.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. NorthWestern Public Service, a division of NorthWestern Corporation

[Docket No. ER00–2464–000]

Take notice that on May 11, 2000, NorthWestern Public Service, division of NorthWestern Corporation, tendered for filing a Petition under Commission Rules 205 and 207 and 35.14 of the Regulations of the Commission under the Federal Power Act, requesting that the Commission enter its order adopting the plan for Arbitration Case damage and interest crediting to NorthWestern's wholesale electric customers through NorthWestern's adjustment clause and waiving any provisions of such adjustment clause that might be inconsistent with such crediting plan. NorthWestern proposes to credit $5,860.58 to its wholesale electric customers in the State of South Dakota, representing arbitration award damages and interest, less certain costs incurred by NorthWestern in obtaining such damages and other coal agreement contract changes.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Western Resources, Inc.

[Docket No. ER00–2465–000]

Take notice that on May 11, 2000, Western Resources, Inc., tendered for filing a change to Service Schedule 6 under its FERC Electric Tariff, Original Volume No. 1. Western Resources states that the change is to realign transmission capacity available to Oklahoma Municipal Power Authority.

Notice of the filing has been served upon Oklahoma Municipal Power Authority and the Kansas Corporation Commission.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER00–2466–000]

Take notice that on May 11, 2000, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the fully executed to Amendment No. 3 to Contract No. 91–SAO–30005 between PacifiCorp and Western Area Power Administration.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

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Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER00–2467–000]

Take notice that on May 11, 2000, Commonwealth Edison Company (ComEd) tendered for filing four Non-Firm Transmission Service Agreements with the City of St. Charles, Illinois (St. Charles), the City of Batavia, Illinois (Batavia), InPower Marketing Corp. (IPMC), and Dynegy Energy Services, Inc. (DESY), and four Short-Term Firm Transmission Service Agreements with DESY, Merchant Energy Group of the Americas, Inc. (MEGA), NewEnergy, Inc. (NEI), and IPMC under the terms of ComEd's Open Access Transmission Tariff (OATT). ComEd requests that the Commission substitute the Service Agreement with MEGA for the unexecuted agreement with MEGA previously filed under the OATT in Docket No. ER00–2260–000 on April 21, 2000.

ComEd also submits for filing an updated Index of Customers reflecting the addition of St. Charles, Batavia, IPMC, DESY, and NEI, and name changes for current customers PP&L, Inc, renamed PPL Electric Utilities Corporation d/b/a PPL Utilities (PPL); PP&L EnergyPlus Co, LLC, renamed PP&L EnergyPlus LLC. (EPLUS).

ComEd requests an effective date of and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served on St. Charles, Batavia, IPMC, DESY, MEGA, NEI, PPL and EPLUS.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER00–2468–000]

Take notice that on May 11, 2000, Portland General Electric Company (PGE), on May 9, 2000, tendered for filing proposed changes in its FERC Electric Service Tariff No. 11 to reflect its affiliation with PG&E Energy Services Corporation (PG&E ES). PGE also filed a revised Code of Conduct that will generically restrict the relationship of PGE with all of its affiliates with market-based rate authority, including PG&E ES.

Copies of the filing were served upon the Oregon Public Utility Commission, the California Public Utility Commission, the California Independent System Operator Corporation, and PG&E Energy Services Corporation.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Services Company

[Docket No. ER00–2471–000]

Take notice that on May 9, 2000, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate, The Connecticut Light and Power Company (CL&P), tendered for filing Notice of Cancellation of the Federal Energy Regulatory Commission (FERC) rate schedules and supplements thereto for Unit Contract Connecticut Yankee, Rate Schedule FERC No. CL&P 225, by and between CL&P and the Connecticut Municipal Electric Energy Cooperative (CMEEC).

NUSCO requested that the cancellation become effective as of April 30, 2000.

The termination of this contract is part of a larger settlement of disputes between CL&P and CMEEC, including disputes related to the operation, shutdown and decommissioning of the Connecticut Yankee nuclear plant.

Copies of the filing were served upon the jurisdictional customer, CMEEC, as well as upon CL&P and the Connecticut Department of Public Utilities Control.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Williams Flexible Generation, LLC

[Docket No. ER00–2469–000]

Take notice that on May 11, 2000, Williams Flexible Generation, LLC tendered for filing pursuant to Section 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, its application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Electric Rate Schedule FERC No. 1.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Electric Energy, Inc.

[Docket No. EG00–148–000]

Take notice that on May 11, 2000, Electric Energy, Inc. (EEInc.), 2100 Portland Road, P.O. Box 165, Joppa, IL 62953 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

EEInc. is a generation-only company, the stock of which is owned by Union Electric Company (40%), Central Illinois Public Service Company (20%), Illinova Generating Company (20%), and Kentucky Utilities Company (20%) (collectively, the Sponsors). EEInc. owns and operates a six-unit coal-fired generating plant in Joppa, IL that has a total generating capacity of 1,086 MW (the "Joppa Plant"). All of the electricity available from the Joppa Plant is sold at wholesale either to the U.S. Department of Energy, to the Sponsors, or to other wholesale purchasers. EEInc. also owns all of the outstanding common stock of Midwest Electric Power, Inc., which will own and/or operate 260 MW of combustion turbine generating capacity to be installed at the site of the Joppa Plant and sell electricity exclusively at wholesale.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13049 Filed 5–23–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 420–009, Alaska]

City of Ketchikan and Ketchikan Public Utilities; Notice of Availability of Final Environmental Assessment

May 18, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Ketchikan Lakes Hydroelectric Project, and has prepared a Final Environmental Assessment (FEA). The project is located on Ketchikan Creek and Granite Basin Creek, near the City of Ketchikan, in Ketchikan Gateway Borough, Alaska. The project uses lands administered by the U.S. Forest Service in the Tongass National Forest. The Forest Service is a cooperating agency on this environmental assessment. The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NW., Washington, DC 20426. This FEA may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). For further information, contact Charles Hall at (202) 219–2853.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13010 Filed 5–23–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–75–000]

Notice of Interim Procedures To Support Industry Reliability Efforts and Request for Comments

May 17, 2000.

As the electric industry prepares for another summer of potentially high peak demands, the Commission believes it is important to identify practical steps the Commission and others can take to support the industry's efforts to ensure the continued reliability of the electric power system.[1] Accordingly, the Commission hereby announces a number of specific actions it will implement on an interim basis this summer, and requests comments on these and other actions the Commission could take to assist others in their efforts to address system reliability this summer.

Background

While the Commission does not have direct responsibility over reliability matters, its consistent policy has been to assure that the exercise of its ratemaking and other jurisdictional responsibilities supports and facilities the continued high degree of reliability that has existed in the U.S. Indeed, transmission system reliability is one of the principal issues sought to be addressed by the Commission's recent rulemaking on Regional Transmission Organizations.[2] The Commission has also been monitoring the functioning of electricity markets and has been encouraging good utility practices through its Enforcement Hotline and other programs.

Our objective is not to become involved in the day-to-day operation of the electric grid or to duplicate or supplant the efforts of others in the industry that are engaged in inquiries about electric reliability issues. However, it is important that the Commission exercise its regulatory mandate in a manner that supports, and does not impede, efforts to enhance reliability throughout the industry. The Commission has identified five actions that it can take, in exercising its regulatory responsibilities, that may provide such support this summer by, for example, supporting efforts to increase generation supply, supporting efforts to implement demand-side management, and supporting efforts to maximize the amount of Available Transmission Capability (ATC) this summer. In addition to these actions, the Commission will be expediting individual cases affecting reliability planning for this summer which are pending before the Commission in other dockets.

Actions Commission Will Implement During the Summer of 2000

The Commission hereby announces the following actions that it will implement to support the electric industry's efforts in dealing with reliability issues this summer. Although these actions are within the Commission's authority to implement on an immediate basis and will be in effect on an experimental basis from the date of this Notice through September 30, 2000, we invite comments on them.

1. There are many businesses that have installed generators at their business location to meet a portion of their own demands or to serve as a backstop to their purchase of electricity from the local grid. These generators may provide a ready source of generation capacity during periods when power markets are facing a temporary generation shortage. Indeed, we recently approved a tariff under which the owners of such generation could sell electricity to a power marketer in *InPower Marketing Corporation*.[3] In order to facilitate the use of existing on-site generators to meet demand, the Commission will adopt a streamlined regulatory procedure to accommodate sales from such facilities to any entity engaged in sales of electric energy. Owners of generating facilities located at business locations and used primarily for back-up for self-generation, who would become subject to the Federal Power Act by virtue of sales of power from such facilities,[4] will be permitted to sell power at wholesale from such facilities to non-affiliated entities without prior notice under section 205 of the FPA. Pursuant to FPA section 205(d), we find good cause to waive the prior notice requirements for such sales. Further, the Commission hereby grants waiver of its regulations consistent with our recent orders on market-based rates,[5] and authorizes market-based rates during the identified time period, subject to the following requirements: The wholesale purchasers

[1] We note that other governmental and industry sources share a heightened awareness to current reliability issues. *See, e.g.*, Report of the U.S. Department of Energy's Power Outage Study Team, Findings and Recommendations to Enhance Reliability from the Summer of 1999, at S–1, S–2 (March 2000) ("the reliability events of the summer of 1999 demonstrated that the necessary operating practices, regulatory policies, and technological tools for assuring an acceptable level of reliability were not yet in place"); Investigation Into The Adequacy and Availability of Electric Power (Pub. Util. Comm. of Ohio, Case No. 00–617–EL–COI, April 10, 2000) (Ohio Commission notes that ECAR is predicting a tight capacity situation this summer); High Temperatures & Electricity Demand: An Assessment of Supply Adequacy in California Trends & Outlook (July 1999) (California Energy Commission staff report showing decreasing reserve margins); Northwest Power Planning Council, Pacific Northwest Power Supply Adequacy/Reliability Study (February 2000) (24 percent probability of being unable to serve winter loads by 2003).

[2] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (2000), FERC Stats. and Reg. ¶ 31,089 at 30,997–99 (1999), *order on reh'g*, Order No. 2000–A, 65 FR 12,088 (March 8, 2000), FERC Stats. and Regs. ¶ 31,092 (2000).

[3] Order Accepting For Filing Proposed Market-Based Rate Schedule And Granting Waivers, 90 FERC ¶ 61,329 (2000) (*InPower*).

[4] We note that while entities become "public utilities" subject to the Federal Power Act when they commence the sale of electric energy at wholesale in interstate commerce, they cease to be public utilities when such sales cease (assuming they engage in no other activities that would make them public utilities) without further Commission action. *See* Century Power Corporation, 72 FERC ¶ 61,045 at 61,279 (1995).

[5] *See, e.g., InPower*, 90 FERC at 62,105; Reliant Energy, Inc., *et al.*, 91 FERC ¶ 61,073 at Appendix B (2000). The Commission has generally waived for such sellers the following parts of its regulations in 18 CFR: most of Subparts B and C of Part 35 (documentation), Part 41 (accounting verification), Part 101 (prescribed Uniform System of Accounts), and Part 141 (annual reports). In addition, where requirements are statutory, the Commission has allowed such sellers to make shortened filings to satisfy Part 33 (disposition of facilities) and Part 45 (interlocking positions), and has granted blanket authorizations for issuances of securities (Part 34).

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of power from such facilities must report to the Commission the names of each such seller from whom power was purchased, the aggregate amount of capacity and/or energy purchased from each seller, and the aggregate compensation paid to each seller.[6] To minimize the number of required reports, the purchaser may make one report for all purchases through September 30, and, if it otherwise files quarterly transactions summaries with the Commission, may include this report as a separate section of its transaction summary for the third calendar quarter of 2000. If the purchaser does not otherwise file quarterly transactions summaries, it should file this report with the Commission by October 31, 2000.[7]

2. There may be opportunities during the upcoming summer for public utilities to make demand-side arrangements with their wholesale customers. For example, some wholesale requirements customers may have the ability to enter arrangements with their own retail customers to reduce load or obtain power from an industrial generator. Or, a partial requirements customers may have access to generating capacity on its own system. We want to ensure that public utilities will be able to work with their customers to negotiate mutually beneficial arrangements on short notice should the need arise during periods of peak summer demand or should other events occur that affect system reliability. Since time may be of the essence as these opportunities are discovered and negotiated, we find good cause to waive the FPA's prior notice requirement for any rate schedule amendments that may be required to effect these types of arrangements. Thus, to the extent a mutually agreeable DSM alternative changes the terms and conditions of a contract within our jurisdiction, we will grant waiver of the filing of prior notice of the change. By October 31, 2000, the public utility supplier must amend the filed rate schedule. The filing must consist of a report containing the following information: the FERC rate schedule numbers, the load reduction negotiated under the DSM arrangement (MW/MWh), total compensation, and the name of each affected wholesale customer.

3. While most power sales are currently transacted under market-based rates, there are occasions when utilities continue to operate under cost-based rates. Often, these cost-based rate incorporate formulas that are intended to track the actual out-of-pocket (*i.e.*, incremental) cost that was incurred to generate or purchase the energy. During periods of generation shortage, some utilities may be in a position to engage in DSM transactions with their wholesale and retail requirements customers in order to free up capacity for resale to neighboring utilities. These transactions will not take place unless any DSM expenditures can also be recovered under the rate formula, as are all other out-of-pocket costs. However, most rate schedules define out-of-pocket or incremental cost in terms of expenses incurred to generate power, rather than costs incurred to compensate a preexisting customer to reduce load. A few jurisdictional utilities have amended their cost-based pricing formulas to recognize the fact that DSM costs are a form of out-of-pocket or incremental cost.[8] In order to eliminate any disincentive to rely on DSM as a source of supply during generation shortages, we clarify that DSM costs should be treated consistently with all other types of incremental and out-of-pocket costs.

4. In prior orders, we have noted that the deductions from ATC to reflect reliability needs (Capacity Benefit Margin or CBM) can often be reduced in the near-term as the transmission provider gains certainty as to whether the assumptions underlying the CBM computation have, in fact, materialized.[9] The Commission takes this opportunity to remind transmission providers that they are required to reassess CBM assumptions for the current period and determine whether they have, in fact, materialized, *e.g.*, load, temperature and generation outages.[10] Another element of the ATC calculation is the Transmission Reliability Margin (TRM), *i.e.*, transmission capacity that is set aside to account for the inherent uncertainty in system conditions and the need for operating flexibility to ensure reliable system operation as system conditions change.[11] Since the assumptions underlying TRM calculations similarly become more certain in the near-term, we expect transmission providers to engage in the same periodic reassessment of TRM needs. Any changes in CBM and TRM must, of course, be reflected in recalculated ATC. By keeping both CBM and TRM set-aside values up to date, OASIS postings will be more accurate. Accurate ATC is crucial to facilitating power sale transactions that can relieve stresses on the Nation's electric systems.

5. The Commission will be responsive throughout the summer period to suggestions and questions regarding actions that relate to electric system reliability. The Commission is directing its staff to assist with regulatory questions related to practical ideas about what the Commission can do to support the electric industry's efforts with respect to reliability issues. The Commission staff, including the Hotline staff, will be available to respond to questions and suggestions in this regard.

Actions Others Could Take

There are likely other actions that could be taken, either by industry participants or state regulators, that could alleviate potential reliability problems during this summer. These include using demand-side management and applying market mechanisms to stimulate demand-side response; eliminating any regulatory disincentives to customers' integrating on-site supply and demand solutions; promoting energy efficiency; and improving coordination and preparation for electricity emergencies.[12] Where the Commission does not have a direct role in such matters, we seek suggestions from state authorities and industry organizations as to how we could assist in these, or other, areas.

Request for Comments

The Commission seeks the views of industry participants, organizations, and state regulatory authorities on the actions identified herein and on identifying what other short-term measures the Commission and others could take to alleviate reliability stress during peak periods.

For example, in the short term, are there any Commission regulations that the Commission should consider waiving to facilitate electricity commerce during periods when electricity markets are stressed? Can the Commission do more in the short-term to facilitate interconnections? We note that the Public Utilities Commission of Ohio has opened an inquiry into the readiness of its electric utilities to respond to higher demands for electricity this summer.[13] Is there anything the Commission should do to support such efforts?

In addition, while our request for comments is directed primarily toward interim initiatives to alleviate reliability concerns for this summer, would it be useful for the Commission to convene a public conference later in the year to discuss longer-term initiatives relating to electric system operation during peak demand periods? Are there longer-term initiatives that the Commission should consider, such as initiating a review of regional market rules with the goal of clarifying aspects that are ambiguous? The Commission is interested in hearing from such organizations as state regulatory authorities, trade groups, independent system operators, and the North American Electric Reliability Council as to what longer-term measures they or the Commission should consider to deal with reliability stresses.

We request that any comments on short-term interim measures be submitted to us by June 2, 2000. Such comments should be concise and specifically focused on either the specific actions implemented in this Notice or other specific actions capable of being accomplished in the short term. We request that any comments on longer-term initiatives or actions be submitted to us by June 30, 2000. Interested persons should submit an original and 14 copies of any comments to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should reference Docket No. EL00–75–000.

The Commission orders:

(A) For entities meeting the qualifications set forth in Paragraph 1 of this Notice, and who satisfy the reporting requirements set forth in that Paragraph, the following advance waivers and authorizations are hereby granted for the period beginning the date of this Notice until September 30, 2000:

(1) The prior notice requirement of section 205 of the Federal Power Act is hereby waived.

(2) Waiver is hereby granted for Parts 35, 41, 101, and 141 of the Commission's regulations.

(3) Authorization is hereby granted to issue securities and assume obligations and liabilities, provided that such issue or assumption is for some lawful object within the corporate purposes of the eligible entities, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(4) The full requirements of Part 45 of the Commission's regulations, except as noted, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving any eligible entity. Any such person instead shall file a sworn application providing the following information:

(a) full name and business address; and

(b) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(B) The prior notice requirement for rate schedule changes described in Paragraph 2 of this Notice is hereby waived, conditioned on the public utility complying with the filing requirements set forth in that Paragraph.

By direction of the Commission. Commissioner Hébert concurred with a separate statement attached.

Linwood A. Watson, Jr.,

Acting Secretary.

Notice of Interim Procedures To Support Industry Reliability Efforts and Request for Comments

[Docket No. EL00–75–000]
Issued May 17, 2000.

HÉBERT, Commissioner, *concurring*

I certainly agree with my colleagues that the Commission's actions should promote the continued reliability of the electric power system. And I agree that the Commission should take affirmative steps, to the extent consistent with its jurisdictional authority, to enhance the reliability of the system this summer and future summers. Because today's notice does not appear to hurt our reliability efforts, and might offer some slight marginal benefit, I concur with its issuance.

But I write separately to lament the lost opportunity this notice represents. Unfortunately, the Commission today offers little that will significantly enhance the reliability of the electrical grid. The Commission could be doing so much more to address the perceived problem. All today's notice actually accomplishes is to announce that the Commission is doing its job, and deflect blame for any disruptions this summer to Congress. In my judgment, any blame should be directed at this Commission for not taking decisive action last summer and two summers ago, and in all previous seasons, to promote capital investment in our energy infrastructure and new entry into emerging competitive markets.

I find peculiar the timing of today's notice. In the 2½ years I have served as Commissioner, the Commission has refrained from moving too ambitiously and directly into the reliability arena. I have admired the Commission's restraint. For example, the Commission admirably resisted the temptation to demonstrate its regulatory muscle in responding to the Midwestern "price spikes" during the summer of 1998. Despite pleas from some that temporarily high prices suggested a system on the verge of collapse, the Commission resisted the urge to intercede into emerging competitive wholesale markets by, among other things, developing reliability and financial integrity standards.

Rather, the Commission historically has left matters of reliability to the true experts in the field—the North American Electric Reliability Council, the various regional reliability councils around the country, and all affected industry participants. Realizing that the issue of reliability is complex and requires intimate familiarity with local facilities and institutions, the Commission historically has left this matter to industry-led groups, working in concert with all affected stakeholders. The Commission has interceded only when its review of reliability-based practices was necessary to ensure the availability and quality of open access transmission service. Recent orders, such as those addressing the issue of "tagging" customer requests for service and the circumstances in which utilities may invoke line loading (i.e., curtailment) procedures when the system is oversubscribed, attest to the Commission's limited role.[1] Another order, involving the Western Systems Coordinating Council, attests to the Commission's willingness to support regional industry and stakeholder efforts to promote mandatory compliance

[6] Although we are asking all wholesale purchasers who seek to take advantage of these special procedures to file these reports, it is not our intent to assert jurisdiction over any wholesale purchaser who is not otherwise subject to our jurisdiction, and the submission of such reports will not alter a purchaser's jurisdictional status.

[7] These streamlined procedures are offered as an option. Any jurisdictional seller may also follow standard filing requirements if desired.

[8] *See, e.g.*, Wisconsin Electric Power Company, Docket No. ER99–2180–000.

[9] Capacity Benefit Margin in Computing Available Transmission Capacity, 88 FERC ¶ 61,099 (1999) (*CBM Order*).

[10] *CBM Order* at 61,237.

[11] NERC White Paper, *Transmission Capability Margins and Their Use in ATC Determination*, 4 (June 17, 1999).

[12] We also understand that the National Association of Regulatory Utility Commissioners (NARUC) Staff Subcommittee on Electric Reliability has various projects underway that are looking into such matters as distribution system vulnerability to summer heat and peak loading, and interconnection of distributed generation.

[13] *See supra* note 1.

[1] *See, e.g.*, Coalition Against Private Tariffs, 83 FERC ¶ 61,015, *reh'g denied*, 84 FERC ¶ 61,050 (1998); North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998), *order on reh'g*, 87 FERC ¶ 61,161 (1999).

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(through contracts) with reliability standards.[2]

In my opinion, little operationally has changed to motivate the Commission to take a more activist role on reliability. I suspect the real reason for the Commission's enhanced interest is politics and public opinion. Today's newspapers are ablaze with headlines screaming of looming energy crises and impending blackouts and brownouts. Much of this hysteria, unfortunately, has been fed by the Clinton/Gore Administration. Indeed, in a front page article in the Wall Street Journal, dated May 11, 2000, captioned "Gloom and Doom: New Rules, Demands Put Dangerous Strain on Electricity Supply," the Secretary of Energy is quoted as saying that the United States has "the grid of a Third World nation."[3]

I am not so pessimistic. The United States long has enjoyed the most reliable electrical delivery system in the world. The advent of competitive markets and increasing reliance on competitive forces—rather than command and control regulatory policies—to regulate energy markets do not alter this judgment.

It is true that increased competition, and the emergence of a myriad of market participants and offerings, is placing strains on a electrical network that was not designed for such competitive forces. I agree with the rest of the Commission, as well as Secretary Richardson, that something more should be done to enhance reliability and to avoid unexpected outages. I simply disagree as to the means to accomplish this result.

Today's notice offers various measures intended to promote supply, enhance deliverability, and temper demand. My personal opinion is that offering market-based rates to the owners of on-site generation will introduce precious few megawatts into the interstate grid. Demand-side measures to conserve energy are almost entirely within the purview of the states.[4] Transmission providers already have an obligation to update periodically their calculation and posting of available transmission capability. And Commission staff, identified to "assist with regulatory questions related to practical ideas" about reliability, will have limited ability to offer any real help.

My strong preference would be for the Commission, if now inclined to act on reliability, to take decisive action in an area that clearly lies within its existing jurisdiction—the pricing of wholesale power and transmission services. As I have been advocating ever since I first came to the Commission, the Commission has within its jurisdiction the ability to promote reliability—if it really means what it now states. For starters, if the Commission is serious about increasing generation supply, it should act *immediately* to withdraw all price caps in generation markets. I have, unfortunately, written in dissent on many occasions as to the harmful supply effects of price caps.[5] They distort price signals and inhibit entry into competitive markets. By facilitating efforts to minimize short-term price disruptions, and placing regulatory shackles on what should be competitive markets, the Commission is inhibiting precisely the type of investment in the grid that it claims it is now supporting—and that is crucial to assuring true electrical reliability.

Another important means of enhancing reliability is to give transmission providers an incentive to provide reliable, efficient service. Conventional pricing methods provide no such incentive. It is my strong preference to afford utilities some type of performance-based measure of accountability to their customers and their regulators. Consistent with its existing authority, the Commission could—and should—tie earnings and profits to reliability-based and performance-based criteria (such as the number and duration of service interruptions, customer satisfaction, and throughout).

Despite my urgings, the Commission has refused to adopt performance-based pricing measures. I was tremendously gratified when the Commission made its first tentative moves in this direction when it adopted its Order No. 2000 rulemaking on the development of regional transmission organizations. As the Commission explained, a RTO that meets the enumerated characteristics and functions—and that has demonstrated a commitment to promote grid reliability and efficiency—will be eligible for a number of incentives. These incentives include performance-based rates, accelerated depreciation, and return on equity enhancements (formula and risk-based).

While I appreciate the Commission's baby steps on performance-based pricing, it will take awhile for RTOs to develop, win the Commission's approval, and qualify for innovative pricing. If it were up to me, I would adopt pricing measures *now* that would give both regional and individual transmission providers an incentive to minimize or eliminate service disruptions this summer and future summers.

I can think of numerous other measures the Commission can adopt to promote reliability, without delay and without additional authority conferred by Congress. The Commission could afford transcos an additional incentive to build transmission facilities by providing a higher rate of return on transmission assets. The Commission could articulate greater receptivity to proposals to build and invest in merchant transmission facilities. The Commission could pique additional interest in investment and corporate restructuring by allowing acquisition adjustments on the sale of transmission assets that confers benefits on ratepayers.

In addition, the Commission could greatly advance the cause of reliability by indicating its support for stand-alone transmission companies. (In another order on today's agenda, I express serious concern as to the Commission's rejection of the proposed ownership structure for the proposed Alliance transco.)[6] As I have oft-stated, a transco—much more so than any other type of regional institution—has a strong economic incentive to provide reliable and efficient service. I wish the Commission would give a transmission company the chance to operate—and give an unequivocal green light to other utilities that might be considering participation in similar for-profit ventures.

And the Commission—if truly committed to providing supply alternatives—could do much more to promote the development of hydroelectric facilities and the construction of natural gas transmission facilities.[7] The answer to our nation's energy reliability needs lies not in the development of additional regulatory bodies and responsibilities—as the Administration, with the acquiescence of a majority of this Commission, now argues. Rather, the answer lies in promoting policies that encourage capital investment in all types of energy technologies and that allow competitive markets to operate as they should.

I recognize that certain of my suggestions, to some, might fall into the category of "long-term" measures that, even if implemented immediately, would not help this upcoming summer. Of course, if the Commission had adopted such reliability-based measures in prior years, it would not have realized the urgency to issue today's notice. And further delay merely exacerbates the conditions identified in the notice. For this reason, I do not see the advantage of differentiating between short-term and long-term fixes, or awaiting the filing of comments on the subject. Nor do I see any value in convening a "public conference" on the subject of reliability initiatives. The Commission held such a conference in February of 1998, and has since received numerous comments and pleadings on the topic.

In short, there's not need to await further action by Congress. The Commission already has all the authority it needs to effect real reform that will promote reliable and efficient utility service. And there is no need to delay to allow for further grandstanding by industry participants. By this point, after several summers of experience under competitive markets, we all know the way to promote reliability and efficiency—by encouraging investment and by allowing competitive markets to operate.

Therefore, I respectfully concur.

Curt L. Hébert, Jr.,

Commissioner.

[FR Doc. 00–13008 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–M

[2] *See* Western Systems Coordinating Council, 87 FERC ¶ 61,060 (1999).

[3] A Department of Energy report, providing documentation for the Secretary's opinion, is cited in footnote 7 of today's notice.

[4] My experience as a state commissioner shows the difficulty of creating effective DSM programs. I am skeptical of the hasty decision the notice makes on guaranteeing DSM cost recovery.

[5] *See* ISO New England, Inc., 88 FERC ¶ 61,316 at 61,973–74 (1999); California Independent System Operator Corporation, 89 FERC ¶ 61,169 at 61,513–15 (1999); ISO New England, Inc.; New England Power Pool, 90 FERC ¶ 61,170 at 61,555–57 (2000).

[6] *See* Alliance Companies, *et al.*, 91 FERC ¶ ___ (2000).

[7] *See, e.g.*, Independence Pipeline Company, *et al.*, 91 FERC ¶ ___ (2000) (dissenting statement).

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Rates for Transmission Service on the Central Arizona Project 115–kV and 230–kV Transmission Lines

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: The Western Area Power Administration's (Western) Desert Southwest Customer Service Region (DSW) is proposing rate methodologies to calculate the rates for firm point-to-point transmission service, nonfirm point-to-point transmission service, and Network Integration Transmission Service (NITS) on the Central Arizona Project (CAP) 115–kV and 230–kV transmission lines. The proposed calculated rates will provide enough revenue to pay all annual costs, including interest expense, and repay the required investment within the allowable period. The proposed rate methodologies are scheduled to go into effect on October 1, 2000, and will remain in effect through September 30, 2005. This **Federal Register** notice initiates the formal process for these proposed rate methodologies.

DATES: The consultation and comment period will begin from the date of publication of this **Federal Register** notice and will end August 22, 2000. DSW will present a detailed explanation of the proposed rate methodologies and will make available a rate brochure at a public information forum scheduled for June 16, 2000, beginning at 10 a.m. MST, at the DSW office. Western will receive oral and written comments at a public comment forum on July 17, 2000, beginning at 10 a.m. MST, also to be held at the DSW office.

ADDRESSES: Written comments are to be sent to: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, or by e-mail: carlson@wapa.gov. Western should receive written comments by the end of the consultation and comment period to be assured consideration. Western's DSW office, is located at 615 South 43rd Avenue, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Maher A. Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2768, or by e-mail: nasir@wapa.gov.

SUPPLEMENTARY INFORMATION: The CAP 115–kV and 230–kV transmission lines have been used almost exclusively to provide power to the CAP water pumps. The planned construction of a number of independent power plants in Arizona and Nevada creates a potential demand for use of surplus transmission capacity on the CAP 115–kV and 230–kV transmission lines.

The proposed rate methodologies for point-to-point transmission service and NITS on the CAP 115–kV and 230–kV transmission lines are based on a revenue requirement that recovers the CAP 115–kV and 230–kV transmission lines costs for facilities associated with providing transmission service and the non-facilities costs allocated to transmission service. The methodology for calculating the rates for point-to-point transmission service on the CAP 115–kV and 230–kV transmission lines is determined by combining the annual amortization costs with the annual operations and maintenance costs, divided by the annual average contract rate of delivery. Implementing the proposed rate methodology results in a firm point-to-point CAP 115BkV and 230–kV transmission line rate of $8.37 per kilowattyear and a nonfirm point-to-point CAP 115–kV and 230–kV transmission line rate of 0.96 mills/kWh.

NITS allows a transmission customer to integrate, plan, economically dispatch, and regulate its network resources to serve its native load in a way comparable to how a transmission provider uses its own transmission system to service its native load customers. The monthly charge methodology for NITS on the CAP 115–kV and 230–kV transmission lines is the product of the transmission customer's load-ratio share times one-twelfth of the annual transmission revenue requirement. The customer's load-ratio share is calculated on a rolling 12-month basis (12CP). The customer's load-ratio share is equal to that customers' hourly load coincident with the CAP 115–kV and 230–kV transmission lines monthly transmission system peak divided by the resultant value of the CAP 115–kV and 230–kV transmission lines monthly transmission system peak minus the CAP 115–kV and 230–kV transmission lines coincident peak for all firm point-to-point transmission service plus the CAP 115–kV and 230–kV transmission lines firm point-to-point transmission service reservations.

The proposed rate methodologies include the costs for scheduling, system control, and dispatch service.

These rate methodologies for transmission service on the CAP 115–kV and 230–kV transmission lines are being set following the Department of Energy Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the project involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; and (2) the authority to confirm, approve, and place into effect

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on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve and place such rates into effect on an interim basis to the Deputy Secretary.

Existing Department of Energy procedures for public participation in power rate adjustments are located at 10 CFR part 903 effective on September 18, 1985 (50 FR 37835). Since the proposed rates constitute a major rate adjustment as defined in 10 CFR 903.2, both a public information forum and a public comment forum will be held. After reviewing public comments, Western will recommend the proposed rate methodologies be approved on an interim basis by the Deputy Secretary.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western in developing the proposed rate methodologies will be made available for inspection and copying at the DSW office, located at 615 South 43rd Avenue, Phoenix, Arizona.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking that particularly applies to rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: May 15, 2000.

Michael S. Hacskaylo,

Administrator

[FR Doc. 00–13087 Filed 5–23–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00651; FRL–6551–6]

Minimum Risk Pesticides Exempted Under FIFRA Section 25(b); Clarification of Issues; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice clarifies several aspects of the exemption for minimum risk pesticides by the FIFRA section 25(b) rule, including composition, labeling, food tolerances, and state regulation. It is being issued to answer questions frequently asked of EPA about such products. Registration (PR) Notice 2000–6, Entitled "Minimum Risk Pesticides Exempted under FIFRA Section 25(b); Clarification of Issues," provides guidance to the registrant concerning frequently asked questions regarding section 25(b) and is effective now but comments will be accepted for 30 days, after which the Agency may revise the notice.

DATES: Comments, identified by docket control number OPP–00651, must be received on or before June 23, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00651 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Brian Steinwand (7511C), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7973; fax number: (703) 308–7026; e-mail address: steinwand.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are interested in section 25(b) exempted products. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and the PR Notice from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. You can also go directly to the listings from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax on Demand.* You may request a faxed copy of the PR Notice Entitled "Minimum Risk Pesticides Exempted under FIFRA Section 25(b); Clarification of Issues," by using a faxphone to call (202) 401–0527 and selecting item 6130. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00651. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00651 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0, or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00651. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Guidance Does This PR Notice Provide?

Except in very limited circumstances, any substance that makes a pesticidal claim must be registered by EPA before it can be legally sold or distributed. One such exemption to the registration requirement is for those pesticides under section 25(b) of FIFRA. In 1996, EPA exempted certain minimum risk pesticides from FIFRA requirements if they satisfy certain conditions. EPA exempted the products described in 40 CFR 152.25(g) in part to reduce the cost and regulatory burdens on businesses as well as the public for pesticides posing little or no risk, and to focus EPA's limited resources on pesticides which pose greater risk to humans and the environment. To qualify for an exemption as a minimum risk pesticide, each active ingredient in the pesticide product must be listed in 40 CFR 152.25(g)(1). In addition, 40 CFR 152.25(g)(2) provides that these pesticide products may only contain minimal risk inert ingredients listed in List 4A. The PR Notice is intended to answer frequently asked questions regarding composition, labeling, food tolerances, and state regulation.

B. Why Is a PR Notice Guidance and Not a Rule?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, this policy is not binding on either EPA or any outside parties. Although this guidance document provides a starting point for EPA decisions, EPA will depart from this policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that this policy is not appropriate for a specific pesticide or that the specific circumstances demonstrate that this policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment, if necessary. Public comment is not being solicited for the purpose of converting this guidance document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is allowing comment so that it can make fully informed decisions regarding the content of this guidance.

The "revised" guidance will not be an unalterable document. Once a "revised" guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of commenting on this guidance document, EPA would welcome comments that specifically address how the guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 5, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–12960 Filed 5–23–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 15, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 24, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station.

Form Number: FCC 318.

Type of Review: Extension of currently approved collection.

Respondents: Not-for-profit institutions; state, local or tribal government.

Number of Respondents: 2,500.

Estimated Time per Response: 1 hour 30 minutes.

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 3,750.

Total Annual Costs: $0.

Needs and Uses: FCC Form 318 is required to apply for a construction permit for a new LPFM station or to make changes in the existing facilities of such a station. The data is used by FCC staff to determine whether an applicant meets basic statutory and regulatory requirements to become a Commission licensee and to ensure that the public interest would be served by grant of the application.

OMB Control Number: 3060–0855.

Title: Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 98–171.

Form Number: FCC Form 499.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 5500.

Estimated Time Per Response: 7.2 Hours (avg.).

Total Annual Burden: 40,000 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual; semi-annual.

Needs and Uses: Pursuant to the Communications Act of 1934, as amended, telecommunications carriers (and certain other providers of telecommunications services) must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. All contributors to the federal universal service support mechanisms must file the Telecommunications Reporting Worksheet, FCC Form 499. The information is used to calculate carriers' contributions.

OMB Control Number: 3060–0816.

Title: Local Competition and Broadband Report, CC Docket No. 99–301.

Form Number: FCC Form 477.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 510.

Estimated Time Per Response: 58.67 Hours (avg.).

Total Annual Burden: 29,924 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Semi-annually.

Needs and Uses: FCC Form 477 seeks to gather information on the development of local competition and deployment of broadband service also known as advanced telecommunications services. The data is necessary to evaluate the status of developing competition in local exchange telecommunications markets and to evaluate the status of broadband deployment. The information will be used by the Commission staff to advise the Commission about the efficacy of Commission rules and policies adopted to implement the Telecommunications Act of 1996.

OMB Control Number: 3060–0292.

Title: Part 69—Access Charges.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 1458.

Estimated Time Per Response: 23.19 Hours.

Total Annual Burden: 33,825 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0

Frequency of Response: On occasion; semi-annually; one-time reporting; recordkeeping.

Needs and Uses: Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies. Local telephone companies and states are required to submit information to the Commission and/or the National Exchange Carrier Association. The information is used to complete charges in tariffs for access service (or origination and termination) and to computer revenue pool distributions.

OMB Control Number: 3060–0298.

Title: Tariffs (Other Than Tariff Review Plan)—Part 61.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 2000.

Estimated Time Per Response: 341.2 Hours (avg.).

Total Annual Burden: 682,555 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annual; biennially; Third Party Disclosure.

Needs and Uses: Part 61 is designed to ensure that all tariffs filed by common carriers are formally sound, well organized, and provide the Commission and the public with sufficient information to determine the justness and reasonableness as required by the Communications Act of 1934, as amended, of the rates, terms and conditions in those tariffs.

OMB Control Number: 3060–0804.

Title: Universal Service—Health Care Providers Universal Service Program.

Form Number: FCC Forms 465, 466, 466–A, 467, 468.

Type of Review: Extension.

Respondents: Business or other for profits; not for profit institutions.

Number of Respondents: 5255.

Estimated Time Per Response: 1.8 Hours (avg.).

Total Annual Burden: 9755 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; recordkeeping.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible health care providers. Health care providers who want to participate in the universal service program must file several forms, including FCC Forms 465, 466, 466–A, 467 and 468. The information reported is used to ensure that universal service support is distributed to telecommunications carriers serving eligible health care providers pursuant to 47 CFR part 54.

OMB Control Number: 3060–0511.

Title: ARMIS Access Report.

Form Number: FCC Report 43–04.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 150.

Estimated Time Per Response: 621 Hours.

Total Annual Burden: 93,150 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Needs and Uses: The Access Report is needed to administer the results of the FCC's jurisdictional separations and access charge procedures in order to analyze revenue requirements, joint cost allocations, jurisdictional separations and access charges.

OMB Control Number: 3060–0512.

Title: The ARMIS Annual Summary Report.

Form Number: FCC Report 43–01.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 150.

Estimated Time Per Response: 135 Hours.

Total Annual Burden: 20,250 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Needs and Uses: The ARMIS Annual Summary Report contains financial and operating data and is used to monitor the incumbent local exchange carriers and to perform routine analyses of costs and revenues on behalf of the Commission.

OMB Control Number: 3060–0513.

Title: ARMIS Joint Cost Report.

Form Number: FCC Report 43–03.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 150.

Estimated Time Per Response: 83 Hours.

Total Annual Burden: 12,450 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Needs and Uses: The Joint Cost Report is needed to administer our Part 64 joint cost rules and to analyze the regulated and nonregulated cost and revenue allocations by study area in order to prevent cross-subsidization of nonregulated operations by the regulated operations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13036 Filed 5–23–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 18, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 24, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–XXXX.

Title: Wireless Medical Telemetry Service (ET Docket 99–255).

Type of Review: New collection.

Respondents: Business or not for profit institutions.

Number of Respondents: 2500.

Estimated Hours Per Response: 4.

Frequency of Response: Recordkeeping; one time reporting requirement.

Estimated Total Annual Burden: 10,000 hours.

Total Annual Cost: $500,000.00.

Needs and Uses: The Commission adopted a Notice of Proposed Rule Making, to create a Wireless Medical Telemetry Service ("WMTS") (ET Docket No. 99–255). If the WMTS were licensed by rule, there would be no record of which frequencies are used by each facility or device. This could result in interference if multiple parties located closely together attempted to use the same frequencies. Therefore, the Commission proposes the appointment of a frequency coordinator, who will maintain a database of all WMTS equipment in operation. All parties using equipment in the WMTS would be required to coordinate/register their operating frequency and other relevant technical operating parameters with a coordinator designated by the Commission. This proposal would assist WMTS users in avoiding interference.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13037 Filed 5–23–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 15, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 24, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0921.

Title: Petitions for LATA Boundary Modification for the Deployment of Advanced Services.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 20.

Estimated Time Per Response: 8 Hours (avg.).

Total Annual Burden: 160 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Needs and Uses: Bell Operating Companies (BOCs) that petition for LATA boundary modifications to encourage the deployment of advanced services on a reasonable and timely basis are requested to include information in accordance with specified criteria. The Commission will use this information to review the petitions. The petitioning BOC is required to serve its state commission with a copy of the petition.

OMB Control Number: 3060–0681.

Title: Toll-Free Service Access codes—CC Docket No. 95–155(47 CFR Part 52, Subpart D, Sections 52.101–52.111).

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 168.

Estimated Time Per Response: 15 Hours (avg.).

Total Annual Burden: 2520 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: Responsible Organizations (RespOrgs) who wish to make a specific toll free number unavailable must submit written requests to the toll free database administrator. The request shall include the appropriate documentation of the reason for the request.

OMB Control Number: 3060–0579.

Title: Expanded Interconnection with Local Telephone Company Facilities for Interstate Switched Transport Services.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 16.

Estimated Time Per Response: 124.7 Hours (avg.).

Total Annual Burden: 1996 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: Local exchange carriers are required to make tariff filings to provide new switched transport expanded interconnection services and to comply with Commission standards governing nonrecurring charges.

OMB Control Number: 3060–0577.

Title: Expanded Interconnection with Local Telephone Company Facilities.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 16.

Estimated Time Per Response: 15 Hours (avg.).

Total Annual Burden: 240 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: Local exchange carriers are required to make tariff filings to provide public notice of fresh look opportunity at their offices and to comply with Commission standards governing nonrecurring reconfiguration charges, expanded interconnection connection charge rate structure and fresh look.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13038 Filed 5–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 17, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 23, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0233.

Title: Part 36, Separations.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, Local, or Tribal Governments.

Number of Respondents: 1,500.

Estimate Time Per Response: 2 to 22 hours.

Frequency of Response: On occasion, quarterly, and annual reporting requirements; Third party disclosure.

Total Annual Burden: 157,125 hours.

Total Annual Costs: None.

Needs and Uses: In order to allow determination of the study areas that are entitled to an expense adjustment, and the wire centers that are entitled to support, each incumbent local exchange carrier must make certain annual and/or quarterly data reports to the National Exchange Carrier Association. State or local telephone companies which want to participate in the federal assistance program must make certain informational showings to demonstrate eligibility.

OMB Control Number: 3060–0774.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45, 47 CFR part 54.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local, or Tribal Governments.

Number of Respondents: 5,565,451.

Estimate Time Per Response: 2 to 4 hours.

Frequency of Response: On occasion, quarterly, and annual reporting requirements; Third party disclosure.

Total Annual Burden: 1,787,278 hours.

Total Annual Costs: None.

Needs and Uses: Congress directed the FCC to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in 47 U.S.C. section 254 and other such principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience, and necessity, and are consistent with the Communications Act of 1934, as amended. Part 54 promulgates the rules and requirements to preserve and advance universal service. The collections are necessary to implement section 254.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13032 Filed 5–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 18, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 23, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Section 95.1215, Disclosure Policies and Section 95.1217, Labeling Requirements.

Form No.: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 20.

Estimated Time Per Response: 1 hour.

Frequency of Response: Third party disclosure requirement .

Total Annual Burden: 20 hours.

Total Annual Cost: N/A.

Needs and Uses: The information collection contained in Sections 95.1215 and 95.1217 require manufacturers of transmitters for the Medical Implant Communications Service (MICS) to include with each transmitting device a statement regarding harmful interference and to label the device in a conspicuous location on the device. The requirements will allow use of potential life-saving medical technology without causing interference to other users of the 402–405 MHz band.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13035 Filed 5–23–00; 8:45 am]

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FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Tuesday, May 30, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

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2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13125 Filed 5–22–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00059]

Prevention Epicenters Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Prevention Epicenters. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Access to Quality Health Services and Immunization and Infectious Diseases. For the conference copy of "Healthy People 2010", visit the internet site http://www.health.gov/healthypeople.

The purpose of the program is to assist healthcare organizations and institutions to support established Prevention Epicenters or to develop new Prevention Epicenters as part of the CDC's Prevention Epicenters (PE) program. The PE program is designed to develop, implement, and evaluate the effectiveness of epidemiologically-based strategies to improve healthcare quality and assure patient safety by preventing adverse events associated with healthcare including, but not limited to, healthcare-associated infections and antimicrobial resistant infections. (See Attachment II Background for more information.)

The goals of the PE program are to: (1) Support activities which lead to improvements in information system capacity to monitor healthcare system performance and healthcare outcomes. Such activities should expand the use of information technology to acquire, integrate, process, analyze, and report information, and use information technology to develop and implement innovative interventions to prevent infections and other adverse health events; (2) be a national resource for building epidemiologic capacity in healthcare outcomes research. PE program activities should extend the capacity of healthcare epidemiology and infection control programs to address patient safety, cost effectiveness, prevention effectiveness, healthcare outcomes monitoring, and performance measurement; and (3) support activities which develop an infrastructure to address the above goals in the broadest spectrum of healthcare delivery settings, including acute care hospitals, long-term care facilities, rehabilitation programs, dialysis centers, home healthcare programs, ambulatory care programs, and others.

Specific objectives for the pilot and developmental phases of the project will include identifying (1) appropriate populations, (2) outcome measures, (3) data collection methods, and (4) interventions to be instituted in year 2 of the project.

Each Prevention Epicenter will be established within a healthcare network or system, integrated healthcare delivery system (IDS), or managed care organization (MCO) which serves a large and diverse group of people. Through the network, system, or organization, the Prevention Epicenter should have access to patients in a variety of healthcare settings (e.g., long-term care, rehabilitation, home health care, ambulatory care, dialysis centers, etc.). The population served by the components of the system should be definable based on the network's, system's, or organization's knowledge of historical patterns of use of services by patients and/or the demographics of enrollment in managed healthcare plans served by the network, system, or organization. Prevention Epicenters will work together as part of a national multi-center collaborative research and demonstration program in the areas of patient safety and healthcare outcomes research.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $2,000,000 is available in FY 2000 to fund approximately 10 awards (up to eight competing continuations and one or two new Prevention Epicenters). It is expected that the average award for the existing Prevention Epicenters will range from approximately $100,000 to $450,000, depending on the activities funded per site, and the average award for new Prevention Epicenters will range from approximately $75,000 to $250,000. More funds are available for existing Prevention Epicenters because they are mature, fully-functional programs and new Prevention Epicenters might need up to 12 to 24 months to become fully-functional and able to participate in all activities.

It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

1. Although applications for new programs are encouraged, funding preference will be given to the competing continuation applications over applications for programs not already receiving support under the existing Prevention Epicenter program. The current awardees already have the infrastructure needed to continue the Prevention Epicenter program.

2. To achieve appropriate representation in the Prevention Epicenters program, funding preference may be given to approved applications that would enhance the racial, ethnic, socioeconomic, and/or geographic diversity of the program.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Establish and/or operate a Prevention Epicenter that is consistent with the purposes of the program.

b. Establish collaborative and cooperative relationships with other public and private organizations that have an interest in outcomes research, disease management, prevention effectiveness, prevention of adverse health outcomes, patient safety, and healthcare quality in order to maximize access to, and participation of, relevant study populations.

(1) Collaborate with other Prevention Epicenters to establish a PE program advisory committee and participate in the project planning activities.

(2) Collaborate with other Prevention Epicenters on one or two core program activities. Core program activities are defined as activities intended to become multicenter collaborative projects addressing the three goals of the PE program.

(3) Propose and conduct one or more investigator-initiated projects. Investigator initiated projects may address issues of local interest or concern that are in keeping with the goals of the PE program. In addition to focusing on defined patient populations, investigator-initiated projects may address issues that include, but are not limited to: healthcare personnel behavior modification, healthcare personnel safety, laboratory-based assessment and interventions, and the monitoring and control of antimicrobial resistance.

(4) Manage, analyze, and interpret data, and publish and disseminate important medical and public health information stemming from Prevention Epicenter projects in collaboration with other PE program sites.

(5) Monitor and evaluate scientific and operational accomplishments and progress in achieving the purpose of this program.

2. CDC Activities

a. Collaborate, as appropriate, with the recipient in all stages of the program, and provide programmatic and technical assistance.

b. As requested, participate in data collection, analysis, and interpretation of data from Prevention Epicenter projects. Provide scientific collaboration.

c. As requested, participate in the dissemination of findings and information stemming from Prevention Epicenter projects.

d. Participate in improving program performance through consultation based on information and activities of other projects.

e. As requested, perform laboratory evaluation of specimens or isolates (*e.g.*, molecular epidemiologic studies, evaluation of diagnostic tools) obtained in Prevention Epicenter projects.

f. As requested, facilitate communication of data and results among Prevention Epicenters.

g. Assist in the development of research protocols for IRB review by all cooperating institutions participating in the research project.

The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should not be more than 25 single-spaced pages printed on one side, with one inch margins and unreduced font. Applications should follow the PHS 398 (rev. 4/98) application and Errata sheet, and should include the following information.

1. Submission of an application for at least two but no more than three project activities in total. Each activity proposal, including the proposed multicenter collaborative projects (core program activities), and investigator-initiated activities, should be clearly identified in a distinct portion of the Operational Plan. Although the activities proposed may address distinct issues and needs, they may be implemented in an integrated manner such that staff members work on more than one activity, or supplies and equipment are shared.

Note: Approximately 50–80 percent of resources will go to the core, multicenter collaborative activities.

2. Provide a line-item budget and narrative justification for all requested costs, and separate line-item budgets for each proposal submitted to conduct core program activities and investigator-initiated activities. Budgets should be consistent with the purpose, objectives and research activities, and include:

a. Line-item breakdown and justification for all personnel, *i.e.*, name, position title, annual salary, percentage of time and effort, and amount requested.

b. For each contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, (5) method of contractor selection (*e.g.*, sole-source or competitive solicitation) and (6) method of accountability.

c. A brief five-year budget projection should be submitted that clearly separates and distinguishes direct from indirect costs.

d. A description of any financial and in-kind contributions from nonfederal sources.

Additionally, for each proposed activity (core and investigator-initiated) include a one-page, single-spaced, typed abstract. The heading should include the title of the cooperative agreement, project title, organization, name and address, project director, and telephone number. This abstract should include a workplan identifying activities to be developed, activities to be completed, and a time-line for completion of these activities.

F. Submission and Deadline

Letter of Intent

In order to enable CDC to determine the level of interest in the program announcement, a non-binding letter-of-intent to apply is requested from potential applicants. Your letter-of-intent should identify program announcement number 00059, and include the following information: (1) Name and address of institution, and (2) name, address, telephone number, e-mail address, and fax number of contact person. On or before June 9, 2000, submit the letter-of-intent (original and two copies) to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit.

On or before July 11, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information Section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

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(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each competing continuation Prevention Epicenter and new application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Competing Continuation PE Centers

1. Establishment of Prevention Epicenter (30 points)

a. Productivity

Extent to which the competing continuation Center has used program resources to successfully conduct research and demonstration projects as evidenced by submission of abstracts to national scientific meetings; presentations at local, regional and national conferences, meetings, and other settings for information exchange; and publications in scientific journals, lay media, public or healthcare provider information and educational sources.

b. Institutionalization

Extent to which the Prevention Epicenter has been established within the home institution and network/system/organization as evidenced by collaboration with other departments, institutions, and components of the network/system/organization; support from officials and representatives of the home institution and networks; recognition in internal publications and documents; and collaboration as a Prevention Epicenter with entities outside the network/system/organization.

2. Existing Capacity (30 points)

Description of existing capacity to conduct outcomes research and prevention effectiveness research in the areas of healthcare-associated infections and other adverse events associated with healthcare.

a. Description of applicant's experience and documentation of accomplishments in conducting healthcare outcomes research and quality improvement activities, including projects and studies involving: database integration; outcomes data acquisition, validation, and analysis; cost-and resource-effectiveness and cost-utility assessment; performance measurement and performance improvement; quality of care assessment and intervention clinical and laboratory process and outcomes assessment; and provider and patient behavior change studies and interventions. (A list of relevant papers and abstracts should be included in an appendix.)

b. Description of applicant's experience and documentation of accomplishments in conducting surveillance, applied epidemiologic research, applied laboratory research, and prevention research in the areas of healthcare-associated infections and other adverse events (e.g., antimicrobial drug resistant infections, device-related infections, medication errors, etc.) A list of relevant papers and abstracts should be included in an appendix.

c. Demonstration of applicant's ability to develop and maintain strong cooperative relationships with medical, public health, laboratory, academic, and community organizations that are either public or private, local or regional. Evidence of applicant's ability to solicit and secure programmatic collaboration, and financial and technical support from such organizations.

d. Demonstration of support from non-applicant participating agencies, institutions, organizations, laboratories, individuals, consultants, etc., mentioned in the operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate each collaborator's willingness to participate in studies and other activities with the Prevention Epicenter. The letters should clearly define the roles of these collaborations.

e. Demonstration of applicant's ability to participate in multicenter research and demonstration studies.

3. Operational Plan (35 points)

a. The extent to which the applicant's plan for establishing, operating, and maintaining the Prevention Epicenter clearly describes the proposed activities and clearly identifies the roles and responsibilities of all participating individuals, agencies, organizations, and institutions.

b. The extent to which the applicant describes plans for collaboration with other PE program sites in the establishment and operation of the PE program and individual Prevention Epicenter projects, including participation in advisory committee and subcommittee activities, as well as project design/development (e.g., protocols), management and analysis of data, and synthesis and dissemination of findings.

c. Description and quality of applicant's partnerships with necessary and appropriate individuals, departments, agencies and organizations for establishing and operating the proposed Prevention Epicenter projects.

d. Consistency of the proposed projects with regard to Prevention Epicenter program goals.

e. Description of the operational plan for conducting core multicenter collaborative projects, including the extent to which: (1) The project is consistent with one or more of the stated goals of the PE program, (2) the objectives of the proposed project are specific, measurable, and time-phased; (3) the plan clearly describes applicant's technical approach/methods for conducting the proposed project(s); and (4) the plan is adequate to accomplish the stated objectives.

f. Description of the operational plan for conducting one or two investigator-initiated projects, including the extent to which: (1) The project is consistent with one or more of the stated goals of the PE program, (2) the objectives of the proposed project are specific, measurable, and time-phased; (3) the plan clearly describes applicant's technical approach/methods for conducting the proposed project(s); and (4) the plan is adequate to accomplish the stated objectives.

g. Identification of applicant's key professional personnel to be assigned to the Prevention Epicenter and to specific projects as well as key professional personnel from other participating or collaborating institutions, agencies, organizations outside of the applicant's agency that will be assigned to PE activities (provide curriculum vitae for each in an appendix). Clear identification of applicants' respective roles in the management and operation of the Prevention Epicenter and in individual projects. Descriptions of participants' experience in conducting work similar to that proposed in this announcement.

h. Description of all support staff and services to be assigned to the Prevention Epicenter.

i. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (1) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (2) the proposed justification when representation is limited or absent, (3) a statement as to whether the design of the study is adequate to measure differences when warranted and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Evaluation (5 points)

a. Quality of plan for monitoring and evaluating scientific and operational accomplishments of the Prevention Epicenter and of individual Center projects.

b. Quality of plan for monitoring and evaluating progress in achieving the purpose and overall goals of this cooperative agreement program.

5. Budget (not scored)

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

6. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

New Applicants

1. Understanding the objectives of the PE program (5 points)

a. Demonstration of a clear understanding of the background and objectives of this cooperative agreement program.

b. Demonstration of a clear understanding of the requirements, responsibilities, problems, constraints, and complexities that may be encountered in establishing and operating the Prevention Epicenter.

c. Demonstration of a clear understanding of the roles and responsibilities of participation in the PE program.

2. Description of the healthcare network or system, IDS, or MCO in which the Prevention Epicenter is situated and the population served by the network/system/organization (10 points)

a. Clear definition of the components of the network/system/organization, their relationship to the Prevention Epicenter, the geographic area and the population base in which the Prevention Epicenter will operate.

b. Clear description of the populations served, the health care services provided, and the healthcare settings within which defined population(s) receive care, as they relate to the proposed activities of the PE program.

c. Clear description of the management information systems of the network/system/organization, with emphasis on the level of integration of patient level electronic data sources within and between facilities, including electronic data bases containing clinical, administrative, laboratory, pharmacy, and other data. Description of the availability and accessibility of such data for outcomes-type research.

d. Extent to which the population base is diverse demographically.

3. Description of existing capacity to conduct outcomes research and prevention effectiveness research in the areas of healthcare-associated infections and other adverse events associated with healthcare (35 points)

a. Description of applicant's experience and documentation of accomplishments in conducting healthcare outcomes research and quality improvement activities, including projects and studies involving: database integration; outcomes data acquisition, validation, and analysis; cost- and resource-effectiveness and cost-utility assessment; performance measurement and performance improvement; quality of care assessment and intervention clinical and laboratory process and outcomes assessment; and provider and patient behavior change studies and interventions. (A list of relevant papers and abstracts should be included in an appendix.)

b. Description of applicant's experience and documentation of accomplishments in conducting surveillance, applied epidemiologic research, applied laboratory research, and prevention research in the areas of healthcare-associated infections and other adverse events (*e.g.*, antimicrobial drug resistant infections, device-related infections, medication errors, etc.) A list of relevant papers and abstracts should be included in an appendix.

c. Demonstration of applicant's ability to develop and maintain strong cooperative relationships with medical, public health, laboratory, academic, and community organizations that are either public or private, local or regional. Evidence of applicant's ability to solicit and secure programmatic collaboration, and financial and technical support from such organizations.

d. Demonstration of support from non-applicant participating agencies, institutions, organizations, laboratories, individuals, consultants, etc., mentioned in the operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate each collaborator's willingness to participate in studies and other activities with the Prevention Epicenter. The letters should clearly define the roles of these collaborations.

e. Demonstration of applicant's ability to participate in multicenter research and demonstration studies.

4. Operational Plan (45 points)

a. The extent to which the applicant's plan for establishing, operating, and maintaining the Prevention Epicenter clearly describes the proposed activities and clearly identifies the roles and responsibilities of all participating individuals, agencies, organizations, and institutions.

b. The extent to which the applicant describes plans for collaboration with other PE program sites in the establishment and operation of the PE program and individual Prevention Epicenter projects, including participation in advisory committee and subcommittee activities, as well as project design/development (*e.g.*, protocols), management and analysis of data, and synthesis and dissemination of findings.

c. Description and quality of applicant's partnerships with necessary and appropriate individuals, departments, agencies and organizations for establishing and operating the proposed Prevention Epicenter projects.

d. Consistency of the proposed projects with regard to Prevention Epicenter goals.

e. Description of the operational plan for conducting core multicenter collaborative projects, including the extent to which: (1) the project is consistent with one or more of the stated goals of the PE program, (2) the objectives of the proposed project are specific, measurable, and time-phased; (3) the plan clearly describes applicant's technical approach/methods for conducting the proposed project(s); and (4) the plan is adequate to accomplish the stated objectives.

f. Description of the operational plan for conducting one or two investigator-initiated projects, including the extent to which: (1) The project is consistent with one or more of the stated goals of the PE program, (2) the objectives of the proposed project are specific, measurable, and time-phased; 3) the plan clearly describes applicant's technical approach/methods for conducting the proposed project(s); and (4) the plan is adequate to accomplish the stated objectives.

g. Identification of applicant's key professional personnel to be assigned to the Prevention Epicenter and to specific

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projects as well as key professional personnel from other participating or collaborating institutions, agencies, organizations outside of the applicant's agency that will be assigned to PE activities (provide curriculum vitae for each in an appendix). Clear identification of applicants' respective roles in the management and operation of the Prevention Epicenter and in individual projects. Descriptions of participants' experience in conducting work similar to that proposed in this announcement.

h. Description of all support staff and services to be assigned to the Prevention Epicenter.

i. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (a) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Evaluation (5 points)

a. Quality of plan for monitoring and evaluating scientific and operational accomplishments of the Prevention Epicenter and of individual Center projects.

b. Quality of plan for monitoring and evaluating progress in achieving the purpose and overall goals of this cooperative agreement program.

6. Budget (not scored)

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

7. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. progress reports (semiannual);

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where To Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

For this and other CDC announcements, please see the CDC home page on the Internet: http://www.cdc.gov (click on "Funding"). To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Gladys Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number 770–488–2753, Email address gcg4@cdc.gov

For program technical assistance, contact: Steve Solomon, M.D., Hospital Infections Program, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, N.E. Mailstop A–07, Atlanta, GA 30333, Telephone number 404–639–6476, Email address sls1@cdc.gov

Dated: May 18, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13028 Filed 5–23–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00093]

States Helping States Through The Association of Food And Drug Officials; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention, (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for States Helping States Through the Association of Food and Drug Officials.

B. Eligible Applicant

Assistance will be provided only to the Association of Food and Drug Officials (AFDO). No other applications are solicited.

AFDO is the only organization qualified to conduct this work because:

1. AFDO is the only organization that represents the state and local food protection regulatory agencies. Regular members are official heads of State or local regulatory agencies or personnel under their supervision. The Association's principle purpose is to act as a leader and resource to state and local regulatory agencies in developing strategies to resolve and promote public health and consumer protection related to the regulation of foods as well as drugs, medical devices and consumer products.

2. AFDO focuses on the administration of the nation's food safety component of public health programs. AFDO has unique perspective on the infrastructure, capacity, strengths and needs of state and local food safety programs.

3. AFDO has experience in carrying out national training efforts that focus on the needs of state and local regulatory agencies.

C. Availability of Funds

Approximately $102,000 is available in FY 2000 to fund this Cooperative Agreement. It is expected that the award will begin on or about September 1, 2000, and will be made for a 12-month budget period within a project period of up to 5 years.

D. Where To Obtain Additional Information

Program technical assistance may be obtained from: Chuck Higgins, Senior Environmental Health Officer, Environmental Health Services Branch, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341–3724, Telephone number: (770) 488–4180, Email address: cth4@cdc.gov

Business management technical assistance may be obtained from: Sonia V. Rowell, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2724, Email address: svp1@cdc.gov

Dated: May 18, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13029 Filed 5–23–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0046]

Quarterly List of Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a quarterly update of all guidance documents issued and withdrawn since we compiled the last quarterly list of guidance documents that published on March 14, 2000. FDA committed to publishing quarterly updates in our February 1997 "Good Guidance Practices" (GGP's) document, which set forth the agency's policies and procedures for developing, issuing, and using guidance documents. This list is intended to inform the public of the existence and availability of guidance documents issued since the annual comprehensive list was compiled.

DATES: General comments on this list and on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. For information on where to obtain single copies of guidance documents listed here, see the specific center's list of guidance documents.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice announcing its "Good Guidance Practices" (GGP's), which set forth our policies and procedures for developing, issuing, and using guidance documents. We adopted the GGP's to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of our guidance documents.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, we committed to publishing an annual comprehensive list of guidance documents and quarterly **Federal Register** notices that list all guidance documents that were issued and withdrawn during that quarter, including "Level 2" guidance documents. The following list of guidance documents represents all guidances that we issued or withdrew since we published the last quarterly list on March 14, 2000 (65 FR 13771). The guidance documents are organized by the issuing center or office within FDA, and are further grouped by the intended users or relevant regulatory activities. Dates provided in the following list refer to the date the guidance was issued or, where applicable, the last date the document was revised. We provided document numbers where available.

II. Guidance Document Issued by the Center for Biologics Evaluation and Research (CBER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft guidance entitled "International Conference on Harmonsation of Technical Requirements for Registration of Pharmaceuticals for Human Use M4: Common Technical Document"	February 11, 2000	FDA Regulated Industry	Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800. FAX Information System: 1–888–CBER–FAX (within U.S.)or 301–827–3844 (outside U.S. and local to Rockville, MD). Internet access: http://www.fda.gov/cber
Draft Guidance for Industry: Special Protocol Assessment	December 1999	Do	Do
Draft Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol	February 2000	FDA Personnel	Do

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Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: IND Meetings for Human Drugs and Biologics: Chemistry, Manufacturing, and Controls Information	February 2000	FDA Regulated Industry	Do
Guidance for Industry: Formal Meetings With Sponsors and Applicants for PDUFA Products	February 2000	Do	Do
Guidance for Industry: Formal Dispute Resolution: Appeals Above the Division Level	February 2000	Do	Do
Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing	February 2000	Do	Do
Draft Guidance for Industry: Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank	March 2000	Do	Do

III. Guidance Documents Issued by the Center for Devices and Radiological Health (CDRH)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Guidance for Industry and for FDA Staff: Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals, Draft Guidance-Not for Implementation	February 8, 2000	Office of Compliance (OC)	Division of Small Manufacturers Assistance; 1–800–638–2041 or 301–827–0111 or FAX Facts-on-Demand 1–800–899–0381 Internet access: http://www.fda.gov/cdrh
Guidance for FDA Staff; Compliance Program Guidance Manual; Field Compliance Testing of Diagnostic (Medical) X-ray Equipment	March 15, 2000	OC/Division of Enforcement I (DOE1)	Do
Guidance for Industry and FDA; Guidance for Indwelling Blood Gas Analyzer 510(k) Submissions	February 21, 2000	Office of Device Evaluation (ODE)	Do
Guidance on the Use of Standards in Substantial Equivalence Determination	March 12, 2000	Do	Do
Guidance Document for Premarket Notification Submission for Nitnc Oxide Delivery Apparatus, Nitric Oxide Analyzer and Nitrogen Dioxide Analyzer	January 24, 2000	ODE/Division of Cardiovascular, Respiratory & Neurological Devices (DCRND)	Do
Guidance for Extracorporeal Blood Circuit Defoamer 510(k) Submissions	February 16, 2000	ODE/DCRND	Do
Guidance for Cardiopulmonary Bypass Arterial Line Blood Filter 510(k) Submissions	February 21, 2000	Do	Do
Guidance Document for the Preparation of IDEs for Spinal Systems (Replaces: Guidance Document for the Preparation of IDEs for Spinal Systems 8/26/98)	January 13, 2000	ODE/Division of General & Restorative Devices (DGRD)	Do
Guidance for the Arrangement and Content of a Premarket Approval (PMA Application for an Endosseous Implant	May 16, 1989	ODE/Division of Dental, Infection Control and General Hospital Devices (DDIGD)	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Guidance for Industry and FDA Reviewers: Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme (Replaces: Reprocessing and Reuse of Single-Use-Devices: Risk Categorization Scheme; Draft Guidance 12/9/99)	February 8, 2000	Do	Do
Guidance for Industry and for FDA Reviewers/Staff; Guidance for the Content of Premarket Notifications for Penile Rigidity Implants (Replaced: Draft Guidance for the Content of Premarket Notifications for Penile Rigidity Implants 5/30/95)	January 16, 2000	ODE/Division of Reproductive Abdominal, ENT and Radiological Devices (DRAERD)	Do
Guidance for Manufacturers Seeking Marketing Clearance of Ear, Nose, and Throat Endoscope Sheaths Used as Protective Barriers (Replaces: Guidance for the Content of Premarket Notification for Disposable, Sterile, Ear, Nose and Throat Endoscope Sheaths with Protective Barrier Claims 10/21/96)	March 12, 2000	ODE/Division of Ophthalmic and Ear, Nose, Throat Devices (DOED)	Do
Draft Guidance for Industry; Guidance on Medical Device Patient Labeling	March 3, 2000	Office of Health and Industry Programs (OHIP)/Division of Device User Programs and Systems Anaylsis (DDUPSA)	Do
The FDA Export Reform and Enhancement Act of 1996/Export Certification Package including "Instructions for Requests for Certificate to Foreign Governments" (Replaces: The FDA Export Reform and Enhancement Act of 1996/Export Certification Package including "Instructions for Requests for Certificate to Foreign Governments" 6/22/99)	February 7, 2000	OHIP/Division of Small Manufacturers Assistance (DSMA)	Do
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #2	February 25, 2000	OHIP/Division of Mammography Quality and Radiation Programs (DMQRP)	Do
Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket (Replaces: Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements 2/22/99)	February 2, 2000	Office of Surveillance and Biometrics (OSB)/Division of Postmarket Surveillance (DPS)	Do

WITHDRAWALS

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Guidance on Medical Device Tracking [FDAMA] Replaced by Guidance for Industry and FDA Staff-Guidance on Medical Device Tracking [FDAMA]	February 19, 1998	OC	January 24, 2000
Guideline for Preparing Notices of Availability of Investigational Medical Devices (Replaced by: Preparing Notices of Availability of Investigational Medical Devices and for Recruiting Study Subjects 3/19/99)	November 1, 1985	OC/BIMO	February 14, 2000

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Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Review Proposal for Reagents and Analyzer Systems	March 14, 1995	ODE	February 17, 2000
Implantable Pacemaker Lead Testing Guidance for the Submission of a Section 510(k) Notification (Replaced by: Guidance for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads and for Pacemaker Lead Adaptor 510(k) Submissions 1/14/00)	September 1, 1989	ODE/DCRND	January 21, 2000
Determining Equivalence of Intraaortic Balloon Catheters Under the 510(k) Regulations	December 12, 1989	Do	April 7, 2000
510(k) Guidance for Screw Type Endosseous Implants for Prosthetic Attachment	August 11, 1992	ODE/DDIGD	April 5, 2000
Addendum to Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for General Purpose Disinfectants	March 9, 1994	Do	February 15, 2000
Reprocessing and Reuse of Single-Use-Devices: Risk Categorization Scheme; Draft Guidance (Replaced by: Guidance for Industry and FDA Reviewers: Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme Draft 2/8/00	December 9, 1999	Do	February 9, 2000
Draft Guidance on the Content and Format of Premarket Approval Application (PMA) for Sharps Needle Destruction Devices	February 11, 1997	Do	April 10, 2000
Sunglass Package; including Certification Statement for the Impact-Resistance Test of Lenses in Eyeglasses and Sunglasses	March 19, 1998	ODE/DOD	February 8, 2000
Guidance for Submission of a 510(k) Premarket Notification for an Air Conduction Hearing Aid	April 1, 1991	ODE/DRAERD	April 7, 2000
Draft Guidance for the Content of Premarket Notifications for Penile Rigidity Implants (Replaced by: Guidance for Industry and for FDA Reviewer/Staff; Guidance for the Content of Premarket Notifications for Penile Rigidity Implants 1/16/00)	May 30, 1995	Do	March 20, 2000
Guidance for the Content of Premarket Notification for Disposable, Sterile, Ear, Nose and Throat Endoscope Sheaths with Protective Barrier Claims (Replaced by: Guidance for the Content of Premarket Notification for Disposable, Sterile, Ear, Nose and Throat Endoscope Sheaths with Protective Barrier Claims 3/12/00)	November 21, 1996	Do	March 22, 2000
Draft Guidance to Hearing Aid Manufacturers for Substantiation of Claims	August 5, 1994	Do	April 14, 2000
Medical Device Reporting for Distributors	April 1, 1996	OHIP/DSMA	February 16, 2000
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #2 (Replaced by Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #2 2/25/00)	March 5, 1999	OHIP/DMQRP	January 21, 2000

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
The FDA Export Reform and Enhancement Act of 1996/Export Certification Package including "Instructions for Requests for Certificate to Foreign Governments"	June 22, 1999	Do	February 14, 2000
Import of Medical Devices—A Workshop Manual (FDA 93–4228)	March 1, 1993	Do	February 8, 2000
Guidance for Medical Gloves—A Workshop Manual FDA 97–4257 (Replaced by Guidance for Industry and FDA–Medical Glove Guidance Manual Draft FDA 99–4257)	September 1, 1997	Do	Do
Part I—FDA Structure and Functions Part II—Center for Devices and Radiological Health (CDRH) Structure and Functions/International Manual (Replaced by: U.S. FDA–Regulation of Medical Devices; Background Information for International Officials 4/14/99)	April 14, 1999	OHIP/DSMA	February 15, 2000
Part III—FDA's Regulation of Medical Devices/International Manual (Replaced by: U.S. FDA Regulation of Medical Devices; Background Information for International Officials 4/14/99)	April 14, 1999	OHIP/DSMA	Do
Part IV—Electronic Access to FDA Guidance Documents and Information/International Manual (Replaced by: U.S. FDA–Regulation of Medical Devices; Background Information for International Officials 4/14/99)	April 14, 1999	OHIP/DSMA	Do
MDR Documents Access Information for CDRH Facts-On-Demand (FOD)	February 29, 1996	OSB	Do
MDR Documents Access Information for Industry Organizations	May 8, 1996	OSB	Do
Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements	February 22, 1999	OSB/DPS	January 17, 2000

CORRECTIONS

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Group	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance on Premarket Notification [510(k)] Submissions for Automated Endoscope Washers, Washer/Disinfectors, and Disinfectors Intended for Use in Health Care Facilities (This document was mistakenly listed as "withdrawn" in the March 14, 2000 FEDERAL REGISTER	August 1, 1993	ODE/Division of General & Restorative Devices (DGRD)	Do

IV. Guidance Documents Issued by the Center for Drug Evaluation and Research (CDER)

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Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Skin Irritation and Sensitization Testing of Generic Transdermal Drug Products	February 3, 2000	Generic Drug	Office of Training and Communication, Drug Information Branch, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Internet access: http://www.fda.gov.cder/guidance/index.htm
IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing, and Controls information	February 4, 2000	Chemistry Draft	Do
Special Protocol Assessment	February 9, 2000	Modernization Act Draft	Do
Draft guidance entitled "M4 Common Technical Document: Request for Comments on Initial Components"	February 11, 2000	ICH Draft—Joint Safety/Efficacy	Do
NDAs: Impurities in Drug Substances	February 25, 2000	Chemistry	Do
Formal Meetings With Sponsors and Applicants For PDUFA Products	March 7, 2000	Modernization Act	Do
Formal Dispute Resolution: Appeals Above the Division Level	March 7, 2000	Do	Do
OTC Treatment of Herpes Labialis with Antiviral Agents	March 8, 2000	Clinical/Medical Draft	Do
Conjugated Estrogens, USP: LC–MS Method for Both Qualitative chemical characterization and Documentation of Qualitative Pharmaceutical Equivalence	March 9, 2000	Biopharmaceutic Draft	Do
Content and Format of New Drug Applications and Abbreviated New Drug Applications for Certain Positron Emission Tomography Drug Products	March 10, 2000	Modernization Act Draft	Do
Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank: Availability	March 29, 2000	Do	Do
Court Decisions, ANDA Approvals, and 180-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act	March 30, 2000	Procedural	Do
Draft guidance entitled "E11: Clinical Investigation of Medicinal Products in the Pediatric Population"	April 12, 2000	ICH Draft—Efficacy	Do

V. Guidance Documents Issued by the Center for Veterinary Medicine (CVM)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs—Draft Guidance	January 2000	Animal Drug Industry	Communications Staff (HFV–12), FDA/CVM, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755. Internet access: http://www.fda.gov/cvm FAX 301–594–1831

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry: Stability Testing for Medicated Premixes Guidance	March 2000	Do	Do

VI. Guidance Documents Issued by the Office of Regulatory Affairs (ORA)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Institutional Review Baords, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research.	March 30, 2000	Regulated Industry	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–857–0420 or Internet access at http://www.fda.gov/ora/compliance—ref/bimo_err—guide.htm
Compliance Policy Guide, Chapter 2, Sec.252.110, NEW: Volume Limits for Automated collection of Source Plasma	March 6, 2000	FDA Staff	Do Internet access at http://www.fda.gov/ora/compliance—ref/cpg/cpgbio/cpg252.110.htm
Compliance Policy Guide, Chapter 2, Sec. 257.100, REVISED: Deferral of source Plasma Donors Due to Red Cell Loss During collection of Source Plasma by Automated Plasmapheresis	March 22, 2000	Do	Do—Internet at http://www.fda.gov/ora/ compliance—ref/cpg/cpgbio/ cpg257.100.htm
Regulatory Procedures Manual, UPDATE/ REVISION: Chapter 4, Subchapter/ Warning Letters	March 21, 2000	Do	Do—Internet at http://www.fda.gov/ora/compliance—ref/rpm—new2/ch4.html
Investigations Operation Manual 2000	March 2000	Do	Division of Emergency and Investigational Operations (HFC–130) Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5636
Memorandum to Import Program Managers—Surveillance and Post Reconditioning Sampling of Bulk Spices for Pathogens	February 11, 2000	Do	Division of Import Operations and Policy (HFC–170), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 301–443–6553
Import Alerts	Continuously	Do	Freedom of Information staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville MD Internet at http:www.fda.gov/ora/fiars/ ora—import—alerts.html

WITHDRAWALS

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Compliance Policy Guide, Chapter 2, Sec. 215.100 (CPG 7134.07), IND Filings; Completion of Applicable Portions Prior to Final Action on License Applications or License Amendments	July 19, 1976	FDA Staff	March 28, 2000

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Dated: May 17, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–12989 Filed 5–23–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

AIDS Education and Training Centers' National HIV/AIDS Clinical Consultation Center Grant

AGENCY: Health Resources and Services Administration.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB) announces that applications will be accepted for fiscal year (FY) 2000 grants for a discretionary grant to support an AIDS Education and Training Centers' National Clinical Consultation Center. The Center will be responsible for assisting medical providers in the treatment of persons with HIV infection and in management of health care workers who may have sustained occupational exposure to HIV and other blood borne pathogens commonly occurring in persons living with HIV infection (including Hepatitis B and C) through prompt, individualized, expert consultation. The Center will also link service users to education and training opportunities available through regional AIDS Education and Training Centers and provide technical assistance to these regional centers. The authority for this program is 2692 (a) of the Public Health Service Act as amended by Public Law 104–146, the Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 1996.

Availability of Funds

It is anticipated that a single recipient will be selected for the National HIV/AIDS Clinical Consultation Center and the award is expected to be $1,500,000 of the initial budget period. Funding will be made available for 12 months, with a project period of up to three years. Continuation awards within the approved project period will be made on the basis of satisfactory progress and the availability of funds.

Eligible Applicants

Eligible applicants are public and nonprofit entities and schools and academic health science centers.

DATES: A letter of intent to submit an application is requested by June 14, 2000. Applications for this announced grant must be received in the HRSA Grants Application Center by the close of business July 10, 2000, to be considered for competition. Applications shall be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing and submission to the review committee. (Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.) Applications received after the deadline will be returned to the applicant.

ADDRESSES: Letters of intent to apply for funding should be mailed to Dr. Laura Cheever, HIV Education Branch, HRSA, 5600 Fishers Lane, Parklawn Building, Rm 7–16, Rockville, Maryland 20857. All applications should be mailed or delivered to: Grants Management Officer, HRSA Grants Application Center, 1815 N. Fort Meyer Drive, Suite 300, Arlington, VA 22209. Grant applications sent to any address other than that above are subject to being returned. **Federal Register** notices and application guidance for the HIV/AIDS Bureau program are available on the World Wide Web via the Internet. The web site for the HIV/AIDS Bureau is: http://www.hrsa.gov/hab/. Federal grant application kits are available at the following Internet address: http://forms.psc.gov/phsforms.htm. For those applicants who are unable to access application materials electronically, a hard copy of the official grant application kit (SF 5161) must be obtained from the HRSA Grants Application Center. The Center may be contacted by (telephone, 1–877–477–2123) FAX: (703–477–2345) e-mail: hrsagac@hrsa.gov.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained from Dr. Laura W. Cheever, Chief, HIV Education Branch, Division of Training and Technical Assistance, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–16, Rockville, Maryland 20857. Telephone number (301) 443–6364 and the FAX: (301) 443–9887.

Dated: May 17, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–12990 Filed 5–23–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

"Low-Income" Levels for Health Professions and Nursing Programs

Health Resources and Services Administration (HRSA) is updating income levels used to identify a "low-income family" for the purpose of providing training in the various health professions and nursing programs included in titles VII and VIII of the Public Health Service Act (the Act).

The Department periodically publishes in the **Federal Register** low-income levels used for grants and cooperative agreements to institutions providing training for (1) disadvantaged individuals, (2) individuals from a disadvantaged background, or (3) individuals from low-income families.

The program under the Act that may use "low-income levels" as one of the factors in determining a disadvantaged or low-income status are:

Advanced Education Nursing (section 811)
Allied Health Special Projects (section 755)
Basic Nurse Education and Practice (section 831)
Dental Public Health (section 768)
Faculty Loan Repayment and Fellowships Program (section 738)
General and Pediatric Dentistry (section 747)
Health Administration Traineeships and Special Projects (section 769)
Health Careers Opportunity Program (section 739)
Loans to Disadvantaged Students (section 724)
Physician Assistant Training (section 747)
Primary Care Residency Training (section 747)
Public Health Traineeships (section 767)
Quentin N. Burdick Program for Rural Interdisciplinary Training (section 754)
Residency Training in Preventive Medicine (section 768)
Scholarships for Disadvantaged Students (section 737)
Public Health Training Centers (section 766)
Nursing Workforce Diversity (section 821)

These programs generally award grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, Pediatric medicine, nursing, chiropractic, public or nonprofit private schools which offer graduate programs in behavioral health and mental health practice, and other public or private nonprofit health or educational entities to assist the disadvantaged to enter the graduate from health professions schools. Some programs provide for the repayment of health professions education loans for disadvantaged students.

The following income figures were taken from poverty thresholds published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal programs. That index includes multiplication by a factor of 1.3 for adaptation to health professions and nursing programs which support training for disadvantaged individuals or those from disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1999.

Size of parents' family*	Income level**
1	$11,100
2	14,400
3	17,200
4	22,000
5	26,000
6 or more	29,200

* Includes only dependents listed on Federal income tax forms.

** Rounded to the nearest $100. Adjusted gross income for calendar year 1999.

Dated: May 18, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–12991 Filed 5–23–00; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Establishment of Interagency Council on Biomedical Imaging in Oncology in Call for Requests to Present

The National Cancer Institute (NCI), Food and Drug Administration (FDA), and the Health Care Financing Administration (HCFA) are pleased to announce the formation of an Interagency Council on Biomedical Imaging in Oncology. This announcement summarizes the purpose of this newly created Interagency Council, how it will function, the types of advice it will provide, its composition and membership, and the time of the first Council meeting.

Name of Committee: The National Cancer Institute, Food and Drug Administration, and the Health Care, Financing Administration Interagency Council on Biomedical Imaging in Oncology.

Due Date for Request: June 8, 2000.

Contract Person: Ellen G. Feigal, Deputy Director, Division of Cancer Treatment and Diagnosis, National Cancer Institute, 31 Center Drive, Building 31, Room 3A44, Bethesda, MD 20892–2440, Tel: 301 496–6711, Fax: 301 496–0826, E-mail: *ef30d@nih.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Interagency Council?

The Interagency Council is a newly created multi-agency group designed to serve as a sounding board for investigators and manufacturers attempting to take emerging medical imaging technology to market. It consists of a core staff from the FDA, HCFA, and NCI with experience and knowledge concerning the decision-making processes for their agency for medical imaging products. Additional agency staff may be added to the core group on specific matters when needed. The purpose of the Council is to provide multi-agency advice that may help guide imaging technology developers in the fight against cancer. the Council will provide advice on projects or project proposals brought voluntarily by investigators and technology/device developers in industry and academia. It offers a new, multi-agency perspective to the communication with government agencies that is already available to investigators and companies.

Why Does the Nation Need This?

In September, 1999, the NCI and the National Electrical Manufacturer's Association co-sponsored the First NCI-Industry Forum and Workshop on Biomedical Imaging in Oncology. This meeting included senior leadership from industry, FDA, HCFA, NCI, and researchers from academia. We gathered to discuss ways to align investment in imaging technologies with the biomedical opportunities and unmet clinical needs in cancer. Participants asked the NCI to convene meetings between the multiple government agencies and industry to facilitate forward movement of promising technologies into the marketplace. The overall goal is to bring effective technologies into clinical use so that an impact on the public health can be achieved. The summary of the Forum and Workshop and follow-up comments to that conference can be reviewed on http://dino.nci.nih.gov/dctd/forum.

What Will the Interagency Council Do?

The three agencies participating in the Interagency Council all have different roles in the development of medical imaging technologies. NCI has created and is expanding a Biomedical Imaging Program. This effort currently funds innovative device and technology development, small animal imaging, in vivo cellular and molecular imaging centers, and a clinical trails imaging network (ACRIN). FDA is responsible for determining the safety and efficacy of specific products proposed for marketing and for marketing and for monitoring those products while they are on the market. HCFA is responsible, as a Federal health insurance provider, for determining coverage and reimbursement for products and services in the marketplace for their beneficiaries. By participating in the Council, these three agencies will be able to provide coordinated assistance to sponsors as they go through the development and regulatory processes necessary to bring products to market.

The specific roles envisioned by the participants in the Council are as follows:

NCI will provide input on scientific and medical issues, information on the initiatives and research resources available to fund or develop imaging technologies, explain the process for gaining access to such resources, and facilitate future interactions of imaging technology developers with NCI staff or with other NCI-sponsored investigators.

FDA will provide information on the issues that may need to be addressed to establish that a product is safe and effective, explain its existing guidance and procedures, and facilitate future interactions of imaging technology developers with its regulatory staff. How FDA may interact with sponsors is defined in statutes, regulations, and performance goals, and FDA expects that the Council will provide a mechanism to explain to imaging technology developers how to work within existing processes to bring products to market.

HCFA will provide information on its coverage and reimbursement processes, and facilitate future interactions of imaging technology developers with HCFA staff.

The products of the Interagency Council will be:

- Suggestions on the scientific and medical issues related to proposals, and information regarding available resources, potential relevant contacts for investigators within FDA, HCFA, NCI or with other investigators; and
- Written summary of the session, detailing the agenda topic, participants,

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and proposed plans or advice given or discussed.

Will the Interagency Council Maintain Confidentiality?

Council meetings will be closed to the public. Information exchanged with the Interagency Council will be held in confidence by the participants, consistent with applicable laws. The NCI, FDA, and HCFA are all agencies in the Department of Health and Human Services, and by law are obligated to protect from disclosure trade secrets and confidential commercial information.

Who Can Present Before the Interagency Council?

Any company or academic investigator developing a device or technology relevant to biomedical imaging in cancer who seeks the perspectives of a multi-agency assessment and discussion may present.

What Is the Process?

The first due date for request is June 8, 2000. The Council will consider additional calls for requests after the initial Interagency Council meeting has taken place on July 20, 2000. The Council expects to meet about four times each year, if it receives enough requests to do so.

The Council may schedule discussion of several similar types of products at a single meeting. Generally, the Council will give preference in scheduling meetings to promising new technologies that are viewed as important new developments in cancer imaging.

Each meeting will be attended by the available core members on the Council. The core members also may invite additional relevant staff within their agency to attend the Council meetings. Logistics for the meeting date, time, and location will be coordinated by the Council coordinator, and communicated to all participants.

Request to Present

The requestor should follow a standardized format that the Council will make available on the Internet or that can also be completed and sent by hard copy. The information that the requestor will need to provide includes:

- Name of investigator, professional title(s) and degree(s) of investigator;
- Name of company and or/ institution affiliation;
- What is the question/issue that you want to raise? Do you need/want representatives from the 3 government agencies, e.g., NCI, FDA, and HCFA, present for the presentation and discussion? Will you have data to present?

Submit to: Council Coordinator (same address as listed for contact information).

Reply to Letter of Intent

Within approximately 3 working days of receipt of the letter of request, the Council coordinator will send a letter acknowledging receipt of the request. Within 30 days, and after consultation with Council representatives, the Council coordinator will either invite the requester to a meeting (at the requestor's expense) if it appears that the question or issue would benefit from a multi-agency discussion, or indicate the Council's determination that a meeting will not be provided. A letter of invitation will ask the requestor to provide specific questions or issues they want to discuss with the Council, and, at the discretion of the requestor, relevant background information and data in a packet not to exceed 25 pages.

If it is not thought that a multi-agency discussion is required or desirable, then a letter will be sent to requestor stating the reason why such a meeting request has been denied. If appropriate, the letter may suggest other viable paths the requestor might pursue.

If the Council has already met with requestor before, the Council coordinator will determine if this is a new situation that requires a multi-agency discussion.

All letters will be kept on file with Council at the NCI.

Provision of Background Material

The requestor will submit background materials within two weeks of receipt of the letter from the Council. The Council coordinator will distribute the completed packet to the core members of the Interagency Council, and to the ad hoc members.

During the Session

Each session will last about a half-day, e.g., 3 to 4 hours, to discuss at most 2 or 3 issues. The general format of the session will consist of the requestor presenting their question/issue, and background information including data, when available. This will be a relatively informal discussion that can be interrupted as needed to answer questions, and clarify issues. At the conclusion of each topic, the Council will summarize the main issues and plans or set of actions that might be considered.

Follow-Up After the Session

Within one week after the meeting, the Council coordinator will prepare minutes of the meeting noting the main take-home points of the discussion and the conclusions. It will include the names of all participants in the session, the question or issue being addressed, and the proposed plans or advice given or discussed. The coordinator will obtain review and concurrence in the minutes by each agency participating in the meeting. The minutes will be sent to the person requesting the meeting and to agency representatives within four weeks of the meeting. The Council will keep one copy of the letter, as well as the letter of request and the submitted background information, on file at the NCI.

What the Interagency Council Is Not

The Interagency Council is intended to provide research groups with advice on the spectrum of scientific, regulatory, coverage and reimbursement issues that affect the development of imaging devices or technologies.

The Council's advice does not replace the legislatively mandated roles and functions of the agencies individually. In particular, the Interagency Council does not approve funding of research and development, and does not make or guarantee FDA regulatory, or HCFA coverage or reimbursement decisions.

Request to Present to the Interagency Council

(Suggested format)
Name of investigator: _____
Professional title(s) and degree(s) of investigator: _____
Name of company and/or institution affiliation: _____
Address: _____
_____
City: _____
State: _____
Zip: _____
What is the question/issue that you want to raise: _____
_____
Do you need/want representatives from the three government agencies, e.g., NCI, FDA, and HCFA, present for the presentation and discussion? Yes __ No __
Will you have data to present? Yes __ No __
Will you be presenting confidential commercial or proprietary information? Yes __ No __
Submit applications to: Jaime Quinn, M.P.H. Council Coordinator, National Cancer Institute, 31 Center Drive, Building 31, Room 3A44, Bethesda, MD 20892–2440. Tel: 301–496–6711, Fax: 301–496–0826, Email: *jq14u@nih.gov*.

Dated: May 16, 2000.

Alan Rabson,

Deputy Director, National Cancer Institute, National Institutes of Health.

[FR Doc. 00–13026 Filed 5–23–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–04]

Notice of Proposed Information Collection for Public Comment for the Contract Administration, Public and Indian Housing Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 24, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available document. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Contract Administration; Public and Indian Housing Programs.

OMB Control Number: 2577–0039.

Description of the need for the information and proposed use: Housing Agencies (HAs) must maintain certain records or submit certain documents to HUD with the award of oversight or construction contracts for development or new low-income housing developments or modernization of existing developments. The information is necessary for the proper performance of agency functions and compliance with the common rule for procurement (24 CFR 85.36(b)(2) and (9)). HAs must maintain a contract administration system and maintain sufficient records.

Agency form numbers, if applicable. HUD–5372; HUD–51000.

Members of affected public: State, local or Tribal Government Housing Agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 2,100 responses, five contract administration documents (bidding control record, register of change orders and time extensions, disputes and claims records, HUD–5372, Construction Progress Schedule, HUD–51000, Schedule of Amounts for Contract Payments) will be submitted annually for a total of 11,608 responses. The amount of burden hours per document varies and will have a total burden of 14,506 hours.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 18, 2000.

Elinor Bacon,

Deputy Assistant Secretary for Public Housing Investments.

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Construction Progress Schedule

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0039
(Exp. 4/30/2000)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

Construction practices and HUD administrative requirements establish the need that HAs maintain certain records or submit certain documents in conjunction with the oversight of the award of construction contracts for the construction of new low-income housing developments or modernization of existing developments. These forms are used by HA to provide information on the construction progress schedule and schedule of amounts for contract payments. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Name of Public Housing Agency/Indian Housing Authority (PHA/IHA)

2. City | 3. State | 5. Project Name

4. Location | 6. Project Number

7. Contract For | 8. Contract Time (Days)

9. From (mm/dd/yyyy) | To (mm/dd/yyyy) | 10. Contract Price $

11. Number of Buildings | 12. Number of Dwelling Units | 13. Number of Rooms

(Submit as many pages as necessary to cover the construction period.)	Year (yyyy)							
	Month							
Actual Monthly Value, Work in Place	($)							
Actual Accumulated Progress	(%)							
Anticipated Monthly Value	($)							
Accumulated Scheduled Progress	(%)							

Submitted by Contractor's Name | Title | Signature | Date (mm/dd/yyyy)

Approved by PHA/IHA | Title | Date (mm/dd/yyyy)

Approved by Architect | Date (mm/dd/yyyy)

Instructions for Preparation of Construction Progress Schedule Form HUD-5372

General. The information required for items 1 through 6 can be obtained from the contract documents. (7.) Enter the type of work awarded by the PHA/IHA. This may be "general construction," "plumbing," "heating," "electrical," etc., depending upon prime contract awards. (8.) Enter the contract time in calendar days (unless otherwise stated). (9.) Enter the starting and completion dates as established by the Notice to Proceed.

Year and Month. At the top of the Schedule, space is provided for inserting the "Year" and "Month" to identify the times during which the work is to be performed.

Year. Enter the year when the Notice to Proceed was issued. If the starting date of the contract is such that the time assigned for completion will be carried into a succeeding year, two yearly designations will be shown, each centered over the applicable spread of time for each year.

Month. The body of the Schedule is divided into Columns, each representing a period of one month. Starting in the Column with the month stated in the Notice to Proceed, enter at the top of each column the successive months corresponding to the entire spread of the total contract time. The Schedule must contain monthly columns to cover the entire active period of contract, with extra columns for possible overruns in contract time.

Computation of Anticipated Monthly Value of Work in Place

Before presenting the form for approval, enter in each monthly column the dollar value (omit cents) of the increment of work anticipated to be put in place during that interval of time. This shall be the Contractor's best estimate of the rate of progress for each month. This section contains a suggested guide for the elapsed contract time vs. progress percentages.

The horizontal total of the monthly dollars shown for "Anticipated Monthly Value" must equal the contract price shown in the heading.

Accumulated Scheduled Progress – %

Entries on this line shall show in percentage of total completion the cumulative stage of progress that is scheduled to be reached at the end of each monthly interval. It is generally sufficient to state this anticipated progress to the nearest tenth of one percent, but for very large contracts it may be advisable to extend computations to the nearest hundredth.

The entry for the first month's column should be the % obtained by the anticipated monthly dollar value of work in place at the close of the first month being divided by the contract price.

The entry for the second month's column is obtained by the sum of the anticipated monthly dollar values of work in place for Columns 1 and 2 being divided by the contract price.

Enter in the third month's column the percentage computed similarly, using the sum of dollar values of work in place for Columns 1, 2, and 3. Continue in this manner for the succeeding monthly columns until "100" is reached in the final column.

Charting Actual Progress. The horizontal space extending through the monthly columns is divided into "Actual Monthly Value of Work in Place – $" and Actual Accumulated Progress – %." In each monthly column show the actual accumulated % of progress and the actual value of work in place for that month, as the work progresses. An anticipated complete shutdown at some stage in the work because of adverse seasonal weather or otherwise, as may occur in road work, excavation (grading), etc., is readily shown by a gap.

The Contractor's name shall be placed in the lower left-hand corner of the form, together with the signature and title of the employee who prepared the Schedule and the date. The form then shall be sent to the Architect for review. If the Architect considers that changes are necessary to make the Schedule more realistic, it will withhold approval and so advise the Contractor. When the form is acceptable and approved by the Architect, and the PHA/IHA, it will be returned to the Contractor, who shall reproduce and submit the number and style of prints required by the PHA/IHA.

Normal building construction experience has proved that the rate of overall progress (as measured by work in place) accelerates slowly at the start, reaches its peak in the middle third of the construction period, and tapers down at the close. The data following illustrate the general average expectancy of a well-balanced operation and may be used as a guide. If the proposed progress lies within reasonable range of these check points, the Schedule may be considered satisfactory insofar as the time-performance feature is involved.

% of Contract Time	% of Accumulated Progress
0	0
10	2
20	8
30	20
40	37
50	57
60	75
70	89
80	96
90	99
100	100

The foregoing percentages must be tempered by consideration of seasonal weather conditions and other known conditions which may affect the progress of the work. These percentages are offered for information only.

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Schedule of Amounts for Contract Payments

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0039
(Exp. 4/30/2000)

No progress payments shall be made to the contractor unless a schedule of amounts for contract payments in accordance with the construction contract is received.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

Construction practices and HUD administrative requirements establish the need that HAs maintain certain records or submit certain documents in conjunction with the oversight of the award of construction contracts for the construction of new low-income housing developments or modernization of existing developments. These forms are used by HAs to provide information on the construction progress schedule and schedule of amounts for contract payments. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

Project Name and Location					Project Number
Name, Address, and Zip Code of Contractor					
Nature of Contract					Contract Number
Approved for Contractor by	Title				Date (mm/dd/yyyy)
Approved for Architect by	Title				Date (mm/dd/yyyy)
Approved for Owner by	Title				Date (mm/dd/yyyy)

Item No. (1)	Description of Item (2)	Quantity (3)	Unit of Measure (4)	Unit Price in Place (5)	Amount of Sub-Item (6)	Amount of Principal Item (7)

Total Amount of Contract or Carried Forward $

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Signature of authorized represenative	Date signed (mm/dd/yyyy)

Previous editions are obsolete

Page 1 of ____

form **HUD-51000** (7/97)
ref Handbooks 7417.1 and 7485.1

Instructions for Preparation of form HUD-51000

1. A separate breakdown is required for each project and prime contract instructions for preparation are given below.
   a. **Heading.** Enter all identifying information required for both forms.
   b. **Columns 1 and 2.** In column 1, enter the item numbers starting with No. 1, and in column 2 enter each principal division of work incorporated in the contract work.
      (1) **Master List.** The Master list contains the basic items into which any construction contract may be subdivided for the purpose of preparing the Construction Progress Schedule and the Periodical Estimates for Partial Payments. Only those items shall be selected which apply to the particular contract. To ensure uniformity, no change shall be made in the item numbers. Generally, about 25 to 40 major items appear in a contract.
      (2) **Items Subdivided.** In the Contractor's breakdown, against which all periodical estimates will be checked prior to payment, each major item must be subdivided into sub-items pertinent to the project involved and in agreement with the Contractor's intended basis for requesting monthly payments.
   c. **Column 3.** Enter the total quantity for each sub-item of each principal division of work listed in the breakdown.
   d. **Column 4.** Enter the appropriate unit of measure for each sub-item of work opposite the quantities described in column 3, such as "sq. ft.," "cu. yd.," "tons," "lb.," "lumber per M/BM," "brickwork per M," etc., applicable to the particular sub-item. Items shown on "lump sum" or equivalent basis will be paid for only on completion of the whole item and not on a percentage of completion basis.
   e. **Column 5.** Enter the unit price, in place, of each sub-item of work.
   f. **Column 6.** Enter the amount of each sub-item obtained by multiplying the quantities in column 3 by the corresponding unit prices in column 5.
   g. **Column 7.** Enter the amount of principal item only, obtained by adding the amounts of all sub-items of each principal division of work listed in column 6. Continue with the breakdown on form HUD-51000.
   h. The "Schedule of Amounts for Contract Payments" shall be signed and dated in the space provided at the bottom of each sheet of the form by the individual who prepared the breakdown for the Contractor.
2. The minimum number of copies required for each submission for approval is an original and two copies. When approved, one fully approved copy will be returned to the Contractor.

Master List of Items

Item No.	Division of Work	Item No.	Division of Work	Item No.	Division of Work
1	Bond	20	Rough Carpentry		**Site Improvements**
2	General Conditions \1	21	Metal Bucks	44	Retaining Walls
3	Demolition & Clearing	22	Caulking	45	Storm Sewers
		23	Weatherstripping	46	Sanitary Sewers
	Structures	24	Lath & Plastering-Drywall	47	Water Distribution System
4	General Excavation	25	Stucco	48	Gas Distribution System
5	Footing Excavation	26	Finish Carpentry	49	Electrical Distribution System
6	Backfill	27	Finish Hardware	50	Street & Yard Lighting
7	Foundation Piles & Caissons	28	Glass & Glazing	51	Fire & Police Alarm System
8	Concrete Foundations	29	Metal Doors	52	Fire Protection System
9	Concrete Superstructures	30	Metal Base & Trim	53	Street Work
10	Reinforcing Steel	31	Toilet Partitions	54	Yard Work
11	Waterproofing & Dampproofing	32	Floors	55	(Other)
12	Spandrel Waterproofing	33	Painting & Decorating	56	(Other)
13	Structural Steel	34	Screens		
14	Masonry	35	Plumbing		**Equipment**
15	Stonework	36	Heating	57	Shades & Drapery Rods
16	Miscellaneous & Ornamental Metal	37	Ventilating System	58	Ranges
17	Metal Windows	38	Electrical	59	Refrigerators
18	Roofing	39	Elevators	60	Kitchen Cabinets & Work Tables
19	Sheet Metal	40	Elevator Enclosures—Metal	61	Laundry Equipment
		41	Incinerators—Masonry & Parts	62	(Other)
		42	(Other)		
		43	(Other)	63	**Punch List \2**
				64	Lawns & Planting

1 General Conditions should be 3% to 5% of contract amount.
2 Punch List should be approximately 1/2 of 1% or $30 per dwelling unit, whichever is greater.

Previous editions are obsolete

form **HUD-51000** (7/97)
ref Handbooks 7417.1 and 7485.1

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DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Copies of the proposed collection instrument may be obtained by contacting the USGS clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192. Telephone 703–648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: National Atlas of the United States of America.

Current OMB approval number: 1028–0057.

Abstract: Potential customers of electronic national atlas products will be asked questions that provide (1) potential uses of these products; (2) type of personal computer used; (3) current method of acquiring atlas-type information; (4) demographic information; and (5) personal expectations from the products. Survey questionnaires will be distributed by mail in a return postage-paid format and via the World Wide Web. Focus groups will be held at various locations across the United States and could include prototype product testing. Software usability studies will be conducted at various locations and will result in the development of products that are easier to use. Customer information gathered from the questionnaires, focus groups, and usability studies will be used to evaluate the National Atlas of the United States products and to make development adjustments based on customer responses. The proposed collection is limited in scope to the National Atlas products and the capability of the products to meet customer needs. The USGS intends to develop a cooperative research and development agreement with private industry to assist in product development and to provide an additional avenue for product distribution.

Bureau form number: None.

Frequency: An estimated 2–3 surveys, 2–5 focus groups, and 2–5 software usability studies per year to evaluate potential customer segments and reactions.

Description of respondents: Owners of powerful home personal computers, some with Internet access—potentially the general public, libraries, and schools.

Estimated completion time: Varies depending on the mechanism used: approximately 0.15 minutes per survey and 1 hour per focus group session.

Annual responses: Approximately 1,000 survey, 75 focus group responses, and 75 software usability responses.

Annual burden hours: 500.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: May 12, 2000.

Richard E. Witmer,

Chief Geographer.

[FR Doc. 00–13000 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Cow Creek Band of Umpqua Tribe of Indians in Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 200.05 acres as an addition to the reservation of the Cow Creek Band of Umpqua Tribe of Indians on May 3, 2000. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tract of land described below. The land was proclaimed to be an addition to and part of the reservation of the Cow Creek Band of Umpqua Tribe of Indians for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Reservation of the Cow Creek Band of Umpqua Tribe of Indians

The following described real property is located in the North Half of Section 29 and in the South Half of Section 20, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon.

Beginning at a brass cap located at the Southwest corner of the William Preston Donation Land Claim Number 44, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon; Thence along the West boundary of said Donation Land Claim Number 44, North 0°48′23″ East 2231.02 feet to a 5/8 inch iron rod located at the intersection of said Donation Land Claim and the section line common to Sections 20 and 29, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon; Thence along said section line, North 89°58′05″ West 1932.48 feet to a brass cap located at the Section Corner common to Sections 19, 20, 29, and 30, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon; Thence along the section line common to Sections 19 and 20, North 1°00′05″ East 677.74 feet to a 5/8 inch iron rod located on the southerly right of way boundary of County Road Number 20A; Thence along said southerly right of way boundary, North 72°57′10″ East 402.28 feet to a 5/8 iron rod; Thence continuing along said southerly right of way boundary, North 17°02′50″ West 95.00 feet to a 5/8 inch iron rod; Thence leaving said southerly right of way boundary and crossing said County Road Number 20A, North 17°02′50″ West 60.00 feet to a 5/8 inch iron rod located on the northerly right of way boundary of said County Road Number 20A; Thence along said northerly right of way boundary, North 17°02′50″ West 50.00 feet to a point; Thence continuing along said northerly right of way boundary, South 72°57′10″ West 70.84 feet to a point located on the said northerly right of way boundary and its intersection with the southeasterly bank of the South Umpqua River; Thence leaving said northerly right of way boundary and running along the said southeasterly bank of the South Umpqua River, North 33°50′49″ East 81.20 feet to a point; Thence continuing along said southeasterly bank of the South Umpqua River, North 40°35′52″ East 153.31 feet to a point; Thence continuing along said southeasterly bank of the South Umpqua River, North 45°23′03″ East 24.87 feet to a point; Thence continuing along said southeasterly bank of the South Umpqua River, North 55°48′50″ East 78.16 feet to a point; Thence continuing along said southeasterly bank of the South Umpqua River North 42°45′25″ East 35.86 feet to a point; Thence continuing along said southeasterly bank of the South Umpqua River, North 36°24′42″ East 75.45 feet to a point located on the South boundary of Government Lot 2, Section 20, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon; Thence leaving said southeasterly bank of the South Umpqua River and running along the South boundary of said Government Lot 2, South 89°29′39″ East 44.57 feet to a point located at the Southeast corner of said Government Lot 2 on the westerly boundary of the John Yokum Donation Land Claim Number 43; Thence along the easterly boundary of said Government Lot 2, North 1°06′14″ East 51.10 feet to a point located at the Northeast corner of said Government Lot 2, said point is along the interior "L" Corner of the said John Yokum Donation Land Claim Number 43; Thence North 2°02′42″ East 919.73 feet to a 5/8 inch iron rod located in the southerly right of way boundary of U.S. Interstate Highway Number 5; Thence along said southerly right of way boundary of U.S. Interstate Highway Number 5, North 78°37′03″ East 212.05 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way of said U.S. Interstate Highway Number 5, North 89°54′19″ East 499.91 feet to a 5/8 inch iron rod located on the northwesterly right of way boundary of said County Road Number 20A; Thence leaving said southerly right of way boundary of said U.S. Interstate Highway Number 5 and running along the said northwesterly right of way boundary of said County Road Number 20A, South 12°57′22″ West 225.06 feet to a 5/8 inch iron rod; Thence leaving said northwesterly right of way of said County Road Number 20A and crossing the right of way of said County Road Number 20A, South 67°42′14″ East 60.29 feet to a 5/8 inch iron rod located on the southeasterly right of way boundary of said County Road Number 20A; Thence along said southeasterly right of way boundary of said County Road Number 20A, North 39°46′17″ East 16.34 feet to a 5/8 inch iron rod located on the said southerly right of way of said U.S. Interstate Highway Number 5; Thence leaving said right of way boundary of said County Road Number 20A and running along the said southerly right of way boundary of said U.S. Interstate Highway Number 5, North 89°54′39″ East 184.60 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way boundary of said U.S. Interstate Highway Number 5, North 84°00′20″ East 200.89 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way boundary of said U.S. Interstate Highway Number 5, North 71°52′32″ East 210.36 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way boundary of said U.S. Interstate Highway Number 5, North 55°08′48″ East 139.93 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way boundary of said U.S. Interstate Highway Number 5, North 40°06′59″ East 2.77 feet to a 5/8 inch iron rod; Thence leaving said southerly right of way of said U.S. Interstate Highway Number 5 and running South 0°24′54″ West 45.71 feet to a 5/8 inch iron rod; Thence South 89°35′07″ East 160.00 feet to a 5/8 inch iron rod; Thence South 0°24′54″ West 836.51 feet to a point from which a 1/2 inch iron rod bears South 0° 24′54″ West 1.44 feet; Thence South 89°23′37″ East 534.73 feet to a 1/2 inch iron rod; Thence South 0°54′31″ West 256.92 feet to a 5/8 inch iron rod; Thence Due East 693.05 feet to a 5/8 inch iron rod; Thence South 2°11′00″ West 577.95 feet to a 5/8 inch iron rod; Thence South 0°08′20″ West 585.20 feet to a 5/8 inch iron rod located on the section line common to said Sections 20 and 29, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon; Thence along said section line common to said Sections 20 and 29, North 86°41′24″ West 63.09 feet to a 5/8 inch iron rod; Thence leaving said section line common to said Sections 20 and 29, South 0°08′20″ West 2181.12 feet to a 5/8 inch iron rod located on the South boundary of said William Preston Donation Land Claim Number 44; Thence along the southerly boundary of said William Preston Donation Land Claim Number 44, Due West 1452.48 feet to the point of beginning.

Less that portion of Douglas County Road Number 20A that crosses through the Northwest corner of the above described property. Said portion of said Douglas County Road Number 20A is more particularly described as follows:

Beginning at a 5/8 inch iron rod located on the southerly right of way boundary of Douglas County Road Number 20A, said 5/8 inch iron rod bears North 1°00′05″ East 677.74 feet, North 72°57′10″ East 402.98 feet, and North 17°02′50″ West 95.00 feet from the Section Corner common to Sections 19, 20, 29, and 30, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon; Thence along the said southerly right of way boundary of said Douglas County Road Number 20A, North 72°57′10″ East 317.78 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way boundary, along the arc of a 316.49 foot radius curve to the left, the long chord of which bears North 50°25′25″ East 242.53 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way boundary, North 27°53′40″ East 1062.80 feet to a 5/8 inch iron rod; Thence leaving said southerly right of way boundary and crossing the right of way of said Douglas County Road Number 20A, North 67°42′14″ West 60.29 feet to a 5/8 inch iron rod located on the northerly right of way boundary of said Douglas County Road Number 20A; Thence along said northerly right of way boundary of said Douglas County Road Number 20A, South 27°53′40″ West 1056.92 feet to a 5/8 inch iron rod; thence continuing along said northerly right of way boundary, along the arc of a 256.49 foot radius curve to the right, the long chord of which bears South 50°25′25″ West 196.55 feet to a 5/8 inch iron rod; Thence continuing along said northerly right of way boundary, South 72°57′10″ West 317.78 feet to a 5/8 inch iron rod; Thence leaving said northerly right of way boundary of said Douglas County Road Number 20A and crossing the right of way of said Douglas County Road Number 20 A, South 17°02′50″ East 60.00 feet to the Point of Beginning.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: May 3, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–13081 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–02–P

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO 310 1310 03–2410; OMB Approval Number 1004–0074]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). On March 7, 2000, the Bureau of Land Management (BLM) published a notice in the **Federal Register** (65 FR 12027) requesting comments on the collection. The comment period ended May 8, 2000. No comments were received. Copies of the proposed collection of information may be obtained by contacting the Bureau's Clearance Office at the phone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0074), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630) 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Oil and Gas and Geothermal Resources Leasing (43 CFR 3120, 3209 and 3220).

OMB Approval Number: 1004–0074.

Abstract: Respondents supply information that will be used to determine the highest qualified bonus bid submitted for a competitive oil and gas or geothermal resources parcel on Federal land and to enable the BLM to complete reviews in compliance with the National Environmental Policy Act. The BLM needs the information to determine the eligibility of an applicant to hold, explore for, develop, and produce oil and gas and geothermal resources on Federal lands.

Forms Numbers: 3000–2 and 3200–9.

Frequency: On occasion.

Description of Respondents: Individuals, small business, large corporations.

Estimated Completion Time: 2 hours each form.

Annual Responses: 443.

Annual Burden Hours: 886.

Bureau Clearance Officer: Carole Smith, (202) 452–0367.

Dated: May 9, 2000.

Carole J. Smith,

Bureau Clearance Officer.

[FR Doc. 00–13072 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(WY–921–5440–K029–EU; WYW 150541)

Realty Action; Conveyance of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; airport conveyance to the Joint Powers Big Piney-Marbleton Airport Board.

SUMMARY: The following public lands in Sublette County have been found suitable for conveyance to the Joint Powers Big Piney-Marbleton Airport Board for airport purposes under the Act of May 24, 1928, as amended, and Section 516 of the Airport and Airway Improvement Act of 1982.

Sixth Principal Meridian, Sublette County, Wyoming

T. 30 N., R. 111 W.,
Sec. 7, lots 3, 4, NE¼SW¼;
Sec. 8, SE¼SW¼, SW¼SE¼;
Sec. 17, NW¼NE¼, N½NW¼, N½SW¼NW¼;
Sec. 18, lot 1, NE¼NE¼;
Sec. 20, S½NW¼.

The area described contains 499.5 acres.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

SUPPLEMENTARY INFORMATION: Conveyance of the lands is consistent with applicable Federal and county land use plans and will help meet the needs of Sublette County residents. Under this conveyance, improvements will be made at the Big Piney-Marbleton Municipal Airport for safety purposes.

The conveyance will contain reservations to the United States for ditches, canals and all minerals. Additionally the conveyance will be subject to rights of record including a right-of-way, WYW 7389 to Sublette County for road purposes; a right-of-way, WYW 146644 to the Federal Highway Administration; three rights-of-way, WYW 36810, WYW 87760, and WYW 6316, issued to Pacificorp for power transmission purposes; and two rights-of-way, WYW 76039, and 090925, issued to Century Telephone for communication purposes.

Specific covenants required by the Federal Aviation Administration will also be included in the conveyance and are available by contacting the office listed below.

The conveyance is consistent with the Pinedale Resource Management Plan. The land is not required for any other Federal purpose.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except applications for airport purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Bureau of Land Management, Branch of Minerals & Lands Authorizations, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objection, this proposed realty action will become final.

Dated: May 18, 2000.

Tamara J. Gertsch,

Realty Specialist.

[FR Doc. 00–13030 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0064).

SUMMARY: To comply with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), we are notifying you that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) to request an extension of OMB's approval for a currently approved information collection. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before June 23, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0064), 725 17th Street, NW, Washington, DC 20503. Copies of these comments should also be sent to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. Email address is RMP.comments@mms.gov.

Public Comment Procedure

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Payor Information Form—Solid Minerals, Form MMS–4030, OMB Control Number 1010–0064, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov*. You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION:

Title: Payor Information Form—Solid Minerals.

Bureau Form Number: Form MMS–4030.

OMB Control Number: 1010–0064.

Abstract: The Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

MMS' Royalty Management Program is proposing to continue the use of Form MMS–4030 to be used by royalty payors on Federal or Indian mineral leases. The information on Form MMS–4030 is used to establish a database of new payors/leases, lease-level (rent, advance and minimum royalty) obligations, other royalty/lease data, and to change existing royalty/lease data.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. A 60-day **Federal Register** notice soliciting comments on this collection of information was published on December 8, 1999 (64 FR 68700). No comments were received.

Respondents/Affected Entities: Royalty payors.

Frequency of Response: On occasion, annually.

Estimated Number of Respondents: 130 payors.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 173 burden hours. Refer to the following chart:

Citations	Reporting and recordkeeping requirements	Frequency	Number	Burden	Total annual burden hours
30 CFR 210.201	Complete and submit Form MMS–4030	Annual	130	1 hour	130 hours
30 CFR 212.50	Maintain records for 6 years	Annual	130	.333 hours	43 hours
Total			130		173

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by June 23, 2000.

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MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744 .

Dated: April 24, 2000.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 00–13020 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Environmental Assessment for Proposed Construction and Operation of Telecommunications Facilities in John D. Rockefeller, Jr. Memorial Parkway, WY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of environmental assessment.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the National Park Service announces the availability of an environmental assessment for proposed the construction and operation of a wireless communication facility on Steamboat Mountain in John D. Rockefeller, Jr. Memorial Parkway, WY. Steamboat Mountain is located at N. latitude 44–3–5, W. longitude 110–41–50. Union Telephone Company made an initial application to install the site in April, 1999. Public notice of the application was published in the **Federal Register**/Vol. 64. No. 86/Wednesday, May 5, 1999/Notices. JBR Environmental Consultants, Inc. prepared the assessment for the two companies for submittal to the National Park Service. The environmental assessment describes a no action alternative and two action alternatives. Union Telephone and CommNet Cellular, Inc.'s proposed action includes the installation of an underground power line to the site, two 8x18x9 wooden buildings, and a 70' wooden tower, including various wireless communication devices, at the site. Under the proposal, the companies would bring all materials to the site via a 3,300 cleared route needed for the powerline. At this time, the National Park Service's preferred alternative would bring some of the materials to the site by helicopter. The assessment discloses the possible environmental impacts of all the alternatives. Persons wishing to receive a copy of the assessment may do so by contacting the Superintendent, Grand Teton National Park, P.O. Drawer 170, Moose, WY 83012, or by calling (307) 730–3410.

DATES: Written comments on the environmental assessment must be postmarked or hand delivered by close of business June 30, 2000. Please address comments to the Superintendent at the above address. Comments will become part of the official record. Names and addresses of those who make comments will become part of the public record and cannot be withheld unless anonymity is specifically requested of and approved by the National Park Service.

FOR FURTHER INFORMATION: Contact the Superintendent, Grand Teton National Park, at the above address.

Dated: May 12, 2000.

Jack Neckels,

Superintendent, Grand Teton National Park.

[FR Doc. 00–13031 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Funding Assistance for Non-Federal Acquisition of Civil War Battlefield Land

AGENCY: National Park Service, Interior.

ACTION: Availability of Funding for Acquisition of Civil War Battlefield Land.

SUMMARY: The National Park Service (NPS) announces the availability of funds to assist States and local communities in acquiring for permanent protection lands, or interests in lands, at significant Civil War battlefield sites.

ADDRESSES: Funding proposals should be mailed to: Hampton Tucker, National Park Service, Heritage Preservation Services 1849 C Street, NW, NC 200, Washington, DC 20240, telephone (202) 343–3580.

FOR FURTHER INFORMATION CONTACT: Hampton Tucker, National Park Service, Heritage Preservation Services, 1849 C Street NW, NC 200, Washington, DC 20240; telephone (202) 343–3580.

SUPPLEMENTARY INFORMATION: Under the 1999 Interior Appropriations Act (Public Law 105–83), Congress appropriated $8 million from the Land & Water Conservation Fund to assist non-Federal efforts to acquire and preserve Civil War battlefield lands. The Congress assigned most of these funds to specific projects. At this time, it appears that a portion of these funds will be left unspent and will be reassigned to other worthy projects. NPS seeks proposals from State and local governments—or from qualified non-profit historic preservation organizations acting through an agency of State or local government—for the non-federal acquisition of significant Civil War battlefield land.

Project proposals are subject to the following requirements:

1. The 1999 Appropriations Act requires that these funds be matched on a two-for-one basis with non-federal dollars. That is, the federal dollars can pay for no more that one-third of the acquisition cost.

2. The purchase price must be supported by a qualified appraisal that has been approved by NPS as meeting the Uniform Appraisal Standards for Federal Land Acquisitions.

3. The battlefield land acquired with the assistance of these funds must be permanently protected from inappropriate development either through public ownership or through conveyance of a perpetual easement to a public historic preservation agency.

NPS will give priority to acquisition of land, or interests in land, within the "core" areas of Priority I and Priority II battlefields, as identified by the Congressionally-chartered Civil War Sites Advisory Commission (see list below). Among potential projects NPS will give highest priority to acquisition projects that can be completed within the immediate future.

Proposals should be submitted by July 14, 2000, and must include:

1. A carefully drawn map (preferably on a U.S.G.S. Quadrangle Map) that sets out the boundaries of the battlefield and identifies within those boundaries the specific lands to be acquired.

2. The number of acres of land to be acquired.

3. A description of the battle-related events that occurred on the land.

4. A statement of whether the owner of the land to be acquired has indicated a willingness to sell the land.

5. A statement of the owner's asking price and/or the estimated fair market value of the land to be acquired.

6. A statement of how much federal assistance from this program the applicant is requesting.

7. A statement of how much matching share is already on hand or firmly pledged.

Priority I Civil War Battlefields

Alabama Mobile Bay (Ft Morgan & Blakeley); *Arkansas* Prairie Grove; *Georgia* Allatoona, Chickamauga Kennesaw Mountain, Ringgold Gap; *Kentucky* Mill Springs, Perryville; *Louisiana* Port Hudson; *Maryland* Antietam, Monocacy, South Mountain; *Mississippi* Brices Cross Roads, Chickasaw Bayou, Corinth, Port Gibson, Raymond, Vicksburg; *Missouri* Byram's Ford, Fort Davidson, Newtonia; *New Mexico* Glorieta, Pass; *North Carolina* Bentonville, Fort Fisher; *Oklahoma* Honey Springs; *Pennsylvania* Gettysburg; *South Carolina* Secessionville, *Tennessee* Chattanooga, Fort Donelson, Spring Hill; *Virginia* Boydton Plank Road, Brandy Station, Bristoe Station, Cedar Creek, Chaffin's Farm/New Market Heights, Chancellorsville, Cold Harbor, Deep Bottom II, Fisher's Hill, Gaines' Mill, Glendale, Kernstown I, Malvern Hill, Manassas, Second Mine Run, North Anna, Petersburg, Richmond, Spotsylvania Court House, White Oak Road, Wilderness; *West Virginia* Harpers Ferry, Rich Mountain.

Priority II Civil War Battlefields

Arkansas Chalk Bluff, Devil's Backbone, Elkin's Ferry, Marks' Mills, Prairie D'an; *Colorado* Sand Creek; *Georgia* Dalton I, Davis' Cross Road, Griswoldville, Kolb's Farm, Lovejoy's Station, New Hope Church, Resaca, Rocky Face Ridge; *Kentucky* Cynthiana, Munfordville, Richmond; *Louisiana* Fort De Russy, Irish Bend, LaFourche Crossing, Mansfield, Mansura; *Maryland* Boonsborough; *Mississippi*, Big Black River Bridge, Champion Hill, Grand Gulf, Okolona, Snyder's Bluff; *Missouri* Carthage, Fredericktown, Lexington, Lone Jack, Newtonia; *New Mexico* Valverde; *North Carolina* Monroe's Cross Roads, Roanoke Island, Wyse Fork; *Oklahoma* Chustenahlah; *South Carolina* Grimball's Landing, Honey Hill; *Tennessee* Brentwood, Fair Garden, Murfreesborough, Parker's Cross Roads, Thompson's Station; *Texas* Sabine Pass II; *Virginia* Aquia Creek, Berryville, Buckland Mills, Cedar Mountain, Cool Springs, Cross Keys, Cumberland Church, Dinwiddie Courthouse, 1st Deep Bottom, Hampton Roads, Hatcher's Run, Haw's Shop, Lewis' Farm, Peebles' Farm, Piedmont, Port Republic, Port Walthall Junction, Ream's Station, Rice's Station, Sailor's Creek, Saltville, Suffolk (Hill's Point), Sutherland's Station, Swift Creek, Tom's Brook, Trevilian Station, Ware Bottom Church, White Oak Swamp; *West Virginia* Hoke's Run, Smithfield Crossing, Summit Point.

Dated: May 19, 2000.

Paul Hawke,

Chief, American Battlefield Protection Program.

[FR Doc. 00–13090 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park; Bar Harbor, Maine; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, June 5, 2000.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held February 7, 2000
2. Committee reports
   - Land Conservation—Proposed conservation easements:
   - A. Gray property, Fernald Point, Southwest Harbor, ME
   - B. Herter property, West Point, Pretty Marsh, Mt. Desert, ME
   - Park Use
   - Science
3. Old business
4. Superintendent's report
5. Public comments
6. Proposed agenda for next Commission meeting, September 11, 2000.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609; tel: (207) 288–3338.

Dated: May 12, 2000.

Len Bobinchock,

Acting Superintendent, Acadia National Park.

[FR Doc. 00–12997 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places;Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 13, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by June 8, 2000.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Bradley County

New Zion AME Zion Church, Jct. of Myrtle and Neely Sts., Warren, 00000628

Greene County

Big Slough Ditch Bridge, (Historic Bridges of Arkansas MPS) Co. Rd. 855, Brighton, 00000629

Hot Spring County

Burks Service Station, (Arkansas Highway History and Architecture MPS) Jct. of Page Ave. and Sullenberger, Malvern, 00000630

Lawrence County

US 63 Black River Bridge, (Historic Bridges of Arkansas MPS) US 63, Black Rock, 00000631

Marion County

US 62 Bridge over Crooked Creek, (Historic Bridges of Arkansas MPS) US 62, Pyatt, 00000632

Ouachita County

Laney, Ben, Bridge, (Historic Bridges of Arkansas MPS) US 79B over Ouachita River, Camden, 00000633

Oakland Cemetery, 100 Blk. of Maul Rd. bounded by Pearl St. and Madison Ave., Camden, 00000634

Pike County

Self Creek Bridge, (Historic Bridges of Arkansas MPS) US 70 across Self Cr. and Lake Greeson, Daisy, 00000635

Polk County

Studebaker Showroom, (Arkansas Highway History and Architecture MPS) 519 Port Arthur, Mena, 00000636

Washington County

Washington County Road 35 Bridge, (Historic Bridges of Arkansas MPS) Co. Rd. 35, Woolsey, 00000637

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FLORIDA

Marion County

Armstrong House, 18050 US 301 N., Citra, 00000638

GEORGIA

De Kalb County

Cheek—Spruill House, 5455 Chamblee—Dunwoody Rd., Dunwoody, 00000639

ILLINOIS

Lake County

Camp Logan National Guard Rifle Range Historic District, Illinois Beach State Park, Zion, 00000640

MASSACHUSETTS

Norfolk County

Colburn School—High Street Historic District, 369–649, 390–680 High St., Westwood, 00000641

MICHIGAN

Huron County

Olgilvie Building, (Port Hope MPS) 4443 Main St., Port Hope, 00000642

Jackson County

Kennedy, Frederick A., Jr., and Caroline Hewett, Farm, 8490 Hanover Rd. (Hanover Township), Hanover, 00000643

Manistee County

Camp Tosebo, 7228 Miller Rd. (Onekama Township), Red Park, 00000644

Oakland County

Holly Union Depot, 223S. Broad St., Holly, 00000645
Western Knitting Mills, 400 Water St., Rochester, 00000646

Wayne County

Bradford, Benjamin and Mary Ann, House, (Canton Township MPS) 48145 Warren Rd., Canton, 00000648
Kinyon, Orrin, and Roxanne Fairman, House, (Canton Township MPS) 7675 N. Ridge Rd., Canton, 00000649
Patterson, John, and Eliza Barr, House, (Canton Township MPS) 6205 N. Ridge Rd., Canton, 00000647

NEW HAMPSHIRE

Cheshire County

Lawrence Farm, 9 Lawrence Rd., Troy, 00000650

Hillsborough County

Hamblet—Putnam—Frye House, 293 Burton Hwy., Wilton, 00000651

Merrimack County

Downtown Concord Historic District, Roughly bounded by Center St., Loudon Rd., Storrs St., Hills Ave., S. State, Green, School, Capitol, and Park Sts., Concord, 00000652

NEW JERSEY

Morris County

Illumination Gas Plant of the New Jersey State Asylum for the Insane at Morris Plains, Old Dover Rd., Parsippany, 00000653

OKLAHOMA

Beckham County

Sayre Rock Island Depot, 106 E. Poplar, Sayre, 00000654

Oklahoma County

St. Stephen's Episcopal Church, 812 Blaine Ave., Chandler, 00000655

TEXAS

Anderson County

Freeman Farm, Co. Rd. 323, 3 miles SE. of Frankston, Frankston, 00000656

A Request for Removal has been made for the following resources:

MINNESOTA

Dodge County

Holtermann, Andrew, House (Dodge County MRA), SR 30, S side, Vernon Township, 82002940

PENNSYLVANIA

Berks County

Astor Theatre, 730–742 Penn St., Reading, 78002342

[FR Doc. 00–12996 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–70–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Thursday, June 8, 2000.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Hearing OPEN to the Public at 2:00 p.m.

PURPOSE: In conjunction with the quarterly meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedure

Individuals wishing to make statements or present written statements must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., June 7, 2000. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., June 7, 2000. Such statements must be typewritten, double-spaced and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via email at cdown@opic.gov.

Dated: May 22, 2000.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 00–13152 Filed 5–22–00; 1:17 pm]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the United States International Trade Commission (USITC or Commission), has submitted a request for approval of electronic form collection to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The form is for use by the Commission in connection with the USITC Electronic Document Imaging System On-Line (EDIS On-Line, or EOL) Web Public Pilot Project. The USITC EOL provides on-line, rapid and customized retrieval of docketed information and images of public documents filed with the USITC in conjunction with investigations conducted under the various international trade statutes and has been an Internet tool primarily for government users.

Representatives of the international trade bar and researchers have requested that EOL be made formally available to the public. The purpose of the public pilot project is to assess the additional costs of making this service formally available to the general public, identify more fully our customer base, and to evaluate benefits. The user registration form is required to accurately track usage and costs by user sector and geographic location. The form would appear on the USITC EOL Internet site (*http://dockets.usitc.gov*) and would need to be filled out only once. The commission expects to complete the pilot project by March 31, 2003.

Summary of Proposal

(1) *Number of forms submitted:* One.

(2) *Title of form:* USITC Electronic Docket Imaging System Pilot Project: "Create New User Account Form".

(3) *Type of request:* New.

(4) *Frequency of use:* Single data gathering.

(5) *Description of respondents:* Government and private sector users of the USITC EOL Web Pilot Project.

(6) *Estimated number of respondents:* 600.

(7) *Estimated total number of minutes to complete the forms:* 2.0 minutes.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

FOR FURTHER INFORMATION CONTACT: Copies of the form and supporting documents may be obtained from Marilyn Abbott (E-mail *mabbott@usitc.gov* or telephone 202–205–3431). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All Comments should be specific, indicate which part of the questionnaire is objectionable, describe the concern in detail, and include specific suggested revisions or language changes. Copies of any comments should be provided to Donna R. Koehnke, Secretary, Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone No. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Issued: May 16, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13074 Filed 5–23–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–416]

The Economic Effects on the United States of the EU-South Africa Agreement on Trade, Development, and Cooperation

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request on April 12, 2000 from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–416, The Economic Effects on the United States of the EU-South Africa Agreement on Trade, Development, and Cooperation, a report to the President under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

EFFECTIVE DATE: May 17, 2000.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Walker Pollard (202–205–3228) or Constance Hamilton (202–205–3263), Office of Economics, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205-3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

USTR requested that the Commission's report include the following:

- An analysis of the likely impact of the EU-South Africa agreement (EU-SA agreement) on U.S. trade and investment with South Africa.
- An analysis of the potential trade diversionary effects of the EU-SA agreement and other relevant factors affecting U.S. trade with South Africa.
- The percentage of trade in goods covered by the EU-SA agreement and a profile of South Africa's trade and investment patterns.
- A summary of the EU-SA agreement's trade-related provisions including a descriptive summary of the staging provisions of the agreement and a list of all product categories on which tariffs will not drop to zero by the end of the 12-year implementation period.
- A summary of relevant U.S. business views of the EU-SA agreement.

As requested by the USTR, because the agreement will be implemented in stages, the Commission's economic analysis will look at the impact of the provisions that would be in effect in the first year of the agreement, mid-implementation and full implementation. In addition, because the agreement has implications for the Southern African Customs Union (SACU) and the Southern African Development Community (SADC), the Commission's analysis will, as requested, include information on the effects on U.S. trade with the other SACU and SADC members and a discussion of the impact of the agreement on the members of the SACU and SADC in general. The report will contain a review and bibliography of existing academic and other literature relating to this topic.

In addition to descriptive materials related to the agreement and its broad range of potential effects, the Commission will, as requested, conduct a formal quantitative economic analysis based on actual trade and related to economic variables from a recent representative, historical period. This analysis will report on export and import levels and at a sectoral level, to the extent possible, on changes in U.S. trade and investment with South Africa.

The report will include a description of any models or data sets used in the quantitative assessments of the issues. These descriptions will include a discussion of the structure and function of the model and the type and breadth of data. The study will discuss the nature of the limitations and biases in any formal modeling conducted and how such factors may affect reported results, based on economic theory, reviews of any relevant economic literature, and more general descriptive analysis.

The Commission plans to submit its report, The Economic Effects on the United States of the EU-South Africa Agreement on Trade, Development, and Cooperation, by April 12, 2001. The USTR indicated that the report will be classified as confidential.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on September 7, 2000. All persons shall have the right to appear, by counsel or in person, to present information and to be heard.

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Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., August 17, 2000.

Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., August 31, 2000; the deadline for filing post-hearing briefs or statements is 5:15 p.m., September 21, 2000. In the event that, as of the close of business on August 17, 2000, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after August 17, 2000, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation.

Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

All written submissions must conform with the provisions of section 201.8 of the Commission's Rules. All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on September 21, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects

European Union, EU, South Africa, free trade area, FTA, imports, exports, foreign direct investment.

Issued: May 18, 2000.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13078 Filed 5–23–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–828 (Final)]

In the Matter of Bulk Aspirin From China; Notice of Commission Determination To Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon request of domestic producer Rhodia, Inc.("Petitioner"), the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for May 18, 2000, *in camera*. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR §§ 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public.

The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Tina Potuto Kimble, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3116, e-mail tkimble@usitc.gov.

Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Petitioner has justified the need for a closed session. Petitioner seeks a closed session to allow for a discussion of its financial and operating condition and specific customer accounts. In this investigation, the aggregate data of the domestic industry are business proprietary information (BPI). Because discussion by Petitioner of its own operations and of the domestic industry's data will necessitate disclosure of BPI, it can only occur if a portion of the hearing is held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will begin with public presentations by Petitioner with questions from the Commission. In addition, the hearing will include a 10-minute *in camera* session for a confidential presentation by the Petitioner (Rhodia) and for questions from the Commission relating to the business proprietary information ("BPI"). For any *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 CFR 201.35(b)(1), (2). The time for the petitioners' presentation in the *in camera* session will be taken from their respective overall allotment for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 C.F.R. 201.39) that, in her opinion, a portion of the Commission's hearing in Bulk Aspirin from China, Inv. No. 731–TA–828 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: May 17, 2000
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13077 Filed 5–23–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–825–826 (Final)]

Certain Polyester Staple Fiber From Korea and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Korea and Taiwan of certain subject polyester staple fiber, other than low-melt fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States, that has been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[2]

The Commission further determines, pursuant to section 735(b) of the Act, that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Korea and Taiwan of low-melt polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at LTFV.[3]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Background

The Commission instituted these investigations effective April 2, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by E.I. DuPont de Nemours, Wilmington, DE; Arteva Specialities S.a.r.l. d/b/a KoSa, Spartanburg, SC; Nan Ya Plastics Corp., America, Lake City, SC; Wellman, Inc., Shrewsbury, NJ; and Intercontinental Polymers, Inc., Charlotte, NC on April 2, 1999.[4] The final phase of the investigations was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain polyester staple fiber from Korea and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 24, 1999 (64 FR 66198). The hearing was held in Washington, DC on March 28, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[2] Chairman Bragg found one domestic like product and therefore made an affirmative determination with respect to all certain polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States.

[3] Chairman Bragg found one domestic like product and therefore made an affirmative determination with respect to all certain polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States.

[4] Nan Ya Plastics Corp. is no longer a petitioner in these investigations. DuPont is not a petitioner in the investigation on Taiwan.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 15, 2000. The views of the Commission are contained in USITC Publication 3300 (May 2000), entitled Certain Polyester Staple Fiber from Korea and Taiwan: Investigations Nos. 731–TA–825–826 (Final).

Issued: May 17, 2000.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13076 Filed 5–23–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–415]

U.S. Trade and Investment With Sub-Saharan Africa; Import Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and notice of opportunity to submit comments.

EFFECTIVE DATE: May 15, 2000.

SUMMARY: Following receipt on March 12, 2000, of a letter from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–415, U.S. Trade and Investment with Sub-Saharan Africa.

FOR FURTHER INFORMATION CONTACT: Ms. Constance Hamilton, Office of Economics (202–205–3263), or Mr. William Gearhart, Office of the General Counsel (202–205–3091) for information on legal aspects of the investigation. The media should contact Ms. Margaret O'Laughlin, Office of External Relations (202–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810.

Background

Pursuant to authority under section 332(g) of the Tariff Act of 1930, the USTR requested that the Commission prepare a series of annual reports for five years containing the following information:

1. For the last five years (and the latest quarter available), data for U.S. merchandise trade and U.S. services trade with sub-Saharan Africa, including statistics by country, by major sectors, and by the top 25 commodities, as well as statistics on imports from sub-Saharan Africa under the GSP program by country and major product categories/commodities.

2. Country-by-country profiles of the economies of each sub-Saharan African country, including information on major trading partners, by country.

3. A summary of the trade, services, and investment climates in each of the countries in sub-Saharan Africa, including a description of the basic tariff structure (e.g., the average tariff rate and the average agricultural tariff rate). The summaries should also include information on significant impediments to trade, including any import bans.

4. Updates on regional integration in sub-Saharan Africa and statistics on U.S. trade with major regional groupings (COMESA, EAC, ECOWAS, IGAD, SACU, SADC, and WAEMU). Where applicable, information should be provided on the regional group's tariff structure.

5. A description of the U.S. tariff structure for imports from Africa.

6. A summary of U.S. and total foreign direct investment and portfolio investment in sub-Saharan Africa.

7. Information on sub-Saharan African privatization efforts based on publicly available information.

8. A summary of multilateral and U.S. bilateral assistance to the countries of sub-Saharan Africa.

The USTR requested that the Commission provide its first report by December 2000, and annually for a period of 4 years thereafter. The 48 countries of sub-Saharan Africa covered in this investigation include: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Republic of the Congo, Rwanda, São Tomé and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, and Zimbabwe.

Written Submissions

The Commission does not plan to hold a public hearing in connection with this investigation. However, interested persons are invited to submit written statements concerning matters to be addressed in the report. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. The

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Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules (19 CFR 201.6). All written statements, except for confidential business information will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received not later than August 31, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: May 16, 2000.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 00–13075 Filed 5–23–00; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Rights Division; Notice of Fairness Hearing

AGENCY: Disability Rights Section, Civil Rights Division, DOJ.

ACTION: Notice of fairness hearing.

SUMMARY: The Civil Rights Division is announcing that the Court will hold a fairness hearing in *United States* v. *City and County of Denver & the Denver Police Department* (Civil Action No. 96–K–370 (D. Colo.)). At the hearing, the United States and the City of Denver will ask the Court to approve the Consent Decree filed by the parties to resolve this case. The Court will also consider any objections to the Consent Decree by persons who may be affected.

DATES: Objections to the Consent Decree are due by June 8, 2000. The fairness hearing will be held on July 7, 2000 at 9:30 a.m. See **SUPPLEMENTARY INFORMATION** for more information on the procedure for filing objections.

ADDRESSES: Address all objections to the Consent Decree to James R. Manspeaker, Clerk, United States Courthouse, 1929 Stout Street, Room C–145, Denver, CO 80294. The fairness hearing will be held at the United States District Court for the District of Colorado, United States Courthouse, Courtroom C–401, 1929 Stout Street, Denver, CO 80294.

FOR FURTHER INFORMATION CONTACT:
Eugenia Esch, Civil Rights Division, P.O. Box 66738, Washington, DC 20035–6738; 202–514–3816; or
Steven W. Moore, City Attorney's Office, 1437 Bannock Street, Room 353, Denver, CO 80202; 720–913–3100.

SUPPLEMENTARY INFORMATION: Under 42 U.S.C. 12111–12134, and 42 U.S.C. 2000e–2(n), the Civil Rights Division announces that a fairness hearing will be conducted by the Court in the case of *United States* v. *City and County of Denver & the Denver Police Department* (Civil Action No. 96–K–370 (D. Colo.)) at the time and place listed above. On May 9, 2000, the United States and the City and County of Denver submitted a proposed Consent Decree ("Decree") which resolved all issues raised by the Complaint charging employment discrimination on the basis of disability in violation of the Americans with Disabilities Act.

Under the Decree, the City of Denver has agreed to specific injunctive and remedial relief and to create a new reassignment policy for the Denver Police Department. The Decree also provides for back pay relief for eleven (11) individuals. A copy of the Decree can be obtained by writing or calling Eugenia Esch or Steven W. Moore at the addresses or phone numbers listed above.

At the hearing, the United States and the City of Denver will ask the Court to approve the Decree. The Court will also consider any objections to the Decree by persons who may be affected. If you believe that your rights have been or will be affected by the Decree, you have the right to object.

Any objection must be in writing and sent to the Clerk of the Court at the address above. Your objection must be filed with the Clerk of the Court by the date listed above. Only written objections will be considered by the Court at the fairness hearing. Written objections should state the name and number of this case (*United States* v. *City and County of Denver & the Denver Police Department* (Civil Action No. 96–K–370 (D. Colo.)); the objector's name, current address, home and work telephone numbers; the reason(s) for and a description of the objection(s); a description of any documents supporting the objector's position; the name and address of the objector's attorney, if any; and a statement as to whether the objector wishes to be heard at the fairness hearing.

Dated: May 19, 2000.

John Wodatch,
Chief, Disability Rights Section.

[FR Doc. 00–13054 Filed 5–23–00; 8:45 am]
BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 2000 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services ("COPS" announces the availability of grants to support the hiring of new, additional civilian support positions under COPS Making Officer Redeployment Effective ("COPS MORE 2000"). Eligible applicants under COPS MORE 2000 are those state, local and other public law enforcement agencies, Indian tribal governments, other public and private entities, and multi-jurisdictional agencies that employ career law enforcement officers.

DATES: COPS MORE 2000 Application Kits will be available after May 30, 2000. The COPS Office will accept applications for COPS MORE 2000 from May 30, 2000 through July 14, 2000. Applications received postmarked on or before June 30, 2000 will be given priority consideration.

ADDRESSES: COPS MORE 2000 Application Kits may be obtained by writing to COPS MORE 2000, The Department of Justice Response Center, 1100 Vermont Avenue NW, Washington, DC 20530, or by calling the Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770, or the full application kit is also available on the COPS Office web site at: http://www.usdoj.gov/cops. Completed application kits should be sent to COPS MORE 2000, 7th Floor, COPS Office, 1100 Vermont Avenue NW, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers

devoted to community policing on the streets and rural routes in this nation. COPS MORE 2000 is designed to expand the time available for community policing by current law enforcement officers, rather than fund the hiring or rehiring of additional law enforcement officers.

COPS MORE 2000 permits eligible agencies to seek funding to hire new, additional civilian support positions. To qualify for funding, civilian positions must be hired after the COPS MORE 2000 grant award start date and must increase the level of locally-funded civilian positions budgeted irrespective of the grant.

As a result of this funding, the number of officers redeployed by agencies in community policing must be equal to or greater than the number of officers that would result from grants of the same amount for hiring new officers. Application Kits will be available after May 30, 2000. Completed Applications Kits must be received by the COPS Office by July 14, 2000. Applications received postmarked on or before June 30, 2000 will be given priority consideration.

Applicants must provide a thorough explanation of how the proposed redeployment funds will actually result in the required increase in the number of officers deployed in community policing. Additionally, the applicant must specify within the COPS MORE 2000 Application a plan for retaining the additional civilian positions and continuing the increased level of redeployment into community policing with state or local funds following the conclusions of COPS MORE 2000 funding. Technical assistance with the development of community policing plans will be provided to jurisdictions in need of such assistance. Grants will be made for up to 75 percent of the cost of the civilian salaries up to $25,000 for one year, with the remainder to be paid by state or local funds. Waivers of the non-federal share will be considered upon a showing of severe fiscal distress. COPS redeployment funds may not be used to replace funds that eligible agencies otherwise would have devoted to civilian hiring.

An award under COPS MORE 2000 will not affect the eligibility of an agency's application for a grant under any other COPS program.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: May 17, 2000.

Thomas C. Frazier,
Director.

[FR Doc. 00–13018 Filed 5–23–00; 8:45 am]
BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Justice Management Division; Notice of Availability of the Revised FAIR Act Inventory

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: In accordance with the requirements of section 2(c)(2)(B) of the Federal Activities Inventory Reform Act, notice is hereby given that the revised inventory of activities considered not to be inherently governmental functions is now publicly available. As a result of the challenges and appeals submitted predominantly by Federal employee unions, several functions have been deleted from the list that relate to law enforcement activities. A copy of the revised inventory may be obtained by requesting it through one of the following: E-mail to *larry.silvis2@usdoj.gov;* fax (202) 514–6145; or call Larry Silvas on (202) 616–3754.

Stephen R. Colgate,
Assistant Attorney General for Administration.

[FR Doc. 00–13055 Filed 5–23–00; 8:45 am]
BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities Comment Request

ACTION: Notice of Information Collection Under Review: Application to Register Permanent Residence or Adjust Status, and Supplement A to Form I–485.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 15, 2000 at 65 FR 13990, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 23, 2000. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved information collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status, and Supplement A to Form I–485.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–485 and I–485 Supplement A, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This collection allows an applicant to determine whether he or she must file under section 245 of the Immigration and Nationality Act, and it allows the Service to collect information needed for reports to be made to different government committees.

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(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* I–485 Adult respondents if 265,097 at 5.25 hours per response; I–485 Children respondents if 208, 291 at 4.5 hours per response; and I–485 Supplement A respondents if 50,000 at 13 minutes (.216) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection(s):* 2,339,869.

If you have additional comments suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 19, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–13047 Filed 5–23–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Report of Complaint.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 17, 2000 at 65 FR 14626, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service during that period. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 23, 2000. This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Report of Complaint.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–847. Border Patrol Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to establish a record of complaint and to initiate an investigation of misconduct by any officer of the INS.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 63 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 19, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–13044 Filed 5–23–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Application to Preserve Residence for Naturalization.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in **Federal Register** on March 22, 2000 at 65 FR 15356, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 23, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Preserve residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–470. Adjudications Division, Immigration and Naturalization service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information will be used to determine whether an alien who intends to be absent from United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 responses at 15 minutes (.25) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 19, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–13045 Filed 5–23–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Affidavit of Support.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 22, 2000 at 65 FR 15355, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 23, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–134, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected by this form is used to determine whether the applicant for the benefit will become a public charge if admitted to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 44,000 responses at 20 minutes (.333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,652 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection

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instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 19, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–13046 Filed 5–23–00; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 171, "Duplication Request".

2. *Current OMB approval number:* OMB 3150–0066.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Individuals or companies requesting document duplication.

5. *The number of annual respondents:* 16,800.

6. *The number of hours needed annually to complete the requirement or request:* 1,109 hours (16,800 forms X .066hours/form) or about 4 minutes per form.

7. *Abstract:* This form is utilized by individual members of the public requesting reproduction of publicly available documents in NRC's Headquarters Public Document Room. Copies of the form are utilized by the reproduction contractor to accompany the orders and are then discarded.

Submit, by July 24, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 17th day of May 2000.

For the Nuclear Regulatory Commission

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–13065 Filed 5–23–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–6394–MLA; ASLBP No. 00–777–05–MLA]

Department of the Army, U.S. Army Research Laboratory; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that: (1) A single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding:

Department of the Army, U.S. Army Research Laboratory, Depleted Uranium Study Area of the Transonic Range, Aberdeen Proving Ground, Maryland

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted by Aberdeen Proving Ground Superfund Citizens Coalition (APGSCC). The request was filed in response to a notice of consideration by the Nuclear Regulatory Commission staff concerning issuance of an amendment to Source Material License No. SMB–141. The application requests decommissioning of the Depleted Uranium Study Area (DUSA) of the Transonic Range at the Department of the Army's U.S. Army Research Laboratory facility in Aberdeen Proving Ground, Maryland. The notice of consideration of the application and opportunity for hearing was published in the **Federal Register** at 65 FR 17,321 (Mar. 31, 2000).

The Presiding Officer in this proceeding is Administrative Judge Ivan W. Smith. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Smith and Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Ivan W. Smith, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Issued at Rockville, Maryland, this 18th day of May 2000.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00– 13059 Filed 5–23–00; 8:45 am]

BILLING CODE 7590–01– P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 119th meeting on June 13–15, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, June 13, 2000—8:30 a.m. Until 5:00 p.m.

A. *8:30 a.m.–10:30 a.m.: ACNW Planning and Procedures* (Open)—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The ACNW will discuss planned tours and ACNW-related activities of individual members.

B. *10:45 a.m.–12:30 p.m.: Low Level Waste Branch Technical Position on Performance Assessment* (Open)—The Committee will review and provide comments on the final draft version of this branch technical position (BTP). The NRC staff will discuss the resolution of public comments received on the BTP.

C. *1:30 p.m.–3:00 p.m.: West Valley Policy Public Comments* (Open)—The Committee will hear and discuss public comments on the West Valley Demonstration Project decommissioning plan. The Committee will discuss the current status of the license termination plan with representatives of the NRC staff.

D. *3:15 p.m.–5:00 p.m.: Prepare for the Next Public Meeting with the Commission* (Open)—The ACNW will begin preparation for the next public meeting with the Commission. Potential topics for discussion include: NRC's 10 CFR part 63, Disposal of High-Level Radioactive Waste in a Proposed Geological Repository at Yucca Mountain, Nevada; the recent Committee advice on the control of solid material; highlights of the Committee's recent European trip; the Defense In-Depth philosophy; and the ACNW's 2000 Action Plan.

Wednesday, June 14, 2000—8:30 a.m. Until 5:00 p.m.

E. *8:30 a.m.–10:30 a.m.: Proposed Yucca Mountain Repository Design Features* (Open)—Representatives of the DOE will present the status of the design for the proposed high-level waste repository at Yucca Mountain. The latest engineered features will be discussed.

F. *10:45 a.m.–12:30 p.m.: Department of Energy's (DOE) Repository Safety Strategy*—Representatives of the DOE will discuss the safety strategy for the proposed Yucca Mountain high-level waste repository. This may include a comparison of their principal factors associated with the proposed repository to the NRC staff's list of Key Technical Issues. There will also be a summary of Yucca Mountain specific siting guidelines in 10 CFR part 963.

G. *1:30 p.m.–3:00 p.m.: Status of the NRC LLW Program* (Open)—The Committee will review the status of the NRC's low-level radioactive waste program with representatives of the NRC staff's Uranium Recovery and Low-Level Waste Branch.

H. *3:15 p.m.–5:00 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss planned reports on the following topics: NRC's plans to provide sufficiency comments on the DOE's Site Recommendation Considerations Report; the Use of Defense In-Depth philosophy; Risk-Informed Approaches to Nuclear Materials Regulatory Applications; Comments on the LLW BTP on Performance Assessment; High-Lights of the ACNW Visit to the U.K. and France; and comments on draft regulatory guides, DG–1067, "Decommissioning of Nuclear Power Reactors" and DG–1071, "Standard Format and Content For Post-Shutdown Decommissioning Activities."

Thursday, June 15, 2000—8:30 a.m. Until 5:00 p.m.

I. 8:30 a.m.—9:30 a.m.: *Meeting with the Director of the Division of Waste Management, Office of Nuclear Material Safety and Safeguards* (Open)—The Committee will meet with the Director to discuss items of mutual interest.

J. *9:30 a.m.–10:00 a.m.: DG–1067 and DG–1071*—The ACNW will consider two draft regulatory guides, DG–1067, "Decommissioning of Nuclear Power Reactors," and DG–1071, "Standard Format and Content for Post-Shutdown Decommissioning Activities."

K. *10:00 a.m.–2:00 p.m.: Complete ACNW Reports* (Open)—Complete preparation of ACNW reports noted in item H.

L. *2:00 p.m.–3:00 p.m.: Miscellaneous* (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Richard K. Major, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Richard K. Major, ACNW (Telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the

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videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 17, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–13061 Filed 5–23–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 7–9, 2000, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 14, 1999 (64 FR 55787).

Wednesday, June 7, 2000

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:00 A.M.: Proposed Resolution of Generic Safety Issue-173A, "Spent Fuel Storage Pool for Operating Facilities" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed resolution of Generic Safety Issue-173A.

10:15 A.M.–11:45 A.M.: Regulatory Effectiveness of the Station Blackout Rule (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the results of the review performed by the staff to determine the regulatory effectiveness of the Station Blackout Rule.

12:45 P.M.–2:15 P.M.: Proposed Final Standard Review Plan Section and Regulatory Guide Associated with the Revised Source Term Rule (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final Standard Review Plan Section and Regulatory Guide associated with the application of the revised source term for operating nuclear power plants.

2:30 P.M.–4:30 P.M.: Assessment of the Quality of Probabilistic Risk Assessments (PRAs) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's proposal to address PRA quality until the industry standards have been completed, including the potential role of industry PRA certification process.

4:30 P.M.–5:30 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

5:30 P.M.–7:00 P.M. : Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Thursday, June 8, 2000

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:00 A.M.: Performance-Based Regulatory Initiatives (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a draft Commission Paper associated with performance-based regulatory initiatives and related matters.

10:15 A.M.–11:30 A.M.: Use of Industry Initiatives in the Regulatory Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding use of industry initiatives in the regulatory process.

11:30 A.M.–12:00 Noon: Safety Culture at Operating Nuclear Power Plants (Open)—The Committee will hear a presentation by and hold discussions with Mr. Sorensen, ACRS Senior Fellow, regarding the safety culture at operating nuclear power plants.

1:00 P.M.–1:30 P.M.: Visit to Davis Besse Nuclear Power Plant and Meeting with NRC Region III Personnel (Open)—The Committee will hear a presentation by and hold discussions with Mr. Singh, ACRS Senior Staff Engineer, regarding the proposed schedule for touring the Davis Besse Nuclear Power Plant, specific plant areas to be visited, proposed topics for discussion with representatives of the licensee, and the NRC Region III Office.

1:30 P.M.–2:00 P.M.: Proposed Plan and Assignments for Reviewing License Renewal Guidance Documents (Open)—The Committee will discuss the proposed plan and member assignments for reviewing the license renewal guidance documents (Standard Review Plan, Regulatory Guide, and Generic Aging Lessons Learned II Report).

2:00 P.M.–2:15 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

2:15 P.M.–3:00 P.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

3:00 P.M.–4:00 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

4:00 P.M.–7:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Friday, June 9, 2000

8:30 A.M.–2:30 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

2:30 P.M.–3:00 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52353). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Sam Duraiswamy prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Sam Duraiswamy if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy (telephone 301/415–7364), between 7:30 a.m. and 4:l5 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 18, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–13060 Filed 5–23–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Joint Meeting of the Subcommittees on Plant Operations and Fire Protection; Notice of Meeting

The ACRS Subcommittees on Plant Operations and Fire Protection will hold a joint meeting on June 14, 2000, NRC Region III Office, 801 Warrenville Road, Lisle, Illinois.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 14, 2000—8:30 a.m. Until the Conclusion of Business

The Subcommittees will discuss items of mutual interest with the representatives of NRC Region III Office, including plant performance review process, implementation challenges associated with the revised inspection and assessment programs, and fire protection issues. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC Region III Office, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Amarjit Singh (telephone 301/415–6899) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 17, 2000.

Richard K. Major,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–13062 Filed 5–23–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of May 22, 29, June 5, 12, 19, and 26, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 22

Thursday, May 25

8:30 a.m. Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: Joe Shea, 301–415–1727)

10:15 a.m. Briefing on Status of Regional Programs, Performance and Plans (Public Meeting) (Contact: Joe Shea, 301–415–1727)

1:25 a.m. Affirmation Session (Public Meeting)

a: Hydro Resources, Inc., Docket No. 40–8968–ML, Memorandum and Order (Financial Assurance for Decommissioning Issues), LBP–99–13, 49 NRC 233 (March 9, 1999); and Memorandum and Order (Motion to Hold in Abeyance), LBP–99–40 (October 19, 1999); and,

b: Final Rule: "Elimination of the Requirement for Noncombustible Fire Barrier Penetration Seal Materials and Other Minor Changes" (10 CFR Part 50) (WITS 199800128) (Contact: Ken Hart, 301–415–1659)

1:30 p.m. Briefing on Improvements to 2.206 Process (Public Meeting) (Contact: Andrew Kugler, 301–415–2828)

Week of May 29—Tentative

Tuesday, May 30

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

Week of June 5

There are no meetings scheduled for the Week of June 5.

Week of June 12—Tentative

Tuesday, June 13

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Paul Lohaus, 301–415–3340)

1:00 p.m. Meeting with Korean Peninsula Energy Development

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Organization (KEDO) and State Department (Public Meeting) (Contact: Donna Chaney, 301–415–2644)

Week of June 19—Tentative

Tuesday, June 20, 2000

9:25 a.m. Affirmation Session (Public Meeting) (If needed)
9:30 a.m. Briefing on Final Rule—Part 70—Regulating Fuel Cycle Facilities (Public Meeting)
1:30 p.m. Briefing on Risk-Informed Part 50, Option 3 (Public Meeting)

Week of June 26—Tentative

There are no meetings scheduled for the Week of June 26.

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc. gov.

Dated: May 19, 2000.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 00–13151 Filed 5–22–00; 1:16 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant, Units 1 and 2; Notice of Correction to Biweekly Notice of Issuance of Amendments to Facility Operating Licenses

On May 17, 2000 (65 FR 31364), the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations. On page 31364, under Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, the amendment number was incorrectly noted. It should read, "Amendment Nos.: 244 and 225.

Dated at Rockville, Maryland this 18th day of May 2000.

For the Nuclear Regulatory Commission.

John F. Stang,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation

[FR Doc. 00–13064 Filed 5–23–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42786; File No. SR–Amex–99–49]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Partially Approving Proposed Rule Change Relating to Investment Series of the iShares Trust Based on Foreign Stock Indexes

May 15, 2000.

I. Introduction

On December 28, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to listing and trading investment series of the iShares trust based on foreign stock indexes. The proposed rule change was published for comment in the **Federal Register** on March 28, 2000.[3] No comments were received on the proposal. This order approves the proposed rule change with respect to the iShares S&P Europe 350 Index Fund and the iShares S&P/TSE 60 Fund.

II. Description of the Proposal

The Exchange proposes to list and trade under Amex Rules 1000 *et seq.* the following investment series (each a "Fund" and collectively, the "Funds") of the iShares SM Trust[4] ("Trust") based on indexes (referred to herein as "Underlying Indices") comprised in whole or part of equity securities issued by foreign issuers as follows: (1) iShares S&P Europe 350 Index Fund and (2) iShares S&P/TSE 60 Fund. Amex Rules 1000A *et seq.* apply to Index Funds Shares.

In addition to the Funds listed above, the Trust's 1940 Act exemptive application requests that the exemptive relief sought in the Application apply to Funds (referred to herein as "Additional Funds") based on the following indexes: (1) S&P Euro Index; (2) Dow Jones Global Media Sector Index; (3) Dow Jones Global Pharmaceuticals Sector Index; and (4) Dow Jones Global Telecommunications Sector Index. Funds on these indexes will not be the subject of the Trust's initial registration statement, which will cover the iShares S&P Europe 350 Index Fund and the iShares S&P/TSE 60 Fund. The Exchange proposes to list and trade the Additional Funds, listed above, that are the subject of the Trust's 1940 Act exemptive application after an effective registration statement is in place for those funds. All descriptions herein that apply to the two proposed iShares Funds also apply to the Additional Funds.

A detailed description of each Underlying Index for the Funds and the Additional Funds, as prepared by the compilers of the Underlying Indices, is available in the Commission's Public Reference Room as Exhibit B. These descriptions include information regarding component selection criteria, issue changes, index maintenance, index availability, index description, and industry group distribution by market capitalization.

"Passive" or Indexing Investment Approach

The investment objective of each Fund is to provide investment results that, before expenses, correspond generally to the price and yield performance of companies in the Underlying Index. In seeking to achieve the respective investment objective of each Fund, Barclays Global Fund Advisors, ("the Advisor"), will utilize some variety of "passive" or indexing investment approach. Certain Funds will use a replication strategy by which an index fund seeks to match an Underlying Index's performance, before fees and expenses, by buying and selling all of the Underlying Index's securities in the same proportion as they are reflected in the Underlying Index. These funds reserve the right not to invest in every security in the Underlying Index if the Adviser believes it is not practical to do so under the circumstances. It is anticipated that the iShares S&P/TSE 60 Fund will use a replication strategy.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42543 (March 17, 2000), 65 FR 16433.

[4] The Trust has filed with the Commission an Application for Orders ("Application") under Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act") as amended, for the purpose of exempting the Trust from various provisions of the 1940 Act and Amex Rules thereunder (File No. 812–11598).

Representative Portfolio Sampling Approach

Other Funds may not hold all or most of the securities in the Underlying Index ("Component Securities"). This may be the case, for example, when there are substantial costs involved in compiling an entire Underlying Index basket that contains scores of Component Securities or, in certain instances, when a Component Security is illiquid. In cases such as these, a Fund will attempt to hold a representative sample of the Component Securities in the Underlying Index, which will be selected by the Adviser utilizing quantitative analytical models in a strategy known as "representative portfolio sampling." It is anticipated that the iShares S&P Europe 350 Index Fund will use this technique.

No Fund will concentrate *i.e.*, hold more than 25% of its assets in the stocks of a single industry or a group of industries) its investments in issuers of one more more particular industries, except that a Fund will concentrate to the extent that its Underlying Index concentrates in the stocks of such particular industry or industries.

Under this strategy, each security is considered for inclusion in a Fund based on its contribution to certain capitalization, industry, and fundamental investment characteristics. The Adviser will seek to construct the portfolio of a Fund so that it will have capitalization, industry and fundamental investment characteristics that perform like those in the corresponding Underlying Index. From time to time, adjustments will be made in the portfolio of each Fund in accordance with changes in the composition of the Underlying Index, or to maintain compliance as a "regulated investment company" under the Internal Revenue Code.[5] Certain of these Funds may also hold some securities that are not components of the relevant Underlying Index if the Adviser decides it is appropriate in view of such Funds' investment objectives and investment or tax constraints. If the representative portfolio sampling technique is used, a Fund will not be expected to track its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weightings as the Underlying Index. It is anticipated that, over time, the Adviser in such case will be able to employ representative portfolio sampling techniques such that the expected tracking error of a Fund relative to the performance of its Underlying Index will be less than 5 percent.

Procedures for Creation and Redemption of iShares of the Funds

Procedures for the creation and redemption of iShares of the proposed Funds are similar to procedures for creation and redemption of certain other Index Fund Shares based on a foreign stock index currently listed on the Amex (*i.e.*, WEBS), which do not utilize processes of the National Securities Clearing Corporation "NSCC") in connection with the transmittal of trade instructions, the transfer of component securities and the cash component, and the transfer of iShares on creation and redemption. In contrast, creation and redemption procedures applicable to Portfolio Depositary Receipts, such as SPDRs and Index Fund Shares, such as Select Sector SPDRs based on domestic stock indexes, utilize such NSCC processes.

Purchase or Creation of Creation Unit Aggregations

The trust will issue and sell iShares of each Fund only in Creation Unit Aggregations[6] on a continuous basis through the distributor, SEI Investments Distribution Company ("the Distributor"), without a sales load. The price will be the net asset value ("NAV") next determined after receipt, on any business day, of an order in proper form. The consideration for purchase of Creation Unit Aggregations of a Fund generally consists of the in-kind deposit of a designated portfolio of equity securities (the "Deposit Securities") per each Creation Unit Aggregation of the stocks and weightings in the relevant Fund's portfolio ("Fund Securities") and an amount of cash (the "Cash Component") computed as described below. Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation of any Fund. The Trust will impose a Transaction Fee in connection with the creation and redemption of Creation Unit Aggregations.

The Cash Component is an amount equal to the Balancing Amount. The "Balancing Amount" is an amount equal to the difference between the NAV of the iShares (per Creation Unit Aggregation) and the "Deposit Amount." The "Deposit Amount" is an amount equal to the market value of the Deposit Securities. If the Balancing Amount is a positive number (*i.e.*, the NAV per Creation Unit Aggregation exceeds the Deposit Amount), the Cash Component will be paid to the Trust by the Creator. If the Balancing Amount is a negative number (*i.e*, the NAV per Creation Unit Aggregation is less than the Deposit Amount), the creator will receive cash in an amount equal to the differential.

The Adviser, through NSCC, will make available on each Business Day immediately prior to the opening of business on the Amex, currently 9:30 a.m., New York time, the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit for each Fund. Such Fund Deposit is applicable, subject to any adjustments, to effect creations of Creation Unit Aggregations of a given Fund, until such time as the next-announced composition of the Deposit Securities is made available.

It is anticipated that the deposit of Deposit Securities and the Cash Component in exchange for iShares will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Creation Unit Aggregations are separable upon issuance into identical shares that are listed and traded on the Amex.

Redemption of Creation Unit Aggregations

Shares may be redeemed only in Creation Unit Aggregations at their NAV next determined after receipt of a redemption request in proper form by the fund through the Distributor and only on a business day. Immediately prior to the opening of business on the Amex on each business day, the Adviser, through NSCC, will identify the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests for each Fund received in proper form on that day.

[5] In order for a Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the Internal Revenue Code. One requirement that as of the close of each quarter of the Fund's taxable year: (1) At least 50 percent of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5 percent of the value of the Fund's assets and not greater than 10 percent of the outstanding voting securities of such issuer, and (2) not more than 25 percent of the value of its total assets may be invested in the securities of any one issuer, or of two or more issuers that are controlled by the fund (within the meaning of Section 851(b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies).

[6] iShares cannot be redeemed individually but must be redeemed in Creation Unit Aggregations applicable to the specific Fund.

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Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Unit Aggregations.

Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit Aggregation generally consist of Fund Securities—as announced by the Adviser on the Business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the iShares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the "Cash Redemption Amount").

If it is not possible to effect deliveries of the Fund Securities, the Trust may in its discretion exercise its option to redeem iShares in cash, and the redeeming beneficial owner will be required to receive redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit. In either case, the investor will receive a cash payment equal to the NAV of its iShares based on the NAV of iShares of the relevant Fund next determined after the redemption request is received in proper form. A Fund may also, in its sole discretion, upon request of a shareholder, provide the redeemer a portfolio of securities that differs from the exact composition of the Fund Securities but does not differ in NAV.

Availability of Information Regarding Fund Shares and Underlying Indices

In addition to the list of names and amount of each security constituting the current Deposit Securities of the Portfolio Deposit, the Cash Component effective as of the previous business day, per outstanding share of each Fund, is expected to be made available each business day. The Exchange expects to disseminate, every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association ("CTA"), an amount per Fund Share representing the sum of the estimated Cash Component effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per share basis.

The value of each Underlying Index will be updated intra-day on a real-time basis as individual Component Securities change in price. These intra-day values of the Underlying Indices will be disseminated every 15 seconds throughout the trading day. In addition, these organizations will disseminate a value for each Underlying Index once each trading day, based on closing prices in the relevant exchange market. Each Fund will make available on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the cash-balancing amount. The NAV for each Fund will be calculated and disseminated daily. In addition, the Adviser maintains a website that provides information about the returns and methodology of various indices, and will include the relevant Underlying Index for each Fund. The Trust also intends to maintain a website that will include the relevant prospectuses and additional quantitative information that is updated on a daily basis, including daily trading volume and closing price for each Fund. The Amex also intends to disseminate a variety of data with respect to each Index Series on a daily basis by means of CTA and Consolidated Quotation High Speed Lines, including shares outstanding and cash amount per Creation Unit Aggregation, which will be made available prior to the opening of the Amex. The closing prices of the Funds' Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters.

Dissemination of Indicative Portfolio Value

In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to create or redeem iShares based on indexes with non-U.s. components, it is expected that the Exchange will disseminate thought the facilities of the CTA an updated indicative portfolio value ("Value") for each of the Funds traded on the Exchange as calculated by a securities information provider ("Value Calculator"). It is anticipated that the methodology utilized in connection with the Funds will be similar to procedures used to calculate the Value for WEBS currently trading on the Exchange. The Value will be disseminated on a per iShares basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time. The equity securities values included in the Value are the values of the Deposit Securities, which are the same as the portfolio that is to be utilized generally in connection with creations and redemptions of iShares in Creation Unit Aggregations on that day. The equity securities included in the Value reflects the same market capitalization weighting as the Deposit Securities in the portfolio for the particular iShares Fund. In addition to the value of the Deposit Securities for each Fund, the Value includes the Cash Component. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

The Value may not reflect the value of all securities included in the applicable Underlying Index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the Value on a per iShares basis disseminated during Amex trading hours should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. While the Value that will be disseminated by the Amex by 9:30 a.m. is expected to be generally very close to the most recently calculated Fund NAV on a per iShares basis, it is possible that the value of the portfolio of securities held by a Fund may diverge from the Deposit Securities Values during any trading day. In such case, the Value will not precisely reflect the value of the Fund portfolio.

However, during the trading day, the Value can be expected to closely approximate the value per Fund share of the portfolio of securities for each Fund except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a Fund at the same time of the Advisor). The circumstances that might cause the Value to be based on calculations different from the valuation per Fund share of the actual portfolio of a Fund would not be different that circumstances causing any index fund or trust to diverge from an underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding each Fund that would not otherwise be available to the public and is useful to professionals and investors in connection with iShares trading on the Exchange or the creation or redemption of iShares.

For each Fund, the Value Calculator will utilize closing prices (in applicable foreign currency prices) in the principal foreign market(s) for securities in the Fund portfolio, and convert the price to U.S. dollars. This Value will be updated every 15 seconds during Amex trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The Value will also include the applicable Cash Component for each Fund.

For Funds that include foreign stocks, the principal foreign markets for which have trading hours overlapping regular Amex trading hours, the Value Calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but the Amex is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign markets close.

Other Characteristics of iShares

It is anticipated that a minimum of two Creation Unit Aggregations for each Fund will be outstanding at the commencement of trading on the Exchange. The number of shares per Creation Unit Aggregation is anticipated to be approximately 50,000 shares.

Fund shares will be registered in book-entry form through the Depository Trust Company ("DTC"). Trading in Fund shares on the Exchange will be effected until 4:15 p.m. each business day. The minimum trading increment under Amex rule 127 for Fund Shares will be 1/64 of $1.00.

Dividends from net investment income will be declared and paid at least annually by each Fund. Distributions of realized securities gains, if any, generally will be declared and paid at least once a year, but each Fund may make distributions on a more frequent basis to comply with Internal Revenue Code distribution requirements. Certain of the Funds intend to make the DTC book-entry Dividend Reinvestment Service available for use by beneficial owners of the Fund through DTC Participants for reinvestment of their cash proceeds.

The Exchange, in an information circular, will inform member firms, prior to commencement of trading, that investors purchasing iShares will be required to receive a Fund prospectus prior to or concurrently with the confirmation of a transaction therein.[7]

Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of iShares is $5,000 for each Fund. In addition, the annual listing fee under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding iShares for all Funds combined.

Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security other than an option, which is covered by Amex rule 950(f) and Commentary thereto, the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated iShares as eligible for this treatment.[8]

Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex rule 918C(b) in exercising its discretion to halt or suspend trading in a Fund. These factors include: (1) The extent to which trading is not occurring in stocks underlying the specific underlying index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair orderly market are present. Trading in iShares will halt in the event that market-wide circuit breakers are triggered pursuant to Amex to Rule 117.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5).[9] Specifically, the Commission finds that the proposal to list and trade the iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund will provide investors with a convenient and less expensive way of participating in the securities markets, including involvement with equities issued by foreign issuers. The Exchange's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating or to a large extent representing the performance of several portfolios of stock a negotiated prices throughout the business day. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in resulting, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[10]

Amex Rules 1000 A *et seq.* provide for the listing and trading of Index Fund Shares, which are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic index.[11] The Exchange currently lists under Amex Rules 1000A *et seq.* eighteen series of World Equity Benchmark Shares ("WEB TM") based on Morgan Stanley Capital Internation foreign stock indices;[12] and nine series of Select Sector SPDRs® based on Selected Sector Indexes comprised of stocks representing various industry sectors and included in the S&P 500® Index.[13] Similar to these other types of Index Fund Shares, the Commission believes that the iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade a product representing an interest in a portfolio of securities designed to reflect substantially the applicable Underlying Index. The iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and, (3) reduce transactions costs for trading a portfolio of securities.

Although these iShares are not leveraged instruments, and, therefore do not possess any of the attributes of stock index options, their prices will be derived and based on the value of the securities and the cash held in the Fund. Accordingly, the level of risk involved in the purchase or sale of these

[7] In its 1940 Act exemptive application, the Trust requests relief from the prospectus delivery requirements imposed by Section 24(d) of the 1940 Act. The Exchange will inform member firms of the prospectus delivery requirements applicable at commencement of trading.

[8] See Securities Exchange Act Release No. 29063, note 9, (SR–Amex–90–31) regarding Exchange designation of equity derivative securities as eligible for such treatment under Amex rule 154, Commentary .04(c).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] See Securities Exchange Act Release No. 3647 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[12] "World Equity Benchmark Shares" and "WEBS" are service marks of Morgan Stanley Group, Inc. See Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999).

[13] "S&P®", "S&P 500®", and "SPDRs®" are trademarks of The McGraw-Hill Companies, Inc., and "Select Sector SPDR" is service mark of The McGraw-Hill Companies, Inc., See Securities Exchange Act Release 40479 (December 4, 1998), 63 FR 68483 (December 11, 1998).

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Funds is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for these Funds is based on a portfolio of securities. Nevertheless, the Commission believes that the unique nature of the iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund raises certain product design, disclosure, trading and other issues that must be addressed.

Generally

The Commission believes that the proposed iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the index it is based upon. In this regard, the Commission notes that the Funds will be developed and maintained using two different investment approaches. The iShares S&P/TSE 60 Fund will use a replication strategy by which the Fund will seek to match the Underlying Index's performance, before fees and expenses, by buying and selling all of the Underlying Index's securities in the same proportion as they are reflected in the Underlying Index. The Fund may not invest in every security in the underlying index if the Adviser believes it is not practical to do so.

The iShares S&P Europe 350 Index Fund will be managed using the representative portfolio sampling approach. Under this strategy, the Advisor will seek to construct the portfolio of a Fund so that it will consist of securities that have capitalization, industry, and fundamental investment characteristics that perform like those in the corresponding Underlying Index. The Fund may not hold all or most of the securities in the Underlying Index and may hold some securities that are not part of the Underlying Index. However, the Fund will not concentrate more than 25% of its assets in the stocks of a single industry or a group of industries, except to the extent that its Underlying Index does so. The Exchange represents that the tracking error on the Fund relative to the performance of its Underlying Index will be less than 5 percent.

The aim of these component selection processes is to make index components highly representative of the overall economic sector composition and market capitalization of a given market. The Commission believes that the aforementioned criteria should serve to ensure that the underlying securities of these indexes are well capitalized and actively traded.

Listing and Trading

The Commission finds that the Amex's proposal contains adequate rules and procedures to govern the listing and trading of the iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund. These Funds will be subject to the full panoply of Amex listing and delisting/suspension rules and procedures governing the trading of Index Fund Shares on the Amex. As such, these Funds are subject to the Amex rules governing the trading of equity securities, including, among others, rules governing trading halts, notices of members, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order. Amex surveillance procedures for Index Fund Shares will also be applicable to the iShares S&P Europe 350 Index and iShares S&P/TSE 60 Fund. The Commission believes that the surveillance procedures developed by the Amex for Index Fund Shares are adequate to address the concerns associated with the listing and trading of these Funds, including any concerns associated with purchasing and redeeming Creation Units.

In addition, the Exchange has designated that a minimum of two creation units, approximately 100,000 shares, will be required to be outstanding at start-up of trading. The Commission believes this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading. Furthermore, the Commission finds that registering the Fund shares in book-entry form through DTC, managing the distribution of dividend from net investment income, if any, and permitting beneficial owners of the Funds to offer the DTC book-entry Dividend Reinvestment Service are characteristics of the Funds that are consistent with the Act and should allow for the maintenance of fair and orderly markets and perfect the mechanism of a free and open market.

Furthermore, the Commission believes that the Exchange's proposal to trade the iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund in minimum fractional increments of 1/64 of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the Funds. Additionally, the Commission believes that the proposed original listing fee of $5,000 is reasonable as is the proposed method for calculating the annual fee.

Dissemination of Information Regarding the Funds

The Commission believes that the Values and figures that the Exchange proposes to have disseminated for the iShares S&P Europe 350 Fund and iShares S&P/TSE 60 Fund will provide investors with timely and useful information concerning the value of the individual Funds. The Exchange represents that the Value information will be disseminated, every 15 seconds during regular Amex trading hours, through the facilities of the CTA and will reflect currently-available information concerning the value of the assets comprising the Deposit Securities and the Cash Component. The intra-day value of the Underlying Index also will be disseminated every 15 seconds throughout the trading day. On a daily basis, the Fund will make available the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, and the NAV will be calculated and disseminated. The Exchange represents that the Fund will maintain a website containing the prospectuses and relevant material that is updated daily, including trading volume and closing prices for each Fund. Additionally, the Exchange represents that it will disseminate on a daily basis the shares outstanding and cash amount per Creation Unit Aggregation.

Disclosure

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading the iShares S&P Europe 350 Fund and iShares S&P/TSE 60 Fund. Investors purchasing iShares will be required to receive a fund prospectus prior to or concurrently with the confirmation of a transaction therein. Alternatively, as previously noted, the Funds will be subject to the Exchange's rules and procedures for Index Fund Shares. This includes the provisions in Commentary .03 to Amex Rule 1000A, which provides for delivery of a product description for series that have granted relief from the prospectus delivery requirements of the 1940 Act.[14] The prospectus or product description will address the special terms and

[14] See Securities Exchange Act Release No. 42787 (May 15, 2000) (approving delivery of product description in lieu of prospectus).

characteristics of the Funds, including a statement regarding their redeemability and method of creation, and a statement regarding the likelihood of whether such products will trade below, at, or above net asset value, based on the rule of discount or premiums.[15] The delivery requirement will extend to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. Finally, Commentary .03 provides that a member or member organization must deliver a prospectus to a customer upon request.

The Commission also notes that prior to commencement of trading in the Funds, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases in the iShares S&P Europe 350 Funds and iShares S&P/TSE 60 Fund. The circular also will inform members of their responsibilities under Amex Rule 411 in connection with customer transactions in these securities.

Accordingly, the Commission believes that the rules governing the trading of the iShares S&P Europe 350 Fund and iShares S&P/TSE 60 Fund provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

Scope of the Order

The Commission is approving the iShares S&P Europe 350 Fund and iShares S&P/TSE 60 Fund. Approval of iShares on the S&P Euro Index, Dow Jones Global Media Sector Index, Dow Jones Global Pharmaceuticals Sector Index, and Dow Jones Global Telecommunications Sector Index remains pending. Additionally, approval of other similarly structured products, or additional iShare Funds based on foreign stock indexes will require review by the Commission pursuant to Section 19(b) of the Act prior to being traded on the Exchange.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Amex–99–49) is partially approved with respect to the iShares S&P Europe Index Fund and iShares S&P/TSE 60 Fund.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13003 Filed 5–23–00; 8:45 am]

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[15] As per telephone conversation between Mike Cavalier, Associate General Counsel, Amex, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on May 15, 2000.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–04951]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Westcoast Energy Inc., Common Stock, No Par Value, and Associated Common Stock Purchase Rights)

May 18, 2000.

Westcoast Energy Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value, and associated Common Stock Purchase Rights (referred to collectively herein as the "Securities"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

The Company, which is based in Vancouver, British Columbia, and whose Securities are additionally listed on the Toronto Stock Exchange ("TSE"), in Canada, and on the New York Stock Exchange ("NYSE"), is seeking to withdraw the Securities from listing and registration on the PCX at this time in order to save the costs associated with such listing and related compliance.

The Company has stated that its application relates solely to the withdrawal of the Securities from listing and registration on the PCX and shall have no effect upon the Securities' continued listing and registration on the NYSE under section 12(b) of the Act.[3]

The withdrawal of the Securities from listing and registration on the PCX was approved by the Company's board of directors at a meeting held on February 15 and 16, 2000. Furthermore, the Company has included with its application a copy of a letter from the PCX indicating that the Equity Listings Committee of the PCX, at a meeting held on May 2, 2000, has approved the Company's request that the Securities be removed from listing and registration on the Exchange, pending final approval of the Commission.

Any interested person may, on or before June 9, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–13067 Filed 5–23–00; 8:45 am]

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[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78l(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24459; 812–11976]

Yahoo! Inc.; Notice of Application

May 18, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 3(b)(2) of the Investment Company Act of 1940 (the "Act").

SUMMARY: Applicant Yahoo! Inc. ("Yahoo!") seeks an order under section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Applicant is a global Internet new media company that offers a branded network of media, commerce and communication services. On April 5, 2000, a temporary order was issued pursuant to section 3(b)(2) of the Act exempting applicant from all provisions of the Act until July 10, 2000.

Filing Dates: The application was filed on February 11, 2000 and amended April 5, 2000 and May 16, 2000.

Hearing for Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving

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applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 12, 2000 and should be accompanied by proof of service on the applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609; Applicant, 3420 Central Expressway, Santa Clara, CA 95051.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942–0526; or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Yahoo!, a Delaware corporation , was formed in 1995. Yahoo! states that it is a global Internet new media company that offers a branded network of media, commerce and communication services. Yahoo! develops, operates and markets advertising-supported online properties, including Yahoo!, a branded Internet navigational service that is among the most widely used and recognized search guides on the World Wide Web. Yahoo! states that it conducts its Internet and new media business directly and through wholly-owned and majority-owned subsidiaries and Yahoo! Japan, a company that it controls within the meaning of section 2(a)(9) of the Act.[1] Yahoo! states that it is not in the business of investing, reinvesting or trading in securities.

2. Yahoo! has expanded its Internet and new media business to Japan through Yahoo! Japan, which unlike Yahoo!'s other international subsidiaries, is not majority-owned or wholly-owned by Yahoo!. Yahoo! states that Yahoo! Japan was created in 1996 as a joint venture between Yahoo! and Softbank Corp. to establish and manage a Japanese version of the Yahoo! directory service, develop related Japanese online navigational services and conduct other related businesses. Yahoo! states that it currently owns 34% of the outstanding voting securities of Yahoo! Japan and Softbank Corp. owns 51%. Yahoo! states that Yahoo! Japan currently is a publicly traded company with shares listed on the Tokyo Stock Exchange. Yahoo! represents that Yahoo! Japan is not an investment company and is not relying on section 3(c)(1) or 3(c)(7) of the Act. As of December 31, 1999, Yahoo! states that the fair market value of Yahoo!'s interest in Yahoo! Japan was approximately $8.4 billion, accounting for over 90% of the value of Yahoo!'s total assets (exclusive of government securities and cash items) on an unconsolidated basis.

3. Yahoo! represents that it maintains a large cash position to help fund operations, research and development, and to take advantage of acquisition opportunities as they arise. Yahoo!'s cash position is currently invested in cash and government securities; Yahoo! plans to invest part of its cash position in higher-yielding corporate bonds and other high-quality debt securities that are consistent with the goal of capital preservation. Yahoo! represents that it has adopted a Corporate Investment Policy to ensure that its cash management investments consist of only certain high-quality predominately short-term debt instruments (together with cash items and government securities, "Cash Management Investments"). Yahoo! represents that it needs sufficient cash for bona fide business purposes, such as funding operations, funding research and development and improvements to its network, and funding strategic acquisitions. Yahoo! also states that it does not engage in speculative short-term trading with its Cash Management Investments.

4. Yahoo! states that it makes certain small strategic, non-controlling investments in companies that can complement or enhance Yahoo!'s Internet and new media business ("Strategic Investments"). Yahoo! states that it carries these investments on its balance sheet as "long-term" assets and does not invest or trade in such securities for short-term or speculative purposes. As of December 31, 1999, the value of the Strategic Investments was less than 5% of the value of Yahoo!'s total assets (exclusive of government securities and cash items) on an unconsolidated basis. Yahoo! states that it does not hold Strategic Investments because of the possibility of gain resulting from an increase in the market price of the securities, but primarily as a means to enter into or solidify business relationships with companies to expand Yahoo!'s business lines. Yahoo! further states that it uses Strategic Investments as a way of outsourcing research and development instead of developing technology internally.

Applicant's Legal Analysis

1. Yahoo! seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

2. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines "investment securities" to include all securities except government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which: (i) Are not investment companies; and (ii) are not relying on the exclusive from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

3. Yahoo! states that its interest in Yahoo! Japan represents over 90% of its total assets (exclusive of government securities and cash items) on an unconsolidated basis. Yahoo! states that it cannot rely upon rule 3a–1 under the Act because, although it owns over 25% of the outstanding voting securities of Yahoo! Japan, it does not primarily control Yahoo! Japan because another entity owns a larger percentage of voting securities.[2] If the interest in Yahoo! Japan is deemed to be an "investment security" (as that term is defined in section 3(a)(2) of the Act), Yahoo! may be deemed to be an investment company within the meaning of section 3(a)(1)(C) of the Act.

[1] Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that an owner of more than 25% of the outstanding voting securities of a company controls the company.

[2] Rule 3a–1 provides an exemption from the definition of investment company if no more than 45% of a company's total assets consist of, and not more than 45% of its net income over the last four quarters is derived from, securities other than government securities and securities of majority-owned subsidiaries and companies primarily controlled by it.

4. Yahoo! states that it views its controlling interest in Yahoo! Japan as an operating asset. Yahoo! represents that it plays a significant role in the management of Yahoo! Japan and is fully involved both directly and indirectly, in the operations of Yahoo! Japan. Yahoo! states that it directly oversees the operations of Yahoo! Japan through its involvement with the board of directors of Yahoo! Japan. Yahoo! further states that Yahoo! Japan operates under various agreements with Yahoo! that give Yahoo! significant power to direct the operations of Yahoo! Japan, including a licensing agreement that, among other things, sets minimum content specifications and subjects Yahoo! Japan to an international pricing policy designed by Yahoo! to allocate sales revenue involving more than one Yahoo! entity. Yahoo! argues that these facts demonstrate not only that Yahoo! controls Yahoo! Japan, but also that it is involved in the management and operations of Yahoo! Japan.

5. Section 3(b)(2) of the 1940 Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the Commission may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or controlled companies conducting similar types of business. Yahoo! requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

6. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the Commission considers: (a) The applicant's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income. [3]

a. *Historical Development.* Yahoo! states that since its inception in 1995, it has considered itself to be a company engaged in the Internet and new media business of developing and providing Internet-related products and services. Yahoo! represents that its business strategy has not changed since it outlined its business plan in its prospectus for the initial public offering of its securities in 1996. Yahoo! has used its revenue and raised capital to expand its operations into foreign countries, to expand its product and service lines and to acquire companies with complementary products or services.

b. *Public Representations of Policy.* Yahoo! states that it has never represented that it is involved in any business other than the Internet and new media business that develops and provides Internet-related products and services. Yahoo! asserts that it has consistently stated in its reports to stockholders, press releases and periodic reports filed with the Commission that it is an Internet and new media company. Yahoo! states that it emphasizes operating results and has never emphasized either its investment income or the possibility of significant appreciation from its Cash Management Investments or Strategic Investments as a material factor in its business or future growth.

c. *Activities of Officers and Directors.* Yahoo! states that its board of directors and its officers spend almost all of their time on Yahoo!'s Internet and new media business. The board of directors' activities with respect to Yahoo!'s Cash Management Investments is minimal, limited to its adoption of the Corporate Investment Policy and periodically receiving reports. Yahoo! also states that only two of its approximately 2,000 employees spend any time with respect to its Cash Management Investments, and those employees spend only approximately 20% of their time in this manner. Yahoo! states that the amount of time that the board of directors dedicates to the Strategic Investments is small relative to the amount of time dedicated to Yahoo!'s business activities.

d. *Nature of Assets.* Yahoo! states that as of December 31, 1999, exclusive of cash items and government securities, over 90% of Yahoo!'s total assets, on an unconsolidated basis, was attributable to direct non-investment security assets and Yahoo!'s interests in wholly- and majority-owned subsidiaries and Yahoo! Japan. As of December 31, 1999, Yahoo represents that less than 5% of its total assets (exclusive of cash items and government securities), on an unconsolidated basis, were attributable to Strategic Investments. Yahoo further represents that Cash Management Investments comprised less than 10% of its total assets, as of December 31, 1999.

e. *Sources of Income.* Yahoo! states that for the year ended December 31, 1999, Yahoo!'s investment income comprised approximately 37% and its operating income comprised approximately 63% of Yahoo!'s gross income. Yahoo! further states that for the quarter ended March 31, 2000, Yahoo!'s investment income comprised approximately 44%, and operating income comprised approximately 57% of Yahoo!'s gross income. Moreover, Yahoo! states that 70% of the approximately $57 million of investment income it reported in the quarter ended March 31, 2000, resulted from the consolidation of certain joint venture operations following Yahoo!'s acquisitions of Geocities and broadcast.com, not from speculation in securities. Yahoo! notes that in the past its income from operations has fluctuated widely and Yahoo! has incurred substantial non-recurring costs in connection with acquisitions and product development. Yahoo! notes that the composition of its income, at-times, is not representative of Yahoo!'s activities as an operating company. Yahoo! believes that the sources of its revenue are more representative of Yahoo!'s activities as an operating company. Yahoo! states that as far back as 1996, Yahoo! generated 83% of its total revenue from sales of advertisements and 14% from investment income. For the year ended December 31, 1999, Yahoo states that it generated 94% of its total revenue from operating activities and the remaining 6% from investment income. Yahoo! expects that in the future the percentage of its total revenues derived from operating activities will ordinarily be over 90%.

7. Yahoo! thus asserts that it satisfies the standards for an order under section 3(b)(2) of the Act.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. Yahoo! will continue to allocate and utilize its accumulated cash and Cash Management Investments for bona fide business purposes.

2. Yahoo! will refrain from investing or trading in securities for short-term speculative purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13002 Filed 5–23–00; 8:45 am]

BILLING CODE 8010–01–M

[3] *Tonopah Mining Company of Nevada*, 26 SEC 426, 427 (1947).

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24457; 813–170]

Bain Capital, Inc. and BCIP Associates II; Notice of Application

May 17, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 ("Act") granting an exemption from all provisions of the Act except section 9, sections 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j)) and 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under the Act.

SUMMARY OF APPLICATION: Applicants Bain Capital, Inc. ("Bain Capital") and BCIP Associates II (the "Initial Investment Entity") request an exemption from various provisions of the Act for an "employees' securities company" within the meaning of section 2(a)(13) of the Act.

Filing Dates: The application was filed on May 29, 1997, and amended on May 12, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 12, 2000, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES:

Secretary, SEC, 450 Fifth Street NW, Washington, DC 20549–0609.

Applicants, Two Copley Place, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee by writing the SEC's Public Reference Branch at 450 Fifth Street NW, Washington, DC 20549–0102, or by telephone at (202) 942–8090.

Applicants' Representations

1. Bain Capital, A Delaware corporation, is a private equity investment firm. It manages private investment funds (the "Bain Funds") which are exempt from registration under the Act in reliance on sections 3(c)(1) and 3(c)(7) of the Act. Bain Capital is exempt from registration as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") in reliance upon section 203(b)(3) of the Advisers Act.

2. Applicants propose to offer various investment programs ("Investment Entities") to Eligible Investors (as defined below) of Bain Capital and Bain Capital Holdings, LLC, a limited liability company which is being organized to carry on the business activities of Bain Capital and will be owned by key employees of Bain Capital (together with Bain Capital, the "Company").

The Initial Investment Entity has been established to enable Eligible Investors to participate in co-investment opportunities with the Bain Funds. The Initial Investment Entity is structured as a general partnership formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified, management investment company.

A subsequent Investment Entity may be structured as a general partnership or as a domestic or offshore limited partnership, limited liability company, or corporation. The Investment Entities are established to reward and retain Eligible Employees (as defined below) and to attract highly qualified personnel to the Company. No Eligible Employee will be required to invest in any Investment Entity.

3. The Company will act as the managing partner ("Managing Partner") of the Initial Investment Entity. The Managing Partner of subsequent Investment Entities will be the Company, a successor entity, (*i.e.*, an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization of the Company) or an affiliated person (as defined in section 2(a)(3)(C) of the Act) of the Company ("Control Affiliate"). A person serving as an investment adviser to an Investment Entity will be registered as an investment adviser under the Advisers Act, if required under applicable law.

4. No fee will be charged to an Investment Entity by the Managing Partner and no compensation will be paid by an Investment Entity or its Partners to the Managing Partner for its services in such capacity. No Investment Entity will be charged management fees by the Company, or any of its affiliates. The Managing Partner may require an Investment Entity to reimburse it for direct costs of disbursements and expenses that it incurs on behalf of such Investment Entity.

5. Interests in the Investment Entities ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1993 (the "1933 Act") or Regulation D under the 1933 Act and will be sold without a sales charge. Interests will be sold solely to "Eligible Investors."

Eligible Investors will consist of: (a) Eligible Employees (as defined below); (b) trusts and other investments vehicles of which the trustees, grantors and/or beneficiaries are Eligible Employees or of which the beneficiaries are immediate family members (spouses, parents, children, spouses of children, brothers, sisters, and grandchildren) of Eligible Employees and charitable organizations, including self-directed retirement plan vehicles (including individual retirement accounts); (c) partnerships, corporations or other entities all of the voting power of which is controlled by Eligible Employees; and (d) the Company.

Prior to offering interests in an Investment Entity to an Eligible Employee, the Managing Partner must reasonably believe that the Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Investment Entity without the benefit of regulatory safeguards. Eligible Employees will be experienced professionals in the leveraged buy out, venture capital, investment banking or management consulting business, or in related administrative, financial, accounting or operational activities.

6. An "Eligible Employee" is an individual who at the time of an offer for an Interest in an Investment Entity is:

(a) A professional or key administrative employee of the Company or a Control Affiliate, or a former professional employee of the Company or a Control Affiliate, and is an accredited investor meeting the income requirements set forth in rule 501(a)(6) of Regulation D under the 1933 Act; or

(b) an employee of the Company or a Control Affiliate who: (i) Will be involved in managing the finances or the day-to-day affairs of the Investment Entities or in locating, structuring or administering the investments made by the Investment Entities; (ii) has an individual rate of annual compensation from all sources of at least $120,000, (iii) has a reasonable expectation of having the same rate of annual compensation in each of the two immediately succeeding years; and (iv) has such knowledge and experience in financial and business matters that he will be capable of evaluating the merits and risks of the proposed investments. A maximum of 35 persons who do not meet the income requirements of Regulation D under the 1933 Act at the time an offer for an Interest is made will be admitted to any Investment Entity.

7. Before participating in an Investment Entity, Eligible Employees will be provided with a copy of the organizational documents of the Investment Entity, which will set forth the specific investment objectives and strategies of the Investment Entity, and a description of the relevant risks associated with an investment in an Investment Entity.

8. Each Investment Entity will send the Eligible Investors that participate in the Investment Entity ("Partners") an annual repot regarding its operations which will contain unaudited financial statements. Within 90 days after the end of each fiscal year, or as soon as practicable thereafter, each Investment Entity will transmit to each Partner a report indicating its Share of the income or losses of the Investment Entity for federal income tax purposes for the fiscal year most recently ended.

9. An Investment Entity will maintain a separate class of capital accounts for Partners who are participating in a particular investment (the "Participating Partners"). Capital contributions made to an Investment Entity by or on behalf of Participating Partners will be allocated pro-rata to the capital sub-accounts relating to a particular investment for such Participating Partners. Partners who do not participate in a particular investment will have no interest in, or capital sub-account with respect to, such investment. A Partner's percentage share will differ from one sub-account to another, such that each Partner's proportionate mix of investments is likely to differ from each other Partner's and from an Investment Entity's aggregate investments.

10. In addition to co-investment opportunities with the Bain Funds, the Managing Partner of the Initial Investment Entity may make other investment opportunities not related to Bain Fund investments available to one or more Partners who are Eligible Investors and in the case of any follow-on investment in a portfolio company, the Managing Partner may also, in its discretion, make such opportunity available to Partners who participated in earlier investments by the Initial Investment Entity in such portfolio company.

11. Partners will not be entitled to redeem their interest in the Initial Investment Entity. A Partner will be permitted to transfer its interest only with the express consent of the Managing Partner and only to an Eligible Investor. Upon a Partner's death, the Partner's estate will be substituted as a Partner.

12. The Managing Partner may require a Partner to withdraw from an Investment Entity if: (a) The Partner is no longer deemed to be able to bear to economic risk of investment in an Investment Entity; (b) an Investment Entity may suffer adverse tax consequences if a particular Partner were to remain; (c) the continued participation of the Partner would violate applicable law or regulations; or (d) the Managing Partner; in its sole discretion, deems such withdrawal to be in the best interest of the Investment Entity and any of its affiliated persons (as defined in section 2(a)(3)(C) of the Act).

If a Partner is required to withdraw, an Investment Entity may, in its sole discretion, require the Partner to sell its Interest in the Investment Entity. The purchase price for the sale of a withdrawing Partner's Interest would be equal to the Partner's capital account for the Investment as of the date the Partner is requested to withdraw determined as if the capital account were credited or charged with the income, realized and unrealized gains, expenses, and realized and unrealized losses attributable to the investment as determined by the Managing Partner.

13. An Investment Entity will not acquire any security issued by a registered investment company if, immediately after such acquisition, the Investment Entity would own more than 3% of the outstanding voting stock of the registered investment company.

14. Each Investment Entity may invest in investment opportunities offered to or by, or that come to the attention of, the Company, including opportunities in which the Company, its affiliates and/or its employees (including Partners of the Investment Entities) may invest for their own respective accounts. The Investment Entities may also sell securities to, or buy securities from, the Company, its affiliates, or its employees and may distribute securities in-kind to Partners. The Company may perform services for entities in which an Investment Entity invests and may be paid by such entities for such services and for related disbursements and charges.

Applicant's Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining which provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests.

Section 2(a)(13) of the Act defines an employees' security company, in relevant part, as any investment company all of whose outstanding securities are beneficially owned: (a) By current or former employees, or persons on retainer, of one or more affiliated employers; (b) by immediate family members of such employees; or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) of the Act provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though such company were registered under the Act.

Applicants request an order under sections 6(b) and 6(e) of the Act exempting them from all provisions of the Act, except section 9, sections 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j)), and 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), and sections 36 through 53, and the rules and regulations under the Act.

3. Section 17(a) generally prohibits any affiliated person (as defined in section 2(a)(3) of the Act) of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling or

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purchasing any security or other property to or from the company.

Applicants request an exemption from section 17(a) to permit:

(a) The Company and Control Affiliates, acting as principal, to engage in any transaction directly or indirectly with any Investment Entity or any entity controlled by an Investment Entity;

(b) Any Investment Entity to invest in or engage in any transaction with any entity, acting a principal: (i) in which an Investment Entity, and entity controlled by an Investment Entity, the Company or Control Affiliate has invested or will invest; or (ii) with which an Investment Entity, any entity controlled by an Investment Entity, the Company or any Control Affiliate is or will become otherwise affiliated; and

(c) A partner or other investor of an investment vehicle for investors who are not affiliated with the Company, over which the Company or a Control Affiliate exercises investment discretion, and any affiliate of that partner or investor (collectively, "Third Party Investors"), acting as principal, to engage in any transaction directly or indirectly with an Investment Entity or any entity controlled by an Investment Entity.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors. Applicants assert that, prior to investing, Eligible Employees will be provided with a copy of the organizational documents of an Investment Entity, which will set forth its specific investment objectives and strategies. Applicants believe that the Eligible Employees will be able to understand and evaluate the risks associated with participation in an Investment Entity. Applicants assert that the community of interest among the Partners and the Company will reduce the risk of abuse in such transactions. Applicants also acknowledge that any transaction subject to section 17(a) for which exemptive relief has not been requested would require specific approval from the SEC.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by order of the SEC.

Applicants request relief to permit an Investment Entity to participate in joint transactions involving:

(a) An investment in a security: (i) in which the Bain Funds, the Company, another Investment Entity or an affiliated person of any of the Bain Funds, the Company or an Investment Entity, or a transferee of one of these, is a participant or becomes a participant; or (ii) with respect to which the Company or any affiliated person thereof is entitled to receive fees or compensation of any kind, including, but not limited to, transaction fees, consulting fees, management fees or other economic benefits or interests; and

(b) Any investment vehicle sponsored, offered or managed by the Company, another Investment Entity or any affiliated person of the Company or an Investment Entity.

6. Applicants assert that the flexibility to structure co- and joint investments in the manner described in the application will not involve abuses of the type section 17(d) an rule 17d–1 were designed to prevent. Applicants state that, because attractive investment opportunities of the types considered by the Investment Entities often require that each participant make available funds in an amount that may be substantially greater than that available to an Investment Entity alone, there may be certain attractive opportunities of which an Investment Entity may be unable to take advantage except as a co-participant with other persons, including affiliated persons.

Applicants state also that, in light of the Company's purpose of establishing the Investment Entities to reward Eligible Investors and to attract highly-qualified personnel to the Company, the possibility is minimal that an affiliated-party investor will enter into a transaction with an Investment Entity with the intent of disadvantaging the Investment Entity. Applicants assert that strict compliance with section 17(d) could cause an Investment Entity to forgo investment opportunities simply because a Partner, the Company, or another affiliated person of the Investment Entity also had or was making such investment and would prevent the Investment Entity from achieving its primary investment purpose of investing alongside the Bain Funds.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 specifies the requirements for a registered management investment company to maintain custody of its investments.

Applicants request an exemption from the requirements of section 17(f) of the Act and rule 17f–2 under the Act to permit the following exceptions from the requirements of rule 17f–2:

(a) Compliance with paragraph (b) of the rule may be achieved through safekeeping in the locked files of the Company or of a partner of the Company;

(b) For purposes of paragraph (d) of the rule: (i) employees of the Company will be deemed employees of the Investment Entities, (ii) officers of the Managing Partner of an Investment Entity will be deemed to be officers of such Investment Entity, (iii) the Managing Partner of an Investment Entity will be deemed to be the board of directors of such Investment Entity; and

(c) In place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Company. Applicants submit that, because may of the Investment Entities' investments will be evidenced only by partnership agreements or similar documents, rather than by negotiable certificates which could be misappropriated, such instruments are most suitably kept in the Company's files where they can be referred to as necessary. Applicants also state that each Investment Entity comply with all other requirements of rule 17f–2.

8. Section 17(g) of the Act and rule 17g–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding.

Applicants state that it is likely that all members of the board of directors of the Managing Partners ("Board Members") would be considered interested persons of the Investment Entities. Applicants request exemptive relief to permit a majority of the Board Members, regardless of whether they are interested persons, to take certain actions and make certain approvals concerning bonding required by rule 17g–1.

Applicants state that the Investment Entities could not comply with rule 17g–1 without the requested relief. Applicants also state that each Investment Entity will comply with all other requirements of rule 17g–1.

9. Section 17(j) and rule 17j–1(b) make it unlawful for certain persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1 under the Act, with the exception of the anti-fraud provisions of paragraph (b), because they would be unnecessary and burdensome in the case of the Investment Entities.

10. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Investment Entities and would entail administrative and legal costs that outweigh any benefit to the Partners. Applicants request exemptive relief to the extent necessary to permit each Investment Entity to report annually to its Partners.

Applicants also request an exemption from section 30(h) to the extent necessary to exempt the Managing Partner, Board Members and any other persons who may be deemed to be members of an advisory board of an Investment Entity from filing Forms 3, 4, and 5 under section 16(a) of the Securities Exchange Act of 1934 (the "Exchange Act") with respect to their ownership of Interests in the Investment Entities. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicant's Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the "Section 17 Transactions") will be effected only if the Managing Partner determines that:

(A) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the affected Partners of the participating Investment Entity and do not involve overreaching of the Investment Entity or its Partners on the part of any person concerned; and

(b) The Section 17 Transaction is consistent with the interests of the Partners of the participating Investment Entity, the Investment Entity organizational documents, and the Investment Entity's reports to its Partners.

In addition, the Managing Partner will record and preserve a description of such section 17 Transactions, its findings, the information or materials upon which its findings are based and the basis therefor. All such records will be maintained for the life of an Investment Entity and at least two years thereafter, and will be subject to examination by the SEC and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. In any case where purchases or sales are made from or to an entity affiliated with an Investment Entity by reason of a 5% or more investment in such entity by a director, officer, or employee of the Managing Partner, such individual will not participate in the Managing Partner's determination of whether or not to make such investment available to the Partners of an Investment Entity.

3. The Managing Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person of the Investment Entities, or any affiliated person of such a person.

4. The Managing Partner will not make available to the Partners of an Investment Entity any investment in which a Co-Investor, as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Investment Entity and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment:

(a) Gives the Managing Partner of the participating Investment Entity holding such investment sufficient, but not less than one day's, notice of its intent to dispose of its investment; and

(b) Refrains from disposing of its investment unless the participating Investment Entity holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with, the Co-Investor.

The term "Co-Investor" means any person who is a: (a) An affiliated person of the Investment Entity who is under common control with the Investment Entity, or controlled by the Company; [1] (b) the Company and any entities controlled by the Company; (c) a current or former managing director of the Company; (d) an investment vehicle offered, sponsored, or managed by the Company or an affiliated person of the Company; or (e) a company in which the Managing Partner acts as a general partner or in a similar capacity, or has a similar capacity to control the sale or disposition of the company's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor:

(a) To its direct or indirect wholly-owned subsidiary, to any Company (a "parent") of which the Co-investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent;

(b) to immediate family members (spouses, parents, children, spouses of children, brothers, sisters and grandchildren) of the Co-investor or a trust established for any such family member;

(c) When the investment is comprised of securities that are listed, on a national securities exchange registered under section 6 of the Exchange Act; or

(d) When the investment is comprised of securities that are, national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder.

5. The Managing Partner of each Investment Entity will send to each Partner who had an interest in that Investment Entity at any time during the fiscal year then ended, Investment Entity financial statements. Such financial statements may be unaudited. In addition, within 90 days after the end of each fiscal year of each of the Investment Entities or as soon as practicable thereafter, the Managing Partner shall send a report to each person who was a partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Partner of his federal and state income tax returns and a report of the investment activities of the Investment Entity during such year.

The Managing Partner will make a valuation or have a valuation made of all of the assets of the Investment Entities as of the end of each fiscal year in a manner consistent with the

[1] Such persons shall not include any parties who may be affiliated persons of the Investment Entity solely because they have co-invested in an investment vehicle or joint enterprise, where neither the Investment Entity nor the Company exercises control over such persons.

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customary practice with respect to the valuation of assets of the kind held by the Investment Entities which may include, in the case of co-investments with a Bain Fund, valuations provided by such Bain Fund.

6. Each Investment Entity and its Managing Partner will maintain and preserve, for the life of each such Investment Entity and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of such Investment Entity to be provided to its Partners, and agree that all such records will be subject to examination by the SEC and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13066 Filed 5–24–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42787; File No. SR–Amex–00–14]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to Generic Listing Standards Applicable to Listing Portfolio Depository Receipts and Index Fund Shares Pursuant to Rule 19b–4(e) Under the Securities Exchange Act of 1934

I. Introduction

On March 6, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish generic listing standards applicable to Portfolio Depository Receipts ("PDRs") and Index Fund Shares. By establishing generic listing standards, the Amex may permit the listing and trading of PDRs and Index Fund Shares pursuant to Rule 19b–4(e) under the Act[3] without submitting a proposed rule change pursuant to Section 19(b) under the Act.[4] The proposed rule change was published for comment in the **Federal Register** on March 28, 2000.[5] No comments were received on the proposal. The proposal was amended on April 27, 2000.[6] In this notice and order, the Commission is seeking comment from interested persons on Amendment No. 1, and is approving the proposed rule change, including accelerated approval of Amendment No. 1.

II. Description of the Proposal

The proposal adds commentaries to Amex Rules 1000 and 1000A to provide standards to permit listing and trading of PDRs and Index Fund Shares pursuant to Rule 19b–4(e) under the Act.[7] The proposal requires that PDRs and Index Fund Shares listed pursuant to Rule 19b–4(e) be subject to specific generic criteria as set forth in proposed Amex Rule 1000, Commentary .03 (for PDRs) and Amex Rule 1000A, Commentary .02 and .03 (for Index Fund Shares). All other provisions of Amex Rules 1000 *et seq.* and 1000A *et seq.* will continue to apply to such securities.

The proposed implements generic listing criteria that are intended to ensure that a significant portion of the weight of an index or portfolio is accounted for by stocks with substantial market capitalization and trading volume. Proposed Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A both provide that, upon the initial listing of a series of PDRs or Index Fund Shares under Rule 19b–4(e), component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio must have a minimum market value of at least $75 million. In addition, the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio.

The most heavily weighted component stock in an underlying index cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The underlying index or portfolio must include a minimum of 13 stocks, which is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code.[8] All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

Proposed Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A provide that the underlying index will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer must erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index must be calculated by a third party who is not a broker-dealer. The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The Reporting Authority will disseminate for each series of PDRs and Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities plus any cash amount to permit creation of new shares of the series or upon the index value.

A minimum of 100,000 shares of a series of PDRs or Index Fund Shares will be required to be outstanding as of the start of trading. The minimum trading increment for a series of PDRs will be 1/64 of $1.00, and for Index Fund Shares will be 1/16, 1/32 or 1/64 of $1.00, as determined by the Exchange for a specific series.

The original listing fee for each series of PDRs and Indes Fund Shares will be $5,000. The annual listing fee under Section 141 of the Amex *Company Guide* will be based upon the number of shares of a series of PDRs outstanding at the end of each calendar year. For funds with multiple series of Index Fund Shares, shares in all series outstanding at year end will be aggregated for purposes of the annual listing fee under Section 141 of the Amex *Company Guide.*

The Exchange will implement written surveillance procedures for PDRs and Index Fund Shares. In addition, the Exchange will comply with the recordkeeping requirements of Rule 19b–4(e), and will file Form 19b–4(e) for each series of PDRs or Index Fund Shares listed under the rule within five business days of commencement of trading.[9]

The provisions of Amex Rules 1000 *et seq.* or 1000A *et seq.* will apply to all series of PDRs and Index Fund Shares listed under Rule 19b–4(e). In addition to the requirements of proposed Commentary .03 to Amex Rule 1000 and Commentary .02 and .03 to Amex Rule 1000A, PDRs and Index Fund Shares will be subject to Exchange procedures and rules, discussed below, comparable to those applied to existing PDRs and Index Fund Shares.

Amex Rule 154

Commentary .04(c) to Amex Rule 154 provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto), the price of which is derivatively priced based upon another security or index of securities, may, with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). PDRs and Index Fund Shares listed under Rule 19b–4(e) will be eligible for this treatment.[10]

Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in PDRs and Index Fund Shares. These factors would include: (1) The extent to which trading is not occurring in stocks underlying the Index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in these Securities will also be halted in the event that market-wide "circuit breaker" parameters of Amex Rule 117 are triggered.

Amex Rule 190, Commentary .04

Commentary .04 to Amex Rule 190 will apply to PDRs and Index Fund Shares listed under 19b–4(e). This Commentary provides that the prohibition in Amex Rule 190(a) against a specialist or the specialist's member organization effecting any business transactions with a company in which stock the specialist is registered does not restrict a specialist registered in a series of PDRs or Index Fund Shares from purchasing and redeeming the applicable series from the issuer to facilitate the maintenance of a fair and orderly market.

Notice to Members

The Exchange will issue a Notice to Members for each series of PDRs or Index Fund Shares to be listed pursuant to Rule 19b–4(e). The Notice will describe the characteristics of the securities and inform members of any obligation to deliver a written product description or prospectus, applicable, to purchasers of PDRs or Index Fund Shares. In addition, the notice will inform members of their responsibilities under Amex Rule 411 (Duty to Know and Approve Customers) in connection with customer transactions in these securities.

The proposal also requires, in proposed Commentary .03 to Rule 1000A, members and member organizations to provide to purchasers of a series of Index Fund Shares a product description of the terms and characteristics of such securities in a form prepared by the open-end management investment company issuing such securities, not later than the time a conformation of the first transaction in such series is delivered to the purchaser. This requirement applies only if the particular series has been granted relief from the prospectus delivery requirements of Section 24(d) of the 1940 Act.[11] Additionally, members and member organizations are required to include the product description with any sales materials relating to a series of Index Fund Shares that is provided to the public. Any other written materials provided to customers by a member or member organization referring to a series of Index Fund Shares must include a statement relating to the product description, in substantially the form set forth in the proposed Commentary .03. The proposal also provides that a member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such account will be deemed to constitute agreement by the non-member to make such product description available to its customers on the same terms as are directly applicable to members and member organizations under proposed Commentary .03. Finally, the proposal provides that a member or member organization must provide a prospectus for a particular series of Index Fund Shares upon the customer's request.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[12] Specifically, the Commission finds that the proposal to provide generic standards to permit listing and trading of PDRs and Index Fund Shares pursuant to Rule 19b–4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the Act. Thus, by establishing generic standards, the proposal should reduce the Exchange's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[13]

On December 11, 1992, the Commission approved Amex Rules 1000 *et seq.* to accommodate trading on the Exchange of PDRs, which represent interests in a unit investment trust

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(e).

[4] 15 U.S.C. 78s(b).

[5] Securities Exchange Act Release No. 42542 (March 17, 2000), 65 FR 16437.

[6] See letter from Michael J. Ryan, Chief of Staff, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, dated April 24, 2000 ("Amendment No. 1"). In Amendment No. 1, Amex proposed to add Commentary .03 to Amex Rule 1000A, creating a product description delivery requirement for series that have been granted relief by the SEC from the prospectus delivery requirements of Section 24(d) of the Investment Company Act of 1940 ("1940 Act"). Amex also clarified the timing for compliance with the eligibility criteria and verified that the Exchange will require issuers of a series of PDRs or Index Fund Shares listed under Rule 19b–4(e) to represent to the Exchange that the index or portfolio of securities underlying such series will comply with the applicable eligibility criteria as of the date of initial deposit of securities to the trust or fund in connection with the initial issuance of shares of such trust or fund.

[7] 17 CFR 240.19b–4(e). Rule 19b–4(e) permits self-regulatory organizations ("SROs") to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b).

[8] Under the Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of such fund's total assets.

[9] 17 CFR 240.19b–4(e).

[10] See Securities Exchange Act Release No. 29063, (April 10, 1991), 56 FR 15652 (April 17, 1991) note 9, regarding Exchange designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c).

[11] 15 U.S.C. 870a–24(d).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that is has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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("Trust") that operates on an open-end basis and holds a portfolio of securities.[14] Each Trust is intended to provide investors with an instrument that closely tracks the underlying securities portfolio, that trades like a share of common stock, and that pays to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. The Exchange currently trades PDRs based on: the Standard & Poor's 500 Index, known as Standard & Poor's Depositary Receipts® ("SPDRs"®); [15] the Standard & Poor's MidCap 400 Index™ ("MidCap SPDRs ™"); [16] the Dow Jones Industrial Average℠ ("DIAMONDs℠"); [17] and, the Nasdaq-100® (Index Nasdaq-100 Shares ™).[18]

The Commission first approved Amex's listing and trading of Index Fund Shares under Amex Rules 1000A *et seq.* in 1996.[19] Index Fund Shares are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index. The Exchange currently lists under Amex Rules 1000A *et seq.* seventeen series of World Equity Benchmark Shares℠ ("WEBS ™") based on Morgan Stanley Capital International foreign stock indices,[20] and nine series of Select Sector SPDRs® based on Select Sector Indexes comprised of stocks representing various industry sectors and included in the S&P 500® Index.[21]

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class.[22] As noted above, the Commission has previously approved Amex Rules 1000 *et seq.* and 1000A *et seq.* to permit the listing and trading of PDRs and Index Fund Shares. In approving these securities for Exchange trading, the Commission thoroughly considered the structure of these securities, their usefulness to investors and to the markets, and the Amex rules that govern their trading. Moreover, except for SPDRs and the initial WEBS series, the Exchange separately filed proposed rule changes pursuant to Rule 19b–4 for each series of PDRs or Index Fund Shares currently trading on the Exchange. The Commission believes that adopting generic listing standards for these securities and applying Rule 19b–4(e) should fulfill the intended objective of that rule by allowing those series of PDRs and Index Fund Shares that satisfy those standards to start trading, without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's and the Commission's regulatory burden, the Commission will maintain regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission previously concluded that PDRs and Index Fund Shares it previously approved for listing under the existing rules governing those securities would allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities. The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed generic standards for PDRs and Index Fund Shares and, therefore, can be listed under Rule 19b–4(e) without prior Commission approval, should produce the same benefits to the Exchange and to investors.

The Commission finds that the Amex's proposal contains adequate rules and procedures to govern the listing and trading of PDRs and Index Fund Shares Rule 19b–4(e). All series of PDRs and Index Fund Shares listed under the generic standards will be subject to the full panoply of Amex rules and procedures that now govern the trading of existing PDRs and Index Fund Shares on the Amex. Accordingly, any new series of PDRs and Index Fund Shares listed and traded under Rule 19b–4(e) will be subject to Amex rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

In addition, the Amex has developed specific listing criteria for series of PDRs or Index Fund Shares qualifying for Rule 19b–4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. Specifically, the Exchange has designated that a minimum of 100,000 shares of a series of PDRs or Index Fund Shares will be required to be outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid Exchange market at the commencement of trading. The Exchange has also established that upon initial listing: Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio must have minimum market value of at least $75 million; the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio; the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio; the index or portfolio must include a minimum of 13 stocks; and all securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock Market. Moreover, any series seeking to list under the generic standards must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust or fund.[23] The Commission believes that these criteria should serve to ensure that the underlying securities of these indexes and portfolios are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new series of PDRs and Index Fund Shares under rule 19b–4(e). These listing criteria also will make certain that new series of PDRs and Index Fund Shares do not contain features that are likely to impact adversely the U.S. securities markets. Accordingly, the Commission finds that these criteria are consistent with Section 6(b)(5) of the Act, because they serve to prevent fraudulent or manipulative acts; promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.

In addition, as previously noted, all series of PDRs and Index Fund Shares listed under the generic standards will be subject to the existing continued listing criteria for these securities. This requirement allows the Amex to consider the suspension of trading and the delisting of a series if an event occurred that makes further dealings in such securities inadvisable. The Commission believes that this will give the Amex flexibility to delist PDRs or Index Fund Shares if circumstances warrant such action.

Furthermore, the Commission finds that the Exchange's proposal to trade PDRs in minimum fractional increments of 1/64 of $1.00 and Index Fund Shares in increments of 1/16, 1/32, or 1/64 of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations, which are all mechanisms that benefit the investor. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the PDRs or Index Fund Shares, thereby protecting customers and the public interest consistent with Section 6(b)(5) of the Act.[24]

The Exchange represents that the Reporting Authority will disseminate for each series of PDRs or Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series. Additionally, the Commission believes that the proposed original listing fee of $5,000 is reasonable, as is the proposed method for calculating the annual fee.

The Amex has developed surveillance procedures for PDRs and Index Fund Shares listed under the generic standards that incorporate and rely upon existing Amex surveillance procedures governing PDRs, Index Fund Shares, and equities. The Exchange also will file Form 19b–4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b–4(e) recordkeeping requirements. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading PDRs and Index Fund Shares under the generic standards. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[25]

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which a product such as PDRs or Index Fund Shares is based. The proposal would require that in such circumstances, the broker dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading PDRs and Index Fund Shares. PDRs listed under the generic standards will be subject to the existing Amex rules for PDRs which have a prospectus delivery requirement or, for series that have been granted relief from the prospectus delivery requirements of the 1940 Act, a product description delivery requirement. The proposal would implement a similar requirement for Index Fund Shares. The prospectus or product description will address the special terms and characteristics of a particular series, including a statement regarding their redeemability and method of creation, and a statement regarding the likelihood of whether such products will trade below, at, or above net asset value, based on the role of discount or premiums.[26] The requirement extends to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. Finally, a member or member organization must delivery a prospectus to a customer upon request.

The Commission also notes that upon the initial listing of any PDRs or Index Fund Shares under the generic standards, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases in a particular series of PDRs or Index Fund Shares.[27] The circular also will inform members of their responsibilities under Amex Rules 411 in connection with customer transactions in these securities. Accordingly, the Commission believes that the proposal governing the trading of PDRs and Index Fund Shares pursuant to the generic standards provides adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest consistent with Section 6(b)(5) of the Act.[28]

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. Specifically, the amendment adds Commentary .03 to Rule 1000A. Proposed Commentary .03 establishes a product description delivery requirement for series of Index Fund Shares that have been granted relief by the Commission from the prospectus delivery requirements of Section 24(d) of the 1940 Act. Proposed Commentary .03 is comparable to

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[14] Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992). "PDRs" is a service mark of PDR Services LLC, a wholly-owned subsidiary of the Exchange.

[15] Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992).

[16] Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995). "Standard & Poor's 500," "Standard & Poor's MidCap 400 Index," "Standard & Poor's Depositary Receipts ®," "SPDRs ®," "Standard & Poor's MidCap 400 Depositary Receipts" and "MidCap SPDRs" are trademarks of The McGraw-Hill Companies, Inc.

[17] Securities Exchange Act Release No. 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998). "Dow Jones Industrial Average℠," "DJIA ℠," "Dow Jones℠" and "DIAMONDS" are each trademarks and service marks of Dow Jones & Company, Inc.

[18] Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999). The "Nasdaq-100 Index ®," "Nasdaq-100 ®," "Nasdaq ®," and "The Nasdaq Stock Market ®" are trademarks of Nasdaq and have been licensed for use for certain purposes by Investment Product Services, Inc. pursuant to a License Agreement with Nasdaq.

[19] Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[20] See Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999). "World Equity Benchmark Shares" and "WEBS" are service marks of Morgan Stanley Group, Inc.

[21] *See* Securities Exchange Act Release No. 40479 (December 4, 1998), 63 FR 68483 (December 11, 1998). "Select Sector SPDR" is a service mark of The McGraw-Hill Companies, Inc.

[22] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[23] *See supra* Amendment No. 1, note 5.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(5)

[26] As per conversation between Mike Cavalier, Associate General Counsel, Amex, and Heather Traeger, Attorney, Division, SEC, on May 15, 2000.

[27] *Id.*

[28] 15 U.S.C. 78f(b)(5).

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Commentary .01 to Amex Rule 1000 which, under similar circumstances, requires delivery of a product description to purchasers of PDRs and was approved by the Commission in December 1992.[29] The Commission believes it is appropriate to approve this proposed provision at the same time as approving the generic standards because it establishes an important parallel requirement for Index Fund Shares that apply for listing under the proposed generic standards to that of PDRs. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether this amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–00–14 and should be submitted by June 14, 2000.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–Amex–00–14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13004 Filed 5–23–00; 8:45 am]

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[29] *See supra*, note 15.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42792; File No. SR–NASD–00–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Amending Its Mediation Fee Structure

May 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend the Code of Arbitration Procedure ("Code") of the NASD to encourage the use of mediation, increase revenue by adjusting mediation fee schedules, and permit parties to agree to stay arbitrations in order to mediate their claims. The text of the proposed rule change follows. Proposed new language appears in italics; proposed deletions appear in brackets.

* * * * *

Rule 10205. Schedule of Fees for Industry and Clearing Controversies

(a)–(i) No change.

[(j) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of $250. The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session: $600 or four (4) times the mediator's hourly rate agreed to by the parties and the mediator; and

(2) Additional Mediation Sessions: $150 per hour, or such other hourly rate agreed to by the parties and the mediator.]

* * * * *

Rule 10332. Schedule of Fees for Customer Disputes

(a)–(h) No change.

[(i) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of $150.]

[(j) The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session: $600 or four (4) times the mediator's hourly rate agreed to by the parties and the mediator; and

(2) Additional Mediation Sessions: $150 per hour, or such other hourly rate agreed to by the parties and the mediator.]

* * * * *

Rule 10403. Arbitration Proceedings

(*a*) Unless the parties agree otherwise, the submission of a matter for mediation shall not stay or otherwise delay the arbitration of a matter pending under this Code. *When the parties agree to stay the arbitration in order to mediate the claim, the arbitration proceeding shall be stayed, notwithstanding any provision to the contrary in this Code.*

(b) If mediation is conducted through NASD Regulation, no adjournment fees will be charged for staying the arbitration proceeding in order to mediate.[3]

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Note: the reference to NASD Regulation will be changed to NASD Dispute Resolution, Inc., when such new subsidiary becomes operational.

Rule 10407. Mediation Fees

(a) Filing Fees: Cases Filed Directly in Mediation.

Each party to a matter submitted directly to a mediation administered by the Association shall pay an administrative fee to the Association in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director of Mediation.

Amount in controversy	*Customer and associated person fee*	*Member fee*	*Total fees*
$.01–$25,000	*$50*	*$150*	*$200*
$25,000.01–$100,000	*150*	*300*	*450*
Over $100,000	*300*	*500*	*800*

(b) Filing Fees: Cases Initially Filed in Arbitration.

When a matter is initially filed an arbitration and subsequently submitted to a mediation administered by the Association, each party shall pay an administrative fee to the Association in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director of Mediation.

Amount in controversy	*Customer and associated person fee*	*Member fee*	*Total fees*
$.01–$25,000	*$0*	*$0*	*$0*
$25,000.01–$100,000	*100*	*150*	*250*
Over $100,000	*250*	*500*	*750*

(c) Mediator Fees and Expenses.

The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association its proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is designed to encourage the use of mediation, especially in smaller cases, and to adjust mediation fee schedules. This proposed adjustment would be a first step toward making the NASD Regulation Mediation Program ("Mediation Program") financially self-sustaining. The proposed rule change would also permit parties to stay arbitrations by agreement in order to mediate the claim, and would eliminate the adjournment fees when parties conduct their mediation through NASD Regulation.

The NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

Background. In 1995, NASD Regulation initiated a mediation program to provide an additional dispute resolution option for parties.[4] Mediation is an informal, non-binding, voluntary process in which an impartial person, trained in facilitation and negotiation techniques, helps the parties reach a mutually acceptable resolution. What distinguishes mediation from other forms of dispute resolution—principally, arbitration and litigation—is that the mediator does not impose a resolution on the parties, but rather works with the parties to create their own resolution. The settlement resulting from mediation, rather than arbitration or litigation, often saves the parties substantial time and expense.

The goal of the Mediation Program is to provide public customers, member firms, and associated persons with an alternative and effective means for resolving their disputes. Since its inception in 1995, over 3,500 cases have been submitted to the Mediation Program. By 1999, parties in twenty percent of all arbitration cases filed with NASD Regulation used mediation to help resolve their disputes.

The Mediation Program has been extremely successful, in terms of both settlement rates and customer satisfaction. Approximately eighty percent of the mediations settle within 60 to 90 days of the parties' formal agreement to mediate. Parties that used the Mediation program consistently express satisfaction with their experience, including those who have not ultimately reached full agreement. Sometimes parts of a dispute are resolved in mediation, leaving fewer issues to be resolved in arbitration. During the mediation, leaving fewer

[4] *See* Securities Exchange Act Release No. 35990 (July 19, 1995), 60 FR 38384 (July 26, 1995). (SR–NASD–95–25).

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issues to be resolved in arbitration. During the mediation process, the parties and their representatives gain a better understanding of their case. Improved lines of communication often place the parties in a better position to settle the case at a later stage.

The features that have contributed to the success of the Mediation Program include:

• The mediators on the roster are highly qualified and experienced. Prior to admission to the roster, mediators are carefully screened by NASD Regulation staff and by members of the National Arbitration and Mediation Committee. Formal multi-day mediator training and experience as a mediator are requirements of service. NASD Regulation's 850 mediators represent a cross-section of people from diverse cultures, professions, and backgrounds. Many have extensive knowledge of securities law and industry practices, and many are also arbitrators with training and experience in resolving securities matters.

• The NASD Regulation staff in the Office of Dispute Resolution ("ODR") performs a number of administrative services to facilitate the mediation. The staff works diligently to educate parties on the mediation process, to encourage them to mediate, to assist them in finding the best mediator for their case, and to ensure that the process runs smoothly. When one party expresses an interest in mediation, the ODR will contact the other party or parties, explain the mediation process, and answer any questions that arise. The ODR staff are trained to explain the benefits of mediation and to help bring all parties to the table. After conferring with the parties, the ODR will propose a list of several neutrals from its roster of experienced mediators who seem consistent with the parties' needs. The list is accompanied by a complete profile of each mediator. The parties may select their mediator from that list or ask for additional lists. The parties may also choose another mediator not on the list or from outside the Mediation Program roster. The staff works with the mediator and the parties to select a mutually convenient date and location for the mediation.

• Participation in the Mediation Program is voluntary. Parties choose whether, and at what point in the course of their case, to enter mediation.

• The Mediation Program is flexible and controlled by the engaged parties, who control the process, schedule, and outcome of the dispute. Parties may mediate before filing a formal claim or pleading in arbitration, or at any stage of the arbitration process. They may submit all or some of the issues in dispute to mediation, including selected substantive or procedural issues such as the extent, nature, and schedule of discovery. The first session can be scheduled in a matter of days or weeks. Meetings can be conducted in person in over 50 cities in the United States and abroad, by telephone, video conference, or by any other method to which the parties and the mediator agree.

• Mediating through NASD Regulation is cost-effective. Most mediations are successfully concluded in less than a single day, resulting in lower attorney fees for the parties. Parties that choose to mediate may also avoid the fees for an arbitration hearing if they can settle before proceeding to a hearing. Finally, parties in mediation benefit by avoiding the discovery costs typically associated with other forms of dispute resolution.

Operating the Mediation Program. The Mediation Program is currently subsidized. There are fifteen employees, located in five offices, in ODR's mediation department. For 1999, the total direct expenses for the Mediation Program were approximately $960,000, compared to $100,000 in direct revenues, resulting in an annual program deficit of $860,000. Because the Mediation Program has continued to grow steadily since its inception, NASD Regulation believes that this is an appropriate time to change the mediation fee structure.

The objective of the proposed rule change is to take preliminary steps toward making the Mediation Program financially self-sustaining while still keeping mediation as a cost-effective alternative to arbitration for parties with claims of any dollar value. NASD Regulation estimates that the proposed mediation fee package would generate income of $640,000 on an annual basis, assuming a level number of case filings. These funds would be used to help offset the operational costs of the Mediation Program and to ensure the continuation of this valuable service. In addition, the fee adjustments should add incentives for parties to mediate smaller cases.

In addition to filing this proposed rule change, NASD Regulation has recently instituted another revenue-increasing measure which did not require a change to the Code. Mediators on the roster of the Mediation Program individually set the fees they charge parties on each case. The rates are usually hourly and vary depending upon a given mediator's background, experience, and reputation. NASD Regulation then assesses a fee for each hour that the mediator bills the parties. This fee defrays a part of the costs the ODR incurs in providing services to mediators to administer the case.

Formerly, NASD Regulation charged mediators a fee of $25 for each hour the mediator billed the parties. This fee was significantly less than the charges of other dispute resolution providers, including those of the American Arbitration Association and JAMS, and will remain significantly less even with the enhanced fees. Effective April 3, 2000, NASD Regulation has eliminated the flat rate in favor of a sliding rate tied to the mediator's hourly compensation. This fee schedule, in addition to other changes, is designed to encourage mediators to charge lower rates for small claims and to agree to handle some cases *pro bono*. The new rates are as follows:

Mediator's hourly rate	NASD regulation fee
Pro Bono	None.
Up to $99.99	$25.
$100 to $199.99	$35.
$200 and over	$50.

Reduced Fees for Smaller Claims. NASD Regulation is committed to making mediation attractive to customers with smaller claims, that is, claims with less than $25,000 in dispute. Mediation is especially well-suited to resolving small disputes. However, with most mediators' hourly rates at $150 or more, mediation costs may exceed the parties' cost (exclusive of attorneys' fees) to arbitrate smaller claims. During 1997 and 1998, fewer than ten percent of all mediations involved claims of less than $25,000.

NASD Regulation has recently asked its mediators to help reduce the cost of mediation for small cases by agreeing to charge reduced rates to mediate cases involving claims of $25,000 or less. Specifically, it has suggested that mediators agree to charge $50 an hour for mediations where the amount in dispute is less than $25,000.

Mediators may set a limit on the number of reduced fee medications they will conduct during a year. After a mediator serves the designated number of times, ODR staff will not propose his or her name for mediation of small claims for the remainder of the year, unless the mediator is willing to serve on more cases at the reduced rate.

Summary of Proposed Rule Change. The rules setting mediation filing fees are currently contained in Rules 10205 and 10332 of the Code, which primarily address intra-industry and customer arbitration fees, respectively. NASD Regulation proposes to delete the provisions relating to mediation fees from the arbitration sections of the Code, and to include them in the Rule 10400 Series that pertains to mediation. Specifically, NASD Regulation would create a new rule, Rule 10407, entitled "Mediation Fees."

The proposed rule change includes three components. First, new Rule 10407(a) would replace the current flat fee with a sliding-scale schedule of fees for cases filed directly in mediation. Second, new Rule 10407(b) would require parties to pay a mediation case filing fee when they choose to use the Mediation Program after having initiated arbitration. Third, Rule 10403(a) would be changed to make clear that the parties in arbitration can agree to stay the proceeding in order to mediate their claims, and new Rule 10403(b) would be added to provide an incentive to use the Mediation Program rather than an alternative forum when mediation takes place after an arbitration has been filed.

Mediation Case Filing Fees for Cases Filed Directly in Mediation: Rule 10407(a). About fifteen percent of the 850 mediation cases filed annually are filed directly in mediation and result in a mediation administrative fee charged to parties. NASD Regulation currently charges $150 per party for customer cases and $250 per party for intra-industry cases, irrespective of the amount in dispute. These fees are currently found in Rules 10205(j) and 10332(i).

NASD Regulation proposes to replace the flat fee with a sliding scale fee schedule in new Rule 10407(a). The schedule has one column of filing fees for customers and associated persons, and another column for member firms. The filing fees are lowest for the smallest claims but increase as the amount in controversy increases.[5]

Customers in mediation whose cases involve up to $25,000 in controversy would be charged only $50, rather than the present filing fee of $150. This is another measure that is intended to encourage the use of mediation for smaller claims. For claims between $25,000 and $100,000, customers would pay a filing fee of $150, the same as in the current model. However, when the claim exceeds $100,000, customers would pay a $300 filing fee. As noted, this same schedule also applies to claims made by associated persons.

Fees also are adjusted for members. Under the proposed rule, for cases up to $25,000 in controversy, members would continue to pay $150, which is the current flat rate for a customer dispute, but is lower than the current $250 flat rate for intra-industry disputes. For claims between $25,000 and $100,000, the charge for members would increase to $300, slightly higher than the current intra-industry rate under the flat fee schedule. For claims exceeding $100,000, the member fee would increase to $500. For all claims, regardless of the amount in dispute, customers and members would pay less under the proposal than the corresponding filing fees for arbitration.

Mediation Case Filing Fees for Cases Initially Filed in Arbitration: Rule 10407(b). For cases first filed in arbitration that later go to mediation—which amount to about eighty-five percent of all the NASD Regulation mediations—NASD Regulation currently waives all mediation case filing fees for the parties, as stated in Rules 10205(j) and 10332(i). NASD Regulation proposes to eliminate the fee waiver for all cases over $25,000 and to charge mediation filing fees to parties choosing mediation after the arbitration case is already filed.

The ORD's mediation staff incurs expenses that are distinct from those incurred by its arbitration staff. For cases filed in arbitration first, the mediation staff expends a great deal of time educating the parties about the mediation alternative and attempting to encourage the parties to agree to mediate. NASD Regulation staff expends these efforts to encourage parties to mediate because mediation generally saves the parties costs and time. Settlement rates for mediation have been consistently high and parties have reported a high level of satisfaction with the process.

Arbitration fees currently cover arbitration case administrative tasks, but they do not cover the expenses of the mediation staff. Eliminating the fee waiver would recover some of the resources expended by the mediation staff in attempting to move cases from arbitration to mediation.

Consistent with its other efforts to increase the incentives for parties to mediate claims under $25,000, NASD Regulation would not impose any filing fee for converted small cases under the new Rule 10407(b). NASD Regulation believes it is beneficial to resolve these claims through mediation because of the cost savings to the parties involved.

NASD Regulation proposes to reduce the mediation filing fee for cases between $25,000 and $100,000 in order to induce members and investors to choose mediation. Members' filing fees for converted cases, found in Rule 10407(b), would be fifty percent less than for a case that is first filed in mediation, found in Rule 10407(a). Similarly, fees for customers would be reduced by $50.

In matters involving more than $100,000 in dispute, the proposed mediation filing fee for members is equal to the fee for a case that is first filed in mediation. Investors would get the benefit of a small reduction in fees for cases converted to mediation from the arbitration docket.

Mediator Fees and Expense: Rule 10407(c). The rule language regarding mediator fees and expenses contained in Rules 10205(j) and 10332(j) would be moved to Rule 10407(c). The rule language would remain unchanged, with one exception. NASD Regulation proposes to delete the final sentence in Rules 10205(j) and 10332(j), respectively, specifying mediator charges. NASD Regulation has found that mediators do not charge the parties fees for "mediation sessions," as indicated in the rule. Rather, mediators charge for the actual hours of services they provide. Therefore, NASD Regulation proposed to delete the final sentence in Rules 10205(j) and 10332(j) when it moves the other relevant language to new Rule 10407(c).

Proposed Changes to Rule 10403. NASD Regulation proposes to amend Rule 10403 of the Code in two ways. First, by adding language to Rule 10403(a) to make it clear that parties who agree to submit a matter for mediation can also agree to stay the arbitration. The parties can do so notwithstanding Rule 10319, the rule that gives arbitrators discretion whether to stay an arbitration proceeding. This rule change would benefit the parties to a proceeding by saving them time and money and by relieving them of the problems of proceeding in two arenas at the same time. Moreover, this change is consistent with the approach of other alternative dispute resolution providers.

Second, NASD Regulation proposes to add a new provision, Rule 10403(b), that encourages the use of the NASD Regulation Mediation Program. Whenever the mediation is conducted through NASD Regulation, the parties would avoid payment of arbitration adjournment fees.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD

[5] NASD Regulation currently has a sliding scale schedule in place for arbitration fees. See NASD Rules 10205 and 10332.

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Regulation believes that the proposed rule change is in the public interest because it will encourage the use of mediation, especially for small claims.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–11 and should be submitted by June 14, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13068 Filed 5–23–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42791; File No. SR–Phlx–00–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Pilot Program To Assess a Monthly Credit of Up to $1,000 to Qualified Members

May 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. Today the Phlx filed an amendment to the proposed rule change ("Amendment No. 1").[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of fees, dues, and charges to allow for a monthly credit of up to $1,000 to be applied against all fees, dues, charges, and other amounts as may from time to time be owed to the Exchange that month, except fines, late fees, out-of-pocket expenses,[4] pass-through costs,[5] capital funding fees,[6] and any fees paid by equity trading permit holders in respect of any trading permits the Exchange may issue ("credit-eligible fees")[7] by members who own the membership by which they are a member ("member-owners") and certain other categories of members described below.[8] This credit is proposed as a six month pilot program.

In addition to member-owners, a monthly credit of up to $1,000 may be applied against credit-eligible fees incurred by the following persons, who are so closely connected to the owners that the Exchange believes they should be treated as member-owners: (1) All members who are a party to an A–B–C Agreement[9] with a member organization who owns that membership; or (2) all members who are lessees if: (a) the member is also an owner of a different membership; (b) the member is an immediate family member of the owner of that membership;[10] (c) the member is associated with a member organization in which the owner has an interest of at least ten percent; (d) the member leases from an owner or a related entity of the owner who provides order flow to the Exchange through the member consisting of at least 5,000 equity trades over the preceding twelve months or 50,000 option contracts over the preceding twelve months; or (e) the member leases from a clearing firm or a related entity of the clearing firm that provides clearing services to the leasing member. The aforementioned categories (including member-owners) are hereinafter to as "qualified members."

Specifically, the amount of credit-eligible fees owed to the Exchange shall be reduced on a monthly basis by an amount equal to: (1) $1,000 per month if such fees, dues, charges, and other amounts equal to or greater than $1,000, or (2) the amount of such fees, dues, charges and other amounts if such fees, dues, charges and other amounts are less that $1,000.[11] Credits may not be carried over from one month to the next and only one credit of up to $1,000 is available per membership per month.

Credits cannot be shared among members, except qualified member(s) in the same member organization may aggregate their credit(s). The monthly credit of up to $1,000 will be applied against the invoice of the member or member organization with which is associated. However, in no event shall the aggregate credit(s) exceed $1,000 per membership per month.

The Exchange initially intends that the request to receive the credit will be application driven, which applicant submitting an Exchange form delineating the credit-eligible fees for that calendar month. The credit is proposed for a six month pilot period.[12] The Exchange reserves the right to suspend the credit at any time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Introduction.* The purpose of the proposed rule change is to amend the Exchange's schedule of fees, dues and charges to allow for a monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other amounts, as defined above, owed to the Exchange by a qualified member of the Exchange.

As more fully explained below, the Exchange believes that the proposed credit should provide qualified members with additional liquidity and an incentive for seat owners to trade on the Exchange. In turn, the Exchange believes that this will introduce additional liquidity into the marketplace to the benefit of the investing public.

The Exchange believes that leasing of memberships by passive holders of equitable title to lessees who trade on the Exchange (*e.g.*, members) does not necessarily promote the long-term interests of the Exchange. Although the practice of leasing by financial investors to members is permitted by the rules of the Exchange, and may provide an important means by which members can access trading rights on the Exchange, the Exchange believes that lessors who are passive financial investors have a limited stake and interest in the liquidity, technology or operations of the Exchange.

Moreover, such lessors have limited practical ability to influence the affairs of the Exchange because practically all voting rights are vested in the "members" under Phlx's Certificate of Incorporation and By-Laws.[13]

The Exchange also believes that members who acquire membership and access trading on the Exchange by means of a lease may in many cases have a very limited stake in the well-being and survival of the Exchange. Although such members may have voting rights, they have no capital investment in their membership, and, because leases typically may be terminated on 30 days notice,[14] they do not necessarily have the incentive to act in the long-term best interests of the Exchange.

Specifically, by terminating a lease with 30 days notice, lessees who do not have "other" business interests or relationships with the Exchange beyond the mere existence of a lease (such as those relationships enumerated in part b. below) may, and often do, leave the Exchange to trade on another exchange, perhaps seeking to trade a certain "hot" option or other product. Thus, their potential commitment to the Exchange's long-term well-being and survival is undercut by their easy ability to pursue business endeavors that further their own well-being. Further, although member-lessees may be appointed to certain Exchange committees and sub-committees, their motivation to devote the time to such service may be less, as is their incentive to make decisions focused on the long-term. Both daily and longer terms, strategic decision-making could thus be affected.

This short-term commitment may also bear on the quality and quantity of liquidity provided on the Exchange. Building order flow commitments with order flow providers is a long-term endeavor, often requiring regular performance, evaluation, and most importantly, a relationship with the trading crowd providing liquidity. Thus, familiarity and consistency of crowd participation are an important marketing mechanism to order flow providers. Providing liquidity also involves a longer-term view of sacrificing profit today for continued order flow, as well as acknowledging that not every order is a profitable one, but continuous order flow, spawned by ample liquidity, should, over time, provide more opportunity for additional order flow.

Lessees that do not have other business interests or relationships such as those referred to in part b. below may also have a limited stake in the technology of the Exchange, including participation in and good use of technology, nor would they necessarily have an incentive to invest in the longer-term development of that technology. Such investment is not only financial, but also strategic. Such lessees may also have a limited stake in the operations of the Exchange, including the continued long-term refinement and upgrading of facilities, other equipment and the pricing of such operations. In sum, lessees, absent other factors tying them to the Exchange, may be less vested in the long-term success of the Exchange, in terms of a lesser incentive to create liquidity, invest in technology and be active in strategic and daily decision-making.

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2000. Amendment No. 1 summarizes the two comment letters the Exchange received in response to this proposal and clarifies who is eligible for this credit. Due to the substantive nature of Amendment No. 1, this proposed rule change is deemed filed and immediately effective as of today.

[4] Out-of-pocket expenses include charges for wireless telephone services, postage, ILX machines and Dow Jones News Service.

[5] Pass-through costs include charges for member health insurance and parcel delivery services.

[6] Capital funding fees are fees assessed on owners to provide funding for technological improvements and other capital needs. The Commission approved the capital funding fee for a pilot period extending to July 6, 2000. See Securities Exchange Act Release No. 42405 (February 8, 2000) 65 FR 8226 (February 17, 2000) (SR–Phlx–99–51); and Securities Exchange Act Release No. 42714 (April 24, 2000), 65 FR 25782 (May 3, 2000) (SR–Phlx–00–29). The proposal to adopt the capital funding fee on a permanent basis is pending with the Commission. See Securities Exchange Act Release No. 42318 (January 5, 2000), 65 FR 2216 (January 13, 2000) (SR–Phlx–99–49).

[7] The credit-eligible fees are fees assessed on members and include transaction as well as trading floor fees. Transaction fees include equity transaction value charges, equity floor brokerage transaction fees, option comparison charges, and option transaction charges. Trading floor fees include charges for trading post/booth, controller space, shelf space, transmission, execution/communication charge, and floor facility fees. Fees assessed on foreign currency options participants are not considered credit-eligible fees.

[8] This proposed rule change is intended to replace SR–Phlx–99–54, which was filed with the Commission on December 22, 1999 and withdrawn by letter dated May 13, 2000.

[9] Pursuant to Phlx Rule 940, the parties to an A–B–C Agreement are an employee, general partner, or officer, and the member organization with which such person is associated. The member organization provides all or part of the funds for the purchase of a membership of which the legal title is placed in the member and the equitable title is placed in the member organization.

[10] Immediate family member is defined as a member's spouse, parents, stepmother, stepfather, mother-in-law, father-in-law, brothers, brothers-in-laws, stepbrothers, sisters, sisters-in-law, stepsisters, children, stepchildren, and any other person living with the member for whom the member provides at least 50 percent of his/her financial support per year.

[11] For example, if a member has $1,500 in credit-eligible fees for the month, such member is entitled to the full $1,000 credit. However, if the member has $600 in credit-eligible fees for the month, such member is entitled to a $600 credit.

[12] This credit is part of the Exchange's long-term financing plan, which separately includes the $1,500 capital funding fee.

[13] A lessor entitled to vote in any decision relating to a compromise or arrangement between the Phlx and its creditors or its members, or relating to a reorganization of the Phlx. *See e.g.* Article Thirteenth of the Exchange's Certificate of Incorporation and Phlx By-Law Article XII, Section 12–6.

[14] *See* Phlx Rule 930(b).

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In contrast, the Exchange is of the view that members who own their own memberships (and their functional equivalents, such as members who lease their members from close family members), and members who have certain other business or financial relationships which owners who are active on the Exchange (*e.g.*, members who are associated with member organizations and hold their memberships pursuant to "A-B-C Agreements") have a combination of financial incentives and voting rights (in some cases, indirectly via the owners with whom they are closely related or associated) to create liquidity on the Exchange, to invest in systems and compliance infrastructure, to be active in and informed about the decision-making processes of the Exchange, and otherwise to act in the Exchange's long-term best interests. By providing the credit described in this filing to these groups of members, the Exchange expects to create economic incentives for owners to trade on the Exchange by actively using their memberships (or selling them to persons who would do so) and for members to organize their affairs in ways that, the Exchange's view, properly align the interests of the members with the long-term interest of the Exchange. The Exchange also believes that the credit should help retain or create liquidity on the Exchange by freeing up funds that member-owners of their functional equivalents may otherwise be expending on credit-eligible fees.[15]

Although the credit described in this filing is available to some Exchange members and not others, it meets the criteria set forth in Sections 6(b)(4) [16] and 6(b)(5) [17] of the Act because it: (i) provides for "* * * the equitable allocations of dues, fees and other charges among its members * * * and other persons using its facilities;" and (ii) is not designed "* * * to permit unfair discrimination between customers, issuers, brokers or dealers." Although the Exchange is not aware of precedents in which other exchanges have established fee or credit programs based upon ownership of seats or the connection between lessees and their lessors, as the Phlx proposes to adopt in this filing, the Commission has approved many exchange fee and credit arrangements that do not threat all members (or other persons covered by Sections 6(b)(4) [18] and (5)) [19] equally, such as credits and discounts based on transaction volume, fees based upon the usage by certain members of equipment or other services or resources of an exchange, and fee structures that distinguish among the various activities of persons and firms (*e.g.*, specialists versus floor brokers, or specialists versus market makers). As with the proposed credit, such measures are designed to promote and encourage certain behaviors and/or discourage others. The Exchange believes that this is an appropriate, nondiscriminatory business strategy.

As more fully articulated below, the Exchange believes that the credit is equitably distributed and not unfairly discriminatory, because it is based on legitimate, reasonable business interests of the Exchange, and is reasonably designed to further those interests. Moreover, it does not unfairly single out individuals or groups for personal or political reasons. To the contrary, and member may become eligible for the credit by changing the way in which such member finances his or her access to the Exchange by purchasing the membership or by changing the member's lease arrangement.

b. *More Detailed Rationale Specifically Applied to the Various Eligibility Criteria—i. Member-Owners.* In many areas of economic life, businesses and governments establish incentives to encourage behavior that is deemed desirable. In the case of exchanges, volume discounts and credits encourage members to direct transaction volume and trading activity to the exchange; other fee structures are designed to deter excessive usage of exchange resources or to cause scarce resources to be allocated more efficiently (*e.g.*, equipment service fees or fees relating to use of post/booth space on the floor).[20] The Exchange, as a matter of policy, believes that owner-membership or its functional equivalents as described above, should be encouraged because:

(A) Unlike passive, financial investors, owner-members risk their capital by their trading and other activities on the floor, thereby (in many cases) creating liquidity in our market and generating revenues for the Exchange, both directly though transaction-based revenues, and indirectly, by generating activity that results in tape revenues under the Consolidated Tape Association ("CTA") and Options Price Reporting Authority ("OPRA") plans.[21]

Seat ownership is one aspect of Exchange "investment" and the actual use of that membership by the qualified member is a different form. Member-owners on their functional equivalents, have *additional* operational and market risks. For example, a qualified member who is also a specialist or market maker may have additional risks related to fluctuations in the securities market and order-processing errors in addition to market risks associated with seat ownership. Similarly, a qualified member who is also a specialist may have risks (in addition to seat risk) associated with the specialists' obligation to promote a fair and orderly market and, particularly, maintain the limit order book. Furthermore, in addition to any fees assessed on owners, qualified members also contribute to the Exchange by paying transaction fees, such as equity transaction value charges, equity floor brokerage transaction fees, option comparison charges and option transaction charges, and trading floor fees, such as trading post/both, controller space, shelf space, transmission, execution/communication charges, and floor facility fees.

(B) Unlike members who lease their seats under typical lease arrangements that may be cancelled on 30 days' notice, member-owners have a significant capital investment at risk; and

(C) Unlike owners that are not members, member-owners may have voting rights under the Exchange's by-laws, and may participate on certain Exchange committees.[22]

Because of their dual interest in preserving and increasing the value of their memberships, and in the technological, operational, and regulatory infrastructure that affects the present and future conditions of transacting business on or at the Exchange, the Exchange believes that member-owners have powerful incentives to create liquidity on the Exchange, and to participate responsibly in the business life of the Exchange through the exercise of voting rights, and through service on the Board and certain Exchange committees. The concept (and the underlying policy) of making the credit available to member-owners is not unlike that of the federal government in providing tax incentives to homeowners that are not available to renters. The long-term capital stake of the homeowner in his or her property promotes various behaviors that have social utility in that it fosters community-oriented behavior, and increases the prospect that the homeowner will make further socially useful investments in the property and in the neighborhood.

The Exchange believes that similar principles are involved in the instant case. The ability to lease memberships has been available for many years. Over time, the equitable ownership of memberships by passive financial investors has become a very pervasive phenomenon at the Exchange, with 324 of the Exchange's 505 memberships being owned by such financial investors.[23] Of those memberships owned by passive financial investors, approximately 48 memberships are currently dormant (neither used for active trading nor leased).[24] Although the Exchange believes that leasing of memberships has a legitimate role in providing members a means of accessing trading rights on the Exchange, it also believes that the extent to which long-term capital investment is currently divorced from voting rights and trading interest in not healthy insofar as it relates to the long-term viability of the institution and its membership as a whole. The credit should create an incentive for owners to actively use their trading rights though membership and for members to reconsider the manner in which they finance their access to the Exchange. Furthermore, the Exchange believes that the credit will free up funds for those owners who are most likely to put their capital to work by trading and creating liquidity on the floor. The credit may also effectively (but indirectly) lessen the overall impact of the capital funding fee on those owners who are trading at the Exchange and (because the credit may be applied against transactional fees) create further incentives to trade.

The Exchange notes that no member may claim that his or her lack of eligibility for the credit is unfair or discriminatory. Any member may obtain eligibility for the credit by changing his or her method of financing their access to the Exchange—*e.g.*, by purchasing their membership and (if they choose) borrowing from third-party lenders to effect that purchase. Any owner may obtain eligibility for the credit by, for instance, becoming an Exchange member (if they qualify for this and subject to the procedures set forth in the Exchange's rules).

ii. *Members/Member Organizations with A–B–C Agreements.* By definition, with respect to A–B–C Agreements, there is a very close nexus between a member and the member organization with whom the member is associated; in general, the member is an employee of the member organization. This close connection is reflected in the fact that the member organization provides all or part of the funds for the purchase of the membership of which the legal title is placed in the member, while the equitable title remains with the member organization.[25] In addition, the Exchange's By-Laws state, in part, that "[a]n A–B–C Agreement is a contract between the member and member organization with which the member is associated in which a portion of the risk of fluctuations in the value of the membership shall rest with the member organization rather than with the member."[26]

Pursuant to the A-B-C Agreement, the member contributes to use of the membership to the member organization and subjects the membership to the claims of the creditors of the member organization. Moreover, the member organization pays the dues, fees, and other charges on behalf of the member. Thus, given this unique business relationship, owners who are member organizations have significant capital investment at risk and have a long-term interest in preserving and increasing the value of their membership, much like member-owners. For this reason, the Exchange is providing the credit to members who are a party to an A-B-C Agreement with a member organization who owns that membership.[27]

iii. *Lessees.* As stated previously, although leasing arrangements are permitted, lessees, other than the five types of qualifying members discussed in detail below ("non-qualifying lessees"), may have a limited stake in the long-term well-being of the Exchange. In fact, non-qualifying lessees may lack the incentive to engage in certain types of behavior that promote the long-term best interests of the Exchange, including providing liquidity and investing in technology enhancements. Specifically, non-qualifying lessees who do not put their own (or a member with whom they have a close nexus) capital at risk with respect to membership may provide liquidity or order flow with less of a long-term view and more of a focus on their current market risk only. This view may be at odds with behavior needed to address long-term Exchange needs. These non-qualifying lessees who do not have the types of additional connections to owners on the Exchange described below, may only have the incentive to participate in a self-focused way for their short-term benefit. If the credit were made available to all lessees, it would not serve its purpose as an inducement to promote owner-membership or other relationships to the Exchange that the Exchange believes are the most conductive to its continued health and success. Therefore, the Exchange is not making the credit available to all lessees. However, the Exchange is seeking to provide the credit to those qualified members whose relationship with the owners from whom they lease their seats is such that the Exchange believes they (either individually or indirectly when viewed in conjunction with their owners) have incentives properly aligned with the long-term interests of the Exchange.

(A) Members who are Lessees but who also are Owners of Different Memberships. Members who are lessees but who also are owners of a different membership should be accorded the same treatment as the traditional member-owners who were previously discussed. These members, who are also owners, have an interest in preserving and increasing the value of their membership as well as an interest in preserving and increasing the standard of technology and the operational and regulatory infrastructure that affects the present and future conditions of transacting business at the Exchange. As with traditional member-owners, the Exchange believes that the credit will

[15] The Exchange notes that, as part of its overall strategic financing plan, contemporaneously with the implementation of the credit described in this filing, it is separately instituting a $1,500 monthly capital funding fee upon all "owners," regardless of their level of activity (if any) of the Exchange. *See supra* notes 6 and 12. Although the credit is not available to offset all or any portion of the capital funding fee, the credit will enable member-owners and others eligible for the credit to defray a portion of the transaction and other fees charged by the Exchange (and that, in general, result from member activity on the Exchange), thereby effectively reducing, for member-owners and other eligible members the cost of trading on the Exchange. Therefore, the credit may also have the indirect effect of blunting the incremental economic burden of the capital funding fee for owners who are active and, directly or indirectly, trading on (or otherwise providing certain economic benefits to) the Exchange. In addition, the credit frees up funds for trading activity on the Exchange that would otherwise be used for the payment of credit-eligible Exchange fees.

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78f(b)(5).

[20] *See e.g.* Securities Exchange Act Release Nos. 41748 (August 16, 1999), 64 FR 46218 (August 24, 1999) (SR–CBOE–99–34); 40496 (September 29, 1998), 63 FR 54175 (October 8, 1998) (SR–PCX–98–42); and 41108 (February 25, 1999), (64 FR 10516 (March 4, 1999) (SR–BSE–99–2).

[21] The CTA Plan and the OPRA Plan are approved by the Commission as national market system plans under Rule 11Aa3–2, 17 CFR 240.11Aa3–2, governing the dissemination of market information for certain equity securities and options, respectively; these plans govern both the fees that can be charged for such information as well as the distribution of revenues derived from those fees among participants in these plans, including the Exchange.

[22] *See supra* note 13.

[23] As of March 31, 2000, 324 memberships were subject to lease agreements. This number may change on a monthly basis.

[24] As of March 31, 2000, 48 seats were dormant (neither used for active trading nor leased).

[25] *See* Phlx Rules 940 and 941.

[27] *See supra* note 3.

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free up funds for those members who are also owners thereby encouraging them to put their capital to work by trading and creating liquidity on the floor. As previously discussed, the credit may also effectively (but indirectly) lessen the overall impact of the capital funding fee on those owners who are trading at the Exchange.

(B) Members who Lease from Close Family Members. At the Phlx, many members firms are family businesses, which choose to structure their operations with the owner being a relative (rather than that member) for tax or estate planning purposes. The Exchange believes that there is commonality of interest in property of close family members, thus affording the credit to members who lease from close family members. This concept is one that is widely accepted, especially in connection with rules relating to the securities industry and tax law. For example, Rule 16a–1(a)(2) under the Act [28] defines the term "beneficial owner" to mean any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares a direct or indirect pecuniary interest in the equity securities. Indirect pecuniary interest is then defined to include securities held by members of a person's immediate family sharing the same household.[29] In addition, Rule 701 under the Securities Act of 1933 [30] exempts from Section 5 of the Securities Act [31] certain offers and sales of securities under a written compensatory benefit plan established by the issuer for the participation of their employees and their family members who acquire such securities from such persons though gifts or domestic relations orders. Family members are defined in Rule 701(c)(3) [32] the same as "immediate family" is defined in Rule 16a–1(e).[33]

Tax laws also recognize the commonality of interest in property of close family members. For example, the Internal Revenue Code ("IRC") recognizes the shared interests of family members by way of attributing the ownership of stock held by close family members to the taxpayer. [34] The IRC treats stock owned by these close family members as owned by the taxpayer in determining the tax liability of the taxpayer in various situations.[35]

A further example is the National Association of Securities Dealers, Inc. ("NASD") Freeriding and Withholding Interpretation,[36] which restricts sales by NASD members to accounts in which so-called "restricted persons" have a beneficial interest. Such restrictions are also applicable, with some exceptions, to immediate family members of those restricted persons.

The Exchange believes that it should not penalize members who choose to lease memberships from close family members, as it believes that these persons are the functional equivalents of member-owners, and the same rationale applies to giving the credit to these members as to member-owners.

(C) Members who are Associated with a Member Organization in which the Owner has an Interest of at Least Ten Percent. Members who are lessees and are associated with a member organization in which the owner has at least a ten percent interest also should be eligible for the credit based on their closely aligned interests with the owner. The federal securities laws and rules of the securities industry have long recognized that a ten percent ownership interest is a significant capital investment. For example, Section 16 of the Act [37] requires any person who is the beneficial owner of more than ten percent of an equity security registered under Section 12 of the Act [38] to file a statement with the Commission indicating his ownership interest. Section 16 [39] also treats such beneficial owners as a company insiders and limits their ability to realize "short swing" profits. In enacting Section 16,[40] the Congress found that a ten percent owner was sufficiently involved in the affairs of the issuer to be treated as an insider.

Moreover, for purposes of NASD Conduct Rule 2720, which restricts the ability of an NASD member to participate in the distribution of a public offering of its own securities or the securities of the member's parent or affiliate, a company is presumed to control a member (and thus is an affiliate) if the company beneficially owns ten percent or more of the member firm. Finally, under the NASD's Freeriding and Withholding Interpretation,[41] an individual with a ten percent or more equity interest in an NASD member firm is deemed restricted by virtue of his ownership interest, and, thus, NASD member firms may not sell so-called "hot issues" to that individual.

In each of these examples, Congress or the NASD found that a ten percent owner is sufficiently involved in the affairs of the subject entity to be subject to the applicable restriction. A similar analysis is applicable with respect to owners of Phlx memberships who hold a ten percent or greater interest in the very member organization with which the lessee is associated. The interests of the owner, the member lessee and the member organization are sufficiently aligned to allow the lessee member the benefit of the credit.

(D) Members who Lease From Owners or Their Affiliates who Provide Order Flow to the Exchange Member. Similar to member-owners and other eligible members discussed above, members who lease from owners or their affiliates who provide order flow to the Exchange through the member have a direct contractual relationship with that owner. For example, a floor broker who executes orders entered by the owner from whom the member leases his or her seat has a fiduciary relationship with that owner. The member derives income, by way of commissions, from the order floor provider and the order flow provider, in turn, provides revenue to the Exchange mainly by way of transaction fees (and indirectly via tape revenues). Giving a credit to members in this situation should encourage the member to fully maximize the business relationship between the floor broker and order flow provider by encouraging the member to get more order flow, which in turn equates to an increase in fees paid by the floor broker to the Exchange. The Exchange believes that by extending the credit to this category of members who are closely associated with the owner, it is encouraging behavior that is beneficial to the long-term interests of the Exchange, *e.g.*, providing more order flow.

(E) Members who Lease From a Clearing Firm or a Related Entity of the Clearing Firm That Provides Clearing Services to the Leasing Member. Members who lease from a clearing firm or related entity of the clearing firm that provides clearing services to the leasing member should also be eligible to receive the credit. Members have a close connection to their clearing firms, or related entity of the clearing firms, in that the clearing firms provide important and essential services by contractual agreement with such members; for instance, they guarantee members' trades. In addition, clearing firms lend money and extend credit; they also manage risk by way of tracking positions and other monitoring functions. Moreover, the clearing firm offers various ancillary services to the members, including stock executions services, office space and other business amenities. Therefore, given this close connection between the members and clearing firms or their affiliates, the Exchange believes that the credit is appropriate and should further their joint interest in the well-being of the Exchange.

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, [42] in general, and with Section 6(b)(4) [43] in that it provides for the equitable allocation of reasonable dues, fees and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule imposes no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Although written comments were not solicited, the Exchange issued a circular dated September 27, 1999 which announced certain actions taken at the September 1999 Phlx Board of Governors meeting. These actions included the approval of a monthly credit of up to $1,000 and invited telephone comments to be made to the Chairman. The Exchange has received two written comments; although these comments do not specifically address the proposed $1,000 credit, they do make reference to a "rebate" and a "credit." Both letters raised the issue, among other things, of fairness in that some members would receive the credit and not others; this issue is addressed in detail in section A.1. above.[44]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become immediately effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [45] and Rule 19b–4(f)(2) [46] thereunder because it establishes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–44 and should be submitted by June 14, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13069 Filed 5–23–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 23, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Request for Information Concerning Portfolio Financing.

Form No: SBA Form-857.

Frequency: On Occasion.

Description of Respondents: SBIC Investment Companies.

Annual Responses: 2,160.

Annual Burden: 2,160.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00– 12984 Filed 5–23–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

[28] 17 CFR 240.16a–1.

[29] Immediate family is defined to mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include adoptive relationships. 17 CFR 240.16a–1(e).

[30] 17 CFR 230.71.

[31] 15 U.S.C. 77e

[32] 17 CFR 230.701(c)(3).

[33] 17 CFR 240.16a–1.

[34] See 26 U.S.C. Section 318.

[35] See 26 U.S.C. Section 301 et. seq.

[36] NASD Conduct Rule IM–2110–1. The Freeriding and Withholding Interpretation is based on the premise that NASD members have an obligation to make a bona fide distribution of securities of a public offering that trade at a premium in the secondary market.

[37] 15 U.S.C. 78p.

[38] 15 U.S.C. 78L.

[39] 15 U.S.C. 78p

[40] *Id.*

[41] See *supra* note 33.

[42] 15 U.S.C. 78f(b).

[43] 15 U.S.C. 78(b)(4).

[44] See *supra* note 3.

[45] 15 U.S.C. 78s(b)(3)(A)(ii).

[46] 17 CFR 240.19b–4(f)(2).

[47] 17 CFR 240.19b–4(f)(6)(iii).

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DATES: Submit comments on or before June 23, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Financial Institution Confirmation Form.

Form No: SBA Form-860.

Frequency: On Occasion.

Description of Respondents: SBIC Investment Companies.

Annual Responses: 750.

Annual Burden: 750.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–12985 Filed 5–23–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3311]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is announcing the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

There will be a featured guest speaker at the meeting who will speak on an important topic involving international communications and information policy.

This meeting will be held on Thursday, June 22, 2000, from 9:30 a.m.–12:30 p.m. in Room 1105 of the Main Building of the U.S. Department of State, located at 2201 "C" Street NW., Washington, DC 20520.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc@state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the State Department building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov>.

Dated: May 18, 2000.

Timothy C. Finton,

Executive Secretary, Advisory Committee on International Communications and Information Policy, U.S. Department of State.

[FR Doc. 00–13079 Filed 5–23–00; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33875]

The Kansas City Southern Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company

Illinois Central Railroad Company (IC) has agreed to grant overhead trackage rights to The Kansas City Southern Railway Company (KCS) between a connection at Eastbridge Junction in Jefferson Parish, LA, at IC's milepost 906.73 in its McComb District, to a connection at Lampert Junction, in Orleans Parish, LA, at IC's milepost 921.3, in its McComb District, a distance of 2.8 miles.

The transaction was scheduled to be consummated on or shortly after May 12, 2000.[1]

The purpose of the trackage rights is to allow KCS a more direct access to the New Orleans Public Belt Railroad Company than it currently has, and to allow KCS to avoid operations through two heavily used yard facilities at IC's Mays Yard and KCS' West Yard.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33875, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on William A. Mullins, 1300 I Street NW, Suite 500, Washington, DC 30005–3314.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 17, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–12965 Filed 5–23–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

[General Counsel Designation No. 250]

Appointment of Members of the General Counsel Panel of the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101–5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following individuals to the General Counsel Panel of the Legal Division Performance Review Board;

Joan E. Donoghue, Deputy General Counsel, who shall serve as Chairperson;

Thomas M. McGivern, Counselor to the General Counsel;

Kenneth R. Schmalzbach, Assistant General Counsel (General Law and Ethics);

Roberta K. McInerney, Assistant General Counsel (Banking and Finance);

Stephen J. McHale, Assistant General Counsel (Enforcement);

Russell L. Munk, Assistant General Counsel (International Affairs);

Rochelle F. Granat, Deputy Assistant General Counsel (General Law and Ethics);

Francine J. Kerner, Deputy Assistant General Counsel (Enforcement);

Marilyn L. Muench, Deputy Assistant General Counsel (International Affairs);

Eleni Constantine, Deputy Assistant General Counsel (Banking and Finance);

John J. Manfreda, Chief Counsel, Bureau of Alcohol, Tobacco & Firearms;

Alfonso Robles, Chief Counsel, United States Customs Service;

Walter Eccard, Chief Counsel, Bureau of Public Debt.

Dated: May 10, 2000.

Neal S. Wolin,

General Counsel.

[FR Doc. 00–13001 Filed 5–23–00; 8:45 am]

BILLING CODE 4810–25–M

[1] Pursuant to 49 CFR 1180.4(g), a railroad must file a verified notice with the Board at least 7 days before the trackage rights are to be consummated. In its verified notice, IC indicated that it proposed to consummate the transaction on or about May 11, 2000. Because the verified notice was filed on May 5, 2000, consummation would not take place until May 12, 2000. IC's representative has been contacted and has confirmed that the consummation could not take place before May 12, 2000.

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Corrections

Federal Register
Vol. 65, No. 101
Wednesday, May 24, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00-2356-000]

Entergy Services, Inc.; Notice of Filing

Correction

In notice document 00–12216 appearing on page 31155 in the issue of Tuesday, May 16, 2000, make the following correction:

In the first column, the docket line and the subject line should appear as set forth above.

[FR Doc. C0–12216 Filed 5–23–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

Correction

In notice document 00–10899 beginning on page 25503 in the issue of Tuesday, May 2, 2000, make the following correction:

On page 25504, in the second column, in the 31st line, "*OMB Number:*1281–0101" should read "*OMB Number:*1218–0101"

[FR Doc. C0–10899 Filed 5–23–00; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42730; File No. SR–ISE–00–02]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the International Securities Exchange LLC Relating to its Fee Schedule

April 28, 2000.

Correction

In notice document 00–11229 appearing on page 26256, in the issue of Friday, May 5, 2000, the docket line should appear as set forth above.

[FR Doc. C0–11229 Filed 5–23–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTAION

Federal Aviation Administration

14 CFR Part 71

Modification of Class E Airspace, Coldwater, MI

Correction

In rule document 00–9405 beginning on page 20350 in the issue of Monday, April 17, 2000, make the following correction:

§71.1 [Corrected]

On page 20351, in §71.1, in the second column, in the 12th line from the bottom, "Mi" should read "MI".

[FR Doc. C0–9405 Filed 5–23–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of Systems Notice; Appointment of New System Manager

Correction

In notice document 00–11086 appearing on page 25979, in the issue of Thursday, May 4, 2000, make the following correction

On page 25979, in the third column, the heading "**45FVA21**" should read "**45VA21**".

[FR Doc. C0–11086 Filed 5–23–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday
May 24, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 447 and 457

45 CFR Parts 92 and 95

State Child Health; States Children's Health Insurance Program Allotments and Payments to States; Final Rule and Notices

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 92 and 95

Health Care Financing Administration

42 CFR Parts 447 and 457

[HCFA–2114–F]

RIN 0938–AI65

State Child Health; State Children's Health Insurance Program Allotments and Payments to States

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule sets forth the methodologies and procedures to determine the allotments of Federal funds for each Federal fiscal year (FY) available to individual States, Commonwealths and Territories under title XXI of the Social Security Act. This rule also specifies the allotment, payment, and grant award process that will be used for the States, the Commonwealths and Territories to claim and receive Federal financial participation (FFP) for expenditures under the State Children's Health Insurance Program (SCHIP) and related Medicaid program provisions.

Established by section 4901 of the Balanced Budget Act of 1997 (Public Law 105–33), amended by technical amendments (made by Public Law 105–100), and most recently amended by the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Public Law 106–113, enacted November 29, 1999), the State Children's Health Insurance Program provides Federal matching funds to States to initiate and expand health insurance coverage to uninsured, low-income children. Aggregate Federal funding is limited to a fixed amount for each Federal fiscal year. This aggregate amount is divided into allotments for each State. State allotments are determined based on a statutory formula that divides the total available appropriation among all States with approved child health plans. Once determined, the amount of a State's allotment for a fiscal year is available for 3 years.

We are publishing this final rule in accordance with the provisions of sections 2104 and 2105 of the Act that relate to allotments and payments to States under title XXI.

DATES: *Effective Date:* These regulations are effective on June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019

SUPPLEMENTARY INFORMATION:

I. Background

We published on March 4, 1999 a proposed rule in the **Federal Register** (64 FR 10412), that set forth the methodologies and procedures to determine allotments of federal funds for each federal fiscal year that will be available to individual States, Commonwealths and Territories under title XXI of the Social Security Act (the Act). This rule also specified the allotment, payment, and grant award process that would be used for the States, the Commonwealths and Territories to claim and receive Federal financial participation (FFP) for expenditures under SCHIP and related Medicaid program provisions.

Section 4901 of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, as amended by Public Law 105–100, added title XXI to the Act, to assist State efforts to initiate and expand child health assistance to uninsured, low-income children. Under title XXI, child health assistance is provided primarily for obtaining health benefits coverage through (1) obtaining coverage that meets requirements specified in the law under Section 2103 of the Act; or (2) expanding benefits under the State's Medicaid plan under title XIX of the Act; or (3) a combination of both.

Section 2104(a) of the Act appropriates funds for each of ten fiscal years and directs the Secretary to calculate allotments of these appropriated funds for each State that will be available to match the State expenditures for that fiscal year. Section 2104(b) of the Act sets forth a specific methodology for calculating allotments to the fifty States, while section 2104(c) of the Act sets forth a methodology for calculating allotments to the Commonwealths and Territories. Section 2104(d) of the Act requires the reduction of the title XXI allotment to account for Medicaid expansions funded through the enhanced rate authorized by title XXI. Section 2104(e) of the Act provides for a 3-year period of availability for each State's annual allotment, and section 2104(f) authorizes redistribution of unspent allotments at the end of that period of availability.

Section 2105(a) and (b) of the Act requires the Secretary to make payments to each State with an approved State child health plan from its available allotment equal to a certain percentage (referred to as the enhanced Federal medical assistance percentage (enhanced FMAP)) of the State expenditures under the plan. These expenditures are primarily for child health assistance for targeted low-income children that meet the health benefits coverage requirements in section 2103 of the Act. Section 2105 of the Act authorizes the Secretary to establish a process for making payments to States for State expenditures under their title XXI programs. According to section 2105(c) of the Act, no more than 10 percent of a State's total expenditures may be used for the total costs of: other child health assistance for targeted low-income children; health services initiatives; outreach; and administrative costs.

This final rule implements these title XXI SCHIP and related title XIX Medicaid program financial provisions, including the allotment process, the payment process, financial reporting requirements, and the grant award process.

II. Provisions of the Proposed Rule

Under our March 4, 1999 proposal, the new regulations for the State Children's Health Insurance Program would be set forth in regulations at 42 CFR part 457 subchapter D. The existing regulations for the Medicaid program containing similar general financial and related provisions were used as a model for SCHIP regulations. We note that some sections and subparts would be reserved for regulations currently under development related to other statutory requirements of the State Children's Health Insurance Program. We intend to address these and other statutory requirements in subsequent **Federal Register** documents. In particular, a SCHIP proposed rule was published on November 8, 1999 in the **Federal Register** (64 FR 60882).

We proposed a new subpart B in Part 457 that would address requirements for financial administration of the SCHIP plan. We also proposed a new subpart F that would specify the methodologies and procedures to determine the Federal allotments, and the grant award process that will be used for payment to States.

Specifically, we proposed to add §§ 457.200 through 457.238 in Subpart B to set forth financial administration requirements to govern the documentation of claims for Federal payment, the standard accounting practices to be used in determining claims, and the process for resolving disputes about those claims. We proposed to add §§ 457.600 through 457.632, subpart F, that would implement the provisions of section 2104 of the Act, relating to the process for establishing the national total amounts available and the State specific allotments for a fiscal year, and section 2105 of the Act, relating to the process for making payments to States from their allotments. We also proposed to add a new section on Medicaid presumptive eligibility at § 447.88 to subpart A.

Certain existing general Departmental regulations in part 45 of the Code of Federal Regulations (CFR) subparts 92 and 95 were conformed to the title XXI program. We revised the sections in these subparts.

III. Analysis of and Responses to Public Comments

We received one letter of comment on the March 4, 1999 proposed rule. A summary of the comments contained in that letter, and our responses follows.

A. Resubmission of Claims

Comment: The commenter noted that the proposed regulations seem to confirm that States may carry forward SCHIP claims in excess of their allotments for particular fiscal years and have those claims satisfied out of the following year's allotments, once those funds become available. The commenter suggested that claims exceeding a fiscal year's allotment should not have to be resubmitted.

Response: This commenter is concerned that a State should only have to report expenditures once, without having to resubmit them again in the case where the expenditures reported for a fiscal year are in excess of the SCHIP fiscal year allotments available in that fiscal year. This is already the case under the proposed rule as published in the **Federal Register** on March 4, 1999. Under § 457.616(c)(2), a State's reported payments are applied against the State's allotment "based on the quarter in which the expenditures are claimed by the State." This provides the State with flexibility to decide the quarter in which a particular expenditure will be reported and claimed. As further provided in § 457.616(c)(6), if the State reports expenditures in one fiscal year and these expenditures are in excess of the allotment(s) available in that fiscal year, the amount of the excess expenditures are carried over for application against the allotment(s) available in the following fiscal year when they become available. We designed the expenditure reporting system to automatically track and carry over the amounts of excess expenditures. Therefore, States do not need to resubmit expenditures once they are submitted.

B. Regulations Related to Provider Related Donations and Health Care Related Taxes

Comment: The commenter suggested that HCFA should not issue SCHIP regulations in the area of provider-related donations and health care-related taxes. This commenter indicated that: "In the overview regarding the section, Public Funds as the State Share of Financial Participation (§ 457.220), a statement is made that HCFA is considering whether there is need to issue additional regulations for provider-related donations and health care-related taxes for SCHIP. It does not seem appropriate or warranted under the title XXI legislation to have different regulations regarding provider-related donations and health care-related taxes for various programs. Additions to the current regulations for provider-related donations and health care-related taxes would bring unnecessary confusion and complication to SCHIP. We strongly urge HCFA against promulgating regulations in this area."

Response: We agree that there is the potential for confusion if different regulations on the provider-related donations and health care-related taxes provisions applied in the SCHIP and the Medicaid program. The quoted language was intended to reflect recognition that, after we have more experience with the SCHIP program, we may need to clarify how the basic tax and donation principles set forth in the Medicaid statute would apply to a SCHIP program. At this time, we do not intend to incorporate special provisions on provider-related donations and health care-related taxes into the SCHIP regulations. As indicated in the preamble to the proposed rule published on March 4, 1999, in §§ 457.220 and 457.628, we will retain the references to the Medicaid regulatory provisions on this issue contained in 42 CFR subpart B §§ 433.51 through 433.74.

C. Carryover of Expenditures and the 10 Percent Limit

Comment: The commenter notes that the 10 percent limit on certain categories of costs—administrative costs and costs of outreach, health services initiatives, and payment for services other than coverage—is applied on an annual fiscal year basis. The commenter further noted that SCHIP guidance documents prepared by HCFA would permit States to withhold submission of claims for expenditures, which would have the effect of allowing a carryover period for the 10 percent limit. The commenter requested that the final regulation expressly authorize such a carryover period for the 10 percent limit.

Response: We are clarifying the regulation in this regard. While we agree with the commenter that we would permit States the flexibility to time the submission of claimed expenditures, we would not permit the carryover of claims for administrative costs once claimed in a particular fiscal year (even when no Federal payment is made based on those expenditures paid because they exceed the 10 percent limit for that fiscal year). HCFA believes its position faithfully adheres to the intent of the statute while permitting some administrative flexibility in the submission of claims and administrative simplicity in calculating whether the limit has been exceeded.

As indicated in proposed § 457.616(c)(2), for purposes of applying expenditures against the available fiscal year allotments, we intended to permit States flexibility in deciding the quarter in which they will submit the expenditures. We would make the same flexibility available to States with respect to the 10 percent limit referred to in § 457.618. As specified below, in this final rule, we are amending §457.618 to make clear that both the expenditures used in calculating the 10% percent limit, and the expenditures applied against the 10 percent limit, are based on the quarter in which the expenditures are claimed by a State. We are also amending § 457.616 to make clear that the expenditures that are within a particular fiscal year's 10 percent limit may be applied against a subsequent fiscal year's available allotment or allotments for purposes of Federal reimbursement. This could occur when the available allotment or allotments for a fiscal year was exhausted. In that case, even though the amounts of the expenditures were within the 10 percent limit, and therefore, otherwise reimbursable, no Federal payment would be available for the expenditures because there would be no available allotment for that fiscal year. Therefore, we are clarifying that expenditures in excess of the 10 percent limit for the fiscal year during which they are claimed may not be applied against an allotment available only in a subsequent fiscal year.

Consistent with this position that expenditures subject to the limits are counted in the fiscal year claimed, we are also clarifying that, for purposes of calculating the 10 percent limit, total program expenditures are counted in the fiscal year claimed as well. These expenditures cannot be used in more than one Federal fiscal year. For

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example, the amount of the expenditures referenced in section 2105(a)(1) of the Act as claimed and reported by a State on the 4 quarterly expenditure reports for FY 1998, would be used in calculating a State's 10 percent limit for FY 1998. These expenditures may not be used again for calculating a 10 percent limit for another fiscal year, such as for FY 1999. Similarly, the amount of the expenditures referenced in section 2105(a)(2) of the Act, as reported on the 4 quarterly expenditure reports for FY 1998 would be applied against the 10 percent limit for FY 1998; these expenditures may not be applied against a 10 percent limit for another fiscal year, such as for FY 1999. Therefore, based on when they claim and report expenditures, States have the flexibility to determine the fiscal year 10 percent limit regarding which such expenditures will be applied.

IV. Provisions of the Final Regulations

After consideration of the comments reviewed and further analysis of specific issues, we are adopting the March 4, 1999 proposed rule as final with minor editorial clarification and revisions discussed and identified in Section III of this preamble.

In addition, the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Public Law 106–113, enacted on November 29, 1999) contained certain provisions which are being implemented in this final regulation. As detailed below, these provisions are explicit, clear and straightforward in the statute, and we believe, self-implementing. Therefore, we are implementing the new provisions of BBRA of 1999 discussed below in this final regulation as final without need for public comment.

A. Inapplicability of Enhanced Match Under the SCHIP to Medicaid DSH Payments

Section 605(a) of the BBRA of 1999 amends section 1905(b) of the Act to preclude the availability of the enhanced Federal medical assistance percentage (enhanced FMAP) for disproportionate share hospital (DSH) payments made by States under section 1923 of the Act. Under section 606(b) of Public Law 106–113, this amendment "takes effect on October 1, 1999, and applies to expenditures made on or after such date." In general, the Federal matching rate available for expenditures described in sections 1905(u)(2) and (3) of the Act, relating to the Medicaid SCHIP expansion groups, is the enhanced FMAP specified in section 2105(b) of the Act and by reference in section 1905(b) of the Act. However, section 605(a) of the BBRA of 1999 amended section 1905(b) of the Act to specifically preclude the availability of the enhanced FMAP for DSH payments made under section 1923 of the Act.

Sections 457.616(a)(1) and (2) of this final regulation refer to the reduction of a State's Title XXI allotment by the amount of Medicaid payments made to the State on the basis of the enhanced FMAP. As indicated above, enhanced FMAP is no longer available for DSH expenditures under section 1923 of the Act, regardless of whether the expenditures meet other conditions for enhanced FMAP. Therefore, there is no need to modify these SCHIP regulations, as contained in this **Federal Register** publication. However, we also note that the proposed SCHIP regulations published on November 8, 1999 in the **Federal Register** at sections 42 CFR 433.10 and 433.11 would have provided for the availability of the enhanced FMAP under the Medicaid program. These proposed regulations will need to be revised to reflect the provisions of section 605(a) of the BBRA of 1999, which precludes enhanced match for DSH expenditures under section 1923 of the Act.

B. Stabilizing the SCHIP Allotment Formula

1. Acceleration of the Phase-in of Low-Income Children.

Section 701(a)(1) of the BBRA of 1999 amended section 2104(b) of the Act to accelerate the phase-in of the blend of the numbers of uninsured low-income children and low-income children specified in the statute, which are used in determining the Number of Children factor. Prior to this legislative change, the Number of Children for FYs 1998 through 2000 would have been based on the total number of low-income uninsured children in the State. As a result of the legislative change, the total number of uninsured low-income children in the State is only used for determining the Number of Children factor for FYs 1998 and 1999. Under section 2104(b) of the Act, as amended by section 701(a)(1) of the BBRA of 1999, for FY 2000 the Number of Children is now calculated as the sum of 75 percent of the low-income, uninsured children in the State, and 25 percent of the number of low-income children in the State. Furthermore, for FY 2001 and succeeding fiscal years through FY 2007, the Number of Children is calculated as the sum of 50 percent of the low-income, uninsured children in the State, and 50 percent of the number of low-income children in the State. Section 457.608 of the final regulation incorporates this change.

2. Floors and Ceiling in State Allotments.

Section 701(a)(2) of the BBRA of 1999 significantly amended and revised section 2104(b)(4) of the Act to impose floors and ceilings in the determination of the SCHIP allotments for a fiscal year, for the purpose of providing increased stability in SCHIP funding from fiscal year to fiscal year and cumulatively over a number of fiscal years, as compared to FY 1999. For purposes of this provision, the floors and ceilings are only applicable to a "Subsection (b) State," which as defined in section 2104(b)(4)(D)(ii) of the Act, "means one of the 50 States or the District of Columbia." More specifically, the floors and ceilings apply only to the determination of the "Allotments to 50 States and District of Columbia" under section 2104(b) of the Act, as distinguished from the determination of the "Allotments to Territories" under section 2104(c) of the Act. The floors and ceilings imposed by section 701(a)(2) of the BBRA of 1999 do not apply with respect to the determinations of allotments for the Commonwealths or Territories as prescribed in section 2104(c) of the Act.

Under section 2104(b)(4)(D) of the Act, as amended by section 701(a)(2) of the BBRA of 1999, for a fiscal year each State is allotted a "proportion" of the total amount available for funding under title XXI to all States for the fiscal year. The term "proportion," as defined in section 2104(b)(4)(D)(i) of the Act, refers to the amount of the allotment for a State for a fiscal year divided by the total amount available nationally for all States for the fiscal year. The proportion for each State is the State's percentage share of the total amount available nationally for that fiscal year to all States. Therefore, in order for the entire total amount available nationally to be allotted to the States, the sum of the proportions for all States must exactly equal one; in other words, the sum of each State's percentage share, must exactly equal 100 percent. The determination of the proportion for each State is in accordance with the provisions of section 2104(b) of the Act, and as amended by section 701(a)(2) of the BBRA of 1999, the proportions will reflect the application of floors, ceilings, and a reconciliation process, if appropriate.

In general, a State's allotment for a fiscal year is calculated by multiplying the State's proportion for the fiscal year by the national total amount available for allotment for that fiscal year. In accordance with the statutory formula for determining allotments, the State proportions are determined under two steps, which are described below in further detail.

Under the first step, each State's proportion is calculated by multiplying the State's Number of Children and the State Cost Factor to determine a "product" for each State. The determination of the Number of Children and the State Cost Factor are described in other sections. The resulting products for all States are then summed. Finally, the product for a State is divided by the sum of the products for all States, thereby yielding that State's preadjusted proportion, referring to the State's proportion before the imposition of the floors and ceilings and related reconciliation provisions.

Under the second step, the preadjusted proportions are subject to the application of the floors and ceilings provisions. The amended SCHIP statute specifies three proportion floors, or minimum proportions, that apply in determining States' allotments. The first proportion floor is equal to $2,000,000 divided by the total of the amount available nationally. The second proportion floor is equal to 90 percent of the allotment proportion for the State for the previous fiscal year; that is, a State's proportion for a fiscal year must not be lower than 10 percent below the previous fiscal year's proportion. The third proportion floor is equal to 70 percent of the proportion for the State for FY 1999; that is, the proportion for a fiscal year must not be lower than 30 percent below the State's FY 1999 proportion.

Each State's proportion for a fiscal year is limited by a maximum ceiling amount, equal to 145 percent of the State's proportion for FY 1999; that is, a State's proportion for a fiscal year must not be higher than 45 percent above the State's proportion for FY 1999. The floors and ceilings are intended to minimize the fluctuation of State allotments from year to year and over the life of the program.

As determined under the first step, which is applied prior to the application of any floors or ceilings, the sum of these preadjusted proportions for all the States will be exactly equal to one. However, the application of the floors and ceilings under the second step may change the proportions for certain States; that is, some States' proportions may need to be raised to the proportion floors, while other States' proportions may need to be lowered to the maximum proportion ceiling. After application of the fixed floors and ceilings, the sum of the (adjusted) proportions for all States may not exactly equal one. In that case, section 2104(b)(4)(B) of the Act requires a further "reconciliation" of the proportions, under which the proportions will be adjusted to make the sum of the proportions exactly equal to one. This reconciliation process is determined in accordance to whether the sum of the proportions after application of the fixed floors and ceiling, but before reconciliation, is greater than or less than one.

The sum of the proportions would be greater than one if the application of the fixed floors and ceilings resulted in the raising of the proportions of States (due to the floors) to a greater degree than the lowering of the proportions of other States (due to the ceilings). The sum of the proportions would be lower than one, if the application of the fixed floors and ceilings resulted in the lowering of the proportions of States (due to the ceilings) to a greater degree than the raising of the proportions of other States (due to the floors). It is at least theoretically possible, though highly unlikely, that the sum of the States' proportions would still exactly equal one after the application of the fixed floors and ceilings. In that case, no further reconciliation would be necessary, and the proportions would be the same as the preadjusted proportions.

Finally, section 2104(b)(4)(C) of the Act, requires that the floors and ceilings provisions under section 2104(b)(4) of the Act, must not apply or take into account the amounts of allotments that might be redistributed in accordance with section 2104(f) of the Act. Therefore, the total amount available to States nationally in a fiscal year, would not include any redistributed amounts in that year.

Under the reconciliation process, if the application of the fixed floors and ceilings results in the sum of the States' proportions being greater than one, section 2104(b)(4)(B)(i) of the Act requires the Secretary to establish a maximum percentage increase in States' proportions, such that when applied to the State proportions the sum of the proportions would exactly equal one. If the application of the fixed floors and ceilings results in the sum of the States' proportions being less than one, section 2104(b)(4)(B)(ii) of the Act requires the Secretary to increase States' proportions (as computed before the application of the fixed floors) in a pro rata manner (but not to exceed the 145 percent ceiling), such that when applied to the State proportions the sum of the proportions would exactly equal one.

These final regulations are revised to conform to the provisions of section 701(a)(2) of BBRA of 1999 discussed above, specifically:

Section 457.608(e)(3)(A) specifies the provisions in section 2104(b)(4)(A) of the Act related to the fixed floors and ceilings.

Section 457.608(e)(3)(B) specifies the provisions in section 2104(b)(4)(B) of the Act related to the reconciliation process.

Section 457.608(b) specifies the provision in section 2104(b)(4)(D) of the Act related to the definition of proportion.

Section 457.608(a)(3) specifies the provisions in section 2104(b)(4)(C) of the Act related to the redistribution process.

3. Availability of Data From the Bureau of the Census

Under section 2104(b)(2)(B) of the Act, as amended by section 701(a)(3) of the BBRA of 1999, the Number of Children for each State (provided in thousands) for a fiscal year is determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the Current Population Survey (CPS) officially available from the Bureau of the Census before the beginning of the calendar year in which the fiscal year begins. For example, FY 2000 begins on October 1, 1999; that is, FY 2000 begins during calendar year 1999. Therefore, the Number of Children for each State for FY 2000 would be based on the most recent 3 years of the Bureau of the Census CPS data officially available before January 1, 1999 (the beginning of the calendar year in which FY 2000 begins), that is, it would be based on the Bureau of the Census CPS data officially available through December 31, 1998. Section 457.608(e)(2) of the final regulation in the discussion for "Number of Children" incorporates this change.

4. Availability of Data From the Bureau of Labor Statistics

Under section 2104(b)(3)(B) of the Act, as amended by section 701(a)(4) of the BBRA of 1999, the State Cost Factor for each State for a fiscal year is calculated based on the average of the annual wages for employees in the health industry for each State as reported, determined, available as final, and provided to HCFA by the Bureau of Labor Statistics (BLS) in the Department of Labor for each of the most recent 3 years available before the beginning of the calendar year in which the fiscal year begins. For example, FY 2000

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begins on October 1, 1999, that is, FY 2000 begins during calendar year 1999. Therefore, the State cost factor for FY 2000 would be based on the most recent 3 years of BLS data available as final before January 1, 1999 (the beginning of the calendar year in which FY 2000 begins); that is, it would be based on the BLS data available as final through December 31, 1998. Section 457.608(e)(2) of the final regulation in the discussion for "State Cost Factor for a State" incorporates this change.

C. Increased Allotments for Territories Under SCHIP

Section 702 of the BBRA of 1999, provides for additional funds available for allotment only to the Commonwealths and Territories. Under this new provision, an additional $34.2 million is made available for allotment to the Commonwealths and Territories in fiscal years 2000 and 2001; $25.2 million in FYs 2002 through 2004; $32.4 million for fiscal years 2005 and 2006; and $40 million for FY 2007. These amounts would be added to the amounts previously available for allotment to the Commonwealths and Territories, that is, the amount determined as .25 percent of the appropriation amount for the fiscal year specified at section 2104(a) of the Act. Section 457.608(d) of these final regulations contains the amounts available for allotment to the Commonwealths and Territories.

D. References to SCHIP and State Children's Health Insurance Program

Section 704 of the BBRA of 1999 requires the Secretary of the U.S. Department of Health and Human Services or any other Federal officer or employee, with respect to any reference to the program under title XXI of the Act in any publication or official communication, to use the term "SCHIP" instead of the term "CHIP," and the term "State children's health insurance program" instead of "children's health insurance program." This final regulation incorporates the application of these terms, as required by section 704 of the BBRA of 1999.

V. Regulatory Impact Statement

We have examined the impacts of this final rule as required by Executive Order 12866, the Unfunded Mandate Reform Act of 1995 (Public Law 104–4), and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). In addition, a Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted each year for inflation). Because participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the federal government are made voluntarily. These regulations will implement narrowly defined statutory language on the allocation of funds for SCHIP and will not create unfunded mandate on States, tribal or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of these regulations.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of Section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of Section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule sets forth the methodologies and procedures to determine the Federal fiscal year allotments of Federal funds available to individual States, Commonwealths and Territories for the new State Children's Health Insurance Program established under title XXI of the Act. This rule also establishes in regulations the payment and grant award process that will be used for the States, the Commonwealths and Territories to claim and receive FFP for expenditures under the SCHIP and related Medicaid program provisions.

Budget authority for title XXI is statutorily specified in Section 2104(a) of the BBA with additional money authorized in Public Law 105–100. The total national amount available for allotment to the 50 States, the District of Columbia, and the Commonwealths and Territories for the life of SCHIP, is established as follows:

TOTAL AMOUNT OF ALLOTMENTS

Year	Amount
1998	$4,235,000,000
1999	4,247,000,000
2000	4,249,200,000
2001	4,249,200,000
2002	3,115,200,000
2003	3,175,200,000
2004	3,175,200,000
2005	4,082,400,000
2006	4,082,400,000
2007	5,040,000,000

The spending levels shown in the table above are based entirely on the spending and allocation formulas contained in the statute. The Secretary has no discretion over these spending levels and initial allotments of funds allocated to States. In addition, under Public Law 105–277, an additional $32 million was appropriated for allotment only to the Commonwealths and Territories, and only for FY 1999, and is included in the amount listed for FY 1999 in the chart above. Section 702 of the BBRA of 1999 also provided for additional funds available for allotment only to the Commonwealths and Territories. Under this new provision, an additional $34.2 million is made available for allotment to the Commonwealths and Territories in fiscal years 2000 and 2001; $25.2 million in fiscal years 2002 through 2004; $32.4 million for fiscal years 2005 and 2006; and $40 million for fiscal year 2007.

Furthermore, under sections 4921 and 4922 of Public Law 105–33, the total amount available for allotment to the 50 States and the District of Columbia is reduced by an additional total of $60,000,000; $30,000,000 each for a special diabetes research program for Type I diabetes and special diabetes programs for Indians. The diabetes programs are funded from FYs 1998 through 2002 only.

Administrative resources needed in HCFA's Program Management account to carry out the new responsibilities of the State Children's Health Insurance Program have been estimated at $10.1 million.

For these reasons, we are not preparing an analysis for either the RFA or Section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IV. Federalism

Under Executive Order 13132, this regulation will not significantly affect the States beyond what is required by title XXI of the Act. It follows the intent and letter of the law and does not preempt State authority beyond what title XXI requires. This regulation describes only the methodologies and procedures to determine the Federal fiscal year allotments of Federal funds and proposes the allotment, payment, and grant award processes applicable to individual States, Commonwealths, and Territories for SCHIP, established under title XXI of the Act.

We have included various provisions throughout this regulation that demonstrate our intention to cooperate with the States. For example, in the implementation of title XXI and the development of these regulations, we established a process under which, during the period when States were developing their programs, SCHIP allotments were determined and "reserved" for each State for the fiscal year, regardless of whether the State had submitted and had an approved State child health plan. Accordingly, for FYs 1998 and 1999, we published "reserved" allotments at the beginning of each fiscal year; the "final" allotments to be published at a later date. By publishing the "reserved" allotments during the early stages of title XXI implementation, our intention was to provide States with the flexibility and time needed to develop their programs and to submit their State child health plans. Every State, Commonwealth and Territory qualified for an allotment by having an approved State child health plan prior to the start of FY 2000. As a result, so long as all States, Commonwealths, and Territories continue to qualify for allotments, the allotments for FY 2000 and future years can be published as "final" rather than "reserved."

In addition, training sessions led by HCFA were held throughout the country in 1998, with almost all States in attendance, on the financial and reporting aspects of title XXI. These presentations were designed to initiate a dialogue with the States and to obtain their input. States also provided substantial input following distribution of a December 8, 1998, all State letter intended to provide guidance to States on reporting for purposes of program monitoring and evaluation, including the submission of quarterly expenditure and financial/statistical reports and the Federal fiscal year 1998 annual reports. States were among those who provided comments on the March 4, 1999, proposed rule, as well as the **Federal Register** notices of September 12, 1997 (62 FR 48098), and February 8, 1999 (64 FR 6102), both of which listed reserved allotments for the States, District of Columbia, and Commonwealth and Territories.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved, Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 457.226 Fiscal Policies and Accountability

A State plan must provide that the SCHIP agency and, where applicable, local agencies administering the plan will: (a) Maintain supporting fiscal records to assure that claims for Federal funds are in accord with applicable Federal requirements, (b) retain records for 3 years from date of submission of a final expenditure report, (c) maintain records beyond the 3-year period if audit findings have not been resolved, and (d) retain certain records for nonexpendable property acquired under a Federal grant for 3 years from the date of final disposition of that property.

We have determined that these record keeping requirements meet the criteria set forth in 5 CFR 1320.3, (b)(2) and (b)(3) (usual and customary burden). Therefore, there is no burden imposed by these requirements.

Section 457.234 State Plan Requirements

A State plan must describe the policy and the methods to be used in setting payment rates for each type of service included in the State's SCHIP program.

The burden associated with this requirement is captured pursuant to the completion of HCFA collection, HCFA–R–211, approved under OMB number 0938–0707.

Section 457.238 Documentation of Payment Rates

The SCHIP agency must maintain documentation of payment rates and make it available to HHS upon request.

We have determined that these record keeping requirements meet the criteria forth in 5 CFR 1320.3, (b)(2) and (b)(3) (usual and customary burden). Therefore, there is no burden imposed by these requirements.

Section 457.606 Conditions for State Allotments and Federal Payments for a Fiscal Year

In order to receive a State allotment for a fiscal year, a State must have a State child health plan submitted in accordance with Section 2106 of the Act and approved by the end of the fiscal year.

The burden associated with the submission of the State Child Health Plan is currently captured in accordance with the completion of the HCFA–R–211, approved under OMB number 0938–0707.

Section 457.614 General Payment Process

In order to receive FFP for a State's claims for payment for the State's expenditures, a State must submit budget estimates of quarterly funding requirements for Medicaid and the State Children's Health Insurance Programs and submit an expenditure report.

The burden associated with these reporting requirements are currently captured in accordance with the completion of HCFA collections, HCFA–21, HCFA–37, and HCFA–64. The OMB control numbers for these collections are 0938–0731, 0938–0101, and 0938–0067, respectively.

Section 457.630 Grants procedures

A State must submit a budget request in an appropriate format for the first 3 quarters of the fiscal year. In addition a State must submit a budget request for the fourth quarter of the fiscal year.

The State Children's Health Insurance Program Agency must submit Form HCFA–21B (State Children's Health Insurance Program Budget Report for State Children's Health Insurance Program State expenditures) to the HCFA central office (with a copy to the HCFA regional office) 45 days before the beginning of each quarter.

The State must submit Form HCFA–64 (Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program) and Form HCFA–21 (Quarterly State Children's Health Insurance

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Program Statement of Expenditures for title XXI), to central office (with a copy to the regional office) not later than 30 days after the end of the quarter.

The burden associated with these reporting requirements are currently captured in accordance with the completion of HCFA collections, HCFA–21, HCFA–37, and HCFA–64. The OMB control numbers for these collections are 0938–0731, 0938–0101, and 0938–0067, respectively.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in §§ 457.226, 457.234, 457.238, 457.606, 457.614, and 457.630.

If you comment on any of these information collection and recordkeeping requirements, please mail 3 copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room N2–14–16, 7500 Security Boulevard, Baltimore, MD 21244–1850. ATTN: John Burke, HCFA–2114–F, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. ATTN: Allison Herron Eydt, HCFA Desk Officer

List of Subjects

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, State Children's Health Insurance Program, Reporting and record keeping requirements.

42 CFR Part 92

Accounting, Grant Programs, Indians, Intergovernmental Relations, Reporting & record keeping requirements.

42 CFR Part 95

Claims, Computer technology, Grant programs—Health, Grant programs—Social programs, Reporting and recordkeeping requirements.

42 CFR chapter IV, and 45 CFR subtitle A are amended as set forth below:

A. 45 CFR part 447 is amended as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 447.88 is added to read as follows:

Subpart A—Payments: General Provisions

§ 447.88 Options for claiming FFP payment for section 1920A presumptive eligibility medical assistance payments.

(a) The FMAP rate for medical assistance payments made available to a child during a presumptive eligibility period under section 1920A of the Act is the regular FMAP under title XIX, based on the category of medical assistance; that is, the enhanced FMAP is not available for section 1920A presumptive eligibility expenditures.

(b) States have the following 3 options for identifying Medicaid section 1920A presumptive eligibility expenditures and the application of payments for those expenditures:

(1) A State may identify Medicaid section 1920A presumptive eligibility expenditures in the quarter expended with no further adjustment based on the results of a subsequent actual eligibility determination (if any).

(2) A State may identify Medicaid section 1920A presumptive eligibility expenditures in the quarter expended but may adjust reported expenditures based on results of the actual eligibility determination (if any) to reflect the actual eligibility status of the individual, if other than presumptively eligible.

(3) A State may elect to delay submission of claims for payments of section 1920A presumptive eligibility expenditures until after the actual eligibility determination (if any) is made and, at that time identify such expenditures based on the actual eligibility status of individuals if other than presumptively eligible. At that time, the State would, as appropriate, recategorize the medical assistance expenditures made during the section 1920A presumptive eligibility period based on the results of the actual eligibility determination, and claim them appropriately.

B. A new subchapter D—CHILDREN'S HEALTH INSURANCE PROGRAMS is added, to read as follows:

SUBCHAPTER D—STATE CHILDREN'S HEALTH INSURANCE PROGRAMS (SCHIPs)

PART 457—ALLOTMENTS AND GRANTS TO STATES

Subpart A—[Reserved]

Subpart B—General Administration—Reviews and Audits; Withholding for Failure to Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

Sec.

457.200 Program reviews.
457.202 Audits.
457.204 Withholding of payment for failure to comply with Federal requirements.
457.206 Administrative appeals under SCHIP.
457.208 Judicial review.
457.210 Deferral of claims for FFP.
457.212 Disallowance of claims for FFP.
457.216 Treatment of uncashed or canceled (voided SCHIP checks).
457.218 Repayment of Federal funds by installments.
457.220 Public funds as the State share of financial participation.
457.222 FFP for equipment.
457.224 FFP: Conditions relating to cost sharing.
457.226 Fiscal policies and accountability.
457.228 Cost allocation.
457.230 FFP for State ADP expenditures.
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457.234 State plan requirements.
457.236 Audit of records.
457.238 Documentation of payment rates.

Subparts C through E—[Reserved]

Subpart F—Payment to States

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457.602 Applicability.
457.606 Conditions for State allotments and Federal payments for a fiscal year.
457.608 Process and calculation of State allotments for a fiscal year.
457.610 Period of availability for State allotments for a fiscal year.
457.614 General payment process.
457.616 Application and tracking of payments against the fiscal year allotments.
457.618 Ten percent limit on certain State Children's Health Insurance Program expenditures.
457.622 Rate of FFP for State expenditures.
457.624 Limitations on certain payments for certain expenditures.
457.626 Prevention of duplicate payments.
457.628 Other applicable Federal regulations.
457.630 Grants procedures.

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—[Reserved]

Subpart B—General Administration—Reviews and Audits; Withholding for Failure to Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

§ 457.200 Program reviews.

(a) *Review of State and local administration of the SCHIP plan.* In order to determine whether the State is complying with the Federal requirements and the provisions of its plan, HCFA reviews State and local administration of the SCHIP plan through analysis of the State's policies and procedures, on-site reviews of selected aspects of agency operation, and examination of samples of individual case records.

(b) *Action on review findings.* If Federal or State reviews reveal serious problems with respect to compliance with any Federal or State plan requirement, the State must correct its practice accordingly.

§ 457.202 Audits.

(a) *Purpose.* The Department's Office of Inspector General (OIG) periodically audits State operations in order to determine whether —

(1) The program is being operated in a cost-efficient manner; and

(2) Funds are being properly expended for the purposes for which they were appropriated under Federal and State law and regulations.

(b) *Reports.* (1) The OIG releases audit reports simultaneously to State officials and the Department's program officials.

(2) The reports set forth OIG opinion and recommendations regarding the practices it reviewed, and the allowability of the costs it audited.

(3) Cognizant officials of the Department make final determinations on all audit findings.

(c) *Action on audit exceptions.* (1) *Concurrence or clearance.* The State agency has the opportunity of concurring in the exceptions or submitting additional facts that support clearance of the exceptions.

(2) *Appeal.* Any exceptions that are not disposed of under paragraph (c)(1) of this section are included in a disallowance letter that constitutes the Department's final decision unless the State requests reconsideration by the Appeals Board. (Specific rules are set forth in § 457.212.)

(3) *Adjustment.* If the decision by the Board requires an adjustment of FFP, either upward or downward, a subsequent grant award promptly reflects the amount of increase or decrease.

§ 457.204 Withholding of payment for failure to comply with Federal requirements.

(a) *Basis for withholding.* HCFA withholds payments to the State, in whole or in part, only if, after giving the State notice, a reasonable opportunity for correction, and an opportunity for a hearing, the Administrator finds—

(1) That the plan is in substantial noncompliance with the requirements of title XXI of the Act; or

(2) That the State is conducting its program in substantial noncompliance with either the State plan or the requirements of title XXI of the Act. (Hearings are generally not called until a reasonable effort has been made to resolve the issues through conferences and discussions. These efforts may be continued even if a date and place have been set for the hearing.)

(b) *Noncompliance of the plan.* A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan or the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans.

(c) *Noncompliance in practice.* A question of noncompliance in practice may arise from the State's failure to actually comply with a Federal requirement, regardless of whether the plan itself complies with that requirement.

(d) *Notice, reasonable opportunity for correction, and implementation of withholding.* If the Administrator makes a finding of noncompliance under paragraph (a) of this section, the following steps apply:

(1) *Preliminary notice.* The Administrator provides a preliminary notice to the State—

(i) Of the findings of noncompliance;

(ii) The proposed enforcement actions to withhold payments; and

(iii) If enforcement action is proposed, that the State has a reasonable opportunity for correction, described in paragraph (d)(2) of this section, before the Administrator takes final action.

(2) *Opportunity for corrective action.* If enforcement actions are proposed, the State must submit evidence of corrective action related to the findings of noncompliance to the Administrator within 30 days from the date of the preliminary notification.

(3) *Final notice.* Taking into account any evidence submitted by the State under paragraph (d)(2) of this section, the Administrator makes a final determination related to the findings of noncompliance, and provides a final notice to the State—

(i) Of the final determination on the findings of noncompliance;

(ii) If enforcement action is appropriate—

(A) No further payments will be made to the State (or that payments will be made only for those portions or aspects of the programs that are not affected by the noncompliance); and

(B) The total or partial withholding will continue until the Administrator is satisfied that the State's plan and practice are, and will continue to be, in compliance with Federal requirements.

(4) *Hearing.* An opportunity for a hearing will be provided to the State prior to withholding under paragraph (d)(5) of this section.

(5) Withholding. HCFA withholds payments, in whole or in part, until the Administrator is satisfied regarding the State's compliance.

§ 457.206 Administrative appeals under SCHIP.

Three distinct types of determinations are subject to Departmental reconsideration upon request by a State.

(a) *Compliance with Federal requirements.* A determination that a State's plan or proposed plan amendments, or its practice under the plan do not meet (or continue to meet) Federal requirements are subject to the hearing provisions of 42 CFR part 430, subpart D of this chapter.

(b) *FFP in State SCHIP expenditures.* Disallowances of FFP in State SCHIP expenditures (mandatory grants) are subject to Departmental reconsideration by the Departmental Appeals Board (the Board) in accordance with procedures set forth in 45 CFR part 16.

(c) *Discretionary grants disputes.* Determinations listed in 45 CFR part 16, appendix A, pertaining to discretionary grants, such as grants for special demonstration projects under Section 1115 of the Act, that may be awarded to an SCHIP agency, are subject to reconsideration by the Departmental Grant Appeals Board.

§ 457.208 Judicial review.

(a) *Right to judicial review.* Any State dissatisfied with the Administrator's final determination on approvability of plan material or compliance with Federal requirements (§ 457.204) has a right to judicial review.

(b) *Petition for review.* (1) The State must file a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, within 60 days after it is notified of the determination.

(2) After the clerk of the court files a copy of the petition with the Administrator, the Administrator files in the court the record of the proceedings on which the determination was based.

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(c) *Court action.* (1) The court is bound by the Administrator's findings of fact, if they are supported by substantial evidence.

(2) The court has jurisdiction to affirm the Administrator's decision, to set it aside in whole or in part, or, for good cause, to remand the case for additional evidence.

(d) *Response to remand.* (1) If the court remands the case, the Administrator may make new or modified findings of fact and may modify his or her previous determination.

(2) The Administrator certifies to the court the transcript and record of the further proceedings.

(e) *Review by the Supreme Court.* The judgment of the appeals court is subject to review by the U.S. Supreme Court upon certiorari or certification, as provided in 28 U.S.C. 1254.

§ 457.210 Deferral of claims for FFP.

(a) *Requirements for deferral.* Payment of a claim or any portion of a claim for FFP is deferred only if—

(1) The Regional Administrator or the Administrator questions its allowability and needs additional information in order to resolve the question; and

(2) HCFA takes action to defer the claim (by excluding the claimed amount from the grant award) within 60 days after the receipt of a Quarterly Statement of Expenditures (prepared in accordance with HCFA instructions) that includes that claim.

(b) *Notice of deferral and State's responsibility.* (1) Within 15 days of the action described in paragraph (a)(2) of this section, the Regional Administrator sends the State a written notice of deferral that—

(i) Identifies the type and amount of the deferred claim and specifies the reason for deferral; and

(ii) Requests the State to make available all the documents and materials the HCFA regional office believes are necessary to determine the allowability of the claim.

(2) It is the responsibility of the State to establish the allowability of a deferred claim.

(c) *Handling of documents and materials.* (1) Within 60 days (or within 120 days if the State requests an extension) after receipt of the notice of deferral, the State must make available to the HCFA regional office, in readily reviewable form, all requested documents and materials except any that it identifies as not being available.

(2) HCFA regional office staff initiates review within 30 days after receipt of the documents and materials.

(3) If the Regional Administrator finds that the materials are not in readily reviewable form or that additional information is needed, he or she promptly notifies the State that it has 15 days to submit the readily reviewable or additional materials.

(4) If the State does not provide the necessary materials within 15 days, the Regional Administrator disallows the claim.

(5) The Regional Administrator has 90 days, after all documentation is available in readily reviewable form, to determine the allowability of the claim.

(6) If the Regional Administrator cannot complete review of the material within 90 days, HCFA pays the claim, subject to a later determination of allowability.

(d) *Effect of decision to pay a deferred claim.* Payment of a deferred claim under paragraph (c)(6) of this section does not preclude a subsequent disallowance based on the results of an audit or financial review. (If there is a subsequent disallowance, the State may request reconsideration as provided in paragraph (e)(2) of this section.)

(e) *Notice and effect of decision on allowability.* (1) The Regional Administrator or the Administrator gives the State written notice of his or her decision to pay or disallow a deferred claim.

(2) If the decision is to disallow, the notice informs the State of its right to reconsideration in accordance with 45 CFR part 16.

§ 457.212 Disallowance of claims for FFP.

(a) *Notice of disallowance and of right to reconsideration.* When the Regional Administrator or the Administrator determines that a claim or portion of claim is not allowable, he or she promptly sends the State a disallowance letter that includes the following, as appropriate:

(1) The date or dates on which the State's claim for FFP was made.

(2) The time period during which the expenditures in question were made or claimed to have been made.

(3) The date and amount of any payment or notice of deferral.

(4) A statement of the amount of FFP claimed, allowed, and disallowed and the manner in which these amounts were computed.

(5) Findings of fact on which the disallowance determination is based or a reference to other documents previously furnished to the State or included with the notice (such as a report of a financial review or audit) that contain the findings of fact on which the disallowance determination is based.

(6) Pertinent citations to the law, regulations, guides and instructions supporting the action taken.

(7) A request that the State make appropriate adjustment in a subsequent expenditure report.

(8) Notice of the State's right to request reconsideration of the disallowance and the time allowed to make the request.

(9) A statement indicating that the disallowance letter is the Department's final decision unless the State requests reconsideration under paragraph (b)(2) of this section.

(b) *Reconsideration of FFP disallowance.* (1) The Departmental Appeals Board reviews disallowances of FFP under title XXI.

(2) A State may request reconsideration with a request to the Chair, Departmental Appeals Board, within 30 days after receipt of the disallowance letter, which must include—

(i) A copy of the disallowance letter;

(ii) A statement of the amount in dispute; and

(iii) A brief statement of why the disallowance is wrong.

(c) *Reconsideration procedures.* The reconsideration procedures are those set forth in 45 CFR part 16.

(d) *Implementation of decisions.* If the reconsideration decision requires an adjustment of FFP, either upward or downward, a subsequent grant award promptly reflects the amount of increase or decrease.

§ 457.216 Treatment of uncashed or canceled (voided SCHIP checks).

(a) *Purpose.* This section provides rules to ensure that States refund the Federal portion of uncashed or canceled (voided) checks under title XXI.

(b) *Definitions.* As used in this section—

Canceled (voided) check means an SCHIP check issued by a State or fiscal agent that prior to its being cashed is canceled (voided) by the State or fiscal agent, thus preventing disbursement of funds.

Fiscal agent means an entity that processes or pays vendor claims for the SCHIP agency.

Uncashed check means an SCHIP check issued by a State or fiscal agent that has not been cashed by the payee.

Warrant means an order by which the SCHIP agency or local agency without the authority to issue checks recognizes a claim. Presentation of a warrant by the payee to a State officer with authority to issue checks will result in release of funds due.

(c) *Refund of Federal financial participation (FFP) for uncashed checks—*(1) *General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was issued; that is, the date of the check, it is no longer regarded as an allowable program expenditure. If the State has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks that remain uncashed beyond a period of 180 days after issuance. The SCHIP agency must refund all FFP that it received for uncashed checks by adjusting the Quarterly Statement of Expenditures for that quarter. If an uncashed check is cashed after the refund is made, the State may file a claim. The claim will be considered to be an adjustment to the costs for the quarter in which the check was originally claimed. This claim will be paid if otherwise allowed by the Act and the regulations issued in accordance with the Act.

(3) If the State does not refund the appropriate amount as specified in paragraph (c)(2) of this section, the amount will be disallowed.

(d) *Refund of FFP for canceled (voided) checks—*(1) *General provisions.* If the State has claimed and received FFP for the amount of a canceled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the SCHIP agency must identify those checks that were canceled (voided). The State must refund all FFP that it received for canceled (voided) checks by adjusting the Quarterly Statement of Expenditures for that quarter.

(3) If the State does not refund the appropriate amount as specified in paragraph (d)(2) of this section, the amount will be disallowed.

§ 457.218 Repayment of Federal funds by installments.

(a) *Basic conditions.* When Federal payments have been made for claims that are later found to be unallowable, the State may repay the Federal Funds by installments if the following conditions are met:

(1) The amount to be repaid exceeds 2½ percent of the estimated or actual annual State share for the State SCHIP program; and

(2) The State has given the Regional Administrator written notice, before total repayment was due, of its intent to repay by installments.

(b) *Annual State share determination.* HCFA determines whether the amount to be repaid exceeds 22 percent of the annual State share as follows:

(1) If the State SCHIP program is ongoing, HCFA uses the annual estimated State share of State SCHIP expenditures. This is the sum of the estimated State shares for four consecutive quarters, beginning with the quarter in which the first installment is to be paid, as shown on the State's latest HCFA–21B form.

(2) If the State SCHIP program has been terminated by Federal law or by the State, HCFA uses the actual State share. The actual State share is that shown on the State's Quarterly Statement of Expenditures reports for the last four quarters before the program was terminated.

(c) *Repayment amounts, schedules, and procedures—*(1) *Repayment amount.* The repayment amount may not include any amount previously approved for installment repayment.

(2) *Repayment schedule.* The number of quarters allowed for repayment is determined on the basis of the ratio of the repayment amount to the annual State share of State SCHIP expenditures. The higher the ratio of the total repayment amount is to the annual State share, the greater the number of quarters allowed, as follows:

Total repayment amount as percentage of State share of annual expenditures for State SCHIP	Number of quarters to make repayment
2.5 pct. or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

(3) *Quarterly repayment amounts.* The quarterly repayment amounts for each of the quarters in the repayment schedule may not be less than the following percentages of the estimated State share of the annual expenditures for SCHIP:

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

(4) *Extended schedule.* The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100 percent of the estimated State share of annual expenditures. In these circumstances, the repayment schedule in paragraph (c)(2) of this section is followed for repayment of the amount equal to 100 percent of the annual State share. The remaining amount of the repayment is in quarterly amounts equal to not less than 17.5 percent of the estimated State share of annual expenditures.

(5) *Repayment process.* Repayment is accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule. If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages is applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(6) *Offsetting of retroactive claims.* The amount of a retroactive claim to be paid a State is offset against any amounts to be, or already being, repaid by the State in installments. Under this provision, the State may choose to:

(A) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(B) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

(ii)A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more before the beginning of the quarter in which HCFA would pay that claim.

§ 457.220 Public funds as the State share of financial participation.

(a) Public funds may be considered as the State's share in claiming FFP if they meet the conditions specified in paragraphs (b) and (c) of this section.

(b) The public funds are appropriated directly to the State or local SCHIP agency, or transferred from other public agencies (including Indian tribes) to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP under this section.

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(c) The public funds are not Federal funds, or are Federal funds authorized by the Federal law to be used to match other Federal funds.

§ 457.222 FFP for equipment.

Claims for Federal financial participation in the cost of equipment under SCHIP are determined in accordance with subpart G of 45 CFR part 95. Requirements concerning the management and disposition of equipment under SCHIP are also prescribed in subpart G of 45 CFR part 95.

§ 457.224 FFP: Conditions relating to cost sharing.

(a) No FFP is available for the following amounts, even when related to services or benefit coverage which is or could be provided under a State SCHIP program—

(1) Any cost sharing amounts that beneficiaries should have paid as enrollment fees, premiums, deductibles, coinsurance, copayments, or similar charges.

(2) Any amounts paid by the agency for health benefits coverage or services furnished to individuals who would not be eligible for that coverage or those services under the approved State child health plan, whether or not the individual paid any required premium or enrollment fee.

(b) The amount of expenditures under the State child health plan must be reduced by the amount of any premiums and other cost-sharing received by the State.

§ 457.226 Fiscal policies and accountability.

A State plan must provide that the SCHIP agency and, where applicable, local agencies administering the plan will—

(a) Maintain an accounting system and supporting fiscal records to assure that claims for Federal funds are in accord with applicable Federal requirements;

(b) Retain records for 3 years from date of submission of a final expenditure report;

(c) Retain records beyond the 3-year period if audit findings have not been resolved; and

(d) Retain records for nonexpendable property acquired under a Federal grant for 3 years from the date of final disposition of that property.

§ 457.228 Cost allocation.

A State plan must provide that the single or appropriate SCHIP Agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in subpart E of 45 CFR part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that subpart are not met.

§ 457.230 FFP for State ADP expenditures.

FFP is available for State ADP expenditures for the design, development, or installation of mechanized claims processing and information retrieval systems and for the operation of certain systems. Additional HHS regulations and HCFA procedures regarding the availability of FFP for ADP expenditures are in 45 CFR part 74, 45 CFR part 95, subpart F, and part 11, State Medicaid Manual.

§ 457.232 Refunding of Federal Share of SCHIP overpayments to providers and referral of allegations of waste, fraud or abuse to the Office of Inspector General.

(a) Quarterly Federal payments to the States under title XXI (SCHIP) of the Act are to be reduced or increased to make adjustment for prior overpayments or underpayments that the Secretary determines have been made.

(b) The Secretary will consider the pro rata Federal share of the net amount recovered by a State during any quarter to be an overpayment.

(c) Allegations or indications of waste fraud and abuse with respect to the SCHIP program shall be referred promptly to the Office of Inspector General.

§ 457.234 State plan requirements.

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its State Children's Health Insurance Program and giving assurance that it will be administered in conformity with the specific requirements of title XXI, the applicable regulations in chapter IV, and other applicable official issuance of the Department. The State plan contains all information necessary for HCFA to determine whether the plan can be approved to serve as a basis for FFP in the State plan program.

§ 457.236 Audits.

The SCHIP agency must assure appropriate audit of records on costs of provider services.

§ 457.238 Documentation of payment rates.

The SCHIP agency must maintain documentation of payment rates and make it available to HHS upon request.

Subparts C through E—[Reserved]

Subpart F Payments to States

§ 457.600 Purpose and basis of this subpart.

This subpart interprets and implements—

(a) Section 2104 of the Act which specifies the total allotment amount available for allotment to each State for child health assistance for fiscal years 1998 through 2007, the formula for determining each State allotment for a fiscal year, including the Commonwealth and Territories, and the amounts of payments for expenditures that are applied to reduce the State allotments.

(b) Section 2105 of the Act which specifies the provisions for making payment to States, the limitations and conditions on such payments, and the calculation of the enhanced Federal medical assistance percentage.

§ 457.602 Applicability.

The provisions of this subpart apply to the 50 States and the District of Columbia, and the Commonwealths and Territories.

§ 457.606 Conditions for State allotments and Federal payments for a fiscal year.

(a) *Basic conditions.* In order to receive a State allotment for a fiscal year, a State must have a State child health plan submitted in accordance with section 2106 of the Act, and

(1) For fiscal years 1998 and 1999, the State child health plan must be approved before October 1, 1999;

(2) For fiscal years after 1999, the State child health plan must be approved by the end of the fiscal year;

(3) An allotment for a fiscal year is not available to a State prior to the beginning of the fiscal year; and

(4) Federal payments out of an allotment are based on State expenditures which are allowable under the approved State child health plan.

(b) Federal payments for States' Children's Health Insurance Program (SCHIP) expenditures under an approved State child health plan are —

(1) Limited to the amount of available funds remaining in State allotments calculated in accordance with the allotment process and formula specified in §§ 457.608 and 457.610, and payment process in §§ 457.614 and 457.616.

(2) Available based on a percentage of State SCHIP expenditures, at a rate equal to the enhanced Federal medical assistance percentage (FMAP) for each fiscal year, calculated in accordance with § 457.622.

(3) Available through the grants process specified in § 457.630.

§ 457.608 Process and calculation of State allotments for a fiscal year.

(a) *General*—(1) State allotments for a fiscal year are determined by HCFA for each State and the District of Columbia with an approved State child health plan, as described in paragraph (e) of this section, and for each Commonwealth and Territory, as described in paragraph (f) of this section.

(2) In order to determine each State allotment, HCFA determines the national total allotment amount for each fiscal year available to the 50 States and the District of Columbia, as described in paragraph (c) of this section, and the total allotment amount available for each fiscal year for allotment to the Commonwealths and Territories, as described in paragraph (d) of this section.

(3) The amount of allotments redistributed under section 2104(f) of the Act will not be applied or taken into account in determining the amounts of a fiscal year allotment for a State and the District of Columbia under this section.

(b) *Definition of Proportion.* As used in this section, *proportion* means the amount of the allotment for a State or the District of Columbia for a fiscal year, divided by the national total allotment amount available for allotment to all States and the District of Columbia, as specified in paragraph (c) of this section, for that fiscal year.

(c) *National total allotment amount for the 50 States and the District of Columbia.* (1) The national total allotment amount available for allotment to the 50 States and the District of Columbia is determined by subtracting the following amounts in the following order from the total appropriation specified in section 2104(a) of the Act for the fiscal year —

(i) The total allotment amount available for allotment for each fiscal year to the Commonwealths and Territories, as determined in paragraph (d)(1) of this section;

(ii) The total amount of the grant for the fiscal year for children with Type I Diabetes under Section 4921 of Public Law 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002; and

(iii) The total amount of the grant for the fiscal year for diabetes programs for Indians under Section 4922 of Public Law 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002.

(2) The following formula illustrates the calculation of the national total allotment amount available for allotment to the 50 States and the District of Columbia for a fiscal year:

$A_{TA} = S_{2104(a)} - T_{2104(c)} - D_{4921} - D_{4922}$

A_{TA} = National total allotment amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$ = Total appropriation for the fiscal year indicated in Section 2104(a) of the Act.

$T_{2104(c)}$ = Total allotment amount for a fiscal year available for allotment to the Commonwealths and Territories; as determined under paragraph (d)(1) of this section.

D_{4921} = Amount of total grant for children with Type I Diabetes under Section 4921 of Public Law 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002.

(d) *Total allotment amount available to the Commonwealths and Territories.* (1) *General.* The total allotment amount available to all the Commonwealths and Territories for a fiscal year is equal to .25 percent of the total appropriation for the fiscal year indicated in section 2104(a) of the Act, plus the additional amount for the fiscal year specified in paragraph (d)(2) of this section.

(2) *Additional amounts for allotment to the Commonwealths and Territories.* The following amounts are available for allotment to the Commonwealths and Territories for the indicated fiscal years in addition to the amount specified in paragraph (d)(1) of this section: For FY 1999, $32 million; for each of FY 2000 and FY 2001, $34.2 million; for each fiscal year FY 2002 through 2004, $25.2 million; for each fiscal year FY 2005 and FY 2006, $32.4 million; and for FY 2007, $40 million. The additional amount for allotment for FY 1999 for the Commonwealths and Territories was provided under Public Law 105–277. The additional amounts for allotment for FY 2000 through FY 2007 were provided for the Commonwealths and Territories under section 702 of Public Law 106–113.

(e) *Determination of State allotments for a fiscal year.* (1) *General.* The allotment for a State and the District of Columbia for a fiscal year is the product of:

(i) The proportion for the State or the District of Columbia for the fiscal year, as defined in paragraph (b) of this section, and determined after application of the provisions of paragraphs (e)(2) and (3), related to the preadjusted proportion, and the floors, ceilings, and reconciliation process, respectively; and

(ii)(A) The national total allotment amount available for allotment for the fiscal year, as specified in paragraph (c) of this section. The State and the District of Columbia's allotment for a fiscal year is determined in accordance with the following general formula:

$SA_i = P_i \times A_{TA}$

SA_i = Allotment for a State or District of Columbia for a fiscal year.

P_i = Proportion for a State or District of Columbia for a fiscal year.

A_{TA} = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

(B) There are two steps for determining the proportion for a State and the District of Columbia. The first step determines the preadjusted proportions, and is described under paragraph (e)(2) of this section. The first step applies in determining the proportion for all fiscal years. The second step applies floors and ceilings and, if necessary, applies a reconciliation to the preadjusted proportion. The second step is described in paragraph (e)(3) of this section. The second step applies in determining the proportion only for FY 2000 and subsequent fiscal years. For FY 1998 and FY 1999, the preadjusted proportion is the State or District of Columbia's proportion for the fiscal year.

(2) *Determination of the Preadjusted Proportions for a Fiscal Year.* (i)The methodology for determining the State preadjusted proportion, referring to the determination of the proportion before the application of floors and ceilings and reconciliation for a fiscal year is in accordance with the following formula:

$PP_i = (C_i \times SCF_i) / \Sigma(C_i \times SCF_i)$

PP_i = Preadjusted proportion for a State or District of Columbia for a fiscal year.

C_i = *Number of children* in a State (section 2104(b)(1)(A)(I) of the Act) for a fiscal year. This number is based on the number of low-income children for a State for a fiscal year and the number of low-income children for a State for a fiscal year with no health insurance coverage for the fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the 3 most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census, and for FY 2000 and subsequent fiscal years, officially available before the beginning of the calendar year in which the fiscal year begins. For FY 1998 and FY 1999, the availability of the CPS data obtained from the Bureau of the Census is as specified in paragraphs (e)(4) and (5) of this

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section, respectively. (section 2104(b)(2)(B) of the Act).

(ii)For each of the fiscal years 1998 and 1999, the number of children is equal to the number of low-income children in the State for the fiscal year with no health insurance coverage. For fiscal year 2000, the number of children is equal to the sum of 75 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage and 25 percent of the number of low-income children in the State for the fiscal year. For fiscal years 2001 and thereafter, the number of children is equal to the sum of 50 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage and 50 percent of the number of low-income children in the State for the fiscal year. (section 2104(b)(2)(A) of the Act).

SCF_i = *State cost factor for a State* (section 2104(b)(1)(A)(ii) of the Act). For a fiscal year, this is equal to: $.15 + .85 \times (W_i/W_N)$ (section 2104(b)(3)(A) of the Act).

W_i = The annual average wages per employee for a State for such year (section 2104(b)(3)(A)(ii)(I) of the Act).

W_N = The annual average wages per employee for the 50 States and the District of Columbia (section 2104(b)(3)(A)(ii)(II) of the Act). The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health services industry (SIC 80), as reported by the Bureau of Labor Statistics of the Department of Labor for each of the most recent 3 years, and for FY 2000 and subsequent fiscal years, finally available before the beginning of the calendar year in which the fiscal year begins. For FY 1998 and FY 1999, the availability of the wage data obtained from the Bureau of Labor Statistics is as specified in paragraphs (e)(4) and (5), respectively. (section 2104(b)(3)(B) of the Act).

$\Sigma(C_i \times SCF_i)$ = The sum of the products of $(C_i \times SCF_i)$ for each State (section 2104(b)(1)(B) of the Act).

A_{TA} = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year as determined under paragraph (c) of this section.

(3) *Application of floors and ceilings and reconciliation in determining proportion.* (i) *Floors and ceilings in proportions.* The preadjusted State proportions for a fiscal year are subject to the application of floors and ceilings in paragraphs (e)(3)(i)(A) and (B) of this section..

(A) The proportion floors, or minimum proportions, that apply in determining a State's proportion for the fiscal year are:

(*1*) $2,000,000 divided by the total of the amount available nationally;

(*2*) 90 percent of the State's proportion for the previous fiscal year; and

(*3*) 70 percent of the State's proportion for FY 1999.

(B) The proportion ceiling, or maximum proportion, for a fiscal year that applies in determining the State's fiscal year proportion is 145 percent of the State's proportion for FY 1999.

(ii) *Reconciliation of State proportions.* If, after the application of the floors and ceilings in paragraph (e)(3)(i), the sum of the States' proportions is not equal to one, the Secretary will reconcile the States' proportions by applying either paragraph (e)(3)(i)(A) or (B) of this paragraph, as appropriate, such that the sum of the proportions after reconciliation equals one. If, after the application of the floors and ceilings in paragraph (e)(3)(i), the sum of the States' proportions is equal to one, no reconciliation is necessary, and the States' proportions will be the same as the preadjusted proportions determined under paragraph (e)(2) of this section.

(A) If, after the application of the floors and ceilings under paragraphs (e)(3)(i)(A) and (B) of this section, the sum of the States' proportions is greater than one, the Secretary will establish a maximum percentage increase in States' proportions, such that when applied to the States' proportions, the sum of the proportions is exactly equal to one.

(B) If, after the application of the floors and ceilings under paragraphs (e)(3)(i)(A) and (B), the sum of the proportions is less than one, the Secretary will increase States' proportions (as computed before the application of the floors under paragraph (e)(3)(i)(A)) in a pro rata manner (but not to exceed the 145 percent ceiling computed under paragraph (e)(3)(i)(B)), such that when applied to the States' proportions, the sum of the proportions is exactly equal to one.

(4) *Data used for calculating the FY 1998 SCHIP allotments.* The FY 1998 SCHIP allotments were calculated in accordance with the methodology described in paragraphs (e)(1) and (2) of this section, using the most recent official and final data that were available from the Bureau of the Census and the Bureau of Labor Statistics, respectively, prior to the September 1 before the beginning of FY 1998 (that is, through August 31, 1997). In particular, through August 31, 1997, the only official data available on the numbers of children were data from the 3 March CPSs conducted in March 1994, 1995, and 1996 that reflected data for the 3 calendar years 1993, 1994, and 1995.

(5) *Data used for calculating the FY 1999 SCHIP allotments.* In accordance with section 101(f) of Public Law 105–277, the FY 1999 allotments were calculated in accordance with the methodology described in paragraph (e)(2) of this section, using the same data as were used in calculating the FY 1998 SCHIP allotments.

(f) *Methodology for determining the Commonwealth and Territory allotments for a fiscal year.* The total amount available for the Commonwealths and Territories for each fiscal year, as determined under paragraph (d) of this section, is allotted to each Territory and Commonwealth below which has an approved State child health plan. These allotments are in the proportion that the following percentages for each Commonwealth Territory bear to the sum of such percentages, as specified in section 2104(c)(2) of the Act:

Puerto Rico—91.6%
Guam—3.5%
Virgin Islands—2.6%
American Samoa—1.2%
Northern Mariana Islands—1.1%

(g) *Reserved State allotments for a fiscal year.* (1) For FY 2000 and subsequent fiscal years, HCFA determines and publishes the State reserved allotments for a fiscal year for each State, the District of Columbia, and Commonwealths and Territories in the **Federal Register** based on the most recent official and final data available before the beginning of the calendar year in which the fiscal year begins for the number of children and the State cost factor.

(2) For FY 1998 and FY 1999, HCFA determined and published the State reserved allotments using the available data described in paragraphs (e)(4) and (e)(5) of this section, respectively, on the basis of the statutory allotment formula as it existed prior to the enactment of Public Law 106–113.

(3) If all States, the District of Columbia, and the Commonwealths and Territories have approved State child health plans in place prior to the beginning of the fiscal year, as appropriate, HCFA may publish the allotments as final in the **Federal Register**, without the need for publication as reserved allotments.

(h) *Final allotments.* (1) Final State allotments for FY 1998 and FY 1999 for each State, the District of Columbia, and the Commonwealths and Territories are determined by HCFA based only on those States, the District of Columbia, and the Commonwealths and Territories that have approved State child health plans by the end of fiscal year 1999, in accordance with the formula and methodology specified in paragraphs (a) through (g) of this section.

(2) Final State allotments for a fiscal year after FY 1999 for each State, the District of Columbia, and the Commonwealths and Territories are determined by HCFA based only on those States, the District of Columbia, and the Commonwealths and Territories that have approved State child health plans by the end of the fiscal year, in accordance with the formula and methodology specified in paragraphs (a) through (g) of this section.

(3) HCFA determines and publishes the States' final fiscal year allotments in the **Federal Register** based on the same data, with respect to the number of children and State cost factor, as were used in determining the reserved allotments for the fiscal year.

§ 457.610 Period of availability for State allotments for a fiscal year.

The amount of a final allotment for a fiscal year, as determined under § 457.608(h) and reduced to reflect certain Medicaid expenditures in accordance with § 457.616, remains available until expended for Federal payments based on expenditures claimed during a 3-year period of availability, beginning with the fiscal year of the final allotment and ending with the end of the second fiscal year following the fiscal year.

§ 457.614 General payment process.

(a) A State may make claims for Federal payment based on expenditures incurred by the State prior to or during the period of availability related to that fiscal year.

(b) In order to receive Federal financial participation (FFP) for a State's claims for payment for the State's expenditures, a State must —

(1) Submit budget estimates of quarterly funding requirements for Medicaid and the State Children's Health Insurance Programs; and

(2) Submit an expenditure report.

(c) Based on the State's quarterly budget estimates, HCFA —

(1) Issues an advance grant to a State as described in § 457.630;

(2) Tracks and applies Federal payments claimed quarterly by each State, the District of Columbia, and each Commonwealth and Territory to ensure that payments do not exceed the applicable allotments for the fiscal year; and

(3) Track and apply relevant State, District of Columbia, Commonwealth and Territory expenditures reported each quarter against the 10 percent limit on expenditures other than child health assistance for standard benefit package, on a fiscal year basis as specified in § 457.618.

§ 457.616 Application and tracking of payments against the fiscal year allotments.

(a) *Categories of payments applied to reduce the State allotments.* In accordance with the principles described in paragraph (c) of this section, the following categories of payments are applied to reduce the State allotments for a fiscal year:

(1) Payments made to the State for expenditures claimed during the fiscal year under its title XIX Medicaid program, to the extent the payments were made on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for expenditures attributable to children described in section 1905(u)(2) of the Act.

(2) Payments made to the State for expenditures claimed during the fiscal year under its title XIX Medicaid program, to the extent the payments were made on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for expenditures attributable to children described in section 1905(u)(3) of the Act.

(3) Payments made to a State under section 1903(a) of the Act for expenditures claimed by the State during a fiscal year that are attributable to the provision of medical assistance to a child during a presumptive eligibility period under section 1920A of the Act.

(4) Payments made to a State under its title XXI State Children's Health Insurance Program with respect to section 2105(a) of the Act for expenditures claimed by the State during a fiscal year.

(b) *Application of principles.* HCFA applies the principles in paragraph (c) of this section to —

(1) Coordinate the application of the payments made to a State for the State's expenditures claimed under the Medicaid and State Children's Health Insurance programs against the State allotment for a fiscal year;

(2) Determine the order of these payments in that application; and

(3) Determine the application of payments against multiple State Child Health Insurance Program fiscal year allotments.

(c) *Principles for applying Federal payments against the allotment.* HCFA—

(1) Applies the payments attributable to Medicaid expenditures specified in paragraphs (a)(1) through (a)(3) of this section, against the State child health plan allotment for a fiscal year before State child health plan expenditures specified in paragraph (a)(4) of this section are applied.

(2) Applies the payments attributable to Medicaid and State child health plan expenditures specified in paragraph (a) of this section against the applicable allotments for a fiscal year based on the quarter in which the expenditures are claimed by the State.

(3) Applies payments against the State allotments for a fiscal year in a manner that is consistent for all States.

(4) Applies payments attributable to Medicaid expenditures specified in paragraphs (a)(1) through (a)(3) of this section, in an order that maximizes Federal reimbursement for States. Expenditures for which the enhanced FMAP is available are applied before expenditures for which the regular FMAP is available.

(5) Applies payments for expenditures against State Child Health Insurance Program fiscal year allotments in the least administratively burdensome, and most effective and efficient manner; payments are applied on a quarterly basis as they are claimed by the State, and are applied to reduce the earliest fiscal year State allotments before the payments are applied to reduce later fiscal year allotments.

(6) Subject to paragraphs (c)(6)(i) and (ii) of this section, applies payments for expenditures for a fiscal year's allotment against a subsequent fiscal year's allotment; however, the subsequent fiscal year's allotment must be available at the time of application. For example, if the allotment for fiscal year 1998 has been fully expended, payments for expenditures claimed in fiscal year 1998 are carried over for application against the fiscal year 1999 allotment when it becomes available.

(i) In accordance with § 457.618, the amount of non-primary expenditures that are within the 10 percent limit for the fiscal year for which they are claimed may be applied against a fiscal year allotment or allotments available in a subsequent fiscal year.

(ii) In accordance with § 457.618, the amounts of non-primary expenditures that exceed the 10 percent limit for the fiscal year for which they are claimed may not be applied against a fiscal year allotment or allotments available in a subsequent fiscal year.

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(7) Carries over unexpended amounts of a State's allotment for a fiscal year for use in subsequent fiscal years through the end of the 3-year period of availability. For example, if the amounts of the fiscal year 1998 allotment are not fully expended by the end of fiscal year 1998, these amounts are carried over to fiscal year 1999 and are available to provide FFP for expenditures claimed by the State for that fiscal year.

(d) *Amount of Federal payment for expenditures claimed.* The amount of the Federal payment for expenditures claimed by a State, District of Columbia, or the Commonwealths and Territories is determined by the enhanced FMAP applicable to the fiscal year in which the State paid the expenditure. For example, Federal payment for an expenditure paid by a State in fiscal year 1998 that was carried over to fiscal year 1999 (in accordance with paragraph(c)(6) of this section), because the State exceeded its fiscal year 1998 allotment, is available at the fiscal year 1998 enhanced FMAP rate.

§ 457.618 Ten percent limit on certain State Children's Health Insurance Program expenditures.

(a) *Expenditures.* (1) *Primary expenditures* are expenditures under a State plan for child health assistance to targeted low-income children in the form of a standard benefit package, and Medicaid expenditures claimed during the fiscal year to the extent Federal payments made for these expenditures on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act that are used to calculate the 10 percent limit.

(2) *Non-primary expenditures* are other expenditures under a State plan. Subject to the 10 percent limit described in paragraph (c) of this section, a State may receive Federal funds at the enhanced FMAP for 4 categories of non-primary expenditures:

(i) Administrative expenditures;

(ii) Outreach;

(iii) Health initiatives; and

(iv) Certain other child health assistance.

(b) *Federal payment.* Federal payment will not be available based on a State's non-primary expenditures for a fiscal year which exceed the 10 percent limit of the total of expenditures under the plan, as specified in paragraph (c) of this section.

(c) *10 Percent Limit.* The 10 percent limit is —

(1) Applied on an annual fiscal year basis;

(2) Calculated based on the total computable expenditures claimed by the State on quarterly expenditure reports submitted for a fiscal year. Expenditures claimed on a quarterly report for a different fiscal year may not be used in the calculation; and

(3) Calculated using the following formula:

L10% = (a1+ u2+ u3)/9;

L10% = 10 Percent Limit for a fiscal year

a1 = Total computable amount of expenditures for the fiscal year under section 2105(a)(1) of the Act for which Federal payments are available at the enhanced FMAP described in Section 2105(b) of the Act;

u2 = Total computable expenditures for medical assistance for which Federal payments are made during the fiscal year based on the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for individuals described in section 1905(u)(2) of the Act; and

u3 = Total computable expenditures for medical assistance for which Federal payments are made during the fiscal year based on the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for individuals described in section 1905(u)(3) of the Act.

(d) The expenditures under section 2105(a)(2) of the Act that are subject to the 10 percent limit are applied —

(1) On an annual fiscal year basis; and

(2) Against the 10 percent limit in the fiscal year for which the State submitted a quarterly expenditure report including the expenditures. Expenditures claimed on a quarterly report for one fiscal year may not be applied against the 10 percent limit for any other fiscal year.

(e)(1) The 10 percent limit for a fiscal year, as calculated under paragraph (c)(3) of this section, may be no greater than 10 percent of the total computable amount (determined under paragraph (e)(2) of this section) of the State allotment or allotments available in that fiscal year. Therefore, the 10 percent limit is the lower of the amount calculated under paragraph (c)(3) of this section, and 10 percent of the total computable amount of the State allotment available in that fiscal year.

(2) As used in paragraph (e)(1) of this section, the total computable amount of a State's allotment for a fiscal year is determined by dividing the State's allotment for the fiscal year by the State's enhanced FMAP for the year. For example, if a State allotment for a fiscal year is $65 million and the enhanced FMAP rate for the fiscal year is 65 percent, the total computable amount of the allotment for the fiscal year is $100 million ($65 million/.65). In this example, the 10 percent limit may be no greater than a total computable amount of $10 million (10 percent of $100 million).

§ 457.622 Rate of FFP for State expenditures.

(a) *Basis.* Sections 1905(b), 2105(a) and 2105(b) of the Act provides for payments to States from the States' allotments for a fiscal year, as determined under § 457.608, for part of the cost of expenditures for services and administration made under an approved State child health assistance plan. The rate of payment is generally the enhanced Federal medical assistance percentage described below.

(b) *Enhanced Federal medical assistance percentage (Enhanced FMAP)— Computations.* The enhanced FMAP is the lower of the following:

(1) 70 percent of the regular FMAP determined under section 1905(b) of the Act, plus 30 percentage points; or

(2) 85 percent.

(c) *Conditions for availability of enhanced FMAP based on a State's expenditures*—The enhanced FMAP is available for payments based on a State's expenditures claimed under the State's title XXI program from the State's fiscal year allotment only under the following conditions:

(1) The State has an approved title XXI State child health plan;

(2) The expenditures are allowable under the State's approved title XXI State child health plan;

(3) State allotment amounts are available in the fiscal year, that is, the State's allotment or allotments (as reduced in accordance with § 457.616) remain available for a fiscal year and have not been fully expended.

(4) Expenditures claimed against the 10 percent limit are within the State's 10 percent limit for the fiscal year.

(5) The State is in compliance with the maintenance of effort requirements of Section 2105(d)(1) of the Act.

(d) *Categories of expenditures for which enhanced FMAP are available.* Except as otherwise provided below, the enhanced FMAP is available with respect to the following States' expenditures:

(1) Child health assistance under the plan for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 2103 of the Act; and

(2) Subject to the 10 percent limit provisions under § 457.618(a)(2), the following expenditures:

(i) Payment for other child health assistance for targeted low-income children;

(ii) Expenditures for health services initiatives under the State child health assistance plan for improving the health of children (including targeted low-income children);

(iii) Expenditures for outreach activities; and

(iv) Other reasonable costs incurred by the State to administer the State child health assistance plan.

(e) *SCHIP administrative expenditures and SCHIP related title XIX administrative expenditures.* (1) *General rule.* Allowable title XXI administrative expenditures should support the operation of the State child health assistance plan. In general, FFP for administration under title XXI is not available for costs of activities related to the operation of other programs.

(2) *Exception.* FFP is available under title XXI, at the enhanced FFP rate, for Medicaid administrative expenditures attributable to the provision of medical assistance to children described in sections 1905(u)(2) and 1905(u)(3), and during the presumptive eligibility period described in section 1920A of the Act, to the extent that the State does not claim those costs under the Medicaid program.

(3) FFP is not available in expenditures for administrative activities for items or services included within the scope of another claimed expenditure.

(4) FFP is available in expenditures for activities defined in sections 2102(c)(1) and 2105(a)(2)(C) of the Act as outreach to families of children likely to be eligible for child health assistance under the plan or under other public or private health coverage programs to inform these families of the availability of, and to assist them in enrolling their children in such a program.

(5) FFP is available in administrative expenditures for activities specified in sections 2102(c)(2) of the Act as coordination of the administration of the State Children's Health Insurance Program with other public and private health insurance programs. FFP would not be available for the costs of administering the other public and private health insurance programs. Coordination activities must be distinguished from other administrative activities common among different programs.

§ 457.624 Limitations on certain payments for certain expenditures.

(a) *Abortions.* (1) *General rule.* Payment is not made for any State expenditures to pay for abortions or to assist in the purchase, whole or in part, of health benefit coverage that includes coverage of abortion.

(2) *Exception.* Payment may be made for expenditures for health benefits coverage and services that include abortions that are necessary to save the life of the mother or if the pregnancy is the result of rape or incest.

(b) *Waiver for purchase of family coverage.* Payment may be made to a State with an approved State child health plan for the purchase of family coverage under a group plan or health insurance coverage that includes coverage of targeted low-income children only if the State establishes to the satisfaction of HCFA that —

(1) Purchase of this coverage is cost-effective relative to the amounts that the State would have paid to obtain comparable coverage only of the targeted low-income children involved; and

(2) This coverage will not be provided if it would otherwise substitute for health insurance coverage that would be provided to such children but for the purchase of family coverage.

§ 457.626 Prevention of duplicate payments.

(a) *General rule.* No payment shall be made to a State for expenditures for child health assistance under its State child health plan to the extent that:

(1) A non-governmental health insurer would have been obligated to pay for those services but for a provision of its insurance contract that has the effect of limiting or excluding those obligations based on the actual or potential eligibility of the individual for child health assistance under the State child health insurance plan.

(2) Payment has been made or can reasonably be expected to be made promptly under any other Federally operated or financed health insurance or benefits program, other than a program operated or financed by the Indian Health Service.

(b) *Definitions.* As used in paragraph (a) of this section —

Non-governmental health insurer includes any health insurance issuer, group health plan, or health maintenance organization, as those terms are defined in 45 CFR 144.103, which is not part of, or wholly owned by, a governmental entity.

Prompt payment can reasonably be expected when payment is required by applicable statute, or under an approved State plan.

Programs operated or financed by the Indian Health Service means health programs operated by the Indian Health Service, or Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement or compact with the Indian Health Service under the authority of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, *et seq.*), or by an urban Indian organization in accordance with a grant or contract with the Indian Health Service under the authority of title V of the Indian Health Care Improvement Act (25 U.S.C. 1601, *et seq.*).

§ 457.628 Other applicable Federal regulations.

Other regulations applicable to SCHIP programs include the following:

(a) HHS regulations in 42 CFR Subpart B—433.51–433.74 sources of non-Federal share and Health Care-Related Taxes and Provider-Related Donations; these regulations apply to States' SCHIPs in the same manner as they apply to States' Medicaid programs.

(b) HHS Regulations in 45 CFR subtitle A:

Part 16—Procedures of the Departmental Appeals Board.

Part 74—Administration of Grants (except as specifically excepted).

Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services: Effectuation of title VI of the Civil Rights Act of 1964.

Part 81—Practice and Procedure for Hearings Under 45 CFR part 80.

Part 84—Nondiscrimination on the Basis of Handicap in Programs and activities Receiving or Benefiting From Federal Financial Assistance.

Part 95—General Administration—grant programs (public assistance and medical assistance).

§ 457.630 Grants procedures.

(a) *General provisions.* Once HCFA has approved a State child health plan, HCFA makes quarterly grant awards to the State to cover the Federal share of expenditures for child health assistance, other child health assistance, special health initiatives, outreach and administration.

(1) For fiscal year 1998, a State must submit a budget request in an appropriate format for the 4 quarters of the fiscal year. HCFA bases the grant awards for the 4 quarters of fiscal year 1998 based on the State's budget requests for those quarters.

(2) For fiscal years after 1998, a State must submit a budget request in an appropriate format for the first 3 quarters of the fiscal year. HCFA bases the grant awards for the first 3 quarters of the fiscal year on the State's budget requests for those quarters.

(3) For fiscal years after 1998, a State must also submit a budget request for the fourth quarter of the fiscal year. The amount of this quarter's grant award is based on the difference between a

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State's final allotment for the fiscal year, and the total of the grants for the first 3 quarters that were already issued in order to ensure that the total of all grant awards for the fiscal year are equal to the State's final allotment for that fiscal year.

(4) The amount of the quarterly grant is determined on the basis of information submitted by the State (in quarterly estimate and quarterly expenditure reports) and other pertinent information. This information must be submitted by the State through the Medicaid Budget and Expenditure System (MBES) for the Medicaid program, and through the Child Health Budget and Expenditure System (CBES) for the title XXI program.

(b) *Quarterly estimates.* The State Children's Health Insurance Program agency must submit Form HCFA–21B (State Children's Health Insurance Program Budget Report for State Children's Health Insurance Program State expenditures) to the HCFA central office (with a copy to the HCFA regional office) 45 days before the beginning of each quarter.

(c) *Expenditure reports.* (1) The State must submit Form HCFA–64 (Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program) and Form HCFA–21 (Quarterly State Children's Health Insurance Program Statement of Expenditures for title XXI), to central office (with a copy to the regional office) not later than 30 days after the end of the quarter.

(2) This report is the State's accounting of actual recorded expenditures. This disposition of Federal funds may not be reported on the basis of estimates.

(d) *Additional required information.* A State must provide HCFA with the following information regarding the administration of the title XXI program:

(1) Name and address of the State Agency/organization administering the program;

(2) The employer identification number (EIN); and

(3) A State official contact name and telephone number.

(e) *Grant award.* (1) *Computation by HCFA.* Regional office staff analyzes the State's estimates and sends a recommendation to the central office. Central office staff considers the State's estimates, the regional office recommendations and any other relevant information, including any adjustments to be made under paragraph (e)(2) of this section, and computes the grant.

(2) *Content of award.* The grant award computation form shows the estimate of expenditures for the ensuing quarter, and the amounts by which that estimate is increased or decreased because of an increase or overestimate for prior quarters, or for any of the following reasons:

(i) Penalty reductions imposed by law.

(ii) Deferrals or disallowances.

(iii) Interest assessments.

(iv) Mandated adjustments such as those required by Section 1914 of the Act.

(3) *Effect of award.* The grant award authorizes the State to draw Federal funds as needed to pay the Federal share of disbursements.

(4) *Draw procedure.* The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. (The letter of credit payment system was established in accordance with Treasury Department regulations—Circular No.1075.)

(f) *General administrative requirements.* With the following exceptions, the provisions of 45 CFR part 74, that establish uniform administrative requirements and cost principles, apply to all grants made to States under this subpart:

(1) Subpart G—Matching and Cost Sharing; and

(2) Subpart I—Financial Report Requirement.

C. 45 CFR part 92 is amended as follows:

PART 92—UNIFORM ADMINISTRATION REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 301.

2. Section 92.4 is amended by revising paragraphs (a)(3)(iv) and (a)(3)(v), and adding a new paragraph (a)(3)(vi) to read as follows:

§ 92.4 Applicability.

(a) * * *

(3) * * *

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI–AABD of the Act);

(v) Medical Assistance (Medicaid) (title XIX of the Act) not including the State Medicaid Fraud Control program authorized by Section 1903(a)(6)(B); and

(vi) State Children's Health Insurance Program (title XXI of the Act).

* * * * *

D. 45 CFR part 95 is amended as follows:

1. The title of part 95 is revised to read as follows:

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE, MEDICAL ASSISTANCE AND STATE CHILDREN'S HEALTH INSURANCE PROGRAMS)

2. The authority citation for part 95 is revised to read as follows:

Authority: Sec. 452(a), 83 Stat. 2351, 42 U.S.C. 652(a); sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2577b; sec. 144, 81 Stat. 529, 42 U.S.C. 2678; sec. 1132, 94 Stat. 530, 42 U.S.C. 1320b-2; sec. 306(b), 94 Stat. 530, 42 U.S.C. 1320b-2note, unless otherwise noted.

Subpart A—Time Limits for States To File Claims

3. In § 95.1(a), title XXI is added in numerical order immediately following title XX as follows:

§ 95.1 Scope.

(a) * * *

Title XXI—Grants to States for State Children's Health Insurance Programs.

4. In § 95.4, the definition of "State agency" is revised to read as follows:

§ 95.4 Definitions.

* * * * *

State agency for the purposes of expenditures for financial assistance under title IV–A and for support enforcement services under title IV–D means any agency or organization of the State or local government which is authorized to incur matchable expenses; for purposes of expenditures under titles XIX and XXI, means any agency of the State, including the State Medicaid agency or State Child Health Agency, its fiscal agents, a State health agency, or any other State or local organization which incurs matchable expenses; for purposes of expenditures under all other titles, see the definitions in the appropriate program's regulations.

* * * * *

5. In § 95.13, paragraph (b) and the first sentence of paragraph (d) are revised to read as follows:

§ 95.13 In which quarter we consider an expenditure made.

* * * * *

(b) We consider a State agency's expenditure for services under title I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI (AABD) , XIX, or XXI to have been made in the quarter in which any State agency made a payment to the service provider.

* * * * *

(d) We consider a State agency's expenditure for administration or training under titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI (AABD), XIX, or XXI to have been made in the quarter payment was made by a State agency to a private agency or individual; or in the quarter to which the costs were allocated in accordance with the regulations for each program. * * *

Subpart E—Cost Allocation Plans

6. Section 95.503 is revised to read as follows:

§ 95.503 Scope.

This subpart applies to all State agency costs applicable to awards made under titles I, IV–A, IV–B, IV–C, IV–D, IV–E, X, XIV, XVI (AABD), XIX, and XXI, of the Social Security Act, and under the Refugee Act of 1980, title IV, Chapter 2 of the Immigration and Nationality Act (8 U.S.C. 1521 *et seq.*), and under title V of Pub. L. 96–422, the Refugee Education Assistance Act of 1980.

7. Section 95.507(a)(3) is revised to read as follows:

§ 95.507 Plan requirements.

(a) * * * (3) Be compatible with the State plan for public assistance programs described in 45 CFR Chapter II, III and XIII, and 42 CFR Chapter IV Subchapters C and D; and

* * * * * *

Subpart F—Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation (FFP)

8. Section 95.601 is revised to read as follows:

§ 95.601 Scope and applicability.

This subpart prescribes part of the conditions under which the Department of Health and Human Services will approve Federal financial participation (FFP) at the applicable rates for the costs of automatic data processing incurred under an approved State plan for titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), XIX, or XXI of the Social Security Act and title IV chapter 2 of the Immigration and Nationality Act. The conditions of approval of this subpart add to the statutory and regulatory requirements for acquisition of ADP equipment and services under the specified titles of the Social Security Act.

9. In § 95.605, the definitions of "approving component", "operation", "regular matching rate", and "State agency" are revised to read as follows:

§ 95.605 Definitions.

* * * * *

Approving component means an organization within the Department that is authorized to approve requests for the acquisition of ADP equipment or ADP services. Family Support Administration (FSA) for cash assistance for titles I, IV–A, X, XIV, and XVI(AABD); Office of Human Development Services (OHDS) for social services for titles IV–B (child welfare services) and IV–E (foster care and adoption assistance); Family Support Administration (FSA) for title IV–D; and Health Care Financing Administration (HCFA) for titles XIX and XXI of the Social Security Act.

* * * * *

Operation means the automated processing of data used in the administration of State plans for titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act. Operation includes the use of supplies, software, hardware, and personnel directly associated with the functioning of the mechanized system. See 45 CFR 205.38 and 307.10 for specific requirements for titles IV–A and IV–D, and 42 CFR 433.112 and 42 CFR 433.113 for specific requirements for title XIX.

Regular matching rate means the normal rate of FFP authorized by titles IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act for State and local agency administration of programs authorized by those titles.

* * * * *

State agency means the State agency administering or supervising the administration of the State plan under titles I, IV, X, XIV, XVI(AABD), XIX or XXI of the Social Security Act.

* * * * *

10. In § 95.703 the definition of "Public Assistance Programs" is revised to read as follows:

§ 95.703 Definitions.

* * * * *

Public Assistance Programs means programs authorized by titles I, IV–A, IV–B, IV–C, IV–D, IV–E, X, XIV, XVI (AABD), XIX and XXI of the Social Security Act, and programs authorized by the Immigration and Nationality Act as amended by the Refugee Act of 1980 (Pub. L. 96–212).

* * * * *

(Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: March 22, 2000.

Nancy Ann-Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 28, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–12879 Filed 5–23–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2064 N]

RIN 0938–AJ77

State Children's Health Insurance Program; Final Allotments to States, Commonwealths, and Territories for Fiscal Years 1998 and 1999

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the final allotments of Federal funding available to each State, Commonwealth and Territory for fiscal years (FYs) 1998 and 1999 under title XXI of the Social Security Act (the Act). The final allotments are the same as the reserved allotments previously published in the **Federal Register** on February 8, 1999.

Established by section 4901 of the Balanced Budget Act of 1997 (Public Law 105–33), title XXI of the Act authorizes payment of Federal matching funds to States, Commonwealths and Territories to initiate and expand health insurance coverage to uninsured, low-income children through a State Children's Health Insurance Program (SCHIP), an expansion of a State Medicaid program, or a combination of both.

Recent legislation, the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Public Law 106–113, enacted November 29, 1999), amended title XXI of the Act in part by modifying the allotment formula, effective with the FY 2000 allotments. The FY 1998 and 1999 allotments contained in this notice were determined under the allotment formula in existence prior to the enactment of Public Law 106–113.

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FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

The reserved FY 1998 allotments were originally published on September 12, 1997 in the **Federal Register** (62 FR 48098). On February 8, 1999, revised reserved FY 1998 allotments and reserved FY 1999 allotments were published in the **Federal Register** (64 FR 6102). The allotments were originally published as reserved because not all States, Commonwealths, and Territories had submitted and had State child health plans approved by HCFA. Final allotments may only be provided to those with approved plans. For purposes of planning and budgeting, the reserved FYs 1998 and 1999 allotments were calculated as if all States, Commonwealths and Territories had approved State child health plans.

Public Law 105–174, enacted on May 1, 1998, provides that for purposes of the calculation of allotments, a State child health plan approved by HCFA on or after October 1, 1998, and before October 1, 1999, must be treated as having been approved for both FYs 1998 and 1999. Because all States, Commonwealths, and Territories had approved plans prior to the end of FY 1999, the final FYs 1998 and 1999 SCHIP allotments are available to all of them and are, therefore, the same as the reserved allotments published on February 8, 1999.

While none of the provisions of Public Law 106–113 take effect retroactively, one provision of the legislation is incorporated into this notice due to the fact that the new legislation was enacted prior to the publication of this final notice. Specifically, section 704 of the BBRA of 1999 requires that the program enacted by title XXI of the Act be referred to exclusively as "SCHIP" rather than "CHIP" and that the term "State children's health insurance program" be substituted for "children's health insurance program." This provision applies to the Secretary of the U.S. Department of Health and Human Services, as well as any other Federal officer or employee, in any publication or other official communication.

II. Purpose of This Notice

This notice sets forth the final allotments of Federal funding available to each State, Commonwealth and Territory for fiscal years (FYs) 1998 and 1999 under title XXI of the Social Security Act. Final allotments for a fiscal year are available to match expenditures under an approved State child health plan for three fiscal years, including the year for which the final allotment was provided. Federal funds appropriated for title XXI are limited, and the law specifies a formula to divide the total annual appropriation into individual allotments available for each State, Commonwealth and Territory with an approved child health plan, as described under section III of the February 8, 1999 **Federal Register** notice (64 FR 6102).

Section 2104(b) of the Act indicates that "the Secretary shall allot to each State * * * with a State child health plan approved under this title." This language requires States, Commonwealths, and Territories to have an approved State child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year. If a State, Commonwealth, or Territory does not have an approved State child health plan for that fiscal year, the amount of their reserved allotment would be unavailable to them and would be allotted to those with approved State child health plans. On September 8, 1999, the last two States seeking approval for their State child health plans were granted approval. Since all States, Commonwealths, and Territories had approved plans prior to the end of FY 1999, this notice merely republishes as final the same FYs 1998 and 1999 allotments that were originally published as reserved allotments in the February 8, 1999 **Federal Register** notice.

We issued a proposed rule on March 4, 1999 in **Federal Register** (64 FR 10412), on the requirements for the allotment and payment process under title XXI. The allotments set forth in this notice were calculated in accordance with the process set forth in that proposed rule.

For informational purposes, we are republishing the FYs 1998 and 1999 allotment charts below, which are the same as those published in the February 8, 1999 notice.

III. Table of State Children's Health Insurance Program Final Allotments for FYs 1998 and 1999

Key to Tables I and II

Column/Description

Column A = Name of State, Commonwealth, or Territory.

Column B = Number of Children. The Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the 1994, 1995, and 1996 March supplements to the Current Population Survey, as adjusted in August 1998. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be not covered by health insurance. The Number of Children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in their annual Current Population Surveys on these topics. For FYs 1998 and 1999, the Number of Children is equal to the number of low-income children in each State with no health insurance for the fiscal year.

Column C=State Cost Factor. The State Cost Factor for a State is equal to the sum of: .15, and .85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State Cost Factor for each State was calculated based on such wage data for each State as reported, determined, and provided to HCFA by the Bureau of Labor Statistics in the Department of Labor for 1993, 1994, and 1995.

Column D=Product. The Product for each State was calculated by multiplying the Number of Children in Column B by the State Cost Factor in Column C. The sum of the Products for all 50 States and the District of Columbia is below the Products for each State in Column D. The Product for each State and the sum of the Products for all States provides the basis for allotment to States.

Column E=Percent Share of Total. This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The Percent Share of Total is calculated as the ratio of the Product for each State in Column D to the sum of the products for all 50 States and the District of Columbia below the Products for each State in Column D.

Column F=Allotment. This is the State Child Health Program allotment for each State, Commonwealth, or Territory. For each of the 50 States and the District of Columbia, this is determined as the Percent Share of Total in Column E for the State multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year.

For each of the Commonwealths and Territories, the allotment is determined as the Percent Share of Total in Column E multiplied by the total amount available for allotment to the Commonwealths and Territories. For the Commonwealths and Territories, the Percent Share of Total in Column E is specified in section 2104(c) of the Act. For FY 1999, the Commonwealths and Territories were allotted an additional $32 million, which is added to the total allotment available to them for FY 1999, determined by the formula described above. The total amount is then allotted to the Commonwealths and Territories according to the percentages specified in section 2104 of the Act.

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STATE CHILDREN'S HEALTH INSURANCE PROGRAM FINAL ALLOTMENTS FOR FISCAL YEAR: 1998					
A	B	C	D	E	F
STATE	NUMBER OF CHILDREN (000)	STATE COST FACTOR	PRODUCT	PERCENT SHARE OF TOTAL (3)	ALLOTMENT (1)
ALABAMA	154	0.9510	146.46	2.08%	$85,975,213
ALASKA	11	1.0669	11.74	0.16%	$6,889,296
ARIZONA	190	1.0472	198.97	2.76%	$116,797,799
ARKANSAS	92	0.8871	81.61	1.13%	$47,907,958
CALIFORNIA	1,281	1.1365	1,455.92	20.23%	$854,644,807
COLORADO	72	0.9888	71.19	0.99%	$41,790,547
CONNECTICUT	53	1.1257	59.55	0.83%	$34,959,875
DELAWARE	13	1.0553	13.72	0.19%	$8,053,483
DISTRICT OF COLUMBIA	16	1.2857	20.57	0.29%	$12,076,802
FLORIDA	444	1.0368	460.32	6.40%	$270,214,724
GEORGIA	214	0.9923	212.36	2.95%	$124,648,136
HAWAII	13	1.1722	15.24	0.21%	$8,945,384
IDAHO	31	0.8726	27.05	0.38%	$15,879,787
ILLINOIS	211	0.9892	208.73	2.90%	$122,528,573
INDIANA	131	0.9169	120.12	1.67%	$70,512,432
IOWA	67	0.8253	55.30	0.77%	$32,468,483
KANSAS	60	0.8764	52.22	0.73%	$30,654,526
KENTUCKY	93	0.9146	85.06	1.18%	$49,932,527
LOUISIANA	194	0.8934	173.31	2.41%	$101,738,841
MAINE	24	0.8863	21.27	0.30%	$12,484,977
MARYLAND	180	1.0498	188.98	1.46%	$61,827,358
MASSACHUSETTS	69	1.0578	72.97	1.01%	$42,836,251
MICHIGAN	156	1.0081	156.02	2.17%	$91,585,508
MINNESOTA	50	0.9675	48.37	0.67%	$28,395,988
MISSISSIPPI	118	0.8675	95.43	1.33%	$56,017,103
MISSOURI	97	0.9075	88.03	1.22%	$51,673,123
MONTANA	24	0.8333	20.00	0.28%	$11,740,395
NEBRASKA	36	0.8440	25.32	0.35%	$14,862,926
NEVADA	43	1.2846	51.80	0.72%	$30,407,867
NEW HAMPSHIRE	20	0.9760	19.52	0.27%	$11,458,484
NEW JERSEY	134	1.1241	150.62	2.09%	$88,417,899
NEW MEXICO	117	0.9169	107.28	1.49%	$62,972,705
NEW YORK	399	1.0914	435.47	6.05%	$255,616,489
NORTH CAROLINA	138	0.9815	135.45	1.88%	$79,506,482
NORTH DAKOTA	10	0.8587	8.59	0.12%	$5,040,741
OHIO	205	0.9617	197.16	2.74%	$115,734,364
OKLAHOMA	170	0.8588	145.99	2.03%	$85,699,861
OREGON	67	0.9947	66.65	0.93%	$39,121,043
PENNSYLVANIA	200	1.0885	200.89	2.78%	$117,456,521
RHODE ISLAND	19	0.9580	18.20	0.25%	$10,684,422
SOUTH CAROLINA	110	0.9843	108.27	1.50%	$63,557,819
SOUTH DAKOTA	17	0.8559	14.55	0.20%	$8,541,224
TENNESSEE	115	0.9799	112.69	1.57%	$66,153,882
TEXAS	1,031	0.9275	956.25	13.29%	$561,331,921
UTAH	46	0.8977	41.30	0.57%	$24,241,159
VERMONT	7	0.8684	6.02	0.08%	$3,535,445
VIRGINIA	118	0.9862	116.38	1.62%	$68,314,915
WASHINGTON	85	0.9352	79.49	1.10%	$46,661,213
WEST VIRGINIA	45	0.8937	40.21	0.56%	$23,606,744
WISCONSIN	75	0.9229	69.22	0.96%	$40,633,039
WYOMING	15	0.8758	13.14	0.18%	$7,711,038
TOTAL STATES ONLY			7,196.17	100.00%	$4,224,262,500
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES (2)					
PUERTO RICO				91.50%	$9,635,550
GUAM				3.56%	$375,013
VIRGIN ISLANDS				2.65%	$279,175
AMERICAN SAMOA				1.20%	$126,350
N. MARIANA ISLANDS				1.10%	$116,113
TOTAL COMMONWEALTHS AND TERRITORIES ONLY				100.00%	$10,737,500
TOTAL STATES AND COMONWEALTHS AND TERRITORIES					$4,235,000,000

FOOTNOTES
(1) Total amount available for allotment to the 50 States and the District of Columbia is $4,224,262,500; determined as the fiscal year appropriation ($4,295,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories ($10,737,500) and amounts for Special Diabetes Grants ($60,000,000) under sections 4921 and 4922 of BBA
(2) Total amount available for allotment to the Commonwealths and Territories is $10,737,500; determined as .25 percent of the fiscal year appropriation ($4,295,000,000)
(3) Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Social Security Act

STATE CHILDREN'S HEALTH INSURANCE PROGRAM FINAL ALLOTMENTS FOR FISCAL YEAR: 1999					
A	B	C	D	E	F
STATE	NUMBER OF CHILDREN (000)	STATE COST FACTOR	PRODUCT	PERCENT SHARE OF TOTAL (3)	ALLOTMENT (1)
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ALASKA	11	1.0669	11.74	0.16%	$6,856,768
ARIZONA	190	1.0472	198.97	2.76%	$116,246,196
ARKANSAS	92	0.8871	81.61	1.13%	$47,681,702
CALIFORNIA	1,281	1.1365	1,455.92	20.23%	$850,606,561
COLORADO	72	0.9888	71.19	0.99%	$41,593,182
CONNECTICUT	53	1.1257	59.55	0.83%	$34,793,973
DELAWARE	13	1.0553	13.72	0.19%	$8,015,429
DISTRICT OF COLUMBIA	16	1.2857	20.57	0.29%	$12,018,971
FLORIDA	444	1.0368	460.32	6.40%	$268,938,576
GEORGIA	214	0.9923	212.36	2.95%	$124,071,402
HAWAII	13	1.1722	15.24	0.21%	$8,903,857
IDAHO	31	0.8726	27.05	0.38%	$15,804,712
ILLINOIS	211	0.9892	208.73	2.90%	$121,949,395
INDIANA	131	0.9169	120.12	1.67%	$70,179,422
IOWA	67	0.8253	55.30	0.77%	$32,307,161
KANSAS	60	0.8764	52.22	0.73%	$30,511,738
KENTUCKY	93	0.9146	85.06	1.18%	$49,696,709
LOUISIANA	194	0.8934	173.31	2.41%	$101,250,366
MAINE	24	0.8863	21.27	0.30%	$12,424,884
MARYLAND	180	1.0498	188.98	1.46%	$61,336,389
MASSACHUSETTS	69	1.0578	72.97	1.01%	$42,633,928
MICHIGAN	156	1.0081	156.02	2.17%	$91,152,976
MINNESOTA	50	0.9675	48.37	0.67%	$28,261,873
MISSISSIPPI	118	0.8675	95.43	1.33%	$55,752,550
MISSOURI	97	0.9075	88.03	1.22%	$51,429,880
MONTANA	24	0.8333	20.00	0.28%	$11,684,948
NEBRASKA	36	0.8440	25.32	0.35%	$14,792,733
NEVADA	43	1.2846	51.80	0.72%	$30,263,463
NEW HAMPSHIRE	20	0.9760	19.52	0.27%	$11,404,289
NEW JERSEY	134	1.1241	150.62	2.09%	$88,000,326
NEW MEXICO	117	0.9169	107.28	1.49%	$62,675,303
NEW YORK	399	1.0914	435.47	6.05%	$254,419,158
NORTH CAROLINA	138	0.9815	135.45	1.88%	$79,132,966
NORTH DAKOTA	10	0.8587	8.59	0.12%	$5,016,935
OHIO	205	0.9617	197.16	2.74%	$115,187,783
OKLAHOMA	170	0.8588	145.99	2.03%	$85,294,328
OREGON	67	0.9947	66.65	0.93%	$38,936,982
PENNSYLVANIA	200	1.0885	200.89	2.78%	$116,901,807
RHODE ISLAND	19	0.9580	18.20	0.25%	$10,633,962
SOUTH CAROLINA	110	0.9843	108.27	1.50%	$63,257,653
SOUTH DAKOTA	17	0.8559	14.55	0.20%	$8,500,896
TENNESSEE	115	0.9799	112.69	1.57%	$65,848,648
TEXAS	1,031	0.9275	956.25	13.29%	$558,698,310
UTAH	46	0.8977	41.30	0.57%	$24,126,875
VERMONT	7	0.8684	6.02	0.08%	$3,518,748
VIRGINIA	118	0.9862	116.38	1.62%	$67,992,282
WASHINGTON	85	0.9352	79.49	1.10%	$46,448,845
WEST VIRGINIA	45	0.8937	40.21	0.56%	$23,495,256
WISCONSIN	75	0.9229	69.22	0.96%	$40,441,141
WYOMING	15	0.8758	13.14	0.18%	$7,675,218
TOTAL STATES ONLY			7,196.17	100.00%	$4,204,312,500
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES (2)					
PUERTO RICO				91.50%	$39,101,750
GUAM				3.56%	$1,494,063
VIRGIN ISLANDS				2.65%	$1,109,875
AMERICAN SAMOA				1.20%	$512,250
N. MARIANA ISLANDS				1.10%	$469,563
TOTAL COMMONWEALTHS AND TERRITORIES ONLY				100.00%	$42,687,500
TOTAL STATES AND COMONWEALTHS AND TERRITORIES					$4,247,000,000

FOOTNOTES
(1) Total amount available for allotment to the 50 States and the District of Columbia is $4,204,312,500; determined as the fiscal year appropriation ($4,275,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories ($10,687,500) and amounts for Special Diabetes Grants ($60,000,000) under sections 4921 and 4922 of BBA
(2) Total amount available for allotment to the Commonwealths and Territories is $42,687,500; determined as $10,687,500 (.25 percent of $4,275,000,000, the fiscal year appropriation) plus $32,000,000
(3) Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Social Security Act

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III. Impact Statement

HCFA has examined the impact of this notice as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rules are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). We believe that this notice is consistent with the regulatory philosophy and principles identified in the Executive Order. The formula for the allotments is specified in the statute. Since the formula is specified in the statute, we have no discretion in determining the allotments.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before publishing any notice that may result in an expenditure in any year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted each year for inflation). Because participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the federal government are made voluntarily. This notice will not create unfunded mandate on States, tribal or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of these regulations.

Under Executive Order 12612, Federalism, we have reviewed this notice and determined that it does not significantly affect States' rights, roles, and responsibilities. Low-income children will benefit from payments under this program through increased opportunities for health insurance coverage.

We believe this notice has an overall positive impact by informing States, Commonwealths, and Territories of the extent to which they are permitted to expend funds under their State child health plans using their FYs 1998 and 1999 allotments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: March 22, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing, Administration.

Dated: March 27, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–12880 Filed 5–23–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2067–N]

RIN 0938–AJ94

State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the final allotments of Federal funding available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year (FY) 2000 under title XXI of the Social Security Act (the Act).

Established by section 4901 of the Balanced Budget Act (BBA) of 1997 (Public Law 105–33), title XXI of the Act authorizes payment of Federal matching funds to States, the District of Columbia, and U.S. Territories and Commonwealths to initiate and expand health insurance coverage to uninsured, low-income children under a new State Children's Health Insurance Program (SCHIP). States may implement SCHIP through a separate State program under title XXI, an expansion of a State Medicaid program under title XIX, or a combination of both. Recent legislation, the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Public Law 106–113, enacted November 29, 1999), amended title XXI of the Act in part by modifying the SCHIP allotment formula effective with the FY 2000 allotments. The FY 2000 allotments contained in this notice were determined under the new SCHIP allotment formula.

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FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

This notice sets forth the allotments available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for FY 2000 under title XXI of the Social Security Act (the Act). In prior years, we published "reserved" allotments at the beginning of the fiscal year and then "final" allotments at some later time, because it was not certain at the beginning of the fiscal year that every State, the District of Columbia, and every U.S. Territory and Commonwealth would qualify for an allotment. As we explain below, each State, the District of Columbia, and each U.S. Territory and Commonwealth has now qualified for an allotment by having an approved State child health plan for the fiscal year. Therefore, publication of "reserved" allotments is not necessary.

Final allotments for a fiscal year are available to match expenditures under an approved State child health plan for three fiscal years, including the year for which the final allotment was provided. Federal funds appropriated for title XXI are limited, and the law specifies a formula to divide the total annual appropriation into individual allotments

available for each State, the District of Columbia, and each U.S. Territory and Commonwealth with an approved child health plan. The allotment formula outlined in title XXI has been modified with the enactment of Public Law 106–113 on November 29, 1999, as described under section II of this notice.

Section 2104(b) of the Act indicates that "the Secretary shall allot to each State * * * with a State child health plan approved under this title." This language requires States, the District of Columbia, and U.S. Territories and Commonwealths to have an approved child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year. All States, the District of Columbia, and U.S. Territories and Commonwealths had approved plans prior to the end of FY 1999.

II. Methodology for Determining Final Allotments for States, the District of Columbia, and U.S. Territories and Commonwealths

This notice specifies in the Table under section III, the final FY 2000 allotments available to individual States, the District of Columbia, and U.S. Territories and Commonwealths for child health assistance expenditures under approved State child health plans. As discussed below, the FY 2000 final allotments have been calculated to reflect the way title XXI, as amended by the new Public Law 106–113, prescribes the process for determining an allotment amount for each State, the District of Columbia, and each U.S. Territory and Commonwealth. As a result of the recent changes to the allotment formula, the calculation of the allotments for FY 2000 and subsequent fiscal years differs from the way the FY 1998 and FY 1999 allotments were calculated for the first two years of the program.

We have applied the statutory formula specified in section 2104(b) of the Act, as modified by section 701 of the BBRA of 1999, to calculate the final allotments for FY 2000, as discussed below. The recent legislative changes will reduce the variability of individual State allotments from year to year and over a number of years. The new formula results in more stable federal allotments, which may permit States to more effectively plan and budget their State programs.

Section 2104(a) of title XXI provides that, for purposes of providing allotments to the 50 States and the District of Columbia, the following amounts are appropriated: $4.295 billion for FY 1998; $4.275 billion for each fiscal year FY 1999 through FY 2001; $3.150 billion for each FY 2002 through 2004; $4.050 billion for each FY 2005 through 2006 and $5 billion for FY 2007. However, under section 2104(c) of the Act, 0.25 percent of the total amount appropriated each year is available for allotment to the U.S. Territories and Commonwealths of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. The total amounts are allotted to the U.S. Territories and Commonwealths according to the following percentages: Puerto Rico, 91.6 percent; Guam, 3.5 percent; the Virgin Islands, 2.6 percent; American Samoa, 1.2 percent; and the Northern Mariana Islands, 1.1 percent.

Section 702 of the BBRA of 1999, provides for additional funds available for allotment only to the U.S. Territories and Commonwealths for fiscal years 2000 to 2007. Under this new provision, an additional $34.2 million is made available for allotment to the U.S. Territories and Commonwealths in fiscal years 2000 and 2001; $25.2 million in fiscal years 2002 through 2004; $32.4 million for fiscal years 2005 and 2006; and $40 million for fiscal year 2007. Therefore, the total amount available for allotment to the U.S. Territories and Commonwealths in FY 2000 is $44,887,500 (that is, $34,200,000 plus $10,687,500 (.25 percent of the FY 2000 appropriation of $4,275,000,000)).

Furthermore, under sections 4921 and 4922 of Public Law 105–33, the total amount available for allotment to the 50 States and the District of Columbia is reduced by an additional total of $60,000,000; $30,000,000 to Public Health Service for a special diabetes research program for children with Type I diabetes, and $30 million for special diabetes programs for Indians. The diabetes programs are funded from FYs 1998 through 2002 only.

Therefore, the total amount available nationally for allotment for the 50 States and the District of Columbia for FY 2000 was determined in accordance with the following formula:

$$_{AT}=S_{2104(a)}—T_{2104(c)}—D_{4921}—D_{4922}$$

$_{AT}$=Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$=Total appropriation for the fiscal year indicated in section 2104(a) of the Act. For FY 2000, this is $4,275,000,000.

$T_{2104(c)}$=Total amount available for allotment for the U.S. Territories and Commonwealths; determined under section 2104(c) of the Act as 0.25 percent of the total appropriation for the 50 States and the District of Columbia. For FY 2000, this is: .0025 x $4,275,000,000=$10,687,500

D_{4921}=Amount of grant for research regarding Type I Diabetes under section 4921 of the Balanced Budget Act of 1997. This is $30,000,000 for each of the fiscal years 1998 through 2002.

D_{4922}=Amount of grant for diabetes programs for Indians under section 4922 of the BBA. This is $30,000,000 for each of the fiscal years 1998 through 2002. Therefore, for FY 2000 the total amount available for allotment to the 50 States and the District of Columbia is $4,204,312,500. This was determined as follows:

$$_{AT}($4,204,312,500) = S_{2104(a)}($4,275,000,000)—T_{2104(c)}($10,687,500)—D_{4921}($30,000,000)—_{4922}($30,000,000)$$

For purposes of the following discussion, the term "State," as defined in section 2104(b)(1)(D)(ii) of the Act, "means one of the 50 States or the District of Columbia."

Public Law 106–113 amended title XXI such that, beginning with FY 2000, the determination of the Number of Children for a fiscal year is based on the three most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census before the beginning of the calendar year in which the fiscal year begins. Similarly, the determination of the State Cost Factor is based on the Annual Average Wages Per Employee in the health services industry, which is determined by the most recent three years of such wage data reported by the Bureau of Labor Statistics of the Department of Labor prior to the beginning of the calendar year in which the fiscal year begins.

Therefore, for FY 2000 and subsequent fiscal years, we will use the most recent official data from the Bureau of the Census and Bureau of Labor Statistics, respectively, available prior to January 1 of the calendar year in which the fiscal year begins. Specifically, in determining the FY 2000 allotments in this notice, we utilized the most recent data available from the Bureau of the Census and the Bureau of Labor Statistics prior to January 1, 1999, because FY 2000 begins on October 1, 1999 in calendar year 1999. This is a change from the first two years of the program, in which the Number of Children and the State Cost Factor were based on the most recent data available before the beginning of the fiscal year.

Number of Children

Section 701(a)(1) of the BBRA of 1999 accelerated the phase-in of the blend of the numbers of uninsured low-income children and low-income children

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specified in the statute, which are used in determining the Number of Children factor. Prior to this legislative change, the Number of Children for FYs 1998 through 2000 would have been based on the total number of low-income uninsured children in the State. As a result of the legislative change, the total number of uninsured low-income children in the State is only used for determining the Number of Children factor for FYs 1998 and 1999. Under the legislation, for FY 2000 the Number of Children is now calculated as the sum of 75 percent of the number of low-income, uninsured children in the State, and 25 percent of the number of low-income children in the State. For FY 2001 and succeeding years through FY 2007, the Number of Children is calculated as the sum of 50 percent of the number of low-income, uninsured children in the State, and 50 percent of the number of low-income children in the State.

The Number of Children factor for each State is developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in the annual CPS on these topics. As part of a continuing formal process between HCFA and the Bureau of the Census, each fiscal year HCFA obtains the Number of Children data officially from the Bureau of the Census.

Under section 2104(b)(2)(B) of the Act, as amended by section 701(a)(3) of the BBRA of 1999, in determining the FY 2000 final allotments, the Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the CPS officially available from the Bureau of the Census before the beginning of the 1999 calendar year. In particular, through December 31, 1998, the most recent official data available from the Bureau of the Census on the numbers of children were data from the three March CPSs conducted in March 1996, 1997, and 1998.

State Cost Factor

The State Cost Factor is based on annual average wages in the health services industry in the State. The State Cost Factor for a State is equal to the sum of: .15, and .85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. Under section 2104(b)(3)(B) of the Act, as amended by section 701(a)(4) of the BBRA of 1999, the State Cost Factor for each State for a fiscal year is calculated based on the average of the annual wages for employees in the health industry for each State as reported, determined, available as final, and provided to HCFA by the Bureau of Labor Statistics (BLS) in the Department of Labor for each of the most recent three years available before the beginning of the calendar year in which the fiscal year begins. For example, FY 2000 begins on October 1, 1999, that is, FY 2000 begins during calendar year 1999. Therefore, the State cost factor for FY 2000 would be based on the most recent three years of BLS data available as final before January 1, 1999 (the beginning of the calendar year in which FY 2000 begins), that is, it would be based on the BLS data available as final through December 31, 1998. In accordance with these requirements, we used the final State Cost Factor data available from BLS for 1994, 1995, and 1996 in calculating the FY 2000 final allotments.

The State Cost Factor is determined based on the calculation of the ratio of each State's average annual wages in the health industry to the National average annual wages in the health care industry. In order for the National average to appropriately reflect the State-specific suppressed data, HCFA calculated the National average wages directly from the State-specific data provided by BLS. This was necessary because, due to the Privacy Act, BLS is required to suppress certain State-specific data in providing HCFA with the State-specific average wages per health services industry employee. As part of a continuing formal process between HCFA and the BLS, each fiscal year HCFA obtains these wage data officially from the BLS.

Under section 2104(b)(4) of the Act, as amended by section 701(a)(2) of the BBRA of 1999, each State and the District of Columbia is allotted a "proportion" of the total amount available nationally for allotment to the States. The term "proportion" is defined in section 2104(b)(4)(D)(i) of the Act and refers to a State's share of the total amount available for allotment. In order for the entire total amount available to be allotted to the States, the sum of the proportions for all States must exactly equal one. Under the statutory definition, a State's proportion for a fiscal year is equal to the State's allotment for the fiscal year divided by the total amount available nationally for allotment. In general, a State's allotment for a fiscal year is calculated by multiplying the State's proportion for the fiscal year by the national total amount available for allotment for that fiscal year in accordance with the following formula:

$SA_i = P_i \times {}_{AT}$

SA_i = Allotment for a State or District of Columbia for a fiscal year.

P_i = Proportion for a State or District of Columbia for a fiscal year.

${}_{AT}$ = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year. For FY 2000, this is $4,204,312,500.

In accordance with the statutory formula for determining allotments, the State proportions are determined under two steps, which are described below in further detail.

Under the first step, each State's proportion is calculated by multiplying the State's Number of Children and the State Cost Factor to determine a "product" for each State. The products for all States are then summed. Finally, the product for a State is divided by the sum of the products for all States, thereby yielding the State's preadjusted proportion.

Application of Floors and Ceilings

Under the second step, which was added by section 701(a)(2) of the BBRA of 1999, the preadjusted proportions are subject to the application of proportion floors, ceilings and a reconciliation process, as appropriate. The amended SCHIP statute specifies three proportion floors, or minimum proportions, that apply in determining States' allotments. The first proportion floor is equal to $2,000,000 divided by the total of the amount available nationally for the fiscal year. For FY 2000, no State's preadjusted proportion is below this floor. The second proportion floor is equal to 90 percent of the allotment proportion for the State for the previous fiscal year; that is, a State's proportion for a fiscal year must not be lower than 10 percent below the previous fiscal year's proportion. The third proportion floor is equal to 70 percent of the allotment proportion for the State for FY 1999; that is, the proportion for a fiscal year must not be lower than 30 percent below the FY 1999 proportion.

Each State's allotment proportion for a fiscal year is limited by a maximum ceiling amount, equal to 145 percent of the State's proportion for FY 1999; that is, a State's proportion for a fiscal year must be no higher than 45 percent above the State's proportion for FY 1999. The floors and ceilings are intended to minimize the fluctuation of State allotments from year to year and over the life of the program. Note, the floors and ceilings on proportions are not applicable in determining the allotments of the U.S. Territories and Commonwealths; they receive a fixed percentage specified in the statute of the total allotment available to the U.S. Territories and Commonwealths.

As determined under the first step, which is applied prior to the application of any floors or ceilings, the sum of the proportions for all the States and the District of Columbia will be equal to exactly one. However, the application of the floors and ceilings under the second step may change the proportions for certain States; that is, some States' proportions may need to be raised to the floors, while other States' proportions may need to be lowered to the maximum ceiling. If this occurs, the sum of the proportions for all States and the District of Columbia may not exactly equal one. In that case, the statute requires that the proportions will need to be adjusted, under a method that is determined by whether the sum of the proportions is greater or less than one.

The sum of the proportions would be greater than one if the application of the floors and ceilings resulted in raising the proportions of some States (due to the floor) to a greater degree than the proportions of other States were lowered (due to the ceiling). If, after application of the floors and ceiling, the sum of the proportions is greater than one, the new statute requires the Secretary to determine a maximum percentage increase limit, which, when applied to the State proportions, would result in the sum of the proportions being exactly one.

If, after the application of the floors and ceiling, the sum of the proportions is less than one, the States' proportions must be increased in a "pro rata" manner so that the sum of the proportions again equals one. It is also possible, although unlikely, that the sum of the proportions (after the applications of the floors and ceilings) will be exactly one, and therefore, the proportions would require no further adjustment.

Determination of Preadjusted Proportions

Following is an explanation of how HCFA applied the two State-related factors specified in the statute to determine the States' preadjusted proportions for FY 2000. The term "preadjusted," as used here, refers to the States' proportions prior to the application of the floors and ceiling and adjustments, as specified in the BBRA of 1999. The determination of each State and the District of Columbia's preadjusted proportion for FY 2000 and subsequent fiscal years is in accordance with the following formula:

$PP_i = (C_i x SCF_i)/\Sigma(C_i x SCF_i)$

PP_i = Preadjusted proportion for a State or District of Columbia for a fiscal year.

C_i = *Number of children* in a State (Section 2104(b)(1)(A)(I)) for a fiscal year. This number is based on the number of low-income children for a State for a fiscal year and the number of low-income uninsured children for a State for a fiscal year coverage for the fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the three most recent March supplements to the Current Population Survey of the Bureau of the Census, and for FY 2000 and subsequent fiscal years, officially available before the beginning of the calendar year in which the fiscal year begins. (Section 2104(b)(2)(B) of the Act).

For fiscal year 2000, the number of children is equal to the sum of 75 percent of the number of low-income uninsured children in the State for the fiscal year and 25 percent of the number of low-income children in the State for the fiscal year. For fiscal years 2001 and thereafter, the number of children is equal to the sum of 50 percent of the number of low-income uninsured children in the State for the fiscal year and 50 percent of the number of low-income children in the State for the fiscal year. (Section 2104(b)(2)(A) of the Act).

SCF_i=*State cost factor for a State* (Section 2104(b)(1)(A)(ii)of the Act). For a fiscal year, this is equal to:

$.15+.85 \times (W_i/W_N)$

W_i=The annual average wages per employee for a State for such year (Section 2104(b)(3)(A)(ii)(I) of the Act).

W_N = The annual average wages per employee for the 50 States and the District of Columbia (Section 2104(b)(3)(A)(ii)(II) of the Act).

The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health services industry (SIC 80), as reported by the Bureau of Labor Statistics of the Department of Labor for each of the most recent three years, and for FY 2000 and subsequent fiscal years, finally available before the beginning of the calendar year in which the fiscal year begins. (Section 2104(b)(3)(B) of the Act).

$\Sigma(C_i x SCF_i)$ =The sum of the products of (C_i x SCF_i) for each State (Section 2104(b)(1)(B) of the Act).

The resulting proportions would then be subject to the application of the floors and ceilings specified in Public Law 106–113 and reconciled, as necessary, to eliminate any deficit or surplus of the allotments because the sum of the proportions was either greater than or less than one.

Section 2104(e) of the Act requires that the amount of a State's allotment for a fiscal year be available to the State for a total of three years, the fiscal year for which the State child health plan is approved and two years following. Section 2104(f) of the Act requires the Secretary to establish a process for redistribution of the amounts of States' allotments that are not expended during the three-year period to States that have fully expended their allotments.

III. Table of State Children's Health Insurance Program Final Allotments for FY 2000

Key to Table

Column/Description

Column A = Name of State, Commonwealth, or Territory.

Column B = Number of Children. The Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income uninsured children, and is based on the three most recent March supplements to the Current population survey of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The FY 2000 allotments were based on the 1996, 1997, and 1998 March supplements to the Current Population Survey. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be not covered by health insurance. The Number of Children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in their annual March Current Population Surveys on these topics.

For FY 2000, the Number of Children is equal to the sum of 75 percent of the number of low-income uninsured children in the State and 25 percent of the number of low-income children in the State. For FY 2001 and succeeding years, the Number of Children is equal to the sum of 50 percent of the number

of low-income uninsured children in the State and 50 percent of the number of low-income children in the State.

Column C=State Cost Factor. The State Cost Factor for a State is equal to the sum of: .15, and .85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State Cost Factor for each State was calculated based on such final wage data for each State as reported, determined, and provided to HCFA by the BLS in the Department of Labor for each of the most recent three years before the beginning of the calendar year in which the fiscal year begins. The FY 2000 allotments were based on final BLS wage data for 1994, 1995, and 1996.

Column D=Product. The Product for each State was calculated by multiplying the Number of Children in Column B by the State Cost Factor in Column C. The sum of the Products for all 50 States and the District of Columbia is below the Products for each State in Column D. The Product for each State and the sum of the Products for all States provides the basis for allotment to States and the District of Columbia.

Column E=Proportion of Total. This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The Percent Share of Total is calculated as the ratio of the Product for each State in Column D to the sum of the products for all 50 States and the District of Columbia below the Products for each State in Column D.

Column F=Adjusted Proportion of Total. This is the calculated percentage share for each State of the total allotment available after the application of the floors and ceilings and after any further reconciliation needed to ensure that the sum of the State proportions is equal to one. The three floors specified in the amended statute are: (1) A floor of $2,000,000 divided by the total of the amount available; (2) an annual floor of 90 percent of (or 10 percent below) the preceding fiscal year's allotment proportion; and (3) a cumulative floor of 70 percent of (or 30 percent below) the FY 1999 allotment proportion. There is also a cumulative ceiling of 145 percent of (or 45 percent above) the FY 1999 allotment proportion.

Column G=Allotment. This is the State Children's Health Insurance Program allotment for each State, Commonwealth, or Territory for the fiscal year. For each of the 50 States and the District of Columbia, this is determined as the Adjusted Proportion of Total in Column F for the State multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year.

For each of the U.S. Territory and Commonwealth, the allotment is determined as the Proportion of Total in Column E multiplied by the total amount available for allotment to the U.S. Territories and Commonwealths. For the U.S. Territories and Commonwealths, the Proportion of Total in Column E is specified in section 2104(c) of the Act. The total amount is then allotted to the U.S. Territories and Commonwealths according to the percentages specified in section 2104 of the Act. There is no adjustment made to the allotments of the U.S. Territories and Commonwealths as they are not subject to the application of the floors and ceiling. As a result, Column F in the table, the Adjusted Proportion of Total, is empty for the U.S. Territories and Commonwealths.

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STATE CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FEDERAL FISCAL YEAR: 2000

A	B	C	D	E	F	G
STATE	NUMBER OF CHILDREN (000)	STATE COST FACTOR	PRODUCT	PROPORTION OF TOTAL (3)	ADJUSTED PROPORTION OF TOTAL (3)	ALLOTMENT (1)
ALABAMA	235	0.9680	225.61	1.67%	1.83%	$77,812,259
ALASKA	30	1.0580	31.24	0.23%	0.18%	$7,734,825
ARIZONA	398	1.0521	418.73	3.10%	3.10%	$131,213,977
ARKANSAS	207	0.8891	184.28	1.36%	1.28%	$53,754,380
CALIFORNIA	2,064	1.1227	2,317.16	17.14%	18.21%	$765,547,705
COLORADO	152	0.9947	151.19	1.12%	1.12%	$46,990,416
CONNECTICUT	116	1.1170	129.85	0.96%	0.95%	$39,225,273
DELAWARE	33	1.0455	35.43	0.26%	0.21%	$9,036,288
DISTRICT OF COLUMBIA	26	1.3185	34.61	0.26%	0.26%	$10,817,974
FLORIDA	738	1.0331	762.86	5.64%	5.76%	$242,844,718
GEORGIA	431	0.9883	425.78	3.15%	3.15%	$132,381,325
HAWAII	43	1.1724	50.71	0.38%	0.24%	$10,036,935
IDAHO	71	0.8815	62.15	0.46%	0.42%	$17,817,572
ILLINOIS	496	0.9924	491.75	3.64%	3.27%	$137,481,231
INDIANA	214	0.9191	196.22	1.45%	1.50%	$63,161,488
IOWA	124	0.8581	106.13	0.77%	0.77%	$32,382,884
KANSAS	112	0.8686	97.58	0.72%	0.72%	$30,328,974
KENTUCKY	200	0.9197	187.39	1.39%	1.33%	$56,025,995
LOUISIANA	361	0.8945	288.25	1.96%	2.17%	$91,136,730
MAINE	50	0.8945	44.95	0.33%	0.33%	$13,978,085
MARYLAND	174	1.0495	182.88	1.35%	1.35%	$56,869,698
MASSACHUSETTS	180	1.0527	196.18	1.47%	1.14%	$48,083,710
MICHIGAN	351	1.0059	353.31	2.61%	2.44%	$102,762,859
MINNESOTA	155	0.9771	151.45	1.12%	0.76%	$31,861,258
MISSISSIPPI	213	0.8772	186.83	1.38%	1.38%	$58,036,228
MISSOURI	219	0.9155	200.26	1.48%	1.38%	$57,979,884
MONTANA	58	0.8357	48.26	0.36%	0.31%	$13,173,122
NEBRASKA	63	0.8495	53.39	0.39%	0.39%	$16,576,269
NEVADA	83	1.1899	98.76	0.73%	0.73%	$30,526,393
NEW HAMPSHIRE	33	0.9788	32.55	0.24%	0.24%	$10,243,860
NEW JERSEY	277	1.1244	311.47	2.30%	2.30%	$96,858,660
NEW MEXICO	177	0.9225	162.83	1.20%	1.34%	$56,497,772
NEW YORK	923	1.0084	1,005.38	7.44%	6.82%	$228,241,535
NORTH CAROLINA	340	0.9877	335.34	2.48%	2.12%	$89,211,202
NORTH DAKOTA	28	0.8547	23.76	0.18%	0.13%	$5,455,383
OHIO	445	0.9620	427.81	3.16%	3.09%	$129,857,897
OKLAHOMA	219	0.8553	187.53	1.39%	1.83%	$76,764,095
OREGON	148	1.0027	148.41	1.10%	1.84%	$43,895,837
PENNSYLVANIA	416	0.9962	414.89	3.07%	3.07%	$128,956,235
RHODE ISLAND	31	0.9684	29.78	0.22%	0.23%	$9,578,548
SOUTH CAROLINA	231	0.9955	229.72	1.70%	1.70%	$71,314,837
SOUTH DAKOTA	30	0.8668	25.57	0.19%	0.19%	$7,951,348
TENNESSEE	318	0.9888	314.43	2.33%	1.77%	$74,226,911
TEXAS	1,509	0.9263	1,397.77	10.34%	11.96%	$502,312,459
UTAH	186	0.8997	95.59	0.71%	0.65%	$27,199,486
VERMONT	19	0.8625	16.68	0.12%	0.09%	$3,984,897
VIRGINIA	240	0.9879	236.81	1.75%	1.75%	$73,588,345
WASHINGTON	211	0.9419	198.51	1.47%	1.29%	$52,355,478
WEST VIRGINIA	69	0.8922	61.54	0.45%	0.50%	$21,145,738
WISCONSIN	169	0.9338	149.17	1.10%	1.88%	$45,991,853
WYOMING	26	0.8743	22.73	0.17%	0.17%	$7,086,749
TOTAL STATES ONLY			13,519.43	100.00%	100.00%	$4,204,312,500
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES (2)						
PUERTO RICO				91.89%		$41,116,950
GUAM				3.50%		$1,571,803
VIRGIN ISLANDS				2.69%		$1,167,875
AMERICAN SAMOA				1.28%		$538,630
N. MARIANA ISLANDS				1.10%		$493,763
TOTAL COMMONWEALTHS AND TERRITORIES ONLY				100.00%		$45,887,500
TOTAL STATES AND COMMONWEALTHS AND TERRITORIES						$4,249,200,000

FOOTNOTES

(1) Total amount available for allotment to the 50 States and the District of Columbia is $4,204,312,500; determined as the fiscal year appropriation ($4,275,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories under section 2104(c) of the Act ($10,687,500) and amounts for Special Diabetes Grants ($60,000,000) under sections 4921 and 4922 of BBA

(2) Total amount available for allotment to the Commonwealths and Territories is $10,687,500 (determined as .25 percent of $4,275,000,000, the fiscal year appropriation) plus $34,200,000 as specified in section 2104(c)(4)(B) of the Act

(3) Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Social Security Act

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IV. Impact Statement

HCFA has examined the impact of this notice as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rules are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety,

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other advantages, distributive impacts, and equity). We believe that this notice is consistent with the regulatory philosophy and principles identified in the Executive Order. The formula for the allotments is specified in the statute. Since the formula is specified in the statute, we have no discretion in determining the allotments.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before publishing any notice that may result in an expenditure in any year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted each year for inflation). Because participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the federal government are made voluntarily. This notice will not create unfunded mandate on States, tribal or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of these regulations.

Under Executive Order 12612, Federalism, we have reviewed this notice and determined that it does not significantly affect States' rights, roles, and responsibilities. Low-income children will benefit from payments under this program through increased opportunities for health insurance coverage.

We believe this notice will have an overall positive impact by informing States, the District of Columbia, and U.S. Territories and Commonwealths of the extent to which they are permitted to expend funds under their child health plans using their FY 2000 allotments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: February 7, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing, Administration.

Dated: March 20, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–12881 Filed 5–23–00; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Wednesday,
May 24, 2000

Part III

Federal Trade Commission

16 CFR Part 313
Privacy of Consumer Financial Information; Final Rule

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FEDERAL TRADE COMMISSION

16 CFR Part 313

Privacy of Consumer Financial Information

AGENCY: Federal Trade Commission.

ACTION: Final Rule.

SUMMARY: The Federal Trade Commission ("Commission" or "FTC") is publishing a final privacy rule, as required by section 504(a) of the Gramm-Leach-Bliley Act, Pub. L. 106-102 (the "G-L-B Act" or "Act"), with respect to financial institutions and other persons under the Commission's jurisdiction, as set forth in section 505(a)(7) of the Act. Section 504 of the Act requires the Commission and other federal regulatory agencies to issue regulations as may be necessary to implement notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. Pursuant to section 503 of the G-L-B Act, a financial institution must provide its customers with a notice of its privacy policies and practices. Section 502 prohibits a financial institution from disclosing nonpublic personal information about a consumer to nonaffiliated third parties unless the institution satisfies various disclosure and opt-out requirements and the consumer has not elected to opt out of the disclosure. This final rule implements the requirements outlined above.

EFFECTIVE DATE: This rule is effective November 13, 2000. Full compliance is required by July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Kellie A. Cosgrove or Clarke Brinckerhoff, Attorneys, Division of Financial Practices, Federal Trade Commission, Washington, DC 20580, 202–326–3224.

SUPPLEMENTARY INFORMATION:

Section A. Background

On November 12, 1999, President Clinton signed the G-L-B Act (Public Law 106–102) into law. Subtitle A of Title V of the Act, captioned Disclosure of Nonpublic Personal Information, limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties. The Commission notes that there are other laws that may impose limitations on disclosures of nonpublic personal information in addition to those imposed by the G-L-B Act and this rule. For instance, the Fair Credit Reporting Act imposes conditions on the sharing of application information and credit report information between affiliates and nonaffiliated third parties.[1] Title V also requires the Commission, along with the Federal banking agencies[2] and other Federal regulatory authorities,[3] after consulting with representatives of State insurance authorities designated by the National Association of Insurance Commissioners (NAIC), to prescribe such regulations as may be necessary to carry out the purposes of the provisions in Title V, Subtitle A, that govern disclosure of nonpublic personal information. The Federal agencies are sometimes referred to collectively in this document as the "Agencies" (or "other Agencies" when excluding the Commission).

The Agencies are all issuing final rules to implement Subtitle A that are consistent and comparable to the extent possible, as is required by the statute.

Section B. Overview of Comments Received

On March 1, 2000, the Commission published a notice of proposed rulemaking (the proposal or proposed rule) in the **Federal Register** (65 FR 11174). The other Agencies published their proposed rules on different dates.[4] The Commission received a total of 640 comments, and the other Agencies collectively received a total of 8,337 comments in response to the various proposed rules. Many commenters sent the same letter to multiple Agencies. Many of the comments were from individuals, virtually all of whom encouraged the Agencies to provide greater protection of individuals' financial privacy. Many individuals noted their concerns generally about the loss of privacy and the receipt of unwanted solicitations by marketers. A large number of individuals also requested the Agencies to support legislation that the commenters believe would provide additional protections.

The Agencies also received several letters from members of Congress. In two letters signed by several members of the House of Representatives, the Agencies were encouraged to exercise their rulemaking authority to provide greater protections than provided in the Act. Other Representatives requested, in separate letters, that some other Agencies (a) create a limited exception to the prohibition against the sharing of account numbers for marketing purposes and (b) ensure that social security numbers are considered "nonpublic personal information."

The NAIC submitted a comment on behalf of the State insurance authorities that generally supported the Agencies' proposed rule. The NAIC also proposed various measures to provide greater protections for consumers, such as specifying more convenient means to exercise the right to opt out of the disclosure of information. The NAIC further advised the Agencies to clarify the boundary of Federal and State jurisdiction over privacy regulations and ensure that the financial privacy rules under the Act are compatible with the privacy rules relating to medical information that are to be issued by the Secretary of the Department of Health and Human Services (HHS) under the Health Insurance Portability and Accountability Act (HIPPA) of 1996.[5]

Other comments were received from consumer groups and others advocating that the Agencies extend privacy protections in a number of ways, such as by requiring (a) financial institutions to provide consumers with access to their information maintained by the institutions and the opportunity to correct errors, (b) more detailed disclosures of the information collected and disclosed, and (c) disclosures of a financial institution's privacy policies and practices earlier in the process of establishing a customer relationship. A letter signed by 33 State Attorneys General urged some other Agencies to add certain consumer protections to the disclosure requirements and to the

[1] The Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq*, provides no limitation on communication by an entity solely of its own "transactions or experiences" with the consumer (*e.g.*, the individual's account history). However, it limits the reporting of information obtained from other sources, such as consumer application information or credit report information. An institution may normally share such data with its affiliates only if it has complied with the notice and opt-out procedures set forth in FCRA § 603(d)(2)(A)(iii), which are very similar to those set forth in Section 502(b)(1) of the Act. Sharing such data with nonaffiliates may be effectively prohibited by the FCRA, because the institution likely would become a consumer reporting agency subject to its restrictions on reporting of information to third parties.

[2] Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and Secretary of the Treasury.

[3] National Credit Union Administration (NCUA) and Securities and Exchange Commission (SEC).

[4] Those proposed rules, which were consistent and comparable with the proposals published by the Commission, appeared in the **Federal Register** at 65 FR 8770 (Feb. 22, 2000) (OCC, FRB, FDIC, and OTS jointly), 65 FR 10988 (Mar. 1, 2000) (NCUA), and 65 FR 12354 (Mar. 8, 2000) (SEC).

[5] These proposed regulations were published for comment at 64 FR 59918 (Nov. 3, 1999).

provision permitting financial institutions to enter into joint marketing agreements.

Most of the remaining comments were from businesses concerned about the Act, and their representatives. This included not only creditors of various types, but also representatives of the health care industry, retail merchants, insurance companies, securities firms, private investigators, debt collection agencies, consumer reporting agencies, institutions of higher education, tax professionals, and others. These commenters offered a large number of suggested changes, with the most commonly advanced suggestions including: an extension of the effective date of the rule; an amendment to the definition of "nonpublic personal information" to focus more narrowly on "financial" information; a streamlining of information required in the initial and annual disclosures; a clarification of how one or more of the statutory exceptions operate; an exclusion from, or clarification of, the definitions of "consumer" and "customer" in various contexts; and the addition of flexibility to provide initial notices at some point other than "prior to" the time a customer relationship is established.

The Commission has made some modifications to its proposed rule in light of the comments received. These comments, and the Commission's responses thereto, are discussed in the following section-by-section analysis. Following the section-by-section analysis, the Commission has provided guidance for certain institutions in order to provide additional direction on how these institutions may comply with the rule and avoid unnecessary burden.

Section C. Section-by-Section Analysis

As an initial matter, the Commission notes that the final rule, unlike the proposal, presents the various sections in subparts that consist of related sections. This change was made to group related concepts together and thereby make the rule easier to follow. A derivation table is included following this preamble to assist readers in locating provisions as set out in the Commission proposal. The Commission has also added an Appendix to the final rule, setting out example disclosure clauses for financial institutions to consider.

Section 313.1 Purpose and Scope

Purpose. Paragraph (a) of this section states that the rule is intended to require a financial institution to provide notice to customers about its privacy policies and practices; to describe the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and to provide a method for consumers to prevent a financial institution from disclosing that information to certain nonaffiliated third parties by "opting out" of that disclosure, subject to various exceptions as stated in the rule. No significant comments addressed this provision, and the Commission made no substantive change to this section.

Scope. Paragraph (b) sets out the scope of the rule, and tracks the enforcement role assigned to the Commission by section 505(a)(7) of the G-L-B Act. It states that the rule applies only to information about individuals who obtain a financial product or service from a financial institution to be used for personal, family, or household purposes. The principal type of entity subject to the rule is a "financial institution," a term section 509(3) of the G-L-B Act defines very broadly to mean "any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956" (12 U.S.C. 1843(k)). Those "financial activities" include not only a number of traditional financial activities specified in section 4(k) itself,[6] but also those activities that the Federal Reserve Board has found to be either closely related to banking,[7] or usual in connection with the transaction of banking or other financial operations abroad,[8] by regulation (or order or interpretation) "in effect on the date of the enactment of the Gramm-Leach-Bliley Act."[9] Section 313.1(b) also lists some examples of "financial institutions" subject to Commission jurisdiction under the Act. Finally, this part notes that the Commission is also authorized to enforce the Act against "other persons" who are not financial institutions, but receive protected information from a financial institution and are subject to section 502(c) of the G-L-B Act ("Limits on Reuse of Information"), which imposes restrictions on recipients of such information as set forth in 16 CFR 313.11, *infra*.

Many industry commenters suggested revising the "financial institution" definition set forth in § 313.3(k) to narrow the scope to only those businesses that engage in traditional financial activities, arguing that Congress did not intend to cover businesses that conducted no such activities. On the other side, consumer commenters vigorously defended the broad scope, contending that the need to protect personal financial data extends beyond traditional financial institutions and that Congress intended to regulate a wide range of businesses that provide "financial" services to consumers when it enacted this statute. The G-L-B Act clearly covers more than parties in the credit, insurance, or securities industries; rather, an entity is a "financial institution" if it engages in any activity that the Board has determined to be a "financial activity."

[6] Section 4(k)(4)(A–E) states "the following activities shall be considered to be financial in nature: (A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities. (B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State. (C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940). (D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly. (E) Underwriting, dealing in, or making a market in securities."

[7] Section 4(k)(4)(F). The Board's list of such activities is found in 12 CFR 225.28 and 12 CFR 225.86(a). The latter subsection was added as an interim rule published by the Board in the **Federal Register** upon enactment of the G-L-B Act (65 FR 14433; Mar. 14, 2000), subject to revision after a public comment period ending on May 12, 2000. The activities listed in 12 CFR 225.28 include in certain circumstances: brokering or servicing loans; leasing real or personal property (or acting as agent, broker, or advisor in such leasing) without operating, maintaining or repairing the property; appraising real or personal property; check guaranty, collection agency, credit bureau, and real estate settlement services; providing financial or investment advisory activities including tax planning, tax preparation, and instruction on individual financial management; management consulting and counseling activities (including providing financial career counseling); courier services for banking instruments; printing and selling checks and related documents; community development or advisory activities; selling money orders, savings bonds, or traveler's checks; and providing financial data processing and transmission services, facilities (including hardware, software, documentation, or operating personnel), data bases, advice, or access to these by technological means.

[8] Section 4(k)(4)(G). The scope of the Act is not limited to activities abroad, because the text of Section 4(k)(4)(G) is "Engaging, *in the United States*, in any Section 4(k)(4)(G) activity that (i) a bank holding company may engage in outside of the United States; and (ii) the Board has determined to be usual in connection with the transaction of banking and financial operations abroad." (Emphasis added.) The Board has provided a list of such activities in 12 CFR 211.5(d) and 12 CFR 225.86(b). The latter subsection was added as an interim rule published by the Board in the **Federal Register** upon enactment of the G-L-B Act (65 FR 14433; Mar. 14, 2000), subject to revision following a public comment period ending on May 12, 2000. The activities listed in 12 CFR 211.5(d) include leasing real or personal property (or acting as agent, broker, or advisor in such leasing) where the lease is functionally equivalent to an extension of credit; acting as fiduciary; providing investment, financial, or economic advisory services; and operating a travel agency in connection with financial services.

[9] Section 4(k)(4)(G) uses "*day before the* date of" rather than "date of" in the quoted phrase.

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After a careful review of the comments received, the Commission finds no sound rationale for fundamentally revising the scope of the rule. Therefore, the Commission continues to interpret the act as written and has made no broad change to 16 CFR 313.1(b) in that regard.[10] However, as the Commission noted when it proposed this rule and repeats hereafter, some businesses that are technically "financial institutions" will have no disclosure obligations under the Act.[11] Furthermore, as is evident from the discussion of the term "customer relationship" that is defined in 16 CFR 313.3(i), many others will have only limited duties because they will not establish such relationships or they will be of very short duration.

Several commenters requested that the Commission clarify how its rule applies to insurance companies. The Commission notes that section 505 of G-L-B Act, which sets out the enforcement authority of the Agencies, explicitly commits the enforcement jurisdiction over "persons engaged in providing insurance" to state insurance authorities, thus excluding them from the Commission's authority (and, by operation of section 504(a)(1) of the G-L-B Act, from the Commission's rulemaking authority).

Several other commenters asked that the final rule state that certain transactions that are exempt from the coverage of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) and Regulation Z (Reg. Z, 12 CFR part 226) also be treated as beyond the scope of the privacy rule. TILA and Reg. Z, which impose disclosure requirements on credit extended to consumers under certain circumstances, exempt several transactions, including those involving business, commercial, or agricultural credit. 15 U.S.C. 1603(1); 12 CFR 226.3(a). The Commission agrees that transactions that fit within the business, commercial, and agricultural exemptions from TILA and Reg. Z for these types of credit also would fall outside the scope of the privacy rule, and has amended § 313.1(b) accordingly.[12]

Several comments suggested that the rule should not apply to entities that must comply with regulations issued by the HHS that implement the HIPAA. Given the broad definition of "financial institution" under the G-L-B Act, certain entities are subject to these privacy rules as well as rules promulgated under HIPAA regarding appropriate handling of protected health information. Accordingly, financial institutions may be covered both by this privacy rule and by the regulations promulgated by HHS under the authority of sections 262 and 264 of HIPAA once those regulations are finalized. Based on the proposed HIPAA rules, it appears likely that there will be areas of overlap between HIPAA and financial privacy rules. For instance, under the proposed HIPAA regulations, consumers must provide affirmative authorization before a covered institution may disclose medical information in certain instances, whereas under the financial privacy rules, institutions need only provide consumers with the opportunity to opt out of disclosures. In this case, the Agencies anticipate that compliance with the affirmative authorization requirement, consistent with the procedures required under HIPAA, would satisfy the opt out requirement under the financial privacy rules. After HHS publishes its final rules, the Commission and other Agencies will consult with HHS to avoid the imposition of duplicative or inconsistent requirements.

The Commission also received several comments from colleges and universities and their representatives requesting that institutions of higher education be excluded from the definition of financial institution. The Commission disagrees with those commenters who suggested that colleges and universities are not financial institutions. Many, if not all, such institutions appear to be significantly engaged in lending funds to consumers. However, such entities are subject to the stringent privacy provisions in the Federal Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, which govern the privacy of educational records, including student financial aid records. The Commission has noted in its final rule, therefore, that institutions of higher education that are complying with FERPA to protect the privacy of their student financial aid records will be deemed to be in compliance with the Commission's rule.

Section 313.2 Rule of Construction

Proposed § 313.2 of the rule sets out a rule of construction intended to clarify the effect of the examples used in the rule. As noted in the proposal, these examples are not intended to be exhaustive; rather, they are intended to provide guidance about how the rule would apply in specific situations.

Commenters generally agreed that examples are helpful in clarifying how the rule will work in specific circumstances and suggested that the Commission should include more examples. Many commenters requested that the Commission provide examples of model disclosures. Commenters also generally agreed that it is useful to state that the list of examples is not intended to be exhaustive, and that compliance with one of the examples would be deemed compliance with the regulation. A few commenters suggested that the regulation state that a financial institution is not obligated to comply with an example but has the latitude to comply with the general rule in other ways. Others stated that the examples ought to be identical in each privacy regulation adopted by the Agencies. The Commission also received comments suggesting that the Commission defer to the expertise of other agencies when considering application of its rule to entities such as credit unions or investment advisors under its jurisdiction.

The Commission believes that more examples would be helpful and has included additional examples in appropriate places throughout the rule. The Commission has also provided sample clauses in Appendix A to the rule to aid financial institutions in their drafting of privacy notices. The sample clauses are provided to illustrate the level of detail the Commission believes is appropriate. The Commission cautions financial institutions against relying on the sample clauses without determining the relevance or appropriateness of the disclosure for their operations. The Commission has used statutory terms, such as "nonpublic personal information" and "nonaffiliated third parties," in the sample clauses to convey generally the subject of the clauses. However, a financial institution that uses these terms must provide sufficient information to enable consumers to understand what these terms mean in the context of the institution's notices. Moreover, the Commission notes that, in providing the sample disclosures, the Commission is addressing solely the level of detail required and is not attempting to provide guidance on issues such as type size, margin width, "clear and conspicuous" generally, and so on.

The rule does not contain a statement regarding a financial institution's ability to comply with the rule in ways other than as suggested in the examples, but does provide that the examples are not exclusive. The rule also states that compliance with the examples will constitute compliance with the rule. The Commission believes that, when read together, these provisions give financial institutions sufficient flexibility to comply with the regulation but also sufficient guidance about the use of examples.

The Commission understands that the NCUA and SEC have issued, or will issue, final rules with examples that are tailored to entities under their jurisdiction. Therefore, the Commission has stated in § 313.2 that compliance by non-federally insured credit unions with credit union examples in the NCUA rule will constitute compliance with the Commission's rule. Similarly, compliance by interstate securities broker-dealers and investment advisers that are not registered with the SEC with applicable examples in the SEC rule will constitute compliance with the Commission's rule.

Section 313.3 Definitions

a. *Affiliate.* The proposal adopted the definition of "affiliate" that is used in section 509(6) of the G-L-B Act. An affiliation exists when one company "controls" (which is defined in § 313.3(g), below), is controlled by, or is under common control with another company. The definition includes both financial institutions and entities that are not financial institutions.

The Commission received comparatively few comments in response to this definition. A few commenters requested that the final rule state that a credit union service organization will be deemed to be an affiliate of every credit union that has an interest in it. The Commission has declined to adopt this suggestion. If the relationship between a credit union and a credit union service organization satisfies the test for affiliation set out in the statute and regulation, then an affiliation exists.

In light of the comparatively few comments received and the nature of those comments, the Commission adopts the definition of "affiliate" as proposed.

b. *Clear and conspicuous.* Under the proposed rule, various notices must be "clear and conspicuous." The proposed rule defines this term to mean that the notice must be reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice. The proposal did not mandate the use of any particular technique for making the notices clear and conspicuous, but provided examples of how a notice may be made clear and conspicuous. As noted in the preamble to the proposed rule, each financial institution retains the flexibility to decide for itself how best to comply with this requirement.

The Commission received a large number of comments on this proposed definition. Some commenters favored adopting the definition as proposed, with some of these advocating that the final rule add a requirement that disclosures must be on a separate piece of paper in order to ensure that they will be conspicuous. Others stated that the definition was unnecessary, given the experience financial institutions have in complying with requirements that disclosures mandated by other laws be clear and conspicuous. Several commenters made the related point that the rule proposed is inconsistent with requirements in other consumer protection regulations such as Reg. Z and the Truth in Savings regulation (Regulation DD, 12 CFR part 230), which require only that a disclosure be reasonably understandable. Many of these commenters expressed concern that the examples would invite litigation because of ambiguities inherent in terms used in the examples in the proposed rule such as "ample line spacing," "wide margins," and "explanations * * * subject to different interpretations." A few commenters questioned how the requirement would work in a document that contains several disclosures that each must be clearly and conspicuously disclosed, while others raised questions about how a disclosure may be clear and conspicuous on a web site. These comments are addressed below.

New standard for "clear and conspicuous" The Commission recognizes that the proposed definition articulates the concept of "clear and conspicuous" in ways perhaps not familiar to some commenters. However, the Commission included the phrase "designed to call attention to the nature and significance of the information contained" to provide added meaning to the term "conspicuous." The Commission believes that this standard, when coupled with the existing standard requiring that a disclosure be readily understandable, likely will result in notices to consumers that communicate effectively the information needed by consumers to make an informed choice about the privacy of their information, including whether to transact business with a financial institution.

The standard for clear and conspicuous adopted by the Commission in this rulemaking applies solely to disclosures required under the privacy rules. Disclosures governed by other rules requiring clear and conspicuous disclosures (such as Reg. Z) are beyond the scope of this rulemaking.

Examples of "clear and conspicuous" The Commission recognizes that many of the examples require judgment in their application. The Commission believes, however, that more prescriptive examples, while perhaps easier to conform to, likely would result in requirements that would be inappropriate in a given circumstance. To avoid this result, the examples provide generally applicable guidance about ways in which a financial institution may make a disclosure clear and conspicuous. The Commission notes that the examples of how to make a disclosure clear and conspicuous are not mandatory. A financial institution must decide for itself how best to comply with the general rule and may use techniques not listed in the examples. To address these concerns, the Commission has incorporated several of the commenters' suggestions for ways to make the guidance more helpful.

Combination of several "clear and conspicuous" notices. A document may combine several disclosures that each must be clear and conspicuous. The final rule provides an example, in § 313.3(b)(2)(ii)(E), of how a financial institution may make disclosures conspicuous, including disclosures on a combined notice. In order to avoid the potential conflicts envisioned by several commenters between two different requirements, the final rule does not mandate precise specifications for how various disclosures must be presented.

Because the Commission believes that privacy disclosures may be clear and conspicuous when contained in a document containing other disclosures, the rule does not mandate that disclosures be provided on a separate piece of paper. Such a requirement is not necessary and would significantly increase the burden on financial institutions. Moreover, it would not necessarily provide the most effective notice in all circumstances.

Disclosures on web pages. Several commenters requested guidance on how they may clearly and conspicuously

[10] However, as discussed in the definition of "financial institution" in § 313.3(k), the Commission has retained its interpretation that an institution is covered only if it is "significantly engaged" in such activities.

[11] "Many entities that come within the broad definition of financial institution will likely not be subject to the disclosure requirements of the rule because not all financial institutions have 'consumers' or establish 'customer relationships.'" 65 Fed. Reg. 11174, 11177 (Mar. 1, 2000).

[12] Thus, creditors may look at how this exemption is applied under Reg. Z for guidance on the scope of covered transactions under the privacy rule. It should be noted, however, that TILA exempts several other types of transactions that would be covered under the privacy rule if they are for the purpose of an individual obtaining a financial product or service as that term is defined in the privacy regulation. *See* 15 U.S.C. 1603 (2) and (3).

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disclose privacy-related information on their Internet sites. The Commission recognizes that disclosures over the Internet present some issues that will not arise in paper-based disclosures. There may be web pages within a financial institution's website that consumers may view in a different order each time they access the site, aided by hypertext links. Depending on the customer hardware and software used to access the Internet, some web pages may require consumers to scroll down to view the entire page. To address these issues, the Commission has included a statement in the example in § 313.3(b)(2)(iii) concerning Internet disclosures informing financial institutions that they may comply with the rule if they use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice. In addition, a financial institution is to place either a notice or a conspicuous link on a page frequently accessed by consumers, such as a page on which transactions are conducted.

Given current technology, there are a range of approaches a financial institution could take to comply with the rule. For example, a financial institution could use a dialog box that pops up to provide the disclosure before a consumer provides information to the institution. Another approach would be a simple, clearly labeled graphic located near the top of the page or in close proximity to the financial institution's logo, directing the customer, through a hypertext link or hotlink, to the privacy disclosures on a separate web page.

For the reasons advanced above, the Commission has adopted the definition of "clear and conspicuous," with the changes previously described and with certain other changes intended to make the definition easier to apply.

c. *Collect.* The statute requires a financial institution to include in its initial and annual notices a disclosure of the categories of nonpublic personal information that the institution collects. The proposal defined "collect" to mean obtaining any information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information. This definition was included to provide guidance about the information that a financial institution must include in its notices and to clarify that the obligations arise regardless of whether the financial institution obtains the information from a consumer or from some other source.

Commenters suggested that the final rule treat information that is not organized and retrievable in an automated fashion as not "collected." This approach would exclude separate documents not included in a file. The Commission disagrees that information should not be deemed to be collected simply because it is not retrievable in an automated fashion. The Commission believes that the method of retrieval is irrelevant to whether information should be protected under the rule. The Commission agrees, however, that the scope of the regulation should be refined, and has changed the definition of "collect" by using language taken from the Privacy Act of 1974 (5 U.S.C. 552a).

Other commenters requested that the rule clarify that information that is received by a financial institution but then immediately passed along without otherwise disclosing, using, or maintaining a copy of the information is not "collected" as this term is used in the final rule. The Commission believes that merely receiving information without maintaining it would not be "collecting" the information. The final rule reflects this by stating that the information must be organized or retrievable by the financial institution. Otherwise, the definition of "collect" is adopted as proposed.

d. *Company.* The proposal defined "company," which is used in the definition of "affiliate," as any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

The Commission received no substantive comments on this proposed definition.[13] Accordingly, the Commission adopts the definition of "company" as proposed.

e. *Consumer.* The G-L-B Act distinguishes "consumers" from "customers" for purposes of the notice requirements imposed by the Act. A financial institution is required to give a "consumer" the notices required under Title V only if the institution intends to disclose nonpublic personal information about the consumer to a nonaffiliated third party for purposes other than as permitted by section 502(e) of the statute (as implemented by §§ 313.14 and 313.15). By contrast, a financial institution must give all "customers" a notice of the institution's privacy policy at the time of establishing a customer relationship and annually thereafter during the continuation of the customer relationship.

The proposed rule defined "consumer" to mean an individual (and his or her legal representative) who obtains, from a financial institution, financial products or services that are to be used primarily for personal, family, or household purposes. Because "financial product or service" is defined to include the evaluation by a financial institution of an application to obtain a financial product or service (*see* further discussion of this point, below), a person becomes a consumer even if the application is denied or withdrawn. An individual also would be deemed to be a consumer (as well as a customer) of a financial institution that purchases the individual's account from some other institution.

The Commission received a large number of comments on this proposed definition, raising questions about how the definition would apply in a variety of situations. These comments are addressed below.

Distinction between "consumer" and "customer." While many agreed with the distinction drawn in the proposal between "consumer" and "customer," a few commenters suggested that no distinction between "consumer" and "customer" should be made, given that, in these commenters" views, the statute appears to use the terms interchangeably. The Commission believes, however, that the distinction was deliberate and that the rule should implement it accordingly. A plain reading of the statute supports the conclusion that Congress created one set of protections for anyone who obtains a financial product or service (*i.e.*, who receives a financial institution's privacy policy and opt out notice only if a financial institution intends to disclose nonpublic personal information to nonaffiliated third parties), and an additional set of protections for anyone who establishes a relationship of a more lasting nature than an isolated transaction with a financial institution (*i.e.*, who gets a notice of the institution's privacy policy at the time of establishing a customer relationship, and annual notices as appropriate thereafter). Because the statute tailors the notice requirements to the type of relationship an individual has with a financial institution, that distinction is preserved in the rule.

Applicants as consumers. Many of the comments received by the Commission concerning the proposed definition of "consumer" disagreed that someone should be deemed a consumer of a financial institution simply by virtue of the institution evaluating an application. These commenters maintained that the individual has not obtained a financial product or service, as is required by the statutory definition of "consumer." The Commission believes that the better reading of the G-L-B Act is that an individual has obtained a financial product or service when a financial institution evaluates information provided to the financial institution for the purpose of the individual obtaining some other financial product or service. Financial institutions frequently provide a range of services in connection with the delivery of a financial product. Included within these will be the evaluation by the financial institution of information provided by an individual. In certain instances, such as when an individual is shopping for the best rate on a mortgage loan or the lowest premium for an insurance policy, that evaluation may be the sole financial product or service obtained. In other instances, the evaluation may be one of several services provided that lead up to the eventual establishment of a customer relationship. In either case, the individual will have obtained a financial product or service from the financial institution when the financial institution evaluates the information and informs the individual of the outcome of that evaluation.

In addition to being consistent with the language of the statute, the proposed definition of "consumer" is consistent with one of the primary purposes of Title V of G-L-B Act, namely, to enable an individual to limit the sharing of nonpublic personal information by a financial institution with a nonaffiliated third party. The information provided by a person to a financial institution before a customer relationship is established is likely to contain precisely the types of information that the statute is designed to protect. This information is no less deserving of protection simply because an application is denied or withdrawn. For these reasons, the Commission has retained the individual whose application is evaluated by a financial institution as an example of "consumer" in § 313.3(e)(2)(i).

Loan sales. Several commenters requested clarification of whether an individual becomes a consumer in various other scenarios involving loans. Commenters posited a wide variety of examples, which, if each were to be addressed specifically in the rule, would require a final rule of enormous complexity and detail. The Commission believes that a rule setting forth a general principle that is flexible enough to be applied in the array of loan transactions posited by the commenters is more appropriate. Towards this end, the Commission's rule provides, by example at § 313.3(e)(2)(iv), that a person will be a consumer of any entity that holds ownership or servicing rights to an individual's loan.[14] Financial institutions that own or service a loan are providing a financial product or service to the individual borrower in question. In some cases, the product or service is the funding of the loan, directly or indirectly. In other cases, the product or service is the processing of payments, sending account-related notices, responding to consumer questions and complaints about the handling of the account, and so on. The rule defines "consumer" in a way that covers individuals receiving financial products or services in each of these situations.

Agents of financial institutions. Several commenters agreed with the principle set out in the proposed rule that an individual should not be considered to be a consumer of an entity that is acting as agent for a financial institution. These commenters noted that the financial institution that hires the agent is responsible for that agent's conduct in carrying out the agency responsibili ties. The Commission agrees that the purposes of the G-L-B Act will be met provided the activities of the agent are the responsibility of the financial institution, and, therefore, the financial institution fulfills any obligations regarding the agent's handling of consumer information that otherwise would fall on the agents.[15] Of course, those providing services to a financial institution will also be subject to the limitations on reuse of information. *See* § 313.3(e)(2)(v).

Legal representative. The Commission also agrees with the suggestion made by several commenters that the definition of "consumer" should clarify that the obligations stemming from a consumer relationship may be satisfied by dealing either with the individual who obtains a financial product or service from a financial institution *or* that individual's representative. The Commission does not intend for the rule to require a financial institution to send opt out and initial notices to *both* the individual and the individual's legal representatives and has amended the final rule accordingly in § 313.3(e)(1).

Trusts. The Commission and the other Agencies received several comments concerning whether an individual who obtains financial services in connection with trusts is a consumer or customer of a financial institution. Several commenters urged the Agencies to exempt generally a financial institution from the requirements of the rule when it acts as a fiduciary, or, in the alternative, to clarify the categories of individuals that are considered to be customers. Commenters proposed, for example, that individuals who are beneficiaries with current interests should be identified as customers, whereas individuals who are only contingent beneficiaries should not be customers. Other commenters stated that when the financial institution serves as trustee of a trust, neither the grantor nor beneficiary is a consumer or customer under the rule. In these commenters' view, the trust itself is the institution's "customer," and, therefore, the rule should not apply to a financial institution when it acts as trustee. These commenters also stated that when a financial institution is a trustee, it serves as a fiduciary and is subject to other obligations to protect the confidentiality of the beneficiaries' information that are more stringent than those under the provisions in the G-L-B Act. Similarly, these and other commenters claimed that an individual who is a participant in an employee benefit plan administered or advised by a financial institution does not qualify as a consumer or customer. The commenters opined that the plan sponsor, or the plan itself, is the "customer" for the purposes of the proposed rule. These commenters contended that plan participants have no direct relationship with the financial institution and, in any event, the financial institution is authorized to use information that would be covered under the G-L-B Act only in accordance with the directions of the plan sponsor. The commenters concluded, therefore, that the regulations should specifically exclude individuals who are participants in an employee benefit plan from the definition of consumer.

The definition of "consumer" in the G-L-B Act does not squarely resolve whether the beneficiary of a trust is a consumer of the financial institution that is the trustee. One consideration is that a financial institution that is a trustee assumes obligations as a fiduciary, including the duty to protect

[13] However, the Commission did receive a few comments asking that sole proprietors be excluded from the definitions of both "company" and "financial institution." Those comments are discussed in the context of § 313.3(k).

[14] Such a person may not be a customer, however. *See* explanation of how the definition of "customer" will be applied in the loan context, in the discussion of the definition of § 313.3(h) and (i) below. *See also* § 313.4(c)(2) and (3)(ii) for further discussion concerning when a borrower establishes a customer relationship in the context of a loan sale.

[15] Of course, in some cases two institutions will each provide a financial service to the consumer as part of the same transaction, such as a loan broker that locates a creditor who makes a loan to the individual, in which case the consumer will have a customer relationship with both financial institutions.

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the confidentiality of the beneficiaries' information, that are consistent with the purposes of the G-L-B Act and enforceable under state law. The Commission agrees with the commenters who concluded that, when the financial institution serves as trustee of a trust, neither the grantor nor the beneficiary is a consumer or customer under the rule. Instead, the trust itself is the institution's "customer," and therefore, the rule does not apply because the trust is not an individual. Similarly, the Commission has excluded an individual who is a beneficiary of a trust or a plan participant of an employee benefit plan from the definitions of "consumer" and "customer." Nevertheless, the Commission believes that an individual who selects a financial institution to be a custodian of securities or assets, for example in an IRA, is obtaining a financial product or service from the financial institution and is, therefore, a "consumer" under the G-L-B Act. The Commission has included examples in the rule that appropriately illustrate this interpretation of the G-L-B Act in §§ 313.3(e)(2)(vi)–(viii) and 313.3(i)(2)(i)(D).

Requirements arising from consumer relationship. While the proposed and final rule defines "consumer" broadly, this will not result in any additional burden to a financial institution in situations where (a) no customer relationship is established and (b) the institution does not intend to disclose nonpublic personal information about a consumer to nonaffiliated third parties. Under the final rule, a financial institution is under no obligation to provide a consumer who is not a customer with any privacy disclosures unless it intends to disclose the consumer's nonpublic personal information to nonaffiliated third parties outside the exceptions in §§ 313.14 and 313.15. A financial institution that wants to disclose a consumer's nonpublic personal information to nonaffiliated third parties is not prohibited by the rule from doing so, if the requisite notices are delivered and the consumer does not opt out. Thus, a financial institution that does not wish to be subject to the disclosure obligations of the rule as it applies to consumers who are not customers may simply decide not to share consumers' information with nonaffiliated third parties. Conversely, if a financial institution determines that the benefits of such sharing outweigh the attendant burdens, the financial institution is free to do so provided it notifies consumers about the disclosure and affords them a reasonable opportunity to opt out. In this way, the rule attempts to strike a balance between protecting an individual's nonpublic personal information and minimizing the burden on a financial institution.

f. *Consumer reporting agency.* The proposal adopted the definition of "consumer reporting agency" that is used in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)). It is used in §§ 313.6(c), 313.12(a), and 313.15(a)(5) of the final rule.

The Commission received no comments suggesting any changes to this definition. Accordingly, the definition is adopted as proposed.

g. *Control.* The proposal defined "control" using the tests applied in section 23A of the Federal Reserve Act (12 U.S.C. 371c). This definition is used to determine when companies are affiliated (see discussion of § 313.3(a), above), and would result in financial institutions being considered as affiliates regardless of whether the control is by a company or individual.

The Commission received few comments in response to this definition. Some commenters suggested that a definition that did not require 25% ownership be adopted, while others suggested adopting a test focused solely on percent of stock owned in a company so as to avoid the uncertainties arising from a "control in fact" test.

The Commission believes that the proposed test is sufficiently well established and has concluded that an alternative test to be used solely in the privacy rule could create confusion. The Commission also believes that any test based only on stock ownership is unlikely to be flexible enough to address all situations in which companies are appropriately deemed to be affiliated and that including the stock ownership as one measurement of control provides necessary flexibility. Accordingly, the Commission adopts the definition of "control" as proposed.

h. *Customer.* The proposal defined "customer" as any consumer who has a "customer relationship" with a particular financial institution. As is explained more fully in the discussion of § 313.4, below, a consumer is a customer of a financial institution when the consumer has a continuing relationship with the institution.

The Commission received a large number of comments on the definition of "customer" and "customer relationship." Given the interdependence of the two terms, the following analysis of the comments received will address both under the heading "customer relationship."

i. *Customer relationship.* The proposed rule defined "customer relationship" as a continuing relationship between a consumer and a financial institution whereby the institution provides a financial product or service that is to be used by the consumer primarily for personal, family, or household purposes. As noted in the proposal, a one-time transaction may be sufficient to establish a customer relationship, depending on the nature of the transaction. A consumer would not become a customer simply by repeatedly engaging in isolated transactions that by themselves would be insufficient to establish a customer relationship, such as withdrawing funds at regular intervals from an ATM owned by an institution at which the consumer has no account. However, an individual who becomes the client of a loan brokerage, tax preparation firm, or financial counseling service would be a customer. The proposal also stated that a consumer would have a customer relationship with a financial institution that makes a loan to the consumer and then sells the loan but retains the servicing rights. The Commission received a large number of comments on this definition, as discussed below.

Point at which one becomes a customer. The Commission received many comments in response to the definitions of "customer" and "customer relationship." Some commenters criticized what they considered to be the ill-defined line distinguishing consumers from customers. These commenters stated that the proposed distinction makes it difficult for a financial institution to know when the obligations attendant to a customer relationship arise. Several suggested that the distinction should be based on when a consumer and financial institution enter into a written contract for a financial product or service.

The Commission recognizes that the distinction between consumers and customers will, in some instances, require a financial institution to evaluate whether the particular facts of its consumer transactions fit within the definition of customer relationship. In those cases where an individual engages in a transaction that is isolated in nature (such as ATM transactions, purchases of money orders, or cashing of checks), the individual will not have established a customer relationship as a result of that transaction. In other situations, where a consumer typically would receive some measure of service such that the consumer's contact with the financial institution is more significant (such as would be the case when a consumer

borrows money, obtains investment advice, or becomes the client of an institution for the purpose of receiving tax preparation, loan brokerage, or credit counseling services), a customer relationship will be established. In those cases, the nature of the relationship indicates that it is not an isolated transaction, even though it may be short-term in duration.[16] The Commission believes that the distinction set out in the proposed rule, as further clarified by the examples in the final rule regarding the establishment of a customer relationship, provides sufficiently clear principles that can be applied to most fact situations that arise in the financial marketplace.

Customer relationship defined by written contract. The Commission agrees with those commenters who consider the execution of a written contract by a consumer and financial institution as clear evidence that a customer relationship has been established. The proposal cited the execution of a written contract as an example of when a customer relationship is established, and the final rule retains that example in § 313.4(c)(3)(i)(B). However, a test based solely on whether there is a written contract could inappropriately exclude situations in which an individual is a customer of a financial institution as a result of obtaining, for instance, financial, economic, or investment advisory services from a financial institution. Accordingly, the final rule does not define a customer relationship solely by the execution of a written contract.

Purchase of insurance. Other commenters suggested that, in the context of financial institutions that engage in the sale of insurance, the customer should be the policyholder and not the beneficiary. The Commission agrees and has retained the example in § 313.3(i)(2)(i)(C) of purchasing an insurance product as one situation in which a customer relationship is formed.[17] In this case, the person obtaining a financial product or service from the financial institution is the person purchasing the policy. The beneficiaries would be recipients of the insurance proceeds, thereby entitling them to the protections afforded consumers.

Sales of loans. As previously noted, several commenters raised questions in the context of loan sales. Many commenters stated that, under the final rule, a person should not be considered a customer of two financial institutions when the originating bank sells the servicing rights. A point consistently made by these commenters was that a borrower would be equally well protected with less risk of confusion if the borrower is deemed to be a customer of only one entity in connection with a loan, with that entity perhaps being the party with whom the borrower communicates about the loan. The Commission believes that it is appropriate to consider a loan transaction as giving rise to only one customer relationship, with the recognition that this customer relationship may be transferred in connection with a sale of part or all of the loan. In this way, the borrower will not be inundated by privacy notices (but rather will normally receive annual notices from the loan servicer), many of which might be from subservicers that the borrower did not know had any connection to his or her loan. However, that customer will remain a consumer of the entity that transfers the servicing rights, as well as a consumer of any other entity that holds an interest in the loan.

In order to satisfy the statutory requirement that a customer receive an annual notice from a financial institution until that relationship terminates, the final rule provides that the borrower must be deemed to have a customer relationship with at least one of the entities that hold an interest in the loan. A financial institution that makes a loan, retains it in its portfolio, and provides servicing for the loan clearly would have a customer relationship with the borrower. More complex, however, are situations in which servicing is sold or investors purchase a partial interest in a loan. The Commission has adopted an approach designed to ensure that a customer receives annual notices for the duration of the customer relationship from the most appropriate financial institution.

Under the final rule, as stated in § 313.3(i)(2)(i)(B), a customer relationship will be established as a general rule with the financial institution that makes a loan to an individual. This customer relationship then will attach to the entity providing servicing. Thus, if the originating lender retains the servicing, it will continue to have a customer relationship with the borrower and will be obligated to provide annual notices for the duration of the customer relationship. If the servicing is sold, then the purchaser of the servicing rights will establish a customer relationship (and the originating lender will have a consumer relationship with the borrower). *See* § 313.3(i)(2)(ii)(B). In this way, the borrower will be entitled to receive an initial notice and annual notices from the loan servicer, but will not be inundated by initial and annual notices from entities that hold interests in the loan but are unknown to the consumer (and who do not share the consumer's nonpublic personal information with unaffiliated third parties).

Collection agencies that purchase accounts in their own name. The Commission received a substantial number of comments from different types of debt collectors and their representatives. This section addresses several comments the Commission received concerning the proposed rule's differentiation between collectors who assist creditors in collecting delinquent accounts, and those who purchase them in their own name.[18] The Commission also received comments from all types of collection agencies on other points. Several contested the Commission's treatment of debt collectors as financial institutions.[19] Others were concerned that the rule would prohibit communications with a creditor that retained ownership on the account and hired the agency to obtain payment from debtors.[20]

Representatives of two major trade associations of debt collectors pointed to the definitions set forth in section 803 of the Fair Debt Collection Practices Act, which specifically exempts any "creditor" collecting its own accounts in its own name from being within the definition of a "debt collector" subject to that statute, and the case law holding that the "creditor" exemption does not include debt collectors that purchase defaulted accounts in their own name

[16] Many of the customer relationships established by institutions under the Commission's jurisdiction may well be short-term, as can be seen from the examples in § 313.5(b)(2) of when a customer relationship terminates.

[17] Despite its lack of enforcement jurisdiction over persons providing insurance, the Commission retains this example because it may be useful in evaluating analogous situations. Some commenters also asked for further clarification of "purchase" in this context. The Commission does not believe such clarification is necessary and has retained the example as proposed.

[18] "A consumer has a "customer relationship" with a debt collector that purchases an account from the original creditor (because he or she would have a credit account with the collector), but not with a debt collector that simply attempts to collect amounts owed to the creditor." 65 FR 11174 at 11176 (Mar. 1, 2000).

[19] Those issues are discussed under §§ 313.1(b), 313.3(k) and 313.4.

[20] This fear is unfounded, because such a communication by a collection agency reporting to a creditor that has retained ownership of an account would be permitted under § 313.15(a)(2)(iv). That section allows communications to parties holding a legal interest relating to the consumer, which would certainly include a creditor that owns the debt.

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for collection.[21] The commenters argued that, because the FDCPA does not treat collection agencies that purchase defaulted accounts in their own name as creditors, the G-L-B Act should not be interpreted to do so. In addition, debt buyers stated that they frequently made bulk purchases of defaulted accounts from creditors, immediately discarded and never even attempted to collect many of the accounts they purchased, and were unable to locate many of the account debtors from whom they wanted to collect amounts due.

The Commission recognizes that these businesses have some attributes of creditors who buy active accounts (where the debtors clearly become customers of the account purchaser) and some attributes of regular debt collectors who attempt to collect amounts due on behalf of the creditor (where the debtors clearly remain the creditor's customer). After careful consideration of the comments and the purposes of the Act, the Commission retains its view that if a business purchases a defaulted account for collection, it may establish a "customer relationship" with the account debtor. However, such a relationship occurs only in those instances where the agency locates the individual and tries to obtain payments on the debt. This approach reflects the reality that the collector has purchased the account (albeit for less than it would pay for a current account) and avoids the result that otherwise the individual would not have a "customer relationship" with anyone because the former relationship with the creditor will have been terminated. At the same time, it responds to industry commenters that contested the Commission's previous position that purchase of the account automatically establishes a customer relationship. The applicable example in § 313.3(i)(2)(i)(J) makes it clear that a debt buyer does not have a customer relationship if it does not attempt to collect payments from, or is unable to locate, the individual named on an account it has purchased.

Brokers. Several commenters suggested that the use of a mortgage broker, or other business that procures credit on behalf of a consumer, such as financing to purchase an automobile, should not create a customer relationship. The Commission disagrees. A relationship between such a business and a consumer is more than an isolated transaction, given that the broker will likely provide significant services for a consumer, such as providing information or advice about financing options, actively assisting the consumer in contacting potential financing sources, analyzing financial information, or performing credit checks. In some cases, the broker will also negotiate with other financial institutions on the consumer's behalf and/or assist with paperwork and loan closings. In light of the nature of the services provided by a loan broker or other credit arranger in assisting the consumer with financial transactions, it is appropriate to consider the business to be a financial institution that establishes a customer relationship when it undertakes to arrange or broker a home mortgage loan or other credit for the consumer. The final rule reflects this conclusion in § 313.3(i)(2)(i)(E).

IRA Custodians. The final rule adds an example in § 313.3(i)(2)(i)(D) to clarify that an individual will be deemed to establish a customer relationship when a financial institution acts as a custodian for securities or assets in an IRA. This example is consistent with the explanation set out above in the discussion of "consumer" concerning trusts.

j. *Federal functional regulator.* The proposal sought comment on a definition of "government regulator" that included all of the Agencies and State insurance authorities under the circumstances identified in the definition.[22]

The few comments that were received on this definition suggested that it be expanded to include additional governmental entities. The Commission notes that, for purposes of the privacy rule, this term (which does not include the Commission) is relevant only in the discussion of when a financial institution may disclose information to a law enforcement agency. The exception as stated in the statute uses the term "federal functional regulator" (*see* section 502(e)(5)), which term is defined in the statute at section 509(2) and also includes the Commission and Secretary of the Treasury, for purposes of the exception permitting disclosures to law enforcement agencies. The Commission has decided simply to use the statutory term.

k. *Financial institution.* The Commission's proposed rule defined financial institution as "any institution the business of which is engaging in activities that are financial in nature as described in section 4(k) of the Bank Holding Company Act * * *" Through the examples, the Commission expressed its view that an institution is a financial institution "the business of which is engaging in activities that are financial in nature" only if the entity is significantly engaged in such activities. The Commission received numerous comments concerning this definition.

Some commenters requested that the Commission adopt the definition of financial institution contained in the other Agencies' definition. The other Agencies defined financial institution as "any institution the business of which is engaging in activities that are financial in nature *or incidental to such financial activities* as described in section 4(k) of the Bank Holding Company Act." Section 509(3) of the G–L–B Act defines the term as "any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956." Section 4(k) of the Bank Holding Company Act refers to three types of activities that the Board may determine permissible for financial holding companies: those that are financial in nature, those that are incidental to such financial activity, and those that are complementary to financial activities. The Commission interprets the G-L-B Act to refer to those activities in Section 4(k) that are described as financial in nature at present, and not to include automatically those activities that the Board later determines are incidental or complementary to financial activities. Such activities are not necessarily themselves financial activities and, therefore, should not have an impact on the definition of financial institution. Thus, the final rule incorporates the statutory language in § 313.3(k).[23]

Given the breadth of the definition, some commenters requested that the Commission provide a definitive list of the entities that are subject to the rule. The Commission deems it inappropriate to publish such a definitive list. The institutions covered by the rule currently are defined by reference to the comprehensive list of activities found at section 4(k)(4) of the Bank Holding Company Act.[24] The Commission has reformatted and added additional examples of financial institutions in the final rule to guide the analysis of whether a particular entity is a financial institution through reference to section 4(k)(4) and particular sections of the Board regulations that are incorporated therein by reference.

The Commission received several comments on the "significantly engaged" standard set forth in the examples in the proposed rule. A few expressed concern that the "significantly engaged" test was too imprecise to allow some businesses to know whether they were within the definition, usually suggesting alternatives that would exclude the industries they represent. The final rule does not define "significantly engaged." The revenue tests suggested by some commenters are too inflexible to take into consideration all instances where an institution may be significantly engaged in a financial activity. The final rule retains the flexibility of the "significantly engaged" standard and provides guidance through examples. To that end, the Commission has moved the "significantly engaged" language into the text of the final rule and retains in the final rule those examples from the proposed rule of entities that are and are not significantly engaged in a financial activity. A retail business that issues its own credit card directly to consumers is a financial institution significantly engaged in the extension of credit, but a retail business that merely allows its retail clients to make payments through occasional lay-away plans is not significantly engaged in a financial activity. Similarly, a small merchant that informally extends credit when it "runs a tab" for some individuals is not significantly engaged in the business of extending credit. The Commission believes that the concept of "significantly engaged" is sufficiently clear to provide guidance to most entities in analyzing their specific factual situations.

Many commenters, especially some representatives of the consumer debt collection industry,[25] expressed concern at the breadth of the definition and asserted that Congress could not have intended to include all institutions that engage in the activities referenced in Section 4(k). The plain language of the statute, however, dictates that breadth and grants the Commission no authority to exclude particular entities from the definition. The broad scope of the Act, and the comments received by the Commission, are also discussed above in more detail in the context of § 313.1(b). While it is not possible to discuss every potential financial institution in detail, the Commission specifically sought comment on certain of the activities listed in section 4(k) and the Board regulations that are incorporated by reference.

The proposed rule acknowledged that one of the activities characterized as financial in nature in Section 4(k)(4) of the Bank Holding Company Act is operating a travel agency in connection with offering financial services.[26] The Commission received few comments on the extent to which travel agents operate in connection with financial services. The comments did indicate that travel agents generally do sell travelers checks, trip insurance, and travel insurance, all of which constitute financial products or services. However, the Commission does not consider a travel agency's operations to be "in connection with offering financial services" and therefore covered simply because it offers travelers checks or travel related insurance to their travel clients. Rather, the Commission interprets the G-L-B Act to cover travel agencies only if their travel-related services are offered in addition to offering other financial services.[27] This would cover, for example, entities that offer credit, investment, or insurance products or services, and also offer travel-related services to their clients. For these types of entities, travel operations would thereby become covered services and their travel transactions would be protected by the G-L-B Act.[28]

Some commenters requested clarification concerning whether certain Internet industries are affected by the rule. The comments in this regard did not provide sufficient detail for the Commission to evaluate all of the concerns of the commenters, but the Commission notes that institutions operating on-line, like those operating off-line, will have to evaluate (1) whether they are engaged in a financial activity, and (2) if so, whether they have consumers or customers that trigger the disclosure or other requirements of the Act. On a related issue, the Commission notes that one of the financial activities incorporated by reference into Section 4(k) of the Bank Holding Company Act is:

> "providing data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), data bases, advice, and access to such services, facilities, or data bases by any technological means, if * * * [t]he data to be processed or furnished are financial, banking, or economic * * *."

12 CFR 225.28 (b)(14). The Commission notes with respect to this activity that financial software and hardware manufacturers, as described, are financial institutions but will have no disclosure obligations if they sell only to businesses. Furthermore, in the case of an isolated one-time sale of software or hardware to a consumer, their disclosure obligations would be very limited. In addition, this language brings into the definition of financial institution an Internet company that compiles, or aggregates, an individual's on-line accounts (such as credit cards, mortgages, and loans) at that company's web site as a service to the individual, who then may access all of its account information through that Internet site.

Many entities that come within the broad definition of financial institution will likely not be subject to the disclosure requirements of the rule because not all financial institutions have "consumers" or establish "customer relationships." Several commenters supported this distinction and the Commission retains it here. For example, management consulting is a "financial activity" but it is not likely

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[21] 15 U.S.C. 1692a(4) and 1692a(6). *Cirkot v. Diversified Fin. Sys., Inc.*, 839 F. Supp. 941, 944–45 (D. Conn. 1993); *Holmes v. Telecredit Service Corp.*, 736 F. Supp. 1289, 1293 (D. Del. 1990); *Kimber v. Federal Fin. Corp.*, 668 F. Supp. 1480, 1485–86 (D. Ala. 1987).

[22] This term was used in the exception set out in § 313.11(a)(4) of the proposal as it related to disclosures to law enforcement agencies, "including government regulators."

[23] *See also* the discussion of the effective date at § 313.18, *infra*. Section 4(k) of the Bank Holding Company Act established procedures whereby the Board can add activities to the list of activities that it is permissible for financial holding companies to engage in. To the extent these later added activities are financial activities, and not incidental activities, the rule will not be effective as to those new financial institutions until the Commission so determines.

[24] See footnotes 5–8 and accompanying text, *supra*. These are activities either specified in Section 4(k)(4) itself, or are activities listed in Board regulations referenced in Section 4(k)(4) already in effect on the effective date of the G–L–B Act. This list of activities may expand as the Board exercises its authority to add additional activities that are financial in nature pursuant to Section 4(k)(1–3) of the Bank Holding Company Act.

[25] The statute is clear that debt collection agencies are financial institutions under its terms. As noted in the discussion of the definition of "financial institution" below, the statute treats a broad range of activities as "financial in nature." Section 509(3) of the G-L-B Act defines the term to mean "any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956." Section 4(k)(4)(F) of the Bank Holding Company Act includes all financial activities deemed by the Federal Reserve Board "to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." In Regulation Y, 12 CFR 225.28(b)(2)(iv), the Board specifically designated "collection agency services" as such a financial activity.

[26] *See* footnote 5 of the Commission's discussion of the proposal at 65 FR 11176. Section 4(k)(4)(G) of the Bank Holding Company Act includes all financial activities conducted in the United States deemed by the Federal Reserve Board "to be usual in connection with the transaction of banking or other financial operations abroad." In Regulation K, 12 CFR 211.(d)(15), the Board specifically designated "[o]perating a travel agency * * * in connection with financial services" as such a financial activity.

[27] This analysis is consistent with an interim rule published by the Board at 12 CFR 225.86(b)(2), in which it characterized the travel agency activity "operating a travel agency in connection with financial services offered by the financial holding company or others." 65 FR 14433, 14439 (Mar. 17, 2000).

[28] *See* the Commission's discussion of "financial product or service" in the next section, as it relates to the Act's inapplicability to nonfinancial products or services of financial institutions.

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that any individual obtains management consulting services for personal, family or household purposes. Likewise, courier services, data processors, and real estate appraisers who perform services for a financial institution, but do not provide financial products or services to individuals, will not be required to make the disclosures mandated by the rule because they do not have "consumers" or "customers" as defined by the rule.[29] The Commission declines to adopt a definitive list, as requested by some commenters, of all of the financial institutions that do not have consumers and customers. Such a list inevitably will not be exclusive and may include some institutions that operate so that in some instances they have consumers and customers and in others they do not.

Some commenters suggested that sole proprietors be exempt from the definition, but provided no helpful rationale for doing so, while others requested clarification as to whether nonprofit entities could be financial institutions covered by the rule. Whether or not a commercial enterprise is operated by a single individual is not determinative in analyzing whether the entity is a "financial institution." If an individual is in the "business of * * *, engaging in financial activities * * *," that "business" is included within the "financial institution" definition.[30] Similarly, nothing in the definition of financial institution excludes nonprofit entities from the definition of financial institution.

Few commenters addressed proposed § 313.3(j)(3)(iii), which incorporated the Act's exemption for institutions chartered by Congress to engage in secondary market sales and similar transactions related to consumers, as long as the institution does not sell or transfer nonpublic personal information to a nonaffiliated third party. This exemption applies even if the chartered institution sells or transfers information as permitted by the exceptions to the notice and opt out requirements in proposed §§ 313.10 and 313.11 (§§ 313.14 and 313.15 in the final rule). The Commission also sought comment on whether it should require chartered institutions, as a condition of their exemption, to enter into a confidentiality agreement with any nonaffiliated third parties with whom they share information pursuant to the exceptions. Chartered institutions supported the interpretation; one commenter contended that such additional language was not in keeping with the intent of the exemption. The Commission believes that its interpretation merely operates to allow chartered institutions to continue their normal business, and does not permit them (or any party receiving information from them) to disclose information unrestrained. In accord with the limitations on reuse and redisclosure in section 502(c) of the G–L–B Act, both chartered institutions and recipients of nonpublic personal information are limited in that regard. The Commission has adopted the provision as proposed.

l. *Financial product or service.* The proposal defined "financial product or service" as a product or service that a financial institution could offer by engaging in an activity that is financial in nature under section 4(k) of the Bank Holding Company Act of 1956. The proposal's definition included the financial institution's evaluation of information collected in connection with an application by a consumer for a financial product or service even if the application ultimately is rejected or withdrawn. It also included the brokerage and distribution of information about a consumer for the purpose of assisting the consumer in obtaining a financial product or service.

The most frequent comment on this proposed definition was that the evaluation of application information should not be considered a financial product or service. For the reasons advanced above in the discussion of the definition of "consumer," the Commission concludes that it is appropriate to retain evaluation activity within the scope of financial product or service covered by the rule. Evaluation is one of many financial services provided by financial institutions. Moreover, a consumer is likely to provide the type of information that the statute is designed to protect in the course of obtaining the financial institution's evaluation.

An entity's status as a financial institution does not cause every product or service offered by that entity to be a financial product or service. A retailer that issues its own credit card directly to consumers provides a financial service (credit) to consumers who utilize the card; but when that same retailer sells merchandise, it provides a nonfinancial product or service (retail sale of merchandise).

The Commission has retained the essence of the proposed definition, but has revised § 313.(l)(1) to mirror its change to the definition of "financial institution" in § 313.3(k) and eliminated the word "distribution" from § 313.3(l)(2) because it is not intended to mean anything different from "brokerage" and, therefore, its use invites confusion.

m. *Nonaffiliated third party.* The proposal defined "nonaffiliated third party" as any person (which includes natural persons as well as corporate entities) except (1) an affiliate of a financial institution and (2) a joint employee of a financial institution and a third party. The proposal clarified the circumstances under which a company that is controlled by a financial institution pursuant to that institution's merchant banking activities or insurance company activities would be a "nonaffiliated third party" of that financial institution.

The Commission received very few comments in response to this proposed definition. One commenter requested that the final rule provide that a disclosure of information to someone who is serving as a joint employee of two financial institutions should be deemed to have been disclosed to both financial institutions. The Commission disagrees with this result. Instead, the Commission believes it is appropriate to deem the information to have been given to the financial institution that is providing the financial product or service in question. Thus, if an employee of a mortgage lender is a dual employee with a securities firm, information received by that person in connection with a securities transaction conducted with the securities firm would be deemed to have been received by the securities firm.

The Commission notes that its proposal omitted a section included in the other Agencies' rules relating to companies engaged in merchant banking, investment banking, or investment activities described in section 4(k)(4)(H–I) of the Bank Holding Company Act. For purposes of consistency with the rules to be adopted by the other Agencies, the Commission has included it at § 313.3(m)(2). Otherwise, the final rule defines "nonaffiliated third party" as proposed.

n. *Nonpublic personal information.* Section 509(4) of the G-L-B Act defines "nonpublic personal information" to mean "personally identifiable financial information" that is provided by a consumer to a financial institution, results from any transaction with the

[29] If such financial institutions receive consumers' nonpublic personal information from nonaffiliated financial institutions pursuant to one of the exceptions set forth in §§ 313.14 and 313.15, however, they would be required to observe the § 313.11 limitations on reuse and redisclosure of that information.

[30] An individual who provides a financial service only informally (e.g., preparing tax forms without remuneration for friends or family, or as community service) is not likely significantly engaged in a financial activity.

consumer or any service performed for the consumer, or is otherwise obtained by the financial institution. It also includes any "list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information other than publicly available information." The statute excludes publicly available information (unless provided as part of the list, description or other grouping described above), as well as a list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using nonpublic personal information. The statute does not define either "personally identifiable financial information" or "publicly available information."

The proposed rule restated the categories of information described above and presented two alternative approaches to identifying what information would be regarded as publicly available (and therefore, as a general rule, outside the definition of "nonpublic personal information"). Alternative A deemed information as publicly available only if a financial institution *actually obtained* the information from a public source while Alternative B treated information as publicly available if a financial institution *could* obtain it from such a source. Both Alternatives A and B included within the definition of "nonpublic personal information" publicly available information that is provided as part of a list, description, or other grouping of consumers. In addition to requesting comment on Alternatives A and B, the Commission requested comment concerning whether a variation of the two alternatives should be adopted that would require a financial institution to undertake reasonable procedures to establish that information is, in fact, publicly available.

Commenters favoring Alternative A noted that it provided the greatest protection for consumers by treating anything the consumer gives to a financial institution to obtain a financial product or service as nonpublic personal information. Under Alternative A, this protection would be lost only if a financial institution actually obtained the information from a public source. These commenters also preferred the bright-line distinction drawn by treating as nonpublic personal information any information given by a consumer to obtain a financial product or service or information that results from transactions between a financial institution and a consumer. However, the majority of those commenting on this issue favored Alternative B, noting that this alternative was consistent with the statute and would be far less burdensome on financial institutions. These commenters suggested that a requirement that the information actually be obtained from a public source would impose needless burdens on financial institutions (by requiring, for instance, that a financial institution "tag" information they obtained from public records) and is not required by the statute.

The final rule incorporates the benefits of both alternatives. Under the final rule, information will be deemed to be "publicly available" and therefore excluded from the definition of "nonpublic personal information" if a financial institution has a reasonable basis to believe that the information is lawfully made available to the general public from one of the three categories of sources listed in the rule. *See* § 313.3(p)(1). The final rule provides that a financial institution will have a "reasonable basis" for believing that information is lawfully made available if the financial institution has taken steps to determine whether the information is of the type that is available to the general public, whether an individual can direct that the information not be made available to the general public, and, if so, that the financial institution's particular consumer has not so directed. In this way, a financial institution will be able to avoid the burden of having to actually obtain information from a public source, but will not be free simply to assume that information is publicly available without some reasonable basis for that belief.

An example of information a financial institution might have a reasonable basis to believe is publicly available, cited in the final rule, is the fact that someone has a loan that is secured by a mortgage, as long as the financial institution has determined that the mortgage information is included on the public record in the relevant jurisdiction. *See* § 313.3(p)(3)(iii)(1). The rule also explains that a financial institution will have a reasonable basis to believe that a telephone number is publicly available only if the institution has either located the number in a telephone book or has been informed by the consumer that the number is not an unlisted telephone number. *See* § 313.3(p)(3)(iii)(2). This approach is based on the underlying principle that a financial institution should not automatically assume that an individual's information is publicly available, especially if a consumer has some measure of control over the public availability of the information.

With regard to some types of information that may be available to the general public, the extent to which a consumer can control the release of that information should be well known. For example, in most jurisdictions, a borrower has no choice about whether a lender will make a mortgage a matter of public record; a lender must do so in order to protect its security interest. In the case of a telephone number, it is well established that a person may request that his or her number be unlisted; thus, the financial institution will have to takes steps to determine whether a particular consumer has exercised that option. In other instances, there will be more variation on the general availability of the information and the consumer's right to direct that it not be disclosed. Some jurisdictions, for example, make driver's license information more available than others.[31] In evaluating whether it is reasonable to believe that information is publicly available, a financial institution must consider whether the information is of a type that a consumer could keep from being a matter of public record.

To implement the Act's complex definition of "nonpublic personal information" that is provided in the statute, the final rule adopts a definition that consists, generally speaking, of (1) personally identifiable financial information, plus (2) a consumer list (and publicly available information pertaining to the consumers on that list) that is derived using personally identifiable financial information that is *not* publicly available. From that body of information, the final rule excludes publicly available information (except as noted above) and any consumer list that is derived without using personally identifiable financial information that is not publicly available. *See* § 313.3(n)(1) and (2). Examples are provided in § 313.3(n)(3) to illustrate how this definition applies in the context of consumer lists.

o. *Personally identifiable financial information.* The proposed rule defined "personally identifiable financial information" to include information that a consumer provides to a financial institution in order to obtain a financial product or service, information resulting from any transaction between the consumer and the financial institution involving a financial product or service,

[31] The Driver's Privacy Protection Act, 18 U.S.C. 2721–2725, restricts the states' ability to disclose a driver's personal information without the driver's consent. *Reno* v. *Condon* __ U.S. __, 120 S. Ct. 666 (2000).

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and information about a consumer a financial institution otherwise obtains in connection with providing a financial product or service to the consumer. The proposed rule also treated the fact that someone is a customer of a financial institution as personally identifiable financial information. In essence, the proposed rule treated any personally identifiable information as financial if it was obtained by a financial institution in connection with providing a financial product or service to a consumer. The Commission noted in the preamble to the proposed rule that this interpretation may result in certain information being covered by the rule that may not be considered intrinsically financial, such as health status.

The Commission received a large number of comments in response to this definition, most of which stated that the definition inappropriately included certain identifying information that is not financial, such as name, address, and telephone number. Many others maintained that "personally identifiable financial information" should not include the fact that someone is a customer of a financial institution. These commenters typically noted that many customer relationships are matters of public record (such as would be the case, for instance, anytime a transaction results in the recordation of a security interest) while other customer relationships are matters of public knowledge (because consumers frequently disclose the relationships by writing checks, using credit cards, and so on). Many commenters stated that aggregate data about a financial institution's customers that lack personal identifiers should not be considered personally identifiable financial information.

Treatment of identifying information as financial. The Commission continues to believe that any information should be considered financial information if it is requested by a financial institution for the purpose of providing a financial product or service. This approach is consistent with the broad definition of "financial institution" used in the statute, which encompasses not only traditional financial activities (such as banks, mortgage lenders, finance companies), but also a large number of entities that engage in activities not traditionally considered financial (such as financial career counselors, insurance companies, and data processors). As a consequence of that definition, the range of information that has a bearing on the terms and availability of a financial product or service or that is used by a financial institution in connection with providing a financial product or service is extremely broad and may include, for instance, medical information and other sorts of information that might not be thought of as financial.

Many commenters, including several hundred private investigators, expressed concern about the need for ready access to identifying information to locate people attempting to evade their financial obligations. These commenters consistently suggested that names, addresses, and telephone numbers should not be treated as financial information. However, financial institutions rely on a broad range of information that they obtain about consumers, including information such as addresses and telephone numbers, when providing financial products or services. Location information is used by financial institutions to provide a wide variety of financial services, from the sending of checking account statements to the disbursing of funds to a consumer. Other information, such as the maiden name of a consumer's mother often will be used by a financial institution to verify the consumer's identity. The Commission concluded that it would be inappropriate to carve out certain items of information that a particular financial institution might rely on when providing a particular financial product or service.

The Commission notes that names, addresses, and telephone numbers, if publicly available, will not be subject to the opt out provisions of the statute unless that information is "derivative information" (*i.e.*, information that is part of a list, description, or other grouping of consumers that is derived from personally identifiable financial information that is not publicly available). Thus, in instances involving specific requests about individuals, a financial institution still may disclose information about the individual that the institution has a reasonable basis to believe is publicly available, provided that in so doing the institution does not disclose the existence of a customer relationship (unless the relationship is a matter of public record, as in the case of most mortgage loans). Moreover, in instances when a consumer does not opt out, a financial institution may disclose any nonpublic personal information to a nonaffiliated third party provided that the disclosure is consistent with the institution's opt out and privacy notices.

Customer relationship as "personally identifiable financial information." The Commission disagrees with those commenters who maintain that customer relationships should not be considered to be personally identifiable financial information. Information that a particular person has a customer relationship identifies that person, and thus is personally identifiable. This information also is financial, because it communicates that the person in question has a transaction involving a financial product or service with a financial institution. While this information could in certain cases be a matter of public record, that does not change the analysis of whether the information is personally identifiable financial information.

Changes made to the definition. The final rule makes various stylistic changes to the definition to make it easier to read and understand. In addition, the final rule adds to the examples of information covered by the rule any information that the institution collects through a "cookie."[32] *See* § 313.3(o)(2)(F). This illustrates one of the various means by which a financial institution may "otherwise obtain" information about a consumer in connection with providing a financial product or service to that consumer.

An example in § 313.3(o)(2)(ii)(B) clarifies that aggregate information or blind data lacking personal identifiers is not covered by the definition of "personally identifiable financial information." The Commission agrees with those commenters who opined that such data, by definition, do not identify any individual.

p. *Publicly available information.* The proposal defined "publicly available information" to include information that is lawfully made available to the public from official public records (such as real estate recordations or security interest filings), information from widely distributed media (such as a telephone book, television or radio program, or newspaper), and information that is required to be disclosed to the general public by Federal, State, or local law (such as securities disclosure documents). The proposed rule stated that publicly available information from widely distributed media would include information from an Internet site that is available to the general public without requiring a password or similar restriction.

As noted in the discussion of "nonpublic personal information," the Commission proposed two versions of the definition of "publicly available information." The final rule more closely tracks the statute while

[32] A cookie is a small text file placed on a consumer's computer hard drive by a web server. The cookie transmits information back to the server that placed it.

incorporating the benefits of both alternatives.

Several commenters questioned the appropriateness of excluding information from the definition of "publicly available information" if a person who seeks to obtain the information over the Internet must have a password or comply with a similar restriction. These commenters made the point that many Internet sites are available to a large number of people, each of whom need a user name and identification number to access the sites. Several of these commenters suggested that it is more appropriate to focus on whether the information was lawfully placed on the Internet.

The Commission agrees and has amended the final rule to remove the reference to passwords or similar restrictions from the example of the Internet as a "widely distributed" medium of communication. In its place, the Commission has substituted a standard requiring that the information be available on an unrestricted basis, and has then specified that a site is not restricted merely because an Internet service provider or a site operator requires a fee or password as long as access is otherwise available to the general public. The traditional use of passwords is to confine the access of individual customers to specific, individual information. However, website operators, in particular, may require user identifications and passwords as a method of tracking access rather than restricting access to the information available through the website. Fees may be levied to enhance the revenue of the Internet service provider or site operator rather than restrict access. Therefore, the Commission believes that the definition of "widely distributed media" should properly focus on whether the information is lawfully available to the general public, rather than on the type of medium from which information is obtained.

The concept of information being lawfully obtained was included in the proposal, and is retained in the final rule. Thus, information unlawfully obtained will not be deemed to be publicly available notwithstanding that it may be available to the general public through widely distributed media.

The following example illustrates how "nonpublic personal information," "personally identifiable financial information," and "publicly available information" will work under the final rule. Assume that Mary provides a mortgage lender with information in order to obtain a loan to finance a home purchase, and the same information to a retail store to open a credit card account. Under the final rule, all of this information would be personally identifiable financial information. Once Mary establishes the customer relationships she seeks, the fact that Mary is a mortgage loan customer and a credit card customer at the financial institutions also would be personally identifiable financial information.

Certain information provided by Mary, such as her name and address, may be publicly available. If the mortgage lender has a reasonable basis to believe that this information is publicly available, and if the information was included on a list of all of the institution's mortgage loan customers, then her name and address would fall outside the definition of "nonpublic personal information" in those jurisdictions where mortgages are a matter of public record. However, Mary's name and address would be protected as nonpublic personal information if the retailer wanted to include those items on a list of holders of its proprietary credit card. The difference in treatment stems from the distinction drawn in the statute between lists prepared using publicly available information (as would be the case in the mortgage loan hypothetical) and lists prepared using information that is not publicly available (as would be the case in the credit card hypothetical).

The Commission concludes that this relatively complex approach is mandated by the statute's definition of "nonpublic personal information." The final rule also is consistent with the fact that certain relationships are matters of public record, and, therefore, less deserving of protection from disclosure.

q. *You.* The Commission used the pronoun "you" to refer to financial institutions within its jurisdiction in the proposal and defined "you" to mean those entities.

The Commission received no comments in response to this definition and adopts the definition set forth in the proposed rule.

Section 313.4 Initial Privacy Notice to Consumers Required

The G-L-B Act requires a financial institution to provide an initial notice of its privacy policies and practices in two circumstances. For customers, the notice must be provided at the time of establishing a customer relationship. For consumers who are not customers, the notice must be provided prior to disclosing nonpublic personal information about the consumer to a nonaffiliated third party.

The proposed rule implemented these requirements by mandating that a financial institution provide the initial notice to an individual prior to the time a customer relationship is established and the opt out notice prior to disclosing nonpublic personal information to nonaffiliated third parties. These notices were required to be clear and conspicuous and to accurately reflect the institution's privacy policies and practices. The proposal also set out standards governing when a customer relationship is established and how a financial institution is to provide notice.

The Commission received many comments on proposed § 313.4. Most of the comments raised questions about the time by which initial notices must be provided, whether new notices are required for each new financial product or service obtained by a customer, the point at which a customer relationship is established, and how initial notices may be provided.

Providing initial notices "prior to" time customer relationship is established. Many commenters stated that, because the statute requires only that the initial notice be provided "at the time of establishing a customer relationship," the regulation should not require that the notice be provided "prior to" the point at which a customer relationship is established. These commenters were concerned that the rule could be interpreted as requiring a financial institution to provide disclosures at a point different from when they must provide other federally mandated consumer disclosures during the process of establishing a customer relationship.

In response to these comments, the Commission has clarified the timing for providing initial notices. The final rule provides that, as a general rule, the initial notice must be given not later than the time when a financial institution establishes a customer relationship. *See* § 313.4(a)(1). As in the proposal, the initial notices may be provided at the same time a financial institution is required to give other notices, such as those required by the Board's regulations implementing the TILA. This approach, like the approach taken in the proposed rule, strikes a balance between (1) ensuring that consumers will receive privacy notices at a meaningful point along the continuum of "establishing a customer relationship" and (2) minimizing unnecessary burdens on financial institutions that may otherwise result if the final rule were to require financial institutions to provide consumers with a series of notices at different times in a transaction.

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Providing notices after customer relationship is established. Several commenters stated that the rule should provide financial institutions with the flexibility to deliver the initial notice after the customer relationship is established under certain circumstances. These commenters posited several situations in which a customer relationship is established without face-to-face contact between the consumer and financial institution. For example, collection agencies that purchase accounts in default noted that it frequently takes time to locate debtors on such accounts (and that sometimes they do not even try to do so.) The commenters stated that delivery of the initial notice *before* the customer relationship is established in these situations would be impractical, and a requirement along those lines would have a significant adverse effect on the ability to provide a financial product or service to a consumer as quickly as the consumer desires.

The Commission believes that it is appropriate for financial institutions to have flexibility in certain circumstances to provide the initial notice at a point after the customer relationship is established. To accommodate the wider range of situations presented by the commenters, the Commission has modified the relevant examples so that they now are more broadly applicable. As stated in the final rule in § 313.4(e), a financial institution may provide the initial notice within a reasonable time after establishing a customer relationship in two instances. First, notice may be provided after the fact if the establishment of the customer relationship is not at the customer's election. *See* § 313.4(e)(1)(i). This might occur, for instance, when a credit account is sold. Second, a notice may be sent after establishing a customer relationship when to do otherwise would substantially delay the consumer's transaction and the consumer agrees to receive the notice at a later time. *See* § 313.4(e)(1)(ii). An example of this would be when a transaction is conducted over the telephone and the customer desires prompt delivery of the item purchased. Another example of when this might occur is when a lender (other than a college or university) establishes a customer relationship with an individual under a student loan program as described in the final rule where loan proceeds are disbursed promptly without prior communication between the bank and the customer.

In most situations, and particularly where the establishment of a customer relationship is in person, a financial institution should give the initial notice at a point when the consumer still has a meaningful choice about whether to enter into the customer relationship. The exceptions listed in the examples, while not exhaustive, illustrate the less frequent situations when delivery either would pose a significant impediment to the conduct of a routine business practice or the consumer agrees to receive the notice later in order to obtain a financial product or service immediately.

In circumstances when it is appropriate to deliver an initial notice after the customer relationship is established, a financial institution should deliver the notice within a reasonable time thereafter. For example, a debt buyer that has purchased a defaulted account for collection in its own name would be authorized by § 313.4(e)(2)(i) to provide its privacy notice shortly after locating the debtor. Several commenters requested that the final rule specify precisely how many days a financial institution has in which to deliver the notice under these circumstances. However, the Commission believes that a rule prescribing the maximum number of days would be inappropriate because (a) the circumstances of when an after-the-fact notice is appropriate are likely to vary significantly, and (b) a rule that attempts to accommodate every circumstance is likely to provide more time than is appropriate in many instances. Thus, rather than establish an inflexible rule, the Commission has elected to retain the more general rule as set out in the proposal in § 313.4(e)(1).

Nothing in the rule is intended to discourage a financial institution from providing an individual with a privacy notice at an earlier point in the relationship if the institution wishes to do so in order to make it easier for the individual to compare its privacy policies and practices with those of other institutions in advance of conducting transactions.

New notices not required for each new financial product or service. Several commenters asked whether a new initial notice is required every time a customer obtains a financial product or service from that financial institution. These commenters suggested that the public would not materially benefit from repeated disclosures of the same information, and that requiring additional initial notices to be provided to the same consumer would be burdensome on financial institutions.

The Commission agrees that it would be burdensome, with little corresponding benefit to the public, to require a financial institution to provide the same consumer with additional copies of its initial notice every time the consumer obtains a financial product or service. Accordingly, the final rule states, in § 313.4(d)(2), that a financial institution will satisfy the notice requirements when an existing customer obtains a new financial product or service if the institution's initial, revised, or annual notice (as appropriate) is accurate with respect to the new financial product or service.

Joint accountholders. The majority of comments on how to provide notice suggested that the final rule state that a financial institution is not obligated to provide more than one notice to joint accountholders. Several of these commenters noted that disclosure obligations arising from joint accounts are well settled under other rules, such as the regulations implementing the Equal Credit Opportunity Act (Regulation B, 12 CFR part 202,) and TILA. Under both Reg. B and Reg. Z, a financial institution is permitted to give only one notice. The authorities cited include requirements that the financial institution give disclosures, as appropriate, to the "primary applicant" if this is readily apparent (in the case of Reg. B; *see* 12 CFR 202.9(f)) or to a person "primarily liable on the account" (in the case of Reg. Z; *see* 12 CFR 226.5(b)).

The Commission agrees that a financial institution should be allowed to provide initial notices in a manner consistent with other disclosure obligations. There are also circumstances, however, where more than one of the joint account holders may want separate notices. Therefore, the final rule states in § 313.9 that the financial institution may send one notice, but must honor requests from one or more account holders for separate notices. Even absent a request, a financial institution may, in its discretion, provide notices to each party to the account. This situation might arise, for instance, when a financial institution does not want one opt out election to apply automatically to all joint accountholders (*see* discussion of how to provide opt out notices, below).

Mergers. A few commenters requested guidance on what notices are required in the event of a merger of two financial institutions or an acquisition of one financial institution by another. In such a situation, the need to provide new initial (and opt out) notices to the customers of the entity that ceases to exist will depend on whether the notices previously given to those customers accurately reflect the policies and practices of the surviving entity. If they do, the surviving entity will not be required under the rule to provide new notices.

As was stated in the preamble to the proposed rule, a financial institution must maintain any protections that it represents it will provide in its privacy notices. Financial institutions must take appropriate measures to adhere to their stated policies and practices.

Section 313.5 Annual Privacy Notice to Customers Required

Section 503 of the G-L-B Act requires a financial institution to provide notices of its privacy policies and practices at least annually to its customers "during the continuation" of a customer relationship. The proposed rule implemented this requirement by requiring a clear and conspicuous notice that accurately reflects the privacy policies and practices then in effect to be provided at least once during any period of twelve consecutive months. The proposed rule noted that provisions governing how to provide an initial notice also would apply to annual notices, and stated that a financial institution would not be required to provide annual notices to a customer with whom it no longer has a continuing relationship.

Several commenters requested that the final rule permit annual notices to be given each calendar year, instead of every twelve months. A variation suggested by a few commenters was to state that notices must be provided during each calendar year, with no more than 15 months elapsing between mailings. To clarify the extent of financial institutions' flexibility, the final rule retains the general rule requiring annual notices but then provides an example, in § 313.5(a)(2), stating that a financial institution may select a calendar year as the 12-month period within which notices will be provided and provide the first annual notice at any point in the calendar year following the year in which the customer relationship was established. The final rule also requires that a financial institution apply the 12-month cycle to its consumers on a consistent basis.

Several commenters suggested that a financial institution be permitted to make the annual notice available upon request only, particularly if there have been no material changes to the notice since it was last delivered or the customer has opted out. These commenters maintained that little value is added by providing customers with additional copies each year of the same information. Some suggested that financial institutions be permitted to provide a "short-form" annual notice, in which the institution informs its customers that there has been no change to its privacy policies and practices and that the customers may obtain a copy upon request.

The Commission has not amended the final rule to permit this approach, for two reasons. First, the Commission interprets the statute as contemplating complete disclosures annually to all customers during the duration of the customer relationship. Section 503 of the G-L-B Act states that "not less than annually during the continuation of [a customer] relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer [*i.e.*, one with whom a customer relationship has been formed], . . . of such financial institution's policies and practices with respect to" the information enumerated in the statute. The Commission believes that this provision contemplates a full set of disclosures to each customer once a year.

Second, the clarifications made in the final rule to the disclosure provisions make it clear that a financial institution is not required to provide a lengthy and detailed privacy notice to comply with the rule. Small institutions that do not share information with third parties beyond the statutory exceptions should be able to provide a short, streamlined notice. The rule also permits a financial institution to provide annual notices to customers over the institution's web site if the customer conducts transactions electronically and agrees to such disclosures (*see* additional discussion of this flexibility, below, in § 313.9). As a result, the final rule achieves much of the burden reduction sought by those requesting a short-form annual notice option.

Most of the remaining comments received in response to proposed § 313.5 addressed the sections governing when a customer relationship is terminated. Some noted that the examples used "consumer" when "customer" was appropriate, and the final rule is revised accordingly. A few commenters, including retailers and some whose business related to real estate transactions, stated that the example of no communication with a customer for twelve months should be amended to clarify that promotional materials would not be considered a communication about the relationship sufficient to reactivate a dormant or terminated customer relationship. These commenters generally suggested that the rule be tied to communications initiated by the customer. The Commission agrees that a communication that merely informs a person about, or seeks to encourage use of, a financial institution's products or services is not the type of communication that signifies an ongoing relationship. The final rule has been amended in § 313.5(b)(2)(vii) to reflect that the distribution of promotional materials will not prolong a customer relationship under the rule. The Commission disagrees, however, that the test should focus on whether there has been any customer-initiated contact, because there will be instances in which the customer will not initiate a contact with a financial institution within the relevant time period but nonetheless has an ongoing relationship.

Section 313.6 Information To Be Included in Initial and Annual Privacy Notices

Section 503 of the G-L-B Act identifies the items of information that must be included in a financial institution's initial and annual notices. Section 503(a) of the G-L-B Act sets out the general requirement that a financial institution must provide customers with a notice describing the institution's policies and practices with respect to, among other things, disclosing nonpublic personal information to affiliates and nonaffiliated third parties. Section 503(b) of the Act identifies certain elements that must be addressed in that notice.

The proposed rule implemented section 503 by requiring a financial institution to provide information concerning:

- The categories of nonpublic personal information that a financial institution may collect;
- The categories of nonpublic personal information that a financial institution may disclose;
- The categories of affiliates and nonaffiliated third parties to whom a financial institution discloses nonpublic personal information, other than those to whom information is disclosed pursuant to an exception in section 502(e) of the G-L-B Act;
- The financial institution's policies with respect to sharing information about former customers;
- The categories of information that are disclosed pursuant to agreements with third party service providers and joint marketers and the categories of third parties providing the services;
- A consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties;
- Any disclosures regarding affiliate information sharing opt outs a financial

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institution is providing under the FCRA; and

• The financial institution's policies and practices with respect to protecting the confidentiality, security, and integrity of nonpublic personal information.

The Commission received a large number of comments concerning these requirements, with the majority of comments making the points summarized below.

Level of detail required. Many commenters offered the general observation that the level of detail that would be required under the proposed rule would result in lengthy, complicated, and ultimately confusing disclosures. These comments have led the Commission to clarify the level of detail that is required in a financial institution's initial and annual disclosures to contain.

Neither the Act nor this rule requires a financial institution to publish lengthy disclosures that identify with precision every type of information collected or disclosed, the name of every entity with whom the financial institution shares information, a complete description of the technical specifications of methods used by the institution to protect its customers' records, or the identity of each employee who has access to the records. Instead, the Commission has concluded that the statute, by focusing on "categories" of information and recipients of information, is intended to require notices that provide consumers with a general description of the third parties to whom a financial institution discloses nonpublic personal information, the types of information it discloses, and the other information about the institution's privacy policies and practices listed above. The Commission's intent is that the notice must be reasonably designed to be meaningful to consumers. The final rule, like the proposal, permits a financial institution to comply with these notice requirements by providing a description that accurately represents its privacy policies and practices. The Commission believes that in most cases the initial and annual disclosure requirements can be satisfied by disclosures contained in a tri-fold brochure.

To address commenters' concerns about the likelihood that consumers will not read long, detailed disclosures, the Commission has revised the examples of the disclosures set out in proposed § 313.6(e), which appears in the final rule at § 313.6(c), to clarify the level of detail that it thinks is appropriate under the G-L-B Act. Sample clauses have been provided in Appendix A to the rule, and guidance for certain institutions has been set out below in Section D. Because the examples are not exclusive, the final rule permits a financial institution to use categories different from those provided in the examples, thereby providing additional flexibility for financial institutions in complying with the disclosure requirements. In addition, the language in § 313.6(a) that precedes the items of information to be addressed in the initial notice has been amended to clarify that a financial institution is required only to address those items that apply to the institution. Thus, for instance, if a financial institution does not disclose nonpublic personal information to third parties, it may simply omit any reference to the categories of affiliates and nonaffiliated third parties to whom the institution discloses nonpublic personal information. The Commission has made these changes to clarify financial institutions' obligations under the statute and thereby eliminate unnecessary confusion.

The required content is the same for both the initial and annual notices of privacy policies and practices. While the information contained in the notices must be accurate as of the time the notices are provided, a financial institution may prepare its notices based on current and anticipated policies and practices.

The Commission received conflicting suggestions relating to disclosures required about information provided to service providers and joint marketers. Some industry commenters suggested that the example in § 313.6(a)(5) required the same specificity as other disclosures and that it should be collapsed into § 313.6(a)(1–4). Some consumer advocates asked for more detail with respect to these disclosures, because consumers cannot opt out of them. The Commission believes that the example in § 313.6(a)(5) appropriately requires a "separate statement" on this point, and that this is sufficient to alert consumers about this practice. Therefore, it retains the example as proposed.

Short-form initial notice. The Commission has reconsidered the need to give consumers a copy of a financial institution's complete initial notice when there is no customer relationship. In these circumstances, the Commission believes that the objectives of the statute can be accomplished in a less burdensome way than was proposed and has exercised its exemptive authority as provided in section 504(b) to create an exception to the general rule that otherwise requires a financial institution to provide both the initial and opt out notices to a consumer before disclosing nonpublic personal information about that consumer to nonaffiliated third parties.

This exception is set out in § 313.6(d) of the final rule, which states that a financial institution may provide a "short-form" initial privacy policy notice along with the opt out notice to a consumer with whom the institution does not have a customer relationship. The short-form notice, along with the opt out notice, must clearly and conspicuously state that the disclosure containing information about the institution's privacy policies and practices is available upon request and provide one or more reasonable means by which the consumer may obtain a copy of the notice. This approach reflects the conclusion that consumers who do not become customers of a financial institution generally will have less interest in the privacy policies of that financial institution and will benefit from obtaining a concise, but meaningful, opt out notice that informs the consumer about the categories of their information the institution intends to disclose and the categories of nonaffiliated third parties that will receive the information. Consumers who are interested in the more complete privacy disclosures will be provided with a convenient means to obtain them.

Information about affiliate sharing. Another point made by several commenters in response to proposed § 313.6 was that the rule should not include a requirement that categories of affiliates with whom a financial institution shares information be included in the initial and annual notices. These commenters pointed out that the statute specifically requires disclosures of categories of nonaffiliated third parties only, and that the only statutorily mandated disclosures concerning affiliate sharing are disclosures required, if any, concerning affiliate sharing pursuant to section 603(d)(2)(A)(iii) of the FCRA.[33] These commenters concluded that the Commission, by expanding the disclosure requirements in the manner prescribed in the proposed rule, would be exceeding its rulemaking authority and imposing unnecessary burdens on financial institutions.

[33] Section 603(d)(2)(A)(iii) excludes from the definition of "consumer report" the communication of certain consumer information among affiliated entities if the consumer is notified about the disclosure of such information and given an opportunity to opt out of the disclosure of that information. The information that can be disclosed to affiliates under this provision includes information from consumer reports. It also includes personal information provided directly by consumers to institutions in applications for financial products or services, such as information on income and assets.

The language and legislative history of section 503 support requiring disclosures of affiliate sharing beyond what may be required by the FCRA. First, section 503(b) does not state that the items listed therein are to be the only items set out in a financial institution's initial and annual disclosures. Instead, it uses the nonrestrictive phrase "shall include" when discussing the contents of the disclosures, thereby preserving flexibility for the Commission (which was expressly granted authority under section 503(a) to prescribe rules governing these notices) to require that additional items be addressed in the disclosures consistent with those specifically enumerated.

Second, section 503(a) provides that the financial institution shall provide in its initial and annual notices "a clear and conspicuous disclosure * * * of such financial institution's policies and practices with respect to—(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 502, including the categories of information that may be disclosed; * * *." While the FCRA disclosures would be a subset of the disclosures required by section 503(a)(1), they may not be sufficient to fully satisfy that requirement.

Third, the legislative history of the G-L-B Act suggests that Congress intended for the disclosures to provide more information about affiliate sharing than what may be required under the FCRA.[34] That history underscores the Congressional intent of ensuring that individuals are given the opportunity to make informed decisions by reviewing the privacy policies and practices of financial institutions. The Commission believes that limiting the disclosures about affiliate sharing just to those disclosures required under the FCRA would frustrate that purpose.

Disclosures of the FCRA opt out right. Another frequent comment was that a financial institution should not be required to include FCRA disclosures in its annual notices. As previously discussed, section 503(b)(4) of the G-L-B Act requires a financial institution's initial and annual notice to include the disclosures required, if any, under section 603(d)(2)(A)(iii) of the FCRA. The proposed rule implemented section 503(b)(4) of the G-L-B Act by including the requirement that a financial institution's initial and annual notice include any disclosures a financial institution makes under section 603(d)(2)(A)(iii) of the FCRA. Several commenters pointed out that the FCRA requires disclosures of a consumer's right to opt out of affiliate sharing only once. They noted that the G-L-B Act states, in section 506(c), that nothing in the G-L-B Act is to be construed to modify, limit, or supersede the operation of the FCRA. The "if any" language of section 503(b)(4), read in the context of section 506, suggests that, since at most only one notice must be provided under the FCRA, section 503 should require only one FCRA disclosure under the privacy rule. The commenters concluded that, by requiring more notices than are required under the FCRA, the Commission would be violating this express preservation of the FCRA.

In order to comply with the requirement of the G-L-B Act that it disclose its policies and practices with respect to sharing information with affiliated and nonaffiliated third parties, a financial institution, must describe the circumstances under which it will be sharing information with affiliates. Clearly, the ability of consumers to opt out of affiliate information sharing under the FCRA affects a financial institution's policies and practices with respect to disclosing information to its affiliates. The Commission finds that failing to include this information and an explanation of how the opt out right may be exercised would make the disclosures incomplete. Thus, a financial institution must include this information in its initial and annual notices.

The commenters' reading of sections 503 and 506 is wrong. Section 503 does not distinguish between the disclosures to be provided in the initial notice from those to be provided in the annual notice. Thus, a plain reading of section 503 suggests that any disclosures that are required under the FCRA must be included in both the initial and annual notices.

The "if any" language is a recognition that not all institutions provide FCRA notices because not all institutions engage in the type of affiliate sharing covered by the FCRA. By requiring the FCRA notice to appear as part of the annual notice under the privacy rule, the Commission is not modifying, limiting, or superseding the operation of the FCRA; financial institutions will have exactly the same FCRA obligations following the effective date of the privacy rule as they had before. The only difference will be that, as is required by the G-L-B Act, a financial institution's initial and annual disclosures about its privacy policy and practices will need to reflect how the financial institution complies with the affiliate sharing provisions of the FCRA.

Disclosures of the right to opt out. Other commenters suggested that the final rule eliminate the requirement that the initial and annual notices contain disclosures about a consumer's right to opt out. These commenters pointed out that the statute does not specifically require these disclosures.

As previously discussed, section 503(a) of the statute requires a financial institution to disclose its policies and practices with respect to sharing information, both with affiliated and nonaffiliated third parties. Given that a financial institution's practices with respect to sharing nonpublic personal information with nonaffiliated third parties will be affected by the opt out rights created by the statute, an institution will need to describe these opt out rights in order to provide a complete disclosure that satisfies the statute.

Other comments. Many commenters expressed support for a number of the provisions in proposed § 313.6. For instance, several commenters noted their agreement with the approach of permitting a financial institution to state generally that it makes disclosures to nonaffiliated third parties "as permitted by law" to describe disclosures made pursuant to one of the exceptions. Others agreed with the proposed flexibility to allow a disclosure to be based on current and contemplated information sharing. In addition, the Commission received may requests for model forms of privacy notices. In light of these comments, the Commission has adopted proposed § 313.6 with changes as discussed above, plus stylistic changes to the material in § 313.6 that are intended to make the rule easier to read, and added the sample clauses in Appendix A.

Section 313.7 Form of Opt Out Notice to Consumers; Opt Out Methods

Paragraph (a) of proposed § 313.8 required that any opt out notice provided by a financial institution be clear and conspicuous and accurately explain the right to opt out. The

[34] *See, e.g.*, remarks of Sen. Gramm (noting that the privacy bill contains "for the first time a full disclosure requirement. It requires every bank in America, when you open your account to tell you precisely what their policy is: Do they share personal financial information within the bank? Do they share it outside the bank?"), 145 Cong. Rec. S13786 (daily ed. Nov. 3, 1999); remarks of Sen. Hagel, *id.* at S13876 ("Financial institutions would be required to disclose their privacy policies to their customers on a timely basis. If customers do not believe adequate protections exist at their institution, they can take their business elsewhere.").

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proposed rule also required a financial institution to provide the consumer with a reasonable means by which to opt out, required a financial institution to honor an opt out election as soon as reasonably practicable, and stated that an opt out election survived until revoked by the consumer. The Commission received several comments in response to each of these provisions, addressing the application of these rules to joint accounts, the means by which an opt out right may be exercised, duration of an opt out, the level of detail required in the opt out notice, and the time by which an opt out election must be honored. These points are addressed below.

Joint accounts. Most of the commenters on this issue stated that a financial institution should have the option of providing one notice per account, regardless of the number of persons on the account. The Commission has added a new § 313.7(d) to address this issue. Under the final rule, a financial institution has the option of providing only one initial, annual, and opt out notice per account. However, if one or more of the joint account holders requests separate notices, the financial institution must honor that request. Even in instances where only one notice is provided, any of the accountholders must have the right to opt out. The final rule requires a financial institution to state in the opt out notice provided to a joint accountholder whether the institution will consider an opt out by a joint accountholder as an opt out by all of the associated accountholders or whether each accountholder is permitted to opt out separately.

Means of opting out. Another issue addressed by many commenters concerned the means by which consumers may opt out. Several suggested that a financial institution, after having provided reasonable means of opting out, should be able to require consumers to use those means exclusively. The Commission recognizes that a financial institution may not have trained personnel or systems in place to handle opt out elections at each point of contact between a consumer and financial institution. Assuming a financial institution offers one or more of the opt out means provided in the examples in the final rule or a means of opting out that is comparably convenient for a consumer, the institution may require consumers to opt out in accordance with those means and choose not to honor opt out elections communicated to the institution through alternative means. A new paragraph (iv) has been added to § 313.7(a)(2)(iv) to reflect this. However, as stated in § 313.7(a)(2)(iii)(A), a financial institution may not require a consumer to write his or her own letter in order to opt out.

Several commenters supported the alternative ways in which financial institutions could provide for consumers to opt out, especially the toll-free number set forth in § 313.8(a)(2)(ii)(D) in the Commission's proposal that was not included in the other Agencies' proposed rule. The Commission has retained that example in § 313.7(a)(2)(ii)(D) of the final rule, and the other Agencies have added the toll-free telephone number to their lists of examples. The Commission also received numerous comments indicating that one of the proposal's means of opting out, providing a self-addressed stamped envelope with a detachable card, was too burdensome. The Commission has, therefore, revised that example to provide for a reply form that contains the relevant address to facilitate the consumers ability to return it.

Duration of opt out. Several commenters questioned the practicality of the rule concerning duration of an opt out, as provided in § 313.8(e) of the proposal. These commenters noted that, under the proposal, a financial institution would be required to keep track of opt out elections forever. To illustrate their point, the commenters posited the example of a person who opts out during the course of establishing a customer relationship with a financial institution, terminates that relationship, and then establishes another customer relationship several years later, perhaps under a different name or with someone on a joint account. The commenters suggested that it would be more appropriate in these circumstances to treat the opt out election made in connection with the first relationship as applying solely to that relationship.

The Commission agrees. Thus, under the final rule, a financial institution is not required to treat an opt out election made by a customer in connection with a prior customer relationship as applying solely to the nonpublic personal information that the financial institution collected during, or related to, that relationship. That opt out will continue until the customer revokes it. However, if the customer relationship terminates and a new one is established at a later point, the financial institution must then provide a new opt out notice to the customer in connection with the new relationship and any prior opt out election does not apply to the new relationship.

Level of detail required in opt out notice. A few commenters expressed concern about the level of detail they perceived the proposed rule to require in an opt out notice. These commenters interpreted the statement in proposed § 313.8(a)(2) that a financial institution "provides adequate notice . . . if [the institution] identifies all of the categories of nonpublic personal information that [the institution] discloses or reserves the right to disclose to nonaffiliated third parties as described in [§ 313.6]" as requiring a more detailed disclosure of categories of nonpublic personal information and nonaffiliated third parties than is required in the initial and annual notices.

The Commission did not intend this result, and specifically referred to § 313.6 in the proposed opt out provision to address precisely the concern raised by these commenters. The disclosures in the initial and annual notices of the categories of nonpublic personal information being disclosed and the categories of nonaffiliated third parties to whom the information is disclosed will suffice for purposes of the opt out notices as well. If the opt out notice is a part of the same document that contains the disclosures that must be included in the initial notice, then the financial institution is not required to restate the same information in the opt out notice. In this instance, the rule requires only that the categories of nonpublic personal information the institution intends to share and the categories of nonaffiliated third parties with whom it will share are clearly disclosed to the consumer when the opt out and privacy notices are read together.

One commenter suggested that, while a financial institution should have the option of providing an opt out notice that is sufficiently broad to cover anticipated disclosures, the financial institution also should be permitted to provide a customer who already has opted out with a new opt out notice in connection with a new financial product or service and, if the consumer does not opt out a second time, be free to disclose nonpublic personal information obtained in connection with that financial product or service to nonaffiliated third parties. The Commission believes that a financial institution should be permitted the flexibility to provide opt out notices that are either clearly limited to specific types of nonpublic personal information and types of nonaffiliated third parties, or that are more broadly worded to anticipate future disclosure plans. However, if a consumer opts out after receiving an opt out notice from a financial institution that is broad enough to cover the new type of information sharing desired by that institution, the failure of the consumer to opt out again does not revoke the earlier opt out election.

Time by which opt out must be honored. Under the proposal, a financial institution is directed to comply with an opt out election "as soon as reasonably practicable." A large number of comments asked the Commission to clarify in the final rule how long a financial institution has after receiving an opt out election to cease disclosing nonpublic personal information to nonaffiliated third parties. Suggestions for a more precise standard ranged from mandating that a financial institution stop disclosing information immediately to a mandatory cessation within several months of receiving the opt out. As was the case with other suggestions for bright-line standards in different contexts, the Commission believes that it is appropriate to retain a more general rule in light of the wide range of practices throughout the various financial institutions within its jurisdiction. A potential drawback of a more prescriptive rule is that an institution might use the standard as a safe harbor in all instances and thus fail to honor an opt out election as early as it is otherwise capable of doing. Another drawback is that a standard that is set in light of current industry practices and capabilities may become outmoded as advances in technology increase efficiency. The Commission therefore declines to adopt a more rigid standard and instead retains the rule as set out in § 313.7(e) of the final rule.

For the reasons stated above, the Commission adopts, in § 313.7, the rule governing the form of opt out notices and methods of opting out as discussed above. This section contains other stylistic changes to what was proposed in order to make the final rule easier to read.

Section 313.8 Revised Privacy Notices

The proposed rule, in § 313.8(c) ("Notice of change in terms"), prohibited a financial institution (directly, or through its affiliates) from disclosing nonpublic personal information about its consumers to nonaffiliated third parties unless the institution first provided a copy of its privacy notice and opt out notice. The proposal also required that these notices be accurate when given. Thus, if an institution wants to disclose nonpublic personal information in a way that is not accurately described in its notices, the institution would be required under the proposed rule to provide new notices before making the disclosure in question.

The only comments relating to these requirements received by the Commission posited that a revised notice should be required only upon material changes. Section 313.8(a)(i) addresses this point—no new notice is required if the original notice "accurately describes" the institution's policies. Accordingly, the Commission adopts the rule as proposed, but places the relevant provisions in a separate section (§ 313.8, "Revised privacy notices") in the final rule for emphasis. The final rule sets out examples in § 313.8(b) of when a new notice would, and would not, be required.

Section 313.9 Delivering Privacy and Opt Out Notices

The proposed rules governing delivery of initial, annual, and opt out notices were set out in proposed §§ 313.4(d), 313.5(b), and 313.8(b), respectively. Given the substantial similarities between the three sets of rules, the Commission has decided to combine the rules in one section in order to make it easier for the reader. Accordingly, the final rule states these rules in § 313.9.

The general rule requires that notices be provided in a manner so that each consumer can reasonably be expected to receive actual notice in writing, or, if the consumer agrees, electronically. The Commission received a number of comments on the various provisions governing delivery, as discussed below.

Posting initial notices on a web site. A few commenters suggested that a financial institution be allowed to deliver initial notices simply by posting its notice on the institution's web site. Some of them criticized the example in proposed § 313.4(d)(5)(C) that required the consumer to acknowledge receipt of an electronic communication as tantamount to an "opt-in" provision; conversely, at least one consumer representative vigorously contended that it was essential that the consumer affirmatively respond in this situation because computer literacy cannot be presumed from the use of a web site.

There will be instances when a notice on a web site may be delivered in a way that will enable the financial institution to reasonably expect that the consumer will receive it. The final rule retains, as an example of one way to comply with the rule, the posting of a notice on a web site and requiring a consumer to acknowledge receipt of the notice as a step in the process of obtaining a financial product or service. *See* § 313.9(b)(1)(iii). However, the mere posting of a notice on a web site would not be sufficient in all cases for the financial institution to reasonably expect its consumers to receive the notice. Accordingly, the Commission does not view the limited acknowledgment of receipt in this context as equivalent to an opt in requirement.

Posting annual notices on a web site. Several commenters requested that a privacy notice posted by a financial institution on its web site be deemed to satisfy the annual notice requirement, at least for customers who agree to receive notices on the institution's web site. The final rule contains a new § 313.9(c)(i) to clarify that a financial institution may reasonably expect that a customer who uses the institution's web site to access financial products or services will receive actual notice if the customer has agreed to accept notices at the institution's web site and the financial institution posts a current notice of its privacy policies and practices continuously and in a clear and conspicuous manner on the web site.

The Commission views it as appropriate to post the annual notice on the web site only where the customer is in a relationship with the financial institution that is conducted almost entirely at the web site and where the customer has explicitly agreed to receive all of its notices and financial information at the web site. Moreover, the financial institution must position any link or links to the privacy policy such that they are evident to the customer wherever the customer may go on the web site to conduct transactions or obtain information. In those circumstances, the Commission agrees that it is appropriate to provide annual notices in this way for customers who conduct transactions electronically and agree to accept notices on a web site. This will reduce burden on financial institutions while ensuring that customers who transact business electronically will have access to institutions' privacy policies and practices.

Disclosures to customers requesting no communication. Several commenters suggested the Commission clarify in the final rule how the disclosure obligations may be met in the case of a customer who requests that the institution refrain from sending information about the customer's relationship. These commenters stated that, in this case, the customer's request should be honored.

The Commission agrees. When a customer provides explicit instructions for a financial institution not to communicate with that customer, the

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Commission believes that the request should be honored. The final rule clarifies, in § 313.9(c)(ii), that financial institutions need not send notices to a customer who requests no communication, provided that a notice is available upon request.

Reaccessing a notice. A few commenters stated that the requirement that a privacy policy be provided in a way that enables a customer to either retain or reaccess the notice should clarify that the rule obligates a financial institution to make available only the privacy policy currently in effect. These commenters were concerned about the potential for confusion and the burden stemming from a rule that would require a financial institution to make available every version of its privacy policies. The Commission agrees that it is appropriate to require only that the current privacy policy be made available to someone seeking to obtain it after having received the initial notice, and has revised the final rule accordingly in § 313.9(e)(2)(iii).

Joint notices. Other commenters requested that the rule clarify that the privacy policies and practices of several different affiliated financial institutions may be described on a single notice. Further, commenters requested that the final rule address whether affiliated financial institutions, each of whom has a customer relationship with the same consumer, may elect to send only one notice to the consumer on behalf of all of the affiliates covered by the notice and have that one notice satisfy the disclosure obligations under § 313.4 of each affiliate. Financial institutions should be able to combine initial disclosures in one document. The Commission also believes that it is appropriate to permit financial institutions that prepare a combined initial or annual notice to give, on a collective basis, a consumer only one copy of the notice. The final rule reflects this flexibility, in § 313.9(f). The notice must be accurate for all financial institutions using the notice, and must identify by name each of the institutions. The Commission also notes that financial institutions that provide one combined notice must be capable of keeping track of whether a consumer has opted out in order to ensure that disclosures are made in accordance with whatever opt out instructions a consumer provides after having received the joint notice.

Section 313.10 Limits on Disclosure of Nonpublic Personal Information to Nonaffiliated Third Parties

Section 502(a) of the G-L-B Act generally prohibits a financial institution, directly or through its affiliates, from sharing nonpublic personal information about a consumer with a nonaffiliated third party unless the institution provides the consumer with a notice of the institution's privacy policies and practices. Section 502(b) further requires that the financial institution provide the consumer with a clear and conspicuous notice that the consumer's nonpublic personal information may be disclosed to nonaffiliated third parties, that the consumer be given an opportunity to opt out of that disclosure, and that the consumer be informed of how to opt out. Section 313.7 of the proposed rule implemented these provisions by requiring a financial institution to give the consumer the initial notice required by § 313.4, the opt out notice required by § 313.8, and a reasonable opportunity to opt out.

Most of the comments addressing these requirements focused on the question of what is a reasonable opportunity to opt out. Suggestions ranged from a financial institution having the right to begin sharing information immediately (when the opt out and initial notices are provided as part of a transaction being conducted electronically, such as might be the case in an ATM transaction) up to a mandatory delay of 120 days from the time the notices are provided.

The wide variety of suggestions underscores the appropriateness of a more general test that avoids setting a mandatory waiting period applicable in all cases. For isolated transactions where a financial institution intends to disclose nonpublic personal information that it obtains through an electronic transaction and the consumer is provided a convenient means of opting out as part of the transaction, it would be reasonable not to force the financial institution to wait a set period of time before sharing the information. Thus, the example in § 313.10(a)(3)(iii) provides flexibility. For other opt out notices that are provided by mail, the Commission believes it is appropriate to allow the consumer additional time. In these latter instances, the Commission considers it reasonable to permit the consumer to opt out by mailing back a form, by calling a toll-free number, or by any other reasonable means within 30 days from the date the opt out notice was mailed. *See* § 313.10(a)(3)(i). The final rule also provides an example of a reasonable opportunity for opting out in connection with accounts opened on-line. *See* § 313.10(a)(3)(ii). However, rather than try to anticipate every scenario and establish a time frame that would accommodate each, the rule simply provides that the consumer must be given a reasonable opportunity to opt out and then provide a few illustrative examples of what would be reasonable in different contexts.

Other comments pointed out that proposed § 313.7(a)(3)(i), which is § 313.10(a)(3)(i) of the final rule, inappropriately implied that the opportunity to opt out by mail is available only when a consumer has a customer relationship with the financial institution. The final rule deletes the reference to a customer relationship in that section to avoid that implication.

Section 313.11 Limits on Redisclosure and Reuse of Information

Section 502(c) of the G-L-B Act provides that a nonaffiliated third party that receives nonpublic personal information from a financial institution shall not, directly or indirectly through an affiliate, disclose the information to any person that is not affiliated with both the financial institution and the third party, unless the disclosure would be lawful if made directly by the financial institution. The proposed rule implemented section 502(c) by imposing limits on redisclosure that apply both to a financial institution that receives information from a nonaffiliated financial institution and to any nonaffiliated third party that receives nonpublic personal information from a financial institution. The proposed rule also imposed limits on the ability of financial institutions and nonaffiliated third parties to reuse nonpublic personal information they receive. As noted in the preamble to the proposed rule, sections 502(b)(2) and 502(e) permit disclosures of nonpublic personal information for specific purposes. The Commission sought comment on whether the final rule should limit the ability of an entity that receives nonpublic personal information pursuant to an exception to use that information only for the purpose of that exception. The Commission also sought comment on what the term "lawful" means in the context of section 502(c), and whether a recipient of nonpublic personal information could "lawfully" disclose information if the disclosure complied with a notice provided by the institution that made the disclosure initially. Finally, the Commission invited comment on whether the rule should require a financial institution that discloses nonpublic personal information to a nonaffiliated third party to develop policies and procedures to ensure that the third party complies with the limits on redisclosure of that information.

The Commission received many comments in response to this proposed section. A few opined that the Commission would exceed its rulemaking authority if the final rule were to retain the limits on reuse of information, given that section 502(c) expressly addresses only redisclosures and not reuse. Most comments concerning proposed § 313.12 stated that financial institutions should not have to monitor compliance with the redisclosure and reuse provisions of the rule, although these commenters said that financial institutions typically will contractually limit the recipient's ability to reuse information for purposes other than those for which the information was disclosed. The Commission also received comments from consumer reporting agencies, individual reference services, private investigators, and direct marketers stating that consumer reporting agencies should be able to continue their practice of selling "credit header" information that they obtain from financial institutions, as well as some comments stating that the Commission should clarify that the rules prohibit the continued distribution of such information by consumer reporting agencies. These issues are addressed below.

Limits on reuse. Those critical of imposing limits on reuse believe that Congress, by addressing limits on redisclosures in section 502(c), provided the only limits that may be imposed on what a recipient of nonpublic personal information can do with that information. The Commission disagrees. Section 502(c) is silent on the question of reuse, making it necessary to look to the overall purposes of the statute to determine whether the Commission should impose limits on the ability of nonaffiliated third parties to reuse nonpublic personal information that they receive from a financial institution. The Act makes it appropriate to impose limits on reuse, depending on whether the information was obtained pursuant to one of the exceptions in section 502(e) of the G-L-B Act (as implemented by §§ 313.14 and 313.15 of the final rule).

When disclosures are made to nonaffiliated third parties in connection with one of the purposes set out in section 502(e), those disclosures are exempt from the notice and opt out protections altogether. A customer has no right to prohibit those disclosures or even to know more than that the disclosures are being made "as permitted by law." A consumer who does not establish a customer relationship is not even put on notice that the disclosures are made as permitted by law, because the consumer is not entitled to any privacy or opt out notice. The only protection afforded by the statute for disclosures made under section 502(e) is the limited nature of the exceptions. It would be inappropriate to undermine the key privacy requirements of the Act that ensure a consumer can generally control the disclosure of his or her nonpublic personal information by allowing the recipient of nonpublic personal information under the section 502(e) exception to reuse the information for any purpose, including marketing.

By contrast, when a consumer decides not to opt out after being given adequate notices and the opportunity to do so, that consumer has made a decision to permit the sharing of his or her nonpublic personal information with the categories of entities identified in the financial institution's notices. The consumer's primary protection in the case of a disclosure falling outside the section 502(e) exceptions comes from receiving the mandatory disclosures and the right to opt out. The statute provides only the additional protection in section 502(c), restricting a recipient's ability to redisclose information to entities that are not affiliated with either the recipient or the financial institution making the disclosure initially. Thus, if a consumer permits a financial institution to disclose nonpublic personal information to the categories of nonaffiliated third parties that are described in the institution's notices, recipients of that nonpublic personal information appear authorized under the statute to make disclosures that comply with those notices.

To implement this statutory scheme, the Commission has retained a limit on reuse in addition to the limit on redisclosures. The limits on redisclosure and reuse that apply to recipients of information and their affiliates will vary, depending on whether the information was provided pursuant to one of the section 502(e) exceptions.

For nonpublic personal information provided pursuant to section 502(e), a financial institution receiving the information may disclose the information to its affiliates or to affiliates of the financial institution from which the information was received. It may also disclose and use the information pursuant to an exception in §§ 313.14 or 313.15 in the ordinary course of business to carry out the activity covered by the exception under which the institution received the information. Therefore, the financial institution's affiliates may disclose and use the information, but only to the extent permissible for the financial institution under those exceptions.

For nonpublic personal information provided *outside* one of the section 502(e) exceptions (*i.e.*, where a customer or consumer has not opted out), the financial institution receiving the information may disclose the information to its affiliates or to the affiliates of the financial institution that made the initial disclosure. It may also disclose the information to any other person, if the disclosure would be lawful if made directly by the financial institution from which the information was received. This would enable the receiving institution to redisclose information pursuant to one of the section 502(e) exceptions. It also would permit the receiving institution to redisclose information in accordance with the opt out and privacy notices given by the institution making the initial disclosures, as limited by any opt out elections received by that institution. The affiliates of a financial institution that receives nonpublic personal information may disclose only to the extent that the financial institution may disclose the information.

These same general rules apply to a *non-financial institution* third party that receives nonpublic personal information from a financial institution. Thus, the third party receiving the information pursuant to one of the section 502(e) exceptions may disclose the information to its affiliates or to the affiliates of the financial institution that made the disclosure. The third party also may disclose and use the information pursuant to one of the section 502(e) exceptions as noted in the rule. The affiliates of the third party may disclose and use the information only to the extent permissible for the third party. If the third party receives the information from a financial institution outside one of the section 502(e) exceptions, the third party may disclose to its affiliates or to the affiliates of the financial institution. It may also disclose to any other person if the disclosure would be lawful if made by the financial institution. The third party's affiliates may disclose and use the information to the same extent permissible for the third party.

To summarize, in cases where an entity receives information outside of one of the section 502(e) exceptions, that entity will in essence "step into the shoes" of the financial institution that made the initial disclosures. Thus, if the financial institution made the initial disclosures after representing to its consumers that it had carefully screened the entities to whom it intended to

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disclose the information, the receiving entity must be able to comply with those representations. Otherwise, the subsequent disclosure by the receiving entity would not be in accordance with the notices given to consumers and would not, therefore, be lawful. Even if such representations do not prevent the recipient from redisclosing the information, the recipient's ability to redisclose will be limited by whatever opt out instructions were given to the institution making the initial disclosures and by whatever new opt out instructions are given after the initial disclosure. The receiving entity, therefore, must have procedures in place to continually monitor the status of who opts out and to what extent. Given these practical limitations on the ability of a recipient to disclose pursuant to another institution's privacy and opt out notices, redisclosure of information is most likely to arise under one of the section 502(e) exceptions (as implemented by §§ 313.14 and 313.15 of the final rule).

Monitoring third parties. The final rule does not impose a general duty on financial institutions to monitor third parties' use of nonpublic personal information provided by the institutions. Obligations to do so may arise in other contexts, however. For instance, some of the commenters who requested that the Commission not impose such a duty stated that they have contracts in place that limit what the recipient may do with the information. Also, the limits on reuse as stated in the final rule provide a basis for an action to be brought against an entity that violates those limits.

Redisclosure by consumer reporting agencies. Comments regarding the availability of credit header information[35] from consumer reporting agencies addressed not only the reuse and redisclosure provisions, but also the definition of nonpublic personal information (*see* § 313.3(n, o, p) above), the exception in § 313.15(a)(5), and the operation of the Fair Credit Reporting Act (*see* § 313.16 below). For clarity, the Commission addresses the credit header issue here, with reference as appropriate to other provisions of the final rule.

The definition of nonpublic personal information dictates that all of the information a financial institution provides to a consumer reporting agency is nonpublic personal information: "Any list, description or other grouping of consumers (*and publicly available information pertaining to them*) that is derived using any personally identifiable financial information * * *." (§ 313.3(n)(1)(ii)(emphasis added).) The financial institution is permitted under § 313.15(a)(5) to disclose this nonpublic personal information, without giving the consumer notice and the opportunity to opt out, "[t]o a consumer reporting agency * * *." That same exception states that the notice and opt out provisions do not apply to nonpublic personal information "from a consumer report reported by a consumer reporting agency."

The Commission recognizes that § 313.15(a)(5) permits the continuation of the traditional consumer reporting business, whereby financial institutions report information about their consumers to the consumer reporting agencies and the consumer reporting agencies, in turn, disclose that information in the form of consumer reports to those who have a permissible purpose to obtain them. Despite a contrary position expressed by some commenters, this exception does not allow consumer reporting agencies to redisclose the nonpublic personal information it receives from financial institutions other than in the form of a consumer report. Therefore, the exception does not operate to allow the disclosure of credit header information to individual reference services, direct marketers, or any other party that does not have a permissible purpose to obtain that information as part of a consumer report.[36]

Disclosure by a consumer reporting agency of the nonpublic personal information it receives from a financial institution pursuant to the exception, other than in the form of a consumer report, is governed by the limitations on reuse and redisclosure in § 313.11, discussed above in "Limits on reuse." Those limitations do not permit consumer reporting agencies to disclose credit header information that they received from financial institutions to nonaffiliated third parties. Some commenters suggested that the information loses its status as "nonpublic personal information" when the consumer reporting agencies combine it with other information in their databases. The Commission does not agree. The information is disclosed to the consumer reporting agencies as nonpublic personal information and it retains that status regardless of how the consumer reporting agency stores or rediscloses that data.

Several commenters stated that the Fair Credit Reporting Act operates to allow consumer reporting agencies to disclose credit header information and, therefore, any prohibition on the sale of credit header information violates section 506 of the G–L–B Act, which states that "nothing in [Title V of the G-L-B Act] shall be construed to modify, limit, or supercede the operation of the [FCRA]." The Commission does not agree. To the extent credit header information is not a consumer report, it is not regulated by the FCRA and a prohibition on its disclosure by a consumer reporting agency consistent with the statutory scheme of the G-L-B Act in no way modifies, limits or supercedes the operation of the FCRA.[37]

At least one commenter requested that the Commission make use of the authority granted to it under section 504(b) of the G-L-B Act to provide for an exception to the reuse and redisclosure limitations that would allow consumer reporting agencies to sell credit header information. The Commission does not believe that such an exception is consistent with the privacy provisions of the Act, which function to protect a consumer's nonpublic personal information from widespread distribution without notice and the opportunity for the consumer to opt out. An exception that allows a consumer reporting agency to redisclose that information where there has been no notice to the consumer and no opportunity for the consumer to direct that the information not be disclosed works at cross purposes with the Act. The Commission, therefore, declines to adopt such an exception.

If consumer reporting agencies receive credit header information from financial institutions outside of an exception, the limitations on reuse and redisclosure may allow them to continue to sell that information. This could occur if the originating financial institutions disclose in their privacy policies that they share consumers' nonpublic personal information with consumer reporting agencies, and provide consumers with the opportunity to opt out. Then, like any other nonaffiliated third party that receives information outside of an exception, the consumer reporting agency can redisclose that information consistent with the originating financial institutions' privacy policies and subject to applicable consumer opt out directions.

[35] "Credit header" information was traditionally defined to include identifying information such as name, address, telephone number, social security number, mother's maiden name, and age. However, the Commission's recent decision in *In re Trans Union*, Docket No. 9255 (Feb. 10, 2000), *appeal docketed*, No. 00–1141 (D.C. Cir. Apr. 4, 2000), determined that age is a "consumer report" and can be disclosed only pursuant to a permissible purpose under Section 604 of the Fair Credit Reporting Act.

[36] Section 608 of the Fair Credit Reporting Act does allow consumer reporting agencies to furnish a consumer's name, address, former addresses, places of employment, and former places of employment to a governmental agency.

[37] To the extent that previously-considered credit header information is now deemed consumer report information (*i.e.*, age), the FCRA provides requirements and protections in addition to those provided under the G-L-B Act.

Section 313.12 Limits on Sharing Account Number Information for Marketing Purposes.

Section 502(d) of the G-L-B Act prohibits a financial institution from disclosing, "other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer." Proposed § 313.13 applied this statutory prohibition to disclosures made directly or indirectly by a financial institution and sought comment on whether one or more exceptions to the flat prohibition should be created.

The Commission received many comments from people who suggested that various exceptions be created, as well as people who believe that a flat prohibition is necessary to protect consumers from unscrupulous practices. After considering the suggestions from all of the commenters addressing this issue, the Commission has decided, pursuant to its authority under 504(b), to modify proposed § 313.13 by (a) adding two exceptions that allow financial institutions to engage in legitimate, routine business practices and that are unlikely to pose a significant potential for abuse and (b) clarifying that the prohibition does not apply in two circumstances frequently mentioned in the comments. These exceptions and clarifications are discussed below.

Disclosures to a financial institution's agent or service provider. Many financial institutions noted that they use agents or service providers to conduct marketing on the institution's behalf. This might occur, for instance, when a mortgage lender instructs a service provider that assists in the delivery of monthly statements to include a "statement stuffer" with the statement informing consumers about a financial product or service offered by the institution. The Commission recognizes the need to disclose account numbers in this instance, and believe that there is little risk to the consumer presented by such disclosure.

Similarly, the Commission recognizes that a financial institution may use agents to market the institution's own financial products and services. Commenters advocating that the final rule exclude disclosures to agents stated that the agents effectively act as the financial institution in the marketing of the institution's financial products and services. These commenters suggested that there was no more reason to preclude sharing the account numbers with an agent hired to market the institution's financial products and services than there would be to preclude sharing between two departments of the same institution. The Commission is concerned, however, about the possibility of transactions being consummated by a financial institution's agent who may be engaging in practices contrary to the institution's instructions. While the Commission recognizes that a financial institution frequently will use agents to assist it in marketing its products, a consumer's protections are potentially eroded by allowing agents to have access to a consumer's account. Accordingly, an exception in § 313.12(b)(1) will permit disclosures of account numbers by a financial institution to an agent for the purpose of marketing the financial institution's financial product or services, but has qualified that exception by stating that the agent has no authority to make charges to the account.

Private label credit cards and affinity programs. Many commenters stated that the final rule should not prevent the disclosure of account numbers in the situation where a consumer chooses to participate in a private label credit card program or other affinity program. Under these programs, a consumer typically will be offered certain benefits, often by a retail merchant, in return for using a credit card that is issued by a particular financial institution. The commenters suggested that, in the example of an affinity program, the consumer understands the need for the merchant and financial institution to share the consumer's account number. The Commission agrees that this type of disclosure is appropriate and does not create a significant risk to the consumer. Accordingly, § 313.12(b)(2) has been added to the final rule to exclude the sharing of account numbers where the participants are identified to the consumer at the time the consumer enters into the program.

Encrypted numbers. Many commenters urged the Commission to exercise its exemptive authority to permit the transmission of account numbers in encrypted form. Several commenters noted that encrypted account numbers and other internal identifiers of an account are frequently used to ensure that a consumer's instructions are properly executed and that the inability to continue using these internal identifiers would increase the likelihood of errors in processing a consumer's instructions. These commenters also point out that if internal identifiers may not be used, a consumer would need to provide an account number in order to ensure proper handling of a request, which would expose the consumer to a greater risk than would the use of an internal tracking system that preserves the confidentiality of a number that may be used to access the account.

The Commission believes an encrypted account number without the key is something different from the number itself and thus falls outside the prohibition in section 502(d). In essence, it operates as an identifier attached to an account for internal tracking purposes only. The statute, by contrast, focuses on numbers that provide *access* to an account. Without the key to decrypt an account number, an encrypted number does not permit someone to access an account.

In light of the statutory focus on access numbers, and given the demonstrated need to be able to identify which account a financial institution should debit or credit in connection with a transaction, the Commission has included a clarification in § 313.12(c)(1) of the final rule stating that an account number, or similar form of access number or access code, does not include a number or code in an encrypted number form, as long as the financial institution does not provide the recipient with the means to decrypt the number. Consumers will be adequately protected by disclosures of encrypted account numbers that do not enable the recipient to access the consumer's account.

Definition of "transaction account." Several commenters suggested that the final rule clarify that accounts to which no charge may be posted are not covered by the prohibition against disclosing account numbers. These commenters frequently cited mortgage loan accounts as typical of those that should fall outside the scope of the prohibition. The Commission agrees with the principle behind these suggestions. However, there have been instances in which a borrower's monthly payments on a mortgage loan have been increased in connection with the marketing of a financial product or service without the borrower's knowledge or permission. Accordingly, the final rule clarifies in § 313.12(c)(2) that a transaction account is an account, other than a deposit account or a credit card account, to which third parties can initiate charges.

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If it would be possible, for instance, for a third party marketer to initiate a charge to a mortgage loan account, then the final rule would prohibit the disclosure of that account number to the marketer.

Section 313.13 Exception To Opt Out Requirements for Service Providers and Joint Marketing

Section 502(b) of the G-L-B Act creates an exception to the opt out rule for the disclosure of information to a nonaffiliated third party for use by the third party to perform services for, or functions on behalf of, the financial institution, including the marketing of the financial institution's own products or services or financial products or services offered pursuant to a joint agreement between two or more financial institutions. A consumer will not have the right to opt out of disclosing nonpublic personal information about the consumer to nonaffiliated third parties under these circumstances, if the financial institution "fully discloses" to the consumer that it will provide this information to the nonaffiliated third party before the information is shared and enters into a contract with the third party that requires the third party to maintain the confidentiality of the information. As noted in the proposed rule, this contract should be designed to ensure that the third party (a) will maintain the confidentiality of the information at least to the same extent as is required for the financial institution that discloses it, and (b) will use the information solely for the purposes for which the information is disclosed or as otherwise permitted by §§ 313.10 and 313.11 of the proposed rule. The Commission invited comment on whether the statute would prohibit the sharing of aggregate data without personal identifiers and whether additional requirements should be imposed on the agreements to address, for instance, reputation risk and legal risk for a financial institution entering into such an agreement.

The majority of the comments on this exception expressed concern that routine servicing agreements between a financial institution and, for instance, a loan servicer would be subject to the requirements of proposed § 313.9, which appears as § 313.13 in the final rule. These commenters consistently pointed out that section 502(e) of the G-L-B Act contains several exceptions for the sharing of information by a financial institution that is necessary to permit a third party to perform services for a financial institution. The commenters requested clarification that disclosures made pursuant to one of the section 502(e) exceptions are not subject to the requirements imposed on disclosures made pursuant to section 502(b)(2) of the G-L-B Act. The Commission agrees that when a disclosure may be made under section 502(e), the Act permits that disclosure without first complying with the requirements of section 502(b)(2).

A related issue is whether a financial institution must satisfy the disclosure obligations of section 502(b)(2) and have a confidentiality agreement in the case of a service provider that is performing an activity governed by section 502(b)(2) (*i.e.*, those that are not covered by one of the section 502(e) exceptions). Several commenters maintained that those requirements apply only to joint marketing agreements and that it is illogical to impose a set of requirements on disclosures to the section 502(b)(2) service providers when no such requirements are imposed on the section 502(e) service providers. The Commission believes, however, that a plain reading of section 502(b)(2) leads to that result.[38] The Commission reads the phrase "if the financial institution fully discloses * * *" as used in section 502(b)(2) as modifying the phrase "[t]his subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, * * *" The Commission thus has concluded that any disclosure to a service provider not covered by section 502(e) must satisfy the disclosure and written contract requirements of section 502(b)(2).

Several other commenters addressed the question of whether the rule should include safeguards beyond those provided by the statute to protect a financial institution from the risks that can arise from agreements with third parties. Most suggested that safety and soundness concerns were more appropriately addressed in a forum other than a rule designed to protect consumers' financial privacy. Others opined that financial institutions did not need the rule to mandate certain protections on their behalf. The Commission has concluded that the protections set out in the statute, as implemented by § 313.13(a)(1)(ii), are adequate for purposes of the privacy rule. Those protections require a financial institution to provide the initial notice required by § 313.4 of the final rule as well as enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the financial institution disclosed the information, including use under an exception in §§ 313.14 or 313.15 in the ordinary course of business to carry out those purposes. These limitations will preclude recipients from sharing a consumer's nonpublic personal information pursuant to a chain of third party joint marketing agreements.

Several commenters asked whether a financial institution would have to modify existing contracts with third parties to comply with the rule. The Commission believes that a balance must be struck that minimizes interference with existing contracts while preventing evasions of the regulation. To achieve these goals, the final rule states, in § 313.18(c), that contracts in effect as of July 1, 2000 must be brought into compliance with the provisions of § 313.13 by July 1, 2002. For the reasons expressed above, the Commission has adopted the provisions that were set out in § 313.9 of the proposal, with the changes noted above, as § 313.13 of the final rule.

Section 313.14 Exceptions to Notice and Opt Out Requirements for Processing and Servicing Transactions

As previously discussed, section 502(e) of the G-L-B Act creates exceptions to the requirements that apply to the disclosure of nonpublic personal information to nonaffiliated third parties. Paragraph (1) of that section sets out certain exceptions for disclosures made, generally speaking, in connection with the administration, processing, servicing, and sale of a consumer's account. Proposed § 313.10 implemented those exceptions by restating them with only stylistic changes that were intended to make the exceptions easier to read. The preamble to that proposed section noted that the exceptions set out in proposed § 313.10 (as well as the exceptions set out in § 313.11 of the proposal) do not affect a financial institution's obligation to provide initial notices of its privacy policies and practices prior to the time it establishes a customer relationship and annual notices thereafter.

[38] Section 502(b)(2) states, in relevant part, that the opt out provision: "shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including the marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 504, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

The Commission received several comments from institutions pointing out that, by deleting the statutory phrase "in connection with" from the exceptions for information shared (a) to service or process a financial product or service requested by the consumer or (b) to maintain or service a customer account, the Commission narrowed the application of the exception. The Commission did not intend this result and has changed the final rule accordingly. *See* § 313.14(a).

Several other commenters requested that the final rule specifically state that certain services, such as those provided by attorneys, appraisers, financial planners, and debt collectors (as appropriate), are "necessary" to effect, administer, or enforce a transaction, as that term is used in paragraph (a) and defined in paragraph (b) of proposed § 313.10. Others cited examples of entities seeking to verify funds availability or obtain loan payoff information as instances where a disclosure would fall within the exceptions described in proposed § 313.10. The Commission believes that disclosures to these types of professionals and under the circumstances posited by the commenters may be necessary to effect, administer, or enforce a transaction in a given situation. However, the Commission has not listed specific types of disclosures in the regulation as necessarily falling within the scope of the exception because such a general statement could be applied inappropriately to shelter disclosures that, in fact, are not necessary to effect, administer, or enforce a transaction.

Other commenters suggested that the final rule clarify, in situations where a financial institution uses an agent to provide services to a consumer, that the consumer need not have directly requested or authorized the service provider to provide the financial product or service but may request it from the principal instead. The Commission agrees that the communication may be between the consumer and the service provider and notes that the rule governing agents as set out in the definition of "consumer" above, provides the flexibility sought by the commenters. Briefly stated, an individual is not a consumer of an entity that is acting as agent for another financial institution in connection with that financial institution's providing a financial product or service to the consumer.

Section 313.15 Other Exceptions to Notice and Opt Out Requirements

As noted above, section 502(e) contains several exceptions to the requirements that otherwise would apply to the disclosures of nonpublic personal information to nonaffiliated third parties. Proposed § 313.11 set out those exceptions for disclosures that are not made in connection with the administration, processing, servicing, and sale of a consumer's account and made stylistic changes to the statutory language intended to clarify the exceptions. The proposal also provided an example of the consent exception in the context of a financial institution that has received an application from a consumer for a mortgage loan informing a nonaffiliated insurance company that the consumer has applied for a loan. The Commission invited comment on whether safeguards should be added to the exception for consent in order to minimize the potential for consumer confusion.

Several commenters responded to the request for comment on whether the consent exception should include safeguards, such as a requirement that the consent be written, be indicated by a signature on a separate line, or automatically terminate after a certain period of time. Of these, some favored the additional safeguards discussed in the proposal, while others maintained that such precautions are unnecessary. Several suggested that the consent exception include a provision noting that participation in a program where a consumer receives "bundled" products and services (such as would be the case, for instance, in an affinity program) necessarily implies consent to the disclosure of information between the entities that provide the bundled products or services. Others suggested that certain terms and conditions be imposed on any consent agreement, such as a time by which the financial institution must stop disclosing nonpublic personal information once a consent is revoked.

The Commission has declined to elaborate on the requirements for obtaining consent or the consumer safeguards that should be in place when a consumer consents. The resolution of this issue is appropriately left to the particular circumstances of a given transaction. Any financial institution that obtains the consent of a consumer to disclose nonpublic personal information should take steps to ensure that the limits of the consent are well understood by both the financial institution and the consumer. If misunderstandings arise, consumers may have means of redress, such as in situations when a financial institution obtains consent through a deceptive or fraudulent practice. Moreover, a consumer may always revoke his or her consent. In light of the safeguards already in place, the Commission has decided not to add safeguards to the consent exception.

Many commenters offered specific suggestions for additional exceptions or amendments to the proposed exceptions. In many cases, the suggestions are accommodated elsewhere in the regulation (such as is the case, for instance, for exceptions to permit (a) verification of available funds or (b) disclosures to or by appraisers, flood insurers, attorneys, insurance agents, or mortgage brokers to effect a transaction). In other cases, the suggestions are inconsistent with the statute (as is the case, for instance, with one commenter's suggestion that the Commission completely exempt a financial institution from all of the statute's requirements if the institution makes no disclosures other than what is permitted by section 502(e)). Accordingly, the Commission has retained, in § 313.15, the statement of the exceptions as proposed and invites interested parties to seek clarifications as necessary in their particular circumstance. See 16 CFR pt. 1.

Section 313.16 Protection of the Fair Credit Reporting Act

Section 506 of the G-L-B Act makes several amendments to the FCRA to vest rulemaking authority in various agencies and to restore the Agencies' regular examination authority. Paragraph (c) of section 506 states that, except for the amendments noted regarding rulemaking authority, nothing in Title V of the G-L-B Act is to be construed to modify, limit, or supersede the operation of the FCRA, and no inference is to be drawn on the basis of the provisions of Title V whether information is transaction or experience information under section 603 of the FCRA. Proposed § 313.14 implemented section 506(c) of the G-L-B Act by restating the statute, making only minor stylistic changes intended to make the rule clearer.

Comments about this provision focused mainly on whether the Commission, by requiring annual notice of a consumer's right to opt out under the FCRA, was modifying, limiting, or superseding the operation of the FCRA. For the reasons explained in the discussion of § 313.6, above, the annual disclosure mandated by the G-L-B Act does not affect the obligations imposed by the FCRA.

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Other commenters suggested that this section protects the ability of consumer reporting agencies to disclose credit header information to unaffiliated third parties. As discussed in § 313.11 above, the Commission disagrees with this position. Finally, at least one commenter requested that the Commission specifically reference provisions of the Fair Credit Reporting Act that are not modified, limited, or superceded by the G-L-B Act. Such an approach is not necessary to implement section 506 of the Act and, therefore, the final rule adopts in § 313.16 the text set out in § 313.14 of the proposal.

Section 313.17 Relation to State Laws

Section 507 of the G-L-B Act states, in essence, that Title V does not preempt any State law that provides greater protections than are provided by Title V. Determinations of whether a State law or Title V provides greater protections are to be made by the Commission after consultation with the agency that regulates either the party filing a complaint or the financial institution about which the complaint was filed, and may be initiated by any interested party or on the Commission's own motion. The Act does not require such determinations for consistent state laws. Some commenters suggested that the Commission lacks the authority to consider preemption issues with respect to the rule, but only with respect to the Act. The Commission disagrees with the analysis. Any determination of whether a state law provides greater protection than the Act will necessarily require consideration of the rules that implement the Act.

Comments on this section ranged from those who suggested that federal law should preempt state law in every case where there is a conflict to those who encouraged the Commission to support the rights of states to enact greater protections. Some requested clarification of whether a particular state law would be considered more restrictive, while others suggested that the Commission establish in the final rule a choice of law principle for financial institutions operating in more than one state. These and other suggestions exceed the scope of this rulemaking and are better addressed, to the extent practicable, in the context of a preemption determination. Accordingly, the Commission has adopted in § 313.17 the text set out in proposed § 313.15.

Section 313.18 Effective Date; Transition Rule

Section 510 of the G-L-B Act states that, as a general rule, the relevant provisions of Title V take effect 6 months after the date on which rules are required to be prescribed, *i.e.*, November 13, 2000. However, section 510(1) authorizes the Commission to prescribe a later date in the rule enacted pursuant to section 504. The proposed rule sought comment on the effective date prescribed by the statute. It also would have required that financial institutions provide initial notices, within 30 days of the effective date of the final rule, to people who were customers as of the effective date. The preamble to the proposed rule noted that a financial institution would have to provide opt out notices before the rule's effective date if the institution wanted to continue sharing nonpublic personal information with nonaffiliated third parties without interruption.

The overwhelming majority of commenters addressing this provision requested additional time to comply with the final rule. Commenters stated that six months would not be sufficient to take the steps needed to comply with the regulation, including preparing new disclosure forms, developing software needed to track opt outs, training employees, creating management oversight systems, and undergoing internal examination and auditing to ensure compliance. Several commenters suggested that it would be less effective and potentially more confusing for consumers to receive several notices all around the end of the year 2000 than it would be for the notices to be delivered during a rolling phase-in. Others noted that the proposed effective date would place a severe strain on financial institutions at a time when other year-end notices need to be prepared and delivered. Several commenters noted that financial institutions have not budgeted for the expenses in the current year that likely will be incurred. They also noted that the disclosures regarding the standards to be followed to protect customers' records have not been proposed for comment, thereby making it impossible for financial institutions to know how to prepare at least that part of the initial privacy notices. Requests for extensions of the effective date typically ranged from 12 months to 24 months from publication of the rule.

Many commenters also stated that a 30-day phase-in for initial notices to existing customers is not feasible, given the large number of notices, the short period of time allowed, and the competing demands on financial institutions at the time when the initial notices must be sent. A few suggested that the rule require initial notices to be sent only to people who establish customer relationships after the effective date of the rule and allow a financial institution to send annual notices to existing customers at some point during the next 12 months and annually thereafter.

The Commission agrees that six months may be insufficient in certain instances for a financial institution to ensure that its forms, systems, and procedures comply with the rule. In order to accommodate situations requiring additional time, the Commission has retained the effective date of November 13, but, consistent with its authority under section 510(1) of the G-L-B Act to extend the effective date, the Commission will give financial institutions until July 1, 2001 to be in full compliance with the regulation. Financial institutions are expected, however, to begin compliance efforts promptly, to use the period prior to June 30, 2001 to implement and test their systems, and to be in full compliance by July 1, 2001. Because financial institutions will have slightly over 13 months in which to comply with the rule, there no longer is any need for a separate phase-in for providing initial notices. Thus, a financial institution will need to deliver all required opt out notices and initial notices before July 1, 2001. This extension represents a fair balance between those seeking prompt implementation of the protections afforded by the statute and those concerned about the reliability of the systems that are put in place.

Financial institutions are encouraged to provide disclosures as soon as practicable. Institutions that do not disclose nonpublic personal information to third parties have fewer burdens under the rule (both in terms of notice requirements and opt out mechanism) and should therefore be able to provide privacy notices to their consumers more expeditiously. Depending on the readiness of an institution to process opt out elections, institutions might wish to consider including the privacy and opt out notices in the same mailing as is used to provide tax information to consumers in the first quarter of 2001 so that consumers are less likely to overlook the notices.

The Commission has concluded that the extension of the date by which financial institutions must be in full compliance provides much of the relief sought by those who suggested that initial notices should not be required for existing customers. By allowing financial institutions to deliver notices over a significantly longer period of time than was proposed, the concentrated burden that would have been imposed by the proposed rule is avoided. Accordingly, the Commission has decided not to adopt the suggestion that initial notices be required only for new customers after the effective date of the rule. Initial notices need not be given to customers whose relationships have terminated prior to the date by which institutions must be in compliance with the rule. Thus, if an account is inactive according to a financial institution's policies before July 1, 2001, then no initial notice would be required in connection with that account. However, because these former customers would remain consumers, a financial institution would have to provide a privacy and opt out notice to them if the financial institution intended to disclose their nonpublic personal information to nonaffiliated third parties beyond the exceptions in §§ 313.14 and 313.15.

The Commission notes that full compliance with the rule's restrictions on disclosures is required on July 1, 2001. To be in full compliance, institutions must have provided their existing customers with both a privacy notice and a reasonable amount of time to opt out prior to that date. If these have not been provided, the disclosure restrictions will apply. This means that a financial institution would have to cease sharing customers' nonpublic personal information with nonaffiliated third parties on that date, unless it may share the information pursuant to an exception under §§ 313.14 or 313.15. However, financial institutions that both provide the privacy notice and allow a reasonable period of time to opt out before July 1, 2001 may continue to share nonpublic personal information after that date about customers who do not opt out.

The Commission's final rule provides for an exception to the effective date to take into consideration the Board's authority to add activities that are permissible for financial holding companies to engage in. The Board's addition of permissible activities ("subsequent permissible activities") will cause some entities that are not now financial institutions to come within the definition at a later date. The exception provides that the rule is not effective as to any entity engaging in subsequent permissible activities until the Commission so determines.

The Board has the authority to allow financial holding companies to engage in activities that are financial in nature, activities that are incidental to financial activities, and activities that are complementary to financial activities. If the Board, therefore, issues an order or regulation identifying the activity that the financial holding company may engage in without characterizing that activity, the Commission will have to determine whether any entities engaging in such activity should be covered by the privacy provisions of the G-L-B Act and, if so, to what extent. The Commission intends to publish for notice and comment its proposals with respect to entities engaging in subsequent permissible activities.

Appendix A—Sample Clauses

In order to provide additional guidance to financial institutions concerning the level of detail the Commission believe is appropriate under the statute, the Commission has set forth a variety of sample clauses for financial institutions to consider. The Commission urges financial institutions to carefully review whether these clauses accurately reflect a given institution's policies and practices before using the clauses. Financial institutions are free to use different language and to include as much additional detail as they think is appropriate in their notices.

Derivation Chart

Below is a chart showing the derivation of the sections in the final privacy rule from the proposal. Only changes are noted.

Proposal	Content of provision	Final rule
4(d)	How to provide initial notice	9(a)
N/A	New product for existing customer	4(d)
4(d)(3)	Oral delivery (privacy notice)	9(d)
4(d)(4)	Retainable notice	9(e)
N/A	Joint relationships (privacy notice)	4(f)
5(b)	How to provide annual notice	9(a) and (c)
5(c)	Terminated customer relationships	5(b)
N/A	Delivering short-form initial notices	6(d)(3)
7	Main operative provision	10
8(a)	Opt out methods; opt out notice content	7(a)
8(b)(1)	How to deliver opt out notices	9(a)
8(b)(2)	Oral delivery (opt out notice)	9(d)
8(b)(3)	Same form as initial notice	7(b)
8(b)(4)	Initial notice must accompany opt out notice	7(c)
N/A	Joint relationships (opt out notice)	7(d)
8(d)	Time to comply with opt out; continuing right to opt out	7(e) and (f)
8(e)	Duration of opt out	7(g)
8(c)(1)	Revised notices	8(a)
8(c)(2)	How to deliver revised notice	8(c)
8(c)(3)	Examples of when revised notice is required	8(b)
9	Exception for service providers and joint marketers	13
10	Exceptions for processing and servicing transactions	14
11	Other exceptions	15
12	Rediscloure and reuse	11
13	Sharing account number information	12
14	FCRA	16
15	State law	17
16	Effective date	18

Section D. Guidance for Certain Institutions

To minimize the burden and costs to a financial institution ("you") and generally clarify the operation of the final rule, the Agencies have included this guidance that you may use in conjunction with the sample clauses in Appendix A. This guidance specifically applies to you if you:

(1) do not have any affiliates;

(2) only disclose nonpublic personal information to nonaffiliated third

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parties in accordance with an exception under §§ 313.14 or 313.15, such as in connection with servicing or processing a financial product or service that a consumer requests or authorizes ; and

(3) do not reserve the right to disclose nonpublic personal information to nonaffiliated third parties, except under §§ 313.14 and 313.15. [39]

In addition, if you disclose nonpublic personal information in accordance with the exception in § 313.13 for service providers and joint marketers, you also must include an accurate description of that information, as illustrated by the sample clause in section *(K)* below.

In general, if you disclose nonpublic personal information to nonaffiliated third parties only as authorized under an exception, then your only responsibilities under the regulation are to provide initial and annual notices to each of your customers. You do not need to provide an opt out notice or opt out rights to your customers.

A. Initial notice to customers. You must provide an initial notice to each of your customers. A customer is a natural person who has a continuing relationship with you, as described in § 313.4(c). For instance, a "pay day" lender who extends a loan to an individual has a customer relationship with that individual. By contrast, if the "pay day" lender only cashes a check for that individual, there is no customer relationship; even if that individual repeatedly cashes checks with the same pay-day lender, she remains only the lender's consumer. In other words, you must provide initial and annual notices to each of your customers, but not to others.

B. Time to provide initial notice. You must provide an initial privacy notice to each of your customers not later than when you establish a customer relationship (§ 313.4(a)(1)). For instance, you must provide a privacy notice to an individual not later than when that individual executes the contract to open a checking account. Thus, you can provide the notice to a checking account customer together with the account agreement and signature card.

Similarly, in the case of extending a mortgage loan, you must provide a privacy notice to an individual not later than when you and the individual enter into an agreement that you will serve as the mortgage lender. For example, you can provide the notice to an individual together with the documents (or other forms) that constitute the contract to extend the loan. You may always deliver your privacy notices earlier than required.

If one of your existing customers obtains a new financial product or service from you, then you need not provide another initial notice to that customer (§ 313.4(d)) if that earlier notice covered the subsequent product.

For instance, if Alison Individual enters Lender's offices for the first time on July 2, 2001 to obtain a mortgage, then Lender complies with § 313.4(a)(1) of the rule if it provides an initial notice to Alison with the mortgage agreement. When Alison obtains her mortgage, she becomes a customer of Lender. Alison makes regular payments to Lender on her mortgage and, two years later, returns to Lender to obtain a credit card. If the initial notice that Lender provided to Alison is accurate with respect to the terms of that credit card, then Lender need not provide another initial notice to her when she obtains the credit card because Lender has already provided a notice to Alison that covers that relationship.

C. Method of providing the initial notice. You must provide your initial notice so that each customer can reasonably be expected to receive actual notice of it, in writing (§ 313.9(a)). For example, you may provide the initial notice by mailing a printed copy of it together with a loan contract. Similarly, you may provide the initial notice by hand-delivering a printed copy of it to the customer together with a deposit account agreement.

D. Compliance with initial notice requirement for existing customers by effective date. You must provide an initial notice to each of your current customers not later than July 1, 2001 (§ 313.18(b)). You may do so by mailing a printed copy of the notice to the customer's last known address.

E. Annual notice. During the continuation of the customer relationship, you must provide an annual notice to the customer, as described in § 313.5(a). You must provide an annual notice to each customer at least once in any period of 12 consecutive months during which the customer relationship exists. You may define the 12-consecutive-month period, but must consistently apply that period to the customer. You may define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice.

For example, assume that Lender defines the 12-consecutive-month period as a calendar year and provides annual notices to all of its customers on October 1 of each year. If Alison Individual obtained her mortgage with Lender on July 2, 2001, thereby becoming a customer, then Lender must provide an initial notice to Alison together with the mortgage agreement or earlier. Lender must provide an annual notice to Alison by December 31, 2002. If Lender provides an annual notice to Alison on October 1, 2002, as it does for other customers, then it must provide the next annual notice to Alison not later than October 1, 2003.

F. Method of providing the annual notice. Like the initial notice, you must provide the annual notice so that each customer can reasonably be expected to receive actual notice of it, in writing (§ 313.9(a)). You may do so by mailing a printed copy of the notice to the customer's last known address.

G. Joint accounts. If two or more customers jointly obtain a financial product or service, then you may provide one initial notice to those customers jointly. Similarly, you may provide one annual notice to those customers jointly (§ 313.4(f)).

H. Information described in the initial and annual notices. The initial and annual notices must include an accurate description of the following four items of information:

(a) The categories of nonpublic personal information that you collect (§ 313.6(a)(1));

(b) The fact that you do not disclose nonpublic personal information about your current customers to affiliates or nonaffiliated third parties, except as authorized by §§ 313.14 and 313.15 (§ 313.6(a)(2)–(3), (9)). When describing the categories with respect to those parties, you are required to state only that you make disclosures to other nonaffiliated third parties as permitted by law (§ 313.6(b));

(c) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers (§ 313.6(a)(4));

(d) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information (§ 313.6(a)(8)).

For each of these four items of information above, you may use a sample clause from Appendix A. The Agencies emphasize that you may use a sample clause only if that clause accurately describes your actual policies and practices.

I. Example of notice. A financial institution ("Lender") that (i) does not have any affiliates and (ii) only discloses nonpublic personal information to nonaffiliated third parties as authorized under §§ 313.14 and 313.15, may comply with the requirements of § 313.6 of the rule by using the following notice, if applicable.

Lender collects nonpublic personal information about you from the following sources:

- *Information we receive from you on applications or other forms;*
- *Information about your transactions with us or others; and*
- *Information we receive from a consumer reporting agency.*[40]

We do not disclose any nonpublic personal information about you to anyone, except as permitted by law.

If you decide to pay off your loan(s), we will adhere to the privacy policies and practices as described in this notice.

Lender restricts access to your personal and account information to those employees who need to know that information to provide products or services to you. Lender maintains physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

J. Initial and annual notices must be clear and conspicuous. The Commission emphasizes that you must ensure that both the initial and annual notices are clear and conspicuous, as defined in § 313.3(b).

K. Example of notice for disclosure to service providers and joint marketers. If you disclose nonpublic personal information in accordance with the exception in § 313.13, for service providers and joint marketers, you also must include an accurate description of that information. You may comply with the requirements of § 313.13 of the rule by including the following sample clause, if applicable, in the example of notice described in section *(I)* above:

We may disclose all of the information we collect, as described [describe location in the notice, such as "above" or "below"], to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

[39] If you disclose or reserve the right to disclose nonpublic personal information to a nonaffiliated third party under other circumstances, you must comply with other provisions in the rule, notably §§ 313.7, 313.8, and 313.13, if applicable. If you disclose or reserve the right to disclose nonpublic personal information to an affiliate you must comply with other provisions in the rule, notably § 313.6(a)(7), as applicable.

[40] You only need to describe those general categories that apply to your policies and practices. Accordingly, if you do not collect information from "a consumer reporting agency," for instance, then you need not describe that category in your notices.

Section E. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) ("RFA") requires, subject to certain exceptions, that federal agencies prepare an initial regulatory flexibility analysis ("IRFA") with a proposed Rule and a final regulatory flexibility analysis ("FRFA") with a final Rule, unless the agency certifies that the Rule will not have a significant economic impact on a substantial number of small entities. At the time the proposed Rule was issued, the Commission believed that the G-L-B Act's requirements accounted for most, if not all, of the economic impact of the Rule, but decided to publish the IRFA to ensure that in developing the final Rule it adequately considered the impact on small businesses. After reviewing the comments submitted in response to the proposed Rule, the Commission continues to believe that the burden imposed on small institutions stems primarily from the statute and that certification would be proper. However, in order to assist those entities with comprehending and complying with the final Rule, the Commission has determined that it is appropriate to publish a FRFA analyzing the Rule as a whole and highlighting provisions that will particularly accommodate the needs of small businesses.

This FRFA incorporates the Commissions's initial findings, as set forth in the IRFA; addresses the comments submitted in response to the IRFA; and describes the steps the Commission has taken in the final Rule to minimize the impact on small entities, consistent with the objectives of the G-L-B Act. The Commission is publishing with this part a guide for entities that do not share any nonpublic personal information, a disproportionate number of which are likely to be small businesses. (See Supplementary Information, Section C.) Also, in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Commission will in the near future issue a compliance guide to assist small entities in complying with this rule.

Succinct Statement of the Need for, Objectives of, and Legal Basis for the Rule

The final Rule implements the provisions of Title V, Subtitle A of the G-L-B Act, which addresses consumer privacy. In general, these statutory provisions require financial institutions to provide notice to consumers about the institution's privacy policies and practices, describe the conditions under which financial institutions may disclose nonpublic personal information about consumers to nonaffiliated third parties, and permit consumers to prevent institutions from sharing nonpublic personal information about them with certain non-affiliated third parties by "opting out" of that disclosure.

Section 504 of the G-L-B Act requires the Commission to prescribe "such regulations as may be necessary" to carry out the purposes of Title V, Subtitle A. In the absence of these regulations, the substantive burdens imposed by the Act (*e.g.*, the notice, information-sharing restrictions, and opt-out requirements) would have become effective and binding upon financial institutions within one year of the enactment of the law. The Commission believes that the final Rule gives the private sector greater certainty and flexibility with respect to compliance with the statute, as well as clearer guidance as to how the Commission will enforce it.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

Determining a precise estimate of the number of small entities that are financial institutions within the meaning of the proposed Rule is not readily feasible. The definition of "financial institution" includes any institution the business of which is engaging in a financial activity, as described in section 4(k) of the Bank Holding Company Act, which incorporates by reference the activities listed in 12 CFR 225.28 and 12 CFR 211.5(d). These include lenders, loan brokers and servicers, collection agencies, financial advisors, tax preparers, real estate settlement services, property appraisers, and others. The G-L-B Act does not identify for purposes of the Commission's jurisdiction any specific category of financial institution; section 505(a)(7) vests the Commission with enforcement authority with respect to "any other financial institution or other person that is not subject to the jurisdiction of any [other] agency or authority [charged with enforcing the statute]." Jurisdiction is assigned to other agencies with respect to banks, bank holding companies, and their subsidiaries and affiliates; savings associations, federal credit unions, and their subsidiaries; securities brokers and dealers; investment advisers and investment companies; and insurers.

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Although the Commission requested comment on these issues, it did not receive a response sufficient to provide a basis for determining the number of small entities subject to the final Rule. In the absence of such information, there is no way to estimate precisely the number of affected entities that share nonpublic personal information with nonaffiliated third parties or that establish customer relationships with consumers and therefore assume greater disclosure obligations.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission incorporates by reference its description of the projected reporting, recordkeeping, and other compliance requirements of the Rule, as set forth in the IRFA. The Commission has not received any comments that necessitate modification of its previous description of projected compliance requirements. Based on the information the Commission submitted to the Office of Management and Budget, which included an estimated average annual burden over the three-year period of clearance of 4.03 million hours and $87.3 million, OMB has approved the final Rule for the related purposes of the Paperwork Reduction Act. (See section F, infra.)

Among the principal obligations that Title V, Subtitle A of the G-L-B Act, as executed by the final Rule, imposes upon financial institutions is the preparation of notices explaining their privacy policies and practices. Institutions are required to provide those notices to consumers as specified in the Rule, and institutions that disclose nonpublic personal information about their consumers to nonaffiliated third parties will be required to provide opt out notices, as well as a reasonable opportunity to opt out of certain disclosures, to their consumers. These institutions will have to develop systems for keeping track of consumers' opt out directions. Some institutions, particularly those that disclose nonpublic information about consumers to nonaffiliated third parties, will likely need the advice of legal counsel to ensure that they comply with the Rule and may also require computer programming changes and additional staff training.

A detailed, section-by-section analysis of the final Rule is set forth above in section B. of the Supplementary Information part of this notice.

Summary of Significant Issues Raised by Public Comments and Description of Steps the Commission Has Taken To Minimize the Significant Economic Impact on Small Entities

The Commission has sought to minimize the burden on all businesses, including small entities, in promulgating this final rule. Although one method of accomplishing this objective would be to adopt a specific exemption for small entities, the G-L-B Act does not authorize the Commission to create exemptions based on an institution's size. Further, the Commission believes that different compliance standards would be inconsistent with the purpose of Title V, which is to offer all consumers some measure of control over the dissemination of the nonpublic personal information that they provide to financial institutions, regardless of the institution's size. As section 501(a) of the Act declares, "[i]t is the policy of the Congress that *each* financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information." (Emphasis added).

Notwithstanding its limited authority to accommodate the specific needs of smaller institutions, the Commission has requested and analyzed throughout this rulemaking process information regarding the economic impact of the G-L-B Act's requirements for all financial institutions, including small entities. The proposed rule and the IRFA included a number of questions for public comment regarding the costs associated with complying with the Rule and the impact on small entities. Although the Commission received few comments that specifically addressed the regulatory flexibility analysis, it carefully considered comments concerning the substantive provisions of the Rule.[41] The discussion below reviews some of those key recommendations and corresponding changes adopted in the final Rule that accommodate those suggestions. Many of the steps taken by the Commission will benefit all institutions, regardless of size, while others will especially reduce the regulatory burden for small entities. For a more complete discussion of these changes, see the section-by-section analysis under section C of the Supplementary Information part of this notice.

Effective Date

Subject to section 510 of the G-L-B Act, the relevant provisions of Title V take effect on November 13, 2000. However, section 510(1) authorizes the Commission to prescribe a later date in the regulations enacted pursuant to section 504. The proposed Rule sought comment on the effective date prescribed by the statute. The overwhelming majority of commenters requested additional time to comply with the final rule. Several commenters noted that financial institutions may encounter difficulty managing the expenses and resources required to comply with the final rule as the institution's budget for the current year was established prior to the issuance of the proposed regulation. This may be especially true for small institutions that face already tight budgetary constraints due to heightened competition. In response to these concerns, the Commission has retained the effective date of November 13, 2000 but, consistent with its authority under section 510(1) of the statute, will give financial institutions until July 1, 2001 to be in full compliance with the final Rule. This additional time should reduce compliance costs for institutions by allowing additional time to budget for any necessary expenses and to implement all necessary operational changes required to comply with this Rule.

Examples

Throughout the final Rule, the Commission has included examples of conduct that illustrate ways to comply with particular provisions. As the section-by-section analysis above and the Rule itself explain, these examples are not exclusive, but they should lessen for institutions the burdens imposed by the Rule by clarifying that compliance with an applicable example constitutes compliance with the applicable provision.

Definition of Nonpublic Personal Information

In the proposed rule, the Commission provided two alternatives for defining nonpublic personal information. The first, (Alternative A) deemed information as publicly available only if a financial institution *actually obtained* the information from a public source, whereas the second (Alternative B) treated information as publicly available if a financial institution *could* obtain it from such a source. A vast majority of commenters favored Alternative B as significantly less burdensome than Alternative A. In response to these comments, the final Rule adopts a modified version of Alternative B, which is more fully explained in the section-by-section analysis.

Content of Notices

Many commenters interpreted the proposed Rule as mandating lengthy, confusing privacy notices that would offer little benefit to consumers, and asked for clarification with respect to the content of those disclosures. Although the Commission believes that the notice obligations are not unduly burdensome, in the final Rule it has taken a number of steps to clarify the requirements imposed by the G-L-B Act. The final Rule substantially revises the examples of disclosures that would satisfy the Rule, includes sample clauses that might be used, and adds a new provision for "short-form" privacy notices to a consumer that does not become a customer, provided the institution gives the consumer an opt out notice and a reasonably convenient method of obtaining a copy of the full privacy notice. It also retains the simplified notice provision for institutions that do not share nonpublic personal information with nonaffiliated third parties, except pursuant to the exceptions set forth in §§ 313.14 and 313.15 of this part. These measures may be particularly helpful to smaller institutions who do not disclose nonpublic personal information except under those and other exceptions in the final Rule.

In addition, the Commission has included with the final Rule sample disclosures that institutions may use to draft their privacy and opt out notices required by this part. As discussed in the section-by-section analysis above, these clauses are provided to convey to institutions the requisite level of detail that these notices must contain. Institutions can also consult the Guide for Certain Financial Institutions ("Guide"). The Guide generally clarifies the operation of the final Rule. It also provides an example of a notice for institutions, including small entities, that only share nonpublic personal information with nonaffiliated third parties pursuant to the exceptions provided in §§ 313.14 and 313.15. The Guide may be used in conjunction with the sample clauses contained in Appendix A. Like the examples discussed above, the sample disclosures and the Guide are intended to minimize the burden of complying with the final Rule, by reducing, among other costs, the need for legal advice.

Joint Account Holders

Another frequent comment addressed the provision of notice to and effect of opt outs exercised by joint account holders. As the section-by-section analysis describes, the final Rule clarifies that institutions may provide a single notice to joint account holders (unless otherwise requested), with the understanding that a decision to opt out made by one of the joint account holders will, absent a provision to the contrary in the opt out notice, be effective with respect to each of the account holders. By reducing the number of notices that institutions are required to provide, this flexibility will particularly benefit those institutions, including small entities, that do not share nonpublic personal information with nonaffiliated third parties, except pursuant to an exception.

New Notices Not Required for Each New Financial Product or Service

Some commenters expressed concern that the proposed rule may require a new initial notice each time a consumer obtains a new financial product or service. This would be especially burdensome for an institution that adopts a universal privacy policy that covers multiple products and services. To address these concerns and minimize economic burden, the final Rule was clarified to instruct institutions that a new initial notice is not required if the institution has given the customer the institution's initial notice, and that notice remains accurate with respect to the new product or service.

Section F. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act, as amended, 44 U.S.C. 3501 *et seq.*, the Commission submitted the proposed Rule to the Office of Management and Budget (OMB) for review. The OMB has approved the Rule's information collection requirements.[42] A **Federal Register** notice with a 30-day comment period of soliciting comments on this collection of information was published on March 1, 2000 (65 FR 11174). The Commission did not receive any comments that necessitated modifying its original burden estimates for the Rule's notice requirements.

Section G. Final Rule

List of Subjects in 16 CFR Part 313

Consumer protection, Credit, Data protection, Privacy, Trade practices.

Accordingly, the Commission amends 16 CFR Ch. I, Subchapter C, by adding a new Part 313 to read as follows:

PART 313—PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.
313.1 Purpose and scope.
313.2 Rule of construction.
313.3 Definitions.

Subpart A—Privacy and Opt Out Notices

313.4 Initial privacy notice to consumers required.
313.5 Annual privacy notice to customers required.
313.6 Information to be included in privacy notices.
313.7 Form of opt out notice to consumers; opt out methods.
313.8 Revised privacy notices.
313.9 Delivering privacy and opt out notices.

Subpart B—Limits on Disclosures

313.10 Limitation on disclosure of nonpublic personal information to nonaffiliated third parties.
313.11 Limits on redisclosure and reuse of information.
313.12 Limits on sharing account number information for marketing purposes.

Subpart C—Exceptions

313.13 Exception to opt out requirements for service providers and joint marketing.
313.14 Exceptions to notice and opt out requirements for processing and servicing transactions.
313.15 Other exceptions to notice and opt out requirements.

Subpart D—Relation to Other Laws; Effective Date

313.16 Protection of Fair Credit Reporting Act.
313.17 Relation to State laws.
313.18 Effective date; transition rule.

Appendix A to Part 313—Sample Clauses

Authority: 15 U.S.C. 6801 *et seq.*

§ 313.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution in specified circumstances to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may

[41] Even if the Commission had the authority to craft exceptions strictly based on the size of institutions, the comments received did not provide the amount, specificity, or consistency of information required to make such targeted policy determinations. For example, the Commission received one comment from a regional department store retailer with an estimated annual volume of $700 million in 1999. This small retail chain stated that approximate mailing costs associated with issuing privacy notices would be $400,000–$500,000, or 4%–5% of its net income. Another commenter estimated that total compliance costs would total $97,400 for an institution with assets of approximately $100 million. Based on these widely disparate projections and scant statistics, an exception applicable to all "small entities" would be impracticable and inappropriate.

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disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure, subject to the exceptions in §§ 313.13, 313.14, and 313.15.

(b) *Scope.* This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to those "financial institutions" and "other persons" over which the Federal Trade Commission ("Commission") has enforcement authority pursuant to Section 505(a)(7) of the Gramm-Leach-Bliley Act. An entity is a "financial institution" if its business is engaging in a financial activity as described in Section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k), which incorporates by reference activities enumerated by the Federal Reserve Board in 12 CFR 211.5(d) and 12 CFR 225.28. The "financial institutions" subject to the Commission's enforcement authority are those that are not otherwise subject to the enforcement authority of another regulator under Section 505 of the Gramm-Leach-Bliley Act. More specifically, those entities include, but are not limited to, mortgage lenders, "pay day" lenders, finance companies, mortgage brokers, account servicers, check cashers, wire transferors, travel agencies operated in connection with financial services, collection agencies, credit counselors and other financial advisors, tax preparation firms, non-federally insured credit unions, and investment advisors that are not required to register with the Securities and Exchange Commission. They are referred to in this part as "You." The "other persons" to whom this part applies are third parties that are not financial institutions, but that receive nonpublic personal information from financial institutions with whom they are not affiliated. Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d–1320d–8. Any institution of higher education that complies with the Federal Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, and that is also a financial institution subject to the requirements of this part, shall be deemed to be in compliance with this part if it is in compliance with FERPA.

§ 313.2 Rule of construction.

The examples in this part and the sample clauses in Appendix A of this part are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this part. For non-federally insured credit unions, compliance with an example or use of a sample clause contained in 12 CFR part 716, to the extent applicable, constitutes compliance with this part. For intrastate securities broker-dealers and investment advisors not registered with the Securities and Exchange Commission, compliance with an example or use of a sample clause contained in 17 CFR part 248, to the extent applicable, constitutes compliance with this part.

§ 313.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples*—(i) *Reasonably understandable.* You make your notice reasonably understandable if you:

(A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Use short explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology whenever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read;

(C) Provide wide margins and ample line spacing;

(D) Use boldface or italics for key words; and

(E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, when you combine your notice with other information.

(iii) *Notices on web sites.* If you provide a notice on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

(A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(c) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) *Examples*—(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer, regardless of whether you establish a continuing advisory relationship.

(iv) If you hold ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(v) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(vi) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vii) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(viii) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company.

(h) *Customer* means a consumer who has a customer relationship with you.

(i)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) *Examples*—(i) *Continuing relationship.* A consumer has a continuing relationship with you if the consumer:

(A) Has a credit or investment account with you;

(B) Obtains a loan from you;

(C) Purchases an insurance product from you;

(D) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(E) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan, or credit to purchase a vehicle, for the consumer;

(F) Enters into a lease of personal property on a non-operating basis with you;

(G) Obtains financial, investment, or economic advisory services from you for a fee;

(H) Becomes your client for the purpose of obtaining tax preparation or credit counseling services from you;

(I) Obtains career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a financial institution or department of any company);

(J) Is obligated on an account that you purchase from another financial institution, regardless of whether the account is in default when purchased, unless you do not locate the consumer or attempt to collect any amount from the consumer on the account;

(K) Obtains real estate settlement services from you; or

(L) Has a loan for which you own the servicing rights.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service from you only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution; purchasing a money order from you; cashing a check with you; or making a wire transfer through you;

(B) You sell the consumer's loan and do not retain the rights to service that loan;

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions;

(D) The consumer obtains one-time personal or real property appraisal services from you; or

(E) The consumer purchases checks for a personal checking account from you.

(j) *Federal functional regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Director of the Office of Thrift Supervision;

(5) The National Credit Union Administration Board; and

(6) The Securities and Exchange Commission.

(k)(1) *Financial institution* means any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). An institution that is significantly engaged in financial activities is a financial institution.

(2) *Examples of financial institution.*

(i) A retailer that extends credit by issuing its own credit card directly to consumers is a financial institution because extending credit is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act and issuing that extension of credit through a proprietary credit card demonstrates that a retailer is significantly engaged in extending credit.

(ii) A personal property or real estate appraiser is a financial institution because real and personal property appraisal is a financial activity listed in 12 CFR 225.28(b)(2)(i) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(iii) An automobile dealership that, as a usual part of its business, leases automobiles on a nonoperating basis for longer than 90 days is a financial institution with respect to its leasing business because leasing personal property on a nonoperating basis where the initial term of the lease is at least 90 days is a financial activity listed in 12 CFR 225.28(b)(3) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(iv) A career counselor that specializes in providing career counseling services to individuals currently employed by or recently displaced from a financial organization, individuals who are seeking employment with a financial organization, or individuals who are currently employed by or seeking placement with the finance, accounting or audit departments of any company is a financial institution because such career counseling activities are financial activities listed in 12 CFR 225.28(b)(9)(iii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(v) A business that prints and sells checks for consumers, either as its sole business or as one of its product lines,

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is a financial institution because printing and selling checks is a financial activity that is listed in 12 CFR 225.28(b)(10)(ii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(vi) A business that regularly wires money to and from consumers is a financial institution because transferring money is a financial activity referenced in section 4(k)(4)(A) of the Bank Holding Company Act and regularly providing that service demonstrates that the business is significantly engaged in that activity.

(vii) A check cashing business is a financial institution because cashing a check is exchanging money, which is a financial activity listed in section 4(k)(4)(A) of the Bank Holding Company Act.

(viii) An accountant or other tax preparation service that is in the business of completing income tax returns is a financial institution because tax preparation services is a financial activity listed in 12 CFR 225.28(b)(6)(vi) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(ix) A business that operates a travel agency in connection with financial services is a financial institution because operating a travel agency in connection with financial services is a financial activity listed in 12 CFR 211.5(d)(15) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(x) An entity that provides real estate settlement services is a financial institution because providing real estate settlement services is a financial activity listed in 12 CFR 225.28(b)(2)(viii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(xi) A mortgage broker is a financial institution because brokering loans is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(xii) An investment advisory company and a credit counseling service are each financial institutions because providing financial and investment advisory services are financial activities referenced in section 4(k)(4)(C) of the Bank Holding Company Act.

(3) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party other than as permitted by §§ 313.14 and 313.15 of this part.

(iv) Entities that engage in financial activities but that are not significantly engaged in those financial activities.

(4) *Examples of entities that are not significantly engaged in financial activities.* (i) A retailer is not a financial institution if its only means of extending credit are occasional "lay away" and deferred payment plans or accepting payment by means of credit cards issued by others.

(ii) A retailer is not a financial institution merely because it accepts payment in the form of cash, checks, or credit cards that it did not issue.

(iii) A merchant is not a financial institution merely because it allows an individual to "run a tab."

(iv) A grocery store is not a financial institution merely because it allows individuals to whom it sells groceries to cash a check, or write a check for a higher amount than the grocery purchase and obtain cash in return.

(l)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(m)(1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

(2) *Nonaffiliated third party* includes any company that is an affiliate by virtue of your or your affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

(n)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (n)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) *Examples of lists*—(i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information (that is not publicly available), such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived, in whole or in part, using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(o)(1) *Personally identifiable financial information* means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples*—(i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on, or servicing, a credit account;

(F) Any information you collect through an Internet "cookie" (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(p)(1) *Publicly available information* means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, State, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, State, or local law.

(2) *Reasonable basis.* You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your consumer has not done so.

(3) *Examples*—(i) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis*—(A) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(q) *You* includes each "financial institution" (but excludes any "other person") over which the Commission has enforcement jurisdiction pursuant to section 505(a)(7) of the Gramm-Leach-Bliley Act.

Subpart A—Privacy and Opt Out Notices

§ 313.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) *Customer.* An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer.* A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 313.14 and 313.15.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 313.14 and 313.15; and

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship*—(1) *General rule.* You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) *Special rule for loans.* You establish a customer relationship with a consumer when you originate a loan to the consumer for personal, family, or household purposes. If you subsequently transfer the servicing rights to that loan to another financial institution, the customer relationship transfers with the servicing rights.

(3)(i) *Examples of establishing customer relationship.* You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to obtain credit from you or purchase insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee; or

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services, or to obtain career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a company or financial institution);

(E) Provides any personally identifiable financial information to you in an effort to obtain a mortgage loan through you;

(F) Executes the lease for personal property with you;

(G) Is an obligor on an account that you purchased from another financial institution and whom you have located and begun attempting to collect amounts owed on the account; or

(H) Provides you with the information necessary for you to compile and provide access to all of the consumer's on-line financial accounts at your Web site.

(ii) *Examples of loan rule.* You establish a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when you:

(A) Originate the loan to the consumer and retain the servicing rights; or

(B) Purchase the servicing rights to the consumer's loan.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice, under § 313.8, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

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(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) *Examples of exceptions*—(i) *Not at customer's election.* Establishing a customer relationship is not at the customer's election if you acquire a customer's loan, or the servicing rights, from another financial institution and the customer does not have a choice about your acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when:

(A) You and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) You establish a customer relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the customer.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as through a web site.

(f) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to § 313.9. If you use a short-form initial notice for non-customers according to § 313.6(d), you may deliver your privacy notice according to § 313.6(d)(3).

§ 313.5 Annual privacy notice to customers required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a former customer.

(2) *Examples.* Your customer becomes a former customer when:

(i) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(ii) In the case of a credit card relationship or other open-end credit relationship, you sell the receivables without retaining servicing rights;

(iii) In the case of credit counseling services, the customer has failed to make required payments under a debt management plan, has been notified that the plan is terminated, and you no longer provide any statements or notices to the customer concerning that relationship;

(iv) In the case of mortgage or vehicle loan brokering services, your customer has obtained a loan through you (and you no longer provide any statements or notices to the customer concerning that relationship), or has ceased using your services for such purposes;

(v) In the case of tax preparation services, you have provided and received payment for the service and no longer provide any statements or notices to the customer concerning that relationship;

(vi) In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, you have received payment, or you have completed all of your responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(vii) In cases where there is no definitive time at which the customer relationship has terminated, you have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans.* If you do not have a customer relationship with a consumer under the special rule for loans in § 313.4(c)(2), then you need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to § 313.9.

§ 313.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that you provide under §§ 313.4, 313.5, and 313.8 must include each of the following items of information that applies to you or to the consumers to whom you send your privacy notice, in addition to any other information you wish to provide:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 313.14 and 313.15;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 313.14 and 313.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 313.13 (and no exception under §§ 313.14 or 313.15 applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under § 313.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 313.14 and 313.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 313.4 and 313.5. When describing the categories with respect to those parties, you are required to state only that you make disclosures to other nonaffiliated third parties as permitted by law.

(c) *Examples*—(1) *Categories of nonpublic personal information that you collect.* You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information you disclose*—(i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (e)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list them using the following categories, as applicable, and a few applicable examples to illustrate the significant types of third parties covered in each category.

(i) Financial service providers, followed by illustrative examples such as mortgage bankers, securities broker-dealers, and insurance agents.

(ii) Non-financial companies, followed by illustrative examples such as retailers, magazine publishers, airlines, and direct marketers; and

(iii) Others, followed by examples such as nonprofit organizations.

(4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal information under the exception in § 313.13 to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with whom you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§ 313.14 and 313.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) *Short-form initial notice with opt out notice for non-customers*—(1) You may satisfy the initial notice requirements in §§ 313.4(a)(2), 313.7(b), and 313.7(c) for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt out notice as required in § 313.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to § 313.9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 313.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this part.

§ 313.7 Form of opt out notice to consumers; opt out methods.

(a) (1) *Form of opt out notice.* If you are required to provide an opt out notice under § 313.10(a), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples*—(i) *Adequate opt out notice.* You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of nonaffiliated third parties to which you disclose the information, as described in § 313.6(a) (2) and (3) and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form that includes the address to which the form should be mailed; or

(C) Provide an electronic means to opt out, such as a form that can be sent via

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electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You *do not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 313.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice later than required for the initial notice in accordance with § 313.4, you must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships*—(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice, unless one or more of those consumers requests a separate opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (d)(5)(ii)of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint credit card account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so,

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) *Time to comply with opt out.* You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction*—(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to § 313.9.

§ 313.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under § 313.4, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) the consumer does not opt out.

(b) *Examples*—(1) Except as otherwise permitted by §§ 313.13, 313.14, and 313.15, you must provide a revised notice before you:

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to § 313.9.

§ 313.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b)(1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, clearly and conspicuously post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may *not*, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish

advertisements of your privacy policies and practices;

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(1) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers*—(1) For customers only, you must provide the initial notice required by § 313.4(a)(1), the annual notice required by § 313.5(a), and the revised notice required by § 313.8 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer; or

(iii) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships.* If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§ 313.4(a), 313.5(a), and 313.8(a) by providing one notice to those consumers jointly, unless one or more of those consumers requests separate notices.

Subpart B—Limits on Disclosures

§ 313.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 313.4;

(ii) You have provided to the consumer an opt out notice as required in § 313.7;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 313.13, 313.14, and 313.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) *By electronic means.* A customer opens an on-line account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a money order by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information*—(1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 313.11 Limits on redisclosure and reuse of information.

(a)(1) *Information you receive under an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in § 313.14 or 313.15 of this part, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in § 313.14 or 313.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) *Example.* If you receive a customer list from a nonaffiliated financial institution in order to provide account processing services under the exception in § 313.14(a), you may disclose that information under any exception in § 313.14 or 313.15 in the ordinary course of business in order to provide those services. You could also disclose that information in response to a properly authorized subpoena. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b)(1) *Information you receive outside of an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution other than under an exception in § 313.14 or 313.15 of this part, you may disclose the information only:

(i) To the affiliates of the financial institution from which you received the information;

(ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and

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(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.

(2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in § 313.14 and 313.15:

(i) You may use that list for your own purposes; and

(ii) You may disclose that list to another nonaffiliated third party only if the financial institution from which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the opt out direction of each consumer whose nonpublic personal information you intend to disclose, and you may disclose the list in accordance with an exception in § 313.14 or 313.15, such as to your attorneys or accountants.

(c) *Information you disclose under an exception.* If you disclose nonpublic personal information to a nonaffiliated third party under an exception in § 313.14 or 313.15 of this part, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in § 313.14 or 313.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in § 313.14 or 313.15 of this part, the third party may disclose the information only:

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if you made it directly to that person.

§ 313.12 Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Examples*—(1) *Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

(2) *Transaction account.* A transaction account is an account other than a deposit account or a credit card account. A transaction account does not include an account to which third parties cannot initiate charges.

Subpart C—Exceptions

§ 313.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in §§ 313.7 and 313.10 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(i) Provide the initial notice in accordance with § 313.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in § 313.14 or 313.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in § 313.14 or 313.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, joint agreement means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 313.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 313.4(a)(2), for the opt out in §§ 313.7 and 313.10, and for service providers and joint marketing in § 313.13 do not apply if you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law;

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

§ 313.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice in § 313.4(a)(2), for the opt out in §§ 313.7 and 313.10, and for service providers and joint marketing in § 313.13 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's State that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with Federal, State, or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, State, or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 313.7(f).

Subpart D—Relation to Other Laws; Effective Date

§ 313.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 313.17 Relation to State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such State statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Commission on its own motion or upon the petition of any interested party, after consultation with the applicable federal functional regulator or other authority.

§ 313.18 Effective date; transition rule.

(a) *Effective date.* (1) *General rule.* This part is effective November 13, 2000. In order to provide sufficient time for you to establish policies and systems to comply with the requirements of this part, the Commission has extended the time for compliance with this part until July 1, 2001.

(2) *Exception.* This part is not effective as to any institution that is significantly engaged in activities that the Federal Reserve Board determines, after November 12, 1999, (pursuant to its authority in Section 4(k)(1–3) of the Bank Holding Company Act), are activities that a financial holding company may engage in, until the Commission so determines.

(b)(1) *Notice requirement for consumers who are your customers on the compliance date.* By July 1, 2001, you must have provided an initial notice, as required by § 313.4, to consumers who are your customers on July 1, 2001.

(2) *Example.* You provide an initial notice to consumers who are your customers on July 1, 2001, if, by that

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date, you have established a system for providing an initial notice to all new customers and have mailed the initial notice to all your existing customers.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 313.13(a)(1) of this part, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as you entered into the contract on or before July 1, 2000.

Appendix A to Part 313—Sample Clauses

Financial institutions, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets and income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A–1—Categories of Information You Collect (All Institutions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(1) to describe the categories of nonpublic personal information you collect.

Sample Clause A–1

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A–2—Categories of Information You Disclose (Institutions That Disclose Outside of the Exceptions)

You may use one of these clauses, as applicable, to meet the requirement of § 313.6(a)(2) to describe the categories of nonpublic personal information you disclose. You may use these clauses if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 313.13, 313.14, and 313.15.

Sample Clause A–2, Alternative 1

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

Sample Clause A–2, Alternative 2

We may disclose all of the information that we collect, as described [*describe location in the notice, such as "above" or "below"*].

A–3—Categories of Information You Disclose and Parties to Whom You Disclose (Institutions That Do Not Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirements of §§ 313.6(a)(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. You may use this clause if you do not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§ 313.14, and 313.15.

Sample Clause A–3

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A–4—Categories of Parties to Whom You Disclose (Institutions That Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 313.13, 313.14, and 313.15, as well as when permitted by the exceptions in §§ 313.14, and 313.15.

Sample Clause A–4

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [*provide illustrative examples, such as "mortgage bankers, securities broker-dealers, and insurance agents"*];
- Non-financial companies, such as [*provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"*]; and
- Others, such as [*provide illustrative examples, such as "non-profit organizations"*].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A–5—Service Provider/Joint Marketing Exception

You may use one of these clauses, as applicable, to meet the requirements of § 313.6(a)(5) related to the exception for service providers and joint marketers in § 313.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A–5, Alternative 1

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

Sample Clause A–5, Alternative 2

We may disclose all of the information we collect, as described [*describe location in the notice, such as "above" or "below"*] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A–6—Explanation of Opt Out Right (Institutions that Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 313.13, 313.14, and 313.15.

Sample Clause A–6

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)"*].

A–7—Confidentiality and Security (All Institutions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A–7

We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"*]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

By direction of the Commission.

Approved by the Commission on May 12, 2000.

Donald S. Clark,

Secretary.

[FR Doc. 00–12755 Filed 5–23–00; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Parts 180, 185 and \186
Consolidation of Certain Food and Feed Additive Tolerance Regulations; Final Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300756; FRL–6043–1]

RIN 2070–AB78

Consolidation of Certain Food and Feed Additive Tolerance Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule transfers certain of the pesticide food and feed additive regulations that are now in 40 CFR parts 185 and 186 to part 180. EPA is consolidating these regulations because as a matter of law all of pesticide tolerances are now considered to be regulated under section 408 of the Federal Food, Drug, and Cosmetic Act as amended by the Food Quality Protection Act (Pub. L. 104–17) and they no longer need to be separate. EPA is also amending 40 CFR 180.1 by adding a definition for the term "food commodity."

EFFECTIVE DATE: This final rule is effective on May 24, 2000.

FOR FURTHER INFORMATION CONTACT: By mail, Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308-9368; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300756. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. "Good Cause" Finding

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because this rule contains technical, non-substantive amendments to 40 CFR. This rule transfers certain pesticide tolerances currently in 40 CFR parts 185 and 186 to 40 CFR part 180. There are no changes to the tolerances or to the commodities to which they apply. In addition, there are no reassessments of the adequacy of the tolerances under the Federal Food, Drug, and Cosmetic Act's (FFDCA) standards for safety. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

II. Background

What Action is the Agency Taking?

EPA is transferring certain pesticide tolerances currently in 40 CFR parts 185 and 186 to 40 CFR part 180.

Before the passage of the Food Quality Protection Act (FQPA), pesticide residues in food and feed were regulated under two sections of the FFDCA. Residues in raw agricultural commodities were regulated under section 408 of the FFDCA. The term "raw agricultural commodity" is defined in section 201(r) of the FFDCA as any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing. Pesticide residues in processed food or animal feed were regulated as "food additives" under section 409 of the FFDCA. Because there were legal differences in authority and how and when tolerances could be established under sections 408 and 409, tolerances for the same pesticide could appear in several parts of the Code of Federal Regulations.

FQPA clarified the status of pesticide residues and brought all pesticide residues in food and feed under the authority of section 408 of the FFDCA. In addition, FQPA added a definition of "processed food" for the first time (section 201(gg) of the FFDCA). The term "processed food" is defined in section 201(gg) of the FFDCA as "any food other than a raw agricultural food and includes any raw agricultural commodity that has been subject to processing...." Subsequent to the passage of the FQPA, Congress, in the Antimicrobial Regulation Technical Corrections Act of 1988 (ARTCA) (Pub. L. 105–324), amended the definition of "pesticide residue" in section 201(q) of the FFDCA so as to exclude certain antimicrobial pesticide residues in raw and processed foods from the authority of section 408. These residues now fall within the coverage of FFDCA section 409. Since the statute has consolidated much of authority for and treatment of pesticide chemical residues in food and feed under FFDCA section 408, EPA is now transferring those pesticide chemical residue regulations established under section 409 that pertain to pesticide chemical residues now covered by section 408 to the portion of the CFR, part 180, in which section 408 tolerance regulations are collected.

EPA is transferring these pesticide chemical residue regulations in stages. A second document will be issued later transferring additional pesticide chemical residue regulations. Eventually, all pesticide residue regulations in parts 185 and 186 that pertain to pesticide residues covered by section 408 will be transferred to part 180, and users will be able to determine all the section 408 tolerances for a single pesticide chemical by referring to the listings in part 180.

At the same time, EPA is creating a general definition that it will use in tolerance regulations to cover all the types of food and feed commodities. Henceforth, the term "food commodity" will be used to refer to raw agricultural commodities (food and feed), processed food commodities and processed animal feed commodities. Accordingly, EPA is adding the following definition to 40 CFR 180.1:

The term "food commodity" is defined to mean:

(1) Any raw agricultural commodity (food or feed) as defined in section 201(r) of the FFDCA; and

(2) Any processed food or feed as defined in section 201(gg) of the FFDCA.

This new definition merely consolidates the existing terminology used in the regulations and does not have the effect of changing the scope of any regulations under part 180 or the regulations being transferred to part 180. To the extent any existing regulations in part 180 apply to pesticide chemical residues that were transferred by ARTCA from coverage under section 408 to section 409, EPA will work with FDA, the agency that administers section 409, to insure that these regulations are identified and transferred to a portion of the CFR under FDA's jurisdiction.

While EPA believes that it has accurately transferred each of the tolerances included in this rule, the Agency would appreciate readers notifying EPA of discrepancies, omissions or technical problems by submitting them to the address or e-mail address under **FOR FURTHER INFORMATION CONTACT**. These would be corrected in a future rule.

EPA is not at this time making any changes in the tolerances or the commodities to which they apply, nor is EPA reassessing the adequacy of the tolerances under FFDCA standards for safety. Further, EPA is not at this time standardizing the terminology used to describe various food commodities. EPA is aware that there may be inconsistencies in the description of food commodities among parts 180, 185 and 186. EPA will make such changes when all tolerances have been consolidated. No tolerances are revoked by this rule. Duplicate tolerance entries, which would be created by transferring food and feed additive tolerances established for the same food commodity at the same tolerance level from parts 185 and 186 to the corresponding part 180 section, have been deleted.

III. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104– 4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. EPA has made such a good cause finding, including the reasons therefor, and established an effective date of [*insert 30 days from date of publication in FR*]. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

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Dated: May 10, 2000.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I, Subchapter E is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

Subpart A—[Amended]

b. In subpart A, § 180.1 is amended by adding paragraph (p) to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(p) The term *food commodity* means:

(1) Any raw agricultural commodity (food or feed) as defined in section 201(r) of the Federal Food, Drug, and Cosmetic Act (FFDCA); and

(2) Any processed food or feed as defined in section 201(gg) of the FFDCA.

Subpart D—[Amended]

c. In subpart D, § 180.111 is amended by revising paragraph (a) to read as follows:

§ 180.111 Malathion; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on the following food commodities:

Commodity	Parts per million
Alfalfa (PRE-H)	135
Almond hulls (PRE-H)	50
Almonds (PRE- and POST-H)	8
Almonds, shells	50
Apples (PRE-H)	8
Apricots (PRE-H)	8
Asparagus (PRE-H)	8
Avocados (PRE-H)	8
Barley, grain (PRE- and POST-H)	8
Beans (PRE-H)	8
Beets (including tops) (PRE-H)	8
Beets, sugar, roots (PRE-H)	1
Beets, sugar, tops (PRE-H)	8
Birdsfoot trefoil, forage (PRE-H)	135
Birdsfoot trefoil, hay (PRE-H)	135
Blackberries (PRE-H)	8
Blueberries (PRE-H)	8
Boysenberries (PRE-H)	8
Carrots (PRE-H)	8
Cattle, fat (PRE-S)	4
Cattle, mbyp [1] (PRE-S)	4
Cattle, meat [1] (PRE-S)	4
Chayote fruit	8
Chayote roots	8
Cherries (PRE-H)	8
Chestnuts (PRE-H)	1
Clover (PRE-H)	135
Corn, forage (PRE-H)	8
Corn, fresh (including sweet K+CWHR) (PRE-H)	2
Corn, grain (POST-H)	8
Cottonseed (PRE-H)	2
Cowpea, forage (PRE-H)	135
Cowpea, hay (PRE-H)	135
Cranberries (PRE-H)	8
Cucumbers (PRE-H)	8
Currants (PRE-H)	8
Dates (PRE-H)	8
Dewberries (PRE-H)	8
Eggplants (PRE-H)	8
Eggs (from application to poultry)	0.1
Figs (PRE-H)	8
Filberts (PRE-H)	1
Flax seed	0.1
Flax straw	1
Garlic (PRE-H)	8
Goats, fat (PRE-S)	4
Goats, mbyp [1] (PRE-S)	4
Goats, meat [1] (PRE-S)	4
Gooseberries (PRE-H)	8
Grapefruit (PRE-H)	8
Grapes (PRE-H)	8
Grass, (PRE-H)	135
Grass, hay (PRE-H)	135
Guavas (PRE-H)	8
Hogs, fat (PRE-S)	4
Hogs, mbyp [1] (PRE-S)	4
Hogs, meat [1] (PRE-S)	4
Hops (PRE-H)	1
Horseradish (PRE-H)	8
Horses, fat (PRE-S)	4
Horses, mbyp [1] (PRE-S)	4
Horses, meat [1] (PRE-S)	4
Kumquats (PRE-H)	8
Leeks (PRE-H)	8
Lemons (PRE-H)	8
Lentils (PRE-H)	8
Lespedeza, hay (PRE-H)	135
Lespedeza, seed (PRE-H)	8
Lespedeza, straw (PRE-H)	135
Limes (PRE-H)	8
Loganberries (PRE-H)	8
Lupine, seed (PRE-H)	8
Macadamia nuts (PRE-H)	1
Mangos (PRE-H)	8
Melons (PRE-H)	8
Milk, fat (from application to dairy cows)	0.5
Mushrooms (PRE-H)	8
Nectarines (PRE-H)	8
Oats, grain (PRE- and POST-H)	8
Okra (PRE-H)	8
Onions (including green onions) (PRE-H)	8
Oranges (PRE-H)	8
Papayas (PRE-H)	1
Parsnips (PRE-H)	8
Passion fruit (PRE-H)	8
Peaches (PRE-H)	8
Peanut, forage (PRE-H)	135
Peanut, hay (PRE-H)	135
Peanuts (PRE- and POST-H)	8
Pears (PRE-H)	8
Peas (PRE-H)	8
Peavine, hay (PRE-H)	8
Peavines (PRE-H)	8
Pecans (PRE-H)	8
Peppermint (PRE-H)	8
Peppers (PRE-H)	8
Pineapples (PRE-H)	8
Plums (PRE-H)	8
Potatoes (PRE-H)	8
Poultry, fat (PRE-S)	4
Poultry, mbyp [1] (PRE-S)	4
Poultry, meat [1] (PRE-S)	4
Prunes (PRE-H)	8
Pumpkins (PRE-H)	8
Quinces (PRE-H)	8
Radishes (PRE-H)	8
Raspberries (PRE-H)	8
Rice, grain (PRE- and POST-H)	8
Rice, wild	8
Rutabagas (PRE-H)	8
Rye, grain (PRE- and POST-H)	8
Safflower, seed (PRE-H)	0.2
Salsify (including tops) (PRE-H)	8
Shallots (PRE-H)	8
Sheep, fat (PRE-S)	4
Sheep, mbyp [1] (PRE-S)	4
Sheep, meat [1] (PRE-S)	4
Sorghum, forage (PRE-H)	8
Sorghum, grain (PRE- and POST-H)	8
Soybeans (dry and succulent) (PRE-H)	8
Soybeans, forage (PRE-H)	135
Soybeans, hay (PRE-H)	135
Spearmint (PRE-H)	8
Squash, summer and winter (PRE-H)	8
Strawberries (PRE-H)	8
Sunflower seeds (Post-H)	8
Sweet potatoes (PRE-H)	1
Tangerines (PRE-H)	8
Tomatoes (PRE-H)	8
Turnips (including tops) (PRE-H)	8
Vegetables, leafy, *Brassica* (cole)	8
Vegetables, leafy (except *Brassica*)	8
Vetch, hay (PRE-H)	135
Vetch, seed (PRE-H)	8
Vetch, straw (PRE-H)	135
Walnuts (PRE-H)	8
Wheat, grain (PRE- and POST-H)	8

[1] The tolerance level shall not be exceeded in any cut of meat or in any meat byproduct from cattle, goats, hogs, horses, poultry, or sheep.

(2) Malathion may be safely used in accordance with the following conditions:

(i) It is incorporated into paper trays in amounts not exceeding 100 milligrams per square foot.

(ii) Treated paper trays are intended for use only in the drying of grapes (raisins).

(iii) Total residues of malathion resulting from drying of grapes on treated trays and from application to grapes before harvest shall not exceed 12 parts per million on processed ready-to-eat raisins.

(3) Residues of malathion in refined safflower oil from application to the growing safflower plant shall not exceed 0.6 parts per million.

(4) Malathion may be safely used for the control of insects during the drying of grapes (raisins) in compliance with paragraph (a)(2) of this section by incorporation into paper trays in amounts not exceeding 100 milligrams per square foot.

(5) Malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate) may be safely used in feed in accordance with the following conditions.

(i) A tolerance of 50 parts per million is established for residues of malathion in dehydrated citrus pulp for cattle feed, when present as the result of the application of the pesticide to bagged citrus pulp during storage. Whether or not tolerances for residues of malathion on the fresh fruit have been established under section 408 of the Act, the total residue of malathion in the dried citrus pulp shall not exceed 50 parts per million.

(ii) A tolerance of 10 parts per million is established for malathion in nonmedicated cattle feed concentrate blocks resulting from its application as a pesticide to paper used in packaging the nonmedicated cattle feed concentrate blocks.

* * * * *

d. Section 180.151 is revised to read as follows:

§ 180.151 Ethylene oxide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the antimicrobial agent and insecticide ethylene oxide, when used as a postharvest fumigant in or on the following food commodities:

Commodity	Parts per million
Black walnut meats	50
Copra	50
Spices, whole	50

(2) Ethylene oxide may be safely used as a fumigant for the control of microorganisms and insect infestation in ground spices and other processed natural seasoning materials, except mixtures to which salt has been added, in accordance with the following prescribed conditions:

(i) Ethylene oxide, either alone or admixed with carbon dioxide or dichlorodifluoromethane, shall be used in amounts not to exceed that required to accomplish the intended technical effects. If used with dichlorodifluoromethane, the dichlorodifluoromethane shall conform with the requirements prescribed by 21 CFR 173.355 of this chapter.

(ii) To assure safe use of the fumigant, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency and it shall be used in accordance with such label or labeling.

(iii) Residues of ethylene oxide in ground spices from both postharvest application to whole spices and application to the ground spices shall not exceed the established tolerance of 50 parts per million for residues in whole spices in paragraph (a)(1) of this section.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

e. Section 180.169 is revised to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate), including its hydrolysis product 1-naphthol, calculated as 1-naphthyl *N*-methylcarbamate, in or on the following food commodities:

Commodity	Parts per million
Alfalfa	100
Alfalfa, hay	100
Almonds	1
Almonds, hulls	40
Apricots	10
Asparagus	10
Bananas	10
Barley, grain	0
Barley, green fodder	100
Barley, straw	100
Beans	10
Beans, forage	100
Beans, hay	100
Beets, garden (roots)	5
Beets, garden (tops)	12
Birdsfoot trefoil, forage	100.0
Birdsfoot trefoil, hay	100.0
Blackberries	12
Blueberries	10
Boysenberries	12
Broccoli	10
Brussels sprouts	10
Cabbage	10
Carrots	10
Cauliflower	10
Celery	10
Cherries	10
Chestnuts	1
Chinese cabbage	10
Citrus fruits	10
Clover	100
Clover, hay	100
Collards	12
Corn, fresh (including sweet) K+CWHR	5
Corn, fodder	100
Corn, forage	100
Cotton, forage	100
Cottonseed	5
Cowpeas	5
Cowpeas, forage	100
Cowpeas, hay	100
Cranberries	10
Cucumbers	10
Dandelions	12
Dewberries	12
Eggplants	10
Endive (escarole)	10
Filberts (hazelnuts)	1
Flax, seed	5
Flax, straw	100
Grapes	10
Grass	100
Grass, hay	100
Horseradish	5
Kale	12
Kohlrabi	10
Lentils	10
Lettuce	10
Loganberries	12
Maple sap	0.5
Melons	10
Millet, proso, grain	3
Millet, proso, straw	100
Mustard greens	12
Nectarines	10
Oats, fodder, green	100
Oats, grain	0
Oats, straw	100
Okra	10
Olives	10
Oysters	0.25
Parsley	12
Parsnips	5
Peaches	10
Peanuts	5
Peanuts, hay	100
Peas (with pods)	10
Peavines	100
Pecans	1
Peppers	10
Pistachio nuts	1
Plums (fresh prunes)	10
Poultry, fat	5
Poultry, meat	5
Potatoes	0.2(N)
Prickly pear cactus, fruit	12.0
Prickly pear cactus, pads	12.0
Pumpkins	10
Radishes	5
Raspberries	12
Rice	5
Rice, straw	100
Rutabagas	5
Rye, fodder, green	100
Rye, grain	0
Rye, straw	100
Salsify (roots)	5
Salsify (tops)	10
Sorghum, forage	100

Commodity	Parts per million
Sorghum, grain	10
Soybeans	5
Soybeans, forage	100
Soybeans, hay	100
Spinach	12
Squash, summer	10
Squash, winter	10
Strawberries	10
Sugar beets, tops	100
Sunflower seeds	1
Sweet potatoes	0.2
Swiss chard	12
Tomatoes	10
Turnips, roots	5
Turnips, tops	12
Walnuts	1
Wheat, fodder, green	100
Wheat (grain)	3
Wheat, straw	100

(2) Tolerances are established for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate) including its metabolites 1-naphthol (naphthyl-sulfate), 5,6-dihydrodihydroxycarbaryl, and 5,6-dihydrodihydroxy naphthol, calculated as 1-naphthyl *N*-methylcarbamate in or on the following food commodities:

Commodity	Part per million
Cattle, fat	0.1
Cattle, kidney	1
Cattle, liver	1
Cattle, meat	0.1
Cattle (mbyp)	0.1
Goats, fat	0.1
Goats, kidney	1
Goats, liver	1
Goats, meat	0.1
Goats (mbyp)	0.1
Horses, fat	0.1
Horses, kidney	1
Horses, liver	1
Horses, meat	0.1
Horses (mbyp)	0.1
Sheep, fat	0.1
Sheep, kidney	1
Sheep, liver	1
Sheep, meat	0.1
Sheep (mbyp)	0.1
Swine, fat	0.1
Swine, kidney	1
Swine, liver	1
Swine, meat	0.1
Swine (mbyp)	0.1

(3) A tolerance is established for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate), including its metabolites 1-naphthol (naphthyl sulfate), 5,6-dihydro-dihydroxycarbaryl and 5-methoxy-6-hydroxycarbaryl, calculated as 1-naphthyl *N*-methylcarbamate in or on the food commodity milk at 0.3 ppm.

(4) Tolerances are established for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate) in or on the following food commodities:

Commodity	Parts per million
Pineapple bran (wet and dry)	20
Pineapples	2.0
Pome fruits	10.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for the insecticide carbaryl (1-napthyl *N*-methylcarbamate) in or on the following food commodities.

Commodity	Parts per million
Avocados	10.0
Dill (fresh)	0.2

(d) *Indirect or inadvertent residues.* [Reserved]

f. Section 180.182 is revised to read as follows:

§ 180.182 Endosulfan; tolerances for residues.

(a) *General.* (1) Tolerances are established for the total residues of the insecticide endosulfan (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9*a*-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide) and its metabolite endosulfan sulfate (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9*a*-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide) in or on the food commodities:

Commodity	Parts per million
Alfalfa, fresh	0.3
Alfalfa, hay	1.0
Almonds	0.2(N)
Almonds, hulls	1.0
Apples	2.0
Apricots	2.0
Artichokes	2.0
Barley, grain	0.1(N)
Barley, straw	0.2(N)
Beans	2.0
Beets, sugar, without tops	0.1(N)
Blueberries	0.1(N)
Broccoli	2.0
Brussels sprouts	2.0
Cabbage	2.0
Carrots	0.2
Cattle, fat	0.2
Cattle, mbyp	0.2
Cattle, meat	0.2
Cauliflower	2.0
Celery	2.0
Cherries	2.0
Collards	2.0
Corn, sweet (K+CWHR)	0.2
Cottonseed	1.0
Cucumbers	2.0
Eggplant	2.0
Filberts	0.2(N)
Goats, fat	0.2
Goats, mbyp	0.2
Goats, meat	0.2
Grapes	2.0
Hogs, fat	0.2
Hogs, mbyp	0.2
Hogs, meat	0.2
Horses, fat	0.2
Horses, mbyp	0.2
Horses, meat	0.2
Kale	2.0
Lettuce	2.0
Macadamia nuts	0.2(N)
Melons	2.0
Milk, fat (=N in whole milk)	0.5
Mustard greens	2.0
Mustard seed	0.2(N)
Nectarines	2.0
Oats, grain	0.1(N)
Oats, straw	0.2(N)
Peaches	2.0
Pears	2.0
Peas, succulent	2.0
Pecans	0.2(N)
Peppers	2.0
Pineapples	2.0
Plums	2.0
Potatoes	0.2(N)
Prunes	2.0
Pumpkins	2.0
Rape seed	0.2(N)
Raspbernes	0.1
Rye, grain	0.1(N)
Rye, straw	0.2(N)
Safflower seed	0.2(N)
Sheep, fat	0.2
Sheep, mbyp	0.2
Sheep, meat	0.2
Spinach	2.0
Squash, summer	2.0
Squash, winter	2.0
Strawberries	2.0
Sugarcane	0.5
Sunflower seed	2.0
Sweet potatoes	0.2
Tomatoes	2.0
Turnips, greens	2.0
Walnuts	0.2(N)
Watercress	2.0
Wheat, grain	0.1(N)
Wheat, straw	0.2(N)

(2) A tolerance of 24 parts per million is established for combined residues of the insecticide endosulfan (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide) and its metabolite endosulfan sulfate (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide) in or on dried tea (reflecting less than 0.1 part per million residues in beverage tea) resulting from application of the insecticide to growing tea.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

g. Section 180.204 is revised as follows:

§ 180.204 Dimethoate including its oxygen analog; tolerances for residues.

(a) *General.* Tolerances are established for total residues of the insecticide dimethoate (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorodithioate) including its oxygen analog (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorothioate) in or on the following food commodities:

Commodity	Parts per million
Alfalfa	2
Apples	2
Beans, dry	2
Beans; lima	2
Beans, snap	2
Blueberries[1]	1
Broccoli	2
Cabbage	2
Cattle, fat	0.02(N)
Cattle, mbyp	0.02(N)
Cattle, meat	0.02(N)
Cauliflower	2
Celery	2
Citrus, pulp, dried	5
Collards	2
Corn, fodder	1
Corn, forage	1
Corn, grain	0.1(N)
Cottonseed	0.1
Eggs	0.02(N)
Endive (escarole)	2
Goats, fat	0.02(N)
Goats, mbyp	0.02(N)
Goats, meat	0.02(N)
Grapefruit	2
Grapes	1
Hogs, fat	0.02(N)
Hogs, mbyp	0.02(N)
Hogs, meat	0.02(N)
Horses, fat	0.02(N)
Horses, mbyp	0.02(N)
Horses, meat	0.02(N)
Kale	2
Lemons	2
Lentils	2.0
Lettuce	2
Melons	1
Milk	0.002(N)
Mustard greens	2
Oranges	2
Pears	2
Peas	2
Pecans	0.1
Peppers	2
Potatoes	0.2
Poultry, fat	0.02(N)
Poultry, mbyp	0.02(N)
Poultry, meat	0.02(N)
Safflower seed	0.1
Sheep, fat	0.02(N)
Sheep, mbyp	0.02(N)
Sheep, meat	0.02(N)
Sorghum, forage	0.2
Sorghum, grain	0.1
Soybeans	0.05(N)
Soybeans, forage	2
Soybeans, hay	2
Spinach	2
Swiss chard	2
Tangerines	2
Tomatoes	2
Turnips, roots	2
Turnips, tops	2
Wheat, grain	0.04(N)
Wheat, green fodder	2
Wheat, straw	2

[1]There are no U.S. registrations as of August 16, 1995.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for total residues of dimethoate including its oxygen analog in or on the following food commodities:

Commodity	Parts per million
Asparagus	0.15
Brussels sprouts	5
Cherries	2

(d) *Indirect or inadvertent residues.* [Reserved]

h. Section 180.235 is amended by revising the section heading and by adding paragraph (a)(3) to read as follows:

§ 180.235 Dichlorvos; tolerances for residues.

(a) * * *

(3) Dichlorvos may be present as a residue from application as an insecticide on packaged or bagged nonperishable processed food (see: 21 CFR 170.3(j)) in an amount in such food not in excess of 0.5 part per million (ppm). To assure safe use of the insecticide, its label and labeling shall conform to the label and labeling registered by the U.S. Environmental Protection Agency, and the usage employed shall conform with such label or labeling.

* * * * *

i. Section 180.252 is amended by revising the section heading and paragraph (a) to read as follows:

§ 180.252 Tetrachlorvinphos; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide tetrachlorvinphos (2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate) in or on the following food commodities:

Commodity	Parts per million
Alfalfa	110
Cattle, fat	1.5
Egg	0.1
Goat, fat	0.5
Hog, fat	1.5
Horse, fat	0.5
Milk, fat (reflecting negligible residues in whole milk).	0.5
Poultry, fat	0.75
Sheep, fat	0.5

(2) Tetrachlorvinphos may be safely used in accordance with the following prescribed conditions:

(i) It is used in the feed of beef, dairy cattle, and horses at a rate of 0.00015 pound (0.07 gram) and swine at the rate of 0.00011 pound (0.05 gram) per 100 pounds of body weight per day.

(ii) It is used for control of fecal flies in manure of treated cattle, horses, and swine.

(iii) To assure safe use of the pesticide, the label and labeling of the pesticide formulation shall conform to the label and labeling registered by the United States Environmental Protection Agency.

* * * * *

j. Section 180.253 is revised to read as follows:

§ 180.253 Methomyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide methomyl (*S*-methyl *N*-[(methylcarbamoyl)oxy] thioacetimidate) in or on the food commodities as follows:

Commodity	Parts per million
Alfalfa	10
Apples	1
Asparagus	2
Avocados	2
Barley, grain	1
Barley, hay	10
Barley, straw	10
Beans, dry	0.1(N)
Beans, forage	10
Beans, succulent	2
Beets, tops	6
Blueberries	6
Brassica (cole) leafy vegetables	6.0
Broccoli	3
Brussels sprouts	2
Cabbage	5
Cauliflower	2
Celery	3
Chinese cabbage	5
Collards	6
Corn, fodder	10

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Commodity	Parts per million
Corn, forage	10
Corn, fresh (inc sweet K+CWHR)	0.1(N)
Corn, grain (inc pop)	0.1(N)
Cottonseed	0.1(N)
Cucurbits	0.2(N)
Dandelions	6
Endive (escarole)	5
Grapefruit	2
Grapes	5
Grass, Bermuda	10
Grass, Bermuda, hay (dried and dehydrated)	40
Hops, dried[1]	12
Kale	6
Leeks	3.0
Lemons	2
Lentils	0.1
Lettuce	5
Mint, hay	2
Mustard greens	6
Nectarines	5
Oats, forage	10
Oats, grain	1
Oats, hay	10
Oats, straw	10
Onions, green	3
Oranges	2
Parsley	6
Peaches	5
Peanuts	0.1(N)
Peas	5
Peas, vines	10
Pecans	0.1
Peppers	2
Pomegranates	0.2(N)
Rye, forage	10
Rye, grain	1
Rye, hay	10
Rye, straw	10
Sorghum, forage	1
Sorghum, grain	0.2(N)
Soybeans	0.2(N)
Soybeans, forage	10
Spinach	6
Strawberries	2
Swiss chard	6
Tangerines	2
Tomatoes	1
Turnip greens, tops	6
Vegetables, fruiting	0.2(N)
Vegetables, leafy [exc. beets (tops), broccoli, Brussels sprouts, cabbage, cauliflower, celery, Chinese cabbage, collards, dandelions, endive (escarole), kale, lettuce, mustard greens, parsley, spinach, Swiss chard, turnip greens (tops), and watercress]	0.2(N)
Vegetables, root crop	0.2(N)
Watercress	6
Wheat, forage	10
Wheat, grain	1
Wheat, hay	10
Wheat, straw	10

[1]There are no U.S. registrations for use of methomyl on dried hops as of February 14, 1990.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of methomyl in or on the following food commodities:

Commodity	Parts per million
Pears	4

(d) *Indirect or inadvertent residues.* [Reserved]

k. Section 180.272 is revised to read as follows:

§ 180.272 Tribuphos; tolerances for residues.

(a) *General.* Tolerances are established for residues of the defoliant tribuphos (*S,S,S*-tributyl phosphorotrithioate) in or on food commodities as follows:

Commodity	Parts per million
Cattle, fat (negligible residue).	0.02
Cattle, mbyp (negligible residue).	0.02
Cattle, meat (negligible residue).	0.02
Cottonseed	4
Cottonseed, hulls	6
Goats, fat (negligible residue).	0.02
Goats, mbyp (negligible residue).	0.02
Goats, meat (negligible residue).	0.02
Milk (negligible residue)	0.002
Sheep, fat (negligible residue).	0.02
Sheep, mbyp (negligible residue).	0.02
Sheep, meat (negligible residue).	0.02

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

l. Section 180.303 is revised to read as follows:

§ 180.303 Oxamyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for the sum of the residues of the insecticide oxamyl (methyl N-N-dimethyl-N-[(methylcarbamoyl)-oxy]-1-thiooxamimidate) and its oxime metabolite N,N-dimethyl-N-hydroxy-1-thiooxamimidate calculated as oxamyl in or on the following food commodities:

Commodity	Parts per million
Apples	2
Bananas	0.3
Cantaloupe	2.0
Celery	3
Citrus fruits	3
Cottonseed	0.2
Cucumbers	2.0
Eggplants	2.0
Honeydews	2.0
Peanuts	0.2
Peanut, forage	2.0
Peanut, hay	2.0
Pears	2.0
Peppermint, hay	10.0
Peppers (bell)	3
Peppers, non-bell	5.0
Pineapples	1
Pineapples, forage	10
Potatoes	0.1
Pumpkins	2.0
Root crop vegetables	0.1
Soybeans	0.2
Soybean straw	0.2
Spearmint, hay	10.0
Summer Squash	2.0
Tomatoes	2
Winter Squash	2.0
Watermelon	2.0

(2) A tolerance of 6 parts per million is established for residues of the insecticide oxamyl (methyl *N,N*-dimethyl-*N*-[(methylcarbamoyl)oxy]-1-thiooxamimidate) in pineapple bran as a result of application of the insecticide to growing pineapples.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

m. Section 180.332 is amended by revising the heading and paragraph (a) to read as follows:

§ 180.332 Metribuzin; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the herbicide metribuzin (4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-;1,2,4-triazin-5(4*H*)-one) and its triazinone metabolites in or on food commodities:

Commodity	Parts per million
Alfalfa, green	2
Alfalfa, hay	7
Asparagus	0.05
Barley, grain	0.75
Barley, milled fractions (except flour)	3
Barley, straw	1
Carrots	0.3
Cattle, fat	0.7
Cattle, mbyp	0.7
Cattle, meat	0.7
Corn, fodder	0.1
Corn, forage	0.1

Commodity	Parts per million
Corn, fresh (inc. sweet K+CWHR)	0.05
Corn, grain (inc. popcorn)	0.05
Eggs	0.01
Goats, fat	0.7
Goats, mbyp	0.7
Goats, meat	0.7
Grass	2
Grass, hay	7
Hogs, fat	0.7
Hogs, mbyp	0.7
Hogs, meat	0.7
Horses, fat	0.7
Horses, mbyp	0.7
Horses, meat	0.7
Lentils (dried)	0.05
Lentils, vine hay	0.05
Milk	0.05
Peas	0.1
Peas (dried)	0.05
Peas, forage	0.5
Peas, vine hay	0.05
Potatoes	0.6
Potatoes, processed (inc. potato chips)	3
Potato waste, processed (dried)	3
Poultry, fat	0.7
Poultry, mbyp	0.7
Poultry, meat	0.7
Sainfoin	2
Sainfoin, hay	7
Sheep, fat	0.7
Sheep, mbyp	0.7
Sheep, meat	0.7
Soybeans	0.1
Soybeans, forage	4
Soybeans, hay	4
Sugarcane	0.1
Sugarcane molassses	2
Tomatoes	0.1
Wheat, forage	2
Wheat, grain	00.75
Wheat, milled fractions (except flour)	3
Wheat, straw	1

* * * * *

n. Section 180.371 is revised to read as follows:

§ 180.371 Thiophanate-methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide thiophanate-methyl (dimethyl [(1,2-phenylene)-bis(iminocarbonothioyl)] bis[carbamate]), its oxygen analogue dimethyl-4,4-*o*-phenylene bis(allophonate), and its benzimidazole-containing metabolites (calculated as thiophanate-methyl) in or on the following food commodities:

Commodity	Parts per million
Almonds (PRE-H)	0.2(N)
Almonds (hulls) pre-H	1.0
Apple, dried pomace	40.0
Apples (PRE- and POST-H)	7.0
Apricots (PRE- and POST-H)	15.0
Bananas (PRE-H)	2.0
Bananas, pulp (PRE-H)	0.2
Beans (snap and dry) (PRE-H)	2.0
Bean (forage and hay) (PRE-H)	50.0
Cattle, fat	0.1
Cattle, kidney	0.2(N)
Cattle, liver	2.5
Cattle, meat byproducts (exc. kidney and liver)	0.1(N)
Cattle, meat	0.1(N)
Celery (PRE-H)	3.0
Cherries (PRE- and POST-H)	15.0
Cucumbers	1.0
Eggs	0.1(N)
Goats, fat	0.1(N)
Goats, kidney	0.2
Goats, liver	2.5
Goat, meat byproducts (exc. kidney and liver)	0.1(N)
Goat, meat	0.1(N)
Hogs, fat	0.1(N)
Hogs, liver	1.0
Hogs, meat byproducts (exc. liver)	0.1(N)
Hogs, meat	0.1(N)
Horses, fat	0.1(N)
Horses, liver	1.0
Horses, meat byproducts (exc. liver)	0.1(N)
Horses, meat	0.1(N)
Melons	1.0
Milk	1.0
Nectarines (PRE- and POST-H)	15.0
Onion, dry	3.00
Onion, green	3.00
Pecans (PRE-H)	0.2
Peaches (PRE- and POST-H)	15.0
Peanuts (PRE-H)	0.2(N)
Peanuts (forage and hay) (PRE-H)	15.0
Plums (PRE- and POST-H)	15.0
Potatoes (seed treatment)	0.05
Poultry, fat	0.1(N)
Poultry, liver	0.2(N)
Poultry, meat byproducts (exc. liver)	0.1(N)
Poultry, meat	0.1(N)
Prunes (PRE- and POST-H)	15.0
Pumpkins	1.0
Sheep, fat	0.1(N)
Sheep, kidney	0.2
Sheep, liver	2.5
Sheep, meat byproducts (exc. kidney and liver)	0.1(N)
Sheep, meat	0.1(N)
Soybeans (PRE-H)	0.2
Squash	1.0
Strawberries (PRE-H)	5.0
Sugar beets (roots PRE-H)	0.2
Sugar beets (tops PRE-H)	15.0
Sugarcane (seed piece treatment PRE-H)	0.1(N)
Wheat, grain	0.05
Wheat, hay	0.10
Wheat, straw	0.10

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

o. Section 180. 377 is revised to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide diflubenzuron (*N*-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide) in or on the following food commodities:

Commodity	Parts per million
Artichokes	6.0
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Cottonseed	0.2
Eggs	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Grapefruit	0.5
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Milk	0.05
Mushrooms	0.2
Orange	0.5
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05
Soybeans	0.05
Soybean hulls	0.5
Tangerine	0.5
Walnuts	0.1

(2) A temporary tolerance expiring June 30, 1999, is established for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice grain at 0.01 ppm.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of diflubenzuron in or on the following raw agricultural commodities:

Commodity	Parts per million
Grass, pasture	1.0
Grass, range	3.0

(d) *Indirect or inadvertent residues.* [Reserved]

p. Section 180.403 is revised to read as follows:

§ 180.403 Thidiazuron; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the defoliant thidiazuron (N-phenyl-N-1,2,3-thiadiazol-5-ylurea) and its aniline containing metabolites in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, mbyp	0.2
Cottonseed	0.4
Cottonseed hulls	0.8
Eggs	0.1
Goat, fat	0.2
Goats, meat	0.2
Goat, mbyp	0.2
Hogs, fat	0.2
Hogs, meat	0.2
Hogs, mbyp	0.2
Horses, fat	0.2
Horses, meat	0.2
Horses, mbyp	0.2
Milk	0.05
Poultry, fat	0.2
Poultry, meat	0.2
Poultry, mbyp	0.2
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, mbyp	0.2

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

q. Section 180.404 is revised to read as follows:

§ 180.404 Profenofos; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the insecticide profenofos [*O*-(4-bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate and its metabolites converted to 4-bromo-2-chlorophenyl and calculated as profenofos in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Cottonseed	3.0
Cottonseed hulls	6.0
Eggs	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Milk	0.01
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

s. Section 180.408 is revised to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dmethylphyenyl)-*N*-(methoxyacetyl) alanine methylester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on the following food commodities:

Commodity	Parts per million
Alfalfa, forage	6.0
Alfalfa, hay	20.0
Almonds	0.5
Almonds, hulls	10.0
Apples	0.2
Apple, pomace (wet)	0.4
Apricots (dried)	4.0
Asparagus	7.0
Avocados	4.0
Beets	0.1
Beet, tops	0.1
Blueberries	2.0
Brassica (cole) leafy vegetables group [except broccoli, cabbage, cauliflower, brussels sprouts, and mustard greens]	0.1
Broccoli	2.0
Brussels sprouts	2.0
Cabbage	1.0
Cattle, fat	0.4
Cattle, kidney	0.4
Cattle, liver	0.4
Cattle, meat	0.05
Cattle, mbyp (except kidney and liver)	0.05
Cauliflower	1.0
Cereal grains (except wheat, barley, and oats)	0.1
Citrus fruit	1.0
Citrus, oil	7.0
Citrus, pulp	7.0
Clover, forage	1.0
Clover, hay	2.5
Cottonseed	0.1
Cranberry	4.0
Cucurbit vegetables group	1.0
Eggs	0.05
Fruiting vegetables (except cucurbits) group	1.0
Ginseng	3.0
Goats, fat	0.4
Goats, kidney	0.4
Goats, liver	0.4
Goats, meat	0.05
Goats, mbyp (except kidney and liver)	0.05
Grain, crops	0.1
Grapes	2.0
Grass, forage	10.0
Grass, hay	25.0
Hogs, fat	0.4
Hogs, kidney	0.4
Hogs, liver	0.4
Hogs, meat	0.05
Hogs, mbyp (except kidney and liver)	0.05
Hops, dried	20
Hops, green	2.0
Horses, fat	0.4
Horses, kidney	0.4
Horses, liver	0.4
Horses, meat	0.05
Horses, mbyp (except kidney and liver)	0.05
Leafy vegetables (except brassica) group (except spinach)	5.0
Leaves of root and tuber vegetables (human food or animal feed) group	15.0
Legume vegetable, cannery waste	5.0
Legume vegetable foliage	8.0
Legume vegetable group (dry or succulent)	0.2
Lettuce, head	5.0
Milk	0.02
Mustard greens	5.0
Onions, dry bulb	3.0
Onions, green	10.0
Peanut, hay	20.0
Peanut, meal	1.0
Peanut, nuts	0.2
Peanut, shells	2.0
Peanut, vines	20.0
Pineapples	0.1
Pineapple fodder	0.1
Pineapple forage	0.1
Potato waste, dried, processed	4.0
Potatoes, processed (including potato chips)	4.0
Poultry, fat	0.4
Poultry, kidney	0.4
Poultry, liver	0.4
Poultry, meat	0.05
Poultry, mbyp (except kidney and liver)	0.05
Potatoes	0.5
Prunes (dried)	4.0
Raisins	6.0
Raspberries	0.5
Root and tuber vegetables group	0.5
Sheep, fat	0.4
Sheep, kidney	0.4
Sheep, liver	0.4
Sheep, meat	0.05
Sheep, mbyp (except kidney and liver)	0.05
Soybean, grain	1.0
Soybean, hulls	2.0
Soybean, meal	2.0
Spinach	10.0
Stonefruit group	1.0
Strawberries	10.0
Sugar beets	0.1
Sugar beet molasses	1.0
Sugar beet (roots)	0.5
Sugar beet (tops)	10.0
Sunflowers	0.1
Sunflower, forage	0.1
Tomatoes, processed	3.0
Walnuts	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration (refer to § 180.1(n)) are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the following raw agricultural commodity:

Commodity	Parts per million
Papaya	0.1

(d) *Indirect or inadvertent tolerances.* Tolerances are established for indirect or inadvertent residues of metalaxyl in or on the food commodities when present therein as a result of the application of metalaxyl to growing crops listed in paragraph (a) of this section and other non-food crops to read as follows:

Commodity	Part per million
Barley, grain	0.2
Barley, fodder	2.0
Barley, milling fractions	1.0
Barley, straw	2.0
Cereal grains group (except wheat, barley, and oats), fodder	1.0
Cereal grains group (except wheat, barley, and oats), forage	1.0
Cereal grains group (except wheat, barley, and oats), straw	1.0
Oat, fodder	2.0
Oat, forage	2.0
Oat, grain	0.2
Oat milling fractions	1.0
Oat, straw	2.0
Wheat, fodder	2.0
Wheat, forage	2.0
Wheat, grain	0.2
Wheat, milling fractions	1.0
Wheat, straw	2.0

§ 180.422 [Amended]

t. Section 180.422 is amended as follows:

i. In paragraph (a)(1), by changing the phrase "agricultural commodities" to read "food commodities."

ii. In paragraph (a)(2), remove the phrase "food additive."

iii. In paragraph (a)(3), remove the phrase "feed additive."

u. Section 180.427 is revised to read as follows:

§ 180.427 Fluvalinate; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide (alpha *RS*,2R)-fluvalinate [(*RS*)-alpha-cyano-3-phenoxybenzyl (*R*)-2-[2-chloro-4-(trifluoromethyl) anilino]-3-methylbutanoate in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.01
Cattle, mbyp	0.01
Cattle, meat	0.01
Cottonseed	0.1
Cottonseed hulls	0.3
Cottonseed oil (crude and refined)	1.0
Eggs	0.01
Goat, fat	0.01
Goat, mbyp	0.01
Goat, meat	0.01
Hogs, fat	0.01
Hogs, mbyp	0.01
Hogs, meat	0.01
Honey	0.05
Horses, fat	0.01
Horses, mbyp	0.01
Horses, meat	0.01
Milk	0.01
Poultry, fat	0.01
Poultry, mbyp	0.01
Poultry, meat	0.01
Sheep, fat	0.01
Sheep, mbyp	0.01
Sheep, meat	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registration.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the insecticide (alpha RS,2R)-fluvalinate[(RS)-alpha-cyano-3-phenoxybenzyl(R)-2-[2-chloro-4-(trifluoromethyl)anilino]-3-methylbutanoate in or on the following food commodities:

Commodity	Parts per million
Coffee	0.01

(d) *Indirect and inadvertent residues.* [Reserved]

v. Section 180.463 is amended by revising paragraph (a) to read as follows:

§ 180.463 Quinclorac; tolerances for residues.

(a) *General.* Tolerances are established for residues of quinclorac (3,7-dichloro-8-quinoline carboxylic acid) in or the following food commodities:

Commodity	Parts per million
Aspirated grain fractions	1200
Cattle, fat	0.7
Cattle, mbyp	1.5
Cattle, meat	0.05
Eggs	0.05
Goats, fat	0.7
Goats, mbyp	1.5
Goats, meat	0.05
Hogs, fat	0.7
Hogs, mbyp	1.5
Hogs, meat	0.05
Horses, fat	0.7
Horses, mbyp	1.5
Horses, meat	0.05
Milk	0.05
Poultry, fat	0.05
Poultry, mbyp	0.1

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Commodity	Parts per million
Poultry, meat	0.05
Rice bran	15.0
Rice grain	5.0
Rice, straw	12.0
Sheep, fat	0.7
Sheep, mbyp	1.5
Sheep, meat	0.05
Sorghum, grain, forage	3.0
Sorghum, grain, grain	6.0
Sorghum, grain, stover	1.0
Wheat forage	1.0
Wheat germ	0.75
Wheat grain	0.5
Wheat hay	0.5
Wheat straw	0.1

* * * * *

w. Section 180.476 is revised to read as follows:

§ 180.476 Triflumizole; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the fungicide triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on the following food commodities:

Commodity	Parts per million
Apple pomace	2.0
Apples	0.5
Grapes	2.5
Grape pomace	15.0
Pears	0.5
Raisin waste	10.0

(2) Tolerances are established for the combined residues of the fungicide triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole, the metabolite 4-chloro-2-hydroxy-6-trifluoromethylaniline sulfate, and other metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on the following food commodities of animal origin:

Commodity	Parts per million
Cattle, fat	0.5
Cattle, meat	0.05
Cattle, mbyp	0.5
Eggs	0.05
Goats, fat	0.5
Goats, meat	0.05
Goats, mbyp	0.5
Hogs, fat	0.5
Hogs, meat	0.05
Hogs, mbyp	0.5
Horses, fat	0.5
Horses, meat	0.05
Horses, mbyp	0.5
Milk	0.05
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, mbyp	0.1
Sheep, fat	0.5
Sheep, meat	0.05
Sheep, mbyp	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

x. Section 180.477 is revised to read as follows:

§ 180.477 Flumiclorac pentyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide flumiclorac pentyl, pentyl[2-chloro-4-fluoro-5-(1,3,4,5,6,7-hexahydro-1,3-dioxo-2H-isoindol-2-yl)phenoxy]acetate, including all the metabolites of flumiclorac pentyl, in or on the food commodities listed below. The tolerance level for each commodity is expressed in terms of the parent only which serves as an indicator of the use of flumiclorac pentyl on these food commodities.

Commodity	Parts per million
Corn, field, grain	0.01
Corn, field, fodder	0.01
Corn, field, forage	0.01
Soybean, hulls	0.02
Soybean, seed	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

y. Section 180.491 is revised to read as follows:

§ 180.491 Propylene oxide; tolerances for residues.

(a) *General.* Propylene oxide may be safely used in or on foods in accordance with the following prescribed conditions:

(1) It is intended as a fumigant in or on bulk quantities of cocoa, gums, processed spices, and processed nutmeats (except peanuts) when such bulk foods are to be further processed into a final food form.

(2) It is applied in fumigation chambers not more than one time at a temperature not in excess of 125 °F. The maximum period of fumigation shall not exceed 4 hours for cocoa, processed nutmeats (except peanuts), and processed spices. For edible gums, the maximum duration shall be 24 hours.

(3) When used as described in paragraphs (a)(1) and (2) of this section, residues shall not exceed the following limitations:

Food	Limitations[1]
Cocoa	300
Gums	300
Processed nutmeats (except peanuts)	300
Spices, processed	300

[1] Expressed as parts per million of propylene oxide.

(4) When used as a mixture with carbon dioxide (92 parts of carbon dioxide to 8 parts of propylene oxide on a weight/weight basis), all commodities listed in paragraph (a)(3) of this section may be processed not more than one time for a period not to exceed 48 hours and at a temperature not to exceed 125 °F.

(5) To assure safe use of the pesticide, the label and labeling of the pesticide formulation shall conform to the label an labeling registered by the U. S. Environmental Protection Agency.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§§ 185.250, 185.1900, 185.2600, 185.2850, 185.4000, 185.4100, 185.5150, and 185.7000 [Removed]

b. Sections 185.250, 185.1900, 185.2600, 185.2850, 185.4000, 185.4100, 185.5150, and 185.7000 are removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

§§ 186.550, 186.950, 186.2000, 186.2050, 186.2100, 186.3325, 186.3400, 186.3850, 186.4575, 186.4975, 186.5600, 186.5700, 186.5800, and 186.5850 [Removed]

b. Sections 186.550, 186.950, 186.2000, 186.2050, 186.2100, 186.3325, 186.3400, 186.3850, 186.4575, 186.4975, 186.5600, 186.5700, 186.5800, and 186.5850 are removed.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300753; FRL–6041–9]

RIN 2070–AB78

Consolidation of Certain Food and Feed Additive Tolerance Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendments.

SUMMARY: The Office of Pesticide Programs is transferring certain of the pesticide food and feed additive regulations that are now in 40 CFR parts 185 and 186 to part 180. These regulations are being consolidate because as amatter of law all of the pesticide tolerances are now considered to be regulated under FFDCA section 408 as amended by the Food Quality Protection Act (Public Law 104–17) and they no longer need to be separate.

DATES: These technical amendments are effective on May 24, 2000.

FOR FURTHER INFORMATION CONTACT: By mail, Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: 3rd floor, Crystal Mall (CM #2), 2100 Jefferson Davis Drive, Arlington, VA 22202, (703) 308–9368; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300756. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. "Good Cause" Finding

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because this rule contains technical, non-substantive amendments to 40 CFR. This rule transfers certain pesticide tolerances currently in 40 CFR parts 185 and 186 to 40 CFR part 180. There are no changes to the tolerances or to the commodities to which they apply. In addition, there are no reassessments of the adequacy of the tolerances under the Federal Food, Drug, and Cosmetic Act's (FFDCA) standards for safety. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

II. Background

What Action is the Agency Taking?

EPA is transferring certain pesticide tolerances currently in 40 CFR parts 185 and 186 to 40 CFR part 180.

Before the passage of the Food Quality Protection Act (FQPA), pesticide residues in food and feed were regulated under two sections of the FFDCA. Residues in raw agricultural commodities were regulated under section 408 of the FFDCA. The term "raw agricultural commodity" is defined in section 201(r) of the FFDCA as any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing. Pesticide residues in processed food or animal feed were regulated as "food additives" under section 409 of the FFDCA. Because there were legal differences in authority and how and when tolerances could be established under sections 408 and 409, tolerances for the same pesticide could appear in several parts of the Code of Federal Regulations.

FQPA clarified the status of pesticide residues and brought all pesticide residues in food and feed under the authority of section 408 of the FFDCA. In addition, FQPA added a definition of "processed food" for the first time (section 201(gg) of the FFDCA). The term "processed food" is defined in section 201(gg) of the FFDCA as "any food other than a raw agricultural food and includes any raw agricultural commodity that has been subject to processing...." Subsequent to the passage of the FQPA, Congress, in the Antimicrobial Regulation Technical Corrections Act of 1988 (ARTCA)(Public Law 105–324), amended the definition of "pesticide residue" in section 201(q) of the FFDCA so as to exclude certain antimicrobial pesticide residues in raw and processed foods from the authority of section 408. These residues now fall within the coverage of FFDCA section

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409. Since the statute has consolidated much authority for and treatment of pesticide chemical residues in food and feed under FFDCA section 408, EPA is now transferring those pesticide regulations established under section 409 that pertain to pesticide chemical residues now covered by section 408 to the portion of the CFR, part 180, in which section 408 tolerance regulations are collected.

Published elsewhere in this separate part, EPA is transfering some of the regulations from parts 185 and 186 to part 180. With this document, all tolerances have been transferred, and users will be able to determine all the tolerances for a single pesticide chemical by referring to the listings in part 180.

While EPA believes that it has accurately transferred each of the tolerances included in this rule, the Agency would appreciate readers notifying EPA of discrepancies, omissions or technical problems by submitting any comments to the address or e-mail address under **FOR FURTHER INFORMATION CONTACT**. These would be corrected in a future rule.

EPA is not at this time making any changes in the tolerances or the commodities to which they apply, nor is EPA reassessing the adequacy of the tolerances under FFDCA standards for safety. Further, EPA is not at this time standardizing the terminology used to describe various food commodities. EPA is aware that there may be inconsistencies in the description of food commodities among parts 180, 185 and 186. EPA will make such changes when all tolerances have been consolidated.

No tolerances are revoked by this rule. Duplicate tolerance entries, which would be created by transfering food and feed additive tolerances established for the same food commodity at the same tolerance level from parts 185 and 186 to the corresponding part 180 section, have been deleted.

The following distribution table shows the new location of the provisions formerly in parts 185 and 186 now in part 180.

Old Sections	New Section
185.3700	180.123(a)(3)
186.3700	180.123(a)(3)
185.4900	180.127(a)(2)
186.4900	180.127(a)(3)
185.5200	180.128(a)(2)
186.5200	180.128(a)(3)
185.1350	180.144(a) table
186.1350	180.144(a) table
185.6300	180.176(a) table
186.6300	180.176(a) table
185.2500	180.226(a)(5)
186.2500	180.226(a)(6)
185.1800	180.227(a)(1) table
186.1800(a) and (b)	180.227(a)(1) table
185.5000	180.259(a) table
186.5000	180.259(a) table
185.150	180.269(a) table
186.150	180.269(a) table
185.2700	180.300(a) table
186.2700(a)	180.300(a) table
185.1000(a), (b), (c) and (d).	180.342(a)(1) table, (a)(3), (4), (2) table, respectively
186.1000	180.342(a)(1) table
185.2950	180.349(a)(1)
186.2950	180.349(a)(1)
185.4150	180.359(a)(1) table
186.4150(a), (b), (c)	180.359(a)(2)(i), (ii), and (iii), respectively
186.4150(d)	180.359(a)(1) table
185.3550	180.362(a) table
186.3550(a)	180.362(a) table
185.4500	180.367(a)(2)
185.5950	180.382(a) table
186.5950	180.382(a) table
185.3575	180.396(c) table
186.3575	180.396(c) table
185.4950(a) and (b), respectively.	180.409(a)(2), and (3)
186.4950	180.409(a)(2)
185.3250	180.411(a)(1) table
186.3250	180.411(a)(1) table
185.3650	180.413(a)(1) table
186.3650	180.413(a)(1) table
185.1050	180.419(a)(2)
186.1050	180.419(a)(2)
185.1200	180.538
185.3775 and 186.3775.	180.539
185.2200	180.540
185.5100	180.541(a)(1)
186.5100	180.541(a)(2)
185.3000	180.542
185.1700 and 186.1700.	180.1017(b)
185.650	180.1049(a)
185.4400	180.1050
185.1150	180.1051
185.4035 and 186.4035.	180.1116

III. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 24, 2000. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: May 10, 2000.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, parts 180, 185 and 186 are amended as follows:

I. By amending part 180 as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. By revising § 180.123 to read as follows:

§ 180.123 Inorganic bromide residues resulting from fumigation with methyl bromide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of inorganic bromides (calculated as Br) in or on the following food commodities which have been fumigated with the antimicrobial agent and insecticide methyl bromide after harvest (with the exception of strawberries):

Commodity	Parts per million
Alfalfa, hay (POST-H)	50.0
Almonds (POST-H)	200.0
Apples (POST-H)	5.0
Apricots (POST-H)	20.0
Artichokes, Jerusalem (POST-H)	30.0
Asparagus (POST-H)	100.0
Avocados (POST-H)	75.0
Barley (POST-H)	50.0
Beans (POST-H)	50.0
Beans, green (POST-H)	50.0
Beans, lima (POST-H)	50.0
Beans, snap (POST-H)	50.0
Beets, garden, roots (POST-H)	30.0
Beets, sugar, roots (POST-H)	30.0
Blueberries (POST-H)	20.0
Brazil nuts (POST-H)	200.0
Bush nuts (POST-H)	200.0
Butternuts (POST-H)	200.0
Cabbage (POST-H)	50.0
Cantaloupes (POST-H)	20.0
Carrots (POST-H)	30.0
Cashews (POST-H)	200.0
Cherries (POST-H)	20.0
Chestnuts (POST-H)	200.0
Cippolini, bulbs (POST-H)	50.0
Citrus citron (POST-H)	30.0
Cocoa beans (POST-H)	50.0
Coffee beans (POST-H)	75.0
Copra (POST-H)	100.0
Corn (POST-H)	50.0
Corn (pop) (POST-H)	240.0
Corn, sweet (K+CWHR) (POST-H)	50.0
Cottonseed (POST-H)	200.0
Cucumbers (POST-H)	30.0
Cumin, seed (POST-H)	100.0
Eggplants (POST-H)	20.0
Filberts (Hazelnuts) (POST-H)	200.0
Garlic (POST-H)	50.0
Ginger, roots (POST-H)	100.0
Grapefruit (POST-H)	30.0
Grapes (POST-H)	20.0
Hickory nuts (POST-H)	200.0
Honeydew melons (POST-H)	20.0
Horseradish (POST-H)	30.0
Kumquats (POST-H)	30.0
Lemons (POST-H)	30.0
Limes (POST-H)	30.0
Mangoes (POST-H)	20.0
Muskmelons (POST-H)	20.0
Nectarines (POST-H)	20.0
Oats (POST-H)	50.0
Okra (POST-H)	30.0
Onions (POST-H)	20.0
Oranges (POST-H)	30.0
Papayas (POST-H)	20.0
Parsnips, roots (POST-H)	30.0
Peaches (POST-H)	20.0
Peanuts (POST-H)	200.0
Pears (POST-H)	5.0
Peas (POST-H)	50.0
Peas, blackeyed (POST-H)	50.0
Pecans (POST-H)	200.0
Peppers (POST-H)	30.0
Pimentos (POST-H)	30.0
Pineapples (POST-H)	20.0
Pistachio nuts (POST-H)	200.0
Plums (POST-H)	20.0
Pomegranates (POST-H)	100.0
Potatoes (POST-H)	75.0
Pumpkins (POST-H)	20.0
Quinces (POST-H)	5.0
Radishes (POST-H)	30.0
Rice (POST-H)	50.0
Rutabagas (POST-H)	30.0
Rye (POST-H)	50.0
Salsify, roots (POST-H)	30.0
Sorghum, grain (POST-H)	50.0
Soybeans (POST-H)	200.0
Squash, summer (POST-H)	30.0
Squash, winter (POST-H)	20.0
Squash, zucchini (POST-H)	20.0
Strawberries (PRE- and POST-H)	60.0
Sweet potatoes (POST-H)	75.0
Tangerines (POST-H)	30.0
Timothy, hay (POST-H)	50.0
Tomatoes (POST-H)	20.0
Turnips, roots (POST-H)	30.0
Walnuts (POST-H)	200.0
Watermelons (POST-H)	20.0
Wheat	50.0

(2) Inorganic bromide may be present as a residue in certain processed foods in accordance with the following conditions:

(i) When inorganic bromide residues are is present as a result of fumigation of the processed food with methyl bromide or from such fumigation in addition to the authorized use of methyl bromide on the source raw agricultural commodity, as provided for in this part, the total residues of inorganic bromides (calculated as Br) shall not exceed the following levels:

(A) 400 parts per million in or on dried eggs and processed herbs and spices.

(B) 325 parts per million in or on parmesan cheese and roquefort cheese.

(C) 250 parts per million in or on concentrated tomato products and dried figs.

(D) 125 parts per million in or on processed foods other than those listed above.

(ii) When inorganic bromide residues are present in fermented malt beverages in accordance with 21 CFR 172.730(a)(2), the amount shall not exceed 25 parts per million (calculated as Br).

(iii) Where tolerances are established on both the raw agricultural commodities and processed foods made therefrom, the total residues of inorganic bromides in or on the processed food shall not be greater than those designated in paragraph (a)(2) of this section, unless a higher level is established elsewhere in this part.

(3) Tolerances are established for residues of inorganic bromides (calculated as Br) as follows:

(i) 400 parts per million for residues in or on dog food, resulting from fumigation with methyl bromide.

(ii) 125 parts per million for residues in or on milled fractions for animal feed from barley, corn, grain sorghum (milo), oats, rice, rye, and wheat, resulting directly from fumigation with methyl bromide or from carryover and concentration of residues of inorganic bromides from fumigation of the grains with methyl bromide.

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(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* A tolerance with regional registration, as defined in § 180.1(n), is established for residues of inorganic bromides (calculated as Br) in or on the following food commodity grown in soil fumigated with methyl bromide.

Commodity	Parts per million
Ginger, roots (PRE- and POST-H)	100

(d) *Indirect or inadvertent residues.* [Reserved]

3. By revising § 180.127 to read as follows:

§ 180.127 Piperonyl butoxide; tolerances for residues.

(a) *General.* (1) Tolerances for residues of the insecticide piperonyl butoxide [(butyl carbityl)(6-propyl piperonyl)ether] are established in or on the following food commodities:

Commodity	Parts per million
Almonds (POST-H)	8
Apples (POST-H)	8
Barley (POST-H)	20
Beans (POST-H)	8
Birdseed mixtures (POST-H)	20
Blackberries (POST-H)	8
Blueberries (huckleberries) (POST-H)	8
Boysenberries (POST-H)	8
Buckwheat (POST-H)	20
Cattle, fat	0.1(N)
Cattle, mbyp	0.1(N)
Cattle, meat	0.1(N)
Cherries (POST-H)	8
Cocoa beans (POST-H)	8
Copra (POST-H)	8
Corn (including popcorn) (POST-H)	20
Cottonseed (POST-H)	8
Crabapples (POST-H)	8
Currants (POST-H)	8
Dewberries (POST-H)	8
Eggs	1
Figs (POST-H)	8
Flaxseed (POST-H)	8
Goats, fat	0.1(N)
Goats, mbyp	0.1(N)
Goats, meat	0.1(N)
Gooseberries (POST-H)	8
Grain sorghum (POST-H)	8
Grapes (POST-H)	8
Guavas (POST-H)	8
Hogs, fat	0.1(N)
Hogs, mbyp	0.1(N)
Hogs, meat	0.1(N)
Horses, fat	0.1(N)
Horses, mbyp	0.1(N)
Horses, meat	0.1(N)
Loganberries (POST-H)	8
Mangoes (POST-H)	8
Milk fat (reflecting negligible residues in milk)	0.25
Muskmelons (POST-H)	8
Oats (POST-H)	8
Oranges (POST-H)	8
Peaches (POST-H)	8
Peanuts (with shell removed) (POST-H)	8
Pears (POST-H)	8
Peas (POST-H)	8
Pineapples (POST-H)	8
Plums (fresh prunes) (POST-H)	8
Potatoes (POST-H)	0.25
Poultry, fat	3
Poultry, mbyp	3
Poultry, meat	3
Raspberries (POST-H)	8
Rice (POST-H)	20
Rye (POST-H)	20
Sheep, fat	0.1(N)
Sheep, mbyp	0.1(N)
Sheep, meat	0.1(N)
Sweet potatoes (POST-H)	0.25
Tomatoes (POST-H)	8
Walnuts (POST-H)	8
Wheat (POST-H)	20

(2) Piperonyl butoxide may be safely used in accordance with the following prescribed conditions:

(i) It is used or intended for use in combination with pyrethrins for control of insects:

(A) In cereal grain mills and in storage areas for milled cereal grain products, whereby the amount of piperonyl butoxide is at least equal to but not more than 10 times the amount of pyrethrins in the formulation.

(B) On the outer ply of multiwall paper bags of 50 pounds or more capacity in amounts not exceeding 60 milligrams per square foot, whereby the amount of piperonyl butoxide is equal to 10 times the amount of pyrethrins in the formulation. Such treated bags are to be used only for dried foods.

(C) On cotton bags of 50 pounds or more capacity in amounts not exceeding 55 milligrams per square foot of cloth, whereby the amount of piperonyl butoxide is equal to 10 times the amount of pyrethrins in the formulation. Such treated bags are constructed with waxed paper liners and are to be used only for dried foods that contain 4 percent fat or less.

(D) In two-ply bags consisting of cellophane/polyolefin sheets bound together by an adhesive layer when it is incorporated in the adhesive. The treated sheets shall contain not more than 50 milligrams of piperonyl butoxide per square foot (538 milligrams per square meter). Such treated bags are to be used only for packaging prunes, raisins, and other dried fruits and are to have a maximum ratio of 3.12 milligrams of piperonyl butoxide per ounce of fruit (0.10 milligram of piperonyl butoxide per gram of product).

(E) In food processing and food storage areas: Provided, That the food is removed or covered prior to such use.

(ii) It is used or intended for use in combination with pyrethrins and N-octylbicycloheptene dicarboximide for insect control in accordance with 21 CFR 178.3730.

(iii) A tolerance of 10 parts per million is established for residues of piperonyl butoxide in or on:

(A) Milled fractions derived from cereal grains when present therein as a result of its use in cereal grain mills and in storage areas for milled cereal grain products.

(B) Dried foods when present as a result of migration from its use on the outer ply of multiwall paper bags of 50 pounds or more capacity.

(C) Foods treated in accordance with 21 CFR 178.3730.

(D) Dried foods that contain 4 percent fat, or less, when present as a result of migration from its use on the cloth of cotton bags of 50 pounds or more capacity constructed with waxed paper liners.

(E) Foods treated in accordance with paragraph (a)(2)(i)(D) and (E) of this section.

(iv) To assure safe use of the pesticide, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(v) Where tolerances are established on both raw agricultural commodities and processed foods made therefrom, the total residues of piperonyl butoxide in or on the processed food shall not be greater than that permitted by the larger of the two tolerances.

(3) Piperonyl butoxide may be safely used in accordance with the following prescribed conditions:

(i) It is used or intended for use in combination with pyrethrins for control of insects:

(A) On the outer ply of multiwall paper bags of 50 pounds or more capacity in amounts not exceeding 60 milligrams per square foot.

(B) On cotton bags of 50 pounds or more capacity in amounts not exceeding 55 milligrams per square foot of cloth. Such treated bags are constructed with waxed paper liners and are to be used only for dried feeds that contain 4 percent fat or less.

(ii) It is used in combination with pyrethrins, whereby the amount of

piperonyl butoxide is equal to 10 times the amount of pyrethrins in the formulation. Such treated bags are to be used only for dried feeds.

(iii) A tolerance of 10 parts per million is established for residues of piperonyl butoxide when present as the result of migration:

(A) In or on dried feeds from its use on the outer ply of multiwall paper bags of 50 pounds or more capacity.

(B) In or on dried feeds that contain 4 percent fat, or less, from its use on cotton bags of 50 pounds or more capacity constructed with waxed paper liners.

(iv) To assure safe use of the pesticide, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency.

(v) Where tolerances are established on both the raw agricultural commodities and processed foods made therefrom, the total residues of piperonyl butoxide in or on the processed food shall not be greater than that permitted by the larger of the two tolerances.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

4. By revising § 180.128 to read as follows:

§ 180.128 Pyrethrins; tolerances for residues.

(a) *General.* (1) Tolerances for residues of the insecticide pyrethrins (insecticidally active principles of *Chrysanthemum cinerariaefolium*) are established in or on the following food commodities:

Commodity	Parts per million
Almonds (POST-H)	1
Apples (POST-H)	1
Barley (POST-H)	3
Beans (POST-H)	1
Birdseed mixtures (POST-H)	3
Blackberries (POST-H)	1
Blueberries (huckleberries) (POST-H)	1
Boysenberries (POST-H)	1
Buckwheat (POST-H)	3
Cattle, fat	0.1(N)
Cattle, mbyp	0.1(N)
Cattle, meat	0.1(N)
Cherries (POST-H)	1
Cocoa beans (POST-H)	1
Copra (POST-H)	1
Corn (including popcorn) (POST-H)	3
Cottonseed (POST-H)	1
Crabapples (POST-H)	1
Currants (POST-H)	1
Dewberries (POST-H)	1
Eggs	0.1(N)
Figs (POST-H)	1
Flaxseed (POST-H)	1
Goats, fat	0.1(N)
Goats, mbyp	0.1(N)
Goats, meat	0.1(N)
Gooseberries (POST-H)	1
Grain sorghum (POST-H)	1
Grapes (POST-H)	1
Guavas (POST-H)	1
Hogs, fat	0.1(N)
Hogs, mbyp	0.1(N)
Hogs, meat	0.1(N)
Horses, fat	0.1(N)
Horses, mbyp	0.1(N)
Horses, meat	0.1(N)
Loganberries (POST-H)	1
Mangoes (POST-H)	1
Milk fat (reflecting negligible residues in milk)	0.5
Muskmelons (POST-H)	1
Oats (POST-H)	1
Oranges (POST-H)	1
Peaches (POST-H)	1
Peanuts (with shell removed) (POST-H)	1
Pears (POST-H)	1
Peas (POST-H)	1
Pineapples (POST-H)	1
Plums (fresh prunes) (POST-H)	1
Potatoes (POST-H)	0.05
Poultry, fat	0.2
Poultry, mbyp	0.2
Poultry, meat	0.2
Raspberries (POST-H)	1
Rice (POST-H)	3
Rye (POST-H)	3
Sheep, fat	0.1(N)
Sheep, mbyp	0.1(N)
Sheep, meat	0.1(N)
Sweet potatoes (POST-H)	0.05
Tomatoes (POST-H)	1
Walnuts (POST-H)	1
Wheat (POST-H)	3

(2) Pyrethrins may be safely used in accordance with the following prescribed conditions:

(i) It is used or intended for use in combination with piperonyl butoxide for control of insects:

(A) In cereal grain mills and in storage areas for milled cereal grain products, whereby the amount of pyrethrins is from 10 percent to 100 percent of the amount of piperonyl butoxide in the formulation.

(B) On the outer ply of multiwall paper bags of 50 pounds or more capacity in amounts not exceeding 6 milligrams per square foot, whereby the amount of pyrethrins is equal to 10 percent of the amount of piperonyl butoxide in the formulation. Such treated bags are to be used only for dried foods.

(C) On cotton bags of 50 pounds or more capacity in amounts not exceeding 5.5 milligrams per square foot of cloth, whereby the amount of pyrethrins is equal to 10 percent of the amount of piperonyl butoxide in the formulation. Such treated bags are constructed with waxed paper liners and are to be used only for dried foods that contain 4 percent fat or less.

(D) In two-ply bags consisting of cellophane/polyolefin sheets bound together by an adhesive layer when it is incorporated in the adhesive. The treated sheets shall contain not more than 10 milligrams of pyrethrins per square foot (107.6 milligrams per square meter). Such treated bags are to be used only for packaging prunes, raisins, and other dried fruits and are to have a maximum ratio of 0.31 milligram of pyrethrins per ounce of fruit (0.01 milligram of pyrethrins per gram of product).

(E) In food processing areas and food storage areas: *Provided,* That the food is removed or covered prior to such use.

(ii) It is used or intended for use in combination with piperonyl butoxide and *N*-octylbicycloheptene dicarboximide for insect control in accordance with § 180.367(a)(2).

(iii) A tolerance of 1 part per million is established for residues of pyrethrins in or on:

(A) Milled fractions derived from cereal grains when present as a result of its use in cereal grain mills and in storage areas for milled cereal grain products.

(B) Dried foods when present as the result of migration from its use on the outer ply of multiwall paper bags of 50 pounds or more capacity.

(C) Foods treated in accordance with § 180.367(a)(2).

(D) Dried foods that contain 4 percent fat, or less, when present as a result of migration from its use on the cloth of cotton bags of 50 pounds or more capacity constructed with waxed paper liners.

(E) Foods treated in accordance with paragraphs (a)(2)(i)(D) and (a)(2)(i)(E)) of this section.

(iv) To assure safe use of the pesticide, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(v) Where tolerances are established on both the raw agricultural commodities and processed foods made therefrom, the total residues of pyrethrins in or on the processed food shall not be greater than that permitted by the larger of the two tolerances.

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(3) Pyrethrins may be safely used in accordance with the following prescribed conditions:

(i) It is used or intended for use in combination with piperonyl butoxide for control of insects:

(A) On the outer ply of multiwall paper bags of 50 pounds or more capacity in amounts not exceeding 6 milligrams per square foot.

(B) On cotton bags of 50 pounds or more capacity in amounts not exceeding 5.5 milligrams per square foot of cloth. Such treated bags are constructed with waxed paper liners and are to be used only for dried feeds that contain 4 percent fat or less.

(ii) It is used in combination with piperonyl butoxide, whereby the amount of pyrethrins is equal to 10 percent of the amount of piperonyl butoxide in the formulation. Such treated bags are to be used only for dried feeds.

(iii) A tolerance of 1 part per million is established for residues of pyrethrins when present as the result of migration:

(A) In or on dried feeds from its use on the outer ply of multiwall paper bags of 50 pounds or more capacity.

(B) In or on dried feeds that contain 4 percent fat, or less, from its use on cotton bags of 50 pounds or more capacity constructed with waxed paper liners.

(iv) To assure safe use of the pesticide, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency.

(v) Where tolerances are established on both raw agricultural commodities and processed foods made therefrom, the total residues of pyrethrins in or on the processed food shall not be greater than that permitted by the larger of the two tolerances.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

5. By revising § 180.144 to read as follows:

§ 180.144 Cyhexatin; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the pesticide cyhexatin (tricyclohexylhydroxystannane; CAS Reg. No. 13121–70–5) and its organotin metabolites (calculated as cyhexatin) in or on the following food commodities:

Commodity	Parts per million
Almonds	0.5
Almonds, hulls	60
Apples	2
Cattle, fat	0.2
Cattle, kidney	0.5
Cattle, liver	0.5
Cattle, mbyp (exc. kidney, liver)	0.2
Cattle, meat	0.2
Citrus fruits	2
Citrus pulp, dried	8
Goats, fat	0.2
Goats, kidney	0.5
Goats, liver	0.5
Goats, mbyp (exc kidney, liver)	0.2
Goats, meat	0.2
Hogs, fat	0.2
Hogs, kidney	0.5
Hogs, liver	0.5
Hogs, mbyp (exc kidney, liver)	0.2
Hogs, meat	0.2
Hops	30
Hops, dried	90
Horses, fat	0.2
Horses, kidney	0.5
Horses, liver	0.5
Horses, mbyp (exc kidney, liver)	0.2
Horses, meat	0.2
Macadamia nuts	0.5
Milk, fat (=N in whole milk)	0.05
Nectarines	4
Peaches	4
Pears	2
Plums (fresh prunes)	1
Prunes, dried	4
Sheep, fat	0.2
Sheep, kidney	0.5
Sheep, liver	0.5
Sheep, mbyp (exc kidney, liver)	0.2
Sheep, meat	0.2
Strawberries	3
Walnuts	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

6. By revising § 180.176 to read as follows:

§ 180.176 Mancozeb; tolerances for residues.

(a) *General.* Tolerances for residues of a fungicide which is a coordination product of zinc ion and maneb (manganous ethylene-bisdithiocarbamate) containing 20 percent manganese, 2.5 percent zinc, and 77.5 percent ethylene-bisdithiocarbamate (the whole product calculated as zinc ethylenebisdithiocarbamate), are established as follows:

Commodity	Parts per million
Apples	7
Asparagus (negligible residue)	0.1
Bananas	4.0
Bananas, pulp (no peel)	0.5
Barley, grain	5
Barley, milled feed fractions	20
Barley, straw	25
Carrots	2
Celery	5
Corn, fodder	5
Corn, forage	5
Corn grain (except popcorn grain)	0.1
Cottonseed	0.5
Crabapples	10
Cranberries	7
Cucumbers	4
Fennel	10
Fresh corn (including sweet corn, kernels plus cob with husk removed)	0.5
Grapes	7
Kidney	0.5
Liver	0.5
Melons	4
Oats, bran	20
Oats, grain	5
Oats, milled feed fractions	20
Oats, straw	25
Onions (dry bulb)	0.5
Papayas (whole fruit with no residue present in the edible pulp after the peel is removed and discarded)	10
Peanuts	0.5
Peanut vine hay	65
Pears	10
Popcorn grain	0.5
Quinces	10
Rye, grain	5
Rye, milled feed fractions	20
Rye, straw	25
Sugar beets	2
Sugarbeet tops	65
Summer squash	4
Tomatoes	4
Wheat, grain	5
Wheat, milled feed fractions	20
Wheat, straw	25

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for combined residues of the fungicide mancozeb, calculated as zinc ethylenebisdithiocarbamate and it's metabolite ETU in connection with use of the pesticide under a section 18 emergency exemption granted by EPA. The tolerance will expire and is revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/ Revocation Date
Ginseng	2.0	12/31/99

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

7. By revising § 180.226 to read as follows:

§ 180.226 Diquat; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the plant growth regulator diquat [6,7-dihydrodipyrido (1,2-a:2(a) Tolerancprime;,1-c) pyrazinediium] derived from application of the dibromide salt and calculated as the cation in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.02
Cattle, mbyp	0.02
Cattle, meat	0.02
Eggs	0.02
Goats, fat	0.02
Goats, mbyp	0.02
Goats, meat	0.02
Hogs, fat	0.02
Hogs, mbyp	0.02
Hogs, meat	0.02
Horses, fat	0.02
Horses, mbyp	0.02
Horses, meat	0.02
Milk	0.02
Potato	0.1
Potato, waste, dried	1.0
Poultry, fat	0.02
Poultry, mbyp	0.02
Poultry, meat	0.02
Sheep, fat	0.02
Sheep, mbyp	0.02
Sheep, meat	0.02

(2)(i) Tolerances are established for residues of the herbicide diquat (6,7-dihydrodipyrido (1,2-a:2,1-c) pyrazinediium) (calculated as the cation) derived from the application of the dibromide salt to ponds, lakes, reservoirs, marshes, drainage ditches, canals, streams, and rivers which are slow-moving or quiescent in programs of the Corps of Engineers or other Federal or State public agencies and to ponds, lakes and drainage ditches only where there is little or no outflow of water and which are totally under the control of the user, in or on the following food commodities:

Commodity	Parts per million
Avocado	0.02
Cotton, undelinted seed	0.02
Fish	0.1
Fruit, citrus, group	0.02
Fruit, pome, group	0.02
Fruits, small	0.02
Fruit, stone, group	0.02
Grain, crops	0.02
Grass, forage	0.1
Hop, dried cones	0.02
Nut, tree, group	0.02
Shellfish	0.1
Sugarcane, cane	0.02
Vegetable, cucurbit, group	0.02
Vegetable, foliage of legume, group	0.1
Vegetable, fruiting, group	0.02
Vegetables, leafy	0.02
Vegetable, root and tuber, group	0.02
Vegetables, seed and pod	0.02

(ii) Where tolerances are established at higher levels from other uses of diquat on the subject crops, the higher tolerances applies also to residues of the aquatic uses cited in this paragraph.

(3) Tolerances are established for the plant growth regulator diquat [6,7-dihydrodipyrido (1,2-a:2¼,1¼-c) pyrazinediium] derived from application of the dibromide salt and calculated as the cation in or on the following food commodities:

Commodity	Parts per million
Bananas	0.05
Coffee	0.05

(4) There are no U.S. registrations as of December 6, 1995.

(5) A tolerance of 0.5 part per million is established for residues of diquat in potato, granules/flakes and potato, chips.

(6) A tolerance regulation of 1.0 part per million (ppm) is established for residues of the desiccant diquat [6,7-dihydrodipyrido (1,2-a:2¼,1¼-c) pyrazinediium] derived from application of the dibromide salt and calculated as the cation, in processed, dried potato waste.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

8. By revising § 180.227 to read as follows

§ 180.227 Dicamba; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite 3,6-dichloro-5-hydroxy-*o*- anisic acid in or on the food commodities as follows:

Commodity	Parts per million
Barley, grain	6.0
Barley, hay	2.0
Barley, straw	15.0
Corn, field, forage	3.0
Corn, field, stover	3.0
Corn, fodder	0.5
Corn, forage	0.5
Corn, grain	0.5
Corn, pop, stover	3.0
Cottonseed	5.0
Cottonseed, meal	5.0
Crop Group 17 (grass, forage, fodder and hay).	
Grass, forage	125.0
Grass, hay	200.0
Millet, proso, grain	0.5
Millet, proso, straw	0.5
Oats, forage	80.0
Oats, grain	0.5
Oats, hay	20.0
Oats, straw	0.5
Sorghum, fodder	3.0
Sorghum, forage	3.0
Sorghum, grain	3.0
Sugarcane	0.1
Sugarcane, fodder	0.1
Sugarcane forage	0.1
Sugarcane molasses	2.0
Wheat, forage	80.0
Wheat, grain	2.0
Wheat, hay	20.0
Wheat, straw	30.0

(2) Tolerances are established for the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite 3,6-dichloro-5-hydroxybenzoic acid in or on the food commodities as follows:

Commodity	Parts per million
Asparagus	4.0
Cattle, fat	0.2
Cattle, kidney	1.5
Cattle, liver	1.5
Cattle, mbyp	0.2
Cattle, meat	0.2
Goats, fat	0.2
Goats, kidney	1.5
Goats, liver	1.5
Goats, mbyp	0.2
Goats, meat	0.2
Hogs, fat	0.2
Hogs, kidney	1.5
Hogs, liver	1.5
Hogs, mbyp	0.2
Hogs, meat	0.2
Horses, fat	0.2
Horses, kidney	1.5
Horses, liver	1.5
Horses, mbyp	0.2
Horses, meat	0.2
Milk	0.3
Sheep, fat	0.2
Sheep, kidney	1.5
Sheep, liver	1.5
Sheep, mbyp	0.2
Sheep, meat	0.2

(3) Tolerances are established for the combined residues of dicamba (3,6-dichloro-*o*-anisic and its metablites 3,6-dichloro-5-hydroxy-*o*-anisic acid and 3,6-dichloro-2-hydroxybenzoic acid in or on the food commodities as follows:

Commodity	Parts per million
Aspirated grain fractions	5100.0
Soybean, hulls	13.0

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Commodity	Parts per million
Soybean, seed	10.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

9. By revising § 180.259 to read as follows:

§ 180.259 Propargite; tolerances for residues.

(a) *General.* Tolerances are established for residues of the pesticide propargite (2-(*p*-*tert*-butylphenoxy) cyclohexyl 2-propynyl sulfite) in or on the following food commodities.

Commodity	Parts per million
Almonds	0.1
Almonds, hulls	55
Beans, dry	0.2
Cattle, fat	0.1
Cattle, mbyp	0.1
Cattle, meat	0.1
Citrus pulp, dried	40
Corn, fodder	10
Corn, forage	10
Corn, grain	0.1
Cottonseed	0.1
Eggs	0.1
Goats, fat	0.1
Goats, mbyp	0.1
Goats, meat	0.1
Grapefruit	5
Grapes	10
Hogs, fat	0.1
Hogs, mbyp	0.1
Hogs, meat	0.1
Hops	15
Hops, dried	30
Horses, fat	0.1
Horses, mbyp	0.1
Horses, meat	0.1
Lemons	5
Milk, fat (0.08 ppm in milk)	2
Mint	50
Nectarines	4
Oranges	5
Peanuts	0.1
Peanuts, forage	10
Peanuts, hay	10
Peanuts, hulls	10
Poultry, fat	0.1
Poultry, mbyp	0.1
Poultry, meat	0.1
Potatoes	0.1
Sheep, fat	0.1
Sheep, mbyp	0.1
Sheep, meat	0.1
Sorghum, fodder	10
Sorghum, forage	10
Sorghum, grain	10
Tea, dried	10
Walnuts	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of propargite in or on the following raw agricultural commodities:

Commodity	Parts per million
Corn, sweet, kernal plus cob with husks removed	0.1

(d) *Indirect or inadvertent residues.* [Reserved]

10. By revising § 180.269 to read as follows:

§ 180.269 Aldicarb; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the insecticide and nematocide aldicarb (2-methyl-2-(methylthio)propionaldehyde *O*-(methylcarbamoyl) oxime and its cholinesterase-inhibiting metabolites 2-methyl 2-(methylsulfinyl) propionaldehyde *O*-(methylcarbamoyl) oxime and 2-methyl-2-(methylsulfonyl) propionaldehyde *O*-(methylcarbamoyl) oxime in or on the following food commodities:

Commodity	Parts per million
Beans (dry)	0.1
Beets, sugar	0.05
Beets, sugar, tops	1
Cattle, fat	0.01
Cattle, mbyp	0.01
Cattle, meat	0.01
Citrus pulp, dried	0.6
Coffee beans	0.1
Cottonseed	0.1
Cottonseed, hulls	0.3
Goats, fat	0.01
Goats, mbyp	0.01
Goats, meat	0.01
Grapefruits	0.3
Hogs, fat	0.01
Hogs, mbyp	0.01
Hogs, meat	0.01
Horses, fat	0.01
Horses, mbyp	0.01
Horses, meat	0.01
Lemons	0.3
Limes	0.3
Milk	0.002
Oranges	0.3
Peanuts	0.05
Pecans	0.5
Potatoes	1
Sheep, fat	0.01
Sheep, mbyp	0.01
Sheep, meat	0.01
Sorghum, bran	0.5
Sorghum, fodder	0.5
Sorghum, grain	0.2
Soybeans	0.02
Sugarcane	0.02
Sugarcane, fodder	0.1
Sugarcane, forage	0.1
Sweet potato	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

11. By revising § 180.300 to read as follows:

§ 180.300 Ethephon; tolerances for residues.

(a) *General.* Tolerances are established for residues of the plant regulator ethephon [(2-chloroethyl) phosphonic acid] in or on food commodities as follows:

Commodity	Parts per million
Apples	5
Barley, bran	5.0
Barley, grain	2.0
Barley, pearled barley	5.0
Barley, straw	10.0
Blackberries	30
Blueberries	20
Cantaloupes	2
Cattle, fat	0.1
Cattle, mbyp	0.1
Cattle, meat	0.1
Cherries	10
Coffee beans	0.1(N)
Cottonseed	2.0
Cranberries	5
Cucumbers	0.1
Fig	5
Goat, fat	0.1
Goats, mbyp	0.1
Goats, meat	0.1
Grapes	2.0
Hogs, fat	0.1
Hogs, mbyp	0.1
Hogs, meat	0.1
Horses, fat	0.1
Horses, mbyp	0.1
Horse, meat	0.1
Nut, macadamia	0.5
Milk	0.1
Peppers	30
Pineapple	2
Pumpkin	0.1
Raisin	12
Sheep, fat	0.1
Sheep, mbyp	0.1
Sheep, meat	0.1
Sugarcane, molasses	1.5
Tomato	2
Walnuts	0.5
Wheat bran	5.0
Wheat, grain	2.0
Wheat, middlings	5.0
Wheat, shorts	5.0
Wheat, straw	10.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* A tolerance with regional registration, as defined in § 180.1(n), of 0.1 part per million is established for residues of the plant regulator ethephon [(2-chloroethyl)phosphonic acid] in or on the food commodity sugarcane.

(d) *Indirect or inadvertent residues.* [Reserved]

12. By revising § 180.342 to read as follows:

§ 180.342 Chloropyrifos; tolerances for residues.

(a) *General.* (1) Tolerances are established for combined residues of the pesticide chlorpyrifos (*O*,*O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate and its metabolite 3,5,6-trichloro-2-pyridinol in or on the following food commodities:

Commodity	Parts per million
Almonds	0.2
Almonds, hulls	12.0
Apples	1.5
Beans, lima	0.05
Beans, lima, forage	1.0
Beans, snap	0.05
Beans, snap, forage	1.0
Beets, sugar, molasses	15.0
Beets, sugar, pulp (dried)	5.0
Beets, sugar, roots	1.0
Beets, sugar, tops	8.0
Blueberries	2 ppm (of which no more than 1 ppm is chlorpyrifos)
Citrus pulp, dried	5.0
Citrus fruits	1.0
Citrus oil	25.0
Corn, fresh (inc. sweet K+CWHR)	0.1
Corn oil	3.0
Cranberries	1.0
Kiwifruit	2.0
Mushrooms	0.1
Onions (dry bulb)	0.5
Peppers	1.0
Seed and pod vegetables	0.1
Sorghum, fodder	6.0
Sorghum, forage	1.5
Sorghum, grain	0.75
Sorghum milling fractions	1.5
Sunflower, seeds	0.25
Tomatoes	0.5
Tree nuts	0.2
Vegetables, leafy, *Brassica* (cole)	[1]2.0
Walnuts	0.2

[1] Of which no more than 1.0 ppm is chlorpyrifos.

(2) Tolerances are established for residues of the pesticide chlorpyrifos (*O*,*O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate in or on the following food commodities:

Commodity	Parts per million
Alfalfa, forage	3
Alfalfa, hay	13
Bananas, whole	0.1
Bananas, pulp with peel removed	0.01
Bean, forage	0.7
Broccoli	1
Brussels sprouts	1
Cabbage	1
Caneberries	1.0
Cattle, fat	0.3
Cattle, meat and meat byproducts	0.05
Cauliflower	1
Cherries	1
Chinese cabbage	1
Corn, field, grain	0.05
Corn, forage and fodder	8
Cottonseed	0.2
Cucumbers	0.05
Eggs	0.01
Figs	0.01
Goats, fat	0.2
Goats, meat and meat byproducts	0.05
Hogs, fat	0.2
Hogs, meat and meat byproducts	0.05
Horses, meat, fat, and meat byproducts	0.25
Legume vegetables, succulent or dried (except soybeans)	0.05
Milk, fat	0.25
Milk, whole	0.01
Milling fractions (except flour) of wheat	1.5
Mint, hay	0.8
Mint oil	8
Nectarines	0.05
Pea forage	0.7
Peaches	0.05
Peanut oil	0.4
Peanuts	0.2
Pears	0.05
Plums	0.05
Poultry, meat, fat, and meat byproducts (inc. turkeys)	0.1
Pumpkins	0.05
Radishes	2
Rutabagas	0.5
Sheep, fat	0.2
Sheep, meat and meat byproducts	0.05
Soybean grain	0.3
Soybean forage	0.7
Strawberries	0.2
Sugarcane	0.01
Sweet potatoes	0.05
Turnip greens	0.3
Turnips	1
Wheat, grain	0.5
Wheat, straw	6
Wheat, forage	3

(3) Chlorpyrifos [*O*,*O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] may be safely used in accordance with the following prescribed conditions.

(i) Application shall be limited solely to spot and/or crack and crevice treatment in food handling establishments where food and food products are held, processed, prepared or served. Contamination of food or food contact surfaces shall be avoided. Food must be removed or covered during treatment.

(ii) Spray concentration for spot treatment shall be limited to a maximum of 0.5 percent of the active ingredient by weight. A course, low-pressure spray shall be used to avoid atomization or splashing of the spray.

(iii) Paint-on application for spot treatment shall be limited to a maximum of 2 percent of the active ingredient by weight.

(iv) Crack and crevice treatment shall be limited to a maximum of 2 percent of the active ingredient by weight. Equipment capable of delivering a pin-stream of insecticide shall be used.

(v) Application via adhesive strips shall contain a maximum of 10% by weight of the controlled-release product in food-handling establishments where food and food products are held, processed, prepared, or served. A maximum of 36 strips (or 5.15 grams of chlorpyrifos) is to be used per 100 square feet of floor space. The strips are not to be placed in exposed areas where direct contact with food, utensils, and food-contact surfaces would be likely to occur.

(vi) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(4) A tolerance of 0.1 part per million is established for residues of chlorpyrifos, per se, in or on all food items (other than those already covered by a higher tolerance as a result of use on growing crops) in food service establishments where food and food products are prepared and served, as a result of the application of chlorpyrifos in microencapsulated form.

(i) Application of a microencapsulated product shall be limited solely to spot and/or crack and crevice treatment in food handling establishments where food and food products are prepared and served. All treatments shall be applied in such a manner as to avoid contamination of food or food contact surfaces.

(ii) Spray concentrations shall be limited to a maximum of 0.5 percent of the active ingredient by weight.

(iii) For crack and crevice treatment, equipment capable of delivering a pin stream of spray directly into cracks and crevices or capable of applying small amounts of insecticide into cracks and crevices shall be used.

(iv) For spot treatment, an individual spot shall not exceed 2 square feet.

(v) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* (1) Tolerances with regional registration, as defined in

§ 180.1(n), are established for the combined residues of chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol in or on the following food commodities:

Commodity	Parts per million
Asparagus	5.0
Dates	0.5 (of which no more than 0.3 ppm is chlorpyrifos)
Grapes	0.5
Leeks	0.5 (of which no more than 0.2 ppm is chlorpyrifos)

(2) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the pesticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate) in or on the following food commodities:

Commodity	Parts per million
Cherimoya	0.05
Feijoa (pineapple guava)	0.05
Sapote	0.05

(d) *Indirect or inadvertent residues.* [Reserved]

13. By revising § 180.349 to read as follows:

§ 180.349 Fenamiphos; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the nematocide Fenamiphos (ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate) and its cholinesterase inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1- methylethyl)phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on the following food commodities:

Commodity	Parts per million
Apples	0.25
Bananas	0.10
Brussels sprouts	0.10
Cabbage	0.10
Cherries	0.25
Citrus, oil	25.0
Citrus pulp, dried	2.5
Cottonseed	0.05
Eggplant	0.1
Garlic	0.50
Grapefruit	0.60
Grapes	0.10
Lemons	0.60
Limes	0.60
Okra	0.30
Oranges	0.60
Peaches	0.25
Peanuts	0.02
Pineapples	0.30
Pineapples, bran	10.0
Raisins	0.3
Raspberries	0.1
Strawberries	0.6
Tangerines	0.60

(2) Tolerances are established for the combined residues of the nematocide Fenamiphos (ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl)phosphoramidate) and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1- methylethyl)phosphoramidate, ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl)phosphoramidate, ethyl 3-methyl-4-(methylthio)phenyl phosphoramidate, ethyl-4-(methylsulfinyl)phenyl phosphoramidate, and ethyl 3-methyl-4-(methyl-sulfonyl)phenyl phosphoramidate in or on the following raw agricultural meat commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	0.05
Cattle (mbyp)	0.05
Goats, fat	0.05
Goats, meat	0.05
Goats (mbyp)	0.05
Hogs, fat	0.05
Hogs, meat	0.05
Hogs (mbyp)	0.05
Horses, fat	0.05
Horses, meat	0.05
Horses (mbyp)	0.05
Milk	0.01
Sheep, fat	0.05
Sheep, meat	0.05
Sheep (mbyp)	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of Fenamiphos (ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate) and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on the following raw agricultural commodities:

Commodity	Parts per million
Asparagus	0.02
Beets, garden, roots	1.5
Beets, garden, tops	1.0
Bok choy	0.5
Kiwifruit	0.1
Peppers, non-bell	0.6

(d) *Indirect or inadvertent residues.* [Reserved]

14. By revising § 180.359 to read as follows:

§ 180.359 Methoprene; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insect growth regulator methoprene (isopropyl (*E,E*)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the following food commodities:

Commodity	Parts per million
Barley	5.0
Buckwheat	5.0
Cattle, fat	1.0
Cattle, meat	0.1
Cattle, meat byproducts	0.1
Cereal grain milled fractions (except flour and rice hulls)	10
Corn (except popcorn and sweetcorn)	5.0
Eggs	0.1
Goats, fat	1.0
Goats, meat	0.1
Goats, meat byproducts	0.1
Hogs, fat	1.0
Hogs, meat	0.1
Hogs, meat byproducts	0.1
Horses, fat	1.0
Horses, meat	0.1
Horses, meat byproducts	0.1
Milk	0.1
Millet	5.0
Mushrooms	1.0
Oats	5.0
Peanuts	2.0
Poultry, fat	1.0
Poultry, meat	0.1
Poultry, meat byproducts	0.1
Rice	5.0
Rice hulls	25
Rye	5.0
Sheep, fat	1.0
Sheep, meat	0.1
Sheep, meat byproducts	0.1
Sorghum (milo)	5.0
Wheat	5.0

(2) Methoprene (isopropyl (*E,E*)-11-methoxy-3,7,11- trimethyl-2,4-dodecadienoate) may be safely used in accordance with the following prescribed conditions:

(i) It is used in the form of mineral and/or protein blocks or other feed supplements in the feed of cattle at the rate of 22.7 to 45.4 milligrams per 100 pounds of body weight per month.

(ii) It is used to prevent the breeding of hornflies in the manure of treated cattle.

(iii) To ensure safe use of the pesticide, the label and labeling of the pesticide formulation containing this pesticide shall conform to the label and labeling registered by the U.S. Environmental Protection Agency.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

15. By revising § 180.362 to read as follows:

§ 180.362 Hexakis (2-methyl-2-phenylpropyl)distannoxane; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide hexakis[2-methyl-2-phenylpropyl] distannoxane and its organotin metabolites calculated as hexakis[2-methyl-2-phenylpropyl] distannoxane in or on the following food commodities:

Commodity	Parts per million
Almonds	0.5
Almonds, hulls	80.0
Apples	15.0
Cattle, fat	0.5
Cattle, mbyp	0.5
Cattle, meat	0.5
Cherries, sour	6.0
Cherries, sweet	6.0
Citrus fruits	20.0
Citrus oil	140.0
Citrus pulp, dried	100.0
Cucumbers	4.0
Eggplant	6.0
Eggs	0.1
Goats, fat	0.5
Goats, mbyp	0.5
Goats, meat	0.5
Grapes	5.0
Hogs, fat	0.5
Hogs, mbyp	0.5
Hogs, meat	0.5
Horses, fat	0.5
Horses, mbyp	0.5
Horses, meat	0.5
Milk fat	0.1
Papayas	2.0
Pecans	0.5
Peaches	10.0
Pears	15.0
Plums	4.0
Poultry, fat	0.1
Poultry, mbyp	0.1
Poultry, meat	0.1
Prunes	4.0
Prunes, dried	20.0
Raisins	20.0
Sheep, fat	0.5
Sheep, mbyp	0.5
Sheep, meat	0.5
Strawberries	10.0
Walnuts	0.5
Raspberries	10.0

(d) *Indirect or inadvertent residues.* [Reserved]

16. By revising § 180.367 to read as follows:

§ 180.367 n-Octyl bicycloheptenedicarboximide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide *n*-octyl bicycloheptene-dicarboximide, resulting from dermal application, in food commodities as follows:

Commodity	Parts per million
Cattle, fat	0.3
Goats, fat	0.3
Hogs, fat	0.3
Horses, fat	0.3
Milk, fat	0.3
Sheep, fat	0.3

(2) *N*-octylbicycloheptene dicarboximide may be safely used in accordance with the following prescribed conditions:

(i) It is used in combination with piperonyl butoxide and pyrethrins for insect control in food-processing and food-storage areas, provided that the food is removed or covered prior to such use.

(ii) Residues in food resulting from the use described in paragraph (a)(2)(i) of this section shall not exceed 10 parts per million of *N*- octylbicycloheptene dicarboximide, 10 parts per million of piperonyl butoxide, and 1 part per million of pyrethrins.

(iii) To assure safe use of the pesticide, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

17. By revising § 180.382 to read as follows:

§ 180.382 Triforine; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide triforine (*N,N*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)]bis[formamide]) in or on the following food commodities:

Commodity	Parts per million
Almond hulls	0.20
Almond (nutmeats)	0.01
Apples	0.01
Apricots	8.0
Bell peppers	5.0
Blueberries	.1
Cantaloupes	1.0
Cherries	3.0
Cranberries	.1
Cucumbers	.5
Eggplant	1.0
Hops, dried	60
Hops, spent	60
Nectarines	8.0
Peaches	8.0
Plums	3.0
Prunes (fresh)	3.0
Strawberries	2.0
Watermelon	1.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for residues of the fungicide triforine (*N,N'*-[1,4-piperazinediylbis (2,2,2-trichloroethylidene)[bis (formamide)) in or on the following food commodities:

Commodity	Parts per million
Asparagus	0.01

(d) *Indirect or inadvertent residues.* [Reserved]

18. By revising § 180.396 to read as follows:

§ 180.396 Hexazinone; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1, 3, 5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following food commodities:

Commodity	Parts per million
Alfalfa green forage	2.0
Alfalfa hay	8.0
Blueberries	0.2
Cattle, fat	0.1
Cattle, mbyp	0.1

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Commodity	Parts per million
Cattle, meat	0.1
Goats, fat	0.1
Goats, mbyp	0.1
Goats, meat	0.1
Grasses, pasture	10
Grasses, range	10
Hogs, fat	0.1
Hogs, mbyp	0.1
Hogs, meat	0.1
Horses, fat	0.1
Horses, mbyp	0.1
Horses, meat	0.1
Milk	0.1
Pineapple (whole fruit)	0.5
Sheep, fat	0.1
Sheep, mbyp	0.1
Sheep, meat	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* A tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethyamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following food commodities:

Commodity	Parts per million
Sugarcane	0.2
Sugarcane molasses	5.0

(d) *Indirect or inadvertent residues.* [Reserved]

19. By revising § 180.409 to read as follows:

§ 180.409 Pirimiphos-methyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the insecticide pirimiphos-methyl, *O*-[2-diethylamino-6-methyl-4-pyrimidinyl) *O,O*-dimethyl phosphorothioate, the metabolite *O*-[2-ethylamino-6-methyl-pyrimidin-4-yl) *O,O*-dimethyl phosphorothioate and, in free and conjugated form, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol), 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in or on the following food commodities:

Commodity	Parts per million
Corn	8.0
Cattle fat	0.2
Cattle, kidney and liver	2.0
Cattle, mbyp	0.2
Cattle, meat	0.2
Eggs	0.5
Goats, fat	0.2
Goats, kidney and liver	2.0
Goats, mbyp	0.2
Goats, meat	0.2
Hogs, fat	0.2
Hogs, kidney and liver	2.0
Hogs, mbyp	0.2
Hogs, meat	0.2
Horses, fat	0.2
Horses, kidney and liver	2.0
Horses, mbyp	0.2
Horses, meat	0.2
Kiwifruit	5.0
Milk, fat (0.1 ppm (N) in whole milk)	3.0
Poultry, fat	0.2
Poultry, mbyp	2.0
Poultry, meat	2.0
Sheep, fat	0.2
Sheep, kidney and liver	2.0
Sheep, mbyp	0.2
Sheep, meat	0.2
Sorghum, grain	8.0

(2) Tolerances are established for the combined residues of the insecticide pirimiphos-methyl [*O*-[2-diethylamino-6-methyl-4-pyrimidinyl] *O,O*-dimethyl phosphorothioate) and its metabolite *O*-(2-ethylamino-6-methyl-pyrimidin-4-yl) *O,O*-dimethyl phosphorothioate and, in free and conjugated forms, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in or on the following food commodities when present therein as a result of application to stored grains:

Food	Parts per million
Corn milling fractions (except flour)	40
Corn oil	88
Sorghum milling fractions (except flour)	40

(3) A tolerance of 8.0 parts per million is established for residues of the insecticide pirimiphos-methyl (*0*-[2-diethylamino-6-methyl-4-pyrimidinyl]*O,O*-dimethyl phosphorothioate) and its metabolite O-(2-ethylamino-6-methyl-pyrimidine-4-yl)*O,O*-dimethylphosphorothioate and, in free and conjugated forms, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol,2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methylpyrimidin-4-ol in or on the processed commodity wheat flour as a result of application to stored wheat grain. There are no U.S. registrations for use of pirimiphos-methyl on wheat, as of June 12, 1990.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

20. By revising § 180.411 to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide fluazifop-butyl (#)-2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoic acid (fluazifop), both free and conjugated and of (#)-2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoate (fluazifop-butyl), all expressed as fluazifop, in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	.05
Cattle, mbyp	.05
Cottonseed	.1
Cottonseed, oil	0.2
Eggs	.05
Goats, fat	.05
Goats, meat	.05
Goats, mbyp	.05
Hogs, fat	.05
Hogs, meat	.05
Hogs, mbyp	.05
Horses, fat	.05
Horses, meat	.05
Horses, mbyp	.05
Milk	.05
Poultry, fat	.05
Poultry, meat	.05
Poultry, mbyp	.05
Sheep, fat	.05
Sheep, meat	.05
Sheep, mbyp	.05
Soybeans	1.0
Soybean, meal	2.0
Soybean, oil	2.0

(2) Tolerances are established for residues of the resolved isomer of fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid, both free and conjugated and of fluazifop-P-butyl, butyl(R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate, all expressed as fluazifop, in or on the food commodity:

Commodity	Parts per million
Carrots	2.0
Endive	6.0
Macadamia nuts	0.1
Onions (bulb)	0.5
Pecans	0.05
Spinach	6.0
Stone fruits	0.05
Sweet potatoes	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* (1) Tolerances with regional registration are established for residues of fluazifop-butyl (#)-2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoic acid (fluazifop), both free and conjugated and of (#)-butyl-2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoate (fluazifop-butyl), all expressed as fluazifop, in or on the following food commodities:

Commodity	Parts per million
Peppers, tabasco	1.0

(2) Tolerances with regional registration, see § 180.1(n), are established for residues of the resolved isomer of the herbicide fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]-oxy]phenoxy] propanoic acid, both free and conjugated and of fluazifop-P-butyl, butyl[R]-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy] propanoate, all expressed as fluazifop, in or on the food commodities:

Commodity	Parts per million
Asparagus	3.0
Coffee	0.1
Rhubarb	0.5

(d) *Indirect or inadvertent residues.* [Reserved]

21. By revising § 180.413 to read as follows:

§ 180.413 Imazalil; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the fungicide imazalil 1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl]-1*H*-imidazole and its metabolite 1-(2,4-dichlorophenyl)-2-(1*H*-imidazole-1-yl)-1-ethanol in or on the following food commodities:

Commodity	Parts per million
Bananas (Whole)	3.00
Bananas (Pulp)	0.20
Barley, grain	0.05
Barley, straw	0.5
Citrus fruit (POST-H)	10.0
Citrus oil	25.0
Citrus pulp (dried)	25.0
Cottonseed	0.05
Wheat, forage	0.5
Wheat, grain	0.05
Wheat, straw	0.5

(2) Tolerances are established for the combined residues of the fungicide imazalil 1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl]-1*H*-imidazole and its metabolites 1-(2,4-dichlorophenyl)-2-(1*H*-imidazole-1-yl)-1-ethanol and 3-[1-(2,4-dichlorophenyl)-2-(1*H*-imidazole-1-yl)ethoxyl]-1,2-propane diol in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.01
Cattle, liver	0.50
Cattle, meat	0.01
Cattle, mbyp	0.01
Goats, fat	0.01
Goats, liver	0.50
Goats, meat	0.01
Goats, mbyp	0.01
Hogs, fat	0.01
Hogs, liver	0.50
Hogs, meat	0.01
Hogs, mbyp	0.01
Horses, fat	0.01
Horses, liver	0.50
Horses, meat	0.01
Horses, mbyp	0.01
Milk	0.01
Sheep, fat	0.01
Sheep, liver	0.50
Sheep, meat	0.01
Sheep, mbyp	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

22. By revising § 180.419 to read as follows:

§ 180.419 Chlorpyrifos-methyl; tolerances for residues.

(a)*General.* (1) Tolerances are established for the combined residues of the insecticide chlorpyrifos-methyl [*O,-O,*-dimethyl *O*-(3,5,6-trichloro-2-pyridyl)] phosphorothioate and its metabolite (3,5,6-trichloro-2-pyridinol) in or on the following food commodities:

Commodity	Parts per million
Barley, grain	6.0
Cattle, fat	0.5
Cattle, meat	0.5
Cattle, mbyp	0.5
Eggs	0.1
Goats, fat	0.5
Goats, meat	0.5
Goats, mbyp	0.5
Hogs, fat	0.5
Hogs, meat	0.5
Hogs, mbyp	0.5
Horses, fat	0.5
Horses, meat	0.5
Horses, mbyp	0.5
Milk, fat (0.05 ppm (N) in whole milk	1.25
Oats, grain	6.0
Poultry, fat	0.5
Poultry, meat	.5
Poultry, mbyp	.5
Rice, grain	6.0
Sheep, fat	0.5
Sheep, meat	0.5
Sheep, mbyp	0.5
Sorghum, grain	6.0
Wheat, grain	6.0

(2) Tolerances are established for the combined residues of the insecticide chlorpyrifos-methyl (*O,-O-* dimethyl-*O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate and its metabolite (3.5.6-trichloro-2-pyridinol) in or on the following food commodities when present therein as a result of application to stored grains:

Food	Parts per million
Barley milling fractions (except flour)	90
Oats milling fractions (except flour)	130
Rice milling fractions (except flour)	30
Sorghum milling fractions (except flour)	90
Wheat milling fractions (except flour)	30

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

23. By adding § 180.538 to read as follows:

§ 180.538 Copper; tolerances for residues.

(a) *General.* A tolerance of 1 part per million is established in potable water for residues of copper resulting from the use of the algicides or herbicides basic copper carbonate (malachite), copper sulfate, copper monoethanolamine, and copper triethanolamine to control aquatic plants in reservoirs, lakes, ponds, irrigation ditches, and other potential sources of potable water.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

24. By adding § 180.539 to read as follows.

§ 180.539 d-Limonene; tolerances for residues.

(a) *General.* (1) The insectide d-limonene may be safely used with the active ingredients dihydro-5-pentyl-2(3*H*)-furanone and dihydro-5-heptyl-2(3*H*)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food- or feed-handling establishments.

(2) To assure safe use of the insect repellent, its label and labeling shall

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conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

25. By adding § 180.540 as follows:

§ 180.540 Fenitrothion; tolerances for residues.

(a) *General.* A tolerance of 30 parts per million, of which no more than 15 parts per million is *O,O*-dimethyl *O*-(4-nitro-*m*-tolyl) phosphorothioate or *O,O*-dimethyl *O*-(4-nitro-*m*-tolyl) phosphate, is established for combined residues of the insecticide *O,O*-dimethyl *O*-(4-nitro-*m*-tolyl) phosphorothioate and its metabolites *O,O*-dimethyl O-(4-nitro-*m*-tolyl) phosphate and 3-methyl-4-nitrophenol in wheat gluten resulting from postharvest application of the insecticide to stored wheat in Australia.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

26. By adding § 180.541 to read as follows:

§ 180.541 Propetamphos; tolerances for residues.

(a) A tolerance of 0.1 part per million is established for residues of the insecticide propetamphos ([(e)-]-methylethyl 3-[[(ethylamino) methoxyphosphinothioyl]oxy]-2-butenoate]) in food commodities exposed to the insecticide during treatment of food- or feed-handling establishments.

(1) Direct application shall be limited solely to spot and/or crack and crevice treatment in food-handling establishments where food and food products are held, processed, prepared, or served. Spray and dust concentrations shall be limited to a maximum of 1 percent active ingredient. For crack and crevice treatment, equipment capable of delivering a dust or a pin-stream of spray directly into cracks and crevices shall be used. For spot treatment, a coarse, low-pressure spray shall be used to avoid contamination of food or food-contact surfaces.

(2) Direct application shall be limited solely to spot and/or crack and crevice treatment in feed-handling establishments where feed and feed products are held, processed, prepared, or sold. Spray and dust concentrations shall be limited to a maximum of 1 percent active ingredient. For crack and crevice treatment, equipment capable of delivering a dust or a pinstream of spray directly into cracks and crevices shall be used. For spot treatment, a coarse, low-pressure spray shall be used to avoid contamination of feed or feed-contact surfaces.

(3) To ensure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

27. By adding § 180.542 to read as follows

§ 180.542 Sulprofos; tolerances for residues.

(a) *General.* A tolerance of 1 part per million is established for residues of the insecticide Sulprofos, *O*-ethyl *O*-[4-(methylthio)- phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in cottonseed oil resulting from application of the pesticide to growing cotton.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

28. By revising § 180.1017 to read as follows:

§ 180.1017 Diatomaceous earth; exemption from the requirement of a tolerance.

(a) Diatomaceous earth is exempted from the requirement of a tolerance for residues when used in accordance with good agricultural practice in pesticide formulations applied to growing crops, to food commodities after harvest, and to animals.

(b) Diatomaceous earth may be safely used in accordance with the following conditions. Application shall be limited solely to spot and/or crack and crevice treatments in food or feed processing and food or feed storage areas in accordane with the precribed conditions:

(1) It is used or intended for use for control of insects in food or feed processing and food or feed storage areas: *Provided,* That the food or feed is removed or covered prior to such use.

(2) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

29. By revising § 180.1049 to read as follows:

§ 180.1049 Carbon dioxide; exemption from the requirement of a tolerance.

The insecticide carbon dioxide is exempted from the requirement of a tolerance when used after harvest in modified atmospheres for stored insect control on food commodities.

30. By revising § 180.1050 to read as follows:

§ 180.1050 Nitrogen; exemption from the requirements of a tolerance.

The insecticide nitrogen is exempted from the requirements of a tolerance when used after harvest in modified atmospheres for stored product insect control on all food commodities.

31. By revising § 180.1051 to read as follows:

§ 180.1051 Combustion product gas; exemption from the requirements of a tolerance.

The insecticide combustion product gas is exempted from the requirements of a tolerance when used after harvest in modified atmospheres for stored product insect control on all food commodities (except fresh meat) with the following prescribed conditions.

(a) The insecticide is produced by the controlled combustion in air of butane, propane, or natural gas. The combustion equipment shall be provided with an absorption type filter capable of removing possible toxic impurities, through which all gas used in the treatment of food shall pass; and with suitable controls to insure that any combustion products failing to meet the specifications provided will be prevented from reaching the food being treated.

(b) The insecticide meets the following specifications:

(1) Carbon monoxide content not to exceed 4.5 percent by volume.

(2) It is used or intended for use to displace or remove oxygen in the storage of food, except fresh meat.

32. By revising § 180.1116 to read as follows:

§ 180.1116 Metarhizium anisopliae strain ESF1; exemption from the requirement of a tolerance.

(a) An exemption from the requirement of a tolerance is established for the microbial pest control agent *Metarhizium anisopliae* strain ESF1 on all raw agricultural commodities in accordance with the following prescribed conditions:

(1) Application shall be limited solely to placement of attractant stations containing *Metarhizium anisopliae* strain ESF1.

(2) To ensure safe use of the microbial pest control agent, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency.

(b) An exemption from the requirement of a tolerance is established allowing the use of the microbial pest-control agent *Metarhizium anisopliae* strain ESF1 as follows:

(1) *Metarhizium anisopliae* strain ESF1 may be present as a residue in food items as a result of application of *Metarhizium anisopliae* strain ESF1 in food-handling establishments, including food service, manufacturing, and processing establishments such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat-slaughtering and packing plants, and canneries where food and food products are held, processed, and served.

(2) *Metarhizium anisopliae* strain ESF1 may be present as a residue in or on processed animal feeds as a result of application of *Metarhizium anisopliae* strain ESF1 in feed-handling establishments, including areas where livestock and poultry feed is consumed, feed-manufacturing establishments and feed-processing establishments such as stores, supermarkets, dairies, poultry houses, livestock barns, meat-slaughtering and packing plants, and canneries, where feed and feed products are held, processed, sold and/or consumed by livestock or poultry.

(c) With respect to paragraphs (b)(1) and (2) of this section, application of the microbial pest control agent shall be limited solely to placement of attractant stations containing *Metarhizium anisopliae* strain ESF1 in food-handling establishments or in animal feed-handling establishments, and to ensure safe use of the microbial pest control agent, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

II. In part 185:

PART 185—[AMENDED]

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a), and 348.

2. By removing part 185 in its entirety.

III. In part 186:

PART 186—[AMENDED]

1. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

2. By removing part 186 in its entirety.

[FR Doc. 00–12959 Filed 5–23–00; 8:45 am]

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135
Emergency Medical Equipment; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. FAA–2000–7119; Notice No. 00–03]

RIN 2120–AG89

Emergency Medical Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action responds to the Aviation Medical Assistance Act of 1998 by proposing that air carrier operators carry automated external defibrillators on large, passenger-carrying aircraft and also augment currently required emergency medical kits. It would affect those operations for which at least one flight attendant is required and, if adopted, would require instruction on the use of this equipment. This proposal would modify the regulations to include provisions designed to provide the option of treatment of serious medical events during flight time.

DATES: Comments must be received on or before September 21, 2000.

ADDRESSES: Comments on this document should be mailed or delivered in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2000–7119, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: http://dms.dot.gov/. Commenters who wish to file comments electronically, should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Judi Citrenbaum, AAM–210, Aeromedical Standards, Office of Aviation Medicine, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9689.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2000–7119." The postcard will be date-stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office (GPO) electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communication must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Issue

The Aviation Medical Assistance Act (the Act) was introduced in the United States Congress on November 6, 1997. Enacted April 24, 1998 [Pub. L. 105–170, 49 USC 44701], the Act directs the FAA to determine whether current minimum requirements for air carrier crewmember medical emergency training and air carrier emergency medical equipment should be modified.

Typically, when in-flight medical events occur, airline passengers may be assisted by crewmembers, generally flight attendants working in the cabin, and by other passengers. Flight attendants frequently solicit the voluntary advice and assistance of medically qualified passengers, if on board, to assist with serious medical events. A basic emergency medical kit and a basic first-aid kit are required to be carried on board major air carriers and are available for use. Additionally, and if available, ground-based medical advice may be solicited. If it is subsequently recommended to divert the flight, the pilot in command may elect to land the aircraft.

With passenger enplanements numbering over 600 million in 1998, nearly double what they were in the early 1980's, an increase in passengers needing in-flight medical assistance is anticipated for the future. The overall aging of the general population is expected to result in a greater number of air carrier passengers with medical conditions, passengers who are more likely to experience an in-flight medical event.

The most commonly observed serious in-flight medical events appear to be cardiac in nature, due to chronic pre-existing conditions or to the sudden onset of previously unknown conditions. Reporting seen in various medical journals, as well as in the popular press, reveals the following about cardiac events in general:

- Cardiac arrest (the stopping of effective pumping of blood by the heart) reportedly strikes over 350,000 Americans every year, typically those 41 to 65 years old.
- The most common form of treatable cardiac arrest (a substantial portion of all cardiac events) is caused by an abnormal heart rhythm called "ventricular fibrillation," (where the heart is still beating, although ineffectively pumping blood). Ventricular fibrillation is treatable with defibrillation, electric shocks that stimulate the heart to resume beating normally.
- Survival of individuals undergoing ventricular fibrillation can be as high as 90 percent in some circumstances, if defibrillation is provided during the first minute following collapse and subsequent cardiac care is rapidly provided.

- For every minute that defibrillation is delayed, survival is reported to fall about 10 percent, dropping below 50 percent after 6 minutes.
- By providing early electrical correction of ineffective heart pumping, therapeutic defibrillation is more effective than cardiopulmonary resuscitation (CPR) in sustaining life and function in certain situations.

In light of the aforementioned, and for reasons elaborated in the discussion below, the FAA is reviewing emergency medical equipment and crewmember emergency medical training requirements.

Background

Automated External Defibrillators

Cardiac defibrillator technology has progressed to the point that defibrillation similar to that performed in hospitals can, in many cases, be accomplished effectively outside the hospital environment by automated external defibrillators (AED's). When activated, AED's deliver a high energy electrical pulse to attempt to restore the normal electric heart activity required for normal heart function. At a cost of approximately $3,500 per unit, AED's are lightweight, compact, virtually maintenance-free, and simple to use. Because these battery-powered systems voice-prompt step-by-step guidance, appropriately trained non-medical personnel may use them fairly confidently to assist in certain, especially treatable, cardiac emergencies.

The type of AED most commonly used can monitor a person's heart rhythm and prompt whether a shock should be administered. The machine determines whether, and when, an individual needs to be administered an electric shock. If defibrillation is needed and is successfully performed, further medical intervention is necessary to determine the underlying cause for definitive treatment.

CPR is a necessary adjunct to AED usage as it may be the only effective assistance available. CPR should be initiated immediately upon encountering any apparent cessation of breathing or cardiac arrest (in an attempt to maintain a person's oxygen flow) and must be continued in the event of any of the following: the AED voice-prompt indicates "no shock," and a pulse is absent; three AED shocks are administered to no avail; the AED malfunctions. As some cardiac events will not be treatable by AED, it is vital that CPR be started and performed as long as necessary.

Some non-medical professionals, among them police officers and fire fighters, have the devices available and are trained to use them. The U.S. Food and Drug Administration (FDA) regulates the use of AED's and began approving use of the devices in an aircraft environment in September 1996. Subsequent to this approval, several air carriers voluntarily have begun or have announced plans to carry them on board.

Emergency Medical Kits

In 1986, the FAA promulgated a final rule, "the Emergency Medical Equipment Requirements Rule," requiring large, passenger-carrying aircraft to carry emergency medical kits [51 FR 1218; January 9, 1986, effective August 1, 1986]. The FAA set a minimum standard for kit contents requiring the following: a sphygmomanometer, which is an instrument for measuring blood pressure; a stethoscope; three different sizes of oral airways (breathing tubes); syringes; needles; 50 percent dextrose injection, for hypoglycemia or insulin shock; epinephrine, for asthma or acute allergic reactions; diphenhydramine, for allergic reactions; nitroglycerin tablets, for cardiac-related chest pain; and basic instructions on the use of the drugs.

The rule has been amended once, in October 1994, [59 FR 52640; October 18, 1994], to require protective gloves. Also, in January 1996, under the "Commuter Rule," commuter air carriers operating 20-to-30-seat airplanes, that previously were required to carry only first-aid kits, have been required to carry the emergency medical kit described above [60 FR 65831, December 20, 1995].

At the time the emergency medical kit rule was promulgated, there was controversy over what types of instruments and medications the FAA should require since some commenters to the proposed rule expressed concerns about controlled substances (originally proposed for the action) being stowed on board any passenger aircraft. It was argued that an aircraft should not be a flying hospital, but that the proper course of action in the event of an on-board medical emergency is for the pilot in command to decide if the aircraft can be landed safely to allow the ailing passenger to receive appropriate medical care. As a result of these concerns, the FAA scaled down its original proposal in terms of the contents that would be required of emergency medical kits. The rule promulgated was designed to ensure that, at the very least, U.S.-registered aircraft would have the basic, minimum equipment on board if the crew chose to attempt treatment and/or to aid in decisions regarding diversion. The rule also required airlines to report to the FAA principal operations inspector, for a period of 24 months after the effective date of the rule, information on each medical emergency occurring during flight time and resulting in the use of the emergency medical kit or the diversion of aircraft.

Related Studies

The FAA's Civil Aeromedical Institute (CAMI), located in Oklahoma City, has conducted four specific studies on in-flight medical emergencies and the use of the emergency medical kit. These technical reports, issued by CAMI in 1991, 1997, and 2000, are described briefly below. Copies of the CAMI reports are available for review in the public docket established for this rulemaking action.

CAMI Technical Reports

- "Response Capability During Civil Air Carrier In-flight Medical Emergencies" [March 1991; DOT/FAA/AM–91/3] and "Utilization of Emergency Kits by Air Carriers." [March 1991; DOT/FAA/AM–91/2].

The former report reveals the preliminary findings and the latter report reveals the comprehensive findings of data collected from part 121 air carriers on medical emergencies. As described above, "The Emergency Medical Equipment Requirements Rule" issued in 1986 required that, for a 2-year period, all part 121 air carriers maintain records on each medical event occurring during flight time which resulted in the use of the emergency medical kit, diversion of the aircraft, or death of a passenger or crewmember.

During the 2-year monitoring period, a total of 2,322 medical events were documented (equating to approximately three per day) with 33 deaths reported. In the 2,293 actual uses of the medical kit, a physician was the provider in over 85% of the cases. The most common presenting symptom was pain, followed by unconsciousness, impaired breathing, nausea and/or vomiting; the most common presenting "sign" was described as a "myocardial problem."

Although only 2 years of data were available for review, the pattern of medical kit item usage was very similar in the first and second years. An increase in the number of cases also was noted in the second year. The FAA did not find justification to make any modifications to the emergency medical kits following the 2-year regulatory reporting period.

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• "In-flight Medical Care, An Update" [February 1997; DOT/FAA/AM–97/2].

From 1990 to 1993, CAMI obtained information from two airlines and two in-flight medical care delivery companies to determine which category of in-flight medical event occurred most frequently and which category accounted for the greatest number of diversions. The trend in the frequency of diversions for medical reasons also was assessed. The effect of in-flight medical advice was then evaluated by comparing the number of diversions that resulted in hospitalizations to the number that did not. The findings showed that neurological, syncopal, and cardiac episodes respectively, were the most frequent categories of medical emergencies encountered in flight, while cardiac, neurological, and respiratory events, in that order, accounted for the most diversions.

• "The Evaluation of In-flight Medical Care Aboard Selected U.S. Air Carriers from 1996 to 1997" [April 2000; DOT/FAA/AM–00/13].

• CAMI analyzed 1,132 in-flight medical incidents that occurred between October 1, 1996, and September 30, 1997. The data included information from six airlines that accounted for approximately 20 percent of all U.S. domestic enplanements for the period. This study was not designed to provide an in-depth review of in-flight diagnoses by ground-based physicians frequently can be in close agreement with hospital discharge diagnoses, indirectly implying that the proper diagnosis was made in flight. In particular, in the case of cardiac patients, the agreement rate was 94.1 percent, and passengers appeared to be conservatively diagnosed and treated in flight. Many of these in-flight diagnoses were made with the assistance of a ground-based physician.

Additionally, this study suggested that the items that should be considered for possible addition to a future medical kit include a bronchodilator inhaler, an oral antihistamine, and some form of oral non-narcotic analgesic medication. These items are not commonly available because they are not routinely carried by other passengers or the airline. No data were collected in this study concerning AED's as they were not being carried on board at the time of the study. As a result, no consideration was given to adding cardiac drugs to the emergency medical kit for use after an AED intervention.

Related Activity

In 1995, in light of changing demographics of air carrier passengers and advances in clinical medicine, some FAA physicians began an informal analysis of in-flight medical events. These physicians explored the issue with individual air carriers, the Aerospace Medical Association (AsMA), the Air Transport Association (ATA), and MedAire, Inc. (a for-profit firm that provides medical advice to flight crews through air-to-ground communication links). The physicians did not produce any written technical reports or recommend any regulatory changes; they merely gathered information on the issue.

In May 1997, the U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Aviation, held hearings on in-flight medical events. Witnesses who testified at these hearings strongly supported additional crew training and the inclusion of AED's in the onboard medical equipment.

In August 1997, AsMA convened a task force of physicians across the major medical specialties to review the contents of emergency medical kits. This task force recommended certain minimum medications and medical supplies for air carriers. The group further recommended that air carriers consider AED's on wide body aircraft for use on specific routes, particularly lengthy or over-water flights. It was recommended that AED's be tested for their possible effects on installed avionics and that airlines use an appropriate training program with particular attention given to safety considerations of in-flight use. These recommendations were based on a survey of 2,300 AsMA physicians who had treated at least one passenger on a commercial flight.

In December 1997, an ATA Medical Panel recommended that ATA member airlines place AED's on at least 20 percent of the aircraft in their fleets (initially), upgrade emergency medical kits, and modify flight attendant training on the use of this equipment. (In forming this recommendation, this ATA group collected information from nine member airlines on in-flight medical emergencies and medical kit usage.)

In January 1998, the FAA received a petition for rulemaking from a physician who had assisted a passenger on board a December 1997 flight who apparently suffered a fatal heart attack. The petitioner requested that the FAA take action to upgrade emergency medical equipment being carried on board major air carriers.

On April 24, 1998, the Aviation Medical Assistance Act of 1998 (the Act), Pub. L. 105–170, 49 U.S.C 44701, was enacted. The Act directs that the FAA take the following action:

• Evaluate the equipment required to be carried in air carrier emergency medical kits and the training of flight attendants on the use of such equipment; issue a Notice of Proposed Rulemaking (NPRM) if regulations need to be modified.

• Collect data for 1 year from a major air carrier on medical emergencies that result in death and any information necessary to determine whether AED's should be required on board air carriers (with a maximum payload capacity of more than 7,500 pounds) and/or at airports.

• Following an analysis of the results of the data collection, determine whether to issue one of the following: an NPRM to require AED's on air carriers (with a maximum payload capacity of more than 7,500 pounds) and/or at airports; [1] a recommendation to Congress for legislation; or a notice in the **Federal Register** that would indicate why this action is not required.

• Issue a final rule within 120 days following the date on which comments are due on an NPRM. The Act includes a "Good Samaritan" provision that limits air carriers" liability in obtaining medically qualified non-employee passengers to assist persons. The "Good Samaritan" provision limits non-employee passenger liability for providing assistance during an in-flight medical event unless the assistance is grossly negligent, or is willful misconduct.

In September 1998, in a letter sent to the Federal Air Surgeon, the Association of Flight Attendants (AFA) discussed the potential implications of the Act on its members.

On December 10, 1999, the FAA held a public meeting on airline workplace safety. Some flight attendants who spoke at the meeting stated that, based on their personal experiences in handling in-flight medical events, currently required emergency medical equipment needs to be enhanced.

[1] The Act requires the Administrator to make a decision on requiring AD's at airports, as well as on air carrier aircraft. The Act recognized that the decision on requiring the devices for airports may be in a form different than the decision for air carriers. As a result, the FAA decided to undertke separate efforts in gathering and analyzing information for airports and air carrier aircraft. A cardiac event on an aircraft occurs in a totally different environment from a cardiac event that occurs on an airport. This NPRM applies only to air carriers. A decision on whether or not to require AED's at airports will be issued separately.

A copy of the information provided to the FAA on the recommendations from the AsMA and the ATA Medical Panels, as well as a copy of the petition, the Act, and the AFA letter have been placed in the public docket established for this proposal. Information provided to the FAA at the December 10, 1999, public meeting is available under Docket number FAA–1999–6342.

July 1, 1998, to June 30, 1999, Data Collection

On July 1, 1998, the FAA initiated a data collection, as directed in the Act, to gather information on in-flight medical events that result in death or threat of death. The FAA developed a 1-page checklist, the "In-Flight Medical Event Report," (the event report) designed for the use of nonmedical professionals such as crewmembers. (A copy is on file in the docket.) The FAA asked the ATA and several flight attendant unions to review the event report. The ATA agreed to distribute the event reports among its members, to collect any input received, and to forward it to the FAA on a quarterly basis. Up to 15 different ATA-member airlines, carrying approximately 85% of U.S. domestic airline passengers, contributed some data throughout the year.

The event report was intended to record incidents that were likely to be of cardiac origin and, thus, possibly require use of an AED. As other medical conditions may have similar symptoms, additional checklist choices were provided in an attempt to distinguish non-cardiac problems.

Based on the symptoms, treatment, and follow-up information on the event report, a general medical category was assigned to each event. In an effort to indicate more specifically when an AED may have been useful, a category also was assigned based only on symptom and in-flight treatment information. In some cases, this assignment was not possible because of the limited or incomplete information provided. A few reports included a specific follow-up diagnosis based on a hospital evaluation.

Data collected for the Act resulted in the submission of 188 in-flight medical event forms, not including 15 that were provided in an unusable format. Of the 188 events, 177 events occurred on the aircraft (either in flight, at the gate, or while taxiing), 10 events occurred on the ground (either in the jetway or the terminal) and one event occurred in a taxi enroute to the airport. A total of 108 deaths were reported (out of the 188 total events) either by the end of the flight or after the passenger was transferred to a hospital. Of the 80 remaining events, 14 passengers were reported as being alive, 56 were reported on the event report as "Unknown," and 10 were submitted with no outcome reported.

Of the 177 events that occurred on the aircraft, 119 were thought to be of cardiac origin based on a review of all the information provided on the event reports. (The average age of those passengers on the aircraft with reported cardiac problems was 62 years.) Sixty-four of these 119 passengers were reported as having died. For the remainder, 42 passengers had unknown dispositions and 10 passengers were reported as having survived. Three events had unreported results.

The AED was used to deliver at least one shock in 17 separate events, 14 on the aircraft and three on the ground. From these events, four passengers were reported as having survived, 11 as having died, and two as having unknown outcomes. It is believed the AED use was the event that changed the outcome for those who were reported as having survived. For cardiac-related events on the aircraft, an AED was reported as "Not available" for 40 events, "Not needed" for 12 events, and "Not reported" for 40 events.

CPR was reportedly performed 82 times on the aircraft.

A total of 74 diversions for passenger medical emergencies were reported; 52 for cardiac events.

While not a primary focus of this data collection, aircraft emergency medical kit item usage also was reported: six uses of epinephrine and six uses of nitroglycerin. (Both epinephrine and nitroglycerin currently are required to be carried in the emergency medical kits.) Intravenous (IV) saline and atropine (neither currently required by the FAA but carried by some airlines) were reported used once each. All events reporting these medications were apparent cardiac problems.

Overall, 156 (of the total 188) events reported some type of medical assistance being provided on board the flight, although the actual number may be somewhat lower as it was impossible sometimes to determine whether a reported paramedic or emergency medical technician was a passenger or part of the ground response team. Physicians were reported available on the aircraft for 92 events, nurses for 49 events.

As is common when collecting this type of information, the data have multiple limitations. The accuracy of the data provided appeared highly variable, and analysis to assign a specific medical category often was difficult or impossible. Early in the data collection, various draft iterations of the event report were submitted that were slightly different from the final event report adopted for use. Because a limited data form was used (so that the data collection would not be overly burdensome), ambiguity with respect to precise symptom reporting was allowed. Reports often were incomplete, resulting in additional uncertainty about the type of event. Finally, no method exists for confirming whether participating air carriers reported every death or near-death event or whether privacy constraints may have limited the information in the event reports submitted to the FAA.

The availability of AED's changed through the year as more airlines began carrying them on their aircraft. For this reason, it was not possible to determine the number of aircraft carrying AED's at any point during the data collection. Additionally, the number of airlines submitting data varied for each quarter of data collection with some airlines reporting no events in later quarters. The survival rate may have been greater than the four possible lives saved if AED's had been aboard each aircraft of each participating air carrier throughout the data collection. If the survival rate during the test period had been higher, then the projected number of lives that potentially could be saved over time would be higher; however, this cannot be established from the data received during the July 1998-June 1999 timeframe.

In spite of these limitations, however, the FAA can conclude from the data collection that deaths occur on air carriers and that certain medical interventions can be useful and may change the outcome for some.

Given the normal circumstances of flight (e.g., reduced air pressure, reduced humidity, high ambient noise levels, reduced space, possible air turbulence, delayed access to the most effective hospital care, etc.) the aircraft is a difficult environment in which to treat a serious medical event, cardiac or otherwise. When serious medical incidents do occur in flight, however, having enhanced emergency medical equipment available may facilitate the response of flight attendants, and others who may volunteer to assist them.

General Discussion of the Proposal

The data collection revealed that four passengers who were administered at least one AED shock during flight survived and the FAA has confirmed that these passengers continue to survive. Subsequent to the data collection, further FAA investigation

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has revealed that more passengers, and a flightcrew member, have had similar experiences. Therefore, the option of not requiring action appears inappropriate.

The FAA reviewed various ways of proposing this action before deciding on what it determined would be an appropriate course of action. In particular, the FAA considered an action that would amend 14 CFR part 91 to allow specifically the use of AED's on board aircraft. It was determined that this action would not be adequate, however, because it would not address issues such as maintenance and safe and appropriate usage of the device. The FAA determined that, to provide for the safe carriage and appropriate usage of AED's, it was necessary to amend part 121 to modify current emergency medical equipment and emergency medical training requirements to appropriately address AED usage.

Therefore, the FAA is proposing that all air carriers operating passenger-carrying airplanes under part 121 with a maximum payload capacity of more than 7,500 pounds, and required to have at least one flight attendant on board, take the following actions:

- Have at least one AED on board each flight.
- Require initial and recurrent training for all flight attendants on AED usage and in CPR.
- Require initial training for all pilots on the location of the AED and its instruction set.
- Enhance emergency medical kits to include the following additional medications: non-narcotic analgesic (such as acetaminophen, 325 mg, or ibuprofen, 200 mg, or equivalent); oral antihistamine (such as diphenhydramine, 25 mg or equivalent); aspirin (325 mg); atropine (0.5 mg, 5cc single dose ampule or equivalent); a bronchodilator inhaler (such as albuterol, metered dose inhaler or equivalent); lidocaine (5 cc, 20 mg/ml, injectable, single dose ampule or equivalent) and saline solution (500 cc) for intravenous infusion.
- Enhance emergency medical kits to include the following additional equipment: an IV administration kit with connectors (and, for placing the IV, alcohol sponges, tape, bandage scissors, and a tourniquet); a self-inflating manual resuscitation device with three sizes of masks (one pediatric, one small adult, one large adult), such as an AMBU bag; and three sizes of CPR masks (one pediatric, one small adult, one large adult).
- Require initial, familiarization training on enhanced emergency medical kit content for all crewmembers.

It should be noted that the decision to offer treatment or take other action (including safe diversion of the aircraft) is discretionary with the air carrier and its agents. While the FAA believes that this action is justified, it is also aware that adding enhancements to the medical kit could result in their unintentional misuse. Passenger expectations regarding the level of medical care should not be unrealistically raised by this action. Onboard medical assistance will continue to be discretionary as well as limited and must be regarded as emergency treatment with no unrealistic expectations of favorable outcomes for passengers having medical events in flight. The FAA believes that it is unrealistic to expect crewmembers to achieve the same level of proficiency as emergency medical personnel who perform medical procedures routinely on a daily basis.

It is recognized that the availability of these enhancements (equipment and medication) will not eliminate the logistical and medical difficulties experienced in attempting to treat a stricken passenger effectively while in flight. The intent of the regulation is to provide options for treatment, not to raise expectation in the passenger or physician community regarding the level of medical care available in flight.

Section-by-Section Discussion of the Proposal

The FAA proposes to amend 14 CFR part 121 by adding subpart X and by amending appendix A and the following sections: §§ 121.303, 121.309, 121.323, 121.325, 121.415, 121.417, 121.427. A minor editorial amendment is proposed for part 135 under § 135.177. These modifications are described below.

Section 121.303 Airplane Instruments and Equipment

Paragraphs (b) and (d) of § 121.303 currently address airworthiness requirements and operable conditions for airplane instruments and equipment. Under this proposal, paragraphs (b) and (d)(2), which reference other sections including § 121.309, would be modified to include a reference to proposed § 121.803.

Section 121.309 Emergency Equipment

Paragraph (d) of § 121.309 currently addresses first aid and emergency medical equipment and protective gloves. Under this proposal, the provisions would be moved to proposed subpart X, and paragraph (d) of § 121.309 would be removed and reserved.

Section 121.323 Instruments and Equipment for Operation at Night

Section 121.323 currently addresses instruments and equipment for operations at night. The introductory paragraph references other sections including § 121.309. Under this proposal, the introductory paragraph would be modified to include a reference to the proposed § 121.803.

Section 121.325 Instruments and Equipment for Operations Under IFR or Over-The-Top

Section 121.325 currently addresses instruments and equipment for operations under IFR or over-the-top. The introductory paragraph references other sections including § 121.309. Under this proposal, the introductory paragraph would be modified to include a reference to proposed § 121.803.

Section 121.415 Crewmember and Dispatcher Training Requirements

Paragraph (a)(3) currently requires each training program to provide ground training, including emergency training for crewmembers as specified in § 121.417. Under this proposal, paragraph (a)(3) would be modified to reference emergency training specified in both § 121.417 and proposed § 121.805.

Section 121.417 Crewmember Emergency Training

Paragraph (b)(2)(ii) currently requires, in part, that crewmembers receive individual instruction in the location, function, operation, and proper use of first aid equipment. Paragraph (b)(3)(iv) currently requires, in part, that crewmembers receive instruction in handling "illness, injury, or other abnormal situations" involving passengers or crewmembers and that this training include familiarization with the emergency medical kit. Under this proposal, the provisions would be modified and moved to proposed subpart X. Paragraphs (b)(2)(ii) and (b)(3)(iv) of § 121.417 therefore would be removed and reserved.

Section 121.427 Recurrent Training

Paragraph (b)(2) of § 121.427 currently requires recurrent training instruction, as necessary, in the subjects required for initial ground training by § 121.415(a), as appropriate, including emergency training (not required for aircraft dispatchers). Under this proposal, paragraph (b)(2) would be modified to reference emergency training specified in proposed § 121.805.

Subpart X Emergency Medical Equipment and Training

Under this proposal, subpart X would be added to part 121 to describe emergency medical equipment and requirements for instruction applicable to all certificate holders operating certain passenger-carrying airplanes. These requirements would include existing requirements for emergency medical equipment and training that would be modified and moved to this new subpart.

Section 121.803 paragraph (a) would adopt existing § 121.309(a) requirements and add the words "unless authorized by the Administrator." These words would be added to cover situations in which an AED may be inoperable or not available for flight. In such cases, the certificate holder would have to obtain approval from the FAA principal operations inspector before operating a flight.

Section 121.803 paragraph (b) would adopt provisions of existing § 121.309 (b) regarding inspection, accessibility, and marking requirements for emergency equipment.

Section 121.803 paragraphs (c)(1) and (2) would require each passenger-carrying airplane to have approved first-aid kits and a modified emergency medical kit (in airplanes for which a flight attendant is required). The required minimum number of first-aid kits is specified under part 121, appendix A, as are the specifications and requirements for the emergency medical kit. This requirement is currently specified in paragraph (d) of § 121.309.

Paragraph (c)(3) of § 121.803 is a new provision that would require, in airplanes for which a flight attendant is required, an approved AED.

Paragraph (b)(2) of § 121.805 would include a provision that all crewmembers be instructed in the location, function, and operation of emergency medical equipment which, under the proposal, would include modified emergency medical kits and AED's. This requirement is currently specified in paragraph (b)(2)(ii) of § 121.417.

Paragraph (b)(3) of § 121.805 would include a provision that all crewmembers be instructed in the handling of emergency medical events involving passengers or crewmembers to include familiarization with the emergency medical kit, as modified under the proposal. This requirement is currently specified in paragraph (b)(3)(iv) of § 121.417.

Paragraph (b)(4) of § 121.805 would include additional provisions for flight attendants that would require appropriate instruction in the proper use of AED's; appropriate instruction in CPR; and appropriate recurrent training in the use of AED's and in CPR. All emergency medical training would have to be completed before 36 months after the effective date of the rule. The instruction required under proposed § 121.805(b)(4) would be in addition to the programmed hours of training required for flight attendants under § § 121.421 and 121.427.

Specific training-hour requirements are not proposed under this regulatory action. Since some air carriers have already voluntarily enhanced emergency medical response capabilities and have initiated and implemented specific training programs, it would be overly burdensome to try to standardize training. The FAA anticipates, however, that the initial and recurrent instruction that would be needed in CPR and in AED usage would conform to national programs conducted for ground-based trainees who initially certify and recertify in CPR procedures and AED usage. These national programs would include those offered, for example, by the American Heart Association or the American Red Cross. The FAA proposes that recurrent instruction in the proper use of AED's and in CPR procedures be conducted at least once every 24 months.

It is expected that some time will be required for air carriers to modify training programs, to enhance emergency medical kits and associated protocols, and to procure AED's. Therefore, the agency is proposing that a final rule take effect 36 months after publication. This would mean that the required training must be completed within 36 months after the effective date and before compliance is required.

Appendix A to Part 121-First-Aid Kits and Emergency Medical Kits

Appendix A sets forth the specifications and requirements for first-aid kits and emergency medical kits. Under this proposal, appendix A would be amended to include an AED and proposed enhancements to the emergency medical kit. The appendix also would be revised for overall clarity; specific amendments are described below.

"First-Aid Kits"

The reference to "Federal Specification GG-K–391a" would be deleted. This reference is obsolete as the specification was cancelled as of July 6, 1986. No changes are proposed for either the quantity of kits required or the content.

"Emergency Medical Kit"

This section would be amended to propose that the following be included in an approved emergency medical kit:

Medications: oral antihistamine, non-narcotic analgesic, aspirin, atropine, a bronchodilator, additional epinephrine, lidocaine, and saline for intravenous infusion.

Equipment: an IV administration kit with connectors (and, for placing the IV, alcohol sponges, tape, bandage scissors, and a tourniquet); a self-inflating manual resuscitation device with three sizes of masks (1 pediatric, 1 small adult, and 1 large adult), such as an AMBU bag; and three sizes of CPR masks (1 pediatric, 1 small adult, and 1 large adult).

Paragraph (4) under "Emergency Medical Kits" would be removed. This paragraph was added under 1994 action to require protective gloves. Because all affected air carriers have now complied with the requirement, the compliance date is no longer needed and may be removed. It should be noted, however, that the FAA proposes to change the reference to protective gloves from "protective latex gloves or equivalent" to "protective nonpermeable gloves or equivalent." When the emergency medical kit action was first adopted, potential for allergic reaction to latex was not clear. Because there may be a potential for allergic reaction to latex, however, the FAA has determined that it would be best to remove the reference to latex under this action.

Rationale for Amending the Emergency Medical Kits

The FAA's study entitled "The Evaluation of In-Flight Medical Care Aboard Selected U.S. Air Carriers from 1996 to 1997," reveals that an oral antihistamine (used mainly to relieve symptoms associated with allergies and hay fever), a non-narcotic analgesic (used mainly to relieve muscle aches and headaches), and a bronchodilator inhaler (used to help restore normal breathing in asthmatics) are appropriate for inclusion in air carrier emergency medical kits.

The FAA consulted with the University of Oklahoma, Department of Biostatistics and Epidemiology in analyzing the data received for this study. Frequency response and contingency analyses were performed, giving special attention to items that are not part of the currently mandated emergency medical kit that were used during in-flight medical events. If such items appeared to have been obtained and used frequently, it suggested that they should be considered for inclusion.

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Upon review of the data, researchers determined that additional items should be considered for inclusion in the medical kit if the item was used in more than 1 or 2 percent of all cases. After identifying items that might be considered for inclusion in the medical kit, their effect on in-flight medical care was investigated. Of those items that potentially could be added to the kit, a bronchodilator inhaler and an oral antihistamine appeared to have the greatest effect on passengers; analgesic therapy also showed effective results.

The recent data collection mandated by the Act did not reveal a need for any further modification of the emergency medical kits. Nitroglycerin and epinephrine, already required items, were the medications most commonly reported as being used. Atropine and IV saline were used one time each.

Because the FAA proposes to require AED carriage, however, it is appropriate to require the following items in the emergency medical kits that might be useful to medical personnel who may treat a stricken passenger(s):

Aspirin: a general oral medication that may be needed to alleviate head and muscle aches and, possibly, a cardiac event.

Atropine: a drug, most effectively administered intravenously and used to increase heart rate, that may be needed to assist a passenger with an unstable cardiac rhythm.

Lidocaine: a drug, most effectively administered intravenously, that may be needed in cases of unresponsiveness to defibrillation and possibly for maintenance of normal heart rhythm after successful defibrillation.

An IV administration kit with connectors (and, for placing the IV, alcohol sponges, tape, bandage scissors, and a tourniquet): for administering IV drugs (e.g., atropine or lidocaine) that may be needed to sustain heart function.

A self-inflating manual resuscitation bag (with 3 masks: 1 pediatric, 1 small adult, and 1 large adult): that may be needed for continuation of respiratory support.

CPR masks (1 pediatric, 1 small adult, 1 large adult): that may be needed if CPR is required.

The FAA has determined that these additions are justified based on the proposed addition of the AED and on best medical practice. It should be noted that an additional preparation of epinephrine, a drug that may be used for heart stimulation, also is being proposed. This additional preparation is intended to complement the dosage of epinephrine currently required which is intended for use as a muscle relaxant.

Comments on these proposed additions to the emergency medical kits are specifically invited.

"Approved" first-aid kit and "approved" emergency medical kit would continue to mean that the FAA principal operations inspector assigned to the holder of an operating certificate exercises approval for the Administrator, as appropriate, of equipment to be carried aboard a certificate holder's aircraft.

"Automated External Defibrillator"

This section would be added to set forth AED specifications. Currently, AED's are powered by primary (not rechargeable) lithium batteries. Safety of these batteries is stressed because extremely energetic materials are used in lithium cells and they are not intrinsically safe. Safety concerns include the possibility of fire, explosion, and the venting of toxic or flammable gases. In this regard, and given the limitations of the aircraft environment, AED carriage on aircraft presents special circumstances in terms of the storage of the device and proper maintenance. Therefore, certificate holders must be vigilant about inspecting and visually checking the device and its battery on a regular basis. The FAA proposes to enhance the level of safety by requiring that certificate holders comply with all requirements in applicable Flight Standards Information Bulletins for Airworthiness, such as the one for medical portable electronic devices (FSAW 98–05), and in applicable Technical Standard Orders, such as the one for lithium batteries (FAA TSO–C142).

"U.S. Food and Drug Administration-approved AED" would mean that the U.S. Food and Drug Administration has approved the device for medical use and that the device conforms to its standards. "Otherwise approved by the Administrator" would mean that certificate holders would have to seek individual approval from FAA principal operations inspectors for power sources for which an FAA TSO does not exist.

Section 135.177 Emergency Equipment Requirements for Aircraft Having a Passenger Seating Configuration of More Than 19 Passengers

This section would be amended to remove the obsolete reference to "Federal Specification GG–K–391a" and to generally conform to clarifying language proposed for part 121, appendix A. No content changes are proposed under this action.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the FAA has determined that there are no requirements for information collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to review International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARP's) and to comply to the maximum extent possible.

ICAO Standard (Annex 6, Part 1, Chapter 6, Section 6.2.2) states that airplanes shall be equipped with "accessible and adequate medical supplies appropriate to the number of passengers the aeroplane is authorized to carry." ICAO Recommended Practice (Annex 6, Part 1, Chapter 6, Section 6.2.2) states that medical supplies should comprise "one or more first-aid kits" and "a medical kit for the use of medical doctors or other qualified persons in treating in-flight medical emergencies for aeroplanes authorized to carry more than 250 passengers." Attachment B to this Recommended Practice lists, in part, the "typical contents" of first-aid kits and emergency medical kits.

Part 121, Appendix A, as currently drafted, complies with these ICAO SARP's insofar as first-aid kits and emergency medical kits are required to be carried. Part 121, Appendix A does not include all ICAO-recommended emergency medical kit items under ICAO Attachment B, however, and does not specify who is authorized to use the emergency medical kit.

The FAA proposes to add to the emergency medical kits those items warranted for inclusion as a result of its study entitled "The Evaluation of In-Flight Medical Care Aboard Selected U.S. Air Carriers from 1996 to 1997" and those items necessary to support AED protocol. The FAA concurs with the recommendation that emergency medical kits be used by qualified and trained personnel only. Adding such a requirement to part 121, however, would involve defining the various medical specialties and, perhaps, limiting access to the extent that the only person available to assist on a flight might not be included.

ICAO Standard (under Annex 6, Part 1, Chapter 12, Section 12.4) states, in part, that cabin attendants shall complete training programs that ensure that each person is "drilled and capable in the use of emergency and life-saving equipment required to be carried, such as . . ., first-aid kits." Existing § 121.417 and proposed 121.805 comply with these ICAO guidelines.

ICAO SARPS do not address AED usage on aircraft.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, OMB directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined this proposed rule is a "significant regulatory action" under section 3 (f) of Executive Order 12866 and, therefore, is subject to review by the Office of Management and Budget. This proposed rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This proposed rule would not have a significant impact on a substantial number of small entities. Furthermore, this proposal would not constitute a barrier to international trade. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation.

Benefits

The proposed rule is intended to require equipment that might preserve the lives of passengers who have serious cardiac medical events on board commercial airplanes operating under part 121 for which a flight attendant is required and with a maximum payload of more than 7,500 pounds. This proposal would require certain passenger-carrying air carrier operators to carry AED's on board their aircraft and to augment currently required emergency medical kits with additional medications and medical equipment. Another requirement of this proposal is to augment the emergency medical training of crewmembers, in particular flight attendants and those who may assist them, for responding to in-flight medical events.

Medical reporting shows that the chances of surviving ventricular fibrillation, a critical cardiac event, are enhanced by the application of AED technology. Aero-medical groups have recommended placing AED's on board airplanes and the experiences of airlines that already carry AED's have been positive. Up to 15 different Air Transport Association members participated in a 1-year in-flight medical event data collection effort in cooperation with the FAA. This effort was in response to one of the provisions of the Aviation Medical Assistance Act of 1998. The data were collected for the period July 1, 1998, through June 30, 1999. There were 188 death or threat-of-death incidents resulting in a total of 108 deaths. (It should be noted that 11 of these incidents occurred on the ground.) AED's were used a total of 17 times, 14 times to deliver at least one shock on board an aircraft. From these events, four passengers were reported as having survived. Assuming the four passengers survived due to the use of AED's, the AED survival rate per hundred million passenger enplanements is 0.7193. The survival rate may have been different if AED's had been aboard all participating carriers' aircraft for the entire data collection period. If the survival rate during the test period had been higher, then the projected number of lives saved over the next 10 years would be higher. However, since this number cannot be established from the available data, the FAA will use the conservative projection.

Applying the survival rate to the estimated 7.5819 billion enplaned passengers over the next 10 years may result in 55 passenger medical event outcomes being changed by AED's during that period.

The FAA acknowledges the difficulty of quantifying benefits with any precision at this stage of the rulemaking. The FAA also believes that there is merit in continuing to collect data on in-flight medical incidents. Therefore, the FAA may propose in the future that data be collected on all uses of the emergency medical kits and AED's by the certificate holder or its agents. This data would be used to further refine the contents of and training for the use of the medical kits and the AED's. Data would be collected directly from the certificate holders in a manner prescribed by the Administrator. The FAA seeks comment on the need for further data collection. The FAA may also issue a supplementary notice to elicit comments on a specific proposed data collection.

Costs

The FAA has analyzed the expected costs of this regulatory proposal for a 10-year period, 2000 through 2009. All costs in this analysis are expressed in 1998 dollars.

The estimated industry costs over 10 years total $138.1 million, or $95.6 million discounted. These costs consist of the initial cost to equip the aircraft, for carriers who have not voluntarily placed AED's and emergency medical kits aboard their aircraft; the cost of equipping new aircraft that the industry will add to the fleet over the next 10 years; the cost of maintaining the equipment and replacing medications, and the weight penalty cost of carrying the additional equipment. In addition, the carriers will incur the cost of initially training flight attendants in the proper usage of the AED's and for recurrent training. The cost of AED's is estimated at $26.7 million, ($20.2 million discounted); the cost of upgrading the emergency medical kits at $4.0 million, ($2.8 million discounted); and additional fuel is estimated to cost $4.4 million, ($3.0 million discounted). The training of flight attendants is estimated to cost $103.0 million, ($69.7 million discounted).

The flight attendants receiving the training as a result of this proposal would probably view this as enhancing their job skills and could lead to efforts to raise their wages based on this perception. The FAA has no basis for estimating this possible impact on industry costs. Public comments are invited; the FAA requests that all comments be accompanied by clear and detailed economic documentation.

Cost-Benefit Analysis

If the proposed rule becomes effective, the FAA estimates that as many as 55 passenger medical outcomes could possibly be changed over the next 10 years. Based on the estimated cost of $138.1 million and an estimated 55 lives possibly saved, the rule is estimated to cost $2.5 million per life saved.

Approximately $88 million of the total cost will be borne by the air carriers that have voluntarily placed the AED's and expanded emergency medical kits aboard their aircraft principally due to the cost of recurrent training of flight attendants. The cost to major carriers that currently do not carry this equipment is estimated at $39 million and small carriers would incur a cost of $11 million as a result of this proposal.

The FAA invites public comments and requests that all comments be accompanied with clear and detailed economic documentation.

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Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and government jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605 (b) of the 1980 act provides that the head of the agency may so certify and a RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration suggests that "small" represent the impacted entities with 1,500 or fewer employees. For this proposed rule, the small entity group is considered to be part 121 operators (Standard Industrial Classification Code 4512) with 1,500 or fewer employees. The FAA has identified a total of 60 operators that meet this definition.

To determine the impact of the proposed rule on small part 121 operators, the FAA has estimated the annualized cost impact on each of those small entities potentially impacted by the proposed rule. The proposed rule is expected to impose an estimated cost of $10.9 million on the 60 small entities over the next 10 years. The annualized cost per small operator is estimated at $18,300. This amount represents less than one-tenth of the annual cost ($265,300, in 1998 dollars) to small operators that the FAA considers economically significant in that it may entail either an increase in airline ticket fares or a requirement to create operating cost efficiencies to preserve the economic stability of impacted airlines. None of the 60 part 121 small entities would incur a substantial economic impact in the form of higher annual costs in excess of $265,300, as the result of the proposed rule.

Therefore, the FAA has determined that this proposed rule would not have a significant impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605 (b), the Federal Aviation Administration certifies that this rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The provisions of this proposed rule would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

A number of foreign carriers carry AED's and enhanced emergency medical kits on flights to and from the United States. U.S. carriers that have voluntarily upgraded their emergency medical equipment account for a majority of the U.S.-flag international service.

Federalism Implications

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. It has determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications."

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 2 U.S.C. (the Act), codified in 2 U. S. C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a) requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) P.L. 94–163, as amended (43 U.S.C 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 121 and 135 of Title 14, Code of Federal Regulations (14 CFR parts 121 and 135) as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Amend § 121.303 by revising paragraphs (b) and (d)(2) to read as follows:

§ 121.303 Airplane instruments and equipment.

* * * * *

(b) Instruments and equipment required by §§ 121.305 through 121.359 and 121.803 must be approved and installed in accordance with the airworthiness requirements applicable to them.

* * * * *

(d) * * *

(2) Instruments and equipment specified in §§ 121.305 through 121.321, 121.359, 121.360, and 121.803 for all operations, and the instruments and equipment specified in §§ 121.323 through 121.351 for the kind of operation indicated, wherever these items are not already required by paragraph (d)(1) of this section.

* * * * *

§ 121.309 [Amended]

3. Amend § 121.309 by removing and reserving paragraph (d).

4. Amend § 121.323 by revising the introductory text to read as follows:

§ 121.323 Instruments and equipment for operations at night.

No person may operate an airplane at night under this part unless it is equipped with the following instruments and equipment in addition to those required by §§ 121.305 through 121.321 and 121.803:

* * * * *

5. Amend § 121.325 by revising the introductory text to read as follows:

§ 121.325 Instruments and equipment for operations under IFR or over-the-top.

No person may operate an airplane under IFR or over-the-top conditions under this part unless it is equipped with the following instruments and equipment, in addition to those required by §§ 121.305 through 121.321 and 121.803:

* * * * *

6. Amend § 121.415 by revising paragraph (a)(3) to read as follows:

§ 121.415 Crewmember and dispatcher training requirements.

(a) * * *

(3) For crewmembers, emergency training as specified in § § 121.417 and 121.805.

* * * * *

§ 121.417 [Amended]

7. Amend § 121.417 by removing and reserving paragraphs (b)(2)(ii) and (b)(3)(iv).

8. Amend § 121.427 by revising paragraph (b)(2) to read as follows:

§ 121.427 Recurrent training.

* * * * *

(b) * * *

(2) Instruction as necessary in the subjects required for initial ground training by § § 121.415(a) and 121.805, as appropriate, including emergency training (not required for aircraft dispatchers).

* * * * *

9. Amend part 121 by adding subpart X to read as follows:

Sec.

Subpart X—Emergency Medical Equipment and Training 121.801 Applicability.

121.803 Emergency medical equipment.
121.805 Crewmember training for in-flight medical events.

Subpart X—Emergency Medical Equipment and Training

§ 121.801 Applicability.

This subpart prescribes the emergency medical equipment and training requirements applicable to all certificate holders operating passenger-carrying airplanes under this part.

§ 121.803 Emergency medical equipment.

(a) No person may operate a passenger-carrying airplane under this part unless it is equipped with the emergency medical equipment listed in this section or unless authorized by the Administrator.

(b) Each equipment item listed in this section—

(1) Must be inspected regularly in accordance with inspection periods established in the operations specifications to ensure its condition for continued serviceability and immediate readiness to perform its intended emergency purposes;

(2) Must be readily accessible to the crew and, with regard to equipment located in the passenger compartment, to passengers;

(3) Must be clearly identified and clearly marked to indicate its method of operation; and

(4) When carried in a compartment or container, must be carried in a compartment or container marked as to contents and the compartment or container, or the item itself, must be marked as to date of last inspection.

(c) For treatment of injuries, medical events, or minor accidents that might occur during flight time each airplane must have the following equipment that meets the specifications and requirements of appendix A of this part:

(1) Approved first-aid kits.

(2) In airplanes for which a flight attendant is required, an approved emergency medical kit, as modified effective [36 months after the effective date of the final rule.]

(3) In airplanes for which a flight attendant is required and with a maximum payload capacity of more than 7,500 pounds, an approved automated external defibrillator as of [36 months after the effective date of the final rule].

§ 121.805 Crewmember training for in-flight medical events.

(a) Each training program must provide the instruction set forth in this section with respect to each airplane type, model, and configuration, each required crewmember, and each kind of operation conducted, insofar as appropriate for each crewmember and the certificate holder.

(b) Training must provide the following:

(1) Instruction in procedures for responding to medical events including coordination among crewmembers.

(2) Instruction in the location, function, and operation of emergency medical equipment.

(3) Instruction in the handling of medical events involving passengers or crewmembers to include familiarization with the emergency medical kit, as modified on [36 months after the effective date of the final rule].

(4) For each flight attendant—

(i) Instruction in the proper use of automated external defibrillators, in addition to the programmed hours of instruction required by § 121.421(c).

(ii) Instruction in cardiopulmonary resuscitation, in addition to the programmed hours of instruction required by § 121.421(c).

(iii) Recurrent training in the proper use of automated external defibrillators and in cardiopulmonary resuscitation, at least once every 24 months, in addition to the instruction required by § 121.427(c).

10. Revise Appendix A to part 121 as follows:

Appendix A to Part 121—First-aid Kits and Emergency Medical Kits

Approved first-aid kits, at least one approved emergency medical kit, and at least one approved automated external defibrillator required under § 121.803 of this part must be readily accessible to the crew, stored securely, and kept free from dust, moisture, and damaging temperatures.

First-Aid Kits

1. The minimum number of first-aid kits required is set forth in the following table:

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Number of passenger seats	Number of first-aid kits
0–50	1
51–150	2
151–250	3
More than 250	4

2. Except as provided in paragraph (3), each approved first-aid kit must contain at least the following appropriately maintained contents in the specified quantities:

Contents	Quality
Adhesive bandage compresses, 1-inch	16
Antiseptic swabs	20
Ammonia inhalants	10
Bandage compresses, 4-inch	8
Triangular bandage compresses, 40-inch	5
Arm splint, noninflatable	1
Leg splint, noninflatable	1
Roller bandage, 4-inch	4
Adhesive tape, 1-inch standard roll	2
Bandage scissors	1

3. Arm and leg splints which do not fit within a first-aid kit may be stowed in a readily accessible location that is as near as practicable to the kit.

Emergency Medical Kits

1. At least one approved emergency medical kit that must contain at least the following appropriately maintained contents in the specified quantities:

Contents	Quantity
Sphygmomanometer	1
Stethoscope	1
Airways, oropharyngeal (3 sizes): 1 pediatric, 1 small adult, 1 large adult	3
Self-inflating manual resuscitation device with 3 masks (1 pediatric, 1 small adult, 1 large adult)	1:3 masks
CPR mask (3 sizes), 1 pediatric, 1 small adult, 1 large adult [1]	3
IV Admin Tubing w/2 Y connectors: [1]	1 set
Alcohol sponges [1]	2
Adhesive tape, 1-inch standard roll adhesive [1]	1
Tape scissors [1]	1 pair
Tourniquet [1]	1
Saline solution, 500 cc [1]	1
Protective nonpermeable gloves or equivalent	1 pair
Needles (2–18 ga., 2–20 ga., 2–22 ga., or sizes necessary to administer required medications)	6
Syringes (1–5 cc, 2–10 cc, or sizes necessary to administer required medications	4
Analgesic, non-narcotic, tablets,[1] 325 mg	4
Antihistamine tablets,[1] 25 mg	4
Antihistamine injectable, 50 mg, (single dose ampule or equivalent	2
Atropine, 0.5 mg, 5 cc (single dose ampule or equivalent) [1]	2
Aspirin tablets, 325 mg [1]	4
Bronchodilator, inhaled [1] (metered dose inhaler or equivalent)	1
Dextrose, 50%/50 cc injectable, (single dose ampule or equivalent)	1
Epinephrine 1:1000, 1 cc, injectable, (single dose ampule or equivalent)	2
Epinephrine 1:10,000, 2 cc, injectable, (single dose ampule or equivalent)	2
Lidocaine, 5 cc, 20 mg/ml, injectable (single dose ampule or equivalent) [1]	2
Nitroglycerin tablets, 0.4 mg	10
Basic instructions for use of the drugs in the kit	1

[1] Required on and after [36 months after the effective date of the final rule.]

Automated External Defibrillators

At least one U.S. Food and Drug Administration-approved automated external defibrillator that must:

1. Be stored in the passenger cabin.
2. Meet FAA Technical Standard Order requirements for power sources for electronic devices used in aviation or be otherwise approved by the Administrator.
3. Be maintained in accordance with the manufacturer's specifications.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

11–12. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

13. Amend § 135.177 by revising paragraph (a)(1) to read as follows:

§ 135.177 Emergency equipment requirements for aircraft having a passenger seating configuration of more than 19 passengers.

(a) * * *

(1) At least one approved first-aid kit for treatment of injuries likely to occur in flight or in a minor accident that must:

(i) Be readily accessible to crewmembers.

(ii) Be stored securely and kept free from dust, moisture, and damaging temperatures.

(iii) Contain at least the following appropriately maintained contents in the specified quantities:

Contents	Quantity
Adhesive bandage compresses, 1-inch	16
Antiseptic swabs	20
Ammonia inhalants	10
Bandage compresses, 4-inch	8
Triangular bandage compresses, 40-inch	5
Arm splint, noninflatable	1
Leg splint, noninflatable	1
Roller bandage, 4-inch	4
Adhesive tape, 1-inch standard roll	2
Bandage scissors	1
Protective nonpermeable gloves or equivalent	[1]1

[1] Pair.

* * * * *

Issued in Washington, D.C., on May 18, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 00–12982 Filed 5–22–00; 8:45 am]

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Federal Register

Wednesday,
May 24, 2000

Part VI

Federal Reserve System

Department of the Treasury

Fiscal Service

Policy Statement on Payments System Risk: Modifications to Daylight Overdraft Posting Procedures; Treasury Tax and Loan Program Enhancements; Notices

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FEDERAL RESERVE SYSTEM

[Docket No. R–1068]

Policy Statement on Payments System Risk: Modifications to Daylight Overdraft Posting Procedures

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy Statement.

SUMMARY: The Board has adopted changes to the procedures for measuring daylight overdrafts. Posting times for Treasury Investment Program transactions have been added to these procedures to implement program changes announced by Department of the Treasury in today's **Federal Register**.

EFFECTIVE DATE: July 10, 2000 for transitional posting procedures and November 2, 2000 for final posting procedures.

FOR FURTHER INFORMATION CONTACT: Myriam Payne, Manager (202/452–3219), Stacy Coleman, Financial Services Analyst (202/452–2934), or Donna DeCorleto, Project Leader (202/452–3956), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired *only*: Telecommunications Device for the Deaf, Janice Simms (202/872–4984).

SUPPLEMENTARY INFORMATION:

Background

The Board's Policy Statement on Payments System Risk establishes maximum limits (net debit caps) and fees on daylight overdrafts in depository institutions' accounts at Federal Reserve Banks. The Federal Reserve measures depository institutions' intraday account balances according to a set of "posting rules" established by the Board. These rules comprise a schedule for the posting of debits and credits to institutions' Federal Reserve accounts for different types of payments.[1] The Board's objectives in designing the posting rules include minimizing intraday float, facilitating depository institutions' monitoring and control of their cash balances during the day, and reflecting the legal rights and obligations of parties to payments. The Board has established daylight overdraft posting times for the new Treasury Investment Program (TIP) transactions based on these objectives.

The Federal Reserve will implement TIP on July 10, 2000, to replace the Treasury Tax and Loan (TT&L) system. The Reserve Banks, as fiscal agents and depositories of the United States, act on behalf of the Department of the Treasury (Treasury) to collect Federal taxes and invest excess Treasury balances with depository institutions. The Reserve Banks use the TT&L system to collect and invest Federal tax proceeds and to monitor the collateral pledged by institutions.[2] TT&L is primarily an end-of-day batch processing system implemented in the mid-1980s to process paper-based tax payments.

In 1993, the North American Free Trade Agreement Implementation Act (NAFTA) required Treasury to begin an orderly conversion from its paper-based system to an electronic tax collection system to accelerate the availability of its funds. In 1996, Treasury introduced the Electronic Federal Tax Payment System (EFTPS) to offer taxpayers electronic payment alternatives, such as the Automated Clearing House (ACH) and Fedwire.[3] The Reserve Banks modified the TT&L automated application to accept and invest tax proceeds collected through EFTPS. The aging technology of the TT&L application, however, limited opportunities to automate tax collection further. As a result, the Reserve Banks worked with Treasury to design the TIP application to support Treasury's changing tax collection and investment requirements.

Treasury envisioned an all-electronic tax collection system when TIP was developed but later determined that a paper-based tax payment alternative should be available to smaller business taxpayers.[4] At Treasury's request, the Federal Reserve developed the Paper Tax System (PATAX) to accommodate paper-based tax payments. The Federal Reserve will implement the TIP and PATAX applications concurrently.

An important feature of the TIP application is its ability to receive and process data from interfacing applications in real time. Throughout the day, TIP will receive and process payment information from EFTPS, the Federal Reserve Electronic Tax Application (FR–ETA), and PATAX, and collateral information from the National Book-Entry System (NBES) and the Definitive Safekeeping System (DSS). The Federal Reserve will adjust the total Treasury balances at depository institutions based on Treasury's cash needs and depository institutions' willingness and ability to collateralize Treasury investments. In addition, TIP will monitor the value of collateral pledged to protect government monies held at depository institutions for other Treasury purposes besides tax collections and investments.[5] The Federal Reserve will be able to reduce those balances at depository institutions if the value of collateral is insufficient to protect those monies.

TIP-Related Daylight Overdraft Posting Rule Changes

Unlike TT&L, TIP will process transactions throughout the day and depository institutions will be able to access information on the status of TIP transactions destined for their Federal Reserve accounts through their FedLine terminals.[6] Therefore, in accordance with the Board's objective to minimize intraday float, the Board believes the TIP transactions should post to depository institutions' accounts in real time throughout the day.

Currently, because TT&L is primarily an end-of-day batch processing system, the Reserve Banks post TT&L transactions resulting in debits to depository institutions' accounts after the close of Fedwire. TIP will process transactions throughout the day, however, allowing the Reserve Bank to post TIP-related transactions on a flow basis in order to match more closely the actual TIP processing times. In the near term this change could make controlling daylight overdrafts related to some TIP transactions more challenging for depository institutions. For example, with near real-time posting under TIP, a large debit transaction could post to a depository institution's account early in the day and create a considerable daylight overdraft. Under TT&L, the debit transaction would post after the close of Fedwire, providing the depository institution ample time to fund its account. As a result, depository institutions may find managing their daylight overdrafts more difficult until they become familiar with TIP's processing patterns.

The Board recognizes that depository institutions may need time to change the systems or procedures they use to fund their accounts and monitor their tax payment flows. For this reason, the Board will introduce the TIP-related posting rule changes for most transactions resulting in debits to depository institutions' accounts in two phases.[7] To allow sufficient time for depository institutions to adjust to the various operational changes associated with TIP, initially the Federal Reserve will post most transactions resulting in debits to depository institutions' accounts after the close of Fedwire. Approximately four months after the implementation of TIP, on November 2, 2000, the Federal Reserve will post all transactions resulting in debits to depository institutions' accounts on a flow basis as TIP processes them. The Board believes that this approximate four-month transition period, which covers a full quarterly business tax payment cycle, provides depository institutions with sufficient time to identify the effects of and adjust to the new debit timing patterns that TIP creates.

Debits to Depository Institutions[8]

After-the-Close-of-Fedwire Posting

Beginning July 10, 2000 the Federal Reserve will post the TIP transactions listed below, resulting in debits to depository institutions' Federal Reserve accounts, after the close of Fedwire. The Reserve Banks will provide depository institutions with information on their TIP transactions through FedLine, which will allow depository institutions to observe and become familiar with the actual TIP processing cycles. Beginning November 2, 2000, the Reserve Banks will post these transactions on an intraday basis to reflect more closely the actual TIP processing times. Unless stated otherwise in this notice, the Reserve Banks will begin posting TIP-related transactions at 8:30 a.m. ET and on an hourly basis, on the half-hour, thereafter.[9]

Main Account System-Initiated Balance Limit Withdrawal. This transaction withdraws from a depository institution's account any amount that exceeds its balance limit. A depository institution's balance limit is the amount of Treasury funds that it is willing to accept as investments and may be changed at any time.

Main Account System-Initiated Collateral Deficiency Withdrawal. This transaction withdraws from a depository institution's account any amount that is not protected by collateral.

Main Account Treasury Withdrawal. This transaction withdraws some or all of Treasury's invested balances from a depository institution's Federal Reserve account.[10] TIP will process the transactions on the date and time specified by Treasury. The Federal Reserve will post future-day withdrawals at 8:30 a.m. ET on the settlement day designated by Treasury, same-day withdrawals announced by 11:30 a.m. ET at 1:00 p.m. ET, and same-day withdrawals announced by 6:15 p.m. ET after the close of Fedwire.[11]

31 CFR Part 202 Collateral Deficiency Withdrawal. Under 31 CFR part 202 (formerly called Circular 176), Treasury permits authorized depository institutions to hold fully collateralized deposits of public monies for government agencies. Under TIP, Treasury has centralized the monitoring of the collateral pledged to protect 31 CFR part 202 deposits and requires that collateral be assessed at market value. At the discretion of the depositing government agency, this transaction will withdraw from the depository institution's account any amount not protected by collateral. TIP will identify deficiencies between 7:00 a.m. and 6:00 p.m. ET, and the Reserve Bank will work with the depository institutions and the depositing government agencies to resolve the deficiencies. If a deficiency is not corrected before the end of the day, the Federal Reserve may debit the depository institution's account for the uncollateralized amount.

Near Real-Time Posting

Beginning July 10, 2000, the Federal Reserve will post the TIP transactions listed below, resulting in debits to depository institutions' account balances, on an intraday basis during the day as soon as TIP processes them. The Board does not believe depository institutions require a transitional period for these transactions' posting times given their relatively small dollar value.

Uninvested PATAX Tax Deposit. This transaction withdraws from depository institutions' accounts the proceeds of PATAX tax collections that will not be invested with those institutions. The Reserve Banks will post these transactions beginning at 8:30 a.m. ET and on an hourly basis, on the half-hour, thereafter.

Penalty for Tax Payments. Treasury will use this transaction to assess a penalty any time that a depository institution accepts a timely payment from a taxpayer, but submits the payment to the Treasury late. Every Thursday night, the Reserve Banks will identify and notify depository institutions of their Treasury-authorized penalties.[12] The Reserve Banks will calculate the penalty for each depository institution and post the debit to the depository institution's account at 8:30 a.m. ET on the following business day.

Credits to Depository Institutions

Beginning July 10, 2000, the Federal Reserve will post the TIP transactions listed below, resulting in credits to depository institutions' accounts, on an intraday basis during the day as soon as TIP processes them.

Dynamic Investment. The Dynamic Investment is a new transaction that will invest excess Treasury funds with depository institutions that want the funds and have sufficient collateral to protect the investment.[13] The Reserve Banks will post these transactions beginning at 12:30 p.m. ET and on an hourly basis, on the half-hour, thereafter.

FR–ETA Value Fedwire Investment. The FR–ETA Value Fedwire Investment is a new transaction that will return to depository institutions, as a Treasury investment, the tax proceeds that the institutions sent to Treasury through a FR–ETA Value Fedwire transaction (31 CFR 203.2). TIP will identify those FR–

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[1] See "Federal Reserve Policy Statement on Payments System Risk," section I.A (57 FR 47093, October 14, 1992).

[2] 31 CFR part 203 "Payment of Federal Taxes and the Treasury Tax and Loan Program" requires that TT&L depositaries pledge to Treasury sufficient collateral to protect the uninsured portion of Treasury tax proceeds and the full value of Treasury investments held at the depositaries.

[3] For purposes of this notice, "Fedwire" refers to the electronic funds transfer system owned and operated by the Federal Reserve System. See 31 CFR part 203 for further detail regarding electronic tax payment alternatives.

[4] Treasury currently requires that business taxpayers with an annual tax liability of $200,000 or more pay their income, withholding, and other federal taxes by electronic means no later than the tax due date. Other taxpayers are encouraged to use electronic means, but have the option of submitting their tax payment information using a paper Federal Tax Deposit (FTD) coupon. See 26 CFR parts 1, 20, 25, 31, and 40 regarding "Electronic Funds Transfers of Federal Deposits."

[5] Government monies can be held at depository institutions for a variety of reasons. Initially, TIP will monitor collateral pledged pursuant to 31 CFR part 202 "Depositaries and Financial Agents of the Government" and 31 CFR part 203.

[6] FedLine is the Federal Reserve's proprietary PC software that offers depository institutions access to Federal Reserve services such as accounting, ACH, book-entry, cash, check, statistical reporting, funds transfer, and Treasury services.

[7] The Reserve Banks will post small-dollar transactions, such as uninvested PATAX tax deposits and penalties for tax payments, on a flow basis as they are processed beginning July 10, 2000. The posting rules for these transactions will not change in the second phase.

[8] The Board has not modified the posting rules for existing TT&L transactions unless specifically referenced in this notice.

[9] While TIP begins processing transactions as early as 6 a.m. ET, the Federal Reserve will not begin posting transactions until 8:30 a.m. ET in order to match the initial posting of other non-wire transactions and to allow depository institutions time to manage or fund their accounts.

[10] The balances that Treasury invests with depository institutions are payable on demand without prior notice. Treasury may announce these balance withdrawals, however, hours or days in advance. See 31 CFR 203.23.

[11] On rare occasions, the Treasury may announce withdrawals in advance that are based on depository institutions' closing balances on the withdrawal date. The Federal Reserve will post these withdrawals after the close of Fedwire.

[12] In the event that Thursday is a holiday, the Reserve Banks will identify and notify depository institutions with Treasury-authorized penalties on the following business day. Penalties will then be posted on the business day following notification.

[13] Depository institutions specify the times of day and the amount of funds they are willing to accept as investments. Funds are distributed pro-rata based on depository institutions' capacity levels.

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ETA tax payments that were sent by Retainer or Investor institutions with unused capacity and will invest the funds with those Retainer or Investor institutions.[14] The Reserve Banks will post these transactions beginning at 9:30 a.m. ET and on an hourly basis, on the half-hour, thereafter.[15]

Penalty Abatement. The Penalty Abatement is a new transaction that Treasury will use to return money paid previously as penalties by a depository institution to Treasury. In the event that a depository institution provides evidence that the Treasury charged it incorrectly, Treasury may return the penalty money to the depository institution. The Reserve Banks will process and post Penalty Abatements on Thursdays at 6:30 p.m. ET.[16]

Main Account Administrative Investment and SDI Administrative Investment. These transactions are administrative or correcting entries that Reserve Banks will occasionally make to depository institutions' Main Accounts or Special Direct Investment Accounts.[17] For example, after two entities merge, the Reserve Banks would use one of the Main Account Administrative Investment transactions to move the non-survivor's TIP account balance to the survivor's account.[18] The Reserve Banks will post these transactions at 8:30 a.m. ET and on an hourly basis, on the half-hour, thereafter.

31 CFR Part 202 Account Deposits. The 31 CFR part 202 Account Deposit is a new transaction that will place public monies with depository institutions authorized by Treasury to accept these deposits, but only after TIP confirms that the depository institutions have pledged sufficient collateral to protect these deposits. Based on Treasury's or the depositing agency's instruction, the Reserve Banks will post these transactions at 8:30 a.m. ET and on an hourly basis, on the half-hour, thereafter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the policy statement under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the policy statement.

Policy Statement on Payments System Risk

1. The "Federal Reserve Policy Statement on Payments System Risk" (57 FR 47093, October 14, 1992), section I.A., under the heading "*Modified Procedures for Measuring Daylight Overdrafts* " is amended, effective *July 10, 2000*, as follows with changes identified by *italics*:

I. Federal Reserve Policy

A. Daylight Overdraft Definition

* * * * *

Modified Procedures for Measuring Daylight Overdrafts[3]

Opening Balance (Previous Day's Closing Balance)

Post at 8:30 a.m. Eastern Time:
+/– Government and commercial ACH credit transactions
+Treasury Electronic Federal Tax Payment System (EFTPS) investments from ACH credit transactions
+ Advance-notice Treasury investments
+ Treasury state and local government series (SLGs) interest and redemption payments
+ Treasury checks, postal money orders, local Federal Reserve Bank checks, and EZ-Clear savings bond redemptions in separately sorted deposits
– *Penalty Assessments for tax payments from the Treasury Investment Program (TIP)*[4]

Post at 8:30 a.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:
+ *Main Account Administrative Investment from TIP*
+ *SDI (Special Direct Investment) or Administrative Investment from TIP*
+ *31 CFR part 202 Account Deposits from TIP*
– *Uninvested PATAX Tax Deposits from TIP*

Post Throughout Business Day:
+/– Fedwire funds transfers
+/– Fedwire book-entry securities transfers
+/– Net settlement entries[5]

Post by 9:15 a.m. Eastern Time:
+ U.S. Treasury and government agency book-entry interest and redemption payments
+ U.S. Treasury and government agency matured coupons and definitive securities received before the maturity date

Post Beginning at 9:15 a.m. Eastern Time:
– Original issues of Treasury securities[6]

Post at 9:30 a.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:
+ *FR–ETA Value Fedwire Investments from TIP*

Post at 11:00 a.m. Eastern Time:
+/– ACH debit transactions
+ EFTPS investments from ACH debit transactions

Post at 11:00 a.m. Eastern Time and Hourly Thereafter:
+/– Commercial check transactions, including return items
+/– Check correction amounting to $1 million or more
+ Currency and coin deposits
+ Credit adjustments amounting to $1 million or more

Post at 12:30 p.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:
+ *Dynamic Investment from TIP*

Post by 1:00 p.m. Eastern Time:
+ Same-day Treasury investments

Post at 2:00 p.m. Eastern Time:
+ Processed manual letters of credit[7]

Post at 5:00 p.m. Eastern Time:
+ Treasury checks, postal money orders, and EZ-Clear savings bond redemptions in separately sorted deposits. These items must be presented by 4:00 p.m. eastern time.
+ Local Federal Reserve Bank checks. These items must be presented before 3:00 p.m. eastern time.
+ Processed manual letters of credit
+/– Same-day ACH transactions. These transactions include ACH return items, check-truncation items, and flexible settlement items.

Post at 6:30 p.m. Eastern Time:[8]

[14] A Retainer institution will collect tax payments using FR–ETA, EFTPS, and/or PATAX, and will accept back in its Main Account, as Treasury investments, only the amount it collected. The Main Account replaces the TT&L account under TIP. An Investor institution will collect tax payments using ETA, EFTPS, and/or PATAX, accept those funds as a Treasury investment, and also accept other Treasury investments to its Main Account up to capacity.

[15] For example, a Retainer or Investor institution with sufficient collateral that sends an FR–ETA tax payment at 11:45 a.m. ET will receive an FR–ETA Value Fedwire Investment at 12:30 p.m. ET.

[16] In the event that Thursday is a holiday, TIP will process Treasury-authorized penalty abatements on the following business day.

[17] The Special Direct Investment Account is define din 31 CFR part 203.

[18] The TIP application receives notice of a merger the day the merger occurs and therefore cannot combine merged accounts after the close of Fedwire prior to the merger day. In addition, the TIP operations staff must determine whether the surviving entity will accept the non-surviving entity's account balance and has the capacity to do so.

[3] The posting changes do not affect the overdraft restrictions and overdraft-measurement provisions for nonbank banks established by the Competitive Equality Banking Act of 1987 and the Board's Regulation Y (12 CFR 225.52).

[4] The Reserve Banks will identify and notify depository institutions with Treasury-authorized penalties on Thursdays. In the event that Thursday is a holiday, the Reserve Banks will identify and notify depository institutions with Treasury-authorized penalties on the following business day. Penalties will then be posted on the business day following notification.

[5] Settlement entries from the "settlement sheet" service will be posted on the next clock hour approximately one hour after settlement data are received by the Reserve Banks. The settlement sheet service will be discontinued by year-end 2001. Settlement entries from the enhanced settlement service will be posted on a flow basis as they are processed.

[6] Original issues of government agency securities are delivered as book-entry securities transfers and will be posted when the securities are delivered to the purchasing institutions.

[7] Letters-of-credit transactions are drawdowns of government grants.

[8] The Reserve Banks will process and post Treasury-authorized penalty abatements on Thursdays. In the event that Thursday is a holiday, the Reserve Banks will process and post Treasury-authorized penalty abatements on the following business day.

+ *Penalty Abatements from TIP*

Post After the Close of Fedwire Funds Transfer System:
+/– All other non-Fedwire transactions. These transactions include the following: local Federal Reserve Bank checks presented after 3:00 p.m. eastern time, but before 3:00 p.m. local time; noncash collections; credits for U.S. Treasury and government agency definitive security interest and redemption payments if the coupons or securities are received on or after the maturity date; *Treasury Investment Program Main Account Balance Limit Withdrawals and Collateral Deficiency Withdrawals; Main Account Treasury Withdrawals;*[9] *31 CFR part 202 Deficiency Withdrawals;* subscriptions for SLGS; currency and coin shipments; small-dollar credit adjustments; all debit adjustments; and small-dollar check corrections. Discount-window loans and repayments are normally posted after the close of Fedwire as well; however, in unusual circumstances a discount window loan may be posted earlier in the day with repayment 24 hours later, or a loan may be repaid before it would otherwise become due.

Equals:
Closing balance

* * * * *

2. Footnotes 7 through 29 are renumbered 10 through 32.

I. Federal Reserve Policy

A. Daylight Overdraft Definition

Policy Statement on Payments System Risk

3. The "Federal Reserve Policy Statement on Payments System Risk," (57 FR 47093, October 14, 1992) section I.A., under the heading "*Modified Procedures for Measuring Daylight Overdrafts*" is amended, effective *November 2, 2000*, as follows with changes identified by *italics*:

* * * * *

Modified Procedures for Measuring Daylight Overdrafts[3]

Opening Balance (Previous Day's Closing Balance)

Post at 8:30 a.m. Eastern Time:
+/– Government and commercial ACH credit transactions
+ Treasury Electronic Federal Tax Payment System (EFTPS) investments from ACH credit transactions
+ Advance-notice Treasury investments
+ Treasury state and local government series (SLGs) interest and redemption payments
+ Treasury checks, postal money orders, local Federal Reserve Bank checks, and EZ-Clear savings bond redemptions in separately sorted deposits
– Penalty Assessments for tax payments from the Treasury Investment Program (TIP)[4]

Post at 8:30 a.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:
+ Main Account Administrative Investment from TIP
+ SDI (Special Direct Investment) or Administrative Investment from TIP
+ 31 CFR part 202 Account Deposits from TIP
– *31 CFR part 202 Deficiency Withdrawals from TIP*
– Uninvested PATAX Tax Deposits from TIP
– *Main Account Balance Limit Withdrawals from TIP*
– *Collateral Deficiency Withdrawals from TIP*

Post at 8:30 a.m., 11:30 a.m., and 6:30 p.m. Eastern Time:
– *Main Account Treasury Withdrawals from TIP*[5]

Post Throughout Business Day:
+/– Fedwire funds transfers
+/– Fedwire book-entry securities transfers
+/– Net settlement entries[6]

Post by 9:15 a.m. Eastern Time:
+ U.S. Treasury and government agency book-entry interest and redemption payments
+ U.S. Treasury and government agency matured coupons and definitive securities received before the maturity date

Post Beginning at 9:15 a.m. Eastern Time:
– Original issues of Treasury securities[7]

Post at 9:30 a.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:
+ FR–ETA Value Fedwire Investments from TIP

Post at 11 a.m. Eastern Time:
+/– ACH debit transactions
+ EFTPS investments from ACH debit transactions

Post at 11:00 a.m. Eastern Time and Hourly Thereafter:
+/– Commercial check transactions, including return items
+/– Check correction amounting to $1 million or more
+ Currency and coin deposits
+ Credit adjustments amounting to $1 million or more

Post at 12:30 p.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:
+ Dynamic Investment from TIP

Post by 1:00 p.m. Eastern Time:
+ Same-day Treasury investments

Post at 2:00 p.m. Eastern Time:
+ Processed manual letters of credit[8]

Post at 5:00 p.m. Eastern Time:
+ Treasury checks, postal money orders, and EZ-Clear savings bond redemptions in separately sorted deposits. These items must be presented by 4:00 p.m. eastern time.
+ Local Federal Reserve Bank checks. These items must be presented before 3:00 p.m. eastern time.
+ Processed manual letters of credit
+/– Same-day ACH transactions. These transactions include ACH return items, check-truncation items, and flexible settlement items.

Post at 6:30 p.m. Eastern Time: [9]
+ Penalty Abatements from TIP

Post After the Close of Fedwire Funds Transfer System:
+/– All other non-Fedwire transactions. These transactions include the following: local Federal Reserve Bank checks presented after 3:00 p.m. eastern time but before 3:00 p.m. local time; noncash collection; credits for U.S. Treasury and government agency definitive security interest and redemption payments if the coupons or securities are received on or after the maturity date; subscriptions for SLGS; currency and coin shipments; small-dollar credit adjustments; all debit adjustments; and small-dollar check collections. Discount-window loans and repayments are normally posted after the close of Fedwire as well; however, in unusual circumstances a discount window loan may be posted earlier in the day with repayment 24 hours later, or a loan may be repaid before it would otherwise become due.

Equals:
Closing balance

* * * * *

4. Footnotes 7 through 29 are renumbered 10 through 32.

By order of the Board of Governors of the Federal Reserve System, May 18, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–13016 Filed 5–23–00; 8:45 am]

BILLING CODE 6210–01–P

[4] The Reserve Banks will identify and notify depository institutions with Treasury-authorized penalties on Thursdays. In the event that Thursday is a holiday, the Reserve Banks will identify and notify depository institutions with Treasury-authorized penalties on the following business day. Penalties will then be posted on the business day following notification.

[5] On rare occasions, the Treasury may announce withdrawals in advance that are based on depository institutions' closing balances on the withdrawal date. The Federal Reserve will post these withdrawals after the close of Fedwire.

[6] Settlement entries from the "settlement sheet" service will be posted on the next clock hour approximately one hour after settlement data are received by the Reserve Banks. The settlement sheet service will be discontinued by year-end 2001. Settlement entries from the enhanced settlement service will be posted on a flow basis as they are processed.

[7] Original issues of government agency securities are delivered as book-entry securities transfers and will be posted when the securities are delivered to the purchasing institutions.

[8] Letters-of-credit transactions are drawdowns of government grants.

[9] The Reserve Banks will process and post Treasury-authorized penalty abatements on Thursdays. In the event that Thursday is a holiday, the Reserve Banks will process and post Treasury-authorized penalty abatements on the following business day.

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DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Tax and Loan Program Enhancements

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This announces new applications to be available in the Treasury Tax and Loan program.

DATES: The new applications are effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist on (202) 874–6705 or walt.henderson@fms.treas.gov; Mary Bailey, Financial Program Specialist, at (202) 874–6749 or mary.bailey@fms.treas.gov; Adam Martin, Financial Program Specialist, at (202) 874–6881 or adam.martin@fms.treas.gov; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590 or cindy.johnson@fms.treas.gov; or Ellen Neubauer, Senior Attorney, at (202) 874–6680 or ellen.neubauer@fms.treas.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Federal Reserve) are enhancing the Treasury Tax and Loan (TT&L) program by implementing two new applications. The current TT&L program encompasses two separate components—a depositary component through which Treasury collects Federal tax deposits and payments from business taxpayers for employee withholding and other types of taxes, and an investment component through which Treasury invests short-term operating balances not needed for immediate cash outlays. More than 10,500 commercial financial institutions participate in the TT&L depositary component, collecting and/or reporting almost $1.4 trillion in Fiscal Year 1999. Additionally, more than 1,500 of the TT&L depositaries borrow excess short-term Treasury operating funds by participating in the TT&L investment component.

B. Summary of the New TT&L Applications

On July 10, 2000, Treasury and the Federal Reserve will introduce two new TT&L applications—the Treasury Investment Program (TIP) and the Paper Tax System (PATAX)—which will enhance the current TT&L program. The TIP and PATAX systems will benefit financial institutions by providing the following features:

—Flexibility in investment options by offering dynamic investing through the new TIP application. Dynamic investing allows qualified financial institutions to receive excess Treasury funds throughout the day, provided the institution has the capacity to accept the funds.

—Near real time processing throughout the day. Tax payments settled by TIP (paper tax payments and same day Electronic Federal Tax Payment System (EFTPS) payments) are credited to an institution's accounts throughout the day rather than at the end of the day. A more accurate Treasury balance leads to greater investment opportunities for financial institutions. Financial institutions also benefit from near real time account balance information because they can better manage their cash position.

—Electronic delivery of statements and expanded hours for same day electronic tax payments and for processing paper tax payments (5:00 p.m. Eastern Time cut-off).

—Improved collateral monitoring. TIP will receive hourly collateral updates to help prevent deficiencies. These improvements ensure that Treasury's funds are always fully collateralized.

The Federal Reserve conducted training sessions for select financial institutions on the new TT&L applications across the U.S. during February, March, and April of this year.

Additional Information

In response to the implementation of these new applications, the Federal Reserve is publishing a new policy statement in this separate part pertaining to daylight overdrafts. Prior to July 10, 2000, Treasury's Financial Management Service will update the Treasury Financial Manual (TFM) chapters pertaining to TT&L and collateral. TFM chapters are available at www.fms.treas.gov/tfm/index.html.

For more information on the new TT&L applications, please visit www.frbservices.org. Financial institutions may also visit www.fms.treas.gov/regs.html for regulations and guidance pertaining to TT&L, EFTPS, and collateral. Financial institutions with questions on the new TT&L applications should contact the TT&L National Customer Service Area on 1–800–568–7343.

Dated: May 17, 2000.

Bettsy H. Lane,

Assistant Commissioner, Federal Finance, Financial Management Service.

[FR Doc. 00–13015 Filed 5–23–00; 8:45 am]

BILLING CODE 4810–35–P

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H.R. 434/P.L. 106–200

Trade and Development Act of 2000 (May 18, 2000; 114 Stat. 251)

S. 1744/P.L. 106–201

To amend the Endangered Species Act of 1973 to provide that certain species conservation reports shall continue to be required to be submitted. (May 18, 2000; 114 Stat. 307)

S. 2323/P.L. 106–202

Worker Economic Opportunity Act (May 18, 2000; 114 Stat. 308)

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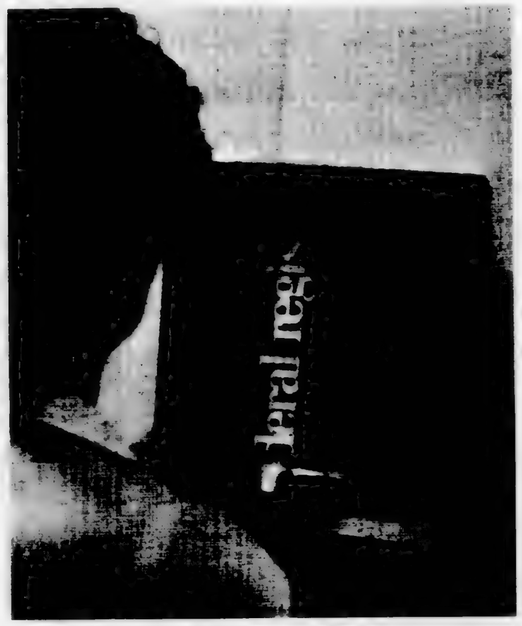

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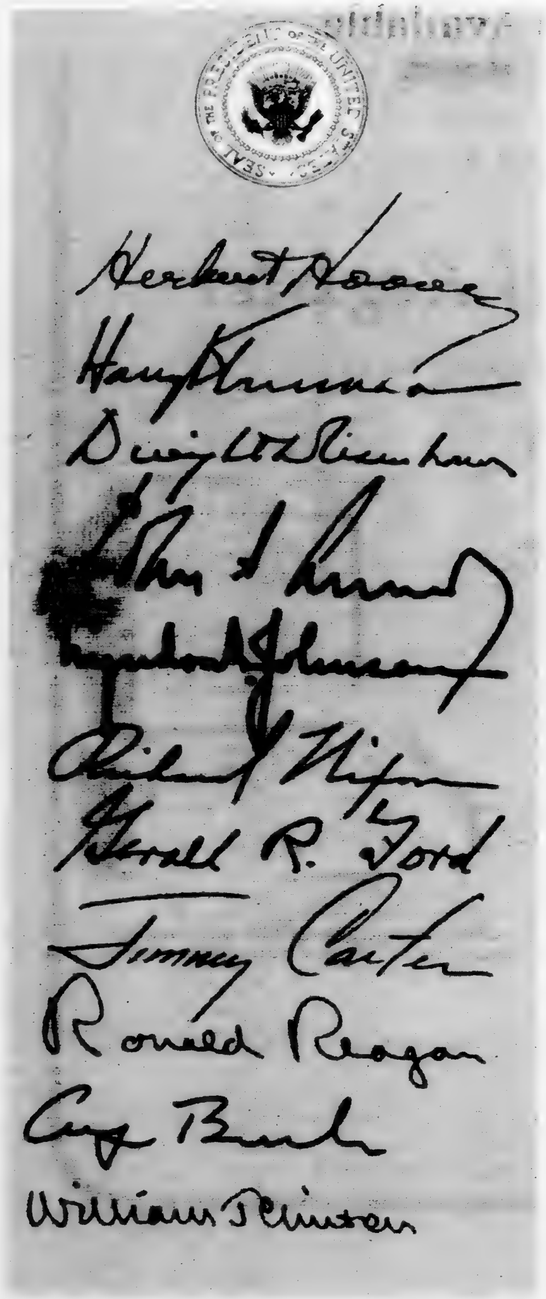

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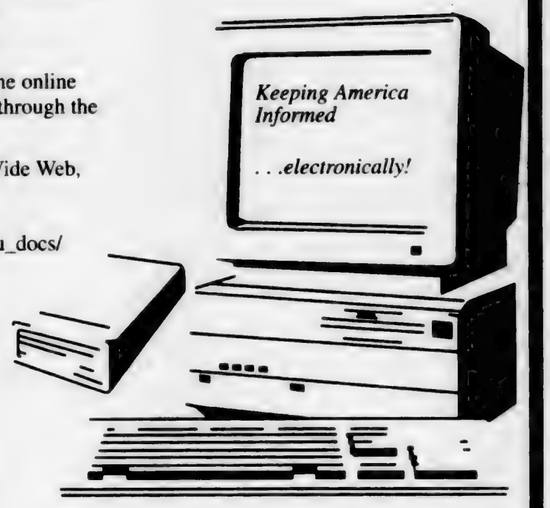

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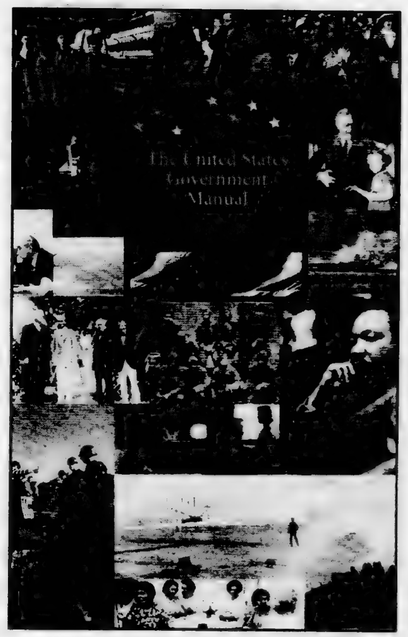

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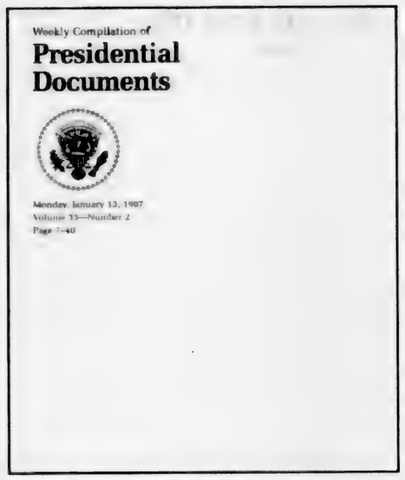

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Rules and Regulations

Federal Register
Vol. 65, No. 102
Thursday, May 25, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

GENERAL ACCOUNTING OFFICE

4 CFR Chapter I

Claims, Waiver of Claims and Transportation Issues

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: The General Accounting Office (GAO) is removing regulations which relate to the settlement of claims, settlement of accounts of deceased and incompetent individuals, transportation transactions, and waiver of claims for erroneous payments. The Legislative Branch Appropriations Act of 1996 transferred these functions to the executive branch, but these regulations were kept for a transition period. This final rule eliminates these regulations as unnecessary because the functions are no longer carried out by GAO but have been transferred to other federal agencies.

DATES: Effective May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Barry L. Shillito, 202–512–4663; shillitob.ogc@gao.gov.

SUPPLEMENTARY INFORMATION:

Claims Settlements Authority

In Subchapter C (Claims; General), Parts 30–36 set out the Comptroller General's regulations for the settlement of (1) claims and (2) accounts of certain deceased and incompetent individuals. The Legislative Branch Appropriations Act of 1996, Public Law 104–53, sec. 211(a), 109 Stat. 514, 535 (1996), transferred certain of the Comptroller General's authority to settle claims and accounts to the Director of the Office of Management and Budget (OMB), and provided for the Director of OMB to delegate this authority to other appropriate agencies. The Director of OMB delegated his authority to several executive branch agencies. Subsequently, the General Accounting Office Act of 1996, Public Law 104–316, 110 Stat. 3826 (1996), set out in detail, among other things, the authority given to the Director of OMB and other heads of agencies to settle the claims and accounts formerly subject to settlement by the Comptroller General. Section 202(n) of the GAO Act of 1996 made a conforming amendment to 31 U.S.C. 732 to set out the executive branch agencies to whom the Director of OMB delegated the authority to settle claims formerly within the authority of the Comptroller General. Additionally, section 103(c) of the GAO Act of 1996 transferred the Comptroller General's authority to promulgate regulations with respect to the designation of beneficiaries for certain deceased and incompetent persons to various specified officials in the three branches of government.

The Director of OMB delegated to the Director of the Office of Personnel Management (OPM) the authority to settle claims against the United States involving Federal employee compensation and leave, deceased employees' compensation, and proceeds of canceled checks payable to deceased beneficiaries. Individuals with these types of claims should no longer contact GAO but should contact OPM.

The Director of OMB delegated to the Administrator of General Services the authority to settle claims involving expenses incurred by Federal civilian employees for official travel and transportation and for relocation expenses incident to transfers of official duty station. Individuals with these type of claims should no longer contact GAO but should contact the General Services Administration.

OMB delegated to the Secretary of Defense the authority to settle claims for military pay, allowances, travel, transportation, retired pay, and survivor benefits as well as claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at Government expense. Individuals with these types of claims should no longer contact GAO but should contact the Department of Defense.

Accordingly, the Comptroller General no longer has the authority to prescribe the regulations in 4 CFR parts 30–32, regarding claims settlement, and parts 33–36, regarding settlement of accounts for certain deceased and incompetent persons.

Transportation

Sections 125 and 127(d) of the GAO Act of 1996, transferred the Comptroller General's authority to promulgate regulations for transportation transactions for use of U.S. flag carriers pursuant to the Merchant Marine Act of 1936, 46 U.S.C. 1241a, and the Fly America Act, 49 U.S.C. 40118(c), to the Administrator of General Services. Accordingly, the Comptroller General no longer has authority to prescribe the regulations found at 4 CFR part 52. With the removal of part 52, there is no further need for 4 CFR part 51.

Section 202(o)(2) of the GAO Act of 1996 transferred the Comptroller General's authority to promulgate regulations governing the review of GSA transportation settlement actions pursuant to 31 U.S.C. 3726(g)(1) to the Administrator of General Services. Accordingly the Comptroller General no longer has authority to prescribe the regulations found at 4 CFR part 53.

Section 202(o)(1) of the GAO Act of 1996, 110 Stat. 3826, 3844 (1996), removed the Comptroller General's authority to jointly prescribe standards, with the Secretary of Treasury, for advance payment of charges for transportation services pursuant to 31 U.S.C. 3726(f). Accordingly, the Comptroller General no longer has authority to prescribe the regulations found at 4 CFR part 56.

Given the above discussion, there is no long current need for a subchapter devoted to transportation (Subchapter D).

Waiver

Sections 103 of the GAO Act of 1996 transferred the Comptroller General's authority to waive claims against civilian employees arising out of erroneous payments of pay and allowances, travel, transportation and relocation benefits to the head of an agency with respect to a legislative branch employee, or to the Director of OMB with respect to any other agency or employee. Further, the Comptroller General's authority over such claims against members of the military and the National Guard was transferred to the Director of OMB by sections 105(b) and 116 of the GAO Act of 1996. The Director of OMB has delegated his authority to the head of the agency that

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made the erroneous payment. Accordingly the Comptroller General no longer has authority to promulgate the regulations at 4 CFR parts 91 and 92 (Subchapter G—Standards for waiver of claims for erroneous payments of pay and allowances, and of travel, transportation, and relocation expenses and allowances). Individuals seeking a waiver should no longer contact GAO but should direct a request for waiver to their employing agency.

Accordingly, as set forth in the preamble and under the authority of Public Law 104–53, sec. 211(a), 109 Stat. 535, and secs. 103(c), 103(d), 105(b), 116, 125, and 127 of Public Law 104–316, 110 Stat. 3826, GAO amends 4 CFR Chapter I as follows:

1. Subchapter C, consisting of parts 30 through 36, Subchapter D, consisting of parts 51 through 53 and part 56, and Subchapter G, consisting of parts 91 through 93, are removed and reserved.

Dated: May 19, 2000.

Robert P. Murphy,

General Counsel, General Accounting Office.

[FR Doc. 00–13192 Filed 5–24–00; 8:45 am]

BILLING CODE 1610–02–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 317

RIN 3206–AI58

Employment in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations governing career and limited appointments to the Senior Executive Services (SES). The amended regulations emphasize the importance of executive leadership qualifications in agency SES selection criteria, strengthen merit principles, and increase SES staffing flexibilities to help agencies recruit the brightest and most diverse executive cadre possible.

EFFECTIVE DATE: June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Daliza Salas (202–606–1274, email desalas@opm.gov) or Marcia Staten (202–606–1832, email mkstaten@opm.gov).

SUPPLEMENTARY INFORMATION: The success of the Senior Executive Service (SES) rests on the ability of agencies to employ highly competent, motivated, and diverse professionals dedicated to public service who have the requisite leadership expertise to meet the challenges facing the Government and the Nation now and into the future.

The final regulations and accompanying guidance to agencies are an outcome of extensive discussions with stakeholders about improving the SES. These discussions challenged stakeholders to think about the future and whether the way we develop, select, and manage the SES cadre produces the kind of executives the Government needs to meet the leadership challenges of the 21st century. Although stakeholder views varied widely, there was consensus on many ideas, including increasing agency flexibilities for SES staffing. Specifically, there was general support for improving the SES selection process to ensure that leadership and executive qualifications are the major selection criteria, reducing the paperwork burden on applicants and agencies, considering options for delegating QRB administration, and increasing agency authority to make limited terms appointments.

On July 30, 1999, OPM published a proposed rule in the **Federal Register** (64 CFR 41334) to amend the regulations governing career and limited appointments to the Senior Executive Service (SES) and Qualifications Review Board (QRB) certification. We received 24 written comments during the comment period: 16 from departments and agencies, 4 from professional organizations, and 4 from individuals. There was broad support for the changes, although some respondents had serious reservations about the proposal to delegate QRB administration to individual agencies via delegation agreement.

In addition to these regulatory changes, we have modified internal procedures and other requirements to streamline the SES application process, reduce paperwork requirements, and improve the QRB certification process. These modifications provide alternative methods for documenting executive qualifications for presentation to QRBs and improved guidance and instructions to QRBs to ensure that members fully understand their role and responsibilities. We have also suggested ways for agencies to improve their recruitment and selection procedures. OPM's administrative modifications and the suggested changes at the agency level will help agencies and candidates focus on substance rather than process and format, and they reinforce the goal of achieving a highly-qualified, diverse SES corps. We have summarized these procedural modifications and flexibilities in supplemental guidance to agencies.

Emphasis on Executive Leadership

The key characteristic of an SES position is executive leadership, and therefore selection criteria should focus primarily on leadership qualifications. Further, the law at 5 U.S.C. 3393 requires agency Executive Resources Boards to conduct the merit staffing process for career entry into the SES, including reviewing the executive qualifications of each career SES candidate.

During discussions on improving the SES, stakeholders confirmed that, in many agencies, the selection criteria focuses mainly on candidates' professional or technical qualifications, and therefore consideration of executive qualifications is not getting the full attention intended by the SES legislation. To strengthen that focus and encourage agencies to fully integrate consideration of executive leadership qualifications into their selection processes, the proposed regulations amended the current provisions to incorporate the statutory requirements.

Most commenters supported the proposal. One agency felt there was not pressing need to revise the current wording, as what constitutes SES qualifications changes over time with new studies and emerging approaches and theories. We do not agree, given that the statute requires selection based on executive qualifications and our findings that many agencies are not considering executive expertise in their SES selections. An August 1999 survey of SES members reinforces these findings. Only 56 percent of the senior executives responding to the survey said that their agencies strongly emphasize executive qualifications in evaluating applications and use them as key factor in determining who is selected for the SES. Further, our research tells us that the emphasis on executive skills and expertise is even more critical than in the past and will continue to be of primary importance in the future. The survey findings supported this as well. When asked to rank qualifications for SES positions now and in five years, respondents rated executive qualifications as more important than technical qualifications today and even more important in five years.

One agency, while not opposing the proposal, was concerned that it might lead to overly prescriptive procedural requirements. This is not our intent. Agencies will continue to have the latitude to design merit staffing processes to meet their unique mission requirements, within the framework of law and regulations, including determining how to ensure that SES selections are based on consideration of executive qualifications.

One agency objected to the requirement that the appointing authority certify the candidate's executive and technical qualifications. The certification requirement is not new—it is included in current regulations at § 317.502(b). The same agency recommended adding a statement that the appointing authority can approve the appointment of a candidate who does not meet the executive qualifications but has special or unique qualities that indicate a likelihood of executive success. Selection of a candidate on this basis is already provided in statute (5 U.S.C. 3393(c)(2)) and current regulations (§ 317.502(c)).

Two professional organizations recommended that we require equal consideration of executive and technical qualifications to ensure that technical qualifications are not favored over executive qualifications. Since the statute does not make this specification, we have not adopted the recommendation. Further, "equal consideration" would indicate that technical qualifications should carry the same weight in SES selections, which is not the case. Executive qualifications should be the primary factor. The final regulations concerning executive qualifications are adopted as proposed in order to reinforce the primacy of executive expertise and encourage agencies to fully integrate consideration of executive leadership qualifications into their selection processes.

Three professional organizations recommended additional language to emphasize that recruitment and selection for initial SES career appointments should be achieved from the brightest and most diverse executive cadre possible. We have added language to the final regulations that stresses the importance of reaching out to women, minorities, and people with disabilities in SES recruitment and selection. We have also addressed this in the supplemental guidance to agencies on the staffing flexibilities and procedural modifications.

Delegating QRB Administration

During stakeholder discussions on improving the SES, several agencies recommended delegating QRB administration to agencies to give them more flexibility to manage their executive resources. Some were critical of the paperwork and procedures connected with QRB certification and felt that agencies could make process improvements if the authority were delegated. OPM agreed to consider the recommendation, incorporated it into the proposed regulations, and formally asked for stakeholder views. The proposed regulatory changes provided for delegation of QRB administration to agencies, on an agency-by-agency basis via individual delegation agreements, provided that the focus on leadership and executive expertise would be maintained and merit system principles would be preserved.

Two-thirds of those commenting on the proposal either supported or voiced no objections to the proposal. However, very few indicated an interest in pursuing a delegation agreement. Supporters favored the increased flexibility to manage and be held accountable for the SES appointment process. Another commented that agencies have long records of merit-based selections of individuals with well-demonstrated SES qualifications.

A few supporters had some reservations. One stated that delegation might create undue pressure on QRB members to certify candidates. Another commented that fairness might be jeopardized under delegation and politicization heightened. A third commenter said that more benefit could be obtained through streamlining paperwork requirements than through QRB delegation.

One agency, three professional organizations, and four individuals strongly opposed the proposal. Key reasons given were serious concerns about the ability of agencies to guarantee an independent peer review, the potential for abuse of the merit staffing process and politicization of the career SES, and the possible adverse impact on efforts to increase the diversity of the SES cadre. In addition, one professional organization questioned OPM's authority to delegate QRB administration. Regarding this issue, we have determined that OPM's broad statutory authority at 5 U.S.C. 1104 for delegating personnel management functions permits the delegation of QRB administration.

Although more respondents supported the proposal than opposed it, the arguments against delegation were substantive and persuasive. The concerns about preserving the independence of QRB certification and the perceived potential for politicization of the career appointment process expressed by those opposed to the proposal outweighed comments in favor of delegation. Since the supporters did not offer compelling reasons for proceeding with the proposal, the final regulations do not include the proposed amendment to § 317.502 regarding QRB delegation.

We will strengthen efforts to encourage senior executives from diverse backgrounds to serve as QRB members to ensure that the boards are representative of the Nation's diversity. In addition, we have modified the procedures and streamlined paperwork associated with QRB administration to address concerns that the process focuses on paper over substance and to provide more specific and detailed feedback to agencies on QRB disapprovals.

Noncareer Conversion Restriction

The current regulation at § 317.502(e) precludes QRB certification of a noncareer SES employee for career appointment in the employee's current position or a successor to that position, because there is no bona-fide vacancy for which to hold competition. This regulation was intended to preserve the merit principle of fair and open competition in merit selections. Since the regulation was promulgated, however, questions have arisen about the definition of "noncareer SES employee." The proposed regulation strengthens and clarifies the intent of the current regulation by expanding coverage to noncareer-type employees, including noncareer SES appointees and Schedule C appointees, or the equivalent. This generally refers to individuals in or from positions of a confidential, policy-determining, or policy-advocating nature.

Commenters concurred with the proposed revision. One agency recommended adding certain limited appointees to those considered to be noncareer-type employees. These would be limited appointees not appointed under an agency's delegated authority at § 317.601(c)(1), which restricts use of the authority to individuals with career or career-conditional appointments. Since limited appointees, regardless of the method of appointment, are not considered noncareer-type employees within the meaning intended by this provision, we are not adopting the recommendation.

One agency recommended that we delete "or equivalent" and restrict coverage to noncareer SES and Schedule C appointees only. We believe the additional language is needed to cover other categories that might meet the intent of the provision, so we have not adopted this recommendation. The final regulations are adopted as proposed.

SES Probationary Period

The proposal made two changes to the regulations governing the SES

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probationary period. One would require agencies to assess the performance of new career appointees before the end of the probationary period and make an official determination that the appointee is performing at the level of excellence expected of a senior executive. The second change would require that, during the probationary period, agencies address the executive development activities outlined in development plans used to support QRB certification based on special and unique qualifications. Both requirements were an outcome of stakeholder discussions about making more effective use of the probationary period. Stakeholders had serious concerns about the lack of attention paid to performance during probation. They also felt that, when a QRB certifies candidates on the basis of special and unique qualifications, stronger oversight is needed to verify that the executive development activities promised by the agency are accomplished.

There was overall support for the proposals. One agency, while supporting the concepts, opposed placing the provisions in regulation. The agency felt that agencies should be trusted to manage their own executive resources effectively under their own administrative authority. Another supported the concepts, but said that the means should be left to each agency. Another agency opposed the provision, stating that performance issues can be addressed through the performance management system. While these views have merit, most stakeholders indicated that something more is needed to reinforce the importance of paying attention to performance during probation.

One professional organization recommended requiring training in succession planning and diversity leadership during probation. These are important issues, and we are using other venues to bring their importance to that attention of agency leadership and human resources directors. The training needs of individual appointees vary widely. While some may need training in succession planning or diversity leadership, there are other equally critical areas where training might be necessary, such as managing information technology or measuring business results. Agencies should have the flexibility to assess these needs and determine how to address them.

Two agencies recommended that the appointing authority be allowed to delegate the certification responsibility, and we agree. The final regulations provide that the appointing authority, or his or her designee, must certify that the appointee performed at the level of excellence expected of a senior executive during the probationary period.

Pool of Limited Appointment Authorities

The proposed regulations would increase the pool of limited appointment authorities currently available to agencies from 2 percent to 3 percent of their total SES allocation. Use of this pool authority is restricted to appointments of individuals with career or career-type appointments outside the SES.

Most commenters supported this provision. One agency recommended that the pool be increased to 5 percent. One professional organization opposed the provision, stating that it would encourage and facilitate more temporary SES appointments and would jeopardize OPM's traditional oversight role. However, Congress intended that a number of appointments in the SES be temporary, and set a maximum of 5 percent of the Governmentwide SES allocation to prevent excessive use of the authority. Since the SES was established in 1978, no more than 2.5 percent have been limited appointees, well within the congressional limit. Increasing the agency pool authority by 1 percent gives agencies some additional flexibility, while giving OPM enough reserves to address other limited appointment needs that cannot be met with the agencies' delegated authority. The final rule adopts the amendment as proposed.

In exercising this delegated authority, agencies must continue to comply with all other statutory and regulatory provisions affecting limited appointments, *e.g.*, that an appointment be made only to a general position; that the appointee meet the qualifications required for the position; and that the appointment is to a non-continuing, project-type position. OPM will continue to monitor use of this appointment authority to ensure compliance with the statutory 5 percent limit on SES limited appointments Governmentwide and that appointments are being made in accordance with statutory and regulatory requirements.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

List of Subjects in 5 CFR Part 317

Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR Part 317 as follows:

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

1. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593 and 3596.

Subpart E—Career Appointments

2. Amend § 317.501 by revising the section heading, the first sentence of paragraph (c)(2), and paragraph (c)(6), to read as follows:

§ 317.501 Recruitment and selection for initial SEC career appointment be achieved from the brightest and most diverse pool possible.

* * * * *

(c) * * *

(2) Provide that the ERB consider the executive and technical qualifications of each candidate, other than those found ineligible because they do not meet the requirements of the vacancy announcement. * * *

* * * * *

(6) Provide that the appointing authority select from among the candidates identified as best qualified by the ERB and certify the candidate's executive and technical qualifications.

* * * * *

3. Amend § 317.502 by revising paragraph (e) to read as follows:

§ 317.502 Qualifications Review Board certification.

* * * * *

(e) An action to convert a "noncareer-type" employee to a career SES appointment in the employee's current position or a successor to that position will not be forwarded to a QRB. A "noncareer-type" employee includes a noncareer SES appointee, a Schedule C appointee, or equivalent.

* * * * *

4. Amend § 317.403 by revising paragraph (a); redesignating paragraphs (b) through (f) as paragraphs (c) through (g), respectively; adding a new paragraph (b); and revising the last sentence in newly redesignated paragraph (f) to read as follows:

§ 317.503 Probationary period.

(a) An individual's initial appointment as an SES career appointee becomes final only after the individual has served a 1-year probationary period as a career appointee; there has been an assessment of the appointee's performance during the probationary period; and the appointing authority, or his or her designee, has certified that the appointee performed at the level of excellence expected of a senior executive during the probationary period.

(b) When a career appointee's executive qualification have been certified by a Qualifications Review Board on the basis of special or unique qualities, as described in § 317.502(c), the probationary assessment must address any executive development activities the agency identified in support of the request for QRB certification.

* * * * *

(f) * * * The individual, however, need not be recertified by a QRB unless the individual was removed for performance or disciplinary reasons.

* * * * *

5. In Subpart F, the heading for the subpart is revised to read as follows:

Subpart F—Noncareer and Limited Appointments

6. Amend § 317.601, paragraph (c)(1), by revising the first sentence to read as follows:

§ 317.601 Authorization.

* * * * *

(c) * * *

(1) Agencies are provided a pool of limited appointment authorities equal to 3 percent of their Senior Executive Service (SES) position allocation, or one authority, whichever is greater. * * *

[FR Doc. 00–13053 Filed 5–24–00; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 360 and 361

[Docket No. 99–064–2]

Noxious Weeds; Update of Weed and Seed Lists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the noxious weeds regulations by adding *Homeria* spp. (cape tulips) to the list of terrestrial weeds. Listed noxious weeds may be moved into or through the United States or interstate only under a written permit and under conditions that would not involve a danger of dissemination of the weeds. This action is necessary to prevent the artificial spread of noxious weeds into noninfested areas of the United States.

EFFECTIVE DATE: June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Permits and Risk Assessment, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations were promulgated under authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*), and are set forth in 7 CFR part 360. They contain restrictions on the movement of listed noxious weeds into or through the United States and interstate.

Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, "Foreign Commerce," requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's (APHIS) regulations implementing the provisions of title III of the FSA are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weed seeds with no tolerances applicable to their introduction into the United States.

On December 27, 1999, we published in the **Federal Register** (64 FR 72293–72296, Docket No. 99–064–1) a proposal to amend the noxious weed regulations by adding Homeria spp. (cape tulips) to the list of terrestrial noxious weeds in § 360.200(c) and to the list of seeds with no tolerances applicable to their introduction in § 361.6(a)(1).

We held a public hearing on the proposed rule on February 1, 2000. No one came to speak about the proposed rule. We also solicited comments concerning our proposal for 60 days ending February 25, 2000. We received one comment by that date. The comment was from a representative of a foreign government. We carefully considered the comment, and have discussed its concerns below.

Comment: APHIS should conduct its own comprehensive review to assess the number of *Homeria* spp. already present in the United States and their distribution, by species.

Response: As stated in our proposed rule, APHIS has been unable to determine the number and distribution of *Homeria* spp. in the United States. Based on information available from literature and known herbarium collections, there are no known established, feral populations of *Homeria* spp. in the United States. In our proposed rule, we asked the public to provide us with information on what species of *Homeria* are being planted and where. Due to the limited resources available to fund monitoring and survey programs in regard to noxious weeds, we are unable to conduct additional reviews specific to *Homeria* spp. We will continue to monitor and conduct surveys at current levels, and as resources permit. If, in the future, we are able to determine that certain species of the genus *Homeria* have become widespread, then we will consider removing those particular species from the list of noxious weeds at that time.

Comment: APHIS should assess the potential for *Homeria* spp. to set seeds under the U.S. cultural practices and the potential for *Homeria* spp. to become established as weeds in agricultural areas of the United States.

Response: APHIS has no reason to doubt that most species of *Homeria* will set seed in the United States. Using a simulation model for predicting the effects of climate on the distribution of plants, we matched locations of infestations of *Homeria* spp. in Australia to locations with similar climate in the United States. Based on the results of the simulation, we have reason to believe that *Homeria* spp. presents a significant risk of becoming established as a weed in certain areas of the United States, especially along the west coast and in Texas.

Prolific seed production is only one indicator of high dispersal or spread potential. At least one species of the genus *Homeria, H. miniata*, does not produce viable seeds, but produces cormils in each leaf axil and around the developing corm at the base of the plant. The cormils may remain dormant and build up in established patches, serving as effective dispersal agents. If APHIS determines in the future that certain species of the genus *Homeria* do not produce seed or cormils, we will consider relieving restrictions on the importation of those species.

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Comment: *Homeria* spp. may not present the same degree of risk in the United States as they have in South Africa and Australia, due probably to unique pasture and animal husbandry situations in these countries. APHIS could investigate whether *Homeria* spp. would cause any economic losses in U.S. pastures, particularly taking into account the pasture management and animal husbandry systems being used in the country.

Response: Again, APHIS has determined that several areas of the United States provide ideal climate conditions for the establishment of *Homeria* spp. As stated in our proposed rule, we believe there is a significant risk associated with the importation of seeds of *Homeria* spp. as contaminants of shipments of Australian oats or other varieties of seeds. We believe that such shipments provide a direct path for establishment of *Homeria* spp. in U.S. pastures, which could result in the poisoning of livestock, reduction of carrying capacity, and substantial losses for U.S. farmers.

Further, our review of the scientific literature has revealed that species of the genus *Homeria* have escaped from garden plantings in Australia and New Zealand into surrounding areas. According to the literature, dispersal occurs by the movement of corms and seeds, aided by humans, animals, wind, and water. When plants dry out at the end of the growing season, they may break off at the soil level, with seed heads attached. The dry plants then may blow around the ground surface, scattering seeds.

In the absence of any data regarding imported species of the genus *Homeria* that have become widely distributed in the United States or imported species that do not produce cormils or seeds, and for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set forth below, regarding the economic effects of this rule on small entities.

In accordance with the FNWA, the Secretary of Agriculture is authorized to promulgate regulations to prevent the movement of any noxious weed into the United States, or interstate, except under conditions prescribed by the Secretary.

This rule will add *Homeria* spp. (cape tulips) to the list of Federal noxious weeds and to the list of seeds with no tolerances applicable to their introductio...

Homeria spp. (cape tulips) are not known to exist in the United States in the wild. However, *Homeria* spp. have been imported into the United States under the Bulb Preclearance Program since 1994, with increasing numbers of imports each year. We estimate that over 1.8 million corms of *Homeria* spp. were received in the United States between July 1994 and March 1999. However, data on the distribution of *Homeria* spp. are not available. Persons who import or purchase *Homeria* spp., including those in the nursery trade, could be affected by this rule. However, data on the number and location of persons who import or purchase *Homeria* spp. are not available.

As stated above, *Homeria* spp. nursery stock has been imported into the United States for several years without restriction. Recently, APHIS inspectors found seeds of *Homeria* spp. in shipments of Australian oats to the United States. As a result of this finding, APHIS conducted a risk assessment to determine the potential effects of *Homeria* spp. on U.S. agriculture. The risk assessment revealed that *Homeria* spp. may present a high risk to U.S. agriculture and that *Homeria* spp. meet the criteria for listing as a Federal noxious weed.

Since imported Australian oats are likely to be used as a feed for horses and other livestock, it is likely that the *Homeria* spp. seeds could be introduced into grazing lands and paddocks, where they could do the following:

- Poison livestock and/or humans. Livestock may die within 12 hours or less after ingesting the leaves.
- Reproduce and persist in prolific fashion, thus crowding out desirable plants and competing with them for soil nutrients, reducing the carrying capacity of pastures and reducing crop yields.

Historical data show that, in the 1980's in South Africa, poisoning from *Homeria* spp. and a related genus resulted in losses of $2.5 to $3 million per year in livestock. All classes of livestock are susceptible, but cattle, sheep, goats, and donkeys are most likely to suffer poisoning under natural conditions. Further, since *Homeria* spp. could grow on cultivated land, they may be cut with forage and cause poisoning in stall-fed animals. If *Homeria* spp. are introduced into the United States via Australian oats, U.S. livestock producers could be expected to experience livestock losses similar to those experienced by South Africa in the 1980's.

Effects on Small Entities

The unchecked spread of *Homeria* spp. into the United States can be expected to have a negative economic effect on livestock operations in the United States, whether small or large, given significant negative effects on the regions in Australia and South Africa where *Homeria* spp. are already established. In responding to the potential harm caused by *Homeria* spp. to livestock and grazing lands, one or more organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to be introduced into the environment. Although the size and magnitude of such potential costs are not known, it is clear that this rule will help to prevent the need for such expenditures.

We are aware that there are persons in the nursery trade who import and distribute *Homeria* spp. nursery stock, especially corms. We have no data available on the location, number, or size of those businesses; however, it is likely that the majority of those businesses could be classified as small entities. In our proposed rule, we requested that the public provide any available data relevant to volumes and distribution of imported *Homeria* spp. nursery stock. We received no relevant data in response to our request. Further, we asked the public to provide information on the current distribution and taxonomy of *Homeria* spp. in the United States in order to determine if certain species of *Homeria* spp. are widespread, and, therefore, should be excluded from the noxious weed regulations. We received no information in response to this request, and, therefore, are adopting our proposed rule as a final rule, without change.

We believe that adding *Homeria* spp. to the list of Federal noxious weeds will help preclude potential economic and ecological consequences that could result from its spread.

Alternatives Considered

We considered two alternatives to this rule. One alternative was to make no changes in the regulations; *i.e.*, to not add *Homeria* spp. to the list of Federal noxious weeds. We have rejected that alternative because of the potential economic and ecological consequences that we believe would result from the spread *Homeria* spp. We also considered exempting certain species of the genus *Homeria* from being listed as noxious weeds if we received information documenting that certain species had become widely distributed in the United States. We did not receive any information on the distribution of any species of the genus *Homeria*, and, therefore, could not select that alternative.

This final rule contains no new information collection or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, we are amending 7 CFR parts 360 and 361 as follows:

PART 360—NOXIOUS WEED REGULATIONS

1. The authority citation for part 360 continues to read as follows:

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.22, 2.80, and 371.2(c).

§ 360.200 [Amended]

2. In § 360.200, paragraph (c) is amended by adding, in alphabetical order, an entry for "*Homeria* spp.".

PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

3. The authority citation for part 361 continues to read as follows:

Authority: 7 U.S.C. 1581–1610; 7 GFR 2.22, 2.80, and 371.2(c).

§ 361.6 [Amended]

4. In § 361.6, paragraph (a)(1) is amended by adding, in alphabetical order, an entry for "*Homeria* spp.".

Done in Washington, DC, this 19th day of May 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–13158 Filed 5–24–00; 8:45 am]

BILLING CODE 3410–34–U

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB87

Loan Policies and Operations; Participations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 614 on April 25, 2000 (65 FR 24101). This final rule deletes requirements for a Farm Credit System (Farm Credit or System) institution to provide notice to or seek consent from other System institutions when it buys participation interests in loans originated outside its chartered territory. Repealing these notice and consent requirements can help increase the flow and availability of agricultural credit and help diversify geographic and industry concentrations in the loan portfolios of Farm Credit banks and associations. As a result of this rule, a Farm Credit bank or association will no longer need approval from other System institutions when it buys participations in loans from non-System lenders. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 25, 2000.

EFFECTIVE DATE: The regulation amending 12 CFR part 614 published on April 25, 2000 (65 FR 24101) is effective May 25, 2000.

FOR FURTHER INFORMATION CONTACT:

S. Robert Coleman, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 22, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–13191 Filed 5–24–00; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–04–AD; Amendment 39–11729; AD 2000–10–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SE.3160, SA.316B, SA.316C, SA.319B, SA330F, SA330G, SA330J, SA341G, and SA342J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Eurocopter France Model SE.3160, SA.316B, SA.316C, SA.319B, SA330F, SA330G, SA330J, SA341G, and SA342J helicopters. This AD requires inspecting each inflation head and union nut on certain emergency flotation gear nitrogen cylinders and replacing each cracked inflation head with an airworthy inflation head. This amendment is prompted by the discovery of cracked inflation heads during routine maintenance inspections of emergency flotation systems. The actions specified by this AD are intended to prevent an emergency flotation gear nitrogen cylinder from exploding with resultant high velocity shrapnel, which could cause airframe damage or personal injury and subsequent loss of control of the helicopter.

DATES: Effective June 29, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 2000.

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ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that applies to Eurocopter France Model SE.3160, SA.316B, SA.316C, SA.319B, SA330F, SA330G, SA330J, SA341G, and SA342J helicopters was published in the **Federal Register** on December 10, 1999 (64 FR 69206). That action proposed to require inspecting each inflation head and union nut on certain emergency flotation gear nitrogen cylinders and replacing each cracked inflation head with an airworthy inflation head.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial changes.

The FAA estimates that 114 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,138 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $271,092.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–10–05 Eurocopter France: Amendment 39–11729. Docket No. 99–SW–04–AD.

Applicability: Model SE.3160, SA.316B, SA.316C, SA.319B, SA330F, SA330G, SA330J, SA341G, and SA342J helicopters with emergency flotation gear nitrogen cylinder, P/N ARZ 74921, with inflation head, part number (P/N) 74929, that has no serial number (S/N), or with a S/N lower than 12000, or has a union nut, P/N 75441 or 75834, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless previously accomplished.

To prevent an emergency flotation gear nitrogen cylinder from exploding with resultant high velocity shrapnel, which could cause airframe damage or personal injury and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model SE.3160, SA.316B, SA.316C, SA.319B, SA330F, SA330G, or SA330J helicopters,

(1) At the next scheduled emergency flotation gear maintenance inspection or 400 hours time-in-service (TIS), whichever occurs first, accomplish the following:

(i) Discharge each emergency flotation gear nitrogen cylinder (cylinder) in accordance with the "Discharge Procedure for the 74921G Cylinder" in Eurocopter France Service Bulletin 05.66, Revision 3, dated May 4, 1998 or Eurocopter France Service Bulletin 05.58, Revision 3, dated May 4, 1998.

(ii) Remove the inflation head and degrease the assembly.

(iii) Perform a dye penetrant inspection of each inflation head and union nut on each emergency flotation gear nitrogen cylinder.

(2) Thereafter, conduct a dye penetrant inspection of each inflation head and union nut on each cylinder at each scheduled emergency flotation gear maintenance inspection or at intervals of not more than 400 hours TIS, whichever occurs first.

(b) For Model SA341G or SA342J helicopters,

(1) At the next scheduled emergency flotation gear maintenance inspection or 520 hours time-in-service, whichever occurs first, accomplish the following:

(i) Discharge each emergency flotation gear nitrogen cylinder in accordance with the "Discharge Procedure for the 74921G Cylinder" in Eurocopter France Service Bulletin 05.19, Revision 3, dated May 4, 1998.

(ii) Remove the inflation head and degrease the assembly.

(iii) Perform a dye penetrant inspection of each inflation head and union nut on each cylinder.

(2) Thereafter, conduct a dye penetrant inspection of each inflation head and union nut on each cylinder at each scheduled emergency flotation gear maintenance inspection or at intervals of not more than 520 hours TIS, whichever occurs first.

(c) Before further flight, replace each cracked inflation head, P/N 74929, with an airworthy inflation head having S/N 12000 or higher.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The discharge of each cylinder shall be done in accordance with the "Discharge Procedure for the 74921G Cylinder" in Eurocopter France Service Bulletin 05.66, Revision 3, dated May 4, 1998; Eurocopter France Service Bulletin 05.58, Revision 3, dated May 4, 1998; or Eurocopter France Service Bulletin 05.19, Revision 3, dated May 4, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 29, 2000.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile AD's 80–062–041(A) R2, 80–063–030(A) R2, and 80–061–028(A) R2, all dated July 15, 1998.

Issued in Fort Worth, Texas, on May 5, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–12351 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–112–AD; Amendment 39–11747; AD 99–15–04 R1]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc., Models PA–46–310P and PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 99–15–04, which currently requires you to calibrate, inspect, and repair or replace portions of the turbine inlet temperature system on all The New Piper Aircraft, Inc. (New Piper) Models PA–46–310P and PA–46–350P airplanes (different actions for different airplane models). Information reveals that the AD should not apply to airplanes where the factory installed turbine inlet temperature gauge and associated probe have been replaced through supplemental type certificate (STC). This AD retains the actions of AD 99–15–04, and restricts the applicability accordingly. The actions specified by this AD are intended to prevent improper engine operation caused by improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes, which could result in engine damage/failure with consequent loss of control of the airplane.

EFFECTIVE DATE: This AD becomes effective on July 28, 2000.

ADDRESSES: You may examine information related to this AD at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–112–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Young, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6079; facsimile: (770) 703–6097; e-mail address: "Donald.Young@faa.gov".

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

Has FAA taken any action to this point? Field reports that indicated service accuracy problems with the existing turbine inlet temperature system on certain New Piper Models PA–46–310P and PA–46–350P airplanes caused FAA to issue AD 99–15–04, Amendment 39–11223. This AD currently requires you to accomplish the following:

1. Calibrate the turbine inlet temperature system to assure the accuracy of the existing turbine inlet temperature indicator and wiring on all airplanes;

2. Repair or replace any turbine inlet temperature system that fails the calibration test on all airplanes;

3. Repetitively replace the turbine inlet temperature probe on the Model PA–46–350P airplanes; and

4. Insert a copy of the AD into the Pilot's Operating Handbook (POH) of certain airplanes.

Since issuing AD 99–15–04, we have received information to show that the AD should not apply on airplanes where the factory installed turbine inlet temperature gauge and associated probe were replaced through supplemental type certificate (STC).

To address this issue, we issued a notice of proposed rulemaking (NPRM) to revise AD 99–15–04. This NPRM was published in the **Federal Register** on November 5, 1999 (64 FR 60383). The NPRM proposed to continue to require you to accomplish all the actions that AD 99–15–04 currently requires. Those airplanes that do not have a Lewis or Transicoil Turbine Inlet Temperature Gauge and associated probe installed, and where this system was replaced in accordance with an STC, would be excluded from the AD. Relief from the AD is available only if the gauge and probe are replaced through STC and not if a second turbine inlet temperature gauge was installed while retaining the Lewis or Transicoil gauge and probe.

Was the public invited to comment on the NPRM? The FAA invited interested persons to participate in the making of the amendment. A summary of the comments and FAA's responses follows:

Comment Issue No. 1: Provide Justification for Indefinite Life of Probes Installed Through STC

What is the commenter's concern? One commenter requests an explanation on how FAA determined that the turbine inlet temperature gauge and associated probe would last indefinitely if installed through STC.

What is FAA's response to the concern? Our intent of this AD is not to life limit the turbine inlet temperature system. We are issuing the AD to assure that the system is calibrated correctly and assure that certain parts of this system are checked and replaced accordingly. We have not received any service history or other evidence of problems with those systems installed in accordance with an STC. We also have not received any evidence of inadequate maintenance instructions for any system installed in accordance with an STC. If an unsafe condition develops on airplanes with these systems installed per STC, we will issue an AD against airplanes with that specific configuration.

We are not changing the AD as a result of this comment.

Comment Issue No. 2: Provide Specific STC Numbers and Holders

What are the commenter's concerns? One commenter requests that FAA include a list of STC numbers and holders of those STC's that provide relief from this AD. This commenter also points out that relief should also be given if New Piper (the manufacturer) develops a new turbine temperature inlet system since we are allowing relief for any STC, whether currently-approved or approved in the future.

What is FAA's response to the concerns? We have elected not to provide a list of STC's that provide relief because the FAA having to revise the AD every time a new STC was developed and certificated would make tracking of this AD action confusing and impractical. We acknowledge that New

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Piper could develop a system that could be eligible for relief from the actions in this AD. In this case, New Piper could request an alternative method of compliance to the AD. If we approve, then New Piper could include a statement in the maintenance instructions that installation of such a system is considered an alternative method of compliance to the AD per a specific FAA letter, or FAA could revise the AD to exclude such systems.

We are not changing the AD as a result of this comment.

Comment Issue No. 3: Include Piper Service Bulletin No. 995A in the AD

What is the commenter's concern? One commenter requests that FAA reference Piper Service Bulletin No. 995A, dated April 26, 1996, in the AD.

What is FAA's response to the concern? Piper Service Bulletin No. 995A, dated April 26, 1996, contains information related to the subject of this AD. However, if you comply with this service bulletin, you have not accomplished all of the actions required by the AD. Therefore, we are not mandating compliance with the service bulletin. Instead we are including the following statement in the AD: "Piper Service Bulletin 995A, dated April 26, 1996, contains information related to the subject matter of this AD."

The FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the following:

—the addition of the statement that Piper Service Bulletin No. 995A contains information related to the subject matter of this AD; and

—minor editorial corrections.

How does the addition and corrections affect the AD? We have determined that the addition and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD will affect 580 airplanes in the U.S. registry.

What is the cost impact of the affected airplanes on the U.S. Register? We estimate 4 workhours per airplane to accomplish the calibration at an average labor rate of $60 an hour. Based on these figures, we estimate the cost impact of the calibration on U.S. operators at $139,200, or $240 per airplane.

We estimate 1 workhour per airplane to accomplish the initial turbine inlet temperature probe replacement at an average labor rate of $60 an hour. Parts cost approximately $518. We estimate the cost impact of the replacement on U.S. operators at $335,240, or $578 per airplane.

What about repetitive actions? These figures only take into account the initial replacement and do not take into account the cost of subsequent repetitive replacements. We have no way of determining the number of replacements each owner/operator will incur over the life of the affected airplanes.

What is the cost impact difference between this AD and AD 99–15–04? The cost impact of this AD is the same as that specified in AD 99–15–04. The only difference between AD 99–15–04 and this AD is the exemption of certain airplanes from this AD if a certain turbine inlet temperature gauge and associated probe is installed.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules. We have placed a copy of the final regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it at the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by removing Airworthiness Directive (AD) 99–15–04, Amendment 39–11223 (64 FR 37699, July 13, 1999), and adding a new AD to read as follows:

99–15–04 R1 The New Piper Aircraft, Inc.: Amendment 39–11747; Docket No. 98–CE–112–AD; Revises AD 99–15–04, Amendment 39–11223.

(a) *What airplanes are affected by this AD?* This AD applies to Models PA–46–310P and PA–46–350P airplanes, all serial numbers, that are:

(1) Certificated in any category; and

(2) Equipped with a Lewis or Transicoil Turbine Inlet Temperature Gauge and associated probe installed. Relief from the AD is available only if the gauge and probe are replaced through STC and not if a second turbine inlet temperature gauge was installed while retaining the Lewis or Transicoil gauge and probe.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions required in this AD are intended to detect and correct improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes. This condition, if not detected and corrected, could result in improper engine operation and engine damage/failure with consequent loss of control of the airplane.

(d) What must I do to address this problem? To address this problem, you must accomplish the following actions:

(1) For the Model PA–46–310P airplanes:

Compliance time	Action	In accordance with
(i) Within the next 100 hours time-in-service (TIS) after August 31, 1999 (the effective date of the AD 99–15–04).	(A) Perform the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection.	The PA–46–310P/350P Maintenance Manual, Chapter 77–20–00 (section A.(1)(d), pages 1 and 2).
	(B) Accomplish the Turbine Inlet Temperature System Calibration.	The PA–46–310P/350P Maintenance Manual, Chapter 77–20–00 (pages 3 and 4).
(ii) Prior to further flight after the above cleaning, inspection, and calibration.	Repair or replace any failed parts (the turbine inlet temperature system indicator cannot be calibrated or the turbine inlet temperature probe fails the inspection) with serviceable parts that are listed in paragraph (e) of this AD.	Equipment manufacturer instructions and the applicable maintenance manual.
(iii) Within the next 100 hours TIS after August 31, 1999 (the effective date of the AD 99–15–04), unless the applicable Pilot's Operating Handbook (POH) revision is incorporated as presented in paragraph (f) of this AD.	(A) Incorporate the emergency procedures presented in paragraph (g) of this AD into the POH. (B) This may be accomplished by inserting a copy of this AD into the POH.	Not applicable.
(iv) As of July 28, 2000 (the effective date of this AD).	Do not install one of the affected Lewis or Transicoil turbine inlet temperature gauges or probes without assuring that it is airworthy and properly calibrated.	Use the procedures located in the previously referenced maintenance manual sections and pages.

(2) For the Model PA–46–350P airplanes:

Compliance time	Action	In accordance with
(i) Within the next 100 hours TIS after August 31, 1999 (the effective date of AD 99–15–04).	(A) Perform the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection.	For serial numbers 4622001 through 4622200 and 4636001 through 4636020, utilize the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.C, page 1). For all serial numbers beginning with 4636021, utilize the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.C, page 1).
	(B) Accomplish the Turbine Inlet Temperature System Calibration.	For serial numbers 4622001 through 4622200 and 4636001 through 4636020, utilize the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.I, pages 4 through 7). For all serial numbers beginning with 4636021, calibration is not required.
(ii) Prior to further flight after the above cleaning, inspection, and calibration.	Repair or replace any failed parts (the turbine inlet temperature system indicator cannot be calibrated or the turbine inlet temperature probe fails the inspection) with serviceable parts that are listed in paragraph (e) of this AD.	Equipment manufacturer instructions and the applicable maintenance manual.
(iii) Upon accumulating 250 hours TIS on the currently installed turbine inlet temperature probe or within the next 100 hours TIS after August 31, 1999 (the effective date of AD 99–15–04), whichever occurs later, and thereafter at intervals not to exceed 250 hours TIS.	Replace the turbine inlet temperature probe with a new part number 481–389 or 481–392 probe.	Equipment manufacturer instructions and the applicable maintenance manual.
(iv) Within the next 100 hours TIS after August 31, 1999 (the effective date of the AD 99–15–04), unless the applicable Pilot's Operating Handbook (POH) revision is incorporated as presented in paragraph (f) of this AD.	(A) Incorporate the emergency procedures presented in paragraph (g) of this AD into the POH. (B) This may be accomplished by inserting a copy of this AD into the POH.	Not applicable.
(v) As of July 28, 2000 (the effective date of this AD).	Do not install one of the affected Lewis or Transicoil turbine inlet temperature gauges or probes without assuring that it is airworthy and properly calibrated.	Use the procedures located in the previously referenced maintenance manual sections and pages.

(3) Operators of the Model PA–46–350P airplanes with over 150 hours TIS on the currently installed turbine inlet temperature probe will have to replace the probe as required in paragraph (d)(2)(iii) of this AD. In this case, the operator may want to accomplish the replacement prior to the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection, and Turbine Inlet Temperature System Calibration.

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(e) *What are the part numbers of the replacement parts referenced in paragraph (d)(2)(ii) of this AD?*

Equipment name and manufacturer	Part No.
(1) Lewis Turbine Inlet Temperature Analog Indicator	471–008. This is the only indicator that has a zero adjustment screw.
(2) Lewis Turbine Inlet Temperature Digital Indicator	548–811. Since this indicator does not have a zero adjustment screw, you must return it to the factory for adjustment or replacement.
(3) Lewis Turbine Inlet Temperature Probe	471–009 for the Model PA–46–310P airplanes and 481–389 or 481–392 for the Model PA–46–350P airplanes.

(f) *What are the POH revisions that can be incorporated instead of the emergency procedures that this AD requires?*
(1) For operators of the Model PA–46–310P airplanes:

POH	Revision/date	Affected serial numbers
VB–1200	16/March 19, 1999	46–8408001 through 46–8608067 and 4608001 through 4608007.
VB–1300	13/February 25, 1999	4608008 through 4608140.

(2) For operators of the Model PA–46–350P airplanes:

POH	Revision/date	Affected serial numbers
VB–1332	16/November 14, 1997	4622001 through 4622200.
VB–1609	1/November 21, 1997	463001 through 4636020.
VB–1602	1/November 28, 1997	4636021 through 4636131.
VB–1446	New/December 3, 1997	4636132 through 4636195.
VB–1710	New/February 23, 1999	All serial numbers beginning with 4636196.

(g) *What are the emergency procedures referenced in paragraphs (d)(1)(iii) and (d)(2)(iv) of this AD?*

(1) For Model PA–46–310P airplanes:

(i) If the turbine inlet temperature indication fails during takeoff, climb, descent, or landing, maintain FULL RICH mixture to assure adequate fuel flow for engine cooling.

(ii) If the turbine inlet temperature indication fails after cruise power has been set, maintain cruise power setting and lean to 6 gallons per hour (GPH) fuel flow above that specified in the Power Setting Table in Section 5 of the AFM/POH. Continually monitor engine cylinder head and oil temperatures to avoid exceeding temperature limits.

(2) For Model PA–46–350P airplanes:

(i) If the turbine inlet temperature indication fails during takeoff, climb, descent or landing, set power per the POH Section 5 Power Setting Table and then lean to the approximate POH Power Setting Table fuel flow plus 4 GPH.

(ii) If the turbine inlet temperature indication fails after cruise power has been set, maintain the power setting and increase indicated fuel flow by 1 GPH. Continually monitor engine cylinder head and oil temperatures to avoid exceeding temperature limits.

(h) *Did The New Piper Aircraft, Inc develop service information related to this subject?* Piper Service Bulletin 995A, dated April 26, 1996, contains information that related to the subject matter of this AD. However, if you comply with this service bulletin, you have not accomplished all of the actions required by the AD. Therefore, we are not mandating compliance with the service bulletin.

(i) *Can the pilot accomplish the action?* Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may insert a copy of this AD into the POH, as required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(j) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1)(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 99–15–04 are approved as alternative methods of compliance for this AD.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(k) *Where can I get information about any already-approved alternative methods of compliance?* Contact Donald Young, Aerospace Engineer, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6079; facsimile: (770) 703–6097; e-mail address: "Donald.Young@faa.gov".

(l) *What if I need to fly the aircraft to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your aircraft to a location where you can accomplish the requirements of this AD.

(m) *Does this AD action affect any existing AD actions?* This amendment revises AD 99–15–04, Amendment 39–11223.

(n) *When does this amendment become effective?* This amendment becomes effective on July 28, 2000.

Issued in Kansas City, Missouri, on May 17, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13083 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–10]

Revision of Class D Airspace, Alexandria England AFB, LA; Revocation of Class D Airspace, Alexandria Esler Regional Airport, LA; and Revision of Class E Airspace, Alexandria, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D Airspace at Alexandria England AFB, LA; revokes Class D Airspace at Alexandria Esler Regional Airport, LA; and revises Class E Airspace at Alexandria, LA.

EFFECTIVE DATE: The direct final rule published at 65 FR 15860 is effective 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 24, 2000, (65 FR 15860). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–13176 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–07]

Establishment of Class D Airspace; Salisbury, MD

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace area at Salisbury, MD. The commissioning of a new Air Traffic Control Tower (ATCT) at the Salisbury-Ocean City, Wicomico Regional Airport (SBY) has made this proposal necessary. Controlled airspace extending upward from the surface to 2,500 feet Above Ground Level (AGL) is needed to accommodate Instrument Flight Rules (IFR) operations to the airport.

EFFECTIVE DATE: 0901 UTC, 13 July 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 7, 1999, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Salisbury, MD was published in the **Federal Register** (64 FR 30259–30260). A new Air Traffic Control Tower (ATCT) made this action necessary. Controlled airspace extending upward to 2,500 feet above Ground Level (AGL) is needed to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the en-route and terminal environments. The notice proposed to designate the entire Class E airspace that is now in existence to Class D airspace. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments to the proposal were received which labeled the proposed Class D airspace excessive when it includes all of the Class E airspace assigned to Salisbury Airport area. After further review the airspace area is amended so that the established Class D airspace is only the area within a 6.6 mile radius of the airport.

The coordinates for this airspace docket are based on North American Datum 83.

Class D airspace areas designations for airspace extending upward from the surface to a specified level are published in paragraph 5000 of FAA Order 7400.9F, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Salisbury, MD extending upward from the surface to 2,500 feet AGL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

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Paragraph 5000 Class D airspace area consisting of specified airspace within which all aircraft operators are subject to operating rules and equipment requirements of Part 91 of the Federal Aviation Regulation.

AEA MD D Salisbury, MD [Original]

Salisbury-Ocean City, Wicomico County Regional Airport, MD.

(Lat. 3820.26 N/long. 753062 W)
Salisbury VORTAC
(Lat. 3820.70 N/long. 753064 W)

That airspace extending upward from the surface to an including 2,500 feet MSL within a 6.6 mile radius of the Salisbury-Wicomico County Regional Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Issued in Jamaica, New York on May 9, 2000.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 00–13173 Filed–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–08]

Revision of Class E Airspace; Waco, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Waco, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 14856 is effective 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 20, 2000, (65 FR 14856). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised that public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–13178 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–09]

Revision of Class E Airspace; Fort Stockton, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Fort Stockton, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 14855 is effective 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 20, 2000, (65 FR 14855). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–13177 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–01]

Revision of Class E Airspace, Englewood, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Englewood, CO, Class E airspace to accommodate the revision of a Standard Instrument Approach Procedure (SIAP) at the Centennial Airport, Englewood, CO.

EFFECTIVE DATE: 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–01, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On January 24, 2000, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising a Class E airspace extension at Englewood, CO, in order to accommodate a revised SIAP to the Centennial Airport, Englewood, CO. This amendment provides a small amount of additional Class E4 airspace at Englewood, CO, to meet current criteria standards associated with the SIAP. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route enivornments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This rule promotes safe flight operations under Instrument Flight Rules (IFR) at the Centennial Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as an extension to a Class D airspace area, are published in paragraph 6004, of FAA Order 7400.9G dated September 1, 1999, and effective September 16,1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) revise Class E airspace extension at Englewood, CO, in order to accommodate a revised SIAP to the Centennial Airport, Englewood, CO. This amendment provides a small amount of additional Class E4 airspace at Englewood, CO, to meet current criteria standards associated with the SIAP. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Centennial Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as an extension to a Class D airspace area, are published Paragraph 6004, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Order 7400.9G dated September 1, 1999, and effective September 16,1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D airspace area.

* * * * *

ANM CO E5 Englewood, CO [Revised]

Centennial Airport, CO
(Lat. 39°34'13" N, long. 104°50'58" W)

That airspace extending upward from the surface within 3.2-mile radius each side of the 178° bearing from the Centennial Airport extending from the 4.4-mile radius to 14.1 miles south of the airport, and within 2.1 miles each side of the 109° bearing from the Centennial Airport extending from the 4.4-mile radius to 5.5 miles southeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, DC on May 12, 2000.

Daniel A. Boyle,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 00–13174 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121 and 135

[Docket No. FAA–1999–5926; Amendment Nos. 91–263, 93–80, 121–274 and 135–75]

RIN 2120–AG74

Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule, published in the **Federal Register** on April 4, 2000 (65 FR 17736). That final rule amends special operating rules and airspace for those persons operating aircraft in the area designated as the Grand Canyon National Park Special Flight Rules Area (SFRA). That rule assists the National Park Service in fulfilling the statutory mandate of substantial restoration of the natural quiet and experience of the park.

DATES: This correction is effective December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, (202) 267–8741.

Correction of Publication

In final rule FR Doc. 00–7950, beginning on page 17736 in the **Federal Register** issue of April 4, 2000, make the following correction:

1. On page 17736, in column 1, in the heading section, beginning on line 4, correct "Amendment No. 93–80" to read "Amendment Nos. 91–263, 93–80, 121–274 and 135–75".

Issued in Washington, DC on May 15, 2000.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 00–12819 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

Changes to the International Aviation Safety Assessment (IASA) Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy statement.

SUMMARY: This notice describes recent policy changes to the FAA's

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International Aviation Safety Assessment (IASA) program, which involves assessing whether another country's oversight of its air carriers that operate, or seek to operate, into the United States complies with minimum international standards for aviation safety. The FAA is making these changes as it commences a new phase of the IASA program following the completion of initial determinations on the safety oversight exercised by virtually all countries whose air carriers operate, or have applied to operate, to the United States. This notice modifies the IASA policies previously announced by the FAA.

DATES: This policy modification is effective May 25, 2000. Comments on this policy may be directed to the address below.

ADDRESSES: Send comments to Federal Aviation Administration, Office of Public Affairs, 800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Jensen, International Liaison Staff, AFS–50, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; (202) 267–3719.

SUPPLEMENTARY INFORMATION:

Background

The policy announced at 57 FR 38342, August 24, 1992, described how the FAA would assess whether a foreign civil aviation authority (CAA) complied with the minimum international standards for aviation safety oversight established by the International Civil Aviation Organization (ICAO). In obtaining information relevant to its assessment, the FAA meets with the foreign CAA responsible for providing the safety oversight to its carriers, reviews pertinent records and meets with officials of the subject foreign air carriers. The FAA then analyzes the collected information to determine whether the CAA complies with ICAO standards regarding the oversight provided to the air carriers under its authority. This determination is part of the basis for FAA recommended courses of action to the Department of Transportation on the initiation, continuation, or expansion of air service to the United States by the carriers overseen by that CAA. The IASA program applies to all foreign countries with air carriers proposing or have existing air service to the United States under an economic authority issued by the Department

The policy announced at 59 FR 46332, September 8, 1994, concerned the FAA's decision to publicly disclose the results of FAA assessments. In connection with the public disclosure policy, the FAA established three categories of ratings for countries to signify the status of a CAA's compliance with minimum international safety standards: Category I (Acceptable), Category II (Conditional), and Category III (Unacceptable). Category II or III apply to countries whose CAAs are found not to be providing safety oversight in compliance with the minimum international standards established by ICAO. The FAA normally places a country in Category II if one of its carriers provided air service to the United States at the time of the FAA assessment. The FAA places a country in Category III if none of its carriers provided air service to the United States at the time of the FAA assessment. Carriers from Category II countries are permitted to maintain, but not expand, current levels of service under heightened FAA surveillance. Carriers from Category III countries are not permitted to commence service to the United States.

Program and Public Disclosure Changes

Sources of Information on Safety Oversight

The FAA has a continuing obligation to ensure that CAAs comply with minimum international standards for safety oversight. In collecting information to support its assessment findings, the FAA will continue to rely, when necessary, on meetings with CAA and airline officials and reviewing pertinent documents. The FAA also will make use of other sources of information on CAA compliance with minimum international standards for safety oversight. These sources may include other qualified entities (e.g., the European Joint Aviation Authorities or ICAO) considered reliable by the FAA.

Categorization of Results of FAA Assessments

As in the past, assessment determinations will continue to be publicly disclosed. However, FAA will only use two categories in the future, i.e., Category 1 (in compliance with minimum international standards for aviation safety) and Category 2 (not in compliance with minimum international standards for aviation safety). This change is being made to eliminate any confusion that has resulted from having two different categories regarding non-compliance with ICAO standards. We believe that there has been a misimpression created that being in Category II reflects a higher degree of compliance with ICAO standards than being in Category III. To correct this misimpression and make clear that no inferences should be drawn about relative degrees of ICAO compliance, we are deleting Category III and redefining Category II as follows:

Category 2. The Federal Aviation Administration assessed this country's civil aviation authority and determined that it does not provide safety oversight of its air carrier operators in accordance with the minimum safety oversight standards established by the International Civil Aviation Organization (ICAO). This rating is applied if one or more of the following deficiencies are identified: (1) The country lacks laws or regulations necessary to support the certification and oversight of air carriers in accordance with minimum international standards; (2) the CAA lacks the technical expertise, resources, and organization to license or oversee air carrier operations; (3) the CAA does not have adequately trained and qualified technical personnel; (4) the CAA does not provide adequate inspector guidance to ensure enforcement of, and compliance with, minimum international standards, and (5) the CAA has insufficient documentation and records of certification and inadequate continuing oversight and surveillance of air carrier operations. This category consists of two groups of countries.

One group are countries that have air carriers with existing operations to the United States at the time of the assessment. While in Category 2 status, carriers from these countries will be permitted to continue operations at current levels under heightened FAA surveillance. Expansion or changes in services to the United States by such carriers are not permitted while in category 2, although new services will be permitted if operated using aircraft wet-leased from a duly authorized and properly supervised U.S. carrier or a foreign air carrier from a category 1 country that is authorized to serve the United States using its own aircraft.

The second group are countries that do not have air carriers with existing operations to the United States at the time of the assessment. Carriers from these countries will not be permitted to commence service to the United States while in Category 2 status, although they may conduct services if operated using aircraft wet-leased from a duly authorized and properly supervised U.S. carrier or a foreign air carrier from a Category 1 country that is authorized to serve the United States with its own aircraft.

No other difference is made between these two groups of countries while in a category 2 status.

Transition to New IASA Categorization System

Countries in the former Category I will initially be placed in the new Category 1 (in compliance with ICAO Standards). Countries in the former Categories II and III will initially be placed in the new Category 2 (not in compliance with ICAO standards). For those countries not serving the U.S. at the time of the assessment, an asterisk "*" will be added to their Category 2 determination.

The FAA will review the category determinations of all countries included in the IASA categorization scheme at least once every two years, or when new information becomes available which calls into question the country's ability to continue complying with minimum standards for aviation safety. The purpose of such reviews is to determine if a country's CAA continues to comply with minimum international standard for aviation safety (Category I) or is making sustainable progress toward compliance (Category 2). After each such review, the FAA will update the appropriate public disclosure.

The FAA will continue to work with countries to improve safety oversight capabilities in cases where the assessment process has revealed deficiencies. When FAA determines that sustainable progress is not being made, or is not possible under the prevailing circumstances in the country, it may advise the Office of the Secretary that the subject country has not made significant progress in correcting its safety oversight deficiencies and recommend a course of action to review the status of all authorities issued to carriers of that country.

Current IASA category determinations for countries included in the IASA categorization system are available on the FAA web-site at http://www.faa.gov/avr/isa.htm

Issued in Washington, DC on May 15, 2000.

Thomas E. McSweeny,

Associate Administrator for Regulation and Certification.

[FR Doc. 00–13179 Filed 5–24–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8884]

RIN 1545–AV88

Consolidated Returns—Limitations on the Use of Certain Credits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding certain credits of corporations that become members of a consolidated group. The regulations provide rules for computing the limitation with respect to certain credits earned in a separate return limitation year (SRLY) and the carryover and carryback of those credits to consolidated and separate return years. The regulations also eliminate the application of the SRLY rules in certain circumstances in which the rules of section 383 also apply.

DATES: *Effective Date:* These regulations are effective May 25, 2000.

Applicability Dates: For dates of applicability, see the "Dates of Applicability" portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Marie C. Milnes-Vasquez, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

A. In General

On January 12, 1998, the IRS and Treasury published in the **Federal Register** a Treasury decision (TD 8751, 63 FR 1740) containing temporary regulations concerning the use of certain tax attributes by a consolidated group. In part, these regulations provided rules governing the absorption of general business credits and minimum tax credits carried from separate return limitation years (SRLYs), and eliminated SRLY restrictions with respect to recapture of overall foreign losses (OFLs) and on the use of foreign tax credits of corporations joining a group. Further, this Treasury decision contained a final regulation eliminating the limitation on credit carryovers following a consolidated return change of ownership (CRCO).

A notice of proposed rulemaking cross-referencing the temporary regulations was published in the **Federal Register** on the same day (63 FR 1803). On March 16, 1998, the IRS and Treasury published temporary amendments to those consolidated return regulations (TD 8766, 63 FR 12641) and the corresponding notice of proposed rulemaking (63 FR 12717) modifying the general date of applicability contained in the January 12, 1998 temporary regulations. Per the amendment, the January 12, 1998 temporary regulations, as amended, are generally applicable for consolidated return years for which the due date of the return is after March 13, 1998. The amendments provided further guidance with respect to consolidated return years beginning on or after January 1, 1997, for which the income tax return is due on or before March 13, 1998.

On August 11, 1999, the IRS and Treasury issued final regulations relating to the recapture of OFLs (including elimination of any SRLY limitation on such recapture). (TD 8833, 64 FR 43613).

This Treasury decision adopts without substantive change the portions of the temporary regulations that were issued in 1998, relating to general business credits and minimum tax credits, with the addition of the "overlap rule", discussed in *Extension of 1999 Principles* of this preamble. This Treasury decision also makes final the rules eliminating SRLY restrictions on the use of foreign tax credits, and the rules repealing the consolidated return change of ownership provisions pertaining to those credits.

B. Extension of 1999 Principles

On July 2, 1999, the IRS and Treasury published in the **Federal Register** a Treasury decision (TD 8823, 64 FR 36092) containing final regulations providing rules governing the absorption of certain tax attribute carryovers and carrybacks from separate return limitation years (SRLYs). These tax attributes included net operating losses and net capital losses. The rules also governed the absorption of recognized built-in losses. These regulations, in part, eliminated the application of the SRLY rules in certain circumstances in which the rules of section 382 also apply (overlap rule).

The IRS and Treasury believe that it is appropriate to apply a single set of SRLY principles to all attributes that are subject to SRLY limitations. Unnecessary complexity would result from applying different principles to different attributes. Accordingly, this document extends the principles of the overlap rule of the 1999 final regulations to the general business credit and the minimum tax credit. These final regulations adopt the mechanism of subgrouping and the

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overlap rule set forth in § 1.1502–21 (including the requirements of coextensive subgroups and contemporaneity).

C. Dates of Applicability

The final regulations generally are applicable to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. However, there are some special effective dates. The rules contained in these final regulations (except the overlap rule) may be applied optionally to years beginning on or after January 1, 1997. Application of the overlap principles of § 1.1502–21(g) is generally effective for consolidated return years for which the return (without extensions) is due after May 25, 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect persons filing consolidated federal income tax returns that have carryover or carryback of credits from separate return limitation years. Available data indicates that many consolidated return filers are large companies (not small businesses). In addition, the data indicates that an insubstantial number of consolidated return filers that are smaller companies have credit carryovers or carrybacks, and thus even fewer of these filers have credit carryovers or carrybacks that are subject to the separate return limitation year rules. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking accompanying these regulations was sent to the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Marie C. Milnes-Vasquez of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for sections 1.1502–3T and 1.1502–55T and adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–3 also issued under 26 U.S.C. 1502.

Section 1.1502–4 also issued under 26 U.S.C. 1502. * * *.

Section 1.1502–55 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502–3 is amended as follows:

1. The section heading is revised.

2. Paragraph (b)(3) is added.

3. Paragraphs (c), (d), and (e)(3) are revised.

The addition and revisions read as follows:

§ 1.1502–3 Consolidated tax credits.

* * * * *

(b) * * *

(3) *Example.* The provisions of paragraphs (a) and (b) of this section may be illustrated by the following example:

Example. (i) Corporation P is incorporated on January 1, 1966. On that same day P incorporates corporation S, a wholly owned subsidiary. P and S file consolidated returns for calendar years 1966 and 1967. P's and S's credit earned, the consolidated credit earned, and the consolidated limitation based on amount of tax for 1966 and 1967 are as follows:

	Credit earned	Consolidated credit earned	Consolidated limitation based on amount of tax
1966:			
P	$60,000		
S	30,000	$90,000	$100,000
1967:			
P	40,000		
S	25,000	65,000	50,000

(ii) P's and S's credit earned for 1966 are aggregated, and the group's consolidated credit earned, $90,000, is allowable in full to the group as a credit under section 38 for 1966 since such amount is less than the consolidated limitation based on amount of tax for 1966, $100,000.

(iii) Since the consolidated limitation based on amount of tax for 1967 is $50,000, only $50,000 of the $65,000 consolidated credit earned for such year is allowable to the group under section 38 as a credit for 1967. The consolidated unused credit for 1967 of $15,000 ($65,000 less $50,000) is a consolidated investment credit carryback and carryover to the years prescribed in section 46(b). In this case the consolidated unused credit is a consolidated investment credit carryback to 1966 (since P and S were not in existence in 1964 and 1965) and a consolidated investment credit carryover to 1968 and subsequent years. The portion of the consolidated unused credit for 1967 which is allowable as a credit for 1966 is $10,000. This amount shall be added to the amount allowable as a credit to the group for 1966. The balance of the consolidated unused credit for 1967 to be carried to 1968 is $5,000. These amounts are computed as follows:

Consolidated carryback to 1966			$15,000
1966 consolidated limitation based on tax		$100,000	
Less: Consolidated credit earned for 1966	$90,000		
Consolidated unused credits attributable to years preceding 1967	0	90,000	
Limit on amount of 1967 consolidated unused credit which may be added as a credit for 1966			10,000
Balance of 1967 consolidated unused credit to be carried to 1968			5,000

(c) *Limitation on investment credit carryovers and carrybacks from separate return limitation years applicable for consolidated return years for which the due date of the return is on or before March 13, 1998—(1) General rule.* In the case of an unused credit of a member of the group arising in a separate return limitation year (as defined in § 1.1502–1(f)) of such member (and in a separate return limitation year of any predecessor of such member), the amount which may be included under paragraph (b) of this section (computed without regard to the limitation contained in paragraph (e) of this section) shall not exceed the amount determined under paragraph (c)(2) of this section.

(2) *Computation of limitation.* The amount referred to in paragraph (c)(1) of this section with respect to a member of the group is the excess, if any, of—

(i) The limitation based on amount of tax of the group, minus such limitation recomputed by excluding the items of income, deduction, and foreign tax credit of such member; over

(ii) The sum of the investment credit earned by such member for such consolidated return year, and the unused credits attributable to such member which may be carried to such consolidated return year arising in unused credit years ending prior to the particular separate return limitation year.

(3) *Special effective date.* This paragraph (c) applies to consolidated return years for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See paragraph (d) of this section for the rule that limits the group's use of a section 38 credit carryover or carryback from a SRLY for a consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998. See also paragraph (d)(4) of this section for an optional effective date rule (generally making the rules of this paragraph (c) inapplicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(4) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example 1. (i) Assume the same facts as in the example contained in paragraph (b)(3) of this section, except that all the stock of corporation T, also a calendar year taxpayer, is acquired by P on January 1, 1968, and that P, S, and T file a consolidated return for 1968. In 1966, T had an unused credit of $10,000 which has not been absorbed and is available as an investment credit carryover to 1968. Such carryover is from a separate return limitation year. P's and S's credit earned for 1968 is $10,000 each, and T's credit earned is $8,000; the consolidated credit earned is therefore $28,000. The group's consolidated limitation based on amount of tax for 1968 is $50,000. Such limitation recomputed by excluding the items of income, deduction, and foreign tax credit of T is $30,000. Thus, the amount determined under paragraph (c)(2)(i) of this section is $20,000 ($50,000 minus $30,000). Accordingly, the limitation on the carryover of T's unused credit is $12,000, the excess of $20,000 over $8,000 (the sum of T's credit earned for the taxable year and any carryovers from prior unused credit years (none in this case)). Therefore T's $10,000 unused credit from 1966 may be carried over to the consolidated return year without limitation.

(ii) The group's consolidated credit earned for 1968, $28,000, is allowable in full as a credit under section 38 since such amount is less than the consolidated limitation based on amount of tax, $50,000.

(iii) The group's consolidated investment credit carryover to 1968 is $15,000, consisting of the consolidated unused credits of the group ($5,000) plus T's separate return year unused credit ($10,000). The entire $15,000 consolidated carryover shall be added to the amount allowable to the group as a credit under section 38 for 1968, since such amount is less than $22,000 (the excess of the consolidated limitation based on tax, $50,000, over the sum of the consolidated credit earned for 1968, $28,000, and unused credits arising in prior unused credit years, zero).

Example 2. Assume the same facts as in *Example 1*, except that the amount determined under paragraph (c)(2)(i) of this section is $12,000. Therefore, the limitation on the carryover of T's unused credit is $4,000. Accordingly, the consolidated investment credit carryover is only $9,000 since the amount of T's separate return year unused credit which may be added to the group's $ 5,000 consolidated unused credit is $4,000. These amounts are computed as follows:

T's carryover to 1968			$10,000
Consolidated limitation based on amount of tax minus recomputed limitation		$12,000	
Less: T's credit earned for 1968	$8,000		
Unused credits attributable to T arising in unused credit years preceding 1966	0	$8,000	
Limit on amount of 1966 unused credit of T which may be added to consolidated investment credit carryover			4,000
Balance of 1966 unused credit of T to be carried to 1969 (subject to the limitation contained in paragraph (c) of this section)			6,000

(d) *Limitation on tax credit carryovers and carrybacks from separate return limitation years applicable for consolidated return years for which the due date of the return is after March 13, 1998—(1) General rule.* The aggregate of a member's unused section 38 credits arising in SRLYs that are included in the consolidated section 38 credits for all consolidated return years of the group may not exceed—

(i) The aggregate for all consolidated return years of the member's contributions to the consolidated section 38(c) limitation for each consolidated return year; reduced by

(ii) The aggregate of the member's section 38 credits arising and absorbed in all consolidated return years (whether or not absorbed by the member).

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(2) *Computational rules*—(i) *Member's contribution to the consolidated section 38(c) limitation.* If the consolidated section 38(c) limitation for a consolidated return year is determined by reference to the consolidated tentative minimum tax (see section 38(c)(1)(A)), then a member's contribution to the consolidated section 38(c) limitation for such year equals the member's share of the consolidated net income tax minus the member's share of the consolidated tentative minimum tax. If the consolidated section 38(c) limitation for a consolidated return year is determined by reference to the consolidated net regular tax liability (see section 38(c)(1)(B)), then a member's contribution to the consolidated section 38(c) limitation for such year equals the member's share of the consolidated net income tax minus 25 percent of the quantity which is equal to so much of the member's share of the consolidated net regular tax liability less its portion of the $25,000 amount specified in section 38(c)(1)(B). The group computes the member's shares by applying to the respective consolidated amounts the principles of section 1552 and the percentage method under § 1.1502–33(d)(3), assuming a 100% allocation of any decreased tax liability. The group must make proper adjustments so that taxes and credits not taken into account in computing the limitation under section 38(c) are not taken into account in computing the member's share of the consolidated net income tax, etc. (See, for example, the taxes described in section 26(b) that are disregarded in computing regular tax liability.) Also, the group may apportion all or a part of the $25,000 amount (or lesser amount if reduced by section 38(c)(3)) for any year to one or more members.

(ii) *Years included in computation.* For purposes of computing the limitation under this paragraph (d), the consolidated return years of the group include only those years, including the year to which a credit is carried, that the member has been continuously included in the group's consolidated return, but exclude—

(A) For carryovers, any years ending after the year to which the credit is carried; and

(B) For carrybacks, any years ending after the year in which the credit arose.

(iii) *Subgroups and successors.* The SRLY subgroup principles under § 1.1502–21(c)(2) apply for purposes of this paragraph (d). The predecessor and successor principles under § 1.1502–21(f) also apply for purposes of this paragraph (d).

(iv) *Overlap with section 383.* The principles under § 1.1502–21(g) apply for purposes of this paragraph (d). For example, an overlap of paragraph (d) of this section and the application of section 383 with respect to a credit carryover occurs if a corporation becomes a member of a consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 383 credit limitation with respect to that carryover (the section 383 event), with the result that the limitation of this paragraph (d) does not apply. See §§ 1.1502–21(g)(2)(ii)(A) and 1.383–1; see also § 1.1502–21(g)(4) (subgroup rules).

(3) *Effective date*—(i) *In general.* This paragraph (d) generally applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998.

(A) *Contribution years.* Except as provided in paragraph (d)(4)(ii) of this section, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in determining a member's (or subgroup's) contributions to the consolidated section 38(c) limitation under this paragraph (d).

(B) *Special subgroup rule.* In the event that the principles of § 1.1502–21(g)(1) do not apply to a particular credit carryover in the current group, then solely for purposes of applying paragraph (d) of this section to determine the limitation with respect to that carryover and with respect to which the SRLY register (the aggregate of the member's or subgroup's contribution to consolidated section 38(c) limitation reduced by the aggregate of the member's or subgroup's section 38 credits arising and absorbed in all consolidated return years) began in a taxable year for which the due date of the return is on or before May 25, 2000, the principles of § 1.1502–21(c)(2) shall be applied without regard to the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or § 1.1502–15(g) with respect to another group (the former group)."

(ii) *Overlap rule.* Paragraph (d)(2)(iv) of this section (relating to overlap with section 383) applies to taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000. For purposes of paragraph (d)(2)(iv) of this section, only an ownership change to which section 383, as amended by the Tax Reform Act of 1986 (100 Stat. 2085), applies and which results in a section 383 credit limitation shall constitute a section 383 event.

(4) *Optional effective date of January 1, 1997.* (i) For consolidated taxable years beginning on or after January 1, 1997, for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in lieu of paragraphs (c) and (e)(3) of this section (relating to the general business credit), § 1.1502–4(f)(3) and (g)(3) (relating to the foreign tax credit), the next to last sentence of § 1.1502–9A(a)(2), § 1.1502–9A(b)(1)(v) (relating to overall foreign losses), and § 1.1502–55(h)(4)(iii) (relating to the alternative minimum tax credit), a consolidated group may apply the corresponding provisions as they appear in 1998–1 C.B. 655 through 661 (see § 601.601(d)(2) of this chapter) (treating references in such corresponding provisions to §§ 1.1502–9(b)(1)(ii), (iii), and (iv) as references to §§ 1.1502–9(b)(1)(ii), (iii), and (iv)). Also, in the case of a consolidated return change of ownership that occurs on or after January 1, 1997, in a taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, a consolidated group may choose not to apply paragraph (e) of this section and § 1.1502–4(g) to taxable years ending after December 31, 1996. A consolidated group making the choices described in the two preceding sentences generally must apply all such corresponding provisions (including not applying paragraph (e) of this section and § 1.1502–4(g)) for all relevant years. However, a consolidated group making the election provided in § 1.1502–9A(b)(1)(vi) (electing not to apply § 1.1502–9A(b)(1)(v) to years beginning before January 1, 1998) may nevertheless choose to apply all such corresponding provisions referred to in this paragraph (d)(4)(i) other than the provision corresponding to § 1.1502–9A(b)(1)(v) for all relevant years.

(ii) If a consolidated group chooses to apply the corresponding provisions referred to in paragraph (d)(4)(i) of this section, the consolidated group shall not take into account a consolidated taxable year beginning before January 1, 1997, in determining a member's (or subgroup's) contributions to the consolidated section 38(c) limitation under this paragraph (d).

(5) *Example.* The following example illustrates the provisions of this paragraph (d):

Example. (i) Individual A owns all of the stock of P and T. P is the common parent of the P group. P acquires all the stock of T at the beginning of Year 2. T carries over an unused section 38 general business credit from Year 1 of $100,000. The table in paragraph (i) of this Example shows the group's net consolidated income tax, consolidated tentative minimum tax, and consolidated net regular tax liabilities, and T's share of such taxes computed under the principles of section 1552 and the percentage method under § 1.1502–33(d)(3), assuming a 100% allocation of any decreased tax liability, for Year 2. (The effects of the lower section 11 brackets are ignored, there are no other tax credits affecting a group amount or member's share, and $1,000s are omitted.)

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Year 2	Group	P's share of col. 1	T's share of col. 1
1. consolidated taxable income	$2,000	$1,200	$800
2. consolidated net regular tax	$700	$420	$280
3. consolidated alternative minimum taxable income	$4,000	$3,200	$800
4. consolidated tentative minimum tax	$800	$640	$160
5. consolidated net income tax	$800	$520	$280
6. greater of line 4 or 25% of (line 2 minus $25,000) for the group	$800		
7. consolidated §38(c) limitation (line 5 minus line 6)	$0		

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(ii) T's Year 1 is a SRLY with respect to the P group. See § 1.1502–1(f)(2)(ii). T did not undergo an ownership change giving rise to a section 383 credit limitation within 6 months of joining the P group. Thus, T's $100,000 general business credit arising in Year 1 is subject to a SRLY limitation in the P group. The amount of T's unused section 38 credits from Year 1 that are included in the consolidated section 38 credits for Year 2 may not exceed T's contribution to the consolidated section 38(c) limitation. For Year 2, the group determines the consolidated section 38(c) limitation by reference to consolidated tentative minimum tax for Year 2. Therefore, T's contribution to the consolidated section 38(c) limitation for Year 2 equals its share of consolidated net income tax minus its share of consolidated tentative minimum tax. T's contribution is $280,000 minus $160,000, or $120,000. However, because the group has a consolidated section 38 limitation of zero, it may not include any of T's unused section 38 credits in the consolidated section 38 credits for Year 2.

(iii) The following table shows similar information for the group for Year 3:

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Year 3	Group	P's share of col. 1	T's share of col. 1
1. consolidated taxable income	$1,200	$1,500	$(300)
2. consolidated net regular tax	$420	$525	$(105)
3. consolidated alternative minimum taxable income	$1,500	$1,700	$(200)
4. consolidated tentative minimum tax	$300	$340	$(40)
5. consolidated net income tax	$420	$525	$(105)
6. greater of line 4 or 25% of (line 2 minus $25,000) for the group	$300	[redacted]	
7. consolidated $38(c) limitation (line 5 minus line 6)	$120		

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(iv) The amount of T's unused section 38 credits from Year 1 that are included in the consolidated section 38 credits for Year 3 may not exceed T's aggregate contribution to the consolidated section 38(c) limitation for Years 2 and 3. For Year 3, the group determines the consolidated section 38(c) limitation by reference to the consolidated tentative minimum tax for Year 3. Therefore, T's contribution to the consolidated section 38(c) limitation for Year 3 equals its share of consolidated net income tax minus its share of consolidated tentative minimum tax. Applying the principles of section 1552 and § 1.1502–33(d) (taking into account, for example, that T's positive earnings and profits adjustment under § 1.1502–33(d) reflects its losses actually absorbed by the group), T's contribution is $(105,000) minus $(40,000), or $(65,000). T's aggregate contributions to the consolidated section 38(c) limitation for Years 2 and 3 is $120,000 + $(65,000), or $55,000. The group may include $55,000 of T's Year 1 unused section 38 credits in its consolidated section 38 tax credit in Year 3.

(e) * * *

(3) *Special effective date.* This paragraph (e) applies only to a consolidated return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See paragraph (d)(4) of this section for an optional effective date rule (generally making the rules of this paragraph (e) also inapplicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

* * * * *

§ 1.1502–3T [Removed]

Par. 3. Section 1.1502–3T is removed.

Par. 4. Section 1.1502–4 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§ 1.1502–4 Consolidated foreign tax credit.

* * * * *

(f) * * *

(3) *Limitation on unused foreign tax credit carryover or carryback from separate return limitation years.* Paragraphs (f)(1) and (2) of this section do not apply for consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, a group shall include an unused foreign tax of a member arising in a SRLY without regard to the contribution of the member to consolidated tax liability for the consolidated return year. See also § 1.1502–3(d)(4) for an optional effective date rule (generally making the rules of paragraphs (f)(1) and (2) of this section also inapplicable to a consolidated return year beginning on or after January 1, 1997, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(g) * * *

(3) *Special effective date for CRCO limitation.* Paragraphs (g)(1) and (2) of this section apply only to a consolidated return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See also § 1.1502–3(d)(4) for an optional effective date rule (generally making the rules of paragraph (g)(1) and (2) of this section also inapplicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

* * * * *

§ 1.1502–4T [Removed]

Par. 5. Section 1.1502–4T is removed.

Par. 6. Section 1.1502–21 is amended by revising paragraph (c)(2)(ix) to read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(c) * * *

(2) * * *

(ix) *Application to other than loss carryovers.* Paragraph (g) of this section and the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or § 1.1502–15(g) with respect to another group (the former group)" in this paragraph (c)(2) apply only to carryovers of net operating losses, net capital losses, and for taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000, to carryovers of credits described in section 383(a)(2). Accordingly, as the context may require, if another regulation references this section and such other regulation does not concern a carryover of net operating losses, net capital losses, or for taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000, carryovers of credits described in section 383(a)(2), then such reference does not include a reference to such paragraph or phrase.

* * * * *

Par. 7. Section 1.1502–55 is added to read as follows:

§ 1.1502–55 Computation of alternative minimum tax of consolidated groups.

(a) through (h)(3) [Reserved].

(h)(4) *Separate return year minimum tax credit.*

(i) and (ii) [Reserved].

(iii)(A) *Limitation on portion of separate return year minimum tax credit arising in separate return limitation years.* The aggregate of a member's minimum tax credits arising in SRLYs that are included in the consolidated minimum tax credits for all consolidated return years of the group may not exceed—

(*1*) The aggregate for all consolidated return years of the member's contributions to the consolidated section 53(c) limitation for each consolidated return year; reduced by

(*2*) The aggregate of the member's minimum tax credits arising and absorbed in all consolidated return years (whether or not absorbed by the member).

(B) *Computational rules—*(*1*) *Member's contribution to the consolidated section 53(c) limitation.* Except as provided in the special rule of paragraph (h)(4)(iii)(B)(*2*) of this section, a member's contribution to the consolidated section 53(c) limitation for a consolidated return year equals the member's share of the consolidated net regular tax liability minus its share of consolidated tentative minimum tax. The group computes the member's shares by applying to the respective consolidated amounts the principles of section 1552 and the percentage method under § 1.1502–33(d)(3), assuming a 100% allocation of any decreased tax liability. The group makes proper adjustments so that taxes and credits not taken into account in computing the limitation under section 53(c) are not taken into account in computing the member's share of the consolidated net regular tax, etc. (See, for example, the taxes described in section 26(b) that are disregarded in computing regular tax liability.)

(*2*) *Adjustment for year in which alternative minimum tax is paid.* For a consolidated return year for which consolidated tentative minimum tax is greater than consolidated regular tax liability, the group reduces the member's share of the consolidated tentative minimum tax by the member's share of the consolidated alternative minimum tax for the year. The group determines the member's share of consolidated alternative minimum tax for a year using the same method it uses to determine the member's share of the consolidated minimum tax credits for the year.

(*3*) *Years included in computation.* For purposes of computing the limitation under this paragraph (h)(4)(iii), the consolidated return years of the group include only those years, including the year to which a credit is carried, that the member has been continuously included in the group's consolidated return, but exclude any years after the year to which the credit is carried.

(*4*) *Subgroup principles.* The SRLY subgroup principles under § 1.1502–21(c)(2) apply for purposes of this paragraph (h)(4)(iii). The predecessor and successor principles under § 1.1502–21(f) also apply for purposes of this paragraph (h)(4)(iii).

(*5*) *Overlap with section 383.* The principles under § 1.1502–21(g) apply for purposes of this paragraph (h)(4)(iii). For example, an overlap of this paragraph (h)(4)(iii) and the application of section 383 with respect to a credit carryover occurs if a corporation becomes a member of a consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 383 credit limitation with respect to that carryover (the section 383 event), with the result that the limitation of this paragraph (h)(4)(iii) does not apply. See §§ 1.1502–21(g)(2)(ii)(A) and 1.383–1; see also § 1.1502–21(g)(4) (subgroup rules).

(C) *Effective date—*(*1*) *In general.* This paragraph (h)(4)(iii) generally applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. See § 1.1502–3(d)(4) for an optional effective date rule (generally making this paragraph (h)(4)(iii) also applicable to a consolidated return year beginning on or after January 1, 1997, if the due date of the income tax return (without extensions) was on or before March 13, 1998).

(i) *Contribution years.* In general, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in determining a member's (or subgroup's) contributions to the consolidated section 53(c) limitation under this paragraph (h)(4)(iii). However, if a consolidated group chooses to apply the optional effective date rule, the consolidated group shall not take into account a consolidated taxable year beginning before January 1, 1997 in determining a member's (or subgroup's) contributions to the consolidated section 53(c) limitation under this paragraph (h)(4)(iii).

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(ii) *Special subgroup rule.* In the event that the principles of § 1.1502–21(g)(1) do not apply to a particular credit carryover in the current group, then solely for purposes of applying this paragraph (h)(4)(iii) to determine the limitation with respect to that carryover and with respect to which the SRLY register (the aggregate of the member's or subgroup's contribution to consolidated section 53(c) limitation reduced by the aggregate of the member's or subgroup's minimum tax credits arising and absorbed in all consolidated return years) began in a taxable year for which the due date of the return is on or before May 25, 2000, the principles of § 1.1502–21(c)(2) shall be applied without regard to the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or § 1.1502–15(g) with respect to another group (the former group)."

(2) *Overlap rule.* Paragraph (h)(4)(iii)(B)(*5*) of this section (relating to overlap with section 383) applies to taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000. For purposes of paragraph (h)(4)(iii)(B)(*5*) of this section, only an ownership change to which section 383, as amended by the Tax Reform Act of 1986 (100 Stat. 2095), applies and which results in a section 383 credit limitation shall constitute a section 383 event. The optional effective date rule of § 1.1502–3(d)(4) (generally making this paragraph (h)(4)(iii) also applicable to a consolidated return year beginning on or after January 1, 1997, if the due date of the income tax return (without extensions) was on or before March 13, 1998) does not apply with respect to paragraph (h)(4)(iii)(B)(*5*) of this section (relating to the overlap rule).

§ 1.1502–55T [Removed]

Par. 8. Section 1.1502–55T is removed.

Par. 9. Section 1.1502–98 is amended by adding a sentence immediately following the first sentence to read as follows:

§ 1.1502–98 Coordination with section 383.

* * * For example, subgroups with respect to the carryover of general business credits, minimum tax credits, unused foreign tax, and net capital loss are determined by applying the principles of § 1.1502–91(d)(1). * * *

§ 1.1502–9A [Amended]

Par. 10. Section 1.1502–9A is amended as follows:

1. In paragraph (a)(2), the last sentence is amended by removing the language "1.1502–3T(c)(4)" and adding "1.1502–3(d)(4)" in its place.

2. In paragraph (b)(1)(v), the last sentence is amended by removing the language "1.1502–3T(c)(4)" and adding "1.1502–3(d)(4)" in its place.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: May 8, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–11901 Filed 5–24–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110, and 165

[CGD01–99–050]

RIN 2115–AA97, AA98, AE46

Temporary Regulations: OPSAIL 2000/ International Naval Review 2000 (INR 2000), Port of New York/New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary regulations in New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull for OPSAIL 2000/INR 2000 activities. This action is necessary to provide for the safety of life on navigable waters during OPSAIL 2000/ INR 2000. This action is intended to restrict vessel traffic in portions of New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull.

DATES: This rule is effective from 12 p.m. e.s.t. on June 29, 2000, until 12 p.m. e.s.t. on July 5, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–99–050 and are available for inspection or copying at room 205, of the Waterways Oversight Branch of Coast Guard Activities New York, between 8 a.m., e.s.t. and 3 p.m., e.s.t. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 7, 2000, we published a notice of proposed rulemaking (NPRM) entitled Temporary Regulations: OPSAIL 2000/International Naval Review 2000 (INR 2000), Port of New York/New Jersey in the **Federal Register** (65 FR 5833). On February 14, 2000, we published a correction to this NPRM entitled Temporary Regulations: OPSAIL 2000/International Naval Review 2000 (INR 2000), Port of New York/New Jersey in the **Federal Register** (65 FR 7333). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The U.S. Navy is sponsoring the International Naval Review. This event consists of the anchoring of approximately 50 U.S. and foreign naval vessels in line between the Verrazano-Narrows Bridge and the George Washington Bridge. A high level U.S. dignitary will transit aboard a U.S. Navy vessel along this line as a ceremonial review. Operation Sail, Inc. is sponsoring the seventh OPSAIL Parade of Tall Ships, as well as a fireworks display co-sponsored by Macy's Inc. Operation Sail consists of a parade of sailing vessels from the Verrazano-Narrows Bridge north past a reviewing stand aboard the U.S.S. John F. Kennedy (CV–67) anchored in Federal Anchorage 21B in Upper New York Bay. This parade will continue north to the George Washington Bridge where these vessels will turn south and go to berth throughout the Port of New York and New Jersey. These events are scheduled to take place on July 4, 2000, in the Port of New York/New Jersey, on the waters of New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull. The Coast Guard expects a minimum of 40,000 spectator craft for these events. These regulations create temporary anchorage regulations, vessel movement controls, and two security zones. The regulations will be in effect at various times in the Port of New York and New Jersey during the period June 29, 2000 through July 5, 2000. The vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life. This rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

Regulated Areas

The Coast Guard is establishing two regulated areas in New York Harbor that will be in effect from July 3–5, 2000. These two regulated areas are needed to protect the maritime public and participating vessels from possible hazards to navigation associated with an International Naval Review conducted on the Hudson River and New York Harbor Upper Bay, a Parade of Tall Ships transiting the waters of Sandy Hook Bay, New York Harbor, and the Hudson River in close proximity; fireworks fired from 11–13 barges on the Hudson and East Rivers and in Upper New York Bay; and a large number of naval vessels, Tall Ships, and spectator craft anchored in close proximity throughout the duration of these events. These regulated areas include vessel anchoring and operating restrictions.

Regulated Area A covers all waters of New York Harbor Lower Bay and Sandy Hook Bay within the following boundaries: south of the Verrazano-Narrows Bridge; west of a line drawn shore to shore along 074°00′00″ W (NAD 1983) between Coney Island, New York, and Navesink, New Jersey; and east of a line drawn shore to shore along 074°03′12″ W (NAD 1983) between Fort Wadsworth, Staten Island, and Leonardo, New Jersey and all waters of Ambrose Channel shoreward of Ambrose Channel Entrance Lighted Gong Buoy 1 (LLNR 34800) and Ambrose Channel Entrance Lighted Bell Buoy 2 (LLNR 34805). Please see Chartlet I, depicting Regulated Area A, included with this Temporary final rule (TFR) for the convenience of the reader. This area is to be used as a staging area for vessels participating in the Parade of Tall Ships. This regulated area is effective from 6 a.m., e.s.t. July 3, until 4 p.m., e.s.t. on July 4, 2000.

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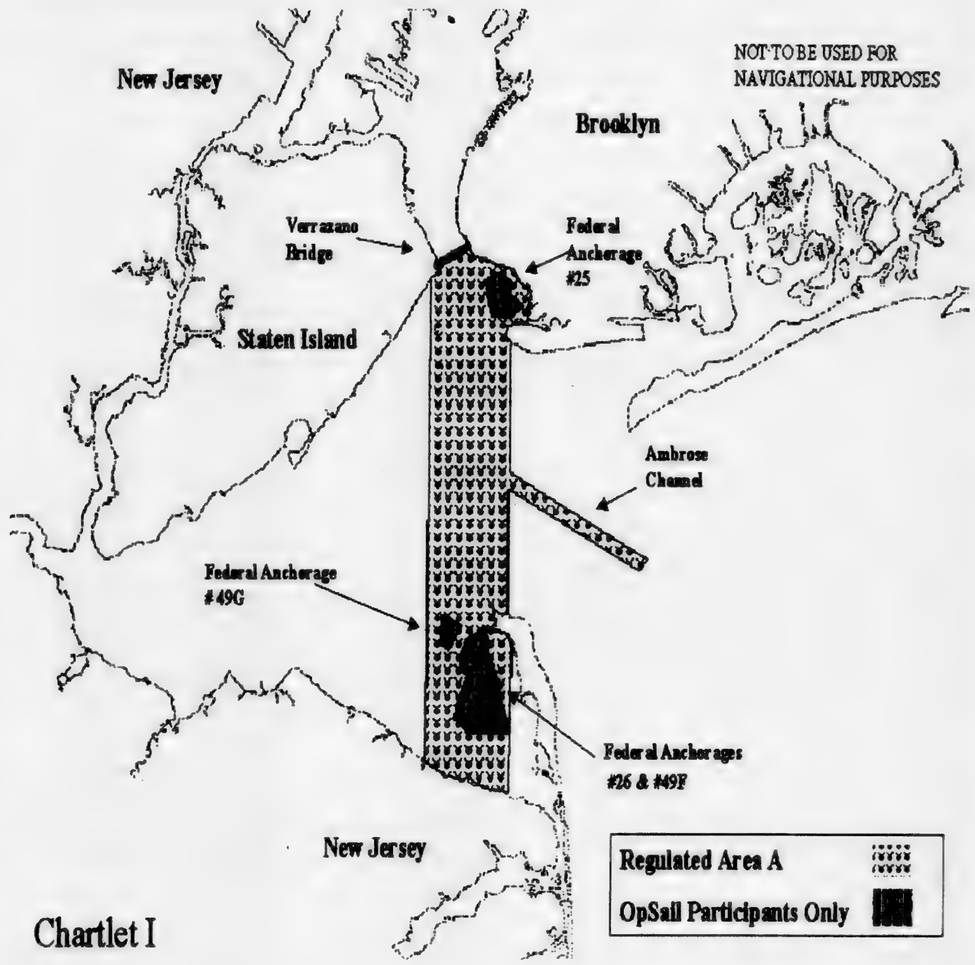

Chartlet I

Regulated Area B covers all waters of New York Harbor, Upper Bay, the Hudson, Harlem, and East Rivers, and the Kill Van Kull within the following boundaries: south of 40°52′39″ N (NAD 1983) on the Hudson River at Spuyten Duyvil Creek; west of the Throgs Neck Bridge on the East River; north of the Verrazano-Narrows Bridge; and east of a line drawn from shore to shore along 074°05′15″ W (NAD 1983) between New Brighton, Staten Island, and Constable Hook, New Jersey, in the Kill Van Kull. Please see Chartlet II, depicting Regulated Area B, included with this TFR for the convenience of the reader.

This regulated area is for the International Naval Review, the Parade of Tall Ships, and the July 4th fireworks display. This regulated area is effective from 10 a.m., e.s.t. on July 3, 2000, until 10 a.m., e.s.t. on July 5, 2000.

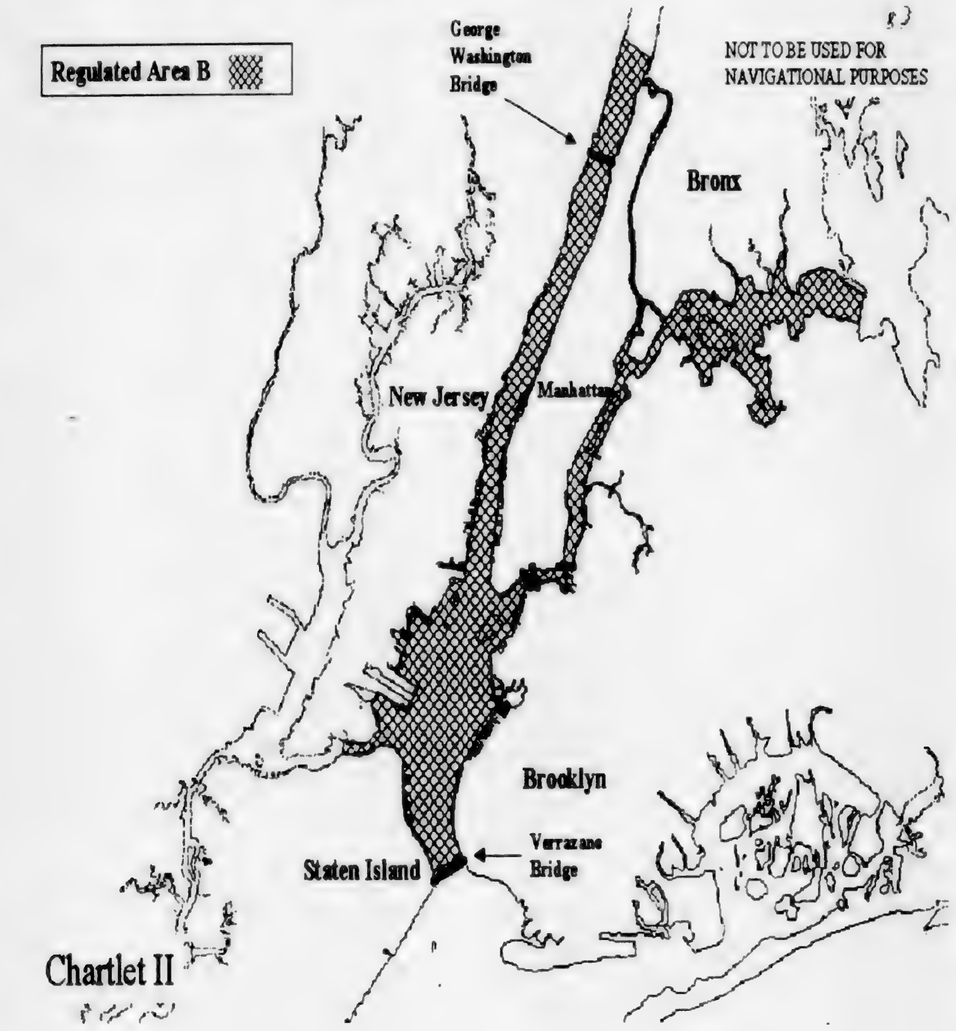

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Spectator vessels transiting Regulated Area A or B must do so at no wake speed or at speeds not to exceed 10 knots, whichever is less. No vessels other than OPSAIL 2000/INR 2000 vessels, their assisting tugs, and enforcement vessels, may enter or navigate within the boundaries of the Anchorage Channel or Hudson River in regulated Area B unless specifically authorized by the Coast Guard Captain of the Port, New York, or his on-scene representative. No vessel may anchor in the Anchorage Channel or Hudson River outside of the designated spectator anchorages in Regulated Area B at any time without authorization. The operation of seaplanes, including taxiing, landing, and taking off, is prohibited in Area B on July 3–4, 2000, without prior written authorization from the Captain of the Port. Ferry services may operate in Area B on July 3 and 5, 2000. On July 4, 2000 only those ferry services with prior written authorization from the Coast Guard Captain of the Port will be authorized to operate in this area.

No vessel, other than OPSAIL 2000/INR 2000 vessels, their assisting tugs, and enforcement vessels, is permitted to transit the waters between Governors Island and The Battery in southern Manhattan from 7 a.m., e.s.t. July 4, 2000 until the end of the Parade of Sail. Vessels which must transit to or from the East River may only do so by using Buttermilk Channel unless otherwise authorized by the Coast Guard Captain of the Port, New York, or his on-scene representative.

Regulated Area A contains three anchorage grounds for use by OPSAIL 2000/INR 2000 vessels only and it will also serve as a staging area for the vessels participating in the Parade of Sail. Regulated Area B contains anchorage grounds for OPSAIL 2000/INR 2000 vessels and spectator craft. It contains the International Naval Review of Ships on the Hudson River and New York Harbor's Upper Bay, from the Verrazano-Narrows Bridge to the George Washington Bridge (river mile 11.0). The International Naval Review will be conducted on the morning of July 4, 2000 and consists of a column of approximately 50 International Naval Ships anchored in the Hudson River and New York Harbor's Upper Bay along the western side of the Anchorage Channel. The U.S. Navy Review Ship will transit south along this column from the George Washington Bridge to the Verrazano-Narrows Bridge and conduct a review of all the participating naval ships. After the INR, approximately 300 vessels will participate in the Parade of Sailing Vessels which will take place in Area B between the Verrazano-Narrows Bridge and the George Washington Bridge (river mile 11.0) on the Hudson River. Additionally, Area B will contain 11–13 fireworks barges being used for the July 4th fireworks display. Fireworks barges will be located in the Hudson River between the Holland Tunnel Ventilators and West 65th Street in Manhattan, in the East River between the southern tip of Roosevelt Island and The Battery, east of Liberty Island, and in the Anchorage Channel north of the Verrazano-Narrows Bridge.

Anchorage Regulations

The Coast Guard is also establishing temporary Anchorage Regulations for participating OPSAIL 2000/INR 2000 ships and spectator craft. Some current Anchorage Regulations in 33 CFR 110.155 are temporarily suspended by this regulation and new Anchorage Grounds and regulations are being temporarily established. Chartlets I, III, and IV illustrate the anchorage grounds and are included for the convenience of the reader.

The anchorage regulations designate selected current or temporarily established Anchorage Grounds for spectator or OPSAIL 2000/INR 2000 participant vessel use only. They restrict all other vessels from using these Anchorage Grounds during a portion of the OPSAIL 2000/INR 2000 event. The Anchorage Grounds are needed to provide viewing areas for spectator vessels while maintaining a clear parade route for the participating OPSAIL/INR vessels and to protect boaters and spectator vessels from the hazards associated with the International Naval Review and the Parade of Tall Ships.

The Coast Guard designates Anchorage Grounds 16, 17, and 18–A in the Hudson River in the vicinity of the George Washington Bridge (river mile 11.0); and the temporarily established Liberty Island Anchorage, Ellis Island Anchorage, Caven Point Anchorage, Jersey Flats Anchorage and Robbins Reef Anchorage in New York Harbor's Upper Bay, and a temporary Anchorage Ground from north of the Verrazano-Narrows Bridge to Owls Head Park along the Brooklyn shoreline exclusively for spectator vessel use from 12 p.m., e.s.t. on June 29, 2000, until 12 p.m., e.s.t. on July 5, 2000. The temporary Narrows Anchorage is being expanded to authorize a larger viewing area for spectator vessels between 25 meters (82 feet) and 60 meters (197 feet). The expanded area includes all waters of Anchorage Channel east of a line drawn between Gowanus Flats Lighted Bell Buoy 22 (LLNR 34945) and Bay Ridge Channel Lighted Buoy 2 (LLNR 36872) to the western boundary of the temporary Narrows Anchorage.

The Coast Guard also designates Anchorage Grounds 21–B, 23–A, 23–B, and 24 in New York Harbor's Upper Bay for OPSAIL 2000/INR 2000 participant vessels. These regulations are effective from 3 a.m., e.s.t. July 1, 2000, through 6 p.m., e.s.t. July 5, 2000. Other vessels may be authorized to use these anchorages on July 1 and 2, 2000 as determined by the Captain of the Port, New York.

Additionally, the Coast Guard designates Anchorage Ground 25 and a temporarily established Anchorage Ground covering portions of Anchorage Grounds 26, 49–F and 49G in Sandy Hook Bay for OPSAIL 2000/INR 2000 participant vessels. These proposed regulations are effective from 6 a.m., e.s.t. July 2, 2000, through 4 p.m., e.s.t. July 4, 2000.

The eastern portions of the Jersey Flats and Robbins Reef Anchorages and the Narrows Temporary Anchorage Ground are for vessels between 25 meters (82 feet) and 60 meters (197 feet) in length. Anchorage 21–C is for vessels greater than 60 meters (197 feet). Positioning within these three anchorages will be controlled by the Captain of the Port, New York. Persons desiring to use these anchorages must have a permit from the Captain of the Port New York. A lottery was held to determine vessel anchorage locations and applications are no longer being accepted.

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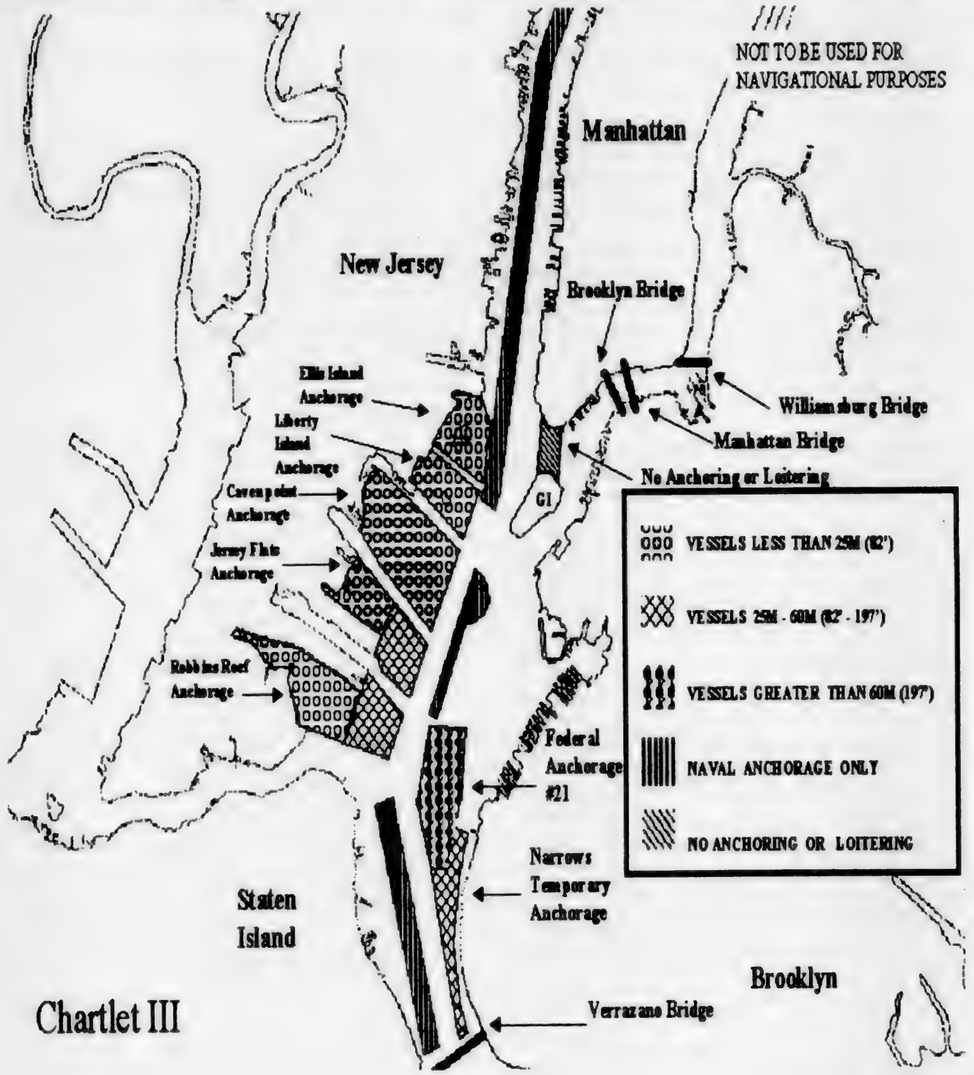

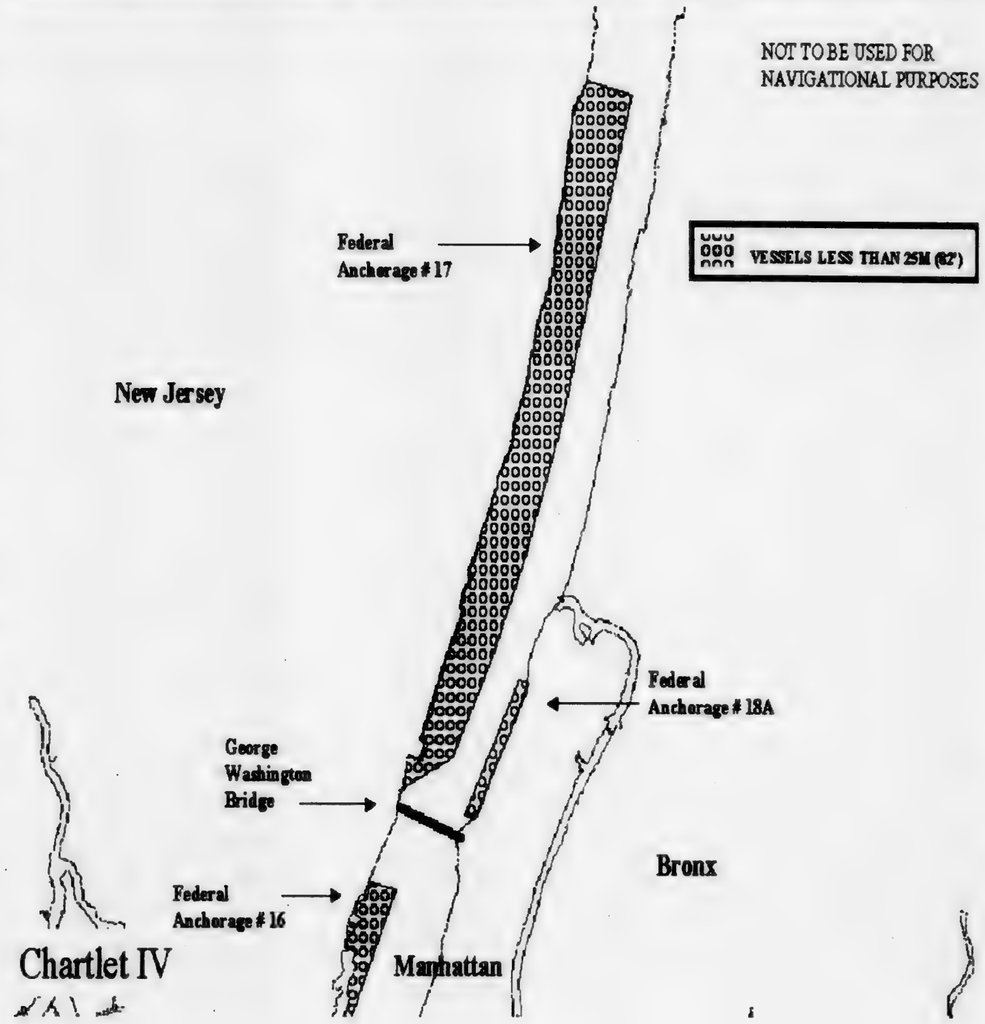

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Security Zones

The Coast Guard is establishing a moving security zone for all waters within 500 yards of the Review Ship for the International Naval Review from 7 a.m., e.s.t. until 11 a.m., e.s.t. on July 4, 2000. The Review Ship will be the U.S. Navy vessel that is anchored the furthest north in the Hudson River at 7 a.m., e.s.t. on July 4, 2000. This ship will get underway and transit down the Hudson River and Upper New York Bay between the George Washington Bridge (river mile 11.0) and the Verrazano-Narrows Bridge. The Review Ship will be easily identifiable during its transit because it will be the only large U.S. Navy vessel that is underway at this time in the Port of New York, and it will be escorted by numerous U.S. Coast Guard small boats.

A second security zone is established for all waters within 500 yards of the U.S.S. John F. Kennedy (CV–67), from 10 a.m., e.s.t. until 5 p.m., e.s.t. on July 4, 2000 while in Anchorage 21–B and while being used as the reviewing stand for the Parade of Sailing Vessels. Numerous dignitaries who require Secret Service protection will be onboard both Navy vessels. Due to the dignitaries' attendance, security zones are required to ensure the proper level of protection to prevent sabotage or other subversive acts, accidents, or other activities of a similar nature to the Port of New York/New Jersey.

Discussion of Comments and Changes

We received no letters commenting on the proposed rule, but we did make two minor changes to it. The temporary Narrows Anchorage is being expanded to make a larger viewing area for spectator vessels between 25 meters (82 feet) and 60 meters (197 feet). The expanded area includes all waters of Anchorage Channel east of a line drawn between Gowanus Flats Lighted Bell Buoy 22 (LLNR 34945) and Bay Ridge Channel Lighted Buoy 2 (LLNR 36872) to the western boundary of the temporary Narrows Anchorage, and south of the current southern boundary of Federal Anchorage 21–C. This change increases the length of the temporary Narrows Anchorage by 1,450 yards. The increased anchorage length is necessary because it provides a greater area for spectator craft to anchor in. It is also easier to enforce as the western boundary is now aligned with the western boundary of Federal Anchorage No. 21–C. This will provide one straight boundary line to enforce as opposed to three boundary lines as originally planned. The expanded temporary Narrows Anchorage area will not have a negative impact on vessel traffic in the area because the expanded area does not include any navigable channels and it would not have been used by vessels. But it will have a positive impact because it provides space for five extra spectator craft that were alternate winners of the lottery drawing for anchorage spots in the area.

We changed section 110.155's introductory note to emphasize the mariners' need to exercise caution while using the temporarily designated anchorage areas for OPSAIL 2000/INR 2000. While we are not aware of any safety problems associated with these temporary anchorage areas, we can not ensure the anchor holding capability of each area nor that the bottoms are free from obstructions. Consequently, we are advising mariners to take appropriate precautions including using all means available to ensure their vessels are not dragging anchor. But based on past experience with these temporary anchorage areas, we have no reason to believe they are not adequate for their intended use.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull during the events, the effect of this regulation will not be significant for the following reasons: The limited duration that the regulated areas will be in effect and the extensive advance notifications that have been and will be made to the maritime community via the Local Notice to Mariners, facsimile, marine information broadcasts, New York Harbor Operations Committee meetings, and New York area newspapers, so mariners can adjust their plans accordingly. At no time will commercial shipping access to Port Newark/Port Elizabeth facilities be prohibited. Access to those areas may be accomplished using Raritan Bay, Arthur Kill, Kill Van Kull, and Newark Bay as an alternate route. This will allow the majority of the maritime industrial activity in the Port of New York/New Jersey to continue, relatively unaffected. Similar regulated areas were established for the 1986 and 1992 OPSAIL events. Based upon the Coast Guard's experiences learned from these previous events of a similar magnitude, these proposed regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

One substantive change is being made to the Temporary final rule. The temporary Narrows Anchorage is being expanded to authorize a larger viewing area for spectator vessels between 25 meters (82 feet) and 60 meters (197 feet). The expanded area includes all waters of Anchorage Channel east of a line drawn between Gowanus Flats Lighted Bell Buoy 22 (LLNR 34945) and Bay Ridge Channel Lighted Buoy 2 (LLNR 36872) to the western boundary of the temporary Narrows Anchorage, and south of the current southern boundary of Federal Anchorage 21–C. We expect this change to have no adverse economic impact as it increases the size of the available spectator craft viewing area in the Narrows Temporary anchorage without closing any portions of any navigable channels. As originally published in the NPRM, this area would not have been used by any vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in portions of Lower and Upper New York Bay and the Hudson and East Rivers during various times from June 29–July 5, 2000. These regulations will not have a significant economic impact on a substantial number of small entities for the following additional reasons: Although these regulations will apply to a substantial portion of the Port of New York/New Jersey, designated areas for

viewing the Parade of Sailing Vessels and the Fourth of July Fireworks are being established to allow for maximum use of the waterways by commercial tour boats that usually operate in the affected areas. Before the effective period, the Coast Guard will make notifications to the public via mailings, facsimiles, the Local Notice to Mariners and use of the sponsors Internet site. In addition, the sponsoring organization, OPSAIL Inc., is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts.

One substantive change is being made to the Temporary final rule. The temporary Narrows Anchorage is being expanded to authorize a larger viewing area for spectator vessels between 25 meters (82 feet) and 60 meters (197 feet). The expanded area includes all waters of Anchorage Channel east of a line drawn between Gowanus Flats Lighted Bell Buoy 22 (LLNR 34945) and Bay Ridge Channel Lighted Buoy 2 (LLNR 36872) to the western boundary of the temporary Narrows Anchorage, and south of the current southern boundary of Federal Anchorage 21–C. This will have a positive impact on small entities as it provides space for five more spectator craft to be awarded permits to anchor here in the lottery drawing. As originally published in the NPRM, this area would not have been used by any vessels.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. We provided explanations of the effect of these regulations on the Port of New York/New Jersey to approximately 15 small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agricultural Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–800–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule, including the expansion of the Temporary Narrows Anchorage discussed in the Discussion of Comments and Changes section above, and concluded that, under figure 2–1, paragraph 34(f, g, and h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. These temporary regulations establish special local regulations, anchorage grounds, and security zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Parts 100, 110, and 165 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add temporary § 100.T01–050 to read as follows:

§ 100.T01–050 OPSAIL 2000/International Naval Review (INR) 2000, Port of New York/New Jersey.

(a) *Regulated Areas.* (1) *Regulated Area A.* (i) *Location.* All waters of New York Harbor, Lower Bay and Sandy Hook Bay within the following boundaries: south of the Verrazano-Narrows Bridge; west of a line drawn shore to shore along 074°00″00 W (NAD 1983) between Coney Island, New York, and Navesink, New Jersey; and east of a line drawn shore to shore along 074°03′12″ W (NAD 1983) between Fort Wadsworth, Staten Island, and Leonardo, New Jersey, and all waters of Ambrose Channel shoreward of Ambrose Channel Entrance Lighted Gong Buoy 1 (LLNR 34800) and Ambrose Channel Entrance Lighted Bell Buoy 2 (LLNR 34805).

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section is enforced from 6 a.m., e.s.t. July 3, until 4 p.m., e.s.t. on July 4, 2000.

(2) *Regulated Area B.* (i) *Location.* All waters of New York Harbor, Upper Bay, the Hudson and East Rivers, and the Kill Van Kull within the following boundaries: south of 40°52′39″ N (NAD 1983) on the Hudson River at Spuyten Duyvil Creek; west of the Throgs Neck Bridge on the East River; north of the Verrazano-Narrows Bridge; and east of a line drawn from shore to shore along 074°05′15″ W (NAD 1983) between New Brighton, Staten Island, and Constable Hook, New Jersey, in the Kill Van Kull.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section is enforced from 10 a.m., e.s.t. on July 3, 2000, until 10 a.m., e.s.t. on July 5, 2000.

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(b) *Special local regulations.* (1) No vessel except OPSAIL 2000/INR 2000 participating vessels and their assisting tugs, spectator vessels, and those vessels exempt from the regulations in this section, may enter or navigate within Areas A and B, unless specifically authorized by the Coast Guard Captain of the Port, New York, or his on-scene representative.

(2) Vessels transiting Area B must do so at no wake speed or at speeds not to exceed 10 knots, whichever is less.

(3) Not withstanding paragraph (b)(1) of this section, no vessel, other than OPSAIL 2000/INR 2000 Vessels, their assisting tugs, and enforcement vessels, may enter or navigate within the boundaries of the main shipping channels in Area B unless they are specifically authorized to do so by Coast Guard Captain of the Port, New York, or his on-scene representative. No vessel in Area B is permitted to cross through the parade of sail, cross within 500 yards of the lead or last vessel in the parade of sail, or maneuver alongside within 100 yards of any OPSAIL 2000/INR 2000 Vessel unless authorized to do so by the Captain of the Port.

(4) No vessel is permitted to anchor in the Anchorage Channel or the Hudson River outside of the designated anchorages at any time without authorization. Vessels which need to anchor to maintain position will only do so in designated anchorage areas.

(5) No vessel, other than OPSAIL 2000/INR 2000 Vessels, their assisting tugs, and enforcement vessels, is permitted to transit the waters between Governors Island and The Battery in southern Manhattan from 7 a.m., e.s.t. July 4, 2000 until the end of the Parade of Sailing Vessels. Vessels which must transit to or from the East River may only do so by using Buttermilk Channel, unless otherwise authorized by the Coast Guard Captain of the Port, New York, or his designated on-scene representative.

(6) Ferry services may operate in Area B on July 3 and 5, 2000. On July 4, 2000 only those with prior written authorization from the Coast Guard Captain of the Port will be authorized to operate in this area.

(7) The operation of seaplanes, including taxiing, landing, and taking off, is prohibited in Area B on July 3–4, 2000, without prior written authorization from the Captain of the Port.

(8) All spectator vessels must maintain their position in the designated spectator craft anchorages during the fireworks display on July 4th scheduled from 9 p.m., e.s.t. until 10:45 p.m., e.s.t.

(c) *Effective period.* This section is applicable from 6 a.m., e.s.t. on July 3, 2000, until 10 a.m., e.s.t. on July 5, 2000.

PART 110—ANCHORAGE REGULATIONS

3. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

4. Effective June 29, 2000 through July 5, 2000, § 110.155 is temporarily amended as follows:

a. Add introductory text to the beginning of the section;

b. Add new paragraphs (c)(1)(ii), (c)(2)(ii), (c)(3)(ii);

c. Paragraphs (d)(1) through (d)(5), (d)(7) through (d)(9), (d)(10)(i), (d)(12)(i) and the introductory text of paragraph (d)(16) are suspended and new paragraphs (d)(10)(ii), (d)(11)(iii), (d)(12)(iii) through (d)(12)(iv), (d)(13)(vi), (d)(14)(iv), (d)(15)(iii), and (d)(17) through (d)(20) are added;

d. Add new paragraph (e)(1)(iii);

e. The Note to paragraph (f)(1) introductory text is suspended;

f. Paragraphs (m)(2)(i) through (m)(2)(ii) and (m)(3)(i) are suspended and new paragraphs (m)(2)(iii) and (m)(3)(ii) are added;

g. Paragraph (n)(1) is suspended; and

h. Add new paragraphs (o) and (p).

The additions read as follows:

§ 110.155 Anchorage Grounds; Port of New York.

The designated anchorage grounds in this section have not been specially surveyed or inspected and navigational charts may not show all seabed obstructions or shallowest depths. Additionally, the anchorages are in areas of substantial currents. Mariners who use these temporary anchorages should take appropriate precautions, including using all means available to ensure your vessel is not dragging anchor. Finally, these are not special anchorage areas. Thus vessels must display anchor lights, as required by the navigation rules.

* * * * *

(c) * * *

(1) * * *

(ii) This anchorage is designated for the exclusive use of spectator vessels less than 25 meters (82 feet) in length on a first come, first served basis.

(2) * * *

(ii) See paragraph (c)(1)(ii) of this section.

(3) * * *

(ii) See paragraph (c)(1)(ii) of this section.

* * * * *

(d) * * *

(10) * * *

(ii) This anchorage is for OPSAIL 2000 participating vessels only.

(11) * * *

(iii) This anchorage is reserved for OPSAIL 2000/INR 2000 participating vessels. No other vessel may anchor or operate in this area within 100 yards of OPSAIL 2000/INR 2000 participating vessels.

(12) * * *

(iii) This anchorage is for vessels greater than 60 meters (197 feet) in length. Persons desiring to use this anchorage must hold a permit from the Captain of the Port New York on their vessel. A lottery was held to determine vessel anchorage locations and applications are no longer being accepted.

(iv) This anchorage is available for vessels observing or participating in OPSAIL 2000/INR 2000 festivities and which have been authorized by the Coast Guard Captain of the Port, New York. No vessel may anchor within this area without authorization to do so.

(13) * * *

(vi) See paragraph (d)(12)(iv) of this section.

(14) * * *

(iv) See paragraph (d)(12)(iv) of this section.

(15) * * *

(iii) See paragraph (d)(12)(iv) of this section.

* * * * *

(17) The anchorages in this paragraph (d)(17) are designated for the exclusive use of spectator vessels less than 25 meters (82 feet) in length on a first come, first served basis.

(i) *Ellis Island Anchorage.* That area bound by the following points: 40°41′55″ N, 074°02′56″ W; 40°41′29.5″ N, 074°02′05″ W; 40°41′42″ N, 074°02′00.5″ W; 40°41′55″ N, 074°01′58″ W; 40°42′05″ N, 074°01′57″ W; 40°42′20.5″ N, 074°02′06″ W (NAD 1983); thence along the shoreline to the point of beginning.

(ii) *Liberty Island Anchorage.* That area bound by the following points: 40°41′30.5″ N, 074°03′15.5″ W; 40°41′11.5″ N, 074°02′44″ W; 40°41′34″ N, 074°02′26.5″ W; 40°41′51.5″ N, 074°02′59.5″ W (NAD 1983); thence along the shoreline to the point of beginning.

(iii) *Caven Point Anchorage.* That area bound by the following points: 40°40′33″ N, 074°03′33″ W; 40°40′25″ N, 074°03′23″ W; 40°40′09.5″ N, 074°02′59″ W; 40°40′59.5″ N, 074°02′26.5″ W; 40°41′26″ N, 074°03′18″ W (NAD 1983); thence along the shoreline and the Caven Point Pier to the point of beginning.

(18) *Jersey Flats Anchorage.* That area bound by the following points: 40°39′57″ N, 074°04′00″ W; 40°39′50″ N, 074°03′56″ W; 40°39′35″ N, 074°03′22″ W; 40°40′02.5″ N, 074°03′04″ W; 40°40′53″ N, 074°04′17″ W (NAD 1983); thence along the shoreline to the point of beginning.

(i) The area west of the eastern end of the Global Marine Terminal Pier is for the exclusive use of spectator vessels less than 25 meters (82 feet) in length on a first come, first served basis. The area east of the eastern end of the Global Marine Terminal Pier is for vessels between 25 meters (82 feet) and 60 meters (197 feet) in length.

(ii) Persons desiring to use this anchorage must hold a permit from the Captain of the Port New York on their vessel. A Lottery was held to determine vessel anchorage locations and applications are no longer being accepted.

(19) *Robbins Reef Anchorage.* That area bound by the following points: 40°39′19.5″ N, 074°05′10″ W; 40°39′00″ N, 074°03′46″ W; 40°39′22″ N, 074°03′29″ W; 40°39′49.5″ N, 074°04′06″ W; (NAD 1983); thence along the shoreline to the point of beginning.

(i) The area west of the eastern end of the Military Ocean Terminal Pier is for the exclusive use of spectator vessels less than 25 meters (82 feet) in length on a first come, first served basis. The area east of the eastern end of the Military Ocean Terminal Pier is for vessels between 25 meters (82 feet) and 60 meters (197 feet) in length.

(ii) Persons desiring to use this anchorage must hold a permit from the Captain of the Port New York on their vessel. A lottery was held to determine vessel anchorage locations and applications are no longer being accepted.

(20) All vessels anchored in the anchorages described in paragraphs (d)(17) through (19) of this section must comply with the requirements in paragraphs (d)(16)(iii) through (vii) of this section. Any vessel anchored in or intending to anchor in Federal Anchorage 21–A through 21–C, 23–A, 23–B, 24 or 25 must comply with the requirements in paragraphs (d)(16)(i) through (x) of this section.

(e) * * *

(1) * * *

(iii) No vessel other than OPSAIL 2000/INR 2000 Vessels and their designated assist tugs may anchor and/or approach within 100 yards of any OPSAIL 2000/INR 2000 Vessel navigating or anchored in this area.

* * * * *

(m) * * *

(2) * * *

(iii) Anchorage No. 49–F is reserved for vessels as set out in paragraph (o)(2) of this section.

(3) * * *

(ii) Anchorage No. 49–G is reserved for vessels as set out in paragraph (o)(2) of this section.

* * * * *

(o) *Temporary Anchorage Grounds.*

(1) *Narrows Anchorage.* That area bound by the following points: 40°38′17″ N, 074°02′18.5″ W; 40°38′22″ N, 074°02′39″ W; 40°38′02.5″ N, 074°02′47.5″ W; 40°38′03″ N, 074°03′02″ W; 40°37′21.5″ N, 074°02′48.5″ W; 40°36′31″ N, 074°02′34″ W; 40°36′36.5″ N, 074°02′15.5″ W; 40°36′53.5″ N, 074°02′28.5″ W; 40°37′13″ N, 074°02′34″ W; 40°37′44″ N, 074°02′33″ W; thence to the point of beginning at 40°38′17″ N, 074°02′18.5″ W (NAD 1983).

(i) This anchorage is designated for the exclusive use of spectator vessels between 25 meters (82 feet) and 60 meters (197 feet) in length. Persons desiring to use this anchorage must hold a permit from the Captain of the Port New York on their vessel. A lottery was held to determine vessel anchorage locations and applications are no longer being accepted.

(ii) *Effective period.* Paragraph (o)(1) of this section is applicable from 12 p.m., e.s.t. on July 2, 2000, through 12 noon on July 5, 2000.

(2) *Sandy Hook Bay Anchorage.* That area bound by the following points: 40°28′30″ N, 074°01′42″ W; 40°27′56″ N, 074°01′35″ W; 40°27′54″ N, 074°01′25″ W; 40°26′00″ N, 074°00′58″ W; 40°26′00″ N, 074°02′00″ W; 40°26′29″ N, 074°02′51″ W; 40°27′29″ N, 074°02′10″ W; 40°27′40″ N, 074°02′36″ W; 40°28′07″ N, 074°02′19″ W (NAD 1983); thence along the shoreline to the point of beginning.

(i) This anchorage sets aside Anchorage No. 49–F and a portion of Anchorage No. 26, as described in paragraph (f)(1) of this section, for the exclusive use of OPSAIL 2000/INR 2000 Vessels.

(ii) No vessels other than OPSAIL 2000/INR 2000 naval and Tall Ships, their designated assist tugs, and enforcement vessels may anchor, loiter, or approach within 100 yards of any OPSAIL 2000/INR 2000 Vessel when it is navigating or at anchor in this area.

(iii) *Effective period.* Paragraph (o)(2) of this section is applicable from 6 a.m., e.s.t. on July 2, 2000, through 4 p.m., e.s.t. on July 4, 2000.

(p) *Temporary amendment applicable dates and times.* (1) From 12 noon on June 29, 2000 through 12 noon on July 5, 2000:

(i) The introductory text of this section is applicable.

(ii) The suspension of paragraphs (d)(1) through (5), (d)(10)(i), (n)(1), the introductory text of paragraph (d)(16), and the note to paragraph (f)(1) introductory text of this section is applicable.

(iii) Paragraphs (d)(10)(ii), (d)(17) through (20) and (p) of this section are applicable.

(2) The suspension of paragraphs (d)(7) through (9) of this section is applicable from 3 a.m., e.s.t. on July 3, 2000 through 12 noon on July 5, 2000.

(3) From 3 a.m., e.s.t. on July 3, 2000 through 6 a.m., e.s.t. on July 5, 2000:

(i) The suspension of paragraph (d)(12)(i) of this section is applicable.

(ii) Paragraphs (d)(11)(iii), (d)(12)(iii) and (iv), (d)(13)(vi), (d)(14)(iv), and (d)(15)(iii) of this section are applicable.

(4) From 6 a.m., e.s.t. on July 2, 2000 through 4 p.m., e.s.t. on July 4, 2000:

(i) The suspensions of paragraphs (m)(2)(i) and (ii), and (m)(3)(i) of this section are applicable.

(ii) Paragraphs (m)(2)(iii), (m)(3)(ii), and (e)(1)(iii) of this section are applicable.

(5) From 6 a.m., e.s.t. on July 2, 2000 through 12 noon on July 5, 2000, paragraph (o) of this section is applicable.

(6) From 12 noon on July 2, 2000 through 12 noon on July 5, 2000, paragraphs (c)(1)(ii), (c)(2)(ii), and (c)(3)(ii) of this section are applicable.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

5. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

6. Add temporary § 165.T01–050 to read as follows:

§ 165.T01–050 Security Zones: International Naval Review (INR) 2000, Hudson River and Upper New York Bay.

(a) The following areas are established as security zones:

(1) *Security Zone A.* (i) *Location.* This security zone includes all waters within 500 yards of the U.S. Navy review ship and the zone will move with the review ship as it transits the Hudson River and Upper New York Bay during the International Naval Review between the George Washington Bridge (river mile 11.0) and the Verrazano-Narrows Bridge.

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section is enforced from 7 a.m., e.s.t. until 11 a.m., e.s.t. on July 4, 2000.

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(2) *Security Zone B.* (i) *Location.* All waters within 500 yards of the U.S.S. John F. Kennedy (CV–67), in Federal Anchorage 21B.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section is enforced from 10 a.m., e.s.t. until 5 p.m., e.s.t. on July 4, 2000.

(b) *Effective period.* This section is applicable from 7 a.m., e.s.t. on July 4, 2000, until 5 p.m., e.s.t. on July 4, 2000.

(c) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 4, 2000.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–12641 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP MIAMI 00–015]

RIN 2115–AA97

Safety Zone: OpSail Miami 2000, Port of Miami.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary regulations in the Port of Miami for OpSail Miami 2000 activities. This action is necessary to provide for the safety of life and property on navigable waters during OpSail Miami 2000. This action will restrict vessel traffic in portions of the Port of Miami.

DATES: This rule is effective from 9 p.m. Eastern Daylight Time (EDT) on June 9, 2000 and terminates at 4 p.m. EDT on June 10, 2000.

ADDRESSES: Coast Guard Marine Safety Office Miami maintains the public docket for this rulemaking. Documents indicated in this preamble as being available in the docket, are available for inspection or copying at room 201, Coast Guard Marine Safety Office Miami, between 8 a.m. and 3 p.m., EDT Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Joseph Boudrow, Port Management and Response Department, Coast Guard Marine Safety Office Miami, (305) 535–8705.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 17, 1999, the Coast Guard published an advanced notice of proposed rulemaking (ANPRM), and on March 17, 2000, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled OPSAIL 2000 in the **Federal Register** (64 FR 70650 and 65 FR 14502). No comments were received during either comment period. No public hearing was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Updated information regarding the fireworks display was recently received from the sponsor. Further, the proposed rule was well publicized in the ANPRM and the NPRM, and the event will be further publicized throughout the local community by the event sponsor.

Background and Purpose

The temporary regulations are for OpSail Miami 2000 events scheduled to be held in portions of the Port of Miami over the period of June 6–10, 2000. This rule will provide for the safety of life and property on navigable waters during OpSail Miami 2000 events on June 9, 2000 and June 10, 2000.

Discussion of Rule

OpSail Miami 2000, Inc., is sponsoring OpSail Miami 2000 activities which consist of the arrival, display, and departure parade of numerous large U. S. and foreign flagged sail vessels. A fireworks display is planned for the evening prior to the final day of the sail vessel visit. Currently, approximately 20 Class A (175 feet or larger in length) and 20 smaller Class B (100 feet up to 175 feet) and C (up to 100 feet) sail vessels are expected to participate in OpSail Miami 2000.

Participant sail vessels will begin arriving in the Port of Miami on June 6, 2000 and will moor alongside Dodge Island within the Port of Miami. These vessels will be open to the public during certain hours between June 7 and June 9, 2000. On June 9, 2000, fireworks displays will be conducted commencing approximately 9:00 p.m. EDT from the orchestra vessel POINT COUNTERPOINT II, a barge anchored in the turning basin at the west end of Main Channel, and the Watson Island bridge structure. On June 10, 2000, the sail vessels will make their departure from the Port of Miami in a parade commencing approximately 12 noon EDT and ending approximately 4 p.m. EDT. Participant sail vessels will proceed under auxiliary power from their moorings to the turning basin at the west end of the Main Channel. From the turning basin, they will proceed under auxiliary power in 300 to 500 yard intervals in a ocean-bound direction along the Main Channel, thence along Government Cut, thence along Bar Cut, thence along Outer Bar Cut, to the vicinity of Miami Lighted Bouy M (Light List Number (LLNR) 10455–895), located at 25 degrees, 46.0 minutes North latitude, 080 degrees, 05.0 minutes West longitude. The area of Miami Lighted Buoy M is the termination point for pilotage. As pilots disembark their vessels, the sail vessels will parade northward off the coastline, under sail, to the parade termination point in the general vicinity of the entrance to Port Everglades, Florida.

Waterborne spectator areas have been designated by the event sponsor to be on either side of Bar Cut and Outer Bar Cut in the open ocean. These areas will be delineated by lines of marker floats placed by the sponsor. The marker floats will be round balls, orange in color, and spaced approximately 200 yards apart. They will be placed 100 yards out from the aids to navigation that mark each side of the channel. Spectator craft will be expected to remain behind the marker float lines for the duration of the parade.

Because of the number of the sail vessels, fireworks displays, and the large number of spectator watercraft expected during the parade, the Coast Guard is establishing regulations for the creation of temporary safety zones and vessel movement controls in portions of the Port of Miami and its channels affected by these events. The regulations will be in effect on June 9 and 10, 2000. The vessel congestion due to the large number of participant and spectator vessels poses a significant threat to the safety of life and property. The Coast Guard has determined this rulemaking is necessary to ensure the safety of life and property on the navigable waters of the United States within portions of the Port of Miami affected by this event.

Regulated Areas

The Coast Guard is establishing temporary safety zones for fireworks displays on June 9, 2000 and the Parade of Sail on June 10, 2000. The safety zone for June 9, 2000 shall include all waters within 100 yards of the orchestra vessel POINT COUNTERPOINT II, and all waters bounded on the north by the Venetian Causeway West drawbridge, a line drawn from the southwest corner of Biscayne Island to the northwest corner of Watson Island, and a line drawn from the southwest corner of Watson Island near the seaplane ramp to the northeast corner of the American Airlines Arena property water frontage.

The safety zone for the June 10, 2000, Parade of Sail shall include all waters in the Port of Miami within the turning basin at the west end of Main Channel bounded by the bridges connecting Dodge Island and Watson Island to the mainland, the Main Channel, Lummus Island Cut east of a line drawn northward from the west end of Fisher Island, Government Cut, Bar Cut, Outer Bar Cut, and 100 yards on either side of the Bar Cut and Outer Bar Cut short range navigational aids, seaward to Miami Lighted Buoy M (LLNR 10455–895).

Entry into these safety zones by non-participating vessels will be prohibited. The Coast Guard expects many spectator craft for this millennium event. These craft will be allowed to view the Parade of Sail vessels from viewing areas on either side of Bar Cut and Outer Bar Cut. These areas will delineated by marker floats placed by the sponsor of the event.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Although the rule prohibits all non-parade related traffic in the area of the temporary safety zone on Saturday, June 10, 2000, the effect of this regulation will not be significant for the following reasons: the regulation will be in effect for less than 6 hours; the maritime community will receive extensive advance notices through Local Notices to Mariners, facsimile, and marine information broadcasts, maritime association meetings, and Miami area newspapers; and specific viewing areas will be marked for spectator vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. We received no comments on this rule from small entities. However, this rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit those portions of the Port of Miami during the two periods of safety zone enforcement. These regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. Although these regulations would apply to a substantial portion of the Port of Miami, the periods of the regulatory enforcement will be of short duration. Before the effective periods, the Coast Guard will make notifications to the public via mailings, facsimilies, the Local Notice to Mariners, and use of the sponsor Internet site. In addition, OpSail Miami 2000, Inc., the sponsoring organization, is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we will assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Joe Boudrow, Coast Guard Marine Safety Office Miami at (305) 535–8705.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose on unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this action and have determined under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket where indicated under **ADDRESSES.** By controlling vessel traffic during the event, this rule is intended to minimize environmental impacts of increased vessel traffic during the parade of sail.

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List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T 07–015 is added to read as follows:

§ 165.T07–015 Safety zones; Miami, Florida.

(a) *Regulated areas.* (1) *Fireworks area.* (i) *Location.* All waters within 100 yards of the M/V POINT COUNTERPOINT II; and, all waters within an area bounded on the north by the Venetian Causeway West drawbridge, a line drawn from the southwest corner of Biscayne Island to the northwest corner of Watson Island, and a line drawn from the southwest corner of Watson Island near the seaplane ramp to the northeast corner of the American Airlines Arena property water frontage.

(ii) *Regulations.* In accordance with the general regulations in 165.23 of this part, no vessel shall enter the fireworks display fallout area during the enforcement period unless otherwise authorized by the U.S. Coast Guard Captain of the Port.

(iii) *Enforcement period.* This section becomes effective at 9 p.m. Eastern Daylight Time (EDT) and terminates at 11 p.m. EDT on June 9, 2000, unless terminated earlier by the U. S. Coast Guard Captain of the Port.

(2) *Parade of sail area.*—(i) *Location.* A temporary safety zone is established to include all waters in the Port of Miami within the turning basin at the west end of Main Channel bounded by the bridges connecting Dodge and Watson Islands with the mainland, Main Channel, Lummus Island Cut east of a line extending northward from the west end of Fisher Island, Government Cut, Bar Cut, Outer Bar Cut, and 100 yards on either side of the Bar Cut and Outer Bar Cut short range navigational aids, seaward to Miami Lighted Buoy M (LLNR 10455–895).

(ii) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited to all non-parade related vessels without the prior permission of the U. S. Coast Guard Captain of the Port.

(iii) *Enforcement period.* This section becomes effective at 10 a.m. EDT and terminates at 4 p.m. EDT on June 10, 2000, unless terminated earlier by the U.S. Coast Guard Captain of the Port.

(b) *Dates.* This section becomes effective at 9 p.m., EDT on June 9, 2000, and terminates at 4 p.m., EDT on June 10, 2000.

Dated: May 17, 2000.

L.J. Bowling,

Captain, U. S. Coast Guard, Captain of the Port, Miami Zone.

[FR Doc. 00–13195 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR 76–7291; FRL–6601–1]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to procedures described in the January 19, 1989 **Federal Register**, the Environmental Protection Agency (EPA or we) recently approved a minor State Implementation Plan (SIP) revision submitted by the Oregon Department of Environmental Quality (ODEQ). This submittal includes the following changes to the Oregon Administrative Rules (OAR) 340-028–0110 (Definitions): a revision of the definition of Volatile Organic Compounds (VOC), typographical corrections, updated reference dates, and the renumbering of several definitions. The VOC definition was revised to delist parachlorobenzotriflouride (PCBTF) and cyclic, branched, or linear completely methylated siloxanes from the definition of VOC. This document lists the revision we approved and incorporates the relevant material into the Code of Federal Regulations.

DATES: This rule is effective May 25, 2000.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Copies of material submitted to EPA and other information supporting this action may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101 and Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0985.

SUPPLEMENTARY INFORMATION: We approved the following minor SIP revision request under section 110(a) of the Clean Air Act (Act):

State	Subject matter	Date of submission	Date of approval
OR	Definitions: Revised the definition of VOC (delist parachlorobenzotnflounde (PCBTF) and cyclic, branched, or linear completely methylated siloxanes) consistent with changes in the federal definition, made typographical corrections, updated reference dates, and incorporated the renumbering of several definitions.	12–3–98	6–16–99

We took no action on the definitions relating to the Compliance Assurance Monitoring (CAM) Rule and on Tables 1 through 3. Please note that since these SIP revisions were adopted by the state, other modifications to Oregon's rules may have been adopted by the Environmental Quality Commission and submitted to EPA for approval (e.g. the rule recodification package). Approval of this SIP revision does not rescind any local rule amendments that were subsequently filed and submitted. We determined that this SIP revision complies with all applicable requirements of the Act and EPA policy and regulations concerning such revisions. Due to the minor nature of this revision, we concluded that conducting notice-and-comment rulemaking prior to approving this revision would have been "unnecessary and contrary to the public interest", and therefore, was not required by the Administrative Procedure Act, 5 U.S.C. 553(b). This SIP approval became final and effective on the date of EPA approval listed above.

I. Administrative Requirements

A. Executive Order 12866

A. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule became effective on June 16, 1999.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 24, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

B. Oregon Notice Provision

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. EPA determined that, because the five-day advance notice provision required by ORS 468.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval, as specified in section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a section 110 SIP revision.

To correct the problem the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph ORS 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from federal approval or delegation. ODEQ responded to EPA's understanding of the application of ORS 468.126(2)(e) and agreed that, because federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

C. Oregon Audit Privilege

Another enforcement issue concerns Oregon's audit privilege and immunity law. Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's Audit Privilege Act, ORS 468.963 enacted in 1993, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act Program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

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Dated: March 16, 2000.

Chuck Clarke,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (131) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(131) On December 3, 1998, the Director of the Oregon Department of Environmental Quality (ODEQ) submitted a revision to the definition section of the Oregon Administrative Rules (OAR), as effective October 14, 1998.

(i) Incorporation by reference.

(A) OAR 340–028–0110, as effective October 14, 1998, except for the following: (16) Capture system, (25) Continuous compliance determination method, (27) Control device, (29) Data, (39)(b) Emission Limitation and Emission Standard, (47) Exceedance, (48) Excursion, (55) Inherent process equipment, (67) Monitoring, (86) Pollutant-specific emissions unit, (88) Predictive emission monitoring system (PEMS), Table 1, Table 2, and Table 3.

(B) Remove the following provision from the current incorporation by reference: OAR 340–028–0110, as effective October 6, 1995, except for Table 1, Table 2, and Table 3.

[FR Doc. 00–13070 Filed 5–24–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Par. 271

[FRL–6704–7]

Minnesota: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Minnesota has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Minnesota's changes to their hazardous waste program will take effect as provided below. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on August 23, 2000 unless EPA receives adverse written comment by June 26, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments referring to Docket Number Minnesota ARA 8, to Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450. We must receive your comments by June 26, 2000. You can view and copy Minnesota's application from 9:00 am to 4:00 pm at the following addresses: Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155, contact Nathan Cooley at (651) 297–7544; or EPA Region 5, contact Gary Westefer at the following address.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Minnesota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Minnesota Final authorization to operate its hazardous waste program with the changes described in the authorization application. Minnesota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Minnesota, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Minnesota subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. Minnesota has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA maintains independent authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to conduct inspections and require monitoring, tests, analyses or reports and to enforce RCRA requirements and suspend or revoke permits.

This action does not impose additional requirements on the regulated community because the regulations for which Minnesota is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register**, we are publishing a separate document that proposes to authorize the state program changes.

E. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives appropriate comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Minnesota Previously Been Authorized For?

Minnesota initially received Final authorization on January 28, 1985, effective February 11, 1985 (50 FR 3756), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 20, 1987, effective September 18, 1987 (52 FR 27199), on April 24, 1989, effective June 23, 1989 (54 FR 16361), amended June 28, 1989 (54 FR 27170), on June 15, 1990, effective August 14, 1990 (55 FR 24232), on June 24, 1991, effective August 23, 1991 (56 FR 28709), on March 19, 1992, effective May 18, 1992 (57 FR 9501), on March 17, 1993, effective May 17, 1993 (58 FR 14321), and on January 20, 1994, effective March 21, 1994 (59 FR 2998).

G. What Changes Are We Authorizing With Today's Action?

On March 7, 2000, Minnesota submitted a final complete program revision application, seeking authorization of program changes in accordance with 40 CFR 271.21. EPA reviewed Minnesota's application, and we now make an immediate final decision, subject to receipt of adverse written comments that oppose this action, that Minnesota's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Minnesota Final authorization for the following program changes:

Description of Federal requirement	**Federal Register** date and page *[and/or RCHA statutory authority]*	Analogous State authority
Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038) Checklist 81 as amended Checklist 81.1.	November 2, 1990, 55 FR 46354 ..... December 17, 1990, 55 FR 51707	Minnesota Rules 7045.0135, 7045.0139; effective March 1, 1994.
Wood Preserving Listings Checklist 82	December 6, 1990, 55 FR 50450	Minnesota Rules 7045.0020, 7045.0120, 7045.0135, 7045.0139, 7045.0141, 7045.0145, 7045.0292, 7045.0528, 7045.0541, 7045.0552, 7045.0623, 7045.0628, 7045.0644; effective January 31, 1994, as amended October 2, 1995.
Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment Checklist 87.	April 26, 1991, 56 FR 19290	Minnesota Rules 7001.0625, 7001.0626, 7045.0547, 7045.0548, 7045.0564, 7045.0584, 7045.0647, 7045.0648; effective March 1, 1994.
Revision to F037 and F038 Listings Checklist 89.	May 13, 1991, 56 FR 21955	Minnesota Rules 7045.0135 effective March 1, 1994.
Wood Preserving Listing: Technical Correction Checklist 92.	July 1, 1991, 56 FR 30192	Minnesota Rules 7001.0623 7045.0120, 7045.0145, 7045.0292, 7045.0541, 7045.0644; effective January 31, 1994 as amended October 2, 1995.
Second Correction to the Third Third Land Disposal Restrictions Checklist 102.	March 6, 1992, 57 FR 8086	Minnesota Rules 7045.0458, 7045.0564, 7045.1305, 7045.1355, 7045.1360; effective March 1, 1994.
Hazardous Debris Case-by-Case Capacity Variance Checklist 103.	May 15, 1992, 57 FR 20766	Minnesota Rules 7045.1335; effective March 1, 1994.
Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance Checklist 106.	June 26, 1992, 57 FR 28628	Minnesota Rules 7045.1335; effective March 1, 1994.
Wood Preserving: Amendments to Listings and Technical Requirements Checklist 120.	December 24, 1992, 57 FR 61492	Minnesota Rules 7045.0541, 7045.0644; effective January 31, 1994, as amended October 2, 1995.

H. Where Are the Revised State Rules Different From the Federal Rules?

In the changes currently being made to Minnesota's program, we consider the following State requirement to be more stringent than the Federal requirements:

- Minnesota Rules 7001.0623, because the State does not allow for an exemption to Subpart F of 40 CFR part 264, as provided for in 40 CFR 270.26(b), making the State requirements more stringent.

More stringent rules are part of Minnesota's authorized program and are Federally enforceable.

Broader-in-scope requirements are not part of the authorized program and EPA cannot enforce them. Although you must comply with these requirements in accordance with state law, they are not RCRA requirements. There are no broader-in-scope provisions in these changes.

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I. Who Handles Permits After This Authorization Takes Effect?

Minnesota will issue permits for all the provisions for which it is authorized, and will administer the permits that it issues. EPA will continue to administer any RCRA hazardous waste permits, or portions of permits, that we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Minnesota is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Minnesota?

Minnesota is not authorized to carry out its hazardous waste program in Indian country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of the following Indian Reservations, located within or abutting the State of Minnesota:
a. Bois Forte Indian Reservation
b. Fond Du Lac Indian Reservation
c. Grand Portage Indian Reservation
d. Leech Lake Indian Reservation
e. Lower Sioux Indian Reservation
f. Mille Lacs Indian Reservation
g. Prairie Island Indian Reservation
h. Red Lake Indian Reservation
i. Shakopee Mdewankanton Indian Reservation
j. Upper Sioux Indian Reservation
k. White Earth Indian Reservation

2. Any land held in trust by the U.S. for an Indian tribe, and

3. Any other land, whether on or off a reservation that qualifies as Indian country.

Therefore, this action has no effect in Indian country where EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Is EPA Codifying Minnesota's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. The authorized Minnesota RCRA program was incorporated by reference into 40 CFR part 272 on May 15, 1989, effective July 14, 1989 (54 FR 20851). Minnesota's Incorporation by Reference was amended on March 16, 1990, effective May 15, 1990 (55 FR 9880), on October 15, 1992, effective December 14, 1992 (57 FR 47265), and on September 6, 1994, effective November 7, 1994 (59 FR 45986).

We reserve the amendment of 40 CFR part 272, subpart Y for this authorization of Minnesota's program changes until a later date.

L. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Minnesota program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) a small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes, for the purpose of RCRA section 3006, those existing State requirements.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States, prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves Minnesota's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in Minnesota in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the Office of Management and Budget determines is "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it authorizes a State program.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Minnesota is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 3, 2000.

Elissa Speizman,

Acting Regional Administrator, Region 5.

[FR Doc. 00–12953 Filed 5–24–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–36

[FPMR Amendment H–205]

RIN 3090–AF39

Disposition of Excess Personal Property; Correction

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error contained in a final rule appearing in Part III of the **Federal Register** of Tuesday, May 16, 2000 (64 FR 31218). The rule revised the Federal Property Management Regulations (FPMR) by moving coverage on the disposition of excess personal property into the Federal Management Regulation (FMR) and adding a cross-reference to the FPMR to direct readers to the coverage in the FMR.

EFFECTIVE DATE: May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Director, Personal Property Management Policy Division (MTP), 202–501–3828.

SUPPLEMENTARY INFORMATION: In rule document 00–11921 beginning on page 31218 in the issue of Tuesday, May 16, 2000, make the following correction:

§ 102–36.170 [Corrected]

1. On page 31225, in the first column, in the second line, "in" should read "is".

Dated: May 19, 2000.

Sharon A. Kiser,

Federal Acquisition Policy Division, Office of Governmentwide Policy.

[FR Doc. 00–13147 Filed 5–24–00; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–866; MM Docket No. 90–466; RM–7327, RM–7987, RM–7988, RM–8705].

Radio Broadcasting Services; Pleasanton, Bandera, Hondo, Hollywood Park, and Dilley, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission dismisses as moot the Application for Review filed by Reding Broadcasting Company, requesting reconsideration of a dismissal of its proposal to substitute Channel 252A for Channel 253C2 at Pleasanton, TX, substitute Channel 253A for Channel 290A at Hondo, TX and Channel 252A for Channel 276A at Bandera, TX. Petitioner received requested relief in MM Docket No. 98–55.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order, MM Docket No. 90–466 adopted April 12, 2000, and released April 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13138 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–945; MM Docket No. 99–83; RM–9500; RM–9722]

Radio Broadcasting Services; Saranac Lake and Westport, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dana Puopolo, allots Channel 296A to Saranac Lake, NY, as the community's third local FM service. *See* 64 FR 14422, March 25, 1999. At the request of Westport Broadcasting, the Commission substitutes Channel 275A for Channel 273A at Westport, NY, and modifies the license of Station WCLX to specify the alternate Class A channel. Channel 296A can be allotted to Saranac Lake in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, without the imposition of a site restriction, at coordinates 44–19–48 NL; 74–08–00 WL. Channel 275A can be allotted to Westport in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, with a site restriction of 4.6 kilometers (2.9 miles) northeast, at coordinates 44–13–16 NL; 73–24–42 WL, to accommodate WB's desired transmitter site. Both Saranac Lake and Westport are located within 320 kilometers (200 miles) of the U.S.-Canadian border and thus Canadian concurrence in the allotments is required. *See* **SUPPLEMENTARY INFORMATION**.

DATES: Effective June 12, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–83, adopted April 19, 2000, and released April 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036. In addition, Channel 296A at Saranac Lake will be short-spaced to Station CITE–FM, Channel 297C1, Montreal, Quebec, Canada, and Channel 275A at Westport will be short-spaced to Station CITE1, Channel 274C1, Sherbrooke, Quebec, Canada. Therefore, concurrence in these allotments, as specially-negotiated short-spaced allotments, was requested in October, 1999, but has not yet been received. However, rather than delay any further the opportunity to file applications for these channels, we will allot Channel 296A at Saranac Lake and Channel 275A at Westport at this time. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian Government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement." A filing window for Channel 296A at Saranac Lake will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 296A at Saranac Lake, and removing Channel 273A and adding Channel 275A at Westport.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13137 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–920; MM Docket No. 99–103; RM–9506; RM–9829]

Radio Broadcasting Services; Bayfield, CO and Teec Nos Pos, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 223A, in lieu of previously proposed Channel 237A, to Bayfield, Colorado, as an additional local FM transmission service at that community in response to a petition for rule making filed by Mountain West Broadcasting (RM–9506). *See* 64 FR 17141, April 8, 1999. Additionally, Channel 237C1 is allotted to Teec Nos Pos, Arizona, as that community's first local aural transmission service, in response to a counterproposal filed on behalf of Voice Ministries of Farmington, Inc. (RM–9829). Coordinates used for Channel 223A at Bayfield, Colorado, are 37–07–29 NL; 107–34–10 WL; coordinates used for Channel 237C1 at Teec Nos Pos, Arizona, are 36–54–36 NL; 109–06–00 WL.

DATES: Effective June 9, 2000. A filing window period for Channel 223A at Bayfield, Colorado, and for Channel 237C1 at Teec Nos Pos, Arizona, will not be opened at this time. Instead, the issue of opening a filing window for those channels will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–103, adopted April 19, 2000, and released April 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Teec Nos Pos, Channel 237C1.

3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Bayfield, Channel 223A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13135 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 000519147–0147–01; I.D. 051800C]

RIN 0648–AO22

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS is closing, for a 2 week period, all inshore waters and offshore waters out to 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. (approximately Tybee Island, Georgia) and 34° N. lat. (approximately Wilmington Beach, North Carolina) within the Leatherback Conservation Zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from May 19, 2000 through 11:59 p.m. (local time) on June 2, 2000.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, (727) 570–5312, (ph.

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727–570–5312, fax 727–570–5517, e-mail Chuck.Oravetz@noaa.gov), or Barbara A. Schroeder, (ph. 301–713–1401, fax 301–713–0376, e-mail Barbara.Schroeder@noaa.gov).

For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone (228) 762–4591 or fax (228) 769–8699.

SUPPLEMENTARY INFORMATION:

Prohibitions to taking sea turtles are governed by regulations implementing the Endangered Species Act at 50 CFR parts 222 and 223. The incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713 September 14, 1995), NMFS established regulations to provide protection for leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the Leatherback Conservation Zone, NMFS may close an area for 2 weeks when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to § 223.206(d)(2)(iv)(A) through (C).

An aerial survey conducted on May 12, 2000, along the South Carolina coast documented 14 leatherback turtles over a total survey trackline of approximately 39.7 nm (73.6 km). The survey trackline was flown in a northeasterly direction commencing approximately 1 nm (1.9 km) offshore of Bull's Island (32°55′ N. lat., 080°39′ W. long.) and terminating approximately 1 nm (1.9 km) off of Winyah Bay (33°13′ N. lat., 080°11′ W. long.). A replicate survey conducted on May 16, 2000 sighted 12 leatherbacks in 46 nm (85.2 km) of trackline. This survey was flown in a northeasterly direction commencing approximately 1 nm (1.9 km) offshore of Isle of Palms (32°46′ N. lat., 080°46′ W. long.) and terminating approximately 1 nm (1.9 km) offshore of North Island (33°15′ N. lat., 080°11′ W. long.). Fishing effort appeared heavy at the time of the survey. One hundred and sixteen vessels (77 underway shrimp trawlers) were observed during the survey of the South Carolina coast.

The Assistant Administrator for Fisheries, NOAA (AA), has determined that all inshore waters and offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. and 34° N. lat., within the Leatherback Conservation Zone are closed to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape.

The regulations at 50 CFR 223.206(d)(2)(iv) also state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intentions to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget (OMB) control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zones 32 and 33. This action allows shrimp fishing to continue in the affected area and informs fishermen of the gear changes that they can make to protect leatherback sea turtles.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Notice and opportunity to comment on the leatherback closure procedures was provided through the rulemaking establishing the closure procedures (60 FR 25663, May 12, 1995).

Pursuant to 5 U.S.C. 553(d)(3), the AA finds that there is good cause not to delay the effective date of this rule for 30 days. It would be contrary to the public interest to delay this action because such delay would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Accordingly, the AA is making the rule effective May 19, 2000 through June 2, 2000. This closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727) 570–5312 for updated area closure information. As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et. seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see **ADDRESSES**).

Dated: May 19, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13092 Filed 5–19–00; 4:55 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991106298–0145–02; I.D. 092199C]

RIN 0648–AL88

Fisheries of the Exclusive Economic Zone Off Alaska; At-Sea Scales; Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend portions of the regulations implementing the equipment and operational requirements in the Community Development Quota (CDQ) fisheries for catch weight measurement, observer sampling stations, and observer transmission of data. After the first year of requiring scales and observer sampling stations on specified vessels participating in the CDQ fisheries, NMFS has identified aspects of the requirements that need further refinement and correction for effective implementation. This action is intended to effect those refinements.

DATES: Effective June 26, 2000.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907–586–7228. A copy of the September 9, 1997, environmental assessment prepared for the Multispecies Community Development Quota (MS CDQ) Program can be obtained from the same address.

Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this final rule should be sent to both Lori Gravel, at the above address, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer). Comments sent by e-mail or the Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228 or alan.kinsolving@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska and the Bering Sea and Aleutian Islands Management Area according to the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs at 50 CFR part 679 and subpart H of 50 CFR part 600 govern fishing by U.S. vessels. Equipment and operational requirements for catch weight measurement appear at 50 CFR 679.28 and equipment and operational requirements for transmission of observer data appear at 50 CFR 679.50.

This final rule makes numerous minor revisions to §§ 679.28 and 679.32. NMFS published a proposed rule to implement these revisions in the **Federal Register** on December 2, 1999 (64 FR 67555). The preamble to the proposed rule contains a full description of the revisions and their justification, which is not repeated here. The proposed rule also provided the public with a 30-day review and comment period. NMFS received no comments on the proposed rule. Although some editorial changes were made to the regulatory text in this final rule, no substantive changes were made from the proposed regulatory text. Though this action results in some substantive regulatory revisions, most changes are technical edits needed to clarify existing regulations. The substantive changes that alter existing regulations will:

1. Explicitly allow NMFS staff to inspect and approve scales for use at-sea;
2. Allow the use of scale approval stickers or seals in lieu of maintaining a scale inspection report on board the vessel;
3. Relax the annual certification requirements for the test weights that must accompany an approved observer platform scale;
4. Allow scale manufacturers to use a computer-generated check number instead of a physical seal to protect adjustable scale components from fraudulent tampering;
5. Relax the requirements for the daily printout of haul information for a vessel that must weigh all catch;
6. Modify the requirements for visibility of the display on a total-catch weighing scale;
7. Require operators of trawl catcher/processors to ensure that no removal of fish can take place between the bin and observer sampling station without the removal being visible to the observer;
8. Define "tally area" and "collection point" for longline catcher/processors and specify requirements for their dimensions, location, and construction;
9. Define the phrase "clear and unobstructed passage," as used in the current regulations;
10. Make the minimum work space requirements for the observer sampling station more flexible by giving a minimum area criterion in lieu of specific minimum station length and width requirements;
11. Require that observer sampling station scales be mounted with the platform (i.e., the weighing surface) no more than 0.7 meter above the floor;
12. Require that trawl catcher/processors provide at least 1 meter of belt space downstream from the total-catch weighing scale for the observer's use when processing samples; and
13. Require that catcher/processors and motherships obtain, install, and maintain NMFS-provided data-entry software if participating in CDQ fisheries.

Compliance Guide for Small Entities

The Small Business Regulatory Enforcement Fairness Act of 1996 requires that NMFS prepare a compliance guide that explains how small entities must comply with the regulations implemented in this final rule. This action revises the requirements for observer sampling stations, at-sea scales, and transmission of observer data. This action affects all small entities that are required to install and maintain NMFS-approved scales or observer sampling stations. Affected entities must comply with the regulations concerning at-sea scales and observer sampling stations at § 679.28 and the regulations concerning the transmission of observer data in the CDQ program at § 679.32.

Because this rule makes changes to the at-sea scales and observer sampling station programs, it is possible that a sampling station or scale that was acceptable when inspected in 1999 will not be acceptable now. NMFS recommends that small entities required to provide NMFS-approved scales or observer sampling stations contact Alan Kinsolving (see **ADDRESSES**) prior to their next required scale or observer sampling station inspection to ensure that necessary modifications are made.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This final rule contains collection-of-information requirements subject to the PRA that have been approved by OMB. The OMB control numbers and estimated response times for these requirements are: the submission of

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scale inspection reports is approved under 0648–0330 at 15 minutes per response; the retention of scale weight reports is approved under 0648–0330 at 3 minutes per response; the inspection of an observer sampling station is approved under 0648–0269 at 2 hours per response; and the electronic transmittal of observer data is approved under 0648–0307 at 10 minutes per response.

The estimates of response times given here include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS (see **ADDRESSES**) and to OMB (see **ADDRESSES**).

NMFS prepared an FRFA for this final rule that describes the impact this action will have on small entities. A copy of this analysis is available from NMFS. No comments were received on the initial regulatory flexibility analysis prepared for this action. The Summary and Conclusions section of the FRFA states:

> This action revises and clarifies the equipment and technical requirements for at-sea scales, observer sampling stations, and observer transmission of data by making numerous, minor revisions to the regulations implementing these programs. The action is necessary to ensure NMFS' ability to effectively manage these programs; to improve the clarity and consistency of the implementing regulations; and to reduce unnecessary regulatory burdens. It is being promulgated under the authority of the Magnuson-Stevens Act. This action will directly affect the 13 freezer longliners currently equipped with scales or observer sampling stations that may be small entities. The ownership characteristics of vessels that would be impacted by this action have not been analyzed to determine if they are independently owned and operated or affiliated with a larger parent company. This action will impose no new reporting or recordkeeping requirements nor will it duplicate, overlap, or conflict with existing Federal rules. NMFS estimates that this action will cost the owners of directly affected freezer longliners less than $8,500 distributed among the 13 vessels and in no case cost any one vessel more than $1,700. This represents less than .06 percent of the average per-vessel gross revenues for the affected vessels. In addition to the preferred alternative, the analysis considered two other alternatives: a "no action" alternative that would not revise the existing regulations; and a "partial implementation" alternative that would implement some of the proposed revisions. These alternatives were rejected because they would fail to make the changes necessary for successful management of these programs. NMFS cannot quantify measures to minimize economic impacts on small entities with this type of rulemaking, which is being implemented to ensure that the NMFS-certified observer on board a vessel is able to collect data in a reliable and unbiased manner within a safe working environment. However, the preferred alternatives selected were crafted to minimize costs to the industry and still achieve safety goals.

A copy of the RIR/FRFA can be obtained from NMFS (see **ADDRESSES**).

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 19, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

2. In § 679.28, the section heading is revised; introductory text to paragraphs (b)(2)(iii), (b)(3), (b)(3)(ii)(B), (b)(5), and (d)(8), is revised; and paragraphs (b)(2)(vii), (b)(3)(ii)(A), (b)(5)(i), (b)(6), (d)(2), (d)(3), (d)(5) through (d)(7), and (d)(8)(i)(G) are revised to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(b) * * *

(2) * * *

(iii) *Who may perform scale inspections?* Scales must be inspected by either a NMFS staff scale inspector or a scale inspector employed by a weights and measures agency designated by NMFS to perform scale inspections on its behalf. A list of authorized scale inspectors is available from the Regional Administrator upon request. Scale inspections are paid for by NMFS.

* * * * *

(vii) *Scale inspection report.* (A) A scale is approved for use when the scale inspector completes and signs a scale inspection report verifying that the scale meets all of the requirements specified in this paragraph (b)(2) and appendix A to this part.

(B) The scale inspector must provide the original inspection report to the vessel owner and a copy to NMFS.

(C) The vessel owner must either:

(1) Maintain a copy of the report on board when use of the scale is required and make the report available to the observer, NMFS personnel, or an authorized officer, upon request, or;

(2) Display a valid NMFS-sticker on each approved scale.

(D) When in use, an approved scale must also meet the requirements described in paragraphs (b)(3) through (b)(6) of this section.

(3) *At-sea scale tests.* To verify that the scale meets the MPEs specified in this paragraph (b)(3), the vessel operator must test each scale or scale system used to weigh total catch one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

* * * * *

(ii) * * * (A) The MPE for platform and hanging scales is plus or minus 0.5 percent of the known weight of the test material.

(B) *Test weights.* Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection. The amount of test weights that must be provided by the vessel owner is specified in paragraphs (b)(3)(ii)(B)(*1*) and (b)(3)(ii)(B)(*2*) of this section.

* * * * *

(5) *Printed reports from the scale* (not applicable to observer sampling scales). The vessel owner must ensure that the printed reports are provided as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made and be made available to observers, NMFS personnel, or an authorized officer. In addition, printed reports must be retained by the vessel owner for 3 years after the end of the year during which the printouts were made.

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once every 24 hours when use of the scale is required. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, mud, debris, or other materials. Scale printouts must show:

(A) The vessel name and Federal fisheries or processor permit number;

(B) The haul or set number as recorded in the processor's DCPL (see § 679.5);

(C) The total weight of the haul or set;

(D) The total cumulative weight of all fish or other material weighed on the scale.

* * * * *

(6) *Scale installation requirements.* The scale display must be readable from where the observer collects unsorted catch.

* * * * *

(d) * * *

(2) *Location*—(i) *Motherships and catcher/processors or catcher vessels using trawl gear.* The observer sampling station must be located within 4 m of the location from which the observer collects unsorted catch. Clear, unobstructed passage must be provided between the observer sampling station and the location where the observer collects unsorted catch. When standing where unsorted catch is sampled, the observer must be able to see that no fish have been removed between the bin and the scale used to weigh total catch.

(ii) *Vessels using nontrawl gear.* The observer sampling station must be located within 5 m of the collection area, described at § 679.28(d)(7)(ii)(B), unless any location within this distance is unsafe for the observer. Clear, unobstructed passage must be provided between the observer sampling station and the collection area. Access must be provided to the tally station, described at § 679.28(d)(7)(ii)(A). NMFS may approve an alternative location if the vessel owner submits a written proposal describing the alternative location and the reasons why a location within 5 m of where fish are brought on board the vessel is unsafe, and the proposed observer sampling station meets all other applicable requirements of this section.

(iii) *What is clear, unobstructed passage?* Where clear and unobstructed passage is required, passageways must be at least 65 cm wide at their narrowest point, be free of tripping hazards, and be at least 1.8 m high. Doorways or companionways must be free of obstacles.

(3) *Minimum work space.* The observer must have a working area for sampling of at least 4.5 square meters. This working area includes the observer's sampling table. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

* * * * *

(5) *Observer sampling scale.* The observer sampling station must include a NMFS-approved platform scale with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor. The scale must be approved by NMFS under paragraph (b) of this section and must meet the maximum permissible error requirement specified in paragraph (b)(3)(ii)(A) of this section when tested by the observer.

(6) *Other requirements.* The sampling station must include flooring that prevents slipping and drains well (grating or other material where appropriate), adequate lighting, and a hose that supplies fresh or sea water to the observer.

(7) *Requirements for sampling catch*—(i) *Motherships and catcher/processors using trawl gear.* The conveyor belt conveying unsorted catch must have a removable board to allow fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch so that the observer can use this scale to weigh large samples. At least 1 m of accessible belt space, located downstream of the scale used to weigh total catch, must be available for the observer's use when sampling a haul.

(ii) *Catcher/processors using non-trawl gear.* In addition to the sampling station, vessels using non-trawl gear must provide: (A) *Tally station.* A place where the observer can see the gear as it leaves the water and can count and identify fish. It must be within 5 m of where fish are brought aboard the vessel and in a location where the observer is not in danger of falling overboard or being injured during gear retrieval. Where exposed to wind or seas, it must be equipped with a railing at least 1.0 m high, grating or other non-slip material, and adequate lighting.

(B) *Collection area.* A collection area is a place where the observer, or vessel crew under the observer's guidance, collects fish as they come off the line or are removed from pots. It must be located where the observer can see the gear when it leaves the water. Where exposed to wind or seas, it must be equipped with a railing at least 1.0 m high and grating or other non-slip material.

(8) *Inspection of the observer sampling station.* Each observer sampling station must be inspected and approved by NMFS prior to its use for the first time and then one time each year within 12 months of the date of the most recent inspection with the following exceptions: If the observer sampling station is moved or if the space or equipment available to the observer is reduced or removed when use of the observer sampling station is required, the observer sampling station inspection report issued under this section is no longer valid, and the observer sampling station must be reinspected and approved by NMFS. Inspection of the observer sampling station is in addition to inspection of the at-sea scales by an authorized scale inspector required at paragraph (b)(2) of this section.

(i) * * *

(G) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all catch will be weighed, the location where observers will sample unsorted catch, and the location of the observer sampling station as described at paragraph (d) of this section.

* * * * *

3. In § 679.32, paragraphs (c)(4)(iii) and (c)(4)(iv) are redesignated as paragraphs (c)(4)(iv) and (c)(4)(v) respectively, and a new paragraph (c)(4)(iii) is added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(4) * * *

(iii) Obtain the data entry software provided by the Regional Administrator ("ATLAS software") for use by the observer and ensure that observer data can be transmitted from the vessel to NMFS at any time while the vessel is receiving, catching or processing CDQ species.

* * * * *

4. In appendix A to part 679, in section 2.3.1.8, paragraphs (a)(iv) and (a)(v), in section 3.3.1.7, paragraphs (a)(iv) and (a)(v), and in section 4.3.1.5, paragraph (iv) are removed; in section 2.3.1.8, paragraphs (a)(vi) through (a)(viii) are redesignated as paragraphs (a)(iv) through (a)(vi) respectively: in section 3.3.1.7, paragraphs (a)(vi) through (a)(viii) are redesignated as paragraphs (a)(iv) through (a)(vi) respectively; in section 4.3.1.5, paragraph (a)(v) is redesignated as paragraph (a)(iv); and the definition of "security seals or means" in section 5.0 is revised to read as follows:

APPENDIX A TO PART 679—PERFORMANCE AND TECHNICAL REQUIREMENTS FOR SCALES USED TO WEIGH CATCH AT SEA IN THE GROUNDFISH FISHERIES OFF ALASKA

* * * * *

5. Definitions

* * * * *

Security seals or means—A physical seal such as a lead and wire seal that must be broken in order to change the operating or performance characteristics of the scale, or a number generated by the scale whenever a change is made to an adjustable component. The number must be sequential and it must not be possible for the scale operator to alter it. The number must be displayed whenever the scale is turned on.

* * * * *

[FR Doc. 00–13185 Filed 5–24–00; 8:45 am]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 102
Thursday, May 25, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 536

RIN 3206–AI88

Grade and Pay Retention

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is issuing proposed regulations giving agencies discretionary authority to grant pay retention to certain employees moving to positions under pay systems other than the General Schedule or the Federal Wage System. This new flexibility would allow agencies to prevent eligible employees from suffering a reduction in pay that would otherwise result from a management action. The proposed regulations also provide that grade retention will no longer apply to employees moving into the General Schedule or the Federal Wage System from noncovered pay systems.

DATES: Comments must be received on or before July 24, 2000.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200 (FAX: (202) 606–0824 or EMAIL: payleave@opm.gov)

FOR FURTHER INFORMATION CONTACT: Sharon Herzberg (202) 606–2858 or FAX: (202) 606–0824 or EMAIL: *payleave@opm.gov*.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 5361–5365, agencies may grant grade or pay retention to employees covered by the General Schedule (GS) pay system or the Federal Wage System (FWS) when a reduction in grade or pay is caused or influenced by a management action and certain other conditions are met. While the law expressly provides that these provisions apply to movements within or between those two covered pay schedules, the Office of Personnel Management (OPM) has provided by regulation that these provisions may also be applied to certain employees who move from a noncovered pay schedule to a covered pay schedule. (See definition of *employee* in 5 CFR 536.102.) This regulatory extension of the grade and pay retention provisions is authorized by 5 U.S.C. 5365(b)(1), which allows OPM to extend the application of "all or portions" of the grade and pay retention provisions to employees under noncovered pay schedules who move to a covered pay schedule.

The Department of Justice has requested that we extend pay retention to members of the Senior Executive Service (SES) who move to immigration judge (IJ) positions. While there is no provision in statute or regulation that permits management to direct the movement of a member of the SES to an IJ position, there are circumstances that have resulted in the movement of an SES member to a non-SES position that has a lower rate of pay. Examples include an SES member who voluntarily accepts a non-SES position following receipt of a notice of position abolishment or a notice of directed geographic reassignment (if there is no mobility agreement), or other management action that causes or influences the employee to move to a lower-paid position.

Prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, immigration judges were covered by the GS pay system. Before the statute was enacted, the Department of Justice was able to offer pay retention to an SES member who moved to an IJ position as a result of a management action, as described above. However, section 371 of the Act removed IJs from the GS pay system and established a unique IJ pay system with a top rate set at 92 percent of the rate of basic pay for SES level ES–5. As a result of the Act, immigration judges are no longer under a "covered pay system" and therefore are no longer eligible for pay retention. Because the statutory maximum IJ pay rate is less than the rates of pay for ES–5 and ES–6, an SES member who moves to an IJ position without pay retention could suffer a significant loss in pay. The inability to grant pay retention to employees who move between noncovered pay systems has deprived the Department of Justice of a needed degree of flexibility.

At the request of the Department of Justice, we reviewed this issue and determined that we have authority under the law to extend grade and pay retention to employees who move to or within noncovered pay schedules. Under 5 U.S.C. 5365(b)(2), OPM is authorized to apply "all or portions" of the grade and pay retention provisions to "individuals to whom such provisions do not otherwise apply." We further concluded that it would be appropriate as a matter of policy to amend our regulations to provide agencies with discretionary authority to grant pay retention to employees moving to or within noncovered pay schedules. Since these other pay schedules are generally not administered by OPM, we concluded that any use of the pay retention authority in these circumstances should be discretionary. We note that, under some circumstances, grade and pay retention benefits are already subject to an agency's discretion. (See 5 CFR 536.103(b) and 536.104(b).)

We concluded that this extension should not apply to grade retention, since that benefit was designed specifically for retention of grades under the GS and FWS pay systems. As explained above, the law allows OPM to selectively apply portions of the grade and pay retention provisions. Under current regulations, grade retention does not apply to members of the Senior Executive Service (SES) or employees in senior-level positions under 5 U.S.C. 5376 (SL/ST) even if they move to a covered pay schedule. (See 5 CFR 536.105(c).) However, the current regulations are silent regarding grade retention for administrative law judges (ALJs). Thus, it is possible for an ALJ who moves to a GS–14 position because of a management action to have GS–15 established as a retained grade. For consistency, we are proposing to amend the regulations to provide that grade retention does not apply to any employee who moves from, between, or within non-GS/FWS schedules—including the pay schedules for SES members, SL/ST positions, ALJs, and IJs.

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We are proposing that the normal rules for adjusting a retained rate not be applied to employees covered by a regulatory extension of pay retention under 5 U.S.C. 5365(b) who are not in a GS or FWS position while receiving pay retention, or who are in a GS or FWS position but receiving a retained rate in excess of the maximum rate of the applicable basic pay schedule (GS or FWS). Under the normal rules, a GS or FWS employee's retained rate is adjusted by 50 percent of the dollar increase in the maximum rate for the employee's grade. However, other pay systems may not have the same type of grade-based pay structure or are subject to different annual pay adjustments.

For example, many senior-level pay schedules are linked to the Executive Schedule, which sometimes has not been adjusted on an annual basis. This can result in anomalous situations. If an SES member at the ES–2 level (currently $107,100) moves to a GS–15 position and receives a retained rate, that retained rate subsequently could be increased to a rate above the ES–2 rate in effect at some future date. (Note: Retained rates for GS employees are capped at the rate for level V of the Executive Schedule, which limits this problem; however, agencies are required to adjust and maintain the "retained rate of record" without regard to the level V cap.) We are proposing to exercise our authority under 5 U.S.C. 5365(b) not to apply the retained rate adjustment portion of the statutory pay retention provisions for the categories of employees described above. Thus, these employees' retained rates would be frozen with no provision for any pay adjustment.

These proposed regulations would not impair any agency's independent authority to fix pay for employees under a pay schedule administered by that agency. The proposed extension of the pay retention provisions would be relevant only if the agency lacks any other authority to establish a saved rate for its employees. For example, the Department of Justice does not have authority to create a saved rate under the IJ pay system based on the former rate received by an SES member. The proposed regulations would allow the Department of Justice, at its discretion, to extend pay retention to an SES member moving to an IJ position. To be entitled to pay retention, an employee must also meet all other qualifying conditions (*e.g.*, the pay reduction is caused or influenced by a management action, not at the employee's request or because of personal cause; there is no break in service; and there is no declination of a reasonable offer).

To effect the policy change proposed here, we propose to add a new paragraph (d) to § 536.104 to give agencies discretionary authority to provide pay retention to any otherwise eligible Federal "employee," as defined in 5 U.S.C. 2105. The definition of *employee* in § 536.102 would be broadened to include an "employee," as defined in 5 U.S.C. 2105, to whom pay retention is granted under this discretionary authority. However, we are also proposing to add a sentence to § 530.102 that expressly excludes officials in or moving from an Executive Schedule position, since we believe pay retention is not appropriate for such officials. In addition, § 536.105(c), which excludes certain employees from grade retention, would be revised to exclude any employee who moves from a position not under a statutorily covered pay schedule to a position under a statutorily covered pay schedule. Also, we propose to remove paragraph (3) under the definition of *representative rate* and paragraph (b) of § 536.203, since grade retention would no longer apply to employees moving from noncovered pay schedules.

We also propose to revise § 536.205(c) to provide that an employee who moves from a noncovered pay schedule to a statutorily covered pay schedule and who receives a retained rate in excess of the maximum rate of the statutorily covered pay schedule is not entitled to any increase in basic pay when there is an increase in the scheduled rates. In addition, to clarify and simplify the regulations, we propose to delete the language in the existing § 536.205(g), which we believe is unnecessary in view of other provisions found elsewhere in parts 531, 532 and 536.

Instead, we propose to revise § 536.205(g) to address how the rules for administering a retained rate apply to employees under an administratively covered pay schedule who were granted pay retention under § 536.104(d). Specifically, the proposed change provides that the retained rate of such an employee will be frozen and that the regular or normal rate to which the employee otherwise would be entitled (but for pay retention) must be treated as a single-rate range in applying paragraphs (b) and (d) of that section, including the provisions governing the 150 percent cap established by 5 U.S.C. 5363(b)(2).

As noted above, eligibility for grade and pay retention is subject to certain exclusions, as provided in 5 CFR 536.105. Paragraph (a)(1) of that section bars grade or pay retention for employees who move from a position that is not in an "agency" as defined in 5 U.S.C. 5102. This definition of "agency," which is located in paragraph (a) of section 5102, is used to exclude employees in certain agencies from coverage under the GS classification and pay system. Other employees are excluded from the GS system if they fall under one of the categories of employees listed in paragraph (c) of section 5102 or if they are excluded by some other provision of law.

The exclusion in § 536.105(a)(1) is not statutory, but reflects a limitation OPM imposed simultaneous with the regulatory extension of grade and pay retention eligibility to employees moving to a covered pay schedule from a noncovered pay schedule. Recently OPM approved a variation to § 536.105(a)(1) at the request of the Department of Defense (DOD). (See Notice of OPM Variation, Notice No. 99–47, November 3, 1999.) While DOD is a covered agency under 5 U.S.C. 5102, several DOD subcomponents are expressly excluded from the definition of "agency" in 5 U.S.C. 5102(a)—namely, the National Security Agency, the Defense Intelligence Agency, and the National Imagery and Mapping Agency. Therefore, employees in these subcomponents are barred by § 536.105(a)(1) from receiving grade and pay retention upon movement to a covered pay schedule. DOD requested that OPM approve a variation to 5 CFR 536.105(a)(1) to allow otherwise eligible employees who move to GS or FWS positions from positions in these DOD subcomponents to receive grade or pay retention, even though these DOD subcomponents are excluded from the definition of an "agency" in 5 U.S.C. 5102(a). OPM agreed that a variation was warranted to ensure equal treatment of DOD employees.

Upon further consideration, we believe that the provision in § 536.105(a)(1) barring grade or pay retention for employees who move from a position that is not is an agency as defined in 5 U.S.C. 5102 should be removed altogether. The current rule results in inequitable treatment of employees by providing different benefits based on the specific method used to exclude an employee from coverage under the GS system. For pay retention purposes, we believe it should not matter whether an employee is excluded from the GS system under paragraph (a) or (c) of 5 U.S.C. 5102 or under some other provision of law. Therefore, we propose to remove the existing paragraph (a)(1) from § 536.105. This will extend pay retention eligibility to certain categories of non-GS employees. (Grade retention is not at issue, since we are already proposing to bar grade retention for all employees in or moving from non-GS/FWS pay systems.)

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

List of Subjects in 5 CFR Part 536

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend part 536 of title 5 of the Code of Federal Regulations as follows:

PART 536—GRADE AND PAY RETENTION

1. The authority citation for part 536 continues to read as follows:

Authority: 5 U.S.C. 5361–5366; sec. 7202(f) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), 104 Stat. 1338–336; sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103–89), 107 Stat. 981; § 536.307 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

Subpart A—Definitions; Coverage and Applicability

2. In § 536.102, the definition of *Representative rate* is amended by adding "or" after the semicolon at the end of paragraph (1), removing the "or" at the end of paragraph (2), and replacing the semicolon with a period, and removing paragraph (3); and the definition of *employee* is revised to read as follows:

§ 536.102 Definitions.

* * * * *

Employee means an employee as defined in 5 U.S.C. 5361 and also an individual who moves from a position which is not under a statutorily covered pay schedule to a position which is under a statutorily covered pay schedule, provided that the individual's employment immediately prior to the move was not on a temporary or term basis. *Employee* also means an employee as defined in 5 U.S.C. 2105 who is granted pay retention under § 536.104(d), subject to the limitations set forth in this part. However, *employee* does not include an official in or moving from an Executive Schedule position.

* * * * *

3. In § 536.104, a new paragraph (d) is added to read as follows:

§ 536.104 Coverage and applicability of pay retention.

* * * * *

(d) The head of an agency may apply the pay retention provisions of this part to an individual not under a statutorily covered pay schedule (as defined in 5 U.S.C. 5361) whose rate of basic pay would otherwise be reduced as the result of a management action, provided that individual is an employee as defined in 5 U.S.C. 2105 (excluding an official in or moving from an Executive Schedule position). Coverage is subject to all other qualifying conditions and limitations established in this part.

4. In § 536.105, paragraph (a)(1) is removed, paragraphs (a)(2) through (a)(5) are redesignated as (a)(1) through (a)(4), respectively, and paragraph (c) is revised to read as follows:

§ 536.105 Exclusions.

* * * * *

(c) Grade retention under § 536.103 does not apply to an employee who—

(1) Moves to a position not under a statutorily covered pay schedule; or

(2) Moves from a position not under a statutorily covered pay schedule to a position under a statutorily covered pay schedule.

5. Section 536.203 is revised to read as follows:

§ 536.203 Determination of retained grade.

An employee who is in a position under a statutorily covered pay schedule immediately prior to the action that gives entitlement to grade retention shall retain the grade held immediately prior to the action.

6. In § 536.205, paragraphs (c) and (g) are revised to read as follows:

§ 536.205 Determination of rate of basic pay.

* * * * *

(c) When an increase in the scheduled rates of the grade of the employee's position occurs while the employee is under pay retention, the employee is entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the grade of the employee's current position. This paragraph does not apply to employees who move from a noncovered pay schedule to a statutorily covered pay schedule and who are receiving a retained rate in excess of the maximum payable rate of the applicable covered pay schedule.

* * * * *

(g) Notwithstanding paragraphs (b), (c), and (d) of this section, for an employee who is not in a position under a statutorily covered pay schedule while receiving a retained rate (as allowed by § 536.104(d))—

(1) The retained rate is compared to the rate of basic pay that otherwise would apply to the employee but for the retained rate (instead of comparing it to the maximum rate of the rate range for the employee's position) and is terminated when the retained rate falls below the employee's otherwise applicable rate;

(2) The retained rate is capped at 150 percent of the rate of basic pay that otherwise would apply to the employee but for the retained rate (instead of 150 percent of the maximum rate of the rate range for the employee's position); and

(3) The retained rate is frozen and may not be increased.

[FR Doc. 00–13052 Filed 5–24–00; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AB56

General Policies, Types of Loans, Loan Requirements—Telecommunications Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Supplemental proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations to update the criteria for determining "reasonably adequate service" levels for local exchange carriers and providers of specialized telecommunications service. This supplemental proposed rule is part of an ongoing RUS project to modernize agency policies in order to provide borrowers with the flexibility to continue providing reliable, modern telephone service at reasonable costs in rural areas, while maintaining the security and feasibility of the Government's loans.

DATES: Written comments on this supplemental proposed rule must be received by RUS by or carry a postmark or equivalent of June 26, 2000.

ADDRESSES: Submit written comments on this supplemental proposed rule to Roberta D. Purcell, Assistant Administrator, Telecommunications

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Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. RUS requires a signed original and three copies of all comments (7 CFR part 1700.4). All comments received will be available for public inspection in room 4056, South Building, U.S. Department of Agriculture, Washington, DC, between 8 a.m. and 4 p.m., Monday through Friday (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications loan program provides borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This proposed rule contains no new reporting or recordkeeping burdens, under OMB control number 0572–0079 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034, STOP 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325. Telephone: (202) 512–1800.

Executive Order 12372

This program is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034).

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The telecommunications industry is becoming increasingly competitive. The Telecommunications Act of 1996 (Public Law 104–104) and regulatory actions by the Federal Communications Commission (FCC) are drastically altering the regulatory and business environment of all telecommunications systems, including RUS borrowers. At the same time, changes in overall business trends and technologies continue to place pressure on RUS-financed systems to offer a wider array of services and to operate more efficiently.

The Telecommunications Act of 1996 mandates that universally available and affordable telecommunications services, including advanced services, be made available to all US citizens—whether in rural areas or city centers, affluent or poor communities. RUS supports this mandate and the goal that, with the assistance of advanced telecommunications technology, rural citizens be provided the same economic, educational, and health care benefits available in the larger metropolitan areas. RUS believes that the most expeditious way to bring the full range of telephone services to rural areas is to make certain providers of advanced services, in addition to providers of local exchange services, eligible for RUS financing.

RUS regulations currently contain criteria for RUS to consider in determining whether telecommunications service is reasonably adequate (7 CFR 1735.12(c), Nonduplication). However, these criteria do not recognize certain technological and other factors that are currently employed to determine adequate service. RUS is proposing separate criteria for local exchange carriers and providers of specialized telecommunications service. These revised criteria for determining "reasonably adequate service" are derived primarily from RUS policies related to telecommunications carriers generally, the Telecommunications Act of 1996, and FCC rules and regulations.

Under the Telecommunications Act of 1996, all incumbent local exchange carriers (ILECs) are automatically considered eligible telecommunications carriers (ETCs). An ETC is certified by the regulatory commission having jurisdiction, which makes it eligible to receive universal service support. Each State regulatory commission will name at least one ETC for every area. In return for universal service support, the ETC must make available an FCC-specified level of service throughout a designated area. Furthermore, an ETC must agree to advertise basic services in a specific area and offer service to everyone in that area.

If a LEC that has not previously borrowed from RUS applies for financing, RUS is proposing to lend only to those LECs that are ETCs within the State or tribal jurisdiction in which their financed facilities are to be located, LECs that have made commitments, satisfactory to RUS, to become ETCs, or LECs that commits to act as ETCs with respect to the area coverage requirements as described in § 1735.11. ETCs are eligible for universal service support and have accepted the obligations of being an ETC. ETC status, therefore, both enhances loan feasibility and promotes area wide coverage.

The Governor of RTB utilizes RUS policies in carrying out RTB's loan program. Therefore, these policy revisions would apply to loans made by RTB, as well.

RUS proposed amending certain provisions of 7 CFR part 1735 in a Proposed Rule published on February 11, 2000 at 65 FR 6922. Subsequently, RUS continued to review and analyze the rapidly developing telecommunications environment and decided to propose further revisions of certain provisions of 7 CFR part 1735, including portions of §§ 1735.2, 1735.10(c), 1735.12, and 1735.14 as published on February 2, 2000. RUS requests comments on all provisions published in this Supplemental Proposed Rule. Those proposed amendments published first on February 11, 2000, but revised again by this supplement will be subject to the procedures, including those concerning public comments, applicable hereto.

List of Subjects in 7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set forth in the preamble, 7 CFR chapter XVII is proposed to be amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

1. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. In § 1735.2, as proposed to be amended February 11, 2000, at 65 FR 6923, revise the definition of Mobile telecommunications service and add the following definitions in alphabetical order to read as follows:

§ 1735.2 Definitions.

* * * * *

Exchange access means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

* * * * *

Local exchange carrier (LEC) means an organization that is engaged in the provision of telephone exchange service or exchange access.

* * * * *

Mobile telecommunications service means radio communication voice service between mobile and land or fixed stations, or between mobile stations.

Modernization Plan (State Telecommunications Modernization Plan) means a State plan, which has been approved by RUS, for improving the telecommunications network of those telecommunications providers covered by the plan. A Modernization Plan must conform to the provisions of 7 CFR part 1751, subpart B.

* * * * *

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

* * * * *

Specialized telecommunications service means any telephone service other than telephone exchange service, exchange access, or mobile telecommunications service.

* * * * *

Telecommunications means the transmission or reception of voice, data, sounds, signals, pictures, writings, or signs of all kinds, by wire, fiber, radio, light, or other visual or electromagnetic means.

Telephone exchange service means: (1) Service provided primarily to fixed locations within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge; or (2) Comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

* * * * *

3. Revise § 1735.10(c), as proposed to be revised February 11, 2000, at 65 FR 6923, to read as follows:

§ 1735.10 General.

* * * * *

(c) A borrower receiving a loan to provide mobile telecommunications services or special telecommunications services shall be considered to be participating in the state telecommunications plan (TMP) with respect to the particular loan so long as the loan funds are not used in a manner that, in RUS' opinion, is inconsistent with the borrower achieving the goals set forth in the plan, except that a borrower must comply with any portion of a TMP made applicable to the borrower by a state commission with jurisdiction.

* * * * *

4. In § 1735.12, as proposed to be amended at 65 FR 6923, revise paragraph (c) and add paragraph (f) to read as follows:

§ 1735.12 Nonduplication.

* * * * *

(c) RUS shall consider the following criteria for any wireline local exchange service or similar fixed-station voice service provided by a local exchange carrier (LEC) in determining whether such service is reasonably adequate:

(1) The LEC is providing area coverage as described in § 1735.11.

(2) The LEC is providing all one-party service or, if the State commission has mandated a lower grade of service, the LEC is eliminating that service in accordance with the requirements of the Telecommunications Act of 1996, 47 U.S.C. 151 *et seq.*

(3) The LEC's network is capable of providing transmission and reception of data at a rate of at least 1,000,000 bits per second (1 Mbps) with reasonable modification to any subscriber who requests it.

(4) The LEC makes available custom calling features (at a minimum, call waiting, call forwarding, abbreviated dialing, and three-way calling).

(5) The LEC is able to provide E911 service to all subscribers, when requested by the government entity responsible for this service.

(6) The LEC is able to offer local service with blocked toll access to those subscribers who request it.

(7) The LEC's network is capable of accommodating Internet access at speeds of at least 28,800 bits per second (28.8 Kbps) via modem dial-up from any subscriber location.

(8) There is an absence of frequent service interruptions.

(9) The LEC is interconnected with the public switched network.

(10) No Federal or State regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(11) Services are provided at reasonably affordable rates.

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(12) Any other criteria the Administrator determines to be applicable to the particular case.

* * * * *

(f) RUS shall consider the following criteria for any provider of a specialized telecommunications service in determining whether such service is reasonably adequate:

(1) The provider of a specialized telecommunications service is providing area coverage as described in § 1735.11.

(2) An adequate signal strength is provided throughout the largest practical portion of the service area.

(3) There is an absence of frequent service interruptions.

(4) The quality and variety of service provided is comparable to that provided in nonrural areas.

(5) The service provided complies with industry standards.

(6) No Federal, State, or local regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(7) Services are provided at reasonably affordable rates.

(8) Any other criteria the Administrator determines to be applicable to the particular case.

5. In § 1735.14, as proposed to be amended at 65 FR 6924, remove "and" at the end of paragraph (c)(1), remove the period at the end of paragraph (c)(2) and add "; and" in its place, and add new paragraph (c)(3) to read as follows:

§ 1735.14 Borrower eligibility.

* * * * *

(c) * * *

(3) If a local exchange carrier, must be either an eligible telecommunications carrier (ETC) within the State or tribal jurisdiction in which the RUS-financed facilities are to be located, a LEC that has made a commitment, satisfactory to RUS, to become an ETC within the State or tribal jurisdiction in which the financed facilities are to be located, or a LEC that commits to act as an ETC in such a manner as to meet the area coverage requirements as described in § 1735.11.

Dated: May 12, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–12657 Filed 5–24–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1710

RIN 2550–AA09

Releasing Information; Electronic Freedom of Information Amendment

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is proposing to amend its regulations to reflect the changes to the Freedom of Information Act (FOIA) made by the Electronic Freedom of Information Act Amendments Act of 1996 (1996 Act) and to revise the method of computing fees. The proposal provides for: electronic FOIA requests; access to records published or released under FOIA in electronic format; expedited processing of FOIA requests upon a showing of compelling need; publication of responses to FOIA requests that are likely to become repeat requests; aggregation of clearly related requests by a single requester or group of requesters acting in concert; informing the requester of the volume of requested material withheld and the extent of deletions both in publicly available records and records released in response to a FOIA request; and a method for computing fees that is based upon the classification of the employee performing the work as executive, professional, or clerical.

DATES: Written comments regarding the proposed rulemaking must be received by July 24, 2000.

ADDRESSES: All comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Fourth Floor, Washington, DC 20552. Alternatively, comments may be submitted via electronic mail to: *RegComments@ofheo.gov*. Copies of all communications received will be available for public inspection and copying at the address above.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Acosta, Associate General Counsel, 1700 G Street NW, Fourth Floor, Washington, DC 20552, telephone (202) 414–6924 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION: On December 23, 1998, OFHEO issued a final rule governing the release of information to the public, which, among other things, implemented the requirements of the Freedom of Information Act (FOIA). 63 FR 70998, Dec. 23, 1998. At the time of the publication of the final regulation, OFHEO noted that Congress had enacted the Electronic Freedom of Information Act Amendments of 1996 (1996 Act) [1] to provide for public access to information in an electronic format and for other purposes and announced that these amendments would be implemented by a separate rulemaking. Although certain of the 1996 Act's amendments that did not involve access to records in an electronic format were included in the final regulation, such as the extension of the time limit for the initial agency response from ten (10) to 20 days, this proposed regulation implements the remainder of the amendments and proposes a new method for computing fees. The 1996 Act amendments that are reflected in this proposal are: (1) The requirement to make requested documents available in the form or format specified by the requester, provided the document is readily reproducible in that form or format; (2) the requirement to make publicly available copies of records released in response to FOIA requests that are likely to become the subject of subsequent requests for substantially the same records; (3) the requirement for electronic access to records required to be made public by 5 U.S.C. 552(a)(2) that were created after November 1, 1996; (4) the requirement to provide expedited processing of FOIA requests upon a showing of compelling need by the requester and in such other cases as the agency may determine; (5) the requirement to indicate the extent of any deletion made in released records and publicly available records; (6) the requirement to inform the requester of the estimated volume of material withheld; and (7) the provision for aggregating clearly related requests as a single request when such a request would constitute an "unusual circumstance" justifying an extension of the response time. Although the 1996 Act authorized agencies to promulgate regulations providing for multi-tracking of FOIA requests based on the amount of time or work (or both) involved in processing requests, OFHEO has elected not to propose such regulations at this time. Thus far, the volume of FOIA requests has not been so great that a multi-tracking system is needed.

[1] Pub. L. 104–231, 110 Stat. 3048.

Although not required by the 1996 Act, the proposed regulation would allow requests to be made electronically.

The proposal would also revise the way fees are determined for personnel costs involved in processing a request. Currently, an hourly rate for actual time spent searching, reviewing, and duplicating is determined by the salary of the particular employee performing the work plus 16% of that amount to reflect the cost of benefits. In order to simplify the calculation of fees and provide a more transparent and predictable fee schedule for requesters, OFHEO proposes a method for computing fees that would charge one of three hourly rates for personnel costs associated with responding to a request, depending on whether the employee performing the work is classified as executive, professional, or clerical. An average of the actual compensation (salary and benefits) of all employees of OFHEO in a particular classification would determine the actual hourly fee for that classification. These fees would be adjusted periodically to reflect significant changes in average compensation. The current fee schedule would be available on OFHEO's website (*http://www.ofheo.gov/docs/*) and by mail.

Section-by-Section Analysis

Subpart A—General Definitions

The definition of "record" in § 1710.2(j) would be amended by inserting the phrase "regardless of form or format," to clarify that a record may be electronic in form.

Subpart B—Documents and Information Generally

Subpart B contains general provisions relating to disclosure of documents and information in the possession of OFHEO. Section 1710.7(c) provides that if a requested record is available through routine distribution procedures, OFHEO will first refer the requester to those sources, and only if the requester is not satisfied will OFHEO treat the request as a FOIA request. The proposed regulation adds the OFHEO website, (*http://www.ofheo.gov*) to the list of routine distribution procedures.

Subpart C—Availability of Records of OFHEO

Section 1710.11 of subpart C provides, generally, for the release of OFHEO records. Paragraph (a) of this section addresses the release of records in response to requests and paragraph (b) addresses records required to be made publicly available, including current indexes to such records. The proposed regulation separates the provisions of existing § 1710.11 that relate to records required to be made publicly available pursuant to 5 U.S.C. 552(a)(2) from those that relate to the release of records upon request and relocates provisions related to records required to be made publicly available to § 1710.12. The existing provisions of § 1710.12 would be deleted, because they are made unnecessary by other amendments to the regulation. Specific changes to the existing text of §§ 1710.11 and 1710.12 are explained more fully below.

Section 1710.11(a) would be amended to incorporate the substance of § 1710.11(c), which addresses copying costs, and to state that records will be made available in the form or format requested provided they are readily reproducible in that form or format with reasonable effort. "Readily reproducible" is defined to mean, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk, or other electronic medium using equipment currently in use by OFHEO.

Section 1710.11(b), which addresses records required to be made publicly available under 5 U.S.C. 552(a)(2), would be redesignated as § 1710.12(a) and amended to: (1) Incorporate the substance of § 1710.11(c) addressing copying costs; (2) state that all publicly available documents are available by mail; (3) state that records created after November 1, 1996, including current indexes to all publicly available records regardless of when created, will be available on OFHEO's website; and (4) add to the list of records publicly available, copies of records that have been released under the FOIA that OFHEO believes are likely to become the subject of subsequent requests for substantially the same records.

Section 1710.11(c), which relates to copying charges, would be deleted and its substance incorporated in §§ 1710.11(a) and 1710.12(a).

Section 1710.11(d), which sets forth FOIA exemptions, would then be redesignated as § 1710.11(b). This allows the regulatory designation for exemptions to be consistent with the statutory designation (*i.e.*, (b)(1), (b)(2), (b)(3), etc. instead of (d)(1), (d)(2), (d)(3), *etc.*) and avoids potential confusion arising from different statutory and regulatory designations.

Section 1710.11(e) would be redesignated as § 1710.1(c).

Section 1710.11(f) would be redesignated as § 1710.11(d) and would be amended to require that the amount of any information deleted from a record released under FOIA be indicated on the released portion of the record (at the place the deletion is made, if technically feasible).

Section 1710.11(g), which relates to permissible deletions in publicly available records, would be redesignated as § 1710.12(b) and amended to state that the extent of any deletions necessary to protect personal privacy will be indicated on the records that are publicly available under redesignated § 1710.12(a), at the place where the deletion is made if technically feasible, unless including the indication would harm an interest protected by the exemption on which the deletion is based.

Section (h) would be redesignated as § 1710.11(e).

Section 1710.12(a) currently states that the indexes that are required to be made available for public inspection and copying under 5 U.S.C. 552(a)(2) are available for inspection and copying at OFHEO's offices during regular business hours. This existing provision would be deleted because it is duplicative of the introductory language of existing § 1710.11(b), which would be redesignated as § 1710.12(a) and amended as described above. The heading of § 1710.12 would be revised to read "Publicly Available Records."

Section 1710.12(b) currently contains the Director's determination that, because of the lack of requests to date for records required to be indexed, such indexes do not need to be published quarterly. It states, however, that the indexes will be provided by mail upon request. Because OFHEO proposes to publish current indexes on its website, this finding is unnecessary and would be deleted. The statement that current indexes are available by mail would be relocated to § 1710.12(a).

Section 1710.13 would be amended to permit requests to be made by facsimile or electronic mail and to require that the request include the submitter's name, address and telephone number, to enable the FOIA Officer to contact the requester about the request in the event that clarification is needed.

Section 1710.14(c) would be amended to state that OFHEO is not required to create a record to respond to a request, replacing a statement that OFHEO will not create a record. While normally OFHEO will not create a record to respond to a request, there may be some circumstances in which it is easier to create a record than to redact a record or records in which the requested information is contained.

Section 1710.15, which prescribes the form and content of FOIA responses, would be amended by adding a

requirement that a notice of denial of a FOIA request (in whole or in part) include an estimate of the volume of requested material withheld, unless providing it would harm an interest protected by the exemption on which the denial is based.

Section 1710.16 sets forth the process for appeal of denials. Paragraph (a) would be amended to clarify that the appeal procedures also apply to denials of requests for expedited processing. Paragraph (b) would be amended to permit appeals to be submitted electronically or by facsimile. Paragraph (g), which sets forth the right to judicial review, currently states that a requester will be deemed to have exhausted his or her administrative remedies if an administrative appeal has been denied or has not been acted on within 20 days of receipt. This paragraph would be amended to state that if OFHEO provides the requester an opportunity to limit the scope of the request or arrange an alternate time for processing the request, the requester's refusal to do either will be considered a factor in determining whether "exceptional circumstances" exist. A showing of exceptional circumstances and due diligence on the part of the agency allows a court in which judicial review is sought to grant a stay to allow the agency additional time to complete its review of the records.

Section 1710.17 of the existing rule describes the time limits within which OFHEO will respond to initial requests and appeals of denials of requests. Paragraph (b) would be amended to state that appeals of denials of expedited processing will be acted on as expeditiously as practicable. Paragraph (c) would be amended by providing that if OFHEO extends the time limit stated in that paragraph and is unable to process the request by the date specified in the notice, OFHEO will offer the requester an opportunity to limit the scope of the request or arrange an alternate time frame for processing the request or a modified request. A new paragraph (d) would be added that provides for aggregating multiple requests involving clearly related matters made by a single requester, or group of requesters acting in concert, when such requests would, if considered as a single request, constitute an "unusual circumstance" justifying an extension of the response time. A new paragraph (e) would be added that provides for expedited processing upon a showing of compelling need by the requester and in such other cases as OFHEO may determine. A request for expedited processing must be accompanied by a statement, certified to be true and correct by the requester, that demonstrates compelling need. To show compelling need, the requester's statement must demonstrate that failure to obtain the requested records could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or, in the case of a requester whose main professional occupation or activity is the dissemination of information, that there is urgency to inform the public of the government activity involved in the request beyond the public's right to know of government activity generally. The requester must be notified within 10 working days of the disposition of the request, and any appeal of the denial must be acted on expeditiously.

Subpart D—Fees for Provision of Information

Subpart D sets forth the fees that will be assessed for services rendered in responding to and processing requests for records under the FOIA. The definition of "direct costs" in § 1710.21(b) would be amended to include the costs of any automated searches and the cost of securing any contract services that may be necessary to respond to a FOIA request. To reflect the revised fee schedule set forth in the amended section 1710.22(b), a reference to that section is substituted for the reference to the actual salary of the person performing the work as a basis for the fees charged.

Section 1710.21(f) would be amended by adding a requirement that the copy of the requested record be provided in the form or format requested, provided it is readily reproducible in that form or format with reasonable effort.

Section 1710.22 would be revised to reflect a new method for computing fees and to make minor technical changes to better accommodate the changes made in response to the 1996 Act. Instead of basing the fee on the actual salary rate of the employee performing the work plus 16% for benefits, OFHEO proposes to charge one of three hourly fees determined by whether the employee performing the work is classified as executive, professional, or clerical. The fee for each category would be determined by the average of the actual salaries and benefits of the employees in that category and would be adjusted periodically to reflect significant changes in average compensation of the class. The "executive" category refers to the senior management of the agency (*i.e.* Director, Deputy Director, Associate Directors, and Deputy Associate Directors). The "clerical" category includes employees performing primarily secretarial, clerical or ministerial tasks. The "professional" category includes all other employees. A current fee schedule would be available on OFHEO's website or by mail. Conforming changes are made in paragraph (b)(1)(ii) of this section, § 1710.23(g), and § 1710.38(a) of this part.

Technical changes to § 1710.22 include substituting "computer equipment" for "central processing unit" and changing the heading in § 1710.22(b)(2) from "Duplication" to "Reproduction" to clarify that the paragraph applies both to duplicating a record in the same format and to reproducing a record in a different format, and by changing the word "reproduction" to "photocopied" in the first sentence to clarify that the per page charge applies only to photocopies of records. Conforming changes are made in § 1710.23.

Throughout the regulation, minor, nonsubstantive syntactical changes are made in the revised sections and citations to sections of the Freedom of Information Act are replaced with citations to the sections of the regulation containing the relevant statutory provisions. Citations to 5 U.S.C. 552 are replaced with "the Freedom of Information Act." These changes will allow the reader to understand the regulatory provisions without referring to the statute.

Regulatory Impact

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. OFHEO has determined that this rule has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

Executive Order 12866, Regulatory Planning and Review

OMB has determined that rulemakings that amend FOIA regulations to implement the requirements of the Electronic Freedom of Information Act Amendments of 1996 are not "significant" regulations for the purposes of Executive Order 12866.

Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the Federal Government. This final rule meets the applicable standards of sections 3(a) and (b) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. Consequently, the rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel has certified that this final rule will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, requires that regulations involving the collection of information receive clearance from OMB. This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review under the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 1710

Administrative practice and procedure, Confidential business information, Electronic products, Freedom of information.

Accordingly, for reasons set forth in the preamble, OFHEO proposes to amend 12 CFR part 1710 as follows:

PART 1710—RELEASING INFORMATION

1. The authority citation for part 1710 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 4513, 4522, 4526, 4639; E.O. 12600; 3 CFR, 1987 Comp., p. 235.

Subpart A—General Definitions

§ 1710.2 [Amended]

2. Amend § 1710.2(j) by adding ", regardless of form or format," after "document".

Subpart B—Documents and Information Generally

§ 1710.7 [Amended]

3. Amend the first sentence of § 1710.7(c) by adding "or material offered on OFHEO's website (*http://www.ofheo.gov*)," after the comma following the parenthetical.

Subpart C—Availability of Records of OFHEO

4. Revise § 1710.11 to read as follows:

§ 1710.11 Official records of OFHEO.

(a) OFHEO shall, upon a written request for records that reasonably describes the information or records and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person for inspection and/or copying, except as provided in paragraph (b) of this section. OFHEO may charge a fee determined in accordance with subpart D of this part. OFHEO will make the record available in the form or format requested if the record is readily reproducible in that form or format with reasonable effort. "Readily reproducible" means, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk, tape, or other electronic medium using equipment currently in use by OFHEO.

(b) *Records not available.* Except as otherwise provided in this part, or as may be specifically authorized by the Director, the following information and records, or portions thereof, are not available to requesters:

(1) Any record, or portion thereof, that is—

(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and

(ii) Is in fact properly classified pursuant to such Executive order.

(2) Any record, or portion thereof, related solely to the internal personnel rules and practices of OFHEO.

(3) Any record, or portion thereof that is specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(5) Any matter contained in inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with OFHEO.

(6) Any information contained in personnel and medical files and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Any records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution or an Enterprise regulated and examined by OFHEO that furnished information on a confidential basis, and, in the case of a record of information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Any matter that is contained in or related to examination, operating, or condition reports that are prepared by, on behalf of, or for the use of OFHEO.

(9) Any geological and geophysical information and data, including maps, concerning wells.

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(c) Even if an exemption described in paragraph (b) of this section may be reasonably applicable to a requested record, or portion thereof, OFHEO may elect under the circumstances of any particular request not to apply the exemption to such requested record, or portion thereof. The fact that the exemption is not applied by OFHEO to any requested record, or portion thereof, has no precedential significance as to the application or nonapplication of the exemption to any other requested record, or portion thereof, no matter when the request is received.

(d) Any reasonably segregable portion of a record shall be provided to any person properly requesting such record after deletion of the portions which are exempt under this subpart. The amount of the information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in paragraph (b) of this section pursuant to which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where the deletion is made.

(e) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

5. Revise § 1710.12 to read as follows:

§ 1710.12 Publicly available records

(a) The records described in this paragraph are available for public inspection and copying, for a fee determined in accordance with subpart D of this part, at OFHEO's offices located at 1700 G Street, NW, Fourth Floor, Washington, DC 20552. Records created on or after November 1, 1996, and current indexes to all records described in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section, including those created before November 1, 1996, are available electronically at *http://www.ofheo.gov/docs/*. The publicly available records include—

(1) Any final opinions issued by OFHEO, as well as orders made in adjudication of cases as set forth in § 1710.9 of subpart B of this part;

(2) Any statements of policy and interpretation that have been adopted by OFHEO and have not been published in the **Federal Register**;

(3) Any OFHEO administrative staff manuals and instructions to staff that affect a member of the public, and that are not exempt from disclosure under the Freedom of Information Act;

(4) Copies of all records released pursuant to this subpart that OFHEO determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(5) Current indexes to the records described in this paragraph.

(b) To the extent necessary to prevent an invasion of personal privacy, the Director may delete identifying details from a record described in paragraph (a) of this section. In each case of such deletion, the justification will be clearly explained in writing and the extent of such deletion indicated (at the place in the record where the deletion is made if technically feasible), unless including that indication would harm an interest protected by the exemption in § 1710.11(b) pursuant to which the deletion is made.

6. Revise § 1710.13(a) to read as follows:

§ 1710.13 Requests for records.

(a) *Addressing requests.* Requests for records in the possession of OFHEO shall be made in writing but may be submitted by regular mail, electronic mail, or facsimile. If the request is sent by regular mail, the request shall be addressed to FOIA Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Fourth Floor, Washington, DC 20552, with both the envelope and the letter marked "FOIA Request." Electronic mail requests shall be addressed to *foia_office@ofheo.gov*, with "FOIA Request" in the subject line. Requests submitted by fax shall be sent to FOIA Officer at (202) 414–8917 and shall be clearly marked "FOIA Request." All requests shall include the requester's name, address, and telephone number. An improperly addressed request will be deemed not to have been received for purposes of the 20-day time period set forth in § 1710.17(a) of this subpart until it is received, or would have been received with the exercise of due diligence, by the FOIA Officer. Records requested in conformance with this subpart that are not exempt records may be obtained in person, by regular mail, or by electronic mail, as specified in the request, provided the records are readily reproducible in the requested form or format with reasonable effort. Records to be obtained in person will be available for inspection or copying during business hours on a regular business day in the office of OFHEO.

* * * * *

§ 1710.14 [Amended]

7. Amend § 1710.14(c) by removing "will not" and adding "is not required to" in its place in the last sentence.

8. Amend § 1710.15(b) by redesignating paragraphs (b)(2) and (b)(3) as (b)(3) and (b)(4) respectively, and adding a new paragraph (b)(2) to read as follows:

§ 1710.15 Form and content of responses.

* * * * *

(b) * * *

(2) An estimate of the volume of any requested matter that is withheld, unless providing the estimate would harm an interest protected by the exemption in § 1710.11 (b) pursuant to which the denial was made;

* * * * *

9. Amend § 1710.16 by revising paragraphs (a), (b), and (d) to read as follows:

§ 1710.16 Appeals of denials.

(a) *Right of appeal.* If a request, including a request for expedited processing, has been denied in whole or in part, the requester may appeal the denial to: FOIA Appeals Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW, Fourth Floor, Washington DC 20552. Electronic appeals shall be submitted to *foia_appeals_office@ofheo.gov* with "FOIA Appeal" in the subject line.

(b) *Letter of appeal.* The appeal must be in writing and submitted within 30 days of receipt of the denial letter. The appeal shall be submitted in the manner described in § 1710.13, except that it shall be clearly marked "FOIA Appeal" instead of "FOIA Request." An appeal shall include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons, or arguments advanced in support of disclosure of the requested record. An improperly addressed appeal shall be deemed not to have been received for the purposes of the 20-day time period set forth in § 1710.17(b) until it is received, or would have been received with the exercise of due diligence, by the Appeals Officer.

* * * * *

(d) *Judicial review.* If the denial of the request for records is upheld in whole or in part, or, if a determination on the appeal has not been mailed at the end of the 20-day period or the last extension thereof, the requester is deemed to have exhausted his or her administrative remedies, giving rise to a right of judicial review under 5 U.S.C. 55₹(a)(4). However, a requester's refusal of OFHEO's offer of an opportunity to limit the scope of the request or arrange

an alternate time frame for processing the request shall be considered as a factor in determining whether "exceptional circumstances" exist, which permits a court in which a requester has sought judicial review, to grant a stay to allow OFHEO to complete its review of the records.

10. Revise § 1710.17 to read as follows:

§ 1710.17 Time limits.

(a) *Initial request.* Following receipt of a request for records, the FOIA Officer will determine whether to comply with the request and will notify the requester in writing of his or her determination within 20 days (excluding Saturdays, Sundays, and legal holidays) after receipt of the request.

(b) *Appeal.* A written determination on an appeal submitted in accordance with § 1710.16 of this subpart will be issued within 20 days (excluding Saturdays, Sundays, and legal holidays) after receipt of the appeal. However, determination of an appeal of a denial of expedited processing will be issued as expeditiously as practicable. When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

(c) *Extension of time limits.* The time limits specified in either paragraph (a) or (b) of this section may be extended in unusual circumstances after written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be made. If the date specified for the extension is more than 10 days after the initial time allowed for response, OFHEO will provide the requester an opportunity to limit the scope of the request or arrange for an alternate time frame for processing the request. As used in this paragraph, *unusual circumstances* means that there is a need to—

(1) Search for and collect the requested records from facilities that are separate from the office processing the request;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request, or consult with various offices within OFHEO that have a substantial interest in the records requested.

(d) *Related requests.* OFHEO may aggregate multiple requests involving clearly related matters made by a single requester, or a group of requesters acting in concert, if OFHEO reasonably believes that such requests actually constitute a single request that would qualify as an "unusual circumstance."

(e) *Expedited processing.* (1) Upon a demonstration of compelling need by the requester, OFHEO will grant a request for expedited processing of a FOIA request. If a request for expedited processing is granted, OFHEO will give the request priority and process it as soon as practicable.

(2) To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(i) The failure to obtain the requested records could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The requester's main professional occupation or activity is information dissemination and there is a particular urgency to inform the public of government activity involved in the request beyond the public's right to know about government activity generally.

(3) The requester's statement of compelling need must be certified to be true and correct to the best of his or her knowledge and belief and must explain in detail the basis for requesting expedited processing. The formality of the certification required to obtain expedited treatment may be waived by OFHEO in its discretion.

(4) A requester seeking expedited processing will be notified within ten (10) working days of the receipt of the request whether expedited processing has been granted. If the request for expedited processing is denied, OFHEO will act on any appeal expeditiously.

§ 1710.18 [Amended]

11. Amend § 1710.18 as follows:

a. In paragraph (b)(1), remove "Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4)" and add in its place "§ 1710.11(b)(4)".

b. In paragraph (c), remove "Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4)" and add in its place "§ 1710.11(b)(4)".

c. In paragraph (d)(2), remove "5 U.S.C. 552(b)(4)" and add in its place "§ 1710.11(b)(4)".

d. In paragraph (e)(1), remove "5 U.S.C. 552(b)(4)" and add in its place "§ 1710.11(b)(4)".

e. In paragraph (i)(3), remove "5 U.S.C. 552" and add in its place "the Freedom of Information Act".

Subpart D—Fees for Provision of Information

12. Amend § 1710.21 by revising paragraphs (b) and (f) to read as follows:

§ 1710.21 Fees.

* * * * *

(b) *Direct costs* means the expenditures actually incurred by OFHEO in searching for and reproducing records to respond to a request for information. In the case of a commercial use request, the term also means those expenditures OFHEO actually incurs in reviewing records to respond to the request. The direct costs shall include the cost of the time of the employee performing the work, determined in accordance with § 1710.22(b)(1)(i), the cost of any computer searches, determined in accordance with § 1710.22(b)(1)(ii), and the cost of operating duplication equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored. Direct costs also include the costs incurred by OFHEO for any contract services that may be needed to respond to a request.

* * * * *

(f) *Reproduce* and *reproduction* means the process of making a copy of a record necessary to respond to a request for information. Such copies take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation, *e.g.*, magnetic tape or disk. The copy provided shall be in the form or format requested, provided the record is readily reproducible in that form or format with reasonable effort, and shall be in a form reasonably usable by the requesters.

* * * * *

13. Revise § 1710.22 to read as follows:

§ 1710.22 Fees to be charged—general.

(a) Generally, the fees charged for requests for records pursuant to the Freedom of Information Act will cover the full allowable direct costs of searching for, reproducing, and reviewing records that are responsive to a request for information. Fees will be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 1710.23 of this subpart for services rendered by OFHEO staff in responding to, and processing requests for, records under this part. Fees

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assessed shall be paid by check or money order payable to the Office of Federal Housing Enterprise Oversight.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to a FOIA request are as follows:

(1) *Searches.* (i) *Manual searches for records.* OFHEO will charge for actual search time, billed in 15-minute segments, at a rate determined by whether the employee performing the work is classified as clerical, professional, or executive. The hourly fee for each classification is based on the average of the actual compensation (salary and benefits) of employees in the classification and is adjusted periodically to reflect significant changes in the average compensation of the class. The "executive" classification includes the senior management of OFHEO, *i.e.* Director, Deputy Director, Associate Directors and Deputy Associate Directors. The "clerical" classification includes employees performing primarily secretarial, clerical, or ministerial tasks. The "professional" classification includes all positions not classified as "executive" or "clerical." A current fee schedule is available on electronically at http://www.ofheo.gov/docs/ or by regular mail.

(ii) *Computer searches for records.* Requesters will be charged at the actual direct costs of conducting a search using existing programming. These direct costs will include the cost of operating the computer equipment for that portion of operating time that is directly attributable to searching for records and the cost of the time of the employee performing the work, determined as described in paragraph (b)(1)(i) of this section. A charge will also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to OFHEO for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as of right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart.

(iii) *Unproductive searches.* OFHEO may charge search fees even if no records are found that are responsive to the request or if the records found are exempt from disclosure.

(2) *Reproduction.* Records will be photocopied at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the requester will be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of reproducing the record(s) will be charged.

(3) *Review.* Only requesters who are seeking records for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for initial review, *i.e.*, the review undertaken the first time OFHEO analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a review are properly assessable.

(4) *Other services and materials.* Where OFHEO elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

14. Amend § 1710.23 by revising paragraph (g) to read as follows:

§ 1710.23 Fees to be charged-categories of requesters.

* * * * *

(g) For purposes of paragraph (e) of this section, the term "search time" has as its basis, manual search. To apply this term to searches made by computer, OFHEO will determine the hourly cost of operating the computer equipment and the operator's time determined as described in paragraph (b)(1)(i) of § 1710.22. When the cost of the search (including the operator's time and the cost of operating the computer equipment to process a request) equals the equivalent dollar amount of two hours of the time of the person performing the work, *i.e.*, the operator, OFHEO will begin assessing charges for the computer.

Subpart E—Testimony and Production of Documents in Legal Proceedings In Which OFHEO Is Not a Named Party

15. Amend § 1710.38 by revising paragraph (a) to read as follows:

§ 1710.38 Fees.

* * * * *

(a) *Searches for documents.* OFHEO will charge for the actual search time of the employee performing the work, billed in 15-minute segments, as described in § 1710.22(b)(i).

* * * * *

Dated: May 22, 2000.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00–13194 Filed 5–24–00; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–07]

Proposed Modification of Class E Airspace, Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to modify the Wenatchee, WA, Class E airspace to remove the Fancher Field airspace exclusion at the Panghorn Memorial Airport, Wenatchee, WA.

DATES: Comments must be received on or before July 10, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manger, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–07, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Regional Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manger, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–07, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall

regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with ethos comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ANM–07." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interest in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Wenatchee, WA, in order to remove the Fancher Field airspace exclusion in the legal description for the Panghorn Memorial Airport, Wenatchee, WA. Fancher Field has been abandoned negating the requirement for it's Class E2 airspace exclusion. This airspace modification would delete the airspace requirement for Fanche Field and correct the legal description for Wenatchee, WA. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under Instrument Flight Rules (IFR) at the Wenatchee Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only invokes an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA E2 Wenatchee, WA

Wenatchee, Panghorn Memorial Airport, WA (Lat. 47°23'55" N, long. 120°12'24" W)

Within a 4 mile radius of Panghorn Memorial Airport, and within a 2.7 miles each side of the Wenatchee VOR/DME 124° radial extending from the 4-mile radius to 7 miles southeast of the VOR/DME.

* * * * *

Issued in Seattle, Washington, on May 12, 2000.

Daniel A. Boyle,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 00–13175 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6704–8]

Minnesota: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Minnesota has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). These changes include granting the State authority for the wood preserving rules, petroleum refinery sludge listings, and technical amendments to existing regulations. EPA proposes to grant final authorization to Minnesota. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You

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may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by June 26, 2000.

ADDRESSES: Send written comments referring to Docket Number Minnesota ARA 8, to Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450. Please refer to Docket Number MN ARA 8. You can examine copies of the materials submitted by Minnesota during normal business hours at the following locations: Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155, contact Nathan Cooley (651) 297–7544, and EPA Region 5, contact Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

FOR FURTHER INFORMATION CONTACT: Gary Westefer at the above address and phone number.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: May 3, 2000.

Elissa Speizman,

Acting Regional Administrator, Region 5.

[FR Doc. 00–12954 Filed 5–24–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–999; MM Docket No. 00–74; RM–9862]

Radio Broadcasting Services; Sterling, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Ling Broadcasting requesting the allotment of Channel 248C3 to Sterling, Colorado, as that locality's third local FM transmission service. Coordinates used for this proposal are 40–37–32 NL and 103–12–25 WL.

DATES: Comments must be filed on or before June 26, 2000, and reply comments on or before July 11, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: A. Wray Fitch, III, Esq., Gamon & Grange, P.C., 8280 Greensboro Drive, 7th Floor, McLean, VA 22102–3807.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–74, adopted April 26, 2000, and released May 5, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13141 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–999; MM Docket No. 00–75; RM–9863]

Radio Broadcasting Services; Kahului, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by New West Broadcasting requesting the allotment of Channel 223C2 to Kahului, HI, as that community's second local FM transmission service. Coordinates used for this proposal are 20–50–24 NL and 156–23–14 WL.

DATES: Comments must be filed on or before June 26, 2000, and reply comments on or before July 11, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: New West Broadcasting, c/o Robin B. Thomas, President, 1001 Weatherby Drive, Cheyenne, WY 82007.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–75, adopted April 26, 2000, and released May 5, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13140 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–999; MM Docket No. 00–73; RM–9861]

Radio Broadcasting Services; Hornbrook, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Logan and Company requesting the allotment of Channel 255A to Hornbrook, California, as that locality's first local aural transmission service. As Hornbrook is not incorporated or listed in the U.S. Census, information is requested regarding the attributes of that locality to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 41–53–06 NL and 122–35–03 WL.

DATES: Comments must be filed on or before June 26, 2000, and reply comments on or before July 11, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James A. Koerner, Esq., Koerner & Olender, P.C., 5809 Nicholson Lane, Suite 124, North Bethesda, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–73, adopted April 26, 2000, and released May 5, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13139 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–946, MM Docket No. 99–237; RM–9663]

Radio Broadcasting Services; Medina, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document denies a petition for rule making filed by Medina Radio Broadcasting Company requesting the allotment of Channel 296A at Medina, Texas. *See* 64 FR 36324, July 6, 1999. This document in this proceeding questioned community status and requested commenting parties to present the Commission with information demonstrating community status. Based on the totality of evidence submitted, we do not believe that Medina qualifies as a community for allotment purposes and that it would not serve the public interest to make a channel allotment in response to Medina Radio's proposal.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–237, adopted April 19, 2000, and released April 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13136 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 552 and 570

[APD 2800.12B, Case No. GSAR 5–422]

RIN 3090–AH03

General Services Administration Acquisition Regulation: Tax Adjustment

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the General Services Administration Acquisition Regulation (GSAR) by adding a new clause Tax Adjustment, and by revising the section GSAR contract clauses.

DATES: Comments should be submitted on or before July 24, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, Office of Acquisition Policy, GSA Acquisition Policy Division (MVP), 1800 F Street, NW, Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia L. Davis, GSA Acquisition Policy Division, (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Background

GSA proposes to amend the GSAR by revising Parts 552 and 570 to prescribe and to incorporate a new clause 552.270–30, Tax Adjustment. The clause will be incorporated in acquisitions of leasehold interest in real property when GSA determined that a tax adjustment is necessary.

B. Executive Order 12866

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small

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entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule simply provides a mechanism for adjusting rent to account for changes in real estate taxes.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subject in 48 CFR Part 552 and 570

Government procurement.

Accordingly, GSA proposes to amend 48 CFR Part 552 and 570 as follows:

1. The authority citation for 48 CFR Parts 552 and 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 552.270–30 is added to read as follows:

552.270–30 Tax Adjustment

As prescribed in 570.603, inset the following clause:

Tax Adjustment (Date)

(a) *Definitions.* "Base year taxes," as used in this clause, mean the real estate taxes for the first twelve (12) month period coincident with full assessment, or an amount negotiated by the parties that reflect an agreed on base for a fully assessed value of the property.

"Full assessment," as used in this clause, means that the taxing jurisdiction has considered all contemplated improvements to the assessed property in the valuation of the same. Partial assessments for newly constructed projects or for projects or for projects under construction, conversion, or renovation will not be used for establishing the Government's base year for taxes.

"Real estate taxes," as used in this clause, mean only those taxes assessed against the building or the land on which the building is located, without regard to benefit to the property, for the purpose of funding general government services. Real estate taxes shall not include general or special assessments, business improvement district assessments, or any other present or future taxes or governmental charges imposed on Lessor or assessed against the building or the land upon which the building is located.

(b) *Adjustment for changes in real estate taxes.* This lease provides for adjustments due to changes in real estate taxes on land and buildings occupied by the Government under this lease. Adjustments shall apply to each tax year during the lease term after the base tax year. Under the procedures established in this clause, the Government shall either:

(1) Make a single annual lump sum payment to the Lessor for its share of any increase in real estate taxes during the lease term over the amount established as the base year taxes.

(2) Receive an annual rental credit or lump sum payment from the Lessor for its share of any decreases in real estate taxes during the lease term below the amount established as the base year taxes.

(c) *Notices regarding real estate taxes.* The Lessor shall furnish the Contracting Officer with copies of each of the following within ten (10) calendar days of receipt:

(1) Any notice which may affect the valuation of land and buildings covered by this lease for real estate tax purposes.

(2) Any notice of a tax credit or tax refund related to land and buildings covered by this lease.

(3) Each tax bill related to land and building covered by this lease.

(d) *Increases in real estate taxes.* The following procedures apply for any tax year in which the real estate taxes increase over the base year taxes.

(1) *Invoice.* The Lessor shall submit a proper invoice (as described in the Prompt Payment clause of this lease, GSAR 552.232–75) for the tax adjustment. The invoice must include the calculation of the adjustment for the tax year. The Lessor must also provide a copy of all paid tax receipts for the tax year with the invoice. If the taxing authority does not give tax receipts, the Lessor must provide other similar evidence of payment acceptable to the Contract Officer. The Lessor must submit the invoice together with tax receipts or other evidence of payment no later than sixty (60) days after the date that the final tax payment for the year is due from the Lessor to the taxing authority.

(2) *Payment.* Upon receipt of a proper invoice and evidence of payment, the Government shall make payment no later than thirty (30) days after receipt of the invoice or thirty (30) days after the anniversary date of the lease, whichever is later. If the lease terminates before the end of a tax year, payment for the tax increase due will be prorated based on the number of days the Government occupied the space.

(3) *Waiver of right to adjustment.* If the Lessor fails to submit a proper invoice and tax receipts or other evidence of payment within sixty (60) days after the date that the final tax payment for the year is due, then the Lessor waives its right to receive payment for the increased taxes under this clause.

(e) *Decreases in real estate taxes.* The following procedures apply for any tax year in which the real estate taxes decrease from the base year taxes or during which the Lessor receives a refund or tax deduction for real estate taxes.

(1) The Government shall be entitled to and shall receive a pro rata credit for the reduction in taxes, regardless of whether the Government has not yet made the tax payment for that year.

(2) During the lease term, the Government shall apply any credit as a deduction from the rent.

(3) For any credit due after the expiration or earlier termination of the lease, at the Contracting Officer's direction, the Lessor shall either make a lump sum payment to the Government or provide a rental credit under a succeeding lease. This includes, but is not limited to, credits resulting from a tax decrease pursuant to a tax credit due the Lessor, a reduction in the tax assessment, or a tax appeal proceeding for a year or a portion of the lease. If directed to remit a lump sum payment, the Lessor must make payment to the Government within fifteen (15) days of the Contracting Officer's direction. If the credit due the Government is not paid by the due date, interest shall accrue on the late payment at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect on the day after the due date. The Government shall have the right to pursue the outstanding balance of any tax credit using all collection methods available to the United States to collect debts. Such collection rights survive the expiration of this lease.

(f) *Calculating tax share.* The Government shall pay its share of tax increases or receive its share of any tax decrease based on the ratio of the rentable square feet occupied by the Government to the total rentable square feet in the building or complex (percentage of occupancy). For this lease, the Government's percentage of occupancy as of the effective date of the lease is __%. This percentage shall take into account additions or reductions of the amount of space as may be contemplated in this lease or amendments hereto. The block and lot/parcel or other identification numbers for the property, building(s) and parking areas(s) occupied under this lease are ____.

(g) *Appeals to tax assessments.* The Government may direct the Lessor upon reasonable notice to initiate a tax appeal or the Government may decide to contest a tax assessment on behalf of both the Government and the Lessor or for the Government alone. The Lessor shall furnish to the Government information necessary for appeal of the tax assessment in accordance with the filing requirements on its own behalf or on behalf of both the Government and the Lessor, the Lessor shall cooperate and use all reasonable efforts including, but not limited to, affirming the accuracy of the documents, executing documents required for any legal proceeding, and taking such other actions as may be required. If the Lessor initiates an appeal on behalf of the Government, the Government and the Lessor will enter into an agreement to establish a method for sharing expenses and tax savings.

(End of Clause)

PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

3. Section 570.603 is amended by adding a new prescription at the end of the section to read as follows:

570.603 GSAR contract clauses.

* * * * *

552.270–30 Tax Adjustment. Insert this clause in solicitations and contracts if you determine that a tax adjustment is necessary.

Dated: May 17, 2000.

Sue McIver,

Acting Deputy Associated Administrator for Acquisition Policy.

[FR Doc. 00–13157 Filed 5–24–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 051600A]

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings to receive comments on its proposed Amendment 7 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP). Amendment 7 proposes to extend Florida's trap certificate program for the commercial stone crab fishery into Federal waters off the west coast of Florida. The objective of this program is to reduce, over time, the number of traps used in the fishery to an optimum number necessary to harvest the maximum sustainable yield (MSY).

DATES: The Council will accept written comments on the proposed amendment through June 26, 2000. The public hearings will be held in June. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Written comments should be sent to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619. Copies of draft Amendment 7 are available from Mr. Wayne Swingle, Executive Director, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619; telephone: 813–228–2815; fax: 813–769–4520. See **SUPPLEMENTARY INFORMATION** for specific hearing locations.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: There are about 1.4 million stone crab traps off Florida; the Florida Fish & Wildlife Conservation Commission (FFWCC) estimates that it would take only 600,000 traps to take the MSY from this fishery. The FFWCC, after working with the stone crab industry and Council over the past 4 years, has adopted a rule, effective July 1, 2000, under which a State trap certificate program will gradually reduce the number of traps over a 30-year period. This is a certificate-based attrition program that "grandfathers" fishermen into the program with their present number of traps and then will reduce slowly the trap numbers to the optimum level by reducing the number of certificates whenever they are sold. The Florida Legislature recently authorized license and penalty fees for this certificate program.

Time and Location for Public Hearings

Public hearings for Amendment 7 will be held at the following locations, dates, and times.

1. June 6, 2000, 7 p.m., Naples Depot Civic Cultural Center, 1051 Fifth Avenue South, Naples, Florida 34102; telephone: 941–262–1776.

2. June 7, 2000, 7 p.m., Banana Bay Resort & Marina, 4590 Overseas Highway, Marathon, Florida 33050; telephone: 305–743–3500.

3. June 13, 2000, 7 p.m., Jaycee Building, 501 SE 7th Avenue, Crystal River, Florida 34429; telephone: 352–795–4217.

4. June 14, 2000, 7 p.m., Steinhatchee Elementary School, 1st Avenue South, Steinhatchee, Florida 32359; telephone: 352–498–3303.

The Council will also hear public testimony before taking final action on Amendment 7 on July 12, 2000, at its meeting in Key Largo, Florida.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council office (see **ADDRESSES**) by May 30, 2000.

Dated: May 19, 2000.

Bruce Moorehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13187 Filed 5–24–00; 8:45 am]

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Notices

Federal Register
Vol. 65, No. 102
Thursday, May 25, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–00–06]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: June 6, 2000, from 9 a.m. to 5 p.m., and June 7, 2000, 9 a.m. to 5 p.m. (Eastern Daylight Time each day).

PLACE: Hilton Crystal City at National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703) 418–6800.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Program Manager, National Organic Program, USDA–AMS–TMP–NOP, Room 2945–So., Ag Stop 0268, P.O. Box 96456, Washington, D.C. 20090–6456, Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA. The NOSB met for the first time in Washington, D.C., in March 1992 and currently has six committees working on various aspects of the program. The committees are: Crops Standards; Processing, Labeling and Packaging Standards; Livestock Standards; Accreditation; Materials; and International Issues.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time the NOSB has submitted 30 addenda to its recommendations and reviewed more than 170 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on March 21–22, 2000, in Buena Park, California.

The Department of Agriculture (USDA) published its re-proposed National Organic Program regulation in the **Federal Register** on March 13, 2000 (65 FR 13512). Comments are being accepted until June 12, 2000. Comments may be submitted to: Keith Jones, Program Manager, National Organic Program, USDA–AMS–TMP–NOP, Room 2945–So., Ag Stop 0275, PO Box 96456, Washington, DC 20090–6456. Comments also may be sent by fax to (703) 365–0760 or filed via the Internet through the NOP's homepage at: http://www.ams.usda.gov/nop. Comments should be identified with docket number TMD–00–02–PR.

Purpose and Agenda

The principal purposes of this meeting are to provide an opportunity for the NOSB to receive committee reports; approve the NOSB's comment to the re-proposed National Organic Program regulation; vote on whether to recommend the addition of ethylene gas and amino acids to the National List; elect new officers of the NOSB; and receive an update regarding certification of aquatic animals from the USDA. Copies of the NOSB final meeting agenda can be requested from Mrs. Toni Strother, USDA–AMS–TMP–NOP, Room 2510–So., Ag Stop 0268, P.O. Box 96456, Washington, D.C. 20090–6456; by phone at (202) 720–3252; or by accessing the NOP website at http://www.ams.usda.gov/nop after May 23, 2000.

Type of Meeting

This meeting is open to the public. The NOSB has scheduled time for public input on Tuesday, June 6, 2000, from 1:30 p.m. until 4:00 p.m. at the Hilton Crystal City at National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202. Telephone: (703) 418–6800. Individuals and organizations wishing to make an oral presentation at the meeting should forward the request to Mrs. Strother at the above address or by FAX to (202) 205–7808 by close of business June 2, 2000. While persons wishing to make a presentation may sign up at the door, advance registration will ensure an opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing, if possible. Written submissions may supplement the oral presentation with additional material. Written comments may be submitted to the NOSB at the meeting or to Mrs. Strother after the meeting at the above address.

Dated: May 23, 2000.

Sharon Bomer Lauritsen

Acting Deputy Administrator, Transportation and Marketing

[FR Doc. 00–13289 Filed 5–23–00; 1:35 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–2000]

Foreign-Trade Zone 193–Pinellas County, FL; Application for Subzone Status, Amendment of Application—RP Scherer Corporation (Gelatin Capsules)

Notice is hereby given that the application of the Pinellas County Board of County Commissioners, grantee of FTZ 193, requesting authority for special-purpose subzone status for the gelatin capsule manufacturing facilities of RP Scherer Corporation (Scherer) located in the St. Petersburg/Clearwater area, Pinellas County, Florida (65 FR 5308, 2/3/00), has been amended to expand the proposed use of zone procedures at the Scherer plant to include the manufacture of a new anti-AIDS drug, using foreign and domestic ingredients. The foreign ingredients include Lopinavir (HTSUS 2933.59.7000—9.3% duty rate). The finished product is classified under HTSUS 3004.70.9010 and is duty free. Scherer will be finishing and encapsulating the finished drug under contract for Abbott Laboratories, Inc., which has authority from the FTZ Board to produce the drug under zone procedures at its Chicago, Illinois, plant.

The application remains otherwise unchanged.

The comment period is reopened until June 26, 2000.

Dated: May 17, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–13098 Filed 5–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–851–802]

Preliminary Determination of Critical Circumstances: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 25, 2000.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Dennis McClure, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230; telephone: (202) 482–4126 or 482–0984, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (April 1999).

Background

On February 4, 2000, the Department published the preliminary affirmative determination in the antidumping duty investigation on certain small diameter carbon and alloy seamless standard, line and pressure pipe (seamless pipe) from the Czech Republic, 65 FR 5599. On April 18, 2000, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of seamless pipe from the Czech Republic.

Critical Circumstances

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

History of Dumping and Importer Knowledge

Because we are aware of the European Union's (EU's) November 17, 1997, finding that the Czech Republic had sold similar products (*e.g.*, seamless pipes, of iron or non-alloy steel) at less than fair value and had caused injury to the domestic industry, we find that a reasonable basis exists to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, pursuant to section 733(e)(1)(A)(i) of the Act. Although the products investigated by the EU are not all identical to those covered by the scope of this investigation, we do not require the scope of our proceedings to match exactly the scope of the foreign proceeding. *See Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China*, 60 FR 22359, 22368 (May 5, 1995). In addition, the Department may look to the second criterion for determining importer knowledge of dumping.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the seamless pipe at less than fair value, pursuant to section 733(e)(1)(A)(ii) of the Act, the Department's normal practice is to consider margins of 25 percent or more for export price (EP) sales sufficient to impute knowledge of dumping. *See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997). In the instant case, the respondent, Nova Hut, received a margin of 32.26 percent in the amended preliminary determination, 65 FR 12971. Therefore, we have imputed knowledge of dumping to importers of subject merchandise from Nova Hut.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, under section 733(e)(1)(A)(ii) of the Act, the Department normally will look to the preliminary injury determination of the International Trade Commission (ITC). If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for all imports of seamless pipe from the Czech Republic. *See Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania and South Africa*, 64 FR 46953 (August 27, 1999). As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports of subject merchandise from the Czech Republic.

Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to 733(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for three months immediately preceding and following the filing of the petition. Imports normally will be considered massive

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when imports have increased by 15 percent or more during this "relatively short period."

We do not have verifiable data from Nova Hut because it withdrew from verification. Therefore, the Department must base its "massive imports" determination as to the company on the facts available, pursuant to section 776(a) of the Act.[1] Accordingly, we first examined U.S. Customs data[2] on imports of seamless pipe from the Czech Republic for January through June 1999 (the six months preceding the June 30, 1999, filing of the petition) and from July through December 1999 (the six months following the filing of the petition).[3] We found that the total volume of imports of small diameter seamless pipe from the Czech Republic increased by 45.75 percent in the six-month period following the filing of the petition (July through December 1999), as compared to the total volume of such imports from January through June 1999. Second, we considered that Nova Hut, the sole respondent in the investigation, was the only company identified by both the petitioner and the Government of the Czech Republic as a Czech producer of merchandise under investigation. From this we infer that Nova Hut is a significant producer of the merchandise under investigation. As facts available, then, we also infer that a significant portion of the 45.75 percent increase in imports is attributable to Nova Hut. We recognize that some of the HTS categories analyzed to derive the 45.75 percent increase in imports are basket categories that may include non-scope merchandise. However, given that Nova Hut's refusal to supply verifiable data prevents the Department from doing a company-specific massive imports analysis, we are, pursuant to section 776(b) of the Act, making the adverse inference that the country-wide import data is representative of Nova Hut's import data. Moreover, the Department's practice has been to make an adverse inference concerning massive imports with respect to an uncooperative respondent even when country-wide data was not available or not considered. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51437 (October 1, 1997). We, therefore, find that Nova Hut had massive imports of the subject merchandise over a relatively short period of time, under section 733(e)(1)(B) of the Act and 19 CFR 351.206(h)(2).

Based on our determination that there is a reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports of the subject merchandise in the EU, as well as importer knowledge of dumping, and that there have been massive imports of seamless pipe from this producer over a relatively short period, we preliminarily determine that critical circumstances exist for imports from the Czech Republic of seamless pipe produced by Nova Hut.

All Other Exporters

In regard to the "all others" category, it is the Department's normal practice to conduct its critical circumstances analysis based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey (Rebars from Turkey)*, 62 FR 9737, 9741 (March 4, 1997). In *Rebars from Turkey*, the Department determined that because it found critical circumstances existed for three out of the four companies investigated, critical circumstances also existed for companies covered by the "all others" rate. However, in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan (Stainless Steel from Japan)*, 64 FR 30574 (June 8, 1999), the Department did not extend its affirmative critical circumstances findings to the "all others" categories while finding affirmative critical circumstances for four of the five respondents, because the affirmative determinations were based on adverse facts available.

In the instant case, in our critical circumstances analysis for the one investigated company, Nova Hut, we determined that the EU's finding that the Czech Republic had sold similar products at less than fair value and had caused injury to the domestic industry provides reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in this case. Consistent with our practice, we similarly extend this finding to the "all others" category.

With respect to massive imports, however, we are unable to rely on our import level analysis for Nova Hut because it is based upon adverse facts available, and we have no verified data upon which to base a massive imports analysis. Instead, consistent with the approach taken in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24239 (May 6, 1999) and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand* 65 FR 5220, 5227 (February 4, 2000), we examined U.S. Customs data on overall imports from the Czech Republic for the six months preceding and the six months following the filing of the petition in order to see if we could ascertain whether an increase in shipments of greater than 15 percent or more occurred within a relatively short period following the point at which importers had reason to believe that a proceeding was likely. Information on the record indicates that there was a 45.75 percent increase in overall imports from the Czech Republic for the six months following the filing of the petition, as compared to the six months preceding the filing of the petition. However, these data cover numerous HTS categories that may include merchandise other than subject merchandise. Although we made an adverse inference based on this data with respect to Nova Hut, it is not appropriate to make a similar inference with respect to "all others." Because we have no reliable data upon which to determine whether there were massive imports of seamless pipe from the producers included in the "all others" category, a necessary criterion for determining affirmative critical circumstances has not been met. Therefore, we have preliminarily determined that critical circumstances do not exist for imports from the Czech Republic of seamless pipe for companies in the "all others" category.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, the Department will direct the Customs Service to suspend liquidation of all entries of seamless pipe from the Czech Republic produced by Nova Hut, that are entered, or withdrawn from warehouse, for consumption on or after November 6, 1999, which is 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at less than fair value. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin reflected in the preliminary determination of sales at less than fair value published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice. The margin in the preliminary determination is as follows: Nova Hut—32.26 percent.

Final Critical Circumstances Determination

We will make final critical circumstances determinations when we issue our final determination in the less-than-fair-value investigation, which is due to be made no later than June 19, 2000.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

This notice is published pursuant to section 777(i) of the Act.

Dated: May 17, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–13097 Filed 5–24–00; 8:45 am]

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[1] Because the respondent withdrew from verification, we considered the company non-cooperating and did not request monthly shipment data from the company.

[2] IM–145 import statistics on HTS numbers included within the scope of the investigation.

[3] As stated in *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia* (64 FR 73164, December 29, 1999), the Department's practice is to use the longest period for which information is available from the month that the petition was submitted through the date of the preliminary determination.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an antidumping duty investigation of Bulk Aspirin from the People's Republic of China. We determine that sales have been made at less than fair value. The estimated dumping margins are shown in the Continuation of Suspension of Liquidation section of this notice.

EFFECTIVE DATE: May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Ryan Langan or Blanche Ziv, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3853, 482–1279, or 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to the regulations codified at 19 CFR part 351 (1998).

Case History

Since the preliminary determination (*see* 65 FR 116 (January 3, 2000) ("*Preliminary Determination*")), the following events have occurred:

On December 28, 1999, one of the respondents, Shandong Xinhua Pharmaceutical Factory ("Shandong"), requested a postponement of the final determination and, on January 4, 2000, requested an extension of provisional measures. On January 20, 2000, we published in the **Federal Register** a notice of postponement of the final determination and extension of provisional measures (65 FR 3204).

Supplemental information regarding surrogate values was submitted on February 14, 2000, by the petitioner and respondents.

In February and March 2000, we conducted verification of the questionnaire responses submitted by Shandong and Jilin Pharmaceutical Import and Export Corporation ("Jilin"). We issued reports on our findings of these verifications on April 5, 2000.

The petitioner and respondents filed case briefs and rebuttal briefs on April 12 and April 19, 2000, respectively. At the request of the petitioner and respondents, the Department held a public hearing on April 25, 2000.

We also received a case brief from Dastech International, Inc. ("Dastech"), an interested party in this investigation. After reviewing Dastech's comments, we determined that the information contained in Dastech's brief constituted factual information that was filed on an untimely basis as set forth in section 351.301 of the Department's regulations. Therefore, pursuant to section 351.302(d) of the Department's regulations, we removed Dastech's submission from the record, and did not consider the comments for the final determination. *See* "Rejection of Interested Party's Brief" Memorandum to Richard W. Moreland, Deputy Assistant Secretary, Import Administration, dated May 17, 2000.

Scope of the Investigation

For purposes of this investigation, the product covered is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia ("USP") 23. It is classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of this investigation ("POI") is October 1, 1998, through March 31, 1999.

Nonmarket Economy Country and Market-Oriented Industry Status

The Department has treated the People's Republic of China ("PRC") as a nonmarket economy ("NME") country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998) ("*Mushrooms*"). Under section 771(18)(C) of the Act, this NME designation remains in effect until it is revoked by the Department.

The respondents in this investigation have not requested a revocation of the PRC's NME status and no further information has been provided that would lead to such a revocation. Therefore, we have continued to treat the PRC as an NME in this investigation.

Furthermore, no interested party has requested that the bulk aspirin industry in the PRC be treated as a market-oriented industry and no further information has been provided that would lead to such a determination. Therefore, we have not treated the bulk

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aspirin industry in the PRC as a market-oriented industry in this investigation.

Separate Rates

All responding companies have requested separate, company-specific antidumping duty rates. In our *Preliminary Determination*, we preliminarily found that all responding companies had met the criteria for the application of separate antidumping duty rates. *See* 65 FR at 3204. At verification, we found no discrepancies with the information provided in the questionnaire responses of responding companies. We have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separate rates determinations with respect to these companies. We, therefore, determine that the responding companies in this investigation should be assigned individual dumping margins.

PRC-Wide Rate

As stated in the preliminary determination, information on the record of this investigation indicates that there are numerous producers/exporters of the subject merchandise in the PRC in addition to the companies participating in this investigation. U.S. import statistics show that the responding companies did not account for all imports of bulk aspirin into the United States from the PRC. Given this discrepancy, it appears that not all PRC exporters of bulk aspirin responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate ("the PRC-wide rate") to all bulk aspirin exporters in the PRC except those specifically identified in the "Continuation of Suspension of Liquidation" section of this notice.

Use of Facts Available

As explained in the preliminary determination, the PRC-wide antidumping rate is based on adverse facts available, in accordance with section 776 of the Act. Section 776(a)(2) of the Act provides that "if an interested party or any other person— (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." Use of facts available is warranted in this case because the producers/exporters other than those under investigation have failed to respond to the Department's questionnaire.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The producers/exporters that decided not to respond in any form to the Department's questionnaire, failed to act to the best of their ability in this investigation. Further, absent a verifiable response from these firms, we must presume government control of these PRC companies. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted and has assigned them a common, PRC-wide rate based on adverse inferences.

In accordance with our standard practice, as adverse facts available, we are assigning to the PRC-wide entity (*i.e.*, those companies not receiving a separate rate), which did not cooperate in the investigation, the higher of: (1) the highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Japan*, 63 FR 40434 (July 29, 1998). In this case, the adverse facts available margin is 144.02 percent, the margin from the petition, which is higher than the margin calculated for any respondent in this investigation.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) ("SAA"), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870. As discussed in the *Preliminary Determination*, we determine that the calculations set forth in the petition have probative value.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the May 17, 2000, Decision Memorandum which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the Department. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our *Preliminary Determination*, where applicable. Any programming or clerical errors are discussed in the relevant sections of the Decision Memorandum or in the company-specific final determination calculation memoranda dated May 17, 2000.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by respondents.

Continuation of Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all imports of the subject merchandise from the PRC, except for merchandise both produced and exported by Jilin (which had a zero margin at the *Preliminary Determination*), that are entered, or withdrawn from warehouse, for consumption on or after January 3, 2000, the date of publication of the *Preliminary Determination* in the **Federal Register**. With respect to Jilin, Customs shall suspend liquidation of all imports of the subject merchandise from the PRC, produced and exported by Jilin that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Customs shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Shandong Xinhua Pharmaceutical Factory	42.77
Jilin Pharmaceutical Co., Ltd./. Jilin Pharmaceutical Import and Export Corporation	4.72
PRC-wide Rate	144.02

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 17, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Adminstration.

Appendix

List of Comments in the Issues and Decision Memorandum

Comment 1: Valuation of Phenol
Comment 2: Valuation of Caustic Soda
Comment 3: Valuation of Carbon Dioxide
Comment 4: Valuation of Overhead, Selling, General, Administrative Expenses and Profit
Comment 5: Adjustments to Surrogate Ratios
Comment 6: Valuation of Electricity
Comment 7: Valuation of Water
Comment 8: Valuation of Ocean Freight
Comment 9: Returned Merchandise
Comment 10: Separate Rates
Comment 11: Shandong's Use of Technical-Grade Salicylic Acid
Comment 12: Jilin's Raw Material Consumption
Comment 13: Jilin's By-Product Offset
Comment 14: Jilin's Inland Freight Costs for Materials
Comment 15: Jilin's Multiple Shipments

[FR Doc. 00–13095 Filed 5–24–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839, A–583–833]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Matney (Republic of Korea) or Cynthia Thirumalai (Taiwan), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1778 or (202) 482–4087, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the regulations codified at 19 CFR part 351 (1998).

Scope of Orders

The product covered by these orders is certain polyester staple fiber ("PSF"). Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to these orders may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from these orders. Also specifically excluded from these orders are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from these orders. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to these orders is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of these orders is dispositive.

Amended Final Determination

In accordance with section 735(a) of the Act, on March 30, 2000, the Department published the final determination of the antidumping duty investigation of certain PSF from the Republic of Korea ("Korea"), in which we determined that U.S. sales of PSF from Korea were made at less than normal value (65 FR 16880 ("*Korea Final Determination*")). On March 31 and April 4, 2000, we received ministerial error allegations, timely filed pursuant to § 351.224(c)(2) of the Department's regulations, from the petitioners E.I. DuPont de Nemours, Inc.;[1] Arteva Specialities S.a.r.l.; d/b/a KoSa; Wellman, Inc.; and Intercontinental Polymers, Inc. (hereinafter collectively referred to as "the petitioners") regarding the calculations for Geum Poong Corporation ("Geum Poong") and Samyang Corporation ("Samyang"), respectively. On April 5, 2000, Sam Young Synthetics Co. ("Sam Young") and Geum Poong timely filed ministerial allegations, and Geum Poong also commented on the petitioners' allegations. On April 6, 2000, Samyang filed a rebuttal to the petitioners' ministerial error allegations. We received comments from the petitioners concerning the respondents' clerical error allegations on April 10, 2000.

We have determined in accordance with section 735(e) of the Act that ministerial errors were made in our final margin calculations. For a detailed

[1] E.I. DuPont de Nemours, Inc. is not a petitioner in the Taiwan case.

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discussion of the above-cited ministerial errors and the Department's analysis, see Memorandum to Richard W. Moreland, dated April 26, 2000. We are amending the final determination of the antidumping duty investigation of PSF from Korea to correct these ministerial errors. The revised final weighted-average dumping margins are as follows:

Exporter/manufacturer	Original weighted-average margin percentage	Revised weighted-average margin percentage
Samyang Corporation	0.14	0.14
	(*	(*
Sam Young Synthetics Co.	7.96	7.91
Geum Poong Corporation	14.10	14.10
All Others	11.38	11.35

*de minimis.

For Taiwan, we published *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan* 65 FR 16877 (March 30, 2000) and *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan* 65 FR 24678 (April 27, 2000).

Antidumping Duty Orders

On May 15, 2000, in accordance with section 735(d) of the Act, the U.S. International Trade Commission ("ITC") notified the Department that an industry in the United States is "materially injured," within the meaning of section 735(b)(1)(A) of the Act, by reason of less-than-fair-value imports of PSF from Korea and Taiwan. In its final determination, however, the ITC determined that two domestic like products exist for merchandise covered by the Department's investigation: (1) low-melt PSF and (2) all other types of PSF not specifically excluded. The ITC determined pursuant to section 735(b)(1) that a domestic industry in the United States is not materially injured or threatened with material injury by reason of imports of low-melt PSF from Korea and Taiwan. Accordingly, the scope of these antidumping duty orders has been amended from that used in the investigations to exclude low-melt PSF.

Sam Young and Geum Poong, the two respondents included in the Korea order, did not make sales of low-melt PSF during the period of investigation. Therefore, it was not necessary to recalculate the margins to exclude sales of low-melt PSF for these Korean respondents. However, we recalculated, for purposes of the Taiwan order, the estimated dumping margins for both respondents in Taiwan by excluding sales of low-melt PSF from our analysis. The revised estimated dumping margins for Taiwan are found below.

The Department will direct the U.S. Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the export price or constructed export price of the subject merchandise for all relevant entries of PSF from Korea and Taiwan, except for subject merchandise produced in Korea and imported from Samyang, which received a *de minimis* final margin. With respect to Korea, all bonds may be released and entries by Samyang may be liquidated without regard to antidumping duties.

For all other manufacturers/exporters from Korea, antidumping duties will be assessed on all unliquidated entries of PSF, excluding low-melt PSF, entered, or withdrawn from warehouse, for consumption on or after November 8, 1999, the date of publication of the Department's preliminary determination in the **Federal Register** (64 FR 60776). For all other manufacturers/exporters in Taiwan other than Nan Ya Plastics Corporation, Ltd., antidumping duties will be assessed on all unliquidated entries of PSF, excluding low-melt PSF, entered, or withdrawn from warehouse, for consumption on or after March 30, 2000, the date of publication of the Department's final determination in the **Federal Register** (64 FR 60771). For Nan Ya Plastics Corporation, Ltd., antidumping duties will be assessed on all unliquidated entries of PSF from Taiwan, excluding low-melt PSF, entered, or withdrawn from warehouse, for consumption on or after April 27, 2000, the date of publication of the Department's amended final determination in the **Federal Register** (65 FR 24678). Furthermore, we will instruct Customs to refund all cash deposits, or bonds posted, for entries of subject merchandise from Korea imported from Samyang Corporation and for entries of low-melt PSF from both Taiwan and Korea.

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the weighted-average antidumping duty margins as noted below:

Exporter/manufacturer	Revised weighted-average margin percentage
Republic of Korea	
Samyang Corporation	Excluded
Sam Young Synthetics Co	7.91
Geum Poong Corporation	14.10
All Others	11.35
Taiwan	
Far Eastern Corporation	11.50
Nan Ya Plastics Corporation, Ltd	3.79
All Others	7.31

This notice constitutes the antidumping duty orders with respect to PSF from Korea and Taiwan, pursuant to section 735(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with sections 736(a) and 19 CFR 351.211.

Dated: May 18, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–13096 Filed 5–24–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, June 13, 2000, Wednesday, June 14, 2000, and Thursday, June 15, 2000, from 9:00 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public Details regarding the Board's activities are available at http://csrc.nist.gov/csspab/.

DATES: The meeting will be held on June 13–15, 2000, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, North Campus, 820 West Diamond Avenue, Gaithersburg, MD in Lecture Room 152.

Agenda

As part of this meeting, a "security metrics" workshop will be held on June 13 and 14, 2000, to examine the approaches to measuring security. The following topics will be explored:

—Definitions of "metrics"
—Measures of security against specific security threats
—Measures of overall system security
—Qualitative measures, e.g., adherence to "standards" or checklists of practices
—Live, real-time measures of security in extended networks
—Use of statistically-sampled data in measurement systems
—Effective communications of metrics, assurance levels and risk management tradeoffs to executives, lawmakers, and the public so that risks and protections are properly understood in both business and public policy terms.

The first day of this workshop will be dedicated to presentations from the government, the private sector, and public sector organizations. The second day will consist of case studies presented by a government panel and an industry panel.

The last day of the meeting, Thursday, June 15, 2000, the Board will review the progress of the workshop and, as appropriate, plan or recommend follow-on activity. The Board will also devote discussion period to develop the Board's future program and to identify key issues.

Public Participation

The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board. It would be appreciated if 35 copies of written material were available for distribution to the Board and attendees at the meeting no later than June 5, 2000. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3696.

Dated: May 18, 2000.

Jorge Urrutia,

Acting Director, NIST.

[FR Doc. 00–13144 Filed 5–24–00; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051900B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Social Sciences Advisory Committee and a number of joint meetings of its Groundfish Oversight Committee and Groundfish Advisory Panel in June, 2000. Recommendations from the these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

June 8, 2000, 10:00 a.m.—Social Sciences Advisory Committee Meeting

Location: Holiday Inn, One Newbury Street (Rt. 1 North), Peabody, MA 01960; telephone: (978) 535–4600.

The committee will discuss the social and economic issues associated with measures proposed for Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The proposed measures include a rotational area management system for Atlantic sea scallops including possible access to the groundfish closed areas on Georges Bank and in Southern New England, modifications to trawl gear to require the same scallop selectivity as dredge gear, and a possible increase in the seven-person crew limit. The committee also will discuss the organization of workshops for improving social and economic analyses. Finally, the committee will receive an update on the work of the Council's Capacity Committee.

June 13, 2000, 9:30 a.m.—Joint Groundfish Committee and Advisory Panel Meeting

Location: Howard Johnson's Motor Lodge, Interstate Traffic Circle, Portsmouth, NH 03801; telephone: (603) 436–7600.

The committee and advisors will conduct a joint meeting to continue development of management options for Amendment 13 to the Northeast Multispecies FMP. They also will consider options for developing an area management system, or for a sector allocation system. Work on these options will continue at all meetings to be held in June. In addition, the committee will continue to develop changes to current management measures that will improve the effectiveness of the existing management system. The goal is to develop management alternatives for review at public hearings in the fall of 2000. This same agenda will be followed for the following list of joint Groundfish Committee and Advisory Panel meetings.

June 20, 2000, 9:30 a.m.—Joint Groundfish Committee and Advisory Panel Meeting.

Location: Radisson Hotel, 35 Governor Winthrop Boulevard, New London, CT 06320; telephone: (860) 443–7000.

June 27, 2000, 9:30 a.m.—Joint Groundfish Committee and Advisory Panel Meeting.

Location: Sheraton Inn—Providence Airport, 1850 Post Road, Warwick, RI 02886; telephone: (401) 738–4000.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting.

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Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 22, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13186 Filed 5–24–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0149]

Submission for OMB Review; Comment Request Entitled Subcontract Consent

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0149).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Subcontract Consent. A request for public comments was published at 65 FR 14950 on March 20, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before June 26, 2000.

ADDRESSES: Comments including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Office of Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective to consent to subcontract, as discussed in FAR Part 44, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds, and complies with Government policy when subcontracting. The consent package provides the administrative contracting officer a basis for granting, or withholding consent to subcontract.

B. Annual Reporting Burden

Number of Respondents: 4,252.

Responses Per Respondent: 3.61.

Total Responses: 15,349.

Average Burden Hours Per Response: .87.

Total Burden Hours: 13,353.

Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0149, Subcontract Consent, in all correspondence.

Dated: May 22, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–13145 Filed 5–24–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0007]

Submission for OMB Review; Comment Request Entitled Summary Subcontract Report

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension of an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Summary Subcontract Report. A request for public comments was published at 65 FR 14951, on March 20, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before June 26, 2000.

ADDRESSES: Comments including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Federal Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1 million for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR 19.7.

B. Annual Reporting Burden

Number of Respondents: 4,253.

Responses Per Respondent: 1.66.

Total Responses: 7,098.

Average Burden Hours Per Response: 12.90.

Total Burden Hours: 90,854.

Obtaining Copies of Justifications: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0007, Summary Subcontract Report, in all correspondence.

Dated: May 22, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–13146 Filed 5–24–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2383–000]

California Independent System Operator Corporation; Notice of Filing

May 19, 2000.

Take notice that on May 3, 2000, the California Independent System Operator Corporation (ISO), tendered for filing an correction regarding a proposed amendment (Amendment No. 29), to the ISO Tariff, which had been filed in the above-referenced docket on May 2, 2000. The correction provided tariff sheets containing Tariff sections that were "rolled over" to subsequent pages of the Tariff, as a result of changes and additions made in the Amendment No. 29 filing, and corrected an error in the section numbering on a certain Tariff sheet that was included in the Amendment No. 29 filing.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO tariff.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 30, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13114 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–51–001]

East Tennessee Natural Gas Company; Notice of Amendment

May 19, 2000.

Take notice that on May 10, 2000, East Tennessee Natural Gas Company (East Tennessee), 1001 Louisiana, Houston, Texas 77002, filed with the Commission in Docket NO. CP00–51–001 an amendment to the pending application filed on December 17, 1999, in Docket No. CP00–51–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), to reflect change in the locations of meter stations, main line valves, and manifolds for which certificate authorization is sought, all as more fully set forth in the amendment which is open to the public for inspection.

By the pending application in Docket No. CP00–51–000, East Tennessee proposes to construct, install, and operate: (1) 15.16 miles of 12-inch diameter pipeline looping in Washington, Smyth, and Wythe Counties, Virginia; (2) three meter stations in McGinn, Greene, and Roane Counties, Tennessee, and a modficiation to an existing meter station in Morgan County, Tennessee; (3) approximately 0.62 miles of 22-inch diameter replacement pipe on East Tennessee's 3100 Line in Smith and Overton Counties, Tennessee. Finally, East Tennessee's 3100 Line: and (4) approximately 450 feet of 10-inch and 12-inch diameter replacement pipeline, in addition to two mainline valves on East Tennessee's 3200 Line at the Tennessee River Crossing. Additionally, East Tennessee seeks certain other authorizations, including authorization to up rate four compressor units located at Station 3101 in Robertson County, Tennessee, and Station 3210 in Marion County, Tennessee, and authorization to hydrostatically test to increase the Maximum Allowable Operating Pressure (MAOP) of 26.42 miles of pipe on East Tennessee requests that the Commission authorize the abandonment of approximately 0.62 miles of pipe being replaced align East Tennessee's 3100 Line plus 250 feet of pipe, two mainline valve assemblies and miscellaneous fittings and appurtenances being replaced along the 3200 Line by the above-referenced replacement pipe. East Tennessee submits that these activities are necessary to provide additional firm transportation service to eight customers on the part of East Tennessee's pipeline system located in eastern Tennessee and southwestern Virginia (Rocky Top Expansion Project).

In the subject amendment, East Tennessee seeks to modify its original request for certificate authority by requesting authorization to, *itner alia*, change the locations of the proposed Lenior City and Etowah meter stations. East Tennessee now proposes to construct, install, and operate the Lenior City meter station at Mile Post 3.99, instead of at Mile Post 4.35 south of Main Line Valve 3112–1 as originally proposed, on its 3100 Line in Roane County, Tennessee. East Tennessee also proposes to construct, install, and operate the Etowah meter station at mile Post 3.59 south of Main Line Valve 3217–1 as originally proposed, but on the other side of the road, on its 3200 Line in McMinn County, Tennessee.

East Tennessee also proposes to modify its original proposal with various changes in work space requirements and construction rights-of-way to meet the Commission's template. East Tennessee's other proposed modifications include the following:

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(1) Additional temporay work spaces at Mainline Valve Section 3313, Virginia, and Mainline Valve Section 3105, Tennessee;

(2) Seven new hydrostatic testing manifold location in the vicinity of Mainline Valve Section 3105, Tennessee, and six new hydrostatic testing manifold locations in the vicinity of Mainline Valve Section 3107, Tennessee;

(3) Four new main line valves, replacement of main line valves, and one new relief valve in the vicinity of Mainline Valve Section 3105, Tennessee;

(4) One new relief valve in vicinity of Mainline Valve Section 3107, Tennessee;

(5) New access road in vicinity of Mainline Valve Section 3313, Virginia;

(6) Five temporary access roads in vicinity of Mainline Valve Section 3105, Tennessee, and four temporary access roads in vicinity of Mainline Valve Section 3107, Virginia—eight of these temporary access roads would be constructed within existing permanent rights-of-way:

(7) One temporary access road in vicinity of Tennessee River Crossing, Mainline valve Section 3213–1A1/1A2, Tennessee—this temporary access road would be constructed within an existing permanent right-of-way and existing road.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 9, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Any questions regarding the application should be directed to Susan T. Halbach, Senior Counsel, P.O. Box 2511, Houston, Texas 77252, phone number (713) 420–5751.

A person obtaining intervenor status will be place on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission. A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed document son all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the proposal is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for East Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13105 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA00–4–002]

Indianapolis Power & Light Company; Notice of Filing

May 19, 2000.

Take notice that on May 1, 2000, Indianapolis Power & Light Company (Indianapolis) submitted revised standards of conduct in response to the Commission's February 24, 2000 Order.[1]

Indianapolis states that it served copies of the filing to all parties on the service list, to the Indiana Utility Regulatory Commission and others on the official service list in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before June 5, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Indianapolis's filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13107 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–286–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

May 19, 2000.

Take notice that on May 16, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to become effective June 15, 2000:

Fifth Revised Volume No. 1

Seventh Revised Sheet No. 2
Fourth Revised Sheet No. 103
Fourth Revised Sheet No. 305
First Revised Sheet No. 606
Fourth Revised Sheet No. 719
Second Revised Sheet No. 1004
Fourth Revised Sheet No. 1410
Sixth Revised Sheet No. 1414
Second Revised Sheet No. 1502
Third Revised Sheet No. 1703
Seventh Revised Sheet No. 1808
Fourth Revised Sheet No. 1900
Second Revised Sheet No. 2002
Second Revised Sheet No. 2003
First Revised Sheet No. 2010
Ninth Revised Sheet No. 2700
Fourth Revised Sheet No. 2703
Fifth Revised Sheet No. 3702
First Revised Sheet No. 3900
Fourth Revised Sheet No. 5000
Tenth Revised Sheet No. 5200

Koch states that it has revised the above tariff sheets to reflect minor housekeeping changes for clarification of Koch's FERC Gas Tariff.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13113 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 90 FERC ¶ 61,174 (2000).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–14–006]

Midwestern Gas Transmission Company; Notice of Negotiated Rate Filing

May 19, 2000.

Take notice that on May 15, 2000, Midwestern Gas Transmission Company (Midwestern), tendered for filing certain Negotiated Rate Arrangements. Midwestern requests that the Commission approve the Negotiated Rate Arrangements effective November 1, 2000.

Midwestern states that the filed Negotiated Rate Arrangements reflect negotiated rates between Midwestern and Nicor Gas (Nicor) for transportation under Rate Schedule FT–A beginning November 1, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13112 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1962–000]

Pacific Gas & Electric Company; Notice of Meeting

May 19, 2000.

Take notice that there will be a full group meeting of the Rock Creek-Cresta Relicensing Collaborative on Monday, June 5, 2000, from 9 a.m. to 4 p.m. at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Mark Robinson of the Commission's Office of Energy Projects has been invited to participate by phone for a brief update of the settlement status. Expected participants need to give their names to William Zemke (PG&E) at (415) 973–1646 so that they can get through security.

For further information, please contact Elizabeth Molloy at (202) 208–0771.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13108 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–77–000]

SkyGen Energy LLC v. Southern Company Services, Inc.; Notice of Complaint

May 19, 2000.

Take notice that on May 18, 2000, SkyGen Energy LLC (Complainant) filed with the Federal Energy Regulatory Commission a complaint against Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Respondent) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206. According to the Complaint, Respondent wrongfully denied a request made by SkyGen Energy Marketing, LLC on behalf of SkyGen and Santa Rosa Energy LLC (Santa Rosa Energy) under its Open Access Transmission Tariff (OATT) because that denial is based upon repudiation of the executed interconnection agreement between the Complainant and Respondent. The Complainant alleges that Respondent is denying Complainant interconnection service (the ability to access its electrical system) and its request for transmission service.

According to the Complainant, Respondent has planned the addition of its own generation to the Southwest Quadrant of its system while ignoring the addition of Complainant's Facility to the system already accomplished by the executed interconnection agreement. Now, on the basis that the Respondent cannot honor the Complainant's interconnection agreement by adding its

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Facility to the Southwest Quadrant, Respondent has denied Complainant's request for firm transmission service.

Complainant also asserts that Respondent has failed to consider reassignment of transmission capacity reserved for native load use but not currently needed or used, operating restrictions and/or special protection systems, or redispatch to accommodate Complainant's request for firm transmission service. According to the Complaint, Respondent has refused to expeditiously use a Power System Stabilizer solution it has used in order to accommodate its own generation, and which has been demonstrated to be a means that can accommodate Respondent's request for firm transmission service.

Questions concerning the Complaint may be directed to counsel for Complainant, Robert L. Daileader, Jr., Nixon Peabody LLP, Suite 700, One Thomas Circle, NW, Washington, DC 20005, Phone 202/457–5318, Fax 202/457–5355, e-mail rdaileader@nixonpeabody.com.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 31, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http:/www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before May 31, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13106 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–312–028]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

May 19, 2000.

Take notice that on May 15, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing certain Negotiated Rate Arrangement. Tennessee requests that the Commission approve the Negotiated Rate Arrangement effective November 1, 2000.

Tennessee states that the filed Negotiated Rate Arrangement reflects negotiated rates between Tennessee and Nicor Gas ("Nicor") for transportation under Rate Schedule FT–A beginning November 1, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13111 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Dam Remediation Work and Soliciting Comments, Motions To Intervene, and Protests

May 19, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request to deviate from the target minimum flow required by article 39 below Blue Lake and Rucker Lake during necessary dam remediation.

b. *Project No.* 2310–106.

c. *Date Filed:* May 9, 2000.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Drum-Spaulding Project.

f. *Location:* The project is located on the South Yuba and Bear Rivers in Nevada County and Placer County, California.

g. *Filed Pursuant to:* Section 12.39 of the Commission's Regulations.

h. *Applicant Contact:* Mr. Richard Doble, Pacific Gas and Electric Company (PG&E), Mail Code N11C, P.O. Box 770000, San Francisco, CA 94177.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon at 202–208–7774, or e-mail address *diana.shannon@ferc.fed.us.*

j. *Deadline for filing comments and or motions:* June 14, 2000.

All documents (original and eight copies) should be filed with Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please reference the following number, P–2310–106, on any comments or motions filed.

k. *Description of Proposal:* Remediation of the existing dam at Blue Lake is necessary to improve the stability of the downstream slope. The work is required under Part 12 of the Commission's regulations. A drawdown of Blue Lake and a deviation from the target minimum flow, required by article 39, is necessary at Blue and Rucker Lakes (downstream of Blue Lake). Flow will be maintained at or above the allowable minimum stipulated in article 39. The work will be performed from July–October 2000. Refill of the lake will begin after completion of the work and may take up to three years due to the lake's small drainage area. The licensee has consulted with the FWS, CDFG, FS, and the Regional Water Quality Control Board regarding the necessary remediation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, 888 First Street, NE, Room 2A, Washington, DC 20426, or call 202–208–1371. The application may be viewed on-line at http:*www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13109 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfers of Licenses and Soliciting Comments, Motions To Intervene, and Protests

May 19, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfers of Licenses.

b. *Project Nos:* 2343–041, 2516–018, and 2517–004.

c. *Date Filed:* May 5, 2000.

d. *Applicants:* Potomac Edison Company, PE Transferring Agent, L.L.C. (to be formed), PE Genco (to be formed), and Allegheny Energy Supply Company, L.L.C.

e. *Names and Locations of Projects:* The Millville Project is on the Shenandoah River in Jefferson County, West Virginia and the Dam No. 4 and Dam No. 95. Hydro Stations are on the Potomac River in Berkeley County, West Virginia. The projects do not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Mr. David C. Benson, Allegheny Energy Supply, RR 12, Box 1000, Roseytown Road, Greensburg, PA 15601, (724) 853–3790, and Mr. John A. Whittaker, IV, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005, (202) 371–5766.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839.

i. *Deadline for filing comments and or motions:* June 14, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the noted project numbers on any comments or motions filed.

j. *Description of Proposal:* Applicants propose transfers of the licenses for these three projects from Potomac Edison Company to PE Transferring Agency, L.L.C., a soon-to-be-formed wholly-owned subsidiary of Potomac Edison; then to a yet-to-be-formed-and-named affiliate of Potomac Edison, referred to as PE Genco; and finally to Allegheny Energy Supply Company, L.L.C. Transfer is being sought as part of an intra-corporate reorganization of Potomac Edison's parent company, Allegheny Energy, Inc.

The transfer application was filed within five years of the expiration of the licenses for Project Nos. 2516 and 2517. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 Fed. Reg. 23,756; FERC Stat. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318).

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Recommendations for Terms and Conditions", "Protest", or "Motion to Intervene" as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

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agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–13110 Filed 5–24–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992

May 19, 2000.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of annual change in the Producer Price Index for Finished Goods, minus one percent.

SUMMARY: The Commission is issuing the index that oil pipelines must apply to their July 1, 1999–June 30, 2000 index ceiling levels to compute their index ceiling levels for the period July 1, 2000 through June 30, 2001, in accordance with 18 CFR 342.3(d). This index, which is the percent change (expressed as a decimal) in the annual average Producer Price Index for Finished Goods from 1998 to 1999, minus one percent, is 0.007598. Oil pipelines must multiply their July 1, 1999–June 30, 2000 index ceiling levels by 1.007598 to compute their index ceiling levels for the period July 1, 2000 through June 30, 2001.

FOR FURTHER INFORMATION CONTACT: David Ulevich, Office of Markets, Tariffs, and Rates, Corporate Applications, Group 2, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0678.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www./ferc./fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information management System (RIMS).

CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994. CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

RIMS contains images of documents submitted to an issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.reference room@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The index system as set forth at 18 CFR 342.3 is based on the annual change in the Producer Price Index for Finished Goods (PPI–FG), minus one percent. The regulations provide that each year the Commission will publish an index reflecting the final change in the PPI–FG, minus one percent, after the final PPI–FG is made available by the Bureau of Labor Statistics in May of each calendar year.

The annual average PPI–FG index figure for 1998 was 130.7 and the annual average PPI–FG index figure for 1999 was 133.0.[1] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 1998 to 1999, minus one percent is 0.007598.[2] Oil pipelines must multiply their July 1, 1999–June 30, 2000 index ceiling levels by 1.007598[3] to compute their index ceiling levels for the period July 1, 2000, through June 30, 2001, in accordance with 18 CFR 342.3(d).

To obtain July 1, 1999–June 30, 2000 ceiling levels, pipelines must first calculate their ceiling levels for the January 1, 1995–June 30, 1995 index period, by multiplying their December 31, 1994 rates by 1.002175. Pipelines must then multiply those ceiling levels by 0.996415 to obtain the July 1, 1995–June 30, 1996 ceiling levels. Then pipelines must multiply their July 1, 1995–June 30, 1996 ceiling levels by 1.009124 to obtain the July 1, 1996–June 30, 1997 ceiling levels, and multiply the July 1, 1996–June 30, 1997 ceiling levels by 1.016583 to obtain the July 1, 1997–June 30, 1998 ceiling levels. Pipelines then must multiply the July 1, 1997–June 30, 1998 ceiling levels by 0.993808 to obtain the July 1, 1998–June 30, 1999 ceiling levels. Then, pipelines must multiply the July 1, 1998–June 30, 1999 ceiling levels by 0.981654 to obtain the July 1, 1999–June 30, 2000 ceiling levels. Finally, pipelines must multiply the July 1, 1999–June 30, 2000 ceiling levels by 1.007698 to obtain the July 1, 2000–June 30, 2001 ceiling levels. *See Explorer Pipeline Company*, 71 FERC ¶ 61,416 at n.6 (1995) for an explanation of how ceiling levels must be calculated.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–13115 Filed 5–24–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

May 19, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding,

[1] The final figure for the annual average PPI–FG is published by the Bureau of Labor Statistics in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the Bureau of Labor Statistics, at (202) 606–7705, and is available in print in August in Table 1 of the annual data supplement to the BLS publication *Producer Price Indexes*. The PPI data are also available via the Internet. The Internet address is *http://www.fedstats.gov*. This site contains data from a number of government agencies; to obtain the BLS data, click on agencies, then click on Bureau of Labor Statistics, then click on data, Most Requested Series, scroll to Producer Price Indexes-Commodities (Finished Goods), for the latest available data.

[2] [133.0–130.7]/130.7=0.017598–.01=0.007598.

[3] 1+(0.007598)=1.007598.

the deliver a copy of the communication, if written, or summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when in determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The document may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. Project Nos. 2687, 2699, 2019	5–10–00	Frank Winchell.
2. CP00–14–000	5–1–00	Kim Jessen.
3. CP00–14–000	4–18–00	Janet Rowe.
4. CP00–14–000	4–11–00	Sneed Collard.
5. CP00–14–000	4–11–00	Sneed Collard.
6. CP00–36–000	5–1–00	Anne E. Haaker.
7. CP98–143–000	4–20–00	Clyde N. Thompson.
8. Project Nos. 11563, 2019 and 2699	5–10–00	Chuck Whatford.
19. Project No. 2197–038	5–12–00	Steve Kartalia, FERC.
10. Project No. 2055–006	5–15–00	Dianne Rodman, FERC.
11. CP00–14–000	5–2–00	Bill Sendelbach.
12. CP00–14–000	5–8–00	Joe Peterson.
13. CP00–14–000	5–11–00	Joe Peterson.
14. CP00–14–000	5–11–00	Todd Mattson.
15. CP00–14–000	5–11–00	Todd Mattson.
16. CP00–14–000	4–24–00	James J. Slack.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–13104 Filed 5–24–00; 8:45 am]
BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 19, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0715.
Expiration Date: 06/30/2001.
Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information—CC Docket 96–115.
Form No.: N/A.
Respondents: Business or other for profit.
Estimated Annual Burden: 6832 respondents; 90.28 hours per response (avg). 616,817 total annual burden hours (for all collections under this control number).
Estimated Annual Reporting and Recordkeeping Cost Burden: $229,520,000.
Frequency of Response: On occasion; One-time requirement; Recordkeeping; Third party disclosure. *Description:* In the Order on Reconsideration in CC Docket No. 96–115 (released 9/3/99), the Commission reconsidered the previous CPNI Order, addressed petitions for forbearance from the requirements, and established rules to implement section 222. Among other things, carriers are permitted to use CPNI, without customer approval, under certain conditions. (Number of respondents: 4832; hours per response 39 hours; total annual burden: 188,448 hours). Carriers must obtain express customer approval to use CPNI to market service outside the customer's existing service relationship. (Number of respondents: 4832; hours per response: 30 minutes; total annual burden 2416 hours). Carriers must provide a one-time notification of customer's CPNI rights prior to any solicitation for approval. (Number of respondents: 4832; hours per response: 78 hours; total annual burden: 376,896 hours). Pursuant to this one-time notification requirement, these carriers must maintain a record of such notifications for a period of at least one year. (Number of respondents: 4832; hours per response: 30 minutes; total annual burden 2416 hours). Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in Part 64 for outbound marketing situations. (Number of respondents: 4832; hours per response: 15 minutes; total annual burden: 1208 hours). All telecommunications carriers must obtain on an annual basis a certification signed by a current officer attesting that he or she has personal knowledge that the carrier is in compliance with the Commission's rules and to create an accompanying statement explaining how the carriers are implementing the rules and safeguards. (Number of respondents: 4832; hours per response: 1 hour; total annual burden: 4832 hours). LECs must disclose aggregate customer information to others upon request, when they use or disclose the aggregate customer information for marketing service to which the customer does not subscribe. (Number of respondents: 1400; hours per response: 1 hours; total annual burden: 1400 hours). Section 22(c)(2) requires carriers

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when presented with a customer's affirmative written request, to provide that customer's CPNI to any person designated in the written authorization. (Number of respondents: 500; hours per response: 5 hours; total annual burden; 2500 hours). Obligation to respond: Mandatory.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13142 Filed 5–25–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011512–003.

Title: Slot Charter Agreement Between Hyundai Merchant Marine Co., Ltd. and MSC.

Parties:

Hyundai Merchant Marine Co., Ltd.
Mediterranean Shipping Co., S.A.

Synopsis: The proposed agreement modification clarifies and updates the parties' understandings under their currently effective agreement.

Agreement No.: 011709.

Title: CCNI/CTE Space Charter Agreement.

Parties:

Compania Chilena de Navegacion Interoceanica S.A.
Compania Transatlantica Espanola S.A.

Synopsis: The proposed agreement authorizes the parties to charter vessel space to each other in the trade between Puerto Rico and ports in Europe, the Mediterranean, Chile, Peru, Ecuador, Colombia, Panama, and Venezuela. The parties request expedited review.

Agreement No.: 201102.

Title: License Agreement Between SC State Ports Authority and Charleston International.

Parties:

South Carolina State Ports Authority
Charleston International Ports, LLC.

Synopsis: The agreement grants Charleston International a 30-year license to operate a breakbulk marine terminal. The parties have requested expedited handling for this agreement.

By Order of the Federal Maritime Commission.

Dated: May 19, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–13089 Filed 5–24–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 8, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. David C. Reiling, Minneapolis, Minnesota; to acquire voting shares of University Financial Corporation, Saint Paul, Minnesota, and thereby indirectly acquire voting shares of University National Bank, Saint Paul, Minnesota.

Board of Governors of the Federal Reserve System, May 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13129 Filed 5–24–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *MSB Financial, Inc.*, Manhattan, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of Manhattan State Bank, Manhattan, Montana.

Board of Governors of the Federal Reserve System, May 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13128 Filed 5–24–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00116]

Cooperative Agreement to Enhance Pediatric and Pregnancy Nutrition Surveillance Systems Data Items; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for the (1) Pediatric Nutrition Surveillance System (PedNSS), and (2)Pregnancy Nutrition Surveillance System (PNSS).

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010" a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Public Health Infrastructure, Nutrition and Overweight; and Maternal, Infant, and Child Health. For the conference copy of "Healthy People 2010," visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of this program is to improve the capacity to conduct continuous program-based pediatric and pregnancy nutrition surveillance by adding relevant data items to enhance the ability to monitor the health and nutrition-related problems of women and children. For additional background information see Attachment I.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents that have submitted 1998 or 1999 PedNSS and/or PNSS files which are included in the national PedNSS and/or PNSS reports. Eligible applicants could include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

C. Availability of Funds

Approximately $250,000 is available in FY 2000 to fund approximately 4 awards. It is expected that the average award will be $60,000, ranging from $45,000 to $65,000. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of 1 year. Funding estimates may change.

Use of Funds

Funding Preferences

Funding preference will be given to eligible applicants that submit an application to add Core and Supplemental data items to both the PedNSS and PNSS (Record specifications, field explanations, and code definitions for data items are included in Attachment I).

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under *1. Recipient Activities*, and CDC will be responsible for the activities under *2. CDC Activities*.

1. Recipient Activities

a. Expand the PedNSS and/or PNSS to include core and supplemental data items that are routinely collected in public health clinics. Applicants should be willing to include the following core data items in their nutrition surveillance system including: (1) Household Income, (2) Household Size, (3) Date of Height and Weight Measure, (4) Date of Hemoglobin/Hematocrit Measure, and (5) for PedNSS only, Date of Most Recent Breastfeeding Response.

In addition, applicants participating in PedNSS shall be willing to add 3 of the 4 PedNSS supplemental data items including: (1) Zip Code, (2) Introduction to Supplementary Feeding, (3) TV/Video Viewing, and (4) Household smoking.

Applicants participating in PNSS shall be willing to add 4 of the 5 PNSS supplemental data items including: (1) Zip Code, (2) Gestational Diabetes, (3) High Blood Pressure During Pregnancy, (4) Pre-pregnancy Multivitamin Consumption, and (5) Multivitamin Consumption During Pregnancy .

b. Plan and implement procedures for ensuring the completeness and quality of the data, including training and data editing.

c. Propose an evaluation strategy to assess the usefulness of the suggested core and supplemental data items for program planning

d. Prepare and disseminate surveillance information through presentation and publication in appropriate forums.

2. CDC Activities

a. Assist in the design of standardized data items, definitions, procedures, and methods to collect the desired surveillance information.

b. Provide training and consultation on the rationale, code definitions and methods to collect new core and supplemental data items.

c. Provide technical support for data processing or assist state participants in developing appropriate data-processing capabilities.

d. Assist the recipient in evaluating the usefulness of the suggested core and supplemental data items.

e. Assist the recipient in preparing and presenting Program-relevant surveillance findings to appropriate state and national audiences.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 15 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

1. Table of Contents

2. Plan

a. Define data items to be collected. List the core and supplemental data items that will be included in the revised PedNSS and PNSS transaction files (Record specifications, field explanations, and code definitions for data items are included in Attachment I).

b. Describe the architecture and software of the WIC information system and identify key project staff that will update and test the revised transaction files for PedNSS and PNSS. Include the resume and job descriptions for key project staff in the supporting materials.

c. Define methods to establish data collection for the new core or supplemental data items.

d. Define the process for development and testing of the transaction file(s) to ensure completeness and accuracy of the file(s).

e. Define the process for establishing routine submission of future files.

f. Describe a plan to evaluate the usefulness of the suggested core and supplemental data items.

g. Outline a time schedule for activities listed under c, d, e, and f.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov...Forms, or in the application kit. On or before

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July 14, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria (100 points)

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. The extent to which the applicant states that they will collect and submit new core and supplemental PedNSS and PNSS data items. (10 points)

2. The extent to which the applicant describes the procedures planned to develop and test the transaction files, including methods to establish data collection for any new core and supplemental data items not currently collected by the WIC information system. (30 points)

3. Confirmation of applicant's intention to support future routine file submission. The extent to which the applicant details submission procedures. (20 points)

4. Time schedule: Confirmation that project activities are sequential and will be completed in a timely fashion. (20 points)

5. Capability: The extent to which the applicant demonstrates the organizational capacity and ability to develop and conduct proposed program activities, including the architecture and software of the WIC information system and the key project staff having the responsibility and authority to carry out the program activities, as evidenced by job descriptions and resumes.(20 points)

If applicable, whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

6. Budget (not scored)

The extent to which the budget is reasonable and the budget justification is consistent with the program objectives and purpose.

7. Human Subjects Research (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Progress reports (annual);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. section 241(a) and 42 U.S.C. 247b(k)(2),as amended.

The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This announcement and other CDC program announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain additional information, contact: Cynthia Collins, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch Announcement 00116, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, telephone (770) 488–2757, Email address coc9@cdc.gov.

For program technical assistance, contact: Diane Clark, Deputy Branch Chief, Maternal and Child Nutrition Branch, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, N.E., Atlanta, Georgia 30341–3717, Telephone (770) 488–5702, Email address: ldc2@cdc.gov.

Dated: May 19, 2000.

John L. Williams,

Director, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).

[FR Doc. 00–13132 Filed 5–24–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00135]

Public Health Laboratory Sciences Training Program for Hispanic and Native American Students Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for establishing a Public Health Laboratory Sciences Training Program for Hispanic and Native American Students. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Environmental Health, Nutrition and Overweight, Tobacco Use, Substance Abuse, Diabetes, Heart Disease and Stroke, Cancer, Maternal, Infant and Child Health, and Education and Community-Based Programs. For the conference copy of "Healthy People 2010", visit the internet site: http://www.health.gov/healthypeople.

The purpose of the program is to introduce Hispanic and Native American students to opportunities in public health and laboratory science through education and training, to include students from undergraduate, graduate, and post-doctoral levels.

B. Eligible Applicants

Applications may be submitted by public and private universities or colleges from the United States and its territories, offering undergraduate and postgraduate academic programs in the physical and/or biomedical sciences, and leading to degrees at the bachelors, masters, and doctorate levels.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $150,000 is available in FY 2000 to fund one award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be used for activities which support the goals and objectives of the fellowship program including travel expenses for program faculty and students for orientation and training, and to attend certain professional meetings for recruitment. Funds may be used for reporting results of fellowship research and the preparation and distribution of material to promote and announce the availability of this fellowship program. Funds may also be used to offset a portion of salaries of the recipient institution's faculty, staff, and graduate teaching assistants who spend time in support of the technical and administrative aspects of this program. Funds may be provided for student stipends, with payment scales determined by the recipient, based on the prior training, education and experience of the Fellow.

Funds may not be used for the direct support of faculty research projects except for those aspects of such projects which directly benefit the specific training objectives of Fellows.

D. Programmatic Interest

The mission of the funding agency includes the application of analytical laboratory procedures to measure substances in biological samples from humans. The purpose of these analyses is to assess human exposure to toxic substances, health effects from the exposure, risk factors for diseases, and effectiveness of public health interventions. In achieving this mission, the laboratory techniques and areas of scientific investigation include:

1. Sample preparation techniques
2. Liquid or gas chromatography
3. Radio-immunoassay (RIA), enzyme linked immunoassay (EIA), or other immuno-assay techniques
4. Polymerase chain reaction (PCR) and other molecular biology techniques
5. Atomic absorption and atomic emission techniques
6. Mass spectroscopic techniques
7. Wet chemistry and UV-Visible and Infared spectroscopic techniques
8. Analytical method development and evaluation procedures
9. Routine analytical procedures and quality control
10. Environmental chemistry, environmental health, and toxicology
11. Nutritional Biochemistry, Diabetes, Cancer, Smoking and health
12. Introduction to epidemiology from a laboratory perspective
13. Other laboratory techniques and scientific disciplines as appropriate and necessary

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities under 2. CDC Activities.

1. Recipient Activities

a. Establish and manage a comprehensive program to recruit, select, compensate, mentor, and guide Native American and Hispanic students in the sciences for participation in a public health laboratory sciences training program. (The target number of students for this project is up to 6 per year. Typical fellowships at the undergraduate level will be for a maximum of 4 months. At the post-baccalaureate level (including the post-Masters and the post-Doctorate levels) typical fellowships will be for one year, renewable annually for a maximum of three years. Appointments of less than one year may be made under special circumstances).

b. Provide a senior staff or faculty member to serve as fellowship director, who will be responsible for establishing and/or maintaining close working relationships with students.

c. Identify students with interest and aptitude in specific scientific disciplines such as: chemistry and all sub-specialties of chemistry (clinical, analytical, and organic, etc.), biochemistry and all related sub-specialties (toxicology, neurotoxicology, biosensors, etc.), molecular biology, genetics, biostatistics, and data acquisition and instrument control systems design.

d. Develop new, or modify existing, undergraduate and graduate level curricula in relevant academic departments of the recipient institution to complement this fellowship program.

e. Establish working relationships with community colleges and secondary schools that serve significant populations of Native American and Hispanic students.

f. Develop curricula that provide training in Environmental Chemistry and Environmental Health.

g. Provide guidance to the project mentors on the unique cultural or educational needs of potential Fellows since these needs may have an impact on the success and retention of the students in this program.

h. Provide preliminary training to potential Fellows in chemical and biological laboratory safety, including universal precautions for working with biological samples, use of protective equipment, work-site performance expectations, presentation skills, basic principles of laboratory quality control, and other training which helps build student confidence for encountering the differences between academic settings and the high-throughput laboratory setting they will encounter during the CDC-based portion of their fellowship and in future employment in the sciences.

2. CDC Activities

a. Provide assistance, if needed, in the development of relevant curricula.

b. Provide practical and relevant laboratory training, and work experience opportunities at the CDC Environmental Health Laboratory facilities in Atlanta, Georgia.

c. Provide training oversight, coordination, and guidance for the Fellows and their selected research projects. (Refer to Programmatic Interest section of this announcement.)

F. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The applicant should include as part of the narrative or as a two to five page report at the beginning addressing the following information:

1. Serve local populations of at least 100,000 Native Americans and/or Hispanics.

2. Annually enroll a total of at least 10,000 graduate and undergraduate students, with total enrollment by

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Hispanic, and Native Americans constituting at least 40% of the total undergraduate student body.

3. Have a demonstrated record of success in recruiting and retaining minority undergraduate science students through completion of their bachelors degree and continuation of post graduate training. (Please provide recent historical data on matriculation, retention, graduation, and post-graduate placement of minority students where available).

4. Evidence of past successful activities which illustrate creativity and originality in establishing relationships with local community colleges serving Native American and Hispanic populations.

5. An academic program and supporting faculty recognized in analytical, biomedical, and/or environmental chemistry.

6. Provide plans for recruitment and outreach for Fellows to include the process of establishing partnerships with community(ies) and recognition of mutual benefits beyond those already demonstrated.

7. Present estimates of the level of participation in the program in the first year and projections for future years.

Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than twenty double-spaced pages printed on one side, with one inch margins, and unreduced font plus pre-printed attachments. The application must be submitted unstapled and unbound.

G. Submission and Deadline

Submit the original and two copies of PHS–5161–1 (OMB Number 0937–0189). Forms are in the application kit.

On or before July 21, 2000, submit the application to the Grants Management Specialist identified in **Where to Obtain Additional Information** section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the Objective Review Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Objectives of the Project (20 percent)

The extent to which the applicant demonstrates an understanding of the nature of the problem to be addressed. This specifically includes description of the unique training needs of Native American and Hispanic science students at the undergraduate and graduate levels and cultural barriers which may discourage them from pursuing academic programs in the sciences, and cultural or other factors which may affect the retention of Fellows in the program. Applicant should provide estimates (and sources of estimates) of the demographics of Native American and Hispanic enrollment in scientific higher education in the geographic areas served by the applicant and factors which may affect the validity of such estimates.

2. Technical Approach (25 percent)

The extent to which the applicant describes in detail the academic institution's component of the proposed Fellowship program including, but not limited to a description of:

a. An overview of the goals and objectives of the fellowship program.

b. A comprehensive program to recruit, select, compensate, mentor, and guide Native American and Hispanic students in the sciences for participation in a public health laboratory sciences training program.

c. Activities to establish close working relationships with students.

d. The institution's undergraduate and graduate level curricula in relevant academic departments that may be reasonably expected to integrate with the purpose of this fellowship program.

3. Ability To Carry Out the Project (25 percent)

The extent to which the applicant provides evidence of ability to carry out the proposed project and the extent to which the applicant demonstrates capability to achieve the objectives of the proposed program. This may include plans, time-lines, approaches, methods for conducting such a fellowship program, and may include collaborating with other universities or other health research agencies.

4. Personnel (15 percent)

The extent to which professional personnel involved in this project are qualified, including evidence of experience similar to this project.

5. Collaboration (5 percent)

The extent to which the applicant demonstrates the ability to collaborate and/or form partnerships with community colleges and secondary schools serving significant populations of Hispanic and Native American students.

6. Plans for Administration (10 percent)

The extent to which the applicant describes the plans for administering the project.

7. Budget (Not Scored)

The extent to which the applicant provides a detailed budget justification which is reasonable and consistent with the objectives of this program.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. semi-annual progress reports, no more than 30 days after the end of the report period.

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–16 Security Clearance Requirement

Additional information can be attained as follows:

Executive Order 13021—Tribal Colleges—http://www.aipc.osmre.gov/EO13021.htm
Executive Order 12900—Excellence in Education for Hispanic Americans—http://www.ioc.army.mil/others/minority/ex12900.HTML

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 301(a) and 317 [42 U.S.C. 241(a) and 247(b) as amended]. The Catalog of Federal Domestic Assistance number is 93.283.

K. Where To Obtain Additional Information

This and other CDC Announcements can be found on the CDC homepage Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements". To receive additional written information and to request an application kit, call 1–888–Grants4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC),Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2718, Email address: mij3@cdc.gov.

For program technical assistance, contact: Dayton T. Miller, Ph.D., National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE (F–18), Atlanta, Georgia 30341–3724, Telephone: (770) 488–4452, Email address: dtm1@cdc.gov.

Dated: May 19, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13131 Filed 5–24–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Addendum #3 to the Assessment Plan: Lower Fox River/Green Bay Natural Resource Damage Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 30-day comment period.

SUMMARY: Notice is given that the document entitled: "Third Assessment Plan Addendum: Lower Fox River/Green Bay NRDA" ("The Addendum") will be available for public review and comment on the date of publication in the **Federal Register**.

The U.S. Department of the Interior ("Department"), the U.S. National Oceanic and Atmospheric Administration, the Menominee Indian Tribe of Wisconsin, the Oneida Tribe of Indians of Wisconsin, and the Wisconsin Department of Natural Resources have asserted trusteeship for natural resources considered in this assessment, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600, 300.605, and 300.610, and Executive Order 12580, 52 F.R. 2923 (Jan. 23, 1987).

The assessment, including the activities addressed in this addendum, will be conducted in accordance with the Natural Resource Damage Assessment Regulations found at 43 CFR part 11, to the extent applicable. The public review of the Addendum announced by this Notice is provided for in 43 CFR 11.32(C).

Interested members of the public are invited to review and comment on the Addendum. Copies of the Addendum, and the "Assessment Plan: Lower Fox River/Green Bay NRDA" ("The Plan") issued on August 23, 1996 (FR Doc. 96–21520), can be requested from the address listed below, or downloaded from the following web site: http://www.fws.gov/r3pao/nrda. All written comments will be considered and included in the Report of Assessment, at the conclusion of the assessment process.

DATES: Written comments on the Addendum must be submitted on or before June 26,2000.

ADDRESSES: Requests for copies of the Addendum and/or the Plan may be made to: David Allen, U.S. Fish and Wildlife Service, 1015 Challenger Court, Green Bay, Wisconsin 54311.

SUPPLEMENTARY INFORMATION: The purpose of this natural resource damage assessment is to confirm and quantify the suspected injuries to natural resources in the Lower Fox River, Green Bay, and Lake Michigan environment resulting from exposure to hazardous substances released by area paper mills and other potential sources. It is suspected that this exposure has caused injury to trustee resources. The injury and resultant damages will be assessed under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Clean Water Act, as amended.

The objective of this Addendum is to initiate a process through which the governmental partners will attempt to arrive at a single coordinated Restoration and Compensation Determination Plan that integrates the ongoing state and federal/tribal natural resource damage assessments and to notify the public regarding this process.

William F. Hartwig,

Regional Director, Region 3, Fish and Wildlife Service.

[FR Doc. 00–13133 Filed 5–24–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–ET; IDI–15630 et al.]

Legal Description of Modification and Partial Revocation of Executive Orders; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice corrects the total acreage figures of Public Land Order 7437 published in 65 FR 58, of March 24, 1000, on page 15917. The Summary of the Public Land Order should read: "This order modifies 5 Executive orders to established a 20-year term as to 8,040.07 acres of lands withdrawn for the Bureau of Land Management for use as Powersite Reserves. This order also partially revokes 3 of the Executive orders insofar as they affect 2,362.82 acres and opens 401.95 acres to surface entry. The remaining 1,960.87 acres have been conveyed out of Federal ownership. All of the lands in Federal ownership have been and will remain open to mining and mineral leasing." Paragraph 2 lists 277.30 acres, that figure is corrected to 401.95 acres. Paragraph 3 lists 3,165.70 acres , that figure is corrected to 1,960.87 acres.

EFFECTIVE DATE: May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3867.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 00–13163 Filed 5–24–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–960–1150–PG]

Dakotas Advisory Council Meeting

AGENCY: Bureau of Land Management, North Dakota Field Office, Interior.

ACTION: Notice of meeting; Dakotas Advisory Council Meetings.

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SUMMARY: A meeting of the Dakotas Resource Advisory Council will be held July 10 & 11, 2000, at the Travel Lodge, Dickinson, North Dakota. The session will convene at 8 a.m. on July 10th and resume at 8 a.m. on the 11th. Agenda items will include OHV followup, South Dakota Land Exchange, grazing permit renewal update, Schnell signing, Endangered Species (sage grouse and prairie dogs), Grasslands Stewardship Initiative, Field Trip to Schnell Recreation Area.

The meeting is open to the public and a public comment period is set for 8 a.m. on July 11th. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Douglas Burger, Field Office Manager, North Dakota Field Office, 2933 3rd Ave. W., Dickinson, North Dakota. Telephone (701) 225–9148.

Dated: May 10, 2000.

Douglas J. Burger,

Field Office Manager.

[FR Doc. 00–13122 Filed 5–24–00; 8:45 am]

BILLING CODE 4310–88–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–00–0777–XX]

Sierra Front/Northwestern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Sierra Front/Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), a meeting of the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front/Northwestern Great Basin Resource Advisory Council (Nevada) will be held as indicated below. The topic of discussion will be a review of the Black Rock Management Plan being prepared by the Winnemucca Field Office, and other topics the council may raise.

The meetings is open to the public. The public may present written and/or comments to the council. The public comment period for the council meeting will be at 4:00 p.m. on Wednesday, June 14th. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, or who desire a hard copy of the agenda, should contact Mike Holbert, Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, NV 89445, telephone (775) 623–1514 no later than June 10, 2000.

DATES: The council will meet on Wednesday, June 14, 2000, from 9:00 a.m. to 5:00 p.m. at the Best Western Inn-Fernley, 1405 East Newlands Drive, Fernley, Nevada. Public comment on individual topics will be received at the discretion of the Council Chairperson, as meeting moderator, with a general public comment period on Wednesday, June 14, 2000, at 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Holbert, Associate Field Manager, Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, NV 89445. Telephone (775) 623–1514.

Dated: May 12, 2000.

Michael R. Holbert,

Associate Field Manager, Winnemucca Field Office.

[FR Doc. 00–13165 Filed 5–24–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

[CA–330–1220–AB]

King Range National Conservation Area, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed establishment of supplementary rules.

SUMMARY: The Arcata Field Office is proposing the establishment of the following Supplementary Rules for the King Range National Conservation Area as provided for under title 43 Code of Federal Regulations subpart 8365.1–6. The implementation of fees is authorized under the Land and Water Conservation Fund Act of 1965 as Amended, and the Omnibus Consolidated Rescissions Act of 1996 as Amended (Pub. L. 104–134).

A. Camping Closure

BLM administered lands within the following areas are closed to camping (overnight occupancy) outside of developed campsites: Public lands within 500 feet of the perimeter of the Mattole Campground.

B. Overnight Trail Head Parking Fees

An overnight trailhead parking fee will be implemented at the Mattole and Black Sands Beach Recreation Sites to meet the goals described in the supplementary information below. The fee will be set at $2 per night (any future fee changes would be published locally prior to implementation) and will be in effect from ½ hour after sunset to ½ hour before sunrise. There will be no fees for day use.

C. Overnight Camping Fees

Campground use fees of $5.00 per night are established for the Mattole and Honeydew Creek Campgrounds (any future fee changes would be published locally prior to implementation). Campsite occupancy is limited to two vehicles and 8 persons per site. Fees are in effect from ½ hour after sunset to ½ hour before sunrise at the Mattole Campground, and from ½ hour after sunset until 8:00 a. m. at the Honeydew Creek Campground.

D. Black Sands Beach, Nighttime Use

This site is closed to all overnight camping. Nighttime occupancy is limited to vehicle parking for off-site backcountry use. For the purposes of this rule, off-site means traveling north of Telegraph Creek for camping/backpacking or other overnight uses. Use of the site itself is limited to 30 minutes for unloading/loading purposes during the nighttime restriction period. The nighttime restriction is in place from ½ hour after sunset to ½ hour before sunrise. This rule does not affect day-time use.

EFFECTIVE DATE: These Supplementary Rules will be effective on July 1, 2000.

Comment Period

The BLM is requesting comments concerning these supplemental rules. The comment period will be open for 30 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Lynda Roush, Bureau of Land Management, Arcata Field Office, 1695 Heindon Rd., Arcata, CA 95521. Phone (707) 825–2300.

SUPPLEMENTARY INFORMATION: The above supplementary rules are being proposed for the following purposes:

A. Camping Closure

The closure is intended to reduce resource damage and fire danger in the riparian area and beach dunes surrounding the Mattole Campground. It will also allow for enforcement of the site capacity limits at the Mattole Campground by requiring that visitors hike into the backcountry or travel to other available campgrounds when this site is full. Currently, visitors are impacting undeveloped areas immediately adjacent to the campground so they can camp nearby and use the facilities.

B. Overnight Parking Fees

The overnight parking fees will be implemented as a management tool for encouraging distribution of overnight use away from the crowded Black Sands Beach and Mattole trailheads, and to discourage large nighttime group gatherings at these trailheads. Neither facility is designed to accommodate large nighttime group events, and this use is not compatible with the goals of the King Range Management Program (1974) and King Range Visitor Services Plan (1992). All parking fees will be used within the King Range to cover maintenance costs of the sites and recreation opportunities that they support. Mattole Campground users will not have to pay the parking fee for vehicles (up to two) parked at their campsite.

C. Camping Fees

Camping fees are established at Honeydew Creek and Mattole Campgrounds to cover a portion of the maintenance costs; to be commensurate with fees charged at other public and private camping areas in the region; and for use as a management tool to discourage nighttime group gatherings in the campgrounds. These nighttime group events are not compatible with the purpose of the site development and management as an overnight camping facility, nor with the goals of the King Range Management Program (1974) and King Range Visitor Services Plan (1992).

D. Black Sands Beach Nighttime Use

The Black Sands Beach Recreation Site is designed to be a backcountry trailhead parking area and day use facility. This rule is intended to limit nighttime use of the trailhead facilities to a parking area for backcountry use only. The parking facilities are located immediately adjacent to a residential area, and nighttime use of the area as a destination would cause unreasonable noise within the neighborhood. This restriction would not affect overnight backcountry users who park at the site, and will also not affect day use.

Violation of any of the above rules is punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months (43 CFR 8360.0–7).

Daniel E. Averill,

Acting Arcata Field Manager.

[FR Doc. 00–13134 Filed 5–24–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET; GP0–0220; OR–55753]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes to withdraw approximately 960 acres of National Forest System lands, lying within the Siskiyou National Forest, to protect the recreation, fisheries, scenic, and water quality values of the Scenic section of the North Fork Smith Wild and Scenic River. This notice closes the lands for up to 2 years from surface entry and mining. The public lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: Comments and requests for a public meeting must be received by August 24, 2000.

ADDRESSES: Comments and meetings requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, 503–952–6189.

SUPPLEMENTARY INFORMATION: On May 19, 2000, the Forest Service filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Siskiyou National Forest

All lands lying on the right (west) bank of the river corridor, including the river bed, and extending ¼ mile from the centerline of the North Fork Smith River, from Horse Creek downstream 4.5 miles to the confluence of Baldface Creek, as described in the following:

T. 40 S., R. 11 W., unsurveyed
Sec. 15, SW¼SW¼;
Sec. 16, E½;
Sec. 21, E½E½ and NW¼SE¼;
Sec. 22, W½W½ and SE¼SW¼;
Sec. 27, W½E½, E½W½ and NW¼NW¼;
Sec. 28, NE¼NE¼;
Sec. 34, W½E½ and E½W½.
T. 41 S., R. 11 W.,
Sec. 2, W½;
Sec. 3, NE¼;
Sec. 11, N½NW¼.

AND all lands lying on the left (east) bank of the river corridor, including the river bed, and extending ¼ mile from the centerline of the North Fork Smith River as described in the following:

T. 41 S., R. 11 W.,
Sec. 2, those portions of the E½SW¼ and W½SE¼, lying outside the boundaries of the Kalmiopsis Wilderness Area;
Sec. 11, those portions of the NW¼NE¼ and NE¼NW¼, lying outside the boundaries of the Wild segment of the North Fork Smith Wild and Scenic River.

The areas described aggregate approximately 960 acres in Curry County.

The purpose of the proposed withdrawal is to protect the outstanding recreation, fisheries, scenic, and water quality values for which the North Fork Smith River was designated Wild and Scenic.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

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Dated: May 19, 2000.
Robert D. Devaney, Jr.,
Chief, Branch of Realty and Records Services.
[FR Doc. 00–13170 Filed 5–24–00; 8:45 am]
BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.
ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0091).

SUMMARY: To comply with the requirements of the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on an information collection request (ICR), titled "30 CFR Part 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line." We are preparing an ICR, which we will submit to the Office of Management and Budget (OMB) for review and approval.
DATES: Submit written comments by July 24, 2000.
ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.
FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.
SUPPLEMENTARY INFORMATION:
Title: 30 CFR Part 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.
OMB Control Number: 1010–0091.
Abstract: The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. Regulations at 30 CFR part 254 establish requirements for spill-response plans for oil-handling facilities seaward of the coast line, including associated pipelines.

We use the information collected under 30 CFR part 254 to determine compliance with OPA by owners/operators. Specifically, MMS needs the information to:

- determine effectiveness of the spill-response capability of owners/operators;
- review plans prepared under the regulations of a State and submitted to MMS to satisfy the requirements of this rule to ensure that they meet minimum requirements of OPA;
- verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill response plans and to witness spill-response exercises;
- assess the sufficiency and availability of contractor equipment and materials;
- verify that sufficient quantities of equipment are available and in working order;
- oversee spill-response efforts and maintain official records of pollution events; and
- assess the efforts of owners/operators to prevent oil spills or prevent substantial threats of such discharges.

Responses are mandatory. No proprietary, confidential, or sensitive information is collected.

Frequency: The frequency varies by regulatory requirement, but is mostly annual or on occasion.

Estimated Number and Description of Respondents: Approximately 193 owners or operators of facilities located in both State and Federal waters seaward of the coast line.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved burden for this information collection is 47,439 hours. The major components of this burden are for:

- Spill response plans for OCS or State water facilities (100 hours).
- Revised spill response plans (16.5 hours).
- Modified OCS spill response plan for facilities in State waters (45 hours).
- Response plan for facilities in State waters using State requirements (93 hours).
- Conduct of annual training; retain records for 2 years (40 hours).
- Conduct of triennial response plan exercise; retain records for 3 years (110 hours).

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no non-hour cost burdens for this collection.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *"

Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified any non-hour cost burdens and need to know if you have other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Dated: May 17, 2000.
John V. Mirabella,
Acting Chief, Engineering and Operations Division.
[FR Doc. 00–13166 Filed 5–24–00; 8:45 am]
BILLING CODE 4310–MR–W

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Park Service Policies and Procedures Governing Its Structural Fire Management Program

AGENCY: National Park Service, Interior.
ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Director's Order setting forth its policies and procedures governing structural fire prevention, protection, and suppression. When adopted, the policies and procedures will apply to all units of the national park system, and will supersede and replace the policies and procedures issued in June 1987.
DATES: Written comments will be accepted until June 26, 2000.
ADDRESSES: Draft Director's Order #58 is available on the Internet at http://www.nps.gov/refdesk/DOrders/index.htm. Requests for copies and written comments should be sent to Bill Oswald, NPS Structural Fire Program Manager, Fire Management Program Center, 3833 S. Development Avenue, Boise, Idaho 83705, or to his Internet address: *bill_oswald@nps.gov.*
SUPPLEMENTARY INFORMATION: The NPS is updating its current system of internal written instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, they are first made available for public review and comment before being adopted. The policies and procedures governing structural fire management have previously been published in the form of guideline NPS–58. That guideline will be superseded by the new Director's Order 58 (and a reference manual that will be issued subsequent to the Director's Order). The draft Director's Order covers topics such as fire management planning, safety and health, cultural resources, concessions, reporting, investigation, training, coordination, program review, preparedness, and funding. Director's Order #58 addresses only structural fire management; wildland fire management is addressed in Director's Order #18, approved November 17, 1998 (and is also available on the Internet site listed above).

Dated: May 19, 2000.
Loran Fraser,
Chief, Office of Policy.
[FR Doc. 00–13143 Filed 5–24–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 18, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 219–5096 ext 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), on or before June 26, 2000.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.
Agency: Employment and Training Administration.
Title: Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Claims Report.
OMB Number: 1205–0028.
Affected Public: State, Local, or Tribal Government.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
ETA 538	53	Weekly	2,756	30 min	1,378 hours.
ETA 539	53	Weekly	2,756	50 min	2,297 hours.
Totals	53		5,512	40 min	3,675 hours.

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Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Data for the determination of the beginning, continuance, or termination of an Extended Benefit (EB) period in any State by reason of the EB trigger rate and the data on initial and continued claims used as economic indicators.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–13155 Filed 5–24–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary Submission for OMB Review; Comment Request

May 15, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. The obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((201) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before June 26, 2000.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration (ESA).

Title: Wage Statement.

Type of Review: Extension.

OMB Number: 1215–0148.

Frequency: On occassion.

Affected Public: Farms, business or other for-profit, Individuals or households.

Number of Respondents: 1.4 million.

Number of Annual Responses: 34 million.

Estimated Time Per Response: 1 minute.

Total Burden Hours: 566,667.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Migrant and Seasonal Agricultural Protection Act require employers of agricultural workers to maintain records of certain payroll information given to each worker.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–13156 Filed 5–24–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act (WIA)(Section 167) National Farmworker Jobs Program (NFJP)

Allocations

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: Announcement of Formula Allocations for the Program Year (PY) 2000 NFJP.

SUMMARY: Pursuant to Section 182(d) of the WIA, the ETA is publishing the PY 2000 allocations for the NFJP authorized under Section 167 of the WIA.

FOR FURTHER INFORMATION CONTACT: Ms. Alicia Fernandez-Mott, Chief, Division of Seasonal Farmworker Programs. Her e-mail address is <afernandez-mott@doleta.gov>. Her telephone number is (202) 219–5500, ext. 121. (This is not a toll-free number.)

EFFECTIVE DATE: May 25, 2000. Comments must be submitted on or before June 26, 2000.

SUPPLEMENTARY INFORMATION: On May 19, 1999, a Notice of the new formula for allocating funds available for the NFJP (formerly referred to as the Migrant and Seasonal Farmworker (MSFW) program) was published in the **Federal Register** at 64 FR 27390 (May 19, 1999). The Notice explains how the new formula achieves its purpose, which is to distribute funds geographically by State service area on the basis of each area's relative share of farmworkers who are eligible for enrollment in the NFJP. The new formula consists of a rational organization of multiple data sets selected to yield the relative share distribution of eligible farmworkers. The result is substantially more relevant to the purpose than the allotments determined by the prior formula. Because it is the best available allocation tool and to maintain consistency, the Department of Labor is using the new formula described in the May 19 Notice to allocate PY 2000 WIA section 167 funds. The rationale for the new allocation formula and underlying methodology on how the new formula realigns the NFJP allocations, is fully explained in the May 19 Notice. The Department of Labor invites comments on our decision to use this formula for allocating PY 2000 funds.

Implementing the new formula in PY 1999 gave rise to significant changes in relative funding levels. The magnitude of the realignment for some State service areas is substantial. This is attributable to the inherent weaknesses of the data sources used under the prior formula and also to the fact the sources had gradually become substantially date-stale. To provide for a smooth transition from the original distributions, to the distributions provided by the new formula, Part IV of the May 19, 1999 Notice provides a strategy for implementation of the new formula through four incremental "hold harmless" stages. The stages adjust the formula allocations by limiting the rate of reduction in relative funding levels to the four annual increments of 95 percent, 90 percent, 85 percent and 80 percent of the 1998 level—the last year under the old formula. Full implementation of the new (combined-data) formula is reached on the 5th year allocation. The May 19, 1999 Notice provides that for PY 2000, which is the second stage hold-harmless year, each State service area will receive no less than 90 percent of its PY 1998 allocation (64 FR 27390, 27399 § IV(2)). PY 2000 is the operating year that begins on July 1, 2000.

The Fiscal Year 2000 pre-recission appropriation for the MSFW programs under WIA Section 167 is $74,445,000. A portion of this amount is an addition to the Administration's budget request. This budget addition amount is designated in the Committee appropriation language for addressing two objectives. One objective applies to the state-by-state formula allocation of funds for the NFJP. The budget addition offsets the scheduled adjustment to those State service areas undergoing a reduction in funding, by financing the difference between their PY 1998 level and the PY 2000 hold-harmless adjusted level. The other is to provide additional funding to raise the discretionary support for the farmworker housing assistance grants from the 1998 level to a level of $3,000,000. The total budget addition amount is $ 3,428,000. The recission action on the appropriation for the WIA Section 167 is $250,000. All of the $250,000 recission amount is applied to reduce the budget addition. The final budget addition, after reduction for the recission amount, is $3,178,000.

In PY 2000, the base amount allocated under the formula is equal to the PY 1999 formula allocation amount of $67,596,408. The budget addition amount is applied to those state service areas that are allocated a declining relative share of funding under the second hold-harmless stage of the new formula. Had there been no recission action, the total cost of this offset would be $2,927,691. Application of the 7.293 percent budget recission, reduces the budget addition by $213,517 to the post-recission level of $2,714,174. The total amount allocated to the States for the NFJP is the base amount, plus the budget addition amount, less the applied recission amount, leaving a net total of $70,310,582. The effects of these steps for each State service area are shown in the last three columns of the "Allocation Table."

Under 20 CFR 669.240(a), at least 94 percent of the funds appropriated must be allocated to the State service areas for the NFJP grants. The total amount ($70,310,582) allocated for PY 2000 is 94.446 percent, thus exceeding the minimum requirement. The remaining amount of the appropriation is available for the other WIA Section 167 activities for farmworkers, which include the post recission amount of $2,963,543 for the PY 2000 farmworker housing assistance grants.

Minimum Funding Provisions

Part V of the **Federal Register** Notice (See 64 FR 27390, 27400 § V (May 19, 1999) provides that a State service area allocated less than $60,000 could be combined with an adjoining State service area. For PY 2000, the Rhode Island area allocation of $2,875 will be combined with the Connecticut area allocation. The incumbent grantee will not be required to amend its PY 2000 operating plan due to this action.

PY 2000 Allocations

The final (far right-hand) column of the "Allocation Table" provides the allotments for the NFJP in PY 2000. Grantees will use these figures in preparing the PY 2000 NFJP grant plans.

Signed at Washington, DC, this 18th day of May, 2000.

Shirley M. Smith,

Administrator,, Office of Adult Services.

ALLOCATION TABLE FOR PROGRAM YEAR 2000 NATIONAL FARMWORKER JOBS PROGRAM

State	PY 1998 allotments	Formula allocation w/o hold harmless adjustment	Formula percentage share w/o hold harmless (in percent)	PY 2000 allocation with hold harmless adjustment	Cost to bring states to PY 1998 levels	Recission action (7.293)	PY 2000 allotments
Alabama	$791,835	$437,632	0.67766	$712,652	$79,183	$5,775	$786,060
Arizona	1,519,645	1,719,287	2.66226	1,646,953	.....	0	1,646,953
Arkansas	1,167,409	724,893	1.12247	1,050,668	116,741	8,514	1,158,895
California	14,591,138	20,067,526	31.07392	16,077,073	.....	0	16,077,073
Colorado	805,523	992,449	1.53678	879,010	.....	0	879,010
Connecticut	206,024	303,689	0.47025	228,511	.....	0	228,511
Delaware	118,334	125,899	0.19495	125,899	.....	0	125,899
Florida	4,631,415	2,465,700	3.81806	4,168,274	463,141	33,777	4,597,638
Georgia	1,711,615	876,499	1.35723	1,540,454	171,161	12,483	1,699,132
Idaho	877,438	1,079,184	1.67108	957,349	.....	0	957,349
Illinois	1,425,808	1,424,912	2.20643	1,424,912	896	65	1,425,743
Indiana	781,615	927,202	1.43574	850,271	.....	0	850,271
Iowa	1,314,394	1,078,955	1.67073	1,182,955	131,439	9,586	1,304,808
Kansas	697,839	1,078,783	1.67046	777,719	.....	0	777,719
Kentucky	1,352,613	1,043,179	1.61533	1,217,352	135,261	9,865	1,342,748
Louisiana	796,032	484,907	0.75086	716,429	79,603	5,805	790,227
Maine	327,397	174,702	0.27052	294,657	32,740	2,388	325,009
Maryland	306,291	363,789	0.56332	333,229	.....	0	333,229
Massachusetts	351,027	298,012	0.46146	315,924	35,103	2,560	348,467
Michigan	878,641	944,430	1.46242	944,430	.....	0	944,430
Minnesota	1,274,775	879,095	1.36125	1,147,298	127,477	9,297	1,265,478
Mississippi	1,449,044	571,321	0.88467	1,304,140	144,904	10,568	1,438,476
Missouri	1,094,524	976,379	1.51189	985,072	109,452	7,982	1,086,542
Montana	667,189	461,861	0.71518	600,470	66,719	4,866	662,323
Nebraska	774,884	1,092,397	1.69154	855,772	.....	0	855,772
Nevada	200,795	159,091	0.24635	180,716	20,079	1,464	199,331
New Hampshire	112,600	100,958	0.15633	101,340	11,260	821	111,779
New Jersey	400,038	698,545	1.08168	451,763	.....	0	451,763
New Mexico	598,720	934,978	1.44778	667,952	.....	0	667,952
New York	1,850,667	1,088,774	1.68593	1,665,600	185,067	13,497	1,837,170
North Carolina	3,006,003	1,897,104	2.93760	2,705,403	300,600	21,923	2,984,080
North Dakota	468,362	609,496	0.94379	513,493	.....	0	513,493
Ohio	904,951	1,264,492	1.95803	998,582	.....	0	998,582

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ALLOCATION TABLE FOR PROGRAM YEAR 2000 NATIONAL FARMWORKER JOBS PROGRAM—Continued

State	PY 1998 allotments	Formula allocation w/o hold harmless adjustment	Formula percentage share w/o hold harmless (in percent)	PY 2000 allocation with hold harmless adjustment	Cost to bring states to PY 1998 levels	Recission action (7.293)	PY 2000 allotments
Oklahoma	608,145	1,276,891	1.97723	702,695	.....	0	702,695
Oregon	1,087,697	1,452,311	2.24886	1,195,236	.....	0	1,195,236
Pennsylvania	1,221,441	1,549,985	2.40010	1,336,212	.....	0	1,336,212
Rhode Island	0	38,832	0.06013	2,875	.....	0	2,875
South Carolina	1,080,106	391,046	0.60552	972,095	108,011	7,877	1,072,229
South Dakota	692,869	456,831	0.70739	623,582	69,287	5,053	687,816
Tennessee	957,799	720,217	1.11523	862,019	95,780	6,985	950,814
Texas	5,979,800	6,697,752	10.37126	6,475,747	.....	0	6,475,747
Utah	245,354	288,106	0.44612	266,687	.....	0	266,687
Vermont	213,134	105,217	0.16293	191,821	21,313	1,554	211,580
Virginia	1,036,441	708,789	1.09754	932,797	103,644	7,559	1,028,882
Washington	1,705,576	2,262,216	3.50297	1,873,085	.....	0	1,873,085
West Virginia	219,325	100,275	0.15527	197,393	21,932	1,600	217,725
Wisconsin	1,229,201	953,157	1.47593	1,106,281	122,920	8,965	1,220,236
Wyoming	201,911	232,207	0.35956	219,105	.....	0	219,105
Total Center United States	63,933,384	64,579,952	100.00	64,579,952	2,753,713	200,828	67,132,836
Conterminous United States	63,933,384	64,579,952	95.53755				
Hawaii	251,607	204,254	4.16028	204,254	47,353	3,453	248,154
Puerto Rico	2,938,827	2,812,202	.30217	2,812,202	126,625	9,235	2,929,592
Subtot. (HI+PR)	3,190,434	3,016,456	4.46	3,016,456	173,978	12,688	3,177,746
Total United States	67,123,818	67,596,408	100.00	67,596,408	2,927,691	213,517	70,310,582

[FR Doc. 00–13154 Filed 5–24–00; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Work Incentive Grants

AGENCY: Employment and Training Administration (ETA), DOL.

ACTION: Notice of availability of funds; Solicitation for Grant Applications (SGA).

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA) announces the availability of $20 million to award competitive grants designed to enhance the employability, employment and career advancement of people with disabilities through enhanced service delivery in the new One-Stop delivery system established under the Workforce Investment Act of 1998. The Work Incentive Grant program will provide grant funds to consortia and/or partnerships of public and private non-profit entities working in coordination with a state and/or local One-Stop delivery system to augment the existing programs and services and ensure programmatic access and streamlined, seamless service delivery for people with disabilities.

DATES: Applications will be accepted commencing on the date of publication. The closing date for receipt of applications under this announcement is Tuesday, August 1, 2000, at 4:00 p.m. Eastern Standard Time (EST) at the address below. Telefacsimile (fax), telegraphed, or electronic applications will not be honored.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Ms. B. Jai Johnson, SGA/DFA 00–107, 200 Constitution Avenue, NW Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Ms. B.Jai Johnson, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739. This is not a toll-free number. All inquiries should include the SGA number (DFA 00–107) and a contact name, fax and phone numbers. This solicitation is also being published on the Internet on the ETA's disability On-line Home Page at wdsc.org/disability, or the ETA homepage at doleta.gov. Award notifications will also be published on the ETA homepage.

SUPPLEMENTARY INFORMATION:

I. Authority

Provisions relating to the One-Stop delivery system are at Section 121, 134(c) of the Workforce Investment Act (29 USC 2841, 2864); Wagner-Peyser Act 53(c)(1) (29 USC 496(c)(1)) and Department of Labor Appropriations Act 2000 (Pub. L. 106–113). Regulations governing the Workforce Investment Act are at 20 CFR parts 660–671. An Interim Final Rule was published in the **Federal Register** at 64 FR 18662 (Apr. 19,1999) with issuance of final rule planned for the summer of 2000.

II. Background

The Workforce Investment Act of 1998 establishes comprehensive reform of existing Federal job training programs with amendments impacting service delivery under the Wagner Peyser Act, Adult Education and Literacy Act, the Rehabilitation Act and supersedes the Job Training Partnership Act. A number of other Federal programs are also identified as required partners under the One-Stop delivery system with the intention of providing comprehensive services for all Americans to access the information and resources available to them in the development and implementation of their career goals. The intention of the One-Stop system is to establish programs and providers in co-located, coordinated and integrated settings that are coherent and accessible for individuals and businesses alike in approximately 600 workforce investment areas which will be established throughout the nation.

The Workforce Investment Act establishes State and Local Workforce Investment Boards focused on strategic planning, policy development, and oversight of the workforce system with significant authority for the Governor and chief elected officials to build on existing reforms in order to implement innovative and comprehensive workforce investment systems. Although systemic change of the magnitude envisioned by the Workforce Investment Act is a long term process, State and local planning processes are required to be in place by July 1, 2000. The Work Incentive Grants will facilitate model service delivery for people with disabilities involving coordination of the multiple programs and agencies which frequently impact their ability to achieve self-sustaining employment, skill attainment and long range career opportunities. Recognizing that many One-Stop delivery systems may not currently have the capacity to provide comprehensive services to people with disabilities, the Work Incentive Grant is designed to provide seed monies for the enhancement of service delivery in the One-Stop delivery system.

Many people with disabilities are looking to the new workforce investment system to address their employment and training needs in a progressive, enlightened environment with cutting-edge technologies. They also expect the One-Stop delivery system to provide comprehensive services to meet multiple barriers which frequently limit their access to a productive, economically rewarding work life. These may include, but are not limited to, the availability of basic and skill development; vocational skill training or advanced educational opportunities; apprenticeship and entrepreneurial training; transportation assistance to reach training or employment; housing assistance or advise on retaining existing housing upon employment; and access to medical health coverage upon employment.

Additional Background Information

There are approximately 50 million Americans with disabilities, 30 million of whom are of working age. Of the latter, many are relegated to lives of poverty and reliance on public assistance and supports. The economic boom of recent years has had little to no impact on the more than 70% of those with significant disabilities of working age who are not employed. In addition, many people have hidden disabilities which may or may not be recognized or officially diagnosed but which impact their ability to obtain, retain or advance in employment.

Approximately 10 million people with disabilities are recipients or beneficiaries of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). Many other individuals with disabilities receive public assistance under the Temporary Assistance for Needy Families (TANF) program. The benefits or payments to these individuals are generally at or below Federal poverty income levels.

Generally eligibility for Medicaid, access to subsidized housing and other benefits are automatically tied to receipt of SSI or TANF, while Medicare and some other public supports are closely linked to SSDI benefits. Public policy systems, particularly those related to necessary health coverage, have for many years encouraged dependency on income supports and created many obstacles to employment and economic independence.

The loss of health care benefits and other structural disincentives to working and achieving self-sufficient, living wages have been partially addressed in the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA) (Public Law 106–170) which, among other provisions, encourages States to enact expanded and more readily accessible health care coverage for working age individuals with disabilities. Although not authorized under the TWWIIA, the Department of Labor intends for the Work Incentive Grant program to further support the employment objectives of TWWIIA for SSI and SSDI recipients by enhancing the State and local workforce investment system for all people with disabilities.

The Department of Labor has worked with the Social Security Administration (SSA) and the Department of Health and Human Services (HHS) in designing the Work Incentive Grant program, in a coordinated and strategic effort to support the issuance and objectives of separate SSA's cooperative agreement and HHS's grant programs authorized under the TWWIIA. The SSA will be awarding $50,000 to $300,000 grants for a $23 million Planning, Assistance and Outreach program to establish the capacity to provide comprehensive information on work incentives to SSI and SSDI recipients throughout each State. Workforce Investment Boards and One-Stop systems, among other entities, are eligible applicants for the SSA Planning, Assistance and Outreach Cooperative Agreement program. The HHS Medicaid Infrastructure Grant program is authorized for five years with approximately $40 million to be awarded annually to State Medicaid Agencies for establishing Medicaid buy-in opportunities for individuals who are working. Each of the three grant programs is administered separately by its respective agency but are expected to be implemented in Fiscal Year 2000.

The Department of Education also provided input for the requirements of this Solicitation for Grant Application. The Presidential Task Force on Employment of Adults with Disabilities, established under Executive Order 13078, facilitated and provided guidance to this multi-agency process as part of their charge to design a coordinated and aggressive national policy that will bring working-age individuals with disabilities into gainful employment at a rate approaching that of the general population.

III. Submission of Applications

Late Applications. Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or (b) was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 p.m. the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays. "Post marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt of the proposal.

Hand Delivered Proposals. It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4 p.m., EST, August 1, 2000, at the specified address. Failure to adhere to the above instructions will be basis for a determination of nonresponsiveness.

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Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

IV. Funding Availability and Period of Performance

The Department of Labor anticipates awarding 20–40 grants ranging from $500,000 to $1.5 million. The period of performance will be approximately 30 months from the date of execution by the Department. The grant funds would be available for expenditure until June 30, 2003 when the authority for these funds will expire. The Department may make subsequent grant awards, which would extend grant objectives, to the original grantees based on satisfactory performance and the availability of funds.

V. Eligible Applicants

Eligible applicants may be a State and/or Local Workforce Investment Board(s) (State Board/Local Board(s)) established under the Workforce Investment Act or other State/local public entities including, Vocational Rehabilitation, Mental Health, Mental Retardation/Developmental Disability, TANF; and/or a private non-profit organization including, but not limited to Centers for Independent Living (CILs), disability advocacy and provider organizations, federally-funded disability grant entities, and other non-profit organizations which provide services and/or advocacy for people with disabilities; or a consortium thereof.

To the extent practicable and possible, the Department of Labor is encouraging consortia of entities to develop and submit applications under this grant program. If the applicant is not the State or Local Workforce Investment Board, the Board(s) must be a partner in the consortium.

Applications can be statewide in scope. Statewide projects must propose strategies for enhancing and improving services to people with disabilities involving all local workforce investment areas in the State. State-wide grant projects should obtain and provide letters of commitment from local Workforce Investment Boards to the extent possible. However, a statewide project must include the State Workforce Investment Board as a consortium partner, with applicable letters of commitment provided in the application.

Indian and Native American Tribal entities, or consortia of Tribes, may apply for Work Incentive Grants. These would involve coordination of services and enhancements to a One-Stop system approach for people with disabilities in a specific Indian community or covering multiple Tribal entities which may cut across multiple States and/or workforce investment areas. In such cases, letters of commitment from Local Boards may not be applicable. Grants to Indian and Native American tribal grantees are treated differently because of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act allowing for the government to government relationship between the Federal and Tribal Governments.

VI. Section Format Requirements for Grant Application

General Requirements

Applicants must submit four (4) copies of their proposal, with original signatures. The Application Narrative must be double-spaced, and on single-sided, numbered pages with the exception of format requirements for the Executive Summary. The Executive Summary must be limited to no more than two single-spaced, single sided pages. A font size of at least twelve (12) pitch is required throughout.

There are three required sections of the application. Requirements for each section are provided in this application package. Applications that fail to meet the requirements will not be considered.

Section I—Project Financial Plan;
Section II—Executive Summary—Project Synopsis
Section III—Project Narrative (including Appendices, not to exceed 40 pages)

Section I. Project Financial Plan

Section I of the application must include the following two required elements: (1) Standard Form (SF) 424, Application for Federal Assistance, and (2) Budget Information Form and budget narrative. All copies of the SF 424 MUST have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the SF 424 the organization's IRS Status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c)4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The Catalog of Federal Domestic Assistance (CFDA) number is 17.207. Section I will not count against the application page limits.

The financial plan must describe all costs associated with implementing the project that are to be covered with grant funds. All costs should be necessary and reasonable according to the Federal guidelines set forth in the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," (also known as the "Common Rule") codified at 29 CFR part 97 (97.22), and "Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations" (also known as OMB Circular A–110), codified at 29 CFR part 95 (95.27).

The financial plan must contain the following parts:

—Completed "SF 424—Application for Federal Assistance" (see Appendix A for required form.)
—Completed "Budget Information Form" by line item for all costs required to implement the project design effectively. (See Appendix B for these required forms.)
—Budget narrative/justification which provides sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes.

Please note: Work Incentive Grant project designs which incorporate development, procurement or implementation of information technologies involving linkage, and/or to assure accessible technologies in the One-Stop setting, must provide a 50 percent grantee match for those Work Incentive Grant funds which will be utilized for this (these) purposes. That is, if an applicant intends to use $50,000 in grant funds to develop, procure or implement information technology they must identify $50,000 to be provided by the applicant and/or consortium partner(s). Also, grant funds directed to development, procurement and implementation of these technologies cannot exceed 10% (not including matching funds) of the total grant award. Identification of these funds should be made noted in the remarks section of the Budget Information Sheet and described in the budget narrative/justification, including source of matching funds.

Section II. Executive Summary—Project Synopsis

[Format requirements limited to no more than two single-spaced, single-sided pages]

Each application shall provide a project synopsis which identifies the following:

- The applicant;
- The type of organization the applicant represents;
- Identification of consortium partners and the type of organizations they represent;
- The project service area;

- Whether the service area is an entire local workforce investment area, more than one local area, and/or all local areas in a State;
- The specific areas of focus in the announcement which are addressed by the project;
- The amount of funds requested;
- The planned period of performance;
- The comprehensive strategy proposed for providing seamless service delivery, for addressing the multi-faceted barriers to training and employment which affect people with disabilities, and for improving access for people with disabilities in the generic workforce system;
- The ways in which the proposal is coordinated with a State HHS grant and/or SSA benefits planner grant;
- How counseling and other support needs will be addressed in the One-Stop Center system;
- The actions already taken by the State or Local Workforce Investment Board to address the needs of people with disabilities in the One-Stop delivery system;
- The extent to which the One-Stop facilities and satellite site incorporate physical access for people with disabilities;
- The extent to which Vocational Rehabilitation is integrated or coordinated with the One-Stop delivery system;
- Data on the extent to which people with disabilities have been served under the prior Job Training Partnership Act program and under the Wagner-Peyser Act;
- The level of commitment the applicant and consortium members have to serving people with disabilities; and
- The extent to which the needs of individuals with disabilities from diverse cultural and/or ethnic groups will be addressed.

Section III. Project Narrative

[Format requirements limited to no more than forty (40) double-spaced, single-sided, numbered pages]

Section III of the application, the project narrative, must not exceed forty (40) pages for the Government Requirements/Statement of Work section, as described below in the "Required Content for Work Incentive Grant Applications—Program Year 2000." The forty (40) page limit includes any Attachments which are provided by the applicant. Letters of general support or recommendation for a proposal should NOT be submitted and will count against the page limits. However, letters of commitment are required from partner/consortia organizations, including State and/or Local Workforce Investment Board(s) clearly stating their intent to provide services and resources to the grant.

VII. Program Scope and Objectives

The Department of Labor, in consultation with the President's Task Force on Employment of Adults with Disabilities, has designed the Work Incentive Grant program to achieve the following objectives:

—Provide seamless service delivery within a One-Stop delivery system for people with a wide range of disabilities which may include both documented and undocumented physical, sensory, developmental/cognitive (e.g., mental retardation and learning disabilities, among others), mental and other health related functional disabilities.

—Maintain a referral source of diverse services and information that commonly impact the employability of people with disabilities, such as transportation, housing, education and training programs, access to technology, and health care coverage;

—Provide model One-Stop service delivery through availability of—

- comprehensive services and programs designed to meet multiple needs and common employment barriers such as a procedures for identifying those individuals with hidden disabilities through appropriate screening and diagnostic testing;
- state-of-the-art, fully accessible technologies and/or other accommodations that would be available for use in the One-Stop setting as well as establishing a process for the availability of accommodations in training settings; and
- knowledgeable, experienced and skilled staff support on a broad range of disability issues.

—Ensure access to knowledgeable benefits counselors who can do the following

- provide information on education and training program options and opportunities available under a broad array of programs such as Adult Education; Individuals with Disability Education Act for those under 22 without a high school degree; Vocational Education and School-to-Work programs;
- address the impact of employment on individual benefits such as SSDI, SSI, TANF, Medicaid, Medicare, subsidized housing, and food stamps;
- provide accurate information on the availability of Social Security work incentive programs and Ticket-to-Work options available to SSDI and SSI recipients;
- make available to employers detailed information on the array of tax benefits and incentives to employers of people with disabilities that provide financial support for workplace modifications and accommodations; and
- leverage the diverse range of program resources that may be critical to successful employment, retention and career advancement such as medical or psychological testing or transportation subsidies available to One-Stop customers in local areas, as applicable.

—Establish and carry out extensive and wide-ranging outreach to the disability community, including those with physical, sensory, developmental/cognitive (mental retardation and learning disabilities, among others), mental and other health related impairments, so that core and Title I workforce services are readily available and welcoming to customers with disabilities;

—Ensure linkages and technical assistance to public and private providers of services to people with disabilities such as centers for independent living; State Developmental Disability Councils; State and local mental health agencies; Federal Social Security Agencies, State Medicaid Agencies, Mental Retardation/Developmental Disabilities Offices, TANF agencies; public special education and adult education programs, private schools and training programs designed to meet the needs of persons with disabilities, and other non-profit organizations which support integration into the One-Stop delivery system and which have knowledge regarding the benefits of employment and training information and services available through the workforce system.

—Develop One-Stop capacity as a valued provider of choice for beneficiaries of SSDI and SSI, and to facilitate One-Stop eligibility to be an Employment Network provider established under provisions of the TWWIIA, which assumes responsibility for coordination and delivery of services under the Ticket to Work program, meets professional and educational qualifications, where applicable, and provides appropriate employment services, vocational rehabilitation services, or other support services either directly or by entering into agreement with a qualified entity.

- Leverage available funds and services, including TANF and public education resources, currently available to individuals with disabilities under a variety of public and private non-profit resources to achieve the individual objectives of these customers; and

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• Provides individual customer choice as a primary, key component of program availability and delivery which provide models for how Individual Training Accounts (ITAs) under Title I of WIA, SSA Ticket-to-Work vouchers, Vocational Rehabilitation resources, and other appropriate funding sources can be used to provide seamless service delivery that is responsive to the customer.

—Implement information technologies which may be used to facilitate linkage or consolidation of information or services provided by existing State, local and other Federal program providers; and/or establish innovative accessible technologies in the workforce system to assure universal access to One-Stop information and resources for individuals with disabilities. Please note: Work Incentive Grant project designs which incorporate development, procurement or implementation of information technologies involving linkage, and/or to assure accessible technologies in the One-Stop setting, must provide a 50 percent grantee match for those Work Incentive Grant funds which will be utilized for this (these) purposes. Also, grant funds directed to development, procurement and implementation of these technologies cannot exceed 10% (not including matching funds) of the total grant award.

To the extent appropriate and practicable, the applicant Work Incentive Grant proposals should be developed in coordination with SSA's Benefits Planning, Assistance, and Outreach Cooperative Agreement program and/or HHS's Medicaid Infrastructure Grant program as part of a multi-pronged approach to increase the employment rate of people with disabilities. For example, an applicant for the Work Incentive Grant might consider applying for the SSA Benefit Planning, Assistance and Outreach Cooperative Agreement program, or coordinate with entities who may be applying, with the intent of establishing benefits planning capacity in a One-Stop Center. However, there may be additional strategies to support the Medicaid infrastructure development.

Likewise, the Department is encouraging coordination with formula and competitive Welfare-to-Work grant programs. Coordination should also occur with State/Local five year plans required under Title I of WIA.

The SSA Benefits Planning, Assistance, and Outreach Cooperative Agreement Request for Proposal and HHS Medicaid Infrastructure Grant Request for Application requirements are accessible through ETA's disAbility Online homepage: http://wdsc.org/disability. Additional information and resources are also available at this website.

VIII. Monitoring and Reporting

Monitoring

The Department shall be responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement and the negotiated grant agreement. Applicants should assume that on-site project reviews will be conducted by Department staff, or their designees periodically throughout the implementation of the grant. Reviews will focus on the timely project implementation, performance in meeting the grant's programmatic goals and objectives, expenditure of grant funds on allowable activities, integration and coordination with other resources and service providers in the local area, and project management and administration in achieving project objectives. Work Incentive Grants may be subject to other additional reviews at the discretion of the Department.

Reporting

Grantees will be required to submit periodic financial and participant reports under the Work Incentive Grant program covering the workforce area(s) included in the grant project design. Customer survey information will also be required. Specific reporting requirements have not been established at the time of issuance of this Solicitation for Grant Application. However, data collection will probably incorporate some detailed information about the people with disabilities being served under the grant, by the grant applicant and consortium partners where applicable. To the extent possible, reporting will be conducted electronically through web-based applications.

1. Financial reports will be required on a quarterly basis. This will be the Standard Form 269—Financial Status Report (FSR).

2. Customer Satisfaction Surveys: Customer satisfaction surveys will be required to be conducted with people with disabilities applying for services through the One-Stop delivery system(s) participating in the grant award. The Department of Labor will issue guidelines and reporting instructions related to the Customer Satisfaction Survey process at a later date.

3. Other Reporting: The Department of Labor may require additional reporting requirements, including implementation progress reports and quarterly narrative and/or data reports on participants served in the workforce area(s) included in the grant for grant management and knowledge development purposes. The Department of Labor will issue guidelines and reporting instructions related to progress, narrative and participant reporting at a later date.

IX. Government Requirements/ Statement of Work—Project Narrative

The Project Narrative, or Section III, of the grant application should provide complete information on how the applicant will address government requirements and statement of work provisions outlined here, and not to exceed forty (40) double-spaced numbered pages, including appendices. The application should include information of the type described below, as appropriate.

Description of Service Area and Consortium Configuration

Information provided in this section will be evaluated predominately under the "Statement of Need" criteria.

—Identify the number of workforce areas in the State and the jurisdiction of each local workforce investment area(s) in the State.

—Identify what local areas(s) in the State will be covered by the project and whether the project is Statewide, multiple local areas or a single local area.

—Identify consortium members if any, their primary mission irrespective of participation in the grant proposal, and what political and geographic jurisdictions (*e.g.*, cities, counties, subsections of cities/counties) they cover.

—Identify the percent of people with disabilities in the State and/or local area, including the percentage of people who are beneficiaries of SSDI and/or SSI.

—Identify the most recent unemployment rate(s) in the workforce investment area(s) covering the project.

—Describe the significant deficiencies in the State or local workforce investment system that represent barriers to employment for people with disabilities.

—Identify additional State and/or local funds and resources that will be used to support the overall objectives of the grant and which will assist in addressing the identified issues the grant project is addressing.

—For proposals targeted to a specific Indian community or covering multiple Tribal entities which may cut across multiple States and/or local areas, describe the overall approach of the project, identify the inadequacies and deficiencies of the service delivery to the applicable community, and how the project expects to address these.

Disability Related Knowledge and Skills

The Department will evaluate information provided in this section predominately under the "Comprehensive Action Plan/Statement of Need" criteria.

—Describe how the project will address a primary objective of the Work Incentive Grant program to assure the integration of people with disabilities into the workforce investment system, including the availability of WIA Title I programs and services, as well as the many partner programs operating through the One-Stop delivery system.

—Recognizing that the One-Stop delivery system may not have extensive knowledge or skills in working with people with disabilities, describe the level of expertise of the One-Stop system in the local area(s) addressed in the grant and the projects plans for addressing inadequacies.

—Describe the overall status and actions taken to-date by the One-Stop delivery system to address services to people with disabilities. This should include actions to assure State and/or local facilities are physically and programmatically accessible, training provided to staff, the number and percent of people with disabilities receiving services under JTPA and Employment Service programs during the previous three years compared with that of people without disabilities, and plans to increase services to people with disabilities, if applicable.

—Identify the provisions of the Memorandum of Understanding or other agreements between Title I of the WIA, State Vocational Rehabilitation (VR) Agency, the State Rehabilitation Council, and the State and/or local Workforce Investment Board in terms of the provision of services to people with disabilities; the plans for cost sharing; the arrangements for referral of people with disabilities between Title I of the WIA and VR as appropriate; the extent of integration and co-location of VR in One-Stop Centers, including sharing of MIS systems or participation in case management data base technologies; the extent to which there is joint funding of participant services or leveraging of funds to expand access to services; and utilization of Individual Training Accounts (ITA's) for people with disabilities.

—Identify plans and strategies to develop the capacity of the comprehensive One-Stop Center to function as an Employment Network under the TWWIIA. Project plans in this regard should involve building the capacity of the WIA Title I program and One-Stop system so that more in-depth services and information will be readily available to individuals with disabilities. Additionally, the description of increased capacity should be as an adjunct to the State Vocational Rehabilitation Agency which is an automatic Employment Network provider under the TWWIIA. Descriptions may include the planned coordination, interaction and relationship between the universal One-Stop service delivery system and Vocational Rehabilitation services, planned memorandums of understanding on how the Ticket program may be implemented within the One-Stop system or in partnership with non-profit entities in the local area, and expectations for more services directed to SSI and SSDI recipients.

—Identify whether assessment tools are utilized to identify individuals with learning disabilities in the One-Stop delivery system, including (1) whether assessment tools are utilized to identify individuals with learning disabilities in the One-Stop; (2) plans and processes to identify applicable assessment tools, train staff and incorporate such assessments as part of the service delivery structure; and (3) use of individualized, person-driven processes for identification of strengths, needs and desires related to employment.

Summary of Strategy of Collaboration/ Coordination

Information provided in this section will be evaluated predominately under the "Comprehensive Service Strategy" and "Collaboration and Coordination" criteria. This should include the identification and interaction of a variety of disability-related organizations and entities. These may include but should not be limited to the following: Independent Living Centers, State Mental Health, Mental Retardation/Developmental Disability Agencies, State Planning Councils on Developmental Disabilities, State Independent Living Councils (SILCs), State Rehabilitation Councils, State Governors' Committee, State Medicaid Agency, State and/or local TANF agency, Vocational Rehabilitation Agency and local Welfare-to-Work Programs.

—Identify specific organizational/ service provider capabilities that will be provided as a result of grant activities to ensure the full range of assistance required for receiving and participating in training, skill development, job development, job placement in unsubsidized employment, job retention services and career advancement opportunities for individuals with disabilities.

—Describe the process that will be used to maintain and expand the service structure for individuals with disabilities accessing the workforce investment system after receipt of the grant funds. Describe what linkages are expected to occur that will be sustained over time and what resources various public and private entities will make available in the workforce system that ensure expanded services and integration of people with disabilities.

—Describe the extent to which people with physical and mental disabilities are represented in the development and implementation of plans to improve and enhance One-Stop services for people with disabilities, plans for outreach and marketing to the disability community and organizations which represent or work with people with disabilities; and plans for training disability-related organizations on the resources and programs available to them in the One-Stop system.

—Describe coordination and linkage with regional Disability Business and Technical Assistance Centers (DBTACs) and State Governor's Committees on Employment of People with Disabilities. Have DBTACs provided training to the One-Stop delivery system on the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, or other disability-related training? If not, are plans to do so incorporated into the applicant project?

—Describe coordination and linkage with the State and local Independent Living Center (CIL) system. Are they part of the consortium membership? If not, what outreach is planned to establish linkage with them and their core constituency of people with disabilities?

—Describe coordination and linkage with Mental Health Departments, Mental Retardation/Developmental Disability Agencies, State Councils on Developmental Disabilities, State Vocational Rehabilitation, and Councils on Employment, and other local provider or advocate organizations serving individuals with developmental and/or psychiatric disabilities. Are they part of the consortium membership? If not, what outreach is planned to establish linkage with them and their core constituency of people with disabilities?

—Describe coordination and linkage with Learning Disabilities and Training Dissemination hub centers established under grants from the Department of Education's Office of Vocational and

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Adult Education. Have these centers provided training to the One-Stop delivery system or are plans to do so incorporated into the applicant project?

—Identify how State TANF programs and Welfare to Work (WtW) competitive grant projects will be linked or leveraged with objectives of the applicant's project. States and local areas have been in the process of implementing numerous WtW projects under formula and discretionary grants. Additionally, many TANF agencies have refocused resources on skill attainment and employment outcomes for TANF recipients. In addition to the fact that many TANF recipients have functional disabilities, many WtW and TANF projects address significant structural barriers to employment which are similar in nature to those facing most individuals with disabilities (*e.g.*, health, housing, transportation). Systems which address these barriers for WtW and TANF recipients can be expanded or leveraged to address similar barriers for people with disabilities.

—Describe how the planned project will be coordinated with grant programs which are funded under the SSA Benefits Planning, Assistance and Outreach Cooperative Agreement and HHS Medicaid Infrastructure Grant programs, if applicable.

Analysis of Barriers to Employment Impacting People With Disabilities in State/Local Workforce Investment Area

The Department will evaluate information provided in this section under "Statement of Need" and "Coordination and Collaboration" criteria.

—Identify public and private non-profit provider entities participating in the grant program and what barriers to employment may be addressed by the programs and services that are contributing to the overall applicant proposal. Specifically, describe how the State or local area is addressing (1) health insurance benefits, including relevant Medicaid and/or Medicare provisions, required by many people with disabilities to enter and retain employment; (2) the current transportation infrastructure, the availability of public transportation, and how individuals with all types of disabilities will access training and employment; (3) housing, food stamps and other support services; and (4) assistive technology needs.

—Describe how public supports needed by people with disabilities may be affected by their employment or training and State or local conditions and actions to sustain benefits and services following successful job placement. For example, does the State or local area have provisions to continue supported or Section 8A housing, where applicable, for individuals who enter unsubsidized employment? Has the State adopted Medicaid "buy-in" options, or are there Medicaid waivers which extend health care coverage for individuals who enter employment?

—If the applicant's proposal does not incorporate the capacity for benefits counselors or planners, what coordination is planned that ensures that individuals with disabilities who access One-Stop Center services will be able to obtain accurate work incentive and benefits information from knowledgeable and skilled staff?

Innovative Strategies and Model One-Stop Service Designs

The Department will evaluate information provided in this section predominately under the "Innovations and Model Services" criteria.

—Describe how the project will provide innovative approaches to increasing competitive, unsubsidized employment to individuals with disabilities.

—Provide information on how the project adds value to the workforce system from a national perspective (*e.g.*, fills a gap in policy or service approach), and the potential for replication and dissemination to the workforce system at large.

—Describe investment plans, strategy and rationale for implementation of innovative technologies, whether to establish linkages with disability related entities or to implement innovative accessible technologies (*e.g.*, video interpreting services for clients who are deaf), including the source(s) of the 50 percent match requirement discussed in Section VI under Project Financial Plan.

—Identify the scope of technology implementations, if applicable, and the extent to which implementation is comprehensive and across the workforce area(s) and/or statewide.

—Identify individualized strategies that establish client control of training funds, VR funds, ITAs, or other funding sources to which these individuals may have access, and co-mingle funds in a seamless, customer friendly manner, including plans for obtaining waiver authority to the extent program requirements necessitate this.

—Identify plans or strategies to deploy Ticket-to-Work voucher provisions for beneficiaries of SSDI and recipients of SSI. At the time of this Solicitation for Grant Application, the requirements for implementation of the Ticket will not have been drafted, nor will the number of pilot States participating in a pilot process known. Therefore, the Department recognizes that descriptions for implementing the Ticket may be limited.

—Describe strategies to foster entrepreneurial and self-employment options utilizing ITAs, Plans for Achieving Self-Support (PASS) and other SSA work incentives, and Medicaid coverage for individuals with disabilities who start or return to work.

—Describe strategies to transition youth with disabilities from school-to-work environments using existing systems such as School-to-Work and One-Stop system infrastructures.

—Identify plans for ensuring competitive, unsubsidized employment for individuals with the most significant disabilities, including how the provision of job development, job carving, job coaching, supported employment, and personal assistance services will be addressed when applicable, and plans to integrate individuals with the most significant disabilities into mainstream workforce settings through individualized job development and placement strategies.

—Provide information on how techniques such as job carving and individualized job development may be utilized under Title I of the WIA, or plans to expand this capability.

Employer Related Linkages

The Department will evaluate this section predominately under the "Innovations and Model Services" criteria.

—Describe specific approaches for developing relationships with and support of area employers which establish employment opportunities for individuals with disabilities accessing the One-Stop delivery system, including any commitments by employers to hire these individuals.

—Describe opportunities for competitive employment for individuals with disabilities will be provided or developed within the local workforce investment area and how this is unique or different than what is normally performed by the applicant(s).

—Identify available Federal and State tax incentives available to employers when hiring an individual with a disability; how this information will be marketed and disseminated to employers, the individual and workforce staff; and how employers may use such tax credits to address structural and technological accommodation needs.

—Describe opportunities for increasing integrated, competitive employment through use of strategies such as individualized job development for individuals with the most significant disabilities currently working in segregated facilities or waiting for employment services.

Implementation and Project Management Plan

The Department will evaluate this section predominately under the "Demonstrated Capability" criteria. Applicants must be able to document that they have systems capable of satisfying the administrative and grant management requirements for Work Incentive Grants.

—Identify the critical activities, time frames and responsibilities for effectively implementing the project, including the management and evaluation process for assuring successful implementation of grant objectives.

—Include a project organizational chart which identifies the staff with key management responsibilities, including a matrix of organizational responsibilities of key entities and participating consortium organizations, where applicable.

—Describe the specific experience of the applicant(s) in serving people with disabilities, in providing workforce services, in addressing specific barriers to employment, in achieving expected outcomes in the delivery of such services/programs, and in implementing and administering specific project plans of the grant project. For example, such information might include the local Department of Transportation as a key partner agency addressing transportation barriers and how this entity has participated in similar efforts in the past and the success of these past efforts, and potential success of coordination on the applicant(s) grant project.

X. Review Process and Evaluation Criteria

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Department may elect to award grants either with or without discussion with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer. The Grant Officer may consider any information that is available and will make final award decisions based on what is most advantageous to the Government, considering factors such as:

—Panel findings;

—Geographic distribution of the competitive applications;

—The availability of funds.

Criteria

The following criteria, and the weights assigned to each, will apply to the review of the responsiveness of the information requested in this application to this announcement:

1. "Statement of Need", [15 points] which will consider the scope and targeting of the overall project design to address deficiencies and requirements of the current workforce delivery system.

2. "Comprehensive Service Strategy", [30 points] which will consider the extent and quality of the applicant's plan to improve and enhance workforce delivery services to people with disabilities.

3. "Collaboration and Coordination", [20 points] which shall consider the extent and quality of the consortium partnerships that are involved in, and making, substantial contributions to the project, including the commitment to maintain and expand the capacity to serve the target population with local and workforce resources over a sustained period of time.

4. "Innovations and Model Services", [20 points] which shall consider the extent and degree of innovation represented in the applicant plans which go beyond the expected and predictable availability of accessible facilities and programs for people with disabilities, including innovative accessible technologies implemented on a system wide basis.

5. "Demonstrated Capability", [15 points] which shall consider the extent to which the applicant and its consortium partners demonstrate the knowledge and skills to address the diverse needs and the diversity in population of people with disabilities, and the extent to which the applicant demonstrates the ability to effectively execute grant management responsibilities.

Signed at Washington, DC, this 22nd day of May, 2000.

Laura Cesario,

Grant Officer.

Appendix A: SF–424

Appendix B: Budget Information Form

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE — **APPENDIX A** — OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipe — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.
2. Fringe Benefits: Indicate the rate and amount of fringe benefits.
3. Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.
5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.
6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.
8. Total, Direct Costs: Add lines 1 through 7.
9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. Training /Stipend Cost: (If allowable)
11. Total Federal funds Requested: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 00–13153 Filed 5–24–00; 8:45 am]
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LEGAL SERVICES CORPORATION

Grants Cooperative Agreements; Availability etc.: Civil Legal Services to Poor—Various States

AGENCY: Legal Services Corporation.

ACTION: Program Letters 98–1 and 98–6 regarding statewide planning and Grant Assurances for FY2001.

SUMMARY: Program Letters 98–1 and 98–6 regarding statewide planning were issued in 1998 to solicit input on and assist recipients of Legal Services Corporation funding in improving the delivery of legal services to low-income persons. Recipients of such funding must also agree to the Grant Assurances for FY2001 as part of the competitive bidding process.

EFFECTIVE DATE: June 26, 2000. Comments must be submitted on or before this date.

FOR FURTHER INFORMATION CONTACT: Comments should be submitted to Victor M. Fortuno General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002–4250; 202–336–8800.

SUPPLEMENTARY INFORMATION: In 1998 the Legal Services Corporation (LSC) issued Program Letters 98–1 and 98–6 to all LSC recipients. These program letters solicited input from LSC recipients on improving the delivery of legal services to low-income persons through statewide planning and coordination among LSC recipients. These letters are also available via the Internet at http://ain/ainboard/RFP/Appxcvr.htm in Appendix I. Although not required to publish these documents, LSC has decided to do so. Statewide planning has become an increasingly important aspect of the delivery of legal services to low-income persons.

All recipients of LSC funding must agree to the Grant Assurances. This document is also available via the Internet at http://ain/ainboard/ainboard.htm under Application Forms. The Grant Assurances addresses the recipient's agreement to comply with all applicable laws, rules, regulations, guidelines, instructions, etc. and to cooperate fully with all auditing, monitoring and compliance activities and requirements. Although not required to publish this document, LSC has decided to do so.

Comments received by LSC regarding these documents will be considered as part of LSC's ongoing process of evaluating the best means of delivering legal services to low-income persons and ensuring LSC recipient compliance with all applicable laws, rules, regulations, guidelines, instructions, etc.

Victor M. Fortuno,
Vice President for Legal Affairs and General Counsel.

Program Letter 98–1, February 12, 1998, State Planning

Summary

This Program Letter calls upon all LSC recipients to participate in a state planning process to examine, from a statewide perspective, what steps should be taken in their states to develop further a comprehensive, integrated statewide delivery system. State planners should evaluate whether all programs are working in a coordinated fashion to assure that pressing client needs are being met, that sufficient capacities for training and information sharing exist, that programs are moving forward together on technology, and are collaborating to increase resources and develop new initiatives to expand the scope and reach of their services.

In states with a number of LSC-funded programs and/or the presence of very small programs, a key question to be answered is whether the current structure of the state delivery system, and specifically the number of programs, constitutes the most effective and economical way to meet client needs throughout the state.

The state planning process should develop a report to be submitted to LSC on or before October 1, 1998. We will be guided by your recommendations when making our funding decisions for FY 1999 and beyond.

Background

1995 Program Letter. In July 1995, in anticipation of Congressional action on LSC's 1996 appropriation, we asked recipients in each state to participate in the development of a plan for the design, configuration and operation of LSC-funded programs in the state. In view of potential LSC funding cuts and Congressional restrictions on client services, we were especially concerned that recipients work closely with other stakeholders (*e.g.*, state and local bar associations, IOLTA funders, the judiciary, client groups, non-LSC-funded programs, and others with an interest in legal services) to develop an integrated delivery system to address client needs. A subsequent August 1995 Program Letter outlined the issues and criteria the state planning process should address. Included were integration of LSC-funded programs into a statewide legal services system; advisability of consolidation of programs; consideration of efficient intake and provision of advice and brief service; appropriate use of technology; engagement of pro bono attorneys; and development of additional resources.

Responses to Changes in Laws Affecting Clients and LSC Recipients. Much has occurred since August 1995. Fundamental changes have been made in laws and programs affecting eligible clients—changes which have increased clients—need for legal information, advice, and representation. At the same time, LSC appropriation measures have resulted in deep funding cuts for many programs, elimination of LSC funding of national and state support entities, and dramatic changes in the range of services LSC recipients are permitted to perform. In response, many states have initiated planning processes, developed new partnerships to leverage resources, expanded funding sources, implemented new technologies, and launched innovative methods for serving clients.

Efforts to develop and strengthen comprehensive delivery systems in order to improve and expand client services continue in many states. Equal Justice Commissions, Bar sponsored committees, and organizations of legal services providers continue to explore ways to maximize services in a changed and changing environment. LSC supports these ongoing state efforts and encourages others.

1998 Grant Decisions. In the 1998 LSC grant competition, we determined that grants in several states that were eligible for three year funding should be made for a shorter period. For North Carolina, grants were made for one year. For New York, New Jersey, Pennsylvania and Virginia, grants were made for two years. The decision to award grants for a shorter period was made for two reasons: (1) To encourage recipients in these states to develop further their plans for a comprehensive, integrated statewide delivery system; and, (2) concern that the number of LSC-funded programs in these states may not constitute the most economical and effective configuration for delivering legal services to the low-income community.

1998 Program Letter. This Program Letter calls upon all recipients to re-examine and adjust as necessary their state delivery plans in order to further improve and expand legal services to eligible clients within the state.

A Comprehensive, Integrated Statewide Delivery System

In re-evaluating delivery plans, recipients should examine the progress they have made in the past two and one half years in developing a comprehensive, integrated statewide delivery system. Careful planning and coordination is necessary to insure that pressing legal needs do not go unmet and that resources are used wisely and economically. States must continue to innovate and develop new strategies and alternative delivery models to make the most of scarce resources—to reach more clients, and to provide higher quality services through enhanced use of information technology; centralized intake systems providing advice, brief services, and referrals; expansion of community legal education, pro se, and other methods promoting client self-help; better coordination with volunteer private attorneys; and other, similar initiatives requiring substantial resources and expertise to undertake.

There are many ways for states to achieve these goals. Many excellent models exist of statewide fundraising, integrated technology, statewide and regional hotlines, pro se projects, taskforces and training. Recipients should evaluate which approaches will work best in their states to achieve an even stronger, more effective system for addressing client needs.

Recipients must also examine how the present configuration of programs, and specifically the number of programs, impacts upon the overall effectiveness of the state delivery system. In this regard, it is especially important that each participant look at client services, not from the view of just one city, or one county, or one program, but from a statewide perspective.

What Is Required by This Letter

In the past two and one half years, several states have undertaken extensive processes to evaluate their delivery systems and have implemented, or are in the process of implementing, many state planning recommendations. Additionally, some states have ongoing planning processes involving a wide variety of stakeholders in the civil justice system. We do not intend such states to repeat past, or supplant current processes. Instead, we ask recipients to either work within ongoing processes or develop new ones appropriate to the situation in each state. In either case, we hope recipients and other stakeholders will view this process as an opportunity to join together to strengthen the delivery system and improve and expand services to clients.

In this context we call upon each LSC-funded program to share responsibility for ensuring that a statewide planning process, whether ongoing or to be initiated, addresses the questions discussed further below. For each question state planners should:

- Assess the strengths and weaknesses of the current approach;
- Establish goals to strengthen and expand services to eligible clients; and
- Determine the major steps and a timetable necessary to achieve those goals.

A report should be submitted to LSC on or before October 1, 1998. [1] If a state has recently developed a plan which addresses the substance of one or more of the following questions, for those questions, the state need only report on the pertinent section(s) of that plan.

In exceptional cases, it may not be possible for a state planning process to fully address all of the following questions. In such cases, recipients should contact the LSC staff member responsible for their state.

The questions to be addressed are:

1. How are intake and delivery of advice and referral services structured within the state? What steps can be taken to ensure a delivery network that maximizes client access, efficient delivery, and high quality legal assistance?

2. Is there a state legal services technology plan? How can technological capacities be developed statewide to assure compatibility, promote efficiency, improve quality, and expand services to clients?

3. What are the major barriers low-income persons face in gaining access to justice in the state? What efforts can be taken on a statewide basis to expand client access to the courts, provide preventive legal education and advice, and enhance self-help opportunities for low-income persons?

4. Do program staff and pro bono attorneys throughout the state receive the training and have access to information and expert assistance necessary for the delivery of high quality legal services? How can statewide capacities be developed and strengthened to meet these needs?

5. What is the current status of private attorney involvement in the state? What statewide efforts can be undertaken to increase the involvement of private attorneys in the delivery of legal services?

6. What statewide financial resources are available for legal services to low-income persons within the state? How can these resources be preserved and expanded?

7. Where there are a number of LSC-funded programs and/or the presence of very small programs, how should the legal services programs be configured within the state to maximize the effective and economical delivery of high quality legal services to eligible clients within a comprehensive, integrated delivery system?

[1] LSC will provide guidance at a later date on the format for this report

1. Intake and the Provision of Advice and Brief Services

How are intake and delivery of advice and referral services structured within the state? What steps can be taken to ensure a delivery network that maximizes client access, efficient delivery, and high quality legal assistance?

A successful intake system is critical to effective and comprehensive delivery of legal services. Over the past two years many programs have instituted centralized telephone intake and delivery systems which provide high quality advice and brief service assistance, and promptly refer clients whose problems require more assistance to program case handlers or other resources. In a number of states, statewide or regional systems, using advanced telephone and computer technology, have consolidated these functions in one location where trained, experienced staff provide prompt access for clients and minimize the risk of multiple referrals or loss of clients. These systems improve the quantity and quality of advice, brief service and referral assistance while increasing the number of extended service cases which can be handled by the program.

State planners should evaluate the current status of intake and delivery of advice and referral services within the state and develop strategies for improvement. Consideration should be given to developing regional and statewide intake and delivery systems which:

- Are client-centered, providing ease of access to legal services and prompt, high quality assistance or referral;
- Use specialization to enhance case evaluation and provision of advice, brief service and referral assistance;
- Make effective use of technology; and
- Provide oversight and follow-up to ensure high quality legal services and client satisfaction. .

2. Effective Use of Technology

Is there a state legal services technology plan? How can technological capacities be developed statewide to assure compatibility, promote efficiency, improve quality, and expand services to clients?

Within individual programs, effective use of technology can reduce the cost and substantially enhance the quality of

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services. Collectively, technology can dramatically improve the capacity of staff throughout the state to quickly exchange and share information, improving their ability to stay current with the law, develop legal strategies, write briefs and otherwise serve clients. In the past two years, many programs have significantly increased their technological capacities. On a statewide level, programs have used new technologies to establish E-mail communication with all legal services staff throughout the state; to connect with other service providers; to exchange information with private attorneys participating in PAI efforts; to establish centralized brief/pleadings/ forms/manuals/ information banks; to create resource centers for information on state law and policy developments; and to establish unified case management systems which allow for data collection and outcome measures. New technologies involving the Internet and advanced telephone and computer applications have also been used to provide legal and program resource information to clients.

Improving and staying current with technology is costly and makes it all the more important that states take a unified approach and develop a technology plan that will maximize collective capacity while minimizing cost. A state technology plan should establish reasonable goals and set forth steps to:

- Assure that all programs have networked computer access for all staff; integrated case management; computerized timekeeping; E-mail and the ability to electronically transfer documents; computerized financial management systems; and technological support;
- Develop or improve compatible technological capacities which will allow all staff, statewide, to communicate with each other, share information, and take advantage of other efficiencies made possible by computerization; and
- Use new technologies to provide legal and program resource information to clients and other interested persons.

3. Increased Access to Self-Help and Prevention Information

What are the major barriers low-income persons face in gaining access to justice in the state? What efforts can be taken on a statewide basis to expand client access to the courts, provide preventive legal education and advice, and enhance self-help opportunities for low-income persons?

Pro se, community legal education and access to courts efforts have great potential to address many of the legal needs of low-income persons. Programs in many states utilize these methods to increase legal information available to the public, empower clients to advocate on their own behalf, and increase access to the courts for all low-income people. Given the intensive effort required to implement such strategies, and the influence state laws and rules have on such initiatives, often these results can be realized more easily by coordinated state level efforts. In several states, for example, collaboration with state bar committees and state judicial administrations has resulted in rule changes, publication of pro se oriented materials and more accessible court systems. Likewise, the development of self-help and community legal education materials has benefitted from concerted statewide efforts involving a variety of organizations working to make justice more accessible.

State planners should evaluate the status of pro se, community legal education, and access efforts in their state and determine what steps should be taken statewide to enhance their effectiveness in meeting client needs. Consideration should be given to:

- Statewide coordination and/or production of pro se and community education materials, such as brochures in multiple languages, videos, cable-access TV programs, and projects designed to take advantage of new technologies such as computerized pro se programs and the world wide web; and
- State level initiatives, including efforts with bar associations, the judiciary and other interested parties to increase access to the courts.

4. Capacities for Training and Access to Information and Expert Assistance

Do program staff and pro bono attorneys throughout the state receive the training and have access to information and expert assistance necessary for the delivery of high quality legal services? How can statewide capacities be developed and strengthened to meet these needs?

In the last two years several states have developed new or strengthened existing capacities to ensure that staff and pro bono attorneys throughout the state receive necessary training and have access to information and expert assistance essential for the delivery of high quality legal services. These states employ a variety of methods to provide staff and pro bono attorneys with training on substantive law and skills development, practice manuals and related poverty law materials, information on poverty law developments and strategies, and co-counseling for less experienced staff and pro bono attorneys. Communication, planning and ongoing discussion concerning major legal needs, poverty law developments, effectiveness of approaches, and commonalities in legal work, helps ensure productive use of resources. The use of new technologies has helped maximize the effectiveness of these efforts.

State planners should evaluate current capacities for the provision of training and related services essential for the delivery of high quality legal services. Planners should:

- Assess how a statewide approach can address the needs for these services of staff and pro bono attorneys throughout the state; and
- Determine the steps necessary to provide these services as effectively and efficiently as possible.

5. Engagement of Pro Bono Attorneys

What is the current status of private attorney involvement in the state? What statewide efforts can be undertaken to increase the involvement of private attorneys in the delivery of legal services?

In the past two years, several states have been successful in enlisting or re-enlisting the state Bar, the judiciary and others in developing and supporting private attorney involvement throughout the state. These efforts have helped local private attorney involvement programs expand participation rates and the range and types of services available to clients. State planners should evaluate the current status of private attorney involvement in the state and consider how statewide strategies can increase engagement of pro bono attorneys and benefit clients throughout the state, including areas of the state with lower private attorney involvement.

Consideration should be given to:

- Renewed efforts to involve the Bar, the judiciary and other leaders in the legal community in promoting private attorney involvement;
- Providing greater opportunities for attorney participation in a full spectrum of legal work, including advice and brief service, negotiation, administrative representation, pro se classes, transactional assistance, and simple and complex litigation;
- Providing greater opportunities for attorneys to assist programs with training, co-counseling and mentoring staff; and
- Providing greater opportunities for law schools, corporate counsel, government attorneys, and other professionals to engage in pro bono activities.

6. Development of Additional Resources

What statewide financial resources are available for legal services to low-income persons within the state? How can these resources be preserved and expanded?

In the past two years, many programs have increased the resources available to them through innovative grant projects, local fundraising and other efforts. Even more dramatic, however, are the increases programs have received in many states through collective development and/or expansion of statewide revenues such as state appropriations, filing fee surcharges, state fundraising campaigns, state bar dues checkoffs and direct state bar grants. Whether new or expanded, these revenues have almost always been the product of thoughtful planning with programs and other stakeholders working together.

State planners should evaluate the possibilities for further statewide resource development and develop a statewide strategy to preserve, build, and/or create new financial and non-financial resources in their state. Since program efforts to build such statewide resources are more successful when many stakeholders participate, it is especially important for planners to involve a variety of community leaders in these efforts.

7. Configuration of a Comprehensive, Integrated Statewide Delivery System

Where there are a number of LSC-funded programs and/or the presence of very small programs, how should the legal services programs be configured within the state to maximize the effective and economical delivery of high quality legal services to eligible clients within a comprehensive, integrated delivery system?

In most states, the present delivery structure reflects national funding decisions made in the 1970's. In many states, those decisions were not determined by analysis of what delivery structure would yield the most economical and effective services to clients throughout the state. Moreover, those decisions were made before such major developments in legal services delivery such as IOLTA funding, private attorney involvement, law school clinical programs, hotlines, the emergence of other civil legal aid providers, and restrictions on recipients' non-LSC funds; and before the information revolution and the opportunities it presents with personal computers, E-mail, sophisticated telephone technology, and the Internet. In light of developments over the past twenty-five years, and especially since 1995, it is time to take a fresh look and re-evaluate those structures.

Re-evaluation is particularly critical in states with a number of LSC-funded programs and/or the presence of very small programs. States with many programs often suffer from uneconomical and inefficient redundancy of effort, or no effort at all, in technology, training, fundraising, and development of client services such as intake, advice and referral systems or client education materials. Similarly, small programs often lack the resources necessary to develop proper staff supervision or appropriate specialization, or to acquire current technology necessary for maximum effectiveness.

In addition, while individual programs may excel, a large number of programs or the presence of small programs may result in unnecessary diversion of the state's resources from client services to administrative overhead. Each program, no matter how large or small, must devote significant resources to A–133 audits, state and federal tax and wage reports, funding applications, recordkeeping, personnel policies, purchase and maintenance of technology and equipment, and other administrative tasks. Experienced and accomplished lawyers spend time on program administration when they could be using their talents to represent clients, train or mentor new lawyers and otherwise lead their program's legal work.

Where these conditions exist, state planners must consider whether consolidation of programs would make better use of resources available in the state.

There is no magic number of programs or a single delivery model that fits all states. In some states, a statewide LSC provider makes the most sense; in others, a regional approach or other configuration may be appropriate. Each state must examine what configuration, from a statewide perspective, maximizes services and benefits for clients throughout the state. Factors to be considered include:

- Size, complexity, cultural and ethnic diversity/homogeneity of client population.
- Geographic, physical, and historical distinctions and affinities within the state.
- Variation in local client needs and ability to respond and set priorities accordingly.
- Assessments of programs' performance and capacity to deliver effective and efficient legal services in accordance with LSC and other professional criteria.
- Ease and efficiency of client access to services and opportunities for improvement.
- Capacity to efficiently and effectively conduct community legal education, pro se and outreach activities.
- Level, uniformity, and plans for further development of technological capacity.
- Current levels of private bar involvement and potential for expansion.
- The availability of training, expert assistance, and information about legal developments.
- Current funding sources and potential to expand resources available to all programs.
- Cultural and ethnic diversity of program leadership and management.
- Relative costs associated with fiscal and administrative responsibilities and potential savings in management, board and administrative costs.

In making grants for FY 1999 and beyond, we will look closely at each state where there is currently a number of LSC-funded programs and/or the presence of very small programs to assess whether careful consideration has been given to consolidation of LSC programs. We hope, and have faith, that in these states, this planning process will result in plans for merger and consolidation of programs and integration of services on a broader scale than we have previously seen, and that each state's plan will result in a configuration that is efficient and effective in providing access to justice for the state's low-income clients.

Questions

LSC staff will be contacting recipients to discuss this Program Letter. In the meantime, if you have questions, please contact the LSC staff member responsible for your state.

Program Letter 98–6, July 6, 1998, State Planning Considerations

Introduction

On February 12, 1998, the Corporation issued Program Letter 98–1 calling upon all LSC recipients to participate in a state planning process to examine, from a statewide perspective, what steps should be taken in their states to further develop a comprehensive, integrated statewide delivery system. The Letter poses seven questions recipients are to address in their planning processes and requests recipients to submit a report to LSC on or before October 1, 1998. Many

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recipients have asked LSC to provide further guidance and additional information about how the state planning process will affect LSC grant decisions. Recipients have also inquired about the format for the October 1 report. This Program Letter responds to these requests.

State Planning Considerations

The attached State Planning Considerations have been developed to provide recipients and other stakeholders with more information about statewide goals, capacities and approaches recipients should consider in their planning processes. A number of other sources of information that may assist state planners and upon which these Considerations draw are referenced in the Planning Considerations. We hope these Planning Considerations will help states develop effective plans to strengthen their delivery systems and services to clients. We encourage recipients with any questions about the State Planning Considerations or planning process to contact the LSC staff member responsible for their state.

How the State Planning Process Will Affect LSC Grant Decisions

The Corporation is directed under the LSC Act to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas."[2] The state planning process will provide information that helps LSC exercise this statutory responsibility.

1. Competition

a. Duration of Grants

The state planning process will provide information that helps LSC determine the duration of grants for service areas in the 1999 competition, *i.e.*, service areas that are eligible for grants of up to three years commencing January 1, 1999.

In the 1998 LSC grant competition, we determined that grants in several states that were eligible for three year funding would be made for a shorter period. The decision to award grants for a shorter period was made for two reasons: (1) To encourage recipients in these states to develop further their plans for a comprehensive, integrated statewide delivery system; and (2) concern that the configuration of LSC-funded programs in these states did not constitute the most economical and effective structure for delivering legal services to the low-income community.

As with the 1998 competition, LSC will take into account state delivery plans and configuration of programs in determining the duration of grants for service areas now being competed. Where LSC believes states need to further develop their plans for a comprehensive, integrated statewide delivery system or where LSC remains concerned about the configuration of LSC-funded service areas, grants will be made for less than three years.

b. Service Areas

1. 1999 Competition

The state planning process will not affect decisions about the number, size or configuration of service areas in competition this year.

2. 2000 and Future Competition Years

Information received through the planning process will affect future decisions regarding the most appropriate number, size and configuration of LSC-funded service areas to be competed for the year 2000 and beyond. This includes service areas that become scheduled for those years because of one or two year grant awards made in the present 1999 competition.

2. Grant Renewals

The state planning process will not affect decisions about the number, size or configuration of service areas up for renewal or the duration of grant renewals, *i.e.*, previously made multi-year awards which are now up for renewal. Decisions on renewal of these grants will continue to be based upon a showing of the renewal applicant's continued ability "to perform the duties required under the terms of its grant."[3]

Format for the October 1 Report

The attached Instructions for State Planning Reports provide information about the structure and format of the reports due at LSC on or before October 1, 1998. Please contact the LSC staff member responsible for your state if you have any questions.

Instructions for State Planning Reports

Please submit reports to the Office of Program Operations on or before October 1, 1998. Reports should be no longer than 35 pages and should contain the name and telephone number of a contact person(s). The report should:

A. Briefly describe the state planning process and participants.

B. Address the following areas in the order presented. In addressing each area, please consider LSC's State Planning Considerations and:

- Assess the strengths and weaknesses of the current approach;
- Establish goals to strengthen and expand services to eligible clients; and
- Determine the major steps and a timetable necessary to achieve those goals.

1. Intake, Advice and Referral

How are intake and delivery of advice and referral services structured within the state? What steps can be taken to ensure a delivery network that maximizes client access, efficient delivery, and high quality legal assistance?

2. Technology

Is there a state legal services technology plan? How can technological capacities be developed statewide to assure compatibility, promote efficiency, improve quality, and expand services to clients?

3. Access to the Courts, Self-Help and Preventive Education

What are the major barriers low-income persons face in gaining access to justice in the state? What efforts can be taken on a statewide basis to expand client access to the courts, provide preventive legal education and advice, and enhance self-help opportunities for low-income persons?

4. Coordination of Legal Work, Training, Information and Expert Assistance

Do program staff and pro bono attorneys throughout the state receive the training and have access to information and expert assistance necessary for the delivery of high quality legal services? How can statewide capacities be developed and strengthened to meet these needs?

5. Private Attorney Involvement

What is the current status of private attorney involvement in the state? What statewide efforts can be undertaken to increase the involvement of private attorneys in the delivery of legal services?

6. Resource Development

What statewide financial resources are available for legal services to low-income persons within the state? How can these resources be preserved and expanded?

7. System Configuration

How should the legal services programs be configured within the state to maximize the effective and economical delivery of high quality legal services to eligible clients within a comprehensive, integrated delivery system?[4]

[2] Legal Services Corporation Act, Section 1007(a)(3).

[3] 45 CFR 1634.11.

Form C—Assurances 2001 LSC Grant Competition

If applicant is successful and receives an LSC grant or contract,

Applicant Hereby Assures and Certifies That:

1. It will comply with the Legal Services Corporation Act of 1974 as amended (LSC Act), and any applicable appropriations acts and any other applicable law, all requirements of the rules and regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation (Corporation or LSC), including the LSC *Audit Guide for Recipients and Auditors*, the *Accounting Guide*, the *CSR Instruction Handbook* and with any amendments of the foregoing adopted before or during the period of this grant. It understands that successful applicants may be expected to sign further assurances before the awarding of the grant.

2. It will not use funds received from a source other than the Legal Services Corporation for any activity inconsistent with the requirements of Public Law 106–113, Public Law 105–277, Public Law 105–119 and Public Law 104–134.

3. If the Applicant is a non-profit organization, its governing board will set specific priorities in writing, consistent with the requirements of 45 CFR Part 1620.

4. It agrees to be subject to all provisions of federal law relating to the proper use of federal funds listed in 45 CFR 1640.2(a)(1). Before the initiation of the contract, the Applicant 's employees and board members will have been informed of the federal law and its consequences as required in 45 CFR 1640.3.

5. It has the legal authority to apply for and receive a grant from the Legal Services Corporation.

6. It will provide legal services in accordance with the plans set out in its grant application, as modified in further negotiations with the Corporation, and agrees to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the LSC Act, or a rule, regulation or guidance issued by the Corporation.

7. It will not discriminate on the basis of race, color, religion, gender, age, disability, national origin, or any other basis prohibited by law against: (1) Any person applying for employment or employed by the Applicant; or (2) any person seeking assistance from the Applicant or other program(s) supported in whole or in part by this grant.

8. It will provide the Corporation with copies of the following policies applicable to the employees, partners, and applicants for employment funded in whole or in part under this grant: its Equal Opportunity Policy Statement, including its Complaint Review Procedure or internal means of handling employee grievances; and its Sexual Harassment Policy, including an effective complaint procedure. Each of these will have been reviewed and approved by its governing or policy board within the last three years. It will notify the Corporation prior to the implementation of changes to its Equal Opportunity Policy Statement.

9. Notwithstanding grant assurance number 10 below, and § 1006(b)(3) of the LSC Act, 42 U.S.C. 2996e(b)(3), it shall make available financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, except for those reports or records subject to the attorney-client privilege, to the Corporation and any federal department or agency that is auditing or monitoring the activities of the Corporation or of the Applicant and any independent auditor or monitor receiving federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation.

10. It will cooperate with all reasonable and necessary information collection, including surveys, questionnaires, monitoring, audit, case statistical report (CSR) data, compliance and evaluation activities undertaken by the Corporation or its agents. During normal business hours it will give any authorized representative of the Corporation or the Comptroller General of the United States access to and copies of all original records, books, papers and documents pertaining to the grant in its possession, custody or control, except for that properly subject to the attorney-client privilege, applicable rules of professional responsibility or attorney work product which may be withheld to the extent consistent with grant assurance 9 above. Access must be provided to materials with information otherwise available in the public record (*e.g.* pleadings filed in open court) and to program financial records (*e.g.* negotiable instruments, vendor files, travel records, journals and ledgers.) It agrees to provide the Corporation with the requested materials in a form that meets the Corporation's need for information and, to the extent possible, protecting the reasonable personal privacy interests of its staff members. Should it withhold records or information on these grounds, it shall disclose the withholding and the basis therefor to LSC. LSC may require the grantee to disclose the information if LSC determines that the justification for withholding it is inadequate. In the event that records are unreasonably withheld, the Applicant will be responsible for all reasonable and necessary expenses related to LSC's efforts necessary to obtain the release of such records. It will not take any retaliatory action against any employee because of any cooperation with or release of information to LSC representatives.

11. It agrees to implement all specific record keeping requirements contained in the LSC Act, regulations, appropriations act, other applicable law, and other applicable LSC directives and to implement, as required, any additional specific record keeping requirements that may be forthcoming from the Corporation during the grant period.

12. It will give written notice to the Corporation within thirty (30) calendar days after any of the following occurrences which involve activities funded by the grant:

a. A decision to close and/or relocate any main or staffed branch office;

b. Change of Chairperson of the governing/policy body;

c. Change of chief executive officer;

d. Change in its Charter, Articles of Incorporation, By-laws or governing body structure;

e. Receipt of any notice of a claim for attorneys' fees under the provisions of § 1006(f) of the LSC Act, 42 U.S.C. § 2996e(f). The Applicant will also forward, upon receipt, a copy of the pleading requesting these attorneys' fees; or

f. Change in the Independent Public Accountant performing the grantee's annual financial audit.

13. It agrees that, prior to any merger or consolidation or other change in its current identity or status as a legal entity, it will provide the Corporation with sixty (60) days written notice. If it proposes to transfer its interests in its LSC grant to another entity pursuant to a merger or consolidation, it will seek approval from the Corporation for such transfer and will submit a Successor in Interest Agreement for approval by the Corporation.

14. In the event that the applicant ceases to be a recipient of LSC grant funds during the 2001 grant term for whatever reason,

a. It agrees to provide the Corporation with written notice at least sixty (60)

[4] States with only one LSC-funded program need not answer this question.

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days before the Applicant voluntarily ceases to be a recipient of LSC grant funds during the term of this grant.

b. It will submit to the LSC, Office of Program Performance, at the time that it provides the written notice in (a) above that it is voluntarily ceasing to be a recipient of LSC grant funds or within fifteen (15) days from being notified by LSC that it will cease to be a recipient of LSC grant funds, a plan for the orderly conclusion of the role and responsibilities of the applicant as a recipient of LSC funds. The plan should describe:

1. The immediate transition planning with the new provider, particularly as related to intake, accounting of all open cases (including PAI cases) and transfer of existing cases and contracts;

2. The disposition of the recipient's fund balance, if any, pursuant to 45 CFR Part 1628. The applicant understands that the LSC fund balance amount, including any derivative income from LSC-funded activities which exceeds the 10–25 percent threshold amount pursuant to 45 CFR Section 1628.3(d), unless waived by LSC in writing, shall be returned to the Corporation;

3. An accounting of all real property purchased in whole or in part with LSC funds. The applicant understands and agrees to abide by any agreement it has with the Corporation governing the purchase of real property in whole or in part with LSC funds. The accounting should include:

i. The address and a brief description of the property and the date it was acquired;

ii. The total amount of funds expended to acquire or improve the property, including principal and interest payments, and payment for capital improvements;

iii. The total amount of LSC funds expended to acquire or improve the property, including principal and interest payments, and payment for capital improvements;

iv. The fair market value of the property;

v. A statement indicating the program's plans for disposing of the property; and

vi. Copies of any agreements or contracts governing the disposition of the property.

4. The total costs associated with cessation of LSC funding, and funds available to meet those costs, supported by a budget detailing the planned close out expenditures, and plans for securing payment or reimbursement due under contract from non-LSC sources; and

5. An accounting of all personal/non-expendable property purchased in whole or in part with LSC funds, which has a current book or market value exceeding $1,000. The accounting list should include for each item of property:

i. A brief description of the property item;

ii. The date of acquisition of the property item;

iii. The total amount of funds expended to acquire the property;

iv. The amount of LSC funds expended to acquire the property;

v. The fair market value of the property;

vi. A plan for disposing of all such property, pursuant to the 1981 Property Management Manual for LSC Programs or its duly adopted successor; and

vii. If the property is to be transferred, an assurance that the program, acquiring the property, will use the property in connection with the delivery of legal assistance to low-income persons.

c. It shall certify at the time it submits the plan in (b) above that an Independent Public Accountant will audit the recipient's 2000 financial statements, internal controls and compliance with applicable laws and regulations in accordance with the *LSC Audit Guide for Recipients and Auditors* and *Government Auditing Standards*. It shall submit to LSC's Office of the Inspector General an engagement letter from its Independent Public Accountant that includes an estimate of the LSC-funded portion of the total estimated audit cost for FY 2000 under section 509(c) of Public Law 104–134, as incorporated by Public Law 105–277 and Public Law 106–113.

d. It shall certify at the time it submits the plan in (a) above that it will submit Grant Activity Reports in a format specified by the Corporation in a timely manner;

e. It shall participate in an orderly and professional transition of functions to the new provider to deliver services in the service area; and

f. The recipient understands and agrees that, after it gives notice to LSC or after receipt of notice from LSC of the cessation of funding, the receipt of all future installments after such notice shall be contingent upon satisfactory completion of all closeout obligations imposed by the Corporation including the obligations described herein.

15. It will give telephonic notice to the LSC Office of Inspector General (OIG) within two (2) working days of the discovery of any information that indicates the Applicant may have been the victim of misappropriation, embezzlement or other theft or loss of any funds (LSC funds, non-LSC funds used for the provision of legal assistance or client funds). Such notice shall be followed by written notice by mail or facsimile within ten (10) calendar days. Written notice of a theft of any property other than funds will be provided to the OIG within ten (10) calendar days from the time of the discovery of the theft. The required notice shall be provided regardless of whether the funds or property are recovered.

16. It will notify the Corporation within twenty (20) days of any of the following arising from an LSC funded activity: a monetary judgment; sanction or penalty entered against the program for matters such as Rule 11 sanctions; malpractice judgments; EEO claims; IRS penalties; penalties arising out of the Americans with Disabilities Act; or voluntary settlement of any similar action or matter; or any other matter which may have a substantial impact on its delivery of services.

17. It understands and agrees that it will arrange for an audit and execute an agreement with its auditor that meets the requirements of LSC's *Audit Guide for Recipients and Auditors*. The Applicant also understands and agrees that if it fails to have an audit acceptable to LSC 's Office of Inspector General (OIG) in accordance with LSC's *Audit Guide for Recipients and Auditors*, the following sanctions shall be available to the Corporation as recommended by the Office of Inspector General: (1) Disallowance of the cost of the audit as a charge against LSC funds; (2) the withholding of a percentage of the recipient's funding until the audit is completed satisfactorily; and (3) the suspension of the recipient's funding until an acceptable audit is completed.

18. It shall cooperate with the Corporation in the Corporation's efforts to follow up on the reportable conditions, findings, and recommendations found by LSC, the Government Accounting Office, and/or the Applicant's independent public accountants to ensure that instances of deficiencies and noncompliance are resolved in a timely manner. Applicant management shall expeditiously resolve all such reported conditions, findings, and recommendations, including those of sub-recipients, to the satisfaction of the Corporation.

19. It understands that the LSC Office of Inspector General may remove, suspend or bar an independent public accountant, upon a showing of good cause and after notice and an opportunity to be heard.

20. It certifies that it has a computer that meets or exceeds the following specifications: Pentium/266mhz. or equivalent computer system, 64 megabytes of Random Access Memory; 4 gigabyte hard disk drive; color monitor; Internet access; and Netscape 4.7 or Internet Explorer 5.0 browser.

The applicant certifies that it has, or will obtain, access to e-mail on each casehandler's desk *before December 2001*. The applicant further certifies that, by the same deadline, access to the World Wide Web will be available in each office that houses more than three persons. Each staff member will be appropriately trained in the use of applicable software.

21. It will submit, for each year of the grant and for each service area for which a grant is awarded, Grant Activity Reports in a format and at a time determined by the Corporation. If, during the course of the grant year, Grant Activity Reports no longer accurately reflect actual activity (*e.g.*, CSR, budget, and staffing data) of the program, it will revise and resubmit affected Grant Activity Reports to the Corporation.

22. It is aware of and agrees that an award of a multi-year grant under the competitive bidding process does not obligate LSC to disburse any funds that are not authorized or appropriated by Congress nor does it preclude the imposition of additional conditions, by LSC or the Congress, on any funds that are so disbursed. During calendar year 2001, authority for LSC to disburse some of the funds under the grant award may be rescinded by Congress, or sequestered, thereby reducing the actual amount of funds disbursed under the grant. Further, additional restrictions may be imposed on the use of funds as a result of such appropriation, authorization legislation, or other law. In subsequent years, the amount of and conditions upon funding may be changed to conform to Congressional appropriation levels and legislated restrictions. Such changes and reductions, however implemented by the Legal Services Corporation, shall not constitute a termination or suspension.

23. It will maintain during the grant period and for a period of six (6) years from the date of termination of the grant all records pertaining to the grant. With respect to financial records, it will maintain records and supporting documentation sufficient for the Corporation, or an independent auditor selected by the Corporation, to audit those records and determine whether the costs incurred and billed are reasonable, allowable and necessary under the terms of the grant. In this regard, the Applicant will permit the Corporation or its auditor to review the originals of all financial records and supporting documentation, procedures and internal control systems. Additionally, the Corporation retains the right to perform, or engage independent auditors to perform such an audit, whether during or subsequent to the grant period.

24. It shall retain closed client files for a period of not less than five (5) years.

We have read these assurances and conditions and understand that if this application is approved for funding, the grant and all funds derived therefrom will be subject to these assurances. We certify that the Applicant will comply with these assurances if the application is approved.

Name of Executive Director/(or functional equivalent)

Title

Signature

Date

Name of Governing/Policy Board Chairperson (Or other organization official authorizing this application)

Title

Signature

Date

[FR Doc. 00–13189 Filed 5–24–00; 8:45 am]

BILLING CODE 7050–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 23, 2000,
Time: 8:30 a.m. to 6:00 p.m.,
Room: 415,
Program: This meeting will review applications for Colleges, Universities, and Education Programs I, submitted to the Office of Challenge Grants at the May 1, 2000 deadline.

2. *Date:* June 28, 2000,
Time: 8:30 a.m. to 6:00 p.m.,
Room: 415,
Program: This meeting will review applications for Colleges, Universities, and Education Programs II, submitted to the Office of Challenge Grants at the May 1, 2000 deadline.

Laura S. Nelson,
Advisory Committee Management Officer.

[FR Doc. 00–13102 Filed 5–24–00; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

U.S. National Assessment Synthesis Team; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: National Assessment Synthesis Team (#5219).

Date and Time: May 31, 2000, 8:30 a.m.–5:30 p.m.; June 1, 2000, 8:30 a.m.–3:30 p.m.

Place: Renaissance Hotel, 999 Ninth Street, NW, Washington DC 20001.

Type of Meeting: Open.

Contact Person: Thomas Spence, National Science Foundation, 4201 Wilson Blvd., Suite 705, Arlington, VA 22230. Tel. 703–306–1502; Fax: 703–306–0372; E-mail tspence@nsf.gov. Interested persons should contact Ms. Susan Henson at the above number as soon as possible to ensure space

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provisions are made for all participants and observers.

Minutes: May be obtained subsequent to the meeting from the contact person listed above.

Purpose of Meeting: To review preparation of the report the National Assessment Synthesis Team is preparing for the interagency Subcommittee on Global Change Research to report on the findings of the National Assessment of the potential consequences of climate variability and climate change for the United States.

Agenda:

Day 1 (May 31): Members will review technical comments received and will discuss revisions to report; an opportunity for public comment will be provided in late afternoon.

Day 2 (June 1): Discussion of technical comments and revisions will continue.

Reason for Late Notice: This same notice appeared in the **Federal Register** on May 18, 2000. The Committee was unaware at the time the notice was submitted that it would ultimately be published two days later than anticipated. Because this upcoming Committee meeting will result in a draft report which needs to be made available for a 60-day public comment period, as directed by Congress, it is necessary to continue the Committee's expeditious progress toward completion of its report.

Dated: May 22, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–13160 Filed 5–24–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8698]

Plateau Resources Limited

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request from Plateau Resources Limited to amend Source Material License SUA–1371 for the Shootaring Canyon Uranium Mill in Garfield County, Utah to authorize the receipt and disposal of Atomic Energy Act of 1954, as amended, 11e.(2) byproduct material and notice of opportunity for a hearing.

SUMMARY: In a letter dated March 22, 2000, Plateau Resources Limited (PRL) requested that the U.S. Nuclear Regulatory Commission (NRC) amend Source Material License SUA–1371 for the Shootaring Canyon Uranium Mill in Garfield County, Utah to authorize the receipt and disposal of Atomic Energy Act of 1954, as amended (AEA), 11e.(2) byproduct material. The AEA defines 11e.(2) byproduct material as "the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content." In support of its letter request, PRL enclosed a detailed report titled Supplement to Environmental Report, also dated March 22, 2000. The Supplement to Environmental Report provides the basis for the PRL request, a detailed description of the proposed action, and an environmental assessment of the impacts of the proposal to receive and dispose of off-site generated 11e.(2) byproduct material.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Weller, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, DC 20555. Telephone (301) 415–7287.

SUPPLEMENTARY INFORMATION: The uranium mill at Shootaring Canyon operated for only three months in 1982, generating a small amount of mill tailings (11e.(2) byproduct material). The mill has been on standby status since that time. Currently, the impoundment at Shootaring Canyon for disposal of uranium mill tailings is filled to only about 1% of its licensed capacity and PRL proposes to use a portion of this available capacity to receive and dispose of off-site generated 11e.(2) byproduct material. PRL intends to employ the proper procedures and controls to ensure that only 11e.(2) byproduct material will be accepted for disposal.

PRL's request to amend Source Material License SUA–1371 to authorize the receipt and disposal of 11e.(2) byproduct material, including the report titled Supplement to Environmental Report, is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment request under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for a hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Plateau Resources Limited, 877 North 8th West, Riverton, Wyoming 82501, Attention: Fred Craft; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 18th day of May 2000.

For the Nuclear Regulatory Commission.

Thomas H. Essig,

Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–13159 Filed 5–24–00; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, June 5, 2000; 8:30 a.m., Tuesday, June 6, 2000.

PLACE: Philadelphia, Pennsylvania, at the Four Seasons Hotel, One Logan Square, in the North Ballroom.

STATUS: June 5 (Closed); June 6 (Open).

MATTERS TO BE CONSIDERED:

Monday, June 5–1:00 p.m. (Closed)

1. Strategic Planning.
2. Postal Rate Commission Opinion and Recommended Decision in Docket No. C99–4, Complaint of Continuity Shippers Association.
3. eBusiness Approval Process.
4. Financial Performance.
5. Office of Inspector General Midyear Budget and Performance Results.
6. Compensation Issues.
7. Personnel Matters.

Tuesday, June 6–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, May 1–2, 2000.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Cycling Team.
4. Audit Committee Charter.
5. Briefing on Information Platform.
6. Capital Investments.

a. Recognition Improvement Program.

b. Phoenix, Arizona, Priority Mail—Postal Processing Center.

7. Report on the Philadelphia Performance Cluster.
8. Tentative Agenda for the July 10–11, 2000, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: David G. Hunter, Assistant Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

David G. Hunter,

Assistant Secretary.

[FR Doc. 00–13308 Filed 5–23–00; 2:28 pm]

BILLING CODE 7710–12–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 2000.

Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of May 1, 2000, of three rescission proposals and two deferrals contained in one special message for FY 2000. The message was transmitted to Congress on February 9, 2000.

Rescissions (Attachments A and C)

As of May 1, 2000, three rescission proposals totaling $128 million have been transmitted to the Congress. Attachment C shows the status of the FY 2000 rescission proposals.

Deferrals (Attachments B and D)

As of May 1, 2000, $594 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 2000.

Information From Special Message

The special message containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the edition of the **Federal Register** cited below:

65 FR 9017, Wednesday, February 23, 2000

Jacob J. Lew,

Director.

Attachments

ATTACHMENT A.— STATUS OF FY 2000 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	128.0
Rejected by the Congress	
Currently before the Congress for less than 45 days	128.0

ATTACHMENT B.— STATUS OF FY 2000 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	1,622.0
Routine Executive releases through May 1, 2000 (OMB/Agency releases of $1,027.6 million)	−1,027.6
Overturned by the Congress	
Currently before the Congress	594.4

BILLING CODE 3110–01–P

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ATTACHMENT C
Status of FY 2000 Rescission Proposals - As of May 1, 2000
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Defense Environmental Restoration and Waste Management..	R00-1	13,000		2-9-00	*			
Energy Programs								
SPR Petroleum Account.....	R00-2	12,000		2-9-00	*			
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing								
Housing Certificate Fund.....	R00-3	103,000		2-9-00	*			
TOTAL, RESCISSIONS.....		**128,000**						

* No funds are being withheld.

ATTACHMENT D
Status of FY 2000 Deferrals - As of May 1, 2000
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-00
DEPARTMENT OF STATE									
Other									
United States Emergency Refugee and Migration Assistance Fund.....	D00-1	172,858		2-9-00	27,548				145,310
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance									
Economic Support Fund.....	D99-2	1,449,159		2-9-00	1,000,083				449,076
TOTAL, DEFERRALS.....		**1,622,017**			**1,027,631**				**594,386**

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[FR Doc. 00–13123 Filed 5–24–00; 8:45 am]
BILLING CODE 3110–01–C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42796; File No. SR–NSCC–00–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Related to General Motors Corporate Action

May 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 15, 2000, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to allow the General Motors Corporation ("GM") corporate action to be processed through NSCC's continuous net settlement ("CNS") system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GM has offered to exchange 1.065 shares of Class H common stock for each share of $1 ⅔ par value common stock up to an aggregate of 86,396,977 shares of $1 ⅔ par value common stock.[3] Under the terms of this tender offer, the treatment of a tender is dependent on the number of shares tendered and the calculation of the broker solicitation fee. Under normal circumstances, the differing treatments caused the tender offer to be ineligible for processing in CNS, and NSCC would exit the security from CNS and would issue balance orders. However, because of the size of this issue and the operational impact exiting this security from CNS would have on NSCC's participants, NSCC has filed this rule change to allow NSCC to process this corporate action in CNS. This filing and the procedures established by it will only be applicable to the voluntary GM corporate action referenced therein.[4]

For the purposes of processing this tender offer only, the following additional procedures will be followed: NSCC will process both the round-lot (shareholders of more than 100 shares) and the odd-lot (shareholders of 99 shares or less) portions of this tender offer by using both the CNS G and H reorganization subaccounts. The round-lot portion of this offer will be processed in the CNS G account and the odd-lot portion of this offer will be processed in the CNS H account. This differentiation will permit NSCC to credit long participants with positions in the H account at 100 percent and positions in the G account at the amount determined in accordance with the terms of the offer. Long participants must follow normal CNS by 6:00 p.m. on expiration plus two ("E+2"). Short participant will receive their potential liability report as usual on the morning of E+2 and will receive the liability report on the morning of E+4. NSCC notes that the total number of shares for which short participants will be liable will be based on the total number of odd lot shares plus the number of round lot shares eligible for the exchange. Submission of shares by a long participant to the G and H subaccounts constitutes a representation by such participant that the request for protection conforms to the terms of the offer.

In addition to processing the corporate action as described above, NSCC will take the following steps with respect to the broker solicitation fee. NSCC will establish positions in a "USER" CUSIP for all shares moved to CNS subaccounts G and H (long and short). These positions do not represent separate instructions for the delivery and receipt of any shares. These positions will be valued at .01 cent per share. On the same day that the positions are established, the corresponding values will be debited and credited through NSCC. Reversals of these amounts will take place through NSCC the following business day.

NSCC will issue special receive and deliver instructions naming long and short participants for positions established in the "USER" CUSIP. Each special deliver instruction issued to a short participant represents liability to the named contra participant for any solicitation fees for which such contra participant is entitled to make claim under the terms of the corporate action. All such claims will be made directly between the parties as promptly as possible and are not guaranteed by NSCC.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[5] which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[6] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Allowing this corporate action to be processed in the CNS system should help ensure the tenders processed through NSCC will be promptly and accurately cleared and settled.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will allow NSCC to process this corporate action in the CNS system.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–00–06 and should be submitted by June 15, 2000.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–NSCC–00–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–13148 Filed 5–24–00; 8:45 am]
BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] According to GM, this offer will expire at midnight on Friday, May 19, 2000, unless extended, and the tender offer will have a three day protect that will expire on May 24, 2000, unless extended.

[4] For a detailed description of NSCC procedures for the GM voluntary reorganization, refer to NSCC Important Notice dated May 12, 2000, a copy of which is attached to NSCC's filing as Exhibit A. NSCC's filing is available through the Commission's Public Reference Section or through NSCC.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Sunday, August 6, 2000, from 10 a.m. to 4 p.m. at the Double Tree Hotel, Portland, Maine to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, please write or call Ellen Thrasher, U. S. Small Business Administration, 409 Third Street, SW, Fourth Floor, Washington, DC 20416. Telephone number (202) 205–6817.

Bettie Baca,

Counselor to the Administrator.

[FR Doc. 00–13094 Filed 5–24–00; 8:45 am]
BILLING CODE 8025–01–U]

SMALL BUSINESS ADMINISTRATION

Region IV, North Florida District; Jacksonville, Florida; Advisory Council Meeting; Public Meeting

The U. S. Small Business Administration, North Florida District Office, Jacksonville, Florida, Advisory Council will hold a public meeting from 2 p.m. to 3 p.m., June 15, 2000, at the Caribe Royale Resort, 14300 International Drive, Orlando, Florida, in conjunction with the SBA Florida State Lenders' Conference, to discuss such matters as may be presented by members, staff of the U. S. Small Business Administration, or others present. For further information, write or call Claudia D. Taylor, U. S. Small Business Administration, 7825 Baymeadows Way, Suite 100-B, Jacksonville, Florida 32256–7504, telephone (904) 443–1933.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–13093 Filed 5–24–00; 8:45 am]
BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice 3317]

Civic Education Curriculum Development and Teacher Training Program for Romania

NOTICE: Request for Proposals.

SUMMARY: The Humphrey Fellowships and Institutional Linkages Branch of the Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Civic Education Curriculum Development and Teacher Training Project for Romania. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501c may submit proposals to cooperate with the Bureau in the administration of a two-year project to support the development and implementation of new curriculum units for an eleventh grade civic education and comparative government course in Romania. The grant will award up to $194,000 to facilitate the project. The U.S. organization will work in coordination with the Ministry of Education and its appointees in Romania; the public affairs section of the U.S. Embassy in Bucharest; and an advisory group of Romanian civic educators. The program will comprise two phases of activity: (1) Selection of an eight-member curriculum development team of Romanian educators and preliminary consultations in Bucharest; (2) an eight- to ten-week U.S.-based curriculum development workshop in which the team will produce draft curriculum units and a teacher's manual for an eleventh-grade comparative government course.

In addition to the activity described in this solicitation, additional program activities may be undertaken during a third phase. Contingent upon successful completion of Phases I and II, the grantee may be invited to continue program activities with additional funding that may be provided by the Bureau. These activities would include follow-up consultations in Romania to assist in the further development, review, and field-testing of the draft curricular materials and in the training of a larger group of Romanian practitioners in their utilization.

The Bureau solicits detailed proposals from U.S. educational institutions and public and private non-profit organizations to develop and administer this project. Grantee organizations will consult regularly with the Bureau and with the public affairs section at the U.S. Embassy in Bucharest with regard to participant selection, program implementation, direction, and assessment. Proposals should demonstrate an understanding of the issues confronting education in Romania as well as expertise in civic education, political science, and curriculum development. The Bureau encourages applicants who can draw on the contributions of political scientists to civic education and comparative government curricula in the United

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States while adapting this experience to address Romanian educational needs.

The funding authority for the program cited above is provided through the Support for East European Democracy (SEED) Act. Programs and projects must conform with Bureau requirements and guidelines outlined in the Solicitation Package. The programs and projects of the Bureau of Educational and Cultural Affairs are subject to availability of funds.

Program Information

Overview: The goals of the project are to assist a team of Romanian educators to develop up-to-date curriculum units for a course in civic education and comparative government to be taught at the eleventh grade level, and to assist in training teachers to use these units in Romanian classrooms. The rationale for this project is that improving citizenship education at the high school level will better prepare Romanian students to participate actively in building a pluralistic, democratic society and will promote democratic relations among members of the school community, including students, teachers, school administrators, and parents while training teachers to assist in supporting these relationships. Applicants may suggest topics to be developed by the curriculum team; however, final determination of appropriate topics will be made by the curriculum development team in cooperation with the grantee organization and an advisory group of local curriculum development specialists in Romania during the first phase of the project.

Guidelines

Program Planning and Implementation

Grants should begin on or around September 1, 2000, with Phase I of the project, in which a curriculum development team of eight practitioners (*e.g.*, classroom teachers and curriculum specialists) will be chosen by a selection committee in Romania comprised of local civic education specialists, representatives of the U.S. grantee organization, and the public affairs section of the U.S. Embassy in Bucharest. A Ministry of Education official will be invited to provide liaison between the U.S. project director(s) and the Romanian government. In Phase I, the team will undertake preliminary work in Romania over a period of 3–6 months. Members of the curriculum development team, in consultation with specialists from the grantee organization and local Romanian civic education and political science specialists, will familiarize themselves with civic education curricula and teaching materials used in Romania, with materials used in the U.S. and with the needs of students in Romania, in order to select the topics to be covered in the curriculum units that will be drafted.

In Phase II, members of the curriculum development team will spend approximately eight to ten weeks in a highly structured U.S.-based workshop to be sponsored and organized by the U.S. grantee organization, and will attend focused curriculum seminars; observe relevant aspects of the U.S. educational system; and begin drafting teacher and student materials for the curriculum units in consultation with U.S. specialists. The grantee organization will be responsible for introducing the Romanian team to leading U.S. political science practitioners and civic educators with expertise that is pertinent to the topics to be explored, and to a broad range of relevant resources. The team should be familiarized with methods for effectively utilizing civic education and political science resources from various levels in a classroom setting. The workshop schedule should incorporate significant time for both individual and group work on drafting materials as well as intensive training on specific approaches to the teaching, development, and revision of civic education and comparative government topics. In addition, the workshop should include field experiences which are relevant to the materials being produced (such as visits to schools, matching the Romanian educators with U.S. teachers, and mentored attendance at professional association meetings). The grantee organization will cooperate with the curriculum development team, Romanian educators, and the Ministry of Education in Romania to design a pilot-test program for selected schools in Romania.

Possible future activities include work by the curriculum development team in centers throughout Romania with teacher trainers, local civic education specialists, political science specialists from Romanian universities, U.S. specialists from the grantee organization, and other Romanian specialists to provide introductory training for a larger group of practitioners in methods for testing and utilizing the draft curriculum units in civic education/comparative government classrooms. Revision of the draft curricular materials based on the results of field testing may be completed by the grantee organization and the Romanian curriculum development team during future phases of activity.

During these phases the Romanian Ministry of Education will provide the following assistance to the participants:

(1) Provide a contract for paid leave time for the curriculum development team during their stays in the U.S. and the subsequent in-service training work;

(2) Facilitate the logistics of in-service training sessions for teachers by providing appropriate space at regional teacher training centers (Casa Corpului Didactic).

Visa/Insurance/Tax Requirements

U.S. lecturers and consultants participating in the project must be U.S. citizens. Programs must comply with J–1 visa regulations. Please refer to Program Specific Guidelines POGI) in the Solicitation Package for further information. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $194,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The summary and detailed program and administrative budgets should be accompanied by a narrative which provides a brief rationale for each line item. The total administrative costs funded by the Bureau must be limited and reasonable.

Allowable costs for the program include the following:

(1) Administrative Costs, including salaries and benefits, of grantee organization.

(2) Program Costs, including general program costs and program costs for each Romanian participant in the U.S.-based curriculum development seminar.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/A/S/U–00–11.

FOR FURTHER INFORMATION, CONTACT: The Humphrey Fellowships and Institutional Linkages Branch, ECA/A/S/U, Room 349, U.S. Department of State, 301 4th Street, SW, Washington, DC 20547, telephone 202 619–5289 and fax 202 401–1433, or hiemstra@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Paul Hiemstra on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, June 23, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–00–11, Office of Grants Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the public affairs section at the U.S. Embassy in Bucharest for its review, with the goal of reducing the time it takes to get Embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy, 'the Bureau' shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the U.S. Department of State Office of East European Assistance, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Department of State, Office of the Legal Adviser or by other Bureau elements. Final funding decisions are at the discretion of the Department of State Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission, and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate substantive expertise in civic education, political science, and comparative government course development.

2. Creativity and feasibility of program plan: A detailed agenda and relevant work plan should demonstrate substantive undertakings, logistical capacity, and a creative utilization of resources and relevant professional development opportunities. The agenda and work plan should be consistent with the program overview and guidelines described in this solicitation.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Broad significance and long-term impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Project objectives should have significant but realistically anticipated on-going consequences for the participants and for their surrounding societies and communities as well as for the growth and encouragement of freedom and democracy, and cooperation.

5. Support of diversity: Proposals should demonstrate substantive support

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of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). The proposal should demonstrate an understanding of the specific diversity needs in Romania and strategies for addressing these needs as relevant to achieve program goals.

6. Institutional capacity and record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the grants staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Project evaluation: Proposals should include a plan to evaluate the project's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate program and financial reports after each project component is concluded or quarterly, whichever is less frequent.

8. Cost-effectiveness/Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate and should reflect a commitment to pursuing project objectives. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the Support for East European Democracy (SEED) Act.

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Department of State procedures.

Dated: May 16, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 00–12939 Filed 5–24–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice #3312]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Fire Protection; Notice of Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on Tuesday, June 13, 2000, at 9:30 AM, in room 6103 at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593. The purpose of the meeting will be to discuss the outcome of the Forty-fourth Session of the International Maritime Organization's Subcommittee on Fire Protection, held February 21–25, 2000. In addition, preparations for the next session will also be discussed at the meeting.

The meeting will focus on proposed amendments to the 1974 SOLAS Convention for the fire safety of commercial vessels. Specific discussion areas include: comprehensive review of SOLAS Chapter II–2, unified interpretations to SOLAS II–2 and related fire test procedures, recommendations on evacuation analysis for passenger ships and high-speed passenger craft, fire test procedures for fire retardant materials used in the construction of lifeboats, and use of perfluorocarbons in shipboard fire-extinguishing systems.

Although the meeting will focus primarily on the outcome of the previous session, preparations and plans for the next session will also be discussed. This offers the opportunity for members of the public to be involved early in the standards development process. Members of the public wishing to make a statement on new issues or proposals at the meeting are requested to submit a brief summary to the U. S. Coast Guard five days prior to the meeting.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may obtain more information regarding the meeting of the SOLAS Working Group on Fire Protection by writing: Office of Design and Engineering Standards, Commandant (G–MSE–4), U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593, by calling: LCDR Kevin Kiefer at (202) 267–1444, or by visiting the following World Wide Website: http://www.uscg.mil/hq/g-m/mse4/stdimofp.htm.

Dated: May 17, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.

[FR Doc. 00–13193 Filed 5–24–00; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice of Review Timetable and Public Hearings Regarding Additional Product Designation for Beneficiaries of the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice lists products that the Trade Policy Staff Committee (TPSC) will be reviewing for possible duty-free importation from certain sub-Saharan African countries as provided under the African Growth and Opportunity Act (AGOA), which Congress recently enacted. The notice provides the dates and places the TPSC will hold public hearings on this subject, explains how to make written comments on products included in the list, and provides the deadline for these submissions.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508. Telephone: (202) 395–6971.

SUPPLEMENTARY INFORMATION: Congress established the Generalized System of Preferences (GSP) program in Title V of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 *et seq.*). Under the GSP program, the President may exempt certain products of designated developing countries from import duties. The President implemented the program by Executive Order 11888 of November 24, 1975, and has modified it through later Executive Orders and Presidential Proclamations.

On May 18, 2000, the President signed into law the Trade and Development Act of 2000, which includes the AGOA. The AGOA amends the GSP program, authorizing the President to provide GSP (duty-free) treatment for selected products from designated sub-Saharan African countries if, after receiving advice from the U.S. International Trade Commission, he determines that the products are not import-sensitive in the context of imports from these countries. The AGOA names those countries whose products the President may designate for duty-free importation.

I. TPSC Review of Products To Be Selected for Duty-Free Treatment

This notice lists by Harmonized Tariff System numbers those products not currently receiving GSP treatment that the Congress determined are eligible for designation under the AGOA for such treatment when imported from sub-Saharan African countries. The TPSC's GSP Subcommittee will review this list, after holding hearings and receiving written comments from the public and advice from the International Trade Commission, to decide which of the products the TPSC will recommend to the President for GSP treatment if imported from countries designated as AGOA beneficiaries.

Listing the products proposed for GSP eligibility does not indicate any opinion about the merits of granting eligibility for these products. Placement on the list indicates only that the products have been found eligible for review by the GSP Subcommittee and the TPSC, and that such review will take place.

The GSP Subcommittee of the TPSC invites submissions supporting or opposing the granting of GSP eligibility for any article on the attached list. All such submissions should include an original and thirteen (13) copies in English and conform to 15 CFR 2007, particularly 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3). All submissions should identify the subject article(s) in terms of the current HTS nomenclature and should be provided by 5 p.m., July 5, 2000.

All communications about public comments should be addressed to: Chairman of the GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508. Telephone number: (202) 395–6971. Questions may be directed to any staff member of the GSP Information Center. Public versions of all documents relating to this review will be available for inspection by appointment in the USTR public reading room. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

Submissions that are granted "business confidential" status pursuant to 15 CFR 2203.6, and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7, will not be available for public inspection. If a document contains such business confidential information, an original and thirteen (13) copies of the business confidential versions of the document along with an original and thirteen (13) copies of the non-confidential version must be submitted. The document that contains business confidential information should be clearly marked "business confidential" at the top and bottom of each page. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of every page (either "public version" or "nonconfidential").

II. Requests To Participate in the Public Hearings

The GSP Subcommittee will hold hearings on September 7, 2000 and, if needed, on September 8, 2000 beginning at 10 a.m. in the Truman Room of the White House Conference Center, 726 Jackson Place, NW., Washington, DC. The hearings will be open to the public, and a transcript of the hearings will be available for public inspection or it can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearings must submit the name, address, telephone number, and fax number of the witness or witnesses representing their organization to the Chairman of the GSP Subcommittee by 5 p.m. August 9, 2000 as well as an original and thirteen (13) copies (in English) or all written briefs or statements. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in the briefs or statements submitted for the record.

If, by the close of business on August 9, 2000 no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the GSP Information Office (202) 395–6971 after August 9, 2000 to determine whether a hearing will be held.

Post-hearing and rebuttal written briefs or statements will be accepted if they conform with the regulations cited above and if an original and thirteen (13) copies in English are submitted no later than 5 p.m. September 27, 2000. Parties not wishing to appear at the public hearings may submit pre-hearing written briefs or statements by August 9, 2000, and may submit post-hearing and rebuttal written briefs or statements by September 27, 2000. Comments by interested persons on the USITC Report prepared as part of this product review should be submitted as an original and thirteen (13) copies, in English, by 5 p.m. October 20, 2000.

On behalf of the President and in accordance with section 111 of AGOA (Section 506A of the Trade Act), on May 22, 2000 the list of products proposed for duty-free treatment eligibility under the GSP was furnished to the U.S. International Trade Commission (USITC) to secure its advice on (1) the probable economic effect of the elimination of U.S. import duties under GSP on U.S. industries producing like or directly competitive products, and on consumers; and (2) to the extent possible, the level of U.S. sensitivity to imports of such Sub-Saharan products.

Announcement of Products To Be Accepted for Designation as Eligible Articles for GSP Purposes When Imported Only From the Beneficiaries of the African Growth and Opportunity Act

The AGOA authorizes the President to provide GSP (duty-free) treatment for selected products from designated sub-Saharan African countries if, after receiving advice from the U.S. International Trade Commission, he determines that the products are not import-sensitive in the context of imports from these countries. The list of products designated as eligible for duty-free treatment under the GSP as a result

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of the review will be announced this winter.

H. John Rosenbaum,
Assistant U.S. Trade Representative for Trade and Development.

Attachment: List of HTS Numbers of the Products Proposed for Duty-Free Treatment Eligibility Under GSP

BILLING CODE 3901-01-M

Annex

HTS Subheadings

0101.20.20	0207.13.00	0403.90.37	0406.20.61	0406.90.44
0101.20.40	0207.14.00	0403.90.41	0406.20.65	0406.90.46
0102.90.40	0207.24.00	0403.90.47	0406.20.69	0406.90.49
0104.20.00	0207.25.20	0403.90.51	0406.20.73	0406.90.51
0105.11.00	0207.25.40	0403.90.57	0406.20.77	0406.90.52
0105.12.00	0207.26.00	0403.90.61	0406.20.81	0406.90.59
0105.19.00	0207.27.00	0403.90.72	0406.20.85	0406.90.61
0105.92.00	0207.32.00	0403.90.74	0406.20.89	0406.90.63
0105.93.00	0207.34.00	0403.90.85	0406.20.95	0406.90.66
0105.99.00	0207.35.00	0403.90.87	0406.30.12	0406.90.72
0106.00.30	0207.36.00	0403.90.90	0406.30.14	0406.90.76
0201.10.05	0208.10.00	0404.10.08	0406.30.22	0406.90.82
0201.10.10	0208.90.40	0404.10.11	0406.30.24	0406.90.86
0201.20.02	0210.11.00	0404.10.20	0406.30.32	0406.90.90
0201.20.04	0210.19.00	0404.10.48	0406.30.34	0406.90.93
0201.20.06	0305.30.20	0404.10.50	0406.30.42	0406.90.95
0201.20.10	0305.30.40	0404.90.28	0406.30.44	0406.90.99
0201.20.30	0305.41.00	0404.90.30	0406.30.49	0408.11.00
0201.20.50	0305.61.20	0404.90.70	0406.30.51	0408.19.00
0201.30.02	0305.69.20	0405.10.05	0406.30.55	0408.91.00
0201.30.04	0305.69.40	0405.10.10	0406.30.56	0408.99.00
0201.30.06	0401.10.00	0405.20.10	0406.30.57	0409.00.00
0201.30.10	0401.20.20	0405.20.20	0406.30.61	0509.00.00
0201.30.30	0401.30.02	0405.20.40	0406.30.65	0601.10.30
0201.30.50	0401.30.05	0405.20.50	0406.30.69	0601.10.85
0202.10.05	0401.30.42	0405.20.60	0406.30.73	0601.20.10
0202.10.10	0401.30.50	0405.90.05	0406.30.77	0602.90.50
0202.20.02	0402.10.05	0405.90.10	0406.30.81	0603.10.60
0202.20.04	0402.10.10	0406.10.12	0406.30.85	0701.10.00
0202.20.06	0402.21.02	0406.10.14	0406.30.89	0701.90.50
0202.20.10	0402.21.05	0406.10.24	0406.30.95	0702.00.20
0202.20.30	0402.21.27	0406.10.34	0406.40.20	0702.00.40
0202.20.50	0402.21.30	0406.10.44	0406.40.40	0703.90.00
0202.30.04	0402.21.73	0406.10.54	0406.40.51	0704.90.40
0202.30.06	0402.21.75	0406.10.64	0406.40.52	0706.10.05
0202.30.30	0402.29.05	0406.10.74	0406.40.54	0706.10.20
0202.30.50	0402.29.10	0406.10.84	0406.40.58	0706.90.40
0203.12.10	0402.91.03	0406.10.95	0406.90.05	0707.00.50
0203.19.20	0402.91.06	0406.20.10	0406.90.06	0708.20.90
0204.10.00	0402.91.10	0406.20.22	0406.90.08	0708.90.40
0204.21.00	0402.91.30	0406.20.24	0406.90.14	0709.20.90
0204.22.20	0402.99.03	0406.20.29	0406.90.16	0709.40.20
0204.22.40	0402.99.06	0406.20.31	0406.90.20	0709.40.60
0204.23.20	0402.99.10	0406.20.34	0406.90.25	0709.51.00
0204.23.40	0402.99.30	0406.20.36	0406.90.28	0709.70.00
0204.30.00	0402.99.68	0406.20.43	0406.90.31	0709.90.30
0204.41.00	0402.99.70	0406.20.44	0406.90.33	0709.90.35
0204.42.20	0403.10.05	0406.20.49	0406.90.34	0709.90.45
0204.42.40	0403.10.10	0406.20.51	0406.90.36	0709.90.90
0204.43.20	0403.10.90	0406.20.54	0406.90.38	0710.10.00
0204.43.40	0403.90.02	0406.20.55	0406.90.39	0710.22.37
0207.11.00	0403.90.04	0406.20.56	0406.90.41	0710.22.40
0207.12.00	0403.90.20	0406.20.57	0406.90.43	0710.29.40

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0710.30.00	0811.90.80	1212.91.00	1702.19.00	2007.10.00
0710.40.00	0812.10.00	1214.10.00	1702.50.00	2007.91.10
0710.80.20	0812.20.00	1302.13.00	1704.90.10	2007.99.15
0710.80.40	0812.90.10	1302.39.00	1704.90.52	2007.99.35
0710.80.45	0812.90.20	1401.90.20	1704.90.54	2007.99.55
0710.80.60	0812.90.30	1402.90.10	1704.90.74	2007.99.60
0710.80.85	0812.90.40	1403.10.00	1704.90.90	2007.99.65
0710.80.97	0812.90.90	1501.00.00	1806.20.79	2007.99.70
0710.90.90	0813.20.10	1502.00.00	1806.20.81	2008.11.22
0711.20.38	0813.20.20	1503.00.00	1806.20.85	2008.11.25
0711.20.40	0813.40.15	1504.10.40	1806.20.95	2008.11.42
0711.90.40	0813.40.30	1507.10.00	1806.20.99	2008.11.45
0712.20.20	0813.40.40	1507.90.40	1901.10.05	2008.19.20
0712.20.40	0813.40.90	1508.10.00	1901.10.15	2008.19.40
0712.30.20	0813.50.00	1508.90.00	1901.10.35	2008.19.50
0712.90.20	0814.00.80	1512.11.00	1901.10.45	2008.19.85
0712.90.40	0901.90.20	1512.19.00	1901.10.55	2008.20.00
0712.90.78	0904.20.40	1512.21.00	1901.10.60	2008.30.20
0714.90.40	0910.40.40	1512.29.00	1901.10.80	2008.30.30
0802.11.00	1001.10.00	1514.10.90	1901.10.95	2008.30.35
0802.12.00	1001.90.10	1514.90.50	1901.90.10	2008.30.40
0802.21.00	1001.90.20	1514.90.90	1901.90.20	2008.30.46
0802.22.00	1003.00.20	1515.11.00	1901.90.32	2008.30.55
0802.32.00	1003.00.40	1515.19.00	1901.90.33	2008.30.65
0802.90.10	1006.10.00	1515.21.00	1901.90.34	2008.30.70
0802.90.98	1006.20.20	1515.29.00	1901.90.38	2008.30.80
0804.10.20	1006.20.40	1516.20.10	1901.90.42	2008.30.85
0804.10.40	1006.30.90	1516.20.90	1901.90.44	2008.40.00
0804.10.60	1006.40.00	1517.10.00	1901.90.46	2008.50.40
0804.10.80	1008.20.00	1517.90.45	1901.90.48	2008.60.00
0804.20.40	1008.90.00	1517.90.50	1901.90.56	2008.70.00
0804.20.80	1101.00.00	1517.90.90	1901.90.70	2008.80.00
0804.30.20	1102.10.00	1518.00.20	1903.00.40	2008.92.10
0804.30.40	1103.11.00	1522.00.00	1904.20.10	2008.92.90
0804.30.60	1103.19.00	1602.10.00	1904.20.90	2008.99.05
0804.40.00	1104.11.00	1602.20.20	2001.90.20	2008.99.10
0805.10.00	1104.19.00	1602.41.90	2001.90.35	2008.99.18
0805.20.00	1104.21.00	1602.42.40	2001.90.60	2008.99.25
0805.30.20	1105.20.00	1602.50.60	2002.10.00	2008.99.29
0805.40.40	1107.10.00	1603.00.10	2002.90.80	2008.99.42
0805.40.60	1107.20.00	1604.11.20	2003.10.00	2008.99.60
0805.40.80	1108.13.00	1604.12.20	2004.10.80	2009.11.00
0806.10.20	1202.10.05	1604.13.20	2004.90.90	2009.19.25
0806.10.60	1202.10.40	1604.13.30	2005.51.20	2009.19.45
0806.20.10	1202.20.05	1604.14.10	2005.60.00	2009.20.20
0806.20.20	1202.20.40	1604.14.20	2005.70.50	2009.20.40
0806.20.90	1204.00.00	1604.14.30	2005.70.60	2009.30.40
0807.11.40	1205.00.00	1604.14.40	2005.70.70	2009.30.60
0807.19.10	1207.20.00	1604.14.70	2005.70.91	2009.40.20
0807.19.80	1208.10.00	1604.14.80	2005.70.97	2009.40.40
0808.20.40	1208.90.00	1604.19.10	2005.90.30	2009.60.00
0809.10.00	1209.22.20	1604.19.40	2005.90.50	2009.80.40
0809.30.20	1209.24.00	1604.19.50	2005.90.80	2009.90.40
0809.40.40	1209.25.00	1604.20.40	2006.00.20	2101.30.00
0810.20.10	1209.91.10	1604.20.50	2006.00.40	2103.20.40
0811.90.22	1209.91.50	1605.90.50	2006.00.50	2105.00.05
0811.90.40	1212.30.00	1702.11.00	2006.00.60	2105.00.10

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2105.00.25	2401.30.27	2904.10.15	2914.69.20	2921.30.30
2105.00.30	2401.30.35	2904.10.32	2914.69.90	2921.41.10
2105.00.50	2401.30.37	2904.10.37	2914.70.40	2921.41.20
2106.90.22	2402.10.30	2904.10.50	2915.39.30	2921.42.10
2106.90.24	2402.10.60	2904.20.10	2915.39.35	2921.42.18
2106.90.28	2402.20.80	2904.20.15	2915.40.20	2921.42.22
2106.90.32	2402.90.00	2904.20.35	2915.40.30	2921.42.65
2106.90.34	2403.10.20	2904.20.40	2915.90.18	2921.42.90
2106.90.38	2403.10.30	2904.20.45	2916.11.00	2921.43.08
2106.90.48	2403.10.60	2904.90.08	2916.13.00	2921.43.15
2106.90.62	2403.91.43	2904.90.20	2916.15.10	2921.43.40
2106.90.64	2403.91.45	2904.90.30	2916.19.30	2921.43.80
2106.90.78	2403.99.20	2904.90.40	2916.31.30	2921.44.10
2106.90.83	2403.99.30	2904.90.47	2916.31.50	2921.44.20
2106.90.85	2403.99.60	2905.17.00	2916.32.10	2921.44.70
2106.90.95	2613.10.00	2906.12.00	2916.32.20	2921.45.10
2202.90.10	2613.90.00	2906.21.00	2916.34.10	2921.45.20
2202.90.22	2616.10.00	2906.29.60	2916.34.25	2921.45.60
2202.90.24	2616.90.00	2907.13.00	2916.34.55	2921.45.90
2202.90.30	2709.00.10	2907.15.60	2916.35.25	2921.49.10
2202.90.35	2709.00.20	2907.19.10	2916.35.55	2921.49.37
2204.21.20	2710.00.05	2907.19.20	2916.39.03	2921.49.43
2204.21.50	2710.00.10	2907.19.80	2916.39.45	2921.49.45
2204.29.20	2710.00.15	2907.21.00	2916.39.75	2921.49.50
2204.29.40	2710.00.18	2907.22.50	2917.12.10	2921.51.10
2204.29.60	2710.00.20	2907.29.90	2917.12.50	2921.51.30
2204.29.80	2710.00.25	2907.30.00	2917.19.20	2921.51.50
2204.30.00	2710.00.30	2908.10.10	2917.19.27	2921.59.08
2205.90.40	2710.00.45	2908.10.25	2917.19.40	2921.59.30
2206.00.30	2710.00.60	2908.10.35	2917.20.00	2921.59.40
2206.00.60	2801.30.20	2908.10.60	2917.36.00	2921.59.80
2207.10.60	2804.69.50	2908.20.04	2917.39.04	2922.19.18
2207.20.00	2805.11.00	2908.20.20	2917.39.15	2922.19.20
2208.40.20	2805.19.00	2908.20.60	2917.39.17	2922.19.60
2208.40.40	2805.21.00	2908.90.08	2917.39.30	2922.19.70
2208.40.60	2805.30.00	2908.90.28	2917.39.70	2922.21.10
2208.40.80	2825.90.30	2908.90.40	2918.17.50	2922.21.40
2302.50.00	2827.39.40	2908.90.50	2918.19.10	2922.21.50
2303.10.00	2841.80.00	2909.30.05	2918.19.20	2922.22.10
2304.00.00	2842.10.00	2909.30.07	2918.19.30	2922.22.20
2306.10.00	2843.10.00	2909.30.09	2918.19.90	2922.22.50
2308.10.00	2844.10.50	2909.30.40	2918.23.30	2922.29.10
2308.90.80	2849.90.30	2909.30.60	2918.23.50	2922.29.15
2309.90.22	2850.00.10	2909.49.10	2918.29.04	2922.29.27
2309.90.24	2902.90.30	2909.49.15	2918.29.20	2922.29.60
2309.90.42	2902.90.90	2909.50.10	2918.29.65	2922.29.80
2309.90.44	2903.30.05	2909.50.45	2918.29.75	2922.30.10
2309.90.60	2903.59.05	2909.50.50	2918.30.10	2922.30.25
2309.90.95	2903.59.15	2909.60.10	2918.30.25	2922.30.45
2401.10.61	2903.59.20	2909.60.20	2918.30.30	2922.42.10
2401.10.63	2903.61.20	2910.90.20	2918.90.05	2922.43.10
2401.20.05	2903.62.00	2912.21.00	2918.90.43	2922.43.50
2401.20.31	2903.69.10	2912.30.10	2918.90.47	2922.49.10
2401.20.33	2903.69.20	2913.00.40	2919.00.30	2922.49.27
2401.20.83	2903.69.27	2914.11.10	2920.90.20	2922.49.30
2401.20.85	2903.69.70	2914.40.40	2921.22.10	2922.49.37
2401.30.25	2904.10.10	2914.50.30	2921.30.10	2922.50.10

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2922.50.14	2933.29.10	2942.00.10	3805.90.00	3926.90.77
2922.50.17	2933.29.35	2942.00.35	3806.90.00	3926.90.85
2922.50.25	2933.29.43	3202.10.50	3808.10.50	4010.12.90
2922.50.35	2933.32.10	3204.11.10	3808.20.50	4010.19.80
2922.50.40	2933.32.50	3204.11.15	3808.30.50	4010.21.30
2924.10.80	2933.39.20	3204.11.35	3808.90.95	4010.22.30
2924.21.20	2933.39.30	3204.11.50	3809.92.10	4010.23.50
2924.21.45	2933.39.41	3204.12.17	3809.92.50	4010.24.50
2924.22.00	2933.39.61	3204.13.10	3809.93.10	4010.29.10
2924.29.05	2933.39.91	3204.13.20	3809.93.50	4010.29.50
2924.29.20	2933.40.15	3204.13.25	3810.10.00	4015.19.50
2924.29.31	2933.40.20	3204.13.60	3810.90.10	4015.90.00
2924.29.70	2933.40.26	3204.13.80	3810.90.50	4104.10.60
2924.29.75	2933.40.60	3204.14.10	3811.19.00	4104.10.80
2925.19.10	2933.40.70	3204.14.20	3811.21.00	4105.12.00
2925.19.40	2933.51.90	3204.14.25	3811.29.00	4105.19.10
2925.20.10	2933.59.21	3204.14.30	3811.90.00	4105.19.20
2925.20.20	2933.59.22	3204.14.50	3812.10.50	4105.20.30
2925.20.60	2933.59.36	3204.15.10	3812.20.50	4107.10.20
2926.90.05	2933.59.45	3204.15.20	3812.30.90	4107.10.30
2926.90.12	2933.59.53	3204.15.30	3814.00.10	4107.90.30
2926.90.44	2933.59.70	3204.15.35	3814.00.50	4109.00.30
2926.90.47	2933.59.80	3204.15.40	3815.90.50	4109.00.40
2927.00.06	2933.79.09	3204.15.80	3817.10.10	4202.11.00
2927.00.40	2933.79.15	3204.16.10	3817.20.00	4202.12.20
2927.00.50	2933.90.13	3204.16.20	3819.00.00	4202.19.00
2928.00.25	2933.90.26	3204.16.30	3820.00.00	4202.21.30
2929.10.10	2933.90.46	3204.16.50	3821.00.00	4202.21.60
2929.10.20	2933.90.53	3204.17.04	3823.13.00	4202.21.90
2929.10.35	2933.90.61	3204.17.20	3823.19.40	4202.22.15
2929.10.55	2933.90.65	3204.17.60	3823.70.20	4202.22.70
2929.10.80	2933.90.70	3204.17.90	3823.70.40	4202.29.50
2929.90.15	2933.90.75	3204.19.11	3823.70.60	4202.29.90
2929.90.20	2933.90.79	3204.19.20	3824.10.00	4202.31.60
2930.20.20	2933.90.82	3204.19.25	3824.40.10	4202.32.85
2930.90.29	2934.10.10	3204.19.30	3824.40.50	4202.39.50
2930.90.49	2934.10.20	3204.19.40	3824.71.00	4202.91.00
2931.00.10	2934.20.20	3204.19.50	3824.79.00	4202.92.45
2931.00.15	2934.20.30	3205.00.40	3824.90.35	4202.99.50
2931.00.22	2934.20.40	3205.00.50	3824.90.45	4202.99.90
2931.00.27	2934.20.80	3206.49.20	3824.90.47	4203.10.40
2931.00.30	2934.30.12	3206.50.00	3824.90.90	4203.29.05
2931.00.60	2934.30.23	3207.40.50	3912.20.00	4203.29.08
2932.19.10	2934.30.27	3211.00.00	3916.90.30	4203.29.15
2932.29.20	2934.30.43	3214.90.50	3918.10.32	4203.29.18
2932.29.30	2934.30.50	3301.13.00	3918.10.40	4203.29.20
2932.29.45	2934.90.05	3403.11.20	3918.90.20	4203.29.30
2932.91.00	2934.90.06	3403.19.10	3918.90.30	4203.29.40
2932.92.00	2934.90.39	3403.91.50	3921.13.19	4203.29.50
2932.93.00	2934.90.44	3403.99.00	3921.90.19	4304.00.00
2932.99.35	2935.00.10	3502.11.00	3921.90.21	4405.00.00
2932.99.39	2935.00.15	3502.19.00	3921.90.29	4409.10.65
2932.99.60	2935.00.48	3503.00.20	3926.20.40	4409.20.65
2932.99.70	2935.00.60	3503.00.40	3926.30.50	4412.19.50
2933.19.08	2935.00.75	3506.10.10	3926.90.55	4421.10.00
2933.19.37	2935.00.95	3606.90.30	3926.90.59	4421.90.20
2933.19.43	2942.00.05	3804.00.50	3926.90.65	4421.90.40

4421.90.80	6403.99.20	7013.10.50	7208.25.30	7212.10.00
4421.90.85	6403.99.40	7013.21.10	7208.25.60	7212.20.00
4601.99.00	6403.99.60	7013.21.20	7208.26.00	7212.30.10
4602.10.21	6403.99.75	7013.21.30	7208.27.00	7212.30.30
4602.10.22	6403.99.90	7013.29.05	7208.36.00	7212.30.50
4602.10.25	6404.11.20	7013.29.10	7208.37.00	7212.40.10
4602.10.29	6404.11.40	7013.29.20	7208.38.00	7212.40.50
6401.10.00	6404.11.50	7013.29.30	7208.39.00	7212.50.00
6401.91.00	6404.11.60	7013.29.40	7208.40.30	7212.60.00
6401.92.60	6404.11.70	7013.29.50	7208.40.60	7213.10.00
6401.92.90	6404.11.80	7013.29.60	7208.51.00	7213.20.00
6401.99.30	6404.11.90	7013.31.10	7208.52.00	7213.91.30
6401.99.60	6404.19.15	7013.31.20	7208.53.00	7213.91.45
6401.99.90	6404.19.20	7013.32.10	7208.54.00	7213.91.60
6402.19.05	6404.19.25	7013.32.20	7208.90.00	7213.99.00
6402.19.15	6404.19.30	7013.32.30	7209.15.00	7214.10.00
6402.19.50	6404.19.35	7013.32.40	7209.16.00	7214.20.00
6402.19.70	6404.19.40	7013.39.10	7209.17.00	7214.30.00
6402.19.90	6404.19.50	7013.39.20	7209.18.15	7214.91.00
6402.30.30	6404.19.60	7013.39.30	7209.18.25	7214.99.00
6402.30.50	6404.19.70	7013.39.40	7209.18.60	7215.10.00
6402.30.60	6404.19.80	7013.39.50	7209.25.00	7215.50.00
6402.30.70	6404.19.90	7013.39.60	7209.26.00	7215.90.10
6402.30.80	6404.20.20	7013.91.10	7209.27.00	7215.90.30
6402.30.90	6404.20.40	7013.91.20	7209.28.00	7216.10.00
6402.91.40	6404.20.60	7013.91.30	7209.90.00	7216.21.00
6402.91.50	6405.10.00	7013.99.10	7210.11.00	7216.22.00
6402.91.60	6405.20.30	7013.99.20	7210.12.00	7216.31.00
6402.91.70	6405.20.90	7013.99.40	7210.20.00	7216.32.00
6402.91.80	6405.90.90	7013.99.50	7210.30.00	7216.33.00
6402.91.90	6406.10.05	7013.99.60	7210.41.00	7216.40.00
6402.99.05	6406.10.10	7013.99.70	7210.49.00	7216.50.00
6402.99.10	6406.10.20	7013.99.80	7210.50.00	7216.91.00
6402.99.14	6406.10.25	7013.99.90	7210.61.00	7216.99.00
6402.99.18	6406.10.30	7018.20.00	7210.69.00	7217.10.10
6402.99.20	6406.10.35	7019.19.90	7210.70.30	7217.10.20
6402.99.30	6406.10.40	7019.90.10	7210.70.60	7217.10.30
6402.99.60	6406.10.45	7104.20.00	7210.90.10	7217.10.40
6402.99.70	6406.10.50	7114.11.45	7210.90.60	7217.10.50
6402.99.80	6812.50.10	7202.11.50	7210.90.90	7217.10.60
6402.99.90	6907.10.00	7202.21.75	7211.13.00	7217.10.70
6403.19.10	6907.90.00	7202.21.90	7211.14.00	7217.10.80
6403.19.30	6908.10.10	7202.49.10	7211.19.15	7217.10.90
6403.19.40	6908.10.50	7202.70.00	7211.19.20	7217.20.15
6403.19.50	6908.90.00	7202.91.00	7211.19.30	7217.20.30
6403.40.30	6911.10.10	7202.92.00	7211.19.45	7217.20.45
6403.40.60	6911.10.52	7202.93.00	7211.19.60	7217.20.60
6403.51.30	6911.10.58	7202.99.10	7211.19.75	7217.20.75
6403.51.60	6911.10.80	7202.99.50	7211.23.15	7217.30.15
6403.51.90	6912.00.20	7206.10.00	7211.23.20	7217.30.30
6403.59.15	6912.00.39	7207.11.00	7211.23.30	7217.30.45
6403.59.30	6912.00.45	7207.12.00	7211.23.45	7217.30.60
6403.59.60	7002.10.10	7207.19.00	7211.23.60	7217.30.75
6403.59.90	7005.21.10	7207.20.00	7211.29.20	7217.90.10
6403.91.30	7005.21.20	7208.10.15	7211.29.45	7217.90.50
6403.91.60	7005.29.08	7208.10.30	7211.29.60	7218.10.00
6403.91.90	7005.29.18	7208.10.60	7211.90.00	7218.91.00

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7218.99.00	7226.91.25	7304.41.30	7312.10.90	8482.10.50
7219.11.00	7226.91.50	7304.41.60	7314.31.10	8482.20.00
7219.12.00	7226.91.70	7304.49.00	7314.41.00	8482.91.00
7219.13.00	7226.91.80	7304.51.10	7314.42.00	8482.99.05
7219.14.00	7226.92.10	7304.51.50	7317.00.55	8482.99.15
7219.21.00	7226.92.30	7304.59.10	7318.11.00	8482.99.25
7219.22.00	7226.92.50	7304.59.20	7318.14.10	8482.99.35
7219.23.00	7226.92.70	7304.59.60	7318.14.50	8482.99.45
7219.24.00	7226.92.80	7304.59.80	7320.10.60	8482.99.65
7219.31.00	7226.93.00	7304.90.10	7326.90.35	8483.20.80
7219.32.00	7226.94.00	7304.90.30	7419.99.15	8483.30.80
7219.33.00	7226.99.00	7304.90.50	7601.10.30	8483.60.80
7219.34.00	7227.10.00	7304.90.70	7601.20.30	8483.90.30
7219.35.00	7227.20.00	7305.11.10	7601.20.60	8483.90.70
7219.90.00	7227.90.10	7305.11.50	7604.21.00	8483.90.80
7220.11.00	7227.90.20	7305.12.10	7614.10.10	8525.10.30
7220.12.10	7227.90.60	7305.12.50	7614.90.40	8527.29.80
7220.12.50	7228.10.00	7305.19.10	7901.12.10	8527.31.05
7220.20.10	7228.20.10	7305.19.50	8101.10.00	8527.31.50
7220.20.60	7228.20.50	7305.20.20	8101.91.50	8528.12.24
7220.20.70	7228.30.20	7305.20.40	8101.92.00	8528.12.32
7220.20.80	7228.30.60	7305.20.60	8101.93.00	8528.12.40
7220.20.90	7228.30.80	7305.20.80	8102.10.00	8528.12.48
7220.90.00	7228.40.00	7305.31.40	8102.91.10	8528.12.56
7221.00.00	7228.50.10	7305.31.60	8104.19.00	8528.12.72
7222.11.00	7228.50.50	7305.39.10	8104.30.00	8528.12.97
7222.19.00	7228.60.10	7305.39.50	8105.10.30	8528.13.00
7222.20.00	7228.60.60	7305.90.10	8108.10.50	8528.21.29
7222.30.00	7228.60.80	7305.90.50	8109.10.60	8528.21.39
7222.40.30	7228.70.30	7306.10.10	8111.00.45	8528.21.42
7222.40.60	7228.70.60	7306.10.50	8112.40.60	8528.21.49
7223.00.10	7228.80.00	7306.20.10	8112.91.40	8528.21.52
7223.00.50	7229.10.00	7306.20.20	8112.91.60	8528.21.70
7223.00.90	7229.20.00	7306.20.30	8203.20.40	8528.21.90
7224.10.00	7229.90.10	7306.20.40	8205.90.00	8528.22.00
7224.90.00	7229.90.50	7306.20.60	8206.00.00	8528.30.40
7225.11.00	7229.90.90	7306.20.80	8211.10.00	8528.30.60
7225.19.00	7301.10.00	7306.30.10	8211.91.20	8528.30.68
7225.20.00	7301.20.10	7306.30.50	8211.91.25	8528.30.78
7225.30.10	7301.20.50	7306.40.10	8211.91.30	8528.30.90
7225.30.30	7302.10.10	7306.40.50	8211.91.40	8529.10.20
7225.30.50	7302.10.50	7306.50.10	8213.00.90	8529.90.03
7225.30.70	7302.20.00	7306.50.50	8214.90.30	8529.90.13
7225.40.10	7302.40.00	7306.60.10	8215.10.00	8529.90.33
7225.40.30	7304.10.10	7306.60.30	8215.20.00	8529.90.39
7225.40.50	7304.10.50	7306.60.50	8215.99.01	8529.90.43
7225.40.70	7304.21.30	7306.60.70	8215.99.05	8529.90.49
7225.50.10	7304.21.60	7306.90.10	8215.99.10	8529.90.53
7225.50.60	7304.29.10	7306.90.50	8215.99.15	8529.90.69
7225.50.70	7304.29.20	7307.19.90	8215.99.26	8529.90.83
7225.50.80	7304.29.30	7307.93.30	8215.99.30	8529.90.88
7226.11.10	7304.29.40	7308.90.30	8215.99.35	8529.90.93
7226.11.90	7304.29.50	7308.90.60	8301.10.20	8540.11.10
7226.19.10	7304.29.60	7312.10.30	8301.10.40	8540.11.24
7226.19.90	7304.31.30	7312.10.50	8301.10.80	8540.11.28
7226.20.00	7304.31.60	7312.10.60	8302.30.60	8540.11.30
7226.91.15	7304.39.00	7312.10.70	8482.10.10	8540.11.44

8540.11.48	9029.90.40	9105.11.40	9111.90.50
8540.11.50	9101.11.40	9105.11.80	9111.90.70
8540.12.50	9101.11.80	9105.19.20	9112.10.00
8540.12.70	9101.19.40	9105.19.30	9113.20.40
8540.20.20	9101.19.80	9105.19.50	9114.10.40
8540.20.40	9101.21.10	9105.21.40	9114.10.80
8540.40.00	9101.21.80	9105.21.80	9114.30.40
8540.50.00	9101.29.10	9105.29.10	9114.30.80
8540.60.00	9101.29.20	9105.29.20	9114.40.20
8540.71.40	9101.29.30	9105.29.30	9114.40.40
8540.72.00	9101.29.40	9105.29.40	9114.40.60
8540.79.00	9101.29.50	9105.29.50	9114.40.80
8540.81.00	9101.29.70	9105.91.40	9114.90.15
8540.89.00	9102.11.10	9105.91.80	9114.90.30
8540.91.15	9102.11.25	9105.99.50	9114.90.40
8540.91.50	9102.11.30	9105.99.60	9114.90.50
8607.19.06	9102.11.45	9106.10.00	9209.91.80
8701.20.00	9102.11.50	9106.20.00	9302.00.00
8703.10.10	9102.11.65	9106.90.75	9305.10.20
8703.21.00	9102.11.70	9106.90.85	9404.29.10
8703.22.00	9102.11.95	9107.00.80	9506.99.08
8703.23.00	9102.19.20	9108.11.40	9507.10.00
8703.24.00	9102.19.40	9108.11.80	9507.30.20
8703.31.00	9102.19.60	9108.12.00	9507.30.40
8703.32.00	9102.19.80	9108.19.40	9507.90.70
8703.33.00	9102.21.10	9108.19.80	9603.10.05
8703.90.00	9102.21.25	9108.91.10	9603.10.15
8704.21.00	9102.21.30	9108.91.20	9603.10.35
8704.22.10	9102.21.50	9108.91.30	9603.10.40
8704.22.50	9102.21.70	9108.91.40	9603.10.50
8704.23.00	9102.21.90	9108.91.50	9603.10.60
8704.31.00	9102.29.02	9108.91.60	9608.31.00
8704.32.00	9102.29.15	9108.99.20	9608.39.00
8704.90.00	9102.29.20	9108.99.40	9608.50.00
8706.00.03	9102.29.25	9108.99.80	9612.20.00
8706.00.05	9102.29.30	9109.11.10	9616.20.00
8706.00.15	9102.29.35	9109.11.20	
8706.00.25	9102.29.40	9109.11.40	
8707.10.00	9102.29.45	9109.11.60	
8707.90.50	9102.29.50	9109.19.10	
8708.92.50	9102.29.55	9109.19.20	
8712.00.15	9102.29.60	9109.19.40	
8712.00.25	9102.91.40	9109.19.60	
8712.00.35	9102.91.80	9109.90.20	
8712.00.44	9103.10.20	9109.90.40	
8712.00.48	9103.10.40	9109.90.60	
8714.91.30	9103.10.80	9110.11.00	
8714.91.50	9103.90.00	9110.12.00	
8714.92.10	9104.00.05	9110.19.00	
8714.93.28	9104.00.10	9110.90.20	
8714.93.35	9104.00.20	9110.90.40	
8714.94.90	9104.00.25	9110.90.60	
8714.95.00	9104.00.30	9111.10.00	
8714.96.10	9104.00.40	9111.20.20	
8714.96.90	9104.00.45	9111.20.40	
8714.99.80	9104.00.50	9111.80.00	
9029.20.20	9104.00.60	9111.90.40	

[FR Doc. 00–13169 Filed 5–24–00; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159; Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting to be held June 12–16, 2000, starting at 9:00 a.m. each day. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Washington, DC 20036.

The agenda will be as follows:

Specific Working Group Sessions: June 12: Working Group 1, Third Civil Frequency. June 13: Working Group 6, GPS/Interference; Working Group 2C, GPS/Inertial. June 14: 9 a.m.–12 p.m., Working Group 4, Precision Landing Guidance (GPS/LAAS); Working Group 6, Interference; 1:30 p.m.–4:30 p.m., SC–159 Ad Hoc, Recommendation Support. June 15: Working Group 2, GPS/WAAS; Working Group 4, Precision Landing Guidance (LAAS).

June 16: Plenary Session: (1) Chairman's Introductory Remarks; (2) Approve Summary of Previous Meeting; (3) Review Working Group (WG) Progress and Identify Issues for Resolution: (a) GPS/3rd Civil Frequency (WG–1); (b) GPS/WAAS (WG–2); (c) GPS/GLONASS (WG–2A); (d) GPS/Inertial (WG–2C); (e) GPS/Precision Landing Guidance (WG–4); (f) GPS/Airport Surface Surveillance (WG–5); (g) GPS Interference (WG–6); (h) SC–159 Ad Hoc; (4) Review of EUROCAE Activities; (5) Review/Approve Final Draft, NAVSTAR GPS L5 Civil Signal Specification; (6) Review/Approve Final Draft, SC–159 Response to the Johns Hopkins University Applied Physics Laboratory Recommendation Regarding Receiver Autonomous Integrity Monitoring; (7) Assignment/Review of Future Work; (8) Other Business; (9) Date and Location of Next Meeting; (10) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the RTCA Secretariat, at (202) 833–9339 (phone), (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 18, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–13182 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice Receipt of Noise Compatibility Program and Request for Review Austin-Bergstrom International Airport Austin, Texas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by City of Austin for Austin-Bergstrom International Airport under the provisions of Title 49 USC, Chapter 475 (hereinafter referred to as "Title 49" and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Austin-Bergstrom International Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before November 8, 2000.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program are May 9, 2000. The public comment period ends July 8, 2000.

FOR FURTHER INFORMATION CONTACT: Nan L. Terry, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193–0652, (817) 222–5607. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Austin-Bergstrom International Airport is in compliance with applicable requirements of Part 150, effective May 8, 2000. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before November 8, 2000. This notice also announces the availability of this program for public review and comment.

Under Title 49, an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

On April 20, 1999, FAA published its approval of noise exposure maps for the Austin-Bergstrom International Airport in the **Federal Register**. On April 10, 2000, the City of Austin submitted a new 2004 noise exposure map. The FAA has completed its review of the 2004 the noise exposure maps and related descriptions submitted by City of Austin. The specific map under consideration is 2004 Future Condition Noise Exposure Map, Figure 10–1 in the submission.

In addition to the 2004 future condition noise exposure map, the City of Austin submitted to the FAA on April 10, 2000, descriptions and other documentation which were produced during Austin-Bergstrom International Airport, Austin, Texas, Part 150 Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure map, as described in Title 49, and that the noise mitigation measures, to be implemented jointed by the airport and surrounding communities, be approved as a noise compatibility program under Title 49.

The FAA has determined that this map for Austin-Bergstrom International Airport is in compliance with applicable requirements. This determination is effective on May 8, 2000. FAA's determination on an airport operator's noise exposure map(s) is limited to a finding that the map(s) was developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Title 49. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received noise compatibility program for Austin-Bergstrom International Airport, also effective on May 8, 2000. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 8, 2000.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137

Austin-Bergstrom International Airport, City of Austin, Aviation Department, 3600 Presidential Blvd., Austin, Texas 78719

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, May 9, 2000.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 00–13181 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Fayetteville Regional Airport, Fayetteville, North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fayetteville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Parf 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 26, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bradley S. Whited, Airport Director, of the City of Fayetteville at the following address: Mr. Bradley S. Whited, Airport Director, Fayetteville Regional Airport, P.O. Box 64218, Fayetteville, NC 28306.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Fayetteville under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lee Kyker, Manager of Airport Programs, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747, (404) 305–7161. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fayetteville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 12, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Fayetteville was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 8, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–01–C–00–FAY.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2000.

Proposed charge expiration date: October 1, 2002.

Total estimated net PFC revenue: $942,620.

Brief description of proposed project(s):

- Airport Entrance Road
- Jetway System Modifications
- Security System Upgrade
- Preplan runway safety areas
- Rehabilitate north general aviation ramp
- Security system upgrade, Phase II
- Design & construct RSA, Rwy 4
- Acquire land
- Renovate terminal, Ph II
- Construct RSA, Rwy 4, Ph 2
- Land Purchase
- Renovate terminal
- Construct RSA
- Acquire land
- Rehabilitate Runway 10–28
- Acquire land in fee
- Construct fire training facility & rehabilitate ARFF vehicle Update Airport Master Plan
- Install taxiway guidance signs & REILS
- Construct new general aviation area (design only)
- Acquire sweeper
- Install terminal loading bridges
- Acquire ARFF vehicle
- Construct non-license vehicle road (design only)
- Taxiway K (design only)

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- Install utilities for general aviation
- Design for Highway 301 Connector
- Acquire land for airport development
- Airport terminal development
- Construct taxiway K (design only)
- Construct GA apron (design only)
- Acquire land for development
- Rehabilitate terminal building
- Install 107.14 security access system
- Construct non-license vehicle road (NLVR)
- Jet bridge modification
- Construct taxiway K

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Federal Aviation Administration.

Issued in Atlanta, Georgia on May 16, 2000.

Rans D. Black,

Acting Manager, Atlanta Airports District Office Southern Region.

[FR Doc. 00–13189 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Assist In the Development of Crash Outcome Data Evaluation Systems

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of availability;—discretionary cooperative agreements to assist in the development and use of Crash Outcome Data Evaluation Systems.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to assist states in the development and use of Crash Outcome Data Evaluation Systems (CODES) and solicits applications for projects under this program from states that have not previously been funded to develop CODES. Under this program states will link their existing statewide traffic records with medical outcome and charge data. The linked data will be used to support highway safety decision-making at the local, regional, and state levels to reduce deaths, non-fatal injuries, and health care costs resulting from motor vehicle crashes.

DATES: Applications must be received at the office designated below on or before July 24, 2000.

ADDRESSES: Applications must be submitted to DOT/National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Lamont O. Norwood/Mr. Mark Kromer, 400 7th Street SW, Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–00–H–07212. Interested applicants should contact Mr. Norwood to obtain the application packet. Included in the application packet are reports about data linkage and applications for linked data developed by the CODES project.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Lamont O. Norwood, Office of Contracts and Procurement. All questions and requests for copies may be directed by e-mail at *lnorwood@nhtsa.dot.gov* or, by telephone, at (202) 366–8573. Programmatic questions relating to this cooperative agreement program should be directed to Dennis Utter, CODES Contracting Officer's Technical Representative (COTR), at NHTSA, Room 6125, (NRD–31) 400 7th Street SW, Washington, DC 20590, or by e-mail at *dutter@nhtsa.dot.gov*, or by telephone at (202) 366–5351.

SUPPLEMENTARY INFORMATION:

Statement of Work

Background

Crash data alone are unable to convey the magnitude of the medical and financial consequences of the injuries resulting from motor vehicle crashes or the success of highway safety decision-making to prevent them. Outcome information describing what happens to all persons involved in motor vehicle crashes, regardless of injury, is needed.

Person-specific outcome information is collected at the crash scene and en route by EMS personnel, at the emergency department, in the hospital, and after discharge. When these data are computerized and merged statewide, they generate a source of population-based data that is available for use by state and local traffic safety and public health professionals. Linking these records to statewide crash data collected by police at the scene is the key to developing relationships among specific vehicles, crash, and occupant behavior characteristics and their medical and financial outcomes.

The feasibility of linking crash and medical outcome (EMS, emergency department, hospital discharge, death certificate, claims, etc.) data was demonstrated by the CODES project. This project evolved from the Intermodal Surface Transportation Efficiency Act of 1991, which mandated that NHTSA prepare a Report to Congress about the benefits of safety belt and motorcycle helmet use. NHTSA provided funding to the States of Hawaii, Maine, Missouri, New York, Pennsylvania, Utah, and Wisconsin to link their state data and use the linked data to analyze the effectiveness of safety belts and motorcycle helmets. The Report was delivered to Congress in February 1996. In 1996, three CODES states (New York, Pennsylvania, and Wisconsin) and three states which linked crash and medical data without CODES funding (Alaska, Connecticut, and New Mexico) were awarded NHTSA research funds to develop state-specific applications for linked data. In 1997, NHTSA awarded grants for CODES linkage to Connecticut, New Hampshire, Maryland, North Dakota, South Dakota, Oklahoma, and Nevada. Iowa, Kentucky, Massachusetts, Nebraska, and South Carolina which were funded to implement the CODES linkage in 1998. Arizona, Delaware, Minnesota and Tennessee were funded in 1999.

The CODES project also demonstrated that linked data have many uses for decision-making related to highway safety and injury control. In addition to demonstrating the effectiveness of safety belts and motorcycle helmets in preventing death, injury, and costs, the linked data were used to identify populations at risk for increased severity or high health care costs, the impact of different occupant behaviors on outcome, the safety needs at the community level, the allocation of resources for emergency medical services, the injury patterns by type of roadway and geographic location, and the benefits of collaboration on data quality. When crash, vehicle, and behavior characteristics were linked to outcome information, decision-makers could identify those prevention programs that had the most impact on preventing or reducing the medical and financial costs associated with motor vehicle crashes.

Data linkage fulfills expanded data needs without the additional expense and delay of new data collection. The linkage process itself provides feedback about data quality and content problems which leads to improvement in the state data. Thus, it is in NHTSA's interest to encourage states to qualify for CODES funding. NHTSA benefits from the improved quality of the state data, while the states benefit from state-specific

medical and financial outcome information about motor vehicle crashes.

Objective

The objective of this Cooperative Agreement program is to provide resources to the applicant to:

1. Coordinate the development and institutionalization of the capability to link state crash and medical outcome data to identify the medical and financial consequences of motor vehicle crashes.

2. Utilize this information in crash analysis, problem identification, and program evaluation to improve decision-making at the local, state, and national levels related to preventing or reducing deaths, injuries, and direct medical costs associated with motor vehicle crashes.

3. Provide NHTSA with population-based linked crash and injury data to analyze specific highway safety issues of interest to NHTSA in collaboration with the CODES states.

4. Develop data linkage capabilities as a means of improving the quality of state data that support NHTSA's national data.

This cooperative agreement is not intended to fund basic development of data systems, but rather to create linkages among existing records. However, it is hoped that this project will inspire States to develop and improve their state data and to expedite these activities in order to become eligible for CODES funding.

General Project Requirements

1. Link statewide population-based crash to injury data for any two calendar years available since 1996, to produce a linked data file that, if not statewide, reflects a contiguous geographical area that contains at least three (3) million residents in which the residents obtain all levels of emergency medical care without the need to be transferred elsewhere, except in rare occurrences, when involved in motor vehicle crashes. The linked data must be representative and generalizable for highway traffic safety purposes in the state/area. All applicants must be able to clearly document what data are available and what data are missing and the significance of the missing data for highway traffic safety planning efforts.

a. Develop a state/area-wide CODES that includes outcome information for all persons, injured and uninjured, involved in police reported motor vehicle crashes.

(1) The CODES should consist of crash data linked to hospital and either EMS or emergency department data, preferably both. States without EMS or emergency department data are eligible if this type of outpatient information can be obtained from insurance claims data for everyone involved in a crash who is treated at an outpatient center.

(2) Additional state/area-wide data (driver licensing, vehicle registration, citation/conviction records, insurance claims, HMO/managed care/etc., outpatient records, etc.) should be linked as necessary to meet state/area wide objectives.

b. Set up processes for collaboration among the technical experts who manage the data files being linked.

c. Assign an agency to be responsible for:

(1) Obtaining a computer and linkage software to be dedicated to CODES activities (the computer and software resources may not be permanently tied to an existing computer network in such a way as to preclude their movement in the future, as directed by the CODES Board of Directors, to another organization more interested in continuing the linkage and application for the linked data);

(2) Implementing probabilistic linkage methodology to facilitate tracking the crash victim from the scene to final disposition/recovery using existing computerized state/area-wide population-based databases;

(3) Validating the linkage results by evaluating the rate of false positives and false negatives among the linked and unlinked records;

(4) Analyzing the linked data; and,

(5) Cross-training sufficient staff to ensure continuation of the linkage capability in spite of changes in organizational priorities or personnel during or after the project period.

d. Document the file preparation, linkage and validation processes so that the linkage can be repeated efficiently during subsequent years after Federal funding ends and provide evidence of this documentation.

e. Provide NHTSA a version of the linked data file with supporting documentation that conforms to State laws and regulations governing patient/provider confidentiality, yet satisfies minimum NHTSA data needs.

2. Use the linked data to influence highway traffic safety and injury control decision-making by implementing at least one application of linked data that is expected to have a positive impact on reducing death, injury, and direct medical costs.

3. Use the linked data to prepare management reports using a format standardized by NHTSA for a national CODES report.

4. Develop the computer programs needed to translate the linked data into information useful for highway traffic safety and injury control at the local, regional, or state/area-wide level.

a. Develop, for access within the State, a public-use version of the linked data, copies of which will be distributed upon request.

b. Develop the resources necessary to produce and distribute routine reports, respond to data requests, and provide access to the linked data for analytical, management, planning, and other purposes after Federal funding ends.

c. Use the Internet and other electronic mechanisms to efficiently distribute and share information generated from the linked data.

5. Promote collaboration between the owners and users of the state/area-wide data to facilitate data linkage and applications for linked data.

a. Establish a state/area-wide CODES collaborative network.

(1) Convene a Board of Directors consisting of the data owners and major users of the state/area-wide data. The CODES Board of Directors will be responsible for managing and institutionalizing the linked data, establishing the data release policies for the linked data, supporting the activities of the grantee, ensuring that data linkage and application activities are appropriately coordinated within the state/area, and resolving common issues related to data accessibility, availability, completeness, quality, confidentiality, transfer, ownership, fee for service, management etc. The CODES Board of Directors shall meet bi-monthly.

(2) Convene a CODES Advisory Group consisting of the CODES Board of Directors and other stakeholders interested in the use of linked data to support highway safety, injury control, EMS, etc. The CODES Advisory Group will be informed of the results of the data linkage, application of the data for decision-making, the quality of the state/area-wide data for linkage and the quality of the linked data for analysis. The CODES Advisory Group shall meet twice a year.

b. Promote coordination of the various stakeholders through use of the Internet, teleconferencing, joint meetings, and other mechanisms to ensure frequent communication among all parties to minimize the expense of travel.

6. Work collaboratively with NHTSA to implement the Cooperative Agreement.

a. *Attend Initial Briefing Meeting.* Each grantee shall attend a briefing meeting (date and time to be scheduled within 30 days after the award) in Washington, DC with NHTSA staff. The

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purpose of the meeting will be to review the goals and objectives of the project, discuss implementation of the linkage software, review the tasks to be specified in the action plan for the data linkage and applications of the linked data for highway safety or injury control decision-making and discuss the agendas for the Board of Directors and Advisory Group.

b. *Submit Detailed Action Plan and Schedule.* Within 30 days after the briefing meeting, the grantee shall deliver a detailed action plan and schedule, covering the remaining funding period, for accomplishing the data linkage and incorporating information generated from linked data into the processes for highway safety or injury control decision-making. The action plan shall be subject to the technical direction and approval of NHTSA.

c. *Attend Technical Workshops.* All grantees together shall attend two technology transfer workshops during project performance at locations convenient to the majority of CODES grantees. The first meeting, to be scheduled during the ninth or tenth month of funding, will be organized to share data linkage experiences, discuss standardized formats for management reports, review the proposed state-specific highway safety applications of linked data, and resolve common problems. The second meeting will be scheduled approximately 12 months after first technical assistance meeting, at the end of the funding period, for the purpose of sharing results and making recommendations for future CODES projects.

d. *Attend National Meeting.* At the direction of the COTR, Grantee shall attend one national Meeting to report on progress or results from their CODES project.

e. *Progress Report.* Grantee shall submit quarterly progress reports. During the period of performance, the grantee will provide letter-type written reports to the COTR. These reports will compare what was proposed in the Action Plan with actual accomplishments during the past quarter; what commitments have been generated; what follow up and state-level support is expected; what problems have been experienced and what may be needed to overcome the problems; and what is specifically planned to be accomplished during the next quarter. These reports will be submitted seven days after the end of each quarter.

f. Develop a plan to institutionalize the data linkage and applications for linked data after Federal funding ends. By the end of the 15th month of funding, each grantee shall submit a long-range plan and schedule to institutionalize data linkage and the use of linked data for highway safety and injury control decision-making within the state.

g. *Project Report.* The grantee shall deliver to NHTSA, at the end of the project, a final report describing the results of the data linkage process, and the applications of the linked data generated during the project.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the Cooperative Agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the Cooperative Agreement and coordinate activities between the grantee and NHTSA.

2. Provide, at no cost to the grantee, training and technical assistance by a CODES expert for up to two weeks on-site and off-site during the project to assist the grantee in preparing the files for linkage, implementing probabilistic linkage techniques, validating the linkage results, developing applications for the linked data, and organizing the CODES Board of Directors and Advisory Group.

3. Develop a format in which the linked data and supporting documentation will be delivered to NHTSA.

4. Conduct Initial Briefing at NHTSA Headquarters in Washington, DC. (Date and time to be scheduled within 30 days after the award.) The purpose of the meeting will be to review the goals and objectives of the project, discuss implementation of the linkage software, identify the tasks to be specified in the action plan for the data linkage and applications of the linked data for highway safety or injury control decision-making, and discuss agendas for the Board of Directors and Advisory Group.

5. Conduct two Technical Assistance meetings for the purpose of technology transfer. The first meeting, to be scheduled during the ninth or tenth month of funding, will be organized to share data linkage experiences, develop a standardized format for management reports, review the proposed state-specific highway traffic safety applications of linked data, and resolve common problems. The second meeting will be scheduled at the end of the funding period for the purpose of sharing results and making recommendations for future CODES projects. Locations for the Workshops will be determined based on the location of the Grantees. However, for the purpose of cost estimation, assume the workshops will be held in Washington, DC.

6. Collaboratively work with the state when using the state's linked data to analyze and report on specific highway safety issues.

7. When appropriate, NHTSA will publish state-specific reports on CODES applications.

Period of Support

The project study effort described in this announcement will be supported through the award of up to four (4) Cooperative Agreements, depending upon the merit of the applications received and the availability of funding. It is anticipated that individual award amounts will range from $250,000–$300,000. Project efforts involving linkage of the state/area-wide data and applications for the linked data must be completed within twenty-one months after funding.

Eligibility Requirements

The grantee must be a state agency involved with highway traffic safety, such as a State Highway Safety Office, Department of Transportation or other State agency with demonstrated activities in the highway traffic safety areas, to ensure active involvement by highway traffic safety stakeholders. States that have previously been funded to develop CODES are not eligible. Only one application should be submitted for a state/area. Because this Cooperative Agreement program requires extensive collaboration among the data owners in order to achieve the program objectives, it is envisioned that the grantee agency may need to actively involve the data owners in the development of the formal application and may need to sub-contract activities with at least one of them to implement a successful CODES.

While the general eligibility requirements are broad, applicants are advised that this Cooperative Agreement program is not designed to support basic developmental efforts. Although no single organization within any state/area has all of the required data capabilities, the application should demonstrate strong collaborative agreements with the data owners and access to at least the state/area-wide crash, hospital, and either EMS or emergency department data, or both, by the time of the award. States/areas that collect at least the date of birth and zip code of residence on their crash data and have state/area-wide health and/or vehicle insurance claims information may be eligible, in spite of the lack of EMS or emergency department information, if the claims data include everyone involved in motor vehicle crashes. In addition, it is important that the applicant indicate the level of commitment, with state/area funding and/or shared resources, by the data owners to meet program objectives, particularly institutionalization of the data linkage and applications for linked data.

Application Procedure

Each applicant must submit one original and two (2) copies of the application package to: DOT/National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Lamont O. Norwood/Mark Kromer, 400 7th Street, SW., Room 5301, Washington, DC 20590. Applications must be typed on one side of the page only. An additional two (2) copies will facilitate the review process, but are not required. Applications must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–00–H–07212. Only complete application packages received on or before 2 p.m. on July 24, 2000 will be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (REV. 7–97, including 424A and 424B), Application for Federal Assistance, with the required information filled in and assurances signed (SF 424B). While the Form 424A deals with budget information and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs (direct labor, including labor category, level of effort, and rate; direct materials including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontractors/subgrants, with similar detail, if known; and overhead), as well as any costs the applicant proposes to contribute or obtain from other sources in support of the project. Applicants shall assume that awards will be made during September 2000 and should prepare their applications accordingly.

2. The application shall include a program narrative statement of not more than 20 pages, which addresses the following as a minimum:

a. A brief description of the state/area in terms of its highway safety and injury control decision-making processes for planning, performance monitoring and other functions aimed at reducing death, injury, and costs of injuries resulting from motor vehicle crashes. This description should indicate how linked data will make a difference to the decision-making processes.

b. A brief description of the existing crash and medical outcome data files. Applicants will link state/area-wide population-based crash data to EMS (and/or emergency department or insurance claims) and hospital discharge data to obtain medical and financial outcomes for persons injured in motor vehicle crashes for any two calendar years of data available since 1996. Linkages to census, other traffic records (vehicle registration, driver licensing, roadway, conviction/citation, *etc.*), insurance claims, *etc.*, are encouraged to meet priorities for highway safety and injury control decision-making. The following information should be included describing the state/area-wide data:

(1) The total crashes, total persons involved in crashes, total victims with injuries caused by a motor vehicle crash as identified or estimated and a descriptive profile of the total injuries by severity level, if available, state/area-wide.

(2) Information about the current status of the data files to be linked, recorded using the format below:

Data files	Reporting threshold (A)	Rate of compliance with (A)	Data years to be linked (19XX–19XX)	Month and year when most recent data year will become available	Percent of records computerized	Can remaining records be computerized? (Y/N)
Crash.						
EMS.						
ED.						
Hospital.						
Other.						

(3) The data elements chosen to identify persons and crashes and, for each, the missing data rate.

(4) The data elements indicating type of injury, severity of injury, total charges, a payer source and, for each, the missing data rate.

c. A brief description of the proposed sequence for linking the data files.

d. A brief description of how staff from the various data owners will be cross-trained in the CODES linkage to compensate for potential future changes in organizational priorities and personnel.

e. A brief description of the process to be used to ensure adequate documentation of the data files and linkage process.

f. A brief description of how the linked data will be converted into information useful for the highway safety and injury control decision-making processes for the purpose of reducing death, injury, and costs resulting from motor vehicle crashes.

Describe:

(1) The different types of decision-making processes, currently being utilized in the state/area, that identify highway traffic safety and injury control objectives and prioritize prevention programs that have the most impact on reducing death, injury and direct medical costs associated with motor vehicle crashes; and

(2) Why linked data are needed to make these decision-making processes more effective and how the data will be incorporated.

g. A brief description of each member of the CODES Board of Directors and the proposed arrangements describing the management and use of the linked data.

3. The application shall include an appendix. A large appendix is strongly discouraged. Additional material should be included only if it is necessary to support information about data linkage, applications for linked data or institutionalization discussed in the application. Do not send copies of brochures, documents, etc., developed as the result of a collaborative effort in the state/area. The appendix should include the following:

a. Letters of support from each proposed member of the CODES Board of Directors. A letter of support should reflect the signer's level of commitment to the CODES project and thus should not be a form letter. The letter of support should document:

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(1) Why linked data are important to the agency.

(2) The priority assigned by the agency to obtain linked data compared to other responsibilities.

(3) The agency's level of commitment in terms of the number of staff and the dollars or shared resources which will be available to support and institutionalize CODES.

(4) The agency's willingness to collaborate with other data owners to support shared ownership of the linked data.

(5) The agency's permission to release the linked data (or description of policies which would restrict transfer) to NHTSA at the end of the project.

b. A brief description or letters of support should be included for the other stakeholders to be represented on the CODES Advisory Group. The letters of support should indicate the stakeholder's need for the linked data, and willingness to facilitate the linkage of state/area-wide data or use of linked data for decision-making.

c. A list of activities in chronological order and a time line to show the expected schedule of accomplishments and their target dates.

d. Descriptions of the proposed project personnel as follows:

(1) Project Director: Include a resume along with a description of the director's leadership capabilities to make the various stakeholders work together.

(2) Key personnel proposed for the data linkage and applications of linked data, and other personnel considered critical to the successful accomplishment of this project: include a brief description of qualifications, employment status (permanent, temporary) in the organization, and respective organizational responsibilities. The proposed level of effort in performing the various activities should also be identified.

e. A brief description of the applicant's organizational experience in performing similar or related efforts, and the priority that will be assigned to this project compared to the organization's other responsibilities.

f. A brief description of any potential delays in implementing the project because of requirements for legislative approval before CODES funds can be expended.

g. *Data Use Agreement.* A description of the existing State laws and regulations governing patient/provider confidentiality in the data files being linked that would restrict use of the data for linkage and/or for transfer of the CODES linked data to NHTSA and conditions under which the linked data file may be used by NHTSA.

Application Review Process and Evaluation Factors

Initially, all application packages will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all of the items specified in the Application Content section of this announcement. Each complete application from an eligible recipient will then be evaluated by an Evaluation committee. The applications will be evaluated using the following criteria which are listed in descending order of importance:

1. *Understanding the intent of the program* (30%). The applicant's recognition of the importance of CODES to obtain medical and financial outcome data which are necessary for a comprehensive evaluation of the impact of highway safety and injury control countermeasures. The applicant's understanding of the importance of developing CODES as a meaningful and appropriate strategy for improving traffic records capabilities and ensuring the continuation of CODES after completion of this project.

2. *Technical approach for project completion* (30%). The reasonableness and feasibility of the applicant's approach for successfully achieving the objectives of the project within the required time frame. The appropriateness and feasibility of the applicant's proposed plans for data linkage and applications for the linked data. Evidence that the applicant has the necessary authorization and support from data owners to access medical and non-medical state/area-wide data, particularly total charges and information about type and severity of injury, which are not routinely available for highway safety analyses and the necessary authorization to data.

3. *Project personnel* (20%). The adequacy of the proposed personnel to successfully perform the project study, including qualifications and experience (both general and project related), the various disciplines represented, and the relative level of effort proposed for the professional, technical and support staff.

4. *Organizational capabilities* (20%). The adequacy of organizational resources and experience to successfully manage and perform the project, particularly to support the collaborative network and respond to the increasing demand for access to the linked data. The proposed coordination with and use of other organizational support and resources, including other sources of financial support.

Depending upon the results of the evaluation process, NHTSA may choose to alter the number of awards. In addition, NHTSA may suggest revisions to applications as a condition of further consideration to ensure the most efficient and effective performance consistent with the objectives of the project. An organizational representative of the National Association of Governors' Highway Safety Representatives will be assisting in NHTSA's technical evaluation process.

Special Award Selection Factors

After evaluating all applications received, in the event that insufficient funds are available to award to all meritorious applicants, NHTSA may consider the following special award factors in the award decision:

1. Priority may be given to those applicants that have statewide data available for linkage.

2. Priority may be given to applicants who have the highest probability of maintaining the collaborative network of data owners and users, of institutionalizing the linkage of the crash and medical outcome data on a routine basis, and of continuing to respond to data requests after the project is completed.

3. Priority may be given to an applicant on the basis that the application fits a profile of providing NHTSA with a broad range of population densities (rural through metropolitan) with different highway safety needs.

Terms and Conditions of the Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants). In addition, grantees must certify that data release agreements have been signed by the owners of the data files being linked to transfer the CODES linked database to NHTSA, according to NHTSA specifications.

2. Reporting Requirements and Deliverables:

a. *Detailed Action Plan and Schedule.* Within 30 days after the briefing meeting, the grantee shall deliver a detailed action plan and schedule for accomplishing the data linkage and applications of linked data for decision-making, showing any revisions to the approach proposed in the grantee's application. This detailed action plan will be subject to the technical direction and approval of NHTSA and will describe the following:

(1) The personnel and hardware resources required to perform the data linkage.

(2) The process for obtaining the different files required for linkage.

(3) The process for accelerating the data processing schedule, if necessary, so that the state/area-wide data are available in a timely manner for the linkage.

(4) The process for verifying the data and performing additional edits on the linkage variables.

(5) The process for resolving problems expected during linkage and their proposed solutions.

(6) The process for documenting the content of the various linked data files, programs used for editing, and the linkage process itself.

(7) The milestones for completing the various phases of the probabilistic linkage and validation processes.

(8) The milestones for proposed meeting schedules and actions by the Board of Directors and Advisory Group.

(9) Date(s) for providing the linked data to NHTSA.

(10) The process for identifying the limitations of the final linked database or applications of the linked data, if any.

(11) The process for ensuring access to the linked data as demand for information increases.

(12) The process for choosing those applications of linked data that will have the most impact on reducing death, injury, and costs of injuries related to motor vehicle crashes.

(13) The milestones for implementing the applications.

(14) The benefits expected from the applications of the linked data.

b. *Quarterly Progress Report.* During the performance, the grantee will provide letter-type written reports to the NHTSA COTR. These reports will compare what was proposed in the Plan of Action with actual accomplishments during the past quarter; what commitments have been generated; what follow-up and state-level support is expected; what problems have been experienced and what may be needed to overcome the problems; and what is specifically planned to be accomplished during the next quarter. These reports will be submitted seven days after the end of each quarter.

c. *Board of Directors and Advisory Group Meetings.* Copies of the agenda and minutes for each Board of Directors and Advisory Group Meeting will be attached to the Progress Report submitted to NHTSA immediately following the meeting.

d. *Institutionalization Plan.* The grantee shall deliver to NHTSA, by the end of the 15th month of funding, a long-range plan and schedule to institutionalize data linkage and the use of linked data for highway safety and injury control decision-making within the state.

e. *Project Report.* The grantee shall deliver to NHTSA, at the end of the project, a final report describing the results of the data linkage process, and the applications of the linked data. The report shall include the following:

(1) A description of the state/area wide linked crash and injury data;

(2) A description of the file preparation;

(3) A description of the linkage, validation processes and results;

(4) A description of the extent of the documentation and how the documentation will facilitate linkage in subsequent years;

(5) A discussion of the limitations of the linked data and subsequent applications of these data;

(6) A description of the applications of linked data implemented for decision-making and results of the decision-making;

(7) A description of how the data linkage and use of linked data for decision making has been institutionalized for decision-making;

(8) A description of the documentation created to facilitate repeating of the linkage process and an estimate of how much time is needed to repeat the linkage in subsequent years;

(9) A copy of the public-use formats that were successful for incorporating linked data into the decision-making processes for highway safety and injury control; and

(10) A copy of the management reports prepared using the standardized format for the national CODES report.

f. *CODES Linked Database.* The grantee shall deliver to NHTSA after linkage, at the date specified in the Action Plan, the CODES linked databases. NHTSA will use the data to help facilitate the development of data linkage capabilities at the state/area-wide level and to encourage use of the linked data for decision making.

The deliverables will include:

(1) The database in an electronic media and format acceptable to NHTSA, including all persons, regardless of injury severity (none, fatal, non-fatal), involved in a reported motor vehicle crash for any two calendar years of available data since 1996, and including medical and financial outcome information for those who are linked.

(2) A copy of the file structure for the linked data file.

(3) Documentation of the definitions and file structure for each of the data elements contained in the linked data files.

(4) An analysis of the quality of the linked data and a description of any data bias which may exist based on an analysis of the false positive and false negative linked records.

3. During the effective performance period of Cooperative Agreements awarded as a result of this announcement, the agreement as applicable to the grantee shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

Issued: May 19, 2000.

Joseph Kanianthra,

Acting Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 00–13100 Filed 5–24–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Incentive Grants To Support Increased Seat Belt Use Rates

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of discretionary grants to support innovative projects designed to increase seat belt use rates.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the second year of a discretionary grant program under Section 1403 of the Transportation Equity Act for the 21st Century (TEA–21) to provide funding to States for innovative projects to increase seat belt use rates. Consistent with last year, the goal of this program is to increase seat belt use rates across the nation in order to reduce the deaths, injuries, and societal costs that result from motor vehicle crashes. This notice solicits applications from the States, the District of Columbia and Puerto Rico, through their Governors' Representatives for Highway Safety, for funds to be made available in FY 2001. Detailed application instructions are provided in the Application Contents section of this Notice. The Section 157 Innovative grants will be awarded competitively based upon the evaluation results of the applications received. Detailed information on the evaluation criteria is provided in the Application Review Procedures and Evaluation Criteria section of this Notice.

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DATES: Applications must be received by the office designated below on or before July 26, 2000.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Amy Poling, 400 7th Street, SW, Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Grant Program No. DTNH22–00–G–09200

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Amy Poling, Office of Contracts and Procurement by e-mail at apoling@nhtsa.dot.gov. or by phone at (202) 366–9552. Programmatic questions relating to this grant program should be directed to Philip Gulak, Occupant Protection Division (NTS–12), NHTSA, 400 7th Street, SW, Room 5118, Washington, DC 20590, by e-mail at pgulak@nhtsa.dot.gov, or by phone at (202) 366–2708. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

The Transportation Equity Act for the 21st Century (TEA–21), Pub.L. 105–178, was enacted on June 9, 1998. Section 1403 of TEA–21 contained a safety incentive grant program for use of seat belts. Under this program, funds are allocated each fiscal year from 1999 until 2003 to States that exceed the national average seat belt use rate or that improve their State seat belt use rate, based on certain required determinations and findings. Section 1403 provided that, beginning in fiscal year 2000, any funds remaining unallocated in a fiscal year after the determinations and findings related to seat belt use rates have been made are to be used to "make allocations to States to carry out innovative projects to promote increased seat belt use rates." Today's notice solicits applications for funds that will become available in fiscal year 2001 under this latter provision.

TEA–21 imposes several requirements under the innovative projects funding provision. Specifically, in order to be eligible to receive an allocation, a State must develop a plan for innovative projects to promote increased seat belt use rates and submit the plan to the Secretary of Transportation (by delegation, to NHTSA). NHTSA was directed to establish criteria governing the selection of State plans that are to receive allocations and was further directed to "ensure, to the maximum extent practicable, demographic and geographic diversity and a diversity of seat belt use rates among the States selected for allocations." Finally, subject to the availability of funds, TEA–21 provides that the amount of each grant under a State plan is to be not less than $100,000.

In the following sections, the agency describes the application and award procedures for receipt of funds under this provision, including requirements related to the contents of a State's plan for innovative projects and the criteria the agency will use to evaluate State plans and make selections for award. To assist the States in formulating plans that meet these criteria, we have provided an extensive discussion of strategies for increasing seat belt use and of the ways in which States might demonstrate innovation. Please refer to the Appendix at the end of this Notice for additional background information about strategies that have been used in the past to increase belt use.

Objective of This Grant Program

The objective of this grant program is to increase State seat belt use rates, for both adults and children, by supporting the implementation of innovative projects that build upon strategies known to be effective in increasing seat belt use rates. Because one of the best ways to ensure that children develop a habit of buckling up is for parents to properly restrain them in child safety seats, efforts to increase the use of child safety seats, in addition to seat belts, may be included among the innovative efforts in a State's plan. However, efforts to increase seat belt use rates must remain the focus of the State's plan.

Examples of Effective Innovative Strategies

Recent seat belt use increases in California, North Carolina, Louisiana, Georgia, Maryland, and the District of Columbia (see discussion in next section), as well as increases following national mobilizations, have demonstrated the tremendous potential of highly visible enforcement of strong laws to increase seat belt and child seat use. Given the dramatic results of these programs, NHTSA believes that highly visible enforcement is an important foundation upon which any effective program should be based. An extensive review of the efforts in both the United States and Canada demonstrates that, without a core of highly visible enforcement efforts, high usage rates have not been achieved in any major jurisdiction.

In view of these findings, to be considered for award of funds under this program, the State's innovative project plan should be based on a core component of highly visible enforcement of its seat belt use law with the clear intent of increasing the State's seat belt use rate. A proposal to increase seat belt use in only a limited number of jurisdictions, that would have a questionable impact on the overall state seat belt use rate, may be rejected during the evaluation process. Other components of the plan should support the core enforcement component. If a State is already pursuing a significant and visible enforcement effort, the innovative project plan should detail components that support, expand, or complement the existing enforcement effort. States submitting an innovative project plan with a core component (and supporting components) based on an approach other than enforcement should provide a strong rationale for the proposed approach, preferably accompanied by research evidence, demonstrating the significant potential for increasing the State's seat belt use rate. NHTSA will carefully consider this rationale in its evaluation of the proposal.

A State may demonstrate innovation in its enforcement efforts in a number of ways. If a State is not currently engaged in any form of highly visible enforcement of its occupant protection laws, implementation of such a program, in and of itself, would be innovative to that State. Additionally, innovation may be demonstrated in gaining essential support, implementing statewide training programs, and planning the logistics for wide scale enforcement supported by public information activities. For States that already are engaged in substantial enforcement efforts, innovation can be demonstrated by expanding these efforts. This might include finding more effective ways to reach rural, urban, or diverse groups with strategies designed to address the problem of low seat belt use among those groups. States that have upgraded their laws recently to allow for primary enforcement may wish to initiate innovative ways to implement, enforce, and publicize their newly enacted legislation. For States with secondary enforcement laws, where a motorist must be stopped for another offense before being cited for failure to buckle up, innovation may be demonstrated by integrating the enforcement of the seat belt law with enforcement of another traffic safety law (*e.g.*, an alcohol impaired driving law). Many opportunities for innovation exist, regardless of the State's current seat belt use rate or its ongoing efforts to increase it.

Following are some examples of innovative activities in support of a core component of enforcement:

—Initiate, or expand in novel ways, the operation of existing State or local enforcement-related campaigns;
—Implement highly visible seat belt and child safety seat enforcement efforts in major urban areas, in rural areas, or throughout the State;
—Expand participation across the State in semi-annual national seat belt enforcement mobilizations (*i.e.*, Operation ABC conducted in May and November);
—Plan and support efforts to train and motivate law enforcement officers, prosecutors and judges to consistently enforce, prosecute and adjudicate occupant protection law violations;
—Mount a highly visible program to implement newly enacted legislation which upgrades the State's seat belt or child passenger safety law;
—Initiate or expand public information and education programs designed to complement newly upgraded legislation and/or enhanced enforcement efforts;
—Establish new partnerships and coalitions to support ongoing implementation of legislation or enforcement efforts (*e.g.*, health care and medical groups, partnerships with diverse groups, businesses and employers);
—Initiate or expand public awareness campaigns targeted to specific populations that have low seat belt use (*e.g.*, part-time users; parents of children 0–15 years old; minority populations, including Native Americans; rural communities; males 15–24 years old; occupants of light trucks and sport utility vehicles);
—Implement a program to train law enforcement personnel on the importance of seat belt use, the specifics of the State's seat belt use law, and the importance of enforcing such law to increase usage rates;
—Initiate or expand standardized child passenger safety training of police officers and/or child passenger safety checks and/or clinics across broad geographical areas (*e.g.*, statewide, in major metropolitan areas, in rural areas of the State);
—Initiate, or expand in novel ways, campaigns which use enforcement of other traffic laws (*e.g.*, driving while intoxicated laws) as a means for implementing highly visible enforcement of seat belt use laws.

If a State wishes to submit a plan proposing a core component other than enforcement, it should demonstrate innovation by proposing to perform supporting activities similar in scope to those listed above. The State should demonstrate that the proposed activities have the potential to increase the State's seat belt use rate.

Self-Evaluations of Programs, Management and Resources

Meaningful and timely self-evaluations of each State's innovative programs, management, and associated resources are very important to improving programs in subsequent years. On an annual basis, grantees and NHTSA need to generate the most useful insights and most valuable lessons possible from the 157 program. Consequently, program evaluation will be a necessary component of each award (see Application Contents, Section C.2.e.).

NHTSA Involvement

In support of the activities undertaken by this grant program, NHTSA will:

1. Provide a Contracting Officer's Technical Representative (COTR) to coordinate activities between the Grantee and NHTSA during grant performance, and to serve as a liaison between NHTSA Headquarters, NHTSA Regional offices and the grantee.
2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.

Availability of Funds and Period of Support

The efforts solicited in this announcement will be supported through the award of grants to a number of States, on the basis of the evaluation criteria identified below. The number of grants awarded will depend upon the merits of the applications received, the amount of funds available in fiscal year 2001, and the size of the grants awarded to individual States. The total amount of funds to be made available is not known at this time, as it is dependent upon appropriations by the Congress and the amount of allocations to States based on State seat belt use rates achieved (see discussion in Background section, above). However, the agency estimates that as much as $25–$30 million may become available for this program in fiscal year 2001.

In accordance with TEA–21, the minimum amount of an individual grant award to a State will be $100,000, subject to the availability of funds. However, NHTSA may make individual awards in amounts significantly greater than $100,000, subject to the availability of funds and consistent with the merits of a State's application. In fiscal year 2000, forty-six Innovative grants were awarded. Those grants ranged from $121,500 to $1,557,608. At this time, neither the exact amount of funds available nor the number and proposed costs of meritorious State applications can be determined. There is no assurance that the number of grant awards in FY 2001 will be the same or similar to the number of awards in FY 2000, nor is there any assurance that those States that received awards in FY 2000 will receive awards in FY 2001. In addition, NHTSA may choose to fund an entire plan, or portions of a plan or it may choose to reject a plan, after review based on the evaluation criteria. There is no cost-sharing requirement under this program. The period of support for a grant under this program will be a total of 15 months, with 12 months of plan implementation, and three months for evaluation and preparation of the annual report.

NHTSA estimates that the award of Section 157 Innovative Grants for fiscal year 2001 will occur during January 2001.

Allowable Uses of Federal Funds

Allowable uses of Federal funds shall be governed by the relevant allowable cost section and cost principles referenced in 49 CFR part 18—Department of Transportation Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Funds provided to a State under this grant program shall be used to carry out the activities described in the State's plan for which the grant is awarded.

Eligibility Requirements

Only the 50 States, the District of Columbia, and Puerto Rico, through their Governors' Representatives for Highway Safety, will be considered eligible to receive funding under this grant program.

Application Procedures

Each applicant must submit one original and two copies of the application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Amy Poling, 400 7th Street, SW, Room 5301, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required.

Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Grant Program No. DTNH22–00–G–09200. Only complete application packages submitted by a State's Governor's Representative for Highway Safety on or before July 26, 2000 will be considered.

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Application Contents

This year, the required contents of each State's application will be based upon the State's application and award results for FY 2000 under this grant program.

A. If a State received an award based on a one-year proposal and would like to continue the same or similar work, it may submit an updated or modified version of that proposal. The State is encouraged to modify or strengthen its proposal as appropriate to increase its effectiveness in raising its seat belt use rate. An evaluation component must be included. A Continuation Application using the SF 424 must be submitted which confirms that the same effort will be continued, or indicates what changes are proposed, along with the itemized budget for the proposed effort.

B. If a State received an award based on a proposal that requested funding for several years, and the State wishes to continue the same effort, the State need only re-submit the part of its proposal (or a modified version of such), that relates to FY 2001. The State is encouraged to modify or strengthen its proposal to increase its effectiveness in raising its seat belt use rate. An evaluation component must be included. If there are any changes, additions, or deletions to the original scope of work identified and budgeted for the second year, a Continuation Application using the SF 424 must be submitted which provides a narrative explanation of the proposed differences, along with an itemized budget for the proposed effort.

C. If a State is applying for the first time, or if a State applied and did not receive an award in FY 2000, or if the State is proposing a completely new effort, the State must include in its application all of the contents listed below:

1. The application package must be submitted with OMB Standard Form 424, (Rev. 7–97 or 4–88, including 424A and 424B), Application for Federal Assistance, with the required information provided and the certified assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed total project effort, including evaluation and reporting, (direct labor, including labor category, level of effort, and rate; direct materials, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontracts/subgrants, with similar detail, if known; and overhead). and costs the applicant proposes to contribute or obtain from other sources in support of the projects in the innovative project plan.

2. All applications shall include a State plan detailing innovative projects to increase seat belt use rates. The State plan must provide the following information:

a. An Introduction section with a brief general description of the State's population density, any unique population characteristics, a short summary of the status of the seat belt use law in the State, and the pattern of estimated seat belt use rates for the State.

b. A Discussion section that presents the principal goals and objectives of the proposed plan and articulates the potential to increase State seat belt use rates, with supporting rationale. This section should also identify any proposed partnerships, coalitions, or leveraging of resources that will be employed as a means to implement a comprehensive and significant enforcement effort, as well as public information or educational activities. Any known barriers to implementation of the State's plan should be identified, with a discussion of how such barriers will be overcome. Relevant data based on studies of the program should be included or footnoted. Supporting documentation from concerned interests other than the applicant may be included.

Documentation of existing public and/or political support may be included (*e.g.* endorsement of the Governor, State Police or Patrol, State Association of Chiefs of Police, State Medical Society, etc).

c. A Project Description section, with a detailed description of the innovative projects to be undertaken by the State under the plan, including, for each activity:

(1) the key strategies to be employed to achieve a significant seat belt use rate increase (*e.g.*, enforcement, public information and education, training, incentive/reward efforts);

(2) the innovative features (*e.g.* new participants, expanded efforts, unique resources, design or technological innovations, reductions in cost or time, integration with existing State efforts, extraordinary community involvement); and

(3) a work plan listing milestones in chronological order to show the schedule of expected accomplishments and their target dates. For example, in a work plan based on an enforcement component, the State should provide the following information:

A description of the proposed enforcement waves (if a sTEP–type enforcement activity is included in the State's proposal), detailing

- The approximate dates when each wave will occur
- How long each wave will last (*i.e.*, duration of actual intensified enforcement)
- The number of law enforcement agencies that are expected to participate in each wave
- The approximate cumulative percentage of the State's population served by the participating *local* law enforcement agencies, and what affect this population could have on the State's seat belt use rate
- The kinds of law enforcement activities and strategies that will take place in each wave (*e.g.*, checkpoints, saturation patrols, foot patrols at selected intersections, etc.)
- The number of officers that will participate
- The number of hours, on average, each officer will participate during each wave
- The number of law enforcement contacts, on average, each officer is expected to make per hour during each wave
- The percentage of these contacts, on average, that are expected to result in a citation for a seat belt or child passenger safety violation.

A State that proposes a component other than enforcement should provide a similarly comprehensive work plan containing all relevant milestones.

d. A Personnel section, which identifies the proposed program manager, key personnel and other proposed personnel considered critical to the successful accomplishment of the activities under the State's plan. A brief description of their qualifications and respective responsibilities shall be included. The proposed level of their effort and contributions to the various activities in the plan shall also be identified. Each organization, corporation, or consultant who will work on the innovative project plan shall be identified, along with a short description of the nature of the effort or contribution and relevant experience.

e. An Evaluation section, with a description of how the State will evaluate and measure the outcomes of the activities in its innovative project plan. It is critically important that the innovative programs funded as a result of this announcement be carefully evaluated so that others may learn the relative strengths and weaknesses of the strategies and approaches undertaken and what effects they have on seat belt use rates. The evaluation section should describe the methods for assessing actual results achieved under the plan. Outcomes can be documented in a number of ways. Increases in observed seat belt use and reductions in motor vehicle crash fatalities and injuries provide the ultimate measure of success. However, intermediate measures also may be used to measure progress. For a program based on an enforcement component, these measures may include: (i) Increases in the number of law enforcement personnel trained to enforce occupant protection laws; (ii) increased statewide participation in semi-annual enforcement mobilizations (Operation ABC); (iii) increased public perception of ongoing enforcement and public education activities; (iv) increased numbers of public and private sector partners involved in implementing the Statewide programs that support enforcement efforts; (v) the number of incentive programs, including those that complement enforcement efforts; or (vi) extent to which occupant protection enforcement activities are integrated with other State enforcement activities. Data sources should be identified, and collection and analysis approaches should be described. In particular, the State's proposal should describe how the State intends to assess the effectiveness of its project with respect to:

- Seat belt use rates
- Level of actual ticketing, other enforcement activities and activity to generate support for enforcement
- Public awareness of ticketing and other enforcement efforts
- Public support for seat belt and child passenger safety enforcement.
- Encouraging specific enforcement-related media efforts

For a program based on a component other than enforcement, the State should provide a similar level of detail in measuring progress and assessing outcomes.

f. An Options section, in which the state may choose to propose either optional tasks or activities in addition to the core set of tasks or activities, or optional levels of effort. For either type of option, the State must include a separate budget which clearly delineates the costs associated with each optional task or level of effort. For example, a State may propose a project plan that includes five week-long enforcement waves with the annual project budget, as well as an optional level of effort for an additional sixth enforcement wave and its associated costs. Doing this will allow maximum flexibility in the amount of funding awarded to a State based on funds available.

Application Review Procedures and Evaluation Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all of the information required by the Application Contents section of the notice. Each complete application from an eligible recipient then will be evaluated by an Evaluation Committee. Incomplete applications will be rejected without further review. This evaluation includes a process of reviewing all grant applications; submitting technical, program and budget questions about the proposals to applicants, where necessary; reviewing answers to these questions; and engaging in negotiations where appropriate. This process is expected to extend over the course of several months, and applicants may expect correspondence of this nature throughout this time period. Using this process, the applications will be evaluated in accordance with the following criteria:

1. Evaluation Criterion 1 (80% of total score): The goal(s) the State proposes to achieve, as described in its innovative project plan. The overall soundness and feasibility of the plan for achieving the goal(s), and the potential effectiveness of the proposed activities in the plan for increasing the State's seat belt use rate. The extent to which the plan details a significant and comprehensive enforcement effort or, where another approach is selected, provides evidence supporting the effectiveness of the proposed approach. Regardless of method, the goal must be to increase the State's seat belt use rate. Under this first criterion, all applications will be evaluated using the following sub-factors:

(a) Is the State's plan sound and feasible to effectively achieve the stated goal(s) for increasing the State's seat belt use rate?

(b) Does the plan detail a significant and comprehensive enforcement effort or, if another approach is proposed, is there evidence supporting the effectiveness of the approach?

(c) Are the data collection methodologies and analytical approaches adequately described in the evaluation plan and will the plan effectively measure the outcomes of the proposed activities?

2. Evaluation Criterion 2 (20% of total score): The organizational resources the State will draw upon, and how the State will provide the program management capability and personnel expertise to successfully perform the activities in its innovative project plan. The adequacy of the proposed personnel (including subcontractor and subgrantee personnel) to successfully perform the proposed activities, including qualifications and experience, the various disciplines represented and the relative level of effort proposed for the professional, technical, and support staff, will be considered.

Each application will be reviewed and rated in accordance with the evaluation criteria outlined above. If an application receives a low rating, NHTSA may eliminate it from further consideration for award without discussions with an offeror. For applications that are not eliminated during this initial review, NHTSA may suggest revisions as a condition of further consideration, during the negotiation process described above, to ensure the most efficient and effective performance consistent with the objectives of achieving increased State seat belt use rates. It is anticipated that awards will be made in January 2001.

Special Award Selection Factors

After evaluating all applications received, in the event that insufficient funds are available to award all requested amounts to all meritorious applicants, NHTSA may consider the following special award factors in the award decision:

1. Every effort will be made to provide grants to a diverse group of States representing a broad range of geographic, demographic, and use rate characteristics. Thus, preference may be given to an applicant that fits the need for such diversity.

2. Preference may be given to an applicant on the basis that its application is effectively integrated and coordinated with other ongoing efforts in the State, resulting in additional opportunity for immediately increasing seat belt use rates. This could include proposed cost-sharing strategies, and/or the use of other federal, State, local and private funding sources to complement those available under this announcement.

Terms and Conditions of the Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

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2. Reporting Requirements and Deliverables:

a. Quarterly Progress Reports should include a summary of the previous quarter's enforcement and other activities and accomplishments, significant problems encountered or anticipated, a brief itemization of expenditures made during the quarter, and proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report.

b. Draft Final Report: The grantee shall prepare a Draft Final Report that includes a complete description of the innovative projects conducted, including partners, overall program implementation, evaluation methodology and findings from the program evaluation. In terms of information transfer, it is important to know what worked and what did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The grantee shall submit the Draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

c. Final Report: The grantee shall revise the Draft Final Report to reflect the COTR's comments. The revised final report shall be delivered to the COTR 15 days before the end of the performance period. The grantee shall supply the COTR :

—A camera ready version of the document as printed.

—A copy, on appropriate media (diskette, Syquest disk, etc.), of the document in the original program format that was used for the printing process.

Note: Some documents require several different original program languages (e.g., PageMaker was the program format for the general layout and design and Power point was used for charts and yet another was used for photographs, etc.). Each of these component parts should be available on disk, properly labeled with the program format and the file names. For example, Power point files should be clearly identified by both a descriptive name and file name (e.g., 1994 Fatalities—chart1.ppt).

—A complete version of the assembled document in portable document format (PDF) for placement of the report on the world wide web (WWW). This will be a file usually created with the Adobe Exchange program of the complete assembled document in the PDF format that will actually be placed on the WWW. The document would be completely assembled with all colors, charts, side bars, photographs, and graphics. This can be delivered to NHTSA on a standard 1.44 diskette (for small documents) or on any appropriate archival media (for large documents) such as a CD ROM, TR–1 Mini cartridge, Syquest disk, etc.

—Four additional hard copies of the final document.

3. During the effective performance period of grants awarded as a result of this announcement, the grant shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

Issued on: May 19, 2000.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

Appendix: Strategies That Have Proven Effective in Increasing Seat Belt Use

Seat belts, when properly used, are 45 percent effective in preventing deaths in potentially fatal crashes and 50 percent effective in preventing serious injuries. No other safety device has as much potential for immediately preventing deaths and injuries in motor vehicle crashes. The current level of seat belt use across the nation prevents more than 9,500 deaths and well over 200,000 injuries annually. Through 1997, more than 100,000 deaths and an estimated 2.5 million serious injuries have been prevented by seat belt use.

But, seat belt use rates and the resulting savings could be much greater. As of 1999, the average use rate among States in the U.S. was still well below the goal of 85 percent announced by the President for the year 2000 and at least a dozen States have use rates below 60 percent. On the other hand, use rates of 85–95 percent are a reality in most developed nations with seat belt use laws, and at least six U.S. States and the District of Columbia achieved use rates greater than 80 percent in 1999. A national use rate of 90 percent (the President's goal for 2005), among front seat occupants of all passenger vehicles, would result in the prevention of an additional 5,500 deaths and 130,000 serious injuries annually. This would translate into a $9 billion reduction in societal costs, including $356 million for Medicare and Medicaid.

Effective Enforcement Based Strategies

The history of efforts to increase seat belt use in the U.S. and in Canada suggests that highly visible enforcement of a strong seat belt law must be at the core of any effective program. No State has ever achieved a high seat belt use rate without such a component. Most States that have achieved rates greater than 70 percent have also had laws that allow for primary (standard) enforcement procedures.

Canada currently has a national seat belt use rate well above 90 percent. Nearly every province first attempted to increase seat belt use through voluntary approaches involving public information and education. These efforts were effective in achieving only very modest usage rates (no higher than 30 percent). Even the enactment of primary enforcement seat belt laws, without intense and highly visible enforcement, generally was not sufficient to achieve usage rates greater than 60–65 percent. By 1985, it became clear to Canadian and provincial officials that additional efforts would be needed to achieve levels of 80 percent or greater. These efforts, mounted from 1985 through 1995, centered around highly publicized "waves" of enforcement, a technique that had already been shown to increase seat belt use in Elmira, New York in 1985. When these procedures were implemented in the Canadian provinces, seat belt use generally increased from about 60 percent to well over 80 percent, within a period of 3–5 years.

The U.S. experience has been similar. Prior to 1980, many attempts were made to increase seat belt use through voluntary, persuasive, or educational methods. Most of these efforts were initiated at local, county, or state levels. Nationally, seat belt use remained very low, reaching only about 11 percent. From 1980–1984, efforts to increase seat belt use emphasized networking with various public and private groups to implement public education programs, incentives, and seat belt use policies. While there were some small gains documented in individual organizations, these efforts did not result in any significant increases in seat belt use in any large city or in any State. By the end of 1984, the national usage rate, as measured by a 19-city observational survey, was only about 15 percent.

In 1984, New York enacted the first mandatory seat belt use law and, from 1985 to 1990, at least 37 other States enacted such laws. Most of these laws were secondary enforcement laws that required an officer to observe another traffic violation before stopping and citing a driver for failure to wear a seat belt. During this period of time, the 19-city index of seat belt use increased from about 15 percent to nearly 50 percent. However, as was the case in Canada, the enactment of laws, by itself, was not sufficient to achieve high usage rates.

The Canadian successes using periodic, highly visible "waves" of enforcement, as well as scores of such efforts implemented in local jurisdictions in the U.S., prompted NHTSA to implement Operation Buckle Down (also called the "70 by '92" Program) in 1991. This two-year program focused on Special Traffic Enforcement Programs (STEPs) to increase seat belt use. It was followed by a national usage rate increase from about 53 percent in 1990 to 62 percent by the end of 1992 (as measured by a weighted aggregate of State surveys). Neither the level of enforcement nor its public visibility was uniform in every State. Had these "waves" of enforcement been implemented in a more uniform fashion in every State, the impact likely would have been much greater.

In order to demonstrate the potential of periodic, highly visible enforcement in a more controlled environment, the State of North Carolina implemented its Click-It or Ticket program in 1993. In this program, waves of coordinated and highly publicized enforcement efforts (i.e., checkpoints) were implemented in every county. As a result, seat belt use increased statewide, from 65 percent to over 80 percent, in just a few months. This program provided the clearest possible evidence to demonstrate the potential of highly visible enforcement to increase seat belt use in a large jurisdiction (i.e. an entire State).

On the west coast, the State of California had expended much effort over the years to enforce its secondary enforcement law. These efforts were successful in increasing the statewide usage rate to about 70 percent, where it plateaued. In 1993, California became the first State to upgrade its seat belt law from secondary to primary enforcement. As a result, the rate of seat belt usage increased by 13 percentage points (from 70 percent to 83 percent) in the first year after the law was upgraded.

The California success was a major factor in rekindling interest among safety officials in upgrading their secondary enforcement laws as a way to increase seat belt use. In 1995, Louisiana became the second State to upgrade from secondary to primary enforcement. As a result, it experienced an 18 percentage point increase (from 50 percent to 68 percent) over the next two years. Next, Georgia upgraded its law and experienced a 15 percentage point increase (from 53 percent to 68 percent). After mounting a highly visible enforcement effort in 1998 (Operation Strap 'N Snap), Georgia's usage increased by another 10 percentage points. Similarly, Maryland upgraded its seat belt law in 1997, immediately mounted a two-month enforcement effort, and experienced a 13 percentage point increase in usage. In 1998, the District of Columbia reported a 24 percentage point gain in usage (from 58% to 82%) after enacting one of the strongest seat belt use laws in the nation and implementing several waves of highly visible enforcement. Following a 1999 three-week enforcement effort in Elmira, New York, belt use increased to 90 percent. Taken together, the experiences of North Carolina, California, Louisiana, Georgia, Maryland, the District of Columbia and most recently Elmira, New York have clearly demonstrated that highly visible enforcement of strong laws has tremendous potential for increasing seat belt use rates.

Visible enforcement of strong laws also appears to be an essential component of any effective program to increase the use of child safety seats. This is important since early use of child safety seats contributes to the later use of seat belts by children and young adults. There is also a strong relationship between child safety seat use. Studies conducted in several States have found that child safety seat use is nearly three times as high when a driver is buckled up as when a driver is not buckled up. Thus, efforts to persuade adults to buckle up may be the single most important way to get young children protected. However, with child safety seats, correct use is a major concern and the training of law enforcement officers, parents, and advocates is needed to minimize incorrect use and to ensure age-appropriate graduation to seat belts among young children who have outgrown safety seats. Clearly, efforts to increase the use of seat belts and child safety seats are interdependent and complementary.

Prior to the 1977 passage of the Child Passenger Safety (CPS) law in Tennessee, very little progress was made to get young children buckled up. Nationally, child safety seat use was less than 15 percent at the time. However, the Tennessee law was followed by the enactment of primary enforcement CPS laws in all States by 1985. This wave of legislation resulted in a major increase in child restraint use. By 1990, usage was estimated to be above 80 percent for infants and about 60 percent for toddlers.

Unfortunately, problems such as child seat misuse, premature graduation to seat belt use that skips the important step of booster seat use, and variation in age coverage continue to exist. Another issue to emerge has been the danger posed by passenger side air bags to unrestrained and improperly restrained children. This has led to NHTSA's publication of a final rule for advanced air bags and a new emphasis on programs to increase the proper use of child safety seats and revitalized law enforcement efforts in this area.

Obstacles to Increasing Seat Belt Use

Over the years, all of the States and many public and private sector organizations have been active participants in efforts to increase seat belt use. Public information and education efforts have been the dominant programs funded over the past two decades. Many States have identified major obstacles to enacting primary seat belt laws or implementing highly visible enforcement programs, even though such programs have been shown to result in high usage rates. Most frequently, State (and local) officials have identified a lack of resources for law enforcement as the single greatest barrier to implementing more intense, highly visible enforcement efforts. This lack of resources extends to funding, human resources, and public information support to conduct such campaigns. Over the past five years, many officials have indicated that, if they had the kind of resources provided to States like North Carolina for the Click It or Ticket program, they too would be able to mount similar programs and achieve similar results. The significant amount of funding that has become available under this grant program, combined with the additional new resources available under other TEA–21 programs, should drastically reduce this obstacle.

The second most frequently mentioned obstacle to mounting highly visible enforcement programs is a lack of support from key State and local leaders. Experience with the national mobilizations (Operation ABC) and with jurisdictions such as North Carolina, Georgia, Maryland and the District of Columbia suggests that this obstacle can be overcome to a significant degree by proactive efforts to gain the understanding, support and endorsement of various public and private organizations. Including a broad spectrum of such organizations as coalition members in the State's occupant protection program can be very effective in obtaining the commitment of key persons (e.g., the governor) and in gaining the support that is essential for sustained, highly visible enforcement efforts. Much innovation can be demonstrated in the way of developing public and official support for strong enforcement efforts.

Another obstacle frequently voiced by State and local enforcement officials is a lack of judicial and prosecutorial support for the enforcement of seat belt and child passenger safety laws. It has frequently been pointed out that an enforcement program can be undermined quickly if prosecutors fail to prosecute seat belt and child safety seat violations and judges repeatedly dismiss such cases. This can be overcome to some extent by educating prosecutors and judges across the State and urging them to value occupant protection laws as highly as any other traffic safety law.

Buckle Up America Campaign

In October 1997, the Buckle Up America (BUA) Campaign established ambitious national goals: (a) to increase seat belt use to 85 percent and reduce child-related fatalities (0–4 years) by 15 percent by the year 2000; and (b) to increase seat belt use to 90 percent and reduce child-related fatalities by 25 percent by the year 2005. This Campaign advocates a four part strategy: (1) building public-private partnerships; (2) enacting strong legislation; (3) maintaining high visibility law enforcement; (4) and conducting effective public education. Central to this Campaign's success is the encouragement of primary seat belt use laws and the implementation of two major enforcement mobilizations each year (Memorial Day and Thanksgiving holidays). During the November 1999 mobilization conducted throughout the week surrounding Thanksgiving, over 7,100 police agencies from all 50 states participated in Operation ABC.

The BUA Campaign and the efforts of the Air Bag and Seat Belt Safety Campaign (including Operation ABC) provide a useful framework for the implementation of this grant program. They provide a blueprint for projects that States may wish to implement, using funds to be made available in accordance with this notice. Conversely, this grant program provides an unprecedented opportunity to achieve the ambitious goals established under the BUA Campaign.

[FR Doc. 00–13099 Filed 5–24–00; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

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SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the eighteenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held July 3–13, 2000 in Geneva, Switzerland.

DATES: June 21, 2000 10 a.m.–1 p.m., Room 6244–6248; July 19, 2000, 10 a.m.–1 p.m., Room 6244–6248.

ADDRESSES: Both meetings will be held at DOT Headquarters, Nassif Building, Room 6244–6248, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, or Bob Richard, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the eighteenth session of the UNSCOE and to discuss U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the UNSCOE session and to prepare for the twenty-first Session of the United Nations Committee of Experts on the Transport of Dangerous Goods (UNSCOE) which is scheduled for December 4–13, 2000 in Geneva, Switzerland. Topics to be covered during the public meetings include: (1) Global harmonization of classification criteria, (2) Reformatting the UN Recommendations into a model rule, (3) Criteria for Environmentally Hazardous Substances, (4) Intermodal portable tank requirements including requirements for the transport of solids in portable tanks, (5) Requirements applicable to small quantities of hazardous materials in transport (limited quantities) including package marking requirements, package quantity limits and requirements applicable to consumer commodities, (6) Harmonized requirements for compress gas cylinders, (7) Classification of individual substances, (8) Requirements for bulk and non-bulk packagings used to transport hazardous materials and (9) Hazard communication requirements including harmonized shipping paper requirements.

The public is invited to attend without prior notification.

Documents

Copies of documents for the UNSCOE meeting may be obtained by downloading them from the United Nations Transport Division's web site at http://www.unece.org/trans/main/dgdb/dgsubc/dgscomm.html. Information concerning UN dangerous goods meetings including agendas can be downloaded at http://www.unece.org/trans/danger/meetings.htm#ST/SG. These sites may also be accessed through RSPA's Hazardous Materials Safety Homepage at http://hazmat.dot.gov/intstandards.htm. RSPA's site also provides information regarding the UNSCOE and related matters such as a summary of decisions taken at the 17th session of the UNSCOE, meeting dates and a summary of the primary topics which the UNSCOE plans to address in the 1999–2000 biennium.

Issued in Washington, DC, on May 22, 2000.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–13183 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33876]

State of Georgia, Department of Transportation—Acquisition Exemption—Georgia Southwestern Railroad, Inc.

The State of Georgia, Department of Transportation (GDOT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Georgia Southwestern Railroad, Inc. (GSWR) certain railroad assets, including approximately 71.13 miles of rail line extending between Rochelle, GA (milepost 644.00), and a point near Preston, GA (milepost 713.00), and between Omaha, GA (milepost 753.00), and Mahrt, AL (milepost 755.13).[1]

The transaction is scheduled to take place as soon as possible after the May 22, 2000 effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*.[2] Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33876, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Luke Cousins, State of Georgia, Department of Transportation, #2 Capitol Square, S.W., Atlanta, GA 30334–1002.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 18, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–13171 Filed 5–24–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The transaction does not include the right or obligation to conduct common carrier freight operations. Heart of Georgia Railroad, Inc. (HOG) acquired the exclusive rail freight easement over the rail line. *See Heart of Georgia Railroad, Inc.—Acquisition and Operation Exemption—State of Georgia and Georgia Southwestern Railroad, Inc.*, STB Finance Docket No. 33867 (STB served May 4, 2000). HOG currently conducts and will continue to conduct common carrier freight operations over the rail line. Neither GDOT nor GSWR will have a common carrier obligation to provide freight services when this transaction is completed.

[2] A motion to dismiss has been filed in this proceeding. The motion will be addressed in a subsequent Board decision.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 16, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2000 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0205.
Form Number: ATF F 5110.40.
Type of Review: Extension.
Title: Distilled Spirits Records and Monthly Report of Production Operations.
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,600 hours.

OMB Number: 1512–0247.
Recordkeeping Requirement ID Number: ATF REC 5000/2.
Type of Review: Extension.
Title: Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.
Description: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 50.
Estimated Burden Hours Per Recordkeeper: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 325 hours.

OMB Number: 1512–0292.
Recordkeeping Requirement ID Number: ATF REC 5120/2.
Type of Review: Extension.
Title: Letterhead Applications and Notices Relating to Wine.
Description: Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,650.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 825 hours.

OMB Number: 1512–0335.
Recordkeeping Requirement ID Number: ATF REC 5150/4.
Type of Review: Extension.
Title: Letterhead Applications and Notices Relating to Tax-Free Alcohol.
Description: Tax-free alcohol is used for nonbeverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. Permits/Applications control authorized uses and flow. Protect tax revenue and public safety.
Respondents: Not-for-profit institutions, Federal Government, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 4,444.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 2,222 hours.

OMB Number: 1512–0512.
Form Number: None.
Type of Review: Extension.
Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax.
Description: Excise taxes are collected on the sale or use of firearms and ammunition by firearms or ammunition manufacturers, importers or producers. Taxpayers who elect to pay excise taxes by electronic fund transfer must furnish a written notice upon election and discontinuance. Tax revenue will be protected.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512–0540.
Form Number: ATF REC 5120/11.
Type of Review: Extension.
Title: Information Collection in Support of Small Producer's Wine Tax Credit.
Description: ATF needs this information to insure proper tax credit. The information is used by taxpayers in preparing their returns and by ATF to verify tax computation. Recordkeepers are wine producers who want to transfer their credit to warehouse operators and the transferees who take such credit.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 280.
Estimated Burden Hours Per Recordkeeper: None.
Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–13116 Filed 5–24–00; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 19, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2000 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0038.
Form Number: ATF F 5030.6.
Type of Review: Extension.
Title: Authorization to Furnish Financial Information and Certificate of Compliance.
Description: The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. ATF F 5030.6 serves as both a customer authorization for ATF to receive information and as the required certification to the financial institution.

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Respondents: Business of other for-profit.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 500 hours.
OMB Number: 1512–0059.
Form Number: ATF F 5120.29.
Type of Review: Extension.
Title: Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.
Description: ATF F 5120.29 is used to determine the classification of wines for labeling and consumer protection. The form describes the person filing, type of product to be made and restrictions to the labeling and manufacture. The form is also used to audit a product.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,200 hours.
OMB Number: 1512–0082.
Form Number: ATF F 1582–A (5120.24).
Type of Review: Extension.
Title: Drawback on Wines Exported.
Description: When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U. S., they file a claim for drawback or refund for the taxes that have already been paid on the wine. This form notifies ATF that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 900.
Estimated Burden Hours Per Respondent: 1 hour, 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,025 hours.
OMB Number: 1512–0131.
Form Number: ATF F 5400.14/5400.15, Part III.
Type of Review: Extension.
Title: Renewal of Explosives License or Permit.
Description: This information collection activity is used for the renewal of explosives licenses and permits. This short renewal form is used in lieu of a more detailed application.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 2,500.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 825 hours.
OMB Number: 1512–0554.
Form Number: ATF F 5000.28T.
Type of Review: Extension.
Title: 2000 Floor Stocks Tax Return (Cigarettes) and Recordkeeping Requirements.
Description: All persons who hold for sale any cigarettes on January 1, 2000, must take an inventory. A floor stocks tax has been imposed on cigarettes. The recordkeeping and the tax return for this tax are prescribed by ATF.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 400,000.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: Other (One-time).
Estimated Total Recordkeeping Burden: 1,532,000 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–13117 Filed 5–24–00; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 12, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0025.
Form Number: IRS Form 712.
Type of Review: Revision.
Title: Life Insurance Statement.
Description: Form 712 is used to establish the value of life insurance policies for estate and gift tax purposes. The tax is based on the value of these policies. The form is completed by life insurance companies.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 60,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	18 hr., 11 min.
Learning about the law or the form.	6 min.
Preparing and sending the form to the IRS.	23 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 1,120,800 hours.
OMB Number: 1545–0257.
Form Number: IRS Forms 8109, 8109-B, and 8109-C.
Type of Review: Extension.
Title: Federal Tax Deposits (8109 and 8109-B); and FTD Address Change (8109-C).
Description: Federal Tax Deposit Coupons are used to deposit certain types of taxes at authorized depositaries. Coupons are sent to the IRS Centers for crediting to taxpayers' accounts. Data is used by the IRS to make the credit and to verify tax deposits claimed on the returns. The FTD Address change is used to change the address on the FTD coupons. All taxpayers required to make deposits are affected.
Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 9,300,700.
Estimated Burden Hours Per Respondent: 2 minutes.
Frequency of Response: On occasion, Weekly, Monthly, Other (semi-weekly, monthly).

Estimated Total Reporting Burden: 1,841,607 hours.
OMB Number: 1545–1091.
Form Number: IRS Form 8810.
Type of Review: Extension.
Title: Corporate Passive Activity Loss or Credit Limitations.
Description: Under section 469, losses and credits from passive activities, to the extent they exceed passive income (or, in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 100,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	26 hr., 19 min.
Learning about the law or the form.	5 hr., 7 min.
Preparing and sending the form to the IRS.	5 hr., 43 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 3,708,000 hours.
OMB Number: 1545–1683.
Form Number: IRS Form 56-A (formerly Forms 12575 and 12575-A).
Type of Review: Revision.
Title: Notice Concerning Fiduciary Relationship—Illinois Type Land Trust.
Description: The data collected on the form provides trustees of Illinois Land Trusts a convenient method of reporting information related to creating, changing, and closing such trusts.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 10,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	40 min.
Learning about the law or the form.	10 min.
Preparing the form	21 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 15,100 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 00–13118 Filed 5–24–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; Comment Request

May 16, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0120.
Form Number: IRS Form 1099–G.
Type of Review: Extension.
Title: Certain Government and Qualified State Tuition Program Payments.
Description: Form 1099–G is used by governments (primarily state and local) to report to the IRS (and notify recipients of) certain payments (*e.g.*, unemployment compensation and income tax refunds). IRS uses the information to insure that the income is being properly reported by the recipients on their returns.
Respondents: Federal Government, State, Local or Tribal Government
Estimated Number of Respondents: 2,900.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 11,149,325 hours.
OMB Number: 1545–0190.
Form Number: IRS Form 4876–A.
Type of Review: Extension.
Title: Election To Be Treated as an Interest Charge DISC.
Description: A domestic corporations and its shareholders must elect to be an interest charge domestic international sales corporation (IC–DISC). Form 4876–A I used to make the election. IRS uses the information to determine if the corporation qualifies to be an IC–DISC.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hr., 4 min.
Learning about the law or the form—1 hr., 47 min.
Preparing and sending the form to the IRS—1 hr., 54 min.

Frequency of Response: Other (One-Time Election).
Estimated Total Reporting/ Recordkeeping Burden: 5,760 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–13119 Filed 5–24–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 16, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0205.
Form Number: IRS Form 5452.
Type of Review: Extension.
Title: Corporate Report of Nondividend Distribution.
Description: Form 5452 is used by corporations to report their nontaxable distributions as required Internal Revenue Code (IRC) 6042(d)(2). The information is used IRS to verify that the distributions are nontaxable as claimed.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/ Recordkeepers: 1,700.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8288	Form 8288–A
Recordkeeping	5 hr., 16 min.	2 hr., 52 min.
Learning about the law or the form	5 hr., 8 min.	30 min.
Preparing and sending the form to the IRS	6 hr., 39 min.	34 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 124,607 hours.
OMB Number: 1545–1257.
Form Number: IRS Form 8827.
Type of Review: Extension.
Title: Credit for Prior Year Minimum Tax—Corporation.
Description: Section 53(d), as revised, allows corporations a minimum tax credit based on the full amount of alternative minimum tax incurred in tax years beginning after 1989, or a carryforward for use in a future year.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents: 25,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 25,000 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–13120 Filed 5–24–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 18, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0195.
Form Number: IRS Form 5213.
Type of Review: Extension.
Title: Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

Description: This form is used by individuals, partnerships, estates, trusts, and S corporations to make an election to postpone an IRS determination as to whether an activity is engaged in for profit for 5 years (7 years for breeding, training, showing, or racing horses). The data is used to verify eligibility to make the election.
Respondents: Business or other for-profit, Individual or households.
Estimated Number of Respondents/ Recordkeepers: 10,730.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 min.
Learning about the law or the form.	10 min.
Preparing the form	10 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 8,262 hours.
OMB Number: 1545–0495.
Form Number: IRS Form 4506–A.
Type of Review: Extension.
Title: Request for Public Inspection or Copy of Exempt Organization IRS Form.
Description: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents/ Recordkeepers: 20,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 min.
Learning about the law or the form	3 min.
Preparing the form	13 min.
Copying, assembling, and sending the form to the IRS.	14 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 12,000 hours.
OMB Number: 1545–0865.
Form Number: IRS Form 8264.
Type of Review: Extension.
Title: Application for Registration of a Tax Shelter.
Description: Organizers of certain tax shelters are required to register them with the IRS using Form 8264. Other persons may have to register the tax shelter if the organizer doesn't. We use the information to five the tax shelter a registration number. Sellers of interests in the tax shelter furnish the number of investors who report the number on their tax returns.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	31 hr., 49 min.
Learning about the law or the form	1 hr., 17 min.
Preparing, copying, assembling, and sending the form to the IRS.	1 hr., 52 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 34,960 hours.
OMB Number: 1545–0881.
Form Number: IRS Form 8271.
Type of Review: Extension.
Title: Investor Reporting of Tax Shelter Registration Number.
Description: All persons who are claiming a deduction, loss, credit, or other tax benefit, or reporting any income on their returns from a tax shelter required to be registered (under IRC 6111) must report the tax shelter registration number on that return. Form 8271 is used for this purpose. We use the information to associate claimed benefits with the tax shelter and to determine if any compliance actions are needed.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.
Estimated Number of Respondents/ Recordkeepers: 297,500.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 min.
Learning about the law or the form	8 min.
Preparing the form	17 min.
Copying, assembling, and sending the form to the IRS.	10 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 205,275 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–13121 Filed 5–24–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, and Public Law 92–463, (Committee) will be held from Monday, June 5, 2000 to Wednesday, June 7, 2000, in Washington, DC. The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services to minority veterans; to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The meeting will convene to room 830, VA Central Office Building, 810 Vermont Avenue, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m. each day. On June 5, the Committee will focus on such health care issues as minority health—a global assessment, medical research, Board of Veterans Appeals (BVA) operations, and Minority and Veterans Business contacting. On Tuesday, June 6, the Committee will concentrate its effort on a report of a Veterans Identity Study, Hepatitis C infections, the cardiac care program evaluation, the Veterans' Benefits Administration's Road Map to Excellence and National Cemetery operations. The Committee will work in Subcommittees in the afternoon session. On Wednesday, June 7, the Committee will examine several diversity training programs and will begin drafting its annual report for Fiscal Year 2000.

These sessions will be open to the public. In order to notify the VA Security Office of the number of visitors to expect, those wishing to attend the meeting should contact Mr. Anthony T.

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Hawkins, Department of Veterans Affairs, at (202) 273–6708, before June 1, 2000. No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: May 16, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

FR Doc. 00–13167 Filed 5–24–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a Meeting of the Advisory Committee on the Readjustment of Veterans will be held June 15 and 16, 2000. This will be a regularly scheduled meeting for the purpose of reviewing VA services of veterans, and to formulate Committee recommendations and objectives. The meeting on both days will be held at The American Legion, Washington Office, 1608 K Street, NW, Washington, DC. The agenda on both days will commence at 8:30 a.m. and adjourn at 4:30 p.m.

The agenda for Thursday, June 15, will include reviews of Veterans Health Administration (VHA) special emphasis programs for prosthetics, environmental agents and post-traumatic stress disorder. The agenda for both days will also include strategic planning sessions to formulate goals and objectives for a Committee field visit to VA facilities to be conducted later in the year.

On Friday, June 16, the Committee will review Veterans Benefits Administration (VBA) programs related to PTSD compensation, vocational rehabilitation and counseling, and transition assistance.

The meeting will be open to the public. Those who plan to attend or who have questions concerning the meeting may contact Alfonso R. Batres, Chief Readjustment Counseling Officer, Department of Veterans Affairs Headquarters Office at (202) 273–8967.

Dated: May 16, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–13168 Filed 5–24–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 65, No. 102

Wednesday, May 25, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–36

[FPMR Amendment H–205]

RIN 3090–AF39

Disposition of Excess Personal Property

Correction

In rule document 00–11921 beginning on page 31218 in the issue of Tuesday, May 16, 2000, make the following correction:

§102–36.125 [Corrected]

On pages 31223 and 31224, in §102–36.125(b), the table should read as set forth:

Type of property	GSA region	Location
Aircraft	9 FBP	San Francisco, CA 94102.
Firearms	7 FP–8	Denver, CO 80225.
Foreign Gifts	FBP	Washington, DC 20406.
Forfeited Property	3 FP	Washington, DC 20407.
Standard Forms	7 FMP	Ft. Worth, TX 76102.
Vessels, civilian	4 FD	Atlanta, GA 30365.
Vessels, DOD	3 FPD	Philadelphia, PA 19107.

[FR Doc. C0–11921 Filed 5–24–00; 8:45 am]

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Federal Register

Thursday,
May 25, 2000

Part II

Department of the Interior

Fish and Wildlife Service

National Wildlife Refuge System Administration Act as Amended by the National Wildlife Refuge System Improvement Act of 1997, Refuge Planning Policy; Notice

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Refuge Planning Policy Pursuant to the National Wildlife Refuge System Administration Act as Amended by the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) establishes requirements and guidance for National Wildlife Refuge System planning, including Comprehensive Conservation Plans (CCPs) and step-down management plans. This policy, which incorporates the CCP provisions of the National Wildlife Refuge System Administration Act, as amended, replaces Part 602 Chapters 1, 2, and 3 of the Fish and Wildlife Service Manual. The new policy will appear as Part 602 Chapters 1, 3, and 4.

Our policy for managing units of the National Wildlife Refuge System (Refuge System) is that we will manage all refuges in accordance with an approved CCP which, when implemented, will achieve refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. The CCP will guide management decisions and set forth goals, objectives, and strategies to accomplish these ends. We also may require step-down management plans to provide additional guidance for meeting CCP goals and objectives and to describe strategies and implementation schedules. Each plan will be consistent with principles of sound fish and wildlife management, available science, legal mandates, and our other policies, guidelines, and planning documents. We will prepare refuge plans that, above all else, ensure that wildlife comes first on national wildlife refuges.

DATES: This policy is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: We will send a copy of the Fish and Wildlife Service Manual chapters on Refuge System planning to those who submitted comments on the draft policy and to anyone who would like to receive them. Please contact Liz Bellantoni, Refuge Planning Coordinator, Division of Refuges, U.S. Fish and Wildlife Service, at (703) 358-2422 if you would like to receive a copy. In addition, these chapters will be available on the Refuge System web site (http://refuges.fws.gov [select link to "Manual/Policies: Refuge Planning Policy']).

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd–668ee (Refuge Administration Act), provides an "Organic Act" for the National Wildlife Refuge System. It clearly establishes that wildlife conservation is the principal mission of the Refuge System; provides guidance to the Secretary of the Interior for management of the Refuge System; reinforces the importance of comprehensive planning for all units of the Refuge System; and gives Refuge Managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the Refuge System.

Planning and the Refuge Administration Act

Except for those refuges in Alaska (which are subject to the refuge planning provisions of the Alaska National Interest Lands Conservation Act [ANILCA]), the Refuge Administration Act requires that we manage all national wildlife refuges according to an approved CCP. We will prepare a CCP by October 2012 for each refuge in existence at the time of passage of the National Wildlife Refuge System Improvement Act. For refuges established after passage of this Act, we will prepare CCPs when we staff the refuge and acquire a land base sufficient to achieve refuge purposes, but no later than 15 years after establishment of the refuge. The Refuge Administration Act also requires that we provide an opportunity for active public involvement during the preparation and revision of CCPs. These plans will guide management decisions and establish strategies for achieving the mission of the Refuge System and the purposes of each refuge unit.

Purpose of This Policy

This policy establishes requirements and guidance for National Wildlife Refuge System planning, including CCPs and step-down management plans, and ensures that planning efforts comply with the provisions of the Refuge Administration Act.

Response to Comments Received

On August 13, 1999, we published a notice in the **Federal Register** (64 FR 44368) to establish requirements and guidance for Refuge System planning, including CCPs and step-down management plans. During the 60-day comment period, we received 41 comments from the following sources: non-government organizations (16), State agencies (14), Service employees (5), other Federal agencies (1), private citizens (4), and commercial businesses (1). Key points raised by the public and addressed in the final policy include:

- placing greater emphasis on wildlife first and elevating our commitment to maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System as mandated by the National Wildlife Refuge System Improvement Act of 1997;
- basing management decisions on a thorough assessment of available science;
- defining our relationship with States and other agencies and their programs;
- identifying biological information necessary for planning and management;
- clarifying under what conditions we should revise a CCP;
- expediting or further clarifying our planning process;
- describing the relationship of CCPs to refuge purposes and Refuge System mission; and
- addressing issues related to recreation and public use.

We reviewed and considered all substantive comments received. Following are public comments and our responses grouped under eight broad headings:

I. Placing Greater Emphasis on Wildlife First and Elevating Our Commitment to Maintain and, Where Appropriate, Restore the Ecological Integrity of Each Refuge and the Refuge System as Mandated by the National Wildlife Refuge System Improvement Act of 1997

Comment: The Service's drafting of the proposed planning policy is pursuant to the mandates contained in the National Wildlife Refuge System Improvement Act of 1997. The first and foremost goal of the Refuge Improvement Act is to ensure that wildlife conservation is the principal mission of the Refuge System. Although the Refuge Improvement Act established a hierarchy of appropriate and compatible wildlife-dependent uses of a refuge, wildlife conservation is paramount and every aspect of the Service's planning process must reflect this principal goal. The planning process should be preceded by, and indeed founded upon, first establishing the wildlife and ecological priorities of the refuge. Then the plan should consider certain public uses deemed compatible with the refuge purpose, the Refuge System mission, and the particular conditions of the refuge. This is particularly important since the CCP process includes the drafting or recertification of compatibility determinations.

Response: We have strengthened Section 1.5, "What are the goals of refuge planning?," by adding as the very first goal, "A. To ensure that wildlife comes first in the National Wildlife Refuge System." We have strengthened Section 3.3 (formerly Section 2.3), "What are our goals for Comprehensive Conservation Planning?," by revising goal A. to read: "To ensure that wildlife comes first in the National Wildlife Refuge System and that we manage each refuge to help fulfill the mission of the Refuge System; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; as well as achieve the specific purposes for which the refuge was established."

Comment: The draft planning policy should be revised each and every place where it pledges allegiance to the mission of the Refuge System and purposes of the individual refuges in order to also ensure that the planning process will advance the maintenance and restoration of biological integrity, diversity, and environmental health. For example, Section 602 FW 1.3 should be modified to state that, "We will manage all refuges in accordance with an approved CCP which, when implemented, will achieve refuge purposes, fulfill the System mission, maintain and restore biological integrity, diversity, and environmental health, and meet all other relevant mandates. The CCP will guide management decisions and set forth goals, objectives, and strategies to accomplish these ends * * *."

Response: We have incorporated similar language into the final policy. We are now using the term "ecological integrity" in lieu of the phrase "biological integrity, diversity, and environmental health."

Comment: Reword Section 602 FW 1.5 B to state that the goal of refuge planning is "To help ensure that we restore and maintain the biological integrity, diversity, and environmental health of each refuge and the Refuge System, and contribute to the conservation of the structure and function of the ecosystems of the United States."

Response: We have revised the text with modification. See 602 FW 1.5 C.

Comment: Reword Section 602 FW 1.6 B to define the term CCP as "A document that describes the desired future conditions of the refuge and provides long-range guidance and management direction to accomplish the purposes of the refuge, fulfill the mission of the System, restore and maintain the biological integrity, diversity, and environmental health of each refuge and the Refuge System, and meet other relevant mandates."

Response: We have revised the text with modification. See 602 FW 1.6 E.

Comment: Amend Section 602 FW 1.7 D, 2.1, 2.3 B, 2.4 A, 2.4 C (1)(b), (c), and (d)(ii), 2.4 C (4), 2.4 C (4)(d), and 2.4 C (7) to highlight the restoration and maintenance of biological integrity, diversity, and environmental health as a major feature of CCPs.

Response: We have amended the text where appropriate. See Section 602 FW 1.7 D, 3.1 (formerly 2.1), 3.3 A (formerly 2.3 B), 3.4 A (formerly 2.4 A), and 3.4 C (1)(d) (formerly 2.4 C (1)(c)).

Comment: Reword Section 602 FW 2.4 C (1)(f) to require that CCPs set goals for appropriate indices of biological integrity, diversity, and environmental health.

Response: We have incorporated similar language into the final policy. See 602 FW 3.4 C (1)(g).

Comment: Reword Section 602 FW 2.4 C (1)(g) to require that CCPs identify additional problems, *e.g.*, "Identify any significant problems that may adversely affect the population and habitats of fish, wildlife, and plants (including candidate, threatened, and endangered species), the biological integrity, diversity, and environmental health or the wilderness characteristics within the planning unit, and the actions necessary to correct or mitigate such problems."

Response: We have addressed the need to identify and describe these problems in Section 3.4 C (1)(e)(x) and (xii) (formerly 2.4 C (1)(d)).

Comment: Reword Section 2.4 C (4)(d) to require that CCPs set objectives for appropriate indices of biological integrity, diversity, and environmental health.

Response: We believe this is more appropriately done at the goal-setting level and have revised the text in Section 3.4 C (1)(g) (formerly 2.4 C (1)(f)) accordingly.

Comment: The policies that guide the refuge planning process must, above all else, ensure that CCPs put wildlife first. The draft planning policy makes an important start towards accomplishing this end, but should be modified in several places to drive home this point more explicitly and emphatically.

Response: We have modified the final policy in various places to emphasize that we will prepare CCPs that, above all else, ensure that wildlife comes first on national wildlife refuges. See 602 FW 1.3, 1.4 A, and 1.5 A, and 602 FW 3.3 A.

Comment: Existing language in the draft policy regarding the proposed action is inappropriately and inexplicably weak. Section 602 FW 2.4 C (4)(c) should be reworded to reflect that the planning team shall select as the proposed action in each CCP the alternative that best achieves planning unit purposes, vision and goals; fulfills the Refuge System mission; maintains and restores biological integrity, diversity, and environmental health; addresses the significant issues and relevant mandates, and is consistent with principles of sound fish and wildlife management.

Response: We strengthened the language in the final policy as suggested, with minor modification. See 602 FW 3.4 C (4)(c).

Comment: Section 2.4 C (1)(c) should be modified to place the emphasis on meeting refuge purposes, Refuge System mission, and ecological integrity.

Response: We made a related change in the final policy. See 602 FW 3.4 C (1)(d).

Comment: The planning policy appropriately makes conservation of biological diversity a major goal of refuge planning (Section 602 FW 1.5 B). What is lacking however, is a simple explanation of what this means. The Service should clarify within this section or in another appropriate place in the policy, that it intends to adopt a regional/ecological approach to conserving biological diversity. Simply put, the Service should ensure that its management activities benefit— and do not harm—those species, habitats, and natural processes that are rare and/or declining within the regional ecological context within which the planning unit occurs.

Response: We feel the recommended change is beyond the scope of this policy. A new policy addressing the ecological integrity of the National Wildlife Refuge System is currently being developed and will be published as 601 FW 3 of the Service Manual.

Comment: The planning policy needs to refer to the biological integrity policy when relying on that document for guidance. The planning policy also needs to incorporate these fundamental concepts to the extent possible in the absence of clear guidance from the future biological integrity policy. For example, 602 FW 1.3 should be revised as follows (underscored text are changes

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from the original language): "Each plan will be *founded* on principles of sound fish and wildlife management, available science, *and the maintenance of biological integrity, diversity, and ecosystem health. Each plan will be consistent with* legal mandates and our other policies, guidelines, and planning documents." Amend 602 FW 2.1 to include similar language: "Comprehensive Conservation Plans (CCPs) describe the desired future conditions of a refuge, and provide long-range guidance and management direction for the Refuge Manager to accomplish the purposes of the refuge, contribute to the mission of the System, *ensure that the biological integrity, diversity, and environmental health of the System are maintained,* and meet other relevant mandates." Biological integrity, diversity, and ecosystem health also need to be defined within the planning policy.

Response: We have incorporated the suggested text changes, with slight modification, into the final policy. In addition, we have defined the terms biological integrity, biological diversity, ecological integrity, and environmental health. These definitions are consistent with those which will appear in 601 FW 3 (ecological integrity policy).

Comment: Add the following language to Section 2.4 C (1)(g): Internal Scoping: "Identify significant opportunities to improve the health of refuge habitats or to improve the functioning of ecological systems."

Response: We have addressed the need to identify these opportunities in Section 3.4 C (1)(e).

II. Basing Management Decisions on the Best Available Science

Comment: With regard to developing scientific and other data, such information may be gathered from a number of sources, including the various public comment periods provided by the proposed policy. Thus, when the CCP is presented for public comment, refuge planners should be seeking input and assistance from the scientific community and the public at large, and be responsive to and accountable for considering such scientific input, as would be the case during a notice and comment period under the National Environmental Policy Act (NEPA).

Response: Indeed, we must seek and be responsive to considering the scientific input provided by resource experts, and all other publics, under NEPA. The final policy reflects these points.

Comment: Section 602 FW 2.3 D of the draft policy establishes a goal to "support management decisions and their rationale by sound professional judgment," a statement that appears reactive and defensive of status quo operations. To highlight the importance of science in decision making, this goal should be reworded.

Response: We revised the above goal as follows: "To support management decisions and their rationale by using a thorough assessment of available science derived from scientific literature, on-site refuge data, expert opinion, and sound professional judgment." See 602 FW 3.3 D.

III. Defining Our Relationship With States and Other Agencies and Their Programs

Comment: One commenter states that in Alaska the Department of Fish and Game is woefully underfunded and the Alaska State Legislature has imposed management "standards" regarding priorities for wildlife management that are inconsistent with the major purposes of National Wildlife Refuges in that state (*e.g.*, to conserve fish and wildlife populations and habitats in their natural diversity). The commenter states that it is unrealistic to expect that refuge management plans will be the same as State plans especially when dealing with controversial issues. Furthermore, the public, Tribes, and non-governmental organizations should have the same opportunities for participation in the development and review of CCPs as do State and local governments and adjacent landowners.

Response: Section 668dd (e)(1)(A)(iii) of the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, instructs the Secretary to "issue a final conservation plan for each planning unit consistent with the provisions of this Act and, to the extent practicable, consistent with fish and wildlife conservation plans of the State in which the refuge is located * * *" We believe that we have an obligation under this and other provisions of the Refuge Improvement Act to work closely with State fish and game agencies as we prepare our plans. It is important to note that the Act calls for our plans to be consistent with State plans "to the extent practicable," and that our Regional Directors are the ultimate decision makers in the process. Congress directs our close working relationships with the States. We also believe we built sufficient opportunities into the process to allow all interested parties to participate in our planning efforts.

Comment: We received a number of comments that the refuge planning teams should also include members of State and Tribal conservation agencies.

Response: We changed the policy in Section 3.4 C (1)(a) to state that, "We will provide representatives from appropriate State and Tribal conservation agencies * * * the opportunity to serve on planning teams." We will provide a formal written request inviting States, Tribes, and other appropriate agencies to join the refuge planning effort at the beginning of the process.

Comment: Some commenters requested that States be involved in step-down management plans.

Response: The planning policy guidance provides for and we encourage this opportunity.

Comment: Many commenters requested that the Service participate in cooperative planning efforts with States and/or other agencies.

Response: We have worked closely with many States, other Federal agencies, and others and encourage cooperative management planning for fish and wildlife and natural resources whenever feasible.

Comment: Some of the commenters questioned whether State agencies could be involved in addressing comments, plan review and implementation.

Response: We encourage State and other agency involvement throughout the planning and management processes—including implementation and review. Furthermore, by being a member of the refuge planning team, State agencies will have a direct opportunity to assure that we accurately reflect or respond to their comments in the CCP document or in our analysis. While we recognize the need for input and feedback from others, we recognize the possibility of debate or alternative management direction, if guided solely by other influences. For this reason, while we encourage full input from the States and other entities in our plans, we retain management and decision-making authority for all units of the National Wildlife Refuge System, including approval of CCPs.

Comment: Some commenters asked about other possible partnerships with the Service, beyond CCPs, such as joint ventures and ecosystem planning.

Response: We are appreciative of the interest of States and other organizations who wish to participate as a partner in our refuge and non-refuge projects. We encourage partnerships through our ecosystem approach. We invite agencies and organizations to contact our Regional Offices for more information on how to participate as a partner in our activities.

Comment: Some commenters questioned what determines adequate coordination with States, other agencies, and the public.

Response: Adequate coordination with States, Tribes, other agencies, and the general public includes an invitation to participate, actual participation in our processes, regular and good communication, use of appropriate tools and materials to aid coordination, a sense of teamwork from all parties, and resulting successful partnerships beyond the planning phase. The Service's refuge planning policy developed herein provides for all the processes and procedures for us to meet our burden of responsibility, in regard to agency coordination.

IV. Identifying Biological Information Necessary for Planning and Management

Comment: Criteria should be established for assessing the adequacy of data for making management decisions. The Service should consider delaying management choices until adequate information is available to make a decision informed by science. The U.S. Forest Service proposed planning rule states that if data are not adequate, this triggers a new or supplemental broad-scale assessment or local analysis before proceeding to decision making. It is suggested that the Service consider a similar modification of the proposed policy.

Response: In situations where we are unable to develop new data for the CCP, the plan may identify the need for further data collection. In such cases we may delay decision making, pending additional data collection and analysis. There are many sources of data that can aid in plan development. We include a list of potential data sources in 602 FW 3.4 C (1)(e). A lack of data should not delay completion of the CCP.

Comment: A number of commenters requested that the Service expand and clarify its policy and procedures for collection of data associated with CCPs.

Response: Based on the comments received, we have made extensive changes to Sections 3.4 C(1)(e) and (f), including additional discussion on data needs, data collection, data sources, use of outside experts and literature reviews, and data standards.

V. Clarifying Under What Conditions We Should Revise a CCP

Comment: Additional guidance is necessary to clarify the limits of the adaptive management strategy. The Service's intention of revising a CCP every 15 years after establishment of the initial CCP comports with the requirements set forth in the Refuge Improvement Act. Moreover, the Service indicates that it will revise a CCP sooner than 15 years after the initial CCP is approved, "if conditions that affect the refuge or planning unit change significantly." It is unclear at what point or under what conditions the CCP should, or must, be reviewed or reassessed, prior to the expiration of the 15-year period. The commenter believes that both the Refuge Manager and the public need further guidance as to when a review should be conducted as a result of changing ecological or other conditions presented to the refuge environment, including changes in science which may render a certain use obsolete or no longer compatible with the purposes for which the refuge was established. The Service should amend the draft policy so as to establish as near of an objective standard as possible, and include guidelines and examples for the use of refuge planners.

Response: We have modified Step 8, "Review and Revise Plan," to provide additional guidance. We have revised Subsection (a) to instruct refuge planners and managers to "Modify the plan and associated management activities whenever monitoring and evaluation determine that we need changes to achieve planning unit purpose(s), vision, and goals." Subsection (b) now states: "Revise the CCP when significant new information becomes available, ecological conditions change, major refuge expansion occurs, or when we identify the need to do so during plan review." While these revisions are minimal, we believe we must provide additional guidance dealing with the principles of adaptive management and monitoring. However, we do not believe this type of guidance is appropriate in our planning policy. *Fulfilling the Promise: The National Wildlife Refuge System* includes a number of recommendations focused on developing programs for natural resource inventory and monitoring, habitat monitoring, and adaptive management. Once we fully implement these recommendations and establish programs, we will provide appropriate guidance and initiate training courses. Only then will we be able to utilize the principles of adaptive management to refine our approaches and determine how effectively we are accomplishing refuge goals and objectives.

Comment: Some commenters asked the Service to clarify what level of planning and plan revision is required for refuges.

Response: Chapter 1 of the policy provides a general description of planning requirements. Chapter 3 (formerly Chapter 2) deals specifically with CCPs. Section 3.4 C(8) provides details on plan revision. In general, all newly established refuges will have a Conceptual Management Plan in place at the time of refuge establishment. We will develop CCPs as soon as possible but not later than 15 years after establishment of a refuge. We will review CCPs annually and make revisions as needed. We will revise CCPs at least every 15 years.

Comment: Some commenters were concerned that a change of management direction could occur with a change of Refuge Manager.

Response: The planning policy states that the Refuge Manager shall manage the refuge under an approved CCP, and that plan revision should occur only when monitoring and evaluation documents the need for change in order to achieve planning unit purpose(s), goals, and objectives. The Regional Director approves the CCP with input and concurrence from many levels within the Service, as well as outside review and comment.

VI. Expediting or Further Clarifying Our Planning Process

Comment: Implementing a "Public Participation Plan" early in the planning process before developing alternatives or drafting the plan will help the Service identify issues and define the desired future condition(s) of a particular refuge. Extra effort will be needed at this step of the process in order to establish a firm foundation for subsequent planning phases. Additional guidance would be helpful to ensure refuge planners make this effort.

Response: We require the preparation of a "Public Participation Plan" (referred to as a "Public Involvement/Outreach Plan") in Step 1, "Preplanning: Planning the Plan," of our Comprehensive Conservation Planning process. We also provide guidance on preparing a "Public Involvement/Outreach Plan" during the Refuge Comprehensive Conservation Planning course offered at our National Conservation Training Center. This course is available to Service personnel and other planning team members who are about to begin the preparation of a refuge CCP.

Comment: Integrating the CCP with various Environmental Assessments (EA)/Environmental Impact Statements (EIS) from the outset may not achieve the planning expediency that it is intended to achieve. To save time and money, it is suggested that the first step in the CCP process should be the development of a stand-alone "vision document" that generally describes the

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goals of the refuge and its desired future condition. After the goals of the refuge and its desired future condition are documented and agreed upon, then various EAs/EISs can be developed as a mechanism to examine the alternatives on how to achieve them.

Response: There is no need for a stand-alone vision document. The refuge vision statement and goals are integral parts of our CCP process. Identified in Step 1, "Preplanning: Planning the Plan," we subsequently share them with the public in Step 2, "Initiate Public Involvement and Scoping," and, based on the public's comments, modify them as appropriate in Step 3, "Review Vision Statement and Goals and Determine Significant Issues." We ultimately use them to help identify our Proposed Action in the draft NEPA document in Step 4, "Develop and Analyze Alternatives, Including the Proposed Action." The proposed action will be the one that best achieves the refuge purpose(s), vision, and goals; helps fulfill the Refuge System mission; maintains and, where appropriate, restores ecological integrity; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management.

Comment: Incorporating "compatibility determinations" within the CCP process is a laudable goal. However, in light of the previously completed determinations, it may be advisable to allow this process to have its own time line independent from, but monitored by, the CCP process. These determinations may be examples where interim modifications (of the size or scope that would not require reopening the planning process) are needed between scheduled planning cycles. Additional guidance may be necessary to help determine when, where and how these interim modifications are made.

Response: We believe that incorporating compatibility determinations in our refuge CCPs is both efficient and makes good sense. The degree of public review and opportunities to comment provided in the CCP process will be more than adequate to fully comply with the provisions of the National Wildlife Refuge System Improvement Act of 1997. We believe that we will be able to accommodate most, if not all, interim modifications required for these determinations through the revision procedures of the process. While we will likely accommodate many of these modifications without reopening the entire planning process, we will undoubtedly reopen some. The process will be able to accommodate both situations.

Comment: A commenter expressed the concern that the lack of specific data should not impede the planning process, but rather incorporate and identify this shortcoming as a specific need of a particular refuge in the planning process. While the draft policy specifically mentions that the CCP can identify data needs as part of the plan, it does not provide direction to the effect that the planning process should continue and not be stalled as a result of incomplete data.

Response: We revised the text of the policy in Step 1, "Preplanning: Planning the Plan, (e) Planning Area and Data Needs," to indicate that "While we may not be able to develop new data for the CCP, we may identify the need for further data collection. A lack of data should not delay the completion of the CCP."

Comment: A concern has been raised regarding the "Internal Reviews" of the CCP, or subparts thereof, that are called for in the draft policy. In each reference to internal reviews, the draft policy directs that these should be conducted by "* * * following established regional procedures," yet fails to identify what these procedures may be. The commenter believes that additional guidance is needed to provide a greater degree of consistency to the manner in which internal reviews are conducted.

Response: The "established regional procedures" to which we refer deal primarily with the internal distribution of documents. We have revised the text of the policy in both Step 5, "Prepare Draft Plan and NEPA Document, (d) Internal Review," and Step 6, "Prepare and Adopt Final Plan, (c) Internal Review," to provide further guidance on the internal distribution of documents to include: "* * * refuge program managers, ecosystem managers, refuge staff and other appropriate Service programs and divisions, as well as other agency partners."

Comment: From a public participation point of view, a commenter recommends that a generalized description of the types of circumstances in which "categorical exemptions" may be invoked would be helpful to include in the final policy. Another commenter noted that Section 2.4 C (8)(b) states that CCPs will be periodically reviewed and revised "* * * generally through the use of a categorical exclusion." It was requested that the Service define exactly what category of actions, either individually or cumulatively, it determines will not have a significant effect on the human environment (40 CFR 1508.4).

Response: When revising a CCP, we expect our decision makers to ensure that, when we can categorically exclude an action, the action does, in fact, comply with the requirements and limitations described in the categorical exclusion. Because most categorical exclusions apply to a variety of our actions and different program activities, it is not possible, nor desirable, to address in this policy all possible actions or situations covered by a given categorical exclusion. Our NEPA policy already provides such guidance (see 550 FW 3.3).

Comment: The opening section of Part 602, (National Wildlife Refuge System Planning), Chapter 2, (Comprehensive Conservation Planning Process), says: "it is not the intent of this policy to provide step-by-step direction on how to prepare a CCP but rather to establish the requirements and standards to which we will hold all CCPs." However, "requirements and standards" are either non-existent or very weak. Instead, the subsequent sections primarily describe the steps of the planning process. This is particularly apparent when it comes to wildlife-dependent recreational uses.

Response: We have revised the text of the policy in Section 3.1 (formerly Section 2.1), "What is the purpose of this chapter?," to read, "This policy provides guidance, step-by-step direction, and establishes minimum requirements for all CCPs." We will address the "requirements and standards" to which we originally referred in Part 601 of the Service Manual, "Mission, Goals, and Purposes of the National Wildlife Refuge System," as well as through recommendations in *Fulfilling the Promise: The National Wildlife Refuge System.*

Comment: After describing the steps to be taken to ensure public involvement in the scoping process in Section 2.4 B(2), the policy requires a review of the vision statement and goals to determine significant issues (Section 2.4 B(3)). Item B(3) says, "based on this review, modify the vision and goals for the planning unit as appropriate." The planner needs to keep in mind that Congress has set certain policies and requirements for the administration of the Refuge System. The following sentences should be added to B(3)(a):

"We need to keep in mind that the law sets forth some very specific policies and requirements for the administration of the Refuge System. These include the basic mission of the System and the direction that compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges. Regardless of what may or may not develop during the public involvement and scoping process, the law requires that wildlife-dependent recreational uses be facilitated and expanded."

Response: Step 2, "Initiate Public Involvement and Scoping," instructs the planner to involve the public and gather comments on the existing vision statement, goals and objectives, potential issues, management actions and concerns, significant problems or impacts and opportunities or alternatives to resolve them. This is the very essence of the scoping process mandated by NEPA. Step 3, "Review Vision Statement and Goals and Determine Significant Issues," further instructs the planner to review and evaluate the public's comments on the vision statement and goals and modify them as appropriate. It may not be appropriate to modify them based on the comments received. Professional planners understand that decisions are not based on majority opinion, and we charge them with making certain the public understands this most basic tenant of NEPA.

Comment: The Service properly states that one of the goals for the CCP is to "ensure that we manage each refuge to fulfill the mission of the System as well as the specific purposes for which we established that refuge." The purposes for which the refuge was established should be the very foundation of every CCP. Thus, each CCP should begin with a recitation of the goals for which that particular refuge was established, as enunciated in the text of the refuge's authorizing documentation, and a narrative of how those goals relate to and fulfill the NWRS mission. Such an approach would not only ensure adherence to the refuge's purposes and Refuge System mission, but would be consistent with the intent of Congress in enacting the Refuge Improvement Act.

Response: Step 1, "Preplanning: Planning the Plan," now includes a new Subsection (b) Identify Refuge Purpose(s), History, and Establishing Authority. We instruct those preparing CCPs to "Document the history of refuge establishment and management, as well as refuge purposes and authorizing authority * * *" which "* * * will become driving forces in the process * * *" This is the first task the newly formed planning team undertakes, and we include this important material in Chapter I, "Introduction/Background" of the CCP (also see Exhibit 3–4).

Comment: The Service's proposed policy would require additional expenditures of time on the part of FWS personnel, particularly Refuge System field personnel. There is concern that the demands imposed on Refuge Managers and their staffs by these proposed planning and related NEPA compliance requirements will adversely affect refuge staff's ability to maintain their commitment to current refuge operations, if additional funds and personnel are not made available. Thus, it is imperative that the level of commitment on the part of the Service toward proper planning and administration of the Refuge System be matched by a commitment from the Department of the Interior and Administration to seek an appropriate level of funding on a yearly basis, to provide additional staff and other resources, where needed.

Response: We recognize this potential problem. Congress increased our budget in 1996 to include funding dedicated to the preparation of CCPs. Our regional and field offices are using these funds to provide professional planning staff and services to assist refuge field personnel in the preparation of their plans. The CCPs themselves also will document the increased staffing and funding levels required for their full implementation.

Comment: Public participation is critical to the administration of a refuge and the Refuge System. Proposed Section 2.4 C (2)(a) appears to only provide the public with the ability to comment on the Notice of Intent to prepare a CCP only if the Service intends to prepare an EIS for the CCP. The public should have the ability to provide public comments as part of the scoping process when the Service intends to prepare a CCP, whether or not an EIS is drafted. This section should be amended to make clear that a comment period will follow the publication of a Notice of Intent to prepare a CCP, whether or not the Service intends to prepare an EIS, and if later in the process the Service decides to prepare an EIS, a public comment period would follow that announcement as well.

Response: We did not intend to limit public participation during the scoping process. We have revised the text to remove any possible misconceptions concerning our desire to openly solicit public comment throughout the scoping process, whether or not we prepare an EIS. We have modified Section 3.4 C (2)(b) (formerly Section 2.4 C (2)(b)) to read: "Public scoping will continue until we prepare a draft CCP/NEPA document."

Comment: Amend the proposed public review period for a draft CCP/NEPA document to provide a 60-day comment period for an EA, as well as the currently proposed 60-day comment period when an EIS is to be drafted.

Response: We modified the final policy (see 602 FW 3.4 C (5)(e)) to read, "Provide a minimum of 30 days for public review of a draft CCP with an EA and 45 days for a draft CCP with an integrated EIS." The comment periods noted reflect the minimum comment periods authorized under current NEPA policies. We recognize that under many circumstances the comment period associated with a particular CCP will often be much longer depending on the nature and complexity of the plan.

Comment: Scientific data, collected from governmental and non-governmental organizations, academia and other sources are vital to refuge planning. Although the Service's draft policy acknowledges this importance, we feel that identifying the need for additional data is of equal importance to acknowledging the existence of data already in hand. The current reading of Section 2.4 C (1)(d) states that the planner "*can* identify the need for additional data." Such language does not adequately emphasize the importance of developing additional data. Hence, we recommend that the last sentence of 2.4 C (1)(d) be modified as follows: "You do not need to develop new data at the time of drafting the CCP. If current data exists, the CCP should state so and summarize the existing data; if no current data exists, the CCP should state so, and identify to the extent possible the type of data that will need to be developed."

Response: We have substantially revised the text of Section 3.4 C (1)(e) (formerly Section 2.4 C (1)(d)) based on a number of comments we received.

Comment: 1.6 K. Planning Team Leader. Revise last sentence to read: "The Planning Team Leader manages the refuge planning process, and ensures compliance with applicable regulatory and policy requirements."

Response: We made the recommended change in the final policy. See 602 FW 1.6 Q.

Comment: 1.8 E. Planning Team Leader. Revise second sentence to read: "The Planning Team Leader, in consultation with the Refuge Manager, is responsible for identifying appropriate and proper representation on the interdisciplinary planning team.* * *"

Response: We made the recommended change in the final policy. See 602 FW 1.8 E.

Comment: 1.8 F. Refuge Supervisor. Insert at the end: "Once the plan is approved by the Planning Team Leader

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and the Refuge Manager, the Refuge Supervisor will also be responsible for review and approval of the plan prior to its submission to the next approval level."

Response: We made the recommended change, with slight modification, in the final policy. See 602 FW 1.8 F.

Comment: 1.8 G. Refuge Manager. Revise second sentence to read: "The Refuge Manager assures that the refuge staff participates in plan development, and is responsible for its content in terms of information relating to management of refuge resources and use activities."

Response: The latter is the responsibility of the entire planning team, and not just the Refuge Manager. We have added this responsibility to 1.8 H., "Planning Team."

Comment: Section 1.2, "What does Part 602 apply to?" should be amended to include at the end of the sentence, "except coordination areas," to be consistent with Section 1.6 C, which states "[w]e do not require CCPs for Coordination Areas."

Response: To clarify, Part 602 includes four parts. Part 602 FW 1 is a general overview of refuge planning and addresses more than just CCPs. It applies to all units of the National Wildlife Refuge System.

Comment: Although recreational and commercial trapping are clearly "wildlife-dependent recreational uses" of the Refuge System, it is unclear whether the planning policy requires compatibility determinations for these activities. Although the Refuge Improvement Act does not identify trapping as a "priority use" of the Refuge System, trapping is still a "wildlife-dependent recreational use" and should therefore mandate production of a compatibility determination, with full public review and comment. This point should be clarified in the planning policy.

Response: If a refuge plan included trapping as a use in our proposed action, it would require a compatibility determination under the provisions of this policy. We believe we adequately addressed this concern in Step 5, "Prepare Draft Plan and NEPA Document, Subpart (b) Compatibility Determinations." This subpart requires refuge planners to "Complete new compatibility determinations or re-evaluate existing compatibility determinations as part of the CCP process for all individual uses, specific use programs, or groups of uses associated with the proposed action, when adequate information is available and where possible." It further requires that we incorporate the draft compatibility determinations into the draft CCP as an appendix and obtain the required public review and comment as part of the draft CCP and NEPA document.

Comment: The draft policy only lists trapping as a component of "Population Management" in its list of step-down management plans in Section 3.5 of Part 602 FW 3. Step-down management plans are required for all hunting and fishing programs, but not for recreational and commercial trapping. The commenter interprets this to mean that commercial and recreational trapping will not be allowed on the National Wildlife Refuge System. If this interpretation is incorrect and commercial and recreational trapping will be allowed on the Refuge System, then the draft planning policy should include a step-down management plan for this wildlife-dependent recreational activity.

Response: The commenter's interpretation is incorrect. Commercial and recreational trapping may be allowed on a refuge, but only if done as part of "Population Management." As the commenter notes, we include "Population Management" in the list of step-down management plans. If trapping is to be a part of the management of wildlife populations, such as management of furbearer populations, protection of facilities, or controlling problem predators, we would require the refuge to address trapping and associated means of the population management program in such a plan. The reason that trapping does not appear on the list of priority wildlife-dependent recreational uses is that only the six activities listed therein are specifically identified in the Refuge Administration Act. Other refuge uses, whether listed on the list of step-down management plans specifically, or under a general category, will require planning and compliance, including a compatibility determination. As such, the current reference to trapping in 602 FW 4, Section 4.5, under "Population Management" was intentional and is correct.

Comment: The Service needs to disentangle NEPA from the CCP process. To that end, the commenter recommends that we revise Section 2.4 to require that an EA or an EIS be a document entirely independent of the CCP process. Alternately, the commenter requests that we justify the legal distinction behind the determination to integrate a NEPA document within a CCP and a determination to forego integration.

Response: The language in Section 3.4 B (formerly Section 2.4 B) is correct. The Council on Environmental Quality's (CEQ) regulations require that "to the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and other environmental review laws and executive orders" (40 CFR 1502.25). The regulations also tie a similar requirement to the preparation of environmental assessments (40 CFR 1501.7(b)(3)). The confusion lies in the fact that the development of alternatives, analysis of impacts, and public participation occurs throughout this integrated process, up until the agency makes the final decision in the Record of Decision (ROD) (for an EIS) or a Finding of No Significant Impact (FONSI) or decision to prepare an EIS (for an EA). However, after the agency has made a decision on the content of the CCP, the CCP serves as the management plan for the Service. The NEPA document is useful then as a reference and to ensure that the Service maintains its commitment to the actions it intended to take, as analyzed in its NEPA document. The final policy recognizes the independent nature of the CCP following the completion of the integrated process.

Comment: The draft policy authorizes the continuance of wildlife-dependent recreational uses on an interim basis for lands newly acquired into the Refuge System, pending completion of a CCP. Section 2.4 (5)(d) states: "* * * the draft CCP and NEPA documents also must identify any existing wildlife-dependent recreational uses occurring on those lands. Also identify those uses deemed compatible that we may allow to continue on an interim basis once we acquire the lands, pending completion of a CCP." However, it is unclear what authority makes an interim compatibility determination for such wildlife-dependent uses.

Response: Section 668dd(d)(3)(A)(ii) of the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, states that: "On lands added to the System after March 25, 1996, the Secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any lands, existing compatible wildlife-dependent recreational uses that the Secretary determines shall be permitted to continue on an interim basis pending completion of the comprehensive conservation plan for the refuge." We will use our compatibility policy to make such determinations.

Comment: Section 2.4 B (6)(i), Part 602 FW 2 states that "[I]n some cases, we may require a 30-day public review period for the FONSI." However, the proposed policy does not define what will trigger public review. This section should be revised to outline the criteria FWS will use to make this determination.

Response: The CEQ established criteria for requiring such a review in the "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" (40 CFR 1500–1508), and Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). The regulations require public review "* * * (a) if the proposal is a borderline case, *i.e.*, when there is a reasonable argument for preparation of an EIS; (b) if it is an unusual case, a new kind of action, or a precedent-setting case such as a first intrusion of even a minor development into a pristine area; (c) when there is either scientific or public controversy over the proposal; or (d) when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS." The executive orders require public review if a proposed project would be built in and negatively impact a floodplain or wetland.

Comment: Exhibit 2 lists 41 statutes and executive orders that must be considered during Comprehensive Conservation Planning. All of the listed statutes and executive orders provide for environmental or cultural protections while the authorities applying to FWS land management responsibilities are missing. The list would be complete if the following statutes and executive orders were added:

1. Executive Order 12866 requiring economic impact analyses of any Federal action.

2. Regulatory Flexibility Act requiring the evaluation of the effects of any proposed action on small entities.

3. Mining and Minerals Policy Act of 1970 that applies to the Secretary of the Interior in carrying out any program as may be authorized by any law.

4. National Materials and Minerals Policy Research and Development Act of 1980, which mandates similar requirements as under the Mining and Minerals Policy Act.

Response: We do not intend the list of statutes and executive orders in Exhibit 3–2 to be all inclusive. It is simply a list of some of the more common ones that apply to many refuges. Other statutes and executive orders, such as those cited, also must be taken into consideration by the refuges to which they specifically apply.

Comment: The policy should have better requirements for public involvement so there is a consistent way for the public to be involved throughout the Refuge System. One commenter recommends the requirement for **Federal Register** notices for all CCPs at the scoping and public review stages, in addition to notices in local newspapers or radio. In many areas, refuge offices are not located within the actual refuge areas, so greater effort needs to be made to involve the public. Public notification and opportunity for comment should be required for all CCPs at the scoping phase when plan development or revision is initiated, in addition to a 30–60 day or more public comment period for draft plans. Copies of draft and final plans should be made available to any member of the public upon request and on a website. Statements that FWS shall "develop and implement a process to ensure active public participation," (see "Planning and the NWRSIA–97) give a minimum standard that is woefully inadequate and sets the stage for poor performance. Although later sections of the policy better explain notice and comment procedures, there are loopholes indicating that not all CCPs will require full public input and review.

Response: The policy, as currently written, requires full public input and review for all CCPs. Step 1, "Preplanning: Planning the Plan," requires the preparation of a Public Involvement/Outreach Plan for each CCP, and notes that "We integrate public involvement and outreach into each step and it continues throughout the planning process." Step 2, "Initiate Public Involvement and Scoping," requires that we publish a Notice of Intent in the **Federal Register** for each CCP, and "Using news releases to the local media and other appropriate means, (to) notify the affected public of the opportunity to participate in the preparation of the CCP * * *" Step 2 also notes that "Public scoping will continue until we prepare a draft CCP/NEPA document." Step 5, "Prepare Draft Plan and NEPA Document," requires that we publish a Notice of Availability in the **Federal Register** for each CCP, and "Notify the affected public of the availability of these documents through other appropriate means, as identified in the Public Involvement/Outreach Plan." Step 5 also requires that we "Conduct appropriate public involvement activities as called for in the Public Involvement/Outreach Plan." Step 6, "Prepare and Adopt Final Plan," requires that we "Prepare a summary of the public comments received and a statement of the disposition of concerns expressed in those comments * * *" Step 6 also requires that we publish a Notice of Availability of the final approved CCP and NEPA document(s) in the **Federal Register**. Step 8, "Review and Revise Plan," calls for us to "Continue informing and involving the public through appropriate means."

Comment: One commenter commended the Service's statements in the draft planning policy that new wilderness reviews be conducted as one of the "required elements" of the CCP planning process but expressed disappointment that the draft policy does not provide guidance on how to conduct a wilderness review. (In fact, it alludes to a policy that has yet to be written.) Worse still, the policy includes a loophole that would allow refuges to defer wilderness reviews indefinitely. (A footnote to the policy reads: "Some of these required elements may not be available. In these cases, you need to develop objectives or strategies in the plan to acquire that information.")

Response: We do not believe that our policy on National Wildlife Refuge System planning is the proper place to provide detailed guidance on conducting wilderness reviews. We will provide this guidance in the forthcoming Director's Order on "Wilderness Review and Evaluation." This Director's Order will provide guidance on conducting wilderness reviews pending completion of Part 610 of the Fish and Wildlife Service Manual, "Wilderness Management." Concerning the "loophole," we have removed the footnote from Exhibit 3–3.

Comment: Amend the policy to ensure that the vision statement for the refuge is clearly tied to the mission of the Refuge System, the purposes of the refuge, and the maintenance and restoration of biological integrity, diversity, and environmental health. The draft policy does not appear to provide guidance on the preparation of appropriate refuge visions.

Response: We have revised the definition of "Vision Statement" accordingly. See 602 FW 1.6 Z. We also have added additional guidance on the preparation of refuge vision statements to 602 FW 3.4 C (1)(g).

Comment: Some commenters requested that the Service add

information on the history of settlement, land use, and land tenure of the refuge planning area.

Response: We have modified the policy by adding this item to Section 3.4 C (1)(e) and the Refuge Planning Checklist (Exhibit 3–3).

Comment: Some comments were made about the National Wildlife Refuge System compatibility policy and process and the need to further explain its relationship to refuge planning.

Response: When preparing Comprehensive Conservation Plans (CCPs) and Conceptual Management Plans, refuge planning teams will use the compatibility process outlined in the agency's compatibility policy as defined in regulations. (See 603 FW 2 of the Service Manual.) We do not find it necessary to duplicate this information herein.

Comment: Some commenters requested that CCPs should provide supporting documentation and rationale for refuge objectives.

Response: We have modified Section 3.4 C (4)(d) (Objective Development) to require that CCPs include a short narrative summary, including appropriate literature citations, which provides the rationale for each objective.

Comment: Some commenters requested additional information on adaptive management and monitoring.

Response: The refuge planning policy only touches on the need for adaptive management and monitoring to assure that we are meeting refuge purposes, goals, and objectives and that management strategies are appropriate. We will develop additional Service policy and guidance on both the adaptive management process and monitoring.

Comment: Some commenters requested that the policy include examples of planning products, such as statements for refuge goals, objectives, and strategies.

Response: We find that having a number of examples in the actual policy is not appropriate. What we have done and will continue to improve upon, is to provide a handbook on developing quality goals, objectives, and strategies. Also, the National Conservation Training Center course on Refuge Comprehensive Conservation Planning provides both a training session as well as an expanded guide of resource material, including many examples of planning products. It is our intent to keep this information current and up-to-date with the best available information and examples.

Comment: Comments were raised which asked us to identify the standards for measuring Service success in achieving Refuge System and refuge planning goals.

Response: In general, our measure of success is as follows: (1) complete plans; (2) implementation is preceding; and (3) monitoring and evaluation are under way to help assess and determine successful management actions. Additionally, we are in the process of developing a new policy chapter for the National Wildlife Refuge System, which will include identification of Refuge System goals. We have identified refuge planning goals in Chapter 1 of our planning policy. We also have initiated a process for national review of refuge CCPs to help us evaluate our planning process and products, including the capability to measure our successes and establishing standards to assure we are achieving our goals. We also are developing further guidance on adaptive management and monitoring, which will play key roles in determining the success of the refuge planning process. We sense that it may take a number of years until we can make an adequate assessment of the planning process and the resulting products before we can fully identify such measures and standards. As we further develop and refine this information, including it in future updates of the refuge planning policy will be appropriate. We invite feedback from the public and other agencies on our successes and needs for refinement throughout our planning efforts.

Comment: Some commenters asked how we would determine whether a CCP should be prepared for a single refuge or a complex of refuges.

Response: We will determine the scope of a CCP on an individual, case-by-case basis. Developing a CCP or CCPs for an administrative complex of refuges is ecologically efficient and generally our desired approach. However, in many cases, doing single refuge plans, or plans for less than an entire refuge complex, may be more effective and efficient.

Comment: Some questions were raised about the lead responsibilities, coordination and organizational relationship for developing CCPs within the Service.

Response: The Refuges and Wildlife Program has the lead in preparing plans (see "Who is responsible for implementing our policy?," 602 FW 1.8).

Comment: A recommendation was made to provide a review copy of the draft CCP to all resource experts who contribute to a CCP's development.

Response: We changed the policy in Section 3.4 C(5)(e) to reflect this recommendation.

Comment: Commenters requested that the Service clarify the definition of "objective," and expand upon the description of the objective development process, including explaining how objectives should be worded.

Response: We have included a revised definition of objectives in Section 1.6 N and a revised and expanded description of the objective development process in Section 3.4 C(4)(d).

Comment: Section 602 FW 1.3 and various other sections in the draft policy indicate that the plans will "contribute to" the System mission. In each such instance, the phrase "contribute to" should be replaced with the word "fulfills."

Response: We slightly modified the recommended change in the final policy to read, "help fulfill the Refuge System mission."

Comment: The policy should call for bold vision statements of what the planning unit should be, or what we hope to do. The draft language in Section 602 FW 1.6 S uses words that are passive and indirect (what the planning unit "could be").

Response: We made the recommended change in the final policy. See 602 FW 1.6 Z.

Comment: Section 2.4 C(1)(d) should be modified to place the emphasis squarely on conservation of wildlife, habitat, and biological integrity, where it belongs. The Service should establish a two-stage process that first identifies and describes the management steps that are necessary to accomplish the first priority ("wildlife first") and only then determine what opportunities for wildlife-dependent recreation will be provided ("wildlife-dependent recreation second").

Response: The Refuge Improvement Act clearly states that wildlife comes first on refuges. We only would allow those wildlife-dependent uses deemed compatible and appropriate to occur. Section 602 FW 3.4 C(1)(e) (formerly Section 602 FW 2.4 C(1)(d)) identifies the steps in preplanning. At this stage we are gathering information only. Hence, we see no need to establish a two-stage process as suggested.

Comment: A two-stage process is also recommended for determining goals and objectives: wildlife comes first, wildlife-dependent recreation comes second. There is a fear that the draft policy would mix wildlife conservation and recreation together.

Response: Again, we see no need to establish a two-stage process as suggested. The Refuge Improvement Act makes it quite clear that wildlife comes first on National Wildlife Refuges.

Comment: Section 602 FW 2.4 C(1)(d) states that "You do not need to develop new data for the CCP." This statement belies the commitments in Fulfilling the Promise to address the Refuge System's biological shortcomings. This sentence should be replaced with an admonition that a certain level of information is necessary before the planning process can be initiated in earnest.

Response: We made the recommended change in the final policy. We modified 602 FW 3.4 C(1)(e) (formerly 602 FW 2.4 C(1)(d)) to read: "While we may not be able to develop new data for the CCP, we may identify the need for further data collection. A lack of data should not delay the completion of the CCP."

Comment: Section 602 FW 2.4 C(1)(d)(i) should be reworded to ensure that CCPs identify and describe the "*current and historic* distribution, migration patterns, and abundance of fish, wildlife, and plants * * *" In addition, this section should be amended to identify and describe "those fish, wildlife, and plants that are rare and/or declining within the regional ecological context within which the planning unit occurs."

Response: Although we added the suggested language regarding rare and/or declining species to the final policy (see 602 FW 3.4 C(1)(e)(vii)), language pertaining to the "distribution, migration patterns, and abundance of fish, wildlife, and plants" remains unchanged to be consistent with language that appears in the Refuge Improvement Act. To help address the commenter's concern, we modified 602 FW 3.4 C(1)(e)(v) in the final policy to read, "Current and historic description of the flora and fauna, and the diversity of habitats and natural communities."

Comment: Section 602 FW 2.4 C(1)(d)(iii) should be reworded to ensure that CCPs identify and describe the "current and historic diversity of habitats and natural communities and those habitats and communities that are rare and/or declining within the regional ecological context within which the planning unit occurs." In addition, Section 602 FW 2.4 C(1)(d)(vii) should be reworded to ensure that the plans identify and describe the "current and historic role of fire and other natural processes."

Response: We incorporated the suggested changes, with slight modification, into the final policy. See 602 FW 3.4 C(1)(d)(v), (viii), and (xiii).

Comment: Section 602 FW 2.4 C(2)(c) should be modified so as to ensure that planners "identify any new information, issues, concerns * * *"

Response: We made the recommended change in the final policy. See 602 FW3.4 C(2)(c).

Comment: Section 602 FW 2.4 C(4)(d) should be modified to adopt a System-wide general policy for implementing the Refuge Improvement Act's monitoring requirement.

Response: A System-wide policy that addresses monitoring within the Refuge System already exists in 701 FW 2 of the Service Manual. We are currently revising this policy guidance and will address the monitoring mandates of the Refuge Improvement Act, as necessary.

Comment: Concurrent with the publication of the final planning policy, the Service must publish interim guidance on how wilderness reviews are to be conducted. The guidance should state that the reviews should include: (1) An inventory of all qualifying areas, (2) an analysis of the suitability for their designation as wilderness, and (3) a recommendation for wilderness designation.

Response: We expect that both the interim and final policy on wilderness will include inventory, study, and recommendation as steps needed to complete wilderness reviews. The inventory of the refuge should be broad-based to determine what areas would qualify as wilderness. The study would analyze in detail the resources, values, uses, and other characteristics of the qualifying areas (Wilderness Study Areas). The recommendation follows the study and would depend on its conclusions.

Comment: Section 1.7 A should be modified by adding "or critical habitat designations or proposals" after the words "endangered species recovery plans." In addition, Section 2.4 C(1)(d)(xiii) should be amended to read "Existing special management areas *or designations* (*e.g.*, wilderness, *critical habitat designation or proposal*, research natural area * * *)."

Response: We believe the recommended change is unnecessary since the list is not meant to be all inclusive.

Comment: A new Section 2.4 C(1)(d)(xiv) should be added that indicates "Opportunities to reintroduce endangered, threatened, candidate, or other rare species to the planning unit."

Response: We do not believe this information is appropriate to include in a section dealing with preplanning data needs (602 FW 3.4 C(1)(e)). Such actions would be more appropriate to include in the range of alternatives in the NEPA document.

Comment: Section 602 FW 2.4 C(5)(a) should be modified as follows: "Ensure that no activities are authorized on a national wildlife refuge that may interfere with the recovery of a threatened or endangered species, and ensure compliance regarding other programs and policies, including the Clean Water Act * * *"

Response: We believe the current language in 602 FW 3.4 C (5)(a) that states "Ensure compliance regarding other programs and policies, including Section 7 of the Endangered Species Act; Sections 401 and 404 of the Clean Water Act * * *" already addresses the above concerns.

Comment: Section 1.5 F should be amended to reflect the Refuge Improvement Act by adding at the end "and to ensure that these uses receive enhanced consideration over general public uses in the Refuge System."

Response: We made the recommended change in the final policy. See 602 FW 1.5 G.

Comment: Section 2.4 C (1)(d) should be amended by adding at the end a new paragraph "(xv) Conflicts that may occur or be expected to occur between non-priority uses and priority uses of the planning unit."

Response: We believe this information is more appropriate in the section dealing with environmental consequences (602 FW 3.4 C (4)(f)) rather than the section dealing with preplanning data needs (formerly 602 FW 2.4 C (1)(d)). We made the suggested change in the final policy. See 602 FW 3.4 C (4)(f).

Comment: Planning requirements should be issued as regulations not as policy. Comprehensive Conservation Planning is an integral part of the Refuge Improvement Act, and issuing planning regulations to implement the Act is entirely consistent with Congressional and Administrative intent to promulgate nationally consistent plans for the Refuge System. This is an opportunity to institutionalize better science and clear national direction and maintain this guidance through changes in agency personnel, changes in agency structure, and changes in administrations. This would increase consistency, accountability, and enforceability within the Refuge System. Further, if promulgated as regulations, the Service would have additional justification to increase funding for refuge planning because the provisions of the regulations would be mandatory, as opposed to discretionary.

Response: We assume that the commenter intended to suggest that our planning requirements be published in the Code of Federal Regulations (CFR) rather than in the Service Manual. We believe that one of the main objectives of this effort is to institutionalize better

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science and clear direction that will be maintained regardless of changes in personnel, etc. We believe that, for a number of reasons, the Service Manual, rather than the CFR, is the proper vehicle.

The issuance of planning requirements as part of the Service Manual will accomplish the requirements of the National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act. Publishing planning rules in the Service Manual rather than the CFR does not diminish the requirements that they contain. Refuge Managers will be bound by those requirements that are mandatory whether or not we publish them in the CFR. In addition, because the planning chapters contain rules, we will have to use the same notice and comment procedure utilized to adopt these chapters if we decide to amend or change them.

We have chosen to use the Service Manual because: (1) The requirements are primarily working rules of procedure for Refuge Managers to follow with regard to areas that they manage; (2) the planning chapters contain a mix of rules that we must follow and general guidance that we normally will adhere to but that we may deviate from as the particular situation warrants; (3) the planning chapters do not directly regulate the public; (4) the planning chapters and the Service Manual are available to the public through either the Department of the Interior or the Fish and Wildlife Service home pages on the World Wide Web or by request made to any refuge or Service field, regional, or headquarters office and, therefore, are as available to the public as they would be if published in the CFR; and (5) publishing in the Service Manual rather than the CFR does not affect the strength of any rules that are in the chapters nor does it exempt us from procedural requirements.

Comment: The introductory sections of the draft planning policy identify an important and useful set of refuge planning goals (Sections 1.5 and 2.3). Especially important are the goals of ensuring that the System "contributes to the conservation of biological diversity and integrity and to the structure and function of the ecosystems of the United States" (Section 1.5 B) and encouraging that refuge planning be done in concert with an ecosystem approach (Section 2.3 C). However, those goals are not clearly identified as "national policy" and they are not integrated into the development of a vision and goals. While there is strong support for basing future refuge management on ecosystem goals, this emphasis needs to be much more clearly articulated.

Response: We recognize the need to establish national policy regarding Refuge System goals. This policy is currently under development and will eventually appear as 601 FW 1 of the Service Manual. We expect this policy to be available for public review and comment in spring 2000.

Comment: The definition of "all available information" should be adopted from the Proposed Compatibility Regulations (64 FR 49056) which includes as sources of information "planning documents, environmental assessments, environmental impact statements, annual narratives, information from previously conducted or on-going research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience, etc."

Response: We made the recommended change in the final policy. See 602 FW 3.4 C (1)(e).

Comment: The FWS must ensure that plans at the national, regional, and ecosystem levels are in place before refuge planning begins. The current schedule for CCP completion does not consider whether larger-scale priorities are in place, and does not provide enough time to develop sound individual CCPs. If this recommendation is not adopted, Refuge Managers must at the very least be required to state minimum inventory needs in their plans, if for no other reason than to ensure that they have the minimum baseline data they need in order to write their next plan.

Response: We will coordinate CCP schedules so that they follow completion of national, regional, and ecosystem plans whenever possible. However, we recognize that in some instances we will develop CCPs before ecosystem and other plans are in place or updated. Our policy is to make management decisions using a thorough assessment of available science derived from scientific literature, on-site refuge data, expert opinion, and sound professional judgment. In situations where we are unable to develop new data for the CCP, the plan may identify the need for further data collection. In such cases we may delay decision making, pending additional data collection and analysis.

Comment: A section in the planning policy should be dedicated to issues external to refuge boundaries including how land acquisition and other ecosystem management tools fit in the context of Comprehensive Conservation Planning.

Response: We recognize the need for this additional guidance. Consequently, we will be adding an additional chapter, Land Protection Planning (602 FW 2), to the Service Manual in the near future.

Comment: Endangered and threatened species should be addressed separately within the planning policy. The Service's recommendations should provide direction for specific conservation and recovery planning for threatened and endangered species. Each refuge should be required to integrate specific threatened and endangered species Conservation and Recovery Plan implementation tasks into their CCP.

Response: We do not believe there is a need to address endangered and threatened species separately within our policy. We address endangered and threatened species concerns at various steps throughout the planning process (see 602 FW 1.7 A and 602 FW 3.4 C (1)(a), (1)(e), (4)(d), (4)(f), (5)(a)). We agree that we should integrate Conservation and Recovery Plan implementation tasks for threatened and endangered species into refuge CCPs, where applicable. We advocate the development of goals, objectives, and strategies for the recovery and conservation of threatened and endangered species for any refuge with the potential for such.

Comment: The U.S. General Accounting Office (GAO) has identified four practical steps to successfully implementing ecosystem management (RCED–99–64). The Service should identify opportunities to make the proposed planning process more consistent with these steps, to ease the transition to an ecosystem approach. It is believed that the steps for ecosystem management that GAO has identified are consistent with the Refuge Improvement Act and with the Service's compatibility approach to determining the appropriateness of refuge uses.

Response: We feel the recommended change is beyond the scope of this policy.

Comment: Section 2.4C (1)(d) should be modified to require identification of the relationship between the planning unit and its watershed, and planning teams should be encouraged to identify water quality threats by collaborating with the Environmental Protection Agency (EPA).

Response: We see no need to specifically mention the relationship between the planning unit and its watershed since this relationship is encompassed by 602 FW 3.4 C (1)(e)(ii). With regard to the identification of water quality threats, we have incorporated the above suggestion with the exception that we did not specifically mention collaboration with the EPA. We added text to 602 FW 3.4 C (1)(e) that states: "Obtain information from Federal, Tribal, State, and local agencies * * *" We imply consultation with the EPA, as appropriate.

Comment: The Forest Service rule, released on October 5, 1999, acknowledges the dynamic nature, uncertainty and inherent variability of ecological systems of which we have incomplete data and knowledge. As a result the Forest Service explicitly encourages that variable natural processes be considered when defining desired future ecological conditions. The Forest Service also shifts its perspective from a focus on habitat and population to a focus on the ecosystem conditions necessary to assure a high likelihood of maintaining the viability of native and desired non-native species over time within the plan area. This shift in perspective would benefit the management of wildlife refuges as well.

Response: We recognize the benefit of looking at the ecosystem context of each refuge. Our policy provides direction for the Refuge Manager and planning team to assess ecological conditions of the watershed, ecosystem, and the relationship to the refuge (see 602 FW 1.7). Our policy also provides direction for adaptive management and monitoring, as well as direction to change refuge management in the event of new circumstances or information (see 602 FW 3). The Service also has existing policy and guidance on ecosystem management and will be developing new policy and guidance on ecological integrity.

Comment: Section 2.4 C (1)(d) should be modified to direct the planning team to identify and describe as appropriate, the structures, components, and functions of the ecosystem(s) of which the refuge is a part. In addition, Section 2.4 C (4)(d) should be modified to direct planning teams to develop objectives for ecosystem structures, components, and functions to maintain or restore the ecological health of the refuge.

Response: We revised Section 3.4 C (1)(e) to reflect that the planning team should identify and describe the structures, components, and functions of the ecosystem(s) of which the planning unit is a part. However, we do not believe the planning team should be responsible for developing objectives related to the larger ecosystem. This responsibility belongs to our ecosystem teams.

Comment: Section 2.4 C (3)(b) should be modified to require that planning teams "determine significant issues and the appropriate scale at which to consider those issues."

Response: We made the recommended change in the final policy. See 602 FW 3.4 C (3)(b).

Comment: The Forest Service rule proposed that "focal species" should be selected to serve as surrogate measures in the assessment of ecological integrity. We believe that with limited resources for monitoring and a need to assess the health of refuge habitats and ecological processes, the Service should adopt this strategy for monitoring ecological health. Specifically, 602 FW 2.4 C (7) should be modified to require monitoring of focal species, since their status and time trend provide insights into the integrity of the larger ecological system to which refuges belong, and ecological health is a strong overarching indicator of whether refuge management is generally successful or requires significant modification.

Response: We feel this recommendation is more appropriately addressed in 701 FW 2 (the Service Manual chapter dealing with inventory and monitoring). This policy, currently under revision, will help provide guidance on how to accomplish monitoring strategies identified in the CCP.

Comment: It would be useful for Refuge Managers to seek out information regarding trends in refuge ecological conditions. It is important not only to know the current status of refuge conditions, but also whether they are improving or declining, in order to most effectively prioritize management activities. Hence, Section 2.4 C (1)(d) should be modified to read: "Identify and describe the following conditions and their trends as appropriate."

Response: We made the recommended change in the final policy. See 602 FW 3.4 C (1)(e).

Comment: It is recommended that Section 2.4 (1)(d) be amended so that planning teams would be strongly encouraged to collaborate with adjacent landowners including State, Federal, Tribal, and private landowners, especially to acquire data that may be relevant to planning decisions. Furthermore, planning teams should be encouraged to collaborate as appropriate with the Environmental Protection Agency, the Department of Agriculture's Forest Service and Natural Resources Conservation Service, the Department of Commerce's National Marine Fisheries Service, the United States Army Corps of Engineers, and relevant bureaus within the Department of the Interior such as the U.S. Geological Survey. Each of these agencies may be able to provide information that may dramatically improve the quality of CCPs with limited expense by the Service.

Response: We incorporated the above suggestion into the final policy. We added language to 602 FW 3.4 C (1)(e) which states: "Obtain information from Federal, Tribal, State and local agencies, and private landowners concerning land management issues that may impact or relate to the planning unit." We also substantially modified this section of the draft policy to include a wide variety of additional sources of information we will consult during the preplanning stage.

Comment: Section 2.4 C (3)(b) limits the consideration of issues in the CCP to those that are determined to be "significant" by the planning team. To ensure consistency across refuge units and to ensure that important ecological or public use issues are not excluded from consideration in some plans, it is necessary to establish criteria for determining which issues are "significant" and thereby warrant consideration in the CCP.

Response: We incorporated the above recommendation into the final policy. We added the following language to the end of Section 602 FW 3.4 C (3)(b): "Significant issues typically are those that are: within our jurisdiction, suggest different actions or alternatives, and will influence our decision."

Comment: Section 2.4 C (4) should be significantly modified to ensure wildlife conservation objectives are considered first in the planning process. In addition, another slight modification of this section should be considered. For example, 602 FW 2.4 C (4)(e) directs planning teams to "develop inventory and monitoring strategies to measure implementation results in quantifiable and verifiable ways." This should be elaborated to include direction to prioritize inventory and monitoring efforts in a manner "that maximizes the usefulness of acquired information in directing management activities toward the improved ecological health of the refuge." This additional direction will lead to a more productive use of limited resources for monitoring.

Response: We feel this recommendation is more appropriately addressed in 701 FW 2 (the Service Manual chapter dealing with inventory and monitoring). This policy, currently under revision, will provide guidance on how to accomplish monitoring strategies identified in the CCP.

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VII. Describing the Relationship of CCPs to Refuge Purposes and Refuge System Mission

Comment: Some commenters requested that the agency not overlook the quality of the individual refuges for sake of the "System."

Response: Many sections of the policy identify the need for the planning team to acknowledge individual refuge purposes and functions. For example, see Sections 1.3 and 3.1.

Comment: Some comments were received that requested the CCP policy provide more guidance on the implications of the Service's ecosystem approach to refuge planning and management. In particular, it has been noted that while the Service's ecosystem approach has goals for the effective conservation of natural biological diversity, and the perpetuation of natural communities, many refuges have created or possess artificial habitats, croplands, dikes and other structures. It has been pointed out that more guidance may be needed to help reconcile the differences between areas which may be managed for "naturalness" and those that may need to be highly manipulated or developed to support objectives.

Response: We recognize the great variability in the Refuge System. Many areas are representative of intact ecosystems or vegetation communities, while we may have developed others to provide for wetland habitats lost at a greater scale. We will require refuge planning efforts to review a host of information, including establishing authorities, refuge purposes, past management practices, ecosystem and watershed goals, activities of neighboring lands, and species goals and objectives throughout their ranges. Goals for the restoration or maintenance of biological diversity will be high on our list of priorities for many refuges, however, it will not be appropriate for every refuge in the Refuge System. For unless restoration of wildlife habitat takes place on vast developed areas so that we no longer have to manage highly manipulated refuges to make up for the loss of wetlands or the recovery and restoration of habitats for endangered species, some of our refuge management will continue to be "unnatural," yet for the benefit of numerous wildlife species. We will be working nationally, and with our partners, to help identify and define how units of the Refuge System can best contribute to maintaining biodiversity and the context of each refuge within the greater ecosystem and landscape.

VIII. Addressing Issues Related to Recreation and Public Use

Comment: The National Wildlife Refuge System Improvement Act makes it clear that part of the planning process must be to consider, on a priority basis, wildlife-dependent uses and to facilitate such uses. In order to carry out the intent of Congress, the Service should add real "requirements and standards" to assure that adequate attention is paid to wildlife. For example, there should be language in Section 2.3 dealing with wildlife-dependent uses. This section sets out the goals for Comprehensive Conservation Planning mentioning the ecosystem concept, the use of sound professional judgment, public comment and several other "goals," but nowhere does it refer to the goal of giving priority consideration to wildlife-dependent uses or to facilitating them. The commenter recommends the insertion of a new Subsection E, reading as follows, and the re-lettering of the existing Subsections, E, F, and G:

"E. To assure that wildlife-dependent recreational uses receive priority consideration during the planning process and that plans include steps to facilitate such uses."

Response: We have inserted a new Subsection 602 FW 3.3 E in the final policy that reads: "To ensure that the six priority wildlife-dependent recreational uses receive priority consideration during the preparation of CCPs." We have re-lettered subsequent subsections F, G, and H.

Comment: In Section 2.4 B (1)(d), which deals with "planning area, data needs, and data standards" in the preplanning process, item (x) should be expanded. Currently, that item says that the planning team should "identify and describe the following * * * (x) opportunities for compatible wildlife-dependent recreation." This is quite weak compared to the stress on "facilitating" wildlife-dependent recreational uses contained in the Refuge Improvement Act. Item (x) should be revised to read as follows:

"(x) existing wildlife-dependent recreational uses, opportunities for continuing, facilitating and expanding such uses, and strategies to accomplish such continuation, facilitation and expansion."

Response: We have modified the wording in Step 1, "Preplanning: Planning the Plan, (e) Planning Area and Data Needs" (602 FW 3.4 C (1)(e)), to read as follows: "(xix) Existing and potential opportunities for wildlife-dependent recreation." Developing the strategies associated with continuing, facilitating, or expanding such uses more appropriately belongs in Step 4, "Develop and Analyze Alternatives, Including the Proposed Action, (e) Strategy Development."

Comment: In Section 2.4 B(1)(f), Vision and Goals, the third sentence contains a reference to "compatible wildlife-dependent recreation" in discussing the minimum goals that should be included in a CCP. This sentence should be expanded to read:

"At a minimum, each refuge should develop goals within the following management areas: the continuation, facilitation and expansion of opportunities for compatible wildlife-dependent recreation * * *"

Response: We believe the policy's current wording is appropriate.

Comment: Section 2.4 B(1)(g), Internal Scoping, refers to identification of problems with wildlife and habitats, assessments of water quality and quantity, potential need for administrative sites or visitor facilities, land acquisition, and controversial management actions. There is no reference at all to the continuation, facilitation and expansion of wildlife-dependent uses! The following sentence should be added to this provision:

"We also need to evaluate the current or potential wildlife-dependent uses and consider opportunities to continue, facilitate and expand such uses."

Response: We have moved the list to which you refer to Section 3.4 C (1)(e) "Planning Area and Data Needs," and have added the following item, "(xix) Existing and potential opportunities for wildlife-dependent recreation."

Comment: There is concern that with no public review and comment process in place, some wildlife-dependent uses may be allowed that are detrimental to the refuge and/or to wildlife inhabiting the refuge. Such uses may be allowed for many years, as refuges are not required to prepare CCPs until October 2012. The planning policy should reflect that a public review and comment process will be implemented for all interim wildlife-dependent uses.

Response: We believe we adequately addressed this concern in Step 5, "Prepare Draft Plan and NEPA Document, Subpart (c) Pre-acquisition Compatibility Determinations." This subpart requires that: "If our proposed action includes expanding the planning unit by acquiring new lands, the draft CCP and NEPA documents also must identify any existing wildlife-dependent recreational public uses deemed compatible that we will allow to continue after acquisition." The public will have an opportunity to review and comment on all compatibility determinations. Our refuge planning policy directs that we incorporate pre-acquisition compatibility determinations into the draft CCP and NEPA document, where they will receive their required public review and comment.

Comment: A few commenters stated confusion with, or recommended changes to, the definition of wildlife-dependent recreational uses. In particular, some suggested we reconsider trapping, and other uses, as a wildlife-dependent recreational use.

Response: While we recognize that trapping of animals may be a form of wildlife-dependent recreation, the Refuge Administration Act, as amended, binds our definition of wildlife-dependent recreational uses, which only includes hunting, fishing, wildlife observation and photography, environmental education and interpretation. These are the priority public uses of the National Wildlife Refuge System. We recognize that we may consider other recreational and other activities, such as trapping, during the planning process. Such other uses or activities proposed on a refuge may or may not be both appropriate on the refuge and compatible with refuge purposes. We would not label other recreational uses that we find to be appropriate and compatible through the planning process as wildlife-dependent recreational uses, but would place them in a category of other recreation. Specific to trapping, we note that in many cases we would classify this activity as a commercial use, and require a permit and compatibility determination. We acknowledge that many of the wildlife-dependent recreational uses are "more than recreation," in that the outdoor experience can provide the visitor with a wealth of experiences. However, we support and are bound by the definition in the Act.

Comment: At least one commenter requested that we consider establishing carrying capacities for public uses and other uses.

Response: The Service is developing new policies on habitat management, priority wildlife-dependent recreation, and refuge uses (appropriate uses). We will recommend that carrying capacities be considered in the development of these policies.

Primary Author

Charles J. Houghten, Acting Chief, Division of Refuge Planning, Pacific Region, U.S. Fish and Wildlife Service, is the primary author of this notice.

Refuge Management—Part 602 National Wildlife Refuge System Planning

Chapter 1 Refuge Planning Overview.—602 FW 1

1.1 What is the purpose of Part 602 and this chapter? Part 602 provides guidance for National Wildlife Refuge System (Refuge System) planning, including specific chapters on the Comprehensive Conservation Planning Process (602 FW 3) and Step-Down Management Plans (602 FW 4). This chapter (602 FW 1) provides an overview of refuge planning. We will add an additional chapter, Land Protection Planning (602 FW 2), in the near future.

1.2 To what does Part 602 apply? Part 602 applies to all units of the National Wildlife Refuge System.

1.3 What is our policy for managing refuges? The U.S. Fish and Wildlife Service (Service or we) will manage all refuges in accordance with an approved Comprehensive Conservation Plan (CCP), which, when implemented, will achieve refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. The CCP will guide management decisions and set forth goals, objectives, and strategies to accomplish these ends. We also may require step-down management plans to provide additional details about meeting CCP goals and objectives and to describe strategies and implementation schedules. Each plan will be founded on principles of sound fish and wildlife management and available science, and be consistent with legal mandates and our other policies, guidelines, and planning documents. We will prepare refuge plans that, above all else, ensure that wildlife comes first on national wildlife refuges.

1.4 What are our authorities? Authorities listed below include laws that require us to manage units of the Refuge System in accordance with approved CCPs and to integrate refuge planning decisions with the National Environmental Policy Act (NEPA) process.

A. National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd–668ee (Refuge Administration Act). This law states that "* * * the Secretary shall—(i) propose a comprehensive conservation plan for each refuge or related complex of refuges * * * in the System; (ii) publish a notice of opportunity for public comment in the **Federal Register** on each proposed conservation plan; (iii) issue a final conservation plan for each planning unit consistent with the provisions of this Act and, to the extent practicable, consistent with fish and wildlife conservation plans of the State in which the refuge is located; and (iv) not less frequently than 15 years after the date of issuance of a conservation plan under clause (iii) and every 15 years thereafter, revise the conservation plan as may be necessary." This law provides additional detail on conservation planning for the Refuge System. Above all else, the law directs that wildlife comes first in the National Wildlife Refuge System. It does so by establishing that wildlife conservation is the principal mission of the Refuge System; by requiring that we maintain the biological integrity, diversity, and environmental health of each refuge and the Refuge System; and by mandating that we monitor the status and trends of fish, wildlife, and plants on each refuge.

B. Alaska National Interest Lands Conservation Act of 1980 as amended, 16 U.S.C. 140hh–3233, 43 U.S.C. 1602–1784 (ANILCA). Section 304 states, in part, "The Secretary shall prepare, and from time to time, revise, a comprehensive conservation plan * * * for each refuge." You may find additional guidance on the content of these plans and management direction in this and other sections of ANILCA. If any provisions of the National Wildlife Refuge System Improvement Act of 1997 conflict with the provisions of ANILCA, the provisions of ANILCA will prevail for refuges in Alaska.

C. National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347, and the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR 1500–1508. NEPA is the basic national charter for protection of the environment. The procedural provisions in CEQ's regulations require Federal agencies to integrate the NEPA process with other planning at the earliest possible time in order to provide a systematic interdisciplinary approach; identify and analyze the environmental effects of their actions; describe appropriate alternatives to the proposal; involve the affected State and Federal agencies, Tribal governments, and the affected public in the planning and decision-making process; and fully integrate all refuge proposals that may have an impact on the environment with the provisions of NEPA (40 CFR 1501.2).

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1.5 What are the goals of refuge planning?

A. To ensure that wildlife comes first in the National Wildlife Refuge System.

B. To ensure that we manage the Refuge System for the conservation of fish, wildlife, plants, and their habitats and that refuge management achieves our policies, the Refuge System mission, and the purposes for which the refuge was established.

C. To ensure that the administration of the Refuge System contributes to the conservation of the ecological integrity of each refuge, the Refuge System, and to the structure and function of the ecosystems of the United States.

D. To ensure opportunities to participate in the refuge planning process are available to our other programs; Federal, State, and local agencies; Tribal governments; conservation organizations; adjacent landowners; and the public.

E. To provide a basis for adaptive management by monitoring progress, evaluating plan implementation, and updating refuge plans accordingly.

F. To promote efficiency, effectiveness, continuity, and national consistency in refuge management.

G. To help ensure consistent System-wide consideration of the six priority public uses—hunting, fishing, wildlife observation and photography, and environmental education and interpretation—established by the Refuge Administration Act and to ensure that these uses receive enhanced consideration over general public uses in the Refuge System.

H. To ensure that we preserve the wilderness character of refuge lands.

1.6 What do the following terms mean? (Quotations are from the Refuge Administration Act unless otherwise noted)

A. Adaptive Management. The rigorous application of management, research, and monitoring to gain information and experience necessary to assess and modify management activities. A process that uses feedback from refuge research and monitoring and evaluation of management actions to support or modify objectives and strategies at all planning levels.

B. Alternatives. Different sets of objectives and strategies or means of achieving refuge purposes and goals, helping fulfill the Refuge System mission, and resolving issues.

C. Biological Diversity. The variety of life, including the variety of living organisms, the genetic differences among them, and the communities in which they occur.

D. Biological Integrity. Biotic composition, structure, and functioning at the genetic, organism, and community levels consistent with natural conditions, including the natural biological processes that shape genomes, organisms, and communities.

E. Comprehensive Conservation Plan (CCP). A document that describes the desired future conditions of a refuge or planning unit and provides long-range guidance and management direction to achieve the purposes of the refuge; helps fulfill the mission of the Refuge System; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; helps achieve the goals of the National Wilderness Preservation System; and meets other mandates.

F. Coordination Area. A wildlife management area made available to a State, by "(A) cooperative agreement between the United States Fish and Wildlife Service and the State fish and game agency pursuant to Section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or (B) by long-term leases or agreements pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525; 7 U.S.C. 1010 et seq.)." States manage Coordination Areas, but they are part of the Refuge System. We do not require CCPs for Coordination Areas.

G. Ecological Integrity. The integration of biological integrity, natural biological diversity, and environmental health; the replication of natural conditions.

H. Ecosystem. A biological community together with its environment, functioning as a unit. For administrative purposes, we have designated 53 ecosystems covering the United States and its possessions. These ecosystems generally correspond with watershed boundaries, and their sizes and ecological complexity vary.

I. Environmental Health. Abiotic composition, structure, and functioning of the environment consistent with natural conditions, including the natural abiotic processes that shape the environment.

J. Goal. Descriptive, open-ended, and often broad statement of desired future conditions that conveys a purpose but does not define measurable units.

K. Issue. Any unsettled matter that requires a management decision, *e.g.*, an initiative, opportunity, resource management problem, threat to the resources of the unit, conflict in uses, public concern, or the presence of an undesirable resource condition.

L. National Wildlife Refuge (refuge). "A designated area of land, water, or an interest in land or water within the Refuge System, but does not include Coordination Areas." Find a complete listing of all units of the Refuge System in the current Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service.

M. National Wildlife Refuge System Mission (mission). "The mission of the System is to administer a national network of lands and waters for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans."

N. Objective. A concise statement of what we want to achieve, how much we want to achieve, when and where we want to achieve it, and who is responsible for the work. Objectives derive from goals and provide the basis for determining strategies, monitoring refuge accomplishments, and evaluating the success of strategies. Make objectives attainable, time-specific, and measurable.

O. Planning Area. The area upon which the planning effort will focus. A planning area may include lands outside existing planning unit boundaries currently studied for inclusion in the Refuge System and/or partnership planning efforts. It also may include watersheds or ecosystems outside of our jurisdiction that affect the planning unit. At a minimum, the planning area includes all lands within the authorized boundary of the refuge.

P. Planning Team. Planning teams are interdisciplinary in membership and function. Teams generally consist of a Planning Team Leader, Refuge Manager and staff biologists, a state natural resource agency representative, and other appropriate program specialists (*e.g.*, social scientist, ecologist, recreation specialist). We also will ask other Federal and Tribal natural resource agencies to provide team members, as appropriate. The planning team prepares the CCP and appropriate NEPA documentation.

Q. Planning Team Leader. The Planning Team Leader typically is a professional planner or natural resource specialist knowledgeable of the requirements of NEPA and who has planning experience. The Planning Team Leader manages the refuge planning process and ensures compliance with applicable regulatory and policy requirements.

R. Planning Unit. A single refuge, an ecologically or administratively related refuge complex, or distinct unit of a refuge. The planning unit also may include lands currently outside refuge boundaries.

S. Purposes of the Refuge. "The purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit." For refuges that encompass Congressionally designated wilderness, the purposes of the Wilderness Act are additional purposes of the refuge.

T. Refuge Operating Needs System (RONS). The Refuge Operating Needs System is a national database that contains the unfunded operational needs of each refuge. We include projects required to implement approved plans and meet goals, objectives, and legal mandates.

U. Step-Down Management Plan. A plan that provides specific guidance on management subjects (e.g., habitat, public use, fire, safety) or groups of related subjects. It describes strategies and implementation schedules for meeting CCP goals and objectives.

V. Strategy. A specific action, tool, technique, or combination of actions, tools, and techniques used to meet unit objectives.

W. U.S. Fish and Wildlife Service Mission. Our mission is working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

X. Wilderness Review. The process we use to determine if we should recommend Refuge System lands and waters to Congress for wilderness designation. The wilderness review process consists of three phases: inventory, study, and recommendation. The inventory is a broad look at the refuge to identify lands and waters that meet the minimum criteria for wilderness. The study evaluates all values (ecological, recreational, cultural), resources (e.g., wildlife, water, vegetation, minerals, soils), and uses (management and public) within the Wilderness Study Area. The findings of the study determine whether we will recommend the area for designation as wilderness.

Y. Wildlife-Dependent Recreational Use. "A use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation." These are the six priority public uses of the Refuge System as established in the National Wildlife Refuge System Administration Act, as amended. Wildlife-dependent recreational uses, other than the six priority public uses, are those that depend on the presence of wildlife. We also will consider these other uses in the preparation of refuge CCPs, however, the six priority public uses always will take precedence.

Z. Vision Statement. A concise statement of what the planning unit should be, or what we hope to do, based primarily upon the Refuge System mission and specific refuge purposes, and other mandates. We will tie the vision statement for the refuge to the mission of the Refuge System; the purpose(s) of the refuge; the maintenance or restoration of the ecological integrity of each refuge and the Refuge System; and other mandates.

1.7 What is the relationship between Refuge System planning and other planning efforts? Refuge planning should maintain continuity and consistency with other planning efforts. The relationship between these planning efforts is hierarchical, starting from national plans to regional, State, and ecosystem-level plans, stepping down to refuge-specific plans. See Exhibit 1–1. The process of adaptive management uses feedback from refuge research and monitoring, and evaluation of management actions to support or modify objectives and strategies at all planning levels.

A. National and Regional Plans. We will review other Service documents that address particular programs, species, habitats, public uses, economic uses, archaeological resources, etc., when identifying issues to address in refuge planning. National and regional goals, objectives, strategies, and policies influence management planning for refuges. Source documents include: Fulfilling the Promise: The National Wildlife Refuge System, the Service Manual, the North American Waterfowl Management Plan, National Outreach Strategy, regional resource plans, endangered species recovery plans, migratory bird and flyway plans, fishery resource plans, Joint Venture plans, Partners in Flight plans, and strategies to promote the conservation of natural biological diversity. The contribution of the refuge to achieving regional and national goals will help implement our mission and ensure integrity of the Refuge System.

B. Service Ecosystem Plans, State Fish and Wildlife Conservation Plans, and Other Landscape-Level Plans. Refuge planning will reflect conservation goals and objectives for the landscapes in which the refuges are located. Refuges must review goals and objectives of existing ecosystem plans and determine how the refuge can best contribute to the functioning of the ecosystem. We will coordinate refuge planning with State conservation agencies, Tribal governments, other government agencies, and nongovernmental organizations. To the extent practicable, refuge plans will be consistent with the fish and wildlife conservation plans of the State and the conservation programs of Tribal, public, and private partners within the ecosystem.

C. Land Acquisition Planning. We integrate land acquisition and CCP planning throughout the land acquisition planning process. We describe three opportunities for integration in the following paragraphs:

(1) Refuge planning typically begins before the establishment of an area as a unit of the Refuge System. Land acquisition planning (usually resulting in a Land Protection Plan [LPP] and associated NEPA document) is a preliminary step in the continuous, integrated refuge planning process. This process eventually results in completion of a CCP and appropriate refuge step-down management plans. Other land use, species, or habitat protection planning efforts, or legislative or executive directives may precede land acquisition planning. Refuge establishment documentation (LPP and associated NEPA document) should identify the approved refuge boundary, refuge purpose(s), goals, and general management direction. See 341 FW 2.

(2) Planning for proposed new refuges or major expansions to existing refuges not undergoing a CCP will include the development of a Conceptual Management Plan (CMP) for the new unit. The CMP provides general, interim management direction. The CMP should identify refuge purpose(s), interim goals, and pre-existing compatible wildlife-dependent recreational uses (hunting, fishing, wildlife observation, photography, environmental education and interpretation) that we will allow to continue on an interim basis. The interim period is the duration of time between establishment of a new refuge or refuge expansion and the completion of an approved CCP. Refuges functioning under CMPs also will develop step-down management plans, as appropriate.

(3) Fully integrate land acquisition planning efforts into CCP preparation whenever possible. Some proposed new refuges or refuge expansions may warrant CCP development at the time of acquisition planning. Include appropriate Realty staff on the planning team when considering land acquisition during the CCP process to ensure consistency with land acquisition policy. See 341 FW 2.

D. Comprehensive Conservation Plans (CCP). The CCP is a document that describes the desired future conditions of a refuge or planning unit and provides long-range guidance and management direction to achieve the purposes of the refuge; helps fulfill the

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mission of the Refuge System; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; helps achieve the goals of the National Wilderness Preservation System; and meets other mandates. See 602 FW 3. For refuges established after October 9, 1997, prepare CCPs when the refuge obtains staff and acquires a land base sufficient to achieve refuge purposes, but no later than 15 years after we establish the refuge. Convert refuge long-range management plans (*e.g.*, master plans and refuge management plans) approved prior to October 9, 1997, into CCPs with appropriate public involvement and NEPA compliance no later than October 2012.

E. Step-Down Management Plans. Step-down management plans provide the details (strategies and implementation schedules) necessary to meet goals and objectives identified in the CCP. CCPs will either incorporate or identify step-down management plans required to fully implement the CCP. After completion of the CCP, modify existing step-down management plans to accomplish stated goals and objectives as needed. See 602 FW 4.

F. Integration With Budget Development and Implementation. We will use CCPs to guide annual budget requests. We will identify the unfunded costs of implementing strategies in refuge plans using our budget databases, including the Refuge Operating Needs System (RONS), Maintenance Management System (MMS), and Land Acquisition Priority System (LAPS). As we complete or update each plan, we will review and update these databases to incorporate projects identified in CCPs. The total funding and staffing identified in these databases represents the additional resources required to fully implement the refuge plans.

1.8 Who is responsible for implementing our policy?

A. Director. The Director is responsible for providing national policy and ensuring adherence to refuge planning policy.

B. Regional Director. The Regional Director: (1) Ensures compliance with national planning policy, NEPA, and other applicable laws and policies; (2) approves CCPs, amendments to CCPs, and associated NEPA and other agency compliance documents; and (3) ensures that we manage refuges in accordance with approved CCPs. The Regional Director or designee approves step-down management plans, determines planning priorities, and allocates funds to develop and implement plans.

C. Regional Chief, National Wildlife Refuge System. The Regional Chief, National Wildlife Refuge System, is responsible for initiating and completing refuge plans, budgeting for planning, ensuring programmatic staff participation, and developing regional planning priorities. The Special Assistant for Ecosystems is responsible for ensuring that ecosystem teams participate in developing plans and implementing approved plans.

D. Refuge Planning Coordinator. The Washington Office, Division of Refuges, and each Region will designate a Refuge Planning Coordinator. In cooperation with representatives of our National Conservation Training Center, the Coordinators will establish and maintain appropriate training courses. Refuge Planning Coordinators will provide guidance and direction to assist Planning Team Leaders, regional and field-based planning staff, and planning team members. The Coordinators also are responsible for maintaining regional planning schedules and updating status reports and funding needs for the planning program. The Coordinators periodically will meet to review and recommend changes to planning policy, resolve common planning problems and issues, and help ensure national consistency.

E. Planning Team Leader. The Planning Team Leader is responsible for initiation of the planning process, preparation and completion of refuge plans, and ensuring that we meet compliance requirements. The Planning Team Leader, in consultation with the Refuge Manager, is responsible for identifying appropriate and proper representation on the interdisciplinary planning team, including team members, support personnel, and outside or contract assistance. The Refuge Manager and Planning Team Leader will submit the final CCP through line supervision for concurrence and approval by the Regional Director.

F. Refuge Supervisor. The Refuge Supervisor is responsible for overseeing participation of the Refuge Manager in CCP preparation and implementation, and for providing direction and guidance on compliance with Refuge System policy and regulations. Once the Planning Team Leader and Refuge Manager submit the plan, the Refuge Supervisor will be responsible for review and concurrence of the plan prior to its submission to the next level.

G. Refuge Manager. The Refuge Manager participates in the preparation of the CCP working closely with the Planning Team Leader. The Refuge Manager assures that the refuge staff participates in plan development. The Refuge Manager and Planning Team Leader submit the final CCP through line supervision for concurrence and approval by the Regional Director. The Refuge Manager is responsible for: making compatibility determinations; implementing approved CCPs and step-down management plans; tracking progress; and recommending changes to plans based on monitoring and evaluation. The Refuge Manager also reports plan accomplishments through standard reporting mechanisms and budgeting procedures.

H. Planning Team. The planning team, coordinated by the Planning Team Leader, is responsible for the initiation and completion of all planning steps, including public involvement and NEPA compliance, resulting in a refuge CCP. We describe the steps in 602 FW 3.4C. The planning team is responsible for the CCP's content in terms of information relating to management of refuge resources and use activities. The planning team will ensure that the CCP, when implemented, will achieve the purposes of the refuge and help fulfill the Refuge System mission.

I. Regional Environmental (NEPA) Coordinator. The Regional Environmental (NEPA) Coordinator provides technical assistance on NEPA-related matters.

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Exhibit 1-1

Relationships Between Service, System, and Other Planning Efforts

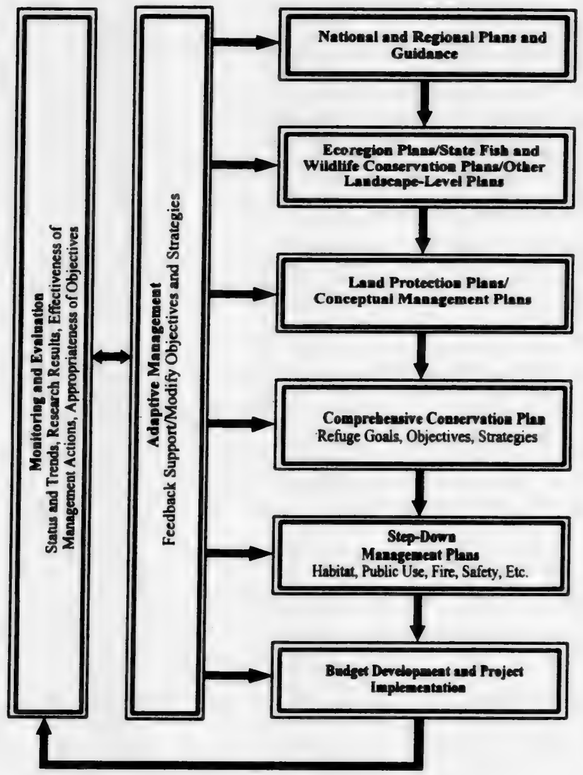

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Refuge Management—Part 602 National Wildlife Refuge System Planning

Chapter 3 Comprehensive Conservation Planning Process 602—FW 3

3.1 What is the purpose of this chapter? Comprehensive Conservation Plans (CCPs) describe the desired future conditions of a refuge and provide long-range guidance and management direction to achieve refuge purposes; help fulfill the National Wildlife Refuge System (Refuge System) mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. The purpose of this chapter is to describe a systematic decision-making process that fulfills the requirements we are establishing for developing a CCP. This policy provides guidance, step-by-step direction, and establishes minimum requirements for all CCPs. Experienced planners lead the CCP process. We require all of our planners and strongly encourage Refuge Managers and other key planning team members attend the National Conservation Training Center (NCTC) course on Refuge Comprehensive Conservation Planning.

3.2 What is our policy for CCPs? The U.S. Fish and Wildlife Service (Service or we) must manage all national wildlife refuges according to an approved CCP. We will prepare a CCP by October 2012, for each refuge in existence at the time of passage of the National Wildlife Refuge System Improvement Act. For refuges established after passage of this Act, we will prepare CCPs when we staff the refuge and acquire a land base sufficient to achieve refuge purposes, but no later than 15 years after establishment of the refuge. To the extent practicable, we will coordinate the development of CCPs with affected States. We will continue to manage each refuge or planning unit with existing plans effective prior to October 9, 1997, to the extent these plans are consistent with the Refuge Administration Act, until we revise such plans or new CCPs supersede them. Upon completion of a CCP, we will manage the refuge or planning unit in a manner consistent with the CCP. We will revise the CCP every 15 years thereafter, or earlier, if monitoring and evaluation determine that we need changes to achieve planning unit purpose(s), vision, goals, or objectives.

3.3 What are our goals for Comprehensive Conservation Planning?

A. To ensure that wildlife comes first in the National Wildlife Refuge System and that we manage each refuge to help fulfill the mission of the Refuge System, maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System, as well as achieve the specific purposes for which the refuge was established.

B. To provide a clear and comprehensive statement of desired future conditions for each refuge or planning unit.

C. To encourage use of an ecosystem approach when we conduct refuge planning. This includes conducting concurrent refuge planning for refuges within the same watershed or ecosystem and considering the broader goals and objectives of the refuges' ecosystems and watersheds when developing management direction (see Ecosystem Approach to Fish and Wildlife Conservation [Part 052 of the Service Manual]).

D. To support management decisions and their rationale by using a thorough assessment of available science derived from scientific literature, on-site refuge data, expert opinion, and sound professional judgment.

E. To ensure that the six priority wildlife-dependent recreational uses receive priority consideration during the preparation of CCPs.

F. To provide a forum for the public to comment on the type, extent, and compatibility of uses on refuges, including priority wildlife-dependent recreational uses.

G. To provide a uniform basis for budget requests for operational, maintenance, and capital improvement programs.

H. To ensure public involvement in refuge management decisions by providing a process for effective coordination, interaction, and cooperation with affected parties, including Federal agencies, State conservation agencies, Tribal governments, local governments, conservation organizations, adjacent landowners, and interested members of the public.

3.4 What is the Comprehensive Conservation Planning process?

A. The CCP process (see Exhibit 3–1) provides consistent guidelines for developing CCPs. We designed the planning process to result in the development of vision statements, goals, objectives, and strategies that achieve refuge or planning unit purpose(s); help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates.

B. Each CCP will comply with the provisions of the National Environmental Policy Act (NEPA) through the concurrent preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) that will accompany or be integrated with the CCP. We have integrated NEPA compliance requirements directly into the CCP process. When preparing an EA, consider integrating it into the draft CCP. When preparing an EIS with a CCP, integrate the documents. Following completion of the final CCP/NEPA document, the product of the planning process will be a stand-alone CCP, separate from the EA or EIS.

C. Our CCP planning process consists of the following eight steps. Although we display the steps sequentially, CCP planning and NEPA documentation are iterative processes. Cycling through some of the steps more than once or having several steps occurring simultaneously is normal. Actions within each of the eight steps may not be sequential.

(1) Preplanning: Planning the Plan

(a) Planning Team. The Regional Chief, National Wildlife Refuge System, appoints the Planning Team Leader. The Planning Team Leader assembles the planning team, which consists of the Planning Team Leader, the Refuge Manager and key staff members, and appropriate support staff or specialists from both regional and field offices (*e.g.*, fisheries, cultural resources, endangered species, external affairs/outreach, realty, contaminants, migratory birds, water resources, etc.). We will provide representatives from appropriate State and Tribal conservation agencies, and any public agency that may have a direct land management relationship with the refuge, the opportunity to serve on planning teams. The Planning Team Leader will prepare a formal written request for participation by appropriate State and Tribal conservation agencies for signature by the Regional Director. Included in this request is an invitation to attend the NCTC course on Refuge Comprehensive Conservation Planning. Participation by these State and Tribal agencies shall not be subject to the Federal Advisory Committee Act.

(b) Identify Refuge Purpose(s), History, and Establishing Authority. Document the history of refuge establishment and management, as well as refuge purposes and authorizing authority (*e.g.*, legislation [including wilderness designation, if applicable], executive orders, administrative memoranda) (*see* 601 FW 1). These will become driving forces in the process and subsequently be reflected in the refuge vision statement, goals, objectives, and strategies in the CCP.

(c) Identify Planning and Compliance Requirements and Special Designations. Review our agency and Refuge System mission statements and policies, as well as other existing legislation to help identify planning and compliance requirements. *See* Exhibit 3–2 for a list of laws and executive orders that may apply and Exhibit 3–3 for a checklist of elements we must include within a CCP. Identify and review other Service guidance such as Fulfilling the Promise: The National Wildlife Refuge System and mandates including laws, executive orders, regulations, and our policies, especially those with compliance requirements. Also review any existing special designation areas such as wilderness, research natural areas, wild and scenic rivers, wetlands of international importance (Ramsar sites), Western Hemisphere Shorebird Reserves, etc., and specifically address the potential for any new special designations. Concurrent with the CCP process we will conduct a wilderness review and incorporate a summary of the review into the CCP. (*See* Part 610 of the Service Manual for guidance on conducting wilderness reviews.) Complete the inventory phase of the review during preplanning. If a Wilderness Study Area is identified, proceed with the study and recommendation phases of the review. (Note: An EIS is the NEPA document we must include in a recommendation or report on a legislative proposal to Congress [40 CFR 1506.8]. This requirement applies to all CCPs that contain wilderness recommendations.)

(d) Purpose and Need for the Plan. The purpose of developing the CCP is to provide the Refuge Manager with a 15-year management plan for the conservation of fish, wildlife, and plant resources and their related habitats, while providing opportunities for compatible wildlife-dependent recreational uses. The CCP, when fully implemented, should achieve refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. The CCP must be specific to the planning unit and identify the overarching wildlife, public use, or management needs for the refuge.

(e) Planning Area and Data Needs. Delineate the planning area on a map. Identify the relationship between the planning unit and its ecosystem(s) and watershed(s) as well as relationships between the planning unit and any other refuges or other important fish and wildlife habitats in the vicinity. Identify data available to address issues discussed in Step (h) Internal Scoping. Obtain information from Federal, Tribal, State and local agencies, and private landowners concerning land management issues that may impact or relate to the planning unit. To assist in determining species or resources of concern, consult the following: Federal threatened and endangered species lists; Migratory Nongame Birds of Management Concern in the United States; Partners in Flight Watch List; State lists of rare, threatened, endangered, or species of concern; National Audubon Society State Watch Lists; The Nature Conservancy's heritage program and ranking system; as well as State heritage databases and conservation data centers for additional sources of information. Also identify resource experts familiar with the key species and habitats in the planning area, and consult with these experts during the development of habitat objectives. Base CCPs on a comprehensive assessment of the existing scientific literature. Potential sources of information include planning documents, EAs, EISs, annual narrative reports, information from previously conducted or ongoing research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience, etc. While we may not be able to develop new data for the CCP, we may identify the need for further data collection. A lack of data should not delay the completion of the CCP. Identify and describe the following conditions and their trends for the planning unit and, as appropriate, for the planning area:

(i) Context of the planning unit in relation to the surrounding ecosystem.

(ii) Structures, components, and functions of the ecosystem(s) of which the planning unit is a part.

(iii) Natural and historic role of fire and other natural occurrences affecting ecological processes.

(iv) Past land use and history of settlement, including a description of any changes in topography, hydrology, and other factors.

(v) Current and historic description of the flora and fauna and the diversity of habitats and natural communities.

(vi) Distribution, migration patterns, and abundance of fish, wildlife, and plant populations, including any threatened or endangered species, and related habitats.

(vii) Fish, wildlife, and plants and their habitats and communities that are rare and/or declining within the ecosystem.

(viii) Water resources including quality and quantity.

(ix) Archaeological and other cultural resources.

(x) Significant problems that may adversely affect the ecological integrity or wilderness characteristics and the actions necessary to correct or mitigate the problems.

(xi) Identify opportunities to improve the health of habitats or the functioning of ecosystems.

(xii) Significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants (including candidate, threatened, and endangered species) and the actions necessary to correct or mitigate the problems.

(xiii) Known or suspected sources of environmental contaminants and their potential impacts on the planning unit (refer to the Contaminant Assessment Program).

(xiv) Land acquisition or habitat protection efforts.

(xv) Habitat management practices.

(xvi) Existing administrative resources, including staffing, funding, and facilities.

(xvii) Existing transportation patterns and related visitor facilities.

(xviii) Potential need for administrative sites, transportation improvements, or visitor facilities and areas within the planning unit that are suitable for such sites.

(xix) Existing and potential opportunities for wildlife-dependent recreation.

(xx) Existing special management areas, or the potential for such designations (*e.g.*, wilderness, research natural areas, and wild and scenic rivers).

(f) Review All Available Information, Plans, Data, Maps, and Data Standards. Based on this review, determine what the initial planning area includes and identify any additional information and data needs, including mapping and GIS needs. Note: All Federal agencies and their contractors must comply with data standards endorsed by the Federal Geographic Data Committee (Executive Order 12906; 59 FR 17671, April 13, 1994). Of particular relevance to refuge planning are the National Vegetation Classification Standard (FGDC–STD–005) and the Classification of Wetlands and Deep Water Habitats (FGDC-STD–004). Compliance with these standards will facilitate the sharing and exchange of high-quality vegetation and wetland data among Federal agencies and their

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partners. We also are developing other data standards, such as cartographic standards for delineation of refuge boundaries and land status.

(g) Vision and Goals. Review the existing planning unit vision statement and goals and determine the need for revision. If these do not exist, prepare a draft vision statement and goals for consideration during public scoping. The vision statement should focus on what will be different in the future because of our efforts, capture the essence of what we are trying to do, and why. It should be future-oriented, concise, clear, compelling, and give a sense of purpose to our efforts. At a minimum, each refuge should develop goals for wildlife species or groups of species, habitat (including land protection needs), compatible wildlife-dependent recreation, other mandates (such as refuge-specific legislation, executive orders, special area designations, etc.), and fish, wildlife, and plant populations, as appropriate. The vision statement and goals will reflect planning unit purposes; help fulfill the mission of the Refuge System; maintain and, where appropriate, restore ecological integrity; and will be consistent with mandates and principles of sound fish and wildlife management. Planning unit goals also will reflect our ecosystem goals to the extent these goals do not conflict with the Refuge System mission or the purposes for which the refuge was established. We also may develop refuge goals for our other mandates. Subsequently, we will develop objectives for achieving planning unit goals (see 602 FW 3.4 C (4)(d) Objective Development). For additional information on developing goals and objectives, see the current edition of Writing Refuge Management Goals and Objectives: A Handbook.

(h) Internal Scoping. Begin the internal scoping process by identifying management concerns, issues, and opportunities to resolve them, as well as any potential impacts and alternatives that we may need to address in the CCP and NEPA analysis. Review the background, rationale, and the success or failure of any controversial management actions and identify any additional information and data needed where appropriate.

(i) Public Involvement/Outreach Planning. Prepare a Public Involvement/Outreach Plan indicating how and when we will invite the affected public to participate in CCP development. This plan will include establishing a mailing list and identifying appropriate techniques and materials to use in public involvement. We integrate public involvement and outreach into each step, and it continues throughout the planning process. For additional information on public involvement techniques, consult the Public Participation Handbook (U.S. Fish and Wildlife Service, 1985) or the NCTC Refuge Comprehensive Conservation Planning Course Handbook and Reference Notebook.

(j) Work Plan/Planning Schedule. Establish a work plan or planning schedule for the CCP. Determine who will be responsible for carrying out identified tasks, gathering information and data, and preparing products identified in the work plan or schedule. Identify all key NEPA compliance steps and public involvement activities. Identify any additional expertise, besides the planning team, required to prepare the CCP. This may include an economist, a facilitator for public and other meetings, other contracted professional services, etc.

(k) Planning Record. Establish a planning record to document the preparation of the CCP and NEPA compliance, and assign its maintenance to a team member. The planning record will serve as a valuable reference and provide important background and historical information. If there is a legal challenge to the CCP, use the planning record to construct the administrative record. For additional information on the planning record, consult the NCTC Refuge Comprehensive Conservation Planning Course Handbook and Reference Notebook.

(2) Initiate Public Involvement and Scoping

(a) Notice of Intent. Prepare a Notice of Intent (NOI) to prepare a CCP, with appropriate NEPA compliance, and publish the NOI in the **Federal Register**. The NOI initiates public scoping for the CCP/NEPA planning and decision-making process. If we initially determine that we will prepare an EIS for the CCP, the NOI should specify that. If at any time during the planning process we decide to prepare an EIS, we will publish in the **Federal Register** a new NOI to prepare an EIS and provide additional time for the public to comment. Should we publish a new NOI, we will use news releases and other appropriate means to notify the public.

(b) Public Scoping. Using news releases to the local media and other appropriate means, notify the affected public of the opportunity to participate in the preparation of the CCP and begin the scoping process. Involve the public and gather comments on any existing planning unit vision statement and goals. Encourage the public to help identify potential issues, management actions and concerns, significant problems or impacts, and opportunities or alternatives to resolve them. Public scoping will continue until we prepare a draft CCP/NEPA document.

(c) Issues and Data Needs. Analyze all comments gathered and recorded during the scoping process. Identify any new information, issues, concerns, or significant problems, opportunities to resolve them, and potential refinements or revisions of any existing planning unit vision statement and goals. Based on this analysis, identify any additional information and data needed.

(3) Review Vision Statement and Goals and Determine Significant Issues

(a) Vision and Goals. Review and evaluate the public's comments on the planning unit vision statement and goals. Based on this review, modify the vision and goals for the planning unit as appropriate.

(b) Determine Significant Issues. Review and evaluate all potential issues, management concerns, and problems and the opportunities to resolve them that the planning team and the public have identified. Identify those issues and concerns that are significant, and the appropriate scale at which to consider those issues. Document the rationale for selecting significant issues, as well as the rationale for not selecting the other issues and concerns (*e.g.*, outside the scope of the CCP, does not contribute to achieving refuge purposes, Refuge System mission, etc.). Significant issues typically are those that are: Within our jurisdiction, suggest different actions or alternatives, and will influence our decision. We will refer those issues identified outside the scope of refuge planning to the pertinent Service program office or division.

(4) Develop and Analyze Alternatives, Including the Proposed Action

This part of the process is not sequential, it is iterative. Iterative procedures in this step of the process include: Issue assessment; refinement and development of goals, objectives, and strategies; analysis and comparison of impacts and benefits of management actions; and the packaging or combining of similar themes or programs to develop preliminary alternatives and assessment of their environmental consequences. The alternatives should reflect different sets of objectives and strategies to achieve refuge purposes, vision, and goals, help fulfill the Refuge System mission, and resolve issues. Prepare maps depicting the different strategies reflected in each alternative. Also display this information in a matrix comparing issues, impacts, and benefits for each alternative.

(a) No Action Alternative. Define the No Action Alternative, which is usually a continuation of current planning unit objectives and management strategies, with no changes or changes that would have occurred without the CCP.

(b) A Range of Alternatives. Develop a range of alternatives, or different approaches to planning unit management, that we could reasonably undertake to achieve planning unit goals and refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; meet other mandates, and resolve any significant issues identified. Alternatives consist of different sets of objectives and strategies for management of the refuge. Give equal effort to each alternative regarding specific objectives and strategies so that the decision maker can make an informed choice. NEPA requires an equal and full analysis of all alternatives considered for implementation.

(c) Proposed Action. The planning team will recommend a proposed action in the NEPA document for the CCP identifying the alternative that best achieves planning unit purposes, vision, and goals; helps fulfill the Refuge System mission; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; addresses the significant issues and mandates; and is consistent with principles of sound fish and wildlife management. The proposed action is, for all practical purposes, the draft CCP for the planning unit.

(d) Objective Development. Develop objectives to address each goal. Word objectives so it is clear what we can measure during monitoring to assess progress toward their attainment. Consult the Service Manual chapters on habitat management, populations management, wilderness management, and wildlife-dependent recreation during the development of objectives. Develop detailed, measurable objectives using available scientific literature and other appropriate information. Develop objectives with consideration of regional and Service ecosystem goals and objectives. Develop objectives for specific refuge habitat types, management units, key species (*e.g.*, migratory birds and threatened and endangered species), wildlife-dependent recreation, monitoring populations of fish, wildlife, and plants and their habitats, and other areas of management, as appropriate. Objectives also may deal with refuge information needs (for example, including the development of baseline data), administrative needs, and any other issues we need to address to meet the goals of the refuge. Document in a short narrative summary the rationale, including appropriate literature citations, that supports each objective. Also consult the current edition of Writing Refuge Management Goals and Objectives: A Handbook. Developing detailed objectives at this stage will expedite development of step-down management plans when required.

(e) Strategy Development. Develop strategies to identify the specific actions, tools, or techniques that are necessary to accomplish each objective. Strategies represent specific projects that provide the detail required to assess and develop funding, staffing, and partnerships needed to implement the plan. Develop inventory and monitoring strategies to measure implementation results in quantifiable and verifiable ways. We may require step-down management plans to provide the specific details of how to achieve goals and objectives identified in the CCP.

(f) Environmental Consequences. Assess the environmental consequences (direct, indirect, and cumulative) of implementing each alternative as required by NEPA. Compare the consequences of implementing each alternative in relation to the No Action Alternative, which serves as a baseline. Describe the adverse and beneficial impacts of implementing each alternative on fish, wildlife, and plants, and their habitats; any threatened or endangered species; cultural resources; the local economy; the ability to provide opportunities for compatible wildlife-dependent recreational uses; conflicts between priority uses and other uses; and other issues identified earlier in the planning process. This analysis must provide the level of detail necessary to assess the compatibility of all proposed uses. Describe each alternative's ability to achieve planning unit purpose(s), vision, and goals; help fulfill the Refuge System mission; ensure that we maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; and address the significant issues and mandates. This assessment also will identify the funding, staffing, and facilities required for implementation of each alternative.

(5) Prepare Draft Plan and NEPA Document

(a) Draft CCP and NEPA Document. Concurrently prepare the draft CCP and appropriate NEPA documentation (EA or EIS). When preparing an EA, consider integrating the draft CCP with the EA. When preparing an EIS with a CCP, integrate the documents. If the decision is to prepare a separate EA, see Exhibit 3–4 for a recommended CCP outline. If the documents are separate, the proposed action in the EA must contain all of the major actions of the draft CCP. If the decision is to merge the CCP and EA, see Exhibit 3–5 for a recommended outline. During the process of preparing the CCP, refer to Exhibit 3–3 to ensure inclusion of all required elements in the plan. Ensure compliance regarding other programs and policies, including: Section 7 of the Endangered Species Act; Sections 401 and 404 of the Clean Water Act; Sections 106 and 110 of the National Historic Preservation Act; Section 14 of the Archaeological Resources Protection Act; Executive Order 13007—Indian Sacred Sites; Executive Order 11988—Floodplain Management; Executive Order 11990—Protection of Wetlands; etc. See Exhibit 3–2 for a list of mandates to consider during the planning process.

(b) Compatibility Determinations. Complete new compatibility determinations or re-evaluate existing compatibility determinations as part of the CCP process for all individual uses, specific use programs, or groups of related uses associated with the proposed action. Prepared concurrently with the CCP, incorporate the draft compatibility determinations into the draft CCP as an appendix. We require public review and comment for all compatibility determinations. We can achieve this concurrently through public review and comment of the draft CCP and NEPA document. While other alternatives do not require compatibility determinations, assess the environmental consequences, and, for all practical purposes, compatibility of all uses proposed in those alternatives in the NEPA document. For additional information on compatibility determinations, see 603 FW 2.

(c) Pre-acquisition Compatibility Determinations. If our proposed action includes expanding the planning unit by acquiring new lands, the draft CCP and NEPA documents also must identify any existing wildlife-dependent recreational public uses deemed compatible that we will allow to continue after acquisition. Incorporate these pre-acquisition compatibility determinations into the draft CCP and NEPA document.

(d) Internal Review. Submit the draft CCP and NEPA document for internal review within the Region following established procedures. Include in the review refuge program managers,

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ecosystem managers, refuge staff and other appropriate Service programs and divisions, as well as other agency partners. Also submit these documents for internal review to the Regional and Washington Office Planning Coordinators. Consider all comments received from the internal reviews and make appropriate changes to the draft document. Print the draft CCP and NEPA document and prepare for public review.

(e) Public Notice, Review, and Comment. Prepare a Notice of Availability of the draft CCP and NEPA document and publish it in the **Federal Register**. Notify the affected public of the availability of these documents through other appropriate means, as identified in the Public Involvement/Outreach Plan. Public notices will make clear that we are seeking concurrent review on compatibility determinations. Provide a minimum of 30 days for public review of a draft CCP with an EA and 45 days for a draft CCP with an integrated EIS. Make copies of the draft CCP and NEPA document available to appropriate elected officials; Federal, State, and local agencies; Tribal governments; organizations; libraries (including NCTC); resource experts; adjacent landowners; and individuals requesting them. Conduct appropriate public involvement activities as called for in the Public Involvement/Outreach Plan. Document all public comments, both written and oral, received on the draft CCP and NEPA document as part of the planning record.

(6) Prepare and Adopt Final Plan

(a) Public Comment, Analysis, and Response. Review and analyze all written and oral comments received from the public on the draft CCP and NEPA document. Determine which comments are substantive and warrant written response. Modify the document(s) as appropriate. Prepare a summary of the public comments received and a statement of the disposition of concerns expressed in those comments, noting where we have changed the document(s) or why we did not make such changes. Incorporate the summary and statement of disposition into the final document(s) (usually in the NEPA document or a CCP appendix).

(b) Final CCP and NEPA Document(s). Identify the preferred alternative and prepare the final CCP and appropriate NEPA documentation. The preferred alternative can be the proposed action, the no action alternative, another alternative, or a combination of actions or alternatives discussed in the draft CCP and NEPA document. Following completion of the final CCP/NEPA document, the product of the CCP process is a stand-alone CCP (the preferred alternative for the planning unit). During the process of preparing the final plan, refer to Exhibit 3–3 to ensure inclusion of all required elements.

(c) Internal Review. Submit the final document(s) for internal review within the Region according to established procedures. Refer to 3.4 C (5)(d) for a list of those to include in the review. Consider all comments received from the internal review and make appropriate changes to the final document(s).

(d) Decision Document. The decision document (either a Finding of No Significant Impact [FONSI] or a Record of Decision [ROD]) will certify that we have met agency compliance requirements and that the CCP, when implemented, will achieve the purposes of the refuge and help fulfill the Refuge System mission.

(i) CCP with an EA and FONSI. The Refuge Manager and Planning Team Leader submit the final CCP and FONSI through line supervision for concurrence and approval by the Regional Director. The Regional Director will sign and date both the FONSI and the final CCP. Following approval, print and distribute the final document(s) and appropriate appendices. Provide the FONSI to all interested and affected parties. Concurrent with the distribution of the FONSI, provide the final, approved, stand-alone CCP or a summary to all interested parties. In some cases we may require a 30-day public review period for the FONSI (see 550 FW 3.3 B (4)(c)). In these cases, we may not sign or release the final CCP until the end of the 30-day review.

(ii) CCP with an EIS and ROD. The Refuge Manager and Planning Team Leader submit the final EIS/CCP through line supervision for concurrence and approval to release these documents to the public. Provide these documents to interested and affected parties for at least 30 days prior to issuing a ROD. Following this period, submit the ROD through line supervision for concurrence and approval by the Regional Director. The Regional Director will sign and date both the ROD and the final CCP. Following approval, print the final documents and appropriate appendices. Provide the ROD or notification of its availability to all interested and affected parties. Concurrent with the release of the ROD, provide or make available the final, approved, stand-alone CCP or a summary to interested parties. Effective with the signing and release of the ROD, implement the CCP.

(iii) Stand-Alone CCP. The final product of the CCP process is a stand-alone CCP (the preferred alternative for the planning unit).

(e) Public Notice. Prepare a Notice of Availability of the final approved CCP and NEPA document(s) and publish it in the **Federal Register**. Notify the affected public of the availability of the final document(s) through other appropriate means, as identified in the Public Involvement/Outreach Plan. Send copies of all final documents to the Regional and Washington Office Planning Coordinators. Make copies of the final approved CCP and NEPA document(s) available to appropriate elected officials; Federal, State, and local agencies; Tribal governments; organizations; libraries (including NCTC); adjacent landowners; and individuals requesting them.

(7) Implement Plan, Monitor, and Evaluate

Following approval of the CCP and public notification of the decision, begin implementing the strategies identified in the CCP. Allocate funding and staff time to the priority strategies as defined in the CCP. Initiate the monitoring and evaluation process identified in the CCP to determine if we are making progress in achieving the planning unit purpose(s), vision, and goals. Monitoring should address habitat or population objectives, and the effects of management activities. See 701 FW 2. Describe the sampling design sufficiently so it may be replicated. Through adaptive management, evaluation of monitoring and research results may indicate the need to modify refuge objectives or strategies.

(8) Review and Revise Plan

(a) Plan Review. Review the CCP at least annually to decide if it requires any revisions. Modify the plan and associated management activities whenever this review or other monitoring and evaluation determine that we need changes to achieve planning unit purpose(s), vision, and goals.

(b) Plan Revision. Revise the CCP when significant new information becomes available, ecological conditions change, major refuge expansion occurs, or when we identify the need to do so during plan review. This should occur every 15 years or sooner, if necessary. All plan revisions should follow the procedures outlined in this policy for preparing plans and will require NEPA compliance. Document minor plan revisions that meet the criteria of a categorical exclusion in an Environmental Action Statement, in accordance with 550 FW 3.3 C. Contact the Regional NEPA Coordinator for an up-to-date list of categorical exclusions and for other NEPA assistance. If the plan requires a major revision, then the CCP process starts anew at the preplanning step. See 602 FW 3.4 C (1).

(c) Ongoing Public Involvement. Continue informing and involving the public through appropriate means.

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Exhibit 3-1

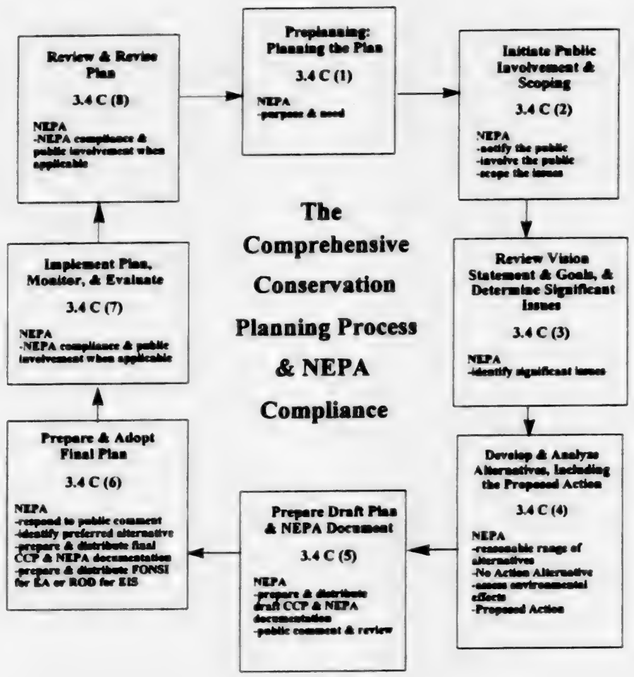

Note: Although the steps are sequential, CCP planning and NEPA documentation are iterative processes. It is normal to cycle through some of the steps more than once or to have several steps occurring simultaneously. Actions within each of the eight steps may not be sequential.

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Exhibit 3–2.—Mandates To Consider During Comprehensive Conservation Planning

	Yes/No
Applicable Statutes:	
Alaska National Interest Lands Conservation Act of 1980, as amended	
American Indian Religious Freedom Act of 1978	
Americans With Disabilities Act of 1990	
Anadromous Fish Conservation Act of 1965, as amended	
Antiquities Act of 1906	
Archaeological and Historic Preservation Act of 1974	
Archaeological Resources Protection Act of 1979, as amended	
Bald and Golden Eagle Protection Act of 1940, as amended	
Clean Air Act of 1970	
Clean Water Act of 1974, as amended	
Coastal Zone Management Act of 1972, as amended	
Emergency Wetlands Resources Act of 1986	
Endangered Species Act of 1973, as amended	
Farmland Protection Act of 1981, as amended	
Federal Cave Protection Act of 1988	
Federal Noxious Weed Act of 1990	
Fish and Wildlife Act of 1956	
Fish and Wildlife Coordination Act of 1958	
Fishery (Magnuson) Conservation and Management Act of 1976	
Marine Mammal Protection Act of 1972, as amended	
Migratory Bird Conservation Act of 1929	
Migratory Bird Hunting and Conservation Stamp Act of 1934	
Migratory Bird Treaty Act of 1918, as amended	
National Environmental Policy Act of 1969	
National Historic Preservation Act of 1966, as amended	
National Wildlife Refuge System Administration Act of 1966, as amended	
Native American Graves Protection and Repatriation Act of 1990	
Refuge Recreation Act of 1962, as amended	
Rivers and Harbors Act of 1899	
Water Resources Planning Act of 1965 (sole-source aquifers)	
Wild and Scenic Rivers Act of 1968, as amended	
Wilderness Act of 1964, as amended	
Applicable Executive Orders:	
Executive Order 11644, Use of Off-Road Vehicles on Public Lands	
Executive Order 11987, Exotic Organisms	
Executive Order 11988, Floodplain Management	
Executive Order 11990, Protection of Wetlands	
Executive Order 12898, Environmental Justice for Minority Populations	
Executive Order 12962, Recreational Fisheries	
Executive Order 12996, Management and General Public Use of the National Wildlife Refuge System	
Executive Order 13007, Indian Sacred Sites	
Executive Order 13084, Consultation and Coordination With Indian Tribal Governments	

Note: This list is not all inclusive. There may be other executive orders and statutes that apply to a particular planning unit.

Exhibit 3–3.—Checklist of Required Comprehensive Conservation Plan Elements

___Short description of the planning unit to include:
___Size
___Establishment date
___Regional setting (include area map)
___Land acquisition or habitat protection efforts
___Current management (including a map)
___Current staffing
___Existing partnerships
___Purpose(s) for which the refuge was established
___Past land use and history of settlement, including a description of any changes in topography, hydrology, and other factors
___Existing transportation patterns and related visitor facilities
___Habitat management practices
___Refuge System mission and goals.
___Ecosystem goals and objectives.
___Goals and objectives for other landscape-level plans.
___National goals and objectives for species, species groups, habitats and communities, or programs (*e.g.*, shorebirds, an endangered species, priority public use program).
___Identify any mandates that apply to the area or the proposed plan.
___Description of the planning unit environment to include:
___distribution, migration patterns, and abundance of fish, wildlife, and plant populations, including any threatened or endangered species and related habitats;
___current and historic description of the flora and fauna, and the diversity of habitats and natural communities;
___wildlife habitat and species relationships;
___ability of the planning unit to meet the habitat needs of fish, wildlife, and plants, as they occur throughout their natural ranges;
___vegetation types (Federal Geographic Data Committee compliant map required);
___vegetation/land cover and wildlife habitat relationships;
___significant problems that may adversely affect the ecological integrity or wilderness characteristics and the actions necessary to correct or mitigate the problems;
___context of the planning unit in relation to the surrounding ecosystem;
___structures, components, and functions of the ecosystem(s) of which the planning unit is a part;
___fish, wildlife, and plants and their habitats and communities that are rare and/or declining within the ecosystem;
___archaeological and cultural resources of the planning unit;
___refuge land status map;
___natural and historic role of fire and other natural occurrences affecting ecological processes;

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___existing special management areas (e.g., wilderness, wild and scenic rivers);
___relationship between the planning unit and other refuges and protected areas.
___Document and describe the following:
___significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants within the planning unit (including candidate, threatened, and endangered species) and the actions necessary to correct or mitigate such problems;
___water resources including quantity and quality;
___known or suspected sources of environmental contaminants and their potential impacts on the planning unit (refer to the Contaminant Assessment Program);
___potential for special management area designations (e.g., wilderness, research natural areas, and wild and scenic rivers);
___summary of management history;
___other significant issues of management or public concern;
___existing and potential opportunities for wildlife-dependent recreation;
___existing administrative resources, including staffing, funding, and facilities;
___potential need for administrative sites, transportation improvements, or visitor facilities and areas within the planning unit that are suitable for such sites.
___Vision statement.
___Goals for at least the following areas:
___wildlife species or groups of species;
___habitat (including land protection needs);
___fish, wildlife, and plant populations, as appropriate;
___compatible wildlife-dependent recreation;
___others as needed to meet mandates (such as refuge-specific legislation, executive orders, special area designations, etc.).
___Objectives for each goal.
___Strategies to achieve each objective.
___Map(s) of desired future conditions (e.g., habitat management areas, facilities, wildlife-dependent recreation sites, etc.).
___Identification of step-down management plans required to fully implement the CCP.
___Prioritized list of projects and estimated project costs (update priorities and cost estimates annually).
___Staffing and funding required to implement the plan.
___Potential partnership opportunities.
___Monitoring plan to evaluate the effectiveness of the plan and project implementation, including monitoring of target fish, wildlife, and plant populations and their habitats.
___Summary of public involvement process, comments received and their disposition, and consultation and coordination with other Federal agencies, State conservation agencies, and adjacent landowners.
___Compatibility determinations (including pre-acquisition compatibility determinations).
___Wilderness review.
___Habitat/Land Protection Plans (if applicable).
___NEPA documentation.

Exhibit 3–4.—Refuge Comprehensive Conservation Plan Recommended Outline

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  NEPA Documentation
  Summary of Public Involvement/Comments and Consultation/Coordination
  Mailing List
  List of Preparers
  Others, as appropriate

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  Others, as appropriate

Refuge Management—Part 602 National Wildlife Refuge System Planning

Chapter 4 Step-Down Management Planning—602 FW 4

4.1 What is the purpose of this chapter? This chapter provides guidance on step-down management planning.

4.2 What is our policy for step-down management planning? The U.S. Fish and Wildlife Service (Service or we) will prepare step-down management plans when required by policy or when they may be necessary to provide strategies and implementation schedules for meeting goals and objectives identified in Comprehensive Conservation Plans (CCPs). Step-down management plans should include public involvement and National Environmental Policy Act (NEPA) compliance documentation, as appropriate. Develop step-down management plans following the planning process guidance in 602 FW 1 and 602 FW 3.

4.3 What is the applicability of step-down management planning and its relationship to Comprehensive Conservation Plans?

A. Step-down management planning is the formulation of detailed plans for meeting goals and objectives identified in the CCP.

B. Step-down management plans describe the specific strategies and implementation schedules we are to follow, "stepping down" from general goals and objectives. The preparation of new step-down management plans or substantial changes to existing step-down management plans typically will require further compliance with NEPA and other policies, and an opportunity for public review. For public use plans or other step-down management plans dealing with proposed uses of the refuge, prepare and append compatibility determinations to the plans.

C. The CCP will identify which step-down management plans are necessary and provide a schedule for their completion. After completion of the CCP, modify existing step-down management plans as needed to accomplish stated objectives. See 602 FW 3. In the absence of an approved CCP, we will develop step-down management plans to describe goals, objectives, strategies, implementation schedules, and details necessary to implement a management program.

D. As an alternative to separate step-down management plans, we may address management programs in detail during preparation of the CCP. Determining which programs we can address in detail in the CCP depends on several factors, including the degree of public interest, the amount of available information, and the complexity of the issues.

4.4 How do we combine step-down management plans? Address management subjects individually or combined into a single, integrated step-down management plan. This decision rests with the Refuge Manager. Base the decision on strategies defined in the CCP, the relationship between program areas, and the complexity of the programs under consideration. Some program areas, such as fire management and habitat management, logically suggest an integrated approach.

4.5 What is the list of potential step-down management plans? Following is the current list of potential refuge step-down management plans. Consider all of these plans during the CCP process. The CCP will document which plans we require for the planning unit.

Step-down management plans	Service manual reference
Occupational Safety and Health.	(Parts 240–249)
Safety Program	(240 FW 1–9)
Safety Operations	(241 FW 1–9)
Industrial Hygiene	(242 FW 1–13)
Hazardous Materials Operations.	(242 FW 6)
Water Rights	(Part 403)
Policy, Objectives, and Responsibilities.	(403 FW 1)
Law Enforcement	(Parts 440–459)
Pollution Control	(Parts 560–569)
Policy and Responsibilities.	(560 FW 1)
Pollution Prevention	(560 FW 2)
Compliance Requirements.	(Part 561)
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Pesticide Use and Disposal.	(Part 562)
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External Threats to FWS Facilities.	(Part 563)
Air Quality Protection	(563 FW 2)
National Wildlife Refuge System (NWRS) Uses.	(Part 603)
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Priority Wildlife-Dependent Recreation.	(Part 605)
Hunting	(605 FW 2)
Fishing	(605 FW 3)
Wildlife Observation	(605 FW 4)
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Environmental Education.	(605 FW 6)
Interpretation	(605 FW 7)
Wilderness Management.	(Part 610)
Special Area Management.	(Part 611)
Research Natural Areas.	(611 FW 1)
Public Use Natural Areas.	(611 FW 2)
Wild and Scenic Rivers.	(611 FW 3)
National Trails	(611 FW 4)
Man in the Biosphere Reserve	
Western Hemisphere Shorebird Reserves	
Ramsar Convention on Wetlands	
Minerals Management	(Part 612)
Minerals and Mining	(612 FW 1)
Oil and Gas	(612 FW 2)
Cultural Resources Management.	(Part 614)
Habitat Management Planning.	(Part 620)
Fire Management	(Part 621)
Population Management.	(Part 701)
Inventory and Monitoring.	(701 FW 2)
Propagation and Stocking.	(701 FW 3)
Marking and Banding	(701 FW 4)
Disease Prevention and Control.	(701 FW 7)
Trapping	(701 FW 11)
Fishery Resources Management.	(Part 710)
Exotic Species	(Part 751)

Dated: May 16, 2000.

Jamie Rappaport Clark,

Director.

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Federal Register

Thursday,
May 25, 2000

Part III

Department of Transportation

Federal Highway Administration
Federal Transit Administration

23 CFR Parts 450 and 1410

49 CFR Parts 613 and 621

Statewide Transportation Planning; Metropolitan Transportation Planning; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 1410

Federal Transit Administration

23 CFR Part 1410

49 CFR Parts 613 and 621

[FHWA Docket No. FHWA–99–5933]

FHWA RIN 2125–AE62; FTA RIN 2132–AA66

Statewide Transportation Planning; Metropolitan Transportation Planning

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA and the FTA are jointly issuing this document which proposes revisions to the regulations governing the development of transportation plans and programs for urbanized (metropolitan) areas and statewide transportation plans and programs. These revisions are a product of statutory changes made by the Transportation Equity Act for the 21st Century (TEA–21) enacted on June 9, 1998, and generally would revise existing regulatory language to make it consistent with current statutory requirements. In addition, the proposed regulatory language addresses the implementation of Presidential Executive Order 12898 regarding Environmental Justice. These changes are being proposed in concert with revisions to regulations regarding environmental impact and related procedures which are published separately in today's **Federal Register**. The two rules are linked in terms of their working relationship and the FHWA and the FTA are soliciting comments on each rule individually, as well as their intended functional and operational interrelationships.

DATES: Comments must be received on or before August 23, 2000. For dates of public information meetings see "Supplementary Information."

ADDRESSES: All signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard. For addresses of public information meetings see "Supplementary Information."

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Sheldon M. Edner, Metropolitan Planning and Policies Team (HEPM), (202) 366–4066 (metropolitan planning), Mr. Dee Spann, Statewide Planning Team (HEPS), (202) 366–4086 (statewide planning), or Mr. Reid Alsop, Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Mr. Charles Goodman, Metropolitan Planning Division (TPL–12) (metropolitan planning), (202) 366–1944, Mr. Paul Verchinski, Statewide Planning Division (TPL–11)(statewide planning), (202) 366–6385, or Mr. Scott Biehl, Office of the Chief Counsel (TCC–30), (202) 366–0952. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Public Information Meetings

We will hold a series of seven public briefings within the comment period for the NPRM. The purpose of these briefings is to explain the content of the NPRM and encourage public input to the final rulemaking. The meetings will address this NPRM, the companion NPRM on the environmental (National Environmental Policy Act of 1969 (NEPA)) process, and the NPRM on Intelligent Transportation Systems Architecture consistency. The meetings will be scheduled from approximately 8 a.m. to 5 p.m. at the locations listed below. Further information and any changes in addresses, dates and other logistical information will be made available after the publication of this NPRM through the FHWA and the FTA websites, and through other public announcement avenues and the newsletters and websites of major stakeholder groups. Individuals wishing information, but without access to these sources, may contact the individuals listed in the above caption **FOR FURTHER INFORMATION CONTACT**.

The structure of the meetings will emphasize brief presentations by the DOT staff regarding the content of the NPRM. A period for clarifying questions will be provided. Under current statutory and regulatory provisions, the DOT staff will not be permitted to engage in a substantive dialog regarding what the content of the NPRMs and the final regulations should be. Attendees wishing to express ideas and thoughts regarding the final content of the rules should direct those comments to the docket. Briefing sites will include: Boston, MA, Auditorium, Volpe National Transportation Systems Center, 55 Broadway, June 9, 2000; Atlanta, GA, Westin Peachtree Plaza Hotel, 210 Peachtree Street, June 20, 2000; Washington, D.C., Marriott Metro Center, 775 12th Street, NW, June 23, 2000; Chicago, IL, Holiday Inn Mart Plaza, 350 North Orleans Street, June 27, 2000; Denver, CO, Marriott City Center, 1701 California Street, June 30 , 2000; Dallas, TX, Hyatt Regency Hotel Dallas, 300 Reunion Boulevard, July 11, 2000; and, San Francisco, CA, Radisson Miyako, 1625 Post Street, July 19, 2000.

As part of the outreach process planned for these proposed rules, the FHWA/FTA will be conducting a national teleconference on June 15, 2000 from 1–4 p.m. eastern time, through the auspices of the Center for Transportation and the Environment at North Carolina State University. The teleconference will be accessible through numerous downlink locations nationwide and further information can be obtained from Ms. Katie McDermott at *kpm@unity.ncsu.edu*. The purpose of the teleconference is to describe the proposed new statewide and metropolitan planning, National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852, implementation, and Intelligent Transportation Systems (ITS) rules.

An overview of each of the three notices of proposed rulemaking (NPRMs) will be presented and the audience (remote and local) will have opportunities to ask questions and seek clarification of FHWA/FTA proposals. By sponsoring this teleconference it is hoped that interest in the NPRMs is generated, that stakeholders will be well informed about FHWA/FTA proposals, and that interested parties will participate in the rulemaking process by submitting written suggestions, comments and concerns to the docket.

Background

Sections 1203, 1204, and 1308 of the TEA–21, Public Law 105–178, 112 Stat. 107, amended 23 U.S.C. 134 and 135, which require a continuing, comprehensive, and coordinated transportation planning process in metropolitan areas and States. Similar changes were made by sections 3004, 3005, and 3006 of the TEA–21 to 49 U.S.C. 5303–5306 which address the metropolitan planning process in the context of the FTA's responsibilities. We are proposing revisions to our current metropolitan and statewide planning regulations and are inviting comments on the proposed revisions.

General Information Concerning Development of Regulation

Approach to Structure of Proposed Regulation

Revisions to the current regulation at 23 CFR part 450 are being proposed to reflect the impacts of the TEA–21. We have adopted an approach to the proposed revisions that will rely heavily on guidance and good practice. The proposed regulatory language attempts to respond to legislative mandates and changes with minimal amplification where feasible. In some cases, other factors, *e.g.*, court cases, presidential directives, etc., have provided a stimulus for change and amplification. In these instances, the agencies have tried to keep regulatory language to a minimum except where clarification would assist appropriate agencies and groups in complying.

In a separate document in today's **Federal Register**, we propose to remove 23 CFR part 771 and add parts 1420 and 1430 in its stead. This regulation implements the FTA and the FHWA processes for complying with the Council on Environmental Quality's (CEQ) regulations for implementing the NEPA, Public Law 91–190, 83 Stat. 852. Jointly administered by the FTA and the FHWA, part 771 was last revised in 1987. The passage of the TEA–21 and its predecessor, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, have contributed legislative impetus to a revision. To facilitate compliance with section 1308 of the TEA–21 dealing with major investment studies and section 1309 addressing environmental streamlining and twelve years of court rulings and experience, we propose to revise the regulations regarding environmental impact and related procedures in conjunction with those for metropolitan and statewide transportation planning. In general, the intent is to more effectively link the two regulations to facilitate integration of decisions, reduce paperwork and analytical activity where feasible, and to refine procedures and processes to achieve greater efficiency of decision making. In addition, we believe that an integrated approach to planning and project development (NEPA process plus additional project level actions needed to prepare for project implementation) will contribute to more effective and environmentally sound decisions regarding investment choices and trade-offs.

In preparing this proposed rule, we have attempted to maintain or reduce the level of data collection and analyses that is currently required. We solicit comment on the extent to which this strategy has been achieved. Comments suggesting that the strategy has not been successful should identify specific requirements and/or provisions that increase burdens and provide specific reasons for this increase. The degree or extent of the increase should be identified also. Suggestions to lessen burdens are welcome.

In the proposed rule, we revised the section headings to utilize more commonplace language and for clarity. The substance of the sections is modified in some cases as described below. The organization of each section and overall flow of organization remains predominantly unchanged, except as indicated in the section-by-section discussion.

In addition, we are proposing a new numbering scheme. Current part 450 would be redesignated as part 1410.

Input to Development of Proposed Regulation

As noted above, the TEA–21 was signed into law on June 9, 1998. Subsequently, the DOT initiated a series of national meetings to solicit input regarding possible approaches to implementing the new legislation. The results of the principal public sessions in this outreach effort are summarized in "Listening to America: TEA–21 Outreach Summary, 1998." This document was published by the Office of the Secretary, U.S. Department of Transportation. It is currently available online through the following website: *www.fhwa.dot.gov/tea21/listamer.htm*. Additionally, on February 10, 1999, we issued a discussion paper (Federal Highway Administration and Federal Transit Administration, TEA–21 Planning and Environmental Provisions: Options for Discussion) to further solicit public comments regarding previously provided suggestions. This discussion paper was designed to reflect comments from stakeholder groups and encourage all interested parties to provide additional detailed comments on approaches to implementing the statutory provisions for the planning and environmental sections of the law. The Options Paper is available online at *www.fhwa.dot.gov/environment/tea21imp.htm*.

Overall Strategy for Regulatory Development

Our strategy for regulatory development has three principal elements: (1) Outreach and listening to stakeholders, (2) developing improvements that will allow the FHWA, the FTA, the States and metropolitan areas to demonstrate measurable progress toward achieving congressional objectives, and (3) looking internally, with our Federal partner agencies, at how we collectively can improve coordination and performance.

As indicated above, the FHWA and the FTA, in concert with the Office of the Secretary and other modal administrations within the DOT, developed and implemented an extensive public outreach process on all elements of the TEA–21. The process began shortly after the legislation was enacted on June 9, 1998, and various types of outreach activities have been underway since that time. The initial six-month departmentwide outreach process included twelve regional forums and over 50 focus groups and workshops (63 FR 40330, July 28, 1998). The DOT heard from over 3,000 people, including members of Congress, Governors and Mayors, other elected officials, transportation practitioners at all levels, community activists and environmentalists, freight shippers and suppliers, and other interested individuals. The input received was valuable and has helped us shape our implementation strategy, guidance and regulations. Those comments will be placed in this docket as informational background.

With respect to the planning and environmental provisions of the TEA–21, we learned a great deal through the twelve regional forums and focus group sessions and subsequently implemented a second, more focused phase of outreach which included issuing an Options Paper for discussion on the Planning and Environmental Streamlining Provisions of the TEA–21. The contents of the Options Paper

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reflected input received up to that time and built upon the existing statewide and metropolitan planning regulations and our implementing regulation for the NEPA. We released the Options Paper on February 10, 1999, and received comments through April 30, 1999.

More than 150 different sets of comments were received from State Departments of Transportation (State DOTs), Metropolitan Planning Organizations (MPOs), counties, regional planning commissions, other Federal agencies, transit agencies, bicycle advocacy groups, engineering organizations, consultants, historical commissions, environmental groups, and customers—the American public. These comments were all reviewed and taken into consideration in the development of this notice of proposed rulemaking.

Another element of outreach included meetings between the FHWA and the FTA and key stakeholder groups, other Federal agencies, and the regional and field staff within the FHWA and the FTA. These sessions also helped guide us in developing this notice of proposed rulemaking. Comments on this NPRM are welcomed and will be taken into account prior to the issuance of a final regulation on statewide and metropolitan planning under the TEA–21.

The Options Paper comments are contained in the docket and are summarized below. This general summary is structured around the issues as presented in the Options Paper and seeks to provide an overall perspective on the range of opinions submitted to the FHWA and the FTA. Details on specific comments and input can be obtained by reviewing the materials in the docket.

These proposed rules were developed by an interagency task force of planners and environmental specialists of the FHWA and the FTA, with input from other DOT modal agencies, the U.S. Environmental Protection Agency (EPA), other Federal agencies and the Office of the Secretary, U.S. DOT. The task force reviewed all input received from the outreach process and through other sources which communicate regularly with the DOT. In addition, comments were solicited from the field staff of the FHWA and the FTA.

Summary of Comments Received on Options Paper

The following discussion summarizes the comments received on the Options Paper and the response we are generally taking in structuring this proposed rule. This summary focuses only on the comments directly related to planning. The comments regarding environmental provisions, generally, are treated in the preamble to the proposed revision to 23 CFR 771. Cross-cutting issues as discussed in the Options Paper appear in both preambles, as appropriate. Since many commenters included both planning and environmental topics in their correspondence, an exact count of planning versus environment issues in the 150 comments received is not easy or useful. The summary is not intended to be complete or comprehensive. Rather, it is provided to give the public a general sense of the issues addressed in the comments received. The views of individual commenters can be obtained by consulting the docket as indicated above.

Planning Factors

We were offered a number of options on how to ensure that the seven new planning factors added by the TEA–21 are addressed in the metropolitan and statewide planning processes. One option is to include the TEA–21 statutory language in the planning regulation and provide maximum flexibility to States and MPOs to tailor approaches to local conditions. In addition, it was suggested that we amplify the basic statutory language in this regulation by providing information to States and MPOs, including best practices on approaches to considering the factors, and technical assistance on planning practices which integrate consideration of the seven factors. A third possibility was to develop specific criteria for the consideration of each of the seven factors, include the criteria in this regulation, and require that State DOTs and MPOs demonstrate compliance through the planning certification process.

The vast majority of comments received on the planning factors, including those from the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the Association of Metropolitan Planning Organizations (AMPO), and the American Association of State Highway and Transportation Officials (AASHTO), supported a twofold approach: (1) To include the TEA–21 statutory language in the planning regulation without further regulatory requirements, and (2) to provide technical assistance and information on current practices to States and MPOs to aid them in consideration of the planning factors. An additional point raised, by State DOTs and MPOs in particular, was that guidance, if issued by the FHWA and the FTA, should not be construed as constituting new, binding requirements on State DOTs and MPOs.

Systems Operation and Management and Integration of Intelligent Transportation Systems Into the Planning Process

The TEA–21 directs that operation and management of the transportation system requires greater attention during planning. Capital investment, especially for new capacity but also for system preservation, has dominated traditional transportation planning analyses and decisions. Continuing fiscal constraint, growing sensitivity to environmental impacts of infrastructure and the need for prudent management of infrastructure all lead to a heightened consideration of systems management and operational strategies as part of systems planning. The emergence of various Intelligent Transportation System (ITS) technologies as useful tools in the operation and management of the transportation system has also highlighted the need to focus increased attention in this area. An additional factor in treating ITS as part of system operation and management are the requirements of section 5206(e) of the TEA–21 regarding the consistency of federally funded ITS projects (funded with highway trust fund dollars) with the National ITS Architecture.

Many individual State DOTs, MPOs, and their national associations (AMPO and AASHTO) expressed the view that the planning factor requiring consideration of strategies to promote efficient system management and operation is sufficient to direct States and MPOs to consider operations and management issues as an integral part of their planning efforts. They indicated that the seven factors are all important and that to highlight consideration of any one factor above all others is inappropriate. Further, they felt that treating operations and management issues with any additional emphasis would be duplicative and is not necessary.

Only one commenter, the Maricopa Association of Governments, explicitly addressed the ITS matter. This agency suggested that we implement a requirement for federally funded ITS projects to be in accord with a regional ITS plan that is developed through a cooperative process.

Cooperative Development of Revenue Forecasts

The TEA–21 retained the basic requirement for financially constrained metropolitan plans and statewide and metropolitan transportation improvement programs (STIPs/TIPs).

The TEA–21 clarifies the requirement for cooperative development by States, MPOs, and transit agencies of estimated future levels of funding from local, State, or Federal sources that may reasonably be expected to be available to metropolitan areas.

In general, many State DOTs and the AASHTO seek the greatest flexibility while MPOs and local governments seek provisions which would ensure that they get a "fair share" of Federal funding. The NACE, the AMPO, the National Association of Counties (NACO), and the Surface Transportation Policy Project (STPP) observe that a formal process should be required based upon consensus of the State, MPO, and transit agencies (where applicable) and that the process should be documented and implemented with an adequate phase-in period provided. The national associations and many of their constituent members commented that the process which has evolved over the past several years is inadequate for MPO and local agency needs, and that the Congress intended that this be rectified through the TEA–21 clarifying language. Both the NACE and the AMPO support the development of formal procedures, including decision rules for allocating funds and the development of internal and external dispute resolution and appeals processes to ensure that revenue forecasting is a truly collaborative process. The NACE also suggests that the FHWA and the FTA serve as "honest brokers" between State transportation agencies and MPOs when there is disagreement on revenue forecasts and allocation.

Illustrative Projects

Organizations and agencies, including the Indian Nation Council of Governments, the Public Policy Institute of California, the AMPO, and the EPA raised concerns about the need for coordination between States and MPOs in cases where illustrative projects are proposed to be added to metropolitan area plans or TIPs. Specifically, it was suggested that in metropolitan areas, MPOs should have explicit approval authority for the inclusion of such projects in transportation plans and TIPs and for the implementation of illustrative projects.

On the whole, respondents supported a position that illustrative projects are important to them, but that such projects should not be included in the transportation plan or TIP conformity analysis until formally amended into the Plan/TIP. In addition, there was considerable support for an approach which requires MPO concurrence on projects that are proposed to be advanced to an MPO plan and/or TIP. The Texas Natural Resources Conservation Commission and the Colorado DOT expressed concern that illustrative projects would be allowed to circumvent the planning process. State DOTs, in particular, advocated allowing illustrative projects to be included in the conformity analyses for plans and TIPs in order that it may be demonstrated that they will not jeopardize the conformity of plans and TIPs.

The AASHTO and several State DOTs felt that we are being too restrictive in our definition of a financially constrained plan. In short, these commenters request more flexibility. Some State DOTs, including the Texas, New Jersey, Missouri, and Virginia DOTs point out that they feel it entirely appropriate to conduct NEPA related project development activities and studies on such projects, outside of the fiscal constraint requirements. They endorse amending such projects into the plan and TIP when appropriate, and at that time trigger fiscal constraint and conformity requirements.

Annual Listing of Projects

During the outreach process, the Missouri DOT, and the Denver Regional Council of Governments (DRCOG) remarked that MPOs do not have the authority to obligate Federal funds and that States and transit agencies are the authorized recipients of Federal funds. Therefore, they suggest, the States, transit agencies, and/or the Federal government need to provide the necessary information to the MPOs in order that they may comply with the TEA–21 requirement for an annual listing of projects.

The AMPO recommended that we establish and maintain a project monitoring system for the purpose of tracking Federal highway and transit obligations and that we make this system accessible to the MPOs in order that it might provide the basis for the annual listing of projects. These stakeholders are concerned that there be clear direction to the implementing agencies (States and transit agencies) for meeting this TEA–21 requirement. Further, they are concerned that MPOs, without the assistance of implementing agencies, do not have the necessary information to comply with this requirement. The American Road and Transportation Builders Association (ARTBA) felt the annual list should include all obligated funds, rather than just projects with Federal funding.

The U.S. EPA believes a nationally uniform format for these lists should be developed and that such lists should be sent to State and Federal environmental agencies, the interagency consultation groups under the transportation conformity regulation, and others.

The Transportation Equity Network and the Center for Community Change advocate the preparation of this list on a zip-code basis and cited a U.S. Department of Housing and Urban Development (HUD) model. They suggest a zip-code based list is easily understandable by members of the public.

Many of those who commented supported an approach which would provide easy public access to information, through a wide means of communication, as noted above. Many stakeholders, including the AMPO and the Kentucky Transportation Cabinet, opposed a process which would require the development of such a list through the public involvement process of the MPO. However, the American Planning Association, the Surface Transportation Policy Project, the Urban Habitat Program, the Tri-State Transportation Campaign, and the National Association to Defend NEPA, among others, supported the dissemination of the list, once developed, through easily accessed public distribution channels.

Coordination With Local Elected Officials in Non-Metropolitan Areas

The NACO, the National Association of Development Organizations, the STPP, the York County Planning Commission (Pennsylvania), the Minnesota DOT, and the Georgia DOT all suggested that where regional planning organizations or councils of government exist, they be considered as an entity that States could work with to facilitate the engagement of elected officials. The NACE, U.S. House of Representative Bob Ney and others supported a two-phased approach: the FHWA and the FTA would provide the flexibility to States and local elected officials to develop a process, and then be provided ample time to document and formalize the process pursuant to the TEA–21. These commenters felt that the flexibility to tailor approaches is needed, but that documentation of the agreed upon approach is also needed to ensure it is implemented on a continuing basis.

The National Association of Towns and Townships suggested more formal processes, like those that are in place in some States, where local governments form development districts or regional development commissions, modeled to some extent after the MPO process. The Land-of-the-Sky Regional Council indicated that this approach is necessary to ensure rural officials have

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a voice in decision making and that rural area needs are addressed. In addition, they suggest that such an approach ensures the coordination of a broad array of objectives relating to economic development, land use, and transportation. State DOTs in Idaho, Montana, North Dakota, South Dakota, Wyoming, New York, Virginia and Oklahoma suggested that existing local official consultation arrangements are adequate and that compliance with the TEA–21 provision merely requires documentation of existing arrangements.

20-Year Forecast Period in Transportation Plans

Commenters, including AASHTO, ITE, Virginia DOT, Texas DOT, Washington DOT, and Kansas DOT supported a clarification which reiterates that transportation plans must be for a 20-year minimum forecast period at the time of plan adoption. Further, the Capital District Transportation Authority, the Regional Transit Agency in Denver, the Central Puget Sound Regional Transit Agency, the Texas Natural Resources Conservation Commission, the Lackawanna County Regional Planning Commission and others felt that so long as metropolitan TIP updates and amendments (required every two years) are consistent with the metropolitan plan, then, a metropolitan plan update with a new 20-year forecast period should not be required. The STIP amendments and updates (also required every two years) would be governed by the State plan and its unique update schedule.

Transportation Conformity Related Issues

There are several issues related to the EPA conformity regulation in 40 CFR parts 51 and 93 that could be addressed in the revised planning regulations. These issues relate to clarifying requirements and definitions, and could lead to better integration of transportation and air quality planning, a principal objective of the EPA's regulation. These include:

1. Consistency between metropolitan plan update cycle and the point at which a conformity determination is required.

During the outreach process, and in many of the comments to the Options Paper, stakeholders indicated that they interpret the three-year clock for a plan (and required conformity analysis) as starting from the date the MPO approves the metropolitan plan. Agencies, including the Utah DOT, the New York DOT, and others commented that this provides certainty about the exact time frame in which the plan needs to be updated and that this is the preferred approach to clarifying this issue.

In nonattainment and maintenance areas, however, this approach is complicated by required MPO and Federal conformity findings. The AASHTO, and the Virginia DOT supported making the effective date of the plan the date of the Federal conformity finding. The AMPO indicated that it has no certainty as to when the FHWA and the FTA will approve a conformity determination on a metropolitan plan and thus, tying the effective date of the plan to an approval over which they feel they have no control does not, in its view, facilitate the planning process.

2. Transportation Control Measures (TCMs) in State Implementation Plans (SIPs).

Stakeholders, including the Bicycle Federation of America, the AASHTO, and the AMPO, observed that TCMs, for which Federal funding or approvals are required, must meet the TEA–21 planning requirements (i.e., come from a conforming and financially constrained transportation plan and TIP) and that attempting to circumvent this process, in order to place these measures in SIPs, undermines the transportation planning process.

3. Definitions: TIP Amendments, Conformity Lapse, TIP Extensions.

The FHWA and the FTA have considered clarifying ambiguous terms used in the ISTEA and the EPA's conformity regulation 40 CFR parts 51 and 93. The New Jersey DOT, the AMPO, the Utah DOT, the Texas Natural Resources Conservation Commission, the Wisconsin DOT, and the DRCOG have endorsed the concept of clarification of definitions and terms and want an opportunity to comment on proposed definitions.

Cross Cutting Issues

There are a number of options for implementing the cross-cutting planning and environmental provisions of the TEA–21. Both regulatory and non-regulatory approaches were suggested to us. The concepts discussed in the proposed rule have been coordinated with other administrations within the DOT and with other Federal agencies.

A. Public Involvement

Some State and local agencies have expressed interest in ways to integrate the public involvement process related to plan and TIP development with public involvement process related to the project development. Several stakeholder groups have noted the difficulties in getting public input on long-range plans and TIPs and the tendency for the public to be more inclined to participate in project-specific opportunities for input. They indicated that this tends to frustrate the public involvement efforts of State and MPO planners to obtain input on long-range transportation plans. During the public outreach process, we sought input in this area, as well as examples of successful techniques and approaches to engage the public on both project-level proposals and long-range plans and TIPs.

Comments from stakeholders were varied. However, there were a substantial number of comments that preferred the following two-fold approach: retaining the public involvement approach included in the planning regulation and modifying the NEPA regulation public involvement requirements to make our procedures the same (based on the FHWA, rather than the FTA, approach). This, they suggest, would allow States and MPOs to design processes that work best given local conditions and needs, yet would simplify the NEPA public involvement process by consolidating the FHWA and the FTA processes into one.

In arguments supporting this option, a considerable number of commenters, including State DOTs in Montana, Washington, New Jersey, Idaho, Wyoming, North Dakota, South Dakota, and the AASHTO, pointed out distinctions between the type of public involvement that must occur in the planning process and that which is sought in the NEPA process. They point out that these two processes, tailored according to each need, can serve two different purposes and can work without conflict.

There were a number of comments on whether freight interests and representatives of transit users should be represented with voting membership on MPO boards. These commenters, including the NACE, all opposed this idea and observed that putting persons representing particular interests on voting boards with elected officials would dilute the representation of duly elected officials. Yet, the Bicycle Federation of America supported putting representatives of bicyclists and pedestrians on voting boards of MPOs to ensure that they have an opportunity to comment on transportation plans and programs. The Texas Natural Resources Conservation Commission, the Orange County Transportation Authority, the Arkansas DOT, and the Minnesota DOT supported a consistent approach to public involvement for both planning activities and the NEPA project development activities and suggested basing this approach on the current FHWA NEPA regulation (23 CFR part 771). The EPA suggested that the DOT needs to assist community leaders, MPOs, and the public in establishing performance goals and local accountability for public participation.

B. Environmental Justice and Equity

There were a considerable number of commenters, including the AASHTO and many State DOTs, that opposed any suggestion that equity in the distribution of resources should be a factor used to assess whether environmental justice issues are being adequately addressed. These comments ranged from claims that such language, if included in regulation, would contradict the hard-fought TEA–21 provisions on the allocation of transportation funds to claims that such language would result in preempting States and MPOs from selecting the transportation projects and programs in their respective jurisdictions. Deep concern about this option and opposition to this approach was widespread and shared by MPOs and transit agencies who feel that geographic sub-allocation of funding based on demographics is short-sighted, and an inappropriate way to ensure the principles of environmental justice are honored.

Many commenters indicated that they believe the Executive Order 12898, Title VI of the Civil Rights Act of 1964, Public Law 88–352, 78 Stat. 241, as amended, and current NEPA requirements are sufficient to ensure that environmental justice concerns are addressed. The New Jersey DOT noted that benefits that accrue to users of investments should be a consideration in planning, and that this could possibly be measured in terms of mobility.

The Fulton County and Georgia Department of Environment and Community Development focused on the composition of appointed officials on regional authorities. This agency suggested that such authorities or decision making bodies should reflect the demographics of the region. This agency also suggested that all elements of the population affected by a particular decision should be sought out for their input. In addition, this commenter suggested that controversial project decisions should be analyzed to ensure that they conform to the Environmental Justice Presidential Executive Order. Finally, the commenter suggested that all decisions should be analyzed to ensure that no particular geographic sub-area is being over-burdened with adverse conditions resulting from transportation investments.

The U.S. Forest Service pointed out that lumping environmental justice and equity together is, in its view, a mistake. It suggested that the best option for public involvement, especially on issues concerning environmental justice, would be those procedures that incorporate collaboration processes early and often in the process.

One agency made the case that we should consider requiring environmental justice analyses of plans, programs and processes, and of major projects. The commenting agency suggested that we could adopt a set of requirements for recipients of our funding. Requirements would include: (1) Community group or nonprofit organization inclusion as equal and full partners in proposed projects; (2) applications for funding include community input in project development; and (3) external reviewers would make project selection decisions.

C. Elimination of Major Investment Study as Separate Requirement

Section 1308 of the TEA–21 eliminates the major investment study (MIS), described in 23 CFR 450.318, as a separate requirement and calls for integration of the MIS, as appropriate, into the planning and NEPA analyses required under 23 CFR parts 450 and 771. Proponents supporting this legislative action cited instances where major investment studies were said to duplicate NEPA requirements, were time consuming and costly, and importantly, that results were not usefully integrated into the project development activities under NEPA.

The Options Paper articulated four general concepts (distilled from earlier stakeholder comments) focusing on strengthening the linkage between systems planning and project development. We thought this would facilitate broader consideration of transportation system development although, in some cases, commenters had other views as discussed below.

In all of the options, the intent was to faithfully implement the TEA–21 provision that exempts plans and programs from consideration under NEPA. The MPOs would not be required to conduct NEPA analyses on plans. However, they could more effectively utilize the analyses conducted during planning activities to facilitate compliance with NEPA requirements at a project level. If an MPO, as part of its planning process, chose to conduct a NEPA analysis on a plan, it would be a permissible, voluntary decision. In addition to the four options presented for input, the Options Paper included a number of questions to solicit a better understanding of stakeholders' needs and concerns.

There were a wide range of comments on the elimination of the MIS and on the options presented. The AASHTO felt that we should restrict regulatory language and allow States and MPOs to integrate the principles of the MIS, as appropriate, into planning and programming activities at their discretion. The AMPO suggested that we should allow States the flexibility to do the NEPA analysis in the planning process, as an option, but not as a requirement. In fact, many stakeholders were firmly opposed to any regulatory language integrating NEPA requirements into the planning process.

Most of the commenters supported better linkages between planning and project development and many commenters, including the Minnesota DOT, supported the development of purpose and need during planning studies and sub-regional analysis, but only with the proviso that resource agencies and others allow the use of this information in the NEPA process. On the other hand, the Virginia DOT, for example, was opposed to developing project purpose and need during planning if there is a lack of participation of resource agencies and other parties to the NEPA process who could then require that analysis be redone or revisited during the formal NEPA process. There was near unanimous support for streamlining through reducing duplicative requirements and practices, such as, revisiting issues during project development that were, in commenters views, fully explored during planning.

Many commenters supported options that offer the most flexibility to States and MPOs. The Florida DOT suggested blending the two most flexible options and developing regulatory language that ensures the principles of MIS not already addressed by other Federal regulations and statutes are included in the metropolitan planning and programming requirements. They also suggested that the planning regulation should include requirements for proactive agency coordination and public involvement, collaborative and multi-modal planning analysis of alternatives, and financial capacity analysis of alternatives. The Florida DOT also felt that the States should take the lead on these processes.

The City of Irvine, Texas, suggested that the MIS process served as a good check on the system planning process and was a good way to build consensus and gain public input. Its traffic and

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transportation director suggested that expanding the purpose and need statement would help narrow down alternatives prior to the NEPA process. The same individual also suggested looking at the entire process to identify what environmental information could be both practical and useful at each level of analysis.

Additionally, and echoing earlier comments, stakeholders felt that the key to success in whatever approach is taken or required in regulation, is that Federal agencies participate early in the process and that they stay involved throughout the development of, and elimination of, alternatives. Consistent with this suggestion, the EPA commented that the only way they would give standing to previously conducted planning analyses during the NEPA project development stage is if there had been full opportunity for consultation in the metropolitan planning process, and if the resource agencies had "confidence that those plans were developed with environmentally desirable alternatives being considered."

D. Cumulative and Secondary Impacts

The Options Paper presented two scenarios which would help promote the consideration and evaluation of the cumulative and indirect effects of projects at a regional or large sub-regional scale, rather than on a project-by-project basis. In metropolitan areas, the former MIS requirement provided an opportunity for appropriate consideration of such effects across a sub-regional area where major, multiple transportation actions might be needed. With the elimination of the separate MIS requirement, the most logical venue for the consideration of such effects may be in the systems planning processes that support the development of metropolitan or statewide transportation plans.

One approach to implementing cumulative and secondary impact consideration would require an appropriate evaluation of these effects in a regional or sub-regional analysis, thus obviating the need for repetitious, project-by-project review. Such an approach might also provide an opportunity for more effective and efficient mitigation of cumulative impacts and the enhancement of adversely affected resources. Another possibility is to rely on a systems planning analysis of cumulative and indirect effects. In the absence of a robust planning-level review of these impacts, the project-by-project review as part of each NEPA evaluation would be required.

Some commenters, including the AASHTO and the Bicycle Federation of America, interpreted the first option as a requirement for enhancement projects whenever there are cumulative or indirect effects identified. A large number of commenters opposed this approach, but for two different reasons. The Bicycle Federation of America felt that using transportation enhancement funding to counterbalance the adverse impacts of projects is unacceptable and that such mitigation should be part of the project cost and implementation from the outset. Others, including State DOTs in Utah, New York, and Virginia, believed that a regional or subregional analysis is unrealistic, excessively costly, and of no value unless the study results were accepted by State and Federal environment and resource agencies.

The Oregon DOT observed that the appropriate level to consider cumulative and indirect impacts is at a regional or sub-regional planning level, but not as an analysis *per se;* rather, as a plan to preserve and enhance habitat and preserve resources for future generations. A few examples of plans that accomplish this objective were provided. The New Jersey DOT, Texas DOT, and the American Road and Transportation Builders Association stated that the "science" for evaluating the impacts is not available and that we should provide funding, education, and tools to assist MPOs and States to develop the appropriate analysis tools.

Finally, the Lubbock and Byron College Station MPOs (both from Texas) indicated that cumulative and indirect impacts are, and should be, adequately addressed in consideration of the planning factors and that additional regulatory requirements are unnecessary and redundant.

Distribution Table

For ease of reference, a distribution table is provided for the current sections and the proposed sections as follows:

Old section	New section
450.100	1410.100.
450.102	1410.102.
450.104	1410.104.
Definitions	Definitions.
None	Conformity lapse.
None	Conformity rule.
Management System	Congestion management system [Revised].
Consultation	Consultation [Revised].
Cooperation	Cooperation [Revised].
Coordination	Coordination [Revised].
None	Design concept.
None	Design scope.
None	Federally funded non-emergency transportation services.
None	Financial estimate.
None	Freight shipper.
None	Illustrative project.
None	Indian tribal government.
None	Interim Plan.
None	Interim Transportation Improvement Program.
None	ITS integration strategy.
Maintenance area	Maintenance area [Revised].
None	Management and operation.
Metropolitan planning area	Metropolitan planning area.
Metropolitan planning organization	Metropolitan planning organization.
Metropolitan transportation plan	Metropolitan transportation plan.
Nonattainment area	Nonattainment area.
None	Non-metropolitan local official.
None	Plan update.

Old section	New section
None	Provider of freight transportation services.
None	Purpose and need.
Regionally significant project	Regionally significant project [Revised].
State	State.
State implementation plan	State implementation plan.
Statewide transportation improvement program (STIP)	Statewide transportation improvement program (STIP).
None	Statewide transportation improvement program (STIP) extension.
Statewide transportation plan	Statewide transportation plan.
None	TIP update.
None	Transportation control measures.
Transportation improvement program	Transportation improvement program [Revised].
Transportation management area	Transportation management area.
Transportation plan update	Transportation plan update.
None	Twenty year planning horizon.
None	Urbanized area.
None	User of public transit.
450.200	1410.200.
450.202	1410.202.
450.204	1410.204.
450.206(a)(1)	Removed.
450.206(a)(2) through (a)(5)	1410.206(a)(1) through (a)(4).
None	1410.206(a)(5)[Added].
450.206(b)	Removed
450.208(a)	1410.208(a) [Revised].
450.208(b)	1410.208(b) [Revised].
450.210(a)	1410.210(a) [Revised].
450.210(b)	1410.210(e) [Revised].
450.212(a) through (f)	1410.212(b) [Revised].
None	1410.212(c) [Added].
450.212(g)	1410.212(e).
450.214	1410.214 [Revised].
450.216(a) introductory paragraph	1410.216(a).
450.216(a)(1) through (a)(7)	1410.216(c)(1) through (c)(7).
None	1410.216(c)(8).
450.216(a)(8)	1410.216(c)(9).
450.216(a)(9)	1410.216(c)(10).
None	1410.216(b) [Added].
450.216(b)	1410.216(d).
450.216(c)	1410.216(e) [Revised].
None	1410.216(f) [Added].
450.216(d)	1410.216(g) [Revised].
None	1410.218 [Added].
450.218	1410.220 [Revised].
450.220(a) introductory paragraph	1410.222(a) introductory paragraph.
450.220(a)(1)	1410.222(a)(1) [Revised].
450.220(a)(2)	1410.222(a)(2) [Revised].
None	1410.222(a)(3) through (a)(6) [Added].
450.220(a)(3)	Removed.
450.220(a)(4)	1410.222(a)(7).
450.220(a)(5)	1410.222(a)(8).
450.220(a)(6)	1410.222(a)(9).
None	1410(a)(10) [Added].
450.220(b) and (c)	1410.222(b) [Revised].
450.220(d)	1410.222(c) [Revised].
450.220(e)	1410.222(b)(3) [Revised].
450.220(f)	1410.222(d).
450.220(g)	1410.222(e).
450.222(a) through (d)	1410.224(a) through (d) [Revised].
None	1410.224(e) [Added].
450.224	Removed.
None	1410.226 [Added].
450.300	1410.300 [Revised].
450.302	1410.302 [Revised].
450.304	1410.304 [Revised].
450.306(a)	1410.306(a) [Revised].
450.306(b) and (c)	1410.306(b) and (c) [Revised].
450.306(d) and (g)	1410.306(f) [Revised].
450.306(e)	1410.306(d).
450.306(f)	1410.306(e).
450.306(h) through (k)	1410.306(g) through (j) [Revised].
450.308(a) through (d)	1410.308(a) through (d) [Revised].
450.308(e)	1410.308(e) [Added].
450.310(a)	1410.310(a) [Revised].

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Old section	New section
450.310(b)	Removed.
None	1410.310(b) [Added].
450.310(c)	1410.310(c) [Revised].
450.310(d)	1410.310(h) [Revised].
450.310(e)	1410.310(d) [Revised].
450.310(f)	1410.310(e) [Revised].
450.310(g)	1410.310(f).
None	1410.310(g) [Added].
450.310(h)	1410.310(i).
450.312(a)	1410.312(a) [Revised].
450.312(b)	1410.312(b).
450.312(c)	1410.312(c) [Revised].
450.312(d)	1410.312(d).
450.312(e) through (i)	1410.312(e) through (i) [Revised].
None	1410.312(j) [Added].
450.314(a), (b) and (d)	1410.314(a), (b) and (c) [Revised].
450.314(c)	Removed
450.316(a)	1410.316(a) [Revised].
450.316(b)(1)	1410.316(b) [Revised].
450.316(b)(2)	1410.316(c) [Revised].
450.316(b)(3)	1410.316(d) [Revised].
450.316(b)(4)	1410.316(e) [Revised].
450.316(b)(5)	1410.316(f) [Revised].
None	1410.316(g) [Added].
450.316(c)	1410.316(h) [Revised].
450.316(d)	1410.316(i).
None	1410.316(j) [Added].
450.318	1410.318 [Revised].
450.320(a)	Removed.
450.320(b), (c) and (d)	1410.320(a), (b) and (c) [Revised].
450.322(a)	1410.322(a) [Revised].
450.322(b)(1) through (b)(7)	1410.322(b)(1) through (b)(7) [Revised].
450.322(b)(8)	Removed.
450.322(b)(9) through (b)(11)	1410.322(b)(8) through (b)(10) [Revised].
None	1410.322(b)(11) [Added].
450.322(c) and (d)	1410.322(c) and (d) [Revised].
None	1410.322(e) [Added].
450.322(e)	1410.322(f).
None	1410.322(g) [Added].
450.324(a) through (e)	1410.324(a) through (e) [Revised].
450.324(f)(1) through (f)(3)	1410.324(f)(1) through (f)(3) [Revised].
None	1410.324(f)(4) [Added].
450.324(f)(4) and (f)(5)	1410.324(f)(5) and (f)(6) [Revised].
450.324(g) through (o)	1410.324(g) through (o) [Revised].
None	1410.324(p) [Added].
450.326	1410.326 [Revised].
450.328	1410.328 [Revised].
450.330(a) and (b)	1410.330(a) and (b) [Revised].
None	1410.330(c) [Added].
450.332(a)	1410.332(b) [Revised].
450.332(b)	1410.332(c) [Revised].
450.332(c)	1410.332(a) [Revised].
450.332(d) and (e)	1410.332(d) and (e).
450.334(a)(1) through (a)(5)	1410.334(a)(1) through (a)(5) [Revised].
None	1410.334(a)(6) through (a)(8) [Added].
450.334(b) through (f)	1410.334(b) through (f) [Revised].
450.334(g)	Removed.
None	1410.334(g) [Added].
450.334(h)	1410.334(h) [Revised].
450.336	Removed.

Section-by-Section Discussion

Section 1410.100 Purpose

Current § 450.100 would be redesignated as § 1410.100 and a technical correction would be made for a legislative citation.

Section 1410.102 Applicability

Current § 450.102 would be redesignated as § 1410.102. The text of this section is unchanged.

Section 1410.104 Definitions

Current § 450.104 would be redesignated as § 1410.104. The definition of "conformity lapse" and "transportation control measure" would be added and would have the meaning given it in the EPA conformity regulation provided at 40 CFR 93.101, as follows:

The term "lapse" means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

The term "congestion management system" would replace the previous definition of "management system" and would have the meaning given in the management system rule (23 CFR part 500).

The term "consultation" would have minor wording changes, but no substantive changes.

The word "programming" would be dropped from the definition of "coordination" to reflect the fact that programming is a subset of the planning process. The project development processes reference would be added to reflect the provisions of proposed § 1410.318.

Definitions are proposed for "design concept," "design scope," "federally funded non-emergency transportation services," "financial estimate," and "freight shipper" for clarification of legislative terminology.

The term "Governor" remains the same.

The terms "illustrative project" and "ITS integration strategy" would be added to reflect new legislative provisions. The term "Indian Tribal Government" is added for clarification.

The terms "Interim Plan" and "Interim Transportation Improvement Program" are added to clarify the basis for advancing exempt and existing and new TCM projects during a conformity lapse. Interim plans and TIPs must be developed in a manner consistent with 23 U.S.C. 134. They must be based on previous planning assumptions and goals; appropriately adjusted for currently available projections for population growth, economic activity and other relevant data. The public must be involved consistent with the regular transportation plan and program development processes. Financial planning and constraint, and, as appropriate, congestion management systems requirements must be satisfied, and interim TIPs must be approved by the MPO and the Governor."

The term "maintenance area" would be revised to reflect the EPA definition used in the conformity regulation at 40 CFR parts 51 and 93.

A definition is proposed for "management and operation" to reflect the new legislative policy direction from the TEA–21.

The terms "metropolitan planning area," "metropolitan planning organization," "metropolitan transportation plan," and "nonattainment area" would remain unchanged, except for legislative references.

A definition of "non-metropolitan local official" would be added to reflect the provisions of the TEA-21 regarding consultation between the State and these officials.

The terms "plan update," "provider of freight services," and "purpose and need" would be added to provide clarification of terminology.

The definition of "regionally significant" reflects the US EPA conformity rule (40 CFR parts 51 and 93).

The terms "State," "State implementation plan," "statewide transportation plan," and "statewide transportation improvement program" would be unchanged.

A definition for "statewide transportation improvement program extension" would be added for clarification.

The term "transportation improvement program" would be revised slightly. The term "TIP update" would be added to provide information and direction on when a TIP must be updated . Anytime a non-exempt project is added to a TIP, the TIP must be updated. In attainment areas, the TIP must be updated whenever a regionally significant project is added to the TIP.

The definition of "transportation management area" would be unchanged. The terms "twenty year planning horizon, "urbanized area," and "user of public transit" would be added to clarify legislative terminology.

Subpart B—Statewide Planning and Programming

Section 1410.200 Purpose of Regulations

Current § 450.200 would be redesignated as § 1410.200. The statement of purpose would be amplified by reflecting the declaration of purpose articulated in the TEA–21. This amplification also supports greater consistency of purpose between metropolitan and statewide planning.

Section 1410.202 Applicability of Regulation

Current § 450.202 would be redesignated as § 1410.202. The text would be revised to add "project sponsors" as agencies affected by the provisions of this section.

Section 1410.204 Definitions

Current § 450.204 would be redesignated as § 1410.204. This section would remain the same.

Section 1410.206 Statewide Transportation Planning Process: Basic Requirements

Current § 450.206 would be redesignated as § 1410.206.

A new § 1410.206(a)(5) would be added. This section articulates the need for the State to develop and implement a process for demonstrating the consistency of plans and programs with the provisions of Title VI of the Civil Rights Act of 1964 and related legislation. We believe that such processes are already in place and that the clarification of minimum required information and analysis would benefit States and other agencies in meeting the existing requirement in the self-certification statement included in the STIP.

Current § 450.206(b) would be eliminated since it is redundant with § 450.210(a).

Section 1410.208 Consideration of Statewide Transportation Planning Factors

Current § 450.208 would be redesignated as § 1410.208. Paragraph (a) would be revised by substituting the seven planning factors identified in the TEA–21 for those previously identified by the ISTEA. All parenthetical amplification has been deleted and the wording is that used by the statute. We plan to issue guidance regarding interpretation and application of the planning factors. We welcome suggestions on exemplary State and MPO procedures already in place or under development, and how those might be replicated in other State or MPO planning processes. We also recognize that it will take some time to develop syntheses of current practices and other tools. However, we will work with States, MPOs, and others to ensure that tools and examples are made available in a timely manner.

We are proposing to revise paragraph (b) to focus on other considerations that the TEA–21 states should be addressed in the planning process. Specifically, the concerns of non-metropolitan local officials and Indian Tribal Governments and Federal land managing agencies are spelled out as a source of concerns that shall be considered.

Section 1410.210 Coordination of Planning Process Activities

Current § 450.210 would be redesignated as § 1410.210. Reflecting the simplification of language provided by the change in planning factors, paragraph (a) would be revised to focus on required planning coordination efforts. This general approach would eliminate the need to spell out in detail all of the specific coordination efforts previously articulated. We believe that the substance of coordination and the process overall remain intact even though the language is vastly simplified. References to the air quality planning process in § 1410.210(b) reflect the

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general role afforded the State transportation planning agency in the air quality planning process under 42 U.S.C. 7504 and the desirability of ensuring coordination of the air quality and transportation planning processes. The current wording of paragraph (b) would be retained as § 1410.210(e) with the addition of "safety concerns" to the list of issues to be coordinated.

Section 1410.212 Participation by Interested Parties

Current § 450.212 would be redesignated as § 1410.212. Overall, current § 450.212 (public involvement) would be broadened to focus on all facets of participation in the statewide planning process. For example, the newly articulated provisions regarding consultation with non-metropolitan officials would be added to this section. In addition, the paragraphs would be redesignated.

Current §§ 450.212(a) through (f) would become § 1410.212(b) and be revised slightly to reflect increased emphasis for public involvement by minorities and low-income populations. The listing of interested parties to be afforded an opportunity to comment is revised to reflect the addition of transit users and freight service providers in statute. This listing reflects the wording of the statute. The FHWA and the FTA believe that the phrase "and other interested parties" reflects the intent of Congress to ensure that all citizens and groups are afforded an opportunity to participate. Comments are solicited as to whether there is a need to further elaborate the listing so as to demonstrate that the specific groups do not constitute an exclusive list of participants. A new § 1410.212(d) would be added to encourage the participation of state air quality and other agencies in the transportation planning process. The existing § 450.212(g) would become § 1410.212(e).

Section 1410.212(b)(2)(vii) makes provision for a periodic evaluation of its public involvement procedures by the State. The FHWA and the FTA believe that the assessment of such processes on a routine basis ensures their effectiveness and enhances continued improvement. The FHWA and the FTA also believe that the effectiveness of public involvement processes can be strengthened through the voluntary development of criteria on which to assess performance by States and MPOs. Where such criteria have been developed by the planning partners, the FHWA and the FTA will consider them in their certification reviews and planning findings, in addition to the generally applicable requirements for public involvement processes under § 1410.212(b)(2) and § 1410.316(b).

A new § 1410.212(c) focusing on participation by Federal agencies and Indian Tribal Governments would be added to support early involvement by these agencies and governments. Such involvement will facilitate streamlining of environmental decisions and ensure adequate consideration of key interests and viewpoints. The proposed wording for the involvement of Indian Tribal Governments reflects current deliberations within the Executive Branch regarding ways to more fully inform and engage Indian Tribal Governments in Federal decision making processes.

Section 1410.214 Content and Development of Statewide Transportation Plan

Current § 450.214 would be redesignated as § 1410.214. Two new sections would be added to reflect legislative changes. Proposed § 1410.214(a)(3) would reflect the intelligent transportation system consistency requirement provided under section 5206(e) of the TEA–21. A separate rulemaking process will address the overall policy and procedures for architecture consistency. The wording reflects that portion of the consistency process that would be started in the statewide planning process for non-metropolitan area projects. We are interested in comments and observations regarding the feasibility of this process. In our view, the basic structure would reflect the activities normally conducted during transportation plan development. Proposed minor information collection additions to reflect utilization of electronic information sharing do not appear to be a major burden addition for planning.

In addition, proposed § 1410.214(d) would implement a provision, added by TEA–21, for an optional financial plan for statewide transportation plans. The TEA–21 did not impose a new requirement on the States. Rather, it offers up the option of a financial plan if decided upon by the statewide planning process participants. This section would spell out how this option would be approached through a statewide planning process.

Section 1410.216 Content and Development of Statewide Transportation Improvement Program

Current § 450.216 would be redesignated as § 1410.216. The provisions of former § 450.216(a)(1) through (a)(9) would be redesignated and revised as § 1410.216(c) providing detailed information on the STIP. A new § 1410.216(b) would spell out the need to involve certain interests in the development of the STIP. The parties identified are the same as those identified for the development of the plan.

Regarding the detailed information requested for projects identified in a STIP in § 450.216(c), a new element (§ 1410.216(c)(8)) regarding ITS projects funded with highway trust funds would be added. This section reiterates the earlier planning level discussion and would direct that projects meeting the definition in § 1410.322(b)(11) would be included in a regional architecture as indicated in the rulemaking on ITS architecture consistency.

The new wording proposed in § 1410.216(f) articulates the legislative provision of an optional financial plan for STIPs.

Section 1410.218 Relation of Planning and Project Development Processes

A new § 1410.218 would address an optional approach to linking statewide planning and project development processes in non-metropolitan areas. It mirrors proposed § 1410.318 which would apply to the metropolitan planning process. The intent of this section is to provide States with an option to more effectively rely on planning processes as a foundation for subsequent environmental and other project level analyses. Nothing in this section would mandate that a State adopt the option provided. If a State chose to take advantage of the option, the language lays out a framework to support the State's actions. This section also would make clear that project level actions shall be consistent with the State plan and program (see proposed § 1410.218(e)). For further information, please see the preamble section related to metropolitan planning, proposed § 1410.318.

Section 1410.220 Funding of Planning Process

The content of the current § 450.218 would be moved here with changes made to the references and the section heading.

Section 1410.222 Approvals, Self-certification and Findings

Current § 450.220 would be redesignated as § 1410.222. Current § 450.220(a)(2) would be revised slightly. Proposed § 1410.222(a)(3) through (a)(5) would articulate the existing legislative and regulatory authorities. Subsequent paragraphs would be redesignated and remain generally unchanged. A new § 1410.222(a)(10) would be added.

We are proposing to modify existing § 450.220(b) slightly to indicate the relationship of the planning finding to self-certifications by the State. In addition, current language provided at § 450.220(c) would be redesignated and combined with a new § 1410.222(b) to clarify the relationship of findings with possible Federal actions.

Proposed § 1410.222(c) that details the approval period for a STIP would modify the text of current § 450.220(d). STIP extensions (and by their inclusion, TIP extensions) would be limited to 180 days. Further, no STIP extension would be granted in nonattainment and maintenance areas. We believe that this policy eliminates substantial confusion regarding application of the Clean Air Act (CAA) conformity provisions in nonattainment and maintenance areas. We also believe that the focus should be on ensuring regular STIP updates, rather than finding a way to maintain funding flows that may conflict with the provisions of the CAA. The overall limit on extensions serves the same general purpose for attainment areas of ensuring that updates are accomplished rather than continuing to rely on out of date documents.

Section 1410.224 Project Selection

Current § 450.222 would be redesignated as § 1410.224 and the references to funding categories updated. Generally, however, it would remain unchanged. Proposed new paragraph (e) would provide the option for expedited procedures where agreed to by the planning participants. The current topic of this section (§ 450.224 phase-in requirements) would be eliminated.

Section 1410.226 Applicability of NEPA to Transportation Planning and Programming

This section simply proposes to restate the provisions of the TEA–21 which direct that decisions by the Secretary regarding plans and programs are not Federal actions subject to the provisions of the NEPA.

Subpart C—Metropolitan Transportation Planning and Programming

Section 1410.300 Purpose of Planning Process

Current § 450.300 would be redesignated as § 1410.300. This statement would remain essentially unchanged. The exceptions are a minor wording change for clarity of Federal expectations with regard to plan content and the addition of the word "management" to reflect the revised declaration of policy in 23 U.S.C. 134(a) as revised by the TEA–21.

Section 1410.302 Organizations and Processes Affected by Planning Requirements

Current § 450.302 would be redesignated as § 1410.302. The principal change would be to add organizations charged with "project development" in metropolitan areas to the affected organizations. This would reflect the general emphasis of the revised rule on more efficiently and effectively linking planning and project development as a means to streamlining decision making and towards ensuring that projects are based on the planning process. The statutory authorizing language reference would be added also.

Section 1410.304 Definitions

Current § 450.304 would be redesignated as § 1410.304. This section would remain unchanged with the exception of referencing definitions in 49 U.S.C. Chapter 53.

Section 1410.306 What is a Metropolitan Planning Organization and How Is It Created

Current § 450.306 would be redesignated as § 1410.306. Minor changes are proposed for existing § 450.306(a) to provide clarity regarding the designation of multiple MPOs serving a single metropolitan area. The wording would more clearly emphasize a preference for not designating more than one MPO in metropolitan areas. We believe that this is consistent with the intent of legislative language changes and the principles of comprehensive transportation planning for metropolitan areas.

Current §§ 450.306(b) and (c) would remain unchanged. Current § 450.306(d) and (g) would be combined and redesignated as § 1410.306(f), § 450.306(e) would be redesignated as § 1410.306(d) and § 450.306(f) would be redesignated as § 1410.306(e). Editing for clarity of intent would simplify the language. Current § 450.306(e) would be redesignated as § 1410.306(d). Sections 450.306(h) through (k) would be redesignated as §§ 1410.306 (g) through (j), respectively, and revised.

Section 1410.308 Establishing the Geographic Boundaries for Metropolitan Transportation Planning Areas.

Current § 450.308 would be redesignated as § 1410.308. Revisions made by the TEA–21 to 23 U.S.C. 134 require the modification of existing § 450.308, which also would be edited for clarification of language. Boundaries in effect as of June 9, 1998, the date of presidential signature for the TEA–21, would remain in effect unless modified by the policy board of the MPO in cooperation with the Governor. The provisions of 23 U.S.C. 134, as modified by the ISTEA, required planning area boundaries to be extended to the limits of the nonattainment area where that area was larger than the transportation planning area.

New MPOs designated after June 9, 1998, would have to take into account the existence of non-attainment and maintenance areas and reflect them as agreed to by the Governor and local officials in the proposed metropolitan planning area boundaries.

In either case, the existing MPO or new MPO, non-attainment and maintenance areas left outside the metropolitan planning areas would have to be addressed in an agreement between the State and the MPO as proposed at paragraph § 1410.310(f).

The option of extending the metropolitan planning area boundary to the limits of the metropolitan statistical area would be retained as provided in the statute. This continuation and the changes discussed in the preceding paragraphs are captured in proposed revisions included in § 1410.308(a).

The wording of current § 450.308(b) would remain unchanged. The provisions of current § 450.308(c) would be slightly modified for clarification. No changes are proposed for § 450.308(d).

A new § 1410.308(e) proposes to address the expenditure of Surface Transportation Program funds attributable to a Transportation Management Area (TMA). The intent of the section is to more clearly state, what has been the FHWA and the FTA policy since 1992, that these funds cannot be expended outside the boundaries of the metropolitan area. They may be expended anywhere inside the metropolitan area including areas outside the urbanized area.

Section 1410.310 Agreements Among Organizations Involved in the Planning Process

Current § 450.310 would be redesignated as § 1410.310. Current § 450.310(a) would be retained in its current form except for the elimination of a reference to corridor and subarea studies. A new proposed § 1410.310(b) would state the overall relationship between planning and project development activities. This section would support the option for conducting project development activities as planning activities under the general relationship between

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planning and project development as established under the proposed new § 1410.318.

Current § 450.310(c) would be redesignated as § 1410.310(c) and the text would remain unchanged except for minor wording revisions for clarification. Section 450.310(d) would be redesignated as § 1410.310(h) and revised for clarity. Current § 450.310(e) would be revised by dropping the reference to a definition of a prospectus in § 450.104. A definition is not required since the nature of prospectus is well established in practice as a statement of ongoing planning activities that continue from year-to-year as a foundation for producing transportation plans and programs.

The current § 450.310(f) would be redesignated as § 1410.310(e) and modified slightly by a wording change to support the revisions to the air quality and transportation planning area boundary relationship. The change is intended to suggest that actions that would leave portions of nonattainment and maintenance areas outside a metropolitan transportation planning area, but contiguous to such an area, should be addressed in consultation with the FHWA, the FTA, and the EPA. The decision to leave such areas outside a metropolitan planning area is the responsibility of the Governor and the MPO acting cooperatively.

A proposed new § 1410.310(g) has been added to reflect the impact of section 5206(e) of the TEA–21. The proposed section requires an agreement among agencies planning and implementing ITS projects and is intended to ensure that the planning and operating agencies specifically agree on an approach to integrated ITS implementation consistent with the options provided in the National ITS Architecture. This provision would direct that this relationship should be covered by agreement within the metropolitan planning area and addresses the policy and operational issues affecting ITS implementation. Where current agreements do not already address these relationships, they would be modified to reflect the provisions of this section. Where possible, existing agreements, per the provisions of § 1410.310(i), would be modified to incorporate the ITS integration strategy required under proposed § 1410.322(b)(11).

A new proposed § 1410.310(h) would permit a single agreement for all activities under § 1410.310 where agreed to by the participants. The wording in current § 450.310(h) remains unchanged from its current text and would be included in a redesignated § 1410.310(i).

Section 1410.312 Planning Process Organizational Relationships

Current § 450.312 would be redesignated as § 1410.312. Existing § 450.312(a) would be redesignated as § 1410.312(a) and modified in several places to reflect wording changes in the subsequent provisions of §§ 1410.314 through 1410.322. A phrase would be made to reflect international border planning with Canada and Mexico.

The text of current § 450.312(b) would be redesignated as § 1410.312(b) and remain unchanged.

The organization of current § 450.312(c) and some of the previous content would be modified and redesignated as § 1410.312(c). The content modifications are intended to clarify how MPO transportation planning activities and planning products are related to air quality planning activities and products. Under 42 U.S.C. 7504, MPOs and State transportation planning organizations are expected to have a formal role in air quality planning. At another level, the transportation and air quality planning processes would work more efficiently if the responsible agencies were more actively engaged in each other's processes. Hence, the proposed rule would more explicitly direct MPOs to participate in air quality planning activities. We would expect that the air quality planning agencies, under the U.S. EPA's conformity regulation (40 CFR parts 51 and 93), would be actively engaged in the transportation planning process. The development of transportation control measures is specifically revised to clarify that new TCMs proposed for funding with FHWA and/or FTA transportation funds or requiring an FHWA or FTA approval can occur during a conformity lapse, if new TCMs are included in an interim plan and interim TIP that satisfy the provisions of this part and are approved into a SIP with identified emission reduction benefits (specified but not necessarily credited in the applicable SIP). The proposals herein implement and clarify the planning regulations consistent with the "National Memorandum of Understanding between the US Department of Transportation and the US Environmental Protection Agency," which was signed on April 19, 2000. This memorandum of understanding outlines procedures for advancing new TCMs during a conformity lapse.

Current § 450.312(d) would be redesignated as § 1410.312(d) and remain unchanged.

Minor wording changes would be made to current § 450.312(e) [proposed § 1410.312(e)] to clarify required coordination in circumstances where more than one MPO is involved in transportation planning for a contiguous metropolitan area, including multi-state areas.

Proposed § 1410.312(f) (current § 450.312(f)) would be revised for text clarity. Proposed § 1410.312(g) (current § 450.312(g)) would be revised to remove a specific reference to cooperative development of the congestion management system (CMS) since it is incorporated in the management system regulation provided at 23 CFR part 500.

Current § 450.312(h) is redesignated as § 1410.312(h) and revised. Proposed § 1410.312(i) (current § 450.312(i)) would be revised by replacing the words "involved appropriately" with "consulted" to more accurately reflect the statutory intention.

A new § 1410.312(j) is proposed to reflect the legislative changes of the TEA–21 which added several new discretionary grant programs. This section asserts that the projects (other than planning and research activities) funded through these programs must be addressed through the transportation planning process and included, as appropriate, in transportation plans and programs. Planning and research activities funded under the referenced programs are addressed in the Unified Planning Work Programs (UPWP) for each metropolitan planning area.

Section 1410.314 Planning Tasks and Work Program

Current § 450.314(a) would be redesignated as § 1410.314(a). The provisions of this overall section remain largely unchanged except for wording revisions for clarity or to reflect modifications in other sections, e.g., elimination of the MIS proposed under § 1410.318. One change to § 450.314(a) proposes to drop the reference to TMAs. This is intended to suggest that all MPOs have a responsibility to meet the requirements of this section. It does not prevent a smaller, attainment area MPO from proposing a prospectus or a simplified work program. Paragraph (c) of current § 450.314 would be revised and redesignated as § 1410.314(c). A new paragraph (d) will be added as § 1410.314(d).

Section 1410.316 Transportation Plan Development

Current § 450.316 would be redesignated as § 1410.316. Overall this section has extensive proposed revisions for several reasons. The metropolitan planning factors were revised by the TEA–21; reduced in number from 16 to 7. The wording in § 450.316(a) would be revised by substituting the seven planning factors identified in the TEA–21 for those previously identified by the ISTEA. All parenthetical amplification would be removed and the wording would be the same as that used in the statute. We plan to issue guidance regarding interpretation and application of the planning factors. This will be especially true of new planning goals, such as safety, environmental considerations, and operations and management, which have been added to the list.

The US EPA has suggested that the FTA and the FHWA amplify and elaborate the detail in the regulation regarding the meaning of the planning factors. The agencies have kept the language as stipulated in the statute. However, the agencies believe that substantial benefits can be realized by States and MPOs in applying the planning factors, under §§ 1410.214 and 1410.316(a), aggressively, most notably in supporting the provisions of § 450.318 below. The planning factors can serve as a key focal point for developing plans and programs and MPOs and States may develop specific rationales to guide their utilization in the plan development process. Indeed, where States and MPOs choose to develop their own performance criteria to monitor the results of planning, they may be well served by utilizing the planning factors as a base for those criteria. The FTA and the FHWA will support efforts by States and MPOs to utilize such criteria by addressing them in Federal reviews and assessments. In addition, the agencies will seek to develop specific examples of how the planning factors can support effective plan development and environmental streamlining. Streamlining, as an activity to reduce project level burden and delay, could be more readily achieved if the planning process provides an early consideration of the planning factors.

The FHWA and the FTA welcome suggestions on exemplary State and MPO procedures or data collection efforts already in place or under development and how those might be replicated in other State or MPO planning processes. We are interested also in specialized training efforts, e.g., safety, that may have been developed or needed by States and MPOs. We also recognize that it will take some time to develop syntheses of current practices and other tools. However, it is our intent to work with States, MPOs, and others to ensure that tools and examples are made available in a timely manner.

The public involvement provisions would be modified for clarity and would reflect the provisions of Presidential Executive Order 12898 on Environmental Justice and implementing DOT and FHWA orders. Similar changes have been made regarding references to compliance with the provisions of Title VI of the Civil Rights Act of 1964. The organization of § 450.316 would be modified slightly to reflect these changes and to provide clarity in understanding them.

The listing of interested parties to be afforded an opportunity to comment is revised to reflect the addition of transit users and freight service providers in statute. This listing reflects the wording of the statute. The FHWA and the FTA believe that the phrase "and other interested parties" reflects the intent of Congress to ensure that all citizens and groups are afforded an opportunity to participate. Comments are solicited as to whether there is a need to further elaborate the listing so as to demonstrate that the specific groups do not constitute an exclusive list of participants.

Section 1410.316(b)(9) makes provision for a periodic evaluation of its public involvement procedures by the State. The FHWA and the FTA believe that the assessment of such processes on a routine basis ensures their effectiveness and enhances continued improvement. The FHWA and the FTA also believe that the effectiveness of public involvement processes can be strengthened through the voluntary development of criteria on which to assess performance by States and MPOs. Where such criteria have been developed by the planning partners, the FHWA and the FTA will consider them in their certification reviews and planning findings.

Relatively small scale modifications to the public involvement provisions are proposed as follows: (1) The provision of timely information will be modified to encourage engagement of the public during the early stages of plan and TIP development; (2) demonstration of timely response to comments received would be revised to highlight response to input from minority and low-income populations; and (3) periodic MPO evaluations of public involvement effectiveness would now include an emphasis on the success obtained in engaging minority and low-income populations.

Current § 450.316(b)(2) is proposed to be redesignated as § 1410.316(c). Additional attention is drawn to the provisions of Executive Order 12898 and implementing DOT and FHWA orders. Specifically, data necessary for the purposes of conducting planning analyses for plan development are identified as contributors to the demonstration of compliance with the Executive Order. We are required to assure compliance with the Executive Order and will rely on the data identified under this section for that purpose. In addition, the statutory and regulatory requirements identified in this section apply to State DOTs, MPOs, and transit operators. Consequently, additional data and analyses are proposed as a basis for demonstrating that plans and resulting programs will be consistent with the referenced statutory requirements. Additional guidance will be issued to refine and amplify the basic framework established by these provisions. We believe, however, that much of the proposed data specification was previously required for assertions of compliance with Title VI and related statutory authorities and, hence, should not require a major new data collection effort.

In addition to the revised requirements of this section, the FHWA and the FTA continue to encourage attention to the selection of members of boards and committees that represent the demographic profile of the metropolitan planning area served. The ability to meet the needs of the community is enhanced by efforts designed to provide voice to as many segments of its membership as possible. The FHWA and the FTA solicit comments regarding additional strategies that may be effective in serving the interests of inclusiveness in transportation decision making.

Current §§ 450.316(b)(3) through 450.316(b)(5) would be redesignated as § 1410.316(d) through (f). Current § 450.316(c) would be redesignated as § 1410.316(g) and revised for clarity. Current § 450.316(d) is proposed to be redesignated as § 1410.316(h).

Proposed § 1410.316(i) is offered to encourage the coordination of federally funded non-emergency transportation services per the requirements of section 1203(d)(4) of the TEA–21. The section simply restates the legislative language.

Section 1410.318 Relation of Planning and Project Development Processes

The TEA–21 eliminates the major investment study (MIS) as a separate requirement as set forth in the planning regulations and calls for integration of the requirement, as appropriate, into the planning and NEPA analyses required under proposed 23 CFR parts 1410 and 1420. Accordingly, current § 450.318

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would be revised to focus on the relationship between the planning and project development processes.

Section 1308 of the TEA–21 directs the US DOT Secretary to eliminate the separate MIS and its elements and integrate the remaining aspects of the MIS into the planning and NEPA regulations. The FHWA and FTA have attempted to do this by focusing on the fundamental basics of the MIS process, i.e., the cooperative relationship of planning and project development agencies, the early engagement of permit and resource agencies, flexible definition of the need to do analyses as decided by the participants and an appropriate level of public involvement. The MIS process did not require a specific methodology for studying alternatives, a specific set of alternatives to study, a particular format for reports, a specific public involvement or analytical process, or a specific set of projects to which the MIS applied. The US EPA has specifically suggested that the MIS process required and should require the use of cost benefit, costs effectiveness analysis and/or other related analytical techniques. The logic of this proposal is that early, effective consideration of social, environmental and economic considerations in planning analyses should permit more expedited consideration of these same issues, at a more micro level of detail, for subsequent NEPA analyses. By linking the planning and project development processes more effectively, the participants can reduce time required, analytical redundancy and process requirements by utilizing previously conducted work as a basis for subsequent analyses and efforts. It is the belief of the FTA and the FHWA that an aggressive utilization of the options provided here can strengthen the planning process and streamline the project development process substantially. The agencies are specifically interested in comments that address the extent to which the remaining aspects of the MIS process have been included in this proposal and suggestions for encouraging States and MPOs to more effectively take advantage of the options provided herein.

The overall structure of the relationship emphasizes alternatives for planning and sponsor agencies to integrate decision processes to take advantage of potential streamlining opportunities and for early consultation among the MPOs, State DOTs, and transit operators. The planning process is charged with providing an initial statement of purpose and need for proposed transportation improvements, identifying and evaluating alternatives (including, but not limited to, design concept and scope) and selecting an alternative and including it in the plan. This statement would not necessarily lead to a determination of purpose and need on a project-by-project basis for transportation improvements normally grouped (not specified individually) in a plan. An alternative could be a programmatic statement of purpose and need that identifies the basis for investing resources in a given transportation area such as safety or pavement resurfacing.

The consideration of alternatives and other planning level analyses done in support of plan development do not eliminate the need for considering all reasonable alternatives during the NEPA process. However, to the extent that the planning participants anticipate the required consideration of all reasonable alternatives in the planning process, they will significantly enhance, in our view, the efficiency of the NEPA process. Well documented, thorough planning analyses should permit the NEPA process to accept this information as a sound basis for reducing the alternatives considered and the detail required for others in the NEPA process. Provision also is made for policy preferences and guidance from planning policy bodies to be included on the record for consideration in subsequent decision steps.

Examples of issues that might be covered in the planning level consideration of alternatives include: the consideration of alternatives that in the past have been rejected for not fully meeting traditional concepts of purpose and need; more broadly defined purpose and need statements during the planning stage so that a full range of modal alternatives are considered; an alternatives analysis that examines "no-build" alternatives that use transportation demand strategies; and, flexibility to encourage the selection of alternatives which may have lower than originally desired levels of transportation service if there are cost, time, and impact savings. The FHWA and the FTA will work with the US EPA on guidance and training in this regard.

A number of alternative sources of information are identified as a basis for the development of purpose and need, a planning level analysis of alternatives (primarily at the level of concept and scope) and specification of a project for inclusion in the transportation plan. These information sources are utilized at the discretion of participating agencies (MPO, State DOT, and transit agency) acting jointly. The underlying logic of the proposal is that if the options to document thoroughly and analyze fully are chosen, this effort will lead to expedited analytical efforts in subsequent NEPA analyses. Less robust analytical and documentation efforts would force elaboration and analysis of alternatives during the NEPA process.

The utilization of planning analyses as a basis for project development actions is explained. In particular the regulatory language specifies that the results of planning analyses shall serve as input to the environmental process under proposed 23 CFR part 1420 (current part 771), and other project level actions. Proposed § 1410.318(c) references the contents of proposed § 1420.201 to provide a frame of reference to data and analytical expectations in subsequent NEPA process steps, *i.e.*, the standard of analysis expected by the NEPA process for projects. Planning, systems level, analyses that address these data and analytical requirements can improve the efficiency of the NEPA process and reduce data and analytical efforts required.

The ability to streamline the planning and environmental relationship is dependent, in part, on appropriate decisions made by the planning participants. They can choose to develop a rigorous basis for establishing transportation purpose and need, identifying alternatives for evaluation, and assessing these alternatives through the planning process. Alternatively, they can choose to apply minimal analytical techniques. At the time the NEPA analyses are undertaken for project development, the agencies participating in that process will review the materials provided by the planning process. Minimal analyses in planning will have to be supplemented and elaborated to satisfy the needs of the NEPA process. More robust planning analyses should allow the NEPA process to reduce the need for revisiting and re-evaluating planning level studies and instead proceed to focus on project level considerations of location and design. Consequently, the consideration of alternatives should be more quickly and efficiently accomplished.

A similar option exists with regard to documentation of planning results. A set of planning activities to be documented to facilitate this linkage is specified in § 1410.318(a)(2). The option to document is a discretionary option of the planning participants in cooperation with appropriate project sponsors. The focus is not on the details of documents but rather on the act of documenting the results of analyses and studies. Robust analyses coupled with sound documentation will permit more effective linkage and utilization of planning analyses and data collection in subsequent NEPA analyses.

The early involvement of Federal and State environmental and permit agencies is encouraged under proposed § 1410.318(d) to facilitate linking planning and environmental processes. The involvement of the FTA is required where planning studies are proposed to satisfy requirements of the Major Capital Investment Program administered by the FTA under 49 CFR part 611. The TEA–21 directive that Federal decisions on plans and programs are not considered a Federal action for NEPA purposes is restated in proposed § 1410.318(f) (the FHWA and the FTA do not approve plans but they do approve the State TIP which is not subject to NEPA). Finally, the basis for Federal project actions in plans and TIPs is specifically stated. The intent of this latter provision, in proposed § 1410.318(g), is to clearly substantiate the need for projects to be in plans before Federal actions can be taken on them. A particular point is made that project actions and the appropriate phase of a project must be in a plan and TIP before project actions can be taken.

Section 1410.320 Congestion Management System and Planning Process

Current § 450.320 would be redesignated as § 1410.320 and would be revised to reflect the impact of the issuance of the Management System rule (23 CFR part 500) and the National Highway System Act of 1995, Public Law 104–59, 109 Stat. 568. The latter made management systems optional, except for the congestion management system in transportation management areas (TMA). Hence, the proposed language focuses on the continuing provisions of the congestion management system in TMAs, including the limitation on single occupant vehicle capacity increases which remains unchanged under the TEA–21. With the exception of current § 450.320(a) which would be removed, the remainder of the overall section is generally unchanged.

One option considered, but not included in this proposal, is to revise 23 CFR part 500 by transferring the provisions dealing with the congestion management system to the metropolitan planning rule. The FHWA and the FTA would welcome comments on this idea with regard to its utility and appropriateness.

Section 1410.322 Transportation Plan Content

Current § 450.322 would be redesignated as § 1410.322. Current § 450.322(a) would be modified by adding a discussion of data assumptions for plan updates. Specifically, the language would clarify what must be considered in preparing a plan update, as a minimum. It also would reaffirm that the MPO must approve the content of a new plan or reaffirm existing plan content in conducting an update. We have chosen to provide this clarification in response to requests from stakeholders and to emphasize that a plan is a critical document. Piecemeal revisions that incrementally revise plans do not constitute an appropriate, accurate or meaningful basis for plan development, implementation, and/or subsequent decision making.

A proposed minor revision would be made to § 450.322(b)(2) to reflect the emphasis on management and operation of the transportation system.

Current §§ 450.322(b)(3) through (b)(6) would remain unchanged with the exception of minor edits for clarity. Current § 450.322(b)(7) would be revised to reflect the elimination of the MIS and redesignated as § 1410.322(b)(7). Current § 450.322(b)(8) would be removed. Current §§ 450.322(b)(9) and (10) would be redesignated as §§ 1410.322(b)(8) and (9), respectively.

Current § 450.322(b)(11) would be redesignated as § 1410.322(b)(10) and remain generally unchanged except for the addition of the reference to "illustrative projects." Illustrative projects have no standing for transportation or air quality purposes until such time as a financing source has been identified and they have been formally amended into the plan by action of the MPO. At that point they could be added to a TIP as a project to be advanced. We expect that the MPO would coordinate its actions with the State DOT and transit operator and vice versa. Once formally added to a plan and TIP, these projects may be included in regional conformity findings, advanced, and subject to appropriate project level actions by the FHWA and the FTA.

The remainder of § 450.322(b)(10) would remain generally unchanged since the TEA–21 either did not change key provisions or reenforced previous provisions required through regulation (*e.g.*, cooperative estimates of revenue for plan development). With regard to estimated revenues, we have opted to rely on a cooperative process of State, MPO and transit operator estimation based on local preferences and arrangements. We would support the cooperative process through the provision of guidance and identification of good practices for emulation.

A new § 1410.322(b)(11) proposes to focus on intelligent transportation systems (ITS) and the National ITS Architecture. As provided in section 5206(e) of TEA–21, we have issued interim guidance on compliance with this new legislative requirement. This proposed wording is intended to be an integral element of the proposed regulatory issuance on compliance with this requirement. A companion NPRM issuance will be made for project development and national policy on consistency with the National ITS Architecture. It will support planning as the initial stage at which this consistency must begin. We are issuing the planning component through this NPRM and solicit comments on this proposal.

The existing wording of § 450.322(c) would be redesignated as § 1410.322(c) and would be modified to add users of public transit and freight shippers as directed by the TEA–21. A minor modification would be made to § 450.322(d) (proposed § 1410.322(d)) to clarify that if either the MPO or we fail to make a conformity determination, the Governor or the Governor's designee must be notified.

A new § 1410.322(e) would refine the operating approach to plan changes and updates. The question of a 20-year horizon has received substantial discussion as indicated previously. As part of the clarification of the meaning of the term "20-year horizon," we are proposing that a plan is valid for transportation purposes if it has a twenty year horizon at the time of adoption. If no major changes are made to the plan, *e.g.*, the addition of a non-exempt project, then the plan would remain valid as a basis for Federal actions until its next regularly scheduled update. This proposal also indicates that it is our intent that conformity determinations by the FHWA/FTA be made as close as possible to the MPO plan conformity finding, *i.e.*, as soon as possible after MPO plan adoption and conformity determination actions are taken. The three year period and the twenty year horizon would start at the point a Federal conformity determination is made on the plan for a nonattainment or maintenance area. This will eliminate confusion over the validity of the transportation plan in relation to air quality conformity determination. A new conformity determination would be required within eighteen months of certain SIP actions according to 40 CFR 93.104, even if the three year period had not expired at the time. In an attainment area, the plan would be valid for five

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years from MPO approval so long as no regionally significant projects are added.

The current requirement of § 450.322(e) that new plans and plan updates be provided to us would be included in proposed § 1410.322(f).

A new § 1410.322(g) would be added to authorize utilization of an interim plan during an anticipated conformity lapse. It is the intent of this section to permit funding of existing exempt, transportation control measures (TCMs) and other projects that can advance under a conformity lapse in accordance with 40 CFR parts 51 and 93. New TCMs under this provision can only be approved or funded during a conformity lapse when they have been included in an approved SIP with identified emission reduction benefits (but not necessarily credited in the applicable SIP). Inclusion in the SIP would have to occur before such TCMs can be advanced into completion of the NEPA process, design, right of way acquisition and/or construction). An interim plan may be used during a conformity lapse to advance projects that can proceed according to 40 CFR parts 51 and 93, including existing TCMs and existing and new exempt projects. It is the expectation of the US DOT that this provision would be utilized for new TCM projects where a conformity lapse would persist for six months or longer. An interim plan may be used for periods of less than six months to advance existing TCM and existing and new exempt projects.

Section 1410.324 Transportation Improvement Program Content

Existing §§ 450.324(a) through (e) would have minor modifications to the text and be redesignated as §§ 1410.324(a) through (e). Please note, however, that an addition to proposed § 1410.324(b) would reflect the changes in proposed § 1410.222(c) to limit STIP/TIP extensions to 180 days in attainment areas. The prohibition against STIP/TIP extensions in nonattainment and maintenance areas is present also in proposed § 1410.324(b). Additionally, the current wording reflects TEA–21's confirmation of the previous regulatory provisions; most notably, the cooperative estimate of available funds. As indicated above, the estimation process would be achieved through locally identified processes.

In existing § 450.324 (proposed § 1410.324), proposed paragraph (f)(1) would be unmodified. Paragraph (f)(2) would be modified to reflect changes in funding categories (*e.g.*, minimum guarantee, etc.) and the elimination of the exemption for Motor Carrier State Assistance Program and 23 U.S.C. 402 safety program projects from being included in a TIP. The exemption for these two categories would be removed to reflect the ITS consistency requirement discussed above and the requirement that transportation projects funded with Federal-aid funds must satisfy the requirements of 23 U.S.C. and, where appropriate, be found conforming for air quality purposes.

In current § 450.324(f)(3) (redesignated as § 1410.324(f)(3)), "approval" would be changed to "action" to reflect a broader concept regarding the range of our activities taken with regard to projects, *i.e.*, not all of them are labeled "approvals" but, yet, they must still be based on plans and programs.

Current §§ 450.324(f)(4) and (f)(5) would be modified and redesignated as §§ 1410.324(f)(5) and (f)(6), respectively. The changes are intended to clarify that all regionally significant projects in air quality non-attainment and maintenance areas, whether funded federally or otherwise, would be included in the metropolitan TIP. This allows full consideration of all projects in a regional conformity determination and ensures that the provisions of the CAA are met.

The three year conformity period for a TIP would start from the date of the conformity determination by the FHWA and the FTA. It is our expectation that the time period from the point of a Federal conformity determination on the TIP and its inclusion by the Governor's action in the STIP and the subsequent gubernatorial approval of the STIP and planning finding and STIP approval by the FHWA and the FTA would be monitored to ensure efficient and expeditious processing by all parties.

With the exception of proposed minor changes for clarification regarding fiscal constraint, § 450.324(g) (proposed § 1410.324(g)) would be unchanged. The changes would reiterate the need for specification of funding sources for projects included in a TIP. The wording of existing § 450.324(h) (proposed § 1410.324(h)) would be unchanged. The content of § 450.324(i) (proposed § 1410.324(i)) would be modified to indicate that only regionally significant projects funded under Chapter 2 of 23 U.S.C. need be specifically identified in a TIP. These projects are typically "Federal Lands" projects, *e.g.*, Indian Reservation Roads, National Park Service Road, etc. The existing §§ 450.324(j) through (m) (proposed § 1410.324(j) through (m)) would be generally unchanged except for statutory reference modifications.

Existing § 450.324(n) (proposed § 1410.324(n)) would be modified to include an indication that projects are to be included on the TIP until fully authorized. A new § 1410.324(n)(5) is proposed to require that the TIP shall serve as the basis for an annual listing of projects, supplemented as appropriate, to ensure adequate public information regarding projects funded with Federal monies. Both changes are geared at ensuring greater clarity as to what projects must be included on a TIP.

The second change to proposed § 1410.324(n) serves another purpose—encouraging greater public knowledge regarding which projects have been advanced. In this case, we are opting to allow the planning participants the flexibility to design a process to comply with the legislative directive provided in section 134(h)(7)(B) of title 23 U.S.C. for an annual listing of projects. While the statute focuses on the MPO, we believe that the State DOT, transit operator, and the MPO operating jointly can produce the required information.

The MPO, in cooperation with its planning partners would, under this proposal, utilize the TIP as the basis for the annual listing. Each year the participating agencies would identify the projects that advanced (or did not) and publish the "list" jointly, in a fashion consistent with the public involvement provisions for the metropolitan area. Changes to the TIP would be acknowledged and reflected in modifications to the annual listing as appropriate.

Current § 450.324(o) would be redesignated as § 1410.324(o) with no other changes.

In general, we believe that it may be possible to further streamline the information and procedural requirements expected of TIPs, particularly with regard to financial information. We would be interested in any possible information reduction options that may be possible while maintaining the principles and practices of sound public involvement and fiscal constraint.

A new § 1410.324(p) would be added to authorize utilization of an interim TIP during an anticipated conformity lapse. It is the intent of this section to permit funding of existing exempt, transportation control measures (TCMs) and other projects that can advance under a conformity lapse in accordance with 40 CFR parts 51 and 93. New TCMs under this provision can only be approved or funded when they have been included in an approved SIP with identified emission reduction benefits (but not necessarily credited in the applicable SIP). These TCMs would have to be included in the SIP before they can be advanced into completion of the NEPA process, design, right of way acquisition and/or construction). An interim plan may be used during a conformity lapse to advance projects that can proceed according to 40 CFR parts 51 and 93, including existing TCMs and existing and new exempt projects. It is the expectation of the US DOT that this provision would be utilized for new TCM projects where a conformity lapse would persist for six months or longer. An interim TIP may be used for periods of less than six months to advance existing TCM and existing and new exempt projects.

Section 1410.326 Transportation Improvement Program Modification

Current § 450.326 would be redesignated as § 1410.326. The only change to this section would be to clarify when a new conformity determination is necessary. The addition of non-exempt projects, or replacement of an existing TIP by a new TIP, requires a new conformity determination. Similarly, moving a project or a phase of a project from year four, five, or later of a TIP to the first three years would be an amendment and require a new conformity determination. We believe that frequent modification of TIPs through the addition of non-exempt projects is inconsistent with the principles of fiscal constraint and public involvement. Hence, we intend to make it clear that a new conformity determination is necessary unless the changes to TIPs are minor, i.e., addition or deletion of exempt projects.

Section 450.328 Transportation Improvement Program Relationship to Statewide TIP

Current § 450.328 would be redesignated as § 1410.328. The text would remain unchanged.

Section 1410.330 Transportation Improvement Program Action by FHWA/FTA

Current § 450.330 would be redesignated as § 1410.330. The provisions of current §§ 450.330(a) and (b) would be redesignated as §§ 1410.330(a) and (b). There would be very minor wording changes for clarification or technical corrections. A new § 1410.330(c) would be added to address the addition of "illustrative projects" to TIPs. This paragraph makes it clear that no Federal action may be taken on these projects until they become formally included in the TIP as indicated previously.

Consistent with the overall purposes of the planning process and the need for Federal actions on planning processes and products as appropriate as described in this proposed regulation, project funding is contingent on the existence of a plan and TIP. If a plan and TIP are not updated as required herein, new funding actions cannot be taken.

Section 1410.332 Selecting Projects from a TIP

Current § 450.332 would be redesignated as § 1410.332. Current §§ 450.332(a), (b) and (c) would be redesignated as §§ 1410.332((b), (c) and (a), respectively, with only citation corrections to the text. Proposed §§ 1410.332(d) and (e) (current §§ 450.332(d) and (e), respectively) would include citation corrections and in paragraph (e) the word "will" would become "shall" to reflect the force of law under the CAA. Consistent with previous program practice by the FHWA and the FTA, selecting a project for advancement from year two or three of a TIP does not require a TIP amendment.

Section 1410.334 Certifications

Current § 450.334 would be redesignated as § 1410.334. Current § 450.334(a) would have three new paragraphs (a)(6) through (a)(8) under this proposal. These paragraphs add references to compliance with additional Federal statutes but do not represent new compliance requirements. These requirements previously existed and the regulations would be revised to point out their existence.

Paragraph (d) would be revised to clarify the basis for Federal certification actions in relation to Federal findings during the review process. The wording of current paragraph (e) would be the same as the sanctions specified in paragraph (f). Current paragraph (g) would be eliminated to reflect changes made by the TEA–21 (related to the failure to remain certified for two years after October 1994). A new proposed § 1410.334(g) would focus on the new statutory requirement for public involvement during a certification review. We previously required this through administrative directive. Hence, there would be no change in practice, other than to further encourage broad public outreach as part of certification reviews.

Phase-in of New Requirements

No phase-in period for any requirements under the TEA–21 is proposed. Current § 450.336 would be removed. Comments on the desirability of such requirements and the specific areas for which they are warranted are welcome.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, we will continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies

We have determined that this rulemaking is a significant regulatory action within the meaning of Executive Order 12866 and under Department of Transportation regulatory policies and procedures because of substantial State, local government, congressional, and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals. This rulemaking is a revision to an existing regulation for which the costs of compliance have previously been addressed. The modifications proposed herein are intended to reduce current regulatory requirements (*e.g.*, simplification of planning factors, elimination of separate MIS requirement, simplification of planning area boundary establishment, etc.) and to add some additional data analysis requirements (*e.g.*, elaboration of environmental justice data analyses, preparation of an Intelligent Transportation Systems Integration Strategy, addition of operations and management responsibility, etc.). In preparing this proposal, the agencies have sought to maintain existing flexibility of operation wherever possible for States, MPOs, and other affected organizations and utilize already existing processes to accomplish any new tasks or activities. As a result, we believe that the economic impact of this rulemaking in comparison to the existing regulation should be the same or less.

The marginal additional costs associated with these proposed rules are attributable to the streamlining

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provisions of the TEA–21. Achieving the goals of these provisions more efficiently and effectively warrants the regulatory changes proposed herein. Furthermore, we provide substantial financial assistance to States and MPOs to support compliance with the regulatory requirements of this part. Funding for the planning process increased substantially under the TEA–21 and should, we believe, off-set much of the economic impact on entities complying with these requirements.

This proposed rule would revise existing metropolitan planning regulations of the FHWA and the FTA and conform those regulations to requirements of the TEA–21. While they incorporate some new requirements, the bulk of them have been in place for many years and States and metropolitan planning organizations have been implementing them. In the past, we have provided funding to support planning activities and production of required transportation documents, *e.g.*, transportation plans and improvement programs. During Fiscal Year 1999, the FHWA will provide in excess of $187 million for metropolitan planning and $492 million for State planning and research activities. The FTA provided $42 million for metropolitan planning. For both agencies, there is a statutory matching grant requirement which stipulates that recipients must match Federal funds at least on an 80 percent Federal, 20 percent recipient basis. To meet the State planning funds matching requirement, States will expend approximately $98 million. The MPOs will have to provide approximately $46 million of non-Federal funds to match the Federal metropolitan planning funds (the FHWA and the FTA funds combined). If the States and other recipient's choose not to accept Federal support for transportation they would not have to develop the plans and programs stipulated in this proposed rule. Hence, the Federal government provides a substantial economic incentive to encourage State and metropolitan planning. In addition, these rules support the EPA conformity regulation at 40 CFR parts 53 and 91 which establishes requirements for MPOs to perform regional transportation and emissions modeling and to document the regional air quality impacts of transportation improvements contained in plans and programs.

The impacts on the States and MPOs result mainly from modified data collection and analysis activities that may be necessary to implement the TEA–21 planning provisions. A single new provision in § 1410.322(b)(11) focuses on the requirements for satisfying section 5206(e) of the TEA–21 regarding demonstrating consistency of Intelligent Transportation Systems projects funded with highway trust fund dollars with the provisions of the National ITS Architecture. The economic impacts of this provision are addressed in the regulatory analysis being prepared for the specific rulemaking on ITS architecture consistency. We anticipate that the elements required in the planning process for ITS consistency would generally be undertaken anyway as a part of the plan development activities and do not require significant new processes or requirements of MPOs and States.

In general, we believe that the rule changes proposed here have added limited regulatory requirements. The impact of complying with the changes can be minimized by States and MPOs by using the flexibility provided in the proposed rule to reduce data collection and analysis costs. While there may be additional costs to some States and MPOs, the TEA–21 significantly increased the mandatory set-aside in Federal funds that must be used for transportation planning, and in addition, gives the States and MPOs the flexibility to use Federal capital dollars for transportation planning if they so desire. We are interested in the costs to States and MPOs of complying with the proposed requirements, including the expenditure of State and MPO funds above the required matching amounts. Comments on this matter are welcome.

The agencies welcome comment on the economic impacts of these proposed regulations. Comments, including those from the States and MPOs, regarding specific burdens, impacts, and costs would be most welcome and would aid us in more fully appreciating the impacts of this ongoing planning process requirement. Hence, we encourage comments on all facets of this proposal regarding its costs, burden, and impact.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Public Law 96–354; 5 U.S.C. 601–612), we have evaluated the effects of these rules on small entities, such as, local governments and businesses. The proposed metropolitan and statewide planning regulations modify existing planning requirements. These modifications are substantially dictated by the statutory provisions of the TEA–21. We believe that the flexibility available to States and MPOs in responding to requirements has been maintained, if not enhanced, in this proposal. Accordingly, the FHWA and the FTA certify that this action would not have a significant economic impact on a substantial number of small entities.

We are interested in any comments regarding the potential economic impacts of these proposed rules on small entities and governments. Of specific concern are the additional costs of the incremental changes in our regulatory requirements. The agencies believe that these costs have been off-set largely by reduced statutory requirements and the flexibility built into the regulations. The agencies are requesting comments on these issues.

Executive Order 13132 (Federalism Assessment)

This proposed action has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient Federalism implications on States and local governments that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. The TEA–21 and its predecessors authorize the Secretary to implement the provisions for metropolitan and statewide planning. We believe that policies in these proposed rules are consistent with the principles, criteria and requirements of the Federalism Executive Order and the TEA–21. Comments on these conclusions are welcomed and should be submitted to the docket.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway planning and Construction (or 20.217); 20.500, Federal Transit Capital Improvement Grants; 20.505, Federal Transit Technical Studies Grants; 20.507, Federal Transit Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. We have determined that this proposal contains a requirement for minor additional data collection to satisfy the provisions of the TEA–21 associated with ITS and environmental justice. The FHWA and the FTA believe that this burden increase has been off-set by decreases in requirements associated with the seven planning factors and related matters.

The reporting requirements for metropolitan UPWPs, transportation plans and transportation improvement programs are currently approved under OMB control number 2132–0529. An extension request was filed with OMB on January 28, 2000, and a Notice of Request for Extension was published in the **Federal Register** on April 7, 2000 (65 FR 18421). The analysis supporting this approval was conducted by the FTA on behalf of both the FTA and the FHWA since the regulations are jointly issued by both agencies. The reporting requirements for statewide transportation plans and programs are also approved under this same OMB control number. The information collection requirements addressed under the current OMB approval number (2132–0529) impose a total burden of 241,850 hours on the planning agencies that must comply with the requirements in the existing regulation. We initiated the preparation of materials to obtain a new three year approval from OMB in January 2000. The request for a new data collection approval will be filed with OMB before publication of this NPRM. The FHWA and the FTA are soliciting comments on this NPRM regarding the extent to which any additional burden, beyond that associated with the current collection requirement, will be incurred by States and MPOs.

The creation and submission of required reports and documents have been constrained to those specifically required by the TEA–21 or essential to the performance of our findings, certifications and/or approvals. The State plans are prepared on cycles individually determined by the States; the average is 10 such submissions per year. The State TIPs are prepared every two years. Approximately one third of all metropolitan areas prepare new plans every three years. The remaining metropolitan plans are updated every five years. We have assumed a distribution over several years for the plans. We have assumed that half of all TIPs are submitted annually. We assume an annual submission of unified planning work programs. By distributing the added burden for preparing these various submissions, the net result would be a minimal burden increase for each type of submission.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA and the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to the NPRM will be summarized and/or included in the request for OMB's clearance of this information collection.

National Environmental Policy Act

We have analyzed these proposed actions for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). It is our determination this action is consistent with the provisions of 23 CFR 771.117(c)(20) which deems the issuance of regulations of this nature to meet the requirements for a Categorical Exclusion.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. (2 U.S.C. 1531 *et seq.*)

The requirements of 23 U.S.C. 134 and 135 are supported by Federal funds administered by the FHWA and the FTA. There is a legislatively established local matching requirement for these funds of twenty percent of the total project cost. The FHWA and the FTA believe that the costs of complying with these requirements is predominantly covered by the funds they administer. However, as has been the case with previous regulatory issuances, we welcome comments from States, MPOs, transit agencies and other organizations regarding the extent to which the cost of compliance is covered by the funds provided.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of every year. The RINs contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

23 CFR Parts 450 and 1410

Grant programs—transportation, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

49 CFR Part 613

Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

49 CFR Part 621

Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Federal Highway Administration

23 CFR Chapter I

For reasons set forth in the preamble, and under the authority of 23 U.S.C. 134, 135, and 315, the FHWA proposes to amend Chapter I of title 23, Code of Federal Regulations, as follows:

PART 450—[REMOVED]

1. Remove part 450.

23 CFR Chapter IV

2. For reasons set forth in the preamble, the Federal Highway Administration and the Federal Transit Administration propose to establish a new chapter IV in title 23, Code of Federal Regulations, consisting of part 1410 as set forth below:

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CHAPTER IV—FEDERAL HIGHWAY ADMINISTRATION AND FEDERAL TRANSIT ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 1410—METROPOLITAN AND STATEWIDE PLANNING

Subpart A—Definitions

Sec.
1410.100 Purpose.
1410.102 Applicability.
1410.104 Definitions.

Subpart B—Statewide Transportation Planning and Programming

1410.200 Purpose.
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1410.204 Definitions.
1410.206 Statewide transportation planning process basic requirements.
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1410.210 Coordination of planning process activities.
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1410.214 Content and development of statewide transportation plan.
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1410.218 Relation of planning and project development processes.
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Subpart C—Metropolitan Transportation Planning and Programming

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1410.302 Organizations and processes affected by planning requirements.
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1410.306 What is a Metropolitan Planning Organization and how is it created?
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1410.320 Congestion management system and planning process.
1410.322 Transportation plan content.
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1410.326 Transportation improvement program modification.
1410.328 Metropolitan transportation improvement program relationship to statewide TIP.
1410.330 Transportation improvement program action by FHWA/FTA.
1410.332 Selecting projects from a TIP.
1410.334 Federal certifications.

Authority: 23 U.S.C. 134, 135, 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5305; 49 CFR 1.48 and 1.51.

Subpart A Definitions

§ 1410.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part which go beyond those terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302.

§ 1410.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

§ 1410.104 Definitions.

Except as defined in this subpart, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this part as so defined.

Conformity lapse means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

Conformity rule means the EPA Transportation Conformity Rule, as amended, 40 CFR parts 51 and 93.

Congestion management system means a systematic process for managing congestion that provides information on transportation system performance and on alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet State and local needs.

Consultation means that one party confers with another party, in accordance with an established process, about an anticipated action and then keeps that party informed about actions taken.

Cooperation means that the parties involved in carrying out the planning and/or project development processes work together to achieve a common goal or objective.

Coordination means the comparison of the transportation plans, programs, and schedules of one agency with related plans, programs and schedules of other agencies and adjustment of plans, programs and schedules to achieve general consistency.

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

Federally funded non-emergency transportation services means transportation services provided to the general public, including those with special transport needs, by public transit, private non-profit service providers, and private third-party contractors to public agencies.

Financial estimate means a projection of Federal and State resources that will serve as a basis for developing plans and /or TIPs.

Freight shipper means an entity that utilizes a freight carrier in the movement of its goods.

Governor means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

Illustrative project means a transportation improvement that would be included in a financially constrained transportation plan and program if reasonable additional financial resources were available to support it.

Indian Tribal Government means a duly formed governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Interim plan means a plan composed of projects eligible to proceed under a conformity lapse (as defined in 40 CFR parts 51 and 93) and otherwise meeting all other provisions of this part including adoption by the MPOs.

Interim transportation improvement program means a TIP composed of projects eligible to proceed under a conformity lapse (as defined in 40 CFR parts 51 and 93) and otherwise meeting all other provisions of this part including approval by the Governor.

ITS integration strategy means a systematic approach for coordinating and implementing intelligent transportation system investments funded with Federal highway trust funds to achieve an integrated regional system.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the Clean Air Act Amendments of 1990 (CAA) and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Management and operation means actions and strategies aimed at improving the person, vehicle and/or freight carrying capacity, safety, efficiency and effectiveness of the existing and future transportation system to enhance mobility and accessibility in the area served.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5306 must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decision making for the metropolitan planning area pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303.

Metropolitan transportation plan means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for the metropolitan planning area, in accordance with 23 U.S.C. 134 and 135 and 49 U.S.C. 5303.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Non-metropolitan local official means elected or appointed officials of general purpose local government, outside metropolitan planning areas, with jurisdiction/responsibility for transportation or other community development actions that impact transportation and elected officials for special transportation and planning agencies, such as economic development districts and land use planning agencies.

Provider of freight transportation services means a shipper or carrier which transports or otherwise facilitates the movement of goods from one point to another.

Purpose and need means the intended outcome and sustaining rationale for a proposed transportation improvement, including, but not limited, to mobility deficiencies for identified populations and geographic areas.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

State implementation plan (SIP) means:

(1) The implementation plan which contains specific strategies for controlling emissions of and reducing ambient levels of pollutants in order to satisfy Clean Air Act (CAA) requirements for demonstrations of reasonable further progress and attainment (CAA secs. 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and secs.192(a) and 192(b), for nitrogen dioxide of the CAA); or

(2) The implementation plan under section 175A of the CAA as amended.

Statewide transportation improvement program (STIP) means a staged, multi-year, statewide, intermodal program of transportation projects which is consistent with the statewide transportation plan and planning processes and metropolitan plans, TIPs and processes pursuant to 23 U.S.C. 135.

Statewide transportation improvement program (STIP) extension means the lengthening of the scheduled duration of an existing STIP, including the component metropolitan TIPs included in the STIP, beyond two years by joint administrative action of the FHWA and the FTA. STIP extensions are not allowed for metropolitan TIP portions of the STIP which are in nonattainment or maintenance areas as well as for those portions of the STIP containing projects in rural nonattainment or maintenance areas.

Statewide transportation plan means the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process pursuant to 23 U.S.C. 135.

TIP update means the periodic re-examination and revision of TIP contents, including, but not limited to, non-exempt projects, on a scheduled basis, normally at least every two years. The addition or deletion of a non-exempt project or phase of a non-exempt project to a TIP shall be based on a comprehensive update of the TIP.

Transportation control measure means any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs.

Transportation improvement program (TIP) means a staged, multi-year, intermodal program of transportation projects in the metropolitan planning area which is consistent with the metropolitan transportation plan.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the FTA. The TMA designation applies to the entire metropolitan planning area(s).

Transportation plan update means the periodic review, revision or reaffirmation of plan content, normally every three years in nonattainment and maintenance areas and five years in attainment areas or the update period for State plans as determined by the State.

Twenty year planning horizon means a forecast period covering twenty years from the date of plan adoption, reaffirmation or modification in attainment areas and subsequent Federal conformity finding at the time of adoption in nonattainment and maintenance areas. The plan must reflect the most recent planning assumptions for current and future population, travel, land use, congestion, employment, economic activity and other related statistical measures for the metropolitan planning area.

Urbanized area (UZA) means a geographic area with a population of at least 50,000 as designated by the U.S. Department of Commerce, Bureau of the Census based on the latest decennial census or special census as appropriate.

User of public transit means any person or group representing such persons who use mass transportation open to the public other than taxis and other privately operated vehicles.

Subpart B—Statewide Transportation Planning and Programming

§ 1410.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 135, which requires each State to carry out a transportation planning process that shall be continuing, cooperative, and

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comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed. The transportation planning process shall be intermodal and shall develop a statewide transportation plan and transportation improvement program for all areas of the State, including those areas subject to the requirements of 23 U.S.C. 134 and 49 U.S.C. 5303–5305. The plan and program shall facilitate the development and integrated management and operation of safe transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States. The intermodal transportation system shall provide for safe, efficient, economic movement of people and goods in all areas of the State and foster economic growth and development while minimizing transportation-related fuel consumption and air pollution.

§ 1410.202 Applicability.

The provisions of this subpart are applicable to States and any other agencies/organizations, such as MPOs, transit operators and air quality agencies, that are responsible for satisfying these requirements for transportation planning, programming and project development throughout the State pursuant to 23 U.S.C. 135.

§ 1410.204 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

§ 1410.206 Statewide transportation planning process basic requirements.

(a) The statewide transportation planning process shall include, as a minimum, the following:

(1) Data collection and analysis;

(2) Consideration of factors contained in § 1410.208;

(3) Coordination of activities as noted in § 1410.210;

(4) Development of a statewide transportation plan for all areas of the State that considers a range of transportation options designed to meet the transportation needs (*e.g.*, passenger, freight, safety, etc.) of the State including all modes and their connections;

(5) Development of a statewide transportation improvement program (STIP) for all areas of the State; and

(6) Various processes to accomplish data collection and analyses essential for an effective transportation planning process, including a process to assure that, no person shall, on the grounds of race, color, sex, national origin, age, or physical handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal assistance from the U.S. Department of Transportation. These assurances shall be demonstrated through the following:

(i) An assessment covering the State, including at a minimum the following:

(A) A geographic and demographic profile of the State that identifies the low-income and minority, and where appropriate, elderly and persons with disabilities, components of this profile;

(B) The transportation services available to or planned for these segments of the State population;

(C) Any disproportionately high and adverse environmental effects, including interrelated social and economic effects, consistent with the provisions of Executive Order 12898 (59 FR 7629, 3 CFR, 1995 comp., p. 859) as implemented through US DOT Order 5610.2 and FHWA Order 6640.23; [1] and

(D) Any denial of or a reduction in benefits;

(ii) Consideration of comments received during public involvement efforts (consistent with the provisions of § 1410.212(b)) to ensure that expressed concerns of the elderly, minority individuals and persons with disabilities, have been addressed during plan and program decision making;

(iii) Identification of prior and planned efforts to address any disproportionately high and adverse effects that are found;

(iv) The results of paragraphs (a)(5)(i), (ii) and (iii) of this section will be documented in a manner to permit public review during appropriate project development activities;

(v) The State may rely on information provided by a metropolitan planning organization for those segments of the population in metropolitan planning areas of the State; and

(vi) In accordance with Executive Order 12898, DOT Order 5610.2, and FHWA Order 6640.23, nothing in paragraphs (a)(5)(i) through (vi) of this section are intended to nor shall they create any right to judicial review of any action taken by the agency, its officers or its recipients taken under this part to comply with such Orders.

(b) [Reserved].

[1] DOT order 5610.2 and FHWA order 6640.23 are available for inspection and copying from DOT headquarters and field offices as prescribed at 49 CFR part 7.

§ 1410.208 Consideration of statewide transportation planning factors.

(a) Each statewide transportation planning process shall provide for consideration of projects and strategies that will:

(1) Support the economic vitality of the United States, the States, and metropolitan areas, especially by enabling global competitiveness, productivity and efficiency;

(2) Increase the safety and security of the transportation system for motorized and nonmotorized users;

(3) Increase the accessibility and mobility options available to people and for freight;

(4) Protect and enhance the environment, promote energy conservation, and improve quality of life;

(5) Enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(6) Promote efficient system management and operation; and

(7) Emphasize the preservation of the existing transportation system.

(b) In addition, in carrying out statewide transportation planning, the State shall consider, at a minimum, the following and other factors and issues that the planning process participants might identify which are important considerations within the statewide transportation planning process:

(1) With respect to nonmetropolitan areas, the concerns of local elected officials representing units of general purpose local government; and

(2) The concerns of Indian Tribal Governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State.

§ 1410.210 Coordination of planning process activities.

(a) The statewide transportation planning process shall be carried out in coordination with adjacent States, adjacent countries as appropriate at the international borders, and with the metropolitan planning process required by subpart C of this part.

(b) The statewide transportation planning process shall be coordinated with air quality planning and provide for appropriate conformity analyses to the extent required by the Clean Air Act (40 U.S.C. 175 and 176). The State shall carry out its responsibilities for the development of the transportation portion of the State Implementation Plan to the extent required by the Clean Air Act (42 U.S.C. 7504), as appropriate within the statewide transportation planning process.

(c) Development of transportation plans, programs and planning activities shall be coordinated with related planning activities being carried out outside of metropolitan planning areas.

(d) The statewide transportation planning process shall provide a forum for coordinating data collection and analyses to support, planning, programming and project development decisions.

(e) The degree of coordination shall be based on the scale and complexity of many issues including transportation problems, safety concerns, land use, employment, economic, environmental, and housing and community development objectives, and other circumstances statewide or in subareas within the State.

§ 1410.212 Participation by interested parties.

(a) Non-metropolitan local official participation.

(1) The State shall have a documented process for consultation with local officials in non-metropolitan areas within the continuing, cooperative and comprehensive planning process for development of the statewide transportation plan and the statewide transportation improvement program. The process shall be documented and cooperatively developed by both the State and nonmetropolitan local officials.

(2) The process for participation of nonmetropolitan local officials shall not be reviewed or approved by the FHWA and the FTA. However, local official participation will be among the issues considered by the FHWA and the FTA in making the transportation planning finding called for in § 1410.222(b).

(b) Public involvement.

(1) Public involvement processes shall be open and proactive by providing complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement.

(2) To satisfy these objectives public involvement processes shall provide for:

(i) Early and continuing public involvement opportunities throughout the transportation planning and programming process; and

(ii) Timely information about transportation issues and processes to citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, freight shippers, providers of freight transportation services, representatives of users of public transit, and other interested parties and segments of the community affected by transportation plans, programs, and projects;

(iii) Reasonable public access to technical and policy information used in the development of the plan and STIP;

(iv) Adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited, to action on the plan and STIP;

(v) A process for demonstrating explicit consideration and response to public input during the planning and program development process, including responses to input received from persons with disabilities and minority, elderly, and low-income populations;

(vi) A process for seeking out and considering the needs of those traditionally under served by existing transportation systems, including, but not limited to, low-income and minority populations which may face challenges accessing employment and other amenities;

(vii) Periodic review of the effectiveness of the public involvement process to ensure that the process provides full and open access to all and revision of the process as necessary, with specific attention to the effectiveness of efforts to engage persons with disabilities, minority individuals, the elderly and low-income populations.

(3) Public involvement activities carried out in a metropolitan area in response to metropolitan planning requirements in § 1410.322(c) or § 1410.324(c) may by agreement of the State and the MPO satisfy the requirements of this section.

(4) During initial development and major revisions of the statewide transportation plan required under § 1410.214, the State shall provide citizens, affected public agencies and jurisdictions, representatives of transportation agency employees, private and public providers of transportation, representatives of users of public transit, freight shippers providers of freight transportation services and other interested parties a reasonable opportunity to comment on the proposed plan. The proposed plan shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment. Likewise, the official statewide transportation plan (see § 1410.214(d)) shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(5) During development and major revision of the statewide transportation improvement program required under § 1410.216, the Governor shall provide citizens, affected public agencies and jurisdictions, representatives of transportation agency employees, private and public providers of transportation, representatives of users of public transit, freight shippers, providers of freight transportation services and other interested parties, a reasonable opportunity for review and comment on the proposed program. The proposed program shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment. The approved program (see § 1410.222(b)) if it differs significantly from the proposed program, shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(6) The time provided for public review and comment for minor revisions to the statewide transportation plan or statewide transportation improvement program shall be determined by the State and local officials based on the complexity of the revisions.

(7) The State shall, as appropriate, provide for public comment on existing and proposed procedures for public involvement throughout the statewide transportation planning and programming process. As a minimum, the State shall publish procedures and allow 45 days for public review and written comment before the procedures and any major revisions to existing procedures are adopted.

(c) Federal agency and other government participation. The transportation planning process shall allow for participation of other governments and agencies, particularly Indian Tribal Governments and Federal lands managing agencies. The process for consulting with Indian Tribal Governments and Federal lands managing agencies shall be cooperatively developed and documented by both the State and the Indian Tribal Government(s) or the respective Federal lands managing agency.

(d) State air quality agency and other state agency participation. The transportation planning process shall allow for participation of the State air quality agency and other state agencies as determined appropriate by the planning process participants.

(e) Participation and the planning finding. The processes for participation of interested parties will be considered by the FHWA and the FTA as they make the planning finding required in § 1410.222(b) to assure that full and

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open access is provided to the decision making process.

§ 1410.214 Content and development of statewide transportation plan.

(a) The State shall develop a statewide transportation plan that shall:

(1) Cover all areas of the State;

(2) Be intermodal (including consideration and provision, as applicable, of elements and connections of and between transit, non-motorized, rail, commercial motor vehicle, waterway, and aviation facilities, particularly with respect to intercity travel) and statewide in scope in order to facilitate the safe and efficient movement of people and goods;

(3) Address the development of intelligent transportation systems (ITS) investment strategies, including an ITS Integration Strategy consistent with the provisions of § 1410.322(b)(11), to support the development of integrated technology based investments, including metropolitan and non-metropolitan investments. The scope of the integration strategy shall be appropriate to the scale of investment anticipated for ITS during the life of the plan and shall address the level of resources and staging of planned investments. ITS Integration Strategy shall be developed and documented no later than the first update of the transportation plan or STIP that occurs two years following the effective date of the final rule;

(4) Be reasonably consistent in time horizon among its elements, but cover a forecast period of at least 20 years;

(5) Provide for development and integrated management and operation of bicycle and pedestrian transportation system and facilities which are appropriately interconnected with other modes;

(6) Be coordinated with the metropolitan transportation plans required under 23 U.S.C. 134 and 49 U.S.C. 5303;

(7) Reference, summarize or contain any applicable short range planning studies, strategic planning and/or policy studies, transportation needs studies, management system reports and any statements of policies, goals and objectives regarding issues, such as, transportation, economic development, housing, social and environmental effects, energy, etc., that were significant to development of the plan;

(8) Reference, summarize or contain information on the availability of financial (including as appropriate an optional financial plan consistent with 23 CFR 1410.214(d)) and other resources needed to carry out the plan; and

(9) Contain strategies that ensure timely compliance with the applicable SIP.

(b) The following entities shall be involved in the development of the statewide transportation plan:

(1) MPOs shall be involved on a cooperation basis for the portions of the plan affecting metropolitan planning areas;

(2) Indian Tribal Governments and the Secretary of the Interior shall be involved on a consultation basis for the portions of the plan affecting areas of the State under the jurisdiction of an Indian Tribal Government;

(3) Federal lands managing agencies shall be involved on a consultation basis for the portions of the program affecting areas of the State under their jurisdiction;

(4) Affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the plan in nonmetropolitan areas of the State.

(c) In developing the statewide transportation plan, the State shall:

(1) Provide for participation by interested parties as required under § 1410.212;

(2) Provide for consideration and analysis as appropriate of specified factors as required under § 1410.208;

(3) Provide for coordination as required under § 1410.210; and

(4) Identify transportation strategies necessary to efficiently serve the mobility needs of people.

(d) The statewide transportation plan may include a financial plan that:

(1) Demonstrates how the adopted transportation plan can be implemented;

(2) Indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan;

(3) Recommends any additional financing strategies for needed projects and programs;

(4) Might include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the Secretary of Transportation on the STIP.

(e) The State shall provide and carry out a mechanism to adopt the plan as the official statewide transportation plan.

(f) The plan shall be continually evaluated and periodically updated, as appropriate, using the procedures in this section for development and establishment of the plan.

§ 1410.216 Content and development of statewide transportation improvement program (STIP).

(a) Each State shall develop a statewide transportation improvement program for all areas of the State. In case of difficulties in developing the STIP portion for a particular area, *e.g.*, metropolitan area, Indian Tribal lands, etc., a partial STIP covering the rest of the State may be developed. The portion of the STIP in a metropolitan planning area (the metropolitan TIP developed pursuant to subpart C of this part) shall be developed in cooperation with the MPO. To assist metropolitan TIP development the State, the MPO and the transit operator will cooperatively develop timely estimates of available Federal and State funds which are to be utilized in developing the metropolitan TIP. Metropolitan planning area TIPs shall be included without modification in the STIP, directly or by reference, once approved by the MPO and the Governor and after needed conformity findings are made. Metropolitan TIPs in nonattainment and maintenance areas are subject to the FHWA and the FTA conformity findings before their inclusion in the STIP. In nonattainment and maintenance areas outside metropolitan planning areas, Federal findings of conformity must be made prior to placing projects in the STIP. The State shall notify the appropriate MPO, local jurisdictions, Federal land management agency, Indian Tribal Government, etc., when a TIP including projects under the jurisdiction of the agency has been included in the STIP. All title 23 U.S.C. and 49 U.S.C. Chapter 53 fund recipients will share information as projects in the STIP are implemented. The Governor shall provide for participation of interested parties in development of the STIP as required by § 1410.212.

(b) The following entities shall be involved in the development of the statewide transportation improvement program:

(1) MPOs shall be involved on a cooperation basis for the portions of the program affecting metropolitan planning areas;

(2) Indian Tribal Governments and the Secretary of the Interior shall be involved on a consultation basis for the portions of the program affecting areas of the State under the jurisdiction of an Indian Tribal Government;

(3) Federal lands managing agencies shall be involved on a consultation basis for the portions of the program affecting areas of the State under their jurisdiction; and

(4) Affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the program in nonmetropolitan areas of the State.

(c) The STIP shall:

(1) Include a list of priority transportation projects proposed to be carried out in the first three years of the STIP. Since each TIP is approved by the Governor, the TIP priorities will dictate STIP priorities for each individual metropolitan area. As a minimum, the lists shall group the projects that are to be undertaken in each of the years, *e.g.*, year 1, year 2, year 3;

(2) Cover a period of not less than three years, but may at State discretion cover a longer period. If the STIP covers more than three years, the projects in the additional years will be considered by the FHWA and the FTA only as informational;

(3) Contain only projects consistent with the statewide plan developed under § 1410.214;

(4) In nonattainment and maintenance areas, contain only transportation projects that have been found to conform, or which come from programs that conform, in accordance with the requirements contained in the EPA conformity regulation 40 CFR parts 51 and 93;

(5) Contain a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. The STIP financial constraint will be demonstrated and maintained by year and the STIP shall include sufficient financial information to demonstrate which projects are to be implemented using current revenues and which projects are to be implemented using proposed revenue sources while the system as a whole is being adequately operated and maintained. In nonattainment and maintenance areas, projects included in the first two years of the current STIP/TIP shall be limited to those for which funds are available or committed. In the case of proposed funding sources, strategies for ensuring their availability shall be identified, preferably in an optional financial plan consistent with § 1410.216(f);

(6) Contain all capital and non-capital transportation projects (including transportation enhancements, safety, Federal lands highways projects, trails projects, pedestrian walkways, and bicycle transportation facilities), or identified phases of transportation projects, proposed for funding under 49 U.S.C. Chapter 53 and/or title 23, U.S.C., excluding:

(i) Metropolitan planning projects funded under 23 U.S.C. 104(f) and 49 U.S.C. 5303;

(ii) State planning and research projects funded under 23 U.S.C. 307(c)(1) and 49 U.S.C. 5313(b)(except those funded with national highway system (NHS), surface transportation program (STP) and minimum guarantee funds that the State and MPO for a metropolitan area agree should be in the TIP and consequently must be in the STIP); and

(iii) Emergency relief projects (except those involving substantial functional, locational or capacity changes);

(7) Contain all regionally significant transportation projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with title 23, U.S.C., or 49 U.S.C. Chapter 53 funds, and/or selected funds administered by the Federal Railroad Administration, *e.g.*, addition of an interchange to the Interstate System with State, local and/or private funds, high priority or demonstration projects not funded under title 23, U.S.C., or 49 U.S.C. Chapter 53. (The STIP should include all regionally significant transportation projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA. It should also include, for information purposes, if appropriate and cited in any TIPs, all regionally significant projects, to be funded with non-Federal funds);

(8) Identify ITS projects funded with highway trust fund monies, including as appropriate an integration strategy, consistent with the statewide plan. Where ITS projects are identified that fit the provisions of § 1410.322(b)(11), an agreement shall exist between participating agencies in the project area that will govern their implementation.

(9) Include for each project or phase the following:

(i) Sufficient descriptive material (*i.e.*, type of work, termini, length, etc.) to identify the project or phase;

(ii) Estimated total project cost, which may extend beyond the three years of the STIP;

(iii) The amount of funds proposed to be obligated during each program year for the project or phase;

(iv) For the first year, the proposed category of Federal funds and source(s) of non-Federal funds for the project or phase;

(v) For the second and third years, the likely category of Federal funds and sources of non-Federal funds for the project or phase;

(vi) Identification of the agencies responsible for carrying out the project or phase; and

(10) For non-metropolitan areas, include in the first year only those projects which have been selected in accordance with the requirements in § 1410.224(c).

(d) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 1420.311(c) and (d) and/or 40 CFR part 93. In addition, projects funded under chapter 2 of 23 U.S.C. may be grouped by funding category and shown as one line item, unless they are determined to be regionally significant.

(e) Projects in any of the first three years of the STIP may be moved to any other of the first three years of the STIP subject to the requirements of § 1410.224.

(f) The statewide transportation improvement program may include a financial plan that:

(1) Demonstrates how the adopted transportation improvement program can be implemented;

(2) Indicates resources from public and private sources that are reasonably expected to be made available to carry out the program;

(3) Recommends any additional financing strategies for needed projects and programs;

(4) Might include, for illustrative purposes, additional projects that would be included in the transportation improvement program if reasonable additional resources beyond those identified in the financial plan were available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the Secretary on the STIP.

(g) The STIP may be modified at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this section (for STIP development), in § 1410.212 (for interested party participation) and in § 1410.222 (for the FHWA and the FTA approval).

§ 1410.218 Relation of planning and project development processes.

(a) Depending upon its character and the level of detail desired as determined by the planning process participants, the statewide planning process products and analyses can be utilized as input to subsequent project development. The process described in § 1410.318 relating planning and project development may

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be utilized at the discretion of the statewide transportation planning process participants in non-metropolitan areas. Analyses performed within the statewide planning process to support project development lead to a statement of purpose and need for regionally significant proposed transportation investments.

(b) The results of analyses conducted under paragraph (a) of this section, at the option of the planning participants, may:

(1) Be documented as part of the plan development record for consideration in subsequent project development actions;

(2) Serve as input to the NEPA process required under 23 CFR 1420;

(3) Provide a basis, in part, for project level decision making; and

(4) Be proposed for consideration as support for actions and decisions by federal agencies other than US DOT;

(c) To the extent feasible, Federal, State, and local agencies with subsequent project level responsibilities for investments included in a transportation plan, shall be involved in planning analyses and studies as a means to reduce subsequent project development analyses and studies, support decisionmaking, and provide early identification of key concerns for later consideration and analysis as needed. Where the processes available under § 1410.318(f) are invoked, the FHWA and the FTA shall be consulted.

(d) Nothing in this section shall be interpreted as requiring formal NEPA review of or action on plans and TIPs.

(e) The FHWA and the FTA project level actions, including, but not limited to issuance of a categorical exclusion, finding of no significant impact or a final environmental impact statement under 23 CFR 1420, right of way acquisition (with the exception of hardship and protective buying actions), interstate interchange approvals, high occupancy vehicle (HOV) conversions, funding of ITS projects, project conformity analyses and approval of final design and construction and transit vehicle acquisition may not be completed unless the proposed project action is included in a STIP which meets the requirements of this subpart. None of these project level actions can occur in nonattainment and maintenance areas unless the project conforms according to the requirements of the EPA's conformity rule (40 CFR parts 51 and 93).

§ 1410.220 Funding of planning process.

Funds provided under 49 U.S.C. 5303, 5307, 5309, 5311, and 5313(b) and 23 U.S.C. 104(b)(1), 104(b)(3), 104(f), 105, and 505(a) may be used to accomplish activities in this subpart.

§ 1410.222 Approvals, self-certification and findings.

(a) At least every two years, each State shall submit the entire proposed STIP, and amendments as necessary, concurrently to the FHWA and the FTA for joint approval. The State shall certify that the transportation planning process is being carried out in accordance with all applicable requirements of:

(1) 23 U.S.C. 134 and 135, 49 U.S.C. 5303–5305 and 5323(k), and this part;

(2) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1) and implementing regulations (49 CFR part 21 and 23 CFR part 230);

(3) Section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324);

(4) The Older Americans Act of 1965, as amended (42 U.S.C. 6101); and

(5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations (49 CFR part 35);

(6) Section 1101 of the Transportation Equity Act for the 21st Century (Public Law 105–178) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded projects (sec. 105(f), Public Law 97–424, 96 Stat. 2100; 49 CFR part 23);

(7) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38);

(8) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities;

(9) In States containing nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act as amended (42 U.S.C. 7504, 7506 (c) and (d)); and

(10) all other applicable provisions of Federal law.

(b) The FHWA and the FTA Administrators, in consultation with, where applicable, Federal land managing agencies, will review the STIP or amendment and jointly make a finding (based on self-certifications made by the State and appropriate reviews established and conducted by FTA and FHWA) as to the extent the projects in the STIP are based on a planning process that meets or substantially meets the requirements of title 23, U.S.C., 49 U.S.C. Chapter 53 and subparts A, B, and C of this part.

(1) If, upon review, the FHWA and the FTA Administrators jointly find that the planning process through which the STIP was developed meets the requirements of 23 U.S.C. 135 and these regulations (including subpart C where a metropolitan TIP is involved), they will unconditionally approve the STIP.

(2) If the FHWA and the FTA administrators jointly find that the planning process through which the STIP was developed substantially meets the requirements of 23 U.S.C. 135 and these regulations (including subpart C where a metropolitan TIP is involved), they will act on the STIP or amendment as follows:

(i) Joint conditional approval of the STIP subject to certain corrective actions being taken;

(ii) Joint conditional approval of the STIP as the basis for approval of identified categories of projects; and/or

(iii) Under special circumstances, joint conditional approval of a partial STIP covering only a portion of the State.

(3) If, upon review, the FHWA and the FTA Administrators jointly find that the STIP or amendment does not substantially meet the requirements of 23 U.S.C. 135 and this part for any identified categories of projects, they will not approve the STIP or amendment.

(c) The joint approval period for a new STIP or amended STIP shall not exceed two years. Where the State demonstrates, in writing, that extenuating circumstances will delay the submittal of a new STIP or amended STIP for approval, the FHWA and the FTA will consider and take appropriate action on requests to extend the approval beyond two years for all or part of the STIP for a limited period of time, not to exceed 180 days. Where the request involves projects in a metropolitan planning area(s), the affected MPO(s) must concur in the request and if the delay was due to the development and approval of the TIP, the affected MPO(s) must provide supporting information, in writing, for the request. If nonattainment and/or maintenance areas are involved, a request for an extension cannot be granted.

(d) The FHWA and the FTA will notify the State of actions taken under this section.

(e) Where necessary in order to maintain or establish operations, the Federal Transit Administrator and/or the Federal Highway Administrator may approve operating assistance for specific projects or programs funded under 49 U.S.C. 5307 and 5311 even though the projects or programs may not be included in an approved STIP.

§ 1410.224 Project selection.

(a) Except as provided in § § 1410.222(e) and 1410.216(c)(6), only projects included in the federally approved STIP shall be eligible for funds administered by the FHWA or the FTA.

(b) In metropolitan planning areas, transportation projects requiring 23 U.S.C. or 49 U.S.C. Chapter 53 funds administered by the FHWA or the FTA shall be selected from the approved TIP/STIP in accordance with procedures established pursuant to the project selection portion of the metropolitan planning regulation in subpart C of this part.

(c) Outside metropolitan planning areas, transportation projects undertaken on the National Highway System with title 23 funds and under the bridge and Interstate maintenance programs shall be selected from the approved STIP by the State in consultation with the affected local officials. Federal lands highway projects shall be selected from the approved STIP in accordance with 23 U.S.C. 204. Other transportation projects undertaken with funds administered by the FHWA shall be selected from the approved STIP by the State in cooperation with the affected local officials, and projects undertaken with 49 U.S.C. Chapter 53 funds shall be selected from the approved STIP by the State in cooperation with the appropriate affected local officials and transit operators.

(d) The projects in the first year of an approved STIP shall constitute an "agreed to" list of projects for subsequent scheduling and implementation. No further action under paragraphs (b) or (c) of this section is required for the implementing agency to proceed with these projects except that if appropriated Federal funds available are significantly less than the authorized amounts, § 1410.332(c) provides for a revised list of "agreed to" projects to be developed upon the request of the State, the MPO, or transit operators. If an implementing agency wishes to proceed with a project in the second and third year of the STIP, the procedures in paragraphs (b) and (c) of this section or as agreed to by the parties under paragraph (e) of this section must be used.

(e) Expedited procedures which provide for the advancement of projects from the second or third years of the STIP may be used if agreed to by all the parties involved in the selection process.

§ 1410.226 Applicability of NEPA to transportation planning and programming.

Any decision by the Secretary concerning a transportation plan or transportation improvement program developed through the processes provided for in 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 through 5305, shall not be considered to be a Federal action subject to review under NEPA.

Subpart C—Metropolitan Transportation Planning and Programming

§ 1410.300 Purpose of planning process.

The purpose of this subpart is to implement 23 U.S.C. 134 and 49 U.S.C. 5303–5306 which require that a Metropolitan Planning Organization (MPO) be designated for each urbanized area (UZA) and that the metropolitan area have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs that consider all transportation modes and support metropolitan community development and social goals. The transportation plan and program shall facilitate the development, management and operation of an integrated, intermodal transportation system that enables the safe, efficient, economic movement of people and goods.

§ 1410.302 Organizations and processes affected by planning requirements.

The provisions of this subpart are applicable to agencies responsible for satisfying the requirements of the transportation planning, programming, and project development processes in metropolitan planning areas pursuant to 23 U.S.C. 134.

§ 1410.304 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this part as so defined.

§ 1410.306 What is a Metropolitan Planning Organization and how is it created?

(a) Designations of metropolitan planning organizations (MPOs) made after December 18, 1991, shall be by agreement among the Governor(s) and units of general purpose local governments representing 75 percent of the affected metropolitan population (including the central city or cities as defined by the Bureau of the Census), or in accordance with procedures established by applicable State or local law. A single metropolitan planning organization, to the extent possible, shall be designated to serve a metropolitan planning area containing:

(1) A single UZA, or

(2) Multiple UZAs that are contiguous with each other or located within the same Metropolitan Statistical Area (MSA).

(b) The designation or redesignation shall clearly identify the policy body that is the forum for cooperative decision making that will be taking the required approval actions as the MPO.

(c) To the extent possible, the MPO designated should be established under specific State legislation, State enabling legislation, or by interstate compact, and shall have authority to carry out metropolitan transportation planning.

(d) Nothing in this subpart shall be deemed to prohibit an MPO from utilizing the staff resources of other agencies to carry out selected elements of the planning process.

(e) Existing MPO designations remain valid until a new MPO is redesignated. Redesignation is accomplished by the Governor and local units of government representing 75 percent of the population in the area served by the existing MPO (the central city(ies) must be among those desiring to revoke the MPO designation). If the Governor and local officials decide to redesignate an existing MPO, but do not formally revoke the existing MPO designation, the existing MPO designation remains in effect until a new MPO is formally designated.

(f) Redesignation of an MPO in a multistate metropolitan area requires the approval of the Governor of each State and local officials representing 75 percent of the population in the entire metropolitan planning area. The local officials in the central city(ies) must be among those agreeing to the redesignation.

(g) Redesignation of an MPO covering more than one UZA requires the approval of the Governor(s) and local officials representing 75 percent of the population in the metropolitan planning area covered by the current MPO. The local officials in the central city(ies) in each urbanized area must be among those agreeing to the redesignation.

(h) The voting membership of an MPO policy body designated/redesignated subsequent to December 18, 1991, and serving a TMA, must include representation of local elected officials, officials of agencies that administer or operate major modes or systems of transportation, *e.g.*, transit operators, sponsors of major local airports, maritime ports, rail operators, etc. (including all transportation agencies that were included in the MPO on June 1, 1991), and appropriate State officials. Where agencies that operate other major modes of transportation do not already have a voice on existing MPOs, the MPOs (in cooperation with the States) are encouraged to provide such agencies a voice in the decision making process, including representation/membership

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on the policy body and/or other appropriate committees. Further, where appropriate, existing MPOs should increase the representation of local elected officials on the policy board and other committees as a means for encouraging their greater involvement in MPO processes. Adding such representation to an MPO will not, in itself, constitute a redesignation action.

(i) Where the metropolitan planning area boundary for a previously designated MPO needs to be expanded, the membership on the MPO policy body and other committees, should be reviewed to ensure that the added area has appropriate representation.

(j) Adding membership (*e.g.*, local elected officials and operators of major modes or systems of transportation, or representatives of newly urbanized areas) to the policy body or expansion of the metropolitan planning area does not automatically require redesignation of the MPO. This may be done without a formal redesignation. The Governor and MPO shall review the previous MPO designation, State and local law, MPO bylaws, *etc.*, to determine if this can be accomplished without a formal redesignation. If redesignation is considered necessary, the existing MPO will remain in effect until a new MPO is formally designated or the existing designation is formally revoked in accordance with the procedures of this section.

§ 1410.308 Establishing the geographic boundaries for metropolitan transportation planning areas.

(a) The metropolitan planning area boundary shall, as a minimum, cover the UZA(s) and the contiguous geographic area(s) likely to become urbanized within, at a minimum, the twenty year forecast period covered by the transportation plan described in § 1410.322.

(1) For existing MPOs, unless modified by agreement of the Governor and the MPO, the planning area boundaries shall be those in existence as of June 9, 1998. For MPOs designated after June 9, 1998, the boundaries shall be those agreed to by the Governor and local officials as indicated in § 1410.306(a).

(2) The boundary may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) For new MPOs, the planning area boundary shall reflect agreements between the MPO and the State DOT regarding the relationship of the metropolitan planning area boundary to any nonattainment and maintenance area within its designated limits or contiguous nonattainment or maintenance area excluded from the boundary.

(b) The metropolitan planning area for a new UZA served by an existing or new MPO shall be established in accordance with these criteria. The current planning area boundaries for previously designated UZAs shall be reviewed and modified if necessary to comply with these criteria.

(c) In addition to the criteria in paragraph (a) of this section, the planning areas currently in use for all transportation modes should be reviewed before establishing the metropolitan planning area boundary. Where appropriate, adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes and their operational integration, and promotes efficient overall transportation investment strategies in support of mobility and accessibility.

(d) Approval of metropolitan planning area boundaries by the FHWA and/or the FTA is not required. However, metropolitan planning area boundary maps must be submitted to the FHWA and the FTA after their approval by the MPO and the Governor and be made publicly available.

(e) The STP funds suballocated to urbanized areas greater than 200,000 in population shall not be utilized for projects outside the metropolitan planning area boundary.

§ 1410.310 Agreements among organizations involved in the planning process.

(a) The responsibilities for cooperatively carrying out transportation planning and programming shall be clearly identified in an agreement or memorandum of understanding among the State(s), operators of publicly owned mass transit, and the MPO.

(b) Where project development activities are conducted under the planning process, they shall be documented in an agreement between the MPO and the applicable project sponsor addressing, at a minimum, the provisions of § 1410.318.

(c) In nonattainment or maintenance areas, if the MPO is not designated as the agency responsible for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be an agreement between the MPO and the designated agency describing their respective roles and responsibilities for air quality related transportation planning.

(d) Where the parties involved agree, the requirement for agreements specified in paragraphs (a), (b), and (c) of this section may be satisfied by including the responsibilities and procedures for carrying out a cooperative process in the unified planning work program or a prospectus.

(e) If the metropolitan planning area does not include the entire nonattainment or maintenance area, there shall be an agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the metropolitan planning area but within the nonattainment or maintenance area. The agreement must indicate how the total transportation related emissions for the nonattainment or maintenance area, including areas both within and outside the metropolitan planning area, will be treated for the purposes of determining conformity in accordance with the U.S. EPA conformity regulation (40 CFR parts 51 and 93). The agreement shall address policy mechanisms for resolving conflicts concerning transportation related emissions that may arise between the metropolitan planning area and the portion of the nonattainment or maintenance area outside the metropolitan planning area. Proposals to exclude a portion of the nonattainment or maintenance area from the planning area boundary shall be coordinated with the FHWA, the FTA, the EPA, and the State air quality agency before a final boundary decision is made for the metropolitan planning area.

(f) Where more than one MPO has authority within a metropolitan planning area, a nonattainment or maintenance area, and/or in the case of adjoining metropolitan planning areas, there shall be an agreement between the State department(s) of transportation and the MPOs describing how the processes and projects will be coordinated to assure the development of an overall transportation plan for the planning area(s). In metropolitan planning areas that are nonattainment or maintenance areas, the agreement shall include State and local air quality agencies, and be consistent with the provisions of § 1410.312(c). The agreement shall address policy mechanisms for resolving potential conflicts that may arise between the MPOs, *e.g.*, issues related to the exclusion of a portion of the nonattainment area from the planning area boundary.

(g) Where the planning process develops an ITS Integration Strategy

under the provisions of § 1410.322(b)(11), there shall be an agreement among the MPO, the State DOT, the transit operator and other agencies as described in the ITS Integration Strategy. This agreement shall address policy and operational issues that will affect the successful implementation of the ITS Integration Strategy, including at a minimum ITS project interoperability, utilization of ITS related standards, and the routine operation of the projects identified in the ITS Integration Strategy;

(h) To the extent possible, a single cooperative agreement containing the understandings required by paragraphs (a) through (c) of this section among the State(s), the MPO, publicly owned operators of mass transportation services, and air quality agencies may be developed. Where the participating planning organizations desire, they may further consolidate agreements required by paragraphs (d) through (g) of this section with those addressed in paragraphs (a) through (c) of this section.

(i) For all requirements specified in paragraphs (a) through (h) of this section, existing agreements shall be reviewed by the MPO, the State DOT and the transit operator for compliance and reaffirmed or modified as necessary to ensure participation by all appropriate modes.

§ 1410.312 Planning process organizational relationships.

(a) The MPO in cooperation with the State and with operators of publicly owned transit services shall be responsible for carrying out the metropolitan transportation planning process. The MPO, the State and transit operator(s) shall cooperatively determine their mutual responsibilities in the conduct of the planning process. They shall cooperatively develop the unified planning work program, transportation plan, and transportation improvement program specified in §§ 1410.314 through 1410.332. In addition, the development of the plan and TIP shall be coordinated with other providers of transportation, *e.g.*, sponsors of regional airports, maritime port operators, rail freight operators, and where appropriate, planning agencies in Mexico and/or Canada.

(b) The MPO shall approve the metropolitan transportation plan, plan amendments and plan updates. The MPO and the Governor shall approve the metropolitan transportation improvement program and any amendments.

(c) In nonattainment or maintenance areas:

(1) The transportation and air quality planning processes shall be coordinated;

(2) TCMs proposed for FHWA and FTA funding and/or approvals shall come from a plan and TIP that fully meet the requirements of this subpart (new TCMs authorized to proceed during a conformity lapse will meet the requirements of this subpart if they are included in an interim plan and program and approved into a SIP with emission reduction benefits); and

(3) MPOs shall participate in the development of motor vehicle emissions budgets, inventories and other transportation related air quality activities undertaken to develop SIPs to the extent required by the Clean Air Act (42 U.S.C. 7504).

(d) In nonattainment or maintenance areas for transportation related pollutants, the MPO shall not approve any transportation plan or program which does not conform with the SIP, as determined in accordance with the U.S. EPA conformity regulation (40 CFR parts 51 and 93).

(e) If more than one MPO has authority in a metropolitan planning area (including multi-State metropolitan planning areas) or in an area which is designated as nonattainment or maintenance for transportation related pollutants, the MPOs and the Governor(s) shall cooperatively establish the boundaries of the metropolitan planning area (addressing the required twenty year planning horizon and relationship to the nonattainment or maintenance areas) and the respective jurisdictional responsibilities of each MPO. The MPOs shall consult with each other and the State(s) to assure that plans and transportation improvement programs are coordinated for the entire metropolitan planning area, including, but not limited to, coordinated data collection, analysis and plan development. Alternatively, a single plan and/or TIP for the entire metropolitan area may be developed jointly by the MPOs in cooperation with their planning partners. Coordination efforts shall be documented in subsequent transmittals of the unified planning work program (UPWP) and various planning products (the plan, TIP, etc.) to the State(s), the FHWA, and the FTA.

(f) The FTA and the FHWA must designate as transportation management areas all UZAs over 200,000 population as determined by the most recent decennial census. The TMAs so designated and those designated subsequently by the FTA and the FHWA (including those designated upon request of the MPO and the Governor) must comply with the special requirements applicable to such areas regarding congestion management systems, project selection, and planning certification. The TMA designation applies to the entire metropolitan planning area boundary. If a metropolitan planning area encompasses a TMA and other UZA(s), the designation applies to the entire metropolitan planning area regardless of the population of constituent UZAs.

(g) In TMAs, the congestion management system shall be developed as part of the metropolitan transportation planning process.

(h) The State shall cooperatively participate in the development of metropolitan transportation plans and metropolitan plans shall be coordinated with the statewide transportation plan. The relationship of the statewide transportation plan and the metropolitan plan is specified in subpart B of this part.

(i) Where a metropolitan planning area includes Federal public lands and/or Indian Tribal lands, the affected Federal agencies and Indian Tribal Governments shall be consulted in the development of transportation plans and programs.

(j) Discretionary grants awarded by the FHWA and the FTA under section 1221 of the TEA–21 (23 U.S.C. 101 note) (Transportation and Community and System Preservation Pilot Program), sections 1118 and 1119 of the TEA–21 (Borders and Corridors) and section 3037 (49 U.S.C. 5309 note) (Access to Jobs) shall be included in the appropriate metropolitan plan and program, except where these funds are utilized for planning and/or research activities. Applicants shall coordinate with the appropriate MPO to ensure that such projects are consistent with the provisions of this subpart. Where planning and research activities are funded under the Transportation and Community and System Preservation Pilot Program or the Borders and Corridors Program, they shall be identified in the Unified Planning Work Program as identified at § 1410.314.

§ 1410.314 Planning tasks and unified work program.

(a) The MPO(s) in cooperation with the State and operators of publicly owned transit shall develop unified planning work programs (UPWPs) that meet the requirements of 23 CFR part 420, subpart A, and:

(1) Discuss the planning priorities facing the metropolitan planning area and describe all metropolitan transportation and transportation-related air quality planning activities

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anticipated within the area during the next one or two year period, regardless of funding sources or agencies conducting activities, in sufficient detail to indicate who will perform the work, the schedule for completing it and the products that will be produced; and

(2) Document planning activities to be performed with funds provided under title 23 and Chapter 53 of title 49 U.S.C.

(b) Arrangements may be made with the FHWA and the FTA to combine the UPWP requirements with the work program for other Federal sources of planning funds.

(c) In areas not designated as TMAs and which are in attainment for air quality purposes, the MPO in cooperation with the State and transit operator(s), with the approval of the FHWA and the FTA, may prepare a simplified statement of work, in lieu of a UPWP, that describes who will perform the work and the work that will be accomplished using Federal funds (administered under title 23 U.S.C. and Chapter 53 of title 49 U.S.C. If a simplified statement of work is used, it may be submitted as part of the statewide planning work program, in accordance with 23 CFR part 420.

(d) MPOs, which include non-attainment or maintenance areas, should consult with the US EPA and state/local air agencies in the development of their UPWP regarding appropriate tasks to support attainment of air quality standards.

§ 1410.316 Transportation planning process and plan development.

(a) Each metropolitan planning process shall provide for consideration of projects and strategies that will:

(1) Support the economic vitality of the metropolitan planning area, especially by enabling global competitiveness, productivity, and efficiency;

(2) Increase the safety and security of the transportation system for motorized and non-motorized users;

(3) Increase the accessibility and mobility options available to people and for freight;

(4) Protect and enhance the environment, promote energy conservation, and improve quality of life;

(5) Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(6) Promote efficient system management and operation; and

(7) Emphasize the efficient preservation of the existing transportation system.

(b) In addition, the metropolitan transportation planning process shall develop and adopt a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs. To attain these objectives the process as developed shall meet the requirements and criteria as follows:

(1) Require a minimum public comment period of 45 days before the public involvement process is initially adopted or revised;

(2) Provide timely information about transportation issues and processes (including but not limited to initiation of plan and TIP updates, revisions and/or other modifications and the general structure of the planning process) to citizens, affected public agencies, representatives of transportation agency employees, users of public transit, freight shippers, private providers of transportation, other interested parties and segments of the community affected by transportation plans, programs and projects (including but not limited to central city and other local jurisdiction concerns);

(3) Provide reasonable public access to technical and policy information used in the development of plans and TIPs and open public meetings where matters related to the Federal-aid highway and transit programs are being considered;

(4) Require adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited to, approval of plans and TIPs (in nonattainment areas classified as serious and above, the comment period shall be at least 30 days for the plan, TIP and major amendment(s));

(5) Demonstrate explicit consideration, recognition and feedback to public input received during the planning and program development processes, including responses to input received from minority, elderly, low-income, and persons with disabilities populations;

(6) Seek out and consider the needs of those traditionally under served by existing transportation systems, including, but not limited to, low-income, the elderly, persons with disabilities and minority populations;

(7) When comments are received on the draft transportation plan or TIP (including the financial plan) as a result of the public involvement process or the interagency consultation process required under the U.S. EPA conformity regulations, a summary, analysis, and report on the disposition of comments shall be made part of the final plan and TIP;

(8) If the final transportation plan or TIP differs significantly from the one which was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts, an additional opportunity for public comment on the revised plan or TIP shall be made available;

(9) Public involvement processes shall be periodically reviewed by the MPO in terms of their effectiveness in assuring that the process provides full and open access to all, with specific attention to the effectiveness of efforts to engage persons with disabilities, minority individuals, the elderly and low income populations;

(10) These procedures will be reviewed by the FHWA and the FTA during certification reviews for TMAs, and as otherwise necessary for all MPOs, to assure that full and open access is provided to MPO decision making processes;

(11) Metropolitan public involvement processes shall be coordinated with statewide public involvement processes and with project development public involvement processes wherever possible to enhance public consideration of the issues, plans, and programs and reduce redundancies and costs.

(c) Transportation plan development and plans shall be consistent with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1) and implementing regulations (49 CFR part 21 and 23 CFR part 230); section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324); the Older Americans Act of 1965, as amended (42 U.S.C. 6101); the Americans With Disabilities Act of 1990 (Public Law 101–336, 104 Stat. 327, as amended) and implementing regulations (49 CFR parts 27, 37, and 38); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations (49 CFR part 35), which ensure that no person shall, on the grounds of race, color, sex, national origin, age, or physical handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal assistance from the United States Department of Transportation. Consistency shall be demonstrated through:

(1) An assessment covering the entire metropolitan planning area, including at a minimum the following:

(i) A geographic and demographic profile of the metropolitan planning area that identifies the low-income and minority, and where appropriate, the elderly and persons with disabilities components of this profile,

(ii) The transportation services available to and planned for these segments of the metropolitan planning area's population, and

(iii) Any disproportionately high and adverse environmental impacts, including interrelated social and economic impacts, affecting these populations, consistent with the provisions of Executive Order 12898 as implemented through U.S. DOT Order 5610.2 and FHWA Order 6640.23. Adverse effects can include a denial of or a reduction in benefits;

(2) Consideration of comments received during public involvement efforts (consistent with the provisions of paragraph (b) of this section to ensure that expressed concerns of the elderly, low-income individuals, minority individuals and persons with disabilities, have been addressed during plan and program decision making;

(3) Identification of prior and planned efforts to address any disproportionately high and adverse effects that are found;

(4) The results of paragraphs (c)(1), (2), and (3) of this section will be documented in a manner to permit public review during appropriate project development activities. In accordance with Executive Order 12898, DOT Order 5610.2, and FHWA Order 6640.23, nothing in this subpart is intended to and shall create any right to judicial review of any action taken by the agencies, their officers or recipients under this subpart to comply with such orders.

(d) The transportation planning process shall identify actions necessary to comply with the Americans With Disabilities Act of 1990, U.S. DOT regulations "Transportation for Individuals With Disabilities" (49 CFR parts 27, 37, and 38) and section 504 of the Rehabilitation Act of 1973 and implementing regulations (49 CFR part 35).

(e) The transportation plan development process shall provide for the involvement of traffic, ridesharing, parking, transportation safety and enforcement agencies; commuter rail operators; airport and port authorities; toll authorities; appropriate private transportation providers and where appropriate city officials; freight shippers; transit users.

(f) The transportation planning process shall provide for the involvement of local, State, and Federal environmental resource and permit agencies as appropriate.

(g) The transportation planning process shall provide for the involvement of Indian Tribal Governments and the Secretary of Interior on a consultation basis for the portions of the plan affecting areas under the jurisdiction of an Indian Tribal Government.

(h) Simplified planning procedures may be proposed in non-TMAs which are in attainment for air quality purposes. The FHWA and the FTA shall review the proposed procedures for consistency with the requirements of this section.

(i) The metropolitan transportation planning process shall include preparation of technical and other reports to assure documentation of the development, refinement, and update of the transportation plan. The reports shall be reasonably available to interested parties, consistent with paragraph (b) of this section.

(j) The metropolitan planning process should provide a forum to coordinate all federally funded non-emergency transportation services within the metropolitan planning area. Where coordination processes are developed within the transportation planning process, at a minimum they should address the planning and delivery of services supporting access to jobs and reverse commute options, relying where feasible on existing processes and procedures.

§ 1410.318 Relation of planning and project development processes.

(a) In order to coordinate and streamline the planning and NEPA processes, the planning process, through the cooperation of the MPO, the State DOT and the transit operator, shall provide the following to the NEPA process:

(1) An identification of an initial statement of purpose and need for transportation investments;

(2) Findings and conclusions regarding purpose and need, identification and evaluation of alternatives studied in planning activities (including but not limited to the relevant design concepts and scope of the proposed action), and identification of the alternative included in the plan;

(3) An identification of the planning documents that provide the basis for paragraphs (a)(1) and (a)(2) of this section; and

(4) Formal expressions of policy support or comment by the planning process participants on paragraphs (a)(1) and (a)(2) of this section.

(b) The following sources of information shall be utilized to satisfy paragraph (a) of this section at a level of detail agreed to by the MPO, the State DOT, and the transit operator:

(1) Inventories of social, economic and environmental resources and conditions;

(2) Analyses of economic, social and environmental consequences;

(3) Evaluation(s) of transportation benefits, other benefits, costs, and consequences, at a geographic scale agreed to by the planning participants, of alternatives, including but not limited to the relevant design concepts and scope of the proposed action;

(4) Data and supporting analyses to facilitate funding related decisions by Federal agencies where appropriate or required, including but not limited to 49 CFR part 611.

(c) The products resulting from paragraphs (a) and (b) of this section shall be reviewed early in the NEPA process in accordance with § 1420.201 to determine their appropriate use.

(d) In order to streamline subsequent project development analyses and studies, and promote better decision making, the FTA and the FHWA strongly encourage all Federal, State, and local agencies with subsequent project level responsibilities for investments included in a transportation plan to do the following:

(1) Participate in planning analyses and studies to the extent possible;

(2) Provide early identification of key concerns for later consideration and analysis as needed; and

(3) Utilize the sources of information identified in paragraph (b) of this section.

(e) The analyses conducted under paragraph (b)(3) of this section may serve as the alternatives analysis required by 49 U.S.C. 5309(e) for new fixed guideway transit systems and extensions and the information required under 49 CFR part 611 shall be generated.

(f) Any decision by the Secretary concerning a transportation plan or transportation improvement program developed in accordance with this part shall not be considered to be a Federal action subject to review under NEPA (42 U.S.C. 4321 *et seq.*). At the discretion of the MPO, in cooperation with the State DOT and the transit operator, an environmental analysis may be conducted on a transportation plan.

(g) The FHWA and the FTA project level actions, including but not limited to issuance of a categorical exclusion, finding of no significant impact or final environmental impact statement under 23 CFR part 1420, approval of right of way acquisition, interstate interchange approvals, approvals of HOV

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conversions, funding of ITS projects, final design and construction, and transit vehicle acquisition, may not be completed unless the proposed project is included in a plan and the phase of the project for which Federal action is sought is included in the metropolitan TIP. None of these project-level actions can occur in nonattainment and maintenance areas unless the project conforms according to the requirements of the US EPA conformity regulation (40 CFR parts 51 and 93).

§ 1410.320 Congestion management system and planning process.

(a) In TMAs designated as nonattainment for ozone or carbon monoxide, Federal funds may not be programmed for any project that will result in a significant increase in carrying capacity for single occupant vehicles (a new general purpose highway on a new location or adding general purpose lanes, with the exception of safety improvements or the elimination of bottlenecks) unless the project results from a congestion management system (CMS) meeting the requirements of 23 CFR part 500. Such projects shall incorporate all reasonably available strategies to manage the single occupant vehicle (SOV) facility effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies, as appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself, shall be committed to by the State and the MPO for implementation in a timely manner, but no later than the completion date for the SOV project.

(b) In TMAs, the planning process must include the development of a CMS that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operational management.

(c) The effectiveness of the congestion management system in enhancing transportation investment decisions and improving the overall efficiency of the metropolitan area's transportation systems and facilities shall be evaluated periodically, preferably as part of the metropolitan planning process.

§ 1410.322 Transportation plan content.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing at least a twenty year planning horizon. The plan shall include both long-range and short-range strategies/actions, including, but not limited to, operations and management activities, that lead to the systematic development of an integrated intermodal transportation system that facilitates the safe and efficient movement of people and goods in addressing current and future transportation demand. The transportation plan shall be reviewed and updated every five years in attainment areas and at least triennially in nonattainment and maintenance areas to confirm its validity and its consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period. The transportation plan must be approved by the MPO. Update processes shall include a mechanism for ensuring that the MPO, the State DOT and the transit operator agree that the data utilized in preparing other existing modal plans providing input to the transportation plan are valid and benchmarked in relation to each other and the transportation plan. In updating a plan, the MPO shall base the update on the latest estimates and assumptions for population, land use, travel, employment, congestion, and economic activity. Reaffirmation or revisions of metropolitan plan contents and supporting analyses produced by an update review require approval by the MPO.

(b) In addition, the plan shall, consistent with the following:

(1) Identify the projected transportation demand of persons and goods in the metropolitan planning area over the period of the plan;

(2) Identify adopted management and operations strategies (*e.g.*, traveler information, traffic surveillance and control, incident and emergency response, freight routing, reconstruction and work zones management, weather response, pricing, fare payment alternatives, public transportation management, demand management, alternative routing, telecommuting, parking management, and intermodal connectivity) that address the need for improved system performance and the delivery of transportation services to customers under varying conditions;

(3) Identify pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g);

(4) Reflect the consideration given to the results of the congestion management system, including in TMAs that are nonattainment areas for carbon monoxide and ozone, identification of SOV projects that result from a congestion management system that meets the requirements of 23 CFR part 500;

(5) Assess capital investment and other measures necessary to preserve the existing transportation system (including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities) and make the most efficient use of existing transportation facilities to relieve vehicular congestion and enhance the mobility of people and goods;

(6) Include design concept and scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of the source of funding, in nonattainment and maintenance areas to permit conformity determinations under the U.S. EPA conformity regulations at 40 CFR parts 51 and 93. In all areas, all proposed improvements shall be described in sufficient detail to develop cost estimates;

(7) Reflect a multimodal evaluation of the transportation, socioeconomic, environmental, and financial impact of the overall plan;

(8) Reflect, to the extent that they exist, consideration of: Comprehensive long-range land use plan(s) and development objectives; State and local housing goals and strategies, community development and employment plans and strategies, and environmental resource plans; linking low income households with employment opportunities as reflected in work force training and labor mobility plans and strategies; energy conservation goals; and the metropolitan area's overall social, economic, and environmental goals and objectives;

(9) Indicate, as appropriate, proposed transportation enhancement activities as defined in 23 U.S.C. 101(a); and

(10) Include a financial plan that demonstrates the consistency of proposed transportation investments (including illustrative projects where identified in the financial plan) with already available and projected sources of revenue. The financial plan shall compare the estimated revenue from existing and proposed funding sources that can reasonably be expected to be available for transportation uses, and the estimated costs of constructing, maintaining and operating the total (existing plus planned) transportation system over the period of the plan. Financial estimates utilized in preparing transportation plans (and TIPs) shall be developed through procedures cooperatively established and mutually agreed to by the MPO, the State DOT and the transit operator(s). The estimated revenue by existing revenue source (local, State, Federal and private) available for transportation projects shall be determined and any shortfalls identified. Proposed new revenues and/or revenue sources to cover shortfalls shall be identified, including strategies for ensuring their availability for proposed investments. Existing and proposed revenues shall cover all forecasted capital, operating, management, and maintenance costs. All cost and revenue projections shall be based on the data reflecting the existing situation and historical trends. For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of projects and programs to reach air quality compliance.

(11) Include an ITS integration strategy for the purposes of guiding and coordinating the management and funding of ITS investments supported with highway trust fund dollars to achieve an integrated regional system. The scope of the integration strategy shall be appropriate to the scale of investment anticipated for ITS during the life of the plan and shall address the resource commitments and staging of planned investments. Provision shall be made to include participation from the following agencies, at a minimum, in the development of the integration strategy: Highway and public safety agencies; appropriate Federal lands agencies; State motor carrier agencies as appropriate; and other operating agencies necessary to fully address regional ITS integration. In determining how ITS investments will meet metropolitan goals and objectives, the integration strategy shall clearly assess existing and future ITS systems, including their functions and electronic information sharing expectations. Unique regional ITS initiatives (a program of related projects) that are multi-jurisdictional and/or multi-modal, ITS projects that affect regional integration of ITS systems, and projects which directly support national interoperability shall be identified. Documentation within the plan shall reflect the scale of investment and the needs and size of the metropolitan area.

(c) There must be adequate opportunity for public official (including elected officials) and citizen involvement in the development of the transportation plan before it is approved by the MPO, in accordance with the requirements of § 1410.316(b). Such procedures shall include opportunities for interested parties (including citizens, affected public agencies, representatives of transportation agency employees, freight shippers, representatives of users of public transit, providers of freight transportation services, and private providers of transportation) to be involved in the early stages of the plan development/update process. The procedures shall include publication of the proposed plan or other methods to make it readily available for public review and comment and, in nonattainment TMAs, an opportunity for at least one formal public meeting annually to review planning assumptions and the plan development process with interested parties and the general public. The procedures also shall include publication of the approved plan or other methods to make it readily available for information purposes.

(d) In nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any new/revised plan in accordance with the Clean Air Act and the EPA conformity regulations (40 CFR parts 51 and 93). If a conformity determination cannot be accomplished by either the MPO and or the FHWA and the FTA, the results will be communicated to the Governor or the Governor's designee and the public transit operator with an explanation of the potential consequences.

(e) The FHWA and the FTA do not approve transportation plans. However, Federal actions and approvals, including, but not limited to, conformity determinations, planning findings (pursuant to § 1410.322(b)), STIP approvals, completion of the NEPA process, grant agreements, and project authorizations, are based on a transportation plan with a horizon of at least twenty years on the effective date of the plan. Plans that remain substantially unchanged (i.e., regionally significant projects in attainment areas and non-exempt projects in nonattainment and maintenance areas have not been added) after adoption may serve as the basis for subsequent Federal actions until such time as the next update. In attainment areas the effective date of the plan shall be its date of adoption by the MPO. In nonattainment and maintenance areas, the effective date shall be the date of a conformity determination by the FHWA and the FTA.

(f) Although transportation plans do not need to be approved by the FHWA or the FTA, copies of any new/revised plans must be provided to each agency.

(g) During a conformity lapse metropolitan areas can prepare an interim plan as a basis for advancing projects that are eligible to proceed under a conformity lapse (as defined in 40 CFR parts 51 and 93). In areas which expect to return to conformity earlier than six months, the emphasis should be on reestablishing conformity, rather than embarking on developing an interim plan and TIP.

§ 1410.324 Transportation improvement program content.

(a) The metropolitan transportation planning process shall include development of a transportation improvement program (TIP) for the metropolitan planning area by the MPO in cooperation with the State and public transit operators.

(b) The TIP must be updated at least every two years and approved by the MPO and the Governor. The frequency and cycle for updating the TIP must be compatible with the STIP development and approval process. Since the TIP becomes part of the STIP, the TIP lapses when the FHWA and the FTA approval for the STIP lapses. In the case of extenuating circumstances, the FHWA and the FTA will consider and take appropriate action on requests to extend the STIP approval period for all or part of the STIP in accordance with § 1410.222(c). TIP extensions shall not be granted in nonattainment or maintenance areas. Although metropolitan TIPs are not approved individually by the FHWA or the FTA, they are approved as part of the STIP approval action by the FTA and the FHWA. Copies of any new or amended TIPs must be provided to each agency. Additionally, in nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any new or amended TIPs (unless the new amended TIP consists entirely of exempt projects) in accordance with the Clean Air Act requirements and the EPA conformity regulations (40 CFR parts 51 and 93).

(c) There must be reasonable opportunity for public comment in accordance with the requirements of § 1410.316(b) and, in nonattainment TMAs, an opportunity for at least one formal public meeting during the TIP development process. This public meeting may be combined with the public meeting required under § 1410.322(c). The proposed TIP shall be published or otherwise made readily available for review and comment. Similarly, the approved TIP shall be published or otherwise made readily available for information purposes.

(d) The TIP shall cover a period of not less than three years, but may cover a longer period if it identifies priorities and financial information for the additional years. The TIP must include a priority list of projects to be advanced in the first three years. As a minimum,

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the priority list shall group the projects that are to be undertaken in each of the years, i.e., year one, year two, year three. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the U.S. EPA conformity regulation (40 CFR parts 51 and 93) and shall provide for their timely implementation.

(e) The TIP shall be financially constrained by year and include a financial plan that demonstrates which projects can be implemented using current revenue sources and which projects are to be implemented using proposed revenue sources (while the existing transportation system is being adequately operated and maintained). The financial plan shall be developed by the MPO in cooperation with the State and the transit operator. Financial estimates utilized in preparing TIPs shall be developed through procedures cooperatively established and mutually agreed to by the MPO, the State DOT and the transit operator(s). It is expected that the State would develop this information as part of the STIP development process and that the estimates would be refined through this process. Only projects for which construction and operating funds can reasonably be expected to be available (and illustrative projects) may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial analysis, the MPO shall take into account all projects and strategies funded under title 23, U.S.C., 49 U.S.C. Chapter 53, other Federal funds, local sources, State assistance, and private participation. In nonattainment and maintenance areas, projects included for the first two years of the current TIP shall be limited to those for which funds are available or committed.

(f) The TIP shall include:

(1) All transportation projects, or identified phases of a project, (including pedestrian walkways, safety, bicycle transportation facilities and transportation enhancement projects) within the metropolitan planning area proposed for funding under title 23, U.S.C., and Federal Lands Highway projects. Title 49, U.S.C., Emergency relief projects (except those involving substantial functional, locational or capacity changes) and planning and research activities (except those funded with NHS, STP, and/or Minimum Guarantee funds) are exempt from this requirement. Planning and research activities funded with NHS, STP and/or Minimum Guarantee funds may be excluded from the TIP by agreement of the State and the MPO;

(2) Only projects that are consistent with the transportation plan;

(3) All regionally significant transportation projects for which an FHWA or FTA action is required whether or not the projects are to be funded with title 23, U.S.C., or title 49, U.S.C., funds, e.g., addition of an interchange to the Interstate System with State, local, and/or private funds, demonstration projects not funded under titles 23 and 49, U.S.C., etc.;

(4) Any FTA or FHWA funded or approved projects submitted to EPA for consideration as a SIP TCM;

(5) For air quality analysis in nonattainment and maintenance areas and informational purposes in other areas, all regionally significant transportation projects proposed to be funded with Federal funds, including intermodal facilities, not covered in paragraphs (f)(1) or (f)(3) of this section; and

(6) For air quality analysis in nonattainment and maintenance areas and informational purposes in other areas, all regionally significant projects to be funded with non-Federal funds.

(g) With respect to each project or project phase under paragraph (f) of this section the TIP shall include:

(1) Sufficient descriptive material (*i.e.*, type of work, termini, length, etc.) to identify the project or phase;

(2) Estimated total project cost (which may extend beyond the three years of the TIP);

(3) The amount of Federal funds proposed to be obligated during each program year for the project or phase of the project;

(4) Proposed category and source of Federal and non-Federal funds;

(5) Identification of the recipient/subrecipient and State and local agencies responsible for carrying out the project or phase of the project;

(6) In nonattainment and maintenance areas, identification of those projects or phases of projects which are identified as TCMs in the applicable SIP or are new TCMs with emissions benefits being submitted for SIP approval during a conformity lapse; and

(7) In areas with Americans with Disabilities Act required paratransit and key station plans, identification of those projects or phases of projects which will implement the plans.

(h) In nonattainment and maintenance areas, projects included shall be specified in sufficient detail (design concept and scope) to permit air quality analysis in accordance with the U.S. EPA conformity requirements (40 CFR parts 51 and 93).

(i) Projects proposed for FHWA and/or FTA funding that are not considered by the State and the MPO to be of appropriate scale for individual identification in a given program year may be grouped by function, geographic area, and work type using applicable classifications under 23 CFR 1420.117 (c) and (d). In nonattainment and maintenance areas, classifications must be consistent with the exempt project classifications contained in the U.S. EPA conformity requirements (40 CFR parts 51 and 93). In addition, projects funded under Chapter 2 of 23 U.S.C. may be grouped by funding category and shown as one line unless they are determined to be regionally significant.

(j) Projects utilizing Federal funds that have been allocated to the area pursuant to 23 U.S.C. 133(d)(3)(E) shall be identified.

(k) The total Federal share of projects included in the TIP proposed for funding under 49 U.S.C. 5307 may not exceed formula backed apportioned funding levels available to the area for the program year.

(l) Procedures or agreements that distribute suballocated Surface Transportation Program or urbanized area formula (49 U.S.C. 5307) funds to individual jurisdictions or modes within the metropolitan area by predetermined percentages or formulas are inconsistent with the legislative provisions that require MPOs in cooperation with the State and transit operators to develop a prioritized and financially constrained TIP and shall not be used unless they can be clearly shown to be based on considerations required to be addressed as part of the planning process.

(m) For the purpose of including transit projects funded through Capital Investment Grants or Loans (49 U.S.C. 5309) in a TIP, the following approach shall be followed:

(1) The total Federal share of projects included in the first year of the TIP shall not exceed levels of funding committed to the area; and

(2) The total Federal share of projects included in the second, third and/or subsequent years of the TIP may not exceed levels of funding committed, apportioned, appropriated (including carryover and unobligated balances reasonably expected to be available, to the area.

(n) As a management tool for monitoring progress in implementing the transportation plan, the TIP shall:

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including intermodal trade-offs) for inclusion in the TIP and any changes in priorities from previous TIPs;

(2) List major projects from the previous TIP that were implemented and identify any significant delays in the planned implementation of major projects;

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, including the reasons for any significant delays in the planned implementation and strategies for ensuring their advancement at the earliest possible time; and

(4) In nonattainment and maintenance areas, include a list of all projects found to conform in a previous TIP. Projects shall be included in this list until construction has been fully authorized.

(5) Serve as a basis for an annual listing of projects for which Federal funds have been obligated, supplemented as appropriate to ensure annual public access to information on the obligation of funds.

(o) In order to maintain or establish operations, in the absence of an approved metropolitan TIP, the FTA area formula (49 U.S.C. 5307) funds to individual jurisdictions or modes within the FHWA and/or the FHWA Administrators, as appropriate, may approve operating assistance.

(p) During a conformity lapses metropolitan areas may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a lapse (as defined in 40 CFR parts 51 and 93). In areas which expect to return to conformity earlier than six months, the emphasis should be on reestablishing conformity, rather than embarking on developing an interim plan and TIP.

§ 1410.326 Transportation improvement program modification.

The TIP may be modified at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation related pollutants, if the TIP is modified by adding or deleting non-exempt projects or is replaced with a new TIP, a new conformity determinations by the MPO and the FHWA and the FTA shall be made. Public involvement procedures consistent with § 1410.316(b) shall be utilized in modifying the TIP, except that these procedures are not required for TIP modifications that only involve projects of the type covered in § 1410.324(i).

§ 1410.328 Metropolitan transportation improvement program relationship in statewide TIP.

(a) After approval by the MPO and the Governor, the TIP shall be included without modification, directly or by reference, in the STIP program required under 23 U.S.C. 135 and consistent with § 1410.220, except that in nonattainment and maintenance areas, a conformity finding by the FHWA and the FTA must be made before it is included in the STIP. After approval by the MPO and the Governor, a copy shall be provided to the FHWA and the FTA.

(b) The State shall notify the appropriate MPO and Federal Lands Highways Program agencies, *e.g.*, Bureau of Indian Affairs and/or National Park Service, when a TIP including projects under the jurisdiction of these agencies has been included in the STIP.

§ 1410.330 Transportation improvement program action by FHWA/FTA.

(a) The FHWA and the FTA must jointly find that each metropolitan TIP is consistent with the metropolitan transportation plan produced by the continuing, comprehensive transportation process carried on cooperatively by the States, the MPOs and the transit operators in accordance with the provisions of 23 U.S.C. 134 and 49 U.S.C. 5307 and 5313(b). This finding shall be based on the self-certification statement submitted by the State and MPO under § 1410.334, a review of the metropolitan transportation plan and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the FHWA and the FTA must also jointly determine, in accordance with 40 CFR parts 51 and 93, that the metropolitan TIP conforms with the applicable SIP and that priority has been given to the timely implementation of transportation control measures contained in the applicable SIP. As part of their review in nonattainment and maintenance areas requiring TCMs, the FHWA and the FTA will specifically consider any comments relating to the financial plans for the plan and TIP contained in the summary of significant comments required under § 1410.316(b). If the TIP is determined to be in nonconformance with the SIP, the FHWA and FTA shall return the TIP to the Governor and the MPO with an explanation of the joint determination and an explanation of potential consequences. If the TIP is found to conform with the SIP, the Governor and MPO shall be notified of the joint finding. After the FHWA and the FTA find the TIP to be in conformance, the TIP shall be incorporated, without modification, into the STIP, directly or by reference.

(c) If an illustrative project is included in the TIP, no Federal action may be taken on that project by the FHWA and the FTA until it is formally included in the fiscally constrained and conforming plan and TIP. The MPOs are not required to include illustrative projects in future TIPs.

§ 1410.332 Selecting projects from a TIP.

(a) Once a TIP that meets the requirements of § 1410.324 has been developed and approved, the first year of the TIP shall constitute an "agreed to" list of projects for project selection purposes and no further project selection action is required for the implementing agency to proceed with projects, except where the appropriated Federal funds available to the metropolitan planning area are significantly less than the authorized amounts. In this case, a revised "agreed to" list of projects shall be jointly developed by the MPO, the State, and the transit operator if requested by the MPO, the State, or the transit operator. If the State or transit operator wishes to proceed with a project in the second or third year of the TIP, the specific project selection procedures stated in paragraphs (b) and (c) of this section must be used unless the MPO, the State, and the transit operator jointly develop expedited project selection procedures to provide for the advancement of projects from the second or third year of the TIP.

(b) In areas not designated as TMAs and when § 1410.332(c) does not apply, projects to be implemented using title 23 funds other than Federal lands projects or title 49 funds shall be selected by the State and/or the transit operator, in cooperation with the MPO from the approved metropolitan TIP Federal Lands Highway Program projects shall be selected in accordance with 23 U.S.C. 204.

(c) In areas designated as TMAs where § 1410.332(c) does not apply, all title 23 and title 49 funded projects, except projects on the NHS and projects funded under the bridge, and Federal Lands Highways programs, shall be selected by the MPO in consultation with the State and transit operator from the approved metropolitan TIP and in accordance with the priorities in the approved metropolitan TIP. Projects on the NHS and projects funded under the bridge program shall be selected by the State in cooperation with the MPO, from the approved metropolitan TIP. Federal Lands Highway Program projects shall

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be selected in accordance with 23 U.S.C. 204.

(d) Projects not included in the federally approved STIP shall not be eligible for funding with title 23 or title 49, U.S.C., funds.

(e) In nonattainment and maintenance areas, priority shall be given to the timely implementation of TCMs contained in the applicable SIP in accordance with the U.S. EPA conformity regulations at 40 CFR parts 51 and 93.

§ 1410.334 Federal certifications.

(a) The State and the MPO shall annually self-certify to the FHWA and the FTA that the planning process is addressing the major issues facing the area and is being conducted in accordance with all applicable requirements of:

(1) 23 U.S.C. 134 and 49 U.S.C. 5303–5306;

(2) Sections 174 and 176 (c) and (d) of the Clean Air Act (42 U.S.C. 7504, 7506 (c) and (d));

(3) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794;

(4) Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 stat. 1914) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded planning projects (sec. 105(f), Public Law 97–424, 96 Stat. 2100; 49 CFR part 23);

(5) Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38);

(6) Older Americans Act, as amended (42 U.S.C. 6101); and

(7) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities.

(8) All other applicable provisions of Federal law.

(b) The FHWA and the FTA jointly will review and evaluate the transportation planning process for each TMA (as appropriate but no less than once every three years) to determine if the process meets the requirements of this subpart.

(c) In TMAs that are nonattainment or maintenance areas for transportation related pollutants, the FHWA and the FTA will also review and evaluate the transportation planning process to assure that the MPO has an adequate process to ensure conformity of plans and programs in accordance with procedures in 40 CFR parts 51 and 93.

(d) Upon the review and evaluation conducted under paragraphs (b) and (c) of this section, the FHWA and the FTA shall take one of the following actions, as indicated:

(1) Where the process meets the requirements of this part, jointly certify the transportation planning process;

(2) Where the process substantially meets the requirements of this part, jointly certify the transportation planning process subject to certain specified corrective actions being taken; or

(3) Where the process does not meet the requirements of this part, jointly certify the planning process as the basis for approval of only those categories of programs or projects that the Administrators may jointly determine and subject to certain specified corrective actions being taken.

(e) A certification action under this section will remain in effect for three years unless a new certification determination is made sooner or a shorter term is specified in the certification report.

(f) If, upon the review and evaluation conducted under paragraph (b) or (c) of this section, the FHWA and the FTA jointly determine that the transportation planning process in a TMA does not substantially meet the requirements, they may take the following action as appropriate:

(1) Withhold up to twenty percent of the apportionment attributed to the relevant metropolitan planning area under 23 U.S.C. 133(d)(3), capital funds apportioned under 49 U.S.C. 5307–5309; or

(2) Withhold approval of all or certain categories of projects.

(g) In conducting a certification review, the FHWA and the FTA shall make provision, relying on the local public involvement processes and supplemented with other involvement strategies as appropriate, to engage the public in the review process. The FHWA and the FTA shall consider the public input received in arriving at a decision on a certification action.

(h) The State and the MPO shall be notified of the actions taken under paragraph (f) of this section. Upon full, joint certification by the FHWA and the FTA, all funds withheld will be restored to the metropolitan area, unless the funds have lapsed.

Federal Transit Administration

49 CFR Chapter VI

For the reasons set forth in the preamble, the Federal Transit Administration proposes to amend Chapter VI of title 49, Code of Federal Regulations, as follows:

PART 613—[REMOVED]

3. Remove part 613.

4. Add part 621 to read as follows:

PART 621—METROPOLITAN AND STATEWIDE PLANNING

Subpart A—Planning

Sec.
621.100 Definitions.

Subpart B—Statewide Transportation Planning and programming

621.200 Statewide transportation planning and programming.

Subpart C—Metropolitan Transportation Planning and Programming

621.300 Metropolitan transportation planning and programming.

Authority: 23 U.S.C. 134 and 135; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5309; 49 CFR .151.

Subpart A—Planning

§ 621.100 Definitions.

The regulations in 23 CFR 1410, subpart A, shall be followed in complying with the requirements of this subpart.

Subpart B—Statewide Transportation Planning and programming

§ 621.200 Statewide transportation planning and programming.

The regulations in 23 CFR 1410 subpart B, shall be followed in complying with the requirements of this subpart.

Subpart C—Metropolitan Transportation Planning and Programming

§ 621.300 Metropolitan transportation planning and programming

The regulations in 23 CFR part 1410, subpart C, shall be followed in complying with the requirements of this subpart.

Issued on: May 18, 2000.

Vincent F. Schimmoller,

Acting Executive Director, Federal Highway Administration.

Nuria I. Fernandez,

Acting Administrator, Federal Transit Administration.

[FR Doc. 00–13021 Filed 5–19–00; 1:15 pm]

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Federal Register

Thursday,
May 25, 2000

Part IV

Department of Transportation

Federal Aviation Administration
Federal Transit Administration

23 CFR Parts 771, 1420 and 1430

49 CFR Parts 622 and 623

NEPA and Related Procedures for Transportation Decisionmaking, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 771, 1420, and 1430

Federal Transit Administration

23 CFR Parts 1420 and 1430

49 CFR Parts 622 and 623

[FHWA Docket No. FHWA–99–5989]

FHWA RIN 2125–AE64; FTA RIN 2132–AA43

NEPA and Related Procedures for Transportation Decisionmaking, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA and the FTA are issuing this notice of proposed rulemaking to update and revise their National Environmental Policy Act of 1969 (NEPA) implementing regulation for projects funded or approved by the FHWA and the FTA. The current regulation was issued in 1987 and experience since that time as well as changes in legislation, most recently by the Transportation Equity Act for the 21st Century (TEA–21), call for an updated approach to implementation of NEPA for FHWA and FTA projects and actions. Under this proposed rulemaking, the FHWA/FTA regulation for implementing NEPA would be redesignated and revised to further emphasize using the NEPA process to facilitate effective and timely decisionmaking.

This NPRM is being issued concurrently with another notice of proposed rulemaking on metropolitan and statewide transportation planning. This coordinated approach to rulemaking will further the goal of the FTA and the FHWA to better coordinate the results of the planning processes with project development activities and decisions associated with the NEPA process.

DATES: Comments must be received on or before August 23, 2000. For dates of public information meetings see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Submit written, signed comments to the docket number appearing at the top of this document. You must submit your comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To receive notification of receipt of comments you must include a pre-addressed, stamped envelope or postcard. For addresses of public information meetings see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Fred Skaer, (202) 366–2058, Office of Planning and Environment, HEPE, or Mr. L. Harold Aikens, (202) 366–0791, Office of the Chief Counsel, HCC–31. For the FTA: Mr. Joseph Ossi, (202) 366–0096, Office of Planning, TPL–22, or Mr. Scott Biehl, (202) 366–0952, Office of the Chief Counsel, TCC–30. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL401, by using the universal resource locator (URL):*http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Contents of Preamble

- Background on the NEPA Rule
- Overall Strategy for Regulatory Development
- Relationship to U.S. DOT's Statewide and Metropolitan Planning Regulation and other Rulemaking Efforts
- Section-by-Section Analysis of the Proposed Rule for NEPA and Related Procedures for Transportation Decisionmaking
- Section-by-Section Analysis of the Proposed Rule for Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites.

Public Information Meetings

We will hold a series of seven public briefings within the comment period for the NPRM. The purposes of these briefings is to explain the content of the NPRM and encourage public input to the final rulemaking. The meetings will address this NPRM, the companion NPRM on the metropolitan and statewide planning process and the NPRM on Intelligent Transportation Systems Architecture consistency. The meetings will be scheduled from approximately 8 a.m. to 5 p.m. at the locations listed below. Changes in the information below will be made available after the publication of this NPRM through the FHWA and the FTA websites, other public announcement avenues and the newsletters and websites of major stakeholder groups. Individuals wishing information but without access to these sources may contact the individuals listed above.

The structure of the meetings will emphasize brief presentations by the DOT staff regarding the content of the NPRM. A period for clarifying questions will be provided. Under current statutory and regulatory provisions, the DOT staff will not be permitted to engage in a substantive dialog regarding what the content of the NPRMs and the final regulations should be. Attendees wishing to express ideas and thoughts regarding the final content of the rules should direct those comments to the docket. Briefing sites will include: Boston, MA, Auditorium, Volpe National Transportation Systems Center, 55 Broadway, June 9, 2000; Atlanta, GA, Westin Peachtree Plaza Hotel, 210 Peachtree Street, June 20, 2000; Washington, D.C., Marriott Metro Center, 775 12th Street, NW, June 23, 2000; Chicago, IL, Holiday Inn Mart Plaza, 350 North Orleans Street, June 27, 2000; Denver, CO, Marriott City Center, 1701 California Street, June 30 , 2000; Dallas, TX, Hyatt Regency Hotel Dallas, 300 Reunion Boulevard, July 11, 2000; and, San Francisco, CA, Radisson Miyako, 1625 Post Street, July 19, 2000.

As part of the outreach process planned for these proposed rules, the FHWA/FTA will be conducting a national teleconference on June 15, 2000 from 1 to 4 p.m., e.t., through the auspices of the Center for Transportation and the Environment at North Carolina State University. The teleconference will be accessible through numerous downlink locations nationwide and further information can be obtained from Ms. Katie McDermott at *kpm@unity.ncsu.edu* or (919) 515–8034. The purpose of the teleconference is to describe the proposed new statewide and metropolitan planning, NEPA implementation, and Intelligent Transportation Systems (ITS) rules.

An overview of each of the three notices of proposed rulemakings (NPRMs) will be presented and the audience (remote and local) will have opportunities to ask questions and seek clarification of FHWA/FTA proposals. By sponsoring this teleconference it is hoped that interest in the NPRMs is generated, that stakeholders will be well informed about FHWA/FTA proposals, and that interested parties will participate in the rulemaking process by submitting written suggestions, comments and concerns to the docket.

Background

The FHWA and the FTA propose to update and revise the current regulation and guidance implementing the NEPA (42 U.S.C. 4321 *et seq.*) for transportation projects using Federal funds or requiring Federal approval.

In this notice of proposed rulemaking, we are clearly communicating that our NEPA responsibilities include an affirmative duty to facilitate the development of transportation proposals which represent responsible stewardship of community and natural environmental resources. In the 13 years since the NEPA regulation was last issued, the nature of the highway and transit programs has evolved to reflect our country's changing transportation needs and the impact that the transportation network can have on a complex set of environmental, community, and economic considerations. What has not changed is the role of State and local officials and Federal land management agency decision makers to define transportation investment strategies, plan for a future transportation system that best reflects their community needs, and select and set priorities for transportation projects.

The NPRM was developed by an interagency Task Force of the FHWA and the FTA with input from other DOT modal agencies, the U.S. Environmental Protection Agency (EPA), other Federal agencies and the Office of the Secretary, U.S. DOT. The Task Force reviewed all input received from the outreach process which is described below and through other sources that communicate regularly with U.S. DOT. In addition, input was provided from the field staff of the FHWA and the FTA.

Over the past thirteen years we have developed an increased understanding of effective environmental analysis, a greater commitment to prevention of adverse environmental impacts, and a realization of the increased value of integrated agency and public coordination. Given these developments, our role to ensure that transportation projects are developed through a more effective and collaborative NEPA process at the State, local, and Federal levels becomes that much more pivotal. Our environmental rule reflects the understanding that NEPA is an important tool for helping make transportation decisions, rather than justifying decisions already made. In addition, we believe that a more coordinated approach to planning and project development (the NEPA process plus additional project level actions needed to prepare for project implementation) will contribute to more effective and environmentally sound decisions regarding investment choices and trade-offs.

By including the environmental streamlining provision in TEA–21, section 1309 of Public Law 105–178, 112 Stat. 108 at 232, the Congress intended that transportation planning and environmental considerations be better coordinated and that project delivery schedules be improved through a process that is efficient, comprehensive, and streamlined. Growing awareness of the need for a Federal role that would oversee development of a coordinated environmental review process is tempered with congressional intent that State and local decisions be respected. The most important Federal role in the transportation decisionmaking process is one where the FHWA and the FTA would facilitate other Federal agencies' early involvement and participation in NEPA activities so that redundant processes are identified and avoided. We will, in our role as lead agencies, highlight opportunities to use NEPA as a mechanism to address statutory responsibilities at Federal, State, and local levels of government. During the TEA–21 outreach process, there has been very strong support from our transportation and environmental partners for a better managed NEPA process which reflects these basic features: coordination, flexibility, and efficiency.

For these reasons, it is clear that a fundamentally new approach to NEPA is needed, one that emphasizes strong environmental policy, collaborative program solving approaches involving all levels of government and the public early in the process, and integrated and streamlined coordination and decisionmaking processes. Proposed approaches are included in this notice of proposed rulemaking. This NPRM fully supports "protection and enhancement of communities and the natural environment," one of five U.S. DOT strategic goals. Translating this strategic direction into day-to-day operations requires that appropriate changes be made to regulations and nonregulatory operating guidance.

Overall Strategy for Regulatory Development

Our strategy for regulatory development has three principal elements: (1) Outreach and listening to stakeholders; (2) developing improvements that will allow the FHWA, the FTA, States and metropolitan areas to demonstrate measurable progress toward achieving congressional intent and objectives; and (3) seeking ways to improve coordination and performance, both internally and with our Federal partner agencies.

Input to Development of Notice of Proposed Rulemaking

We have used several venues to obtain feedback on how to improve the administration of NEPA. Of principal importance was the NEPA 25th Anniversary Workshop held in Chattanooga, Tennessee in 1995. Participants included a diverse group of governmental and nongovernmental individuals representing transportation and community interests, as well as those interested in protecting the natural environment. The blueprint document that resulted from the NEPA Workshop underscores the need for a fundamentally new approach to NEPA, one that focuses on decisionmaking rather than compliance.

The FHWA and the FTA, in concert with the Office of the Secretary and other modal administrations within the U.S. DOT, developed and implemented an extensive public outreach process on all elements of the TEA–21. The process began shortly after the legislation was enacted on June 9, 1998, and various types of outreach activities have been underway since that time. The initial six-month Departmentwide outreach process included twelve regional forums and over 50 focus groups and workshops (63 FR 40330, July 28, 1998). The U.S. DOT heard from over 3,000 people including members of Congress, Governors and Mayors, other elected officials, transportation practitioners at all levels, community activists and environmentalists, freight shippers and suppliers, and other interested individuals. The input received was valuable and has helped us shape implementation strategy, guidance, and regulations.

With respect to the planning and environmental provisions of TEA–21, we learned a great deal through the twelve regional forums and focus group sessions and subsequently implemented a second, more focused phase of outreach which included issuing a discussion paper, "TEA–21 Planning and Environmental Provisions: Options for Discussion," FHWA/FTA, February 1999. The content of the Options Paper reflected input received up to that time and built upon the existing statewide

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and metropolitan planning regulations and our NEPA implementing regulation. We released the Options Paper on February 9, 1999, and received comments through April 30, 1999. More than 150 different sets of comments were received from State Departments of Transportation (DOTs), Metropolitan Planning Organizations (MPOs), counties, regional planning commissions, other Federal agencies, transit agencies, bicycle advocacy groups, engineering organizations, consultants, historical commissions, environmental groups, and customers—the American public. These comments were all reviewed and taken into consideration in the development of this NPRM. Another element of outreach has included meetings with our key stakeholder groups, other Federal agencies, and the regional and field staff within our agencies.

This proposed rule will be one part of a widespread agency effort to provide clear and consistent guidance on how the NEPA process can be most effectively used to help applicants make transportation decisions which reflect a concern for social, economic, and environmental well-being. It provides the framework upon which we, along with State DOTs, MPOs, transit agencies, and Federal land management agencies, can base our approach to transportation decisionmaking.

We recognize that a wide range of issues exist in the realm of transportation and the environment. Our outreach effort associated with TEA–21, as well as feedback to the Options Paper, have highlighted many areas of concern for which the FHWA and the FTA policy should be more clearly articulated. However, not all of these areas will be directly addressed as part of this rule. For many topics for which we feel regulatory treatment is unnecessary or inappropriate, we intend to issue a comprehensive package of materials to provide detailed, nonregulatory information on how to incorporate such considerations into the NEPA process. In addition, certain other topics will be the subject of individual, separate regulations or guidance.

The comprehensive package of informational materials is envisioned as a replacement both for the 1987 FHWA Technical Advisory 6640.8a on environmental documents and the FTA (formerly Urban Mass Transportation Administration) Circular 5620.1 [1] on environmental assessments. The timing of its development is intended to be consistent with the development of the regulations that will result from this NPRM. We anticipate that the comments we receive on the NPRM will help guide the creation of the informational materials, as well as the regulations. Thus, a more complete picture of our approach will be presented.

Further, we have been working with Federal environmental agencies to implement the environmental streamlining provisions of TEA–21. The results of those activities are described in the section-by-section analysis discussion later in this preamble.

The TEA–21 outreach effort and comments on the Options Paper have all helped guide us in developing this notice of proposed rulemaking. Comments on this NPRM are welcomed and will be taken into account prior to the issuance of a final regulation containing updated NEPA implementation requirements.

Relationship to U.S. DOT's Statewide and Metropolitan Planning Regulation and Other Rulemaking Efforts

There are four additional rulemaking activities either underway or planned which relate closely to this notice of proposed rulemaking. These include: the joint FHWA/FTA rules on statewide and metropolitan planning and on section 4(f), and the FHWA rules on acquisition of right-of-way and design-build contracting. The relationship with the statewide and metropolitan planning rulemaking is described below, and the TEA–21 provisions and input received through the Options Paper on the other three issue areas follows:

Statewide and Metropolitan Planning

Concurrent with the release of this notice of proposed rulemaking, the U.S. DOT is issuing a notice of proposed rulemaking to update and revise its statewide and metropolitan planning regulations (23 CFR part 450 and 49 CFR part 613). As proposed in these coordinated rulemaking actions, the statewide and metropolitan planning rule and the NEPA and transportation decisionmaking rules would both be moved to new parts: 1410 and 1420, respectively. This co-location is intended to underscore the integrated nature of transportation planning and the NEPA process.

We intend to ensure that the regulatory provisions governing statewide and metropolitan planning and NEPA work in a consistent and complementary fashion, and result in sound transportation decisions. We view the changes in TEA–21 as opportunities to improve and integrate planning and environmental processes to support more effective decisionmaking and it is in this context that both notices of proposed rulemaking were developed. It is our intent to establish consistency between the two regulations to allow our State and local transportation partners that choose to conduct social, economic, and environmental analysis at the planning stage to incorporate that analysis at the project development phase. This approach offers options for integrating project development efficiencies into the overall planning process, where States, MPOs, and transit agencies deem such action appropriate and desirable.

Section 4(f) (49 U.S.C. 303)

We propose to move the reference and citation for section 4(f) [2] in title 23 of the Code of Federal Regulations. This proposal removes the provisions on section 4(f) from the NEPA rule and establishes a separate regulation for section 4(f). Years of applying section 4(f) to new and unprecedented situations have led to a history of case experience which must be reflected in the regulation. As a result, the rules governing section 4(f) have grown to the point that they warrant their own part in the regulations. We can envision a separate effort to revise and update the section 4(f) rule; however, we are proposing minor changes at this time. Nevertheless, we invite comment on suggested changes to the Section 4(f) rule of a more substantive nature. A comprehensive package of informational materials that will be released concurrent with this final regulation will elaborate on the continued fully integrated relationship between the NEPA process and the section 4(f) evaluation process.

The information within the proposed section 4(f) regulation has not changed in concept. However, new information has been added to bring the administration of section 4(f) evaluations up-to-date with FHWA and FTA programs such as Transportation Enhancements, Transit Enhancements, the Symms National Trail Program, etc. There has been little substantive change in the requirements of the section 4(f) regulation; rather the format of the information presented has been changed to reflect these program changes and proposed organizational changes.

The separation of the section 4(f) and NEPA procedures into separate regulations is not intended to fragment compliance with section 4(f) and NEPA. Our intent is to continue a fully integrated implementation under the unified and coordinated process provided by the NEPA procedures as an umbrella for addressing all relevant responsibilities, including section 4(f). Placing the two regulations in sequence within the Code of Federal Regulations, with cross references between them, is intended to communicate the continued integration of section 4(f) and the NEPA process.

Right-of-Way Acquisition

Section 1301 of the TEA–21 allows the value of land acquired by a State or local government without Federal assistance to be credited to the State share of a federally-assisted project which uses that land. However, the law stipulated that the land acquisition must not influence the environmental assessment of the project, including the need to construct the project, the consideration of alternatives, and the selection of a specific location.

The FHWA considered, under a separate rulemaking, covering "Right-of-Way Program Administration" published as a final rule in the December 21, 1999, **Federal Register**, an "early acquisition" policy to accommodate the acquisition of land or other property interests (including "at-risk" activities) by State or local agencies that may be deemed necessary while NEPA considerations are being concluded. These acquisitions would be considered "at-risk" in that the Federal reimbursement for a share of the acquisition costs would be forthcoming only if the acquired property is subsequently used in a federally-assisted project. Interested parties should refer to the December 21, 1999, final rulemaking (64 FR 71284–71297) in the **Federal Register**.

Advance right-of-way acquisition was the subject of considerable debate during the TEA–21 outreach efforts. Several commenters including the Capital Area MPO in Albany, NY, argued that the advance acquisition of right-of-way in rapidly growing areas is desirable, cost effective and good policy. These commenters view land acquisition as environmentally neutral, in that unused land can be disposed of, often at a profit. Others, including the National Coalition to Defend NEPA, noted the inherent conflict between allowing advance right-of-way acquisition and corridor preservation initiatives, and the selection of a preferred alternative as part of the NEPA process. The National Coalition to Defend NEPA argues that purchase of land represents a commitment to a particular project location and that it, therefore, would influence the assessment of the project under NEPA.

Design-Build Contracting

Section 1307 of the TEA–21 permits a State or local transportation agency to award a design-build contract during project development provided that final design shall not commence before the NEPA process has been completed.

We have been concerned about design-build contracts (also called "turnkey" contracts) for federally-assisted projects being let before the NEPA process has been completed. To do so could give the appearance that the State or local transportation agency is fully committed to a single course of action, and that the NEPA process is simply a clearance exercise and not a true decisionmaking process. There may, however, be some situations in which design-build procurement can be structured to allow for the design-builders to work on an alternative emerging from the NEPA process. Our agencies recognize that the emerging interest in design-build contracting may warrant specific regulatory language or guidance addressing the relationship between design-build procurement and NEPA.

During the TEA–21 outreach efforts, some commenters suggested that design-build contracting provisions could include clauses that would preclude work on construction or the "building" of projects until after the NEPA Record of Decision [3] is made. The American Road and Transportation Builders Association (ARTBA) suggested that any work done on projects using this type of procurement method would be "at-risk" until the NEPA Record of Decision is announced, meaning that the work may have to be discarded if the NEPA process ultimately results in selection of an alternative project. In these cases, the State or local agency would not be eligible to receive Federal reimbursement until that time, and only if the action was consistent with the Record of Decision. The Virginia DOT suggested that design-build procurement awards should not be made until after the NEPA process had been concluded, at which point the specifics of the location and design decisions would be known. This approach has been used by the FTA in its Turnkey Demonstration Program. The Orange County Transportation Corridors Agency suggested that having a design-build agency on board at the earliest possible time is actually environmentally beneficial, since it can contribute valuable input in a timely way, to arrive at implementable and cost effective recommendations.

For highway projects, the FHWA's Office of Infrastructure is responsible for developing regulations which implement this TEA–21 provision. It is currently engaged in fact-finding and consultation among transportation partners including the American Association of State Highway and Transportation Officials (AASHTO), and anticipates beginning the formal rulemaking process next year. Achieving a balance between realizing the fullest time-savings potential of design-build contracting and maintaining the integrity of the NEPA process will be the subject of considerable discussion during that rulemaking process.

Our agencies intend to adopt consistent policies on the NEPA-related aspects of the design-build issue for two reasons: (1) Transit projects should not have procedural disadvantages in comparison to highway projects, and (2) Federal transit law (49 U.S.C. 5304(e)) requires that the FTA and the FHWA conform their NEPA processes to each other's.

Section-by Section Analysis of the Proposed Rule on NEPA and Related Procedures for Transportation Decisionmaking

This section of the notice of proposed rulemaking includes a section-by-section analysis of the proposed rule on NEPA and incorporates summary information on comments received on the Options Paper. All comments on the Options Paper are contained in the docket. The comments are, of necessity, summarized in each of the relevant sections of the proposed rule and are intended to provide an overall perspective on the comments submitted to the FHWA and the FTA. Details on specific comments and input can be obtained by reviewing the materials in the docket.

The proposed regulations have been reordered as to content and organized into the following four subparts:

Subpart A—Purpose, Policy, and Mandate;

Subpart B—Program and Project Streamlining;

[1] The FHWA and the FTA internal directives are available for inspection and copying as prescribed at 49 CFR part 7.

[2] Section 4(f) of the Department of Transportation Act, which protected certain public lands and all historic sites, technically was repealed in 1983 when it was codified without substantive change, as 49 U.S.C. 303. This regulation continues to refer to section 4(f) because it would create needless confusion to do otherwise; the policies section 4(f) engendered are widely referred to as "section 4(f)" matters. A provision with the same meaning is found at 23 U.S.C. 138 and applies only to FHWA actions.

[3] NEPA Record of Decision is the documentation of final action by the FHWA and the FTA regarding their decision on a project action (final alternative chosen, impacts, mitigation and basis for decision, etc.) addressed in an Environmental Impact Statement.

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Subpart C—Process and Documentation Requirements; and
Subpart D—Definitions.

The following table highlights the reordering and organization for each proposed subpart:

Proposed Section		Current Section	
Subpart A—Purpose, Policy, and Mandate		None.	
1420.101	Purpose of this regulation	771.101	Purpose.
1420.103	Relationship of this regulation to the CEQ regulation and other guidance.	771.103	[Reserved]
1420.105	Applicability of this regulation	771.109(a)	Applicability and responsibilities and
		771.111(f)	Early coordination, public involvement, and project development.
1420.107	Goals of the NEPA process	None.	
1420.109	The NEPA umbrella	771.105	Policy.
1420.111	Environmental justice	771.105	Policy.
1420.113	Avoidance, minimization, mitigation, and enhancement responsibilities.	771.105	Policy.
Subpart B—Program and Project Streamlining		None.	
1420.201	Relationship of planning and project development processes.	None.	
1420.203	Environmental streamlining	None.	
1420.205	Programmatic approvals	None.	
1420.207	Quality assurance process	771.125	Final environmental impact statements.
1420.209	Alternate procedures	None.	
1420.211	Use of this part by other U.S. DOT agencies	None.	
1420.213	Emergency action procedures	771.131	Emergency action procedures.
Subpart C—Process and Documentation Requirements		None.	
1420.301	Responsibilities of the participating parties	771.109	Applicability and responsibilities.
1420.303	Interagency coordination	771.111	Early coordination, public involvement, and project development.
1420.305	Public involvement	771.111	Early coordination, public involvement, and project development.
1420.307	Project development and timing of activities	771.111	Early coordination, public involvement, and project development, and
None		771.113	Timing of administration activities.
1420.309	Classes of actions	771.115	Classes of actions.
1420.311	Categorical exclusions	771.117	Categorical exclusion.
1420.313	Environmental assessments	771.119	Environmental assessments.
1420.315	Findings of no significant impacts	771.121	Findings of no significant impacts.
1420.317	Draft environmental impact statements	771.123	Draft environmental impact statements.
1420.319	Final environmental impact statements	771.125	Final environmental impact statements.
1420.321	Record of decision	771.127	Record of decision.
1420.323	Re-evaluations	771.129	Re-evaluations.
1420.325	Supplemental environmental impact statements	771.130	Supplemental environmental impact statements.
Subpart D—Definitions		None.	
1420.401	Terms defined elsewhere	None.	
1420.403	Terms defined in this part	771.107	Definitions.

Subpart A—Purpose, Policy and Mandate

This proposed subpart sets out the framework for the FHWA/FTA NEPA process. It complements and supplements the United States Council on Environmental Quality (CEQ) provisions that serve a similar function for the entire Federal government.

Section 1420.101 Purpose of This Regulation

Current § 771.101 would be redesignated as § 1420.101 and revised to establish that the focus of the proposed regulation is to conduct a decisionmaking process for transportation projects that, under NEPA, integrates and streamlines compliance with all transportation and environmental laws applicable to decisionmaking during project development. Reference is made to the regulations for transportation planning as being a contributing factor to this decisionmaking process.

Section 1420.103 Relationship of This Regulation to the CEQ Regulation and Other Guidance

The proposed § 1420.103 does not appear in the current regulation. It clarifies that this regulation is to be read as a supplement to the CEQ's governmentwide regulations for implementing NEPA (40 CFR parts 1500–1508) and contains specific provisions for Federal surface transportation actions under our jurisdiction. Further, the proposed section acknowledges that, in addition to issuing revised NEPA regulations, we will conduct and fulfil! our responsibilities under NEPA using any combination of approaches including, but not limited to, nonregulatory guidance, training, and technical assistance.

The CEQ regulations cover regulatory definition and general environmental procedural requirements (e.g., acceptable development and evaluation of an acceptable range of alternatives). These are not repeated in this proposed rule because we want to avoid confusion by repeating or paraphrasing CEQ requirements. Reproducing requirements in the FHWA and the FTA environmental regulations that are identical to CEQ requirements could create potential conflicts and confusion as to the applicability of CEQ provisions not reproduced. Instead, the chosen approach makes a discernible connection between the different regulations, and provides the opportunity for general practitioners to increase their familiarity with and understanding of the CEQ regulations, a familiarity of which is essential to their ability to comply fully with all of the environmental requirements applicable to transportation projects.

Section 1420.105 Applicability of This Regulation

The proposed section revises current §§ 771.109 and 771.111, Applicability and responsibilities and Early coordination, public involvement, and project development, respectively. The language appearing in paragraph (a) of the proposed section is a shortened version of paragraph (a) of current § 771.109. Paragraph (b) in the proposed section is essentially the existing criteria for allowable segmentation of projects, taken from paragraph (f) of § 771.111.

Section 1420.107 Goals of the NEPA Process

Proposed section § 1420.107 is to be read in close conjunction with the subsequent proposed § 1420.109. Section 1420.107 would establish the goals of the FHWA/FTA transportation decisionmaking process. The goals are drawn from a variety of statutory mandates, including NEPA itself, and provisions of the various transportation laws that authorize our programs. The NEPA process is a partnership among Federal, State, and local governments and, at times, private entities. Our intent in this section is to establish a common understanding within the partnership of the goals to be achieved through the NEPA process.

The FHWA and the FTA reaffirm their role as lead Federal agencies, and underscore their responsibility to manage the NEPA process with the objective of achieving these goals. This responsibility extends to ensuring that Federal NEPA decisions pay appropriate deference to State and local decisions made in good faith and not coerce a particular Federal point of view. State and local decisions made with full consideration of a broad range of social, economic, and environmental factors, and with the advice of appropriate Federal and other State resource agencies (i.e., the agencies responsible under law for the protection or management of natural and community resources) and with public involvement are those most likely to advance the NEPA goals.

Section 1420.109 The NEPA Umbrella

Proposed § 1420.109 would replace portions of current § 771.105, Policy. The proposed section sets forth our basic policy regarding how the decisionmaking process for surface transportation projects is to be conducted . The proposed section states the intent of our agencies to use the NEPA process as the overarching procedural construct under which the varied legal requirements, environmental issues, and public interests relevant to the transportation decision are brought to bear; hence the term "NEPA umbrella" is used to describe the concept. The consideration of a proposed action under NEPA concludes with a decision made in the best overall public interest: one that balances the need for safe and efficient transportation with the project's social, economic, environmental benefits and impacts, and the attainment of relevant environmental protection goals.

Experience in administering the NEPA process has shown that many practitioners do not fully understand or practice our approach of using the NEPA process as an umbrella for integrating their studies, reviews, or consultations and satisfying all relevant requirements in a single, integrated decisionmaking process. Instead, many have chosen to approach the various requirements as obstacles or hurdles to be addressed in a less than comprehensive fashion. Many delayed projects or failed processes can be traced back to a disintegrated and disconnected approach to meeting NEPA and other requirements. This section of the regulation is intended to clarify the preferred approach and explicitly demonstrate the multitude of factors that can influence Federal decisionmaking. Setting forth these expectations will contribute to a better, more efficient and timely NEPA process, one that is envisioned in the TEA–21 and highlighted in its section 1309 on environmental streamlining.

Section 1420.111 Environmental Justice

Subsequent to the previous regulatory revision in 1987, the 1994 Executive Order 12898 on Environmental Justice was issued to address disproportionately high and adverse human health and environmental effects of Federal government programs, policies, and activities on minority populations and low income populations. This section would be added to present regulatory language from our policy on environmental justice that is articulated in the DOT Order 5610.2 on Environmental Justice (62 FR 18377, April 15, 1997).

Section 1420.113 Avoidance, Minimization, Mitigation, and Enhancement Responsibilities

This section would present our policy regarding NEPA's mandate that Federal agencies, to the fullest extent possible, use all practicable means to restore and enhance, and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

Our policy towards correcting adverse impacts is contained in the hierarchical but not necessarily sequential concepts of avoidance, minimization, and mitigation of impacts, and in the evaluation of environmental enhancements. The policy is consistent with the CEQ's approach to mitigation presented in 40 CFR 1500.2(f) and elsewhere, and would revise the language concerning mitigation of adverse impacts currently provided at § 771.105(d). The proposed language reflects also the broadened Federal funding eligibility for enhancement measures, such as transportation enhancement activities and transit enhancements, enacted with ISTEA and TEA–21. The section would address the eligibility for Federal funding (to the extent authorized by law), of measures to avoid, minimize, or mitigate impacts, or to provide or implement enhancements.

Our general responsibility for ensuring that mitigation is carried out would be presented in paragraph (d) of the proposed section, NEPA Commitments. These provisions would be redesignated from § 771.109(b) to streamline the subject matter of the new regulations; the original text would be revised to detail the responsibility for implementing mitigation measures and environmental enhancements that resulted from commitments made in the FHWA/FTA NEPA process.

Subpart B—Program and Project Streamlining

This subpart would group together a set of provisions aimed at improving the NEPA process, either on individual projects or on a programwide basis, so that transportation decisions can be made in a timely and environmentally sensitive manner. It would respond in part to the TEA–21 chapter on flexibility and streamlining, which addresses major investment study integration (section 1308) and contains the provisions on environmental streamlining (section 1309).

Section 1420.201 Relation of Planning and Project Development Processes

This section would clarify the relationship of the transportation

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planning process and the project development process which is the subject of this NPRM. It reflects coordination with our concurrent proposed Metropolitan and Statewide Planning regulations; § 1420.318 of that proposed rule, and its preamble, provide further discussion of the relationship between the planning and project development processes. The section also stresses that the record of prior transportation planning activities, such as development of purpose and need and the systems-level evaluation of alternatives, shall be incorporated into the scoping or early coordination phases of an EIS or EA, respectively, in order to establish the alternatives to be advanced to the NEPA process.

Our agencies feel it is essential to clarify the nature of the linkage between planning and the NEPA process in this NPRM. The transportation planning process needs to be better coordinated with the project development/NEPA process so that transportation planning decisions can ultimately support the development of the individual projects which arise from transportation plans. During the TEA–21 outreach efforts, opinions varied over whether regulatory language or guidance should be used to integrate planning and programming activities, but most commenters agreed that the linkage between planning and project development needs to be cultivated. Many commenters, including the AASHTO and many State DOTs, opposed any regulatory language which would place requirements of NEPA into the planning process. Others, including the National Coalition to Defend NEPA, pointed to the need for the core values of the NEPA process to be incorporated into the planning process and suggested that regulatory language is in order.

The Options Paper discussed the notion that the establishment of purpose and need and the broad scale evaluation of alternatives can often be best accomplished during the planning process. How to frame the statement of purpose and need so that it is neither too narrow nor too broad is a continuing challenge. If too narrowly conceived, purpose and need can constrain the process with an unreasonably limited set of possible solutions; if too broadly constructed purpose and need may lead to an unmanageably large set of alternatives that unnecessarily bog down the process. Options to provide clearer direction regarding what constitutes an acceptable statement of purpose and need are being explored and we invite specific comments on this issue.

There was considerable support for allowing States and MPOs the option of addressing purpose and need in the planning process, and even to initiate the NEPA process at that time. This would allow stakeholders to conduct broad ranging planning and subregional studies, reach agreement on purpose and need during the planning process, and benefit from such analyses by using them directly in the NEPA process. There was also strong support for establishing a point during the NEPA process at which the participants would discuss and concur in a statement of purpose and need.

However, a considerable number of commenters, including many State DOTs and MPOs, objected to any mandate for the determination of purpose and need during planning and argued that it would burden the planning process and add considerable delay by seeking a determination of need at an inappropriate juncture.

The Surface Transportation Policy Project (STPP) recommended a two-stage NEPA process where the first phase would evaluate the range of social, fiscal, and environmental costs and benefits of various alternative visions for a corridor or community. Based on this evaluation, an initial statement of purpose and need would be articulated. This purpose and need statement would be very broad, an articulation of the goals for the area already arrived at through the planning process, for example. The STPP proposed that a wide field of inquiry would be maintained at this stage. Subsequent to this phase of evaluation, and once a detailed review of options is complete, an agency would have the information necessary to propose a revised, more specific statement of purpose and need. It would be this revised statement of purpose and need that would serve as the basis for a detailed review of alternatives under NEPA. Under both phases, the choice of a project purpose would be subject to public input.

The Environmental Law and Policy Center argued for the allowance of lower-cost and lesser impact project alternatives to be selected through the NEPA process even if they do not fully meet the stated purpose and need. Both the U.S. EPA and the U.S. Department of Interior argued for broadly defined purpose and need during planning to ensure that a full range of modal alternatives are considered.

The National Coalition to Defend NEPA expressed concern over the development of purpose and need during planning. It felt this could prematurely preclude options and alternatives and argued that, until the DEIS is completed, insufficient information is available with which to make such decisions. In short, it is concerned that defining purpose and need so early (in planning) could have the effect of "setting in stone" projects without adequate consideration of alternatives.

Commenters asked for examples, best practices and information on issues related to purpose and need determination, and there was general consensus that improvements in defining purpose and need are warranted. They felt that the difficulties articulated in the Options Paper relating to broad versus narrow statements of purpose and need are indeed real problems and that our agencies could provide useful guidance in this area.

We intend to provide continuity between the systems planning and project development processes so that the results of analysis performed during the planning stage, including project purpose and need, alternatives, public input, and environmental concerns are brought forward into project development. The proposed integration of the planning and project development process embodied in this regulation would enable a more broadly defined statement of purpose and need to be addressed at appropriate points in the integrated process.

There has also been much discussion of the standing given to planning decisions on alternatives to be advanced or dropped from consideration. The proposed regulation envisions an active discussion of this issue during scoping, with the involvement of the responsible planning agencies (*i.e.*, the MPO and/or the State DOT). Ultimately, the U.S. DOT agency, in cooperation with the applicant, must decide the range of alternatives to be evaluated in detail in the NEPA document. The proposed regulation allows these agencies to recognize planning decisions made with adequate supporting documentation. Though the form and content of this support will not be specified in the regulation, we expect to see some or all of the following offered in this context: technical studies as envisioned by proposed § 1420.318(b), documentation of public reviews and comments, formal policy board resolutions in the case of MPO actions, or other supporting materials. For proposed major transit investments, this review will also decide whether the documented planning activities constitute the Alternatives Analysis required by 49 U.S.C. 5309(e) or, alternatively, if the requirement must still be satisfied in the NEPA process.

We propose to provide more detailed treatment on the subjects of purpose and need, and the development, analysis, and evaluation of alternatives in the comprehensive package of informational materials. This would include how to address alternatives which in the past have been rejected for not fully meeting traditional concepts of purpose and need. Further, we plan to showcase examples of successful practices which demonstrate how effective integration of planning and project development can protect communities and environmental resources and save time in providing needed transportation improvements.

Examples of issues that might be covered include: the further consideration of alternatives that may not fully meeting traditional concepts of purpose and need; more broadly defined purpose and need statements during the planning stage so that a full range of modal alternatives are considered; an alternative analysis that examines non-construction alternatives that use transportation demand strategies; and flexibility to encourage the consideration of alternatives which may have lower than originally desired levels of transportation service if there are cost, time, and impact savings that justify the lower levels of transportation service.

We are soliciting comments on a suggestion that specifically addressing the requirements of the major investment study in the planning process would enhance that process by forging a clearer link between the planning and the project-level NEPA processes, leading to greater streamlining at the project level.

Section 1420.203 Environmental Streamlining

This new section would be added to reflect the requirements of section 1309 of the TEA–21. The basic premise of section 1309 of the TEA–21 was to address concerns relating to delays, unnecessary duplication of efforts and costs associated with the development of highway and transit projects. Section 1309 also stipulates that nothing in section 1309 shall affect the applicability of NEPA or any other federal environmental statute or affect the responsibility of any federal offices to comply with or enforce such statutes. The rule responds to the TEA–21 environmental streamlining provisions by establishing a process intended to coordinate Federal agency involvement in major highway and transit projects with the goals of identifying decision points and potential conflicts as early as possible, integrating the NEPA process as early as possible, encouraging the full and early participation of all relevant agencies, and establishing coordinated time schedules for agencies to act on a project.

This proposed section of the regulation establishes the "coordinated environmental review process" which section 1309 of the TEA–21 directed the Secretary of Transportation to develop and implement. Paragraph (a) lays out the elements of this coordinated environmental review process, providing a substantive but flexible set of actions to be taken by the U.S. DOT in cooperation with the applicant to ensure that the goals of section 1309 are met. An important element of this coordinated environmental review process is reaching closure among the Federal agencies on the scoping process. This paragraph calls for agency concurrence at the end of scoping, which could take various forms depending upon the mutual understandings and agreements of the Federal agencies. In the event of nonconcurrence, this paragraph provides also for means to resolve interagency disagreements at the earliest possible time. Paragraph (b) describes the process for applying the coordinated environmental review process to State level environmental reviews. Paragraph (c) would implement the provisions of the statute which allow the Secretary to decide not to apply section 1309 to the preparation of an environmental assessment. Paragraph (d) would implement the CEQ NEPA regulation provisions on paperwork reduction and clarifies that the NEPA documentation need not explicitly contain a finding that a particular impact does not exist. For example, if the environmental inventory revealed that there were no wetlands in the project area, a specific finding indicating that the project would have no impacts on wetlands would not be required. This provision would help to focus NEPA documents on important issues in accordance with the CEQ NEPA regulations' provision on paperwork reduction.

One consistent theme that emerged through the outreach process pointed to the need for early and up-front involvement of Federal agencies in the NEPA process and for close coordination and cooperation among the Federal agencies throughout the process. The State DOTs, the MPOs, the National Association of County Engineers, the U.S. EPA, and the U.S. Department of Interior all felt that Federal agency involvement is critical to successful implementation of the environmental streamlining provisions. They also recommend that our field offices and the resource agencies' field offices throughout the country have the authority to participate in, review, and respond to issues associated with the NEPA process.

Inasmuch as stakeholder sentiments echoed a need for early collaboration and close coordination with all interested and affected parties, they also strongly reinforced the need for flexibility at the State and local levels for implementing the goals of streamlining. A "one-size-fits-all" regulatory approach was soundly rejected by an overwhelming majority of stakeholders, other Federal agencies, practitioners, project sponsors, and field offices.

We believe that successful implementation of environmental streamlining must be based upon a number of principles, and are pursuing a process that will ensure effective environmental decisionmaking in a timely manner. Both transportation and resource agencies must improve their environmental review processes. The U.S. DOT will provide national leadership on environmental streamlining, and is working with CEQ and headquarters offices of the EPA, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. National Park Service, the U.S. National Oceanic and Atmospheric Administration, the Advisory Council on Historic Preservation and others to obtain commitments to better decisionmaking. The framework for this commitment to the environment and to streamlining the environmental process is set forth in the national Memorandum of Understanding (MOU) which was entered into by the aforementioned agencies in July 1999.[4] We fully expect to track the commitments reflected in the national MOU. We recognize that tangible progress will evolve locally, and State by State, at different rates, based largely on good working relationships and trust established among the agencies at the field office level.

We are proposing to implement the environmental streamlining requirements largely outside of the regulatory process through the following means: (1) U.S. DOT memoranda of understanding with Federal or State agencies; (2) establishment of dispute resolution processes; (3) streamlining pilot efforts; (4) authorization of the U.S. DOT to approve State DOT or transit agency requests to reimburse Federal agencies for expenses associated with meeting expedited time frames; and (5) establishing performance measures to evaluate and measure success in both

[4] This Memorandum of Understanding is available electronically from FHWA's website at *http://www.fhwa.dot.gov/environment/strmlng.htm.*

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environmental stewardship and environmental streamlining. We have established an environmental streamlining page on the FHWA website to keep the public up to date on our ongoing activities and resources (http://www.fhwa.dot.gov/environment/strming.htm). We are also providing a detailed description of our work to date on the following:

(1) National MOU

The central effort on the national MOU has been to craft an agreement among agencies which demonstrates a commitment to key principles and upon which further agreements can be executed at a local or regional level to address more specific issues. Establishing and maintaining clear and frank communication has been at the heart of the national MOU and would be the primary guide to further interagency agreements.

The process of developing the national MOU was aimed chiefly at responding to the concerns regarding early and up-front involvement of Federal agencies in the NEPA process and for close coordination and cooperation between Federal agencies throughout the process. We are working with representatives of other Federal agencies at the headquarters and field levels to develop a common understanding of the environmental streamlining provision and a coordinated implementation strategy. The development of the national MOU has followed the suggestion of AASHTO, Association of Metropolitan Planning Organizations (AMPO), and many State DOTs that the MOU include broad principles of agreement on how the NEPA process would be carried out but that project-specific or program-specific MOU's need to be developed at the State, regional, or local level, based upon these broad principles, and tailored to specific local circumstances or projects.

(2) Dispute Resolution Procedures

Procedures for resolving conflict at the national, regional, and State levels are under development. Mediation methods and systems for alternative dispute resolution are being developed and training programs in these methods will be established. This approach will enable parties to seek timely intervention over disputes during the project development process, as a way to circumvent and minimize the number of environmentally unacceptable projects that may otherwise be referred to CEQ for resolution, by either reestablishing consensus on the need for the project or reaching consensus to drop the project entirely. Alternative dispute resolution strategies will be defined so that they can be effectively applied to improve institutional relationships among parties or to resolve conflicts surrounding specific project issues.

On the matter of dispute resolution procedures, commenters made three key points. They felt that explicit time frames for document reviews are needed and should be agreed to, to the fullest extent possible, up-front in the process. Secondly, they supported an approach where the parties to the MOU agree, at an early stage, on the level of information and detail that is needed at various steps in the NEPA process. Resource agencies expressed frustration with the timing and level of detail of information that they are asked to consider and act upon, and State and local implementing agencies expressed frustration due to uncertainties over what specific information and level of detail would be required of them by the Federal resource, regulatory and permitting agencies. A third point made by many stakeholders was that procedures on coordination, documentation, and communications should be agreed to as early as possible. They felt that this would help to resolve differences that arise at various points in the process and which can contribute to delays.

(3) Pilot Efforts Are One Effective Mechanism for Testing and Evaluating Change

One specific topic suggested for pilot projects was from the North Carolina DOT and the American Road and Transportation Builders Association, which suggested the testing of alternative approaches to gaining interagency cooperation during the NEPA process. The Virginia DOT suggested that pilot project efforts should be directed at finding ways to resolve differences between Federal agencies. A third suggestion was that pilot projects should test approaches to providing States flexibility in carrying out the NEPA process.

Not all commenters supported the concept of pilot projects, however, and the National Coalition to Defend NEPA questions the legal authority of our agencies to conduct pilot projects and cautioned against using pilot projects to "back-door" the NEPA process. It was also concerned that pilot efforts not only involve partnership development between Federal and non-Federal partners and resource permitting agencies, but also include groups representing the public as well.

Based on the input received on the issue of pilot efforts, we are not proposing to establish a formal process for pilots at this time, through regulation or any other means. Instead, we will participate in pilot efforts on a case-by-case basis. These pilot efforts might be focused on a single project or on improving a particular process, but would not include the delegation of Federal NEPA responsibilities to States that was considered but not enacted in the TEA–21. We will continue to coordinate closely with the U.S. EPA, the AASHTO and others who are developing pilot efforts, and will actively assist in sharing information on efforts including lessons learned.

(4) Use of Titles 23 and 49, U.S.C., Funds To Pay for Environmental Agency Work

The agency reimbursement language in the environmental streamlining provisions of the TEA–21 offers an opportunity to partially overcome an historic obstacle, that Federal agencies cannot involve themselves in the process early enough or regularly enough due to resource constraints within agencies. The TEA–21 includes specific conditions allowing States and transit agencies to use Federal transportation funds for reimbursement of expenses related to work done to meet the expedited time schedules required by section 1309 of the TEA–21. In addition, other statutory authorities exist for agency reimbursement, and we are exploring the full range of options for reimbursing agencies through any of the available authorities. Furthermore, approaches to developing collaborative efforts with other Federal agencies are being explored in order to develop model reimbursement agreements, and to facilitate the implementation of such agreements by Federal agency field staff.

Due to the need for flexibility and the different practices and needs of various State and resource agencies, it was determined that nonregulatory guidance would most appropriately address the use of Federal transportation funds for reimbursing costs associated with streamlining. Hence, we engaged participation by many other affected Federal agencies to develop a single guidance package that would be useful to transportation and environmental agencies, including State DOT's and transit agencies and Federal, State, and local resource agencies. The breadth of situations that might be addressed under this provision was such that the guidance does not try to anticipate them all. Rather, it reinforces the Federal government's belief in effective interagency coordination and

demonstrates a commitment from Headquarters offices to support field efforts in implementing this provision of the TEA–21.

There were a number of comments on this TEA–21 provision and a suggestion from the American Road and Transportation Builders Association that the principles to apply to reimbursement should include a provision that reimbursement for Federal agency activities to expedite NEPA reviews must be linked to a specific project, set of tasks, and person or position to be involved on behalf of the Federal agency. Others, including the Nevada and Missouri DOTs, felt that reimbursing an agency for working on one project over another is not a good approach. Reimbursing agencies for doing their jobs, it was argued, would introduce a bias into the NEPA process which would result in an expedited review or enhanced level of participation on some projects over others.

(5) Performance Measures

Our agencies have a joint effort underway to evaluate the timeliness and the effectiveness of the NEPA process at arriving at decisions that are in the best overall public interest. Further information on this effort can be obtained from the FHWA.

Section 1420.205 Programmatic Approvals

Section 1420.205 would be added to establish in regulation the FHWA/FTA practice of using programmatic environmental approvals as one way of addressing recurring situations in a streamlined manner.

This practice has been especially effective with categorical exclusions for meeting the NEPA requirements in uncomplicated and non-controversial situations. One example of this are programmatic categorical exclusion approvals in which FHWA and a State DOT established a set of environmental impact thresholds, which, if not exceeded, allow the State DOT to apply the categorical exclusion approval without a project specific review by FHWA. Periodically, the FHWA reviews a sample of projects after-the-fact to ensure that the approval was appropriately applied. Other examples of programmatic approvals include section 4(f) approvals for minor uses of parkland and approval to delegate certain USDOT responsibilities under the recently issued regulations implementing section 106 of the National Historic Preservation Act. The proposed section explicitly recognizes the appropriateness of programmatic approaches for compliance with NEPA and related statutes, but does not specify the types of actions for which programmatic approaches would be created. Programmatic approaches to meeting the NEPA requirements which would not directly involve project level Federal approvals would be subject to periodic process reviews to ensure that they are being properly applied. This would enable the Federal agencies to focus limited resources on more problematic project-level decisions and to maintain a quality assurance role for projects with beneficial or de minimis environmental impacts. There was general support for such an approach in comments on the Options Paper. We invite comments on public notice and interagency coordination processes appropriate for making programmatic approvals.

Section 1420.207 Quality Assurance Process

This new proposed section would establish an internal responsibility for our agencies to employ appropriate quality management methods to assure that the NEPA responsibilities are carried out in a competent and timely manner. Such a process is intended to streamline the process by institutionalizing lessons learned throughout the administration of our programs and NEPA so that mistakes are not repeated and innovative approaches are fully implemented.

The requirements in the current regulation for legal sufficiency review of Final Environmental Impact Statements (FEIS) and prior concurrence of the Headquarters on certain FEISs would be incorporated into this proposed section. These processes have proven helpful in assuring the quality of analysis, coordination, and documentation and can prevent costly and timely lawsuits and conflicts. As proposed, the nature of legal sufficiency review and the threshold for requiring prior concurrence at Headquarters would not be specified in regulation, but would be the subject of internal orders.

Section 1420.209 Alternate Procedures

This new section would be added to establish the procedures for processing and approving alternate procedures for complying with this regulation. This would give us the flexibility to partner with CEQ and State DOTs or transit agencies on NEPA reinvention efforts that achieve the goals of the NEPA process by using alternate methods or procedures that are more in tune with and supportive of non-Federal decisionmaking requirements.

Section 1420.211 Use of This Part by Other U.S. DOT Agencies

In 1993, the U.S. DOT National Performance Review effort recommended that the NEPA procedures of the various modes be blended into a single process. Efforts to accomplish this unified procedure were purposely delayed until after passage of the surface transportation reauthorization which became TEA–21. Recent discussions within the U.S. DOT are now pointing toward a dual effort, one element of which would cover the entire department, the other of which is this proposed regulation covering just the FHWA and the FTA. To advance the first element, U.S. DOT would revise the U.S. DOT Order on NEPA to update the departmentwide statement of environmental policy and to remove barriers to collaboration between the U.S. DOT modes on NEPA issues. It would provide authority for one U.S. DOT agency to use the NEPA procedures of another U.S. DOT agency or to act as the agent for another U.S. DOT agency when a situation warrants. This proposed section clarifies in regulation that the internal order is considered legally sufficient to provide these authorities. The further action at the departmental level to amend the U.S. DOT Order on NEPA is under development.

Most Options Paper commenters, including State DOTs, MPOs, associations, and authorities supported a coordinated approach to NEPA within the U.S. DOT and its modal administrations. There was strong support for the elimination of differences in how the FHWA and the FTA manage the NEPA process and for a consolidation of these approaches in the updated regulation. In addition, there was strong support from New York DOT, the American Road and Transportation Builders Association and others for the elimination of provisions duplicating the CEQ regulations, which many thought would lead to a streamlined regulation. Finally, many commenters supported the notion of the FHWA and the FTA having strong oversight over the NEPA process. Equally important, commenters noted, is that there be a true partnership between Federal agencies and State and local agencies.

Section 1420.213 Emergency Action Procedures

This proposed section would contain the provision currently found at 23 CFR 771.131.

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Subpart C—Process and Documentation Requirements

This proposed subpart describes the requirements of carrying out the NEPA process, including establishing the roles of various governmental agencies and the public in the process, determining the appropriate level of environmental documentation under NEPA, and laying out the procedural requirements for processing NEPA documents. It complements and supplements the CEQ regulations that provide the general NEPA framework for the entire Federal government. In addition to the regulatory requirements described in this subpart, the FHWA's and FTA's comprehensive package of informational materials will provide detailed nonregulatory approaches to many of the subjects herein.

Section 1420.301 Responsibilities of the Participating Parties

This is a new section that addresses some of the items currently contained within § 771.109. Paragraph (a) of the proposed section utilizes the current CEQ regulations (40 CFR 1500–1508) to define terms and set forth concepts, such as: Lead and cooperating agencies; the relationship between Federal agencies, applicants, and contractors; and enhancing the efficiency of the NEPA process through cooperation between Federal, State, and local agencies.

Paragraph (b) would clarify in regulation current practice for administering the NEPA process for projects implemented directly by the Federal government on Federal lands. Namely, it is a shared responsibility of the U.S. DOT and the Federal land management agency. The precise nature of the responsibility is specified in agreements or standard operating procedures.

In the previous regulations, the provision in 23 CFR 771.109(c) on agency responsibilities is largely repetitive of what is also found in CEQ's regulations on NEPA. For this rulemaking effort, we are reluctant to propose regulatory language which simply restates existing sections of another regulation, and would streamline this section accordingly. Paragraph (c) of the proposed section addresses the use of contractors in the NEPA process for contracting for environmental and engineering services. The proposed rule allows a State to procure the services of a consultant, under a single contract, for environmental impact assessment and for subsequent post-NEPA engineering and design work in accordance with the provisions of 23 U.S.C. 112(g), as amended by the TEA–21.

Section 1205 of the TEA–21 allows a State to procure under a single contract, the services of a consultant to prepare environmental documents for a project, and to perform subsequent final engineering and design work on the project. This would only occur if the State conducted a review assessing the objectivity of the environmental documentation. Experience has shown that, although on many projects consultants do prepare the bulk of the detailed analyses and NEPA documentation, this process involves close oversight by the State or local public agency and by the lead Federal agency. It is the ongoing responsibility of our agencies to ensure that all consultant work reflected in the NEPA process and documentation meets appropriate standards of objectivity and professionalism.

The contracting provisions were included in the TEA–21 to clarify our agencies' positions on the use of contractors for environmental and engineering design work for Federal transportation projects, and were chiefly aimed at addressing concerns of potential conflict of interest on the part of the consultants.

The U.S. DOT believes that more detailed nonregulatory guidance will best address the specifics of disclosure statements, other requirements of 40 CFR 1505.5(c), and the requirement for a review of the objectivity of the environmental document.

Generally speaking, commenters on the Options Paper felt that current level of oversight and review is sufficient, and that additional documentation to ensure objectivity is unnecessary. The EPA suggested the need for the development of Federal procedures for monitoring, investigating, and resolving conflicts that might result from this TEA–21 provision.

Section 1420.303 Interagency Coordination

The proposed section would revise the current § 771.111 (a) through (e). The proposed section would simplify the current section by focusing on key terms and concepts that are the basis of an integrated decisionmaking process conducted under the NEPA umbrella. For example, the proposed section features the term "interagency coordination" to supplement the current "early coordination" in order to better express the collaborative intent of the FHWA/FTA NEPA process. The proposed section provides an explanation of the role and function of interagency coordination in the NEPA process. The term "interested agencies" would be added. The proposed section briefly outlines a procedure for notifying affected Federal, State, and local entities of the availability of approved documents for classes of action other than an EIS.

Scoping and early coordination can set the tone, positive or negative, for subsequent project development activities. Experience has shown that many of the conflicts which delay Federal approvals of highway and transit projects are somewhat predictable, and might be better anticipated and managed by using the scoping process as an early warning system. In addition, the development of interest-based negotiating and collaborative problem solving skills can help to craft implementable solutions. Two possible solutions emerged through the outreach process that could assist Federal agencies and applicants in performing more effective project scoping. One approach to the scoping of complex projects is that agencies agree on review schedules, but only after sufficient information on issues has emerged to allow them to gauge the required level of effort for their respective agencies. Another approach might make the scoping process, as part of an aggressive, high visibility project management role by our agencies as the lead Federal agenc(ies), a mechanism for identifying the issues, and agreeing on roles, time frames and methodologies associated with advancing the project, and possibly memorializing that agreement in a project MOU.

Both program reviews and feedback from stakeholders indicate that the FHWA and the FTA need to take a stronger leadership role in the NEPA process. Commenters including the National Coalition to Defend NEPA, the AASHTO, the American Road and Transportation Builders Association, and others reinforced this point in their comments on the Options Paper. These groups said that the FHWA and the FTA staff should attend meetings and serve as conflict resolution agents and mediators between other agencies. Also, they told us that we should provide information, such as, handbooks, best practices on scoping, and training for practitioners. As was the case in many areas, stakeholders including MPOs, State DOTs and others feel that much progress can be made in better integrating environmental and other considerations into the planning process through training, examples of where new approaches are working, handbooks and other useful materials.

Many of the detailed considerations of the scoping process are outside the scope of this proposed rule, and will be addressed separately. Effective project scoping and interagency coordination is a chief topic of our environmental streamlining efforts, and will be given more detailed treatment in the comprehensive package of informational materials to be issued in conjunction with the final rule. Scoping may also be the subject of further guidance on its own. We will make full use of input received through the outreach efforts, as well as through our ongoing coordination with transportation and environmental agencies, in the development of this additional guidance.

Section 1420.305 Public Involvement

Current § 771.111(h) would be redesignated as § 1420.305. It remains relatively unchanged for State DOTs except that the separate requirements specific to the FHWA and the FTA programs would be deleted; and new references specific to public involvement procedures, notification requirements, and accommodations for those with disabilities would be added. A requirement would be added to specifically ascertain if public involvement is warranted whenever a reevaluation is being conducted. Also a minimum 45-day public comment period would be established whenever public involvement procedures are initially adopted or revised.

The proposed rule also aims to consolidate requirements of our two agencies for public involvement so that the U.S. DOT can offer a more consistent approach on this subject. Based upon comments to the Options Paper, there was resounding support for a consistent approach to public involvement requirements between the FHWA and the FTA and this was cited by the National Coalition to Defend NEPA as one way to make the planning process more accessible and understandable to the public. This consolidation may mean that some transit agencies may have to formalize their public involvement procedures through board adoption, or revise their procedures to ensure their applicability to the NEPA process. The FTA does not expect to find many transit agencies without existing adopted procedures applicable to project development, but invites comment on this concern. We recognize the importance of public involvement to informed decisionmaking, and have issued a number of publications which provide nonregulatory guidance on how to increase the effectiveness of applicants' public involvement efforts.

The new § 1420.305(d) recognizes the need for public involvement on certain re-evaluations where the elapsed time may have altered public expectations.

Section 1420.307 Project Development and Timing of Activities

Current § 771.113 would be redesignated as § 1420.307 and revised. The proposed section would clarify the circumstances in which the FHWA/FTA would not approve initiation and funding for certain activities, such as, final design activities. The proposed section would encourage compliance with the requirements of all applicable environmental laws, regulations, executive orders, and other related requirements be demonstrated prior to approval of the final environmental documents or categorical exclusion (CE) designation. Conditions under which agencies responsible for metropolitan and statewide planning would be notified in order to satisfy the planning and programming requirements of proposed 23 CFR part 1410 would be identified.

However, under the NPRM the FHWA and the FTA would not prevent State and local governments and private entities from taking certain actions that are "at risk" of being rendered useless by the final NEPA decision. Such actions include final design or land acquisition prior to NEPA approval, but do not include those that would have an adverse impact, such as, demolition or construction. The FHWA and the FTA would view at risk activities that actually substantially harm environment as so subverting the NEPA process that we would inform applicants that the action would be ineligible for FHWA or FTA financial assistance. The FHWA and the FTA would not finance such "at risk" actions, and would not allow their decisions to be influenced by the actions taken by others. For projects that will be federally-funded, the present regulation prohibits final design and land acquisition (with certain limited exceptions) prior to the completion of the NEPA process. The enforcement of this prohibition has been confounded by the fact that specific funding sources, especially for smaller projects, are often not identified until late in project development. Hence, the applicability of the Federal requirements that attach only to Federal funding sources is not yet determined at the time the "at risk" activities are initiated.

We are considering issuing guidance on how to handle such situations, especially in terms of disclosure responsibilities.

We propose to clarify that full compliance with the transportation conformity rule (40 CFR parts 51 and 93) is required prior to the *approval of the final EIS, FONSI or CE*[5] *designation*. As a result, this proposal would allow preliminary engineering for project development activities to be done prior to final NEPA approval without having to meet conformity requirements. We request public comment on our proposed clarification.

We believe that this proposed change is allowed under current regulations. While the conformity rule requires that a project come from a conforming plan and transportation improvement program (TIP) before final NEPA approval, the rule does not explicitly specify that the project must be in a conforming plan and TIP in order to initiate the NEPA process. In fact, 40 CFR 93.126, table 2, identifies as exempt, "engineering to assess social, economic, and environmental effects of the proposed alternatives to that action." We feel that this is an important distinction that may help to improve the quality of the NEPA process leading to more effective, efficient, and environmentally sound judgments, without compromising the planning process and air quality analysis.

We believe that the emissions impacts of the project should be considered as early as possible and continue to encourage the inclusion of projects in the plan and TIP conformity analysis as early as feasible prior to the completion of the NEPA process where it is feasible. Earlier inclusion of the project in the plan and TIP is beneficial for the overall development of the plan and TIP because regional analysis is used as a long term indicator of the area's emissions impacts and associated problems. Early analysis of projects in the plan and TIP allows a more comprehensive long term assessment of how emissions impacts can be minimized, whether through changes in the timing of projects or changes to the composition of the plan and TIP.

However, a major problem with this approach is that it is counterproductive to corridor planning, prejudges alternatives and can limit thorough exploration of all feasible alternatives throughout the project development process. It can be counterproductive to, rather than supportive of, good long term transportation systems planning in certain circumstances. The reason for this is that in order for a project to be included in the regional plan and TIP and regional analysis prior to

[5] Environmental Impact State...ent (EIS), Finding of No Significant Impact (FONSI), categorical exclusion (CE).

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completion of NEPA, certain assumptions must be made about the project and related emissions impacts. It is difficult to define project design concept and scope that early in the planning process, especially for those projects requiring the highest level of environmental review and scrutiny. When taking complex projects through the project development process, it is very difficult to simply define two points of connection to the network, the number of lanes and facility type (that which is needed for regional analysis). Complex projects and corridor projects often examine multimodal options, some of which are not fully developed until later in the NEPA process. Under this scenario, the assumptions for regional analysis for conformity purposes may encourage an overly narrow alternatives analysis and constrain the environmental review process. We request comment on whether similar experiences have occurred in practice when accounting for preliminary engineering for project development in regional conformity analyses.

It is important to note that, under this proposal, preliminary development of new projects could proceed during a conformity lapse, since such activities would not need to meet conformity requirements. However, final NEPA documents on new projects could not be approved under this proposal until a new conforming plan and TIP are in place.

We believe the frequency requirements for conformity are sufficient to ensure that full emissions impacts of the projects are accounted for before projects move into the final design; therefore, long term risks are minimal and the projects must be included in the regional conformity emissions analysis prior to the completion of NEPA. The regional emissions analysis and conformity determinations can be made as frequently as once a year, but at a minimum at least every three years; therefore, it is reasonable to allow environmental reviews and the NEPA process to be initiated without the project being included in the conformity analysis.

Section 1420.309 Classes of Actions

Current § 771.115 would be redesignated as § 1420.309 and the text would remain the same, except for the addition of certain intercity railroad and intermodal actions.

Section 1420.311 Categorical Exclusions

The proposed § 1430.311 would make several changes from the list of CEs in the current § 771.117 to reflect changes in the FHWA and the FTA programs since 1987. Modal limitations would be eliminated wherever possible. In addition, the CEs would be reordered and regrouped so that similar actions are listed together. The CEs would continue to be organized into two major groupings: those in paragraph (c) that require no further U.S. DOT agency approval, and those in paragraph (d) that require a written demonstration that the CE is appropriate. Paragraph (c) would clarify the need for NEPA approval by the U.S. DOT agency for listed CEs to which other environmental laws (*e.g.*, section 106 of the National Historic Preservation Act) apply.

The proposed changes in CEs in paragraph (c) would be as follows:

Paragraph (c)(1) (non-construction activities) would incorporate the text of current § 771.117(c)(1), (c)(20), and part of (c)(16) without substantive change. It would add designations to the National Highway System to the list.

Paragraph (c)(2) (resurfacing) would move part of the text of current § 771.117(d)(1) to paragraph (c). Experience has shown that simple resurfacing of an existing pavement does not require additional written information for a CE determination.

Paragraph (c)(3) (routine maintenance) is not explicitly covered in the current § 771.117, but it is an important program activity, especially for transit with the re-definition of preventive maintenance as a capital expense.

Paragraph (c)(4) (ITS elements) is not explicitly covered in the text of current § 771.117. Installation of isolated ITS elements is proposed for paragraph (c), but an areawide coordination of multiple ITS elements that would have greater impact on the transportation system is proposed for paragraph (d)(2).

Paragraph (c)(5) (safety programs) would incorporate the text of current § 771.117(c)(4) and would add a current CE of the Federal Railroad Administration related to safety.

Paragraph (c)(6) (support facility improvements) would incorporate the current § 771.117(c)(12), but would extend it to cover toll facilities, control centers, and vehicle test centers, facilities that are similar in size and activity to those in the current CE.

Paragraph (c)(7) (carpool programs) uses a defined term to incorporate the text of current § 771.117(c)(13) except that carpool activities requiring land acquisition and construction (such as new parking lots) would be excluded and covered in paragraph (d)(6).

Paragraph (c)(8) (emergency repairs) would incorporate the text of current § 771.117(c)(9), but extends it to cover modes other than highways.

Paragraph (c)(9) (operating assistance) would incorporate the second part of the text of current § 771.117(c)(16) without substantive change.

Paragraph (c)(10) (vehicle acquisition) would incorporate the text of current § 771.117(c)(17) without substantive change.

Paragraph (c)(11) (purchase and lease of equipment) would incorporate the text of current § 771.117(c)(19), but would extend it to cover leases and the capital cost of contracting for transit services.

Paragraph (c)(12) (vehicle rehabilitation) would incorporate the current § 771.117(c)(14), but would extend it to cover conversions to alternative fuels.

Paragraph (c)(13) (track maintenance) would incorporate the text of current § 771.117(c)(18), but would extend it to cover wayside systems in addition to tracks and railbeds.

Paragraph (c)(14) (bicycle-pedestrian facilities) would incorporate the text of current § 771.117(c)(3) except that bicycle and pedestrian projects requiring land acquisition and construction (such as bike paths on new right-of-way) would be excluded and covered in paragraph (d)(19).

Paragraph (c)(15) (ADA accessibility) would incorporate the text of current § 771.117(c)(15) without substantive change.

Paragraph (c)(16) (signing, etc.) would incorporate the text of current § 771.117(c)(8) without substantive change.

Paragraph (c)(17) (property management) would incorporate the text of current § 771.117(c)(2), (5), and (11), and similar property management activities under the transit program. In addition, disposal of excess property would be moved from § 771.117(d)(6) because experience has shown that the sale or transfer of property does not have significant impact in and of itself, and the U.S. DOT agency does not have the statutory authority to control the subsequent use of property after it has been sold by the applicant.

Paragraph (c)(18) (transportation enhancements) would incorporate the text of current § 771.117(c)(7) and (10), and would add other transportation enhancement activities and transit enhancements to the list.

Paragraph (c)(19) (noise walls) would incorporate the current § 771.117(c)(6) without substantive change.

Paragraph (c)(20) (mitigation banking) would be added due to the transportation enhancement provisions and changes in the mitigation policies of Federal resource agencies that allow or encourage this form of mitigation.

The proposed changes in CEs in paragraph (d) would be as follows:

Paragraph (d)(1) (highway rehabilitation) would incorporate the text of current § 771.117(d)(1) except that simple resurfacing is now proposed to be moved to paragraph (c) and would not require a written CE demonstration.

Paragraph (d)(2) (operational improvements) would incorporate part of the text of current § 771.117(d)(2), with clarification through examples of the ITS systems that would be covered.

Paragraph (d)(3) (safety improvements) would incorporate parts of the text of current § 771.117(d)(2) and (3) without substantive change. It would add safety-related programs of recent importance including seismic retrofit and mitigation of wildlife hazards.

Paragraph (d)(4) (bridge rehabilitation) would incorporate part of the text of current § 771.117(d)(3) with the clarification that the approaches to the bridge or tunnel would also be included in the project and that historic bridges and bridges providing access to ecologically sensitive areas are excluded.

Paragraph (d)(5) (bridge replacement) would incorporate the remaining part of the text of current § 771.117(d)(3). If applicable, "section 106" (National Historic Preservation Act (16 U.S.C. 470 *et seq.*)), "4(f)" (49 U.S.C. 303), "section 404" (Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 to 1376)) and coastal zone management issues must be addressed in the CE documentation and coordinated with the other agencies in accordance with those statutes.

Paragraph (d)(6) (parking facilities) would incorporate activities from the current § 771.117(c)(13) and (d)(4), but would apply to all parking facilities, not just those on transportation fringes, if the CE conditions are met.

Paragraph (d)(7) (new operations centers) would be added as a CE primarily covering the construction of buildings to house the control centers from which ITS systems are operated and managed.

Paragraph (d)(8) (support facility construction) would incorporate the text of current § 771.117(d)(5) with the addition of other similarly sized support facilities.

Paragraph (d)(9) (access control) would incorporate the text of current § 771.117(d)(7) without substantive change.

Paragraph (d)(10) (track improvements) would incorporate the text of current § 771.117(c)(18) in situations where land acquisition is needed.

Paragraph (d)(11) (storage yards and shops) would incorporate the text of current § 771.117(d)(8) and (11) without substantive change.

Paragraph (d)(12) (building renovation) would incorporate the text of current § 771.117(d)(9) without substantive change.

Paragraph (d)(13) (transfer facilities) would incorporate the text of current § 771.117(d)(10) without substantive change.

Paragraph (d)(14) (ferry facilities) would be added as an explicit statement that work on existing ferry facilities may be a CE, but concern for water-related impacts necessitates its inclusion in paragraph (d) so that a written CE demonstration must be provided.

Paragraph (d)(15) (rail service demonstrations) would be added as a CE, based on our experience with previous similar cases. If the service demonstration were to lead to proposal for permanent service involving Federal financial support, that permanent project would be separately evaluated for its impacts.

Paragraph (d)(16) (advance land acquisition) would have three parts to it as follows:

(1) Paragraph (d)(16)(i) would allow the acquisition primarily of underutilized private railroad rights-of-way (ROW). It reflects current FTA practice where present or recent rail operations on the ROW ensure that adjacent land uses remain generally compatible with the continued transportation use of the ROW;

(2) Paragraph (d)(16)(ii) would respond to the provisions of the TEA–21 section 1301 without attempting to elaborate on those provisions. Such elaboration would be covered in separate guidance on the issue of advance land acquisition; and,

(3) Paragraph (d)(16)(iii) would incorporate the text of current § 771.117(d)(12) covering hardship and protective acquisitions, without substantive change.

Paragraph (d)(17) (joint development) would incorporate part of the text of current § 771.117(d)(6) without substantive change.

Paragraph (d)(18) (bicycle facilities) would incorporate activities covered in the text of current § 771.117(c)(3). With this change, bicycle projects involving land acquisition and construction would require a written CE demonstration.

Paragraph (d)(19) (storm water management) would add a new CE that covers a transportation enhancement activity that may involve land acquisition and construction of storm water detention or retention ponds. It is, therefore, proposed to be included in the list where a CE demonstration is required.

Paragraph (d)(20) (historic transportation facilities) would add a new CE that covers a transportation enhancement activity that will have section 106 (historic preservation) implications. It is, therefore, proposed to be included in the list where a CE demonstration is required.

Paragraph (d)(21) (other transportation enhancements) would add a new CE that covers the other transportation enhancement activities and transit enhancements that are not explicitly listed.

We propose additional, nonregulatory guidance on situations where a group of different, but related, categorically excluded actions may need to be evaluated as a whole if they have a net effect that warrants further environmental analysis (e.g., ITS projects throughout a corridor).

Some commenters including the Michigan DOT, the AASHTO and others requested that advance right-of-way acquisition be added to the categorical exclusion list. The U.S. EPA was concerned about coordinating any expansions of the list with other Federal agencies and was particularly concerned about wetlands mitigation needs. The Ohio DOT suggested that rather than expand the list of categorical exclusions, our agencies develop "thresholds of significance" whereby projects within those thresholds would be those considered for categorical exclusions. Finally, a number of commenters, including the Ventura County Transportation Commission, the ARTBA, and the Oregon DOT supported the categorical exclusion of transportation enhancement activities and suggested categorically excluding congestion mitigation and air quality program (CMAQ) eligible projects. We have considered these comments in devising the proposed list. Nevertheless, we invite comment on these suggestions and on the appropriateness of the activities proposed to be categorically excluded, including whether or not specific activities should be included in the list under paragraph (c) or the list under paragraph (d). We encourage commenters to provide examples or information drawn from their

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experience bearing on the appropriateness of the proposed categorical exclusions. We also invite comments on the practice, begun with the 1987 regulation, of using an open-ended list of examples of activities that can be categorically excluded only after appropriate documentation has been prepared and approved on a case-by-case basis by the USDOT agency.

Section 1420.313 Environmental Assessments

Current § 771.119 would be redesignated as § 1420.313 with some minor editing changes.

Section 1420.315 Findings of No Significant Impact

Current § 771.121 would be redesignated as § 1420.121 with minor editing changes.

Section 1420.317 Draft Environmental Impact Statements

The proposed section would revise the current § 771.123 by expanding the description of both public involvement procedures and the information products developed in accordance to the proposed 23 CFR part 1410. Paragraph (b) would specifically indicate that the scoping process must consider the results of the planning process including public involvement and interagency coordination. Items related to mitigation would be expanded to include environmental enhancements. Paragraph (b) would now emphasize public involvement and interagency coordination. Paragraph (c) would add language to our goals and policies in terms of implementing NEPA. The discussion on the use of consultants in the development of the draft EIS would be removed to avoid repetition with proposed § 1420.301.

Section 1420.319 Final Environmental Impact Statements

Current § 771.125 would be redesignated as § 1420.319. Information would be added in paragraph (a)(1) to require any additional environmental studies, public involvement, and/or coordination to consider refinements of alternatives and mitigation to be presented in the FEIS.

Section 1420.321 Record of Decision

Current § 771.127 would be redesignated as § 1420.321. In paragraph (a), the information about preparation of the notice of availability would be expanded to indicate where and to whom the notice should be provided. In paragraph (c), wording would be added to emphasize that mitigation and enhancement features associated with the selected alternative become enforceable conditions of any U.S. DOT actions.

Section 1420.323 Re-evaluations

Current § 771.129 would be redesignated as § 1420.323. Paragraphs (a) through (c) are essentially unchanged from the current regulation. Paragraph (d) has been added to ensure public involvement and interagency coordination when the situation warrants. Guidance will be provided on this subject. We invite comment on how effective the proposed reevaluation provision would be in addressing projects which are implemented over an extended period of time, with construction occurring under multiple contracts. We also invite comment on the appropriate role of public involvement in reevaluations.

Section 1420.325 Supplemental Environmental Impact Statements

Current § 771.130 would be redesignated as § 1420.325. It is essentially unchanged from the current regulation except that supplementation now includes consideration of public involvement and interagency coordination.

Section-by-Section Analysis of the Proposed Rule on Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites

For ease of reference, a distribution table is provided for the current sections and proposed sections as follows:

Current Section	Proposed Section	
None	1430.101	Purpose.
771.109(a)(1) and(2) and part of 771.135(b)	1430.105	Applicability.
771.135(a)	1430.103	Mandate.
771.135(c) and (e)	1430.109	Significance.
771.135(p)(1),(2),(4), and (7)	1430.107	Use of land.
771.135(d),(f),(g),(h), and (p)(5)	1430.111	Exceptions.
771.135(a)(2), part of (b), part of (i), (j),(k),(l),(p)(3), and (p)(6)	1430.113	Evaluations under NEPA.
771.135(m) and (o)	1430.115	Separate evaluations.
771.135(i)[last sentence]	1430.117	Programmatic evaluations.
771.135(o)	1430.119	Linkage to planning.
None	1430.121	Definitions.

Section 1430.101 Purpose

This new section would be added to state that this regulation implements 49 U.S.C. 303 and 23 U.S.C. 138 (section 4(f)).

Section 1430.103 Mandate

Current § 771.135(a)(1) would be redesignated as § 1430.103 without substantive change in text.

Section 1430.105 Applicability

Current §§ 771.109(a)(1) and (2) provide the basis for this proposed section. Also, part of § 771.135(b) would be incorporated to make clear that the U.S. DOT agency decides the applicability of section 4(f).

Section 1430.107 Use of Land

Current § 771.135(p)(1), (2), (4), and (7) would be redesignated as § 1430.107 without substantive change.

Section 1430.109 Significance of the Section 4(f) Resource

Current § 135(c) and (e) would be redesignated as § 1430.109 without substantive change.

Section 1430.111 Exceptions

Current § 771.135(d), (g), (h), and (p)(5) would be redesignated as § 1430.111 without substantive change. The proposed section also incorporates the current § 771.135(f), except that the consultation requirement has been modified to be consistent with the new 36 CFR part 800 recently published by the Advisory Council on Historic Preservation. As proposed, the provision is silent with respect to the relationship between "adverse effects" under 36 CFR part 800 and "constructive use" under this regulation. We invite comment as to whether or not a specific relationship should be established in this regulation. We also invite comment as to other measures that we might take to better

coordinate the section 4(f) process with the process established under 36 CFR 800. The proposed section also has three new provisions in paragraphs (a), (b), and (c), stating that section 4(f) would not apply to park roads, parkways, trails, transportation enhancement activities, and transit enhancements where the purpose of the U.S. DOT agency approval of transportation funding is to improve the section 4(f) resource.

Section 1430.113 Section 4(f) Evaluations and Determinations Under the NEPA Umbrella

Current § 771.135(a)(2), (j), (k), (l), (p)(3), (p)(6), most of (i), and part of (b) would be redesignated as § 1430.113 without substantive change. The proposed section also would include a new provision in proposed paragraph (b) allowing consideration of the products of the planning process in the section 4(f) evaluation. Both the current and proposed regulation continue to codify in regulation language of the Supreme Court decision in Overton Park (401 U.S. 402 (1971)) that an avoidance alternative must be preferred unless the evaluation demonstrates that there are "unique problems or unusual features associated with it, or that the cost, the social, economical, or environmental impacts, or the community disruption resulting from such alternatives reach extraordinary magnitudes." We invite comment on whether or not this standard deserves further definition in regulation or in guidance in light of changes to the highway program in the years since the court's decision. In particular, we would appreciate views on whether or not the qualitative importance or value of the section 4(f) resource should be explicitly taken into account in determining whether or not an avoidance alternative is "feasible and prudent," especially when balancing the impacts of the various alternatives.

Section 1430.115 Separate Section 4(f) Evaluations

Current § 771.135(m) and (n) would be redesignated as § 1430.115 without substantive change.

Section 1430.117 Programmatic Section 4(f) Evaluations

The last sentence of current § 771.135(i) would be redesignated as § 1430.117, including a new explanatory introductory sentence. The proposed provision would provide a clear regulatory basis for programmatic section 4(f) evaluations and approvals, a practice which the Department of Transportation has used from time to time. For example, programmatic section 4(f) evaluations have been prepared for the following situations: Bikeways, historic bridges, projects involving minimal use of property for historic properties and projects involving minimal use of parkland. We invite suggestions of additional situations that would be appropriate subjects of future programmatic section 4(f) evaluations.

Section 1430.119 Linkage with Transportation Planning

Current § 771.135(o) would be redesignated as § 1430.119 and would remain substantively unchanged except that the concept of a preliminary section 4(f) evaluation has been extended to the planning process in exactly the same way it previously applied to first-tier EISs.

Section 1430.121 Definitions

A new § 1430.121 would be added to provide a consistent set of definitions of terms used in the planning regulations (23 CFR part 1410), the NEPA regulation (23 CFR part 1420), and this regulation (23 CFR part 1430).

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address or via the electronic addresses provided above. The FHWA and the FTA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FHWA and the FTA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA and the FTA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

We have determined that this proposed action is a significant regulatory action within the meaning of Executive Order 12866, and under the Department of Transportation regulatory policies and procedures because of substantial State, local government, congressional, and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals. We anticipate that the economic impact of this rulemaking will be minimal. Most costs associated with these rules are attributable to the provisions of the TEA–21, the ISTEA, the Clean Air Act (as amended), and other statutes including earlier highway acts.

We consider this proposal to be a means to simplify, clarify, and reorganize existing regulatory requirements. There have been no changes to NEPA or CEQ regulations. These rules would merely revise existing NEPA regulations of the FHWA and the FTA and conform those regulations to the environmental streamlining requirements of TEA–21. In response to congressional direction in TEA–21, the U.S. DOT is proposing to implement improved coordinated environmental review processes for highway and transit projects. States have been carrying out statewide transportation planning activities with title 23, U.S.C., and FTA planning and research funds for many years. Neither the individual nor the cumulative impact of this action would be significant because this action would not alter the funding levels available to the States for Federal or federally-assisted programs covered by the TEA–21.

The amendments impose no additional requirements. The environmental streamlining process under section 1309 of TEA–21 establishes coordinated environmental review processes by which U.S. DOT would work with other Federal agencies to assure that major highway and transit projects are advanced according to cooperatively determined time frames. Such processes have been incorporated into a memorandum of understanding between U.S. DOT and other Federal agencies.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), we have evaluated the effects of this rule on small entities, such as local governments and businesses. The TEA–21 provides the flexibility for these agencies to provide the resources necessary to meet any time limits established under environmental streamlining. Additionally, the FHWA has issued guidance concerning transportation funding for Federal agency coordination using a full range of options for reimbursement under appropriate authorities. Accordingly, the FHWA and the FTA certify that this action would not have a significant economic impact on a substantial

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number of small entities. This proposed action would merely update and clarify existing procedures. We specifically invite comments on the projected economic impact of this proposal, and will actively consider such information before completing our Regulatory Flexibility Act analysis when adopting final rules.

Environmental Impacts

We have also analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and preliminarily conclude that this action would not have any effect on the quality of the human and natural environment and is therefore categorically excluded under 23 CFR 771.117(c)(20). The TEA–21 directs the implementation of a coordinated environmental review process for highway construction projects, yet, also ensures that such concurrent review shall not result in a significant adverse impact to the environment or substantively alter the operation of Federal law. Time periods for review shall be consistent with time periods established by the Council on Environmental Quality under 40 CFR 1501.8 and 1506.10. As stated in the TEA–21, nothing in section 1309 (the environmental streamlining section) shall affect the applicability of NEPA or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient Federalism implications on States and local governments that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. The TEA–21 directs the DOT to establish an integrated NEPA review and permitting process and to encourage approvals as early as possible in the scoping and planning process, yet also to maintain an emphasis on a strong environmental policy. Throughout the proposed regulation there is an effort to keep administrative burdens to a minimum.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway planning and construction (or 20.217, Motor Carrier Safety). The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Paperwork Reduction Act

This proposal contains no new collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. This notice of proposed rulemaking would encourage the coordination of approvals by Federal agencies involved in the NEPA process and could reduce the level of recordkeeping.

The information prepared by non-Federal parties pursuant to this proposed regulation is exempt from the requirements of the Paperwork Reduction Act. First, the collection of information does not entail reporting of information in response to identical questions. NEPA documents do not involve answering specific questions; they address issues relating to the requirements of multiple Federal environmental statutes. There are too many variables relating to the proposed action, the location in which the action is to be taken, and the statutes that are implicated (and to what extent) to permit a standardized format or content. The issues to be addressed in NEPA documents are therefore determined on a case by case basis. Each is a one of a kind document.

Second, the information is not requested of non-Federal entities but of Federal agencies. The State and local transportation departments and transit agencies compiling information are voluntarily serving as consultants to FHWA and FTA for their own convenience. As the proposers of the actions subject to NEPA, and the owners, operators, and maintainers of the resulting facility, and key decisionmakers regarding the choices involved in project development, it is easier for them to prepare the NEPA documents. Information is not requested of outside entities except within the PRA exception relating to "facts or opinions submitted in response from general solicitations of comments for the general public (5 CFR 1320.3(h)(4)."

Third, State and local departments of transportation and transit agencies develop this information reported to FHWA/FTA as a normal part of doing business. NEPA documents contain engineering and environmental information that is integral to developing projects in a way that conforms to State and local laws. The development of engineering and environmental information is an unavoidable step in project development whether or not the Federal government is involved. We invite comments on this analysis.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to healthy or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 771

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Reporting and recordkeeping requirements.

23 CFR Part 1420

Environmental impact statements, Grant programs—transportation, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

23 CFR Part 1430

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Mass transportation, Public lands, Recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

49 CFR Part 622

Environmental impact statements, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

49 CFR Part 623

Environmental protection, Grant programs—transportation, Mass Transportation, Public lands, Recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Federal Highway Administration

23 CFR Chapter I

For reasons set forth in the preamble, and under the authority of 23 U.S.C. 109, 128, 134, 138, and 315, the Federal Highway Administration proposes to amend Chapter I of title 23, Code of Federal Regulations, as follows:

PART 771—[REMOVED]

1. Remove part 771.

23 CFR Chapter IV

For reasons set forth in the preamble, the Federal Highway Administration and the Federal Transit Administration propose to amend proposed Chapter IV in title 23, Code of Federal Regulations (published elsewhere in this **Federal Register**), as set forth below:

2. Add parts 1420 and 1430 to read as follows:

PART 1420—NEPA AND RELATED PROCEDURES FOR TRANSPORTATION DECISIONMAKING

Subpart A—Purpose, Policy, and Mandate

Sec.

1420.101 Purpose.
1420.103 Relationship of this regulation to the CEQ regulation and other guidance.
1420.105 Applicability of this part.
1420.107 Goals of the NEPA process.
1420.109 The NEPA umbrella.
1420.111 Environmental justice.
1420.113 Avoidance, minimization, mitigation, and enhancement responsibilities.

Subpart B—Program and Project Streamlining

1420.201 Relation of planning and project development processes.
1420.203 Environmental streamlining.
1420.205 Programmatic approvals.
1420.207 Quality assurance process.
1420.209 Alternate procedures.
1420.211 Use of this part by other U.S. DOT agencies.
1420.213 Emergency action procedures.

Subpart C—Process and Documentation Requirements

1420.301 Responsibilities of the participating parties.
1420.303 Interagency coordination.
1420.305 Public involvement.
1420.307 Project development and timing of activities.
1420.309 Classes of actions.
1420.311 Categorical exclusions.
1420.313 Environmental assessments.
1420.315 Findings of no significant impact.
1420.317 Draft environmental impact statements.
1420.319 Final environmental impact statements.
1420.321 Record of decision.
1420.323 Re-evaluations.
1420.325 Supplemental environmental impact statements.

Subpart D—Definitions

1420.401 Terms defined elsewhere.
1420.403 Terms defined in this part.

Authority: 23 U.S.C. 109, 128, 134, 138 and 315; 42 U.S.C. 2000d–2000d–4, 4321 *et seq.*, and 7401 *et seq.*; 49 U.S.C. 303, 5301(e), 5303, 5309, and 5324 (b) and (c); 49 CFR 1.48, and 1.51; 33 CFR 115.60(b); 40 CFR parts 1500–1508.

Subpart A—Purpose, Policy, and Mandate

§ 1420.101 Purpose.

The purpose of this part is to establish policies and procedures of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969 (NEPA) as amended, and to supplement the regulation of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508. In concert with 23 CFR 1410 this part sets forth a NEPA process that integrates and streamlines the compliance with all applicable transportation and environmental laws that govern Federal transportation decisionmaking.

§ 1420.103 Relationship of this regulation to the CEQ regulation and other guidance.

The CEQ regulation lays out NEPA responsibilities for all Federal agencies. This FHWA/FTA regulation supplements the CEQ regulation with specific provisions regarding the FHWA/FTA approach to implementing NEPA for the Federal surface transportation actions under their jurisdiction. For a full understanding of NEPA responsibilities relative to the FHWA/FTA actions, the reader must refer to both this regulation and the CEQ regulation. In addition, the FHWA/FTA will rely on nonregulatory guidance materials, training courses, and documentation of best practices in the management of their NEPA responsibilities. The available materials and training course schedules are posted on the FHWA and the FTA web sites and can be obtained by contacting Planning and Environment Program Manager, Federal Highway Administration, Washington, DC 20590 or Associate Administrator for Planning, Federal Transit Administration, Washington, DC 20590.

§ 1420.105 Applicability of this part.

(a)(1) The provisions of this part and the CEQ regulation apply to actions where a U.S. DOT agency exercises sufficient control and has the statutory authority to condition the action or approval. Actions taken by the applicant or others that do not require any U.S. DOT agency approval or over which a U.S. DOT agency has no discretion, including, but not limited to, projects or maintenance on Federal-aid highways or transit systems not involving Federal-aid funds or approvals, and actions from which the U.S. DOT agency are excluded by law or regulation, are not subject to this part.

(2) This part does not apply to, or alter approvals by the U.S. DOT agencies made prior to the effective date of this part.

(3) NEPA documents accepted or prepared by the U.S. DOT agency after the effective date of this part shall be developed in accordance with this part.

(b) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the actions covered by each environmental impact statement (EIS) or environmental assessment (EA), or designated a categorical exclusion (CE) shall:

(1) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made;

(2) Connect logical termini, if linear in configuration, and be of sufficient length or size to address environmental matters over a sufficiently wide area that all reasonably foreseeable impacts are considered; and

(3) Not restrict consideration of alternatives for other reasonably

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foreseeable transportation improvements.

§ 1420.107 Goals of the NEPA process.

(a) It is the intent of the U.S. DOT agencies that the NEPA principles of environmental stewardship and the Transportation Equity Act for the 21st Century (TEA–21) objective of timely implementation of transportation facilities and provision of transportation services should guide Federal, State, local, and tribal decisionmaking on all transportation actions subject to these laws. Accordingly, in administering their responsibilities under numerous transportation and environmental laws, the U.S. DOT agencies will manage the NEPA process to maximize attainment of the following goals:

(1) *Environmental ethic.* Federal actions reflect concern for, and responsible choices that preserve, communities and the natural environment, in accordance with the purpose and policy direction of NEPA (42 U.S.C. 4321 and 4331), and the specific mandates of statutes, regulations, and executive orders.

(2) *Environmental justice.* Disproportionate adverse effects on minority and low income populations are identified and addressed; no person, because of handicap, age, race, color, sex, or national origin, is excluded from participating in, denied the benefits of, or subject to discrimination under any U.S. DOT agency program or activity conducted in accordance with this regulation.

(3) *Integrated decisionmaking.* Federal transportation approvals are coordinated in a logical fashion with other Federal reviews and approvals, and with State, local, and tribal governmental actions, and actions by private entities, in recognition of interdependencies of decisions by the various parties and the procedural umbrella that the NEPA process provides for facilitating decisionmaking.

(4) *Environmental streamlining.* Federal transportation and environmental reviews and approvals are completed in a timely fashion through a coordinated review process.

(5) *Collaboration.* Transportation decisions are made through a collaborative partnership involving Federal, State, local, and tribal agencies, communities, interest groups, private businesses, and interested individuals.

(6) *Transportation problem solving.* Transportation decisions represent cost effective solutions to current and future problems based on an interdisciplinary evaluation of alternative courses of action.

(7) *Financial stewardship.* Public funds are used to achieve the maximum benefit for the financial investment in accordance with governing statutes and regulations.

§ 1420.109 The NEPA umbrella.

(a) In keeping with the above goals, it is the policy of the FHWA/FTA that the NEPA process be the means of bringing together all legal responsibilities, issues, and interests relevant to the transportation decision in a logical way to evaluate alternative courses of action, and that it lead to a single final decision regarding the key characteristics of a proposed action (such as, location, major design features, mitigation measures, and environmental enhancements). This decision shall be made in the best overall public interest based on a balanced consideration of the need for safe and efficient transportation; the social, economic, and environmental benefits and impacts of the proposed action; and the attainment of national, State, tribal, and local environmental protection goals.

(b) Any environmentally related study, review, or consultation required by Federal law should be conducted within the framework of the NEPA process to assure integrated and efficient decisionmaking. The State is encouraged to conduct its activities during the NEPA process toward the same goal.

(c) Federal responsibilities to be addressed in the NEPA process whenever applicable to the decision on the proposed action include, but are not limited to the following protections of:

(1) *Individual rights:*

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) and related statutes;

(ii) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*), as amended;

(iii) Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*);

(iv) 49 U.S.C. 5332, nondiscrimination;

(v) 49 U.S.C. 5324(a), relocation requirements;

(vi) 23 U.S.C. 128 and 49 U.S.C. 5323(b), public hearing requirements;

(2) *Communities and community resources:*

(i) Executive Order 12898 (59 FR 7629, 3 CFR, 1995 comp., p. 859), environmental justice for minority and low-income populations;

(ii) 49 U.S.C. 303, protection of public parks and recreation areas;

(iii) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;

(iv) 49 U.S.C. 5324(b), economic, social, and environmental effects of transit;

(v) 23 U.S.C. 109(i), highway noise standards;

(vi) Clean Air Act (23 U.S.C. 109(j), 42 U.S.C. 7509 and 7521(a) *et seq.*), as amended;

(vii) Safe Drinking Water Act (42 U.S.C. 201 and 300);

(viii) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201–4209);

(ix) National Flood Insurance Act (42 U.S.C. 1401, 2414, 4001 to 4127);

(x) Solid Waste Disposal Act (Public Law 89–272; 42 U.S.C. 6901 *et seq.*);

(xi) Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*);

(xii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*);

(xiii) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11001 to 11050);

(3)*Cultural resources and aesthetics:*

(i) 49 U.S.C. 303, protection of historic sites;

(ii) National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(iii) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;

(iv) 49 U.S.C. 5324(b), economic, social, and environmental effects of transit;

(v) 23 U.S.C. 109(i), highway noise standards;

(vi) Clean Air Act (23 U.S.C. 109(j), 42 U.S.C. 7509 and 7521(a) *et seq.*), as amended;

(vii) Safe Drinking Water Act (42 U.S.C. 201 and 300);

(viii) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201–4209);

(ix) National Flood Insurance Act (42 U.S.C. 1401, 2414, 4001 to 4127);

(x) Solid Waste Disposal Act (Public Law 89–272; 42 U.S.C. 6901 *et seq.*);

(xi) Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*);

(xii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*);

(xiii) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11001 to 11050);

(3) *Cultural resources and aesthetics:*

(i) 49 U.S.C. 303, protection of historic sites;

(ii) National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(iii) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;

(iv) 49 U.S.C. 5324(b), economic, social, and environmental effects of transit;

(v) Archeological and Historic Preservation Act (16 U.S.C. 469);

(vi) Archeological Resources Protection Act (16 U.S.C. 470aa to 47011);

(vii) Act for the Preservation of American Antiquities (16 U.S.C. 431 to 433);

(viii) American Indian Religious Freedom Act (42 U.S.C. 1996 *et seq.*);

(ix) Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 to 3013);

(x) 23 U.S.C. 144(o), historic bridges;

(xi) 23 U.S.C. 530, wildflowers;

(xii) 23 U.S.C. 131, 136, 319, highway beautification;

(4) *Waters and water-related resources:*

(i) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;

(ii) 49 U.S.C. 5324(b), economic, social, and environmental effects of transit;

(iii) Federal Water Pollution Act, as amended (33 U.S.C. 1251 to 1376);

(iv) Wild and Scenic Rivers Act (16 U.S.C. 1271 to 1287);

(v) Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460);

(vi) Water Bank Act (16 U.S.C. 1301 to 1311);

(vii) Executive Order 11990 (42 FR 26961; 3 CFR, 1977 comp., p. 121), protection of wetlands; ,

(viii) Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3921 to 3931);

(ix) Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*);

(x) Executive Orders 11988 (42 FR 26951; 3 CFR, 1977 comp., p. 1171) and 12148 (44 FR 43239; 3 CFR, 1979 comp., p. 412), floodplain management;

(5) *Wildlife, plants and natural areas:*

(i) Endangered Species Act of 1973 (7 U.S.C. 136, 16 U.S.C. 1531 to 1543);

(ii) 49 U.S.C. 303, protection of wildlife and waterfowl refuges;

(iii) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;

(iv) 9 U.S.C. 5324(b), economic, social, and environmental effects of transit;

(v) Marine Protection Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 to 1445, 33 U.S.C. 1401 to 1445);

(vi) Fish and Wildlife Coordination Act (16 U.S.C. 661 to 666);

(vii) Wilderness Act (16 U.S.C. 1131 to 1136);

(viii) Wild and Scenic Rivers Act (16 U.S.C. 1271 to 1287);

(ix) Coastal Zone Management Act of 1972 (16 U.S.C. 1451 to 1464);

(x) Coastal Barrier Resources Act (16 U.S.C. 3501 to 3510, 42 U.S.C. 4028);

(xi) National Trails System Act (16 U.S.C. 1241 to 1249);

(xii) Executive Order 13112 (64 FR 6183), Invasive Species.

§ 1420.111 Environmental justice.

(a) In accordance with the goals established in Executive Order 12898, as implemented by DOT Order 5610.2 and the FHWA Order 6640.23,[1] and the requirements of the Civil Rights Act of 1964, Title VI, and its implementing regulations, proposed actions shall be developed in a manner to avoid or mitigate disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, on low income populations and minority populations. Adverse effects can include a denial of or reduction in benefits.

(b) In performing an environmental analysis of proposed actions, applicants must analyze data necessary to determine whether the actions will have disproportionately high and adverse effects on low income and minority communities. When disproportionately high and adverse effects are found, the applicant must identify measures to address these disproportionate effects, including actions to avoid or mitigate them, or it must explain and justify why such measures cannot be taken.

(c) The findings and determinations made pursuant to paragraphs (a) and (b) of this section must be documented as part of the NEPA document prepared for the proposed action, or in a supplemental document if the NEPA process has been completed.

(d) In accordance with Executive Order 12898, DOT Order 5610.2, and the FHWA Order 6640.23, nothing in this section is intended to, nor shall create, any right to judicial review of any action taken by the agency, its officers or its recipients taken under this section to comply with such Orders.

§ 1420.113 Avoidance, minimization, mitigation, and enhancement responsibilities.

(a) In accordance with the goals established in § 1420.107, it is the policy of the FHWA and the FTA that proposed actions be developed as described in this section, to the fullest extent practicable. For the purposes of this section, "practicable" means a common sense balancing of environmental values with safety, transportation need, costs, and other relevant factors in decisionmaking. No additional findings or paperwork are required.

(1) Adverse social, economic, and environmental impacts to the affected human communities and the natural environment should be avoided.

(2) Where adverse impacts cannot be avoided, proposed measures should be developed to minimize adverse impacts.

(3) Measures necessary to mitigate unavoidable adverse impacts be incorporated into the action, or should be part of a mitigation program completed in advance of the action.

(4) Environmental enhancements should be evaluated and incorporated into the action as appropriate.

(b) Mitigation measures and environmental enhancements shall be eligible for Federal funding to the fullest extent authorized by law.

(c) NEPA commitments.

(1) It shall be the responsibility of the applicant in cooperation with the U.S. DOT agency to implement those mitigation measures and environmental enhancements, stated as commitments in the final EIS/ROD, EA/FONSI, or CE prepared or supplemented pursuant to this regulation, unless the commitment is modified or eliminated in a supplemental final EIS/ROD, EA/FONSI or CE, or re-evaluation approved by the U.S. DOT agency.

(2) If a final EIS/ROD, EA/FONSI, CE, or other U.S. DOT agency approval commits to coordination with another agency during the final design and construction phase, or during the operational phase of the action, the applicant is responsible for such coordination, unless the commitment is removed in a supplemental final EIS/ROD, EA/FONSI or CE, or re-evaluation approved by the U.S. DOT agency.

Subpart B—Program and Project Streamlining

§ 1420.201 Relationship of planning and project development processes.

(a) The planning products described in § 1410.318 shall be considered early in the NEPA process. The FTA and the FHWA encourage all Federal, State and local agencies with project level responsibilities for investments included in a transportation plan to participate in the planning process so as to maximize the usefulness of the planning products for the NEPA process and eliminate duplication.

(b) Applicants preparing documents under this part shall, to the maximum extent useful and practicable, incorporate and utilize analyses, studies, documents, and other sources of information developed during the transportation planning processes of 23 CFR part 1410 and other planning processes in satisfying the requirements of the NEPA process. The provisions of 40 CFR 1502.21 (incorporation by reference) will be used as appropriate.

[1] These documents are available for inspection and copying as prescribed at 49 CFR part 7.

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(c) During scoping for an EIS or early coordination for an environmental assessment, the U.S. DOT agency and the applicant shall, in consultation with the transportation planning agencies responsible for inclusion of the project in the metropolitan (if applicable) and statewide plan and program, review the record of previously completed planning activities, including any existing statement of purpose and need and evaluation of alternatives. Where the U.S. DOT agency, in cooperation with the applicant, determines that planning decisions are adequately supported, the detailed evaluation of alternatives required under § 1420.313(b) or § 1420.317(c) may be limited to the no action and reasonable alternatives requiring further consideration. In deciding which of the evaluations and conclusions of the planning process are adequately supported and may be incorporated during the NEPA process, the U.S. DOT agency and the applicant shall take into account the following:

(1) The validity and completeness of the supporting analyses,

(2) The public involvement process associated with those planning products,

(3) The degree of coordination with Federal, State, and local resource agencies with interest in or authority over the ultimate action(s); and

(4) The level of formal endorsement of the analyses and conclusions by participants in the planning process.

§ 1420.203 Environmental streamlining.

(a) For highway and mass transit projects requiring an environmental impact statement, an environmental assessment, or an environmental review, analysis, opinion, or environmental permit, license, or approval by operation of Federal law, as lead Federal agency, the U.S. DOT agency, in cooperation with the applicant, shall perform the following:

(1) Consult with the applicant regarding the issues involved, the likely Federal involvement, and project timing.

(2) Early in the NEPA process, contact Federal agencies likely to be involved in the proposed action to verify the nature of their involvement and to discuss issues, methodologies, information requirements, time frames and constraints associated with their involvement.

(3) Identify and use the appropriate means listed in 40 CFR 1500.4 and 1500.5 for reducing paperwork and reducing delay.

(4) Document the results of such consultation and distribute to the appropriate Federal agencies for their concurrence, identifying at a minimum the following:

(i) Federal reviews and approvals needed for the action,

(ii) Those issues to be addressed in the NEPA process and those that need no further evaluation,

(iii) Methodologies to be employed in the conduct of the NEPA process,

(iv) Proposed agency and public involvement processes, and

(v) A process schedule.

(5) Identify, during the course of completing the NEPA process, points of interagency disagreement causing delay and immediately take informal measures to resolve or reduce delay. If these measures are not successful in a reasonable time, the U.S. DOT agency shall initiate a dispute resolution process pursuant to section 1309 of the TEA–21.

(b) A State may request that all State agencies with environmental review or approval responsibilities be included in the coordinated environmental review process and, with the consent of the U.S. DOT agency, establish an appropriate means to assure that Federal and State environmental reviews and approvals are fully coordinated.

(c) At the request of the applicant, the coordinated environmental review process need not be applied to an action not requiring an environmental impact statement.

(d) In accordance with the CEQ regulations on reducing paperwork (40 CFR 1500.4), NEPA documents prepared by DOT agencies need not devote paper to impact areas and issues that are not implicated in the proposed action and need not make explicit findings on such issues.

§ 1420.205 Programmatic approvals.

(a) Nothing in this part shall prohibit the U.S. DOT agency from making approvals which apply to future actions consistent with the conditions established for such programmatic approvals.

(b) Applicants shall cooperate with the U.S. DOT agency in conducting program evaluations to ensure that such programmatic approvals are being properly applied.

§ 1420.207 Quality assurance process.

(a) The FHWA and the FTA shall institute a process to assure that actions subject to this part meet or exceed legal requirements and are processed in a timely manner.

(b) For actions processed with an environmental impact statement, this process shall include a legal sufficiency review and may require the prior concurrence of the Headquarters office in accordance with procedures established by the FTA and the FHWA.

§ 1420.209 Alternate procedures.

(a) An applicant may propose to the U.S. DOT agency alternative procedures for complying with the intent of this part with respect to its actions.

(b) The U.S. DOT agency shall publish such alternative procedures in the **Federal Register** for notice and comment and shall consult with the CEQ pursuant to 40 CFR 1507.3.

(c) After taking into account comments received, and negotiating with the applicant appropriate changes to such alternative procedures, the U.S. DOT agency shall approve such alternative procedures only after making a finding that the alternative procedures will be fully effective at complying with NEPA and related responsibilities.

§ 1420.211 Use of this part by other U.S. DOT agencies.

As authorized by the Secretary, other U.S. DOT agencies may use this part for specific actions or categories of actions under their jurisdiction.

§ 1420.213 Emergency action procedures.

Requests for deviations from the procedures in this part because of emergency circumstances shall be referred to the U.S. DOT agency for evaluation and decision in consultation with the CEQ in accordance with 40 CFR 1506.11.

Subpart C—Process and Documentation Requirements

§ 1420.301 Responsibilities of the participating parties.

(a) The CEQ regulation establishes rules for lead agencies (40 CFR 1501.5) and cooperating agencies (40 CFR 1501.6). It also encourages Federal agencies to cooperate with State and local agencies to eliminate duplication (40 CFR 1506.2) and defines the relationship between Federal agencies, applicants, and contractors (40 CFR 1506.5).

(b) For actions on Federal lands that are developed directly by the U.S. DOT agency in cooperation with the Federal land management agency, responsibilities for management of the NEPA process shall be as established by interagency agreement or procedure.

(c) Use of contractors.

(1) The U.S. DOT agency or an applicant may select and use contractors, in accordance with applicable contracting procedures, and the provisions of 40 CFR 1506.5(c), in support of their respective roles in the NEPA process. An applicant which is a State agency with statewide jurisdiction may select a contractor to assist in the preparation of an EIS. Where the applicant is not a State agency with statewide jurisdiction, the applicant may select a contractor, after coordination with the U.S. DOT agency to assure compliance with 40 CFR 1506.5(c) relative to conflict of interest. Contractors that have a role in the actual writing of a NEPA document shall execute a disclosure statement in accordance with 40 CFR 1506.5(c), specifying that such contractor has no financial or other interest in the outcome of the action (other than engineering with the exception allowed by paragraph (c)(2) of this section, if applicable), and will not acquire such an interest prior to the approval of the final NEPA document by the U.S. DOT agency or the termination of the contractor's involvement in writing the NEPA document, whichever occurs first.

(2) A State may procure the services of a consultant, under a single contract, for environmental impact assessment and subsequent engineering and design work, provided that the State conducts a review that assesses the objectivity of the NEPA work in accordance with the provisions of 23 U.S.C. 112(g).

§ 1420.303 Interagency coordination.

(a) Interagency coordination during the NEPA process involves the early and continuing exchange of information with interested Federal, State, local public agencies, and tribal governments. Interagency coordination should begin early as part of the planning process and continue through project development, the preparation of an appropriate NEPA document, and, by agreement, into the implementation stage of the action. Interested agencies include those that express a continuing interest in any aspect of the actions during the planning process and project development processes. They include those agencies whose jurisdiction, responsibilities, or expertise may involve any aspect of the action or its alternatives. The purpose of interagency coordination is to aid in determining the class of action, the scope of the NEPA document, the identification of key issues, the appropriate level of analysis, methods of avoidance, minimization, and mitigation of adverse impact, opportunities for environmental enhancement, and related environmental requirements. Coordination early in the NEPA process must extend beyond agencies consulted during the planning process to those agencies whose interest begins only when preliminary designs of alternative actions are being developed. The appropriate frequency and timing of coordination with a particular agency will depend on the interests of the agency consulted.

(b) Federal land management entities, neighboring States, and tribal governments, that may be significantly affected by the action or by any of the alternatives shall be notified early in the NEPA process and their views solicited by the applicant in cooperation with the U.S. DOT agency.

(c) Upon U.S. DOT agency written approval of an EA, FONSI, separate section 4(f) determination, or CE designation, the applicant shall send a notice of availability of the approved document, or a copy of the approved document itself, to the affected units of Federal, State, and local government. The notice shall briefly describe the action and its location and impacts. Cooperating agencies shall be provided a copy of the approved document.

§ 1420.305 Public involvement.

(a) The applicant must have a continuing program of public involvement which actively encourages and facilitates the participation of transportation and environmental interest groups, citizens groups, private businesses, and the general public including minority and low income populations through a wide range of techniques for communicating and exchanging information. The applicant shall use the products of the public involvement process developed during planning pursuant to 23 CFR 1410.212 and 1410.316, whenever such information is reasonably available and relevant, to provide continuity between the public involvement programs.

(b) Each applicant developing projects under this part must adopt written procedures to carry out the public involvement requirements of this section and 40 CFR 1506.6, and, as appropriate, 23 U.S.C. 128, and 49 U.S.C. 5323(b) and 5324(b). The applicant's public involvement procedures shall apply to all classes of action as described in § 1420.309 and shall be developed in cooperation with other transportation agencies with jurisdiction in the same area, so that, to the maximum extent practicable, the public is presented with a consistent set of procedures that do not vary with the transportation mode of the proposed action or with the phase of project development. Where two or more involved parties have separate established procedures, a cooperative process for determining the appropriate public involvement activities and their consistency with the separate agency's procedures will be cooperatively established.

(c) Public involvement procedures must provide for the following:

(1) Coordination of public involvement activities with the entire NEPA process and, when appropriate, with the planning process. The procedures also must provide for coordination and information required to comply with public involvement requirements of other related laws, executive orders, and regulations;

(2) Early and continuing opportunities for the public to be informed about, and involved in the identification of social, economic, and environmental impacts and impacts associated with relocation of individuals, groups, or institutions;

(3) The use of an appropriate variety of public involvement activities, techniques, meeting and hearing formats, and notification media;

(4) A scoping process that satisfies the requirements of 40 CFR 1501.7;

(5) One or more public hearings or the opportunity for hearing(s) to be held at a convenient time and place that encourage public participation, for any project which requires the relocation of substantial numbers of people, substantially changes the layout or functions of connecting transportation facilities or of the facility being improved, has a substantial adverse impact on abutting property, substantially affects a community or its mass transportation service, otherwise has a substantial social, economic, environmental or other effect, or for which the U.S. DOT agency determines that a public hearing is in the public interest;

(6) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing where a hearing is determined appropriate. Such notice shall indicate the availability of explanatory information;

(7) Where appropriate, the submission to the U.S. DOT agency of a transcript of each public hearing and a certification (pursuant to 23 U.S.C. 128 or 49 U.S.C. 5324(b)(2)) that a required hearing or hearing opportunity was offered. The transcript should be accompanied by copies of all written statements from the public, submitted either at the public hearing or during an announced period after the public hearing;

(8) Specific procedures for complying with the public and agency involvement and notification requirements for the following: EAs, Findings of no significant impact (FONSI), Draft EISs, Final EISs, and Records of decision (ROD);

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(9) Reasonable accommodations for participation by persons with disabilities, including, upon request, the provision of auxiliary aids and services for understanding speakers at meetings and environmental documents.

(d) Where a re-evaluation of NEPA documents is required pursuant to § 1420.323, the U.S. DOT agency and the applicant will determine whether changes in the project or new information warrant additional public involvement.

(e) A minimum public comment period of 45 days shall be provided prior to the initial adoption or substantial revision of public involvement procedures.

(f) Public involvement procedures in effect as of the date of this part remain valid, but will be reviewed periodically for effectiveness.

§ 1420.307 Project development and timing of activities.

(a) The FHWA and/or the FTA will not approve the initiation and will not authorize funding for final design activities, property acquisition (except the types of advance land acquisitions described in § 1420.311(d)(16)), purchase of construction materials or transit vehicles, or construction, until the following have been completed:

(1)(i) The action has been classified as a categorical exclusion (CE), or

(ii) A FONSI has been approved, or

(iii) A final EIS has been approved, made available for the prescribed period of time, and a record of decision has been signed;

(2) The U.S. DOT agency has received transcripts of public hearings held, and any required certifications that a hearing or opportunity for a hearing was provided; and

(3) The planning and programming requirements of 23 CFR part 1410 have been met.

(b) Before completion of the NEPA document, if it becomes apparent that the preferred alternative will not be consistent with the design concept and scope of the action identified in the relevant plan and TIP, the applicant shall immediately notify the State agency responsible for the State TIP, and, in metropolitan areas, the MPO, so that the planning and programming requirements of 23 CFR part 1410 can be satisfied prior to the approval of a final EIS, Record of Decision, FONSI or CE.

(c) Compliance with the requirements of all applicable environmental laws, regulations, executive orders, and other related requirements as set forth in § 1420.109 should be completed prior to the approval of the final EIS, FONSI, or the CE designation. If full compliance is not possible by the time the final EIS or FONSI is prepared, the final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. However, full compliance with the U.S. EPA's conformity regulation at 40 CFR parts 51 and 93 is required prior to the approval of the ROD, FONSI or CE designation. Approval of the NEPA document constitutes adoption of DOT agency findings and determinations that are contained therein unless otherwise specified. The FHWA approval of the appropriate NEPA document will constitute its finding of compliance with the report requirements of 23 U.S.C. 128. The FTA approval of the appropriate NEPA document indicates compliance with 49 U.S.C. 5324(b) and fulfillment of the grant application requirements of 49 U.S.C. 5323(b), if such requirements are applicable to the action.

(d) The completion of the requirements set forth in this section is considered the U.S. DOT agency's acceptance of the location of the action and design concepts described in the NEPA document unless otherwise specified by the approving official. However, such acceptance does not commit the U.S. DOT agency to approve any future grant request to fund the preferred alternative.

§ 1420.309 Classes of actions.

(a) Class I (EISs). Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions normally requiring an EIS:

(1) A new controlled access freeway.

(2) A highway project of four or more lanes on a new location.

(3) New construction or major extension of fixed rail transit facilities (e.g., rapid rail, light rail, automated guideway transit).

(4) New construction or major extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

(5) New construction or major extension of an intercity railroad not located within existing railroad right-of-way.

(6) A multimodal or intermodal facility that includes or requires any of the other Class I actions.

(b) Class II (Categorical Exclusions). Actions that do not individually or cumulatively have a significant environmental impact are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in § 1420.311(c). Additional actions not listed may be designated as CEs pursuant to § 1420.311(d), if documented environmental studies demonstrate that the action would not, either individually or cumulatively, have a significant environmental impact.

(c) Class III (EAs). Actions in which the significance of the environmental impact is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate, subsequent NEPA document (i.e., Findings of no significant impact or EIS).

§ 1420.311 Categorical exclusions.

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and are known, on the basis of past experience with similar actions, not to involve significant environmental impacts. They are actions which: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the U.S. DOT agency, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Unique environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by 49 U.S.C. 303 (section 4(f)) or section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulation (40 CFR 1508.4) and § 1420.311(a) of this regulation. If other environmental laws (i.e., those listed in § 1420.109(c)) do not apply to the action, then it does not require any further NEPA approval by the U.S. DOT agency. If the U.S. DOT agency is not sure of the applicability of one of these CEs or of other environmental laws to a particular proposed action, the applicant will be required to provide supporting documentation in accordance with paragraph (d) of this section. The following are CEs:

(1) Activities which do not involve or lead directly to construction, such as program administration (e.g., personnel actions, procurement of consulting services or office supplies); the promulgation of rules, regulations, directives, and legislative proposals; planning and technical studies; technical assistance activities; training and research programs; technology transfer activities; research activities as defined in 23 U.S.C. 501–507; archaeological planning and research; approval of a unified planning work program; development and establishment of management systems under 23 U.S.C. 303; approval of project concepts under 23 CFR part 476; preliminary engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; Federal-aid system revisions which establish classes of highways; and designation of highways to the National Highway System.

(2) Modernization of a highway by resurfacing.

(3) Routine maintenance or minor rehabilitation of existing transportation facilities, including pavements, tracks, railbeds, bridges, structures, stations, terminals, maintenance shops, storage yards, and buildings, that occurs entirely on or within the facility, where there is no change in the character and use of the facility, and no substantial disruption of service or traffic; purchase of associated capital maintenance items; preventive maintenance of transit facilities, vehicles, and other equipment.

(4) Incorporation of an Intelligent Transportation Systems (ITS) element into an existing transportation facility or service, including the development, purchase, installation, maintenance, improvement, and operation of a traveler information system, incident management and emergency response system, traffic management and control system, security system, or MAYDAY system that enables public agencies to detect and respond to emergency situations.

(5) Activities included in the State's highway safety program under 23 U.S.C. 402; enforcement of railroad safety regulations, including the issuance of emergency orders.

(6) Improvement of existing rest areas, toll collection facilities, truck weigh stations, traffic management and control centers, and vehicle emissions testing centers where no substantial land acquisition or traffic disruption will occur.

(7) Carpool and vanpool projects, as defined in 23 U.S.C. 146, if no substantial land acquisition or traffic disruption will occur.

(8) Emergency repairs of highways, roads and trails under 23 U.S.C. 125; emergency repair of transit or railroad facilities after a natural disaster or catastrophic failure.

(9) Operating assistance to transit agencies.

(10) Acquisition of buses, rail vehicles, paratransit vehicles, and transit-support vehicles, where the use of these vehicles can be accommodated by existing facilities or by new facilities which are themselves CEs.

(11) Purchase or installation of operating or maintenance equipment to be located within an existing transportation facility with no significant impacts off the site; lease of existing facilities, vehicles, or other equipment for use in providing transit services; capital cost of contracting for transit services.

(12) Bus and rail car rehabilitation, including the retrofit or replacement of vehicles for alternative fuels, where the use of these vehicles can be accommodated by existing facilities or new facilities which are themselves CEs.

(13) Improvement of existing tracks, railbeds, communications systems, signal systems, security systems, and electrical power systems when carried out within the existing right-of-way without substantial service disruption.

(14) Construction of bicycle and pedestrian lanes, paths, and facilities within existing transportation facilities or right-of-ways; installation of equipment for transporting bicycles on transit vehicles.

(15) Alterations to transportation facilities or vehicles in order to make them accessible by persons with disabilities.

(16) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, lighting, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(17) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action; approvals of disposals of excess right-of-way; transfer of surplus assets, in accordance with 49 U.S.C. 5334(g); approval of utility installations along or across a transportation facility.

(18) Landscaping, streetscaping, public art and other scenic beautification; control and removal of outdoor advertising; acquisition of scenic easements and scenic or historic sites for the purpose of preserving the site.

(19) Installation of noise barriers or other alterations to existing facilities to provide for noise reduction; alterations to existing non-historic buildings to provide for noise reduction.

(20) Contributions to statewide or regional efforts to conserve, restore, enhance, and create wetlands or wildlife habitats.

(d) Additionally, for individual proposed actions to be categorically excluded under this section, the applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied, that significant environmental effects will not result, that the applicant's public involvement process is consistent with the procedures adopted pursuant to § 1420.305, that any appropriate interagency coordination has occurred, and that any other applicable environmental laws (*e.g.*, those listed in § 1420.109(c)) have been satisfied. This demonstration may require investigations of specific areas of impact to determine whether the CE criteria are satisfied. If the DOT agency is not certain that the appropriateness of the CE has been demonstrated, additional documentation or an EA or EIS will be required of the applicant. Examples of actions for which a CE demonstration may be possible include, but are not limited to:

(1) Modernization of a highway through restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (*e.g.*, parking, weaving, turning, climbing lanes), or travel lanes in the median of an existing facility, including any such action necessary to accommodate other transportation modes on an existing facility.

(2) Transportation operational improvements, including those that use ITS, such as, freeway surveillance and control systems, traffic signal monitoring and control systems, transit management systems, electronic fare payment systems, and electronic toll collection systems.

(3) Transportation safety improvements and programs; hazard eliminations, including construction of grade separation to replace existing highway-railway grade crossings; projects to mitigate hazards caused by wildlife; and seismic retrofit of existing transportation facilities or structures.

(4) Rehabilitation or reconstruction of tunnels, bridges, and other structures, and the approaches thereto.

(5) Modification or replacement of an existing bridge on essentially the same alignment or location.

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(6) Construction of parking facilities or carpool and vanpool projects that involve land acquisition and construction.

(7) Construction of new buildings to house transportation management and control centers, carpool and vanpool operations centers, or vehicle emissions testing centers.

(8) Construction of new rest areas, toll collection facilities, truck weigh stations or auto emissions testing or safety testing facilities.

(9) Approvals for changes in highway access control.

(10) Improvement of existing tracks, railbeds, communications systems, signal systems, security systems, and electrical power systems, including construction of sidings or passing tracks; extension or expansion of rail electrification on existing, operating rail lines.

(11) Construction of new bus or rail storage and maintenance facilities in undeveloped areas or areas used predominantly for industrial or transportation purposes, where such facility is compatible with existing zoning, the site is located on or near a street with adequate capacity to handle anticipated traffic, and there is no significant air or noise impact on the surrounding community.

(12) Renovation, reconstruction, or improvement of existing rail, bus, and intermodal buildings and facilities, including conversion to use by alternative-fuel vehicles.

(13) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) or intermodal transfer facilities, when located in a commercial area or other high activity center in which there is adequate street capacity for projected traffic.

(14) Rehabilitation, renovation, or improvement of existing ferry terminals, piers, and facilities.

(15) Short-term demonstrations of rail service on existing tracks.

(16) An acquisition of land or property interests that meets the criteria of paragraph (d)(16)(i), (ii) or (iii) of this section may be evaluated against the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section separately from any planned action that would use the land or property interests. Any subsequent action that would use the acquired right-of-way or property interests and would require a DOT agency action must be separately reviewed in accordance with this part prior to any construction on, or change in the land. The following types of acquisitions may qualify as CEs:

(i) Acquisition of an existing transportation right-of-way which is linear in its general configuration and is not publicly owned, such as a railroad or a private road, for the purpose of either maintaining preexisting levels of transportation service on the facility or of preserving the right-of-way for a future transportation action or transportation enhancement activity.

(ii) Acquisition of land, easements, or other property interests with the intent of preserving alternatives for a future transportation action, where the following conditions are met: The transportation action that would use the land or property interests has been specifically included in a transportation plan for the area adopted pursuant to 23 CFR part 1410 and such plan has been found by the U.S. DOT agency to conform to air quality plans in accordance with 40 CFR parts 51 and 93, if applicable; and the acquisition will not limit the evaluation of alternatives to the planned action that would use the land or property interests including shifts in alignment that may be required.

(iii) Acquisition of land or property interests for hardship or protective purposes where the following conditions are met: The transportation action that would use the land or property interests has been specifically included in a transportation plan for the area adopted pursuant to 23 CFR part 1410 and such plan has been found by the U.S. DOT agency to conform to air quality plans in accordance with 40 CFR parts 51 and 93, if applicable; the hardship and protective buying will be limited to a particular parcel or a small number of parcels related to the planned transportation action; and the acquisition will not limit the evaluation of alternatives to the planned action that would use the land or property interests, including shifts in alignment that may be required.

(17) Approvals for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(18) Construction of a bicycle transportation facility on its own, new right-of-way.

(19) Mitigation of water pollution due to storm water runoff from transportation facilities.

(20) Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad or bus facilities and canals).

(21) Transportation enhancement activities and transit enhancements defined in 23 U.S.C. 101 and 49 U.S.C. 5302.

§ 1420.313 Environmental assessments.

(a) An EA shall be prepared by the applicant in consultation with the U.S. DOT agency for each action(s) that is not a CE and does not clearly require the preparation of an EIS, or where the U.S. DOT agency believes an EA would assist in determining the need for an EIS.

(b) The EA shall evaluate the social, economic, and environmental impacts of the proposed action, reasonable alternatives that would avoid or reduce adverse impacts, measures which would mitigate adverse impacts, and environmental enhancements if any that would aid in harmonizing the action with the surrounding community. The EA shall discuss compliance with other related environmental laws, regulations, and executive orders.

(c) The EA is subject to U.S. DOT agency approval before it is made available to the public as a U.S. DOT agency document.

(d) For actions that require an EA, the applicant, in consultation with the U.S. DOT agency, shall do the following:

(1) Conduct interagency coordination in accordance with § 1420.303, beginning at the earliest appropriate time, to advise agencies of the proposed action and to achieve the following objectives: Determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures which might avoid or mitigate adverse impacts; identify environmental enhancements that might aid in harmonizing the action with the surrounding community; and identify other environmental review and coordination requirements which should be performed concurrently with the EA. The results of interagency coordination to the time of EA approval by the U.S. DOT agency shall be included in the EA.

(2) Provide for public involvement in accordance with the procedures established pursuant to § 1420.305. Public involvement to the time of EA approval by the U.S. DOT agency shall be summarized in the EA.

(e) The EA need not be circulated for comment but the document must be made available for inspection in public places readily accessible to the affected community in accordance with paragraphs (f) and (g) of this section. Notice of availability of the EA, briefly describing the action(s) and its impacts, or a copy of the EA, shall be sent by the applicant to the affected units of Federal, State and local government.

(f) When, in accordance with the public involvement procedures established pursuant to § 1420.305, a public hearing on an action evaluated in an EA is held, the following shall occur:

(1) The EA shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing.

(2) The notice of the public hearing in local newspapers shall announce the availability of the EA and where it may be obtained or reviewed.

(3) Pursuant to 40 CFR 1501.4(c) comments shall be submitted in writing to the applicant or the U.S. DOT agency within 30 days of publication of the notice of availability of the EA unless the U.S. DOT agency determines, for good cause, that a different period is warranted.

(g) When, in accordance with the public involvement procedures established pursuant to § 1420.305, a public hearing on an action evaluated in an EA is not held, the following shall occur:

(1) The applicant shall place a notice in a newspaper(s) similar to a public hearing notice at an appropriate stage of development of the action.

(2) The notice shall advise the public of the availability of the EA, state where information concerning the action may be obtained, and invite comments from all parties with an interest in the social, economic, or environmental aspects of the action.

(3) Pursuant to 40 CFR 1501.4(c) comments shall be submitted in writing to the applicant or the U.S. DOT agency within 30 days of the publication of the notice unless the U.S. DOT agency determines, for good cause, that a different period is warranted.

(h) If no significant impacts are identified, the applicant shall consider the public and agency comments received; revise the EA as appropriate; furnish the U.S. DOT agency a copy of the revised EA, the public hearing transcript, where applicable, and copies of any comments received and responses thereto; and recommend a FONSI. The revised EA shall also document compliance, to the fullest extent possible, with other related environmental laws, regulations, and executive orders applicable to the action, or provide reasonable assurance that the requirements will be met. Full compliance with the transportation conformity rule (40 CFR parts 51 and 93) and the planning regulation (23 CFR part 1410) is required before completion of the FONSI.

(i) If, at any point in the EA process, the U.S. DOT agency determines that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

(j) Any action which normally would be classified as an EA but could involve unusual circumstances, such as, substantial controversy on community impact and/or environmental grounds, will require the U.S. DOT agency, in cooperation with the applicant, to determine if the EA is the appropriate level of documentation.

§ 1420.315 Findings of no significant impact.

(a) The U.S. DOT agency will review the EA and other documents submitted pursuant to § 1420.313 (e.g., copies of any hearing transcript and written comments, and the applicant's responses). If the U.S. DOT agency agrees with the applicant's recommendation of a FONSI, it will make such finding in writing and incorporate by reference the EA and any other related documentation.

(b) Pursuant to 40 CFR 1501.4(e)(2), for proposed actions which are either similar to ones normally requiring an EIS or are without precedent and the U.S. DOT agency is processing the action with an EA and expects to issue a FONSI, copies of the EA and proposed FONSI shall be made available for review by the public and affected units of government for a minimum of 30 days before the U.S. DOT agency makes its final decision. This public availability shall be announced by a notice similar to a public hearing notice.

(c) After a FONSI has been made by the U.S. DOT agency, a notice of availability of the FONSI shall be sent by the applicant to the affected units of Federal, State and local government, and the document shall be available from the applicant and the U.S. DOT agency upon request by the public. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(d) Where substantial changes are made to the project and/or its potential impacts after the public review period for the EA, the applicant, pursuant to § 1420.323(c), shall make copies of the revised EA and the FONSI available for review by the public and affected units of government for a minimum of 30 days before the U.S. DOT agency makes its final decision, unless the U.S. DOT agency determines, for good cause, that a different period is warranted.

(e) If another Federal agency has issued a FONSI on an action which includes an element proposed for U.S. DOT agency action, the U.S. DOT agency will evaluate the other agency's EA/FONSI. If the U.S. DOT agency determines that this element of the action and its environmental impacts have been adequately identified and assessed, the U.S. DOT agency will issue its own FONSI in accordance with paragraphs (a), (b), (c) and (d) of this section, incorporating the other agency's FONSI and any other related documentation. If environmental issues have not been adequately identified and assessed, the U.S. DOT agency will require appropriate environmental studies to complete the assessment.

§ 1420.317 Draft environmental impact statements.

(a) A draft EIS shall be prepared when the U.S. DOT agency determines that the action(s) is likely to cause significant impacts on the environment or if the preparation of an EIS is otherwise appropriate. When the decision has been made by the U.S. DOT agency to prepare an EIS, the U.S. DOT agency will publish a Notice of Intent (40 CFR 1508.22) in the **Federal Register**. Applicants must announce the intent to prepare an EIS by appropriate means at the local level in accordance with the public involvement procedures established pursuant to § 1420.305.

(b) The U.S. DOT agency, in cooperation with the applicant, will publish the Notice of Intent and begin a scoping process to establish the scope of the draft EIS and the work necessary for its preparation. The documented results of the planning process relevant to the action, including the public involvement and interagency coordination that has occurred, must be considered in scoping. Scoping is normally achieved through the actions taken to comply with the public involvement procedures and interagency coordination required by §§ 1420.303 and 1420.305. The scoping process will: Review the range of alternatives and impacts and the major issues to be addressed in the EIS; aid in determining which aspects of the proposed action have potential for social, economic, or environmental impact; help identify measures which might mitigate adverse environmental impacts; identify environmental enhancements that might aid in harmonizing the action with the surrounding community; identify other environmental review and coordination requirements that must be performed concurrently with the EIS preparation; and achieve the other objectives of 40 CFR 1501.7 and environmental streamlining (§ 1420.203). If a public scoping meeting is to be held, it must be announced in the U.S. DOT agency 's Notice of Intent and by an appropriate means at the local level.

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(c) The draft EIS shall be prepared by the U.S. DOT agency in cooperation with the applicant or, where permitted by 40 CFR 1506.5, by the applicant with appropriate guidance and participation by the U.S. DOT agency. The draft EIS shall evaluate all reasonable alternatives and may rely on information developed in accordance with 23 CFR part 1410. The draft EIS shall discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall evaluate the social, economic, and environmental impacts of the proposed action, reasonable alternatives that would avoid or reduce adverse impacts, measures which would mitigate adverse impacts, and environmental enhancements that would aid in harmonizing the action with the surrounding community. Alternatives must be sufficiently well-defined to allow full evaluation of the specific alignment and design variations that would avoid or minimize adverse impacts. The draft EIS shall summarize the public involvement and interagency coordination to the time of its approval. The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by other related environmental laws, regulations, and executive orders to the extent appropriate at this stage in the environmental process.

(d) The U.S. DOT agency, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet.

(e) A lead, joint lead, or a cooperating agency shall be responsible for printing and distributing the draft EIS. The initial printing of the draft EIS shall be in sufficient quantity to meet requests for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with U.S. DOT agency concurrence, the party requesting the draft EIS may be charged a fee which is not more than the actual cost of reproducing the copy and also must be informed of the nearest location where the draft EIS may be reviewed without charge.

(f) The draft EIS shall be circulated for comment by the applicant on behalf of the U.S. DOT agency. The draft EIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency in accordance with 40 CFR 1506.9. The draft EIS shall be transmitted to the following:

(1) Public officials, interest groups, and members of the public known to have an interest in the proposed action or alternatives;

(2) Federal, State and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action, and to the State intergovernmental review contacts established under Executive Order 12372; and

(3) Neighboring States and Federal land management entities which may be affected by any of the alternatives.

(g) Public hearing requirements are to be carried out in accordance with the provisions of § 1420.305 and this section. Whenever a public hearing is held, the draft EIS shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS shall be mentioned, and public comments requested, in any public hearing notice and at any public hearing presentation. If a public hearing is not held, a notice shall be placed in a newspaper similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(h) Through the U.S. Environmental Protection Agency's notice of availability (40 CFR 1506.10), the U.S. DOT agency shall establish a period of not less than 45 days for the receipt of comments on the draft EIS. The draft EIS or a transmittal letter sent with each copy of the draft EIS shall identify where comments are to be sent and when the comment period ends.

§ 1420.319 Final environmental impact statements.

(a)(1) After circulation of a draft EIS and consideration of comments received, a final EIS shall be prepared by the U.S. DOT agency in cooperation with the applicant or, where permitted by 40 CFR 1506.5, by the applicant with appropriate guidance and participation by the U.S. DOT agency. Preparation of the final EIS will involve such additional public involvement, interagency coordination, and engineering or environmental studies as are necessary to consider the appropriateness of refinements in the alternatives and the incorporation of mitigation measures and environmental enhancements in response to comments received on the draft EIS.

(2) Every reasonable effort shall be made to resolve interagency disagreements on actions before processing the final EIS. If major issues remain unresolved, the final EIS shall identify those issues and the coordination and other efforts made to resolve them.

(3) The final EIS shall evaluate all reasonable alternatives considered and identify the preferred alternative. It shall also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement and interagency coordination, and describe the environmental design features, including mitigation measures and environmental enhancements, that are incorporated into the proposed action. Environmental design features or other mitigation measures presented as commitments in the final EIS shall be incorporated into the action. The final EIS shall also document compliance with other related environmental laws, regulations, and executive orders applicable to the action, and, if full compliance is not possible, provide reasonable assurance that the requirements will be met.

(b) The U.S. DOT agency will indicate approval of the final EIS by signing and dating the cover page. Approval of the final EIS does not commit the U.S. DOT agency to approve any future grant request.

(c) The initial printing of the final EIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with U.S. DOT agency concurrence, the party requesting the final EIS may be charged a fee which is not more than the actual cost of reproducing the copy and also must be informed of the nearest location where the final EIS may be reviewed without charge.

(d) The final EIS shall be transmitted to any persons, organizations, or agencies that made substantive comments on the draft EIS and to anyone requesting a copy, no later than the time the document is filed with the U.S. EPA. In the case of lengthy documents, the U.S. DOT agency may allow alternative circulation processes in accordance with 40 CFR 1502.19. The applicant shall publish a notice of availability in local newspapers and make the final EIS available through the mechanism established pursuant to DOT Order 4600.13 [2] which implements Executive Order 12372. The final EIS shall be available for public review at the applicant's offices and at appropriate DOT agency offices for at least 30 days after the U.S. EPA publication of the **Federal Register** notice of availability. Copies should also be made available for public review at institutions such as local government

[2] This document is available for inspection and copying as prescribed in 49 CFR part 7.

offices, libraries, and schools, as appropriate.

§ 1420.321 Record of decision.

(a) The U.S. DOT agency will complete and sign a record of decision (ROD) no sooner than 30 days after the U.S. EPA publication in the **Federal Register** of the notice of availability for the final EIS or 90 days after the U.S. EPA publication of the notice for the draft EIS, whichever is later. The ROD will present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures and environmental enhancements that have been incorporated into the action, and document any required section 4(f) approval in accordance with 23 CFR part 1430. Until the ROD has been signed, no further approvals relative to the action may be given except those for administrative activities taken to secure further project funding and for other activities consistent with the limitation on actions in 40 CFR 1506.1. The applicant, in coordination with the U.S. DOT agency shall publish a notice of availability of the ROD for public review in a newspaper of general circulation, and, to the extent practicable, provide the approved ROD to all persons, organizations, and agencies that received a copy of the final EIS pursuant to § 1420.319(d).

(b) After issuance of a ROD, the U.S. DOT agency shall issue a revised ROD if it wishes to approve an alternative which was not identified as the preferred alternative but was fully evaluated in the final EIS or proposes to make substantial changes to the mitigation measures or findings discussed in the original ROD. Before issuing the revised ROD, the U.S. DOT agency shall consider whether additional notification, interagency coordination, and public involvement are needed in accordance with § 1420.303 and § 1420.305. To the extent practicable the approved revised ROD shall be provided to all persons, organizations and agencies that received a copy of the Final EIS pursuant to § 1420.319(d).

(c) Upon approval of the ROD, the mitigation and environmental enhancements in the final EIS associated with the alternative selected in the ROD become enforceable conditions of any subsequent grant related to the action or other DOT agency approval of the action. The U.S. DOT agency will ensure implementation of mitigation and environmental enhancements as described in § 1420.113.

§ 1420.323 Re-evaluations.

(a) A written evaluation of the draft EIS shall be prepared by the applicant in cooperation with the U.S. DOT agency if a final EIS is not approved by the U.S. DOT agency within three years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether a supplement to the draft EIS or a new draft EIS is needed.

(b) A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major DOT agency approval or grant.

(c) After approval of the EIS, FONSI, or CE designation, the applicant shall consult with the U.S. DOT agency prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested U.S. DOT action. These consultations will be documented when determined necessary by the U.S. DOT agency.

(d) A re-evaluation under this section shall include additional notification, interagency coordination, and public involvement as appropriate in accordance with § 1420.303 and § 1420.305.

§ 1420.325 Supplemental environmental impact statements.

(a) A draft EIS or final EIS may be supplemented whenever the U.S. DOT agency determines that supplementation would improve decisionmaking, better inform the agency or the public, or serve other purposes. An EIS shall be supplemented whenever the U.S. DOT agency determines that:

(1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS.

(2) New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(b) A supplemental EIS will not be necessary where:

(1) The changes to the proposed action, new information, or new circumstances result in the actual lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or

(2) The U.S. DOT agency decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a ROD shall be prepared and circulated in accordance with § 1420.321.

(c) Where the U.S. DOT agency is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the U.S. DOT agency deems appropriate, an EA to assess the impacts of the changes, new information, or new circumstances. If, based upon the studies, the U.S. DOT agency determines that a supplemental EIS is not necessary, the U.S. DOT agency shall so indicate in the project file.

(d) A supplement is to be developed using the same process and format (i.e., draft EIS, final EIS, and ROD) as an original EIS, except that scoping is not required. Public involvement and interagency coordination commensurate with the nature and scope of the supplemental EIS shall be conducted in accordance with § 1420.305 and the public involvement procedures developed thereunder.

(e) In some cases, a supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental EIS shall not necessarily prevent the granting of new approvals; require the withdrawal of previous approvals; or require the suspension of project activities for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a new evaluation of the entire action, or more than a limited portion of the overall action, the U.S. DOT agency shall suspend any activities which would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental EIS is completed.

Subpart D—Definitions

§ 1420.401 Terms defined elsewhere.

The definitions contained in the CEQ regulation (40 CFR 1508) and in titles 23 (23 U.S.C. 101) and 49 of the United States Code (49 U.S.C. 14202) are applicable except as modified in § 1420.403.

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§ 1420.403 Terms defined in this part.

The following definitions apply to this part and to part 1430 of this chapter:

Action means a surface transportation infrastructure or service investment (e.g., highway, transit, railroad, or mixed mode) proposed for direct implementation by the U.S. DOT agency or for the U.S. DOT agency financial assistance; and other activities, such as, joint or multiple use of right-of-way, changes in access control, that require a U.S. DOT agency approval or permit, but may or may not involve a commitment of Federal funds; and other FHWA or FTA program decisions, such as, promulgation of regulations and approval of programs, unless specifically defined by statute or regulation as not being an action.

Applicant means the Federal, State or local governmental authority that the U.S. DOT agency works with to conduct environmental studies and prepare environmental documents. For transportation actions implemented by the Federal government on Federal lands, the U.S. DOT agency or the Federal land management agency will take on the responsibilities of the applicant described herein.

Environmental enhancement means a measure which contributes to blending the proposed project harmoniously with its surrounding human communities and the natural environment and extends beyond those measures necessary to mitigate the specific adverse impacts resulting from a proposed transportation action. This includes measures eligible for Federal funding, such as transportation enhancement activities or transit enhancements, and measures funded by the applicant or by others.

Environmental studies means the investigations of potential social, economic, or environmental impacts conducted:

(1) As part of the metropolitan or statewide transportation planning process under 23 CFR part 1410,

(2) To determine the NEPA class of action and scope of analysis, and/or

(3) To provide information to be included in a NEPA decision process.

Hardship acquisition means the early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his/her property. This is justified when the property owner can document on the basis of health, safety, or financial reasons that remaining in the property poses an undue hardship compared to others.

Planning process means the process of developing metropolitan and statewide transportation plans and programs in accordance with 23 CFR part 1410.

Protective acquisition means the purchase of land to prevent imminent development of a parcel which is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

Section 4(f) means the provision in law which provides protection to certain public lands and all historic properties (now codified in 49 U.S.C. 303 and 23 U.S.C. 138).

Transportation conformity means the process for assuring or conformity of transportation projects, programs, and plans with the purpose of State plans for attainment and maintenance of air quality standards under the U.S. EPA regulation at 40 CFR parts 51 and 93. The process applies only to areas designated as nonattainment or maintenance for a transportation related pollutant.

U.S. DOT agency means the FHWA, the FTA, or the FHWA and the FTA together. In addition, U.S. DOT agency refers to any other agency within the U.S. Department of Transportation that uses this part as provided for in § 1420.209.

U.S. DOT agency approval means the approval by FHWA/FTA of the applicant's request relative to an action. The applicant's request may be for Federal financial assistance, or it may be for some other U.S. DOT agency approval that does not involve a commitment of Federal funds.

PART 1430—PROTECTION OF PUBLIC PARKS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES

Sec.

1430.101 Purpose.
1430.103 Mandate.
1430.105 Applicability.
1430.107 Use of land.
1430.109 Significance of the section 4(f) resource.
1430.111 Exceptions.
1430.113 Section 4(f) evaluations and determinations under the NEPA umbrella.
1430.115 Separate section 4(f) evaluations.
1430.117 Programmatic section 4(f) evaluations.
1430.119 Linkage with transportation planning.
1430.121 Definitions.

Authority: 23 U.S.C. 138 and 315; 49 U.S.C. 303; 49 CFR 1.48 and 1.51.

§ 1430.101 Purpose.

The purpose of this part is to implement 49 U.S.C. 303 and 23 U.S.C. 138 which were originally enacted as section 4(f) of the Department of Transportation Act of 1966 and are still commonly referred to as section 4(f).

§ 1430.103 Mandate.

(a) The U.S. DOT agency may approve a transportation project that uses publicly owned land from a significant public park, recreation area, or wildlife and waterfowl refuge, or any land from a significant historic site only if the U.S. DOT agency has determined that:

(1) There is no feasible and prudent alternative to the use of land from the property; and

(2) The project includes all possible planning to minimize harm to the property resulting from such use.

(b) [Reserved]

§ 1430.105 Applicability.

(a) This part applies to transportation projects that require an approval by the U.S. DOT agency, where the U.S. DOT agency has sufficient control and the statutory authority to condition the project or approval.

(b) The U.S. DOT agency will determine the applicability of section 4(f) in accordance with this part.

(c) This part does not apply to or alter approvals by the U.S. DOT agency made prior to the effective date of this regulation.

§ 1430.107 Use of land.

(a) Except as set forth in paragraph (b) of this section and § 1430.111, use of land occurs:

(1) When land is permanently incorporated into a transportation facility;

(2) When there is a temporary occupancy of land that is adverse to the statutory purpose of preserving the natural beauty of that land, as determined by the criteria in paragraph (b) of this section; or

(3) When there is a constructive use of land as determined by the criteria in paragraph (c) of this section.

(b) A temporary occupancy of land occurs when the use is so minimal that it does not constitute a use within the meaning of section 4(f) (§ 1420.403) when the following conditions are satisfied:

(1) The duration of the occupancy must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;

(2) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the section 4(f) resource are minimal;

(3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purposes of the resource, on either a temporary or permanent basis;

(4) The land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project; and

(5) There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

(c) A constructive use of section 4(f) land occurs when the transportation project does not incorporate land from the section 4(f) resource, but the impacts of the project on the resource due to its proximity are so severe that the activities, features, or attributes that qualify the resource for the protection of section 4(f) are substantially impaired. The U.S. DOT agencies have reviewed the following situations and have determined that constructive use occurs when:

(1) The projected noise level increase attributable to the transportation project substantially interferes with the use and enjoyment of a noise-sensitive facility that is a resource protected by section 4(f), such as hearing the performances at a public outdoor amphitheater, sleeping in the sleeping area of a public campground, enjoyment of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance, or enjoyment of an urban park where serenity and quiet are significant attributes;

(2) The proximity of the project to the section 4(f) resource substantially impairs aesthetic features or attributes of a resource protected by section 4(f), where such features or attributes make an important contribution to the value of the resource. For example, substantial impairment of visual or aesthetic qualities occurs where a transportation structure is located in such proximity that it obstructs or eliminates the primary views of an architecturally significant historical building, or substantially detracts from the setting of a park or historic site which derives its value in substantial part from its setting;

(3) The project restricts access to the section 4(f) property and, as a result, substantially diminishes the utility of the resource;

(4) The vibration impact from operation of the project substantially impairs the use of a section 4(f) resource, such as vibration levels from a rail project that are great enough to affect the structural integrity of a historic building or substantially diminish the utility of the building; or

(5) The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife or waterfowl refuge adjacent to the project or substantially interferes with the access to a wildlife or waterfowl refuge, when such access is necessary for established wildlife migration or critical life cycle processes.

§ 1430.109 Significance of the section 4(f) resource.

(a) Consideration under section 4(f) is required when the Federal, State, or local officials having jurisdiction over a park, recreation area or refuge determine that the entire section 4(f) resource is significant. In the absence of such a determination, the section 4(f) land will be presumed to be significant, unless the U.S. DOT agency and the officials with jurisdiction have agreed, formally or informally, that the resource is not significant. The U.S. DOT agency will review the significance determination to assure its reasonableness.

(b) Section 4(f) applies to all properties on or eligible for the National Register of Historic Places. The U.S. DOT agency, in cooperation with the applicant, will consult with the State Historic Preservation Officer (SHPO) and appropriate local officials to identify such historic sites. Section 4(f) applies only to historic sites on or eligible for the National Register unless the U.S. DOT agency determines that the application of section 4(f) to a historic site is otherwise appropriate.

§ 1430.111 Exceptions.

(a) Consideration under section 4(f) is not required for any park road or parkway project developed in accordance with 23 U.S.C. 204.

(b) Consideration under section 4(f) is not required for trail-related projects funded through the Symms National Recreational Trails Act of 1991 (16 U.S.C. 1261).

(c) Consideration under section 4(f) is not required for "transportation enhancement activities" as defined in 23 U.S.C. 101(a) and transit enhancements as defined in 49 U.S.C. 5302(a)(15) if:

(1) The use of the section 4(f) property is solely for the purpose of preserving or enhancing the activities, features, or attributes that qualify the property for section 4(f) protection; and

(2) The Federal, State, or local official having jurisdiction over the property agrees in writing that the use is solely for the purpose of preserving or enhancing the section 4(f) activities, features, or attributes of the property and will, in fact, accomplish this purpose.

(d) Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses and are, in fact, managed for multiple uses, section 4(f) applies only to those portions of such lands which function as significant public parks, recreation areas, or wildlife refuges, or which are designated in the plans of the administering agency as being for, significant park, recreation, or wildlife purposes or historic sites. The determination as to which lands so function or are so designated, and the significance of those lands, shall be made by the officials having jurisdiction over the lands. The determination of significance shall apply to the entire area of lands which so function or are so designated. The U.S. DOT agency will review these determinations to assure their reasonableness.

(e) Consideration under section 4(f) is not required for the restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when:

(1) Such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and

(2) The SHPO has been consulted and has not objected to the U.S. DOT agency finding in paragraph (e)(1) of this section.

(f) Archeological sites.

(1) Section 4(f) applies to all archeological sites on or eligible for inclusion in the National Register, including those discovered during construction except as set forth in paragraph (f)(2) of this section. When section 4(f) requirements apply to archeological sites discovered during construction, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take into account the level of investment already made in the project. The review process, including the consultation with other agencies, will be shortened as appropriate.

(2) Section 4(f) requirements do not apply to archeological sites where the U.S. DOT agency, after consultation with the SHPO, determines that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken or where the U.S. DOT agency decides, with agreement of the SHPO, not to recover the data in the resource.

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(g) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made, and determinations of significance changed, late in the development of a project. With the exception of the treatment of archeological resources in paragraph (f) of this section, the U.S. DOT agency may permit a project to proceed without consideration under section 4(f) if the property interest in the section 4(f) lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to acquisition.

(h) Constructive use normally does not occur when:

(1) Compliance with the requirements of section 106 of the National Historic Preservation Act and 36 CFR part 800 for proximity impacts of the proposed action, on a site listed on or eligible for the National Register of Historic Places results in an agreement of no adverse effect;

(2) The projected traffic noise levels of a proposed nearby highway project do not exceed the FHWA noise abatement criteria given in Table 1, 23 CFR part 772, or the projected operational noise levels of a proposed nearby transit project do not exceed the noise impact criteria in the FTA guidelines (Federal Transit Administration, Transit Noise and Vibration Impact Assessment, April 1995, available from the FTA offices);

(3) The projected noise levels exceed the relevant threshold in paragraph (h)(2) of this section because of high existing noise, but the increase in the projected noise levels if the proposed project is constructed, when compared with the projected noise levels if the project is not built, is barely perceptible (3 dBA or less);

(4) A proposed transportation project will have proximity impacts on a section 4(f) property, but a governmental agency's right-of-way acquisition, an applicant's adoption of project location, or the U.S. DOT agency approval of a final NEPA document established the location of the project before the designation, establishment, or change in the significance of the section 4(f) property. However, if the property in question is a historic site that would be eligible for the National Register except for its age at the time that the project location is established, and construction of the project would begin after the site became eligible, then constructive use of the historic site may occur and such use must be evaluated;

(5) There are proximity impacts to a proposed public park, recreation area, or wildlife refuge, but the proposed transportation project and the resource are concurrently planned or developed. The following examples of such concurrent planning or development include, but are not limited to:

(i) Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation project and the section 4(f) resource; or

(ii) Designation, donation, planning or development of property by two or more governmental agencies, with jurisdiction for the potential transportation project and the section 4(f) resource, in consultation with each other;

(iii) Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features, or attributes that qualify a resource for protection under section 4(f);

(iv) Proximity impacts will be mitigated to a condition equivalent to, or better than, that which would occur under a no-build scenario;

(v) Change in accessibility will not substantially diminish the utilization of the section 4(f) resource; or

(vi) Vibration levels from project construction activities are mitigated, through advance planning and monitoring of the activities, to levels that do not cause a substantial impairment of the section 4(f) resource.

§ 1430.113 Section 4(f) evaluations and determinations under the NEPA umbrella.

(a) Alternatives to avoid the use of section 4(f) properties and measures to minimize harm to such land shall be developed and evaluated by the applicant in cooperation with the U.S. DOT agency. Such evaluation shall be initiated early when alternatives are under study. An alternative that avoids section 4(f) property must be preferred unless the evaluation demonstrates that there are unique problems or unusual factors associated with it, or that the cost, the social, economic, or environmental impacts, or the community disruption resulting from such alternative reach extraordinary magnitudes.

(b) In accordance with the concept of the NEPA umbrella in 23 CFR 1420.109, the section 4(f) evaluation is normally presented in the draft environmental impact statement (EIS), the environmental assessment (EA), or the categorical exclusion (CE) documentation. The evaluation may incorporate relevant information from the planning process in accordance with § 1430.119. A separate section 4(f) evaluation may be necessary as described in section § 1430.115.

(c) The section 4(f) evaluation shall be provided for coordination and comment to the officials having jurisdiction over the section 4(f) property and to the U.S. Department of the Interior, and as appropriate to the U.S. Department of Agriculture and the U.S. Department of Housing and Urban Development. A minimum of 45 days shall be established by the U.S. DOT agency for receipt of comments.

(d) When adequate support exists for a section 4(f) determination, the discussion in the final EIS, the finding of no significant impact (FONSI), the CE documentation, or the separate section 4(f) evaluation shall specifically address the following:

(1) The reasons why the alternatives to avoid a section 4(f) property are not feasible and prudent; and

(2) All measures incorporated into the project that will be taken to minimize harm to the section 4(f) property.

(e) The U.S. DOT agency is not required to determine that there is no constructive use. However, such a determination may be made at the discretion of the U.S. DOT agency. When a constructive use determination is made, it will be based, to the extent it reasonably can, upon the following:

(1) Identification of the current activities, features, or attributes of a resource that qualify it for protection under section 4(f) and which may be sensitive to proximity impacts;

(2) An analysis of the proximity impacts of the proposed project on the section 4(f) resource. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not implemented, since such impacts should not be attributed to the proposed project; and

(3) Consultation, on the above identification and analysis, with the Federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or historic site.

(f) For actions processed with an EIS, the U.S. DOT agency will make the section 4(f) determination either in its approval of the final EIS or in the record of decision (ROD). Where the section 4(f) approval is documented in the final EIS, the U.S. DOT agency will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property, and proposed to be processed with a FONSI or classified as a CE, shall not proceed until the U.S. DOT agency has given notification of section 4(f) approval. For these actions, any required section 4(f) approval will be documented in the FONSI, in the CE approval, if one is provided, or in a separate section 4(f) document.

(g) The final section 4(f) evaluation will be reviewed for legal sufficiency.

§ 1430.115 Separate section 4(f) evaluations.

(a) Circulation of a separate section 4(f) evaluation will be required when:

(1) A proposed modification of the alignment or design would require the use of section 4(f) land after the CE, FONSI, draft EIS, or final EIS has been processed;

(2) A proposed modification of the alignment, design, or measures to minimize harm after an original section 4(f) approval, would result in a substantial increase in the use of section 4(f) land or a substantial reduction in the measures to minimize harm included in the project;

(3) The U.S. DOT agency determines, after processing the CE, FONSI, draft EIS, or final EIS that section 4(f) applies to a property; or

(4) An agency whose actions are not subject to section 4(f) requirements is the lead agency for the NEPA process on an action that involves section 4(f) property and requires a U.S. DOT agency action.

(b) If the U.S. DOT agency determines under paragraph (a) of this section or otherwise, that section 4(f) is applicable after the CE, FONSI, or ROD has been processed, the decision to prepare and circulate a section 4(f) evaluation will not necessarily require the preparation of a new or supplemental NEPA document. Where a separately circulated section 4(f) evaluation is prepared after the CE, FONSI, or ROD has been processed, such evaluation does not necessarily:

(1) Prevent the granting of new approvals;

(2) Require the withdrawal of previous approvals; or

(3) Require the suspension of project activities for any activity not affected by the new section 4(f) evaluation.

§ 1430.117 Programmatic section 4(f) evaluations.

The U.S. DOT agency, in consultation with the U.S. Department of the Interior and other agencies, as appropriate, may make a programmatic section 4(f) determination for a class of similar projects. Uses of section 4(f) land covered by a programmatic section 4(f) evaluation shall be documented and coordinated as specified in the programmatic section 4(f) evaluation.

§ 1430.119 Linkage with transportation planning.

(a) An analysis required by section 4(f) may involve different levels of detail where the section 4(f) involvement is addressed during the planning process or in a tiered EIS.

(b) When a planning document or a first-tier EIS is intended to provide the basis for subsequent project development as provided in § 1420.201 and 40 CFR 1502.20, the detailed information necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation should be made of the potential impacts that a proposed action will have on section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm, to the extent that the level of detail at this stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the project development process have not been precluded by decisions made at this stage. This preliminary determination is then incorporated into official planning documents or the first-tier EIS.

(c) A section 4(f) approval made when additional design details are available will include a determination that:

(1) The preliminary section 4(f) determination made pursuant to paragraph (a) remains valid; and

(2) The criteria of § 1430.103 and § 1430.113(a) have been met.

§ 1430.121 Definitions.

The definitions contained in 23 CFR 1420.403, 23 U.S.C. 101(a), 49 U.S.C. 5302, and 40 CFR part 1508 are applicable to this part.

Federal Transit Administration

49 CFR Chapter VI

For the reasons set forth in the preamble, the Federal Transit Administration proposes to amend chapter VI of title 49, Code of Federal Regulations, as follows:

3. Revise part 622 to read as follows:

PART 622—NEPA AND RELATED PROCEDURES FOR TRANSPORTATION DECISIONMAKING

Subpart A—Purpose, Policy, and Mandate

Sec.

622.101 Cross-reference to subpart A of 23 CFR part 1420.

Subpart B—Program and Project Streamlining

622.201 Cross-reference to subpart B of 23 CFR part 1420.

Subpart C—Process and Documentation Requirements

622.301 Cross-reference to subpart C of 23 CFR part 1420.

Subpart D—Definitions

622.401 Cross-reference to subpart D of 23 CFR part 1420.

Authority: 23 U.S.C. 109, 128, 134 and 138; 42 U.S.C. 2000d–2000d–4, 4321 *et seq.*, and 7401 *et seq.*; 49 U.S.C. 303, 5301(e), 5303, 5309, and 5324(b) and (c); 49 CFR 1.51.

Subpart A—Purpose, Policy, and Mandate

§ 622.101 Cross-reference to subpart A of 23 CFR part 1420.

The regulations for complying with this subpart are set forth in subpart A of 23 CFR part 1420.

Subpart B—Program and Project Streamlining

§ 622.201 Cross-reference to subpart B of 23 CFR part 1420.

The regulations for complying with this subpart are set forth in subpart B of 23 CFR part 1420.

Subpart C—Process and Documentation Requirements

§ 622.301 Cross-reference to subpart C of 23 CFR part 1420.

The regulations for complying with this subpart are set forth in subpart C of 23 CFR part 1420.

Subpart D—Definitions

§ 622.401 Cross-reference to subpart D of 23 CFR part 1420.

The regulations for complying with this subpart are set forth in subpart D of 23 CFR part 1420.

4. Add a new part 623 to read as follows:

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PART 623—PROTECTION OF PUBLIC PARKS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES

Sec.
623.101 Cross-reference to 23 CFR part 1430.

Authority: 49 U.S.C. 303; 49 CFR 1.51.

§ 623.101 Cross-reference to 23 CFR part 1430.

The regulations for complying with 49 U.S.C. 303 are set forth in 23 CFR part 1430.

Issued on: May 18, 2000.

Vincent F. Schimmoller,
Acting Executive Director, Federal Highway Administration.

Nuria I. Fernandez,
Acting Administrator, Federal Transit Administration.

[FR Doc. 00–13022 Filed 5–19–00; 1:15 pm]

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Thursday,
May 25, 2000

Part V

Department of Transportation

Federal Highway Administration

23 CFR Parts 655 and 940
Intelligent Transportation System Architecture and Standards; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 655 and 940

[FHWA Docket No. FHWA–99–5899]

RIN 2125–AE65

Intelligent Transportation System Architecture and Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to implement section 5206(e) of the Transportation Equity Act for the 21st Century (TEA–21), enacted on June 9, 1998, requiring Intelligent Transportation System (ITS) projects funded through the highway trust fund to conform to the National ITS Architecture and applicable standards. Because it is highly unlikely that the entire National ITS Architecture would be fully implemented by any single metropolitan area or State, the FHWA proposes in this NPRM (the ITS Architecture NPRM) that the National ITS Architecture be used to develop a local implementation of the National ITS Architecture, which is referred to as an "ITS regional architecture." Therefore, conformance with the National ITS Architecture is defined under this proposal as development of an ITS regional architecture based on the National ITS Architecture, and the subsequent adherence of ITS projects to the ITS regional architecture. The ITS regional architecture would consist of a concept of operations and a conceptual design, which would draw from the National ITS Architecture, but would be tailored to address the local situation and ITS investment needs. The ITS regional architecture follows from the ITS integration strategy developed in another NPRM entitled "Statewide Transportation Planning; Metropolitan Transportation Planning" also published in today's **Federal Register**. In this NPRM, the FHWA proposes the use of the system engineering process and applicable standards and interoperability tests adopted by the DOT.

DATES: Written comments must be received on or before August 23, 2000. For dates of public information meetings see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–40, 400 Seventh Street, SW, Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard. For addresses of public information meetings see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For technical information*: Mr. Bob Rupert, (202) 366–2194, Office of Travel Management (HOTM–1) and Mr. Mike Freitas, (202) 366–9292, ITS Joint Program Office. *For legal information*: Mr. Wilbert Baccus, Office of the Chief Counsel (HCC–32), (202) 366–1346, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the US DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

The document may also be viewed at the DOT's ITS home page at *http://www.its.dot.gov*.

Public Information Meetings

The DOT will hold a series of seven public briefings within the comment period for the NPRM. The purposes of these briefings is to explain the content of the NPRM and encourage public input to the final rulemaking. The meetings will address this NPRM, a companion NPRM on the metropolitan and statewide planning process (FHWA RIN 2125–AE62; FTA RIN 2132–AA66), and the NPRM entitled, "NEPA [National Environmental Policy Act of 1969] and Related Procedures for Transportation Decisionmaking, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites" (NEPA/NPRM; FHWA RIN 2125–AE64; FTA RIN 2132–AA43). The meetings will be scheduled from approximately 8:00 a.m. to 5:00 p.m. at the locations listed above. Changes in the information below will be made available after the publication of this NPRM through the FHWA and the FTA websites, other public announcement avenues and the newsletters and websites of major stakeholder groups. Individuals wishing information but without access to these sources may contact the individuals listed above.

The structure of the meetings will emphasize brief presentations by the DOT staff regarding the content of the NPRMs. A period for clarifying questions will be provided. Under current statutory and regulatory provisions, the DOT staff will not be permitted to engage in a substantive dialog regarding what the content of the NPRMs and the final regulations should be. Attendees wishing to express ideas and thoughts regarding the final content of the rules should direct those comments to the docket. Briefing sites will include: Boston, MA, Auditorium, Volpe National Transportation Systems Center, 55 Broadway, June 9, 2000; Atlanta, GA, Westin Peachtree Plaza Hotel, 210 Peachtree Street, June 20, 2000; Washington, D.C., Marriott Metro Center, 775 12th Street NW, June 23, 2000; Chicago, IL, Holiday Inn Mart Plaza, 350 North Orleans Street, June 27, 2000; Denver, CO, Marriott City Center, 1701 California Street, June 30, 2000; Dallas, TX, Hyatt Regency Dallas, 300 Reunion Boulevard, July 11, 2000; and San Francisco, CA, Radisson Miyako, 1625 Post Street, July 19, 2000.

As part of the outreach process planned for these proposed rules, the FHWA/FTA will be conducting a national teleconference on June 15, 2000 from 1–4 p.m. eastern time, through the auspices of the Center for Transportation and the Environment at North Carolina State University. The teleconference will be accessible through numerous downlink locations nationwide and further information can be obtained from Katie McDermott at kpm@unity.ncsu.edu. The purpose of the teleconference is to describe the proposed new statewide and metropolitan planning, National Environmental Policy Act (NEPA) implementation, and Intelligent Transportation Systems (ITS) rules. An overview of each of the three Notices of Proposed Rulemaking (NPRMs) will be presented and the audience (remote and local) will have opportunities to ask questions and seek clarification of FHWA/FTA proposals. By sponsoring this teleconference it is hoped that interest in the NPRMs is generated, that stakeholders will be well informed about FHWA/FTA proposals, and that interested parties will participate in the rulemaking process by submitting written suggestions, comments and concerns to the docket.

Introduction

Section 5206(e) of the TEA–21, Public Law 105–178, 112 Stat. 107, at 457, requires ITS projects funded through the highway trust fund to conform to the National ITS Architecture, applicable or provisional standards, and protocols.

The proposed implementing regulations for this provision of law are contained in two NPRMs. The first NPRM for revisions to the Statewide and Metropolitan transportation planning processes, 23 CFR part 1410, published separately in today's **Federal Register**, contains language specific to ITS projects pertaining to implementation of section 5206(e)—§§ 1410.104 (Definition of ITS Integration Strategy), 1410.310(g) (Agreements), 1410.322(b)(11) (Plan and Integration Strategy Content), 1410.214 (a)(3), and 1410.216(c)(8) (State Transportation Improvement Program Content). The second NPRM concerning the ITS Architecture would add part 940 to subchapter K to implement section 5206(e) of TEA–21. The FHWA believes the proposed rules, 23 CFR parts 1410 and 940, would implement the legislative requirement for conforming to the national architecture and standards.

Background

Intelligent transportation systems represent the application of information processing, communications technologies, advanced control strategies, and electronics to the field of transportation. Information technology in general is most effective and cost beneficial when systems are integrated and interoperable. The greatest benefits in terms of safety, efficiency, and costs are realized when electronic systems are systematically integrated to form a whole in which information is shared with all and systems are interoperable.

In the transportation sector, successful ITS integration and interoperability require addressing two different and yet fundamental issues; that of technical and institutional integration. "Technical integration" of electronic systems is a complex issue that requires considerable up-front planning and meticulous execution for electronic information to be stored and accessed by various parts of a system. "Institutional integration" involves coordination between various agencies and jurisdictions to achieve seamless operations and/or interoperability. In order to achieve effective institutional integration of systems, agencies and jurisdictions must agree on the benefits of ITS and the value of being part of an integrated system. They must agree on roles, responsibilities, and shared operational strategies. Finally, they must agree on standards and, in some cases, technologies and operating procedures to ensure interoperability. In some instances, there may be multiple standards that could be implemented for a single interface. In this case, agencies will need to agree on a common standard or agree to implement a technical translator that will allow dissimilar standards to interoperate. This coordination effort is a considerable task that will happen over time, not all at once. Transportation organizations, such as, transit properties, State and local transportation agencies, and metropolitan planning organizations must be fully committed to achieving institutional integration in order for integration to be successful. The transportation agencies must also coordinate with agencies for which transportation is a key, but not a primary part of their business, such as, emergency management and law enforcement agencies.

Successfully dealing with both the technical and institutional issues requires a high-level conceptual view of the future system and careful, comprehensive planning. The framework for the system is referred to as the "architecture." The architecture defines the system components, key functions, the organizations involved, and the type of information shared between organizations and parts of the system. The architecture is, therefore, fundamental to successful system implementation, integration, and interoperability.

The National ITS Architecture

The Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240, 105 Stat. 1914, initiated Federal funding for the ITS program. The program at that time was largely focused on research and development and operational tests of technologies. A key part of the program was the development of the "National ITS Architecture." The National ITS Architecture provides a common structure for the design of ITS systems. The architecture defines the functions that could be performed to satisfy user requirements and how the various elements of the system might connect to share information. It is not a system design, nor is it a design concept. However, it does define the framework around which multiple design approaches can be developed, each one specifically tailored to meet the needs of the user, while maintaining the benefits of a common approach. The National ITS Architecture, Version 3.0 can be obtained from the ITS Joint Program Office of the DOT in CD–ROM format and on the ITS web site http://www.its.dot.gov. The effort to develop a common national system architecture to guide the evolution of ITS in the United States over the next 20 years and beyond has been managed since September 1993 by the FHWA. The National ITS Architecture describes in detail what types of interfaces should exist between ITS components and how they will exchange information and work together to deliver the given ITS user service requirements. The National ITS Architecture and standards can be used to guide multi-level government and private-sector business planners in developing and deploying nationally compatible systems. By ensuring system compatibility, the DOT hopes to accelerate ITS integration nationwide and develop a strong, diverse marketplace for related products and services.

It is highly unlikely that the entire National ITS Architecture will be fully implemented by any single metropolitan area or State. For example, the National ITS Architecture contains information flows for an Automated Highway System that is unlikely to be part of most regional implementations. However, the architecture has considerable value as a framework for local governments in the development of regional architectures by identifying the many functions and information sharing opportunities that may be desired. It can assist local governments with both of the key elements—technical interoperability and institutional coordination.

The National ITS Architecture, because it aids in the development of a high-level conceptual view of a future system, can assist local governments in identifying applications that will support their future transportation needs. From an institutional coordination perspective, the National ITS Architecture helps local transportation planners to identify other stakeholders who may need to be involved and to identify potential integration opportunities. From a technical interoperability perspective, the National ITS Architecture provides a logical and physical architecture and

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process specifications to guide the design of a system. The National ITS Architecture also identifies interfaces where standards may apply, further supporting interoperability.

Transportation Equity Act for the 21st Century

As noted above, section 5206(e) of the TEA–21 requires ITS projects funded from the highway trust fund to conform to the National ITS Architecture, applicable or provisional standards, and protocols. The purpose of the statute is to accelerate the deployment of interoperable ITS systems. Use of the National ITS Architecture provides significant benefits to local transportation planners and deployers as follows:

1. The National ITS Architecture provides assistance with technical design. It saves considerable design time because physical and logical architectures are already defined.
2. Information flows and process specifications are defined in the National ITS Architecture, allowing local governments to accelerate the process of defining system functionality.
3. The architecture identifies standards that will support interoperability now and into the future, but it leaves selection of technologies to local decisionmakers.
4. The architecture provides a sound engineering framework for integrating multiple applications and services in a region.

Transportation Planning Process

The existing transportation planning processes under titles 23 and 49, U.S.C., require a continuing, comprehensive, and coordinated approach to assessing transportation needs, evaluating a range of solutions, and providing a coordinated response through transportation investments. The TEA–21 further emphasizes operations and management of the transportation network as a key consideration in transportation planning. The transportation planning process is currently institutionalized through statewide and metropolitan planning.

Effective implementation of ITS requires careful and comprehensive planning. This notice of proposed rulemaking and the accompanying NPRM on Statewide and Metropolitan Transportation Planning, published separately in today's **Federal Register**, propose changes to 23 CFR part 1410 and explains how ITS would be integrated into the planning process. The ITS would become part of the transportation planning process through the locally defined ITS Integration Strategy. This ITS integration strategy would guide future investment decisions and foster integration and interoperability. Developing the strategy as part of the overall transportation planning process would ensure that ITS is given appropriate consideration as a solution for future transportation needs and services.

Consequently, the DOT is issuing an NPRM (23 CFR part 1410), published separately in today's **Federal Register**, that proposes to incorporate ITS into the transportation planning process for both metropolitan and statewide planning (in addition to other changes needed to implement the TEA–21). The proposed provisions specific to ITS are set forth in 23 CFR 1410.104, 1410.214(a)(3), 1410.310(g), and 1410.322(b)(11). A summary of the proposed revisions follows:

During the development of the metropolitan and/or statewide transportation plan, if ITS applications are envisioned, the transportation plan shall address an ITS integration strategy. Provision shall be made to include participation of key operating agencies in the development of the integration strategy. The ITS integration strategy shall clearly assess existing and future ITS systems, including their functions and information sharing expectations. Planning for ITS shall produce an agreement among the Metropolitan Planning Organizations (MPOs), State DOTs, transit operators and other agencies which addresses policy and operational issues affecting the successful implementation of the ITS integration strategy. The policy statement shall address provisions to ensure ITS project interoperability, utilization of ITS related standards, and the routine operation of the projects. Further, as provided in proposed 23 CFR 1410.322 (b)(11), the transportation plan shall identify:

(1) Major regional ITS initiatives (a program of related projects that are multi-jurisdictional and/or multi-modal),

(2) ITS projects of a scale to affect regional integration of ITS systems, and

(3) ITS projects that directly support national interoperability.

Project Development Process

The ITS integration strategy that is part of the transportation plan would be general in content, articulating key policies and a vision for the planning area. More detailed conceptual designs and operational procedures, as agreed upon by key stakeholders, are necessary to support project development. This proposed rule seeks to implement this approach as part of the project development process. There are two distinct sections to the proposal. The first deals with development of an ITS regional architecture that lays the foundation for integration in a metropolitan planning area or State. The second deals with final project design and ensuring conformance to both the ITS integration strategy and the ITS regional architecture.

Summary of Proposed Requirements

I. The ITS Regional Architecture

This NPRM on the ITS Architecture and Standards would require development of a local implementation of the National ITS Architecture referred to as an ITS regional architecture that is consistent with the ITS integration strategy. The ITS regional architecture would be tailored to meet local needs, meaning that it may not address the entire National ITS Architecture and may also address services not included by the National ITS Architecture. The ITS regional architecture may be developed either through an initial regional development effort or incrementally as major ITS investments are anticipated. In either case, the ITS regional architecture should contain a concept of operations and a conceptual design that addresses the integration of new ITS projects as they are advanced. In this context, a "region" is a geographical area that is based on local needs for sharing information and coordinating operational strategies among multiple projects. A region can be specified at a metropolitan, statewide, multi-State, or corridor level. While "regions" for ITS development may be at any geographic scale, responsibility for planning rests with either the MPO or State planning process. For ITS purposes, a region is any geographic area designated by the planning process. The responsible planning entity (MPO or State) will address the ITS region and ITS planning. Where ITS regions cross planning boundaries, they should be coordinated by the appropriate planning entities (MPOs or States). For ITS Commercial Vehicle Operation projects, the size of the region should not be smaller than a State, with consideration for multi-State, national, and international applications. A regional approach promotes integration of transportation systems. The size of the region should reflect the breadth of the integration of transportation systems and may be at a metropolitan, statewide, multi-State or corridor level.

II. Project Development

Additionally, the proposed regulations would require that all ITS projects be developed using a system engineering process, again recommending the use of the National ITS Architecture as a resource. Project development would be based on the relevant portions of the ITS integration strategy and the ITS regional architecture which the project implements. ITS projects would be required to use applicable ITS standards that have been officially adopted by the DOT and applicable interoperability tests officially adopted by the DOT. Where multiple standards exist, it will be the responsibility of the stakeholders to determine how best to achieve the interoperability they desire.

III. FHWA Project Oversight Procedures

The FHWA project oversight procedures would remain consistent with routine Federal-aid project oversight. Documentation of the proposed ITS requirements would be required to be included in project documents. Any changes made in project design that impact either the ITS integration strategy or the ITS regional architecture would be documented and the appropriate revisions made and agreed to in the ITS integration strategy and/or the ITS regional architecture. All ITS projects that advance to design or preliminary engineering would be required to conform to the system engineering and conformity requirements immediately upon the effective date of a final rule on the National ITS Architecture and Standards. In the event that an applicable ITS regional architecture or ITS integration strategy does not exist, the applicable portions of the National ITS Architecture would be identified and used as the basis for analysis. All requirements of this proposal would apply for two years from the effective date of a final rule. Replacement of existing systems would not be required.

IV. Outreach Process

In the spring of 1998, the FHWA held ten nationwide outreach meetings on a proposed conceptual approach for ensuring consistency with the National ITS Architecture. These meetings were intended to generate discussion and solicit input from the perspective of many different transportation stakeholders on the feasibility of the proposed FHWA approach. Meetings were attended by representatives of Federal, State, local and regional transportation agencies, public sector agencies that rely on Federal-aid funds for projects with ITS components, and interested parties from universities and the private sector. In general, stakeholders expressed the opinion that the interim guidance and the use of system engineering principles represent good practice. Stakeholders expressed a requirement for straightforward, unambiguous guidance that could be implemented with a minimum of additional paperwork, and largely agreed that the interim guidance met this requirement. For more information please see "National ITS Architecture Consistency Outreach Meetings: Summary Findings (1998)" which is included as part of this docket.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date shown above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the FHWA docket identified above and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment closing period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has preliminarily determined that this proposed action is not a significant regulatory action under Executive Order 12866 and within the meaning of the Department of Transportation regulatory policies and procedures. This determination is based upon the regulatory assessment of the proposed rule that indicates that the annual impact of the rule would not exceed $100 million nor would it adversely affect the economy, a sector of the economy, productivity, jobs, the environment, public health, safety, or State, local, or tribal governments.

The FHWA has prepared a preliminary regulatory evaluation (PRE) to accompany the NPRM. A copy of the PRE is included in the docket. The FHWA believes that this proposed action would implement the requirements of section 5206(e) of the TEA–21. Although this law requires ITS projects funded through the highway trust fund to conform to the National ITS Architecture, the FHWA would require development of a regional architecture consisting of a concept of operations and a conceptual design, and would require use of the system engineering process, applicable or provisional standards, and protocols, and interoperability tests developed by the DOT. In developing the proposed rule, the FHWA has sought to allow broad discretion to those entities impacted by the rule, in levels of response and approach, that are appropriate to particular plans and projects while conforming to the requirements of TEA–21. The FHWA has considered the costs and benefits of effective implementation of ITS through careful and comprehensive planning. ITS becomes part of the transportation planning process through the locally defined ITS Integration Strategy. This ITS strategy would guide future investment decisions and foster the benefits of integration and interoperability. Developing the strategy as part of the overall transportation planning process would ensure that ITS is given appropriate consideration as a solution for future transportation needs and services.

Costs

The total costs of this NPRM over 10 years is estimated between $38.1 million and $44.4 million (the net present value over 10 years is between $22.3 million and $31.2 million). The annual constant dollar impact is estimated to range between $3.2 million and $4.4 million. These 10-year cost estimates include transportation planning cost increases, to MPOs ranging from $10.8 million to $13.5 million, and to States from $5.2 million to $7.8 million. Estimated costs to implementing agencies for the development of regional architectures range between $15.8 million and $23.2 million.

These costs do not include additional implementation costs for individual projects as commenters found the additional cost extremely difficult to estimate. Those who responded suggested that the increased cost of project implementation over current good practice would be minimal. However, because of the limited amount of data available on the additional implementation costs for individual projects, the FHWA is seeking additional data on this issue from commenters to this NPRM.

Benefits

The anticipated non-monetary benefits derived include savings from the avoidance of duplicative development, reduced overall development time, and earlier detection of potential incompatibilities. As with

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project implementation impacts, the benefits of the NPRM are very difficult to quantify in monetary terms. It is estimated that the coordination guidance provided through implementation of the NPRM can provide savings of approximately $150,000 to any potential entity seeking to comply with the requirements of section 5206(e) of the TEA–21 as compared with an entity having to undertake compliance individually. The costs may be offset by benefits derived from the reduction of duplicative deployments, reduced overall development time, and earlier detection of potential incompatibilities.

In order to assist the FHWA's analysis of costs and benefits for the final rule stage, the FHWA requests that commenters provide additional information on the following questions:

(1) Are there implementation costs to project designers and operators not properly represented in the present data?

(2) Are there updating and maintenance costs to any of the impacted entities not properly reflected in the present data?

A detailed discussion of how the FHWA prepared its estimates is provided in this NPRM for interested parties that are not able to review the PRE.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated, through the regulatory assessment, the effects of this action on small entities (small businesses, small organizations, and local governments) and determined that this action will not have a significant impact on small entities. Small businesses and small organizations are not subject to this NPRM, which applies to government entities only. The rule accommodates small governmental entities in two significant ways. First, the planning component of the NPRM would apply to MPOs and States. An MPO is the required transportation planning organization for an urbanized area (23 CFR part 1410). An urbanized area, as defined in 23 U.S.C. 101, has a population of 50,000 or more. Therefore small government agencies for areas having populations of less than 50,000 would not be affected. Secondly, the self-scaling aspect of the ITS Architecture NPRM would permit the compliance requirements to vary with the magnitude of the ITS requirements of the entity (small ITS projects have correspondingly small compliance documentation requirements). Small entities, primarily transit agencies, coming within the project implementation component of the proposed rule would be accommodated through this self-scaling feature that imposes only limited requirements on small ITS activities. This same feature would also provide accommodation to MPOs that, while larger than the small entity definition of the Regulatory Flexibility Act, have only small ITS planning requirements. Accordingly, the FHWA preliminarily certifies that this proposed action would not have a significant impact on a substantial number of small entities. A copy of the analysis on the small entity impact is provided in the docket file.

Unfunded Mandates Reform Act of 1995

This rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Executive Order 12988 (Civil Justice Reform)

This proposed action would meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Paperwork Reduction Act

This proposed action does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this proposed action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321), and has preliminarily determined that this proposed action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this proposed action with the Unified Agenda.

List of Subjects

23 CFR Part 655

Design standards, Grant programs-transportation, Highways and roads, Incorporation by reference, Signs and symbols, Traffic regulations.

23 CFR Part 940

Design standards, Grant programs-transportation, Highways and roads, Intelligent transportation systems.

Issued on: May 18, 2000.

Vincent F. Schimmoller,

Acting Executive Director, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to amend Chapter I of title 23, Code of Federal Regulations, as set forth below:

PART 655—[AMENDED]

1. Revise the authority citation for part 655 to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109, 114, 135, 217, 315, and 402; and 49 CFR 1.48.

Subpart D—[Removed]

2. Remove subpart D of part 655, consisting of §§ 655.401, 655.403, 655.407, 655.409, 655.411.

3. Add a new subchapter K, consisting of part 940, to read as follows:

SUBCHAPTER K—INTELLIGENT TRANSPORTATION SYSTEMS

PART 940—INTELLIGENT TRANSPORTATION SYSTEM ARCHITECTURE AND STANDARDS

Sec.

940.1 Purpose.
940.3 Definitions.
940.5 Policy.
940.7 Applicability.
940.9 ITS regional architecture.
940.11 Systems engineering analysis.
940.13 Project implementation.
940.15 Project administration.

Authority: 23 U.S.C. 101, 109, 315, and 508; sec 5206(e), Pub. L. 105–178, 112 Stat. 457 (23 U.S.C. 502 note); and 49 CFR 1.48.

§ 940.1 Purpose.

The purpose of this regulation is to provide policies and procedures relating to the Federal-aid requirements for intelligent transportation systems (ITS) projects funded through the highway trust fund.

§ 940.3 Definitions.

ITS integration strategy means a systematic plan for coordinating and implementing ITS investments funded with highway trust funds to achieve an integrated regional transportation system.

ITS project means any project that in whole or in part funds the acquisition of technologies or systems of technologies (*e.g.* computer hardware or software, traffic control devices, communications link, fare payment system, automatic vehicle location system, etc.) that provide or contribute to the provision of one or more ITS user services as defined in the National ITS Architecture.

ITS regional architecture means a regional framework for ensuring institutional agreement and technical integration for the implementation of projects or groups of projects under an ITS integration strategy.

National ITS Architecture (also "national architecture") means a common framework for ITS interoperability. The National ITS Architecture comprises the logical architecture and physical architecture which satisfy a defined set of user services. All of these documents are controlled by the FHWA, and are updated on an as-needed basis. New versions of the documents, when they are issued, will be available from the FHWA in hard copy and electronic format on the DOT web site at *http://www.its.dot.gov*.

Region is the geographical area that is based on local needs for sharing information and coordinating operational strategies in order to address transportation problems. The size of the region should be chosen to optimize integration of transportation systems by fostering the exchange of information on operating conditions across ITS systems and across a number of agencies and jurisdictions.

Systems engineering is the process to arrive at a final design of a system which is selected from a number of alternatives that would accomplish the same objectives. As in most disciplines, there are usually a number of technical solutions to a set of requirements. This process considers the total life cycle of the project in the evaluation of alternatives including not only the technical merit of potential solutions, but also the costs and relative value of the alternatives that are responsive to the needs of the customer.

§ 940.5 Policy.

The ITS projects shall conform to the National ITS Architecture and standards in accordance with the regulations contained in 23 CFR part 1410. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture in developing a local implementation of the National ITS Architecture, referred to as an ITS regional architecture, and the subsequent adherence of all ITS projects to that ITS regional architecture. Development of the ITS regional architecture begins with the transportation planning process and the development of an ITS integration strategy for Statewide and Metropolitan Transportation Planning.

§ 940.7 Applicability.

All ITS projects that are funded in whole or in part with the highway trust fund are subject to these provisions.

§ 940.9 ITS regional architecture.

(a) An ITS regional architecture shall be developed for implementing the ITS integration strategy as provided in 23 CFR 1410. 214(a)(3) and 1410.322(b)(11) to guide the development of specific projects and programs. The ITS regional architecture shall conform with the applicable ITS integration strategy. The National ITS Architecture shall be used as a resource in the development of the ITS regional architecture.

(b) The ITS regional architecture may be developed either as an initial project development effort and updated as projects are initiated, or the ITS regional architecture may be developed incrementally as major ITS investments are initiated and updated with subsequent projects. In either case, provision shall be made to include participation from all agencies with which information-sharing is planned as specified in the ITS integration strategy.

(c) The ITS regional architecture shall include, at a minimum, the following:

(1) A "concept of operations" that addresses the roles and responsibilities of participating agencies, existing or required agreements for operations, and resources required to support the project, in order to implement the ITS integration strategy;

(2) A "conceptual design" sufficient to support subsequent project design regarding the following:

(i) System functional requirements;

(ii) Interface requirements and information exchanges with planned and existing systems and subsystems (for example, subsystems and architecture flows as defined in the National ITS Architecture);

(iii) Identification of key standards supporting regional and national interoperability, including uniformity and compatibility of equipment, practices and procedures to deliver ITS services; and

(iv) A prioritization of phases or steps required in implementation.

(d) The ITS regional architecture may be developed either as an initial project development effort and updated as projects are initiated, or the ITS regional architecture may be developed incrementally as major ITS investment s are initiated and updated with subsequent projects. If the ITS regional architecture is developed incrementally, the ITS projects meeting the criteria specified in 23 CFR 1410.322(b)(11) shall have an ITS architecture at the project level in order to advance to design or preliminary engineering. The ITS architectures developed for specific individual projects or initiatives that meet these criteria shall be coordinated with each other to form an ITS regional architecture.

§ 940.11 Systems engineering analysis.

(a) All ITS projects shall be based on a systems engineering analysis. The National ITS Architecture is a resource that should be used in the development of ITS projects.

(b) The analysis should be on a scale commensurate with the project scope. The basic elements of the analysis are as follows:

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(1) Identification of applicable parts of the ITS regional architecture or ITS integration strategy;

(2) Preliminary analysis, including project objectives, existing systems resources, existing and future personnel and budget resources for operations, management and maintenance of systems;

(3) Analysis of alternative system configurations and technology options;

(4) Analysis of procurement options; and

(5) Identification of applicable standards and testing procedures, particularly those that support national interoperability.

§ 940.13 Project implementation.

(a) The project specifications shall ensure that the project accommodates the sharing of electronic information and provides for the functionality and operation (both at the time of project implementation and in the future) between the agencies and jurisdictions as indicated in the ITS integration strategy and/or the ITS regional architecture.

(b) All ITS projects funded with highway trust funds shall use applicable ITS standards that have been officially adopted by the United States Department of Transportation (US DOT).

(c) The ITS standards that are pertinent to the project should be used as they become available, prior to adoption by the US DOT.

(d) All ITS projects funded with highway trust funds shall conduct the applicable interoperability tests that have been officially adopted by the US DOT.

(e) Interoperability tests that are pertinent to the project should be used as they become available, prior to adoption by the US DOT.

§ 940.15 Project administration.

(a) Prior to authorization of highway trust funds for construction or implementation, there shall be a demonstrated linkage to the ITS regional architecture or to the ITS integration strategy, and a commitment to the operations, management and maintenance of the overall system.

(b) Documentation of compliance with the provisions of §§ 940.11 and 940.13 shall be developed by project sponsors. The documentation shall include identification of the portions of the ITS regional architecture and/or ITS integration strategy which are implemented through the project, and the identification of applicable ITS standards and/or interoperability tests that were considered or are specified in the project. Documentation of the rationale and interagency coordination strategies that were carried out to agree upon certain changes shall be provided in the event that any changes are made in the implementation of projects contrary to the ITS regional architecture and/or the ITS integration strategy. In addition, the ITS regional architecture and/or ITS integration strategy shall be updated to reflect the changes.

(c) ITS projects shall be monitored for compliance with this part under normal Federal-aid project oversight procedures.

(d) Prior to (*two years after date of final rule publication in the* ***Federal Register***), the ITS architectures are not required for projects that meet any of the criteria as specified in 23 CFR 1410.322(b)(11). The criteria identify major regional ITS initiatives, ITS projects that affect regional integration of ITS systems, and projects which directly support national interoperability.

(e) In order to ensure that each project identified in 23 CFR 1410.322(b)(11) is coordinated with the evolving regional architecture provided in § 940.9(b), these projects shall be evaluated for institutional and technical integration with transportation systems and services within the region. Based upon this evaluation of the project(s), highway trust fund recipients shall immediately take the appropriate actions to ensure that the project(s) perform the following functions:

(1) Engages a wide range of stakeholders;

(2) Enables the appropriate electronic information sharing between stakeholders;

(3) Facilitates future ITS expansion; and

(4) Uses the applicable ITS standards provided in § 940.13(b).

(f) All ITS projects that advance to design or preliminary engineering must conform with the system engineering and conformity requirements provided in §§ 940.11 on or before (*Insert effective date of final rule*). In the event that an applicable ITS regional architecture or ITS integration strategy does not exist, the applicable portions of the National ITS Architecture shall be identified and used as the basis for analysis.

[FR Doc. 00–13023 Filed 5–19–00; 1:15 pm]
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Federal Register

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May 25, 2000

Part VI

Department of Transportation

Federal Transit Administration

Request for Comment on the Federal Transit Administration National ITS Architecture Consistency Policy for Project Development; Notice

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–99–6417]

Request for Comment on the Federal Transit Administration National ITS Architecture Consistency Policy for Project Development

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) announces a Request for Comment on the proposed FTA National ITS Architecture Consistency Policy for project development, which is defined in this document and in the Statewide Transportation Planning; Metropolitan Transportation Planning Notice of Proposed Rulemaking (NPRM published separately in today's **Federal Register**). The Metropolitan and Statewide Planning Process, as it relates to ITS projects, is summarized in this notice for clarity. However, comments on the planning process should be directed to Docket No. FHWA–99–5933, docket for the NPRM. Comments on the project development policy, including answers to the questions asked in Section X, should be submitted to this docket. The Major Capital Investments rule, when made final, will also reference the National ITS Architecture Policy. The National ITS Architecture Policy statement is a product of statutory changes made by the Transportation Equity Act for the 21st Century (TEA–21) (P.L. 105–178) enacted on June 9, 1998. This notice proposes to require development of an ITS regional architecture, consisting of a concept of operations and a conceptual design, which draws from the National ITS Architecture but is tailored to address the local situation and ITS investment needs. This notice also proposes to require use of applicable standards and interoperability tests adopted by the United States Department of Transportation (US DOT). The proposal recommends the use of the National ITS Architecture and provisional standards and interoperability tests.

DATES: Comments shall be submitted by August 23, 2000.

ADDRESSES: All signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For Technical Information: Ron Boenau, Chief, Advanced Public Transportation Systems Division (TRI–11), at (202) 366–0195 or Brian Cronin, Advanced Public Transportation Systems Division (TRI–11), at (202) 366–8841. *For Legal Information:* Linda Sorkin, Office of the Chief Council (202) 366–1936. The FTA is located at 400 Seventh Street, SW, Washington, DC 20590. This notice is posted on the FTA website on the Internet under http://www.fta.dot/gov.

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

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X. Questions

I. Definitions

Intelligent Transportation Systems (ITS), as defined in TEA–21, means electronics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

ITS Integration Strategy means a systematic plan for coordinating and implementing ITS investments funded with highway trust funds to achieve an integrated regional transportation system.

ITS project means any project that, in whole or in part, funds the acquisition of technologies or systems of technologies (e.g. computer hardware or software, traffic control devices, communications links, electronic fare payment system, passenger information system, and automatic vehicle location system) that provide or contribute to the provision of one or more ITS user services as defined in the ITS National ITS Architecture.

ITS Regional Architecture means a regional framework for ensuring institutional agreement and technical integration of technologies for the implementation of projects or groups of projects under an ITS Integration Strategy.

National ITS Architecture (also "national architecture") means a common framework for ITS integration and interoperability. The National ITS Architecture comprises the logical architecture and physical architecture that satisfy a defined set of user services. The logical architecture defines the functions and information flows, and guides the development of functional requirements for new systems and improvements. The physical architecture defines how the system should provide the required functionality defined in the logical architecture.

A *region* is a geographical area that is based on local needs for sharing information and coordinating operational strategies in order to address transportation problems. The size of the region should be chosen to optimize integration of transportation systems by fostering the exchange of information on operating conditions across ITS systems and across a number of agencies and jurisdictions.

II. Background

Section 5206(e) of TEA–21 requires that the Secretary of the DOT must

> "Ensure that intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, • • • conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection(a)."

On October 2, 1998, the DOT issued Interim Guidance on Conformity with the National ITS Architecture and Standards. The Interim Guidance reflects input received from Federal, State, local, and private sector transportation stakeholders in conjunction with the national transportation association forums and 10 outreach sessions held across the Nation in the spring of 1998. The intent of the Interim Guidance is to:

- Foster integration.
- Encourage the incorporation of ITS into the transportation planning process, and
- Focus on near-term ITS projects with the greatest potential for affecting regional integration.

The Interim Guidance is available on the DOT website at *www.its.dot.gov*, and will remain in effect until the adoption of a final policy. The National ITS Architecture Policy presented in this proposal reflects comments from the transportation industry on the Interim Guidance.

The objectives for the FTA's National ITS Architecture Policy for project development are to:

- Provide requirements for ITS project development for projects implemented wholly or partially with highway trust funds.
- Achieve system integration (e.g. seamless traveler information system that electronically combines traveler information data from multiple transportation agencies in a region) for projects funded through the highway trust fund with all other projects contained in the ITS Integration Strategy.
- Engage stakeholders (state DOT's, transit agencies, public safety agencies, other transportation operating agencies).
- Enable electronic information and data sharing among stakeholders.
- Facilitate future expansion capability of the transportation infrastructure.
- Foster interoperability.
- Save design time through use of the National ITS Architecture.

FTA has developed this proposed policy to meet the TEA–21 requirement contained in Section 5206(e) and the DOT/FTA goal to encourage effective deployment of ITS projects. Additionally, DOT and FTA encourage the coordination of local ITS strategies and projects to help meet national and local goals for mobility, accessibility, safety, security, economic growth and trade, and environment.

The National ITS Architecture documents were developed by the US DOT, and are updated on an as-needed basis. The latest addition to the National ITS Architecture is the Archive Data User Service, which provides the ability to store and process data over an extended period of time. FTA is pursuing the addition of a Rail ITS user service within the National ITS Architecture. New versions of the documents, when they are issued, will be available from the US DOT in hard copy and electronic format on the DOT website at *www.its.dot.gov*. Version 3.0 is the latest version of the National ITS Architecture.

III. Statewide and Metropolitan Planning Processes

FTA and FHWA have developed an approach for coordinating this policy with requirements for statewide and metropolitan transportation planning processes. The proposed approach, contained in the Statewide Transportation Planning; Metropolitan Transportation Planning NPRM (published elsewhere in today's **Federal Register**), explains how ITS is proposed to be integrated into the planning process. The Metropolitan and Statewide Planning Process, as it relates to ITS projects, is summarized in this section for clarity. However, comments on the planning process should be directed to Docket Number FHWA–99–5933, docket for the NPRM.

The approach in the NPRM includes the provision that states and MPOs are to develop a locally defined ITS Integration Strategy to guide future investment decisions and foster integration and interoperability [See the following sections: §§ 1410.104, 1410.322(b)(11), 1410.214 (a)(3), and 1410.216(c)(8)]. Included in development of the strategy, at a minimum, are highway, transit, and public safety agencies, appropriate federal lands agencies, state motor carrier agencies as appropriate, and other operating agencies necessary to fully address ITS integration. The Integration Strategy shall assess existing and future ITS systems, functions and electronic information sharing expectations. Unique regional ITS initiatives shall be identified in the Integration Strategy. Under the section for planning agreements [See Section 1410.310(i)], the NPRM also calls for an agreement among the MPO, the state DOT, the transit operator, and other agencies identified in the Integration Strategy. This agreement shall address policy and operational issues, including at a minimum ITS project interoperability, utilization of ITS related standards, and the routine operation of the projects identified in the ITS Integration Strategy.

IV. ITS Regional Architecture

The proposed requirements contained in this section have been developed to facilitate the interoperability of projects funded through the highway trust fund (including the mass transit account) with other projects included in the ITS Integration Strategy. FTA proposes the development of an ITS Regional Architecture for implementing the ITS Integration Strategy per 49 CFR 1410.322(b)(11) and 1410. 214(a)(3) to guide the development of specific projects and programs. The FTA proposes to require that the ITS Regional Architecture conform with the applicable ITS Integration Strategy. This proposal suggests that the National ITS Architecture shall be used as a resource in the development of the ITS Regional Architecture.

The ITS Regional Architecture may be developed either as an initial project development effort and updated as projects are initiated, or the ITS Regional Architecture may be developed incrementally as major ITS investments are initiated and updated with subsequent projects.

Major ITS investments include the following three project categories:

- Unique regional ITS initiatives (a program of related projects) that are multi-jurisdictional and/or multi-modal,
- ITS projects that affect regional integration of ITS systems, and
- Projects which directly support national interoperability.

In either case, it is proposed that provision should be made to include participation from all agencies with which information-sharing is planned as specified in the ITS Integration Strategy.

This proposal recommends that the ITS Regional Architecture include, at a minimum and scalable to the size of the region, the following:

A. A concept of operations addressing: The roles and responsibilities of participating agencies and existing or required agreements for operations and resources required to support the project;

B. A conceptual design sufficient to support subsequent project design regarding system functional requirements; interface requirements and information exchanges with planned and existing systems and subsystems (for example, subsystems and architecture flows as defined in the National ITS Architecture); identification of key standards supporting national interoperability, including uniformity and compatibility of equipment, practices, and procedures to deliver ITS services; and, it must establish a priority of phases or steps required for implementation.

ITS projects that are considered to be major ITS investments are proposed to have an ITS project architecture developed that includes a concept of operations and conceptual design as defined above. The ITS project architecture could then serve as the initial ITS Regional Architecture, or if an ITS Regional Architecture exists, could be used to update the existing ITS Regional Architecture.

V. ITS Projects

This proposal recommends that all projects funded through the highway trust fund (including the mass transit account) shall be consistent with the ITS Integration Strategy, the inter-

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agency agreement, and the ITS Regional Architecture and shall be coordinated with other ITS projects in the state/region. Additionally, it is proposed that the National ITS Architecture shall be used as a resource for interoperability and integration. This proposal recommends that projects financed by FTA are required to be consistent with DOT requirements for standards and interoperability testing as they are officially adopted by DOT. In the interim, grantees should use applicable standards and testing procedures.

As proposed, the project specifications will be required to ensure that the project accommodates the sharing of electronic information and provides for the functionality and operation (both at the time of project implementation and in the future) between the agencies and jurisdictions as indicated in the ITS Integration Strategy and/or the ITS Regional Architecture.

VI. Documentation

This Notice proposes to require documentation of proposed ITS requirements be included in project documents. Documentation will also be required to include identification of the portions of the ITS Regional Architecture and/or ITS Integration Strategy, which are implemented through the project, and the identification of applicable ITS standards and/or interoperability tests that were considered or specified in the project. Any changes made in project design that impact the ITS Integration Strategy or ITS Regional Architecture are proposed to require to be documented. This Notice proposes that documentation of the rationale and interagency coordination strategies that were carried out to agree upon certain changes will be required to be provided in the event that any changes are made in the implementation of projects contrary to the ITS Integration Strategy or ITS Regional Architecture. In addition, this Notice proposes that the ITS Regional Architecture and/or ITS Integration Strategy be required to be updated to reflect the changes.

VII. Phasing

This proposal suggests the phasing to be as follows:

- Prior to (insert the date two years after date of the final policy publication in the **Federal Register**) the development of an ITS Regional Architecture and subsequent ITS project architectures will not be required for projects that meet the requirements for Major ITS Investments.
- All ITS projects that involve preliminary engineering, including system engineering, and which advance to final design must conform to the requirements for ITS Projects on or before (insert effective date of final policy).
- In the event that an applicable ITS Integration Strategy or ITS Regional Architecture does not exist, the applicable portions of the National ITS Architecture will be required to be identified and used as the basis for analysis.
- All National ITS Architecture Consistency Policy requirements will be required to apply on (insert date two years after effective date of final policy).

VIII. Oversight

This Notice proposes to require grantees to self-certify that they have met the National ITS Architecture consistency requirements. Existing FTA Oversight procedures will be used to verify self-certifications. FTA has allocated FTA Oversight funds from the fiscal year 1999 oversight budget to be used to provide the initial oversight and technical assistance to grantees regarding this policy.

IX. FTA Guidance

FTA will develop appropriate guidance materials regarding the National ITS Architecture consistency requirements upon completion of the Statewide Transportation Planning; Metropolitan Transportation Planning NPRM process and after the comment period regarding this policy.

X. Questions

In order to facilitate focused comments, FTA is asking the following questions regarding the proposed National ITS Architecture Consistency Policy for Project Development.

1. Do reviewers understand the definition of a major ITS investment as defined in Section IV, "ITS Regional Architecture," or is more clarification needed, and if so please explain?
2. Do reviewers understand the definition of an ITS project, or is more clarification needed, and if so please explain?
3. Do reviewers understand the difference between a major ITS investment, and an ITS project, or is more clarification needed, and if so please explain?
4. Are the requirements for development of a Regional Architecture clear? If not, what is not clear about the requirement?
5. What additional guidance, if any, is required to explain how to implement this proposed policy?
6. The proposed rule allows regions to develop a Regional Architecture as a separate activity, or incrementally as major ITS investments are developed within a region. Do reviewers anticipate particular difficulties with implementing and documenting either approach?
7. Do reviewers understand the relationships between the Integration Strategy, the ITS Regional Architecture, and the ITS Project Architecture?
8. What additional guidance, if any, is required regarding phasing of this rule?
9. Are the oversight and documentation requirements clear? If not, what is not clear about the requirements?

Issued on: May 18, 2000.

Nuria I. Fernandez,

Acting Administrator.

[FR Doc. 00–12913 Filed 5–19–00; 1:15 pm]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Thursday,
May 25, 2000

Part VII

Department of Education

William D. Ford Federal Loan Program; Notice

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DEPARTMENT OF EDUCATION

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of the annual updates to the income contingent repayment (ICR) plan formula.

SUMMARY: The Secretary announces the annual updates to the ICR Plan formula for 2000. Under the William D. Ford Federal Direct Loan (Direct Loan) Program, borrowers may choose to repay their student loans under the ICR plan, which bases the repayment amount on the borrower's income, family size, loan amount, and interest rate. Each year, the formula for calculating a borrower's payment is adjusted to reflect changes due to inflation. This notice contains the required updates based on inflation, which are examples of how the calculation of the monthly ICR amount is performed, the income percentage factors, the constant multiplier chart, and charts showing sample repayment amounts. These updates are effective from July 1, 2000 to June 30, 2001.

FOR FURTHER INFORMATION CONTACT: Don Watson, U.S. Department of Education, Room 3045, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Direct Loan Program borrowers may choose to repay their Direct Loans under the ICR Plan. The attachment to this Notice provides updates to four sources of information: examples of how the calculation of the monthly ICR amount is performed, the income percentage factors, the constant multiplier chart, and charts showing sample repayment amounts.

We have updated the income percentage factors to reflect changes based on inflation. We have revised the income percentage factor table by changing the dollar amounts of the incomes shown by a percentage equal to the estimated percentage change in the Consumer Price Index for all Urban Consumers from December 1999 to December 2000. Further, we provide examples of monthly repayment amount calculations and two charts that show sample repayment amounts for single, and married or head of household borrowers at various income and debt levels based on the updated income percentage factors.

The updated income percentage factors, at any given income, may cause a borrower's payments to be slightly lower than they were in prior years. This updated amount more accurately reflects the impact of inflation on a borrower's current ability to repay.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:
http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html
To use the PDF, you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498 or in the Washington DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.268, William D. Ford Federal Direct Loan Program)

Program Authority: 20 U.S.C. 1087 *et seq.*

Dated: May 19, 2000.

Greg Woods,

Chief Operating Officer.

Attachment: Examples of the Calculations of Monthly Repayment Amounts

Example 1. This example assumes you are a single borrower with $15,000 in Direct Loans, the interest rate being charged is 8.25 percent, and you have an adjusted gross income (AGI) of $30,713.

Step 1: Determine your annual payments based on what you would pay over 12 years using standard amortization. To do this, multiply your loan balance by the constant multiplier for 8.25 percent interest (0.1315449). The constant multiplier is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. (The 8.25 percent interest rate used in this example is the maximum interest rate charged for all Direct Loans excluding Direct PLUS Loans and may not be your actual interest rate. You can view the constant multiplier chart below to determine the constant multiplier that you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest for estimation purposes.)

- 0.1315449 × $15,000 = $1,973.17

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factor table that corresponds to your income and the divide the result by 100. (If your income is not listed in the income percentage factor table, calculate the applicable income percentage factor by following the instructions under "Interpolation" below.):

- 88.77 × $1,973.17 ÷ 100 = $1,751.58

Step 3: Determine 20 percent of your discretionary income. Because you are a single borrower, subtract the poverty level for a family of one, as published in the **Federal Register** on February 15, 2000 (65 FR 7555), from your income and multiply the result by 20%:

- $30,713 − $8,350 = $22,363
- $22,363 × 0.20 = $4,472.60

Step 4: Compare the amount from Step 2 with the amount from Step 3. The lower of the two will be your annual payment amount. In this example, you will be paying the amount calculated under Step 2. To determine your monthly repayment amount, divide the annual amount by 12.

- $1,751.58 ÷ 12 = $145.97

Example 2. In this example, you are married. You and your spouse have a combined AGI of $58,040 and are repaying your loans jointly under the ICR plan. You have no children. You have a Direct Loan balance of $10,000, and your spouse has a Direct Loan balance of $15,000. Your interest rate is 8.25 percent.

Step 1: Add your and your spouse's Direct Loan balances together to determine your aggregate loan balance:

- $10,000 + $15,000 = $25,000

Step 2: Determine the annual payment based on what you would pay over 12 years using standard amortization. To do this, multiply your aggregate loan balance by the constant multiplier for 8.25 percent interest (0.1315449). (The 8.25 percent interest rate used in this example is the maximum interest rate charged for all Direct Loans excluding Direct PLUS Loans and may not be your actual interest rate. You can view the constant multiplier chart below to determine the constant multiplier that you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest for estimation purposes.)

- 0.1315449 x $25,000 = $3,288.62

Step 3: Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to your and your spouse's income and divide the result by 100. (If your and your spouse's aggregate income is not listed in the income percentage factor table, calculate the applicable income percentage factor by following the instructions under "Interpolation" below.):

- 109.40 x $3,288.62 ÷ 100 = $3,597.75

Step 4: Determine 20 percent of your aggregate income. To do this, subtract the poverty level for a family of 2, as published in the **Federal Register** on February 15, 2000 (65 FR 7555), from your aggregate income and multiply the result by 20 percent:

- $58,040 − $11,250 = $46,790
- $46,790 x 0.20 = $9,358

Step 5: Compare the amount from Step 3 with the amount from Step 4. The lower of the two will be your annual payment amount. You and your spouse will pay the amount calculated under Step 3. To determine your monthly repayment amount, divide the annual amount by 12.

- $3,597.75 ÷ 12 = $299.81

Interpolation: If your income does not appear on the income percentage factor table, you will have to calculate the income percentage factor through interpolation. For example, assume you are single and your income is $25,000.

Step 1: Find the closest income listed that is less than your income of $25,000 and the closest income listed that is greater than your income of $25,000.

Step 2: Subtract the lower amount from the higher amount (for this discussion, we will call the result the "income interval"):

- $30,713 − $24,452 = $6,261

Step 3: Determine the difference between the two income percentage factors that are given for these incomes (for this discussion, we will call the result, the "income percentage factor interval"):

- 88.77% − 80.33% = 8.44%

Step 4: Subtract from your income the closest income shown on the chart that is less than your income of $25,000:

- $25,000 − $24,452 = $548

Step 5: Divide the result by the income interval determined in Step 2:

- $548 ÷ $6,261 = 0.08753

Step 6: Multiply the result by the income percentage factor interval:

- 0.08753 x 8.44% = .73875%

Step 7: Add the result to the lower of the two income percentage factors used in Step 3 to calculate the income percentage factor interval for $25,000 in income:

- .73878% + 80.33% = 81.07% (rounded to the nearest hundredth)

The result is the income percentage factor that will be used to calculate the monthly repayment amount under the ICR Plan.

INCOME PERCENTAGE FACTORS
[Based on annual income]

Single		Married/head of household	
Income	Percent factor	Income	Percent factor
8,028	55.00	8,028	50.52
11,047	57.79	12,669	56.68
14,215	60.57	15,098	59.56
17,455	66.23	19,738	67.79
20,550	71.89	24,452	75.22
24,452	80.33	30,713	87.61
30,713	88.77	38,518	100.00
38,520	100.00	46,327	100.00
46,327	100.00	58,040	109.40
55,679	111.80	77,555	125.00
71,295	123.50	104,879	140.60
100,977	141.20	146,678	150.00

INCOME PERCENTAGE FACTORS—Continued
[Based on annual income]

Single		Married/head of household	
Income	Percent factor	Income	Percent factor
115,780	150.00	239,683	200.00
206,224	200.00		

CONSTANT MULTIPLIER CHART FOR 12-YEAR AMORTIZATION

Interest rate (percent)	Annual constant multiplier
7.00	0.1234057
7.25	0.1250107
7.46	0.1263678
7.50	0.1266272
7.75	0.1282550
8.00	0.1298943
8.25	0.1315449
8.38	0.1324076
8.50	0.1332067
8.75	0.1348796
9.00	0.1365637

[FR Doc. 00–13101 Filed 5–24–00; 8:45 am]
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Part VIII

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Source Categories; Final Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6706–1]

National Emission Standards for Hazardous Air Pollutants for Source Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interpretative rule.

SUMMARY: This interpretative rule clarifies the construction by EPA of the applicability of sections 112(g) and 112(j) of the Clean Air Act (CAA), and of the regulations implementing these provisions for stationary combustion turbines in Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(g) and 112(j).

Specifically, EPA has determined that case-by-case maximum achievable control technology (MACT) determinations under subpart B must be made for all new or reconstructed major source stationary combustion turbines, regardless of whether they are part of a combined cycle system. Waste heat recovery units, including duct burners, which are part of a combined cycle system are considered to be steam generating units. New or reconstructed waste heat recovery units would not be subject to case-by-case MACT determinations under subpart B if they are electric utility steam generating units.

Elsewhere in today's **Federal Register**, EPA is withdrawing the interpretative rule as published on April 21, 2000, at 65 FR 21636. This final interpretative rule supersedes the interpretative rule erroneously published at 65 FR 21636.

EFFECTIVE DATE: June 26, 2000.

FOR FURTHER INFORMATION CONTACT: For further information, contact Sims Roy, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5263, facsimile: (919) 541–5450, electronic mail address: *roy.sims@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated entities. Stationary combustion turbines which meet the criteria for major sources are the regulated entities addressed by this interpretative rule.

I. Why Is EPA Issuing This Interpretative Rule?

The EPA has decided to issue this interpretative rule to resolve an ambiguity in the construction of the exclusion for electric utility steam generating units set forth in 40 CFR 63.40(c). That provision states, "The requirements of [40 CFR part 63, subpart B] do not apply to electric utility steam generating units unless and until such time as these units are added to the source category list pursuant to section 112(c)(5) of the Act." This applicability exclusion was intended to limit the need for case-by-case MACT determinations for new or reconstructed sources under CAA section 112(g) and 40 CFR 63.40–63.44, but the same exclusion would also generally apply to case-by-case MACT determinations for new and existing sources pursuant to CAA section 112(j).

The term "electric utility steam generating unit" is defined in CAA section 112(a)(8) and at 40 CFR 63.41, as follows:

> The term "electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

The EPA explained its reasoning for the electric utility steam generating unit exclusion in the preamble to the final rule implementing CAA section 112(g) for new and reconstructed major sources (61 FR 68387, December 27, 1996). We noted that CAA section 112(n)(1) required us to perform a study of the hazards to public health associated with hazardous air pollutants (HAP) emissions from electric utility steam generating units. After completing the required study and considering the results, we are authorized to regulate such units under CAA section 112 if we determine such regulation is appropriate and necessary. We have not at this time made a determination whether such regulation is appropriate and necessary, but we are required by court order to make a determination by December 15, 2000. We excluded electric utility steam generating units from case-by-case MACT determinations under section 112(g) because we concluded that such determinations should only be made for sources which would otherwise be subject to section 112 MACT standards.

Stationary combustion turbines were included on the list of source categories issued pursuant to CAA section 112(c)(1), and we are, therefore, required to issue a MACT standard applicable to this category pursuant to CAA section 112(d). Proposal of the MACT standard for this source category is anticipated in late 2000, with promulgation in early 2002.

Stationary combustion turbines may be used to generate electricity. These stationary combustion turbines are sometimes combined with waste heat recovery units which generate steam by extracting heat from the exhaust gases (*i.e.*, combined cycle systems). The fact that stationary combustion turbines can be used to generate electricity has created some ambiguity about whether combustion turbines used in this manner are considered electric utilities.

On the one hand, EPA believes that the most reasonable construction of the statutory definition of electric utility steam generating units would not include any stationary combustion turbine, regardless of whether it is used by an electric utility to generate electricity, and regardless of whether it is attached to a waste heat recovery unit which generates steam. Accordingly, we are developing a MACT standard to regulate emissions from all stationary combustion turbines pursuant to CAA section 112(d).

On the other hand, we also recognize that the first sentence of the statutory definition creates ambiguity concerning whether an electric utility unit must even generate steam to be included. This ambiguity has been compounded by the language in the preamble to the final section 112(g) rule, which predicates the exclusion for electric utilities based on the study performed pursuant to CAA section 112(n)(1). That study did, in fact, include some very limited consideration of stationary combustion turbines. In light of these ambiguities, different permitting authorities have reached differing conclusions concerning whether a case-by-case MACT determination under section 112(g) is required for new or reconstructed major source stationary combustion turbines. At various times, offices within EPA have also given differing interpretations concerning whether a case-by-case MACT determination is required for such facilities.

This interpretative rule is intended to clearly resolve the ambiguity in the construction of 40 CFR 63.40(c) as applied to stationary combustion turbines. This interpretative rule will become legally effective and binding on June 26, 2000. After that date, all EPA offices and permitting authorities must adhere to this interpretative rule. Those EPA offices and permitting authorities who become aware of this interpretative rule, or the construction of the statute set forth herein, prior to the effective date should adopt this construction to the full extent it is practicable to do so. However, EPA will not seek to revisit the legality of, or to otherwise reconsider, any final actions previously taken in good faith based on a conclusion that stationary combustion turbines used to generate electricity fall within the exclusion.

II. What Is the Agency's Interpretation?

The EPA construes the term "electric utility steam generating unit," as defined by CAA section 112(a)(8) and 40 CFR 63.41, to exclude all stationary combustion turbines, regardless of whether or not such turbines are utilized to generate electricity or utilized by an electric utility, and regardless of whether or not such turbines are utilized in conjunction with waste heat recovery units (*i.e.*, combined cycle systems). Therefore, a case-by-case MACT determination is required for each new or reconstructed stationary combustion turbine which is a major source.

The phrase "steam generating unit" in the term "electric utility steam generating unit" is critical to interpreting which types of combustion units are covered by this definition and which types are not. The definition clearly covers a conventional fossil fuel fired steam generating unit (*e.g.*, coal-fired boiler) which extracts heat from the combustion of fuel and generates steam for use in a steam turbine, which in turn provides shaft power to spin an electric generator and generate electricity.

However, we do not believe this term was intended to cover a stationary combustion turbine which extracts shaft power from the combustion of fuel and spins an electric generator to generate electricity. Such a combustion turbine does not extract heat to generate steam. In fact, there is no steam generated at all in a combustion turbine. Hence, we conclude that the term "electric utility steam generating unit" does not include any stationary combustion turbine, and that such turbines must be regulated under a section 112(d) MACT standard or a section 112(j) determination. Moreover, a case-by-case MACT determination under section 112(g) is required for any new or reconstructed stationary combustion turbine which is a major source.

This reasoning can be further applied to combined cycle systems. For purposes of this discussion, a combined cycle system is a combination of a stationary combustion turbine and a waste heat recovery unit.

In a combined cycle system, a combustion turbine extracts shaft power from the combustion of fuel and spins an electric generator to generate electricity. The hot exhaust gases from the combustion turbine are then routed to a separate "waste heat recovery unit." The waste heat recovery unit extracts heat from the gases and generates steam for use in a steam turbine, which in turn provides shaft power to spin an electric generator and generate electricity.

The combustion turbine in a combined cycle system does not generate steam. It is not a "steam generating unit" and, therefore, is not an "electric utility steam generating unit."

However, we also conclude that, because the waste heat recovery unit in a combined cycle system does generate steam, it is a steam generating unit. Whether a waste heat recovery unit in a new or reconstructed combined cycle system is subject to a case-by-case MACT is a moot point in many cases because the waste heat recovery unit is not an emission source. The emissions from the combustion turbine pass through the waste heat recovery unit, but the waste heat recovery unit is not a source of additional emissions.

There is another type of combined cycle system, however, in which the waste heat recovery unit does contribute additional emissions. In these types of combined cycle systems, fuel is burned in the duct, through the use of "duct burners," just before the gases enter the waste heat recovery unit.

These duct burners are analogous to the burners in steam generating units (*i.e.*, boilers). Their only purpose is to burn fuel to generate more heat for extraction by the waste heat recovery unit in order for it to generate more steam. As a result, duct burners (where they are used) are considered part of the waste heat recovery unit in a combined cycle system—just as the burners in a boiler are considered part of the boiler.

Duct burners in combined cycle systems normally burn natural gas. Although it is unlikely that sufficient natural gas would be burned in a duct burner in a combined cycle system to result in emissions that would themselves exceed the major source threshold, a combined cycle system may have aggregate emissions which exceed the major source threshold. Therefore, in each instance where a stationary combustion turbine in a combined cycle system must meet MACT requirements because it is a major source of HAP, an associated duct burner will also be subject to MACT requirements unless it is found to be an electric utility steam generating unit. It is also possible that there could be instances where emissions from a duct burner in a waste heat recovery unit which is not an electric utility steam generating unit could cause the total emissions from a combined cycle system to exceed the major source threshold.

If the waste heat recovery unit in a combined cycle system operates with duct burners, and more than one-third of the potential electrical output capacity of the duct burners and more than 25 megawatts of the electrical output provided by the duct burners are provided to any utility power distribution system for sale, then the waste heat recovery unit is an electric utility steam generating unit and is not subject to case-by-case MACT determinations unless and until such units are added to the source category list pursuant to CAA section 112(c)(5). However, if the waste heat recovery unit in a combined cycle system operates with duct burners and less than one-third of the potential electrical output capacity of the duct burners or less than 25 megawatts of the electrical output provided by the duct burners are provided to any utility power distribution system for sale, then the waste heat recovery unit must also meet MACT requirements if the aggregate HAP emissions from the combined cycle system exceed the major source threshold.

III. What Additional Information Is Available?

As mentioned above, EPA is developing MACT standards for stationary combustion turbines. This effort has resulted in collection of information regarding the performance, as well as the costs, associated with the use of various technologies to reduce emissions of HAP from stationary combustion turbines.

In conjunction with today's interpretative rule, EPA is making available two memoranda, the first entitled, "Hazardous Air Pollutant (HAP) Emission Control Technology for New Stationary Combustion Turbines," and the second entitled, "Oxidation Catalyst Costs for New Stationary Combustion Turbines." These two memoranda compile and summarize information collected by EPA and may be of assistance in making any required case-by-case MACT determinations. These memoranda may be obtained by contacting EPA as shown under **FOR FURTHER INFORMATION CONTACT** or downloaded directly by logging on to the following EPA website: http://www.epa.gov/ttn/uatw/combust/turbine/turbpg.html.

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IV. Why Is EPA Withdrawing the Interpretative Rule Published on April 21, 2000?

An error by EPA led to publication of a preliminary draft of the interpretative rule on April 21, 2000 at 65 FR 36321.

V. What Are the Impacts Associated With This Interpretative Rule?

As mentioned above, this interpretative rule simply resolves current ambiguity concerning the applicability of CAA section 112 to new or reconstructed major source stationary combustion turbines. It is not intended to subject these entities to any new or additional regulatory requirements.

VI. What Is the Applicability of Other Review Requirements?

Under Executive Order 12866 (58 FR 51736, October 4, 1993), this interpretative rule is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget.

Section 553(b)(3)(A) of the Administrative Procedure Act provides that interpretative rules are not subject to notice-and-comment requirements. Interpretative rules which do not involve the internal revenue laws of the United States are not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because notice-and-comment requirements do not apply to this interpretative rule, this rule is also not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532 and 1535).

In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This interpretative rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This interpretative rule will not have significant direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This interpretative rule is also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This interpretative rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

In issuing this interpretative rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the interpretative rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This interpretative rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule interpreted herein is discussed in the March 29, 1996 **Federal Register** document (61 FR 14029).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We have established an effective date of June 26, 2000. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air emissions control, Hazardous air pollutants, Combustion turbines.

Dated: May 18, 2000.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–13196 Filed 5–24–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6706–2]

National Emission Standards for Hazardous Air Pollutants for Source Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of interpretative rule.

SUMMARY: The EPA is withdrawing the interpretative rule published in the **Federal Register** on April 21, 2000, at 65 FR 21363. That interpretative rule was intended to clarify the construction by EPA of the applicability of sections 112(g) and 112(j) of the Clean Air Act (CAA) to all stationary combustion turbines and waste heat recovery units in combined cycle systems.

An administrative error led to publication of a preliminary draft of the interpretative rule, rather than the final interpretative rule EPA intended to publish. Concurrent with this withdrawal of the incorrect version of the interpretative rule published on April 21, 2000, EPA is publishing elsewhere in today's **Federal Register** a corrected version of the interpretative rule.

DATES: On May 25, 2000, EPA hereby withdraws the interpretative rule published at 65 FR 21363. The corrected interpretative rule will become legally effective on June 26, 2000.

FOR FURTHER INFORMATION CONTACT: For further information, contact Sims Roy, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5263, facsimile: (919) 541–5450, electronic mail address: *roy.sims@epa.gov*.

Dated: May 18, 2000.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–13197 Filed 5–24–00; 8:45 am]

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Federal Register

Thursday,
May 25, 2000

Part IX

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea; Final Rule

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990901241–0116–02; I.D. 123198B]

RIN 0648–AM09

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS, upon application from BP Exploration (Alaska), 900 East Benson Boulevard, Anchorage, AK 99519 (BPXA) issues regulations to govern the unintentional take of a small number of marine mammals incidental to construction and operation of offshore oil and gas facilities at the Northstar development in the Beaufort Sea in state and Federal waters. Issuance of regulations governing unintentional incidental takes in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize BPXA's activity as such authorization is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses.

DATES: Effective May 25, 2000, until May 25, 2005.

ADDRESSES: A copy of the updated application, Technical Monitoring Plan, Biological Opinion, Environmental Assessment (EA), and a list of the references used in this document may be obtained by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, or by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**).

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055, Brad Smith, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s) of affected marine mammals, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On November 30, 1998, NMFS received an application for Letters of Authorization (LOAs) granting an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from BPXA to take marine mammals incidental to construction and operation of offshore oil and gas facilities at the Northstar and Liberty developments in the Beaufort Sea in state and Federal waters. On March 1, 1999 (64 FR 9965), NMFS published an advance notice of proposed rulemaking (ANPR) on BPXA's application and invited interested persons to submit comments, information, and suggestions concerning the application, and the structure and content of regulations if the application is accepted. During the 30-day comment period on that notice, comments were received from the Marine Mammal Commission (MMC), Greenpeace Alaska (Greenpeace), the Alaska Eskimo Whaling Commission (AEWC), the North Slope Borough (NSB), and the Inupiat Community of the Arctic Slope. Those comments were addressed in the preamble to the proposed rule which was published on October 22, 1999 (64 FR 57010).

Because of delays in construction during 1999, and in issuing a proposed rule on this matter, on October 1, 1999, BPXA updated their application to NMFS. Among other things, the revised application removed from this rulemaking a request for a take of marine mammals incidental to construction and operation at Liberty. The revised application is available upon request (see **ADDRESSES**). Following is a brief description of the proposed scope of work for the Northstar project. For more detailed descriptions please refer to the BPXA application.

Description of the Activity

BPXA proposes to produce oil from the Northstar Unit offshore oil development. This development will be the first in the Beaufort Sea that uses a subsea pipeline to transport oil to shore and then into the Trans-Alaska Pipeline System. The Northstar Unit is located on Seal Island between 2 and 8 miles (mi)(3.2 and 12.9 kilometers (km)) offshore from Pt. Storkersen, AK. This unit is adjacent to the Prudhoe Bay industrial complex and is approximately 54 mi (87 km) northeast of Nuiqsut, a Native Alaskan community.

Construction began in December 1999 with the construction of ice roads. Both island construction and offshore pipeline installation is scheduled to occur in 2000. Construction activity includes the construction of several ice roads, one from West Dock and Pt. McIntyre to the Northstar gravel mine, one from the Kuparuk River delta mine site to Seal Island, and one along the pipeline route to Seal Island. The gravel-haul road will have a parallel alternate road to transport service equipment, construction materials and alternate gravel hauling when maintenance or repair of the main ice road is required. In addition to these main ice roads it is expected that three to four access roads will be cleared of snow to allow light vehicle traffic between the pipeline construction activities and the gravel-haul ice road. These on-ice access roads will have the snow cleared regularly, with intermittent flooding to maintain safe traffic conditions.

It is estimated that during the winter approximately 16,800 large-volume haul trips between the onshore mine site and a reload area in the vicinity of Egg Island, and 28,500 lighter dump truck trips from Egg Island to Seal Island will be necessary to transport construction gravel to Seal Island. An additional 300 truck trips will be necessary to transport concrete-mat slope protection materials to the island.

Construction of a gravel island work surface for drilling and oil production facilities, and the construction and installation of two 10–inch (0.25–m) pipelines, one to transport crude oil and one for gas for field injection, will take place during the winter and into the open water season of 2000, while the transport and installation of the drill rig and associated equipment will occur during the summer, ending around September 1, 2000. The two pipelines will be buried together in a single trench. During the summer barges are expected to make approximately 90 to 100 round-trips from Prudhoe Bay or Endicott to support construction.

The operational phase will begin with drilling as early as the fourth quarter of 2000, and will continue for about 2 years. Power will be supplied by diesel generators. This phase of drilling will temporarily cease in mid-2001 to allow installation and start-up of process facilities. Drilling is expected to resume about November 2001. Drilling will continue until 23 development wells (15 production, 7 gas injection) are drilled. After drilling is completed, only production-related site activities will occur. In order to support operations at Northstar, the proposed operations activity includes the annual construction of an ice road from Pt. McIntyre to the shore crossing of the pipeline and along the pipeline route to Seal Island. Ice roads will be used to resupply needed equipment, parts, foodstuffs, and products, and for hauling wastes back to existing facilities. During the summer, barge trips will be required between West Dock or Endicott and the island for resupply.

Year-round helicopter access to Northstar is planned for movement of personnel, foodstuffs and emergency movement of supplies and equipment. Helicopters will fly at an altitude of at least 1,000 ft (305 m), except for takeoffs, landings, and safe-flight operations.

Comments and Responses

On October 22, 1999 (64 FR 57010), NMFS published a notice of proposed rulemaking on BPXA's application and invited interested persons to submit comments, information, and suggestions concerning the application and proposed rule. During the 60-day comment period on that notice, comments were received from BPXA, the MMC, Greenpeace, the NSB, and the AEWC. Their comments are addressed here.

Activity Concerns

Comment 1: The NSB believes that the Northstar Project area analysis should not be limited to the area immediately adjacent to Seal Island and the pipeline corridor, but expanded to also include the proposed sealift route, and any other route to be used by ocean-going vessels in support of the project, aircraft and vessel paths, and any ice-free corridors to be maintained to facilitate oil spill response.

Response: NMFS agrees that a small number of takings by harassment of marine mammals could occur as a result of these activities, which were addressed in BPXA's application. However, it is NMFS policy that, in most cases, small take authorizations are unnecessary solely for transiting vessels, such as those described in BPXA's application and those providing transportation and supplies to NSB communities, unless the vessel activity has some potential to result in a significant biological response in the marine mammal(s) or affects the subsistence needs of Alaskan communities (*e.g.*, conducting, or in support of seismic, and possibly ice-breaking). In most cases, vessels are presumed not to alter marine mammal behavior sufficient to constitute a taking by harassment. Because barges are expected to travel in inshore waters, where bowheads are less likely to occur, and to travel between Northstar, West Dock, and Barrow and, therefore, have, at most, minimal impact on subsistence whaling by Nuiqsut, and because there is no information that these vessels will have an adverse impact on bowhead whaling at Barrow, NMFS has determined that, based on the record, there will not be an unmitigable adverse impact on bowhead whaling from vessel movement in support of Northstar. If the AEWC determines otherwise, NMFS believes they will make vessel movement a subject of discussion for the Conflict and Avoidance Agreement (C&AA). Under that agreement, BPXA will either agree to cease all vessel traffic between the beginning and end of the fall bowhead subsistence harvest, or limiting vessel traffic during this time period in accordance with the C&AA.

While BPXA would be responsible for maintaining the ice-free channel in order to facilitate oil spill response, the U.S. Army Corps of Engineers (Corps) permit prohibits ice breaking until October 15, meaning that ice-breaking will not occur until after most, if not all of the bowhead migration and subsistence whaling have concluded for the year. Any ice-breaking occurring prior to the end of the bowhead subsistence harvest at Nuiqsut is not considered part of the request by BPXA and, therefore, cannot be authorized for a taking of marine mammals.

An estimate of incidental harassments by aircraft is not necessary because helicopters must remain at a minimum altitude of 1,000 ft (305 m), weather permitting (except when landing or taking off). NMFS understands that other permits require helicopters at Northstar to maintain an altitude of 1,500 ft (457 m). At 1,000–ft altitude and higher, takings of marine mammals are unlikely to occur. At altitudes lower than 1,000 ft (305 m), while seals may make minor behavioral changes to the helicopter noise, these changes are unlikely to alter seal behavior sufficient to constitute a take. Further reducing potential impacts, helicopter traffic will be between shore and Northstar and bowhead and beluga whales are normally found in waters north of Northstar, outside the area of helicopter traffic.

NMFS recognizes however, that helicopter traffic patterns may change in the future when, and if, additional oil development structures are sited. NMFS intends to review the impacts from structure to structure flights when these activities apply for an initial LOA under these regulations. Applicants are encouraged to address this form of taking on marine mammals, especially bowhead whales and the subsistence hunting of this species, when applying for an LOA. Failure to adequately address this issue may result in a delay in processing applications.

MMPA Concerns

Comment 2: Greenpeace states that the artificial segmentation of industrial activities on the North Slope (*e.g.*, seismic, oil exploration, oil development) is not permitted under the MMPA. Later Greenpeace notes that the proposed actions artificially segment the environmental review of Northstar and its impacts, thereby violating the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). As a result, Greenpeace requests that its March 10, 1999, comments on the Final Environmental Impact Statement (FEIS) for Northstar, be incorporated by reference.

Response: When Congress implemented the 1981 Amendments to the MMPA, which authorized the Secretary to allow specified activities to obtain an exemption from the MMPA's moratorium on taking without a requirement to waive the moratorium under section 101(a) of the MMPA, it

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put certain provisions on when and where the Secretary may grant those exemptions. One requirement was for the activity to be as specific as possible. Congress stated: "It is the intention of the Committee that both the specified activity and the specified region referred to in section 101(a)(5) be narrowly identified so that the anticipated effects will be substantially similar. Thus, for example, it would not be appropriate for the Secretary to specify an activity as broad and diverse as outer continental shelf oil and gas development. Rather, the particular elements of that activity should be separately specified, as, for example, seismic exploration, or core drilling." (H.R. Rep. No. 97–228 at p. 19, 1981). To the extent practicable, NMFS follows this guidance when promulgating regulations under section 101(a)(5) of the MMPA. As discussed throughout this document, NMFS does not believe that its action is in violation of either NEPA or the ESA.

The Corps' draft environmental impact statement (DEIS), FEIS, and the comments that were submitted to the Corps on those documents are considered to be part of NMFS' Record of Decision on this matter.

Comment 3: Greenpeace states that the proposed regulations fail to consider reasonably foreseeable exploration and development activities in the Beaufort Sea on the part of companies other than BPXA. The NSB expressed similar concerns regarding BPXA's application.

Response: NMFS has designed these regulations so that as new oil development units are constructed in the Beaufort Sea, and companies apply for a LOA for the taking of marine mammals, NMFS will need to make a finding that the "total taking by the activity" will have no more than a negligible impact on marine mammals and not have an unmitigable adverse impact on subsistence uses of these mammals. NMFS is not required to make these findings beforehand, when future activities remain speculative and impacts on marine mammals have not been fully assessed under NEPA.

NMFS believes that the Corps' FEIS addresses, to the extent possible, the cumulative impacts of past and future impacts on marine mammals and subsistence whaling (see Chapt. 10 of the FEIS). That document notes that "[T]he potential for future developments to cause or contribute to any deflection of the [bowhead] migration or impact the harvest will depend largely upon the proposed location with respect to the traditional migratory path and traditional harvest areas. Accordingly, proposed future projects will have to be analyzed on a case-by-case basis to determine whether and how they may cause or contribute to any effects on the bowhead migration or subsistence harvest."

Application Concerns

Comment 4: The NSB encourages NMFS to require BPXA to submit a modified petition which contains the level of detail and an organization which will allow for a meaningful review of the potential impacts of proposed Northstar development.

Response: NMFS does not agree that NMFS should reject BPXA's application. On March 1, 1999, NMFS provided duplicate sets of NMFS' ANPR, including BPXA's application, on this action to the NSB. ANPRs are provided in order for the public to provide comments on the adequacy of an applicant's application for an incidental take and on the applicant's activity. The NSB did not provide NMFS with comments during that 30-day public comment period. In addition, as discussed within this document, NMFS believes the NSB does not provide sufficient justification for NMFS to determine that the application did not meet the requirements in § 216.104.

Comment 5: The NSB notes that the application has more the appearance of a summary document than a completed document and is lacking in sufficient detail to allow for a meaningful assessment of whether the proposed activities meet the standards that will permit NMFS to issue the requested LOA.

Response: The MMPA requires NMFS to make its findings based on the best scientific evidence available that the total taking by the specified activity during the specified time period will have a negligible impact on species or stock of marine mammal(s) and will not have an unmitigable adverse impact on the availability of those species or stocks intended for subsistence purposes. NMFS is not restricted to the information provided by an applicant when making its findings, recognizing that some biases may be provided in an application. In those cases where the applicant provides the majority of the information for NMFS' findings, and supplementary documentation (*e.g.*, a DEIS or FEIS) is lacking, NMFS holds applicants to a higher standard for determining what is an acceptable application. However, in those cases where supplementary information is available, especially when that information is provided independent of the applicant, NMFS believes that an application need not provide extensive detail that can easily be found elsewhere. In this case, the supplementary information was provided by the Corps in its DEIS and FEIS on this action. The difficulty for the applicant in this action was that it did not have access to the material and analyses provided in the DEIS prior to its release. In addition, as is their right, BPXA is not required to totally agree with the findings in the DEIS/FEIS. As a result, there may be certain distinctions between information contained in the application and that in the DEIS/FEIS. It is the responsibility of NMFS to determine which document, if either, is correct.

Proposed Rule Concerns

Comment 6: BPXA believes the proposed regulations are confusing regarding which portions of the rule address applications or petitions for rulemaking and which portions of the rule address applications for LOAs. BPXA recommends using specific terms consistently to contrast the two steps required to authorize the activity. BPXA suggests utilizing a petition for regulations, and a request for an LOA.

Response: These regulations do not distinguish between applications for LOAs and petitions for rulemaking. While an application for an LOA requires rulemaking, it is a single-step process under these regulations. NMFS believes the commenter has confused these regulations with those in subpart I, which distinguishes between petitions for regulations, applications for LOAs and applications for Incidental Harassment Authorizations (IHAs). Because subpart I is not being amended at this time, BPXA's recommendation cannot be accepted. It should be understood however, that NMFS does not intend to require a dual process for issuing future initial LOAs, that is, rulemaking followed by review of an application for an LOA. NMFS intends the two processes to proceed at the same time.

Comment 7: BPXA presumes that the term "platform" in the rulemaking title includes drilling islands. The proposed activity does not involve an offshore oil rig platform but rather a permanent man-made gravel island.

Response: To avoid confusion, NMFS has replaced the term "platforms" with "facilities" to better describe the various types of oil and gas development activities that can obtain a small take authorization under this rulemaking.

Comment 8: BPXA notes that the term "Northstar Oil and Gas Development Unit on Seal Island," found in § 216.200(a), appears to limit the authorization for taking to the island and not include related activities such as the pipelines. BPXA recommends dropping the words "Unit on Seal Island" from that paragraph.

Response: NMFS agrees and has made the change.

Comment 9: BPXA pointed out that NMFS regulations at § 216.104(a)(12) regarding a Plan of Cooperation (POC) differ from those in these regulations (§ 216.205).

Response: In response to NMFS' proposed regulations (see 60 FR 28379, May 31, 1995) one commenter noted that not all activities required submission of formal POC. As a result, NMFS modified the interim rule (see 61 FR 15884, April 10, 1996) from that originally proposed. However, while in this rulemaking, a POC is viewed as essential, there is no requirement that it be a formal document, separate from the LOA application.

Comment 10: BPXA noted that a POC is different from the C&AA.

Response: NMFS agrees. A POC is a set of information provided to NMFS at the time an applicant requests an LOA for activities in the Arctic. The C&AA is a formal agreement between the activity's participants and the AEWC. NMFS does not play a role in its development or implementation. As a courtesy, NMFS often receives a copy of the C&AA after it is signed.

Comment 11: BPXA recommends that NMFS consider including in the rule a time period by which NMFS must respond to an LOA request with either approval or denial. The applicant should be advised of a decision within a specified time period to avoid ongoing expectations of an LOA being granted or missing an entire season because NMFS approval or denial is not under any time limit.

Response: While NMFS understands the concern, rulemakings cannot be held to specific timelines which may preclude adequate public review and/or limit the decision-making process. Because rulemakings normally will take 8–12 months for completion, NMFS recommends applicants submit complete applications as close as possible to the time that the principal Federal agency releases its NEPA document for public review and comment.

Comment 12: BPXA notes that it submitted its request for an LOA on November 30, 1998, and that this submission fulfills the requirement under § 216.207(d).

Response: NMFS concurs. BPXA submitted its application for an LOA under § 216.104 on November 30, 1998, and a 30-day public comment period commenced on March 1, 1999 (64 FR 9965). Based in part on the comments received by NMFS and delays in both BPXA's construction schedule and NMFS' processing the application, BPXA submitted a revised LOA application on October 1, 1999 (received on October 15, 1999). A 60-day comment period on the revised LOA application began on October 22, 1999 (64 FR 57010). Those review periods satisfy the requirement of § 216.207(d).

LOA Concerns

Comment 13: The AEWC recommends that NMFS provide a minimum of 90 days for public review and comment on any new LOA request for arctic offshore production-related activities.

Response: NMFS believes that a 90-day public comment period is excessive and unnecessary given that new LOAs under these regulations will have several comment periods. First, either the Minerals Management Service or the Corps will provide for review and comment on a document under NEPA, presumably a DEIS, on any oil development in the Beaufort Sea. Such comment periods are a minimum of 45 days, and likely 60 days or longer. Second, NMFS will announce the availability of an application for a small take authorization incidental to the offshore production unit and will offer the public a minimum of 30 days for review of the application. Finally, if NMFS proposes regulations to govern the incidental taking, the public will be offered another comment period of 45–60 days, as was done for the Northstar authorization. Because NMFS' two review periods provide the public with a total of 75 to 90 days, subsequent to, or in conjunction with, the review period for the oil production project itself under NEPA, NMFS does not believe the additional time period is warranted.

It should be recognized however, that NMFS has already published and provided for public comment on BPXA's application for the Liberty oil development project (64 FR 9965, March 1, 1999). Because of a delay in timing for the start of the Liberty project due to NEPA, NMFS expects that BPXA will submit a revised application for Liberty. Because NMFS has already provided public notice on BPXA's application for a small take for the Liberty project, NMFS will not reannounce receipt of the application, but will proceed immediately to the proposed rule stage. As a result, and for this application only, NMFS expects to provide an extended public comment period of 90 days to allow the public adequate time for review both the application and the proposed rule, in lieu of providing another review limited to BPXA's Liberty application.

Comment 14: BPXA believes that a public comment period should not be required for renewal of LOAs under § 216.209(a)(2) only during the petition for regulations. If the activity applied for does not fall within the scope of the existing regulations, then the petition process for new or revised regulations should be followed which includes a public comment period. Having concerns about the adequacy of section 101(a)(5)(A) of the MMPA to provide mitigation measures from the potential adverse impact from oil production, the AEWC and the NSB recommend that NMFS issue an LOA that is either only for construction at Northstar, or is limited to only one year, in order to provide an opportunity to discuss mitigation measures and other protections for oil production activities. In addition, the AEWC requests that the public be granted a minimum of 30 days to review a renewal of an LOA.

Response: NMFS has reviewed the LOA reissuance concerns and notes that it has 3 options: (1) Reissue an LOA annually based upon timely receipt of reports without public comment prior to reissuance, (2) reissue an LOA annually based upon timely reports after a public comment period, or (3) issue an LOA for all or a portion of the 5-year period of validity of the regulations. Because under implementing interim regulations (see § 216.106(e)), NMFS would be required to provide a 30-day public comment period (except in cases where there is a significant risk to impacted marine mammals) prior to withdrawal, or even temporary suspension of, an LOA, for failure to meet any of the requirements of the regulations or the LOA, issuing LOAs for periods greater than one year is generally not acceptable to NMFS. Whether an opportunity for public comment is provided depends entirely on whether NMFS determines that all substantive issues have been addressed satisfactorily during rulemaking. If so, then little would be accomplished by annually revisiting these issues.

In this action however, several issues remain unresolved, the principal ones being the implementation of effective marine mammal mitigation and monitoring during oil production, the peer review of monitoring plans, and the submission of annual POCs. Therefore, NMFS has determined that LOA renewals under this rulemaking will have a requirement for a 30-day public review period, at least in the early years of renewal. However, in order to expedite the LOA renewal process, NMFS will open the review

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process to the following issues only: (1) New citable scientific data or information (including Traditional Knowledge) that indicates that the determinations made in this document are in need of reconsideration, (2) comments on the POC, and (3) comments on a proposed monitoring plan. NMFS will give full consideration to all comments submitted within the authorized comment period when making its determination on reissuance. In addition, because of the requirement to submit timely reports with an LOA renewal application, it is expected that there will be only a limited amount of time between the date a request for an LOA renewal is submitted, and the date of expiration of the current LOA. As a result, NMFS will act on a request for an LOA renewal in a timely manner, but is unlikely to extend the public comment period beyond 30 days, unless there are compelling circumstances. In addition, these regulations allow NMFS to waive the public comment period once either multi-year mitigation (including POCs) and monitoring plans have been submitted to NMFS and reviewed by the peer review process described in the LOA and NMFS determines that no significant issues remain substantially unresolved.

Since construction work at Northstar will continue through at least November, 2000, issuance of an LOA limited only to construction has been accepted by NMFS. In the meantime, discussion on appropriate mitigation and monitoring during production can continue. However, to ensure that takings resulting from uncompleted construction work late in 2000 or early 2001, if any, are covered, NMFS has made the LOA valid for a full 12 months, but only for construction.

Comment 15: BPXA suggests that NMFS clarify that § 216.210(a) is intended to apply to the case of a proposed withdrawal of the LOA by NMFS, not by the applicant.

Response: NMFS agrees and has amended § 216.210(a) as recommended.

Take Level Concerns

Comment 16: Greenpeace states that NMFS accepts the applicant's assertion, with no scientific or other basis, that the number of takes of whales during operation and during construction of Northstar will be identical. There is no estimate of take or possible jeopardy from a variety of oil spill scenarios * * * and from the resultant cleanup activities. The NSB believes that it is unacceptable for the petition not to provide any estimate of the potential number of individuals of any subject species which could potentially be taken in the event of an oil spill associated with Northstar.

Response: While not identical, the estimated take levels by incidental harassment are similar. Calculations for incidental take levels by both construction and production are described in detail in the original and revised BPXA applications. NMFS believes that these calculations are based upon the best scientific information available. As a result, NMFS has accepted these take estimates. However, NMFS recognizes that, for reasons explained later in this document, these estimates do not include takes by harassment, injury, or mortality incidental to oil spills.

Comment 17: BPXA noted that the estimated levels of take provided in the preamble to the proposed rule were not updated based upon estimates provided in the September 30, 1999, revised application.

Response: Unfortunately, updates could not be made to the preamble to the proposed rule because the revised application was not received in time to revise the proposed rulemaking without further delaying the release of the proposed rule. However, NMFS has made the appropriate corrections in this document.

Negligible Impact Concerns

Comment 18: The MMC notes that (1) the path of the fall bowhead migration varies substantially from year to year; (2) that in most years comparatively few bowhead whales are likely to pass within 10 km (6.2 mi) of the Northstar site; and, (3) that any changes in swimming speed, direction, or other behavior caused by Northstar activities are unlikely to affect the size or productivity of the bowhead population (or of bowheads to Alaska natives for subsistence purposes). Because the available data are insufficient to be confident that both the population level effects (and the impacts on Native subsistence hunting) would be negligible, the MMC believes it would be more appropriate to base the assessment of possible impacts on the worst case scenario, and considering possible cumulative impacts over the full 15–20 years that production is expected at the Northstar site, rather than basing the assessment on the best available estimate of the average take level over the next 5 years.

Response: NMFS does not agree that it should make an assessment of take levels over the 15–20 year lifetime of the Northstar Unit. Under the MMPA, NMFS must make a determination that the "total of such taking during each 5-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence purposes * * *."

Also, NMFS does not consider it necessary to make a negligible impact determination on the worst-case scenario. NMFS believes that using the worst case estimate does not provide a realistic estimate of harassment take levels. NMFS suggests that reviewers note the detailed explanation in the application on how BPXA estimated take levels. The best scientific data indicates that, between 1979 and 1997, a period of 18 years of data collection, bowheads came within 10 km (6.2 mi) of the site of the future Northstar Unit only during 1997 (BPXA, 1999). This being the case, there is simply no need to presume that this migratory deflection would occur during each of the next 5 years. However, NMFS has determined that, because this close-approach did occur in a recent year, a more reliable estimate of take can be made by presuming that this take level could occur again once or twice within the next 5 year period. Therefore, NMFS has determined that an average annual take by harassment, due to noise from construction and operation at Northstar, as calculated by BPXA (i.e., 173 (maximum 1,533) per year) would result in a maximum of 717 bowheads annually or approximately 9 percent of the revised 1993 estimated population size of 8,200 (95 percent CI, 7,200–9,400) (Hill and DeMaster, 1999; IWC, 1996). NMFS notes that this harassment will be limited to a deflection in migration and would be considered a taking by Level B harassment. Such a taking would result in only small numbers being taken and having no more than a negligible impact (both as defined in § 216.103) on bowhead whales.

Finally, NMFS disagrees with the MMC that the available data are insufficient to be confident that both the population level effects (and the impacts on Native subsistence hunting) would be negligible. The take levels under discussion here are limited to harassment due to noise disturbance by construction and later production at the Northstar Unit. The level of noise produced at Northstar is expected to be substantially less than that produced during seismic surveys, and, unlike seismic, Northstar is stationary and located well inshore of the normal migratory path of the bowhead whale. In addition, the bowhead whale population has increased from approximately 4,400 (CV 3,500 to 5,300) (Zeh *et al.*, 1993) in 1978 to approximately 8,200 in 1993 (Hill and DeMaster, 1999). A population increase of approximately 3.1 percent annually (Raftery *et al.* 1995, NMFS, 1999), coincident with oil exploration and development activity (including seismic), provides evidence that takings due to harassment by noise at Northstar will not have more than a negligible impact on bowhead whales.

However, of more concern to NMFS is the impact, not by Northstar alone, but the cumulative impact in the future by several offshore oil developments and seismic activity on the subsistence lifestyle of the North Slope residents. This is discussed in more detail later in this document.

Comment 19: Greenpeace notes that NMFS fails (1) to adequately consider the impact if the maximum number of bowhead whale takes (1,533 per year for the 5-year period or a total of 7,665 bowheads actually occurs, and (2) to justify its conclusion that the takings at this level would not be expected every year or would not jeopardize the species.

Response: Please refer to the response to previous comment. As noted in the application and in the preamble to the proposed rule, the taking of up to 173 (maximum 1,533/year) is limited to harassment, meaning the taking is for the short-term incidental harassment by noise disturbance, resulting in a short-term behavior change, such as a slight deflection of its westward migration route.

While NMFS recognizes that there is some potential that bowheads (and other marine mammal species) may be harassed, injured or killed due to an oil spill from Northstar, NMFS determined previously, under section 7 of the ESA, that oil and gas development at Northstar would not jeopardize the continued existence of the bowhead whale.

Comment 20: The NSB questions the citation in BPXA's application (i.e., NMFS, 1997), whether NMFS subscribes to the policy regarding a determination of negligible impact where the impact may be more than negligible, but the likelihood of occurrence is minimal, and whether NMFS will continue this policy in regard to future proposed OCS development projects.

Response: The reference cited in the BPXA application is NMFS' **Federal Register** notice of issuance of an IHA to the ARCO Oil Company for oil exploration in Camden Bay, Alaska (see 62 FR 51637, October 2, 1997). In that document, NMFS stated that when making a negligible impact determination, NMFS can find that a negligible impact determination may be appropriate if the probability of occurrence is low, but the potential effects may be significant. This statement has been made by NMFS previously (see 53 FR 8474, March 15, 1988) and can also be found in NMFS' Programmatic EA (NMFS, 1995) for implementation of regulations found at subpart I of this part. In stating this policy for this and other activities, NMFS is following Congressional direction to balance the potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts states: "If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information." (132 Cong. Rec. S 16305 (Oct. 15, 1986)).

Comment 21: Greenpeace notes that the available information shows that if there is a major oil spill, the impacts would be severe, and, therefore, NMFS cannot find negligible impact. The risk of a long-term chronic leak, a large spill of 1,000 barrels or more, drill rig blowout and other occurrences exists. Because these events are still possible, BPXA must analyze and incorporate the marine mammal take that would occur.

Response: Keeping in mind the response to the previous comment, NMFS notes that, while a large oil spill, if it occurred, has the potential to have impacts on bowhead whales and other marine mammal species that are more than negligible, the possibility for a large oil spill to occur is believed by NMFS to be minimal. The Corps' FEIS describes in detail calculations it made for the probability for a major oil spill occurring at Northstar. According to that document there is a 1.6–5-percent chance of a major oil spill occurring along the offshore portion of the pipeline over the first 15 years of operation and a 7-percent chance that there would be a major spill due to platform operations over the life of the platform. NMFS accepts these estimates as the best information available.

Additionally, spilled oil would need to occur at a time and/or location where it could intercept bowhead whales or other marine mammal species. The FEIS describes the fate and consequences of having a major oil spill during different seasons of the year. NMFS also considers this information to be the best scientific information available. As a result, NMFS believes that, because the likelihood of a major oil spill occurring and impacting marine mammals is low for the period of these regulations, it is both impractical and speculative to calculate take levels for major oil spills. The low probability of a major oil spill impacting marine mammals also allows NMFS to make a determination that the taking would have no more than a negligible impact on marine mammals in accordance with Congressional direction mentioned previously.

However, NMFS recognizes that in the unlikely event that a major oil spill did occur, the impact has some potential to be more than negligible. As a result, NMFS has determined that, in the event a major oil spill occurs, NMFS will need to reassess immediately its determination in this document that the taking of marine mammals by oil and gas development activities in the Beaufort Sea is having no more than a negligible impact on marine mammals. If, because the takings are projected to exceed the levels used in this document to make a negligible impact finding, NMFS can no longer make a negligible impact determination, NMFS will immediately suspend the LOA issued for the oil development project causing the impact. Because the LOA suspension falls under the emergency determination for LOA suspension under these regulations, NMFS will not provide a 30-day public review period prior to suspension. However, NMFS believes the possibility of this situation occurring is remote.

Comment 22: Greenpeace states that the NMFS assertion of negligible impact on endangered species or stock, despite the fact that no specific prediction will be made about the potential number of bowhead whales that would be taken as a result of an oil spill and cleanup, is arbitrary and capricious, and fails to utilize the best scientific and commercial data available. The conclusion of negligible impact is not supported by any assertion of fact.

Response: Please see the response to the previous two comments. The FEIS discusses the potential for a large oil spill, either through a break in the pipeline or a blowout. As mentioned previously, NMFS adopts this documentation as the best scientific information available. In addition, mitigation measures in place at Northstar, including weekly inspection

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overflights of the pipeline (in addition to possibly more frequent flights transporting people and supplies), and incorporation of the LEO spill detection system reduce the potential for chronic leaks to go undetected for long periods of time.

Comment 23: Greenpeace contends that NMFS only cursorily addresses impacts from oil spills and cleanup and fails to analyze the cumulative exposures or the risk to the entire bowhead population from a prolonged disruption of a biologically important behavior or from injury or take over the life of the Northstar project, or due to a catastrophic oil spill.

Response: The MMPA requires NMFS to make a determination that the total of such taking during each 5-year (or less) period concerned will have a negligible impact on the species or stock of marine mammal, not whether the takings will be negligible over the entire 20–30 year lifespan of Northstar. Also, it is not necessary for NMFS to fully describe the impacts and the determinations made in that regard in the preamble to a proposed rule. The concerns raised by Greenpeace were fully addressed by the Corps in its FEIS. Based upon that document, NMFS believes the taking will have no more than a negligible impact (as defined in § 216.103).

Comment 24: Greenpeace states that oil spill trajectory modeling has not been done to support the conclusion of negligible impact, or the conclusion that the impact will be limited because the trajectory will be confined to the shoreline. Also, Greenpeace states that there is no consideration being given of the persistence of oil in the environment when considering level or numbers of take. The toxicity of oil can persist in the environment for more than ten years.

Response: As mentioned previously, NMFS believes that the potential for a large oil spill occurring during the 5-year period of these regulations is remote. Therefore, NMFS believes that the recommended studies or considerations are unnecessary for it to make its negligible impact determination.

Comment 25: Greenpeace states that NMFS has provided no legal justification for authorizing incidental take nor has it utilized the best scientific and commercial data available for any of its conclusions. In the draft regulations, NMFS ignored important scientific information indicating greater oil spill and noise impacts and failed to acknowledge deficiencies in many of the studies BPXA relied on in its application, as noted by Albert (1996, 1997).

Response: NMFS uses the best scientific and commercial information available when making determinations of negligible impact on marine mammal species and no unmitigable adverse impact on species/stocks for subsistence purposes. NMFS believes that this information is contained in the BPXA application, NMFS' biological opinion and the Corps FEIS on Northstar provides this information. Without Greenpeace providing a reference for Albert (1996, 1997) NMFS is unable to respond further to the statement.

Subsistence Concerns

Comment 26: The AEWC notes that the BPXA application estimates the distances from the Northstar Unit to the traditional hunting areas for 3 fall bowhead whale subsistence villages. However, because the bowhead whale moves in a single westward migration, this information is of limited relevance to NMFS' evaluation of potential adverse impacts on subsistence. Adverse impacts to bowhead whales could affect the subsistence hunting of any or all 10 of the villages depending upon the severity and timing of any oil spill and the perceptions by the various villages on how the oil affected the quality of the subsistence product.

Response: While the bowhead whale moves in a single westward migration in the fall, except for the unlikely occurrence of a significant oil spill (greater than 1,000 barrels), wherein all 10 villages' bowhead subsistence harvest may be affected, NMFS believes that the impact on bowhead whales from Northstar will be limited to 3 villages, and in particular Nuiqsut. Nuiqsut has the greatest potential to be impacted by development at Northstar, as its whaling customarily takes place in the vicinity of the island.

In the past, NMFS has requested, without success, information regarding the locations where successful bowhead whale takes occur in the Beaufort Sea. Considering that whalers are provided with GPS receivers, this information should be available. This information could provide scientists with data to make assessments on the impacts from oil and gas production activities on Beaufort Sea subsistence whaling. In the interim, NMFS uses the more general information provided by the applicant.

Based on the information to date, however, NMFS has determined that the potential for a major oil spill to occur, and for that oil to intercept bowhead whales in the migratory corridor, which in turn, could affect the subsistence harvest of all 10 villages, is unlikely.

Comment 27: The NSB notes that one of their primary concerns is the potential for planned (oil development) activities to disrupt fall subsistence whaling by the village of Nuiqsut. NSB believes it is difficult to clearly identify all of the activities associated with construction and operations which are expected to occur during this critical period.

Response: Activities that have some potential to occur during the same period as Nuiqsut subsistence whaling would include any activities scheduled, but not completed, prior to September. These are described in BPXA's application. However, activities that may occur during that time period may be influenced by agreements made during the C&AA negotiations. Based upon previous C&AAs, and recent statements made by BPXA at a stakeholders meeting in Seattle, NMFS presumes that any activity that creates noise, or has the potential to disturb bowheads, either acoustically or visually, either will not take place or will be modified during the fall subsistence hunt for bowheads. However, even without an agreement to curtail activities during this period, NMFS does not believe these activities will create sufficient level of noise to result in an unmitigable adverse affect on subsistence uses of the bowhead.

Comment 28: The AEWC notes that the annual C&AA is not entered into between BPXA and NSB residents, but by the AEWC on behalf of its bowhead whale subsistence hunters.

Response: NMFS concurs and has made the correction in this document.

Mitigation Concerns

Comment 29: The AEWC recommends that NMFS take this opportunity to convene a meeting, or a series of meetings, with the AEWC and other interested parties to (1) address arctic offshore oil production-related impacts to marine mammals and subsistence hunting, and (2) discuss appropriate additional mitigation measures during Northstar oil production.

Response: NMFS concurs that a meeting, or a series of meetings, to address mitigation measures that might be adopted by the industry in the event that an oil spill occurs is warranted. In that regard, NMFS hosted a meeting on February 24, 2000, between the AEWC/NSB and the oil industry to start a dialogue to identify monitoring measures for both noise and oil that might be initiated to address both short- and long-term, cumulative impacts. Future meetings are also planned. However, these meetings should not be confused with the peer-review meetings normally held in late spring for the open water noise monitoring and early fall for on-ice noise monitoring in Seattle, WA.

Comment 30: Greenpeace notes that during the ice covered season, BPXA proposes no mitigation before mid-March, based on the assumption that female ringed seals establish their birth lairs before pupping in late March or April. Noting that ringed seals begin to build lairs as soon as the ice is covered with snow, BPXA must mitigate harassment of ringed seals prior to initiation of any construction activities, regardless of when they commence.

Response: The primary ice roads used during Northstar construction (and later during oil production), must be almost straight-line in order to effectively transport gravel from the mine site to Seal Island and for construction of the pipeline. Once Northstar and the pipeline are constructed, only a single primary offshore road will need to be constructed annually, that one along the pipeline corridor. As a result, there is little mitigation that has been identified that would be practical and effective during the construction of these primary roads in the early part of the winter season. However, secondary ice roads constructed later in the season, are not believed to be confined to a set track and can be constructed to avoid seal structures. As a result, NMFS has imposed mitigation measures in the LOA which requires (1) Using trained dogs to locate seal structures on all ice roads, (2) avoiding seal structures by a minimum of 150 m (492 ft) during construction of any roads other than the gravel and pipeline primary roads, and (3) avoiding, to the greatest extent practicable, disturbance of any located seal structure after March 20.

It should be recognized that mitigation (using trained dogs) conducted this year during primary ice road construction was implemented because BPXA did not have an authorization for harassment under the MMPA, and therefore needed to avoid, to the greatest extent possible, harassing ringed seals. At a workshop later this year, NMFS will assess the value and practicality of using trained dogs as a mitigation measure to locate seal structures on the ice and then halting activity around the structure until either the animal voluntarily vacates the structure or biological observers determine that the structure is unoccupied. Alternatively, NMFS may determine that it is preferable for the ringed seals to be discouraged, by incidental construction noise, from converting breathing holes into seal structures where pups may later be born, and potentially injured or killed at some later time.

Section 101(a)(5)(A)(ii)(I) of the MMPA provides for regulations setting for the permissible methods of taking and other means effecting the least practicable adverse impact on the affected species or stock and its habitat. As ringed seals construct several breathing holes and lairs within its territory, they do not rely on a single structure during the year. Ice roads constructed early in the year will result in some minor harassment as ringed seals abandon certain breathing holes, if the noise is disturbing to them. NMFS believes this may be preferable to avoiding all harassment of ringed seals during ice road construction (how that would be accomplished has not been identified) and then having the newborn pup, who may be more sensitive to noise than an adult, abandon a birthing lair prior weaning, and having that pup succumb to the effects.

Comment 31: Greenpeace notes that BPXA is proposing to have marine mammal monitors conduct watches commencing 30 minutes prior to such noisy activities as impact hammering and offloading during the open water season. Greenpeace states that given frequent and often extended periods of impaired visibility in the Beaufort Sea due to fog and low, or no, light conditions, BPXA should include work restrictions during these times.

Response: NMFS does not agree. BPXA proposed having marine mammal monitors to conduct observations for 8 hours/day for 2–3 days during each major type of construction activity, and during quiet periods before and/or after these activities occur. Monitors must conduct observations a minimum of 30 minutes prior to starting noisier activities. If a marine mammal is observed within an area that might cause Level A harassment (180 dB for cetaceans, 190 dB for pinnipeds), work cannot start until the marine mammal has left the safety zone. NMFS has clarified this requirement in the LOA to require marine mammal monitor(s) be on watch during all daylight hours for any activity that results in a SPL of at least 180 dB at any distance which exceeds the island's land/water interface. This monitoring must begin in daylight at least 30 minutes prior to beginning the activity. Also, the entire safety zone must be visible during the entire pre-activity monitoring time period in order for the activity to begin. This means that noisy activities cannot start, or be restarted after a time period set in the LOA during low visibility and nighttime periods.

As an extra precaution, work is required to cease whenever a marine mammal enters its respective safety zone as noted by an observer. However, while certain work must not start-up until the observer can ensure that the safety zones are free of marine mammals, once that work begins it need not cease simply because weather precludes adequate observation during inclement weather or nighttime. NMFS presumes that anthropogenic noise in the area around Northstar will discourage marine mammal presence if the noise is bothersome to the animals.

Comment 32: Greenpeace was concerned that BPXA proposes to intentionally harass marine mammals as a form of mitigation in the event of an oil spill. Greenpeace believes that NMFS should not approve the intentional use of harassment to reduce the level of serious injury or mortality. Greenpeace notes that regardless of whether this technique constitutes acceptable mitigation (and Greenpeace asserts it does not), it is not practical given the persistence of oil in the environment. There is no information or reasoned analysis of how long intentional harassment will be used as a mitigation strategy during an oil spill and just how much reduction in Level A harassment will be achieved.

Response: The intentional harassment of marine mammals for the health and welfare of the animal is under another provision of the MMPA and not under this section. In the event that a significant oil spill occurred, NMFS and other agencies would determine how best to protect marine mammals from oil.

Comment 33: Greenpeace is concerned that BPXA cites its Oil Discharge Prevention and Contingency Plan (ODPCP) as a mitigation measure for protecting marine mammals. Mitigation should not be assumed until BPXA can reasonably prove its ability to respond and remove oil from the environment.

Response: While NMFS considers the ODPCP to be a mitigation measure to reduce impacts to marine mammals, NMFS also recognizes the inability to respond to an oil spill in the waters surrounding Northstar at certain times and in certain conditions. These constraints to respond in all seasons and weather conditions has been discussed in detail in Chapter 8 of the Corps FEIS.

Comment 34: The MMC recommends that NMFS review the ODPCP to assure that the risk of spills has been estimated appropriately; require modification of the contingency plan if everything feasible has not been done to minimize the risk of spills occurring and impacting marine mammals; and provide for periodic site inspections as part of the long-term monitoring

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program to assure that the contingency plan can be implemented as and when necessary. Finally, the MMC recommends that an assessment of the contingency plan and any monitoring requirements be included in any **Federal Register** document published to promulgate final regulations on this action.

Response: NMFS believes that it has neither the expertise to determine the adequacy of the ODPCP, nor the authority under the MMPA to require the ODPCP be modified by BPXA or to place these requirements on Federal or state agencies with such authority. As the MMC noted in its comment, the ODPCP has been approved by the U.S. Department of Transportation, the U.S. Coast Guard, the Minerals Management Service (MMS), and the State of Alaska Department of Environmental Conservation. For its determinations of negligible impact, NMFS relies on the information, including estimates of risk from oil spills, contained in the FEIS.

Monitoring Concerns

Comment 35: The NSB believes that the proposed marine mammal monitoring plan in its present form is inadequate. The plan, and especially the proposal for passive acoustic monitoring of fall migrating bowhead whales, should be revised and made clearer.

Response: BPXA's technical plan for marine mammal and acoustic monitoring during construction of Northstar was submitted to NMFS in May, 1999, as a supplement to its November 1998, petition. That plan was reviewed at the peer review workshop held in Seattle, WA on July 1, 1999, and revised in August 1999, based on the recommendations made during the workshop. The NSB participated in that workshop. NMFS does not believe that it is necessary at this time to request BPXA to revise the plan prior to providing all parties at the workshop an opportunity to respond. Since this plan will be reviewed again later this year, the comments and recommendations made by the NSB will be placed on this year's meeting agenda.

Comment 36: Greenpeace notes that, although NMFS is proposing regulations governing the taking of marine mammals during the construction and operation of Northstar, the accompanying marine mammal monitoring program only applies to project construction. The monitoring program fails to outline a program for monitoring marine mammal takes during Northstar operation.

Response: BPXA's revised monitoring plan as submitted on September 1, 1999, provides detailed description of proposed monitoring during construction. This monitoring had been amended based on comments received during the Arctic Peer Review Workshop held in Seattle, WA on July 1, 1999.

A detailed description of monitoring during Northstar operations was not submitted at the time because that monitoring program would not begin until oil drilling operations began, approximately November 2000. BPXA will submit a monitoring plan for operations in sufficient time for that plan to be reviewed by peers and the general public. NMFS anticipates public review on the monitoring plan during the first year of operations will be conducted during the public comment period on an application for LOA renewal, which will be contingent on submission of an adequate monitoring plan. In the interim, BPXA will continue monitoring impacts as described in the August 20, 1999, Technical Monitoring Plan. As stated in BPXA's application, monitoring during operations will require evaluation based on the results of monitoring during construction and any other information that becomes available in the interim. NMFS intends to continue past practice and have annual submissions of proposed monitoring plans and to have those plans peer reviewed prior to implementation.

Comment 37: Greenpeace believes that specific monitoring requirements should be included in the regulations, not in the LOA.

Response: If specific monitoring conditions are contained in the regulations, modifications to the monitoring would require an amendment to the regulations prior to implementation. This would prevent prompt implementation of revised monitoring based on the annual review process, or in response to an unusual event, as can be done by having specific monitoring conditions contained in an LOA. As a result, NMFS has not adopted this recommendation. However, it should be noted that BPXA must comply with the conditions of the LOA, so it would be responsible for implementing any monitoring identified in the LOA.

Comment 38: Greenpeace states that NMFS cannot assume that the impacts of the Northstar operations on marine mammals will be negligible in the absence of a detailed monitoring program to back up that assertion.

Response: NMFS believes that the results from monitoring are useful to support or refute its determinations that takings are having a negligible impact on affected marine mammal stocks and not having an unmitigable adverse impact on subsistence uses of marine mammals. However, a detailed monitoring program is not a requirement under the MMPA before NMFS can make these determinations; the MMPA requires only that a monitoring program be required under regulations authorizing the taking. For Northstar, NMFS expects that, through the peer review process, a comprehensive monitoring program will be implemented that will provide the necessary information on impacts on marine mammals.

Comment 39: Greenpeace states that BPXA's proposed plan to establish a peer review process as outlined in its monitoring plan is not sufficiently independent to meet the standards of the MMPA. The regulations should require BPXA to submit the monitoring plans well in advance so that NMFS can instigate its own independent peer review, and require that its recommendations be incorporated into the final plans.

Response: The peer review process described in BPXA's Technical Plan for Marine Mammal and Acoustic Monitoring During Construction of BP's Northstar Oil Development in the Alaskan Beaufort Sea, 2000, is the same as NMFS' Arctic Peer Review Workshop held annually in Seattle, WA. Participants in this workshop, and similar workshops held to discuss on-ice monitoring of seals, typically include representatives from industry, the NSB, the AEWC, universities, environmental organizations, and state and Federal government.

It should be understood that independent peer review in this context means a review by other than NMFS, the oil industry and its contractors, and the AEWC/NSB. However, independent peer review is not required for authorizations issued under section 101(a)(5)(A) of the MMPA. While peer review of monitoring plans has been incorporated into these regulations in accordance with findings made at a workshop held in Seattle in 1994 with the AEWC, the oil and gas industry and others, independent peer review is at the discretion of NMFS. On April 9, 1999 (64 FR 17347), NMFS requested nominations for the voluntary participation in the peer review process. Due to a lack of interest expressed by the public in response to this notice, NMFS has decided to reserve use of an independent peer review to matters of significant dispute between the AEWC, NMFS, and/or the Holder of an LOA. In general, specific requirements for independent peer review will be determined in advance and noted in an LOA.

Comment 40: Both the MMC and BPXA note that the preamble to the proposed rule failed to mention the acoustic monitoring program for bowhead whales described in BPXA's revised application and monitoring plan.

Response: NMFS acknowledges the oversight. BPXA's technical plan for marine mammal and acoustic monitoring during construction at Northstar proposed seven monitoring tasks, not six. These tasks are listed elsewhere in this document.

Comment 41: The MMC recommends that NMFS review past aerial survey data to determine whether the surveys conducted by the MMS are likely to provide sufficient information to assess the utility of the proposed acoustic monitoring and if the MMS' surveys are judged unlikely to provide sufficient data, require that additional surveys be done during the construction phase to document the presumed effectiveness of the acoustic monitoring.

Response: Thank you for this recommendation. As noted in BPXA's application, use of an acoustical monitoring system is planned to be tested in 2000. The purpose of the system is, in part, to assess the feasibility of its use as an alternative to aerial surveys. In addition to MMS surveys, additional aerial surveys for bowheads are conducted in the region to assess impacts from seismic work. This data would also be available for analysis. As a result, the MMC's comments have been forwarded to NMFS scientists and others for consideration. However, NMFS recommends MMC scientists participate in the peer review workshops so that the concerns of the MMC can be addressed more directly.

Comment 42: The MMC, because of perceived uncertainties in the data regarding impacts to ringed seals and polar bears and interactions between these two species, recommends that monitoring of polar bears and polar bear den sites required by regulations and LOAs issued by the U.S. Fish and Wildlife Service (USFWS) will be coordinated with the ringed seal monitoring required by this set of regulations and LOAs.

Response: NMFS is unaware of any evidence that increased interactions between polar bears and ringed seals will occur as a result of construction of ice roads and the reconstruction of Seal Island. To the extent practicable, on-ice monitoring of ringed seals and polar bears has been, and will be, coordinated. NMFS notes that often the same biological observers conducting ringed seal observations are also conducting polar bear observations. In addition, the USFWS has attended on-ice peer review workshops wherein NMFS and others review previous monitoring and upcoming monitoring plans. The MMC concerns expressed here will be reviewed at the next meeting. NMFS recommends that, if the MMC has any suggestions regarding appropriate study designs to determine whether oil and gas activity results in increased interactions between polar bears and ringed seals, they should provide that information to NMFS prior to the next on-ice peer review meeting.

Comment 43: Greenpeace asserts that BPXA's monitoring program relies on ineffective methods for monitoring ringed seals.

Response: To the extent practicable, NMFS follows the guidelines in Swartz and Hofman (1991) when reviewing and making recommendations on monitoring oil and gas activities in Arctic waters. Based on that document, and the results of a workshop held in Seattle in October 1999, BPXA has implemented a monitoring program using dogs to locate ringed seal structures in the ice. However, NMFS notes that using dogs this winter, prior to issuance of an LOA, does not mean that dogs will be required each year that ice roads are constructed. That determination will be based in part on the recommendations of scientists and the value of the information provided by this method of data collection. Generally, in cases where ice roads are constructed early in the year, under an LOA or IHA to take marine mammals, NMFS has questioned the need for dogs to monitor harassment takings. However, in order to protect newborn pups, dogs will be required under an LOA, whenever new, secondary, ice roads are constructed after March 1.

Following Swartz and Hofman (1991), NMFS has determined that the Before-After Control-Impact (BACI) study of ringed seal distribution meets the monitoring requirements for assessing impacts on ringed seals during wintertime construction and operation. This does not mean however, that additional or alternative ringed seal monitoring will not be required in future years under an LOA. Such monitoring may be imposed as a result of future peer review workshops.

Reporting Concerns

Comment 44: The AEWC requests that, when scheduling review periods, NMFS give due consideration to the time of year when that period will occur. Spring bowhead whale subsistence hunting generally is most intense for our communities during April, May, and June. In addition, the annual meetings of the International Whaling Commission, usually are scheduled sometime between early May and mid-July. These meetings last a total of 4 weeks and require intense preparation.

Response: Considering that the fall bowhead whaling season begins around September 1 and continues for several weeks, wherein the AEWC is also not available for reviewing documents and meeting, there is limited time during the year for an annual review.

As proposed previously, an interim report was due 180 days prior to expiration of an LOA. If an LOA expires early in the year, as is expected with the Northstar LOA, then the report would be due 6 months prior to that date, or in late summer of the previous year. Because of the timing, this report obviously could not include an assessment of the activity's impact on bowhead whales and the subsistence harvest that year since the fall migration would only be starting at that time. Therefore, this report would need to contain an assessment of the previous year's impact on bowhead whales, requiring the use of dated information, and putting the data out of synchrony with the actual taking of marine mammals during that LOA period of validity. However, this is realistic considering that it takes 6–7 months to incorporate MMS aerial survey data on bowheads into an analysis of impacts from an oil and gas exploration or development activity.

As a result, because of the importance of having a peer review of both monitoring plans and the results from previous monitoring, NMFS has amended the regulations and is requiring holders of LOAs to provide two interim reports, the first due 90 days after the end of the on-ice season (approximately September 15th for the report), and the second due 90 days after the end of the fall bowhead migration in the Beaufort Sea (approximately February 1st for the report). NMFS will also require a draft comprehensive report by May 1st of the year following the year of validity of the LOA. NMFS recognizes that this means that the first year LOA for Northstar will only have a report on the on-ice monitoring due to NMFS by the time NMFS needs to consider a renewal of the first-year LOA.

Finally, NMFS will require a final comprehensive report on all marine mammal monitoring and research conducted by the holder of its LOAs during the period of these regulations

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must be submitted at least 240 days prior to expiration of these regulations or 240 days after the expiration of these regulations, if renewal of the regulations has not been requested.

Comment 45: The NSB believes that the proposed method for project review (two reviews/year, one through the mail) is not adequate. One meeting is needed to review the draft proposal and a second meeting is needed to review the draft report.

Response: NMFS disagrees that a meeting is necessary solely to review BPXA's draft monitoring report(s). For continuity, this report (which is a report on the results of previous years' monitoring programs), is usually reviewed and critiqued at the same time the NSB and others are recommending monitoring measures for the upcoming season. NMFS believes that discussion on the results of previous monitoring at the same time as discussion of the upcoming monitoring plan, facilitates recommendations on appropriate monitoring and/or research.

In addition, recognizing the period of time when NSB residents are not available to meet (discussed previously in this document) and because the NSB, NMFS, and others are already sponsoring and/or participating in three meetings annually on this issue, one for open water monitoring, a second for winter (on-ice) monitoring, and a third to address short- and long-term monitoring for effects from potential oil spills on marine mammals, a fourth meeting limited to discussion on the results of previous year's monitoring is simply not practical at this time.

ESA Concerns

Comment 46: Greenpeace contends that the proposed rule (64 FR 57010, October 22, 1999) violates section 7(a)(2) of the ESA because it fails to insure that actions to approve regulations are not likely to jeopardize the continued existence of endangered species, after required consultation and using the best scientific and commercial data available.

Response: With the issuance of a Biological Opinion (BO) on March 4, 1999, NMFS completed formal consultation with the Corps under section 7 of the ESA for the construction and operation of the Northstar project. The BO, which found that the construction and operation of the Northstar project activity will not jeopardize the continued existence of any species under the jurisdiction of NMFS, was based upon the best scientific and commercial data available. Because issuance of these regulations and an LOA to BPXA for the incidental take of bowhead whales is also considered a Federal action, NMFS has conducted a consultation under section 7 with itself on this action. The finding by NMFS is that an authorization for the taking of bowhead whales incidental to construction and production of the Northstar Unit, under section 101(a)(5)(A) of the MMPA, while it may adversely affect bowhead whales, is not likely to jeopardize its continued existence. If new information is obtained which affect bowhead whales in a manner or to an extent not previously considered, or if the level of incidental take is exceeded, reinitiation of consultation will be undertaken.

Comment 47: Greenpeace also contends that, by proposing the regulation, NMFS has made an irreversible and irretrievable commitment of resources with respect to the Northstar project, which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternative measures which would not violate section 7(a)(2) of the ESA.

Response: NMFS does not agree that it has made an irreversible and irretrievable commitment of resources in conjunction with proposing regulations for the project. NMFS completed its section 7 responsibilities prior to issuance of this final rule.

Comment 48: Greenpeace believes that the proposed rule (64 FR 57010, October 22, 1999) fails to utilize its authorities in furtherance of the purposes of section 7(a)(1) of the ESA by carrying out programs for the conservation of endangered species.

Response: Conservation recommendations under section 7(a)(1) of the ESA were provided by NMFS to the Corps in the Northstar BO. These include: (1) Vessel operations should be scheduled to minimize operations after August 31 of each year in order to reduce potential harassment of migrating bowhead whales, (2) utilize agitation technique for placement of sheetpiling and piling instead of pile-driving whenever practicable, (3) develop and conduct an acoustic monitoring study during construction and initial operation, and (4) conduct or support studies to describe the impact of Northstar on the migrational path of bowhead whales in the Beaufort Sea.

Additional conservation recommendations to reduce impacts on the endangered bowhead whale are contained in these regulations, the BPXA LOA, and the Incidental Take Statement issued to the Corps under section 7(a)(2) of the ESA.

Comment 49: Greenpeace notes that the proposed rule (64 FR 57010, October 22, 1999) states that NMFS has begun consultation under section 7, but that there has been no public release of information concerning the scope of consultation nor of a biological assessment which adequately assess these impacts.

Response: While there is no requirement in the ESA for making that information public, this document notifies the public of the completion of section 7 consultation. Recognizing that impacts on listed species will result from the activity itself, not from the issuance of an authorization for the incidental taking, NMFS has determined that the issuance of 5-year regulations for the Northstar Project, and a 1-year LOA, may affect bowhead whales, the action was unlikely to jeopardize the stock's continued existence. Because Biological Assessments are written at the discretion of the action agency, and because a BO was written previously on the major action (i.e., on construction and operation of Northstar), a new Biological Assessment is not necessary for this action and, therefore, one was not prepared.

Comment 50: There was no incidental take statement in the Northstar BO.

Response: That is correct. Whenever a marine mammal species listed as endangered or threatened under the ESA is involved, section 7(b)(4)(C) of the ESA requires that the taking is also authorized pursuant to section 101(a)(5) of the MMPA. Until the requirements of both the MMPA and ESA are met, an incidental take statement cannot be issued. The issuance of an LOA to BPXA for Northstar will meet the MMPA requirements and an Incidental Take Statement can be, and will be, issued shortly.

Comment 51: Greenpeace states that the proposed rule results in a taking of a protected species in violation of section 9 of the ESA.

Response: The taking of endangered bowhead whales incidental to the construction and operation of the Northstar Unit is not expected to be in violation of section 9 of the ESA. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to, and not intended as part of, the agency action is not considered to be prohibited taking under the ESA provided that such taking is in compliance with the terms and condition of the Incidental Take Statement. As mentioned previously, the incidental taking of bowhead whales under the ESA will be authorized through an Incidental Take Statement issued under section 7 of the ESA.

Comment 52: The original Northstar BO did not address the quantitative

information submitted by BPXA in its incidental take publication regarding expected level of takes, such as 173–1,533 bowheads annually, or sources of impacts, such as 16,800 large-volume haul trips, 28,500 dump trucks, etc.

Response: The Biological Assessment was first submitted to NMFS by the Corps on May 19, 1998, with supplemental information provided on July 10, 1998. This was prior to BPXA submitting information for an IHA on August 12, 1998 (63 FR 57096, October 26, 1998), or on November 30, 1998, for this action. While NMFS could have included this additional information in its BO, this information was considered preliminary at the time and unnecessary for making a determination on whether or not the activity could jeopardize the bowhead whale's continued existence. Estimates of bowhead whale takes by harassment have been evaluated during this rulemaking and will be incorporated as appropriate into the Incidental Take Statement. NMFS notes however, that the activities mentioned by the commenter will occur during the winter and will not affect bowheads.

Comment 53: Greenpeace believes that NMFS has failed to conduct a North Slope-wide assessment of the impacts to bowhead whales from reasonably foreseeable exploration and development activities in the Beaufort Sea.

Response: NMFS' evaluation of the cumulative effects on bowhead whales, by Beaufort Sea activities, were addressed in part V. of the March 4, 1999, BO.

Description of Habitat and Marine Mammal Affected by the Activity

The DEIS and FEIS prepared for the Northstar development (Corps, 1998, 1999) contains a detailed description of the Beaufort Sea ecosystem and its associated marine mammals. Those documents are part of the record of decision of this rulemaking. A copy of the FEIS is available from the Corps upon request (see **ADDRESSES**).

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga whales (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species and of others can be found in several documents (e.g., Hill and DeMaster, 1998) including the BPXA application (BPXA, 1999) and the previously mentioned FEIS. Please refer to those documents for specific information on these species. These documents are part of this rulemaking. In addition to the species mentioned in this paragraph, Pacific walrus (*Odobenus rosmarus*) and polar bears (*Urus maritimus*) also have the potential to be taken. Appropriate applications for taking these species under the MMPA have been submitted to the USFWS by BPXA.

Potential Effects on Marine Mammals

Noise Impacts

Sounds and non-acoustic stimuli will be generated during construction by vehicle traffic, ice-cutting, pipeline construction, offshore trenching, gravel dumping, sheet pile driving, and vessel and helicopter operations. Sounds and non-acoustic stimuli will be generated during oil production operations by generators, drilling, production machinery, gas flaring, camp operations and vessel and helicopter operations. The sounds generated from construction and production operations and associated transportation activities will be detectable underwater and/or in air some distance away from the area of the activity, depending upon the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor. At times, some of these sounds are likely to be strong enough to cause an avoidance or other behavioral disturbance reaction by small numbers of marine mammals or to cause masking of signals important to marine mammals. The type and significance of behavioral reaction is likely to depend on the species and season, and the behavior of the animal at the time of reception of the stimulus, as well as the distance and level of the sound relative to ambient conditions.

In winter and spring, on-ice travel and construction activities will displace some small numbers of ringed seals along the ice road and pipeline construction corridors. BPXA began winter construction activities in mid-December, 1999, well in advance of female ringed seals establishing birthing lairs beginning in the latter half of March. The noise and general human activity may displace female seals away from activity areas and could negatively affect the female and young, if the female remained in the vicinity of the ice road.

During the open-water season, all six species of whales and seals could potentially be exposed to vessel or construction noise and to other stimuli associated with the planned operations. Vessel traffic is known to cause avoidance reactions by whales at certain times (Richardson *et al.*, 1995). Pile driving, helicopter operations, and possibly other activities may also lead to disturbance of small numbers of seals or whales. In addition to disturbance, some limited masking of whale calls or other low-frequency sounds potentially relevant to bowhead whales could occur (Richardson *et al.*, 1995; BPXA, 1999).

A more detailed description of potential impacts from construction and operational activities on marine mammals can be found in BPXA's application (BPXA, 1999) and the Corps' FEIS (Corps, 1999). That information is accepted by NMFS as a summation of the best scientific information available on the impacts of noise on marine mammals in this area. Additional information used by NMFS in this determination can be found in Richardson *et al.* (1995) and the references provided in BPXA's application.

Oil Spill Impacts

For reasons stated in the application, BPXA believes that the effects of oil on seals and whales in the open waters of the Beaufort Sea are likely to be negligible, but there could be effects on whales in areas where both oil and the whales are at least partially confined in leads or at the ice edge. In the spring, bowhead and beluga whales migrate through offshore leads in the ice. However, given the probable alongshore trajectory of oil spilled from Northstar, in relation to the whale migration route through offshore waters, interactions between oil and whales are unlikely in the spring. In the summer, bowheads are normally found in Canadian waters, and beluga whales are found far offshore. As a result, at this time of the year, these species will be unaffected should a spill occur. However, oil that persists in the Beaufort Sea into the fall or winter and is not contained and/or removed may impact bowhead whales.

In the fall, the migration route of bowheads can be close to shore. If bowheads were moving through leads in the pack ice, or were concentrated in nearshore waters, or if the oil migrated seaward of the barrier islands, some bowhead whales might not be able to avoid oil slicks and could be subject to prolonged contamination. However, because the autumn migration of bowhead whales past Northstar extends over several weeks and because most of the whales travel along routes well north of Northstar, according to BPXA, only a small minority of the whales are likely to intercept patches of spilled oil. The effects of oil on these whales have been described in several documents (BPXA, 1999; Corps, 1999; Loughlin *et*

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al. (1994), which NMFS reviewed during this rulemaking.

Ringed seals exposed to oil during the winter or early spring could die if exposed to heavy doses of oil for prolonged periods of time. Prolonged exposure could occur if fuel or crude oil was spilled in or reached nearshore waters, was spilled in a lead used by seals, or was spilled under the ice when seals have limited mobility. Individual seals residing in these habitats may not be able to avoid prolonged contamination and some would die. Studies in Prince William Sound indicated a long-term decline of 36 percent in numbers of molting harbor seals located on those haulouts affected by oil from the EXXON VALDEZ spill. In addition, newborn seal pups, if contacted by oil, will likely die from oiling through loss of insulation and resulting hypothermia (BPXA, 1999). Because the number of ringed and bearded seals in the central Beaufort Sea represents a relatively small portion of their total populations, and even large oil spills are not expected to extend over large areas, relatively few ringed and bearded seals would be impacted, and impacts on regional population size would be expected to be minor.

In addition to oil contacting marine mammals, oil spill cleanup activities could increase disturbance effects on either whales or seals, causing temporary disruption and possible displacement effects (MMS, 1996; BPXA, 1999). In the event of a large spill contacting and extensively oiling coastal habitats, the presence of response staff, equipment, and many low-flying aircraft involved in the cleanup will (depending on the time of the spill and cleanup), potentially displace seals and other marine mammals. However, the potential effects on bowhead and beluga whales are expected to be less than those on seals. The whales tend to occur well offshore where cleanup activities (during the open water season) are unlikely to be concentrated (BPXA, 1999). Also, because bowheads are transient and during the majority of the year, absence from the area would lessen the likelihood of impact by cleanup activities.

Estimated Level of Incidental Take

BPXA (1999) estimates that, during the ice-covered period, 91 (maximum 125) ringed seals and 1 (maximum 5) bearded seals potentially may be incidentally harassed during construction activities and 77 (maximum 105) ringed seals and 1 (maximum 5) bearded seals potentially may be incidentally harassed annually during oil production activities. BPXA estimates these takings by harassment during the ice-covered season by assuming that seals within 3.7 km (2.3 mi) of Seal Island, within 1.85 km (1.1 mi) of the pipeline construction corridor and related work areas, and within 0.66 km (0.4 mi) of ice roads will be "taken" annually. These anticipated levels of potential take are estimated based on observed densities of seals during recent (1997–1999) BPXA/LGL aerial surveys in the Northstar area during spring (Miller *et al.*, 1998; Link *et al.*, 1999; Moulton and Elliott, 1999) plus correction factors for seals missed by aerial surveyors. NMFS however, concurs with BPXA (1999) that these "take" estimates could result in an overestimate of the actual numbers of seals "taken," if all seals within these disturbance distances do not move from the area. It should be noted that NMFS does not consider an animal to be "taken" if it simply hears a noise, but does not make a biologically significant response to avoid that noise.

NMFS notes moreover, that BPXA has recently adopted new methods for on-ice monitoring of ringed seals which include the use of dogs to find seal structures. These new methods may result in a better estimate of the numbers of seals actually taken by different industrial activities.

During the open-water season, BPXA (1999) estimates that 7 (maximum 22) ringed seals, 1 spotted seal, 1–5 bearded seals, 173 (maximum 1,533) bowhead whales, less than 5 gray whales, and 6 (maximum 45) beluga whales may be incidentally harassed annually whether from construction or operations. BPXA assumes that seals and beluga whales within 1 km (0.6 mi) radius of Seal Island will be harassed incidental to construction and other activities on the island. Assumed "take" radii for bowhead whales are based on the distance at which the received level of construction noise from the island would diminish below 115 dB re 1 μPa. This distance has been estimated as 3.2 km (2 mi).

Although the potential impacts to the several marine mammal species known to occur in these areas is expected to be limited to harassment, a small number of marine mammals may incur lethal and serious injury. Most effects, however, are expected to be limited to temporary changes in behavior or displacement from a relatively small area near the construction site and will involve only small numbers of animals relative to the size of the populations. However, the inadvertent and unavoidable take by injury or mortality of small numbers of ringed seal pups may occur during ice clearing for construction of ice roads. In addition, some injury or mortality of whales or seals may result in the event that an oil spill occurs. As a result, BPXA requested that, because a small number of marine mammals might be injured or killed, that takings by mortality also be covered by the regulations. However, BPXA does not indicate the level of incidental take resulting from an oil spill at Northstar during either the ice-covered period or the open-water period. Because of the unpredictable occurrence, nature, seasonal timing, duration, and size of an oil spill occurring during the 5-year authorization period of these regulations, a specific prediction cannot be made of the estimated number of takes by an oil spill.

According to BPXA, in the unlikely event of a major oil spill at Northstar or from the associated subsea pipeline, numbers of marine mammals killed or injured are expected to be small and the effects on the populations negligible. While NMFS agrees that a major oil spill is unlikely during the 5-year period of these regulations, and believes that it is even less likely that spilled oil will intercept large numbers of marine mammals, NMFS cannot necessarily conclude that the effects on marine mammal populations will be negligible. Depending upon magnitude of the spill, its location and seasonality, an oil spill could have the potential to affect ringed and bearded seals, and/or bowhead and beluga whales. Because of the large population size of ringed seals and bearded seals and the small number of animals in the immediate vicinity of the Northstar facility, and because spilled oil is unlikely to disperse widely and, therefore, affect large numbers of seals, NMFS has determined that the effect on ringed and bearded seals will be negligible, even in the unlikely event that a major oil spill occurred.

Bowhead and beluga whales, however, while potentially less likely to come into contact with spilled oil because of their more prevalent offshore distribution, and potentially less seriously affected when in oiled waters provided their passage is not blocked, may be affected more seriously, if impacted, because of their smaller population sizes. However, based upon the Corps' analysis that there is less than a 10–percent chance of a major oil spill occurring during the 20–30 year lifespan of Northstar, and because NMFS believes that the potential for a major oil spill occurring during the 5-year period of these regulations and intercepting these species would be significantly less than 10 percent (approaching 1 percent), NMFS can make a determination that the taking of these two species incidental to construction and operation at the Northstar oil production facility will have no more than a negligible impact on them.

Impacts on Subsistence Uses

This section contains a summary on the potential impacts from construction and operational activities on subsistence needs for marine mammals. A more detailed description can be found in BPXA's application. This information, in conjunction with information provided by the AEWC and NSB in their comments, and information provided in the Corps' FEIS, is accepted by NMFS as the best information available to date on the potential effects on the availability of marine mammals for subsistence uses in the Beaufort Sea area. Should new information on the impacts to subsistence harvest of bowhead whales become available that may be contrary to the determination made here, NMFS will consider the information during review of a request for future LOAs and/or their renewal.

Noise Impacts

The disturbance and potential displacement of bowhead whales and other marine mammals by sounds from vessel traffic, on-island construction activities (*e.g.*, impact hammering), and production activities are one of the principle concerns related to subsistence use of the area. The harvest of marine mammals is central to the culture and subsistence economies of the coastal North Slope communities. In particular, if elevated noise levels are displacing migrating bowhead whales farther offshore, this could make the harvest of these whales more difficult and dangerous for hunters. The harvest could also be affected if bowheads become more skittish when exposed to vessel or impact-hammering noise (BPXA, 1999).

Construction activities and associated vessel and helicopter support began in December 1999, and are expected to continue into September or October 2000, depending upon ice conditions. Few bowhead whales approach the Northstar area before the end of August, and subsistence whaling generally does not begin until after September 1 and occurs in areas well east of the construction site. Therefore, a substantial portion of the Northstar development is expected to be completed when no bowhead whales are nearby and when no whaling is underway. Insofar as possible, BPXA expects vessel and aircraft traffic near areas of particular concern for whaling will be completed before the end of August. In addition, BPXA does not expect impact hammering to occur during the period when subsistence hunting of migrating bowhead whales is underway. NMFS expects that construction activities that have the potential to disturb bowheads just prior to, and during the bowhead subsistence hunt, would be subject for discussion and resolution during the C&AA discussions. However, even without an agreement to curtail activities during this period, NMFS does not believe these activities will create sufficient level of noise to result in an unmitigable adverse affect on subsistence uses of the bowhead.

Underwater sounds from drilling and production operations on an artificial gravel island are not very strong, and are not expected to travel more than about 10 km (6.2 mi) from the source. BPXA states that even those bowheads traveling along the southern edge of the migration corridor are not expected to be able to even hear sounds from Northstar until the whales are well west of the main hunting area.

Drilling will begin in the latter part of 2000 but will temporarily cease in mid-2001 to allow installation and start-up of processing facilities. Drilling is expected to resume by November 2001, after the bowhead season, and continue until approximately November, 2002. Drilling is, therefore, unlikely to impact either the bowheads or the subsistence needs for this species, prior to the 2002 bowhead season.

Nuiqsut is the community closest to the area of the proposed activity, and it harvests bowhead whales only during the fall whaling season. In recent years, Nuiqsut whalers typically take zero to four whales each season (BPXA, 1999). Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft). Cross Island, the principle field camp location for Nuiqsut whalers, is located approximately 28.2 km (17.5 mi) east of the Northstar construction activity area.

Whalers from the village of Kaktovik search for whales east, north, and west of their village. Kaktovik is located approximately 200 km (124.3 mi) east of Northstar. The westernmost reported harvest location was about 21 km (13 mi) west of Kaktovik, near 70°10'N. 144°W. (Kaleak, 1996). That site is approximately 180 km (112 mi) east of Northstar.

Whalers from the village of Barrow search for bowhead whales much further from the Northstar area, greater than 250 km (>175 mi) west.

While the effects on migrating bowheads from noise created by Northstar construction or production are not expected to extend into the area where Nuiqsut hunters usually search for bowheads and, therefore, are not expected to affect the accessibility of bowhead whales to hunters, it is recognized that it is difficult to determine the maximum distance at which reactions occur (Moore and Clark, 1992). As a result, in order to avoid any unmitigable adverse impact on subsistence needs and to reduce potential interference with the hunt, the timing of various construction activities at Northstar as well as barge and aircraft traffic in the Cross Island area will be addressed in a C&AA between BPXA and the AEWC on behalf of its bowhead whale subsistence hunters. Also, NMFS believes that the September 1999, Technical Monitoring Plan that will be implemented by BPXA will provide information that will help resolve uncertainties about the effects of construction noise on the accessibility of bowheads to hunters.

While Northstar activity has some potential to influence subsistence seal hunting activities, the most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island (BPXA, 1999). Pingok Island is about 24 km (15 mi) west of Northstar. The peak season for seal hunting is during the summer months, but some hunting is conducted on the landfast ice in late spring. In summer, boat crews hunt ringed, spotted and bearded seals (BPXA, 1999). Thus, it is unlikely that construction activity will have a significant negative impact on Nuiqsut seal hunting.

Oil Spill Impacts

Oil spills have the potential to affect the hunt for bowhead whales. While oil spills from production drilling or pipelines could occur at any time of the year, NMFS believes that only if a significant spill occurred just prior to or during the subsistence bowhead hunt and spread into offshore waters would a reduction in the availability of bowhead whales for subsistence uses be possible. While unlikely, oil spills could extend into the bowhead hunting area under certain wind and current conditions. BPXA (1999) states that even in the event of a major spill, it is unlikely that more than a small number of those bowheads encountered by hunters would be contaminated by oil. However, disturbance associated with reconnaissance and cleanup activities could affect bowhead whales and, thus, accessibility of bowheads to hunters. As

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a result, in the unlikely event that a major oil spill occurred during the relatively short fall bowhead whaling season, it is possible that bowhead whale hunting could be significantly affected. Moreover, even with no more than a negligible impact on those marine mammals that would be subject to subsistence hunting, individuals and communities as a whole, may perceive that the whale or seal meat or products are tainted or somehow unfit to eat or use. This could further impact subsistence hunting of these animals. However, NMFS believes that because (1) the probability of a large oil spill is less than 10 percent over the 20–30 years of Northstar operations, (2) bowhead whales in the vicinity of Northstar and hunted only in the months of September and October, limiting exposure time, (3) only under certain wind and sea conditions would it be likely that oil would reach the bowhead subsistence hunting area, (4) there will be an oil spill response program in effect that will be as effective as possible in Arctic waters, and (5) other mitigation measures have been suggested in the event that oil did contact bowheads, NMFS has determined that the construction and operation at Northstar is unlikely to result in an unmitigable adverse impact on subsistence uses of marine mammals during the period of these regulations. However, NMFS will continue to assess this determination as monitoring and mitigation measures are incorporated and improved through experience and as additional offshore developments are proposed. NMFS may revise or clarify its determinations during these rulemakings.

Impacts on Habitat

Invertebrates and fish, the nutritional basis for those whales and seals found in the Beaufort Sea, may be affected by construction and operation of the Northstar project. Fish may react to noise from Northstar with reactions being quite variable and dependent upon species, life history stage, behavior, and the sound characteristics of the water. Invertebrates are not known to be affected by noise. Benthic invertebrates would be affected by island and pipeline construction and overburden placement on the seabottom. Fish may be temporarily or permanently displaced by the island. These local, short-term effects are unlikely to have an impact on marine mammal feeding, except on a very local scale.

In the event of a large oil spill, fish and zooplankton in open offshore waters are unlikely to be seriously affected. Fish and zooplankton in shallow nearshore waters could sustain heavy mortality if an oil spill were to remain within an area for several days or longer. These affected nearshore areas may then be unavailable for use as feeding habitat for seals and whales. However, because these seals and whales are mobile, and bowhead feeding is uncommon along the coast near Northstar, effects would be minor during the open water season. In winter, effects of an oil spill on ringed seal food supply and habitat would be locally significant in the shallow nearshore waters in the immediate vicinity of the spill and oil slick. However, effects overall would be negligible.

Mitigation Measures

Several mitigation measures were proposed by BPXA to reduce harassment takes to the lowest level practicable and have been adopted, with modification, by NMFS. Additional measures may be added or modified in LOAs. Presently identified measures include:

(1) BPXA will begin winter construction activities in December. This will eliminate contact with lairs that are actively used as birthing lairs. Because it is still necessary to determine the number of structures impacted by winter construction, BPXA will survey the area(s) using trained dogs, to identify and avoid ringed seal structures by a minimum of 150 m (492 ft), if practicable.

(2) Other than work done on the primary ice roads, if construction activities are initiated in undisturbed areas BPXA will survey the area(s), using trained dogs, in order to identify and avoid ringed seal structures by a minimum of 150 m (492 ft); after March 20, activities should avoid, to the greatest extent practicable, disturbance of any located seal structure.

(3) During the open water season, BPXA will establish and monitor, during the daytime, a 190 dB re 1 μPa safety range for seals around the island for those construction activities with SPLs that exceed that level. Establishing the safety range will require the collection and analysis of sound attenuation in the waters of the Northstar site.

(4) While whales are unlikely to approach the island during impact hammering or other noisy activities, a 180 dB re 1 μPa safety zone will be established and monitored during daylight hours around the island.

(5) If any marine mammals are observed within their respective safety range, operations will cease until such time as the observed marine mammals have left the safety zone.

(6) Project scheduling indicates that impact hammering will not occur during the period for subsistence hunting of westward migrating bowhead whale.

(7) Helicopter flights to support Northstar construction will be limited to a corridor from Seal Island to the mainland, and, except when limited by weather, will maintain a minimum altitude of 1,000 ft (305 m).

(8) Drilling activities will temporarily cease during the bowhead whale migration during the first year of drilling activity (*i.e.*, September, 2001).

Monitoring Measures

A detailed description of BPXA's proposed monitoring program for implementation during the construction phase at Northstar can be found in both the revised BPXA application (BPXA, 1999) and revised Technical Monitoring Plan (LGL, LGL and Greeneridge, 1999). The open-water season portion of BPXA's May 6, 1999, monitoring plan was reviewed by scientists and others attending the annual open-water peer-review workshop held in Seattle on July 1, 1999. The Technical Monitoring Plan was revised to incorporate recommendations made during this meeting and submitted to NMFS on September 1, 1999. This document was provided to the public during the comment period on the proposed rule. Peer review on the on-ice portion of the plan was conducted on October 14–15, 1999. Recommendations from that workshop were incorporated into work conducted this past winter and will be incorporated, as appropriate, into future monitoring plans. A copy of the September 1, 1999, revised monitoring plan is available upon request (see **ADDRESSES**). Peer review of technical plans for monitoring during production activities will be conducted at future peer review meetings.

A summary of marine mammal monitoring that will be conducted during Northstar construction this year is provided here.

Monitoring will employ both marine mammal observations and acoustic measurements and recordings. During the open-water period, monitoring will consist of (1) acoustic measurements of sounds produced by construction activities through boat-based hydrophones, sonobuoys deployed by boat, and autonomous seafloor acoustic recorders; (2) observations of marine mammals (primarily seals) from an elevated platform on Seal Island, which will be made during periods with and without construction underway; and, (3) acoustic monitoring of the bowhead whale migration. Additional monitoring may be required by NMFS through the peer review workshops.

During the ice-covered season, BPXA proposes to continue an ongoing (since the spring, 1997) Before-After/Control-Impact Study on the distribution and abundance of ringed seals in relation to development of the offshore oil and gas resources in the central Beaufort Sea. Collection and analysis of data before and after construction is expected to provide a reliable method for assessing the impact of oil and gas activities on ringed seal distribution in the Northstar construction area. Other winter/spring monitoring will include (1) on-ice searches for ringed seal lairs in areas where construction starts in the mid-March through April period, (2) assessment of abandonment rates for seal holes, and (3) acoustic measurements of sounds and vibrations from construction. Additional monitoring may be required by NMFS through the peer review workshops.

NMFS expects that the technical monitoring plan for production will be submitted to NMFS later this year and subject to review by NMFS biologists and revised appropriately prior to implementation.

Reporting Measures

BPXA is required to provide two reports annually to NMFS. The first report is due 90 days after either the ice roads are no longer usable or spring aerial surveys are completed, whichever is later. The second report is required to be forwarded to NMFS 90 days after the formation of ice in the central Alaskan Beaufort Sea prevents water access to Northstar. These reports must include the dates and locations of construction activities, details of marine mammal sightings, estimates of the amount and nature of marine mammal takes, and any apparent effects on accessibility of marine mammals to subsistence hunters.

A draft final technical report must be submitted to NMFS by April 1 of each year. The final technical report must fully describe the methods and results of all monitoring tasks and a complete analysis of the data. The draft final report will be subject to peer review before being finalized by BPXA.

Determinations

NMFS has determined that the impact of construction and operation of the Northstar project in the U.S. Beaufort Sea will result in no more than a temporary modification in behavior by certain species of cetaceans and pinnipeds. During the ice-covered season, pinnipeds close to the island may be subject to incidental harassment due to the localized displacement from construction of ice roads, from transportation activities on those roads, and from construction and production activities at Northstar. As cetaceans will not be in the area during the ice-covered season, they will not be affected.

During the open-water season, the principal construction- and operations-related noise activities will be impact hammering, helicopter traffic, vessel traffic, and other general construction/production activity on Seal Island. Sheet-pile driving is expected to be completed prior to whales being present in the area. Sounds from construction/production activities on the island are not expected to be detectable more than about 5–10 km (3.1–6.2 mi) offshore of the island. Disturbance to bowhead or beluga whales by on-island activities will be limited to an area substantially less than that distance. Helicopter traffic will be limited to nearshore areas between the mainland and the island and is unlikely to approach or disturb whales. Barge traffic will be located mainly inshore of the whales and will involve vessels moving slowly, in a straight line, and at constant speed. Little disturbance or displacement of whales by vessel traffic is expected. While behavioral modifications may be made by these species to avoid the resultant noise, this behavioral change is expected to have no more than a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of operations, because the activity is in shallow waters inshore of the main migration corridor for bowhead whales and far inshore of the main migration corridor for belugas, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, areas of concentrated mating or feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations.

Because bowhead whales are east of the construction/production area in the Canadian Beaufort Sea until late August/early September, activities at Northstar are not expected to impact subsistence hunting of bowhead whales prior to that date. Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between BPXA and subsistence users.

Also, while construction/production at Northstar has some potential to influence seal hunting activities by residents of Nuiqsut, because (1) the peak sealing season is during the winter months, (2) the main summer sealing is off the Colville Delta, and (3) the zone of influence from Northstar on beluga and seals is fairly small, NMFS believes that Northstar construction/production will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

NMFS has determined that the potential for an offshore oil spill occurring is low (less than 10 percent over 20–30 years (Corps, 1999)) and the potential for that oil intercepting whales or seals is even lower (about 1.2 percent (Corps, 1999)). Because of this low potential and because of the seasonality of bowheads, NMFS has determined that the taking of marine mammals incidental to construction and operation at the Northstar oil production facility will have no more than a negligible impact on them. In addition, because there will be an oil spill response program in effect that will be as effective as possible in Arctic waters, and because other mitigation measures have been suggested in the event that oil did contact bowheads, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses of marine mammals.

Changes to the Proposed Rule

In addition to the modifications made to the proposed rule as a result of comments discussed previously and corrections of minor typographical errors, the following amendments have been made to the document.

Section 216.207 has been amended to clarify that this paragraph is intended only for the initial submission of an application for an LOA, not for subsequent renewals.

Section 216.209(a)(2) has been amended to note the time needed for receipt of the monitoring reports required under 216.205.

ESA

On March 4, 1999, NMFS concluded consultation with the Corps on permitting the construction and operation at the Northstar site. The finding of that consultation was that construction and operation at Northstar is not likely to jeopardize the continued existence of the bowhead whale stock.

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No critical habitat has been designated for this species; therefore, none will be affected. Because issuance of a small take authorization to BPXA under section 101(a)(5) of the MMPA is a Federal action, NMFS has completed section 7 consultation on this action. The finding of this consultation was that the issuance of the authorization was unlikely to adversely affect the bowhead whale.

NEPA

On June 12, 1998 (63 FR 32207), the Environmental Protection Agency (EPA) noted the availability for public review and comment a DEIS prepared by the Corps under NEPA on Beaufort Sea oil and gas development at Northstar. Comments on that document were accepted by the Corps until August 31, 1998 (63 FR 43699, August 14, 1998). On February 5, 1999 (64 FR 5789), EPA noted the availability for public review and comment, a FEIS prepared by the Corps under NEPA on Beaufort Sea oil and gas development at Northstar. Comments on that document were accepted by the Corps until March 8, 1999. For information on obtaining a copy of the FEIS, please contact the Corps (see **ADDRESSES**). Based upon a review of the FEIS, the comments received on the DEIS and FEIS, and the comments received during this rulemaking, NMFS has adopted the Corps FEIS and has determined that it is not necessary to prepare supplemental NEPA documentation.

Classification

This action has been determined to be significant for purposes of Executive Order 12866.

Until these regulations are effective, BPXA cannot be issued an LOA authorizing takings incidental to construction and operation at Northstar. Therefore, since these regulations relieve a restriction on BPXA, the prohibitions on the issuance of an LOA, are not subject to a 30-day delay in effective date under 5 U.S.C. 553(d)(1).

The Chief Counsel for Regulation of the Department of Commerce certified, at the proposed rule stage, to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This final rule will affect only one or two large oil producing companies which, by definition, are not small businesses. It will also affect a small number of contractors providing services related to monitoring the impact of oil development in the Beaufort Sea on marine mammals. Some of the affected contractors may be small businesses, but the number involved would not be substantial. Further, since the monitoring requirement is what would lead to the need for their services, the economic impact on them would be beneficial. For all the above reasons, a regulatory flexibility analysis is not required.

This final rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act (PRA). These requirements have been approved by OMB under control number 0648–0151, and include an application for an LOA, an interim report, and a final report. Other information requirements in the rule are not subject to the PRA since they apply only to a single entity and, therefore, are not contained in a rule of general applicability.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The reporting burden for the approved collections-of-information are estimated to be approximately 3 hours for an application for a LOA, and 80 hours each for interim and final reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: May 18, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart R is added to part 216 to read as follows:

Subpart R—Taking of Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the U.S. Beaufort Sea

Sec.

216.200 Specified activity and specified geographical region.
216.201 Effective dates.
216.202 Permissible methods of taking.
216.203 Prohibitions.
216.204 Mitigation.
216.205 Measures to ensure availability of species for subsistence uses.
216.206 Requirements for monitoring and reporting.
216.207 Applications for Letters of Authorization.
216.208 Letters of Authorization.
216.209 Renewal of Letters of Authorization.
216.210 Modifications to Letters of Authorization.

Subpart R—Taking of Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the U.S. Beaufort Sea

§ 216.200 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in oil and gas development activities in areas within state and/or Federal waters in the U.S. Beaufort Sea specified in paragraph (a) of this section. The authorized activities as specified in a Letter of Authorization issued under §§ 216.106 and 216.208 include, but may not be limited to, site construction, including ice road and pipeline construction, vessel and helicopter activity; and oil production activities, including ice road construction, and vessel and helicopter activity, but excluding seismic operations.

(a)(1) Northstar Oil and Gas Development; and

(2) [Reserved]

(b) The incidental take by harassment, injury or mortality of marine mammals under the activity identified in this section is limited to the following species: bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), beluga whale (*Delphinapterus leucas*), ringed seal (*Phoca hispida*), spotted seal (*Phoca largha*) and bearded seal (*Erignathus barbatus*).

§ 216.201 Effective dates.

Regulations in this subpart are effective from May 25, 2000, until May 25, 2005.

§ 216.202 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.208, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by harassment, injury, and mortality within the area described in § 216.200(a), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The activities identified in § 216.200 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and on the availability of marine mammals for subsistence uses.

§ 216.203 Prohibitions.

Notwithstanding takings authorized by § 216.200 and by a Letter of Authorization issued under §§ 216.106 and 216.208, no person in connection with the activities described in § 216.200 shall:

(a) Take any marine mammal not specified in § 216.200(b);

(b) Take any marine mammal specified in § 216.200(b) other than by incidental, unintentional harassment, injury or mortality;

(c) Take a marine mammal specified in § 216.200(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of the regulations in this subpart or a Letter of Authorization issued under § 216.106.

§ 216.204 Mitigation.

The activity identified in § 216.200(a) must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.200, the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.208 must be utilized.

§ 216.205 Measures to ensure availability of species for subsistence uses.

When applying for a Letter of Authorization pursuant to § 216.207, or a renewal of a Letter of Authorization pursuant to § 216.209, the applicant must submit a Plan of Cooperation that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(a) A statement that the applicant has notified and met with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding timing and methods of operation;

(b) A description of what measures the applicant has taken and/or will take to ensure that oil development activities will not interfere with subsistence whaling or sealing;

(c) What plans the applicant has to continue to meet with the affected communities to notify the communities of any changes in operation.

§ 216.206 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.208 for activities described in § 216.200 are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, National Marine Fisheries Service, or his/her designee, by letter or telephone, at least 2 weeks prior to initiating new activities potentially involving the taking of marine mammals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization issued pursuant to § 216.106 and § 216.208.

(c) Holders of Letters of Authorization must conduct all monitoring and/or research required under the Letter of Authorization.

(d) Unless specified otherwise in the Letter of Authorization, the Holder of that Letter of Authorization must submit interim reports to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than 90 days after completion of the winter monitoring season (approximately September 15th), and 90 days after the open water monitoring season (approximately February 1st). This report must contain all information required by the Letter of Authorization.

(e) A draft annual comprehensive report must be submitted by May 1st of the year following the issuance of a LOA;

(f) A final annual comprehensive report must be submitted within the time period specified in the governing Letter of Authorization.

(g) A final comprehensive report on all marine mammal monitoring and research conducted during the effective period of the regulations in this subpart must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of these regulations or 240 days after the expiration of these regulations if renewal of the regulations will not be requested.

§ 216.207 Applications for Letters of Authorization.

(a) To incidentally take bowhead whales and other marine mammals pursuant to the regulations in this subpart, the U.S. citizen (see definition at § 216.103) conducting the activity identified in § 216.200, must apply for and obtain either an initial Letter of Authorization in accordance with §§ 216.106 and 216.208, or a renewal under § 216.209.

(b) The application for an initial Letter of Authorization must be submitted to the National Marine Fisheries Service at least 180 days before the activity is scheduled to begin.

(c) Applications for initial Letters of Authorization must include all information items identified in § 216.104(a).

(d) NMFS will review an application for an initial Letter of Authorization in accordance with § 216.104(b) and, if adequate and complete, will publish a notice of receipt of a request for incidental taking and, in accordance with Administrative Procedure Act requirements, a proposed amendment to § 216.200(a). In conjunction with amending § 216.200(a), the National Marine Fisheries Service will provide a minimum of 45 days for public comment on the application for an initial Letter of Authorization.

(e) Upon receipt of a complete application for an initial Letter of Authorization, and at its discretion, the National Marine Fisheries Service may submit the monitoring plan to members of a peer review panel for review and/or schedule a workshop to review the plan. Unless specified in the Letter of Authorization, the applicant must submit a final monitoring plan to the Assistant Administrator prior to the issuance of an initial Letter of Authorization.

§ 216.208 Letters of Authorization.

(a) A Letter of Authorization, unless suspended, revoked or not renewed, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually

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subject to annual renewal conditions in § 216.209.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including any requirements for the independent peer-review of proposed monitoring plans.

(c) Issuance and renewal of each Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.209 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.208 for the activity identified in § 216.200 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application submitted under § 216.207 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under § 216.205, and the Letter of Authorization issued under § 216.208, which have been reviewed by the National Marine Fisheries Service and determined to be acceptable, and the Plan of Cooperation required under § 216.205; and

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under § 216.204 and the Letter of Authorization issued under §§ 216.106 and 216.208, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.208 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the National Marine Fisheries Service will provide the public a minimum of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data that indicates that the determinations made in this subpart are in need of reconsideration,

(2) The Plan of Cooperation, and

(3) The proposed monitoring plan.

(c) A notice of issuance or denial of a Renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.210 Modifications to Letters of Authorization.

(a) In addition to complying with the provisions of §§ 216.106 and 216.208, except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by the National Marine Fisheries Service, issued pursuant to §§ 216.106 and 216.208 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.209, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.200(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.208 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

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Federal Register

Thursday,
May 25, 2000

Part X

The President

Executive Order 13157—Increasing Opportunities for Women-Owned Small Businesses

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Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13157 of May 23, 2000

Increasing Opportunities for Women-Owned Small Businesses

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, 15 U.S.C. 631, *et seq.*, section 7106 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355), and the Office of Federal Procurement Policy, 41 U.S.C. 403, *et seq.*, and in order to strengthen the executive branch's commitment to increased opportunities for women-owned small businesses, it is hereby ordered as follows:

Section 1. *Executive Branch Policy.* In order to reaffirm and strengthen the statutory policy contained in the Small Business Act, 15 U.S.C. 644(g)(1), it shall be the policy of the executive branch to take the steps necessary to meet or exceed the 5 percent Government-wide goal for participation in procurement by women-owned small businesses (WOSBs). Further, the executive branch shall implement this policy by establishing a participation goal for WOSBs of not less than 5 percent of the total value of all prime contract awards for each fiscal year and of not less than 5 percent of the total value of all subcontract awards for each fiscal year.

Sec. 2. *Responsibilities of Federal Departments and Agencies.* Each department and agency (hereafter referred to collectively as "agency") that has procurement authority shall develop a long-term comprehensive strategy to expand opportunities for WOSBs. Where feasible and consistent with the effective and efficient performance of its mission, each agency shall establish a goal of achieving a participation rate for WOSBs of not less than 5 percent of the total value of all prime contract awards for each fiscal year and of not less than 5 percent of the total value of all subcontract awards for each fiscal year. The agency's plans shall include, where appropriate, methods and programs as set forth in section 4 of this order.

Sec. 3. *Responsibilities of the Small Business Administration.* The Small Business Administration (SBA) shall establish an Assistant Administrator for Women's Procurement within the SBA's Office of Government Contracting. This officer shall be responsible for:

(a) working with each agency to develop and implement policies to achieve the participation goals for WOSBs for the executive branch and individual agencies;

(b) advising agencies on how to implement strategies that will increase the participation of WOSBs in Federal procurement;

(c) evaluating, on a semiannual basis, using the Federal Procurement Data System (FPDS), the achievement of prime and subcontract goals and actual prime and subcontract awards to WOSBs for each agency;

(d) preparing a report, which shall be submitted by the Administrator of the SBA to the President, through the Interagency Committee on Women's Business Enterprise and the Office of Federal Procurement Policy (OFPP), on findings based on the FPDS, regarding prime contracts and subcontracts awarded to WOSBs;

(e) making recommendations and working with Federal agencies to expand participation rates for WOSBs, with a particular emphasis on agencies in which the participation rate for these businesses is less than 5 percent;

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(f) providing a program of training and development seminars and conferences to instruct women on how to participate in the SBA's 8(a) program, the Small Disadvantaged Business (SDB) program, the HUBZone program, and other small business contracting programs for which they may be eligible;

(g) developing and implementing a single uniform Federal Government-wide website, which provides links to other websites within the Federal system concerning acquisition, small businesses, and women-owned businesses, and which provides current procurement information for WOSBs and other small businesses;

(h) developing an interactive electronic commerce database that allows small businesses to register their businesses and capabilities as potential contractors for Federal agencies, and enables contracting officers to identify and locate potential contractors; and

(i) working with existing women-owned business organizations, State and local governments, and others in order to promote the sharing of information and the development of more uniform State and local standards for WOSBs that reduce the burden on these firms in competing for procurement opportunities.

Sec. 4. *Other Responsibilities of Federal Agencies.* To the extent permitted by law, each Federal agency shall work with the SBA to ensure maximum participation of WOSBs in the procurement process by taking the following steps:

(a) designating a senior acquisition official who will work with the SBA to identify and promote contracting opportunities for WOSBs;

(b) requiring contracting officers, to the maximum extent practicable, to include WOSBs in competitive acquisitions;

(c) prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by and among small businesses, HUBZone small businesses, SDBs, and WOSBs, and providing guidance on structuring acquisitions, including, but not limited to, those expected to result in multiple award contracts, in order to facilitate competition by and among these groups;

(d) implementing mentor-protege programs, which include women-owned small business firms; and

(e) offering industry-wide as well as industry-specific outreach, training, and technical assistance programs for WOSBs including, where appropriate, the use of Government acquisitions forecasts, in order to assist WOSBs in developing their products, skills, business planning practices, and marketing techniques.

Sec. 5. *Subcontracting Plans.* The head of each Federal agency, or designated representative, shall work closely with the SBA, OFPP, and others to develop procedures to increase compliance by prime contractors with subcontracting plans proposed under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or section 834 of Public Law 101–189, as amended (15 U.S.C. 637 note), including subcontracting plans involving WOSBs.

Sec. 6. *Action Plans.* If a Federal agency fails to meet its annual goals in expanding contract opportunities for WOSBs, it shall work with the SBA to develop an action plan to increase the likelihood that participation goals will be met or exceeded in future years.

Sec. 7. *Compliance.* Independent agencies are requested to comply with the provisions of this order.

Sec. 8. *Consultation and Advice.* In developing the long-term comprehensive strategies required by section 2 of this order, Federal agencies shall consult with, and seek information and advice from, State and local governments, WOSBs, other private-sector partners, and other experts.

Sec. 9. *Judicial Review.* This order is for internal management purposes for the Federal Government. It does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
May 23, 2000.

[FR Doc. 00–13367
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 2412/P.L. 106–203

To designate the Federal building and United States courthouse located at 1300 South Harrison Street in Fort Wayne, Indiana, as the "E. Ross Adair Federal Building and United States Courthouse". (May 22, 2000; 114 Stat. 310)

S. 2370/P.L. 106–204

To designate the Federal building located at 500 Pearl Street in New York City, New York, as the "Daniel Patrick Moynihan United States Courthouse". (May 23, 2000; 114 Stat. 311)

Last List May 22, 2000

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106th Congress, 2nd Session, 2000

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 106th Congress, 2nd Session, 2000.

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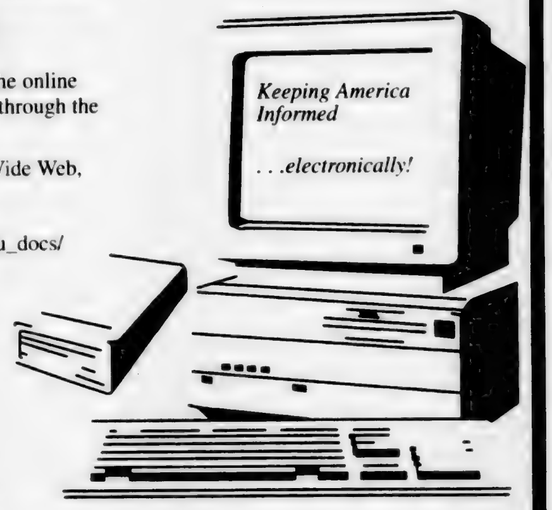

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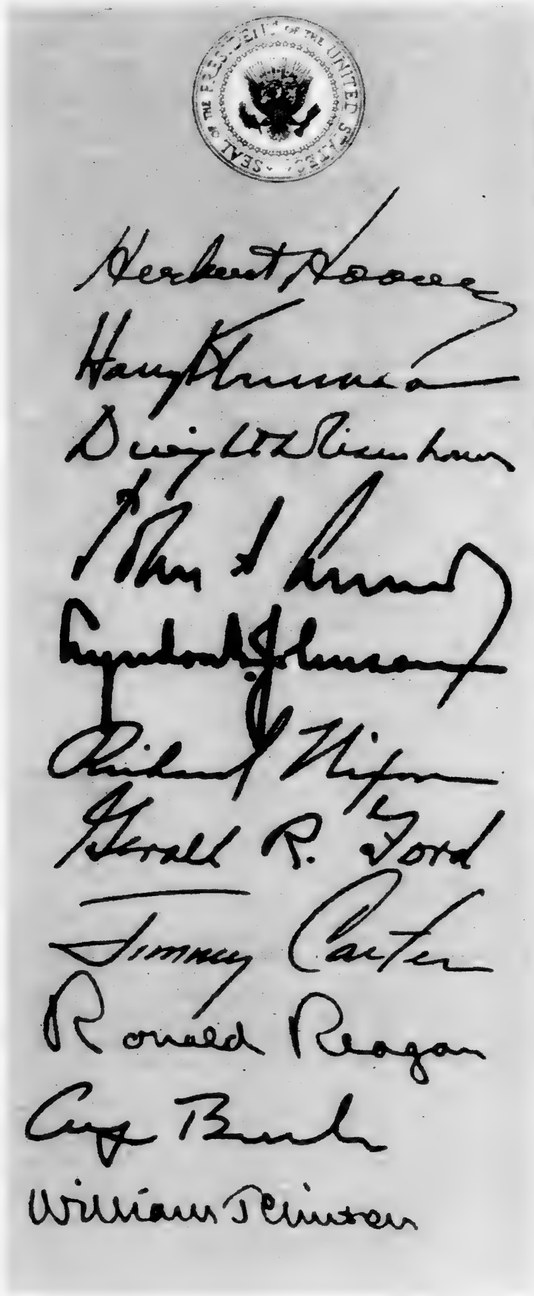

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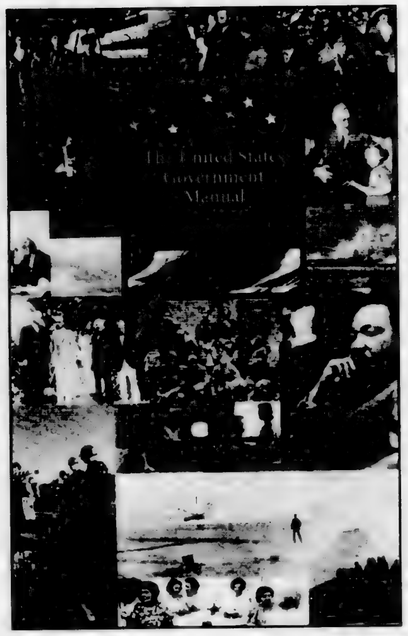

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Rules and Regulations

Federal Register
Vol. 65, No. 103
Friday, May 26, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–00–10]

RIN 0581–AB87

Tobacco Fees and Charges for Mandatory Inspection; Fee Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for inspection and certification, and other services, including administrative and supervisory costs, at designated tobacco auction markets in all tobacco producing areas. The fees collected must, as nearly as possible, cover the Department's costs of performing these services and also maintain a reserve sufficient to cover program financial liabilities. This interim final rule will increase the fee from $.0083 to $.0100 per pound to cover the increased cost of operating the tobacco inspection program and maintain the operating reserve. The last increase in the fee was in 1995. This increase does not affect the fees for import, export, or permissive tobacco inspection.

DATES: Effective May 30, 2000; comments received by June 26, 2000, will be considered prior to issuance of a final rule.

ADDRESSES: Send comments to John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), AG 0280, Room 502 Annex Building, PO Box 96456, Washington, DC 20090–6456. Comments will be made available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, AG 0280, Room 502 Annex Building, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 205–0567; Fax: (202) 205–0235.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are approximately 360 tobacco warehouses and approximately 170,000 producers and most warehouses and producers may be classified as small entities. The AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Tobacco Inspection Act of 1935, as amended, (7 U.S.C. 511–511q), requires the Secretary to fix and collect fees and charges for inspection and certification of quota tobacco, and other services, including administrative and supervisory costs, at designated tobacco auction markets in all tobacco producing areas. The fees collected must, as nearly as possible, cover the Department's costs of performing these services.

The AMS annually reviews its user fee programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule would result in significant losses in crop years 2000 and 2001 and leave the program with inadequate reserve balances. Due to reductions in tobacco quotas and increases in the sale of tobacco through contract sales, obligations for the 2000 crop-year are estimated at $11,607,000 and revenues are expected to reach only $6,843,000, for a loss of $4,764,000 and a reduction in the operating reserve to $4,738,000. If the same level of service and fee structure continues for the 2001 crop-year the estimated loss would exceed $6,154,000 and the operating reserve would drop to a *negative* $1,416,000.

The major items affecting obligations are Federally mandated increases in salaries and benefits, travel costs, and other administrative costs. Revenue depends on the amount of tobacco sold on the designated auction markets. Production quotas for tobacco were reduced by 228.6 million pounds in 1998, 330.7 million pounds in 1999, and 318.7 million pounds in 2000. This is a total decrease of 878 million pounds in production quotas since 1997. The amount of tobacco graded in 1998 was 1.56 billion pounds, 1.31 billion pounds in 1999, and 938 million pounds is estimated in 2000. Contract sales of tobacco will further reduce the amount graded by about 235 million pounds in 2000. Based on these figures, the current fee level will not generate the amount of revenue sufficient to maintain the level of inspection services requested and maintain funds in the program's reserve account. An analysis of available data indicates that a fee of $.0100 per pound effective for the 2000 crop-year would increase revenue by $1,277,000 and bring the operating reserve up to $6,014,000. The requested fee increase was recommended by the National Advisory Committee for Tobacco Inspection Services at its meeting on April 20, 2000. This committee is made up of representatives of producer interest groups, appointed by the Secretary of Agriculture, to advise on the level of services and user fee rate. This fee increase represents the minimum level needed to cover costs for the 2000 crop-year. In the future, AMS will continue to review the program to ensure that fees are adequate. Accordingly, we believe that the impact of the fee increase would not be significant on users of the inspection and certification services.

C. Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to

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have retroactive effect. This rule will not preempt any State or local laws, regulations, policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

The Secretary of Agriculture is authorized by the Tobacco Inspection Act of 1935, as amended, 7 U.S.C. 511–511q *et seq.*, to fix and collect fees and charges for inspection and certification of quota tobacco, and other services, including administrative and supervisory costs, at designated tobacco auction markets in all tobacco producing areas. The fees collected must, as nearly as possible, cover the Department's costs of performing these services.

The AMS regularly reviews programs to determine if fees are adequate and if costs are reasonable. This interim final rule will increase the fees and charges assessed by the AMS for the mandatory inspection and certification of producer tobacco sold at designated auction markets throughout the tobacco producing areas.

The AMS conducted a recent review of the financial status of this program to determine whether the fee is sufficient. Revenue for the 1999 crop-year was approximately $11,419,000. Obligations for the period are approximately $11,508,000. At the current fee level, insufficient revenue would be generated to meet the costs of the inspection program and to replace funds that had to be used from the program's reserve account. The major factors affecting obligations are mandatory increases in Federal salaries and benefits, travel allowances, and other administrative costs since 1995. An analysis of data available to the AMS indicates that a fee of $.0100 per pound would cover expenses and maintain a reserve that would meet any reasonable contingency.

Due to an estimated 43 percent reduction in tobacco to be inspected and 20–30 percent of tobacco being sold through contract sales, obligations for the 2000 crop-year are estimated at $11,607,000 and revenues are expected to reach only $6,843,000, for a loss of $4,764,000 and a reduction in the operating reserve to $4,738,000. If the same level of service and fee structure continues for the 2001 crop-year the estimated loss would exceed $6,154,000 and the operating reserve would drop to a *negative* $1,416,000.

Revenue depends on the amount of tobacco sold on the designated auction markets. Production quotas for tobacco were reduced by 228.6 million pounds in 1998, 330.7 million pounds in 1999, and 318.7 million pounds in 2000. This is a total decrease of 878 million pounds of tobacco since 1997. Also, contract sales of tobacco will further reduce the amount graded by about 235 million pounds in 2000. Based on these figures, the current fee level will not generate the amount of revenue sufficient to maintain the level of inspection services requested and maintain funds in the program's reserve account. An analysis of available data indicates that a fee of $.0100 per pound effective for the 2000 crop-year would increase revenue by $1,277,000 and bring the operating reserve up to $6,014,000.

Information on program income and expenses was presented to the National Advisory Committee for Tobacco Inspection Services at its meeting on February 17, 2000, in Raleigh, North Carolina, and again on April 20, 2000, in Washington, D.C. The National Advisory Committee, which is made up of 14 representatives from tobacco producer interest groups and appointed by the Secretary of Agriculture, was established by law in 1981 to advise the Secretary on the level of services needed and the fees necessary to cover those services. By a majority vote, the Committee adopted a motion to recommend to the Secretary an increase in the fee to $.0100 per pound.

It is hereby found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2000 flue-cured marketing season will begin about July 17 and this action is needed, as soon as possible, so as to treat all types of tobacco on an equal basis for the 2000 crop-year; (2) the National Advisory Committee recommended the fee increase by a majority vote; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For reasons set forth in the preamble, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

1. The authority citation for part 29, subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

§ 29.123 [Amended]

2. In § 29.123, paragraph (a) is amended by removing the words "$.0083 per pound" and adding the words "$.0100 per pound" in their place.

Dated: May 22, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–13290 Filed 5–25–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[Docket No. LS–98–12]

RIN 0581–AB83

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the hourly fee rates for voluntary Federal meat grading and certification services. The hourly fees will be adjusted by this final rule to reflect the increased cost of providing service, and ensure that the Federal meat grading and certification program is operated on a financially self-supporting basis as required by law.

EFFECTIVE DATE: June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, Meat Grading and Certification (MGC) Branch (202) 720–1246.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866, and has not been reviewed by the Office of Management and Budget (OMB).

B. Regulatory Flexibility

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

AMS, through its MGC Branch, provides voluntary Federal meat grading and certification services to a total of 370 business of which 264 are small entities. Small entities, which account for approximately 38 percent of the MGC Branch's total revenues, are defined as those that employ less than 500 employees. The breakdown of small entities that AMS provides meat grading and certification services to are as follows: 93 meat processors, 90 livestock slaughterers, 52 facilities that further process federally donated products, 13 trade associations, 9 livestock feeders, 3 trucking companies, and 4 brokers. These small entities are under no obligation to use meat grading and certification services provided under the authority of the Agricultural Marketing Act of 1946 (AMA), as amended, 7 USC 1621 *et seq.*

Voluntary meat grading and certification services facilitate the orderly marketing of meat and meat products and enable consumers to obtain the quality of meat they desire. Grading services consist of the evaluation of carcass beef, lamb, pork, veal, and calf for conformance with the grades of an official U.S. Standard for each species. Approximately 21 billion pounds of meat is graded each year. Certification services consist of the evaluation of meat and meat products for compliance with specification and contractual requirements. Certification services are used most often by large-scale meat purchasers to ensure that the quality and yields of the products they purchase comply with their stated requirements. Approximately 17 billion pounds of meat and meat products are certified each year.

AMS regularly reviews its user-fee-financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule would not generate sufficient revenues to recover program costs for current and near-term periods while maintaining an adequate reserve balance. Without a fee increase, the projected operating losses for fiscal year (FY) 2000, FY 2001, and FY 2002 will be $1.9 million, $2.9 million, and $4.1 million respectively. Operating losses at these levels will deplete MGC Branch's operating reserve and place the Branch in an unstable financial position that will adversely affect its ability to provide the current level of grading and certification services. Any reduction in Branch services has the potential to substantially harm small and limited resource firms that rely on grading and certification services to market their products and compete in a global marketplace.

This action will raise the fees charged to all users of grading and certification services. AMS estimates that overall, this will yield an additional $175 thousand in revenue for the balance of FY 2000. Of this $175 thousand, small businesses would pay approximately $66,500 or an average of $255 per month. In FY 2001 and 2002, small entities will pay approximately $798,000, an average of $255 per month or $3,058 per year. However, due to increased program and industry efficiencies, the FY 2000–2002 unit costs of program services (revenue/total pounds graded and certified) will remain virtually unchanged at approximately $0.0006 per pound for each fiscal year. Accordingly, the Administrator of AMS has determined that this proposal would not have a significant economic effect on a substantial number of small business entities.

This fee increase, only the second since November 1993, is necessary to offset increased program operating costs resulting from: (1) The congressionally-mandated, governmentwide salary increases for 1998, 1999, and 2000; (2) inflation of nonsalary operating costs; (3) accumulated increases in CONUS per diem rates; (4) increased costs of servicing less than full-time applicants; and (5) costs associated with updating the MGC Branch's automated information management system to ensure compliance with year 2000 operating requirements.

Since 1993, in an ongoing effort to control operating costs, the MGC Branch has closed 3 field offices, reduced mid-level supervisory staff by over 50 percent, and reduced the number of support staff by 38 percent. At the same time, the MGC Branch has become more reliant on automated information management systems for data collection, retrieval, and dissemination, account billing, and disbursement of employee entitlements. The reduction in field offices, supervisory staff, support personnel, and the increased reliance on automated systems has enabled the MGC Branch to absorb a substantial portion of the increased operating costs and minimize increases in user-fees over the past 7 years.

Despite the MGC Branch's vigilant cost reduction efforts since 1993, the operating expenses projected for FY 2000 and beyond can only be balanced by adjusting the hourly fee rate charged to users of meat grading and certification services. Any further reduction in personnel, services, or management infrastructure beyond those already implemented would have a detrimental effect on the program's ability to provide meat grading and certification services and ensure the accurate and uniform application of such services. The hourly rate increase is necessary to recover the costs of providing voluntary Federal meat grading and certification services and for the program to continue serving all segments of the industry.

C. Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not pre-empt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

D. Paperwork Reduction Act

This action will not impose any additional reporting or recordkeeping requirements on either small or large meat slaughters, processors, and other applicants who use Federal meat grading and certification services.

Comments

On January 20, 2000, (65 FR 3155) in the **Federal Register**, the Agency published the proposed rule to increase the fees for Federal Meat Grading and Certification services and requested comments by March 20, 2000. The Agency received two comments. The first respondent requested that AMS work more closely with industry to identify alternatives to current grading and certification operations and procedures to stem future rate increases. The respondent went on to identify the following as possible areas the Industry and AMS could work cooperatively to achieve cost savings or stem future user-fee increases: (1) Incorporating technological advances; (2) identifying appropriate quality control or process verification activities that could be shifted to the Industry; and, (3) identifying plant operation alternatives.

AMS is continually seeking ways to reduce costs to the industry and increase operational efficiency. This fee increase, combined with the previous increase in 1998, equates to an average annual increase of 3.3 percent since 1993. However, during this same time the amount of product graded and certified has dramatically increased by over 9 billion pounds per year in comparison to the total graded and certified in FY 1993. This amounts to a 48 percent per hour increase in efficiency. The increased efficiencies offset the increase in fee rates to leave the overall cost per pound to the industry unchanged at $0.0006 per

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pound. As requested by the respondent, the Agency is currently and will continue seeking ways to increase efficiency and reduce the total cost of grading and certification services to the industry. In fact, AMS is actively involved in each of the areas identified by the respondent for potential cost savings. For example, AMS is cooperating with an industry research project to test video-imaging technology for grading and certification applications. Additionally, AMS is expanding the role of statistical process control as a basis of program verification activities in many carcass and meat marketing programs.

The second respondent questioned the need for revising the fee rates and emphasized the effect of the user fees on small entities. Small entities generate 38 percent of the Agency's meat grading and certification hourly revenues. The Agency is keenly aware of how fee increases impact small entities. In the more than 70 years meat grading and certification services have been available, the Agency has always ensured that every alternative to a fee increase has been considered. This fee increase, only the second since November 1993, is necessary to offset increased program operating costs resulting from: (1) The congressionally-mandated, governmentwide salary increases for 1998, 1999, and 2000; (2) inflation of nonsalary operating costs; (3) accumulated increases in CONUS per diem rates; (4) increased costs of servicing less than full-time applicants; and, (5) costs associated with updating the MGC Branch's automated information management system to ensure compliance with year 2000 operating requirements. Despite the MGC Branch's cost reduction efforts and increased efficiency, the operating expenses projected for FY2000 and beyond can only be balanced by adjusting the hourly fee rate charged to users of voluntary meat grading and certification services. Any further reduction in personnel, services, or management infrastructure beyond those already in place would have a detrimental effect on the program's ability to provide meat grading and certification services and ensure the accurate application of such services. Further, any reduction in Branch services has the potential to substantially (and disproportionally) harm small and limited resource firms that rely on grading and certification services to market their products and compete in a global marketplace.

Background

The Secretary of Agriculture is authorized by the AMA, 1946 as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The AMA also provides for the collection of fees from users of the Federal meat grading and certification services that are approximately equal to the cost of providing these services. The hourly fees for service are established by equitably distributing the projected annual program operating costs over the estimated hours of service—revenue hours—provided to users of the service. Program operating costs include salaries and fringe benefits of meat graders, supervision, travel, training, and all administrative costs of operating the program. Employee salaries and benefits account for approximately 80 percent of the total budget. Revenue hours include base hours, premium hours, and service performed on Federal legal holidays. As program operating costs continue to rise, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law.

In view of these considerations, the Agency will increase the base hourly rate commitment applicants pay for voluntary Federal meat grading and certification services from $39.80 to $45. A commitment applicant is a user of meat grading and certification services who agrees to pay for five continuous 8 hour days, Monday through Friday between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly rate for noncommitment applicants will increase from $42.20 to $52. A noncommitment applicant is a user of meat grading and certification services for eight consecutive hours or less per day between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The hourly rate for premium hours will increase from $47.80 to $57, and will be charged to users of the service for hours worked in excess of 8 hours per day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time on Saturday or Sunday, except on Federal legal holidays. The holiday rate for all applicants will increase from $79.60 to $90, and will be charged to users of the service for all hours worked on legal holidays.

List of Subjects in 7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

For the reasons set forth in the preamble, 7 CFR part 54 is amended as follows:

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for part 54 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 54.27 [Amended]

2. In § 54.27, paragraph (a), "$42.20" is removed and "$52" is added in its place, "$47.80" is removed and "$57" is added in its place, "$79.60" is removed and "$90" is added in its place, and paragraph (b), "$39.80" is removed and "$45" is added in its place, "$47.80" is removed and "$57" is added in its place, "$79.60" is removed and "$90" is added in its place.

Dated: May 22, 2000.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 00–13240 Filed 5–25–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1728

Specifications and Drawings for Underground Electric Distribution

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is revising its regulations on Specifications and Drawings for Underground Electric Distribution, RUS Bulletin 50–6. This bulletin is currently incorporated by reference in RUS regulations and, will continue to be incorporated by reference. This revision is necessary to provide RUS electric borrowers with the latest specifications for constructing their rural underground electric distribution systems using state-of-art materials, equipment, and construction methods. RUS is renumbering and reformating the revised bulletin in accordance with the agency's new publications and directives system.

DATES: *Effective Date:* June 26, 2000.

Incorporation by Reference: IBR approved by the Director, Office of the Federal Register, June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Trung V. Hiu, Electrical Engineer, Distribution Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–1877. Fax: (202) 720–7491.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no reporting or recordkeeping provisions requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325. Telephone: (202) 512–1800.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

Pursuant to the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), the Rural Utilities Service (RUS) is amending 7 CFR Chapter XVII, Part 1728, Electric Standards and Specification for Materials and Construction, by revising RUS Bulletin 50–6 (D–806), Specification and Drawings for Underground Electric Distribution. This revised bulletin is renumbered as RUS Bulletin 1728F–806. RUS maintains a system of bulletins that contains construction standards and specifications for materials and equipment which must be complied with when system facilities are constructed by RUS electric and telecommunications borrowers in accordance with the RUS loan contract. These standards and specifications contain standard construction units, material, and equipment units commonly used in RUS electric and telecommunications borrowers' systems.

RUS Bulletin 50–6 provides standard underground electric distribution construction drawings and specifications of 12.5/7.2 kV and 24.9/14.4 kV underground electric distribution lines. RUS is changing the bulletin number from RUS Bulletin 50–6 to RUS Bulletin 1728F–806. The change in the bulletin number and reformatting is necessary to conform to RUS new publications and directives system. This rule incorporates the bulletin by reference in 7 CFR part 1728.97.

Major changes in the bulletin are described below:

(1) Two new drawings, UC2–1 and UC2–2, have been added as alternative construction to existing drawing UC2.

(2) RUS has determined that the URD INSPECTION FORM and 23 drawings are no longer practical. Therefore, RUS has removed the following drawings: UC3, UC4, UG9A, UG23, UM3–47, UM3–48, UM8–3, UM12–1, UM12–2, UM–26, UM50, UX8 through UX10, and UX12 through UX26.

(3) Some of the specifications cited in the bulletin preface have been altered to comply with the latest codes and regulations and to improve field construction.

(4) The titles of the drawings in the Index of Drawings have been modified to have better descriptions.

Approximately 60 drawings have been revised with one or more of the following changes:

(1) Clearance distance B has been changed to be the distance between open vertical conductors (outer edge nearest to pole) and pole center in accordance to the latest codes.

(2) A B MINIMUM table has been added to appropriate drawings to show proper clearances corresponding to different voltages.

(3) Ground rods have been redrawn to proper grade.

(4) The installation of CAUTION, WARNING, and DANGER signs has been changed to meet the latest codes.

(5) In the material tables, item U hw, CAUTION sign, has been changed to WARNING sign.

(6) In the material tables, item U hp, elbow termination, has been added.

(7) Ground wires between ground rods and connectors have been redrawn as dotted lines.

(8) In boxes labeled B MINIMUM, the v in kv has been capitalized.

(9) Some notes below the DESIGNATE AS headings have been deleted where appropriate.

(10) In the material tables, (load break type) has been removed from item af, cutout descriptions.

(11) Several conductor routes have been redrawn for easier construction and increased performance.

(12) Devices, such as surge arresters, have been redrawn and relocated to reflect the improved designs and to meet the latest construction practices and safety codes.

(13) Crossarms, penta-head bolts, one-line diagrams, grounding pads, and pin

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insulators have been added to certain drawings where appropriate.

(14) Blowups have been added to several drawings to emphasize details.

(15) The notes on some drawings have been revised to remove ambiguity and to meet the latest safety codes and construction standards.

On April 8, 1998, RUS published a proposed rule in the **Federal Register**, at 63 FR 17128. RUS received numerous comments from several cooperatives and interested individuals. The followings are the submitted comments and RUS responses:

(1) Set all pad-mounted equipment on concrete vaults. The reinforcing steel in the base is tied to the ground rod. Tests have shown this scheme to provide a very good ground.

Response: RUS disagrees as this practice may not be practical and may not significantly improve grounding in most cases.

(2) Section 7.4: Requires "mechanical tamp for only 36 inches from major units"—suggests no tamping requirement for the remainder of the trench. Is that the intent?

Response: No. The 36 inches (0.9 meters) is mandatory and is a minimum requirement.

(3) Section 7.5: Does the term "hole" refer to ground sleeve, or vault? Should RUS change this term?

Response: Section 7.5 has been removed. This practice is not recommended by RUS.

(4) Section 11.2: The "not more than one splice per 2,000 feet" is not practical if conduits and ground sleeves are involved. Splice location markings can be helpful, but not needed as a "must".

Response: RUS allows the borrower the option to specify. RUS intention is to limit the number of splices of multi ("scrap") cables.

(5) Section 12.1: Would RUS consider reseal of the jacket?

Response: As a precaution and to maximize reliability, RUS borrowers must use heat or cold shrink sleeves accepted by RUS (Refer to items U hf and U hy in RUS Information Publication 202–1, List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers).

(6) Section 14.4: RUS may want to consider dead front treatment of this type transformer.

Response: RUS does not accept enclosures such as sectionalizers and transformers unless they are of the dead front design.

(7) Section 25.1: Is it the intention to *require* testing or to recommend testing that would be helpful?

Response: Bulletin 1728F–806 requires that conductor continuity tests be conducted while it recommends that borrowers perform the high potential test. The term "shall" has been changed to "should" for the high potential test in section 25.1.b.

(8) Drawing UC2–2: Cutouts placed on the opposite side of the crossarm would not expel fuse material on the terminations.

Response: RUS agrees and has made the modifications to accommodate the suggested comment.

(9) Drawing UC5 and UC6: Clarify underground source/or reverse switch. Also, jumpers from switch to overhead lines would not route to the pole like a ground wire. End view of equipment bracket needs to clarify separate phase connections; may need to exaggerate center phase offset.

Response: The center primary conductor has been redrawn to depict a primary conductor not a ground wire. The devices are in line when seen from the sideview.

(10) Drawing UG7: Position of primary bushings not typical of transformer supplied.

Response: RUS is more concerned with detailing how the electrical connections should be completed. The philosophy of electrical connections is important because the bushing layout design may change from time to time. The drawing shown depicts an ANSI Type I transformer. As a result of this connection, the neutral has been moved to the bottom bushing.

(11) Drawings UJ1 and UJ2: Dead front requirement is not clear.

Response: These drawings apply to secondary connector blocks. Dead front construction does not apply here. However, to minimize chances for confusion, a note stating "insulated cover removed" has been added to the drawings.

(12) Drawing UK6: Pentahead bolts on a below grade enclosure would seem unnecessary.

Response: Public access and safety concerns for accessible underground facilities are no different than above grade construction.

(13) Sections 10 and 11 Method of Calculating Minimum Conduit Size and Installation in Conduit or Duct: Should RUS provide an explanation of why these two sections were deleted and where a borrower can find information on the installation of wire in conduit?

Response: The previous RUS published method of calculating conduit size is not the best available method. RUS recommends that borrowers contact cable and conduit manufacturers for design and installation instructions.

(14) Drawing UG9A: Should this drawing be retained. It may be useful, as a reference, when retiring this unit from the field.

Response: This construction standard is no longer recommended and has been removed from Bulletin 1728F–806. RUS suggests borrowers refer to RUS Bulletin 1767B–2 for reference of retirement units.

(15) In general, the print size should be increased, especially item letters attached to drawings. It's easy to confuse e and c or a and o.

Response: The font sizes have been increased.

(16) On all terminal drawings, delete reference to parallel arresters. Those haven't been used since MOV arresters came into being in 1982–83. Maybe RUS should reinforce use of MOV's on underground in the material list under Uae surge arrester—MOV only.

Response: RUS agrees and has removed all notes referring to parallel arresters as they are no longer applicable to this RUS construction standard.

(17) Do not specify elbows as part of transformer drawings to be consistent with UM3 and UM33 drawings. If RUS would like to specify, UG7 needs 2 elbows not 1.

Response: RUS agrees to specify two elbows on drawing UG7 to be consistent with other drawings.

(18) On UM3–14 delete UM3–15 and UM3–16. Only difference between –14 and –16 is the pad, which is spaced separately. –15 is obsolete. Change drawing to UM3. Redraw UM3–14 now as UM3 and show a 3-point junction to reflect the real world way the inside of the cabinet would look. What's illustrated doesn't exist.

Response: Drawings UM3–15 and UM3–16 are obsolete and have been removed. For the ground connections to the enclosures, the ground wires are hidden. RUS changed the mounting arrangement to reflect field application.

(19) In drawing UX4, since we show loops in ground rod connections for transformers and pad mount equipment, shouldn't there be 2 connections to the ground rod?

Response: Two connections in an enclosure are required to provide additional mechanical protection and to complete the ground loop. Connections to ground rods should be isolated and, mechanically, should not be disturbed. Therefore, dual connections to the ground rods are not needed.

(20) On UX11 drawing, the note about 3 ft. max. is not needed. This connection has lead length of effectively 0 feet. The note is misapplied.

Response: The note has been removed for the reasons presented in this comment.

(21) Section 18: There is no reference to concrete vaults and their associated covers.

Response: Due to the wide variation of concrete vaults available, RUS does not have specific requirements for concrete vaults.

(22) Units UB1, UB3, UB2–1, UC2–1: The jumper between the top of the terminator and the top of the arrester crosses over the top of the crossarm. This will undoubtedly kill lots of birds.

Response: Due to limitations of what and how we can show details on drawings, jumpers in drawings are for demonstration purpose and may not reflect actual field installation. Usually raptors choose the highest point to perch in search of prey and rest. On the structure referred to in this comment, most raptors can be expected to perch on the pole top rather than the lower crossarm. However, in locations where there is a possibility that raptors may use the lower crossarm, borrowers may utilize insulated jumper wires for the connection cited by the commentor.

(23) Drawings UG17 and UG17B: Shows only one ground rod. Note that UM 48–2 shows two (2) ground rods which will help get below 25 ohms.

Response: The ground rods on the drawings referred to by the commentor are not part of the cited drawings as is intended by their dotted appearance on these drawings. The ground rods are shown on these drawings only for reference perspective purposes. Grounding is required but for details on the grounding, borrowers would refer to the applicable RUS standard drawings on which grounding and ground rod use are included as part of the unit and included in the materials list. The applicable grounding drawings include notes that advise borrowers that depending on the condition and type of soil, installation of multiple ground rods may be necessary to attain a desirable ground resistance. These drawing notes also advise that, because use is site specific, numbers and type of ground rods are to be specified separately by the engineer.

(24) Drawings UM 3–44 and UM 3–45: Live bushing equipment in this type of enclosure is not a good safety practice. Suggest it not be allowed.

Response: The drawings were not shown as intended. As can be seen from the material listings for "be" and "el", these items are to be supplied with bushing wells and thus the drawings need to be shown using elbows. The drawings were changed to agree with materials used.

(25) Drawing UM6 Page 5 of 8: In the Notes, items Uhf are referred to for resealing concentric neutral wires. What are they?

Response: Item U hf is a cable sealing kit. A note has been added to the drawing to better explain this item and its use. RUS accepted U hf products of various manufacturers are included in RUS Informational Publication 202–1, List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers.

(26) Drawing UA1—UC6: RUS Bulletin 50–6 recommends, p connectors as required, where as, RUS Bulletin 50–3 required, p compression connectors. It would be desirable to maintain a consistent standard in the type of connector required in making the connection from the primary neutral to the pole ground.

Response: RUS requires compression connectors be used for grounding connections on underground construction. Many connector options may be use for overhead connections where conditions will generally be less adverse than underground construction. Compression connectors improve the chances for more permanent connections in underground construction.

(27) Drawing UM48–2: This drawing previously required #2 copper for the grounding wire. This requirement does not seem to be clearly spelled out in the current drawing.

Response: The minimum size of grounding wire to use is specified in the National Electrical Safety Code (NESC). As the size of grounding wire required will vary, RUS no longer includes wire size in the drawing and leaves determination and specification to the design engineer. RUS does not object to using wire sizes which exceed the minimum NESC requirements.

(28) Section 6.4 and 17.1: The two inches of sand is not recommended by the cable manufacturers. Sand serves as a thermal insulator and de-rates the cable ampacity. Also, for cable runs of a ¼ mile or more, a potential galvanic action problem may be created for grounding the cable as required by NESC.

Response: Normally, good soil removed during digging of a trench is used as backfilling material. Sand is used as backfill in situations where removed soil is not suitable backfill material and consists of large rocks and/or sharp objects that could damage the buried cable. Sand may not be the ideal substitute as backfilling material. However, in most rural low load factor circuit use situations sand availability and economic feasibility make it a choice backfilling substitute.

(29) Drawing UK5: Locking mechanism should have provisions for company pad lock.

Response: NESC Rule 381G. requires enclosures to be either locked or otherwise secure against unauthorized entry. RUS requires and accepts enclosures that include the standard penta-head bolt, which provides the NESC intended security. Borrowers wishing to also use padlocking facilities in addition to having and using the required penta-head bolt may do so.

(30) Can a note be included on some drawings (such as UB1 where the neutral is so high) allowing the neutral to be lowered to get it down out of the primary?

Response: The neutral may be moved as long as the resulting installation meets proper clearances and does not violate safety codes.

(31) Several sections state that it is the responsibility of the *borrower* to ensure that the Contractor and the *Owner*. Is the *borrower* not the owner? Maybe this needs to be clarified.

Response: The commenter is correct in that the "Owner" and "Borrower" are generally the same entity. The "Owner" is the term used in RUS standard contracts to refer to the RUS borrower that executes the contract with the contractor. Borrower refers to a RUS borrower that has obtained financing assistance from RUS and has executed a loan contract with RUS. For accuracy purposes, specific bulletin sections deliberately refer to the contract terminology noted.

(32) Several sections state that it is the responsibility of the *borrower* to ensure. This needs to be changed to include the contractor as well.

Response: RUS does not have a regulatory relationship that allows establishment of requirements for contractors. Thus, RUS requires the borrower to ensure that the contractor complies with contract provisions. Borrowers are able to do so easily by use of RUS construction contracts which both the borrower and the contractor sign. RUS contracts make the design specification (RUS Bulletin 1728F–806 in this case) an integral part of the contract under which the contractor is contractually obligated to comply with the specification provisions.

(33) Section 17: Need to define what proper compaction is.

Response: Proper compaction provisions vary greatly and depend on local conditions. Compaction provision should be established by the borrower and completed in accordance with the borrower's satisfaction.

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(34) Section 17.1: Is one inch too large for having in backfill?

Response: Backfill with pieces of *less* than one-inch (25 millimeter) size is recommended.

(35) Section 18.1: Gravel or sand is not needed under pads in all cases. This should be optional.

Response: RUS agrees and the term "shall" has been changed to "may."

(36) Drawings UB2 and UC2: Why is the crossarm shown on a different side of the pole on these two drawings as compared with UB1 and UC1? Why are left side terminals and cutouts not out to end of arms to balance construction?

Response: Drawings UB1 and UC1 detail construction utilizing crossarm mounting arresters while drawings UB2 and UC2 detail construction utilizing bracket mounting arresters. Brackets mount on opposite sides of the pole to provide for accessibility and clearances. Equipment and hardware on the structures have been redrawn to depict balanced construction as suggested.

(37) Drawings UC5 and UC6: Intermediate arresters are shown (we guess that is why they are so large). Most cooperatives use riser pole arresters.

Response: We agree that the arrester size is confusing and revised the drawings to depict pole arrester use.

(38) Drawings UG6, UG7, UG17, UG17–2 and UG17–3: No slack is shown in primary cable. Most cooperatives loop the primary over from the secondary side to give slack so that cables can be parked or switched. Bulletin 50–6 showed the cable this way.

Response: We agree with the utility suggestion in this comment and revised the drawing by adding a note to allow slack in the primary cable installation.

(39) Drawing UG17: Requiring three phase switches as implied by note 6 should be optional.

Response: Note 6 on Drawing UG17 advises that three phase switching "should" be installed where ferroresonance may occur. The note is cautionary to help avoid equipment damage on three-phase installations where ferroresonance is a possibility. Because the word "should" is used and not "must", three-phase switching would not need to be installed in situations where a borrower's engineer determined that ferroresonance would not occur.

(40) Drawing UJ1: A note is needed on the drawing stating that the connector blocks must be insulated to have a "dead-front" unit.

Response: These are drawings depicting various types of secondary connector blocks. It is not the intent of the bulletin to show dead front in this drawing. To help dispel possible confusion, the drawing includes a note that states "insulated covers are not shown".

(41) Drawing UK6: If this handhole is metal, how is it to be grounded? Sign should be a warning not danger.

Response: RUS accepted metal pedestals must have grounding lugs available on the inside wall. A note has been added advising that all pedestals shall be grounded in accordance with the NESC. The placement of the safety sign has been relocated to the pedestal side (with the penta-head bolt lock) that opens. Both DANGER and WARNING signs have been added to the drawing's material listings. A WARNING sign should be placed on the outside of the enclosure where there is a potential hazard. A DANGER sign should be placed on the inside of the enclosure where there is an imminent hazard.

(42) Drawing UM1–6C: Having three or four different size pads might fit these size transformers better. Note #1 requires 4000# concrete, but most use 3000# which would be adequate for this.

Response: RUS agrees and has amended Note 1 of the drawing to specify the minimum at 3000 pounds per square inch (20 megapascals).

(43) Drawings UM3–44 and UM3–46: This is a dangerous installation since it is not dead front. A bushing insert can be installed in the recloser and then primary cable run to it to make everything deadfront.

Response: The drawings were not shown as intended. As can be seen from the material listings for "be" and "el", these items are to be supplied with bushing wells and thus the drawings needs to be shown using elbows. The drawings were changed to agree with the materials used.

(44) Drawing UM6–27: Needs to be omitted.

Response: RUS agrees and has deleted this obsolete drawing.

(45) Drawing UM8–2: Ground rod connector has to be above grade as per code. Does the post need to be a minimum size, such as 4 x 4 inches?

Response: Section 250–52(c)(3) of the National Electrical Code requires that the upper end of a driven ground rod be flush with or below ground level unless the rod end and the grounding electrode conductor attachment are protected against physical damage. The RUS drawing shows the top of the rod well beneath grade to depict greater protection for the rod end and the grounding attachment.

RUS has included a note to require a minimum post size of 4 inches (10 centimeters) square or diameter.

(46) Drawing UM8–4: Why not show conduit coming in bottom of meter base to eliminate the elbow?

Response: RUS agrees and has revised the drawing to show cable entering from the base instead of from the side of the meter.

(47) Drawing UM8–6: Why cannot a meter be mounted to transformer? Utilities do this all the time.

Response: RUS does not believe such installations to be prudent. Mounting metering equipment onto the wall of padmounted transformers will require some cutting and drilling which will expose untreated transformer metal surfaces. These surfaces overtime will corrode prematurely and may cause serious problems.

In addition, vibrations from the transformer may affect the meter operation. Also, anytime a transformer is changed out, the meter has to be changed as well.

(48) Drawing UM12: Should this sign meet ANSI Z535 standards also? Would it be a Notice or a Warning or a Caution?

Response: RUS agrees there may be confusion with this drawing and revised the drawing by adding the signal word "WARNING" to the label. A note was also added requiring the sign to comply with ANSI Z535.

(49) Drawing UM26: Needs to be omitted. Nobody uses these anymore.

Response: RUS agrees that this drawing depicts outdated construction and removed the drawing.

(50) Drawing UM48–3: Is anode needed for jacketed cable?

Response: The sacrificial anode (Item U si) shown as a hidden line is optional. Some RUS borrowers prefer to install anodes at all ground points because gophers might chew through the jacket and expose the copper neutrals. The sacrificial anode will provide corrosion protection to such exposed neutral wires preventing a loss of neutral integrity.

(51) Drawing UX5: Need to show a minimum distance between ground rods as are done on other drawings.

Response: RUS agrees and has revised the drawing to show a minimum spacing of 6 ft. (1.8 m) between multiple ground rods. (As a general rule, RUS recommends that separation of ground rods be no closer than the length of the ground rods used. When rods are closer to one another than their length they will magnetically influence one another and degrade grounding effectiveness.) A note was also added to advise that multiple rods may not fit inside the enclosure. Where spacing inside an enclosure does not allow the 6 ft. (1.8 m) separation between multiple ground rods, one rod is to be installed inside the enclosure and the other outside. The ground loop has been redrawn to show a complete loop with a conductor feed from the loop down to the ground rod.

(52) Drawing UM7–1: There is no minimum ground clearance shown on any pole structures. If RUS does not want to show minimum clearances, perhaps a note regarding the source for clearance information would be in order.

Response: RUS agrees there is possible confusion here. Clearances were omitted purposefully because alternative working methods may be implemented along with appropriate alternative working clearances as a means of providing safety. To allay concerns of this comment, RUS revised the drawing by adding a note which states that clearances must meet NESC requirements.

(53) Certain existing drawings (UC5) are a different design from the proposed drawings. Certain materials used are different and the specification will also have different record units.

Response: RUS agrees and has changed the drawing numbers to the applicable drawings.

(54) When RUS changes a construction specification, maybe RUS should add a suffix to indicate that change (example: UC5 change to UC5A or UC5–1, or UC5–98)

Response: RUS agrees and has changed the drawing numbers to the applicable drawings.

(55) Drawing UM48–2: The drawing shows the use of two ground rods in the elevation view, however, the quantity of rods is left open in the material list. I and a number of fellow workers and clients feel that it would be helpful to add a note 3 stating that the quantity of rods is to be determined by the specifier and that the use of two rods rather than one at a multi-phase transformer or enclosure is not a standard or a requirement by RUS.

Response: RUS agrees. Depending on the condition and type of soil, installation of multiple ground rods may be necessary to attain a desirable ground resistance. Thus, ground rods need to be specified separately.

In response to this comment, RUS added the following note to the drawing: "The quantity of rods is to be determined by the specifier. The use of two rods rather than one at a multi-phase transformer or enclosure is not a standard or a requirement by RUS."

List of Subjects in 7 CFR Part 1728

Electric power, Incorporation by reference, Loan programs-energy, Rural areas.

For reasons set out in the preamble, RUS is amending 7 CFR part 1728 as follows:

PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

1. The authority citation for part 1728 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. Section 1728.97 is amended by revising paragraph (a) and by adding, in numerical order, the entry for Bulletin 1728F–806 to paragraph (b). The revision and addition read as follows:

§ 1728.97 Incorporation by reference of electric standards and specifications.

(a) The following electric bulletins have been approved for incorporation by reference by the Director of the Office of the Federal Register. The bulletins containing construction standards (50–3 to 50–6 and 1728F–803 to 1728F–811), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bulletins containing specifications for materials and equipment (50–15 to 50–99 and 1728F–700) may be obtained from the Rural Utilities Service, Program Development and Regulatory Analysis, Stop 1522, Room 4028-S, Washington, DC 20250–1522. The terms "RUS form", "RUS standard form", "RUS specification", and "RUS bulletin" have the same meanings as the terms "REA form", "REA standard form", "REA specification", and "REA bulletin", respectively unless otherwise indicated. The bulletins are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(b) * * *

Bulletin 1728F–806 (D–806), Specifications and Drawings for Underground Electric Distribution, June 2000.

* * * * * *

Dated: May 15, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–13293 Filed 5–25–00; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of an increase in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

DATES: The amendments to part 201 (Regulation A) were effective May 16, 2000. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board, at (202) 452–3259; for users of Telecommunications Device for the Deaf (TDD), contact Janice Simms, at (202) 872–4984, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, *et al.*, of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit for up to 30 days. In increasing the basic discount rate from 5.5 percent to 6.0 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 50-basis-point increase in the discount rate was associated with a similar increase in the federal funds rate approved by the Federal Open Market Committee and announced at the same time.

Increases in demand have remained in excess of even the rapid pace of productivity-driven gains in potential supply, exerting continued pressure on resources. The Board and the Reserve Banks are concerned that this disparity

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in the growth of demand and potential supply will continue, which could foster inflationary imbalances that would undermine the economy's outstanding performance. Against the background of the long-term goals of price stability and sustainable economic growth and of the information currently available, the Board and the Reserve Banks believe the risks are weighted mainly toward conditions that may generate heightened inflation pressures in the foreseeable future.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	6.0	May 16, 2000.
New York	6.0	May 19, 2000.
Philadelphia	6.0	May 18, 2000.
Cleveland	6.0	May 16, 2000.
Richmond	6.0	May 16, 2000.
Atlanta	6.0	May 17, 2000.
Chicago	6.0	May 17, 2000.
St. Louis	6.0	May 18, 2000.
Minneapolis	6.0	May 18, 2000.
Kansas City	6.0	May 17, 2000.
Dallas	6.0	May 17, 2000.
San Francisco	6.0	May 16, 2000.

By order of the Board of Governors of the Federal Reserve System, May 23, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–13309 Filed 5–25–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–65–AD; Amendment 39–11741; AD 2000–10–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With Pratt & Whitney JT9D–70 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires inspections, tests, and certain modifications of the thrust reverser control and indication system and wiring on each engine, and corrective action, if necessary. This amendment also requires installation of a terminating modification, and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. This amendment is prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in significant reduction in airplane controllability. The actions specified by this AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

DATES: Effective June 30, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 30, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on February 4, 2000 (65 FR 5459). That action proposed to require inspections, tests, and certain modifications of the thrust reverser control and indication system and wiring on each engine, and corrective action, if necessary. That action also proposed to require installation of a terminating modification, and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 7 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates

that 6 airplanes of U.S. registry will be affected by this AD.

It will take approximately 32 work hours (8 work hours per engine) per airplane, to accomplish the required thrust reverser inspection, modification, and test, described in 747–78A2149, Revision 1, or Revision 2, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $11,520, or $1,920 per airplane.

It will take approximately 8 work hours (2 work hours per engine) per airplane, to accomplish the required 1,000-flight-hour inspections described in Boeing Service Bulletin 747–78A2159, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $2,880, or $480 per airplane, per inspection cycle.

It will take approximately 20 work hours (5 work hours per engine) per airplane, to accomplish the required 18-month thrust reverser system checks described in Boeing Service Bulletin 747–78A2159, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the test required by this AD on U.S. operators is estimated to be $7,200, or $1,200 per airplane, per test cycle.

It will take approximately 544 work hours per airplane, to accomplish the required provisional wiring, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $195,840, or $32,640 per airplane.

It will take approximately 593 work hours per airplane, to accomplish the required sync lock installation, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $213,480, or $35,580 per airplane.

It will take approximately 4 work hours per airplane, to accomplish the required functional test of the additional locking system, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the test required by this AD on U.S. operators is estimated to be $1,680, or $240 per airplane, per test cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–10–17 Boeing: Amendment 39–11741. Docket 99-NM–65-AD.

Applicability: Model 747 series airplanes equipped with Pratt & Whitney JT9D–70 series engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of a thrust reverser during flight and consequent reduced controllability of the airplane, accomplish the following:

Inspection/Repair

(a) Within 200 flight hours or 50 flight cycles after the effective date of this AD, whichever occurs later: Inspect the thrust reverser wiring on each engine to detect discrepancies, in accordance with Boeing Service Bulletin 747–78A2149, Revision 1, dated May 9, 1996, or Revision 2, dated August 29, 1996. Prior to further flight, repair any discrepancy, in accordance with the service bulletin.

Modification and Tests

(b) Within 5,000 flight hours or 500 flight cycles after the effective date of this AD, whichever occurs later: Accomplish the thrust reverser wiring modification on each engine in accordance with Boeing Service Bulletin 747–78A2149, Revision 1, dated May 9, 1996, or Revision 2 dated August 29, 1996.

(1) Concurrent with accomplishment of Boeing Service Bulletin 747–78A2149, Revision 1 or Revision 2: Accomplish the modification of the thrust reverser control system wiring specified in Rohr Service Bulletin TBC-CNS 78–32, Revision 1, dated August 20, 1996.

(2) Prior to further flight following accomplishment of the modification specified in paragraphs (b) and (b)(1): Perform an operational test of the thrust reverser wiring on each engine to detect discrepancies in accordance with Boeing Service Bulletin 747–78A2149, Revision 1, dated May 9, 1996, or Revision 2 dated August 29, 1996. Prior to further flight, correct any discrepancy detected, in accordance with the service bulletin.

Repetitive Inspections and Tests

(c) Perform the inspections and tests of the thrust reverser control and indication system to detect discrepancies at the times specified in paragraphs (c)(1) and (c)(2) of this AD, in accordance with Boeing Alert Service Bulletin 747–78A2159, dated May 18, 1995.

(1) Within 90 days after the effective date of this AD, inspect in accordance with Part III, "1,000 Flight Hour Inspections" of the Accomplishment Instructions of the alert service bulletin. Repeat at intervals not to exceed 1,000 flight hours until accomplishment of paragraph (f) of this AD.

(2) Within 1,500 flight hours or 4 months after the effective date of this AD, whichever occurs later, inspect and test in accordance with Part III, "18 Month Thrust Reverser System Checks" of the Accomplishment Instructions of the alert service bulletin. Repeat at intervals not to exceed 18 months until accomplishment of paragraph (e) of this AD.

Corrective Actions

(d) If any inspection or test required by paragraph (c) of this AD cannot be successfully performed as specified in the referenced service bulletin, or if any discrepancy is detected during any inspection or test, prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–78A2159, dated May 18, 1995. Additionally, prior to further flight, any failed inspection or test required by paragraph (c) of this AD must be repeated and successfully accomplished.

Terminating Action

(e) Accomplish the requirements of paragraphs (e)(1) and (e)(2) of this AD at the times specified in those paragraphs. Accomplishment of these actions constitutes terminating action for the repetitive inspections and tests required by paragraph (c) of this AD.

(1) Within 36 months after the effective date of this AD: Install an additional locking system on each engine thrust reverser in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2153, Revision 1, dated November 27, 1996.

(2) Prior to or concurrent with accomplishment of Boeing Service Bulletin 747–78–2153, Revision 1: Accomplish the installation of provisional wiring for the locking system on the thrust reversers in accordance with Boeing Service Bulletins 747–78–2135, dated August 31, 1995; and 747–78A2149, Revision 1, dated May 9, 1996, or Revision 2, dated August 29, 1996. Additionally, concurrent with accomplishment of Boeing Service Bulletin 747–78–2153, Revision 1, accomplish the installation of the provisional wiring described previously in accordance with Rohr Service Bulletin TBC-CNS 78–33, Revision 1, dated August 20, 1996.

Repetitive Functional Tests

(f) Within 4,000 hours time-in-service after accomplishment of paragraph (e) of this AD: Perform a functional test to detect discrepancies of the additional locking system on each thrust reverser, in accordance with Appendix 1 (including Figures 1 and 2) of this AD. Prior to further flight, correct any discrepancy detected, in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual. Repeat the functional test thereafter at intervals not to exceed 4,000 hours time-in-service.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Except as provided by paragraph (f) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–78A2149, Revision 1, dated May 9, 1996; Boeing Service Bulletin 747–78A2149, Revision 2, dated August 29, 1996; Boeing Alert Service Bulletin 747–78A2159, dated May 18, 1995; Boeing Service Bulletin 747–78–2135, dated August 31, 1995; Boeing Service Bulletin 747–78–2153, Revision 1, dated November 27, 1996; Rohr Service Bulletin TBC–CNS 78–32, Revision 1, dated August 20, 1996; and Rohr Service Bulletin TBC–CNS 78–33, Revision 1, dated August 20, 1996; as applicable. Rohr Service Bulletin TBC–CNS 78–32, Revision 1, dated August 20, 1996 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 5–8, 10–11, 13–14, 16–18	1	August 20, 1996.
2, 4, 9, 12, 15	Original	May 25, 1995.

Rohr Service Bulletin TBC–CNS 78–33, Revision 1, dated August 20, 1996 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3–55	1	August 20, 1996.
2	Original	December 11, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on June 30, 2000.

Appendix 1

Thrust Reverser Sync-Lock Integrity Test

1. General

A. Equipment and Materials

(1) Thrust reverser flex drive adapter—196K8004–1 or 196K8004–3; Rohr Industries, Inc., Chula Vista, California 92012.

2. Thrust Reverser Sync-Lock Integrity Test

B. Prepare for the thrust reverser sync lock test.

(1) Open applicable T/R CONT & BLEED SYS circuit breaker on P12 circuit breaker panel.

(2) Open fan cowl doors (Ref 71–11–02, Maintenance Practices).

(3) Check that forward and aft circumferential latches and all tension latches are engaged and locked.

(4) Depress drive unit latch operating arm and retain by engaging latch arm (detail C).

(5) Disengage stow latch hook on left and right thrust reversers (detail D).

(6) On either lower slave actuator (detail B), either remove coverplate from forward drive pad or remove locking plug from lower drive pad.

(7) Move left-hand sync-lock lever to the unlocked position.

(8) Using appropriate drive adapter (196K8004–1 at forward drive pad or 196K8004–3 at lower drive pad), attempt to manually deploy sleeves.

CAUTION: DO NOT APPLY A TORQUE LOAD OF MORE THAN 75 POUND-INCHES TO THE ACTUATOR; A GREATER TORQUE LOAD CAN CAUSE DAMAGE TO THE MECHANISM.

(9) If sleeves move, replace the right-hand sync-lock.

(10) Move left-hand sync-lock lever to the locked position.

(11) Move right-hand sync-lock lever to the unlocked position.

(12) Repeat step (8) above.

(13) If sleeves move, replace the left-hand sync-lock.

(14) Move left-hand sync-lock lever to the unlocked position.

(15) Rotate actuator gearshaft to fully stow the sleeves.

(16) When translating sleeves reach stowed position, check that stow latch hooks have engaged fixed hooks on both sides (detail D).

(17) Depress latch operating arm and disengage latch arm (detail C); allow latch arm to raise.

(18) After releasing arm, verify latch engagement by attempting to rotate feedback gear on drive unit using ¾-inch square drive; gear shall not rotate in excess of 0.1 of a turn.

CAUTION: DO NOT APPLY A TORQUE LOAD OF MORE THAN 25 POUND-INCHES ON FEEDBACK GEAR; A GREATER TORQUE LOAD CAN CAUSE DAMAGE TO THE MECHANISM.

(19) As applicable, install locking plug (with square section facing away from drive pad) or coverplate on actuator drive pad. Secure plug or plate with bolts tightened to 50–70 pound-inches.

(20) Move both left-and right-hand sync-lock levers to the locked position.

(21) Close fan cowl doors (Ref 71–11–02, Maintenance Practices).

(22) Close T/R CONT & BLEED SYS circuit breaker.

(23) Repeat the sync-lock integrity test on all remaining thrust reversers.

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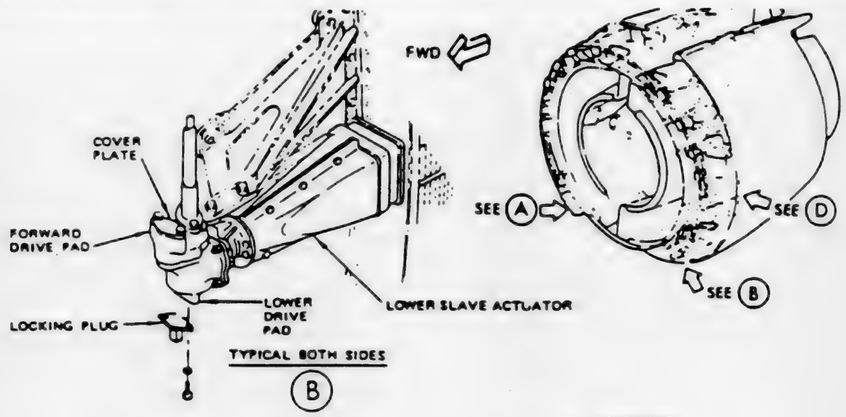

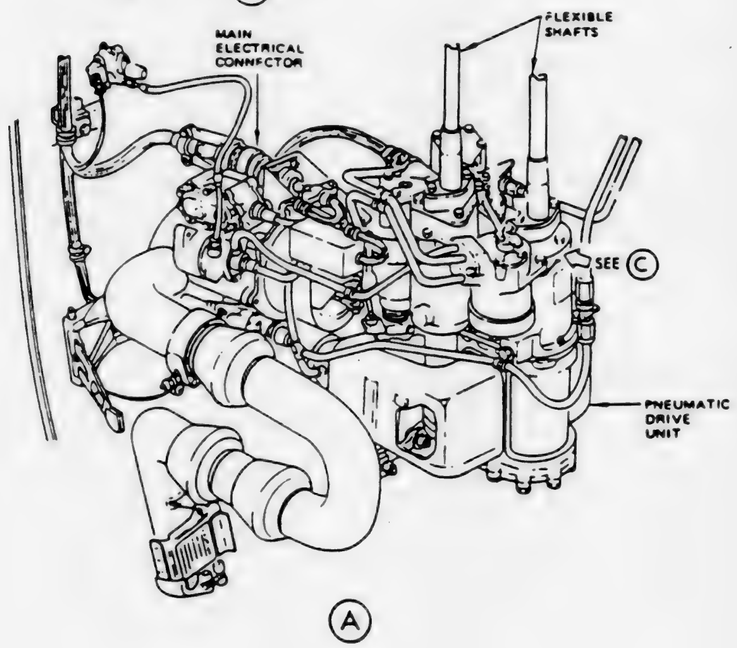

Figure 1

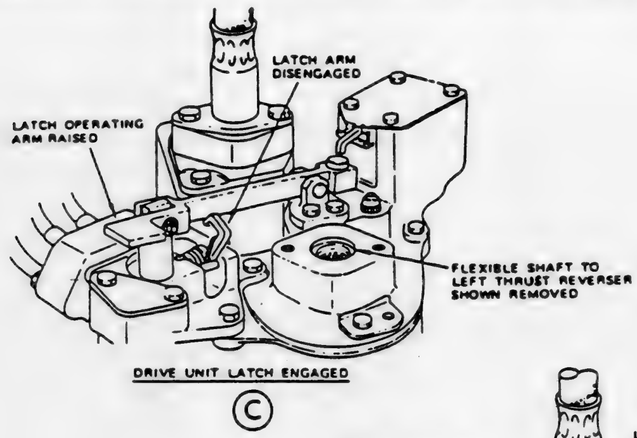

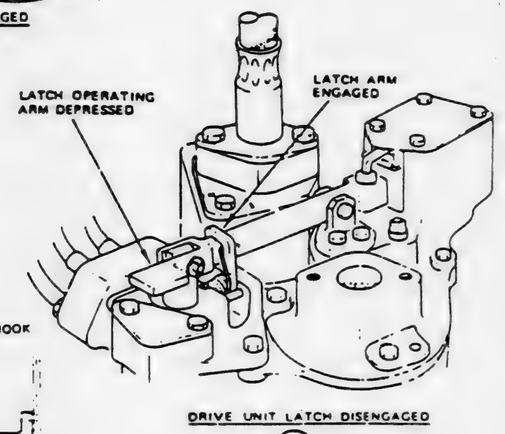

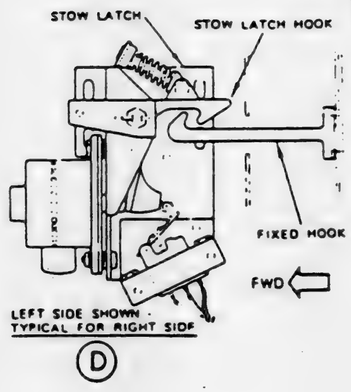

Figure 2

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Issued in Renton, Washington, on May 16, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–12812 Filed 5–25–00; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–360–AD; Amendment 39–11743; AD 2000–10–19]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1125 Westwind Astra and Astra SPX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Israel Aircraft Industries, Ltd., Model 1125 Westwind Astra and Astra SPX series airplanes, that requires replacement of the existing pneumatic de-icing boot pressure indicator switch with a newly designed switch. This amendment is prompted by an occurrence on a similar airplane model in which the pneumatic de-icing boot indication light may have provided the flightcrew with misleading information as to the proper functioning of the de-icing boots. The actions specified by this AD are intended to prevent ice accumulation on the airplane leading edges, which could result in reduced controllability of the airplane.

DATES: Effective June 30, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 30, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Israel Aircraft Industries, Ltd., Model 1125 Westwind Astra and Astra SPX series airplanes was published in the **Federal Register** on January 24, 2000 (65 FR 3617). That action proposed to require replacement of the existing pneumatic de-icing boot pressure indicator switch with a newly designed switch.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Changes to the Proposed AD

Since issuance of the proposed AD, the manufacturer has issued Astra Alert Service Bulletin 1125–30A–199, dated April 17, 2000, which describes procedures for replacement of the wing and tail de-icing boot pressure indicator switches with improved switches. The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, classified this service bulletin as mandatory. Additionally, the CAAI previously issued Israeli airworthiness directive 30–00–02–05, dated February 24, 2000, in order to assure the continued airworthiness of these airplanes in Israel.

The FAA has determined that the replacement described in the service bulletin provides an adequate method of addressing the unsafe condition identified in this AD. Paragraph (a) of the AD has been revised to include that replacement as an acceptable means of compliance to the requirements of the AD. The applicability of the AD has also been revised to exclude airplanes having serial number 116 and up, on which the replacement will be installed in production.

The FAA has also revised the "Cost Impact" section of the AD to provide the estimated cost of the replacement in accordance with the previously described service bulletin, and to revise the number of affected airplanes of U.S. registry.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 89 airplanes of U.S. registry will be affected by this AD.

Should an operator elect to accomplish the replacement in accordance with Astra Alert Service Bulletin 1125–30A–199, it will take approximately 2 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts may cost as much as $1,455 per airplane. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be as much as $1,575 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–10–19 Israel Aircraft Industries, Ltd.: Amendment 39–11743. Docket 99–NM–360–AD.

Applicability: Model 1125 Westwind Astra and Astra SPX series airplanes, serial numbers 004 through 115 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the airplane leading edges, which could result in reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 1 year after the effective date of this AD, replace the pneumatic de-icing boot pressure indicator switch with a switch that activates the flight deck indicator light at 15 pounds per square inch gage, in accordance with Astra Alert Service Bulletin 1125–30A–199, dated April 17, 2000, or in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with Astra Alert Service Bulletin 1125–30A–199, dated April 17, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Israeli airworthiness directive 30–00–02–05, dated February 24, 2000.

(e) This amendment becomes effective on June 30, 2000.

Issued in Renton, Washington, on May 16, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–12813 Filed 5–25–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–251–AD; Amendment 39–11742; AD 2000–10–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A300–600, and A310 series airplanes, that currently requires inspections to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, and repair, if necessary. For certain Model A310 series airplanes, this amendment reduces the currently required inspection thresholds and intervals, and removes an option for a terminating modification. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the engine pylon's lower spar, and possible separation of the engine from the airplane.

DATES: Effective June 30, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 30, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 28, 1996 (61 FR 26091, May 24, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–11–05, amendment 39–9630 (61 FR 26091, May 24, 1996), which is applicable to certain Airbus Industrie Model A300, A300–600, and A310 series airplanes, was published in the **Federal Register** on February 14, 2000 (65 FR 7316). The action proposed to continue to require inspections to detect cracks in the lower spar axis of the engine pylons for Airbus Model A300 and A300–600 series airplanes, and to require accomplishment of the actions specified in Airbus Service Bulletin A310–54–2017, Revision 03, for Model A310 series airplanes.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

No Objection to the Proposal

One commenter, an operator, states that it is not affected by the proposed AD, and therefore has no objection or additional comments.

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Reference to French Airworthiness Directive

One commenter, the manufacturer, requests that the proposed AD be revised to include a reference to a related French airworthiness directive. The commenter states that the proposed AD refers to French airworthiness directive 1999–239–287(B), which addresses Airbus Model A310 series airplanes, but does not mention 1993–228–154(B)R3, which addresses Airbus Model A300 and A300–600 series airplanes (actions for those airplanes are required in existing FAA AD 96–11–05).

The FAA acknowledges that the actions required by existing FAA AD 96–11–05 are related to French airworthiness directive 1993–228–154(B). The FAA has no objection to including the reference in this AD, which continues to require those actions for Model A300 and A300–600 series airplanes. "NOTE 3" of the AD has been revised accordingly. However, although the FAA generally references the latest pertinent airworthiness directive issued by another airworthiness authority as an informational **Note** in the AD, this information is not intended to be an exhaustive list of all related mandatory continuing airworthiness information, and should not be considered as such.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 146 airplanes of U.S. registry that will be affected by this AD.

The requirements of this AD will not add any new additional economic burden on affected operators, other than the costs that are associated with accomplishing inspections for certain airplanes at an earlier time than would have been required by AD 96–11–05. The current costs associated with this AD are reiterated (as follows) for the convenience of affected operators.

The inspections that are currently required by AD 96–11–05, and retained in this AD, take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $480 per airplane, per inspection cycle.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9630 (61 FR 26091, May 24, 1996), and by adding a new airworthiness directive (AD), amendment 39–11742, to read as follows:

2000–10–18 Airbus Industrie: Amendment 39–11742. Docket 99–NM–251-AD. Supersedes AD 96–11–05, Amendment 39–9630.

Applicability: The following models, certificated in any category: Model A300 and A300–600 series airplanes, as listed in Airbus Service Bulletins A300–54–0073 and A300–54–6014, both Revision 1, dated March 28, 1994; and Model A310 series airplanes, except those on which Airbus Modification 10149 has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (m)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent fatigue cracking, which could result in reduced structural integrity of the engine pylon's lower spar and possible separation of the engine from the airplane, accomplish the following:

Restatement of Certain Requirements of AD 96–11–05

Eddy Current Inspections

(a) For Model A300 series airplanes equipped with General Electric CF6–50C engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 10,900 total landings, or within 500 landings after June 28, 1996 (the effective date of AD 96–11–05, amendment 39–9630), whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 6,700 landings.

(2) If any crack is found that is less than 35 millimeters (1.38 inches), prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the Structural Repair Manual (SRM). Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 17,900 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (a)(2) of this AD thereafter at intervals not to exceed 15,000 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(3) If any crack is found that is greater than or equal to 35 mm (1.38 in.), prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(b) For Model A300 series airplanes equipped with General Electric CF6–50C engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 30,300 landings since installation of the modification, or within 500 landings after June 28, 1996, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 21,300 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(c) For Model A300 series airplanes equipped with Pratt & Whitney JT9D–59A engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 8,600 total landings, or within 500 landings after June 28, 1996, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 5,700 landings.

(2) If any crack is found that is less than 35 mm (1.38 in.), prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 14,200 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (c)(2) of this AD thereafter at intervals not to exceed 12,800 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or by the DGAC (or its delegated agent).

(3) If any crack is found that is greater than or equal to 35 mm (1.38 in.), prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(d) For Model A300 series airplanes equipped with Pratt & Whitney JT9D–59A engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 24,000 landings since installation of the modification, or within 500 landings after June 28, 1996, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 18,200 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(e) For Model A300–600 series airplanes equipped with General Electric CF6–80C2 engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 9,400 total landings, or within 500 landings after June 28, 1996, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 6,100 landings.

(2) If any crack is found that is less than or equal to 35 mm (1.38 in.), prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 15,600 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (e)(2) of this AD thereafter at intervals not to exceed 13,600 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(3) If any crack is found that is greater than or equal to 35 mm (1.38 in.), prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(f) For Model A300–600 series airplanes equipped with General Electric CF6–80C2 engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 26,400 landings since installation of the modification, or within 500 landings after June 28, 1996, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 19,400 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(g) For Model A300–600 series airplanes equipped with Pratt & Whitney JT9D–7R4 or PW 4000 engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 5,700 total landings, or within 500 landings after June 28, 1996, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

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(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(2) If any crack is found that is less than 35 mm (1.38 in.), prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 10,100 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (g)(2) of this AD thereafter at intervals not to exceed 10,000 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(3) If any crack is found that is greater than or equal to 35 mm (1.38 in.), prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(h) For Model A300–600 series airplanes equipped with Pratt & Whitney JT9D–7R4 or PW 4000 engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 17,000 landings since installation of the modification, or within 500 landings after June 28, 1996, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 14,500 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

New Requirements of This AD

New and Repetitive Inspections for Model A310 Series Airplanes

(i) For Model A310 series airplanes on which the modification specified in Airbus Service Bulletin A310–54–2023, dated October 15, 1993, has not been accomplished: Perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A310–54–2017, Revision 03, dated June 11, 1999, at the applicable time specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD.

(1) For airplanes that have accumulated fewer than 10,000 total landings as of the effective date of this AD: Inspect prior to the accumulation of 7,000 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 10,000 total landings or more and fewer than 20,000 total landings as of the effective date of this AD: Inspect within 1,000 landings after the effective date of this AD.

(3) For airplanes that have accumulated 20,000 total landings or more as of the effective date of this AD: Inspect within 500 landings after the effective date of this AD.

(j) If no crack is found during the inspection required by paragraph (i) of this AD, accomplish the actions specified by either paragraph (j)(1) or (j)(2) of this AD.

(1) Repeat the inspection thereafter at intervals not to exceed 6,400 landings. Or

(2) Prior to further flight, modify the lower spar between ribs 6 and 7 in accordance with Airbus Industrie Service Bulletin A310–54–2023, dated October 15, 1993, and thereafter accomplish the actions required by paragraph (l) of this AD.

(k) If any crack is found during any inspection required by paragraph (i) or (j) of this AD, accomplish the actions required by paragraph (k)(1) or (k)(2) of this AD, as applicable.

(1) If the crack is less than 35 mm (1.38 in.), prior to further flight, repair in accordance with Airbus Industrie Service Bulletin A310–54–2017, Revision 03, dated June 11, 1999. Thereafter, within 13,600 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair, and on the fasteners located at the end of the doubler, in accordance with the service bulletin.

(i) If no crack is found during the inspection required by paragraph (k)(1) of this AD, repeat the inspection required by paragraph (i) of this AD thereafter at intervals not to exceed 11,600 landings.

(ii) If any crack is found during the inspection required by paragraph (k)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(2) If the crack is equal to or greater than 35 mm (1.38 in.), prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(l) For Model A310 series airplanes on which the modification specified in Airbus Industrie Service Bulletin A310–54–2023, dated October 15, 1993, has been accomplished: Within 23,000 landings after accomplishment of the modification, or within 90 days after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A310–54–2017, Revision 03, dated June 11, 1999.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 15,500 landings.

(2) If any crack is found during any inspection required by paragraph (l) or (l)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Alternative Methods of Compliance

(m)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternate methods of compliance approved previously in accordance with AD 96–11–05, Amendment 39–9630, for paragraphs (a) through (h) of that AD, are approved as alternative methods of compliance with paragraphs (a) through (h) of this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(n) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(o) Except as required by paragraphs (a)(2), (a)(2)(ii), (a)(3), (b)(2), (c)(2), (c)(2)(ii), (c)(3), (d)(2), (e)(2), (e)(2)(ii), (e)(3), (f)(2), (g)(2), (g)(2)(ii), (g)(3), (h)(2), (k)(1)(ii), (k)(2), and (l)(2), the actions shall be done in accordance with the following Airbus service bulletins:

Airbus service bulletin No.	Revision level	Service bulletin date
A300–54–0073,	1	March 28, 1994.
A300–54–6014,	1	March 28, 1994.
A310–54–2017,	03	June 11, 1999.
A310–54–2023,	Original	October 15, 1993.

(1) The incorporation by reference of Airbus Service Bulletin A310–54–2017, Revision 03, dated June 11, 1999, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of the remaining service bulletins was approved previously by the Director of the Federal Register as of June 28, 1996 (61 FR 26091, May 24, 1996).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 1999–239–287(B) and 1993–228–154(B)R3, both dated June 2, 1999.

(p) This amendment becomes effective on June 30, 2000.

Issued in Renton, Washington, on May 16, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–12814 Filed 5–25–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–28–AD; Amendment 39–11740; AD 2000–10–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires repetitive inspections for discrepancies of the lock bolt for the pintle pin on the main landing gear (MLG), and follow-on corrective actions, if necessary. This amendment requires additional follow-on actions for certain airplanes. This amendment also provides for optional terminating action for the requirements of this AD. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct a rotated, damaged, or missing lock bolt, which could result in disengagement of the pintle pin from the pintle fitting bearing, and consequent collapse of the MLG during landing.

DATES: Effective June 30, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 30, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 12, 1998 (63 FR 36834, July 8, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–14–11, amendment 39–10644 (63 FR 36834, July 8, 1998), which is applicable to all Airbus Model A319, A320, and A321 series airplanes, was published in the **Federal Register** on February 24, 2000 (65 FR 9225). The action proposed to continue to require repetitive inspections for discrepancies of the lock bolt for the pintle pin on the main landing gear (MLG), and follow-on corrective actions, if necessary; and to require additional follow-on actions, including a retorque of the lock bolt for the pintle pin.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Reference to Terminating Modification

Two commenters request that the proposed AD include reference to Airbus Modifications 28903 (for Model A319 and A320 series airplanes) and 30044 (for Model A321 series airplanes) as terminating action to the requirements of this AD. Airbus Service Bulletin A320–32–1213, dated March 21, 2000, describes procedures for accomplishment of the modification, which involves installation of a dual lock bolt configuration. One commenter notes that the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has approved this modification as terminating action for the inspections and actions described in Airbus Service Bulletin A320–32–1187.

The FAA concurs that the modification described in Airbus Service Bulletin A320–32–1213 constitutes acceptable terminating action to the requirements of this AD. A new paragraph (c) has been added to the AD to provide this option to operators, and the applicability of the AD has been limited to those airplanes not having the modification. Additionally, since terminating action is now available, the FAA has removed the "Interim Action" discussion from the AD; however, the FAA may consider further rulemaking if

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a determination is made at a later date that the terminating modification should be mandated.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 341 airplanes of U.S. registry that will be affected by this AD. It will take approximately 2 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $40,920, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10644 (63 FR 36834, July 8, 1998), and by adding a new airworthiness directive (AD), amendment 39–11740, to read as follows:

2000–10–16 Airbus Industrie: Amendment 39–11740. Docket 99–NM–28–AD. Supersedes AD 98–14–11, Amendment 39–10644.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category, except those on which Airbus Service Bulletin A320–32–1213, dated March 21, 2000 (reference Airbus Modification 28903 or 30044), has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct a rotated, damaged, or missing lock bolt, which could result in disengagement of the pintle pin from the bearing, and consequent collapse of the main landing gear (MLG) during landing, accomplish the following:

Inspection

(a) Perform a detailed visual inspection to detect discrepancies (rotation, damage, and absence) of the lock bolt for the pintle pin on the MLG, in accordance with Airbus All Operator Telex (AOT) 32–17, Revision 01, dated November 6, 1997, Airbus Service Bulletin A320–32–1187, dated June 17, 1998, or Airbus Service Bulletin A320–32–1187, Revision 01, dated February 17, 1999, at the latest of the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD. If any discrepancy is detected, prior to further flight, perform corrective actions, as applicable, in accordance with the AOT or service bulletin. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 15 months, whichever occurs first, unless the terminating action of paragraph (c) of this AD is accomplished. After the effective date of this AD, only Airbus Service Bulletin A320–32–1187, Revision 01, dated February 17, 1999, shall be used for compliance with this paragraph.

(1) Within 30 months since the airplane's date of manufacture or prior to the accumulation of 2,000 total flight cycles, whichever occurs first.

(2) Within 15 months or 1,000 flight cycles after the last gear replacement or accomplishment of Airbus Industrie Service Bulletin A320–32–1119, dated June 13, 1994, whichever occurs first.

(3) Within 500 flight cycles after August 12, 1998 (the effective date of AD 98–14–11, amendment 39–10644).

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

One-Time Follow-On Actions

(b) For airplanes on which the actions described in paragraph 2.B.(2)(c) of Airbus Service Bulletin A320–32–1187, Revision 01, dated February 17, 1999, have not been accomplished: At the time of the initial inspection or the next repetitive inspection required by paragraph (a) of this AD, perform the applicable one-time follow-on actions (including retorquing the forward pintle pin lock bolt and applying sealant to the head of the lock bolt), in accordance with section 2.B.(2)(c) of the Accomplishment Instructions of Airbus Service Bulletin A320–32–1187, Revision 01, dated February 17, 1999.

Optional Terminating Modification

(c) Modification of the lock bolts of the bolt for the pintle pin on the MLG in accordance with Airbus Service Bulletin A320–32–1213, dated March 21, 2000, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus All Operator Telex (AOT) 32–17, Revision 01, dated November 6, 1997; Airbus Service Bulletin A320–32–1187, dated June 17, 1998; or Airbus Service Bulletin A320–32–1187, Revision 01, dated February 17, 1999.

(1) The incorporation by reference of Airbus Service Bulletin A320–32–1187, dated June 17, 1998, and Airbus Service Bulletin A320–32–1187, Revision 01, dated February 17, 1999, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus All Operator Telex (AOT) 32–17, Revision 01, dated November 6, 1997, was approved previously by the Director of the Federal Register as of August 12, 1998 (63 FR 36834, July 8, 1998).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 97–385–112(B)R1, dated October 21, 1998.

(g) This amendment becomes effective on June 30, 2000.

Issued in Renton, Washington, on May 16, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–12815 Filed 5–25–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–88–AD; Amendment 39–11748; AD 2000–10–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200, –300, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–100, –200, –300, 747SR, and 747SP series airplanes, that currently requires a one-time inspection to detect cracking of the longeron splice fittings at stringer 11, on the left and right sides at body station 2598, and replacement of any cracked fitting with a new fitting. This amendment reduces the compliance time for accomplishment of the currently required inspection and adds a new requirement for repetitive inspections. This amendment is prompted by reports that fatigue cracking was found on longeron splice fittings. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in reduced controllability of the horizontal stabilizer.

DATES: Effective June 30, 2000.

The incorporation by reference of Boeing Alert Service Bulletin 747–53A2410, Revision 2, including Addendum, dated October 30, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of June 30, 2000.

The incorporation by reference of Boeing Service Bulletin 747–53A2410, Revision 3, including Addendum, dated March 12, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 13, 1998 (62 FR 67550, December 29 1997).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–26–21, amendment 39–10264 (62 FR 67550, December 29 1997), which is applicable to certain Boeing Model 747–100, –200, –300, 747SR, and 747SP series airplanes, was published in the **Federal Register** on February 22, 2000 (65 FR 8667). The action proposed to continue to require a one-time inspection to detect cracking of the longeron splice fittings at stringer 11, on the left and right sides at body station 2598, and replacement of any cracked fitting with a new fitting. The action also proposed to reduce the compliance time for accomplishment of the currently required inspection and add a new requirement for repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 685 airplanes of the affected design in the worldwide fleet. The FAA estimates that 99 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 97–26–21 takes approximately 32 work hours per airplane to accomplish, at an average labor rate of $60 per work hour.

Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $190,080, or $1,920 per airplane.

This AD requires the same inspection currently required by AD 97–26–21 to be accomplished repetitively. Therefore, the cost impact of the requirements of this AD on U.S. operators is estimated to be $190,080, or $1,920 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

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Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10264 (62 FR 67550, December 29 1997), and by adding a new airworthiness directive (AD), amendment 39–11748, to read as follows:

2000–10–23 Boeing: Amendment 39–11748. Docket 97-NM–88-AD. Supersedes AD 97–26–21, Amendment 39–10264.

Applicability: Model 747–100, 747–200, 747–300, 747SR, and 747SP series airplanes; having line positions 201 through 886 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the longeron splice fittings at stringer 11, which could result in reduced controllability of the horizontal stabilizer, accomplish the following:

Initial Inspection

(a) Perform a one-time detailed visual inspection to detect cracking of the longeron fittings at stringer 11, on the left and right sides at body station 2598, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2410, Revision 2, dated October 30, 1997, including Addendum; or Boeing Service Bulletin 747–53A2410, Revision 3, dated March 12, 1998, including Addendum. After the effective date of this AD, only Revision 3 shall be used.

(1) For airplanes that have accumulated fewer than 17,000 total flight cycles or 63,000 total flight hours as of the effective date of this AD: Inspect at the later of the times specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 17,000 total flight cycles or 63,000 total flight hours, whichever occurs first.

(ii) Within 1,800 flight cycles or 7,000 flight hours after the effective date of this AD, whichever occurs first.

(2) For airplanes that have accumulated 17,000 total flight cycles or more, or 63,000 total flight hours or more, as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 22,000 total flight cycles or 78,000 total flight hours, whichever occurs first.

(ii) Within 1,800 flight cycles or 7,000 flight hours after the effective date of this AD, whichever occurs first.

Note 2: Where there are differences between the AD and the service bulletin, the AD prevails.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Inspections

(b) If no crack is found during the inspection required by paragraph (a) of this AD, repeat the inspection one time at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD, and thereafter at intervals not to exceed 3,000 flight cycles or 18,000 flight hours, whichever occurs first.

(1) Within 3,000 flight cycles or 18,000 flight hours after accomplishment of the most recent inspection, whichever occurs first.

(2) Within 1,800 flight cycles or 7,000 flight hours after the effective date of this AD, whichever occurs first.

Replacement and Repetitive Inspections

(c) If any crack is found during any inspection required by paragraph (a) or (b) of this AD: Prior to further flight, replace the cracked fitting with a new fitting, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2410, Revision 2, dated October 30, 1997, including Addendum; or Boeing Service Bulletin 747–53A2410, Revision 3, dated March 12, 1998, including Addendum. After the effective date of this AD, only Revision 3 shall be used. Then, repeat the inspection specified in paragraph (a) of this AD at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD, and thereafter at intervals not to exceed 3,000 flight cycles or 18,000 flight hours, whichever occurs first.

(1) Within 17,000 flight cycles or 63,000 flight hours after replacement, whichever occurs first.

(2) Within 1,800 flight cycles or 7,000 flight hours after the effective date of this AD, whichever occurs first.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2410, Revision 2, including Addendum, dated October 30, 1997; or Boeing Service Bulletin 747–53A2410, Revision 3, including Addendum, dated March 12, 1998.

(1) The incorporation by reference of Boeing Service Bulletin 747–53A2410, Revision 3, including Addendum, dated March 12, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–53A2410, Revision 2, including Addendum, dated October 30, 1997, was approved previously by the Director of the Federal Register as of January 13, 1998 (62 FR 67550, December 29 1997).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 30, 2000.

Issued in Renton, Washington, on May 18, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13086 Filed 5–25–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–111–AD; Amendment 39–11745; AD 2000–10–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes. This action requires a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear tracklock bracket, and corrective action, if necessary. This action is necessary to prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective June 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 12, 2000.

Comments for inclusion in the Rules Docket must be received on or before July 25, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–111–AD" in the subject line and need not be submitted in triplicate.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating instances of the pilot seat sliding to the aft-most position during acceleration and take-off on certain Boeing Model 737 series airplanes. Investigation revealed that the screws attaching the rear tracklock bracket to the seat track had broken, allowing excessive lateral movement and disengagement of the locking pin from the floor-mounted seat track. A disengaged locking pin can cause misalignment of the seat tracks. Such misalignment of the seat tracks, if not corrected, could result in uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998, which describes procedures for a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear tracklock bracket. If lock nuts and bolts of adequate length are not installed on the rear tracklock bracket, the service bulletin describes installation of lock nuts and bolts of adequate length on the tracklock bracket, and re-alignment of the seat tracks. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737 series airplanes of the same type design, this AD is being issued to prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, and consequent reduced controllability of the airplane. This AD requires a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear tracklock bracket, and corrective action, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Difference Between Alert Service Bulletin and This AD

Operators should note that, although the alert service bulletin recommends accomplishment of the actions as soon as manpower and materials are available, the FAA has determined that a 90-day compliance time would address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the actions. In light of all of these factors, the FAA finds a 90-day compliance time for completion of the actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before

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the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–111–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–10–21 BOEING: Amendment 39–11745. Docket 2000–NM–111–AD. *Applicability:* Model 737–300, –400, and –500 series airplanes equipped with IPECO flightcrew seats; as listed in Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, accomplish the following:

One-Time Inspection

(a) Within 90 days after the effective date of this AD, perform a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear tracklock bracket, in accordance with Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998.

(1) If the seat lock pin fully engages in all lock positions of the seat track, and the rear tracklock bracket is correctly installed, no further action is required by this AD.

General Visual Inspection

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Action

(2) If the seat lock pin does not fully engage in all positions of the seat track, and lock nuts and bolts of adequate length are not installed on the rear tracklock bracket, prior to further flight, install lock nuts and bolts of adequate length on the tracklock bracket and re-align the seat tracks, in accordance with the alert service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 12, 2000.

Issued in Renton, Washington, on May 18, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13085 Filed 5–25–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–27–AD; Amendment 39–11746; AD 2000–10–22]

RIN 2120–AA64

Airworthiness Directives; REVO, Incorporated Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain REVO, Incorporated (REVO) Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 airplanes. This AD requires you to: inspect the left and right wing upper and lower spar doublers for cracks; replace any cracked parts; and incorporate a modification kit. This AD is the result of a report of a fatigue crack found at the second most inboard wing attachment bolt hole on one of the affected airplanes. Similar fatigue cracking has since been reported on seven more of the affected airplanes, including incidents where the fatigue cracking occurred on airplanes with less than 500 hours time-in-service (TIS). The actions specified by this AD are intended to detect and correct cracks in the wing spars, which could result in the wing separating from the airplane with consequent loss of control.

DATES: This AD becomes effective on June 20, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of June 20, 2000.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before July 28, 2000.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–27–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from REVO, Incorporated, P.O. Box 312, One High Street, Sanford, Maine 04073. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–27–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Noll, Aerospace Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (781) 238–7160; facsimile: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

What Caused This AD?

This AD is the result of a report of fatigue cracks that were found at the second-most inboard wing attachment bolt hole on a REVO Lake Model 250 airplane. The cracks were detected during wing repair where the wing spar and wing skin were disassembled. Further analysis indicated that the cracks initiated at a machined notch at the flange termination point of the spar cap.

The REVO Models Lake LA–4, Lake LA–4A, Lake LA–4P, and Lake LA–4–200 airplanes are of the same type design as the Lake Model 250 airplanes. Fatigue cracking similar to that of the above-referenced report has been found on seven more of these airplanes.

What Is the Potential Impact If FAA Took No Action?

Cracks in the wing spars, if not detected and corrected in a timely manner, could result in the wing separating from the airplane with consequent loss of control.

Has FAA Taken Any Action to This Point?

We issued a notice of proposed rulemaking (NPRM) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain REVO Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 airplanes. We published this NPRM in the **Federal Register** on October 6, 1999 (64 FR 54234). The NPRM proposed to require you to accomplish the following:

—Inspect the left and right wing upper and lower spar caps and doublers for cracks;

—Replace any cracked parts;

—Incorporate a modification kit if damaged past a certain level; and

—Report the results of the inspection to FAA.

REVO Service Bulletin B–79, dated June 12, 1999, includes the procedures necessary for you to accomplish the proposed inspection and modification.

Was the Public Invited To Comment?

The FAA offered interested persons the opportunity to participate in the making of this amendment. The following paragraphs present the comments received on the NPRM. Also included is FAA's response to each comment, including any changes incorporated into the final rule based on the comments.

Comment Issue No. 1: Wing Spar Cracking Does Not Warrant AD Action

What are the Commenters' Concerns? Numerous commenters question FAA's justification for issuing an AD. Several commenters do not believe our service difficulty database provides accurate information. A few commenters recommend that we conduct additional research on the cause of the wing spar cracks and determine if the cracks are unique to a particular configuration of the affected airplanes. Other commenters propose various causes of the cracks, including:

—Installation of auxiliary fuel tanks in the wing floats;

—Increased braking power in the Model Lake LA–4–200 and Lake Model 250 airplanes; and

—The presence of corrosion.

What is FAA's Response to the Concerns? We do not concur that the AD is not justified. We began our investigation of the wing spar cracks on the affected airplanes when the Australian Civil Aviation Safety Authority reported cracks in both the spar cap and doubler in the lower spar of a Lake Model 250 airplane. We then received several reports of similar cracking from personnel of maintenance and repair facilities that were working on the affected airplanes. Reports indicated that both the upper and lower spars were cracked. These subsequent reports did not specify corrosion damage. All of the wing spar cracks initiated at a machined notch at the flange termination point of the spar cap

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at the second-most inboard wing attachment bolt hole.

We also initiated laboratory examinations of the cracked spars. These examinations revealed that fatigue caused the cracks and were associated with the roughness of the notch area. The certification basis for the affected airplanes did not require an evaluation of fatigue characteristics. A database of either analytical results or test data does not exist. However, we performed a fatigue analysis of the affected airplanes in the notch area in developing the proposed inspection compliance times. Our analysis of this situation included working with the manufacturer to develop inspection procedures for the spar doublers and spar cap angles and a modification (doubler kit) for the wing spar. We then determined that enough information existed to implement AD action in order to assure the continued airworthiness of the affected airplanes. Thus, we issued an NPRM to propose inspections for cracks and repair, replacement, and modification, as necessary.

We are not changing the AD as a result of these comments.

Comment Issue No. 2: Do Not Require the Spar Cap Inspection

What are the Commenters' Concerns? Several commenters recommend that FAA not require the spar cap inspection in accordance with REVO, Inc. Service Bulletin B–79, dated June 12, 1999. The commenters offer the following explanations for eliminating this inspection:

—Accomplishing the inspection could cause damage to the spar cap/doubler;
—The number of personnel with the expertise necessary to accomplish the inspection is limited;
—The fluorescent dye penetrant inspection is difficult to implement and is less effective than a visual or borescope examination; and
—There are limited maintenance/repair facilities capable of conducting the inspection.

What are FAA's Responses to the Concerns? We concur that the spar cap inspection is not necessary. The inspection of the spar cap was intended to look for additional cracks outside of the notch area. We are eliminating the spar cap inspection from the AD for the following reasons:

—The cracks detected on the previously-referenced airplanes developed in the notch area and not in the spar cap; and
—We have received several additional reports of airplanes with cracks in the notch area and nowhere else.

We are only requiring a visual inspection of the wing spar doublers instead of a dye penetrant inspection. REVO, Inc. has revised Service Bulletin B–79 (R1—Revised January 5, 2000) to incorporate the visual inspection change.

Comment Issue No. 3: Provide Alternatives to the Proposed Requirements

What are the Commenters' Concerns? Several commenters recommend alternative methods of compliance to meet the safety intent of the AD. These alternatives are:

—Accomplish the inspection utilizing borescope procedures;
—Accomplish the inspection utilizing visual procedures;
—Only inspect the bolt holes;
—Cut inspection holes in the wing skin; and
—Allow repetitive inspections instead of requiring the incorporation of the Aerofab B–79 kit.

What is FAA's Response to the Concerns? We do not concur that any of the alternatives alone are valid to meet the safety intent of this AD. Inspecting the wing spar doubler in accordance with the procedures in REVO, Inc. Service Bulletin B–79, dated June 12, 1999, assures the airworthiness of this component prior to installing the doubler kit (Aerofab B–79 kit). Installing this doubler kit gives the spar an adequate fatigue life and eliminates the need for repetitive inspections. We do not concur that cutting holes in the wing skin for inspections is an acceptable alternative because of the sensitive nature of the wing skin.

We also do not concur with allowing repetitive inspections instead of mandatory incorporation of the Aerofab B–79 kit. Constant removal of the bolts could cause unnecessary damage. The FAA's policy is to require a modification when incorporation of that modification could eliminate or reduce the number of required inspections.

We are not changing the AD as a result of these comments.

Comment Issue No. 4: Eliminate Certain Airplanes From the Applicability of the AD

What are the Commenters' Concerns? Several commenters request that FAA not include the Model Lake LA–4 airplanes in the applicability of the final rule AD. The commenters state that the applicability should be based on the weight, auxiliary fuel, and brake differences of the airplanes.

One commenter concurs with the applicability of the NPRM.

What is FAA's Response to the Concerns? We have determined that this AD should apply to the Model Lake LA–4 airplanes. The service difficulty database clearly shows the need to address the wing spar condition on the Model Lake LA–4–200 and Lake Model 250 airplanes. The Model Lake LA–4 airplanes are included because:

—The wing/spar attachment design is the same as the Model Lake LA–4–200 airplanes;
—The gross weight is only 200 pounds less than the Model Lake LA–4–200 airplanes; and
—These airplanes have been in service longer than the Model Lake LA–4–200 airplanes.

For these reasons, we have determined that the Model Lake LA–4 airplanes are also susceptible to wing spar fatigue cracking and the AD must apply to these airplanes.

We are not changing the AD as a result of these comments.

Comment Issue No. 5: Revise the Methods of Incorporating the Doubler Kit

What are the Commenters' Concerns? Several commenters suggest revisions to the Aerofab B–79 doubler kit. These suggestions include:

1. Revising the rivet removal method;
2. Utilizing bolts instead of rivets;
3. Retaining the original bolts for the Model Lake LA–4 airplanes; and
4. Redesigning the doubler.

What are FAA's Responses to the Concerns? We concur with these suggestions, as follows:

1. We concur and will require accomplishment in accordance with Revo, Inc. Service Bulletin B–79 R1, Revised January 5, 2000. This revised service bulletin incorporates the proposed rivet removal methods;
2. We concur. Revo, Inc. Service Bulletin B–79 R1, Revised January 5, 2000, allows the use of AN3 bolts, and accomplishment of the AD is required in accordance with this service bulletin;
3. We do not concur that you may retain the original bolts for the Model Lake LA–4 airplanes. The new design configuration of the wing spar caps with the doublers requires longer bolts than originally utilized; and
4. We do not concur with the need to redesign the doubler. Incorporation of the doubler kit on the affected airplanes restores wing spars to their required strength if a crack is present in the notch area of a spar cap. Incorporation of the doubler kit also provides the strength and stability to prevent future fatigue cracking.

Comment Issue No. 6: Difference Between the Proposed AD and the Service Bulletin

What are the Commenters' Concerns? Two commenters note a difference between the service bulletin and the proposed AD, regarding the dye penetrant inspection procedure. One of these commenters also points out that ASTM E1417–95 was referred to as ASTM E1417–99 in the NPRM.

What is FAA's Response to the Concerns? We concur that there is a difference between the dye penetrant inspection procedure proposed in the NPRM and that contained in the original service bulletin. When the AD and service bulletin differ, the AD takes precedence. In addition, FAA received a revision to the ASTM document (E1417–99 from E1417–95) after preparing the NPRM.

However, as discussed previously, FAA is not requiring the dye penetrant inspection.

Comment Issue No. 7: Do Not Include the Reporting Requirement

What is the Commenters' Concern? Seven commenters recommend that FAA not require the reporting requirement for the dye penetrant inspection. These commenters state that this proposed requirement is irrelevant to the safety of the aircraft.

What is FAA's Response to the Concern? We concur. As discussed previously, FAA is not including this inspection in the AD, so there is no need for the reporting requirement.

We are not including the reporting requirement in the AD.

Comment Issue No. 8: Inspect the Spar Caps and Doublers for Corrosion Any Time a Wing Is Removed

What are the Commenters' Concerns? Six commenters request that FAA require inspection of the of spar caps and doublers for corrosion any time a wing is removed. The commenters recommend this inspection from the roof rib to the first rib outboard or to the inboard fuel tank.

What is FAA's Response to the Concerns? We do not concur. We have not received any record of wing corrosion on the affected airplanes. The actions in this AD address the unsafe condition.

We are not changing the AD as result of these comments.

Comment Issue No. 9: Redesign the Wing Attachment

What are the Commenters' Concerns? One commenter recommends a redesign of the wing attachment area to correct the unsafe condition. Another commenter suggests that the manufacturer conduct a test of the wing/fuselage attachment area.

What is FAA's Response to the Concerns? We have determined that incorporating the doubler kit restores the wing spars of the affected airplanes to their required strength and addressses the unsafe condition referenced in this AD. We will evaluate any data pertaining to a redesign of the wing attachment area or other alternative method of compliance, as long as it is submitted in accordance with the procedures included in this AD.

We are not changing the AD as a result of these comments.

Comment Issue No. 10: The FAA Underestimated the Cost Impact

What are the Commenters' Concerns? Two commenters state that FAA underestimated the costs of implementing the actions proposed in the NPRM. Another commenter states that the cost impact analysis is inadequate because it is designed to address transport category airplanes and not general aviation aircraft. This commenter suggests that the costs of accomplishing this AD could exceed $5,000 per airplane.

What is FAA's Response to the Concerns? We do not concur that the cost analysis is inadequate. The cost impact as proposed in the NPRM is $4,920 per airplane ($2,400 for the inspections and $2,520 for the modification). However, we are not requiring wing removal and a dye penetrant inspection in the AD. We are now only requiring a visual inspection of the wing spar doublers (with replacement if found cracked) and modification. This reduces the time and cost necessary to accomplish the inspection from approximately 40 workhours per airplane to approximately 1 workhour per airplane.

Comment Issue No. 11: Withdraw the AD

What is the Commenter's Concern? One commenter requests that FAA withdraw the NPRM because the service bulletin is effective.

What is FAA's Response to the Concern? We do not concur. The only way we can assure that all affected airplane owners/operators accomplish the actions in a service bulletin is through the issuance of an AD.

We are not changing the AD as a result of these comments.

Comment Issue No. 12: Change the Compliance Time

What are the Commenters' Concerns? Several commenters request an extension to the compliance time. The commenters state that the available repair/maintenance facilities could not accomplish the work on all affected airplanes within the proposed compliance-time.

One commenter recommends requiring repetitive inspections of the bolt holes and only requiring the doubler kit if cracks are found during an inspection.

Two commenters request a reduction in the compliance time to 25 hours time-in-service (TIS) to coincide with the service bulletin. This commenter refers to an incident where the wing spar was cracked on an affected airplane with less than 300 hours TIS.

What is FAA's Response to the Concerns? Since issuance of the NPRM, we have received information regarding wing spar cracks on an airplane with 270 hours TIS. We also have additional reports of wing spar cracking on airplanes with 556 hours TIS and 538 hours TIS.

Based on this information, we do not concur with the request to extend the compliance time. We are reducing the compliance time although not to coincide with the service bulletin. We have determined that the wing spars on all of the affected airplanes should be inspected within 50 hours TIS or 12 months after the effective date of the AD (whichever occur first), regardless of the total number of hours currently accumulated on the wing spar. The NPRM proposed to allow low time airplanes to reach 500 hours total TIS on the wing spar before requiring inspection and modification. Because the latest reports show that cracking could occur prior to 300 hours TIS, we have determined that the 50-hour TIS or 12-month compliance time will eliminate the unsafe condition presented in this AD without inadvertently grounding any of the affected airplanes.

We do not concur with allowing repetitive inspections instead of mandatory modification. Constant removal of the bolts could cause unnecessary damage. The FAA's policy is to require a modification when incorporation of that modification could eliminate or reduce the number of required inspections.

The FAA's Determination and Followup Action

What Have We Decided?

After careful review of all available information related to the subject presented above, including the above-referenced comments, FAA has determined that:

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—The changes to the proposed AD as described in the above comment disposition should be incorporated; and
—AD action should be taken to incorporate these changes to detect and correct cracks in the wing spar doublers, which could result in the wing separating from the airplane with consequent loss of control.

What Is Our Next Action?

Since the change in the compliance time increases the burden on the owners/operators of the affected airplanes over what was proposed in the NPRM, we are required to allow the public additional time to comment on the AD.

Because additional reports show the cracks are occurring in the wing spar doublers on the affected airplanes with less hours TIS than initially expected, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

What Does This AD Require?

This AD requires you to accomplish the following:
—Inspect the left and right wing upper and lower spar doublers for cracks;
—Replace any cracked parts; and
—Incorporate a modification kit.

What Procedures Must You Use To Accomplish This AD?

You must use the procedures in Revo, Inc. Service Bulletin B–79 R1—Revised January 5, 2000, to accomplish this AD.

What Is the Compliance Time of This AD?

At whichever of the following that occurs first:
—Within the next 50 hours time-in-service (TIS) after June 20, 2000 (the effective date of this AD); or
—On or before June 20, 2001 (12 months after the effective date of this AD).

Why Is the Compliance in Both Hours TIS and Calendar Time?

The fatigue cracks on the wing spar doublers of affected airplanes may have already initiated and could be further developing on the low-usage airplanes as well as high-usage airplanes. Utilizing the dual compliance times would assure that cracks in the wing spars are detected on all affected airplanes in a timely manner without inadvertently grounding any of the affected airplanes.

Comments Invited

This action is in the form of a final rule and the FAA did precede it with notice and opportunity for public comment. However, the change in compliance time, as described above, has changed because of information received since the notice. FAA is issuing the information in this final rule without prior notice because an urgent situation concerning safety of flight exists. However, FAA is still inviting comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–27–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. We have determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If FAA determines that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation. You may obtain a copy of the evaluation (if required) from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2000–10–22 Revo, Incorporated: Amendment 39–11746; Docket No. 99–CE–27–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following model and serial number airplanes, certificated in any category; that incorporate any of the wing spar part numbers (or FAA-approved equivalent part numbers) that are specified below the airplane models and serial numbers:

AFFECTED AIRPLANES

Model	Serial Nos.
Lake LA 4	246 through 421, 423 through 429, 445, and 446.
Lake LA–4A	244 and 245.
Lake LA–4P	121.
Lake LA–4 200	422, 430 through 444, and all serial numbers after 446.
Lake Model 250	1 through 232.

WING SPAR PART NUMBERS INCORPORATED

Wing spar parts	Part Nos.
Upper Spar Cap Angles	2–1610–015 and 2–1610–016.
Lower Spar Cap Angles	2–1610–075 and 2–1610–076.
Upper Spar Doublers	2–1610–061 and 2–1610–081 and 2–1610–065.

WING SPAR PART NUMBERS INCORPORATED

Wing spar parts	Part Nos.
Lower Spar Doublers	2–1610–063 and 2–1610–083.

(b) *Who must comply with this AD?* This AD applies to anyone who wishes to operate any of the above airplanes on the U.S. Register .

(c) *What problem does this AD address?* The actions of this AD are intended to detect and correct cracks in the wing spars, which could result in loss of the wing with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	When	Procedures
(1) Inspect the left and right wing upper and lower spar doublers for cracks.	At whichever of the following that occurs first: (i) Within the next 50 hours time-in-service (TIS) after June 20, 2000 (the effective date of this AD); or. (ii) On or before June 20, 2001 (12 months after the effective date of this AD).	In accordance with the Inspection section of Revo, Inc. Service Bulletin B–79 R1—Revised January 5, 2000.
(2) Replace any cracked wing spar doubler with a new part that incorporates the same part number (or FAA-approved equivalent part number).	Prior to further flight after the required inspection.	In accordance with the applicable maintenance manual.
(3) Incorporate Modification Kit B–79	Prior to further flight after the required inspection.	In accordance with the Kit Installation section of Revo, Inc. Service Bulletin B–79 R1—Revised January 5, 2000.

(e) *What if I need to replace a wing on my airplane?* After the effective date of this AD, you may not install a wing on any of the affected airplanes, unless one of the following exists:

(1) The wing is new from the factory; or

(2) The inspection, applicable replacement, and kit incorporation requirements of this AD have been accomplished at the time of installation.

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Boston Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Richard B. Noll, Aerospace Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (781) 238–7160; facsimile: (781) 238–7199.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance Revo, Inc. Service Bulletin B–79 R1—Revised January 5, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from REVO, Incorporated, P.O. Box 312, One High Street, Sanford, Maine 04073. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) *When does this amendment become effective?* This amendment becomes effective on June 20, 2000.

Issued in Kansas City, Missouri, on May 17, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13084 Filed 5–25–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–99–AD; Amendment 39–11739; AD 2000–10–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to certain Airbus Model A320 series airplanes, that currently require modification of the rear spar web of the wing and cold expansion of certain attachment holes for the forward pintle fitting and certain holes at the actuating cylinder anchorage of the main landing gear (MLG). This amendment adds a requirement for repetitive inspections to detect fatigue cracking in certain areas of the rear spar of the wing, and corrective action, if necessary. This

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amendment also provides for optional terminating action for the requirements of this AD. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking, which may lead to reduced structural integrity of the wing and the MLG.

DATES: Effective June 30, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 30, 2000.

The incorporation by reference of certain other publications was approved previously by the Director of the Federal Register as of June 11, 1993 (58 FR 27923, May 12, 1993), and February 14, 1994 (59 FR 1903, January 13, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–08–15, amendment 39–8563 (58 FR 27923, May 12, 1993), and AD 93–25–13, amendment 39–8777 (59 FR 1903, January 13, 1994), which are both applicable to certain Airbus Model A320 series airplanes, was published in the **Federal Register** on February 10, 2000 (65 FR 6566). The action proposed to continue to require modification of the wing rear spar web and cold expansion of certain attachment holes for the forward pintle fitting and certain holes at the actuating cylinder anchorage of the MLG. The AD proposed to add a requirement for repetitive ultrasonic inspections to detect fatigue cracking in certain areas of the wing rear spar, and repair of cracking. The AD also proposed to provide for optional terminating action for the inspections proposed by this AD.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter concurs with the proposed AD. Another commenter states that Airbus Production Modification 24591 is installed on its airplanes; therefore, it is not affected by the proposed AD.

Inspection Threshold for Certain Airplanes

One commenter requests that the proposed AD be revised to allow "Group 2" airplanes to accomplish the initial inspection of the wing rear spar within 12,000 flight cycles after accomplishment of Airbus Service Bulletin A320–57–1060. The commenter defines "Group 1" airplanes as manufacturer's serial numbers (MSN) 002 through 021, on which Airbus Service Bulletins A320–57–1004 and A320–57–1060 are accomplished as retrofit. "Group 2" airplanes are defined as MSN's 022 through 051, on which Airbus Modification 20740 (equivalent to A320–57–1004) has been accomplished in production, and Airbus Service Bulletin A320–57–1060 as retrofit.

The commenter notes that "Group 1" airplanes are granted 12,000 flight cycles after accomplishment of A320–57–1060, yet "Group 2" airplanes are required to undergo inspection prior to accumulation of 17,300 total flight cycles, regardless of when modification per A320–57–1060 was accomplished. The commenter states that "Group 1" and "Group 2" airplanes are in the same configuration and will have a similar fatigue life; therefore, both should have the same inspection threshold.

The FAA does not concur. Although the FAA acknowledges that "Group 1" and "Group 2" airplanes may be in a similar modification configuration, the design configuration of these airplanes is different. "Group 1" airplanes are composed of Model A320–100 series airplanes, and "Group 2" airplanes are composed of Model A320–200 series airplanes. Model A320–200 series airplanes are equipped with a center fuel tank (not installed on Model A320–100 series airplanes) that increases the airplanes' weight. For this reason, it is necessary that "Group 2" airplanes be inspected for cracking prior to accumulation of 17,300 total flight cycles, regardless of when Service Bulletin A320–57–1060 is accomplished. No change is made to the final rule.

Terminating Modification for Certain Airplanes

One commenter requests that modification in accordance with Airbus Service Bulletin A320–57–1089 be considered as terminating action to all inspection requirements if accomplished prior to the initial inspection interval, or to repetitive inspections if accomplished after the initial inspection interval. The commenter states that terminating action credit is allowed under paragraph (e) of the proposed AD only if accomplished prior to 12,000 total flight cycles. The commenter states that accomplishment of the terminating modification includes a non-destructive test inspection of the inner rear spar at each hole location. Since this inspection during the modification will ensure that the inner rear spar is free of defects, terminating action to the follow-on inspection requirements should also be provided.

The FAA notes that terminating modification to the inspection requirements of the AD is already provided for in paragraph (e) of the proposed AD, and considers that clarification of the provisions for terminating modification is necessary. As stated in the second sentence of paragraph (e) of the AD, the threshold of 12,000 total flight cycles is required only if modification per Service Bulletin A320–57–1089 is chosen in lieu of accomplishing the modifications required by paragraphs (a) and (b) of the AD. However, the modification also constitutes acceptable terminating action for the ultrasonic inspection requirements of the AD, as stated in the first sentence of paragraph (e) of the AD. Paragraph (e) has been revised to more clearly specify the terminating action provisions of the AD.

Cost Estimate for Terminating Modification

Two commenters request that the proposed AD be revised to provide correct cost estimates for the optional modification described in Airbus Service Bulletin A320–57–1089. The commenters state that the service bulletin lists the labor cost as 980 work hours, yet the proposed AD provides an estimate of 750 work hours.

The FAA acknowledges that the service bulletin estimate specifies additional work hours (for access and close) that are not included in the proposed AD. However, the cost impact information in an AD typically describes only the "direct" costs of specific actions, and does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Additionally, since this is an optional modification, operators may choose not to incur such costs, or may minimize costs by accomplishing the modification during scheduled maintenance. No change is made to the final rule.

Additional Changes to the AD

To clarify actions for airplanes on which modifications have been installed in production and those on which service bulletins have been accomplished as retrofit, the FAA has revised paragraph (c)(2) of the AD to refer to certain modifications as "Airbus Production Modification * * *." Additionally, a heading has been included to specify the actions required by paragraphs (c) and (d) of the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 126 airplanes of U.S. registry that will be affected by this AD.

It takes approximately 60 work hours per airplane to accomplish the modification of the rear spar web of the wing, as required by AD 93–08–15 and retained in this AD, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the modification on U.S. operators is estimated to be $3,600 per airplane.

It takes approximately 600 work hours per airplane to accomplish the cold expansion of certain holes associated with the MLG, as required by AD 93–25–13 and retained in this AD, at an average labor rate of $60 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the cold expansion on U.S. operators is estimated to be $36,000 per airplane.

The new inspection that is required by this new AD will take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $181,440, or $1,440 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action specified in this AD, it would take approximately 750 work hours, at an average labor rate of $60 per work hour. The required parts would cost $27,036; $30,595; or $32,727; depending on the airplane configuration. Based on these figures, the cost per airplane of the optional terminating action provided by this AD is estimated to be $72,036; $75,595; or $77,727.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendments 39–8563 (58 FR 27923, May 12, 1993) and 39–8777 (59 FR 1903, January 13, 1994), and by adding a new airworthiness directive (AD), amendment 39–11739, to read as follows:

2000–10–15 Airbus Industrie: Amendment 39–11739. Docket 98–NM–99–AD. Supersedes AD 93–08–15, Amendment 39–8563; and AD 93–25–13, Amendment 39–8777.

Applicability: Model A320 series airplanes, certificated in any category, except those on which Airbus Modification 24591 (Airbus Service Bulletin A320–57–1089, dated December 22, 1996; Revision 01, dated April 17, 1997; or Revision 02, dated November 6, 1998) has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in certain areas of the rear spar of the wing, which may lead to reduced structural integrity of the wing and the main landing gear (MLG), accomplish the following:

Restatement of Actions Required by AD 93–08–15

(a) For airplanes having manufacturer's serial numbers (MSN) 003 through 008 inclusive, and 010 through 021 inclusive: Prior to the accumulation of 12,000 total flight cycles, or within 500 flight cycles after June 11, 1993 (the effective date of AD 93–08–15, amendment 39–8563), whichever occurs later, modify the inner rear spar web of the wing in accordance with Airbus Service Bulletin A320–57–1004, Revision 1, dated September 24, 1992, or Revision 2, dated June 14, 1993.

Restatement of Actions Required by AD 93–25–13

(b) For airplanes having MSN's 002 through 051 inclusive: Prior to the accumulation of 12,000 total flight cycles, or within 2,000 flight cycles after February 14, 1994 (the effective date of AD 93–25–13,

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amendment 39–8777), whichever occurs later, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with Airbus Service Bulletin A320–57–1060, dated December 8, 1992; or Revision 2, dated December 16, 1994.

(1) Perform a cold expansion of all the attachment holes for the forward pintle fitting of the MLG, except for the holes that are for taper-lok bolts.

(2) Perform a cold expansion of the holes at the actuating cylinder anchorage of the MLG.

Note 2: Accomplishment of the cold expansion in accordance with Airbus Service Bulletin A320–57–1060, Revision 1, dated April 26, 1993, is also acceptable for compliance with the requirements of paragraph (b) of this AD.

New Actions Required by This AD

Ultrasonic Inspections and Corrective Action

(c) For all airplanes: Perform an ultrasonic inspection to detect cracking of the rear spar of the wing, in accordance with Airbus Service Bulletin A320–57–1088, Revision 02, dated July 29, 1999; at the applicable time specified by paragraph (c)(1) or (c)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,600 flight cycles.

(1) For airplanes on which the actions specified by Airbus Service Bulletin A320–57–1004, Revision 2, dated June 14, 1993, or earlier version; and Airbus Service Bulletin A320–57–1060, Revision 02, dated December 16, 1994, or earlier version; have been accomplished: Perform the inspection of all applicable fastener holes within 12,000 flight cycles after accomplishment of the service bulletins, or within 750 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the actions specified by Airbus Production Modification 20740 and Airbus Service Bulletin A320–57–1060, Revision 2, dated December 16, 1994, or earlier version, have been accomplished; or on which Airbus Production Modifications 20740, 20741, and 20796 have been accomplished: Perform the inspections at the locations and applicable times specified by paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Perform the inspection of left and right fastener holes 52 to 55, 82, 83, 87, and 88; located in the rear spar of the wing; prior to the accumulation of 17,300 total flight cycles, or within 750 flight cycles after the effective date of this AD, whichever occurs later. If any cracking is found, prior to further flight, accomplish the requirements of paragraph (c)(2)(ii) of this AD.

(ii) Except as required by paragraph (c)(2)(i) of this AD: Perform the inspection of all fastener holes located in the rear spar of the wing that are not identified in paragraph (c)(2)(i) of this AD prior to the accumulation of 20,000 total flight cycles, or within 200 flight cycles after the effective date of this AD, whichever occurs later.

Note 3: Accomplishment of the actions specified by Airbus Service Bulletin A320–57–1088, dated September 30, 1996, or Revision 01, dated September 17, 1997, prior to the effective date of this AD is acceptable for compliance with the requirements of the initial inspection required by paragraph (c) of this AD.

(d) If any crack is found during any inspection required by paragraph (c) of this AD: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Optional Terminating Action

(e) Modification of all specified fastener holes in the rear spar of the wing in accordance with Airbus Service Bulletin A320–57–1089, dated December 22, 1996; Revision 01, dated April 17, 1997; or Revision 02, dated November 6, 1998; constitutes terminating action for the ultrasonic inspections required by paragraph (c) of this AD. Such modification, if accomplished prior to the accumulation of 12,000 total flight cycles, also constitutes terminating action for the actions required by paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 93–25–13, amendment 39–8777, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as required by paragraph (d) of the AD, the actions shall be done in accordance with Airbus Service Bulletin A320–57–1004, Revision 1, dated September 24, 1992; Airbus Service Bulletin A320–57–1004, Revision 2, dated June 14, 1993; Airbus Service Bulletin A320–57–1060, dated December 8, 1992; Airbus Service Bulletin A320–57–1060, Revision 2, dated December 16, 1994; or Airbus Service Bulletin A320–57–1088, Revision 02, including Appendix 01, dated July 29, 1999; as applicable. Airbus Service Bulletin A320–57–1004, Revision 2, dated June 14, 1993, contains the following list of effective pages:

Page No	Revision level shown on page	Date shown on page
1, 4, 12, 14, 17–20, 22, 23, 28, 29	2	June 14, 1993.
15	1	September 24, 1992.
2, 3, 5–11, 13, 16, 21, 24–27, 30	Original	July 9, 1991.

(1) The incorporation by reference of Airbus Service Bulletin A320–57–1004, Revision 2, dated June 14, 1993; Airbus Service Bulletin A320–57–1060, Revision 2, dated December 16, 1994; and Airbus Service Bulletin A320–57–1088, Revision 02, including Appendix 01, dated July 29, 1999; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A320–57–1004, Revision 1, dated September 24, 1992, was approved previously by the Director of the Federal Register as of June 11,1993 (58 FR 27923, May 12, 1993).

(3) The incorporation by reference of Airbus Service Bulletin A320–57–1060, dated Decembe.. 8, 1992, was approved previously by the Director of the Federal Register as of February 14, 1994 (59 FR 1903, January 13, 1994).

(4) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–264–135(B), dated June 30, 1999.

(i) This amendment becomes effective on June 30, 2000.

Issued in Renton, Washington, on May 16, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–12816 Filed 5–25–00; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742, 743, 746, 772 and 774

[Docket No. 990625176–0029–02]

RIN 0694–AB86

Revisions and Clarifications to the Export Administration Regulations; Commerce Control List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On July 23, 1999, the Bureau of Export Administration (BXA) published a final rule (64 FR 40106) that revised the Commerce Control List (CCL) based on Wassenaar Arrangement review. The final rule revised certain entries controlled for national security reasons in Categories 1,2,3,4,5,6,7, and 9 to conform with changes in the Wassenaar Arrangement's List of Dual-Use Goods and Technologies. This final rule amends the CCL by making certain revisions and clarifications and, in some cases, inserts material inadvertently omitted from the July 23 final rule. This rule also makes corresponding changes to parts 742, 743, 746 and 772 of the Export Administration Regulations.

DATES: Effective Date: This rule is effective May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kirsten Mortimer, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items.

On January 15, 1998, the Bureau of Export Administration (BXA) published an interim rule (63 FR 2452) fulfilling U.S. commitments to the Wassenaar Arrangement by implementing the Wassenaar Arrangement of Dual-Use Goods and Technologies which is a list of dual-use items identified by Export Control Classification Numbers (ECCNs) as being controlled for national security (NS) reasons in the Commerce Control List (CCL). On July 23, 1999, BXA published a final rule (64 FR 40106) that revised a number of these national security controlled entries on the CCL to conform with recent changes in the Wassenaar List of Dual-Use Goods and Technologies. This rule corrects a number of inadvertent errors to the EAR that appeared in the July 23 rule.

The changes are summarized as follows:

In part 742, changes are made to sections 742.8, 742.10, 746.7, and Supplement 2 to part 742 to cross-reference certain paragraph references relating to ECCN 5A991 to reflect the renumbering of these paragraph references in the July rule.

In part 743, changes are made to section 743.1 to cross-reference certain paragraph references relating to ECCN 5A001 to reflect the renumbering of these paragraph references in the July rule.

In part 772, where definition in the EAR are described, the definition for "positioning accuracy" is changed to clarify that the 1988 version of the ISO standard applies to this definition. This clarification is also made to the Notes to the Category 2B (Materials Processing—Test, Inspection, and Production Equipment) of the CCL.

ECCN 3B991 is amended by removing a paragraph which was incorrectly referenced twice.

ECCN 5A001 is amended by adding License Exception LVS eligibility to underwater communications systems.

ECCN 5A991 is amended by fixing incorrect paragraph references made in the July rule.

ECCN 5B001 is amended by revising the phrase "employing coherent transmission" to read "employing coherent optical transmission". The word "optical" was mistakenly left out of the July rule.

ECCN 5D001 is amended by putting the word "or" in the correct place within the List of Items controlled section. This mistake was inadvertently made in the July rule.

ECCN 5E001 is amended by putting the word "production" in the correct paragraph. This mistake was inadvertently made in the July rule.

ECCN 5E991 is amended by adding descriptions for certain technologies that were removed from national security controls in the July rule. These technologies were removed from ECCN 5E001 in the July rule, and should have been moved into ECCN 5D991, as they continue to be controlled for anti-terrorism reasons.

ECCN 6A003 is amended by adding a dash to the phrase "time-delay-and integration" to read "time-delay-and-integration". This corrects a typographical error in the July rule.

Background

Specifically this rule makes the following revisions to parts 742, 743, 746, 772 and 774 of the Export Administration Regulations:

(1) In paragraphs 742.8(a)(2), 742.10(a)(2) (Anti-Terrorism Controls), and 746.7(a)(2)(ii) (Embargoes), the phrase "ECCN 5A991.f" is corrected to read "ECCN 5A991.g". This corresponds to the changes agreed to and implemented by the Wassenaar Arrangement.

(2) In Supplement 2 to part 742 (Anti-Terrorism Controls; Iran, Syria and Sudan Contract Sanctity Dates and Related Topics), in paragraph (c)(29), the phrase " ECCN 5A001.c" is removed and the phrase "ECCN 5A991.c.1" is revised to read "ECCN 5A991.c". This corresponds to the changes agreed to and implemented by the Wassenaar Arrangement.

(3) In paragraph 743.1(c)(1)(v) (Special Reporting), the phrase "5A001.b.8" is corrected to read "5A001.b.3". This corresponds to the changes agreed to and implemented by the Wassenaar Arrangement.

(4) In part 772 (Definitions of Terms), the definition for "positioning accuracy" is amended by adding the parenthetical reference "(1988)" immediately following "ISO 230/2". This clarifies that the 1988 version of the ISO standard applies.

(5) In Category 2B (Materials Processing—Test, Inspection, and Production Equipment) of the CCL, the Notes for Category 2B section is amended by revising note 5 to add the parenthetical reference "(1988)" immediately following "ISO 230/2". This clarifies that the 1988 version of the ISO standard applies.

(6) Export Control Classification Number (ECCN) 3B991 is amended by removing paragraph b.2.f.5. These items are already covered in paragraph b.2.f.1 of ECCN 3B991.

(7) ECCN 5A001 is amended by adding License Exception LVS eligibility to paragraph b.1. This corrects the inadvertent removal of LVS eligibility for underwater communications systems.

(8) ECCN 5A991 is amended by revising the paragraph references for paragraphs c.10.c and c.10.d to read c.11 and c.12, respectively. ECCN 5A991 is also amended by revising the phrase "5A001" to read "5A991" in Notes 1

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and 2 to paragraph b.7 and in the Note to paragraph c.9.

(9) ECCN 5B001 is amended by revising the phrase "employing coherent transmission" to read "employing coherent optical transmission" in paragraph b.2.c. This corrects an inadvertent omission and is consistent with the changes agreed to and implemented by the Wassenaar Arrangement.

(10) ECCN 5D001 is amended by adding the word "*or*" at the end of paragraph d.2.a and removing the word "*or*" at the end of paragraph d.4.b. This corrects an inadvertent omission and error and is consistent with the changes agreed to and implemented by the Wassenaar Arrangement.

(11) ECCN 5E001 is amended by adding the word "production" in paragraph c and removing the word "production" in the notes to paragraph c.2.e and c.4.b. This corrects an inadvertent omission and errors and is consistent with the changes agreed to and implemented by the Wassenaar Arrangement.

(12) ECCN 5E991 is amended by revising the entry heading by adding "and other 'technologies' as follows" and by revising the List of Items Controlled section to include paragraphs a.1 and a.2 for 'technology' for the processing and application of coatings to optical fiber specially designed to make it suitable for underwater use and "technology" for the "development" of equipment employing "Synchronous Digital Hierarchy" ("SDH") or "Synchronous Optical Network" ("SONET") techniques. These technologies were removed from ECCN 5E001 in the July 23 rule as they are no longer controlled for national security reasons, consistent with the changes agreed to and implemented by the Wassenaar Arrangement. However, anti-terrorism controls for these technologies should have been retained under ECCN 5E991. This rule corrects this inadvertent omission.

(13) ECCN 6A003 is amended by revising the phrase "time-delay-and integration" to read "time-delay-and-integration" in the note to paragraph b.4. This corrects a typographical error and is consistent with the changes agreed to and implemented by the Wassenaar Arrangement.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, the Export Administration Regulations and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 13, 1999 (64 FR 44101).

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collection of information approved by the Office of Management and Budget under control numbers 0694–0106 and 0694–0088. This clarifies that the July 23. 1999 rule (64 FR 40106) referenced an incorrect collection of information number, 0694–0086, and instead should have referenced collection number 0694–0106.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, this rule is issued in final form. However, comments from the public are always welcome. Comments should be submitted to Kirsten Mortimer, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 742 and 772

Exports, Foreign trade.

15 CFR Part 743

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 746

Embargoes, Exports, Foreign Trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 742, 743, 746, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR Part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

2. The authority citation for 15 CFR part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq;* 50 U.S.C. 1701 et seq; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

3. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p.917; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191; E.O. 13121 of April 30, 1999, 64 FR 24021 (May 5, 1999); Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

4. The authority citation for part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

5. The authority citation for part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

PART 742—[AMENDED]

§ 742.8 [Amended]

6. § 742.8 is amended by revising "5A991.f" in paragraph (a)(2), to read "5A991.g".

§ 742.10 [Amended]

7. § 742.10 is amended by revising "5A991.f" in paragraph (a)(2), to read "5A991.g".

Supplement to 742 [Amended]

8. Supplement No. 2 to part 742 is amended by revising the phrase "ECCNs 5A001.c and 5A991.c.1" in the introductory text of paragraph (c)(29) to read "ECCN 5A991.c".

PART 743—[AMENDED]

§ 743.1 [Amended]

9. § 743.1(c)(1)(v) is amended two places by revising "5A001.b.8", to read "5A001.b.3".

PART 746—[AMENDED]

§ 746.7 [Amended]

10. § 746.7 is amended by revising, "5A991.f" in paragraph (a)(2)(ii), to read "5A991.g".

PART 772—[AMENDED]

11. Part 772 is amended by revising the phrase "with ISO/DIS 230/2" to read "with ISO/DIS 230/2 (1988)" in the definition for "positioning accuracy".

PART 774—[AMENDED]

Supplement No. 1 to Part 774—The Commere Control List

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, at the beginning of Category 2B (Test, Inspection and Production Equipment), note 5 in "Notes for Category 2B" is amended by revising the phrase "in accordance with ISO 230/2" to read "in accordance with ISO 230/2 (1988)".

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, ECCN 3B991 is amended by revising the List of Items Controlled section, as follows:

3B991 Equipment not controlled by 3B001 for the manufacture of electronic components and materials, and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Equipment specially designed for the manufacture of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the manufacture of semiconductor devices, integrated circuits and "assemblies", as follows, and systems incorporating or having the characteristics of such equipment:

Note: 3B991.b also controls equipment used or modified for use in the manufacture of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of 3B991.b, as follows:

Note: 3B991 does not control quartz furnace tubes, furnace liners, paddles, boats (except specially designed caged boats), bubblers, cassettes or crucibles specially designed for the processing equipment controlled by 3B991.b.1.

b.1.a. Equipment for producing polycrystalline silicon and materials controlled by 3C001;

b.1.b. Equipment specially designed for purifying or processing III/V and II/VI semiconductor materials controlled by 3C001, 3C002, 3C003, or 3C004, except crystal pullers, for which see 3B991.b.1.c below;

b.1.c. Crystal pullers and furnaces, as follows:

Note: 3B991.b.1.c does not control diffusion and oxidation furnaces.

b.1.c.1. Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 m^2 per minute;

b.1.c.2. "Stored program controlled" crystal pullers having any of the following characteristics:

b.1.c.2.a. Rechargeable without replacing the crucible container;

b.1.c.2.b. Capable of operation at pressures above 2.5×10^5 Pa; *or* b.1.c.2.c. Capable of pulling crystals of a diameter exceeding 100 mm;

b.1.d. "Stored program controlled" equipment for epitaxial growth having any of the following characteristics:

b.1.d.1. Capable of producing a layer thickness uniformity across the wafer of equal to or better than ±3.5%;

b.1.d.2. Rotation of individual wafers during processing; *or*

b.1.e. Molecular beam epitaxial growth equipment;

b.1.f. Magnetically enhanced "sputtering" equipment with specially designed integral load locks capable of transferring wafers in an isolated vacuum environment;

b.1.g. Equipment specially designed for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

b.1.g.1. Patterning capability;

b.1.g.2. Beam energy (accelerating voltage) exceeding 200 keV;

b.1.g.3 Optimized to operate at a beam energy (accelerating voltage) of less than 10 keV; *or*

b.1.g.4. Capable of high energy oxygen implant into a heated "substrate";

b.1.h. "Stored program controlled" equipment for the selective removal (etching) by means of anisotropic dry methods (*e.g.*, plasma), as follows:

b.1.h.1. Batch types having either of the following:

b.1.h.1.a. End-point detection, other than optical emission spectroscopy types; *or*

b.1.h.1.b. Reactor operational (etching) pressure of 26.66 Pa or less;

b.1.h.2. Single wafer types having any of the following:

b.1.h.2.a. End-point detection, other than optical emission spectroscopy types;

b.1.h.2.b. Reactor operational (etching) pressure of 26.66 Pa or less; *or*

b.1.h.2.c. Cassette-to-cassette and load locks wafer handling;

Notes: 1. "Batch types" refers to machines not specially desired for production processing of single wafers. Such machines can process two or more wafers simultaneously with com. .on process parameters, *e.g.*, RF power, temperature, etch gas species, flow rates.

2. "Single wafer types" refers to machines specially designed for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, *e.g.*, RF power or end point, can be independently determined for each individual wafer.

b.1.i. "Chemical vapor deposition" (CVD) equipment, *e.g.*, plasma-enhanced CVD (PECVD) or photo-enhanced CVD, for semiconductor device manufacturing, having either of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon:

b.1.i.1. "Chemical vapor deposition" equipment operating below 10^5 Pa; *or*

b.1.i.2. PECVD equipment operating either below 60 Pa (450 millitorr) or having automatic cassette-to-cassette and load lock wafer handling;

Note: 3B991.b.1.i does not control low pressure "chemical vapor deposition" (LPCVD) systems or reactive "sputtering" equipment.

b.1.j. Electron beam systems specially designed or modified for mask making or semiconductor device processing having any of the following characteristics:

b.1.j.1. Electrostatic beam deflection;

b.1.j.2. Shaped, non-Gaussian beam profile;

b.1.j.3. Digital-to-analog conversion rate exceeding 3 MHz;

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b.1.j.4. Digital-to-analog conversion accuracy exceeding 12 bit; *or*

b.1.j.5. Target-to-beam position feedback control precision of 1 micrometer or finer;

Note: 3B991.b.1.j does not control electron beam deposition systems or general purpose scanning electron microscopes.

b.1.k. Surface finishing equipment for the processing of semiconductor wafers as follows:

b.1.k.1. Specially designed equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; *or*

b.1.k.2. Specially designed equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

Note: 3B991.b.1.k does not control single-side lapping and polishing equipment for wafer surface finishing.

b.1.l. Interconnection equipment which includes common single or multiple vacuum chambers specially designed to permit the integration of any equipment controlled by 3B991 into a complete system;

b.1.m. "Stored program controlled" equipment using "lasers" for the repair or trimming of "monolithic integrated circuits" with either of the following characteristics:

b.1.m.1. Positioning accuracy less than ± 1 micrometer; *or*

b.1.m.2. Spot size (kerf width) less than 3 micrometer.

b.2. Masks, mask "substrates", mask-making equipment and image transfer equipment for the manufacture of devices and components as specified in the heading of 3B991, as follows:

Note: The term "masks" refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.

b.2.a. Finished masks, reticles and designs therefor, except:

b.2.a.1. Finished masks or reticles for the production of unembargoed integrated circuits; *or*

b.2.a.2. Masks or reticles, having both of the following characteristics:

b.2.a.2.a. Their design is based on geometries of 2.5 micrometer or more; *and*

b.2.a.2.b. The design does not include special features to alter the intended use by means of production equipment or "software";

b.2.b. Mask "substrates" as follows:

b.2.b.1. Hard surface (*e.g.*, chromium, silicon, molybdenum) coated "substrates" (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm x 125 mm; *or*

b.2.b.2. "Substrates" specially designed for X-ray masks;

b.2.c. Equipment, other than general purpose computers, specially designed for computer aided design (CAD) of semiconductor devices or integrated circuits;

b.2.d. Equipment or machines, as follows, for mask or reticle fabrication:

b.2.d.1. Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm x 100 mm, or capable of producing a single exposure larger than 6 mm x 6 mm in the image (i.e., focal) plane, or capable of producing line widths of less than 2.5 micrometer in the photoresist on the "substrate";

b.2.d.2. Mask or reticle fabrication equipment using ion or "laser" beam lithography capable of producing line widths of less than 2.5 micrometer; *or*

b.2.d.3. Equipment or holders for altering masks or reticles or adding pellicles to remove defects;

Note: 3B991.b.2.d.1 and b.2.d.2 do not control mask fabrication equipment using photo-optical methods which was either commercially available before the 1st January, 1980, or has a performance no better than such equipment.

b.2.e. "Stored program controlled" equipment for the inspection of masks, reticles or pellicles with:

b.2.e.1. A resolution of 0.25 micrometer or finer; *and*

b.2.e.2. A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

Note: 3B991.b.2.e does not control general purpose scanning electron microscopes except when specially designed and instrumented for automatic pattern inspection.

b.2.f. Align and expose equipment for wafer production using photo-optical or X-ray methods, including both projection image transfer equipment and step and repeat (direct step on wafer) or step and scan (scanner) equipment, capable of performing any of the following functions:

Note: 3B991.b.2.f does not control photo-optical contact and proximity mask align and expose equipment or contact image transfer equipment.

b.2.f.1. Production of a pattern size of less than 2.5 micrometer;

b.2.f.2. Alignment with a precision finer than ±0.25 micrometer (3 sigma);

b.2.f.3. Machine-to-machine overlay no better than +0.3 micrometer; or

b.2.f.4. A light source wavelength shorter than 400 nm;

b.2.g. Electron beam, ion beam or X-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometer;

Note: For focussed, deflected-beam systems (direct write systems), see 3B991.b.1.j or b.10.

b.2.h. Equipment using "lasers" for direct write on wafers capable of producing patterns less than 2.5 micrometer.

b.3. Equipment for the assembly of integrated circuits, as follows:

b.3.a. "Stored program controlled" die bonders having all of the following characteristics:

b.3.a.1. Specially designed for "hybrid integrated circuits";

b.3.a.2. X–Y stage positioning travel exceeding 37.5 x 37.5 mm; *and*

b.3.a.3. Placement accuracy in the X–Y plane of finer than +10 micrometer;

b.3.b. "Stored program controlled" equipment for producing multiple bonds in a single operation (*e.g.*, beam lead bonders, chip carrier bonders, tape bonders);

b.3.c. Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled by 3A001 and that have a throughput equal to or more than one package per minute.

Note: 3B991.b.3 does not control general purpose resistance type spot welders.

b.4. Filters for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometer or smaller per 0.02832 m_3 and filter materials therefor.

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunication and Information Security, Part I—Telecommunications is amended:

a. By revising the License Exceptions section for ECCN 5A001; and

b. By revising the List of Items Controlled section for ECCNs 5A991, 5B001, 5D001, and 5E001; and

c. By revising the entry heading and List of Items Controlled section for ECCN 5E991, as follows:

5A001 Telecommunications systems, equipment, and components.

* * * * *

License Exceptions

LVS: N/A for 5A001.a and b.4
$5000 for 5A001.b.1, b.2, b.3, b.5, and .d
$3000 for 5A001.c
GBS: Yes, except 5A001.a and b.4
CIV: Yes, except 5A001.a, b.3 and b.4

* * * * *

5A991 Telecommunication equipment, not controlled by 5A001.

* * * * *

List of Items Controlled

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Any type of telecommunications equipment, not controlled by 5A001.a, specially designed to operate outside the temperature range from 219 K (− 54 °C) to 397 K (124 °C).

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

Note: Telecommunication transmission equipment:

a. Categorized as follows, or combinations thereof:

1. Radio equipment (*e.g.*, transmitters, receivers and transceivers);
2. Line terminating equipment;
3. Intermediate amplifier equipment;
4. Repeater equipment;
5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical mutiplex included);
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G701);

10. "Stored program controlled" digital crossconnection equipment;
11. "Gateways" and bridges;
12. "Media access units"; *and*

b. Designed for use in single or multi-channel communication via any of the following:

1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation; *or*
5. Underwater acoustic wave propagation.

b.1. Employing digital techniques, including digital processing of analog signals, and designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s or a "total digital transfer rate" exceeding 90 Mbit/s;

Note: 5A991.b.1 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b.2. Modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 9,600 bits per second;

b.3. Being "stored program controlled" digital cross connect equipment with "digital transfer rate" exceeding 8.5 Mbit/s per port.

b.4. Being equipment containing any of the following:

b.4.a. "Network access controllers" and their related common medium having a "digital transfer rate" exceeding 33 Mbit/s; *or*

b.4.b. "Communication channel controllers" with a digital output having a "data signalling rate" exceeding 64,000 bit/s per channel;

Note: If any uncontrolled equipment contains a "network access controller", it cannot have any type of telecommunications interface, except those described in, but not controlled by 5A991.b.4.

b.5. Employing a "laser" and having any of the following characteristics:

b.5.a. A transmission wavelength exceeding 1,000 nm; *or*

b.5.b. Employing analog techniques and having a bandwidth exceeding 45 MHz;

Note: 5A991.b.5.b does not control commercial TV systems.

b.5.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

b.5.d. Employing wavelength division multiplexing techniques; *or*

b.5.e. Performing "optical amplification";

b.6. Radio equipment operating at input or output frequencies exceeding:

b.6.1. 31 GHz for satellite-earth station applications; *or*

b.6.2. 26.5 GHz for other applications;

Note: 5A991.b.6 does not control equipment for civil use when conforming with an International Telecommunications Union (ITU) allocated band between 26.5 GHz and 31 GHz.

b.7. Being radio equipment employing any of the following:

b.7.a. Quadrature-amplitude-modulation (QAM) techniques above level 4 if the "total digital transfer rate" exceeds 8.5 Mbit/s;

b.7.b. QAM techniques above level 16 if the "total digital transfer rate" is equal to or less than 8.5 Mbit/s; *or*

b.7.c. Other digital modulation techniques and having a "spectral efficiency" exceeding 3 bit/sec/Hz;

Notes: 1. 5A991.b.7 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

2. 5A991.b.7 does not control radio relay equipment for operation in an ITU allocated band:

a. Having any of the following:

a.1. Not exceeding 960 MHz; *or*

a.2. With a "total digital transfer rate" not exceeding 8.5 Mbit/s; *and*

b. Having a "spectral efficiency" not exceeding 4 bit/sec/Hz.

b.8. Providing functions of digital "signal processing" as follows:

b.8.a. Voice coding at rates less than 2,400 bit/s;

b.8.b. Employing circuitry that incorporates "user-accessible programmability" of digital "signal processing" circuits exceeding the limits of 4A003.b.

c. "Stored program controlled" switching equipment and related signalling systems, having any of the following characteristics, functions or features, and specially designed components and accessories therefor:

Note: Statistical multiplexers with digital input and digital output which provide switching are treated as "stored program controlled" switches.

c.1. "Data (message) switching" equipment or systems designed for "packet-mode operation" and assemblies and components therefor, n.e.s.

c.2. Containing "Integrated Services Digital Network" (ISDN) functions and having any of the following:

c.2.a. Switch-terminal (*e.g.*, subscriber line) interfaces with a "digital transfer rate" at the highest multiplex level exceeding 192,000 bit/s, including the associated signalling channel (*e.g.*, 2B+D); *or*

c.2.b. The capability that a signalling message received by a switch on a given channel that is related to a communication on another channel may be passed through to another switch.

Note: 5A991.c does not preclude the evaluation and appropriate actions taken by the receiving switch or unrelated user message traffic on a D channel of ISDN.

c.3. Routing or switching of "datagram" packets;

c.4. Routing or switching of "fast select" packets;

Note: The restrictions in 5A991.c.3 and c.4 do not apply to networks restricted to using only "network access controllers" or to "network access controllers" themselves.

c.5. Multi-level priority and pre-emption for circuit switching;

Note: 5A991.c.5 does not control single-level call preemption.

c.6. Designed for automatic hand-off of cellular radio calls to other cellular switches or automatic connection to a centralized subscriber data base common to more than one switch;

c.7. Containing "stored program controlled" digital crossconnect equipment with "digital transfer rate" exceeding 8.5 Mbit/s per port.

c.8. "Common channel signalling" operating in either non-associated or quasi-associated mode of operation;

c.9. "Dynamic adaptive routing";

Note: 5A991.c.10 does not control packet switches or routers with ports or lines not exceeding the limits in 5A991.c.10.

c.10. Being packet switches, circuit switches and routers with ports or lines exceeding any of the following:

c.10.a. A "data signalling rate" of 64,000 bit/s per channel for a "communications channel controller"; *or*

Note: 5A991.c.10.a does not control multiplex composite links composed only of communication channels not individually controlled by 5A991.b.1.

c.10.b. A "digital transfer rate" of 33 Mbit/s for a "network access controller" and related common media;

c.11. "Optical switching";

c.12. Employing "Asynchronous Transfer Mode ("ATM") techniques.

d. Optical fibers and optical fiber cables of more than 50 m in length designed for single mode operation;

e. Centralized network control having all of the following characteristics:

e.1. Receives data from the nodes; *and*

e.2. Process these data in order to provide control of traffic not requiring operator decisions, and thereby performing "dynamic adaptive routing";

Note: 5A991.e does not preclude control of traffic as a function of predictable statistical traffic conditions.

f. Phased array antennae, operating above 10.5 GHz, containing active elements and distributed components, and designed to permit electronic control of beam shaping and pointing, except for landing systems with instruments meeting International Civil Aviation Organization (ICAO) standards (microwave landing systems (MLS)).

g. Mobile communications equipment, n.e.s., and assemblies and components therefor; *or*

h. Radio relay communications equipment designed for use at frequencies equal to or exceeding 19.7 GHz and assemblies and components therefor, n.e.s.

5B001—Telecommunication test, inspection and production equipment, as follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.
Related Controls: See also 5B991.
Related Definition: N/A.
Items:

a. Equipment and specially designed components or accessories therefor, specially designed for the "development", "production" or "use" of equipment, functions or features controlled by 5A001, 5D001 or 5E001.

Note: 5B001.a. does not control optical fiber characterization equipment not using semiconductor "lasers".

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b. Equipment and specially designed components or accessories therefor, specially designed for the "development" of any of the following telecommunication transmission or "stored program controlled" switching equipment:

b.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

b.2. Equipment employing a "laser" and having any of the following:

b.2.a. A transmission wavelength exceeding 1750 nm;

b.2.b. Performing "optical amplification";

b.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques); *or*

b.2.d. Employing analogue techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5B001.b.2.d. does not include equipment specially designed for the "development" of commercial TV systems.

b.3. Equipment employing "optical switching";

b.4. Radio equipment having any of the following:

b.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

b.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

Note: 5B001.b.4.b. does not include equipment specially designed for the "development" of equipment designed or modified for operation in any ITU allocated band.

b.5. Equipment employing "common channel signaling" operating in either the non-associated mode of operation.

5D001 "Software", as described in the List of Items Controlled.

* * * * *

List of Items Controlled

Unit: $ value.
Related Controls: See also 5D991.
Related Definitions: N/A.
Items:

a. "Software" specially designed or modified for the "development", "production" or "use" of equipment, functions or features controlled by 5A001 or 5B001.

b. "Software" specially designed or modified to support "technology" controlled by 5E001.

c. Specific "software" as follows:

c.1. "Software" specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001;

c.2. "Software" which provides the capability of recovering "source code" of telecommunications "software" controlled by 5D001;

c.3. "Software", other than in machine-executable form, specially designed for "dynamic adaptive routing".

d. "Software" specially designed or modified for the "development" of any of the following telecommunication transmission or "stored program controlled" switching equipment:

d.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

d.2. Equipment employing a "laser" and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm; *or*

d.2.b. Employing analogue techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5D001.d.2.b does not include "software" specially designed or modified for the "development" of commercial TV systems.

d.3. Equipment employing "optical switching"; *or*

d.4. Radio equipment having any of the following:

d.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

d.4.b. Operating at input or output frequencies exceeding 31 GHz.

Note: 5D001.d.4.b does not include "software" specially designed or modified for the "development" of equipment designed or modified for operation in any ITU allocated band.

5E001 "Technology", (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: $ value.
Related Controls: See also 5E101 and 5E991.
Related Definitions: N/A.
Items:

a. "Technology" according to the General Technology Note for the "development", "production" or "use" (excluding operation) of equipment, functions or features or "software" controlled by 5A001, 5B001 or 5D001.

b. Specific "technologies", as follows:

b.1. "Required" "technology" for the "development" or "production" of telecommunications equipment specially designed to be used on board satellites;

b.2. "Technology" for the "development" or "use" of "laser" communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. "Technology" for the "development" of digital cellular radio systems;

b.4. "Technology" for the "development" of "spread spectrum" or "frequency agility" (frequency hopping) techniques.

c. "Technology" according to the General Technology Note for the "development" or "production" of any of the following telecommunication transmission or "stored program controlled" switching equipment, functions or features:

c.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

c.2. Equipment employing a "laser" and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing "optical amplification" using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; *or*

c.2.e. Employing analogue techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5E001.c.2.e does not include "technology" for the "development" of commercial TV systems.

c.3. Equipment employing "optical switching"; *or*

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

c.4.b. Operating at input or output frequencies exceeding 31 Ghz; *or*

Note: 5E001.c.4.b does not include "technology" for the "development" of equipment designed or modified for operation in any ITU allocated band.

c.5. Equipment employing "common channel signalling" operating in either non-associated or quasi-associated mode of operation.

5E991 "Technology" for the "Development", "Production" or "Use" of Equipment Controlled by 5A991 or 5B991, or "Software" Controlled by 5D991, and Other "Technologies" as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:

a. Specific "technologies" as follows:

a.1. "Technology" for the processing and application of coatings to optical fiber specially designed to make it suitable for underwater use;

a.2. "Technology" for the "development" of equipment employing "Synchronous Digital Hierarchy" ("SDH") or "Synchronous Optical Network"("SONET") techniques.

15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, ECCN 6A003 is amended by revising the List of Items Controlled section, as follows:

6A003 Cameras

* * * * *

List of Items Controlled

Unit: Number.
Related Controls: See also 6A203. See 8A002.d and .e for cameras specially designed or modified for underwater use.
Related Definitions: N/A.
Items:

a. Instrumentation cameras, as follows:

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

Note: 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras having writing speeds exceeding 10 mm/µs;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras, having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1 µs per full frame; and

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second.

b. Imaging cameras, as follows:

Note: 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having any of the following:

b.1.a. More than 4×10^6 "active pixels" per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4×10^6 "active pixels" per solid state array for color cameras incorporating three solid state arrays; *or*

b.1.c. More than 12×10^6 "active pixels" for solid state array color cameras incorporating one solid state array;

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a. Linear detector arrays with more than 8,192 elements per array; *and*

b.2.b. Mechanical scanning in one direction;

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a;

b.4. Imaging cameras incorporating "focal plane arrays" having the characteristics listed in 6A002.a.3.

Note: 6A003.b.4 does not control imaging cameras incorporating linear "focal plane arrays" with twelve elements or fewer, not employing time-delay-and-integration with the element, designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; *or*

e. Medical equipment.

Dated: May 18, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–13252 Filed 5–25–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–7858; 34–42789; 35–27177; 39–2385; IC–24455]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting revisions to the EDGAR Filer Manual and is providing for their incorporation by reference into the Code of Federal Regulations. In conjunction with the transition to the new capabilities made available in EDGAR Release 7.0, we will be redesignating the components of the Filer Manual into three parts: Volume I discusses the old (Legacy) EDGAR filing system; Volume II discusses modernized EDGAR and all its new features; and the N–SAR Supplement discusses the filing of N–SAR documents. Today, we are adopting new provisions to the Filer Manual that describe the modernized EDGAR system implemented in EDGAR Release 7.0. These new provisions are designated as Volume II of the EDGAR Manual.

EFFECTIVE DATE: May 30, 2000. The revisions to the EDGAR Filer Manual (Release 7.0), contained in Volume II—Modernized EDGARLink, will be effective on May 30, 2000. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of May 30, 2000.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, Richard Heroux at (202) 942–8800; for questions concerning investment company filings, Ruth Armfield Sanders, Senior Special Counsel, or Shaswat K. Das, Attorney, Division of Investment Management, at (202) 942–0978; and for questions concerning Corporation Finance company filings, Herbert Scholl, Office Chief, EDGAR and Information Analysis, Division of Corporation Finance, at (202) 942–2930.

SUPPLEMENTARY INFORMATION: Today we are adopting a new Volume II of the EDGAR Filer Manual ("Filer Manual"), which describes the technical formatting requirements for the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.[1] Volume II describes the requirements for filing using the new EDGARLink.[2]

Previously, the EDGAR Manual was composed of two parts. With the addition of Volume II, the EDGAR Manual will consist of three parts because we will be maintaining two separate software applications for the preparation and transmission of filings until at least November 1, 2000. We are doing this to provide filers abundant time to transition to the new modernized system.

Volume II of the Manual contains all the new technical specifications for filers to submit filings using the new modernized EDGAR system available in Release 7.0. The specifications include features that will be available for the first time to filers using the new EDGARLink software, such as expanded hyperlinks, graphics, and filing over the Internet.

We also plan shortly to adopt revised versions of the remaining parts of the Manual. These revisions will reflect the limited changes effected by EDGAR Release 7.0 to the Legacy EDGAR systems and Form N–SAR filing. Until we do, the provisions of EDGAR Manual Release 6.75 and N–SAR Supplement for Release 6.1 will continue to apply to filers using the Legacy EDGAR system and to filers filing Form N–SAR.

Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[3] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[4]

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (Apr. 1, 1993) (58 FR 18638). We implemented the most recent update to the Filer Manual on January 24, 2000. *See* Release No. 33–7769 (January 20, 2000) (65 FR 3123).

[2] This is the Filer Assistance software we provide filers filing on the EDGAR system.

[3] *See* Rule 301 Regulation S–T (17 CFR 232.301).

[4] *See* Release Nos. 33–6977 (Feb. 23, 1993) (58 FR 14628), IC–19284 (Feb. 23, 1993) (58 FR 14848), and 35–25746 (Feb. 23, 1993) (58 FR 14999), and 33–6980 (Feb. 23, 1993) (58 FR 15009) in which we comprehensively discuss the rules we adopted to govern mandated electronic filing. *See also* Release No. 33–7122 (Dec. 19, 1994) (59 FR 67752), in which we made the EDGAR rules final and applicable to all domestic registrants; Release No. 33–7427 (July 1, 1997) (62 FR 36450), in which we

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The purpose of EDGAR Release 7.0 is to implement the next stage of modernization that filers may begin using on May 30, 2000. The modernized version of EDGAR includes a number of changes: An easier to use EDGARLink for creating and submitting filings to the EDGAR system; graphics and image files in HTML filings; expanded use of hyperlinks in HTML filings; the addition of the Internet as a means of transmission; an update to use of magnetic tape cartridges and the removal of 9 track tapes when support of the Legacy EDGAR system ends; and the elimination of diskette filing in July 2000. The new EDGARLink will be available for download from the EDGAR Filing website; it will not be distributed by diskette.

Legacy EDGARLink is a DOS-based system. We believe the modernized EDGARLink will be easier to use under a Windows operating system, the system most filers use. The new EDGARLink will enable filers to transmit their filings to EDGAR using the Internet. As with the current EDGARLink, the new EDGARLink also assists filers with building the header, attaching documents to the header, checking for errors and transmitting documents to us. The new EDGARLink does not use the current tagging; instead, predefined templates are available for download through our EDGAR Filing web site. The new EDGARLink checks for errors so that filers can make corrections and increase the chance of acceptance by the system.

Filers must use the new EDGARLink if they wish to include graphics and expanded hyperlinks in their HTML documents. Filers using the old version of EDGARLink will not be able to take advantage of EDGAR's new features. Also, as of May 30th, filers using the Legacy EDGAR software system will be able to update company information, change their passwords or change their CIK confirmation codes only by submitting an amended Form ID.

Finally, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations the revisions to the Filer Manual reflected in Volume II. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The revised Filer Manual and the amendments to Rule 301 will be effective on May 30, 2000.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC. 20549–0102. We will post electronic format copies on the SEC's Web Site. The SEC's Web Site address for the Filer Manual is http://www.sec.gov/asec/ofis/filerman.htm. You may also obtain copies from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[5] It follows that the requirements of the Regulatory Flexibility Act[6] do not apply.

The effective date for the updated Filer Manual and the rule amendments is May 30, 2000. In accordance with the APA,[7] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system is scheduled to be upgraded to Release 7.0 on May 30, 2000. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade in order to minimize confusion to EDGAR filers.

Statutory Basis

We are adopting the amendments to Regulation S–T under sections 6, 7, 8, 10, and 19(a) of the Securities Act,[8] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[9] Section 20 of the Public Utility Holding Company Act of 1935,[10] Section 319 of the Trust Indenture Act of 1939,[11] and Sections 8, 30, 31, and 38 of the Investment Company Act.[12]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. For the period during which Legacy EDGAR will be available, prior to the complete transition to the use of Modernized EDGAR, the EDGAR Filer Manual will consist of three parts. For filers using modernized EDGARLink, the requirements are set forth in EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 7.0), Volume II—Modernized EDGARLink. For filers using Legacy EDGAR, the applicable provisions are set forth in EDGAR Filer Manual, Release 6.75. All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Additional provisions applicable to Form N–SAR filers are set forth in EDGAR Filer Manual: N–SAR Supplement, EDGAR Release 6.1.

You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549–0102 or by calling Disclosure Incorporated at (800) 638–8241. Electronic format copies are available on the SEC's Web Site. The SEC's Web Site address for the Manual is http://www.sec.gov/asec/ofis/filerman.htm. Information on becoming an EDGAR e-mail/electronic bulletin board subscriber is available by contacting TRW/UUNET at (703) 345–8900 or at www.trw-edgar.com.

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adopted minor amendments to the EDGAR rules: Release No. 33–7472 (Oct. 24, 1997) (62 FR 58647), in which we announced that, as of January 1, 1998, we would not accept in paper filings that we require filers to submit electronically; Release No. 34–40935 (Jan. 12, 1999) (64 FR 2843) in which we made mandatory the electronic filing of Form 13F; Release No. 33–7684 (May 17, 1999) (64 FR 27888), in which we adopted amendments to implement the first stage of EDGAR modernization; and Release No. 33–7855 (April 24, 2000) (65 FR 23937), in which we implemented EDGAR Release 7.0.

[5] 5 U.S.C. 553(b).
[6] 5 U.S.C. 601–612.
[7] 5 U.S.C. 553(d)(3).
[8] 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).
[9] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w and 78*ll*.
[10] 15 U.S.C. 79t.
[11] 15 U.S.C. 77sss.
[12] 15 U.S.C. 80a–8, 80a–29, 80a–30 and 80a–37.

Dated: May 16, 2000.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 00–12756 Filed 5–25–00; 8:45 am]
BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 00F–0813]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sodium xylenesulfonate as a component of paper and paperboard intended to contact food. This action is in response to a petition filed by Tritex Co., Inc.

DATES: This rule is effective May 26, 2000. Submit written objections and requests for a hearing by June 26, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 7, 2000 (65 FR 12015), FDA announced that a food additive petition (FAP 0B4719) had been filed by Tritex Co., Inc., 1001 Boul. Industriel, Saint-Eustache (Quebec), CANADA J7R 6C3 (zip code was incorrectly identified as J7H 6C3 in the March notice). The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of sodium xylene sulfonated as a component of paper and paperboard intended to contact food. Although the additive was identified as sodium xylene sulfonated in the notice of filing, FDA feels that it is more appropriately listed as sodium xylenesulfonate in this final rule.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this rule as announced in the notice of filing for FAP 0B4719. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by June 26, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.170 is amended in the table in paragraph (b)(2) by alphabetically adding an entry under the headings "List of substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * * * * * *	
Sodium xylenesulfonate (CAS Reg. No. 1300–72–7)	For use only in paper and paperboard coatings at levels not to exceed 0.01 percent by weight of the finished paper and paperboard.
* * * * * * *	

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Dated: May 11, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–13209 Filed 5–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 200

[Docket No. 96N–0048]

RIN 0910–AA88

Sterility Requirement for Aqueous-Based Drug Products for Oral Inhalation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to require that all prescription and over-the-counter (OTC) aqueous-based drug products for oral inhalation be manufactured sterile. This rule applies to aqueous-based oral inhalation drug products in both single-dose and multiple-use primary packaging. Pressurized metered-dose inhalers are not subject to this rule. Based on reports of adverse drug experiences from contaminated nonsterile inhalation drug products and recalls of these products, FDA is taking this action to help ensure the safety and effectiveness of these products.

DATES: This rule is effective May 27, 2002.

FOR FURTHER INFORMATION CONTACT: Peter H. Cooney, Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5818.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 23, 1997 (62 FR 49638), FDA proposed to amend its regulations to require that all inhalation solutions for nebulization be manufactured sterile. This action was proposed to help ensure the safety and effectiveness of these drug products.

Drug products for oral inhalation are used to treat a variety of breathing disorders and are frequently administered to patients who are immunocompromised, have cystic fibrosis, or have chronic obstructive airway disease. Aqueous-based oral inhalation drug products either in single-dose or multiple-use packaging are administered by oral inhalation into the lungs as a mist or spray created by a nebulizer device. The majority of inhalation drug products on the market are manufactured to be sterile. Those products not manufactured to be sterile are often manufactured under assigned microbial count limits, but current manufacturing methods and safeguards have not prevented dangerous microbial contamination.

Inhalation drug products contaminated with microorganisms are likely to cause lung infections because the contaminating organisms are introduced with the drug product directly into the lungs through the mouth. Thus, microbial contamination of these products may result in serious health consequences. Microbial contamination of these products may also cause degradation of the drug product.

Because of contamination problems with several different aqueous-based drug products for oral inhalation and for the reasons explained in the proposed rule, FDA has determined that current manufacturing methods and safeguards against contamination, including microbial limits tests, have not prevented dangerous microbial contamination of nonsterile aqueous-based drug products for oral inhalation.

The final rule reflects FDA's determination that all aqueous-based drug products for oral inhalation be manufactured sterile. Once the final rule becomes effective, failure to comply with the sterility requirement will result in a finding that the drug product is adulterated under section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(a)(2)(B)), and misbranded under section 502(j) of the act (21 U.S.C. 352(j)). Failure to comply with the sterility requirement will also result in the agency's refusal to approve a new or abbreviated application for a product, under section 505(d)(1), (d)(2), (d)(3), and (j)(4)(A) of the act (21 U.S.C. 355(d)(1), (d)(2), (d)(3), and (j)(4)(A)).

II. Highlights of the Final Rule

This final rule amends the regulations governing requirements for specific classes of drugs to include new § 200.51 for aqueous-based drug products for oral inhalation. Section 200.51(a) requires that all prescription and OTC aqueous-based drug products for oral inhalation be manufactured sterile. FDA is taking this action to prevent the public health consequences of the distribution of contaminated aqueous-based drug products for oral inhalation and to help ensure the safety and effectiveness of these products.

In the **Federal Register** of October 11, 1991 (56 FR 51354), FDA proposed to require that manufacturers use a terminal sterilization process when preparing a sterile drug unless the process adversely affects the drug product. The October 11, 1991, proposed rule would require that manufacturers include in their applications a written justification for not using terminal sterilization if such process is not appropriate. The agency plans to issue a final rule regarding terminal sterilization. When the proposed requirement for terminal sterilization becomes final, manufacturers of aqueous-based drug products for oral inhalation will be subject to its requirements.

The agency has revised the proposed regulation in response to comments received on the proposed rule. The comments and responses are discussed in section III of this document, "Comments on the Proposed Rule." The agency is revising the title of proposed § 200.51 from "Sterility Requirements for Inhalation Solution Drug Products" to "Aqueous-Based Drug Products for Oral Inhalation." The new title names the specific class of drugs subject to the rule in conformance with the established format of part 200 (21 CFR part 200), subpart C of the regulations. The agency is removing the phrases "inhalation solution drug products" and "inhalation solutions for nebulization" from proposed § 200.51. These phrases are replaced by the phrase "aqueous-based drug products for oral inhalation." The agency has added the phrase "for oral inhalation" to clarify that the rule applies to orally administered inhalation drug products and not nasal sprays. The agency has added the modifier "aqueous-based" to the type of drug products covered to exclude metered-dose inhalers from coverage. In addition, the agency has made minor edits to the final rule in response to the President's June 1, 1998, memorandum on plain language in government writing. The agency has increased the amount of time for manufacturers to comply with the sterility requirement from 1 year to 2 years. All manufacturers of nonsterile aqueous-based drug products for oral inhalation will have until 2 years after the date of publication of the final rule to comply with the sterility requirement. As discussed in section IV of this document, "Effective Date," the agency believes this effective date more realistically reflects the time

manufacturers may need to establish the sterility of their products.

Section 200.51(b) states that manufacturers must comply with the requirements of 21 CFR 211.113(b) of FDA's current good manufacturing practice (CGMP) regulations. This section requires that manufacturers establish and follow appropriate written procedures designed to prevent microbiological contamination of drug products purporting to be sterile. Such procedures must include validation of any sterilization process.

In addition to the above highlights, the agency notes that persons holding an approved new drug application (NDA) or abbreviated application for a nonsterile aqueous-based drug product for oral inhalation must submit to FDA a supplemental application describing the new manufacturing process under § 314.70(b) or § 314.97 (21 CFR 314.70(b) or 314.97). The proposed rule stated that if a manufacturer intended to sterilize a product by terminal sterilization, the manufacturer must obtain prior FDA approval for such change under § 314.70(b)(2), but if a manufacturer intended to sterilize a product by aseptic processing they may make the change at the time a supplemental application is submitted under § 314.70(c)(1). The agency has now determined that the technological complexity of aseptic processing warrants prior approval of any changes in the manufacturing process. Accordingly, the agency concludes that all manufacturing changes related to sterility requirements require supplemental applications to be submitted and approved under § 314.70(b)(2) prior to making any changes. In November 1999, a guidance related to this topic, entitled "Changes to an Approved NDA or ANDA," became available. This guidance states that the agency considers a change in the sterilization process, e.g. from aseptic processing to terminal sterilization or vice versa, a major change to any approved application for which the manufacturer should submit a prior approval supplement. The agency notes that a proposed rule entitled "Supplements and Other Changes to an Approved Application," published in the **Federal Register** of June 28, 1999 (64 FR 34608). This proposed rule is currently being finalized and may further affect the filing of supplemental applications related to this rule.

The following information should be included in a supplemental application related to this rule:

- Complete validation data for the aseptic process (see November 1994 guidance document entitled "Guidance for Industry for the Submission of Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products");
- For abbreviated applications, an executed batch record for a production batch of the product using the approved formulation;
- In-process and release control data;
- Updated release specifications that include sterility;
- Three months accelerated stability data;
- An updated stability protocol to include either sterility or container/closure integrity testing initially and at expiry; and
- A commitment to place the first three commercial batches into the routine stability program and submit the data in annual reports.

III. Comments on the Proposed Rule

The agency received a total of 61 comments on the September 23, 1997, proposed rule. Forty-nine of those comments were from consumers of an OTC aqueous solution of epinephrine sold in a kit with an atomizer. Of the remaining 12 comments, 8 were from industry, 2 were from associations of health care professionals, 1 was from academia, and 1 was from a Federal Government agency. The majority of comments requested clarification of the scope of the rule and the drug products intended to be covered, and also discussed the economic impacts of the proposed rule.

A. Covered Products

1. The proposed rule stated: "All inhalation solutions for nebulization shall be manufactured to be sterile" (proposed § 200.51(a)). Several comments indicated that the scope of drug products intended to be covered by the proposed rule was either unclear or overbroad. Some of the comments asked whether intranasal sprays would be subject to the rule. One comment asked whether both OTC and prescription drugs were covered. Three comments suggested clarifying that only aqueous-based drug products are subject to the rule. One comment interpreted the proposed rule to cover OTC and prescription drugs dispensed out of a manufacturer's primary packaging container into a separate, secondary and independent device prior to administration to the end user or patient, excluding nebulized or atomized sprays for inhalation. The comment stated that primary formulations should include both single-dose and multiple-use sterile products to eliminate microbial contamination during use. One comment suggested that the rule cover inhalation suspension products, stating that they contain more nutrients that contaminating microorganisms can metabolize than do inhalation solutions, and suggested that the title of the rule be modified to reflect this change.

The agency has considered these comments and agrees that further clarification of products covered by the rule is warranted. In response to these comments, the agency has revised the final rule to state: "All aqueous-based drug products for oral inhalation must be manufactured to be sterile." Because the rule covers only drug products administered orally, it does not cover nasal sprays. Because the rule covers only aqueous-based drug products, pressurized metered-dose inhalers are not covered. All marketed prescription and OTC drugs are covered by the rule.

The agency agrees with the comment that inhalation suspension products pose contamination risks at least as great as those of inhalation solution products. Aqueous-based suspension drug products for oral inhalation would also bypass many of a patient's natural defense mechanisms and, if contaminated, pose similar risks. However, all currently marketed inhalation suspension drug products are metered-dose inhalers and, because they are metered-dose inhalers, are not subject to this final rule. Any aqueous-based oral inhalation suspension drug products approved in the future that are not metered-dose inhalers are subject to this rule.

B. Pharmacy Compounding

2. One comment asked whether the proposed rule would cover solutions for oral inhalation compounded under applicable practice of pharmacy provisions and regulations. Another comment stated that a large fraction of nebulizer solutions sold in the United States are compounded in pharmacies and suggested that such facilities use chemicals of dubious quality, that such solutions are dispensed in unsafe vials, and that preservatives used are contraindicated in anti-asthma products. This comment supported the rule and suggested that the rule would resolve issues of compounding in pharmacies which, the comment stated, results in millions of dollars in Medicare fraud.

Compounding occurs when a pharmacist or physician mixes, combines, or alters ingredients to create a customized drug product for an individual patient. The issue of pharmacy compounding is addressed in section 127 of the Food and Drug

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Administration Modernization Act of 1997 (Pub. L. 105–115). Section 127 adds section 503A to the act (21 U.S.C. 353a). Section 503A(b)(3)(A) of the act provides that a drug product may qualify for exemptions from certain provisions of the act, including CGMP requirements (section 501(a)(2)(B) of the act) if, among other conditions, the drug product is not identified by regulation as a drug product that presents demonstrable difficulties for compounding that reasonably demonstrate an adverse effect on the safety or effectiveness of that drug product. FDA intends to issue regulations to implement section 503A(b)(3)(A) of the act. During the course of that rulemaking, the agency intends to consider, among other issues, whether aqueous-based drug products for oral inhalation present demonstrable difficulties for compounding that reasonably demonstrate an adverse effect on the safety or effectiveness of that drug product. Compounded aqueous-based drug products for oral inhalation that fail to meet any of the conditions of section 503A of the act are subject to the statutory CGMP provision (section 501(A)(2)(B) of the act) and, therefore, are subject to the requirements of this final rule.

C. Packaging

3. Several comments asked whether the proposed rule addresses maintaining the sterility of multiple-use containers after the container is opened and closed for later use. These comments stated that there is a high risk of contamination of inhalation drug products when multiple-use containers, e.g., bottles with droppers, are opened and used in a nonsterile environment. One comment asked whether the rule would require single-dose containers for one-time use. Two comments noted that new packaging is either on the market or in development that would eliminate the need to transfer aqueous-based drugs into separate secondary receptacles, thus reducing the potential for microbial contamination.

The agency recognizes that multiple-use containers raise issues of microbial contamination when aseptic handling procedures are not used either by a patient at home or in a hospital setting. However, the intent of this rule is to ensure sterility from the point of manufacture. The rule is intended to prevent contaminated products from being distributed by manufacturers. While the agency encourages the use of single-dose containers, the agency is not requiring their use at this time. The agency supports innovations in new packaging that would reduce the likelihood of microbial contamination. The agency has no current plans, however, to require the use of such packaging by manufacturers.

D. Antimicrobial Preservatives

4. One comment suggested that the proposed rule was a "simplistic fix" for a series of complex problems including inadequate antimicrobial preservation systems for in-use contamination control, inadequate U.S. Pharmacopeia (USP) microbiological testing methods, and defective hospital infection control procedures. The comment questioned the adequacy of microbial limits testing, in particular USP procedure <61>, to reliably detect the prevalent contaminants of inhalation drug products. The comment also suggested that there is no evidence for the assumption underlying the proposed rule that contaminating organisms have developed resistance to the antimicrobial preservative systems used. The comment stated that organisms historically known to be resistant to benzalkonium chloride have been noted and that mistakes have occurred when companies have made errors designing a product's antimicrobial preservative system. The comment also noted the inadvisability of using a single preservative in the manufacturing process and suggested that the proposed rule shows that the agency now believes preservatives are to be used to address inadequate manufacturing contamination controls that were previously considered to be serious CGMP violations.

Another comment acknowledged that some antimicrobial preservatives are no longer effective because resistance to them in certain bacterial strains has developed, and expressed concern as to whether this problem would be addressed by the rule. Similarly, a different comment noted microbial contamination in spite of preservatives. This comment indicated support for sterile, additive-free solutions, noting that one disadvantage of preservatives is that they may be contraindicated in anti-asthmatic products. This comment stated that benzalkonium chloride is a known bronchoconstrictor contraindicated in anti-asthmatic products and that edetic acid, while not as potent as benzalkonium chloride, causes bronchospasm and would not be present in an ideal nebulizer solution.

Antimicrobial preservatives are added to dosage forms to protect them from microbial contamination. The USP states that antimicrobial agents should not be used solely to reduce the viable microbial count as a substitute for good manufacturing practices. The USP sets forth tests for estimating the presence, or absence, of microorganisms. USP procedure <61> sets forth tests for the estimation of the number of viable aerobic microorganisms present and the absence of designated microbial species in both raw materials and finished form drug products. FDA recognizes that both sterile and nonsterile drug products may contain preservative systems to control bacteria and fungi that may be inadvertently introduced during manufacturing or use.

Concerning the comment that the proposed rule represents an inappropriate policy change in allowing preservatives to be used to address inadequate manufacturing contamination controls, this rule does not change the agency's policy of considering such use of preservatives a serious CGMP violation. To the extent agency policy is reflected in the USP, the USP clearly states that while situations may arise where the use of an antimicrobial preservative may be necessary to minimize the proliferation of microorganisms, all useful antimicrobial agents are toxic substances.

The agency agrees with the comment acknowledging that some antimicrobial preservatives are no longer fully effective because certain bacterial strains have developed resistance. The agency disagrees with the comment that suggests there is no evidence that contaminating organisms have developed resistance to antimicrobial preservatives. Bacteria best identified as belonging to the *Pseudomonas* family have been known for many years to survive and grow in commercial preparations of quanternary ammonium compounds such as benzalkonium chloride. (See, for example, Adair, F.W., S.G. Geftic, and J. Gelzer, "Resistance of *Pseudomonas* to Quaternary Ammonium Compounds: I. Growth in Benzalkonium Chloride Solution," *Applied Microbiology*, vol. 18, pp. 299–302, 1969. See also, Dixon, R E., et al., "Aqueous Quaternary Ammonium Antiseptics and Disinfectants," *Journal of the American Medical Association*, vol. 236, pp. 2415–2417, 1976.) In fact, the albuterol sulfate product recalled in January 1994, discussed in the proposed rule, contained benzalkonium chloride, an antimicrobial preservative, yet the preservative failed to prevent microbial contamination of the product. As of October 28, 1997, the agency's Spontaneous Reporting System (SRS) reported that this albuterol sulfate incident was associated with a total of 2,846 cases including 1,498 serious cases, 1,163 hospitalizations, and 441 deaths.

The agency acknowledges the public health need for sterile, additive-free, aqueous-based drug products for oral inhalation for the segment of the population for whom antimicrobial products are contraindicated (e.g., sensitive patients with asthma and other pulmonary diseases). To this end, the agency encourages the manufacture of sterile, additive-free, single-dose drug products for oral inhalation. However, the agency is not at this time requiring that all aqueous-based drug products for oral inhalation be manufactured in single-dose containers.

The agency recognizes that microbial limits tests have not prevented serious microbial contamination of nonsterile inhalation drug products in the past. Endproduct microbial limits tests performed prior to distribution may not be capable of detecting low levels of contamination. Products that initially pass the microbial limits test may support the growth of contaminating organisms that could later increase to unacceptable levels. The agency believes that requiring the sterility of such products from the point of manufacture will reduce the likelihood of microbial contamination.

The agency recognizes that contamination of these products may occur during usage. Such contamination may occur because of inadequate handling procedures, including defective hospital infection control procedures, or patient handling errors. The agency notes that the National Center for Infectious Diseases of the Centers for Disease Control and Prevention is sponsoring initiatives on preventing nosocomial transmission of antimicrobial-resistant microorganisms and directs those interested to their Internet at www.cdc.gov/ncidod/ for related information. The agency encourages hospital personnel and patients to follow instructions in the labeling for such products, including any precautions for use. The agency emphasizes the importance of following proper handling technique when transferring these products from their original container into an atomizer or nebulizer. FDA has determined that the best way for it to prevent future public health problems associated with contaminated aqueous-based drug products for oral inhalation is to require sterility at the point of manufacture.

E. Costs of Compliance

In the proposed rule, FDA estimated that the affected industry would incur total annual compliance costs of $192,000 to $1,210,000 (after amortization over 10 years at a 7 percent interest rate), mostly for constructing clean rooms in the five manufacturing facilities believed to be using a nonsterile production process. Several of the comments addressed aspects of FDA's original analysis of economic impacts.

5. Three comments stated that FDA had underestimated the costs of compliance and two comments provided estimates of compliance costs for their companies, although they did not provide the bases for these estimates.

FDA has considered these estimates and has revised its compliance cost estimates for the final rule, as described in section V of this document, "Analysis of Economic Impacts." The agency's full cost analysis is based on a report prepared by its contractor, Eastern Research Group (ERG) (available in the docket) entitled "Cost Impact on the Pharmaceutical Industry of Final Sterility Requirements for Inhalation Solution Products," and the comments mentioned above.

6. The U.S. Small Business Administration (SBA) commented that there was insufficient information on the record to evaluate the need for the regulation, as measured by the incidence of illness, against the enormous cost of compliance.

The proposed rule listed several incidents of contaminated inhalation drug products that jeopardized the public health and safety and were the subject of product recalls (62 FR 49638 at 49639). The proposed rule did not, however, provide data on adverse events associated with these recalls. The agency notes that as of October 28, 1997, FDA's SRS reported that the albuterol sulfate product recalled in January 1994, discussed in the proposed rule, was associated with 2,846 reports of adverse events including 441 deaths. FDA believes that this evidence, along with the resistance to microbial preservatives and the growth potential of the *Pseudomonas* family of bacteria, provides the public health and safety justification for this rule. Further, as the revised compliance costs of the final rule are estimated at $10.1 million per year, the agency believes that public health and safety concerns outweigh the compliance burdens.

F. Training Costs

7. SBA noted the lack of training costs for sterility procedures in the agency's original cost estimates. FDA agrees with this comment, and training costs are now included in its final estimate.

G. Enforcement of CGMP Regulations

8. One comment suggested that enforcement of CGMP regulations and monitoring of unethical repackaging operations would be more effective and less costly then requiring firms to convert to sterile processes.

The agency has determined that adherence to CGMP regulations without appropriate sterilization procedures does not provide an adequate level of assurance that aqueous-based drug products for oral inhalation will be free of contaminants. Based on past incidents of serious health risks to users, the agency has determined that enforcement of CGMP's is not enough to ensure these products are contaminant-free when they leave the manufacturer for distribution. Antimicrobial preservatives used in these products may not be effective because many bacteria, including *Pseudomonas* spp., have developed resistance to these preservatives. The albuterol sulfate product recalled in January 1994, discussed in the proposed rule, contained benzalkonium chloride, an antimicrobial preservative, yet the preservative failed to prevent microbial contamination of the product. Resistance to preservatives is not species specific; strains of many species are resistant. Furthermore, use of a single preservative in a nonsterile inhalation drug product for an extended period may actually select for preservative-resistant strains of *Pseudomonas* spp. or other bacteria. Similarly, although the agency recognizes the importance of the enforcement of repackaging regulations, this rule is intended to help ensure that products are sterile at the point of manufacture.

H. Hazard Analysis and Critical Control Point (HACCP) Program

9. SBA recommended the use of a HACCP program, like that used for the food industry. SBA stated that a HACCP program would reduce compliance costs.

HACCP is a preventive system of hazard control used primarily in the food industry. The HACCP concept is a systematic approach to the identification and assessment of the risk of biological, chemical, and physical hazards that may occur in a particular production process or practice and the control of those hazards. Under HACCP, the producer develops a plan that anticipates and identifies the points in the production process where a failure would likely result in a hazard being created or allowed to persist. These points are referred to as critical control points (CCP's). Under HACCP, identified CCP's are systematically monitored to ensure that critical limits are not exceeded, and records are kept

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of that monitoring. Corrective actions are taken when control of a CCP is lost and these actions are documented. The effectiveness of HACCP is also systematically verified by the processor.

Because of the potential public health consequences of contaminated aqueous-based drug products for oral inhalation, as shown by the incidents cited earlier in this document, the agency concludes that a HACCP system is not an adequate substitute for sterilization requirements.

I. Clean Rooms

10. Another comment stated that the proposed rule would limit the use of each clean room to one product and questioned the necessity of this.

FDA is aware that the trade press has reported that the proposed rule would require one product per clean room. FDA is clarifying that this interpretation of the proposed rule is inaccurate. FDA did not intend to limit, and is not limiting, each clean room to the manufacture of only one inhalation product.

J. Specific OTC Drug Product

11. The agency received 49 comments from consumers of an OTC asthma inhalant, Breatheasy, as well as one comment from the manufacturer of the Breatheasy product, Pascal Co., Inc., of Bellevue, WA. Pascal Co., Inc., distributed a letter to consumers of its product stating the agency's new policy would require that all inhalants be manufactured in clean rooms and suggesting that overhead costs to produce clean rooms would far exceed annual sales of this product. Pascal stated that the rule would be cost prohibitive for the company and would require it to discontinue manufacture of the product. The 49 letters from consumers of this product indicated that they had been informed by Pascal Co., Inc., that the new policy would require the manufacturer to discontinue manufacture of the product. These letters testified to individual experiences with the product, stating duration of use, some for as many as 50 or 60 years, lack of any ill effects or quality problems, unique needs met by the product exclusive of any other available remedy, and the low cost of the product.

The agency has reviewed the concerns of individuals who have used this product for many years and who are understandably concerned about it being discontinued. The agency contacted Pascal, Inc., and reviewed the labeling of the product to determine if it is the type of product intended to be covered by the rule.

The Breatheasy product is a 2-percent buffered aqueous solution of epinephrine that comes in a kit that contains an atomizer. Breatheasy is the type of product that has raised serious concerns about the health and safety of individuals using such products and it is an example of the type of product intended to be covered by the final rule. The agency has determined that other, alternative OTC epinephrine inhalation products, which do not raise the safety concerns of this product, are available on the market to treat the symptoms of these individuals. Should Breatheasy become unavailable, the agency suggests that individuals consult their health care practitioners for the identity of an appropriate alternative OTC product.

IV. Effective Date

12. Two comments stated that the time for implementation was too short and impractical for conversion to sterile processes. Both comments requested up to a 2-year phase-in period to allow development time for packaging, stability data, and facility modifications. SBA stated that allowing a 1-year transition period, as proposed, was not sufficient. The comment requested a transition period of 2 years.

FDA has considered these comments and has decided to lengthen the effective date to 2 years after publication of the final rule to give each firm a longer period of time to implement the new sterility requirements.

The final rule prohibits all manufacturers of nonsterile aqueous-based drug products for oral inhalation, including those products currently approved, from introducing or delivering for introduction into interstate commerce any such products that are nonsterile beginning 2 years after the date of publication of the final rule in the **Federal Register**.

Holders of approved NDA's and abbreviated new drug applications (ANDA's) must submit supplemental applications to FDA to establish sterility of these products within 2 years after the publication of the final rule in the **Federal Register**.

Any NDA or ANDA for a nonsterile aqueous-based drug product for oral inhalation under review by FDA on or after the date of publication of the final rule, but before the effective date of the final rule may be approved if the application is otherwise approvable and the applicant agrees to establish the sterility of its drug product in a supplemental application by the effective date. On or after the effective date of the final rule, FDA will refuse to approve an NDA or ANDA for an aqueous-based drug product for oral inhalation if the applicant has not established the sterility of the product.

V. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. The Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

FDA concludes that this final rule is consistent with the principles set forth in the Executive Order and in these two statutes. FDA estimates that the final rule would impose annual compliance costs on industry of about $10.1 million. In addition, the final rule is a significant regulatory action as defined by the Executive Order and was subject to review under the Executive Order. FDA has also determined, as explained later in this section, that the final rule may have a significant economic impact on a substantial number of small entities. This section, along with the report by FDA's contractor ERG, constitutes the agency's final regulatory flexibility analysis as required under the Regulatory Flexibility Act. Further, because this final rule makes no mandates on government entities and will result in expenditures of less than $100 million in any one year, FDA need not prepare additional analyses under the Unfunded Mandates Reform Act.

B. Compliance Requirements and Costs

FDA is amending its regulations to require that all prescription and OTC aqueous-based inhalation solutions or suspensions in single-dose or multiple-use primary packaging administered orally via a secondary device or other ancillary hardware (e.g., an atomizer, nebulizer, or pump), be manufactured to be sterile. This does not include inhalation solutions administered by pressurized metered dose inhalers. FDA believes this action is necessary to help ensure the safety and efficacy of these products, due to reports of adverse drug experiences from contaminated nonsterile inhalation solutions and recalls of these products.

In the preamble to the proposed rule published September 23, 1997, FDA estimated that the affected industry would incur total annual compliance costs of $192,000 to $1,210,000 (after amortization over 10 years at a 7 percent interest rate), mostly for constructing clean rooms in the five manufacturing facilities believed to be using a nonsterile production process. Several of the comments to the proposed rule addressed aspects of FDA's original analysis of economic impacts. These comments are addressed in section III of this document and below.

FDA has reviewed its original compliance cost estimates in light of the comments to the proposed rule, and has determined that it underestimated compliance costs to industry. The agency's revised estimates are fully described in the ERG report on compliance costs (available in the docket).

In the proposed rule, FDA estimated that up to five firms may still be using a nonsterile manufacturing process for inhalation solutions. ERG found that eight firms would be affected by the final rule because they use nonsterile manufacturing processes. The ERG estimate assumes that some products with an uncertain classification were actually nonsterile.

ERG concluded that the final rule would impose a total annual cost of $10.1 million (after amortization of capital costs over 10 years at a 7 percent interest rate). The majority of these annual costs ($8 million) are attributed to the increase in annual operating costs for two large manufacturers. This estimate was derived from the comment of one of the large companies, which indicated that its operating costs would increase by $4 million, primarily due to the lower labor productivity that results from the extra activities necessary when operating in a sterile environment. One-time capital and related costs are estimated at about $8.3 million for converting to the sterile production process, including the planning, constructing and equipping of clean rooms, training of employees, and revalidation of production processes. On an annualized basis (after amortizing over 10 years at a 7 percent discount rate), these costs are projected at $600,000 per year for each of these two large manufacturers.

The other six manufacturers, which produce nonsterile inhalation products with much lower annual revenues (about $1 million or less), are not expected to convert their production processes, due to the relatively high compliance costs compared to the revenues from these products. Instead, ERG projected that one-half of these firms would transfer production of these products to a contract manufacturer, with an estimated increase in manufacturing costs of about 30 percent, resulting in an additional $900,000 per year in costs. The other one-half of these small volume manufacturers, those with the smallest revenues, are expected to discontinue these products altogether. Consumers of the discontinued products are expected to switch to alternative products. FDA believes, based on the small volume of affected sales, the wide availability of competing products, and the probable low elasticity of product demand, that the loss of consumer and producer value due to this regulation would be extremely small.

After further review, FDA also decided to require inhalation suspension products, other than suspensions in pressurized metered dose inhalers, to be sterile although they had not been included in the proposal. There are currently five approved inhalation suspension products. Because they are all metered-dose inhalers, however, they are not covered under the final rule. Further, FDA does not expect to receive any new applications for inhalation suspensions that are nonsterile, as the current procedures for new products are likely to include a sterilization process. Thus, FDA has not raised its compliance cost estimates due to the addition of inhalation suspension products for oral inhalation in the final rule.

C. Affected Entities

As stated above, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities, unless the rule is not expected to have a significant economic impact on a substantial number of small entities.

SBA limits the definition of small businesses in the pharmaceutical industry to those with less than 750 employees. ERG estimated that five small manufacturers with a total of eight products will be affected by this rule, although the data necessary to make this determination are scarce and often rely on sales volume rather than number of employees. About one-half of these manufacturers (two or three) are expected to transfer production to a contract manufacturer, which is estimated to increase operating costs by about $180,000 each per year per product. In addition, these companies may experience a loss of jobs as these products are transferred to the contract manufacturers. The other two or three companies are expected to cease production of their product completely, thereby incurring the loss of profits on those products. While neither ERG nor FDA has quantified these impacts, it expects them to be low due to the low product sales volume.

Affected firms will need to acquire some new professional skills, because this rule deals with a new manufacturing process that will require technicians to have a knowledge of sterility procedures. Any other skills necessary for implementation of this rule (e.g., skills associated with preparing the supplemental application) should already exist within the firms and should not need to be newly acquired. No other compliance costs are estimated for these manufacturers.

D. Alternatives Considered

FDA has considered alternatives to this rule. FDA considered exempting small entities. However, as stated in the proposal, the alternative of exempting small businesses from the rule is not feasible, because most firms using a nonsterile process are small firms and thus granting small businesses an exemption would negate the purpose of the rule.

One alternative mentioned in the comments discussed in section III.H of this document was the creation of a HACCP program whereby the most critical points in the production process would be monitored for microbial safety problems, possibly resulting in lower compliance costs for small businesses. As discussed above, FDA has rejected a HACCP program for these drug products because of the potential public health consequences of contaminated products, as shown by the cited earlier incidents involving aqueous-based drug products for oral inhalation.

Another alternative to the final rule would have been to retain the 1-year effectiveness date as required by the proposed rule. Instead, FDA has responded to public comments by delaying the effectiveness date an extra year in order to give industry members additional time to adjust to the new requirements and mitigate costs as much as possible. In doing so, FDA has

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eliminated compliance costs for 1 year, the present value of which is $10.1 million.

Another alternative mentioned in the comments and discussed in section III.G of this document was more uniform enforcement of CGMP's and monitoring of unethical repackaging. Based on past incidents of serious health risk to users, the agency has determined that enforcement of CGMP's is not enough to ensure these products are contaminant free when they leave the manufacturer for distribution. Similarly, one comment suggested end-testing the product in batches prior to shipment from the manufacturing facility. This comment incorrectly stated that all contaminated products to date have been caught prior to reaching or harming patients. As discussed in section III.E of this document, contaminated products have caused serious harm to patients. For this reason, the agency has determined that end-testing and/or enforcement of CGMP's are not adequate to address the serious public health and safety concerns raised by such incidents.

Due to contamination problems with several different inhalation solution drug products and adverse experience reports, FDA has determined that current manufacturing methods and safeguards against contamination, including microbial limits tests, have not prevented dangerous microbial contamination of nonsterile aqueous-based drug products for oral inhalation. Based on the significant health risk to users, FDA is requiring that all aqueous-based drug products for oral inhalation be manufactured sterile.

One alternative considered was to supply consumers and providers with information related to the potential risks of aqueous-based drug products for oral inhalation that are not manufactured to be sterile, instead of mandating sterility in this market. FDA is concerned that many prescribers and consumers may not understand the potential risks of such products, given that these products are approved and therefore regarded as safe and effective when used according to the labeling. In many circumstances, additional information would assist prescribers and users in making informed choices, and if it were possible to provide correct and complete information to all prescribers and consumers in this market, they should make the optimal choice for their situation. However, FDA does not believe that such information could be developed for nonsterile aqueous-based oral inhalation drug products that would be consistent with FDA's mandate under the Federal Food, Drug, and Cosmetic Act to assure that drug products are safe and effective. Additionally, even if such information could be developed, the cost associated with providing the information to the relevant parties would be too large, and FDA believes that these costs would overshadow any expected benefits of allowing fully informed consumers to make their own choice in this market.

VI. Environmental Impact

The agency previously considered the environmental effects of this rule as announced in the proposed rule (62 FR 49638). At that time, the agency determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Sterility Requirements for Aqueous-based drug products for oral inhalation.

Description: The final rule requires that all aqueous-based drug products for oral inhalation, including those currently approved, be manufactured sterile. Respondents will be required to submit a supplemental application under § 314.70(b) or § 314.97, describing their new manufacturing process for achieving sterility of their aqueous-based drug products for oral inhalation. FDA needs this information to determine compliance with this new regulation and will use information collected to make decisions on approval of supplemental applications. Applicants will have 2 years after the date of publication of the final rule to comply with the sterility requirement.

Description of Respondents: Respondents are businesses engaged in the manufacture of aqueous-based drug products for oral inhalation.

The collection of information described in the proposed rule was approved by OMB under control number 0910–0353. However, based on new data collected by its contractor, ERG, FDA has revised its estimate of the number of respondents in the original proposal for reporting and recordkeeping burden. Because the number of respondents has changed, the estimate of the total hours has changed. The economic analysis of the proposed rule estimated 5 manufacturers, while the economic analysis of the final rule estimates 8 manufacturers with 11 nonsterile products based on new data collected by ERG (see Ref. 1). However, four of the manufacturers are estimated to cease manufacturing, leaving four companies manufacturing seven products. These companies are estimated to cease manufacturing because they may lack the in-house technical capability to convert their operations or might find the prospective investments in sterile production technologies to be unattractive. Because each nonsterile product will require an annual report (21 CFR 314.81(b)(2)(iv)), the number of annual responses for nonsterile products has increased to seven. Based on a review of FDA's past experience with applicants submitting supplemental applications under § 314.97, we estimate 160 hours to prepare a supplemental application. Therefore, due to the increased estimate of respondents, the total hours for the annual reporting burden for manufacturers of nonsterile products has increased from 800 hours in the proposed rule to 1,120 hours in the final rule. The agency's review of the estimated reporting burden for manufacturers of sterile products in the proposed rule and its experience with the annual reporting burden for manufacturers of sterile products supported the estimate provided in the proposed rule. Therefore, the estimated reporting burden for manufacturers of sterile products in the final rule is the same as in the proposed rule.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
314.97	7	1	7	160	1,120[1]
314.70	2	1	2	20	40[2]
Total					1,160

[1]Reporting burden for manufacturers of nonsterile products.
[2]Reporting burden for manufacturers of sterile products.

Because of the estimated increase from the proposed rule to the final rule in the number of respondents for nonsterile products, the number of recordkeepers in the recordkeeping burden of Table 2 has increased by two from the proposed rule. FDA estimated a total of seven recordkeepers in the proposed rule and now estimates a total of nine recordkeepers as a result of new data collected by ERG. The proposed rule estimated 2 hours per record, and FDA's review of that estimate and its experience with the control and validation of microbiological contamination supports this proposed estimate. Therefore, the total number of hours for the recordkeeping burden has increased from 14 hours to 18 hours.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
211.113(b)	9	1	9	2	18
Total					18

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Individuals and organizations may submit comments on these burden estimates or on any other aspect of these information collection provisions, including suggestions for reducing the burden, and should direct them to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

The information collection provisions of this final rule have been submitted to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

IX. Reference

The following reference is on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Eastern Research Group, "Cost Impact on the Pharmaceutical Industry of Final Sterility Requirements for Inhalation Solution Products," 1998.

List of Subjects in 21 CFR Part 200

Drugs, Prescription drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 200 is amended as follows:

PART 200—GENERAL

1. The authority citation for 21 CFR part 200 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360e, 371, 374, 375.

2. Section 200.51 is added to subpart C to read as follows:

§ 200.51 Aqueous-based drug products for oral inhalation.

(a) All aqueous-based drug products for oral inhalation must be manufactured to be sterile.

(b) Manufacturers must also comply with the requirements in § 211.113(b) of this chapter.

Dated: February 1, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–13210 Filed 5–25–00; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 123

[Public Notice 3318]

Exports of Commercial Communications Satellite Components, Systems, Parts, Accessories and Associated Technical Data

AGENCY: Bureau of Political-Military Affairs, State.

ACTION: Interim final rule.

SUMMARY: Section 1309(a) of the Foreign Relations Authorization Act for Fiscal Years 2000 and 2001 requires the Department of State to establish a regulatory regime for the export licensing to U.S. allies of commercial satellites, technologies, components, and systems, which shall include expedited approval, as appropriate, while ensuring priority to national security and U.S. commitments under the Missile Technology Control Regime.

Section 1302(a) of the same Act requires the Department to promulgate regulations in order to ensure timely reporting to the Department (within 15

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days of shipment or export) of all shipment information concerning items exported pursuant to section 38 of the Arms Export Control Act. The Department will phase-in the reporting requirements for shipment information during the remainder of Calendar Year 2000 through publication of a separate rule change. However, U.S. exporters wishing to take advantage of the special regulatory regime for satellite related licensing to U.S. allies established in this amendment will need to meet the reporting requirements of section 1302(a) in accordance and coincident with the effective date of this amendment or their initial license application submissions. In order to facilitate use of the special regime, the Office of Defense Trade Controls will make available free of charge to U.S. exporters the computer software and guidance for its use that are needed to participate fully.

This interim final rule amends the International Traffic in Arms Regulations (ITAR) by establishing a new regulatory regime for communications satellite related exports to U.S. allies.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: William Lowell or Terry Davis, Office of Defense Trade Controls, Department of State, Telephone (202) 663–2700 or FAX (202) 261–8264, ATTN: Regulatory Change, Commercial Communications Satellites.

SUPPLEMENTARY INFORMATION: Section 1309(a) of the Foreign Relations Authorization Act for Fiscal Years 2000 and 2001 provides that the Secretary of State shall establish a regulatory regime for licensing the export of commercial satellites, satellite technologies, their components, and systems which shall include expedited approval, as appropriate, of the licensing for export by U.S. companies of such items to NATO allies and major non-NATO allies. Pursuant to § 1309(a) the regime should include expedited processing of requests for export authorizations that are time critical (including information exchange relating to satellite failures or anomalies); are required to submit bids to foreign persons for procurements; are related to re-export of unimproved materials, products, or data; or are required to obtain launch and on-orbit insurance.

Within this legislative framework, the Department of State (Office of Defense Trade Controls) and the Department of Defense (Defense Threat Reduction Agency/Technology Policy) convened in January 2000 a task force of U.S. aerospace industry experts who were members of the State Department's federal advisory committee for defense trade matters, the Defense Trade Advisory Group (DTAG). This DTAG task force met regularly with State and Defense in the period January–April 2000 for the purpose of setting forth a special licensing regime involving U.S. allies that would reflect experience gained since the transfer of commercial communications satellites to the U.S. Munitions List, which became effective March 15, 1999. This task force also drew on the technical and business expertise of other U.S. aerospace industry representatives in discrete product lines (particularly those involved in the supply of components and systems) and held a town hall discussion of the special licensing regime included herein at the April 2–4, 2000 Spring Conference of the Society for International Affairs, a non-profit association comprised of defense firms, held at Laguna Beach, California.

The ITAR amendment herein concerns the special satellite regime involving U.S. allies, provided for by authorizing legislation for exports and re-exports of U.S. Munitions List controlled articles for satellites to, within and among the territories of the member countries of NATO (Belgium, Canada, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey, United Kingdom and the United States) and countries that have been designated pursuant to the Foreign Assistance Act of 1961, as amended, as major non-NATO allies (Australia, New Zealand, Japan, Israel, Egypt, Jordan, Republic of Korea and Argentina). This coverage also includes exports and re-exports of U.S. Munitions List controlled articles for approved satellite projects to be launched from the United States or the territory of a NATO or major non-NATO ally. Importantly, unless otherwise specifically authorized at the time of license approval, this special satellite regime does not apply to any other country in any measure, including but not limited to intermediate consignment occurring during the initial export; temporary re-transfer or re-export; or launch into outer space of USML-controlled articles, whether or not incorporated (*e.g.*, embedded) in a satellite when that activity involves a country that is not a member of NATO or a major non-NATO ally of the United States.

The special satellite regime has three principal features. The first is the ability to use high volume licenses (*e.g.*, known in the trade as "bulk" licenses) for exports of specifically designed or modified components, parts, systems, accessories, attachments and certain associated technical data for commercial communications satellites under specified conditions for multiple shipments to any of the NATO or major non-NATO allies.

The second principal feature concerning use of this regime is that all eligible articles for export must be confined to an approved list of foreign aerospace firms located within the territories of U.S. allies for use in an approved list of commercial communications satellite programs of U.S. allies. The lists of foreign aerospace firms and commercial communications satellite programs included within the coverage of this regime will be kept under scrutiny by the U.S. Government and made publicly available on ODTC's Website and by other means. New firms and programs will be added to these lists following scrutiny within the U.S. Government (and approved for inclusion within the regime) in light of proposals from U.S. aerospace firms through export license applications.

Third, when exporting pursuant to the special regime, it is not necessary under specified conditions for U.S. exporters to provide in advance the details of purchase orders or contracts, or non transfer and end use certificates (*e.g.*, form DSP–83) where they may be required. While all of this documentation will continue to be mandatory, and while exporters will continue to be required to ascertain the specific end users and end uses prior to export or re-export, the required documentation will only be required to be furnished to ODTC within 15 days following shipment from the United States (or re-transfer within the approved territory), at which time U.S. exporters will report the appropriate shipping information (discussed further below) and furnish the required documentation.

For sensitive components, such as MTCR-controlled items, the long standing controls of the ITAR, including non-transfer and end use certificates, parts control plans, and the like, will continue to be required. But, in most cases, such documentation may be furnished within 15 days of shipment, as described below. Restrictions may also be imposed on such licenses, however, in view of the specific items proposed for export as appropriate in furtherance of the security and foreign policy of the United States (*e.g.*, to meet missile nonproliferation objectives). Further, for particularly sensitive articles or information, the U.S. Government retains the discretion to require a separate license when

necessary in furtherance of the security and foreign policy of the United States.

The principal articles envisaged for the special regime are: (1) The supply of satellite components, parts, systems, attachments, accessories and associated technical data, including for off-shore procurement; and, (2) technical information needed to respond to bids, to requests for quotations, plant visits, acceptance testing of equipment and the like. Technical data for satellite insurance purposes, including for on-orbit anomalies, involving exports to insurance firms and their brokers and consultants located within the territories of U.S. allies has also been discussed extensively within DTAG and will be the subject of separate, informal guidelines not requiring an amendment to the ITAR.

Exports of complete commercial communications satellites for sale to, or launch by, U.S. allies have been proceeding expeditiously consistent with the Department of State's January 1999 report to Congress concerning implementation of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. Such exports invariably involve contracts of $50 million or more, requiring notification to Congress pursuant to section 36(c) of the Arms Export Control Act before an export license may be issued. As such, these exports do not lend themselves to the special regime provided for herein and no rule change to that effect is being undertaken at this time. As suggested in the referenced report, the Department of State and the interested Committees of Congress have used all appropriate opportunities to ensure that U.S. aerospace companies are able to meet contract deadlines and launch schedules consistent with the security and foreign policy of the United States. The details of communications satellite notifications to Congress that have taken place since March 15, 1999, are available on the Website of the Office of Defense Trade Controls (HYPERLINK http://www.pmdtc.org.).

In carrying out this directive Part 123, Licenses for the Export of Defense Articles is being amended.

This amendment involves a foreign affairs function of the United States and therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found to be a minor rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with § 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Order Nos. 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Part 123—Commercial Communications Satellites Components, Systems, Parts, and Accessories, 13th Floor, Room H1304, SA–1, Washington, D.C. 20520–0113. Such persons must be so registered with the Department's Office of Defense Trade Controls (ODTC) pursuant to the registration requirements of § 38 of the Arms Export Control Act.

List of Subjects in 22 CFR Part 123

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 123, is amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

1. The authority citation for Part 123 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub.L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub L. 105–261.

2. Section 123.27 is revised to read as follows:

§ 123.27. Special licensing regime for export to U.S. allies of commercial communications satellite components, systems, parts, accessories, attachments and associated technical data.

(a) U.S. persons engaged in the business of exporting specifically designed or modified components, systems, parts, accessories, attachments, associated equipment and certain associated technical data for commercial communications satellites, and who are so registered with the Office of Defense Trade Controls pursuant to part 122 of this subchapter, may submit license applications for multiple permanent and temporary exports and temporary imports of such articles for expeditious consideration without meeting the documentary requirements of § 123.1(c)(4) and (5) concerning purchase orders, letters of intent, contracts and non-transfer and end use certificates, or the documentary requirements of § 123.9, concerning approval of re-exports or re-transfers, when all of the following requirements are met:

(1) The proposed exports or re-exports concern exclusively one or more countries of the North Atlantic Treaty Organization (Belgium, Canada, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, The Netherlands, Norway, Poland, Portugal, Spain, Turkey, United Kingdom and United States) and/or one or more countries which have been designated in accordance with section 517 of the Foreign Assistance Act of 1961 as a major non-NATO ally (and as defined further in section 644(q) of that Act) for purposes of that Act and the Arms Export Control Act (Argentina, Australia, Egypt, Israel, Japan, Jordan, New Zealand and Republic of Korea).

(2) The proposed exports concern exclusively one or more foreign persons (*e.g.*, companies or governments) located within the territories of the countries identified in paragraph (a)(1) of this section, and one or more commercial communications satellite programs included within a list of such persons and programs approved by the U.S. Government for purposes of this section, as signified in a list of such persons and programs that will be publicly available through the Internet Website of the Office of Defense Trade Controls and by other means.

(3) The articles are not major defense equipment sold under a contract in the amount of $14,000,000 or more or defense articles or defense services sold under a contract in the amount of $50,000,000 or more (for which purpose, as is customary, exporters may not split contracts or purchase orders). Items meeting these statutory thresholds must be submitted on a separate license application to permit the required notification to Congress pursuant to section 36(c) of the Arms Export Control Act.

(4) The articles are not detailed design, development, manufacturing or production data and do not involve the manufacture abroad of significant military equipment.

(5) The U.S. exporter reports complete shipment information to the Office of Defense Trade Controls within 15 days of shipment in accordance with section 1302 of the Foreign Relations Authorization Act for Fiscal Years 2000 and 2001, and at that time meets the documentary requirements of § 123.1(c)(4) and (5), the documentary requirements of § 123.9 in the case of re-exports or re-transfers, and, other documentary requirements that may be imposed as a condition of a license (*e.g.*, parts control plans for MTCR-controlled items). The shipment information reported must include a description of the item and quantity, value, port of exit and end user and country of destination of the item.

(6) At any time in which an item exported pursuant to this section is proposed for re-transfer outside of the approved territory, programs or persons (*e.g.*, such as in the case of an item included in a satellite for launch beyond the approved territory), the detailed requirements of § 123.9 apply with regard to

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obtaining the prior written consent of the Office of Defense Trade Controls.

(b) The re-export or re-transfer of the articles authorized for export (including to specified re-export destinations) in accordance with this section do not require the separate prior written approval of the Office of Defense Trade Controls provided all of the requirements in paragraph (a) of this section are met.

(c) The Office of Defense Trade Controls will consider, on a case-by-case basis, requests to include additional foreign companies and satellite programs within the geographic coverage of a license application submitted pursuant to this section from countries not otherwise covered, who are members of the European Space Agency or the European Union. In no case, however, can the provisions of this section apply or be relied upon by U.S. exporters in the case of countries who are subject to the mandatory requirements of section 1514 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, concerning national security controls on satellite export licensing.

(d) Registered U.S. exporters may request at the time of a license application submitted pursuant to this section that additional foreign persons or communications satellite programs be added to the lists referred to in paragraph (a)(2) of this section, which additions, if approved, will be included within the publicly available lists of authorized recipients and programs.

Dated: May 16, 2000.

Eric D. Newsom,

Assistant Secretary, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 00–13329 Filed 5–25–00; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–147–FOR]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to its statutes that would allow the use of money from its post-1977 abandoned mine reclamation fund, under specified circumstances, to replace domestic water supplies disrupted or affected by surface coal mining and reclamation operations. Indiana intends to revise its program in order to provide additional protection to society and the environment from the adverse effects of surface coal mining operations.

EFFECTIVE DATE: May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982 **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Amendment

By letter dated February 25, 2000 (Administrative Record No. IND–1686), the Indiana Department of Natural Resources (department) sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). The department sent the amendment at its own initiative. The amendment concerns revisions to the Indiana Surface Coal Mining and Reclamation Act at Indiana Code (IC) 14–34–6–15. The revisions made to IC 14–34–6–15 will allow the department to use money from its post-1977 abandoned mine reclamation fund to replace domestic water supplies disrupted or affected by surface coal mining and reclamation operations.

We announced receipt of the amendment in the March 9, 2000, **Federal Register** (65 FR 12492). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on April 10, 2000. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

IC 14–34–6–15 Abandoned Mine Reclamation Fund

Indiana revised IC 14–34–6–15(b) and (c) to read as follows:

(b) The post-1977 abandoned mine reclamation fund is established. The fund consists of bond forfeiture money collected under section 16 of this chapter and the civil penalties described in IC 14–34–16–9. The fund may be used as follows:

(1) To effect the restoration of land not otherwise eligible for federal funding on which there has been surface mining activity after August 3, 1977.

(2) To replace domestic water supplies disrupted or affected by a surface coal mining and reclamation operation, including the disposal of coal combustion waste (as defined in IC 13–19–3–3), where the surface coal mining and reclamation operation has been completed and is no longer subject to IC 14–34.

The money held for this purpose may not exceed an amount established by the department that is sufficient to enable the director to cover the anticipated cost of restoration.

(c) At least five hundred thousand dollars ($500,000) in the fund is dedicated as collateral for the bond pool under IC 14–34–8 and may not be used for the restoration of land or replacement of water described in subsection (b).

Indiana's post-1977 abandoned mine reclamation fund (fund) consists of both bond forfeiture and civil penalty monies. However, only the monies collected for civil penalties may be used for the purposes specified in IC 14–34–6–15(b). Under IC 14–34–6–16(f), the bond forfeiture monies are to be used solely for the purpose of reclaiming the forfeiture sites to which the bonds apply. Under IC 14–34–6–16(d), any excess forfeited bond money must be returned to the person from whom the amount was received. Under IC 14–34–6–15(b)(1), the civil penalty money in the fund may be used to restore land affected by surface mining activity after August 3, 1977, if the land is not eligible for Federal funding. Under the new provision at IC 14–34–6–15(b)(2), the civil penalty money in the fund may be used to replace domestic water supplies disrupted or affected by a surface coal mining and reclamation operation, if the operation is completed and is no longer subject to the requirements of the Indiana program under IC 14–34. Indiana revised its exception provision at IC 14–34–6–15(c) to clarify that the $500,000 that is dedicated as collateral for the Indiana bond pool may not be used for replacement of water. The Federal regulation at 30 CFR 845.21(a) authorizes the expenditure of money collected from the assessment of civil penalties under section 518 of SMCRA for reclamation of lands adversely affected by coal mining practices after August 3, 1977. The Federal regulation is silent regarding the use of Federal civil penalty money to replace domestic water supplies. However, section 518(i) of SMCRA does not place conditions on the use of money collected by the States from the assessment of civil penalties. Nor is there a requirement in SMCRA or the Federal regulations that State programs include rules comparable to 30 CFR 845.21. Therefore, we find that Indiana's revised statutory requirements at IC 14–34–6–15(b) and (c) are not inconsistent with the requirements of section 518(i) of SMCRA or the Federal regulations at 30 CFR 845.21. We are approving the proposed revisions to IC 14–34–6–15.

IV. Summary and Disposition of Comments

Federal Agency Comments

On March 2, 2000, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1688). We did not receive any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

On March 2, 2000, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IND–1688). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP for amendments that may have an effect on historic properties. On March 2, 2000, we requested comments on Indiana's amendment (Administrative Record No. IND–1688), but neither responded to our request.

Public Comments

OSM requested public comments on the proposed amendment, but did not receive any.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Indiana on February 25, 2000.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 914, which codify decisions concerning the Indiana program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Indiana to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

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Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 12, 2000.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
February 25, 2000	May 26, 2000	IC 14–34–6–15(b) and (c).

[FR Doc. 00–13246 Filed 5–25–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–027–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed revisions and additions to its regulations concerning restrictions on the financial interests of State employees. Specifically, the amendment concerns the authority of the Director of the Department of Mines, where to file statements of financial interests, what to report on such statements, and resolving prohibited interests. Oklahoma intends to clarify the responsibilities of the Director of the Oklahoma Department of Mines, advisory board members, commissions, and employees regarding restriction on the financial interests of State employees.

EFFECTIVE DATE: May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430. Internet: mwolfrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions concerning the Oklahoma program at 30 CFR 936.15 and 936.16.

II. Submission of the Proposed Amendment

By letter dated January 13, 2000 (Administrative Record No. OK–985.01), Oklahoma sent us an amendment to its approved regulatory program under the Federal regulations at 732.17(b). Oklahoma sent the amendment in response to our letter dated December 6, 1999 (Administrative Record No. OK–985), that we sent to Oklahoma concerning regulation changes in its program that we did not approve. Oklahoma proposed to amend the Oklahoma Administrative Code (OAC). We announced receipt of the amendment in the March 31, 2000, **Federal Register** (65 FR 17213). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on May 1, 2000. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment to the Oklahoma permanent regulatory program.

Any revisions that we do not discuss below are about misspelled words, minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. OAC 460:20–5–3. Authority

Oklahoma proposed to add a new paragraph (4) to read as follows:

> File all statements and supplements received pursuant to 45 O.S. Supp. 1980, Section 765, from members of advisory boards and the Oklahoma Mining Commission with the Oklahoma Governor's Office, Director of Appointments.

This paragraph authorizes the Director of the Oklahoma Department of Mines to file with the Oklahoma Governor's Office, Director of Appointments all statements and supplements received according to 45 O.S. Supp. 1980, Section 765 from members of advisory boards and the Oklahoma Mining Commission. We are approving this addition because the federal regulations at 30 CFR 705.3(b) allow the state regulatory authority to expand the provisions of 30 CFR Part 705—Restrictions on Financial Interests of State Employees, in order to meet the particular needs within the State and because the addition is not inconsistent with the federal regulations. However, in a letter dated March 29, 2000 (Administrative Record No. OK–985.05), we notified Oklahoma that the reference to Section 765 should be Section 767. We advised the state to make this reference correction in a future rulemaking.

B. OAC 460:20–5–9. Where To File

Previously, the Director of the Oklahoma Department of Mines was to file his or her statement with the Director of OSM. Also, all other employees and members of advisory boards and commissions representing multiple interests, as provided in Section 460:20–5–7, were to file their statements with the Director of the Oklahoma Department of Mines or such other official as may be designated by state law or regulation. The Director of the Oklahoma Department of Mines will continue to file his or her statement with the Director of OSM. Oklahoma proposed to have members of advisory boards and commissions representing multiple interests, as provided in Section 460:20–5–7, file their statements with the Governor's Office, Director of Appointments, or such other official as may be designated by state law or regulation. The state also proposed to have all other employees file their statement with the Director of the Oklahoma Department of Mines according to the requirements of 45 O.S. Supp. 786 and 460:20–5. We are approving these changes because they meet the requirements of 30 CFR 705.15 which states that all employees (except the head of the state regulatory authority) and members of advisory boards and commissions representing multiple interests must file their statements with the head of the state regulatory authority or such other official as may be designated by state law or regulation. However, in a letter dated March 29, 2000 (Administrative Record No. OK–985.05), we notified Oklahoma that the reference to Section 786 should be Section 767. We advised the state to make this reference correction in a future rulemaking.

C. OAC 460:20–5–10. What To Report

Oklahoma proposed to revise paragraph (c)(3) to read as follows:

> (3) The exceptions shown in the employee certification of the form must provide enough information for the Director of the Department or the Governor's Office, Director of Appointments, for Commission members, to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

Oklahoma proposed to clarify that the Director of the Oklahoma Department of Mines is responsible for determining the existence of a direct or indirect financial interest for employees and that the Governor's Office, Director of Appointments, is responsible for making the same type of determination for Commission members. We are approving this amendment because it is consistent with 30 CFR 705.17(c)(3).

IV. Summary and Disposition of Comments

Federal Agency Comments

On March 22, 2000, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments from various Federal agencies with an actual or potential interest in the Oklahoma amendment (Administrative Record No. OK–985.04). The U.S. Army Corps of Engineers responded on April 17, 2000 (Administrative Record No. OK–985.08), that it found the proposed amendment to be satisfactory.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Oklahoma proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA on March 22, 2000 (Administrative Record No. OK–985.02). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 22, 2000, we requested comments on Oklahoma's amendment (Administrative Record No. OK–985.03), but neither responded to our request.

Public Comments

We requested public comments on the amendment, but did not receive any.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Oklahoma on January 13, 2000. To implement this decision, we are amending the Federal regulations at 30 CFR Part 936, which codify decisions concerning the Oklahoma program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Oklahoma to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the

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applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides a decision on a proposed state regulatory program provision does not constitute major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 11, 2000.

Richard J. Seibel,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 936 is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
. .	. .	. .
January 13, 2000	May 26, 2000	OAC 460:20–5–3(4); 20–5–9(a)–(c); 20–5–10(c)(3); 20–5–12(b)(1).

[FR Doc. 00–13247 Filed 5–25–00; 8:45 am]

BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR Part 20

Priority Mail Global Guaranteed

AGENCY: Postal Service.

ACTION: Amendment to interim rule.

SUMMARY: The Postal Service is amending the interim rule on Priority Mail Global Guaranteed service to extend service to most countries in the world and to create rate groups for these countries to reflect the cost associated with providing this service.

EFFECTIVE DATE: May 28, 2000. Comments on the amendment to the interim rule must be received on or before June 26, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Business Results, International Business, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in International Business, 10th Floor, 901 D Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 314–7256.

SUPPLEMENTARY INFORMATION: On April 19, 1999, the Postal Service announced in the **Federal Register** (62 FR 19039–19042) the introduction of Priority Mail Global Guaranteed on an interim basis.

The U.S. Postal Service, through an alliance with DHL Worldwide Express Inc., is offering an enhanced expedited service, Priority Mail Global Guaranteed, from selected locations in the United States to selected countries. This service offers day-certain delivery with postage refund guarantee and document reconstruction coverage of $100 for allowable contents.

On November 4, 1999, the Postal Service announced in the **Federal Register** (64 FR 60106–60109) an amendment to the interim rule to add more U.S. acceptance locations and to extend the service to more destination countries. Public comments were requested by December 6, 1999, and by that date two comments were received. Both comments related to the way in which the Postal Service categorized the U.S. acceptance offices and how the acceptance offices were selected.

The acceptance offices were selected on their ability to meet the stringent service standards for this service based on local considerations such as timely transportation, mail processing capabilities, and access to national transportation.

The presentation of acceptance offices has been changed. ZIP Code ranges can overlap metropolitan areas and state boundaries. Accordingly, the chart of acceptance offices has been changed to delete the reference to metropolitan areas and only state names are used as a guide to determining where service is available. The use of state designations is not meant to limit service within the specified ZIP Code ranges, since they are intended only to serve as a guide to the areas that offer Priority Mail Global Guaranteed service.

The Postal Service is now extending service to more countries and redesigning the rates to reflect the cost of providing service to these additional countries. Service will be available to all country destinations listed in the International Mail Manual except Afghanistan, Ascension, China, Iraq, Japan, Democratic People's Republic of Korea (North), Libya, Pitcairn Island, Saint Helena, Sudan, and Tristan de Cunha.

Although each network country has been placed into one of eight rate groups, rate groups 1 and 2, 3 and 7, and 4 and 6, respectively, contain duplicate rates at the present time. The applicable rates and the destination countries that are associated with each rate group are as follows:

Weight not over (lbs.)	Rate Groups 1 and 2 (Canada, Mexico, and St. Pierre & Miquelon)	Rate Groups 3 and 7	Rate Groups 4 and 6	Rate Group 5	Rate Group 8
0.5	$20.00	$24.00	$29.00	$40.00	$60.00
1	31.00	34.00	41.00	51.00	72.00
2	31.00	34.00	41.00	65.00	87.00
3	42.00	53.00	60.00	80.00	102.00
4	44.00	60.00	67.00	94.00	115.00
5	47.00	66.00	74.00	107.00	129.00
6	50.00	71.00	81.00	119.00	141.00
7	53.00	76.00	88.00	131.00	153.00
8	56.00	81.00	95.00	142.00	165.00
9	59.00	85.00	102.00	154.00	176.00
10	62.00	89.00	109.00	166.00	188.00
11	64.00	93.00	114.00	177.00	200.00
12	66.00	98.00	120.00	187.00	212.00
13	69.00	102.00	125.00	197.00	224.00
14	72.00	106.00	131.00	207.00	235.00
15	74.00	110.00	136.00	215.00	246.00
16	77.00	114.00	141.00	223.00	258.00
17	79.00	118.00	147.00	230.00	269.00
18	82.00	121.00	152.00	238.00	280.00
19	84.00	125.00	158.00	245.00	292.00
20	87.00	128.00	163.00	253.00	303.00
21	89.00	132.00	168.00	260.00	313.00
22	91.00	136.00	173.00	268.00	322.00
23	94.00	139.00	178.00	275.00	332.00
24	96.00	143.00	183.00	283.00	341.00
25	98.00	146.00	188.00	290.00	349.00
26	100.00	149.00	193.00	298.00	358.00
27	103.00	153.00	198.00	305.00	366.00
28	105.00	156.00	203.00	313.00	375.00
29	107.00	160.00	208.00	320.00	384.00
30	110.00	163.00	213.00	328.00	392.00
31	112.00	167.00	218.00	335.00	401.00
32	114.00	170.00	223.00	343.00	410.00
33	116.00	174.00	228.00	350.00	418.00
34	119.00	177.00	233.00	358.00	427.00
35	121.00	181.00	238.00	365.00	435.00
36	123.00	184.00	243.00	373.00	444.00
37	125.00	188.00	248.00	380.00	453.00
38	128.00	191.00	253.00	388.00	461.00
39	130.00	195.00	258.00	395.00	470.00
40	132.00	198.00	263.00	403.00	479.00
41	133.00	202.00	268.00	410.00	487.00
42	135.00	205.00	273.00	418.00	496.00
43	137.00	209.00	278.00	425.00	505.00
44	138.00	212.00	283.00	433.00	514.00
45	140.00	216.00	288.00	440.00	522.00
46	142.00	219.00	293.00	448.00	531.00
47	143.00	223.00	298.00	455.00	540.00
48	145.00	226.00	303.00	463.00	548.00

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Weight not over (lbs.)	Rate Groups 1 and 2 (Canada, Mexico, and St. Pierre & Miquelon)	Rate Groups 3 and 7	Rate Groups 4 and 6	Rate Group 5	Rate Group 8
49	147.00	230.00	308.00	470.00	557.00
50	148.00	233.00	313.00	478.00	566.00
51	148.00	233.00	313.00	478.00	566.00
52	152.00	240.00	323.00	492.00	583.00
53	152.00	240.00	323.00	492.00	583.00
54	154.00	247.00	333.00	505.00	601.00
55	154.00	247.00	333.00	505.00	601.00
56	156.00	254.00	343.00	516.00	617.00
57	156.00	254.00	343.00	516.00	617.00
58	159.00	261.00	353.00	527.00	633.00
59	159.00	261.00	353.00	527.00	633.00
60	161.00	268.00	363.00	538.00	649.00
61	161.00	268.00	363.00	538.00	649.00
62	164.00	275.00	373.00	549.00	666.00
63	164.00	275.00	373.00	549.00	666.00
64	166.00	282.00	383.00	560.00	684.00
65	166.00	282.00	383.00	560.00	684.00
66	168.00	289.00	393.00	571.00	701.00
67	168.00	289.00	393.00	571.00	701.00
68	171.00	296.00	403.00	583.00	718.00
69	171.00	296.00	403.00	583.00	718.00
70	173.00	303.00	413.00	594.00	735.00

Country	Rate group
Afghanistan	[1]
Albania	8
Algeria	8
Andorra	8
Angola	8
Anguilla	7
Antigua & Barbuda	7
Argentina	5
Armenia	8
Aruba	7
Ascension	[1]
Australia	4
Austria	3
Azerbaijan	8
Bahamas	7
Bahrain	6
Bangladesh	8
Barbados	7
Belarus	8
Belgium	3
Belize	5
Benin	8
Bermuda	7
Bhutan	8
Bolivia	5
Bosnia-Herzegovina	8
Botswana	8
Brazil	5
British Virgin Islands	7
Brunei Darussalam	8
Bulgaria	8
Burkina Faso	8
Burma (Myanmar)	8
Burundi	8
Cambodia	8
Cameroon	8
Canada	1
Cape Verde	8
Cayman Islands	7
Central African Republic	8
Chad	8
Chile	5
China	[1]
Colombia	5
Comoros	8
Congo, Democratic Republic of the	8
Congo, Republic of the	8
Costa Rica	5
Cote d'Ivoire (Ivory Coast)	8
Croatia	8
Cuba	8
Cyprus	6
Czech Republic	8
Denmark	3
Djibouti	8
Dominica	7
Dominican Republic	7
Ecuador	5
Egypt	6
El Salvador	5
Equatorial Guinea	8
Eritrea	8
Estonia	8
Ethiopia	8
Falkland Islands	5
Faroe Islands	8
Fiji	8
Finland	3
France	3
French Guiana	5
French Polynesia	8
Gabon	8
Gambia	8
Georgia, Republic of	8
Germany	3
Ghana	8
Gibraltar	3
Great Britain & Northern Ireland	3
Greece	3
Greenland	8
Grenada	7
Guadeloupe	7
Guatemala	5
Guinea	8
Guinea-Bissau	8
Guyana	5
Haiti	7
Honduras	5
Hong Kong	3
Hungary	8
Iceland	8
India	6
Indonesia	4
Iran	6
Iraq	[1]
Ireland (Eire)	3
Israel	6
Italy	3
Jamaica	7
Japan	[1]
Jordan	6
Kazakhstan	8
Kenya	8
Kiribati	8
Korea, Democratic People's Republic of (North)	[1]
Korea, Republic of (South)	4
Kuwait	6
Kyrgyzstan	8
Laos	8
Latvia	8
Lebanon	6
Lesotho	8
Liberia	8
Libya	[1]
Liechtenstein	3
Lithuania	8
Luxembourg	3
Macao	3
Macedonia, Republic of	8
Madagascar	8
Malawi	8
Malaysia	4
Maldives	8
Mali	8
Malta	3
Martinique	7
Mauritania	8
Mauritius	8

Country	Rate group
Mexico	2
Moldova	8
Mongolia	8
Montserrat	7
Morocco	8
Mozambique	8
Namibia	8
Nauru	8
Nepal	8
Netherlands	3
Netherlands Antilles	7
New Caledonia	8
New Zealand	4
Nicaragua	5
Niger	8
Nigeria	8
Norway	3
Oman	6
Pakistan	6
Panama	5
Papua New Guinea	8
Paraguay	5
Peru	5
Philippines	4
Pitcairn Island	[1]
Poland	8
Portugal	3
Qatar	6
Reunion	8
Romania	8
Russia	8
Rwanda	8
St. Christopher (St. Kitts) & Nevis	7
Saint Helena	[1]
Saint Lucia	7
Saint Pierre & Miquelon	1
Saint Vincent & Grenadines	7
San Marino	3
Sao Tome & Principe	8
Saudi Arabia	6
Senegal	8
Serbia-Montenegro (Yugoslavia)	8
Seychelles	8
Sierra Leone	8
Singapore	3
Slovak Republic (Slovakia)	8
Slovenia	8
Solomon Islands	8
Somalia	8
South Africa	8
Spain	3
Sri Lanka	8
Sudan	[1]
Suriname	5
Swaziland	8
Sweden	3
Switzerland	3
Syrian Arab Republic (Syria)	6
Taiwan	3
Tajikistan	8
Tanzania	8
Thailand	4
Togo	8
Tonga	8
Trinidad & Tobago	7
Tristan da Cunha	[1]
Tunisia	8
Turkey	6
Turkmenistan	8
Turks & Caicos Islands	7
Tuvalu	8
Uganda	8
Ukraine	8
United Arab Emirates	6
Uruguay	5
Uzbekistan	8
Vanuatu	8
Vatican City	3
Venezuela	5
Vietnam	4
Wallis & Futuna Islands	4
Western Samoa	4
Yemen	6
Zambia	8
Zimbabwe	8

[1] No Service.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment on the amendment to the interim rule at the above address.

The Postal Service is amending International Mail Manual chapter 2, Conditions for Mailing, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

A transmittal letter changing the relevant pages in the International Mail Manual will be published and automatically transmitted to all subscribers. Notice of issuance of the transmittal will be published in the **Federal Register** as provided by 39 CFR 20.3.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual (IMM) is amended as follows:

2 CONDITIONS FOR MAILING

210 Express Mail International Service

* * * * *

215 Priority Mail Global Guaranteed

* * * * *

215.3 Service Areas

215.31 U.S. Origins

Priority Mail Global Guaranteed (PMGG) items must be entered at post offices that are located in the following ZIP Code areas:

State	ZIP code areas
Arizona	850, 852–853
California	900, 902–908, 910–918, 926–928, 937, 939–941, 943–944, 946, 949–951, 954
Colorado	802
Connecticut	060–069
Delaware	197–199
District of Columbia	200, 202–203, 205
Florida	320, 322, 327–338, 342, 346–347
Georgia	300–303, 305–306, 311
Illinois	600–608, 610–611, 620, 622, 629
Indiana	460–470, 472–475, 478–479
Kentucky	410, 452
Maine	039–041
Maryland	206–212, 214, 217, 219
Massachusetts	010–027
Michigan	481–482, 486–491, 493–497
Minnesota	550–551, 553–554, 558–559
Missouri	630–631, 633
New Hampshire	030–034, 038
New Jersey	070–085, 087–089
New York	100–101, 103–105, 107, 109–119, 124–127
North Carolina	270–278, 280–282, 286
Ohio	430–438, 440–458

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State	ZIP code areas
Pennsylvania	189–191, 193–196
Rhode Island	028–029
Tennessee	372
Texas	750–752, 760–764, 769–770, 772–778, 780–782, 784, 791, 794
Virginia	201, 220–225, 230–232, 238–239
Vermont	054, 056
Washington	980–982
Wisconsin	530–532, 534

215.32 Foreign Destinations

Priority Mail Global Guaranteed (PMGG) service is available to all locations that are referenced in the Individual Country Listings except for the following:

Afghanistan
Ascension
China
Iraq
Japan
Korea, Democratic People's Republic of (North)
Libya
Pitcairn Island
Saint Helena
Sudan
Tristan de Cunha

* * * * *

215.6 Postage

215.61 RATE GROUPS [1]

Weight not over (lb.) [2]	Rate groups 1 and 2 (Canada, Mexico, and St. Pierre & Miquelon)	Rate groups 3 and 7	Rate groups 4 and 6	Rate group 5	Rate group 8
0.5	$20.00	$24.00	$29.00	$40.00	$60.00
1	31.00	34.00	41.00	51.00	72.00
2	31.00	34.00	41.00	65.00	87.00
3	42.00	53.00	60.00	80.00	102.00
4	44.00	60.00	67.00	94.00	115.00
5	47.00	66.00	74.00	107.00	129.00
6	50.00	71.00	81.00	119.00	141.00
7	53.00	76.00	88.00	131.00	153.00
8	56.00	81.00	95.00	142.00	165.00
9	59.00	85.00	102.00	154.00	176.00
10	62.00	89.00	109.00	166.00	188.00
11	64.00	93.00	114.00	177.00	200.00
12	66.00	98.00	120.00	187.00	212.00
13	69.00	102.00	125.00	197.00	224.00
14	72.00	106.00	131.00	207.00	235.00
15	74.00	110.00	136.00	215.00	246.00
16	77.00	114.00	141.00	223.00	258.00
17	79.00	118.00	147.00	230.00	269.00
18	82.00	121.00	152.00	238.00	280.00
19	84.00	125.00	158.00	245.00	292.00
20	87.00	128.00	163.00	253.00	303.00
21	89.00	132.00	168.00	260.00	313.00
22	91.00	136.00	173.00	268.00	322.00
23	94.00	139.00	178.00	275.00	332.00
24	96.00	143.00	183.00	283.00	341.00
25	98.00	146.00	188.00	290.00	349.00
26	100.00	149.00	193.00	298.00	358.00
27	103.00	153.00	198.00	305.00	366.00
28	105.00	156.00	203.00	313.00	375.00
29	107.00	160.00	208.00	320.00	384.00
30	110.00	163.00	213.00	328.00	392.00
31	112.00	167.00	218.00	335.00	401.00
32	114.00	170.00	223.00	343.00	410.00
33	116.00	174.00	228.00	350.00	418.00
34	119.00	177.00	233.00	358.00	427.00
35	121.00	181.00	238.00	365.00	435.00
36	123.00	184.00	243.00	373.00	444.00
37	125.00	188.00	248.00	380.00	453.00
38	128.00	191.00	253.00	388.00	461.00
39	130.00	195.00	258.00	395.00	470.00
40	132.00	198.00	263.00	403.00	479.00
41	133.00	202.00	268.00	410.00	487.00
42	135.00	205.00	273.00	418.00	496.00
43	137.00	209.00	278.00	425.00	505.00
44	138.00	212.00	283.00	433.00	514.00
45	140.00	216.00	288.00	440.00	522.00

215.61 RATE GROUPS [1]—Continued

Weight not over (lb.) [2]	Rate groups 1 and 2 (Canada, Mexico, and St. Pierre & Miquelon)	Rate groups 3 and 7	Rate groups 4 and 6	Rate group 5	Rate group 8
46	142.00	219.00	293.00	448.00	531.00
47	143.00	223.00	298.00	455.00	540.00
48	145.00	226.00	303.00	463.00	548.00
49	147.00	230.00	308.00	470.00	557.00
50	148.00	233.00	313.00	478.00	566.00
51	148.00	233.00	313.00	478.00	566.00
52	152.00	240.00	323.00	492.00	583.00
53	152.00	240.00	323.00	492.00	583.00
54	154.00	247.00	333.00	505.00	601.00
55	154.00	247.00	333.00	505.00	601.00
56	156.00	254.00	343.00	516.00	617.00
57	156.00	254.00	343.00	516.00	617.00
58	159.00	261.00	353.00	527.00	633.00
59	159.00	261.00	353.00	527.00	633.00
60	161.00	268.00	363.00	538.00	649.00
61	161.00	268.00	363.00	538.00	649.00
62	164.00	275.00	373.00	549.00	666.00
63	164.00	275.00	373.00	549.00	666.00
64	166.00	282.00	383.00	560.00	684.00
65	166.00	282.00	383.00	560.00	684.00
66	168.00	289.00	393.00	571.00	701.00
67	168.00	289.00	393.00	571.00	701.00
68	171.00	296.00	403.00	583.00	718.00
69	171.00	296.00	403.00	583.00	718.00
70	173.00	303.00	413.00	594.00	735.00

[1] See the Individual Country Listings for the postage rates that are applicable to each PMGG destination country.
[2] Maximum weight limit is 70 pounds to all destination countries.

* * * * *

[The Individual Country Listing pages in the International Mail Manual will be revised to reflect the availability of Priority Mail Global Guaranteed service and the applicable postage rates.]

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 00–12971 Filed 5–25–00; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–184–0229; FRL–6585–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District, South Coast Air Quality Management District, San Diego County Air Pollution Control District, and Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on January 19, 2000. These revisions concern Bay Area Air Quality Management District (BAAQMD) Rule 8.45, Motor Vehicle and Mobile Equipment Coating Operations; South Coast Air Quality Management District (SCAQMD) Rule .1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operation; San Diego County Air Pollution Control District (SDCAPCD) Rule 67.19, Coatings and Printing Inks Manufacturing Operations, and Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 425, Use of Cutback Asphalt. This approval action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). These revised rules control VOC emissions from automobile refinishing, coating and ink manufacturing and use of cutback asphalt. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective June 26, 2000.

ADDRESSES: Copies of the rule revisions and EPA's evaluation reports for these rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

South Coast Air Quality Management District, 21865 E. Copley, Diamond Bar, CA 91765

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office

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(AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1189.

SUPPLEMENTARY INFORMATION:

I. Applicability

EPA is approving Bay Area Air Quality Management District (BAAQMD) Rule 8.45, Motor Vehicle and Mobile Equipment Coating Operations; South Coast Air Quality Management District (SCAQMD) Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; San Diego County Air Pollution Control District (SDCAPCD) Rule 67.19, Coatings and Printing Inks Manufacturing Operations, and Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 425, Use of Cutback Asphalt. These rules were submitted by the California Air Resources Board (CARB) to EPA on August 1, 1997, February 16, 1999, October 18, 1996, and June 3, 1997, respectively.

II. Background

On January 19, 2000 (see 65 FR 2921) EPA proposed to approve the following rules: BAAQMD Rule 8.45, Motor Vehicle and Mobile Equipment Coating Operations; SCAQMD Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; SDCAPCD Rule 67.19, Coatings and Printing Inks Manufacturing Operations, and MBUAPCD Rule 425, Use of Cutback Asphalt. BAAQMD adopted Rule 8.45 on November 6, 1996; SCAQMD adopted Rule 1151 on December 11, 1998; SDCAPCD adopted Rule 67.19 on May 15, 1996; and MBUAPCD adopted Rule 425 on March 26, 1997. These rules were submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonable available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the proposed rule (PR) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PR. EPA is finalizing the proposed approval of these rules in order to strengthen the SIP. A discussion of the submitted rules are as follows:

BAAQMD Rule 8.45, Motor Vehicle and Mobile Equipment Coating Operations includes the following significant changes from the current SIP:

- Section 231, Volatile Organic Compounds, was amended by adding acetone, parachlorobenzotrifluoride (PCBTF), and cyclic, branched, or linear, fully methylated siloxanes (VMS) to the list of exempt compounds in conformance with EPA and CARB action.
- Section 601, "Analysis of Samples" was amended by adding BAAQMD Method 41 to analyze samples containing PCBTF, and BAAQMD Method 43 to analyze samples containing VMS.
- Section 602, "Determination of Emissions" was amended by adding the following sentence: For the purpose of determining abatement device efficiency, any acetone, PCBTF or VMS shall be included as a VOC.

SCAQMD Rule 1151, Motor Vehicles and Mobile Equipment Non-Assembly Line Coating Operations, includes the following significant changes from the current SIP:

- Effective December 12, 1998 and until April 1, 1998 the Group II multistage topcoat composite VOC limit was raised to 4.5 lbs/gal. The pre-December 12, 1998 limit of 3.5 lbs/gal limit was reinstated on April 1, 1999;
- A 10% usage limitation on a monthly basis was added for specialty coatings;
- Expanded the prohibition of sale clause;
- Added the requirement that manufacturers must offer for sale by January 1, 1999 clearcoats having VOC content of 2.1 lbs/gal or less; and
- Added an exemption for topcoats applied to prototype motor vehicles.

There is currently no version of SDCAPCD's Rule 67.19, Coatings and Printing Inks Manufacturing Operations, in the SIP. The submitted rule includes the following provisions:

- Applicability section;
- Exemption for sources emitting less than 15 lbs/day;
- Sources emitting less than 50 tons/year are exempted from the requirements of emission control systems;
- Storage tanks of less than 550 gal capacity, or those used exclusively for epoxies or water based coatings are exempted from the requirements of submerged fill pipes;
- A definition section;
- Equipment and workmanship standards;
- Option to comply by using abatement equipment;
- Recordkeeping provisions; and
- Test methods.

Earlier versions of this rule were adopted on June 7, 1994, and March 7, 1995. While EPA can only act on the most recently submitted version, EPA reviewed relevant materials associated with the superseded versions.

MBUAPCD submitted Rule 425, Use of Cutback Asphalt, includes the following significant changes from the current SIP:

- Use of the term "petroleum solvent" is now used consistently throughout the rule. Prior to this revision, the term organic solvents and petroleum solvents were used interchangeably leading to confusion in the implementation and enforcement of the rule. The rule has been revised to enhance clarity.
- An additional change was made to the "effective date" section. The rule as revised is now effective on the date of adoption.

A detailed discussion of the rules provisions and evaluation has been provided in the PRs and in technical support documents (TSDs) available at EPA's Region IX office. TSDs prepared by EPA are dated November 2, 1998 for MBUAPCD Rule 425, December 1999 for SDCAPCD Rule 67.19, SCAQMD Rule 1151, and BAAQMD Regulation 8–45.

III. Response to Public Comments

A 30-day public comment period was provided in the PR (see 65 FR 2921). EPA received no comments during this period and one comment after the 30 days expired. This comment was submitted by the National Paint & Coatings Association (NPCA), dated February 25, 2000, and only concerned SCAQMD Rule 1151. Although this comment was submitted and received after close of the comment period, we are acknowledging the comment in this action and summarizing NPCA's primary concern.

NPCA is concerned with the prohibition of sale provision contained in Rule 1151, paragraph (d)(2). NPCA specifically objects to EPA's characterization in proposing approval of Rule 1151, that SCAQMD has "expanded the prohibition of sale clause." EPA believes this characterization is correct, however, and directs the commenter to page 9 of the December 1998 final staff report associated with SCAQMD's adoption of the submitted rule.

Nothing in this comment has caused EPA to change the rationale for proposing approval of SCAQMD 1151 or the other rules.

IV. EPA Action

EPA is finalizing action to approve BAAQMD Rule 8.45, Motor Vehicle and Mobile Equipment Coating Operations; SCAQMD Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; SDCAPCD Rule 67.19, Coatings and Printing Inks Manufacturing Operations, and MBUAPCD Rule 425, Use of Cutback Asphalt for inclusion into the California SIP. EPA is approving these rules under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules are to regulate emissions of VOCs according to requirements of the CAA.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13121, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and

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advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 25, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Lists of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 12, 2000.

John Wise,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(241)(i)(A)(*5*), (c)(248)(i)(F), (c)(258)(i)(A)(*3*) and (c)(262)(i)(C)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(241) * * *

(i) * * *

(A) * * *

(*5*) Rule 67.19, adopted May 15, 1996.

* * * * *

(248) * * *

(i) * * *

(F) * * *

(*1*) Regulation 8, Rule 45, adopted on November 6, 1996.

* * * * *

(258) * * *

(i) * * *

(A) * * *

(*3*) Rule 425, adopted on March 26, 1997.

* * * * *

(262) * * *

(i) * * *

(C) * * *

(*2*) Rule 1151, adopted on December 11, 1998.

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[FR Doc. 00–13200 Filed 5–25–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA152–4099a; FRL–6705–7]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Allegheny County, Pennsylvania; Control of Emissions from Existing Hospital/Medical/Infectious Waste Incinerators; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correcting amendment.

SUMMARY: This document corrects minor errors in the text of rule language in a published final rule pertaining to EPA's approval of the Allegheny County, Pennsylvania hospital/medical/ /infectious waste incinerator (HMIWI) 111(d)/129 plan submitted by the Commonwealth of Pennsylvania.

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, (215) 814–2190 or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," or "our" are used, we mean EPA. On April 7, 2000 (65 FR 18249), we published a final rulemaking action announcing our approval of the Allegheny County, Pennsylvania hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan submitted by the Commonwealth of Pennsylvania. In the text of that document, we inadvertently made two minors. Neither the rationale for nor the intent of the April 7, 2000 direct final rule was affected by these minor errors. This action simply corrects the erroneous language in the published final rulemaking.

To the final rule (FR Docket 00–8660) published in the **Federal Register** on April 7, 2000 (65 FR 18249), we are making the following corrections:

(1) On page 18251 in the first column, the revised rule language to the second answer (A.) is corrected to read, "* * * meeting the maximum achievable control technology * * *".

The word "available" was inadvertently inserted in place of "achievable".

(2) On page 18252 in the third column under § 62.9662 Effective Date, the text is revised to read, "The effective date of the plan is June 6, 2000."

The phrase "* * * for municipal solid waste landfills * * *" was inadvertently included in the sentence and is hereby deleted.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting minor errors in the text of a previous action. Thus, notice and public procedures are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of June 6, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These corrections to the preamble and 40 CFR 62.9662 for Pennsylvania is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: May 10, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–13205 Filed 5–25–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No.1999–6189; Amendment 1–302]

Organization and Delegation of Powers and Duties Delegations to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) is delegating to the Maritime Administrator his authority to appoint special police and enforce laws for the protection of property and persons at the United States Merchant Marine Academy located in Kings Point, New York. The authorities relating to the protection of Federal property are vested in the Secretary of Transportation by a March 2000 delegation from the Administrator of General Services. The Act of June 1, 1948, P.L. 80–566, 62 Stat. 281, 40 U.S.C. 318–318c and the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377, provides the Administrator of General Services the authority relating to the protection of Federal property.

EFFECTIVE DATE: May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Chief, Division of Management and Organization, Maritime Administration, MAR–318, Room 7301, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–2811; or Blane Workie, Office of General Counsel (C–50), Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–9314.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation is delegating to the Maritime Administrator his authority relating to the protection of property and persons at the United States Merchant Marine Academy located in Kings Point, New York. The Secretary of Transportation obtained the authority to enforce laws for the protection of property and persons at the United States Merchant Marine Academy from the Administrator of General Services on March 23, 2000.

Previously, the Administrator of General Services had delegated this authority to the Secretary of Transportation who redelegated the authority to the Maritime Administrator. The delegation expired on May 1, 2000. As a result, this delegation of authority from the Secretary of Transportation to

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the Maritime Administrator relating to the protection of property and persons at the United States Merchant Marine Academy is necessary to ensure the continued authority of the Maritime Administrator to appoint uniformed personnel as special police, establish the rules and regulations governing conduct on the affected property, and execute agreements with other Federal, State, or local authorities. The Maritime Administration has previously had the responsibility for the Academy and related property, and currently has the experience and requisite expertise to promptly effect the actions prescribed by the statutes.

This amendment revises 49 CFR 1.66(q) to reflect the Secretary of Transportation's delegation of his authority relating to the protection of the Merchant Academy to the Maritime Administrator for an indefinite period of time. Since this amendment relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Maritime Administration's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended, effective upon publication, to read as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Public Law 101–552, 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2).

2. Section 1.66 is amended by revising paragraph (q) is amended to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(q) Exercise the authority vested in the Administrator of General Services by the Act of June 1, 1948, Public Law 80–566, 62 Stat. 281, 40 U.S.C. 318–318c and the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377, and delegated to the Secretary of Transportation by the Administrator of General Services on March 23, 2000, relating to the enforcement of laws for the protection of property and persons at the United States Merchant Marine Academy, located in Kings Point, New York. This may be accomplished through appointment of uniformed personnel as special police, establishment of rules and regulations governing conduct on the affected property, and execution of agreements with other Federal, State, or local authorities.

* * * * *

Issued at Washington, DC, this 18th day of May, 2000.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 00–13270 Filed 5–25–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2000–7331]

RIN 2127–AH78

Federal Motor Vehicle Theft Prevention Standard; Final Listing of Model Year 2001 High-Theft Vehicle Lines

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces NHTSA's determination for model year (MY) 2001 high-theft vehicle lines that are subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard, and high-theft MY 2001 lines that are exempted from the parts-marking requirements because the vehicles are equipped with antitheft devices determined to meet certain statutory criteria pursuant to the statute relating to motor vehicle theft prevention.

EFFECTIVE DATE: The amendment made by this final rule is effective May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Consumer Programs Division, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: The Anti Car Theft Act of 1992, Pub. L. 102–519, amended the law relating to the parts-marking of major component parts on designated high-theft vehicle lines and other motor vehicles. The Anti Car Theft Act amended the definition of "passenger motor vehicle" in 49 U.S.C. 33101(10) to include a "multipurpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight." Since "passenger motor vehicle" was previously defined to include passenger cars only, the effect of the Anti Car Theft Act is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high-theft vehicles subject to the Federal motor vehicle theft prevention standard (49 CFR part 541).

The purpose of the theft prevention standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines selected as high-theft.

The Anti Car Theft Act also amended 49 U.S.C. 33103 to require NHTSA to promulgate a parts-marking standard applicable to major parts installed by manufacturers of "passenger motor vehicles (other than light duty trucks) in not to exceed one-half of the lines not designated under 49 U.S.C. 33104 as high-theft lines." Section 33103(a) further directed NHTSA to select only lines not designated under section 33104 of this title as high theft lines. NHTSA lists each of these selected lines in appendix B to part 541. Since section 33103 did not specify marking of replacement parts for below-median lines, the agency does not require marking of replacement parts for these lines. NHTSA published a final rule amending 49 CFR part 541 to include the definitions of MPV and LDT, and major component parts. See 59 FR 64164, December 13, 1995.

49 U.S.C. 33104(a)(3) specifies that NHTSA shall select high-theft vehicle lines, with the agreement of the manufacturer, if possible. Section 33104(d) provides that once a line has been designated as likely high-theft, it remains subject to the theft prevention standard unless that line is exempted under section 33106. Section 33106 provides that a manufacturer may petition to have a high-theft line

exempted from the requirements of section 33104, if the line is equipped with an antitheft device as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft prevention standard in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of the lines which were previously listed as high-theft, and the lines which are being listed for the first time and will be subject to the theft prevention standard beginning in a given model year. It also identifies those lines that are exempted from the theft prevention standard for a given model year under section 33104. Additionally, this listing identifies those lines (except light-duty trucks) in appendix B to part 541 that have theft rates below the 1990/1991 median theft rate but are subject to the requirements of this standard under section 33103.

On May 25, 1999, the final listing of high-theft lines for the MY 2000 vehicle lines was published in the **Federal Register** (64 FR 28110). The final listing identified five vehicle lines that were listed for the first time and became subject to the theft prevention standard beginning with the 2000 model year.

For MY 2001, the agency identified eight new vehicle lines that are likely to be high-theft lines, in accordance with the procedures published in 49 CFR part 542. The new lines are the Daewoo Musso (MPV), the Honda Acura MDX (MPV), the Kia Motors Rio and Optima, the Suzuki MPV (nameplate not available), the Toyota Highlander (MPV), the Toyota Lexus IS300 and the Toyota MR2 Spyder. In addition to these eight vehicle lines, the list of high-theft vehicle lines includes all lines previously designated as high-theft and listed for prior model years. Appendix A also has been amended to reflect a nameplate change for the Isuzu Amigo vehicle line to Isuzu Rodeo Sport beginning with MY 2001.

The list of lines that have been exempted by the agency from the parts-marking requirements of Part 541 includes high-theft lines newly exempted in full beginning with MY 2001. The four vehicle lines newly exempted in full are the Ford Mercury Sable, the General Motors Chevrolet Malibu, the Nissan Pathfinder and the Volkswagen Audi Allroad Quattro.

Subsequent to publishing the MY 2000 listing, the agency granted BMW of North America, Inc., an exemption from the parts-marking requirements of the theft prevention standard for its X5 vehicle line beginning with the 2000 model year. Therefore, the BMW X5 vehicle line has been added to Appendix A–I of this listing. Furthermore, Appendix A–I has been amended to reflect a nameplate change for the General Motors Chevrolet Lumina/Monte Carlo car line. The Chevrolet Lumina/Monte Carlo car line nameplate was changed to Chevrolet Impala/Monte Carlo beginning with MY 2000.

Appendix A–II has also been amended to reflect a MY 1994 nameplate change for the General Motors Cadillac Sixty Special to General Motors Cadillac Concours.

Additionally, since the agency granted Ford Motor Company an exemption from the parts-marking requirements for its Mercury Sable car line, it has been deleted from Appendix B.

The vehicle lines listed as being subject to the parts-marking standard have previously been designated as high-theft lines in accordance with the procedures set forth in 49 CFR part 542. Under these procedures, manufacturers evaluate new vehicle lines to conclude whether those new lines are likely to be high theft. The manufacturer submits these evaluations and conclusions to the agency, which makes an independent evaluation; and, on a preliminary basis, determines whether the new line should be subject to the parts-marking requirements. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to reconsider the preliminary determinations. Within 60 days of the receipt of these requests, the agency makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new lines on the high-theft list has been the subject of a final determination under either 49 U.S.C. 33103 or 33104.

The vehicle lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR part 543 and 49 U.S.C. 33106.

Similarly, the low-theft lines listed as being subject to the parts-marking standard have previously been designated in accordance with the procedures set forth in 49 U.S.C. 33103.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by 49 U.S.C. Chapter 331.

For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also considered this notice under Executive Order 12866. As already noted, the selections in this final rule have previously been made in accordance with the provisions of 49 U.S.C. 33104, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of 49 CFR part 541 for MY 2001. Further, this listing does not actually exempt lines from the requirements of 49 CFR part 541; it only informs the general public of all such previously granted exemptions. Since the only purpose of this final listing is to inform the public of actions for MY 2001 that the agency has already taken, a full regulatory evaluation has not been prepared.

2. Regulatory Flexibility Act

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this final rule is simply to inform the public of those lines that are already subject to the requirements of 49 CFR part 541 for MY 2001. The agency believes that the listing of this information will not have any economic impact on small entities.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule, and determined that it will not have any significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient

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Federalism implications to warrant the preparation of a Federalism Assessment.

5. Civil Justice Reform

This final rule does not have a retroactive effect. In accordance with section 33118 when the Theft Prevention Standard is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

PART 541—[AMENDED]

1. The authority citation for Part 541 continues to read as follows:

Authority: 49 U.S.C. 33102–33104 and 33106; delegation of authority at 49 CFR 1.50.

2. In Part 541, Appendices A, A–I, A–II and B are revised to read as follows:

APPENDIX A TO PART 541.—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

Manufacturer	Subject lines
ALFA ROMEO	Milano 161.
	164.
BMW	Z3.
	6 Car Line.
CONSULIER	Consulier GTP.
DAEWOO	Korando.
	Musso (MPV) [1].
	Nubira.
DAIMLERCHRYSLER	Chrysler Cirrus.
	Chrysler Fifth Avenue/Newport.
	Chrysler Laser.
	Chrysler LeBaron/Town & Country.
	Chrysler LeBaron GTS.
	Chrysler's TC.
	Chrysler New Yorker Fifth Avenue.
	Chrysler Sebring.
	Chrysler Town & Country.
	Dodge 600.
	Dodge Aries.
	Dodge Avenger.
	Dodge Colt.
	Dodge Daytona.
	Dodge Diplomat.
	Dodge Lancer.
	Dodge Neon.
	Dodge Shadow.
	Dodge Stratus.
	Dodge Stealth.
	Eagle Summit.
	Eagle Talon.
	Jeep Cherokee (MPV).
	Jeep Grand Cherokee (MPV).
	Jeep Wrangler (MPV).
	Plymouth Caravelle.
	Plymouth Colt.
	Plymouth Laser.
	Plymouth Gran Fury.
	Plymouth Neon.
	Plymouth Reliant.
	Plymouth Sundance.
	Plymouth Breeze.
FERRARI	Mondial 8.
	328.
FORD	Ford Aspire.
	Ford Escort.
	Ford Probe.
	Ford Thunderbird.
	Lincoln Continental.
	Lincoln Mark.
	Lincoln Town Car.
	Mercury Capri.
	Mercury Cougar.
	Merkur Scorpio.
	Merkur XR4Ti.
GENERAL MOTORS	Buick Electra.
	Buick Reatta.
	Buick Skylark.

APPENDIX A TO PART 541.—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD—Continued

Manufacturer	Subject lines
	Chevrolet Malibu.
	Chevrolet Nova.
	Chevrolet Blazer (MPV).
	Chevrolet Prizm.
	Chevrolet Venture (MPV).
	Chevrolet S–10 Pickup.
	Geo Storm.
	Chevrolet Tracker (MPV).
	GMC Jimmy (MPV).
	GMC Sonoma Pickup.
	Oldsmobile Achieva (MYs 1997–1998).
	Oldsmobile Bravada.
	Oldsmobile Cutlass.
	Oldsmobile Cutlass Supreme (MYs 1988–1997).
	Oldsmobile Intrigue.
	Pontiac Fiero.
	Pontiac Grand Prix.
	Saturn Sports Coupe.
HONDA	Accord.
	CRV (MPV).
	Odyssey (MPV).
	Passport.
	Prelude.
	S2000.
	Acura Integra.
	Acura MDX (MPV) [1].
HYUNDAI	Accent.
	Sonata.
	Tiburon.
ISUZU	Amigo [2].
	Impulse.
	Rodeo.
	Rodeo Sport.
	Stylus.
	Trooper/Trooper II.
	VehiCross (MPV).
JAGUAR	XJ.
KIA MOTORS	Optima [1].
	Rio [1].
	S–II.
LOTUS	Elan.
MASERATI	Biturbo.
	Quattroporte.
	228.
MAZDA	626.
	MX–3.
	MX–5 Miata.
	MX–6.
MERCEDES-BENZ	190 D.
	190 E.
	260E (1987–1989).
	300 SE (1988–1991).
	300 TD (1987).
	300 SDL (1987).
	300 SEL.
	350 SDL (1990–1991).
	420 SEL (1987–1991).
	560 SEL (1987–1991).
	560 SEC (1987–1991).
	560 SL.
MITSUBISHI	Cordia.
	Eclipse.
	Mirage.
	Montero (MPV).
	Montero Sport (MPV).
	Tredia.
	3000GT.
NISSAN	240SX.
	Sentra/200SX.
	Xterra.
PEUGEOT	405.
PORSCHE	924S.

APPENDIX A TO PART 541.—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD—Continued

Manufacturer	Subject lines
SUBARU	XT.
	SVX.
	Forester.
	Legacy.
SUZUKI	X90.
	MPV(nameplate not determined) [1].
	Sidekick (MYs 1997–1998).
	Vitara (MPV).
TOYOTA	Toyota 4-Runner (MPV).
	Toyota Avalon.
	Toyota Camry.
	Toyota Celica.
	Toyota Corolla/Corolla Sport.
	Toyota Echo.
	Toyota Highlander (MPV) [1].
	Toyota MR2.
	Toyota MR2 Spyder [1].
	Toyota RAV4 (MPV).
	Toyota Sienna (MPV).
	Toyota Tercel.
	Lexus IS300 [1].
	Lexus RX300 (MPV).
VOLKSWAGEN	Audi Quattro.
	Volkswagen Scirocco.

[1] Lines added for MY 2001.
[2] Renamed Isuzu Rodeo Sport beginning with MY 2001.

APPENDIX A–I—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturer	Subject lines
AUSTIN ROVER	Sterling.
BMW	X5.[1]
	3 Car Line.
	5 Car Line.
	7 Car Line.
	8 Car Line.
DAIMLERCHRYSLER	Chrysler Conquest.
	Chrysler Imperial.
FORD	Mustang.
	Mercury Sable.[2]
	Taurus.
GENERAL MOTORS	Buick LeSabre.
	Buick Park Avenue.
	Buick Regal/Century.
	Buick Riviera.
	Cadillac Allante.
	Cadillac Deville.
	Cadillac Seville.
	Chevrolet Cavalier.
	Chevrolet Corvette.
	Chevrolet Impala/Monte Carlo.
	Chevrolet Lumina/Monte Carlo (MYs 1996–1999).[3]
	Chevrolet Malibu.[2]
	Oldsmobile Alero.
	Oldsmobile Aurora.
	Oldsmobile Toronado.
	Pontiac Bonneville.
	Pontiac Grand Am.
	Pontiac Sunfire.
HONDA	Acura CL.
	Acura Legend (MYs 1991–1996).
	Acura NSX.
	Acura RL.
	Acura SLX.
	Acura TL.
	Acura Vigor (MYs 1992–1995).
ISUZU	Impulse (MYs 1987–1991).
JAGUAR	XK8.
MAZDA	929.

APPENDIX A–I—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543—Continued

Manufacturer	Subject lines
MERCEDES-BENZ	RX–7.
	Millenia.
	124 Car Line (the models within this line are):.
	260E.
	300D.
	300E.
	300CE.
	300TE.
	400E.
	500E.
	129 Car Line (the models within this line are):.
	300SL.
	500SL.
	600SL.
	SL320.
	SL500.
	SL600.
	202 Car Line (the models within this line are):.
	C220.
	C230.
	C280.
	C36.
	C43.
MITSUBISHI	Galant.
	Starion.
	Diamante.
NISSAN	Nissan Altima.
	Nissan Maxima.
	Nissan Pathfinder.[2]
	Nissan 300ZX.
	Infiniti I30.
	Infiniti J30.
	Infiniti M30.
	Infiniti QX4.
	Infiniti Q45.
PORSCHE	911.
	928.
	968.
	Boxster.
SAAB	900.
	9000.
TOYOTA	Toyota Supra.
	Toyota Cressida.
	Lexus ES.
	Lexus GS.
	Lexus LS.
	Lexus SC.
VOLKSWAGEN	Audi 5000S.
	Audi 100/A6.
	Audi 200/S4/S6.
	Audi Allroad Quattro (MPV).[2]
	Audi Cabriolet.
	Volkswagen Cabrio.
	Volkswagen Corrado.
	Volkswagen Golf/GTI.
	Volkswagen Jetta/Jetta III.
	Volkswagen Passat.

[1] Exempted in full beginning with MY 2000.
[2] Exempted in full beginning with MY 2001.
[3] Renamed Impala/Monte Carlo beginning with MY 2000.

APPENDIX A–II TO PART 541.—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED IN-PART FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturers	Subject lines	Parts to be marked
GENERAL MOTORS	Cadillac Eldorado	Engine, Transmission.
	Cadillac Concours	Engine, Transmission.
	Oldsmobile Ninety-Eight	Engine, Transmission.
	Pontiac Firebird	Engine, Transmission.

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APPENDIX A–II TO PART 541.—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED IN-PART FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543—Continued

Manufacturers	Subject lines	Parts to be marked
	Chevrolet Camaro	Engine, Transmission.
	Oldsmobile Eighty-Eight	Engine, Transmission.

APPENDIX B—PASSENGER MOTOR VEHICLE LINES (EXCEPT LIGHT-DUTY TRUCKS) WITH THEFT RATES BELOW THE 1990/91 MEDIAN THEFT RATE, SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

Manufacturer	Subject lines
Ford	Crown Victoria.
	Mercury Grand Marquis.
General Motors	Chevrolet Astro (MPV).
	GMC Safari (MPV).
Honda	Civic.

Issued on: May 22, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–13273 Filed 5–25–00; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 65, No. 103
Friday, May 26, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. 98–030–1]

RIN 0579–AA97

Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment would provide protection against fruit flies and the mango seed weevil. This proposal would provide an alternative to the currently approved treatments (various fumigation, cold, and heat treatments, and systems approaches employing techniques such as greenhouse growing) against fruit flies and the mango seed weevil in fruits and vegetables.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by July 25, 2000.

ADDRESSES: To submit a comment by postal mail, please send your comment and three copies to Docket No. 98–030–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–030–1.

You may also file comments on this docket electronically, and review comments filed electronically, at the World Wide Web site http://comments.aphis.usda.gov.

You may read any comments that we receive by postal mail in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For general program and phytosanitary issues, contact Donna L. West, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale MD 20737–1236; (301) 734–6799. For technical irradiation issues, contact Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7710.

SUPPLEMENTARY INFORMATION:

Background

I. Introduction
II. Critical Control Points: Dose, Dosimetry, Safeguards
III. Irradiation Doses to Control Fruit Flies and Seed Weevils in Fruits and Vegetables
IV. Dosimetry and Dose Control Issues
V. Safeguards for Different Irradiation Situations
VI. Proposed Regulatory Framework for Irradiation Treatments
VII. Proposed Changes to Fruits and Vegetables Import Regulations
VIII. Compliance With Executive Orders, Regulatory Flexibility Act, National Environmental Policy Act, and Paperwork Reduction Act

I. Introduction

The Animal and Plant Health Inspection Service (APHIS) is aware of growing commercial interest in the use of irradiation as a treatment for agricultural products, both for food safety purposes (to kill pathogens and retard spoilage) and for phytosanitary purposes (to destroy plant pests). At least 38 countries have approved irradiation treatment of more than 40 foods or groups of related foods. In Europe more than 28 billion pounds of food are irradiated annually. With regard to phytosanitary irradiation treatments to control plant pests, the World Health Organization, the International Plant Protection Convention, and the North American Plant Protection Organization have endorsed the technology as effective and safe.

In anticipation of requests to allow the use of irradiation in APHIS' regulatory programs, we have been developing policies for evaluating irradiation methods and have been evaluating research on the efficacy of irradiation.

To set a framework for developing APHIS' irradiation policy, we published a notice entitled "The Application of Irradiation to Phytosanitary Problems" in the **Federal Register** on May 15, 1996 (61 FR 24433–24439, Docket No. 95–088–1). Among other things, the notice discussed how APHIS, in collaboration with the Agricultural Research Service (ARS), would evaluate scientific research to determine the minimum irradiation doses necessary to kill or render sterile particular pests associated with particular articles. The notice emphasized that minimum dose levels are important and necessary, but that dose levels by themselves do not constitute a complete treatment schedule or an adequate regulatory framework. Treatment schedules, in addition to specifying minimum doses, may employ irradiation as a single treatment, as part of a multiple treatment, or as a component of a systems approach combined with other pest mitigation measures. The regulatory framework for employing irradiation treatments must also address system integrity or quality control issues, including methods to ensure that the irradiation is properly conducted so that the specified dose is achieved, and must address matters such as packaging or safeguarding of the treated articles to prevent reinfestation.

This proposed rule discusses these various issues and how they must be integrated to achieve effective irradiation treatments, and then proposes specific standards for an irradiation treatment for fruit flies and the mango seed weevil in imported fruits and vegetables.

II. Critical Control Points: Dose, Dosimetry, Safeguards

We have identified three critical control points in the activities involved in irradiating imported fruits and vegetables to prevent the spread of fruit flies and the mango seed weevil. These are points where errors will definitely reduce the long-term effectiveness of the treatment and where, on the other hand, correct procedure will ensure effective treatments.

The three critical control points are:

Dose: The dose of ionizing radiation, calculated in Gray, must be sufficient to

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prevent adult emergence of each species of fruit fly in fruits and vegetables. Each dose is set at the lowest level that achieves this effect; the dose will not necessarily kill larvae immediately after treatment. These doses are based on research conducted by ARS and others, as discussed below.

It is important that the dose be set at the lowest effective level for regulatory, economic, and product quality reasons. The Food and Drug Administration has issued regulations providing that fruits and vegetables may receive up to 1 kiloGray (=1,000 Gray) of irradiation (21 CFR 179.26). This current limit of 1 kiloGray for fruits and vegetables is significant because industry irradiation methods can only ensure that all articles in an irradiated lot receive a guaranteed minimum dose, at the cost of having some articles in the lot subjected to two or three times the minimum dose. Therefore, to achieve a minimum absorbed dose of 250 Gray, some articles in a lot may be subjected to a dose of 750 Gray or more. Obviously, this encourages us to set the dose at the minimum effective level to avoid the possibility of any articles being subjected to a dose above 1 kiloGray. Also, the higher the dose, the greater the cost of the irradiation treatment. Finally, irradiation causes many fruits and vegetables to suffer changes in color and texture that increase at higher doses.

Dosimetry: If *establishing* the required dose correctly is the first critical control point, *delivering* the expected dose accurately and consistently is the second critical control point. Accurate dosimetry ensures that this happens. An effective dosimetry system is necessary to ensure that irradiated articles do in fact receive the minimum required dose of ionizing radiation. An inaccurate dosimetry system that records received doses as higher than they actually are could allow survival of fruit flies or mango seed weevils in treated articles. An inaccurate dosimetry system that records received doses as lower than they actually are could result in doses exceeding the 1 kiloGray limit, as well as unacceptable changes in the color and texture of the fruits and vegetables.

Safeguards: The third critical control point, safeguards, addresses the movement and identification of articles before and after they are irradiated. There is always a risk that treated articles may become reinfested with pests after treatment, and safeguards are necessary to control this risk. If the fruits and vegetables are irradiated after arriving in the United States, safeguards must also be employed to ensure that pests do not escape from articles en route through the United States to the irradiation facility. Finally, internal safeguards, such as recordkeeping, labeling, and monitoring and enforcement of regulatory requirements, are necessary to ensure that articles are not accidentally or intentionally presented as properly irradiated when they have not been.

III. Irradiation Doses To Control Fruit Flies and Seed Weevils in Imported Fruits and Vegetables

APHIS is now prepared to propose regulations providing for the use of irradiation as a phytosanitary treatment to control 11 species of fruit flies and one species of seed weevil in imported fruits and vegetables. Based on evaluation of research that is summarized in documents available upon request,[1] APHIS is proposing irradiation for each species as follows:

FRUIT FLIES AND SEED WEEVILS IN IMPORTED FRUITS AND VEGETABLES

Scientific name	Common name	Dose (gray)
Bactrocera dorsalis	Oriental fruit fly	250
Ceratitis capitata	Mediterranean fruit fly	225
Bactrocera cucurbitae	Melon fly	210
Anastrepha fraterculus	South American fruit fly	150
Anastrepha suspensa	Caribbean fruit fly	150
Anastrepha ludens	Mexican fruit fly	150
Anastrepha obliqua	West Indian fruit fly	150
Anastrepha serpentina	Sapote fruit fly	150
Bactrocera tryoni	Queensland fruit fly	150
Bactrocera jarvisi	(No common name)	150
Bactrocera latifrons	Malaysian fruit fly	150
Cryptorhynchus mangiferae	Mango seed weevil	100

ARS recommended these doses based on review of available literature, participation in workshops and meetings, discussions among ARS scientists, and verbal and written comments from numerous stakeholders and interested parties.

The recommended doses are sufficient to ensure probit 9 efficacy (a statistical estimation of 99.99683 percent mortality or sterility, corresponding to a survival rate of 32 fertile flies or weevils per million). The doses will almost entirely prevent emergence of live adults from irradiated fruits and vegetables.

ARS found sufficient data in its review of research[2] to recommend irradiation doses for 11 species of tephritid fruit flies and one species of seed weevil.

In 1986, minimum doses of 150 and 300 Gray were internationally proposed for quarantine security of tephritid fruit flies and all other arthropods, respectively (Loaharanu 1992). It was concluded that the dose of 150 Gray should prevent development of adult tephritid fruit flies capable of flight when eggs and larvae are irradiated, while 300 Gray should cause sterility to all stages of other insects and mites.

The first calculated estimates of doses to provide probit 9 security against fruit fly adult emergence were made by Balock *et al.* (1966). The probit 9 estimate of the irradiation dose that would prevent the emergence from fruit of adult Oriental fruit fly, *Bactrocera dorsalis* (Hendel), varied from 206 Gray in papaya to 280 Gray in a combination of eight different fruits. The fruits tested in this research ranged in size from Barbados cherry to tangerine and were infested with immature stages of the fruit fly ranging from egg to third instar. For melon fly, *Bactrocera cucurbitae* (Coquillett), combined data on irradiation of eggs through third instars in papaya, tomato, and cucumber gave a probit 9 estimate of 156 Gray. Two adult Mediterranean fruit flies, *Ceratitis capitata* (Wiedemann), emerged from approximately 1,300 early instar larvae in papayas treated at 100 Gray. However, the study's authors believed that these two flies resulted from post-treatment infestation because no adults emerged from papayas infested with approximately 19,000 early instars and treated with 25–75 Gray. No estimate of probit 9 security for *C. capitata* was offered. No tests using large numbers of *B. dorsalis* or *B. cucurbitae* were conducted at the estimated probit 9 doses; therefore, accuracy of these estimates was not confirmed.

Seo *et al.* (1973) subjected large numbers of fruit fly immatures inside fruits to irradiation doses ranging from 209 to 291 Gray. Doses as high as 244 Gray allowed some *B. dorsalis* to emerge as adults; it was not stated whether these adults were capable of flight. No irradiated *B. cucurbitae* immatures emerged as adults even at doses as low as 209 Gray. Two adult *C. capitata* emerged from an estimated 110,772 *C. capitata* immatures irradiated at 225 Gray. It was not mentioned whether either adult was capable of flight. Based on this study, Burditt and Seo (1971) recommended a dose of 210–250 Gray to prevent adult emergence of these three flies infesting tropical fruits in Hawaii.

Other studies dealt with irradiation of fruits infested with *B. dorsalis* and *C. capitata*. Although no adults emerged from an estimated 18,000 *B. dorsalis* third instars irradiated with 150 Gray in carambolas, emergence was less than 10 percent in the untreated control, indicating that the pupae were exposed to severe mortality factors unrelated to irradiation (Vijaysegaran *et al.* (1992)). A dose of 100 Gray prevented adult emergence of an estimated 131,148, 5- to 6-day-old *B. dorsalis* immatures irradiated in 250–300 gram "Carabao" mangoes (Manoto *et al.* (1992)). Komson *et al.* (1992) irradiated an estimated 173,042, 5-day-old *B. dorsalis* larvae reared at 27 (+/−2)°C in "Nang Klangwan" mangoes with 150 Gray with one adult survivor. Although no *C. capitata* adults emerged from an estimated 100,854 third instars in mangoes exposed to 150 Gray, 5 adults emerged from an estimated 5,268 larvae irradiated at that same dose in a previous test (Bustos *et al.* (1992)). Bustos *et al.* (1993) felt that 250 Gray was required to prevent development of adult *C. capitata* from irradiated larvae.

In Australia, various researchers have irradiated, at 50–100 Gray, a wide variety of fruits infested with large numbers of all immature stages of Queensland fruit fly, *Bactrocera tryoni* (Froggatt), with no apparently normal adult survivors. An estimated total of 566,714 "old larvae" were subjected to 75 Gray in five different fruits with no normal adult survivors. Heather *et al.* (1991) irradiated an estimated 110,935 eggs and 153,814 third instars of *Bactrocera jarvisi* (Tryon) in "Kensington" mangoes with 74–100 Gray and obtained no normal adult survivors.

Large numbers of five species of *Anastrepha* in fruits have been irradiated with doses of 50–150 Gray with no apparently normal adult survivors. However, von Windeguth (1986) found one apparently normal adult *A. suspensa* from an estimated 25,363 third instars in mangoes irradiated with 55 Gray.

Cherries infested with western cherry fruit fly, *Rhagoletis indifferens* Curran, were irradiated with a mean dose of 97 Gray, and one adult with vestigial wings emerged out of an estimated 15,812 immatures (Burditt and Hungate (1988)).

APHIS bases its proposed irradiation doses on the pertinent literature. The doses vary according to species, because the resistance of species varies. We propose to require a minimum dose of 250 Gray for *B. dorsalis* based on the study of Seo *et al.* (1973), who obtained 17 adults from a total of 490,289 larvae in papaya irradiated at a minimum dose of 244–252 Gray. At lower doses (214–225 Gray) in papaya, 5 of a total of 306,431 immatures developed to adults. Given the data of Seo *et al.* (1973), a dose of 250 Gray for *B. dorsalis* appears marginally effective at producing probit 9 security. However, it seems that the high survival rate at a dose of 244 Gray was atypical (17 adults emerged from 130,156 immature forms irradiated with 244 Gray), given that the study showed that fewer adults emerged at lower doses. No adults emerged when 155,903 immature forms in papayas were irradiated with 214 Gray. The only other large-scale studies with *B. dorsalis* used very high infestation levels and included few third instars, which may have reduced tolerance of the insects to irradiation (Komson *et al.* (1992); Manoto *et al.* (1992)).

We propose a minimum dose of 225 Gray for *C. capitata*. At 225 Gray, 2 of an estimated 110,772 *C. capitata* larvae completed development to the adult stage (Seo *et al.* (1973)). Furthermore, although no larvae of an estimated 100,854 third instar *C. capitata* in mangoes irradiated with 150 Gray became adults, the fact that 5 of 5,268 larvae did in an earlier test cannot be ignored (Bustos *et al.* (1992)).

We propose a minimum dose of 210 Gray for *B. cucurbitae* because at a dose of 209 Gray no *B. cucurbitae* larvae of an estimated 169,903 in bell peppers reached the adult stage (Seo *et al.* (1973)). The study's authors did not test lower doses, and no other studies using large numbers of *B. cucurbitae* have been conducted.

We propose a minimum dose of 150 Gray for eight other tephritid fruit flies: *B. tryoni, B. jarvisi, B. latifrons, A. fraterculus, A. suspensa, A. serpentina, A. ludens,* and *A. obliqua*. Although the research evidence shows that lower doses might suffice, a dose of 150 Gray should pose no greater problem to irradiation-tolerant commodities compared with lower doses, and it provides greater security.

We propose a minimum dose of 100 Gray for the mango seed weevil, *Cryptorhynchus mangiferae*, because research by ARS (Follett, 1999) has demonstrated that the weevils are effectively killed or sterilized at this dose.

IV. Dosimetry and Dose Control Issues

It is critical to ensure that articles actually receive the required dose during irradiation, since lower doses could allow pests to survive. Fortunately, the irradiation industry and researchers have spent decades developing and documenting effective systems for dosimetry. We are confident that facilities that correctly apply dosimetry guidance published by the American Society for Testing and Materials (ASTM) will be able to reliably measure the doses regulated articles receive.

The basic product delivered by businesses engaged in irradiation is an accurately measured dose of ionizing radiation, within the range requested by the customer, delivered to articles provided by the customer. Therefore, dosimetry is an integral part of these businesses' procedures, and APHIS does not need to address dosimetry in detail in this proposal, other than to require that the businesses follow good dosimetry practices to map, control, and record the radiation dose. Guidance and

[1] "Recommendation Irradiation Dose to Provide Quarantine Security for Commodities Infested with Certain Fruit Fly Species," Agricultural Research Service, April 7, 1995, and corollary APHIS memoranda. You may request these documents from the person identified above under **FOR FURTHER INFORMATION CONTACT**, or download them from http://www.aphis.usda.gov/ppd/irrad.

[2] Reports from many of the researchers cited in this document are available in a single compilation, "Proceedings of the Final Research Coordination Meeting on Use of Irradiation as a Quarantine Treatment of Food and Agricultural Commodities, August 27–31 1990"; published by the International Atomic Energy Agency; U.S. distributor UNIPUB, Lanham, MD. Parties interested in irradiation research reports may also be interested in a huge bibliography on agricultural irradiation assembled by the Federal Research Center for Nutrition in Germany, and available on their Web site at http://www.dainet.de/bfe/english/thmliste.htm.

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requirements for dosimetry by ASTM, the U.S. Department of Energy, and APHIS, and supervision by responsible national agencies in foreign countries, establish the degree of dosimetry reliability needed to make this proposal work.

V. Safeguards for Different Irradiation Situations

Safeguards reduce risk by controlling the movement and identification of articles before and after they are irradiated. Safeguards include such matters as packaging, labeling, records, and irradiation facility construction and procedures. The types of safeguards needed to reduce risks will change with changing conditions. Certain safeguards are needed if the irradiation facility is located in an area infested with fruit flies, or if irradiated commodities leaving the facility en route to the United States will transit such an area where the risk is high that flies could oviposit in fruit after it is irradiated. These identical safeguards would not be needed if the irradiation takes place in an area not infested with fruit flies.

The actual safeguards needed for different situations are discussed below under "Proposed Regulatory Framework for Irradiation Treatments." The goal of the safeguards is to address risks that are *not* fully addressed by the technical irradiation components of this proposal. Such risks include misidentification of articles so that untreated cartons are delivered labeled as treated, reinfestation of treated articles after treatment, and escape of fruit flies from articles in the United States prior to treatment.

Most of the safeguards we are proposing are based on previous operational experience that shows these safeguards to be effective when required to import fruits and vegetables that are subject to a variety of treatments under our regulations (e.g., fumigation, hot water dips, cold treatments). For instance, many existing treatments require the treated articles to be packed in insect proof cartons after treatment, and require labeling to distinguish treated from untreated cartons. The proposed safeguards concerning the allowed locations of irradiation facilities in the United States, and the routes untreated articles may follow to these facilities, are based on operational experience showing that the pests of concern cannot become established in the climate prevailing in the States where irradiation facilities would be allowed. The safeguards concerning records that irradiation facilities would have to keep (concerning lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation) are based on procedures the irradiation industry has endorsed and found effective in documenting that various irradiated articles (e.g., medical supplies) receive the required dose of irradiation.

VI. Proposed Regulatory Framework for Irradiation Treatments

As discussed above, we have proposed, based on research data, the doses of radiation for imported fruits and vegetables that effectively prevent the emergence of living adult forms of 11 species of fruit flies and one species of seed weevil. The above discussion also explains how we propose to measure and verify delivery of the effective doses and that safeguards may be needed to prevent pest escape from products before treatment and reinfestation after treatment. These elements of irradiation treatment fit into the existing APHIS regulatory structure as follows.

First, we propose to establish a new part 305 in title 7 of the Code of Federal Regulations. The new part 305 would be titled "Phytosanitary Treatments." At this time, this part would contain only the irradiation treatment schedules and procedures for treatment for 11 species of fruit flies and one species of seed weevil in fruits and vegetables. In the future, APHIS may add more of its existing and new treatments to part 305 to make it easier for customers to find treatments and to simplify cross-references in our regulations.

In addition to establishing a new part 305 to contain the irradiation treatment schedules, we also propose to make changes to "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) to authorize the importation of articles irradiated in accordance with the new part 305.

New part 305 would also specify requirements for irradiation facilities performing the irradiation. These requirements would include procedures for approving the facility, monitoring facility operations, recordkeeping, dosimetry, and packaging of fruits and vegetables treated at the facility. These requirements in the new part 305 would be similar to existing APHIS regulations concerning irradiation treatments. These include regulations for moving regulated articles interstate from Mediterranean fruit fly quarantined areas (7 CFR 301.78–10), and regulations for moving certain fruits and vegetables interstate from Hawaii (7 CFR 318.13–4f).

Proposed § 305.1 would set forth definitions of the terms *Administrator, APHIS, Dose mapping, Dosimetry,* and *Dosimetry system*. The first two terms would use the same definitions commonly in use in other APHIS regulations. The final three terms would use definitions consistent with accepted nuclear industry use of those terms.

Proposed § 305.2(a) would set forth the common and scientific names of the fruit flies and seed weevil for which irradiation treatment is authorized and the dose in Gray required for each species.

Proposed § 305.2(b) would allow irradiation to be conducted prior to the arrival of articles in the United States, or after arrival, but would limit the location of facilities in the United States to certain northern States where the climate would preclude the successful establishment of the targeted fruit flies, *i.e.*, any State on the mainland United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia. We propose this location restriction as a safeguard against the possibility that, despite container and movement restrictions designed to prevent this possibility, fruit flies could escape from regulated articles in the United States prior to treatment. Paragraph (b) also would provide that fruits and vegetables to be irradiated may not move into or through the States listed above prior to treatment, except that Dallas/Fort Worth, TX, would be an authorized stop for air cargo or a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route. Dallas/Fort Worth would be an exception because the transloading facility at the airport is under USDA supervision, and both the facility procedures and the climate and host material in the immediate area minimize the risk that fruit flies could escape and become established.

This geographic restriction of irradiation facilities to States where fruit flies would not survive the winter may be reevaluated later if evidence from irradiation operations shows the risk of fruit fly escape and spread from the facilities to be insignificant.

Proposed § 305.2(c) and (d) would require that facilities conducting authorized irradiation treatments, and importers moving articles to such facilities in the United States, must do so under a compliance agreement with APHIS.

Proposed § 305.2(e) would require that facilities conducting irradiation treatments be certified by the Administrator of APHIS. Certification would not expire after a fixed time; however, a facility would have to be recertified after an increase or decrease in radioisotope, natural deterioration of the radioisotope, a major modification to equipment that affects the delivered dose, or a change in the owner or manager of the facility. Recertification also may be required in cases where a significant variance in dose delivery has been measured by the dosimetry system.

In order to be certified, a facility would have to be capable of administering the minimum absorbed ionizing radiation doses and be constructed according to specified standards so that treated and untreated fruits and vegetables are kept in separate locations with a physical barrier between them to prevent the transfer of cartons. Treated and untreated fruits and vegetables could be separated with barriers such as a 6-foot wall or chain link fence to minimize interference with facility operations and visibility.

It might seem that an insect proof barrier should separate the areas for untreated and treated articles. Obviously, a chain link barrier would not prevent flies from emerging from fruits on the untreated side, flying to the treated side, and leaving the facility in fruit that has been irradiated. However, we believe an insect proof barrier in the facility is unnecessary because it is extremely unlikely that fruit and vegetable shipments, moved by air freight and irradiated on speedy industrial schedules, would be around long enough prior to treatment for fruit flies to hatch, emerge, and spread to the untreated side of the facility. Larvae and pupae, if any are present in the articles, are not mobile enough to move from untreated cartons to treated cartons. Adult flies are unlikely to be present with commercial fruit, which is usually shipped before it is fully ripe. Therefore, an insect proof barrier separating the facility areas for treated and untreated articles is not needed.

Another safeguard in proposed § 305.2(e) provides that a facility in the United States would only be approved to irradiate imported regulated articles if the Administrator determines that regulated articles would be safely transported to the facility from the port of arrival without diversion to any other destination, and without significant risk that plant pests will escape in transit or while the regulated articles are at the facility. The compliance agreement for a facility located in the United States would require the facility to comply with additional requirements to prevent escape of plant pests from the articles prior to their treatment. One of these requirements would be prompt irradiation of the fruits and vegetables to minimize the risk that fruit flies could emerge from the articles and spread to treated articles and reinfest them.

Proposed § 305.2(f) concerns monitoring of treatments. Treatment in U.S. and foreign facilities would have to be monitored by an APHIS inspector, who would also inspect treatment records and make unannounced inspections of the facility. We propose to require facilities that carry out continual irradiation operations to notify an inspector at least 24 hours before the date operations commence. Facilities that carry out periodic irradiation operations would have to notify an inspector at least 24 hours before scheduled operations.

We believe this level of monitoring is necessary to ensure that irradiation is effectively conducted. Monitoring and verification are extremely important to ensure the integrity of the entire system for irradiating imported fruits and vegetables. This is because there is no practical way for an inspector to determine, based on physical evidence from the commodity itself, that a commodity has been irradiated. Irradiation leaves no residue and usually causes no discernable change to the commodity's color or texture. In addition, an effective irradiation treatment may not kill all larvae, but instead might prevent adult emergence. In cases where an inspector at the port of arrival encounters live larvae of the target pest in a shipment that is documented as irradiated, it is extremely important that the documentation and procedures of the irradiation treatment system allow the inspector to determine with full confidence that the commodity was properly treated according to APHIS requirements.

Proposed § 305.2(g) prescribes requirements for the packaging of irradiated fruits and vegetables.

First, all irradiated fruits and vegetables must be shipped in the same cartons in which they are irradiated, and no irradiated fruits or vegetables may be shipped in the same carton with nonirradiated fruits and vegetables. This is to prevent confusion as to the treatment status of the articles.

In addition, fruits and vegetables irradiated before arrival in the United States would have to be packaged as follows:

The cartons must be insect proof unless the treated fruits and vegetables are stored in an insect proof room after irradiation and are wrapped on their pallets in insect proof polyethylene, shrink wrap, or fine netting before being shipped to the United States. If insect proof cartons are employed, they may have no openings that could allow the entry of fruit flies, and must be sealed with seals that will visually indicate if the cartons have been opened. The cartons may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the articles in the carton.

We also propose the following pallet security requirement for articles irradiated prior to arrival in the United States, regardless of whether insect proof cartons are employed. In order to ensure that no cartons are added to or removed from a pallet load of cartons containing irradiated fruits or vegetables, pallet loads would have to be wrapped in one of the following ways: With polyethylene sheet wrap, with net wrapping, or with strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

We further propose to require that pallet loads of irradiated fruits and vegetables be marked with irradiation lot numbers, packing and irradiation facility identification and locations, and dates of packing and irradiation. If the pallet load is broken down into smaller units before or during the process of entering the United States, the individual cartons would have to be labeled with this information. This information would allow an inspector to identify the irradiation lots and trace them back to the packing and irradiation facilities. While this labeling imposes some burden on the importer, some of the information, *e.g.*, identification of the packer, is already normally required for imported fruits and vegetables, and irradiation facilities routinely label treated articles with the identity of the irradiation facility, the lot number, and the treatment date upon request. This labeling is normally done for each pallet, but other arrangements may be made if the pallet is to be broken into smaller units prior to entry into commerce in the United States. Irradiation facilities have indicated that they can work with customers to minimize the cost and inconvenience of such labeling, *e.g.*, by providing customers with preassigned lot numbers so they can be printed on the cartons along with the packer's name.

We are not proposing any special packaging requirements for articles to be irradiated in facilities in the United States. Untreated fruits and vegetables imported for irradiation in the United States may be packed in ventilated

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cartons that are not insect-proof. The cartons will generally be imported in shipping containers that are not opened until they reach the facility, and importers must sign compliance agreements with APHIS that will ensure against diversion of the shipment to a destination other than treatment, and against possible releases of fruit flies en route. No additional packing requirements appear necessary because the articles are destined for irradiation facilities in States where fruit flies cannot become established and spread.

Proposed § 305.2(h) concerns dosimetry requirements. We propose to require that absorbed dose be measured at the treatment facility using a dosimetry system that can accurately measure a minimum absorbed dose of 150, 210, 225, and 250 Gray, to match the required doses for the relevant species of fruit fly. We would require that the dosimetry system, including the number and placement of dosimeters used at the facility to measure the absorbed dose, be in accordance with standards of the American Society for Testing and Materials (ASTM). (See Designation E 1261–94, "Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing," American Society for Testing and Materials, *Annual Book of ASTM Standards*.)

We considered proposing to require that each carton or other container of fruits or vegetables contain a radiation indicator that is placed in the carton or other container prior to irradiation and remains in place until after the fruits and vegetables have entered the United States. Such indicators, in the form of chemically impregnated stickers that change color after exposure to specified levels of ionizing radiation, are inexpensive and are in common use on cartons of medical supplies irradiated for sterility. This requirement would assist our inspectors by providing them with a tool to determine that a particular carton has been irradiated. Using such an indicator would also be a safeguard against fraudulent representations in paperwork that articles had been irradiated when they had not.

However, we have decided not to propose such a requirement at this time, for the following reasons. There are no indicator stickers currently on the market that change color in the 150–250 Gray range proposed in this document; the medical products indicators mentioned above react in the 1 kiloGray range. Also, such indicators are not accurate dosimeters and may in fact change color when exposed to conditions other than irradiation treatment (*e.g.*, intense sunlight or temperature changes). While further developments may eventually make such indicators useful for monitoring compliance with irradiation requirements for fruits and vegetables, we do not believe they would be useful now.

Proposed § 305.2(i) would require the treatment facility to maintain records of treatment for 1 year after each lot is treated. We would require the records to include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation. All records would have to be available for review by APHIS inspectors during normal business hours. These detailed records are necessary to ensure system integrity for irradiation treatments and for successful enforcement of the regulations and identification of fraudulent documents or other violations. We believe that all of these records are already kept by irradiation facilities, either as normal business practice or as required by the Nuclear Regulatory Commission or State agencies.

Proposed § 305.2(j) and (k) describe how a person would request certification by APHIS of an irradiation facility, and how such certification could be denied or withdrawn by the Administrator.

Proposed § 305.2(l) states that the Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from irradiation treatment. From the literature available, we believe the fruits and vegetables authorized for treatment under this section are tolerant to the minimum absorbed dose required by the treatment. However, the facility operator and shipper would be responsible for determination of tolerance. This paragraph also briefly describes the responsibilities of the Nuclear Regulatory Commission and the Food and Drug Administration in regulating irradiation facilities.

Damage to treated commodities is a significant issue for importers. In fact, one reason there is interest in irradiation treatments is that the treatment is effective against fruit flies in a number of tropical fruits and other articles that do not survive other treatments well; *e.g.*, papaya, rambutan, carambola, litchi. Some research has shown changes to fruit color and texture when they are irradiated at several times the required minimum dosage. This could be a problem because some irradiation facilities may subject the articles to two to three times the required minimum dose—either to ensure that all articles in a treated lot (both those nearest to and farthest from the radiation source) receive at least the required minimum dose, or because it is simply infeasible to expose the articles to the radiation source and then remove them quickly enough to achieve only the minimum required dose.

To illustrate this dose range problem, consider that, in a typical irradiation facility fruits may be treated while they are stacked in cartons on 4-by-4 foot pallets. When these stacks are exposed to the radiation source, an exposure long enough to result in the minimum required dose for the fruit in the center of the stack will result in a significantly higher dose for fruit on the outside of the stack, even if the stacks are rotated during irradiation. Also, some minimum required doses are so small that an entire stack of pallets need be exposed to the radiation source for 1 minute or less, but it is very difficult to move the stack of pallets through the irradiation chamber quickly enough to achieve only the minimum dose.

Therefore, persons using irradiation treatments on their commodities should pay close attention to the studies of effects on commodity quality of radiation doses over the level required by APHIS, and should understand the procedures employed by the irradiation facility and work with the facility to avoid doses that might negatively affect quality.

The following table [3] is presented to give some idea of the relative tolerances to irradiation of different fruits and vegetables.

IRRADIATION DOSES BELOW 1 KILOGRAY.—RELATIVE TOLERANCES OF FRUITS AND VEGETABLES

High	Apple, cherry, date, guava, longan, muskmelon, nectarine, papaya, peach, rambutan, raspberry, strawberry, tamarillo, tomato.

[1] Kader, A.A., 1986. "Potential Applications of Ionizing Radiation in Postharvest Handling of Fresh Fruits and Vegetables." Food Technology, v. 40, no. 6, June 1986.

IRRADIATION DOSES BELOW 1 KILOGRAY.—RELATIVE TOLERANCES OF FRUITS AND VEGETABLES—Continued

Medium	Apricot, banana, cherimoya, fig, grapefruit, kumquat, loquat, litchi, orange, passion fruit, pear, pineapple, plum, tangelo, tangerine.
Low	Avocado, cucumber, grape, green bean, lemon, lime, olive, pepper, sapodilla, soursop, summer squash, leafy vegetables, broccoli, cauliflower.

This table should not be considered authoritative, as many variables affect radiation tolerance. For example, although grapes are considered to have low tolerance, in the past year grapes have been irradiated and moved from the Medfly-quarantined area in Florida, in accordance with § 301.78–10, without apparent effects on the quality of the fruit.

VII. Proposed Changes to the Fruits and Vegetables Import Regulations

As discussed above, in addition to establishing a new part 305 to contain the irradiation treatment requirements, this proposal would also make changes to the regulations to authorize the importation of fruits and vegetables using those treatments.

Regulations for importing fruits and vegetables are contained in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8).

APHIS intends that irradiation, where available, may be substituted for, or used in conjunction with, any other treatment or special growing and handling conditions (systems approach) required by "Subpart—Fruits and Vegetables" or the Plant Protection and Quarantine Treatment Manual to mitigate the risk associated with any of the 11 species of fruit flies and one species of seed weevil named in this proposal. The fruits and vegetables regulations cover a large number of importation scenarios, and the requirements of the regulations depend on the risks presented by the particular article being imported. Fruits or vegetables imported from an area with no significant pests of concern may be imported without any treatment, subject only to inspection upon arrival. At the other extreme, fruits or vegetables imported from an area with several significant pests might have to undergo several different treatments to be eligible for importation.

"Subpart—Fruits and Vegetables" contains a number of administrative instructions in §§ 319.56–2a through 319.56–2ee that specify unique combinations of treatments, procedures, and other tailored requirements to allow the safe importation of various articles. However, in recent years our policy has been to list most articles under one of two sections. Section 319.56–2t lists articles that may be imported from various foreign locations *without any required treatment*, subject to inspection and other activities at the port of arrival. Section 319.56–2x lists articles that may be imported from various foreign locations *only if they have been treated* in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated into the regulations by reference at 7 CFR 300.1.

The PPQ Treatment Manual includes a number of fumigation, cold, and heat treatments to control the 11 species of fruit flies and one species of seed weevil that APHIS has determined can be controlled by irradiation of fruits and vegetables. Therefore, we propose to amend § 319.56–2x to state that the listed articles may be imported only if they have been either: (1) Treated in accordance with the PPQ Treatment Manual, or (2) treated by irradiation in accordance with 7 CFR part 305 if treatment is required by the PPQ Treatment Manual for one or more of the 11 species of fruit flies and one species of seed weevil listed in part 305.

There are also sections of "Subpart—Fruits and Vegetables" other than § 319.56–2x that require that some fruits and vegetables be treated or subjected to special growing and handling conditions (a systems approach) for fruit flies. For example, § 319.56–2h requires fumigation of grapes from Australia for several pests, including two fruit flies. Section 319.56–2k prescribes fumigation of grapes from many countries, and the pests of concern for this section are often fruit flies. Therefore, we also propose to add a new paragraph (k) to § 319.56–2 to allow substitution of irradiation for fruit fly treatments or systems approaches that are required by any section in "Subpart—Fruits and Vegetables." New paragraph (k) would read "Any fruit or vegetable that is required by this subpart or the Plant Protection and Quarantine Treatment Manual to be treated or subjected to other growing or inspection requirements to control one or more of the 11 species of fruit flies and one species of seed weevil listed in § 305.2(a) of this chapter as a condition of entry into the United States may instead be treated by irradiation in accordance with part 305 of this chapter."

For example, § 319.56–2x currently allows importation of grapefruit and oranges from Mexico if they are treated in accordance with the PPQ Treatment Manual, which requires a cold treatment (T107) of these commodities for several species of fruit fly that attack grapefruit and oranges in Mexico. Because these species of fruit fly are among the 11 species listed in proposed part 305, grapefruit and oranges from Mexico could be imported subject to irradiation treatment instead of the cold treatment. Another example where irradiation treatment could be substituted would be kiwis and tangerines from Greece. Currently, the PPQ Treatment Manual requires either a cold treatment (T107(a)) or fumigation plus refrigeration (T108(a)) to control fruit flies in these articles from Greece. An example of a scenario where treatment for fruit flies is required by a different section of "Subpart—Fruits and Vegetables" would be grapes imported from Algeria under § 319.56–2k; if fruit flies are the only pest in that country requiring precooling and fumigation under § 319.56–2k, the grapes would be allowed to enter the United States if they receive an irradiation treatment instead. Another scenario under which the proposed irradiation treatment could be used in lieu of current regulatory requirements would be the current importation of pink or red tomatoes from Spain in accordance with § 319.56–2dd. To prevent the introduction of Mediterranean fruit fly, § 319.56–2dd imposes various requirements including greenhouse growing of the tomatoes, fruit fly trapping surveys in the greenhouse area, and shipping only during winter and early spring months. If this proposal is adopted, shippers of pink and red tomatoes from Spain could choose to irradiate them rather than meet the requirements of § 319.56–2dd.

These are examples of the simplest scenario under the present proposal, *i.e.*, importing articles when the only pests of concern are one or more of the 11 species of fruit flies. However, sometimes other pests that attack the articles will be present in the place of origin. If the regulations or the PPQ Treatment Manual require the article to be treated for these additional pests, the articles must receive any additional required treatment, in addition to irradiation for fruit flies or mango seed weevils.

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The proposed irradiation doses are specific to the identified species of fruit fly or seed weevil but generic for the commodity. Any fruit or vegetable may be treated at the dose prescribed for the fruit fly of concern. The treatment for the fruit fly requiring the highest dose would be required when more than one species of fruit fly is a pest of concern.

VIII. Compliance With Executive Orders, Regulatory Flexibility Act, National Environmental Policy Act, and Paperwork Reduction Act

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

The economic analysis for the changes proposed in this document is set forth below. It provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis regarding the effect of this proposed rule on small entities. Because we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

Under the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and the Plant Quarantine Act (7 U.S.C. 151–165 and 167), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

This proposed rule would permit the treatment of imported fruit and vegetables by irradiation, in place of or in conjunction with existing phytosanitary treatments or other protocols, for 11 species of fruit flies and one species of seed weevil. Irradiation could take place prior to shipment to the United States or after arrival. There would be requirements for certification of the facilities, treatment monitoring, pallet security, and recordkeeping for irradiation at all facilities, and packaging and labeling requirements for articles irradiated before arrival in the United States. Irradiation facilities would have to use an approved dosimetry system during treatment and keep records to verify effective irradiation. For irradiation after arrival, compliance agreements would impose requirements on the transit from ports to irradiation facilities, to ensure all shipments requiring irradiation are delivered to the facility and are not rerouted to sale prior to treatment.

Firms in the United States primarily affected by this proposed rule would be ones conducting the irradiation treatments. They could be variously classified by the Small Business Administration, depending on each one's particular business enterprises. A firm providing irradiation services strictly for the treatment of crops, including imported fruits and vegetables, would be included in the Standard Industry Classification (SIC) category 0723 (Crop Preparation Services, except Cotton Ginning). A firm would qualify as a small entity if it had annual revenues of $5 million or less. If a firm that imports or wholesales fruits and vegetables were to perform the irradiation itself, it would be included in SIC 5148 (Fresh Fruits and Vegetables), since its principal activity would remain importing or wholesaling. In this case, the firm would be designated as a small entity if it had 100 or fewer employees.

Firms expected to benefit most immediately from this proposed rule, however, would not belong in either of these SIC categories. They would be companies that currently provide irradiation services on contract for decontamination or sterilization purposes and could readily adapt to perform phytosanitary irradiation. They are classified within SIC 2099 (Food Preparations, N.E.C.) or SIC 2842 (Specialty Cleaning, Polishing, and Sanitation). The former category includes firms that irradiate food items, such as spices, seeds, culinary herbs, vegetable seasoning, and poultry, to destroy harmful pathogens. Included in SIC 2842 are firms that primarily provide irradiation services for the sterilization of medical devices, pharmaceutical preparations, and raw materials used in cosmetic products.

Four firms with SIC 2099 or 2842 designations have been identified that provide irradiation services on contract. For both categories, employment of 500 or fewer persons qualifies a firm as a small entity. Three of the four firms are considered small. (The fourth one had been a small entity until last year, when it was purchased by another corporation.)

Of these four companies, the one that is not a small entity is the only one engaged at present in phytosanitary irradiation. This firm treats papayas, carambolas, litchis, and other tropical fruits from Hawaii that are moved interstate to the mainland United States. Irradiation of the fruit in accordance with 7 CFR 318.13–4f, performed at facilities in Illinois, removes the risk of Mediterranean, Oriental, and melon fruit fly introduction, while also lengthening the shelf life of the fruit. Treatment of the Hawaiian fruit, however, is a small part of the firm's business; irradiation services are mainly provided for sterilization purposes through a network of facilities in nine States and Canada.

Similarly, the second of the four firms has 12 facilities throughout the United States, 8 of which are used for medical sterilizations and 4 for other purposes. One of the 12 facilities, located in southern California, has been adapted for irradiation of fruits and vegetables for the purpose of lengthening shelf life.

The other two firms that provide irradiation services are single-facility businesses. One, in Maryland, principally conducts medical and pharmaceutical sterilizations, and the other, in Florida, has been irradiating poultry products for the retail market and hospitals since 1993.

In addition to these four firms, companies that use irradiation to sterilize their own products could also benefit from this proposed rule by contracting their irradiation facilities for phytosanitary purposes. Location, throughput capacity, the irradiating processes used, and other characteristics of the facilities would help determine whether the cost of their services would be competitive in comparison to the cost of alternative methods of treatments.

While these firms are technologically capable of taking advantage of treatment opportunities afforded by this proposed rule, any economic effects on them will ultimately depend on the cost effectiveness of irradiation when compared to alternative phytosanitary treatments. A 1994 study sheds light on the benefits and costs of irradiation versus methyl bromide (MB) fumigation for the treatment of imported fruits and vegetables.[4] Economic benefits in this study were estimated in terms of preventing potential economic losses in U.S. fruit and vegetable markets that would result from discontinuation of MB as a fumigant for imports. In fiscal

[4] "Costs and Benefits of Irradiation Versus Methyl Bromide Fumigation for Disinfestation of U.S. Fruit and Vegetable Imports," by Kenneth W. Forsythe, Jr. and Phylo Evangelou, ERS Staff Report No. AGES 9412, March 1994.

year 1996, 14 percent of imported fruits, nuts, and vegetables, valued at about $345 million, were treated with MB, 80 percent at U.S. ports and 20 percent in preclearance programs in foreign locations.[5] Although temperature-modifying treatments are possible alternatives for some fruits and vegetables, MB fumigation is the principal, and sometimes sole, phytosanitary treatment available for many commodities.

The 1994 study focused on short-and medium-term costs and benefits of irradiation treatment in off-season U.S. import markets for grapes, nectarines, okra, peaches, and plums. Grapes comprise over 80 percent, by value, of imported fruits and vegetables fumigated with MB, but they have a low tolerance for irradiation. When grapes were included in the analysis, irradiation treatment costs, in 1998 dollars, ranged from 1.6 to 3.9 cents per pound. Excluding grapes, irradiation cost estimates ranged from 3.4 to 3.9 cents per pound.[6] These unit costs reflect the substantial economies of size that could be captured by irradiation facilities, due to the concentration of imported fruit at certain ports of arrival.

Preshipment and quarantine uses of MB, along with critical agricultural and emergency uses, are exempted from the MB phaseout required by the Clean Air Act.[7] These exemptions essentially segment the MB market into restricted and unrestricted parts. Demand for MB used for exempted purposes is expected to remain unaffected as its use as a soil fumigant is restricted. However, reduced production due to the phaseout may cause the price of MB used for phytosanitary purposes to rise, due to an increase in the unit cost of production. Most MB in the world is manufactured by only three companies, two in the United States and one in Israel. Whether their economies of production can be maintained will depend on the demand for MB for exempted purposes in the United States and other developed countries, and overall demand in developing countries (where final phaseout is scheduled under the Montreal Protocol for 2015).

The demand for irradiation as a treatment alternative will be influenced by product quality and phytotoxicity issues. Product shelf life can be extended by irradiation. Moreover, some fruits and vegetables that are damaged by fumigation or temperature-modifying treatments are tolerant of irradiation. On the other hand, as indicated above for grapes, some fruits and vegetables are considered not very tolerant of irradiation. Assuming consumers accept irradiation as a phytosanitary treatment, its use will be determined not only by the availability of alternative treatments and relative costs but also by its enhancing or diminishing effects on product quality.

When the latter range of unit costs (3.4 to 3.9 cents per pound) are applied to fumigated quantities of 11 varieties of fruits imported in fiscal year 1996 that have a high or medium tolerance of irradiation, costs of irradiation treatment range, in 1998 dollars, between $2.7 million and $3.1 million.[8] Applying MB fumigation costs assumed in the 1994 study, 0.6 to 1.2 cents per pound in 1998 dollars, yields a total treatment cost of $0.5 million to $0.9 million for this same set of imports. It is apparent that the use of irradiation for phytosanitary purposes is probably not a cost-competitive alternative to MB fumigation at present. However, the phaseout of MB as a soil fumigant may result in an increase in its unit cost of production, thereby making the cost of irradiation and other treatment alternatives more competitive.

Adopting this rule would broaden the choices among phytosanitary treatment alternatives for U.S. fruit and vegetable importers. No net societal gains and losses other than small price-related changes are expected from this proposed rule if irradiation is used only to treat fruits and vegetables that would have been imported otherwise using an alternative treatment. Income earned by firms providing the irradiation services would be income forgone by the displaced fumigators or other treatment providers. But if irradiation enables importations that would not otherwise occur, then societal gains (increased imports) could be attributed to its phytosanitary use. Irradiation treatment most likely will both serve as an alternative treatment for a fraction of current imports and stimulate additional imports for certain fruits and vegetables, such as papaya, that need to be treated for fruit flies and have a high tolerance for irradiation.

Allowing irradiation to be used as a phytosanitary treatment for 11 fruit fly species and one seed weevil species would most immediately benefit four firms, three of which are small entities, that currently provide irradiation services on contract for sterilization and decontamination purposes. Participation of these firms, and entry of other firms, in the treatment of imported fruits and vegetables will depend upon the demand that develops for irradiation in relation to alternative treatments.

The major alternative to this proposed rule would be to not allow these irradiation treatments. In that case, importers and irradiation businesses would not accrue the benefits described above, and firms providing existing treatment alternatives would continue operating as at present (with MB fumigation becoming less competitive as its supply is constrained).

This proposed rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading "Paperwork Reduction Act."

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have

[5] "Quarantine Uses of Methyl Bromide by the United States, Fiscal Year 1996" (Draft), APHIS-PPD-PAD, April 1997; available in the APHIS reading room (see **ADDRESSES**).

[6] To adjust irradiation unit costs estimated in the 1994 study from 1987 dollars to 1998 dollars, values are multiplied by a factor of 1.23 (producer price index for capital equipment, series ID: WPSSOP3200, Bureau of Labor Statistics, U.S. Dept. of Labor).

[7] Ten percent of methyl bromide used annually in agriculture in the United States is for commodity and quarantine treatment, compared to 85 percent for soil fumigation and 5 percent for structural fumigation. The 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277) made specific changes to the Clean Air Act, to harmonize the U.S. phaseout of methyl bromide with the Montreal Protocol phaseout schedule for developed countries. This schedule requires U.S. methyl bromide production and importation reductions (from 1991 levels) of 25 percent in 1999, 50 percent in 2001, 70 percent in 2003, and 100 percent in 2005; exempted from this phaseout schedule are critical agricultural, emergency, and preshipment and quarantine uses. With respect to traded commodities, the amendment states that "the [EPA] Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements * * *" (www.epa.gov/ozone/mbr/mbrqa.html).

[8] The 11 fruits are apricot, banana/plantain, grapefruit, orange, papaya, peach/nectarine, pineapple, plum, strawberry, tangerine, and tomato. The combined weight of import shipments of these fruits that were fumigated with MB in fiscal year 1996 was approximately 78.3 million pounds. This represented only 2.43 percent, by weight, of total imports of these 11 fruits (see, *op. cit.*, "Quarantine Uses of Methyl Bromide by the United States, Fiscal Year 1996" [Draft], Table 1). The range of costs is probably underestimated, since it assumes economies of size would be captured in all cases.

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been prepared for this proposed rule. The assessment provides a basis for the conclusion that the irradiation methods proposed in this rule would not present a risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–030–1. Please send a copy of your comments to: (1) Docket No. 98–030–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to authorize irradiation as a treatment for 11 species of fruit flies and one species of seed weevil in imported fruits and vegetables. This proposal would facilitate the importation of fruits and vegetables by giving importers another alternative to currently approved treatments required for articles attacked by these species of fruit flies and mango seed weevils.

Implementing this rule would necessitate the use of seven new paperwork collection activities (in the form of a compliance agreement, 24-hour notification, labeling requirements, dosimetry recordings, requests for dosimetry device approval, recordkeeping requirements, and requests for facility approval).

Labeling requirements represent a substantial part of the paperwork burden. The proposed rule would require that pallet loads of irradiated fruits and vegetables be marked by irradiation facility personnel or by the shipper with treatment lot numbers, packing and treatment facility identification and locations, and dates of packing and treatment. This information would allow an inspector to identify the treatment lots and trace them back to the packing and treatment facilities. The burden of this marking requirement would increase for importers who arrange to have pallet loads broken apart into individual cartons before entry into the United States, because, in such cases, individual cartons would have to bear the required information to allow successful traceback.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Estimate of burden: Public reporting burden for this collection of information is estimated to average .0825 hours per response.

Respondents: Irradiation facilities and shippers.

Estimated annual number of respondents: 125.

Estimated annual number of responses per respondent: 999.

Estimated annual number of responses: 124,885.

Estimated total annual burden on respondents: 10,305.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend title 7, chapter III, of the Code of Federal Regulations as follows:

1. A new part 305 would be added to read as follows:

PART 305—PHYTOSANITARY TREATMENTS

Sec.

305.1 Definitions.
305.2 Irradiation treatment of imported fruits and vegetables for certain fruit flies and mango seed weevils.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 305.1 Definitions.

The following definitions apply for the purposes of this part:

Administrator. The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person delegated to act for the Administrator in matters affecting this part.

APHIS. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

Dose mapping. Measurement of absorbed-dose within a process load using dosimeters placed at specified locations to produce a one-, two-, or three-dimensional distribution of absorbed dose, thus rendering a map of absorbed-dose values.

Dosimeter. A device that, when irradiated, exhibits a quantifiable change in some property of the device that can be related to absorbed dose in a given material using appropriate analytical instrumentation and techniques.

Dosimetry system. A system used for determining absorbed dose, consisting of dosimeters, measurement instruments and their associated reference standards, and procedures for the system's use.

§ 305.2 Irradiation treatment of imported fruits and vegetables for certain fruit flies and mango seed weevils.

(a) Approved doses. Irradiation at the following doses for the specified fruit flies and seed weevils, carried out in accordance with the provisions of this section, is approved as a treatment for all fruits and vegetables:

IRRADIATION FOR FRUIT FLIES AND SEED WEEVILS IN IMPORTED FRUITS AND VEGETABLES

Scientific name	Common name	Dose (gray)
Bactrocera dorsalis	Oriental fruit fly	250
Ceratitis capital	Mediterranean fruit fly	225
Bactrocera cucurbitae	Melon fly	210
Anastrepha fraterculus	South American fruit fly	150
Anastrepha suspensa	Caribbean fruit fly	150
Anastrepha ludens	Mexican fruit fly	150
Anastrepha obliqua	West Indian fruit fly	150
Anastrepha serpentina	Sapote fruit fly	150
Bactrocera tryoni	Queensland fruit fly	150
Bactrocera jarvisi	(No common name)	150
Bactrocera latifrons	Malaysian fruit fly	150
Cryptorhynchus mangiferae	Mango seed weevil	100

(b) *Location of facilities.* Where certified irradiation facilities are available, an approved irradiation treatment may be conducted for any fruit or vegetable either prior to shipment to the United States or in the United States. Irradiation facilities certified under this section may be located in any State on the mainland United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Prior to treatment, the fruits and vegetables to be irradiated may not move into or through any of the States listed in this paragraph, except that movement is allowed through Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route.

(c) *Compliance agreement with importers and facility operators for irradiation in the United States.* If irradiation is conducted in the United States, both the importer and the operator of the irradiation facility must sign compliance agreements with the Administrator. In the facility compliance agreement, the facility operator must agree to comply with any additional requirements found necessary by the Administrator to prevent the escape, prior to irradiation, of any fruit flies that may be associated with the articles to be irradiated. In the importer compliance agreement, the importer must agree to comply with any additional requirements found necessary by the Administrator to ensure the shipment is not diverted to a destination other than treatment and to prevent escape of plant pests from the articles to be irradiated during their transit from the port of first arrival to the irradiation facility in the United States.

(d) *Compliance agreement with irradiation facilities outside the United States.* If irradiation is conducted outside the United States, the operator of the irradiation facility must sign a compliance agreement with the Administrator and the plant protection service of the country in which the facility is located. In this agreement, the facility operator must agree to comply with the requirements of this section, and the plant protection service of the country in which the facility is located must agree to monitor that compliance and to inform the Administrator of any noncompliance.

(e) *Certified facility.* The irradiation treatment facility must be certified by the Administrator. Recertification is required in the event of an increase or decrease in radioisotope, a major modification to equipment that affects the delivered dose, or a change in the owner or managing entity of the facility. Recertification also may be required in cases where a significant variance in dose delivery has been measured by the dosimetry system. In order to be certified, a facility must:

(1) Be capable of administering the minimum absorbed ionizing radiation doses specified in paragraph (a) of this section to the fruits and vegetables; [1]

(2) Be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, except that fruits and vegetables traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons.

(3) If the facility is located in the United States, the facility will only be certified if the Administrator determines that regulated articles will be safely transported to the facility from the port of arrival without significant risk that plant pests will escape in transit or while the regulated articles are at the facility.

(f) *Treatment monitoring.* Treatment must be monitored by an inspector. This monitoring must include inspection of treatment records and unannounced inspections of the facility by an inspector. Facilities that carry out continual irradiation operations must notify an inspector at least 24 hours before the date operations commence.[2] Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.

(g) *Packaging.* Fruits and vegetables that are irradiated in accordance with

[1] The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR part 179.

[2] Inspector means any employee of the Animal and Plant Health Inspection Service, or other person, authorized by the Administrator in accordance with law to enforce the provisions of the regulations of this part. Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

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this section must be packaged in cartons in the following manner:

(1) All irradiated fruits and vegetables must be shipped in the same cartons in which they are irradiated. Irradiated fruits and vegetables may not be packaged for shipment in a carton with nonirradiated fruits and vegetables.

(2) For all fruits and vegetables irradiated prior to arrival in the United States:

(i) The fruits and vegetables to be irradiated must be packaged either:

(A) In insect-proof cartons that have no openings that will allow the entry of fruit flies. The cartons must be sealed with seals that will visually indicate if the cartons have been opened. The cartons may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the articles in the carton; [3] or

(B) In noninsect-proof cartons that are stored immediately after irradiation in a room completely enclosed by walls or screening that completely precludes access by fruit flies. If stored in noninsect-proof cartons in a room that precludes access by fruit flies, prior to leaving the room each pallet of cartons must be completely enclosed in polyethylene, shrink-wrap, or another solid or netting covering that completely precludes access to the cartons by fruit flies.

(ii) To preserve the identity of treated lots, each pallet-load of cartons containing the fruits and vegetables must be wrapped before leaving the irradiation facility in one of the following ways:

(A) With polyethylene shrink wrap;

(B) With net wrapping; or

(C) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(iii) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment. Pallets that remain intact as one unit until entry into the United States may have one such label per pallet. Pallets that are broken apart into smaller units prior to or during entry into the United States must have the required label information on each individual carton.

(h) *Dosimetry systems at the irradiation facility.* (1) Dosimetry mapping must indicate the doses needed to ensure that all the commodity will receive the minimum dose prescribed.

(2) Absorbed dose must be measured using an accurate dosimetry system that ensures that the absorbed dose meets or exceeds the absorbed dose required by paragraph (a) of this section (150, 210, 225, or 250 Gray, depending on the target species of fruit fly).

(3) The utilization of the dosimetry system, including the number and placement of dosimeters used, must be in accordance with American Society for Testing and Materials (ASTM) standards.[4]

(i) *Records.* An irradiation processor must maintain records of each treated lot for 1 year following the treatment date and must make these records available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(j) *Request for certification and inspection of facility.* Persons requesting certification of an irradiation treatment facility must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro Street, Oxford, NC 27565. The initial request must identify the owner, location, and radiation source of the facility, and the applicant must supply additional information about the facility construction, treatment protocols, and operations upon request by APHIS if APHIS requires additional information to evaluate the request. Before the Administrator determines whether an irradiation facility is eligible for certification, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of this section.

(k) *Denial and withdrawal of certification.* (1) The Administrator will withdraw the certification of any irradiation treatment facility upon written request from the irradiation processor.

(2) The Administrator will deny or withdraw certification of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying certification, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend certification pending final determination in the proceeding if he or she determines that suspension is necessary to prevent the spread of any dangerous insect. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(l) *Department not responsible for damage.* This treatment is approved to assure quarantine security against the listed fruit flies. From the literature available, the fruits and vegetables authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or monitored. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

[3] If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro Street, Oxford, NC 27565.

[4] Designation E 1261–94, "Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing," American Society for Testing and Materials, *Annual Book of ASTM Standards.*

PART 319—FOREIGN QUARANTINE NOTICES

2. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

3. In § 319.56–2, a new paragraph (k) would be added to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(k) Any fruit or vegetable that is required by this subpart or the Plant Protection and Quarantine Treatment Manual to be treated or subjected to other growing or inspection requirements to control one or more of the 11 species of fruit flies and one species of seed weevil listed in § 305.2(a) of this chapter as a condition of entry into the United States may instead be treated by irradiation in accordance with part 305 of this chapter.

4. In § 319.56–2x, paragraph (a), the introductory text preceding the table would be revised to read as follows:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) The following fruits and vegetables may be imported into the United States only if they have been treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. Treatment by irradiation in accordance with part 305 of this chapter may be substituted for treatments in the PPQ Treatment Manual for the mango seed weevil *Cryptorhynchus mangiferae* or for one or more of the following 11 species of fruit flies: *Anastrepha ludens, Anastrepha obliqua, Anastrepha serpentina, Anastrepha suspensa, Bactrocera cucurbitae, Bactrocera dorsalis, Bactrocera tryoni, Bactrocera jarvisi, Bactrocera latifrons, and Ceratitis capitata.*

* * * * *

Done in Washington, DC, this 23rd day of May 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–13291 Filed 5–25–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1792

RIN 0572–AB47

Seismic Safety

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend its regulations to update and simplify the requirements of the agency. This revised rule would provide RUS borrowers, grant recipients, Rural Telephone Bank (RTB) borrowers and the public with updated rules for compliance with seismic safety requirements for new building construction using RUS or RTB loan, grant or guaranteed funds or funds provided through lien accommodations or subordinations approved by RUS or RTB. The proposed revision would identify model codes and standards found to provide a required level of seismic safety.

DATES: Written comments must be received by RUS on or before July 25, 2000.

ADDRESSES: Written comments should be addressed to George J. Bagnall, Director, Electric Staff Division, U.S. Department of Agriculture, Rural Utilities Service, Room 1246 South Building, Stop 1569, 14th & Independence Ave., SW., Washington, DC 20250–1569. Telephone 202–720–1900. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Mr. Donald Heald, Structural Engineer, Transmission Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–9102. Fax: (202) 720–7491.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local offices. See the final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034).

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS and RTB loan programs provide borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. Borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

Comments on this notice must be received by July 25, 2000.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, D.C. 20250–1522.

For further information contact Mr. Donald Heald, Structural Engineer, Transmission Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–9102. Fax: (202) 720–7491.

Title: Seismic Safety of New Building Construction.

OMB Control Number: 0572–0099.

Type of Request: Revision of a currently approved collection.

Abstract: The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701

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et seq.) was enacted to reduce risks to life and property through the National Earthquake Hazards Reduction Program (NEHRP). The Federal Emergency Management Agency (FEMA) is designated as the agency with the primary responsibility to plan and coordinate the NEHRP. This program includes the development and implementation of feasible design and construction methods to make structures earthquake resistant. Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, requires that measures to assure seismic safety be imposed on federally assisted new building construction.

The revision of 7 CFR Part 1792, Subpart C, Seismic Safety of Federally Assisted New Building Construction, will reduce the requirements by the borrower or grant recipient needed to comply with this part. This revision will also include RUS water and waste water borrowers previously under the former Famers Home Administration (FmHA) (Pub. L. 103–354, 108 Stat. 3178).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 hours per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 800.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, at (202) 720–0812.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The programs covered by this proposed rule are listed in the Catalog of Federal Domestic Assistance programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees; 10.851, Rural Telephone Loans and Loan Guarantees; 10.852, Rural Telephone Bank Loans; 10.760, Water and Waste Disposal System for Rural Communities; 10.764, Resource Conservation Development Loans, and 10.765, Watershed Protection and Flood Prevention Loans.

This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325. Telephone: (202) 512–1800.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

Background

RUS requires borrowers and grant recipients to meet applicable requirements mandated by Federal statutes and regulations to obtain RUS financing. One such requirement is compliance with building safety provisions of the Earthquake Hazards Reduction Act of 1977, (42 U.S.C. 7701 *et seq.*) as implemented pursuant to Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR, 1990 Comp., pg. 269).

Subpart C of this part codifies the policies and requirements that RUS and RTB borrowers and grant recipients must meet for new building construction when using funds provided or guaranteed by RUS or RTB (or when obtained through a lien accommodation or subordination approved by RUS or RTB).

The Executive Order requires all Federal agencies to ensure that any new building which is leased for federal users or purchased or constructed with federal assistance is designed and constructed in accordance with appropriate seismic design standards. Those standards must be equivalent to or exceed the seismic safety levels in the National Earthquake Hazards Reduction Program (NEHRP) recommended provisions for the development of seismic regulations for new buildings. The Executive Order charges the Interagency Committee on Seismic Safety in Construction (ICSSC) with recommending appropriate and cost-effective seismic design, construction standards and practices.

The ICSSC has identified several model codes and standards that provide an acceptable level of seismic safety. The existing regulation in this subpart would be revised to identify new model codes or standards which are equivalent to the 1994 NEHRP Recommended Provisions for the Development of Seismic Regulations for New Buildings.

List of Subjects in 7 CFR Part 1792

Buildings and facilities, Electric power, Grant programs, Loan programs, Reporting and recordkeeping requirements, Rural area, Seismic safety, Telephone.

For reasons set for in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1792—COMPLIANCE WITH OTHER FEDERAL STATUTES, REGULATIONS, AND EXECUTIVE ORDERS

1. The authority citation for part 1792 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*, and 42 U.S.C. 7701 *et seq.*

Subpart C—Seismic Safety

2. Section 1792.101 is amended by revising paragraph (b) and removing paragraphs (c), (d), & (e), to read as follows:

§ 1792.101 General.

* * * * *

(b) This subpart identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utilities Service (RUS) or the Rural Telephone Bank (RTB) (or through lien accommodations or subordinations approved by RUS or RTB).

3. Section 1792.102 is amended by revising the definitions for "RUS" and "Seismic," removing "REA," and adding the definition of "Model Code" to read as follows:

§ 1792.102 Definitions.

* * * * *

Model Code—A building code developed for the adoption of local or state authorities or to be used as the basis of a local or state building code.

* * * * *

RUS—Rural Utilities Service, and for the purposes of this subpart, shall include the Rural Telephone Bank. For the purposes of RTB borrowers, as used in this subpart, RUS means RTB and Administrator means Governor.

Seismic—Related to or caused by earthquakes.

* * * * *

4. Sections 1792.103 and 1792.104 are revised to read as follows:

§ 1792.103 Seismic design and construction standards for new buildings.

(a) In the design and construction of federally assisted buildings, the borrowers and grant recipients must utilize the seismic provisions of the most recent edition of those standards and practices that are substantially equivalent to or exceed the seismic safety level in the most recent or immediately preceding edition of the NEHRP Recommended Provisions for the Development of Seismic Regulation for New Buildings.

(b) Each of the following model codes or standards has been found to provide a level of seismic safety substantially equivalent to that provided by the use of the 1994 NEHRP Recommended Provisions and appropriate for federally assisted new building construction:

(1) 1997 International Conference of Building Officials (ICBO) Uniform Building Code. Copies are available from ICBO, Austin Regional Office, 9300 Jollyville Road., Suite 101, Austin, Texas 78759–7455.

(2) 1995 American Society of Civil Engineers (ASCE) 7, *Minimum Design Loads for Buildings and Other Structures.* Copies are available from ASCE, 345 East 47th Street, New York, New York 10017–2398.

(c) The NEHRP Recommended Provisions for the Development of Seismic Regulations for New Buildings is available from the Office of Earthquakes and Natural Hazards, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

§ 1792.104 Seismic acknowledgments.

For each applicable building, borrowers and grant recipients must provide RUS a written acknowledgment from a registered architect or engineer responsible for the design stating that seismic provisions pursuant to § 1792.103(b) will be used in the design of the building. This acknowledgement will include the identification and date of the model code or standard that is used for the seismic design of the building project and the seismic factor for the building location.

Dated: May 15, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–13295 Filed 5–25–00; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 940, 950, 955 and 956

[No. 2000–20]

RIN 3069–AA98

Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On May 3, 2000, the Federal Housing Finance Board (Finance Board) published a proposed rule in the **Federal Register** (65 FR 25676 (May 3, 2000)) that would: add a new part 955 to the Finance Board's regulations to authorize the Federal Home Loan Banks (Banks) to hold acquired member assets; amend the Finance Board's recently adopted part 940 to enumerate the types of core mission assets that must be addressed in the Banks' strategic business plans; and make related changes to the Finance Board's regulations governing the Banks' investment and advances authorities.

The Finance Board has received a number of requests for an extension of the June 2, 2000 deadline for written comments on the proposed rule. In order to provide interested parties ample opportunity to participate in the rulemaking process, the Finance Board is extending the comment period for the proposed rule from June 2, 2000 to June 15, 2000.

DATES: The comment period on the proposed rule is extended until June 15, 2000.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director and Chief Economist, (202) 408–2821; Scott L. Smith, Deputy Director, (202) 408–2991; Ellen E. Hancock, Senior Financial Analyst, (202) 408–2906; Christina K. Muradian, Senior Financial Analyst, (202) 408–2584, Office of Policy, Research and Analysis; or Eric M. Raudenbush, Senior Attorney-Advisor, (202) 408–2932; Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

Dated: May 22, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–13254 Filed 5–25–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–00–015]

RIN 2115–AA97

Safety Zone; Atlantic Ocean, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing temporary safety zones for the Virginia Beach Fireworks displays, north of the Virginia Beach Fishing Pier, in the Atlantic Ocean. This action would restrict vessel traffic on the Atlantic Ocean within a 2500-foot radius of a fireworks=laden barge. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

DATES: Comments and related material must reach the Coast Guard on or before June 5, 2000.

ADDRESSES: You may mail comments and related material to USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, VA, or deliver them to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. USCG Marine Safety Office Hampton Roads maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Roddy Corr, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3290.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and

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address, identify the docket number for this rulemaking (CGD05–00–015), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. The comment period for this regulation is 10 (ten) days. This time period is adequate since the events are well publicized in the local maritime community. In addition these events are held in the same area at about the same time each year with no objection. If you would like to know that your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for a meeting by writing to USCG Marine Safety Office Hampton Roads at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The city of Virginia Beach is sponsoring several fireworks events from July 9, 2000 through September 9, 2000. The fireworks will be fired from a barge in approximate position 36° 50.75′ N, 076°58.40′ W, which position is in the vicinity of the Virginia Beach Fishing Pier.

The purpose of these regulations is to promote maritime safety and protect the boating public from the hazards associated with a fireworks display. These regulations will provide a safety buffer around the fireworks-laden barge. The regulations will affect the movement of all vessels operating in the specified areas of the Atlantic Ocean.

Public notifications would be made prior to the event via marine information broadcasts.

Discussion of Proposed Rule

The Coast Guard is proposing to establish temporary safety zones for the Virginia Beach fireworks displays, north of the Virginia Beach Fishing Pier, in the Atlantic Ocean. The safety zones would restrict vessel traffic within a 2500-foot radius of a fireworks-laden barge, in approximate position 36°50.75′ N, 076° 58.40′ W. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

The safety zone would be enforced from 9 p.m. until 11 p.m. on July 9, 2000—rain date July 15, 2000; July 16, 2000—rain date July 22, 2000; July 23, 2000—rain date July 29, 2000; July 30, 2000—rain date August 5, 2000; August 6, 2000—rain date August 12, 2000; August 13, 2000—rain date August 19, 2000; August 20, 2000—rain date August 26, 2000; August 27, 2000; September 2, 2000—rain date September 3, 2000; and September 9, 2000.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposed rule will only affect a limited area for two hours per event, alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid the safety zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Atlantic Ocean off Virginia Beach, Virginia within a 2500-foot radius of a fireworks laden barge located in approximate position 36°50.75′ N, 076°58.40′ W.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule only affects a limited area for two hours per event, alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the safety zones.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Roddy Corr, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3290.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

List of Subjects

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary section 165.T05–015 to read as follows:

§ 165.T05–015 Safety Zone; Atlantic Ocean, Virginia Beach, VA.

(a) *Location*. The following area is a safety zone: All waters of the Atlantic Ocean within a 2500-foot radius of a fireworks laden barge in approximate position 36°50.75′ N, 076°58.40′ W.

(b) *Captain of the Port*. Captain of the Port means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his behalf.

(c) *Regulations*. (1) All persons are required to comply with the general regulations governing safety zones found in section 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first request authorization from the Captain of the Port. The Coast Guard representative enforcing the safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (757) 484–8192.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by marine information broadcast on VHF marine band radio, channel 22 (157.1 MHz).

(d) *Effective Date*. This section will be enforced from 9 p.m. until 11 p.m. on the following dates:

(1) July 9, 2000—rain date July 15, 2000.

(2) July 16, 2000—rain date July 22, 2000.

(3) July 23, 2000—rain date July 29, 2000.

(4) July 30, 2000—rain date August 5, 2000.

(5) August 6, 2000—rain date August 12, 2000.

(6) August 13, 2000—rain date August 19, 2000.

(7) August 20, 2000—rain date August 26, 2000.

(8) August 27, 2000.

(9) September 2, 2000—rain date September 3, 2000.

(10) September 9, 2000.

Dated: May 22, 2000.

J.E. Schrinner,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 00–13442 Filed 5–24–00; 3:14 pm]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–6706–7]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts, contained in the Technical Support Document, is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before June 26, 2000.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XXI, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XXI. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XXI, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XXI, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

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I. Background

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by two local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

II. EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

A. After review of the rules submitted by Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revision applicable to OCS sources for which the Santa Barbara County APCD is designated as the COA: Rule 330 Surface Coating of Metal Parts and Products (Adopted 1/20/00)

B. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA proposing to make the following new rule applicable to OCS sources for which the Ventura County APCD is designated as the COA: Rule 230 Notice to Comply (Adopted 11/09/99)

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 11, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(F) and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to part 55 is proposed to be amended by revising paragraph (b)(6) and (b)(8) under the heading "California" to read as follows:

Appendix A to Part 55 —Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) Local requirements.

* * * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 5/20/99)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Adopted 7/15/99)
Rule 201 Permits Required (Adopted 4/17/97)
Rule 202 Exemptions to Rule 201 (Adopted 4/17/97)
Rule 203 Transfer (Adopted 4/17/97)
Rule 204 Applications (Adopted 4/17/97)
Rule 205 Standards for Granting Applications (Adopted 4/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 4/17/97)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 4/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 7/18/96)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 1/25/94)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 1/20/00)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 4/17/97)
Rule 342 Control of Oxides of Nitrogen (NOx) from Boilers, Steam Generators and Process Heaters) (Adopted 4/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 9/16/99)
Rule 353 Adhesives and Sealants (Adopted 8/19/99)
Rule 359 Flares and Thermal Oxidizers (6/28/94)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 6/15/95)
Rule 505 Breakdown Conditions Sections A..B.1., and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 4/17/97)
Rule 802 Nonattainment Review (Adopted 4/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 4/17/97)
Rule 804 Emission Offsets (Adopted 4/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 4/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 5/20/99)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 4/17/97)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

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(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 11/10/98)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 7/9/96)

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Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 1/13/98)
Rule 26.2 New Source Review—Requirements (Adopted 1/13/98)
Rule 26.6 New Source Review—Calculations (Adopted 1/13/98)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42 Permit Fees (Adopted 6/22/99)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 9/10/96)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/10/98)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/95)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_x (Adopted 4/9/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs)(Adopted 6/13/95)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 10/10/95)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 11/10/98)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)
Rule 230 Notice to Comply (Adopted 11/9/99)

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[FR Doc. 00–13333 Filed 5–25–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 390, 394, 395, and 398

[Docket No. FMCSA–97–2350]

RIN 2126–AA23

Public Hearing on Hours of Service of Drivers; Change in Format

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of change in hearing structure.

SUMMARY: By notice of May 5, 2000 (65 FR 26166), the FMCSA announced the scheduling of a public hearing on May 31 and June 1, 2000, for persons to present comments on the agency's proposed revisions to its hours-of-service regulations (65 FR 25540, May 2, 2000). The announcement said the hearing would be subdivided and the FMCSA would seek comments on specific topics during prescribed time periods.

Because many persons have asked to speak on the general subject, rather than specific areas, it has been determined that all speakers may speak on the general subject of the proposed revisions at any time they are scheduled to testify during the hours of 8:30 a.m. to 5 p.m. each day.

DATES: The hearing will be held on May 31 and June 1, 2000.

ADDRESS: The hearing will be at the DOT Headquarters building, Room 2230, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: *General Information.* To request time to be heard at the Washington hearing and for other general information about the Washington hearing and others scheduled for later throughout the country, contact Mr. Stanley Hamilton, Office of Regulatory Development, (202) 366–0665. *Specific Information.* For information concerning the rulemaking contact Mr. David Miller, Office of Bus and Truck Standards, (202) 366–1790, or Mr. Charles Medalen, Office of the Chief Counsel, Federal Highway Administration, (202) 366–1354. Office hours are from 7:45 a.m. to 4:15 p.m., et, Monday through Friday, except Federal holidays.

Authority: 49 U.S.C. 322, 31502, and 31136; and 49 CFR 1.73.

Issued on: May 22, 2000.

Brian M. McLaughlin,

Director, Office of Policy Plans and Regulations.

[FR Doc. 00–13284 Filed 5–25–00; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000511130–0130–01; I.D. 032900C]

RIN 0648–AN25

Fisheries of the Exclusive Economic Zone Off Alaska; Allocation of Pacific Cod among Vessels Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed Rule; proposed revision to the 2000 harvest specifications for Pacific cod; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 64 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This proposed amendment would also necessitate a revision to the 2000 harvest specifications for Pacific cod in the Bering Sea and Aleutian Islands management area (BSAI). Amendment 64, submitted by the North Pacific Fishery Management Council (Council), would apportion the hook-and-line or pot gear (fixed gear) allocation of total allowable catch (TAC) of Pacific cod in the BSAI among hook-and-line catcher-processor vessels, hook-and-line catcher vessels, and pot gear vessels. This action is necessary to respond to socio-economic needs of the fishing industry that have been identified by the Council and is intended to promote the goals and objectives of the FMP.

DATES: Comments must be received by July 10, 2000.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Hand or courier delivered comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or the Internet. Copies of Amendment 64 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the amendments are available from the North Pacific Fishery Management Council at 605 West 4th Ave. Suite 306, Anchorage, AK 99501, telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) of the BSAI under the FMP, which the Council prepared and NMFS approved in 1982 under the Magnuson-Stevens Fishery Conservation and Management Act, P. L. 94–265, 16 U.S.C. 1801 (Magnuson-Stevens Act).

The Council has submitted Amendment 64 for Secretarial review. NMFS published a Notice of Availability (NOA) of the FMP amendment in the **Federal Register** on April 11, 2000 (65 FR 19354), with comments on the FMP amendment invited through June 12, 2000. Written comments may address the FMP amendment, the proposed rule, or both, but must be received by June 20, 2000 to be considered in the decision to approve or disapprove the FMP amendment.

Background and Need for Action

Beginning in 1997, Amendment 46 to the FMP allocated the TAC for BSAI Pacific cod among vessels using jig gear, trawl gear, and hook-and-line or pot gear. Two percent of the TAC is reserved for jig gear, 51 percent for hook-and-line or pot gear, and 47 percent for trawl gear. The amendment further split the trawl allocation equally between catcher vessels and catcher/processor vessels, but no split was adopted for the 51 percent allocated to hook-and-line or pot vessels.

Since the approval of Amendment 46, increasing competition for Pacific cod among catcher/processor and catcher vessels using pot or hook-and-line gear has given rise to new allocation issues. Increased prices for Pacific cod, reduced crab guideline harvest levels, and shortened or canceled crab seasons due to low resource abundance have resulted in increased harvests of Pacific cod by vessels using pot gear. Fishermen displaced from crab fisheries have expressed ongoing interest in fishing for Pacific cod aggravating the concerns of long-term Pacific cod fishermen about erosion of their gear harvest shares in the cod fishery in favor of new entrants using pot gear who, until very recently, focused harvest activity in the BSAI crab fisheries.

In response to these concerns, the Council initiated an analysis at its April 1999 meeting of the effects of splitting the hook-and-line or pot gear allocation of Pacific cod in the BSAI among hook-and-line catcher/processor vessels, hook-and-line catcher vessels, and all vessels using pot gear. At its June 1999 meeting, the Council reviewed the analysis and drafted the following problem statement to guide further analysis of alternatives for Amendment 64:

> The hook-and-line and pot fisheries for Pacific cod in the Bering Sea/Aleutian Islands are fully utilized. Competition for this resource has increased for a variety of reasons, including increased market value of cod products and a declining [acceptable biological catch and total allowable catch.] Longline and pot fishermen who have made significant long-term investments, have long catch histories, and are significantly dependent on the BSAI cod fisheries need protection from others who have little or limited history and wish to increase their participation in the fishery. This requires prompt action to promote stability in the BSAI fixed gear cod fishery until comprehensive rationalization is completed.

The subsequent analysis reviewed, in addition to the status quo, alternatives for separate Pacific cod allocations for the different hook-and-line and pot gear users that approximate their historical catches over the past 4 years. The options analyzed determined those percentages based on catch histories from (1) 1996 and 1997, (2) 1997 and 1998, (3) 1996 through 1998, and (4) 1995 through 1998. In general, the

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allocations that would result from these options ranged between 80 and 85 percent to hook-and-line vessels and between 15 and 20 percent to pot vessels.

At its October 1999 meeting, the Council adopted Amendment 64 to set Pacific cod directed fishing allowances for the different hook-and-line and pot gear users (sectors) in the following percentages: Hook-and-line catcher/processor vessels, 80 percent; hook-and-line catcher vessels, 0.3 percent; pot gear vessels, 18.3 percent; and hook-and-line or pot catcher vessels less than 60 feet length overall (LOA), 1.4 percent. These percentages represent divisions of the hook-and-line or pot gear TAC after a deduction of estimated incidental catch of Pacific cod in other groundfish hook-and-line or pot gear fisheries.

The proposed amendment also provides that harvests by pot and hook-and-line catcher vessels less than 60 feet LOA would accrue against the 1.4 percent allocation only after pot vessels and hook-and-line catcher vessels harvest the respective 18.3 percent and 0.3 percent allocations. Managing the allocations in this manner would ensure that cod is available to the smaller catcher vessels even after the larger vessels in their gear sector have taken their allocation. Nevertheless, if the pot gear fishery lasts longer than the hook-and-line fishery, then the small hook-and-line catcher vessels could begin (and possibly finish) harvesting the 1.4 percent allocation before catcher vessels under 60 feet using pot gear have an opportunity to harvest any of the 1.4 percent set aside for smaller catcher vessels.

Because a sector of the BSAI Pacific cod fishery may not be able to harvest its entire allocation in a year due to halibut bycatch constraints or, in the case of the jig fishery, insufficient effort in the fishery, the Council also provided direction on how projected unharvested amounts of a gear's directed fishing allowance may be transferred to a different user group. Unharvested amounts (roll-overs) from the jig or trawl gear allocations would be apportioned between catcher-processors using hook-and-line gear and vessels equal to or greater than 60 ft LOA using pot gear according to the actual harvest of roll-overs by these two sectors during the 3-year period from 1996–98. Projections based on information in the analysis for this proposed action indicate that 94.7 percent of the cod would be allocated to the hook-and-line catcher-processor fleet and the remaining 5.3 percent to the pot fleet. In addition, any amounts of Pacific cod annually allocated to catcher vessels using hook-and-line gear or to vessels less than 60 ft (18.3 meters(m)) LOA that are projected to remain unharvested would be rolled over to the hook-and-line catcher-processor fleet in September.

The Council recommended that the Pacific cod directed fishing allowances proposed under Amendment 64 for the different hook-and-line and pot gear sectors would terminate on December 31, 2003. On that date, Pacific cod allocation would revert to the current regime unless the Council adopts and NMFS approves a new FMP amendment to continue the proposed allocations of Pacific cod or implement new allocation percentages after that date. In adopting an expiration date for the proposed amendment, the Council reasoned that 3 years would be sufficient time to evaluate the impact of this action in light of other impending changes for the BSAI fixed gear fishery, such as, proposed Amendment 67 to require Pacific cod and gear endorsements on permits issued under the License Limitation Program (LLP). Whereas this proposed action would establish allocations for different sectors of the fixed gear cod fishery, proposed Amendment 67 would limit the participants to those who meet certain historical criteria.

In adopting Amendment 64, the Council recognized that a separate regulatory amendment would be needed to apportion the 900 mt Pacific halibut prohibited species mortality limit established for nontrawl gear in regulations at § 679.21(e)(2) among catcher vessels and catcher/processor vessels fishing for Pacific cod using hook-and-line gear. Current regulations only authorize a separate Pacific halibut bycatch allowance to the "Pacific cod hook-and-line fishery" defined at § 679.21(e)(4)(ii)(A). Thus, catcher/processor vessels using hook-and-line gear to fish for Pacific cod could attain amounts of halibut bycatch mortality that would result in prohibition of directed fishing for Pacific cod by all vessels using hook-and-line gear, including catcher vessels using this gear type under a separate Pacific cod directed fishing allowance.

To respond to this concern, the Council has requested staff to develop an analysis of regulatory measures that would authorize further allocation of the Pacific halibut mortality limits among vessels using hook-and-line or pot gear. If adopted by the Council in the future, this regulatory amendment would be published as a separate proposed rule for public review and comment.

Incidental Catch Allowance

Pacific cod also are taken incidentally in directed fisheries using hook-and-line or pot gear for other species. To the extent practicable, NMFS credits this incidental harvest against the TAC to ensure that Pacific cod are not overharvested. The proposed rule to implement Amendment 64 would require the Administrator, Alaska Region, NMFS, (Regional Administrator), to annually establish an incidental catch allowance for Pacific cod taken in other directed hook-and-line and pot fisheries for groundfish. The incidental catch allowance would be deducted from the overall hook-and-line or pot gear allocation of the Pacific cod TAC before that allocation is divided among the different hook-and-line and pot gear user groups.

NMFS acknowledges that incidental catch of Pacific cod occurs in non-groundfish fisheries such as the hook-and-line gear fishery for Pacific halibut or crab pot gear fisheries. Sufficient data currently are not collected from these fisheries that would allow NMFS to extrapolate useful estimates of incidental catch for purposes of specifying the annual ICA and deducting these amounts from the Pacific cod TAC allocated to vessels using hook-and-line or pot gear as directed fishing allowances. The total incidental catch amount of Pacific cod in the crab and Pacific halibut fisheries likely exceeds several thousand metric tons (mt) based on (1) anecdotal information on the amount of incidentally caught Pacific cod used as bait in the crab fisheries, (2) the fact that the Pacific halibut fishery during summer months typically occurs in relatively shallow water where Pacific cod are prevalent, and (3) assumptions on amount of gear deployed and incidental catch rates. In the absence of the quantitative data needed to estimate incidental Pacific cod harvests in the halibut and crab fisheries, NMFS intends to estimate the ICA only on the basis of incidental catch estimated for the non-Pacific cod hook-and-line or pot gear groundfish fisheries.

NMFS recognizes the potential biological significance of not accounting for all incidental catch of Pacific cod in non-trawl fisheries and intends to explore with the State of Alaska and the International Pacific Halibut Commission options to collect better information on incidental catch rates of non-target species in the crab and Pacific halibut fisheries. NMFS further anticipates that improved estimates of incidental catch amounts in these fisheries will be available to the Council when it reassesses BSAI Pacific cod allocation issues prior to the proposed expiration date of Amendment 64. Until then, NMFS' stock assessment scientists believe that, while the amounts of Pacific cod taken in the crab and Pacific halibut fisheries could exceed several thousand mt, this level of mortality does not pose significant concerns for overfishing or sustainable resource management of the Pacific cod resource given the conservative management of this species under the FMP. That being said, NMFS firmly believes that steps must be taken to collect the data necessary to obtain better estimates of overall mortality of Pacific cod in the non-groundfish fisheries.

Subsequent to the Council's October 1999 adoption of proposed Amendment 64, several owners of catcher/processor vessels using pot gear to participate in a directed fishery for Pacific cod petitioned the Council to initiate a separate FMP amendment that would authorize separate Pacific cod directed fishing allowances for catcher/processor vessels using pot gear and catcher vessels using pot gear. This petition was based on the assumptions that increased fishing effort for Pacific cod with pot gear is due primarily to catcher vessels using pot gear and that the historical harvest share of cod by catcher/processor vessels using pot gear is threatened. In response to these concerns, the Council requested staff to develop a separate FMP amendment that would authorize a further allocation of Pacific cod between these two sectors. If adopted by the Council in the future, the proposed amendment and its implementing rule would be published in the **Federal Register** for public review and comment.

In December 1999, the Council recommended seasonal allowances for the 51 percent of the Pacific cod TAC allocated to the hook-and-line or pot gear fisheries. The seasonal allowances are authorized under § 679.20(a)(7)(iv) and are based on the criteria set forth at § 679.20(a)(7)(iv)(B). The final 2000 harvest specifications for BSAI groundfish were approved by NMFS and published in the **Federal Register** on February 18, 2000 (65 FR 8282).

If approved by NMFS, the final rule implementing Amendment 64 would revise the final 2000 harvest specifications in concert with the hook-and-line and pot gear allocations proposed under the amendment. The final 2000 harvest specifications set the hook-and-line or pot gear allocation of the 2000 Pacific cod TAC at 91,048 mt. An incidental catch allowance of 500 mt, derived from estimates of incidental catch of Pacific cod in other groundfish fisheries from 1996–1999, would be deducted from the hook-and-line or pot gear allocation of the Pacific cod TAC before the allocation is apportioned to the separate gear sectors. Table 1 lists the proposed revisions to the 2000 allocations and seasonal apportionments of the Pacific cod TAC.

Consistent with § 679.20(a)(7)(iv)(C), any portion of the first seasonal allowance of the catcher/processor hook-and-line gear allocation that is not harvested by the end of the first season would become available on September 1, the beginning of the third season. No seasonal apportionment of the amounts of Pacific cod allocated to catcher vessels or to vessels using pot gear is proposed for 2000.

TABLE 1.—GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD HOOK-AND-LINE AND POT GEAR ALLOCATION

Gear sector	Percent	Share (mt)	Seasonal appointment [1]	
			Date	Amount (mt)
Hook-and-line Catcher-processors	80	72,438	Jan 1–Apr 30	52,000
			May 1–Aug 31	
			Sept 1–Dec 31	20,438
Hook-and-Line Catcher Vessels	0.3	272	Jan 1–Dec 31	
Pot Gear Vessels	18.3	16,570	Jan 1–Dec 31	16,570
Catcher Vessels under 60 feet LOA using Hook-and-line or Pot Gear	1.4	1,268	272. Jan 1–Dec 31	1,268
Sub-total	100	90,548		90,548
Incidental Catch Allowance		500		500
Total hook-and-line and pot gear allocation of Pacific cod TAC		91,048		91,048

[1] Any unused portion of the first seasonal Pacific cod allowance specified for catcher/processors using hook-and-line fishery will be reapportioned to the third seasonal allowance.

Implementation

In the event that NMFS approves this action and implements it mid-season during the 2000 fishing year, any overage of a sector's annual allocation of Pacific cod would be deducted proportionately from the other sectors' allocation remaining for the year.

Classification

At this time, NMFS has not determined that the FMP amendment this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an EA for this FMP amendment that discusses the impact on the environment as a result of this rule. A copy of this EA is available from the Council (see **ADDRESSES**).

The Initial Regulatory Flexibility Analysis (IRFA) prepared for this action indicates that the proposed amendment could negatively affect a number of small entities. For purposes of the Regulatory Flexibility Act (RFA), all catcher vessels fishing for Pacific cod using hook-and-line or pot gear can be considered small businesses, with annual receipts of less than $3 million. Under the current LLP, approximately 330 catcher vessels would be authorized to participate in the Bering Sea Pacific cod hook-and-line or pot gear fishery. Of the 98 catcher-processor vessels potentially authorized under the LLP to fish for Pacific cod, approximately one-third could be considered small entities.

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Five of the ten shore-based plants and floating processors operating within Alaskan state waters and processing most of the Pacific cod harvested by hook-and-line or pot gear catcher vessels would be considered small businesses under RFA, processing less than 2 percent of the total shoreside landings of Pacific cod by catcher vessels in 1998. Other small entities affected by the proposed amendment include the three Alaskan communities that are home to processing plants that process limited amounts of BSAI Pacific cod: King Cove, Egegik, and Kenai.

The proposed amendment would allocate a portion of the Pacific cod resource away from the longline catcher-processor fleet and move it to the catcher vessels delivering to shore-based processors. Because the longline catcher-processor fleet comprises the highest number of large entities of any sector fishing off Alaska, this allocation would tend to favor small entities. By implementing the allocations by gear sector without limiting the number of vessels in any gear sector that may enter the fishery, this action may have the effect of increasing competition among users. However, the Council at its April 2000 meeting took final action to mitigate the effect of this action on competition within gear sectors by recommending for approval by NMFS a proposed amendment to require gear and species endorsements on licenses of those who wish to participate in the fixed gear BSAI Pacific cod fishery.

The magnitude of the proposed amendment's impact cannot be conclusively determined with the data currently available. Most persons operating in the fishery affected by the proposed action are small entities given their expected annual gross revenues of less than $3 million, and revenues could potentially be decreased by more than 5 percent, but that depends on the level of catch that might have been achieved in the absence of an allocation. Also, impacts of this action on potential revenues cannot be isolated from other factors including price fluctuation, amount of effort exerted by latent permits, and stock fluctuation of alternative fisheries such as crab.

This action would not limit the number of vessels moving into the Pacific cod fishery from the crab fishery because of downward trends in the Bering Sea crab stocks, and any increase in participation of crab vessels in the Pacific cod pot gear fishery would increase competition for the 18.3 percent of the fixed gear Pacific cod TAC allocated to pot gear vessels and the 1.4 percent allocated to vessels under 60 ft LOA. As noted here, the Council intends to mitigate this impact with proposed Amendment 67, which would require gear and species endorsements based on historical participation in the fishery.

Nothing in this proposed action would result in any changes in reporting or recordkeeping requirements, or any obvious disproportionment regulatory impacts to small entities relative to large. From one perspective, setting a percentage allocation will keep one sector from increasing its share relative to what it could do under the status quo. From the information in the analysis, and from public testimony before the Council, it appears likely that the pot sector would increase its relative share in the absence of a quota split. From another perspective, adoption of the Council's preferred alternative would serve to increase the current share of the smallest entities. In deliberations on this action, the Council considered alternative allocation options, based on historical percentages of catch by the different gear sectors, that would have had varying degrees of impact on small entities in the fixed gear Pacific cod fishery. For longline catcher processors, the annual average harvests ranged from 80 percent of the fixed gear Pacific cod TAC for the years 1996–97 to 86.5 percent for the years 1997–98. For this gear sector the Council chose the lower end of the range, thus leaving a larger percentage of the TAC remaining for longline catcher vessels, pot vessels, and both longline and pot vessels under 60 ft LOA. The allocation options reviewed for longline catcher vessels ranged from 0 percent in the years 1996–97 to 0.25 percent for the years 1995–98. The Council chose a slightly higher percentage (3.0 percent) than the highest average reviewed in the options. For pot vessels, the options ranged from an average harvest of 13.5 percent for the years 1997–98 to 21 percent for 1996–97. While the higher average would have had less impact on small entities in the pot sector, the Council chose to set the pot allocation at 18.3 percent and provided for small entities that are pot or longline vessels under 60 ft LOA by setting aside for those vessels an allocation that represents a larger percentage of the TAC than vessels under 60 ft LOA have historically harvested.

This analysis did not reveal any existing Federal rules that duplicate, overlap, or conflict with any to the actions proposed in the alternatives.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 19, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.20, paragraph (a)(7)(i)(C) is redesignated as paragraph (a)(7)(i)(D), paragraph (a)(7)(ii)(B) is redesignated as paragraph (a)(7)(ii)(C), redesignated paragraphs (a)(7)(i)(D) and (a)(7)(ii)(C) and paragraphs (a)(7)(iv)(A), (a)(7)(iv)(C) and (b)(1)(v) are revised, paragraph (a)(7)(iii) is removed, and new paragraphs (a)(7)(i)(C) and (a)(7)(ii)(B) are added to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(7) * * *

(i) * * *

(C) *Allocations among vessels using hook-and-line or pot gear (Applicable through December 31, 2003).* (*1*) The Regional Administrator annually will estimate the amount of Pacific cod taken as incidental catch in directed fisheries for groundfish other than Pacific cod by vessels using hook-and-line or pot gear and deduct that amount from the portion of Pacific cod TAC annually allocated to hook-and-line or pot gear under paragraph (a)(7)(i)(A) of this section. The remainder will be further allocated as directed fishing allowances as follows:

(*i*) 80 percent to catcher/processor vessels using hook-and-line gear;

(*ii*) 0.3 percent to catcher vessels using hook-and-line gear;

(*iii*) 18.3 percent to vessels using pot gear; and

(*iv*) 1.4 percent to catcher vessels less than 60 feet LOA that use either hook-and-line or pot gear.

(*2*) Harvests of Pacific cod made by catcher vessels less than 60 feet (18.3 m) LOA using pot gear will not accrue to the 1.4 percent allocation under paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section until vessels using pot gear have harvested the 18.3 percent allocated to all vessels using pot gear under paragraph (a)(7)(i)(C)(*1*)(*iii*) of this section.

(*3*) Harvests of Pacific cod made by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line gear will not accrue to the 1.4 percent allocation under paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section until catcher vessels using hook-and-line gear have harvested the 0.3 percent allocated to all catcher vessels using hook-and-line gear under paragraph (a)(7)(i)(C)(*1*)(*ii*) of this section.

(D) The Regional Administrator may establish separate directed fishing allowances and prohibitions authorized under paragraph (d) of this section for vessels harvesting Pacific cod using trawl gear, jig gear, hook-and-line gear, or pot gear.

(ii) * * *

(A) * * *

(B) *Reallocation among vessels using hook-and-line or pot gear.* If, during a fishing year, the Regional Administrator determines that catcher vessels using hook-and-line gear or vessels less than 60 ft (18.3 m) LOA using hook-and-line or pot gear will not be able to harvest the directed fishing allowance of Pacific cod allocated to those vessels under paragraphs (a)(7)(i)(C)(*1*)(*ii*) or (a)(7)(i)(C)(*1*)(*iv*) of this section, NMFS may reallocate the projected unused amount of Pacific cod as a directed fishing allowance to catcher/processor vessels using hook-and-line gear through notification in the **Federal Register**.

(C) *Reallocation between vessels using trawl or non-trawl gear.* If, during a fishing year, the Regional Administrator determines that vessels using trawl gear, hook-and-line gear, pot gear or jig gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraphs (a)(7)(i)(A), (a)(7)(i)(B) or (a)(7)(i)(C) of this section, NMFS may reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through notification in the **Federal Register**, except as provided below:

(*1*) *Reallocation of TAC specified for jig gear.* On September 15 of each year, the Regional Administrator will reallocate any projected unused amount of Pacific cod in the BSAI allocated to vessels using jig gear only to vessels using hook-and-line or pot gear through notification in the **Federal Register**.

(*2*) *Reallocation of TAC to catcher/processor vessels using hook-and-line gear or vessels using pot gear.* Any unharvested amounts of Pacific cod TAC that are reallocated from vessels using trawl or jig gear to catcher/processor vessels using hook-and-line gear or vessels using pot gear to increase directed allowances established under paragraphs (a)(7)(i)(C)(*1*)(*i*) or (a)(7)(i)(C)(*1*) (*iii*) of this section, will be apportioned so that catcher/processor vessels using hook-and-line gear will receive 95 percent and vessels using pot gear will receive 5 percent of any such reallocation.

(iv) * * *

(A) *Time periods.* NMFS, after consultation with the Council, may divide the directed fishing allowances allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) of this section among the following three periods: January 1 through April 30, May 1 through August 31, and September 1 through December 31.

(B)* * *

(C) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) will be reallocated to the remaining seasons during the current fishing year in a manner determined by NMFS, after consultation with the Council.

* * * * *

(b) * * *

(1) * * *

(v) *Pacific cod* Any amounts of the BSAI nonspecific reserve that are apportioned to Pacific cod as provided by paragraph (b)(1)(ii) of this section must be apportioned among vessels using jig, hook-and-line or pot, and trawl gear in the same proportion specified in paragraph (a)(7)(i) of this section, unless the Regional Administrator determines under paragraph (a)(7)(ii) of this section that vessels using a certain gear type will not be able to harvest the additional amount of Pacific cod. In this case, the nonspecific reserve will be apportioned to vessels using the other gear type(s).

* * * * *

[FR Doc. 00–13188 Filed 5–25–00; 8:45 am]

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Notices

Federal Register
Vol. 65, No. 103
Friday, May 26, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 22, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have partical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of infomration on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR 1910–A Receiving and Processing Applications.

OMB Control Number: 0560–0178.

Summary of Collection: Section 302 (7 U.S.C. 1922) of the Consolidated Farm and Rural Development Act (CONACT) provides that "the Secretary is authorized to make and insure loans under this title to farmers and ranchers * * *" Section 339 (7 U.S.C. 1989) of the CONACT further provides "the Secretary is authorized to make such rules and regulations, prescribe the terms and conditions for making and insuring loans, security instruments and agreements, except as otherwise specified herein, and make such delegations of authority as he deems necessary to carry out this title." The Farm Service Agency (FSA) has issued regulations through the Federal Register process to implement the making and servicing of direct loans in chapter 18 of the Code of Federal Regulations. These regulations establish the information collections necessary for FSA to make and service direct loans. These loans include Operating, Farm Ownership, Soil and Water, Softwood Timber Production, Emergency, Economic Emergency, Economic Opportunity, Recreation, and Rural Housing loans for Farm Service Buildings. FSA will collect information using loan applications.

Need and Use of the Information: FSA will collect information to determine eligibility and financial feasibility on respondent's requests for loans. The information is required to insure that FSA provides assistance to applicants who have reasonable prospects of repaying the government and meet statutory eligibility requirements.

Description of Respondents: Farm; individuals or households; business or other-for-profit; Federal Government.

Number of Respondents: 34,970.

Frequency of Responses: Reporting: Other (Eligibility).

Total Burden Hours: 119,412.

Forest Service

Title: Application for Permit Non-Federal Commercial Use of Roads by Order.

OMB Control Number: 0596–0016.

Summary of Collection The forest Service (FS) transporation system includes approximately 380,000 miles of roads. These roads are grouped into five maintenance levels. Level one includes roads, which are closed and maintained only to protect the environment. Level of maintenance increase to level five, which is maintained for safe passenger car use. The roads usually provide the only access to commercial products including timber and minerals found on both Federal and private lands within and adjacent to National Forests. Annual maintenance not performed becomes a backlog that creates a financial burden for the FS. To remedy the backlog and pay for needed maintenance the FS requires commercial users to apply and pay for a permit to use the FS Road System. Maintenance resulting from commercial use is accomplished through collection of funds or requiring the commercial users to perform the maintenance. The vehicle for this is the Road Use Permit. The authority for the Road Use Permit process comes from 36 CFR 212.5, 36 CFR 212.9 and 36 CFR 261.54 Section 212.9 authorizes the FS to develop a road system with private in holders that is mutually beneficial to both parties. FS will collect information using form FS 7700–40.

Need and Use of the Information: FS will collect the name; address; and telephone number; description of mileage of roads; purpose of use; use schedule; and plans for future use. The information is used by the FS to identify the road maintenance that is the direct result of the applican't traffic, to calculate any applicable collections for recovery of past Federal investments in roads. Without the Road Use Permit the backlog of maintenance would increase and the FS would have great difficulty providing the transportation system necessary to meet our mission.

Description of Respondents: Business or other for-profit; individuals or households; State, Local or Tribal Government; not-for-profit institutions.

Number of Respondents: 2000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours 500.

Farm Service Agency

Title: Lamb Meat Adjustment Assistance Program (LMAAP).

OMB Control Number: 0560–NEW.

Summary of Collection: The Lamb Meat Adjustment Assistance Program (LMAAP) is administered and implemented under the general direction of and supervision of the Farm Service Agency (FSA) through its State and County Committees. The LMAAP is authorized by the Act of August 24, 1935, clause (3) of section 32, and are implemented by regulations at 7 CFR Part 748, which provide for the reestablishment of farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. Recently the surge of low-priced, imported lamb-meat causes the threat of injury to U.S. producers in the sheep and lamb industry. The objective of the program is to make direct payments to producers of sheep and lamb operations to help them weather the current economic crisis, as well as, help improve their production efficiencies and the marketability of lamb meat during the 3 year period from July 21, 1999, through July 31, 2002. FSA will collect information using forms FSA–382 and 383.

Need and Use of the Information: FSA will collect the following information: (1) Sheep and lamb operation name; (2) each related producer's name; (3) ID number and shares; (4) the number of rams purchased for the intended purpose of breeding; (5) the number of eligible sheep enrolled in and eligible sheep improvement program; and/or (6) the type and cost of the facility improvement. The information is needed to verify commodity and producer eligibility and calculate payment amounts. Without the information from the producers, FSA would be unable to administer the program to provide direct payments to the sheep and lamb operations.

Description of Respondents: Farm; Individuals or households; Business or other-for-profit.

Number of Respondents: 60,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 25,000.

Agency is requesting and emergency approval by May 20, 2000.

William McAndrew,

Departmental Clearance Officer.

[FR Doc. 00–13236 Filed 5–25–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB–00–09]

Flue-Cured Tobacco Advisory Committee—Notice of Committee Renewal

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of committee renewal.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has renewed the Flue-Cured Tobacco Advisory Committee for an additional period of 2 years.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, 300 12th Street, S.W., Stop 0280, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567.

SUPPLEMENTARY INFORMATION: The Committee, which reports to the Secretary through the Under Secretary for Marketing and Regulatory Programs, recommends opening dates and selling schedules for the flue-cured marketing area which aid the Secretary in making an equitable apportionment and assignment of tobacco inspectors. The Committee consists of 39 members; 21 producer representatives, 10 warehouse representatives, and 8 buyer representatives, representing all segments of the flue-cured tobacco industry and meets at the call of the Secretary. The Secretary has determined that renewal of this Committee is in the public interest.

To ensure that recommendations of the Committee take into account the needs of diverse groups served by the Department, membership should include, to the extent practicable, persons with demonstrated ability to represent minorities, women, and persons with disabilities.

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App.).

Dated: May 22, 2000.

Paul W. Fiddick,

Assistant Secretary for Administration.

[FR Doc. 00–13239 Filed 5–25–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plantation Lakes Project; Ottawa National Forest, Houghton County, Michigan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA-Forest Service will prepare an Environmental Impact Statement (EIS) for the Plantation Lakes Project to disclose the effects of timber harvest, site preparation for natural and artificial regeneration, planting, road management including: road construction, reconstruction, temporary road construction, obliteration, and motorized vehicle closure; dispersed parking area installation and improvement, trail construction, maintenance of permanent openings for wildlife habitat, and classification of old growth, in the Frost Opportunity Area on the Ontonagon Ranger District, and the Connors, Kenton, Plantation Lakes, and Richard Lake Opportunity Areas on the Kenton Ranger District, located approximately 7 air miles northeast of Kenton, Michigan. The purpose and need for action is to: (1) Promote and maintain processes which would enhance natural species diversity, manage to reduce insect and disease potential below epidemic levels, and decrease fire hazard in the long term while providing a supply of wood products for regional and local needs to help support a stable economic base within the dependent geographical area. (2) Maintain and enhance habitat capable of sustaining long-term populations of a variety of wildlife species. (3) Maintain a road system that allows for management of National Forest lands and provides for public access while meeting other resource needs, and (4) Provide dispersed recreation opportunities to meet public needs.

The DEIS is expected to be filed with the EPA and available for public review by September, 2000.

DATES: Written comments and suggestions should be received on or before June 26, 2000.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Leanne Marten, District Ranger, Ontonagon District, 1209 Rockland Road, Ontonagon, MI 49953.

FOR FURTHER INFORMATION CONTACT: Contact Allen Nicholson, Interdisciplinary Team Leader, Iron

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River Ranger District, Phone: (906) 265–5139.

SUPPLEMENTARY INFORMATION: The project area contains approximately 17,700 acres within the Ottawa National Forest, Houghton County, Michigan. The legal location of the National Forest lands within the project area are: all or portions of Section 4–10, 15–22, 27–30, 33, T48N R36W; Sections 1, 12, 24, 25, T48N R37W; Sections 29–34, T49N R36W; Sections 22, 23, 26, 27, 34–36, T49N R37W, Michigan Meridian.

The Forest Service proposes to harvest approximately 111,000 hundred cubic feet (equivalent to approximately 60 million board feet, MMBF) of timber through a variety of harvest methods on approximately 7,080 acres of forest land. Silviculture systems include approximately 1830 acres of salvage-modified clearcut, 1070 acres of salvage/sanitation harvest, 3,250 acres of selection harvest, 200 acres of shelterwood preparation harvest, and 730 acres of commercial thinning. Connected actions include: approximately 2120 acres of mechanical site preparation for natural and artificial regeneration, and supplemental planting on approximately 140 acres. An estimated 2.5 miles of new system road construction, 8.0 miles of system road reconstruction, and 4.0 miles of temporary road construction would be needed to access timber harvest areas. Temporary roads would be evaluated based on the proposed national transportation policy and would be either obliterated following completion of sale activities or added to the classified road system in the Maintenance Level 1 closed category. The proposal also includes an estimated 3.5 miles of system road decommissioning, permanent closure or obliteration of approximately 16 miles of unclassified roads currently closed, and permanent closure or obliteration of approximately 7.5 miles of unclassified roads currently open. Approximately 0.5 additional miles of Forest Road 1338, currently open, would be managed as closed to highway vehicles. A dispersed parking/camping area would be provided at this new road closure. Approximately 400 feet of new trail and a canoe access at Echo Lake would be constructed, about 100 feet of trail would be resurfaced at Penegor Lake, and improvements made to small parking areas at Penegor and Echo Lakes.

The proposal also includes maintaining approximately 110 acres of permanent openings for wildlife habitat and the classification of approximately 1660 acres of old growth.

The Ottawa Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The proposed projects include activities in management areas (MAs) 1.1,2.1,3.1, and 4.1. This proposal includes 11 openings greater than 40 acres (size range is approximately 50 to 480 acres), to treat high-risk stands of jack pine (Regional Forester approval for exceeding the forty acre regeneration and salvage/sanitation harvest would be required prior to signing the Record of Decision).

Range of Alternatives

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose site-specific mitigation measures, if needed, and their effectiveness.

Preliminary Issues

Tentatively, several preliminary issues of concern have been identified. These issues are briefly described below:

Transportation System: Implementation of the proposed action would permanently close or obliterate roads not needed for the transportation system, and manage an additional segment of road as closed to some types of motorized use. This may affect the public's ability to use traditional access routes.

Vegetation: There are large areas of mature and declining jack pine that are at high risk of loss to insects, disease, or fire. When proposed harvest areas are added to adjacent recently harvested areas (10–15 years ago) several temporary open areas exceeding 40 acres will be created.

Canada Lynx: Effective April 24, 2000, the lynx was listed as a threatened species by the US Fish and Wildlife Service. The lynx will be addressed in the EIS.

Decisions To Be Made

The Ottawa Forest Supervisor will decide the following:

- Whether or not to harvest timber and, if so, identify the selection of, and site-specific location of, appropriate timber management practices (silvicultural prescription, fuels treatment, site preparation, and reforestation), road construction, reconstruction, and temporary road construction necessary to provide access to accomplish treatments, and appropriate mitigation measures.
- Whether or not to permanently close or obliterate roads and restrict motorized access, and if so, where and how.
- Whether or not to maintain permanent openings, and, if so, the location and size of openings to be maintained.
- What facilities, if any, should be constructed to enhance dispersed recreation opportunities.
- What, if any, specific project monitoring requirements would be needed to assure mitigation measures are implemented and effective.

Public Involvement and Scoping: In February 1996, initial scoping was done for the Trophy Barr timber sale, now one of the projects included in the Plantation Lakes analysis. Comments received regarding the Trophy Barr sale project proposal prior to this notice will be included in the documentation for the EIS. The public is encouraged to take part in the process by communicating or visiting with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, as well as other individuals or organizations who may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Identifying alternatives to the proposed action.
- Identifying potential environmental effects of this proposed action and the alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September, 2000. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by March, 2001. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations: The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR fl503.3 in addressing these points.

Responsible Official: Phyllis A. Green, Forest Supervisor, Ottawa National Forest, E6248 U.S. 2, Ironwood, MI 49938, is the Responsible Official. As the Responsible Official she will decide if the proposed project will be implemented. She will document the decision and reasons for the decision in the Record of Decision. I have delegated the responsibility to prepare the EIS to Leanne Marten, District Ranger, Ontonagon Ranger District.

Dated: May 17, 2000.

Phyllis A. Green,

Forest Supervisor, Ottawa National Forest.

[FR Doc. 00–13027 Filed 5–25–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection: comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations for Multi-Family Housing.

DATES: Comments on this notice must be received by July 25, 2000 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Mary Fox, Senior Loan Specialist, Multi-Family Housing Processing Division, RHS, United States Department of Agriculture, Stop 0781, 1400 Independence Ave., SW, Washington, DC 20250–0781, Telephone (202) 720–1624.

SUPPLEMENTARY INFORMATION:

Title: Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations.

OMB Number: 0575–0045.

Expiration Date of Approval: June 30, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) is authorized under Section 514, 516, and 521 of Title V of the Housing Act of 1949, as amended, to make initial and subsequent loans and grants to provide housing and related facilities for domestic farm labor. A loan only can be made to a farmowner, family farm partnership, family farm corporation, or an association of farmers whose farming operations demonstrate a need for farm labor housing and that is engaged in agricultural or aquacultural farming operations and which will own the housing and operate it on a nonprofit basis. A loan can also be made to any limited partnership in which the general partner is a nonprofit entity. A loan and/or grant can be made to public, private nonprofit organizations for domestic farm labor in areas where need exists. In some cases, rental assistance may be provided to eligible tenants.

RHS has the responsibility of assuring the public that funds for Farm Labor Housing projects are financed to build, buy, improve or repair farm labor housing and related facilities. The facilities financed are to have decent, safe and sanitary living conditions and are managed and operated as mandated by Congress. 7 CFR part 1944, subpart D was issued to set forth the policies and procedures and delegation of authority for making initial and subsequent insured loans under Section 514 and grants under Section 516 to provide housing and related facilities for domestic farm labor and to assure that applicable laws and authorities are carried out as intended.

With the provisions of this regulation, RHS will be able to provide the financial assistance and necessary guidance to applicants in the development of their project proposals. It provides the Agency the capacity to meaningfully evaluate the feasibility of the proposed projects. RHS will be able to assure Congress and the general public that all LH projects will be operated for purposes that are intended, and for the benefit of those they are mandated to serve.

The required information is collected on a project-by-project basis and is done so in accordance with the amended Housing Act of 1949, so that RHS can provide guidance and be assured of compliance with terms and conditions of loan, grant, and or subsidy agreements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10.93 hours per response.

Respondents: Farms, Not-for-profit Institutions, and State, Local or Tribal Government.

Estimated Number of Respondents: 95.

Estimated Number of Responses per Respondent: 8.21.

Estimated Total Annual Burden on Respondents: 8,524 hours.

Copies of this information collection can be obtained from Brenda Frost, Regulations and Paperwork Management Branch, Support Services Division, at (202) 692–0037.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including

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whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brenda Frost, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0743, 1400 Independence Ave., SW, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 10, 2000.

Obediah G. Baker, Jr.,

Acting Administrator, Rural Housing Service.

[FR Doc. 00–13237 Filed 5–25–00; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Jackson County Lake Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of Draft Environmental Impact Statement and Notice of Public Meeting.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing a Draft Environmental Impact Statement (EIS) for the Jackson County Lake Project. The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508) and RUS regulations (7 CFR part 1940, Subpart G). RUS invites comments on the Draft EIS.

The purpose of the EIS is to evaluate the potential environmental impacts of and alternatives to the Jackson County Empowerment Zone (EZ) Community, Incorporated and Jackson County Water Association's (JCWA) applications for financial assistance to provide water supply for the residents of Jackson County and parts of surrounding counties. The project, known as the Jackson County Lake Project, proposes to construct a roller-compacted concrete dam to create a reservoir within Jackson County, Kentucky, and to construct a raw water transmission main from the proposed reservoir to the JCWA Treatment Plant. A 300-foot buffer zone surrounding the reservoir horizontally from the normal pool level has been proposed to protect the water quality of the reservoir by restricting development and certain land uses in this area. Also included in the proposal is the construction of a water intake structure and a pump house to pump water out of the reservoir. Proposed recreational development around the reservoir may include a boat ramp, boat dock, public beach, hiking trails, picnic areas, and a primitive campground.

DATES: Written comments on this Draft EIS will be accepted on or before July 10, 2000. A public meeting will be held on June 27, 2000. The public meeting will be held in two sessions, one beginning at 10 a.m. and one beginning at 7 p.m.

ADDRESSES: To send comments or for more information, contact: Mark S. Plank, USDA, Rural Utilities Service, Engineering and Environmental Staff, 1400 Independence Avenue, Mail Stop 1571, Washington DC 20250, telephone (202) 720–1649, fax (202) 720–0820, or email: mplank@rus.usda.gov. Further information can also be obtained from: Thomas G. Fern, State Director, USDA, Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, telephone (606) 224–7300, or fax (606) 224–7340. The public meeting will be held in the gymnasium of Jackson County High School, located on U.S. 421.

A copy of the Draft EIS can be obtained or viewed online at http://www.usda.gov/rus/water/ees/deis-jc.htm. The files are in a portable document format (pdf); in order to review or print the document, users need to obtain a free copy of Acrobat Reader. The Acrobat Reader can be obtained from http://www.adobe.com/prodindex/acrobat/readstep.html.

Copies of the Draft EIS will be available for public review during normal business hours at the following locations:

Jackson County Public Library, Courthouse Square, PO Box 160, McKee, KY 40447, (606) 287–8113

Natural Resources Conservation Service, U.S. Highway 421 South, McKee, KY 40447, (606) 287–8311

Jackson County Extension Service, 263 U.S. Highway 421 South, PO Box 188, McKee, KY 40447, (606) 287–7693

Kentucky Highlands Investment Corporation, 362 Old Whitley Road, London, KY 40741, (606) 864–5175

Jackson County EZ Community, Incorporated, McCammon Ridge Road, PO Box 280, McKee, KY 40447, (606) 287–8395

USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7300.

SUPPLEMENTARY INFORMATION: Pursuant to Subchapter C, Part 1 (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993, Jackson County, Kentucky is located in an area designated as an Empowerment Zone/Enterprise Community (EZ/EC) (see **Federal Register** Vol. 60, No. 24, February 6, 1995). The purpose of the EZ/EC initiative is to empower rural communities and their residents to create opportunities for economic development as part of a Federal-State-local and private sector partnership. The proposed action is an integral component of the EZ/EC initiative as identified in the Kentucky Highland Empowerment Zone's Strategic Plan. The proposed action will improve the area's water supply necessary for promoting economic development in the area.

The Jackson County EZ Community, Inc. and the JCWA have applied for financial assistance for the Jackson County Lake Project from the following: RUS; Appalachian Regional Commission; U.S. Department of Commerce, Economic Development Administration; Department of Housing and Urban Development; Kentucky Highlands Empowerment Zone; and Kentucky Tobacco Settlement money. In accordance with 40 CFR 1501.5, Lead Agencies, the RUS is the lead Agency for the EIS and the U.S. Forest Service is the Cooperating Agency.

A number of alternatives were evaluated in the EIS and were determined to be unreasonable or inefficient due to environmental or economic reasons or due to an insufficient yield to meet the projected water needs of Jackson County. These alternatives included eleven reservoir sites throughout Jackson County, groundwater development, the expansion of existing surface water storage facilities within Jackson County, water conservation, and importing water from existing surface water resources in surrounding counties to the JCWA Treatment Plan.

Three alternative sites for the dam and reservoir were determined to be reasonable for further consideration, and are evaluated in the EIS along with the No Action alternative. these alternative reservoir sites include the War Fork and Steer Fork site, the Sturgeon Creek, 8.5 million gallons per day (mgd) site, and the Sturgeon Creek, 2.5 mgd site.

The War Fork and Steer Fork dam site is located about 0.5 miles southwest of Turkey Foot in eastern Jackson County. The dam would be situated on War Fork, 0.75 miles north of the confluence with Steer Fork. The dam would be about 87 to 107 feet tall, 760 to 790 feet long, and 102 to 122 feet wide, creating a reservoir with an average yield of 2.5 mgd of raw water. At a normal pool elevation of 980 feet above mean sea level (MSL), the surface area of this reservoir would be about 116 acres. At a potential maximum floor elevation of 1,000 feet above MSL, the surface area of the reservoir would be approximately 162 acres. The total acreage for a reservoir at maximum flood level at this site, with a 300-foot buffer extending from normal pool level, would be about 337 acres of land. As much of this land is currently part of the Daniel Boone National Forest, land acquisition at this site would require a land exchange with the U.S. Forest Service. the War Fork and Steer Fork reservoir site has been identified as the Lead Agency's Preferred Alternative.

The Sturgeon Creek, 8.5 mgd dam site is located near the Jackson/Owsley County boundary line in eastern Jackson County. The dam would be situated on Sturgeon Creek, just below the confluence with Blackwater Creek. The dam would be about 84 to 100 feet tall, 825 to 850 feet long, and 99 to 115 feet wide, creating a reservoir with an average yield of 8.5 mgd of raw water. Due to this greater yield, a reservoir at this site might be used as a regional water supply source to serve the needs of neighboring counties in addition to Jackson County. At a normal pool elevation of 990 feel above MSL, the surface area of this reservoir would be about 467 acres. At a potential maximum flood elevation of 1,010 feet above MSL, the surface of the reservoir would be approximately 740 acres. The total acreage for a reservoir at maximum flood level at this site, with a 300-foot buffer extending from normal pool level, would be about 1,119 acres of land. all of this land is currently privately owned. Implementation of the project at this site would require the relocation of residents currently living on the project at this site would require the relocation of residents currently living on the project site and the demolition or relocation of existing structures in this area, including homes, barns, and outbuildings. There would also be connected actions associated with the project at this site, such as plugging water and oil wells in the project area, closing existing septic and storage tanks, and relocating roadways, such as KY 30.

The Sturgeon Creek, 3.5 mgd dam site is located near the Jackson/Owsley County boundary line in eastern Jackson County. The dam would be situated on Sturgeon Creek, about 0.6 miles above the confluence with Blackwater Creek. The dam would be about 64 to 67 feet tall, 500 to 600 feet long, and 104 to 107 feet wide, creating a reservoir with an average yield of 3.5 mgd of raw water. At a normal pool elevation of 980 feet above MSL, the furace area of this reservoir would be about 264 acres. At a potential maximum flood elevation of 1,000 feet above MSL, the surface area of the reservoir would be approximately 440 acres. The total acreage for a reservoir at maximum flood level at this site, with a 300–foot buffer extending from normal pool level, would be about 643 acres of land. All of this land is currently privately owned. Implementation of the project at this site would require the relocation of residents currently living on the project site and the demolition or relocation of existing structures in this area, including homes, barns, and outbuildings. There would also be connected actions associated with the project at this site, such as plugging water and oil wells in the project area, closing existing septic and storage tanks, and relocating roadways, such as KY 30.

Some major potential environmental impacts associated with the implementation of the proposed action that are common to all three dam and reservoir sites include a significant, beneficial increase in recreational opportunities provided by the reservoir, moderately significant changes in property values in the vicinity of and increases in business development induced by the proposed reservoir, moderately significant impacts to downstream aquatic biota and riparian vegetation due to decreased water quality; and significant impacts on the visual quality of the area, both adverse and beneficial.

There are also major potential site-specific environmental impacts associated with the implementation of the project. The project at the War Fork and Steer Fork site would have slightly greater adverse impacts on downstream water quality as a result of construction activities, due to the Wild and Scenic Study River status of the downstream river segment. In addition, there would be a more significant adverse impact on terrestrial plants and wildlife due to permanent elimination of forest habitat at this site. The Federally-endangered India bat (*Myotis sodalis*) is also more likely to utilize this site for foraging than either of the Sturgeon Creek sites, although it is unlikely that the project will have an adverse effect on the local population of these bats.

Major potential environmental impacts are similar at both of the Sturgeon Creek reservoir sites. Implementation of the project at these sites would result in a significant loss of Prime and other important farmland, moderately significant changes to roadway structure due to the necessary relocation of KY 30, and moderately significant permanent changes in land uses within the project area. The project would likely result in significant disruption of community structure and social relations due to necessary residential relocations from either of the project areas. There would also be a more significant adverse impact on human health and safety in the event of a dam failure at either of the Sturgeon Creek sites. In addition, a preliminary cultural resources survey indicated a potentially significant archeological site within the boundaries of both Sturgeon Creek reservoir sites, which would require Phase II testing, and the potential for historic sites and undisturbed, intact cultural deposits to be located there.

With this notice, RUS invites any affected Federal, State, and local Agencies and other interested persons to comment on the Draft EIS. RUS will hold a public meeting on June 27, 2000, in the gymnasium of Jackson County High School, located on U.S. 421. This public meeting will be held in two sessions, one beginning at 10 a.m. and one beginning at 7 p.m. In accordance with 40 CFR Section 1503.1, Inviting Comments, the purpose of the meeting will be to solicit comments from interested parties on the Draft EIS for the Jackson County Lake Project.

Throughout the Jackson County Lake Project EIS, two definitions of the No Action alternative were analyzed. The first definition, identified in the EIS as the No Change alternative, describes a situation in which nothing is done to meet the projected water and recreation needs of Jackson County. The No Change alternative was determined to be unreasonable due to the documented need for water in Jackson County. Therefore, a second definition, identified as the No Action alternative in the EIS, was also analyzed. The No Action alternative assumes that, although a dam and reservoir will not be constructed to meet the needs of Jackson County, other activities will occur to

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increase the current water supply, although in insufficient amounts to meet the projected needs. These activities may include drilling additional water wells throughout Jackson County, constructing water transmission lines from existing resources, such as intermittent streams, within the County to the JCWA Treatment Plant, or water conservation.

The major environmental and human health and safety impacts that would result from implementation of the No Action alternative include: Significant, continued lack of recreation needs within Jackson County and the surrounding region; a moderately significant adverse impact on human health and safety due to an insufficient water supply; a significant impediment to growth of industry, residential devleopment, and employment in Jackson County; an impediment to other development goals of the EZ/EC; and a significant potential to adversely and disproportionately affect minority or low-income groups due to further economic degradation and due to adverse health impacts associated with an insufficient water supply.

Dated: May 22, 2000.

John P. Romano,

Deputy Administrator, Water and Environmental Programs.

[FR Doc. 00–13294 Filed 5–25–00; 8:45 am]

BILLING CODE 3410–15–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 26, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION:

On February 4 and March 31, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 F.R. 5492 and 17255) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Blanket Set, Bed

6545–00–911–1300

Thumbtacks, Maptacks and Pushpins

7510–00–272–6886 (Thumbtacks)
7510–00–272–6887 (Thumbtacks)
7510–00–272–3099 (Maptacks)
7510–00–285–5844 (Maptacks)
7510–00–940–0935 (Pushpins)

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–13316 Filed 5–25–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: June 26, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

PVA Sponge Mop Refill
M.R. 1037
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington

Cover, Mattress
7210–00–140–4235
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina

Nonfat Dry Milk
8910–00–NSH–0001
NPA: Advocacy and Resources Corp. (ARC), Cookeville, Tennessee, Transylvania Vocational Services, Inc., Brevard, North Carolina

Services

Grounds Maintenance

U.S. Army Reserve Centers at the following locations:

Lydia Street Ext., Waterbury, Connecticut
Phelps Road, East Windsor, Connecticut

AMSA 69

26 Seamans Lane, Milford, Connecticut
499 Mile Lane, Middletown, Connecticut

AMSA 72

536 Spring Street, Windsor Locks, Connecticut
200 Wintergreet Avenue, New Haven, Connecticut
180 High Street, Fairfield, Connecticut
South Quaker Lane, West Hartford, Connecticut
NPA: CW Resources, Inc., New Britain, Connecticut

Janitorial/Custodial

Bureau of Land Management, Montana State Office Fire Office Complex for the following locations in Billings, Montana:

The Fire Operations and Air Tanker Base Building, 1299 Rimtop Drive
Billings Zone Fire Cache Building, Airport Industrial Park IP–7, 551 Northview Drive
NPA: Community Options Resource Enterprises, Inc., Billings, Montana

Janitorial/Custodial

Bureau of Land Management, Carlsbad Field Office, 620 East Green Street, Carlsbad, New Mexico

Leon A. Wilson, Jr.

Executive Director.

[FR Doc. 00–13317 Filed 5–25–00; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on Thursday, June 22, 2000, at the Horizonte School, 1234 So. Main Street, Salt Lake City, Utah 84101. The purpose of the meeting is to discuss civil rights issues in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 19, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–13214 Filed 5–25–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Census Bureau.

Title: 2000 Panel of the Survey of Income and Program Participation, Wave 3.

Form Number(s): SIPP/CAPI Automated Instrument.

Agency Approval Number: 0607–0865.

Type of Request: Revision of a currently approved collection.

Burden: 37,650.

Number of Respondents: 26,250.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau conducts the Survey of Income and Program Participation (SIPP) to collect information concerning the distribution of income received directly as money or indirectly as in-kind benefits. SIPP data are used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare and transfer payment programs such as the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Agriculture.

The SIPP is a longitudinal survey, in that households in the panel are interviewed at 4-month intervals or waves over the life of the panel. The duration of a panel is typically 3 to 4 years. The length of the 2000 SIPP Panel is subject to the approval of budget initiatives but is currently scheduled for one year and will include three waves of interviews.

The survey is molded around a central core of labor force and income questions, health insurance questions, and questions concerning government program participation that remain fixed throughout the life of the panel. The core questions are asked in Wave 1 and are updated during subsequent interviews. The core is supplemented with additional questions or topical modules designed to answer specific needs.

This request is for clearance of the topical modules for Wave 3. The core questionnaire and topical modules for Waves 1 and 2 were cleared previously. The topical modules for Wave 3 are: Medical Expenses and Utilization of Health Care (Adults and Children); Work Related Expenses and Child Support Paid; and Assets, Liabilities, and Eligibility. Wave 3 interviews will be conducted from October 2000 through January 2001. Additionally, a reinterview for quality control purposes will be conducted with a small subsample of respondents throughout the life of the panel.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

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Dated: May 23, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–13296 Filed 5–25–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Census Bureau.

Title: Survey of Housing Starts, Sales, and Completions.

Form Number(s): SOC–QI/SF.1, SOC–QI/MF.1.

Agency Approval Number: 0607–0110.

Type of Request: Extension of a currently approved collection.

Burden: 9,395 hours.

Number of Respondents: 26,000.

Avg Hours Per Response: 5 minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension of the currently approved collection for the Survey of Housing Starts, Sales, and Completions, also known as the Survey of Construction (SOC).

Government agencies and private companies use statistics from the SOC to monitor and evaluate the large and dynamic housing construction industry. From the SOC, three principal economic indicators are produced: Housing Starts, New Home Sales, and Housing Completions. In addition, a number of other statistical series are produced, including extensive information on the physical characteristics of new residential buildings, and indexes measuring rates of inflation in the price of new buildings. These statistics are based on a sample of residential buildings in permit-issuing places and a road canvass in a sample of land areas not covered by building permit systems.

We mail survey forms to the respondents to complete. A few days later, field representatives either call or visit the respondents to enter their survey responses into a laptop computer using Computer Assisted Personal Interviewing (CAPI). Approximately 26,000 buildings are selected in the sample each year. The Builder, real estate agent, rental agent, or new home owner is contacted an average of 4.34 times (at monthly intervals) over the course of the building project.

Affected Public: Businesses or other for-profit organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 23, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–13297 Filed 5–25–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet June 13, 2000, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW, Washington DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Update on pending regulatory revisions.
4. Update on BXA policies under review.
5. Discussion of deemed export rule.
6. Discussion of BXA compliance initiatives.
7. Discussion of regulations relating to encryption and high performance computers.

Closed Session

8. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, 14th St. & Constitution Ave., NW, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 12, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: May 22, 2000.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 00–13253 Filed 5–25–00; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Extension of Time Limit for Preliminary Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of a new shipper review of glycine from the People's Republic of China ("China"). This review covers one Chinese producer, Nantong Dongchang Chemical Industry Corp. ("Nantong"), for the period March 1, 1999 through August 31, 1999.

EFFECTIVE DATE: May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak at (202) 482–5811; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA").

Postponement of Preliminary Results

The Department has determined that it is not practicable to issue its preliminary results of the administrative review within the current time limit of June 28, 2000. *See Decision Memorandum from Edward C. Yang, Office Director to Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III,* May 16, 2000. The Department is extending the time limit for completion of the preliminary results until August 28, 2000 in accordance with Section 751(a)(2)(B)(iv) of the Act.

The deadline for the final results of this review will continue to be 90 days after the signature date of the preliminary results.

Dated: May 16, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 00–13321 Filed 5–25–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804]

Certain Preserved Mushrooms From Chile: Preliminary Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary rescission of antidumping duty administrative review.

SUMMARY: In response to a timely request from the petitioners, [1] on January 26, 2000, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from Chile with respect to Nature's Farm Products (Chile) S.A. and Ravine Foods Inc. covering the period August 5, 1998, through November 30, 1999. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 65 FR 42280 (January 26, 2000). [2] The Department of Commerce is now preliminarily rescinding this review as a result of the absence of imports and entries into the United States of subject merchandise during the period of review.

EFFECTIVE DATE: May 26, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Katherine Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR part 351 (1999).

Background

On January 21, 2000, the Department ("the Department") issued the antidumping questionnaire to Nature's Farm Products (Chile) S.A. ("NFP") via its U.S. parent, Nature Farm Products, Inc., and Ravine Foods Inc. ("Ravine"), a Canadian company. On January 26, 2000, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from Chile with respect to NFP and Ravine (65 FR 4228). On February 28, 2000, Ravine advised the Department that the company did not export the subject merchandise to the United States during the period of review ("POR").

To confirm the accuracy of Ravine's claim, the Department performed a customs query on entries of the subject merchandise exported from Chile and Canada. In so doing, the Department examined U.S. Customs import statistics, and found no imports of the subject merchandise by Ravine, NFP, or any other company from Chile to the United States during the period of review ("POR"). We also found no imports of the subject merchandise from Canada. Accordingly, there is no basis for applying facts available in this instance with regard to NFP, which did not respond to our questionnaire. *See* March 14, 2000, memorandum, "U.S. Customs Data on Imports of the Subject Merchandise," from David J. Goldberger to Irene Darzenta Tzafolias. The petitioners did not comment on these findings.

Scope of the Review

The products covered by this review are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this review are the species *Agaricus bisporus* and *Agaricus bitorquis.* "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by

[1] The petitioners are the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkernamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

[2] On December 14, 1999, the Department published a notice of "Opportunity To Request Administrative Review" which inadvertently omitted the antidumping duty order on preserved mushrooms from Chile. Therefore, on December 16, 1999, the Department informed interested parties that they could request an administrative review of the antidumping duty order on certain preserved mushrooms from Chile no later than January 3, 2000.

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cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this review are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this review are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this review is classifiable under subheadings 2003.1000.27, 2003.1000.31, 2003.1000.37, 2003.1000.43, 2003.1000.47, 2003.1000.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States ("HTS"). Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Preliminary Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Since the evidence shows that there were no entries of certain preserved mushrooms made by any exporter or producer from Chile during the POR, we are preliminarily rescinding this review in accordance with 19 CFR 351.213(d)(3). The cash-deposit rate for NFP and "All Other" producers/exporters of the subject merchandise will remain at 148.51 percent, the rate established in the most recent segment of this proceeding (63 FR 56613, October 22, 1998).

This notice is published in accordance with 19 CFR 351.213(d)(4).

Dated: May 19, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–13319 Filed 3–25–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054; A–588–604]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan; Antidumping Duty Administrative Reviews; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the 1998–1999 administrative reviews of the antidumping finding (A–588–054) and duty order (A–588–604) on tapered roller bearings from Japan. These reviews cover 3 manufacturers/exporters of the subject merchandise to the United States and the period October 1, 1998 through September 30, 1999.

EFFECTIVE DATE: May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah Scott at (202) 482–2657 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete these reviews within the normal statutory time limit, the Department is extending the time limits for completion of the preliminary results until October 31, 2000 in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended. See Memorandum from Joseph A. Spetrini to Troy H. Cribb, on file in Room B–099 of the main Commerce building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: May 15, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–13318 Filed 5–25–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–010. *Applicant:* Tulane University, 6823 St. Charles Avenue, New Orleans, LA 70118–5698. *Instrument:* Electron Microscope, Model JEM–2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used for the study of microstructure of metals, metal oxide fibers, ceramics, semiconductors, composite materials, and geological samples. In these studies, the microscope is used to measure particle and crystal sizes and morphologies, crystalline structure and d-spacing of crystallographic planes, chemical composition and distribution, and number and extent of defects. In addition, the instrument will be used to train graduate students so that they will better understand the microscopy analysis of their samples. *Application accepted by Commissioner of Customs:* April 12, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–13320 Filed 5–25–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 000505126–0126–01

RIN 0693–ZA37

Materials Science and Engineering Laboratory, NIST Center for Neutron Research Supplemental Grants Program—Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the National Institute of Standards and Technology Center for Neutron Research (NCNR) is establishing a supplemental program within the Materials Science and Engineering Laboratory (MSEL) Grants Program, offering financial assistance in the field of Neutron Scattering Research and Spectroscopy.

DATES: Proposals for the NCNR Supplemental Grants Program must be received no later than 5:00 p.m. Eastern Standard Time (June 26, 2000). Applications received after the closing time and date will not be accepted, and they will be returned to the sender.

ADDRESSES: Each applicant must submit one signed original and two paper copies of a proposal with a Grant Application (Standard Form 424, Rev. 7/97 series and other required forms) to Denise Sullivan, National Institute of Standards and Technology, NIST Center for Neutron Research, STOP 8560, Gaithersburg, Maryland 20899–8560, Phone (301) 975–5831. Facsimile, electronic mail, and other forms of electronic application submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Sullivan (301) 975–5831.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards—11.609.

Authority: As authorized under 15 U.S.C. 272(b)(7) and (c)(16), the MSEL conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Program Description/Objectives

The primary objective of the supplemental program in Neutron Research is to develop new areas of neutron instrumentation with emphasis on cold neutrons; to explore and develop new areas of neutron scattering science, with emphasis on macromolecular science, condensed matter physics, and chemistry; to assist and train facility users in their research, and to conduct other outreach and educational activities that advance the use of neutrons by U.S. university and industrial scientists.

Eligibility

The NCNR Supplemental Grants Program will be open to colleges and universities in the United States.

Funding Instrument

The funding instrument will be a cooperative agreement, to allow substantial NIST involvement in directing and collaborating on the scope of work.

Funding Availability

Proposals will be considered for research projects with durations up to five years, subject to the availability of funds, satisfactory progress, and continuing relevance to the objectives of the NIST Center for Neutron Research. The anticipated level of funding for the supplemental program in Neutron Research in the MSEL Grants Program is for one ward of up to $2,000,000 per year.

Proposal Review and Evaluation Criteria

Proposals will be reviewed in a two-step process. First, an independent, objective panel of at least three individuals knowledgeable about neutron scattering research and spectroscopy will conduct a technical review of proposals, based on the evaluation criteria. Second, the Center Director will make the final award selection. In making the final award selection, the Center Director will take into consideration the results of the panel's evaluations, including rank, the compatibility of the applicant's proposal with the program objectives of the NCNR, and the Center Director's judgment as to which application, when the slate is taken as a whole, is likely to best further the objectives of the NCNR Supplemental Grants Program, described above in the "Program Description/Objectives" section. If an award is made to an applicant inconsistent with the ranking by technical reviewers, the Center Director shall justify the selection in writing. The final approval of the selected application and award of a cooperative agreement will be made by the NIST Grants Officer based on compliance with program requirements and whether the recommended applicants appear competently managed, responsible, and committed to achieving project objectives. The decision of the Grants Officer is final.

For the NCNR Supplemental Grants Program, the evaluation criteria the technical reviewers will use in evaluating the proposals are a follows:

1. Qualifications and experience of the Principle Investigator in neutron scattering research, as demonstrated by extensive publications and invited lectures in condensed matter physics, chemistry, material science, macromolecular science or ralted fields. (15%)

2. Qualifications and experience of the proposed staff of the university in neutron scattering research or in related scientific or engineering areas that are key to the activities contained in the proposal, as demonstrated by resumes of staff proposed for this program. (25%)

3. Quality of the proposed research and development plan and its potential impact on neutron scattering science, particularly in the areas of macromolecular science, condensed matter physics, and chemistry. (30%)

4. Quality of the plan in the terms of providing research assistance to U.S. neutron researchers using the NCNR facilities and related training, education, and outreach plan. (20%)

5. Quality of the plan for special engagement and outreach to minority or female students, professional scientists, or institutions. (10%)

Award Period

Proposals will be considered for research projects with a duration of up to five years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the NCNR program, and the availability of funds.

Matching Funds

This program does not require the recipient to provide any matching funds.

Application Kit

An application kit, containing all required application forms and certifications is available by contacting Ms. Denise Sullivan, (301) 975-5831. The application kit includes the following:

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SF 424 (Rev 7/97)—APPLICATION FOR FEDERAL ASSISTANCE
SF 424A (Rev 7/97)—BUDGET INFORMATION—Non-Construction Programs
SF 424B (Rev 7/97)—ASSURANCES—Non-Construction Programs
CD 511 (7/91)—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS; DRUG-FREE WORKPLACE REQUIREMENTS AND LOBBYING
CD 512 (7/91)—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS AND LOBBYING
SF–LLL—DISCLOSURE OF LOBBYING ACTIVITIES
CD–346—APPLICANT FOR FUNDING ASSISTANCE

Paperwork Reduction Act

The Standard Form 424 and other Standard Forms in the application kit are subject to the requirements of the Paperwork Reduction Act and have been approved by OMB under Control No. 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Additional Requirements

Primary Application Certifications: All primary applicant institutions must submit a completed form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and the following explanations must be provided:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contacting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

4. *Anti-Lobbying Disclosure.* Any applicant institution that has paid or will pay for lobbying using any funds must submit an SF—LL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

5. *Lower-Tier Certifications.* Recipients shall require applicant/bidder institutions for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF—LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF—LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document.

Name Check Reviews

All for-profit and non-profit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. Form CD–346 must be completed for all personnel with key programmatic or fiduciary responsibilities.

Preaward Activities

Applicants (or their institutions) who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover pre-award costs.

No Obligation for Future Funding

If an application is accepted for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

False Statements

A false statement on an application is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,

2. A negotiated repayment schedule is established and at least one payment is received, or

3. Other arrangements satisfactory to DoC are made.

Indirect Costs

Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the DoC will reimburse the Recipient shall be the lesser of:

(a) the Federal Share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or

(b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

Federal Policies and Procedures

Recipients and subrecipients under each of the above grant programs shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards.

Each of the above grant programs does not directly affect any state or local government.

Applications under these programs are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Executive Order Statement

This funding notice was determined to be "not significant" for purposes of Executive Order 12866.

Dated: May 22, 2000.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 00–13299 Filed 5–25–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Solicitation of Public Comments on Establishing a Review Process for Mandatory Conditions Developed by the Departments of the Interior and Commerce in the Context of Hydropower Licensing

AGENCIES: Office of the Secretary, Interior; National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation of public comments.

SUMMARY: The Department of the Interior and the Department of Commerce (Departments) have committed to establishing a review process for the mandatory conditions and prescriptions the Departments develop as part of the Federal Energy Regulatory Commission's hydropower licensing proceedings under part I of the Federal Power Act. The Departments have convened a joint drafting committee to develop such a process and, with the input of the public and agency field staffs, will be exploring a variety of options in the coming months.

DATES: Comments must be submitted by June 26, 2000.

ADDRESSES: Please submit all comments to Liz Birnbaum, U.S. Department of the Interior, Solicitor's Office, MS–6352, 1849 C Street, NW 20240, or by email: <MARP@ios.doi.gov>.

FOR FURTHER INFORMATION CONTACT: Liz Birnbaum, U.S. Department of the Interior, 202–208–4423, or Stephen Waste, U.S. Department of Commerce, 301–713–2325, extension 182.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Part I of the Federal Power Act, 16 U.S.C. 791a *et seq.*, the Department of the Interior and Department of Commerce possess certain authorities in the process for licensing non-federal hydroelectric generating facilities. Although the final licensing decision lies with the Federal Energy Regulatory Commission (Commission), various bureaus of the Departments provide input to the Commission on a number of issues related to the license application. Among others, the Departments' authorities include the U.S. Fish and Wildlife Service's and National Marine Fisheries Service's authority to prescribe fishways under section 18 of the Federal Power Act, 16 U.S.C. 811, and the Secretary of the Interior's authority with respect to land "reservations" that may contain non-federal hydropower project works, to establish conditions "necessary for the adequate protection and utilization of such reservations" under section 4(e) of the Federal Power Act, 16 U.S.C. 797(e). These reservations may include lands managed principally by the U.S. Fish and Wildlife Service, the National Park Service, the Bureau of Land Management, the Bureau of Reclamation and the Bureau of Indian Affairs.

The Federal Power Act states that both section 18 prescriptions and section 4(e) conditions must be included in any license issued by the Commission. The mandatory nature of these prescriptions and conditions has been upheld by Federal courts, including the Supreme Court. *Escondido Mutual Water Co.* v. *La Jolla Band of Mission Indians*, 466 U.S. 765 (1984); *Bangor Hydroelectric Co.* v. *FERC*, 78 F.3d 659 (D.C. Cir. 1996); *American Rivers* v. *FERC*, 129 F.3d 99 (2d Cir. 1997); *American Rivers* v. *FERC*, 187 F.3d 1007 (9th Cir. 1999). After incorporation into a license, the prescriptions and conditions are subject to judicial review under the appeal procedures of the Federal Power Act, which places exclusive jurisdiction in the Federal courts of appeals (16 U.S.C. 8251(b)).

Currently, the Departments try to work closely with the license applicant in developing mandatory prescriptions and conditions. However, the Departments understand the interest of licensees and others in having a more formal opportunity to provide input on the Departments' mandatory conditions before FERC issues a license. Such a review process mechanism would provide an opportunity for the Departments and interested parties to work together to improve prescriptions and conditions in advance of license issuance. While it is generally thought that this process would only be appropriate in a traditional process licensing, the Departments will also evaluate whether such a mechanism should be available for prescriptions and conditions developed during negotiations under the Commission's alternative licensing procedure, or other settlement negotiations.

Before the Departments can establish a review process, a number of issues must be considered and addressed. The Departments do not wish to institute a review process that causes significant delays in developing prescriptions and conditions, or creates unnecessary procedural burdens on the Commission, licensees, or on to balance the need to obtain timely, meaningful input with their legal obligation to support conditions and prescriptions with substantial evidence in the record. Furthermore, in consideration of increasingly significant resource constraints, the Departments must adopt a procedure that is not too burdensome.

Timing will be a particularly important consideration in establishing a review process. While the Departments often have an opportunity to review and comment on draft hydropower licensing applications before the applications are due, they typically do not see the final license application until it is submitted to the Commission. The Departments therefore have very little time to analyze the application and develop appropriate prescriptions and conditions. In addition, they often must wait to receive additional environmental information before being able to develop section 18 prescriptions or Section 4(e) conditions. Commission rules ask that the Departments submit prescriptions and conditions within 60 days after the Commission determines that the application is complete and ready for environmental review. Where there is sufficient information to support a preliminary prescription or condition, the Departments normally take this time to develop prescriptions and conditions that address the application as written, leaving little time for any kind of review process. Once the prescriptions and conditions have bean submitted, the Commission's regulations provide a narrow 45-day comment period for public comments. Therefore, in developing a review process, the Departments must consider whether to delay their submissions to the Commission in order to accommodate the new process, use the time period already contemplated under the Commission's regulations, or take otherstreps to integrate this new process into the licensing procedure.

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Issues To Be Addressed

Based on the cited considerations, the Departments are seeking public comment on the following questions:

1. Should a review process be adopted and, if so, what kind of process should be established?

2. If so, how could such a process be integrated into the Commission's current licensing procedures in a timely and efficient manner? To meet the constraints of timeliness and resource limitations, are changes needed in the timing or implementation of various steps in the agencies'—including the Commission's—existing regulations or procedures? If not, then when should the review process take place?

3. If, under any review process mechanism, it were not possible to avoid delaying the overall licensing process, would it still be worth establishing such a process?

4. Should the review process for Section 4(e) and Section 18 be the same?

5. Who should be allowed to initiate and/or participate in the review process? Should it be limited to the license applicant? Should it be limited to formal parties (*i.e.*, intervenors) to the Commission's licensing process (note that, depending upon when the review process takes place, there may not yet be intervenors before the Commission)? Should the opportunity be available to anyone with an interest in the project?

6. Should the new process be available for prescriptions and conditions agreed upon pursuant to the Commission's streamlined alternative licensing procedure—a process that already provides considerable opportunity for communication and negotiation among the Departments and other interested parties?

Alex Matthiessen,

Special Assistant to the Deputy Secretary, U.S. Department of the Interior.

Andrew Rosenberg,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

[FR Doc. 00–13265 Filed 5–25–00; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Appendix I, DoD Pilot Mentor Protégé Program Improvements; OMB Number 0704–0412.

Type of Request: Extension.

Number of Respondents: 145.

Responses per Respondent: 1.

Annual Responses: 145.

Average Burden per Response: 3 hours.

Annual Burden Hours: 435 (145 reporting hours and 290 recordkeeping hours).

Needs and Uses: The new information collection required by Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protégé Program, is required by section 811 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). DoD will use the information to assess whether the purposes of the Pilot Mentor-Protégé Program have been attained and to prepare the reports to Congress required by section 811 of Public Law 106–65. DFARS Appendix I requires a protégé firm to report on its progress under a mentor-protégé agreement by concurring with or rebutting its mentor firm's year-end report. The protégé firm also must provide data on its employment, revenues, and participation in Dod contracts. The report is required annually during the protégé firm's program participation term and for two fiscal years after the expiration of the program participation term.

Affected Public: Business or Other For-Profit.

Frequency: Annually.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Lewis W. Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD (Acquisition), Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 22, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–13286 Filed 5–25–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Form Number, and OMB Number: Pentagon Reservation Parking Permit Application; DD Form 1199; OMB Number 0704–0395.

Type of Request: Extension.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Annual Responses: 10,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 833.

Needs and Uses: The information collection requirement is necessary for the administration and management of the Pentagon's parking control program, which is designed to meet the government mandated car pool program. Respondents are Department of Defense and non-DoD personnel who utilize designated parking areas on the Pentagon Reservation. The Pentagon Reservation Parking Permit Application, DD Form 1199, is a machine read form that includes information, such as name, rank or grade, Social Security Number (SSN), and vehicle license plate number, required for the issuance and control of the parking permit. The DD Form 1199 is scanned into a computerized database designed for the administration of the Pentagon's parking control program. Each member of a Pentagon Reservation authorized car pool or individual parking permit holder is required to complete and submit the DD Form 1199 upon initial application and annually thereafter.

Affected Public: Individuals or Households.

Frequency: On Occasion; Annually.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 22, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–13287 Filed 5–25–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Form Number, and OMB Number: Medical Screening of Military Personnel; DD Forms 2807–1, 2807–2; OMB Number 0704–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 850,000.

Responses per Respondent: 1.

Annual Responses: 850,000.

Average Burden per Response: 9.6 minutes.

Annual Burden Hours: 135,833.

Needs and Uses: Title 10 USC 504, 505, 507, 532, 978, 1201, 1202, and 4346, require military applicants to meet medical accession standards for enlistment, induction, and appointment to the Armed Forces. This information collection is the basis for determining medical eligibility of applicants based upon their current and past medical history. The General Accounting Office report, "Military Attrition—DoD Could Save Millions by Better Screening Enlisted Personnel," dated January 1997, instructed the Department of Defense to develop a better method for medically screening military applicants. As a result, the DD Form 2807–1, "Report of Medical History" and the DD Form 2807–2, "Medical Prescreen of Medical History Report," will be the forms used to collect the necessary data needed from the military applicants to elicit a more accurate picture of their well being and medical history. The information obtained on the DD Form 2807–2 will also identify any medical disqualifying condition(s) prior to the application process and meets the Congressional requirements to obtain the applicant's health care provider and insurance provider.

Affected Public Individuals or Households; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 22, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–13288 Filed 5–25–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement; Airfield Repairs, Landing Systems Improvements, and Adjustments to Aircrew Training at Altus Air Force Base, Oklahoma

The United States Air Force intends to prepare an Environmental Impact Statement (EIS) to evaluate potential environmental impacts of the following proposed actions at the 97th Air Mobility Wing, Altus Air Force Base, Oklahoma:

- Repair of the west runway (Runway 17 Right/35 Left) and associated taxiways;
- Installation of an Instrument Landing System (ILS) for the east runway (Runway 17 Left/35 Right) and a Microwave Landing System (MLS) on the assault landing strip;
- Increase C–17 and KC–135 training while phasing out C–141 aircrew training and reducing C–5 training.

Deterioration of airfield pavements over the years has increased the potential for loose material damage to the aircraft that use the west runway and associated taxiways. During the nearly three-year phased runway repair program, some increased use of the east runway would be necessary. During an approximate four-month period, the west runway would be closed and the east runway would be used for all essential aircraft operations.

An instrument approach is a series of predetermined maneuvers for the orderly transfer of an aircraft from the beginning of the initial approach to a landing, or to a point from which a landing may be made visually or a missed approach is executed. Currently, Altus AFB has ILS approaches only to each end of the west runway. ILS equipment transmits information to aircraft to guide the aircraft to the runway. This ILS approach capability would be lost during the repair phase when the west runway would be closed. Thus, installing ILS equipment on the east runway before the west runway is closed for repair would allow continued ILS approach training at Altus AFB. Over the long-term, the increased availability of ILS approaches on both runways, as opposed to only the west runway, would improve aircrew training efficiency at the base. Aircrews currently use simulators for MLS approaches since the base does not have MLS equipment on the airfield. MLS approach capability to the assault landing strip would allow aircrews to perform MLS approaches in the C–17 aircraft. This equipment would also complement simulator training.

As C–141 aircraft are phased out of the Air Force inventory, the Air Force's need for C–17 and KC–135 aircrew training will increase and need for C–5 aircrew training will decrease from levels previously forecast and environmentally assessed. The net effect will be an increased need for flying training at Altus AFB. Altus AFB aircrews would continue using Clinton-Sherman Industrial Airpark, Burns Flat, Oklahoma, for practice approaches, takeoffs, landings, and closed patterns.

In addition to the Proposed Action, the EIS will evaluate the potential environmental impacts of alternatives. One alternative is identical to the Proposed Action except that C–5 aircraft operations at the base would be reduced during the period when the west runway is closed. A second alternative is identical to the Proposed Action except that KC–135 aircraft operations at the base would be reduced during the period when the west runway is closed. These two alternatives would result in increased operations at Clinton-Sherman Industrial Airpark during the period of runway repair. The flying training adjustments identified for the

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Proposed Action would occur under a third alternative; however, the runway repair and landing systems installations would not occur. A fourth alternative would be the same as the Proposed Action except that the C–141 aircraft would not be phased out. Therefore, this alternative would include C–141 aircraft operations. The EIS will also evaluate the No Action alternative.

The EIS is being prepared in compliance with the National Environmental Policy Act. The Air Force invites government agency representatives and members of the community to hear a presentation on the proposal and to identify environmental issues to be analyzed in the EIS that will be used in the decision-making process.

A public scoping meeting on the proposal will be held Tuesday, June 13, 2000. An Open House will be held at 6:30 p.m. The meeting begins at 7:30 p.m. in Herschel H. Crow Auditorium, Western Oklahoma State College, 2801 N. Main, Altus, Oklahoma.

Comments on this proposed action may be sent (postmarked by June 30, 2000) to Linda C. Stokes, 97 AMW/PA, 100 Inez Blvd., Suite 2, Altus AFB, OK 73523–5047. Ms. Stokes can be reached at (580) 481–7229 or by facsimile at (580) 481–5966.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–13305 Filed 5–25–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.295A]

Office of Educational Research and Improvement (OERI); Ready-To-Learn (RTL) Television Program

Notice of selection criteria and extension of deadline for transmittal of applications for a new award for fiscal year (FY) 2000.

SUMMARY: On May 3, 2000, we published in the **Federal Register** (65 FR 25815–25817) a notice inviting applications for a new award for FY 2000 for the RTL Television Program. This notice explains the Selection Criteria that the Secretary will use to evaluate your application.

Note: This notice also extends the deadline for transmittal of applications as follows:

Deadline for Transmittal of Applications: June 26, 2000.

Selection Criteria: The Secretary uses the following selection criteria in 34 CFR 700.30 to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *National significance* (30 points). The Secretary considers the national significance of the proposed project. In determining the national significance of the proposed project, the Secretary considers the following factors:

(1) The importance of the problem or issue to be addressed.

(2) The nature of the products (such as information, materials, processes, or techniques) likely to result from the project and the potential for their effective use in a variety of other settings.

(3) The extent and quality of plans for disseminating results in ways that will allow others to use the information.

(b) *Quality of the project design* (30 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the research design includes a thorough, high-quality review of the relevant literature, a high-quality plan for research activities, and the use of appropriate theoretical and methodological tools, including those of a variety of disciplines, where appropriate.

(2) The quality of the plan for evaluating the functioning and impact of the project, including the objectivity of the evaluation and the extent to which the methods of evaluation are appropriate to the goals, objectives, and outcomes of the project.

(3) The quality of the demonstration design and procedures for documenting project activities and results.

(4) The likelihood that the design of the project will successfully address the intended, demonstrated educational need or needs.

(5) How well and innovatively the project addresses statutory purposes, requirements, and any priority or priorities announced for the program.

(c) *Quality and potential contributions of personnel* (10 points). The Secretary considers the quality and potential contributions of personnel for the proposed project. In determining the quality and potential contributions of personnel for the proposed project, the Secretary considers the following factors:

(1) The qualifications, including training and experience, of the project director or principal investigator.

(2) The qualifications, including training and experience, of key project personnel.

(3) The qualifications, including training and experience, of proposed consultants or subcontractors.

(d) *Adequacy of resources* (10 points). The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The adequacy of support from the lead applicant organization.

(2) The relevance and commitment of each partner in the project to the implementation and success of the project.

(3) Whether the budget is adequate to support the project.

(e) *Quality of the management plan* (20 points). The Secretary considers the quality of the management plan of the proposed project. In determining the quality of the management plan of the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the project, including the specification of staff responsibility, timelines, and benchmarks for accomplishing project tasks.

(2) The adequacy of plans for ensuring high-quality products and services.

(3) The adequacy of plans for ensuring continuous improvement in the operation of the project.

(4) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the project, including those of parents and teachers, where appropriate.

FOR FURTHER INFORMATION CONTACT: Joe Caliguro, U.S. Department of Education, 555 New Jersey Avenue, NW., room 604–I, Washington, DC 20202–5520. Telephone: (202) 219–1596. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in the previous paragraph.

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Program Authority: 20 U.S.C. 6921–6928.

Dated: May 23, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–13302 Filed 5–25–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration; Rescheduling of Scoping Meeting for the Proposed Relocation of the Los Alamos National Laboratory Technical Area 18 Missions

AGENCY: Department of Energy, National Nuclear Security Administration.

ACTION: Rescheduling of scoping meeting.

SUMMARY: On May 2, 2000, the Department of Energy (DOE) announced in the **Federal Register**, 65 FR 25472), that it would hold scoping meetings for the proposal to relocate missions at Technical Area 18 (TA–18). Due to the fire in the Los Alamos, New Mexico area, DOE announced in the **Federal Register** that the Los Alamos scoping meeting scheduled for May 17, 2000 was postponed (65 FR 31536). DOE has now rescheduled the Los Alamos scoping meeting for May 30th, 7–10 p.m. at the Northern New Mexico Community College, 921 Paseo de Onate, Espanola, New Mexico 87532. DOE regrets any inconvenience for this postponement. DOE is also announcing that the scoping period, originally scheduled to end on June 1, 2000, has been extended until June 15, 2000. Any questions associated with the TA–18 Project can be asked by calling Mr. Jay Rose at 1–800–832–0885, ext. 65484.

Issued in Washington, D.C., this 22nd day of May 2000.

Henry Garson,

NEPA Compliance Officer, Office of Defense Programs, Department of Energy.

[FR Doc. 00–13262 Filed 5–25–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, June 1, 2000: 6:30 p.m.–8:30 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda: 6:30 p.m.
Call to order
Project briefing
SSAB discussion
Public discussion
8:30 p.m.
Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days in advance of the meeting because during their regular monthly meeting on May 18, 2000, the SSAB, Paducah, determined that an additional review of the Drum Mountain Project was important for the final assessment of environmental monitoring consideration prior to operation to take place in early June. Consequently, a special meeting of the Board was requested by the Board. Public notice of this special SSAB, Paduach, meeting was published in the local newspaper during the weekend edition of May 20–21, 2000.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on May 22, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–13263 Filed 5–25–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE)

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, June 15, 2000: 5:30 p.m.—8:30 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m. Informal Discussion
6:00 p.m. Call to Order
6:10 p.m. Approve Minutes
6:20 p.m. Presentations/Board Response/Public Comments

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7:20 p.m. Sub Committee Reports/ Board Response/Public Comment
8:15 p.m. Administrative Issues
8:30 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday—Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on May 22, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–13264 Filed 5–25–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Petroleum Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Petroleum Council. Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, June 20, 2000, 9 AM.

ADDRESSES: The St. Regis Hotel, Crystal Ballroom, 923 16th & K Streets, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/ 586–3867.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda:

—Call to order and introductory remarks by Archie W. Dunham, Chair of the NPC.
—Remarks by the Honorable Bill Richardson, Secretary of Energy (invited).
—Consideration of the proposed final report of the NPC Committee on Refining.
—Progress Report of the NPC Committee on Critical Infrastructure Protection.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9 AM and 4 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on May 23, 2000.

Rachel M. Samuel,

Deputy Committee Advisory Management Officer.

[FR Doc. 00–13261 Filed 5–25–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–2251–001, ER97–705–012, ER98–2491–007 and ER99–2251–001]

Consolidated Edison Company of New York, Inc., Consolidated Edison Solutions, Inc., Consolidated Edison Energy, Inc. and Orange and Rockland Utilities, Inc.; Notice of Filing

May 22, 2000.

Take notice that on May 5, 2000, Consolidated Edison Company of New York, Inc. (Con Edison), on behalf of itself and its affiliates Consolidated Edison Solutions, Inc., Consolidated Edison Energy, Inc., and Orange and Rockland Utilities, Inc. submitted an updated market power analysis.

Con Edison states that a copy of the filing was served on the New York Public Service Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 1, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13228 Filed 5–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG00–8–000]

Egan Hum Partners, L.P.; Notice of Filing

May 22, 2000.

Take notice that on April 18, 2000, Egan Hum Partners, L.P. made a standards of conduct filing under Part 161 of the Commission's regulations, 18 CFR 161, and Order Nos. 497 *et seq.*,[1] Order Nos. 566 *et seq.*,[2] and Order No. 599.[3]

Egan Hum states that it has served copies of this filing on its customers and on the regulatory agency of the state of Louisiana.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 6, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/ online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13227 Filed 5–25–00; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994)

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–287–000]

Great Lakes Gas Transmission Limited Partnership and Ocean Energy Resources, Inc.; Notice of Petition for Declaratory Order

May 22, 2000.

Take notice that on May 18, 2000, Great Lakes Gas Transmission Limited Partnership (Great Lakes) and Ocean Energy Resources, Inc. (Ocean) (jointly the parties) pursuant to Rule 207 of the Rules of Practice and Procedure, 18 CFR 385.207, of the Federal Energy Regulatory Commission, tendered for filing a Request for Declaratory order concerning application of Great Lakes' right of First Refusal procedures.

The parties jointly request that the Commission declare whether the "primary term" of the 6–19–98 FT254 shall be determined by reference to the contract date stated in Section 1 and the effective date stated in Section 7, or by reference to the term of service stated in Section 6.

Great Lakes and Ocean ask the Commission to identify the "primary terms" of Service Agreement FT254, for purposes of determining whether Section 16(a) or 16(b) of the Right of First Refusal procedures of Great Lakes' FERC Gas Tariff, Second Revised Volume No. 1, should apply. The parties respectfully request the Commission to issue a final Declaratory Order prior to the July 31, 2000 closing date of the Open Season for the 6–19–98 FTS254 capacity now posted on Great Lakes' Electronic Bulletin Board, so that neither Ocean nor any bidder may be harmed by the outcome of these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 19, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/ rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 00–13229 Filed 5–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–79–000]

Mid-Tex G&T Electric Cooperative, Inc., et al., Complainants. v. West Texas Utilities Company, Respondent; Notice of Complaint

May 22, 2000.

Take notice that on May 19, 2000, Mid-Tex G&T Electric Cooperative, Inc. ("Mid-Tex") and its member cooperatives filed a Complaint and Request for Refund of Fuel Adjustment Clause Charges against West Texas Utilities Company ("WTU"). Mid-Tex requests that the Commission issue an order finding that (A) the inclusion of emergency or replacement power costs in fuel cost adjustments violates the terms of the TWU wholesale rate schedules applicable to the Complainants and the provisions of the Commission's fuel clause regulations, (B) Directing WTU to (i) recalculate the fuel factor for any month where emergency or replacement power costs were included in the fuel adjustment calculation and (ii) refund to the Complainants, with interest, all fuel clause overcharges; and (C) Ordering WTU to cease and desist from including emergency or replacement power costs in its fuel clause calculations in the future and to comply with the requirements of its wholesale rates schedules and the Commission's fuel clause regulations.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before June 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the

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Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before June 8, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13230 Filed 5–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–92–000]

Nevada Sun-Peak Limited Partnership and Sun-Peak Power, LLC; Notice of Filing

May 22, 2000.

Take notice that on May 17, 2000, Nevada Sun-Peak Limited Partnership and Sun-Peak Power, LLC (Applicants) filed with the Federal Energy Regulatory Commission pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, and Part 33 of the Commission's regulations, a joint Application requesting that the Commission approve the transaction by which Sun-Peak Power, LLC will acquire general and limited partnership interests in Nevada Sun-Peak Limited Partnership, and a request for expedited consideration. Pursuant to 18 CFR 388.112, Applicants request confidential treatment of Exhibit H to the Application.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13222 Filed 5–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF87–407–005]

Pedricktown Cogeneration Limited Partnership; Notice of Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

May 22, 2000.

Take notice that on May 16, 2000, Pedricktown Cogeneration Limited Partnership, 143 Highway 130, Pedricktown, NJ 08067, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(a) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing. The facility is a topping-cycle cogeneration facility with a maximum net electric power production capacity of 117.8 MW. It is interconnected with Atlantic City Electric Company and sells electric capacity and energy on a merchant basis in PJM.

The Commission previously certified the facility as a qualifying cogeneration facility in docket No. QF87–407–000, Pedricktown Cogeneration Limited Partnership, 41 FERC ¶ 62,025 (1987) and recertified the facility as a qualifying cogeneration facility in Docket No. QF87–407–003, 50 FERC ¶ 62,069 (1990) and Docket No. QF87–407–004, 73 FERC ¶ 62,108 (1995). Notices of Self-certification were filed on May 7, 1987 (Docket No. QF87–407–001) and on November 2, 1987 (Docket No. QF87–407–002).

Recertification is sought to reflect the proposed sale of half of the upstream ownership interests in the Facility and to report certain changes in operating mode resulting from recent contract restructuring.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 15, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13223 Filed 5–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–93–000]

SOWEGA Power LLC; Notice of Filing

May 22, 2000.

Take notice that on May 17, 2000, SOWEGA Power LLC (SOWEGA Power) submitted for filing an application under Section 203 of the Federal Power Act for approval of (1) the transfer of control over SOWEGA Power's jurisdictional transmission facilities and paper facilities as a result of a transfer of ownership of SOWEGA Power from its existing owners, Grady Electric Membership Cooperative (Grady EMC) and Three Notch Electric Membership Cooperative (Three Notch EMC) to SOWEGA Energy Resources LLC, a new company to be owned by Grady EMC, Three Notch EMC, and ConerStone Operating Services, Inc., and (2) a transfer of SOWEGA Power's interest in certain 230 kV bus facilities to Baconton Power LLC.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims. htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13223 Filed 5–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–275–007]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

May 22, 2000.

Take notice that on May 16, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Sixth Revised Sheet No. 405. Tennessee requests an effective date of June 16, 2000.

Tennessee states that this filing is in compliance with the Commission's April 13, 2000 Order on Remand in the above-referenced docket (Remand Order). Tennessee Gas Pipeline Company, 91 FERC ¶ 61,053 (2000). Tennessee further states that the filing eliminates the 20-year term-matching cap from Tennessee's net present value firm capacity allocation method.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13225 Filed 5–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–336–004]

Trailblazer Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

May 22, 2000.

Take notice that on May 15, 2000, Trailblazer Pipeline Company (Trailblazer) tendered for filing Original Sheet No. 6A to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective May 15, 2000.

Trailblazer states that the purpose of this filing is to implement a negotiated rate transaction with Enservco Energy, Inc. under Trailblazer's Rate Schedule FTS pursuant to Section 38 of the General Terms and Conditions of Trailblazer's Tariff.

Trailblazer requests waiver of the Federal Energy Regulatory Commission's (Commission) Regulations, including the 30-day notice requirement of Section 154.207, to the extent necessary to permit Original Sheet No. 6A to become effective May 15, 2000.

Trailblazer states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP97–336.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13226 Filed 5–25–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–117–000, et al.]

Ameren Energy Generating Company, et al.; Electric Rate and Corporate Regulation Filings

May 22, 2000.

Take notice that the following filings have been made with the Commission:

1. Ameren Energy Generating Company

[Docket No. EG00–117–000]

Take notice that on May 18, 2000, Ameren Energy Generating Company (Generating Co.), c/o Ameren Services, 1901 Chouteau Avenue, St. Louis, MO 63166, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: June 12, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. FirstEnergy System

[Docket No. ER00–2518–000]

Take notice that on May 17, 2000, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Pepco Services, Inc., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is May 16, 2000 for the above mentioned Service Agreement in this filing..

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. FirstEnergy System

[Docket No. ER00–2519–000]

Take notice that on May 17, 2000, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for Pepco Services, Inc., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is May 16, 2000, for the above mentioned Service Agreement in this filing.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER00–2520–000]

Take notice that on May 17, 2000, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Interconnection Agreement by and

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between West Georgia Generating Company L.P. (West Georgia) and Georgia Power (the Agreement). The Agreement permits West Georgia to interconnect and operate in parallel with the Georgia Power electric system.

The Agreement is dated as of May 11, 2000 and shall terminate upon mutual written agreement of the parties.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. The Dayton Power and Light Company

[Docket No. ER00–2521–000]

Take notice that on May 17, 2000, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing MIECO Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon establishing MIECO Inc., and the Public Utilities Commission of Ohio.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power and Light Company

[Docket No. ER00–2522–000]

Take notice that on May 17, 2000, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing with Cargill—Alliant, LLC and MIECO Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with Cargill—Alliant, LLC, MIECO Inc., and the Public Utilities Commission of Ohio.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER00–2523–000]

Take notice that on May 17, 2000, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement and network operating agreement for network integration transmission service under the terms of PNM's Open Access Transmission Service Tariff with Navopache Electric Cooperative, Inc. (Navopache), dated April 26, 2000. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico

Copies of this filing have been served upon Navopache and the New Mexico Public Regulation Commission.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER00–2524–000]

Take notice that on May 17, 2000, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an Interconnection and Operating Agreement with Ouachita Power, LLC (Ouachita), and a Generator Imbalance Agreement with Ouachita.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER00–2525–000]

Take notice that on May 17, 2000, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an Interconnection and Operating Agreement with Koch Power Louisiana, L.L.C. (Koch), and a Generator Imbalance Agreement with Koch.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER00–2526–000]

Take notice that on May 17, 2000, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an Interconnection and Operating Agreement with Acadia Power Partners, LLC (Acadia), the First Amendment to the Interconnection Agreement with Acadia, and a Generator Imbalance Agreement with Acadia.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. New Century Services, Inc.

[Docket No. ER00–2528–000]

Take notice that on May 17, 2000, New Century Services, Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and Western Area Power Administration—Colorado River Storage Project., which is an umbrella service agreement under Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on April 27, 2000.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Dow Pipeline Company

[Docket No. ER00–2529–000]

Take notice that on May 17, 2000, Dow Pipeline Company (DPL), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, and for the purpose of permitting Dow to assign transmission capacity and to resell Firm Transmission Rights, to be effective as of May 18, 2000, the day following the date of its filing.

DPL intends to engage in electric power and energy transactions as a marketer. In transactions where DPL sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither DPL nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER00–2530–000]

Take notice that on May 17, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and MIECO, Inc.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Company

[Docket No. ER00–2531–000]

Take notice that on May 17, 2000, Commonwealth Edison Company (ComEd) tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, an Application for Authorization to Amend Market-Based Rate Schedule to allow ComEd to sell power at market-based rates to Central Illinois Power Company (CILCO).

ComEd also requests that the Commission permit its proposed amended rate schedule to take effect on May 18, 2000.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Tampa Electric Company

[Docket No. ER00–2532–000]

Take notice that on May 17, 2000, Tampa Electric Company (Tampa Electric), tendered for filing service agreements with Allegheny Energy Supply Company, LLC (Allegheny) for firm and non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of May 17, 2000, for the tendered service agreements, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Allegheny and the Florida Public Service Commission.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Tampa Electric Company

[Docket No. ER00–2533–000]

Take notice that on May 17, 2000, Tampa Electric Company (Tampa Electric), tendered for filing the First Amendment to the Interconnection Agreement among Tampa Electric, Seminole Electric Cooperative, Inc. (Seminole), and Hardee Power Partners Limited (HPP).

Tampa Electric proposes that the First Amendment be made effective on April 18, 2000, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Seminole, HPP, and the Florida Public Service Commission.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. SOWEGA Power LLC

[Docket No. ER00–2534–000]

Take notice that on May 17, 2000, SOWEGA Power LLC tendered for filing, pursuant to Section 205 of the Federal Power Act, a Common Bus Ownership Agreement between itself and its prospective affiliate, Baconton Power LLC. The agreement concerns ownership interests in certain 230 kV bus facilities on the plant site shared by SOWEGA Power and Baconton Power that are used to connect the generators to Georgia Transmission Corporation.

SOWEGA Power seeks a waiver of the Commission's 60 day prior notice and filing requirements and requests an effective date from the Commission as of May 18, 2000.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. EMW Marketing Corp.

[Docket No. ER00–2535–000]

Take notice that on May 17, 2000, EMW Marketing Corp. (EMW), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting EMW's FERC Electric Rate Schedule No. 1 and accompanying Code of Conduct to be effective as of 60 days from the date of the filing or upon issuance of the Commission's order accepting the Rate Schedule and Code of Conduct.

EMW intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where EMW sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. EMW's proposed Rate Schedule also permits it to reassign transmission capacity and make resales of firm transmission rights in California.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER00–2538–000]

Take notice that on May 17, 2000, Ameren Services Company (AMS) , as Agent for Central Illinois Public Service Company (CIPS), tendered for filing a Fifth Amendment and Service Schedule L, each dated April 24, 2000, to the Power Supply Agreement, dated June 11, 1987, as amended, between Illinois Municipal Electric Agency (IMEA) and CIPS. AMS asserts that the purpose of the Amendment is to establish a two-year firm power supply for two of IMEA's members " the cities of Batavia, IL and St. Charles, IL.

AMS requests that open acceptance of these filings retroactively become effective June 1, 2000.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13220 Filed 5–25–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2157–001, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings

May 17, 2000.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER00–2157–001]

Take notice that on May 12, 2000, Commonwealth Edison Company (ComEd) tendered for filing Amendment No. 1 to the Interconnection Agreement between ComEd and Des Plaines Green Land Development L.L.C. (Des Plaines), which ComEd filed with the Commission on April 10, 2000 in Docket No. ER00–2157–000.

ComEd requests the same effective date of April 11, 2000, for Amendment No. 1 as it requested for the Interconnection Agreement in its April 10, 2000 filing.

Copies of the filing were served on Des Plaines and the Illinois Commerce Commission.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. AES Eastern Energy, L.P.

[Docket No. ER00–2463–000]

Take notice that on May 10, 2000, AES Eastern Energy, L.P. (AES Eastern), tendered for filing two long-term service agreements. Both contracts are between AES Eastern and Aquila Risk Management Corporation.

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Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company

[Docket No. ER00–2472–000]

Take notice that on May 12, 2000, Commonwealth Edison Company (ComEd) tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a Notice of Cancellation of Service Agreement Nos. 76, 15, and 163 between ComEd and Sonat Power Marketing, L.P. (Sonat), and a Notice of Cancellation of Service Agreement No. 7 between ComEd and Illinova Energy Partners, Inc. (IEP) under ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of May 12, 2000, for the cancellations and accordingly requests waiver of the Commission's notice requirements.

ComEd served copies of the filing upon EPME, and Dynegy, the successors in interest to Sonat and IEP, respectively.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. American Electric Power Service Corporation Central and South West Services, Inc.

[Docket No.ER00–2473–000]

Take notice that on May 12, 2000, American Electric Power Service Corporation tendered for filing, on behalf of the operating company subsidiaries of American Electric Power Company, Inc. and Central and South West Corporation, proposed amendments to the Open Access Transmission Tariff accepted for filing by the Commission in Docket No. ER98–2786–000.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Indiana Gas and Electric Company

[Docket No. ER00–2474–000]

Take notice that on May 12, 2000, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing service agreements for firm and non-firm transmission service under Part II of its Transmission Services Tariff with Cinergy Capital & Trading, Inc. (CCT), and MIECO, Inc.

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company

[Docket No. ER00–2475–000]

Take notice that on May 12, 2000, Jersey Central Power & Light Company (doing business and referred to as GPU Energy), tendered for filing two amendments to the Interconnection Agreement, dated as of March 1, 1978, as amended, between GPU Energy and Atlantic City Electric Company (Agreement). The amendments revise a component of the rate for service under the Agreement relating to GPU Energy's O&M expense for 2000 and 2001.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER00–2476–000]

Take notice that on May 12, 2000, Commonwealth Edison Company (ComEd), tendered for filing a Notice of Cancellation for Service Agreement No. 334 (between ComEd and Commonwealth Edison Company, in its Wholesale Merchant Function (WMD) for Firm Point-to-Point Transmission Service under ComEd's Open Access Transmission Tariff (OATT), and submits for filing a firm service agreement (New Service Agreement) between ComEd and WMD under ComEd's Open Access Transmission Tariff, FERC Electric Tariff Volume No. 5 (OATT).

ComEd requests an effective date of May 1, 2000, for the New Service Agreement and the cancellation of Service Agreement No. 334, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on WMD.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Western Systems Power Pool

[Docket No. ER00–2477–000]

Take notice that on May 12, 2000, the Western Systems Power Pool (WSPP), tendered for filing certain revisions to the WSPP Agreement. The WSPP states that these changes are intended to clarify certain provisions relating to firm sales, and to allow the WSPP members to modify certain provisions of the WSPP Agreement on a transaction-specific basis as agreed to by the parties.

The WSPP seeks an effective date of July 1, 2000 for this filing.

The WSPP states that copies of this filing have been served upon all state commissions within the continental United States and all members of the WSPP.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER00–2478–000]

Take notice that on May 12, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing a service agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Amerada Hess Corporation and a Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Amerada Hess Corporation.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of May 12, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon Amerada Hess Corporation, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Madison Gas and Electric Company

[Docket No. ER00–2479–000]

Take notice that on May 12, 2000, Madison Gas and Electric Company (MGE), tendered for filing a service agreement under MGE's Market-Based Power Sales Tariff with The Dayton Power and Light Company.

MGE requests this agreement be effective the date the agreement was filed with the FERC.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER00–2480–000]

Take notice that on May 12, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Short-Term Firm Transmission Service Agreement and a non-firm Transmission Service Agreement between itself and NewEnergy Inc. (NewEnergy). The Transmission Service Agreements allow NewEnergy to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on NewEnergy, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER00–2481–000]

Take notice that on May 12, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a short-term firm Transmission Service Agreement and a non-firm Transmission Service Agreement between itself and Calpine Power Services Company (Calpine). The Transmission Service Agreements allow Calpine to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on Calpine, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER00–2482–000]

Take Notice that on May 12, 2000, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies), tendered for filing revised pages to the CSW Operating Companies' open access transmission service tariff (CSW OATT).

The CSW Operating Companies state that a copy of the filing was served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission, the Louisiana Public Service Commission, and on all persons with whom the CSW Operating Companies have entered into service agreements under the CSW OATT.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. New Century Services, Inc.

[Docket No. ER00–2483–000]

Take notice that on May 12, 2000, New Century Services, Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and Sempra Energy Trading Corp., which is an umbrella service agreement under Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on April 14, 2000.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Tucson Electric Power Company

[Docket No. ER00–2484–000]

Take notice that on May 12, 2000, Tucson Electric Power Company tendered for filing an Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of May 4, 2000 by and between Tucson Electric Power Company and Southern California Edison Company. No service has commenced at this time, and also a Non-Firm Service Agreement dated as of May 4, 2000 by and between Tucson Electric Power Company and Southern California Edison Company. Service commenced on April 13, 2000.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2499–000]

Take notice that on May 12, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 3 to Supplement No. 23 to the Market Rate Tariff to incorporate a Netting Agreement with New York State Electric & Gas Corporation into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of May 3, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13219 Filed 5–25–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2212–001, et al.]

Entergy Services, Inc., et al. Electric Rate and Corporate Regulation Filings

May 18, 2000.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

Docket No. ER00–2212–001]

Take notice that on May 12, 2000, Entergy Services, Inc., acting as agent for Entergy Arkansas, Inc. and Entergy Gulf States, Inc., tendered for filing an amendment to its April 14, 2000, filing of Generator Imbalance Agreements with Pine Bluff Energy LLC (Pine Bluff) and Carville Energy LLC (Carville), and amendments to the Interconnection and Operating Agreements with Pine Bluff and Carville.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

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2. Wisconsin Public Service Corporation

[Docket No. ER00–2495–000]

Take notice that on May 15, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an amendment to its Coordination Sales Tariff (CST), FERC Electric Tariff, First Revised Volume No. 5. WPSC filed this amendment to change the definition of "out-of-pocket cost" for purposes of Service Schedule A—Negotiated Capacity and Energy, Service Schedule B—General Purpose Energy and Service Schedule C—Emergency Energy. This filing also reformats the CST to comply with the Commission's new tariff sheet designation policy.

Copies of the filing were served upon the public utility's customers under the CST Tariff, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2494–000]

Take notice that on May 15, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 41 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply Company offers generation services; and filed Amendment No. 1 to Supplement No. 41 to incorporate a Netting Agreement with FirstEnergy Trading Services, Inc. into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements both to make service available to the Customer and to make the Netting Agreement effective as of April 16, 2000 or on a date as determined by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Maine Electric Power Company

[Docket No. ER00–2493–000]

Take notice that on May 15, 2000, Maine Electric Power Company (MEPCO) tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with Duke Energy Trading and Marketing. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER00–2127–000]

Take notice that on May 15, 2000, Public Service Company of New Mexico (PNM), tendered for filing an amendment to its April 5, 2000, filing of Notices of Cancellation of various Electric Power Sale, Purchase, and Tariff Service Agreements. In the amendment, PNM withdraws the Notice of Cancellation for the Service Agreement between PNM and Washington Water Power Company (now known as Avista Corporation) dated June 1, 1992 under Avista Corporation's FERC Electric Rate Tariff Original Volume No. 4. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER00–2487–000]

Take notice that on May 15, 2000, Commonwealth Edison Company (ComEd), tendered for filing a Sales Agreement to sell power and energy to Central Illinois Light Company (CILCO).

ComEd requests an effective date of May 16, 2000 for the agreements and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on CILCO.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER00–2486–000]

Take notice that on May 15, 2000, Commonwealth Edison Company (ComEd), tendered for filing MBR Sales Agreements establishing Dynegy Energy Services, Inc., MidAmerican Energy Company and Nicor Energy, L.L.C. as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of May 16, 2000 for the agreements and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Dynegy Energy Services, Inc., MidAmerican Energy Company and Nicor Energy L.L.C.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Reliant Energy Mid-Atlantic Power Holdings, LLC

[Docket No. ER00–2508–000]

Take notice that on May 15, 2000, Reliant Energy Mid-Atlantic Power Holdings, LLC (Reliant Energy Mid-Atlantic), tendered for filing a Notice of Succession pursuant to Section 35.16 of the Commission's Regulations, 18 CFR 35.16. Reliant Energy Mid-Atlantic is succeeding to the FERC Electric Tariff, First Revised Volume No. 1 of Reliant Energy Pennsylvania Holdings, LLC, effective May 12, 2000.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1262–000]

Take notice that on May 12, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing filed revisions to its Open Access Transmission Tariff in compliance with the Commission's Order of Aril 13, 2000 at Docket No. ER00–1262–000, 91 FERC ¶ 61,044.

Copies of the filing have been provided to jurisdictional customers, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission and all parties of record.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. MidAmerican Energy Company

[Docket No. ER00–2503–000]

Take notice that on May 15, 2000, MidAmerican Energy Company (MidAmerican), tendered for filing with the Commission a Notice of Cancellation of its Service Agreement dated July 11, 1962, between Iowa Power and Light Company (a predecessor company of MidAmerican) and the City of Neola, Iowa, pursuant to Section 35.15 of the Commission's Regulations. This Agreement has been designated as MidAmerican Rate Schedule No. 33.

MidAmerican requests a waiver of Section 35.15 to the extent that this Notice of Cancellation has not been filed within the time required by such section. MidAmerican inadvertently failed to submit the Notice of Cancellation upon expiration of the agreement under its own terms.

MidAmerican requests that the following rate schedule be canceled effective as of 11:59 p.m. on March 31, 1999:

MidAmerican has mailed a copy of this filing to City of Neola, Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Avista Corporation; TransAlta Centralia Generation LLC

[Docket No. EC00–87–001]

Take notice that on May 11, 2000, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Avista Corporation, and TransAlta Centralia Generation LLC (TACG) (collectively, the Applicants) filed as part of Exhibit H to their Application filed on Friday, May 5, 2000 pursuant to Section 203 of the Federal Power Act, an unexecuted version of the Assignment and Assumption Agreement for the transfer of the Standby Service Agreement.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp; Portland General Electric Company; Puget Sound Energy, Inc.; Avista Corporation; TransAlta Centralia Generation LLC

[Docket No. EC00–87–000]

Take notice that on May 5, 2000, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Avista Corporation (collectively, the Joint Parties), and TransAlta Centralia Generation LLC (TACG) (together, the Applicants) submitted for filing an application pursuant to Section 203 of the Federal Power Act (FPA) seeking authorization to assign the rights and obligations of the Joint Parties under the Centralia Standby Service Agreement between Bonneville Power Administration (BPA) and the Joint Parties from the Joint Parties to TACG.

On May 8, 2000, the applicants filed an errata to their application correcting footnote one on page one of the application. It incorrectly stated that the Joint parties and certain other non-jurisdictional public entities are the joint owners of the Centralia Steam Electric Generating Plant (the Centralia Facility). The Applicants would like to clarify that these parties interests in the Centralia Facility were conveyed to TACG in a transaction which was approved by the Commission and consummated on May 4, 2000.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Madison Gas & Electric Company

[Docket No. EC00–89–000]

Take notice that on May 9, 2000, Madison Gas & Electric Company (MGE), pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b, filed an Application for approval to transfer operational control over certain identified transmission facilities to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). MGE states that this filing is intended to reflect the fact that it has joined the Midwest ISO, and to allow for the transfer of control of the identified facilities to the Midwest ISO.

MGE states that the filing has been served on all affected state commissions and all parties in Docket Nos. ER98–1438 and EC98–24.

Comment date: June 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. P&L Coal Holdings Corporation; Edison Mission Energy; Citizens Power LLC

[Docket No. EC00–90–000]

Take notice that on May 12, 2000, P&L Coal Holdings Corporation, Edison Mission Energy, and Citizens Power LLC filed an application for an order authorizing the proposed sale to Edison Mission Energy, of certain of P&L Coal Holdings Corporation's indirect equity interests in the following power marketing entities: Citizens Power Sales LLC, Hartford Power Sales, L.L.C., CL Power Sales One, L.L.C., CL Power Sales Two, L.L.C., CP Power Sales Five, L.L.C., CL Power Sales Six, L.L.C., CL Power Sales Seven, L.L.C., CL Power Sales Eight, L.L.C., CL Power Sales Nine, L.L.C., CL Power Sales Ten, L.L.C., CP Power Sales Twelve, L.L.C., CP Power Sales Thirteen, L.L.C., CP Power Sales Fourteen, L.L.C., CP Power Sales Fifteen, L.L.C., CP Power Sales Seventeen, L.L.C., CP Power Sales Eighteen, L.L.C., CP Power Sales Nineteen, L.L.C., and CP Power Sales Twenty, L.L.C.

Comment date: June 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Conectiv; NRG Energy, Inc.

[Docket No. EC00–91–000]

Take notice that on May 15, 2000, Conectiv and NRG Energy, Inc. (NRG Energy) (collectively, the Applicants) submitted on behalf of certain of their respective subsidiaries a joint application under Section 203 of the Federal Power Act and Part 33 of the Commission's regulations to request authorization and approval for the sale of certain jurisdictional transmission facilities (and the appurtenant generating facilities) and for the assignment of interests in the Keystone and Conemaugh Interconnection Agreements to NRG Energy.

The Conectiv subsidiaries involved in the sale of the facilities and interests are Delmarva Power & Light Company, Atlantic City Electric Company, and Conectiv Delmarva Generation, Inc. The NRG Energy subsidiaries who will acquire the Conectiv facilities and interests are Deepwater Power LLC; B. L. England Power LLC; Indian River Power LLC; Vienna Power LLC; Keystone Power LLC; and Conemaugh Power LLC. The NRG Energy subsidiaries who will participate in the ownership of those six companies are MidAtlantic Generation Holding LLC; NRG Atlantic LLC; and NRG MidAtlantic Generating LLC.

The Applicants' proposed closing date for the sale and assignment is on or about September 1, 2000. The Applicants request approval of the transaction by or about August 1, 2000.

The Applicants state that copies of their joint application have been served upon the state regulatory commissions of New Jersey, Delaware, Maryland, Pennsylvania and Virginia; the signatories to the Keystone and Conemaugh Interconnection Agreements; the PJM Interconnection, LLC; Delmarva's wholesale requirements customers; and the wholesale electric systems dependent on Atlantic or Delmarva for access to the PJM transmission grid.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Pool

[Docket No. ER00–2485–000]

Take notice that on May 15, 2000, the New England Power Pool (NEPOOL) Participants Committee and Transmission Owners submitted the Fifty-Fifth Agreement Amending the New England Power Pool Agreement

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(Fifty-Fifth Agreement) which provides for the addition of System Restoration and Planning Services to the NEPOOL Tariff, including both requirements and compensation for the provision of those services. The NEPOOL Participants Committee and Transmission Owners could not agree on the effective date for the Agreement and have requested the Commission determine the effective date provided such date is not later than July 14, 2000.

The NEPOOL Participants Committee and Transmission Owners state that copies of these materials were sent to the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Edison Company

[Docket No. ER00–2488–000]

Take notice that on May 15, 2000, Commonwealth Edison Company (ComEd) tendered for filing a Sales Agreement to sell power and energy to Unicom Energy, Inc. (UEI).

ComEd requests an effective date of May 16, 2000 for the agreements and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on UEI.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas And Electric Company; Kentucky Utilities Company

[Docket No. ER00–2489–000]

Take notice that on May 15, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing executed unilateral Service Sales Agreement between Companies and Connectiv Energy Supply, Inc. under the Companies' Rate Schedule MBSS. This filing replaces previous filing of unexecuted agreement filed on April 18, 2000 and designated Docket No. ER00–2231–000.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas And Electric Company; Kentucky Utilities Company

[Docket No. ER00–2490–000]

Take notice that on May 15, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed Netting Agreement between the Companies and Connectiv Energy Supply, Inc.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas And Electric Company; Kentucky Utilities Company

[Docket No. ER00–2491–000]

Take notice that on May 15, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing AN executed Netting Agreement between the Companies and DTE Energy Trading.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. PPL Montana, LLC

[Docket No. ER00–2492–000]

Take notice that on May 15, 2000, PPL Montana, LLC (PPL Montana) filed a Service Agreement dated May 1, 2000 with PPL EnergyPlus, LLC (PPL EnergyPlus) under PPL Montana's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds PPL EnergyPlus as an eligible customer under the Tariff.

PPL Montana requests an effective date of May 1, 2000 for the Service Agreement.

PPL Montana states that PPL EnergyPlus has been served with a copy of this filing.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Consumers Energy Company

[Docket No. ER00–2496–000]

Take notice that on May 15, 2000, Consumers Energy Company (Consumers) tendered for filing a service agreement for unbundled wholesale power service pursuant to the Consumers' cost-based Power Sales Tariff accepted for filing on September 12, 1997 in Docket No. ER97–964–000 with British Columbia Power Exchange Corporation.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the customer.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Entergy Services, Inc.

[Docket No. ER00–2497–000]

Take notice that on May 15, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Long-Term Firm Point-to-Point Transmission Service Agreement Entergy Services, Inc. as agent for the Entergy Operating Companies, and PECO Energy Company—Power Team.

Entergy Services requests that the agreement be made effective no later than May 3, 2000.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Golden Spread Electric Cooperative, Inc.

[Docket No. ER00–2498–000]

Take notice that on May 15, 2000, Golden Spread Electric Cooperative, Inc. (Golden Spread) tendered for filing Revisions to its FERC Rate Schedule Nos. 23–33.

Copies of this filing were served upon each of Golden Spread's Member Cooperatives taking service under such rate schedules and the Public Utility Commission of Texas.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER00–53–000]

Take notice that on May 15, 2000, Deseret Generation & Transmission Co-operative, Inc. filed an informational filing, attached as Appendix A, providing the exact amount paid as a Supplemental 1999 Rate Rebate to each of its six member cooperatives.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. NorthWestern Corporation

[Docket No. ES00–35–001]

Take notice that on May 12, 2000, NorthWestern Corporation submitted an amendment to its original application in this proceeding pursuant to Section 204 of the Federal Power Act. The amendment seeks authorization to issue (iii) not more than 1,000,000 shares of its Common Stock, par value $1.75 per share, including related Common Stock Purchase Rights, for its Dividend Reinvestment and Director Stock Purchase Plan; (iv) not more than 100,000 shares of its Common Stock, par value $1.75 per share, including related Common Stock Purchase Rights to be issued for the purpose of making charitable contributions to qualifying organizations; (v) not more than 500,000 shares of its Cumulative Preferred Stock, par value $100 per share; and (vi) not more than 500,000 shares of its Preference Stock, par value $50 per share.

NorthWestern Corporation also requests an exemption from the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13221 Filed 5–25–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–152–000, et al.]

Lone Star Steel Sales Company, et al.; Electric Rate and Corporate Regulation Filings

May 17, 2000.

Take notice that the following filings have been made with the Commission:

1. Lone Star Steel Sales Company

[Docket No. EG00–152–000]

Take notice that on May 15, 2000, Lone Star Steel Sales Company (LSSS), P.O. Box 803546, Dallas, Texas 75380, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

LSSS is a Delaware corporation with its principal place of business in Dallas, Texas. LSSS is engaged exclusively in the business of owning or operating an eligible facility selling electric energy at wholesale. The eligible facility consists of 15 MW of gas-fired generation located in Northeast Texas that is entirely within the certificated service area of Southwestern Electric Power Company (SWEPCO).

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Twelvepole Creek, LLC

[Docket No. EG00–153–000]

Take notice that on May 15, 2000, Twelvepole Creek, LLC, with its principal place of business c/o Columbia Electric Company, 13880 Dulles Corner Lane, Herndon, VA, 20171, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Twelvepole Creek, LLC intends to construct, own or lease, and operate an approximately 504 MW natural gas-fired generating facility located in Wayne County, West Virginia. All output from the facility will be sold at wholesale.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. MidAmerican Energy Company

[Docket No. EL99–92–002]

Take notice that on May 11, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, 2900 Ruan Center, Des Moines, Iowa 50309 tendered for filing a Refund Report as required by the March 17, 2000 Letter Order in Docket No. EL99–92–000.

MidAmerican states that the last billings at non-settlement rates were rendered for the month of February 2000 and that all subsequent billings have been based on the settlement rates and charges approved by the Letter Order. MidAmerican further states that interest on the refunds was calculated in accordance with 18 CFR 35.19a and that all refunds with interest required to be paid pursuant to the Letter Order were transmitted electronically to customers on April 28, 2000.

Copies of the filing were served on all parties to Docket Nos. EL99–92–000 and ER99–3887–000.

Comment date: June 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Lyon Rural Electric Cooperative

[Docket No. ES00–34–000]

Take notice that on May 10, 2000, Lyon Rural Electric Cooperative (Lyon) filed an application pursuant to Section 204 of the Federal Power Act seeking authorization to borrow money under a long-term loan agreement in the form of secured promissory notes in an amount not to exceed $2,400,000. Lyon seeks authorization to borrow money under a short-term line of credit agreement in the form of promissory notes in an amount not to exceed $900,000. Lyon requests authorization for the long-term loan agreement and the short-term line of credit over a two-year period commencing June 30, 2000.

Lyon also seeks a waiver of the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2 regarding both the long-term loan agreement and the short-term line of credit.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Northwestern Corporation

[Docket No. ES00–35–000]

Take notice that on May 8, 2000, Northwestern Corporation filed an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue

(i) not more than 5,000,000 shares of its Common Stock, par value $1.75 per share, including related Common Stock Purchase Rights; and

(ii) not more than $140,000,000 of its mortgage bonds, notes, debentures, subordinated debentures, guarantees or other evidences of indebtedness.

NorthWestern also requests an exemption from the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Electric Energy, Inc.

[Docket No. ES00–36–000]

Take notice that on May 11, 2000, Electric Energy, Inc. submitted an application pursuant to the Federal Power Act seeking authorization to issue from time to time (a) not more than $120 million of new long-term debt with a maturity of up to 15 years, and (b) new short-term debt in an amount not to exceed $70 million at any time.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

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7. Kansas Gas and Electric Company

[Docket No. ES00–37–000]

Take notice that on May 11, 2000, Kansas Gas and Electric Company submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to (1) issue not more than $1 billion of short-term securities on or before December 31, 2002, and (2) pledge first mortgage bonds in an aggregate principal amount not to exceed $1.0 billion at any one time outstanding to secure such short-term indebtedness.

Kansas Gas and Electric Company also requests a waiver from the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2 with regards to the issuance of short-term securities.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas Gas and Electric Company

[Docket No. ES00–38–000]

Take notice that on May 11, 2000, Kansas Gas and Electric Company submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to pledge not more than $1 billion of first mortgage bonds and guaranties to secure short-term indebtedness of its parent, Western Resources, Inc.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Western Resources, Inc.

[Docket No. ES00–39–000]

Take notice that on May 11, 2000, Western Resources, Inc. submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to (1) issue not more than $1.5 billion in short-term securities on or before December 31, 2002, and (2) pledge first mortgage bonds in an aggregate principal amount not to exceed $1.5 billion to secure such short-term indebtedness.

Western Resources, Inc. also requests a waiver of the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2 with regards to the issuance of short-term securities.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13217 Filed 5–25–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–141–000, et al.]

PSEG Power New York Inc., et al.; Electric Rate and Corporate Regulation Filings

May 19, 2000.

Take notice that the following filings have been made with the Commission:

1. PSEG Power New York Inc.

[Docket No. EG00–141–000]

Take notice that on May 1, 2000, PSEG Power New York Inc. (PSEG New York or Applicant) with its principal office at 80 Park Plaza Newark, New Jersey filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG New York is a corporation organized under the laws of the State of Delaware. PSEG New York will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a generating facility which consists of four fossil generating units representing a total of approximately 400 MW of generating capacity and incidental facilities located in the Township of Bethlehem, County of Albany, State of New York; selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. CMS Distributed Power L.L.C.

[Docket No. EG00–154–000]

Take notice that on May , 2000, CMS Distributed Power L.L.C., 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

CMS Distributed Power L.L.C. is a Michigan limited liability company and a wholly-owned indirect subsidiary of CMS Energy Corporation, a Michigan corporation. CMS Distributed Power L.L.C. is constructing a diesel powered generating facility in Dearborn, Michigan of approximately 38 megawatts and a diesel powered generating facility in Zilwaukee, Michigan of approximately 40 megawatts.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Kansas Gas and Electric Company

[Docket No. ES00–37–001]

Take notice that on May 17, 2000, Kansas Gas and Electric Company submitted an amendment to its original application in this proceeding pursuant to Section 204 of the Federal Power Act. The application is amended so as to define the terms "short term indebtedness," "securities" and "short-term securities" to mean securities with a maturity date no longer than five years from the date of issuance. The application is further amended so that the final maturity date of the medium-term securities to be issued will be no later than December 31, 2007.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Gas and Electric Company

[Docket No. ES00–38–001]

Take notice that on May 17, 2000, Kansas Gas and Electric Company submitted an amendment to its original application in this proceeding pursuant to Section 204 of the Federal Power Act. The application is amended so as to define the term "short term indebtedness" to mean securities with a maturity date no longer than five years from the date of issuance.

Kansas Gas and Electric Company requested a waiver from the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc.

[Docket No. ES00–39–001]

Take notice that on May 17, 2000, Western Resources, Inc. submitted an amendment to its original application in this proceeding pursuant to Section 204 of the Federal Power Act. The application is amended so as to define the terms "short term indebtedness," "securities" and "short-term securities" to mean securities with a maturity date no longer than five years from the date of issuance. The application is further amended so that the final maturity date of the medium-term securities to be issued will be no later than December 31, 2007.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Rumford Cogeneration Company Limited Partnership

[Docket No. QF86–291–003]

Take notice that on May 16, 2000, Rumford Cogeneration Company Limited Partnership, c/o The Mead Corporation, Courthouse Plaza NE, Dayton, OH 45463, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing. The facility is a 95 MW topping-cycle cogeneration facility. It is interconnected with Central Maine Power Company.

The Facility was originally certified as a QF in Docket No. QF86–291–000, Rumford Cogeneration Company, 34 FERC ¶ 62,205 (1986). Rumford also filed Notices of Self-recertification on September 29, 1987, in Docket No. QF86–291–001, and on October 22, 1997 in Docket No. QF86–291–002.

Recertification is sought to reflect the proposed sale of one of the limited partners' interest in the Facility.

Comment date: June 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. California Independent System Operator Corporation

[Docket No. ER00–726–000]

Take notice that on May 16, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a revision to the Scheduling Coordinator Agreement (SCA) between the ISO and Puget Sound Energy. The ISO states that the revision modifies the SCA to incorporate a name change for the bank in which Puget Sound Energy maintains its Fed-Wire Transfer account.

The ISO requests that the revision be made effective as of November 18, 1999.

The ISO states that this filing has been served on Puget Sound Energy and the California Public Utilities Commission.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Energy East Corporation and CMP Group, Inc.

[Docket No. ER00–2373–001]

Take notice that on May 16, 2000, Central Maine Power Company (CMP), tendered for filing pursuant to Rule 215 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.215, amended revised pages to CMP's Open Access Transmission Tariff in compliance with Energy East Corporation and CMP Group, Inc., 91 FERC ¶ 61, 001 (2000).

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Electric Power Company

[Docket No. ER00–2500–000]

Take notice that on May 16, 2000, Southwestern Electric Power Company (SWEPCO), tendered for filing an Interconnection Agreement between SWEPCO and Lone Star Steel Sales Company (Lone Star). The Interconnection Agreement supersedes an Interconnection Agreement between SWEPCO and Lone Star filed July 28, 1999. SWEPCO requests an effective date for the new Interconnection Agreement of May 17, 2000. Accordingly, SWEPCO requests waiver of the Commission's notice requirements.

SWEPCO states that a copy of the filing was served on Lone Star and the Public Utility Commission of Texas.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Western Resources, Inc.

[Docket No. ER00–2501–000]

Take notice that on June 6, 2000, Western Resources, Inc. (WR), tendered for filing the Third Amendment to the electric service Contract with the City of Ellinwood, Kansas (Ellinwood), the Third Amendment to the electric service Contract with the City of Larned, Kansas (Larned), the Third Amendment to the electric service Contract with the City of Osage City, Kansas (Osage City), the Third Amendment to the electric Service Contract with the City of Sterling, Kansas (Sterling), and the Second Amendment to the electric service Contract with City of Wamego, Kansas (Wamego).

WR requests an effective date of June 1, 2000 for these rate schedule changes.

Copies of this filing has been served upon the City of Ellinwood, City of Larned, City of Osage City, City of Sterling, City of Wamego, and the Kansas Corporation Commission.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Western Resources, Inc.

[Docket No. ER00–2502–000]

Take notice that on May 16, 2000, Western Resources, Inc., tendered for filing Service Schedule WTU–6/2000, which will supercede Service Schedule WTU–3/94. Service Schedule WTU–6/2000 is proposed to be effective as of June 1, 2000. The revisions to Service Schedule WTU–3/94 promotes competition by allowing customers taking service under this schedule to receive credit for alternative competitive resources.

A copy of this filing was served upon the Kansas Corporation Commission and the wholesale customers who take service under the aforementioned Service Schedule.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2504–000]

Take notice that on May 16, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 42 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply Company offers generation services; and filed Amendment No. 1 to Supplement No. 42 to incorporate a Netting Agreement with Tractebel Energy Marketing, Inc. into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of April 19, 2000 or

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on a date as determined by the Commission to Tractebel Energy Marketing, Inc., and make the Netting Agreement effective as of May 3, 2000 or on a date as determined by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, (Allegheny Power)

[Docket No. ER00–2505–000]

Take notice that on May 16, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 79 to add Public Service Company of Colorado to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is May 15, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. PPL Electric Utilities Corporation

[Docket No. ER00–2506–000]

Take notice that on May 16, 2000, PPL Electric Utilities Corporation tendered for filing notice of cancellation of Service Agreement No. 8 under its FERC Electric Tariff Volume No. 1. PPL Utilities requested an effective date of this cancellation of July 17, 2000.

Notice of the proposed cancellation has been served upon Cargill-Alliant, LLC.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Central Vermont Public Service Corporation

[Docket No. ER00–2507–000]

Take notice that on May 16, 2000, Central Vermont Public Service Corporation, tendered for filing a modification to its billing procedures under Section 7.1 of its open access Transmission Service Tariff No. 7.

Copies of the filing were served upon Central Vermont's jurisdictional customers, Vermont Public Service Board, New Hampshire Public Utilities Commission, Connecticut Public Utilities Control Department and Massachusetts Public Utilities Commission.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Energy Corporation

[Docket No. ER00–2509–000]

Take notice that on May 16, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with New Energy, Inc. for Non-Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 2, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Duke Energy Corporation

[Docket No. ER00–2510–000]

Take notice that on May 16, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with New Energy, Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 2, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Energy Corporation

[Docket No. ER00–2511–000]

Take notice that on May 16, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Amerada Hess Corporation for Non-Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 2, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Duke Energy Corporation

[Docket No. ER00–2512–000]

Take notice that on May 16, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Amerada Hess Corporation, for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 2, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Northern Indiana Public Service Company

[Docket No. ER00–2513–000]

Take notice that on May 16, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Amerada Hess Corporation (Amerada).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Amerada pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of May 17, 2000.

Copies of this filing have been sent to Amerada, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. TransAlta Centralia Generation LLC

[Docket No. ER00–2514–000]

Take notice that on May 16, 2000, TransAlta Centralia Generation LLC (TACG) tendered for filing, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Rules and Regulations, a Power Purchase and Sale Agreement between TACG and TransAlta Energy Marketing (US) Inc.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. MidAmerican Energy Company

[Docket No. ER00–2515–000]

Take notice that on May 16, 2000, MidAmerican Energy Company (MidAmerican), tendered for filing with the Commission a Notice of Cancellation of its Service Agreement dated July 21, 1958, between Iowa Power and Light Company (a predecessor company of MidAmerican) and City of Carlisle, Iowa, pursuant to Section 35.15 of the Commission's Regulations. MidAmerican requests that the following rate schedule be canceled effective as of 11:59 p.m. on February 23, 1998. This Agreement has been designated as MidAmerican Rate Schedule No. 32.

MidAmerican requests a waiver of Section 35.15 to the extent that this Notice of Cancellation has not been filed within the time required by such section. MidAmerican inadvertently failed to submit the Notice of Cancellation upon expiration of the agreement. The expired agreement was supplanted by a new agreement, the "Wholesale Full Requirements Power Sales Agreement" and has been designated as MidAmerican Rate Schedule Electric Tariff No. 5, Service Agreement No. 24.

MidAmerican has mailed a copy of this filing to City of Carlisle, Iowa, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Central Maine Power Company

[Docket No. ER00–2017–000]

Take notice that on May 16, 2000, Central Maine Power Company (CMP), tendered for filing an amendment to its Motion To Defer Action (Motion), filed on May 12, 2000, in the above-referenced docket. By the Motion and this amendment, CMP is seeking for the Commission to defer action for forty-five (45) days on an unexecuted service agreement for Firm Local Point-to-Point Transmission and interconnection agreement by and between CMP and Moosehead Energy Inc., submitted in Docket No. ER00–2017–000. CMP states this amendment will allow CMP and Moosehead Energy, Inc., to negotiate executed agreements.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Citizens Power Sales LLC, et al

[Docket Nos. ER94–1685–029, ER95–393–027, ER95–892–053, ER95–856–002, ER96–2652–047, ER99–893–005, ER99–892–006, ER99–891–006, ER99–890–006, ER99–4229–003, ER99–4330–001, ER99–4228–003, and ER99–4331–001]

Take notice that on May 12, 2000, Citizens Power Sales LLC, Hartford Power Sales, L.L.C., CL Power Sales One, L.L.C., CL Power Sales Two, L.L.C., CP Power Sales Five, L.L.C., CL Power Sales Six, L.L.C., CL Power Sales Seven, L.L.C., CL Power Sales Eight, L.L.C., CL Power Sales Nine, L.L.C., CL Power Sales Ten, L.L.C., CP Power Sales Twelve, L.L.C., CP Power Sales Thirteen, L.L.C., CP Power Sales Fourteen, L.L.C., CP Power Sales Fifteen, L.L.C., CP Power Sales Seventeen, L.L.C., CP Power Sales Eighteen, L.L.C., CP Power Sales Nineteen, L.L.C., and CP Power Sales Twenty, L.L.C., tendered for filing revised codes of conduct.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13218 Filed 5–25–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6705–6]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at 260–2740,or email at Farmer.sandy@epa.gov,and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1573.06; Part B Permit Application, Permit Modifications, and Special Permits; in 40 CFR parts 264 and 270; was approved 03/31/2000; OMB No. 2050–0009; expires 03/31/2003.

EPA ICR No. 0029.07; National Pollutant Discharge Elimination System (NPDES) Modification and Variance Requests; in 40 CFR parts 122.62 and 122.63; was approved 04/04/2000; OMB No. 2040–0068; expires 04/30/2003.

EPA ICR No. 1560.05; National Water Quality Inventory Reports " Clean Water Act Sections 305(b), 303(d), 314(a), and 106(e); in 40 CFR part 130.10(2); was approved 04/05/2000; OMB No. 2040–0071; expires 04/30/2003.

EPA ICR No. 0168.07; Pollutant Discharge Elimination System and Sewage Sludge Management State Programs; in 40 CFR parts 122 through 125; was approved 04/10/2000; OMB No. 2040–0057; expires 04/30/2003.

EPA ICR No. 0226.15; Applications for NPDES Discharge Permits and the Sewage Management Permits; in 40 CFR parts 122 through 125, 403, and 501; was approved 04/11/2000; OMB No. 2040–0086; expires 04/30/2003.

EPA ICR No. 1569.04; Approval of State Coastal Non-point Control Program " CZARA Section 6217; was

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approved 04/1/2000; OMB No. 2040–0153; expires 04/30/2003.

EPA ICR No. 1500.04; National Estuary Program; in 40 CFR part 35, subpart P was approved 04/11/2000; OMB No. 2040–0138; expires 04/30/2003.

EPA ICR No. 1727.02; Evaluation of the Burden of Waterborne Disease Within Communities in the United States; was approved 04/20/2000; OMB No. 2080–0050; expires 04/30/2003.

Extensions of Expiration Dates

EPA ICR No. 0276.08; Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only; in 40 CFR part 172; OMB No. 2070–0040; on 02/29/2000 OMB extended the expiration date through 05/31/2000.

EPA ICR No. 1780.01; Voluntary Cover Sheet for TSCA Submissions; OMB No. 2070–0156; on 03/30/2000 OMB extended the expiration date through 06/30/2000.

EPA ICR No. 0282.10; Emission Defect Information and Voluntary Emission Recall Reports; in 40 CFR part 85, subpart T, and 40 CFR part 91, subpart I; OMB No. 2060–0048; on 03/30/2000 OMB extended the expiration date through 08/31/2000.

EPA ICR No. 1000.06; Polychlorinated Biphenyls (PCBs) Used in Electrical Equipment; in 40 CFR part 761; OMB No. 2070–0003; on 03/30/2000 OMB extended the expiration date through 09/30/2000.

EPA ICR No. 1796.01; Industrial Combustion Coordinated Rule-making (ICCR) Questionnaire; OMB No. 2060–0355; on 03/30/2000 OMB extended the expiration date through 09/30/2000.

EPA ICR No. 1504.03; Data Generation for Registration Activities; in 40 CFR part 158; OMB No. 2070–0107; on 03/31/2000 OMB extended the expiration date through 05/31/2000.

EPA ICR No. 0597.06; Maximum Residue Limit (MRL) Petitions on Food/Feed Crops and New Inert Ingredients; in 40 CFR parts 177 and 180; OMB No. 2070–0024; on 03/31/2000 OMB extended the expiration date through 06/30/2000.

EPA ICR No. 0922.05; Data Call-in for Special Review Chemicals; in 40 CFR part 158; OMB No. 2070–0057; on 03/31/2000 OMB extended the expiration date through 06/30/2000.

EPA ICR No. 1774.01; Mobile Air Conditioner Retrofitting Program; in 40 CFR part 82; OMB No. 2060–0350; on 04/20/2000 OMB extended the expiration date through 06/30/2000.

Comments Filed

EPA ICR No. 1920.01; Revisions to Regulatory Provisions Governing Permit Issuance for the National Pollutant Discharge Elimination System; on 04/11/2000 OMB filed comment.

EPA ICR No. 0002.10; Revision of Information Request for National Pretreatment Program; in 40 CFR part 403; OMB No. 2040–0009; on 04/10/2000 OMB filed comment.

EPA ICR No. 0229.14; Standards for the use or Disposal of Sewage Sludge—Round 2 Amendments to 40 CFR part 503; OMB No. 2040–0004; on 04/13/2000 OMB filed comment.

Action Withdrawn

ICR No. 1940.01; Health Effects of Particulate Matter and Co-Pollutant Exposures Near the El Paso/Juarez Border Crossings; on 04/25/2000 OMB filed comment.

Dated: May 17, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–13206 Filed 5–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6709–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Revisions to the Information Collection Request (ICR) for the National Water Quality Inventory Reports (Clean Water Act Section 305(b)) and Proposed Revisions to EPA's Regulations Implementing Section 303(d)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an ICR for the proposed revisions to the Water Quality Planning and Management Regulation has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection for the proposed regulation and its expected burden and cost. The ICR also revises the expected burden and costs of the current Section 303(d) program and for Section 305(b) reports.

DATES: Comments must be submitted on or before June 26, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of EPA ICR Number 1560.06 contact Sandy Farmer at the Environmental Protection Agency (EPA) by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by phone at (202) 260–2740, by email at *farmer.sandy@epa.gov*, or download from the Internet at *http://www.epa.gov/icr*. For technical questions about this ICR, contact Richard Iovanna by phone at (202) 260–5194 or by email at *iovanna.rich@epa.gov*.

SUPPLEMENTARY INFORMATION:

Section 303(d) of the Clean Water Act requires States, Territories, and authorized Tribes to identify and rank waters which do not meet water quality standards following implementation of technology-based controls. Under section 303(d), States, Territories, and authorized Tribes are also required to establish total maximum daily loads (TMDLs) for listed waters not meeting standards as a result of pollutant discharges. In developing the section 303(d) lists, States, Territories, and authorized Tribes are required to consider various sources of water-quality related data and information, including the section 305(b) water quality reports. The section 305(b) reports contain information on the extent of water quality degradation, the pollutants and sources affecting water quality, and progress in controlling water pollution.

The Clean Water Act requires EPA to review and approve or disapprove section 303(d) lists and TMDLs. Currently, there are 56 respondents (the 50 States, the District of Columbia, and the five Territories). Section 303(d) specifically requires States, Territories, and authorized Tribes to develop lists and TMDLs "from time to time" and EPA to review and approve or disapprove the lists and the TMDLs. EPA collects section 305(b) reports from 59 respondents (the 50 States, the District of Columbia, five Territories, and 3 River Basin commissions).

The Office of Management and Budget (OMB) previously approved information collection authority for the submission of section 305(b) reports under 40 CFR 130.10(a) of the EPA Water Quality Management Standards under OMB Number 2040–0071. In 1992, OMB approved an addendum to this ICR clarifying the burden associated with preparing section 303(d) lists of waters for inclusion in the section 305(b) reports. OMB reapproved the ICR for the period 1993–1995, 1996–1998, and then again from March 1999–April 2003 (ICR Number 1560.05, approved April 5, 2000).

Today's proposed ICR (ICR Number 1560.06, OMB Number 2040–0071) proposes revisions to the currently approved ICR based on changes EPA proposed to make to the section 303(d) regulations. These revisions would increase the burden to States, Territories, and authorized Tribes for four section 303(d) activities related to preparation of the section 303(d) lists: revising the listing methodology, establishing schedules for TMDL development, increased public participation, and providing the listing methodology in a new format. EPA's currently approved ICR for the period March 1999 through April 2003 was based on the burden to respondents of the current program and did not include consideration of the impact of the proposed regulations. The revisions contained in the revised ICR include the increased section 303(d) listing burden to States, Territories, and authorized Tribes that would result under the proposed regulations.

As required by OMB's Terms of Clearance for the currently approved ICR, the revised ICR includes the respondent burden associated with developing TMDLs. This burden has not been estimated in previous ICRs, but can now be included due to recent advances in EPA's ability to estimate the cost of developing TMDLs. In this ICR, the burden for developing TMDLs is divided into two parts: the burden associated with the current TMDL regulations, and the additional burden associated with the new requirements for the final revisions to the TMDL regulations. The new requirements add two additional TMDL development tasks: preparation of an implementation plan, and written response to public comments regarding the TMDL.

As required by OMB's Terms of Clearance for the currently approved ICR, the revised ICR also estimates the burden to respondents of providing information as required by section 305(b) on the costs and benefits of attaining water quality standards, and the burden to the Agency of providing guidance to respondents for preparing this information. Although this is not a new requirement, the burden of providing this information has not been estimated in previous ICRs, whether based on the effort associated with the current practices of respondents in providing this information or the availability of better guidance for developing this information.

The revised ICR does not include the reduction in respondent burden resulting from the anticipated final regulations' adoption of a 4-year section 303(d) listing cycle instead of the current 2-year section 303(d) listing cycle because the savings (although substantial over time) would likely not be realized for the period covered by this ICR. It also does not include the reduction in respondent burden resulting from EPA's March 27, 2000 rule removing the federal requirement for States to submit their section 303(d) lists in 2000 (skipping this listing cycle) because the timing of the rule's issuance makes it difficult to estimate the extent to which savings occurred.

EPA has concluded that no government information collection activity duplicates the information requested by this revised ICR and, therefore, it has no other way to obtain the information. Therefore, these responses are mandatory. In addition to EPA, environmental groups will most likely use the information collected to assess the actions of States, Territories, and authorized Tribes. Information collected through the proposed activities is not confidential because all respondents are State agencies, Territorial agencies, and Tribes working entirely in a public forum. The proposed information collection activities do not request information of a sensitive nature from the State, Territorial, or Tribal respondents.

The projected average additional cost associated with the revised section 303(d) rule requirements is estimated to be $218,663 per respondent, and the total annual cost for all 56 respondents is estimated to be $12,245,100 . This estimate does not include any of the savings that will accrue to respondents in future years resulting from the Agency's anticipated adoption of a 4-year section 303(d) listing cycle instead of the current 2-year section 303(d) listing cycle. The average current cost associated with developing TMDLs under the current section 303(d) program is estimated to be $7,653,941 per respondent, and the total annual cost for all 56 respondents is estimated to be $128,620,703. The average current cost associated with developing benefit cost information for the section 305(b) biennial reports is estimated to be $1,750, and the total annual cost for all 59 respondents is estimated to be $103,253. The average potential additional cost associated with developing improved benefit cost information for the section 305(b) biennial reports is estimated to be $25,901 per respondent (depending on the level of detail and sophistication of the analyses), and the total annual potential additional cost for all 59 respondents is estimated to be $1,424,891. Overall, the burden associated with the new requirements amounts to a total of 351,504 hours at a cost of $13,669,991 and the burden associated with the current program requirements amounts to a total of 3,309,950 hours at a cost of $128,723,955. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 26, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by June 26, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

Dated: May 19, 2000

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 00–13441 Filed 5–25–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OH137–1a; FRL–6705–3]

Adequacy Status of Cincinnati, Ohio Submitted Ozone Maintenance Plan Budgets for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this document, EPA is notifying the public that EPA has found that the motor vehicle emissions budgets in the Cincinnati, Ohio ozone maintenance plan submitted on December 22, 1999, are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, Cincinnati can use the motor vehicle emissions budgets for the year 2010 from the submitted ozone maintenance plan for future conformity determinations. These budgets are effective June 12, 2000.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments already received will be available at EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Patricia Morris, Environmental Scientist, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, morris.patricia@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

Throughout this document, whenever "we," "us" or "our" is used, we mean EPA. Today's document is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Ohio Environmental Protection Agency on April 27, 2000, stating that the motor vehicle emissions budgets in the Cincinnati, Ohio submitted ozone maintenance plan for 2010 are adequate. This finding will also be announced on EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 5, 2000.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 00–13203 Filed 5–25–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6607–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed May 15, 2000 Through May 19, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000146, Final EIS, USA, HI, Schofield Barracks Wastewater Treatment Plant (WWTP), Effluent Treatment and Disposal, NPDES Permit and COE Section 404 Permit, City of County of Honolulu, Oahu, HI, Due: June 26, 2000, Contact: William Eng (703) 428–7078.

EIS No. 000147, Draft EIS, AFS, ID, East Beaver and Miner's Creek Timber Sales and Prescribed Burning Project, Implementation, Caribou-Targhee National Forest, Dubois Ranger District, Clark County, ID, Due: July 10, 2000, Contact: John Councilman (208) 374–5422.

EIS No. 000148, Draft EIS, FHW, MO, US Route 65/US Route 36 in Livingston County, Transportation Improvements, Funding and COE Section 404 Permit, Livingston County, MO, Due: July 10, 2000, Contact: Carole Hopkins (573) 526–6680.

EIS No. 000149, Draft EIS, FHW, TX, Grand Parkway (TX–99) Segment C, Construction from US 59 to TX 288, Funding and Right-of-Way Requirements, City of Houston, Fort Bend and Brazoria Counties, TX, Due: July 13, 2000, Contact: John Mack (512) 916–5516.

EIS No. 000150, Draft EIS, AFS, CA, 64-Acre Tract Intermodal Transit Center, Construction and Operation, Lake Tahoe Basin Management Unit, Tahoe City, Placer County, CA, Due: July 21, 2000, Contact: Joe Oden (530) 573–2653.

EIS No. 000151, Final EIS, FHW, FL, FL–423 (John Young Parking), Improvements from FL–50 to FL–434, City of Orlando, Orange County, FL, Due: June 26, 2000, Contact: Mark Bartlett (850) 942–9650.

EIS No. 000152, Draft EIS, RUS, KY, Jackson County Lake Project, Implementation, To Provide Adequate Water Supplies for the Projected Residential, Commercial and Industrial Needs, Funding and Possible COE Section 10 and 404 Permits, Jackson County, KY, Due: July 10, 2000, Contact: Mark S. Plank (202) 720–1649.

EIS No. 000153, Draft EIS, FTA, NY, East Side Access Project, Improve Access to Manhattan's East Side for Commuters in the Long Island Transportation Corridor (LITC), MTA Long Island Rail Road (LIRR), Funding, Nassau, Suffolk, New York, Queens and Bronx Counties, NY, Due: July 12, 2000, Contact: Anthony G. Carr (212) 668–2175.

EIS No. 000154, Draft EIS, GSA, MA, U.S. Courthouse Springfield, Construction, Hampden County, MA, Due: July 11, 2000, Contact: Frank Saviano (617) 565–5494.

EIS No. 000155, Draft EIS, AFS, MT, Discovery Ski Area Expansion, Implementation, Special-Use-Permit and COE Section 404 Permit, Beaverhead-Deerlodge National Forest, Pintler Ranger District, Rumsey Mountain, Granite County, MT, Due: July 10, 2000, Contact: Bob Gilman (406) 859–3211.

EIS No. 000156, Final EIS, AFS, WY, ID, Targhee National Forest Plan Oil and Gas Leasing Analysis, Implementation, Bonneville, Butte, Clark, Fremont and Madison Counties, ID and Teton County, WY, Due: June 26, 2000, Contact: Wally Bunnell (208) 624–3151.

Amended Notices

EIS No. 000141, Draft EIS, AFS, Forest Service Roadless Area Conservation, Implementation, Proposal to Protect Roadless Areas, In addition, the Agency is proposing special consideration for the Tongass National Forest, Due: July 17, 2000, Contact: Scott Conroy (703) 605–5299. Revision of FR notice published on 05/19/2000: CEQ Comment Date corrected from 07/03/2000 to 07/17/2000.

Dated: May 23, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–13303 Filed 5–25–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6607–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 08, 2000 Through May 12, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 574–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–F65026–MN

Rating EC2, Gunflint Corridor Fuel Reduction, Implementation, Superior National Forest, Gunflint Ranger District, Cook County, MN.

Summary: EPA expressed environmental concerns regarding potential adverse impacts to air and water quality.

ERP No. D-AFS-J65313–CO

Rating EC2, White River National Forest, Revised Land and Resource Management Plan, Implementation, Eagle, Garfield, Gunnison, Mesa, Moffat and Pitkin Counties, CO.

Summary: EPA expressed environmental concerns that the impacts of unplanned, user-created travelways on the Forest were not fully evaluated and disclosed and the analysis of ski-based resorts and aerial travel corridors contained conflicting and misleading information. EPA suggests that the watershed analysis include information from the most recent watershed assessments. EPA supports the preferred alternative as best meeting the purpose and need for both the Forest and Travel Management Plans.

ERP No. D-AFS-L65346–OR

Rating LO, Triangle Land Exchange Project, Between Clearwater Land Exchange Oregon (Clearwater) an Oregon Partnership, Implementation, Malheur, Umatilla and Wallowa-Whitman National Forests, Baker, Grant, Harney and Wallowa Counties, OR.

Summary: EPA expressed lack of objections.

ERP No. D–AFS–L65351–ID

Rating EC2, East Slate Project, Harvesting Timber, Implementation, Idaho Panhandle National Forests, St. Joe Ranger District, Shoshone County, ID.

Summary: EPA expressed environmental concerns regarding impacts to water quality from roads and proposed harvest activities. EPA suggests that the EIS describe whether restoration efforts contingent on funding are incorporated into the effects analysis and that a monitoring plan to determine extent of temperature impacts to salmonid be included.

Final EISs

ERP No. F–AFS–J65295–MT

Clancy-Unionville Vegetation Manipulation and Travel Management Project, Implementation, Helena National Forest, Helena Ranger District, Lewis and Clark and Jefferson Counties, MT.

Summary: EPA did not object to the preferred alternative, but expressed environmental concerns regarding the level of aquatic and hydrologic monitoring proposed by the BLM and Forest Service. EPA suggests that quantitative emissions for PM10 from prescribed burning be disclosed for each alternative.

ERP No. F–OSM–E61047–TN

Fall Creek Falls Petition Evaluation Document, Implementation, Designate the Land as Unsuitable for Surface Coal Mining Operation, Van Buren and Bledsoe Counties, TN.

Summary: EPA supports the less damaging alternative that ensures protection of Park land viewsheds and protects three of the five watersheds that were threatened by mine expansion while permitting mining in previously degraded Piney Creek and Dry Fork.

Dated: May 23, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–13304 Filed 5–25–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6705–5]

Gulf of Mexico Program Focus Team Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Gulf of Mexico Program (GMP) focus teams.

SUMMARY: Under the Federal Advisory Act, Public Law 92463, EPA gives notice of a comprehensive meeting of GMP Focus Teams (Public Health, Nutrient Enrichment, Habitat, and Nonindigenous Species).

DATES: The Comprehensive Meeting will be held on Tuesday, June 20, 2000, from 10 p.m. to 5 p.m. and on Wednesday, June 21, 2000, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Hilton New Orleans Riverside, Poydras at the Mississippi River, New Orleans, LA (504) 561–0500.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: Focus Team Development of FY2001 Performance Goal Recommendations and Supporting Strategies, Overview of FY2000 Workplan Process and Accomplishments, Briefing on FY2001 Workplan Schedule, and Review of Focus Team Roles and Responsibilities.

The meeting is open to the public.

Dated: May 17, 2000.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 00–13201 Filed 5–25–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–00661; FRL–6589–2]

State FIFRA Issues Research and Evaluation Group (SFIREG) Water Quality/Pesticide Disposal Working Committee Meeting; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Water Quality/Pesticide Disposal Working Committee will hold a 2-day meeting, beginning on June 12, 2000, and ending on June 13, 2000. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, June 12, 2000, from 8:30 a.m. to 5 p.m. and Tuesday, June 13, 2000, from 8:30 a.m. to noon.

ADDRESSES: The meeting will be held at Doubletree Hotel, 300 Army Navy Drive, Arlington—Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax: (802) 472–6957; e-mail address: aapco@plainfield.bypass.com or Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20405; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: McDuffie.Georgia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, but all parties interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. You may also obtain electronic copies of the minutes, and certain other related documents that might be available electronically from the Association of American Pesticide Control Officials (AAPCO) Internet Home Page at http://aapco.ceris.purdue.edu/doc/index.html. To access this document, on the Home Page select "SFIREG Meetings."

2. *By mail.* Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249.

III. Purpose of Meeting

Tentative Agenda:

1. Revising EPA guidance document for the Pesticide Management Plan rule.
2. Probabilistic risk assessment for ecological effects.
3. State regulation of aquatic use pesticides.
4. Up-date on Total Maximum Daily Load (TMDL) activities in California.
5. Report on certain herbicides in surface and ground water in the Midwest.
6. Topics for Pesticide Regulatory Education Program (PREP) course on water quality.
7. General program up-dates from the Office Pesticide Programs (OPP) and the Office of Enforcement and Compliance Assurance (OECA).
8. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: May 19, 2000.

Jay Ellenberger,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 00–13314 Filed 5–25–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30496; FRL–6559–5]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30496, must be received on or before June 26, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30496 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Thomas C. Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 213, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202; telephone number: 703–308–9423; e-mail: harris.thomas@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30496. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30496 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30496. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. File Symbol: 48210–G. Applicant: Sankyo Co., Ltd., c/o Rockwell Enterprises, Inc., 1720 Savannah Dr., NE, Rio Rancho, NM 87124–5700. Product Name: Milbemectin Technical Miticide/Insecticide. Active ingredient: Milbemectin (≥ 70% milbemycin A_4 and ≤ 30% milbemycin A_3) at 97.0%. Proposed classification/Use: Formulation into miticide/insecticide for application to pome fruits group, citrus fruits group, strawberries, ornamentals, and non-bearing fruit trees.

2. File Symbol: 48210–U. Applicant: Sankyo Co., Ltd., c/o Rockwell Enterprises, Inc., 1720 Savannah Dr., NE, Rio Rancho, NM 87124–5700. Product Name: Milbeknock EC Miticide/Insecticide. Active ingredient: Milbemectin (≥ 70% milbemycin A_4 and ≤ 30 milbemycin A_3) at 1.0%. Proposed classification/Use: Miticide/insecticide for application to pome fruits group, citrus fruits group, strawberries, ornamentals, and non-bearing fruit trees.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 17, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–13312 Filed 5–25–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–42077; FRL–6488–6]

Delaware State Plan for Certification of Applicators of Restricted Use Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: The State of Delaware has submitted to EPA several statutory, regulatory, and programmatic amendments to its State Plan for Certification and Training of Applicators of Restricted Use Pesticides. The proposed amendments establish new requirements for the certification and recertification of pesticide applicators, requires training for registration of non-certified employees, adopts EPA's requirements for direct supervision, adds new commercial subcategories, and establishes the payment of fees for commercial applicators, issuance of business licenses, and dealer permits. Notice is hereby given of the intention of the Regional Administrator, Region III, to approve the revised Plan for the Certification of Applicators of Restricted Use Pesticides. EPA is soliciting comments on the proposed amendments.

DATES: Comments, identified by docket control number OPP–42077, must be received on or before July 10, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–42077 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Clara Fuentes, Pesticides/Asbestos Programs and Enforcement Branch (3WC32), Environmental Protection Agency, Region III, 1650 Arch St., Philadelphia, PA 19103–2029; telephone number: 215–814–3453; fax number: 215–814–3114; e-mail address: fuentes.clara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. In addition, it may be of interest to others, such as, those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of the Amended State Plan, Other Related Documents, and Additional Information?

To obtain copies of the amended Delaware Certification Plan, other related documents, or additional information contact:

1. Clara Fuentes at the address listed under **FOR FURTHER INFORMATION CONTACT**.

2. Larry Towel, Delaware Department of Agriculture, Pesticides Compliance, 2320 Dupont Highway, Dover, DE 19901; telephone number: 302–697–6287; e-mail address: larry@smtp.dda.state.de.us.

3. John MacDonald, Office of Pesticides Program, Field and External Affairs Division (7506C), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW.; telephone number: 703–305–7370; e-mail address: macdonald.john@epa.gov.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically to Clara Fuentes at the address listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–42077 in the subject line on the first page of your response. Electronic comments can be submitted by e-mail or you can submit a computer disk. When submitting comments electronically do not submit any information that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–42077.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has reviewed the revised Delaware Certification Plan and finds it in compliance with FIFRA and 40 CFR part 171 and is announcing its intention to apprpove the amended plan and seeks public comment.

List of Subjects

Environmental protection.

Dated: May 16, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–13315 Filed 5–25–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–937A; FRL–6588–6]

Vinclozolin, Notice of Filing; Availability of Supplemental Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of its summary of the toxicity and human health risk associated with the notice of filing of the pesticide petition (PP) (OF6079), which proposes the establishment of tolerances for residues of the fungicide vinclozolin in or on the raw agricultural commodities succulent beans and canola.

DATES: Comments, identified by docket control number PF–937A, must be received by EPA on or before June 4, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–937A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in this risk summary for vinclozolin, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control numbers PF–937A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–937A in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number PF–937A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. What Action is EPA Taking in this Notice?

The notice of filing proposing the establishment of tolerances for the residues of the fungicide vinclozolin in or on succulent beans and canola was published in the **Federal Register** on April 21, 2000 (65 FR 21427) (FRL–6555–6). The supplemental information to that notice of filing has been placed in the public version of the official record under docket control number PF–937A for public viewing. Due to the availability of this additional information the Agency is extending the closing of the comment period for the notice of filing from May 21, 2000 to June 4, 2000.

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The notice of filing represented the view of the petitioner concerning the toxicity and risk associated with the establishment of these tolerances. The supplemental information contains the Agency's summary of the toxicity and risk associated with the establishment of these tolerances. This document has been developed to provide the public with the Agency's current risk characterization for vinclozolin and to provide an opportunity, through this notice, for interested parties to provide written comments to the Agency on the chemical, vinclozolin.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 12, 2000.

James J. Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–12649 Filed 5–25–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6705–8]

Proposed CERCLA Prospective Purchaser Agreement for the Former O'Shux Golf Course, Adjacent to the Copley Square Plaza Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of CERCLA Prospective Purchaser Agreement for the former O'Shux Golf Course as part of the settlement of the Copley Square Plaza Superfund Site.

SUMMARY: In accordance with the comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99–499, notice is hereby given that a proposed prospective purchaser agreement (PPA) for the former O'Shux Golf Course adjacent to the Copley Square Plaza Superfund Site (Site) located in Copley, Ohio, has been executed by Ameri-Con Inc. The proposed PPA has been submitted to the Attorney General for approval. The proposed PPA would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against Ameri-Con Inc. and Ameri-Con Copley, Ltd. The proposed PPA will not pay any money directly to the United States, but is part of a larger settlement by which the United States stands to recover just under 50% of its outstanding response costs incurred at the Site. The Site is not on the National Priorities List.

DATES: Comments on the proposed PPA must be received by U.S. EPA on or before June 26, 2000.

ADDRESSES: A copy of the proposed PPA is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Kathleen Schnieders at (312) 353–8912, prior to visiting the Region 5 office.

Comments on the proposed PPA should be addressed to Kathleen Schnieders, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Kathleen Schnieders at (312) 353–8912, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed PPA. Comments should be sent to the addressee identified in this notice.

Richard C. Karl,

Acting Director, Superfund Division, Region 5.

[FR Doc. 00–13198 Filed 5–25–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6705–9]

Proposed CERCLA Administrative Cost Recovery Settlement; Hoxie Flying Service, Inc., Hoxie, Sheridan County, Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(h), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Hoxie Superfund Crash Site, Hoxie, Sheridan County, Kansas, with the following settling party: Hoxie Flying Service, Inc. The settlement requires the settling party to pay $89,500 to the Hazardous Substance Superfund over a period of five years, plus interest at the current rate specified for interest on investments of the Hazardous Substance Superfund (5.3%) established by 26 U.S.C. 9507. The settlement agreement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). An employee of Hoxie Flying Services, Inc. crashed into the roof of a residence located at the Site while carrying a full load of methyl parathion. EPA removed contaminated portions of the structure and contaminated soils surrounding the residence and then restored the property in cooperation with the home owner's insurance company. The home owner's insurance company has reimbursed $10,000 of EPA's total costs of $134,398.54. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Sheridan County Library, 801 Royal Avenue, Hoxie, Kansas 67740, and Office of Regional Hearing Clerk, EPA, 901 North 5th Street, Kansas City, KS 66101.

DATES: Comments must be submitted on or before June 26, 2000.

ADDRESSES: The proposed settlement providing additional background information relating to the settlement is available for public inspection at Office of Regional Hearing Clerk, Environmental Protection Agency, 901 N. 5th Street, Kansas City, KS 66101. A copy of the proposed settlement may be obtained from Kathy Robinson, Regional Hearing Clerk, EPA, 901 N. 5th Street, Kansas City, KS 66101, telephone 913–551–7567. Comments should reference the Hoxie Superfund Crash Site, Hoxie, Sheridan County, Kansas, Docket No. CERCLA 7–2000–0018, and should be addressed to Regional Hearing Clerk, EPA, 901 N. 5th Street, Kansas City, KS 66101.

FOR FURTHER INFORMATION CONTACT: James D. Stevens, Assistant Regional Counsel, EPA, 901 N. 5th Street, Kansas City, KS 66101, telephone: 913–551–7322.

Dated: May 15, 2000.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 00–13204 Filed 5–25–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1326–DR]

Maine; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine, (FEMA–1326–DR), dated April 28, 2000, and related determinations.

EFFECTIVE DATE: May 18, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Maine is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 28, 2000:

Piscataquis County for Public Assistance

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–13325 Filed 5–25–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3154–EM]

New Mexico; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New Mexico, (FEMA–3154–EM), dated May 10, 2000, and related determinations.

EFFECTIVE DATE: May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for the emergency declaration has been reopened. The incident period is May 5, 2000 and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–13323 Filed 5–25–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1329–DR]

New Mexico; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–1329–DR), dated May 13, 2000, and related determinations.

EFFECTIVE DATE: May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New Mexico is hereby amended to include Public Assistance for the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 13, 2000. Act (42 U.S.C. 5121 *et seq.*), as follows:

Los Alamos County for Public Assistance (previously designated for Individual Assistance)

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–13324 Filed 5–25–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

NAME: Technical Mapping Advisory Council.

DATE OF MEETING: June 1–2, 2000.

PLACE: Federal Emergency Management Agency, Region III Office, Liberty Square Bldg., 2nd Floor, 105 S. Seventh Street, Philadelphia, PA 19106–3316.

TIMES: 8:30 a.m. to 5 p.m., both days.

PROPOSED AGENDA:

1. Call to Order and Announcements.
2. Action on Minutes of Previous Meetings.
3. Discussion of Final Annual Report.
4. New Business.
5. Adjournment.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Ms. Sally P. Magee, Federal Emergency Management Agency, 500 C Street SW., room 442, Washington, DC 20472, telephone (202) 646–8242 or by facsimile at (202) 646–4596 on or before May 29, 2000.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting.

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Dated: May 22, 2000.
Michael J. Armstrong,
Associate Director for Mitigation.
[FR Doc. 00–13326 Filed 5–25–00; 8:45 am]
BILLING CODE 6718–04–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Australia and New Zealand Banking Group Limited, Melbourne, Australia; to become a bank holding company by acquiring 100 percent of the voting shares of Amerika Samoa Bank, Pago Pago, American Samoa.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Lafayette Community Bancorp, Lafayette, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Lafayette Community Bank (in organization), Lafayette, Indiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Arvest Bank Group, Inc., Bentonville, Arkansas, and its subsidiary, First Bancshares, Incorporated, Bartlesville, Oklahoma; to retain 100 percent of the voting shares of State Bank and Trust, Tulsa, Oklahoma, following it's conversion to a state chartered bank.

2. Heritage Group, Inc., Aurora, Nebraska; to acquire 100 percent of the voting shares of City National Bank and Trust Company, Hastings, Nebraska.

Board of Governors of the Federal Reserve System, May 22, 2000.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 00–13255 Filed 5–25–00; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 9, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Gary Arthur Rubel and Nancy Sue Rubel, both of Englewood, Florida; to acquire voting shares of CNB Bancorp, Inc., Woodsfield, Ohio, and thereby indirectly acquire voting shares of Citizens National Bank of Woodsfield, Woodsfield, Ohio.

Board of Governors of the Federal Reserve System, May 22, 2000.
Robert deV. Frierson,
Associate Secretary of the Board
[FR Doc. 00–13256 Filed 5–25–00; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 9, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First Gothenburg Bancshares, Inc., Gothenburg, Nebraska; Nebraska Bankshares, Inc., Gothenburg, Nebraska; and Stamford Banco, Inc., Stamford, Nebraska; to acquire First Gothenburg Bancshares, Inc., Gothenburg, Nebraska, through Cook Management, Inc., Gothenburg, Nebraska, and thereby engage in general insurance activities in a town of less than 5,000 in population, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 22, 2000.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 00–13257 Filed 5–25–00; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1037]

Modifying Federal Reserve ACH Deposit Deadlines and Pricing Practices Relative to Private-Sector ACH Operators

AGENCY: Board of Governors of the Federal Reserve System.
ACTION: Notice.

SUMMARY: Based on comments received in response to its request for comment last year, the Board has concluded that the Federal Reserve Banks' deposit deadlines and pricing practices for automated clearing house (ACH) transactions exchanged with private-sector ACH operators should be modified. The Board is considering specific modifications to these deadlines and pricing practices, which could be implemented as early as mid-2001, and requests comment on these proposed modifications.

DATES: Comments must be submitted on or before July 25, 2000.

ADDRESSES: Comments, which should refer to Docket No. R–1037, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m. weekdays, pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Manager (202/452–2660); Michele Braun, Project Leader (202/452–2819); or Jeffrey S.H. Yeganeh, Senior Financial Services Analyst (202/728–5801); for the hearing impaired *only*, contact Janice Simms, Telecommunication Device for the Deaf (202/872–4984).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Reserve Banks are collectively the largest ACH operator and process more than 80 percent of commercial interbank ACH transactions. Private-sector ACH operators (PSOs) process the remaining transactions and typically provide services, including processing and settling ACH transactions, similar to those offered by the Reserve Banks. PSOs also rely on the Reserve Banks' ACH services for the delivery and settlement of some transactions in which either the originating depository financial institution (ODFI) or receiving depository financial institution (RDFI) is not their customer.

The Reserve Banks' authority to provide payment services is limited by law to services provided to depository institutions.[1] The Reserve Banks, however, allow depository institutions to send or receive their ACH transactions through intermediaries, such as PSOs, and treat those intermediaries as agents of the depository institutions they serve. Nevertheless, all depository institutions are currently subject to the same Reserve Bank prices and service guidelines regardless of how they send or receive their ACH transactions to and from the Reserve Banks.

Some industry representatives have expressed concerns that the Reserve Banks' price and service level policies have created barriers to open and vigorous competition among ACH operators because the policies do not recognize the role played by operators in the ACH system.[2] Specifically, these representatives have maintained that the Reserve Banks' deposit deadlines and price structure do not permit the PSOs to compete effectively in the provision of ACH services to depository institutions.

The Federal Reserve Board recognizes the benefits of competition in the provision of payment services. In a 1990 white paper on the Federal Reserve in the payments system, the Board stated that "the role of the Federal Reserve in providing payments services is to promote the integrity and efficiency of the payments mechanism and to ensure the provision of payment services to all depository institutions on an equitable basis, and to do so in an atmosphere of competitive fairness."[3] In addition, the Board's standards for priced services activities note that "Federal Reserve actions are implemented in a manner that ensures fairness to other providers of payment services."[4]

In response to the industry's concerns, the Board requested comment last year on the benefits and drawbacks of modifying the Reserve Banks' deposit deadlines and pricing practices for ACH transactions exchanged with PSOs (64 FR 27793, May 21, 1999). Specifically, the Board requested comment on whether the Reserve Banks should (1) modify their deposit deadlines and processing schedules, (2) modify their pricing structure for interoperator transactions, and (3) limit any modifications to PSOs only.

II. Summary of Comments

The Board received fifty-eight responses to its request for comment.[5] Thirty-two commenters supported and twenty-six commenters opposed modifications to the Reserve Banks' deposit deadlines and pricing practices. Those supporting modifications generally tended to be larger depository institutions and ACH associations that believed modifications would improve competition in the provision of ACH services. Those opposing modifications generally tended to be smaller or medium-sized depository institutions that believed any modifications would lead to higher Reserve Bank fees, which in turn would make them less able to compete in the market for origination services with institutions that use PSO ACH services. Given the diversity in the commenters' views, Board staff invited commenters to a meeting in December 1999 to discuss interoperator issues more fully and to explore alternative approaches to addressing these issues.[6]

A. Deposit Deadlines

The Board requested comment on the benefits and drawbacks of the Reserve

[1] Reserve Banks may also provide services to a limited set of other institutions, such as state member banks that are not defined as depository institutions. Further, the Reserve Banks may provide services to other entities if directed to do so as fiscal agent of the United States.

[2] ACH Vision 2000 Task Force Recommendations, NACHA, 1997; The Role of the Federal Reserve and the Banking Industry in the Retail Electronic Payments Systems of the Future, The Bankers Roundtable, April 1998.

[3] The Federal Reserve in the Payments System, Federal Reserve Regulatory Service 7–139.

[4] Standards Related to Priced-Services Activities of the Federal Reserve Banks, Federal Reserve Regulatory Service 7–136.

[5] The Board received seventeen comments from small banks and thrifts, fourteen comments from national and regional banks, nine comments from ACH associations and clearinghouses, seven comments from credit unions, five comments from Reserve Banks, three comments from private-sector operators, and three comments from consultants, law firms, and corporate associations.

[6] This summary of comments reflects commenters' formal responses to the request for comment as well as the views expressed at the December 1999 meeting.

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Banks establishing different deposit and delivery deadlines for PSOs and depository institutions. PSOs maintain that they are unable to offer competitive deposit deadlines and delivery schedules to their customers because they are subject to the same deposit deadlines and delivery schedules that Reserve Banks offer to depository institutions.

Commenters suggested a number of solutions to address this issue. One suggestion was that the Reserve Banks could offer PSOs later deposit and earlier delivery deadlines to enable PSOs, in turn, to offer competitive deadlines to their customers. Another potential solution was for the industry to adopt a uniform interoperator deposit deadline at which all operators would deposit transactions with one another. Other commenters, however, advocated the status quo because they did not believe that Reserve Bank deadlines place PSOs at a competitive disadvantage.

B. Pricing Structure

The Board also requested comment on the benefits and drawbacks of the Reserve Banks modifying their pricing structure for interoperator transactions. PSOs maintain that the Reserve Banks' current pricing structure has placed them at a competitive disadvantage. Specifically, the main concern regarding the Reserve Banks' current pricing structure is the asymmetry in the ability of operators to charge each other's customers. The Reserve Banks consider both the ODFI and RDFI in an interoperator transaction to be their customers and charge both accordingly. PSOs, on the other hand, can only charge their own customer in an interoperator transaction. Some commenters also expressed concern about the Reserve Banks' ability to charge monthly account servicing fees to all depository institutions, including those that send or receive all their ACH transactions through PSOs.

Some commenters suggested that the Reserve Banks should modify their pricing structure for interoperator transactions such that they assess fees only to their direct customers. Commenters also suggested that the Reserve Banks should abolish the monthly account servicing fee for depository institutions that send and receive all of their ACH transactions through a PSO. Commenters believed that these suggested modifications would eliminate the asymmetry noted earlier and would result in a similar customer pricing structure for Reserve Banks and PSOs in which each operator would charge its direct customer only. Other commenters were concerned that any modifications to the Reserve Banks' pricing structure could result in an increase in fees to Reserve Bank customers that do not use the services of a PSO and, thus, opposed any change to the current pricing structure.

C. Eligibility

The Board also requested comment on whether any modifications to the Reserve Banks' deadlines and pricing structure should be limited to ACH operators or extended to other intermediaries, such as third-party processors and correspondents. Specifically, because many of the characteristics that distinguish ACH operators from other intermediaries do not affect how Reserve Banks provide ACH services, the Board was interested whether all intermediaries should be eligible for modified deadlines and pricing. Further, the Board requested comment on whether the Reserve Banks should rely on the National Automated Clearing House Association's (NACHA) ACH operator definition if they were to limit modifications to ACH operators.

Some commenters suggested that only ACH operators should be eligible for modified deadlines and pricing. These commenters noted that Reserve Banks compete with ACH operators in the provision of ACH operator services and, thus, only ACH operators should be eligible for any modifications. These commenters also stated that the Reserve Banks should use NACHA's ACH operator definition to determine eligibility for modified deadlines and pricing rather than develop their own definition. Other commenters, however, suggested that if the Reserve Banks' ACH processing is not affected by the type of intermediary from which they receive transactions or to which they deliver transactions, then all intermediaries should be eligible for modified deadlines and pricing.

III. Enhancing Competition

The Board has carefully considered the commenters' views and has concluded that the Reserve Banks' deposit deadlines and pricing structure for ACH transactions exchanged with private-sector ACH operators should be modified. The Board believes that adopting certain deadline and pricing modifications for interoperator transactions would enhance competition in the provision of ACH operator services to depository institutions.

To determine what modifications might be appropriate to enhance competition in the market for ACH operator services, the Reserve Banks examined the types of services PSOs receive from the Reserve Banks when they send transactions to depository institutions through the Reserve Banks. Similarly, the Reserve Banks examined the types of services they receive from PSOs when they send transactions to depository institutions through PSOs.

First, an operator provides other operators' customers with access to depository institutions on its network. Each of these networks essentially is comprised of telecommunications links that permit the transmission of ACH files between participating depository institutions and the operator. While each operator's network might employ different technologies with different levels of complexity, the costs associated with these networks are primarily fixed. For interoperator transactions, the ability to access depository institutions on other networks allows an operator (1) to forego the costs associated with establishing a direct connection to all depository institutions and (2) to provide its own customers with the ability to send ACH transactions to any depository institution. Thus, when an operator provides other operators' customers with access to a depository institution on its network, it provides value to those customers and the operators that serve them.

Second, an operator processes transactions it receives from other operators and delivers those transactions to depository institutions on its network. Processing ACH transactions requires computing and other resources, which have both fixed and variable components. Therefore, it is reasonable for an operator to charge transaction fees to recover the costs associated with processing ACH transactions.

Third, the Reserve Banks provide settlement for all ACH transactions they process, including interoperator transactions. Other operators do not settle interoperator transactions that are processed by the Reserve Banks. As a result, the Reserve Banks incur accounting, computing, and other costs when they settle ACH interoperator transactions for depository institutions that use PSOs. Thus, the Reserve Banks are providing a service not provided by other operators when they settle interoperator transactions they process.

The Board has concluded that competition in the provision of ACH operator services would be enhanced through modifications to the deposit deadlines and delivery schedules for interoperator transactions and the adoption of a new pricing structure for these transactions. Specifically, the Board believes that deposit deadlines for interoperator transactions should enable Reserve Banks and PSOs to establish competitive deposit deadlines and delivery schedules for their customers. The Board also believes that the Reserve Banks should adopt a price structure for interoperator transactions that is consistent with the cost structure associated with processing interoperator transactions. This new price structure should include a fee to access depository institutions on the Reserve Banks' ACH network, a fee to process interoperator transactions, and a settlement fee to recover the Reserve Banks' settlement costs. The Board believes that these changes, along with the ability of PSOs to assess interoperator fees to Reserve Banks, should enhance competition in the provision of ACH operator services to depository institutions.

IV. Proposed Modifications

The Board has developed a specific proposal to modify the Reserve Banks' deadlines and pricing structure for ACH interoperator transactions that it believes will promote competition in the provision of ACH services and address the concerns raised by some commenters. The Board is requesting comment on this proposal.

The Board proposes the following deadlines and pricing structure for ACH interoperator transactions that are processed by the Reserve Banks:

- Deposit deadlines: The Board proposes that the Reserve Banks work collaboratively with ACH operators to establish interoperator deposit deadlines by which the Reserve Banks and the PSOs would exchange interoperator transactions.
- Pricing structure: The Board proposes the following price structure for interoperator transactions processed by the Reserve Banks.
  - —First, the Reserve Banks would charge ACH operators a monthly network access fee for each routing number they access on the Reserve Banks' ACH network.
  - —Second, the Reserve Banks would charge ACH operators per-item fees for transactions they send through the Reserve Banks' ACH network.
  - —Third, the Reserve Banks would charge depository institutions that send and receive all their transactions through PSOs a monthly settlement fee rather than the current monthly account servicing fee.
  - —Fourth, the Reserve Banks would pay PSOs for transactions they send to depository institutions through those PSOs.
- Eligibility: The Board proposes to limit the modified deadlines and pricing structure to intermediaries that are defined as ACH operators in the NACHA rules.

A. Deposit Deadlines

The Board proposes that the Reserve Banks work collaboratively with ACH operators to establish interoperator deposit deadlines by which the Reserve Banks and the PSOs would exchange interoperator transactions. The Reserve Banks' preliminary recommendation is that one interoperator deposit deadline be established at 2:30 p.m. eastern time for immediate settlement items and that another interoperator deposit deadline for next-day settlement items be established at 3:00 a.m. eastern time.[7] The Reserve Banks would accept interoperator transactions from PSOs and send interoperator transactions to PSOs at the new deposit deadlines. Clearly, ACH operators, including the Reserve Banks, would need to establish their own deposit and delivery deadlines for their customers. Further, the PSOs could establish other deadlines by which they would exchange interoperator transactions among themselves.

If the Reserve Banks' preliminary recommendation for interoperator deposit deadlines were adopted, the Reserve Banks would require their customers to deposit next-day settlement items half an hour earlier than they do today. The Reserve Banks, however, currently receive almost all their ACH volume well before the deposit deadlines and deadline extensions have become much less frequent. The recommended deposit deadlines would require no change in deposit times for Reserve Bank customers depositing immediate settlement items. As a result, the recommended exchange deadlines would likely have minimal effects on the processing schedules of Reserve Bank customers. Further, because Reserve Banks would deposit transactions with PSOs at the interoperator deposit deadlines, PSOs should be able to offer their customers deposit and delivery deadlines that are competitive with those offered by the Reserve Banks. Thus, the Board's general proposal for interoperator deposit deadlines, as well as the specific Reserve Bank deposit deadline recommendation, would likely enhance competition with minimal effect on depository institutions.

Interoperator deposit deadlines, however, pose problems for transactions that involve three operators. Currently, a small fraction of the volume that PSOs deposit with the Reserve Banks is destined to other PSOs, which results in some transactions being processed by three operators.[8] With interoperator deposit deadlines, however, if an operator receives a transaction from another operator at the interoperator deposit deadline that is destined to a third operator, the middle operator would be unable to forward the transaction timely because the deadline to deposit transactions with the third operator would have already passed. Moreover, three-operator transactions tend to be inefficient because they result in redundant processing by multiple operators before they are delivered to the RDFI.

One way to address this issue is for NACHA to prohibit three-operator transactions. The Board suggests that NACHA evaluate whether its ACH operator definition should be revisited to require operators to exchange interoperator transactions directly with the operator serving the RDFI. In any case, to ensure that the Reserve Banks are able to forward the transactions to the RDFI's PSO by the interoperator deposit deadline, the Board proposes that the Reserve Banks require all ACH transactions that need to be forwarded to another operator, including transactions deposited by a PSO, be deposited by the Reserve Banks' regular customer deposit deadline.

B. Pricing Structure for Interoperator Transactions

The Board proposes a new three-tiered pricing structure for interoperator transactions processed by the Reserve Banks. Under the proposed structure, the Reserve Banks would charge PSOs and their customers fees (1) to access the Reserve Banks' ACH network, (2) to process interoperator transactions they receive from PSOs, and (3) to settle

[7] Immediate settlement items are items that are settled on the same banking day as they are received while next-day settlement items are items that are settled on the banking day after they are received. The Reserve Banks' banking day for the receipt of ACH items is from 3:00 a.m. eastern time to 2:59 a.m. eastern time on the next calendar day. Only returns and National Association of Check Safekeeping items are eligible for immediate settlement.

[8] The Board understands that some depository institutions that use a PSO prefer to minimize the number of settlements they receive for their ACH transactions. Most of these institutions already receive and reconcile two settlements one from their PSO, another from the Reserve Banks and do not want to receive a third settlement for ACH transactions that PSOs exchange directly using the Private ACH Exchange (PAX) system. Thus, PSOs use the Reserve Banks to send some transactions destined to other PSOs, which minimizes settlements but results in three-operator transactions.

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interoperator transactions for depository institutions that send and receive all their transactions through a PSO. The Reserve Banks plan to maintain the current fee structure for their customers and do not anticipate any increases in fees resulting from this proposal.

In developing a pricing structure for interoperator transactions, the Reserve Banks used a cost-based approach to set fees. In their analysis, the Reserve Banks attempted to identify costs related to network access, processing, and settlement and to price those components separately. Further, the Reserve Banks excluded certain costs that might not be incurred when services are provided to ACH operators so that the interoperator fee structure would reflect, as closely as possible, the cost structure for interoperator transactions.

Specifically, the Board proposes the following fee structure for interoperator transactions. The price ranges outlined below are based on preliminary cost analyses by the Reserve Banks. First, the Reserve Banks would charge the PSOs a monthly network access fee of between $5 and $10 for each routing number to which they send transactions on the Reserve Banks' ACH network. Second, the Reserve Banks would charge PSOs a per-item fee of between $0.002 and $0.004 to process interoperator transactions sent to RDFIs on the Reserve Banks' ACH network. And third, rather than the current monthly account servicing fee, the Reserve Banks would charge depository institutions that send and receive all their transactions through PSOs a monthly settlement fee per routing number (projected to be about $20) to settle interoperator transactions.[9]

An important additional feature of the Board's overall proposal is that the Reserve Banks would pay PSOs for commercial and government ACH transactions they deliver to RDFIs through PSOs. These fees would compensate the PSOs for the services they provide to Reserve Banks by delivering transactions to RDFIs on their networks.

An open issue that remains unresolved is how fees that PSOs would charge Reserve Banks would be restrained. The Board examined alternative approaches to restrain fees charged by operators. First, the Board considered limiting the interoperator fees Reserve Banks would pay to PSOs to the PSOs' published fees. In practice, however, because a PSO's published customer fee structure may be different from its interoperator fee structure and because not all operators publish fees or charge all of their customers their published fees, it would be difficult to ascertain whether the interoperator fees charged by an operator are reasonable. Alternatively, the Board considered allowing the Reserve Banks to pay PSOs the same fees they charge PSOs. This mechanism, while creating parity, would require PSOs to adopt the Reserve Banks' pricing structure, which may not be reflective of the PSOs' cost structures. The Board believes that the continued growth of the ACH network would be enhanced by maintaining low, cost-based interoperator fees. Thus, the Board requests comment on how the fees that operators charge each other might be restrained to encourage the continued growth of the ACH network.

C. Eligibility

The Board proposes that the deadline and price structure modifications be limited to any intermediary that is defined as an operator under NACHA rules.[10] The role of operators in the ACH system is separate and distinct from the role of other ACH intermediaries. Generally, ACH operators play a significant role in protecting the integrity of the overall ACH network and ensuring the interoperability and efficiency of the overall network. From a service perspective, the primary distinction between ACH operators and other intermediaries is that operators provide clearing, delivery, and settlement services for intraoperator transactions and exchange interoperator transactions with other operators. Third-party processors typically do not provide settlement services for transactions they process while correspondent banks typically do not provide the comprehensive clearing and delivery services provided by operators. Thus, the Reserve Banks tend to compete with PSOs, and not third-party processors or correspondent banks, in providing services to depository institutions. Further, because NACHA's operator definition does not preclude other entities from becoming new operators, it is possible that some of the larger correspondents or third-party processors might become operators to compete with the established operators.

V. Competitive Impact

The Board must conduct a competitive impact analysis when it considers a major operational change such as that being proposed for interoperator transactions.[11] Specifically, the Board must determine whether the proposed deadlines and pricing structure have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services, and if so, whether the adverse effect on competition is due to differing legal powers or constraints, or due to a dominant market position deriving from such legal differences.

The purpose of the proposed modifications is to address the concerns expressed by commenters with respect to the Reserve Banks' current deposit deadlines and pricing practices. The proposed modifications will enhance the ability of PSOs to compete with the Reserve Banks in providing ACH operator services to depository institutions. Further, depository institutions and other intermediaries should also benefit as they are likely to see a more competitive market for the provision of ACH operator services, which could result in lower costs to process their ACH transactions. Thus, the Board does not anticipate any adverse effects on competition resulting from this proposal.

VI. Conclusion

The Board requests comment on the proposed modifications. Specifically, the Board is interested in commenters' views on whether the proposed modifications enhance competition in the market for ACH operator services. Further, the Board requests comment on how the fees that operators charge each other might be restrained to encourage the continued growth of the ACH network.

By order of the Board of Governors of the Federal Reserve System, May 22, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–13207 Filed 5–25–00; 8:45 am]

BILLING CODE 6210–01–P

[9] The Reserve Banks would no longer provide customer service to depository institutions for transactions they send or receive through a PSO. These institutions would have to direct transaction and service-related inquiries to their PSOs. The Reserve Banks, however, would continue to provide customer service on settlement-related questions.

[10] NACHA recently adopted modifications to its definition of an ACH operator (NACHA Operating Rules, section 13.1.1). To qualify as a private-sector ACH operator, an entity must execute an agreement with NACHA to comply with or perform all of the following: adhere to NACHA operating rules and other applicable laws and regulations; execute agreements with a minimum of twenty independent depository institutions that bind the depository institutions NACHA operating rules and the private-sector ACH operator's rules; provide clearing, delivery, and settlement services for intraoperator transactions; exchange interoperator transactions with other ACH operators; process and edit files based on the requirements of NACHA operating rules; evaluate the creditworthiness of and apply risk control measures to their customers; adhere to the Federal Reserve's Policy Statement on Privately Operated Multilateral Settlement Systems; and adhere to any NACHA performance standards for ACH operators. Under this definition, Electronic Payments Network, Visa, and American Clearing House are considered to be private-sector ACH operators. The Reserve Banks reserve the right to preempt any NACHA rule in their ACH operating circular. Thus, the Reserve Banks reserve the right to establish their own operator definition should they object to any future modifications to NACHA's definition of an ACH operator.

[11] Federal Reserve Regulatory Service, 7–145.2.

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, May 31, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 24, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13425 Filed 3–24–00; 12:58 pm]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of Issuance of Statement of Federal Financial Accounting Standards (SFFAS) No. 18).

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standards (SFFAS) No. 18, *Amendments to Accounting Standards for Direct Loans and Loan Guarantees in SFFAS No. 2.*

The Board approved the Statement in February 2000, and submitted it to FASAB principals for a 90-day review. The review period closed on May 19, 2000.

SFFAS No. 18 provides the following new requirements to improve financial reporting for subsidy costs and performance of Federal credit programs:

- Report subsidy reestimates in two distinct components: the interest rate reestimate and the technical/default reestimate. The former is a reestimate due to a change in interest rates used in calculating the subsidy expense. The latter is a reestimate due to changes made in projected cash flows after reevaluating all the risk factors as of the financial statement date.

- Display a reconciliation on an entity-wide basis between the beginning and the ending balances of the subsidy cost allowance for direct loans and the liability for loan guarantees, reported in an entity's balance sheet.

- Provide a narrative to disclose and discuss events and changes in economic conditions and legislation that have had a significant and measurable effect on the subsidy costs of direct loans and loan guarantees.

The standards prescribed in SFFAS No. 18 are effective for periods beginning after September 30, 2000. Hard copies of the statement will be mailed to the FASAB mailing list. It is also available on the FASAB web site at *www.financenet.gov/fasab.htm* or by calling 202–512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: May 23, 2000.

Wendy M. Comes,

Executive Director.

[FR Doc. 00–13306 Filed 5–25–00; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: General Services Administration.

ACTION: Notice of a revised system of records subject to the Privacy Act of 1974.

SUMMARY: The General Services Administration (GSA) is providing notice of a revision to the system of records, Disbursement and Accounts Payable Files (GSA/PPFM–1). The revision expands the categories of individuals covered by the system to include contractual and appointed experts and consultants. It also includes the purpose for the system and updates information on the system manager, the authority for the system, and changes due to automation.

DATES: Comments on the proposed revisions must be provided by June 26, 2000. The proposed revision will become effective without further notice on June 26, 2000 unless comments require otherwise.

ADDRESSES: Comments should be addressed to: GSA Privacy Act Officer, General Services Administration, CAI, 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jinaita Kanarchuk by phone, 202–501–1452, or e-mail jinaita.kanarchuk@gsa.gov.

GSA/PPFM–1

SYSTEM NAME:

Disbursement and Accounts Payable Files.

SYSTEM LOCATION:

System records are located in GSA's finance centers as follows:

Heartland Finance Center, 1500 East Bannister Road, Kansas City, MO 64131.

Greater Southwest Finance Center, 819 Taylor Street, Fort Worth, TX 76102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees; and contractual or appointed experts and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system provides for reporting each account's status. Records may include but are not limited to name, address, telephone number, vendor identification number, and Social Security number.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3501 *et seq.*; 40 U.S.C. 758; 5 U.S.C. 3109.

PURPOSE(S):

To assemble in one system disbursement and accounts payable records to GSA employees, and on experts and consultants procured contract or by appointment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent necessary, the records are available outside GSA to monitor and document adverse action proceedings and to advise on credit inquiries.

The following routine uses also apply:

a. A record may be disclosed where pertinent in any legal proceeding to which GSA is a party before a court or administrative body.

b. A record may be disclosed to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. A record may be disclosed as needed to duly authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an employee or other individual who is the subject of the record.

d. Records may be provided to the Office of Personnel Management (OPM) in accordance with the agency's responsibility for evaluating Federal personnel management.

e. A record may be disclosed to a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Paper records are maintained in file folders and card files stored in filing cabinets, or in electronic form in computers.

RETRIEVABILITY:

Records are retrieved by name or by identifying number.

SAFEGUARDS:

Records are stored in guarded buildings and/or in areas controlled by authorized personnel. Computer files are protected by the use of passwords.

RETENTION AND DISPOSAL:

Disposition of records is in accordance with the Handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial and Accounting Systems Division (BCA), Office of Finance, Office of the Chief Financial Officer, General Services Administration, 1800 F Street, NW, Washington, DC 20405.

NOTIFICATION PROCEDURE:

Individuals may obtain information about whether they are part of this system of records from the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests to access records should be directed to the system manager at the above address. Inquiries should provide, as appropriate, full name, Social Security number, vendor number, address, telephone number, and the dates and transactions giving rise to the record. For identification requirements, refer to the agency regulations in 41 CFR part 105–64.

CONTESTING RECORD PROCEDURES:

GSA rules for access to records, and for contesting the contents and appealing initial determinations, are provided in 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

The individuals themselves, employees, other agencies, management officials, and non-Federal sources such as private firms.

Dated: May 22, 2000.

Daniel K. Cooper,

Director, Administrative Services Division.

[FR Doc. 00–13266 Filed 5–25–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–34–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Public Health Infrastructure Surveillance and Performance Monitoring Network—New—The Centers for Disease Control and Prevention (CDC) proposes to establish a sentinel network of 320 local health departments to provide ongoing public health system infrastructure and capacity data. As the nation's prevention agency, CDC is working to support the U.S. public health mission of rapidly detecting disease and health risks, rapidly communicating and strengthening the capacity to respond. Towards this goal, CDC proposes to assess and strengthen the nation's public health infrastructure by developing a network of local health departments that will provide ongoing information to public health leaders, policy makers, program managers and others to identify needs, target resources, and assist in overall preparedness. Data gathered by survey from the sentinel network will also lead to improvement of the public health communications systems and reinforced training and credentialing for core workforce skills, and will help in developing standards for improved organizational performance.

The purpose of this Sentinel System is to: (1) Provide data to assist with monitoring and measuring local public health systems; (2) assess the public health infrastructure including data and information systems, public health workforce, and effective public health organizations that enable the performance of the essential public health services in every community; and (3) evaluate the use of these data in developing strategies to strengthen the infrastructure of public health. This data will allow CDC and the public health community to improve infrastructure quality and capacity. Examples of cross-cutting infrastructure issues that may be identified by this data include the extent of under-funding of public health, the need for effective local leadership and for integrated electronic information systems, and the emerging role of measurable standards for local health departments.

The main respondents to the survey will be local health officers. The annual burden hours are estimated to be 1,920.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Local public health systems	320	1	6	1,920
Total				1,920

Dated: May 19, 2000.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13244 Filed 5–25–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–36–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Congenital Syphilis (CS) Case Investigation and Report Form (0920–0128)—Extension—The Centers for Disease Control and Prevention (CDC) proposes to continue data collection for congenital syphilis case investigations under the Congenital Syphilis Case Investigation and Report Form (CDC 73.126 REV 11–98), currently approved under OMB No. 0920–0128. This request is for a 3-year extension of clearance. Reducing congenital syphilis is a national objective in the DHHS Report entitled Healthy People 2000: Mid-course Review and 1995 Revisions. Objective 19.4 of this document states the goal: "reduce congenital syphilis to an incidence of no more than 40 cases per 100,000 live births" by the year 2000. In order to meet this national objective, an effective surveillance system for congenital syphilis must be continued in order to monitor current levels of disease and progress towards the year 2000 objective. This data will also be used to develop intervention strategies and to evaluate ongoing control efforts.

Respondent burden is approximately 15 minutes per reported case. The estimated annual number of cases expected to be reported using the current case definition is 1,000 or less. Therefore, the total number of hours for congenital syphilis reporting required will be approximately 260 hours per year. The annualized cost to the respondents is $9,100 based on the average hourly wage of $35.00 per hour for respondents (clerical and nursing staff from 65 project areas).

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
State and local health departments	65	16	15/60	260
Total				260

Dated: May 19, 2000.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00091]

State Cardiovascular Health Programs; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for State Cardiovascular Health Programs. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce the morbidity and improve the quality of life. This program addresses the "Healthy People 2010" focus area of Heart Disease and Stroke. For the conference copy of "Healthy People 2010", visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of the program is assist States in developing, implementing, and evaluating cardiovascular health promotion, disease prevention, and control programs. Also, to assist States in developing their Core Capacity Programs into Comprehensive Programs. Core Capacity Programs are the foundation upon which comprehensive cardiovascular health programs can be built.

Special Guidelines for Technical Assistance

Conference Call

Technical assistance will be available for potential applicants on a conference call to be held from 2:00 EDT to 4:00 EDT on June 6, 2000. Potential applicant are requested to call in using only one telephone line. The conference can be accessed by calling 1–800–311–3437 [Federal call (404) 639–3277] and entering access code 371045. The purpose of the conference call is to help potential applicants to:

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1. Understand the scope and intent of the Program Announcement for the State Cardiovascular Health Programs;

2. Be familiar with the Public Health Services funding policies and application and review procedures. Participation in this conference call is not mandatory. At the time of the call if you have problems accessing the call, contact 770–488–2525.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, except for the 11 States currently receiving funds under Program Announcement 98084, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

State health departments are uniquely qualified to define the cardiovascular disease problem throughout the State, to plan and develop statewide strategies to reduce the burden of cardiovascular diseases, to provide overall State coordination of cardiovascular health promotion, disease prevention, and control activities among partners, to lead and direct communities, to direct and oversee interventions within overarching State policies, and to monitor critical aspects of cardiovascular diseases.

Eligible applicants may apply for either the Core Capacity Program or the Comprehensive Program. However, applicants choosing to apply for the Comprehensive Program must meet the matching requirement for State funds (see Recipient Financial Participation).

To improve the cardiovascular health of all Americans, every State health department should have the capacity, commitment, and resources to carry out a comprehensive cardiovascular health promotion, disease prevention and control program. Applicants may apply for one, but not both, of the following levels of support:

1. A Core Capacity Program to develop basic cardiovascular health promotion, disease prevention, and control functions and activities at the State level such as partnerships and program coordination related to primary and secondary prevention; scientific capacity; inventory of policy and environmental strategies; a State plan for cardiovascular health promotion, disease prevention, and control; training and technical assistance; culturally-competent strategies for addressing priority populations (See Attachment I); and population-based intervention strategies.

2. A Comprehensive Program to continue and enhance core capacity functions, as needed, as well as implement, disseminate, and evaluate intervention activities throughout the State using State-level organizations, health care settings, work sites, schools, media, the government, and community-based organizations as primary modes of intervention for cardiovascular health promotion, disease prevention, and control; monitor secondary prevention strategies; and complement professional education activities. In addition to the components of the Core Capacity Programs, the Comprehensive Programs extend resources to local health agencies, communities, and organizations for implementation of cardiovascular health strategies.

C. Availability of Funds

Approximately $4,950,000 is available in FY 2000 to fund approximately seven awards.

1. Approximately $1,200,000 is available for approximately 3 to 5 Core Capacity Program awards. It is expected that the average award will be $300,000, ranging from $250,000 to $450,000.

2. Approximately $3,750,000 is available for approximately 2 to 4 Comprehensive Program awards. It is expected that the average award will be $1,250,000, ranging from $1,000,000 to $1,400,000.

It is expected that the awards will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

States that apply for Comprehensive Program funding should submit in their applications evidence that they have significant core capacity as specified in the Core Capacity Program Recipient Activities 1 through 5.

Direct Assistance

You may request Federal personnel as direct assistance in lieu of a portion of financial assistance.

Use of Funds

Funds provided under this program announcement are not intended to be used to conduct community-based pilot or demonstration research projects. Cooperative agreement funds may be used to support personnel and to purchase equipment, supplies, and services directly related to program activities and consistent with the scope of the cooperative agreement. Cooperative agreement funds may not be used to supplant State or local funds, to provide inpatient care or personal health services, or support construction or renovation of facilities. Secondary prevention activities cannot provide for drugs, patient rehabilitation, or other costs associated with the treatment of cardiovascular diseases.

Recipient Financial Participation

Under the Comprehensive Program of this announcement, matching funds are required from State sources in an amount not less than $1 for each $4 of Federal funds awarded. Applicants for the Comprehensive Program must provide evidence of State-appropriated resources targeting cardiovascular health promotion, disease prevention, and control of at least twenty percent of the total approved budget. The Preventive Health and Health Services (PHHS) Block Grant may not be included as State resources.

Applicants may not use these funds to supplant funds from State sources or the Preventive Health and Health Services Block Grant dedicated to cardiovascular disease. Applicants must maintain current levels of support dedicated to cardiovascular disease from State sources or the Preventive Health and Health Services Block Grant.

Funding Preferences

A preference will be given to those States in which mortality rates from ischemic heart disease or stroke exceed the national rates by ten percent or more. The States eligible for a preference (based on National Vital Records) that are not presently funded include: Arkansas, Indiana, Ohio, Oklahoma, Tennessee, and the District of Columbia.

Other States or territories may request preference status; but, they must provide evidence that their mortality rate from ischemic heart disease exceeds 189.7/100,000 or the mortality rate from stroke exceeds 44.4/100,000. Mortality statistics provided by the applicant must use ICD–9 codes of 410–414 (Ischemic heart disease) and 430–438 (Stroke), age-adjusted to the 1970 U.S. population, resident population only, for the 35–74 year-old population of the State, for 1991–1995 based on National Vital Records available on CDC WONDER.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting the activities under 1.a. (Recipient Activities for Core Capacity Programs) or under 1.b. (Recipient Activities for Comprehensive Programs), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1.a. Recipient Activities for Core Capacity Programs

(1) Develop and Coordinate Partnerships. Identify, consult with, and appropriately involve State cardiovascular health partners to identify areas critical to the development of a statewide cardiovascular health promotion, disease prevention, and control program, coordinate activities, avoid duplication of effort, and enhance the overall leadership of the State with its partners. Within the State health department, coordinate and collaborate with partners in nutrition, physical activity, tobacco, secondary prevention, diabetes, health education, Preventive Health and Health Services Block Grant, office of minority health, laboratory, as well as with data partners such as vital statistics and the State's Behavioral Risk Factor Surveillance System. Efforts to address tobacco use should be coordinated with the State tobacco program; tobacco-related activities should not be duplicated. Within State government, collaborate and partner with other departments such as education, transportation, parks and recreation and with State agency data partners, such as the youth risk behavioral surveillance system. Within the State, collaborate with other organizations such as the American Heart Association and other peer review organizations. Partnerships and collaborative efforts may develop into memorandums of agreement (MOA) or similar formalized arrangements. The State health department should organize a statewide work group or coalition with representation from other agencies, professional and voluntary groups, academia, community organizations, the media, and the public to develop a state plan.

(2) Develop Scientific Capacity to Define the Cardiovascular Disease Problem. Enhance epidemiology, statistics, surveillance, and data analysis from existing data systems such as vital statistics, hospital discharges, and Behavioral Risk Factor Surveillance System (BRFSS). This should include the collecting of cardiovascular-related data using the BRFSS protocols and time line. It is suggested that funded States collect data on the BRFSS sections or modules on Hypertension Awareness, Cholesterol Awareness, and Cardiovascular Disease in odd years (*i.e.*, 2001, 2003).

It is suggested that funded States collect data using the Module on Heart Attack and Stroke Signs and Symptoms at least every four years (*i.e.*, 2001, 2005) or, if possible, every two years (*i.e.*, 2001, 2003, 2005). The enhanced scientific capacity should include efforts to determine: (a) Trends in cardiovascular diseases, including age of onset of disease and age at death. (b) Geographic distribution of cardiovascular diseases.

(c) The racial and ethnic disparities in cardiovascular diseases.

(d) Ways to integrate systems to provide comprehensive data needed for assessing and monitoring the cardiovascular health of populations and program outcomes.

Monitoring and program evaluation are considered essential components of building scientific capacity. Scientific capacity may also extend to developing access to outside databases such as medical care, and to laboratory development consistent with the overall direction of the program. State public health laboratories, or laboratories contracted by States to perform lipid and lipoprotein testing, should be standardized by the CDC Lipid Standardization Program.

(3) Develop an Inventory of Policy and Environmental Strategies. Develop an inventory of policy and environmental issues in systems and settings (*e.g.*, State-level, communities, health care sites, work sites, schools) affecting the cardiovascular health of the general population and priority populations. The inventory should focus on physical activity, nutrition, tobacco, elevated blood pressure, and elevated cholesterol. It should initially focus on state-level systems, and by funding future years it should include the remaining four settings (*i.e.*, communities, health care sites, work sites, schools). Items inventoried could include issues related to food service policies; availability of environmental strategies for being active such as sidewalks, recreation centers, parks, walking trails; and restrictions on tobacco. Health care-related policy and environmental issues should relate to the standards of care for primary and secondary prevention and should be assessed in collaboration with purchasers of medical care, managed care organizations, and consumers. Attention should be paid to the needs of priority populations and the policy and environmental issues most vital to their cardiovascular health.

(4) Develop or Update a State Plan. Develop or update a comprehensive State Plan for cardiovascular health promotion, disease prevention, and control to include specific objectives for future reductions in cardiovascular diseases and related risk factors. Develop a thorough description of the cardiovascular disease burden geographically and demographically, set objectives, and include population-specific strategies for achieving the objectives. The strategies should emphasize population-based policy and environmental approaches and education and awareness that increase support for policy and environmental approaches. It should also address the needs of priority populations. The strategies may also include planning for program development at the community level, particularly for priority populations. Partners should be involved in the development and implementation of the cardiovascular health State Plan.

(5) Provide Training and Technical Assistance. Increase the skill-level of State health department staff and partners in areas such as approaches to population-based interventions utilizing policy and environmental strategies; cardiovascular diseases and related risk factors including nutrition, physical activity, tobacco, elevated blood pressure, and elevated cholesterol; secondary prevention; social marketing and communications; epidemiology; cultural competency; use of data in program planning; and program planning and evaluation. Training may address State and local health department staff and partners, and may include provision of technical assistance to communities, work sites, health sites, schools, and faith-based organizations.

(6) Develop Population-Based Strategies. Develop population-based intervention strategies to promote cardiovascular health, promote primary and secondary prevention of cardiovascular diseases and related risk factors (*e.g.*, nutrition, physical activity, tobacco, elevated blood pressure, and elevated cholesterol); increase awareness of first signs and symptoms of heart attack and stroke, educate about the need for policy and environmental approaches, and reduce the burden of cardiovascular diseases in the State. The strategies may use State-level organizations, health sites, work sites, schools, media, faith-based organizations, community-based organizations, and governments as effective means to reach people.

(7) Develop Culturally-Competent Strategies for Priority Populations. Develop strategies for enhanced program efforts to address priority

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populations. Specify how interventions would be designed appropriately for the priority populations to be addressed. Strategies should focus on policy and environmental approaches specific for the population to be addressed but may, on a limited basis, include interventions such as community events, screenings, and campaigns designed to increase awareness of the cardiovascular disease burden and risk factors in the priority populations and to promote policy and environmental strategies to improve cardiovascular health and reduce risk factors. Initiatives may be used to demonstrate the effectiveness of selected strategies or as a means to generate community support for policy and environmental strategies.

1.b. Recipient Activities for Comprehensive Programs

(1) Implement Population-Based Intervention Strategies Consistent with the State Plan. Strategies should include policy and environmental approaches, education and awareness supportive of the need for policy and environmental approaches, and other population-based approaches. These may be disseminated through various settings and groups including State-level organizations, health care settings, work sites, schools, community-based organizations, governments, and the media.
Interventions should be population-based, with objectives established that specify the population-wide changes sought. Approaches should extend to a relatively large proportion of the population to be addressed, rather than a few selected communities.
Interventions should be coordinated such that health messages, policies, and environmental measures are consistent, the most cost-effective methods are used for reaching the populations, and duplication of effort is avoided.
Interventions should address physical activity, nutrition, tobacco, elevated blood pressure, elevated cholesterol and secondary prevention. Efforts to address tobacco use should be coordinated with the State tobacco program; tobacco-related activities should not be duplicated. Implementation may extend to grants and contracts with local health agencies, communities, and nonprofit organizations.

(2) Implement Strategies Addressing Priority Populations. These strategies may include interventions directed to specific communities and segments of the population, and may include all appropriate modes of intervention needed to reach the populations to be addressed. These strategies may include more intensive, directed interventions by organizations concerned with improving the health and quality of life of priority populations, including community-based organizations, State-level organizations, faith-based organizations, work sites, health care sites, and schools.

(3) Specify and Evaluate Intervention Components. Design and implement a program evaluation system. The evaluation plan should address measures considered critical to determine the success of the program. Evaluation should be limited in scope to address strategy implementation, changes in policies and the physical and social environments affecting cardiovascular health and, to a lesser degree, changes in behavioral risk factors. Evaluation should not include comparison communities or quasi-experimental designs. Evaluation should cover both population-based strategies as well as targeted strategies. Evaluation should rely primarily upon existing data systems such as vital statistics and hospital discharges.

(4) Implement Professional Education Activities. Provide or collaborate with partners to provide professional education to health providers and others to assure appropriate primary and secondary prevention practices are offered routinely and to assure that appropriate standards of care are provided to all.

(5) Monitor Secondary Prevention Strategies. Secondary prevention strategies may include such issues as aspirin and drug therapy, physical activity regimens, hormone replacement therapy, dietary changes, and hypertension and lipid management. Activities in secondary prevention should include monitoring the delivery of secondary prevention practices and collaborating with partners on professional education and policy change related to the implementation of the American Heart Association guidelines on primary and secondary prevention. Development of monitoring systems for secondary prevention practices may be coordinated with managed care providers, Medicaid, major employers, insurers, other organized health care providers, and purchasers of health care. Secondary prevention strategies may be integrated with professional education initiatives. Secondary prevention should not provide for drugs, patient rehabilitation, or other costs associated with the treatment of cardiovascular diseases.

2. CDC Activities

a. Provide technical assistance in the coordination of surveillance and other data systems to measure and characterize the burden of cardiovascular diseases. Provide technical assistance in the design of surveillance instruments and sampling strategies, and provide assistance in the processing of data for States. Provide data on populations at highest risk. Provide data for national-level comparisons.

b. Collaborate with the States and other appropriate partners to develop and disseminate programmatic guidance and other resources for specific interventions, media campaigns, and coordination of activities.

c. Collaborate with the States and other appropriate partners to develop and disseminate recommendations for policy and environmental interventions including the measurement of progress in the implementation of such interventions.

d. Collaborate with appropriate public, private, and nonprofit organizations to coordinate a cohesive national program.

e. Provide technical assistance to the State public health laboratory or contract laboratory to standardize cholesterol, high density lipoproteins, and triglyceride measurements.

f. Provide training and technical assistance regarding the coordination of interventions, policy and environmental strategies, and population-based strategies.

g. If requested, provide Federal personnel in lieu of a portion of the financial assistance.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Applications for the Core Capacity Program should not exceed 60 double-spaced pages, printed on one-side, in 12 point font, excluding budget, justification, and appendixes.
Applications for the Comprehensive Program should not exceed 130 double-spaced pages, printed on one-side, in 12 point font, excluding budget, justification, and appendixes.
Applicants should also submit appendixes including resumes, job descriptions, organizational chart, facilities, and any other supporting documentation as appropriate. All materials must be suitable for photocopying (*i.e.*, no audiovisual materials, posters, tapes, etc.)

Applicants may apply for funding of either Core Capacity activities or Comprehensive activities, but not both, and must designate in the Executive Summary of their application the component (Core Capacity Program or Comprehensive Program) for which they are applying. Provide the following information:

1. Executive Summary

All applicants must provide a summary of the program described in the proposal (two pages maximum).

2. Core Capacity Program

a. Staffing (not included in 60-page limitation)

Describe program staffing and qualifications including contacts for physical activity, nutrition, tobacco, secondary prevention, epidemiology, and evaluation. Provide organizational chart, resumes, job descriptions, and experience for all budgeted positions. Describe lines of communication between various related chronic disease programs.

b. Facilities (not included in 60-page limitation)

Describe facilities and resources available to the program, including equipment available, communications systems, computer capabilities and access, and laboratory facilities if appropriate.

c. Background and Need

Thoroughly describe the need for funding and the current resources available for Core Capacity activities, to include:
(1) The overall State cardiovascular disease problem.
(2) The geographic patterns, trends, age, gender, racial and ethnic patterns, and other measures or assessments.
(3) The barriers the State currently faces in developing and implementing a statewide program for the prevention of cardiovascular diseases.
(4) The advisory groups, partnerships, or coalitions currently involved with the State health department for cardiovascular disease prevention and control.
(5) The current chronic disease programs within the State health department.
(6) The gaps in resources, staffing, capabilities, and programs that, if addressed, might further the progress of cardiovascular disease prevention; and how the funds will be used to fill the gaps in the core capabilities of the State cardiovascular disease prevention and control efforts.

d. Core Capacity Work Plan

Provide a work plan that addresses each of the required Core Capacity elements cited in the Recipient Activities section above, to include the following information:
(1) Program objectives for each of the elements. Objectives should describe what is to happen, by when, and to what degree.
(2) The proposed methods for achieving each of the objectives.
(3) The proposed plan for evaluating progress toward attainment of the objectives.
(4) A milestone, time line, and completion chart for all objectives for the project period.

e. Core Capacity Program Budget

Provide a detailed line-item budget with justifications consistent with the purpose and proposed objectives, using the format on CDC Form 0.1246. Applicants are encouraged to include budget items for travel for three trips to Atlanta, Georgia for three individuals to attend three-day training and technical assistance workshops.

Supporting material such as organizational charts, tables, position descriptions, relevant publications, letters of support, memorandums of agreement, etc., should be included in the appendixes and be reproducible.

3. Comprehensive Program (Narrative portions of the Comprehensive Program application may not exceed 130 double-spaced pages using 12 point font)

a. Background and Need

(1) Provide evidence that the State health department has significant core capacity as specified in the Core Capacity Program Recipient Activities 1 through 5.

(2) Provide a thorough description of the overall burden of Cardiovascular disease and related risk factors in the State and the need for support in the State; the geographic and demographic distribution, age, sex, racial and ethnic groups, educational, and economic patterns of the diseases as well as the trends over time. Describe the barriers to successful implementation of a statewide program for prevention of cardiovascular diseases within the State; partnerships and collaboration with related agencies, and the status of policies and environmental approaches in place that influence risk factors and public awareness. Describe how the funding will be used to fill the gaps in cardiovascular disease prevention activities. Provide a description of the populations to be addressed, including priority populations, and their constituencies and leadership potential to develop and conduct program activities.

b. Staffing (not included in 130-page limitation)

Describe project staffing and qualifications including contacts for physical activity, nutrition, tobacco, secondary prevention, evaluation, and epidemiology. Provide organizational chart, curriculum vitae, job descriptions, and experience needed for all budgeted positions. Describe lines of communication between various related chronic disease programs.

c. State Plan

Provide the current State plan (dated January 1997 or later) that includes population-based policy and environmental strategies as well as strategies for implementing programs which utilize health care settings, worksites, the media, schools, community-based organizations, the community at-large; and which includes strategies addressing specific priority populations and communities.

d. Evaluation

Provide description of surveillance and monitoring activities that include mortality, changes in environmental and policy indicators, and behavioral risk factors including statistically valid estimates for populations to be addressed. Describe the capability for special one-time surveys to be conducted by the state. Describe how each of the program elements will be evaluated and which measures are considered critical to monitor for evaluating the success of the program. Describe the various existing data systems to be employed, how the systems might be adapted, and the specific program elements to be evaluated by those systems. Describe the schedules for data collection and when analyses of the data will become available.

e. Comprehensive Program Work Plan

Address each of the required Comprehensive Program recipient activities cited in the Recipient Activities section above in sufficient detail to describe the results expected and how the State will achieve the results. Objectives and strategies should specify priority populations to be addressed, communities, or geographic areas of concern; complete listings of the policy and environmental changes sought to create heart-healthy environments for the population; other intervention strategies; coordination among State partners; and strategies for closing the gap in cardiovascular disease disparity. Interventions should be expressed in terms of changes sought for the general population as well as

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changes in Priority populations to be addressed. Population-based approaches should extend to a relatively large proportion of the State population rather than a few selected communities. Targeted strategies should clearly define the priority populations to be addressed. Objectives should describe what is to happen, by when, and to what degree. A milestone and activities completion chart or time line should be provided for all objectives for the project period.

f. Collaboration

Provide letters of support describing the nature and extent of involvement by outside partners and coordination among State health department programs, other State agencies, and nongovernmental health and nonhealth organizations. Describe how the overall delivery of interventions for priority populations will be enhanced by these collaborative activities. Describe current data systems and how coordination will be ensured with managed care providers, Medicaid, major employers, insurers, and other organized health care providers, as well as purchasers of health care.

g. Training Capability

Provide a description of training sessions for health professionals provided within the past three years. Include agendas, dates, professional status or occupation, and number of attendees. Provide other evidence of training capabilities deemed appropriate to the program.

h. Comprehensive Program Budget Justification

Provide a line-item budget consistent with CDC Form.1246(E) along with appropriate justifications. Applicants are encouraged to include budget items for travel for three trips to Atlanta, Georgia for three individuals to attend three-day training and technical assistance workshops. State matching funds should be listed on question 15 (estimated funding) of the application face page and Section C of the Budget Information worksheet.

F. Submission and Deadline

Submit the original and two copies of new CDC Form 0.1246(E). Forms are available in the application kit. Submit the application, on or before July 14, 2000, to the Grants Management Specialist identified in Section J., "Where to Obtain Additional Information".

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date.

(Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Core Capacity Program (Total 100 Points)

a. Staffing (10 Points)

The degree to which the proposed staff have the relevant background, qualifications, and experience; and the degree to which the organizational structure supports staffs' ability to conduct proposed activities. The degree of coordination between relevant programs within the State health department.

b. Facilities (5 Points)

The adequacy of the applicant's facilities and resources.

c. Background and Need (15 Points)

The extent to which the applicant identifies specific needs and resources available for Core Capacity activities. The extent to which the funds will successfully fill the gaps in State capabilities. The extent to which the applicant demonstrates a review of journals and other publications particularly for policy and environmental strategies.

d. Core Capacity Work Plan (60 Points)

(1) (20 Points) The extent to which the plan for achieving the proposed activities appears realistic and feasible and relates to the stated program requirements and purposes of this cooperative agreement.

(2) (20 Points) The extent to which the proposed methods for achieving the activities appear realistic and feasible and relate to the stated program requirements and purposes of the cooperative agreement.

(3) (10 Points) The extent to which the proposed plan for evaluating progress toward meeting objectives and assessing impact appears reasonable and feasible.

(4) (10 Points) The degree to which partnerships are demonstrated through collaborative activities or letters of support.

e. Objectives (10 Points)

The degree to which objectives are specific, time-phased, measurable, realistic, and related to identified needs, program requirements, and purpose of the program.

f. Budget (Not Scored)

The extent to which the budget appears reasonable and consistent with the proposed activities and intent of the program.

Content of Noncompeting Continuation Applications submitted within the project period need only include:

1. A brief progress report that describes the accomplishments of the previous budget period.

2. Any new or significantly revised items or information (objectives, scope of activities, operational methods, evaluation, key personnel, work plans, etc.) not included in year 01 or subsequent continuation applications.

3. An annual budget and justification. Existing budget items that are unchanged from the previous budget period do not need re-justification. Simply list the items in the budget and indicate that they are continuation items.

However, States receiving Core Capacity Program funding may submit a competitive application for Comprehensive Program funding at the end of any budget period within the five-year project period, provided new funds are available to fund additional Comprehensive Programs. These applications must successfully address the application Evaluation Criteria for the Comprehensive Program; and, if successful, they will move from Core Capacity funding to Comprehensive funding. If unsuccessful, they will continue with Core Capacity funding.

2. Comprehensive Program (Total 100 Points):

a. Background and Need (30 Points)

(1) (20 Points) The extent to which the applicant provides evidence that it has significant core capacity as specified in the Core Capacity Program Recipient Activities No.1 through No.5 (see Program Requirements section).

(2) (10 Points) The extent to which the funds will fill the gaps in the State's cardiovascular disease prevention activities. The extent to which the applicant identifies specific needs in relation to geographic and demographic distribution of cardiovascular diseases with particular emphasis on priority populations; identifies trends in mortality and risk factors; identifies barriers to successful program implementation; and describes existing policy and environmental influences in terms of their affect on public awareness and the risk factors for cardiovascular diseases.

b. Staffing (10 Points)

The degree to which the proposed staff have the relevant background, qualifications, and experience; the degree to which the organizational structure supports staffs' ability to conduct proposed activities; the degree of staff coordination between relevant program within the State health department.

c. Comprehensive Work Plan (45 Points)

(1)(20 Points) The extent to which the work plan for achieving the proposed activities appears realistic and feasible and relates to the stated program requirements and purposes of this cooperative agreement. The extent to which the plan addresses the needs of the State, the feasibility of the plan and the appropriateness of the planned interventions to the cardiovascular disease problem, and the adequacy of the plan to identify and address the needs of priority populations.

(2) (20 Points) The extent to which the work plan addresses the problem through policy and environmental strategies and other appropriate population-based approaches and the extent of program activities that appropriately use settings (*e.g.*, worksites, the media, schools, community-based organizations, faith-based organizations, the community at large).

(3) (5 Points) The extent to which collaboration of State nutrition, physical activity, tobacco, health promotion, and other chronic disease programs with external partners is used to deliver the program; the extent to which coordination with other State chronic disease programs and other State agencies enhances the cardiovascular disease program; and the extent of involvement of community-based organizations in the implementation of the program.

d. Objectives (5 Points)

The degree to which the objectives are specific, time-phased, measurable, realistic, and relate to identified needs and purposes of the program, for both the general population as well as the targeted populations.

e. Evaluation (10 Points)

The extent to which the evaluation plan appears capable of monitoring progress toward meeting specific project objectives, assessing the impact of the program on the general population, assessing changes in the Priority populations, monitoring utilization of secondary prevention strategies, and assessing the implementation of policy and environmental strategies.

f. Budget (Not Scored)

The extent to which the budget appears reasonable and consistent with the proposed activities and intent of the program. For the Comprehensive application, matching funds should be listed on question 15 (estimated funding) of the application face page and section C of the Budget Information worksheet.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of the following:

1. Progress reports (semiannual);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II in the application kit.

AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number (CFDA)

This program is authorized under sections 301(a) and 317b(k)(2) of the Public Health Service (PHS) Act, [42 U.S.C. sections 241(a) and 247b(k)(2)], as amended.

The Catalog of Federal Domestic Assistance (CFDA) number is 93.945.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page at Internet address http://www.cdc.gov. Click on Funding then click on Grants and Cooperative Agreements.

If you have questions after reviewing the contents of all documents, business management assistance may be obtained from: Van A. King, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00091, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone Number (770) 488–2751, Email address vbk5@cdc.gov.

For program technical assistance, contact: Nancy B. Watkins, Division of Adult and Community Health National, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, MS K–47, Atlanta, Georgia 30341–4146, Telephone Number (770) 488–8004, Email address naw1@cdc.gov.

Dated: May 22, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13243 Filed 5–25–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES).

Times and Dates: 8:30 a.m.–5 p.m., June 13, 2000. 8:30 a.m.–12:30 p.m., June 14, 2000.

Place: Coeur d'Alene Hotel, 115 South Second Street, Coeur d'Alene Idaho 83814, telephone 208/765–4000, fax 208/664–7678.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE) and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of

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communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction, and serve as a vehicle for community concerns to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include an update on Pit 9 work; an update from the Risk Assessment Corporation (RAC); a report on the January 2000 National Cancer Institute workshop held in Rockville, Maryland on the health effects of I–131 related to Nevada Test Site fallout; and an update on the Evaluation Work Group project.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Arthur J. Robinson, Jr., Executive Secretary, INEELHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: May 19, 2000.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13130 Filed 5–25–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96M–0311]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in the Public Health Service (PHS) guideline entitled "PHS Guideline on Infectious Disease Issues in Xenotransplantation."

DATES: Submit written comments on the collection of information by July 25, 2002.

ADDRESSES: Submit written requests for single copies of the guideline entitled "PHS Guideline on Infectious Disease Issues in Xenotransplantation" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844.

Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

PHS Guideline on Infectious Disease Issues in Xenotransplantation

The statutory authority to collect this information is provided under sections 351 and 361 of the PHS Act (42 U.S.C. 262 and 264) and the provisions of the Federal Food, Drug, and Cosmetic Act that apply to drugs (21 U.S.C. 301 et seq.). This PHS guideline is revised based on public comment to a previous document entitled "Draft Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation (August 1996)," which published in the **Federal Register** of September 23, 1996 (61 FR 49919). The PHS guideline recommends procedures to diminish the risk of transmission of infectious agents to the xenotransplantation product recipient and the general public. The PHS guideline is intended to address public health issues raised by xenotransplantation, through identification of general principles of prevention and control of infectious diseases associated with xenotransplantation that may pose a hazard to the public health. The collection of information described in this guideline is intended to provide general guidance to sponsors in: (1) The development of xenotransplantation clinical protocols, (2) the preparation of submissions to FDA, and (3) the conduct of xenotransplantation clinical trials. Also, the collection of information will help ensure that the sponsor maintains important information in a cross-referenced system that links the relevant records of the xenotransplantation product recipient, xenotransplantation product, source animal(s), animal procurement center, and significant nosocomial exposures. The PHS guideline describes an occupational health service program for the protection of health care workers involved in xenotransplantation procedures, caring for xenotransplantation product recipients, and performing associated laboratory testing. The guideline also describes public health needs for: (1) A pilot national xenotransplant data base, which is currently under development by the PHS; (2) a central PHS biologic specimen archive; and (3) the Secretary's Advisory Committee on Xenotransplantation (SACX), which is being developed and implemented by the Department of Health and Human Services (DHHS). These public health programs and this PHS guideline are intended to protect the public health and help ensure the safety of using xenotransplantation products in humans by preventing the introduction, transmission, and spread of infectious diseases associated with xenotransplantation.

Respondents to this collection of information are the sponsors of clinical studies of investigational xenotransplantation products under investigational new drug applications (IND's) and xenotransplantation product procurement centers, referred to as source animal facilities. Currently, there are 11 respondents who are sponsors of IND's, which include protocols for xenotransplantation in humans. Other respondents for this collection of information are 18 source animal facilities which provide source xenotransplantation product material to sponsors for use in human xenotransplantation procedures. These 18 source animal facilities keep medical records of the herds/colonies as well as the medical records of the individual source animal(s).

The PHS guideline proposes that certain specimens and records be maintained for 50 years beyond the date of the xenotransplantation. These include: (1) Records linking each xenotransplantation product recipient with relevant health records of the source animal, herd or colony, and the specific organ, tissue, or cell type included in or used in the manufacture of the product (3.2.7.1); (2) aliquots of serum samples from randomly selected animal and specific disease investigations (3.4.3.1); (3) source animal biological specimens designated for PHS use (3.7.1); animal health records (3.7.2), including necropsy results (3.6.4); and (4) recipients' biological specimens (4.1.2).

The retention period is intended to assist health care practitioners and officials in surveillance and in tracking the source of an infection, disease, or illness that might emerge in the recipient, the source animal, or the animal herd or colony after a xenotransplantation. Although the draft guideline discussed holding specimens and records indefinitely, comments described this recommendation as impractical and unfeasible.

The recommendation for maintaining records for 50 years is based on clinical experience with several human viruses that have presented problems in human to human transplantation and are therefore thought to share certain characteristics with viruses that may pose potential risks in xenotransplantation. These characteristics include long latency periods and the ability to establish persistent infections. Several also share the possibility of transmission among individuals through intimate contact with human body fluids. Human immunodeficiency virus (HIV) and Human T-lymphotropic virus are human retroviruses. They contain ribonucleic acid that is reverse-transcribed into deoxyribonucleic acid (DNA) using an enzyme provided by the virus and the cell machinery. That DNA can then be integrated into the cellular DNA. Both viruses establish persistent infections and have long latency periods before the onset of disease, 10 years and 40 to 60 years, respectively. The human hepatitis viruses are not retroviruses, but several share with HIV the characteristic that they can be transmitted through body fluids, can establish persistent infections, and have long latency periods, *e.g.*, approximately 30 years for Hepatitis C.

In addition, the PHS guideline recommends that a record system be developed that allows easy, accurate, and rapid linkage of information among the specimen archive, the recipient's medical records, and the records of the source animal for 50 years. If record systems are maintained in a computer data base, electronic backups should be kept in a secure office facility and backup on hard copy should be routinely performed (4.1.2.2). The development of such a record system would be a one-time burden. Such a system is intended to cross-reference and locate relevant records or recipients, source animals and facilities, and specimens of both the recipient and the source animal. Based on agency experience in establishing new, small volume, recordkeeping and tracking systems, we estimate approximately 16 hours would be necessary for each sponsor to set up the records system.

The total annual reporting and recordkeeping burden is estimated to be approximately 327 hours. The burden estimates are based on FDA's records of xenotransplantation-related IND's and estimates of time required to create an appropriate record system and to complete the various reporting and recordkeeping tasks described in the guideline. A total of 22 IND's have been submitted since 1994 resulting in an average of 4 IND submissions per year. A total of 87 patients have been treated over a 3-year period indicating there are on average 29 xenotransplantation product recipients per year. FDA does not expect the level of clinical studies using xenotransplantation to increase significantly in the next few years; therefore, the agency is using these historical figures in projecting burdens for the next 3 years.

FDA is requesting OMB approval for the following reporting and recordkeeping recommendations in the PHS guideline:

TABLE 1.—REPORTING RECOMMENDATIONS

PHS Guideline Section	Description
3.2.7.2	Notify sponsor or FDA of new archive site when source animal facility or sponsor ceases operations.
3.4	Standard operating procedures (SOP's) of source animal facility should be available to review bodies.
3.5.1	Include increased infectious risk in informed consent if source animal quarantine period of 3 weeks is shortened.
3.5.4	Sponsor to make linked records described in section 3.2.7 available for review.

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TABLE1.—REPORTING RECOMMENDATIONS—Continued

PHS Guideline Section	Description
3.5.5	Source animal facility to notify clinical center when infectious agent is identified in source animal or herd after xenotransplantation product procurement.

TABLE 2.—RECORDKEEPING RECOMMENDATIONS

PHS Guideline Section	Description
3.2.7 and 4.3	Establish records linking each xenotransplantation product recipient with relevant records. Sponsor to maintain cross-referenced system that links all relevant records (recipient, product, source animal, animal procurement center, and nosocomial exposures).
3.4.2	Document results of monitoring program used to detect introduction of infectious agents which may not be apparent clinically.
3.4.3.2	Document full necropsy investigations including evaluation for infectious etiologies.
3.5.1	Justify shortening a source animal's quarantine period of 3 weeks prior to xenotransplantation product procurement.
3.5.2	Document absence of infectious agent in xenotransplantation product if its presence elsewhere in source animal does not preclude using it.
3.5.4	Add summary of individual source animal record to permanent medical record of the xenotransplantation product recipient.
3.6.4	Document complete necropsy results on source animals (50-year record retention).
3.7	Link xenotransplantation product recipients to individual source animal records and archived biologic specimens.
4.2.3.2	Record base-line sera of xenotransplantation health care workers and specific nosocomial exposure.
4.2.3.3 and 4.3.2	Keep a log of health care workers' significant nosocomial exposure(s).
4.3.1	Document each xenotransplant procedure.
5.2	Document location and nature of archived PHS specimens in health care records of xenotransplantation product recipient and source animal.

FDA estimates the burden for this collection of information as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN[1]

PHS Guideline Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3.2.7.2[2]	18	0	0	0.5	0
3.2.7.2[2]	11	0	0	0.5	0
3.4[3]	11	0.4	4	0.08	0.3
3.5.1[4]	11	0.09	1	0.25	0.25
3.5.4[5]	11	2.6	29	0.5	14.5
3.5.5[4]	18	0.06	1	0.2	0.2
Total					15.25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] No animal facility or sponsor has ceased operations to date and none are expected to cease operation in the next several years.
[3] FDA's records indicate that an average of four IND's have been and are expected to be submitted per year.
[4] Has not occurred in the past 5 years and is expected to continue to be a rare occurrence.
[5] Based on 87 patients treated over the last 3 years, the average number of xenotransplantation product recipients per year is estimated to be 29.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

PHS Guideline Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
3.2.7 and 4.3[2]	11	1	N/A	16	172
3.4.2[3]	11	15.1	166	3.77	41.5
3.4.3.2[4]	18	4.0	72	1.32	23.8
3.5.1[5]	11	0.09	(0–1)1	0.045	0.5
3.5.2[5]	11	0.09	(0–1)1	0.023	0.25
3.5.4	11	2.6	29	0.45	4.9
3.6.4[6]	11	5.3	58	1.32	14.5
3.7[6]	18	3.2	58	0.26	4.6
4.2.3.2[7]	11	27.3	300	4.64	51
4.2.3.2[5]	11	0.09	(0–1)1	0.015	0.17
4.2.3.3 and 4.3.2[5]	11	0.09	(0–1)1	0.015	0.17
4.3.1	11	2.6	29	0.66	7.25
5.2[8]	11	7.9	87	0.63	6.96
Total					327.6

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] A one-time burden for setting up a recordkeeping system which rapidly links information regarding the specimen archive, the recipient's medical records, and source animals.
[3] Monitoring for sentinel animals (subset representative of herd) plus all source animals. There are approximately 6 sentinel animals per herd x 1 herd per facility x 18 facilities = 108 sentinel animals. There are approximately 58 source animals per year (see footnote 6 of this table); 108 + 58 = 166 monitoring records to document.
[4] Necropsy for animal deaths of unknown cause estimated to be approximately 4 per herd per year x 1 herd per facility x 18 facilities = 72.
[5] Has not occurred in the past 5 years and is expected to continue to be a rare occurrence.
[6] On average 2 source animals are used for preparing xenotransplantation product material for one recipient. The average number of source animals is 2 source animals per recipient x 29 recipients annually = 58 source animals per year. (See footnote 5 of table 3 of this document.)
[7] FDA estimates there are approximately 12 clinical centers doing xenotransplantation procedures x approximately 25 health care workers involved per center = 300 health care workers.
[8] Fifty-eight source animal records + 29 recipient records = 87 total records.

Because xenotransplantation is a relatively new area of medical science, potential problems and adverse effects are not well known. Because of the potential risk for cross-species transmission of infectious agents from source animals to patients, their close contacts, and the general public and the latency period of known human pathogenic persistent virus, the guideline recommends that health records be retained for 50 years. Since these records are medical records, the retention of such records for up to 50 years is not information subject to the PRA (5 CFR 1320.3(h)(5)). Also, because of the limited number of clinical studies with small patient populations, the number of records is small and, therefore, the capital and operating costs are expected to be insignificant at this time.

Many of the information collections described in this guideline are not new and can be found under existing regulations and, therefore, are not included in the hour burden estimates in tables 1 through 4 of this document. These information collections are included under the regulations and approved under the OMB control numbers as follows: (1) "Current Good Manufacturing Practice for Finished Pharmaceuticals," 21 CFR 211.1 through 211.208, approved under OMB control number 0910–0139; (2) "Investigational New Drug Application," 21 CFR 312.1 through 312.160, approved under OMB control number 0910–0014; and (3) information included in a license application, 21 CFR 601.1 through 601.3, approved under OMB control number 0910–0124. (Although it is possible that a xenotransplantation product may not be regulated as a biological product (*e.g.*, it may be regulated as a medical device), FDA believes, based on its knowledge and experience with xenotransplantation, that any xenotransplantation product subject to FDA regulation within the next 3 years will most likely be regulated as a biological product.) However, FDA recognized that some of the information collections go beyond approved collections; assessments for these burdens are included in tables 1 through 4.

In table 5 of this document, FDA identifies those collection of information activities that are already encompassed by existing regulations or are consistent with voluntary standards which reflect industry practice.

TABLE 5.—COLLECTION OF INFORMATION REQUIRED BY CURRENT REGULATIONS AND STANDARDS

PHS Guideline Section	Description of Collection of Information Activity	21 CFR Section (unless otherwise stated)
2.2.1	Document off-site collaborations	312.52
2.5	Sponsor ensure counseling patient + family + contacts	312.62(c)
3.1.1 and 3.1.6	Document well-characterized health history and lineage of source animals	312.23(a)(7)(a) and 211.84
3.1.8	Registration with and import permit from the Centers for Disease Control and Prevention	42 CFR 71.53
3.2.2	Document collaboration with accredited microbiology labs	312.52
3.2.3	Procedures to ensure the humane care of animals	9 CFR parts 1, 2, and 3 and PHS Policy[1]
3.2.4	Procedures consistent for accreditation by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC International) and consistent with the National Research Council's (NRC) Guide	AAALAC International Rules of Accreditation[2] and NRC Guide[3]
3.2.5, 3.4, and 3.4.1	Herd health maintenance and surveillance to be documented, available, and in accordance with documented procedures; record standard veterinary care	211.100 and 211.122
3.2.6	Animal facility SOP's	PHS Policy[1]
3.3.3	Validate assay methods	211.160(a)
3.6.1	Procurement and processing of xenografts using documented aseptic conditions	211.100 and 211.122
3.6.2	Develop, implement, and enforce SOP's for procurement and screening processes	211.84(d) and 211.122(c)
3.6.4	Communicate to FDA animal necropsy findings pertinent to health of recipient	312.32(c)
3.7.1	PHS specimens to be linked to health records; provide to FDA justification for types of tissues, cells, and plasma, and quantities of plasma and leukocytes collected	312.23(a)(6)
4.1.1	Surveillance of xenotransplant recipient; sponsor ensures documentation of surveillance program life-long (justify >2 yrs.); investigator case histories (2 yrs. after investigation is discontinued)	312.23(a)(6)(iii)(f) and (g), and 312.62(b) and (c)
4.1.2	Sponsor to justify amount and type of reserve samples	211.122
4.1.2.2	System for prompt retrieval of PHS specimens and linkage to medical records (recipient and source animal)	312.57(a)
4.1.2.3	Notify FDA of a clinical episode potentially representing a xenogeneic infection	312.32
4.2.2.1	Document collaborations (transfer of obligation)	312.52
4.2.3.1	Develop educational materials (sponsor provides investigators with information needed to conduct investigation properly)	312.50

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TABLE 5.—COLLECTION OF INFORMATION REQUIRED BY CURRENT REGULATIONS AND STANDARDS—Continued

PHS Guideline Section	Description of Collection of Information Activity	21 CFR Section (unless otherwise stated)
4.3	Sponsor to keep records of receipt, shipment, and disposition of investigative drug; investigator to keep records of case histories	312.57 and 312.62(b)

[1] The "Public Health Service Policy on Humane Care and Use of Laboratory Animals" (http://www.grants.nih.gov/grants/olaw/references/phspol.htm).
[2] AAALAC International Rules of Accreditation (http://www.aaalac.org/html/rules.html).
[3] The NRC's "Guide for the Care and Use of Laboratory Animals" (1996).

II. Electronic Access

Persons with access to the Internet may obtain the guideline at http://www.fda.gov/cber/guidelines.htm.

Dated: May 23, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–13340 Filed 5–25–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–99–7000]

Memorandum of Understanding Between the Food and Drug Administration, the Centers for Disease Control and Prevention, the U.S. Department of Agriculture, the U.S. Department of Defense, and the Environmental Protection Agency

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA, the Centers for Disease Control and Prevention, the U.S. Department of Agriculture, the U.S. Department of Defense, and the Environmental Protection Agency. The purpose of the MOU is to establish an interagency coordinating committee on animal production and food health with the goal of improving animal and public health.

DATES: The agreement became effective November 17, 1999.

FOR FURTHER INFORMATION CONTACT: Robert C. Livingston, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–5903.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOU's between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: May 19, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

The MOU is set forth in its entirety as follows:

BILLING CODE 4160–01–F

MOU 225–99–7000

MEMORANDUM OF UNDERSTANDING

Between The Following Departments and Agencies

THE UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
AGRICULTURAL RESEARCH SERVICE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE
ECONOMIC RESEARCH SERVICE
FOOD SAFETY AND INSPECTION SERVICE
FOREIGN AGRICULTURAL SERVICE
GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION
OFFICE OF RISK ASSESSMENT AND COST-BENEFIT ANALYSIS

And

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION
and the
FOOD AND DRUG ADMINISTRATION (FDA)
including FDA's
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION
CENTER FOR VETERINARY MEDICINE

And

THE DEPARTMENT OF DEFENSE
UNITED STATES ARMY VETERINARY SERVICE

And

ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF PREVENTION, PESTICIDES, AND TOXIC SUBSTANCES
and the
OFFICE OF WATER

RELATIVE TO

INTERAGENCY COORDINATING COMMITTEE ON ANIMAL PRODUCTION AND FOOD SAFETY

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The parties to this Memorandum of Understanding are the following agencies of the United States Department of Agriculture: the Agricultural Marketing Service, the Agricultural Research Service, the Animal and Plant Health Inspection Service, the Cooperative State Research, Education and Extension Service, the Economic Research Service, the Food Safety and Inspection Service, the Foreign Agricultural Service; the Grain Inspection, Packers and Stockyards Administration, and the Office of Risk Assessment and Cost-Benefit Analysis; the following agencies of the Department of Health and Human Services: the Food and Drug Administration's Center for Food Safety and Applied Nutrition and Center for Veterinary Medicine, and the Centers for Disease Control and Prevention; the Department of Defense's United States Army Veterinary Service; and the Environmental Protection Agency's Office of Prevention, Pesticides, and Toxic Substances and the Office of Water;

WHEREAS, the parties to the Memorandum of Understanding agree that the public policy issues surrounding food animal and public health and the marketing of food animals are integral to the work of each of the parties;

WHEREAS, the parties recognize that food animal production practices including production of livestock, poultry, eggs, and farm-raised fish may impact food safety;

WHEREAS, it is important to the success of the mission of each of the parties that each party know about food safety activities being undertaken by other parties and that the such activities of each of the parties be coordinated;

WHEREAS, President William J. Clinton has challenged those federal agencies involved in food safety/public health to build consensus and to identify opportunities to better use their collective resources and expertise, and to strengthen partnerships with all stakeholders;

WHEREAS, the parties to this agreement recognize the fundamental relationship between food safety and public health and food animal health and production practices;

THEREFORE, the parties to this Memorandum of Understanding agree to cooperate through an orderly exchange of information, jointly held meetings, and the appointment of liaison personnel and committees to gather and exchange background information relating to individual agency policies or use in risk analysis, to exchange information about ongoing agency activities, and to increase interaction among food animal health and public health experts with the goal of improving animal and public health, and for other purposes in the interest of the parties to improve the safety of food produced from animals.

I. RATIONALE

All federal agencies share a common objective of serving the American public. Although each agency has a defined set of responsibilities, it is only when they work in harmony

that the government is most efficient. The safety of food depends upon the integrated efforts of those agencies responsible for animal health, animal production, human health and food derived from livestock and aquaculture, including animal production practices on land and in water which may impact food safety. The complexity of the farm-to-table chain requires communication, coordination and cooperation among all these organizations in order to efficiently, effectively and rapidly achieve respective goals as well as to provide consumers with the safest, most abundant and economical food supply in the world.

Examples of this approach include the 1997 Presidential Food Safety Initiatives on produce and animal products. Therein, the President directed the many involved agencies to work cooperatively to develop systems improving food safety.

The signatory agencies to this Memorandum of Understanding share a common interest in maintaining a safe, wholesome and affordable food supply. While each signatory's mission area may focus on different aspects of animal production and food safety, the agencies agree that sharing food safety information, coordinating activities, and improving collaboration will collectively enhance the success of each agency's mission.

II. RELATIONSHIPS OF PARTIES

The **Agricultural Marketing Service** (AMS), USDA, administers standardization, grading, certification, promotion, and regulatory programs. Grading and classification services are provided to certify the grade and quality of meat, egg and poultry products. *See* 21 U.S.C. 601 *et seq.*, 451 *et seq.*, and 1031 *et seq.* These grading services are provided to buyers and sellers of live cattle, swine, sheep, poultry, rabbits, and other meat, egg and poultry products. These services are voluntary and provided upon request on a fee-for-service basis. The AMS also administers the Pesticide Data Program, in cooperation with States, in which fresh fruits and vegetables are sampled and analyzed for pesticide residues. *See* 7 U.S.C. 136i-1. Under a government-wide quality assurance program, AMS is responsible for developing specifications for government procurement of food used by the military and for civilians. The AMS is responsible for the development of an efficient agricultural transportation system for rural America. *See* 7 U.S.C. 1622. The system begins at the farm gate and moves agricultural and other rural products through the Nation's highways, railroads, etc., into domestic and international marketplaces. The AMS is also developing national organic standards. *See* 7 U.S.C. 6501-6522.

The **Agricultural Research Service** (ARS), USDA, is responsible for carrying out research programs to assist other USDA agencies in meeting their statutory objectives. Accordingly, it is responsible for developing research methodologies relating to both animal health and animal production food safety.

The **Animal and Plant Health Inspection Service** (APHIS), USDA, was established to conduct regulatory and control programs to protect and improve animal and plant health.

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The agency administers Federal laws and regulations pertaining to plant and animal health and quarantine, and the control and eradication of plant and animal pests and diseases. APHIS is authorized to cooperate with State and local jurisdictions in achieving these objectives.

The **Center for Food Safety and Applied Nutrition** (CFSAN), Food and Drug Administration (FDA), U.S. Department of Health and Human Services (USHHS), is charged with enforcement of the Federal Food, Drug and Cosmetic Act (FD & C Act), 21 U.S.C. 301 et. seq., and the Public Health Service Act. 42 U.S.C. 201 et. seq., Under the FD & C Act, CFSAN is responsible for the regulation of foods for human consumption and cosmetics. The mission of the center is to (1) ensure that food is safe, (2) emphasize a preventive approach to protecting public health, (3) promote sound nutrition, (4) ensure that food and cosmetic products are honestly and accurately labeled, and (5) encourage industry innovation while upholding safety standards and maintaining consumer protection. CFSAN has responsibility for ensuring the general safety and wholesomeness of all human food except meat, poultry and egg products.

The **Centers for Disease Control and Prevention** (CDC) of USHHS is the Federal agency charged with protecting the public health of the Nation by providing leadership and direction to prevent and control diseases and other preventable conditions and to respond to public health emergencies pursuant to Section 301 of the Public Health Service Act (42 U.S.C. 241). It is composed of 11 major operating components including the National Center for Infectious Diseases. The CDC administers national programs for the prevention and control of communicable and vector-borne diseases, injury, and other preventable conditions. CDC develops and implements programs in chronic disease prevention and control in consultation with State and local health departments.

The **Center for Veterinary Medicine (CVM)**, FDA, USHHS, has responsibility under the Federal FD & C Act for regulation of animal drugs and feeds, including the premarket approval of veterinary drugs and feed additives, and regulating the manufacture and distribution of animal drugs and feeds. Before approving an animal drug, CVM reviews the sponsor's data to assure the drug's effectiveness as well as safety to the animal being treated and to humans consuming food derived from animals treated with the drug. To assure human food safety, CVM sets safe concentration and tolerance levels for the approved drugs that may appear in animal tissue at the time of slaughter and investigates violations of residues above safe tolerance levels. CVM also ensures that animal feed is safe and wholesome and is free of illegal drug, pesticide, and industrial chemical residues. To address the potential public health risks from antibiotic resistant pathogens and resistance genes, in 1996 CVM established and coordinated the National Antimicrobial Resistance Monitoring System (NARMS), a collaboration between FDA, CDC and USDA/ARS. NARMS currently monitors shifts in susceptibility to antimicrobial drugs among Salmonella from animal isolates and Salmonella, E. coli O157 and Campylobacter from human isolates. CVM plans to greatly expand the program under the Food Safety Initiative.

The **Cooperative State Research, Education, and Extension Service** (CSREES), USDA, links the research and education resources and activities of USDA and works with educational institutions in each state and territory. CSREES provides focus to advance a global system of research, extension, and higher education in food and agricultural sciences and in related environmental and human sciences. The CSREES mission emphasizes partnerships with the public and private sector to maximize the effectiveness of limited resources.

The **Department of Defense** (DOD) also has defined functions impacting public health (food safety). The United States Army Veterinary Service, the United States Army Center for Health Promotion and Preventive Medicine, and the United States Air Force Biomedical Science Corps conduct training in public health, including food safety; inspect and test food processing facilities and delivered products; manage community public health programs; and coordinate these programs with other federal agencies. The U.S. Army Veterinary Service also participates in national/regional responses to natural and disease emergencies impacting public health, animal health, and economic stability. The DOD also contributes to food safety through research and surveillance on pathogens associated with the production and consumption of foods.

The mission of the **Economic Research Service** (ERS), USDA, is to provide agricultural economic and other agriculture-related social science information and analysis for public and private decisions on agriculture, food, natural resources, and rural America issues. ERS produces such information for use by the general public and to help the executive and legislative branches of the Federal government develop, administer, and evaluate agricultural and rural policies and programs.

The **Food Safety and Inspection Service** (FSIS), USDA, under the authority of the FMIA, PPIA, and the EPIA is responsible for the wholesomeness and safety of meat, poultry, and egg products intended for human consumption. This is accomplished by continuous inspection at slaughtering and processing establishments. The inspections include the sampling and analyzing of edible tissues taken from livestock and poultry at the time of slaughter to assure that meat and poultry do not contain adulterants such as drugs, pesticides, other industrial chemicals and harmful foodborne pathogens. FSIS also takes egg product samples to test for Salmonella. FSIS seeks to reduce the incidence of foodborne human pathogens on meat, poultry and egg products in order to reduce the incidence of foodborne.

The **Foreign Agricultural Service** (FAS), USDA, represents the diverse interests of US farmers and the food and agricultural sector abroad. It collects, analyzes, and disseminates information about global supply and demand, trade trends, and emerging market opportunities. FAS seeks improved market access for U.S. products and implements programs designed to build new markets and to maintain the competitive position of U.S. products in the global marketplace. In addition, FAS coordinates food safety issues for USDA in Washington, D.C. and overseas, as they impact on foreign trade.

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The **Grain Inspection, Packers and Stockyards Administration** (GIPSA), USDA, plays a key part in USDA's efforts to ensure a productive and competitive global marketplace for U.S. agriculture products. One of GIPSA's program, the Packers and Stockyards Programs, ensures open and competitive markets for livestock, meat, and poultry. The other program, the Federal Grain Inspection Service, provides the U.S. grain market with Federal quality standards and a uniform system for applying them. GIPSA, as an impartial third party in American agriculture, helps ensure a fair competitive marketing system for all involved in the merchandising of grain and related products, livestock, meat and poultry.

The **Office of Risk Assessment and Cost-Benefit Analysis,** (ORACBA), USDA, is part of the Office of the Chief Economist. The primary mission of ORACBA is to ensure that major regulations proposed by USDA, which primarily affect human health, safety, or the environment, are based on sound scientific and economic analysis. Besides assuring that statutory requirements for risk assessment are met, ORACBA provides guidance and technical assistance and coordinates risk analysis work across USDA.

The U.S. Environmental Protection Agency, (EPA), **Office of Prevention, Pesticides, and Toxic Substances** (OPPTS) is responsible for registering pesticides, many of which control microorganisms that cause foodborne illness. Through ongoing testing and rigorous review of submitted data, OPPTS ensures the efficacy of antimicrobial pesticides that prevent growth of pathogenic microorganisms on raw agricultural commodities (fruits and vegetables) and on certain surfaces that contact food during processing. These actions are central to reducing the public's risk of foodborne disease.

The U.S. Environmental Protection Agency (EPA), **Office of Water**, is the Federal Agency responsible for insuring that drinking waters in the United States are safe for human consumption. Pursuant to the Safe Drinking Water Act, 42 U.S.C. 300 (f) et seq., the EPA provides regulations on acceptable treatment and monitoring of drinking water from chemically or microbiologically contaminated surface and ground water sources to protect public health. Pursuant to the Clean Water Act, 33 U.S.C. 1251 et. seq., the EPA provides for the protection of fresh and marine waters so they are swimmable and fishable. EPA also has responsibilities for ensuring adequate treatment and control of infectious disease contaminants that may occur in human and industrial wastes, manures and other waste products that can imperil the safety of ambient water resources. EPA conducts risk assessments on pathogens in various water exposure scenarios, provides research to develop analytical methods, conducts evaluation of pathogen occurrence and human exposure/health effects, and develops improved water, wastewater, and biosolids treatment technologies for pathogen reduction or elimination.

III. Establishment of Committee

The aforementioned agencies and centers (hereinafter "agencies" or the "parties") agree to establish an Interagency Coordinating Committee on Animal Production and Food Safety.

IV. Purpose and Function of the Committee

The purpose and function of the Interagency Coordinating Committee on Animal Production and Food Safety shall be:

(a) To provide a forum where member agencies share information related to food safety, animal health, marketing and production, environmental safety, research, educational initiatives, risk analysis, policies, programs and other activities which may potentially impact public health and animal production practices.

(b) To promote coordination of agency activities relating to (a) above, including policy development, rulemaking, educational initiatives, risk analysis and research; and

(c) To promote collaboration whereby agencies, where authorized, might enter into joint activities which would make the most effective use of resources and avoid unnecessary duplication of activities relating to animal production practices and food safety.

V. Organization of the Committee

The parties hereby establish the Interagency Coordinating Committee on Animal Production and Food Safety, which shall consist of a **Steering Committee** and a **General Committee.**

The **Steering Committee** shall consist of one representative from each of the signatories, who shall be appointed by the Agency Administrator or Center Director or other authorized official of the agencies, who are parties to this Agreement. The Steering Committee provides leadership and logistical support for the work of the Interagency Coordinating Committee on Animal Production and Food Safety. The Steering Committee shall facilitate and coordinate the activities of agencies, where the agencies pursue joint action. Members of the Steering Committee are the official conduit to the agency Administrators or center Directors, as appropriate, for the determination of whether an agency or center shall commit resources for a project or activity, in accordance with each Agency's or Center's authorities. The Steering Committee may set up subcommittees to coordinate projects, as it shall deem appropriate. The Chairperson of the Steering Committee shall be chosen by the membership of the Steering Committee for a one-year term.

The purpose of the **General Committee** is to provide a forum to share information and to promote interagency collaboration and coordination of issues, including those issues prioritized by the Steering Committee. The General Committee may make recommendations to the Steering Committee. The General Committee shall consist of

representatives from each of the member agencies. The members of the General Committee shall be designated either by the Agency Administrator or Center Director, or by the member agency Steering Committee representative, as determined by each member agency. A member agency may have more than one representative on the General Committee, but no more than three per agency. Official representatives to the General Committee may ask appropriate staffs of their agencies to attend General Committee meetings to ensure adequate information sharing. Agencies that are not signatories to this Memorandum of Understanding may become members of the General Committee upon application to, or nomination by a signatory agency, and approval by the Steering Committee. The Chairperson of the General Committee shall be chosen by the membership of the General Committee for a one-year term.

There shall be an **Executive Secretary** appointed by the Steering Committee for the purpose of supporting the activities of the Interagency Coordinating Committee on Animal Production and Food Safety. The Executive Secretary shall be responsible for making meeting arrangements, organizing committee and sub-committee activities, and publishing committee reports.

VI. Sunset of the Committee

The Interagency Coordinating Committee on Animal Production and Food Safety will cease to exist five years after the signature of all of the parties, but may be re-authorized and thereby extended through amendment of this Memorandum of Understanding by the signatories.

VII. General Provisions

It is mutually agreed and understood by and among the parties to this Agreement that:

A. Specific work projects or activities that involve transfer of funds, services, or property among the parties will require execution of separate interagency agreements, contingent upon availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving transfer of funds, services, or property among the parties must comply with all applicable statutes and regulations, including those statutes and regulations governing procurement activities, and must be authorized by appropriate statutory authority.

B. This Memorandum of Understanding in no way restricts the parties from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

C. Nothing in this Memorandum of Understanding supersedes any other memorandum of understanding held by any of the participating agencies.

D. Nothing in this Memorandum of Understanding shall obligate the parties to expend appropriations to enter into any contract or other obligations. Each party

to this Memorandum of Understanding shall handle its own activities and utilize its own resources, including expenditure of its own funds. This Memorandum of Understanding is neither a funds obligation or funds transfer document.

E. This Memorandum of Understanding will become effective upon the signature of all of the parties and shall remain in effect for 5 years from the date of execution. This Memorandum of Understanding may be extended or amended upon written request of any party hereto and the subsequent written concurrence of all of the parties. Parties' participation in the Memorandum of Understanding may be terminated by providing 60-day written notice to all the other parties. Additional parties may be added to this Memorandum of Understanding with the agreement of the signatories.

F. This Memorandum of Understanding is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

G. The terms of this Memorandum of Understanding are not intended to be enforceable by any party other than the signatories.

The following member agencies have agreed to the aforementioned Memorandum of Understanding establishing the Interagency Coordinating Committee on Animal Production and Food Safety on the dates set forth below.

APPROVED AND ACCEPTED FOR THE
U.S. DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE

BY: _____
THOMAS J. BILLY
ADMINISTRATOR
DATE: 11/17/99

APPROVED AND ACCEPTED FOR THE
U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION
CENTER FOR VETERINARY MEDICINE

BY: _____
STEPHEN F. SUNDLOF
DIRECTOR
DATE: 11/17/99

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APPROVED AND ACCEPTED FOR THE U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL RESEARCH SERVICE

BY: Floyd P. Horn
FLOYD HORN
ADMINISTRATOR
DATE: 5-25-99

APPROVED AND ACCEPTED FOR THE U.S. DEPARTMENT OF AGRICULTURE COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE

BY: Colien Hefferan, acting
COLIEN HEFFERAN
ADMINISTRATOR
DATE: May 17, 1999

APPROVED AND ACCEPTED FOR THE U.S. DEPARTMENT OF AGRICULTURE GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION

BY: James R Baker
JAMES R. BAKER
ADMINISTRATOR
DATE: 1-20-99

APPROVED AND ACCEPTED FOR THE ENVIRONMENTAL PROTECTION AGENCY OFFICE OF PREVENTION, PESTICIDES, AND TOXIC SUBSTANCES

BY: Susan H. Wayland
SUSAN H. WAYLAND
DEPUTY ASSISTANT ADMINISTRATOR
DATE: 8/9/99

APPROVED AND ACCEPTED FOR THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTERS FOR DISEASE CONTROL PREVENTION, NATIONAL CENTER FOR INFECTIOUS DISEASES

BY: James M Hughes
JAMES M. HUGHES
DIRECTOR
DATE: 9/16/99

APPROVED AND ACCEPTED FOR THE U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL MARKETING SERVICE

BY:
ENRIQUE FIGUEROA
ADMINISTRATOR
DATE: 5-11-99

APPROVED AND ACCEPTED FOR THE U. S. DEPARTMENT OF DEFENSE DEPARTMENT OF THE ARMY

BY: John J Cuddy
MAJOR GENERAL JOHN J. CUDDY
DEPUTY SURGEON GENERAL
DATE: 12-23-98

APPROVED AND ACCEPTED FOR THE ENVIRONMENTAL PROTECTION AGENCY OFFICE OF WATER

BY:
J. CHARLES FOX
ASSISTANT ADMINISTRATOR
DATE: 6/7/99

APPROVED AND ACCEPTED FOR THE U.S. DEPARTMENT OF AGRICULTURE OFFICE OF RISK ASSESSMENT AND COST BENEFIT ANALYSIS

BY:
ALWYNELLE S. AHL
DIRECTOR
DATE: 2/18/99

APPROVED AND ACCEPTED FOR THE U.S. DEPARTMENT OF AGRICULTURE FOREIGN AGRICULTURAL SERVICE

BY: For TJG
Timothy J. Galvin
Administrator
DATE: 4/28/99

APPROVED AND ACCEPTED FOR THE U.S. DEPARTMENT OF AGRICULTURE ANIMAL AND PLANT HEALTH INSPECTION SERVICE

BY: Craig A. Reed
CRAIG A. REED
ADMINISTRATOR
DATE: 11/17/99

APPROVED AND ACCEPTED FOR THE U.S. DEPARTMENT OF AGRICULTURE ECONOMIC RESEARCH SERVICE

BY: Susan Offutt
SUSAN OFFUTT
ADMINISTRATOR
DATE: 3/5/99

APPROVED AND ACCEPTED FOR THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOOD AND DRUG ADMINISTRATION CENTER FOR FOOD SAFETY AND APPLIED NUTRITION

BY: Joseph A Levitt
JOSEPH A. LEVITT
DIRECTOR
DATE: 11/12/99

[FR Doc. 00–13208 Filed 5–25–00; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

List of Recipients of Indian Health Scholarships Under the Indian Health Scholarship Program

The regulations governing Indian Health Care Improvement Act Programs (Pub. L. 94–437) provide at 42 CFR 36.334 that the Indian Health Service shall publish annually in the **Federal Register** a list of recipients of Indian Health Scholarships, including the name of each recipient, school and tribal affiliation, if applicable. These scholarships were awarded under the authority of Sections 103 and 104 of the Indian Health Care Improvement Act, 25 U.S.C. 1613–1613a, as amended by the Indian Health Care Amendments of 1988, Pub. L. 100–713.

The following is a list of Indian Health Scholarship Recipients funded under Sections 103 and 104 for Fiscal Year 1999:

Abertia, Lynn Ann, Arizona State University, Pueblo of Isleta
Ables, Millicent Elaine, University of Kansas, Choctaw Nation of Oklahoma
Abold-Arellano, Carol Ann, University of South Dakota, Oglala Sioux of the Pine Ridge Reservation
Adams, Daniel Robert, North Dakota State University, Sisseton-Wahpeton Sioux Tribe
Alexander, Andrea Lynn, Oklahoma State University—Ada, Seminole Nation of Oklahoma
Alexander, Lisa Kalliah, Washington State University/Vancouver School of Medicine, Confederated Tribes of the Grand Ronde
Allen, Gwen Vera, Salish Kootenai College, Confederated Tribes of the Colville Reservation
Allen, Toni Lee, University of Oklahoma, Choctaw Nation of Oklahoma
Allery-Decoteau, Crystal Vernelle, Minot State University, Turtle Mountain Band of Chippewa Indians
Allery, Cynthia Ann, University of North Dakota, Turtle Mountain Band of Chippewa Indians
Allick, Albert Philip, University of Minnesota-Duluth, Turtle Mountain Band of Chippewa Indians
Allison, Rochelle Jade, Mesa Community College, Navajo Tribe of AZ, NM, & UT
Ammesmaki, Frank P., University of North Dakota, Fond du Lac Band—MN Chippewa
Anderson, Debbie Ann, Salish-Kootenai Community College, Confederated Salish & Kootenai Tribes
Anderson, Lisa Dawn, College of St. Scholastica, Bois Forte Band—MN Chippewa
Anderson, Sandra Dee, Mesa Community College, Navajo Tribe of AZ, NM, & UT
Anderson-McMillan, Tarina Kay, University of Southern Mississippi, Mississippi Band of Choctaw Indians
Andrews, Jananna Dove, University of Alaska, Teller Native Village
Antonio, John Emery, University of New Mexico—Albuquerque, Pueblo of Laguna, NM
Arneson, Richelle Marie, University of Washington, Tlingit & Haida Indians Tribes, AK
Arviso, Angela, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Ashley, Jeannette, New Mexico State University—Las Cruces, Navajo Tribe of AZ, NM, & UT
Atcitty, Nicole Robin, University of New Mexico—Gallup, Navajo Tribe of AZ, NM, & UT
Bacoch, Michaele, University of the Pacific, Big Pine Paiute Shoshone
Barber, Tina, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Bark, Linda Marie, University of Arkansas, Confederated Tribes of the Colville Reservation
Barkhurst, Kip, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Barnes, Carmen Rose, University of New Mexico, Confederated Salish & Kootenai Tribes
Barnes, Kellie Elizabeth, University of Oklahoma, Chickasaw Nation of Oklahoma
Bartholomew, Michael Lee, Dartmouth Medical School, Kiowa Of Oklahoma
Bartmess, Valene Nancy, University of Oklahoma, Muskogee (Creek) Nation of Oklahoma
Beard, R. Lacy, University of Oklahoma—Norman, Choctaw Nation of Oklahoma
Begay, Andreana, University of New Mexico—Gallup, Navajo Tribe of AZ, NM, & UT
Begay, Bryant, Apollo College, Navajo Tribe of AZ, NM, & UT
Begay, Helena Elsie, Phoenix College, Navajo Tribe of AZ, NM, & UT
Begay, Miranda, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Begay, Monica Calley, Colorado State University, Navajo Tribe of AZ, NM, & UT
Begay, Paula Moiselle, Weber State University, Navajo Tribe of AZ, NM, & UT
Begay, Sarah Jane, New Mexico Highland University, Navajo Tribe of AZ, NM, & UT
Begay, Stephanie Ann, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Begay, Stephanie R., University of New Mexico, Navajo Tribe of AZ, NM, & UT
Begay, Tamana, University of California—San Francisco, Navajo Tribe of AZ, NM, & UT
Begaye, Wahaila Nizhoni, University of Utah, Navajo Tribe of AZ, NM, & UT
Behymer, Virginia May, University of Alaska—Anchorage, Aleut
Belgarde, Vita Ann, University of North Dakota, Turtle Mountain Band of Chippewa Indians
Bell, Jason Burton, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation
Ben, Elaine Ann, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Ben, Lydia, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Benally, Annisa, New Mexico Highland University, Navajo Tribe of AZ, NM, & UT
Benally, Cheryl Lynn, Pima Co. Community College, Navajo Tribe of AZ, NM, & UT
Benally Dorena, San Juan Community College, Navajo Tribe of AZ, NM, & UT
Benally, Max Joe, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Benally, Romancelita, University of Arizona, Navajo Tribe of AZ, NM, & UT
Benton, Mario, University of Arizona/Tucson, Round Valley Indian Tribes
Bercier, Christine Marie, University of North Dakota, Turtle Mountain Band of Chippewa Indians
Berg, Ida, University of Phoenix, Navajo Tribe of AZ, NM, & UT
Berryhill-Baker, Tishanda Leigh, Northeastern State University, Muskogee (Creek) Nation of Oklahoma
Bia, Gabriel Tyler, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Bighorn, Lisa Elaine, University of Colorado—Denver, Assiniboine & Sioux of Fort Peck, MT
Bighorn, Praire Rose, Rocky Mountain College, Assiniboine & Sioux of Fort Peck, MT
Billy, Vermonica, San Juan Community College, Navajo Tribe of AZ, NM, & UT
Blair, Wendy Suzanne, University of Texas Medical School at San Antonio, Comanche of Oklahoma
Boatwright, Melinda Lea, East Central University, Choctaw Nation of Oklahoma

Boloz, Angelita Colleen, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Boot, Maryjo, University of Arizona College of Pharmacy, Pueblo of Zuni Tribe, NM
Booth, Geri Lynn, Bellin College of Nursing, Lac Courte Oreilles Band of Lake Superior Chippewa
Booth, Loretta M. Rie, Pacific University College, Cheyenne River Sioux
Bourque-Wilton, Leanna Shere, Lake Superior State University, Sault Ste. Marie Tribe—Chippewa
Boyd, Cassandra Iva, University of New Mexico—Gallup, Navajo Tribe of AZ, NM, & UT
Bradley, Stephanie, East Carolina University, Eastern Band Cherokee of NC
Brandt, Julie Marie, University of the Health Sciences College, Iowa Tribe of KS & NE
Breland, Kylie Lea, University of North Dakota, Turtle Mountain Band of Chippewa Indians
Briere, Delmar Lee, University of North Dakota, Turtle Mountain Band of Chippewa Indians
Briggs, Misty Elaine, Northeastern State University, Cherokee Nation of Oklahoma
Brinson, Timothy James, East Central University, Citizen Band Potawatomi of Oklahoma
Briones, Rosinna, Arizona Heart Institute Foundation, Salt River Pima-Maricopa Indian Community
Brooks, Shelly Beth, University of Arkansas—Fayetteville, Cherokee Nation of Oklahoma
Brosel, Conrad Carl, University of Wisconsin, Oneida of Wisconsin
Brown, Gerald Ray, Oklahoma State University, Cherokee Nation of Oklahoma
Brown, Ryan David, University of Oklahoma, Choctaw Nation of Oklahoma
Bruce, Dawn Marie, University of North Dakota, Turtle Mountain Band of Chippewa Indians
Bruce, Troy Alan, Presentation College, Turtle Mountain Band of Chippewa Indians
Brunoe, Carnella Lynn, Oregon Health Sciences University, Pueblo of Laguna
Burk, Kristi Carroll, Fort Lewis College, Alaskan/Not Specified
Burnette, Ronald, New Mexico State University, White Mountain Apache Tribe
Bush, Gerald Ray, University of Arizona College of Medicine, White Mountain Apache Tribe
Butterfly, Glenn Curtis, Blackfeet Community College, Blackfeet Tribe
Cain, Marcia L., University of Montana School of Medicine, Sitka Tribe Community Association
Caldwell, Troy Tinsley, University of Oklahoma, Cherokee Nation of Oklahoma
Campbell, Gabriel Antonio, University of North Dakota, Confederated Salish & Kootenai
Campbell, Jamie Renae, East Central University, Muskogee (Creek) Nation of Oklahoma
Camplain-Guthrie, Jamie Lynn, University of Oklahoma Dental School, Choctaw Nation of Oklahoma
Camplain-Sudderth, Lisa Nichole, University of Oklahoma Health Science Center, Choctaw Nation of Oklahoma
Carpenter, April Rachelle, University of Oklahoma HSC, Chickasaw Nation of Oklahoma
Carroll, Ian Lorne, University of Washington School of Medicine, Alaskan/Not Specified
Cary, Brenda Lee, University of Minnesota—Duluth, Oneida of Wisconsin
Charles, Tracey Roseann, University of Tennessee—Memphis, Choctaw Nation of Oklahoma
Charlo, Joseph Donald, University of Montana, Confederated Salish & Kootenai Tribes
Chatter, Teddy Duke, University of Utah, Navajo Tribe of AZ, NM, & UT
Chimoni, Reinette, University of New Mexico, Zuni Tribe
Christofferson, Melissa Renee, Bethel College, White Earth Band—Minnesota Chippewa
Chythlook, William T., Loma Linda University, Alaskan
Clancy, Venessa Mae, Salish-Kootenai Community College, Assiniboine & Sioux of Fort Peck, MT
Clark, Doreen June, Carroll College, Barrow Native Village
Clark, Dorrance Dean, University of Michigan Dental School, Assiniboine & Sioux of Fort Peck, MT
Clarke, Alberta, Dine College, Navajo Tribe of AZ, NM, & UT
Clauschee-Freeland, Rachel Sue, Grand Canyon College, Navajo Tribe of AZ, NM & UT
Clay, Rondella Evelyn, East Central Oklahoma State University, Three Affiliated Tribes of the Fort Berthold Reservation
Cloer-Myers, Melissa Lynn, University of Columbia, Choctaw Nation of Oklahoma
Comnick, Kymberlee Rae, Oregon Institute of Technology, Rosebud Sioux
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Scalpane-Moore, Lavonne Jean, Salish Kootenai College, Northern Cheyenne
Scheinesson, Sheila, University of Southern California, Navajo Tribe of AZ, NM, & UT
Schroeder, Dawn Marie, University of North Dakota, Turtle Mountain Band of Chippewa Indians
Scott, Bobbie Joe, Rogers State Universty, Cherokee Nation of Oklahoma
Scott, Brian Edward, University of Tulsa, Cherokee Nation of Oklahoma
Seaboy, Shirley Jean, Sisseton Wahpeton Community College, Crow Tribe of Montana
Sealey, Sandra Lynnette, Cameron University, Chickasaw Nation of Oklahoma
Seibel, Gennea Adelle, University of North Dakota, Three Affiliated Tribes of the Fort Berthold Reservation
Seubert, Andra Ruth, Washington State University, Nez Perce of Idaho
Shane, Allison Doreen, South Dakota State University, Alaskan
Shangreau, Rhiannon Brook, Oglala Sioux Community College, Oglala Sioux Tribe of the Pine Ridge Reservation, SD
Sharp, Joan, Salish Kootenai College, Confederated Salish & Kootenai Tribes
Shepard, Cristopher Allen Joseph, Pomona College, Alaskan/Not Specified
Shields, Deborah Anne, East Central OK State University, Prairie Band Potawatomi of Kansas
Shipley, Wade Paul, Rocky Mountain College, Turtle Mountain Band of Chippewa Indians
Shirley, Lenora Jean, University of New Mexico—Albuquerque, Navajo Tribe of AZ, NM, & UT
Shirley, Stella Louise, University of New Mexico—Gallup, Navajo Tribe of AZ, NM, & UT
Show, Michelle Rae, Montana State University, Fort Belknap Indian Community
Sinclair, Edward Jared Mathew, University of Montana, Blackfeet Tribe, MT
Sirmans, Jayna Deneice, Oklahoma State University, Choctaw Nation of Oklahoma
Skan, Eric Christopher, Washington State University, Ketchikan Indian Corp
Skin, Betty Erma, Wayland Baptist University, Selawik Native Village
Slim, Geraldine Ann, Phoenix College, Navajo Tribe of AZ, NM, & UT
Sloan, Adreanne, New Mexico Highlands University, Navajo Tribe of AZ, NM, & UT
Sloan, Rick Michael Wesley, University of Colorado, Cherokee Nation of Oklahoma
Smith, Barbara Ann, University of New Mexico—Albuquerque, Navajo Tribe of AZ, NM, & UT
Smith, Crystal Lee, University of Oklahoma, Mississippi Band of Choctaw
Smith, Derek Haskeltsie, Brigham Young University, Navajo Tribe of AZ, NM, & UT
Smith, Elaine Show, Montana State University, Blackfeet Tribe, MT
Smith, Linda Ann, Minot State College, Turtle Mountain Band of Chippewa Indians
Smith, Seneca Martin, Southwestern Oklahoma State University, Muskogee (Creek) Nation of Oklahoma
Smith, Sheila Rena, University of Oklahoma Health Sciences Center, Seminole of Oklahoma
Smith, Tiffany Beth, East Central Oklahoma State University, Cherokee Nation of Oklahoma

Snell, Jerry David, University of Oklahoma Dental School, Cherokee Nation of Oklahoma
Spotted Horse, Patricia Jean, American University, Standing Rock Sioux Tribe of N. & S. Dakota
Spurlock, Cory Stephen, University of Oklahoma, Citizen Band Potawatomi of OK
St. Clair, Billie Jo, North Dakota State University, Turtle Mountain Band of Chippewa Indians
St. John, Valdon John, University of Mary, Cheyenne River Sioux
Starbard, Karla Rachelle, University of Nevada, Craig Community College
Starks, Rachel Rose, Wheaton College, Zuni Tribe
Starr, Suzaane, Salish-Kootenai Community College, Northern Cheyenne
Stefaniak, Yvonne Chester, University of New Mexico—Gallup, Navajo Tribe of AZ, NM, & UT
Stevens, Andrew Levi, University of North Dakota, Cheyenne-Arapaho of Oklahoma
Stewart, Daryl Lee, University of New Mexico—Gallup, Navajo Tribe of AZ, NM, & UT
Stover, Patrick Pete, University of Oklahoma Dental School, Chickasaw Nation of Oklahoma
Strobbe, Vonne Kay, University of New Mexico—Albuquerque, Assiniboine & Sioux of Fort Peck, MT
Stuck, Andrew Timothy Lewis, University of Arizona, Navajo Tribe of AZ, NM, & UT
Stump-King, Glynna Marie, University of New Mexico—Gallup, Chippewa Cree Indians of RockyBoy, MT
Summerlin, Allen William, University of the Pacific, Cherokee Nation of Oklahoma
Sutton, Stephanie, University of Washington, Blackfeet Tribe, MT
Swan, Rhonda, University of Great Falls, Chickasaw Nation of Oklahoma
Swensen, Eric Carl, University of North Dakota, Aleut
Swift, Jennifer Renae, University of Arizona, San Carlos Apache Tribe
Taylor, Jody Belinda, University of North Dakota, Cherokee Nation of Oklahoma
Teasyatwho, Arlene Jean, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Teller, Pamela, Dine College, Narraganset Indian Tribe of Rhode Island
Teller, Tanya Corina, University of New Mexico—Albuquerque, Navajo Tribe of AZ, NM, & UT
Tenequer, Valerie Leigh, Gateway Community College, Navajo Tribe of AZ, NM, & UT
Terrell, Mendy Renee, University of Oklahoma-Norman, Cherokee Nation of Oklahoma
Tescier, Echo, University of California—Berkeley, Citizen Band Potawatomi of Oklahoma
Thomas, Sheila, University of New Dakota, Turtle Mountain Band of Chippewa
Thomas, Veronica Rose, Mounty Marty College, Santee Sioux of Nebraska
Thomason, Felecia, University of New Mexico—Albuquerque, Navajo Tribe of AZ, NM, & UT
Thompson-Lookingback, Bret, University of Minnesota, White Earth Band-Minnesota Chippewa
Thrasher, Amy Renee, Northeastern State University, Choctaw Nation of Oklahoma
Todichenney, Linda Lee, Northland Pioneer College, Navajo Tribe of AZ, NM, & UT
Todicheeney, Rydell, Arizona State University, Navajo Tribe of AZ, NM, & UT
Tolino, Gerilyn Ardith, New Mexico Highlands University, Navajo Tribe of AZ, NM, & UT
Tom, Jolene, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Tommie, Titania Leonila, Arizona State University, Navajo Tribe of AZ, NM, & UT
Torres, Tina Marie, Heritage College, Turtle Mountain Band of Chippewa Indians
Toya, Antoinette Elisia, Forth Lewis College, Pueblo of Jemez, NM
Toya, Tirzah Marie, Albuquerque Technical Vocational Institute, Pueblo of Laguna, NM
Tracy, Caroline, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Tsethlikai, Cynthia, University of New Mexico, Zuni Tribe, NM
Tsethlikai, Nina Marie, University of New Mexico—Gallup, Zuni Tribe, NM
Tsingine, Georgia Lynn, University of Arizona, Navajo Tribe of AZ, NM, & UT
Tsosie, Orlando, Utah State University, Navajo Tribe of AZ, NM, & UT
Tsosie, Veronica Tonya, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Tunnell, Kimberly Rennee, Oklahoma State University, Kiowa of Oklahoma
Turner, Rayna June, Northern Oklahoma College, Apache Tribe of Oklahoma
Turney, Jarett Brandon, Northeastern State University, Cherokee Nation of Oklahoma
Tyner, Vera Alene, University of Oklahoma, Muskogee (Creek) Nation of Oklahoma
Underwood, April Dawn, Oklahoma State University, Cherokee Nation of Oklahoma
Upshaw, Juliana, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Uttchin, Venus, University of Oklahoma, Muskogre (Creek) Nation of Oklahoma
Van Meter, Catherine Leigh, University of Alabama, Poarch Band of Creek Indians of Alabama
Vandusen, Terra Andrea, Seminole State College, Cherokee Nation of Oklahoma
Vardeman, Barry Keith, University of Oklahoma—Norman, Cherokee Nation of Oklahoma
Vielle, Nadine Marie, Salish Kootenai Community College, Blackfeet Tribe, MT
Volden, Minisa Michelle, California School of Psychology, Cherokee Nation of Oklahoma
Vollin, Marcia Fay, University of Montana, Confederated Salish & Kootenai Tribe
Wahkinney, Margie Maxine, Cameron University, Comanche of Oklahoma
Walkingstick, Chanel Ryan, Northeastern State University, Cherokee Nation of Oklahoma
Wallace, Kacey Leann, University of Central Oklahoma, Choctaw Nation of Oklahoma
Walls, Andrew James, University of Oklahoma Dental School, Choctaw Nation of Oklahoma
Waquie, Monica Janet, Albuquerque Technical Vocational Institute, Pueblo of Jemez
Ward, Sandi Rae, Peninsula College, Makah Indian Tribe of Washington
Ware, Brenda Lee, Valley View Hospital, Cherokee Nation of Oklahoma
Watford, Velma Jean, Pima Community College, Navajo Tribe of AZ, NM, & UT
Weber, Shana Renae, Michigan State University, Oneida of Wisconsin
Webster, Edwin Quillin, University of Montana, Aleut, AK
Welch, Marvel Andrea, Western Carolina University, Eastern Band-Cherokee of North Carolina
Wells, Elmer Bruce, North Dakota State University, Three Affiliated Tribes of the Ft Berthold Reservation
Wells, Shane, Southern Adventist University, Tlingit & Haida, Central Council
Werito, Jennifer, University of New Mexico—Albuquerque, Navajo Tribe of AZ, NM, & UT
West, Michael Clinton, Oklahoma State University, Choctaw Nation of Oklahoma
Westman, Delana Denise, University of Oklahoma, Cherokee Nation of Oklahoma

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Wheeler Sheehy, Antonia Loui, North Park University, Blackfeet Tribe, MT
White, Richard Kalvin, University of Utah, Navajo Tribe AZ, NM, & UT
White, Sidney John, Marquette University, Oneida of Wisconsin
White Calfe-Sayler, Verlee Key, University of North Dakota, Three Affiliated Tribes of the Ft Berthold Reservation
Whited, Stephanie Lynn, University of Southern Mississippi, Nenana Native Association
Whitehair, Jennifer June, University of North Dakota, Navajo Tribe of AZ, NM, & UT
Whitehair, Rosalita Marie, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Wilcox, Amelia Mae, University of Phoenix, Navajo Tribe of AZ, NM, & UT
Willcuts, Peggy Sue, South Dakota State University, Rosebud Sioux
Willeto, Virginia, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Williams, Alice, Coconino Community College, Navajo Tribe of AZ, NM, & UT
Williams, Amy Nicole, Bartlesville Wesleyan College, Choctaw Nation of Oklahoma
Williams-Begay, Vanessa, University of Phoenix, Navajo Tribe of AZ, NM, & UT
Wilson, Dana Lynn, Northland Pioneer College, Navajo Tribe of AZ, NM, & UT
Wilson, Dena Lynn, University of Washington, Oglala Sioux
Wilson, Mackenzie Paulette, University of Arizona, Navajo Tribe of AZ, NM, & UT
Wilson, Sandra, University of Oklahoma Dental School, Northern Cheyenne
Wing, Ilene Longknife, Montana State University, Assiniboine & Sioux
Winstead, Quana Marie, College of Health Sciences, Eastern Band—Cherokee of North Carolina
Witherspoon, Lachelle Linette, San Fransisco State University, Navajo Tribe of AZ, NM, & UT
Wood, Chad Nathaniel, University of Utah, Cherokee Nation of Oklahoma
Woolley, Eric Brady, University of Oklahoma, Iowa Tribe of Kansas & Nebraska
Work, Hugh Edward, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Worker, Shanna Renee, Grand Canyon University, Navajo Tribe of AZ, NM, & UT
Wright, Christy Marie, Arizona State University, Nenana Native Association
Wyaco, Barbie Jen, University of Arizona, Navajo Tribe of AZ, NM, & UT
Yazzie, Abiegail, New Mexico Highlands University, Navajo Tribe of AZ, NM, & UT
Yazzie, Charisse Lindsey, Scottsdale Community College, Navajo Tribe of AZ, NM, & UT
Yazzie, Nazhone Paul, University of Arizona, Navajo Tribe of AZ, NM, & UT
Yazzie, Sharon, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Yazzie, Sheldwin, University of New Mexico—Albuquerque, Navajo Tribe of AZ, NM, & UT
Yazzie, Timothy, Midwestern University, Navajo Tribe of AZ, NM, & UT
Yazzie-Valencia, Martha, University of Oklahoma, Navajo Tribe of AZ, NM, & UT
Ybarra, Ysidro Patrick, University of Alaska, Crow Tribe of Montana
Yoe, Corinna Mae, Weber State University, Navajo Tribe of AZ, NM, & UT
York, Rebecca Ann, University of Arkansas Fayetteville, Cherokee Nation of Oklahoma
Young, Evelyn, Salish Kootenai College, Confederated Salish Kootenai & Tribes
Zubach, Kari Lynn, Carroll College, Blackfeet Tribe
Zunie, Janet, University of New Mexico, Zuni Tribe, NM
Zwaryck, Shelby Leone, University of Great Falls, Chippewa Cree Indians of the Rocky Boy's Reservation

FOR FURTHER INFORMATION CONTACT: The Indian Health Service Scholarship Branch, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland, 20852, Telephone: (301) 443–6197, Fax: (301) 443–6048.

Dated: May 19, 2000.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 00–13213 Filed 5–25–00; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Mental Health and Community Safety Initiative for American Indian/Alaska Native Children, Youth and Families

AGENCY: Indian Health Service, HHS.

ACTION: Extension of Deadline for Receipt of Competitive Grant Applications for the Mental Health and Community Safety Initiative for American Indian/Alaska Native (AI/AN) Children, Youth, and Families.

The Notice of funding availability for competitive grants for the mental health and community safety initiative for American Indian/Alaska Native (AI/AN) children, youth, and families was published at 65 FR 26841, on Tuesday, May 9, 2000.

The Indian Health Service (IHS) announces the extension of the application receipt deadlines to June 15, 2000 for the following grant programs included in the above Notice:

1. The AI/AN Mental Health Grants Program funded by the IHS and
2. The Mental Health and Community Safety Initiative for American Indian/Alaska Native (AI/AN) Children, Youth, and Families funded by the Office of Community Oriented Policing Services (COPS).

This extension to June 15, 2000, provides applicants for both of these programs approximately an additional two weeks to prepare and submit competitive applications.

All other information contained in the **Federal Register** announcement and in the consolidated grant application package distributed in early May remains unchanged.

Dated: May 19, 2000.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 00–13212 Filed 5–25–00; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Statement of Mission, Organization, Functions and Delegation of Authority

Part G, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, as amended at 60 FR 56606, November 9, 1995, and most recently amended at 61 FR 67048, December 19, 1996, is amended to reflect a reorganization of the Albuquerque Area Indian Health Service (GFC). The changes are as follows:

Delete the functional statements for the Albuquerque Area in their entirety and replace with the following:

Section GFC–00, Albuquerque Area Indian Health Service—Mission. The Albuquerque Area IHS defines its mission as a commitment to the well-being and cultural integrity of Indian people through a participatory and consultative process. The goal of the Albuquerque Area IHS is to elevate the health status of American Indian and Alaska Native people to the highest possible level by (1) providing and/or assuring availability, (2) providing increasing opportunities for Indians to manage and operate their own health programs; and (3) serving as an advocate for Indian people.

Section GFC–10, Functions. Office of the Director (GFC1). By specific delegation from the Director, Indian Health Service: (1) Plans, develops, and directs the area program within the framework of IHS policy in pursuit of the IHS mission; (2) delivers and ensures the delivery of high quality comprehensive health services; (3) coordinates the Albuquerque Area Indian Health Service activities and resources, internally and externally, with those of other governmental and nongovernmental programs; (4) promotes optimum utilization of health care services through quality management and delivery of services to American Indian and Alaska Natives; (5) promotes collaboration of Indian tribes and Indian organizations in developing the goals and objectives for the Albuquerque Area Indian Health Service; (6) evaluates the efficiency, economy, legality, and effectiveness with which programs carry out their responsibilities; (7) promotes resource development; and (8) oversees the EEO program and tribal Support Staff Office.

Office of Operational Support (GFC2). (1) Administers the Divisions of Budget, Accounting, Human Resources, Contracts, and Information Management Systems; (2) provides operational consultation; (3) provides resource review, analysis and realignment; (4) develops reporting systems, assessment and auditing procedures; (5) establishes, maintains, and promotes liaison with community, tribal, civic groups, professional organizations, colleges, universities, and other agencies as appropriate; (6) serves as principal advisor to the Chief Medical Officer and Area Director on administrative and management matters involving the Area and headquarters functions for Diabetes, Epidemiology and Information Technology Services; (7) serves as principal advisor on fiscal matters; and (8) provides billing consultation and assessment.

Division of Budget (CFC21). (1) Formulates fiscal budget activities; (2) determines funding amounts available for tribal shares distribution; (3) prepares operating budget authority documents to distribute funds to service units, programs, area support divisions and tribal contractors; (4) oversees and consults on proper cost accounting and cost reporting.

Division of Accounting (GFC22). Responsible for (1) the overall accounting, financial reporting, reconciliation and payment functions for the Albuquerque Area and National Programs-Albuquerque; (2) certifies all travel payments; (3) reconciles with service units, area office divisions, and the U.S. Treasury; (4) performs internal control reviews for the area; (5) oversees tribal shares distribution and payments; (6) consults with tribes on accounting issues; and (7) provides support services to headquarters functions for Diabetes, Epidemiology and Information Technology Services.

Division of Human Resources (GFC23). (1) Plans, implements, coordinates, and evaluates the area civil service and commissioned officer human resources program; (2) develops operating personnel policies, and assures a supportive human resources program which meets the human capital framework of the area; (3) administers operating personnel policies, position classification and pay management, recruitment and staffing, employee relations, labor management, employee development; personnel records and reports; (4) conducts training courses for supervisory and non-supervisory staff; (5) maintains pertinent federal personnel regulation guidelines; (6) serves as principal advisor to the Area Director, Executive Officer, area staff, and service unit staff in matters relating to human resources; (7) keeps abreast of current development of tribal health activities as they relate to the area human resources program; (8) establishes, maintains and promotes liaison with community, tribal, civic groups, professional organizations, colleges, universities, and other agencies as appropriate; (9) oversees the scholarship program; and (10) provides support services to headquarters functions for Diabetes, Epidemiology and Information Technology Services.

Division of Contracts and Grants Management (GFC24). (1) Plans, implements, coordinates, and evaluates the area contract and grants management programs within established requirements and authorities; (2) interprets federal contract, grant and procurement regulations, policies, procedures, and practices; (3) provides technical assistance to Indian tribes, Indian and urban Indian organizations in the development of activities related to procurement capabilities; (4) maintains the federal procurement regulation manuals and the HHS grant administration manuals; (5) provides delegations of authority for service unit procurement; (6) evaluates service unit procurement operations; (7) keeps abreast of current development of tribal health activities as they related to the contract, grant and procurement activity; and (8) provides support services to headquarters functions for Diabetes, Epidemiology and Information Technology Services as delegated by the Headquarters Memorandum of Agreement.

Division of Information Management Services (GFC25). (1) Provides advice on area policies and procedures related to data processing, computer software, computer equipment, and telecommunications; (2) provides technical support on data processing services and software application to the area and service units; (3) assesses area needs for information technology and advises on alternatives; (4) provides training to improve utilization and understanding of information technologies; and (5) works with Headquarters Division of Information Resources (DIR), to design and develop systems that are responsive to area needs and provides tribal support.

Office of Clinical Care Programs (GFC3). Plans, implements, directs, coordinates and evaluates the patient care programs throughout the Albuquerque Area health care system. This office oversees (1) planning/statistics; (2) integrated health systems; (3) medical information; (4) epidemiology; (5) contract health; (6) clinical nursing; (7) diabetes/public health nursing; (8) Community Health Representative/Emergency Medical Services Programs (CHR/EMS); (9) behavioral health; (10) optometry; (11) provider recruitment; (12) serves as the expert in clinical programs for the Albuquerque Area; and (13) serves as liaison for clinical tort claims, sentinel events and risk management issues.

Division of Clinical System Support (GFC31). Provides (1) data gathering for clinical improvement and quality of care; (2) strategic planning and community assessment; (3) Contract Health Services Program (CHS); (4) dental support; and (5) facilitates integrated systems approach with outside agencies.

Division of Clinical Quality (GFC32). (1) coordinates clinical technical assistance that impacts on quality performance and promotes collaboration to improve quality care; (2) oversees the diabetes/public health nursing and clinical nursing programs; behavioral health program; provider recruitment program; and the CHR/EMS program; and (3)O provides area-wide technical

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support in the clinical programs and quality council.

Office of Environmental Health & Engineering (GFC4). (1) Administer the area facilities management, sanitation facilities construction, environmental health services, and the national environmental health support functions; (2) serves as the principal advisor to the Area Director, area staff, and service unit staff and healthful environment in IHS facilities and Indian communities; (4) constructs, improves, extends or otherwise provides essential sanitation facilities in Indian homes and communities; (5) maintains liaison and coordinates environmental activities with tribes, area programs, state and local governments, and other outside groups; and (6) provides support services to headquarters functions for Diabetes, Epidemiology and Information Technology Services.

Division of Health Facilities (GFC41). (1) Manages the area health facilities & maintenance program; (2) serves as the liaison with Headquarters and engineering services in Dallas; (3) provides resource coordination; (4) advises service units on Heating, Ventilation, and Air Conditioning (HVAC) & energy issues; (5) advises the service units on construction & utility issues; (6) constructs, maintains, and improves health facilities of the IHS; and (7) manages and controls the area-wide real property program.

Division of Environmental Health Support (GFC42). Provides nationwide training and technical support in the areas of environmental health and injury prevention, engineering, operation and maintenance for the IHS. Coordinates national emergency response activities on behalf of the Indian Health Service.

Section GFN–20, Albuquerque Area IHS-Delegations of Authority. All delegations and redelegations of authority made to officials in the Albuerque Area that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further redelegation.

This reorganization shall be effective on the date of signature.

Dated: May 16, 2000.

Michel E. Lincoln,

Deputy Director.

[FR Doc. 00–13211 Filed 5–25–00; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Aging, May 25, 2000, 1 p.m. to May 26, 2000, 12 p.m., 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD, 20892 which was published in the **Federal Register** on April 18, 2000, 65 FR 21002.

The meeting has been changed to a one day meeting—May 25, 2000 from 1 p.m. to adjournment. The meeting will be open from 1 p.m. until 6 p.m. and closed from 6 p.m. until adjournment. The meeting is partially Closed to the public.

Dated: May 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13277 Filed 5–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

Date: June 15, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Camille M. King, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, 301–435–0815.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Centers of Biomedical Research Excellence (COBRE).

Date: June 18–20, 2000.

Time: June 18, 2000, 8 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: John J. Ryan, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Centers of Biomedical Research Excellence (COBRE).

Date: June 18–20, 2000.

Time: June 25, 2000, 8 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: John J. Ryan, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: May 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13275 Filed 5–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: May 22, 2000.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 350, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Andrew P. Mariani, Chief, Scientific Review Branch, 6120 Executive Blvd., Suite 350, Rockville, MD 20892, 301/496–5561.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13282 Filed 5–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: May 19, 2000.

Time: 2 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 350, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Andrew P. Mariani, Chief, Scientific Review Branch, 6120 Executive Blvd., Suite 350, Rockville, MD 20892, 301/496–5561.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13283 Filed 5–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Genomic Applications for Heart, Lung and Blood Research (PGA).

Date: June 19–20, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Baltimore, On the Inner Harbor, 300 Light Street, Baltimore, MD 21202.

Contact Person: Valerie L. Prenger, PhD, Health Science Administrator, NIH, NHLBI, DEA, Review Branch, Rockledge Center II, 6701 Rockledge Drive, Suite 7198, Bethesda, MD 20892–7924, (301) 435–0297.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Programs of Excellence in Gene Therapy.

Date: July 8–10, 2000.

Time: 7:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Terry Rogers Bishop, Scientific Review Administrator, Review Branch, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7210, Bethesda, MD 20892–7924, (301) 435–0303.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Positional Candidate Gene Approaches in Asthma Gene Discovery.

Date: July 10, 2000.

Time: 8:00 AM to 5:00 PM

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Valerie L. Prenger, PhD, Health Science Administrator, NIH, NHLBI, DEA, Review Branch, Rockledge Center II, 6701 Rockledge Drive, Suite 7198, Bethesda, MD 20892–7924, (301) 435–0297.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Disease and Resources Research, National Institutes of Health, HHS)

Dated: May 18, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR doc. 00–13274 Filed 5–25–00; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 20–21, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hotel Lombardy, 2019 I Street, NW, Washington, DC 20006.

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center,

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6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 30, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 6, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 12, 2000.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13276 Filed 5–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: June 27–28, 2000.

Time: 7:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13278 Filed 5–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 20, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20892.

Contact Person: John R. Lymangrover, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13280 Filed 5–25–00; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group, Pathology B Study Section.

Date: June 7–9, 2000.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, Kaleidoscope Room, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Martin L. Padarathsingh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group Epidemiology and Disease Control Subcommittee 1.

Date: June 7–9, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holidy Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: J. Scott Osborne, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacteriology and Mycology Subcommittee 2.

Date: June 7–9, 2000.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148, branchew@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hematology Subcommittee 1.

Date: June 8–9, 2000.

Time: 8 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, Versailles Room 4, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Su, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Tropical Medicine and Parasitology Study Section.

Date: June 8–9, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Jean Hickman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Biochemical Sciences Integrated Review Group, Pathobiochemistry Study Section.

Date: June 8–9, 2000.

Time: 8:30 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Zakir Bengali, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 8–9, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Jay Cinque, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 8–9, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: Victoria S. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levin@csr.nih.gov.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Respiratory and Applied Physiology Study Section.

Date: June 8–9, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Everett E. Sinnett, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@nih.gov.

Name of Committee: Genetic Sciences Integrated Review Group, Genetics Study Section.

Date: June 9–10, 2000.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, N.W., Washington, DC. 20037.

Contact Person: David J. Remonidini, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, remondid@csr.nih.gov..

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 8–9, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.

Contact Person: Thomas A. Tatham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 8, 2000.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SSS–4 (02).

Date: June 9, 2000.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: Stephen M. Nigida, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 9, 2000.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

Contact Person: Betty Haden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, haydenb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 9, 2000.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Bethesda, Versailles Room 4, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert T. Su, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892, 301–435–1195.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 19, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13281 Filed 5–25–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–13]

Notice of Proposed Information Collection: Comment Request; Supplement to Subscription Agreement for Cooperative Management-Type Applicants Under Section 213 and 221(d)(3)

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 25, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department and Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, DC 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Business Products, U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone number (202) 708–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Supplement to Subscription Agreement for Cooperative Management-Type Applicants Under Section 213 and 221(d)(3).

OMB Control Number, if applicable: 2502–0058.

Description of the need for the information and proposed use: Section 213 and 221(d)(3) of the National Housing Act, as amended authorizes the Secretary to insure mortgages covering property held by a non-profit cooperative ownership housing cooperation. It states: "Any mortgages insured under this Section shall provide for complete amortization by periodic payments within such terms as the Secretary may prescribe but not to exceed forty years from the beginning of amortization of the mortgage * * *." In order to determine the capacity of the borrower corporation and the individual members to meet the statutory requirement for repayment, the Department must require and review information as to the applicant's financial and credit history.

Agency form numbers, if applicable: HUD–93232A.

Estimation of the total numbers of hours and needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 100, the frequency of response is 100, the frequency of response is 12, the estimated time per response is 15 minutes, and the requested annual burden hours is 300.

Status of the proposed information collection: Reinstatement with change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 15, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–13235 Filed 5–25–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–21]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information lines at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, ND 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *COE:* Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, Pulaski Bldg., Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–0515; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; *Energy:* Mr. Tom Knox, Department of Energy, Office of Contract & Resource Management, MA–52, Washington, DC 20585; (202) 586–8715; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: May 18, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special needs Assistance Programs.

Title V, Federal Surplus Property Program; Federal Register Report for 5/26/00

Suitable/Available Properties

Buildings (by State)

California

Bldg. 371
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020080
Status: Unutilized
Comment: 29,800 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 402
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020081
Status: Unutilized
Comment: presence of lead paint, most recent use—storage, off-site use only

Bldg. 417
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020082
Status: Unutilized
Comment: 100 TR, needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 418
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020083
Status: Unutilized
Comment: 288 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 426
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020084
Status: Unutilized
Comment: presence of asbestos/lead paint, off-site use only

Bldg. 434
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020085
Status: Unutilized
Comment: 11,440 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 210
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020086
Status: Unutilized
Comment: 17,708 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—police station, off-site use only

Bldg. 541
Naval Warfare Assessment Station
Corona Co: CA 91718–5000

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Landholding Agency: Navy
Property Number: 77200020087
Status: Unutilized
Comment: 3,857 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 804
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020088
Status: Unutilized
Comment: 3,119 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 805
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020089
Status: Unutilized
Comment: 3,632 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 806
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020090
Status: Unutilized
Comment: 3,110 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 807
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020091
Status: Unutilized
Comment: 3,110 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

North Carolina

Goldsboro Federal Bldg.
134 North John Street
Goldsboro Co: Wayne NC 27530
Landholding Agency: GSA
Property Number: 54200020016
Status: Excess
Comment: 24,492 sq. ft., presence of asbestos/lead paint
GSA Number: 4–G–NC–736

North Dakota

Office Bldg.
Lake Oahe Project
3rd & Main
Ft. Yates Co: Sioux ND 58538–
Landholding Agency: COE
Property Number: 31200020001
Status: Unutilized
Comment: 1200 sq. ft., 2-story wood, off-site use only

Unsuitable Properties

Building (by State)

California

Bldgs. 5157, 5158
Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200020045
Status: Unutilized
Reason: Secured Area

Facility 13181
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020046
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facility 14220
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020047
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facility 24151
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020048
Status: Unutilized
Comment: Secured Area, Extensive deterioration

Florida

Bldg. 7H
Naval Air Station
Jacksonville Co: FL 32212–
Landholding Agency: Navy
Property Number: 77200020064
Status: Unutilized
Comment: Secured Area, Extensive deterioration

Bldg. 7J
Naval Air Station
Jacksonville Co: FL 32212–
Landholding Agency: Navy
Property Number: 77200020065
Status: Unutilized
Comment: Secured Area, Extensive deterioration

Bldg. 7K
Naval Air Station
Jacksonville Co: FL 32212–
Landholding Agency: Navy
Property Number: 77200020066
Status: Unutilized
Comment: Secured Area, Extensive deterioration

Bldg. 106
Naval Air Station
Jacksonville Co: FL 32212–
Landholding Agency: Navy
Property Number: 77200020067
Status: Unutilized
Comment: Secured Area, Extensive deterioration

Bldg. 135
Naval Air Station
Jacksonville Co: FL 32212–
Landholding Agency: Navy
Property Number: 77200020068
Status: Unutilized
Comment: Secured Area, Extensive deterioration

Bldg. 142
Naval Air Station
Jacksonville Co: FL 32212–
Landholding Agency: Navy
Property Number: 77200020069
Status: Unutilized
Comment: Secured Area, Extensive deterioration

Bldg. 584
Naval Air Station
Jacksonville Co: FL 32212–
Landholding Agency: Navy
Property Number: 77200020070
Status: Unutilized
Comment: Secured Area, Extensive deterioration

Bldg. 610
Naval Air Station
Jacksonville Co: FL 32212–
Landholding Agency: Navy
Property Number: 77200020071
Status: Unutilized
Comment: Secured Area, Extensive deterioration

Bldg. 702
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020072
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 703
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020073
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 725
Naval Air Station
Jacksonville, Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020074
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 740A
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020075
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 54
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200020076
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 211
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200020077
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Guam

Bldg. 26
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020049
Status: Unutilized
Reason: Secured Area

Bldg. 264
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051

Landholding Agency: Navy
Property Number: 77200020050
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3112
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020051
Status: Unutilized
Reason: Secured Area

Bldg. 3116
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020052
Status: Unutilized
Reason: Secured Area

Bldg. 3117
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020053
Status: Unutilized
Reason: Secured Area

Bldg. 3118
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020054
Status: Unutilized
Reason: Secured Area

Bldg. 3120
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020055
Status: Unutilized
Reason: Secured Area

Bldg. 3121
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020056
Status: Unutilized
Reason: Secured Area

Bldg. 4400
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020057
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 4402
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020058
Status: Unutilized
Reason: Secured Area

Bldg. 4414
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020059
Status: Unutilized
Reason: Secured Area

Bldg. 4425
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020060
Status: Unutilized
Reason: Secured Area

Bldgs. 4426, 4427, 4428
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020061
Status: Unutilized
Reason: Secured Area

Illinois

Bldg. 381
Argonne National Lab
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 41200020005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 384
Argonne National Lab
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 41200020006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 480
Argonne National Lab
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 41200020007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 486
Argonne National Lab
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 41200020008
Status: Unutilized
Reason: Extensive deterioration

Minnesota

Dwelling
Mississippi Hdqts Leech Lake Proj.
Federal Dam Co: Cass MN 56641–
Landholding Agency: COE
Property Number: 31200020002
Status: Unutilized
Reason: Extensive deterioration

Garage 1
Mississippi Hdqts Leech Lake Proj.
Federal Dam Co: Cass MN 56641–
Landholding Agency: COE
Property Number: 31200020003
Status: Unutilized
Reason: Extensive deterioration

Garage 2
Mississippi Hdqts Leech Lake Proj.
Federal Dam Co: Cass MN 56641–
Landholding Agency: COE
Property Number: 31200020004
Reason: Extensive deterioration

Nevada

6 Bldgs.
Dale Street Complex
300, 400, 500, 600, Block
Bldg, Valve House
Boulder City Co: NV 89005–
Landholding Agency: GSA
Property Number: 54200020017
Status: Excess
Reason: Extensive deterioration
GSA Number: LC–00–01–RP

New Mexico

Bldg. 16, TA–3
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020009
Status: Unutilized
Reason: Secured Area

Bldg. 339, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020010
Status: Unutilized
Reason: Secured Area

Bldg. 340, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020011
Status: Unutilized
Reason: Secured Area

Bldg. 341, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020012
Status: Unutilized
Reason: Secured Area

Bldg. 342, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020013
Status: Unutilized
Reason: Secured Area

Bldg. 343, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020014
Status: Unutilized
Reason: Secured Area

Bldg. 345, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020015
Status: Unutilized
Reason: Secured Area

Bldg. 16, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020016
Status: Unutilized
Reason: Secured Area

Bldg. 48, TA–55
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020017
Status: Unutilized
Reason: Secured Area

Bldg. 125, TA–55
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020018
Status: Unutilized
Reason: Secured Area

Bldg. 162, TA–55

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Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020019
Status: Unutilized
Reason: Secured Area

New York

Bldg. AT–1
Knolls Atomic Power Lab
Niskayuna Co: Schenectady NY 12301–
Landholding Agency: Energy
Property Number: 41200020020
Status: Unutilized
Reason: Secured Area

South Carolina

Bldg. 49
Naval Public Works Center
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020062
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Virginia

Bldg. 145
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–5000
Landholding Agency: Navy
Property Number: 77200020063
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. SP–76
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020078
Status: Unutilized
Reasons: Extensive deterioration

Pennsylvania

Tract No. B–212C
Upstream from Gen. Jadwin
Dam & Reservoir
Honesdale Co: Wayne PA 18431–
Landholding Agency: COE
Property Number: 31200020005
Status: Unutilized
Reason: Floodway

Tennessee

Tract D, 7 acres
Cheatham Lock & Dam
Nashville Co: Davidson TN 37207–
Landholding Agency: COE
Property Number: 31200020006
Status: Unutilized
Reason: Floodway

Virginia

0.4 acres
Naval Amphibious Base
Norfolk Co: VA 23521–3229
Landholding Agency: Navy
Property Number: 77200020079
Status: Unutilized
Comment: Secured Area

[FR Doc. 00–13041 Filed 5–25–00; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–ET; A–062024]

Proposed Extension of Withdrawal and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to extend the withdrawal for 730.13 acres of public land known as the Campbell Tract Administrative Site, for an additional 20 years. The land is withdrawn from all forms of appropriation under the public land laws by Public Land Order (PLO) No. 6127, until February 11, 2002. The purpose of the extension is to protect the existing Bureau of Land Management Campbell Tract Administrative Site. This Notice gives an opportunity to comment on the proposed action and to request a public meeting.

DATE: Comments and requests for a public meeting must be received by August 24, 2000.

ADDRESSES: Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Susan J. Lavin, BLM Alaska State Office, 907–271–5049.

SUPPLEMENTARY INFORMATION: On April 28, 2000, a petition was approved allowing the Bureau of Land Management to file an application to extend the PLO No. 6127 withdrawal for the Campbell Tract Administrative Site, as it affects the following described land, for an additional 20 years:

Seward Meridian

T. 12 N., R. 3 W.
Sec. 2, W½W½E½NW¼, W½NW¼, W¼E½W½SW¼, W½W½SW¼;
Sec. 3, Lots 1 through 4, inclusive, S½N½NE¼NE¼, S½NE¼NE¼, S½SE¼NW¼NE¼, S½NE¼, SE¼SE¼NW¼, S½NE¼SE¼NW¼, S½SW¼SE¼NW¼, SW¼, E½SE¼;
Sec. 10, NE¼NE¼, E½NW¼NE¼, NW¼NW¼NE¼, N½SW¼NW¼NE¼, N½N½N½NW¼;
Sec. 11, NW¼NW¼NW¼, W½SW¼NW¼NW¼.

The area described contains 730.13 acres.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the Alaska State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the Alaska State Director within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register**, at least 30 days before the scheduled date of the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2300. The land will continue to be subject to the terms and conditions of PLO No. 6127, until February 11, 2002.

Dated: May 16, 2000.

Donald W. Baggs,

Lands and Minerals Group Supervisor, Division of Lands, Minerals, and Resources.

[FR Doc. 00–12884 Filed 5–25–00; 8:45 am]
BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1610–DH]

Notice of Intent To Prepare an Amendment to the Lahontan Resource Management Plan for Resource Management of Withdrawn Lands at Naval Air Station Fallon, Nevada

AGENCY: Department of the Interior, Bureau of Land Management, Carson City Field Office in partnership with the Department of Defense, U.S. Naval Air Station Fallon, Nevada.

ACTION: Notice of Intent. The Bureau of Land Management (BLM) is proposing to amend the Lahontan Resource Management Plan (RMP) based on specific direction within Public Law 106–65, section 3014 (Military Lands Withdrawal Act of 1999). In addition, the BLM's amended RMP will be prepared with the Naval Air Station Fallon (Navy) to comply with Department of Defense requirements for an Integrated Natural Resource Management Plan in accordance with the Sikes Act Amendment Act (1997), Public Law 105–85.

SUMMARY: BLM and Navy have determined that the resource management plan process and environmental assessment (EA) is the appropriate means to serve as the analysis and the basis for decisions on lands identified in the Military Lands Withdrawal Act of 1999 for public land management.

The following resource-related issues have been identified: (1) Off Highway Vehicle use; (2) public access (hunting, ranching, mining claims, etc.); (3) livestock grazing; (4) sage grouse habitat preservation; (5) Pony Express Trail protection; (6) wildfire prevention and suppression. The BLM and Navy are soliciting comments regarding issues and concerns the public may have.

EFFECTIVE DATES: Two public scoping meetings will be held in June 2000 to allow the public an opportunity to identify issues and concerns to be addressed in the RMP Amendment. Representatives from BLM and Navy will be available to answer questions about the Military Lands Withdrawal Act of 1999 and the RMP Amendment process. Comments will be accepted until June 30, 2000.

The scheduled public meetings are:

Fallon, NV (7:00–9:00 p.m.)—June 13, 2000, Fallon Convention Center, 100 Campus Way, Fallon, NV.
Reno, NV (7–9 p.m.)—June 15, 2000, BLM Nevada State Office, 1340 Financial Blvd., Reno, NV.

The proposed plan amendment schedule is as follows:

Begin Public Scoping: May 25, 2000.
Public Scoping Meetings: June 13 and 15, 2000.
Release Proposed Plan Amendment, EA and FONSI for Public Review, Governor's Consistency Review: November 30, 2000.
Issue Plan Amendment and Decision Record: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Scoping comments may be sent to: Field Manager, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701. ATTN: Navy Project Manager.

For additional information, write to the above address or call Terri Knutson (BLM Project Manager) at (775) 885–6156 or email tknutson@nv.blm.gov.

SUPPLEMENTARY INFORMATION: In 1998 the Navy completed an environmental impact statement (EIS) to analyze the proposed withdrawal of public lands to provide safety and training buffers around three established training ranges in Churchill County, Nevada. The Findings and Recommendations resulting from the EIS were transmitted to Congress and in October 1999 the Military Lands Withdrawal Act of 1999, Public Law 106–65 was passed and signed by the President. The Act specifies several actions to be taken by the BLM and Navy prior to October 2001, including development of a plan for management of each area withdrawn for protection of the resources and values. Federal, state, and local agencies, Tribal entities, and other individuals or organizations who may be interested in or affected by the decisions to be made in this plan amendment are invited to participate in the scoping process and may request, or be requested by the BLM and Navy, to participate as a cooperating agency.

Dated: May 15, 2000.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 00–13164 Filed 5–25–00; 8:45 am]
BILLING CODE 4310–HC–U

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–434]

Notice of Investigation

In the Matter of: Certain Magnetic Resonance Injection Systems and Components Thereof.

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 25, 2000, and supplemented on May 10, 2000 and May 17, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Medrad, Inc., One Medrad Drive, Indianola, Pennsylvania 15051–0780. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain magnetic resonance injection systems, components thereof, and molds therefor by reason of infringement of claims 8–9, 22, 25–28, 30–31, and 33–39 of U.S. Letters Patent Re. 36,648. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2580. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (1999).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on May 19, 2000, ordered that:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain magnetic resonance injection systems and components thereof by reason of infringement of claims 8–9, 22, 25–28, 30–31, or 33–39 of U.S. Letters Patent Re. 36,648, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Medrad, Inc., One Medrad Drive, Indianola, Pennsylvania 15051–0780.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nemoto Kyorindo Co., Ltd., 3–26–4 Hongo Bunkyou-ku, Tokyo, Japan.
Liebel-Flarsheim Co., 2111 E. Galbraith Road, Cincinnati, OH 45215–6305
Mallinckrodt Inc., (New York corporation), 675 McDonnell Boulevard, Hazelwood, MO 63042.

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Mallinckrodt Inc., (Delaware corporation), 675 McDonnell Boulevard, Hazelwood, MO 63042.

(c) Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–H, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 22, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13269 Filed 5–25–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–856 (Final)]

Certain Ammonium Nitrate From Russia

AGENCY: International Trade Commission.

ACTION: Cancellation of hearing, posthearing briefs, and final comments.

SUMMARY: On May 19, 2000, the Department of Commerce informed the Commission that a suspension agreement had been signed in the subject investigation. Accordingly, the Commission hereby cancels the hearing on the investigation currently scheduled for May 25, 2000, the posthearing briefs currently due on June 1, 2000, and the final comments currently due on June 22, 2000. The Commission unanimously determined that no earlier announcement of this cancellation was possible.

EFFECTIVE DATE: May 22, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Taylor (202–708–4101), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules (19 CFR § 207.21).

Issued: May 22, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13267 Filed 5–25–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–318 (Review) and 731–TA–538 and 561 (Review)]

Sulfanilic Acid From China and India

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the countervailing duty and antidumping duty orders on sulfanilic acid from China and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on October 1, 1999 (64 FR 53412, October 1, 1999) and determined on January 7, 2000 that it would conduct expedited reviews (65 FR 2645, January 18, 2000). The Commission transmitted its determinations in these reviews to the Secretary of Commerce on May 18, 2000. The views of the Commission are contained in USITC Publication 3301 (May 2000), entitled Sulfanilic Acid From China and India: Investigations Nos. 701–TA–318 (Review) and 731–TA–538 and 561 (Review).

Issued: May 22, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13268 Filed 5–25–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities; Current Collection; Comments Requests

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of Information Collection Under Review; Extension of a Currently Approved Collection: Hate Crime Incident Report and Quarterly Hate Crime Report

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 25, 2000.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Gregory E. Scarbro (phone number and address listed below). Additional information as well as copies of the proposed information collection instrument with instructions are available by contacting Gregory E. Scarbro, Unit Chief, telephone 304–625–4830, FBI, CJIS Division, Statistical Unit, E–3, 1000 Custer Hollow Road, Clarksburg, WV 26306.

Overview of this information collection:

(1) Type of information collection: Extension of Current Collection.

(2) The title of the form/collection: Hate Crime Incident Report and Quarterly Hate Crime Report.

(3) The agency form number, if any, and applicable component of the Department Sponsoring the collection. Form: 11–1; 11–2. Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as brief abstract. Primary: Local and State Law Enforcement Agencies. These reports will gather information necessary to monitor the bias motivation of selected criminal offenses. The resulting data are published annually.

(5) The FBI UCR Program is currently reviewing its race and ethnicity data collection in compliance with the Office of Management and Budget's *Revisions for the Standards for the Classification of Federal Data on Race and Ethnicity.*

(6) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 17,667 agencies with 106,002 responses (including zero reports); and with an average of 6 hours and 35 minutes annually devoted to compilation of data for this information collection.

(7) An estimate of the total public burden (in hours) associated with both collections: 15,900 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 23, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–13307 Filed 5–25–00; 8:45 am]

BILLING CODE 4410–22–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers an mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR 29 Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None.

Volume II

Pennsylvania
PA000003 (Feb. 11, 2000)
PA000006 (Feb. 11, 2000)
PA000014 (Feb. 11, 2000)

Volume III

Florida
FL0000028 (Feb. 11, 2000)
South Carolina
SC000003 (Feb. 11, 2000)

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Volume IV

Ohio
OH000004 (Feb. 11, 2000)

Volume V

Iowa
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IA000003 (Feb. 11, 2000)
IA000004 (Feb. 11, 2000)
IA000005 (Feb. 11, 2000)
IA000006 (Feb. 11, 2000)
IA000010 (Feb. 11, 2000)
IA000013 (Feb. 11, 2000)
IA000014 (Feb. 11, 2000)
IA000015 (Feb. 11, 2000)
IA000016 (Feb. 11, 2000)
IA000018 (Feb. 11, 2000)
IA000019 (Feb. 11, 2000)
IA000024 (Feb. 11, 2000)
IA000029 (Feb. 11, 2000)
IA000032 (Feb. 11, 2000)
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IA000046 (Feb. 11, 2000)
IA000047 (Feb. 11, 2000)
IA000067 (Feb. 11, 2000)
IA000070 (Feb. 11, 2000)
IA000071 (Feb. 11, 2000)
IA000072 (Feb. 11, 2000)
IA000078 (Feb. 11, 2000)
IA000079 (Feb. 11, 2000)
IA000080 (Feb. 11, 2000)
Kansas
KS000013 (Feb. 11, 2000)
KS000022 (Feb. 11, 2000)
KS000069 (Feb. 11, 2000)
KS000070 (Feb. 11, 2000)

Volume VI

South Dakota
SD000011 (Feb. 11, 2000)
Washington
WA000003 (Feb. 11, 2000)
WA000008 (Feb. 11, 2000)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512 1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. This 18th Day of May 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–13048 Filed 5–25–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Federal Economic Statistics Advisory Committee; Appointment of Members

This is to announce the appointment of members to the Federal Economic Statistics Advisory Committee (FESAC), established under the provisions of the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App. 2, 6(c)). The membership of the Committee is as follows:

Professor Ernst R. Berndt, Chair, Massachusetts Institute of Technology
Dr. Barry P. Bosworth, Brookings Institution
Professor Franklin M. Fisher, Massachusetts Institute of Technology
Professor John C. Haltiwanger, University of Maryland
Dr. Sallie Keller-McNulty, Los Alamos National Laboratory
Professor Alan B. Krueger, Princeton University
Dr. Judith T. Lessler, Research Triangle Institute
Professor Lisa M. Lynch, Tufts University
Professor Joseph Sedransk, Case Western Reserve University
Professor Matthew D. Shapiro , University of Michigan
Professor John B. Taylor, Stanford University
Professor Kirk M. Wolter, University of Chicago

The Committee will present advice and make recommendations to the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census (the Agencies) from the perspective of the professional economics and statistics communities. The Committee is a technical committee composed of economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields. Committee members will be called upon to analyze the issues involved in producing Federal economic statistics and recommend practices that will lead to optimum efficiency, effectiveness, and cooperation among the Agencies. These initial appointments are for one-, two- or three-year terms, to provide staggered three-year terms overall. Professor Ernst R. Berndt will serve as Committee Chairperson.

Signed at Washington, DC this 19th day of May 2000.

Katharine G. Abraham,

Commissioner of Labor Statistics.

[FR Doc. 00–13249 Filed 5–25–00; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Federal Economic Statistics Advisory Committee; Notice of Open Meeting and Agenda

The initial meeting of the Federal Economic Statistics Advisory Committee will be held on June 15, 2000 in the Postal Square Building, 2 Massachusetts Avenue N.E., Washington, DC.

The Federal Economic Statistics Advisory Committee is a technical committee composed of economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields. Committee members will be called upon to analyze issues involved in producing Federal economic statistics and recommend practices that will lead to optimum efficiency, effectiveness, and cooperation among the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census.

The meeting will be held in Meeting Rooms 1 and 2 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

9:00 Opening Session
1. Purpose of the Committee
2. Introduction of members and statements of their research interests
3. Committee operating procedures
10:15 The Measurement of E-commerce
1:00 Service Sector Measurement: The Case of Banking
2:45 Bureau of the Census and Bureau of Labor Statistics Establishment Lists
3:45 Ethics, Rules and Regulations
4:15 Future Agenda Topics
5:00 Conclude (approximate time)

The meeting is open to the public. It is suggested that persons planning to attend the meeting as observers contact Margaret Johnson, Federal Economic Research Advisory Committee, on Area Code (202) 691–5600. Persons needing special assistance such as sign language interpretation or other special accommodation in order to attend the meeting are asked to contact Ms. Johnson at least two days prior to the meeting date.

Signed at Washington, D.C. the 19th day of May 2000.

Katharine G. Abraham,

Commissioner of Labor Statistics.

[FR Doc. 00–13248 Filed 5–25–00; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) publishes periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Lag Service Reports; OMB 3220–0005.

Under Section 9 of the Railroad Retirement Act (RRA) and Section 6 of the Railroad Unemployment Insurance Act (RUIA), railroad employers are required to submit reports of employee service and compensation to the RRB as needed for administering the RRA and RUIA. To pay benefits due on a deceased employee's earnings records or determine entitlement to, and amount of annuity applied for, it is necessary at time to obtain from railroad employers current (lag) service and compensation net yet reported to the RRB through the annual reporting process.

The reporting requirements are specified in 20 CFR 209.4 and 209.5. The RRB currently utilizes Form G–88, Employer's Supplemental Report of Service and Compensation, and Form AA–22, Notice of Death and Compensation, to obtain the required lag service and related information from railroad employers. The RRB proposes to obsolete Form G–88a. Form G–88a will be replaced by two forms, Form G–88a.1, Notice of Retirement of Verification of Date Last Worked, and Form G–88a.2, Notice of Retirement and Request for Service Needed for Eligibility. Form G–88a.1 will be sent by the RRB to railroad employers and used for the specific purpose of verifying information previously provided to the RRB regarding the date last worked by the employee. If the information is correct, the employer need not reply. If the information is incorrect, the employer is asked to provide corrected information. Form G–88a.2 will be used by the RRB to secure lag service and compensation information when it is needed to determine benefit eligibility. Both proposed forms will direct the railroad employers to fax the information directly to the RRB. It is expected that the proposed new forms will be easier for railroad employers to complete and will encourage a speedier reply, allowing the RRB to pay applicants in a more timely and accurate manner. A minor editorial change is proposed to Form AA–12.

The completion time for proposed forms G–88a.1 and G–88a.2 is estimated at 5 minutes per response. The estimated completion time for Form AA–22 remains at 6½ minutes per response. Completion is mandatory. The RRB estimates that approximately 800 Form AA–12's 2,300 Form G–88a.1's, and 1,200 G–88a.2's will be completed annually.

The renewal of this information collection will continue the RRB's initiative to consolidate information collections by major functional areas. The purpose of the initiative is to bring related collection instruments together in one collection, better manage the instruments, and prepare for the electronic collection of this information (A collection instrument can be an individual form, electronic collection, interview, or any other method that collects specific information from the public.)

As part of the OMB renewal process, the RRB proposes that this collection (OMB 3220–0005), Lag Service Reports, will be renamed Employer Reporting. Upon approval by OMB, and RRB intends to merge the following OMB approved collections into the collection by the Expected Expiration Date.

OMB collection No.	Collection title	RRB forms	Expected expiration date
3220–0008	Railroad Service and Compensation Reports	BA 3a, BA–4	9/30/2001
3220–0012	Employers Quarterly Report of Contributions Under the RUIA	DC–1	2/28/2003
3220–0014	Employer Representatives' Status and Compensation Reports	DC–2, DC–2a	6/30/2003
3220–0070	Employer Service and Compensation Reports	UI–41, UI–41a	9/30/2001
3220–0089	Pension Plan Reports	G–88p, G–88r, G–88r.1.	11/30/2002
3220–0097	Pay Rate Report	UI–1e	9/30/2001
3220–0132	Gross Earnings Report	BA–11	1/31/2003
3220–0156	Employers Deemed Service Month Questionnaire	GL–99	6/30/2003
3220–0173	Railroad Separation Allowance or Severance Pay Report	BA–9	4/30/2002
3220–0175	Sick Pay and Miscellaneous Payments Report	BA–10	9/30/2001
3220–0194	Employee Home Address Report	BA–6a	3/31/2001

Revisions to existing collection instruments and, occasionally, a new instrument related to this program function may be required during the three-year cycle of this information collection.

The RRB currently estimates the completion time for manual Form BA–3a, Annual Report of Creditable

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Compensation at 85 hours, the electronic version of Form BA–3a at 33.3 hours, Form BA–4, Report of Creditable Compensation Adjustments at 1 hour, Form DC–1, Employer's Quarterly Report of Contributions Under the RUIA at 25 minutes, Form DC–2a, Employee Representative's Report of Compensation at 15 minutes, Form UI–41, Supplemental Report of Service and Compensation at 8 minutes, Form UI–41a, Supplemental Report of Compensation at 8 minutes, Form G–88p, Employer's Supplemental Pension Report, at 8 minutes, G–88r, Request for Information About New or Revised Employer Pension Plan at 10 minutes, G–88r.1, Request for Additional Information About Employer Pension Plan in Case of Change of Employer Status or Termination of Plan at 10 minutes, Form UI–1E, Pay Report Information at 5 minutes, Manual Form BA–11, Report of Gross Earnings at 15 to 30 minutes, the electronic version of Form BA–11 at 5 hours, Form GL–99, Employer's Deemed Service Months Questionnaire at 2 minutes, Form BA–9, Report of Separation Allowance or Severance Pay at 75 minutes, Form BA–10, Report of Miscellaneous Compensation and Sick Pay at 55 minutes, and Form BA–6a, Employer Home Address Report at 30 minutes. Completion of each of the above forms is mandatory.

After the last information collection is merged and other necessary adjustments are made, the resultant information collection is expected to total approximately 55,400 annual burden hours. A justification for each action described above (merge collection, revised collection instrument, new collection instrument) will be provided to OMB with a correction Change Worksheet (OMB Form 83–C) at the time the action occurs. With the next renewal of this collection, the RRB will update the information collection package to account for the consolidation and other interim adjustments.

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearnace Officer.

[FR Doc. 00–13215 Filed 5–25–00; 8:45am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27178]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

May 19, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declarations(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 13, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 13, 2000 the application(s) and/or declaration(s) as filed or as amended, may be granted and/or permitted to become effective.

Southern Co. et al. (70–8733)

The Southern Company, a registered public utility holding company, located at 270 Peachtree Street, N.W., Atlanta, Georgia, Southern Energy, Inc. ("SEI"), a nonutility subsidiary company, and Southern Energy Resources, Inc., a nonutility subsidiary company of SEI, both located at 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338, have filed a post-effective amendment under section 12(c) of the Act and rules 46 and 54 under the Act.

By supplemental orders dated July 17, 1996 and July 2, 1997 (HCAR Nos. 26543 and 26738, respectively), the Commission authorized SEI and its current and future subsidiaries to pay dividends to their parent companies with respect to the securities of such companies through June 30, 2000, out of capital or unearned surplus (including revaluation reserve). In both orders the Commission reserved jurisdiction over payment of dividends out of capital or unearned surplus by any current or future subsidiary company of SEI that derived any material part of its revenues from the sale of goods, services, electricity or natural gas to any of Southern's five domestic electric utility subsidiaries or to Southern Company Services, Inc.

SEI and its current and future subsidiaries now propose to extend the time during which they may declare and pay dividends to their parent companies with respect to the securities of such companies, from time to time through June 30, 2002, out of capital or unearned surplus. The Commission will continue to reserve jurisdiction over the payment of dividends out of capital or unearned surplus by any current or future subsidary company of SEI that derived any material part of its revenues from the sale of goods, services, electricity or natural gas to any of Southern's five domestic electric utility subsidiaries or to Southern Company Services, Inc. The application cites the need to efficiently manage the unrestricted cash of SEI and its intermediate and special purpose subsidiaries as the main reason for extending the time to declare and issue dividends.

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–13233 Filed 5–25–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42803; File No. SR–Amex–00–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Adopting a Peer Review Requirement for Auditors of Listed Companies

May 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the *Amex Company Guide* to adopt a peer review requirement for auditors of listed companies. The text of the proposed rule change is as follows (all text is proposed to be added):

Sec. 605. Peer Review

(a) A listed company must be audited by an independent public accountant that: (i) Has received an external quality control review by an independent public accountant ("peer review") that determines whether the auditors' system of quality control is in place and operating effectively and whether established policies and procedures and applicable auditing standards are being followed; or

(ii) Is enrolled in a peer review program and within 18 months receives a peer review that meets acceptable guidelines.

(b) The following guidelines are acceptable for the purposes of Sec. 605: (i) The peer review should be comparable to AICPA standards included in Standards for Performing on Peer Reviews, codified in the AICPA's SEC Practice Section Reference Manual;

(ii) The peer review program should be subject to oversight by an independent body comparable to the organizational structure of the Public Oversight Board as codified in the AICPA's SEC Practice Section Reference Manual; and

(iii) The administering entity and the independent oversight body of the peer review program must, as part of their rules of procedure, require the retention of the peer review working papers for 90 days after acceptance of the peer review report and allow the Exchange access to those working papers.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and bais for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange believes that auditors of listed companies should be subject to a practice monitoring program under which their auditor's quality control system is reviewed by an independent peer auditor on a periodic basis.[3] The Nasdaq Stock Market and certain banking agencies such as the Federal Deposit Insurance Corporation ("FDIC") have implemented a peer review requirement. In addition, the Commission has generally expressed support for the concept of peer review.[4] Although it withdrew its mandatory peer review proposal, the Commission nonetheless confirmed its belief that "the peer review process contributes significantly to improving the quality control systems of accounting firms auditing Commission registrants and enhances the consistency and quality of practice before the Commission."[5]

The proposed rule would require all independent public accountants auditing Exchange listed companies to have received, or be enrolled in, peer review that meets acceptable guidelines. Acceptable guidelines would include comparabiity to standards of the American Institute of Certified Public Accountants ("AICPA") included in the Standards for Performing on Peer Reviews codified in the AICPA's SEC Practice Section Reference Manuel, and oversight of the peer review program by an independent body comparable to the organizational structure of the Public Oversight Board as codified in the AICPA's SEC Practice Section Reference Manuel. Further, copies of peer review reports, accompanied by any letters of comment and letters of response, would be maintained by the administering entity of the peer review program and be made available to the Exchange upon request.[6] Similarly, working papers of the administrating entity and the independent oversight body would also be required to be retained for 90 days after the report is filed, and be made available to the Exchange upon request.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)[7] of the Act, which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, the peer review requirement for auditors of Exchange listed issuers will provide safeguards for investors by ensuring that an auditing firm's quality control systems are subjec to an industry-accetped level of review.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[3] After the initial peer review required by proposed Section 605(a), independent auditors of listed companies would be required to receive a peer review that meets the guidelines of proposed Section 605(b) every three years. Telephone call between Sonia Patton, Attorney, Commission, and John Nachmann, Attorney, Office of the General Counsel, the Nasdaq-Amex Market Group, on March 28, 2000.

[4] *See* Securities Act Release No. 6695 (April 1, 1987), 52 FR 11665 (April 10, 1987).

[5] *See* Securities Act Release No. 6958A (Sept. 24, 1992), 57 FR 45287 (Oct. 1, 1992), n.24.

[6] The administering entity would be required to maintain the reports until the completion of the next peer review report. Telephone call between Sonia Patton, Attorney, Commission, and John Nacmann, Attorney, Office of the General Counsel, The Nasdaq-Amex Market Group, on Mach 28, 2000.

[7] 15 U.S.C. 78(b)(5).

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(ii) as to which the Exchange consents, the commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–00–04 and should be submitted by June 16, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13259 Filed 5–25–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42799; File No. SR–CBOE–99–20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Exchange's Rapid Opening System

May 19, 2000.

I. Introduction

On May 21, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposed rule change. In its proposal, the CBOE seeks to amend its Rapid Opening System ("ROS") rule to permit two Floor Officials to adjust affected trades in cases where an underlying stock has been opened at an erroneous price and later corrected on the underlying market. The proposed rule change was published for comment in the *Federal Register* on July 14, 1999.[3] On March 22, 2000, the CBOE filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended. In addition, the Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change and is simultaneously approving Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

In 1999, the Commission approved ROS on a pilot basis.[5] CBOE represents that ROS enables the Exchange to open classes of options within seconds of the opening of the underlying security, which in turn enables firms and customers to enter orders in open trading almost immediately after the opening bell. In addition, CBOE believes that in those classes where it has been employed, ROS has prevented backlogs of orders from developing during the opening. However, according to the Exchange, there have been a few instances where ROS has opened an option class at a price based upon an erroneous opening price of the underlying security disseminated by the primary market which is later corrected by the primary market only after ROS had opened the option class.[6]

In those instances when ROS opened on an erroneous print, the Exchange represents that it had to expend a substantial amount of time working with the participants in the trades to get their agreement to adjusts the trades and to determine which customer orders should have been filled at the opening. According to the Exchange, market makers in classes where ROS is employed have suffered significant deleterious financial consequences from these openings on an erroneous print because only those market maker trades that occurred at a price that disfavored a customer were adjusted. As a result, the Exchange believes market makers may become discouraged from participating in ROS because, even though the incidences where an erroneous print occur are rare, the financial consequences to a particular market maker can be substantial.

The Exchange also notes that when ROS opens based upon an incorrect price of the underlying security, certain customer orders can be adversely affected. In particular, customer orders that would have been executed had ROS opened based on a correct price may not be executed. Further, certain customer-to-customer trades may be executed at an erroneous price.

After these problems first occurred, the Exchange represents that it tried to educated trading crowds about ways to avoid them. For example, the trading crowds may wait to send their AutoQuote values until after the initial bid/ask quotes on the underlying are disseminated to ensure that the initial disseminated opening price for the underlying security is in line with the bid/ask quotes. Also, a system enhancement was put in place that provides as indication to crowds when ROS is being opened at a price that appears erroneous. The Exchange believes, however, that there is no guarantee that these methods can prevent every occurrence of an opening on ROS based on an erroneous underlying price.

The Exchange believes, therefore, that it is necessary to grant Floor Officials the authority to adjust opening trades in the event that the class is opened at an erroneous price.[7] The Exchange represents that this authority is similar to the authority Floor Officials currently have with respect to RAES trades.[8] The Exchange believes this change will prevent market makers from becoming discouraged from participating on ROS and will save time spent by Exchange staff negotiating with participants on trades that occur on erroneous prints. At the same time, the Exchange believes the rule change will give Floor Officials the authority to determine which trades should be adjusted so that a fair and equitable result is achieved for all market participants, including those customers that might not have been filled on the opening but otherwise would have been filled had the class opened at the correct price.

Under the proposed rule change, the Exchange will notify its members as soon as practicable after the correction of an erroneous print on the underlying.[9] In addition, the Exchange will indicate that this may result in the adjustment of opening trades that were either executed on ROS or should have been executed on ROS. Further, all adjustments will be made the day of the erroneous print correction.[10]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–20 and should be submitted by June 16, 2000.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[11] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[12] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposed rule change promotes just and equitable principles of trade. In particular, the proposal allows two Floor Officials to adjust trades when ROS opens a class based on an erroneous opening print disseminated by the underlying market.[13] In addition, the proposal would not only affect market makers, but also customers whose orders should or should not have been executed at opening. The Commission believes that procedures to correct erroneous trades in a timely manner are in the interest of all parties.

The Commission also believes the proposal includes adequate Exchange oversight and review procedures by requiring the concurrent approval of two Floor Officials before a trade can be adjusted. In addition, CBOE amended the proposal with Amendment No. 1 to include certain other procedural protections that limit the Exchange's and Floor Officials' discretion in adjusting trades. In particular, Amendment No. 1 requires the Exchange to notify its members as soon as practicable about the possibility of a trade adjustment, limits the adjustment of trades to those that were or should have been executed at the opening, and requires that the Exchange make the adjustments on the day when the correction of the erroneous print occurred. The Commission believes these requirements should help protect investors who execute trades at the opening that are later adjusted.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission believes that Amendment No. 1 strikes a reasonable balance between the need to correct erroneous trades and the need for adequate Exchange oversight over the process. Further, the Commission did not receive any comments on the original proposal, which did not contain the protections that were incorporated into the proposal through Amendment No. 1.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–99–20), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–13234 Filed 5–25–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42798; File No. SR–CBOE–00–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Make Certain Changes to Its Fee Schedule

May 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41599 (July 6, 1999), 64 FR 38058.

[4] In Amendment No. 1, the CBOE amended the text of the rule language to provide notification of trade adjustments, clarify the trades that can be adjusted, and limit the time period that trades can be adjusted to the day when the correction of the erroneous print occurs. *See* letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Terri Evans, Special Counsel, Division of Market Regulation ("Division"), Commission, dated March 2, 2000 ("Amendment No. 1").

[5] *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999)S The pilot was initially approved through March eq, 2000. The termination of the pilot was subsequently extended to September 30, 2000. *See* Securities Exchange Act Release No. 42596 (March 30, 2000), 65 FR 18397 (April 7, 2000).

[6] Because ROS employs the Exchange's AutoQuote system and the Exchange's AutoQuote system relies on a data feed of the price of the underlying security to determine the option's price, an inaccurate underlying price can lead to an inaccurate ROS opening price.

[7] The concurrent approval of two Floor Officials would be needed before a trade could be adjusted. Telephone conversation between Timothy Thompson, Director, Regulatory Affairs, CBOE, and Terri Evans, Special Counsel, Division, Commission, on May 17, 2000.

[8] CBOE Rule 6.8(a)(ii) states in part: "A trade execute on RAES at an erroneous quote should be treated as a trade reported at an erroneous price and adjusted to reflect the accurate market after receiving a Floor Official's approval."

[9] According to the Exchange, either Exchange staff or the traders in the crowd where the particular options class is traded will know that the conditions have been met just as soon as the underlying market disseminates a corrected opening price, which usually occurs within a few minutes of the erroneous print's dissemination. The traders who trade the options have access to the underlying market's quotes and will receive a message that the opening print has been corrected. *See* Amendment No. 1, *supra* note 4.

[10] According to the Exchange, it does not have an automated system to handle the adjusting of these trades so it could require a significant amount of staff time to determine exactly which trades may need to be adjusted. Where there have been only a very few affected trades, the Exchange represents that its staff may be able to provide Floor Officials with the necessary information to adjust the trades within a few minutes. In an opening where a large number of trades are affected, the Exchange believes that it may take a number of hours to sift through the various trades and determine how each should be adjusted. As a result, the Exchange proposes to provide prompt notice that the situation has occurred and that trades may be adjusted. In this way, any trader or customer that may be affected by the adjustment can take any appropriate action to adjust his or her position. Because the opening print and its correction will be known as soon as any notice is disseminated, traders and customers should be able to determine the likelihood of their trade being adjusted and what the adjustment is likely to be. *See* Amendment No. 1, *supra* note 4.

[11] In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] Concurrent approval of both Floor Officials is necessary before a trade can be adjusted. *See supra* note 7.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to rescind certain customer equity options fees. The text of the proposed rule change is available at the CBOE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the purposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to rescind certain customer equity option fees. These fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22 and will be in effect as of May 1, 2000.

Specifically, the CBOE proposes to rescind transaction fees for manually executed equity options orders for public customers. The CBOE also proposes to eliminate the trade match fee for manually executed equity options orders for public customers.[3] Finally, the CBOE proposes to eliminate the floor brokerage fee assessed to floor brokers for execution of equity options orders of public customers. The Exchange believes this fee change would generate significant savings for its customers.

2. Statutory Basis

The CBOE believes that the proposed rule change would be consistent with the provisions of Section 6(b) of the Act[4] in general and would further the objectives of Section 6(b)(4)[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change would result in any burden on competition.

Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicted or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(B)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–19 and should be submitted by June 16, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–13241 Filed 5–25–00; 8:45 am]

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[3] The Exchange recently has rescinded transaction fees and trade match fees for public customer equity options orders routed through the Exchange's electronic Order Routing System. *See* File No. SR–CBOE–00–06.

[4] 17 U.S.C. 78f(b).

[5] 17 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42801; File No. SR–NASD–00–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Margin Rule Amendments for Non-Equity Securities and Exempt Accounts

May 19, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 2520 to revise the margin requirements relating to non-equity securities and exempt accounts. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2520. Margin Requirements

(a) Definitions

For purposes of this paragraph, the following terms shall have the meanings specified below:

(a)(1) through (a)(3) No change

(4) The term "designated account" means the account of: [a bank, trust company, insurance company,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States or any state, or pension or profit sharing plan subject to ERISA or of any agency of the United States or of a state or a political subdivision thereof.]

(A) a bank (as defined in Section 3(a)(6) of the Act),

(B) a savings association (as defined in Section 3(b) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation,

(C) an insurance company (as defined in Section 2(a)(17) of the Investment Company Act of 1940),

(D) an investment company registered with the Securities and Exchange Commission (SEC) under the Investment Company Act,

(E) a state or political subdivision thereof, or

(F) a pension or profit sharing plan subject to Employee Retirement Income Security Act (ERISA) or of an agency of the United States or of a state or a political subdivision thereof.

(a)(5) through (a)(8) No Change

(9) The term "highly rated foreign sovereign debt securities" means any debt securities (including major foreign sovereign debt securities) issued or guaranteed by the government of a foreign country, its provinces, state or cities, or a supranational entity, if at the time of the extension of credit the issue, the issuer or guarantor, or any other outstanding obligation of the issuer or guarantor ranked junior to or on a parity with the issue or the guarantee is assigned a rating (implicitly or explicitly) in one of the top two rating categories by at least one nationally ranked statistical rating organization.

(10) The term "investment grade debt securities" means any debt securities (including those issued by the government of a foreign country, its requirements, states or cities, or a supranational entity), if at the time of the extension of credit the issue, the issuer or guarantor, or any other outstanding obligation of the issuer or guarantor ranked junior to or on a parity with the issue or the guarantee is assigned a rating (implicitly or explicitly) in one of the top four rating categories by at least one nationally recognized statistical rating organization.

(11) The term "major foreign sovereign debt" means any debt securities issued or guaranteed by the government of a foreign country or a supranational entity, if at the time of the extension of credit the issue, the issuer or guarantor, or any other outstanding obligation of the issuer or guarantor ranked junior to or on a parity with the issue or the guarantee is assigned a rating (implicitly or explicitly) in the top rating category by at least one nationally recognized statistical rating organization.

(12) The term "mortgage related securities" means securities falling within the definition in Section 3(a)(41) of the Act.

(13) The term "exempt account" means a member, non-member broker/dealer registered as a broker or dealer under the Act, "designated account," or any person having a net worth of at least forty-five million dollars and financial assets of at least forty-million dollars.

(14) The term "non-equity securities" means any securities other than equity securities as defined in Section 3(a)(11) of the Act.

(15) The term "listed non-equity securities" means any non-equity securities that: (A) are listed on a national securities exchange; or (B) have unlisted trading privileges on a national securities exchange.

(16) The term "other marginable non-equity securities" means:

(A) Any debt securities not traded on a national securities exchange meeting all of the following requirements:

(i) At the time of the original issue, a principal amount of not less than $25,000,000 of the issue was outstanding;

(ii) The issue was registered under Section 5 of the Securities Act of 1933 and the issuer either files periodic reports pursuant to Section 13(a) or 15(d) of the Act or is an insurance company which meets all of the conditions specified in Section 12(g)(2)(G) of the Act; and

(iii) At the time of the extensions of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or

(B) Any private pass-through securities (not guaranteed by any agency of the U.S. government) meeting all of the following requirements:

(i) An aggregate principal amount of not less than $25,000,000 (which may be issued in series) was issued pursuant to a registration statement filed with the SEC under Section 5 of the Securities Act of 1933;

(ii) Current reports relating to the issue have been filed with the SEC; and

(iii) At the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering.

(b)(1) through (e)(1) No change

(e)(2) Exempted Securities, [Marginable Corporate Debt Securities] *Non-equity Securities* and Baskets

(A) Obligations of the United States *and Highly Rated Foreign Sovereign Debt Securities*

On net "long" or net "short" positions in obligations (including zero coupon bonds, *i.e.*, bonds with coupons detached or non-interest bearing bonds) issued or guaranteed as to principal or interest by the United States Government or [issued or guaranteed] by corporations in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury, *or in obligations that are highly rated foreign sovereign debt securities*, the margin to be maintained shall be the percentage of the current market value of such obligations as specified in the applicable category below:

(i) Less than one year to maturity—1 percent

(ii) One year but less than three years to maturity—2 percent

(iii) Three years but less than five years to maturity—3 percent

(iv) Five years but less than ten years to maturity—4 percent

(v) Ten years but less than twenty years to maturity—5 percent[, or]

(vi) Twenty years or more to maturity—6 percent

Notwithstanding the above, on zero coupon bonds with five years or more to maturity the margin to be maintained shall not be less than 3 percent of the principal amount of the obligation.

When such obligations other than United States Treasury bills are due to mature in thirty calendar days or less, a member, at its discretion, may permit the customer to substitute another such obligation for the maturing obligation and use the margin held on the maturing obligation to reduce the margin required on the new obligation, provided the customer has given the member irrevocable instructions to redeem the maturing obligation.

(B) All Other Exempted Securities

On any positions in exempted securities other than obligations of the United States, the margin to be maintained shall be [15]*7* percent of the current market value [or 7 percent of the principal amount of such obligation, whichever amount is greater].

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(C) [Non-Convertible Corporate Debt] *Non-Equity* Securities

On any positions in [non-convertible corporate debt] *non-equity* securities, [which are listed or traded on a registered national securities exchange or qualify as an "OTC margin bond," as defined in Section 220.2(t) of Regulation T of the Board of Governors of the Federal Reserve System], the margin to be maintained *(except where a lesser requirement is imposed by other provisions of this Rule)* shall be]:

(i) 10 percent of the current market value in the case of investment grade debt securities; and

(ii) 20 percent of the current market value or 7 percent of the principal amount, whichever amount is greater, *in the case of all other listed non-equity securities, and all other marginable non-equity securities as defined in paragraph (a)(16) of this Rule* [except on mortgage related securities as defined in Section 3(a)(41) of the Act the margin to be maintained for an exempt account shall be 5 percent of the current market value. For purposes of this subparagraph, an exempt account shall be defined as a member, non-member broker/dealer, "designated account" or any person having net tangible assets of at least sixteen million dollars.]

(D) and (E) No Change

(F) [Cash] Transactions With [Customers] *Exempt Accounts Involving Certain "Good Faith" Securities*

[When a customer purchases an issued exempted security from or through a member in a cash account, full payment shall be made promptly. If, however, delivery or payment therefor is not made promptly after the trade date, a deposit shall be required as if it were a margin transaction, unless it is a transaction with a "designated account."]

On any position resulting from a transaction [in issued] *involving* exempted securities, *mortgage related securities, or major foreign soveriegn debt securities* [made for a member, or a non-member broker/dealer, or] made for or with [a "designated"] *an "exempt* account," no margin need be required and *any marked to the market loss on* such position need not be [marked to the market] *collected*. However, [where such position is not marked to the market, an amount equal to the loss at the market in such position] *the amount of any uncollected marked to the market loss* shall be [charged against] *deducted in computing* the member's net capital as provided in SEC Rule 15c3–1, *subject to the limits provided in paragraph (e)(2)(H) below.*

(G) Transactions With Exempt Accounts Involving Highly Rated Foreign Sovereign Debt Securities and Investment Grade Debt Securities

On any position resulting from a transaction made for or with an "exempt account" (other than a position subject to paragraph (e)(2)(F), the margin to be maintained on highly rated foreign sovereign debt and investment grade debt securities shall be, in lieu of any greater requirements imposed under this Rule, (i) 0.5 percent of current market value in the case of highly rated foreign sovereign debt securities, and (ii) 3 percent of current market value in the case of all other investment grade debt securities. The member need not collect any such margin, provided the amount equal to the margin required shall be deducted in computing the member's net capital as provided in SEC Rule 15c3–1, subject to the limits provided in paragraph (e)(2)(H) below.

(H) Limits on Net Capital Deductions for Exempt Accounts

(i) Member organizations shall maintain a written risk analysis methodology for assessing the amount of credit extended to exempt accounts pursuant to paragraphs (e)(2)(F) and (e)(2)(G) which shall be made available to the Association upon request.

(ii) In the event that the deductions of securities positions from net capital deductions taken by a member as a result of marked to the market losses incurred under paragraphs (e)(2)(F) and (e)(2)(G) (exclusive of the percentage requirements established thereunder) exceed:

a. on any one account or group of commonly controlled accounts, 5 percent of the member's tentative net capital, or

b. on all accounts combined, 25 percent of the member's tentative net capital,

and, such excess exists on the fifth business day after it was incurred, the member shall give prompt written notice to the Association and shall not enter into any new transaction(s) subject to the provisions of paragraphs (e)(2)(F) or (e)(2)(G) that would result in an increase in the amount of such excess under, as applicable, subparagraph a. or b. above.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Regulation is proposing amendments to Rule 2520 to revise the margin requirements for certain non-equity securities and to expand the types of non-equity securities eligible for exempt account treatment. Currently, Regulation T [3] of the FRB, which establishes initial margin requirements, provides that transactions in non-equity securities are subject to "good faith" requirements [4] when effected in a margin account. Securities that are transacted in a "good faith" account are not subject to Regulation T margin requirements, [5] but are subject to the margin required by the creditor in "good faith" or the percentage set by the regulatory authority where the trade occurs, whichever is greater. As a result, the margin requirements of NASD Rule 2520 apply to non-equity positions maintained in customers' accounts and are important in providing ongoing safety and soundness levels. In this regard, NASD Regulation believes that the proposed rule change provides for margin requirements for non-equity securities that are commensurate with the risks associated with positions in such securities held by customers.

In addition, NASD Regulation is proposing several changes with regard to exempt accounts. Specifically, the proposed rule change will modify the definition of "exempt account," including increasing the financial threshold for a customer to be considered an exempt account, and will revise margin requirements for exempt account transactions involving mortgage-related securities, major foreign sovereign debt securities, highly rated foreign debt securities and other investment grade debt securities.

Non-Equity Securities NASD Regulation believes that the proposed rule change will provide for margin requirements on non-equity securities that are commensurate with the risks associated with positions in such securities held by customers. Under the proposed rule change, the margin requirements for highly rated foreign sovereign debt securities will be the amounts specified in NASD Rule 2520 for U.S. debt securities.[6] In addtition, the posposed rule change will reduce the margin requirement for exempted securities [7] other than U.S. debt securities from 15 percent to 7 percent of the current market value, and reduce the margin requirement for investment grade debt securities, including investment grade debt securities issued by the government of a foreign country, from 20 percent to 10 percent of the current market value. The margin requirement for all other marginable non-equity securities will remain at the greater of 20 percent of the current market value or 7 percent of the principal amount. The proposed rule change will result in margin requirements for investment grade debt securities and exempted securities other than U.S. debt securities that are comparable to the highest haircut percentages under the SEC's net capital rule [8] for proprietary positions in similar securities.

Exempt Accounts. Currently, NASD Rule 2520 contains margin requirements specifically addressing transactions by exempt accounts in exempted securities and mortgage-related securities. These requirements are lower than those applicable to transactions in such securities effected in accounts other than exempt accounts. The proposed rule change will define "exempt account" as a member organization, non-member broker/dealer registered as a broker or dealer pursuant to the Act or "designated account," [9] and will increase the financial threshold for a person to be considered an exempt account to require a net worth of at least $45 million and financial assets of $40 million.

The proposed rule change also will provide lower margin requirements for exempt account transactions in highly rated foreign sovereign debt, investment grade foreign sovereign debt, and other investment grade non-equity securities. According to NASD Regulation, the proposed rule change recognizes both the quality of the securities as well as the creditworthiness of the customer and, as such, is intended to maintain reasonable safety and soundness standards. For transactions in these types of securities by exempt accounts, members will be required either to collect margin equal to the marked to market losses and any percentage requirements under the rule or to take a net capital charge, subject to the limits provided in proposed NASD Rule 2520(e)(2)(H). Under the proposed rule change, the percentage requirements will be 3 percent of current market value for all investment grade corporate debt and for foreign sovereign debt in the lower two investment grade categories and 0.5 percent of current market value for foreign sovereign debt in the second highest investment grade category (*i.e.*, highly rated foreign sovereign debt securities). These terms are also defined in the proposed rule change.

For major foreign sovereign debt securities and mortgage-related securities in exempt accounts, the proposed rule change provides the same margin treatment for these securities as U.S. Government securities in exempt accounts, in that no margin will be required and marked to the market losses need not be collected, subject to the limits proposed in NASD Rule 2520(e)(2)(H).

Proposed NASD Rule 2520(e)(2)(H) will also limit the amount of any uncollected marked to market losses which are being deducted from a member's net capital to 5 percent for each exempt account and 25 percent for all exempt accounts combined. When marked to market losses exceeding these limits continue to exist on the fifth business day after they were incurred, the member will be required to provide the Association with written notification and will be prohibited from entering into any new transactions that would increase the amount of the excess.

Other Provisions. The proposed rule change will provide new definitional provisions, which, among other things, will define the following types of non-equity securities: highly rated foreign sovereign debt securities; investment grade debt securities; major foreign sovereign debt securities; listed non-equity securities; and other marginable non-equity securities. The defined terms categorize certain types of non-equity securities for purposes of prescribing the applicable margin requirements. In addition, the proposed rule change will require that, as good business practice and for safety and soundness considerations, members maintain written procedures for assessing credit extended to exempt accounts.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) [10] of the Act which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will promote the safety and soundness of member firms and is consistent with the rules and regulations of the FRB for the purpose of preventing the excess use of credit for the purchase or carrying of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[3] 12 CFR 220. The Board of Governors of the Federal Reseve System ("FRB") issued Regulation T pursuant to Section 7(c) of the Act.

[4] The term "good faith" in this context generally means that such transactions are subject to the requirements of the applicable self-regulatory organizaiton and that such requirements shall be applicable for initial and maintenance margin purposes.

[5] In 1998, amendments to Regulation T established "good faith" accounts, which can be used for transactions in non-equity securities in lieu of a margin or cash account. *See* Board of Governors of the Federal Reserve Docket Nos. R–0923, and R–0944 (January 8, 1998), 63 FR 2706 (January 16, 1998).

[6] The margin required for U.S. government obligations under NASD Rule 2520 varies according to the length of time to maturity.

[7] NASD Rule 2520(a)(6) provides that exempted securities have the meaning provided in Section 3(a)(12) of the Act.

[8] *See* SEC Rule 15c3–1.

[9] NASD Regulation proposes to revise the definition of "designated account." Specifically, the proposal defines "designated account" to mean the account of: (1) a bank, as defined in Section 3(a)(6) of the Act; (2) a savings association, as defined in Section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation; (3) an insurance company, as defined in Section 2(a)(17) of the Investment Company Act of 1940; (4) an investment company registered with the SEC under the Investment Company Act of 1940; (5) a state or a political subdivision thereof; or (6) a pension or profit sharing plan subject to ERISA or of an agency of the United States or of a state or a political subdivision thereof.

[10] 15 U.S.C. 78o–3(b)(6).

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(ii) as to which the NASD consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule chane should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–08 and should be submitted by June 16, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13260 Filed 5–25–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42802; File No. SR–Phlx–00–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt a New Transaction Fee of $0.20 Per Trade for Specialists Trading on the Philadelphia Stock Exchange Automated Communication System

May 19, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b 4 thereunder,[2] notice hereby is given that on May 8, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees, and charges to initiate a transaction fee of $0.20 per trade for equity specialists using the PACE System. The proposed fee would be effective on June 1, 2000. The following is the text of the proposed addition to the Phlx fee schedule:

"EQUITY FLOOR SPECIALIST TRANSACTION FEE $.20 per trade for each trade conducted on PACE"

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. the Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the Exchange's fee schedule to include a transaction fee of $0.20 per trade for those specialists trading through the PACE system on the equity floor of the Exchange. PACE is the Exchange's automated order entry, routing, and execution system. The purpose of the fee is to generate revenues for the Exchange that would strengthen its overall financial and competitive posture. For example, the Exchange may continue to incur costs respecting PACE system development, such as decimalization efforts and other planned improvements. Of course, the Phlx is seeking to raise revenues for overall Exchange use. The Exchange believes that the fee is both reasonable and equitable because Phlx specialists are not currently charged any Phlx fee respecting PACE trades.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [4] in general and Section 6(b)(4) of the Act [5] in particular in that it is intended to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.[6]

B. Self-Regulatory Organization's Statement of Burden on Competition

The Phlx does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(B)(3)(A)(ii) of the Act [7] and Rule 19b–4(f)(2) [8] thereunder. The Exchange intends to implement the fee effective June 1, 2000. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current proposal replaces File No. SR–Phlx–00–36, which the Phlx has withdrawn. See Letter from John Kenney, Jr., Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 5, 2000. In file No. SR–Phlx–00–36, the Phlx proposed to establish a monthly transaction fee of $0.20 per $1000 of value traded for equity specialists' trades transacted through the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") System. According to the Phlx, the Exchange inadvertently filed File No. SR–Phlx–00–36 with the Commission. Telephone conversation between John Kenney, Jr., Counsel, Phlx, and Michael Gaw, Attorney, Division of Market Regulation, Commission, on May 16, 2000 ("May 16 Conversation")

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] The Phlx represents that the proposed fees would be charged exclusively to members and not to public customers. See May 16 Conversion, *supra* note 3. The Commission notes that this proposed rule change is, therefore, properly filed under Section 19(b)(3)(A)(ii) of the Act. 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–42 and should be submitted by June 16, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13258 Filed 5–25–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 26, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205-7044.

SUPPLEMENTARY INFORMATION:

Title: Surety Bond Guarantee Assistance.

No's: SBA Forms 990, 991, 994B, 994C, 994F and 994H.

Frequency: On Occasion.

Description of Respondents: Small Business Contractors applying for the Surety Bond Guarantee Program.

Annual Responses: 195,930.

Annual Burden: 53,375.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–13341 Filed 5–25–00; 8:45 am]

BILLING CODE 8025–01–M

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3254]

State of Missouri

As a result of the President's major disaster declaration on May 12, 2000, I find that the following Counties in the State of Missouri constitute a disaster area due to damages caused by severe thunderstorms and flash flooding that occurred on May 6 and 7, 2000: Crawford, Franklin, Gasconade, Jefferson, St. Charles, Ste. Genevieve, St. Francois, St. Louis County, Warren, and Washington. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 11, 2000, and for loans for economic injury until the close of business on February 12, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Callaway, Dent, Iron, Lincoln, Madison, Maries, Montgomery, Osage, Perry, and Phelps Counties, and the City of St. Louis in the State of Missouri, and Calhoun, Jersey, Madison, Monroe, Randolph, and St. Clair Counties in the State of Illinois.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.375%

Homeowners Without Credit Available Elsewhere: 3.687%

Businesses With Credit Available Elsewhere: 8.000%

Businesses and Non-Profit Organizations Without Credit Available Elsewhere: 4.000%

Others (Including Non-Profit Organizations) With Credit Available Elsewhere: 6.750%

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%

The number assigned to this disaster for physical damage is 325406. For economic injury the numbers are 9H3600 for Missouri and 9H3700 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 18, 2000.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–13231 Filed 5–25–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3255]

State of New Mexico

As a result of the President's major disaster declaration on May 13, 2000, and an amendment thereto on May 16, I find that the following Counties in the State of New Mexico constitute a disaster area due to damages caused by a severe forest fire beginning on May 5, 2000 and continuing: Bernalillo, Chaves, Cibola, DeBaca, Dona Ana, Eddy, Guadalupe, Lincoln, Los Alamos, McKinley, Mora, Otero, Rio Arriba, San Juan, San Miguel, Sandoval, Santa Fe, Sierra, Socorro, Taos, and Torrance. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 12, 2000, and for loans for economic injury until the close of business on February 13, 2001 at the address listed below or other locally announced locations: U.S. Small

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Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Catron, Colfax, Curry, Grant, Harding, Lea, Luna, Quay, Roosevelt, and Valencia Counties in New Mexico; Apache County, Arizona; Archuleta, Conejos, Costilla, La Plata, and Montezuma Counties in Colorado; San Juan County, Utah; and Culberson, El Paso, Hudspeth, Loving, and Reeves Counties in Texas.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.375%
Homeowners Without Credit Available Elsewhere: 3.687%
Businesses With Credit Available Elsewhere: 8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere: 4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere: 6.750%

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%

The number assigned to this disaster for physical damage is 325505. For economic injury the numbers are 9H3800 for New Mexico, 9H3900 for Arizona, 9H4000 for Colorado, 9H4100 for Utah, and 9H4200 for Texas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 18, 2000.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–13232 Filed 5–25–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Controlled Substances and Alcohol Testing Management Information System (MIS) Statistical Data

May 15, 2000.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: The FMCSA is announcing the motor carrier industry's 1997 and 1998 controlled substances and alcohol usage rates based on random testing. The positive rate for controlled substances was 1.3 percent in calendar year 1997, and 1.5 percent in 1998. The alcohol "violation" rate was 0.2 percent in 1997, and 0.4 percent in 1998. Because the alcohol "violation" rate has remained below 0.5 percent for these two years, the FMCSA is announcing that it is maintaining the random alcohol testing rate for calendar year 2000 at 10 percent, in accordance with the provisions of the testing regulations. This lowered rate continues the DOT policy set in 1998 when data supported the same policy decision. Because the positive rate from controlled substances testing has remained above 1.0 percent during this same period, the FMCSA is maintaining the random controlled substances testing rate for calendar year 2000 at 50 percent, in accordance with FMCSA regulations. This notice serves to continue the existing policy and provides that it is effective until further notice.

FOR FURTHER INFORMATION CONTACT: For enforcement questions: Mr. Kenneth Rodgers, Office of Enforcement and Compliance (HMCE–20), (202) 366–4016; For substantive questions: Mr. David M. Lehrman, Office of Policy, Plans, and Regulations, (202) 366–0994; For statistical questions: Mr. Richard Gruberg, Office of Motor Carrier Information Analysis (HIA–20), (202) 366–2959; For legal questions, Mr. Michael Falk, Office of the Chief Counsel, (HCC–20), (202) 366–1384, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Creation of New Agency

In October 1999, the Secretary of Transportation rescinded the authority previously delegated to the Federal Highway Administrator to perform the motor carrier functions and operations, and to carry out the duties and powers related to motor carrier safety, that are statutorily vested in the Secretary. That authority was redelegated to the Director of the Office of Motor Carrier Safety (OMCS), a new office within the Department (see, 64 FR 56270, October 19, 1999, and 64 FR 58356, October 29, 1999). The OMCS had previously been the FHWA's Office of Motor Carriers (OMC).

The Motor Carrier Safety Improvement Act of 1999 established the Federal Motor Carrier Safety Administration as a new operating administration within the Department of Transportation, effective January 1, 2000 (Public Law 106–159, 113 Stat. 1748, December 9, 1999). The Secretary therefore rescinded the motor carrier authority delegated to the Director of the OMCS and redelegated it to the Administrator of the FMCSA (65 FR 220, January 4, 2000).

The staff previously assigned to the FHWA's OMC, and then to the OMCS, are now assigned to the FMCSA. The motor carrier functions of the FHWA's Resource Centers and Division (i.e., State) Offices have been transferred without change to the FMCSA Resource Centers and FMCSA Division Offices, respectively. For the time being, all phone numbers and addresses are unchanged. Similarly, rulemaking activities begun under the auspices of the FHWA and continued under the OMCS will be completed by the FMCSA.

Background

On December 23, 1993 (58 FR 68220), the FHWA announced it would require motor carriers subject to 49 CFR part 391, later replaced by part 382, to implement and maintain specific controlled substance testing data, and submit an appropriate annual report when requested. All motor carriers must maintain this information. The FHWA randomly selects a sample of motor carriers annually and asks those selected to submit their data.

On February 15, 1994 (59 FR 7484), the FHWA promulgated new controlled substances and alcohol testing rules in 49 CFR part 382. These rules combined the controlled substances annual report with a similar alcohol rule "violation" annual report. An alcohol rule violation for purposes of the annual report are alcohol concentrations of 0.04 or greater and refusals to submit to alcohol testing.

On March 13, 1995, the FHWA amended the rule to reduce the information collection burden on all respondents, including small entities (60 FR 13369).

The current rule at § 382.403, formerly at 49 CFR 391.87(h), is essential for the accomplishment of the following four goals:

1. Collect controlled substance and alcohol testing statistical data.

2. Use the data to analyze the FMCSA's current approach to deterring and detecting illegal controlled substance use and alcohol misuse in the motor carrier industry.

3. Determine each calendar year's random selection rates for alcohol and controlled substance testing under the rule.

4. Provide for a more efficient and effective regulatory program.

In 1995, the FHWA requested a sample of motor carriers report to the FHWA data collected in 1994. The FHWA determined the random positive controlled substance usage rate for commercial motor vehicle (CMV) drivers subject to 49 CFR part 391, subpart H, for the period of January 1, 1994, through December 31, 1994, was 2.6 percent. This rate was estimated to be 2.8% in 1995 and 2.2% in 1996.

Estimates of positive usage rates for alcohol were first produced for calendar year 1995. The alcohol testing "violation" rate was 0.14 percent in 1995, and 0.18 percent in 1996.

The criteria for raising or lowering the random testing rate are established by regulation. Under 49 CFR 382.305(d)(1), when the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FMCSA Administrator may lower the rate to 10 percent of all driver positions if the Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive years indicate that the violation rate is less than 0.5 percent.

Under § 382.305(e)(1), when the minimum annual percentage rate for random alcohol testing is 10 percent, the Administrator is required to increase the rate to 25 percent only if the violation rate is equal to or greater than 0.5 percent.

Under § 382.305(g), when the minimum annual percentage rate for random controlled substances testing is 50 percent, the Administrator may lower the rate to 25 percent of all driver positions only if the data indicate that the positive testing rate is less than 1.0 percent.

Based upon this authority, and because the violation rate was below 0.5 percent for two consecutive years, the FHWA announced it was lowering the random alcohol testing rate for calendar year 1998 to 10 percent. The random controlled substances testing rate remained 50 percent. On January 14, 1998 (63 FR 2172) the agency published this policy in a notice including an extensive appendix C explaining the methodology used to estimate the controlled substances positive and alcohol violation rates.

Today's notice announces the results of data collected for the 1997 and 1998 FHWA Drug and Alcohol Surveys. These surveys, conducted annually, measure the percentage of CDL drivers testing positive for controlled substances (as defined in 49 CFR 40.21 of the Federal Motor Carrier Safety Regulations) and/or alcohol, based on both random and nonrandom testing. The survey data are collected from a random sample of motor carrier annual drug and alcohol testing summaries. Because the positive rate from random controlled substances testing has remained above 1.0 percent during this period, the FMCSA is maintaining the random controlled substance testing rate for calendar year 2000 at 50 percent, in accordance with 49 CFR 382.305(g). The FMCSA is also maintaining the random alcohol testing rate for calendar year 2000 at 10 percent, in accordance with 49 CFR 382.305(e)(1).

Authority: 49 U.S.C 504, 31136, chapter 313; and 49 CFR 1.73.

Issued on: May 18, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 00–13313 Filed 5–25–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7403]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) this notice announces the Maritime Administration's (MARAD's) intentions to request Office of Management and Budget (OMB) approval to add a new survey form to the currently approved information collection titled "Customer Service Surveys," OMB Number 2133–0528.

DATES: Comments should be submitted on or before July 25, 2000.

FOR FURTHER INFORMATION CONTACT: James J. Zok, Associate Administrator for Shipping Analysis and Cargo Preference, MAR–500, Room 8126, 400 Seventh Street, SW, Washington, D.C. 20590. Telephone 202–366–0364 or fax 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Customer Service Surveys.

Type of Request: Revision of a currently approved information collection.

OMB Control Number: 2133–0528.

Form Number: MA–1016; MA–1017; MA–1021.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and the level of their satisfaction with existing services. This collection covers MARAD forms used to carry out such surveys covering MARAD programs and services.

Need and Use of the Information: (1) Responses to the "Customer Service Questionnaire" are needed to obtain prompt customer feedback on the quality of specific services/products provided to the customer by MARAD. The information provided will be used to ascertain the customer's level of satisfaction. (2) Responses to the "Program Performance Survey" are needed to obtain customers' views on MARAD's major programs and activities with which the customers were involved during the preceding year. (3) Responses to the new "Conference/Exhibit Survey" are needed to obtain feedback from conference attendees on the quality and success of a particular MARAD sponsored conference or event. The information provided will be used by MARAD's senior management and MARAD's program managers to monitor the overall level of customer satisfaction and to identify areas for improvement.

Description of Respondents: Individuals/entities directly served by MARAD.

Annual Responses: 6650 responses.

Annual Burden: 256 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., EDT. Monday through Friday,

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except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: May 22, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 00–13242 Filed 5–25–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on March 10, 2000 [65 FR 13075].

DATES: Comments must be submitted on or before June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Otto A. Strassburg, Chief, Division of Marine Insurance, Office of Insurance and Shipping Analysis, MAR–570, Room 8117, Maritime Administration, 400 Seventh Street, SW, Washington, D.C. 20590, telephone number 202–366–4161. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration.

Title of Collection: "Approval of Underwriters for Marine Hull Insurance."

OMB Control Number: 2133–0517.

Type of Request: Approval of an existing information collection.

Affected Public: Foreign underwriters of marine insurance and insurance brokers.

Form(s): None.

Abstract: This collection of information involves the approval of marine hull underwriters to insure MARAD program vessels. Foreign applicants will be requested to submit financial data upon which MARAD approval would be based. In certain cases, brokers would be required to certify that American underwriters were offered opportunity to compete for the business.

Annual Estimated Burden Hours: 46 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: May 23, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–13328 Filed 5–25–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7291; Notice 1]

General Motors Corporation; Receipt of Application for Determination of Inconsequential Non-Compliance

General Motors Corporation (GM) has applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 "Motor Vehicle Safety" for a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection," on the basis that the noncompliance is inconsequential to motor vehicle safety. GM has filed a report of a noncompliance pursuant to 49 CFR part 573 "Defects and Noncompliance Report."

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

Description of Noncompliance

GM has identified a condition in which the required seat belt audible signal on some 1996–99 Model Year Chevrolet Astro and GMC Safari vans may occasionally operate for less than the 4 to 8 second time required. Upon such occurrence, the signal would not fully comply with the audible signal portion of the S7.3 seat belt warning provision of FMVSS No. 208. GM has submitted a 49 CFR 573.5 noncompliance notification to the agency which details the affected vehicles. Pursuant to section 30118(d) and 30120(h) of Chapter 301 and 49 CFR part 556, and for reasons set forth, GM requested exemption from the notification, and remedy provisions of 49 U.S.C. 30118 and 30120 on the basis that the noncompliance is inconsequential to motor vehicle safety.

"A total of 461,851 1996–99 MY Chevrolet Astro and GMC Safari vans were built with an audible driver seat belt warning system that may, in a random manner (1) operate properly, (2) terminate the audible signal in less than the minimum 4 second requirement, or (3) not operate at all. The possibility of a random noncompliance results from a transient signal being generated at the seat belt switch input to the audible signal module when the ignition switch is turned to start and the belt latch mechanism is not fastened. The module may interpret this transient signal input as the seat belt latch mechanism being fastened and thereby terminate the audible tone. The condition is caused by a ground voltage difference between the seat belt switch and the signal module creating a transient signal that the module was not designed to filter. At the time the subject module and associated wiring harness were developed, GM truck engineering did not have a formal requirement for electrical grounding and module input filtering."

"A new module and wiring harness were implemented at the assembly plant in January 1999, that changed this condition. To prevent this issue in the future, electrical grounding rules that define specific requirements for modules and their inputs have been implemented to evaluate all electrical ground designs during the design review process. This condition is not present in other GM vehicles with the same signal module because the respective component ground is compatible with the module design in other GM products. GM also has reviewed its warranty is information regarding the subject vehicle's audible signal. There has been no change in the occurrences of customer warranty claims regarding the seat belt audible signal for the 1995 vehicles, produced prior to this issue, and the warranty claim made on the vehicles involved."

Supporting Information Submitted by General Motors

It is GM's understanding that the purpose of the seat belt warning requirement is to provide a reminder to the vehicle's driver to wear a seat belt. Section 7.3 of FMVSS 208 currently allows a manufacturer two alternatives for complying with the seat belt warning requirements. As Option 1, S7.3(a)(1) essentially requires (1) an audible signal of 4 to 8 seconds, and (2) a minimum 60 second telltale light when the driver seat belt is unbuckled and the ignition is moved to the "on" or "start" position. If the driver seat belt is buckled, neither the audible signal nor the telltale light should be activated when the ignition is turned to the "on" or "start" position. As Option 2, S7.3 (a)(2) essentially requires (1) an audible signal of 4 to 8 seconds when the driver seat belt is unlocked and the ignition is moved to the "on" or "start" position, and (2) a 4 to 8 second telltale light whenever the ignition is moved to the "on" or "start" position, whether or not the driver seat belt is buckled.

The subject vehicles were designed to Option 1 and comply with the portion of the requirements to activate a continuous or flashing warning light for a minimum of 60 seconds if the ignition is turned to the "on" or "start" position and the driver seat belt is not buckled, thus notifying a driver that he/she is not buckled up. Specifically, the subject vehicles comply with this portion of the requirement by displaying a continuous warning light for approximately the first 20 seconds and then a flashing light for approximately 55 seconds if the driver belt is not buckled. The subject vehicles, therefore, provide a visual warning signal that exceeds the 60 second duration requirement of Option 2. Furthermore, the design duration of 75 seconds for the visual signal provides a considerable enhancement over the 4 to 8 second duration requirement allowed by Option 2.

GM believes that the subject vehicles provide an enhanced visual seat belt warning indicator to remind the driver to wear a seat belt. Under these particular conditions, GM believes that the noncompliance to S7.3 f FMVSS 208 is inconsequential as it relates to motor vehicle safety, and therefore, requests the affected vehicles exempted from the notification, recall and remedy provisions of Section 30120 of the Safety Act.

Interested persons are invited to submit written data, views and arguments on the petition of GM, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, National Highway Traffic Safety Administration, Room PL 401, 400 7th Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, a Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 26, 2000.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: May 22, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–13272 Filed 5–25–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 579X)]

CSX Transportation, Inc.—Abandonment Exemption—In Parke and Vermillion Counties, IN

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 1.17-mile line of its railroad between milepost BD–191.41 at Montezuma and milepost BD–192.58 at Hillsdale in Parke and Vermillion Counties, IN. The line traverses United States Postal Service Zip Codes 47862 and 47854.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 25, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 5, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 15, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202. If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 31, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

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conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by May 26, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 18, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–13172 Filed 5–25–00; 8:45 am]

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Federal Register

Friday,
May 26, 2000

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6703–4]

RIN 2060–AH22

National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for solvent extraction for vegetable oil production. This industry is comprised of facilities that produce crude vegetable oil and meal products by removing oil from listed oilseeds through direct contact with an organic solvent. The EPA has identified solvent extraction for vegetable oil production processes as major sources of a single hazardous air pollutant (HAP), n-hexane.

The EPA does not consider n-hexane classifiable as a human carcinogen. However, short-term exposure to high levels of n-hexane is reported to cause reactions such as irritations, dizziness, headaches, and nausea. Long-term exposure can cause permanent nerve damage.

This proposed rule will require all existing and new solvent extraction for vegetable oil production processes that are major sources (have the potential to emit 10 tons per year (tpy) or more of n-hexane) to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The EPA estimates that this proposed rule will reduce nationwide emissions of n-hexane from solvent extraction for vegetable oil production processes by approximately 6,800 tons per year (tpy). The emissions reductions achieved by these NESHAP, when combined with the emissions reductions achieved by other similar standards, will provide protection to the public and achieve a primary goal of the Clean Air Act (CAA).

DATES:

Comments. Submit comments on or before July 25, 2000.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by June 15, 2000, a public hearing will be held on June 26, 2000.

ADDRESSES:

Comments. Submit written comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–59, Room M–1500, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.** Be sure to include the docket number, A–97–59, on your comments.

Public Hearing. If a public hearing is held, it will be held at 10:00 a.m. in the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket. Docket No. A–97–59 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Durham, Waste & Chemical Processes Group, Emission Standards Division, (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5672; facsimile number (919) 541–0246; electronic mail address "durham.jim@epa.gov."

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® version 5.1, 6.1, or 8 file format. All comments and data submitted in electronic form must note the docket number: A–97–59. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. James F. Durham, c/o OAQPS Document Control Officer (Room 740B), U.S. Environmental Protection Agency, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2, subpart B. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. A request for a public hearing must be made by the date specified under the DATES section. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mr. James F. Durham via the information listed under **FOR FURTHER INFORMATION CONTACT** at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Mr. James F. Durham to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. If your facility produces vegetable oil from corn germ, cottonseed, flax, peanuts, rapeseed (for example, canola), safflower, soybeans, or sunflower, it may be a "regulated entity." Categories and entities

potentially regulated by this action include:

Category	SIC code	NAICS	Examples of regulated entities
Industry	2074	311223	Cottonseed oil mills.
	2075	311222	Soybean oil mills.
	2076	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	2079	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	2048	311119	Prepared feeds and feed ingredients for animals and fowls, excluding dogs and cats.
	2041	311221	Flour and other grain mill product mills.
	2046	311221	Wet corn milling.
Federal government			Not affected.
State/local/tribal government			Not affected.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2832 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. What is the subject and purpose of this rule?
  A. What pollutant emissions will be reduced?
  B. What are the health effects of these pollutants?
II. Am I subject to this rule?
III. Have these sources been regulated in the past?
IV. What procedures did we follow in developing the proposed rule?
V. What are the regulatory requirements for MACT?
VI. How was MACT determined?
VII. What are the proposed emission standards?
VIII. How do I demonstrate compliance?
IX. What are the recordkeeping requirements?
  A. What is a plan for demonstrating compliance?
  B. What is a startup, shutdown, and malfunction plan?
  C. What data must I record?
X. What are the reporting requirements?
  A. What notifications must I submit?
  B. What reports must I submit?
XI. What are the environmental, energy, cost and economic impacts?
XII. What are the administrative requirements for this rule?
  A. Executive Order 12866, Significant Regulatory Action
  B. Executive Order 13132, Federalism
  C. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
  D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
  E. Unfunded Mandates Reform Act of 1995
  F. Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
  G. Paperwork Reduction Act
  H. National Technology Transfer and Advancement Act of 1995

I. What Is the Subject and Purpose of This Rule?

The CAA requires EPA to establish standards to control HAP emissions from source categories listed under the authority of section 112(c) of the CAA. An initial source category list was published in the **Federal Register** on July 16, 1992 (57 FR 31576), and it included the "vegetable oil production" source category. We have identified 106 existing facilities in the source category.

For purposes of the proposed rule, the title has been changed to "solvent extraction for vegetable oil production" to better describe the effected population. The source category list will be amended to reflect this name change in a separate action. For the remainder of this preamble and in the regulatory text, solvent extraction for vegetable oil production processes is called vegetable oil production processes.

The purpose of the proposed rule is to reduce HAP emissions, namely n-hexane, from major sources that produce vegetable oil. A major source is one with the potential to emit at least 10 tpy of any one HAP or 25 tpy of any combined HAP. We estimate that all 106 of the existing facilities are major sources of HAP emissions, and the baseline emissions of n-hexane from this source category are approximately 27,400 tpy. We estimate the proposed rule will reduce baseline HAP emissions from this source category by approximately 6,800 tpy (25 percent).

A. What Pollutant Emissions Will Be Reduced?

The predominate emissions from solvent extraction for vegetable oil production processes include n-hexane (a HAP) and volatile organic compounds (VOC). Currently, all existing solvent extraction for vegetable oil production processes use a hexane-based extraction solvent that consists primarily (on average 64 percent) of n-hexane, the only HAP. The remaining portion of the solvent consists of hexane isomers which are categorized as VOC. The proposed rule includes requirements to specifically reduce emissions of n-hexane. The process of controlling n-hexane emissions also reduces emissions of VOC.

B. What Are the Health Effects of These Pollutants?

Reported effects on humans from short-term exposure to high levels of n-hexane include irritation of eyes, mucous membranes, throat and skin, as well as impairment of the central nervous system (CNS) including dizziness, giddiness, headaches, and slight nausea. Long-term human exposure from inhalation is associated with a slowing of peripheral nerve signal conduction which causes numbness in the extremities and muscular weakness, as well as changes to the retina which causes blurred vision. Animal exposures to n-hexane have resulted in damage to nasal, respiratory tract, lung and peripheral nerve tissues, as well as effects on the CNS. No information is available on n-hexane effects on human reproduction or development. Limited laboratory animal data indicate a potential for testicular damage in adults, while several animal studies show no effect on fetal development. Due to a lack of information for humans and inadequate animal evidence, EPA does not consider n-hexane classifiable as to human carcinogenicity.

We recognize that the degree of adverse effects to human health from exposure to n-hexane can range from mild to severe. The extent and degree to which the human health effects may be experienced is dependent upon (1) the ambient concentration observed in the

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area (as influenced by emission rates, meteorological conditions, and terrain); (2) the frequency of and duration of exposures; (3) characteristics of exposed individuals (genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population; and (4) pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence.)

The proposed rule reduces non-HAP VOC emissions as well. Emissions of VOC have been associated with a variety of health and welfare impacts. Volatile organic compound emissions, together with nitrogen oxides, are precursors to the formation of tropospheric ozone, or smog. Exposure to ambient ozone is responsible for a series of public health impacts, such as alterations in lung capacity; eye, nose, and throat irritation; nausea; and aggravation of existing respiratory disease. Ozone exposure can also damage forests and crops.

II. Am I Subject to This Rule?

The proposed rule applies to you if you own or operate any facility with a solvent extraction for vegetable oil production process that is a major source of HAP emissions and processes any combination of listed oilseed. Listed oilseeds refers only to the following agricultural products: corn germ, cottonseed, flax, peanut, rapeseed (for example, canola), safflower, soybean, or sunflower. A solvent extraction for vegetable oil production process is defined in § 63.2872 of the proposed rule as the collection of continuous process equipment and activities that produce crude vegetable oil and meal products by removing oil from listed oilseeds through direct contact with an organic solvent, such as a hexane isomer blend.

III. Have These Sources Been Regulated in the Past?

This is the first Federal regulation affecting air emissions from solvent extraction for vegetable oil production processes.

IV. What Procedures Did We Follow in Developing the Proposed Rule?

First, we identified the types of emission points within the source category that may potentially release HAP. A total of nine emission points were identified including:

(1) Exhaust from the mineral oil adsorber system;
(2) Exhaust from the meal dryer vent;
(3) Exhaust from the meal cooler vent;
(4) Residual losses from crude meal;
(5) Residual losses from crude oil;
(6) Evaporative losses from equipment leaks;
(7) Solvent storage tanks;
(8) Process wastewater collection; and
(9) process startup/shutdowns.

It is not practical from a cost standpoint to quantify losses of HAP from the individual emission points. However, total HAP emissions from the entire source can be determined using records of deliveries and inventories of solvent and oilseed. Thus, the regulatory format for the proposed rule was selected as an emission limit expressed in terms of gallons of HAP lost per ton of oilseed processed.

Next, we investigated possible differences in solvent retention characteristics in the meal among oilseed types and process operations which affect the achievable level of HAP emissions. Based on this investigation, we established 12 performance standards for both existing and new sources. The performance standards are based on the regulatory requirements in the CAA which are described in the next section. Finally, we developed procedures for determining regulatory alternatives for existing and new sources.

V. What Are the Regulatory Requirements for MACT?

The CAA requires a NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. We refer to this control level as the maximum achievable control technology. The CAA also provides guidance on determining the least stringent level allowed for a MACT standard, the "MACT floor." For existing sources, MACT floor standards must be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources, or by the best performing five sources for source categories or subcategories with fewer than 30 sources. For new sources, MACT floor standards must be no less stringent than the emission control achieved in practice by the best controlled similar source. Control levels more stringent than the MACT floor must reflect consideration of the cost of achieving the emission reductions, any nonair quality, health, and environmental impacts, and energy requirements.

VI. How Was MACT Determined?

For this proposed rule, the MACT performance level is an emission limit expressed in terms of gallons of HAP lost per ton of oilseed processed over a 12-month compliance period. Each of the 12 performance standards were determined from 2 years of monthly data relating solvent losses (gal) to oilseed processing rates (tons).

To address variability observed in the 2 years of data used in the MACT floor determinations, statistical procedures were applied. Varying climatic patterns from year-to-year affect oilseed quality and solvent retention characteristics which can directly affect facility operations. Two years of emissions and process information is not sufficient to characterize long-term impacts of climatic patterns on oilseed quality. The never-to-be-exceeded format of these proposed MACT standards required us to statistically examine variability over 2 years and make adjustments to the HAP loss performance level of each source to reflect long-term achievability.

For existing sources, the MACT floor for each of the 12 oilseed or process operations was determined as the average of the HAP loss performance levels corresponding to the top performing 12 percent of sources (or the top five for oilseeds or operations with fewer than 30 sources). For new sources, the MACT floor was based on the performance level corresponding to the top ranking source. The new source MACT floors are the same or slightly more stringent than the corresponding existing source MACT floors. More details on the MACT floor determinations can be found in the memorandum entitled "MACT Floor Determinations for Existing and New Sources in the Vegetable Oil Production Source Category" (Docket No. A–97–59).

We also considered a regulatory alternative more stringent than the MACT floor, but rejected it because of a significantly higher cost per ton of emission reductions. This above-the-floor option would have required a catalytic incinerator to control the HAP emissions in the combined exhaust from the meal dryer and cooler vents. A fabric filter would also be required to remove particulate matter in the exhaust stream prior to entering the catalytic incinerator. At present, solvent extraction for vegetable oil production processes have not installed such emission controls on meal dryer or cooler vents. Thus, the MACT floor performance level was determined to represent MACT for this regulation.

More details on the above-the-floor analysis can be found in the memorandum entitled "Summary of Emission Reductions and Control Costs Associated with Achieving the MACT Floor and a Control Option Above the MACT Floor" (Docket No. A–97–59).

VII. What Are the Proposed Emission Standards?

Separate emission standards are proposed for each oilseed or process operation because solvent retention in the meal differs for each oilseed and process type. The emission standards are presented in Table 1 in § 63.2840 of the proposed rule.

VIII. How Do I Demonstrate Compliance?

To demonstrate compliance, you must perform the following:

(1) Develop a plan for demonstrating compliance per § 63.2851 of the proposed rule.

(2) Develop a startup, shutdown, and malfunction (SSM) plan per § 63.2852 of the proposed rule.

(3) Maintain monthly records of solvent loss, HAP content of solvent received and quantity of oilseed type processed per § 63.2862(c) of the proposed rule.

(4) Comply with the standards for HAP losses as required in § 63.2840 of the proposed rule.

(5) Submit the necessary notifications per § 63.2860 of the proposed rule.

(6) Submit the necessary reports per § 63.2861 of the proposed rule.

IX. What Are the Recordkeeping Requirements?

A. What Is a Plan for Demonstrating Compliance?

Most vegetable oil production sources currently use reliable methods to measure the solvent loss and the quantity of oilseed processed. Therefore, today's proposed rule does not require you to change the method of measurement, but does require you to document each method of measurement and to consistently follow each documented method. You must develop a plan for demonstrating compliance which describes in detail how you will determine your solvent loss, HAP content of solvent received, and the quantity of each oilseed type processed. The plan for demonstrating compliance must be developed by the compliance date and must be kept on site and available for inspection as described in §§ 63.2851 and 63.2862(b) of the proposed rule.

B. What Is a Startup, Shutdown, and Malfunction Plan?

In accordance with the NESHAP General Provisions (40 CFR 63.6(e)(3)), you must develop a written startup, shutdown, and malfunction (SSM) plan that describes the exact procedures you will follow during each type of SSM to minimize HAP emissions. The SSM plan must be developed by the compliance date and must be kept on site and available for inspection as described in §§ 63.2852 and 63.2862(b) of the proposed rule. The SSM plan must be implemented during a malfunction period or an initial startup period as described in § 62.2850 of the proposed rule.

C. What Data Must I Record?

You must record all of the data necessary to determine your compliance ratio as described in § 63.2862 of the proposed rule. This includes all receipts and inventory records used to determine the monthly solvent loss, the HAP content of each shipment of solvent received, and the monthly quantity of oilseed processed. You must record the starting and ending dates of each malfunction period and initial startup period, and the activities during such periods to demonstrate that the procedures in the SSM plan were followed during each such period.

As described in § 63.2863 of the proposed rule, your records must be in a form suitable and readily available for review. You must also keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. Records must remain on site for at least 2 years and then can be maintained offsite for the remaining 3 years.

X. What Are the Reporting Requirements?

A. What Notifications Must I Submit?

If you are an existing source, you must submit an "initial notification" within 120 days after promulgation of the rule stating whether you are a major or an area source of HAP and other information listed under § 63.2860 of the proposed rule. This initial submission notifies the Administrator that you have an affected major source and must comply with the rule as promulgated. These NESHAP does not apply to area sources. If you are a new or reconstructed source, you must make several notifications during the process of construction and startup according to § 63.9 of the General Provisions.

You must also submit a notification of compliance status no later than 60 days after your initial compliance determination. For existing sources, you would normally submit this notification 50 calendar months after promulgation of the rule (3 years for compliance, 1 year or 12 operating months to record data, and 2 calendar months to complete the report). For a new or reconstructed source, you normally submit this notification 20 calendar months after initial startup (6 calendar months for an initial startup period, 12 operating months to record data, and 2 calendar months to complete the report). The notification of compliance status identifies the source, lists the oilseed types processed, and certifies that you are in compliance.

B. What Reports Must I Submit?

According to § 63.2861 of the proposed rule, you are required to submit an annual report certifying that your source is in compliance. The first annual compliance certification is due 1 year, 12 calendar months, after the notification of compliance status.

If your compliance ratio exceeds one, you must submit a deviation notification report by the end of the month following the calendar month in which you determined the deviation.

If you have a malfunction period or an initial startup period, as described in § 63.2850 of the proposed rule, you must submit a periodic SSM report. If you followed the procedures in the SSM plan, the periodic SSM report is due by the end of the following month and certifies that the SSM plan was followed. You must also include in the report a description of the initial startup or malfunction event and an estimate of the solvent loss during the initial startup or malfunction period, as described in § 63.2861(c) of the proposed rule. If you did not follow the procedures in the SSM plan, you must notify the responsible agency within 2 days of the occurrence and submit an immediate SSM report within 7 days as described in § 63.2861(d) of the proposed rule.

XI. What Are the Environmental, Energy, Cost and Economic Impacts?

We do not expect any significant secondary air emission, wastewater, solid waste, or energy impacts resulting from the proposed rule. The emissions reduction techniques that will be used to comply with the NESHAP are pollution prevention technologies designed to recover and recycle solvent. More details on the environmental and energy impacts can be found in the memorandum entitled "Summary of Environmental and Energy Impacts" (Docket No. A–97–59).

As shown in Table 1 of this preamble, the overall cost effectiveness associated with the MACT floor level of control is $1,800 per ton of HAP. This level of control will reduce HAP emissions from existing sources by approximately 6,800 tpy, a reduction of approximately 25 percent.

Also shown in Table 1 of this preamble, we considered an option

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more stringent than the MACT floor which requires installation of a fabric filter and catalytic incinerator. This option nearly doubles the reduction of HAP emissions achieved by the MACT floor. However, the cost effectiveness of the option above the MACT floor is approximately $13,800 per ton of HAP reduced. The cost effectiveness associated with the above-the-floor control option could be higher after considering site-specific conditions which may result in additional design, operating, and safety requirements that were not included in the model costs listed in Table 1 of this preamble. Because of the significantly higher cost per ton of emission reductions, we did not require control more stringent than the MACT floor. More details on the MACT floor and above-the-floor cost analysis can be found in the memorandum entitled "Summary of Emission Reductions and Control Costs Associated with Achieving the MACT Floor and a Control Option Above the MACT Floor" (Docket No. A–97–59).

TABLE 1.—SUMMARY OF NATIONAL IMPACTS FOR THE FLOOR AND ABOVE-THE-FLOOR CONTROL SCENARIOS

Control option	Emission reductions (tons/yr)		Overall emission reduction (percent)	Total capital investment (million $)	Annual monitoring, record-keeping, and report-ing cost (million $/yr)	Total annual cost (million $/yr)	Cost effectiveness ($/ton)	
	VOC	HAP					VOC	HAP
MACT floor	10,600	6,800	25	29.7	4.4	12.4	1,200	1,800
Above MACT floor total[a]	20,900	13,400	49	134.7	6.6	185.0	8,900	13,800

[a] The above the MACT floor control option includes the installation of a fabric filter and a catalytic incinerator to control the HAP in the exhaust from the meal dryer and cooler vents. The above the MACT floor total is the cumulative of impacts and costs associated with the MACT floor and the additional controls. The costs associated with the above the MACT floor control option could be higher than the costs listed in Table 1 of this preamble. Site-specific conditions at each source may result in additional design, operating, and safety requirements that were not included in the above model costs.

The economic impacts of the proposed rule for the vegetable oil industry are measured primarily in terms of market impacts. Market impacts include estimates of changes in market price, market production, industry annual revenues, and possible facility closures that may result from the proposed rule. Other secondary market impacts analyzed include potential labor market and international trade impacts.

The proposed rule will potentially impose emission control costs on facilities that use solvent extraction processes to extract oil from oilseeds. Oilseed processors using mechanical extraction will not incur emission control costs as a result of the proposed rule. In 1995, 31 companies operated 106 solvent extraction for vegetable oil production processing facilities in the United States. These companies process soybean, corn, cottonseed, and other seeds into oil, meal, and other products. The other oilseeds include flaxseed, peanut, rapeseed, safflower, and sunflower.

Emission control costs were estimated for each facility expected to be affected by the proposed rule. Two regulatory alternatives were analyzed; the MACT floor and a more stringent above-the-floor alternative. The capital costs for the proposed rule, the MACT floor, are estimated to be approximately $29.7 million, while national annualized costs of $12.4 million are anticipated. By comparison, the capital and annual cost estimates for the above-the-floor alternative are $134.7 million and $185.0 million, respectively. All costs are stated in 1995 dollars. The annualized cost estimates include: (1) The costs of monitoring, reporting, and recordkeeping; (2) annualized lost production costs; (3) operation and maintenance costs for the emission control equipment, less the cost savings from reduced solvent purchases; and (4) the annualized capital recovery for total capital emission control investment.

Since capital costs relate to emission control equipment that will be utilized over a period of years, this cost is annualized or apportioned to each year of the anticipated equipment life. The annual capital costs include annual depreciation of equipment plus the cost of capital associated with financing the capital equipment over its useful life. In addition, lost production costs are foregone profits and other costs incurred when the plant shuts down to install new capital equipment. These costs are a one time expense of the proposed rule and are annualized over the same period as the capital equipment. A 7 percent discount rate or cost of capital is assumed for this proposed rule. The annualized capital and lost production costs are combined with annual operating and maintenance costs (less solvent recovery credits) and recordkeeping, monitoring, and reporting costs to compute the total annualized costs to comply with the proposed rule.

A financial ratio analysis estimating the ratio of emission control costs to annual sales revenues (CSR) was conducted to determine the financial impact of the proposed rule for facilities anticipated to incur emission control costs. Annual facility revenues were estimated by multiplying the average 1995 market price reported by the United States Department of Agriculture by annual production levels for each facility. The individual facility financial impacts are expected to be minimal for the proposed regulatory alternative of the MACT floor. Of the 106 facilities affected by the proposed rule, 105 are predicted to have a facility CSR between 0 and 1 percent, and one facility has a CSR between 1 and 2 percent. For the above-the-floor alternative, 21 facilities have a CSR between 0 and 1 percent, 39 have a CSR between 1 and 2 percent, and 46 have a CSR between 2 and 3 percent.

A market-based approach was also used to evaluate the economic impacts of the proposed rule to producers and consumers of vegetable oil and meal products. This approach assumes that producers have choices when confronted with emission control costs. Producers must make a decision of whether to continue producing these products and, if so, the optimal level of production. The vegetable oil markets are assumed to be perfectly competitive.

In general, the economic impacts of this proposed rule are expected to be minimal with predicted price increases ranging from 0.14 percent to 0.47 percent for individual products. Estimated domestic production decreases resulting from the proposed rule range from 0.12 percent to 0.34 percent for all oil and meal products.

Revenues for the industry or the value of domestic shipments are expected to increase 0.10 percent. This increase in industry revenues results because the price elasticity of demand for vegetable oil and meal products is inelastic. For products with inelastic demand, a price increase leads to increases in revenues for the affected industry. Individual facilities within the industry may experience revenue increases or decreases, depending on their costs of production, but on average the industry revenues are anticipated to increase slightly with the proposed rule. No facilities are expected to close as a result of the proposed rule. Labor market impacts and international trade impacts are anticipated to be minimal also. More detailed information concerning the economic impacts of the proposed solvent extraction for vegetable oil production NESHAP can be found in the report entitled "Economic Analysis of Air Pollution Regulations: Vegetable Oil Industry" (Docket No. A–97–59).

XII. What Are the Administrative Requirements for This Rule?

A. Executive Order 12866, Significant Regulatory Action

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed rule. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed rule.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from its Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This is because the proposed rule applies to affected sources in the vegetable oil production industry, not to States or local governments. Nor will State law be preempted, or any mandates be imposed on States or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule. The EPA notes, however, that although not required to do so by this Executive Order (or otherwise) it did consult with State governments during development of this proposed rule.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. No known vegetable oil production facility is located within the jurisdiction of any tribal government. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

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and reasonably feasible alternatives considered by the Agency.

This rule is not "economically significant" as defined under Executive Order 12866. Further, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it establishes an environmental standard based on available technology rather than reduction of health risk. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, this rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of this proposed rule for any 1 year has been estimated to be less than $15 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed solvent extraction for vegetable oil production NESHAP will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For this regulation, the impacted small entities are businesses, and the Small Business Administration (SBA) defines the criteria used to designate a business as small. The relevant small business criteria are shown below.

TABLE 2.—AFFECTED INDUSTRY CLASSIFICATION CODES AND SMALL BUSINESS CRITERIA FOR THE SOLVENT EXTRACTION FOR VEGETABLE OIL PRODUCTION NESHAP

SIC	NAICS	Small business criteria (by SIC)
2046—Wet Corn Milling	311221—Wet Corn Milling	Fewer than 750 employees.
2041—Flour and Other Grain Mill Products	311221—Wet Corn Milling	Fewer than 500 employees.
2074—Cottonseed Oil Mills	311223—Other Oilseed Processing	Fewer than 500 employees.
2075—Soybean Oil Mills	311222—Soybean Processing	Fewer than 500 employees.
2076—Vegetable Oil Mills	311223—Other Oilseed Processing	Fewer than 1,000 employees.

Based upon these criteria, thirteen companies operating oilseed processing facilities are small businesses. These small businesses operated 16 vegetable oil processing facilities or 15 percent of the solvent extraction facilities in operation during 1995. Twelve of these 17 facilities were cottonseed processing mills indicating that 50 percent of the 25 cottonseed processing facilities operating in 1995 were operated by small businesses.

The EPA analyzed the potential impact of the proposed rule on these small entities. The EPA calculated the ratio of estimated annualized emission control costs relative to baseline 1995 sales revenue for each small company expected to be impacted by the proposed rule. While the CSR has different significance for different market situations, it is a good rough gauge of potential impact. If costs for the individual firm (or group of firms) are completely passed on to the purchasers of the good(s) being produced, the ratio is an estimate of the price increase (in percentage form after multiplying the ratio by 100). If costs are completely absorbed by the producer, this ratio is an estimate of the decrease in pretax profits (in percentage form after multiplying the ratio by 100). The distribution of cost to sales ratios across the whole market, the competitiveness of the market, and profit to sales ratios are among the obvious factors that may influence the significance of any particular cost to sales ratio for an individual facility. The mean or average CSR for small companies affected by the proposed rule is 0.29 percent, with

range of CSR from a low of 0.04 percent to a high estimate of 0.86 percent. As a result of the increased costs of emission controls, these firms will either likely increase the price of their products in response to a market change in price, will absorb the cost increase with no price increase, or will respond with a combination of these responses. Since the estimated costs as a percentage of sales is relatively minimal for the affected small oilseed processing companies, it is anticipated that the proposed rule will not have a significant impact on the affected companies' profitability.

Many cottonseed processing facilities are owned by small businesses. Nine of the 25 cottonseed processing facilities have ceased operation or are currently dormant subsequent to the baseline year of 1995. These factors prompted an additional analysis to determine whether cottonseed processing facilities will experience significant economic impacts as a result of the proposed rule. For this analysis, the estimated costs of emission controls for an individual facility were compared to the estimated 1995 sales revenue for that facility to estimate facility-specific cost to sales ratios. A CSR exceeding 1 percent was determined to be an indicator of the potential for a significant economic impact for cottonseed processing facilities. For the eight cottonseed processing facilities currently operating that are owned by small businesses, the average CSR is 0.39 percent with a high-low range of 0.08 to 0.86 percent. These estimated costs as a percent of sales are less than 1 percent indicating that significant economic impacts are not likely for the cottonseed facilities owned by small businesses as a result of the proposed rule. Thus, EPA has concluded that this proposed rule will not have a significant impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1947–01) and a copy may be obtained from Sandy Farmer by mail at the U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue NW., Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The total 3-year burden of monitoring, recordkeeping, and reporting for this collection is estimated at 30,275 labor hours, and the annual average burden is 10,092 labor hours for the affected facilities. There are no required capital costs for the proposed solvent extraction for vegetable oil production NESHAP. This estimate includes initial notification(s), plan for demonstrating compliance, SSM plan, notification of compliance status, monthly inventory recordkeeping, monthly determination of the compliance ratio, annual compliance certifications, deviation notification reports, periodic SSM reports, and immediate SSM reports for each of the 106 existing sources and one new source per year from proposal.

Burden means the total time, effort, or financial resources people spend to generate, maintain, keep, or disclose to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems to collect, validate, and verify information; process, maintain, disclose, and provide information; adjust ways to comply with any previously applicable instructions and requirements; train people to respond to a collection of information; search data sources; collect and review information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are in 40 CFR part 9 and 48 CFR chapter 15.

H. National Technology Transfer and Advancement Act of 1995

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Publication L. No. 104–113), all Federal agencies are required to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the EPA conducted a search for EPA's Method 311 (Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph) and found no candidate voluntary consensus standards for use in identifying n-hexane. This proposal references the National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process (Subpart SS). Since there are no new technical standard requirements resulting from specifying Subpart SS in this rule, and no candidate consensus standards were identified for EPA Method 311 (n-hexane) in this proposal, EPA is not proposing/adopting any voluntary consensus standards in this rulemaking.

EPA takes comment on proposed compliance demonstration requirements proposed in this rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commentors should also explain why this regulation should adopt these VCS's in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR Part 63, Appendix A was used).

Section 63.2854(b)(1) of the proposed standard lists EPA Method 311. EPA Method 311 has been used by States and industry for approximately five years. Nevertheless, under § 63.7(f) of Subpart A of this part, the proposal allows any State or source to apply to EPA for permission to use an alternative method in lieu of EPA Method 311 listed in § 63.2854(b)(1).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations,

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Reporting and recordkeeping requirements.

Dated: May 12, 2000.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart GGGG to read as follows:

Subpart GGGG—National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production

Sec.

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Subpart GGGG—National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production

What This Subpart Covers

§ 63.2830 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) emitted during vegetable oil production. These standards limit HAP emissions from specified vegetable oil production processes. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.2831 Where can I find definitions of key words used in this subpart?

You can find definitions of key words used in this subpart in the sources listed in paragraphs (a) through (c) of this section:

(a) The Clean Air Act, section 112(a).

(b) The NESHAP General Provisions in § 63.2.

(c) In § 63.2872 of this subpart.

§ 63.2832 Am I subject to this subpart?

(a) You are an affected source subject to this subpart if you meet all of the criteria listed in paragraphs (a)(1) and (a)(2) of this section:

(1) You own or operate a vegetable oil production process that is a major source of HAP emissions or is collocated within a plant site with other sources that are individually or collectively a major source of HAP emissions.

(i) A *vegetable oil production process* is defined in § 63.2872. In general, it is the collection of continuous process equipment and activities that produce crude vegetable oil and meal products by removing oil from oilseeds listed in Table 1 in § 63.2840 through direct contact with an organic solvent, such as a hexane isomer blend.

(ii) A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

(2) Your vegetable oil production process processes any combination of eight types of oilseeds listed in paragraphs (a)(2)(i) through (viii) of this section:

(i) Corn germ;

(ii) Cottonseed;

(iii) Flax;

(iv) Peanut;

(v) Rapeseed (for example, canola);

(vi) Safflower;

(vii) Soybean; and

(viii) Sunflower.

(b) You are not subject to this subpart if your vegetable oil production process meets any of the criteria listed in paragraphs (b)(1) through (3) of this section:

(1) It uses only mechanical extraction techniques that use no organic solvent to remove oil from a listed oilseed.

(2) It uses only batch solvent extraction and batch desolventizing equipment.

(3) It processes only agricultural products that are not listed oilseeds as defined in § 63.2872.

§ 63.2833 Is my source categorized as existing or new?

(a) This subpart applies to each existing and new affected source. You must categorize your vegetable oil production process as either an existing or new source in accordance with the criteria in Table 1 of this section, as follows:

TABLE 1 OF § 63.2833.—CATEGORIZING YOUR SOURCE AS EXISTING OR NEW

If your affected source . . .	And if . . .	Then your affected source . . .
1. Was constructed or began construction before May 26, 2000.	reconstruction has not occurred	is an existing source.
2. Began reconstruction, as defined in § 63.2, on or after May 26, 2000.	reconstruction was part of a scheduled plan to comply with the existing source requirements of this subpart and reconstruction was completed no later than 3 years after the effective date of this subpart.	remains an existing source.
3. Began a significant modification, as defined in § 63.2872, at any time on an existing source.	the modification does not constitute reconstruction.	remains an existing source.
4. Began a significant modification, as defined in § 63.2872, at any time on a new source.	the modification does not constitute reconstruction.	remains a new source.
5. Began reconstruction on or after May 26, 2000.	reconstruction was completed later than 3 years after the effective date of this subpart.	is a new source.
6. Began construction on or after May 26, 2000.		is a new source.

(b) *Reconstruction of a source.* Any affected source is reconstructed if components are replaced so that the criteria in the definition of *reconstruction* in § 63.2 are satisfied. In general, a vegetable oil production process is reconstructed if the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost for constructing a new vegetable oil production process, and it is technically and economically feasible for the reconstructed source to meet the relevant new source standard established in this subpart. The effect of reconstruction on the categorization of your existing and new affected source is described in paragraphs (b)(1) and (b)(2) of this section:

(1) After reconstruction of an existing source, the affected source is recategorized as a new source and becomes subject to the new source requirements of this subpart.

(2) After reconstruction of a new source, the affected source remains categorized as a new source and remains subject to the new source requirements of this subpart.

(c) *Significant modification of a source.* A significant modification to an affected source is a term specific to this subpart and is defined in § 63.2872.

(1) In general, a significant modification to your source consists of adding new equipment or the modification of existing equipment within the affected source that significantly affects solvent losses from the affected source. Examples include adding or replacing extractors, desolventizer-toasters (conventional and specialty), and meal dryer-coolers. All other significant modifications must meet the criteria listed in paragraphs (c)(1)(i) and (1) (ii) of this section:

(i) The fixed capital cost of the modification represents a significant percentage of the fixed capital cost of building a comparable new vegetable oil production process.

(ii) It does not constitute reconstruction as defined in § 63.2.

(2) A significant modification has no effect on the categorization of your source as existing and new. An existing source remains categorized as an existing source and subject to the existing source requirements of this subpart. A new source remains categorized as a new source and subject to the new source requirements of this subpart.

(d) Changes in the type of oilseed processed by your affected source does not affect the categorization of your source as new or existing. Recategorizing an affected source from existing to new occurs only when you add or modify process equipment within the source which meets the definition of *reconstruction*.

§ 63.2834 When do I have to comply with the standards in this subpart?

You must comply with the standards in accordance with one of the schedules in Table 1 of this section, as follows:

TABLE 1 OF § 63.2834.—COMPLIANCE DATES FOR EXISTING AND NEW SOURCES

If your affected source is categorized as . . .	And if . . .	Then your compliance date is . . .
1. An existing source		3 years after [the effective date of this subpart].
2. A new source	you startup your affected source before [the effective date of this subpart].	[the effective date of this subpart].
3. A new source	you startup your affected source on or after [the effective date of this subpart].	your startup date.

Standards

§ 63.2840 What emission requirements must I meet?

(a)(1) The emission requirements limit the number of gallons of HAP lost per ton of listed oilseeds processed. For each operating month, you must calculate a compliance ratio which compares your actual HAP loss to your allowable HAP loss for the previous 12 operating months as shown in Equation 1 of this section. An operating month, as defined in § 63.2872, is any calendar month in which a source processes a listed oilseed, excluding any entire calendar month in which the source operated under an initial startup period subject to § 63.2850(c)(2) or (d)(2) or a malfunction period subject to § 63.2850(e)(2). Equation 1 of this section follows:

$$\text{Compliance Ratio} = \frac{\text{Actual HAP Loss}}{\text{Allowable HAP Loss}} \qquad \text{(Eq. 1)}$$

(2) Equation 1 of this section can also be expressed as a function of total solvent loss as show in Equation 2 of the section, as follows:

$$\text{Compliance Ratio} = \frac{f \cdot \text{Actual Solvent Loss}}{0.64 \cdot \sum_{i=1}^{n}((\text{Oilseed})_i \cdot (\text{SLF})_i)} \quad \text{(Eq. 2)}$$

Where:

f = The weighted average volume fraction of HAP in solvent received during the previous 12 operating months, as determined in § 63.2854, dimensionless.

0.64 = The average volume fraction of HAP in solvent in the baseline performance data, dimensionless.

Actual Solvent Loss = Gallons of actual solvent loss during previous 12 operating months, as determined in § 63.2853.

Oilseed = Tons of each oilseed type "i" processed during the previous 12 operating months, as shown in § 63.2855.

SLF = The corresponding solvent loss factor (gal/ton) for oilseed "i" listed in Table 1 of this section, as follows:

TABLE 1 OF § 63.2840.—OILSEED SOLVENT LOSS FACTORS FOR DETERMINING ALLOWABLE HAP LOSS

Type of oilseed process	A source that . . .	Oilseed solvent loss factor (gal/ton)	
		Existing sources	New sources
1. Corn Germ, Wet Milling	processes corn germ that has been separated from other corn components using a "wet" process of centrifuging a slurry steeped in a dilute sulfurous acid solution.	0.4	0.3
2. Corn Germ, Dry Milling	processes corn germ that has been separated from the other corn components using a "dry" process of mechanical chafing and air sifting.	0.7	0.7
3. Cottonseed, Large	processes 120,000 tons or more of a combination of cottonseed and other listed oilseeds during all normal operating periods in a 12 operating month period.	0.5	0.4
4. Cottonseed, Small	processes less than 120,000 tons of a combination of cottonseed and other listed oilseeds during all normal operating periods in a 12 operating month period.	0.7	0.4
5. Flax	processes flax	0.6	0.6
6. Peanuts	processes peanuts	1.2	0.7
7. Rapeseed	processes rapeseed	0.7	0.3
8. Safflower	processes safflower	0.7	0.7
9. Soybean, Conventional	uses a conventional style desolventizer to produce crude soybean oil products and soybean animal feed products.	0.2	0.2
10. Soybean, Specialty	uses a special style desolventizer to produce soybean meal products for human and animal consumption.	1.7	1.5
11. Soybean, Combination Plant with Low Specialty Production.	processes soybeans in both specialty and conventional desolventizers and the quantity of soybeans processed in specialty desolventizers during normal operating periods is less than 3.3 percent of total soybeans processed during all normal operating periods in a 12 operating month period. The corresponding solvent loss factor is an overall value and applies to the total quantity of soybeans processed.	0.25	0.25
12. Sunflower	processes sunflower	0.4	0.3

(b) When your source has processed listed oilseed for 12 operating months, calculate the compliance ratio by the end of each calendar month following an operating month using Equation 2 of this section. When calculating your compliance ratio, consider the conditions and exclusions in paragraphs (b)(1) through (6) of this section:

(1) If your source processes any quantity of listed oilseeds in a calendar month and the source is not operating under an initial startup period or malfunction period subject to § 63.2850, then you must categorize the month as an operating month, as defined in § 63.2872.

(2) The 12-month compliance ratio may include operating months occurring prior to a source shutdown and operating months that follow after the source resumes operation.

(3) If your source shuts down and processes no listed oilseed for an entire calendar month, then you must categorize the month as a nonoperating month, as defined in § 63.2872. Exclude any nonoperating months from the compliance ratio determination.

(4) If your source is subject to an initial startup period as defined in § 63.2872, exclude from the compliance ratio determination any solvent and oilseed information recorded for the initial startup period.

(5) If your source is subject to a malfunction period as defined in § 63.2872, exclude from the compliance ratio determination any solvent and oilseed information recorded for the malfunction period.

(6) For sources processing cottonseed or specialty soybean, the solvent loss factor you use to determine the compliance ratio may change each operating month depending on the tons of oilseed processed during all normal operating periods in a 12 operating month period.

(c) If the compliance ratio is less than or equal to 1.00, your source was in compliance with the HAP emission requirements for the previous operating month.

(d) To determine the compliance ratio in Equation 2 of this section, you must select the appropriate oilseed solvent loss factor from Table 1 of this section. First, determine whether your source is new or existing using Table 1 in § 63.2833. Then, under the appropriate existing or new source column, select the oilseed solvent loss factor that corresponds to each type oilseed or process operation for each operating month.

Compliance Requirements

§ 63.2850 How do I comply with the HAP emission standards?

(a) *General requirements.* The requirements in paragraphs (a)(1)(i) through (iv) of this section apply to all affected sources:

(1) Submit the necessary notifications in accordance with § 63.2860, which include:

(i) Initial notifications for existing sources.

(ii) Initial notifications for new and reconstructed sources.

(iii) Initial notifications for significant modifications to existing or new sources.

(iv) Notification of compliance status.

(2) Develop and implement a plan for demonstrating compliance in accordance with § 63.2851.

(3) Develop a written startup, shutdown and malfunction (SSM) plan in accordance with the provisions in § 63.2852.

(4) Maintain all the necessary records you have used to demonstrate compliance with this subpart in accordance with § 63.2862.

(5) Submit the reports in paragraphs (a)(5)(i) through (iii) of this section:

(i) Annual compliance certifications in accordance with § 63.2861(a).

(ii) Periodic startup, shutdown, and malfunction reports in accordance with § 63.2861(c).

(iii) Immediate startup, shutdown, and malfunction reports in accordance with § 63.2861(d).

(6) Submit all notifications and reports and maintain all records required by the General Provisions for performance testing if you add a control device that destroys solvent.

(b) *Existing sources under normal operation.* You must meet all of the requirements listed in paragraph (a) of this section and Table 1 of this section for sources under normal operation, and the schedules for demonstrating compliance for existing sources under normal operation in Table 2 of this section.

(c) *New sources.* Your new source, including a source that is categorized as new due to reconstruction, must meet the requirements associated with one of two compliance options. Within 15 days of the startup date, you must choose to comply with one of the options listed in paragraph (c)(1) or (c)(2) of this section:

(1) *Normal operation.* Upon startup of your new source, you must meet all of the requirements listed in § 63.2850(a) and Table 1 of this section for sources under normal operation, and the schedules for demonstrating compliance for new sources under normal operation in Table 2 of this section.

(2) *Initial startup period.* For up to 6 calendar months after the startup date of your new source, you must meet all of the requirements listed in paragraph (a) of this section and Table 1 of this section for sources operating under an initial startup period, and the schedules for demonstrating compliance for new sources operating under an initial startup period in Table 2 of this section. After a maximum of 6 calendar months, your new source must then meet all of the requirements listed in Table 1 of this section for sources under normal operation.

(d) *Existing or new sources that have been significantly modified.* Your existing or new source that has been significantly modified must meet the requirements associated with one of two compliance options. Within 15 days of the modified source startup date, you must choose to comply with one of the options listed in paragraph (d)(1) or (d)(2) of this section:

(1) *Normal operation.* Upon startup of your significantly modified existing or new source, you must meet all of the requirements listed in paragraph (a) and Table 1 of this section for sources under normal operation, and the schedules for demonstrating compliance for an existing or new source that has been significantly modified in Table 2 of this section.

(2) *Initial startup period.* For up to 3 calendar months after the startup date of your significantly modified existing or new source, you must meet all of the requirements listed in paragraph (a) and Table 1 of this section for sources operating under an initial startup period, and the schedules for demonstrating compliance for a significantly modified existing or new source operating under an initial startup period in Table 2 of this section. After a maximum of 3 calendar months, your new or existing source must meet all of the requirements listed in Table 1 of this section for sources under normal operation.

(e) *Existing or new sources experiencing a malfunction.* A *malfunction* is defined in § 63.2. In general, it means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment or process equipment to function in a usual manner. If your existing or new source experiences an unscheduled shutdown as a result of a malfunction, continues to operate during a malfunction (including the period reasonably necessary to correct the malfunction), or starts up after a shutdown resulting from a malfunction, then you must meet the requirements associated with one of two compliance options. Routine or scheduled process startups and shutdowns resulting from, but not limited to, market demands, maintenance activities, and switching types of oilseed processed, are not startups or shutdowns resulting from a malfunction and, therefore, do not qualify for this provision. Within 15 days of the beginning date of the malfunction, you must choose to comply with one of the options listed in paragraphs (e)(1) through (e)(2) of this section:

(1) *Normal operation.* Your source must meet all of the requirements listed in paragraph (a) of this section and one of the options listed in paragraphs (e)(1)(i) through (iii) of this section:

(i) Existing source normal operation requirements in paragraph (b) of this section.

(ii) New source normal operation requirements in paragraph (c)(1) of this section.

(iii) Normal operation requirements for sources that have been significantly modified in paragraph (d)(1) of this section. Table 1 of this section follows:

TABLE 1 OF § 63.2850.—REQUIREMENTS FOR COMPLIANCE WITH HAP EMISSION STANDARDS

Are you required to . . .	For periods of normal operation?	For initial startup periods subject to § 63.28590(c)(2) or (d)(2)?	For malfunction periods subject to § 63.2850(e)(2)?
1. Operate and maintain your source in accordance with your SSM plan as described in § 63.2852?	No, your source is not subject to the SSM plan, but rather the HAP emission limits of this standard.	Yes, throughout the entire initial startup period.	Yes, throughout the entire malfunction period.
2. Determine and record the extraction solvent loss in gallons from your source?	Yes, as described in § 63.2853.	Yes, as described in § 63.2862(e) ..	Yes, as described in § 63.2862(e).

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TABLE 1 OF § 63.2850.—REQUIREMENTS FOR COMPLIANCE WITH HAP EMISSION STANDARDS—Continued

Are you required to . . .	For periods of normal operation?	For initial startup periods subject to § 63.28590(c)(2) or (d)(2)?	For malfunction periods subject to § 63.2850(e)(2)?
3. Record the volume fraction of HAP present at greater than 1 percent by volume and gallons of extraction solvent in shipment received?	Yes	Yes	Yes.
4. Determine and record the tons of each oilseed type processed by your source?	Yes, as described in § 63.2855.	No	No.
5. Determine the weighted average volume fraction of HAP in extraction solvent received as described in § 63.2854 by the end of the following calendar month?	Yes	No. Except for solvent received by a new or reconstructed source commencing operation under an initial startup period, the HAP volume fraction in any solvent received during an initial startup period is included in the weighted average HAP determination for the next operating month.	No, the HAP volume fraction in any solvent received during a malfunction period is included in the weighted average HAP determination for the next operating month.
6. Determine and record the actual solvent loss, weighted average volume fraction HAP, oilseed processed and compliance ratio for each 12 operating month period as described in § 63.2840 by the end of the following calendar month?	Yes	No, these requirements are not applicable because your source is not required to determine the compliance ratio with data recorded for an initial startup period.	No, these requirements are not applicable because your source is not required to determine the compliance ratio with data recorded for a malfunction period.
7. Submit a Notification of Compliance Status or Annual Compliance Certification as appropriate?	Yes, as described in §§ 63.2860(d) and 63.2861(a).	No. However, you may be required to submit an annual compliance certification for previous operating months, if the deadline for the annual compliance certification happens to occur during the initial startup period.	No. However, you may be required to submit an annual compliance certification for previous operating months, if the deadline for the annual compliance certification happens to occur during the malfunction period.
8. Submit a Deviation Notification Report by the end of the calendar month following each operating month in which the compliance ratio exceeds 1.00 as described in § 63.2861(b)?	Yes	No, these requirements are not applicable because your source is not required to determine the compliance ratio with data recorded for an initial startup period.	No, these requirements are not applicable because your source is not required to determine the compliance ratio with data recorded for a malfunction period.
9. Submit a Periodic SSM Report as described in § 63.2861(c)?	No, a SSM activity is not categorized as normal operation.	Yes	Yes.
10. Submit an Immediate SSM Report as described in § 63.2861(d)?	No, a SSM activity is not categorized as normal operation.	Yes, only if your source does not follow the SSM plan.	Yes, only if your source does not follow the SSM plan.

TABLE 2 OF § 63.2850.—SCHEDULES FOR DEMONSTRATING COMPLIANCE UNDER VARIOUS SOURCE OPERATING MODES

If your source is . .	and is operating under . . .	then your record-keeping schedule . . .	You must determine your first compliance ratio by the end of the calendar month following . . .	Base your first compliance ratio on information recorded . . .
1. Existing	Normal operation,	Begins on the compliance date.	The first 12 operating months after the compliance date.	During the first 12 operating months after the compliance date.
2. New	Normal operation,	Begins on the startup date of your new source.	The first 12 operating months after the startup date of the new source.	During the first 12 operating months after the startup date of the new source.
3.	An initial startup period,.	Begins on the startup date of your new source.	The first 12 operating months after termination of the initial startup period, which can last for up to 6 months.	During the first 12 operating months after the initial startup period, which can last for up to 6 months.
4. Existing or new that has been significantly modified.	Normal operation,	Resumes on the startup date of the modified source.	The first operating month after the startup date of the modified source.	During the previous 11 operating months prior to the significant modification and the first operating month following the initial startup date of the source.

TABLE 2 OF § 63.2850.—SCHEDULES FOR DEMONSTRATING COMPLIANCE UNDER VARIOUS SOURCE OPERATING MODES—Continued

If your source is. . .	and is operating under. . .	then your record-keeping schedule . . .	You must determine your first compliance ratio by the end of the calendar month following. . .	Base your first compliance ratio on information recorded. . .
5.	An initial startup period.	Resumes on the startup date of the modified source.	The first operating month after termination of the initial startup period, which can last up to 3 months.	During the 11 operating months before the significant modification and the first operating month after the initial startup period.

(2) *Malfunction period.* Throughout the malfunction period, you must meet all of the requirements listed in paragraph (a) of this section and Table 1 of this section for sources operating during a malfunction period. At the end of the malfunction period, your source must then meet all of the requirements listed in Table 1 of this section for sources under normal operation.

§ 63.2851 What is a plan for demonstrating compliance?

(a) You must develop and implement a written plan for demonstrating compliance that provides the detailed procedures you will follow to monitor and record data necessary for demonstrating compliance with this subpart. Procedures followed for quantifying solvent loss from the source and amount of oilseed processed vary from source to source because of site-specific factors such as equipment design characteristics and operating conditions. Typical procedures include one or more accurate measurement methods such as weigh scales, volumetric displacement, and material mass balances. Because the industry does not have a uniform set of procedures, you must develop and implement your own site-specific plan for demonstrating compliance before the compliance date for your source. You must also incorporate the plan for demonstrating compliance by reference in the source's title V permit and keep the plan on-site and readily available as long as the source is operational. If you make any changes to the plan for demonstrating compliance, then you must keep all previous versions of the plan and make them readily available for inspection for at least 5 years after each revision. The plan for demonstrating compliance must include the items in paragraphs (a)(1) through (a)(7) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the vegetable oil production process.

(3) Method of measurement. Provide a detailed description of all methods of measurement your source will use to determine your solvent losses, HAP content of solvent, and the tons of each type of oilseed processed.

(4) Measurement Frequency. Specify when each measurement will be made.

(5) Calculations. Provide examples of each calculation you will use to determine your compliance status. Include examples of how you will convert data measured with one parameter to other terms for use in compliance determination.

(6) Recordkeeping. Provide example logs of how data will be recorded.

(7) Quality assurance/quality control plan. Provide a plan to ensure that the data continue to meet compliance demonstration needs.

(b) The responsible agency of this subpart may require you to revise your plan for demonstrating compliance. The responsible agency may require reasonable revisions if the procedures lack detail, are inconsistent or do not accurately determine solvent loss, HAP content of the solvent, or the tons of oilseed processed.

§ 63.2852 What is a startup, shutdown, and malfunction plan?

You must develop a written startup, shutdown, and malfunction plan in accordance with § 63.6(e)(3) of the General Provisions and implement the plan, when applicable. You must complete the SSM plan before the compliance date for your source. You must also incorporate the SSM plan by reference in your source's title V permit and keep the SSM plan on-site and readily available as long as the source is operational. The SSM plan provides detailed procedures for operating and maintaining your source to minimize emissions during a qualifying SSM event for which the source chooses the § 63.2850(e)(2) malfunction period, or the § 63.2850(c)(2) or § 63.2850(d)(2) initial startup period. The SSM plan must specify a program of corrective action for malfunctioning process and air pollution control equipment and reflect the best practices now in use by the industry to minimize emissions. Some or all of the procedures may come from plans you developed for other purposes such as a Standard Operating Procedure manual or an Occupational Safety and Health Administration Process Safety Management plan. To qualify as a SSM plan, other such plans must meet all the applicable requirements of this subpart.

§ 63.2853 How do I determine the actual solvent loss?

By the end of each calendar month following an operating month, you must determine the total solvent loss in gallons for the previous operating month. The total solvent loss for an operating month includes all solvent losses that occur during normal operating periods within the operating month. If you have determined solvent losses for 12 or more operating months, then you must also determine the 12 operating months rolling sum of actual solvent loss in gallons by summing the monthly actual solvent loss for the previous 12 operating months. The 12 operating months rolling sum of solvent loss is the "actual solvent loss," which is used to calculate your compliance ratio as described in § 63.2840.

(a) To determine the actual solvent loss from your source, follow the procedures in your plan for demonstrating compliance to determine the items in paragraphs (a)(1) through (a)(5) of this section:

(1) *The dates that define each operating status period during a calendar month.* The dates that define each operating status period include the beginning date of each calendar month and the date of any change in the source operating status. If the source maintains the same operating status during an entire calendar month, these dates are the beginning and ending dates of the calendar month.

(2) *Source operating status.* You must categorize the operating status of your source for each recorded time interval in accordance with criteria in Table 1 of this section, as follows:

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TABLE 1 OF § 63.2853.—CATEGORIZING YOUR SOURCE OPERATING STATUS

If during a recorded time interval . . .	then your source operating status is . . .
i. your source processes any amount of listed oilseed and your source is not operating under an initial startup period or a malfunction period subject to § 63.2850(c)(2), § 63.2850(d)(2), or § 63.2850(e)(2).	a normal operating period.
ii. your source processes no agricultural product and your source is not operating under an initial startup period or malfunction period subject to § 63.2850(c)(2), § 63.2850(d)(2), or § 63.2850(e)(2).	a nonoperating period.
iii. you choose to operate your source under an initial startup period subject to § 63.2850(c)(2) or § 63.2850(d)(2)	an initial startup period.
iv. you choose to operate your source under a malfunction period subject to § 63.2850(e)(2)	a malfunction period.
v. your source processes agricultural products not defined as listed oilseed	an exempt period.

(3) *Measuring the beginning and ending solvent inventory.* You are required to measure and record the solvent inventory on the beginning and ending dates of each normal operating period that occurs during an operating month. An operating month is any calendar month with at least one normal operating period. You must consistently follow the procedures described in your plan for demonstrating compliance, as specified in § 63.2851, to determine the extraction solvent inventory, and maintain readily available records of the actual solvent loss inventory, as described in § 63.2862(c)(1). In general, you must measure and record the solvent inventory only when the source is actively processing any type of agricultural product. When the source is not active, some or all of the solvent working capacity is transferred to solvent storage tanks which can artificially inflate the solvent inventory.

(4) *Gallons of extraction solvent received.* Record the total gallons of extraction solvent received in each shipment. For most processes, the gallons of solvent received represents purchases of delivered solvent added to the solvent storage inventory. However, if your process refines additional vegetable oil from off-site sources, recovers solvent from the off-site oil, and adds it to the on-site solvent inventory, then you must determine the quantity of recovered solvent and include it in the gallons of extraction solvent received.

(5) *Solvent inventory adjustments.* In some situations, solvent losses determined directly from the measured solvent inventory and quantity of solvent received is not an accurate estimate of the "actual solvent loss" for use in determining compliance ratios. In such cases, you may adjust the total solvent loss for each normal operating period as long as you provide a reasonable justification for the adjustment. Situations that may require adjustments of the total solvent loss include, but are not limited to, situations in paragraphs (a) (5)(i) and (5)(ii) of this section:

(i) Solvent destroyed in a control device. You may use a control device to reduce solvent emissions to meet the emission standard. The use of a control device does not alter the emission limit for the source. If you use a control device that reduces solvent emissions through destruction of the solvent instead of recovery, then determine the gallons of solvent entering the control device and destroyed there during each normal operating period. All solvent destroyed in a control device during a normal operating period can be subtracted from the total solvent loss. Examples of destructive emission control devices include catalytic incinerators, boilers, or flares. Identify and describe in your plan for demonstrating compliance each type of reasonable and sound measurement method that you use to quantify the gallons of solvent entering and exiting the control device and to determine the destruction efficiency of the control device. You may use design evaluations to document the gallons of solvent destroyed or removed by the control device instead of performance testing under § 63.7 of the General Provisions. The design evaluations must be based on the procedures and options described in §§ 63.985(b)(1)(i) (A) through (C) or § 63.11, as appropriate. All data, assumptions, and procedures used in such evaluations must be documented and must be available for inspection. If you use performance testing to determine solvent flow rate to the control device or destruction efficiency of the device, follow the procedures as outlined in § 63.997(e)(1) and (2). Instead of periodic performance testing to demonstrate continued good operation of the control device, you may develop a monitoring plan, following the procedures outlined in § 63.988(c) and using operational parametric measurement devices such as fan parameters, percent measurements of lower explosive limits (LELs), and combustion temperature.

(ii) Changes in solvent working capacity. In records you keep on-site, document any process modifications resulting in changes to the solvent working capacity in your vegetable oil production process. Solvent working capacity is defined in § 63.2872. In general, solvent working capacity is the volume of solvent normally retained in solvent recovery equipment such as the extractor, desolventizer-toaster, solvent storage, working tanks, mineral oil absorber, condensers, and oil/solvent distillation system. If the change occurs during a normal operating period, you must determine the difference in working solvent volume and make a one-time documented adjustment to the solvent inventory.

(b) Use Equation 1 of this section to determine the actual solvent loss occurring from your affected source for all normal operating periods recorded within a calendar month. Equation 1 of this section follows:

$$\text{Monthly Actual Solvent Loss (gal)} = \sum_{i=1}^{n}\left(SOLV_B - SOLV_E + SOLV_R \pm SOLV_A\right)_i \qquad \text{(Eq. 1)}$$

Where:

$SOLV_B$ = Gallons of solvent in the inventory at the beginning of normal operating period "i" as determined in paragraph (a)(3) of this section.

$SOLV_E$ = Gallons of solvent in the inventory at the end of normal operating period "i" as determined in paragraph (a)(3) of this section.

$SOLV_R$ = Gallons of solvent received between the beginning and ending inventory dates of normal operating period "i" as determined in paragraph (a)(4) of this section.

$SOLV_A$ = Gallons of solvent added or removed from the extraction solvent inventory during normal operating period "i" as determined in paragraph (a)(5) of this section.

n = Number of normal operating periods in a calendar month.

(c) The actual solvent loss is the total solvent losses during normal operating periods for the previous 12 operating months. You determine your actual solvent loss by summing the monthly actual solvent losses for the previous 12 operating months. You must record the actual solvent loss by the end of each calendar month following an operating month. Use the actual solvent loss in Equation 2 in § 63.2840 to determine the compliance ratio. Actual solvent loss does not include losses that occur during operating status periods listed in paragraphs (c)(1) through (4) of this section. If any one of these four operating status periods span an entire month, then the month is treated as nonoperating and there is no compliance ratio determination.

(1) Nonoperating periods as described in paragraph (a)(2)(ii) of this section.

(2) Initial startup periods as described in § 63.2850(c)(2) or § 63.2850(d)(2).

(3) Malfunction periods as described in § 63.2850(e)(2).

(4) Exempt operation periods as described in paragraph (a)(2)(v) of this section.

§ 63.2854 How do I determine the weighted average volume fraction of HAP in the actual solvent loss?

(a) This section describes the information and procedures you must use to determine the weighted average volume fraction of HAP in extraction solvent received for use in your vegetable oil production process. By the end of each calendar month following an operating month, determine the weighted average volume fraction of HAP in extraction solvent received since the end of the previous operating month. If you have determined the monthly weighted average volume fraction of HAP in solvent received for 12 or more operating months, then also determine an overall weighted average volume fraction of HAP in solvent received for the previous 12 operating months. Use the volume fraction of HAP determined as a 12 operating months weighted average in Equation 2 in § 63.2840 to determine the compliance ratio.

(b) To determine the volume fraction of HAP in the extraction solvent determined as a 12 operating months weighted average, you must comply with paragraphs (b)(1) through (3) of this section:

(1) Record the volume fraction of each HAP comprising more than 1 percent by volume of the solvent in each delivery of solvent, including solvent recovered from off-site oil. To determine the HAP content of the materials used in your operations, the reference method is EPA Method 311 of appendix A of this part. You may use EPA Method 311, an approved alternative method, or any other reasonable means for determining the HAP content. Other reasonable means of determining HAP content include, but are not limited to, a material safety data sheet (MSDS) or a manufacturer's hazardous air pollutant data sheet. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 311 (or an approved alternative method) to confirm the reported HAP content. However, if the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

(2) Determine the weighted average volume fraction of HAP in the extraction solvent each operating month. The weighted average volume fraction of HAP for an operating month includes all solvent received since the end of the last operating month, regardless of the operating status at the time of the delivery. Determine the monthly weighted average volume fraction of HAP by summing the products of the HAP volume fraction of each delivery and the volume of each delivery and dividing the sum by the total volume of all deliveries as expressed in Equation 1 of this section. Record the result by the end of each calendar month following an operating month. Equation 1 of this section follows:

$$\text{Monthly Weighted Average HAP Content of Extraction Solvent (volume fraction)} = \frac{\sum_{i=1}^{n}\left(\text{Received}_i * \text{Content}_i\right)}{\text{Total Received}} \qquad \text{(Eq. 1)}$$

Where:

$Received_i$ = Gallons of extraction solvent received in delivery "i."

$Content_i$ = The volume fraction of HAP in extraction solvent delivery "i."

Total Received = Total gallons of extraction solvent received since the end of the previous operating month.

n = Number of extraction solvent deliveries since the end of the previous operating month.

(3) Determine the volume fraction of HAP in your extraction solvent as a 12 operating months weighted average. When your source has processed oilseed for 12 operating months, sum the products of the monthly weighted average HAP volume fraction and corresponding volume of solvent received, and divide the sum by the total volume of solvent received for the 12 operating months, as expressed by Equation 2 of this section. Record the result by the end of each calendar month following an operating month and use it in Equation 2 in § 63.2840 to determine the compliance ratio. Equation 2 of this section follows:

$$\text{12-Month Weighted Average of HAP Content in Solvent Received (volume fraction)} = \frac{\sum_{i=1}^{12}\left(\text{Received}_i * \text{Content}_i\right)}{\text{Total Received}} \qquad \text{(Eq. 2)}$$

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Where:

Received, = Gallons of extraction solvent received in operating month "i" as determined in accordance with § 63.2853(a)(4).

Content, = Average volume fraction of HAP in extraction solvent received in operating month "i" as determined in accordance with paragraph (b)(1) of this section.

Total Received = Total gallons of extraction solvent received during the previous 12 operating months.

§ 63.2855 How do I determine the quantity of oilseed processed?

By the end of each calendar month following an operating month, you must determine the tons of each listed oilseed processed for the operating month. The total oilseed processed for an operating month includes the total of each oilseed processed during all normal operating periods that occur within the operating month. If you have determined the tons of oilseed processed for 12 or more operating months, then you must also determine the 12 operating months rolling sum of each type oilseed processed by summing the tons of each type of oilseed processed for the previous 12 operating months. The 12 operating months rolling sum of each type of oilseed processed is used to calculate the compliance ratio as described in § 63.2840.

(a) To determine the tons of each type of oilseed processed at your source, follow the procedures in your plan for demonstrating compliance to determine the items in paragraphs (a)(1) through (5) of this section:

(1) *The dates that define each operating status period.* The dates that define each operating status period include the beginning date of each calendar month and the date of any change in the source operating status. The dates on each oilseed inventory log must be consistent with the dates recorded for the solvent inventory.

(2) *Source operating status.* You must categorize the source operation for each recorded time interval. The source operating status for each time interval recorded on the oilseed inventory for each type of oilseed must be consistent with the operating status recorded on the solvent inventory logs as described in § 63.2853(a)(2).

(3) *Measuring the beginning and ending inventory for each oilseed.* You are required to measure and record the oilseed inventory on the beginning and ending dates of each normal operating period that occurs during an operating month. An operating month is any calendar month with at least one normal operating period. You must consistently follow the procedures described in your plan for demonstrating compliance, as specified in § 63.2851, to determine the oilseed inventory, and maintain readily available records of the oilseed inventory as described by § 63.2862(c)(3).

(4) *Tons of each oilseed received.* Record the type of oilseed and tons of each shipment of oilseed received and added to your onsite storage.

(5) *Oilseed inventory adjustments.* In some situations, determining the quantity of oilseed processed directly from the measured oilseed inventory and quantity of oilseed received is not an accurate estimate of the tons of oilseed processed for use in determining compliance ratios. For example, spoiled and molded oilseed removed from storage but not processed by your source will result in an overestimate of the quantity of oilseed processed. In such cases, you must adjust the oilseed inventory and provide a justification for the adjustment. Situations that may require oilseed inventory adjustments include, but are not limited to, the situations listed in paragraphs (a)(5)(i) through (v) if this section:

(i) Oilseed that mold or otherwise become unsuitable for processing.

(ii) Oilseed you sell before it enters the processing operation.

(iii) Oilseed destroyed by an event such as a process malfunction, fire, or natural disaster.

(iv) Oilseed processed through operations prior to solvent extraction such as screening, dehulling, cracking, drying, and conditioning; but that are not routed to the solvent extractor for further processing.

(v) Periodic physical measurements of inventory. For example, some sources periodically empty oilseed storage silos to physically measure the current oilseed inventory. This periodic measurement procedure typically results in a small inventory correction. The correction factor, usually less than 1 percent, may be used to make an adjustment to the source's oilseed inventory that was estimated previously with indirect measurement techniques. To make this adjustment, your plan for demonstrating compliance must provide for such an adjustment.

(b) Use Equation 1 of this section to determine the quantity of each oilseed type processed at your affected source during normal operating periods recorded within a calendar month. Equation 1 of this section follows:

$$\text{Monthly Quantity of Each Oilseed Processed (tons)} = \sum_{n=1}^{n} (SEED_B - SEED_E + SEED_R \pm SEED_A) \quad \text{(Eq. 1)}$$

Where:

$SEED_B$ = Tons of oilseed in the inventory at the beginning of normal operating period "i" as determined in accordance with paragraph (a)(3) of this section.

$SEED_E$ = Tons of oilseed in the inventory at the end of normal operating period "i" as determined in accordance with paragraph (a)(3) of this section.

$SEED_R$ = Tons of oilseed received during normal operating period "i" as determined in accordance with paragraph (a)(4) of this section.

$SEED_A$ = Tons of oilseed added or removed from the oilseed inventory during normal operating period "i" as determined in accordance with paragraph (a)(5) of this section.

n = Number of normal operating periods in the calendar month during which this type oilseed was processed.

(c) The quantity of each oilseed processed is the total tons of each type of listed oilseed processed during normal operating periods in the previous 12 operating months. You determine the tons of each oilseed processed by summing the monthly quantity of each oilseed processed for each oilseed for the previous 12 operating months. You must record the 12 operating months quantity of each type of oilseed processed by the end of each calendar month following an operating month. Use the 12 operating months quantity of each type of oilseed processed to determine the compliance ratio as described in § 63.2840. The quantity of oilseed processed does not include oilseed processed during the operating status periods in paragraphs (c)(1) through (4) of this section. If any one of these four operating status periods span an entire calendar month, then the calendar month is treated as a nonoperating month and there is no compliance ratio determination.

(1) Nonoperating periods as described in § 63.2853 (a)(2)(ii).

(2) Initial startup periods as described in § 63.2850(c)(2) or (d)(2).

(3) Malfunction periods as described in § 63.2850(e)(2).

(4) Exempt operation periods as described in § 63.2853(a)(2)(v).

Notifications, Reports, and Records

§ 63.2860 What notifications must I submit and when?

You must submit the one-time notifications listed in paragraphs (a) through (d) of this section to the responsible agency:

(a) *Initial notification for existing sources.* For an existing source, submit an initial notification to the responsible agency of this subpart no later than 120 days after the effective date of this subpart. In the notification, include the items in paragraphs (a)(1) through (5) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the vegetable oil production process.

(3) Identification of the relevant standard, such as the vegetable oil production NESHAP in this subpart, and compliance date.

(4) A brief description of the source including the types of listed oilseeds processed, nominal operating capacity, and type of desolventizer(s) used.

(5) A statement designating the source as a major source of HAP or a demonstration that the source meets the definition of an area source. An area source is a source that is not a major source and is not collocated within a plant site with other sources that are individually or collectively a major source.

(b) *Initial notifications for new and reconstructed sources.* New or reconstructed sources must submit a series of notifications before, during, and after source construction per the schedule listed in § 63.9 of the General Provisions. The information requirements for the notifications are the same as those listed in the General Provisions with the exceptions listed in paragraphs (b)(1) and (b)(2) of this section:

(1) The application for approval of construction does not require the specific HAP emission data required in §§ 63.5(d)(1)(ii)(H), 63.5(d)(1)(iii), 63.5(d)(2) and 63.5(d)(3)(ii). The application for approval of construction would include, instead, a brief description of the source including the types of listed oilseeds processed, nominal operating capacity, and type of desolventizer(s) used.

(2) The notification of actual startup date must also include whether you have elected to operate under an initial startup period subject to § 63.2850(c)(2) and provide an estimate and justification for the anticipated duration of the initial startup period.

(c) *Significant modification notifications.* Any existing or new source that plans to undergo a significant modification as defined in § 63.2872 must submit two reports as described in paragraphs (c)(1) and (c)(2) of this section:

(1) *Initial notification.* You must submit an initial notification to the responsible agency of this subpart 30 days prior to initial startup of the significantly modified source. The initial notification must demonstrate that the proposed changes qualify as a significant modification. The initial notification must include the items in paragraphs (c)(1)(i) and (c)(1)(ii) of this section:

(i) The expected startup date of the modified source.

(ii) A description of the significant modification including a list of the equipment that will be replaced or modified. If the significant modification involves changes other than adding or replacing extractors, desolventizer-toasters (conventional and specialty), and meal dryer-coolers, then you must also include: the fixed capital cost of the new components expressed as a percentage of the fixed capital cost to build a comparable new vegetable oil production process, supporting documentation for the cost estimate, and documentation that the proposed changes will significantly affect solvent losses.

(2) *Notification of actual startup.* You must submit a notification of actual startup date within 15 days after initial startup of the modified source. The notification must include the items in paragraphs (c)(2)(i) through (iv) of this section:

(i) The initial startup date of the modified source.

(ii) An indication whether you have elected to operate under an initial startup period subject to § 63.2850(d)(2).

(iii) The anticipated duration of any initial startup period.

(iv) A justification for the anticipated duration of any initial startup period.

(d) *Notification of compliance status.* As an existing, new, or reconstructed source, you must submit a notification of compliance status report to the responsible agency no later than 60 days after determining your initial 12 operating months compliance ratio. If you are an existing source, you generally must submit this notification no later than [50 calendar months after promulgation of these NESHAP] [36 calendar months for compliance, 12 operating months to record data, and 2 calendar months to complete the report). If you are a new or reconstructed source, the notification of compliance status is generally due no later than 20 calendar months after initial startup (6 calendar months for the initial startup period, 12 operating months to record data, and 2 calendar months to complete the report). The notification of compliance status must contain the items in paragraphs (d)(1) through (6) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the vegetable oil production process.

(3) Each listed oilseed type processed during the previous 12 operating months.

(4) Each HAP identified under § 63.2854(a) as being present in concentrations greater than 1 percent by volume in each delivery of solvent received during the 12 operating months period used for the initial compliance determination.

(5) A statement designating the source as a major source of HAP or a demonstration that the source qualifies as an area source. An area source is a source that is not a major source and is not collocated within a plant site with other sources that are individually or collectively a major source.

(6) A compliance certification indicating whether the source complied with all of the requirements of this subpart throughout the 12 operating months used for the initial source compliance determination. This certification must include a certification of the items in paragraphs (d)(6)(i) through (iii) of this section:

(i) The plan for demonstrating compliance (as described in § 63.2851) and SSM plan (as described in § 63.2852) are complete and available on site for inspection.

(ii) You are following the procedures described in the plan for demonstrating compliance.

(iii) The compliance ratio is less than or equal to 1.00.

§ 63.2861 What reports must I submit and when?

After the initial notifications, you must submit the reports in paragraphs (a) through (d) of this section to the responsible agency of this subject at the appropriate time intervals:

(a) *Annual Compliance Certifications.* The first annual compliance certification is due 12 calendar months after you submit the Notification of Compliance Status. Each subsequent annual compliance certification is due

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12 calendar months after the previous annual compliance certification. The annual compliance certification provides the compliance status for each operating month during the 12 calendar months period ending 60 days prior to the date on which the report is due. Include the information in paragraphs (a)(1) through (a)(6) of this section in the annual certification:

(1) The name and address of the owner or operator.

(2) The physical address of the vegetable oil production process.

(3) Each listed oilseed type processed during the 12 calendar months period covered by the report.

(4) Each HAP identified under § 63.2854(a) as being present in concentrations greater than 1 percent by volume in each delivery of solvent received during the 12 calendar months period covered by the report.

(5) A statement designating the source as a major source of HAP or a demonstration the source qualifies as an area source. An area source is a source that is not a major source and is not collocated within a plant site with other sources that are individually or collectively a major source.

(6) A compliance certification to indicate whether the source was in compliance for each compliance determination made during the 12 calendar months period covered by the report. For each such compliance determination, you must include a certification of the items in paragraphs (a)(6)(i) through (iii) of this section:

(i) You are following the procedures described in the plan for demonstrating compliance.

(ii) The compliance ratio is less than or equal to 1.00.

(b) *Deviation notification report.* Submit a deviation report for each compliance determination you make in which the compliance ratio exceeds 1.00 as determined under § 60.2840(c). Submit the deviation report by the end of the month following the calendar month in which you determined the deviation. The deviation notification report must include the items in paragraphs (b)(1) through (b)(4) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the vegetable oil production process.

(3) Each oilseed type processed during the 12 operating months period for which you determined the deviation.

(4) The compliance ratio comprising the deviation. You may reduce the frequency of submittal of the Deviation Notification Report if the responsible agency of this subject does not object as provided in § 63.10(e)(3)(iii) of the General Provisions.

(c) *Periodic startup, shutdown, and malfunction report.* If you choose to operate your source under an initial startup period subject to § 63.2850(c)(2) or § 63.2850(d)(2) or a malfunction period subject to § 63.2850(e)(2), you must submit a periodic SSM report by the end of the calendar month following each month in which the initial startup period or malfunction period occurred. The periodic SSM report must include the items in paragraphs (c)(1) through (c)(3) of this section:

(1) The name, title, and signature of a source's responsible official who is certifying that the report accurately states that all actions taken during the initial startup or malfunction period were consistent with the SSM plan.

(2) A description of events occurring during the time period, the date and duration of the events, and reason the time interval qualifies as an initial startup period or malfunction period.

(3) An estimate of the solvent loss during the initial startup or malfunction period with supporting documentation.

(d) *Immediate SSM Reports.* If you handle a SSM during an initial startup period subject to § 63.2850(c)(2) or § 63.2850(d)(2) or a malfunction period subject to § 63.2850(e)(2) differently from procedures in the SSM plan, then you must submit an immediate SSM report. Immediate SSM reports consist of a telephone call or facsimile transmission to the responsible agency within 2 working days after starting actions inconsistent with the SSM plan, followed by a letter within 7 working days after the end of the event. The letter must include the items in paragraphs (d)(1) through (d)(3) of this section:

(1) The name, title, and signature of a source's responsible official who is certifying the accuracy of the report, an explanation of the event, and the reasons for not following the SSM plan.

(2) A description and date of the SSM event, its duration, and reason it qualifies as a SSM.

(3) An estimate of the solvent loss for the duration of the SSM event with supporting documentation.

§ 63.2862 What records must I keep?

(a) You must satisfy the recordkeeping requirements of this section by the compliance date for your source specified in Table 1 in § 63.2834.

(b) Prepare a plan for demonstrating compliance (as described in § 63.2851) and a SSM plan (as described in § 63.2852). In these two plans, describe the procedures you will follow in obtaining and recording data, and determining compliance under normal operations or a SSM subject to § 63.2850(c)(2) or § 63.2850(d)(2) initial startup period or the § 63.2850(e)(2) malfunction period. Complete both plans before the compliance date for your source and keep them on-site and readily available as long as the source is operational.

(c) If your source processes any listed oilseed, record the items in paragraphs (c)(1) through (c)(5) of this section:

(1) For the solvent inventory, record the information in paragraphs (c)(1)(i) through (vii) of this section in accordance with your plan for demonstrating compliance:

(i) Dates that define each operating status period during a calendar month.

(ii) The operating status of your source such as normal operation, nonoperating, initial startup period, malfunction period, or exempt operation for each recorded time interval.

(iii) Record the gallons of extraction solvent in the inventory on the beginning and ending dates of each normal operating period.

(iv) The gallons of all extraction solvent received, purchased, and recovered during each calendar month.

(v) All extraction solvent inventory adjustments, additions or subtractions. You must document the reason for the adjustment and justify the quantity of the adjustment.

(vi) The total solvent loss for each calendar month, regardless of the source operating status.

(vii) The actual solvent loss in gallons for each operating month.

(2) For the weighted average volume fraction of HAP in the extraction solvent, you must record the items in paragraphs (c)(2)(i) through (iii) of this section:

(i) The gallons of extraction solvent received in each delivery.

(ii) The volume fraction of each HAP exceeding 1 percent by volume in each delivery of extraction solvent.

(iii) The weighted average volume fraction of HAP in extraction solvent received since the end of the last operating month as determined in accordance with § 63.2854(b)(2).

(3) For each type of oilseed processed, record the items in paragraphs (c)(3)(i) through (vi) of this section, in accordance with your plan for demonstrating compliance:

(i) The dates that define each operating status period. These dates must be the same as the dates entered for the extraction solvent inventory.

(ii) The operating status of your source such as normal operation, nonoperating, initial startup period, malfunction period, or exempt operation for each recorded time interval. On the log for each type of oilseed that is not being processed during a normal operating period, you must record which type of oilseed is being processed in addition to the source operating status.

(iii) The oilseed inventory for the type of oilseed being processed on the beginning and ending dates of each normal operating period.

(iv) The tons of each type of oilseed received at the affected source each normal operating period.

(v) All oilseed inventory adjustments, additions or subtractions for normal operating periods. You must document the reason for the adjustment and justify the quantity of the adjustment.

(vi) The tons of each type of oilseed processed during each operating month.

(d) After your source has processed oilseed for 12 operating months, and you are not operating during an initial startup period as described in § 63.2850(c)(2) or § 63.2850(d)(2), or a malfunction period as described in § 63.2850(e)(2), record the items in paragraphs (d)(1) through (5) of this section by the end of the calendar month following each operating month:

(1) The 12 operating month rolling sum of the actual solvent loss in gallons as described in § 63.2853(c).

(2) The weighted average volume fraction of HAP in extraction solvent received for the previous 12 operating months as described in § 63.2854(b)(3).

(3) The 12 operating months rolling sum of each type of oilseed processed at the affected source in tons as described in § 63.2855(c).

(4) A determination of the compliance ratio. Using the values from §§ 63.2853, 63.2854, 63.2855, and Table 1 in § 63.2840, calculate the compliance ratio using Equation 2 in § 63.2840.

(5) A statement of whether the source is in compliance with all of the requirements of this subpart. This includes a determination of whether you have met all of the applicable requirements in § 63.2850.

(e) For each SSM event subject to an initial startup period as described in § 63.2850(c)(2) or § 63.2850(d)(2), or a malfunction period as described in § 63.2850(e)(2), record the items in paragraphs (e)(1) through (3) of this section by the end of the calendar month following each month in which the initial startup period or malfunction period occurred:

(1) A description and date of the SSM event, its duration, and reason it qualifies as an initial startup or malfunction.

(2) An estimate of the solvent loss in gallons for the duration of the initial startup or malfunction period with supporting documentation.

(3) A checklist or other mechanism to indicate whether the SSM plan was followed during the initial startup or malfunction period.

§ 63.2863 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for review in accordance with § 63.10(b)(1) of the General Provisions.

(b) As specified in § 63.10(b)(1) of the General Provisions, you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, in accordance with § 63.10(b)(1) of the General Provisions. You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.2870 What parts of the General Provisions apply to me?

Table 1 of this section shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you. Table 1 of § 63.2870 follows:

TABLE 1 OF § 63.2870.—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR PART 63, SUBPART GGGG

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
1. § 63.1	Applicability	Initial Applicability Determination; Applicability After Standard Established; Permit Requirements; Extensions, Notifications.	Yes.	
2. § 63.2	Definitions	Definitions for Part 63 standards	Yes	Except as specifically provided in this subpart.
3. § 63.3	Units and Abbreviations	Units and abbreviations for Part 63 standards.	Yes.	
4. § 63.4	Prohibited Activities and Circumvention.	Prohibited Activities; Compliance date; Circumvention, Severability.	Yes.	
5. § 63.5	Construction/Reconstruction	Applicability; Applications; Approvals	Yes	Except for paragraphs of § 63.5 as listed in this table.
6. § 63.5(c)	[Reserved].			
7. § 63.5(d) (1)(ii)(H).	Application for Approval	Type and quantity of HAP, operating parameters.	No	All sources emit HAP. Subpart GGGG does not require control from specific emission points.
8. § 63.5(d)(1)(i)	[Reserved].			

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TABLE 1 OF § 63.2870.—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR PART 63, SUBPART GGGG—Continued

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
9. § 63.5(d)(1)(iii), (d)(2), (d)(3)(ii).		Application for approval	No	The requirements of the application for approval for new, reconstructed and significantly modified sources are described in § 63.2860 (b) and (c) of subpart GGGG. General provision requirements for identification of HAP emission points or estimates of actual emissions are not required. Descriptions of control and methods, and the estimated and actual control efficiency of such do not apply. Requirements for describing control equipment and the estimated and actual control efficiency of such equipment apply only to control equipment to which the subpart GGGG requirements for quantifying solvent destroyed by an add-on control device would be applicable.
10. § 63.6	Applicability of GP	Applicability of GP	Yes	Except for paragraphs of § 63.6 as listed in this table.
11. § 63.6(b) (1)–(3).	Compliance dates, new and reconstructed sources.		No	Section 63.2834 of Subpart GGGG specifies the compliance dates for new and reconstructed sources.
12. § 63.6(b)(6)	[Reserved].			
13. § 63.6(c)(3)–(c)(4).	[Reserved].			
14. § 63.6(d)	[Reserved].			
15. § 63.6(e)	Operation and maintenance requirements.		Yes	Implement your SSM plan, as specified in § 63.2851 of subpart GGGG.
16. § 63.6 (f)–(g)	Compliance with Nonopacity Emission Standards Except During SSM.	Comply with emission standards at all times except during SSM.	No	Subpart GGGG does not have nonopacity requirements.
17. § 63.6(h)	Opacity/Visible Emission (VE) Standards.		No	Subpart GGGG has no opacity or visual emission standards.
18. § 63.6(i)	Compliance Extension	Procedures and criteria for responsible agency to grant compliance extension.	Yes.	
19. § 63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with subpart.	Yes.	
20. § 63.7	Performance Testing Requirements.	Schedule, conditions, notifications and procedures.	Yes	Subpart GGGG requires performance testing only if the source applies additional control that destroys solvent. Section 63.2850(a)(6) requires sources to follow the performance testing guidelines of the General Provisions if a control is added.
21. § 63.8	Monitoring Requirements		No	Subpart GGGG does not require monitoring other than as specified therein.
22. § 63.9	Notification Requirements	Applicability and state delegation	Yes	Except for paragraphs of § 63.9 as listed in this table.
23. § 63.9(b)(2)	Notification Requirements	Initial notification requirements for existing sources.	No	Section 63.2860(a) of subpart GGGG specifies the requirements of the initial notification for existing sources.
24. § 63.9(b) (3)–(5).	Notification Requirements	Notification requirement for certain new/reconstructed sources.	Yes	Except the information requirements differ as described in § 63.2860(b) of subpart GGGG.
25. § 63.9(e)	Notification of Performance Test.	Notify responsible agency 60 days ahead.	Yes	Applies only if performance testing is performed.
26. § 63.9(f)	Notification of VE/Opacity Observations.	Notify responsible agency 30 days ahead.	No	Subpart GGGG has no opacity or visual emission standards.

TABLE 1 OF § 63.2870.—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR PART 63, SUBPART GGGG—Continued

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
27. § 63.9(g)	Additional Notifications When Using a Continuous Monitoring System (CMS).	Notification of performance evaluation; Notification using COMS data; Notification that exceeded criterion for relative accuracy.	No	Subpart GGGG has no CMS requirements.
28. § 63.9(h)	Notification of Compliance Status.	Contents	No	Section 63.2860(d) of subpart GGGG specifies requirements for the notification of compliance status.
29. § 63.10	Recordkeeping/Reporting	Schedule for Reporting, record storage.	Yes	Except for paragraphs of § 63.10 as listed in this table.
30. § 63.10(b)(2)(i)	Recordkeeping	Record SSM event	Yes	Applicable to periods when sources must implement their SSM plan as specified in subpart GGGG.
31. § 63.10(b)(2)(ii)–(iii).	Recordkeeping	Malfunction of air pollution equipment	No	Applies only if air pollution control equipment has been added to the process and is necessary for the source to meet the emission limit.
32. § 63.10(b)(2)(vi)	Recordkeeping	CMS recordkeeping	No	Subpart GGGG has no CMS requirements.
33. § 63.10(b)(2)(viii)–(ix).	Recordkeeping	Conditiohs of performance test	Yes	Applies only if performance tests are performed. Subpart GGGG does not have any CMS opacity or visible emissions observation requirements.
34. § 63.10(b)(2)(x)–(xii).	Recordkeeping	CMS, performance testing, and opacity and visible emissions observations recordkeeping.	No	Subpart GGGG does not require CMS.
35. § 63.10(c)	Recordkeeping	Additional CMS recordkeeping	No	Subpart GGGG does not require CMS.
36. § 63.10(d)(2)	Reporting	Reporting performance test results	Yes	Applies only if performance testing is performed.
37. § 63.10(d)(3)	Reporting	Reporting opacity or VE observations	No	Subpart GGGG has no opacity or visible emission standards.
38. § 63.10(d)(4)	Reporting	Progress reports	Yes	Applies if a condition of compliance extension.
39. § 63.10(d)(5)	Reporting	SSM reporting	No	Section 63.2861 (c) and (d) of subpart GGGG specifies SSM reporting requirements.
40. § 63.10(e)	Reporting	Additional CMS reports	No	Subpart GGGG does not require CMS.
41. § 63.11	Control Device Requirements.	Requirements for flares	Yes	Applies only if your source uses a flare to control solvent emissions. Subpart GGGG does not require flares.
42. § 63.12	State Authority and Delegations.	State authority to enforce standards	Yes.	
43. § 63.13	State/Regional Addresses	Addresses where reports, notifications, and requests are sent.	Yes.	
44. § 63.14	Incorporation by Reference	Test methods incorporated by reference.	Yes.	
45. § 63.15	Availability of information and confidentiality.	Public and confidential information	Yes.	

§ 63.2871 Who administers this subpart?

(a) This subpart can be administered by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to administer and enforce this regulation. You should contact your U.S. EPA Regional Office to find out if the authority to implement and enforce this regulation is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as follows:

(1) Approval of alternative nonopacity emissions standards under § 63.6(g).

(2) Approval of alternative opacity standards under § 63.6(h)(9).

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

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§ 63.2872 What definitions apply to this subpart?

Terms used in this subpart are defined in the sources listed in paragraphs (a) through (c) of this section:

(a) The Clean Air Act, title III, section 112(a).

(b) In 40 § 63.2, the NESHAP General Provisions.

(c) In this section as follows:

Actual solvent loss means the gallons of solvent lost from a source during 12 operating months as determined in accordance with § 63.2853.

Agricultural product means any commercially grown plant or plant product.

Allowable HAP loss means the gallons of HAP that would have been lost from a source if the source was operating at the solvent loss factor for each oilseed type. The allowable HAP loss in gallons is determined by multiplying the tons of each oilseed type processed during the previous 12 operating months, as determined in accordance with § 63.2855, by the corresponding oilseed solvent loss factor (gal/ton) listed in Table 1 in § 63.2840, and by the dimensionless constant 0.64, and summing the result for all oilseed types processed.

Area source means any source that does not meet the major source definition.

Batch operation means any process that operates in a manner where the addition of raw material and withdrawal of product do not occur simultaneously. Typically, raw material is added to a process, operational steps occur, and a product is removed from the process. More raw material is then added to the process and the cycle repeats.

Calendar month means 1 month as specified in a calendar.

Compliance date means the date on which monthly compliance recordkeeping begins. For existing sources, recordkeeping typically begins 3 years after [the promulgation date of the subpart]. For new and reconstructed sources, recordkeeping typically begins upon initial startup, except as noted in § 63.2834.

Compliance ratio means a ratio of the actual HAP loss in gallons from the previous 12 operating months to an allowable HAP loss in gallons, which is determined by using oilseed solvent loss factors in Table 1 in § 63.2840, the weighted average volume fraction of HAP in solvent received for the previous 12 operating months, and the tons of each type of listed oilseed processed in the previous 12 operating months. Months during which no listed oilseed is processed, or months during which the § 63.2850(c)(2) or § 63.2850(d)(2) initial startup period or the § 63.2850(e)(2) malfunction period applies, are excluded from this calculation. Equation 2 in § 63.2840 of this subpart is used to calculate this value. If the value is less than or equal to 1.00, the source is in compliance. If the value is greater than 1.00, the source is deviating from compliance.

Continuous operation means any process that adds raw material and withdraws product simultaneously. Mass, temperature, concentration and other properties typically approach steady-state conditions.

Conventional desolventizer means a desolventizer toaster that operates with indirect and direct-contact steam to remove solvent from the extracted meal. Oilseeds processed in a conventional desolventizer produce crude vegetable oil and crude meal products, such as animal feed.

Corn germ dry milling means a source that processes corn germ that has been separated from the other corn components using a "dry" process of mechanical chafing and air sifting.

Corn germ wet milling means a source that processes corn germ that has been separated from other corn components using a "wet" process of centrifuging a slurry steeped in a dilute sulfurous acid solution.

Exempt period means a period of time during which a source processes agricultural products not defined as listed oilseed.

Extraction solvent means an organic chemical medium used to remove oil from an oilseed. Typically, the extraction solvent is a commercial grade of hexane isomers which have an approximate HAP content of 64 percent by volume.

Hazardous air pollutant (HAP) means any substance or mixture of substances listed as a hazardous air pollutant under section 112(b) of the Clean Air Act, as of May 26, 2000.

Initial startup date means the first calendar day that a new, reconstructed or significantly modified source processes any oilseed.

Initial startup period means a period of time from the initial startup date of a new, reconstructed or significantly modified source, for which you choose to operate the source under an initial startup period subject to § 63.2850(c)(2) or § 63.2850(d)(2). During an initial startup period, a source is in compliance with the standards by following the operating and maintenance procedures listed for minimizing HAP emissions in the source's SSM plan rather than being subject to a HAP emission limit. The initial startup period following initial startup of a new or reconstructed source may not exceed 6 calendar months. The initial startup period following a significant modification may not exceed 3 calendar months. Solvent and oilseed inventory information recorded during the initial startup period is excluded from use in any compliance ratio determinations.

Large cottonseed plant means a vegetable oil production process that processes 120,000 tons or more of cottonseed and other listed oilseed during all normal operating periods in a 12 operating month period used to determine compliance. Listed oilseed is defined with the entry for oilseed.

Malfunction period means a period of time between the beginning and end of a process malfunction and the time reasonably necessary for a source to correct the malfunction for which you choose to operate the source under a malfunction period subject to § 63.2850(e)(2). This period may include the duration of an unscheduled process shutdown, continued operation during a malfunction, or the subsequent process startup after a shutdown resulting from a malfunction. During a malfunction period, a source complies with the standards by following the operating and maintenance procedures described for minimizing HAP emissions in the source's SSM plan rather than being subject to a HAP emission limit. Therefore, solvent and oilseed inventory information recorded during a malfunction period is excluded from use in any compliance ratio determinations.

Mechanical extraction means removing vegetable oil from oilseeds using only mechanical devices such as presses or screws that physically force the oil from the oilseed. Mechanical extraction techniques use no organic solvents to remove oil from an oilseed.

Nonoperating period means any period of time in which a source processes no agricultural product. This operating status does not apply during any period in which the source operates under an initial startup period as described in § 63.2850(c)(2) or § 63.2850(d)(2), or a malfunction period, as described in § 63.2850(e)(2).

Normal operating period means any period of time in which a source processes a listed oilseed that is not categorized as an initial startup period as described in § 63.2850(c)(2) or § 63.2850(d)(2), or a malfunction period, as described in § 63.2850(e)(2). At the beginning and ending dates of a normal operating period, solvent and oilseed inventory information is recorded and included in the compliance ratio determination.

Oilseed or listed oilseed means the following agricultural products: corn germ, cottonseed, flax, peanut, rapeseed (for example, canola), safflower, soybean, and sunflower.

Oilseed solvent loss factor means a ratio expressed as gallons of solvent loss per ton of oilseed processed. A solvent loss factor was determined for each type of listed oilseed and process operation based on the MACT floor. The solvent loss factors are presented in Table 1 in § 63.2840 and are used to determine the allowable HAP loss.

Operating month means any calendar month in which a source processes any quantity of listed oilseed, excluding any entire calendar month in which the source operated under an initial startup period as described in § 63.2850(c)(2) or § 63.2850(d)(2), or a malfunction period, as described in § 63.2850(e)(2). An operating month may include time intervals characterized by several types of operating status. However, an operating month must have at least one normal operating period.

Significant modification means the addition of new equipment or the modification of existing equipment that:

(1) Significantly affects solvent losses from your vegetable oil production process;

(2) The fixed capital cost of the new components represents a significant percentage of the fixed capital cost of building a comparable new vegetable oil production process; and

(3) The fixed capital cost of the new equipment does not constitute reconstruction as defined in § 63.2 of the General Provisions.

(4) Examples of significant modifications include replacement of or major changes to solvent recovery equipment such as extractors, desolventizer-toasters/dryer-coolers, flash desolventizers, and distillation equipment associated with the mineral oil system, and equipment affecting desolventizing efficiency and steady state operation of your vegetable oil production process such as flaking mills, oilseed heating and conditioning equipment, and cracking mills.

Small cottonseed plant means a vegetable oil production process that processes less than 120,000 tons of cottonseed and other listed oilseed during all normal operating periods in a 12 operating month period used to determine compliance.

Solvent extraction means removing vegetable oil from listed oilseed using an organic solvent in a direct-contact system.

Solvent working capacity means the volume of extraction solvent normally retained in solvent recovery equipment. Examples include components such as the solvent extractor, desolventizer-toaster, solvent storage and working tanks, mineral oil absorption system, condensers, and oil/solvent distillation system.

Specialty desolventizer means a desolventizer that removes excess solvent from soybean meal using vacuum conditions, energy from superheated solvent vapors, or reduced operating conditions (*e.g.*, temperature) as compared to the typical operation of a conventional desolventizer. Soybeans processed in a specialty desolventizer result in high-protein vegetable meal products for human and animal consumption, such as calf milk replacement products and meat extender products.

Vegetable oil production process means the equipment comprising a continuous process for producing crude vegetable oil and meal products, including specialty soybean products, in which oil is removed from listed oilseeds through direct contact with an organic solvent. Process equipment typically includes the following components: Oilseed preparation operations (including conditioning, drying, dehulling, and cracking), solvent extractors, desolventizer-toasters, meal dryers, meal coolers, meal conveyor systems, oil distillation units, solvent evaporators and condensers, solvent recovery system (also referred to as a mineral oil absorption system), vessels storing solvent-laden materials, and crude meal packaging and storage vessels. A vegetable oil production process does not include vegetable oil refining operations (including operations such as bleaching, hydrogenation, and deodorizing) and operations that engage in additional chemical treatment of crude soybean meals produced in specialty desolventizer units (including operations such as soybean isolate production).

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Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6703–5]

RIN 2060–AH89

National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is adding wet-formed fiberglass mat production to the list of categories of major sources of hazardous air pollutants (HAPs) published under section 112(c) of the Clean Air Act (CAA) and to the source category schedule for national emission standards for hazardous air pollutants (NESHAP).

The EPA is, at the same time, proposing the NESHAP for new and existing sources at wet-formed fiberglass mat production facilities. The HAPs emitted by the facilities subject to the proposed NESHAP include three organic HAPs (formaldehyde, methanol, and vinyl acetate). Exposure to these HAPs can cause reversible or irreversible adverse health effects including carcinogenic, respiratory, nervous system, developmental, reproductive, and/or dermal health effects. The EPA estimates the proposed NESHAP would reduce nationwide emissions of HAPs from the drying and curing ovens at these facilities by 199 megagrams per year (Mg/yr)(219 tons per year or tons/yr), an approximate 74 percent reduction from the current level of emissions. Under section 112(c)(5) of the CAA, the wet-formed fiberglass mat production NESHAP has a promulgation date of May 26, 2002.

The proposed NESHAP are based on the Administrator's determination that wet-formed fiberglass mat production facilities emit several of the 188 HAPs listed in the CAA from the various process operations found within the industry, and that these facilities can be major sources of HAPs. The proposed NESHAP protect the public by requiring all wet-formed fiberglass mat production facilities that are major sources to meet emission standards reflecting the application of the maximum achievable control technology (MACT).

DATES: *Comments.* Public comments on the proposed rule must be received on or before July 25, 2000.

Public Hearing. A public hearing will be held if requests to speak are received by June 12, 2000.

ADDRESSES: *Comments.* Interested parties may submit written comments (in duplicate, if possible) to Docket No. A–97–54 at the following address: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A separate copy of the comments should be sent to Mr. Juan Santiago, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1084.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed rule, contact Mr. Juan Santiago, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1084, e-mail address: santiago.juan@epa.gov. For information regarding Method 316, contact Ms. Rima N. Howell; Emissions, Monitoring, and Analysis Division (MD–19); U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443, e-mail address: *howell.rima@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Juan Santiago, c/o OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740B, Durham, North Carolina 27701. Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the submission may be made available to the public without further notice to the commenter.

Public Hearing. Anyone requesting to present oral testimony or attend the public hearing must contact Ms. Tanya Medley at (919) 541–5422 no later than June 16, 2000. A verbatim transcript of the hearing and any written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC.

Docket. Docket A–97–54, containing supporting information used in developing the proposed standards, is available at the Air and Radiation Docket and Information Center, 401 M Street, SW, Room M–1500, Waterside Mall, Washington D.C. 20460 and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday. Copies of this information may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Electronic Access and Filing Addresses. The official record for this rulemaking has been established under Docket No. A–97–54 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

Electronic comments can be sent directly to the EPA's Air and Radiation Docket and Information Center at: "A–and–R–Docket@epamail.epa.gov." Electronic comments must be submitted in American Standard Code for Information Interchange (ASCII) file format. Avoid the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect® Version 5.1, 6.1 or Corel 8 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–97–54). Electronic comments may be filed online at many Federal Depository Libraries.

Worldwide Web (WWW). The proposed regulatory text will be available on the WWW through the Technology Transfer Network (TTN), a network of the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The TTN is accessible through the Internet at "TELNET ttnbbs.rtpnc.epa.gov". If more information on the TTN is needed, call the HELP line at (919) 541–5384.

Regulated Entities. Entities potentially regulated by this action are those industrial facilities that manufacture wet-formed fiberglass mat. Wet-formed fiberglass mat production is classified under Standard Industrial Classification (SIC) code 3329325, a subset of SIC code 3329, Pressed and Blown Glass, Not Elsewhere Classified. Regulated categories and entities are shown in table 1. This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be regulated by final action on this proposal. This table lists the types of entities that EPA is now aware could potentially be regulated by final action on this proposal. To determine whether your facility would be regulated by final action on this proposal, carefully examine the applicability criteria in section III.A of this preamble and in § 63.2981 of the proposed rule. If there are any questions regarding the applicability of this action to a particular entity, consult Mr. Juan Santiago (See **FOR FURTHER INFORMATION CONTACT**).

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Category	SIC code	Description
Industrial	3329325	Wet-formed fiberglass mat production facilities.

Incorporation by Reference. A request for approval of the incorporation by reference by the Director of the Office of the Federal Register will be submitted prior to promulgation of this rule for the following material: Chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice," American Conference of Governmental Industrial Hygienists (22nd edition, 1995). The procedures in this material are used for designing the system for capturing and conveying HAP emissions to the control device. The incorporation by reference of this publication is expected to be approved by the Director of the Office of the Federal Register upon promulgation.

Organization of this Document. The information in this preamble is organized as follows:

I. Introduction
A. Regulatory Background and Addition to Source Category List
B. Solicitation of Comments
C. Source of Authority for National Emission Standards for Hazardous Air Pollutants Development
D. What are the health effects of pollutants emitted from this source category?
E. Wet-Formed Fiberglass Mat Production Industry Profile and Process Description
F. How were pollution prevention practices considered in the development of these proposed NESHAP?
II. What are the requirements of these proposed NESHAP?
A. Do these proposed NESHAP apply to me?
B. What emission standards must I meet?
C. What operating standards must I meet?
D. What are the performance test and initial compliance provisions of these proposed NESHAP?
E. What monitoring requirements must I meet?
F. What are the notification, recordkeeping, and reporting requirements of these proposed NESHAP?
III. What are the impacts of these proposed NESHAP?
A. What are the air emission impacts?
B. What are the water and solid waste impacts?
C. What are the energy impacts?
D. Are there any additional environmental and health impacts?
E. What are the cost impacts?
F. What are the economic impacts?
IV. How were these proposed NESHAP developed?
A. Selection of Emission Sources
B. Selection of MACT Floor
C. Emission Limits
D. Selection of Test Methods
E. Selection of Operating Standards and Monitoring Requirements
V. What are the administrative requirements of these proposed NESHAP?
A. Executive Order 12866—Regulatory Planning and Review
B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
C. Executive Order 13132—Federalism
D. Executive Order 13084—Consultation and Coordination with Tribal Governments
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act

I. Introduction

A. Regulatory Background and Addition to Source Category List

Section 112(c) of the CAA directs us to list each category of major and area sources, as appropriate, that emits one or more of the 188 HAPs listed in section 112(b) of the CAA. The term "major source" is defined in section 112(a)(1) to mean:

> * * * any stationary source or group of stationary sources located within a contiguous area under common control that emits or has the potential to emit, considering controls, in the aggregate 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs * * *

We published an initial list of source categories on July 16, 1992 (57 FR 31576). Included on the initial source category list were major sources of HAP emissions from the asphalt roofing and processing industry.

During development of the asphalt roofing and processing NESHAP, industry representatives alerted us about the existence of the wet-formed fiberglass mat production industry, and its relationship to the asphalt roofing production industry. They indicated to us that wet-formed fiberglass mat production facilities have the potential to be major sources of HAP emissions, and some wet-formed fiberglass mat production facilities are collocated with asphalt roofing and processing facilities. They expressed the opinion that there should be a NESHAP for wet-formed fiberglass mat production developed separately from the asphalt roofing and processing industry. We have decided to propose a separate NESHAP for wet-formed fiberglass mat production because the production processes and pollutant emissions differ from those in the asphalt roofing industry. In addition, wet-formed fiberglass mat is produced at both stand-alone facilities and those collocated with asphalt roofing and processing facilities. The CAA provides that we may amend the list anytime. Consequently, wet-formed fiberglass mat production is being added to the source category list under section 112(c) of the CAA.

Wet-formed fiberglass mat is the substrate for several asphalt roofing products. In wet-formed fiberglass mat production, glass fibers are bonded with an organic resin. The mat is formed as the resin is dried and cured in heated ovens. The majority of HAP emissions associated with wet-formed fiberglass mat production are emitted from the drying and curing oven exhaust. Based on HAP emission data obtained during the development of this proposed rule, we have determined that wet-formed fiberglass mat production facilities are major sources of HAPs. Nine of the 14 facilities (10 of the 15 production lines) control the drying and curing oven exhaust emissions. All five of the remaining facilities that do not control the drying and curing oven exhaust are major sources of HAPs (Docket No. A–97–54).

Today's action adds wet-formed fiberglass mat production to the list of source categories for which MACT standards are to be developed. Final standards for this source category are required to be promulgated by May 26, 2002.

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B. Solicitation of Comments

We are seeking full public participation in arriving at final decisions and encourage comments on all aspects of this proposal from all interested parties. Full supporting data and detailed analyses should be submitted with comments to allow us to make maximum use of the comments. All comments should be sent according to the information given in the **ADDRESSES** section. Comments on this proposal must be submitted on or before the date specified in the **DATES** section.

C. Source of Authority for National Emission Standards for Hazardous Air Pollutants Development

Section 112 of the CAA requires us to promulgate standards for the control of HAP emissions from each source category listed under section 112(c). The statute requires the standards to reflect the maximum degree of reduction in emissions of HAPs that is achievable taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT. The MACT standards can be based on the emission reductions achievable through application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in section 112(h) of the CAA; or (5) a combination of the above (see section 112(d)(2) of the CAA).

For new sources, MACT standards cannot be less stringent than the emission control achieved in practice by the best-controlled similar source (see section 112(d)(3) of the CAA). The MACT standards for existing sources can be less stringent than standards for new sources. However, they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the best-performing five sources for categories or subcategories with fewer than 30 sources.

In essence, MACT standards are designed to ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better-controlled and lower-emitting sources in each category. This approach provides assurance to the public that each major source of toxic air pollution will be required to effectively control its emissions. At the same time, this approach provides a level economic playing field, ensuring that facilities that employ cleaner processes and good emission controls are not disadvantaged relative to competitors with poorer controls.

D. What Are the Health Effects of Pollutants Emitted From This Source Category?

The CAA was created, in part, "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" (see section 101(b) of the CAA). The proposed NESHAP would protect public health by reducing emissions of HAPs from wet-formed fiberglass mat production facilities.

Emission data collected during development of the proposed NESHAP show that formaldehyde, vinyl acetate, and methanol are emitted from wet-formed fiberglass mat production facilities (Docket No. A–97–54). The proposed emission limits would reduce emissions of formaldehyde, vinyl acetate, and methanol emitted from drying and curing ovens. As a result of controlling these HAPs, the proposed NESHAP would also reduce emissions of volatile organic compounds (VOC). Following is a summary of the potential health effects caused by exposure to these pollutants.

Exposure to formaldehyde, vinyl acetate, and methanol irritates the eyes, skin, and mucous membranes and can cause conjunctivitis, dermal inflammation, and respiratory symptoms. Formaldehyde exposure has been associated with reproductive effects such as menstrual disorders and pregnancy problems in female workers. We have classified formaldehyde as Class B1, a probable human carcinogen, on the basis of findings of nasal cancer in animal studies and limited human data. Acute exposure to vinyl acetate is known to cause irritation of the lungs and nose, and irritation or blistering of skin. Exposure to very high levels of vinyl acetate can cause dizziness. Data are not sufficient to classify vinyl acetate as a potential human carcinogen.

Acute exposure to methanol (usually by ingestion) is well known to cause blindness and severe metabolic acidosis, sometimes leading to death. Chronic methanol exposure, including inhalation, may cause central nervous system disturbances possibly leading to blindness. Methanol exposure has also been linked to developmental effects in animals. Data are not sufficient to classify methanol as a potential human carcinogen (Docket No. A–97–54).

The degree of adverse health effects associated with HAP exposure can range from mild to severe. The extent and degree to which the health effects may be experienced are dependent upon: (1) The ambient concentrations observed in the area (*e.g.*, as influenced by emission rates, meteorological conditions, and terrain); (2) the frequency and duration of exposures; (3) characteristics of exposed individuals (*e.g.*, genetics, age, preexisting health conditions, and lifestyles); and (4) pollutant-specific characteristics (*e.g.*, toxicity, half-life in the environment, and bioaccumulation).

Formaldehyde, vinyl acetate, and methanol are also VOC that are precursors to tropospheric ozone formation. Ambient concentrations in excess of the national ambient air quality standards (NAAQS) for ozone can damage lung tissue, reduce lung function, and increase sensitivity of the lung to other irritants. Additional information on the health effects of ozone are included in the EPA's "Criteria Document" (three volumes, EPA/600/P–93–004aF through EPA/600/P–93–004cF, July 1996), which supports the NAAQS for ozone. Many areas of the country, including several in which wet-formed fiberglass mat production facilities are located, are not in compliance with the NAAQS for ozone.

E. Wet-Formed Fiberglass Mat Production Industry Profile and Process Description

Wet-formed fiberglass mat is currently produced in the United States by nine companies operating 14 plants (15 production lines) in nine States. These plants may be collocated with asphalt roofing plants because wet-formed fiberglass mat can be used as a substrate for manufacturing asphalt roofing shingles and roll roofing products.

Wet-formed fiberglass mat is used as a substrate for asphalt shingles and roll roofing, as a reinforcement for reinforced plastic composite products (including thermosets and thermoplastics) and for cement and gypsum products, and in miscellaneous specialty applications such as battery separators and for pipe-wrapping and flooring.

A typical wet-formed fiberglass mat production line consists of the following processes: (1) Preparation of glass fibers; (2) formation of fibers into a fiberglass mat; (3) saturation with urea-formaldehyde binder solution; (4) curing and drying the binder-coated fiberglass mat; (5) cooling the mat; and (6) trimming, cutting, and packaging.

Fiberglass mat is manufactured by binding glass fibers with urea-formaldehyde resin. The glass fibers are mixed with water and emulsifiers in large (several thousand gallons) mixing vats to form an aqueous slurry of fibers and water. The slurry is then pumped to another large vat that acts as a surge tank and then to a third vat that is the supply tank for the mat forming machine.

The mat forming machine consists of a slurry dispenser and moving wire screen belt. The wire screen belt carries the glass fiber mat throughout the production process. The glass fiber slurry is dispensed from a slot onto the screen in a uniform curtain. After the slurry is dispensed onto the screen, the screen passes over a vacuum slot into which the excess water and emulsion are drawn, leaving only a layer of fibers on the screen.

The mat of fibers then passes under a binder dispenser. An aqueous solution of urea-formaldehyde binder is dispensed from a slot or a curtain coater onto the mat of fibers in a uniform curtain. Just after the binder is dispensed onto the mat, the screen passes over another vacuum slot into which the excess binder solution is drawn.

The mat of fibers and binder then passes into a drying and curing oven. This is a multiple-stage oven that uses heated, forced air to carry away excess moisture. In the first stage, the moisture is driven from the binder. This causes the binder to migrate to the points where the glass fibers cross each other. In the second and third stages of the oven, the binder cures and hardens. After leaving the oven, the finished mat is wound into large rolls and prepared for shipment.

The information in the Technical Association of the Pulp and Paper Industry (TAPPI) survey responses (Docket No. A–97–54) and information obtained from a single facility that did not respond to the TAPPI survey (Docket No. A–97–54) indicate that drying and curing oven emissions from 10 of the 15 glass mat production lines are controlled by thermal oxidizers. Five facilities for which information is available do not have add-on emission controls on either the binder application vacuum or the drying and curing oven exhausts. No emission control devices other than thermal oxidizers are used on the drying and curing oven exhausts in this industry.

The thermal oxidizers used in this industry operate at temperatures that range from about 1,000 to 1,500 degrees Fahrenheit (°F) (540 to 820 degrees Celsius (°C)) with residence times from 0.5 to 4.8 seconds. Most existing thermal oxidizers are also designed for energy recovery. Formaldehyde destruction efficiencies, for those facilities for which there are data, range from about 90 percent to greater than 99 percent.

F. How Were Pollution Prevention Practices Considered in the Development of These Proposed NESHAP?

The format of the proposed NESHAP is a mass emission limit (kilograms of formaldehyde per megagram of wet-formed fiberglass mat produced) and an equivalent percentage reduction requirement compliance option. The mass emission limit allows for the use of pollution prevention practices in place of add-on control devices. A potential pollution prevention practice could be a process modification to reduce the formaldehyde content of binder formulations.

II. What Are the Requirements of These Proposed NESHAP?

A. Do These Proposed NESHAP Apply to Me?

The proposed NESHAP would apply to each existing and newly constructed drying and curing oven located at a wet-formed fiberglass mat production facility that is a major source of HAPs or that is collocated with a major source. A major source means any source that has the potential to emit 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAPs. If your facility is determined to be an area source, you would not be subject to these proposed NESHAP.

B. What Emission Standards Must I Meet?

The proposed NESHAP regulate emissions of formaldehyde as a surrogate for total HAP emissions. Control of formaldehyde will also result in control of vinyl acetate and methanol. A mass emission limit and a percentage reduction requirement compliance option for formaldehyde are proposed for each new and existing drying and curing oven. The emission limits are the same for new and existing sources. New source and existing source emission standards for the drying and curing oven exhaust are a maximum formaldehyde emission rate of 0.03 kilograms per megagram (kg/Mg) of wet-formed fiberglass mat produced (0.05 pounds per ton (lb/ton) of wet-formed fiberglass mat produced) or a minimum of 96 percent destruction efficiency of formaldehyde (as shown in table 2). You can choose to comply with either the emission rate limit or the percent reduction requirement. If you use a thermal oxidizer or other control device to achieve the mass emission limit or percentage reduction requirement, you must collect and convey the emissions from each drying and curing oven to the control device according to the procedures specified in chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice."

TABLE 2.—SUMMARY OF PROPOSED EMISSION STANDARDS FOR NEW AND EXISTING DRYING AND CURING OVENS AT WET-FORMED FIBERGLASS MAT MANUFACTURING PLANTS

Process	Emission limit
Each existing and new drying and curing oven.	0.03 kg of formaldehyde per Mg of fiberglass mat (0.05 lb of formaldehyde per ton of fiberglass mat). OR 96 percent reduction of formaldehyde.

C. What Operating Standards Must I Meet?

In addition to the emission standards, the proposed NESHAP contain specific operating standards, summarized in Table 3. The operating standards require you to maintain certain process or control device parameters within the levels established during the initial performance test. In general, the parameter values or ranges that must be maintained, must be approved by the

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Administrator based on the performance test demonstrations. You must reference the operating standards in the operating permit that you are required to obtain under 40 CFR part 70.

You must also submit for the Administrator's approval an operations, maintenance, and monitoring (OMM) plan for the facility. The OMM plan specifies the parameters that must be monitored, how they will be monitored, and the corrective actions to follow whenever a monitored parameter deviates from the operating standards. You must also reference the OMM plan in your 40 CFR part 70 operating permit.

TABLE 3.—SUMMARY OF OPERATING STANDARDS FOR NEW AND EXISTING SOURCES

Affected source	Monitor type/operation/process	Operating Standards
Drying and curing ovens	Resin free-formaldehyde content.	Use a resin with a free-formaldehyde content no greater than that of the resin used during the performance test, as determined by the resin purchase specification or test method.
	Binder formulation formaldehyde content.	Use a binder with a formaldehyde content no greater than that of the binder formulation used during the performance test.
	Product urea-formaldehyde resin solids content.	Do not manufacture a product with a urea-formaldehyde resin solids content per ton of product higher than that of the product made during the performance test.
	Loss-on-ignition	Do not exceed the loss-on-ignition value of the product made during the performance test.
	Solids content of urea-formaldehyde resin.	Do not exceed the solids content of the urea-formaldehyde resin used in the product made during the performance test.
Drying and curing ovens controlled by a thermal oxidizer.	Thermal oxidizer operating temperature.	Maintain the average temperature for each 3-hour period at or above the average operating temperature achieved during the performance test.
	Thermal oxidizer operation.	Operate the thermal oxidizer in accordance with the operation, maintenance, and monitoring plan; annually inspect the thermal oxidizer for structural and design integrity.
Drying and curing ovens controlled by modifications or a control device other than a thermal oxidizer.	Process or control device parameters.	Maintain the process or control device within the ranges established during the performance test.
All affected sources	Corrective action	Initiate corrective action within 1 hour of an established operating parameter excursion and complete and document action per operation, maintenance and monitoring plan.

If the operating parameters deviate from the values or ranges specified in your OMM plan, you would be in violation of the standards. Following the performance test, whenever a monitored parameter deviates from the established operating standards, you must initiate the corrective actions specified in the OMM plan within 1 hour. You must complete the corrective actions in an expeditious manner and implement them as specified in your OMM plan.

If you use a thermal oxidizer to achieve compliance with the emission standards, you must operate the thermal oxidizer so that the average operating temperature in any 3-hour block period does not fall below the average temperature established during the performance test. Additionally, an annual inspection of the thermal oxidizer is required to ensure that the structural and design integrity of the combustion chamber is maintained in the same condition as during the performance test. If you use process modifications or an add-on control device other than a thermal oxidizer to achieve compliance with the emission standards, you must maintain the process or control device parameter(s) within the required ranges that you established during the performance test.

The operating standards also require you to maintain the resin free-formaldehyde content, the binder formulation formaldehyde content, the solids content of the urea-formaldehyde resin, the urea-formaldehyde resin solids content of the product manufactured, and the loss-on-ignition value of the wet-formed fiberglass mat produced within the levels you established during a compliance test and as specified in your OMM plan.

D. What Are the Performance Test and Initial Compliance Provisions of These Proposed NESHAP?

You must conduct a performance test to demonstrate initial compliance with the emission limits. The performance test must be performed initially and every 5 years following the initial performance test. A performance test is also required to change the value or range of an operating standard. Under the proposed NESHAP, you must conduct the performance test while operating at or near the maximum production rate and while making wet-formed fiberglass mat with the highest urea-formaldehyde resin solids content, loss-on-ignition value, using the resin with the highest free-formaldehyde content, and using the binder with the highest formaldehyde content. You must measure formaldehyde emissions as the average of three test runs using EPA Reference Method 316 in appendix A of 40 CFR part 63, "Sampling and Analysis for Formaldehyde from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries." This proposed method was published in the March 31, 1997 **Federal Register** (63 FR 15288). You must demonstrate compliance with either the mass emission limit or the percentage reduction requirement using the instructions and equations contained in the performance test requirement section of this proposed NESHAP.

During the performance tests, you must continuously monitor the thermal oxidizer operating temperature and record the average temperature in 15-minute blocks during each 1-hour test run. After completion of the three required test runs, you must determine the 3-hour average operating temperature of the thermal oxidizer. If you use process modifications or an add-on control device other than a thermal oxidizer to comply with the emission standards, you must determine the appropriate control device or process monitoring parameters to indicate whether compliance is being achieved. You must include the process or control device parameters, monitoring frequency, and the averaging periods in your site-specific test plan required by the 40 CFR part 63 general provisions and approved by the permitting agency prior to conducting your initial performance test. You may perform multiple tests to establish the least restrictive value or operating range for the selected parameters that still demonstrate compliance.

During the performance tests, you must also monitor and record the average hourly wet-formed fiberglass mat production rate prior to edge trimming, the free-formaldehyde content and the solids content of the urea-formaldehyde resin used to produce the mat, the formaldehyde content of the binder used to produce the mat, the urea-formaldehyde solids content per ton of product, and the loss-on-ignition value of the product manufactured during each of the three test runs.

If you use a thermal oxidizer to comply with these NESHAP, you must conduct a performance evaluation for the thermal oxidizer temperature monitoring device prior to the initial performance test to determine compliance. The evaluation must be conducted according to the procedures in 40 CFR 63.8(e) of the NESHAP general provisions. The temperature monitoring device must meet the following performance and equipment specifications: (1) The temperature monitoring device must be installed at the exit of the combustion zone of each thermal oxidizer; (2) the recorder response range must include zero and 1.5 times the average temperature; and (3) the reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or an alternate reference, subject to the approval of the Administrator.

The proposed NESHAP would allow facilities subject to the NESHAP to conduct short-term experimental production runs, where the formaldehyde content or other process parameters deviate from the levels established during previous performance tests, without conducting additional performance tests. You must apply for approval from the Administrator or delegated State agency to conduct such experimental production runs. The application must be made at least 30 days prior to conducting the run. The application would include information on the nature and duration of the test runs including plans to perform emissions testing. Such experimental production runs are important to industry and allow them to develop new products, improve existing products, and determine the effects on emissions of process modifications being considered, such as binder formulation.

E. What Monitoring Requirements Must I Meet?

Continuous compliance is demonstrated after the initial performance test and between subsequent performance tests by monitoring emission control devices and process operating parameters. The allowable monitoring parameter values or ranges are determined during your initial performance test and must be approved by the Administrator.

If a thermal oxidizer is used to achieve compliance with the emission standards, you must monitor the operating temperature of the thermal oxidizer. If you use a thermal oxidizer to achieve compliance with the proposed emission standards, you must: (1) Install, operate, calibrate, and maintain a device that continuously measures the operating temperature of each thermal oxidizer; and (2) determine and record the temperature in 15-minute and 3-hour block averages. This is typically done using a thermocouple (a standard feature on most thermal oxidizers) and a chart recorder or data logger. You are also required to monitor the resin free-formaldehyde content, the binder formulation formaldehyde content, the solids content of the urea-formaldehyde resin, the urea-formaldehyde resin solids content of the product manufactured, and the loss-on-ignition value of the wet-formed fiberglass mat produced. Because these process parameters affect the amount of HAPs emitted from the drying and curing oven, you must monitor them to ensure that operation of the production process is consistent with the conditions of the performance test, and that the production process does not vary in such a way as to increase HAP emissions from the drying and curing oven exhaust.

If process modifications or a control device other than a thermal oxidizer is used to achieve compliance with the emission standards, you must monitor the parameters that were established during the performance test and approved by the Administrator.

The proposed NESHAP contain provisions that would allow you to change the thermal oxidizer operating temperature, add-on control devices, and process parameter values from those established using the initial and 5-year performance tests. These provisions would allow you to make process changes or to demonstrate that different monitoring parameter values would more appropriately demonstrate compliance with the proposed emission standards. You may revise the monitoring or process parameter values by conducting additional performance tests to verify compliance at the revised operating levels. For example, if you intend to use a urea-formaldehyde resin with a higher free-formaldehyde or solids content, produce a wet-formed fiberglass mat with a higher urea-formaldehyde resin solids content, or produce a product with a higher loss-on-ignition value, you must perform additional performance tests to verify compliance at the increased operating or process parameters. You must request and obtain approval from the Administrator to conduct these additional performance tests and must submit performance data that justify and support the expanded parameter ranges before the facility is allowed to operate under the revised monitoring parameters.

F. What Are the Notification, Recordkeeping, and Reporting Requirements of These Proposed NESHAP?

All notification, recordkeeping, and reporting requirements in the 40 CFR part 63 general provisions, as well as additional requirements, apply to wet-formed fiberglass mat manufacturing facilities. The notification and reporting requirements include, but are not limited to: (1) Initial notification of applicability of the rule, notification of the dates for conducting the performance test, and notification of compliance status; (2) a report of performance test results; (3) a startup, shutdown, and malfunction plan; (4) reports of any startup, shutdown, and malfunction events that occur; and (5) reports of excess emissions (*i.e.*, monitoring parameter exceedances) and continuous monitoring system performance. When no exceedances occur, you must submit semiannual reports indicating that no exceedances have occurred during the period. If exceedances or deviations from established monitoring parameters occur, the frequency of submitting the excess emission reports becomes quarterly until a request to return to semiannual reporting is approved by the Administrator. You cannot submit the request to reduce the frequency of the reporting period until the affected

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source's excess emissions and continuous monitoring system performance reports remain continually within the established parameter ranges for 1 full year.

You must maintain records of the following, as applicable: (1) Thermal oxidizer operating temperature; (2) process parameters for drying and curing ovens that comply with the emission standards using process modifications or an add-on control device other than a thermal oxidizer; (3) free-formaldehyde content of the resin; (4) binder formulation formaldehyde content; (5) loss-on-ignition value of the wet-formed fiberglass mat produced; (6) urea-formaldehyde resin solids content per ton of the wet-formed fiberglass mat produced; (7) average hourly wet-formed fiberglass mat production rate; (8) the date and time an exceedance commenced if a parameter monitoring exceedance occurs, the date and time corrective actions were initiated and completed, a description of the cause of the exceedance, and a description of the corrective actions taken; (9) the approved OMM plan; (10) maintenance and inspections performed on control devices; and (11) any other information required to be recorded in the general provisions.

The NESHAP general provisions require that records be maintained for at least 5 years from the date of each record. You would retain the records onsite for at least 2 years but may retain the records offsite for the remaining 3 years. The records must be readily available and in a form suitable for efficient inspection and review. The files may be retained on paper, on microfilm, on microfiche, on a computer, on computer disks, or on magnetic tape. Reports may be made on paper or on a labeled computer disk using commonly available and compatible computer software.

III. What Are the Impacts of These Proposed NESHAP?

A. What Are the Air Emission Impacts?

At the current level of control, nationwide emissions of HAPs from the 14 facilities in the industry are about 268 Mg/yr (295 tons/yr). Under the proposed NESHAP, it is expected that thermal oxidizers will be added to the five uncontrolled drying and curing ovens, and that existing thermal oxidizers will be replaced with new units for three out of the ten controlled drying and curing ovens. This would result in an estimated reduction in nationwide HAP emissions of 199 Mg/yr (219 tons/yr) (Docket No. A–97–54).

Formaldehyde emissions from wet-formed fiberglass mat manufacturing lines account for about 65 percent of the baseline HAP emissions. Methanol emissions account for approximately 30 percent, with vinyl acetate comprising the remaining 5 percent of the baseline HAP emissions. Estimated nationwide emissions of formaldehyde from existing wet-formed fiberglass mat production lines are 174 Mg/yr (192 tons/yr) at the current level of control. Implementing the proposed NESHAP will reduce nationwide formaldehyde emissions from existing sources by about 130 Mg/yr (143 tons/yr) (Docket No. A–97–54), and combined emissions of vinyl acetate and methanol will be reduced by 70 Mg/yr (77 tons/yr).

B. What Are the Water and Solid Waste Impacts?

Because compliance with the proposed NESHAP is based on the use of thermal oxidizers, no water pollution or solid waste impacts would result from the proposed NESHAP.

C. What Are the Energy Impacts?

Thermal oxidizers require electrical energy to operate fans. Additional electrical energy requirements are estimated to be 4,260 megawatt hours per year (MW-hr/yr). An additional 275,000 million British thermal units per year (Btu/yr) of natural gas are estimated to be required for eight additional thermal oxidizers that would be added to existing sources. The total additional energy (electricity and natural gas) required as a result of the proposed NESHAP is 290 billion Btu/yr in the fifth year following promulgation of the NESHAP (Docket No. A–97–54). No new glass mat production lines are projected in the 5 years after promulgation; therefore, no increased energy requirement is expected for new glass mat production lines under the proposed NESHAP.

D. Are There Any Additional Environmental and Health Impacts?

Reducing HAP emissions will lower occupational HAP and VOC exposure levels. The operation of thermal oxidizers may increase occupational noise levels in the five facilities that currently do not control HAP emissions.

E. What Are the Cost Impacts?

Cost impacts of the proposed NESHAP for drying and curing ovens were analyzed using site-specific information included in the TAPPI survey responses coupled with procedures from the "OAQPS Cost Manual" (Docket No. A–97–54). For some facilities where site-specific data necessary for estimating costs (e.g., a vent flow rate) were not available, average factors developed from industry data were used to estimate the missing data.

The total capital costs to achieve the proposed NESHAP were estimated to be $5,272,000. These capital cost impacts arise from the purchase and installation of eight thermal oxidizers—five thermal oxidizers for the five facilities without existing controls and three thermal oxidizers for three facilities that must replace existing thermal oxidizers that cannot meet the proposed NESHAP. The average capital costs of installing a new thermal oxidizer is $658,000 per oxidizer. The capital costs estimate to install a new thermal oxidizer to achieve compliance includes the cost of auxiliary burners, combustion chambers, primary heat exchangers, weather-tight housing and insulation, a fan, flow and temperature controls, a stack, and structural supports.

Ten of the 15 wet-formed fiberglass mat production lines have existing thermal oxidizers. We have formaldehyde emissions data for five of the existing thermal oxidizers. Based on an evaluation of the emissions data, four of these five thermal oxidizers are already achieving the formaldehyde control level required by the proposed NESHAP. Therefore, no thermal oxidizer capital costs to comply with the proposed NESHAP were estimated for these four facilities. The fifth facility controls both the drying and curing oven exhaust and the binder application vacuum exhaust. Since this facility is not achieving the formaldehyde control level required by the proposed NESHAP, the cost of a new thermal oxidizer was estimated for this facility. The thermal oxidizer cost estimate is based on the flow rate from the drying and curing oven exhaust only since the proposed NESHAP does not require control of the binder application vacuum exhaust.

No formaldehyde emissions data are available for the remaining five existing thermal oxidizers. Three facilities have thermal oxidizers operating at temperatures and residence times that are as high as those that have achieved the proposed formaldehyde control level. Therefore, we expect that these three facilities will be able to comply with the proposed NESHAP using their existing thermal oxidizers. No increases in capital or annual costs were estimated for these facilities. The two remaining thermal oxidizers have temperatures or residence times lower than those at the facilities that are achieving the proposed control levels. Capital costs were estimated to replace these two thermal oxidizers with new thermal oxidizers that are designed to meet the proposed NESHAP.

The proposed monitoring requirements for the thermal oxidizer operating temperature are not current industry practice and are expected to impose additional costs on facilities with existing thermal oxidizers. To estimate the impact of the additional monitoring equipment (i.e., a data logging system), a cost of $7,000 ($1,000 for each of the seven facilities with an existing thermal oxidizer that is achieving the proposed NESHAP) was included in the capital cost estimate (Docket No. A–97–54). No additional capital costs were estimated for monitoring equipment for the new thermal oxidizers since temperature monitors and recording devices are standard equipment and are included in the cost estimates for new thermal oxidizers.

The total annualized cost of the proposed NESHAP for eight new thermal oxidizers is about $2,414,000. The average annual cost for a typical facility that installs a new thermal oxidizer is $302,000. The annualized cost estimate includes the cost of operation, maintenance, supervisory labor, maintenance materials, utilities, administrative charges, taxes, insurance, and capital recovery.

F. What Are the Economic Impacts?

The goal of the economic impact analysis is to estimate the market response of the wet-formed fiberglass mat production industry to the proposed emission standards and to determine the economic effects that may result from the proposed NESHAP. As discussed above, 14 facilities owned by nine different companies produce wet-formed fiberglass mat domestically. These facilities may potentially be affected by the proposed NESHAP.

The estimated nationwide annualized cost of the proposed NESHAP is $1.595 million. This cost estimate represents approximately 0.069 percent of the 1995 sales revenues for domestically produced wet-formed fiberglass mat. Based upon this estimate, it is reasonable to assume that market price increases and production decreases resulting from the proposed NESHAP are likely to be very small. Thus, we conclude that the proposed NESHAP is not likely to have a significant economic impact on the wet-formed fiberglass mat industry as a whole or on secondary markets such as the labor market and foreign trade.

We performed a streamlined economic analysis to determine facility-specific impacts. The facility-specific impacts are examined by calculating the ratio of the estimated annualized costs of emission controls for each facility to the estimated revenues per facility (i.e., a cost-to-sales ratio) to assess the likelihood of facility closures and employment impacts. Cost-to-sales ratios refer to the change in the cost of emission controls divided by the sales revenue of wet-formed fiberglass mat, the goods produced in the process for which additional pollution control is required. This ratio can be estimated for either individual firms or as an average for some set of firms such as affected small firms. While it has different significance for different market situations, it is a good rough gauge of potential impact. If costs for the individual (or group of) firms are completely passed onto the purchasers of the good(s) being produced, the ratio is an estimate of the price change (in percentage form after multiplying the ratio by 100). If costs are completely absorbed by the producer, this ratio is an estimate of changes in pretax profits (in percentage form after multiplying the ratio by 100). The distribution of cost-to-sales ratios across the whole market, the competitiveness of the market, and profit-to-sales ratios are among the obvious factors that may influence the significance of any particular cost-to-sales ratio for an individual facility.

For these proposed NESHAP, a cost-to-sales ratio exceeding 1 percent was determined to be an initial indicator of the potential for a significant facility impact. Each of the 14 facilities affected by the proposed NESHAP has cost-to-sales ratios of less than 1 percent of sales. Therefore, the facility-specific impacts are not considered to be significant for any facility affected by the proposed NESHAP. No facility is likely to close as a result of the proposed NESHAP. Facilities in the wet-formed fiberglass mat production industry are likely to increase the price charged for the product in response to market price changes, to absorb the costs with no price increase, or to respond with a combination of these alternatives. The economic impacts to consumers and producers of wet-formed fiberglass mat are anticipated to be minimal. The generally small scale of the impacts suggests that there will also be no significant impacts on markets for the products made using wet-formed fiberglass mat. For more information, consult the economic impact report entitled "Economic Impact Analysis for the Proposed National Emission Standard for Hazardous Air Pollutants from the Production of Wet-Formed Fiberglass Mat," January 1999 (Docket No. A–97–54).

IV. How Were These Proposed NESHAP Developed?

A. Selection of Emission Sources

In the wet-formed fiberglass mat production industry, HAPs are emitted from two processes: binder application processes and drying and curing processes. For the reasons described below, we selected the drying and curing processes at new and existing wet-formed fiberglass mat production lines for control under the proposed NESHAP.

The drying and curing oven drives off moisture remaining on the fibers and sets the binder using heated air. Fans are used to draw hot air through the mat within each of the oven zones; the hot air may be recycled within each zone to conserve energy. Emissions of formaldehyde, vinyl acetate, and methanol result from vaporization of volatile compounds in the binder. Emissions from ten of the 15 drying and curing ovens on wet-formed fiberglass manufacturing lines are controlled by thermal oxidizers. Emissions from the remaining five ovens are uncontrolled.

The emissions from the drying and curing ovens account for approximately 90 percent of the total HAP emissions from wet-formed fiberglass mat production facilities. Although one facility controls the vent gases from the binder application vacuum exhaust along with the drying and curing oven exhaust, we do not consider the control of the binder application vacuum exhaust at this facility to represent MACT for new sources. When the binder application vacuum exhaust is controlled using an existing thermal oxidizer designed to control only the drying and curing oven exhaust, the overall HAP reduction achieved by the thermal oxidizer is decreased (Docket No. A–97–54). Introducing the binder application vacuum exhaust into an existing thermal oxidizer decreases the performance of the thermal oxidizer because of the decreased residence time in the thermal oxidizer and the high moisture content of the binder application vacuum exhaust. No binder application vacuum exhausts are controlled using stand-alone thermal oxidizers. In addition, the costs of controlling the binder application vacuum exhaust by requiring a stand-alone thermal oxidizer would be unreasonably high. For these reasons, we propose to regulate HAP emissions at the MACT floor only from the drying and curing oven processes.

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B. Selection of MACT Floor

After identifying the MACT floors for new and existing sources, we must investigate regulatory alternatives. Regulatory alternatives are different levels of emissions control, equal to or more stringent than the MACT floor levels. Information about the industry is analyzed to project national impacts (which include HAP emission reduction levels and cost, energy, and non-air quality health and environmental impacts) and to select the regulatory alternative that best reflects MACT. The selected alternative may be more stringent than the MACT floor, but the control level must be achievable and reasonable in the Administrator's judgement considering cost, non-air quality health and environmental impacts, and energy requirements. The objective is to achieve the maximum degree of emissions reduction without imposing unreasonable impacts (see section 112(d)(2) of the CAA). The regulatory alternatives and emission limits selected for new and existing sources may be different because of different MACT floors.

In establishing the MACT standards, we may distinguish among classes, types, and sizes of sources within a category or subcategory when there are significant differences among the classes or subcategories (see section 112(d)(1) of the CAA). For the wet-formed fiberglass mat industry, we examined the processes, the process operations, and other factors to determine if separate classes of units, operations, or other criteria have an effect on air emissions or their controllability that would justify subcategories. Because all the wet-formed fiberglass mat production facilities use similar processes and emit the same pollutants, there is no basis for establishing subcategories. Therefore, we decided to regulate wet-formed fiberglass mat production as one source category.

Because the wet-formed fiberglass mat production industry has fewer than 30 sources, the MACT floor for existing sources is based on the average of the best-performing five sources. Nine facilities (10 production lines) of the 14 facilities (15 production lines) use a thermal oxidizer to control HAP emissions from the drying and curing oven exhaust. Emission reductions achieved by thermal oxidizers represent the best emissions control technology achieved by sources subject to the proposed standards. Thus, the MACT floor for existing sources is the level of control achieved by a thermal oxidizer.

The new source MACT floor is based on the emission control that is achieved in practice by the best-controlled similar source. Because the best-controlled drying and curing oven uses a thermal oxidizer and no more effective control technology than thermal oxidation has been achieved to control gaseous HAPs, this is also the MACT floor level of control for new sources.

One facility currently controls the emissions from the binder application vacuum exhaust using a thermal oxidizer originally designed to control only the drying and curing oven exhaust. Because the existing thermal oxidizer was not designed to control the binder application vacuum exhaust along with the drying and curing oven exhaust, a lower overall HAP reduction is achieved at this facility than by facilities controlling only the drying and curing oven exhaust. The overall HAP level of control is compromised due to the decreased residence time in the thermal oxidizer and the high moisture content of the binder application vacuum exhaust. Therefore, because it is not the best controlled source, we do not consider the control of the binder application vacuum exhaust at this facility to represent the MACT floor for new sources.

Currently, we are not aware of any available controls that are better than a thermal oxidizer for controlling gaseous HAP emissions at wet-formed fiberglass mat production lines. We considered controlling the binder application vacuum exhaust emissions in addition to the drying and curing oven exhaust emissions. We have determined that controlling the binder application vacuum exhaust emissions with a stand-alone thermal oxidizer was the only available beyond-the-floor option for existing sources. The incremental cost of controlling the binder application vacuum exhaust with a dedicated thermal oxidizer is approximately $39,200/Mg ($35,700/ton) of HAP reduced (Docket No. A–97–54). As discussed above, it is not possible to combine the binder application vacuum exhaust with the drying and curing oven exhaust at existing facilities without decreasing the performance of the existing thermal oxidizer. We did not select this control scenario because it achieves a lower overall HAP reduction.

As with existing sources, the only option more stringent than the MACT floor level of control for new sources is control of the binder application vacuum exhaust in addition to controlling the drying and curing oven exhaust. For new sources, a thermal oxidizer could be designed to handle both emission sources. Therefore, for this analysis, we assumed that a single thermal oxidizer would be used to control both the drying and curing oven exhaust and the binder application vacuum exhaust. This assumption was made since controlling the drying and curing oven exhaust and the binder application vacuum exhaust in separate thermal oxidizers would be more expensive than a single thermal oxidizer for both emission sources (Docket No. A–97–54).

The estimated incremental cost for new sources to control both the drying and curing oven exhaust and the binder application vacuum exhaust with one thermal oxidizer is approximately $12,800/Mg ($11,600/ton) of HAP reduced. The new source control cost estimates are based on a representative wet-formed fiberglass mat production facility controlling both the drying and curing oven exhaust and the binder application vacuum exhaust with a single thermal oxidizer (Docket No. A–97–54). Based on this evaluation, we concluded that the cost of controlling the binder application vacuum exhaust at new sources is unreasonable at this time.

For each of the cases evaluated above, we did not identify emission control technologies or control of additional emission sources that would reduce emissions to a level below the MACT floor without imposing costs which we concluded are unreasonable at this time. Therefore, we are proposing emission limits at the MACT floor level of control.

C. Emission Limits

We have performance data for five facilities in this industry that use thermal oxidizers to control drying and curing oven exhaust streams. Table 4 summarizes the available formaldehyde emissions data from these facilities. However, data from only four thermal oxidizers were used to determine the proposed emission limits. The performance of the thermal oxidizer at the fifth facility was not considered representative of the MACT floor level of control. This facility controls the emissions from the binder application vacuum exhaust using a thermal oxidizer originally designed to control only the emissions from the drying and curing oven exhaust. Because the binder application vacuum exhaust is a cooler and more dilute stream than the drying and curing oven exhaust, the residence time in the combustion chamber is decreased and HAP destruction efficiency is reduced. Therefore, data from plant E in table 4 were not used to determine emission limits for drying and curing ovens.

TABLE 4.—SUMMARY OF FORMALDEHYDE EMISSION TEST RESULTS ON WET-FORMED FIBERGLASS MAT PRODUCTION LINES FOR DRYING AND CURING OVEN EXHAUST

Plant	Thermal oxidizer parameters[b]	Average formaldehyde emissions[a]				Calculated control device efficiency (% destruction)
		Uncontrolled		Controlled		
		kg/Mg	lb/ton	kg/Mg	lb/ton	
A	1500 °F, 1.25 s RT	1.972	3.945	0.0065	0.013	99.7
B	1500 °F, 1 s RT	0.415	0.830	0.0018	0.0037	99.5
C	1350 °F, 0.75 s RT	0.296	0.591	0.0035	0.0070	98.8
D	1400 °F, 1.2 s RT	0.590	1.18	0.02	0.04	96.4
E[c]	1500 °F, 0.6 s RT	0.970	1.94	0.095	0.19	90.1

[a] Emission units are kg (lb) of formaldehyde per Mg (ton) of fiberglass mat product.
[b] RT = Retention time.
[c] This facility also controls the binder application vacuum exhaust with the thermal oxidizer that was originally designed to control only the drying and curing oven exhaust. Therefore, this thermal oxidizer was not considered representative of the MACT floor level of control.

The controlled emission rates of the four thermal oxidizers that represent the MACT floor level of control range from 0.0018 to 0.02 kg/Mg (0.0037 to 0.04 lb/ton) and the destruction efficiencies range from 99.7 to 96.4 percent efficiency. We believe that the differences in the performance achieved by the four thermal oxidizers are due to differences in operating temperature, residence time, combustion chamber design, and variations in uncontrolled emissions that occur in this industry. Considering these variables, we consider the performance of the four well-designed and -operated thermal oxidizers to represent the MACT floor level of control. Based on the data from all four sources with well-designed and -operated thermal oxidizers, and considering the variability in performance of a thermal oxidizer representative of the MACT floor level of control, we have selected a mass emission limit of 0.03 kg/Mg as the standard for new and existing sources. The 0.03 kg/Mg mass emission limit selected is somewhat higher that the short-term test result of 0.02 kg/Mg for the fourth thermal oxidizer. However, the selected mass emission limit allows for long-term process and control equipment variability.

We are also establishing an alternative percentage reduction efficiency standard to address situations in which a facility cannot achieve the 0.03 kg/Mg mass emission limit due to process variations while operating technology representative of the MACT floor level of control. Considering the data from all four of the sources with well-designed and -operated thermal oxidizers representative of the MACT floor level of control, and considering the variability in performance of a thermal oxidizer representative of the MACT floor level of control, we have selected a 96 percent destruction efficiency as the alternative standard. Sources subject to these emission standards would be allowed to demonstrate compliance by either meeting a mass emission limit of 0.03 kg/Mg (0.05 lb/ton) of product or achieving a 96 percent destruction efficiency. For example, a facility with a high inlet formaldehyde concentration may not be able to achieve the mass emission limit but could comply with the percentage reduction.

D. Selection of Test Methods

Under the proposed NESHAP, you must conduct a performance test using formaldehyde as a surrogate measure for all organic HAPs. You must measure formaldehyde emissions using EPA Reference Method 316 or any other alternative method that has been approved by the Administrator under § 63.7(f) of the general provisions.

The EPA Reference Method 316, "Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries," is a manual test method that measures formaldehyde by spectrophotometry using the modified pararosaniline method. The method was validated at a mineral wool manufacturing facility, which has been determined to be a similar source, according to the procedures in EPA Validation Method 301, 40 CFR part 63, appendix A. In Method 316, gases are withdrawn isokinetically from an emission source and are collected in high-purity water. Formaldehyde present in the emissions is highly soluble in water. Formaldehyde in the sample reacts with acidic pararosaniline and sodium sulfite, forming a purple chromophore. The intensity of the purple color, measured spectrophotometrically, provides a measure of the formaldehyde concentration in the sample.

Using the results of the performance tests, you would use the equations and procedures in the rule to convert the formaldehyde emission rate into either a kg/Mg (lb/ton) of product emission rate or a percentage removal value. Appendix A to the proposed standards contains a method for determining the free-formaldehyde content of urea-formaldehyde resins. Appendix B to the proposed standards contains a method for determining the loss-on-ignition of the product. You must monitor these parameters to ensure compliance with the standards between performance tests.

E. Selection of Operating Standards and Monitoring Requirements

We believe that the operating standards and monitoring requirements discussed in sections II.C and II.E, respectively, will provide sufficient information needed to determine continuing compliance or identify operating problems at the source. At the same time, the provisions are not labor intensive, do not require expensive or complex equipment, and do not require burdensome recordkeeping. For example, temperature monitoring and recording equipment are standard features on thermal oxidizers. Resin free-formaldehyde content is a standard purchase specification for resin. Finally, the solids content of the urea-formaldehyde resins, the urea-formaldehyde solids content, the binder formulation formaldehyde content, and loss-on-ignition value of the product manufactured are monitored and recorded as part of normal product quality control procedures.

V. What Are the Administrative Requirements of These Proposed NESHAP?

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to

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review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a "significant regulatory action" under the terms of the Executive Order and is, therefore, not subject to OMB review. However, an economic analysis of the proposed NESHAP was prepared and is available in the docket (Docket A–97–54).

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns the environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it is based on technology performance and not on health or safety risks.

C. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This determination has been made since none of the affected facilities under this proposed rule are owned or operated by State or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing the proposed rule.

D. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. No affected facilities are owned or operated by Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total nationwide capital cost for the proposed standard is estimated at $5.3 million; the annualized nationwide cost is estimated at $2.4 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statue unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business that has less than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any non-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that only two of the nine companies producing wet-formed fiberglass mat are small businesses. One of these small businesses is not anticipated to incur emission control costs because it already has controls in place which should achieve the MACT emission levels. Therefore, only one small firm in the wet-formed fiberglass mat production industry is expected to incur emission control costs as a result of the regulation. This small business is expected to incur control costs that represent 0.3441 percent of current sales revenues, a cost-to-sales ratio substantially below 1 percent (the criterion established as a first indicator of the potential for significant impact). As a result of the increased costs of emission controls, this small entity in the affected industry will likely increase the price of its product in response to a market change in price, will absorb the cost increase with no price increase, or will respond with a combination of these responses. Since the estimated costs as a percentage of sales are relatively minimal, it is anticipated that the regulation will not have a significant impact on this company's profitability.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities by providing flexibility by offering a choice of compliance and monitoring options. Compliance options include mass emission limits or percent reduction standards. Compliance with the proposed standard can be achieved through the use of a thermal oxidizer or other control device. Pollution prevention practices, such as process modifications, are also included in the proposed rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. ____), and a copy may be obtained from Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or by calling (202) 260–2740.

The information requirements contained in the proposed NESHAP are necessary to determine initial and continuous compliance with the emission standards. The proposed information requirements include the notification, recordkeeping, and reporting requirements of the NESHAP general provisions, authorized under section 114 of the CAA, which are mandatory for all owners or operators subject to national emission standards. All information submitted to EPA for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B. The proposed rule does not require any notifications or reports beyond the minimum required by the general provisions. Proposed subpart HHHH requires additional records of information specific to the wet-formed fiberglass mat production industry which are needed to determine compliance with the rule.

The annual public reporting and recordkeeping burden for this collection is estimated at 2,983 labor hours per year at an annual cost of $98,183. This estimate includes an initial performance test and report (with repeat tests where needed); one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports of any event in which the procedures in the plan were not followed; semiannual excess emissions reports; notifications; the operations, maintenance, and monitoring plan; and recordkeeping. The annualized capital cost associated with monitoring requirements is estimated at $2,300.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, verifying, processing, maintaining, disclosing, and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

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control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Refer to ICR 1964.01 in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after May 26, 2000, A comment to OMB is most likely to have its full effect if OMB receives it by June 26, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113, directs all Federal Agencies to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (VCS) are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus standard bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards for the EPA's emissions sampling and analysis reference methods and industry recommended materials analysis procedures cited in this rule. Candidate voluntary consensus standards for materials analysis were identified for product loss-on-ignition and free formaldehyde content. Consensus comments provided by industry experts were that the candidate standards did not meet industry materials analysis requirements. Therefore, EPA has determined these VCS were impractical for the wet-formed fiberglass mat production NESHAP. The EPA, in consultation with the Technical Association for the Pulp and Paper Industry (TAPPI), has formulated industry-specific materials analysis consensus standards which are proposed in this rule.

The EPA search to identify VCS for the EPA's emissions sampling and analysis reference methods cited in this proposed rule identified six candidate standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, EPA determined that four of the candidate consensus standards identified for measuring emissions of the HAPs or surrogates subject to emission standards in the proposed rule would not be practical due to lack of equivalency, documentation, and validation data. Two of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date.

The EPA takes comment on compliance demonstration requirements proposed in this rulemaking and specifically invites the public to identify potentially-applicable VCS. Commentors should also explain why this proposed rule should adopt these VCS in lieu of EPA's test methods. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A was used).

Section 63.2993 of the proposed NESHAP lists the EPA testing methods. These testing methods have been used by States and industry for more than 10 years.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 12, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart HHHH to read as follows:

Subpart HHHH—National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

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Subpart HHHH—National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

Introduction and Applicability

§ 63.2980 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants for existing, new, and reconstructed drying and curing ovens at facilities that produce wet-formed fiberglass mat.

§ 63.2981 Does this subpart apply to me?

You must comply with this subpart if you meet the criteria in paragraphs (a), (b), (b)(1) or paragraph (b)(2) of this section:

(a) You own or operate a drying and curing oven at a wet-formed fiberglass mat production facility.

(b) The facility at which your drying and curing oven is located emits or has the potential to emit in the aggregate either:

(1) A single hazardous air pollutant at a rate of 9.07 megagrams (10 tons) or more per year; or

(2) Any combination of hazardous air pollutants at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.2982 Where can I find definitions of key words used in this subpart?

The definitions of keywords used in this subpart are in §§ 63.2 and 63.3004.

Standards

§ 63.2983 What emission standards must I meet?

(a) You must control the formaldehyde emissions from each drying and curing oven by either:

(1) Limiting emissions of formaldehyde to 0.03 kilograms or less per megagram (0.05 pounds per ton) of fiberglass mat produced; or

(2) Reducing uncontrolled formaldehyde emissions by 96 percent or more.

(b) [Reserved]

§ 63.2984 What operating standards must I meet?

(a) You must maintain operating parameters within established limits or ranges specified in your operation, maintenance, and monitoring plan described in § 63.2987. If any of the specified parameters deviate from the limit or range specified in the operation, maintenance, and monitoring plan, an operating parameter excursion occurs and must be addressed according to paragraph (b) of this section. The operating parameters in paragraphs (a)(1) through (7) of this section must be maintained:

(1) You must operate the thermal oxidizer so that the average operating temperature in any 3-hour block period does not fall below the temperature established during your performance test and specified in your approved operation, maintenance, and monitoring plan.

(2) You must maintain the process or emission control device parameters within the ranges established during the performance test and specified in your approved operation, maintenance, and monitoring plan.

(3) You must not use a resin with a free-formaldehyde content greater than that of the resin used during your performance test and specified in your approved operation, maintenance, and monitoring plan.

(4) You must not use a binder formulation with a urea formaldehyde content greater than that of the binder formulation used during your performance test and specified in your approved operation, maintenance, and monitoring plan.

(5) You must not use a urea-formaldehyde (UF) resin with a solids content greater than that of the resin used during your performance test and specified in your approved operation, maintenance, and monitoring plan.

(6) You must not manufacture a product with a higher UF resin solids content per ton of product (including any material trimmed from the final product) than that of the product manufactured during your performance test and specified in your approved operation, maintenance, and monitoring plan.

(7) You must not produce products that have a loss-on-ignition value greater than that of the product manufactured during your performance test and specified in your approved operation, maintenance, and monitoring plan.

(b) When you detect that an operating parameter deviates from the limit or range established in paragraph (a) of this section, you must initiate corrective actions within 1 hour according to the provisions of your operation, maintenance, and monitoring plan. The corrective actions must be completed in an expeditious manner as specified in the operation, maintenance, and monitoring plan.

(c) You must maintain and inspect control devices according to the procedures specified in the operation, maintenance, and monitoring plan.

(d) You must reference the operating standards and their allowable ranges or limits and your operation, maintenance, and monitoring plan in the 40 CFR part 70 operating permit application for the drying and curing oven.

(e) If you use a thermal oxidizer or other control device to achieve the emission standards in § 63.2983, you must capture and convey the formaldehyde emissions from each drying and curing oven according to the procedures in chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice (22nd Edition)." This publication is incorporated by reference in § 63.3003.

§ 63.2985 When must I meet these standards?

(a) Existing drying and curing ovens must be in compliance with this subpart no later than [3 years after date final rule is published in the **Federal Register**].

(b) New or reconstructed drying and curing ovens must be in compliance with this subpart at startup or by [the date final rule is published in the **Federal Register**], whichever is later. For the purpose of this subpart, a new drying and curing oven is defined as each drying and curing oven that commences construction or reconstruction after May 26, 2000.

§ 63.2986 How do I comply with the standards?

(a) You must install, maintain, and operate a thermal oxidizer or other control device or implement a process modification that reduces formaldehyde emissions from each drying and curing oven to the limits specified in the emission standards in § 63.2983.

(b) You must comply with the operating standards of this subpart. The operating standards prescribe the requirements for demonstrating continuous compliance, based on the operation, maintenance, and monitoring plan. Requirements for operating standards are specified in § 63.2984.

(c) You must conduct a performance test to demonstrate compliance for each

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drying and curing oven subject to the emission standards of this subpart and to establish the limits or ranges for process or control device parameters that will be monitored to demonstrate continuous compliance. You must repeat the test every 5 years as part of renewing your 40 CFR part 70 operating permit. A performance test is also required to change the limit or range for any operating parameter specified in the operation, maintenance, and monitoring plan. In conducting performance tests, you must meet the requirements of § 63.7 for test dates; notifications; quality assurance program; testing facilities; conduct of the test; use of an alternate test method; data analysis, recordkeeping, and reporting; and requesting a test to be waived. You must also conduct the tests under the conditions specified in § 63.2992 and after verifying the performance of monitoring equipment as specified in § 63.2994.

(d) You must install, calibrate, maintain, and operate devices that monitor the parameters specified in your approved operation, maintenance, and monitoring plan at the frequency specified in the plan.

(e) You must prepare and follow a written operation, maintenance, and monitoring plan. The plan must be submitted to the Administrator for review and approval and must be referenced by your 40 CFR part 70 operating permit. The plan must include, as a minimum, the information specified in § 63.2987.

(f) You must comply with the monitoring, recordkeeping, and reporting requirements of this subpart. You must perform the monitoring, recordkeeping, and reporting required in §§ 63.2996 through 63.3000.

Operation, Maintenance, and Monitoring Plan

§ 63.2987 What must my operation, maintenance, and monitoring plan include?

(a) You must prescribe the monitoring that will be performed to ensure compliance with the standards in this subpart. Minimum monitoring requirements are listed in table 1 of this subpart. Your plan must specify the items listed in paragraphs (a)(1) through (3) of this section:

(1) Each process and control device to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(3) The limits or ranges for each parameter that represent continuous compliance with the emission standards in § 63.2983. Limits and ranges must be based on values of the monitored parameters recorded during performance tests.

(b) You must establish routine and long-term maintenance and inspection schedules for each control device. You must incorporate in the schedules the control device manufacturer's recommendations for maintenance and inspections or equivalent procedures. If you use a thermal oxidizer, the maintenance schedule must include procedures for annual or more frequent inspection of the thermal oxidizer to ensure that the structural and design integrity of the combustion chamber is maintained. At a minimum, you must meet the requirements of paragraphs (b)(1) through (10) of this section:

(1) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation. Clean pilot sensor if necessary.

(2) Ensure proper adjustment of combustion air and adjust if necessary.

(3) Inspect, when possible, all internal structures (such as baffles) to ensure structural integrity per the design specifications.

(4) Inspect dampers, fans, and blowers for proper operation.

(5) Inspect motors for proper operation.

(6) Inspect, when possible, combustion chamber refractory lining. Clean and repair or replace lining if necessary.

(7) Inspect the thermal oxidizer shell for proper sealing, corrosion, and hot spots.

(8) For the burn cycle that follows the inspection, document that the thermal oxidizer is operating properly and make any necessary adjustments.

(9) Generally observe whether the equipment is maintained in good operating condition.

(10) Complete all necessary repairs as soon as practicable.

(c) You must establish procedures for responding to operating parameter excursions. At a minimum, the procedures in paragraphs (c)(1) through (3) of this section must include:

(1) Procedures for determining the cause of the operating parameter excursion.

(2) Actions for correcting the excursion and returning the operating parameters to the allowable ranges or limits.

(3) Procedures for recording the times that the excursion began and ended, and corrective actions were initiated and completed.

(d) Your plan must specify the recordkeeping procedures to document compliance with the emissions and operating standards. Table 1 of this subpart establishes the minimum recordkeeping requirements.

§ 63.2988 How do I get my operation, maintenance, and monitoring plan approved?

You must obtain approval for your operation, maintenance, and monitoring plan. The steps in paragraphs (a) and (b) of this section are required to obtain approval of your plan:

(a) You must submit a draft plan to the Administrator for approval 60 days before conducting the performance tests required in § 63.2991.

(b) Within 60 days after conducting the performance tests required in § 63.2991, you must submit the final plan, including the results of the performance tests, to the Administrator for approval. In addition, you must submit the parameter levels or ranges to the permit Agency for approval.

§ 63.2989 How do I change my operation, maintenance and monitoring plan?

Changes to your operation, maintenance and monitoring plan require the approval of the Administrator.

(a) If you are revising the ranges or limits established for your operating standards, you must meet the requirements in paragraphs (a)(1) through (4) of this section:

(1) Submit a request to and obtain approval from the Administrator to conduct a performance test to revise your operating standard ranges or limits.

(2) After you receive approval from the Administrator, conduct a performance test to demonstrate that compliance with the emissions standards can be achieved at the revised operating conditions.

(3) Submit the performance test results and the revised operating, maintenance, and monitoring plan to the Administrator for approval.

(4) Pending Administrator approval of the revised operating, maintenance, and monitoring plan, you must comply with the provisions of your approved plan.

(b) If you are revising an aspect of the plan that does not require an additional performance test, for example, maintenance procedures, you must submit only a final plan to the Administrator for approval. Pending the Administrator's approval of the changes, you must comply with the provisions of your approved plan.

§ 63.2990 Can I conduct short-term experimental production runs that cause parameters to deviate from operating standards?

With the approval of the Administrator, you may conduct short-term experimental production runs during which your operating parameters deviate from the limits or ranges in your operating standards. Experimental runs may include, but are not limited to, runs using resin with a higher free-formaldehyde content than specified in the operation, maintenance, and monitoring plan, or using experimental pollution prevention techniques. To conduct a short-term experimental production run, you must complete the requirements in paragraphs (a) and (b)(1) through (6) of this section:

(a) Submit an application to the Administrator for approval at least 30 days before you conduct the test run.

(b) Prepare an application. Your application must include:

(1) The purpose of the experimental run.

(2) Identification of the affected line.

(3) An explanation of how the operating parameters will deviate from the previously approved ranges and limits.

(4) The duration of the experimental run.

(5) The date and time of the experimental run.

(6) A description of any emission testing to be performed during the experimental run.

Performance Test Requirements

§ 63.2991 When must I conduct performance tests?

You must conduct performance tests for each drying and curing oven subject to this subpart under the circumstances listed in paragraphs (a) and (b) of this section:

(a) *Initially.* You must conduct an initial performance test according to the dates specified in § 63.7. This performance test is used to demonstrate initial compliance and establish operating parameter limits and ranges to be used to demonstrate continuous compliance with the emission standards.

(b) *Every 5 Years.* You must conduct a performance test every 5 years as part of renewing your 40 CFR part 70 operating permit.

(c) *To change your operation, maintenance and monitoring plan.* You must conduct a performance test according to the requirements specified in § 63.2989.

§ 63.2992 How do I conduct a performance test?

(a) You must verify the performance of monitoring equipment as specified in § 63.2994.

(b) You must conduct the performance test according to the procedures in § 63.7.

(c) You must conduct the performance test under the conditions listed in paragraphs (c)(1) through (6) of this section:

(1) The resin must have the highest specified free-formaldehyde content that will be used.

(2) The binder formulation must have the highest urea formaldehyde content of all formulations that will be used.

(3) The resin used must have the highest UF resin solids content of all resins that will be used.

(4) The product made must have the highest UF resin solids content per ton of product of all products that will be manufactured.

(5) The product made must have the highest loss-on-ignition of all products that will be manufactured.

(6) You must operate at the maximum feasible production rate for the specific product.

(d) During the test, you must monitor and record the operating parameters that you will use to demonstrate continuous compliance after the test. These parameters are listed in table 1 of this subpart.

§ 63.2993 What test methods must I use in conducting performance tests?

(a) EPA Reference Method 1 (40 CFR part 60, appendix A) for selecting the sampling port location and the number of sampling ports.

(b) EPA Reference Method 2 (40 CFR part 60, appendix A) for measuring the volumetric flow rate.

(c) EPA Reference Method 316 (40 CFR part 60, appendix A) for measuring the concentration of formaldehyde.

(d) The method contained in appendix A of this subpart for determining the free-formaldehyde resin solids content or the resin purchase specification and the vendor specification sheet for each resin lot.

(e) The method in appendix B of this subpart for determining product loss-on-ignition.

§ 63.2994 How do I verify the performance of monitoring equipment?

Before conducting the performance test, you must take the steps listed in paragraphs (a) and (b) of this section:

(a) Install and calibrate all process equipment, control devices, and monitoring equipment.

(b) Conduct a performance evaluation of the continuous monitoring system (CMS) according to § 63.8(e) which specifies the general requirements and requirements for notifications, the site-specific performance evaluation plan, conduct of the performance evaluation, and reporting of performance evaluation results.

(c) If you use a thermal oxidizer, the temperature monitoring device must meet the performance and equipment specifications listed in paragraphs (c)(1) through (3) of this section:

(1) The temperature monitoring device must be installed at the exit of the combustion zone of each thermal oxidizer.

(2) The recorder response range must include zero and 1.5 times the average temperature required in § 63.2984(a)(1).

(3) The measurement method or reference method for calibration must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or an alternate reference subject to the approval of the Administrator.

§ 63.2995 What equations must I use to determine compliance?

(a) *Percent reduction for formaldehyde.* To determine compliance with the percent reduction formaldehyde emission standard, use equation 1 as follows:

$$E_f = \frac{M_i - M_o}{M_i} \times 100 \qquad \text{(Eq. 1)}$$

Where:

E_f=Formaldehyde control efficiency, percent.

M_i=Mass flow rate of formaldehyde entering the control device, kilograms (pounds) per hour.

M_o=Mass flow rate of formaldehyde exiting the control device, kilograms (pounds) per hour.

(b) *Formaldehyde mass emissions rate.* To determine compliance with the kilogram per megagram (pound per ton) formaldehyde emission standard, use equation 2 as follows:

$$E = \frac{M}{P} \qquad \text{(Eq. 2)}$$

Where:

E=Formaldehyde mass emissions rate, kilograms (pounds) of formaldehyde per megagram (ton) of fiberglass mat produced.

M=Formaldehyde mass emissions rate, kilograms (pounds) per hour.

P=The wet-formed fiberglass mat production rate during the emissions sampling period, including any material trimmed from the final product, megagrams (tons) per hour.

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(c) *Urea-formaldehyde (UF) resin solids content.* To determine the UF resin solids content, use equation 3 as follows:

$$\%UF = LOI \times A \qquad \text{(Eq. 3)}$$

Where:

%UF=Percent of urea-formaldehyde resin solids of wet-formed fiberglass mat produced, percent.

A=Ratio of the urea-formaldehyde resin solids to the total solids content of the binder formulation.

LOI=The loss-on-ignition of the wet-formed fiberglass mat, percent.

Monitoring, Recordkeeping, and Reporting Requirements

§ 63.2996 What must I monitor?

You must monitor the parameters listed in table 1 of this subpart and any other parameters specified on your operation, maintenance, and monitoring plan. The parameters must be monitored, at a minimum, at the corresponding frequencies listed in table 1 of this subpart.

§ 63.2997 What are the requirements for monitoring devices?

(a) If formaldehyde emissions are controlled using a thermal oxidizer, you must meet the requirements in paragraphs (a)(1) through (2) of this section:

(1) Install, calibrate, maintain, and operate a device to monitor and record continuously the thermal oxidizer temperature consistent with manufacturer's recommendations.

(2) Continuously monitor the thermal oxidizer temperature and determine and record average temperature in 15-minute and 3-hour block averages. You may determine the average temperature more frequently than every 15 minutes and every 3 hours, but not less frequently.

(b) If formaldehyde emissions are controlled by process modifications or a control device other than a thermal oxidizer, you must install, calibrate, maintain, and operate devices to monitor the parameters established in your operation, maintenance, and monitoring plan at the frequency established in the plan.

§ 63.2998 What records must I maintain?

You must maintain records according to the procedures of § 63.10. You are required to maintain the following types of records listed in paragraphs (a), (b), (c), (d) and (e)(1) through (4) of this section:

(a) All information required by the applicable general provisions. Table 2 of this subpart presents the applicable requirements of the general provisions.

(b) The approved operation, maintenance, and monitoring plan.

(c) Records of values of monitored parameters listed in table 1 of this subpart.

(d) Records of maintenance and inspections performed on the control devices.

(e) If an operating parameter excursion occurs, you must record:

(1) The date, time, and duration of the operating parameter excursion.

(2) A brief description of the cause of the operating parameter excursion.

(3) The dates and times at which corrective actions were initiated and completed.

(4) A brief description of the corrective actions taken to return the parameter to the limit or to within the range established in the operation, maintenance, and monitoring plan.

§ 63.2999 For how long must I maintain records?

You must maintain each record required by this subpart for 5 years. You must maintain the most recent 2 years of records at the facility. The remaining 3 years of records may be retained offsite.

§ 63.3000 What reports must I submit?

(a) You must submit all reports and notifications required by the applicable general provisions. Table 2 of this subpart presents the applicable requirements of the general provisions.

(b) You must include in the performance test reports required by § 63.10(d)(2) the values measured during the performance test for operating parameters listed in table 1 of this subpart. For the thermal oxidizer temperature, you must include 15-minute averages and the average for the three 1-hour test runs.

(c) You must submit to the Administrator the startup, shutdown, and malfunction plan required in § 63.6(e)(3) within 180 days of the compliance date. You must submit reports of any revisions to the plan semiannually. If no revisions are made within a semiannual period, you are not required to submit a report.

(d) If an operating parameter excursion occurs, you must comply with the reporting requirements for excess emissions and parameter monitoring exceedances in § 63.10(e)(3), which specifies the reporting frequency, excess emissions report content, and summary report content. In addition to the information required by § 63.10(e)(3), the report must contain the information recorded as a result of the operating parameter excursion, including the dates and times when the excursion commenced, corrective actions were taken, and the excursion ended and descriptions of the cause of the excursion and of the corrective actions taken. As required by § 63.10(e)(3), you must report quarterly if an excursion occurs, semiannually if no excursions occur.

Other Requirements and Information

§ 63.3001 What portions of the general provisions apply to me?

You must comply with the requirements of the general provisions of subpart A of this part, as specified in table 2 of this subpart.

§ 63.3002 Who enforces this subpart?

If the Administrator has delegated authority to your State, the State is the primary enforcement authority. If the Administrator has not delegated authority to your State, only EPA enforces this subpart.

§ 63.3003 Incorporation by reference.

(a) The following material is incorporated by reference in this section: chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice," American Conference of Governmental Industrial Hygienists, (22nd edition, 1995). The incorporation by reference of this material will be approved by the Director of the Office of the Federal Register as of the date of publication of the final rule according to 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of approval and notice of any change in the material will be published in the **Federal Register**.

(b) The materials referenced in this section are incorporated by reference and are available for inspection at the Office of the Federal Register, 800 North Capital Street NW, Suite 700, 7th Floor, Washington, DC. The material is also available for purchase from the following address: Customer Service Department, American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240, telephone number (513) 742–2020.

§ 63.3004 What definitions must I understand?

In addition to the definitions in § 63.2, keywords used in this subpart are defined as follows:

Binder application vacuum exhaust means the exhaust from the vacuum system used to remove excess resin solution from the wet-formed fiberglass mat before it enters the drying and curing oven.

Binder formulation urea formaldehyde content means the urea formaldehyde concentration of the binder, prepared from the urea-formaldehyde resin and water, as applied to the glass fibers to form the mat.

Drying and curing oven means the process section that evaporates excess moisture from a fiberglass mat and cures the resin that binds the fibers.

Fiberglass mat production rate means the weight of finished fiberglass mat produced per hour of production including any trim removed after the binder is applied and before final packaging.

Loss-on-ignition means the percentage decrease in weight of fiberglass mat measured before and after it has been ignited to burn off the applied binder. The loss-on-ignition is used to monitor the weight percent of binder in fiberglass mat.

Nonwoven wet-formed fiberglass mat manufacturing means the production of a fiberglass mat by bonding glass fibers to each other using a resin solution. Nonwoven wet-formed fiberglass mat manufacturing is also referred to as wet-formed fiberglass mat manufacturing.

Operating parameter excursion means any time an operating parameter deviates from the limit or range established in the operation, maintenance, and monitoring plan.

Thermal oxidizer means an air pollution control device that uses controlled flame combustion inside a combustion chamber to convert combustible materials to noncombustible gases.

§§ 63.3005—63.3079 [Reserved].

TABLE 1 OF SUBPART HHHH.—MINIMUM REQUIREMENTS FOR MONITORING AND RECORDKEEPING

You must monitor these parameters	At this frequency	And record for the monitored parameter
1. Thermal oxidizer temperature [a]	Continuously	15-minute and 3-hour block averages.
2. Other process or control device parameters specified in your operation, maintenance and monitoring (OMM) [b] plan.	As specified in your OMM	As specified in your OMM plan.
3. Resin free-formaldehyde content	For each lot	The value for each lot used during the operating day.
4. Binder formulation urea formaldehyde content	For each product manufactured	The value for each product manufactured during the operating day.
5. Urea-Formaldehyde (UF) resin solids content	For each product manufactured	The value for each product manufactured during the operating day.
6. Product UF resin solids content per ton of product manufactured.	For each product manufactured	The value for each product manufactured during the operating day.
7. Loss-on-ignition	For each product manufactured	The value for each product manufactured during the operating day.
8. Average hourly nonwoven wet-formed fiberglass mat production rate [c].		The value for each product manufactured during the operating day.

[a] Required if a thermal oxidizer is used to control formaldehyde emissions.
[b] Required if process modifications or a control device other than a thermal oxidizer is used to control emissions.
[c] Average production rate is a parameter that must be monitored, however, it is not an operating standard.

TABLE 2 OF SUBPART HHHH.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH

Citation	Requirement	Applies to subpart HHHH	Explanation
§ 63.1(a)(1)–(a)(4)	General Applicability	Yes.	
§ 63.1(a)(5)		No	[Reserved].
§ 63.1(a)(6)–(a)(8)		Yes.	
§ 63.1(a)(9)		No	[Reserved].
§ 63.1(a)(10)–(a)(14)		Yes.	
§ 63.1(b)	Initial Applicability Determination	Yes.	
§ 63.1(c)(1)	Applicability After Standard Established	Yes.	
§ 63.1(c)(2)		Yes	Some plants may be area sources.
§ 63.1(c)(3)		No	[Reserved].
§ 63.1(c)(4)–(c)(5)		Yes.	
§ 63.1(d)		No	[Reserved].
§ 63.1(e)	Applicability of Permit Program	Yes.	
§ 63.2	Definitions	Yes	Additional definitions in § 63.3004.
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(a)(3)	Prohibited Activities	Yes.	
§ 63.4(a)(4)		No	[Reserved].
§ 63.4(a)(5)		Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)	Existing/Constructed/Reconstruction	Yes.	
§ 63.5(b)(2)		No	[Reserved].
§ 63.5(b)(3)–(b)(6)		Yes.	
§ 63.5(c)		No	[Reserved].
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes.	

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TABLE 2 OF SUBPART HHHH.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH—Continued

Citation	Requirement	Applies to subpart HHHH	Explanation
§63.6(a)	Compliance with Standards and Maintenance—Applicability.	Yes.	
§63.6(b)(1)–(b)(5)	New and Reconstructed Sources—Dates	Yes.	
§63.6(b)(6)		No	[Reserved].
§63.6(b)(7)		Yes.	
§63.6(c)(1)–(c)(2)	Existing Sources Dates	Yes	§63.2985 specifies dates.
§63.6(c)(3)–(c)(4)		No	[Reserved].
§63.6(c)(5)		Yes.	
§63.6(d)		No	[Reserved].
§63.6(e)	Operation and Maintenance Requirements	Yes	§§63.2984 and 63.2987 specify additional requirements
§63.6(f)	Compliance with Emission Standards	Yes.	
§63.6(g)	Alternative Standard	Yes.	
§63.6(h)	Compliance with Opacity/Visible Emissions Standards.	No	Subpart HHHH does not specify opacity or visible emission standards.
§63.6(i)(1)–(i)(14)	Extension of Compliance	Yes.	
§63.6(i)(15)		No	[Reserved].
§63.6(i)(16)		Yes.	
§63.6(j)	Exemption from Compliance	Yes.	
§63.7(a)	Performance Test Requirements—Applicability and Dates.	Yes.	
§63.7(b)	Notification of Performance Test	Yes.	
§63.7(c)	Quality Assurance Program/Test Plan	Yes.	
§63.7(d)	Testing Facilities	Yes.	
§63.7(e)	Conduct of Tests	Yes	§§63.2991—63.2994 specify additional requirements.
§63.7(f)	Alternative Test Method	Yes	EPA retains approval authority.
§63.7(g)	Data Analysis	Yes.	
§63.7(h)	Waiver of Tests	Yes.	
§63.8(a)(1)–(a)(2)	Monitoring Requirements—Applicability	Yes.	
§63.8(a)(3)		No	[Reserved].
§63.8(a)(4)		Yes.	
§63.8(b)	Conduct of Monitoring	Yes.	
§63.8(c)(1)–(c)(3)	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes.	
§63.8(c)(4)		Yes.	
§63.8(c)(5)		No	Subpart HHHH does not specify opacity or visible emission standards.
§63.8(c)(6)–(c)(8)		Yes.	
§63.8(d)	Quality Control	Yes.	
§63.8(e)	CMS Performance Evaluation	Yes.	
§63.8(f)(1)–(f)(5)	Alternative Monitoring Method	Yes.	
§63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart HHHH does not require the use of continuous emissions monitoring systems (CEMS).
§63.8(g)(1)	Data Reduction	Yes.	
§63.8(g)(2)	Data Reduction	No	Subpart HHHH does not require the use of CEMS or continuous opacity monitoring systems (COMS).
§63.8(g)(3)–(g)(5)	Data Reduction	Yes.	
§63.9(a)	Notification Requirements—Applicability	Yes.	
§63.9(b)	Initial Notifications	Yes.	
§63.9(c)	Request for Compliance Extension	Yes.	
§63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
§63.9(e)	Notification of Performance Test	Yes.	
§63.9(f)	Notification of Visible Emissions/Opacity Test	No	Subpart HHHH does not specify opacity or visible emission standards.
§63.9(g)(1)	Additional CMS Notifications	Yes.	
§63.9(g)(2) and (g)(3)		No	Subpart HHHH does not require the use of COMS or CEMS.
§63.9(h)(1)–(h)(3)	Notification of Compliance Status	Yes.	
§63.9(h)(4)		No	[Reserved].
§63.9(h)(5)–(h)(6)		Yes.	
§63.9(i)	Adjustment of Deadlines	Yes.	
§63.9(j)	Change in Previous Information	Yes.	
§63.10(a)	Recordkeeping/Reporting—Applicability	Yes.	
§63.10(b)	General Recordkeeping Requirements	Yes	§63.2998 includes additional requirements.
§63.10(c)(1)	Additional CMS Recordkeeping	Yes.	
§63.10(c)(2)–(c)(4)		No	[Reserved].

TABLE 2 OF SUBPART HHHH.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH—Continued

Citation	Requirement	Applies to subpart HHHH	Explanation
§63.10(c)(5)–(c)(8)		Yes.	
§63.10(c)(9)		No	[Reserved].
§63.10(c)(10)–(c)(15)		Yes.	
§63.10(d)(1)	General Reporting Requirements	Yes	§63.3000 includes additional requirements.
§63.10(d)(2)	Performance Test Results	Yes	§63.3000 includes additional requirements.
§63.10(d)(3)	Opacity or Visible Emissions Observations	No	Subpart HHHH does not specify opacity or visible emission standards.
§63.10(d)(4)–(d)(5)	Progress Reports/Startup, Shutdown, and Malfunction Reports.	Yes.	
§63.10(e)(1)	Additional CMS Reports-General	No	Subpart HHHH does not require CEMS.
§63.10(e)(2)	Reporting results of CMS performance evaluations.	Yes.	
§63.10(e)(3)	Excess Emissions/CMS Performance Reports.	Yes.	
§63.10(e)(4)	COMS Data Reports	No	Subpart HHHH does not specify opacity or visible emission standards.
§63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§63.11	Control Device Requirements—Applicability	No	Facilities subject to subpart HHHH do not use flares as control devices.
§63.12	State Authority and Delegations	Yes.	
§63.13	Addresses	Yes.	
§63.14	Incorporation by Reference	No.	
§63.15	Availability of Information/Confidentiality	Yes.	

Appendix A to Subpart HHHH to Part 63—Method for Determining Free-Formaldehyde in Urea-Formaldehyde Resins by Sodium Sulfite (Iced & Cooled)

1.0 Scope

This procedure corresponds to the Housing and Urban Development method of determining free-formaldehyde in urea-formaldehyde resins. This method applies to samples that decompose to yield formaldehyde under the conditions of other free-formaldehyde methods. The primary use is for urea-formaldehyde resins.

2.0 Part A—Testing Resins

Formaldehyde will react with sodium sulfite to form the sulfite addition products and liberate sodium hydroxide (NaOH); however, at room temperature, the methylol groups present will also react to liberate NaOH. Titrate at 0 degrees Celsius (°C) to minimize the reaction of the methylol groups.

2.1 Apparatus Required.

2.1.1 Ice crusher.

2.1.2 One 100-milliliter (mL) graduated cylinder.

2.1.3 Three 400-mL beakers.

2.1.4 One 50-mL burette.

2.1.5 Analytical balance accurate to 0.1 milligrams (mg).

2.1.6 Magnetic stirrer.

2.1.7 Magnetic stirring bars.

2.1.8 Disposable pipettes.

2.1.9 Several 5-ounce (oz.) plastic cups.

2.1.10 Ice cube trays (small cubes).

2.2 Materials Required.

2.2.1 Ice cubes (made with distilled water).

2.2.2 A solution of 1 molar (M) sodium sulfite (Na_2SO_3) (63 grams (g) Na_2SO_3/500 mL water (H_2O) neutralized to thymolphthalein endpoint).

2.2.3 Standardized 0.1 normal (N) hydrochloric acid (Hcl).

2.2.4 Thymolphthalein indicator (1.0 g thymolphthalein/199 g methanol).

2.2.5 Sodium chloride (NaCl) (reagent grade).

2.2.6 Sodium hydroxide (NaOH).

2.3 Procedure.

2.3.1 Prepare sufficient quantity of crushed ice for three determinations (two trays of cubes).

2.3.2 Put 70 cubic centimeters (cc) of 1 M Na_2SO_3 solution into a 400-mL beaker. Begin stirring and add approximately 100 g of crushed ice and 2 g of NaCl. Maintain 0 °C during test, adding ice as necessary.

2.3.3 Add 10–15 drops of thymolphthalein indicator to the chilled solution. If the solution remains clear, add 0.1 N NaOH until the solution turns blue; then add 0.1 N HCl back to the colorless endpoint. If the solution turns blue upon adding the indicator, add 0.1 N HCl to the colorless endpoint.

2.3.4 On the analytical balance, accurately weigh the amount of resin indicated under the "*Resin Sample Size*" chart (see below) as follows.

RESIN SAMPLE SIZE

Approximate free HCHO	Sample weight (grams)
<0.5%	10
0.5—1.0%	5
1.0—3.0%	2
>3.0%	1

2.3.4.1 Pour about 1 inch of resin into a 5 oz. plastic cup.

2.3.4.2 Determine the gross weight of the cup, resin, and disposable pipette (with the narrow tip broken off) fitted with a small rubber bulb.

2.3.4 3 Pipette out the desired amount of resin into the stirring, chilled solution (approximately 1.5 to 2 g per pipette-full).

2.3.4.4 Quickly reweigh the cup, resin, and pipette with the bulb.

2.3.4.5 The resultant weight loss equals the grams of resin being tested.

2.3.5 Rapidly titrate the solution with 0.1 N HCl to the colorless endpoint described in Step 3 (2.3.3).

2.3.6 Repeat the test in triplicate.

2.4 Calculation.

2.4.1 The percent free-formaldehyde (%HCHO) is calculated as follows:

$$\%HCHO = \frac{(mL\ 0.1\ N\ HCl)\ (N\ of\ Acid)\ (3.003)}{Weight\ of\ Sample}$$

2.4.2 Compute the average percent free-formaldehyde of the three tests. *Note:* If the results of the three tests are not within a range of ±0.5 percent or if the average of the three tests does not meet expected limits, carry out Part B and then repeat Part A.

3.0 Part B—Standard Check

Part B ensures that test reagents used in determining percent free-formaldehyde in urea-formaldehyde resins are of proper concentration and that operator technique is correct. Should any doubts arise in either of these areas, the formaldehyde standard solution test should be carried out.

3.1 Preparation and Standardization of a 1 Percent Formalin Solution.

Prepare a solution containing approximately 1 percent formaldehyde from a stock 37 percent formalin solution. Standardize the prepared solution by titrating the hydroxyl ions resulting from the formation of the formaldehyde bisulfite complex.

3.2 Apparatus Required.

Note: All reagents must be American Chemical Society analytical reagent grade or better.

3.2.1 One 1-liter (L) volumetric flask (class A).
3.2.2 One 250-mL volumetric flask (class A).
3.2.3 One 250-mL beaker.
3.2.4 One 100-mL pipette (class A).
3.2.5 One 10-mL pipette (class A).
3.2.6 One 50-mL graduated cylinder (class A).
3.2.7 A pH meter, standardized using pH 7 and pH 10 buffers.
3.2.8 Magnetic stirrer.
3.2.9 Magnetic stirring bars.
3.2.10 Several 5-oz. plastic cups.
3.2.11 Disposal pippettes.
3.2.12 Ice cube trays (small cubes).

3.3 Materials Required.

3.3.1 A solution of 37 percent formalin.
3.3.2 Anhydrous Na_2SO_3.
3.3.3 Distilled water.
3.3.4 Standardized 0.100 N Hcl.
3.3.5 Thymolphthalein indicator (1.0 g thymolphthalein/199 g methanol).

3.4 Preparation of Solutions and Reagents.

3.4.1 Formaldehyde Standard Solution (approximately 1 percent). Measure, using a graduated cylinder, 27.0 mL of analytical reagent 37 percent formalin solution into a 1-L volumetric flask. Fill the flask to volume with distilled water.

Note: You must standardize this solution as described in section 3.5. This solution is stable for 3 months.

3.4.2 Sodium Sulfite Solution 1.0 M (used for standardization of Formaldehyde Standard Solution). Quantitatively transfer, using distilled water as the transfer solvent, 31.50 g of anhydrous Na_2SO_3 into a 250-mL volumetric flask. Dissolve in approximately 100 ml of distilled water and fill to volume. *Note:* You must prepare this solution daily, but the calibration of the Formaldehyde Standard Solution needs to be done only once.

3.4.3 Hydrochloric Acid Standard Solution 0.100 M. This reagent should be readily available as a primary standard that only needs to be diluted.

3.5 Standardization.

3.5.1 Standardization of Formaldehyde Standard Solution.

3.5.1.1 Pipette 100.0 mL of 1 M sodium sulfite into a stirred 250-mL beaker.

3.5.1.2 Using a standardized pH meter, measure and record the pH. The pH should be around 10. It is not essential the pH be 10; however, it is essential that the value be accurately recorded.

3.5.1.3 To the stirring Na_2SO_3 solution, pipette in 10.0 mL of Formaldehyde Standard Solution. The pH should rise sharply to about 12.

3.5.1.4 Using the pH meter as a continuous monitor, titrate the solution back to the original exact pH using 0.100 N HCl. Record the milliliters of HCl used as titrant.

Note: Approximately 30 to 35 mL of HCl will be required.

3.5.1.5 Calculate the concentration of the Formaldehyde Standard Solution using the equation as follows:

$$\%HCHO = \frac{(mL\ HCl)\ (N\ HCl)\ (3.003)}{mL\ sample}$$

3.6 *Procedure.*

3.6.1 Prepare a sufficient quantity of crushed ice for three determinations (two trays of cubes).

3.6.2 Put 70 cc of 1 M Na_2SO_3 solution into a 400-mL beaker. Begin stirring and add approximately 100 g of crushed ice and 2 g NaCl. Maintain 0 °C during the test, adding ice as necessary.

3.6.3 Add 10–15 drops of thymolphthalein indicator to the chilled solution. If the solution remains clear, add 0.1 N NaOH until the solution turns blue; then add 0.1 N HCl back to the colorless endpoint. If the solution turns blue upon adding the indicator, add 0.1 N HCl to the colorless endpoint.

3.6.4 On the analytical balance, accurately weigh a sample of Formaldehyde Standard Solution as follows.

3.6.4.1 Pour about 0.5 inches of Formaldehyde Standard Solution into a 5-oz. plastic cup.

3.6.4.2 Determine the gross weight of the cup, Formaldehyde Standard Solution, and a disposable pipette fitted with a small rubber bulb.

3.6.4.3 Pipette approximately 5 g of the Formaldehyde Standard Solution into the stirring, chilled Na_2SO_3 solution.

3.6.4.4 Quickly reweigh the cup, Formaldehyde Standard Solution, and pipette with the bulb.

3.6.4.5 The resultant weight loss equals the grams of Formaldehyde Standard Solution being tested.

3.6.5 Rapidly titrate the solution with 0.1 N HCl to the colorless endpoint in Step 3 (3.6.3).

3.6.6 Repeat the test in triplicate.

3.7 Calculation for Formaldehyde Standard Solution.

3.7.1 The percent free-formaldehyde (% HCHO) is calculated as follows:

$$\%HCHO = \frac{(mL\ 0.1\ N\ HCl)\ (N\ Acid)\ (3.003)}{Weight\ of\ Formaldehyde\ Standard\ Solution}$$

3.7.2 The range of the results of three tests should be no more than ±5 percent of the actual Formaldehyde Standard Solution concentration. Report results to two decimal places.

3.8 Reference.

West Coast Adhesive Manufacturers Trade Association Test 10.1.

Appendix B to Subpart HHHH to Part 63—Method for the Determination of Loss-on-Ignition

1.0 *Purpose*

The purpose of this test is to determine the loss-on-ignition (LOI) of wet-formed fiberglass mat.

2.0 *Equipment*

2.1 Scale sensitive to 0.001 gram (g).

2.2 Drying oven equipped with a means of constant temperature regulation and mechanical air convection.

2.3 Furnace designed to heat to at least 625 °C (1,157 °F) and controllable to ±25 °C (±45 °F).

2.4 Crucible, high form, 250 milliliter (mL).

2.5 Desiccator.

2.6 Pan balance (see Note 2 in 4.9)

3.0 *Sample Collection Procedure*

3.1 Obtain a sample of mat in accordance with Technical Association of the Pulp and Paper Industry (TAPPI) method 1007 "Sample Location."

3.2 Use a 5-to 10-g sample cut into pieces small enough to fit into the crucible.

3.3 Place the sample in the crucible. (Note 1: To test without the use of a crucible, see Note 2 after Section 4.8.)

3.4 Condition the sample in the furnace set at 105 ± 3 °C (221 ± 9 °F) for 5 minutes ± 30 seconds.

4.0 *Procedure*

4.1 Condition each sample by drying for 5 minutes ± 30 seconds at 105 ± 3 °C (22 ± 5 °F).

4.2 Remove the test sample from the furnace and cool in the desiccator for 30 minutes in the standard atmosphere for testing glass textiles.

4.3 Place the empty crucible in the furnace at 625 ± 25 °C (1,157 ± 45 °F). After 30 minutes, remove and cool the crucible in the standard atmosphere (TAPPI method 1008) for 30 minutes.

4.4 Identify each crucible with respect to each test sample of mat.

4.5 Weigh the empty crucible to the nearest 0.001 g. Record this weight as the tare mass, T.

4.6 Place the test sample in the crucible and weigh to the nearest 0.001 g. Record this weight as the initial mass, A.

4.7 Place the test sample and crucible in the furnace and ignite at 625 ± 25 °C (1,157 ± 45 °F).

4.8 After ignition for at least 30 minutes, remove the test sample and crucible from the furnace and cool in the desiccator for 30 minutes in the standard atmosphere (TAPPI method 1008).

4.9 Remove each crucible, and test each sample separately from the desiccator, and immediately weigh each sample to the nearest 0.001 g. Record this weight as the ignited mass, B. (Note 2: When it is known that no ash residue separates from the test sample during the weighing and igniting processes, you may weigh the sample separately without the crucible. When this occurs, the tare mass (T) equals zero. With appropriate care, you can dry and weigh a single piece of mat and place with tongs into the ignition oven on appropriate refractory supports. When the ignition time is over, remove the sample as an intact fragile web and weigh it directly on a pan balance.)

5.0 *Calculation*

5.1 Calculate the LOI for each sample as follows:

% LOI = 100 × (A − B)/(A − T)

Where:

A = initial mass of crucible and sample before ignition (g);
B = mass of crucible and glass residue after ignition (g); and
T = tare mass of crucible, (g) (see Note 2).

5.2 Report the percent LOI of the glass mat to the nearest 0.1 percent.

6.0 *Precision*

The repeatability of this test method for measurements on adjacent specimens from the same sample of mat is better than 1 percent.

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Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 90, 91 et al.
Changes in Fees for Science and Technology (S&T) Laboratory Service; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 90, 91, 92, 93, 94, and 98

[Docket Number S&T–99–008]

RIN 0581–AB91

Changes in Fees for Science and Technology (S&T) Laboratory Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the standard hourly fee rate for each laboratory analysis conducted under the AMS S&T Laboratory Program from $36.26 to $45.00. The premium laboratory rate for appeals, holiday and overtime service would be increased from $54.39 to $67.50 per analysis hour. These proposed 24.1 percent increases in hourly rates reflect the additional revenue S&T is required to collect in order to recover laboratory program expenses. AMS also proposes to change fees for laboratory testing services which are offered for agricultural food commodities to reflect actual equipment and labor expenses for performing each test. The proposed regulations include additional tests for commodity products for incorporation into existing schedules and sets an updated hourly rate of $45.00 for unlisted tests. AMS proposes to remove laboratory tests that have been found to be obsolete as well as duplicate tests performed by other Agricultural Marketing Service programs. The proposal also has name, position title, and address changes as a result of Agency restructuring that lead to the formation of the AMS Science and Technology program.

DATES: Comments must be received on or before June 15, 2000.

ADDRESSES: Comments are invited on this proposed rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Comments should be sent in triplicate to James V. Falk, Docket Manager, USDA, AMS, Science and Technology, P.O. Box 96456, Room 3521-South, Washington, DC 20090–6456; telephone (202) 690–4089; the facsimile (202) 720–4631, or e-mail: James.Falk@usda.gov and should refer to the docket title and number located in the heading of this document. Comments received will be available for public inspection in Room 3507, South Agriculture Building, 1400 Independence Avenue, SW, Washington, D.C. 20250 between the hours of 10:00 a.m. and 4:00 p.m., Eastern Time, Monday through Friday, except Federal holidays. All comments received on or before the closing date for comments will be considered. After the close of the comment period, AMS intends to publish a final rule in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Anita J. Okrend, Technical Services Branch Chief, telephone (202) 690–4025, or e-mail: Anita.Okrend@usda.gov.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

B. Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule does not preempt any State or local laws, regulation, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

C. Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

There are 811 current users of the Science and Technology's (S&T) laboratory testing services. Such users of services include food processors, handlers, growers, government agencies, and exporters. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). Laboratory tests for commodities are provided to all businesses on a voluntary basis and user fees are set at an hourly rate. Any decision to discontinue the use of the laboratory services and obtain new contracts with other governmental agencies or private laboratories would not hinder the food processors or industry members from marketing their products. User fee costs to entities would be proportional to their use of testing services, so that costs are shared equitably by all users.

The last fee increases for the Laboratory Program testing services became effective on May 4, 1998 (63 FR 16370–16375). Since that time, there has been both a decline in revenue and an increase in costs. This reflects a shift in usage patterns on the part of applicants for testing services and change to government programs. For example, several federal commodity purchasing programs are now relying heavily on vendor certification rather than government laboratory testing; a larger percentage of peanut aflatoxin analyses are performed by other, non-S&T laboratories; testing of tobacco samples is down; and poultry testing is decreasing due to changing importer country requirements. In addition, some companies are doing their own company and in-house analyses rather than using government laboratory testing services. Further, there has been a noticeable decrease in requested dairy product testing with the scaling back of the dairy price support program. Several streamlining actions to be completed in FY 2000 will result in cost savings. They include staff and space reductions or closing of laboratories. However, overall, costs are increasing despite these efforts. Employee salary and benefits, which account for approximately 68 percent of FY 2000 operating budget, have increased 4.8 to 5.59 percent, depending on the locality, since January 2000. For FY 1999, these increases were 3.54 to 4.02 percent, depending on locality. Rents, utilities, communications, and other overhead costs increased 5.1 percent during FY 1999. These overhead costs are projected to increase by the same percentage for FY 2000.

In fiscal year 1999, the S&T Laboratory Program obligatory costs exceeded revenues by $1,423,869 with costs at $6,419,006 and revenue at $4,995,137. There was an $807,299 decline in revenue in fiscal year 1999. For FY 2000 the S&T program expects to report a $1,562,534 deficit at the current fees because there are expected to be lower numbers of samples for analysis with all commodities at our laboratories. The S&T program projected costs and revenues for FY 2000 are $6,513,730 and $4,951,196 respectively without a fee increase.

The AMS estimates that this rule would yield $1,584,383 overall in additional laboratory testing program revenues during FY 2000. The laboratory hourly fee rate would increase by approximately 24.1 percent from $36.26, as last revised effective May 4, 1998. The new standard laboratory service fee rate would be $45.00 per hour. This fee would also apply to tests which are not listed in the fee schedules (Tables 1 through 8). The premium laboratory rate for appeals, holiday and overtime service would be $67.50 per analysis hour or one and one half times the fees listed in Tables 1 through 8. This represents a 24.1 percent increase. The fees in Tables 1 through 8 would also be amended. Most of these would increase. Without an increase, anticipated revenue would not adequately cover increasing program costs. FY 2000 revenues for laboratory testing are expected to be $4,951,196 at the current hourly fee rates, obligatory costs are projected at $6,513,730, and trust fund balance would be $797,211, which is below necessary reserve level ($2,552,243). With the fee increase, FY 2000 revenues are projected to be $5,017,147 with obligatory costs of $6,400,480 and trust balance at $874,667. Users of S&T testing services are under no obligation to use them. However, it is necessary for AMS to recover the cost of these services. The Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) provides for the collection of reimbursable fees from users of the program services to cover, as nearly as practicable, the costs of the services rendered.

Other miscellaneous and unsubstantial changes are proposed that would not adversely affect users of the program services. Related proposed fee increases represent the minimal fee increases necessary to cover the costs of operating the services provided under the S&T program. Accordingly, the Administrator has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This proposed rule does not contain any new information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E. Background and Proposed Fees

On August 9, 1993, AMS published a rule in the **Federal Register** (58 FR 42408–42448) to combine all AMS regulations concerning laboratory services. The goal was to consolidate and to transfer existing laboratory testing programs operating independently under the various AMS commodity programs (Cotton, Poultry, Fruit and Vegetable, Tobacco, Dairy, and Livestock and Seed) to its Science and Technology (S&T) program, formerly the Science Division and the Science and Technology Division (S&TD).

All divisions in the Agricultural Marketing Service (AMS) were designated as programs by the Administrator on September 18, 1997. The prior rules included fees charged for testing and related services under the diversified S&T programs and set an hourly analytical testing rate. The current standard hourly rate of $36.26 and the premium hourly rate of $54.39 have been in effect since the April 2, 1998 rule (63 FR 16370—16375).

The S&T laboratory testing programs are mainly voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The Act authorizes the Secretary of Agriculture to provide Federal analytical testing services that facilitate marketing and allow products to obtain grade designations or meet marketing standards. In addition, the laboratory tests establish quality standards for agricultural commodities. The Act also requires that reasonable fees be collected from the users of the services to cover as nearly as possible the costs of maintaining the programs.

In addition to raising hourly fees, there is a need to amend all general schedules and listing of fees for official laboratory test services in tables 1 through 8 in Part 91, Subpart I due to rapid changes in analytical methodologies and customer service needs. Under the present regulations the fee schedules list 200 items of laboratory services in part 91. Many additions and deletions of laboratory tests have occurred since the last rule published on April 2, 1998 (63 FR 16370—16375). The following tables 1 through 8 compare current fees and charges with proposed fees and charges for the laboratory testing of food and fiber products as found at 7 CFR 91.37:

TABLE 1.—AMENDED

Name of specific program	Type of analysis	Current fee	Proposed fee
Table 1—Single Test Laboratory Fees for Proximate Analyses.	Ammonia, Ion Selective Electrode	$81.59	$101.25
	Ash, Total	36.26	45.00
	Ash, Acid Insoluble	54.39	[2]
	Chloride, Salt Titration (Dairy)	18.13	22.50
	Fat, Acid Hydrolysis (Cheese)	36.26	45.00
	Fat Acid Hydrolysis (Mojonnier)	36.26	45.00
	Fat (Dairy Prod. Except Cheese)	18.13	22.50
	Fat (Dry Basis)	None	67.50
	Fat, Ether Extraction (Soxhlet)	36.26	45.00
	Fat (Kohman)	[1]	45.00
	Fat, Microwave-Solvent Extract	36.26	45.00
	Fiber, Crude	72.52	[2]
	Moisture, Distillation	36.26	45.00
	Moisture, Oven	18.13	22.50
	Moisture (Kohman)	[1]	11.25
	Protein, Combustion	72.52	90.00
	Protein, Kjeldahl	72.52	90.00
	Salt, Back Titration	27.20	33.75
	Salt, Potentiometric	18.13	22.50
	Salt (Rapid)	[1]	33.75
	Standard hourly rate	36.26	45.00
	Premium hourly rate	54.39	67.50

[1] None.
[2] Removed.

TABLE 2.—AMENDED

Name of specific program	Type of analysis	Current fee	Proposed fee
Table 2—Single Test Laboratory Fees for Lipid Related Analysis.	Acid Degree Value (Dairy)	$36.26	$45.00
	Acidity, Titratable	9.07	22.50
	Carotene, Spectrophotometric	90.65	[2]
	Catalase Test	18.13	[2]
	Cholesterol	90.65	[2]
	Color (Honey)	18.13	[2]
	Color, NEPA (Eggs)	36.26	[2]
	Consistency, Bostwick (Cooked)	18.13	[2]
	Consistency, Bostwick Uncooked)	18.13	[2]
	Density (Specific Gravity)	9.07	11.25
	Dispersibility (I Dry Whole Milk)	[1]	67.50
	Dispersibility (Moates-Dabbah)	18.13	22.50
	Fat Stability, AOM	36.26	45.00
	Fatty Acid Profile, AOAC–GC	145.04	180.00
	Flash Point Test only	72.52	90.00
	Free Fatty Acids	18.13	22.50
	Meltability (Process Cheese)	18.13	22.50
	Peanut Oil Analyses (Oil, Moisture, Free Fatty Acid, Ammonia, and Foreign Matter).	[1]	45.00
	Any 1 of the oilseed oil analyses	[1]	22.50
	Peroxidase Test	18.13	[2]
	Peroxide Value	27.20	33.75
	Smoke Point Test only	72.52	90.00
	Smoke Point and Flash Point	126.91	157.50
	Solids, Total (Oven Drying)	18.13	22.50
	Soluble Solids, Refractometer	18.13	22.50

[1] None.
[2] Removed.

TABLE 3.—AMENDED

Name of specific program	Type of analysis	Current fee	Proposed fee
Table 3—Single Test Laboratory Fees for Food Additive (Direct and Indirect).	Aflatoxin (Dairy, Eggs)	$126.91	[2]
	Alar or Daminozide Residue	217.56	[3]
	Amitraz Residue, GLC	217.56	$270.00
	Alcohol (Qualitative)	72.52	[3]
	Alkalinity of Ash	54.39	[3]
	Antibiotic, Qualitative (Dairy)	18.13	22.50
	Antibiotic, Quantitative	389.86	393.75
	Ascorbates (Qualitative—Meats)	18.13	22.50
	Ascorbic Acid, Titration	36.26	45.00
	Ascorbic Acid, Spectrophotometric	36.26	45.00
	Benzene, Residual	72.52	[3]
	Brix, Direct Percent Sucrose	18.13	22.50
	Brix, Dilution	18.13	22.50
	Butylated Hydroxyanisole (BHA)	54.39	67.50
	Butylated Hydroxytoluene (BHT)	54.39	67.50
	Caffeine, Micro Bailey-Andrew	54.39	67.50
	Caffeine, Spectrophotometric	36.26	78.75
	Calcium	54.39	[3]
	Citric Acid, GLC or HPLC	54.39	67.50
	Chlorinated Hydrocarbons: Pesticides and Industrial Chemicals—Initial Screen.	145.04	180.00
	Second Column Confirmation of Analyte	36.26	45.00
	Confirmation on Mass Spectrometer	72.52	90.00
	Dextrin (Qualitative)	18.13	22.50
	Dextrin (Quantitative)	108.78	135.00
	Filth, Heavy (Dairy)	90.65	112.50
	Filth, Heavy (Eggs)	145.04	180.00
	Filth, Light (Eggs)	90.65	112.50
	Filth, Light & Heavy (Eggs)	217.56	270.00
	Fines	[1]	22.50
	Flavor (Dairy)	9.07	11.25
	Flavor (Products except Dairy)	27.20	33.75
	Fumigants:		
	Initial Screen—		
	Dibromochloropropane (DBCP)	36.26	45.00
	Ethylene Dibromide	36.26	45.00

TABLE 3.—AMENDED—Continued

Name of specific program	Type of analysis	Current fee	Proposed fee
	Methyl Bromide	36.26	45.00
	Confirmation on Mass Spectrometer—Each individual fumigant residue.	72.52	90.00
	Glucose (Qualitative)	27.20	33.75
	Glucose (Quantitative)	63.46	78.75
	Glycerol (Quantitative)	108.78	135.00
	Gums	108.78	135.00
	Heavy Metal Screen	317.28	326.25
	High Sucrose Content or Avasucrol (Holland Eggs)	145.04	[3]
	Hydrogen Ion Activity, pH	18.13	[3]
	Mercury, Cold Vapor AA	90.65	135.00
	Metals (Other Than Heavy, Each Metal)	72.52	[3]
	Monosodium Dihydrogen Phosphate	145.04	180.00
	Monosodium Glutamate	145.04	180.00
	Niacin	72.52	90.00
	Nitrites (Qualitative)	18.13	[3]
	Nitrites (Quantitative)	108.78	[3]
	Ochratoxin A	[1]	67.50
	Odor	9.07	11.25
	Organic Acids (in Eggs)	[1]	180.00
	Oxygen	18.13	22.50
	Palatability and Odor:		
	First Sample	27.20	22.50
	Each Additional Sample	18.13	[3]
	Penicillin	[1]	67.50
	Phosphatase, Residual	36.26	[3]
	Phosphorus	72.52	[3]
	Propylene Glycol, Codistillation: (Qualitative)	72.52	[3]
	Pyrethrin Residue (Dairy)	145.04	180.00
	Scorched Particles	9.07	22.50
	Sodium, Potentiometric	36.26	45.00
	Sodium Benzoate, HPLC	54.39	67.50
	Sodium Lauryl Sulfate (SLS)	290.08	[3]
	Sodium Silicoaluminate (Zeolex)	72.52	90.00
	Solubility Index	18.13	11.25
	Starch (in Dry Milk)	[1]	22.50
	Starch, Direct Acid Hydrolysis	108.78	90.00
	Sugar, Polarimetric Methods	36.26	33.75
	Sugar Profile, HPLC—		
	One type sugar from profile	108.78	135.00
	Each additional type sugar	18.13	22.50
	Sugars, Non-Reducing	108.78	135.00
	Sugars, Total as Invert	72.52	[3]
	Sulfites (Qualitative)	27.20	[3]
	Sulfur Dioxide, Direct Titration	36.26	45.00
	Sulfur Dioxide, Monier-Williams	54.39	[3]
	Toluene, Residual	72.52	90.00
	Triethyl Citrate, GC (Quantitative)	36.26	[3]
	Vitamin A, Carr-Price (Dairy)	45.33	112.50
	Vitamin A, HPLC	90.65	90.00
	Vitamin B-1 (Thiamin)	72.52	90.00
	Vitamin B-2 (Riboflavin)	72.52	90.00
	Vitamin D, HPLC (Vitamins D2 & D3/Dairy)	308.21	382.50
	Whey Protein Nitrogen	27.20	33.75
	Whey Protein Nitrogen, Kjeldahl	[1]	112.50
	Xanthydrol Test for Urea	54.39	67.50
	This is an optional test to the extraneous material isolation test.		

[1] None.
[2] Redistributed.
[3] Removed.

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TABLE 4.—AMENDED

Name of specific program	Type of analysis	Current fee	Proposed fee
Table 4—Single Test Laboratory Fees for Other Chemical and Physical Component Analyses	Available Carbon Dioxide (Baking Powders)	$145.04	[2]
	Capsaicin (Hot Sauce)	72.52	[2]
	Cheese (Fines)	[1]	$11.25
	Color, Apparent-Visual	9.07	11.25
	Complete Kohman Analysis-DairyExtractable Color in Spices.	36.26	45.00
	Grape Juice Absorbancy Ratio	18.13	[2]
	Hot Water Insolubles	18.13	[2]
	Hydroxymethylfurfural (Honey)	[1]	67.50
	Jelly Strength (Bloom)	36.26	[2]
	Linolenic Acid	90.65	[2]
	Methyl Anthranilate	72.52	90.00
	Net Weight (Per Can)	36.26	[2]
	Non-Volatile Methylene Chloride Extract	9.07	11.25
	Overrun for Whipped Topping	90.65	112.50
	Particle Size (Ether Wash)	27.20	33.75
	pH	18.13	22.50
	pH—Quinhydrone (Cheese)	[1]	11.25
	Potassium Iodide (Table Salt)	18.13	22.50
	Protein Reducing Substances	54.39	67.50
	Quinic Acid (Cranberry Juice)	[1]	45.00
	Serum Drainage for Whipped Topping	63.46	78.75
	Sieve or Particle Size	18.13	22.50
	Rate of Wetting (Nondairy Creamer)	18.13	22.50
	Reducing Sugars	18.13	22.50
	Water Activity	72.52	90.00
	Water Insoluble Inorganic Residues (WIIR)	27.20	22.50
	Yellow Onion Test	72.52	90.00
		27.20	[2]

[1] None.
[2] Removed.

TABLE 5.—AMENDED

Name of specific program	Type of analysis	Current fee	Proposed fee
Table 5—Single Test Laboratory Fees for Microbiological Analyses.	Aerobic (Standard) Plate Count	$18.13	$22.50
	Anaerobic Bacterial Plate Count	27.20	33.75
	Bacillus cereus	72.52	90.00
	Bacterial Direct Microscopic Count	36.26	45.00
	Campylobacter jejuni	145.04	[2]
	Coliform Plate Count (Dairy Products)	18.13	22.50
	Coliform Plate Count, Violet Red Bile Agar (Presumptive Coliform Plate Count).	27.20	33.75
	Coliforms, Most Probable Number (MPN):		
	Step 1	27.20	33.75
	Step 2	27.20	22.50
	Direct Microscopic Clump Count	[1]	11.25
	Direct Microscopic Clump Count Greater Than 75 Million.	[1]	45.00
	E. coli, Presumptive MPN (Additional)	54.39	45.00
	E. coli (MUG)	[1]	33.75
	Enterococci Count	108.78	135.00
	Howard Mold Count	[1]	56.25
	Lactobacillus Count	45.33	56.25
	Lactic Acid Tolerant Microbes	[1]	22.50
	Listeria monocytogenes Confirmation Analysis:		
	Step 1	54.39	67.50
	Step 2	54.39	56.25
	Step 3 (Confirmation)	90.65	112.50
	Parasite Identification	145.05	180.00
	Psychrotrophic Bacterial Plate Count	27.20	45.00
	Salmonella (USDA Culture Method):		
	Step 1 (Dairy Products)	$36.26	[2]
	Step 1	54.39	$78.75
	Step 2	27.20	33.75
	Step 3 (Confirmation)	54.39	56.25
	Serological Typing (Optional)	90.65	[2]
	Salmonella Enumeration (Complete Test)	108.78	135.00
	Salmonella (Rapid Methods):		

TABLE 5.—AMENDED—Continued

Name of specific program	Type of analysis	Current fee	Proposed fee
	Step 1	72.52	78.75
	Step 2	27.20	33.75
	Step 3 (Confirmation)	54.39	56.25
	Salmonella typhi (Meat Products)	36.26	45.00
	Staphylococcus aureus, Direct Plating	[1]	67.50
	Staphylococcus aureus, MPN: With Coaguiase Positive Confirmation.	63.46	78.75
	Thermoduric Bacterial Plate Count	27.20	33.75
	Yeast and Mold Count	18.13	22.50
	Yeast and Mold Differential Confirmation	[1]	22.50
	Yeast and Mold Differential Plate Count	27.20	33.75
	Yeast or Mold Confirmation	[1]	22.50

[1] None.
[2] Removed.

TABLE 6.—[AMENDED] LABORATORY FEES FOR AFLATOXIN ANALYSES

Aflatoxin test by commodity	Current fee per single analysis	Current fee per pair analyses	Proposed fee per single analysis	Proposed fee per pair analyses [1]
Peanut Butter (TLC–CB, HPLC, Affinity Column) Affinity Column)	$36.26	[3]	$45.00	[3]
Corn (TLC–CB, HPLC, Affinity Column)	36.26	[3]	45.00	[3]
Roasted Peanuts (TLC–BF)	36.26	[3]	45.00	[3]
Brazil Nuts (TLC–BF)	72.52	[3]	90.00	[3]
Pistachio Nuts (TLC–BF, HPLC)	72.52	[3]	90.00	[3]
Shelled Peanuts (TLC , Affinity Column)	17.00	$34.00	45.00	$38.00
Shelled Peanuts (HPLC)	31.00	62.00	45.00	70.00
Tree Nuts (TLC)	36.26	[3]	45.00	[3]
Oilseed Meals (TLC, HPLC, Affinity Column)	36.26	[3]	45.00	[3]
Edible Seeds (TLC)	36.26	[3]	45.00	[3]
Dried Fruit (TLC)	36.26	[3]	45.00	[3]
Small Grains (TLC)	36.26	[3]	45.00	[3]
In-Shell Peanuts (TLC, Affinity Column)	17.00	34.00	45.00	38.00
In-Shell Peanuts (HPLC)	[2]	[2]	45.00	70.00
Silage; Other Grains (TLC)	36.26	[3]	45.00	[3]
Submitted Samples (TLC, HPLC, Affinity Column)	36.26	[3]	45.00	[3]
Aflatoxin (Dairy, Eggs)	126.91	[2]	157.50	[3]

[1] Aflatoxin testing of raw peanuts under Peanut Marketing Agreement for subsamples 1–AB, 2–AB, 3–AB, and 1–CD for single or pair of analyses is $19.00 or $38.00, respectively using Thin-Layer Chromatography (TLC) and Best Foods (BF) extraction or immunoaffinity column assay with fluorometric quantitation. The BF method has been modified to incorporate a water slurry extraction procedure. The Contaminants Branch (CB) method is used on occasion as an alternative method for peanuts and peanut meal when doubt exists as to the effectiveness of the Best Foods method in extracting aflatoxin from the sample or when background interferences exist that might mask TLC quantitation of aflatoxin. The cost per single or pair of analyses using High Pressure Liquid Chromatography (HPLC) is $35.00 and $70.00, respectively. Other aflatoxin analyses for fruits and vegetables are listed at Science and Technology's current hourly rate of $45.00.
[2] None.
[3] NA=Not Applicable.

TABLE 7.—MISCELLANEOUS CHARGES SUPPLEMENTAL—TO SCIENCE AND TECHNOLOGY'S LABORATORY TEST FEES

Laboratory service description	Current list fee	Proposed list fee
Sample Grinding by Vertical Cutter Mixer (VCM).	$18.13	$22.50.
Sample Grinding Canned Boned Poultry	36.26	11.25 per can.
Sample Grinding by Dickens Hammer Mill	None	11.25.
Sample Grinding (Meats, Meat Products, Meals, Ready-to-Eat):		
Per pouch or raw sample	9.07	11.25.
Per tray pack	18.13	22.50.
Compositing Multiple Subsamples for an Individual Test Sample—Unit per Subsample.	9.07	Varies—Preparation fee based on $45.00 per hour.

TABLE 8.—ADDITIONAL CHARGES APPLICABLE TO SAMPLE RECEIPT AND ANALYSIS REPORT

Service description	Current list charge	Proposed list charge
Established Courier Expense at Albany, Georgia S&T Laboratory.	$2.15	Removed.

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TABLE 8.—ADDITIONAL CHARGES APPLICABLE TO SAMPLE RECEIPT AND ANALYSIS REPORT—Continued

Service description	Current list charge	Proposed list charge
Courier Expense at Other AMS Laboratories: Mileage Charge Set at $0.325 Per Mile Round Trip from Laboratory to Delivery Site.	Varies	Varies (based on total mileage).
Facsimile Charge (Per Analysis Report)	$3.20 minimum up to first 3 pages, then $1.10 per page.	$3.20 minimum up to first 3 pages, then $1.50 per page.
Additional Analysis Report or Extra Certificate (½ hour charge minimum).	$18.13 per report or certificate reissued	$22.50 per report or certificate issued.

Currently, there are 200 tests or laboratory services in the current fee schedules in Tables 1 through 8 of Part 91 of the regulations. This proposed rule recommends removing 41 laboratory tests or services which have been found to be obsolete or which duplicate tests performed by other Agricultural Marketing Service programs. The proposed rule adds 28 new analytical tests that are frequently requested by many of Science and Technology's 811 customers. The customers for our laboratory services would benefit with the increased convenience of choosing newer and perhaps less costly analytical methods for determining a particular analyte in a commodity product. Once this rule becomes effective, there would be 187 laboratory test and service descriptions with scheduled fees in tables 1 through 8 of part 91 of the regulations. The majority of the fees have increased by 24.1 percent. However, 11 fees have increased by a greater percentage and 8 fees have been lowered. Although the fees set for the various tests are based on the hourly fee, it is necessary to consider other factors when setting fees for some of the tests. For example, the large increase in proposed fees for some laboratory tests is due to the additional need to recover the large increase in costs for specialized chemicals or microbiological media and other materials for performing these tests. Therefore, the titratable acidity and the scorched particles analyses would increase from $9.07 to $22.50, and the Carr-Price vitamin A (Dairy) test would increase from $45.33 to $112.50. For the same reason, S&T is proposing to increase the cost of performing step 1 for the Salmonella (USDA culture method) to $78.75 from $54.39 and the fee for performing the psychrotrophic bacterial plate count would change from $27.20 to $45.00.

The general 24.1 percent increase in user fees for laboratory services are intended to cover all of the costs associated with S&T Laboratory Program. In fee tables 1 through 8 in 7 CFR part 91, S&T is proposing to increase the fees for the quantitative antibiotic, the heavy metal screen, the step 1 *Listeria monocytogenes* analysis, the step 3 or confirmation *Salmonella* analysis (both the USDA culture and rapid methods), and the step 1 *Salmonella* analysis (rapid method) by 1, 2.8, 3.4, 3.4 (both), and 8.6 percent respectively. In addition, certain laboratory fees are proposed to be lowered by 17.3 percent. These are the palatability and odor test, the direct acid hydrolysis starch test, the water activity test, the step 2 MPN coliforms test, and the MPN presumptive *E. coli* test. S&T is also proposing to lower the fees for the solubility index, the sugar polarimetric methods, and the HPLC vitamin A analysis by 37.9, 6.9, and 0.7 percent respectively.

In its analysis of projected costs for fiscal years 1999 and 2000, AMS has identified increases in the costs of providing laboratory testing services despite declining revenues. In fiscal year 1999, the S&T Laboratory Program obligatory costs exceeded revenues by $1,423,869 with costs at $6,419,006 and revenue at $4,995,137. There was an $807,299 decline in revenue in fiscal year 1999. For FY 2000 the S&T program expects to report a $1,562,534 deficit at the current fees because there are expected to be lower numbers of samples for analysis with all commodities at our laboratories. The S&T program projected costs and revenues for FY 2000 are $6,513,730 and $4,951,196 respectively without a fee increase. The corresponding decrease in revenue with lower numbers of samples are attributable mainly to a shift in usage patterns on the part of applicants for testing services and change to government programs. For example, several federal commodity purchasing programs are now relying heavily on vendor certification rather than government laboratory testing; a larger percentage of peanut aflatoxin analyses are performed by Peanut Administrative (PAC) approved private laboratories; testing of tobacco samples is down; and poultry testing is decreasing due to changing importer country requirements. In addition, some companies are doing their own company analyses rather than using government laboratory testing services. Further, there has been a noticeable decrease in requested dairy product testing as a result of an ongoing phase out of the dairy price support program. Several streamlining actions to be completed in FY 2000 will result in cost savings. They include staff and space reductions or closing of laboratories. For example, S&T has voluntarily closed aflatoxin testing facilities at Dothan, Alabama and Ashburn, Georgia that are currently listed in 7 CFR part 91. Overall, costs are increasing despite these efforts. Employee salary and benefits, which account for approximately 68 percent of FY 2000 operating budget, have increased 4.8 to 5.59 percent, depending on the locality, since January 2000. For FY 1999, these increases were 3.54 to 4.02 percent, depending on locality. Rents, utilities, communications, and other overhead costs increased 5.1 percent during FY 1999. These overhead costs are projected to increase by the same percentage for FY 2000.

The AMS estimates that this rule would yield $1,584,383 overall in additional laboratory testing program revenues during FY 2000. The laboratory hourly fee rate would increase by approximately 24.1 percent from $36.26, as last revised effective May 4, 1998 (63 FR 16370). The new standard laboratory service fee rate would be $45.00 per hour. This fee would also apply to tests which are not listed in the fee schedules (Tables 1 through 8). The premium laboratory rate for appeals, holiday and overtime service would be $67.50 per analysis hour or one and one half times the fees listed in Tables 1 through 8. This represents an approximate 24.1 percent increase. The fees in Tables 1 through 8 would also be amended. Most of these would increase. Without an increase, anticipated revenue would not adequately cover increasing program costs. FY 2000 revenues for laboratory testing are expected to be $4,951,196 at the current hourly fee rates, obligatory costs are projected at $6,513,730, and trust fund balances would be $797,211, which is below necessary reserve level ($2,552,243). With the fee increase, FY 2000 revenues are projected to be $5,017,147 with obligatory costs of $6,400,480 and trust balance at $874,667. Users of S&T testing services are under no obligation to use them. However, it is necessary for AMS to recover the cost of these services. The Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) provides for the collection of reimbursable fees from users of the program services to cover, as nearly as practicable, the costs of the services rendered.

All divisions in the Agricultural Marketing Service (AMS) were designated as programs by the Administrator on September 18, 1997. Hence, this proposal also has name, position title, address corrections, and other changes which are administrative in nature as a result of these Agency restructuring efforts. The term "Science and Technology Division" would be changed to "Science and Technology." The term "Director" would be replaced by the term "Deputy Administrator." Section 91.5 would list new addresses for the Science and Technology regional laboratories, headquarters offices, the Information Technology (IT) office, the Statistical Branch office, and the offices for residue programs. The name "Residue Branch" in section 91.5 would be more appropriately named "Pesticide Data Branch." In section 91.9, the Technical Service Branch Chief would replace the defunct Laboratory Operations Coordination Staff Chief position. In sections 91.23, 93.13, 94.4 and 98.4, the analytical method references would have updated addresses. Section 91.37 would list a world wide web (www) site (*http://ams.usda.gov/science*) in which to obtain updated schedules of the laboratory testing fees. In section 91.37, a new fee ($11.25) in table 7 for sample grinding by Dickens hammer mill would be listed.. In table 8 of section 91.37, a revised facsimile charge ($1.50) for an additional page would be listed. In section 91.40, the established courier expense at the S&T peanut aflatoxin laboratory in Albany, Georgia would be removed.

This proposed rule provides for a 20-day comment period. This period is deemed appropriate in view of the need to make changes to the fees as soon as possible, in order to cover the necessary and ongoing expenditures of the S&T Laboratory Program. All comments which are received during the comment period will be considered before this rule is finalized.

List of Subjects

7 CFR Part 90

Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 92

Agricultural commodities, Laboratories, Pesticides and pests, Tobacco.

7 CFR Part 93

Agricultural commodities, Citrus fruits, Fruit juices, Fruits, Laboratories, Nuts, Vegetables.

7 CFR Part 94

Agricultural commodities, Eggs, Laboratories, Poultry.

7 CFR Part 98

Agricultural commodities, Laboratories, Meat and Meat products.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend Title 7, chapter I, subchapter E, of the Code of Federal Regulations as follows:

PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

§ 90.1 [Amended]

2. In § 90.1, the words "Science and Technology Division" are revised to read "Science and Technology", the words "Science and Technology Division's" are revised to read "Science and Technology's", and the word "S&TD" is revised to read "S&T" everywhere they appear.

§ 90.2 [Amended]

3. In § 90.2, the definitions of "Director," "Division" and "Laboratories" are removed and new definitions of "Deputy Administrator", "Laboratories", and "Program" are added in alphabetical order read as follows:

§ 90.2 General terms defined.

* * * * *

Deputy Administrator. The Deputy Administrator of the Science and Technology program of the Agricultural Marketing Service agency, or any officer or employee of this agency to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act.

Laboratories. Science and Technology laboratories performing the official analyses described in this subchapter.

Program. The Science and Technology (S&T) program of the Agricultural Marketing Service (AMS) which performs official analytical testing services, issues licenses for cottonseed chemists, and conducts quality assurance reviews and grants accreditation or certification for commodity testing programs of laboratories.

* * * * *

§ 90.3 [Amended]

4. In § 90.3, the words "Science and Technology Division" are revised to read "Science and Technology".

§ 90.101 [Amended]

5. In § 90.101, the words "Science and Technology Division" are revised to read "Science and Technology".

§ 90.102 [Amended]

6. In § 90.102, the word "Director" is revised to read "Deputy Administrator".

PART 91—[AMENDED]

7. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

§ 91.1 [Amended]

8. In § 91.1, the words "Science and Technology Division" are revised to read "Science and Technology".

9. In § 91.2, the definition for "Applicant" is revised and the definition for "Agency" is added to read as follows:

§ 91.2 Definitions.

* * * * *

Agency. The Agricultural Marketing Service agency of the United States Department of Agriculture.

* * * * *

Applicant. Any person or organization requesting services provided by the Science and Technology (S&T) programs.

* * * * *

§ 91.3 [Amended]

10. In § 91.3, the words "Division Director" are revised to read "Deputy Administrator".

11. Section 91.4 is revised to read as follows:

§ 91.4 Kinds of services.

(a) *Analytical tests.* Analytical laboratory testing services under the regulations in this subchapter consist of microbiological, chemical, and certain

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other analyses, requested by the applicant and performed on tobacco, seed, dairy, egg, fruit and vegetable, meat and poultry products, and related processed products. Analyses are performed to determine if products meet Federal specifications or specifications defined in purchase contracts and cooperative agreements. Laboratory analyses are also performed on egg products as part of the mandatory Egg Products Inspection Program under the management of USDA's Food Safety and Inspection Service (FSIS) as detailed in 9 CFR 590.580.

(b) *Examination and licensure.* The manager of the Science and Technology's Cottonseed Chemist Licensing Program administers examinations and licenses chemists to certify the official grade of cottonseed.

(c) *Quality assurance reviews.* The Science and Technology representative performs on-site laboratory quality assurance reviews (both required and voluntary) to ensure that appropriate technical methods, equipment maintenance, and quality control procedures are being observed.

(d) *Consultation.* Technical advice, statistical science consultation, and quality assurance program assistance are provided by the representatives for the Science and Technology programs for domestic and foreign laboratories.

12. Section 91.5 is revised to read as follows:

§ 91.5 Where services are offered.

(a) Services are offered to applicants at the Science and Technology laboratories and facilities in the following list.

(1) *Science and Technology regional laboratories.* A variety of tests and laboratory analyses are available in two regional multi-disciplinary Science and Technology (S&T) laboratories, and are located as follows:

(i) USDA, AMS, S&T, Midwestern Laboratory, 3570 North Avondale Avenue, Chicago, IL 60618–5391.

(ii) USDA, AMS, S&T, Eastern Laboratory (Microbiology), 2311–B Aberdeen Boulevard, Gastonia, NC 28054.

(iii) USDA, AMS, S&T, Eastern Laboratory (Chemistry), 645 Cox Road, Gastonia, NC 28054.

(2) *Science and Technology (S&T) aflatoxin laboratories.* The specialty laboratories performing aflatoxin testing on peanuts, peanut products, dried fruits, grains, edible seeds, tree nuts, shelled corn products, oilseed products and other commodities are located as follows:

(i) USDA, AMS, S&T, 1211 Schley Avenue, Albany, GA 31707.

(ii) USDA, AMS, S&T, c/o Golden Peanut Company, Mail: P.O. Box 279, 301 West Pearl Street, Aulander, NC 27805.

(iii) USDA, AMS, S&T, 610 North Main Street, Blakely, GA 31723.

(iv) USDA, AMS, S&T, 107 South Fourth Street, Madill, OK 73446.

(v) USDA, AMS, S&T, c/o Cargill Peanut Products, Mail: P.O. Box 272, 715 North Main Street, Dawson, GA 31742–0272.

(vi) USDA, AMS, S&T, Mail: P.O. Box 1130, 308 Culloden Street, Suffolk, VA 23434.

(3) *Citrus laboratory.* The Science and Technology's citrus laboratory specializes in testing citrus juices and other citrus products and is located as follows: USDA, AMS, S&T Eastern Laboratory (Citrus), 98 Third Street, S.W., Winter Haven, FL 33880.

(4) *Program laboratories.* Laboratory services are available in all areas covered by cooperative agreements providing for this laboratory work and entered on behalf of the Department with cooperating Federal or State laboratory agencies pursuant to authority contained in Act(s) of Congress. Also, services may be provided in other areas not covered by a cooperative agreement if the Administrator determines that it is possible to provide such laboratory services.

(5) *Other alternative laboratories.* Laboratory analyses may be conducted at alternative Science and Technology laboratories and can be reached from any commodity market in which a laboratory facility is located to the extent laboratory personnel are available.

(6) *The Plant Variety Protection (PVP) Office.* The PVP office and plant examination facility of the Science and Technology programs issues certificates of protection to developers of novel varieties of plants which reproduce sexually. The PVP office is located as follows: USDA, AMS, Science & Technology, Plant Variety Protection Office, National Agricultural Library Building, Room 500, 10301 Baltimore Boulevard, Beltsville, MD 20705–2351.

(7) *Science and Technology headquarters offices.* The examination, licensure, quality assurance reviews, laboratory accreditation/certification and consultation services are provided by headquarters staff located in Washington, DC. The main headquarters office is located as follows: USDA, AMS, Science and Technology, Office of the Deputy Administrator, Room 3507 South Agriculture Bldg., Mail Stop 0222, 1400 Independence Ave., SW., Washington, DC 20250.

(8) *The Information Technology (IT) Office.* The IT office of the Science and Technology programs is headed by AMS's Chief Information Officer (CIO) and provides information technology services and management systems to the Agency and other agencies within the USDA. The main IT office is located as follows: USDA, AMS, Science and Technology, Office of the Chief Information Officer, 1752 South Agriculture Bldg., 1400 Independence Ave., SW., Washington, DC 20250.

(9) *Statistical Branch office.* The Statistical Branch office of Science and Technology (S&T) provides statistical services to the Agency and other agencies within the USDA. In addition, the Statistical Branch office devices sample plans and performs consulting services for research studies in joint efforts with or in a leading role with other program areas of AMS or of the USDA. The main Statistical Branch office is located as follows: USDA, AMS, S&T Statistical Branch, 0611 South Agriculture Bldg., 1400 Independence Ave., SW., Washington, DC 20250.

(10) *Offices for Pesticide Residue Programs.* Services afforded by the Federal Pesticide Record Keeping Program for restricted-use pesticides by certified applicators and services afforded by the Pesticide Data Program (PDP) are provided by offices located as follows:

(i) USDA, AMS, Science and Technology, Pesticide Data Branch, 8700 Centreville Road, Suite 200, Manassas, VA 20110–8411.

(ii) USDA, AMS, Science and Technology, Pesticide Records Branch, 8700 Centreville Road, Suite 202, Manassas, VA 20110–8411.

(iii) USDA, AMS, Science and Technology, Office of Associate Deputy Administrator, Room 3522 South Agriculture Bldg., 1400 Independence Ave., SW., Washington, DC 20250.

(b) The addresses of the various laboratories and offices appear in the pertinent parts of this subchapter. A prospective applicant may obtain a current listing of addresses and telephone numbers of Science and Technology laboratories, offices, and facilities by addressing an inquiry to the Administrative Officer, Science and Technology, Agricultural Marketing Service, United States Department of Agriculture (USDA), P.O. Box 96456, Room 0727 South Building, Mail Stop 0271, Washington, DC 20090–6456.

§ 91.6 [Amended]

13. In § 91.6, paragraph (a), the words "Science and Technology Division" are revised to read "Science and Technology".

14. Section 91.9 is revised to read as follows:

§ 91.9 How to make an application.

(a) *Voluntary.* An application for analysis and testing may be made by contacting the director or supervisor of the Science and Technology laboratory where the service is provided, or by contacting the Technical Services Branch Chief at Science and Technology Headquarters, Washington, DC. A list of the Science and Technology laboratories is included in § 91.5.

(b) *Mandatory.* In the case of mandatory analyses, such as those required to be performed on eggs and egg products, application for services may be submitted to the office or USDA agency which administers the program, or by contacting an inspector or grader who is involved with the program.

15. Section 91.23 is revised to read as follows:

§ 91.23 Analytical methods.

Most analyses are performed according to approved procedures described in manuals of standardized methodology. These standard methods are the specific methods used. Alternatively, equivalent methods prescribed in cooperative agreements are used. The manuals of standard methods most often used by the Science and Technology laboratories are listed as follows:

(a) Approved Methods of the American Association of Cereal Chemists (AACC), American Association of Cereal Chemists/Eagan Press, 3340 Pilot Knob Road, St. Paul, Minnesota 55121–2097.

(b) ASTA's Analytical Methods Manual, American Spice Trade Association (ASTA), 560 Sylvan Avenue, P.O. Box 1267, Englewood Cliffs, New Jersey 07632.

(c) Compendium Methods for the Microbiological Examination of Foods, Carl Vanderzant and Don Splittstoesser (Editors), American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

(d) Edwards, P.R. and W.H. Ewing, Edwards and Ewing's Identification of Enterobacteriaceae, Elsevier Science, Inc., Regional Sales Office, 655 Avenue of the Americas, P.O. Box 945, New York, NY 10159–0945.

(e) FDA Bacteriological Analytical Manual (BAM), AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

(f) Manual of Analytical Methods for the Analysis of Pesticide Residues in Human and Environmental Samples, EPA 600/9–80–038, U.S. Environmental Protection Agency (EPA) Chemical Exposure Research Branch, EPA Office of Research and Development (ORD), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268.

(g) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, P.O. Box 3489, 2211 West Bradley Avenue, Champaign, Illinois 61821–1827.

(h) Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

(i) Standard Analytical Methods of the Member Companies of Corn Industries Research Foundation, Corn Refiners Association (CRA), 1701 Pennsylvania Avenue, NW, Washington, DC 20006.

(j) Standard Methods for the Examination of Dairy Products, American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

(k) Standard Methods for the Examination of Water and Wastewater, American Public Health Association (APHA), the American Water Works Association (AWWA) and the Water Pollution Control Federation, AWWA Bookstore, 6666 West Quincy Avenue, Denver, CO 80235.

(l) Test Methods for Evaluating Solid Waste Physical/Chemical Methods, Environmental Protection Agency, Office of Solid Waste, SW–846 Integrated Manual (available from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161).

(m) U.S. Army Natick Research, Development and Engineering Center's Military Specifications, approved analytical test methods noted therein, Code NPP–9, Department of Defense Single Stock Point (DODSSP) for Military Specifications, Standards, Building 4/D, 700 Robbins Avenue, Philadelphia, PA 19111–5094.

(n) U.S. Food and Drug Administration, Pesticide Analytical Manuals (PAM), Volumes I and II, Food and Drug Administration, Center for Food Safety and Applied Nutrition (CFSAN), 200 C Street, SW, Washington, DC 20204 (available from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161).

16. Section 91.24 is revised to read as follows:

§ 91.24 Reports of test results.

(a) Results of analyses are provided, in writing, by facsimile, by e-mail or other electronic means to the applicant.

(b) Applicants may call the appropriate Science and Technology laboratory for interim or final results prior to issuance of the formal report. The advance results may be telegraphed, e-mailed, telephoned, or sent by facsimile to the applicant. Any additional expense for advance information shall be borne by the requesting party.

(c) A letter report in lieu of an official certificate of analysis may be issued by a laboratory representative when such action appears to be more suitable than a certificate: *Provided*, that, issuance of such report is approved by the Deputy Administrator.

§ 91.25 [Amended]

17. In § 91.25, the words "Division Director" are revised to read "Deputy Administrator".

§ 91.26 [Amended]

18. In § 91.26, the words "Division Director" are revised to read "Deputy Administrator", and the word "Division" is revised to read "Science and Technology Program" everywhere they appear.

§ 91.31 [Amended]

19. In § 91.31, the words "Division Director" are revised to read "Deputy Administrator".

20. Section 91.32 is revised to read as follows:

§ 91.32 Where to file for an appeal of a laboratory service and information required.

(c) Application for an appeal of a laboratory service may be filed with the supervisor in the office or the director of the laboratory facility that issued the certificate or laboratory report on which the appeal analysis covering the commodity product is requested.

(b) The application for an appeal of a laboratory service shall state the location of the lot of the commodity product and the reasons for the appeal; and date and serial number of the certificate covering the laboratory service of the commodity product on which the appeal is requested. In addition, such application shall be accompanied by the original and all available copies of the certificate or laboratory report.

(c) Application for an appeal of a laboratory service may be made orally (in person or by telephone), in writing, by e-mail, by facsimile, or by telegraph. If made orally, written confirmation shall be made promptly.

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21. In part 91, subpart I §§ 91.37 through 91.40 are revised to read as follows:

§ 91.37 Standard hourly fee rate for laboratory testing, analysis, and other services.

(a) The standard hourly fee rate in this section for the individual laboratory analyses cover the costs of Science and Technology laboratory services, including issuance of certificates and personnel and overhead costs other than the commodity inspection fees referred to in 7 CFR 52.42 through 52.46, 52.48 through 52.51, 55.510 through 55.530, 55.560 through 55.570, 58.38 through 58.43, 58.45 through 58.46, 70.71 through 70.72, and 70.75 through 70.78. The hourly fee rates in this part 91 apply to all processed commodity products, except flue-cured and burley tobacco, and exclude aflatoxin analyses, citrus juices and certain citrus products. The printed updated schedules of the laboratory testing fees for processed fruits and vegetables (7 CFR part 93), poultry and egg products (7 CFR part 94), and meat and meat products (7 CFR part 98) will be available for distribution by the individual Laboratory Directors of Science and Technology laboratories listed in § 91.5. The updated schedules of the laboratory testing fees are also available for electronic access on the world wide web (www) site at: *http://ams.usda.gov/science*. The fees for chemical analysis of cottonseed associated with grading and novel variety seed certification under the Plant Variety Protection Act are specified in 7 CFR parts 96 and 97, respectively. Except as otherwise provided in this section, charges will be made for laboratory analysis at the standard hourly rate of $45.00 for the time required to perform the service. A minimum charge of one-quarter hour at $11.25 will be made for service pursuant to each request or certificate issued.

(b) When a laboratory test service is provided for AMS by a commercial or State government laboratory, the applicant will be assessed a fee which covers the costs to the Science and Technology program for the service provided.

When Science and Technology staff provides applied and developmental research and training activities for microbiological, physical and chemical analyses on agricultural commodities the applicant will be charged a fee on a reimbursable cost basis.

General Schedules of Fees for Official Laboratory Test Services Performed at the AMS Science and Technology Laboratories for Processed Commodity Products

TABLE 1.—SINGLE TEST LABORATORY FEES FOR PROXIMATE ANALYSES

Type of analysis	List fee
Ammonia, Ion Selective Electrode	$101.25
Ash, Total	45.00
Chloride, Salt Titration (Dairy)	22.50
Fat, Acid Hydrolysis (Cheese)	45.00
Fat, Acid Hydrolysis (Mojonnier)	45.00
Fat (Dairy Products except Cheese)	22.50
Fat (Dry Basis)	67.50
Fat, Ether Extraction (Soxhlet)	45.00
Fat (Kohman Analysis)	45.00
Fat, Microwave—Solvent Extraction	45.00
Moisture, Distillation	45.00
Moisture, Oven	22.50
Moisture (Kohman Analysis)	11.25
Protein, Combustion	90.00
Protein, Kjeldahl	90.00
Salt, Back Titration	33.75
Salt, Potentiometric	22.50
Salt, (Rapid)	33.75

TABLE 2.—SINGLE TEST LABORATORY FEES FOR LIPID RELATED ANALYSES

Type of analysis	List fee
Acid Degree Value (Dairy)	$45.00
Acidity, Titratable	22.50
Density (Specific Gravity)	11.25
Dispersibility (Instant Dry Whole Milk)	67.50
Dispersibility (Moates-Dabbah Method)	22.50
Fat Stability,[1] AOM	45.00
Fatty Acid Profile (AOAC–GC method)	180.00
Flash Point Test only	90.00
Free Fatty Acids	22.50
Meltability (Process Cheese)	22.50
Peanut Oil Analyses (Oil, Moisture, Free Fatty Acids, Ammonia, and Foreign Matter)	45.00
Any One of the Oilseed Oil Analyses	22.50
Peroxide Value	33.75
Smoke Point Test only	90.00
Smoke Point and Flash Point	157.50
Solids, Total (Oven Drying)	22.50
Soluble Solids, Refractometer	22.50

[1] Peroxide value analysis is required as a prerequisite to the fat stability test at the additional fee.

TABLE 3.—SINGLE TEST LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)

Type of analysis	List fee
Amitraz Residue, GLC	$270.00
Antibiotic, Qualitative (Dairy)	22.50
Antibiotic, Quantitative [1]	393.75
Ascorbates (Qualitative—Meats)	22.50
Ascorbic Acid, Titration	45.00
Ascorbic Acid, Spectrophotometric	45.00
Brix, Direct Percent Sucrose	22.50
Brix, Dilution	22.50
Butylated Hydroxyanisole (BHA)	67.50
Butylated Hydroxytoluene (BHT)	67.50
Caffeine, Micro Bailey-Andrew	67.50
Caffeine, Spectrophotometric	78.75
Citric Acid, GLC or HPLC	67.50
Chlorinated Hydrocarbons:	
Pesticides and Industrial Chemicals—	
Initial Screen	180.00
Second Column Confirmation of Analyte	45.00
Confirmation on Mass Spectrometer (Per Residue)	90.00
Dextrin (Qualitative)	22.50
Dextrin (Quantitative)	135.00
Filth, Heavy (Dairy)	112.50
Filth, Heavy (Eggs)	180.00
Filth, Light (Eggs)	112.50

TABLE 3.—SINGLE TEST LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)—Continued

Type of analysis	List fee
Filth, Light & Heavy (Eggs Extraneous)	270.00
Fines	22.50
Flavor (Dairy)	11.25
Flavor (Products except Dairy)	33.75
Fumigants:	
Initial Screen—	
Dibromochloropropane (DBCP)	45.00
Ethylene Dibromide	45.00
Methyl Bromide	45.00
Confirmation on Mass Spectrometer—	
Each individual fumigant residue	90.00
Glucose (Qualitative)	33.75
Glucose (Quantitative)	78.75
Glycerol (Quantitative)	135.00
Gums	135.00
Heavy Metal Screen [2]	326.25
Mercury, Cold Vapor-AA	135.00
Monosodium Dihydrogen Phosphate	180.00
Monosodium Glutamate	180.00
Niacin	90.00
Ochratoxin A	67.50
Odor	11.25
Organic Acids (in Eggs)	180.00
Oxygen	22.50
Palatability and Odor:	
Each Sample	22.50
Penicillin	67.50
Pyrethrin Residue (Dairy)	180.00
Scorched Particles	22.50
Sodium, Potentiometric	45.00
Sodium Benzoate, HPLC	67.50
Sodium Lauryl Sulfate (SLS)	360.00
Sodium Silicoaluminate (Zeolex)	90.00
Solubility Index	11.25
Starch, Direct Acid Hydrolysis	90.00
Starch (in Dry Milk)	22.50
Sugar, Polarimetric Methods	33.75
Sugar Profile, HPLC [3]	
One type sugar from HPLC profile	135.00
Each additional type sugar	22.50
Sugars, Non-Reducing	135.00
Sulfur Dioxide, Direct Titration	45.00
Toluene, Residual	90.00
Vitamin A, Carr-Price (Dairy)	112.50
Vitamin A, HPLC	90.00
Vitamin B–1 (Thiamin)	90.00
Vitamin B–2 (Riboflavin)	90.00
Vitamin D, HPLC (Vitamins D_2 and D_3), Dairy	382.50
Whey Protein Nitrogen	33.75
Whey Protein Nitrogen, Kjeldahl	112.50
Xanthydrol Test For Urea	67.50
This is an optional test to the extraneous materials isolation test.	

[1] Antibiotic testing includes tests for chlorotetracycline, oxytetracycline, and tetracycline.
[2] Heavy metal screen includes tests for cadmium, lead, and mercury.
[3] This profile includes the following components: Dextrose, Fructose, Lactose, Maltose and Sucrose.

TABLE 4.—SINGLE TEST LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES

Type of analysis	List fee
Cheese (Fines)	$11.25
Color, Apparent—Visual	11.25
Complete Kohman Analysis (Dairy)	45.00
Hot Water Insolubles	67.50
Linolenic Acid	90.00
Net Weight (Per Can)	11.25
Non-Volatile Methylene Chloride Extract	112.50
Overrun for Whipped Topping	33.75
Particle Size {Ether Wash)	22.50
pH	11.25
pH—Quinhydrone (Cheese)	22.50

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TABLE 4.—SINGLE TEST LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES—Continued

Type of analysis	List fee
Potassium Iodide (Table Salt)	67.50
Protein Reducing Substances	45.00
Quinic Acid (Cranberry Juice)	78.75
Serum Drainage for Whipped Topping	22.50
Sieve or Particle Size	22.50
Rate of Wetting (Nondairy Creamer)	22.50
Reducing Sugars	90.00
Water Activity	22.50
Water Insoluble Inorganic: Residues (WIIR)	90.00

TABLE 5.—SINGLE TEST LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES

Type of analysis	List fee
Aerobic (Standard) Plate Count	$22.50
Anaerobic Bacterial Plate Count	33.75
Bacillus cereus	90.00
Bacterial Direct Microscopic Count	45.00
Coliform Plate Count (Dairy Products)	22.50
Coliform Plate Count, Violet Red Bile Agar (Presumptive Coliform Plate Count)	33.75
Coliforms, Most Probable Number (MPN): [1]	
Step 1	33.75
Step 2	22.50
Direct Microscopic Clump Count	11.25
Direct Microscopic Clump Count— Greater Than 75 Million	45.00
E. coli, Presumptive MPN (Additional) [2]	45.00
E. coli (MUG [3])	33.75
Enterococci Count	135.00
Howard Mold Count [4]	56.25
Lactobacillus Count [5]	56.25
Lactic Acid Tolerant Microbes	22.50
Listeria monocytogenes Confirmation Analysis: [6]	
Step 1	67.50
Step 2	56.25
Step 3 (Confirmation)	112.50
Parasite Identification	180.00
Psychrotrophic Bacterial Plate Count	45.00
Salmonella (USDA Culture Method): [7]	
Step 1	78.75
Step 2	33.75
Step 3 (Confirmation)	56.25
Salmonella Enumeration (Complete Test)	135.00
Salmonella (Rapid Methods): [8]	
Step 1	78.75
Step 2	33.75
Step 3 (Confirmation)	56.25
Salmonella typhi (Meat Products) [9]	45.00
Staphylococcus aureus, Direct Plating	67.50
Staphylococcus aureus, MPN: With Coagulase Positive Confirmation	78.75
Thermoduric Bacterial Plate Count	33.75
Yeast and Mold Count	22.50
Yeast and Mold Differential Confirmation	22.50
Yeast and Mold Differential Plate Count	33.75
Yeast or Mold Confirmation	22.50

[1] Coliform MPN analysis may be in two steps as follows: Step 1—presumptive test through lauryl sulfate tryptose broth; Step 2—confirmatory test through brilliant green lactose bile broth.

[2] Step 1 of the coliform MPN analysis is a prerequisite for the performance of the presumptive *E. coli* test. Prior enrichment in lauryl sulfate tryptose broth is required for optimal recovery of *E. coli* from inoculated and incubated EC broth (*Escherichia coli* broth). The *E. coli* test is performed through growth on eosin methylene blue agar. The fee stated for *E. coli* analysis is a supplementary charge to step 1 of coliform test.

[3] In the presence of the substrate 4-methylumbelliferone-β-D-glucuronide (MUG), the enzyme β-glucuronidase, which is found in the majority of *E. coli* strains, produces a fluorogenic end product which is visible under ultraviolet (UV) light.

[4] Howard Mold Count involves counting mold filaments in commodity products.

[5] Determination of bacterial plate count of different species of *Lactobacillus*.

[6] *Listeria monocytogenes* test using the USDA method may be in three steps as follows: Step 1—isolation by University of Vermont modified (UVM) broth and Fraser's broth enrichments and selective plating with Modified Oxford (MOX) agar; Presumptive Step 2—typical colonies inoculated from Horse Blood into brain heart infusion (BHI) broth and check for characteristic motility; Confirmatory Step 3—culture from BHI broth with typical motility is inoculated into the seven biochemical media, BHI agar for oxidase and catalase tests, Motility test medium, and Christie-Atkins-Munch-Peterson (CAMP) test.

Listeria monocytogenes test using the FDA method may be in three steps as follows: Step 1—isolation by trypticase soy broth with 0.6% yeast extract (TSB–YE) broth enrichment and selective plating with Modified McBrides agar and Lithium chloride Phenylethanol Moxalactam (LPM) agar; Presumptive Step 2—typical colonies inoculated to trypticase soy agar with yeast extract (TSA–YE) with sheep blood plates to check for hemolysis followed by inoculations to BHI broth and TSA–YE plates to check for characteristic motility, gram stain and catalase test; Confirmatory Step 3—culture from BHI broth with typical motility for wet mount is inoculated into the required 10 biochemical media, Sulfide-Indole-Motility (SIM) medium, and the CAMP test. Serology is checked using growth from TSA–YE plates.

Both methods for *Listeria* determination have the equivalent time needed for each step.

[7] *Salmonella* test may be in three steps as follows: Step 1— growth through differential agars; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3— confirmatory test through biochemicals, and polyvalent serological testing with Poly "O" and Poly "H" antiserums. The serological typing of *Salmonella* is requested on occasion.

[8] *Salmonella* test may be in three steps as follows: Step 1—growth in enrichment broths and ELISA test or DNA hybridization system assay; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly "O" and Poly "H" antiserums.

[9] *Salmonella typhi* determination in mechanically deboned meat.

TABLE 6.—LABORATORY FEES FOR AFLATOXIN ANALYSES

Aflatoxin test by commodity	Single analysis fee	Pair analyses [1] fee
Peanut Butter (TLC–CB, HPLC, Affinity Column)	$45.00	NA [2]
Corn (TLC–CB, HPLC, Affinity Column)	45.00	NA
Roasted Peanuts (TLC–BF)	45.00	NA
Brazil Nuts (TLC–BF)	90.00	NA
Pistachio Nuts (TLC–BF, HPLC)	90.00	NA
Shelled Peanuts (TLC, Affinity Column)	45.00	38.00
Shelled Peanuts (HPLC)	45.00	70.00
Tree Nuts (TLC)	45.00	NA
Oilseed Meals (TLC, HPLC, Affinity Column)	45.00	NA
Edible Seeds (TLC)	45.00	NA
Dried Fruit (TLC)	45.00	NA
Small Grains (TLC)	45.00	NA
In-Shell Peanuts (TLC, Affinity Column)	45.00	38.00
In-Shell Peanuts (HPLC)	45.00	70.00
Silage; Other Grains (TLC)	45.00	NA
Submitted Samples (TLC, HPLC, Affinity Column)	45.00	NA
Aflatoxin (Dairy, Eggs)	157.50	NA

[1] Aflatoxin testing of raw peanuts under Peanut Marketing Agreement for subsamples 1–AB, 2–AB, 3–AB, and 1–CD for single or pair of analyses is $19.00 or $38.00, respectively using Thin-Layer Chromatography (TLC) and Best Foods (BF) extraction or immunoaffinity column assay with fluorometric quantitation. The BF method has been modified to incorporate a water slurry extraction procedure. The Contaminants Branch (CB) method is used on occasion as an alternative method for peanuts and peanut meal when doubt exists as to the effectiveness of the Best Foods method in extracting aflatoxin from the sample or when background interferences exist that might mask TLC quantitation of aflatoxin. The cost per single or pair of analyses using High Pressure Liquid Chromatography (HPLC) is $35.00 and $70.00, respectively. Other aflatoxin analyses for fruits and vegetables are listed at Science and Technology's current hourly rate of $45.00.

[2] NA denotes not applicable.

TABLE 7.—MISCELLANEOUS CHARGES SUPPLEMENTAL TO THE SCIENCE AND TECHNOLOGY'S LABORATORY ANALYSIS FEES

Laboratory service description	List fee
Sample Grinding by Vertical Cutter Mixer (VCM)	$22.50.
Sample Grinding Canned Boned Poultry	11.25 per can.
Sample Grinding by Dickens Hammer Mill	11.25.
Sample Grinding (Meats, Meat Products, Meals, Ready-to-Eat):	
Per pouch or raw sample	11.25.
Per tray pack	22.50.
Compositing Multiple Subsamples for an Individual Test Sample Unit per subsample.	Varies Preparation fee based on $45.00 per hour.

TABLE 8.—ADDITIONAL CHARGES APPLICABLE TO THE SAMPLE RECEIPT AND ANALYSIS REPORT

Service description	List charge
Courier Expense at Other AMS Laboratories: Mileage Charge Set at 32.5 Per Mile Round Trip from Laboratory to Delivery Site.	Varies (based on total mileage).
Facsimile Charge (Per Analysis Report)	$3.20 minimum up to first 3 pages, then $1.50 per page.
Additional Analysis Report or Extra Certificate (½ hour charge)	$22.50 per report or certificate reissued.

§ 91.38 Additional fees for appeal of analysis.

(a) The appellant will be charged an additional fee at a rate of 1.5 times the standard rate stated in § 91.37(a) if, as a result of an authorized appeal analysis, it is determined that the original test results are correct. The appeal laboratory rate is $67.50 per analysis hour.

(b) The appeal fee will be waived if the appeal laboratory test discloses that an inadvertent error was made in the original analysis.

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§ 91.39 Premium hourly fee rate for overtime and legal holiday service.

(a) Laboratory analyses initiated at the special request of the applicant to be rendered on Saturdays, Sundays, Federal holidays, and on an overtime basis will be charged at a rate of 1.5 times the standard rate stated in § 91.37 (a). The premium laboratory rate for holiday and overtime service will be $67.50 per analysis hour.

(b) Information on legal holidays or what constitutes overtime service at a particular S&T laboratory is available from the Laboratory Director or facility supervisor.

§ 91.40 Fees for courier service and facsimile of the analysis report.

(a) The Science and Technology laboratories have a courier charge per trip to retrieve the sample package. The courier service charge is determined from the established single standard mileage rate and from the total authorized distance based on the shortest round trip route from laboratory to sample retrieval site. Pursuant to the requirements of Title 5, United States Code (U.S.C.), part III, subpart D, § 5704, paragraph (a) (1), the automobile reimbursement rate per mile established by the Administrator of General Services for an employee who is engaged on official business for the Government cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS).

(b) The faxing of laboratory analysis reports or certificates is an optional service for each S&T facility offered at a fee specified in table 8 in § 91.37.

§ 91.41 [Amended]

22.–26. In § 91.41, the words "Division Director" are revised to read "Deputy Administrator."

27. § 91.42 is revised to read as follows:

§ 91.42 Billing.

(a) Each billing cycle will end on the 25th of the month. The applicant will be billed by the National Finance Center using the Billings and Collections System (BLCO) on the 1st day, following the end of the billing cycle in which voluntary laboratory services and other services were rendered at a particular Science and Technology laboratory.

(b) The total charge shall normally be stated directly on the analysis report or on a standardized official certificate form for the laboratory analyses of a specific agricultural commodity and related commodity products.

(c) The actual bill for collection will be issued by the USDA, National Finance Center Billings and Collection Branch, (Mail: P.O. Box 60075), 13800 Old Gentilly Road, New Orleans, Louisiana 70160–0001.

28. In § 91.43, paragraph (b) is revised and in paragraph (c) the words "Division Director" are removed and the words "Deputy Administrator" are added in their place to read as follows:

§ 91.43 Payment of fees and charges.

* * * * *

(b) Fees and charges for services under a cooperative agreement with a State or other AMS programs or other governmental agency will be paid in accordance with the terms of the cooperative agreement.

* * * * *

29. In § 91.44, paragraph (e) is revised to read as follows:

§ 91.44 Charges on overdue accounts and issuance of delinquency notices.

* * * * *

(e) The Deputy Administrator of S&T program and personnel of the USDA, NFC Billings and Collections Branch (address as listed in § 91.42) will take such actions as may be necessary to collect any delinquent amounts due for accounts in claim status.

30. Section 91.45 is revised to read as follows:

§ 91.45 Charges for laboratory services on a contract basis.

(a) Irrespective of hourly fee rates and charges prescribed in § 91.37, or in other sections of this subchapter E, the Deputy Administrator may enter into contracts with applicants to perform continuous laboratory services or other types of laboratory services pursuant to the regulations in this part and other requirements, as prescribed by the Deputy Administrator in such contract. In addition, the charges for such laboratory services, provided in such contracts, shall be on such basis as will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such laboratory services, including an appropriate overhead charge to cover administrative overhead expenses as may be determined by the Administrator.

(b) Irrespective of hourly fee rates and charges prescribed in this subpart I, or in other parts of this subchapter E, the Deputy Administrator may enter into a written Memorandum of Understanding (MOU) or agreement with any administrative agency or governing party for the performance of laboratory services pursuant to said agreement or order on a basis that will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such laboratory service, including an appropriate overhead administrative overhead charge.

(c) The conditions and terms for renewal of such Memorandum of Understanding or agreement shall be specified in the contract.

PART 92—[AMENDED]

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 511m and 7 U.S.C. 511r.

§ 92.1 [Amended]

2. In § 92.1, the words "Science and Technology Division's" are revised to read "Science and Technology's".

§ 92.2 [Amended]

3. Section 92.2 is amended as follows:

a. Remove the definition of "Certificate of Analysis (Form CSSD–3)".

b. Revise the definitions for "2,4-D", "DDE", "Dicamba", "HCB", "Maximum pesticide residue level", "Pesticide certification", "Pesticide test sample","Sample Identification Form (Form TB-89)", "2,4,5-T", "TDE", and "Tobacco".

c. Add two new definitions of "AMS" and "Certificate of Analysis (Form TB–92)" in alphabetical order to read as follows:

§ 92.2 Definitions.

* * * * *

AMS. The abbreviations for the Agricultural Marketing Service (AMS) agency of the United States Department of Agriculture.

* * * * *

Certificate of Analysis (Form TB–92). A legal document on which the confirmed test results for official samples will be testified to be correct by a Science and Technology chemist in charge of testing.

2,4-D. The common abbreviation for the acid herbicide 2,4-Dichlorophenoxyacetic acid.

* * * * *

DDE. The common abbreviation for the chlorinated pesticide Dichlorodiphenyldichloroethylene. Degradation product of DDT by loss of one molecule of hydrochloric acid or referred to as a dehydrohalogenation process.

* * * * *

Dicamba. The common name for the acid herbicide 2-Methoxy-3,6-dichlorobenzoic acid.

* * * * *

HCB. The common abbreviation for the organochlorine pesticide Hexachlorobenzene.

* * * * *

Maximum pesticide residue level. The maximum concentration of residue allowable for a specific pesticide or combination of pesticides, as set forth in 7 CFR 29.427 by the AMS Deputy Administrator of the Tobacco Programs.

* * * * *

Pesticide certification. A document issued by the Tobacco Programs in a form approved by its AMS Deputy Administrator, containing a certification by the importer that flue-cured and burley tobacco offered for importation does not exceed the maximum allowable residue levels of any pesticide that has been canceled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Pesticide test sample. An official sample or samples, collected from a lot of tobacco by the AMS Tobacco Programs inspector for analysis by a certified chemist to ascertain the residue levels of pesticides that have been canceled, suspended, revoked, or otherwise prohibited under the FIFRA.

Sample Identification Form (Form TB–89). A document titled "Imported Tobacco Pesticide Residue Analysis" that is approved by the AMS Deputy Administrator of the Tobacco Programs that identifies and accompanies the sample to the testing facility.

2,4,5-T. The common abbreviation for the acid herbicide 2,4,5-Trichlorophenoxyacetic acid.

TDE. DDD or the common abbreviation for the chlorinated insecticide 1,1-Dichloro-2,2-bis(p-chlorophenyl)ethane (CAS number 72–54–8).

* * * * *

Tobacco. Tobacco as it appears between the time it is cured and stripped from the stalk, or primed and cured, in whole leaf or strip form, and the time it enters into the different manufacturing processes. Conditioning, sweating, stemming, and threshing are not regarded as manufacturing processes. Tobacco, as used in this part, does not include manufactured or semi-manufactured products, stems, cuttings, clippings, trimmings, siftings, or dust.

4. Section 92.3 is revised to read as follows:

§ 92.3 Location for laboratory testing and kind of services available.

(a) The analytical testing of imported Type 92 flue-cured tobacco samples and imported Type 93 burley tobacco samples for maximum pesticide residue level determinations is performed at the AMS Science and Technology's Eastern Laboratory and is located at: USDA, AMS, Science and Technology, Eastern Laboratory (Chemistry), 645 Cox Road, Gastonia, NC 28054.

(b) Domestic-grown tobacco and tobacco products may be analyzed for acid herbicides, chlorinated hydrocarbons, fumigants, and organophosphates at the Science and Technology facility in this section.

(c) The Science and Technology facility performs for the AMS Tobacco Programs the quantitative and confirmatory chemical residue analyses on pesticide test samples of imported tobacco for the following specific pesticides:

(1) Organochlorine pesticides such as Dichloro-diphenyldichloroethylene (DDE), Dichloro Diphenyl Trichloroethane (DDT), 1,1-Dichloro-2,2-bis(p-chlorophenyl)ethane (TDE), Toxaphene, Endrin, Aldrin, Dieldrin, Heptachlor, Methoxychlor, Chlordane, Heptachlor Epoxide, Hexachlorobenzene (HCB), Cypermethrin, and Permethrin.

(2) Organophosphorus pesticides such as Formothion.

(3) Fumigants such as Ethylene Dibromide (EDB) and Dibromochloropropane (DBCP).

(4) Acid herbicides such as 2,4-D, 2,4,5-T, and Dicamba.

5. In § 92.4, paragraph (b) is revised to read as follows:

§ 92.4 Approved forms for reporting analytical results.

* * * * *

(b) Test results of the pesticide analyses for tobacco shall be recorded on "Certificate of Analysis For Official Samples", Form TB–92, and shall be expressed as parts by weight of the residue per one million parts by weight of the tobacco sample (parts per million or ppm), which concentration is representative for each particular pesticide residue found in the lot of tobacco. Form TB–92 is attached to Form TB–89 that is returned to the AMS Tobacco Programs. The analytical data on Form TB–92 substantiates the information placed on Form TB–89.

6. Section 92.5 is revised to read as follows:

§ 92.5 Analytical methods.

Every chemist certified to analyze tobacco samples for pesticide residue contamination shall follow precisely the USDA developed analytical test methods and all successive official method updates, as approved by the AMS Deputy Administrator, Science and Technology. Many of the official analyses for tobacco are found in the following manuals:

(a) Manual of Analytical Methods for the Analysis of Pesticide Residues in Human and Environmental Samples, EPA 600/9–80–038, U.S. Environmental Protection Agency (EPA) Chemical Exposure Research Branch, EPA Office of Research and Development (ORD), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268.

(b) Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I and II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

(c) U.S. Food and Drug Administration, Pesticide Analytical Manuals (PAM), Volumes I and II, Food and Drug Administration, Center for Food Safety and Applied Nutrition (CFSAN), 200 C Street, SW, Washington, DC 20204 (available from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161).

7. Section 92.6 is revised to read as follows:

§ 92.6 Cost for pesticide analysis set by cooperative agreement.

The fee for the pesticide analysis of tobacco is set by the AMS Tobacco Programs, in conjunction with the AMS Science and Technology program, and appears at 7 CFR 29.500 as part of Tobacco Programs' fees for sampling and certification of imported flue-cured and burley tobacco. A Memorandum of Understanding (MOU) exists between the Tobacco Programs and the Science and Technology (S&T) for the testing of imported tobacco samples for pesticide residue contamination, and the corresponding agreement on the cost of analyses is specified in the MOU.

PART 93—[AMENDED]

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

§ 93.2 [Amended]

2. In § 93.2, the definitions for "Brix or degrees Brix", "Brix value" and "Recoverable oil" are revised to read as follows:

§ 93.2 Definitions.

* * * * *

Brix or degrees Brix. The percent by weight concentration of the total soluble solids of the juice or citrus product when tested with a Brix hydrometer calibrated at 20 °C (68 °F) and to which any applicable temperature correction has been made. The Brix or degrees Brix may be determined by any other method which gives equivalent results.

Brix value. The pure sucrose or soluble solids value of the juice or citrus product determined by using the

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refractometer along with the "International Scale of Refractive Indices of Sucrose Solutions" and to which the applicable correction for acidity is added. The Brix value is determined in accordance with the refractometer method outlined in the Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II.

* * * * *

Recoverable oil. The percent of oil by volume, determined by the bromate titration method after distillation and acidification as described in the current edition of the Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II.

* * * * *

3. Section 93.3 is revised to read as follows:

§ 93.3 Analyses available and location of laboratory.

(a) Laboratory analyses of citrus juice and other citrus products are being performed at the following Science and Technology location: USDA, AMS, S&T Eastern Laboratory (Citrus), 98 Third Street, S.W., Winter Haven, FL 33880.

(b) Laboratory analyses of citrus fruit and products in Florida are available in order to determine if such commodities satisfy the quality and grade standards set forth in the Florida Citrus Code (Florida Statutes Pursuant to Chapter 601). Such analyses include tests for acid as anhydrous citric acid, Brix, Brix/acid ratio, recoverable oil, and artificial coloring matter additive, as turmeric. The Fruit and Vegetable Inspectors of the Division of Fruit and Vegetable of the Florida Department of Agriculture and Consumer Services may also request analyses for arsenic metal, pulp wash (ultraviolet and fluorescence), standard plate count, yeast with mold count, and nutritive sweetening ingredients as sugars.

(c) There are additional laboratory tests available upon request at the Science and Technology Eastern (Citrus) Laboratory at Winter Haven, Florida. Such analyses include tests for vitamins, naringin, sodium benzoate, *Salmonella*, protein, salt, pesticide residues, sodium metal, ash, potassium metal, and coliforms for citrus products.

4. Section 93.4 is revised to read as follows:

§ 93.4 Analytical methods.

(a) The majority of analytical methods for citrus products are found in the Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

(b) Other analytical methods for citrus products may be used as approved by the AMS Deputy Administrator, Science and Technology (S&T).

5. Section 93.5 is revised to read as follows:

§ 93.5 Fees for citrus product analyses set by cooperative agreement.

The fees for the analyses of fresh citrus juices and other citrus products shall be set by mutual agreement between the applicant, the State of Florida, and the AMS Deputy Administrator, Science and Technology programs. A Memorandum of Understanding (MOU) or cooperative agreement exists presently with the AMS Science and Technology and the State of Florida, regarding the set hourly rate and the costs to perform individual analytical tests on Florida citrus products, for the State.

6. In § 93.11, the definitions for "Aflatoxin" and "Peanut Administrative Committee (PAC)" are revised to read as follows:

§ 93.11 Definitions.

* * * * *

Aflatoxin. A toxic metabolite produced by the molds *Aspergillus flavus, Aspergillus parasiticus,* and *Aspergillus nomius.* The aflatoxin compounds fluoresce when viewed under UV light as follows: aflatoxin B_1 and derivatives with a blue fluorescence, aflatoxin B_2 with a blue-violet fluorescence, aflatoxin G_1 with a green fluorescence, aflatoxin G_2 with a green-blue fluorescence, aflatoxin M_1 with a blue-violet fluorescence, and aflatoxin M_2 with a violet fluorescence. These closely related molecular structures are referred to as aflatoxin B_1, B_2, G_1, G_2, M_1, M_2, GM_1, B_{2a}, G_{2a}, R_0, B_3, 1-OCH_3B_2, and 1-CH_3G_2.

Peanut Administrative Committee (PAC). The committee established under the United States Department of Agriculture Marketing Agreement for Peanuts, 7 CFR part 998, which administers the terms and provisions of this Agreement, including the aflatoxin control program for domestically produced raw peanuts, for peanut shellers. The Peanut Administrative Committee (PAC) headquarters are at 2537 Lafayette Plaza Drive Suite A; Albany, Georgia 31707.

* * * * *

7. Section 93.12 is revised to read as follows:

§ 93.12 Analyses available and locations of laboratories.

(a) *Aflatoxin testing services.* The aflatoxin analyses for peanuts, peanut products, dried fruits, grains, edible seeds, tree nuts, shelled corn products, cottonseed, oilseed products and other commodities are performed at the following 6 locations for AMS Science and Technology (S&T) Aflatoxin Laboratories:

(1) USDA, AMS, S&T, 1211 Schley Avenue, Albany, GA 31707.
(2) USDA, AMS, S&T, c/o Golden Peanut Company, Mail: P.O. Box 279, 301 West Pearl Street, Aulander, NC 27805.
(3) USDA, AMS, S&T, 610 North Main Street, Blakely, GA 31723.
(4) USDA, AMS, S&T, 107 South Fourth Street, Madill, OK 73446.
(5) USDA, AMS, S&T, c/o Cargill Peanut Products, Mail: P.O. Box 272, 715 North Main Street, Dawson, GA 31742–0272.
(6) USDA, AMS, S&T, Mail: P.O. Box 1130, 308 Culloden Street, Suffolk, VA 23434.

(b) *Peanuts, peanut products, and oilseed testing services.* (1) The Science and Technology (S&T) Aflatoxin Laboratories at Madill, Oklahoma and Blakely, Georgia will perform other analyses for peanuts, peanut products, and a variety of oilseeds. The analyses for oilseeds include testing for free fatty acids, ammonia, nitrogen or protein, moisture and volatile matter, foreign matter, and oil (fat) content.

(2) All of the analyses described in paragraph (b)(1) of this section performed on a single seed sample are billed at the rate of one hour per sample. Any single seed analysis performed on a single sample is billed at the rate of one-half hour per sample. The standard hourly rate shall be as specified in § 91.37(a) of this subchapter.

(c) *Vegetable oil testing services.* The analyses for vegetable oils are performed at the USDA, AMS, Science and Technology (S&T) Midwestern Laboratory, 3570 North Avondale Avenue, Chicago, IL 60618–5391. The analyses for vegetable oils will include the flash point test, smoke point test, acid value, peroxide value, phosphorus in oil, and specific gravity. The fee charged for any single laboratory analysis for vegetable oils shall be obtained from the Midwestern Laboratory Director and it is based on the hourly fee rates and charges as specified in 7 CFR part 91, subpart I.

8. Section 93.13 is revised to read as follows:

§ 93.13 Analytical methods.

Official analyses for peanuts, nuts, corn, oilseeds, and related vegetable oils are found in the following manuals:

(a) Approved Methods of the American Association of Cereal Chemists (AACC), American Association of Cereal Chemists/Eagan Press, 3340 Pilot Knob Road, St. Paul, Minnesota 55121–2097.

(b) ASTA's Analytical Methods Manual, American Spice Trade Association (ASTA), 560 Sylvan Avenue, P.O. Box 1267, Englewood Cliffs, New Jersey 07632.

(c) Analyst's Instruction for Aflatoxin (August 1994), S&T Instruction No. 1, USDA, Agricultural Marketing Service, Science and Technology, 3521 South Agriculture Building, 1400 Independence Avenue, SW, P.O. Box 96456, Washington, DC 20090–6456.

(d) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, P.O. Box 3489, 2211 West Bradley Avenue, Champaign, Illinois 61821–1827.

(e) Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

(f) Standard Analytical Methods of the Member Companies of Corn Industries Research Foundation, Corn Refiners Association (CRA), 1701 Pennsylvania Avenue, NW, Washington, DC 20006.

(g) U.S. Army Natick Research, Development and Engineering Center's Military Specifications, approved analytical test methods noted therein, Code NPP–9, Department of Defense Single Stock Point (DODSSP) for Military Specifications, Standards, Building 4/D, 700 Robbins Avenue, Philadelphia, PA 19111–5094.

9. Section 93.14 is revised to read as follows:

§ 93.14 Fees for aflatoxin analysis and fees for testing of other mycotoxins.

(a) The fee charged for any laboratory analysis for aflatoxins and other mycotoxins shall be obtained from the Laboratory Director for aflatoxin laboratories at the Dothan administrative office as follows: USDA, AMS, Science & Technology, 3119 Wesley Way, Suite 6, Dothan, Alabama 36305, Voice Phone: 334–794–5070, Facsimile: 334–792–1432.

(b) The charge for the aflatoxin testing of raw peanuts under the Peanut Marketing Agreement for subsamples 1–AB, 2–AB, 3–AB, and 1–CD is a set cost per pair of analyses and shall be set by cooperative agreement between the Peanut Administrative Committee and AMS Science and Technology program.

10. Section 93.15 is revised to read as follows:

§ 93.15 Fees for analytical testing of oilseeds.

The fee charged for any laboratory analysis for oilseeds shall be obtained from the Laboratory Director for aflatoxin laboratories at the Dothan administrative office as listed in § 93.14(a).

PART 94—[AMENDED]

1. The authority citation for part 94 continues to read as follows:

Authority: Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056), Agricultural Marketing Act of 1946, Secs. 202–208 as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

2. In § 94.2, the definitions for "Egg", "Egg product" and "Mandatory sample" are revised to read as follows:

§ 94.2 Definitions.

* * * * *

Egg. The shell egg of the domesticated chicken, turkey, duck, goose, or guinea. Some of the terms applicable to shell eggs are defined by the AMS Poultry Programs in 7 CFR 57.5.

Egg product. Any dried, frozen, or liquid eggs, with or without added ingredients. However, products which contain eggs only in a relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry may be exempted by the Secretary under such conditions as may be prescribed to assure that the egg ingredients are not adulterated and such products are not represented as egg products. Some of the products exempted as not being egg products are specified by the AMS Poultry Programs in 7 CFR 57.5.

Mandatory sample. An official sample of egg product(s) taken for testing under authority of the Egg Products Inspection Act (21 U.S.C. 1031–1056) for analysis by a United States Department of Agriculture, Agricultural Marketing Service, Science and Technology laboratory at government expense. A mandatory sample shall include an egg product sample to be analyzed for microbiological, chemical, or physical attributes. A mandatory egg product sample analyzed for the presence of *Salmonella* is also referred to as a confirmation sample as specified by the Food Safety and Inspection Service agency of USDA in 9 CFR 590.580, paragraph (d).

* * * * *

3. In § 94.3, paragraphs (a), (b) and (e) are revised to read as follows:

§ 94.3 Analyses performed and locations of laboratories.

(a) Samples drawn by a USDA egg products inspector will be analyzed by AMS Science and Technology (S&T) personnel for microbiological, chemical, and physical attributes. The analytical results of these samples will be reported to the resident egg products inspector at the applicable plant on the official certificate.

(b) Mandatory egg product samples for *Salmonella* are required and are analyzed in S&T laboratories to spot check and confirm the adequacy of USDA approved and recognized laboratories for analyzing routine egg product samples for *Salmonella*.

* * * * *

(e) The AMS Science and Technology's Eastern Laboratory shall conduct the majority of laboratory analyses for egg products. The analyses for mandatory egg product samples are performed at the following USDA location: USDA, AMS, Science & Technology, Eastern Laboratory (Microbiology), 2311–B Aberdeen Boulevard, Gastonia, NC 28054.

4. Section 94.4 is revised to read as follows:

§ 94.4 Analytical methods.

The majority of analytical methods used by the USDA laboratories to perform mandatory analyses for egg products are listed as follows:

(a) Compendium Methods for the Microbiological Examination of Foods, Carl Vanderzant and Don Splittstoesser (Editors), American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

(b) Edwards, P.R. and W.H. Ewing, Edwards and Ewing's Identification of Enterobacteriaceae, Elsevier Science, Inc., Regional Sales Office, 655 Avenue of the Americas, P.O. Box 945, New York, NY 10159–0945.

(c) FDA Bacteriological Analytical Manual (BAM), AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

(d) Manual of Analytical Methods for the Analysis of Pesticide Residues in Human and Environmental Samples, EPA 600/9–80–038, U.S. Environmental Protection Agency (EPA) Chemical Exposure Research Branch, EPA Office of Research and Development (ORD), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268.

(e) Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

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(f) Standard Methods for the Examination of Dairy Products, American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

(g) Standard Methods for the Examination of Water and Wastewater, American Public Health Association (APHA), the American Water Works Association (AWWA) and the Water Pollution Control Federation, AWWA Bookstore, 6666 West Quincy Avenue, Denver, CO 80235.

(h) Test Methods for Evaluating Solid Waste Physical/Chemical Methods, Environmental Protection Agency, Office of Solid Waste, SW–846 Integrated Manual (available from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161).

(i) U.S. Food and Drug Administration, Pesticide Analytical Manuals (PAM), Volumes I and II, Food and Drug Administration, Center for Food Safety and Applied Nutrition (CFSAN), 200 C Street, SW, Washington, DC 20204 (available from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161).

PART 98—[AMENDED]

1. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In part 98, the words "Science and Technology Division" are revised to read "Science and Technology", and the word "S&TD" is revised to read "S&T" everywhere they appear.

Dated: May 22, 2000.

William J. Franks, Jr.,

Deputy Administrator, Science and Technology, Agricultural Marketing Service.

[FR Doc. 00–13238 Filed 5–25–00; 8:45 am]

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Federal Register

Friday,
May 26, 2000

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; McDonnell Douglas Model DC–9–80 and MD–90–30 Series Airplanes and Model MD–88 Airplanes; Final Rule

Airworthiness Directives; McDonnell Douglas Model DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–40 Series Airplanes, and Model MD–11 and –11F Series Airplanes; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–161–AD; Amendment 39–11749; AD 2000–11–01]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 and MD–90–30 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 and MD–90–30 series airplanes, and Model MD–88 airplanes, that requires a determination be made of whether, and at what locations, metallized polyethyleneteraphthalate (MPET) insulation blankets are installed, and replacement of MPET insulation blankets with new insulation blankets. This amendment is prompted by reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets covered with MPET, which may contribute to the spread of a fire when ignition occurs from small ignition sources such as electrical arcing or sparking. The actions specified by this AD are intended to ensure that insulation blankets constructed of MPET are removed from the fuselage. Such insulation blankets could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire.

DATES: Effective June 30, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 30, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5334; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 and MD–90–30 series airplanes, and Model MD–88 airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 12, 1999 (64 FR 43966). A second proposal that was identical to the NPRM, except that it affected additional airplanes, was published as a supplemental NPRM on November 17, 1999 (64 FR 62613). Those actions proposed to require that a determination be made of whether, and at what locations, metallized polyethyleneteraphthalate (MPET) insulation blankets are installed, and replacement of MPET insulation blankets with new insulation blankets.

Since the issuance of those NPRM's, the FAA has observed several prototyping exercises that involved the removal and replacement of MPET insulation blankets. The information obtained from these exercises assisted the FAA, operators, and manufacturer in understanding the technical details and impact of the requirements of this AD. Certain aspects of these prototype exercises will be discussed in the FAA's response to the comments received from the NPRM's.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has received comments in response to the NPRM's and supplemental NPRM's to Rules Docket No.'s. 99–NM–161–AD [applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) series airplanes; Model MD–90–30 series airplanes; and Model MD–88 airplanes] and 99–NM–162—AD (applicable to certain McDonnell Douglas Model DC–10–30 and –30F series airplanes, and Model MD–11 and –11F series airplanes). Because in most cases the issues raised by the commenters are generally relevant to both NPRM's, each final rule includes a discussion of all comments received.

Support for Proposed AD's

Several commenters support the intent of the proposed AD's; however, they request that some changes be made (discussed later).

Unsafe Condition

One commenter states that, because the MPET insulation blankets only propagate the flame and are not the source of the flame, the proposed AD's should address the unsafe condition (*i.e.*, source of the flame) rather than previously certified material (which met the flammability standard at one time) that is not creating the unsafe condition. The FAA does not concur. MPET insulation blankets, when ignited from a small ignition source, such as an electrical arc, can contribute to the spread of a fire. Such insulation blankets could propagate a small fire and lead to a much larger fire. Potential ignition sources exist in many areas of the affected airplanes. It is extremely difficult to determine where all potential ignition sources are. To provide the level of safety that is expected by the public for transport category airplanes, insulation blankets constructed of MPET must be removed. Therefore, the FAA finds that it has properly identified the unsafe condition (*i.e.*, insulation blankets constructed of MPET) addressed by these AD's.

The same commenter suggests that the subject blankets be handled as "attrition replacements," as intended in the original McDonnell Douglas service bulletins. The commenter states that, since cabin interior flammability has been addressed already to a large extent by the FAA, MPET insulation blankets could be treated comparably, and thus, integrated into the overall interior materials requirements. (The FAA infers that the commenter is referring to the provisions in 14 CFR section 121.312 related to "substantially complete replacement of the cabin interior.") These requirements not only mandate stricter new standards, but allow older airplane interiors to remain in service until a balanced decision is made to fully reconfigure the cabin. After that decision is made, the entire flammability rule must be met on these older airplane interiors, as well. The commenter argues that insulation blankets could be included, since the proposed requirements are in the same category of "new flammability standards" and do not address the actual ignition source.

The FAA does not concur with the commenter's request to handle the subject blankets as "attrition replacements." Attrition is appropriate for safety enhancements, not to correct identified unsafe conditions. There is a distinct difference between correcting an identified unsafe condition and enhancing safety. The intent of the interior material flammability enhancement was to provide occupants more time to evacuate an airplane before the cabin environment would become unsurvivable due to smoke and fire. The existing interior materials were not deemed unsafe, and therefore, could remain in service until the airlines needed to replacement them. With this action, as discussed above, the FAA finds that MPET-covered insulation material represents an unsafe condition that must be corrected. These AD's are a vehicle for ensuring that all affected operators perform the necessary actions that will address the identified unsafe condition. Therefore, these AD's are appropriate and warranted.

One commenter expresses concern that, because the requirements of the proposed AD's are extremely costly and cumbersome, resources are being taken away from more effective measures for improving aviation safety. The commenter states that there are safety groups (both with wide aviation business basis) that have targeted the most important/critical areas to be addressed. However, neither of these groups has fire on board as its top priority. The commenter interprets this to mean that the safety experts looking at statistical data would rather concentrate their efforts in other fields.

While there may be groups that concentrate their efforts in other areas, the FAA has identified an unsafe condition that needs to be corrected (as discussed above). The activity referred to is primarily aimed at identifying areas for improved safety, and focusing resources on the most effective candidates. This is distinctly different from correcting an identified unsafe condition. Therefore, these AD's are appropriate and warranted.

One commenter notes that in its experience most blankets are wet or soaking wet in a short time after coming out fairly dry (*i.e.*, after extensive drying) during a heavy check. The commenter asks how it should explain to its mechanics that they have to replace wet blankets because of a fire hazard.

The FAA infers from this comment that the wet blankets are a result of the atmospheric conditions in which the airplane is being operated or a result of moisture accumulation in the belly of the fuselage. As discussed above, the FAA has identified an unsafe condition on the affected airplanes that needs to be corrected. As addressed in the preambles of the NPRM's, the FAA has received reports of a number of in-flight and ground fires on in-service airplanes manufactured with insulation blankets covered with MPET, which can cause fire to spread from a small ignition source such as electrical arcing or sparking. The fact that insulation material itself may be wet may not prevent the MPET film material from propagating the fire to other combustible materials and causing a larger fire.

One commenter states that the wording "otherwise harmless electrical arcs" in the Summary section in the preamble of the proposed AD's is misleading and requests that this wording be removed. The commenter reports that there has never been any Maintenance Steering Group (MSG) 3 testing on airplane wiring, and that no one other than the FAA has even evaluated the problems associated with momentary metal-to-metal contact of wires. In addition, the FAA has never evaluated the effects of spurious signals emitted from degraded wires that can affect flight control surfaces, autopilots, rudders, etc.

The FAA does not concur with the commenter's request to revise the Summary section of the AD's. The term "otherwise harmless arcs" refers to an electrical arc that, on insulation films other than MPET, would not propagate a fire. In this case, the effect of the arc is negligible. In the case of MPET, an uncontrolled fire could develop. The FAA points out that these AD's do not address the aging wiring issues that can affect various systems. As discussed in the preamble of the NPRM's, the FAA is continuing to investigate various wiring problems on certain airplanes. In addition, the Aging System Task Force (ASTF) is continuing to investigate the need for specific aging wiring inspections and tests, as well as the potential effect on systems from degraded wiring. The actions required by this AD only address the identified unsafe condition (*i.e.*, insulation blankets constructed of MPET). The FAA may consider additional rulemaking actions to address any other identified unsafe condition.

Risk Assessment

Several commenters state that, in concert with the scheduled prototyping, a thorough risk assessment should be accomplished, particularly on the effects of replacing insulation blankets on the electrical (including wiring, cables, and installations), hydraulic, and mechanical systems. One commenter states that the risk assessment must be taken into account when mandating the scope and compliance of the proposed AD's. Several commenters state that a risk assessment is needed to determine whether areas exist where the risks associated with the replacement of MPET insulation blankets outweigh the benefits of replacing them. Risks inherent with disturbing airplane wiring and other permanently installed systems, particularly on the scale contemplated by the proposed AD's, are of primary concern. This and other related risks should be addressed using a structured method that considers the characteristics of MPET and alternative films, design and operation of overlying systems, susceptibility of those systems to damage during the replacement of insulation under proposed methods, and likely effects of any damage to those systems. One commenter states that the proposed AD's are not supported by such an analysis.

The FAA does not concur that a formal risk assessment is necessary. If accomplished properly, the replacement required by this AD will not disrupt wiring in such a way as to adversely affect safety. Generally, the prototype exercises demonstrated that the required replacement can be accomplished safely. In addition, Boeing is revising the referenced service bulletins to provide additional guidance on techniques to ensure safe replacements. The primary reason for providing an extended compliance time for this AD, as discussed under the next heading, is to ensure that operators have adequate time to accomplish the replacements properly. On the other hand, MPET insulation blankets have been shown to create an unsafe condition that must be corrected. Furthermore, the FAA will require any operator/modifier that develops its own installation data to include specific instructions to ensure that any displaced wires, systems, and installations are in an airworthy condition after accomplishment of the required replacement. The FAA will monitor these areas of concern during the accomplishment of the insulation blanket installations. Finally, if operators can show that removal and replacement of MPET insulation blankets in certain areas of an airplane will create a greater risk of an unsafe condition than leaving the MPET blankets in place, the FAA will consider requests that provide an acceptable level of safety under the provision of paragraph (e) of the final rule. Any request to leave MPET insulation

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blankets installed in an airplane must provide justification that the identified unsafe condition has been minimized and that an acceptable level of safety is maintained.

One commenter states that the proposed AD's should be rewritten to limit the blanket replacement to areas of high risk, or conversely, retain existing blankets in areas with no wiring or with wiring deemed to pose little or no hazard.

The FAA does not concur. No technical justification, criteria, or data were submitted to support the commenter's request. Potential ignition sources exist throughout the airplane and insulation blankets constructed of MPET film material are located throughout the airplane. It is, therefore, extremely difficult to identify high risk areas and areas of little or no risk. The FAA finds that MPET insulation blankets in all areas of the affected airplanes must be addressed.

One commenter states that the requirements of the proposed AD's should be recast into phases so as to first respond across the worldwide fleet of affected airplanes to the areas of highest perceived risk. Thereafter, the areas of lesser perceived risk can be dealt with at a more appropriate pace. Targeting the highest perceived risk areas of the worldwide fleet of affected airplanes first would provide the greatest decrease in risk across the fleet most quickly. This approach also would make the best use of limited resources, lessen the substantial adverse impact to the traveling public of excessive fleet groundings, and somewhat reduce the substantial economic burden to the airlines.

The FAA does not concur with the commenter's statement that the requirements of the final rule should be recast into phases. As discussed above under the heading "Unsafe Condition," potential ignition sources exist in many areas of the affected airplanes. It is difficult to identify high risk areas and areas of little or no risk. Therefore, the FAA finds that MPET insulation blankets in all areas of the affected airplanes must be replaced. With the change in the compliance time from 4 to 5 years in this AD, excessive fleet grounding should not take place. Adequate maintenance facilities are available to complete this action within the required time period.

Compliance Time for Proposed Replacement of MPET Insulation Blankets

Several commenters request that the compliance time for accomplishing the proposed replacement of the MPET insulation blankets be extended from the proposed 4 years to a range of 5 years to 8 years. The commenters state that such an extension will allow the replacement to be accomplished during a regularly scheduled "D" check or heavy maintenance visit, thereby eliminating any additional expenses that would be associated with special scheduling. The commenters express a concern about the availability of facilities and trained personnel, either domestically or offshore, to accomplish tasks of this magnitude.

One commenter states that maintenance planning can only be done effectively once all details of the work to be accomplished and all downtimes needed to perform the work are known in detail. Therefore, the compliance time should only start once all these details have been clarified.

One commenter states that the proposed AD's do not provide sufficient time for accomplishment of the prototyping effort. Wholesale removal or relocation of wiring not designed for removal in areas where access is difficult can lead to incidental damage even with the best maintenance practices. Given the problems of access, multiple blanket sections will now be required in many fuselage areas to replace a single original blanket. This will lead to new designs, templates, and part numbers. The commenter concludes that this cannot happen in an orderly fashion without completing a prototyping effort on at least one airplane.

The FAA concurs that an extension to the compliance time is warranted. The FAA's intent was that the replacement be conducted during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenters, the FAA now recognizes that 5 years corresponds more closely to an interval representative of most of the affected operators' normal maintenance schedules. The FAA finds that a 4-year compliance time would have a significant impact on scheduling and cost and might result in hurried accomplishment of the required replacement, which could result in potential damage to associated wiring. This decision is supported by experience from the prototype installations, which demonstrated that the required replacement procedures are complex in some areas, and that adequate time and facilities are necessary to ensure that they are completed safely and correctly. Paragraphs (a) and (c) of the final rule have been revised to reflect a compliance time of 5 years. The FAA does not consider that this extension will adversely affect safety.

One commenter supports the proposed 4-year compliance time for accomplishing the proposed replacement of the MPET insulation blankets. The commenter states that, while some operators feel it is not a practical time period, the proposed compliance time is reasonable and practical to retrofit all of the affected airplanes, utilizing airline and third party maintenance facilities. The commenter also states that it and other materials manufacturers are fully prepared and have the capacity to support this effort. Another commenter states that the proposed 4-year compliance time is a very generous allotment of time and would not want to see the proposed AD's delayed any further.

The commenters did not provide any data to support their position. For the reasons described previously, the FAA finds that a 5-year compliance time is reasonable and practical to retrofit all of the affected airplanes rather than the 4-year compliance time proposed by the original NPRM and supplemental NPRM.

Two commenters request that the compliance time for accomplishing the proposed replacement be shortened. One commenter states that the proposed compliance time of 4 years is too lengthy given the fire hazard introduced by MPET insulation blankets. The second commenter states that quicker action is necessary if the conditions of the wiring on affected airplanes are anything like what was discovered in the 737's emergency grounding issue of May 98, wires found damaged on the Space Shuttle Columbia, or numerous instances of wire insulation failure coming out of the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC)/ASTF inspections (15 service bulletins upgraded to alert status on Model MD–11 series airplanes alone) or alert service bulletins on the 727's.

The FAA does not concur with the commenter's request to shorten the compliance time. As discussed previously, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of replacement of the MPET insulation blankets. In consideration of all of these factors, the FAA determined that the compliance time, as revised, represents an appropriate interval in which replacement of the MPET insulation blankets can be accomplished in a timely manner within the fleet and still maintain an adequate level of safety. The FAA encourages operators to accomplish this modification as soon as possible. The commenter points out several incidents associated with airplane wiring. The FAA is addressing these issues as they are identified. The commenter is correct that these wiring incidents are the focus of ATSRAC and ASTF activity. However, these wiring issues are not the subject of this AD.

One commenter requests that the FAA consider a 4-year compliance time to accomplish the proposed replacement only in areas that are readily accessible (*i.e.*, areas where extraordinary means are not required to gain access). The MPET insulation blankets for certain defined areas of the cockpit and electronics bay(s) should not be replaced or should be replaced when those areas are made accessible. The commenter states that replacement of 98 percent of the insulation on the affected airplanes will provide an equivalent level of safety to those airplanes not affected by the proposed AD's. Considerable time will have to be added to the proposed compliance time to accommodate a complete replacement without forcing some airplanes to be grounded due to lack of maintenance capacity.

The FAA does not concur with the commenter's request to require a compliance time of 4 years only for replacement areas that are readily accessible. Although the prototype installations have shown that accomplishment of the required replacement in the cockpit and electronic compartment is physically challenging, potential ignition sources and the identified unsafe condition exist in areas that are not readily accessible. Therefore, the FAA finds that MPET insulation blankets in all areas of the affected airplanes must be replaced. However, as discussed previously, the FAA has extended the compliance time for the required replacement from 4 years to 5 years. While not intended to address the issue of inaccessible areas, the extension of the compliance time by one year should help alleviate the concern for grounding of airplanes due to lack of maintenance capacity.

Two commenters request that the FAA ensure that sufficient insulation material of appropriate quality is available. Supply shortages could create conditions in which the work needs to be performed under time pressure. One commenter notes that there is only one blanket covering material that is currently approved, and only one qualified test apparatus available for operators to perform American Society for Testing and Materials (ASTM) E648 tests on other products. The commenter also notes that the airplane manufacturer has stated that it has only one qualified supplier for manufactured blankets. The commenter is uncertain if the blanket manufacturer can meet replacement demands within the proposed 4-year compliance time. Furthermore, the commenter states that there are no dimensioned drawings available to 14 CFR part 121 operators who might plan to fabricate their own blankets. Templates must be plotted and obtained from the airplane manufacturer, which is a time consuming process.

Various insulation blanket material suppliers state that there is no cause for concern over the availability of the materials specified in the proposed AD's. Metallized Tedlar™ (*i.e.*, polyvinylfluoride), polyimide film, Tedlar™ and polyimide tapes, and fiberglass are abundant and are readily accessible to support all retrofit requirements.

The FAA has assessed the availability of materials required by this AD and has determined that required materials and manufacturing sources should be available for modification of the U.S. fleet within the 5-year compliance time. The FAA encourages operators to review their airplanes to assess their individual needs for materials and plan accordingly. The FAA anticipates that operators will accomplish the requirements of this AD at the earliest practicable maintenance opportunity to lessen the burden toward the end of the compliance time. In addition, the airplane manufacturer is preparing installation kits that can be utilized to accomplish the required replacement. Also, operators and modifiers have developed and are continuing to develop their own data (templates and drawings) to accomplish this required replacement. While this may be a time consuming process for some, it can be accomplished.

Inadequate Procedures and Information in Referenced Service Bulletins

Several commenters state that the replacement procedures and information specified in the referenced service bulletins (*i.e.*, McDonnell Douglas Service Bulletins MD–90–25–015, Revision 01, dated November 5, 1997; MD80–25–355, Revision 01, dated November 5, 1997; DC10–25–368, dated October 31, 1997; and MD11–25–200, Revision 01, dated March 20, 1998) are inadequate for reasons discussed below.

Several commenters state that the Accomplishment Instructions of the referenced service bulletins address the fabrication of insulation blankets but provide no instructions for installation. Detailed instructions for installation are essential to avoid risks during installation, particularly in crucial areas where wiring or other systems are densely concentrated. Damage to installed systems can result in latent failures of critical flight systems and generation of electrical ignition sources. The unprecedented scope of the work involved in moving and replacing wires and systems, and the fact that nothing similar has ever been attempted, introduce a new and unquantified amount of risk.

One commenter states that Boeing has acknowledged that instructions to remove and reinstall some equipment racks and related structures, which are necessary to accomplish the proposed replacement, do not exist in current maintenance documents and will need to be developed. Specific aspects of the proposed replacement are beyond the scope of any currently authorized maintenance procedures. The members of the Boeing Recovery and Modification (RAM) Team are the only personnel trained and authorized to disassemble and reassemble certain critical areas. Several commenters state that Boeing is planning to issue revised service bulletins around June 2000. One commenter states that Boeing should issue detailed service bulletins to cover the scope of the NPRM's and all related test criteria and requirements associated with insulation blanket replacement and removal/installation of associated equipment/components. One commenter states that the service bulletins should be revised to include the above information.

The FAA acknowledges that the instructions appear to be generic, without reference to specific locations in the airplane. However, it is still possible to complete the replacement required by this AD by developing the necessary installation data in conjunction with existing maintenance procedures. Since the issuance of the NPRM's, the manufacturer, in conjunction with operators, has completed prototype installations. Based on the results of the prototype, the manufacturer is developing revisions to the referenced service bulletins that will contain additional installation information and instructions. These revised service bulletins are scheduled for completion in June 2000. Any new or revised service bulletins will contain procedures to maintain/test the integrity

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of the wiring after accomplishment of the replacement of any MPET insulation blanket. The FAA is planning to review and approve the revised service bulletins under the AMOC provision of paragraph (e) of the final rule.

In addition, the FAA is aware that certain operators and modifiers are developing their own installation data. The FAA may approve requests for an AMOC under the provisions of paragraph (e) of this AD if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

The FAA does not concur with the commenter that the members of the Boeing RAM team are the only personnel that can address certain areas of the airplane. The FAA finds that many operators have the expertise to accomplish the required replacement. In addition, Boeing intends to include the necessary instructions in the revised service bulletins.

Several commenters state that the referenced service bulletins not only refer to materials tested in accordance with Standard Test Method ASTM E648 and approved by the FAA as a method of compliance with the requirements of the proposed AD, but also refer to materials that do not meet the new requirements. Moreover, other materials acceptable for compliance with the requirements of the proposed AD are not listed in the referenced service bulletins.

The FAA concurs that the referenced service bulletins refer to materials that do not meet the requirements of this AD. When the referenced service bulletins specified in the NPRM's were issued in 1997, the insulation blanket film material listed in those service bulletins were considered acceptable for installation. Since the issuance of those service bulletins, however, only one of the two metallized Tedlar™ covers specified in the referenced service bulletins has been demonstrated to be acceptable for compliance with the replacement requirements of paragraph (c) of this AD (as indicated in NOTE 4 of the AD) based on flammability testing using the criteria specified in the final rule. The revised service bulletins will only list material that has been approved by the FAA. Under the provisions of paragraph (c) of this AD, the FAA may approve other film material that is shown to meet the flammability test method specified in the final rule. Also, under the provisions of paragraph (e) of this AD, the FAA may approve requests for approval of an AMOC for insulation blankets other than those specified in the service bulletins referenced in the final rule that are shown to meet the flammability test method specified in the final rule and all other airworthiness regulations.

Several commenters state that, due to age, identification stamps on the MPET insulation blankets may be unreadable. The referenced service bulletins are missing instructions for determining whether such blankets are constructed of MPET.

Although the referenced service bulletins are missing instructions for determining whether insulation blankets are constructed of MPET, the FAA finds that such a determination can be made without such instructions. MPET insulation blankets are extremely shiny when compared to all other insulation blanket cover material, and can be readily recognized by trained maintenance personnel. It is also possible to use known MPET material as a comparison sample to assist in the identification should the markings not be readable. Paragraph (a) of the final rule has been revised to clarify the method of identifying MPET. MPET insulation blankets can be identified by the following markings: (1) DMS 2072, Type 2, Class 1, Grade A; (2) DMS 2072, Type 2, Class 1, or (3) DMS 1996, Type 1. The FAA has revised NOTE 2 of the final rule to clarify these markings.

Several commenters state that the referenced service bulletins specify the least effective method for the fabrication of new insulation blankets. Few operators are equipped or have the capability or capacity to manufacture their own blankets. Four sources of insulation blankets were evaluated in technical meetings with the manufacturer. Of these four sources, operators viewed blankets provided in kits by the manufacturer as the most efficient and practical. Such kits would facilitate the earliest completion date of a replacement program, would preserve the thermoacoustic characteristics of insulation systems and certificated configuration of affected airplanes, and can be supported according to the manufacturer. In addition, no dimensional blanket drawings and templates for making the blankets are available.

Although the method for fabrication of new insulation blankets specified in the referenced service bulletins may not be the most efficient method for the commenters, the FAA finds that it is possible to develop the necessary data to manufacture blankets in accordance with the instructions of the referenced service bulletins. The FAA is aware that Boeing is developing replacement kits. The information necessary to purchase these kits will be included in the revised service bulletins (as discussed previously). However, the revised service bulletins are not scheduled to be completed until June 2000. The FAA has decided not to delay this action in anticipation of the service bulletins, since the release date is not absolute and this action is necessary to address an identified unsafe condition. Therefore, the FAA may approve requests for an AMOC under the provisions of paragraph (e) of this AD once the revised bulletins are issued.

In addition, the FAA acknowledges that templates may not be available for operators to make new insulation blankets. However, the referenced service bulletins do describe procedures for removing the subject insulation blankets and using those blankets as templates for making new insulation blankets. While some operators may not be equipped or may decide not to manufacture the replacement blankets, there are adequate resources available in the industry to accomplish the manufacturing.

Several commenters state that the referenced service bulletins provide no labor estimates. One commenter states that it is not aware of any large transport category airplane that has been removed from service, has had its insulation replaced, and has been returned to service. This lack of experience and labor estimates from the manufacturer would impair the planning required of operators and their ability to provide accurate comments to the proposed AD's.

The FAA does not concur. The FAA acknowledges that the referenced service bulletins do not provide labor estimates. However, as indicated under the heading "Regulatory Evaluation Summary" in the preamble of the NPRM's and supplemental NPRM's, a Preliminary Cost Analysis and Initial Regulatory Flexibility Analysis to determine the regulatory impacts of the proposed AD's were included in the Rules Docket No.'s 99–NM–161–AD and 99–NM–162–AD. A summary of those analyses was contained under that same heading in the preamble of the NPRM's and supplemental NPRM's. In addition, the manufacturer, operators, and modifiers have developed estimates based on the prototype installations completed to date. (The FAA discusses the comments to the cost estimate of the proposed AD's in more detail, below, under the heading "Regulatory Evaluation Summary.")

In response to the original NPRM's, several commenters state that the manufacturer has indicated that the airplane effectivity in the referenced service bulletins is currently being re-

evaluated and may be revised substantially. This lack of accurate airplane effectivity also would impair the planning required of operators and their ability to provide accurate comments.

The FAA concurs that the effectivity listed in the service bulletins is not correct. As indicated under the heading "Differences Between the Proposed AD and Service Bulletins" in the preamble of the NPRM's, the FAA realizes that the effectivity listing of the referenced service bulletins not only includes airplanes manufactured with MPET insulation blankets, but airplanes equipped with other materials that are much more difficult to ignite than MPET. The FAA has determined that only airplanes manufactured with MPET insulation blankets are subject to the identified unsafe condition. Therefore, paragraph (a) of the AD's requires that a determination be made of whether, and at what locations, MPET insulation blankets are installed. In addition, the applicability specified in the final rules, based on the supplemental NPRM's, includes fewer airplanes than specified in the service bulletins. In addition, the applicability statement of the final rule, Rules Docket No. 99-NM–162-AD, has been revised to clarify the airplanes that are subject to the identified unsafe condition, which is discussed below, under the heading "Revise Applicability of Proposed AD."

Several commenters state that some accessibility issues have not been addressed. One commenter requests that the removal/replacement requirements be re-evaluated to exclude replacement insulation blankets in those "inaccessible places" of the airplanes. Three to four percent of the MPET insulation blankets are buried beneath structure and wiring in areas like the electrical and equipment (EE) bay and the flight deck and will require as much as 70 percent of the total man hours to replace.

The FAA does not concur that replacement of MPET insulation blankets should not be required in "inaccessible" areas. The areas identified by the commenters (*i.e.*, the EE bay and flight deck) are areas where potential ignition sources (*i.e.*, electrical arcing) are likely to exist and are, therefore, susceptible to the identified unsafe condition. During the prototype exercises and subsequent inspections of the EE bay and flight deck, the FAA learned that most Model DC–9–80 and MD–90–30 series airplanes do not have MPET insulation blankets in these areas. It is, however, the operator's responsibility, as required by paragraph (a) of this AD, to determine whether, and at what locations, MPET insulation blankets are installed in each airplane. Therefore, contrary to the commenters' assertion, the total labor costs associated with replacement of the MPET insulation blankets in the EE bay and flight deck will not be the most significant portion of the total cost of the AD.

One commenter requests that the FAA revise the proposed AD to incorporate specific references to industry guidance material on wire inspection and disturbance. As a minimum, such references should include Advisory Circular 25–16, "Electrical Fault and Fire Protection and Prevention."

The FAA does not concur. Operators and modifiers should be aware of the existing guidance and the revised service bulletin instructions (discussed above), which, based on the prototyping that has been accomplished, will specify wiring inspection information that may be needed.

One commenter requests that the FAA develop and require post-modification wiring inspections to verify the integrity of the wiring insulation. The FAA concurs that any damage done to wiring or other components in the course of the required replacement needs to be corrected. In fact, if maintenance personnel are aware of damage, whether or not caused by replacement of the MPET insulation blankets, they are obligated to document it and initiate appropriate corrective action. Operators are required by 14 CFR parts 91, 121, and 135 to maintain their airplanes in an airworthy condition after any alteration or repairs are made to the airplane. Also, based on the prototyping that has been accomplished, the revised service bulletins will provide any specific wire integrity inspection that may be needed. Therefore, no change to the final rule is necessary.

Coordination With Wiring AD's

Several commenters state that they understand that other NPRM's are in the development phases, which would require inspection of airplane wiring, and would deal with the same issues that have brought about the subject proposed AD's. Some of these commenters state that these NPRM's should not be developed, mandated, and undertaken separately, but rather should be part of a carefully thought out and coordinated process and program. A properly developed plan must consider that each time such disruption of airplane wires/systems takes place, there is an increasing opportunity for collateral damage to those wire/systems with unknown future safety implications. Such a plan also should recognize that the insulation proposed to be changed is not really the source of any fire problem and that proper rectification of the issues being considered might better lie in a carefully thought out and researched wiring AD. One commenter states that it would be efficient to combine the requirements of the proposed AD's with the wiring requirements that will be proposed soon. One commenter states that Boeing is developing several service bulletins dedicated to the inspection and maintenance of airplane wiring. However, these service bulletins will not be available in time to coincide with the insulation blanket replacement should the current NPRM's, with their proposed timing, become law.

The FAA does not concur that AD's addressing specific unsafe wiring conditions should necessarily provide for compliance times that are concurrent with this AD. In some cases, the corrective actions for those unsafe conditions are simple maintenance actions that can be accomplished quickly. It would be inappropriate to allow those unsafe conditions to continue during the extended compliance time allowed by this AD. The FAA does concur that any AD's addressing general wiring inspections for unsafe conditions would be best accomplished in conjunction with the replacement of MPET insulation blankets in affected areas. Such coordinated actions would certainly be most efficient for operators. The FAA does not concur with the commenters' request to combine the requirements of this AD with any proposed actions to address general wiring issues. Such action may delay correction of the unsafe condition of this AD by extending the compliance time further. The FAA will take into consideration the compliance time of this AD in any future action for general wiring inspection to minimize the duplication of aircraft downtime associated with accomplishing the actions of this AD.

Revise Applicability of Proposed AD

One commenter notes that paragraph (a) of the proposed AD states "* * * determine whether, and at what locations, insulation blankets constructed of MPET are installed. This determination shall be made in a manner approved by the FAA." The commenter states that this wording is very unclear to operators and that the FAA should coordinate with Boeing to determine more precisely what the applicable airplanes are.

Based on the commenter's statement that "the FAA should coordinate with Boeing to determine more precisely

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what the applicable airplanes are," the FAA finds that clarification is necessary. After inspecting in-service airplanes, the FAA has determined that all affected airplanes may not have MPET insulation blankets throughout the fuselage. Some airplanes may have very little MPET insulation blankets installed and others may have 100 percent installed. The FAA also has determined that, based on the manufacturer's records alone, it is not possible to determine precisely the configuration of each individual airplane. Therefore, paragraph (a) of the final rule requires that operators determine whether, and at what locations, insulation blankets constructed of MPET are installed. If MPET insulation blankets are not installed, no further action is required by this AD.

The manufacturer states that it is continuing to verify the actual extent of MPET-covered insulation on airplanes delivered from the factory. In response to the original NPRM's, the manufacturer states that additional Model DC–9–87 (MD–87), DC–10, and MD–11 series airplanes, and KC–10A (military) airplanes need to be included in the applicability of the NPRM's, and at least some Model DC–9 series airplanes should be excluded. When that effort is complete, the manufacturer states that it will issue new service bulletin information. One commenter states that the applicability statement of NPRM, Rules Docket No. 99–NM–162–AD, is incorrect. The commenter states that the manufacturer has indicated that MPET insulation blankets were used on Model DC–10 series airplanes, fuselage numbers 359 through 381 inclusive, and 432 through 436 inclusive, and Model MD–11 series airplanes, fuselage numbers 447 through 602 inclusive. In addition, MPET insulation blankets were used on ducting installed in Model MD–11 series airplanes, fuselage numbers 603 through 632 inclusive.

The FAA acknowledges that the applicability statement of the original NPRM's was incorrect. Following the issuance of the NPRM's, the FAA identified additional airplanes that were subject to the identified unsafe condition and issued supplemental NPRM's to reopen the comment period to provide additional opportunity for public comment. The applicability statement of the supplemental NPRM's included the fuselage numbers of the airplanes the commenter referred to above.

One commenter states that the applicability statement of supplemental NPRM, Rules Docket No. 99–NM–162–AD, is incomplete. The commenter notes that it operates four Model DC–10–15 series airplanes, three of which fall within fuselage numbers 359 through 632 inclusive (*i.e.*, fuselage numbers 362, 365, and 374), which were manufactured between June 1981 and January 1982. The commenter requests that the applicability statement of the supplemental NPRM be revised to include Model DC–10–15 series airplanes. The FAA concurs. The applicability statement of the subject supplemental NPRM correctly references the specific manufacturer's fuselage numbers of all affected airplanes, including those fuselage numbers for Model DC–10–15 series airplanes. Therefore, the FAA finds that it is necessary to revise the applicability statement of the subject final rule to include all affected series of Model DC–10 airplanes, specifically Model DC–10–10F, DC–10–15, and DC–10–40 series airplanes.

One commenter requests that the applicability of NPRM, Rules Docket No. 99–NM–161–AD, be revised to "[m]anufacturer's fuselage number 1011 through 2241 inclusive; certified in common carriage operations." The commenter states that private operators were not considered when studying the effects of the proposed AD's. Private operators who operate under 14 CFR 91.501 need to be separately considered when they are faced with rules that are directed at air carriers. Transport category "Private Carriage" operators, who operate under 14 CFR 91.501, are part of the general aviation population and do not offer service to the public or a segment of the public. General aviation operators' airplanes are not held (and are not expected to be held) accountable to the same regulation standards as "Common Carriage" operators. The commenter also states that significant differences in airplane utilization, interior, and operation make the likelihood of in-flight fire threat due to MPET insulation blankets on "Private Carriage" airplanes extremely remote. Therefore, the exclusion of "Private Carriage" airplanes from the applicability of this NPRM would not jeopardize public interest.

The FAA does not concur with the commenter's request to revise the applicability of the subject rule as stated. The identified unsafe condition and potential consequences addressed by this AD are not any different for airplanes utilized in private operation versus ones operated in common carriage.

One commenter states that the proposed AD's do not address affected airplanes outside the noted applicability that may have been retrofitted with MPET insulation blankets during service. This implies that the FAA's investigation has determined that small amounts of MPET on those airplanes do not pose an unsafe condition.

Regarding post-delivery installation of MPET, the FAA does consider that such insulation is unsafe. Most operators do not retain records identifying on what airplanes such insulation has been installed. Therefore, to address this unsafe condition, an AD would have to require that all operators inspect all airplanes of any type to identify the relatively small amount of such insulation that may have been installed during post-production maintenance. The FAA does not consider that such a requirement would be practical or cost effective. However, as with any other unsafe condition, when an operator becomes aware that MPET insulation blankets have been installed, the material should be removed to maintain the airplane in an airworthy condition.

Flammability Test Method Not Adequately Developed/Defined

Several commenters state that the proposed test method seems insufficiently developed to be considered the new standard flammability test. The commenters addressed several issues, including:

- The validity of the test method;
- Qualification of the test method;
- Details of the test procedures; and
- Materials and approval process.

Validity of Test Method

One commenter notes that it has built a test unit and conducted tests on it. The commenter has verified the results of the FAA Technical Center tests, but believes there are serious limitations on this test's utility for predicting how insulation coverings will burn when in place on an airplane. In addition, the commenter states that the mechanism by which films can pass the Radiant Panel Test is for the material to shrink away from the heat source. Other materials, such as polyimide film, pass the Radiant Panel Test by not igniting and shrinking away from the heat source. Two other commenters state that the best of Tedlar™ and Mylar™ (*i.e.*, 3 polyethyleneteraphthalate) films shrink away in the presence of flame and are no help at all in containing fire. The Tedlar™ material that passes the test shrinks away from the heat source before the ignition source can be applied to the surface of the test material. Thus, there is no material to ignite. The commenter states that the Radiant Panel Test may not replicate the condition on an airplane where blankets are restrained and multiple layers are often part of the blanket construction.

The commenter further states that it is possible for polyethyleneteraphthalate (PET), MPET, or other plastics that are more combustible than Tedlar™ to pass ASTM E648, if treated to have desirable heat shrink characteristics. The only other requirement for insulation coverings is the 12-sec vertical burn, which is recognized as inadequate because MPET materials can pass it. The commenter notes that the proposed standard may leave the door open in the future for combustible materials to be installed on airplanes.

The FAA does not concur with the commenter's statement that films can pass the Radiant Panel Test by shrinking away from the heat source and are no help in containing a fire. The purpose of the test is to establish the flame spread characteristics of insulation blanket materials under realistic conditions. The results of this test have been correlated with full-scale testing, conducted by the FAA Technical Center, in which insulation was installed in fuselage sections in a representative fashion. Certain materials that shrink when exposed to heat have been shown to prevent propagation of a fire. In addition, for these same reasons, the FAA does not concur with the commenter that the FAA Technical Center tests have serious limitations. The FAA finds that the insulation material tested in accordance with the method specified in the AD will have much better flame spread characteristics than MPET, which was shown to comply with the current Bunsen Burner Test specified in the regulations, and subsequently, determined to have unsafe flame spread characteristics when ignited from a small ignition source.

One commenter states that the best situation is to have insulation covering film that does not burn in the Radiant Panel Test. The commenter contends that the test should screen out material that does not perform as well as polyimide film.

The FAA does not concur that the test method must screen out materials that do not perform as well as polyimide films. As discussed previously, materials, including polyimide films, that pass the Radiant Panel Test perform much better in full-scale testing than MPET insulation blankets that are the subject of this AD.

Qualification of the Test Method

One commenter expresses concern that the FAA has not yet published updated flammability standards that will allow for the development and testing of materials other than those cited in previous McDonnell Douglas service bulletins, which specify the replacement of MPET with two types of metallized Tedlar™. The commenter notes that the FAA has approved only one type of specified metallized Tedlar™ after it successfully passed an ASTM flame spread test. The commenter emphasizes that it is urgent that the FAA provide its own applicable test standard to facilitate the rapid replacement of MPET with other materials that will have superior fire resistant characteristics.

One commenter requests that the FAA revise the proposed AD's to "more clearly require the FAA Radiant Panel Test, which was derived from ASTM E648," and to define the test before approving specific films. The commenter states that ASTM E648 is much different than the Radiant Panel Test developed by the FAA Technical Center. The Radiant Panel Test uses the same enclosure, a radiant panel, and the same basic concept as the ASTM E648 test. However, the Radiant Panel Test has had several modifications including a different heat flux, different ignition source, and a modified sample holder. The commenter notes that results of the Radiant Panel Test vary widely when test specifications are changed. Therefore, the specification of any film as passing the test prior to the completion of the test method is not warranted. It is possible for films that currently fail the existing test to pass when the test procedures or chamber is fully defined. Conversely, films that currently pass the test can fail.

One commenter states that industry experts should discuss the success criteria of ASTM E648 further. This commenter notes that these changes to the standard and success criteria have not been subject to round robin testing and outside peer review, so various aspects of their merit are questionable. One commenter suggests that round robin testing with clearly identifiable/achievable pass/fail criteria be performed by the industry to validate the repeatability of the test procedures prior to release of the proposed AD's. Validated criteria would produce an equivalent level of safety to material currently in production and in use in the fleet, which is deemed acceptable.

The FAA concurs with the commenters concerning the reference to ASTM E648 in the NPRM's and finds that clarification is necessary. The FAA has been developing for some time new flammability standards for insulation material. Research has been conducted on the various types of insulation material to determine their effectiveness on both flame spread and fuselage burnthrough. As a result, the FAA has developed a new flame spread test method. The flame spread test method specified in this AD is a modified version of the ASTM E648 flammability standard and test apparatus. Modifications to ASTM E648 test apparatus have been made to more closely reflect the fire conditions in an airplane environment. The FAA has prepared a document to reflect the flame spread test method to be used for testing of replacement insulation blankets for this AD. It is identified as "Test Method to Determine the Flame Spread Characteristics of Thermal/Acoustic Insulation Material for Replacement of MPET." For the purposes of correcting the identified unsafe condition of this AD, the FAA finds that this flame spread test method is sufficiently developed.

The FAA also has developed a procedure for utilizing the FAA Technical Center flame spread test apparatus to qualify materials for this AD. The procedure for utilizing the test apparatus of the FAA Technical Center is identified as "Ground Rules for Use of Technical Center Facility for Testing."

The flame spread test method and procedure for using the FAA Technical Center test apparatus are both included in Appendix 1 of this AD.

As paragraph (c) of the NPRM's is currently worded, some commenters may misinterpret that the replacement insulation blankets must be constructed of materials tested in accordance with the original ASTM E648 flammability standard, rather than tested in accordance with a new flame spread test using an apparatus derived from ASTM E648 in accordance with a method approved by the FAA. Paragraph (c) of the final rules has been revised to clarify the flame spread test method for replacement insulation blankets. The Los Angeles Aircraft Certification Office (ACO) will work closely with other FAA ACO's and the FAA Technical Center to assist operators/modifiers in qualifying new materials for compliance with the requirements of this AD.

The FAA concurs that the method specified is not yet a "standard." However, the method is sufficiently developed for this AD and, before adoption as a standard, will undergo the kind of industry qualification proposed by one commenter. The FAA partially concurs with the commenter's statement that round robin testing is necessary and that the success criteria of the flame spread test method should be discussed further. Prior to incorporation of a new flame spread test method into the

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Airworthiness Standards for transport category airplanes (14 CFR part 25), the test method will be subject to round robin testing. In fact, this process is currently underway within the International Aircraft Materials Fire Test Working Group.

With respect to changes in the flame spread test method that may cause certain materials to go from acceptable to unacceptable, or vice versa, the FAA does not agree that this is an issue. Refinements to the test method will be made to improve the repeatability of the test, not to change the test results. Materials that are marginal will perform marginally regardless of the details of the method.

One commenter states that it understands that the FAA has plans to replace the standard gas-fired radiant panel with an electric panel, and that the flame ignition source is a single cone non-standard burner as opposed to the T-type burner method specified in ASTM E648. The commenter contends that differences between the FAA method and ASTM E648 are confusing to both testing labs wishing to provide services to FAA-regulated clients as well as suppliers of insulation who are unclear as to what the specification will be for the products they produce for the aerospace industry. The commenter states that "specification of a non-standard test apparatus and conditions by the FAA end up creating a whole other set of devices which must be fabricated and maintained separately from their standard 'parent devices' removing the economic benefits which use of consensus developed public sector standards provide."

The FAA does not concur for the reasons noted previously. In addition, since the apparatus specified is not used for any other aviation application, there is very little potential for confusion. The number of facilities currently equipped to conduct these tests is extremely small, which further diminishes any problems associated with differences in the test method.

One commenter states that, because of such a tremendously costly retrofit program, all further developments with regard to new testing methods must clearly avoid duplication or contradiction of actions as described in the proposed AD's.

The FAA has revised paragraph (c) of the final rule to clarify the flame spread test method to be used to qualify replacement insulation blankets. As previously discussed, this test method is adequately refined to qualify these materials for this AD.

Details of the Test Procedures

One commenter states that results of tests have shown that the thickness of the insulation has no impact on the performance of the film under test. Therefore, the commenter suggests that all samples be tested with two-inch thick insulation.

One commenter requests that the FAA develop specifications for environmental conditioning of samples since the absence of such requirements will significantly alter test results, in particular for ignition and flame spread sensitive materials such as faced insulation.

The commenter states that the proposed pass/fail criteria, including the minimum 2-inch burn length and 0 flame spread, are not easily measured or agreed upon. Several commenters state that clearer pass/fail criteria are needed. One commenter states that subjective assessment of test results in small scale fire testing is a constant, ongoing problem that should be avoided.

One commenter claims that the "pilot" burner arrangement called out in the FAA specification does not result in reproducible test results. Likewise, the "pre-heat" time between specimens and the time between sample insertion and flame application have not been defined. The commenter prefers a standard design and operation conditions and is unclear why the standard design has been modified.

The FAA does not agree that the current test method lacks reproducibility. Tests conducted at the FAA Technical Center and at other facilities indicate that the test is reproducible and repeatable. The FAA concurs with the commenter that a defined test protocol should be used when testing replacement material. The flame spread test method specified in the final rule does include the pass/fail criteria, environmental conditioning, and test specimen thickness. Issues such as the pilot burner arrangement will be the subject of further refinement before the test method is adopted as a regulatory standard, but are adequately defined for this AD.

One commenter requests that the test procedures include contaminated insulation blankets to simulate real world conditions. The commenter states that testing of pristine material may not provide sufficient assurance when within a few years the thermal blankets will be contaminated with solvents and other material. The FAA does not concur. While "contamination" might result in either detrimental or improved flammability performance, incorporation of generic "contamination" into a test requirement is not practical. Contamination is usually a localized phenomenon, and not spread uniformly throughout the airplane. Replacing the existing materials with materials that will not propagate a fire will confine a fire to the area of contamination and should prevent the fire from becoming a hazard. As with any material installed on an airplane, it is the operator's responsibility to ensure that the airplane remains in an airworthy condition.

The commenter further requests that the test procedures include ignition "by these so-called, otherwise harmless electrical arcs." The commenter states that the likelihood of thermal blankets propagating a fire will typically start with an electrical arc. Therefore, the resistance to an arc-tracking Kapton™ (*i.e.*, polyimide) wire fire should be assessed. The commenter contends that this will give a clear indication of what the next flight crew might experience, rather than a Bunsen Burner or cotton swab test that doesn't relate to the real world conditions found on affected airplanes.

The FAA does not concur with the commenter's request to include electrical arcing ignition in the test procedures. Electrical arc tests were used to identify the unsafe characteristics of MPET in the course of research. The test method required by this AD is, in fact, a more severe measure of the materials' performance. There are materials that are not susceptible to ignition by electrical arcing that will not pass the test required by this AD. Therefore, the replacement of MPET insulation blankets in accordance with this AD will address the commenter's concern.

Approved Materials

Two commenters request that the FAA revise the proposed AD's to include an expanded list of approved films. Several commenters note that Kapton™ film installed 25 years ago on Model L–1011 series airplanes has proven to outperform Tedlar™ and Mylar™ films in FAA tests, which measure the materials' ability to hold back flames. Two commenters state that all FAA testing, including burnthrough testing, have shown polyimide films to be superior. In addition, FAA Administrator, Jane Garvey, specifically mentioned Kapton™ film as being a material that would be "grandfathered in" in an October 14, 1998, announcement.

Two commenters state that the proposed AD's appear to preclude the use of polyimide (Kapton™) insulation covering film that has passed the new Radiant Panel Test.

The FAA does not concur with the commenters' request to revise NOTE 4 of the AD to include additional films. Except for the metallized Tedlar™ cover mentioned in NOTE 4 of the AD, currently, no other film has successfully passed the flammability testing in a manner approved by the Manager, Los Angeles ACO. However, the FAA is aware of various film materials that could be found to be acceptable replacement materials for MPET. Once these materials have successfully passed the flammability testing specified in the AD, they must be approved by the Manager, Los Angeles ACO. In addition to the flammability requirements, the material must be shown to meet all other applicable airworthiness requirements. The FAA Administrator did make an announcement in October 1998 that Kapton™ would be "grandfathered," and that the FAA would not require that material to be replaced once is was installed. However, that announcement was made prior to the issuance of the NPRM for this final rule. This AD does NOT require Kapton™ to be replaced once it is installed; however, it does require testing and approval of any material, including Kapton™.

One commenter requests that the FAA revise NOTE 4 of the proposed AD's to read "[t]he metallized Tedlar covers specified in the service bulletins must be tested to demonstrate compliance with the requirements of paragraph (c) of this AD." The commenter disagrees with the characterization that a particular cover material is considered acceptable with the requirements of paragraph (c) of the proposed AD's. The commenter states that the Thermal Acoustic Task Group, which was organized by the Fire (Safety) Test Branch of the FAA Technical Center to develop the new flammability requirements, did not begin to discuss the procedures for demonstrating compliance until a seminar was held on September 13 and 14, 1999. Because the release date of the NPRM's was before the seminar, no material could have been specified to be in compliance with the requirements of paragraph (c) of the NPRM's. The commenter states that, at the time of publication of the proposed AD's, compliance materials and methods had not yet been submitted under a Test Plan, conformity inspection of samples had not been completed, and properly witnessed testing had not taken place.

The FAA does not concur with the commenter's request to revise NOTE 4 of the AD as it suggests. The material that is listed in the service bulletins has been found acceptable by the FAA and was tested at the FAA Technical Center in a manner approved by the FAA, prior to the September seminar. The purpose of the seminar was not to develop test methods, but to introduce the method to the interested segment of the industry. Therefore, the timing of the seminar has no bearing on the approval status of the material. No change to the final rule is necessary.

Replacement Material Approval Process

One commenter notes that under the heading "Differences Between the Proposed AD and Service Bulletins" in the preamble of the NPRM's, it states "* * * Only one of the two insulation blanket film materials specified in the service bulletins has successfully passed the testing of the ASTM flammability standard and has been found to be an acceptable replacement material for the MPET-covered insulation blankets. Other film material, such as certain polyimide and fluoropolymer composites, also have been successfully tested to ASTM E648 and could be found to be acceptable for compliance with the requirements of this proposed AD if presented to the FAA for approval. These materials are not listed in the service bulletins described previously." The commenter claims that the original equipment manufacturer (OEM) and certain operators are interpreting this statement as requiring a full Part Manufacturing Approval (PMA) and Supplemental Type Certificate (STC) approval process for blankets using films not in the referenced McDonnell Douglas service bulletins.

One commenter states that other new materials besides Kapton™ will become available in the near future for use as insulation coverings, and that the PMA/STC process is not designed for nor suited for purely materials testing. The commenter contends that using this process would add a great deal of unnecessary cost to the current approval process for new materials. Another commenter requests that the proposed AD be revised to include language describing a clear and abbreviated approval process for blankets utilizing new and less flammable materials.

The FAA does not concur with the commenter's request to include language describing the process for approval of replacement insulation blankets utilizing new and less flammable materials. The FAA approval process of replacing materials/installations is well established and known. Design approval can be obtained by an STC or PMA. It is the responsibility of the operators and modifiers to obtain such approvals for any proposed materials under paragraph (c) of the AD. The FAA may approve requests for AMOC's, such as alternative blanket installation, under the provisions of paragraph (e) of this AD if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

The FAA has determined that an adequate supply of approved replacement materials will be available to comply with this AD in the time specified. Operators that choose to develop new or different materials must plan accordingly and obtain approval as previously stated. While the PMA or STC process may not seem to be cost effective for some operators, it is the proper approval method to assure all airworthiness standards are met.

Insulation Material on Other Aircraft

One commenter is not clear if the material used today on other Boeing airplanes is able to pass ASTM E648. The same commenter also states that the proposed AD's require full replacement of only MPET. The commenter is not clear what the rationale behind this decision is.

As discussed in the NPRM's, these AD's are intended to correct an unsafe condition by replacing MPET insulation blankets. MPET film differs from other films in use in that it is susceptible to propagation of a fire from a small ignition source. Other films, while not necessarily meeting the proposed test requirements, do not have this susceptibility. It is the susceptibility to small ignition sources that creates the unsafe condition. New standards for insulation materials in general may be similar to the requirements of this AD, but will be used to upgrade the level of safety, and not correct an unsafe condition.

Burnthrough

Several commenters request that the FAA revise the proposed AD's to make clear that airlines are permitted to install insulation that meets a burnthrough protection standard. Two commenters state that the proposed AD's appear to preclude the use of Curlon as a substitute for fiberglass to achieve burnthrough performance. One commenter states that Curlon material and many other materials recently developed could easily and economically provide double the level of protection of the current burnthrough time (*i.e.*, four minutes). Although the proposed AD's do not address the

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burnthrough safety threat, the commenters want to take this opportunity to achieve this important safety advance when replacing the insulation. The commenters reemphasize that this would simply be reinforcing the October 1998 announcement that Curlon would be one of the materials "grandfathered in," if operators proceeded to install it voluntarily.

Two commenters request that the FAA revise the proposed AD's to include requirements for burnthrough protection from fuel fires on the ground for all affected airplanes. The commenters state that replacement of flammable insulation is an opportunity to install burnthrough protection. One commenter states that this should be the time to push the industry, as was done with the heat release requirements for interior materials a few years ago. Materials were not even available to meet the new FAA requirements, but the industry "stepped up to the plate and we now are all safer as a result of this proactive approach."

The FAA does not concur with the commenters' requests to include burnthrough requirements in the AD. While burnthrough protection is important to the overall fire resistance of airplanes following an accident, the actions required by this AD are intended to correct a known unsafe condition—insulation blankets constructed of MPET. The FAA does not consider that the degree of burnthrough protection provided by currently installed insulation constitutes an unsafe condition. Therefore, it would be inappropriate to issue an AD to require improvement in burnthrough protection. The new replacement insulation blankets required by this AD meet the test method specified in the final rule, correct the identified unsafe condition, and provide the level of safety required by 14 CFR part 25. The FAA encourages the installation of materials that meet additional standards such as fuselage burnthrough protection.

Trade Names

One commenter opposes the use of trade names in both the preamble and regulatory text of the proposed AD's and considers such references to trade names highly prejudicial to Chemfab, the manufacturer of Chemfilm. The commenter states that there is no need for brand name product identification and that this connotes not only FAA approval of, but also preference for, the identified product brand. Once the official "seal of approval" has been granted through the rulemaking process, other market entrants face a significant barrier in gaining customer acceptance simply because the identified product has been "officially" sanctioned.

Because of the publication and circulation of the proposed AD's, two commenters request that the FAA revise the proposed AD's to identify the manufacturer(s) and trade names of insulation blanket covering films that have met FAA requirements specified in the proposed AD's.

The FAA does not concur with the commenters' request to reference other trade name products in the final rules or to eliminate all references. Tedlar™ and Mylar™ are common trade names and this is the clearest way for FAA to communicate with affected operators. Except for the one metallized Tedlar™ cover mentioned in NOTE 4 of the AD, currently, no other film has been approved by the Manager, Los Angeles ACO. In addition, the airplane manufacturer is planning to list materials, once they have been tested and approved by the FAA, in the revised service bulletins (discussed previously under the heading "Inadequate Procedures and Information in Referenced Service Bulletin"). Furthermore, the FAA finds that trade names such as of Mylar™, Kapton™, and Tedlar™ are well known and are accepted terminology in industry. The reference of these trade names in the AD's are not, in any way, an FAA endorsement of those products. Therefore, no change to the final rule is necessary.

Wiring

One commenter requests that flammability requirements for the sources of ignition (*i.e.*, the wiring) for thermal blanket fires be stricter than the requirements for thermal blankets themselves. The commenter states that the 60-degree flame test—the only test required by the FAA for the wiring on commercial airplanes—should be replaced immediately with the vertical flame test as a minimum requirement, and that every type of wire insulation in all airplanes should have to meet it.

The FAA does not concur. The current flammability standard for wiring has not been determined to be inadequate. The actions required by this AD are intended to address an identified unsafe condition, which is that MPET-covered insulation blankets can contribute to the spread of a fire when ignition occurs from a small ignition source such as electrical arcing or sparking. As noted previously, the FAA has a major program underway to address issues related to airplane wiring and problems are being addressed as they are identified.

Corrosion Protection

One commenter states that for Model MD–11 series airplanes to be afforded the same corrosion protection offered by the OEM installation, any fabricated blankets must meet the original type design. The existing Corrosion Prevention and Control Program (CPCP) requirements are based on the performance of the insulation system. Any compromise or alteration will necessitate changes to the CPCP. Many insulation blankets cannot be installed as they originally were due to installation of overlying structure. Therefore, deviations to the type design will have to be approved by the OEM and FAA in the form of an AMOC. The burden of these approvals will stress the resources of the OEM and FAA over the duration of the compliance period.

The FAA does not concur. The FAA is aware of the potential effects of changing insulation material has on the corrosion protection of the affected airplanes. The airplane manufacturer intends to take this into account so that no change to the CPCP is required. Any operator or modifier also will be required, under paragraph (e) of this AD, to address any ramifications to the CPCP in any request for an AMOC.

Add New Inspection

One commenter requests that, if it is determined that an insulation blanket is not constructed of MPET during the action required by paragraph (a) of the proposed AD's, a visual inspection be conducted to detect fire damage, electrical arcing, discoloration, or other physical damage. The commenter also requests a visual inspection for possible ignition sources during routine maintenance on airplanes not affected by the proposed AD's.

The FAA does not concur with the commenter's request to revise paragraph (a) of the final rule to include a visual inspection for possible ignition sources. If any evidence of fire damage is found during the subject inspection, operators are already required to investigate and determine the source of the problem. This is no different from any other maintenance action that is performed by the operators. It is not necessary to include any additional requirements in this AD to accomplish this action.

Alternative Method of Compliance

One commenter states that it has developed a system whereby the existing bagged insulation can be removed from the airplane without the necessity of interfering with wiring harnesses or other unrelated systems. The commenter claims that its system would reduce the installation time of the proposed AD's, reduce the cost of compliance, and reduce the remote chances of creating future related AD's caused by the method of compliance. Another commenter states that it also has developed an insulation system that works around existing equipment and thus eliminates the need to remove much of the equipment that is not normally removed during heavy maintenance checks. The commenter claims that its system is lighter in weight than the OEM insulation system and will result in fuel savings.

One commenter agrees that the flammability/flame spread performance of the MPET-covered insulation blankets should be improved, but questions proposed AD's that would require blanket replacement. The commenter states that this approach may not be the only possible method of addressing the issue. This concept is especially important considering the potential negative consequences of required airplane disassembly to accomplish the blanket replacement. The commenter suggests that there may be other options such as spray coatings that offer virtually equivalent performance with little negative impact.

From these comments, the FAA infers that the commenters are requesting that the final rules be revised to include the commenter's systems for replacing or modifying the MPET insulation blankets. The FAA does not concur. The commenters did not provide any technical details for the FAA to make a finding. Paragraph (e) of the final rule contains provisions for requesting approval of an AMOC to address these types of unique circumstances.

One commenter requests that the FAA require installation of additional fire resistant material(s) between the insulation blankets and any adjacent wires, wire bundles, or other potential ignition sources instead of removing and replacing MPET insulation blankets. The commenter also requests that the FAA consider this approach on either a full or partial basis. Another commenter believes that fire resistant material(s) in such a location would better promote the overall safety of the affected airplanes.

The FAA acknowledges that this suggestion may be a possible acceptable alternative to removing the existing insulation blankets. However, no change to the final rule is necessary. Under paragraph (e) of the AD, operators may apply for the approval of an AMOC or adjustment of the compliance time that provides an acceptable level of safety.

Communication

One commenter requests that the FAA have a public meeting regarding the proposed AD's. The commenter states that, because many vendors are trying to develop materials that meet the new FAA requirements, and the market price of these materials seems to vary drastically at present, it just has insufficient information on new materials.

The FAA does not concur that a public meeting regarding the proposed AD's is necessary. Through the FAA Technical Center, the FAA has provided a forum to develop flammability standards for insulation materials. In addition, the FAA is aware of a number of meetings hosted by the airplane manufacturer to provide information to operators affected by the requirements of this AD. The FAA is sensitive of the public's concern with the fire safety issues associated with this AD and is aware of the effects this AD will have on operators. The FAA has determined that an unsafe condition exists, and that the actions required by this AD are necessary in order to ensure the continued safety of the affected fleet.

Extend Comment Period of NPRM's, Delay Issuance of Final Rules, and Withdraw NPRM's

For the reasons described above, several commenters request that the FAA do one or more of the following: (1) Extend the public comment period for the NPRM's and supplemental NPRM's; (2) delay issuance of the final rules; or (3) withdraw the NPRM's and combine them with the draft burnthrough NPRM. (The FAA infers that the commenters are referring to a draft NPRM relating to insulation blanket flammability. The FAA announced its intention to develop new flammability standards for thermal/acoustic insulation in October 1998. This announcement included mention of improved burnthrough protection.)

One commenter states that it is not uncommon, in the case of an AD relating to issues not as complex as the proposed AD's, for the FAA to allow 90 days or more to comment. The 45-day comment period of the proposed AD's does not allow for proper understanding and evaluation on which to develop reasonable comments.

The FAA does not concur with the commenters' request to extend the comment period. On November 10, 1999, the FAA issued supplemental NPRM's to reopen the comment period for an additional 25 days to provide opportunity for public comment (the comment period for the NPRM's was 45 days and closed on September 27, 1999). The FAA finds that the public has had a reasonable opportunity to comment on the substance of the AD's. The FAA does not concur with the commenter's statement that it is not uncommon for the FAA to allow 90 days or more for the public to comment on proposed AD's. The standard comment period is 45 days for NPRM's and 25 days for supplemental NPRM's in which the FAA has responsibility as the State of Design of the affected airplanes. A 90-day comment period would be uncommon.

As discussed above in "Inadequate Procedures in Referenced Service Bulletins," the FAA also finds that it is possible to accomplish the requirements of this AD. Since the issuance of the NPRM's, the airplane manufacturer, in conjunction with operators, has completed the prototype installations. Based on the results of these installations, the airplane manufacturer is developing revisions to the service bulletins referenced in the AD's to include detailed instructions for accomplishment of the required replacement. These revised service bulletins are scheduled for completion in June 2000. Any new or revised service bulletins, among other items, will contain procedures to maintain/test the integrity of the wiring after accomplishment of the replacement of any MPET insulation blanket. These revised service bulletins will be approved as an AMOC for the requirements of this AD.

The FAA does not concur with the commenter's request to delay issuance of the final rules. These revised service bulletins are scheduled for completion in June 2000. The FAA has determined that, while physically challenging, the actions required by the AD can be accomplished within the 5-year compliance time, and that the actions are warranted to address an identified unsafe condition.

In support of its request to withdraw the NPRM's, one commenter contends that other rulemaking in development by the FAA may eventually affect the airplanes covered by this AD, thereby requiring two extensive modifications.

The FAA does not concur with the commenter's request to withdraw the NPRM's and combine them with the draft burnthrough NPRM. Any other regulatory action to raise the level of safety would have to be justified and subject to public comment. The FAA does not anticipate requiring airplanes to be modified twice as a result of future actions. The actions required by this AD are intended to correct an identified unsafe condition by removing MPET insulation blankets from airplanes

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affected by these AD's. These actions are not intended to provide a general upgrade to the current level of safety specified in the airworthiness regulations. Therefore, the actions required by these AD's are warranted.

One commenter disagrees that prototyping efforts are necessary to determine the feasibility of the requirements of the proposed AD's and disagrees that issuance of the proposed AD's should be delayed. The commenter states that it is in the process of prototyping the insulation retrofit on several affected airplanes. The commenter expects the prototyping to be completed in 6 weeks (the commenter's letter was received by the FAA on September 27, 1999). The FAA concurs with the commenter that issuance of the final rules should not be delayed. As discussed previously, the FAA has participated in the prototyping specified by the commenter, and that prototyping effort has been completed.

Cost Estimates

Several commenters state that the FAA "grossly" underestimated the costs associated with accomplishing the requirements of the proposed AD and provided their cost estimates. Two other commenters provided cost estimates that were less than those provided in the NPRM's.

The FAA concurs that the cost estimates specified in the NPRM's were underestimated. The FAA based its cost estimates on information that was available at the time the NPRM's were issued. Since the issuance of the NPRM's, the FAA has carefully reviewed the information and cost estimates provided by the commenters and the information obtained during the prototype exercises. The FAA has learned that most Model DC–9–80 and MD–90–30 series airplanes do not have MPET insulation blankets installed in the nose section of the airplane. Also, a number of airplanes do not have MPET insulation blankets in the fuselage, but have MPET insulation blankets only on the air conditioning ducting. The airplane manufacturer will be making this information available when the service bulletins are revised, as mentioned above. In light of these findings, the FAA has revised the cost estimates for the final rules, which is summarized below under the heading "Regulatory Evaluation Summary."

Several commenters request that the FAA reevaluate the cost estimates once the prototype exercises are completed. As discussed previously, the FAA has revised the cost estimate of the final rules based on the prototype exercises.

Several commenters state that the FAA should consider costs associated with accomplishing the requirements of both proposed AD's (*i.e.*, Rules Dockets 99–NM–161–AD and 99–NM–162–AD), under Title II of the Unfunded Mandates Reform Act of 1995.

The FAA did consider the total costs associated with accomplishing the requirements of both NPRM's for all affected airplanes under the heading "Regulatory Evaluation Summary" in the preamble of the NPRM's. A copy of the Preliminary Cost Analysis and Initial Regulatory Flexibility Analysis also were included in each docket. These documents, along with the final documents, are available for the public to review.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Evaluation Summary

To determine the regulatory impact of this AD, the FAA conducted a Final Cost Analysis and a Final Regulatory Flexibility Analysis. In addition, the FAA assessed the impact of this AD on international trade and determined whether it must satisfy the requirements of the Unfunded Mandate Reform Act. While a summary of these findings is reported in this preamble, a more detailed discussion is included in the Rules Docket for this AD.

Since the publication of the NPRM, the FAA has observed several prototype exercises that involved the removal and replacement of MPET insulation blankets. Information gained through these exercises has contributed to greater understanding by the FAA, operators, and manufacturer of the technical details and impacts of the requirements of this AD.

The FAA took account of the results of the prototype exercises, comments to the NPRM's, and other additional information, and then adjusted its estimates of the costs attributable to this AD. Further, recent information indicates that the count of affected airplanes is 621 Model DC–9–80 series airplanes and 21 Model MD–90–30 series airplanes. Specifics of these adjustments are discussed below.

Several commenters indicate that the FAA underestimated the costs of the new insulation material, labor hours necessary for retrofitting, and lost passenger revenue from retrofitting downtime. With respect to labor and material costs, the FAA contacted the major material suppliers (one of which was the airplane manufacturer) and three carriers that together operate 75% of the affected fleet. Information and estimates from these sources support increases both in the level of detail and in the levels of labor and material costs for this adjusted estimate. Therefore, the labor cost calculation methods used in this AD differ from those used in the NPRM's. The FAA has developed the labor estimates for this AD using information supplied by the manufacturer and affected operators to arrive at average values specific to the requirements of this AD. The FAA considers these values conservative.

The commenters express disagreement with the asset-based approach the FAA used in the Preliminary Cost Analysis to estimate the cost of the loss of service of the airplanes during their retrofits. The commenters suggest that the estimate be made on the basis of loss of per seat revenue. There are two reasons why the FAA uses the asset-based approach. First, the FAA takes an industry-wide perspective in which a passenger who cannot be seated on an airplane that is out of service for compliance with this AD can be seated on an airplane that is in service. On an industry-wide basis, no revenue will be lost. Second, the contribution of a seat's revenue to corporate net income is subject to variations in accounting, financial, marketing, and operational practice.

The FAA's asset-based approach centers on the financial ratio, overall corporate rate of return, which was reported by the operators and published by the Department of Transportation. This ratio is applied to the average value of the assets lost to the service of the operators and is adjusted for the average period of time for which they are lost because of compliance. This approach assumes that operators maximize the value of their firms by optimizing the mix and quantity of their assets.

Even though the FAA uses essentially the same "lost-revenue" method as that in the supplemental NPRM's, the FAA nevertheless did increase its estimates of lost revenue by increasing the number of days out of service, reducing the operating base year from 365 days to approximately 320 days, and raising the rate of return (9% is an average of domestic passenger and cargo operators' profit rates as estimated by the Department of Transportation's Bureau of Transportation Statistics). All of these adjustments raise the value of the variables applied to the airplane asset values (*i.e.*, $16.2 million per DC–9–80/MD–90–30).

The FAA has identified 621 Model DC–9–80 and 21 MD–90–30 series airplanes that will be subject to retrofitting. Four of these airplanes have MPET insulation installed throughout. Thirty-five of these airplanes have MPET insulation installed only around air conditioning ducts. Six hundred and three of these airplanes have MPET installed throughout except for the nose. These patterns of installation strongly affect the retrofitting costs for each individual airplane. The FAA final costs estimate reflects the cost of each airplane when averaged for the total DC–9–80/MD–90–30 affected fleet.

The foregoing results in the following adjustments to the calculations presented in the supplemental NPRM.

For Model DC–9–80 series airplanes, the preliminary estimates for labor, material, and lost service per airplane were as follows: labor, $335,988; material, $27,021; and lost service, $20,416. The corresponding MD–90–30 estimates were as follows: $385,560; $31,008; and $37,052.

The components of this adjusted estimate per airplane, for both Model DC–9–80 and MD–9–30 series airplanes, are as follows: combined labor and material, $479,921 (averaged as $628,184 for 4 airplanes, $73,156 for 35 airplanes, and $502,547 for 603 airplanes, as discussed above); and lost service, $65,998. Overall, the adjusted estimates compare to the original estimates as follows:

Original	Adjusted
625 DC–9–80, each $383,000.	621 MD80s, each $545,919.
22 MD–90–30, each $454,000.	21 MD90s, each $545,919.

The adjusted estimate of the total costs of this AD over the five-year retrofit period for all 644 affected narrow-body airplanes is approximately $351.6 million or $288.6 million discounted to present value. The total impact for all affected airplanes (i.e., Model DC–9–80, MD–90–30 , MD–11, and DC–10 series airplanes) is 449.3 million or 368.4 million discounted to present value over the five year compliance time.

With respect to effects on small entities, the Regulatory Flexibility Act (RFA) of 1980 establishes "as a principle of regulatory issuance" that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the Agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Of the operators affected by this AD, all but three are air carriers, none of which is a small business. In two of the remaining cases, Model DC–9–80 series airplanes are owned for personal use. One Model DC–9–80 series airplane is operated for non-carrier business purposes by a large corporation. Although the small business size criterion is met in the cases of the two Model DC–9–80 series airplanes that are owned for personal use, two such entities do not constitute a "substantial number" within the meaning of the RFA. Thus, pursuant to the Regulatory Flexibility Act, 5 U.S. C. 605(b), the FAA certifies that this AD will not have a significant economic impact on a substantial number of small entities.

The provisions of this AD will have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Finally, Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534, requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This AD does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–01 McDonnell Douglas: Amendment 39–11749. Docket 99–NM–161–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) series airplanes; Model MD–90–30 series airplanes; and Model MD–88 airplanes; manufacturer's fuselage numbers 995 through 2243 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

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owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that insulation blankets constructed of metallized polyethyleneteraphthalate (MPET) are removed from the fuselage, accomplish the following:

Inspection

(a) Within 5 years after the effective date of this AD, determine whether, and at what locations, insulation blankets constructed of MPET, are installed. When markings are not visible, the determination shall be made by using known MPET material as a comparison sample to assist in the identification.

Note 2: Insulation blankets that are marked with "DMS 2072, Type 2, Class 1, Grade A;" "DMS 2072, Type 2, Class 1;" or "DMS 1996, Type 1;" are constructed of MPET.

Corrective Actions

(b) For insulation blankets that are determined not to be constructed of MPET, no further action is required by this AD.

(c) For insulation blankets that are determined to be constructed of MPET, within 5 years after the effective date of this AD, replace the MPET insulation blankets with new insulation blankets that have been approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The blankets shall be replaced in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD–90–25–015, Revision 01, dated November 5, 1997 (for Model MD–90–30 series airplanes); or McDonnell Douglas Service Bulletin MD80–25–355, Revision 01, dated November 5, 1997 (for Model DC–9–80 series airplanes and Model MD–88 airplanes); as applicable. The replacement insulation blankets must be constructed of materials tested in accordance with Appendix 1 of this AD, or in accordance with a method approved by the Manager, Los Angeles ACO.

Note 3: Although this paragraph allows up to 5 years for the required replacement, the FAA anticipates that operators will comply at the earliest practicable maintenance opportunity.

Note 4: Only one of the two metallized Tedlar™ covers specified in the service bulletins has been shown to have successfully passed the testing of the American Society for Testing and Materials (ASTM) flammability standard and is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install an MPET insulation blanket on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The blankets shall be replaced in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD–90–25–015, Revision 01, dated November 5, 1997; or McDonnell Douglas Service Bulletin MD80–25–355, Revision 01, dated November 5, 1997; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 30, 2000.

Appendix 1.—Test for Materials Replacing Metallized PET Thermal Acoustical Insulation, Film February 16, 2000

This test method is used to evaluate the flammability and flame propagation characteristics of thermal/acoustic insulation when exposed to both a radiant heat source and a flame.

(a) *Definitions.*

(1) *Thermal/Acoustic Insulation.* Thermal/acoustic insulation is defined as a material or system of materials used to provide thermal and/or acoustic protection. Examples include a film-covering material encapsulating a core material such as fiberglass or other batting material and foams.

(2) *Radiant Heat Source.* The radiant heat source is an air/gas fueled radiant heat energy panel.

(b) *Test Apparatus* (as schematically shown in figure 1).

(1) *Radiant Panel Test Chamber.* Tests will be conducted in the radiant panel test chamber as used in ASTM—Designation: E 648. It is suggested that the test chamber be located under an exhaust hood to facilitate clearing the chamber of smoke after each test. The radiant panel test chamber shall consist of an enclosure 55 inches (1400 mm) long by 19½ inches (500 mm) deep by 28 inches (710 mm) above the test specimen. The sides, ends, and top shall be insulated with a fibrous ceramic insulation such as Kaowool™ board. One side shall be provided with an approximately 48 by 6 inch (1219 by 152mm) draft tight, high temperature, heat resistant glass observation window, to facilitate viewing the sample during testing. On the same side and below the window is a door which, when open, allows the specimen platform to be moved out for mounting or removal of test specimens. The bottom of the test chamber shall consist of a sliding steel platform, which has provisions for securing the test specimen holder in a fixed and level position. The top of the chamber shall have an exhaust stack with interior dimensions of 4 inches (102mm) wide by 15 inches (380 mm) deep by 12.5 inches (318mm) high at the opposite end of the chamber from the radiant energy source.

(2) *Radiant Heat Source.* The radiant heat energy source will be a panel of porous refractory material mounted in a cast iron frame, with a radiation surface of 12 by 18 inches (305 by 457mm). It shall be capable of operating at temperatures up to 1500°F (816°C (Figure 1).

Figure 1.

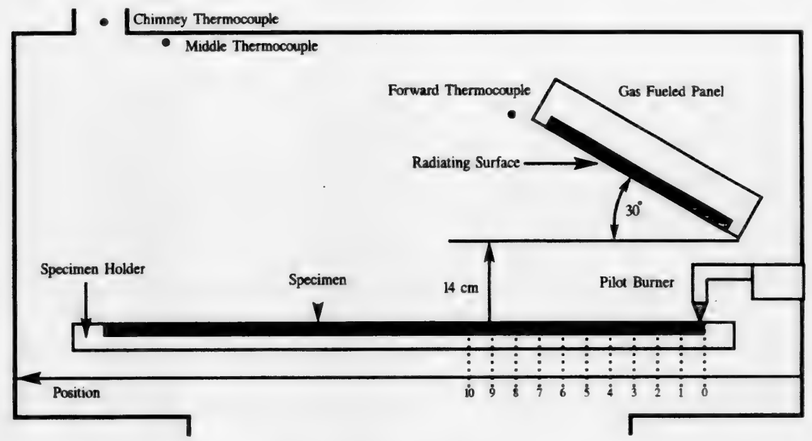

(i) Radiant Panel Fuel System. The radiant panel fuel will be propane (liquid petroleum gas—2.1 UN 1075). The panel fuel system shall consist of a venturi-type aspirator for mixing gas and air at approximately atmospheric pressure. Suitable instrumentation will be necessary for monitoring and controlling the flow of fuel and air to the panel. Instrumentation will include an air flow gauge, an air flow regulator, a gas pressure gauge, and a rotameter for measuring gas flow.

(ii) Radiant Panel Placement. The panel will be mounted in the chamber at 30 degrees to the horizontal specimen plane.

(3) *Specimen Holding System.*

(i) The sliding platform serves as the housing for test specimen placement. A ¼ inch (6.35mm) sheet of Durarock®, or other non-combustible base, measuring 43¾ inches by 12½ inches (1098 by 317.5mm) will be placed in the open bottom (base) of the sliding platform. It is necessary to cut the non-combustible base into two pieces for placement in the bottom of the platform, since it will be supported by a ¾-inch (19.1mm) lip that extends around the bottom of the platform base. It is suggested that the shortest piece be placed at the end furthest from the radiant panel (figure 2). A ½ inch (13mm) piece of Kaowool™ board or other high temperature material measuring 41½ by 8¼ inches (1054 by 210mm) will be attached to the back side of the platform. This board will serve as a heat retainer and will protect the test specimen from excessive preheating. The height of this board must not be too high such that it will impede the sliding platform movement (in and out) of the test chamber.

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Figure 2: Sliding Platform

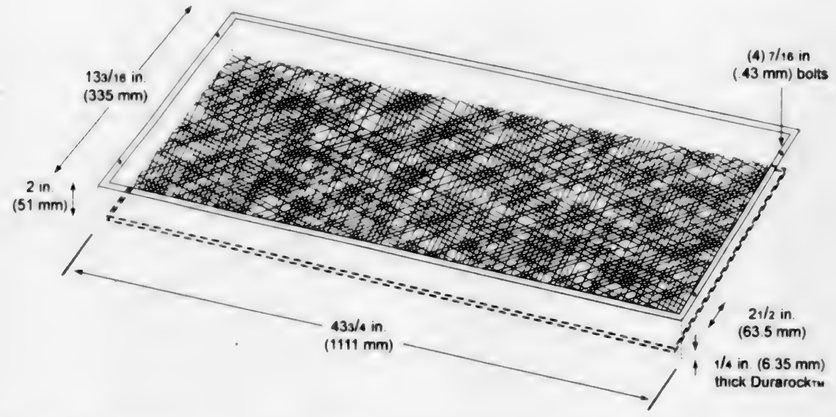

(ii) The test specimen will be placed horizontally on the non-combustible base. A stainless steel retaining frame (AISI Type 300 UNA–NO8330), or equivalent, having a thickness of 0.078 inches (1.98mm) and overall dimensions of 44¾ by 12¾ inches (1137 by 320mm) with a specimen opening of 40 by 7⅞ (1016 by 140mm) will be placed on top of the test specimen. The retaining frame will have two ½inch (12.7mm) holes drilled at each end for positioning the frame to the two stud bolts at each end of the sliding platform (figure 3).

Figure 3: Stainless Steel Retaining Frame

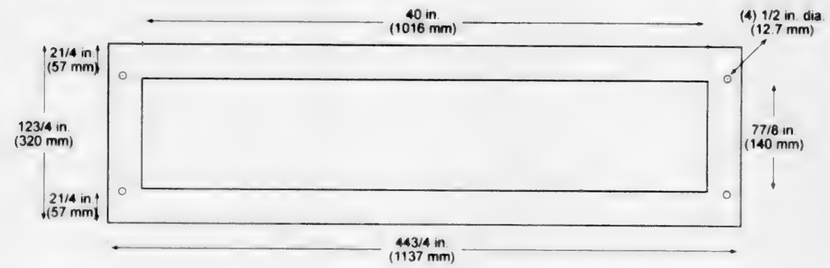

(iii) A securing frame (acting as a clamping mechanism) constructed of mild steel will be placed over the test specimen. The securing frame overall dimensions are 42½ by 10½ inches (1080 by 267mm) with a specimen opening of 39½ by 7½ inches (1003 by 190mm). Hence, the exposed area of test specimen exposed to the radiant panel is 39¼ by 7¼ inches (996 by 184mm). See figure 4. It is not necessary to physically fasten the securing frame over the test specimen due to the weight of the frame itself.

(4) *Pilot Burner.* The pilot burner used to ignite the specimen is a commercial propane venturi torch with an axially symmetric burner tip having a propane supply tube with an orifice diameter of 0.003 inches (0.076mm). The propane flow is adjusted to produce a pencil flame blue inner cone length of ½ inch (13mm). There will be a means provided to move the burner out of the ignition position so that the flame is horizontal and at least 2 inches (50mm) above the specimen plane.

(5) *Thermocouples.* Three 24 American Wire Gauge (AWG) Type K (Chromel-Alumel) thermocouples will be installed in the test chamber for temperature monitoring. All three are inserted into the chamber through three small holes drilled through the top of the chamber. One thermocouple is placed 2 inches (51mm) from the end of the radiant panel and approximately 16 inches (406mm) above the test specimen. The second thermocouple is placed 5 inches (127mm) from the first thermocouple and approximately 16 inches (406mm) from the sample. The third thermocouple is located in the chimney approximately 38 inches (965mm) above the specimen.

(6) *Calorimeter.* The calorimeter will be a one inch cylindrical water-cooled, total heat flux density, foil type Gardon Gage that has a range of 0 to 5 BTU/ft²-second (0 to 5.6 Watts/cm²).

(7) *Calorimeter Calibration Specification and Procedure.*

(i) Calorimeter Specification.

(A) Foil diameter will be 0.25±0.005 inches (6.35±0.13mm).

(B) Foil thickness will be 0.0005±0.0001 inches (0.013±0.0025mm).

(C) Foil material will be thermocouple grade Constantan.

(D) Temperature measurement will be a Copper Constantan thermocouple.

(E) The copper center wire diameter will be 0.0005 inches (0.013mm).

(F) The entire face of the calorimeter will be lightly coated with "Black Velvet" paint having an emissivity of 96 or greater.

(ii) Calorimeter Calibration.

(A) The calibration method will be by comparison to a like standardized transducer.

(B) The standardized transducer will meet the specification given in paragraph (6).

(C) It will be calibrated against a primary standard by the National Institute of Standards and Technology (NIST).

(D) The method of transfer will be a heated graphite plate.

(E) The graphite plate will be electrically heated, have a clear surface area on each side of the plate of at least 2 by 2 inches (51 by 51mm), and be ⅛ inch ±1/16 inch thick (3.2 ±1.6mm).

(F) The 2 transducers will be centered on opposite sides of the plates at equal distances from the plate.

(G) The distance of the calorimeter to the plate will be no less than 0.0625 inches (1.6mm), nor greater than 0.375 inches (9.5mm).

(H) The range used in calibration will be at least 0–3.5 BTUs/ft² second (0–3.9 Watts/cm²) and no greater than 0–5.6 BTUs/ft² second (0–5 Watts/cm²).

(I) The recording device used must record the 2 transducers simultaneously or at least within 1/10 second of each other.

(8) *Calorimeter Fixture.* With the sliding platform pulled out of the chamber, install a 2-rail fixture that has a travel range of 40¼ inches (1022mm) over the sliding platform. The dimension between the 2 rails is 2 13/16 inches (68mm). The rail fixture is screwed into the sliding panel, such that it is always directly under the geometric center of the radiant panel (figure 4). Push the platform into the chamber and insert the calorimeter. The calorimeter, which is mounted in an insulated housing, fits in the rail opening but has enough clearance such that it may be moved along the rail for heat flux readings. The top surface of the calorimeter must be level with the rails.

Figure 4: Angle Iron (1.5x1.5) Securing Frame
*NOTE: All Seams Welded

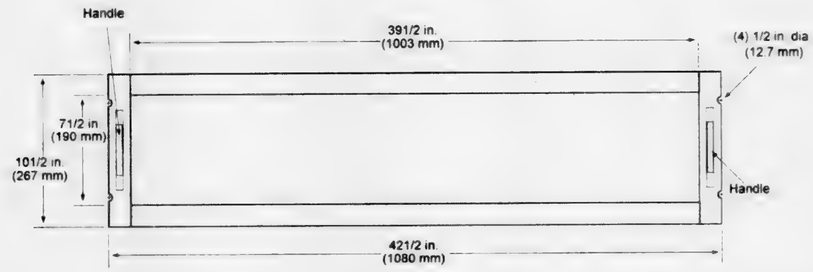

(9) *Instrumentation.* A calibrated recording device with an appropriate range or a computerized data acquisition system will be provided to measure and record the outputs of the calorimeter and the thermocouples. The data acquisition system must be capable of recording the calorimeter output every second.

(10) *Timing Device.* A stopwatch or other device, accurate to ±1second/hour, will be provided to measure the time of application of the pilot burner flame.

(c) *Test Specimens.*

(1) Specimen Preparation. A minimum of three test specimens will be prepared and tested.

(2) Construction. Cut a piece of core material such as foam or fiberglass. If fiberglass is used, cut the material 43½ (±¼) inches long (1093mm) (±6.3mm) by 12½ inches (305.1mm) wide. If using foam, cut the material 41¼ inches (1039mm) by 11 inches wide (279mm) by 1½ inches (381mm) high. Cut a piece of film cover material (if used) large enough to cover the core material. It is permissible to staple the film cover at the ends, as they are not exposed to the radiant heat source. A piece or pieces of an inorganic/inert material such as Kaowool™ or Marinite ™ board may be placed in the bottom of the sliding platform holder if the sample is not thick enough to be level with the top of the sliding platform. The specimen thickness must be of the same thickness as installed in the airplane.

(d) *Specimen Conditioning.* The specimens will be conditioned at 70 ±5°F (21 ±2°C) and 55%±10% relative humidity for a minimum of 24 hours prior to testing.

(e) *Calibration.*

(1) With the sliding platform out of the chamber, install the rail fixture. Push the platform back into the chamber, install the calorimeter (in its housing), and move the calorimeter to the "zero" position (figure 5). Close the bottom door located below the sliding platform. The centerline of the calorimeter is 1 7/8 inches (46mm) from the end of the sliding platform. This will be the "zero" position. The distance from the center of the calorimeter to the radiant panel surface at this point is 7.5 inches ±⅛ (191 mm ±3).

(i) Prior to igniting the radiant panel, ensure that the calorimeter face is clean and that there is water running through the calorimeter.

(2) Ignite the panel. Adjust the fuel/air mixture to achieve 1.5 BTUs/ft²–second ±0.025 BTUs/ft²–second (1.9 Watts/cm²±0.025 Watts/cm²) at the "zero" position. Allow the unit to reach steady state (this may take up to 1 hour). The pilot burner is off during this time. The temperature as measured by the thermocouple closest to the panel (forward) is approximately 1100°F (600°C). The temperatures recorded by thermocouples 2 and 3 (thermocouple 3 located in chimney) are approximately 430°F (230°C) and 300°F (135°C), respectively.

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Figure 5: Calorimeter Rail

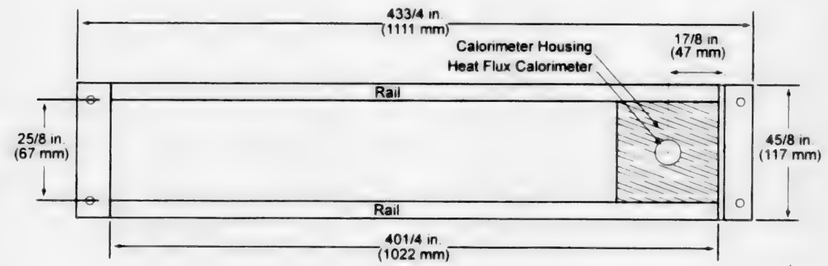

(3) After steady-state conditions have been reached, move the calorimeter 2 inches (51mm) from the "zero" position and record the heat flux. Allow a minimum of 30 seconds at each position for the calorimeter to stablize. Record at least 10 positions. (Figure 6 depicts a calibration profile.)

Figure 6: Heat Flux Calibration

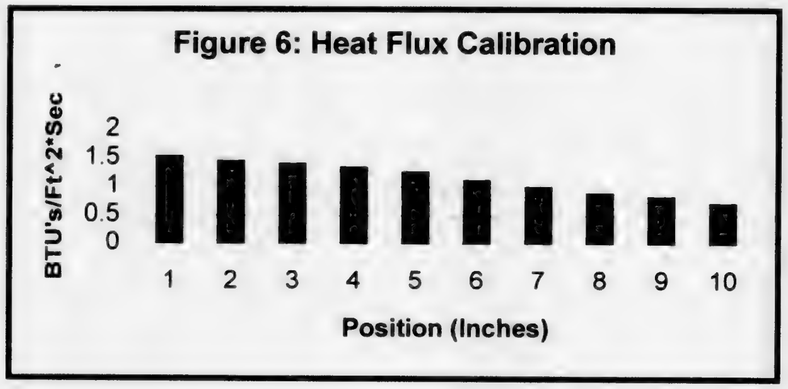

(4) It is not necessary to run a full heat flux calibration (minimum of 10 positions) each time the chamber is powered on. It is required that a heat flux measurement be taken at the "zero" position at the start of the test period (e.g., each morning) to ensure that the 1.5 BTU/ft²–second (1.9 Watts/cm²) requirement be met. A full calibration should be run periodically.

(5) Open the bottom door, pull out the sliding platform, and remove the calorimeter and rail fixture.

(f) *Test Procedure.*

(1) Ignite the pilot burner. Ensure that it is at least 2 inches (51mm) above the top of the platform. The burner must not contact the specimen until the test begins.

(2) Place the test specimen in the sliding platform holder. Ensure that the test sample surface is level with the top of the platform. At "zero" point, the specimen surface is 7½ inches ±1/8 (191mm ±3) below the radiant panel.

(3) With film/fiberglass assemblies, it may be necessary to puncture small holes in the film cover to purge any air inside. This allows the operator to maintain the proper test specimen position (level with the top of the platform). The holes should be made in the sides and/or the corners of the test specimen using a needle-like tool.

(4) Place the retaining frame and the securing frame over the test specimen.

(5) A small mark should be placed on the "zero" point.

(6) Immediately push the sliding platform into the chamber and close the bottom door.

(7) Bring the pilot burner flame into contact with the center of the specimen such that the center line of the flame impinges on the "zero" point and simultaneously start the timer. The burner flame impinges the sample at an angle of approximately 20 degrees with the horizontal (front of the sliding platform).

(8) Leave the burner in position for 15 seconds and then remove to a position at least 2 inches (51mm) above the specimen.

(g) *Report.*

(1) Identify and describe the specimen being tested.

(2) Report any shrinkage or melting of the test specimen.

(3) Report the Burn length

(4) Report Extinguishing Time

(h) *Requirements.*

(1) During burner application, no flaming is allowed to propagate more than 2 inches (50.8mm) along the sample (to the left in figure 1) of the centerline of the flame.

(2) There shall be no flaming of the test sample after pilot burner removal.

Issued in Renton, Washington, on May 19, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13149 Filed 5–25–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–162–AD; Amendment 39–11750; AD 2000–11–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–40 Series Airplanes, and Model MD–11 and –11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–40 series airplanes, and Model MD–11 and –11F series airplanes, that requires a determination be made of whether, and at what locations, metallized polyethyleneteraphthalate (MPET) insulation blankets are installed, and replacement of MPET insulation blankets with new insulation blankets. This amendment is prompted by reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets covered with MPET, which may contribute to the spread of a fire when ignition occurs from small ignition sources such as electrical arcing or sparking. The actions specified by this AD are intended to ensure that insulation blankets constructed of MPET are removed from the fuselage. Such insulation blankets could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire.

DATES: Effective June 30, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 30, 2000..

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5334; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–30 and –30F series airplanes, and Model MD–11 and –11F series airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 12, 1999 (64 FR 43963). A second proposal that was identical to the NPRM, except that it affected additional airplanes, was published as a supplemental NPRM on November 17, 1999 (64 FR 62615). Those actions proposed to require that a determination be made of whether, and at what locations, metallized polyethyleneteraphthalate (MPET) insulation blankets are installed, and replacement of MPET insulation blankets with new insulation blankets.

Since the issuance of those NPRM's, the FAA has observed several prototyping exercises that involved the removal and replacement of MPET insulation blankets. The information obtained from these exercises assisted the FAA, operators, and manufacturer in understanding the technical details and impact of the requirements of this AD. Certain aspects of these prototype exercises will be discussed in the FAA's response to the comments received from the NPRM's.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has received comments in response to the NPRM's and supplemental NPRM's to Rules Docket No.'s. 99–NM–161–AD [applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) series airplanes; Model MD–90–30 series airplanes; and Model MD–88 airplanes] and 99–NM–162–AD (applicable to certain McDonnell Douglas Model DC–10–30 and –30F series airplanes, and Model MD–11 and –11F series airplanes). Because in most cases the issues raised by the commenters are generally relevant to both NPRM's, each final rule includes a discussion of all comments received.

Support for Proposed AD's

Several commenters support the intent of the proposed AD's; however, they request that some changes be made (discussed later).

Unsafe Condition

One commenter states that, because the MPET insulation blankets only propagate the flame and are not the source of the flame, the proposed AD's should address the unsafe condition (i.e., source of the flame) rather than previously certified material (which met the flammability standard at one time) that is not creating the unsafe condition. The FAA does not concur. MPET insulation blankets, when ignited from a small ignition source, such as an electrical arc, can contribute to the spread of a fire. Such insulation blankets could propagate a small fire and lead to a much larger fire. Potential ignition sources exist in many areas of the affected airplanes. It is extremely difficult to determine where all potential ignition sources are. To provide the level of safety that is expected by the public for transport category airplanes, insulation blankets constructed of MPET must be removed. Therefore, the FAA finds that it has properly identified the unsafe condition (i.e., insulation blankets constructed of MPET) addressed by these AD's.

The same commenter suggests that the subject blankets be handled as "attrition replacements," as intended in the original McDonnell Douglas service bulletins. The commenter states that, since cabin interior flammability has been addressed already to a large extent by the FAA, MPET insulation blankets could be treated comparably, and thus, integrated into the overall interior materials requirements. (The FAA infers that the commenter is referring to the provisions in 14 CFR section 121.312 related to "substantially complete replacement of the cabin interior.") These requirements not only mandate stricter new standards, but allow older airplane interiors to remain in service

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until a balanced decision is made to fully reconfigure the cabin. After that decision is made, the entire flammability rule must be met on these older airplane interiors, as well. The commenter argues that insulation blankets could be included, since the proposed requirements are in the same category of "new flammability standards" and do not address the actual ignition source.

The FAA does not concur with the commenter's request to handle the subject blankets as "attrition replacements." Attrition is appropriate for safety enhancements, not to correct identified unsafe conditions. There is a distinct difference between correcting an identified unsafe condition and enhancing safety. The intent of the interior material flammability enhancement was to provide occupants more time to evacuate an airplane before the cabin environment would become unsurvivable due to smoke and fire. The existing interior materials were not deemed unsafe, and therefore, could remain in service until the airlines needed to replacement them. With this action, as discussed above, the FAA finds that MPET-covered insulation material represents an unsafe condition that must be corrected. These AD's are a vehicle for ensuring that all affected operators perform the necessary actions that will address the identified unsafe condition. Therefore, these AD's are appropriate and warranted.

One commenter expresses concern that, because the requirements of the proposed AD's are extremely costly and cumbersome, resources are being taken away from more effective measures for improving aviation safety. The commenter states that there are safety groups (both with wide aviation business basis) that have targeted the most important/critical areas to be addressed. However, neither of these groups has fire on board as its top priority. The commenter interprets this to mean that the safety experts looking at statistical data would rather concentrate their efforts in other fields.

While there may be groups that concentrate their efforts in other areas, the FAA has identified an unsafe condition that needs to be corrected (as discussed above). The activity referred to is primarily aimed at identifying areas for improved safety, and focusing resources on the most effective candidates. This is distinctly different from correcting an identified unsafe condition. Therefore, these AD's are appropriate and warranted.

One commenter notes that in its experience most blankets are wet or soaking wet in a short time after coming out fairly dry (*i.e.*, after extensive drying) during a heavy check. The commenter asks how it should explain to its mechanics that they have to replace wet blankets because of a fire hazard.

The FAA infers from this comment that the wet blankets are a result of the atmospheric conditions in which the airplane is being operated or a result of moisture accumulation in the belly of the fuselage. As discussed above, the FAA has identified an unsafe condition on the affected airplanes that needs to be corrected. As addressed in the preambles of the NPRM's, the FAA has received reports of a number of in-flight and ground fires on in-service airplanes manufactured with insulation blankets covered with MPET, which can cause fire to spread from a small ignition source such as electrical arcing or sparking. The fact that insulation material itself may be wet may not prevent the MPET film material from propagating the fire to other combustible materials and causing a larger fire.

One commenter states that the wording "otherwise harmless electrical arcs" in the Summary section in the preamble of the proposed AD's is misleading and requests that this wording be removed. The commenter reports that there has never been any Maintenance Steering Group (MSG) 3 testing on airplane wiring, and that no one other than the FAA has even evaluated the problems associated with momentary metal-to-metal contact of wires. In addition, the FAA has never evaluated the effects of spurious signals emitted from degraded wires that can affect flight control surfaces, autopilots, rudders, etc.

The FAA does not concur with the commenter's request to revise the Summary section of the AD's. The term "otherwise harmless arcs" refers to an electrical arc that, on insulation films other than MPET, would not propagate a fire. In this case, the effect of the arc is negligible. In the case of MPET, an uncontrolled fire could develop. The FAA points out that these AD's do not address the aging wiring issues that can affect various systems. As discussed in the preamble of the NPRM's, the FAA is continuing to investigate various wiring problems on certain airplanes. In addition, the Aging System Task Force (ASTF) is continuing to investigate the need for specific aging wiring inspections and tests, as well as the potential effect on systems from degraded wiring. The actions required by this AD only address the identified unsafe condition (i.e., insulation blankets constructed of MPET). The FAA may consider additional rulemaking actions to address any other identified unsafe condition.

Risk Assessment

Several commenters state that, in concert with the scheduled prototyping, a thorough risk assessment should be accomplished, particularly on the effects of replacing insulation blankets on the electrical (including wiring, cables, and installations), hydraulic, and mechanical systems. One commenter states that the risk assessment must be taken into account when mandating the scope and compliance of the proposed AD's. Several commenters state that a risk assessment is needed to determine whether areas exist where the risks associated with the replacement of MPET insulation blankets outweigh the benefits of replacing them. Risks inherent with disturbing airplane wiring and other permanently installed systems, particularly on the scale contemplated by the proposed AD's, are of primary concern. This and other related risks should be addressed using a structured method that considers the characteristics of MPET and alternative films, design and operation of overlying systems, susceptibility of those systems to damage during the replacement of insulation under proposed methods, and likely effects of any damage to those systems. One commenter states that the proposed AD's are not supported by such an analysis.

The FAA does not concur that a formal risk assessment is necessary. If accomplished properly, the replacement required by this AD will not disrupt wiring in such a way as to adversely affect safety. Generally, the prototype exercises demonstrated that the required replacement can be accomplished safely. In addition, Boeing is revising the referenced service bulletins to provide additional guidance on techniques to ensure safe replacements. The primary reason for providing an extended compliance time for this AD, as discussed under the next heading, is to ensure that operators have adequate time to accomplish the replacements properly. On the other hand, MPET insulation blankets have been shown to create an unsafe condition that must be corrected. Furthermore, the FAA will require any operator/modifier that develops its own installation data to include specific instructions to ensure that any displaced wires, systems, and installations are in an airworthy condition after accomplishment of the required replacement. The FAA will monitor these areas of concern during the accomplishment of the insulation blanket installations. Finally, if

operators can show that removal and replacement of MPET insulation blankets in certain areas of an airplane will create a greater risk of an unsafe condition than leaving the MPET blankets in place, the FAA will consider requests that provide an acceptable level of safety under the provision of paragraph (e) of the final rule. Any request to leave MPET insulation blankets installed in an airplane must provide justification that the identified unsafe condition has been minimized and that an acceptable level of safety is maintained.

One commenter states that the proposed AD's should be rewritten to limit the blanket replacement to areas of high risk, or conversely, retain existing blankets in areas with no wiring or with wiring deemed to pose little or no hazard.

The FAA does not concur. No technical justification, criteria, or data were submitted to support the commenter's request. Potential ignition sources exist throughout the airplane and insulation blankets constructed of MPET film material are located throughout the airplane. It is, therefore, extremely difficult to identify high risk areas and areas of little or no risk. The FAA finds that MPET insulation blankets in all areas of the affected airplanes must be addressed.

One commenter states that the requirements of the proposed AD's should be recast into phases so as to first respond across the worldwide fleet of affected airplanes to the areas of highest perceived risk. Thereafter, the areas of lesser perceived risk can be dealt with at a more appropriate pace. Targeting the highest perceived risk areas of the worldwide fleet of affected airplanes first would provide the greatest decrease in risk across the fleet most quickly. This approach also would make the best use of limited resources, lessen the substantial adverse impact to the traveling public of excessive fleet groundings, and somewhat reduce the substantial economic burden to the airlines.

The FAA does not concur with the commenter's statement that the requirements of the final rule should be recast into phases. As discussed above under the heading "Unsafe Condition," potential ignition sources exist in many areas of the affected airplanes. It is difficult to identify high risk areas and areas of little or no risk. Therefore, the FAA finds that MPET insulation blankets in all areas of the affected airplanes must be replaced. With the change in the compliance time from 4 to 5 years in this AD, excessive fleet grounding should not take place. Adequate maintenance facilities are available to complete this action within the required time period.

Compliance Time for Proposed Replacement of MPET Insulation Blankets

Several commenters request that the compliance time for accomplishing the proposed replacement of the MPET insulation blankets be extended from the proposed 4 years to a range of 5 years to 8 years. The commenters state that such an extension will allow the replacement to be accomplished during a regularly scheduled "D" check or heavy maintenance visit, thereby eliminating any additional expenses that would be associated with special scheduling. The commenters express a concern about the availability of facilities and trained personnel, either domestically or offshore, to accomplish tasks of this magnitude.

One commenter states that maintenance planning can only be done effectively once all details of the work to be accomplished and all downtimes needed to perform the work are known in detail. Therefore, the compliance time should only start once all these details have been clarified.

One commenter states that the proposed AD's do not provide sufficient time for accomplishment of the prototyping effort. Wholesale removal or relocation of wiring not designed for removal in areas where access is difficult can lead to incidental damage even with the best maintenance practices. Given the problems of access, multiple blanket sections will now be required in many fuselage areas to replace a single original blanket. This will lead to new designs, templates, and part numbers. The commenter concludes that this cannot happen in an orderly fashion without completing a prototyping effort on at least one airplane.

The FAA concurs that an extension to the compliance time is warranted. The FAA's intent was that the replacement be conducted during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenters, the FAA now recognizes that 5 years corresponds more closely to an interval representative of most of the affected operators' normal maintenance schedules. The FAA finds that a 4-year compliance time would have a significant impact on scheduling and cost and might result in hurried accomplishment of the required replacement, which could result in potential damage to associated wiring. This decision is supported by experience from the prototype installations, which demonstrated that the required replacement procedures are complex in some areas, and that adequate time and facilities are necessary to ensure that they are completed safely and correctly. Paragraphs (a) and (c) of the final rule have been revised to reflect a compliance time of 5 years. The FAA does not consider that this extension will adversely affect safety.

One commenter supports the proposed 4-year compliance time for accomplishing the proposed replacement of the MPET insulation blankets. The commenter states that, while some operators feel it is not a practical time period, the proposed compliance time is reasonable and practical to retrofit all of the affected airplanes, utilizing airline and third party maintenance facilities. The commenter also states that it and other materials manufacturers are fully prepared and have the capacity to support this effort. Another commenter states that the proposed 4-year compliance time is a very generous allotment of time and would not want to see the proposed AD's delayed any further.

The commenters did not provide any data to support their position. For the reasons described previously, the FAA finds that a 5-year compliance time is reasonable and practical to retrofit all of the affected airplanes rather than the 4-year compliance time proposed by the original NPRM and supplemental NPRM.

Two commenters request that the compliance time for accomplishing the proposed replacement be shortened. One commenter states that the proposed compliance time of 4 years is too lengthy given the fire hazard introduced by MPET insulation blankets. The second commenter states that quicker action is necessary if the conditions of the wiring on affected airplanes are anything like what was discovered in the 737's emergency grounding issue of May 98, wires found damaged on the Space Shuttle Columbia, or numerous instances of wire insulation failure coming out of the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC)/ASTF inspections (15 service bulletins upgraded to alert status on Model MD–11 series airplanes alone) or alert service bulletins on the 727's.

The FAA does not concur with the commenter's request to shorten the

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compliance time. As discussed previously, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of replacement of the MPET insulation blankets. In consideration of all of these factors, the FAA determined that the compliance time, as revised, represents an appropriate interval in which replacement of the MPET insulation blankets can be accomplished in a timely manner within the fleet and still maintain an adequate level of safety. The FAA encourages operators to accomplish this modification as soon as possible. The commenter points out several incidents associated with airplane wiring. The FAA is addressing these issues as they are identified. The commenter is correct that these wiring incidents are the focus of ATSRAC and ASTF activity. However, these wiring issues are not the subject of this AD.

One commenter requests that the FAA consider a 4-year compliance time to accomplish the proposed replacement only in areas that are readily accessible (i.e., areas where extraordinary means are not required to gain access). The MPET insulation blankets for certain defined areas of the cockpit and electronics bay(s) should not be replaced or should be replaced when those areas are made accessible. The commenter states that replacement of 98 percent of the insulation on the affected airplanes will provide an equivalent level of safety to those airplanes not affected by the proposed AD's. Considerable time will have to be added to the proposed compliance time to accommodate a complete replacement without forcing some airplanes to be grounded due to lack of maintenance capacity.

The FAA does not concur with the commenter's request to require a compliance time of 4 years only for replacement areas that are readily accessible. Although the prototype installations have shown that accomplishment of the required replacement in the cockpit and electronic compartment is physically challenging, potential ignition sources and the identified unsafe condition exist in areas that are not readily accessible. Therefore, the FAA finds that MPET insulation blankets in all areas of the affected airplanes must be replaced. However, as discussed previously, the FAA has extended the compliance time for the required replacement from 4 years to 5 years. While not intended to address the issue of inaccessible areas, the extension of the compliance time by one year should help alleviate the concern for grounding of airplanes due to lack of maintenance capacity.

Two commenters request that the FAA ensure that sufficient insulation material of appropriate quality is available. Supply shortages could create conditions in which the work needs to be performed under time pressure. One commenter notes that there is only one blanket covering material that is currently approved, and only one qualified test apparatus available for operators to perform American Society for Testing and Materials (ASTM) E648 tests on other products. The commenter also notes that the airplane manufacturer has stated that it has only one qualified supplier for manufactured blankets. The commenter is uncertain if the blanket manufacturer can meet replacement demands within the proposed 4-year compliance time. Furthermore, the commenter states that there are no dimensioned drawings available to 14 CFR part 121 operators who might plan to fabricate their own blankets. Templates must be plotted and obtained from the airplane manufacturer, which is a time consuming process.

Various insulation blanket material suppliers state that there is no cause for concern over the availability of the materials specified in the proposed AD's. Metallized Tedlar™ (i.e., polyvinylfluoride), polyimide film, Tedlar™ and polyimide tapes, and fiberglass are abundant and are readily accessible to support all retrofit requirements.

The FAA has assessed the availability of materials required by this AD and has determined that required materials and manufacturing sources should be available for modification of the U.S. fleet within the 5-year compliance time. The FAA encourages operators to review their airplanes to assess their individual needs for materials and plan accordingly. The FAA anticipates that operators will accomplish the requirements of this AD at the earliest practicable maintenance opportunity to lessen the burden toward the end of the compliance time. In addition, the airplane manufacturer is preparing installation kits that can be utilized to accomplish the required replacement. Also, operators and modifiers have developed and are continuing to develop their own data (templates and drawings) to accomplish this required replacement. While this may be a time consuming process for some, it can be accomplished.

Inadequate Procedures and Information in Referenced Service Bulletins

Several commenters state that the replacement procedures and information specified in the referenced service bulletins (i.e., McDonnell Douglas Service Bulletins MD–90–25–015, Revision 01, dated November 5, 1997; MD80–25–355, Revision 01, dated November 5, 1997; DC10–25–368, dated October 31, 1997; and MD11–25–200, Revision 01, dated March 20, 1998) are inadequate for reasons discussed below.

Several commenters state that the Accomplishment Instructions of the referenced service bulletins address the fabrication of insulation blankets but provide no instructions for installation. Detailed instructions for installation are essential to avoid risks during installation, particularly in crucial areas where wiring or other systems are densely concentrated. Damage to installed systems can result in latent failures of critical flight systems and generation of electrical ignition sources. The unprecedented scope of the work involved in moving and replacing wires and systems, and the fact that nothing similar has ever been attempted, introduce a new and unquantified amount of risk.

One commenter states that Boeing has acknowledged that instructions to remove and reinstall some equipment racks and related structures, which are necessary to accomplish the proposed replacement, do not exist in current maintenance documents and will need to be developed. Specific aspects of the proposed replacement are beyond the scope of any currently authorized maintenance procedures. The members of the Boeing Recovery and Modification (RAM) Team are the only personnel trained and authorized to disassemble and reassemble certain critical areas. Several commenters state that Boeing is planning to issue revised service bulletins around June 2000. One commenter states that Boeing should issue detailed service bulletins to cover the scope of the NPRM's and all related test criteria and requirements associated with insulation blanket replacement and removal/installation of associated equipment/components. One commenter states that the service bulletins should be revised to include the above information.

The FAA acknowledges that the instructions appear to be generic, without reference to specific locations in the airplane. However, it is still possible to complete the replacement required by this AD by developing the necessary installation data in conjunction with existing maintenance procedures. Since the issuance of the NPRM's, the manufacturer, in conjunction with operators, has completed prototype installations. Based on the results of the prototype, the manufacturer is developing revisions to the referenced service bulletins that will contain additional installation information and instructions. These revised service bulletins are scheduled for completion in June 2000. Any new or revised service bulletins will contain procedures to maintain/test the integrity of the wiring after accomplishment of the replacement of any MPET insulation blanket. The FAA is planning to review and approve the revised service bulletins under the AMOC provision of paragraph (e) of the final rule.

In addition, the FAA is aware that certain operators and modifiers are developing their own installation data. The FAA may approve requests for an AMOC under the provisions of paragraph (e) of this AD if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

The FAA does not concur with the commenter that the members of the Boeing RAM team are the only personnel that can address certain areas of the airplane. The FAA finds that many operators have the expertise to accomplish the required replacement. In addition, Boeing intends to include the necessary instructions in the revised service bulletins.

Several commenters state that the referenced service bulletins not only refer to materials tested in accordance with Standard Test Method ASTM E648 and approved by the FAA as a method of compliance with the requirements of the proposed AD, but also refer to materials that do not meet the new requirements. Moreover, other materials acceptable for compliance with the requirements of the proposed AD are not listed in the referenced service bulletins.

The FAA concurs that the referenced service bulletins refer to materials that do not meet the requirements of this AD. When the referenced service bulletins specified in the NPRM's were issued in 1997, the insulation blanket film material listed in those service bulletins were considered acceptable for installation. Since the issuance of those service bulletins, however, only one of the two metallized Tedlar™ covers specified in the referenced service bulletins has been demonstrated to be acceptable for compliance with the replacement requirements of paragraph (c) of this AD (as indicated in NOTE 4 of the AD) based on flammability testing using the criteria specified in the final rule. The revised service bulletins will only list material that has been approved by the FAA. Under the provisions of paragraph (c) of this AD, the FAA may approve other film material that is shown to meet the flammability test method specified in the final rule. Also, under the provisions of paragraph (e) of this AD, the FAA may approve requests for approval of an AMOC for insulation blankets other than those specified in the service bulletins referenced in the final rule that are shown to meet the flammability test method specified in the final rule and all other airworthiness regulations.

Several commenters state that, due to age, identification stamps on the MPET insulation blankets may be unreadable. The referenced service bulletins are missing instructions for determining whether such blankets are constructed of MPET.

Although the referenced service bulletins are missing instructions for determining whether insulation blankets are constructed of MPET, the FAA finds that such a determination can be made without such instructions. MPET insulation blankets are extremely shiny when compared to all other insulation blanket cover material, and can be readily recognized by trained maintenance personnel. It is also possible to use known MPET material as a comparison sample to assist in the identification should the markings not be readable. Paragraph (a) of the final rule has been revised to clarify the method of identifying MPET. MPET insulation blankets can be identified by the following markings: (1) DMS 2072, Type 2, Class 1, Grade A; (2) DMS 2072, Type 2, Class 1, or (3) DMS 1996, Type 1. The FAA has revised NOTE 2 of the final rule to clarify these markings.

Several commenters state that the referenced service bulletins specify the least effective method for the fabrication of new insulation blankets. Few operators are equipped or have the capability or capacity to manufacture their own blankets. Four sources of insulation blankets were evaluated in technical meetings with the manufacturer. Of these four sources, operators viewed blankets provided in kits by the manufacturer as the most efficient and practical. Such kits would facilitate the earliest completion date of a replacement program, would preserve the thermoacoustic characteristics of insulation systems and certificated configuration of affected airplanes, and can be supported according to the manufacturer. In addition, no dimensional blanket drawings and templates for making the blankets are available.

Although the method for fabrication of new insulation blankets specified in the referenced service bulletins may not be the most efficient method for the commenters, the FAA finds that it is possible to develop the necessary data to manufacture blankets in accordance with the instructions of the referenced service bulletins. The FAA is aware that Boeing is developing replacement kits. The information necessary to purchase these kits will be included in the revised service bulletins (as discussed previously). However, the revised service bulletins are not scheduled to be completed until June 2000. The FAA has decided not to delay this action in anticipation of the service bulletins, since the release date is not absolute and this action is necessary to address an identified unsafe condition. Therefore, the FAA may approve requests for an AMOC under the provisions of paragraph (e) of this AD once the revised bulletins are issued.

In addition, the FAA acknowledges that templates may not be available for operators to make new insulation blankets. However, the referenced service bulletins do describe procedures for removing the subject insulation blankets and using those blankets as templates for making new insulation blankets. While some operators may not be equipped or may decide not to manufacture the replacement blankets, there are adequate resources available in the industry to accomplish the manufacturing.

Several commenters state that the referenced service bulletins provide no labor estimates. One commenter states that is not aware of any large transport category airplane that has been removed from service, has had its insulation replaced, and has been returned to service. This lack of experience and labor estimates from the manufacturer would impair the planning required of operators and their ability to provide accurate comments to the proposed AD's.

The FAA does not concur. The FAA acknowledges that the referenced service bulletins do not provide labor estimates. However, as indicated under the heading "Regulatory Evaluation Summary" in the preamble of the NPRM's and supplemental NPRM's, a Preliminary Cost Analysis and Initial Regulatory Flexibility Analysis to determine the regulatory impacts of the proposed AD's were included in the Rules Docket No.'s 99–NM–161–AD and 99–NM–162–AD. A summary of those analyses was contained under that same heading in the preamble of the NPRM's

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and supplemental NPRM's. In addition, the manufacturer, operators, and modifiers have developed estimates based on the prototype installations completed to date. (The FAA discusses the comments to the cost estimate of the proposed AD's in more detail, below, under the heading "Regulatory Evaluation Summary.")

In response to the original NPRM's, several commenters state that the manufacturer has indicated that the airplane effectivity in the referenced service bulletins is currently being re-evaluated and may be revised substantially. This lack of accurate airplane effectivity also would impair the planning required of operators and their ability to provide accurate comments.

The FAA concurs that the effectivity listed in the service bulletins is not correct. As indicated under the heading "Differences Between the Proposed AD and Service Bulletins" in the preamble of the NPRM's, the FAA realizes that the effectivity listing of the referenced service bulletins not only includes airplanes manufactured with MPET insulation blankets, but airplanes equipped with other materials that are much more difficult to ignite than MPET. The FAA has determined that only airplanes manufactured with MPET insulation blankets are subject to the identified unsafe condition. Therefore, paragraph (a) of the AD's requires that a determination be made of whether, and at what locations, MPET insulation blankets are installed. In addition, the applicability specified in the final rules, based on the supplemental NPRM's, includes fewer airplanes than specified in the service bulletins. In addition, the applicability statement of the final rule, Rules Docket No. 99–NM–162–AD, has been revised to clarify the airplanes that are subject to the identified unsafe condition, which is discussed below, under the heading "Revise Applicability of Proposed AD."

Several commenters state that some accessibility issues have not been addressed. One commenter requests that the removal/replacement requirements be re-evaluated to exclude replacement insulation blankets in those "inaccessible places" of the airplanes. Three to four percent of the MPET insulation blankets are buried beneath structure and wiring in areas like the electrical and equipment (EE) bay and the flight deck and will require as much as 70 percent of the total man hours to replace.

The FAA does not concur that replacement of MPET insulation blankets should not be required in "inaccessible" areas. The areas identified by the commenters (i.e., the EE bay and flight deck) are areas where potential ignition sources (*i.e.*, electrical arcing) are likely to exist and are, therefore, susceptible to the identified unsafe condition. During the prototype exercises and subsequent inspections of the EE bay and flight deck, the FAA learned that most Model DC–9–80 and MD–90–30 series airplanes do not have MPET insulation blankets in these areas. It is, however, the operator's responsibility, as required by paragraph (a) of this AD, to determine whether, and at what locations, MPET insulation blankets are installed in each airplane. Therefore, contrary to the commenters' assertion, the total labor costs associated with replacement of the MPET insulation blankets in the EE bay and flight deck will not be the most significant portion of the total cost of the AD.

One commenter requests that the FAA revise the proposed AD to incorporate specific references to industry guidance material on wire inspection and disturbance. As a minimum, such references should include Advisory Circular 25–16, "Electrical Fault and Fire Protection and Prevention."

The FAA does not concur. Operators and modifiers should be aware of the existing guidance and the revised service bulletin instructions (discussed above), which, based on the prototyping that has been accomplished, will specify wiring inspection information that may be needed.

One commenter requests that the FAA develop and require post-modification wiring inspections to verify the integrity of the wiring insulation. The FAA concurs that any damage done to wiring or other components in the course of the required replacement needs to be corrected. In fact, if maintenance personnel are aware of damage, whether or not caused by replacement of the MPET insulation blankets, they are obligated to document it and initiate appropriate corrective action. Operators are required by 14 CFR parts 91, 121, and 135 to maintain their airplanes in an airworthy condition after any alteration or repairs are made to the airplane. Also, based on the prototyping that has been accomplished, the revised service bulletins will provide any specific wire integrity inspection that may be needed. Therefore, no change to the final rule is necessary.

Coordination With Wiring AD's

Several commenters state that they understand that other NPRM's are in the development phases, which would require inspection of airplane wiring, and would deal with the same issues that have brought about the subject proposed AD's. Some of these commenters state that these NPRM's should not be developed, mandated, and undertaken separately, but rather should be part of a carefully thought out and coordinated process and program. A properly developed plan must consider that each time such disruption of airplane wires/systems takes place, there is an increasing opportunity for collateral damage to those wire/systems with unknown future safety implications. Such a plan also should recognize that the insulation proposed to be changed is not really the source of any fire problem and that proper rectification of the issues being considered might better lie in a carefully thought out and researched wiring AD. One commenter states that it would be efficient to combine the requirements of the proposed AD's with the wiring requirements that will be proposed soon. One commenter states that Boeing is developing several service bulletins dedicated to the inspection and maintenance of airplane wiring. However, these service bulletins will not be available in time to coincide with the insulation blanket replacement should the current NPRM's, with their proposed timing, become law.

The FAA does not concur that AD's addressing specific unsafe wiring conditions should necessarily provide for compliance times that are concurrent with this AD. In some cases, the corrective actions for those unsafe conditions are simple maintenance actions that can be accomplished quickly. It would be inappropriate to allow those unsafe conditions to continue during the extended compliance time allowed by this AD. The FAA does concur that any AD's addressing general wiring inspections for unsafe conditions would be best accomplished in conjunction with the replacement of MPET insulation blankets in affected areas. Such coordinated actions would certainly be most efficient for operators. The FAA does not concur with the commenters' request to combine the requirements of this AD with any proposed actions to address general wiring issues. Such action may delay correction of the unsafe condition of this AD by extending the compliance time further. The FAA will take into consideration the compliance time of this AD in any future action for general wiring inspection to minimize the duplication of aircraft downtime associated with accomplishing the actions of this AD.

Revise Applicability of Proposed AD

One commenter notes that paragraph (a) of the proposed AD states ". . . determine whether, and at what locations, insulation blankets constructed of MPET are installed. This determination shall be made in a manner approved by the FAA." The commenter states that this wording is very unclear to operators and that the FAA should coordinate with Boeing to determine more precisely what the applicable airplanes are.

Based on the commenter's statement that "the FAA should coordinate with Boeing to determine more precisely what the applicable airplanes are," the FAA finds that clarification is necessary. After inspecting in-service airplanes, the FAA has determined that all affected airplanes may not have MPET insulation blankets throughout the fuselage. Some airplanes may have very little MPET insulation blankets installed and others may have 100 percent installed. The FAA also has determined that, based on the manufacturer's records alone, it is not possible to determine precisely the configuration of each individual airplane. Therefore, paragraph (a) of the final rule requires that operators determine whether, and at what locations, insulation blankets constructed of MPET are installed. If MPET insulation blankets are not installed, no further action is required by this AD.

The manufacturer states that it is continuing to verify the actual extent of MPET-covered insulation on airplanes delivered from the factory. In response to the original NPRM's, the manufacturer states that additional Model DC–9–87 (MD–87), DC–10, and MD–11 series airplanes, and KC–10A (military) airplanes need to be included in the applicability of the NPRM's, and at least some Model DC–9 series airplanes should be excluded. When that effort is complete, the manufacturer states that it will issue new service bulletin information. One commenter states that the applicability statement of NPRM, Rules Docket No. 99–NM–162–AD, is incorrect. The commenter states that the manufacturer has indicated that MPET insulation blankets were used on Model DC–10 series airplanes, fuselage numbers 359 through 381 inclusive, and 432 through 436 inclusive, and Model MD–11 series airplanes, fuselage numbers 447 through 602 inclusive. In addition, MPET insulation blankets were used on ducting installed in Model MD–11 series airplanes, fuselage numbers 603 through 632 inclusive.

The FAA acknowledges that the applicability statement of the original NPRM's was incorrect. Following the issuance of the NPRM's, the FAA identified additional airplanes that were subject to the identified unsafe condition and issued supplemental NPRM's to reopen the comment period to provide additional opportunity for public comment. The applicability statement of the supplemental NPRM's included the fuselage numbers of the airplanes the commenter referred to above.

One commenter states that the applicability statement of supplemental NPRM, Rules Docket No. 99–NM–162–AD, is incomplete. The commenter notes that it operates four Model DC–10–15 series airplanes, three of which fall within fuselage numbers 359 through 632 inclusive (i.e., fuselage numbers 362, 365, and 374), which were manufactured between June 1981 and January 1982. The commenter requests that the applicability statement of the supplemental NPRM be revised to include Model DC–10–15 series airplanes. The FAA concurs. The applicability statement of the subject supplemental NPRM correctly references the specific manufacturer's fuselage numbers of all affected airplanes, including those fuselage numbers for Model DC–10–15 series airplanes. Therefore, the FAA finds that it is necessary to revise the applicability statement of the subject final rule to include all affected series of Model DC–10 airplanes, specifically Model DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–40 series airplanes.

One commenter requests that the applicability of NPRM, Rules Docket No. 99–NM–161–AD, be revised to "[m]anufacturer's fuselage number 1011 through 2241 inclusive; certified in common carriage operations." The commenter states that private operators were not considered when studying the effects of the proposed AD's. Private operators who operate under 14 CFR 91.501 need to be separately considered when they are faced with rules that are directed at air carriers. Transport category "Private Carriage" operators, who operate under 14 CFR 91.501, are part of the general aviation population and do not offer service to the public or a segment of the public. General aviation operators' airplanes are not held (and are not expected to be held) accountable to the same regulation standards as "Common Carriage" operators. The commenter also states that significant differences in airplane utilization, interior, and operation make the likelihood of in-flight fire threat due to MPET insulation blankets on "Private Carriage" airplanes extremely remote. Therefore, the exclusion of "Private Carriage" airplanes from the applicability of this NPRM would not jeopardize public interest.

The FAA does not concur with the commenter's request to revise the applicability of the subject rule as stated. The identified unsafe condition and potential consequences addressed by this AD are not any different for airplanes utilized in private operation versus ones operated in common carriage.

One commenter states that the proposed AD's do not address affected airplanes outside the noted applicability that may have been retrofitted with MPET insulation blankets during service. This implies that the FAA's investigation has determined that small amounts of MPET on those airplanes do not pose an unsafe condition.

Regarding post-delivery installation of MPET, the FAA does consider that such insulation is unsafe. Most operators do not retain records identifying on what airplanes such insulation has been installed. Therefore, to address this unsafe condition, an AD would have to require that all operators inspect all airplanes of any type to identify the relatively small amount of such insulation that may have been installed during post-production maintenance. The FAA does not consider that such a requirement would be practical or cost effective. However, as with any other unsafe condition, when an operator becomes aware that MPET insulation blankets have been installed, the material should be removed to maintain the airplane in an airworthy condition.

Flammability Test Method Not Adequately Developed/Defined

Several commenters state that the proposed test method seems insufficiently developed to be considered the new standard flammability test. The commenters addressed several issues, including:

- The validity of the test method;
- Qualification of the test method;
- Details of the test procedures; and
- Materials and approval process.

Validity of Test Method

One commenter notes that it has built a test unit and conducted tests on it. The commenter has verified the results of the FAA Technical Center tests, but believes there are serious limitations on this test's utility for predicting how insulation coverings will burn when in place on an airplane. In addition, the commenter states that the mechanism by which films can pass the Radiant Panel Test is for the material to shrink

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away from the heat source. Other materials, such as polyimide film, pass the Radiant Panel Test by not igniting and shrinking away from the heat source. Two other commenters state that the best of Tedlar ™ and Mylar ™ (*i.e.*, polyethyleneteraphthalate) films shrink away in the presence of flame and are no help at all in containing fire. The Tedlar ™ material that passes the test shrinks away from the heat source before the ignition source can be applied to the surface of the test material. Thus, there is no material to ignite. The commenter states that the Radiant Panel Test may not replicate the condition on an airplane where blankets are restrained and multiple layers are often part of the blanket construction.

The commenter further states that it is possible for polyethyleneteraphthalate (PET), MPET, or other plastics that are more combustible than Tedlar ™ to pass ASTM E648, if treated to have desirable heat shrink characteristics. The only other requirement for insulation coverings is the 12-sec vertical burn, which is recognized as inadequate because MPET materials can pass it. The commenter notes that the proposed standard may leave the door open in the future for combustible materials to be installed on airplanes.

The FAA does not concur with the commenter's statement that films can pass the Radiant Panel Test by shrinking away from the heat source and are no help in containing a fire. The purpose of the test is to establish the flame spread characteristics of insulation blanket materials under realistic conditions. The results of this test have been correlated with full-scale testing, conducted by the FAA Technical Center, in which insulation was installed in fuselage sections in a representative fashion. Certain materials that shrink when exposed to heat have been shown to prevent propagation of a fire. In addition, for these same reasons, the FAA does not concur with the commenter that the FAA Technical Center tests have serious limitations. The FAA finds that the insulation material tested in accordance with the method specified in the AD will have much better flame spread characteristics than MPET, which was shown to comply with the current Bunsen Burner Test specified in the regulations, and subsequently, determined to have unsafe flame spread characteristics when ignited from a small ignition source.

One commenter states that the best situation is to have insulation covering film that does not burn in the Radiant Panel Test. The commenter contends that the test should screen out material that does not perform as well as polyimide film.

The FAA does not concur that the test method must screen out materials that do not perform as well as polyimide films. As discussed previously, materials, including polyimide films, that pass the Radiant Panel Test perform much better in full-scale testing than MPET insulation blankets that are the subject of this AD.

Qualification of the Test Method

One commenter expresses concern that the FAA has not yet published updated flammability standards that will allow for the development and testing of materials other than those cited in previous McDonnell Douglas service bulletins, which specify the replacement of MPET with two types of metallized Tedlar™. The commenter notes that the FAA has approved only one type of specified metallized Tedlar™ after it successfully passed an ASTM flame spread test. The commenter emphasizes that it is urgent that the FAA provide its own applicable test standard to facilitate the rapid replacement of MPET with other materials that will have superior fire resistant characteristics.

One commenter requests that the FAA revise the proposed AD's to "more clearly require the FAA Radiant Panel Test, which was derived from ASTM E648," and to define the test before approving specific films. The commenter states that ASTM E648 is much different than the Radiant Panel Test developed by the FAA Technical Center. The Radiant Panel Test uses the same enclosure, a radiant panel, and the same basic concept as the ASTM E648 test. However, the Radiant Panel Test has had several modifications including a different heat flux, different ignition source, and a modified sample holder. The commenter notes that results of the Radiant Panel Test vary widely when test specifications are changed. Therefore, the specification of any film as passing the test prior to the completion of the test method is not warranted. It is possible for films that currently fail the existing test to pass when the test procedures or chamber is fully defined. Conversely, films that currently pass the test can fail.

One commenter states that industry experts should discuss the success criteria of ASTM E648 further. This commenter notes that these changes to the standard and success criteria have not been subject to round robin testing and outside peer review, so various aspects of their merit are questionable. One commenter suggests that round robin testing with clearly identifiable/achievable pass/fail criteria be performed by the industry to validate the repeatability of the test procedures prior to release of the proposed AD's. Validated criteria would produce an equivalent level of safety to material currently in production and in use in the fleet, which is deemed acceptable.

The FAA concurs with the commenters concerning the reference to ASTM E648 in the NPRM's and finds that clarification is necessary. The FAA has been developing for some time new flammability standards for insulation material. Research has been conducted on the various types of insulation material to determine their effectiveness on both flame spread and fuselage burnthrough. As a result, the FAA has developed a new flame spread test method. The flame spread test method specified in this AD is a modified version of the ASTM E648 flammability standard and test apparatus. Modifications to ASTM E648 test apparatus have been made to more closely reflect the fire conditions in an airplane environment. The FAA has prepared a document to reflect the flame spread test method to be used for testing of replacement insulation blankets for this AD. It is identified as "Test Method to Determine the Flame Spread Characteristics of Thermal/Acoustic Insulation Material for Replacement of MPET." For the purposes of correcting the identified unsafe condition of this AD, the FAA finds that this flame spread test method is sufficiently developed.

The FAA also has developed a procedure for utilizing the FAA Technical Center flame spread test apparatus to qualify materials for this AD. The procedure for utilizing the test apparatus of the FAA Technical Center is identified as "Ground Rules for Use of Technical Center Facility for Testing."

The flame spread test method and procedure for using the FAA Technical Center test apparatus are both included in Appendix 1 of this AD.

As paragraph (c) of the NPRM's is currently worded, some commenters may misinterpret that the replacement insulation blankets must be constructed of materials tested in accordance with the original ASTM E648 flammability standard, rather than tested in accordance with a new flame spread test using an apparatus derived from ASTM E648 in accordance with a method approved by the FAA. Paragraph (c) of the final rules has been revised to clarify the flame spread test method for replacement insulation blankets. The Los Angeles Aircraft Certification Office (ACO) will work closely with other FAA

ACO's and the FAA Technical Center to assist operators/modifiers in qualifying new materials for compliance with the requirements of this AD.

The FAA concurs that the method specified is not yet a "standard." However, the method is sufficiently developed for this AD and, before adoption as a standard, will undergo the kind of industry qualification proposed by one commenter. The FAA partially concurs with the commenter's statement that round robin testing is necessary and that the success criteria of the flame spread test method should be discussed further. Prior to incorporation of a new flame spread test method into the Airworthiness Standards for transport category airplanes (14 CFR part 25), the test method will be subject to round robin testing. In fact, this process is currently underway within the International Aircraft Materials Fire Test Working Group.

With respect to changes in the flame spread test method that may cause certain materials to go from acceptable to unacceptable, or vice versa, the FAA does not agree that this is an issue. Refinements to the test method will be made to improve the repeatability of the test, not to change the test results. Materials that are marginal will perform marginally regardless of the details of the method.

One commenter states that it understands that the FAA has plans to replace the standard gas-fired radiant panel with an electric panel, and that the flame ignition source is a single cone non-standard burner as opposed to the T-type burner method specified in ASTM E648. The commenter contends that differences between the FAA method and ASTM E648 are confusing to both testing labs wishing to provide services to FAA-regulated clients as well as suppliers of insulation who are unclear as to what the specification will be for the products they produce for the aerospace industry. The commenter states that "specification of a non-standard test apparatus and conditions by the FAA end up creating a whole other set of devices which must be fabricated and maintained separately from their standard 'parent devices' removing the economic benefits which use of consensus developed public sector standards provide."

The FAA does not concur for the reasons noted previously. In addition, since the apparatus specified is not used for any other aviation application, there is very little potential for confusion. The number of facilities currently equipped to conduct these tests is extremely small, which further diminishes any problems associated with differences in the test method.

One commenter states that, because of such a tremendously costly retrofit program, all further developments with regard to new testing methods must clearly avoid duplication or contradiction of actions as described in the proposed AD's.

The FAA has revised paragraph (c) of the final rule to clarify the flame spread test method to be used to qualify replacement insulation blankets. As previously discussed, this test method is adequately refined to qualify these materials for this AD.

Details of the Test Procedures

One commenter states that results of tests have shown that the thickness of the insulation has no impact on the performance of the film under test. Therefore, the commenter suggests that all samples be tested with two-inch thick insulation.

One commenter requests that the FAA develop specifications for environmental conditioning of samples since the absence of such requirements will significantly alter test results, in particular for ignition and flame spread sensitive materials such as faced insulation.

The commenter states that the proposed pass/fail criteria, including the minimum 2-inch burn length and 0 flame spread, are not easily measured or agreed upon. Several commenters state that clearer pass/fail criteria are needed. One commenter states that subjective assessment of test results in small scale fire testing is a constant, ongoing problem that should be avoided.

One commenter claims that the "pilot" burner arrangement called out in the FAA specification does not result in reproducible test results. Likewise, the "pre-heat" time between specimens and the time between sample insertion and flame application have not been defined. The commenter prefers a standard design and operation conditions and is unclear why the standard design has been modified.

The FAA does not agree that the current test method lacks reproducibility. Tests conducted at the FAA Technical Center and at other facilities indicate that the test is reproducible and repeatable. The FAA concurs with the commenter that a defined test protocol should be used when testing replacement material. The flame spread test method specified in the final rule does include the pass/fail criteria, environmental conditioning, and test specimen thickness. Issues such as the pilot burner arrangement will be the subject of further refinement before the test method is adopted as a regulatory standard, but are adequately defined for this AD.

One commenter requests that the test procedures include contaminated insulation blankets to simulate real world conditions. The commenter states that testing of pristine material may not provide sufficient assurance when within a few years the thermal blankets will be contaminated with solvents and other material. The FAA does not concur. While "contamination" might result in either detrimental or improved flammability performance, incorporation of generic "contamination" into a test requirement is not practical. Contamination is usually a localized phenomenon, and not spread uniformly throughout the airplane. Replacing the existing materials with materials that will not propagate a fire will confine a fire to the area of contamination and should prevent the fire from becoming a hazard. As with any material installed on an airplane, it is the operator's responsibility to ensure that the airplane remains in an airworthy condition.

The commenter further requests that the test procedures include ignition "by these so-called, 'otherwise harmless electrical arcs.'" The commenter states that the likelihood of thermal blankets propagating a fire will typically start with an electrical arc. Therefore, the resistance to an arc-tracking Kapton™ (i.e., polyimide) wire fire should be assessed. The commenter contends that this will give a clear indication of what the next flight crew might experience, rather than a Bunsen Burner or cotton swab test that doesn't relate to the real world conditions found on affected airplanes.

The FAA does not concur with the commenter's request to include electrical arcing ignition in the test procedures. Electrical arc tests were used to identify the unsafe characteristics of MPET in the course of research. The test method required by this AD is, in fact, a more severe measure of the materials' performance. There are materials that are not susceptible to ignition by electrical arcing that will not pass the test required by this AD. Therefore, the replacement of MPET insulation blankets in accordance with this AD will address the commenter's concern.

Approved Materials

Two commenters request that the FAA revise the proposed AD's to include an expanded list of approved films. Several commenters note that Kapton™ film installed 25 years ago on Model L–1011 series airplanes has

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proven to outperform Tedlar ™ and Mylar ™ films in FAA tests, which measure the materials' ability to hold back flames. Two commenters state that all FAA testing, including burnthrough testing, have shown polyimide films to be superior. In addition, FAA Administrator, Jane Garvey, specifically mentioned Kapton ™ film as being a material that would be "grandfathered in" in an October 14, 1998, announcement.

Two commenters state that the proposed AD's appear to preclude the use of polyimide (Kapton ™) insulation covering film that has passed the new Radiant Panel Test.

The FAA does not concur with the commenters' request to revise NOTE 4 of the AD to include additional films. Except for the metallized Tedlar ™ cover mentioned in NOTE 4 of the AD, currently, no other film has successfully passed the flammability testing in a manner approved by the Manager, Los Angeles ACO. However, the FAA is aware of various film materials that could be found to be acceptable replacement materials for MPET. Once these materials have successfully passed the flammability testing specified in the AD, they must be approved by the Manager, Los Angeles ACO. In addition to the flammability requirements, the material must be shown to meet all other applicable airworthiness requirements. The FAA Administrator did make an announcement in October 1998 that Kapton ™ would be "grandfathered," and that the FAA would not require that material to be replaced once is was installed. However, that announcement was made prior to the issuance of the NPRM for this final rule. This AD does NOT require Kapton™ to be replaced once it is installed; however, it does require testing and approval of any material, including Kapton ™.

One commenter requests that the FAA revise NOTE 4 of the proposed AD's to read "[t]he metallized Tedlar covers specified in the service bulletins must be tested to demonstrate compliance with the requirements of paragraph (c) of this AD." The commenter disagrees with the characterization that a particular cover material is considered acceptable with the requirements of paragraph (c) of the proposed AD's. The commenter states that the Thermal Acoustic Task Group, which was organized by the Fire (Safety) Test Branch of the FAA Technical Center to develop the new flammability requirements, did not begin to discuss the procedures for demonstrating compliance until a seminar was held on September 13 and 14, 1999. Because the release date of the NPRM's was before the seminar, no material could have been specified to be in compliance with the requirements of paragraph (c) of the NPRM's. The commenter states that, at the time of publication of the proposed AD's, compliance materials and methods had not yet been submitted under a Test Plan, conformity inspection of samples had not been completed, and properly witnessed testing had not taken place.

The FAA does not concur with the commenter's request to revise NOTE 4 of the AD as it suggests. The material that is listed in the service bulletins has been found acceptable by the FAA and was tested at the FAA Technical Center in a manner approved by the FAA, prior to the September seminar. The purpose of the seminar was not to develop test methods, but to introduce the method to the interested segment of the industry. Therefore, the timing of the seminar has no bearing on the approval status of the material. No change to the final rule is necessary.

Replacement Material Approval Process

One commenter notes that under the heading "Differences Between the Proposed AD and Service Bulletins" in the preamble of the NPRM's, it states "* * * Only one of the two insulation blanket film materials specified in the service bulletins has successfully passed the testing of the ASTM flammability standard and has been found to be an acceptable replacement material for the MPET-covered insulation blankets. Other film material, such as certain polyimide and fluoropolymer composites, also have been successfully tested to ASTM E648 and could be found to be acceptable for compliance with the requirements of this proposed AD if presented to the FAA for approval. These materials are not listed in the service bulletins described previously." The commenter claims that the original equipment manufacturer (OEM) and certain operators are interpreting this statement as requiring a full Part Manufacturing Approval (PMA) and Supplemental Type Certificate (STC) approval process for blankets using films not in the referenced McDonnell Douglas service bulletins.

One commenter states that other new materials besides Kapton™ will become available in the near future for use as insulation coverings, and that the PMA/STC process is not designed for nor suited for purely materials testing. The commenter contends that using this process would add a great deal of unnecessary cost to the current approval process for new materials. Another commenter requests that the proposed AD be revised to include language describing a clear and abbreviated approval process for blankets utilizing new and less flammable materials.

The FAA does not concur with the commenter's request to include language describing the process for approval of replacement insulation blankets utilizing new and less flammable materials. The FAA approval process of replacing materials/installations is well established and known. Design approval can be obtained by an STC or PMA. It is the responsibility of the operators and modifiers to obtain such approvals for any proposed materials under paragraph (c) of the AD. The FAA may approve requests for AMOC's, such as alternative blanket installation, under the provisions of paragraph (e) of this AD if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

The FAA has determined that an adequate supply of approved replacement materials will be available to comply with this AD in the time specified. Operators that choose to develop new or different materials must plan accordingly and obtain approval as previously stated. While the PMA or STC process may not seem to be cost effective for some operators, it is the proper approval method to assure all airworthiness standards are met.

Insulation Material on Other Aircraft

One commenter is not clear if the material used today on other Boeing airplanes is able to pass ASTM E648. The same commenter also states that the proposed AD's require full replacement of only MPET. The commenter is not clear what the rationale behind this decision is.

As discussed in the NPRM's, these AD's are intended to correct an unsafe condition by replacing MPET insulation blankets. MPET film differs from other films in use in that it is susceptible to propagation of a fire from a small ignition source. Other films, while not necessarily meeting the proposed test requirements, do not have this susceptibility. It is the susceptibility to small ignition sources that creates the unsafe condition. New standards for insulation materials in general may be similar to the requirements of this AD, but will be used to upgrade the level of safety, and not correct an unsafe condition.

Burnthrough

Several commenters request that the FAA revise the proposed AD's to make clear that airlines are permitted to install insulation that meets a burnthrough protection standard. Two commenters state that the proposed AD's appear to preclude the use of Curlon as a substitute for fiberglass to achieve burnthrough performance. One commenter states that Curlon material and many other materials recently developed could easily and economically provide double the level of protection of the current burnthrough time (*i.e.*, four minutes). Although the proposed AD's do not address the burnthrough safety threat, the commenters want to take this opportunity to achieve this important safety advance when replacing the insulation. The commenters reemphasize that this would simply be reinforcing the October 1998 announcement that Curlon would be one of the materials "grandfathered in," if operators proceeded to install it voluntarily.

Two commenters request that the FAA revise the proposed AD's to include requirements for burnthrough protection from fuel fires on the ground for all affected airplanes. The commenters state that replacement of flammable insulation is an opportunity to install burnthrough protection. One commenter states that this should be the time to push the industry, as was done with the heat release requirements for interior materials a few years ago. Materials were not even available to meet the new FAA requirements, but the industry "stepped up to the plate and we now are all safer as a result of this proactive approach."

The FAA does not concur with the commenters' requests to include burnthrough requirements in the AD. While burnthrough protection is important to the overall fire resistance of airplanes following an accident, the actions required by this AD are intended to correct a known unsafe condition—insulation blankets constructed of MPET. The FAA does not consider that the degree of burnthrough protection provided by currently installed insulation constitutes an unsafe condition. Therefore, it would be inappropriate to issue an AD to require improvement in burnthrough protection. The new replacement insulation blankets required by this AD meet the test method specified in the final rule, correct the identified unsafe condition, and provide the level of safety required by 14 CFR part 25. The FAA encourages the installation of materials that meet additional standards such as fuselage burnthrough protection.

Trade Names

One commenter opposes the use of trade names in both the preamble and regulatory text of the proposed AD's and considers such references to trade names highly prejudicial to Chemfab, the manufacturer of Chemfilm. The commenter states that there is no need for brand name product identification and that this connotes not only FAA approval of, but also preference for, the identified product brand. Once the official "seal of approval" has been granted through the rulemaking process, other market entrants face a significant barrier in gaining customer acceptance simply because the identified product has been "officially" sanctioned.

Because of the publication and circulation of the proposed AD's, two commenters request that the FAA revise the proposed AD's to identify the manufacturer(s) and trade names of insulation blanket covering films that have met FAA requirements specified in the proposed AD's.

The FAA does not concur with the commenters' request to reference other trade name products in the final rules or to eliminate all references. Tedlar™ and Mylar™ are common trade names and this is the clearest way for FAA to communicate with affected operators. Except for the one metallized Tedlar™ cover mentioned in NOTE 4 of the AD, currently, no other film has been approved by the Manager, Los Angeles ACO. In addition, the airplane manufacturer is planning to list materials, once they have been tested and approved by the FAA, in the revised service bulletins (discussed previously under the heading "Inadequate Procedures and Information in Referenced Service Bulletin"). Furthermore, the FAA finds that trade names such as of Mylar™, Kapton™, and Tedlar™ are well known and are accepted terminology in industry. The reference of these trade names in the AD's are not, in any way, an FAA endorsement of those products. Therefore, no change to the final rule is necessary.

Wiring

One commenter requests that flammability requirements for the sources of ignition (i.e., the wiring) for thermal blanket fires be stricter than the requirements for thermal blankets themselves. The commenter states that the 60-degree flame test—the only test required by the FAA for the wiring on commercial airplanes—should be replaced immediately with the vertical flame test as a minimum requirement, and that every type of wire insulation in all airplanes should have to meet it.

The FAA does not concur. The current flammability standard for wiring has not been determined to be inadequate. The actions required by this AD are intended to address an identified unsafe condition, which is that MPET-covered insulation blankets can contribute to the spread of a fire when ignition occurs from a small ignition source such as electrical arcing or sparking. As noted previously, the FAA has a major program underway to address issues related to airplane wiring and problems are being addressed as they are identified.

Corrosion Protection

One commenter states that for Model MD–11 series airplanes to be afforded the same corrosion protection offered by the OEM installation, any fabricated blankets must meet the original type design. The existing Corrosion Prevention and Control Program (CPCP) requirements are based on the performance of the insulation system. Any compromise or alteration will necessitate changes to the CPCP. Many insulation blankets cannot be installed as they originally were due to installation of overlying structure. Therefore, deviations to the type design will have to be approved by the OEM and FAA in the form of an AMOC. The burden of these approvals will stress the resources of the OEM and FAA over the duration of the compliance period.

The FAA does not concur. The FAA is aware of the potential effects of changing insulation material has on the corrosion protection of the affected airplanes. The airplane manufacturer intends to take this into account so that no change to the CPCP is required. Any operator or modifier also will be required, under paragraph (e) of this AD, to address any ramifications to the CPCP in any request for an AMOC.

Add New Inspection

One commenter requests that, if it is determined that an insulation blanket is not constructed of MPET during the action required by paragraph (a) of the proposed AD's, a visual inspection be conducted to detect fire damage, electrical arcing, discoloration, or other physical damage. The commenter also requests a visual inspection for possible ignition sources during routine maintenance on airplanes not affected by the proposed AD's.

The FAA does not concur with the commenter's request to revise paragraph (a) of the final rule to include a visual

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inspection for possible ignition sources. If any evidence of fire damage is found during the subject inspection, operators are already required to investigate and determine the source of the problem. This is no different from any other maintenance action that is performed by the operators. It is not necessary to include any additional requirements in this AD to accomplish this action.

Alternative Method of Compliance

One commenter states that it has developed a system whereby the existing bagged insulation can be removed from the airplane without the necessity of interfering with wiring harnesses or other unrelated systems. The commenter claims that its system would reduce the installation time of the proposed AD's, reduce the cost of compliance, and reduce the remote chances of creating future related AD's caused by the method of compliance. Another commenter states that it also has developed an insulation system that works around existing equipment and thus eliminates the need to remove much of the equipment that is not normally removed during heavy maintenance checks. The commenter claims that its system is lighter in weight than the OEM insulation system and will result in fuel savings.

One commenter agrees that the flammability/flame spread performance of the MPET-covered insulation blankets should be improved, but questions proposed AD's that would require blanket replacement. The commenter states that this approach may not be the only possible method of addressing the issue. This concept is especially important considering the potential negative consequences of required airplane disassembly to accomplish the blanket replacement. The commenter suggests that there may be other options such as spray coatings that offer virtually equivalent performance with little negative impact.

From these comments, the FAA infers that the commenters are requesting that the final rules be revised to include the commenter's systems for replacing or modifying the MPET insulation blankets. The FAA does not concur. The commenters did not provide any technical details for the FAA to make a finding. Paragraph (e) of the final rule contains provisions for requesting approval of an AMOC to address these types of unique circumstances.

One commenter requests that the FAA require installation of additional fire resistant material(s) between the insulation blankets and any adjacent wires, wire bundles, or other potential ignition sources instead of removing and replacing MPET insulation blankets. The commenter also requests that the FAA consider this approach on either a full or partial basis. Another commenter believes that fire resistant material(s) in such a location would better promote the overall safety of the affected airplanes.

The FAA acknowledges that this suggestion may be a possible acceptable alternative to removing the existing insulation blankets. However, no change to the final rule is necessary. Under paragraph (e) of the AD, operators may apply for the approval of an AMOC or adjustment of the compliance time that provides an acceptable level of safety.

Communication

One commenter requests that the FAA have a public meeting regarding the proposed AD's. The commenter states that, because many vendors are trying to develop materials that meet the new FAA requirements, and the market price of these materials seems to vary drastically at present, it just has insufficient information on new materials.

The FAA does not concur that a public meeting regarding the proposed AD's is necessary. Through the FAA Technical Center, the FAA has provided a forum to develop flammability standards for insulation materials. In addition, the FAA is aware of a number of meetings hosted by the airplane manufacturer to provide information to operators affected by the requirements of this AD. The FAA is sensitive of the public's concern with the fire safety issues associated with this AD and is aware of the effects this AD will have on operators. The FAA has determined that an unsafe condition exists, and that the actions required by this AD are necessary in order to ensure the continued safety of the affected fleet.

Extend Comment Period of NPRM's, Delay Issuance of Final Rules, and Withdraw NPRM's

For the reasons described above, several commenters request that the FAA do one or more of the following: (1) extend the public comment period for the NPRM's and supplemental NPRM's; (2) delay issuance of the final rules; or (3) withdraw the NPRM's and combine them with the draft burnthrough NPRM. (The FAA infers that the commenters are referring to a draft NPRM relating to insulation blanket flammability. The FAA announced its intention to develop new flammability standards for thermal/acoustic insulation in October 1998. This announcement included mention of improved burnthrough protection.)

One commenter states that it is not uncommon, in the case of an AD relating to issues not as complex as the proposed AD's, for the FAA to allow 90 days or more to comment. The 45-day comment period of the proposed AD's does not allow for proper understanding and evaluation on which to develop reasonable comments.

The FAA does not concur with the commenters' request to extend the comment period. On November 10, 1999, the FAA issued supplemental NPRM's to reopen the comment period for an additional 25 days to provide opportunity for public comment (the comment period for the NPRM's was 45 days and closed on September 27, 1999). The FAA finds that the public has had a reasonable opportunity to comment on the substance of the AD's. The FAA does not concur with the commenter's statement that it is not uncommon for the FAA to allow 90 days or more for the public to comment on proposed AD's. The standard comment period is 45 days for NPRM's and 25 days for supplemental NPRM's in which the FAA has responsibility as the State of Design of the affected airplanes. A 90-day comment period would be uncommon.

As discussed above in "Inadequate Procedures in Referenced Service Bulletins," the FAA also finds that it is possible to accomplish the requirements of this AD. Since the issuance of the NPRM's, the airplane manufacturer, in conjunction with operators, has completed the prototype installations. Based on the results of these installations, the airplane manufacturer is developing revisions to the service bulletins referenced in the AD's to include detailed instructions for accomplishment of the required replacement. These revised service bulletins are scheduled for completion in June 2000. Any new or revised service bulletins, among other items, will contain procedures to maintain/test the integrity of the wiring after accomplishment of the replacement of any MPET insulation blanket. These revised service bulletins will be approved as an AMOC for the requirements of this AD.

The FAA does not concur with the commenter's request to delay issuance of the final rules. These revised service bulletins are scheduled for completion in June 2000. The FAA has determined that, while physically challenging, the actions required by the AD can be accomplished within the 5-year compliance time, and that the actions are warranted to address an identified unsafe condition.

In support of its request to withdraw the NPRM's, one commenter contends that other rulemaking in development by the FAA may eventually affect the airplanes covered by this AD, thereby requiring two extensive modifications.

The FAA does not concur with the commenter's request to withdraw the NPRM's and combine them with the draft burnthrough NPRM. Any other regulatory action to raise the level of safety would have to be justified and subject to public comment. The FAA does not anticipate requiring airplanes to be modified twice as a result of future actions. The actions required by this AD are intended to correct an identified unsafe condition by removing MPET insulation blankets from airplanes affected by these AD's. These actions are not intended to provide a general upgrade to the current level of safety specified in the airworthiness regulations. Therefore, the actions required by these AD's are warranted.

One commenter disagrees that prototyping efforts are necessary to determine the feasibility of the requirements of the proposed AD's and disagrees that issuance of the proposed AD's should be delayed. The commenter states that it is in the process of prototyping the insulation retrofit on several affected airplanes. The commenter expects the prototyping to be completed in 6 weeks (the commenter's letter was received by the FAA on September 27, 1999). The FAA concurs with the commenter that issuance of the final rules should not be delayed. As discussed previously, the FAA has participated in the prototyping specified by the commenter, and that prototyping effort has been completed.

Cost Estimates

Several commenters state that the FAA "grossly" underestimated the costs associated with accomplishing the requirements of the proposed AD and provided their cost estimates. Two other commenters provided cost estimates that were less than those provided in the NPRM's.

The FAA concurs that the cost estimates specified in the NPRM's were underestimated. The FAA based its cost estimates on information that was available at the time the NPRM's were issued. Since the issuance of the NPRM's, the FAA has carefully reviewed the information and cost estimates provided by the commenters and the information obtained during the prototype exercises. The FAA has learned that most Model DC–9–80 and MD–90–30 series airplanes do not have MPET insulation blankets installed in the nose section of the airplane. Also, a number of airplanes do not have MPET insulation blankets in the fuselage, but have MPET insulation blankets only on the air conditioning ducting. The airplane manufacturer will be making this information available when the service bulletins are revised, as mentioned above. In light of these findings, the FAA has revised the cost estimates for the final rules, which is summarized below under the heading "Regulatory Evaluation Summary."

Several commenters request that the FAA reevaluate the cost estimates once the prototype exercises are completed. As discussed previously, the FAA has revised the cost estimate of the final rules based on the prototype exercises.

Several commenters state that the FAA should consider costs associated with accomplishing the requirements of both proposed AD's (*i.e.*, Rules Dockets 99–NM–161–AD and 99–NM–162–AD), under Title II of the Unfunded Mandates Reform Act of 1995.

The FAA did consider the total costs associated with accomplishing the requirements of both NPRM's for all affected airplanes under the heading "Regulatory Evaluation Summary" in the preamble of the NPRM's. A copy of the Preliminary Cost Analysis and Initial Regulatory Flexibility Analysis also were included in each docket. These documents, along with the final documents, are available for the public to review.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Evaluation Summary

To determine the regulatory impact of this AD, the FAA prepared a Final Cost Analysis and a Final Regulatory Flexibility Analysis. In addition, the FAA assessed the impact of the AD on international trade and whether it must satisfy the requirements of the Unfunded Mandates Reform Act. While a summary of these findings is reported in this preamble, a more detailed discussion is included in the Rules Docket for this AD.

Since the publication of the NPRM, the FAA has observed several prototype exercises that involved the removal and replacement of MPET insulation blankets. The information obtained from these exercises assisted the FAA, operators, and manufacturer in understanding the technical details and impact of the requirements of this AD.

The FAA took account of the results of these exercises, comments to the NPRM's, and other additional information, then consequently adjusted its estimates of the costs attributable to this AD. In addition, between 50 and 60 Model DC–10 series airplanes included in the proposed analysis are not in fact operated as civil aircraft and were thus excluded from this final analysis (only economic impacts on the private sector are considered in rulemaking evaluations). Specifics of all these adjustments are discussed below.

Several commenters indicate that the FAA underestimated the costs of the new insulation material, labor hours necessary for retrofitting, and lost passenger revenue from retrofitting downtime. With respect to labor and material costs, the FAA contacted the major operators affected by the AD (those with the preponderate portion of airplanes requiring modification), as well as the major material suppliers (one of which was an airplane manufacturer), and consequently, increased the estimated compliance costs. Therefore, the labor cost calculation methods used in this AD differ from those used in the NPRM's. The FAA has developed the labor estimates for this AD using information supplied by the manufacturer and affected operators to arrive at average values specific to the requirements of this AD. The FAA considers these values conservative.

The commenters express disagreement with the FAA's asset-based approach to estimating the cost of the loss of service of the airplanes during their retrofits. These commenters suggest that the estimate be made on the basis of loss of per seat revenue. There are two reasons why the FAA does not use the loss of per seat revenue approach. First, the FAA takes an industry-wide perspective in which a passenger who cannot be seated on an airplane that is out of service for compliance with this AD can be seated on an airplane that is in service. On an industry-wide basis, no revenue will be lost. Second, the contribution of a seat's revenue to corporate net income is subject to variations in accounting, financial, marketing, and operational practice.

The FAA's asset-based approach centers on the operators' reported financial ratio and overall corporate rate of return, which is published by the Department of Transportation. This ratio is applied to the average value of the assets lost to the service of the operators

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and is adjusted for the average period of time for which they are lost because of compliance. This approach assumes that operators maximize the value of their firms by optimizing the mix and quantity of their assets.

Even though the FAA uses essentially the same "lost-revenue" method as that in the supplemental NPRM's, the FAA nevertheless did increase its estimates of lost revenue by increasing the number of days out of service, reducing the operating base year from 365 days to approximately 320 days, and raising the rate of return (9% is an average of domestic passenger and cargo operators' profit rates as estimated by the Department of Transportation's Bureau of Transportation Statistics). All of these adjustments raise the value of the variables applied to the airplane asset values (*i.e.*, $75.3 million per MD–11 and $31.5 million per DC–10).

The foregoing results in the following adjustments to the calculations presented in the supplemental NPRM.

For Model MD–11 series airplanes, the FAA increased the estimate of material costs from approximately $54,300 to $217,460 per airplane, installation costs from approximately $674,700 to $723,600 per airplane, and net lost revenues from approximately $158,750 to $401,340, summing to $1,342,400 per airplane. (Note: The affected Model MD–11 series airplanes have been split up into two groups: Group 1, which require insulation replacement and modification of air conditioning ducts (57 airplanes); and Group 2, which require only modification of air conditioning ducts (4 airplanes); costs per airplane equal approximately $1,417,360 for Group 1 and $274,310 for Group 2). The total costs over the 5-year retrofit period (2001–2005) for all 61 affected MD–11 airplanes is approximately $81.9 million, or $66.9 million discounted to present value (previous estimate was $45.8 million discounted).

For Model DC–10 series airplanes , the FAA increased the estimate of material costs from $46,139 to $203,700 per airplane, the installation costs from $573,689 to $636,700 per airplane, and net lost revenues from $54,370 to $150,610, summing to $991,010 per airplane. The total costs over the 5-year retrofit period (2001–2005) for all 16 affected DC–10 airplanes is approximately $15.9 million, or $12.9 million discounted to present value (previous estimate was $41.6 million discounted). [Note: The significant decrease in total costs for the group of Model DC–10 series airplanes is the result of excluding 57 airplanes that are owned by the U.S. Department of Defense.]

The adjusted estimate of the total costs of this AD over the 5-year retrofit period for all 77 affected wide-body airplanes is approximately $97.7 million ($1,269,390 per airplane) or $79.8 million discounted to present value. The total impact for all affected airplanes (*i.e.*, DC–9–80, MD–90–30, MD–11, and DC–10) is $449.3 million or $368.4 million discounted to present value over the five year compliance time.

With respect to effects on small entities, the Regulatory Flexibility Act (RFA) of 1980 establishes "as a principle of regulatory issuance" that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the Agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Two entities affected by the AD are considered small, *i.e.*, have less than 1,500 employees (one of these entities has revenues in excess of $100 million); however, the FAA does not consider two entities to be a substantial number. Pursuant to the RFA, 5 U.S.C. 605(b), the FAA certifies that this AD will not have a significant economic impact on a substantial number of small entities.

The provisions of this AD will have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Finally, Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534, requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This AD does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–02 McDonnell Douglas: Amendment 39–11750. Docket 99–NM–162-AD.

Applicability: Model DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–40 series airplanes, and Model MD–11 and –11F series airplanes; manufacturer's fuselage numbers 359 through 632 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that insulation blankets constructed of metallized polyethyleneteraphthalate (MPET) are removed from the fuselage, accomplish the following:

Inspection

(a) Within 5 years after the effective date of this AD, determine whether, and at what locations, insulation blankets constructed of MPET, are installed. When markings are not visible, the determination shall be made by using known MPET material as a comparison sample to assist in the identification.

Note 2: Insulation blankets that are marked with "DMS 2072, Type 2, Class 1, Grade A;" "DMS 2072, Type 2, Class 1;" or "DMS 1996, Type 1;" are constructed of MPET.

Corrective Actions

(b) For insulation blankets that are determined not to be constructed of MPET, no further action is required by this AD.

(c) For insulation blankets that are determined to be constructed of MPET, within 5 years after the effective date of this AD, replace the MPET insulation blankets with new insulation blankets that have been approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The blankets shall be replaced in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC10–25–368, dated October 31, 1997 (for Model DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–40 series airplanes); or McDonnell Douglas Service Bulletin MD11–25–200, Revision 01, dated March 20, 1998 (for Model MD–11 and –11F series airplanes); as applicable. The replacement insulation blankets must be constructed of materials tested in accordance with Appendix 1 of this AD, or in accordance with a method approved by the Manager, Los Angeles ACO.

Note 3: Although this paragraph allows up to 5 years for the required replacement, the FAA anticipates that operators will comply at the earliest practicable maintenance opportunity.

Note 4: Only one of the two metallized Tedlar™ covers specified in the service bulletins has been shown to have successfully passed the testing of the American Society for Testing and Materials (ASTM) flammability standard and is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install an MPET insulation blanket on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The blankets shall be replaced in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC10–25–368, dated October 31, 1997 (for Model DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–40 series airplanes); or McDonnell Douglas Service Bulletin MD11–25–200, Revision 01, dated March 20, 1998 (for Model MD–11 and –11F series airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 30, 2000.

Appendix 1.—Test for Materials Replacing Metallized PET Thermal Acoustical Insulation Film, February 16, 2000

This test method is used to evaluate the flammability and flame propagation characteristics of thermal/acoustic insulation when exposed to both a radiant heat source and a flame.

(a) *Definitions.*

(1) *Thermal/Acoustic Insulation.* Thermal/acoustic insulation is defined as a material or system of materials used to provide thermal and/or acoustic protection. Examples include a film-covering material encapsulating a core material such as fiberglass or other batting material and foams.

(2) *Radiant Heat Source.* The radiant heat source is an air/gas fueled radiant heat energy panel.

(b) *Test Apparatus* (as schematically shown in figure 1).

(1) *Radiant Panel Test Chamber.* Tests will be conducted in the radiant panel test chamber as used in ASTM-Designation: E 648. It is suggested that the test chamber be located under an exhaust hood to facilitate clearing the chamber of smoke after each test. The radiant panel test chamber shall consist of an enclosure 55 inches (1400 mm) long by 19½ inches (500 mm) deep by 28 inches (710 mm) above the test specimen. The sides, ends, and top shall be insulated with a fibrous ceramic insulation such as Kaowool™. One side shall be provided with an approximately 48 by 6 inch (1219 by 152mm) draft tight, high temperature, heat resistant glass observation window, to facilitate viewing the sample during testing. On the same side and below the window is a door which, when open, allows the specimen platform to be moved out for mounting or removal of test specimens. The bottom of the test chamber shall consist of a sliding steel platform, which has provisions for securing the test specimen holder in a fixed and level position. The top of the chamber shall have an exhaust stack with interior dimensions of 4 inches (102mm) wide by 15 inches (380 mm) deep by 12.5 inches (318mm) high at the opposite end of the chamber from the radiant energy source.

(2) *Radiant Heat Source.* The radiant heat energy source will be a panel of porous refractory material mounted in a cast iron frame, with a radiation surface of 12 by 18 inches (305 by 457mm). It shall be capable of operating at temperatures up to 1500° F (816° C) (Figure 1).

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Figure 1.

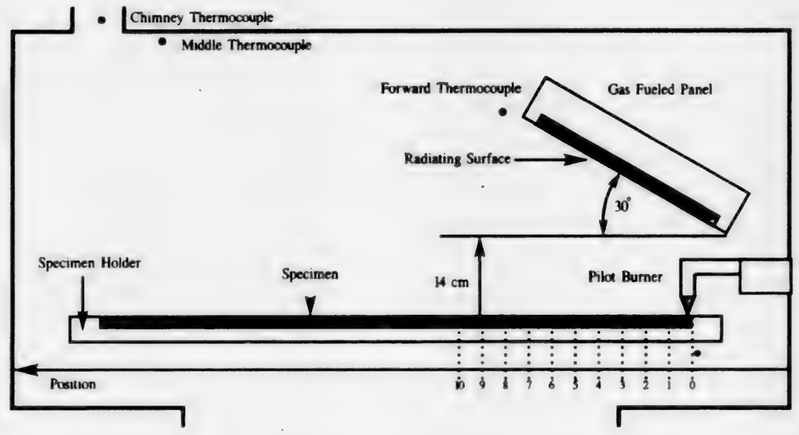

(i) Radiant Panel Fuel System. The radiant panel fuel will be propane (liquid petroleum gas—2.1 UN 1075). The panel fuel system shall consist of a venturi-type aspirator for mixing gas and air at approximately atmospheric pressure. Suitable instrumentation will be necessary for monitoring and controlling the flow of fuel and air to the panel. Instrumentation will include an air flow gauge, an air flow regulator, a gas pressure gauge, and a rotameter for measuring gas flow.

(ii) Radiant Panel Placement. The panel will be mounted in the chamber at 30 degrees to the horizontal specimen plane.

(3) *Specimen Holding System.*

(i) The sliding platform serves as the housing for test specimen placement. A ¼ inch (6.35mm) sheet of Durarock®, or other non-combustible base, measuring 43¼ inches by 12½ inches (1098 by 317.5mm) will be placed in the open bottom (base) of the sliding platform. It is necessary to cut the non-combustible base into two pieces for placement in the bottom of the platform, since it will be supported by a ¾-inch (19.1mm) lip that extends around the bottom of the platform base. It is suggested that the shortest piece be placed at the end furthest from the radiant panel (figure 2). A ½ inch (13mm) piece of Kaowool™ board or other high temperature material measuring 41½ by 8¼ inches (1054 by 210mm) will be attached to the back side of the platform. This board will serve as a heat retainer and will protect the test specimen from excessive preheating. The height of this board must not be too high such that it will impede the sliding platform movement (in and out) of the test chamber.

Figure 2: Sliding Platform

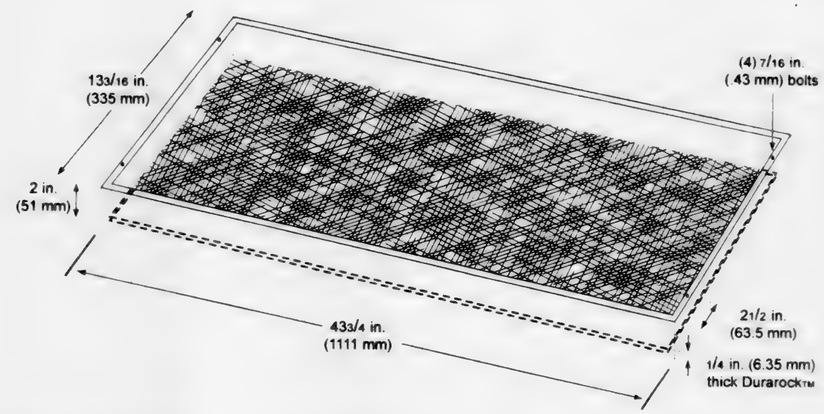

(ii) The test specimen will be placed horizontally on the non-combustible base. A stainless steel retaining frame (AISI Type 300 UNA–NO8330), or equivalent, having a thickness of 0.078 inches (1.98mm) and overall dimensions of 44¾ by 12¾ inches (1137 by 320mm) with a specimen opening of 40 by 7⅞ (1016 by 140mm) will be placed on top of the test specimen. The retaining frame will have two ½ inch (12.7mm) holes drilled at each end for positioning the frame to the two stud bolts at each end of the sliding platform (figure 3).

Figure 3: Stainless Steel Retaining Frame

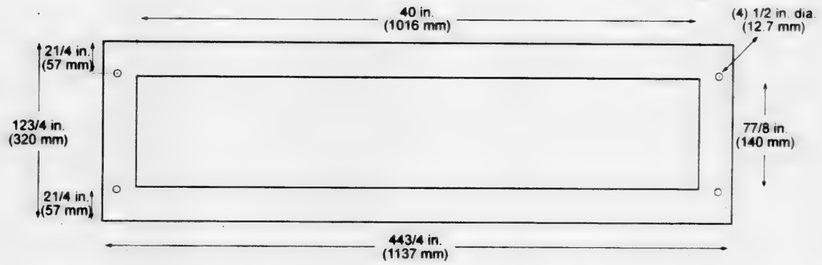

(iii) A securing frame (acting as a clamping mechanism) constructed of mild steel will be placed over the test specimen. The securing frame overall dimensions are 42½ by 10½ inches (1080 by 267mm) with a specimen opening of 39½ by 7½ inches (1003 by 190mm). Hence, the exposed area of test specimen exposed to the radiant panel is 39¼ by 7¼ inches (996 by 184mm). See figure 4. It is not necessary to physically fasten the securing frame over the test specimen due to the weight of the frame itself.

(4) *Pilot Burner.* The pilot burner used to ignite the specimen is a commercial propane venturi torch with an axially symmetric burner tip having a propane supply tube with an orifice diameter of 0.003 inches (0.076mm). The propane flow is adjusted to produce a pencil flame blue inner cone length of ½ inch (13mm). There will be a means provided to move the burner out of the ignition position so that the flame is horizontal and at least 2 inches (50mm) above the specimen plane.

(5) *Thermocouples.* Three 24 American Wire Gauge (AWG) Type K (Chromel-Alumel) thermocouples will be installed in the test chamber for temperature monitoring. All three are inserted into the chamber through three small holes drilled through the top of the chamber. One thermocouple is placed 2 inches (51mm) from the end of the radiant panel and approximately 16 inches (406mm) above the test specimen. The second thermocouple is placed 5 inches (127mm) from the first thermocouple and approximately 16 inches (406mm) from the sample. The third thermocouple is located in the chimney approximately 38 inches (965mm) above the specimen.

(6) *Calorimeter.* The calorimeter will be a one inch cylindrical water-cooled, total heat flux density, foil type Gardon Gage that has

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a range of 0 to 5 BTU/ft²second (0 to 5.6 Watts/cm²).

(7) *Calorimeter Calibration Specification and Procedure.*

(i) Calorimeter Specification.

(A) Foil diameter will be 0.25 ±0.005 inches (6.35±0.13mm).

(B) Foil thickness will be 0.0005 ±0.0001 inches (0.013±0.0025mm).

(C) Foil material will be thermocouple grade Constantan.

(D) Temperature measurement will be a Copper Constantan thermocouple.

(E) The copper center wire diameter will be 0.0005 inches (0.013mm).

(F) The entire face of the calorimeter will be lightly coated with "Black Velvet" paint having an emissivity of 96 or greater.

(ii) Calorimeter Calibration.

(A) The calibration method will be by comparison to a like standardized transducer.

(B) The standardized transducer will meet the specification given in paragraph (6).

(C) It will be calibrated against a primary standard by the National Institute of Standards and Technology (NIST).

(D) The method of transfer will be a heated graphite plate.

(E) The graphite plate will be electrically heated, have a clear surface area on each side of the plate of at least 2 by 2 inches (51 by 51mm), and be ⅛ inch ±1/16 inch thick (3.2 ±1.6mm).

(F) The 2 transducers will be centered on opposite sides of the plates at equal distances from the plate.

(G) The distance of the calorimeter to the plate will be no less than 0.0625 inches (1.6mm), nor greater than 0.375 inches (9.5mm).

(H) The range used in calibration will be at least 0–3.5 BTUs/ft² second (0–3.9Watts/cm²) and no greater than 0–5.6 BTUs/ft² second (0–5 Watts/cm²).

(I) The recording device used must record the 2 transducers simultaneously or at least within 1/10 second of each other.

(8) *Calorimeter Fixture.* With the sliding platform pulled out of the chamber, install a 2-rail fixture that has a travel range of 40¼ inches (1022mm) over the sliding platform. The dimension between the 2 rails is 2 11/16 inches (68mm). The rail fixture is screwed into the sliding panel, such that it is always directly under the geometric center of the radiant panel (figure 4). Push the platform into the chamber and insert the calorimeter. The calorimeter, which is mounted in an insulated housing, fits in the rail opening but has enough clearance such that it may be moved along the rail for heat flux readings. The top surface of the calorimeter must be level with the rails.

Figure 4. Angle Iron (1.5x1.5) Securing Frame
*NOTE: All Seams Welded

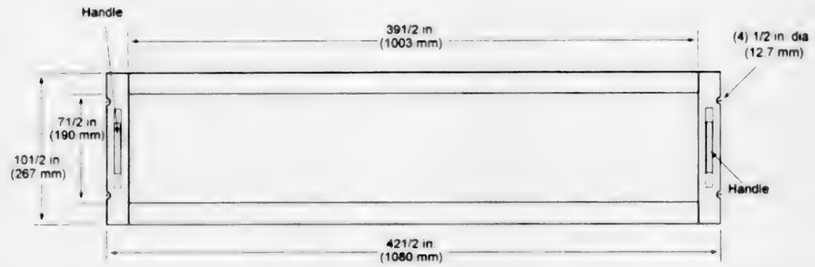

(9) *Instrumentation.* A calibrated recording device with an appropriate range or a computerized data acquisition system will be provided to measure and record the outputs of the calorimeter and the thermocouples. The data acquisition system must be capable of recording the calorimeter output every second.

(10) *Timing Device.* A stopwatch or other device, accurate to ±1 second/hour, will be provided to measure the time of application of the pilot burner flame.

(c) *Test Specimens.*

(1) Specimen Preparation. A minimum of three test specimens will be prepared and tested.

(2) Construction. Cut a piece of core material such as foam or fiberglass. If fiberglass is used, cut the material 43½ (±¼) inches long (1093mm) (±6.3mm) by 12½ inches (305.1mm) wide. If using foam, cut the material 41¼ inches (1039mm) by 11 inches wide (279mm) by 1½ inches (381mm) high. Cut a piece of film cover material (if used) large enough to cover the core material. It is permissible to staple the film cover at the ends, as they are not exposed to the radiant heat source. A piece or pieces of an inorganic/inert material such as Kaowool™ or Marinite™ board may be placed in the bottom of the sliding platform holder if the sample is not thick enough to be level with the top of the sliding platform. The specimen thickness must be of the same thickness as installed in the airplane.

(d) *Specimen Conditioning.* The specimens will be conditioned at 70 ±5°F (21 ±2°C) and 55%±10% relative humidity for a minimum of 24 hours prior to testing.

(e) *Calibration.*

(1) With the sliding platform out of the chamber, install the rail fixture. Push the platform back into the chamber, install the calorimeter (in its housing), and move the calorimeter to the "zero" position (figure 5). Close the bottom door located below the sliding platform. The centerline of the calorimeter is 1⅞ inches (46mm) from the end of the sliding platform. This will be the "zero" position. The distance from the center of the calorimeter to the radiant panel surface at this point is 7.5 inches ±⅛ (191 mm ±3).

(i) Prior to igniting the radiant panel, ensure that the calorimeter face is clean and that there is water running through the calorimeter.

(2) Ignite the panel. Adjust the fuel/air mixture to achieve 1.5 BTUs/ft² – second ±0.025 BTUs/ft² – second (1.9 Watts/cm² ±0.025 Watts/cm²) at the "zero" position. Allow the unit to reach steady state (this may take up to 1 hour). The pilot burner is off during this time. The temperature as measured by the thermocouple closest to the panel (forward) is approximately 1100°F (600°C). The temperatures recorded by thermocouples 2 and 3 (thermocouple 3 located in chimney) are approximately 430°F (230°C) and 300°F (135°C), respectively.

Figure 5: Calorimeter Rail

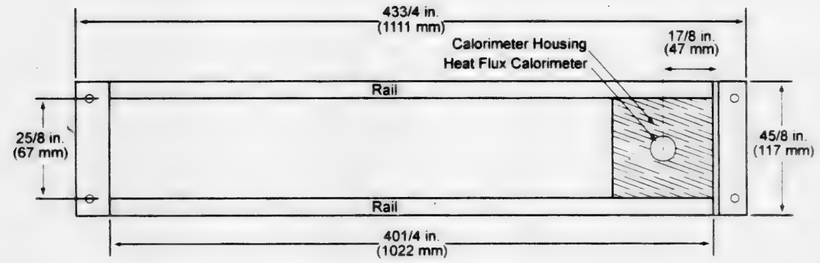

(3) After steady-state conditions have been reached, move the calorimeter 2 inches (51 mm) from the "zero" position and record the heat flux. Allow a minimum of 30 seconds at each position for the calorimeter to stabilize. Record at least 10 positions. (Figure 6 depicts a calibration profile.)

Figure 6: Heat Flux Calibration

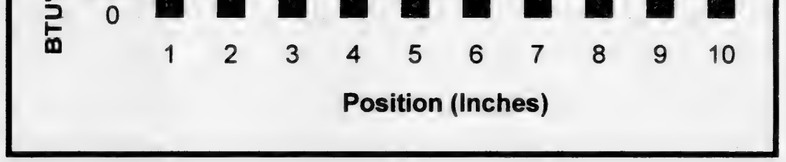

(4) It is not necessary to run a full heat flux calibration (minimum of 10 positions) each time the chamber is powered on. It is required that a heat flux measurement be taken at the "zero" position at the start of the test period (*e.g.*, each morning) to ensure that the 1.5 BTU/ft² -second (1.9 Watts/cm²) requirement be met. A full calibration should be run periodically.

(5) Open the bottom door, pull out the sliding platform, and remove the calorimeter and rail fixture.

(f) *Test Procedure.*

(1) Ignite the pilot burner. Ensure that it is at least 2 inches (51mm) above the top of the platform. The burner must not contact the specimen until the test begins.

(2) Place the test specimen in the sliding platform holder. Ensure that the test sample surface is level with the top of the platform. At "zero" point, the specimen surface is 7½ inches +/-⅛ (191mm +/-3) below the radiant panel.

(3) With film/fiberglass assemblies, it may be necessary to puncture small holes in the film cover to purge any air inside. This allows the operator to maintain the proper test specimen position (level with the top of the platform). The holes should be made in the sides and/or the corners of the test specimen using a needle-like tool.

(4) Place the retaining frame and the securing frame over the test specimen.

(5) A small mark should be placed on the "zero" point.

(6) Immediately push the sliding platform into the chamber and close the bottom door.

(7) Bring the pilot burner flame into contact with the center of the specimen such that the center line of the flame impinges on the "zero" point and simultaneously start the timer. The burner flame impinges the sample at an angle of approximately 20 degrees with the horizontal (front of the sliding platform).

(8) Leave the burner in position for 15 seconds and then remove to a position at least 2 inches (51mm) above the specimen.

(g) *Report.*

(1) Identify and describe the specimen being tested.

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(2) Report any shrinkage or melting of the test specimen.
(3) Report the Burn length
(4) Report Extinguishing Time
(h) *Requirements.*
(1) During burner application, no flaming is allowed to propagate more than 2 inches (50.8mm) along the sample (to the left in figure 1) of the centerline of the flame.

(2) There shall be no flaming of the test sample after pilot burner removal.

Issued in Renton, Washington, on May 19, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13150 Filed 5–25–00; 8:45 am]
BILLING CODE 4910–13–P

Federal Register

Friday,
May 26, 2000

Part VI

Department of Justice

Bureau of Prisons

28 CFR Parts 522 and 543
Civil Contempt of Court Commitments; Federal Tort Claims Act; Final Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 522

[BOP–1092–F]

RIN 1120–AA87

Civil Contempt of Court Commitments

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on civil contempt of court commitments to note the statutory distinction between the order of service of a sentence for offenses committed before November 1, 1987, and those committed on or after November 1, 1987. This amendment merely describes the various dispositions of the court under the appropriate statutes and is intended to be informational in nature.

EFFECTIVE DATE: June 26, 2000.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Civil Contempt of Court Commitments (28 CFR part 522, subpart B). A final rule on this subject was published in the **Federal Register** on June 29, 1979 (44 FR 38244), and was amended April 6, 1994 (59 FR 16406).

Current provisions on civil contempt of court commitments in § 522.11 describe a court's discretion pertaining to offenses committed before November 1, 1987. Section 522.11 (d) and (e) are being revised to reflect a court's discretion pertaining to offenses committed on or after November 1, 1987. More specifically, federal criminal sentences of imprisonment might not commence immediately upon being imposed for several reasons. For example, the defendant may be granted bail pending appeal, or the sentencing court may order the defendant to self-surrender at a later scheduled date. Consequently, § 522.11(d) is revised to apply in those situations where a person receives a federal sentence of imprisonment and, prior to commencing service of the sentence, is the subject of a civil contempt commitment order. In such circumstances, the rule indicates credit toward service of the criminal sentence is delayed or suspended for the duration of the contempt commitment, unless the committing judge orders otherwise. The rule still applies to those defendants serving criminal sentences of imprisonment who subsequently become the subject of a civil contempt commitment order.

Pursuant to federal caselaw decisions, multiple federal sentences of imprisonment imposed pursuant to 18 U.S.C. Chapter 227, as applicable to offenses committed before November 1, 1987, are presumed to run concurrently unless ordered to run consecutively by the sentencing judge. To the contrary, as applied to offenses committed on or after November 1, 1987, 18 U.S.C. 3584 requires that multiple federal sentences of imprisonment imposed at different times run consecutively unless ordered to run concurrently by the sentencing judge or statutory directive. Revised § 522.11 (e)(1) and (2) reflect these differences in cases where a civil contempt commitment order is in effect and a criminal sentence of imprisonment is subsequently imposed. In the case of a criminal sentence of imprisonment imposed pursuant to 18 U.S.C. Chapter 227, as applicable to offenses committed before November 1, 1987, the criminal sentence runs concurrently with the commitment order unless the sentencing judge orders otherwise. In the case of a criminal sentence of imprisonment imposed pursuant to 18 U.S.C. Chapter 227, as applicable to offenses committed on or after November 1, 1987, the criminal sentence runs consecutively to the commitment order unless the sentencing judge orders otherwise.

Because this amendment merely describes the various dispositions of the court under the appropriate statute, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., NW., Washington, DC 20534; telephone (202) 514–6655.

List of Subjects in 28 CFR Part 522

Prisoners.

Kathleen Hawk Sawyer,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 522 in 28 CFR, chapter V, subchapter B, is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 522—ADMISSION TO INSTITUTION

1. The authority citation for 28 CFR part 522 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 522.11, paragraphs (d) and (e) are revised to read as follows:

§ 522.11 Procedures.

* * * * *

(d) If a federal criminal sentence of imprisonment (including a Narcotic Addict Rehabilitation Act or Youth Corrections Act commitment) exists when a civil contempt commitment is ordered, credit towards service of the criminal sentence is delayed or suspended for the duration of the contempt commitment unless the committing judge orders otherwise.

(e)(1) If a civil contempt commitment order is in effect when a criminal sentence of imprisonment is imposed under 18 U.S.C. Chapter 227 (as applicable to offenses committed before November 1, 1987), the criminal sentence runs concurrently with the commitment order unless the sentencing judge orders otherwise.

(2) If a civil contempt commitment order is in effect when a criminal sentence of imprisonment is imposed under 18 U.S.C. Chapter 227 (as applicable to offenses committed on or after November 1, 1987), the criminal sentence runs consecutively to the commitment order unless the sentencing judge orders otherwise.

* * * * *

[FR Doc. 00–13301 Filed 5–25–00; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 543

[BOP–1098–F]

RIN 1120–AA94

Federal Tort Claims Act

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document adopts as final the proposed rule pertaining to the Federal Tort Claims Act in accordance with the mandate to use plain language. The amendment is intended to provide clearer instructions for filing and processing a claim with the Bureau for money damages for personal injury or death and/or damage to or loss of property.

EFFECTIVE DATE: June 26, 2000.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its regulations in 28 CFR 543, subpart C, on the Federal Tort Claims Act. A proposed rule on this subject was published in the **Federal Register** on June 14, 1999 (64 FR 32172). The Bureau received comment from three respondents.

One commenter filed a tort claim alleging that the proposed rule and various other Bureau policies were vague and unclear. No specifics, however, were provided as to the proposed tort claim procedures. This commenter's claim is being processed in accordance with the existing procedures for tort claims. The second commenter stated that the proposed revision was plain and concise. This commenter also expressed the opinion that the current procedures were cumbersome and slow. As noted above, the intent of the revision is to provide clearer instructions for filing and processing a claim with the Bureau for money damages for personal injury or death and/or damage to or loss of property. The Bureau believes that revising the procedures for clarity will also serve to help expedite the process. The third commenter was seeking guidance whether to submit a warranty claim or to file a tort claim for damaged property. The tort claim procedures are available for use. It would be a conflict of interest for the Bureau to advise an inmate on the question of using the tort claim procedures or other available avenues of redress in any specific instance.

With due consideration to the comments received, the Bureau has determined to adopt the proposed rule as final. In adopting the proposed rule as final, the Bureau is amending proposed § 543.32(d) to reflect the role of the Department of Justice's Torts Branch in deciding administrative claims for amounts beyond delegated settlement authority. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were

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deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic at the address listed above.

List of Subjects in 28 CFR Part 543

Claims, Prisoners.

Kathleen Hawk Sawyer,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(o), part 543 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 543—LEGAL MATTERS

1. The authority citation for 28 CFR part 543 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510 1346(b), 2671–80; 28 CFR 0.95–0.99, 0.172, 14.1–11.

2. Subpart C is revised to read as follows:

Subpart C—Federal Tort Claims Act

Sec.
543.30 Purpose and scope.
543.31 Filing a claim.
543.32 Processing the claim.

Subpart C—Federal Tort Claims Act

§ 543.30 Purpose and scope.

Pursuant to the Federal Tort Claims Act, a claim for money damages for personal injury or death and/or damage to or loss of property must be filed against the United States by the injured party with the appropriate Federal agency for administrative action. General provisions for processing administrative claims under the Federal Tort Claims Act are contained in 28 CFR part 14. The provisions in this subpart describe the procedures to follow when filing an administrative tort claim with the Bureau of Prisons.

§ 543.31 Filing a claim.

(a) *Who may file a claim?* You may file a claim if you are the injured person or the owner of the damaged or lost property. A person acting on your behalf as an agent, executor, administrator, parent, guardian, or other representative may file a claim for you if the person provides a written statement signed by you giving that person permission to act for you. A representative may also file a claim for wrongful death. If you hire a lawyer or authorize a representative to act on your behalf, the agency will correspond only with that representative, and will not continue to correspond with you.

(b) *Where do I obtain a form for filing a claim?* You may obtain a form from staff in the Central Office, Regional Offices, Bureau institutions, or staff training centers.

(c) *Where do I file the claim?* You may either mail or deliver the claim to the regional office in the region where the claim occurred. If the loss or injury occurred in a specific regional office or within the geographical boundaries of the region, you may either mail or deliver the claim to that regional office. If the loss or injury occurred in the Central Office, you may either mail or deliver the claim to the Office of General Counsel, Central Office. If the loss or injury occurred in one of the training centers, you may either mail or deliver the claim to the Associate General Counsel, Federal Law Enforcement Training Center. 28 CFR part 503 lists Bureau institutions by region and also contains the addresses of the Central Office, regional offices and training centers.

§ 543.32 Processing the claim.

(a) *Will I receive an acknowledgment letter?* Yes. If you have provided all necessary information to process your claim (such as time, date, and place where the incident occurred, and a specific sum of money you are requesting as damages), you will receive an acknowledgment letter indicating the filing date and a claim number. The filing date is the date your claim was first received by either the Department of Justice or an office of the Bureau of Prisons. You should refer to your claim number in all further correspondences with the agency. Additionally, you must inform the agency of any changes in your address. If you fail to provide all necessary information, your claim will be rejected and returned to you requesting supplemental information.

(b) *Will I be notified if my claim is transferred?* Yes. If your claim is improperly filed, you will be notified by the responsible office that your claim was transferred to another regional office, the Central Office, a training center, or another agency.

(c) *Will an investigation be conducted?* Yes. The regional office ordinarily refers the claim to the appropriate institution or office for investigation. You may also be required to provide additional information during the investigation. Your failure to respond within a reasonable time may result in the rejection or denial of the claim.

(d) *Who will decide my administrative claim?* The Regional Counsel or his or her designee reviews the investigation and the supporting evidence and renders a decision of all claims properly filed in the regional office and within regional settlement authority. The Regional Counsel has limited settlement authority (up to an amount established by the Director, Bureau of Prisons). After considering the merits of the claim, the Regional Counsel may deny or propose a settlement of the claim. The General Counsel will investigate and propose settlement for all claims properly filed in the Central Office in accordance with delegated settlement authority. If the proposed settlement exceeds the General Counsel's authority, the General Counsel will seek approval from the appropriate Department of Justice officers.

(e) *Will my claim be reviewed by or referred to the Central Office?* If the Regional Counsel recommends a proposed settlement in excess of the settlement authority, the claim will be forwarded, with a recommendation, to the Office of General Counsel, Central Office for their review.

(f) *Will appreciation or depreciation be considered?* Yes. Staff will consider appreciation or depreciation of lost or damaged property in settling a claim.

(g) *If my claim is denied or I am dissatisfied with a settlement offer, what are my options?* If your claim is denied or you are dissatisfied with a settlement offer, you may request, in writing, that the Bureau of Prisons reconsider your claim in the administrative stage. You should include additional evidence of injury or loss to support your request for reconsideration. If you are dissatisfied with the final agency action, you may file suit in an appropriate U.S. District Court as no further administrative action is available.

(h) *What if I accept a settlement of my claim?* If you accept a settlement, you give up your right to bring a lawsuit against the United States or against any employee of the government whose action or lack of action gave rise to your claim.

(i) *How long will it take to get a response?* Generally, you will receive a decision regarding your claim within six months of when you properly file the claim. If you have not received a letter either proposing a settlement or denying your claim within six months after the date your claim was filed, you may assume your claim is denied. You may proceed to file a lawsuit in the appropriate U.S. District Court.

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May 26, 2000

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
National Parks Air Tour Management; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

National Parks Air Tour Management

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of statutory requirement.

SUMMARY: The FAA publishes this document to inform commercial air tour operators of recent legislation that affects them. The National Parks Air Tour Management act of 2000, part of Public Law 106–181, was signed into law on April 5, 2000. The Act requires operators who conduct commercial air tours under Part 92 over national parks, tribal lands within such parks, or tribal lands abutting such parks to apply to the FAA to obtain a certificate under Part 119, Part 121, or Part 135 to continue these commercial air tour operators. Excluded from this law are parks in Alaska and Grand Canyon national Park and Rocky Mountain National Park. The FAA publishes this document to assist commercial air tour operators, who conduct some air torus under Part 91, in meeting the requirements of the public law.

DATES: By July 5, 2000, commercial air tour operators conducting air tours over national parks or tribal lands under Part 91 must apply to the FAA for certification as an air carrier or commercial operator under Part 119 unless excepted.

ADDRESSES: Part 92 operators conducting commercial air tours must apply for certification to the Flight Standards District Office (FSD) which is located in the geographic area of the operator's principal business office.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Flight Standards Service (AFS–200), Federal Aviation Administration, Seventh and Maryland Streets, SW, Washington, DC 20591; Telephone: (202) 493–4981. Readers who wish more information on national park unit should visit the National Park Service's web at *http://nps.gov/* or call Howie Thompson, National Park Service at (303) 969–2461.

SUPPLEMENTARY INFORMATION:

Background

There are currently 379 units of the National Park System in the United States. The National Park System is defined as any area of land and water administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes. For purposes of the National Parks Air Tour Management Act of 2000, the term "national park" includes all of these types, but does not include other lands under National Park Service control that are not specifically designated as units of the National Park System.

In May 1997 the Secretaries of Interior and Transportation established the National Parks Overflights Working Group (NPOWG) to "define the process to reduce or prevent the adverse effects of commercial sightseeing flight over units of the national park system." The NPOWG met from May 1997 until November 1997 and produced a recommendation for rulemaking for the FAA and National Park Service (NPS) to use in drafting a proposed regulation.

Subsequently, the Congress accepted the recommendation that it enact legislation based on the NPOWG's consensus product. The legislation requires that the two agencies work in a cooperative effort to protect the parks.

Operators Conducting Commercial Air Tour Operation Under Part 91

Public Law 106–181, commonly known as the FAA Reauthorization Act, was signed into law on April 5, 2000. Section 803(a) of the FAA Reauthorization Act added Section 40128 to Title 49 of the United States Code. Section 40128(a)(4) of Title 49 of the U.S. Code requires that air tour operators conducting air tour operations under Part 91 (14 CFR Part 91) apply for operating authority under Parts 119, 121, or 135 (14 CFR Parts 119, 121, 135) within 90 days after date of enactment. However, paragraph (a)(3) allows commercial air tour operators to continue operating over parks under Park 91 if such activity is permitted under Part 119, the operator secures a letter of agreement from the Administrator and the national park superintendent for that particular park, and the total number of operations under this exception is limited to not more than 5 flights in any 30-day period. Note that this exception limits the "total number of operations * * * to not more than 5 flights in any 30-day period over a particular park". Since § 119.1(e)(2) of Title 14 of the Code of Federal Regulations, which allows sightseeing flights within a 25-mile radius of an airport to be conducted under Part 91, is still in effect, it would apply to these operators. Operators will be allowed to continue to operate over parks and tribal lands if the conditions of 49 U.S.C. Section 40128(a)(3) are met. Commercial air tour operators who conduct air tour flights under Part 91 must apply for certification under Part 119, 121, or 135 unless they wish to continue to operate in compliance with requirements of (a)(3).

The FAA understands that an operator will not be able to obtain a certificate in 90 days Operators should contact their local FSDO for information on certification as an air carrier or commercial operator, in addition to applying for a letter of agreement to operate in the interim. Application may be initiated by phone or facsimile.

Next Actions

The FAA realizes that additional regulations will be needed to establish the altitude by which a commercial air tour operation will be defined. (See 49 U.S.C. 40128(f)(4)(A).) Additional rulemaking will be necessary to establish the competitive bidding process for limited capacity parks. (See 49 U.S.C. § 40128(a)(1)(B).) Congress required the Administrator, in cooperation with the Director of the NPS, to consider several factors in making selections under a competitive bidding process, including quiet technology issues.

Additional rulemaking will also address interim operating authority for commercial air tour operators conducting air tour operations under Part 121 or Part 135.

Because Public Law 106–181 is now in effect, the FAA intends to issue a notice of proposed rulemaking to propose the minimum altitude which would complete the statutory definition of a "commercial air tour operation." See 49 U.S.C. Section 40128(f)(4)(A)(i).

Issued in Washington, DC on May 11, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 00–13368 Filed 5–24–00; 10:58 am]

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Federal Register

Friday,
May 26, 2000

Part VIII

Nuclear Regulatory Commission

Arizona Public Service Company et al.; Consideration of Approval of Application Regarding Proposed Corporate Restructuring of Public Service Company of New Mexico and Conforming Amendments, and Opportunity for a Hearing; Notice

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, stn 50–529, and STN 50–530]

Arizona Public Service Company, et al.; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring of Public Service Company of New Mexico and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating Licenses Nos. NPF–41, NPF–51, and NPF–74 for the Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, respectively, to the extent held by Public Service Company of New Mexico (PNM), one of seven joint owners or lessees of Palo Verde. The indirect transfers would occur in connection with a proposed corporate restructuring of PNM. The Commission is also considering approving conforming license amendments to reflect the proposed renaming of PNM, which is part of the restructuring plan for PNM. The facility is located in Maricopa County, Arizona.

According to an application filed by PNM dated March 3, 2000, the proposed indirect transfers of the Palo Verde licenses as held by PNM would be to a newly created holding company, Manzano Corporation (Manzano). Manzano, which presently exists as a subsidiary of PNM, was formed to eventually become the holding company for PNM to implement the public utility restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999. The proposed restructuring of PNM encompasses the formation of Manzano as a holding company, the transfer by PNM of its electric and gas transmission and distribution businesses to an affiliated company (with PNM and such affiliated company being under common control by Manzano), and a change in PNM's name to Manzano Energy Corporation (Manzano Energy).

Arizona Public Service Company, the sole licensed operator of the facility, would remain as the managing agent for the joint owners or lessees of the facility and would continue to have exclusive responsibility for the management, operation, and maintenance of Palo Verde. The application does not propose a change in the rights, obligations, or interests of the other licensees of Palo Verde. In addition, no physical changes to Palo Verde or operational changes are being proposed.

By letter dated April 26, 2000, Arizona Public Service Company submitted the associated conforming amendments request. The proposed amendments would reflect the change in the name of Public Service Company of New Mexico to Manzano Energy Corporation in the licenses.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By June 15, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon counsel for PNM, Matias F. Travieso-Diaz, Esq., Shaw Pittman, 2300 N Street, NW, Washington, DC 20037; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by June 26, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the license transfer application filed by PNM dated March 3, 2000, and the application for the proposed license amendments filed by the Arizona Public Service Company dated April 26, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov*.

Dated at Rockville, Maryland this 23rd day of May 2000.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Section 2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reator Regulation.

[FR Doc. 00–13426 Filed 5–25–00; 8:45 am]

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Part IX

The President

Proclamation 7312—National Maritime Day, 2000

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Presidential Documents

Title 3—

The President

Proclamation 7312 of May 22, 2000

National Maritime Day, 2000

By the President of the United States of America

A Proclamation

Americans have always looked to the sea as a source of prosperity and security. Bounded by two oceans and the Gulf of Mexico, with the Great Lakes, the Saint Lawrence Seaway, scores of harbors, ports, and inlets, and thousands of miles of inland river shorelines, our Nation has been blessed with an unparalleled means of moving passengers and freight, protecting our freedom, and linking our citizens with the world.

Today, 95 percent of our imports and exports are moved by water—more than one billion metric tons of cargo—and our waterways currently handle 140 million passengers a year. Our domestic fleet is one of our most productive and cost-effective modes of transportation, moving 24 percent of the Nation's cargo at less than 2 percent of America's total freight cost. The men and women of the U.S. Merchant Marine and the thousands of other workers in our Nation's maritime industry have made immeasurable contributions to our economic strength, standard of living, and leadership in the global marketplace.

The U.S. Merchant Marine plays an equally important role in maintaining our national security. In times of conflict or crisis, the Armed Forces rely upon the Merchant Marine's sealift capability to transport critically needed equipment and supplies. Time and again, American mariners have demonstrated their willingness and ability to meet often daunting challenges. From World War II to Korea to Vietnam, from Desert Storm to the Balkans and in numerous incidents in between, the U.S. Merchant Marine has responded with courage, patriotism, and a steadfast devotion to duty.

The 21st century will hold new challenges for our maritime industry, including an anticipated doubling of cargo and passenger traffic in the next two decades. If we are to meet those challenges, we must maintain a robust U.S.-flag fleet, crewed by American mariners. Last September, the Secretary of Transportation presented to the Congress a blueprint for modernizing our Marine Transportation System—the waterways, ports, railways, and roads that move people and goods to, from, and on the water. We must build more and better ships, modernize our shipyards, create deeper ports for today's ever larger containerships and ocean liners, and maintain a skilled maritime workforce. We must also ensure that local, State, and Federal agencies, the U.S. military, the maritime industry, shippers, labor unions, environmental groups, and other concerned organizations work in partnership to carry out this blueprint.

As we celebrate National Maritime Day this year, we also mark the 50th anniversary of the U.S. Maritime Administration. Throughout the past five decades, the dedicated men and women of this agency have worked to improve the competitiveness of our maritime industry in world markets and to strengthen our ability to respond swiftly and effectively in times of crisis. On behalf of a grateful Nation, I salute these outstanding public servants for their commitment to the U.S. Merchant Marine and to the shipbuilding, repair services, ports, and intermodal water and land transportation systems they need to function efficiently.

In recognition of the importance of the U.S. Merchant Marine to our Nation's prosperity and security, the Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as "National Maritime Day" and has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 22, 2000, as National Maritime Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities and by displaying the flag of the United States in their homes and in their communities. I also request that all merchant ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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Part X

The President

Notice of May 25, 2000—Continuation of Emergency With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), the Bosnian Serbs, and Kosovo

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Presidential Documents

Title 3—

The President

Notice of May 25, 2000

Continuation of Emergency With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), the Bosnian Serbs, and Kosovo

In accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared on May 30, 1992, with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), as expanded on October 25, 1994, in response to the actions and policies of the Bosnian Serbs. In addition, I am continuing for 1 year the national emergency declared on June 9, 1998, with respect to the Federal Republic of Yugoslavia's policies and actions in Kosovo. This notice shall be published in the **Federal Register** and transmitted to the Congress.

On May 30, 1992, by Executive Order 12808, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Governments of Serbia and Montenegro, blocking all property and interests in property of those Governments. President Bush took additional measures to prohibit trade and other transactions with the Federal Republic of Yugoslavia (Serbia and Montenegro) by Executive Orders 12810 and 12831, issued on June 5, 1992, and January 15, 1993, respectively, and on April 25, 1993, I issued Executive Order 12846 imposing additional measures.

On October 25, 1994, I expanded the scope of the national emergency by issuing Executive Order 12934 to address the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the actions and policies of the Bosnian Serb forces and the authorities in the territory that they controlled within Bosnia and Herzegovina.

On December 27, 1995, I issued Presidential Determination 96–7, directing the Secretary of the Treasury, *inter alia*, to suspend the application of sanctions imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro) pursuant to the above-referenced Executive orders and to continue to block property previously blocked until provision is made to address claims or encumbrances, including the claims of the other successor states of the former Yugoslavia. This sanctions relief, in conformity with United Nations Security Council Resolution 1022 of November 22, 1995 (hereinafter the "Resolution"), was an essential factor motivating Serbia and Montenegro's acceptance of the General Framework Agreement for Peace in Bosnia and Herzegovina initialed by the parties in Dayton on November 21, 1995, and signed in Paris on December 14, 1995 (hereinafter the "Peace Agreement"). The sanctions imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro) were accordingly suspended prospectively, effective January 16, 1996. Sanctions imposed on the Bosnian Serb forces and authorities and on the territory that they control within Bosnia and Herzegovina were subsequently suspended prospectively, effective May 10, 1996, also in conformity with the Peace Agreement and the Resolution. Sanctions against both the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serbs were subsequently terminated by United Nations Security Council Resolution 1074 of October 1, 1996. This termination, however, did not end the requirement of the Resolution that those blocked funds

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and assets that are subject to claims and encumbrances remain blocked, until unblocked in accordance with applicable law.

Until the status of all remaining blocked property is resolved, the Peace Agreement implemented, and the terms of the Resolution met, the national emergency declared on May 30, 1992, as expanded in scope on October 25, 1994, must continue beyond May 30, 2000.

On June 9, 1998, by Executive Order 13088, I found that the actions and policies of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Republic of Serbia with respect to Kosovo, by promoting ethnic conflict and human suffering, threatened to destabilize countries in the region and to disrupt progress in Bosnia and Herzegovina in implementing the Dayton peace agreement, constituted an unusual and extraordinary threat to the national security and foreign policy of the United States. I therefore declared a national emergency to deal with that threat. On April 30, 1999, I issued Executive Order 13121 to take additional steps with respect to the continuing human rights and humanitarian crisis in Kosovo and the national emergency declared with respect to Kosovo. Because the crisis with respect to the situation in Kosovo has not been resolved, I have determined that it is necessary to maintain in force these emergency authorities beyond June 9, 2000.

William J. Clinton

THE WHITE HOUSE,
May 25, 2000.

[FR Doc. 00–13540
Filed 5–25–00; 1:01 pm]
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H.R. 2412/P.L. 106–203

To designate the Federal building and United States courthouse located at 1300 South Harrison Street in Fort Wayne, Indiana, as the "E. Ross Adair Federal Building and United States Courthouse". (May 22, 2000; 114 Stat. 310)

S. 2370/P.L. 106–204

To designate the Federal building located at 500 Pearl Street in New York City, New York, as the "Daniel Patrick Moynihan United States Courthouse". (May 23, 2000; 114 Stat. 311)

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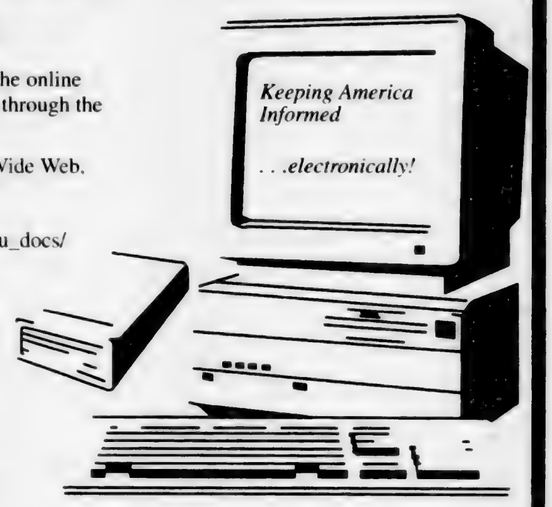

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 318, 319, 381, and 424

[Docket No. 97–001F]

RIN 0583–AC35

Elimination of Requirements for Partial Quality Control Programs

AGENCY: Food Safety and Inspection Service.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the meat and poultry products inspection regulations by removing the remaining requirements pertaining to partial quality control (PQC) programs. A PQC program controls a single product, operation, or part of an operation in a meat or poultry establishment. FSIS is removing the design requirements for PQC programs and the requirements for establishments to have PQC programs for certain products or processes. For example, poultry slaughtering establishments operating under the New Line Speed (NELS) inspection system and the New Turkey Inspection System (NTIS) will no longer be required to operate PQC programs in conjunction with those systems. FSIS also is removing from the thermal processing regulations all requirements concerning PQC programs, the requirements for case-by-case FSIS approval of systems and devices not specified in the regulations, and several other prior approval requirements. The amended regulations will be more consistent with the Pathogen Reduction (PR)/Hazard Analysis and Critical Control Points (HACCP) regulations and inspected establishments will have greater flexibility to adopt new technologies and methods that will improve food safety and other consumer protections.

EFFECTIVE DATE: August 28, 2000. The material incorporated by reference is approved by the Director of the Federal Register as of August 28, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel L. Engeljohn, Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

FSIS carries out programs designed to ensure that meat, poultry, and egg products are wholesome, not adulterated, and properly marked, labeled, and packaged. FSIS is implementing the "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" final rule published July 25, 1996 (61 FR 38806), to reduce the risk of foodborne illness associated with the consumption of meat and poultry products to the maximum extent possible. The Pathogen Reduction (PR)/HACCP final rule requires establishments to take appropriate and feasible measures to prevent or reduce the likelihood of physical, chemical, and microbiological hazards in the production of meat and poultry products. Specifically, the PR/HACCP final rule: (1) Requires each official meat and poultry establishment to develop and implement written sanitation standard operating procedures (Sanitation SOP's); (2) requires regular microbial testing (for generic *Escherichia coli*) by slaughter establishments to verify the adequacy of the establishment's process controls for the prevention and removal of fecal contamination and associated bacteria; (3) establishes pathogen reduction performance standards for Salmonella that slaughter establishments producing raw ground products must meet; and (4) requires that all meat and poultry establishments develop and implement a system of preventive controls designed to improve the safety of their products, known as HACCP.

HACCP is a conceptually simple, science-based process control system by which food processors identify and evaluate hazards to the production of safe products, institute controls necessary to reduce or eliminate those hazards, monitor the performance of these controls, and maintain records of this monitoring.

FSIS is reviewing its regulations to determine how they can be revised to conform with the PR/HACCP regulations and the regulatory approach they embody. This approach favors performance-based standards over prescriptive, command-and-control regulations. In its December 29, 1995, advance notice of proposed rulemaking (ANPR) "FSIS Agenda for Change: Regulatory Review" (60 FR 67469), FSIS said that by eliminating unnecessary regulations and replacing command-and-control prescriptions with performance standards, inspected establishments would have greater flexibility to adopt innovations that can yield food safety benefits. Identified as candidates for modification or elimination were those regulations that delimit processing and treatment methods intended to address specific food safety hazards and requirements that establish quality control programs.

Under FSIS regulations, a company may choose to place all of the processes and products in a plant under a comprehensive, or total, quality control (TQC) system, or the company may choose to place only individual products or processes under quality control. A quality control program for only one process or product in a plant is known as a partial quality control, or PQC, program. This final rule addresses PQC programs.

Some PQC programs control potential health and safety problems; others focus on economic or quality factors. PQC programs controlling for safety factors include those for thermally processed products, which are intended primarily to prevent toxin formation in the processed product. The programs for cooked beef products are intended to ensure that the processing of the products meets the regulatory requirements for handling, processing (time, temperature, and relative humidity), and storage to prevent pathogen formation in the products. PQC programs that control for product safety have been superseded by required HACCP plans.

PQC programs that control for economic or non-food safety factors include those used to control the fat and water content of hotdogs; the number of

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meatballs in or pepperoni slices on, a product; and the moisture or protein-fat-free (PFF) content of a product labeled "ham, water added." The quality control program for mechanically separated (species) (MS(S)) is intended to control bone particle size, calcium content, fat and protein content, and protein efficiency ratio (9 CFR 319.5). The programs for pressed ham and spiced ham products are intended to ensure that the products meet the PFF regulatory requirements of § 319.104.

PQC programs to control products for economic factors are intended to prevent the marketing of products that are misbranded or that lack the quality or value that consumers expect. A plant operating under a PQC program for net weight keeps records of its checks and corrective actions to avoid lot inspection. Under PQC programs for fat and water in frankfurters, plants keep ingredient records by lot and results of laboratory tests for verification by FSIS inspectors. A plant operating a PQC program for boneless meat inspection does its own on-line inspection and keeps records. The FSIS inspector randomly selects samples of product that the plant has already inspected to ensure that the records are accurate.

FSIS regulations have required establishments to have PQC programs for certain products or processes, such as the one for MS(S), just mentioned. A PQC program for on-line carcass quality control has been required for an establishment operating under either the NELS or the NTIS poultry inspection system (9 CFR 381.76(c)).

In 1997, the Agency published a final rule that, among other things, removed the requirement for FSIS prior approval of most PQC programs (62 FR 45016; August 25, 1997). FSIS now thinks it appropriate to take the further step of eliminating the remaining PQC requirements so that establishments will have the flexibility they need to be innovative, consistent with HACCP and the Agency's regulatory policy.

On May 18, 1999, FSIS proposed to amend the meat and poultry products inspection regulations by removing requirements pertaining to PQC programs, except programs for poultry product irradiation plants (64 FR 26892). The December 23, 1999, final rule "Irradiation of Meat Food Products" removed requirements for quality control programs in such irradiation plants (64 FR 72165).

Comments Received

FSIS received six letters in response to the May 18, 1999, proposal. All were from the regulated industry and all supported the proposal. Some commenters wanted clarification of matters addressed in the preamble of the proposal, and one requested the removal of additional regulatory restrictions. The substantive comments and the Agency's responses are summarized below.

Comment: An organization representing the food processing industry supported the proposed removal from the thermal processing regulations of requirements for FSIS prior approval of systems and devices not specified in the regulations and of all requirements concerning PQC programs. This commenter also recommended the removal from these regulations of additional command-and-control provisions. The commenter asked that, in the regulations on the handling of containers after closure (9 CFR 318.301(f)(2) and 381.301(f)(2)), approval by a processing authority replace the need to obtain the FSIS Administrator's permission for a time lapse between container closing and initiation of thermal processing of greater than two hours.

Response: FSIS set the regulatory maximum 2-hour time period between container closure and initiation of the thermal process in its 1984 canning regulation amendments. The Agency did so to prevent adulteration from the holding of unprocessed products for an extended period, and because it was aware of several documented incidents of illness from staphylococcal enterotoxin in such products. The commenter's suggested change would place the judgment whether to alter the specified time interval between closure and the initiation of thermal processing with the process authority rather than the FSIS Administrator.

A processing authority is an individual or organization with expert knowledge of thermal processing requirements for foods in hermetically sealed containers, having access to facilities for making such determinations, and designated by the establishment to perform certain functions required by the regulations. FSIS already requires the processing authority to perform the vital function of developing and determining the process schedule and specifying the critical factors in the process.

The change suggested by the commenter is consistent with the Agency's stated aim of making the meat and poultry canning regulations more consistent with the Agency's new, non-command-and-control regulatory approach by eliminating some prior approval requirements. With respect to the canning regulations, however, this rulemaking addresses only PQC programs and prior approval requirements other than the one addressed by the commenter. FSIS therefore considers the commenter's request to be outside the scope of this rulemaking.

Comment: The same commenter requested the addition to the regulations on pH measurement in canning plants (9 CFR 318.304(e) and 381.304(e)) of a provision allowing use of colorimetric or other methods in addition to potentiometric methods, provided that the methods are sufficiently accurate to ensure product safety and stability. The commenter also asked for the removal of the requirement for approval by the FSIS Administrator of methods other than the potentiometric. In addition, the commenter requested the removal of the requirement at 9 CFR 318.305(h)(2) and 381.305(h)(2) for approval by the FSIS Administrator for the use in cooling canal water of chemicals other than chlorine that have a bactericidal effect equivalent to that of chlorine.

Response: As stated in the previous response, FSIS proposed to make the thermal processing regulations more consistent with its new regulatory approach by eliminating provisions concerning PQC programs and certain prior approval requirements. FSIS did not propose changes in its requirements for pH measuring devices or chemicals used in cooling canal water. These suggested changes are outside the scope of this rulemaking, and, accordingly, FSIS is not making them in this final rule.

Regarding the regulation on chemicals in cooling canal water, FSIS announced in early 1998 that it was ending its prior approval system for all non-food compounds and proprietary substances (63 FR 7319; February 13, 1998). These classes of substances include water treatment compounds. The program was ended because the Agency considered it to be redundant with those of other Federal agencies and because of the program's inconsistency with the PR/HACCP regulations.

Since establishments are responsible for developing and implementing HACCP plans incorporating the controls necessary and appropriate to produce safe meat and poultry products, FSIS is not responsible for determining whether the nonfood compounds and proprietary substances they use are safe and effective. Therefore, establishments need not obtain the approval of the Administrator to use chemicals other than chlorine in cooling canal water.

Nevertheless, FSIS retains the discretionary authority to prevent the use of such substances in official establishments if the Agency finds, through its normal inspection activities, that the substances directly or indirectly contaminate edible product. FSIS expects establishments to use only compounds that are safe and that have the intended technical effect when used appropriately in a food preparation environment. The Agency expects establishments to keep on file any information provided by chemical manufacturers (written approvals from other agencies, letters of guaranty, etc.) as part of their sanitation SOP, HACCP, or other records.

Comment: The same commenter requested the removal of two other prior-approval requirements in the canning regulations: first, the requirement (in 9 CFR 318.305(a)(2)(ii) and 381.305(a)(2)(ii))for FSIS Administrator approval of recording devices other than temperature/time recording devices; and second, the requirement at 9 CFR 318.305(d)(5) and 381.305(d)(5) that the FSIS Administrator be notified of the use of any batch retorts with steam/air circulation systems.

Response: FSIS proposed the elimination of the requirement for prior-approval of thermometric measuring devices other than mercury-in-glass thermometers (proposed §§ 318.305(a)(1)(ii) and 381.305(a)(1)(ii)). The Agency also proposed the elimination of prior approval requirements for automated process monitoring and recordkeeping systems not specified in the canning processing regulations (proposed §§ 318.307(b) and 381.307(b)). The commenter's suggestion to remove the requirement in §§ 318.305(a)(2)(ii) and 381.305(a)(2)(ii) for prior approval of time/temperature recording devices other than chart-type devices is consistent with the Agency's proposals regarding temperature measurement and automatic process monitoring devices. Accordingly, FSIS is making the requested change to the regulations in this final rule.

Regarding the prior approval of batch retorts with steam-air cooling, FSIS finds the commenter's request to be consistent with the Agency's proposal to eliminate the requirement for prior approval of thermal processing systems other than those delineated in §§ 318.305 and 381.305 of the canning regulations (proposed §§ 318.305(f) and 381.305(f)). FSIS is therefore adopting the requested change in this final rule.

Comment: The same commenter—the organization representing the food processing industry—questioned the intent of the Agency's statement in the preamble of the proposal regarding alternative documented procedures for handling process deviations or finished product inspections. FSIS stated, at 64 FR 26894, that such procedures "would have to ensure that only safe, stable product is shipped in commerce." The procedures would have to ensure that the product is free of microorganisms of public health significance and is not adulterated by other types of bacteria, such as "flat-sour" bacteria or other spoilage organisms.

The commenter thought that the Agency's statement could be misinterpreted to mean that a product might be adulterated if spoilage organisms were merely present in a product not likely to be subject to conditions that would lead to the growth of the organisms and deterioration of the product. Citing the regulatory definition of shelf stability (at 9 CFR 318.300 and 381.300), the commenter pointed out that the presence in low numbers of flat-sour bacteria or other spoilage organisms that would not grow under intended conditions of distribution and storage would not render the product adulterated. However, the growth of spoilage organisms to high numbers that affected product characteristics before or after processing would adulterate the finished product. The product then would not be cleared by a processing authority or released into commerce.

Response: The commenter has accurately explained the intended meaning of the phrase "adulterated by * * * spoilage organisms" in the preamble of the proposal (at 64 FR 26894). In stating the conditions for use of procedures alternative to the existing prescriptive requirements (9 CFR 318.308(d) and 381.308(d); 9 CFR 318.309(d) and 381.309(d)), FSIS assumed the current regulatory definitions of "shelf stability."

Comment: The same commenter questioned whether the Agency's example of an establishment's incorporation of a PQC program for raw materials in the establishment's HACCP plan (at 64 FR 26896) might imply that non-food safety regulatory concerns might become part of HACCP systems, which only address food safety issues.

Response: FSIS agrees with the commenter that HACCP systems are only intended to control food safety hazards. The Agency recognizes the potential for misunderstanding that can arise when PQC programs and HACCP systems are discussed because PQC programs may address either safety or quality issues or both. The context of the statements to which the commenter refers was the analysis of benefits of the rule. One benefit to establishments is a possible efficiency gain through integration of some facets of quality control with HACCP. FSIS meant to suggest by its example that a food safety-related PQC program or other food safety process control could be used in the context of an establishment's HACCP plan. The HACCP plan would include a critical control point for raw materials only if the hazard analysis identified a food safety hazard associated with raw materials. Raw material control is identified as a CCP in many HACCP plans and is not so identified in others. A PQC program for raw materials or any other step in processing a product would be relevant to HACCP and be subject to being subsumed in or superseded by a HACCP plan only if it were food safety-related.

Comment: The food-processing industry organization also read proposed § 318.308(b)(2) and § 381.308(b)(2) as inadvertently depriving very small establishments of the option of using the alternative procedures for handling process deviations (§ 318.308(d) and § 381.308(d)).

Response: The proposal language did not exclude any canning establishment without a HACCP plan that addresses microbial hazards from using the procedures in paragraph (d) of § 318.308 or § 381.308. Further, under the final rule, these procedures will continue to be available to establishments whose HACCP plans do not address microbial hazards.

Comment: Three of the commenters—the food-processing industry organization, an organization representing the Nation's turkey industry, and a producer of processed meat and poultry products—wanted FSIS to continue to recognize the value of PQC programs, and particularly of those programs that the Agency has previously approved. The food-processing industry organization expressed concern that such programs might automatically become invalid when the final rule goes into effect. The organization wanted the Agency to address this matter in implementing notices or directives to the FSIS field force lest previously approved procedures have to be re-documented.

Response: FSIS has not changed its policy of encouraging establishments to adopt statistically sound quality control systems. FSIS recognizes, however, that product formulations, processing operations, and technology may change over time, and that establishments should have the ability to change the variables and parameters of their control programs without seeking Agency revalidation of those programs. The Agency is therefore removing the

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prescriptive, command-and-control regulatory requirements that may inhibit innovation—especially innovation that may yield food safety benefits. The Agency's approval process for PQC programs was part of that old command-and-control system.

Obviously, a PQC program that the Agency approved in the past may still be regarded as useful if no significant changes have been made in the process or product controlled. However, the proof of the program's effectiveness must be found primarily in the data collected under the program or other studies of the product or process controlled and not in an old approval letter. This is particularly the case with respect to food safety-related PQC programs. Where food safety is concerned, FSIS will be relying primarily on its verification of HACCP systems to determine whether official establishments are taking sound control measures.

Regarding the enforcement of this final rule, FSIS will issue appropriate instructions to its field force. Many of the changes necessary to carry out this final rule have already been instituted with the revision of the Agency's automated system for directing inspection program activities.

Comment: An organization representing the meat and poultry canning industry supported the proposal but thought the preamble should have expanded on how and why the elimination of PQC programs would not diminish consumer confidence. The commenter thought that FSIS should have furnished a more comprehensive explanation of PR/HACCP for readers unfamiliar with it, and of why and how PR/HACCP systems make PQC programs redundant. The commenter also thought the explanation for the elimination of specific PQC requirements was insufficient to allay consumer skepticism or fears about eliminating such requirements. In particular, a more substantial justification should have been given for removing FSIS case-by-case approval of thermal processing systems not specifically delineated in the regulations. In this context, the commenter thought that FSIS should have discussed the fact that scientific evaluation of all new processes by competent experts is a long-established practice of the canned food industry.

Response: FSIS made an editorial decision to limit the explanation of the PR/HACCP final rule and its underlying principles because they had been fully discussed in previous Agency publications and at the many public meetings and media events conducted since 1995. The PR/HACCP final rule and the other documents referred to in the preamble of the proposal were made available for public viewing in the FSIS Docket Room at the address given in the proposal. Nevertheless, in response to the commenter's suggestion, FSIS has added, near the beginning of this preamble, a summary of the main features of the PR/HACCP final rule.

While FSIS may not have provided a discussion of PR/HACCP sufficient to satisfy the commenter, the Agency did state in the proposal that requirements for PQC programs that control for product safety have been superseded by required HACCP plans (64 FR 26893, col. 1). The Agency also stated that requirements pertaining to PQC programs that control food safety factors are inconsistent with PR/HACCP (64 FR 26894, col. 3). The Agency further stated or implied in a number of places (64 FR 26892, col. 3; 26893, col. 3; 26894, col. 1, col. 3; 26895, col. 2, col. 3; and 26896, col. 2) that regulatory requirements for PQC programs tend to restrict innovation and perpetuate the command-and-control approach to food inspection and regulation. Such regulatory requirements are not in keeping with the Agency's new approach of defining industry compliance with performance-related objectives.

On the matter of consumer protection, the Agency stated that the proposed rule was intended to provide inspected establishments with flexibility and to encourage them to adopt new technologies and methods that will improve food safety and other consumer protections (64 FR 26892, 26895 col. 2). The Agency also stated, with respect to PQC programs required to ensure compliance with regulatory limits on certain restricted ingredients (64 FR 28693, col. 3) and with product standards, that the limits and standards themselves, as well as product labeling requirements, would continue to protect consumers (64 FR 26894, col. 3; 26895, col. 1).

FSIS stated that PQC programs were not necessary to ensure food safety protection where HACCP plans were in operation (64 FR 26894, col.2). It may be that FSIS could have said more about its regulatory provisions for continued consumer protection, but in the Agency's judgment, what it said was sufficient for the purposes of the rulemaking.

On the elimination of case-by-case approval of new types of thermal processing systems in 9 CFR 318.305(f) and 381.305(f), new systems must still meet the applicable requirements governing equipment and heat processing procedures and be capable of producing shelf-stable products consistently and uniformly. FSIS stated in the preamble of the proposal (at 64 FR 26894) that these requirements reflect the basic purposes of the canning regulations.

The canning regulations continue to address such matters as: container integrity before and after fill; container closure; thermal processing schedules; critical factors; operations in the thermal processing area; processing and production records; deviations in processing; finished product standards; recalls; and the role of the processing authority. FSIS has recognized that the thermal processing regulations are HACCP-consistent with respect to the control of microbial hazards and has supplemented them with a requirement for HACCP plans that address physical and chemical hazards. The Agency also realizes, however, that many of these regulations are excessively prescriptive and in its December 29, 1995, ANPR, cited above, listed them among candidates for revision or removal in conjunction with HACCP implementation.

The commenter's statement about the canning industry's practice of having all new processes evaluated scientifically by competent experts is a point well taken. Both the FDA and the FSIS regulations governing thermally processed, low-acid foods in hermetically sealed containers require thermal process schedules to be established by qualified persons—processing authorities—who have expert knowledge of thermal processing requirements for such foods and access to the facilities to make the necessary determinations (21 CFR 113.83; 9 CFR 318.302, 381.302). These requirements remain in effect for canned products. Also, FSIS has thought well enough of the process-authority concept to make use of it in the final rule "Performance Standards for the Production of Certain Meat and Poultry Products" (64 FR 732; January 6, 1999). Under that final rule, affected products not produced under a HACCP plan must be produced according to a process schedule approved in writing by a process authority for safety and efficacy in meeting the performance standards applicable to the product.

Regarding the interest commenters have shown in the few changes in the canning regulations to be made in this final rule, FSIS notes that in the December 29, 1995, ANPR cited above, FSIS listed the requirements for canning and canned products as candidates for reform. Possible actions to be taken were the conversion of these requirements to performance standards and clarifying the role of inspection program employees. A future rulemaking to reform the canning regulations remains under consideration.

Regulation Changes Adopted

FSIS is eliminating the requirement in 9 CFR 317.21(b) that establishments have, as an alternative to State or local certification of scales, PQC programs or total quality control system provisions for checking the accuracy of scales. The Agency will simply require that there be a certification of accuracy from State or local authorities or from a State-registered or -licensed scale repair firm or person. Establishments can, of course, continue to maintain scale-checking provisions in their QC programs and systems.

The Agency is removing from the meat and poultry inspection regulations the design requirements for partial quality control programs (9 CFR § 318.4(d), § 381.145(d)).

FSIS also is removing quality control requirements governing the use of nitrites in bacon curing and the use of certain organic acids singly or in combination to delay the discoloration of fresh meat cuts (9 CFR 424.21–.22). Such requirements are incompatible with the Agency's regulatory objectives because they specify a manner of compliance rather than simply a performance standard. Both the nitrite and the organic acid regulations clearly state the maximum limits of use of the substances they concern. Also, the consumer is informed by product labeling of the presence of the substances in products. The regulations provide clear limits and adequate consumer protections without the quality control requirements. In addition, the Agency is improving the accuracy of the regulation by using the term "production of botulinum toxin" rather than "growth of botulinum toxin" (see 9 CFR 424.22(b)(1)(ii)(B)).

FSIS is eliminating a number of prior-approval requirements from the meat and poultry canning regulations. The Agency is replacing the requirement that the Agency approve temperature-indicating devices other than mercury-in-glass thermometers (at §§ 318.305(a)(1)(ii) and 381.305(a)(1)(ii)) before they could be used. The devices must meet known standards of accuracy for such devices, but the Agency is not prescribing the frequency of testing for accuracy.

The Agency is removing the requirement for FSIS prior-approval of the use of time/temperature recording devices other than chart-type devices. The alternative devices must meet known standards of accuracy (9 CFR 318.305(a)(1)(ii) and (a)(2)(ii); 9 CFR 381.305(a)(1)(ii) and (a)(2)(ii)).

In response to comments, the Agency is removing the requirement at 9 CFR 318.305(d)(5) and 381.305(d)(5) that the FSIS Administrator be notified of the use of any batch retorts with steam/air circulation systems. As explained previously in this document, FSIS regards this action as consistent with the proposed rule.

As proposed, the Agency is removing the requirement for FSIS case-by-case evaluation and prior approval of systems for thermally processing canned product other than those systems specifically delineated in the regulations. Such alternative systems must still be adequate for producing shelf-stable product consistently and uniformly. (9 CFR 318.305(f), 381.305(f).)

FSIS is removing from the thermal processing regulations (9 CFR 318.307(b) and 381.307(b)) requirements for FSIS approval of automated process monitoring and recordkeeping systems.

The Agency also is removing from the thermal processing regulations the requirements in §§ 318.308 and 309 and §§ 381.308 and 309 concerning partial quality control programs to control process deviations and establishment finished product inspection procedures. The Agency finds that these requirements are unnecessary. The remaining provisions in these sections, which are based on HACCP principles, remain as acceptable protections against potential microbial contamination.

The proposal would have provided additional options for establishments, such as handling the deviations under an approved total quality control system or using alternative documented procedures until the PR/HACCP rule became applicable to the establishment. The alternative documented procedures could have included partial quality control programs or other documented corrective action, monitoring, or recordkeeping procedures developed by or for the establishment, but not subject to FSIS approval. Such food safety-related PQC programs were to be integrated in or superseded by the establishment's HACCP plan. Because the effective date of the final rule is after January 25, 2000, however, the PR/HACCP regulations will be applicable to all establishments that are subject to the final rule. Thus, there is no need to provide options for establishments that are not yet subject to the PR/HACCP requirements. Deviations in processing will need to be handled according to a HACCP plan that addresses hazards associated with microbial contamination or by the alternative procedures for handling deviations during processing or through record review (§§ 318.308(d) and 381.308(d)).

A thermal processing establishment will have available at least three alternatives for handling finished product inspections. The finished product inspections could be handled under: (1) The existing regulations (§§ 318.309(d) and 381.309(d)); (2) a HACCP plan; or (3) alternative documented procedures for handling finished product inspections. The alternative documented procedures can be PQC programs or the HACCP plan provisions.

In any case, any alternative procedures for handling process deviations or finished product inspections will have to ensure that only safe, stable product is shipped in commerce. The procedures will have to ensure that the product is free of microorganisms of public health significance, and that it does not contain other types of microorganisms, such as "flat-sour" bacteria or other viable spoilage organisms, that could cause adulteration under intended conditions of distribution and storage of the product. This requirement is consistent with the aims of HACCP and with the statutory prohibitions against the distribution of adulterated and misbranded meat and poultry products in commerce.

These amendments and revisions will make the thermal processing regulations more consistent with the PR/HACCP final rule by explicitly providing a HACCP-plan alternative (consistent with §§ 417.2(b)(3)) to the prescriptive procedures in §§ 318.309(d) and 381.309(d). The amended and revised regulations also include, as an option for handling process deviations or final product inspections, alternative documented procedures that ensure that only safe and stable products are shipped in commerce. This option will provide the establishment with the flexibility to use PQC programs or other procedures that meet a regulatory public health standard.

It should be noted that, under the HACCP regulations, an establishment's HACCP plan does not have to address potential microbial hazards in thermally processed/commercially sterile product if the establishment is following the current regulatory requirements for such product. However, the HACCP plan must address physical and chemical hazards to which the product may be subject.

Besides removing the requirements pertaining to PQC programs that control food safety factors, which are

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inconsistent with PR/HACCP, FSIS is removing the requirements affecting economic or quality-related PQC programs. FSIS considers both the food safety-related and the economic PQC requirements to be too prescriptive. They tend to perpetuate the command-and-control approach to food inspection and regulation. They are not in keeping with the Agency's new regulatory approach, which is oriented more toward monitoring industry compliance with performance-related objectives.

FSIS is removing the QC system requirements from the regulations and requirements governing the identity and composition of MS(S) product and label approval of the product (9 CFR 319.5). The MS(S) regulations specify the maximum calcium content, the minimum protein content, the protein efficiency ratio, the maximum fat content, and the maximum bone particle size for the product. The regulations also specify the elements that the QC system must contain, including a written description of the methods used by the establishment to maintain uniformity of raw materials used in manufacturing product and to control handling and processing of the raw materials and finished product. The regulations also specify the sample size and sampling frequency for food-chemistry analysis of product to determine compliance with the standards. FSIS regards these provisions as overly prescriptive and believes that, to achieve the purposes of the MS(S) regulations, it is sufficient to set the product standards for fat, protein, calcium content, and bone particle size.

The Agency also is updating the provision for finished product samples to be analyzed according to methods of the Association of Official Analytical Chemists (AOAC) or methods listed in the FSIS "Chemistry Laboratory Guidebook" to reflect use of the most recent edition of the AOAC compendium. In addition, establishments will have the latitude to use validated scientific methods equivalent to, but not listed in, the AOAC and FSIS references. They will have the flexibility to choose the most appropriate means of ensuring that MS(S) meets the compositional and labeling identity requirements of the regulations. The Agency cautions, however that, if the establishment is to adequately protect its interests, it should ensure that the method that it uses will produce results comparable to the relevant AOAC or FSIS method.

Second, FSIS is eliminating the quality control program requirements from the protein-fat-free (PFF) percentage regulations (§§ 319.104 and 319.105) for various "finely divided" cured ham products, such as patties, chopped or pressed ham, and spiced ham. Establishments, however, must continue to comply with the PFF percentage limits for these products.

Finally, FSIS is removing the requirement that poultry slaughtering establishments operating under the NELS and NTIS inspection systems have PQC programs for carcass defects. The establishments will now have the flexibility to adopt quality control programs or other measures for ensuring the quality of their products. Removing the prior-approval aspect of these requirements contributes to clarifying the respective roles of the inspection service and the regulated industry—a necessary task in making the requirements consistent with HACCP.

FSIS inspectors will continue to check poultry in NELS and NTIS plants for visible contamination and carcass trimming defects.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be significant, though not economically significant, and was reviewed by the Office of Management and Budget under Executive Order 12866.

FSIS is eliminating the regulatory requirements pertaining to establishment-operated PQC programs. This action removes regulatory obstacles to innovation and command-and-control requirements, which are inconsistent with the Agency's new regulatory approach and the objectives of the PR/HACCP regulations. In the Agency's August 25, 1997, final rule "Elimination of Prior Approval Requirements for Establishment Drawings and Specifications, Equipment, and Certain Partial Quality Control Programs" (62 FR 45016), the requirements for FSIS prior approval of most PQC programs were eliminated. This action was taken to facilitate the transition to HACCP in official establishments producing the greatest portion of meat and poultry products consumed in the United States. FSIS is now taking the additional step of eliminating the remaining requirements for establishments to have PQC programs for specific products or processes, as well as design requirements affecting PQC programs.

The alternatives to this rulemaking that FSIS considered were, in addition to the alternative of no rulemaking, those of mandating additional in-plant controls and mandating general requirements and standards for PQC programs.

The alternative of no rulemaking would impose no additional regulatory burdens on establishments, which would continue to have the assurance that their PQC programs meet basic design criteria. However, the Agency rejected this alternative. The failure to change the regulations would leave in place a prescriptive regulatory regime for process controls and PQC programs that also conflicts in a material way with the objectives of the PR/HACCP final rule. Under HACCP, establishments assume responsibility for building science-based, preventive process controls into the food production system to reduce or eliminate food safety hazards. This responsibility includes ensuring that processes conform with sound food safety performance standards. Establishments need to be able to implement better and more innovative food safety and other consumer-protection strategies, including having flexibility to design a PQC program and determine its content and implementation date.

The alternative of mandating additional in-plant controls, whether in addition to or in lieu of PQC requirements, would add regulatory assurances that processes are under control and that products are safe, wholesome, and not misbranded. However, this alternative would add prescriptive, command-and-control requirements and restrict the scope for establishment food safety initiatives, contradicting the Agency's new regulatory approach. The additional requirements also would likely not result in food safety improvement.

The alternative of mandating new general requirements or standards for PQC programs would differ little in its effects from the current requirements for PQC programs to have certain features and for process control under the programs to be based on generally accepted statistical principles (9 CFR 318.4(d); 381.145(d)). Even if the current requirements were condensed, they would still be inconsistent with the PR/HACCP regulations and with the Agency's new regulatory approach, establishments would continue to incur a substantial recordkeeping burden, and the Agency would have nearly the same burden as it now does of verifying establishment compliance with the requirements.

FSIS chose the option of eliminating regulatory requirements for all PQC programs except QC programs for the irradiation of poultry products. (As mentioned previously, the final rule "Irradiation of Meat Food Products" removed requirements for poultry irradiation QC programs.) This option provides establishments with the most flexibility in implementing process control programs in a HACCP environment.

This final rule will affect, overall, as many as 72 poultry slaughtering establishments and about 3,550 establishments that process meat and poultry products beyond slaughtering, dressing, and cut-up. The most far-reaching effect of the rule will be to increase the flexibility establishments have in controlling their processes. This benefit arises from eliminating the required PQC program elements in §§ 318.4(d) and 381.145(d).

With or without this final rule, establishment HACCP plans will supersede or incorporate the few PQC programs that control food safety factors. Under the final rule, most establishments that have PQC programs that control for non-food safety factors will continue to use the programs. In all likelihood, in developing new PQC programs, they will continue to include the information now required by FSIS. They will also be free to adopt other methods of process control and different techniques of observation, measurement, documentation, recordkeeping, and evaluation than are prescribed in the current regulations. They are likely to change their PQC-controlled operations to coordinate their food quality process control more effectively with their HACCP system operations to improve overall efficiency. Thus, raw material control, which has been a required element in PQC programs, could be handled under a HACCP plan with a CCP for raw materials, and other process controls for food safety could be handled in the same manner. Similarly, the records requirements for PQC programs could be superseded by more efficient and appropriate establishment-developed systems. Establishments would thus be able to achieve unquantifiable gains in efficiency that would yield food safety and other consumer-protection benefits.

FSIS-inspected establishments develop about 1,900 PQC programs a year according to regulatory design specifications. Assuming that a PQC program is developed by a QC manager earning about $26 an hour, and that it takes about 20 hours, on average, to develop a PQC program, the cost to an establishment of developing such a program is about $520. FSIS estimates that the cost to the regulated industry of developing such programs is about $1,000,000 per year.

This cost of developing PQC programs according to FSIS requirements, plus $13 million in annual operating costs for about 1,852 mandatory (required by regulation) PQC programs ($26/hr. × 260 hrs./yr./program × 1,852 programs), add up to about $14 million in costs to the regulated industry.

For most establishments, the final rule will not yield immediate, direct savings from removal of burdens associated with developing PQC programs because most PQC programs are voluntarily adopted by establishments. Establishments likely will continue the use of QC methods in their operations, so the removal of the regulatory requirement for establishments to follow the regulatory design specifications will not immediately yield a savings to establishments. Further, a substantial proportion of the costs of complying with this regulation was removed with the publication of the final rule eliminating prior approvals for facilities, equipment, and PQC programs (62 FR 45016; August 25, 1997).

However, FSIS currently requires that if establishments adopt PQC programs, the programs must meet certain design specifications and must contain certain specified information. Some establishments that are required to have PQC programs for certain products and processes would benefit from the removal of burdens associated with developing PQC programs. These establishments, including those involved in producing MS(S), meat cuts treated with organic acids, and other processing, may benefit from shifting some portion of their PQC program development and operation costs into HACCP-related or other activities.

Also, under the final rule, establishments would have greater freedom to innovate. An indeterminate proportion of the annual burden of developing PQC programs according to FSIS specifications could eventually be channeled into more efficient and effective use of industry resources, especially where PQC programs have been operated.

Thus, although there will not be a direct savings from the removal of the regulatory requirements governing PQC programs, the industry potentially will be able to make more efficient and effective use of the $1 million or so in annual costs of developing the programs.

Finally, the final rule will permit FSIS to reallocate field inspection and headquarters resources now used in oversight of establishment-operated PQC programs to higher priority food safety-related activities.

Regulatory Flexibility Act

The Administrator of FSIS has determined that this final rule will not have a significant effect on a substantial number of small entities. The final rule will affect about 72 poultry slaughtering establishments, most of which are large business enterprises. It also will affect as many as 3,550 official meat and poultry processing establishments, of which a substantial majority, 3,330, are considered small entities under Small Business Administration criteria (500 or fewer employees per establishment). However, the rule will not have a significant effect on these establishments. It will impose no new regulatory requirements necessitating investments or other resource commitments by establishments but would, by removing a number of existing regulatory requirements, permit more efficient resource utilization, especially to support establishment HACCP systems.

The final rule will remove the remaining requirements for establishments to have PQC programs for certain products or processes and the general requirement concerning the design of such programs. The final rule will give inspected establishments greater flexibility to innovate and to introduce new processes or products that meet HACCP or other consumer protection objectives. As a result, the final rule will theoretically provide several thousand dollars of regulatory relief annually per establishment.

The final rule will enable establishments to avoid the costs associated with developing and implementing PQC programs that address regulatory requirements for the use of certain substances in preparation of meat and poultry products, such as the use of organic acids to delay discoloration of fresh meat cuts. Thermal processing establishments (of which there are about 130) will avoid the costs associated with developing PQC programs according to Agency specifications and the costs associated with obtaining Agency prior approvals.

As many as 3,330 small establishments will no longer be required to operate PQC programs for certain processes (such as PQC programs for processing cooked beef) and products (such as mechanically separated, or "deboned," product). Small and large establishments will save about $520 per PQC program in development costs for 310 mandatory PQC programs, or $161,720 total. Out of this total, small establishments will save about $151,320.

Operating costs of PQC programs vary widely. A simple PQC program to verify the accuracy of scales, for example, may require that tests be performed only several times a year, at little cost in operator time. A PQC program for a complex process, on the other hand,

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may require daily tests and data collection and recordkeeping tasks lasting up to 4 hours. For the purposes of this document, PQC programs are each assumed to require up to 1 hour's worth of daily attention by the establishment QC specialist. The removal of the PQC requirements will relieve small establishments of these burdens.

Assuming, for example, that small establishments incur annual costs of about $12,000,000 in operating mandatory PQC programs (solely in operating the QC evaluation process of such programs, and not including laboratory analysis or special facilities that may be required to determine whether products are in compliance with the regulations), each establishment will save about $3,600 in PQC program operations.

In addition, small establishments will benefit from savings (at the rate of $300 per establishment) that accrue from the removal of regulatory design requirements for both mandatory and voluntary PQC programs. They will have flexibility to develop and implement HACCP-consistent or other process control systems, beyond the flexibility that was provided by the FSIS final rule that removed prior approval requirements for blueprints, equipment, and certain PQC programs (62 FR 45016; August 25, 1997).

Thus, at least $3,900 in recurring savings is available to each small meat and poultry establishment. However, because many, if not most, affected establishments will be likely to continue to operate PQC programs that help in producing products with consistent and uniform characteristics, establishments may not choose to reap the savings that could result from adopting alternatives to their PQC programs. The effect of the final rule on the substantial number of affected small establishments is therefore not likely to be significant.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking or packaging requirements on federally inspected meat and meat products or poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat or poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States.

This final rule is not intended to have retroactive effect.

There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule. However, the administrative procedures specified in 9 CFR 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629; February 16, 1994), "Federal Actions to Address Environmental Justice in Minority and Low-Income Populations," FSIS has considered potential impacts of this final rule on environmental and health conditions in low-income and minority communities.

This final rule will remove the requirements pertaining to PQC programs in federally inspected meat and poultry establishments. It will also remove from the canning regulations all requirements concerning PQC programs, the requirements for case-by-case FSIS approval of systems and devices not specified in the regulations, and several other prior-approval requirements.

As explained in the economic impact analysis, the regulations should generally benefit firms that process meat, meat food products, and poultry products. The regulations will not require or compel meat or poultry establishments to relocate or alter their operations in ways that could adversely affect the public health or environment in low-income and minority communities. Further, this final rule will not exclude any persons or populations from participation in FSIS programs, deny any persons or populations the benefits of FSIS programs, or subject any persons or populations to discrimination because of their race, color, or national origin. The benefits of this final rule from ensuring that products are not adulterated or misbranded will accrue to the members of all classes of the public, including minorities, women, and persons with disabilities.

About 4 percent of official meat and poultry establishments are under female or minority ownership. FSIS does not believe that the effects of this rulemaking, whether beneficial or adverse, on such establishments will be disproportionate. however, the Agency welcomes any data or information that would contribute to an understanding of the effects of this rule on minorities, women, or persons with disabilities.

Additional Public Notification

Public awareness of all stages of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce it and provide copies of this **Federal Register** publication in the weekly FSIS Constituent Update. FSIS communicates the Constituent Update by fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at "http://www.fsis.usda.gov". The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other information that could affect or would be of interest to the Agency's constituents/ stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, readers of this document may fax their requests to the Congressional and Public Affairs Office, at (202) 720–5704.

Paperwork Requirements

Title: Processing Procedures and Quality Control Systems.

Type of Collection: Revision.

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this final rule in accordance with the Paperwork Reduction Act. This final rule will substantially reduce reporting requirements for official establishments. The final rule will remove the design requirements affecting most PQC programs that establishments have and most requirements for establishments to have PQC programs for certain products or processes. Currently, there are 624,465 burden hours associated with the PQC program requirements. FSIS will request OMB to eliminate all these burden hours from the information collection request 0583–0089.

List of Subjects

9 CFR Part 317

Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 318

Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 319

Food labeling, Incorporation by reference, Meat inspection.

9 CFR Part 381

Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 424

Food additives, Food packaging, Meat inspection, Poultry and poultry products.

For the reasons set forth in the preamble, FSIS is amending 9 CFR chapter III, the Federal meat and poultry inspection regulations, as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 317.21 [Amended]

2. Paragraph (b) of § 317.21 is amended by removing the comma and all words following the word "person".

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 138f, 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 318.4 [Amended]

4. Paragraph (d) of § 318.4 is removed and reserved.

5. In § 318.305, paragraph (d)(5) is removed, and paragraphs (a)(1)(ii), (a)(2)(ii), and (f) are revised to read as follows:

§ 318.305 Equipment and procedures for heat processing systems.

(a) * * *

(1) * * *

(ii) *Other devices.* Temperature-indicating devices, such as resistance temperature detectors, used in lieu of mercury-in-glass thermometers, shall meet known, accurate standards for such devices when tested for accuracy. The records of such testing shall be available to FSIS program employees.

(2) * * *

(ii) *Other devices.* Temperature/time recording devices or procedures used in lieu of chart-type devices must meet known accurate standards for such devices or procedures when tested for accuracy. Such a device must be accurate enough for ensuring that process time and temperature parameters have been met.

* * * * *

(f) *Other systems.* All other systems not specifically delineated in this section and used for the thermal processing of canned product shall be adequate to produce shelf-stable products consistently and uniformly.

* * * * *

6. Paragraph (b) of § 318.307 is revised to read as follows:

§ 318.307 Record review and maintenance.

* * * * *

(b) *Automated process monitoring and recordkeeping.* Automated process monitoring and recordkeeping systems shall be designed and operated in a manner that will ensure compliance with the applicable requirements of § 318.306.

* * * * *

7. In § 318.308, paragraph (b) is revised, paragraph (c) is removed and reserved, and paragraph (d) introductory text is revised to read as follows:

§ 318.308 Deviations in processing.

* * * * *

(b) Deviations in processing (or process deviations) must be handled according to:

(1)(i) A HACCP plan for canned product that addresses hazards associated with microbial contamination, or

(ii) Paragraph (d) of this section.

(c) [Reserved]

(d) Alternative procedures for handling process deviations.

* * * * *

8. In § 318.309, paragraph (a) is revised, paragraphs (b) and (c) are removed and reserved, and paragraph (d) introductory text is revised, to read as follows:

§ 318.309 Finished product inspection.

(a) Finished product inspections must be handled according to:

(1) A HACCP plan for canned product that addresses hazards associated with microbiological contamination;

(2) An FSIS-approved total quality control system;

(3) Alternative documented procedures that will ensure that only safe and stable product is shipped in commerce; or

(4) Paragraph (d) of this section.

(b) [Reserved]

(c) [Reserved]

(d) Alternative procedures for handling finished product inspections.

* * * * *

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

9. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

10. Paragraph (e)(2) of § 319.5 is revised to read as follows:

§ 319.5 Mechanically Separated (Species).

* * * * *

(e) * * *

(2) Analytical methods used by establishments in verifying the fat, protein, and calcium content of product consisting of or containing Mechanically Separated (Species) shall be among those listed in "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC)," 16th edition, 1995, §§ 960.39, 976.21, 928.08 (Chapter 39), and 940.33 (Chapter 45), which is incorporated by reference, or, if no AOAC method is available, in the "Chemistry Laboratory Guidebook," U.S. Department of Agriculture, Washington, D.C., March 1986 edition, sections 6.011–6.013, Revised June 1987 (pages 6–35 through 6–65), or by appropriate methods validated by scientific bodies in collaborative trials. The "Official Methods of Analysis of the Association of Official Analytical Chemists," Chapter 39 and Chapter 45, subsection 45.2.06 (AOAC Official Method 940.33), 16th edition, 1995, are incorporated by reference with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

§ 319.104 [Amended]

11. Section 319.104 is amended in paragraph (a) by removing the last sentence of footnote 3 to the chart.

§ 319.105 [Amended]

12. Section 319.105 is amended in paragraph (a) by removing the last sentence of footnote 2 to the chart.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

13. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

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14. Section 381.76 is amended follows:

a. Paragraph (b)(1)(ii)(*b*) is revised.
b. Paragraph (b)(1)(iii)(*b*) is revised.
c. Paragraph (b)(4)(i)(*a*) introductory text is revised.
d. Paragraph (b)(4)(i)(*b*) is revised.
e. Paragraph (b)(4)(ii) is removed and reserved.
f. Paragraph (b)(4)(iii) is removed and reserved.
g. Paragraph (b)(5)(i)(*a*) introductory text is revised.
h. Paragraph (b)(5)(i)(*b*) is revised.
i. Paragraph (b)(5)(ii) is removed and reserved.
j. Paragraph (b)(5)(iii) is removed and reserved.
k. Paragraph (c) is removed.

The revisions read as follows:

§ 381.76 Post-mortem inspection, when required; extent; traditional, Streamlined Inspection System (SIS), New Line Speed (NELS) Inspection System and the New Turkey Inspection (NTI) System; rate of inspection.

* * * * *

(b)(1) * * *
(ii) * * *

(*b*) The Administrator determines that the establishment has the intent and capability to operate at line speeds greater than 70 birds per minute, and meets all the facility requirements in § 381.36(d).

(iii) * * *

(*b*) The Administrator determines that the establishment meets all the facility requirements in § 381.36(e).

* * * * *

(4) * * *
(i) * * *

(*a*) *Post-mortem inspection.* The establishment shall provide three inspection stations on each eviscerating line in compliance with the facility requirements § 381.36(d)(1). The three inspectors shall inspect the inside, viscera, and outside of all birds presented. Each inspector shall be flanked by two establishment employees—the presenter and the helper. The presenter shall ensure that the bird is properly eviscerated and presented for inspection and the viscera uniformly trailing or leading. The inspector shall determine which birds shall be salvaged, reprocessed, condemned, retained for disposition by the veterinarian, or allowed to proceed down the line as a passed bird subject to reinspection. Poultry carcasses with certain defects not requiring condemnation of the entire carcass shall be passed by the inspector, but shall be subject to reinspection to ensure the physical removal of the specified defects. The helper, under the supervision of the inspector, shall mark such carcasses for trim when the defects are not readily observable. Trimming or birds passed subject to reinspection shall be performed by:

* * * * *

(*b*) A reinspection station shall be located at the end of each line. This station shall comply with the facility requirements in § 381.36(d)(2). The inspector shall ensure that the establishment has performed the indicated trimming of carcasses passed subject to reinspection by visually monitoring, checking data, or gathering samples at the station or at other critical points on the line.

(ii) [Reserved]
(iii) [Reserved]
(5) * * *
(i) * * *

(*a*) *Post-mortem inspection.* Each inspection station must comply with the facility requirements in § 381.36(e)(1). Each inspector shall be flanked by and establishment employee assigned to be the inspector's helper. The one inspector on an NTI–1 Inspection System shall be presented every bird. Each inspector on an NTI–2 Inspection System line shall be presented every other bird on the line. An establishment employee shall present each bird to the inspector properly eviscerated with the back side toward the inspector and the viscera uniformly trailing or leading. Each inspector shall inspect the inside, viscera, and outside of all birds presented. The inspector shall determine which bird shall be salvaged, reprocessed, condemned, retained for disposition by a veterinarian, or allowed to proceed down the line as a passed bird subject to reinspection. Turkey carcasses with certain defects not requiring condemnation of the entire carcass shall be passed by the inspector, but shall be subject to reinspection to ensure the physical removal of the specified defects. The helper, under the supervision of the inspector, shall mark such carcasses for trim when the defects of birds passed subject to reinspection shall be performed by:

* * * * *

(*b*) *Reinspection.* A reinspection station shall be located at the end of the lines. This station shall comply with the facility requirements in § 381.36(e)(2). The inspector shall ensure that establishments have performed the indicated trimming of each carcass passed subject to reinspection by visually monitoring, checking data, and/or sampling product at the reinspection station and, if necessary, at other points, critical to the wholesomeness of product, on the eviscerating line.

(ii) [Reserved]
(iii) [Reserved]

§ 381.121d [Amended]

15. Paragraph (b) of § 381.121d is amended by removing the comma and all words following the word "person."

§ 381.145 [Amended]

16. Paragraphs (d) and (e) of § 381.145 are removed and reserved.

17. In § 381.305, paragraph (d)(5) is removed, and paragraphs (a)(1)(ii), (a)(2)(ii), and (f) are revised to read as follows:

§ 381.305 Equipment and procedures for heat processing systems.

(a) * * *
(1) * * *

(ii) *Other devices.* Temperature-indicating devices used in lieu of mercury-in-glass thermometers, such as resistance temperature detectors, shall meet known, accurate standards for such devices when tested for accuracy. The records of such testing shall be available to FSIS program employees.

(2) * * *

(ii) *Other devices.* Temperature/time recording devices or procedures used in lieu of chart-type devices must meet known accurate standards for such devices or procedures when tested for accuracy. Such a device must be accurate enough for ensuring that process time and temperature parameters have been met.

* * * * *

(f) *Other systems.* All other systems not specifically delineated in this section and used for the thermal processing of canned product shall be adequate to produce shelf-stable products consistently and uniformly.

* * * * *

18. Paragraph (b) of § 381.307 is revised to read as follows:

§ 381.307 Record review and maintenance.

* * * * *

(b) *Automated process monitoring and recordkeeping.* Automated process monitoring and recordkeeping systems shall be designed and operated in a manner which will ensure compliance with the applicable requirements of § 381.306.

* * * * *

19. In § 381.308, paragraph (b) is revised, paragraph (c) is removed and reserved, and paragraph (d) introductory text is revised to read as follows:

§ 381.308 Deviations in processing.

* * * * *

(b) Deviations in processing (or process deviations) must be handled according to:

(1) A HACCP plan for canned product that addresses hazards associated with microbial contamination; or

(2) Paragraph (d) of this section.

(c) [Reserved]

(d) Alternative procedures for handling process deviations.

* * * * *

20. In § 381.309, paragraph (a) is revised, paragraphs (b) and (c) are removed and reserved, and paragraph (d) introductory text is revised, to read as follows:

§ 381.309 Finished product inspection.

(a) Finished product inspections must be handled according to:

(1) A HACCP plan for canned product that addresses hazards associated with microbiological contamination; or

(2) An FSIS-approved total quality control system; or

(3) Alternative documented procedures that will ensure that only product that is safe and stable is shipped in commerce; or

(4) Paragraph (d) of this section.

(b) [Reserved]

(c) [Reserved]

(d) Alternative procedures for handling finished product inspections.

* * * * *

PART 424—PREPARATION AND PROCESSING OPERATIONS

21. The authority citation for part 424 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

22. In the table in § 424.21(c), under the Class of substance "Miscellaneous," the entry for the Substance "Ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate, singly or in combination" is revised to read as follows:

§ 424.21 Use of food ingredients and sources of radiation.

* * * * *

(c) * * *

Class of substance	Substance	Purpose	Products	Amount
•	•	•	•	• • •
Miscellaneous	Ascorbic acid, erythorbic acid, citric acid, sodium ascorbate and sodium citrate, singly or in combination.	To delay discoloration.	Fresh beef cuts, fresh lamb cuts, and fresh pork cuts.	Not to exceed, singly or in combination, 500 ppm or 1.8 mg/sq inch of product surface of ascorbic acid (in accordance with 21 CFR 182.3013), erythorbic acid (in accordance with 21 CFR 182.3041), or sodium ascorbate (in accordance with 21 CFR 182.3731); and/or not to exceed, singly or in combination, 250 ppm or 0.9 mg/sq inch of product surface of citric acid (in accordance with 21 CFR 182.6033), or sodium citrate (in accordance with 21 CFR 182.6751).
•	•	•	•	• • •

* * * * *

23. In § 424.22, paragraphs (b)(1)(ii)(A) and (B) are revised to read as follows:

§ 424.22 Certain other permitted uses.

* * * * *

(b) * * *
(1) * * *
(ii) * * *

(A) 100 ppm ingoing (potassium nitrite at 123 ppm ingoing); and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate) shall be used; or

(B) A predetermined level between 40 and 80 ppm (potassium nitrite at a level between 49 and 99 ppm); 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate); and additional sucrose or other similar fermentable carbohydrate at a minimum of 0.7 percent and an inoculum of lactic acid producing bacteria such as *Pediococcus acetolactii* or other bacteria demonstrated to be equally effective in preventing the production of botulinum toxin at a level sufficient for the purpose of preventing the production of botulinum toxin.

* * * * *

Done at Washington, DC, on May 12, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–12659 Filed 5–26–00; 8:45 am]
BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 261a

[Docket No. R–1071]

Rules Regarding Access to Personal Information Under the Privacy Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is amending its Rules Regarding Access to Personal Information under the Privacy Act to include a new system of records, entitled Multi-rater Feedback Records (BGFRS–25) to the list of system of records that is exempt from certain required disclosures. Notice of the new system of records is published elsewhere in this **Federal Register**.

EFFECTIVE DATE: June 28, 2000.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, Legal Division (202/452–2418), or Chris Fields, Manager, Human Resources Function, Management Division (202/452–3654), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. For users of the Telecommunications Device for the Deaf (TDD) only, contact Janice Simms at 202/452–4984.

SUPPLEMENTARY INFORMATION:

The Board is instituting a feedback program for its managers and officers. Under this Multi-rater Feedback program, Board employees who work for or with a particular manager or officer are asked to complete a voluntary, confidential questionnaire regarding the performance of that manager/officer and send it directly to a consultant hired by the Board for this program. The consultant analyzes the completed questionnaires and compiles a report for the manager/officer that summarizes the comments from the questionnaires. This report does not identify individual comments or those who completed the questionnaires. The report is given only to the manager/officer being evaluated; no other Board

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employee or officer receives a copy of the report. The consultant maintains all of the data connected with this program, identified only by the name of the manager/officer being evaluated.

Although information from the completed questionnaires is stored in the system of records without identifying the individual who completed the questionnaire, it is possible that the individual could be identified by careful study of the answers provided. To protect the confidentiality of these participants, which is expressly promised when the questionnaires are distributed, this data will not be available to the manager/officer that is the subject of the questionnaires. Accordingly, access to certain data in this system of records is restricted pursuant to the exemption provided in subsection (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5). The Board's Rules Regarding Access to Personal Information under the Privacy Act must be amended to include this system of records in the list of "exempt" systems of records. In addition, the Board is taking this opportunity to remove from that list a system of records that was amended in 1998 and no longer contains information that is exempt from the access provisions of the Privacy Act.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities, because it applies only to internal personnel matters of the agency.

Administrative Procedure Act

This rule is exempt from the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553, and the Congressional Review Act, pursuant to 5 U.S.C. 804(3)(B) and (C), because it is a rule relating to agency management or personnel and a rule of agency procedure that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 12 CFR Part 261a

Federal Reserve System, Privacy.

For the reasons set forth in the preamble, the Board amends 12 CFR part 261a as follows:

PART 261a—RULES REGARDING ACCESS TO PERSONAL INFORMATION UNDER THE PRIVACY ACT OF 1974

1. The authority citation for part 261a is revised to read as follows:

Authority: 5 U.S.C. 552a

2. In § 261a.13, remove paragraph (b)(6), redesignate paragraphs (b)(7), (8), and (9) as paragraphs (b)(6), (7), and (8), and add a new paragraph (b)(9) to read as follows:

§ 261a.13 Exemptions.

* * * * *

(b) * * *

(9) BGFRS–25 Multi-rater Feedback Records.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 19, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–13127 Filed 5–26–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AWP–1]

Modification of Class E Airspace; Willits, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Willits, CA. The establishment of an Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 16 and RWY 34 at Ells Field-Willits Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 7000 feet or more above the surface of the earth is needed to contain aircraft executing the RBAV RWY 16 and RWY 34 SIAP to Ells Field-Willits Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Ells Field-Willits Municipal Airport, Willits, CA.

EFFECTIVE DATE: 0901 UTC August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On March 22, 2000, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Willis, CA (65 FR 15282). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV RWY 16 and RWY 34 SIAP at Ells Field-Willis Municipal Airport. This action will provide adequate controlled airspace for aircraft executing the RNAV RWY 16 and RWY 34 SIAP at Ells Field-Willits Municipal Airport, Willits, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designation for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Willits, CA. The development of a RNAV RWY 16 and RWY 34 SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the RNAV RWY 16 and RWY 34 SIAP at Ells Field-Willits Municipal Airport, Willits, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follow:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Willits, CA [Revised]

Ells Field-Willits Municipal Airport, CA
(Lat. 39°27'03" N, long. 123°22'12" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Ells Field-Willits Municipal Airport and that airspace bounded by a line beginning at lat. 39°28'00" N, long. 123°30'15" W; to lat. 39°48'30" N, long. 123°42'00" W; to lat. 39°53'30" N, long. 123°28'30" W; to lat. 39°32'11" N, long. 123°17'27" W, thence clockwise along the 6.3-mile radius of the Ells Field-Willits Municipal Airport, to the point of beginning.

* * * * *

Issued in Los Angeles, California, on April 25, 2000.

William D. Marino, Jr.,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 00–13461 Filed 5–26–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2584

RIN 1210–AA79

Rules and Regulations For the Allocation of Fiduciary Responsibility, Federal Retirement Thrift Investment Board

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Direct final rule.

SUMMARY: This document includes amendments authorizing the Executive Director of the Federal Retirement Thrift Investment Board (Board) to allocate certain fiduciary responsibilities for two new investment funds to investment managers. It also provides definitions for the two new funds, updates the definition of investment manager and makes other miscellaneous corrections to the regulations.

DATES: This rule is effective on July 14, 2000 without further notice, unless the Department receives significant adverse written comment by July 29, 2000. If the Department receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments (preferably at least three copies) should be submitted to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5671, U.S. Department of Labor, Washington, DC 20210, and marked "Attention: FERSA Allocation Regulation." All submissions will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, Room N–5507, 200 Constitution Avenue NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm 5669, 200 Constitution Ave., N.W., Washington, DC 20210, tel. (202) 219–7461. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Subchapter III of the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. No. 99–335, 100 Stat. 514, codified largely at 5 U.S.C. 8351 and 8401–8479, created a retirement savings plan for Federal employees known as the Thrift Savings Plan (TSP). As provided at 5 U.S.C. 8437, the TSP is funded by the Thrift Savings Fund (Fund).

Pursuant to 5 U.S.C. 8474(b)(5) and (c)(1), the Executive Director of the Board is granted authority to prescribe such regulations as may be necessary for the administration of the Fund. However, these statutory provisions expressly prohibit the Executive Director from prescribing any regulations relating to fiduciary responsibilities with respect to the Fund. Instead, at 5 U.S.C. 8477(e)(1)(E), the Secretary of Labor is directed to prescribe, in regulations, procedures by which fiduciary responsibilities may be allocated among fiduciaries, including investment managers. The Secretary of Labor published regulations setting forth such procedures in final form in the **Federal Register** on December 29, 1988 (53 FR 52664). These regulations comprise 29 CFR part 2584.

Pursuant to 29 CFR 2584.8477(e)–2(b), the Executive Director may allocate certain fiduciary responsibilities in connection with the management and investment of the Fixed Income Investment Fund (F Fund) to a qualified professional asset manager(s). Section 2584.8477(e)–2(c) of title 29, Code of Federal Regulations, provides that the Executive Director may also allocate certain fiduciary responsibilities in connection with the management and investment of the Government Securities Investment Fund (G Fund) and the Common Stock Index Investment Fund (C Fund) to an investment manager(s). Section 2584.8477(e)–6 of title 29, Code of Federal Regulations, provides definitions for these investment funds.

The Thrift Savings Investment Funds Act of 1996, Pub. L. 104–208, 110 Stat. 3009–372, authorized the creation of two new investment funds. The new funds are the Small Capitalization Stock Index Investment Fund (S Fund) and the International Stock Index Investment Fund (I Fund).

This document provides in § 2584.8477(e)–2 that, in addition to the G, C, and F Funds, the Executive Director may allocate certain fiduciary responsibilities in connection with the management and investment of the two new funds (S and I Funds) to an investment manager(s). The rule also provides definitions for these two new funds in § 2584.8477(e)–6, which conform to the definitions in sections of the Thrift Savings Investment Funds Act of 1996.

Because part 2584 originally adopted the definition of investment manager provided in the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93–406, 88 Stat. 829, 29 U.S.C. 1002, which was later amended by Act of November 10, 1997, § 1(a), Pub. L. 105–72, 111 Stat. 1457, this document replaces the old definition of investment manager in 29 CFR 2584.8477(e)–6 with the amended definition as currently provided in ERISA.

Furthermore, this rule adds the word "Fund" to § 2584.8477(e)–2(c), which was inadvertently omitted from "Common Stock Index Investment Fund" in the final rule, and updates the United States Code citation for FERSA in § 2584.8477(e)–6(a).

Direct Final Rulemaking Procedure

The Department has determined that this rule shall be effective as a final rule 45 days after publication in the **Federal Register**. As explained more fully above,

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the purpose of this rulemaking is to conform the existing regulation with the creation of two new investment funds authorized by the Thrift Savings Investment Funds Act of 1996, and to make certain other minor changes and corrections.

As a result, the Department anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. The amendment will enhance the ability of federal employees to diversify their account balances in the Thrift Investment Fund. In accordance with 5 U.S.C. 553(b), the Department for good cause finds that notice and public procedure on this rule are unnecessary.

Unless a written adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. If the Department does receive, within the comment period, an adverse or negative comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Executive Order 12866 Statement

The regulation set forth in this document is not classified as a "significant regulatory action" under Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. As a result this rule is not subject to review by the Office of Management and Budget.

Regulatory Flexibility Act Statement

Because this rule is being promulgated without a notice of proposed rulemaking it is not covered by the Regulatory Flexibility Act. Nevertheless, the Department has determined that it will not have a significant economic impact on a substantial number of small entities. The rule merely makes changes necessary to permit the operation of two new investment funds authorized under the Thrift Savings Investment Funds Act of 1996 in the same manner as the existing investment funds.

Paperwork Reduction Act

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1996 (44 U.S.C. 3501 *et seq.*) because it does not contain an information collection request as defined in 44 U.S.C. 3502(3).

Executive Order 13132 Federalism

This rule affects only the authority of the Executive Director of the Thrift Investment Board and has no federalism implications.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, § 201, 109 Stat. 48, 64, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 202, 109 Stat. 48, 64–65, is not required.

Small Business Regulatory Enforcement Fairness Act—Congressional Review

The rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more: (2) a major increase in costs or prices for consumers, individual industries, or federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Statutory Authority

The regulation set forth herein is issued pursuant to 5 U.S.C. 8477(e)(1)(E) and under Secretary of Labor's Order No. 1–87.

List of Subjects in 29 CFR Part 2584

Employee benefit plans, Fiduciary, Government employees, Pensions, Retirement, Trusts and trustees.

In view of the foregoing, the Department of Labor amends 29 CFR part 2584 as follows:

PART 2584—[AMENDED]

1. The authority citation for part 2584 continues to read as follows:

Authority: 5 U.S.C. 8477(e)(1)(E) and Secretary of Labor's Order 1–87, 52 FR 13139 (April 21, 1987).

2. Section 2584.8477(e)–(2) is amended by revising paragraph (c) to read as follows:

§ 2584.8477(e)–2 Allocation of fiduciary duties.

* * * * *

(c) The Executive Director may allocate authority and responsibility for the investment and management of the Government Securities Investment Fund, the Common Stock Index Investment Fund, the International Stock Index Investment Fund and the Small Capitalization Stock Index Investment Fund to an investment manager(s).

* * * * *

3. Section 2584.8477(e)–6 is amended as follows:

a. by redesignating paragraphs (h), (i) and (j) as (i), (j) and (l), respectively;

b. by removing the periods in paragraph (e)(2) and the newly redesignated paragraph (j), and by inserting semicolons in their places; and

c. by revising paragraph (a) and the newly redesignated paragraph (i)(2) and inserting new paragraphs (h) and (k) to read as follows:

§ 2584.8477(e)–6 Definitions.

* * * * *

(a) *Act* means the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8401 *et seq.* (Supp. III 1997);

* * * * *

(i) * * *

(1) * * *

(2) Is:

(i) Registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1),

(ii) Not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act (15 U.S.C. 80b–3a) but is registered as an investment adviser under the laws of the state (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such state in order to maintain the fiduciary's registration under the laws of such state, also filed a copy of such form with the Secretary of Labor,

(iii) A bank, as defined in that Act, or

(iv) An insurance company qualified to perform services described in paragraph (i)(1) of this section under the laws of more than one state, and

(3) * * *

* * * * * *

(h) *International Stock Index Investment Fund* means the fund established under 5 U.S.C. 8438(b)(1)(E);

* * * * * *

(k) *Small Capitalization Stock Index Investment Fund* means the fund established under 5 U.S.C. 8438(b)(1)(D);

* * * * * *

Signed at Washington, DC , this 22nd day of March, 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–13250 Filed 5–26–00; 8:45 am]

BILLING CODE 4510–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH135–1a, FRL–6600–8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving, as set forth below, a request from Ohio for a revision to the Ohio State Implementation Plan (SIP) for transportation conformity. The transportation conformity SIP revision enables the State of Ohio to implement and enforce the Federal transportation conformity requirements at the State or local level. The submitted amendments to Ohio Administrative Code reflect the third set of EPA revisions to the federal transportation conformity rules. These rule changes will assure conformity of transportation improvement programs, transportation plans and transportation projects to the SIP. On October 6, 1999, the State of Ohio submitted the adopted rules and public hearing documentation to EPA and requested a revision to the federally approved SIP.

DATES: This rule is effective on July 31, 2000, unless EPA receives adverse written comments by June 29, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the material submitted by the State in support of this request is available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Patricia Morris at (312) 353–8656 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used we mean EPA.

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I. Background

A. What is Transportation Conformity?

The purpose of transportation conformity is to assure that transportation plans, programs and projects, approved by the United States Department of Transportation conform to the purpose of the SIP to attain and maintain the public health based air quality standards. Conformity provisions first appeared in the Clean Air Act {CAA} amendments of 1977 (Public Law 95–95). Although these provisions did not define the term conformity, they provided that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP that has been approved or promulgated for the nonattainment or maintenance areas.

The CAA Amendments of 1990 expanded the scope and content of the conformity provisions by defining conformity to an implementation plan. Conformity is defined in section 176(c) of the CAA as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that affected activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA requires EPA to promulgate criteria and procedures for determining conformity of all Federal actions in the nonattainment or maintenance areas to the SIP. Actions under title 23 United States Code (U.S.C.) or the Federal Transit Act are covered under the transportation conformity rules codified at 40 CFR part 51, subpart T and part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The criteria and procedures developed for all other federal actions are called "general conformity" rules.

B. Why Must the State Submit a Transportation Conformity SIP?

The original 1993 conformity rule required the States and local agencies to adopt and submit a transportation conformity SIP revision to the EPA not later than November 24, 1994 (40 CFR 51.396). Ohio submitted its SIP revision for state transportation conformity rules on August 17, 1995.

The federal transportation conformity rule however, was amended on August 8, 1995, and again on November 14, 1995. The November 14, 1995, amendments allow 12 months, or until November 14, 1996, for States to submit a transportation conformity SIP revision consistent with these amendments. Ohio had submitted state conformity rules consistent with the original November 24, 1994, conformity rules on August 17, 1995, and these rules were conditionally approved by EPA on May 16, 1996 (61 FR 24702). The condition of the approval was that Ohio update the State transportation conformity rules to be consistent with the federal amendments. Ohio updated its State

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rules and met the condition of the conditional approval within the allotted time.

The federal conformity rule was again amended on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendments: Flexibility and Streamlining). States were again given a 12 month time frame to submit State rules consistent with the amendment. Ohio proceeded to update the state transportation conformity rules and submitted the rules on October 6, 1999 (this submittal is the subject of this rulemaking action). However, on March 2, 1999, the United States Court of Appeals for District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency*, No. 97–1637. The Court granted the environmental group's petition for review and ruled that several provisions in the federal transportation conformity rules were unlawful. The rules approved in this rulemaking are consistent with the August 15, 1997, federal conformity amendments that remained unchanged by the Court decision. However, Ohio will need to submit another transportation conformity SIP revision consistent with future amendments to the transportation conformity rule.

The approval of these State transportation conformity rules will update the federally approved State rules to be more consistent with the federal conformity rules, thereby improving the conformity process and providing consistency with other States rules and the federal rule.

II. Review of the State Transportation Conformity Rule

A. What Did the State Submit?

Pursuant to the requirements under section 176(c)(4)(C) of the Clean Air Act, the Ohio Environmental Protection Agency (OEPA) submitted a SIP revision to the EPA on October 6, 1999. In its submittal, the State adopted State rules to meet the requirements of 40 CFR part 51, subpart T, and part 93 subpart A, as published on August 15, 1997. Transportation conformity is required for all nonattainment or maintenance areas for any transportation related criteria pollutants (40 CFR 51.394 (b)).

The State of Ohio currently has 28 counties which are ozone nonattainment or ozone maintenance areas and thus require Ohio to prepare transportation conformity analyses. These areas are: Toledo area (Lucas and Wood Counties), Cleveland/Akron area (Lorain, Cuyahoga, Medina, Summit, Portage, Geauga, Lake, and Ashtabula Counties), Youngstown area (Trumbull and Mahoning Counties), Canton (Stark County), Columbus (Franklin, Delaware and Licking Counties), Cincinnati (Hamilton, Butler, Clermont, and Warren Counties), Dayton (Preble, Montgomery, and Greene Counties), Springfield (Miami and Clark Counties), Clinton County, Columbiana County, and Jefferson County. In addition to the ozone nonattainment and maintenance areas, Cuyahoga County is also a maintenance area for carbon monoxide.

Section 51.390 of the transportation conformity rule requires that the majority of the Federal rules be incorporated verbatim, with only a few exceptions. In addition, the rule states that State rules can not be more stringent than the Federal rules unless the conformity provisions "apply equally to non-federal as well as Federal entities" (40 CFR 51.396(a)). The OEPA held a public hearing on the transportation conformity submittal on December 10, 1998.

B. How Does the Submittal Change the Currently Approved State Transportation Conformity Rules?

The currently approved Ohio conformity rules comply with the 1994 federal conformity regulations. These federal regulations have been amended significantly, as discussed in the previous section. The Ohio submittal revises the State conformity regulations consistent with the 1997 Transportation Conformity Rule Amendments: Flexibility and Streamlining, which is the most current federal transportation conformity regulation.

Section 51.390 of the federal transportation conformity rule states that to be approved by the EPA, the submitted SIP revision must "address all requirements of this subpart in a manner which gives them full legal effect." In particular, the revision shall incorporate the provisions of the following sections verbatim, except insofar as needed to give effect to a stated intent in the revision to establish criteria and procedure more stringent than the requirements stated in these sections: 93.101, 93.102, 93.103, 93.104, 93.106, 93.109, 93.110, 93.111, 93.112, 93.113, 93.114, 93.115, 93.116, 93.117, 93.118, 93.119, 93.120, 93.121, 93.126, and 93.127. The State of Ohio submittal incorporated all of the above sections verbatim following the August 15, 1997 version of the federal rules, with only clarifying changes. The criteria and procedures for consultation between State and local agencies, metropolitan planning organizations and federal agencies were changed from the previous State consultation rules. These changes are not being approved, as discussed further in the next section.

C. What is EPA Approving Today and Why?

We are approving certain sections of the Ohio transportation conformity rule amendments which were adopted on January 26, 1999, and became effective on February 16, 1999.

The following is a summary of the Ohio Administrative Code and the sections that are being approved and why, and the sections that are not being approved and why:

OAC 3745–101–02 *Definitions.* These definitions are consistent with the federal rule and the Court decisions. This rule is being approved.

OAC 3745–101–03 (A), (B), (C), (D), (G), (H), (I), (J), (K), (L) *Applicability, priority, and frequency of conformity determinations.* The sections listed are being approved as consistent with the federal rule and the Court decisions. However, sections (E) and (F) are not being approved. Section E allows projects to proceed to completion after completing the National Environmental Policy Act (NEPA) requirements. This provision was struck down by the court in case No. 97–1637. Section F allows a grace period of 12 months for new nonattainment areas. This was disallowed by the United States Court of Appeals for the District of Columbia Circuit in case No. 96–1007.

OAC 3745–101–04 *Consultation.* This section is not being approved. The State is required to promulgate procedures and rules for consultation between State and local agencies, metropolitan planning organizations and federal agencies. Although this section has not been affected by the Court decisions, the submitted version does not have the detail of the previously approved consultation rule. Therefore, rule OAC 3745–101–04 will remain the same as previously approved.

OAC 3745–101–05 *Content of transportation plans.* This section is being approved. It is consistent with the federal rule and the Court decisions.

OAC 3745–101–06 *Relationship with NEPA and fiscal constraints.* This section is being approved. It is consistent with the federal rule and the Court decisions.

OAC 3745–101–07 *Criteria and procedures for conformity determination, assumptions, emissions model, and consultation.* Sections A, B, C, D, E, F, G, H, I, and J are being approved except for the parts of the sections which require a submitted budget to be used 45 days after submittal to EPA. These sections are contrary to the March 2, 1999, Court decisions. The parts of sections that are not being approved are as follows: OAC 3745–101–07 (C)(1)(a), (C)(2)(a),

OAC 3745–101–08 *Criteria and procedures for implementation of TCMs, current conformity, and projects from a plan and TIP.* This section is being approved. It is consistent with the federal rule and the Court decisions.

OAC 3745–101–09 *Localized CO and PM10 violations and compliance with PM10 control measures.* This section is being approved. It is consistent with the federal rule and the Court decisions.

OAC 3745–101–10 *Motor Vehicle Emissions Budgets.* Sections A, B, C and D are being approved because these sections are consistent with the federal rule and the Court decisions. Section E is not being approved because it is not consistent with the March 2, 1999 Court decisions.

OAC 3745–101–11 *Criteria and Procedures: Emission Reductions in Areas Without Motor Vehicle Emissions Budgets.* This section is being approved. It is consistent with the federal rule and the Court decisions.

OAC 3745–101–12 *Consequences of Control Strategy Implementation Plan Failures.* This section is being approved because it is consistent with the federal rule and the Court decisions, except for section (A)(2) which allows 120 days after a control strategy SIP disapproval before a conformity lapse takes effect. The Court ruled that a conformity lapse must take effect on the same day as the effective date of a control strategy disapproval.

OAC 3745–101–13 *Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Laws.* This section is being approved because it is consistent with the federal rule and the Court decisions, except for section (A)(1) which allows a regionally significant project in the first 3 years of the Transportation Improvement Program to proceed during a conformity lapse. This provision was rescinded by the Court.

OAC 3745–101–14 *Procedures for Determining Regional Transportation-Related Emissions.* This section is being approved. It is consistent with the federal rule and the Court decisions.

OAC 3745–101–15 *Procedures for Determining Localized CO and PM10 Concentrations (Hot-Spot Analysis).* This section is being approved. It is consistent with the federal rule and the Court decisions.

OAC 3745–101–17 *Enforceability of design concept and scope and project-level mitigation and control measures.* This section is being approved. It is consistent with the federal rule and the Court decisions.

OAC 3745–101–18 *Exempt projects.* This section is being approved. It is consistent with the federal rule and the Court decisions.

OAC 3745–101–19 *Traffic Signal Synchronization Projects.* This section is being approved. It is consistent with the federal rule and the Court decisions.

III. Rulemaking Actions

EPA is approving portions of the Ohio Transportation Conformity SIP revision submitted on October 6, 1999. EPA is only approving the sections detailed in the above listing. The rules being approved are consistent with the federal transportation conformity rule and the subsequent Court decisions. EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless EPA receives significant and relevant adverse written comments by June 29, 2000. Should the Agency receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 31, 2000.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987),) on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds

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necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 2000.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: April 14, 2000.

Elissa Speizman,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(122) to read as follows:

§ 52.1870 Identification of Plan.

* * * * *

(c) * * *

(122) On October 6, 1999, the Ohio Environmental Protection Agency submitted revised Transportation Conformity rules for the State of Ohio. The submittal made revisions to the current State plan for the implementation of the federal transportation conformity requirements at the State and local level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. Only certain sections of the submittal are approved.

(i) Incorporation by reference.

(A) Ohio Administrative Code: amended rules, OAC 3745–101–02, OAC 3745–101–03 (A), (B), (C), (D), (G), (H), (I), (J), (K), (L), except (E) and (F), OAC 3745–101–05, OAC 3745–101–06, OAC 3745–101–07 (A), (B), (C) except for (C)(1)(a) and (C)(2)(a), (D), (E), (F), (G), (H), (I), (J), OAC 3745–101–08, OAC 3745–101–09, OAC 3745–101–10, OAC 3745–101–11, OAC 3745–101–12 except for (A)(2), OAC 3745–101–13 except (A)(1), OAC 3745–101–14, OAC 3745–101–15, OAC 3745–101–17, OAC 3745–101–18, OAC 3745–101–19, effective on February 16, 1999.

(B) No action is being taken on: OAC 3745–101–04.

* * * * *

[FR Doc. 00–13334 Filed 5–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0037a; FRL–6706–5]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Designation of Areas for Air Quality Planning Purposes, Canon City

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On September 22, 1997, the Governor of the State of Colorado submitted a State Implementation Plan (SIP) revision for the purpose of establishing a redesignation for the Canon City, Colorado area from nonattainment to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM_{10}) under the 1987 standards. The Colorado Air Pollution Control Division's (Colorado) submittal, among other things, documents that the Canon City area has attained the PM_{10} national ambient air quality standards (NAAQS), requests redesignation to attainment and includes a maintenance plan for the area demonstrating maintenance of the PM_{10} NAAQS for ten years. EPA is approving the redesignation request and maintenance plan because the State has met the applicable requirements of the Clean Air Act, as amended. Subsequent to this approval, the Canon City area will be designated attainment for the PM_{10} NAAQS. This action is being taken under sections 107, 110, and 175A of the Clean Air Act (Act).

DATES: This rule is effective on July 31, 2000, without further notice, unless EPA receives adverse comment by June 29, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the state documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" are used, we mean the Environmental Protection Agency (EPA).

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I. EPA's Final Action

What Action Is EPA Taking in This Direct Final Rule?

We are approving the Governor's submittal of September 22, 1997, that requests a redesignation for the Canon City nonattainment area to attainment for the 1987 PM_{10} standards. We are also approving the maintenance plan for the Canon City PM_{10} nonattainment area, which was submitted with the State's September 22, 1997 redesignation request. We are approving this request and maintenance plan because Colorado has adequately addressed all of the requirements of the Act for redesignation to attainment applicable to the Canon City PM_{10} nonattainment area. Upon the effective date of this action, the Canon City area's designation status under 40 CFR part 81 will be revised to attainment.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 31, 2000, without further notice unless the Agency receives adverse comments by June 29, 2000.

If we receive such comments, then we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 31, 2000, and no further action will be taken on the proposed rule.

II. Summary of Redesignation Request and Maintenance Plan

A. What Requirements Must Be Followed for Redesignations to Attainment?

In order for a nonattainment area to be redesignated to attainment, the following conditions in section 107(d)(3)(E) of the Act must be met:

(i) We must determine that the area has attained the NAAQS;

(ii) The applicable implementation plan for the area must be fully approved under section 110(k) of the Act;

(iii) We must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) We must fully approve a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) The State containing such area must meet all requirements applicable to the area under section 110 and part D of the CAA.

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Our September 4, 1992 guidance entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" outlines how to assess the adequacy of redesignation requests against the conditions listed above.

On September 22, 1997, the Governor of Colorado submitted a revision to the SIP for the Canon City area and a request that we redesignate the area to attainment for PM_{10}. The following is a brief discussion of how Colorado's redesignation request and maintenance plan meets the requirements of the Act for redesignation of the Canon City area to attainment for PM_{10}.

B. Does the Canon City Redesignation Request and Maintenance Plan Meet the CAA Requirements?

i. Attainment of the PM_{10} NAAQS

A State must demonstrate that an area has attained the PM_{10} NAAQS through submittal of ambient air quality data from an ambient air monitoring network representing maximum PM_{10} concentrations. The data, which must be quality assured and recorded in the Aerometric Information Retrieval System (AIRS), must show that the average annual number of expected exceedances for the area is less than or equal to 1.0, pursuant to 40 CFR 50.6. In making this showing, three consecutive years of complete air quality data must be used.

The State operates one PM_{10} monitoring site in the Canon City PM_{10} nonattainment area. Colorado submitted ambient air quality data from the monitoring site which demonstrates that the area has attained the PM_{10} NAAQS. This air quality data was quality-assured and placed in AIRS. Only one exceedance of the 24-hour PM_{10} NAAQS was measured which occurred in 1988. Since that time, no exceedances of the 24-hour or the annual PM_{10} NAAQS have been measured. Officially, the State relied on the years 1993—1995 to show that the Canon City area had attained the PM_{10} NAAQS. The area has continued to attain the PM_{10} NAAQS since 1995. We believe that Colorado has adequately demonstrated, through ambient air quality data, that the PM_{10} NAAQS has been attained in the Canon City area.

ii. State Implementation Plan Approval

Those States containing initial moderate PM_{10} nonattainment areas were required to submit a SIP by November 15, 1991 which demonstrated attainment of the PM_{10} NAAQS by December 31, 1994. To approve a redesignation request, the SIP for the area must be fully approved under section 110(k) and must satisfy all requirements that apply to that area. We approved the PM_{10} SIP for Canon City on December 23, 1993 (58 FR 68036) as meeting those moderate PM_{10} nonattainment plan requirements that were due to EPA on November 15, 1991.

iii. Improvement in Air Quality Due to Permanent and Enforceable Measures

The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. However, Canon City is a unique case in which no area-specific PM_{10} control measures were needed to bring the area into attainment (or to ensure continued attainment), even when growth in emissions through 1997 was considered, because the monitored ambient PM_{10} concentrations were (and still are) so far below the NAAQS. Colorado's September 22, 1997 submittal did cite several State-wide regulations, including SIP-approved regulations for particulates (Regulation No. 1), new source review permitting (Regulation No. 3), and residential wood burning (Regulation No. 4), as being responsible for the improvement in air quality in Canon City. Thus, we believe the Canon City area satisfies this requirement.

iv. Fully Approved Maintenance Plan Under Section 175A of the Act

Section 107(d)(3)(E) of the Act requires that, for a nonattainment area to be redesignated to attainment, we must fully approve a maintenance plan which meets the requirements of section 175A of the Act. The plan must demonstrate continued attainment of the relevant NAAQS in the area for at least 10 years after our approval of the redesignation. Eight years after our approval of a redesignation, the State must submit a revised maintenance plan demonstrating attainment for the 10 years following the initial 10 year period. The maintenance plan must also contain a contingency plan to ensure prompt correction of any violation of the NAAQS. (See sections 175A(b) and (d).) Our September 4, 1992 guidance outlines 5 core elements that are necessary to ensure maintenance of the relevant NAAQS in an area seeking redesignation from nonattainment to attainment. Those elements, as well as guidelines for subsequent maintenance plan revisions, are as follows:

a. Attainment Inventory. The maintenance plan should include an attainment emission inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. An emissions inventory was developed and submitted with the moderate PM_{10} nonattainment plan for the Canon City area on April 9, 1992. As detailed in the TSD for EPA's December 23, 1993 approval of the moderate PM_{10} nonattainment plan for Canon City, the plan contained a comprehensive emissions inventory for mobile source emissions (including re-entrained road dust), residential wood and coal combustion emissions, and stationary source emissions for wintertime emissions in the base year of 1990. The Canon City area was in attainment of the PM_{10} NAAQS in 1990, based on three complete years of data. Thus, we believe Colorado has prepared an adequate attainment inventory for the area.

b. Maintenance Demonstration. A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. Colorado chose the modeling approach. The maintenance demonstration for the Canon City area uses emissions rollback, which was the same level of modeling used in the original attainment demonstration for the moderate PM_{10} SIP for Canon City. The State's rollback approach takes the design day PM_{10} value for 1989/1990 of 93 $\mu g/m^3$, subtracts the background concentration, and divides the remainder by the total design day actual emissions for 1989/1990. This ratio is then applied to 2015 projected emissions to calculate the projected concentration without background. The background value is then added back in to give the total 2015 projected concentration of 141 μ/m^3. Since this is below the 24-hour PM_{10} NAAQS of 150 μ/m^3, the maintenance plan demonstrates maintenance. Although EPA would normally insist on some interim year projections between 2000 and 2015, EPA has no reason to believe that total emissions will be greater than the 2015 projections in any of the interim years. The State applied simple, environmentally conservative, growth rates to all source categories other than stationary sources, and stationary sources were projected at allowable emissions. Thus, total emissions in all years before 2015 should be less than 2015 total emissions.

Since no violations of the *annual* PM_{10} NAAQS have ever occurred in Canon City and since the maintenance demonstration clearly shows maintenance of the 24-hour PM_{10} NAAQS in Canon City through the year 2015, it is reasonable and adequate to assume that protection of the 24-hour standard will be sufficient to protect the annual standard as well. Thus, EPA believes the State has adequately demonstrated that the Canon City area will maintain the PM_{10} NAAQS for at least the next ten years.

c. Monitoring Network. Once a nonattainment area has been redesignated to attainment, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. Colorado operates one PM_{10} monitoring site in the Canon City area. We approve this site annually, and any future change would require discussion with us. In its September 22, 1997 submittal, Colorado committed to continue to operate the PM_{10} monitoring station in Canon City, in accordance with 40 CFR part 58.

d. Verification of Continued Attainment. The State's maintenance plan submittal should indicate how the State will track the progress of the maintenance plan. This is necessary due to the fact that the emissions projections made for the maintenance demonstration depend on assumptions of point and area source growth. Colorado has committed in the Canon City maintenance plan to analyze the three most recent consecutive years of ambient air quality data on an annual basis to verify continued attainment of the PM_{10} NAAQS in Canon City. In addition, they committed to conduct periodic emission inventory reviews every three years to determine if any adjustments to the assumptions used in the maintenance demonstration need to be made. The first such report will be submitted to us in October 2001 for the year 2000.

e. Contingency Plan. Section 175A(d) of the Act requires that a maintenance plan also include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. For the purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is an enforceable part of the SIP and should ensure that contingency measures are adopted expeditiously once they are triggered. The plan should discuss the measures to be adopted and a schedule and procedure for adoption and implementation. The State should also identify the specific indicators, or triggers, which will be used to determine when the contingency plan will be implemented.

The Canon City contingency plan will be triggered upon our determination that a PM_{10} NAAQS violation has occurred in Canon City. The Canon City contingency plan provides that, within one month of our determination that a violation has occurred, Colorado and the Canon City and Fremont County governments and other interested parties will convene a contingency plan subcommittee. The subcommittee will identify the cause(s) of the violation within one month of convening. The subcommittee will then select one of the following potential contingency measures for the area to bring to the Colorado Air Quality Control Commission (AQCC) for adoption: street sweeping requirements, road paving requirements, street sand specifications, woodburning curtailment, use of liquid de-icers, re-establishing nonattainment new source review requirements, or other measures as deemed appropriate. The Canon City contingency plan provides that the contingency measures should become effective within 10 months of our determination that a violation has occurred in the Canon City area. In a letter dated April 24, 2000, from Margie Perkins, Director, Colorado Air Pollution Control Division, to Richard Long, Director, EPA Region VIII Air and Radiation Program, Colorado commits to adopt and implement contingency measures for the Canon City area within one year of a violation of either the 24-hour or annual PM_{10} standard. EPA relies on this commitment in approving the Canon City contingency plan.

f. Subsequent Maintenance Plan Revisions. In accordance with section 175A(b) of the Act, the State of Colorado is required to submit a revision to the maintenance plan eight years after the redesignation of the Canon City area to attainment for PM_{10}. This revision is to provide for maintenance of the NAAQS for an additional ten years following the first ten year period. The State committed in the Canon City redesignation request to submit a revised maintenance plan in 2006. EPA notes that the State chose 2006 based on an assumption that EPA would approve the redesignation request in 1998. Because EPA is approving the redesignation request in 2000, the State must submit the revised maintenance plan in 2008. See section 175A(b) of the Act.

v. Meeting Applicable Requirements of Section 110 and Part D of the Act

In order for an area to be redesignated to attainment, section 107(d)(3)(E) requires that it must have met all applicable requirements of section 110 and part D of the Act. We interpret this to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to, or at the time of, submitting a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

a. Section 110 Requirements. Section 110(a)(2) contains general requirements for nonattainment plans. For purposes of redesignation, the Colorado SIP was reviewed to ensure that all applicable requirements under the amended Act were satisfied. These requirements were met with the Colorado's April 9, 1992 submittal for the Canon City PM_{10} nonattainment area. We approved this submittal on December 23, 1993 (58 FR 68036).

b. Part D Requirements. Before a PM_{10} nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Subpart 1 of part D establishes the general requirements applicable to all nonattainment areas, subpart 4 of part D establishes specific requirements applicable to PM_{10} nonattainment areas.

The requirements of sections 172(c) and 189(a) regarding attainment of the PM_{10} NAAQS, and the requirements of section 172(c) regarding reasonable further progress, imposition of RACM, the adoption of contingency measures, and the submission of an emission inventory, have been satisfied through our December 23, 1993 approval of the Canon City PM_{10} SIP (58 FR 68036), our December 14, 1994 approval of PM_{10} contingency measures for the area (59 FR 64332), and the demonstration that the area is now attaining the NAAQS.

Although EPA's regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

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We approved the requirements of the part D new source review permit program for the Canon City area on August 18, 1994 (59 FR 42506). Once the Canon City area is redesignated to attainment, the prevention of significant deterioration (PSD) requirements of part C of the Act will apply. We must ensure that the State has made any needed modifications to its PSD regulations so that Colorado's PSD regulations will apply in the Canon City area after redesignation. Colorado's PSD regulations, which we approved as meeting all applicable Federal requirements, apply to any area designated as unclassifiable or attainment and, thus, will become fully effective in the Canon City area upon redesignation of the area to attainment.

C. Have the Transportation Conformity Requirements Been Met?

Under our transportation conformity regulations, States are to define the mobile vehicle emissions budget to which Federal transportation plans must demonstrate conformity. The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS.

Colorado had previously adopted mobile source emissions budgets for the years 1994 and 1997 of 4981 lb/day and 5130 lb/day, respectively. In the Canon City maintenance plan, Colorado indicated that it would adopt a new mobile source emissions budget of 7439 lb/day for the year 1997 and beyond. This value is equivalent to the year 2015 projected emissions for mobile sources. EPA believes use of this value as a budget for years before 2015 is acceptable because the available safety margin in years before 2015 is adequate to support such a budget. This is because pre-2015 projected emissions for source categories other than mobile sources are lower than 2015 projected emissions for these other source categories. EPA's approval of 7439 lb/day as the budget means that this value must be used for conformity determinations for all years after 1997, including 2015 (the end of the maintenance period) and beyond. After promulgation of approval of this redesignation request, the State indicated that it would revise its regulation entitled "Ambient Air Standards for the State of Colorado" to include this emissions budget for the years 1997 through 2015.

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Environmental Defense Fund* v. *the Environmental Protection Agency*, No. 97–1637, that we must make an affirmative determination that the submitted motor vehicle emission budgets contained in SIPs are adequate before they are used to determine the conformity of Transportation Improvement Programs or Long Range Transportation Plans. In response to the court decision, we are making most submitted SIP revisions containing a control strategy plan available for public comment and responding to these comments before announcing our adequacy determination. (We do not perform adequacy determinations for SIP revisions that only create new emission budgets for years in which an EPA-approved SIP already establishes a budget, because these new budgets cannot be used for conformity until they are approved by EPA.) We make SIP revisions available for comment by posting notification of their availability on our web site (currently, these notifications are posted at www.epa.gov/oms/transp/conform/adequacy.htm). The adequacy process is discussed in greater detail in a May 14, 1999 memorandum from Gay MacGregor entitled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision," also available on our web site (www.epa.gov/oms/transp/traqconf.htm).

As noted above, the Canon City maintenance plan was submitted to EPA on September 22, 1997. After the court decision, EPA conducted an adequacy review of all SIP submissions that had been received prior to the decision but not yet acted on. However, EPA did not conduct an adequacy review of the Canon City maintenance plan, because the Colorado AQCC voted on April 15, 1999 to request that the Governor withdraw this plan. The AQCC later rescinded its request that the plan be withdrawn, and EPA reviewed the emission budget in this plan for adequacy using the criteria located at 40 CFR 93.118(e).

This notice also serves as our determination that the emission budget in the maintenance plan of 7439 pounds per day of PM_{10} is adequate for conformity purposes. As a result of this adequacy finding, the Colorado Department of Transportation and the Federal Highway Administration are required to use this budget in future conformity analyses, even if EPA withdraws this direct final rule. This adequacy determination will be in effect as of the publication date of this direct final rule, and will remain in effect unless and until EPA disapproves the maintenance plan. EPA will not be publishing a separate notice in the **Federal Register** documenting this adequacy determination.

Notice of the availability of this SIP was posted on our adequacy web site on January 26, 2000, and a 30-day comment period for adequacy was provided following the procedures described in the May 14, 1999 Gay MacGregor memorandum referenced above. No comments were received. Interested parties can still comment on the Canon City mobile source emissions budget in response to the Notice of Proposed Rulemaking that accompanies this **Federal Register** document. If EPA receives adverse comments with respect to the adequacy of the Canon City emissions budget or any other aspect of our approval of this SIP by the time the comment period closes on the proposed rule, we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

D. Did Colorado Follow the Proper Procedures for Adopting This Action?

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

We also must determine whether a submittal is complete and therefore warrants further review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). Our completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. We attempt to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) if a completeness determination is not made within six months after receipt of the submission.

Copies of the proposed changes were made available to the public and the AQCC held a public hearing on October 17, 1996 to entertain public comment on the redesignation request and maintenance plan for the Canon City PM_{10} nonattainment area, after providing for more than 30 days of public notice. Colorado did not receive any adverse comments and therefore, the redesignation request and maintenance plan were subsequently adopted by the AQCC on October 17, 1996. The request was formally submitted to us for approval on September 22, 1997. We did not issue a completeness or an incompleteness finding for the September 22, 1997 submittal. Thus, pursuant to section 110(k)(1)(B), the submittal was deemed administratively and technically complete by operation of law on March 22, 1997 (six months after the date of receipt). We have evaluated the Governor's submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

III. Background

To implement our 1987 revisions to the particulate matter NAAQS, on August 7, 1987 (52 FR 29383), we categorized areas of the nation into three groups based on the likelihood that protection of the PM_{10} NAAQS would require revisions of the existing SIP. We identified Canon City as a PM_{10} "Group I" area of concern, *i.e.*, an area with a strong likelihood of violating the PM_{10} NAAQS and requiring a substantial SIP revision. The Canon City area was among several Group I PM_{10} areas, all of which were designated and classified as moderate PM_{10} nonattainment areas by operation of law upon enactment of the Clean Air Act Amendments of 1990 (November 15, 1990). See 56 FR 56694 at 56705–56706 (November 6, 1991).

By November 15, 1991, States containing initial moderate PM_{10} nonattainment areas were required to submit most elements of their PM_{10} SIPs. (See sections 172(c), 188, and 189 of the Act.) Some provisions, such as PM_{10} contingency measures required by section 172(c)(9) of the Act and nonattainment new source review (NSR) provisions, were due at later dates. In order for a nonattainment area to be redesignated to attainment, the above mentioned conditions in section 107(d)(3)(E) of the Act must be met. We approved Colorado's SIP for the Canon City PM_{10} nonattainment area on December 23, 1993 (58 FR 68036) and PM_{10} contingency measures for the area on December 14, 1994 (59 FR 64332).

On September 22, 1997, the Governor of Colorado submitted a request to redesignate the Canon City moderate PM_{10} nonattainment area to attainment for the 1987 PM_{10} NAAQS along with a maintenance plan for the area. Colorado's submittal was not approved at that time because we promulgated new standards for PM_{10} on September 18, 1997 and at the time of this redesignation request, we were transitioning from the 1987 PM_{10} standard to the new PM_{10} standard. Areas were to be designated under the new PM_{10} standard by July 2000 and for that reason we were encouraging areas to withdraw any redesignation requests for the pre-existing standard. The AQCC had voted to withdraw the Canon City redesignation request and maintenance plan due to the fact that Canon City would have been designated attainment by July 2000 under the 1997 PM_{10} standard. (Colorado's request for withdrawal had not yet been officially sent to us by the Governor and so we are able to process the original redesignation request and maintenance plan now.) On May 18, 1999, the United States Court of Appeals for the D.C. Circuit in *American Trucking Associations, Inc. et al.*, v. *United States Environmental Protection Agency* vacated the 1997 PM_{10} standard. Because of the Court ruling, we are continuing to implement the pre-existing PM_{10} standard, and are therefore approving redesignations to qualified PM_{10} nonattainment areas.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 31, 2000 unless EPA receives adverse written comments by June 29, 2000.

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Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control.

Dated: May 18, 2000.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

40 CFR part 52, subpart TT of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart TT

2. Section 52.332 is amended by adding paragraph (i) to read as follows:

§ 52.332 Moderate PM–10 nonattainment area plans.

* * * * *

(i) On September 22, 1997, the State of Colorado submitted a maintenance plan for the Canon City PM10 nonattainment area and requested that the area be redesignated to attainment for the PM10 National Ambient Air Quality Standards. An April 24, 2000 letter from Margie Perkins, Director, Colorado Air Pollution Control Division, to Richard Long, Director, EPA Region VIII Air and Radiation Program, was sent to clarify the requirements of the contingency plan section of the Canon City maintenance plan. The redesignation request and maintenance plan satisfy all applicable requirements of the Clean Air Act.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.306, the table entitled "Colorado—PM–10" is amended by revising the entry under Fremont County for "Canon City Area" to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
. . .	.	.	.	.
Fremont County				
Canon City Area	July 31, 2000	Attainment.		
Township 18S—Range 70W: All of sections 21, 22, 27, 28, 33, and 34; the E½, NENW, NESW, SENW, SESW quarters of sections 20, 29, 32; and the W½ of sections 23, 26, and 35; Township 19S—Range 70W: All of sections 3, 4, 9, 10; E½, NENW, NESW, SENW, SESW quarters of sections 5 and 8; W½ of sections 2 and 11.				
. . .	.	.	.	.

* * * * *

[FR Doc. 00–13332 Filed 5–26–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6705–4]

Removal of the Maximum Contaminant Level Goal for Chloroform From the National Primary Drinking Water Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is removing the zero MCLG for chloroform from its National Primary Drinking Water Regulations (NPDWRs) in accordance with a recent order of the U.S. Court of Appeals for the District of Columbia Circuit.

DATES: The effective date of this rule is May 30, 2000.

ADDRESSES: The public docket for this and earlier rulemakings concerning the NPDWRs for disinfectants and disinfection byproducts (D/DBPs), including the proposal, public comments in response to the proposal, other major supporting documents, and the index to the docket are available in the Water Docket, U.S. Environmental Protection Agency, 401 M Street SW, East Tower Basement, Washington, DC 20460. For information on how to access docket materials, please call the docket at (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Standard Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Jennifer McLain at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4607), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone (202) 260–0431. For general questions, please contact the Safe Drinking Water Hotline, (800) 426–4791, Monday through Friday from 9 a.m. to 5:30 Eastern Standard Time.

SUPPLEMENTARY INFORMATION:

A. Background

In December, 1998 EPA promulgated National Primary Drinking Water Regulations (NPDWRs) for disinfectants and disinfection byproducts (D/DBPs)

that included a Maximum Contaminant Level Goal (MCLG) of zero for chloroform, a disinfectant byproduct. The MCLG was challenged by the Chlorine Chemistry Council and Chemical Manufacturers Association, and the U.S. Court of Appeals for the District of Columbia Circuit found that EPA had not used the best available, peer-reviewed science to set the MCLG as required by the Safe Drinking Water Act. In *Chlorine Chemistry Council and Chemical Manufacturers Association* v. *EPA*, (No. 98–1627) filed on March 31, 2000, the Court issued an order vacating the zero MCLG. Today EPA is removing the MCLG for chloroform from its NPDWRs to ensure that the regulations conform to the Court's order. No other provision of the D/DBP regulations is affected.

B. "Good Cause" Under the Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because today's action is ministerial, to ensure the Code of Federal Regulations conforms to the Court's order. Thus, notice and public comment are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). For this same reason, EPA has also determined that it has "good cause" under 5 U.S.C. 553(d) to make the rule effective upon publication.

C. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see section B), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not impose technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in 63 FR 69390 (Dec. 16, 1998).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the Agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2).

As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of May 30, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 141

Environmental protection, Drinking water, Public utilities.

Dated: May 18, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5,300g–6, 300j–4, 300j–9, 300j–11.

§ 141.53 [Amended]

2. Section 141.53 is amended by removing the entry for chloroform.

[FR Doc. 00–13202 Filed 5–26–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 11, 73, and 74

[FCC 00–115]

Establishment of a Class A TV Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of May 10, 2000, a document concerning establishment of a Class A television service. This document contains corrections to that rule. Inadvertently, the effective date of the rule and the amendatory instructions to § 73.2080 were incorrect, and a paragraph was incorrectly deleted from § 73.1690. In addition, there is a typographical error in § 11.11, a line missing in the table of contents to Subpart J of part 73, and text that was incorrectly codified in § 73.3580. This document corrects these errors.

DATES: Effective May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, 202–418–2130.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of May 10, 2000 (65 FR 29985), establishing a Class A television service. In rule FR Doc. 00–11481, published on May 10, 2000, 65 FR 29985, correct the effective date, §§ 11.11, 73.1690, 73.2080, 73.3580, and the table of contents to subpart J of part 73.

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In rule FR Doc. 00–11481, published May 10, 2000 (65 FR 29985), make the following corrections:

1. On page 29985, in the second column, the effective date is corrected to read as follows:

DATES: Effective on June 9, 2000.

2. On page 29999, in the first column, in paragraph 87, the first sentence is corrected to read as follows: The amendments set forth shall be effective June 9, 2000.

3. On page 30001, the table "Timetable Broadcast Stations" in § 11.11(a) is corrected by revising the second entry in the first column to read as follows:

§ 11.11 The Emergency Alert System (EAS).

Section 11.11(a) is amended by revising the second entry in the first column of the table "Timetable Broadcast Stations" to read as follows: "Two-tone decoder [4, 5]"

4. On page 30005, in the third column, § 73.1690 is corrected by adding paragraph (c)(3) immediately preceding paragraph (c)(4) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(c) * * *

(3) A directional TV on Channels 2 through 13 or 22 through 68 or a directional Class A TV on Channels 2 through 13 or 22 through 51, or a directional TV or Class A TV station on Channels 15 through 21 which is in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation (*see* part 74, § 74.709(a) and (b) for tables of urban areas and reference coordinates of potentially affected land mobile operations), may replace a directional TV or Class A TV antenna by a license modification application, if the proposed horizontal theoretical directional antenna pattern does not exceed the licensed horizontal directional antenna pattern at any azimuth and where no change in effective radiated power will result. The modification of license application on Form 302–TV or Form 302–CA must contain all of the data set forth in § 73.685(f) or § 73.6025(a), as applicable.

* * * * *

5. On page 30006, in the first column, § 73.2080 is corrected by revising paragraph (a) to read as follows:

§ 73.2080 Equal employment opportunities.

(a) *General EEO Policy.* Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, Class A TV, or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex. Religious radio broadcasters may establish religious belief or affiliation as a job qualification for all station employees. However, they cannot discriminate on the basis of race, color, national origin or gender from among those who share their religious affiliation or belief. For purposes of this rule, a religious broadcaster is a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity.

* * * * *

6. On page 30008, in the third column, § 73.3580(d)(5) was incorrect. Section 73.3580(d)(5) is corrected to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(d) * * *

(5) An applicant who files for a Class A television license must give notice of this filing by broadcasting announcements on applicant's station. (Sample and schedule of announcements are below.) Newspaper publication is not required.

(i) The broadcast notice requirement for those filing for Class A television license applications and amendment thereto is as follows:

(A) *Pre-filing announcements.* Two weeks prior to the filing of the license application, the following announcement shall be broadcast on the 5th and 10th days of the two week period. The required announcements shall be made between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain Time) Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

On (date), the Federal Communications Commission granted (Station's call letters) a certification of eligibility to apply for Class A television status. To become eligible for a Class A certificate of eligibility, a low power television licensee was required to certify that during the 90-day period ending November 28, 1999, the station: (1) Broadcast a minimum of 18 hours per day; (2) broadcast an average of at least three hours per week of programming produced within the market area served by the station or by a group of commonly-owned low power television stations; and (3) had been in compliance with the Commission's regulations applicable to the low power television service. The Commission may also issue a certificate of eligibility to a licensee unable to satisfy the foregoing criteria, if it determines that the public interest, convenience and necessity would be served thereby.

(Station's call letters) intends to file an application (FCC Form 302–CA) for a Class A television license in the near future. When filed, a copy of this application will be available at (address of location of the station's public inspection file) for public inspection during our regular business hours. Individuals who wish to advise the FCC of facts relating to the station's eligibility for Class A status should file comments and petitions with the FCC prior to Commission action on this application.

(B) *Post-filing announcements.* The following announcement shall be broadcast on the 1st and 10th days following the filing of an application for a Class A television license. The required announcements shall be made between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain Time). Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

On (date of filing license application) (Station's call letters) filed an application, FCC Form 302–CA, for a Class A television license. Such stations are required to broadcast a minimum of 18 hours per day, and to average at least 3 hours of locally produced programming each week, and to comply with certain full-service television station operating requirements.

A copy of this application is available for public inspection during our regular business hours at (address of location of the station's public inspection file). Individuals who wish to advise the FCC of facts relating to the station's eligibility for Class A status should file comments and petitions with the FCC prior to Commission action on this application.

(ii) [Reserved]

* * * * *

7. On page 30009, in the first and second columns, the table of contents to subpart J of part 73 is corrected to read as follows:

Subpart J—Class A Television Broadcast Stations

Sec.

73.6000 Definitions.
73.6001 Eligibility and service requirements.
73.6002 Licensing requirements.
73.6003–73.6005 [Reserved]
73.6006 Channel assignments.
73.6007 Power limitations.
73.6008 Distance computations.
73.6010 Class A TV station protected contour.
73.6011 Protection of TV broadcast stations.
73.6012 Protection of Class A TV, low power TV, and TV translator stations.
73.6013 Protection of DTV stations.
73.6014 Protection of digital Class A TV stations.
73.6016 Digital Class A TV station protection of TV broadcast stations.
73.6017 Digital Class A TV station protection of Class A TV, low power TV, and TV translator stations.
73.6018 Digital Class A TV station protection of DTV stations.
73.6019 Digital Class A TV station protection of digital Class A TV stations.
73.6020 Protection of stations in the land mobile radio service.
73.6022 Negotiated interference and relocation agreements.
73.6024 Transmission standards and system requirements.
73.6025 Antenna system and station location.
73.6026 Broadcast regulations applicable to Class A television stations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13402 Filed 5–26–00; 8:45 am]

BILLING CODE 5712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45 and 97–21; FCC 00–180]

Federal-State Joint Board on Universal Service and Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service and Changes to the Board of Directors of the National Exchange Carriers Association, Inc. amends a procedural rule which sets out the time period by which the Common Carrier Bureau or the Commission must take action on a request for review of a decision issued by the Schools and Libraries Division of the Universal Service Administrative Company (USAC or Administrator). This document makes clear that a decision of the Administrator will not be deemed approved upon the running of the 90-day deadline for taking action on requests for review that are pending before the Bureau.

DATES: Effective May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Linda Chang, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission's Order in CC Docket Nos. 96–45 and 97–21 released on May 22, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

1. On March 1, 2000, the Commission released the *Bureau Extension Order*, 65 FR 12135 (March 8, 2000), that amended a rule to make clear that the Common Carrier Bureau (Bureau) may extend, for up to ninety days, the time period for taking action on a request for review of the Schools and Libraries Division of the Universal Service Administrative Company's (USAC or Administrator) decision that is pending before the Bureau or the Commission pursuant to § 54.724 of the Commission's rules. The *Bureau Extension Order* clarified that the Commission may extend the time period for taking action on a pending request for review of an Administrator's decision that is before either the Bureau or the Commission, but the Commission is not limited to a maximum 90-day extension period. In this Order, we amend a procedural rule which sets out the time period by which the Bureau or the Commission must take action on a request for review of a decision issued by the Administrator). We amend § 54.724 of the Commission's rules to make clear that a decision of the Administrator will not be deemed approved upon the running of the 90-day deadline for taking action on requests for review that are pending before the Bureau.

2. Section 54.724(a) of the Commission's rules establishes procedures for a request for review of an Administrator decision that is properly before the Bureau. Matters that are properly before the Bureau are appeals of Administrator decisions that do not involve novel issues of fact, law or policy. If the Bureau does not take action within 90 days regarding a request for review not involving novel issues, the decision issued by the Administrator is deemed approved. The rule also specifies that either the Commission or the Bureau may extend the time period for taking action on a matter before the Bureau.

3. In contrast, § 54.724(b) of the Commission's rules directs the Commission to issue, within 90 days, a written decision resolving a request for review of an Administrator decision that involves novel questions of fact, law or policy. The rules provide that the Commission or Bureau may extend the time period for taking action. Unlike appeals pending before the Bureau, if the Commission does not issue a decision within 90 days or does not extend the time period for taking action on the request for review, the Commission's rules do not provide that the Administrator's decision will be automatically approved.

4. The procedural distinction between matters pending before the Commission and those pending before the Bureau may pose problems for schools and libraries that request reviews of Administrator decisions. The appellants will not be certain whether or not their requests for review raise novel questions of fact, law or policy. As a consequence, appellants are not in a position to determine whether their appeals are pending before the Bureau or the Commission. Without knowledge of whether an appeal is being considered by the Bureau or Commission, a school or library cannot determine whether its appeal remains pending before the Commission or was subject to automatic denial where the 90-day time period for taking action ran without a decision or extension of time having been issued by the Bureau. Because of this lack of certainty, appellants cannot know when a denial is final and when the time period for pursuing further review has begun.

5. We believe that this uncertainty puts appellants in an untenable position. A party adversely affected by a Bureau decision has the right to seek reconsideration or Commission review of the decision. In order to exercise their right to seek review of an adverse decision, however, appellants must file either a petition for reconsideration or an application for review within thirty days from the date of public notice of the final action or release of the decision. The rules fail, however, to set forth a mechanism for public notice of Administrator decisions that are deemed approved upon the passage of 90 days in the absence of action by the Bureau.

6. The requirement in § 54.724(a) that Administrator decisions will be deemed approved in the absence of Bureau action on matters not involving new or novel issues was adopted to promote the prompt and efficient resolution of pending requests for review. We did not anticipate, however, that this means of streamlining our review process would add uncertainty to the appeals process or interfere with the ability of appellants to seek further review. Because we conclude that the different procedural processes found in §§ 54.724(a) and (b) generate uncertainty as to the status of certain requests for review, we find that it is in the public interest to eliminate the provision in § 54.724(a) specifying that a decision by the Administrator will be deemed approved where the Bureau has not acted within the 90-day review period. Accordingly, we find

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that it is appropriate to amend § 54.724(a) in this respect to conform to the rule that applies to Commission-level appeals. At the same time, we recognize the need of applicants under the schools and libraries program to have certainty over the status of their funding requests, and we remain committed to timely resolution of all appeals before us.

7. We believe this procedural amendment will clarify our administrative processes and prevent confusion regarding the procedural status of requests for review of Administrator decisions that are pending before the Bureau. Accordingly, as set forth, we amend § 54.724(a) of the Commission's rules to clarify that a decision of the Administrator will not be deemed approved upon the running of the 90-day time period for taking action on requests for review that are pending before the Bureau.

Ordering Clauses

8. The authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, is adopted.

9. Part 54 of the Commission's Rules 47 CFR part 54, is revised as set forth.

10. This action is exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553, because it affects only rules of agency procedure or practice.

11. Because this action involves an internal procedural matter, it is further ordered that the rule change set forth is May 30, 2000.

List of Subjects in 47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 54 of title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.724 by revising paragraph (a) to read as follows:

§ 54.724 Time periods for Commission approval of Administrator decisions.

(a) The Common Carrier Bureau shall, within ninety (90) days, take action in response to a request for review of an Administrator decision that is properly before it. The Common Carrier Bureau may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days. The Commission may also, at any time, extend the time period for taking action on a request for review of an Administrator decision pending before the Common Carrier Bureau.

* * * * *

[FR Doc. 00–13401 Filed 5–26–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 991210333–0089–02; I.D. 111099C]

RIN 0648–AN37

Dolphin-Safe Tuna Labeling; Official Mark

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to designate an official mark that can be used to label tuna products as being "dolphin-safe." The Dolphin Protection Consumer Information Act (DPCIA), as amended by the International Dolphin Conservation Program Act (IDCPA), requires the Secretary of Commerce to develop an official mark that can be used to label tuna products as "dolphin-safe." The intent of this rule is to establish and designate that mark.

DATES: Effective June 29, 2000.

ADDRESSES: A full color version of the official mark is available at the NMFS Southwest Region website at http://swr.ucsd.edu/dsl.htm or by contacting J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, (562) 980–4020, fax (562) 980–4027.

SUPPLEMENTARY INFORMATION:

Background

The DPCIA, 16 U.S.C. 1385, as amended by the IDCPA, requires the Secretary of Commerce to develop an official mark that can be used to label tuna products as "dolphin-safe." The IDCPA and the official mark provisions of the DPCIA became effective on March 3, 1999, when the Secretary of State certified to Congress that the Agreement on the International Dolphin Conservation Program had been adopted and was in force.

Official Mark

As discussed in the proposed rule to implement the IDCPA (December 22, 1999; 64 FR 71722), the Secretary of Commerce considered the designation of a commonly used "dolphin-safe" logo as the official mark, but instead decided to develop a unique logo as the official mark.

The DPCIA establishes "dolphin-safe" standards applicable to tuna products labeled with either the official mark or an alternative mark (16 U.S.C. 1385(d)). The DPCIA does not mandate the use of the official mark nor does it prohibit the use of alternative marks. However, as set forth under paragraph (d)(3)(B) of the DPCIA, whenever a tuna product bears the official mark, it may not bear any other mark or label that refers to dolphins, porpoises, or marine mammals. The dolphin-safe labeling standards, which are not a part of this rule-making, appear at 50 CFR 216.91 through 216.94. The standards are the subject of ongoing litigation. This final rule codifies the official mark at 50 CFR 216.96.

Proposed Rule

On December 22, 1999, NMFS published proposed regulations to designate an official mark that can be used to label tuna products as being dolphin-safe (64 FR 71722). Public comments on the proposed rule were accepted through January 5, 2000. In addition to publishing the proposed rule in the **Federal Register**, NMFS sent via fax and mail the notice to industry representatives, environmental groups, the Department of State, the Inter-American Tropical Tuna Commission (IATTC), the U.S. Commissioners to the IATTC, the Secretary of the Treasury, the U.S. Customs Service, the Marine Mammal Commission, and the Federal Trade Commission. NMFS also issued a press release summarizing the major issues contained in the proposed rule. Information in the press release was sent to several national newspapers and published on e-mail discussion groups and NMFS websites.

Responses to Comments

NMFS received 43 letters of comment in response to the proposed rule. Comments were received from environmental organizations and members of the public.

Numerous comments received were beyond the scope of the proposed rule to designate an official mark. These comments included concerns about subjects other than the official mark itself, such as: the dolphin-safe labeling standards, the initial finding required by the IDCPA on whether chase and encirclement of dolphins by the tuna purse seine fishery is having an adverse impact on depleted dolphin stocks in the eastern tropical Pacific Ocean (ETP) (notice published at 64 FR 24590), World Trade Organization influence and decisions related to U.S. embargoes against tuna harvested by purse seine in the ETP, enforcement of the Tuna Tracking and Verification Program, observer safety and objectivity, foreign trade interests and influence on the United States legislative process, the effects of purse seine fishing methods on dolphin stocks, mixed well storage of caught tuna onboard purse seine vessels, and decisions and procedures of the IATTC. The scope of the proposed rule is limited to the design elements of an official mark such as the graphics, color, appearance, and shape. The following is a summary of the comments NMFS received and NMFS responses.

Comment 1: Several commenters indicated that the short 14-day comment period and the publishing of the rule near the holidays did not provide adequate time for public comment.

Response: NMFS disagrees. The short comment period was adequate given the limited scope of the proposed rule.

Comment 2: Several commenters indicated that by designating an official mark NMFS would be intentionally defrauding the public about the effects of chase and encirclement on dolphins and unnecessarily confusing consumers with regard to the dolphin-safe status of labeled tuna.

Response: NMFS disagrees. The commenters appear to disagree with the standards for designating tuna products as being dolphin-safe. The standards are not the subject of this rule-making. The subject of this rule-making is an appropriate mark that can be used to show that a product is in compliance with the standards.

Comment 3: To avoid fraudulent representations, one commenter indicated "dolphin-safe" should not be used on the official mark without additional clarifying language such as "Dolphin Safe as Defined by Congressional Committee."

Response: NMFS disagrees. The official mark may only be used to label tuna products that meet the "dolphin-safe" standards set forth in the DCPIA and its implementing regulations. The words "Dolphin Safe" are defined in the DCPIA (16 U.S.C. 1385(d)). A reference to Congressional committees is inappropriate since the law was enacted by the entire Congress and signed by the President.

Comment 4: One commenter indicated that use of the official mark would be damaging to alternative tracking and certification programs.

Response: NMFS disagrees. Use of the official mark is discretionary and not mandated (16 U.S.C. 1385 (d)(3)(2)). Tuna products labeled as being dolphin-safe by any mark must meet the dolphin-safe labeling standards (16 U.S.C. 1385(d)) and the standards of the Tuna Tracking and Verification Program (16 U.S.C. 1385 (d)(3)(c)(ii)), this does not preclude the use of alternative marks or alternative tracking and certification programs.

Comment 5: One environmental organization asserted that the proposed official mark would detract, or undermine, their trademarked "Flipper Seal of Approval" by misleading the consumer about the "true" definition of dolphin-safe tuna.

Response: NMFS disagrees. The commenter appears to disagree with the standards for designating tuna products as being dolphin-safe. The standards are not the subject of this rule-making. The subject of this rule-making is an appropriate mark that can be used to show that a product is in compliance with the standards.

The design and layout of the official mark and the Flipper Seal of Approval are very different and do not resemble each other. The official mark contains the words "U.S. Department of Commerce" in red letters, along with a blue-colored dolphin profile facing the upper left, and a tricolor (light blue, blue, and a dark blue) banner along the bottom of the mark that overlaps the dolphin's fluke. In contrast, the Flipper Seal of Approval depicts a partly submerged dolphin that is smiling and waving, with the word "Flipper" written across the top in bright yellow letters and the words "Seal of Approval" along the bottom of the mark. The unique official mark is easily distinguishable and could not mislead consumers into believing that it was the Flipper Seal of Approval.

Comment 6: Several commenters felt that the development and designation of the official mark is a waste of taxpayer money and contrary to the will of United States consumers.

Response: The DPCIA (16 U.S.C. 1385) requires the Secretary of Commerce to develop an official mark that may be used to label tuna products as "dolphin-safe." The Secretary is obligated to implement this mandate.

Comment 7: One commenter expressed concern that the designation of an official mark would limit the right of tuna companies to use an alternative dolphin-safe marks.

Response: The DPCIA does not mandate the use of the official mark nor does it prohibit the use of alternative marks. However, as set forth under paragraph (d)(3)(B) of the DPCIA, whenever a tuna product bears the official mark, it may not bear any other mark or label that refers to dolphins, porpoises, or marine mammals.

After considering the comments received, there are no changes to the regulatory text from the proposed rule.

Classification

Executive Order 12866

This final rule has been determined to not be significant for purposes of E.O. 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities. NMFS received one comment regarding this certification. The commenter indicated that a Regulatory Flexibility Analysis should be completed before designating the official mark because of potential impacts and costs to small businesses to educate the consumer about the official mark. Because the IDCPA does not mandate the use of the official mark, and use of the official mark is discretionary, there are no compliance costs associated with use of the official mark. This comment did not cause NMFS to change its determination regarding the certification. As a result, no regulatory flexibility analysis was prepared.

List of Subjects in 50 CFR Part 216

Dolphin-safe, Exports, Fish, Imports, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: May 22, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

The authority citation for part 216 continues to read as follows:

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Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.96 is added to read as follows:

§ 216.96 Official mark for "Dolphin-safe" tuna products.

(a) This is the "official mark" (see figure 1) designated by the United States Department of Commerce that may be used to label tuna products that meet the "dolphin-safe" standards set forth in the Dolphin Protection Consumer Information Act, 16 U.S.C. 1385, and implementing regulations at §§ 216.91 through 216.94:

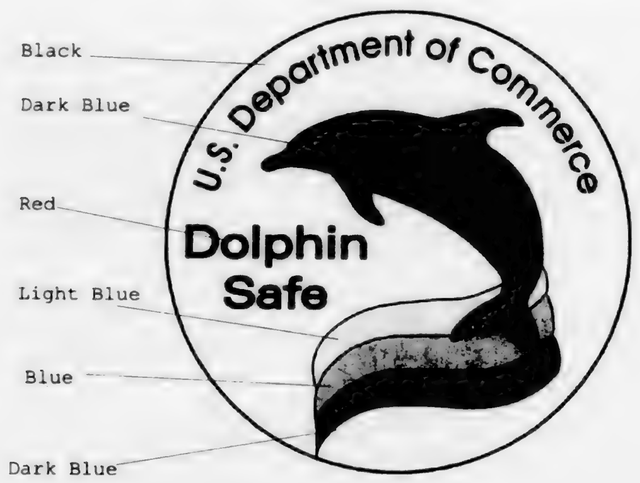

Figure 1.

(b) *Location and size of the official mark.* The official mark on labels must allow the consumer to identify the official mark and be similar in design and scale to figure 1. A full color version of the official mark is available at http://swr.ucsd.edu/dsl.htm.

[FR Doc. 00–13374 Filed 5–26–00; 8:45 am]
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Proposed Rules

Federal Register
Vol. 65, No. 104
Tuesday, May 30, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV00–929–2 PR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington and Long Island in the State of New York; Establishment of Marketable Quantity and Allotment Percentage and Other Modifications Under the Cranberry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish the quantity of cranberries that handlers may purchase from, or handle for, growers during the 2000–2001 crop year, which begins on September 1, 2000, and ends on August 31, 2001. The Cranberry Marketing Committee (Committee), the agency responsible for local administration of the cranberry marketing order, recommended a marketable quantity of 5.4 million barrels and an allotment percentage of 85 percent. This rule invites comments on the Committee's recommendation as well as two alternative levels of regulation being proposed by the Department. This action is designed to stabilize marketing conditions and improve grower returns. Fresh and organically-grown cranberries would be exempt from the volume limitations to facilitate marketing of these products. Also proposed are improvements in the way producer allotments are calculated, including proposals initiated by the Department to revise the way in which growers' sales histories are computed and to suspend certain dates in the order which are impractical.

DATES: Comments must be received by June 14, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax: (202) 720–5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at the following website: www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 5D03, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243; Fax: (301) 734–5275; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

Question and Answer Overview

What Are Marketing Orders?

Marketing orders are rules which are authorized under the Agricultural Marketing Agreement Act of 1937 and which are based on evidence developed at a formal hearing. Marketing orders help fruit and vegetable growers work together to solve marketing problems that cannot be solved individually. Industries voluntarily enter into these programs and choose to have Federal oversight of certain aspects of their operations.

The cranberry industry has operated under a marketing order since 1962. The order's primary regulatory authority is volume control, utilizing either a producer allotment program, or establishing a withholding percentage where the amount of cranberries that handlers can handle is limited. The order also authorizes reporting and record keeping activities related to the gathering of statistical information and supporting volume control activities, as well as research and promotion activities. Volume control has not been used since 1971.

The Committee, which is responsible for local administration of the order, recommended this action to stabilize marketing conditions and improve grower returns. The Department is also proposing some changes in the way the volume control program would be implemented to improve the process.

Who Would Be Affected by This Action?

Growers and handlers/processors located in the 10-State production area would be affected by this action. The 10-State production area covers cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Why Is Volume Control Being Recommended for This Year?

The Committee recommended volume control this year in order to address the serious oversupply situation being experienced by the industry. For the 1999 crop year, industry reports show that continued low grower prices will accompany record high production and inventories. Many cranberry growers are experiencing difficulties dealing with these extreme market conditions. The Committee recommended implementing volume regulations at its March 30, 2000, meeting in Minneapolis, Minnesota.

The Committee determined the best method of volume control would be the producer allotment program which provides for an annual marketable quantity and allotment percentage.

The use of volume control is not the only avenue that could be used to address the oversupply situation being

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experienced by the industry. The industry is also looking into methods of increasing demand by developing new markets, both domestic and foreign, by developing new products and by increasing promotional efforts.

What Is Marketable Quantity and Allotment Percentage?

Marketable quantity is defined as the number of pounds of cranberries needed to meet total market demand and to provide for an adequate carryover into the next season. The Committee determined that the marketable quantity for the 2000–2001 crop year should be established at 5.4 million barrels. This is equal to the expected demand for fruit for processing.

The allotment percentage equals the marketable quantity divided by the total of all growers' sales histories. Total growers' sales histories were set at 6.35 million barrels. Using the formula established under the order (5.4 million barrels divided by 6.35 million barrels), the annual allotment percentage is 85 percent.

The Department is proposing a change in the way sales histories are calculated, which would bring the industry total to 7.6 million barrels. Using the 5.4 million barrel marketable quantity recommended by the Committee would yield an allotment percentage of 71 percent. To keep the allotment percentage at the level recommended by the Committee (85 percent), the marketable quantity would have to be increased to 6.46 million barrels. Comments are invited on the Committee's proposed recommendation for setting a volume regulation for the 2000 cranberry crop and on the two alternative methods proposed by the Department.

Sales of fresh and organically-grown fruit would be exempt from the proposed volume regulation. In addition, the Committee and the Department recommended other modifications to implement volume regulation.

How Are Growers' Annual Allotments Calculated?

A grower's annual allotment is the result of multiplying the individual grower's sales history by the allotment percentage.

How Are Sales Histories Calculated?

The Cranberry Marketing Committee (Committee) is responsible for calculating each grower's sales history on an annual basis. For growers with existing cranberry acreage, sales history is established by computing an average of the best four years' sales out of the last six years' sales. For growers with four years or less of commercial sales history, the sales history is calculated by averaging all available years of such grower's sales. A grower with no sales history would be issued allotment based on the State average yield per acre or the total estimated commercial sales, whichever is greater. For the 2000–2001 crop, the State average yield would be defined as the average State yield for the year 1997 or the average of the best four years out of the last six years, whichever is greater.

The Department is proposing a change in this calculation. For all existing growers, sales histories would be based on the best year out of the last six. For a grower with less than six years of sales, the sales history would be the highest year of sales available. Growers with no sales history would be issued allotment as described in the previous paragraph.

How Can I Comment on This Action?

Interested persons have 15 days from the date of publication of the proposed rule to file written comments. Such comments should be sent to: Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax: (202) 720–5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at the following website: www.ams.usda.gov/fv/moab.html. In addition, small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

When Will This Action Be Effective?

After the 15-day comment period ends, the Department will analyze the comments and issue its decision. Depending on the results of its analysis of the rulemaking proceeding, the Department could issue a final rule similar to, or the same as, this proposal. It could also issue a rule with appropriate modifications, based on the comments and on the rulemaking record, or it could terminate this rulemaking. In rare instances, the Department has issued a second proposal. Any final rule would be effective for the 2000–2001 crop year which begins on September 1, 2000. It would affect all current growers and handlers of cranberries in the production area.

Executive Orders 12866 and 12998

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, a marketable quantity and allotment percentage may be established for cranberries during the crop year. This rule would establish a marketable quantity and allotment percentage for cranberries for the 2000–2001 crop year beginning September 1, 2000, through August 31, 2001. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This proposal invites comments on establishing a marketable quantity and allotment percentage for the 2000–2001 crop year. This action would also exempt fresh and organically-grown cranberries from volume regulation, define State average yield per acre, increase the barrels per acre for determining a commercial crop, and revise the Committee review procedures for re-determination of sales histories. These actions were recommended by the Committee at its March 30, 2000, meeting. The volume regulation would be in effect September 1, 2000, through August 31, 2001.

This action also invites comments on two proposals being suggested by the Department. The first would change the way in which growers' sales histories are computed, which would result in a revised marketable quantity or allotment percentage. The second would suspend the order requirement that grower allotments be issued by June 1.

Marketable Quantity and Allotment Percentage

Section 929.49 of the order currently provides that if the Secretary finds from the recommendation of the Committee or from other available information, that limiting the quantity of cranberries purchased from or handled on behalf of growers during a crop year would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish a marketable quantity for that year. In addition, the Secretary would establish an allotment percentage which shall equal the marketable quantity divided by the total of all growers' sales histories. Handlers cannot handle cranberries unless they are covered by a grower's annual allotment.

The cranberry industry has operated under a Federal marketing order since 1962. The last season volume regulation was recommended was in 1971.

The order covers a ten-State area. The highest producing States are Massachusetts and Wisconsin, which together account for about 80 percent of total production. Over 95 percent of the crop is processed, with the remainder being sold as fresh fruit.

For many years, the industry has enjoyed increasing demand for cranberry products, primarily due to the success of cranberry juice-based drinks. This situation encouraged additional production. From 1960 through 1999, production increased from 1.34 million barrels (one barrel equals 100 pounds of cranberries) to 6.39 million barrels. This represents a 377 percent increase. Production in 1999 was an all-time high, and was 17 percent above that of the previous year.

The growth rate in production is attributable to a 76 percent increase in harvested area (from 21,140 to 37,200 acres) and an even higher increase (171 percent) in yields (from 63.4 to 171.7 barrels per acre).

While production continues to rise, demand has leveled off. Total domestic sales peaked in 1994 at 4.7 million barrels, and declined to 4.5 million barrels in 1998.

Increased total supplies in excess of demand have resulted in large inventories. Carryover inventories have grown from 883,773 barrels in 1988 to 3,107,366 barrels in 1999. From 1988 through 1997, carryover as a percent of production ranged from 21 to 36 percent. However, in 1998, carryover as a percent of production increased to 40 percent; in 1999 it increased to 49 percent. Carryover inventory for the 1999 season exceeded 3 million barrels for the first time in the industry's history.

When supply outpaces demand, resulting in high levels of carryover inventories, grower prices can be negatively impacted. Grower prices rose from $8.83 per barrel in 1960 to a peak level of $65.90 per barrel in 1996. These rising price levels provided an incentive for producers to expand planted acres and to increase yields. Over the past two seasons, prices have started to decline. In 1998, grower prices decreased to $38.80 per barrel. The returns for the 1999 crop year are expected to fall below $30.00 per barrel. The industry anticipates further price reductions if supplies are not brought more in line with demand.

Increasing inventories and the high costs associated with storing these inventories have resulted in the industry considering the use of volume control regulations. The goal of such regulations is to obtain a higher and more stable price than would exist in their absence.

In an industry such as the cranberry industry, where the product can be stored for long periods of time, volume control is a method that could be used to reduce unwanted inventories. Large inventories are costly to maintain and, with the outlook for continued high production levels, these inventories would be difficult to market.

Section 929.46 of the order requires the Committee to develop a marketing policy each year prior to May 1. In its marketing policy, the Committee projects expected supply and market conditions for the upcoming season, including an estimate of the marketable quantity (defined as the number of pounds of cranberries needed to meet total market demand and to provide for an adequate carryover into the next season).

At a March 30, 2000, meeting, the Committee estimated the 2000–2001 domestic production of cranberries at 5.89 million barrels. Carryover as of September 1, 2000 is estimated at 4.6 million barrels. Foreign production (primarily Canada) is projected at 800,000 barrels. Allowing for shrinkage of approximately 3 percent, the total adjusted available supply of cranberries is expected to be 10,930,000 barrels.

Based in large part on historical sales figures, the Committee estimated utilization of processing fruit at 5.4 million barrels and of fresh fruit at 280,000 barrels.

A summary of the marketing policy follows:

CRANBERRY MARKETING POLICY

[2000 crop year estimate]

	Barrels
Carryin as of 9/1/2000	4,600,000
Domestic production	5,890,000
Foreign production	800,000
Available supply (sum of the above)	11,290,000
Minus shrinkage	360,000
Adjusted Supply	10,930,000
Fresh Fruit	280,000
Processing fruit	5,400,000
Total Sales and Usage	5,680,000
Carryover as of 8/31/2001	5,250,000

The Committee determined that the marketable quantity for the 2000–2001 crop year should be established at 5.4 million barrels. This is equal to the expected demand for processing fruit. Fresh fruit sales were not included because (as discussed later in this document) fresh fruit would not be covered by the allotment percentage. Using a marketable quantity equal to processed fruit demand should result in a more stable level of inventories. Supplies in inventory could easily cover any unexpected increases in market demand.

Section 929.49(b) of the order provides that the marketable quantity be apportioned among growers by applying the allotment percentage to each grower's sales history. The allotment percentage equals the marketable quantity divided by the total of all grower's sales histories. No handler can purchase or handle cranberries on behalf of any grower not within the grower's annual allotment.

Total growers' sales histories were set at 6.35 million barrels. Using the formula established under the order in § 929.49 (5.4 million barrels divided by 6.35 million barrels), the annual allotment percentage is 85 percent.

As described later in this document, the Department is proposing a change in the way growers' sales histories are computed. If this change is adopted, each grower's sales history would be recalculated. The Committee staff reports that this would result in a new industry total sales history of 7.6 million barrels. Using the 5.4 million barrel marketable quantity recommended by the Committee would result in an allotment percentage of 71 percent. To retain an allotment percentage of 85 percent, the marketable quantity would need to be increased to 6.46 million barrels. The Department is

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soliciting comments on the Committee's original recommendation of marketable quantity and allotment percentage as well as the two alternatives proposed by the Department. To summarize, the three options are as follows (the marketable quantity and total sales histories figures are all in million barrel units):

	Marketable quantity	Total sales histories	Allotment percentage
Committee Recommendation	5.4	6.35	85
USDA Option 1	5.4	7.6	71
USDA Option 2	6.46	7.6	85

A marketable quantity and allotmentment percentage for the 2000–2001 crop year are proposed to be established by adding a new § 929.250 to the order's rules and regulations. The Committee could at any time, by reason of changed conditions, recommend modification, suspension or termination of this section.

Determination of New Sales History

Section 929.48 of the order provides for computing growers' sales histories to be used in calculating marketable quantities and allotment percentages under § 929.49. Sales history is defined in section 929.13 as the number of barrels of cranberries established for a grower by the Committee. The Committee has been updating growers' sales histories each season. The Committee accomplishes this by using information submitted by the grower on a production and eligibility report filed with the Committee. The order sets forth that a grower's sales history is established by computing an average of the best four years' sales out of the last six years' sales for those growers with existing acreage. For growers with four years or less of commercial sales history, the sales history is calculated by averaging all available years of such grower's sales. A new sales history for a grower with no sales history is calculated by using the State average yield per acre or the total estimated commercial sales, whichever is greater.

The Committee considered for the 2000–2001 crop that the State average yield be defined as the average State yields for the year 1997 or the average of the best four years out of the last six years, whichever is greater. This calculation is similar to that used to compute sales history (an average of the best four years out of the last six years), and would average out seasonal variations in yields. However, if estimated commercial sales are greater than what is computed above, the Committee would use the commercial sales estimated by the grower.

In order to take into account the differences among the States, the Committee recommended calculating the average yield for each State using the best four of the last six years, and comparing it to the average yield for that State in 1997. The higher of the two figures for each State would be used to calculate new sales histories for new growers. This rule proposes adding a new § 929.148 to set forth this calculation.

Some existing growers may also have newly planted acreage that has not yet established a sales history. Sales histories for such acreage would be calculated in the same way as sales histories for new growers.

Growers are required to file a form with the Committee by April 15 each year if they wish to receive an annual allotment. Growers also must notify the Committee of any new acreage that will be coming into production for the 2000–2001 crop year. The Committee would notify each grower of his or her annual allotment and notify each handler of the annual allotment that can be handled for each grower whose total crop will be delivered to such handler. In cases where a grower delivers a crop to more than one handler, such grower may determine how to apportion the annual allotment among those handlers.

A grower who does not produce cranberries equal to his or her annual allotment would transfer such unused allotment to such grower's handler(s). The handlers would then be required to equitably allocate the unused allotment to growers with excess cranberries (those not covered by allotment) who deliver to those handlers. Unused allotment remaining after all such transfers have taken place would be forfeited to the Committee.

Handlers who receive more cranberries than are covered by their growers' annual allotments have excess cranberries. The Committee would equitably distribute unused allotment to those handlers that have excess cranberries.

Outlets for Excess Cranberries

The purpose of the producer allotment program proposed to be implemented by this rule is to limit the amount of the total crop that can be marketed for normal uses. As previously indicated, a large portion of the U.S. cranberry crop is processed. Most of it is marketed domestically.

There is no need to limit the volume of cranberries that may be marketed in noncommercial or noncompetitive outlets. Thus, in accordance with § 929.61, handlers would be able to dispose of excess cranberries in certain designated outlets. Noncommercial outlets include charitable institutions and research and development projects for market development purposes. Noncompetitive outlets are any nonhuman food use and foreign markets, except Canada. Canada is excluded because significant sales of cranberries to Canada could result in transshipment back to the United States of the cranberries exported there. This could disrupt the U.S. market, counter to the intent of the volume regulation.

To ensure that excess cranberries diverted to the specified outlets do not enter normal market channels, certain safeguard provisions are established under § 929.61. These provisions require handlers to provide documentation to the Committee to prove that the diverted cranberries were actually used in a noncommercial or noncompetitive outlet. In the case of nonhuman food use, a handler would be required to notify the Committee at least 48 hours prior to disposition so that the Committee staff would have sufficient time to be available to observe the disposition of the cranberries.

Section 929.104 of the rules and regulations is proposed to be revised to list the outlets in which handlers can divert excess cranberries. That section currently lists outlets for "restricted cranberries." "Restricted cranberries" is a term used in connection with withholding requirements—another type of volume regulation authorized under the order. While the specific outlets listed are not being proposed for revision, changes are proposed in the regulatory text to provide that these outlets are authorized for excess cranberries under a producer allotment program.

Fresh and Organic Fruit Exemption

The Committee also recommended that fresh fruit and organically-grown cranberries be exempted from regulation this season. Fresh and organically-grown fruit would be exempt pursuant to § 929.58 of the order which provides that the Committee may relieve from any or all requirements cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe.

Fresh fruit accounts for about 4.7 percent of the total production. The Committee estimated that about 280,000 barrels will be sold fresh this year, compared to 260,000 barrels sold last season.

Under current marketing practices, there is a distinction between cranberries for fresh market and those for processing markets. Cranberries intended for fresh fruit outlets are grown and harvested differently. Fresh cranberries are dry picked while cranberries used for processing are water picked. When cranberries are water picked, the bog is flooded and the cranberries that rise to the top are harvested. Dry picking is a more labor intensive and expensive form of harvesting. Cranberry bogs are designated as "fresh fruit" bogs and are grown and harvested accordingly. Only the lower quality fruit from a fresh bog goes to processing outlets.

In addition, fresh cranberry sales constitute less than 5 percent of the cranberry market. All fresh cranberries can be marketed and do not compete with processing cranberries. Fresh cranberries are seasonal (due to their limited shelf life) and are not a part of the growing industry inventories. The Committee concluded that fresh supplies do not contribute significantly to the current cranberry surplus. Thus, the Committee recommended that such cranberries be exempt from the allotment percentage this rule proposes.

Organically-grown cranberries comprise an even smaller portion of the total crop than fresh cranberries. The Committee estimated that about 1,000 barrels of organic fruit will be sold this season, compared to 450 barrels last season. Organic cranberries are a growing niche market and regulating them could have an adverse effect on the production and marketing of this product. Like fresh cranberries, demand for organic cranberries is in line with the current limited production. Thus, organic cranberries do not contribute in any meaningful way to the current oversupply experienced with processing fruit. The Committee therefore recommended that organically-grown cranberries be exempt from volume regulation during the upcoming season.

In order to be exempt, organic cranberries would have to be certified as such by a third party organic certifying organization that is acceptable to the Committee.

Exemptions for fresh and organically-grown cranberries would be provided in a proposed new § 929.158.

Definition of Commercial Crop

The Committee also recommended that the amount of barrels that defines a commercial crop under the marketing order be increased. Calculations of sales histories are based on "commercial" cranberry acreage. Currently, section 929.107 defines a commercial crop as acreage that has a sufficient density of growing vines to produce at least 15 barrels per acre without replanting or renovation. The Committee has recommended that the 15 barrels per acre be increased to 50 barrels per acre. Acreage producing less than 50 barrels per acre would not be considered to produce a commercial crop. This increase would bring the order more in line with current growing conditions.

This action would assist growers who harvested cranberries for the first time in 1999. These growers would qualify for a new sales history determination. As previously discussed, sales history on new acreage would be the State average yield or the grower's estimated commercial sales, whichever is greater.

A full commercial cranberry crop is usually not harvested until 3 or 4 years after being planted. Production is usually limited during the first year, with increases in subsequent years until full capacity is reached. If a grower harvested a bog for the first time in 1999, and achieved a yield of 25 barrels per acre, such grower's sales history would be calculated by using the determination for a grower with four years or less of production. This would be the actual production for that year. Therefore, in this example, for the 2000–2001 crop year the grower's sales history would be 25 barrels multiplied by the number of acres such grower harvested. The 25 barrels would be used in the calculation since it is greater than the 15 barrels per acre used to define commercial cranberry acreage.

Under the proposed revision, such grower's first year of sales harvested from that acreage would not count since it is less than 50 barrels per acre. Therefore, the grower would be eligible to receive the determination for growers with no sales history on such acreage (which would be the State average yield or the grower's estimated commercial sales, whichever is greater). This would benefit growers who had very low yields per acre for their first year of production.

Appeal Procedures

Finally, the Committee recommended that the current review procedures for appeals be revised. Currently, section 929.125 provides an appeal procedure for growers who are dissatisfied with their sales histories, as determined pursuant to § 929.48(a) and (b) of the order. Under the current procedures, a grower may submit to the Committee a written argument within 30 days after receiving the Committee's determination of that grower's sales history, if such grower disagrees with the determination. The Committee shall review its determination within a reasonable time, reviewing all the material submitted by the grower, and notify the grower of its decision. If the grower is not satisfied with the Committee's decision, that grower may appeal to the Secretary, through the Committee, within 30 days after being notified about the Committee's decision. The Secretary shall review all pertinent information and render a decision. The Secretary's decision shall be final.

The Committee recommended revising the current process. Specifically, it proposed that an appeals subcommittee be established and that the full Committee be provided with 15 days to further review appeals by growers. The Committee believes that this process would be more efficient in considering grower appeals. The subcommittee, appointed by the Chairman, would be composed of two independent and two cooperative representatives, as well as a public member. Although an additional level of review is being established, the Committee believes that it would be more efficient for a subcommittee composed of 5 members to meet and discuss the appeals. The subcommittee would have 30 days to render a decision on the request.

If the grower is not satisfied with the appeal subcommittee's decision, the grower could further appeal to the full Committee. The grower would submit his or her written argument to the Committee along with any pertinent information for the Committee's review within 15 days after being notified about the determination by the subcommittee. The Committee would have 15 days from the receipt of the grower's appeal to respond. The Committee would inform the grower of its decision, including the reasons for its decision.

The grower may further appeal to the Secretary within 15 days after notification of the Committee's findings, if such grower is not satisfied with the Committee's decision. The Committee would forward a file with all pertinent

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information related to the grower's appeal. The Secretary would inform the grower and Committee staff of the Secretary's decision. All decisions by the Secretary are final.

USDA Proposal—Recalculation of Sales Histories

As previously discussed, the order sets forth that a grower's sales history is established by computing an average of the best four years' sales out of the last six years' sales for those growers with existing acreage. For growers with four years or less of commercial sales history, the sales history is calculated by averaging all available years of such grower's sales. A new sales history for a grower with no sales history is calculated by using the State average yield per acre or the total estimated commercial sales, whichever is greater.

Since the Committee met on March 30, 2000, the Department has received additional information from cranberry growers and handlers pertaining to the way in which sales histories are computed. Of primary concern is the potential inequities that could result from the current process. Specifically, newer growers would be restricted to a greater extent than more established growers. That is because a cranberry bog does not reach full capacity until several years after being planted. Using an average of early years' sales (which are low) would likely result in a sales history substantially below current sales potential. A more established grower, on the other hand, would have a sales history more reflective of his or her production capacity.

The Committee's recommendation concerning the definition of "commercial crop" (previously discussed in this document) was in response to this concern. However, the Department believes a further modification is needed to lessen the differential impact a volume regulation would have on individual cranberry growers. For this reason, The Department is proposing that a sales history for each existing grower be calculated using the best single sales year in the past six years. For a grower with less than six years of sales, the sales history would be the highest year of sales available. This proposal is authorized under § 929.48(a)(2) of the order which provides that the number and identity of the years used to compute sales histories may be altered by regulation. The Department is not proposing a change in the way sales histories are computed for brand new growers (those without any history of sales).

The Department is inviting comments on this proposed change. As previously discussed, this change in the way sales histories are computed would result in a revised industry total sales history of 7.6 million barrels. This would also result in a modification of the marketable quantity or the allotment percentage. It is expected that the Committee would meet to consider this proposal and provide the Department with its views and any recommended revisions prior to finalization of this proposed rule.

This proposal would be implemented by adding a new § 929.149 to the order's rules and regulations.

USDA Proposal—Suspension of Deadline for Notifying Growers of Their Annual Allotment

Section 929.49 of the order provides that in any year in which an allotment percentage is established by the Secretary, the Committee must notify growers of their annual allotment by June 1. That section also requires the Committee to notify each handler of the annual allotments for that handler's growers by June 1.

This rule proposes establishing an allotment percentage for the 2000 cranberry crop. To allow adequate time for interested parties to comment on this proposal and for the Department to give due consideration to the comments received, a final decision on this rule may not be reached before June 1. Therefore, the Department is proposing that the June 1 deadline be suspended for the 2000–2001 crop year.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of cranberries who are subject to regulation under the order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of cranberry handlers and producers may be classified as small businesses.

This rule would establish a marketable quantity and an allotment percentage for cranberries in a 10 State production area during the crop year from September 1, 2000, through August 31, 2001. Handlers would only be allowed to handle those cranberries that are covered by annual allotment. This action would also exempt fresh and organic cranberries from volume regulation, define the State average yield, increase the barrels per acre for determining a commercial crop, and revise the Committee review procedures. These actions are designed to improve the operation of the volume regulation program.

Over the past several years, per capita consumption of cranberries has averaged 1.69 pounds. Per capita consumption peaked in 1994 at 1.80 pounds and began trending downward. In 1998, per capita consumption was 1.67 pounds. Associated with these per capita consumption figures is the fact that total domestic sales also peaked in 1994 at 4,692,507 barrels and has declined to 4,506,632 barrels in 1998. However, cranberry production reached an all-time high of 6,389,000 barrels in 1999. This is a 17 percent increase over 1998 production of approximately 5.4 million barrels. Available cranberry supplies continue to out pace demand, resulting in high levels of carryover inventories. Over the past two seasons, prices have started to decline. In 1998 grower prices decreased to $38.80 per barrel. In 1999, prices are expected to fall to $18–$30 per barrel.

The cranberry industry has operated under a Federal marketing order since 1962. The last season of volume regulation was in 1971. The order covers a ten-State area. The highest producing States are Massachusetts and Wisconsin, which together account for about 80 percent of total production. Over 90 percent of the crop is processed, with the remainder being sold as fresh fruit.

For many years the industry has enjoyed increasing demand for cranberry products, primarily due to the success of cranberry juice-based drinks. This situation encouraged additional production. From 1960 through 1999, production increased from 1.34 million barrels (one barrel equals 100 pounds of cranberries) to 6.39 million barrels. This represents a 377 percent increase. Production in 1999 was an all-time high, and was 17 percent above that of the previous year.

The growth rate in production is attributable to a 76 percent increase in harvested area (from 21,140 to 37,200 acres) and an even higher increase (171 percent) in yields (from 63.4 to 171.7 barrels per acre).

While production continues to rise, demand has leveled off. Total domestic sales peaked in 1994 at 4.7 million barrels, and declined to 4.5 million barrels in 1998.

Increased total supplies in excess of demand have resulted in large inventories. Carryover inventories have grown from 883,773 barrels in 1988 to 3,107,366 barrels in 1999. From 1988 through 1997, carryover as a percent of production ranged from 21 to 36 percent. However, in 1998, carryover as a percent of production increased to 40 percent; in 1999 it increased to 49 percent. Carryover inventory for the 1999 season exceeded 3 million barrels for the first time in the industry's history.

When supply outpaces demand, resulting in high levels of carryover inventories, grower prices could be negatively impacted. Grower prices rose from $8.83 per barrel in 1960 to a peak level of $65.90 per barrel in 1996. These rising price levels provided an incentive for producers to expand planted acres and to increase yields. Over the past two seasons, prices have started to decline. In 1998, grower prices decreased to $38.80 per barrel. The returns for the 1999 crop year are expected to fall below $30.00 per barrel. The industry anticipates further price reductions if supplies are not brought more in line with demand.

Increasing inventories and the high costs associated with storing these inventories have resulted in the industry considering the use of volume control regulations. The goal of such regulations is to obtain a higher and more stable price than would exist in their absence.

In an industry such as cranberries, where the product can be stored for long periods of time, volume control is a method that can be used to reduce unwanted inventories. Large inventories are costly to maintain and, with the outlook for continued high production levels, these inventories would be difficult to market.

Based in large part on historical sales figures, the Committee estimated utilization of processing fruit at 5.4 million barrels and of fresh fruit at 280,000 barrels.

The Committee determined that the marketable quantity for the 2000–2001 crop year should be established at 5.4 million barrels. This is equal to the expected demand for processing fruit. Fresh fruit sales were not included because fresh fruit would not be covered by the allotment percentage. Organically-grown cranberries would also be exempted because projected sales are only about 1,000 barrels. Using a marketable quantity equal to processed fruit demand should result in a more stable level of inventories. Supplies in inventory could easily cover any unexpected increases in market demand.

Section 929.49(b) provides that the marketable quantity be apportioned among growers by applying the allotment percentage to each grower's sales history. The allotment percentage equals the marketable quantity divided by the total of all grower's sales histories. No handler can purchase or handle cranberries on behalf of any grower not within the grower's annual allotment.

Total growers' sales histories were set at 6.35 million barrels. Using the formula established under the order (5.4 million barrels divided by 6.35 million barrels), the annual allotment percentage is 85 percent.

Currently, a grower's sales history is established by computing an average of the best four years' sales out of the last six years' sales for those growers with existing acreage. For growers with four years of less of commercial sales history, the sales history is calculated by averaging all available years of such growers' sales.

The Department is proposing that a sales history for each existing grower be recalculated, using the best single sales year in the past six years. For a grower with less than six years of sales, the sales history would be the highest year of sales available. This change is being proposed to take care of potential inequities that could result from the current process of computing sales histories. Specifically, newer growers are restricted to a greater extent than more established growers. That is because a cranberry bog does not reach full capacity until several years after being planted. Using an average of early years' sales (which are low) would likely results in a sales history substantially below current sales potential. A more established grower, on the other hand, would have a sales history more reflective of his or her production capacity.

If adopted, each grower's sales history would be recalculated. The Committee staff reports that this would result in a new total industry sales history of 7.6 million barrels (compared to the current total of 6.35 million barrels). Since the allotment percentage is determined by dividing the marketable quantity by the total sales history, a change in the total sales history could impact the level of volume regulation.

If the 5.4 million barrel marketable quantity recommended by the Committee is used, the allotment percentage would change from the 85 percent recommended by the Committee to 71 percent. Increasing the restricted percentage from 15 to 29 percent could result in a higher level of restriction than recommended by the Committee.

To retain the Committee's recommended allotment percentage of 85 percent with the new sales history total, the marketable quantity would have to be increased from the current 5.4 million barrels to 6.46 million barrels. This would result in a lower restriction than recommended by the Committee.

The Department is soliciting comments on all the proposals, including the Committee's original recommendation of marketable quantity and allotment percentage, as well as two alternatives proposed by the Department. Particular attention should be given to the expected impacts of these different levels of regulation on cranberry growers and processors, and whether there would be a differential impact on small versus large entities.

The Committee could at any time, by reason of changed conditions, recommend modification, suspension or termination of the marketable quantity or allotment percentage proposed in this rule.

The impact of this rule should be beneficial to both growers and handlers. The regulation is intended to decrease the build-up of excessive inventories and help stabilize grower prices and returns.

Discussions at the meeting indicated that the establishment of a producer allotment program is the best alternative for the industry at this time. Six months ago, the Committee established a volume regulation subcommittee that researched the two methods of volume regulation available under the order. Those two methods are a producer allotment program and handler withholding program. The subcommittee's primary mission was to determine what method of volume control would be best for the industry if volume regulations were recommended. After holding several meetings, the subcommittee concluded that a producer allotment is the best

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method available to the industry at this time.

The withholding program has not been used since 1971. The provisions of the producer allotment program were amended in 1992, but never used. Under the withholding program, growers deliver all their cranberries to their respective handlers. The handler is responsible for setting aside restricted cranberries and ultimately disposing of the cranberries in authorized noncommercial and noncompetitive outlets. This could result in a large volume of cranberries being disposed of and perhaps destroyed. In addition, the withholding provisions require that all withheld cranberries be inspected by the Federal or Federal-State Inspection Service, which could be costly.

The producer allotment program would allow cultural practices to be changed at the grower level prior to harvest. This could result in less fruit being produced and would not require the disposal of as many cranberries as with the withholding provisions. In addition, inspections are not required under the producer allotment method, which is more cost effective and would be simpler to administer. For these reasons, the subcommittee recommended to the full Committee that if volume regulations were recommended, that the producer allotment program be the method for regulation.

In its review of the producer allotment program, the subcommittee recommended that cranberries intended for fresh market be exempt from the volume regulation. This recommendation was unanimously approved by the full Committee. The Committee also recommended by unanimous vote that organic cranberries be exempt from volume regulations.

Fresh and organically-grown fruit would be exempt pursuant to section 929.58 of the order which provides that the Committee may relieve from any or all requirements, cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe.

Fresh fruit accounts for about 4.7 percent of the total production. The Committee estimated that about 280,000 barrels will be sold fresh this year, compared to 260,000 barrels sold last season.

Under current marketing practices, there is a distinction between cranberries for fresh market and those for processing markets. Cranberries intended for fresh fruit outlets are grown and harvested differently. Fresh cranberries are dry picked while cranberries used for processing are water picked. When cranberries are water picked, the bog is flooded and the cranberries that rise to the top are harvested. Dry picking is a more labor intensive and expensive form of harvesting. Cranberry bogs are designated as "fresh fruit" bogs and are grown and harvested accordingly. Only the lower quality fruit from a fresh bog goes to processing outlets.

In addition, fresh cranberry sales constitute approximately 5 percent of the cranberry market. All fresh cranberries can be marketed and do not compete with processing cranberries. Fresh cranberries are seasonal (due to their limited shelf life) and are not part of the growing industry inventories.

The Committee concluded that fresh supplies do not contribute significantly to the current cranberry surplus. Thus, the Committee recommended that such cranberries be exempt from the allotment percentage this rule proposes.

Organically-grown cranberries comprise an even smaller portion of the total crop than fresh cranberries do. The Committee estimated that about 1,000 barrels of organic fruit will be sold this season, compared to 450 barrels last season. Organic cranberries are a growing niche market and regulating them could have an adverse effect on marketing this product. Demand for organic cranberries is in line with the current limited production. Thus, all organic cranberries can be marketed, and they do not contribute in any meaningful way to the current oversupply experienced with processing fruit. The Committee therefore recommended that organically-grown cranberries be exempt from volume regulation during the upcoming season.

In order to receive an exemption for fresh or organic cranberries a handler would be required to report such quantities on the current grower acquisition listing form.

The Committee also recommended, by unanimous vote, that the sales history re-determination procedures be modified by appointing a subcommittee composed of two independent and two cooperative representatives and one public member to be the first level of review.

Currently, section 929.125 provides an appeal procedure for growers that are dissatisfied with a determination made pursuant to section 929.48(a) and (b) of the order which describes the computation for a grower's sales history. A grower may submit to the Committee a written argument within 30 days of receiving the Committee's determination for sales history, if such grower disagrees with the determination. The Committee shall review its determination within a reasonable time, reviewing all the material submitted by the grower. If the grower is not satisfied with the Committee's decision such grower may appeal through the Committee, within 30 days of the Committee's decision, to the Secretary. The Secretary shall review all pertinent information and render a prompt decision. The Secretary's decision shall be final.

The Committee recommended that an appeals subcommittee be established and the full Committee have less time to further review appeals by growers. The Committee believed that this process would prove to be more efficient in considering grower appeals. Although an additional level of review is being established, the Committee believed that it would be more efficient for a subcommittee composed of 5 members to meet and discuss the appeals. Scheduling a meeting of the entire Committee to discuss and make determinations of grower appeals could be cumbersome and time consuming.

The Committee also recommended, by unanimous vote, to raise the amount of barrels that defines a commercial crop under the marketing order from 15 to 50 barrels. Calculations of sales histories are made on "commercial" cranberry acreage. This action would assist growers who harvested cranberries for the first time in 1999. These growers would qualify for a new sales history determination. As previously discussed, sales history on new acreage would be the State average yield or the grower's estimated commercial sales, whichever is greater.

Under the proposed revision, such grower's first year of sales harvested from that acreage would not count since it is less than 50 barrels per acre. Therefore, the grower would be eligible to receive the determination for growers with no sales history on such acreage (which would be the State average yield or the grower's estimated commercial sales, whichever is greater). This would benefit growers who had very low yields per acre for their first year of production.

The Committee also considered that State average yield for the 2000–2001 crop be defined as the average yields during the year 1997 or the average of the best four years out of the last six years, whichever is greater. This calculation is similar to that used to compute sales history (an average of the best four years out of the last six years), and would average out seasonal variations in yields. However, if estimated commercial sales are greater than what is computed above, the Committee would use the commercial sales estimated by the grower.

In order to take into account the differences among the States, the Committee recommended calculating the average yield for each State using the best four of the last six years, and compare it to the average yield for that State in 1997. The higher of the two figures for each State would be used to calculate new sales histories for new growers. This rule proposes adding a new § 929.148 to set forth this calculation.

The Department's proposal to change the way in which sales histories are computed (the best out of the past six years) should result in a more equitable distribution of annual allotment among individual cranberry growers. The proposal to suspend the June 1 deadline for notifying growers and handlers would allow for adequate time to complete this rulemaking proceeding, without unduly impacting the cranberry industry.

Some handlers at the meeting indicated that they do not have large inventories and therefore, may have to purchase fruit from their competitors to meet customer needs. They in turn favored a lesser restriction, rather than 15 percent as proposed. Some growers indicated that they have not contributed to the surplus problem, and they should not be regulated. Those at the meeting further expressed that Wisconsin has expanded its production and Massachusetts has not in the past five years. Massachusetts growers and handlers believe they should not have to be regulated. However, other growers and handlers at the meeting expressed that the surplus is a industry problem and must be dealt with by the entire industry.

The Committee discussed the alternative of not regulating at all. Economic reports of the condition of the cranberry industry indicated that if supplies were not controlled, grower prices would continue to drop. The Committee does not know how small growers as well as large ones could sustain further price drops.

Some growers expressed that the Committee should consider other methods of increasing demand rather than regulating the industry at this time. They suggested implementing a domestic promotion program in addition to the export promotion activities already underway. The Committee did recommend that a subcommittee be established to research such a possibility. They also suggested that effort in market development and new product development would increase demand for cranberries and better address the oversupply situation.

The Committee recommendation for volume regulation passed by a seven to one vote. The person voting against the recommendation felt a volume regulation would adversely affect the growers and handlers in his district, New Jersey. All of the other recommendations were passed by unanimous votes. The proposed marketable quantity and allotment percentage is not expected to cause a shortage of cranberries.

The other changes discussed in this document are designed to improve the operation of the volume regulation this season.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0103.

There are some reporting and recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. This rule does not change those requirements.

The Committee's meetings were widely publicized throughout the cranberry industry and all interested persons were invited to attend them and participate in Committee deliberations. Like all Committee meetings, the March 2000 meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of eight members, of which seven members are growers and one represents the public. Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations. The Committee manager also held several meetings with growers throughout the production area to discuss the methods of volume regulation and the procedures for regulation.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate so that any final rule which is issued may be applicable to 2000–2001 crop year cranberries. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is proposed to be amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 929.49 [Amended]

2. In paragraph (d) of § 929.49, the phrase "On or before June 1" is suspended.

3. In paragraph (e) of § 929.49, the phrase "On or before June 1 of any year in which an allotment percentage is established by the Secretary" is suspended.

4. Section 929.104 is revised to read as follows:

§ 929.104 Outlets for excess cranberries.

(a) In accordance with § 929.61, excess cranberries may be disposed of only in the following noncommercial or noncompetitive outlets, but only if the requirements in paragraph (b) of this section are complied with:

(1) Foreign countries, except Canada.

(2) Charitable institutions.

(3) Any nonhuman food use.

(4) Research and development projects dealing with dehydration, radiation, freeze drying, or freezing of cranberries, for the development of foreign markets.

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(b) Handlers may divert excess cranberries in the outlets listed in paragraph (a) of this section only if they meet the diversion requirements specified in § 929.61(c).

§ 929.107 [Amended]

5. In § 929.107, paragraphs (a) and (c) are amended by removing the number "15" and adding in its place the number "50".

6. Section 929.125 is revised to read as follows:

§ 929.125 Committee review procedures.

Growers may request, and the Committee may grant, a review of determinations made by the Committee pursuant to section 929.48, in accordance with the following procedures:

(a) If a grower is dissatisfied with a determination made by the Committee which affects such grower, the grower may submit to the Committee within 30 days after receipt of the Committee's determination of sales history, a request for a review by an appeals subcommittee composed of two independent and two cooperative representatives, as well as a public member. Such appeals subcommittee shall be appointed by the Chairman of the Committee. Such grower may forward with the request any pertinent material for consideration of such grower's appeal.

(b) The subcommittee shall review the information submitted by the grower and render a decision within 30 days of receipt of such appeal. The subcommittee shall notify the grower of its decision, accompanied by the reasons for its conclusions and findings.

(c) If the grower is not satisfied with the subcommittee's decision, the grower may further appeal to the full Committee. The grower must submit its written argument to the Committee along with any pertinent information for the Committee's review within 15 days after notification of the subcommittee's decision. The Committee shall respond within 15 days of the receipt of the grower's appeal. The Committee shall inform the grower of its decision, accompanied by the reasons for its decision.

(d) The grower may further appeal to the Secretary, within 15 days after notification of the Committee's findings, if such grower is not satisfied with the Committee's decision. The Committee shall forward a file with all pertinent information related to the grower's appeal. The Secretary shall inform the grower and all interested parties of the Secretary's decision. All decisions by the Secretary are final.

7. A new § 929.148 is added to read as follows:

§ 929.148 State average yield.

The State average yield pursuant to section 929.48(a)(5)(ii) is defined as the yield per State for the year 1997 or the best four years out of the last six years whichever is greater. However, if the estimated commercial sales are greater than the volume computed by this method, the Committee will use the grower's estimated commercial sales.

8. A new § 929.149 is added to read as follows:

§ 929.149 Determination of sales history.

A sales history for each grower shall be computed by using the sales in the highest one of the most recent six seasons of sales. For a grower with less than six seasons of sales, the sales history shall be computed using the highest sales season. Sales history for a grower with no previous sales will be computed according to § 929.48 of the order.

9. A new § 929.158 is added to read as follows:

§ 929.158 Exemptions.

Sales of organic and fresh cranberries shall be exempt from volume regulation provisions. Handlers shall qualify for such exemption by filing the amount of fresh or organic cranberry sales on the grower acquisition listing form. In order to receive an exemption for organic cranberry sales, such cranberries must be certified as such by a third party organic certifying organization acceptable to the Committee.

10. A new § 929.250 is added to read as follows:

Option 1

§ 929.250 Marketable quantity and allotment percentage for the 2000–2001 crop year.

The marketable quantity for the 2000–2001 crop year is set at 5.4 million barrels and the allotment percentage is designated at 85 percent.

Option 2

§ 929.250 Marketable quantity and allotment percentage for the 2000–2001 crop year.

The marketable quantity for the 2000–2001 crop year is set at 5.4 million barrels and the allotment percentage is designated at 71 percent.

Option 3

§ 929.250 Marketable quantity and allotment percentage for the 2000–2001 crop year.

The marketable quantity for the 2000–2001 crop year is set at 6.46 million barrels and the allotment percentage is designated at 85 percent.

Dated: May 24, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–13467 Filed 5–25–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–260–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that currently requires a one-time inspection to determine the serial numbers of various switch modules on the overhead panel and control stand, and replacement of switch modules with new, improved modules. The existing AD also requires repetitive tests of the cargo fire extinguishing system, and one-time tests of the fuel crossfeed valve, pack, trim air, and alternate flap control switches; and repair or replacement of switch modules with new improved modules, if necessary.

This action would revise the applicability of the existing AD. This action also would require replacement of the existing switch modules with new switch modules; replacement of the existing module assemblies with new module assemblies; or reworked module assemblies; as applicable. This proposal is prompted by the FAA's determination that certain switches are susceptible to contamination. The actions specified by the proposed AD are intended to minimize contamination of the switch contacts and consequent failure of the switches, which, if not corrected, could result in inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems.

DATES: Comments must be received by July 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–260–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mohamed Jamil, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2677; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–260–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–260–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 2, 1996, the FAA issued AD 96–20–01, amendment 39–9767 (61 FR 53035, dated October 10, 1996), applicable to certain Boeing Model 777–200 series airplanes, to require a one-time inspection to determine the serial numbers of various switch modules on the overhead panel and control stand, and replacement of switch modules with new, improved modules. This AD also requires repetitive tests of the cargo fire extinguishing system, and one-time tests of the fuel crossfeed valve, pack, trim air, and alternate flap control switches; and repair or replacement of switch modules with new improved modules, if necessary.

That action was prompted by a report indicating that the flight crew received a warning of fire in the forward cargo compartment during flight; later inspection revealed that the metered fire bottles failed to discharge possibly due to contamination in the arming switch of the cargo fire extinguishing system. The requirements of that AD are intended to minimize contamination of the switch contacts and consequent failure of the switches, which, if not corrected, could result in inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems.

Actions Since Issuance of Previous Rule

In the preamble to AD 96–20–01, the FAA specified that the actions required by that AD were considered to be interim action. The FAA indicated that it may consider further rulemaking to address other switches that may be susceptible to contamination. The FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

Since the issuance of AD 96–20–01, the FAA has determined that certain switches, including the ten switches previously replaced in accordance with AD 96–20–01, are susceptible to the contamination as a result of particles originating from a component internal to the switches (as discussed in the preamble of AD 96–20–01). Such contamination could result in the failure of the switches and consequent inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems. In addition, analysis indicates that the functional tests required by AD 96–20–01 do not provide any additional increase in safety. Therefore, this proposed AD would eliminate the repetitive functional tests of the cargo fire extinguishing system previously required by AD 96–20–01.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000, which describes procedures for replacing the switch modules in certain pushbutton switches in the flight compartment with new, improved switch modules. Operators would have the option of choosing one of the following methods for replacing the switch modules:

- Method I: Replacement of the existing switch modules with new switch modules (including changing the part number of the reworked module assemblies and control stand assembly).
- Method II: Replacement of the existing switch modules with new switch modules, and replacement of existing module assemblies with new module assemblies or reworked module assemblies (including changing the part number of the control stand assembly).

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–20–01 to require accomplishment of the actions specified in the service bulletin described previously. The proposed AD also would revise the applicability of the existing AD to include additional airplanes that are subject to the identified unsafe condition.

Explanation of Change Made to Applicability Statement

Operators should note that the applicability of the proposal differs from the applicability of AD 96–20–01. The applicability has been revised to include additional airplanes (*i.e.*, line positions 41 through 85 inclusive) that are subject to the identified unsafe condition of this AD.

Operators also should note that the applicability of AD 96–20–01 identified the affected airplanes by "line positions." The terminology "line positions" refers to airplane line numbers, rather than the manufacturer's tracking numbers for production airplanes. To clarify the affected airplanes, the applicability of this AD has been revised to identify those airplanes by "line numbers."

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Cost Impact

There are approximately 85 airplanes of the affected design in the worldwide fleet. The FAA estimates that 23 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours (for Method I) or 9 work hours (for Method II) per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $12,785 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $321,655, or $13,985 per airplane (for Method I), or $306,475, or $13,325 per airplane (for Method II).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9767 (61 FR 53035, dated October 10, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 97–NM–260–AD. Supersedes AD 96–20–01, Amendment 39–9767.

Applicability: Model 777–200 series airplanes, line numbers 1 through 85 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To minimize contamination of the switch contacts and consequent failure of the switches, which, if not corrected, could result in inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems, accomplish the following:

Replacement and Reidentification

(a) For Groups 1 and 2 airplanes identified in Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000, except as provided in paragraph (b) of this AD, within 12 months after the effective date of this AD, perform the actions in either paragraph (a)(1) or (a)(2) of this AD.

(1) Replace the existing switch modules with new switch modules (including changing the part number of the reworked module assemblies and control stand assembly) in accordance with Method I of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000.

(2) Replace the existing switch modules with new switch modules, and replace the existing module assemblies with new module assemblies or reworked module assemblies (including changing the part number of the control stand assembly), in accordance with Method II of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000.

Note 2: Replacements accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–31A0019, Initial Release, dated October 2, 1997; Revision 1, dated March 12, 1998; Revision 2, dated March 25, 1999; or Revision 3, dated January 27, 2000; are acceptable for compliance with the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(b) For Group 2 airplanes identified in Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000, on which a guarded toggle passenger oxygen switch has been installed: Accomplishment of the actions specified in paragraphs (a)(1) and (a)(2) of this AD is not required for the passenger oxygen switch or window heat/emergency light module assembly.

Spares

(c) As of the effective date of this AD, no person shall install on any airplane, any part listed in the "Existing Part Number" column of the table listed in paragraph II.D., "Existing Parts Accountability," of Boeing Alert Service Bulletin 777–31A0019, Revision 4, dated April 27, 2000.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance approved previously in accordance with AD 96–20–01, amendment 39–9767, are not considered to be approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 23, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13450 Filed 5–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA58

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Payments for Professional Services in Low-Access Locations

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 716 of the National Defense Authorization Act for Fiscal Year 2000 which allows the Secretary of Defense to authorize higher provider reimbursement than normally allowable, with certain limitations, when necessary to ensure an adequate TRICARE Prime network of qualified providers. This proposed rule also describes additional actions which may be taken under section 731 of the National Defense Authorization Act for Fiscal Year 1996 when TRICARE beneficiaries face very severe limitations on access to needed health care services. In such instances, the Assistant Secretary of Defense (Health Affairs) may authorize higher TRICARE payments than would normally be allowable for professional services in a designated location.

DATES: Public comments must be received by July 31, 2000.

ADDRESSES: TRICARE Management Activity (TMA), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs)/ TRICARE Management Activity, telephone (703) 681–3628.

SUPPLEMENTARY INFORMATION: Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate TRICARE/CHAMPUS contractor.

1. Background on TRICARE and CHAMPUS Payments to Providers

The relationship of DoD payment levels to Medicare's for institutional and professional health care services is central to the ongoing success of TRICARE. Payment levels have significant effects on our ability to implement managed care programs, to assure beneficiary access to the full spectrum of health services, and to do these things cost-effectively. This section reviews the background of the linkage of TRICARE and CHAMPUS rates to Medicare.

It is appropriate that Medicare serve as the model for establishment of payment rates for TRICARE and CHAMPUS. Medicare is by far the largest payer for health services in the country, and as such its payment methodologies are carefully developed by the Executive Branch and the Congress, and subject to intense scrutiny by the public and by providers of health services. When payment rate policy was established by the Congress and the Executive Branch in the 1980s and early 1990s, CHAMPUS, being structurally similar to Medicare, and a considerably smaller program, neither attracted nor warranted the same degree of attention in development of reimbursement methods. Thus, Congress followed the prudent course of directing DoD to adopt or adopt Medicare payment approaches when appropriate.

Legislative initiatives to link DoD and Medicare payment rates for health care began in the early 1980s, with the initial focus on institutional services. DoD was directed to pay hospitals "* * * to the extent practicable in accordance with the same reimbursement rules as apply to providers of services of the same type under Title XVIII of the Social Security Act" (Department of Defense Authorization Act, 1984 (Pub. L. 98–94, amending 10 U.S.C. 1079(j)(A)). In 1986, a statutory provision was enacted requiring hospitals participating in Medicare to also participate in CHAMPUS. On the basis of these authorities, a Diagnosis Related Group-Based Payment System was implemented for CHAMPUS in 1987, modeled largely on the Medicare Prospective Payment System that had been implemented in 1983.

Similar initiatives have linked DoD's payment levels for professional services to Medicare. Based on General Accounting Office recommendations, Congress in 1988 directed that growth in CHAMPUS prevailing charges be limited through application of the Medicare Economic Index, which had been used since 1972 as a limit on growth in Medicare physician payments. Beginning in 1991, Congress directed that CHAMPUS payments be analyzed to identify overpriced procedures, and gradually to bring payment levels for those procedures into line with payments under Medicare. TRICARE payment limits are called CMACs (CHAMPUS Maximum Allowable Charges).

In 1992, Medicare implemented the Medicare Fee Schedule, and began basing payment limits on the relative resource requirements of procedures, rather than on historical charges submitted by providers. In keeping with statutory direction, Medicare Fee Schedule amounts have become the target payment amounts for TRICARE. The National Defense Authorization Act for Fiscal Year 1996 codified the linkage to Medicare payment amounts. Regulatory provisions governing this and other TRICARE payments are at 32 CFR 199.14.

In adapting Medicare's payment approaches to TRICARE, it has been vital to recognize the differences in the programs and the populations they serve, and to accommodate those differences in the technical details of the payment methodologies. To illustrate, the services of children's hospitals as well as care for neonates were excluded from the initial implementation of the CHAMPUS DRG-Based Payment System. This was done out of concern that the DRG classification system and payment levels did not adequately distinguish the more complex and resource-intensive children's conditions. In consultation with children's hospital representatives, DoD developed a special additional factor (the "children's hospital differential") to uses in the payment methodology so that children's hospital services were appropriately reimbursed. For neonatal services, DoD adopted an industry-developed approach to classify neonates by birthweight to more accurately reimburse their care. Thus, our approach was modeled on Medicare's but modified to reflect the special characteristics of the TRICARE population. Maintaining the special treatment of children's hospitals has required occasional policy changes. For example, recent changes to Medicare's payment of outlier cases have been adopted by TRICARE for most hospitals, but these changes have had an adverse impact on payments to children's hospitals for outlier cases. DoD is working with children's hospital representatives to fix the problem.

For some providers, such as residential treatment centers for children and adolescents, there is no Medicare coverage, and in these cases DoD has developed its own reimbursement approaches, working through the legislative and regulatory processes to find reasonable, cost-effective approaches to payment.

A key principle of DoD's activity in reimbursement design has been the protection of access to services. The statutory linkage of hospital participation in CHAMPUS to Medicare participation provided ample protection

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for our beneficiaries, and enabled aggressive implementation of the CHAMPUS DRG-Based Payment System, which saved taxpayers (and beneficiaries) hundreds of millions of dollars per year. Lacking similar protections for physician services, DoD had to proceed more cautiously: Payment levels have been gradually brought into harmony with Medicare's rates over several years, and special provisions are built into the process to stop reducing payments if access was threatened. In a 1996 Report to Congress, we reviewed acceptance of our payment rates, and found that 86 percent of the time, doctors accepted the CMAC as payment in full; 14 percent of services were subject to balance billing. More recently, this has increased to over 94 percent acceptance, with less than 6 percent of services subject to balance billing. For the small proportion of claims that are subject to balance billing, providers are prohibited from collecting more than 115 percent of the CMAC rate, just as in Medicare.

As of February 1999, over 90 percent of CMAC rates are at the same level as Medicare, and fewer than 10 percent are higher than Medicare, because their gradual transition to the Medicare level is not yet complete. Historically, owing to the strict wording of the Appropriations Act provision on physician payment reform, DoD did not have broad discretion to raise payments for services reimbursed at rates below the Medicare level. Although these services (about 60 out of the 7,000 service types reimbursed) represent less than 0.2 percent of DoD spending for health services (roughly $14 million out of $10 billion), it was important that the issue be addressed. The Department issued a final regulation in September 1998 to provide that in these few cases in which the CMAC rate was less than the Medicare rate, the CMAC rate would be increased to the Medicare level. Implementation was in the February 1, 1999 update of payment rates.

In February 1998 the General Accounting Office issued a report, "Defense Health Care: Reimbursement Rates Appropriately Set; Other Problems Concern Physicians" (GAO/HEHS–98–80). In conducting the study from March 1997 to January 1998, GAO:

- Reviewed the establishment of CMACs and contracted with actuaries to evaluate the methodology's compliance with statutory requirements;
- Compared Medicare and CMAC rates, and interviewed physicians and beneficiary advocacy groups in four locations; and
- Interviewed TRICARE administrators and staff from TRICARE contractors.

GAO found that the CMAC methodology was sound, and that DoD saves about $770 million annually as a result of CMACs. Rates were found to be generally consistent with Medicare's rates. Physician concerns focused on network discounts off to CMACs, rather than on the acceptability of CMACs themselves. Local market factors were found to be the principal determinants of whether physicians would accept discounts off CMACs. Physicians also expressed concerns about administrative hassles and slow claims payments. GAO suggested that DoD do a better job of informing physicians about payment rates, and informing beneficiaries about balance billing limitations. (Payment rates are now available on the Internet, and the Explanation of Benefits for each claim describes the applicable balance billing limit. Revisions to claims payment timeliness requirements have addressed many concerns about slow payments.)

The amounts paid for health care services in TRICARE are governed by either the payment rules described above or on the basis of discounts from those rates. each regional at-risk TRICARE contractor is required to establish a network of providers where the TRICARE Prime (HMO-type) option is offered, and the contractor attempts to negotiate reduced payment amounts with providers who join the network. Beneficiaries who enroll in TRICARE Prime use the network for most civilian health care services; beneficiaries who do not enroll retain their freedom to use any civilian provider under TRICARE Standard, but can take advantage of the discounted network under TRICARE Extra. DoD thus achieves efficiencies for itself and its beneficiaries while preserving freedom of choice of provider for those who do not wish to use the managed care options of TRICARE.

The evolution of DoD reimbursement reforms over the past 15 years has complemented DoD's managed care initiatives; one could not have proceeded without the other. Continued attention to beneficiary access and satisfaction issues will enable us to continue to assure high quality services for our military families and retirees.

II. Statutory Direction and Regulations

Title 10 U.S.C. section 1079(h) provides statutory authority for TRICARE payments to professional providers. Section 1079(h)(1) mandates that payments shall, to the extent practicable, equal Medicare payment amounts. Section 1079(h)(2) permits exceptions, as determined to be necessary to assure that covered beneficiaries retain adequate access to health care services. Title 10 U.S.C. section 1097b(a) provides statutory authority for higher reimbursement for professional providers than normally allowable when determined necessary to ensure an adequate TRICARE Prime network of qualified providers. Regulations providing for exceptions to normally allowed payment amounts are promulgated by the Secretary if Defense in consultation with the other administering Secretaries.

Regulations governing TRICARE payments to providers are in 32 CFR 199.14, with 32 CFR 199.14(h) addressing individual health care professional and other non-institutional health care providers.

III. Access to Care Issues.

As measured by acceptability of payment rates, access to professional services in TRICARE is at its highest level in history. Over 94 percent of the time, providers accept the TRICARE payment amount as full payment, and do not balance bill the beneficiary. This high rate of acceptance has been achieved despite ongoing reductions in payment amounts over the past several years.

We are concerned that the very high acceptance rate for TRICARE payments to professional providers may mask local access problems. When the CMAC payment approach was implemented in 1992, national payment levels were adjusted to reflect local economic conditions in over two hundred "localities" following the Medicare program's technique for recognizing local variations. (This replaced the historical approach taken for CHAMPUS, which based payments on statewide patterns.) Since that time, the number of localities has been reduced to fewer than one hundred, with the introduction of more and more statewide payment localities for Medicare, and hence for TRICARE.

In late 1999, DoD undertook a redemption of one statewide locality—for Alaska—in recognition of significant differences in acceptability of TRICARE payment rates in Anchorage compared to the rest of the state. Overall, CMACs are accepted as full payment over 90 percent of the time in Alaska, but the vast majority of services are provided in Anchorage, so that severe access problems elsewhere are hidden. In an effort to increase acceptability of payment rates outside of Anchorage, DoD created a new locality, including all of Alaska except Anchorage, and, for the new locality, waived reductions in payment amounts taken since inception of the CMAC payment approach in 1992. This was carried out under authority of 32 CFR 199.14(h)(1)(iv), which describes procedures for calculating CMAC levels for localities, including waiving reductions where access is threatened. The resulting payment levels are about 28 percent higher than they would be otherwise.

There is concern that even these dramatic steps, which use the full extent of DoD's current regulatory authority, may be insufficient in some locations. Accordingly, we are publishing this notice of proposed rulemaking, seeking public comment on possible additional actions to increase access to health care providers in locations where evidence shows that TRICARE beneficiaries lack access to needed health services.

IV. TRICARE Prime Preferred Provider Network Adequacy Issues

TRICARE Managed Care Support (MCS) contractors are responsible for providing an adequate network of qualified providers in all areas of TRICARE regions as designed under the terms of their contracts with the government. The network shall include a complement of civilian professional providers adequate to ensure access to care for TRICARE Prime and Extra beneficiaries. In determining if a network is adequate, it is necessary for the network to include an appropriate mix of primary care and specialists to satisfy demand and to meet the standards established for appointment/waiting time and travel distance for patient access to primary, specialty or emergency care.

Today, the number of providers in the TRICARE network varies across the country—for example, the number of specialists per 1,000 enrollees ranges from as low as 16 to as high as 84. This variation may arise from the availability of military providers, which reduces the need for an extensive civilian network. It may also reflect real problems in network sufficiency, and regional averages may mask further problems at local levels.

While TRICARE Prime Preferred Provider networks are generally considered adequate, there are isolated geographical areas outside major metropolitan areas and within states with limited population bases in which network development is hindered due to allowable TRICARE payments being lower than rates used by competitive commercial health care insurance or other governmental programs. Because CMACs are based on Medicare-prescribed payment localities, and generally are consistent with Medicare reimbursement rates, Congress has authorized the Secretary of Defense to allow higher payments, with certain limitations, when determined necessary to ensure adequacy of TRICARE networks.

V. Overview of the Rule

The proposed rule would add a new § 199.14(h)(1)(iv)(D), authorizing the establishing of higher payment rates for services than would otherwise be allowable, if it is determined that access to health care services is severely impaired. Payment rates could be established through addition of a percentage factor to an otherwise applicable payment amount, or by calculating a prevailing charge, or by using another governmental payment rate. Higher payment rates could be applied to all similar services performed in a locality, or a new locality could be defined for application of the higher payment rates.

The proposed rule would also add a new § 199.14(h)(1)(iv)(E), allowing the reimbursement of higher payment rates for services than would otherwise be allowable, if it is determined necessary to ensure adequate Preferred Provider networks. The amount of reimbursement for a health care service would be limited to the lesser of: (1) An amount equal to the local fee for service charge in the area where the service is provided; or (2) 115 per cent of the otherwise allowable TRICARE rate for the service. The higher rate will be authorized only if all reasonable efforts have been exhausted in attempting to create an adequate network and that it is cost-effective and appropriate to pay the higher rate to ensure an appropriate mix of primary care and specialists in the network.

VI. Issues of particular Interest Regarding the Special Locality-Based Exception to Applicable CMACs To Assure Adequate Beneficiary Access to Care

In addition to seeking public comments on the proposed approach, we particularly invite comment on the following issues:

1. *Nature of the relief from current payment levels.*—The proposed rule would authorize three approaches to increasing payment rates: (1) Addition of a percentage factor to the CMAC amount where access problems are so severe that other measures are insufficient; (2) reverting to the historical method of calculating the prevailing charge for a procedure, but using current billed charges to drive the calculation; or (3) using another government payment rate (such as a state Medicaid program rate). Other approaches are possible, including simply paying of billed charges in a location, as is done currently in many overseas locations. Declaration of a location as "overseas" for purpose of an exemption from payment rules would require a statutory change, but we invite comment on the issue.

2. *Extent of availability of relief from payment levels.*—The proposed rule would make payment relief available for specific CPT codes in a location generally described by zip code(s). We invite comment on whether there are locations where access concerns are so pervasive that an authority to increase payment amounts for all services would be appropriate.

3. *Evidence needed to qualify a location for relief.*—The proposed rule would base determinations of severe access problems on the number of providers in the locality who provide the affected services, the number of such providers who are CHAMPUS Participating Providers, the number of CHAMPUS beneficiaries in the locality, availability (including reassignment) of military providers in the location or nearby, and other relevant factors. We invite comment on what factors should be considered to constitute reasonable evidence of severe access problems.

VII. Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one which would result in an annual effect of $100 million or more on the national economy or which would have other substantial impact.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The proposed rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

A discussion of the major issues received by public comments will be included with the issuance of the final rule, anticipated approximately 60 days after the end of the comment period.

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List of Subjects in 32 CFR Part 199

Claims, Fraud, Healthcare, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. chapter 55.

2. Section 199.14 is proposed to be amended by adding new paragraphs (h)(1)(iv)(D) and (E) to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(h) * * *

(1) * * *

(iv) * * *

(D) *Special locality-based exception to applicable CMACs to assure adequate beneficiary access to care.* The Director, OCHAMPUS, or designee, may authorize establishment of higher payment rates for services than would otherwise be allowable under paragraph (h)(1) of this section, if the Director, or designee, determines that available evidence shows that access to health care services is severely impaired. For this purpose, such evidence may include consideration of the number of providers in the locality who provide the affected services, the number of such providers who are CHAMPUS Participating Providers, the number of CHAMPUS beneficiaries in the locality, availability (including reassignment) of military providers in the location or nearby, and other relevant factors. Providers or beneficiaries in a locality may submit to the Director, OCHAMPUS, or designee, a petition, together with appropriate documentation regarding relevant factors, for a determination that adequate access to health care services is severely impaired. The Director, OCHAMPUS, or designee, will consider and respond to all petitions. A decision to authorize a higher payment amount is subject to review and termination or modification by the Director at any time if circumstances change so that adequate access to health care services would no longer be severely impaired. A decision by the Director, or designee, to authorize, not authorize or terminate/modify authorization of higher payment amounts is not subject to the appeal anbd hearing procedures of § 199.10.

(*1*) *Establishing the higher payment rate(s).* When the Director, OCHAMPUS, or designee, determines that beneficiary access to health care services in a locality is severely impaired, the Director or designee may establish the higher payment rate(s) as he or she deems appropriate and cost-effective through one of the following methodologies to assure adequate access:

(*i*) A percentage factor may be added to the otherwise applicable payment amount allowable under paragraph (h)(1) of this section;

(*ii*) A prevailing charge may be calculated, by applying the prevailing charge methodology of paragraph (h)(1)(ii) of this section to a specific locality; or

(*iii*) Another governmental payment rate may be adopted, for example, an applicable state Medicaid rate.

(*2*) *Application of higher payment rates.* Higher payment rates defined under paragraph (h)(1)(iv)(D) of this section may be applied to all similar services performed in a locality, or, if circumstances warrant, a new locality may be defined for application of the higher payment rates. Establishment of a new locality may be undertaken where access impairment is localized and not pervasive across the existing locality. Generally, establishment of a new locality will occur when the area is remote so that geographical characteristics and other factors (such as frequent and predominant climatic conditions, etc.) significantly impair egress/ingress, through normal means of civilian transportation, to health care services routinely available within the existing locality.

(*E*) *Special Locality-Based Exception to Applicable CMACs to Ensure an Adequate TRICARE Prime Preferred Provider Network of Qualified Professional Providers.* The Director, OCHAMPUS, or designee, may authorize any TRICARE managed care support contractor to reimburse health care providers participating in TRICARE Prime Preferred Provider Network a rate or rate(s) higher than would otherwise be allowable under paragraph (h)(1) of this section, if the Director, or designee, determines that available evidence shows that application of the higher rate(s) is necessary to ensure the availability of an adequate number and mix of qualified health care providers in a network in a specific locality. This authority may only be used to ensure adequate networks in those localities designated by the Director, or designee, as requiring TRICARE Preferred Provider networks not in localities in which the managed care support contractor has voluntarily proposed to create TRICARE Preferred Provider networks. Appropriate evidence for this purpose, may include consideration of the number of available primary care and specialist providers in the network locality, availability (including reassignment) of military providers in the location or nearby, the appropriate mix of primary care and specialists needed to satisfy demand and meet appropriate patient access standards (appointment/waiting time, travel distance, etc.), what reasonable efforts have been made to create an adequate network, other cost-effective alternatives, and other relevant factors. The Director, OCHAMPUS, or designee, may establish procedures by which exceptions to applicable CMACs are requested and approved or denied under paragraph (h)(1)(iv)(E) of this section. A decision by the Director, or designee, to authorize or deny an exception is not subject to the appeal and hearing procedures of § 199.10. When the Director, OCHAMPUS, or designee, determines that it is necessary and cost-effective to approve a higher rate or rates in order to ensure the availability of an adequate number of qualified health care providers in a network in a specific locality, the higher rate may not exceed the lesser of the following:

(*1*) The amount equal to the local fee for service charge for the service in the service area in which the service is provided as determined by the Director, OCHAMPUS, or designee, based on one or more of the following payment rates:

(*i*) Usual, customary, and reasonable;

(*ii*) The Health Care finance administration's Resource Based Relative Value Scale;

(*iii*) Negotiated fee schedules;

(*iv*) Global fees; or

(*v*) Sliding scale individual fee allowances.

(2) The amount equal to 115 percent of the otherwise allowable charge under paragraph (h)(1) of the section for the service.

* * * * *

Dated: May 23, 2000.

L.M. Bynum,

Alternate Federal Register Notice Liaison Officer, Department of Defense.

[FR Doc. 00–13406 Filed 5–26–00; 8:45 am]

BILLING CODE 5001–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH135–1b; FRL–6600–9]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve an October 6, 1999, request from Ohio for a revision to the Ohio State Implementation Plan (SIP) which governs transportation conformity. In the Final Rules section of this **Federal Register**, EPA is approving as described herein, the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule we plan to take no further activity in relation to this proposed rule. If EPA receives significant adverse comments, in writing, which have not been addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Written comments must be received on or before June 29, 2000.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

This **SUPPLEMENTARY INFORMATION** section is organized as follows:

What action is EPA taking today?

Where can I find more information about this proposal and the corresponding direct final rule?

What Action Is EPA Taking Today?

In this action, we are proposing to approve a revision to the Ohio State Implementation Plan for transportation conformity. The transportation conformity SIP revisions enable the State of Ohio to implement and enforce the Federal transportation conformity requirements at the State or local level. The amendments to Ohio Administrative Code reflect the third set of EPA revisions to the federal transportation conformity rules. These rule changes will assure conformity of transportation improvement programs, transportation plans and transportation projects to the State Implementation Plan (SIP). EPA is only approving certain sections of the rules submitted by Ohio for transportation conformity.

Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: April 14, 2000.

Elissa Speizman,

Acting Regional Administrator, Region 5.

[FR Doc. 00–13335 Filed 5–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0037b; FRL–6706–6]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Governor of the State of Colorado on September 22, 1997, for the purpose of establishing a redesignation for the Canon City area from nonattainment to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM_{10}) under the 1987 standards. The Colorado Air Pollution Control Division's (Colorado) submittal, among other things, documents that the Canon City area has attained the PM_{10} national ambient air quality standards (NAAQS), requests redesignation to attainment, and includes a maintenance plan for the area demonstrating maintenance of the PM_{10} NAAQS for ten years. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and redesignation and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing on or before June 29, 2000.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 18, 2000.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–13331 Filed 5–26–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 80

[OST Docket No. 2000–7401]

RIN 2105–AC84

Credit Assistance for Surface Transportation Projects

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The DOT proposes to revise certain provisions of the regulations concerning the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) as follows: Assign specific weights to each of the eight statutory selection criteria; specify that loan servicing fees are to be paid by the borrower; modify the time period for audited financial statements from 120 days to 180 days; provide that, consistent with the statutory intent of the TIFIA program, administrative offsets will be employed only in cases of fraud, misrepresentation, or criminal acts, but will not be employed as a result of revenue shortfalls; clarify that funds will be disbursed based on the project's financing needs; clarify that the borrower must satisfy the statute's investment grade rating requirement prior to both the execution of a credit agreement and the funding of each secured loan disbursement; and clarify that the borrower must obtain ongoing credit surveillance for the life of the TIFIA credit instrument. These proposed revisions are made at the DOT's initiative to clarify certain aspects of the regulations based on experience from the first year of program implementation.

DATES: Comments must be submitted on or before June 29, 2000.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, US DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Grote, Office of the Assistant Secretary for Budget and Programs, (202) 366–9656; Ms. Stephanie Kaufman, Office of Budget and Programs Performance, (202) 366–9649; or Mr. Terence Carlson, Office of the General Counsel, (202) 366–9161, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Hearing-and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the US DOT Dockets, by using the universal resource locator (URL) http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at http://www.nara.gov/fedreg and the Government Printing Office's web page at http://www.access.gpo.gov/nara.

Additional general information on the TIFIA program and credit assistance for surface transportation projects is available on the TIFIA web site at http://tifia.fhwa.dot.gov.

Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA). The TIFIA, as amended by section 9007, Public Law 105–206, 112 Stat. 685, 849 and codified at 23 U.S.C. 181–189, authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured direct loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. The TIFIA regulations (49 CFR part 80) provide specific guidance on the program requirements. In addition, the TIFIA Program Guide is available for more general information. Both funding (budget authority) and credit assistance authority for this program are limited, and projects seeking assistance are evaluated and selected by the DOT on a competitive basis. Following selections, term sheets are issued and credit agreements are developed through negotiations between the project sponsors and the DOT.

The TIFIA authorizes annual levels for both credit assistance (as measured by the principal amounts of the secured loans, guaranteed loans, or lines of credit) and subsidy amounts (*i.e.*, the amounts of budget authority available to cover the estimated present value of the Government's expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority appropriated from the Highway Trust Fund, other than the Mass Transit Account.

Total Federal credit assistance amounts authorized for the TIFIA program are $1.8 billion in FY 2000; $2.2 billion in FY 2001; $2.4 billion in FY 2002; and $2.6 billion in FY 2003. These amounts lapse if they are not awarded by the end of the fiscal year for which they are provided.

To support these credit assistance amounts, the TIFIA provides budget authority to fund the required subsidy amounts of $90 million in FY 2000; $110 million in FY 2001; $120 million in FY 2002; and $130 million in FY 2003. Of these amounts, the Secretary may use up to $2 million for each of the fiscal years for administrative expenses. Any budget authority that is not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years.

The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like the funding for certain other administrative or allocated programs (not apportioned to the States) that are subject to the annual Federal-aid highway obligation limitation, the amount of TIFIA budget authority that is available to fund credit instruments in a given year may be less than the amount originally authorized for that year. The extent of any budget authority reduction will depend on the ratio of the obligation limitation, which is determined annually in the appropriations process, to the contract authority for the Federal-aid highway program, which was established in TEA–21. For FY 2000, this reduction is 12.9 percent, or $11.6 million. The credit assistance amounts authorized in the TIFIA are not subject to this annual reduction.

The DOT expects that approximately $81 million in net budget authority will be available in FY 2000 to fund the TIFIA credit assistance program. This approximation takes into account unused FY 1999 budget authority, the reduction in FY 2000 budget authority due to the annual obligation limitation, and administrative expenses authorized by the TIFIA statute. The amount of net budget authority available for new TIFIA commitments in FY 2000 may also be affected by credit subsidy adjustments to obligations for prior TIFIA commitments.

The total amount of Federal credit assistance available for new TIFIA commitments in FY 2000 is about $1.673 billion, which is less than the $1.8 billion authorization level as a result of TIFIA contingent commitments made in FY 1999. The size of the annual TIFIA program may be limited by either budget authority or credit assistance authorization, depending on the risk assessments made for individual projects selected for that fiscal year's program.

Credit Instruments

Three types of credit instruments are permitted under the TIFIA: secured direct loans, loan guarantees, and lines of credit, as provided for generally at 23 U.S.C. 183 and 184. More specific terms for individual projects will be determined during negotiations between the DOT and successful applicants.

Eligible Projects

Highway, rail, transit, and intermodal projects may receive credit assistance under the TIFIA. See the definition of "project" in 23 U.S.C. 181(9) and 49 CFR 80.3 for a description of eligible projects.

Threshold Criteria

Certain threshold criteria must be met by projects seeking TIFIA assistance. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

Limitations on Assistance

The amount of credit assistance that the DOT may provide to a project under the TIFIA is limited to not more than 33 percent of eligible project costs.

Rating Opinions

A project sponsor must submit a preliminary rating opinion letter from one or more of the nationally recognized credit rating agencies with its application, as detailed in 23 U.S.C. 182(b)(2)(B) and 49 CFR 80.11. The preliminary rating opinion letter will confirm the potential for the project's senior debt obligations to achieve an investment grade rating and provide an assessment of the default risk on the requested TIFIA credit instrument. Projects selected for TIFIA credit assistance must obtain an investment grade rating on the senior debt obligations and a revised opinion of the default risk on the TIFIA credit instrument before the DOT will execute a credit agreement and disburse funds.

Application Process

Detailed application information is contained in the TIFIA Program Guide and the TIFIA Application for Credit Assistance, which are posted on the TIFA web site at http://tifia.fhwa.dot.gov or which may be obtained through one of the DOT program contacts listed in this notice. From time to time, the TIFIA Program Guide and Application may be revised to reflect program clarifications. Applicants are encouraged to refer to the TIFIA web site or to TIFIA program contacts for information regarding recent program clarifications.

Fees

The DOT requires payment of a non-refundable fee with each credit assistance application under the TIFIA. For FY 2000, the DOT will assess an application fee of $5,000 for each project applying for credit assistance; however, there will be no additional credit processing fee for FY 2000. For fiscal years 2001 and beyond, the DOT may adjust the amount of the application fee and will determine the appropriate amount of any potential credit processing fee or any other fee based on program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

Proposed Clarifications

The Timing of Loan Disbursements

The DOT clarifies that for each TIFIA credit instrument, the DOT will execute a credit agreement (*i.e.*, loan agreement, guarantee agreement, or line of credit agreement) with the project sponsor. The credit agreement will specify the total amount of credit assistance to be made available, the timing of the loan disbursements, and the terms and conditions, including security provisions, pursuant to which the funding is provided. Secured loan funds will be advanced according to a project schedule included in the credit agreement based on the project's financing needs.

Loan Servicing Fees

The TIFIA statute allows the Secretary to "establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government" of providing credit instruments. Under this clarification, the DOT will require each borrower to pay servicing fees for each credit instrument approved for funding. Separate fees will apply for each type of credit instrument (*e.g.*, a loan guarantee, a secured loan with a single disbursement, a secured loan with multiple disbursements, or a line of credit), depending on the costs of the credit instrument, as determined by the Secretary.

Administrative Offset

Some State and local government representatives as well as private project sponsors have informally indicated to the DOT that they would be reluctant to enter into a TIFIA credit agreement because they believe that the DOT would administratively offset amounts owed to the DOT should a project go into default. This proposed rulemaking clarifies that, consistent with the statutory intent of the TIFIA program, administrative offsets will be employed only in cases of fraud, misrepresentation, false claims, or similar criminal acts or acts of malfeasance or wrongdoing, and will not be employed as a result of revenue shortfalls.

While an administrative offset of Federal funds for moneys otherwise due a State or local government or private entity is available to the DOT under Federal common law, the DOT believes that use of an administrative offset to insure against project-related credit losses would substantially interfere with or defeat the purposes of the TIFIA program.

Investment Grade Ratings

The DOT clarifies that the requirement that the project's senior debt obligations have an investment grade rating from a major credit rating agency is a condition both for the DOT's execution of the credit agreement and for its funding of each loan disbursement under a secured loan agreement. The DOT also wishes to clarify that the borrower must provide for ongoing credit surveillance from a major credit rating agency throughout the life of the TIFIA credit instrument. Borrowers will provide any credit surveillance reports to the DOT as soon as they become available.

Proposed Changes

Selection Criteria

The current TIFIA rule specifies, in § 80.15(c), that "the Secretary shall evaluate each project's distinct public benefits and contribution to program goals according to each of the selection criteria specified in this section." With this rulemaking, the DOT assigns specific weights to the eight selection criteria established in 23 U.S.C.

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182(b)(2). The DOT proposes to give the highest weight, 20 percent, to each criterion it believes is most closely aligned with the objectives of the program: Demonstration of national or regional significance; extent of private participation; and environmental impacts. The next two criteria, each of which is assigned a weight of 12.5 percent, are also critical to achieving the objectives of the program: Project creditworthiness and project acceleration. Given that this program already has a threshold requirement for creditworthiness, the DOT considers 12.5 percent to be an adequate weight. (For a project to be selected to receive TIFIA assistance, it must first obtain a preliminary rating opinion letter from a nationally recognized rating agency indicating that the project has the potential of achieving an investment grade rating. Once selected, a project must obtain and maintain an investment grade credit rating on its senior debt obligations prior to the release of TIFIA funds.) Finally, the DOT proposes to assign a weight of 5 percent to each of the remaining criteria: Use of new technologies; consumption of budget authority; and reduction of Federal grant assistance.

Reporting Requirements

The DOT proposes to increase the number of days for submitting an annual project performance report and audited financial statements from 120 days to 180 days following the recipient's fiscal year-end for each year during which the recipient's obligation to the Federal Government remains in effect. The 180-day reporting requirement is consistent with industry practice for financial reporting.

Rulemaking Analysis and Notices

The 30-day comment period is necessary to help ensure that these rule modifications can be implemented in time for the application cycle anticipated to begin before the end of the current fiscal year. Given the need for the DOT to solicit and evaluate applications, make selections, negotiate term sheets and obligate funds, the usual 60-day comment period is both impracticable and contrary to public interest and Congressional intent.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The DOT will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The DOT may, however, issue a Final Rule at any time after the close of the comment period. In addition to late comments, the DOT will also continue to file in the docket relevant information becoming available after the comment closing date. Interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning And Review) and DOT Regulatory Policies and Procedures

The DOT has determined that issuance of a rule is necessary to implement the TIFIA, and has concluded that this action does not represent a "significant regulatory action" within the meaning of DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Executive Order 12866.

This section summarizes the estimated economic impact of the proposed rule. This regulation would affect only those entities that voluntarily elect to apply for TIFIA assistance and are selected to receive assistance through a Federal credit instrument. It would not impose any direct involuntary costs on non-participants. These proposed changes would have a minimal economic impact. The DOT requests comments, information, and data from the public and potential users concerning the economic impact of the proposed changes to this rule and the TIFIA program.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96–354, 5 U.S.C. 601–612) requires an assessment of the extent to which proposed rules will have an impact on small business or other small entities. Consistent with the Regulatory Flexibility Act, the DOT has evaluated the effects of this rule on small business or other small entities. The NPRM proposes to clarify certain provisions of the Federal credit assistance program for surface transportation projects. As noted above, the proposed revisions would have minimal economic impact. The DOT hereby certifies that this action would not have significant economic impact on a substantial number of small entities. The DOT invites public comment on this determination.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This rule clarifies certain provisions of a Federal credit assistance program.

Executive Order 12372 (Intergovernmental Review)

Given that projects receiving assistance under the TIFIA may fall under the programmatic jurisdiction of the Federal Highway Administration, the Federal Railroad Administration, or the Federal Transit Administration, the relevant Catalog of Federal Domestic Assistance Program Numbers are: 20.205 highway planning and construction; 20.310 rail rehabilitation and improvement; and 20.500 transit capital improvement grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

As specified under section 1503 of the TIFIA, and codified under section 182(c)(2) of title 23, U.S.C., each project obtaining assistance under this program is required to adhere to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). This rulemaking simply proposes to clarify the procedures to apply for credit assistance and therefore, by itself, will not have any effect on the quality of the environment.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have substantial direct effect or sufficient federalism implications on States that would limit the policy-making discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The DOT has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern any environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 80

Credit programs-transportation, Highways and roads, Mass transit, Railroads, Investments, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Office of the Secretary of Transportation proposes to amend 49 CFR part 80 as set forth below:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 1501 *et seq.*, Pub.L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.48, 1.49, and 1.51.

2. Amend § 80.3 by adding the definition *administrative offset* and by placing it in alphabetical order to read as follows:

§ 80.3 Definitions.

* * * * *

Administrative offset means the right of the government to apply moneys held by the government and otherwise owed to a debtor for the extinguishment of claims due the government from the debtor.

* * * * *

3. Add § 80.5(g) to read as follows:

§ 80.5 Limitations on assistance.

* * * * *

(g) The Secretary shall fund a secured loan based on the project's financing needs. The timing of such loan disbursements shall be established in the credit agreement.

4. Revise § 80.11 to read as follows:

§ 80.11 Investment-grade ratings.

(a) At the time a project sponsor submits an application, the DOT shall require a preliminary rating opinion letter. This letter is a conditional credit assessment from a rating agency that provides a preliminary indication of the project's overall creditworthiness and that specifically addresses the potential of the project's senior debt obligations (those obligations having a lien senior to that of the TIFIA credit instrument on the pledged security) to achieve an investment-grade rating.

(b) The DOT shall disburse funds under a secured loan or line of credit or extend a loan guarantee only after the project's senior obligations have obtained an investment grade rating and a credit agreement has been executed. In cases where the TIFIA credit instrument has a senior lien on the pledged security, an investment grade rating must be assigned to the TIFIA obligations. For a secured loan, the execution of a credit agreement and the funding of each loan disbursement thereunder shall be conditioned on the receipt of an investment grade rating on the project's senior debt obligations by a nationally recognized credit rating agency.

(c) * * *

(d) The project sponsor must provide, at its own expense, ongoing credit surveillance of its project and debt obligations from a nationally recognized credit rating agency throughout the life of its TIFIA credit instrument. The project sponsor will share any credit surveillance reports with the DOT as soon as they are available.

5. Amend § 80.15 by revising paragraph (a), by removing paragraphs (c) and (d); and by redesignating paragraph (e) as paragraph (c) to read as follows:

§ 80.15 Selection criteria.

(a) The Secretary shall assign weights as indicated to the following eight selection criteria in evaluating and selecting among eligible projects to receive credit assistance:

(1) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system (20 percent);

(2) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment (12.5 percent);

(3) The extent to which such assistance would foster innovative public-private partnerships and attract private debt or equity investment (20 percent);

(4) The likelihood that such assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed (12.5 percent);

(5) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhance the efficiency of the project (5 percent);

(6) The amount of budget authority required to fund the Federal credit instrument made available (5 percent);

(7) The extent to which the project helps maintain or protect the environment (20 percent); and

(8) The extent to which such assistance would reduce the contribution of Federal grant assistance to the project (5 percent).

* * * * *

6. Revise § 80.17 to read as follows:

§ 80.17 Fees.

(a) The DOT will require a non-refundable application fee for each project applying for credit assistance under the TIFIA. The DOT may also require an additional credit processing fee for projects selected to receive TIFIA assistance. Any required application initiation or credit processing fee must be paid by the project sponsor applying for TIFIA assistance and cannot be paid by another party on behalf of the project sponsor. The proceeds of any such fees will equal a portion of the costs to the Federal Government of soliciting and evaluating applications, selecting projects to receive assistance, and negotiating credit agreements. For FY 2000, the DOT will require payment of a fee of $5,000 for each project applying for credit assistance under the TIFIA, to be submitted concurrently with the formal application. The DOT will not impose any credit processing fees for FY 2000. For each application and approval cycle in FY 2001 and beyond, the DOT may adjust the amount of the application fee and will determine the appropriate amount of the credit processing fee based on program implementation experience. The DOT

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will publish these amounts in each **Federal Register** solicitation for applications.

(b) Applicants shall not include application initiation or credit processing fees or any other expenses associated with the application process (such as fees associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(c) If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(d) The DOT will require borrowers to pay servicing fees for each credit instrument approved for funding. Separate fees may apply for each type of credit instrument (e.g., a loan guarantee, a secured loan with a single disbursement, a secured loan with multiple disbursements, or a line of credit), depending on the costs of servicing the credit instrument as determined by the Secretary. Such fees will be set at a level to enable the DOT to recover all or a portion of the costs to the Federal Government of TIFIA credit instruments.

7. Revise § 80.19 to read as follows:

§ 80.19 Reporting requirements.

At a minimum, any recipient of Federal credit assistance under this part shall submit an annual project performance report and audited financial statements to the DOT within 180 days following the recipient's fiscal year-end for each year during which the recipient's obligation to the Federal Government remains in effect. The DOT may conduct periodic financial and compliance audits of the recipient of credit assistance, as determined necessary by the DOT. The specific credit agreement between the recipient of credit assistance and the DOT may contain additional reporting requirements.

8. Add § 80.21 to read as follows:

§ 80.21 Use of administrative offset.

The DOT will not apply an administrative offset to recover any losses to the Federal Government resulting from project risk the DOT has assumed under a TIFIA credit instrument. The DOT may, however, use an administrative offset in cases of fraud, misrepresentation, false claims, or similar criminal acts or acts of malfeasance or wrongdoing.

Issued on: May 15, 2000.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 00–13271 Filed 5–26–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 051900D]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting/public hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 104th meeting June 13 through June 16, 2000, in Makena, HI. Public hearings will be held on criteria to allow new entry into the Mau Zone limited entry bottomfish fishery in the Northwest Hawaiian Islands (NWHI) and on amendments to the Bottomfish and Seamount Groundfish, Crustaceans, and Precious Corals Fishery Management Plans (FMPs).

DATES: The Council's Standing Committees will meet on June 13, 2000. The full Council meeting will be held on June 14–16, 2000, from 8:30 a.m. to 5 p.m. The public hearings will be held on June 16, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times for these meetings and the hearings.

ADDRESSES: The Council meeting will be held at the Prince Ballroom at the Maui Prince Hotel, 5415 Makena Alanui, Makena, HI 96753; telephone 808–874–1111. Copies of documents that provide information on options to be discussed at the public hearings are available from the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION:

Dates and Times

Committee Meetings

The following Standing Committees of the Council will meet on June 13, 2000. Enforcement/Vessel Monitoring System (including meeting with industry) from 7:30 a.m. to 9:30 a.m.; International Fisheries/Pelagics from 9:30 a.m. to 11:30 a.m.; Executive/Budget and Program from 11:30 a.m. to 1:30 p.m.; Precious Corals from 1:30 p.m. to 3 p.m.; Crustaceans from 1:30 p.m. to 3 p.m.; Bottomfish from 3 p.m. to 4:30 p.m; Ecosystem and Habitat from 3 p.m. to 4:30 p.m.; Fishery Rights of Indigenous People from 4:30 p.m. to 5:30 p.m.; and Joint Bottomfish, Crustacean, Ecosystem and Habitat, Precious Corals, and Fishery Rights of Indigenous People from 5:30 p.m. to 6:30 p.m.

Public Hearings

The public hearing on new entry crtieria for the Mau Zone bottomfish fishery will be held on Friday, June 16, 2000, at 9:30 a.m. The public hearing on amendments to the Bottomfish and Seamount Groundfish, Crustaceans, and Precious Corals FMPs will be held on June 16, 2000, at 2 p.m.

The agenda during the full Council meeting will include the items listed. In addition, the Council will hear recommendations from its advisory panels, plan teams, scientific and statistical committee, and other ad hoc groups. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Agenda

1. Introductions
2. Approval of Agenda
3. Approval of 103rd Meeting Minutes
4. Island Reports
   - A. American Samoa
   - B. Guam
   - C. Hawaii
   - D. Commonwealth of the Northern Mariana Islands (CNMI)
5. Fishery Agency and Organization Reports
   - A. Department of Commerce
   - (1) NMFS
   - (a) Southwest Region, Pacific Island Area Office
   - (b) Southwest Fisheries Science Center, La Jolla and Honolulu Laboratories
   - (2) NOAA General Counsel, Southwest Region
   - B. Department of the Interior
   - (1) U.S. Fish and Wildlife Service (FWS)

6. Enforcement
   - A. U.S. Coast Guard activities
   - B. NMFS activities
   - C. Commonwealth, Territories, and State Activities
   - D. Cooperative agreements for Guam/CNMI
   - E. Status of violations
7. Vessel Monitoring System (VMS)
   - A. Regional VMS report
   - B. National VMS efforts
   - C. Report on Forum Fisheries Agency's VMS program
8. Ecosystems and Habitat
   - A. Federal and state initiatives
   - (1) U.S. Coral Reef Task Force National Action Plan
   - (2) Congressional coral reef bills
   - (3) Federal agencies (NMFS, FWS)
   - (4) Local agencies (American Samoa, Guam, Hawaii, CNMI)
   - B. Habitat issues
   - (1) Tern Island (French Frigate Shoals)
   - (2) Midway
   - (3) Research (including the *DeepWorker* subs)
   - C. Advisory body comments on the Coral Reef Ecosystem FMP preferred alternatives
   - (1) Coral Reef Ecosystem Plan Team
   - (2) Ecosystem and Habitat Advisory Panel
   - (3) Bottomfish Plan Team/Advisory Panel
   - (4) Crustaceans Plan Team/Advisory Panel
   - (5) Precious Corals Plan Team/Advisory Panel
   - (6) Native and Indigenous Rights Advisory Panel
   - D. Organization of coral reef FMP
   - E. Other issues
9. Fishery Rights of Indigenous People
   - A. Status of Marine Conservation Plans
   - B. Status of Community Development Program/Demonstration Projects, including eligibility criteria
   - C. Pelagic and crustacean limited entry permits for Community Development Program
   - D. Access to Military Shore Installations
10. Pelagic Fisheries
   - A. 1st quarter 2000 Hawaii and American Samoa longline fishery report
   - B. Island Issues
   - (1) Status of American Samoa framework measure
   - (2) Domestic fishery development—S-K preliminary results
   - C. Shark management (1) Shark catch and disposition in 1st Quarter of 2000 in the Hawaii Longline fishery
   - (2) Blue shark stock assessment
   - (3) Cultural study of sharks and shark fishing in the Western Pacific (WP) Region
   - (4) Pelagic FMP amendment for shark management
   - (5) State of Hawaii legislation for shark finning
   - (6) State of Hawaii management of shark fishing
   - (7) Shark management in rest of WP Region
   - (8) Federal shark fin legislation
   - (9) Blue Shark Utilization
   - (10) Research priorities
   - D. Seabird management
   - (1) Status of FMP amendment to mitigate seabird take
   - (2) Status of the Biological Opnion on Short-tailed Albatross take
   - E. Sea turtle management
   - (1) Status of litigation
   - (2) Environmental Assessment
   - (3) Federal import embargoes related to incidental sea turtle catches
   - (4) Turtle research/Azores project update
   - (5) Observer program
   - F. International
   - (1) Outcome of Multilatteral High Level Conference 6
   - (2) Tongan Highly Migratory Species Fishery Management Plans
   - G. Purse seining in the Central Western Pacific and untethered Fish Aggregation Device fishing
11. Bottomfish Fisheries
   - A. 1999 Annual Report/Status of the fishery
   - B. New entry criteria for Mau Zone
   - C. Status of Litigation
   - D. Research Plan
   - E. Public hearing on new entry criteria for the Mau Zone bottomfish fishery.

The Council intends to develop a framework amendment to the FMP for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region. The amendment will establish criteria for new entry into the limited access Mau Zone bottomfish fishery in the Northwest Hawaiian Islands. In developing the framework document, the Council will consider a range of alternatives and impacts on Northwest Hawaiian Island bottomfish fishery. Currently, there are no Federal regulations that specify how new permits are to be issued in the Mau Zone once the number of vessels in the Zone falls below the target number, which is now established at 10 permits. The Council seeks to solicit public comment and input on eligibility criteria including but not limited to the following: weighted point system based on past participation in the main and NWHI, free and limited transferability of permits, and a lottery system.

12. Crustacean Fisheries
   - A. Draft 1999 Annual Report
   - B. 2000 NWHI lobster fishery/harvest guidelines/population assessment
   - C. Consideration of amendment to replace lobster assessment model
   - D. Research plans
   - E. Possible additions to Crustaceans management unit species (e.g., deepwater shrimp, crabs)
   - F. Status of litigation
   - (1) Experimental Fishing Permit
13. Precious Corals
   - A. Status of framework amendment
   - B. Stock monitoring
   - C. Research plans (NWHI *DeepWorker* sub surveys)
   - D. American Deepwater Engineering requests
   - (1) Revise quotas for selective gear harvest
   - (2) Expand beds based on new data
14. Program Planning
   - A. Sustainable Fishery Act amendment revisions
   - (1) Bycatch (bottomfish, pelagics)
   - (2) Overfishing (bottomfish, crustaceans, pelagics)
   - (3) Fishing communities
   - (4) Plan Team recommendations
   - B. Draft amendments to include CNMI and Pacific Remote Island Areas (PRIA) in the bottomfish, precious corals and crustaceans FMPs
   - C. Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Changes
   - D. Marine debris conference/update
   - E. Palmyra Atoll
   - F. Report on program planning initiatives G. Advisory Panel modifications
   - H. Western Pacific Fisheries Information Network/Fisheries Data Coordinating Committee
   - I. Recreational Fisheries Data Task Force
   - J. Public hearing on amendments to include CNMI and PRIA in the bottomfish, precious corals and crustaceans FMPs

The Council intends to develop amendments to the Bottomfish and Seamount Groundfish, Crustaceans, and Precious Corals FMPs. In developing these amendments, the Council will consider a range of alternatives and impacts for management of bottomfish, crustaceans and precious corals fisheries of PRIA and CNMI. The PRIA is defined as Kingman Reef, Johnston Atoll, Palmyra Atoll, and Howland, Baker, Jarvis, Wake, and Midway

islands. The Council is evaluating the need to amend the bottomfish, crustaceans and precious corals FMPs to better achieve the management objectives of these FMPs. Currently, no Federal regulations are in place to manage the bottomfish, crustacean and precious coral fishery resources in the Exclusive Economic Zone (EEZ) waters surrounding the CNMI. There are also no Federal regulations in place for the bottomfish and crustacean fisheries in EEZ waters surrounding PRIA. The amendments will be developed by considering a wide range of management alternatives to address data short falls and possible impacts from the bottomfish, crustacean, and precious coral fisheries in PRIA and CNMI. The Council seeks public comment and input on a wide range of management alternatives, including but not limited to the following: Prohibit the use of destructive fishing techniques including the use of explosives, poisons, bottom-set gillnets, bottom trawls, and tangle nets; additions to the managed species list; Federal permit and data reporting requirements; limited access; observer programs; gear restrictions; size limits; catch quotas; and the designation of essential fish habitat.

15. Administrative Matters

A. Administrative reports

B. Advisory body membership changes

C. Meetings and workshops D. 105th Council Meeting in Midway

16. Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Authority: 1801 *et seq.*

Dated: May 24, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13459 Filed 5–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 051500D]

RIN 0648–AM72

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 66 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) to remove the allocation of squid to the Western Alaska Community Development Quota (CDQ) Program. The Council has recommended this amendment to prevent the incidental catch of squid in the pollock CDQ fisheries from preventing the CDQ groups from fully harvesting the pollock CDQ allocation required under the American Fisheries Act (AFA).

DATES: Comments on Amendment 66 must be submitted by July 31, 2000.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of Amendment 66 to the FMP and of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action are available from the Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252, telephone 907–271–2809; from NMFS at the above address; or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7389, sally.bibb@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notification in the **Federal Register** that the FMP or amendment is available for public review and comment. Therefore, NMFS solicits comments on the approval, disapproval, or partial approval of this amendment.

The Council adopted Amendment 66 at its June 1999 meeting. If approved by NMFS, this amendment would remove the allocation of 7.5 percent of the squid total allowable catch (TAC) to the CDQ Program. Currently, each CDQ group must manage its CDQ fisheries to ensure that its squid CDQ allocation is not exceeded. The pollock fishery takes squid as incidental catch. The potential exists that if a CDQ group were to catch its full squid allocation, it would be precluded from continuing to fish for pollock. This potential constraint on the pollock CDQ fisheries existed when the pollock CDQ allocation was 7.5 percent of the pollock TAC. The potential is more likely now that the pollock CDQ allocation has been increased to 10 percent of the TAC under the AFA. In passing the AFA, Congress manifested its intent that CDQ groups be able to harvest their full pollock allocations. Therefore, the Council is recommending removal of squid as a CDQ species.

NMFS solicits public comments on the amendment through July 31, 2000. A proposed rule that would implement the amendment may be published in the **Federal Register** for public comment following NMFS's evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment or to the proposed rule, will be considered in the approval/disapproval decision; comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered,

comments must be received by close of business on the last day of the comment period specified in this notice of availability; that does not mean postmarked or otherwise transmitted by that date.

Dated: May 22, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13370 Filed 5–26–00; 8:45 am]

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Notices

Federal Register
Vol. 65, No. 104
Tuesday, May 30, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Ray's Valley Road Realignment, Uinta National Forest, Utah County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Uinta National Forest will prepare an environmental impact statement on a proposal to realign the existing Ray's Valley Road (Forest Development Road #051). Ray's Valley Road is an arterial road on the Spanish Fork Ranger District, Uinta National Forest.

DATES: Comments should be received in writing by May 14, 2000.

ADDRESSES: Comments should be mailed to Ken Gould, Ray's Valley EIS Team Leader, Uinta National Forest, 88W 100N, PO Box 1428, Provo, Utah 84601 or sent by e-mail to kgould@fs.fed.us

SUPPLEMENTARY INFORMATION: The Ray's Valley Road is a heavily used travel route that connects with the Diamond Fork Road (Forest Development Road #029), and the Right Fork Hobble Creek Road (Forest Development Road #058) at Springville Crossing. These arterial travel routes provide access for the Wasatch Front to Spanish Fork Canyon, and Utah State Highway 6 via the Diamond Fork and Ray's Valley Roads. They also provide access to and from Utah State Highway 6 and the Strawberry Reservoir Recreation Complex via the Ray's Valley Road.

The surface of the Diamond Fork Road and most of the Ray's Valley Road are asphalt pavement or gravel. However, a portion of the Ray's Valley Road is narrow, winding, and native-surfaced. During inclement weather conditions, the road surface becomes extremely hazardous to travel, and/or impassable.

Some of the existing road lies directly adjacent to tributaries of Diamond Fork Creek. Approximately 1.8 miles of this route are located on soils subject to severe slumping and/or erosion. Due to the proximity of the road to the streams, eroding soil is easily transported into Diamond Fork and Sixth Water Creeks. Diamond Fork Creek provides habitat for Bonneville Cutthroat Trout, a sensitive species. Operation and maintenance costs on this section of road are high. Existing road conditions do not meet Road Management Objectives for an arterial system road. The Forest Service has long planned to realign this road to address these concerns; however, funding has never been available.

The proposed action is to construct the Ray's Valley Road on a new alignment and to obliterate the road on its existing alignment. The purpose and need of the proposed action is to reduce or eliminate these adverse watershed and fisheries impacts, and to provide safer driving conditions, while maintaining a key arterial component of the Forest's travel system.

Preliminary Issues

Issues identified at this time include: Health and safety; travel management; soils; fisheries; threatened, endangered, and sensitive plant and animal species; and roadless areas.

Possible Alternatives

Three possible alternatives have been identified: (1) No Action—Leave the road in its current condition; (2) Reconstruct Using the Existing Alignment—Reconstruct on the existing alignment and surface the road with crushed aggregate; and (3) Construct on a New Alignment (Proposed Action)—Reconstruct, realign, and obliterate portions of the Ray's Valley Road.

The No Action Alternative would leave the road in current condition. Maintenance would be limited to actions required for passage of high clearance vehicles. The road would remain unsafe during periods of precipitation. Arterial system road standards for capacity and safety would not be addressed by this alternative. Road induced sediment in nearby streams would remain at current levels, or increase as erosion of the roadway continues.

The Reconstruct Existing Alignment Alternative would reconstruct the road on its existing alignment and add a crushed aggregate surface. Reconstruction would provide better control of drainage from roadway runoff, provide safer and more comfortable vehicle travel during precipitation, and support a greater range of vehicle types. Road induced sediment in nearby streams would slightly decrease due to better drainage and aggregate surfacing. Road Management Objectives for an arterial system road will not be fully accomplished by this alternative due to the location.

The Proposed Action is the Construct New Alignment Alternative. Under this alternative a small portion of the existing Ray's Valley Road would be reconstructed on its existing alignment. Other portions of the Rays Valley Road would be constructed on a new alignment on more stable soils, and away from streams and riparian areas. This proposal would result in approximately 3.6 miles of a double lane road with a crushed aggregate surface. The existing road would be abandoned, closed, and rehabilitated. Access to Forest Development Road 715 from the new alignment would be maintained by reconstructing a portion of Forest Development Road 387. This would ensure continued access to the west portal of the Strawberry Tunnel.

Proposed Scoping Process

This Notice of Intent initiates the scoping process. As part of the scoping period, the Forest Service solicits public comment on the nature and scope of the environmental, social, and economic issues related to the proposed action that should be analyzed in depth in the Draft Environmental Impact Statement. Comments on this proposal should be sent to the address shown earlier in this notice.

Public participation will be solicited by notifying affected interests through personal contacts and by mail. This project has been listed in the Uinta National Forest's "Schedule of Proposed Actions" (*i.e.* NEPA Quarterly). News releases will also be utilized to give the public general notice. Comments concerning the Proposed Action and EIS should address environmental issues to be considered, feasible alternatives to examine, possible mitigation, and information relevant to or bearing on the Proposed Action.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2D 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in the proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can be meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Tentative Project Schedule:

Begin Comment Period—April, 2000; Comment Period Ends—May 26, 2000; Draft EIS—September 30, 2000; Final EIS—January, 2001; Record of Decision—March 2001.

Responsible Official: Jack A. Blackwell, USDA Forest Service Intermountain Regional Supervisor, 324 25th Street, Ogden, Utah 84401.

For Further Information Contact: Ken Gould, (801) 342–5100 or at the address listed previously.

Dated: April 6, 2000.

Peter W. Karp,

Forest Supervisor.

[FR Doc. 00–13394 Filed 5–26–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet on Thursday, June 15, 2000. The meeting is scheduled to begin at 9 a.m., and will conclude at approximately 2 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management, 1717 Fabry Road SE, Salem, Oregon, (503) 375–5646. The tentative agenda includes: (1) Information sharing by PAC members, (2) Threatened and Endangered Species update—spotted owl, Canada lynx, (3) Public forum, (4) Presentation and discussion on FS Roadless area conservation DEIS, (5) PAC discussion and advice on rechartering membership.

The Public Forum is tentatively scheduled to begin at 10:30 a.m. Time allotted for individual presentations will be limited to 3–4 minutes and the total time allotted for the Public Forum will be 40 minutes. Written comments may be submitted prior to the June 15 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: May 23, 2000.

Darrell L. Kenops,

Forest Supervisor.

[FR Doc. 00–13387 Filed 5–26–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 04/15/2000–05/26/2000

Firm name	Address	Date petition accepted	Product
Bulk-Tainers Corp	20 Erie Street, Belmont, NY 14813	18–Apr–2000	Large storage tanks made of carbon and stainless steel.
North Star Ice Equipment Corp	8151 Occidental Avenue S., Seattle, WA 98108.	19–Apr–2000	Ice making machines and equipment.
Nafta Textile Mills, L.L.C	315 Old River Road, Manville, RI 02838	25–Apr–2000	Woven fabrics of natural and synthetic materials.
Lapco Manufacturing, Inc	98 Glenwood Street, Morgan City, LA 70380.	25–Apr–2000	Cotton work shirts.
Nomad USA	3209 Washington Ave., Newport News, VA 23607.	25–Apr–2000	Baseball caps.
Jorgensen Forge	8531 E. Marginal Way S., Seattle, WA 98108.	26–Apr–2000	Pipe collars and billets and other forgings for the aerospace, oil, aircraft, automotive and shipbuilding industries.
Hillcrest Knitting Mills, Inc.,	908 S. Evans Street, Uvalde, Texas 78801.	26–Apr–2000	Cotton sweaters.

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LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 04/15/2000–05/26/2000—Continued

Firm name	Address	Date petition accepted	Product
Bollman Hat Company	110 East Main Street, Adamstown, PA 19501.	03–May–2000	Wood hats.
B. I. Industries, Inc	13920 South Western Ave., Blue Island, IL 60406.	01–May–2000	Industrial incinerators and ovens.
Gallery Graphics, Inc	2400 Highway 59 South, Noel, MO 64854.	01–May–2000	Wooden picture frames.
Thermafiber, L.L.C	3711 West Mill Street, Wabash, IN 46992.	01–May–2000	Mineral wood insulation.
Walk Easy Manufacturing, Inc	L & D Drive, Owensville, MO 65066	04–May–2000	Shoe components.
Bender Ship Building & Repair Co., Inc	265 S. Water Street, Mobile, AL 36603	26–May–2000	Shipbuilding and repair.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: May 16, 2000.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 00–13386 Filed 5–26–00; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Defense Priorities and Allocations System

ACTION: Proposed collection; comments request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 31, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Office of Planning, Evaluation and Management, Department of Commerce, Room 6881, 14th and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The record keeping requirement is necessary for administration and enforcement of delegated authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and the Selective Service Act of 1948 (50 U.S.C. App. 468). Any person who receives a priority rated order under the implementing Defense Priorities and Allocations System regulation (15 CFR 700) must retain records for at least 3 years.

II. Method of Collection

Records retention.

III. Data

OMB Number: 0694–0053.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Businesses and other for-profit institutions, small businesses or organizations.
Estimated Number of Respondents: 700,000.
Estimated Time Per Response: 1 to 31.5 minutes.
Estimated Total Annual Burden Hours: 14,477 hours.
Estimated Total Record Keeping Costs: $10,150.
Estimated Total Annual Cost: No start-up costs or capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 23, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–13382 Filed 5–26–00; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

License Exception TMP: Special Requirements

ACTION: Proposed collection; comments request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 31, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Office of Planning, Evaluation and Management, Department of Commerce, Room 6881, 14th and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

License Exception TMP permits the export of controlled commodities and software for temporary use abroad for a 12-month period under the guidelines listed in Section 740.9 of the EAR. If commodities shipped under License Exception TMP are for news-gathering purposes, the exporter must send BXA a copy of the packing list. Also, a TMP exporter must send BXA an explanatory letter if commodities shipped must be detained abroad beyond the 12-month limit. The information is used to determine whether or not an extension should be granted.

II. Method of Collection

The information will be collected in written form.

III. Data

OMB Number: 0694–0029.
Form Number: None.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses and other for-profit institutions.
Estimated Number of Respondents: 3.
Estimated Time Per Response: 20 to 30 minutes per response.
Estimated Total Annual Burden Hours: 1 hour.
Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 23, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–13383 Filed 5–26–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors ("DRAMs") of One Megabit and Above From the Republic of Korea; Preliminary Results of Full Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: Dynamic Random Access Memory Semiconductors ("DRAMs") of One Megabit and Above from the Republic of Korea.

SUMMARY: On November 2, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on dynamic random access memory semiconductors ("DRAMs") of one megabit and above from the Republic of Korea ("Korea") (64 FR 59160) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of the domestic and respondent interested parties, the Department determined to conduct a full sunset review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Carole Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On November 2, 1999, the Department initiated a sunset review of the antidumping duty order on DRAMs of one megabit and above from Korea (64 FR 59160). We invited parties to comment. On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of domestic and respondent interested parties, the Department determined to conduct a full sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. On February

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25, 2000, the Department determined that the sunset review of the antidumping duty order on DRAMs from Korea is extraordinarily complicated and extended the time limit for completion of the preliminary results of this review until not later than May 22, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The products covered by this order include DRAMs of one megabit and above from Korea. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope. The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules ("SIPs"), single in-line memory modules ("SIMMs"), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter ("VGA") boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors ("VRAMS"), as well as any future packaging and assembling of DRAMs, and removable memory modules placed on motherboards, with or without a central processing unit ("CPU"), unless the importer of motherboards certifies with the Customs Service that neither it nor a party related to it or under contract to it will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are re-imported for repair or replacement. The DRAMs and modules subject to this review are currently classifiable under subheadings 8471.50.0085, 8471.91.8085, 8542.11.0024, 8542.11.8026, 8542.13.8034, 8471.50.4000, 8473.30.1000, 8542.11.0026, 8542.11.8034, 8471.50.8095, 8473.30.4000, 8542.11.0034, 8542.13.8005, 8471.91.0090, 8473.30.8000, 8542.11.8001, 8542.13.8024, 8471.91.4000, 8542.11.0001, 8542.11.8024 and 8542.13.8026 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Analysis of Comments Received

All issues raised in substantive responses and rebuttals by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 22, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Hyundai	20.88
All Others	4.55

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on July 19, 2000. Interested parties may submit case briefs no later than July 11, 2000, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than July 17, 2000. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than September 29, 2000.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated May 22, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–13462 Filed 5–26–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] See Extension of Time Limit for Preliminary Results of Full Five-Year Reviews, 65 FR 10048 (February 25, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–805]

Preliminary Results of Full Sunset Review: Silicomanganese From Ukraine

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: silicomanganese from Ukraine.

SUMMARY: On November 2, 1999, the Department of Commerce ("the Department") initiated a sunset review of the suspended antidumping investigation on silicomanganese from Ukraine pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of the domestic parties and adequate substantive comments filed on behalf of both domestic and respondent interested parties, the Department is conducting a full sunset review. As a result of this review, the Department preliminarily finds that termination of the suspended antidumping investigation would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, D.C. 20230; telephone (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On November 2, 1999, the Department initiated a sunset review of the suspended antidumping investigation on silicomanganese from Ukraine (64 FR 59160), pursuant to section 751(c) of the Act. On November 17, 1999 we received a Notice of Intent to Participate on behalf of Eramet Marietta Inc. ("Eramet"), within the deadline specified in 19 CFR 351.218(d)(1)(i). Eramet claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of silicomanganese.[1]

We received a complete substantive response to the notice of initiation on December 2, 1999, on behalf of Eramet, within the 30-day deadline specified in the Sunset Regulations under 19 CFR 351.218(d)(3)(i). In its substantive response, Eramet indicated that Elkem, now Eramet, was the petitioner in the original investigation and actively participated in the suspended antidumping investigation. We received a substantive response to the notice of initiation on December 13, 1999, on behalf of Ronly Holdings LTD. ("Ronly"), Nikopol Ferroalloys Plant ("Nikopol"), Zaporozhye Ferroalloys Plant ("Zaporozhye"), and the Ministry of Industrial Policy of the Government of Ukraine ("GOU") (collectively the "respondent interested parties").[2] Ronly, Zaporozhye, and Nikopol claimed interested party statues within the meaning of 771(9)(A) of the Act as foreign manufacturers and/or exporters of silicomanganese from Ukraine. Zaporozhye and Nikopol assert that they participated in the original antidumping investigation that led to the suspension agreement. On December 20, 1999, we received rebuttal comments from Eramet.[3]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The review at issue concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, the Department determined that the sunset review of the suspension agreement on silicomanganese from Ukraine is extraordinarily complicated and extended the time limit for completion of the preliminary results of this review until not later than May 22, 2000, in accordance with section 751(c)(5)(B) of the Act.

Scope

The merchandise covered by this sunset review is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous, and sulfur. Silicomanganese generally contains by weight not less than four percent iron, more than 30 percent manganese, more than eight percent silicon, and not more than three percent phosphorous. All compositions, forms, and sizes of silicomanganese are included within the scope of this review, including silicomanganese slag, fines, and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This sunset review covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the subject merchandise remains dispositive.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 22, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include adequacy, the likelihood of continuation or recurrence of dumping, and the magnitude of the margin likely to prevail were the suspension agreement terminated. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

The Department preliminarily determines that if the suspended antidumping investigation is terminated, it is likely that dumping will continue or recur at the levels indicated below:

Manufacturer/exporter	Margin (percent)
All Manufacturers/Producers/ Exporters	163.00

An interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on July 17, 2000. Interested parties may submit case briefs no later than July 10, 2000, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than July 14, 2000. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than September 27, 2000.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 22, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–13463 Filed 5–26–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] Eramet asserts that on June 30, 1999, Elkem Metals Company ("Elkem"), the original petitioner, sold its silicomanganese operations to Eramet SA. As a result, Eramet, a subsidiary of Eramet SA, now owns these operations.

[2] On December 2, 1999, the Department received a request for an extension of the deadline for filing a substantive response from the respondent interested parties. On December 7, 1999, the Department granted the respondent interested parties an extension, and required them to file both their substantive response and rebuttal comments by December 13, 1999. See December 7, 1999, letter from Jeffrey A. May, Director of Office of Policy, to Kieran Sharpe, of Aitken, Irvin, Lewin, Berlin, Vrooman, & Cohn, LLP.

[3] Because the respondent interested parties filed a joint substantive response and rebuttal comments on December 13, 1999, *supra*, the Department granted Eramet an extended deadline for filing rebuttal comments until December 20, 1999.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.051800F]

Availability of a Draft Environmental Assessment/Finding of No Significant Impact and Receipt of an Application for an Incidental Take Permit (1255).

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce

ACTION: Notice of availability.

SUMMARY: NMFS has received an application for an incidental take permit (Permit) from the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fish and Wildlife (WDFW) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). As required by section 10 (a)(2)(B) of the ESA, ODFW and WDFW have also prepared a conservation plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed adult and juvenile salmonids associated with otherwise lawful sport and commercial fisheries on non-listed species in the lower and middle Columbia River and its tributaries in the Pacific Northwest. The duration of the proposed Permit and Plan is one year. The Permit application includes the proposed Plan submitted by ODFW and WDFW. NMFS also announces the availability of a draft Environmental Assessment (EA) for the Permit application. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

DATES: Written comments from interested parties on the Permit application, Plan, and draft EA must be received at the appropriate address or fax number no later than 5:00pm Pacific standard time on June 29, 2000.

ADDRESSES: Written comments on the application, Plan, or draft EA should be sent to Enrique Patino, Sustainable Fisheries Division, F/NWR2, 7600 Sand point Way NE, Seattle, WA, 98115–0070. Comments may also be sent via fax to 206–526–6736. Comments will not be accepted if submitted via e-mail or the internet. Requests for copies of the Permit application, Plan, and draft EA should be directed to the Sustainable Fisheries Division (SFD), F/NWR2, 7600 Sand point Way NE, Seattle, WA, 98115–0070. Comments received will also be available for public inspection, by appointment, during normal business hours by calling 206–526–4655.

FOR FURTHER INFORMATION CONTACT: Enrique Patino, Seattle, WA (ph: 206–526–4655, fax: 206–526–6736, e-mail: Enrique.Patino@noaa.gov).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are included in the Plan and Permit application:

Fish

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SnR) fall, threatened lower Columbia River (LCR).

Steelhead (*O. mykiss*): threatened SnR, endangered naturally produced and artificially propagated UCR, threatened middle Columbia River (MCR), threatened LCR, threatened Upper Willamette River (UWR).

Chum Salmon (*Oncorhynchus keta*): threatened Columbia River (CR).

To date, protective regulations for threatened LCR chinook salmon, threatened SnR, MCR, LCR, and UWR steelhead, and threatened CR chum salmon under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of an application requesting takes of these species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of threatened LCR chinook salmon, and/or threatened SnR, MCR, LCR and/or UWR steelhead. The initiation of a 30-day public comment period on the application, including its proposed takes of threatened LCR chinook salmon, and threatened SnR, MCR, and LCR steelhead does not presuppose the contents of the eventual protective regulations.

Background

Fall season fisheries in the Columbia River have been managed since 1996 under provisions of the 1996–1998 Management Agreement for Upper Columbia River Spring Chinook, Summer Chinook and Sockeye. The Management Agreement modified provisions of the CRFMP to include additional provisions for listed species. The CRFMP and thus the associated Management Agreement expired by their own terms on December 31, 1998, but were extended by agreement of the parties and court order through July 31, 1999. Since NMFS was a signatory party to the CRFMP, and approval of the CRFMP was a federal action subject to section 7 consultation, incidental take associated with the ODFW and WDFW fisheries was authorized in biological opinions issued on the CRFMP. NMFS has advised the states that, with the expiration of the CRFMP, and absent any subsequent agreement among the parties to *U.S. v. Oregon*, there is no longer a federal action that provides a nexus for section 7 consultation. Because the immediate prospects for reaching an agreement remain uncertain, ODFW and WDFW have applied for a one-year ESA section 10(a)(1)(B) permit for incidental takes of ESA-listed adult and juvenile salmonids associated with sport and commercial fisheries during the fall season 2000 on non-listed species in the lower and middle Columbia River and its tributaries in the Pacific Northwest.

Conservation Plan

The Conservation Plan prepared by ODFW and WDFW describes measures designed to monitor, minimize, and mitigate the incidental takes of ESA-listed anadromous salmonids associated with some or all of the following fisheries which are expected to occur during the fall season 2000 with approximate dates as specified:

Mainstem Commercial Salmon/Sturgeon Fisheries: mid-August through mid-September.

Fall Commercial Fishery—Select Areas: August through October.

Smelt Commercial Fishery/Test Fishery: December 1 through March 31.

Commercial anchovy and herring bait fishery: open year round.

Mainstem Salmon/Steelhead Recreational Fishery: August 1 through December 31.

Warmwater Recreational Fishery: open year round.

Columbia River Tributary Recreational Salmon and Steelhead Fisheries: August through December.

Select Area Recreational fisheries: open under permanent regulations for the entire year.

Sturgeon Recreational Fishery: open year-round

Steelhead Recreational Fishery—Ringold: August 1 through December 31.

Sturgeon tagging stock assessment: May through July.

Fall Selective Gear Test Fishery: September through October.

Wanapum Tribe Subsistence Fishery : September.

ESA-listed fish incidental mortalities associated with the ODFW and WDFW fishery programs are requested at levels specified in the Permit application. ODFW/WDFW are proposing to limit state in-river fisheries such that the incidental impacts on ESA-listed salmonids will be minimized. Eight alternatives for the ODFW and WDFW fisheries were provided in the Plan, including: (1) Historic baseline; (2) 1988 Columbia River Fish Management Plan; (3) 1996–1998 Management Agreement; (4) 1999 Management Agreement; (5) 1996–1999 actual impact rates; (6) equitable non-Indian and treaty Indian chinook allocation; (7) reasonable non-Indian fishery opportunity (selected alternative); and (8) No action.

Environmental Assessment/Finding of No Significant Impact

The EA package includes a draft EA and a draft Finding of No Significant Impact (FONSI) which concludes that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended. Three Federal action alternatives have been analyzed in the EA, including: (1) the no action alternative; (2) issue a permit without conditions; and (3) issue a permit with conditions.

This notice is provided pursuant to section 10(c) of the ESA and the NEPA regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed anadromous salmonids under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: May 24, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–13431 Filed 5–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000204026–0136–02; I.D. 121799A]

RIN 0648–AN48

Tautog; Interstate Fishery Management Plans; Cancellation of Moratorium

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of determination of compliance; cancellation of moratorium.

SUMMARY: The Secretary of Commerce (Secretary) announces the cancellation of the Federal moratorium on fishing for tautog in the coastal waters of the State of Rhode Island that would have been implemented on June 15, 2000. The Secretary has canceled the moratorium as required by the Atlantic Coastal Fisheries Cooperative Management Act (Act), based on his determination that the State of Rhode Island is now in compliance with the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for tautog, after the Commission had notified the Secretary that it was withdrawing its determination of noncompliance.

DATES: Effective May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 301–427–2014.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2000, NMFS published a document in the **Federal Register** (FR) (65 FR 7508) announcing the Secretary's determination that the State of Rhode Island was not in compliance with the Commission's ISFMP for tautog for not implementing and enforcing the recreational bag limit contained in the ISFMP for tautog. In the document a moratorium was declared on fishing for tautog in Rhode Island state waters that would be made effective on June 15, 2000, if Rhode Island was not in compliance by June 1, 2000. Details were provided in the February 15, 2000, FR document and are not repeated here.

The Act specifies that, if, after a moratorium is declared with respect to a State, the Secretary is notified by the Commission that it is withdrawing the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan. If the State is determined to be in compliance, the moratorium shall be terminated.

Activities Pursuant to the Act

On April 28, 2000, the Secretary received a letter from the Commission prepared pursuant to the Act. The Commission's letter stated that the State of Rhode Island had taken corrective action to comply with the Commission's ISFMP for tautog, and, therefore, the Commission was withdrawing its determination of noncompliance.

Cancellation of the Moratorium

Based on the Commission's April 28, 2000, letter, information received from the State of Rhode Island, and the Secretary's review of Rhode Island's revised regulations, which adopted a recreational bag limit of 3 tautog from May 1—October 14 annually, and 10 tautog from October 15—December 31 annually with a size limit of 16 inches total length, the Secretary concurs with the Commission's determination that Rhode Island is now in compliance with the Commission's ISFMP for tautog. This combination of measures is listed in Table 14 of the ISFMP for tautog as an acceptable means of achieving the required recreational harvest reduction. This combination achieves a 57–percent reduction whereas the ISFMP requires a 55–percent reduction. Therefore, the moratorium on fishing for these species in Rhode Island waters is canceled.

Dated: May 22, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13373 Filed 5–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052200A]

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

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ACTION: Notice of public meetings.

SUMMARY: NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice defines guidelines for participating on the Committee and provides a tentative schedule of meetings and of important dates.

DATES: The June 5, 2000, Interagency Meeting will be held at 2 p.m. See **SUPPLEMENTARY INFORMATION** for tentative 2000 meeting schedules.

ADDRESSES: The June 5, 2000, meeting will be held in room B841–A, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell, (202) 482–2652.

SUPPLEMENTARY INFORMATION: The purpose of the June 5, 2000, Interagency Committee meeting is to review recent events relating to the IWC and to review U.S. positions for the 2000 IWC annual meeting.

The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary for Oceans and Atmosphere. The U.S. Commissioner to the IWC has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other interested agencies.

Each year, NOAA conducts meetings and other activities to prepare for the annual meeting of the IWC. The major purpose of the preparatory meetings is to provide input in the development of policy by individuals and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling. Any person with an identifiable interest in U.S. whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information and to establish the necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practices.

Tentative Meeting Schedule

The tentative schedule of additional meetings and deadlines, including those of the IWC, during 2000 follows.

June 5, 2000 (Rm B841–A, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C.): Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 2000 IWC annual meeting.

June 12–13, 2000 (Adelaide, Australia): IWC Scientific Committee Working Groups and Sub-committees.

June 14–26, 2000 (Adelaide, Australia): IWC Scientific Committee.

June 28—July 1, 2000 (Adelaide, Australia): IWC Commission Committees, Sub-committees and Working Groups.

July 3–6, 2000 (Adelaide, Australia): IWC 52nd Annual Meeting.

Special Accommodations

Department of Commerce meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cathy Campbell (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: May 23, 2000.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–13432 Filed 5–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051900C]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder Working Group will hold a public meeting.

DATES: The meeting will be held on Tuesday, June 13, 2000, from 10 a.m. until 5 p.m.

ADDRESSES: This meeting will be held at the Sheraton BWI Airport, 7032 Elm Road, Baltimore, MD; telephone: 410–691–9827.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to consider future management measures and possible actions for the summer flounder fishery.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 22, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13372 Filed 5–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051800A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit 1235.

SUMMARY: Notice is hereby given that NMFS has issued a permit to the City of Seattle (City) that authorizes incidental take of Endangered Species Act-listed anadromous fish, subject to certain conditions set forth therein.

ADDRESSES: The applications and related documents are available for review in the following office, by appointment:

Washington State Habitat Branch, 510 Desmond Drive SE, Suite 103, Lacey, WA 98503

FOR FURTHER INFORMATION CONTACT: Steve Landino (360–753–9530)

SUPPLEMENTARY INFORMATION: The permit and permit amendment were issued under the authority of section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 222–227).

The City's covered activities include watershed management and related operations as described in the Cedar River Watershed Habitat Conservation Plan (HCP) and associated Draft Environmental Assessment (EA), Final EA and Finding of No Significant Impact (FONSI). The FONSI was signed on April 19, 2000.

Notice was published on December 11, 1998, and January 5, 1999 (63 FR 68469, and 64 FR 480) that an application had been filed by the City for an incidental take permit. Permit 1235 was issued to the City on April 21, 2000. Permit 1235 authorizes the City incidental take of threatened Puget Sound (PS) chinook (*Oncorhynchus tshawytscha*). As well, other anadromous fish that are not now ESA-listed are covered species and would be included on the permit at time of listing. Permit 1235 expires on December 31, 2050.

Issuance of the permit was based on a finding that the City had met the permit issuance criteria of 50 CFR 222.22(c). The permit will take effect for listed covered species on the effective date of a rule under Section 4(d) of the ESA prohibiting take of the species. For unlisted covered species, the permit will take effect upon the listing of a species as endangered, and for a species listed as threatened, on the effective date of a rule under Section 4(d) of the ESA prohibiting take of the species.

Dated: May 24, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–13430 Filed 5–26–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.051800E]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permit (1253).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research:

NMFS has received a scientific research permit application from Mr. Carlos E. Diez, of Puerto Rico Department of Natural and Environmental Resources (PRDNR) (1253).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5:00 pm eastern daylight time on June 29, 2000.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For application 1253, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910 (ph: 301–713–1401, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: For permit 1253: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species are covered in this notice: endangered Green turtle (*Chelonia mydas*), endangered Hawksbill turtle (*Eretmochelys imbricata*).

New Applications Received

Application 1253: The purpose of the research is to prodive information on the ecology and population dynamics of the hawksbill and green turtles that inhabit the waters surrounding Puerto Rico and its adjacent islands (Mona, Monito, Desecheo, Caja-de-Muertos, Viques and Culebra). This research will improve the effectiveness of management efforts by addressing priorities set forth in the recovery plans for both species: (1) identification of important marine habitats; (2) determination of adult and juvenile distribution and abundance; (3) determination of sex ratios in the juvenile population; (4) evaluation of the extent of ingestion of persistent marine debris; (5) determination of growth rates and age at sexual maturity, and (6) quantification of threats to adults and juveniles on foraging grounds.

Dated: May 23, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–13433 Filed 5–26–00; 8:45 am]

BILLING CODE 3510–22–F

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CONSUMER PRODUCT SAFETY COMMISSION

Notice of Meeting of Chronic Hazard Advisory Panel on Diisononyl Phthalate (DINP) and Opportunity for Public Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission announces the second meeting of the Chronic Hazard Advisory Panel (CHAP) on diisononyl phthalate (DINP). The Commission appointed this CHAP to advise the Commission on any chronic hazards of cancer, birth defects, and gene mutations associated with children's products containing DINP. The public may submit written or oral comments on the issues to be considered by the CHAP.

DATES: The opportunity for the presentation of oral comments will be on June 20 from 10 a.m. to 5 p.m. The remainder of the meeting will be held from 8:30 a.m. to 5 p.m. on June 21 and from 8:30 a.m. to 4 p.m. on June 22, 2000.

Requests to present oral comments, and a written copy of the text of the oral comments, must be filed with the Office of the Secretary no later than June 13, 2000.

Written comments must be received no later than June 13, 2000.

ADDRESSES: The meeting will be held in the fourth floor hearing room in the Commission's offices at 4330 East-West Highway, Bethesda, Maryland.

Written comments, or requests to present oral comments and the written text of such comments, should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. These items also may be filed by telefacsimile to (301)504–0127 or by email to cpsc-os@cpsc.gov. These items should be captioned "CHAP on DINP."

FOR FURTHER INFORMATION CONTACT: Concerning requests and procedures for oral presentations of comments: Rockelle Hammond, Docket Control and Communications Specialist, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0800 ext. 1232; email cpsc-os@cpsc.gov. For all other matters: Marilyn Wind, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0477, ext. 1205; email mwind@cpsc.gov.

SUPPLEMENTARY INFORMATION: The Commission has been concerned with potential risks posed to children under 3 years of age by the plasticizer diisononyl phthalate (DINP), which is used to soften some children's teethers, rattles, and toys made from polyvinyl chloride (PVC). DINP can leach from such products when they are mouthed or held by children, causing some DINP to be absorbed through skin and mucous membranes. DINP has been shown to cause liver and other organ toxicity in laboratory animals. Also, the Commission has received a petition (No. HP 99–1) from the National Environmental Trust and eleven other organizations asking that the Commission ban PVC in children's products.

The Commission appointed a seven-member CHAP to evaluate the existing scientific information regarding the mechanism by which DINP may cause cancer and the implications of this on the potential cancer risk to children. The CHAP members were selected from scientists recommended by the National Academy of Sciences. *See* 15 U.S.C. 2077, 2030(b). The first meeting of the CHAP was on May 10–11, 2000. The second meeting of the CHAP will be on June 20–22, 2000, in the fourth floor hearing room at the Commission's offices in Bethesda, MD (see address above).

The CHAP is seeking public comment on issues relating to the hazard, exposure, and risk posed by DINP in children's products. It is interested in comments and data pertaining to: (a) What the appropriate Acceptable Daily Intake (ADI) of DINP would be; (b) which critical endpoint to use to determine the ADI; (c) the mechanism by which DINP causes cancer in rodents and the relevance of these induced neoplasms to human risk; (d) the appropriate risk assessment model or models to determine human risk; (e) the differential sensitivity/susceptibility of young children to the effects of DINP, if any, and how to incorporate that into an assessment of risk; and (f) age-dependent pharmacokinetic differences. In addition, it is particularly interested in the following:

1. Are Diisononyl Phthalate (DINP) rodent cancer bioassay data inapplicable to human hazard identification?

2. Is there convincing evidence that a linear extrapolation approach for risk assessment is not appropriate for DINP?

3. What is the most appropriate measure of the biologically effective dose for DINP-induced liver cancer?

4. Any data available on the percutaneous absorption of DINP. (Provide any data available on absorption of DINP from the oral mucosa.)

5. Any available data on the pharmacokinetics of DINP including salivary metabolism.

6. Any available data on DINP metabolites.

7. Any available information on spongiosis hepatis.

8. Total exposure to phthalates in adults and children.

9. Toxicological interactions between phthalate esters.

The CPSC would appreciate it if any suitable data are submitted in the form of an Excel Spread Sheet, a space delimited ASCII file, or a SAS (SD2 or SSD) dataset.

There will be an opportunity for oral comments on June 20, from 10 am to 5 pm. As explained at the beginning of this notice, persons wishing to present oral comments must file a request, and a written copy of the text of their comments, with the Commission's Office of the Secretary no later than June 13, 2000.

Commenters should limit their presentations to approximately 15 minutes, exclusive of any periods of questioning by the members of the CHAP or the CPSC staff. The CHAP reserves the right to further limit the time for any presentation and to impose restrictions to avoid excessive duplication of presentations.

Interested persons may also file written comments with the CHAP. Written comments must be filed with the Office of the Secretary no later than June 13, 2000.

The remainder of the CHAP meeting will be from 8:30 a.m. to 5 p.m. on June 21 and from 8:30 a.m. to 4 p.m. on June 22, 2000. During this part of the meeting, the CHAP will discuss issues and the report it will write.

Dated: May 24, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–13466 Filed 5–26–00; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Board of Visitors for the Department of Defense Regional Security Centers

ACTION: Notice.

SUMMARY: The Board of Visitors for the Department of Defense Regional Security Centers was renewed, effective May 1, 2000, in consonance with the public interest, and in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The Board of Visitors, comprised of a balanced membership of leading experts in the field of national security, is essential in providing advice and counsel to the Secretary of Defense, other senior Pentagon officials, and sound management of the DoD Regional Security Centers. The Board members are chosen for their experience and knowledge of national security affairs, academics, and regional political-military issues. They advise senior DoD officials on matters relating to mission, policy, course content, faculty, and administration of the Centers.

FOR FURTHER INFORMATION CONTACT: John Berry, Director, Regional Affairs (703) 695–6386.

Dated: May 23, 2000.

Linda M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 00–13407 Filed 5–26–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 217. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 217 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 1, 2000.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 216. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

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Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 217 UPDATES RATES FOR ALASKA AND HAWAII.						
ALASKA						
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
BARROW	140		75		215	05/01/2000
BETHEL	92		65		157	01/01/2000
CLEAR AB	80		54		134	01/01/2000
COLD BAY	140		73		213	01/01/2000
COLDFOOT	135		71		206	10/01/1999
CORDOVA	80		72		152	03/01/2000
CRAIG						
05/01 - 08/31	95		66		161	10/01/1998
09/01 - 04/30	79		64		143	10/01/1998
DEADHORSE	80		67		147	03/01/1999
DENALI NATIONAL PARK						
06/01 - 08/31	125		56		181	01/01/2000
09/01 - 05/31	90		53		143	01/01/2000
DILLINGHAM	100		58		158	01/01/2000
DUTCH HARBOR-UNALASKA	110		71		181	03/01/1999
EARECKSON AIR STATION	80		54		134	01/01/2000
EIELSON AFB						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
ELMENDORF AFB						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
FAIRBANKS						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
FT. RICHARDSON						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
FT. WAINWRIGHT						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
GLENNALLEN	94		54		148	01/01/2000
HEALY						
06/01 - 08/31	125		56		181	01/01/2000
09/01 - 05/31	90		53		143	01/01/2000
HOMER						
04/30 - 10/03	119		65		184	03/01/2000
10/04 - 04/29	69		60		129	03/01/2000
JUNEAU	95		66		161	01/01/2000
KAKTOVIK	165		75		240	01/01/2000
KAVIK CAMP	125		69		194	03/01/1999
KENAI-SOLDOTNA						
04/01 - 10/31	104		65		169	01/01/2000
11/01 - 03/31	67		61		128	01/01/2000

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LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KENNICOTT	149		68		217	10/01/1998
KETCHIKAN						
04/01 - 10/15	104		71		175	01/01/2000
10/16 - 03/31	80		69		149	01/01/2000
KING SALMON						
05/01 - 10/01	160		88		248	01/01/2000
10/02 - 04/30	100		82		182	01/01/2000
KLAWOCK						
05/01 - 08/31	95		66		161	10/01/1998
09/01 - 04/30	79		64		143	10/01/1998
KODIAK	90		68		158	01/01/2000
KOTZEBUE						
05/01 - 08/31	126		72		198	06/01/2000
09/01 - 04/30	95		63		158	06/01/2000
KULIS AGS						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
MCCARTHY	149		68		217	10/01/1998
METLAKATLA						
05/30 - 10/01	85		52		137	03/01/1999
10/02 - 05/29	78		51		129	03/01/1999
MURPHY DOME						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
NOME	90		60		150	06/01/2000
NUIQSUT	120		47		167	01/01/2000
PETERSBURG	87		57		144	03/01/1999
POINT HOPE	130		70		200	03/01/1999
POINT LAY	105		67		172	03/01/1999
PRUDHOE BAY	80		67		147	03/01/1999
SEWARD						
05/01 - 09/15	119		75		194	03/01/2000
09/16 - 04/30	75		71		146	03/01/2000
SITKA-MT. EDGECOMBE						
05/16 - 09/16	139		73		212	01/01/2000
09/17 - 05/15	129		72		201	01/01/2000
SKAGWAY						
04/01 - 10/15	104		71		175	01/01/2000
10/16 - 03/31	80		69		149	01/01/2000
SPRUCE CAPE	90		68		158	01/01/2000
TANANA	90		60		150	06/01/2000
UMIAT	107		33		140	03/01/1999
VALDEZ						
05/01 - 10/01	117		68		185	01/01/2000
10/02 - 04/30	99		66		165	01/01/2000
WAINWRIGHT	111		81		192	01/01/2000
WASILLA	95		60		155	01/01/2000
WRANGELL						
04/01 - 10/15	104		71		175	01/01/2000
10/16 - 03/31	80		69		149	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	54	134	01/01/2000
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	150	71	221	04/01/2000
HAWAII				
CAMP H M SMITH	112	65	177	06/01/2000
EASTPAC NAVAL COMP TELE AREA	112	65	177	06/01/2000
FT. DERUSSEY	112	65	177	06/01/2000
FT. SHAFTER	112	65	177	06/01/2000
HICKAM AFB	112	65	177	06/01/2000
HONOLULU (INCL NAV & MC RES CTR)	112	65	177	06/01/2000
ISLE OF HAWAII: HILO	84	58	142	05/01/2000
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI				
05/01 - 11/30	143	69	212	06/01/2000
12/01 - 04/30	176	73	249	06/01/2000
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	143	72	215	05/01/2000
ISLE OF OAHU	112	65	177	06/01/2000
KANEOHE BAY MC BASE	112	65	177	06/01/2000
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	143	69	212	06/01/2000
12/01 - 04/30	176	73	249	06/01/2000
KILAUEA MILITARY CAMP	84	58	142	05/01/2000
LUALUALEI NAVAL MAGAZINE	112	65	177	06/01/2000
NAS BARBERS POINT	112	65	177	06/01/2000
PEARL HARBOR [INCL ALL MILITARY]	112	65	177	06/01/2000
SCHOFIELD BARRACKS	112	65	177	06/01/2000
WHEELER ARMY AIRFIELD	112	65	177	06/01/2000
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	13	9	22	10/01/1998
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	04/01/2000
SAIPAN	154	87	241	04/01/2000
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

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Dated: May 23, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–13405 Filed 5–26–00; 8:45 am]

BILLING CODE 50001–10–C

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), U.S. Army, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 31, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the United States Army Recruiting Command, Program analysis & Evaluation Directorate, Building 1307 3rd Avenue, Fort Knox, Kentucky 4012–2726, ATTN: (Mary H. Baker). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Survey of Army Applicants Who were "Qualified Not Enlisted" (QNE) or Those Who entered the Delayed Entry Program (DEP) but Chose Not to complete the Enlistment Process.

Needs and Uses: A very large number of individuals make a decision to enlist in the Army and, although qualified, do not complete the enlistment process. Another group of individuals actually enlists, and become members of the Delayed Entry Program, then later changes their mind prior to actual ship date and become a loss. Understanding the reasons for these losses may place the Army Recruiting Command in a better position to provide the necessary number of recruits to maintain end strength.

Affected Public: Individuals or households.

Annual Burden Hours: 784.

Number of Respondents: 8000.

Responses per Respondent: 1.

Average Burden per Response: 21 minutes.

Frequency: Annually.

Supplementary Information: The survey effort will track the role that expectations play in an individual's decision to become a loss. The model employed in this effort was derived from literature pertaining to organizational socialization, motivation, and decision-making, and posits that Delayed Entry Program attrition is a function of personal characteristics, as well as changes in a recruit's attitudes, perceptions, and valued outcomes. This survey effort will collect expectation metrics concerning the value of Army enlistment incentives, training, and job/occupational choices.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–13343 Filed 5–26–00; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Tillamook Bay and Estuary Flood Damage Reduction and Ecosystem Restoration, Tillamook County, Oregon

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The purpose of this action is to determine the feasibility of implementing flood control measures and ecosystem restoration actions within the Tillamook Bay watershed. A reconnaissance study for the Tillamook Bay & Estuary watershed was initiated in March 1998 to determine if there was a Federal interest in conducting a detailed feasibility study for flood damage reduction, ecosystem restoration and other related purposes. The reconnaissance report, approved by Corps of Engineers headquarters on 21 December 1998, found that various measures could be implemented to benefit the environment. These include improving habitat for coastal coho salmon, a species listed as threatened under the Endangered Species Act. These measures could also improve water quality and reduce sedimentation entering the bay. In addition, flood damage reduction would most likely be provided by these and other measures. An extensive analysis of the estuary and watershed was conducted under the Tillamook Bay National Estuary Project that resulted in identification of four primary goals that are consistent with the Corps' study authority. These goals include restoration of critical habitat for salmon species, reduction of sedimentation of spawning and rearing habitat, reduction of bacterial contamination of shellfish, and reduction of magnitude, frequency and impact of flood events.

FOR FURTHER INFORMATION CONTACT: Questions about the DEIS can be directed to U.S. Army Corps of Engineers, Portland District, Environmental Resources Branch, P.O. Box 2946, Portland, Oregon 97208–2946, Attention: Steven J. Stevens, phone: (503) 808–4768.

SUPPLEMENTARY INFORMATION: Tillamook Bay is an 8,400 acre estuary which is formed by the convergence of five rivers flowing from the crest of the Coast Range. The bay averages only 6.6 feet in depth and is the terminus of a 570 square mile watershed.

The natural resources of the watershed, which initially attracted Euro-American settlers in the mid-1800's, continue to serve as the basis for the primary industries in the county—timber harvest, fishing, and dairy production.

Although the economy depends on the prime conditions for development and use of natural resources, the natural systems have been significantly impacted by human activities and events including four large forest fires in the 1930's–1950's, timber harvest, agriculture and urban development. These events and activities have led to increased erosion and sedimentation rates and landslide potential in the forest slopes as well as reduced wetland and riparian habitat. All five rivers entering Tillamook Bay exceed temperature and/or bacteria standards established by Oregon Department of Environmental Quality.

The lower Tillamook watershed is accustomed to frequent flood events that typically interrupt street traffic, farm operations and cause minor damage to homes, businesses and farms. The flood of 1996, however caused extensive damage throughout the watershed which precipitated a number of emergency actions as well as local requests for further study of the flood problems.

The fishing industry that once thrived in the Tillamook area is now in jeopardy. The watershed has historically supported large populations of anadromous fish species including coho, chum and chinook salmon, steelhead and cutthroat trout. During the past several decades, the number of returning adults have declined. Among the list of reasons attributed to the decline is the loss or reduction of habitat.

The objective of the feasibility study is to analyze flood damage reduction and ecosystem restoration problems and opportunities and identify actions that would address them from the Federal and non-Federal perspective. A full range of alternatives will be identified and evaluated with the anticipation that several alternatives can achieve both planning objectives.

EIS Scoping will be an integral part of the process of identifying alternatives and issues relevant to the planning study. Scoping will formally commence with a scoping letter expected to be issued early this summer. Federal, state and local agencies, Indian tribes, and interested organizations and individuals will be asked to comment on the scope of issues, alternatives and their potential impacts. Public meetings will be held in conjunction with each critical stage of the planning process, including opportunity to comment on the scope of the EIS. Further opportunity for public comment will occur during Draft and Final EIS review.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–13344 Filed 5–26–00; 8:45 am]

BILLING CODE 3710–AR–U

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the White River Minimum Flow Study, Arkansas and Missouri

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The purpose of the EIS is to address alternatives and impacts pertaining to reallocation of water storage at five reservoirs in the White River System (Beaver, Table Rock, Bull Shoals, Norfork, and Greers Ferry) as authorized by section 374, "White River Basin, Arkansas and Missouri" of P.L. 106–53 (Water Resources Development Act of 1999).

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the proposed action should be addressed to Mr. Jim Ellis, Environmental Team Leader, Planning Branch, P.O. Box 867, Little Rock, Arkansas 72203–0867, telephone 501–324–5033, e-mail: James.D.Ellis@sw102.usace.army.mil.

SUPPLEMENTARY INFORMATION: Beaver Lake, Table Rock Lake, Bull Shoals Lake, Norfork Lake, and Greers Ferry Lake were authorized for the purposes of flood control, hydroelectric power generation, water supply, recreation, and fish and wildlife. Each of these lakes has specifically authorized storage for the purposes of flood control and hydropower generation. Beaver Lake and Greers Ferry Lake also have specifically authorized storage for water supply and Table Rock Lake has specifically authorized storage for fish and wildlife.

The evaluation study and EIS for the White River Minimum Flow Project is being conducted in response to Section 374, "White River Basin, Arkansas and Missouri" of P.L. 106–53 (Water Resources Development Act of 1999).

The study will address implementation of the reallocation of 1.5 feet of storage from Beaver Lake, 2.0 feet of storage from Table Rock Lake, 5.0 feet of storage from Bull Shoals Lake, 3.5 feet of storage from Norfok Lake, and 3 feet of storage in Greers Ferry Lake for the purpose of providing minimum flows to sustain the downstream trout fishery. The study will evaluate impacts due to reallocation from the conservation pool and reallocation from the flood control pool. The study will also evaluate necessary structural modifications to the projects to achieve the desired minimum releases.

The EIS will evaluate the effects of alternatives on the authorized project purposes and other identified concerns. Significant issues to be addressed in the EIS include: (1) Impacts on flood control; (2) impacts on hydropower generation; (3) impacts on recreation and recreation facilities; (4) impacts on structure of the dam; (5) impacts on dish and wildlife resources within and also above and below the lake; (6) impacts on downstream flows on the White River System; and (7) other impacts identified by the Public, agencies, or Corps studies.

Scoping meetings for the project are planned to be conducted from June through September 2000. News releases informing the public and local, state, and Federal agencies of the proposed action will be published in local newspapers. Comments received as a result of this notice and the news releases will be used to assist the Little Rock District in identifying potential impacts to the quality of the human or natural environment.

Affected local, state, or Federal agencies, affected Indian tribes, and other interested private organizations and parties may participate in the Scoping process by forwarding written comments to the above noted address or attending Scoping meetings.

The draft EIS (DEIS) is expected to be available for public review and comment by December 2001 subject to receipt of Federal funding. Any comments and suggestions should be forwarded to the above noted address no later than November 1, 2000, to be considered in the DEIS.

Douglas L. Bentley, Jr.,

Major, Corps of Engineers, Acting District Engineer.

[FR Doc. 00–13345 Filed 5–26–00; 8:45 am]

BILLING CODE 3710–57–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Announcement of Army Corps of Engineers Regional Listening Sessions

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Army Corps of Engineers is initiating a dialogue with its stakeholders, the general public, and with federal, state, and local agencies about future water resources challenges facing the nation. The dialogue will entail a series of fourteen regional listening sessions to be conducted during the June–September, 2000 timeframe (see schedule below). Results from all of the public listening sessions will be compiled into a report assessing the current state of water resources in the U.S. and the gap that must be closed to meet future national needs. The information contained within the report will be provided to decision-makers and the public to help frame discussions

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about the need to address the nation's water resource needs for the 21st Century.

ADDRESSES: US Army Corps of Engineers, CEWRC–IWR–A, Casey Building, 7701 Telegraph Road, Alexandria, VA 22315–8435

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gmitro, Program Manager, phone toll free (877) 447–6342 or if you're in Northern Virginia you can phone (703) 428–5835.

SUPPLEMENTARY INFORMATION: Each Regional Listening Session will be held as a facilitated workshop. The workshops will begin at approximately 10:00 a.m. and should end at approximately 4:00 p.m. In order to optimize the time available to all attendees, there will not be time for participants to provide prepared formal statements. However, written statements may be submitted via the web site address below, posted at a designated area during the workshop; or submitted to us before, at or after the workshop to be included in the published proceedings of the listening session.

Registration forms and additional information on the regional listening session is available on the Corps web site (*www.wrsc.usace.army.mil/iwr/waterchallenges*) or by calling our toll free number at (877) 447–6342 or if you're in Northern Virginia you can reach us at (703) 428–5835.

The following sessions are provided. For exact locations within each Division, and verification of dates and starting times, please visit the above web site.

Regional Listening Sessions

Date: June 16, 2000.
Time: 1 p.m.–5:30 p.m.
Host Division: Mississippi Valley Division.
Location: St. Louis, MO.

Date: June 20, 2000.
Time: 10 a.m.–4 p.m.
Host Division: South Pacific Division.
Location: Sacramento, CA.

Date: June 22, 2000.
Time: 10:00 a.m.–4:00 p.m.
Host Division: South Pacific Division.
Location: Phoenix, AZ.

Date: July 11, 2000.
Time: 10:00 a.m.–4:00 p.m.
Host Division: North Atlantic Division.
Location: Waltham, MA.

Date: July 18, 2000.
Time: 1:00 p.m.–5:30 p.m.
Host Division: Northwestern Division.
Location: Omaha, NE.

Date: July 20, 2000.
Time: 10:00 a.m.–4:00 p.m.
Host Division: South Atlantic Division.
Location: Atlanta, GA.

Date: July 26, 2000.
Time: 10:00 a.m.–4:00 p.m.
Host Division: Pacific Ocean Division.
Location: Honolulu, HI.

Date: August 2, 2000.
Time: 10:00–4:00 p.m.
Host Division: Great Lakes and Ohio Rivers Division.
Location: Chicago, IL.

Date: August 7, 2000.
Time: 10:00 a.m.–4:00 p.m.
Host Division: Great Lakes and Ohio Rivers Division.
Location: Louisville, KY.

Date: August 10, 2000.
Time: 10:00 a.m.–4:00 p.m.
Host Division: Southwestern Division.
Location: Dallas, TX.

Date: August 14, 2000.
Time: 10:00 a.m.–4:00 p.m.
Host Division: North Atlantic Division.
Location: Richmond, VA.

Date: August 17, 2000.
Time: 10:00 a.m.–4:00 p.m.
Host Division: North Atlantic Division.
Location: Absecon, NJ.

Date: September 15, 2000.
Time: 10:00 a.m.–4:00 p.m.
Host Division: Pacific Ocean Division.
Location: Anchorage, AK.

Date: September 19, 2000.
Time: 10:00 a.m.–4:00 p.m.
Host Division: Northwestern Division.
Location: Vancouver, WA.

The U.S. Army Corps of Engineers values your opinion. Please plan to attend! We look forward to receiving your RSVP and the opportunity to Join the Dialogue.

Robert A. Pietrowsky,
Acting Director, Institute for Water Resources.
[FR Doc. 00–13342 Filed 5–26–00; 8:45 am]
BILLING CODE 3710–92–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Nanoptics, Inc.

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of a prospective license to Nanoptics Inc. to the Government-owned invention described as "GRID-FREE, MODULAR LARGE SCREEN DISPLAY".

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 31, 2000.

ADDRESSES: Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765. Kindly reference N.C. 72,844 in all correspondence directed to this matter.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Fendelman, Patent Counsel, Space and Naval Warfare Systems Center, Code D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765, telephone (619) 553–3001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: May 18, 2000.

J.L. Roth,
Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.
[FR Doc. 00–13392 Filed 5–26–00; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs

AGENCY: Office of Student Financial Assistance, Department of Education.
ACTION: Notice of revision of the Federal need analysis methodology for the 2001–2002 award year.

SUMMARY: The Secretary of Education announces the annual updates to the tables that will be used in the statutory "Federal Need Analysis Methodology" to determine a student's expected family contribution (EFC) for award year 2001–2002 under part F of title IV of the Higher Education Act (HEA) of 1965, as amended (Title IV, HEA Programs). An EFC is the amount a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The title IV, HEA Programs include the Federal Pell Grant, campus-based (Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs), Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs.

FOR FURTHER INFORMATION CONTACT: Ms. Edith Bell, Program Specialist, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4621, ROB–3), Washington, DC 20202–5444.

Telephone: (202) 708–5591. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Part F of title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of part F of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year to take into account inflation. The changes are based, in general, upon increases in the Consumer Price Index.

For the award year 2001–2002 the Secretary is charged with updating the income protection allowance, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 1999 and December 2000. However, since the Secretary must publish these tables before December 2000, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for all Urban Consumers for 1999. The Secretary estimates that the increase in the Consumer Price Index for all Urban Consumers for the period December 1999 through December 2000 will be 2.3 percent. The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the table on asset protection allowance as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for the award year 2001–2002 has been updated in section 3 of this notice.

Section 477(b)(5) of part F of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services. Therefore, the Secretary is increasing this allowance as described in section 5 of this notice.

The HEA provides for the following annual updates:

1. *Income Protection Allowance.* This allowance is the amount of reasonable living expenses that would be associated with the maintenance of an individual or family. The allowance is offset against the family's income and varies by family size. The income protection allowance for the dependent student is $2,250. The income protection allowances for parents of dependent students and independent students with dependents other than a spouse for award year 2001–2002 are:

Family size	Number in college				
	1	2	3	4	5
2	12,760	10,580			
3	15,890	13,720	11,540		
4	19,630	17,440	15,270	13,090	
5	23,160	20,970	18,800	16,620	14,450
6	27,090	24,900	22,730	20,550	18,380

For each additional family member add $3,060.
For each additional college student subtract $2,170.

The income protection allowances for independent students without dependents other than a spouse for award year 2001–2002 are:

Marital status	Number in college	
Single	1	$5,110
Married	2	5,110
Married	1	8,180

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution since—(1) the income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the net worth of a business or farm is—	The adjusted net worth is—				
Less than $1	0				
$1 to $90,000	0	+	40%	of NW	
$90,001 to $275,000	36,000	+	50%	of NW over	$90,000
$275,001 to $455,000	128,500	+	60%	of NW over	275,000
$455,001 or more	236,500	+	100%	of NW over	455,000

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3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

DEPENDENT STUDENTS

If the age of the older parent is—	And there are—	
	Two parents	One parent
	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,500	1,500
27	5,000	2,900
28	7,500	4,400
29	10,000	5,800
30	12,500	7,300
31	15,000	8,800
32	17,500	10,200
33	19,900	11,700
34	22,400	13,100
35	24,900	14,600
36	27,400	16,100
37	29,900	17,500
38	32,400	19,000
39	34,900	20,400
40	37,400	21,900
41	38,400	22,300
42	39,300	22,800
43	40,300	23,300
44	41,400	23,800
45	42,400	24,400
46	43,500	24,900
47	44,600	25,500
48	45,700	26,100
49	46,800	26,700
50	48,300	27,200
51	49,500	27,900
52	50,800	28,600
53	52,300	29,400
54	53,600	30,100
55	55,300	30,800
56	56,900	31,500
57	58,700	32,400
58	60,400	33,200
59	62,200	34,200
60	64,100	35,000
61	66,000	36,000
62	68,300	37,000
63	70,600	38,000
64	72,700	39,100
65 and over	75,100	40,400

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is—	And the student is—	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,500	1,500
27	5,000	2,900
28	7,500	4,400
29	10,000	5,800
30	12,500	7,300
31	15,000	8,800
32	17,500	10,200
33	19,900	11,700
34	22,400	13,100
35	24,900	14,600
36	27,400	16,100
37	29,900	17,500
38	32,400	19,000
39	34,900	20,400
40	37,400	21,900
41	38,400	22,300
42	39,300	22,800
43	40,300	23,300
44	41,400	23,800
45	42,400	24,400
46	43,500	24,900
47	44,600	25,500
48	45,700	26,100
49	46,800	26,700
50	48,300	27,200
51	49,500	27,900
52	50,800	28,600
53	52,300	29,400
54	53,600	30,100
55	55,300	30,800
56	56,900	31,500
57	58,700	32,400
58	60,400	33,200
59	62,200	34,200
60	64,100	35,000
61	66,000	36,000
62	68,300	37,000
63	70,600	38,000
64	72,700	39,100
65 and over	75,100	40,400

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is—	And the student is—	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,500	1,500
27	5,000	2,900
28	7,500	4,400
29	10,000	5,800

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

If the age of the student is—	And the student is—	
	Married	Single
30	12,500	7,300
31	15,000	8,800
32	17,500	10,200
33	19,900	11,700
34	22,400	13,100
35	24,900	14,600
36	27,400	16,100
37	29,900	17,500
38	32,400	19,000
39	34,900	20,400
40	37,400	21,900
41	38,400	22,300
42	39,300	22,800
43	40,300	23,300
44	41,400	23,800
45	42,400	24,400
46	43,500	24,900
47	44,600	25,500
48	45,700	26,100
49	46,800	26,700
50	48,300	27,200
51	49,500	27,900
52	50,800	28,600
53	52,300	29,400
54	53,600	30,100
55	55,300	30,800
56	56,900	31,500
57	58,700	32,400
58	60,400	33,200
59	62,200	34,200
60	64,100	35,000
61	66,000	36,000
62	68,300	37,000
63	70,600	38,000
64	72,700,	39,100
65 and over	75,100	40,400

4. *Assessment Schedules and Rates.* Two schedules, one for dependent students and one for independent students with dependents other than a spouse, are used to determine the expected contribution toward educational expenses from family financial resources. For dependent students, the expected parental contribution is derived from an assessment of the parents adjusted available income (AAI). For independent students with dependents other than a spouse, the expected contribution is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is—	Then the contribution is—			
Less than –$3,409 ($3,409)	–$750			
($3,409) to $11,400		+	22%	of AAI.
$11,401 to $14,300	2,508	+	25%	of AAI over $11,400
$14,301 to $17,200	3,233	+	29%	of AAI over 14,300
$17,201 to $20,100	4,074	+	34%	of AAI over 17,200
$20,101 to $23,000	5,060	+	40%	of AAI over 20,100
$23,001 or more	6,220	+	47%	of AAI over 23,000

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is—	Then the contribution is—			
Less than –$3,409 ($3,409)	–$750			
($3,409) to $11,400		+	22%	of AAI.
$11,401 to $14,300	2,508	+	25%	of AAI over $11,400
$14,301 to $17,200	3,233	+	29%	of AAI over 14,300
$17,201 to $20,100	4,074	+	34%	of AAI over 17,200
$20,101 to $23,000	5,060	+	40%	of AAI over 20,100
$23,001 or more	6,220	+	47%	of AAI over 23,000

5. *Employment Expense Allowance.* This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students with dependents, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two wage earner family compared to a one wage earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $2,900 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* This allowance for State and other taxes protects a portion of the parents' and student's income from being considered available for postsecondary educational expenses. There are four tables for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse.

PARENTS OF DEPENDENT STUDENTS

If parents' State or territory of residence is:	And parents' total income is—	
	less than $15,000	$15,000 or more
	then the percentage is—	
Wyoming, Tennessee, Nevada, Alaska, Texas	3	2
Louisiana, Florida, Washington, South Dakota	4	3
Alabama, Mississippi	5	4
North Dakota, Illinois, Connecticut, New Mexico, Missouri, West Virginia, Arizona, Indiana, Oklahoma, Arkansas	6	5
New Hampshire, Pennsylvania, Colorado, Georgia, Kansas, Kentucky, Idaho	7	6
North Carolina, Virginia, Delaware, South Carolina, Ohio, Utah, Nebraska, Montana, California, New Jersey, Iowa, Vermont, Hawaii	8	7
Massachusetts, Rhode Island, Michigan, Minnesota, Maine, Maryland	9	8
District of Columbia, Wisconsin, Oregon	10	9
New York	11	10
Other	4	3

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If student's State or territory of residence is:	And student's total income is—	
	Less than $15,000	$15,000 or more
	then the percentage is—	
Wyoming, Tennessee, Nevada, Alaska, Texas	3	2
Louisiana, Florida, Washington, South Dakota	4	3
Alabama, Mississippi	5	4
North Dakota, Illinois, Connecticut, New Mexico, Missouri, West Virginia, Arizona, Indiana, Oklahoma, Arkansas	6	5
New Hampshire, Pennsylvania, Colorado, Georgia, Kansas, Kentucky, Idaho	7	6
North Carolina, Virginia, Delaware, South Carolina, Ohio, Utah, Nebraska, Montana, California, New Jersey, Iowa, Vermont, Hawaii	8	7
Massachusetts, Rhode Island, Michigan, Minnesota, Maine, Maryland	9	8
District of Columbia, Wisconsin, Oregon	10	9
New York	11	10

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INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

If student's State or territory of residence is:	And student's total income is—	
	Less than $15,000	$15,000 or more
Other	4	3

DEPENDENT STUDENTS

If student's State or territory of residence is:	The percentage is—
Alaska, Texas, South Dakota, Wyoming, Washington, Tennessee, Nevada	0
Florida, New Hampshire	1
Connecticut, Louisiana, Illinois, North Dakota	2
Mississippi, Arizona, Alabama, Pennsylvania, New Jersey, Missouri	3
Nebraska, Indiana, Colorado, New Mexico, Oklahoma, Kansas, West Virginia, Rhode Island, Virginia, Georgia, Arkansas, Vermont, Michigan	4
Montana, Idaho, Utah, Kentucky, Massachusetts, California, North Carolina, South Carolina, Ohio, Iowa, Delaware, Maine, Wisconsin	5
Oregon, Maryland, Minnesota, Hawaii	6
District of Columbia, New York	7
Other	2

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If student's State or territory of residence is:	The percentage is—
Alaska, Texas, South Dakota, Wyoming, Washington, Tennessee, Nevada	0
Florida, New Hampshire	1
Connecticut, Louisiana, Illinois, North Dakota	2
Mississippi, Arizona, Alabama, Pennsylvania, New Jersey, Missouri	3
Nebraska, Indiana, Colorado, New Mexico, Oklahoma, Kansas, West Virginia, Rhode Island, Virginia, Georgia, Arkansas, Vermont, Michigan	4
Montana, Idaho, Utah, Kentucky, Massachusetts, California, North Carolina, South Carolina, Ohio, Iowa, Delaware, Maine, Wisconsin	5
Oregon, Maryland, Minnesota, Hawaii	6
District of Columbia, New York	7
Other	2

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; William D. Ford Federal Direct Loan Program, 84.268)

Dated: May 23, 2000.

Jim Lynch,

Acting Chief Operating Officer, Student Financial Assistance.

[FR Doc. 00–13399 Filed 5–26–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.033]

Student Financial Assistance, Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to submit a request for a waiver of the seven percent community service expenditure requirements in the Federal Work-Study (FWS) Program.

SUMMARY: June 26, 2000 is the closing date for institutions to request a waiver of the community service expenditure requirements for the 2000–2001 award year (July 1, 2000 through June 30, 2001). An institution is required to expend at least seven percent of its total Federal allocation under the FWS program to compensate students in community service employment. Also, in meeting the seven percent community service expenditure requirement, one or more of the institution's FWS students must be employed as a reading tutor for children in a reading tutoring project or performing family literacy activities in a family literacy project. The FWS program is authorized by part C of title IV of the Higher Education Act of 1965, as amended (HEA).

DATES: *Closing Date for Submitting a Waiver Request and any Supporting Information or Documents.* To request a waiver, an institution must mail or hand deliver its waiver request to the Department by 5:00 p.m. eastern time on June 16, 2000. If you choose you may fax or e-mail your waiver request and any supporting information or documents by 5 p.m. eastern time on June 16, 2000. You must fax the waiver request to Sandra Donelson at (202) 205–1919 or (202) 260–0522 or e-mail to the following address: Sandra_Donelson@ed.gov.

ADDRESSES: *Waiver Requests Delivered by Mail.* An institution must address a waiver request delivered by mail to Ms. Sandra Donelson, Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 600D, Portals Building, Washington, DC 20202–5453. An institution must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If a waiver request is sent through the U.S. Postal Service, the Secretary does not accept either as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

The Secretary encourages an institution to use certified or at least first-class mail. Institutions that submit waiver requests after the closing date of June 16, 2000, will not be considered.

Waiver Request Delivered by Hand. If an institution delivers its waiver request by hand, it must deliver the waiver request to Ms. Sandra Donelson, Student Financial Assistance, U.S. Department of Education, Suite 600D, Portals Building, 1250 Maryland Avenue, SW., Washington, D.C. The Secretary accepts hand-delivered waiver requests between 8 a.m. and 5 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. The Secretary will not accept waiver requests that are delivered by hand after 5 p.m. on June 16, 2000.

SUPPLEMENTARY INFORMATION: Under section 443(b)(2)(A) of the HEA, an institution must use at least seven percent of the total amount of its FWS Federal allocation granted for an award year to compensate students employed in community service. However, we may waive this requirement if it is determined that enforcing it would cause hardship for students at the institution.

An appropriate institutional official must sign the waiver request and include, above the signature, the following statement: "I certify that the information I provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by the Department of Education."

To receive a waiver, you must demonstrate that complying with the seven percent requirements would cause hardship for students at your institution. To allow flexibility to consider factors that may be valid reasons for a waiver, we do not specify the particular circumstances that would support granting a waiver. However, we do not foresee many instances in which a waiver will be granted. The fact that it may be difficult for you to comply with this provision of the HEA is not a basis for granting a waiver.

Applicable Regulations

The following regulations apply to the Federal Work-Study program:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Work-Study Programs, 34 CFR part 675.

(4) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(5) New Restrictions on Lobbying, 34 CFR part 82.

(6) Government Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(7) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Donelson, Student Financial Assistance, U.S. Department, 400 Maryland Avenue, SW., Suite 600D Portals Building, Washington, DC. Telephone (202) 708–9751. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape or computer diskette) by contacting the Alternate Format Center at (202) 260–9895 between 8:30 a.m. and 4:30 p.m., Eastern time, Monday through Friday.

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Program Authority: 42 U.S.C. 2753.

Dated: May 23, 2000.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 00–13398 Filed 5–26–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Office of Science Financial Assistance Program Notice 00–15: Theoretical Research in Plasma and Fusion Science

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting new and renewal grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy (DOE) announces its interest in receiving grant applications for theoretical research in magnetic fusion energy sciences. All individuals or groups planning to submit applications for new or renewal funding in FY 2001 should submit in response to this Notice.

The specific areas of interest are: Magnetohydrodynamics and Stability; Confinement and Transport; Edge and Divertor Physics; Plasma Heating and Non-inductive Current Drive; Innovative Confinement Concepts; and Atomic and Molecular Processes in Plasmas.

More specific information on each area of interest is outlined in the general

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and program specific supplementary information sections below. Due to the limited availability of funds, Principal Investigators with continuing grants may not submit a new application in the same area(s) of interest as their current grant(s). A Principal Investigator may submit only one application under each area of interest as listed above.

DATES: To permit timely consideration for awards in Fiscal Year 2001, applications submitted in response to this notice must be received no later than 4:30 p.m., July 20, 2000. Electronic submissions of formal applications will not be accepted.

Applicants are requested to submit a letter-of-intent by June 15, 2000, which includes the title of the application, the name of the Principal Investigator(s), the requested funding and a one-page abstract. These letters-of-intent will be used to organize and expedite review processes. Failure to submit a letter-of-intent will not negatively prejudice a responsive formal application submitted in a timely fashion. Electronic submissions of letters-of-intent are acceptable.

ADDRESSES: Formal applications referencing Program Notice 00–15, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 00–15. The above address must also be used when submitting applications by U.S. Postal Service Express or any other commercial overnight delivery service, or when hand-carried by the applicant.

Letters-of-intent referencing Program Notice 00–15, should be forwarded to: U.S. Department of Energy, Office of Science, Office of Fusion Energy Sciences, SC–50, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: John Sauter. Letters-of-intent can also be submitted via E-mail at the following E-mail address: john.sauter@science.doe.gov

FOR FURTHER INFORMATION CONTACT: Office of Fusion Energy Sciences, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Specific contacts for each area of interest, along with telephone numbers and Internet addresses, are listed below:

Magnetohydrodynamics and Stability: Rostom Dagazian, Research Division, SC–55, Telephone: (301) 903–4926, or by Internet address, Rostom.dagazian@science.doe.gov.

Confinement and Transport: Curt Bolton, Research Division, SC–55, Telephone: (301) 903–4914, or by Internet address, curt.bolton@science.doe.gov.

Edge and Divertor Physics: Walter Sadowski, Research Division, SC–55, Telephone: (301) 903–4678, or by Internet address, walt.sadowski@science.doe.gov.

Plasma Heating and Non-inductive Current Drive: Walter Sadowski, Research Division, SC–55, Telephone: (301) 903–4678, or by Internet address, walt.sadowski@science.doe.gov.

Innovative Confinement Concepts: Steve Eckstrand, Research Division, SC–55, Telephone: (301) 903–5546, or by Internet address, steve.eckstrand@science.doe.gov.

Atomic and Molecular Processes in Plasmas: Mike Crisp, Research Division, SC–55, Telephone: (301) 903–4883, or by Internet address, michael.crisp@science.doe.gov.

SUPPLEMENTARY INFORMATION: General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Science (SC) Financial Assistance Program and 10 CFR Part 605. Electronic access to SC's Financial Assistance Guide and required forms is possible via the Internet using the following Web site address: http://www.sc.doe.gov/production/grants/grants.html. DOE is under no obligation to pay for any costs associated with the preparation or submission of an application if an award is not made.

Program Funding

It is anticipated that $7,600,000 of Fiscal Year 2001 funding will be available to start new work or renewals of existing work from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Since future year funding is not anticipated to increase, applications should propose constant year effort (allowing for inflation). Future year funding will depend upon suitable progress and the availability of funds. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements. Applications requiring annual funding as low as $50,000 are welcomed and encouraged.

Collaborative research projects involving more than one institution, as well as work in support of the computational collaborative research efforts are encouraged. Applications submitted from different institutions which are directed at a common research activity, should clearly indicate they are part of a proposed collaboration and contain a brief description of the overall research project. However, each application must have a distinct scope of work and a qualified principal investigator, who is responsible for the research effort being performed at his or her institution. Synergistic collaborations with researchers in federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories are also encouraged, though no funds will be provided to these organizations under this Notice. Further information on preparation of collaborative applications may be accessed via the Internet at http://www.sc.doe.gov/production/grants/Colab.html.

To enable all reviewers in each category to read all applications in that category, the application must be limited to a maximum of twenty (20) pages (including text and figures) for applications from 1–2 persons and thirty (30) pages for applications from theory groups. In addition, please limit biographical and publication information for the principal investigator and senior personnel to no more than one page each. Although it is not required, it would be helpful for each applicant to submit twelve (12) copies of their application due to the anticipated number of reviewers; otherwise the standard number of copies must be received with each application as outlined in the Application Guide.

In addition to the information required by 10 CFR Part 605 each application should contain the following items: (1) A succinct statement of the goal of the research, (2) a detailed research plan, (3) the specific results expected at the end of the project period, (4) an analysis of the adequacy of the budget, and (5) a discussion of the impact of the proposed research on other fields of science.

Merit Review

Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR Part 605 (www.sc.doe.gov/production/grants/605index.html):

1. Scientific and/or technical merit of the project,
2. Appropriateness of the proposed method or approach,
3. Competency of the applicant's personnel and adequacy of the proposed resources,
4. Reasonableness and appropriateness of the proposed budget.

The Office of Fusion Energy Sciences shall consider, as part of the evaluation, other available advice or information as well as program policy factors such as ensuring an appropriate balance among the program areas, ensuring support for computational teams, ensuring support for experiments, and quality of previous performance. Selection of applications/proposals for award will be based upon the findings of the technical evaluations, the importance and relevance of the proposed research to the Office of Fusion Energy Sciences' mission, and funding availability.

Program Specific Supplementary Information

Magnetohydrodynamics and Stability

Grant applications are solicited for new research or continuation of past efforts in MHD theory in support of Fusion community work in magnetically confined plasmas. Current work includes advanced tokamak (AT), innovative confinement concepts (ICC), burning plasma physics and steady state high beta plasma issues. Both analytical and computational approaches will be considered. Additional work is particularly needed in the areas of nonlinear MHD, neoclassical tearing modes, extended MHD, including flows and various non-ideal MHD effects, and resistive wall modes. Work in support of the major computational initiative that involves the development of large-scale codes to explore non-linear MHD will also be considered.

Confinement and Transport

Applications will be considered in the area of confinement and transport in plasmas. Both analytical and computational work is of interest. The general area covers plasma turbulence, energy, particle, momentum and radiation transport in the core of the plasma. The work of interest includes work in support of tokamak as well as non-tokamak innovative concepts. Topics of interest include among others, electromagnetic effects on turbulence, shear flow generation and its impacts on transport, and understanding of the role of collisions in turbulent plasmas. Work in support of the major computational initiative that involves the development of large-scale codes to explore turbulence will also be considered.

Edge and Divertor Physics

Applications will be considered in the area of edge physics theory. Both analytical and numerical models are of interest. The general area covers plasma turbulence, energy, particle and radiation transport in the edge of the plasma and in the neighborhood of the separatrix. The work of interest includes neutrals transport in divertors and plasma edge region, atomic physics processes affecting temperature, radiation and flame front propagation in divertors. Techniques and algorithms for modeling fast particles in the edge region as well as adaptive grid methods and their application to modeling of plasma turbulence and transport in the edge region will be reviewed.

Plasma Heating and Non-Inductive Current Drive

Applications will be considered in the area of RF physics in plasmas. This includes RF propagation, heating and current drive. Of interest are both analytical and numerical treatments of interaction of plasmas with radio frequency waves. These include electron cyclotron, ion cyclotron, lower hybrid and Bernstein waves. Topics of interest include, among others, physical processes involved in conversion layers, power deposition for temperature profile control and interaction of waves of different frequencies to produce specific effects on the plasma. Applications for modeling radio frequency launchers and their coupling to the edge plasma will also be considered.

Innovative Confinement Concepts

Grant applications are desired for theoretical and computational research on innovative confinement concepts that have the possibility of leading to improved magnetic fusion systems. In 1996, the U.S. fusion program began supporting a broadening array of innovative confinement concepts (ICC). Increased theoretical and computational research is needed to make optimal use of these experiments as they come into operation and to support further development of these concepts. Additional work is needed particularly on macroscopic stability and turbulence/transport in innovative confinement concepts.

Atomic and Molecular Processes in Plasmas

Grant applications will be considered for theoretical research relevant to the description of atomic processes in plasmas. In addition to overall scientific merit, emphasis will be given to work that promises to aid the understanding of the basic atomic processes that are important for modeling of magnetically confined plasmas and high-density plasmas found in inertial confinement fusion experiments. The program has found that understanding electron-atom and electron-ion collisions and the radiation emitted by atoms and ions to be of importance for the modeling of plasma behavior in experiments. Some current areas where atomic processes are considered to be important include the effects of transport, the effects of impurities and the understanding of diagnostics.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on May 11, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–13408 Filed 5–26–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–363–004]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

May 23, 2000.

Take notice that on May 19,2000, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet to become effective April 1, 2000.

Second Revised Sheet No. 308

Equitrans states that the purpose of this filing is to comply with the Commission's Order issued on May 8, 2000. The Commission found that the filing contained a duplicate numbered tariff sheet First Revised Sheet No. 308 which should have been paginated Second Revised Sheet No. 308. Also, the tariff sheet did not list GISB standards 4.3.2 and 4.3.3 for which an extension was granted. As required by the Commission, Equitrans hereby files the enclosed tariff sheet in compliance with the May 8 Order, to correct the tariff pagination and incorporate the omitted GISB standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

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protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13361 Filed 5–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–288–000]

Kern River Gas Transmission Company; Notice of Filing Tariff Volume

May 23, 2000.

Take notice that on May 18, 2000, Kern River Gas Transmission Company (Kern River) tendered for filing and acceptance a completely repaginated version of its FERC Gas Tariff, which has been designated Second Revised Volume No. 1.

Kern River states that the purpose of this filing is to reflect an overall reformatting and repagination of its tariff that resulted from the conversion of First Revised Volume No. 1 of its FERC Gas Tariff to Microsoft Word. No substantive changes are being proposed.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13362 Filed 5–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–289–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

May 23, 2000.

Take notice that on May 18, 2000, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with an effective date of June 1, 2000:

Fifth Revised Volume No. 1

Twenty Fourth Revised Sheet No. 26B
Fourth Revised Sheet No. 180
Eighth Revised Sheet No. 181
First Revised Sheet No. 220A

Original Volume No. 2

Forty First Revised Sheet No. 5
First Revised Sheet No. 2028

Tennessee states this filing is to update Rate Schedules NET, NET 284 and T–180 to reflect the conversions of various shippers from Part 157 service to Part 284 service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13363 Filed 5–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

May 23, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License.

b. *Project No.:* 11685–001.

c. *Date filed:* September 10, 1999.

d. *Applicant:* The Stockport Mill Country Inn.

e. *Name of Project:* Stockport Mill Country Inn Water Power Project.

f. *Location:* On the Muskingum River Lock and Dam No. 6 near the town of Stockport, in Morgan County, Ohio. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Brown Kinloch, Soft Energy Associates, 414 South Wenzel Street, Louisville, KY 40204, (502) 589–0975.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us* (202) 219–2778.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is now ready for environmental analysis.

l. *Description of the Project:* The proposed project would consist of the following facilities: (1) The existing 20-foot-high, 482-foot-long Muskingum Lock and Dam No. 6 (including the navigational lock water retaining structure); (2) an existing 476-acre reservoir with a normal pool elevation of 640.1 feet msl; (3) an existing 20 foot by 24 foot forebay with a 19-foot-wide vertical trashrack; (4) an existing powerhouse in the basement of the mill containing two proposed generating units with a total installed capacity of 235 kW; and (5) other appurtenances. The lock and dam is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary,

[FR Doc. 00–13366 Filed 5–26–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

May 23, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI00–4–000.

c. *Date Filed:* April 3, 2000.

d. *Applicant:* Leonard Murphy.

e. *Name of Project:* Lovejoy Mill Project.

f. *Location:* On Schoodic Stream, near Medford, Maine, in Piscataquis County, Maine. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Leonard Murphy, Energy Lane, HC 65, Box 5440, Lincoln, ME 04457–9423 (207) 746–9212.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton at (202) 219–2678, or e-mail address: henry.ecton@ferc.fed.us.

j. *Deadline for filing comments and or motions:* June 30, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426.

Please include the docket number (DI00–4–000) on any comments or motions filed.

k. *Description of Project:* The proposed run-of-river project will consist of a one-half-acre reservoir; an 8-foot-high, 110-foot-wide timber crib dam; a powerhouse containing a 12-kW generator; and appurtenant facilities. The facility will not be connected to an interstate grid. The power produced will be used on site, providing electricity for a sawmill/museum and a greenhouse/curator building.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, by

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only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–13365 Filed 5–26–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

May 24, 2000.

Take notice that the Commission intends to hold scoping meetings for the following hydroelectric application which has been filed with the Commission:

a. *Type of Application:* New Major License.

b. *Project No.:* 2589–024.

c. *Date filed:* July 29, 1999.

d. *Applicant:* Marquette Board of Light and Power.

e. *Name of Project:* Marquette Hydroelectric Project.

f. *Location:* On the Dead River, near the City of Marquette, Marquette County, Michigan. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. David E. Hickey, Marquette Board of Light and Power, 2200 Wright Street, Marquette, MI 49855, (906) 228–0322.

i. *FERC Contact:* Lee Emery, (202) 219–2779.

j. *Deadline for filing scoping comments:* July 6, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of Project:* The Marquette Project consists of two separate developments: the No. 2 (Forestville) development and the No. 3 (Tourist Park) development. The No. 2 development, which is immediately downstream of the Dead River Project's McClure facility, consists of the following existing facilities: (1) a 202-foot-long, 62-foot-high concrete-capped Cyclopean masonry dam comprising: (a) a 197-foot-long concrete retaining wall, (b) a 75-foot-long training wall, and (c) a 33-foot-wide intake for the penstock. The masonry dam, which functions as an uncontrolled spillway during extremely high flows, has a spillway crest elevation of 771.0 feet NGVD. It is founded on, and anchored to, the bedrock; (2) one 90-inch-diameter, wood-stave penstock that is approximately 4,200 feet long and conveys water from the intake structure to a concrete surge tank; (3) two 440-foot-long, 78-inch-diameter steel penstocks that convey water from the surge tank to Powerhouse No. 2; (4) Powerhouse No. 2, a 40-foot by 96-foot reinforced concrete and brick structure that contains two turbines, with a combined capacity of 3.2 MW; (5) a 110-acre reservoir; and (6) appurtenant facilities.

The No. 3 development consists of the following existing facilities: (1) a dam that includes (looking from left to right downstream): (a) a 37-foot-long spillway left dike that has a crest elevation of 642.82 feet and a reinforced concrete core wall with a top elevation of 641.84; (b) a concrete ogee uncontrolled spillway that is 80 feet long and has a crest elevation of 638.84 feet (its maximum height is 21 feet above the streambed); (c) a spillway section that contains two 10-foot-high by 10-foot-wide Taintor gates (rollway crest beneath gates is at elevation 629.84) and electric hoists; (d) a 758-foot-long spillway right dike that has a crest elevation of 642.84 feet and a reinforced concrete wall (crest width 13.5 feet); and (e) a reinforced concrete intake structure that has a single 20-foot-wide by 17-foot-high bay, inclined trash racks, and a horizontally hinged gate with a dedicated electric hoist; (2) one 8-foot-diameter, 150-foot-long steel penstock that is supported on 9 reinforced-concrete pedestals and conveys water from the intake to the No. 3 Powerhouse; (3) Powerhouse No. 3, a 28-foot by 40-foot reinforced-concrete and brick structure containing one 700 kW vertical generating unit; (4) a 100-acre reservoir; and (5) appurtenant facilities.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Scoping Process

The Commission staff held public scoping meetings for the Dead River Project (P–10855), located upstream of the Marquette Project, on October 29 and 30, 1996. Based on the stuff's preliminary analysis of the issues, the staff is proposing to prepare a Multiple Project Environmental Assessment (MPEA) for the Marquette Project and the Dead River Project. The staff believes that combining both the projects into one environmental document would provide the best approach for analyzing potential cumulative environmental effects associated with both projects located relatively close to one another on the Dead River.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to identify the scope of issues to be addressed in the MPEA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the MPEA. The times and locations of these meetings are as follows:

Daytime Meeting
Date: June 6, 2000
Time: 9 a.m.–12 p.m.
Place: Cadillac/Brule Room
Don H. Bottum University Center
Northern Michigan University
540 West K Avenue
Marquette, MI 24855

Evening Meeting
Date: June 6, 2000
Time: 7 p.m.–10 p.m.
Place: Brule Room
Don H. Bottom University Center
Northern Michigan University
540 West K Avenue
Marquette, MI 24855

To help focus discussions, we will distribute a Scoping Document (SDI) outlining the subject areas to be addressed in the MPEA to the parties on the Commission's distribution list. Copies of the SDI also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Tuesday, June 6, 2000 starting at 1:30 p.m. We will meet in the Board Room of Marquette Board of Light and Power, located at 2200 Wright Street in Marquettte, MI. Those who wish to attend the site visit should contact Lee Emery of FERC at (202) 219–2779 or Mike Headrick of Harza Engineering Company at (312) 831–3038 on or before June 1, 2000.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the MPEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the MPEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the MPEA; and (5) identify those issues that require a detail analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to identify themselves clearly for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in this MPEA.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–13410 Filed 5–26–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting, Notice

May 24, 2000.

The Following Notice of Meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING : Federal Energy Regulatory Commission.

DATE AND TIME : May 31, 2000, 10:00 A.M.

PLACE : Room 2C, 888 First Street, N.E., Washington, D.C. 20426 .

STATUS : Open.

MATTERS TO BE CONSIDERED: Agenda—Note—Items listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400 for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 742nd—Meeting May 31, 2000, Regular Meeting (10:00 a.m.)

CAH–1.
Docket# P–4282, 004, Mountain Water Resources
Other's P–4312, 004, Watersong Resources

CAH–2.
Docket# P–2984, 033, S.D. Warren Company

CAH–3.
Docket# P–2389, 036, State of Maine

Consent Agenda—Electric

CAE–1.
Docket# ER00–1721, 000, Virginia Electric and Power Company
Other's ER00–1737, 000, Virginia Electric and Power Company

CAE–2.
Docket# ER00–2065, 000, Boston Edison Company

CAE–3.
Docket# ER00–2015, 000, Nevada Power Company
Other's ER00–2018, 000, Sierra Pacific Power Company

CAE–4.
Docket# ER00–1874, 000, New England Power Pool
Other's ER00–1874, 001, New England Power Pool

CAE–5.
Docket# ER00–2019, 000, California Independent System Operator Corporation

CAE–6.
Docke# ER00–2077, 000, North American Electric Reliability Council

CAE–7.
Docket# ER00–2132, 000, Entergy Services, Inc.

CAE–8.
Docket# ER00–2152, 000, Northern Indiana Public Service Company

CAE–9.
Docket# ER00–2136, 000, Consumers Energy Company

CAE–10.
Docket# ER00–2079, 000, PJM Interconnection L.L.C.
Other's ER00–2079, 001, PJM Interconnection L.L.C.

CAE–11.
Docket# ER00–2198, 000, ISO New England Inc.

CAE–12.
Docket# ER00–2158, 000, Wisconsin Public Service Corporation

CAE–13.
Docket# ER00–2203, 000, New England Power Pool

CAE–14.
Docket# ER00–2234, 000, East Central Area Reliability Council

CAE–15.
Docket# ER00–2424, 000, New England Power Pool

CAE–16.
Docket# ER00–2205, 000, California Independent System Operator Corporation
Other#S ER00–1896, 001, Southern California Edison Company; ER00–2206, 000, California Independent System Operator Corporation

CAE–17. Omitted

CAE–18.
Docket# ER00–2416, 000, Entergy Services, Inc.

CAE–19. Omitted

CAE–20. Omitted

CAE–21.
Docket# EC98–40, 003, American Electric Power Company and Central and South West Corporation
Other# EC98–40, 004, American Electric Power Company and Central and South West Corporation; ER98–2770, 003, American Electric Power Company and Central and South West Corporation; ER98–2770, 004, American Electric Power Company and Central and South

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West Corporation; ER98–2786, 004, American Electric Power Company and Central and South West Corporation; ER98–2786, 005, American Electric Power Company and Central and South West Corporation

CAE–22.
Docket# ER96–3146, 002, West Penn Power Company

CAE–23.
Docket# ER99–3333, 003, TXU Energy Trading Company
Other#S EL00–69, 000, TXU Energy Trading Company; ER00–2178, 000, TXU Energy Trading Company

CAE–24.
Docket# ER99–1659, 003, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Public Service Company of Oklahoma
Other#S ER99–1659, 004, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Public Service Company of Oklahoma; ER99–1660, 003, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Public Service Company of Oklahoma; ER99–1660, 004, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Public Service Company of Oklahoma

CAE–25.
Docket# ER98–2550, 000, El Segundo Power, LLC
Other#S ER98–2550, 001, El Segundo Power, LLC

CAE–26. Omitted

CAE–27.
Docket# EC00–49, 000, Consolidated Edison, Inc. and Northeast Utilities

CAE–28.
Docket# EL98–46, 003, Laguna Irrigation District
Other#S ER99–3145, 001, Pacific Gas and Electric Company

CAE–29. Omitted

CAE–30.
Docket# EL00–62, 000, ISO New England Inc.
Other#S EL00–59, 000, Central Maine Power Company, Northeast Utilities Service Company, United Illuminating Company, Unitil Power Corporation, Fitchburg Gas and Electric Light Company and Vermont Electric Power Company v. New England Power Pool and ISO New England, Inc.; ER00–2005, 000, Central Maine Power Company, Northeast Utilities Service Company, United Illuminating Company, Unitil Power Corporation, Fitchburg Gas and Electric Light Company and Vermont Electric Power Company v. New England Power Pool and ISO New England, Inc.; ER00–2016, 000, New England Power Pool; ER00–2052, 000, ISO New England, Inc.

CAE–31.
Docket# EG00–39, 000, PPL Bruner Island, LLC
Other#S EG00–40, 000, PPL Holtwood, LLC; EG00–41, 000, PPL Martins Creek, LLC; EG00–43, 000, PPL Susquehanna, LLC; EG00–44, 000, PPL Montour, LLC

CAE–32.
Docket# EL97–54, 000, San Diego Gas & Electric Company v. Public Service Company of New Mexico
Other#S EL99–21, 000, San Diego Gas & Electric Company v. Public Service Company of New Mexico; EL00–56, 000, San Diego Gas & Electric Company v. Public Service Company of New Mexico

CAE–33.
Docket# EL00–49, 000, NRG Power Marketing, Inc. v. New York Independent System Operator, Inc.

CAE–34.
Docket# EL97–54, 004, San Diego Gas & Electric Company v. Public Service Company of New Mexico
Other#S EL99–21, 001, San Diego Gas & Electric Company v. Public Service Company of New Mexico

Consent Agenda—Gas and Oil

CAG–1.
Docket# RP00–246, 000, Wyoming Interstate Company, Ltd.

CAG–2.
Docket# RP00–260, 000, Texas Gas Transmission Corporation

CAG–3.
Docket# RP00–267, 000, ANR Pipeline Company

CAG–4.
Docket# RP00–262, 000, Florida Gas Transmission Company

CAG–5.
Docket# RP00–247, 000, Colorado Interstate Gas Company

CAG–6.
Docket# RP00–261, 000, Columbia Gulf Transmission Company

CAG–7.
Docket# RP00–255, 000, Petal Gas Storage, L.L.C.

CAG–8.
Docket# RP00–264, 000, Northern Natural Gas Company

CAG–9. Omitted

CAG–10.
Docket# RP00–83, 000, Texas Gas Transmission Corporation
Other#S RP00–83, 001, Texas Gas Transmission Corporation; RP00–83, 002, Texas Gas Transmission Corporation; RP00–83, 003, Texas Gas Transmission Corporation;

CAG–11.
Docket# RP00–265, 000, Northern Natural Gas Company

CAG–12.
Docket# RP00–266, 000, Transcolorado Gas Transmission Company

CAG–13
Docket# TM00–1–25, 002, Mississippi River Transmission Corporation

CAG–14. Omitted

CAG–15.
Docket# RP00–257, 000, Ozark Gas Transmission, L.L.C.

CAG–16. Omitted

CAG–17. Omitted

CAG–18.
Docket# RP99–496, 000, Southern Natural Gas Company
Other#S CP90–2155, 000, Southern Natural Gas Company; RP99–496, 001, Southern Natural Gas Company; RP99–496, 004, Southern Natural Gas Company; CP00–117, 000, Southern Natural Gas Company; CP00–117, 001, Southern Natural Gas Company; CP00–170, 000, Southern Natural Gas Company

CAG–19.
Docket# RP98–40 025 Panhandle Eastern Pipe Line Company

CAG–20.
Docket# MG00–5, 001, Northern Border Pipeline Company

CAG–21.
Docket# MG00–1, 001, Clear Creek Storage Company, L.L.C.

CAG–22.
Docket# CP00–127, 000, Transcontinental Gas Pipe Line Corporation

CAG–23. Omitted

CAG–24.
Docket# CP98–143, 000, Great Lakes Gas Transmission Limited Partnership

CAG–25.
Docket# CP99–539, 001, Earle and Julie Smith V. Portland Natural Gas Transmission System

CAG–26.
Docket# IS00–208, 000, Equilon Pipeline Company, LLC

CAG–27.
Docket# CP99–576, 001, Williams Gas Pipelines Central, Inc.

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket# ER00–1, 000, Transenergie U.S. Ltd. Order on Transmission Service.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Reserved

David P. Boergers,

Secretary.

[FR Doc. 00–13525 Filed 5–25–00; 1:07 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6706–8]

National Drinking Water Advisory Council; Notice of Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on June 14, 2000, from 12 Noon until 1 p.m. (Mountain Time Zone) at the Denver Convention Center, Room A208, 700 14th Street, Denver, Colorado 90202. Some members of the Council will be participating by conference call. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of the meeting is to provide the Council with the recommendations from the Contaminant Candidate List/Six Year Review Working Group. The Council will also provide its recommendations on the Proposed Long Term 1 Enhanced Surface Water Treatment & Filter Backwash Rule, a discussion begun at the May 10 and 11, 2000, meeting in San Francisco, California. The Council encourages the hearing of outside statements and will allocate, if time permits, ten minutes at the meeting for this purpose. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–2285, before June 7, 2000.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. EPA, Office of Ground Water and Drinking Water (4601), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The telephone number is Area Code (202) 260–2285 or E-Mail shaw.charlene@.epa.gov.

Dated: May 23, 2000.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 00–13460 Filed 5–26–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 22, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 31, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0246.
Title: Section 74.452 Equipment Changes.
Form Number: None.
Type of Review: Extension of currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 25.
Estimated time per response: 0.5 hours.
Frequency of Responding: Reporting, on occasion.
Total Annual Burden: 13 hours.
Total Annual Costs: $0.
Needs and Uses: Section 74.452 requires that licensees of remote pickup stations notify the Commission of any equipment changes that are deemed desirable or necessary (without departing from its station authorization) upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with the rules and regulations.

OMB Control Number: 3060–0254.
Title: Section 74.433 Temporary authorizations.
Form Number: None.
Type of Review: Extension of currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 12.
Estimated time per response: 1.25 hours (0.25 hours respondent, 1 hour attorney).
Frequency of Response: Reporting, on occasion.
Total Annual Burden: 3 hours.
Total Annual Costs: $3,900.
Needs and Uses: Section 74.433 requires that a licensee of a remote pickup station make an informal written request to the FCC when requesting temporary authorization for operations of a temporary nature that cannot be conducted in accordance with Section 74.24. The data is used by FCC staff to insure that the temporary operation of a remote pickup station will not cause interference to existing stations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13400 Filed 5–26–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–171, DA 00–1152]

Comment Sought on Supplemental Joint Submission of Program Administrators Regarding Consolidated Data Collection Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 25, 2000, the Commission released a document

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seeking comment on a proposal filed jointly by the administrators of the local number portability, number administration, telecommunications relay services, and universal service support mechanisms (collectively, "the administrators"). The document seeks comment on the administrators' proposed procedures for handling the Telecommunications Reporting Worksheet (FCC Form 499). The intended effect of this action is to make the public aware of, and to seek public comment on, this proposal.

DATES: Comments are due on or before June 16, 2000, and reply comments are due on or before June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Scott K. Bergmann, Industry Analysis Division, Common Carrier Bureau, at (202) 418–7102; or Jim Lande, Industry Analysis Division, Common Carrier Bureau at (202) 418–0948. The TTY number is (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released May 25, 2000 (DA 00–1152). The full text of the Public Notice and the administrators' joint submission are available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, S.W., Washington, D.C. 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 1231 20th St., NW, Washington, D.C. 20036.

Background: On July 14, 1999, the Commission amended its rules so that telecommunications carriers and other service providers need only file one form—the Telecommunications Reporting Worksheet—for the purpose of determining their contributions to the universal service support mechanisms, the TRS Fund, and the cost recovery mechanisms for numbering administration and local number portability.[1] In that order, the Commission concluded that carriers and other filers of the new worksheet need only file one copy of the new worksheet. Accordingly, the Commission directed the administrators to file with the Bureau a summary of their proposed procedures for distributing the data obtained on the consolidated worksheet and to include a description of how related costs will be equitably apportioned.

On October 12, 1999, the program administrators filed a joint submission addressing data collection procedures and a proposed cost allocation methodology. In a subsequent Order, released on February 4, 2000, the Bureau directed the National Exchange Carriers Association (NECA) to perform the data collection functions for the April 2000 filing of the Telecommunications Reporting Worksheet and set out procedures for the administrators to submit proposed arrangements for future filings no later than May 15, 2000.[2] On May 15, 2000, the administrators submitted their supplemental joint submission regarding procedures for handling the consolidated worksheet. *See* Supplemental Joint Submission of Program Administrators Regarding Consolidated Data Collection Procedures and Cost Allocation Methodology, CC Docket No. 98–171 (filed May 15, 2000) (Supplemental Joint Submission). Through the Public Notice summarized here, the Bureau seeks comment on the proposals contained in that joint submission.

Comment Filing Procedures: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 16, 2000, and reply comments on or before June 23, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to<http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>". A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Additional Information: The full text of the Supplemental Joint Submission is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554.

This document may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036, telephone 202–857–3800, facsimile 202–857–3805. You may also view this document on the Commission's web site at <https://haifoss.fcc.gov/cgi-bin/ws.exe/prod/ecfs/comsrch_v2.hts>.

Federal Communications Commission.

Peyton L. Wynns,

Chief, Industry Analysis Division, Common Carrier Bureau.

[FR Doc. 00–13512 Filed 5–26–00; 8:45 am]

BILLING CODE 6712–01–U

[1] 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Report and Order, FCC 99–175, CC Docket No. 98–171, 64 FR 41320 (rel. July 14, 1999) (Contributor Reporting Requirements Order).

[2] See 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications/Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Order, DA 00–214, CC Docket No. 98–171 (rel. Feb. 4, 2000) (Data Collection Procedures Order).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.
Title: Application for Federal Deposit Insurance.
Form Number: 6200/05.
OMB Number: 3064–0001.
Annual Burden:
Estimated annual number of respondents: 300.
Estimated time per response: 250 hours.
Total annual burden hours: 75,000 hours.
Expiration Date of OMB Clearance: July 31, 2000.
Supplementary Information: The Federal Deposit Insurance Act requires a proposed bank or savings institution to apply to the FDIC in order to obtain federal deposit insurance. The form provides the information necessary for the FDIC to make a determination.

2. *Type of Review:* Renewal of a currently approved collection.
Title: Foreign Branch Report of Condition.
Form Number: FFIEC 030.
OMB Number: 3064–0011.
Annual Burden:
Estimated annual number of respondents: 36.
Estimated time per response: 3.9 hours.
Total annual burden hours: 140.40 hours.
Expiration Date of OMB Clearance: July 31, 2000.
Supplementary Information: The Foreign Branch Report of Condition, Form FFIEC 030, contains asset and liability information along with data on certain off balance sheet items for foreign branches of insured banks.

3. *Type of Review:* Renewal of a currently approved collection.
Title: Application Pursuant to Section 19 of the Federal Deposit Insurance Act.
Form Number: 6710/07.
OMB Number: 3064–0018.
Annual Burden:
Estimated annual number of respondents: 75.
Estimated time per response: 16 hours.
Total annual burden hours: 1,200 hours.
Expiration Date of OMB Clearance: July 31, 2000.
Supplementary Information: Section 19 of the Federal Deposit Insurance Act requires insured depository institutions to obtain the FDIC's consent prior to any participation in their affairs by a person convicted of crimes involving dishonesty or breach of trust. Form 6710/07 is the vehicle for requesting FDIC consent.

4. *Type of Review:* Renewal of a currently approved collection.
Title: Fair Housing Lending Monitoring System.
OMB Number: 3064–0046.
Annual Burden:
Estimated annual number of respondents: 2,000.
Estimated annual number of applications: 1,000,000.
Estimated time per response: 5 minutes.
Total annual burden hours: 83,333 hours.
Expiration of OMB Clearance: July 31, 2000.
Supplementary Information: In order to permit the FDIC to detect discrimination in residential mortgage lending, certain insured state nonmember banks are required by FDIC regulation 12 CFR 338 to maintain various data on home loan applicants.

5. *Type of Review:* Renewal of a currently approved collection.
Title: Public Disclosure by Banks.
OMB Number: 3064–0090.
Annual Burden:
Estimated annual number of respondents: 5,742.
Estimated time per response: .5 hours.
Total annual burden hours: 2,871 hours.
Expiration of OMB Clearance: July 31, 2000.
Supplementary Information: 12 CFR 350 requires a bank to notify the general public, and in some instances shareholders, that disclosure statements are available upon request. Required disclosures consist of financial reports for the current and preceding year which can be copied directly from the year-end Call Report.

6. *Type of Review:* Renewal of a currently approved collection.
Title: Foreign Banks.
OMB Number: 3064–0114.
Annual Burden:
Estimated annual number of respondents: 164.
Estimated time per response: varies from 0.25 hours to 120 hours with an average of 14.2 hours.
Total annual burden hours: 2,336 hours.
Expiration of OMB Clearance: July 31, 2000.
Supplementary Information: The collection of information consists of (a) applications to operate as a noninsured state-licensed branch of a foreign bank; (b) applications from an insured state-licensed branch of a foreign bank to conduct activities which are not permissible for a federally-licensed branch; (c) internal recordkeeping by insured branches of foreign banks; and (d) reporting requirements relating to an insured branch's pledge of assets to the FDIC.

7. *Type of Review:* Renewal of a currently approved collection.
Title: Certification of Eligibility Under the Affordable Housing Program.
OMB Number: 3064–0116.
Annual Burden:
Estimated annual number of respondents: 120.
Estimated time per response: 1 hour.
Total annual burden hours: 120 hours.
Expiration Date of OMB Clearance: July 31, 2000.
Supplementary Information: The collection of information certifies income eligibility under the affordable housing program. This certification assists the FDIC in determining an individual's eligibility for purchasing affordable housing properties from the FDIC.

8. *Type of Review:* Renewal of a currently approved collection.
Title: Mutual-to-Stock Conversions of State Savings Banks.
OMB Number: 3064–0117.
Annual Burden:
Estimated annual number of respondents: 20.
Estimated time per response: 50 hours.
Total annual burden hours: 1000 hours.
Expiration of OMB Clearance: July 31, 2000.
Supplementry Information: 12 CFR 303.15 and 333.4 require state savings banks that are not members of the Federal Reserve System to file with the FDIC a notice of intent to convert to stock form and provide copies of documents filed with state and federal banking and or securities regulators in connection with the proposed conversion.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before [insert date 30 days after date of publication in the **Federal Register**] to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: May 23, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–13428 Filed 5–26–00; 8:45 am]

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FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 23, 2000.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Fulton Financial Corporation, Lancaster, Pennsylvania; to acquire 100 percent of the voting shares of, and merge with Skyland Financial Corporation, Hackettstown, New Jersey, and thereby indirectly acquire voting shares of Skylands Community Bank, Hackettstown, New Jersey.

Board of Governors of the Federal Reserve System, May 23, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13339 Filed 5–26–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, whose membership represents interests of consumers, communities, and the financial services industry. Seven new members will be selected for three-year terms that will begin in January 2001. The Board expects to announce the selection of new members by year-end 2000.

DATES: Nominations should be received by August 1, 2000.

ADDRESSES: Nominations should be submitted in writing and mailed (not sent by facsimile) to Sandra F. Braunstein, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: Ann Bistay, Secretary to the Council, Division of Consumer and Community Affairs, (202) 452–6470. For Telecommunications Device for the Deaf (TDD) users only: Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976 at the direction of the Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial services industry (15 USC 1691(b)). Under the Rules of Organization and Procedure of the Consumer Advisory Council (12 CFR 267.3), members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected for terms beginning January 1, 2001, to replace members whose terms expire in December 2000; the Board expects to announce its appointment of new members by year-end. Nomination letters should include information about past and present positions held by the nominee; a description of special knowledge, interests or experience related to community reinvestment, consumer protection regulations, consumer credit, or other consumer financial services; and the full name, title, organization name, organization description, current address, telephone and fax numbers for both the nominee and the nominator. Individuals may nominate themselves.

The Board is interested in candidates who have familiarity with consumer financial services, community reinvestment, consumer protection regulations, and who are willing to express their viewpoints. Candidates do not have to be experts on all levels of consumer financial services or community reinvestment, but they should possess some basic knowledge of the area. They must be able and willing to make the necessary time commitment to participate in conference calls, and prepare for and attend meetings three times a year (usually for two days, including committee meetings), held at the Board's offices in Washington, D.C. The Board pays travel expenses, lodging, and a nominal honorarium.

In making the appointments, the Board will seek to complement the background of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board may consider prior years' nominees and does not limit consideration to individuals nominated by the public when making its selection.

Council members whose terms end as of December 31, 2000, are:

Walter Boyer, Chairman, The Diamond Group, Dallas, Texas

Jeremy Eisler, Director of Litigation, South Mississippi Legal Services Corp., Biloxi, Mississippi

Robert Elliott, Retired Vice Chairman, Household International, Prospect Heights, Illinois

Dwight Golann, Professor of Law, Suffolk University Law School, Boston, Massachusetts

Karla Irvine, Executive Director, Housing Opportunities Made Equal of Greater Cincinnati, Inc., Cincinnati, Ohio

Gwenn Kyzer, Vice President, Experian, Inc., Allen, Texas

John Lamb, Senior Staff Counsel, Department of Consumer Affairs, Sacramento, California

Martha Miller, President, Choice Federal Credit Union, Greensboro, North Carolina

Daniel Morton, Vice President and Senior Counsel, The Huntington National Bank, Columbus, Ohio

David Ramp, Assistant Attorney General, 1400 NCL Tower, St. Paul, Minnesota

Robert Schwemm, Professor of Law, University of Kentucky, Lexington, Kentucky

David Shirk, Senior Manager, Framework, Inc., Tarrytown, New York

Council members whose terms continue through 2001 and 2002 are:

Lauren Anderson, Executive Director, Neighborhood Housing Services of New Orleans, Inc., New Orleans, Louisiana

Malcolm Bush, President, The Woodstock Institute, Chicago, Illinois

Dorothy Broadman, Senior Vice President, Cal Fed Bank, San Francisco, California

Teresa A. Bryce, General Counsel, Bank of America Mortgage, Charlotte, North Carolina

Robert Cheadle, Chief Executive Officer, Mortgage Express, Ada, Oklahoma

Mary Ellen Domeier, President, State Bank & Trust Company of New Ulm, New Ulm, Minnesota

Lester Wm. Firstenberger, Senior Vice President and General Counsel, Mortgage Lenders Network USA, Inc., Middletown, Connecticut

John Gamboa, Executive Director, The Greenlining Institute, San Francisco, California

Vincent Giblin, Chief Executive Officer, International Union of Operating Engineers, West Caldwell, New Jersey

Willie Jones, Deputy Director, The Community Builders, Inc., Boston, Masschusetts

Dean Keyes, Senior Vice President, Mercantile Bancorporation, Inc., St. Louis, Missouri

Anne Li, Executive Director, New Jersey Community Loan Fund, Trenton, New Jersey

Jeremy Nowak, Chief Executive Officer, The Reinvestment Fund, Philadelphia, Pennsylvania

Marta Ramos, Vice President & CRA Officer, Banco Popular De Puerto Rico, San Juan, Puerto Rico

Russell Schrader, Senior Vice President and Assistant General Counsel, Visa U.S.A., San Francisco, California

Gary Washington, Senior Vice President, ABN AMRO, Chicago, Illinois

Robert Wynn, II, Financial Education Officer, Department of Financial Institutions, Madison, Wisconsin

Board of Governors of the Federal Reserve System, May 24, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–13434 Filed 5–26–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1072]

Privacy Act of 1974; Notice of New System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of new system of records.

SUMMARY: In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is publishing notice of one new system of records, entitled Multi-rater Feedback Records (BGFRS–25). We invite public comment on this new system of records.

DATES: Comment must be received on or before June 29, 2000.

ADDRESSES: Comments, which should refer to Docket No. R–1072, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays and to the security control room outside of those hours. The mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, Legal Division (202/452–2418), or Chris Fields, Manager, Human Resources Function, Management Division (202/452–3654), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. For users of the Telecommunications Device for the Deaf (TDD) only, contact Janice Simms at 202/452–4984.

SUPPLEMENTARY INFORMATION: The Board is instituting a feedback program for its managers and officers. Under this Multi-rater Feedback program, Board employees who work for or with a particular manager or officer are asked to complete a voluntary, confidential questionnaire regarding the performance of that manager/officer and send it directly to a consultant hired by the Board for this program. The consultant analyzes the completed questionnaires and compiles a report for the manager/officer that summarizes the comments from the questionnaires. This report does not identify individual comments or those who completed the questionnaires. The report is given only to the manager/officer being evaluated; no other Board employee or officer receives a copy of the report. The consultant maintains all of the data connected with this program, identified only by the name of the manager/officer being evaluated. The data is stored by name of the officer/manager being evaluated, and thus is considered to be a system of records under the Privacy Act.

In accordance with 5 U.S.C. 552a(r), a report of this new system of records is being filed with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Office of Management and Budget. This new system of records will become effective on June 28, 2000, without further notice, unless the Board publishes a notice to the contrary in the **Federal Register**.

BGFRS–25

SYSTEM NAME:

Multi-rater Feedback Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

The completed multi-rater questionnaires and the resulting feedback reports are maintained by an outside consultant ("Contractor") pursuant to a contract with the Board. Based on the information provided by the completed questionnaires, the Contractor will provide an individual feedback report to the individual being evaluated. With the exception of the feedback report that is provided to the individual being evaluated, no individually-identifiable information is maintained on the Board's premises.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Questionnaires completed by employees, analyses of the questionnaires, and feedback reports compiled by the Contractor based upon the analyses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 11 of the Federal Reserve Act (12 U.S.C. 248(i) and 248(l)).

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PURPOSE(S):

These records are collected and maintained to assist the Board in administering its personnel functions and improving the management skills of its employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

b. To disclose to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

d. To disclose information to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Board is a party to the judicial or administrative proceeding.

e. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

f. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations or other functions vested in the Commission.

g. To disclose information to the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigation of alleged practices, and such other functions promulgated in 5 U.S.C. chapter 12, or as may be authorized by law.

h. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards where a question of material fact is raised, and matters before the Federal Service Impasses Panel.

i. To disclose information to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in paper and electronic format in a secure location by the Contractor.

RETRIEVABILITY:

Information is retrieved by the name of the individual being evaluated.

SAFEGUARDS:

The Contractor maintains strict confidentiality of the information. Information in these files is not provided to Board employees, except the individual being evaluated.

RETENTION AND DISPOSAL:

Each feedback report and the information related to that report shall be retained by Contractor for 5 years after the date of the report, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Human Resources Function, Management Division, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW, Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as " Notification procedure" above.

RECORD SOURCE CATEGORIES:

The individual being evaluated.

The employees completing the questionnaires.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to the Privacy Act, 5 U.S.C. 552a(k)(5), and the Board's regulation relating thereto (12 CFR part 261a), the individual questionnaires contained in this system of records are exempted from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H), and (I).

By order of the Board of Governors of the Federal Reserve System, May 19, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–13126 Filed 5–26–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10 (a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to provide review of contract proposals and recommendations to the Director, AHRQ, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) to "Maintain and Expand the Healthcare Cost and Utilization Project (HCUP)". The RFP was published in the Commerce Business Daily on March 30, 2000.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—"Maintain and Expand the Healthcare Cost and Utilization Project (HCUP)".

Date: June 14, 2000 (Closed to the public).

Place: Agency for Healthcare Research and Quality, 6010 Executive Blvd, 4th Floor Conference Center, Room D, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Jenny Schnaier, Center for Organizaton and Delivery Systems, Agency for Healthcare Research and Quality, 2102 East Jefferson Street, Suite 605, Rockville, Maryland, 20852, 301–594–6827.

Dated: May 22, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–13378 Filed 5–26–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to provide review of contract proposals and recommendations to the Administrator, AHRQ, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "Internet-based Distance Learning", issued on April 21, 2000. The contract will constitute AHRQ's participation in the Small Business Innovation Research program.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section, 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—"Internet-based Distance Learning".

Date: June 16, 2000 (Closed to the public).

Place: Agency for Healthcare Research and Quality, 6010 Executive Blvd., 4th Floor Conference Center, Room B, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Sandra Robinson, Center for Quality Measurement and Improvement, Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 502, Rockville, Maryland 20852, 301–594–1703.

Dated: May 22, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–13379 Filed 5–26–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to provide review of contract proposals and recommendations to the Administrator, AHRQ, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "Lifedata.com: A Repository of Health Related Quality of Life Instruments," issued on April 14, 2000. The contract will constitute AHRQ's participation in the Small Business Innovation Research program.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—"Lifedata.com: A Repository of Health Related Quality of Life Instruments."

Date: June 16, 2000 (Closed to the public).

Place: Agency for Healthcare Research and Quality, 6010 Executive Blvd, 4th Floor Conference Center, Room B, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Yen-Pin Chiang, Center for Outcomes and Effectiveness Research, Agency for Healthcare Research and Quality, 6010 Executive Blvd., Suite 300, Rockville, Maryland 20852, 301–594–4035.

Dated: May 22, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–13380 Filed 5–26–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00070]

Implementation of the National Arthritis Action Plan: Arthritis Education and Control; Notice of Availability of FY 2000 Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a grant with the Edward E. Roybal Comprehensive Health Center to assist with the development and implementation of arthritis education and control activities consistent with the National Arthritis Action Plan: A Public Health Strategy (NAAP).

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010" a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to focus area of Arthritis, Osteoporosis, and Chronic Back Conditions. For the conference copy of "Healthy People 2010," visit the internet site http://www.health.gov/healthypeople.

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Although the NAAP lays out a vision and a framework for addressing the arthritis burden nationwide, it also details other strategic initiatives requiring a coordinated, responsible approach involving all levels of the public health structure (national, State, and local); public and private agencies involved in research activities addressing arthritis; health care systems and health care providers. The values of NAAP are to emphasize prevention at all levels (primary, secondary, and tertiary); to use and expand the science base; to seek social equity (*e.g.*, addressing issues faced by the uninsured or under-insured, the poor, the disabled, and minority populations); and to build partnerships. Little is known about arthritis self-management knowledge, attitudes and behaviors among Hispanic populations—nor knowledge, attitudes and treatment strategies among the health care providers who treat arthritis in these populations. While a variety of arthritis self-management programs are available, few have had rigorous evaluation in minority populations.

The purpose of this arthritis education program is to investigate program delivery mechanisms to identify those that adequately engage minority populations. Specific activities to be implemented should target Hispanic populations and may include the development, dissemination or evaluation of existing or modified self management programs, programs to improve early diagnosis and treatment of arthritis, assessment of the use of complementary and alternative treatments for arthritis; the assessment of knowledge, attitudes and behaviors about arthritis; the assessment of knowledge, attitudes, and treatment behaviors among primary care providers providing care in these populations; and validation of commonly used survey tools (*e.g.*, Behavioral Risk Factor Surveillance System (BRFSS) questions addressing arthritis).

B. Eligible Applicant

Assistance will be provided only to the Edward E. Roybal Comprehensive Health Center, 245 S. Fetterly Avenue, Los Angeles, CA 90022. No other applications will be solicited. This sole source solicitation is based on the Conference Report (H.R. Rep. 106–479) at 601 (1999) to the Consolidated Appropriations Act, 2000, Public Law 106–113, which earmarks funding for the Roybal Center in Los Angeles for a program in arthritis care and education.

C. Availability of Funds

Approximately $603,000 is available in FY 2000 to fund this award. It is expected that the award will begin on or about September 1, 2000, and will be made for a 12-month budget period within a project period of one year. Funding estimates may change.

D. Where To Obtain Additional Information

For this and other announcements see the CDC home page on the Internet to obtain a copy of the announcement: http://www.cdc.gov

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Glynnis D. Taylor, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00070, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146 telephone (770) 488–2752, E-mail address: gld1@cdc.gov

For program technical assistance, contact: Teresa J. Brady, Ph.D., Arthritis Program, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway NE., Atlanta, GA, 30341–3717, Telephone (770) 488–5856, E-mail address: tob9@cdc.gov

Dated: May 23, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13391 Filed 5–26–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

[Program Announcement 00140]

Announcement Grant to the Marin County Department of Health and Human Services, California

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a grant to the Marin County Department of Health and Human Services (MCDHHS)in California to evaluate the high incidence of breast cancer in Marin County.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce mortality and morbidity and improve the quality of life. This announcement is related to the focus area of cancer. For the conference copy of "Healthy People 2010," visit the Internet site: <http://www.health.gov/healthypeople>

The purpose of the program is for MCDHHS community-based investigation of the high incidence of breast cancer and possible causes of increased risks of breast cancer in this region of California.

B. Eligible Applicant

Assistance will be provided only to the Marin County Department of Health and Human Services, California. No other applications are solicited. The sole source justification is based on the Congressional language in FY 2000 CDC appropriation, which earmarked funding for Marin County Department of Health and Human Services, Marin County, California.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $250,000 is available in FY 2000 to fund the MCDHHS. It is expected that the award will begin on or about September 30, 2000, for a 12 month budget period with a project period of up to 18 months.

Use of Funds

The grant funds may not be expended to provide inpatient hospital or treatment services. Treatment is defined as any service recommended by a clinician, including medical and surgical intervention provided in the management of a diagnosed condition.

D. Program Requirements

In conducting activities to achieve the purpose of this project, the recipient shall be responsible for the following activities:

1. Investigate suspected environmental risk factors for breast cancer.

2. Develop, implement, and evaluate effective collaborations among public, non-profit and private partners to achieve and support breast cancer control objectives.

3. Develop and evaluate training for professionals in cancer early detection, surveillance and data analysis. Sponsor information exchanges through workshops, and other group mechanisms as appropriate.

4. Develop a research plan for investigating environmental risk factors with a protocol for mapping environmental factors of women with and without breast cancer.

5. Develop plans for sharing and disseminating the results of the project.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed in Part G. of this announcement, so it is important to consider them in laying out the project plan. The narrative should be no more than 10 double-spaced pages, printed on one side, with one inch margins, and unreduced font. The application pages should be numbered and a complete index to the application and its appendixes included. Begin each separate section on a new page. The original and each copy of the application must be submitted unstapled, unbound, and typed on a 8½″ by 11″ paper, with at least 1″ margins, headings and footers, and printed on one side only using unreduced font. The "narrative" portion of the application should address the following:

1. Statement of Need

Identify and describe the nature and extent of the problem for which assistance is requested.

2. Short and Long-Term Objectives

Describe objectives that must be specific, measurable, time phased, and realistic.

3. Operational Plan

Address the means for achieving each of the objectives. Provide a concise description of each component or major activity and how it will be implemented. The plan must identify and establish a time line for the completion of each component or major activity.

4. Evaluation Plan

Provide a quantitative plan for monitoring progress toward achieving each of the objectives.

5. Program Management

Describe the functions and qualification for each of the program personnel requested.

6. Budget

Provide a detailed budget and justification for the costs that are consistent with the purpose of the program and the proposed project activities.

F. Submission and Deadline

On or before July 20, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. Submit the original and two copies of CDC Form 0.1246. Forms are in the application kit.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Need statement. The extent to which the applicant identifies specific needs related to the purpose of the program. (20 points)

2. Objectives. The degree to which short- and long-term objectives are specific, time-phased, measurable, and realistic. (20 points)

3. Operational Plans. The adequacy of the applicant's plan to carry out the proposed activities, including the extent to which they plan to work collaboratively with other organizations and individuals who may have an impact on cancer prevention and control objectives. (20 points)

4. Evaluation Plan. The extent to which the evaluation plan appears capable of monitoring progress toward meeting project objectives. (20 points)

5. Program Management. The extent to which proposed staff appear to be qualified and possess capacity to perform the project. (20 points)

6. Budget. The extent to which the budget along with narrative justification is reasonable and consistent with the purpose and objectives of the program (Not scored).

H. Other Requirements

Technical Reporting Requirements

An original and two copies of a progress report is required no later than 90 days after the end of the first twelve months. A Financial Status Report and a final performance report are required no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, CDC, identified in the last section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–7 Executive Order 12372 Review

AR–8 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–21 Small, Minority, And Women-owned Business

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a), 317(k)(2) of the Public Health Service Act [42 U.S.C. 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance Number for this program is 93.283.

J. Where To Obtain Additional Information

This announcement and other CDC program announcements can be found on the CDC home page Internet address at: http://www.cdc.gov.

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00140, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146 Telephone Number: 770/488–2757, E-mail address: coc9@cdc.gov.

For program technical assistance, contact: Denita Dean, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Control and Prevention (CDC), Mail Stop K–55, 4770 Buford Highway, NE, Atlanta, GA 30341–3724, Telephone Number: 770/488–4227, FAX Number: 770/488–4639, E-mail address: djd5@cdc.gov.

Dated: May 23, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13389 Filed 5–26–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00096]

National Limb Loss Information Center; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a grant program for a National Limb Loss Information Center (NLLIC). The purpose of the program is to support a NLLIC which will: (1) serve as a national clearinghouse to provide educational materials, referral services, and self-help guidance to persons with limb loss and their families; (2) establish collaborative relationships with peer support groups and conduct peer visitation training opportunities provided through relationships with hospitals and limb loss support groups; (3) provide information to health care providers and professionals regarding limb loss; and (4) develop school-based educational efforts to increase the knowledge and understanding of students regarding limb loss. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of "Disability and Secondary Conditions." For the conference copy of "Healthy People 2010," visit the Internet site: http://www.health.gov/healthypeople

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private non-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $1,400,000 will be available in FY 2000 to fund one award. It is expected that the award will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds. The award made under this announcement will be made with the expectation that program activities will continue when grant funds decrease.

Use of Funds

Grant funds may be used to support personnel services, supplies, equipment, travel, subcontracts, and other services directly related to project activities consistent with the approved scope of work. Project funds may not be used to supplant other agency funds, construction, purchase of facilities or space, or for patient care. Project funds may not be used for individualized preventive or rehabilitative measures (direct patient support) such as for wheelchairs, medical appliances, or assistive technology unless specifically approved by the funding agency.

D. Program Requirements

Applicants are required to collect, organize, and disseminate limb loss educational materials and resources and provide effective management systems for all center operations. Major tasks and responsibilities include:

1. Establish, maintain, and manage a comprehensive project management information system, including data on clients, referrals, and resources;
2. Establish and maintain a resource library regarding limb loss which includes a comprehensive electronic resource database;
3. Utilize universities, research institutions and other noted authorities such as Rehabilitation Hospitals to collect and maintain a comprehensive inventory of current educational materials regarding limb loss;
4. Develop appropriate information, educational messages, and guidance to individuals with limb loss;
5. Develop and disseminate a national education publication that conveys the most current advances in treatment and care of persons with limb loss and disability;
6. Develop a peer visitation training initiative to conduct self-help training and work with support networks, including outreach to special populations such as women, racial and ethnic minorities, and the elderly;
7. Develop standardized materials to assist local organizations in the conduct of appropriate visitation programs;
8. Develop and utilize affiliations with public school systems, other educational facilities, and educational professionals to provide limb loss information to teachers and students;
9. Develop and utilize collaborative relationships with State and local medical societies and health care professionals in order to enhance health care providers' understanding of the needs of people with limb loss;
10. Develop and utilize collaborative relationships with disability organizations to better assess affected individuals and families.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications will be evaluated on the criteria listed; so, it is important to follow them in laying out the program plan. The narrative should be no more than 40 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

The application should describe how the applicant:

1. Is recognized as an organization with established expertise in the provision of educational and support services to individuals with limb loss and their families.
2. Is experienced in limb loss rehabilitation processes and has strong collaborative relationships with a national network of local affiliates and other organizations that provide both rehabilitation and disability services.
3. Can demonstrate and document historical or proposed collaborative relationships with the submission of memorandums of agreement and/or letters of support.
4. Can demonstrate and document competencies in developing and disseminating educational and training materials regarding limb loss that can be utilized for a wide range of informational and referral needs by individuals and interested organizations.
5. Can provide substantive details and information as to how each of the Program Requirements components will be conducted and coordinated into a cohesive and efficient national program.

Recipient Financial Participation

Recipient financial participation is not required for this program in accordance with the authorizing legislation. However, the applicant should document any sources of financial support for a portion of the project cost, such as salaries for key staff and tangible contributions by collaborating agencies.

F. Submission and Deadline

Letter of Intent (LOI)

A letter of intent is requested from prospective applicants. The letter should not exceed two pages. It must identify this Announcement number, organization, and name of the proposed project director. The letter will not be used to eliminate potential applicants, but it will enable CDC to determine the level of interest in the Announcement, and allow CDC to plan the independent review more efficiently.

On or before July 5, 2000, submit the letter of intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this Announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: http://www.cdc.gov, or in the application kit. On or before July 26, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in a. or b. above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review panel appointed by CDC.

1. Evidence of need and understanding of the problem: (15 Points)

a. The extent to which the applicant describes its understanding of the national limb loss problem as evidenced by estimates of incidence and/or prevalence, demographic indicators, and scope of the problem.

b. The extent to which the applicant describes the gaps that exists in current educational materials and the tools that would serve to better educate and facilitate more positive rehabilitation outcomes.

2. Evidence of the ability to provide educational materials needed to inform individuals with limb loss regarding rehabilitation and disability resources, and other pertinent information choices: (25 Points)

a. The extent to which the applicant describes its knowledge and use of current educational materials available in accessible formats (*e.g.,* visually impaired) with regard to limb loss rehabilitation and identification of materials needed to address specific problems associated with the rehabilitation and the disabling process.

b. The extent to which the applicant describes its capacity to acquire and disseminate resources, educational materials and other tools (with descriptions of these resources) in regard to the rehabilitation options and other uses of disability information of benefit to persons with limb loss.

3. Technical Approach: (35 Points)

a. The extent to which the applicant describes its capacity to assess and ensure that the basic components of the project will be promoted and implemented.

b. The extent to which the applicant describes its proposed plan to establish and operate the National Limb Loss Information Center, and ensure its capability to function as a national coordinating focus for collection and dissemination of limb loss information.

c. The extent to which the applicant describes its approach to developing school based limb loss education programs for students and educational professionals.

d. The extent to which the applicant describes its approach to developing health care provider limb loss education programs.

e. The extent to which the applicant describes its demonstrated competency in developing educational materials, including accessible formats, regarding individuals with limb loss.

f. The extent to which the applicant describes the functions of the established oversight entity (such as a board of directors) including its composition, impact on policy, planning, and oversight for educational activities, with an indication of how it will complement existing educational and peer visitation programs.

g. The extent to which the applicant describes the reasonableness, feasibility, and logic of the designated project objectives, including the overall work plan, timetable for accomplishment, and the strength of the proposed evaluation plan.

h. The extent to which the applicant describes the available services and how access to project services, opportunities, and facilities will be achieved for persons with disabilities.

i. The extent to which the applicant describes its demonstrated competency of collecting data and utilizing data sets to establish program priorities and assess program effectiveness.

4. Outreach Capacity: (20 Points)

a. The extent to which the applicant describes its ability to establish and conduct a peer visitation training program initiative.

b. The extent to which the applicant identifies and describes the facilities and organizations to be visited and description of any planned follow-up to evaluate the number of training sessions that are initiated and the outcomes of these activities.

c. The extent to which the applicant describes its ability to target and outreach to several special population groups including women, racial and ethnic minorities, and the elderly.

d. The extent to which the applicant describes its ability to collect data and evaluate the effect of peer visitation and training programs.

5. National Educational Publication: (5 points)

The extent to which the applicant describes its plan to develop, distribute, and update a national educational publication that will provide information regarding limb loss.

6. Budget justification: (not scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, accuracy and consistency with the intended use of grant funds.

H. Other Requirements

Provide CDC with an original plus two copies of:

1. Semiannual progress reports;
2. Financial Status Reports, no later than 90 days after the end of each budget period; and
3. Final Financial Status Report and performance report, due no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

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The following additional requirements are applicable to this program. For a complete description of each, see the ATTACHMENT in the application kit.

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized by Section 301 (a) (42 U.S.C. 241(a)) and Section 317 (42 U.S.C. 247b) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.184.

J. Where To Obtain Additional Information

This and other funding opportunities may be found on the CDC home page on the Internet: http://www.cdc.gov. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name, address, and telephone number and will be instructed to identify the Announcement Number of interest.

If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

William Paradies, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone: (770) 488–2721, E-mail: wep2@cdc.gov

General program assistance can be obtained from: Jack Stubbs, Disability and Health Branch, National Center for Environmental Health, CDC, 4770 Buford Highway, Building 101, Mailstop F–29, Atlanta, Georgia 30341, Telephone: (770) 488–7096, E-mail: jbs2@cdc.gov

Dated: May 23, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13390 Filed 5–26–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

HCFA–2063–N

RIN 0938–AJ72

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: The Social Security Act provides for the Medicaid program to pay all or part of the Medicare Part B premiums for 5 years (Federal fiscal years 1998 through 2002) for two specific eligibility groups of low-income Medicare beneficiaries, referred to as Qualifying Individuals. This notice announces the Federal fiscal year 2000 allotments that are available for State agencies to pay Medicare Part B premiums for these eligibility groups.

EFFECTIVE DATE: This notice is effective October 1, 1999 for allotments for payment of Medicare Part B premiums for individuals in calendar year 2000 from the allocation for fiscal year 2000.

FOR FURTHER INFORMATION CONTACT: Miles McDermott, (410) 786–3722.

SUPPLEMENTARY INFORMATION:

I. Background

A. Before the Balanced Budget Act of 1997

Before the enactment of the Balanced Budget Act of 1997 (BBA), section 1902(a)(10)(E) of the Social Security Act (the Act) specified that the State Medicaid plan must provide for Medicare cost-sharing for three eligibility groups of low-income Medicare beneficiaries. These three groups included Qualified Medicare Beneficiaries (QMBs), Specified Low-income Medicare Beneficiaries (SLMBs), and Qualified Disabled and Working Individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A with income at or below the Federal poverty level and resources below $4,000 for an individual and $6,000 for a couple. An SLMB is an individual who meets the QMB criteria, except that his or her income is between a State-established level (at or below the Federal poverty level) and 120 percent of the Federal poverty level. A QDWI is an individual who is entitled to enroll in Medicare Part A, whose income does not exceed 200 percent of the Federal poverty level for a family of the size involved, whose resources do not exceed twice the amount allowed under the Supplementary Security Income (SSI) program, and who is not otherwise eligible for Medicaid. The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for premiums for Medicare Part B.

B. After the Balanced Budget Act of 1997

Section 4732 of the BBA amended section 1902(a)(10)(E) of the Act to require States to provide for Medicaid payment of the Medicare Part B premiums, during the period beginning January 1998 and ending December 2002, for two eligibility groups of low-income Medicare beneficiaries, referred to as Qualifying Individuals (QIs).

Under section 1902(a)(10)(E)(iv)(I) of the Act, State agencies are required to pay the full amount of the Medicare Part B premium for selected QIs who would be QMBs except that their income level is at least 120 percent but less than 135 percent of the Federal poverty level for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan.

The second group of QIs, under section 1902(a)(10)(E)(iv)(II) of the Act, includes Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the Federal poverty level for a family of the size involved. These QIs may not be otherwise eligible for Medicaid under the approved State plan, but are eligible for a portion of Medicare cost-sharing consisting only of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

Section 4732(c) of the BBA also added section 1933 of the Act, which specifies the provisions for State coverage of the Medicare cost-sharing for additional low-income Medicare beneficiaries.

Section 1933(a) of the Act specifies that a State agency must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of QIs who are selected to receive assistance.

Section 1933(b) of the Act sets forth the rules that State agencies must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State agency must permit all QIs to apply for assistance and must select individuals on a first-come, first-served basis in the order in which they apply. Under section 1933(b)(2)(B) of the Act, when selecting persons who will receive assistance in the years after 1998, State agencies must give preference to those individuals who received assistance as QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year and who continue to be, or now become, QIs. Under section 1933(b)(4), persons selected to receive assistance in a calendar year are entitled to receive assistance for the remainder of the year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year. Because the State's allotment is limited by law, section 1933(b)(3) of the Act provides that the State agency must limit the number of QIs so that the amount of assistance provided during the year is approximately equal to the State's allotment for that year.

Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums each fiscal year and specifies the formula to be used to determine an allotment for each State from this total amount. For State agencies that execute a State plan amendment in accordance with section 1933(a) of the Act, a total of $1.5 billion was allocated over 5 years as follows: $200 million in FY 1998; $250 million in FY 1999; $300 million in FY 2000; $350 million in FY 2001; and $400 million in FY 2002.

The Federal matching rate for Medicaid payment of Medicare Part B premiums for QIs is 100 percent for expenditures up to the amount of the State's allotment. No Federal matching funds are available for expenditures in excess of the State's allotment amount. Administrative expenses associated with the payment of Medicare Part B premiums for QIs remain at the 50 percent matching level and may not be taken from the State's allotment.

The amount available for each fiscal year is to be allocated among States according to the formula set forth in section 1933(c)(2) of the Act. The formula provides for an amount to each State agency that is to be based on each State's share of the Secretary's estimate of the ratio of—

(1) An amount equal to the sum of the following:

(a) Twice the total number of individuals who meet all but the income requirements for QMBs, whose incomes are at least 120 percent but less than 135 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid; and

(b) The total number of individuals in the State who meet all but the income requirements for QMBs, whose incomes are at least 135 percent but less than 175 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid; to

(2) The sum of all of these individuals under item (1) for all eligible States.

II. Provisions of This Notice

This notice announces the availability of individual State allotments for Federal fiscal year 2000 for the Medicaid payment of Medicare Part B premiums for QIs identified under sections 1902(a)(10)(E)(iv)(I) and (II) of the Act. The formula used to calculate these allotments was described in detail in the January 26, 1998 **Federal Register** (63 FR 3754) and, except for the incorporation of the latest data, has been used here without changes.

FY 2000 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS UNDER SEC. 4732 OF THE BBA OF 1997

[In thousands]

State	(a) M1[1]	(b) M2[2]	(c) [2 × (a)] + (b)	State share of (c) (in percent)	State FY 2000 allocation (dollars in thousands)
AK	1	4	6	0.09	278
AL	37	82	156	1.41	7,231
AR	25	43	93	1.44	4,311
AZ	17	71	105	1.62	4,867
CA	102	327	531	8.20	24,614
CO	13	23	49	0.76	2,271
CT	6	52	64	0.99	2,967
DC	2	5	9	0.14	417
DE	5	10	20	0.31	927
FL	100	280	480	7.42	22,250
GA	33	92	158	2.44	7,324
HI	4	10	18	0.28	834
IA	13	54	80	1.24	3,708
ID	5	17	27	0.42	1,252
IL	56	179	291	4.50	13,489
IN	36	103	175	2.70	8,112
KS	14	57	85	1.31	3,940
KY	24	80	128	1.98	5,933
LA	29	75	133	2.06	6,165
MA	33	81	147	2.27	6,814
md	21	66	108	1.67	5,006
ME	8	18	34	0.53	1,576
MI	48	128	224	3.46	10,383
MN	26	63	115	1.78	5,331
MO	25	85	135	2.09	6,258
MS	16	40	72	1.11	3,337
MT	5	13	23	0.36	1,066
NC	48	115	211	3.26	9,781
ND	5	13	23	0.36	1,066
NE	12	31	55	0.85	2,549
NH	6	16	28	0.43	1,298
NJ	44	120	208	3.21	9,642
NM	10	20	40	0.62	1,854
NV	4	18	26	0.40	1,205

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FY 2000 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS UNDER SEC. 4732 OF THE BBA OF 1997—Continued

[In thousands]

State	(a) M1 [1]	(b) M2 [2]	(c) [2 × (a)] + (b)	State share of (c) (in percent)	State FY 2000 allocation (dollars in thousands)
NY	99	228	426	6.58	19,747
OH	72	183	327	5.05	15,158
OK	27	51	105	1.62	4,867
OR	13	44	70	1.08	3,245
PA	83	196	362	5.59	16,780
RI	9	24	42	0.65	1,947
SC	25	80	130	2.01	6,026
SD	5	11	21	0.32	973
TN	29	45	103	1.59	4,774
TX	79	212	370	5.72	17,151
UT	3	20	26	0.40	1,205
VA	13	86	112	1.73	5,192
VT	4	8	16	0.25	742
WA	17	44	78	1.21	3,616
WI	26	82	134	2.07	6,211
WV	18	45	81	1.25	3,755
WY	3	6	12	0.19	556
Total	1358	3756	6472	100.00	300,000

[1] Three-year average (1996–1998) of number of Medicare beneficiaries in State who are not enrolled in medicaid but whoe incomes are at least 120% but less than 135% of FPL.

[2] Three-year average (1996–1998) of number of Medicare beneficiaries in State who are not enroleld in Medicaid but whose incomes are at least 135% but less than 175% of FPL.

III. Waiver of Advance Public Comment and 30-Day Delay in Effective Date

We ordinarily publish an advance notice in the **Federal Register** for a notice containing substantive rules to provide a period for public comment. However, we may waive that procedure if we find good cause that notice and comment are impractical, unnecessary, or contrary to the public interest. In addition, we also normally provide a delay of 30 days in the effective date. However, if adherence to this procedure would be impractical, unnecessary, or contrary to the public interest, we may waive the delay in the effective date.

We find good cause to waive notice and comment procedure for this notice. The law sets out in detail the specific amounts available for each Federal fiscal year for Medicare Part B premiums for QIs and the formula that is used to determine individual State allotments. In addition, the latest data from the U. S. Census Bureau on the number of possible QIs in the States, used in the statutory formula as discussed in section V of this notice, is not available until too late in the calendar year. Therefore, it would be impracticable, unnecessary, and contrary to the public interest to submit this notice to the public for a notice and comment procedure.

Also, because States can begin making payments for Medicare Part B premiums for QIs as early as January 1, 2000, we are not making the effective date of the notice the usual 30 days after publication. For the reasons discussed previously, we find good cause to waive the usual 30-day delay.

IV. Effect of the Contract With America Advancement Act

Normally, under 5 U.S.C. section 801, as added by section 251 of Public Law 104–121, the effective date of a major rule is delayed 60 days for Congressional review. This has been determined to be a major rule under 5 U.S.C. section 804(2). However, as indicated in section III of this notice, we have found that good cause exists to dispense with prior notice and comment procedures since they are unnecessary and impracticable under the circumstances. Under 5 U.S.C. section 808(2), a rule shall take effect at such time as the Federal agency promulgating the rule determines, if it finds, for good cause, that prior notice and comment procedures are unnecessary or impracticable. Accordingly, under the exemption provided in 5 U.S.C. section 808(2), this notice is effective October 1, 1999, for allotments for payments of Medicare Part B premiums for individuals in calendar year 2000 from the allotment for Federal fiscal year 2000.

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered to be small entities.

This notice allocates, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for QIs. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. We have applied the statutory formula for the State allotments except for the use of specified data. Because the data specified in the law were not currently available, we have used comparable data from the U.S. Census Bureau on the number of possible QIs in the States, as described in detail in the January 26, 1998 **Federal Register**. These new allotments for FY 2000 incorporate the latest data from the Census Bureau covering 1996 through 1998, as specified in the footnote to the preceding table.

We believe the statutory provisions implemented in this notice will have a positive effect on States and individuals. Federal funding at the 100 percent matching rate is available for Medicare cost-sharing for Medicare Part B premium payments for QIs, and a greater number of low-income Medicare beneficiaries will be eligible to have their Medicare Part B premiums paid under Medicaid.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act, because we have determined and certify that this notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

We have reviewed this notice under the threshold criteria of Executive Order 13132 of August 4, 1999, Federalism, published in the **Federal Register** on August 10, 1999 (64 FR 43255). The Executive Order is effective on November 2, 1999, which is 90 days after the date of the Order. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

Authority: Sections 1902(a)(10)(E) and 1933 of the Social Security Act (42 U.S.C. 1396a(a)(10)(E) and 1396x).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 28, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Dated: November 22, 1999.

Donna E. Shalala,

Secretary.

Editorial Note. This document was received at the Office of the Federal Register May 23, 2000.

[FR Doc. 00–13346 Filed 5–26–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–9001–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Third Quarter, 1999

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published during July, August, and September of 1999, relating to the Medicare and Medicaid programs. This notice also identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that potentially may be covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons.

Questions concerning Medicare items in Addendum III may be addressed to Bridget Wilhite, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–5248.

Questions concerning Medicaid items in Addendum III may be addressed to Betty Stanton, Center for Medicaid State Operations, Policy Coordination and Planning Group, Health Care Financing Administration, S2–26–13, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–3247.

Questions concerning Food and Drug Administration-approved investigational device exemptions may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Coverage and Analysis Group, Health Care Financing Administration, C4–11–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–4633.

Questions concerning all other information may be addressed to Trenesha Fultz, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, C5–12–08, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–3822.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of these programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or Food and Drug Administration-

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approved investigational device exemptions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique HCFA transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single instruction or many. Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item we list the—
  + Date published;
  + **Federal Register** citation;
  + Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
  + Agency file code number;
  + Title of the regulation;
  + Ending date of the comment period (if applicable); and
  + Effective date (if applicable).
- Addendum V includes listings of the Food and Drug Administration-approved investigational device exemption numbers that have been approved or revised during the quarter covered by this notice. On September 19, 1995, we published a final rule (60 FR 48417) establishing in regulations at 42 CFR 405.201 *et seq.* that certain devices with an investigational device exemption approved by the Food and Drug Administration and certain services related to those devices may be covered under Medicare. It is our practice to announce all investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the investigational device exemption number).

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, all manuals are available at the following Internet address: http://www.hcfa.gov/pubforms/progman.htm.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/nara/index.html, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the HCFA Home Page. The Internet address is http://www.hcfa.gov/regs/rulings.htm.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1995. (Updated titles of the Social Security Laws are available on the Internet at http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the materials, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Intermediary Manual, Part 3-Claims Process, (HCFA Pub. 13–3) transmittal entitled "Outpatient Therapeutic Services," use the Superintendent of Documents No. HE 22.8/6 and the HCFA transmittal number 1778.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: May 22, 2000.

Elizabeth Cusick,

Director, Office of Communications and Operations Support.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

June 4, 1998 (63 FR 30499)
August 11, 1998 (63 FR 42857)
September 16, 1998 (63 FR 49598)
December 9, 1998 (63 FR 67899)
May 11, 1999 (64 FR 25351)
November 2, 1999 (64 FR 59185)
December 7, 1999 (64 FR 68357)
January 10, 2000 (65 FR 1400)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992 (57 FR 47468).

Addendum III.—Medicare and Medicaid Manual Instructions

[July 1999 through September 1999]

Trans. No.		Manual/Subject/Publication No.
		Intermediary Manual **Part 3—Claims Process (HCFA Pub.13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1778	•	Outpatient Therapeutic Services Oral Anti-Nausea Drugs as Full Therapeutic Replacements for Intravenous Dosage Forms as Part of Cancer Chemotherapeutic Regimen
1779	•	Requirements-General Election Procedures Election, Revocation, and Change of Hospice Covered Services Special Coverage Requirements
1780	•	Electronic Media Claims Requirements for Submission of Electronic Media Claims Data File Specifications, Records Specifications, and Data Element Definitions for Electronic Media Claims Bills Medicare Intermediary Standard Paper Remittance Electronic UB–92 Change Request Procedures Medicare Standard Electronic Remittance Support of Non-Millennium Electronic Formats National Standard Electronic Remittance Advice
1781	•	Prospective Payment System PRICER Program Provider—Specific Payment Data Provider Specific Data Record Layout and Description Intermediary Responsibilities
		Carriers Manual **Part 3—Claims Process (HCFA Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7)**
1642	•	Self-Administered Drugs and Biologicals Payment for Oral Anti-emetic Drugs When Used as Full Replacement for Intravenous Anti-emetic Drugs as Part of a Cancer Chemotherapeutic Regimen
1643	•	Claims Involving Beneficiaries Who Have Elected Hospice Coverage
1644	•	Reimbursement for Physician's Visits to Nursing Home Patients Physicians' Services Paid Under Fee Schedule Entities/Suppliers Whose Physicians' Services Are Paid for Under Fee Schedule Payment at Medically Directed Payment Rate Specific Hematology, Cytopathology, and Blood Banking Services Payment Conditions for Radiology Services Payment for Physicians Services Furnished to Dialysis Inpatients Payment for Initial Hospital Care Services Consultations Reporting of Visit When Patient is Seen in Emergency Department and Emergency Department Physician Requests Another Physician to See the Patient in Emergency Department or Office/Outpatient Setting Home Services
1645	•	Reassignment

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[July 1999 through September 1999]

Trans. No.		Manual/Subject/Publication No.
		Payment to Employer of Physician
		Payment to Facility in Which Services Are Performed
		Payment to Health Care Delivery System
		Payment to Physician for Purchased Diagnostic Tests
		Payment to Supplier of Diagnostic Tests for Purchased Interpretations
		Payment Under Locum Tenens Arrangements
1646	•	Requirements for Electronic Data Interchange
		Telecommunications Systems and Methods
		Electronic Data Interchange System
		Electronic Data Interchange Testing and Verification
		Technical Requirements
		Technical Assistance for Electronic Data Interchange Trading Partners
		Prohibition of Exclusive Use of Proprietary Software
		Hardware
		Medicare Standard Personal Computer-Print B Software
		Support of Non-Millennium Electronic Formats
		National Standard Format Maintenance Procedures
1647	•	Correct Coding Initiative
1648	•	Colorectal Cancer Screening
		Bone Mass Measurements.
1649	•	Pancreas Transplants
		Program Memorandum Intermediaries (HCFA Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–99–31	•	Clarifications to Program Memorandum A–99–6, Dated February 1999, 15 Minute Increment Reporting for Home Health Services
A–99–32	•	Medical Review Activities Following the Removal of Home Health Sequential Billing Edits—Regional Home Health Intermediaries Only
A–99–33	•	Change in Hospice Payment Rates, Update to the Hospice Cap, Revised Hospice Wage Index and Hospice PRICER.
A–99–34	•	Implementation of Federal Register Notice to be Published on or About July 30, 1999 of Revised Per-Beneficiary and Per Visit Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning on or After October 1, 1999 and Portions of Cost Reporting Periods Beginning Before October 1, 2000
A–99–35	•	Change to Reporting of Outpatient Rehabilitation Services and All Comprehensive Outpatient Rehabilitation Agency Services Using HCFA Common Procedure Coding System
A–99–36	•	Year 2000 Procedures: Develop Modified System for Beneficiary Requests for Immediate Peer Review Organization Review of Hospital Issued Notices of Noncoverage
A–99–37	•	Home Health Advance Beneficiary Notices Must Be Given to Beneficiaries by Home Health Agencies and Demand Bills Must Be Submitted Promptly
A–99–38	•	Home Health Advance Beneficiary Notices Must Be Given to Beneficiaries by Home Health Agencies and Demand Bills Must Be Submitted Promptly
A–99–39	•	Payment Safeguard Review Instructions for Psychiatric Partial Hospitalization Claims
A–99–40	•	Deactivation of Inactive Community Mental Health Center Medicare Numbers
A–99–41	•	Clarification of Modifier Usage in Reporting Outpatient Hospital Services
A–99–42	•	The Supplemental Security Income Medicare Beneficiary Data for Fiscal Year 1998 for Prospective Payment System Hospitals
		Program Memorandum Carriers (HCFA Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–99–29	•	Returns From Year 2000 Mailing
B–99–30	•	Changes to the 1999 Medicare Physician Fee Schedule Database
B–99–31	•	Change to Health Insurance Claim Form HCFA–1500 Instructions for Processing Physician Claims in Global Payment Systems
B–99–32	•	Durable Medical Equipment Regional Carrier Instructions to Implement Balanced Budget Act of 1997 Provisions § 4105 to Provide Expanded Coverage of Blood Glucose Monitors and Test Strips for all Diabetics. Implement July 1, 1998
B–99–33	•	Change to Health Insurance Claim Form HCFA–1500 Instructions for Processing Physician Claims in Global Payment Systems
B–99–34	•	Site Visits and Enrollment of Independent Diagnostic Testing Facilities

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[July 1999 through September 1999]

Trans. No.		Manual/Subject/Publication No.
		Program Memorandum Intermediaries/Carriers (HCFA Pub. 60A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–99–50	•	Further Delay of Change Request 796 (Coverage Issues Manual § 35–10 Hyperbaric Oxygen Therapy)
AB–99–51	•	Limited Medicare Coverage and Billing Instructions for Enhanced External Counterpulsation
AB–99–52	•	Suspension of National Coverage Policy on Electrostimulation for Wound Healing
AB–99–53	•	Final Rule Revising and Updating Medicare Policies Concerning Ambulance Services
AB–99–54	•	Clarification of Program Memorandum AB–99–27—Implementation of Calendar Year 2000 Fee Schedules and Pricing Updates
AB–99–55	•	Transmittal Number AB–99–55 has been rescinded and will not be released
AB–99–56	•	Biomedical Equipment Year 2000 Compliance
AB–99–57	•	October 1, 1999 Payment and Coding Updates
AB–99–58	•	Modified Procedures for Sharing HCFA Data with the Department of Justice
AB–99–59	•	Medicare Coverage of Epoetin Alfa (Procrit) for Preoperative Use
AB–99–60	•	Notice of New Interest Rate for Medicare Overpayments and Underpayments
AB–99–61	•	Mandatory Submission of Social Security Account Numbers and Employer Identification Numbers
AB–99–62	•	Quarterly Update for 1999 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Fee Schedule
AB–99–63	•	Implementation of the New Payment Limit for Drugs and Biologicals.
AB–99–64	•	Education of Medicare Providers on the Adoption of Standard Electronic Health Care Transaction Formats in the United States
AB–99–65	•	Implementing Coordination of Benefits Contractor Numbers
AB–99–66	•	Provider Education Article: Submitting, Processing, and Paying Year 2000 Medicare Claims
AB–99–67	•	Update of Rates and Wage Index for Ambulatory Surgical Center Payments Effective October 1, 1999
AB–99–68	•	Provider Education Article: National Provider Education and Training Program
AB–99–69	•	Instruction Implementation Reporting
AB–99–70	•	Provider Education Article: Submitting, Processing, and Paying Year 2000 Medicare Claims
AB–99–71	•	Year 2000 HCFA Common Procedure Coding System Update
		Program Memorandum State Survey Agencies (HCFA Pub. 65) (Superintendent of Documents No. HE 22.8/6–5)
99–1	•	Policy Clarification: Home Health Agency Parent, Branch and Subunit Criteria
		State Operations Manual Provider Certification (HCFA Pub. 7) (Superintendent of Documents No. HE 22.8/12)
10	•	Roster/Sample Matrix
		Roster/Sample Matrix Provider Instructions
		Roster/Sample Matrix Surveyor Instructions
		Facility Characteristics
		Facility Quality Indicator Profile
		Resident Level Summary
		Quality Indicator Matrix
		Survey Procedures for Long Term Care Facilities
		Guidance to Surveyors
		Peer Review Organization Manual (HCFA Pub 19) (Superintendent of Documents No HE 22 8/8–15)
74	•	Purpose of Peer Review Organization Review
		Peer Review Organization Responsibilities
		Health Care Financing Administration's Role
		Health Care Quality Improvement Program
		Payment Error Prevention Program
75	•	Objectives of the Internal Quality Control Program
		Internal Quality Control Program Requirements
		Internal Quality Control Process
		Analysis and Reporting Requirements
		Peer Review Organization Review Documentation
		Reporting Requirements
		Peer Review Organization Intermediary Data Exchange Reports
76	•	Authority
		Scope of Review
		Complaints That Do Not Meet Statutory Requirements
		Referrals
	.....	Review Process
	.....	Notice of Disclosure

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ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[July 1999 through September 1999]

Trans. No.		Manual/Subject/Publication No.
	.....	Disclosure of Quality Review Information to Complaints
		Hospice Manual (HCFA Pub. 21) (Superintendent of Documents No. HE 22.8/18)
55	•	Eligibility and Coverage Eligibility Requirements Use of Election Periods Election, Revocation and Change of Hospice Covered Services Core Services Special Coverage Requirements Notice of Election Hospice Payment Rates Local Adjustment of Payment Rates Cap on Overall Reimbursement Adjustments to Cap Amount
		Coverage Issues Manual (HCFA Pub. 5) (Superintendent of Documents No. HE 22.8/14)
118	•	Enhanced External Counterpulsation for Severe Angina
119	•	Pancreas Transplants
		Provider Reimbursement Manual—Part 1 (HCFA Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
409	•	Travel Expense
		Provider Reimbursement Manual—Part 2 Provider Cost Reporting Forms and Instructions Chapter 18—Form HCFA–2088–92 (HCFA Pub. 15–2–18) (Superintendent of Documents No. HE 22.8/4)
3	•	Outpatient Rehabilitation Provider Cost Reporting Form
		Provider Reimbursement Manual—Part 2 Provider Cost Reporting Forms and Instructions Chapter 32—Form HCFA–1728–94 (HCFA Pub. 15–2–32) (Superintendent of Documents No. HE 22.8/4)
7	•	Home Health Agency Cost Reporting Form Electronic Reporting Specifications
		Provider Reimbursement Manual—Part 2 Provider Cost Reporting Forms and Instructions Chapter 35—Form HCFA–2540–96 (HCFA Pub. 15–2–35) (Superintendent of Documents No. HE 22.8/4)
5	•	Skilled Nursing Facility Cost Reporting Form Skilled Nursing Facility Complex Cost Reporting Form
		Medicare/Medicaid Sanction—Reinstatement Report (HCFA Pub. 69)
99–7	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—June 1999
99–8	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—July 1999
99–9	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—August 1999

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR Vol. 64 page	CFR* part(s)	File code**	Regulation title	End of comment period	Effective date
07/02/99	36069–36089	482	HCFA–3018–IFC	Medicare and Medicaid Programs; Hospital Conditions of Participation: Patients' Rights.	08/31/99	08/02/99
07/06/99	36320–36321	409, 410, 411, 412, 413, 419, 489, 498, and 1003.	HCFA–1005–4N	Medicare Program; Prospective Payment System for Hospital Outpatient Services; Extension of Comment Period.	07/30/99	
07/06/99	36321–36322	416 and 488	HCFA–1885–6N	Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Procedures for Ambulatory Surgical Centers Effective October 1, 1998; Extension of Comment Period.	07/30/99	
07/07/99	36695–36696	.....	HCFA–1082–N	Medicare Program; July 22, 1999, Meeting of the Competitive Pricing Advisory Committee and the Area Advisory Committee for the Kansas City Metropolitan.		
07/16/99	38395–38396	405	HCFA–1083–N	Medicare Program; Meetings of the Negotiated Rulemaking Committee on Ambulance Fee Schedule.		
07/22/99	39608–39771	410, 411, 414, and 415.	HCFA–1065–P	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2000.	09/20/99	
07/23/99	39934–39938	431 and 498	HCFA–2054–IFC	Medicare and Medicaid Program; Appeal of the Loss of Nurse Aide Training Programs.	09/21/99	07/23/99
07/27/99	40534–40539	414	HCFA–1010–P	Medicare Program; Replacement of Reasonable Charge Methodology by Fee Schedules.	09/27/99	
07/30/99	41489–41641	412, 413, 483, and 485.	HCFA–1053–F	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2000 Rates.	10/01/99	
07/30/99	41684–41701	.....	HCFA–1056–N	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update.	.....	10/01/99
07/30/99	41643–41683	409, 411, 413, and 489.	HCFA–1913–F	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilties.	.....	09/28/99
08/03/99	42139–42140	.....	HCFA–3021–N	Medicare Program; August 31, 1999 Open Town Hall Meeting To Discuss the End Stage Renal Disease Network Organizations (ESRD Networks) Activities.		
08/04/99	42393–42402	.....	HCFA–1054–N	Medicare Program; Hospice Wage Index.	.....	10/01/99
08/04/99	42403–42406	.....	HCFA–0002–N	Medicare Program; Year 2000 Readiness Letters.		
08/05/99	42610–42614	413	HCFA–1883–F	Medicare Program; Revision of the Procedures for Requesting Exceptions to Cost Limits for Skilled Nursing Facilities and Elimination of Reclassifications.	.....	09/07/99

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ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 64 page	CFR* part(s)	File code**	Regulation title	End of comment period	Effective date
08/05/99	42766–42789		HCFA–1060–NC	Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning on or After October 1, 1999 and Portions of Cost Reporting Periods Beginning Before October 1, 2000.	10/04/99	10/01/99 and 10/01/00
08/09/99	43198–43200		HCFA–1055–NC	Medicare and Medicaid Programs; Announcement of Additional Applications From Hospitals Requesting Waivers for Organ Procurement Service Areas.	10/08/99	
08/10/99	43295	498	HCFA–2054–CN	Medicare and Medicaid Program; Appeal of the Loss of Nurse Aide Training Programs; Correction.		07/23/99
08/10/99	43338–43339	Chapter IV	HCFA–3250–N3	Medicare Program; Negotiated Rulemaking; Coverage and Administrative Policies for Clinical Diagnostic Laboratory Tests; Announcement of Additional Public Meetings.		
08/18/99	44841–44856	413	HCFA–1001–IFC	Medicare Program; Graduate Medical Education (GME): Incentive Payments Under Plans for Voluntary Reduction in the Number of Residents.	10/18/99	09/17/99
08/20/99	45785–45807	45 CFR 144, 146, 148, and 150.	HCFA–2019–IFC	Federal Enforcement in Group and Individual Health Insurance Markets.	10/19/99	09/20/99
08/24/99	46205–46206		HCFA–1076–N	Medicare Program; September 16, 1999, Meeting of the Competitive Pricing Advisory Committee.		
08/27/99	46920		HCFA–1077–N	Medicare Program; September 23, 1999, Meeting of the Competitive Pricing Demonstration Area Advisory Committee, Maricopa County.		
09/07/99	48661		HCFA–1078–N	Medicare Program; September 27 and 28, 1999, Meeting of the Practicing Physicians Advisory Council.		
09/09/99	49020–49021		HCFA–1087–N	Medicare Program; Open Public Meeting To Discuss the Conduct of a Second Competitive Bidding Demonstration.		
09/10/99	49199–49201		HCFA–2057–PN	Medicare and Medicaid Programs; Reapplication of the American Osteopathic Association (AOA) for Continued Approval of Deeming Authority for Hospitals.	10/12/99	
09/10/99	49197–49198		HCFA–2058–PN	Medicare and Medicaid Programs; Application of the Joint Commission for Accreditation of Healthcare Organizations (JCAHO) for Continued Approval of Deeming Authority for Home Health Agencies.	10/12/99	
09/10/99	49121–49128	435, 436, and 440.	HCFA–2082–N	Medicaid Program; Optional Coverage of Certain Tuberculosis-Related Services to TB-Infected Individuals.	11/09/99	

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 64 page	CFR* part(s)	File code**	Regulation title	End of comment period	Effective date
09/16/99	50288		HCFA–1039–CN2	Medicare Program; Hospice Wage Index; Correction.		10/01/99
09/17/99	50482–50483	405	HCFA–1086–N	Medicare Program; Meetings of the Negotiated Rulemaking Committee on the Ambulance Fee Schedule.		
09/17/99	50523–50524		HCFA–1090–N	Medicare Program; October 6, 1999 and November 15, 1999, Meetings of the Competitive Pricing Demonstration Area Advisory Committee, Kansas City, MO Metropolitan Area.		
09/27/99	51908–51910	413	HCFA–1876–F	Medicare Program; Revision to Accrual Basis of Accounting Policy.		11/26/99
09/28/99	52377		HCFA–1054–N	Medicare Program; Hospice Wage Index.		
09/30/99	52665–52670	405	HCFA–4121–FC	Medicare Program; Telephone Requests for Review of Part B Initial Claim Determinations.	11/29/99	02/01/00

*42 CFR except where noted
**N—General Notice; PN—Proposed Notice; NC—Notice with Comment Period; FN—Final Notice; P—Notice of Proposed Rulemaking (NPRM); F—Final Rule; FC—Final Rule with Comment Period; CN—Correction Notice; IFC—Interim Final Rule with Comment Period; GNC—General Notice with Comment Period

Addendum V—Categorization of Food and Drug Administration-Allowed Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist HCFA, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number, category (in this case, A), and criterion code.

G 990077—A2
G 990162—A1
G 990169—A2

The following information presents the device number, category (in this case, B), and criterion code.

G 980325—B3
G 990123—B1
G 990124—B4
G 990125—B2
G 990127—B4
G 990131—B3
G 990132—B2
G 990134—B4
G 990137—B1
G 990138—B5
G 990139—B3
G 990142—B4
G 990143—B3
G 990144—B2
G 990146—B2
G 990148—B4
G 990150—B3
G 990151—B2
G 990152—B2
G 990153—B4
G 990155—B2
G 990156—B2
G 990158—B3
G 990164—B4
G 990171—B1
G 990172—B2
G 990174—B4
G 990175—B2
G 990176—B4
G 990177—B4
G 990178—B2
G 990179—B
G 990181—B4
G 990183—B4
G 990185—B3
G 990189—B3
G 990192—B1
G 990194—B4
G 990197—B4
G 990199—B4
G 990207—B2
G 990209—B4

[FR Doc. 00–13347 Filed 5–26–00; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Federal Credentialing Program; Working Meeting

Announcement is made of the following Federal Credentialing Program (FCP)Working Meeting scheduled for July 10–13, 2000:

Name: Federal Credentialing Program Working Meeting.

Date and Time:
Monday, July 10, 2000, 8:30 a.m.–5 p.m.
Tuesday, July 11, 2000, 8:30 a.m.–5 p.m.
Wednesday, July 12, 2000, 8:30 a.m.–5 p.m.
Thursday, July 13, 2000, 8:30 a.m.–12 p.m.

Place: The Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

This meeting is open to credentialing software developers and data consultants.

Agenda: The agenda will include an opening address on Web Technology and Interoperable Systems, and an overview of the FCP Program. Additional presentations include an introduction to Data Exchange and expert panel presentations on trends in the Development of Standards for Health Care Data Exchange and The Standards Creation Process.

This FCP meeting will convene other health care provider professional representatives for work group meetings to be held on Wednesday, July 12, and Thursday, July 13, 2000. The groups will identify the data elements required to credential their professions, and provide an exhibit forum for credentialing software manufacturers. The meeting will provide an open forum for credentialing data, developers and data consultants to discuss design for a new Health Level 7 software developers credentialing data exchange standard.

For registration information, contact Linda White at 314–894–5747 or by e-mail at whitelin@lrn.va.gov

Agenda items are subject to change as priorities dictate.

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Dated: May 23, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–13338 Filed 5–26–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before July 31, 2000.

ADDRESSES: Send your comments on the requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at (703) 358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB to renew its approval of the collection of information for the nontoxic shot approval process. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0067.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities include approval of nontoxic shot materials that are allowed for use in hunting waterfowl and coots in the U.S.

As of January 1, 1991, lead shot was banned for hunting waterfowl and coots in the U.S. At that time, steel shot was the only nontoxic alternative available. Since then, we have encouraged manufacturers to develop other alternatives that the hunting public may use. In approving a candidate material as nontoxic for hunting waterfowl and coots we must first ensure that secondary exposure (ingestion of spent shot or its components) are not a hazard to migratory birds and the environment. In order to make this decision, we require the applicant to collect information about the toxicity of their candidate material to migratory birds and the environment. A further requirement pertains to law enforcement. A noninvasive field detection device must be available to distinguish the candidate shot from lead shot. The above information provides the bulk of an application. Once a candidate material is approved as nontoxic there is no seasonal or annual information collection requirement.

Title: Protocol for Nontoxic Approval Procedures for Shot and Shot Coatings.

Approval Number: 1018–0067.

Service Form Number: Not applicable.

Frequency of Collection: Upon application.

Description of Respondents: Shot manufacturers.

Total Annual Burden Hours: The reporting burden is estimated to average 3,200 hours per application.

Total Annual Responses: We expect no more than 3 applications per year.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: May 19, 2000.

Paul R. Schmidt,

Assistant Director, Refuges and Wildlife.

[FR Doc. 00–13384 Filed 5–26–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Impact Statement for the Long Island National Wildlife Refuge Complex

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Impact Statement for the Long Island National Wildlife Refuge Complex.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act and its implementing regulations, for the Long Island National Wildlife Refuge Complex refuges located in the State of New York. These refuges include Amagansett National Wildlife Refuge (NWR), Conscience Point NWR, Lido Beach NWR, Morton NWR, Oyster Bay NWR, Seatuck NWR, Target Rock NWR, and Wertheim NWR. The Refuges are in Suffolk and Nassau Counties, New York.

The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*):

(1) To advise other agencies and the public of our intentions, and

(2) To obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Inquire at the address below for dates of planning activity and due dates for comments.

ADDRESSES: Address comments and requests for more information to the following: Refuge Manager, Long Island National Wildlife Refuge Complex, P.O. Box 21, Shirley, New York 11976, 631/286–0485.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public use, and cultural resources. Public input into this planning process is essential. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service will solicit information from the public via open houses, meetings, and written comments. Special mailings, newspaper articles, and announcements will inform people in the general area near each refuge of the time and place of opportunities for public input to the CCP.

The Long Island NWR Complex is a diverse group of nine units totaling over 6,200 acres, and contain most of the habitat types found on Long Island which are important to hundreds of migratory bird species and other wildlife .

Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

We estimate that the draft environmental documents will be available in summer 2001.

Dated: May 11, 2000.

Mamie A. Parker,

Deputy Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 00–13395 Filed 5–26–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for an Incidental Take Permit by Culebra Northshore, S.E. for Development of a Residential Project in Culebra, PR

AGENCY: Fish and Wildlife Service.

ACTION: Notice.

SUMMARY: Culebra Northshore, S.E. (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize incidental take of hatchlings from two nests of the leatherback sea turtle (*Dermochelys coriacea*) or the hawksbill sea turtle (*Eretmochelys imbricata*), both endangered species, on Tortola Beach for a period of twelve (12) years. The proposed taking is incidental to lighting and other activities associated with the development and occupation of a single-family residential project on a 66.80–"cuerda" (64.8-acre) lot adjacent to Tortola Beach, Culebra, Puerto Rico (Project). Nest surveys on this beach indicate that both sea turtle species use the beach for nesting, although in very low numbers. The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the protected species. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a "low effect" project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1).

The Service also announces the availability of the HCP and our determination of Categorical Exclusion for the incidental take application. Copies of the HCP and Service supporting documents may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this notice on the Federal action. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's Permit issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "david_dell@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the permit application, supporting documentation, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 29, 2000.

ADDRESSES: Persons wishing to review the application, supporting documentation, and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Written data or comments concerning the application, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Please reference permit number TE026114–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Marelisa Rivera, Fish and Wildlife Biologist, Boquerón Field Office, (see **ADDRESSES** above), telephone 787/851–7297.

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SUPPLEMENTARY INFORMATION: Nesting grounds of the leatherback sea turtle are distributed world-wide. In the Caribbean, the species nests in French Guiana, Surinam, Guyana, Colombia, Venezuela, Panama, and Costa Rica. In the U.S. Caribbean, nesting has been reported from St. Croix, St. Thomas, St. John, and Puerto Rico. The U.S. Caribbean may support nesting by 150 to 200 adult females per year, representing the most significant nesting activity of this species within the United States. The largest concentration of nesting leatherbacks in the U.S. Caribbean has been documented at Sandy Point National Wildlife Refuge, St. Croix, and Playa Brava and Playa Resaca on Culebra Island, Puerto Rico. Nesting females prefer high-energy beaches with deep and unobstructed access.

The hawksbill sea turtle is found throughout the world's tropical waters. However, nesting within United States territory occurs in Puerto Rico, the U.S. Virgin Islands, and very infrequently in Florida. Two important known nesting areas in the U.S. Caribbean are Mona Island in Puerto Rico and Buck Island Reef National Monument in St. Croix, U.S.Virgin Islands. The species nests on beaches all around the coast of Puerto Rico, but the area that receives the highest number of nesting activities is Mona Island, with approximately 500 nests per year.

Nesting hawksbill sea turtles prefer low energy sandy beaches with woody vegetation such as sea grape or saltshrub located within a few meters of the water line. Suitable nesting habitat can be extremely variable, and ranges from high energy ocean beaches to tiny pocket beaches only a few meters in width.

Major threats to all sea turtle species include loss or degradation of nesting habitat from coastal development and beach armoring; disorientation or misorientation of hatchlings and females by artificial lighting; poaching; disease; commercial trawling, longline and gill net fisheries; and illegal trade, particularly in hawksbill products.

Habitat degradation associated with the project development (lighting, boardwalk construction, increased beach use by residents, use of recreational beach gear at the beach, beach cleaning operations, among others) may result in death or injury of sea turtle hatchlings from either sea turtle species, incidental to the carrying out of these otherwise lawful activities. Section 9 of the Act, and implementing regulations, prohibits taking nests of leatherback sea turtle and hawksbill sea turtle. Taking, in part, is defined as an activity that kills, injures, harms, or harasses a listed endangered or threatened species. Section 10(a)(1)(B) of the Act provides an exemption, under certain circumstances, to the section 9 prohibition if the taking is incidental to, and not the purpose of, otherwise lawful activities.

Beach surveys at Tortola Beach indicate that both sea turtle species use this beach for nesting. In the last 15 years, a total of 24 sea turtle nesting activities (3 for hawksbills and 21 for leatherbacks) have been reported at the Tortola Beach. Tortola Beach is a small pocket beach that measures approximately 90 meters long by 15 meters wide. This beach is located in front of the proposed 45-lot development. Three of the lots border the beach area of Tortola.

The HCP describes measures the Applicant will take to minimize and mitigate such taking resulting from the Project. To minimize impacts to listed species from the proposed project, the Applicant will conduct the following: (1) Donate/transfer to the Puerto Rico Department of Natural and Environmental Resources (DNER) a 10 meter litoral zone (comprising 0.9391 cuerda or 0.91 acre) for additional setback from the maritime zone determined by this agency, along the beach front of the property; (2) a setback of 120 feet from the maritime zone will be left on lots 26, 27, and 29, the only three lots with beachfront property; (3) establish a "central valley" conservation easement on 5.71 cuerdas (5.54 acres) to protect natural forests; (4) no construction activities such as beach armoring or beach nourishment, no mechanical beach clearing, no vehicle traffic or animals will be allowed on the beach and no beach vegetation will be removed or trimmed on the beach; (5) pedestrian traffic to the beach from the property and from the beach to the property will be directed to only one boardwalk across the litoral zone and sand dune area; (6) a low fence will be erected at the end of the maritime zone (where sand turns into hard soil) to control pedestrian access and stray animals; (7) no artificial lighting will be installed on the beach and the beach will be closed to residents from the property during evening hours; (8) no recreation equipment such as lounge chairs, toys, kayaks will be allowed to remain on the beach after sunset and no boating activities, no camping or fires will be allowed on the beach; (9) each lot will have a site-specific residence location and no additional land clearing will be allowed on the lot; (10) all houses will be designed and remain single family units with a maximum size residence permitted of 2,700 square feet and have a maximum height of 18 feet; (11) a deed restriction will be included in each lot to require a lighting plan to address impacts to sea turtles on Tortola Beach and periodic lighting surveys will be conducted and corrective measures will be required; (12) no street lighting on the roadways within the development will be installed, roads will be closed to the general public during evening hours to minimize vehicular lighting, and vehicular traffic is routed one way to minimize headlight glare; and (13) a deed restriction will require that each owner develop and implement an erosion control plan to reduce potential impacts to nesting habitat by eroded materials.

To mitigate for the nests to be taken, the applicant will provide the following: (1) Provide educational materials regarding sea turtles to all owners and construct an information display board at the entrance of the boardwalk; (2) will encourage beach cleaning activities among the owners; (3) will provide trash containers for trash disposal; (4) turtle nesting activities will be reported, marked off-limit and protected until DNER personnel work the nest, and (5) will recruit and facilitate volunteers for sea turtle conservation projects.

As earlier stated, the Service has determined that the HCP qualifies as a Categorically-Excluded, "low-effect" HCP as defined by Service's Habitat Conservation Planning Handbook (November 1996). Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed and candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the leatherback sea turtle and hawksbill sea turtle, and their nesting habitats. The Service does not anticipate significant direct or cumulative effects on these species resulting from the construction of the Project.

2. Approval of the HCP would not have adverse effect on known geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has therefore determined that approval of the HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). No further NEPA determination will therefore be prepared.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, an ITP will be issued for the incidental take of hatchlings from two nests of the leatherback sea turtle or hawksbill sea turtle during a period of 12 years. The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: May 22, 2000.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–13388 Filed 5–26–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Conduct Public Scoping and Prepare an Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), this notice advises other agencies and the public that the Fish and Wildlife Service (Service) intends to prepare an Environmental Impact Statement (EIS) related to the proposed issuance of an Incidental Take Permit (Permit) to the Foster Creek Conservation District (District) in Douglas County, Washington for take of endangered and threatened species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). As required by the Act, the District is preparing a Habitat Conservation Plan (Plan). The Plan is being developed to address agricultural practices throughout Douglas County, and may include management activities on dryland crop farms, livestock ranches, and irrigated orchards. With issuance of the Permit, participating landowners would receive regulatory certainty with regard to the requirements of the Act by implementing the measures prescribed in the Plan.

The Service is furnishing this notice in order to advise other agencies and the public of our intentions and to announce the initiation of a minimum 30-day public scoping period. During the scoping period, other agencies and the public are invited to provide written comments on the scope of issues to be included in the EIS, which is expected to be available for public review and comment during the second quarter of 2001. Interested parties are encouraged to attend the scoping workshops or to provide written comments on the scope of the issues and range of alternatives for the draft EIS.

DATES: Written comments regarding the scope of the issues and range of alternatives for the draft EIS should be received on or before July 14, 2000. Scoping workshops will be held on June 29, 2000 (see **ADDRESSES** for times and location).

ADDRESSES: Comments and requests for additional information should be submitted to Chris Warren, Fish and Wildlife Service, 11103 East Montgomery Drive, Spokane, Washington, 99206, or call (509) 891–6839.

Scoping workshops will be held at the North-central Washington, Fairground, 601 North Monroe Street, Waterville, Washington, 98858. The workshops will be held from 3 p.m. to 5 p.m. and from 6 p.m. to 8 p.m. on June 29, 2000.

SUPPLEMENTARY INFORMATION: Conservation districts are legal subdivisions of the Washington State government, with powers and duties set forth in accordance with the Revised Code of Washington (RCW 89.08). Among other things, conservation districts are authorized to develop comprehensive long-range programs for the conservation of natural resources within their boundaries, to enter into agreements with other State and Federal agencies and the districts' landowners, and to administer the programs of other State and Federal agencies concerned with the conservation of natural resources. Based upon this authority, the Service anticipates the development of a programmatic Plan by the District. Upon completion and approval of detailed, site-specific farm plans that implement the terms of the programmatic Plan, individual landowners will receive permit coverage under section 10(a)(1)(B) of the Act through Certificates of Inclusion.

Douglas County is located in central Washington and encompasses over one million acres of land. It is anticipated that the activities covered under the Permit will include operation and management of dryland crop farms, liverstock ranches (each comprising roughly 48 percent of the country's total agricultural land base), and fruit orchards (comprising roughly 4 percent). Grazing activities that may be addressed include, among others, stocking types and rates, timing, use levels, and management of livestock facilities (fencing, holding areas, transportation, etc.). Farming activities that may be include are, among others, planting types and techniques, crop rotation, timing, weed and pest control, management of facilities, and irrigation activities. It is also anticipated that the measures of proposed Plan and Permit coverage will be coordinated with existing Federal and State programs for private landowners in Douglas County (Conservation Reserve Program, other Farm Bill programs, private lands initiatives, etc.). The District tentatively proposes that the Plan and Permit be in effect for 50 years.

Agricultural activities on private lands and the management activities of the District, along with those of other State and Federal agencies in Douglas County, have the potential to impact species subject to protection under the Act, as well as other unlisted species of concern to the Service. Section 10 of the Act contains provisions for the issuance of Permits to non-Federal landowners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To received section 10 coverage under the act, applicants must prepare and submit to the Service for approval a Plan containing a strategy for minimizing and mitigating to the maximum extent practicable all take associated with the proposed activities. Applicants must also demonstrate that adequate funding will be provided to ensure the Plan will be implemented and monitored throughout its proposed life span. The mandatory elements of Plan and the criteria for issuance of Permits are contained in the Code of Federal Regulations (50 CFR 17.22, 17.32, and 222.22).

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Section 9 of the Act and Federal regulations prohibit the "taking" of any species listed as endangered or threatened. The term "take" is defined under the Act to mean harass, harm, pursue, hunt, shoot, would, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm is defined to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering.

The species currently listed under the Act that are being proposed for coverage under the Permit include the Columbia River Basin population of the bull trout (*Salvelinus confluentus*) and the coterminous United States population of the bald eagle (*Haliaeetus leucocephalus*), both currently listed as threatened. The District also plan to address a number of unlisted fish and wildlife species in the Plan, such as the western sage grouse (*Centrocercus urophasianus phaios*), Colombian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*), and the pygmy rabbit (*Brachylagus idahoensis*), among other. Should any of the unlisted species addressed in the Plan be listed under the Act in the future, participating landowners would receive incidental take coverage for them under the specific provisions of the Permit. The District also plans to seek separate Permit coverage for several species listed under the Act that fall within the purview of the Secretary of Commerce, as administered by the National Marine Fisheries Service, including the upper Columbia River Basin populations of spring chinook salmon (*Oncorhynchus tshawytscha*) and steelhead (O. mykiss), both listed as endangered, and the middle Columbia River population of steelhead, listed as threatened.

Under NEPA, reasonable alternatives to a proposed project must be developed and considered in the Service's environmental review. At a minimum, the alternatives developed must include: (1) A No Action alternative, which describes current management and resource conditions and potential future impacts incurred under this scenario; and (2) the Proposed Action, with thorough descriptions of its management features and anticipated resource conservation benefits and potential impacts. For the present environmental review, the No Action alternative will reflect the baseline condiiions in Douglas County under current agricultural management practices. The Proposed action alternative will be represented by the District's Plan and its associated management measures. Additional project alternatives may be developed based upon input received from this and future scoping notices during development of the EIS.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to these proposed actions are addressed and that all significant issues are identified. The Service requests that comments be as specific as possible. Comments are specifically requested to include information regarding: the direct, indirect, and cumulative impacts that implementation of the proposal could have on endangered and threatened species and their habitats; other possible alternatives; potential adaptive management and/or monitoring provisions; funding issues; baseline environmental conditions in Douglas County; other plans or projects that might be relevant to this project; and minimization and mitigation efforts. In addition to considering impacts on listed species and their habitats, the EIS must include information on impacts resulting from the alternatives on other components of the human environment. These other components include such things as air quality, water quality and quantity, geology and soils, cultural resources, other fish and wildlife species, social resources, and economic resources.

The environmental review for this project will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), Federal regulations implementing NEPA (40 CFR 1500-1508), other appropriate Federal laws and regulations, and the policies and procedures of the Service for compliance with those regulations.

Dated: May 22, 2000.

Carolyn A. Bohan,

Acting Regional Director, Region 1, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 00–13385 Filed 5–26–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–00–1990–00; CACA20139 and CACA22901]

Transit Mixed Concrete Company Proposed Sand and Gravel Mining Operation, Soledad Canyon, Los Angeles County, CA

AGENCY: Bureau of Land Management, Department of the Interior, Palm Springs-South Coast Field Office, California Desert District.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1503.4, notice is hereby given that the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Transit Mixed Concrete (TMC) Company Sand and Gravel Mining Project proposed for construction and operation off of Soledad Canyon Road and State Highway 14, in an unincorporated area of Los Angeles County, California.

Interested citizens are invited to review the Final EIS. Hard copies of the Final EIS may be obtained by telephoning or writing the contact persons listed below. The Technical Appendices and Volumes 1 through 6 are also available on CD-ROM. The CD-ROM is in Adobe Acrobat Reader format, and contains a free download of Acrobat Reader so it can be opened easily. Public reading copies are available at the following County of Los Angeles public libraries: Canyon Country Library (18536 Soledad Canyon Road, Santa Clarita); Newhall Library (22704 W. Ninth Street, Santa Clarita); and the Valencia Library (23743 W. Valencia Boulevard, Santa Clarita).

DATES: BLM will be rendering a decision on the proposed Project no sooner than July 3, 2000.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Elena Misquez, BLM, Palm Springs-South Coast Field Office at (760) 251–4810. To obtain copies of the Final EIS, contact Ms. Linda Brody of Chambers Group Inc. at (949) 261–5414. Fax requests can be sent to the attention of Ms. Linda Brody at (949) 261–8950. Please specify either CD–ROM or the specific volume(s) desired (see Supplemental Information below). Please include name, complete mailing address (no P.O. Boxes), and phone number on all requests.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) has prepared a Final EIS for the Transit Mixed Concrete (TMC) Company Sand and Gravel Mining Project. The Project is proposed for construction and operation in an unincorporated area within Los Angeles County, north of Soledad Canyon Road, south of the Antelope Valley Freeway (State Highway 14), and west of Agua Dulce Canyon. TMC proposes to mine a total of 83 million tons of sand and gravel over a 20-year period. The Project site is located on "split-estate" lands where the surface is privately owned and the minerals are federally owned and administered by the BLM. The Draft EIS was released for public review on May 6, 1999, and the Supplement to the Draft EIS (SDEIS) was released November 17, 1999. The public comment period for both of these documents closed January 10, 2000.

The Final EIS incorporates changes based on public comments received on the Draft EIS, SDEIS, and technical appendices, including final conformity determination for air quality. The Final EIS also includes responses to written comments received during the public comment period for the DEIS and SDEIS, responses to the BLM public hearing held July 2, 1999, and responses to comments on Los Angeles County's Draft EIR for the Project. The Final EIS is comprised of the following volumes:

- Final EIS—Main Text Volume (incorporates changes to DEIS and SDEIS text)
- Final EIS—Technical Appendices Volume (incorporates changes to DEIS Appendices)
- Volume 1—Responses to Comments (Responses to all written and oral comments received on the DEIS, SDEIS, and DEIR)
- Volume 2—DEIS and SDEIS Written Comment Letters (includes federal, state, and local agencies, community groups, associations, consulting firms, and individual letters)
- Volume 3—BLM Public Hearing Transcript
- Volume 4—DEIR Written Comment Letters from State and Local Agencies, Community Groups, Associations, and Consulting Firms
- Volume 5—DEIR Written Comment Letters from Individuals/Petitions/Form Letters
- Volume 6—County DEIR Public Hearing Transcripts

Dated: May 23, 2000.

Danella George,

Acting Field Manager.

[FR Doc. 00–13440 Filed 5–26–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW147467]

Notice of Proposed Reinstatement; Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW147467 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 of reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements of reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW147467 effective February 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Theresa M. Stevens,

Acting Chief, Leasable Minerals Section.

[FR Doc. 00–13393 Filed 5–26–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW147466]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW147466 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW147466 effective February 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Theresa M. Stevens,

Acting Chief, Leasable Minerals Section.

[FR Doc. 00–13397 Filed 5–26–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA210–00–1610–01–2410]

Public Land and Resources; Planning, Programming, and Budgeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notification of availability of Draft Land Use Planning Manual and Handbook.

SUMMARY: The Federal Land Policy and Management Act (FLPMA) and the regulations at 43 CFR part 1600 require the Bureau of Land Management (BLM) to prepare Resource Management Plans (RMPs) to provide management direction for the public lands. The objective of land use planning is to ensure that BLM lands are managed under the principles of multiple use and sustained yield (FLPMA, sec. 102 (a) (7)); in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use (FLPMA, sec. 102 (a) (8)); and in a manner that recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands (FLPMA, sec. 102 (a) (12)).

The BLM's current guidance for the preparation of land use plans is a manual that was prepared in the 1980s, shortly after the BLM published its planning regulations in 1983. The BLM is developing new guidance and is providing the public an opportunity to review the proposed guidance and to provide input. The Planning Manual and Handbook, when finalized, will provide direction in implementing the requirements of FLPMA and the BLM planning regulations.

SUPPLEMENTARY INFORMATION: In addition to serving as BLM's primary tool for determining resource protection and allocations in the management of the public lands, RMPs provide the public a voice in BLM's land and resource management programs. They establish goals and objectives for resource management (i.e., desired future outcomes, based on standards and guidelines and, new regulatory requirements), measures needed to achieve them, and parameters for use. They identify lands which are open or

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available for certain uses, including any applicable restrictions, and lands which are closed. Land use plans provide direction for the management of BLM administered lands in accordance with the legal mandates of FLPMA, BLM regulations, and the mission and goals of BLM's Strategic Plan under the principles of multiple use and sustained yield, and in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archaeological values.

There are more complex demands being made of the public lands today than when the BLM planning regulations and original guidance were issued in the 1980s. There are also new circumstances, such as increasing population growth near public lands in the West, and new data, such as new information on the condition and trend of vegetation, soil, and water resources that must be considered in BLM's land use plans.

The proposed planning guidance differs from existing guidance in that it:

1. Encourages planning on a variety of scales, including both traditional RMPs at the local level and larger regional-level plans, and combinations of these across different land ownerships and jurisdictions;

2. Encourages greater public participation throughout the planning process and facilitates multi-jurisdictional planning;

3. Clarifies the relationship between land use plans and implementation plans;

4. Provides the minimum procedural requirements for completing land use plans and implementation plans;

5. Clarifies the relationships between land use plan and NEPA requirements;

6. Addresses new requirements and approaches for managing public lands or resources; and

7. Addresses the consideration of new information and circumstances, such as new listings of threatened and endangered species, and new requirements and standards for the protection of air and water quality.

In recent years, the BLM has sought to engage and also participate with other landowners and jurisdictions in developing land use plans which address management of natural resource values and uses on a watershed or ecosystem basis, rather than on a strictly jurisdictional basis. The new planning guidance emphasizes the need to plan in conjunction with local communities and stakeholders, and in partnership with other planning jurisdictions. As the existing guidance did not address the BLM's role in these types of multi-jurisdictional plans, there is a need for the policy guidance provided in the planning manual and handbook.

The new guidance is also less process oriented, meaning there is more flexibility in the planning process. Specifically, the new planning guidance highlights the minimum requirements for planning, rather than being prescriptive. It builds on field experience gained in implementing the 1983 planning regulations (43 CFR 1600) and subsequent manual guidance.

This is internal guidance and no comment period is required. However, in the interest of improving BLM's planning process, public comments will be considered in development of the final version of the planning guidance. A public record and summary of how comments were addressed will be available at the BLM Washington Office for review upon request. The final planning manual will not be protestable or appealable.

DATES: Comments on the draft land use planning manual and handbook will be accepted until July 10, 2000.

ADDRESSES: Copies of the draft land use planning manual and handbook may be obtained from the Internet at www.blm.gov; from the BLM Washington Office at the following address: BLM, Planning, Assessment and Community Support Group (WO–210), 1849 C Street, NW., (LS–1050), Washington, D.C. 20240–0001; or from any BLM State Office or field office.

Comments can be electronically sent to www.wo210@blm.gov or mailed to the Bureau of Land Management (WO–210), Attention: Ted Milesnick, 1849 C Street NW., (LS–1050), Washington, DC, 20240–0001.

FOR FURTHER INFORMATION CONTACT: Ted Milesnick at (202) 452–7727, Ann Aldrich at (202) 452–7722, or Paul Politzer at (202) 452–0349.

Dated: May 23, 2000.

Michael Mottice,

Acting Assistant Director, Renewable Resources and Planning.

[FR Doc. 00–13310 Filed 5–26–00; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

Joshua Tree National Park Advisory Commission, Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Joshua Tree National Park Advisory Commission (Commission) will be held from 10:00 am (PDT) until 2:00 pm on Saturday, June 17, 1999, at the Helen Gray Center, on Whitefeather Drive in the community of Joshua Tree, California. The Commission will hear reports on the Climbing Committee, the Wilderness Sustainability Study, Implementation of the Trails Plan, Line Item Construction for the West Entrance Visitor Center, the Learning Center and the Desert Institute.

The Commission was established by Public Law 103–433, section 107 to advise the Secretary concerning the development and implementation of a new or revised comprehensive management plan Joshua Tree National Park.

Members of the Commission include:

Mr. Chuck Bell, Planner

Ms. Cyndie Bransford, Recreational Climbing Interest

Ms. Marie Brashear, Mining Interest

Mr. Gary Daigneault, Property Owner/ Business Interest

Hon. Kathy Davis, County of San Bernardino

Mr. John Freter, Property Owner Interest

Mr. Brian Huse, Conservation

Mr. Julian McIntyre, Conservation

Mr. Roger Melanson, Equestrian Interest

Mr. Ramon Mendoza, Native American Interest

Ms. Leslie Mouriquand, Planner

Mr. Richard Russell, All Wheel Drive Vehicle Interest

Ms. Lynne Shmakoff, Property Owner Interest

Hon. Roy Wilson, County of Riverside

Mr. Gilbert Zimmerman, Tourism

Included on the agenda for this public meeting will be:

Discussion of the Backcountry and Wilderness Management Plan.

- Primitive Auto Camping (*i.e.* study, Environmental Assessment, funding).
- Artificial Water Sources (*i.e.* study, Environmental Assessment, funding).

The meeting is open to the public and will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. For copies, please contact Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, California 92277 at (760)367–5502.

Dated: May 11, 2000.

Ernest Quintana,

Superintendent.

[FR Doc. 00–13377 Filed 5–26–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before MAY 20, 2000. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by June 14, 2000.

Carol D. Shull,

Keeper of the National Register.

Alaska

Valdez-Cordova Borough-Census Area
Bremner Historic Mining District, (Mineral Development in Wrangell-St. Elias National Park and Preserve, Alaska MPS)
Wrangell-St. Elias Park and Preserve, Chitina, 00000659

Florida

Highlands County
Kenilworth Lodge, 836 South Lakeview Dr., Sebring, 00000661
Polk County
Winter Haven Heights Historic Residential District, (Winter Haven, Florida MPS)
Roughly Lake Martha, 2nd St. NE, 5th St. NE, and Avenue A NE, Winter Haven, 00000660

Hawaii

Maui County
Baldwin, Henry Perrine, High School, (Maui Public Schools MPS)
Kaahumanu Ave., Kahuli, 00000667
Kanae School, (Maui Public Schools MPS)
Hana Highway, Keanae, 00000665
Kaupo School, (Maui Public Schools MPS)
Government Rd., Kaupo, 00000662
Paia School, (Maui Public Schools MPS)
Paia vicinity, Paia, 00000664
Puunene School, (Maui Public Schools MPS)
Puunene Ave., Puunene, 00000663
Wailuku School, (Maui Public Schools MPS) High St.,
Wailuku, 00000666

Illinois

Champaign County
Elm Street Court, 1–8 Elm Street Court, Urbana, 00000681
Ricker, Nathan C., House, 612 W. Green St., Urbana, 00000682

Indiana

Johnson County
Hopewell Presbyterian Church, 548 W 100 N, Franklin, 00000680
La Porte County
Michigan City Post Office, 126 E. 5th St., Michigan City, 00000675
Lawrence County
Madden School, 620 H St., Bedford, 00000673
Marion County
Oldfields, 1200 W. 38th St., Indianapolis, 00000676
Marshall County
Forest Place Historic District, Forest Place, bet. College Ave. and Lake Shore Dr., Culver, 00000671
Porter County
Porter Town Hall, 303 Franklin St., Porter, 00000678
Posey County
New Harmony Historic District, Roughly bounded by Third St., Steammill St., Main St., inc. Maple Hill Cem., Arthur St., Atheneum prop. and North St., New Harmony, 00000669
St. Joseph County
Leeper Park, Roughly bounded by St. Joseph R, Park Ln., and Bartlett St., South Bend, 00000679
St. Joseph County Infirmary, 3016 Portage Ave., South Bend, 00000670
Vigo County
Terre Haute Fire Station No. 8, 1831 Wabash Ave., Terre Haute, 00000668
Vigo County Home for Dependent Children, 7140 Wabash Ave., Terre Haute, 00000674
Wayne County
King—Dennis Farm, 2939 King Rd., Centerville, 00000677
White County
Monon Commercial Historic District, Roughly Market St., bet. 3rd St. and 5th St., and 4th St. bet. Arch St. and Railroad St., Monon, 00000672

Louisiana

Caddo Parish
Shreveport Fire Station #8, 3406 Velva St., Shreveport, 00000683
Rapides Parish
Schnack, C.A., Jewelry Co. Store, 924 Third St., Alexandria, 00000684

Massachusetts

Barnstable County
Stony Brook—Factory Village Historic District, Stony Brook Rd.; Setucket Rd., Run Hill Rd., Brewster, 00000688
Middlesex County
Hubbard—French District, 324 and 342 Sudbury Rd., Concord, 00000686
Norfolk County
Fisher School—High Street Historic District, 748–850; 751–823 High St., Westwood, 00000687
Plymouth County
Middleborough Center Historic District, Roughly bounded by Conraill RR, Frank, Pierce, School, North Sts., Nemasket R., and East Grove St., Middleborough, 00000685

Minnesota

Ramsey County
Brooks, Edward, Sr. and Markell, House, 176 N. Mississippi River Blvd., St. Paul, 00000689

Missouri

Buchanan County
Cathedral Hill Historic District, North 9th St., Powell St. and North 13th St., St. Joseph, 00000691
Cass County
Stumbaugh Post No. 180 GAR Hall, Missouri Hwy T, Austin, 00000694
Cole County
Parker, Lester S. and Missouri "Zue" Gordon, House, 624 E. Capitol Ave., Jefferson City, 00000690

New Jersey

Camden County
Kay—Evans Farm, 100 Borton Mill Rd., Cherry Hill Township, 00000693

North Carolina

Carteret County
Cape Lookout Village Historic District, Cape Lookout from Lighthouse to Coast Guard St.; bounded by ocean and a concrete road, and concrete road across Bight, Harkers Island, 00000692

South Carolina

Marion County
Mt. Olive Baptist Church, 301 Church St., Mullins, 00000695

Texas

Travis County
Schemedes, Kurt and Meta, House, 804 Baylor St., Austin, 00000696

Washington

Whatcom County
Si'ke village with historic area called Tsi'lich, Address Restricted, Blaine, 00000697

West Virginia

Hardy County
Funkhouse, Henry, Farm, Funhouse Rd., NW of jct. with Grover Smith Rd., Baker, 00000698

Wisconsin

Clark County
Neillsville Downtown Historic District, 500 Block Hewett St. and 118 W. Sixth St., Neillsville, 00000701
Dane County
South Main Street Historic District, S. Main St., jct. with Jefferson and

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Janesville Sts., Village of Oregon, 00000699
Waukesha County
Needham, Enoch Gardner and Mary Caroline Koch, House, 12713 W. Greenfield Ave., New Berlin, 00000700

A request for *Removal* has been made for the following resources:

Kansas

Kiowa County
Belvidere Medicine River Bridge, (Masonary Arch Bridges of Kansas TR) 0.25 mi. N of Belvidere, Belvidere vicinity, 85001418
Wyandotte County
Huron Building, 905 N. 7th St., Kansas City, 84001243

[FR Doc. 00–13376 Filed 5–26–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 21, 2000, American Radiolabeled Chemical, Inc., 11624 Bowling Green Drive, St. Louis, Missouri 63146, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of gamma hydroxybutyric acid (2010), a basic class of controlled substance listed in Schedule I.

The firm plans to bulk manufacture small quantities of the listed controlled substance as radiolabeled compound.

Any other such applicant and any person who is prsently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 31, 2000.

Dated: May 19, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–13439 Filed 5–26–00; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 10, 2000, and published in the **Federal Register** on February 17, 2000, (65 FR 8206), Ansys Diagnostics, Inc., 25200 Commercentre Drive, Lake Forest, California 92630, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1–Piperid-ino-cyclo-hex-ane-carbo-nitrile (PCC) (8603).	II
Benzoylecgonine (9180)	II

The firm plans to manufacture the listed controlled substances to produce standards and controls for in-vitro diagnostic drug testing systems.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Ansys Diagnostics, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Ansys Diagnostics, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby order that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 19, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc 00–13437 Filed 5–26–00; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 29, 2000, Chemic Laboratories, Inc., 480 Neponset Street, Building 7C, Canton, Massachusetts 02021, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture small quantities of cocaine derivative for a customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 31, 2000.

Dated: May 19, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–13438 Filed 5–26–00; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 10, 2000, and published in the **Federal Register** on February 17, 2000, (65 FR 8207), Noramco of Delaware, Inc., Division of McNeilab, Inc., which has changed its name to Noramco of Delaware, Inc., Division of Ortho-McNeil, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II

Drug	Schedule
Hydrocodone (9193)	II
Morphone (9300)	II
Thebaine (9333)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk product.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Noramco of Delaware, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Noramco of Delaware, Inc. on a regular basis to ensure that the company's continued registsration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 19, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–13435 Filed 5–26–00; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 10, 2000, and published in the **Federal Register** on February 17, 2000, (65 FR 8207), Orpharm, Inc., 4815 Dacoma, Houston, Texas 77092, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methadone (9250)	II
Methadone-intermediate (9254)	II
levo-alphacetymethadol (9648)	II

The firm plans to manufacture methadone and methadone-intermediate for production of LAAM.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Orpharm, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Orpharm, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 19, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–13436 Filed 5–26–00; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Current Collection: Comments Requested

ACTION: Notice of information collection under review: extension of a currently approved collection: Return A—Monthly Return of Offenses Known to the Police and Supplement to Return A—Monthly Offenses Known to the Police

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 31 2000.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposal collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or technological collection techniques of other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Gregory E. Scarbro (phone number and address listed below). Additional information as well as copies of the proposed information collection instrument with instructions are available by contacting Gregory E. Scarbro, Unit Chief, telephone 304–625–4830, FBI, CJIS Division, Statistical Unit, E–3, 1000 Custer Hollow Road, Clarksburg, WV 26306.

Overview of This Information Collection

(1) Type of information collection: Extension of Currently Approved Collection.

(2) The title of the form/collection: Return A—Monthly Return of Offenses Known to the Police and Supplement to Return A—Monthly Offenses Known to the Police.

(3) The agency form number, if any, and applicable component of the Department Sponsoring the collection. Form: 1–720A; 1–706. Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as brief abstract. Primary: Local and State Law Enforcement Agencies. This collection is needed to collect data regarding criminal offenses and their respective clearances throughout the United States. Data is tabulated and published in the annual *Crime in the United States*. The FBI UCR Program is currently reviewing its race and ethnicity data collection in compliance with the Office of Management and Budget's *Revisions for the Standards for the Classification of Federal Data on Race and Ethnicity*.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 17,667 agencies with 212,004 responses (including zero reports); and

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with an average of 30 minutes a month devoted to compilation of data for this information collection.

(6) An estimate of the total public burden (in hours) associated with both collections: 74,201 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 23, 2000.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 00–13381 Filed 5–26–00; 8:45 am]

BILLING CODE 4410–02–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–056]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). The reports will be used to evaluate the use of uncompensated overtime in bids and proposals submitted to NASA for the award of contracts for technical and professional services in support of NASA's mission and in response to contractual requirements. The requirement is stated in 48 CFR 1831.205–670, 1831.205–671, and 1851.231–71.

DATES: All comments should be submitted on or before July 30, 2000.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: Uncompensated Overtime.

OMB Number: 2700–0080.

Type of review: Extension.

Need and Uses: Uncompensated overtime information is used to determine (i) whether a contractor will be able to hire and retain qualified individuals, (ii) whether uncompensated overtime hours will be properly accounted, and (iii) the validity of the proposed uncompensated hours.

Affected Public: Business or other for-profit.

Number of Respondents: 657.

Responses Per Respondent: 1.

Annual Responses: 650.

Hours Per Request: 3¼.

Annual Burden Hours: 2113.

Frequency of Report: Annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–13352 Filed 5–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–057]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). The reports will be utilized by the Office of Small and Disadvantaged Business Utilization as a method for determining if developmental assistance provided to small disadvantaged businesses by prime contractor's performance meets the standards established in NASA policy. The Agency's ability to manage the program effectively would be greatly diminished without receiving the described reports, which are part of the ongoing performance fee evaluation process.

DATES: All comments should be submitted on or before July 30, 2000.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: Small Business and Small Disadvantaged Business Concerns.

OMB Number: 2700–0078.

Type of review: Extension.

Need and Uses: Reports are required to monitor Mentor-Protege performance and progress according to the Mentor-Protege Agreement. Reports are internal control to determine if Agency objectives are met.

Affected Public: Business or other for-profit.

Number of Respondents: 48.

Responses Per Respondent: 2.

Annual Responses: 96.

Hours Per Request: 1½.

Annual Burden Hours: 140.

Frequency of Report: Semi-annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–13353 Filed 5–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–058]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13: 44 U.S.C. 3506(c)(2)(A)). The information is used by NASA attorneys and technology transfer specialists to determine if a licensee is achieving and maintaining practical application of the licensed inventions as required by its license agreement.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before July 31, 2000.

ADDRESSES: All comments should be addressed to Mr. Harry Lupuloff, Office of the General Counsel, Code GP, National Aeronautics and Space Administration, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None

Title: Patent License Report.

OMB Number: 2700–0010.

Type of review: Extension.

Need and Uses: Information is used to determine if a licensee is achieving and maintaining practical application of the licensed inventions as required by its license agreement.

Affected Public: Individuals or households, business or other for-profit

Number of Respondents: 60.

Responses Per Respondent: 1.

Annual Responses: 60.

Hours Per Request: 30 min.

Annual Burden Hours: 30.

Frequency of Report: Annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–13354 Filed 5–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–059]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and /or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). Reports are required to comply with statutes and implementing regulations.

DATES: All comments should be submitted on or before July 30, 2000.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: Patents.

OMB Number: 2700–0048.

Type of review: Extension.

Need and Uses: Grant provisions require that recipients include a list of all inventions required to be disclosed in their annual Performance Report. NASA grant officers and legal counsel review the information to ensure the proper disposition of rights to inventions made in the course of NASA-funded research is completed in accordance with statutes.

Affected Public: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Number of Respondents: 9,347.

Responses Per Respondent: 1.

Annual Responses: 9,347.

Hours Per Request: 30 min to 8 hrs.

Annual Burden Hours: 17,276.

Frequency of Report: Annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–13355 Filed 5–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–060]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13: 44 U.S.C. 3506(c)(2)(A)). This information is used to determine whether the requested license should be granted.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before July 31, 2000.

ADDRESSES: All comments should be addressed to Mr. Harry Lupuloff, Office of the General Counsel, Code GP, National Aeronautics and Space Administration, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: Application for a Patent License.

OMB Number: 2700–0039.

Type of review: Extension.

Need and Uses: The information supplied is used by the NASA Associate General Counsel to make agency determinations that NASA should either grant or deny a request for a patent license, and whether the license should be exclusive, partially exclusive, or nonexclusive.

Affected Public: Individuals or households, business or other for-profit.

Number of Respondents: 80.

Responses Per Respondent: 1.

Annual Responses: 80.

Hours Per Request: 8.

Annual Burden Hours: 640.

Frequency of Report: Annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–13356 Filed 5–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–061]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). The reports will be utilized by NASA Goddard Space Flight Center to support services dependent upon accurate locator-type information.

DATES: All comments should be submitted on or before July 30, 2000.

ADDRESSES: All comments should be addressed to Ms. Lois Ryno, Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt Road, Greenbelt, MD 20771–001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: Locator and Information Services Tracking System (LISTS).

OMB Number: 2700–0064.

Type of review: Extension.

Need and Uses: The LIST System is used primarily to support services on the Center dependent upon accurate locator-type information.

Affected Public: Individuals or households.

Number of Respondents: 8,456.

Responses Per Respondent: 1.

Annual Responses: 8,456.

Hours Per Request: .083.

Annual Burden Hours: 702.

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Frequency of Report: As required.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–13357 Filed 5–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–053]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Tuesday, June 6, 2000, 8 a.m. to 5 p.m.; and Wednesday, 7, 2000, 8 a.m. to 10 p.m.

ADDRESSES: The Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, VA 23185.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Mars Program Independent Assessment Team
—NASA Integrated Action Team
—NASA Intelligent Synthesis Enviroment Program
—NASA Strategic Plan
—Aviation Safety Program Update
—Aerospace System Concepts & Analysis
—Committee/TaskForce/Working Group Reports
—Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: May 17, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–13349 Filed 5–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–054]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

DATES: Wednesday, June 7, 2000, 12 p.m.—1 p.m. Eastern Daylight Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Room 7W31, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to The seating capacity of the room. The agenda for the meeting is as follows:

—Review the status of the assessment conducted by the IOR Task Force and the Russian Aviation and Space Agency (Utkin) Advisory Expert Council on the Russian investigation of the Proton launch failures of July 5 and October 27, 1999. This assessment includes the corrective action taken to help ensure a successful International Space Station Service Module launch.

It is imperative that the meeting be held on this date to accommodate the Scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: May 17, 2000.

Mathew M. Crouch,

Advisory Committee Management Officer., National Aeronautics and Space Administration.

[FR Doc. 00–13350 Filed 5–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–055]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: Thursday, June 8, 2000, 9 a.m. to 4 p.m., and Friday, June 9, 2000, 9 a.m. to 12 noon.

ADDRESSES: NASA Headquarters, 300 E Street, SW, MIC–5, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, Room 9K70, 300 E Street, SW, Washington, DC 20546–0001, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Best Practices on Teaming Agreements Report
—Small Disadvantaged Business Participation in Major NASA Contracts
—Report on ISO 9000 Status
—Action Items
—NASA Small Disadvantaged Business (SDB) Program Update
—Report of Chair
—Public Comment
—Report on New MBRAC Panels
—Report on NASA FY 2000 Small Business Office Priorities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 17, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–13351 Filed 5–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–062]

Notice of prospective patent license

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that MIMIC Health Technologies, LLC, of Santa Barbara, California, has applied for an exclusive patent license to practice the invention described and claimed in U.S. Patent No. 6,047,216, entitled "Endothelium Preserving Microwave Treatment for Atherosclerosis," including divisions thereof, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Johnson Space Center.

DATES: Responses to this notice must be received by July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Hardie R. Barr, Patent Attorney, Johnson Space Center, Mail Stop HA, Houston, TX 77058; telephone (281) 483–1003.

Dated: May 19, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–13358 Filed 5–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of NA Form 3035, Applicant Background Survey, to obtain source of recruitment, ethnicity, race, and disability data on job applicants. The information will be used to determine if the recruitment is effectively reaching all aspects of the relevant labor pool. The information will also be used to determine if there are proportinate acceptance rates at various stages of the recruitment process. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1955.

DATES: Written comments must be received on or before July 31, 2000 to be assured of consideration.

ADDRESSES: Comments shoulod be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Applicant Background Survey.
OMB number: 3095–NEW.
Agency form number: NA Form 3035.
Type of review: Regular.
Affected public: Applicants for NARA jobs.
Estimated number of respondents: 16,600.
Estimated time per response: 5 minutes.
Frequency of response: On occasion (when applicant wishes to apply for a job at NARA).
Estimated total annual burden hours: 1,383 hours.
Abstract: NARA is below parity with the relevant Civilian Labor force representation for many of our mission-critical occupations, and has developed a 10-year Strategic Plan to improve representation and be more responsive to the changing demographics of the country. The only way to determine if there are barriers in the recruitment and selection process is to track the groups that apply and the groups at each stage of the selection process. There is no other objective way to make these determinations and no source of this information other than directly from applicants.

The information is not provided to selecting officials and plays no part in the selection of individuals. Instead, it is used in summary form to determine trends over many selections within a given occupation or organizational area. The information is treated in a very confidential manner. No information from this form is entered into the Personnel File of the individual selected, and the records of those not selected are destroyed after the conclusion of the selection process.

The format of the questions on ethnicity and race are compliant with the new OMB requirements and are identical to those used in the year 2000 census. This form is a simplification and update of a similar OPM applicant background survey used by NARA for many years.

This form is used to obtain source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of the relevant labor pool and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Response is optional. The information is used for evaluating recruitment only, and plays no part in the selection of who is hired.

Dated: May 23, 2000.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 00–13404 Filed 5–26–00; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Closed Meeting and Previously Held Meetings

The National Credit Union Administration Board determined that its business required the deletion of the following item from the closed meeting held on Wednesday, May 24, 2000.

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (7), (8), (9)(A)(ii), and (9)(B).

The Board voted two-to-one, Board Member Wheat voting no, that agency business required that this item be deleted from the closed agenda and that no earlier announcement of this change was possible.

The previously held meetings were scheduled as follows:

Time and Date: 10:00 a.m., Wednesday, May 24, 2000.
Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.
Status: Open.
Matters Considered:
1. Request from a Federal Credit Union to Expand its Community Charter.
2. Final Rule: Amendment to Part 714, NCUA's Rules and Regulations, Leasing.

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3. Final Rule: Amendments to Part 745, NCUA's Rules and Regulations, Share Insurance.

Recess: 11 a.m.

Time and Date: 11:30 a.m., Wednesday, May 24, 2000.

Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428

Status: Closed.

Matters Considered:

1. Four (4) Personnel Matters. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board

[FR Doc. 00–13587 Filed 5–25–00; 3:23 pm]

BILLING CODE 7435–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date and Time: June 20–21, 2000, 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 360, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Leon Esterowitz, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals received under the Biophotonics Partnership Initiative announcement (NSF 00–54) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and person information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Note: Closed portions are proper under the Sunshine Act exemptions cited. The CMO's signature on this Notice is the required determination.

Dated: May 23, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–13421 Filed 5–26–00; 8:45am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical System, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: June 13, 2000, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 530, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Jorn Larsen-Basse, Program Director Surface Engineering and Material Design, Division of Civil and Mechanical Systems, Room 545; (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'00 Mechanics and Structures of Materials and Surface Engineering and Material Design Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Note: Closed portions are proper under the Sunshine Act examptions cited. The CMO's signature on this Notice is the required determination.

Dated: May 23, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–13420 Filed 5–26–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering (1115).

Date & Time: June 14–15, 2000, 8:30 a.m.–5 p.m. each day.

Place: Room 1175, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part open (see Agenda, below).

Contact Person: Dr. Aubrey M. Bush, Division Director, Advanced Networking Infrastructure and Research, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Agenda

Closed: June 14

To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of the Networking Infrastructure, Networking Research, and Special Projects Programs.

Open: June 15

To assess the results of NSF program investments in the Advanced Networking Infrastructure and Research Division. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Note: Closed portions are proper under the Sunshine Act exemptions cited. The CMO's signature on this Notice is the required determination.

Dated: May 23, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–13423 Filed 5–26–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Revised Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (173).

Date and Time: July 17–18, 2000, 7:30 a.m. to 5:30 p.m.

Place: National Science Foundation, Room 375, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mary Poats, Program Manger, Engineering Education and Centers Division, Nation Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Combined Research-Curriculum Development Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Revision: To change location of meeting.

Dated: May 23, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–13422 Filed 5–26–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meetings

In accordance with the Federal advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation's Special Emphasis Panel in Information and Intelligent Systems (1200) announces the following meetings.

Date/Time: June 1–2, 2000, 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 530, Arlington, VA.

Type of Meeting: Closed.

Agenda: To review and evaluate Robotics and Human Augmentation Program proposals as part of the selection process for awards.

Date/Time: June 8–9, 2000, 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 530, Arlington, VA.

Type of Meeting: Closed.

Agenda: To review and evaluate Robotics and Human Augmentation Program proposals as part of the selection process for awards.

Date/Time: June 13–14, 2000, 8:30 a.m.–5 p.m.

Place: Holiday Inn, 4610 North Fairfax Drive, Arlington, VA.

Type of Meeting: Closed.

Agenda: To review and evaluate Knowledge and Cognitive Systems Program proposals as part of the selection process for awards.

Date/Time: June 15, 2000, 8:30 a.m.–5 p.m.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA.

Type of Meeting: Closed.

Agenda: To review and evaluate Computation and Social Systems Program proposals as part of the selection process for awards.

Date/Time: June 20–21, 2000, 8:30 a.m.–5 p.m.

Place: River Inn, 925 25th Street NW, Washington, DC.

Type of Meeting: Closed.

Agenda: To review and evaluate Information and Data Management Program proposals as part of the selection process for awards.

CONTACT PERSON: Dr. Ephraim Glinert, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; (703) 306–1926.

MINUTES: May be obtained from the contact person listed above.

PURPOSE OF MEETINGS: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

REASON FOR CLOSINGS: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Note: Closed portions are proper under the Sunshine Act exemptions cited. The CMO's signature on this Notice is the required determination.

Dated: May 23, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–13424 Filed 5–26–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Information pertaining to the requirement to be submitted:

1. *Type of submission, new, revision, or extension: Extension.*

2. *The title of the information collection:*

10 CFR Part 40, "Domestic Licensing of Source Material;" NRC Form 244, "Registration Certificate—Use of Depleted Uranium under General License;" and NRC Form 484, "Domestic Monitoring Data Report."

3. *The form number, if applicable:* NRC Form 244 and NRC Form 484.

4. *How often the collection is required:* Reports required under 10 CFR Part 40 are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications need to be submitted every 5 to 10 years. Information in previous applications may be referenced without being resubmitted. In addition, recordkeeping must be performed on an on-going basis. NRC Form 244 is submitted when depleted uranium is received or transferred under general license. NRC Form 484 is submitted biannually to report ground-water data necessary to implement EPA ground-water standards.

5. *Who is required or asked to report:*

10 CFR Part 40: Applicants for and holders of NRC licenses authorizing the receipt, possession, use, or transfer of radioactive source and byproduct material.

NRC Form 244: Persons receiving, possessing, using, or transferring depleted uranium under the general license established in 10 CFR 40.25(a).

NRC Form 484: Uranium recovery facility licensees reporting ground-water monitoring data pursuant to 10 CFR 40.65.

6. *An estimate of the number of responses:*

10 CFR Part 40: 447 responses from NRC licensees and 311 responses from Agreement State licensees.

NRC Form 244: 20 responses for NRC licenses and 40 responses for Agreement State licensees.

NRC Form 484: Included in 10 CFR Part 40, above.

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7. *The number of annual respondents:* 10 CFR Part 40: 156 for NRC licensees and 172 for Agreement State licensees.
NRC Form 244: 20 for NRC licensees and 40 for Agreement State licensees.
NRC Form 484: Included in 10 CFR Part 40, above.

8. *The number of hours needed annually to complete the requirement or request:*
10 CFR Part 40: 26,049 hours for reporting requirements and 9,019 hours for recordkeeping requirements, or a total of 35,068 hours for NRC licensees; 28,083 hours for reporting requirements and 9,398 hours for recordkeeping requirements, or a total of 37,481 hours for Agreement State licensees.
NRC Form 244: 20 hours for NRC licensees and 40 hours for Agreement State licensees for reporting requirements.
NRC Form 484: Included in 10 CFR Part 40, above.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 40 establishes requirements for licenses for the receipt, possession, use, and transfer of radioactive source and byproduct material. NRC Form 244 is used to report receipt and transfer of depleted uranium under general license, as required by 10 CFR Part 40. NRC Form 484 is used to report certain groundwater monitoring data required by 10 CFR Part 40 for uranium recovery licensees. The application, reporting, and recordkeeping requirements are necessary to permit the NRC to make a determination on whether the possession, use, and transfer of source and byproduct material is in conformance with the Commission's regulations for protection of public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by June 29, 2000.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0143)NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 22nd day of May, 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–13454 Filed 5–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Application/Permit for Use of the Two White Flint (TWFN) Auditorium.

3. *The form number if applicable:* NRC Form 590.

4. *How often the collection is required:* Each time public use of the NRC auditorium is requested.

5. *Who will be required or asked to report:* Member of the public requesting use of the NRC Auditorium.

6. *An estimate of the number of responses:* 5.

7. *The estimated number of annual respondents:* 5.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1.25 hours (15 minutes per request).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* In accordance with the Public Buildings Act of 1959, an agreement was reached between the Maryland-National Capital Park and Planning Commission (MPPC), the General Services Administration (GSA) and the Nuclear Regulatory Commission, the NRC auditorium will be made available for public use. Public users of the auditorium will be required to complete NRC Form 590, Application/Permit for Use of Two White Flint North (TWFN) Auditorium. The information is needed to allow for administrative and security review, scheduling, and to make a determination that there are no anticipated problems with the requester prior to utilization of the facility.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site(http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 29, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Erik Godwin, Office of Information and Regulatory Affairs (3150–), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 22nd day of May 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–13455 Filed 5–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Oconee Nuclear Station Units 1, 2, and 3; Notice of Issuance of Renewed Facility Operating License; Nos. DPR–38, DPR–47, and DPR–55 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued (1) Renewed Facility Operating License No. DPR–38 (the Unit 1 license), (2) Renewed Facility Operating License No. DPR–47 (the Unit 2 license), and (3) Renewed Facility Operating License No. DPR–55

(the Unit 3 license) to Duke Energy Corporation (the licensee). The Unit 1 license authorizes operation of the Oconee Nuclear Station, Unit 1 by the licensee at reactor core power levels not in excess of 2568 megawatts thermal in accordance with the provisions of the Unit 1 license and its Technical Specifications (Appendix A). The Unit 2 license authorizes operation of the Oconee Nuclear Station, Unit 2 by the licensee at rector core power levels not in excess of 2568 megawatts thermal in accordance with the provisions of the Unit 2 license at its Technical Specifications. The Unit 3 license authorizes operation of the Oconee Nuclear Station, Unit 3 by the licensee at reactor core power levels not in excess of 2568 megawatts thermal in accordance with the provisions of the Unit 3 license and its Technical Specifications.

Oconee Nuclear Station, Units 1, 2, and 3, are pressurized water nuclear reactors located in eastern Oconee County about 8 miles northeast of Seneca, South Carolina.

The application for the renewed licenses complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in each license. Public notice of the proposed action and opportunity for hearing regarding the proposed issuance of these renewed operating licenses was published in the **Federal Register** on August 11, 1998 (63 FR 42885).

For further details with respect to these actions, see (1) The Duke Energy Corporation Oconee Nuclear Station Units 1, 2, and 3, Application for Renewed Operating Licenses, dated July 6, 1998, as supplemented by letter dated March 27, 2000, and by letters contained in Appendix E of NUREG–1723, "Safety Evaluation Report Related to the License Renewal of Oconee Nuclear Station, Units 1, 2, and 3," (2) Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, with the appendix listed above; (3) the Commission's Safety Evaluation Reports dated June 16, 1999, February 3, 2000, and March 2000 (NUREG–1723); (4) the licensee's updated final safety analysis report; and (5) the Commission's Final Environmental Impact Statement (NUREG–1437, Supplement 2), dated December 1996. These items are available at the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555–0001. In addition, documents that were issued after November 1, 1999, (e.g., NUREG–1723, and NUREG–1437, Supplement 2) can be viewed from the NRC Public Electronic Reading Room at http://www.nrc.gov/NRC/ADAMS/index.html.

A copy of the Renewed Facility Operating Licenses, Nos. DRP–38, DRP–47, and DPR–55, may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Licensing Project Management. Copies of the Safety Evaluation Report (NUREG–1723) and the Final Environmental Impact Statement (NUREG–137, Supplement 2) may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (telephone number 1–800–553–6847, <http://www.ntis.gov>), or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone number 202–512–1800, <http://www.access.gpo.gov/su_docs>). All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account, or VISA or Mastercard number and expiration date.

Dated at Rockville, Maryland, this 23rd day of May, 2000.

For the Nuclear Regulatory Commission.

Joseph M. Sebrosky,

Prject Manager, License Renewal and Standardization Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–13457 Filed 5–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08868]

Environmental Assessment and Finding of No Significant Impact and Notice of Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of No Significant Impact and Notice of Opportunity for a Hearing for disposal pursuant to 10 CFR 20.2002.

SUMMARY: The U.S. Nuclear Regulatory Commission is considering the license amendment request for disposal pursuant to 10 CFR 20.2002 of solid residual material containing up to 25 picocuries of thorium-232 and progeny per gram of filtercake from II–VI, Incorporated, to an industrial landfill. II–VI, Incorporated, is authorized to perform activities with source material pursuant to License STA–1455. The licensee and the NRC performed dose assessments of the disposal of this material in this manner, and determined that such disposal, with the restriction that not more than two effective containers per month be disposed of in this manner, would result in doses of less than 25 millirem per year.

Introduction

II–VI, Incorporated (II–VI), is a specialty manufacturer whose products include optical components for the laser industry, some of which contain thorium. They are authorized to perform manufacturing activities with source material pursuant to License STA–1455. Filtration of liquid effluents to remove metals prior to release to the sanitary sewerage system results in collection of small quantities of thorium in the solid residual material (filtercake). The licensee generates 10 or fewer containers of filtercake each year. Each container holds approximately 23.9 cubic meters of material having a mass of approximately 36,000 kilograms, which is defined as an "effective container" for the purpose of dose assessment. The material typically contains less than 25 picocuries of thorium-232 and progeny per gram of filtercake (25 pCi/g Th-232). The licensee requested disposal of this material pursuant to 10 CFR 20.2002 to an industrial landfill, and provided a dose analysis to justify their proposed limit of 25 pCi/g. The licensee and the NRC performed dose assessments of the disposal of this material in this manner, and determined that such disposal would result in doses of less than 25 millirem per year to members of the public so long as not more than two effective containers per month would be disposed of in this manner.

Proposed Action

The U.S. Nuclear Regulatory Commission is considering the request for disposal pursuant to 10 CFR 20.2002 to an industrial landfill, of not more than two effective containers per month of solid residual material (filtercake) containing up to 25 picocuries of thorium-232 and progeny per gram of filtercake from II–VI, Incorporated.

The Need for the Proposed Action

Filtration of liquid effluents is required by other regulatory agencies to remove metals from the liquid effluent prior to release to a public sanitary sewerage system, and small amounts of thorium are retained in the filtercake. The licensee needs this amendment to the license in order to have a cost-effective method of disposal of the

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filtercake containing metals. Prior to filtering of the liquid effluents, thorium in this waste stream was released to a public sanitary sewerage system in accordance with 10 CFR 20.2003 regulatory limits. A restriction is required, that not more than two effective containers be disposed of each month, in order to ensure that such disposals do not exceed the criterion of 25 millirem per year (25 mrem/y) to a member of the public.

Alternatives to the Proposed Action

The staff considered results of analyses using a generic model for unrestricted release of the material. The staff concluded that disposal pursuant to 10 CFR 20.2002 of this material without restrictions would meet the 25 mrem/y criterion only if the filtercake did not exceed 4.1 pCi/g Th-232.

The staff considered results of analyses to determine if site-specific data, such as regional meteorological and subsurface information, would be likely to change the dose assessment results significantly. The staff concluded that annual doses would be less than those resulting from assessments using the generic model, but the annual doses still would be in excess of the 25 mrem/y criterion if the filtercake contained up to 25 pCi/g Th-232.

The staff considered results of analyses using a model that assumed the landfill would not be used for any future activities, as could occur if deed restrictions were in place that prevented exhumation of the landfill. The staff concluded that doses would meet the 25 mrem/y criterion but that such deed restrictions are unlikely at this time.

Environmental Impacts of the Proposed Action

The activities that NRC staff will authorize, pursuant to 10 CFR 20.2002, through the issuance of an amendment to License No. STA–1455 is expected to have an insignificant impact on the environment. The disposal of the filtercake containing up to 25 pCi/g Th–232, restricted so that no more than two effective containers of filtercake are disposed of per month to an industrial landfill, would not exceed the criterion of 25 mrem/y to a member of the public.

Conclusion

The environmental impacts from the proposed action are insignificant.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the proposed disposal pursuant to 10 CFR 20.2002 of filtercake containing up to 25 pCi/g thorium-232 and progeny from II–VI. On the basis of the Environmental Assessment, the Commission has concluded that this licensing action would not significantly affect the environment and does not warrant the preparation of an environmental impact statement. Accordingly, it has determined that a Finding of No Significant Impact is appropriate.

The above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC.

Opportunity for a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to 10 CFR 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with 10 CFR 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of the **Federal Register** Notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U. S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than the applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, II–VI Incorporated, 375 Saxonburg Boulevard, Saxonburg, PA 16056, Attention: Mr. John Lebrecque, and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD, 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW, Washington, DC 20555.

Dated at King of Prussia, Pennsylvania, this 16th day of May, 2000.

For The U.S. Nuclear Regulatory Commission.

Francis M. Costello,

Deputy Director, Division of Nuclear Materials Safety, Region 1.

[FR Doc. 00–13452 Filed 5–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of a Public Meeting of the Interagency Steering Committee on Radiation Standards

AGENCIES: Nuclear Regulatory Commission and U. S. Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will hold a meeting of the Interagency Steering Committee on Radiation Standards (ISCORS) on June 13, 2000. The purpose of ISCORS is to foster early resolution and coordination of regulatory issues associated with radiation standards.

Agencies represented on ISCORS include the NRC; U.S. Environmental Protection Agency; the U.S. Department of Defense; U.S. Department of Energy; U.S. Department of Labor's, Occupational Safety and Health Administration; U.S. Department of Transportation; and the U.S. Department of Health and Human Service. Representatives of the Office of Management and Budget (OMB), the Office of Science Technology Policy (OSTP), and of the States are observers at meetings.

The objectives of ISCORS include:

(1) Facilitating a consensus on acceptable levels of radiation risk to the public and workers;

(2) Promoting consistent risk assessment and risk management approaches in setting and implementing standards for occupational and public protection from ionizing radiation;

(3) Promoting completeness and coherence of Federal standards for radiation protection; and

(4) Identifying interagency issues and coordinating their resolution.

ISCORS meetings involve pre-decisional, intra-governmental discussions and, as such, are not normally open for observation by members of the public or media. However, summary meeting notes are available at the ISCORS website *http://www.iscors.org*. ISCORS meets approximately once each calendar quarter.

DATES: The meeting will be held from 1 to 5 p.m. on Tuesday, June 13, 2000.

ADDRESSES: The meeting will be held in the NRC Auditorium at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Questions with respect to this action should be referred to Patricia A. Santiago, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission at (301) 415–7269; fax 301–415–5398; E-mail *pas2@nrc.gov;* or Behram Shroff, Office of Air and Radiation, U.S. Environmental Protection Agency at (202) 564–9707; fax 202–565–2065; E-mail *shroff.behram@epa.gov*.

SUPPLEMENTARY INFORMATION: Visitor parking around the NRC building is limited; however, the workshop site is located adjacent to the White Flint Metro Station on the Red Line. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, Maryland, this 22nd day of May, 2000.

For the Nuclear Regulatory Commission.

John T. Greeves,

Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–13456 Filed 5–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Membership on the Executive Resources Board

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to the Executive Resources Board for the Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Executive Resources Board. The NRC Executive Resources Board is responsible for providing institutional continuity in executive personnel management by overseeing NRC's Senior Executive Service and Senior Level System merit staffing, executive succession planning, and position management activities.

Appointees

William D. Travers, Executive Director for Operations, Chair
Karen D. Cyr, General Counsel
Stuart Reiter, Acting Chief Information Officer
Jesse L. Funches, Chief Financial Officer
Annette Vietti-Cook, Secretary of the Commission
Frank J. Miraglia, Deputy Executive Director for Reactor Programs
Carl J. Paperiello, Deputy Executive Director for Materials, Research and State Programs
Patricia G. Norry, Deputy Executive Director for Management Services
Samuel J. Collins, Director, Office of Nuclear Reactor Regulation
William F. Kane, Director, Office of Nuclear Material Safety and Safeguards
Ashok C. Thadani, Director, Office of Nuclear Regulatory Research
Michael L. Springer, Director, Office of Administration
Paul E. Bird, Director, Office of Human Resources
Irene P. Little, Director, Office of Small Business and Civil Rights
Hubert J. Miller, Regional Administrator, Region I
Luis A. Reyes, Regional Administrator, Region II
James E. Dyer, Regional Administrator, Region III
Ellis W. Merschoff, Regional Administrator, Region IV

EFFECTIVE DATE: May 18, 2000.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Swanson, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–7530.

Dated at Rockville, Maryland this 18th day of May 2000.

For the U.S. Nuclear Regulatory Commission.

Paul E. Bird,

Director, Office of Human Resources.

[FR Doc. 00–13453 Filed 5–26–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:
Form F–80, SEC File No. 270–357, OMB Control No. 3235–0404
Form 18, SEC File No. 270–105, OMB Control No. 3235–0121

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Form F–80 is used by certain Canadian issuers to register securities to be issued in exchange offers or business combinations. All information provided on Form F–80 must be submitted to the Commission. Form F–80 is required to be filed on occasion and is a public document. Form F–80 takes approximately 2 hours to prepare and is filed by 2 respondents for a total of 4 burden hours.

Form 18 is used for the registration of securities of any foreign government or political subdivision on a U.S. Exchange. All information provided on Form 18 must be submitted to the Commission. Form 18 is filed on occasion and is a public document. Form F–80 takes approximately 8 hours to prepare and filed by 5 respondents for total of 40 burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of

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Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: May 22, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13412 Filed 5–26–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Boise Cascade Corporation, Common Stock, $2.50 Par Value, and Associated Common Stock Purchase Rights) File No. 1–05057

May 23, 2000.

Boise Cascade Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $2.50 par value, and associated Common Stock Purchase Rights (referred to collectively herein as the "Securities"),[3] from listing and registration on the Chicago Stock Exchange, Incorporated ("CHX").

The Company, whose Securities are additionally listed on the New York Stock Exchange ("NYSE"), is seeking to withdraw the Securities from listing and registration on the CHX at this time in order to save the costs associated with such listing and related compliance. The Company's Common Stock has been listed for trading on the CHX since 1968, but in a recent review of its business conduct the Company found that the majority (more than 95%) of its Common Stock is traded on the NYSE. The Company's board of directors has therefore determined that no significant business reasons exist for maintaining the Securities' listing and registration on the CHX.

The Company has stated that its application relates solely to the withdrawal of the Securities from listing and registration on the CHX and shall have no effect upon the Securities' continued listing and registration on the NYSE under Section 12(b) of the Act.[4]

The withdrawal of the Securities from listing and registration on the CHX was approved by the Company's board of directors at a meeting held on July 31, 1998, and a resolution so stating was forwarded to the CHX in accordance with its rules. The Company has included with its application a copy of a letter from the CHX confirming that the Company's request for withdrawal complies with the rules of the CHX governing an issuer's removal of securities from listing and registration on the CHX.

Any interested person may, on or before June 14, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the CHX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–13411 Filed 5–26–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] The Common Stock Purchase Rights are currently attached to, and trade together with, the Company's Common Stock.

[4] 15 U.S.C. 78*l*(b).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24460; File No. 812–11684]

The Ohio National Life Insurance Company, et al.

May 19, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under Section 6(c) of the Investment Company Act of 1940, as amended (the "Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to permit the recapture of certain credits applied to purchase payments made under certain deferred variable annuity contracts.

SUMMARY OF APPLICATIONS: Applicants seek an order under Section 6(c) of the Act to the extent necessary to permit the issuance and, under specified circumstances, the subsequent recapture of certain credits applied to purchase payments made under certain deferred variable annuity contracts, described herein, that The Ohio National Life Insurance Company ("Ohio National") will issue through the Ohio National Variable Account A (the "Account") (the contracts are collectively referred to herein as the "Contracts").

Applicants: Ohio National, the Account, and Ohio National Equities, Inc. ("ONEQ") (collectively, "Applicants").

Filing Date: The Application was filed on November 19, 1999 and amended on March 17, 2000.

Hearing or Notification of Hearing: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 on June 13, 2000 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549–0609. Applicants c/o Ronald L. Benedict, Esq., Corporate Vice President, Counsel and Secretary, The Ohio National Life Insurance Company, P.O. Box 237, Cincinnati, Ohio 45201.

FOR FURTHER INFORMATION CONTACT: Rebecca Marquigny, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0102 (tel. (202) 942–8090.).

Applicants' Representations

1. Ohio National was organized under the laws of Ohio in 1909. It writes life, accident and health insurance and annuities in 47 states, the District of Columbia and Puerto Rico. Currently, Ohio National has assets in excess of $7 billion and equity in excess of $710 million. Ohio National is a stock company ultimately owned by a mutual insurance holding company (Ohio National Mutual Holdings, Inc.) with Ohio Nation's contract owners having majority ownership of the latter.

2. Variable Account A was established in 1969 by Ohio National as a separate account under Ohio law for the purpose of funding variable annuity contracts issued by Ohio National. The Account is a segregated asset account of Ohio National. The Account and its component sub-accounts are registered together with the Commission as a single unit investment trust under the Act (File No. 811–1978). The Account will fund the variable benefits available under the Contracts. The offering of the Contracts will be registered under the Securities Act of 1933 (the "1933 Act"). That portion of the assets of the Account that is equal to the reserves and other Contract liabilities with respect to the Account is not chargeable with liabilities arising out of any other business of Ohio National. Any income, gains or losses, realized or unrealized, from assets allocated to the Account are, in accordance with the Contracts, credited to or charged against the Account, without regard to other income, gains or losses of Ohio National.

3. ONEQ is the principal underwriter of the Contracts. ONEQ is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. The Contracts are sold by insurance agents of Ohio National who are also registered representatives of registered broker-dealers that have entered into distribution agreements with ONEQ. ONEQ is a wholly-owned subsidiary of Ohio National.

4. The minimum initial purchase payment is $5,000 ($2,000 for IRAs). A Contract owner may make additional payments of at least $500 at any time ($300 for payroll deduction plans). Ohio National may limit total purchase payments to $1,500,000.

5. Ohio National credits extra amounts to the Contract each time a Contract owner makes a purchase payment (the "Credit"). The Credit equals 4% of each purchase payment. Ohio National allocates Credit amounts pro rata to the Sub-Accounts (defined herein) and to Ohio National's general account in the same ratio as the purchase payments. Ohio National will fund Credit amounts from its general account assets.

6. The Credit is not part of the amount a Contract owner will be paid if the 10-day free look option is exercised. Ohio National may not offer a Credit on purchase payments made within one year of a free partial withdrawal to the extent those purchase payments are less than the amount withdrawn. Credit amounts applied within one year of the date of death are deducted from amounts payable for any death benefit or stepped-up death benefit where the amount to be paid is based upon Contract value (as opposed to being based on payments minus withdrawals). Credit amounts paid within one year of a Contract owner's confinement in a nursing facility are deducted from any amounts paid under the nursing facility confinement benefit.

7. The free look period is the 10-day period during which an owner may return a Contract after it has been delivered and receive a full refund of the Contract value, less any Credit amounts. The owner bears the investment risk from the time of purchase until he or she returns the Contract. The refund amount may be more or less than the purchase payment the owner made, unless the law requires that the full amount of the purchase payment be refunded.

8. The Contract's death benefit provision states that a death benefit will be paid to the Contract owner's designated beneficiary if the annuitant (and any contingent annuitant) dies before annuity payments begin. This death benefit will be the greatest of: (i) The Contract value (minus any Credit amounts applied within one year of the date of death); or (ii) the net of purchase payments less withdrawals; or (iii) the stepped-up death benefit amount if the Contract has been in effect for at least 8 years.[1] However, if the death benefit is not claimed within 90 days after the date of death, Ohio National will pay the Contract value (minus any Credit amounts applied within one year of the date of death) instead of any greater death benefit. The death benefit is an optional feature of the Contract that must be elected by the owner. Ohio National presently does not assess a charge for the death benefit but reserves the right to do so for Contracts issued in the future in an amount up to 0.25% of annual premium.

9. The Contract's nursing facility confinement benefit provision provides that, if the annuitant is, or has been, confined to a state licensed or legally operated in-patient nursing home facility for at least 30 consecutive days, Ohio National will not assess a surrender charge on partial withdrawals of up to $5,000 per month. Under the Contract's nursing facility confinement benefit provision, a Contract owner may withdraw, subject to the $5,000 per month limit, an aggregate amount equal to one half of the Contract value as of the beginning of the confinement without incurring a surrender charge. Any Credit amounts applied within one year before confinement will be deducted from the proceeds of the first such withdrawal. This waiver of the surrender charge may not be available in all states and it only applies when: (i) The confinement begins after the first contract anniversary and before annuity payments begin; (ii) the Contract was issued before the annuitant's 80th birthday; and (iii) Ohio National receives the request for withdrawal, together with proof of the confinement, at Ohio National's home office while the annuitant is confined or within 90 days after discharge from the facility.

10. The amount the owner receives upon exercise of free look rescission rights or payment of the Contract's death benefit will always equal or exceed the surrender value of the Contract.[2] The amount the owner receives upon payment of a partial withdrawal in connection with the Contract's nursing facility confinement benefit will always equal or exceed the amount the owner would have received had the surrender charge not been waived.

11. Owners of the Contracts may allocate their purchase payments among a number of sub-accounts of the Account (the "Sub-Accounts"). Each Sub-Account will invest in shares of a corresponding portfolio of Ohio National Fund, Inc., The Dow (SM) Target Variable Fund LLC, Goldman Sachs Variable Insurance Trust, Janus Aspen Series, J.P. Morgan Series Trust II, Lazard Retirement Series, Inc., Mitchell Hutchins Series Trust, Morgan Stanley Dean Witter Universal Funds,

[1] For the 8-year period beginning on the eighth Contract anniversary, the stepped-up death benefit will be the greater of (i) the Contract value (minus any Credit amounts applied during the preceding year) as of the eighth anniversary or (ii) the net of purchase payments less withdrawal made on or before the eight anniversary. At the beginning of each later 8-year period (until the annuitant attains age 90), the stepped-up death benefit will be the greater of (i) The Contract value (minus any credit amounts applied during the preceding year) on that date or (ii) the death benefit as of the last day of the preceding 8-year period. The stepped-up death benefit amount is increased by purchase payment and decreased by withdrawals made during each 8-year period after the eighth anniversary. In those states where permitted, the Contract owner may elect an optional annual stepped-up death benefit at the time the Contract is issued. With that option, the death benefit will be increased in the manner indicated above, until the annuitant attains age 80, on each Contract anniversary on which the Contract value (minus any Credit amounts applied during the preceding year) exceeds the death benefit for the previous year. There is an additional charge (presently at an annual rate of 0.10% of the optional death benefit amount, which rate may be increased to no more than 0.25% on Contracts in the future) for this optional benefit.

[2] The surrender value of the Contract equals the Contract value minus the contingent deferred sales charge or "CDSC."

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Inc., Salomon Brothers Variable Series Fund Inc., and Strong Variable Insurance Funds, Inc.

12. Ohio National, at a later date, may decide to create additional Sub-Accounts to invest in any additional funding media as may not or in the future be available. Ohio National, from time to time, also may combine or eliminate Sub-Accounts, or transfer the assets to and from Sub-Accounts.

13. The Contract provides for various surrender options, annuity benefits and annuity payout options, as well as transfer privileges among Sub-Accounts, dollar cost averaging, and other features. The Contract contains the following charges: (i) A CDSC as a percentage of the amount withdrawn or surrendered; [3] (ii) a $30 annual administrative charge; (iii) a mortality and expense risk charge of 1.15%; (iv) administrative expense charge of 0.25%; (v) a transfer fee of $10 after the first transfer made during a calendar month; and (vi) any applicable state premium tax.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions requested below. Applicants represent that it is not administratively feasible to track the Credit amount in the Account after the Credit is applied. Accordingly, the asset-based charges applicable to the Account will be assessed against the entire amounts held in the Account, including the Credit amount, during the free look period and the one year recapture periods. As a result, during such periods, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's annuity account value did not include the Credit.

2. Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of the Credit amount in the circumstance set forth in the Application would not deprive an owner of his or her proportionate share of the issuer's current net assets. An owner's interest in the Credit amount allocated to his or her annuity account value upon receipt of an initial purchase payment is not vested until the applicable free look period has expired without return of the Contract. Similarly, and owner's interest in the Credit amounts allocated to his or her annuity account within one year of the date of death or confinement to a nursing facility also is not vested. Until the right to recapture has expired and any Credit amount is vested, Ohio National retains the right and interest in the Credit amount, although not in the earnings attributable to that amount. Thus, when Ohio National recaptures any Credit, it is merely retrieving its own assets, and the owner has not been deprived of a proportionate share of the Account's assets because his or her interest in the Credit amount has not vested.

4. In addition, permitting an owner to retain a Credit amount under a Contract upon the exercise of the free look would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it and returning it for a quick profit. Furthermore, the recapture of Credit amounts within one year preceding the date of death or confinement to a nursing facility is designed to provide Ohio National with a measure of protection against anti-selection. The risk here is that, rather than spreading purchase payments over a number of years, an owner might make very large purchase payments shortly before death or confinement, thereby leaving Ohio National little time to recover the cost of the Credit amounts. As noted earlier, the amounts recaptured equal the Credit amounts provided by Ohio National from its general account assets, and any gain would remain a part of the owner's Contract value. In addition, with respect to free look and death benefit recapture of Credit amounts, the amount the owner receives will always equal or exceed the surrender value of the Contract and, with respect to the recapture of Credit amount in connection with a partial withdrawal made under the nursing facility confinement benefit, the amount the owner receives will always equal or exceed the amount the owner would have received had the surrender charge not been waived.

5. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put 104% of their purchase payments to work for them in the selected Sub-Accounts. In addition, the owner will retain any earnings attributable to the Credit, as well as the principal Credit amount once vested.

6. Applicants submit that the provisions for recapture of any Credit under the Contracts do not violate Sections 2(a)(32) and 27(i)(2)(A) of the Act. Applicants believe that a contrary conclusion would be inconsistent with a stated purpose of the National Securities Markets Improvement Act of 1996 ("NSMIA"), which is to amend the Act to "provide more effective and less burdensome regulation." Sections 26(e) and 27(i) were added to the Act to implement the purposes of NSMIA and Congressional intent. The application of a Credit to purchase payments made under the Contracts should not raise any questions as to Ohio National's compliance with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described in the Application, without the loss of relief from Section 27 provided by Section 27(i).

7. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

8. Ohio National's recapture of the Credit might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Account. Applicants contend, however, that the recapture of the Credit does not violate Section 22(c) and Rule 22c–1. To effect a recapture of a Credit, Ohio National will redeem interests in an owner's Account at a price determined on the basis of the current net asset value of that Account. The amount recaptured will equal the amount of the Credit that Ohio National paid out of its general account assets. Although the owner will be entitled to retain any investment gain attributable to the Credit, the amount of that gain will be determined on the basis of the current net asset value of the Account. Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts.

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–13375 Filed 5–26–00; 8:45 am]

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[3] The CDSC Schedule is as follows: 9% in year 1; 8% in year 2; 7% in year 3; 6% in year 4; 5% in year 5; 4% in year 6; 2% in year 7; 1% in year 8; and 0% in year 9 and thereafter.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42807; File No. SR–ISE–00–03]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 by the International Securities Exchange LLC Relating to Block and Facilitation Trades

May 22, 2000.

I. Introduction

On February 25, 2000, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 29b–4 thereunder,[2] a proposed rule change relating to its proposed block order and facilitation mechanisms.

The proposed rule change was published for comment in the **Federal Register** on March 6, 2000.[3] The Commission received three comment letters regarding the proposal.[4] On May 19, 2000, the ISE filed Amendment No. 1 to the proposed rule change.[5] This order approves the proposed rule change. In addition, the Commission is publishing this notice to solicit comments on Amendment No. 1 and is simultaneously approving Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

ISE Rule 716(c) establishes a "block mechanism" through which ISE members can obtain liquidity for the execution of block-size orders [6] from market makers and other ISE members with orders at the ISE inside bid or offer ("Crowd Participants"). Similarly, ISE Rule 716(d) establishes a "facilitation mechanism" through which members can seek to facilitate block-size public customer orders. Upon the entry of an order into the block or facilitation mechanisms, a broadcast message is sent to the Crowd Participants.

The proposed rule change contains several proposed revisions to existing ISE Rule 716. First, the ISE has proposed commentary to ISE Rules 716(c) and (d) with respect to the block order mechanism and the facilitation mechanism, specifying that participants will be given 30 seconds to respond to a broadcast message from either the block or facilitation mechanism.

Second, the ISE proposes to amend ISE Rule 716(d)(4)(i) to provide that only public customer bids (offers) on the Exchange at the time a facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at the facilitation price, unless there is sufficient size to execute a facilitation order entirely at a better price. Higher bids and lower offers from non-customer orders and quotes will be executed at their stated price. The current rule provides non-customer orders and quotes the benefit of the facilitation or "block clean-up" price.

Third, ISE is proposing amendments to ISE Rule 716(d)(4)(ii) [7] to eliminate a Primary Market Maker's ("PMM") participation right with respect to the allocation of orders entered into the facilitation mechanism by deleting a reference to ISE Rule 713.[8] In other words, under ISE's proposed amendments to ISE Rule 716(d)(4)(ii), if a PMM is among the Crowd Participants with interest at the facilitation price, the PMM will be treated the same as all other Crowd Participants and not given a preferential allocation under ISE Rule 713.

Finally, ISE is proposing to amend ISE Rule 716(d)(2) and (3) [9] to clarify that a Crowd Participant may enter into the facilitation mechanism an indication at a better price than the facilitation price, but only if such better price is inferior to the ISE best bid or offer. If a Crowd Participant wishes to enter an indication at a price equal to or better than the ISE best bid or offer, the Crowd Participant may do so only by changing its quote or entering an order, so that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42473 (February 29, 2000), 65 FR 11818.

[4] *See* letters to Jonathan G. Katz, Secretary, SEC, from Holly H. Smith, Sutherland, Asbill & Brennan LLP, dated March 24, 2000 ("SA&B Letter"); Peter J. Chepucavage, Fulbright 7 Jaworski L.L.P., dated March 28, 2000 ("Phlx Letter"); and Charles J. Henry, President and Chief Operating Officer, Chicago Board Options Exchange, dated March 31, 2000 ("CBOE Letter").

[5] *See* letter from Katherine Simmons, Vice President and Associate General Counsel, ISE, to Deborah Flynn, Senior Special Counsel, Division of Market Regulation, SEC, dated May 19, 2000 ("Amendment No. 1"). In Amendment No. 1, ISE proposes to delete a reference to ISE Rule 713 to eliminate a Primary Market Maker's participation right with respect to facilitation orders. ISE also proposes to clarify that members may enter indications at prices that improve the facilitation price if such improved price is inferior to the ISE best bid or offer.

[6] For purposes of ISE rules only, block-size orders are orders for fifty contracts or more. *See* ISE Rule 716(a).

[7] *See* Amendment No. 1, *supra* note 5.

[8] ISE Rule 713 sets forth the PMM's allocation algorithm. *See* Securities Exchange Act Release No. 42808.

[9] *See* Amendment No. 1, *supra* note 5.

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such interest will be disseminated to the public.

III. Summary of Comments

The Commission received three comment letters on the proposal.[10] These commenters opposed ISE's proposed rule change, as originally proposed.[11] Commenters argued that the proposed 30 second response time would make it easier for ISE members to execute as principal their own customers' orders for 50 contracts or more without meaningful opportunity for price improvement by competitors, which they argued would undermine the intended purpose of having customers' orders reasonably exposed to other trading interest before being executed by the facilitating ISE member.[12] Moreover, this proposed 30 second response time, commenters emphasized, is not enough time for market participants to have a reasonable opportunity to improve the facilitation price, especially because Crowd Participants who wish to improve the price are required by the rules to do so 10 seconds prior to the expiration of the 30 second time period, effectively reducing the response time to 20 seconds.[13]

In response to commenters' objections to the proposed 30 second "exposure period," ISE states that 30 seconds is sufficient time for Crowd Participants in the ISE market to respond to an order, noting that the Commission has approved exposure times of as few as 15 seconds for certain equity exchanges.[14] ISE notes that floor-based exchanges have no specific limitation on how long a proposed facilitation order must be exposed to the crowd before it is executed. Moreover, ISE states that commenters have no basis to assert that 20, 30 or 60 seconds is the appropriate exposure time, given the lack of precedent for an electronic options market.[15] ISE asserts that, based upon consultation with its members and using the knowledge and understanding of electronic trading it has developed, its proposal is reasonably designed to protect both customers and liquidity providers in its electronic marketplace and is consistent with the requirements of the Act.[16]

Commenters also objected to the proposed amendment requiring non-customer bids (offers) priced higher (lower) than the facilitation price to be executed at their stated price, rather than a single "clean-up" price.[17] The commenters argued that the ISE's proposal would act as a disincentive to ISE Competitive Market Makers ("CMMs") and other Electronic Access Members ("EAMs") to display their true trading interest and offer price improvement, because a CMM who wants to trade, but cannot facilitate the entire order at an improved price, will likely elect not to offer any price improvement to avoid the "penalizing impact" of the rule.[18]

In response, ISE argues that this proposed amendment benefits customers because where a non-customer (*i.e.*, broker-dealer or market maker) indicates that it is willing to trade at a price that is better than the facilitation or "clean-up" price, the customer order being facilitated would get the benefit of the better price, even if the entire order cannot be executed at the better price.[19] The ISE believes that the effect of the proposed change will be to increase opportunities for price improvement for customer orders.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the proposed amendment is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–00–03 and should be submitted by June 20, 2000.

V. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that proposal is consistent with Section 6(b)(5) of the Act.[22]

Under Section 6(b)(5) of the Act,[23] a registered national securities exchange must have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission finds that ISE's proposed commentary to ISE Rule 716 establishing the "exposure time" for a facilitation order at 30 seconds is consistent with Section 6(b)(5) of the Act.[24] Currently, there is no time period specified in the ISE's rules for how long facilitation orders must be exposed to the trading crowd. Instead, the amount of time to respond is set by the Exchange. The Commission believes that setting out in the ISE's rules the response period will provide certainty to the other market participants and ensure that this time period will not be changed without a corresponding change in the ISE rules. On floor-based exchanges, there are no rules that govern how long an order, including a proposed facilitation order, must be exposed to the crowd before it is executed. In addition, in the Commission's view, 30 seconds is a reasonable time frame for Crowd Participants in ISE's market to assess market conditions and their own trading interest and to enter a response to a facilitation order. Accordingly, the Commission is approving the ISE's proposed commentary to ISE Rule 716.

[10] *See* note 4, *supra*.

[11] The Commission notes that commenters expressed views on a number of issues related to the ISE block and facilitation mechanisms that were outside the scope of the current ISE proposal, several of which were addressed in the Commission's approval of ISE as a national securities exchange. *See* Securities Exchange Act Release No. 42455 (February 24, 2000, 65 FR 11388. Consequently, this order addresses only comments regarding those issues presented by the current proposal.

[12] *See* SA&B Letter; Phlx Letter; CBOE Letter.

[13] *See* SA&B Letter; Phlx Letter.

[14] *See* letter to Jonathan G. Katz, Secretary, SEC, from Katherine Simmons, Vice President and Associate General Counsel, ISE, dated May 19, 2000 ("ISE Response Letter").

[15] *Id.*

[16] *Id.*

[17] *See* SA&B Letter; Phlx Letter.

[18] *Id.*

[19] *See* ISE Response Letter.

[20] *Id.*

[21] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

[23] *Id.*

[24] *Id.*

The Commission also agrees with the ISE that public customer bids (offers) on the Exchange at the time a facilitation order is executed that are priced higher (lower) than the facilitation price should be executed at the facilitation price. The Commission believes that this proposal will both protect public customer limit orders on the ISE's book and provide public customers with the benefit of price improvement through the facilitation mechanism. The Commission also believes that allowing the execution of higher bids and lower offers from non-customer orders and quotes by executing them at their stated price is reasonable. Accordingly, the Commission finds that the proposed amendment to ISE Rule 716(d)(4)(i) is consistent with Section 6(b)(5) of the Act[25] in that it promotes just and equitable principles of trade and facilitates transactions in securities by allowing the partial execution of a facilitation order at an improved price for the number of non-customer contracts available, while protecting public customer orders on the book by giving them the benefit of a better execution price.

The Commission also finds that the proposed amendments to ISE Rule 716(d)(4)(ii) are consistent with Section 6(b)(5) of the Act.[26] Under current ISE rules, a PMM is guaranteed certain participation rights in a facilitation order after public customer orders are executed and the facilitating EAM receives an allocation of 40 percent of the order. Amendment No. 1 eliminates the PMM's participation guarantee. Thus, any indication or quote by a PMM will be treated the same as other Crowd Participants' interest. The Commission believes that this proposed amendment is consistent with the public interest, and that it promotes just and equitable principles of trade by ensuring that market makers will be able to compete in a fair and equitable manner, based on the competitiveness of their quotes, for that portion of an order remaining after public customer interest and the EAM's facilitation guarantee.

The Commission finds good cause for approving this proposed amendment prior to the thirtieth day after date of publication of the notice of filing in the **Federal Register**. The proposed change to paragraph (d)(4)(ii) of ISE Rule 716 makes available to Crowd Participants a greater percentage of facilitation orders.[27] Specifically, this change ensures that, if a PMM is among the Crowd Participants with interest at the facilitation price, the PMM will be treated equally with all other Crowd Participants, rather than being "guaranteed" special participation rights. Because this amendment reduces the guarantees to PMMs, the Commission believes it will increase the opportunity for other participants in ISE to complete for order flow and finds that granting accelerated approval to the proposed amendments to ISE Rule 716(d)(4)(ii) in Amendment No. 1 consistent with Section 18(b)(2) Act.[28]

Finally, the Commission believes that ISE's proposed amendment to ISE Rules 716(d)(2) and (3) to clarity that members may enter indications into the facilitation mechanism at prices that improve the facilitation price, if such improved price is inferior to the ISE best bid or offer, is consistent with the Act. ISE's rules currently state that indications from Crowd Participants must be priced *at* the price of the order to be facilitated and must not exceed the size of the order to be facilitated. To facilitate the order at a price superior to the facilitation price, ISE's current rules require Crowd Participants to enter orders change their quotes, as applicable. The proposed amendment allows a Crowd Participant to enter an indication to facilitate an order at a price better than the facilitation price, but inferior to the ISE best bid or offer. Without this change, it would have been possible for a Crowd Participant to improve the facilitation price, but not be at the ISE best bid or offer. In this situation, only the PMM[29] would know about the improved price, creating the potential for PMM to benefit at the expense of the customer order being facilitated. For these reasons, the Commission finds that ISE's proposed amendment is consistent with Section 6(b)(5) of the Act[30]

The Commission also finds good cause for approving the proposed amendments of ISE Rules 716(d)(2) and (3) prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. These proposed changes eliminate a potential avenue for abuse and ensure that a public customer order would receive the benefit of any price offered that is better than the facilitation price. Accordingly, the Commission believes that these proposed amendments do not significantly alter the original proposal, which was subject to a full notice and comment period and addresses the issued raised by commenters. Therefore, the Commission finds that granting accelerated approval to the proposed changes to ISE Rules 716(d)(2) and (3) in Amendment No. 1 is consistent with Section 19(a)(2) of Act.[31]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–ISE–00–03), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13413 Filed 5–26–00; 8:45 am]

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[25] *Id.*

[26] *Id.*

[27] *See* Amendment No. 1, *supra* note 5.

[28] 15 U.S.C. 78f(b)(2).

[29] Under ISE's rules, only the PMM has access to all orders on the ISE book; not just the top of the book.

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78f(b)(2).

[32] *Id.*

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42808; File No. SR–ISE–00–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 by the International Securities Exchange LLC Relating to Market Maker Allocations

May 22, 2000.

I. Introduction

On February 25, 2000, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to its proposed market maker allocation algorithm.

The proposed rule change was published for comment in the **Federal Register** on March 6, 2000.[3] The Commission received three comment letters regarding the proposal.[4] On May 19, 2000, the ISE filed Amendment No.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42473 (February 29, 2000), 65 FR 11818.

[4] *See* letters to Jonathan G. Katz, Secretary, SEC, from Holly H. Smith, Sutherland, Asbill & Brennan LLP, dated March 24, 2000 ("SA&B Letter"); Peter J. Chepucavage, Fulbright & Jaworski L.L.P., dated March 28, 2000 ("Phlx Letter"); and Charles J. Henry, President and Chief Operating Officer, Chicago Board Options Exchange, dated March 31, 2000 ("CBOE Letter").

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1 to proposed rule change.[5] This order approves the proposed rule change. In addition, the Commission is publishing this notice to solicit comments on Amendment No. 1 and is simultaneously approving Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

ISE Rule 713(d) provides that public customer orders at a given price have priority. ISE Rule 713(e) provides that, if there are two or more non-customer orders or market maker quotations at the Exchange's inside market, after filling all customer orders at that price, executions will be allocated between the non-customer orders and market maker quotations "pursuant to an allocation procedure to be determined by the Exchange from time to time. * * *" ISE Rule 713(e) also states that if the PMM is quoting at the Exchange's inside market, it will have precedence over non-customer orders and CMM quotes for execution of orders that are up to a specified number of contracts. The ISE is proposing to establish its allocation procedure for non-customer orders and market maker quotations, and to define the size of orders for which the PMM has priority.

According to the ISE, the allocation procedure is a trading algorithm programmed in the ISE's electronic auction market system ("System") that determines how to split the execution of incoming orders among professional trading interests at the same price. All public customer orders at a given price are executed fully before the trading algorithm is applied. Moreover, because the algorithm is applied automatically by the System upon the receipt of an executable order, only those non-customer orders and market maker quotes that are in the System participate in the algorithm. The ISE represents that, subject to the PMM's participation rights discussed below, the allocation of executions to non-customer orders and market maker quotes is based on the size associated with the order or quote relative to the total size available at the execution price.

The ISE is also proposing certain participation rights for PMMs. If the PMM is one of the participants with a quote at the best price, it has participation rights equal to the greater of (1) the proportion of the total size at the best price represented by the size of its quote, or (2) 60 percent of the contracts to be allocated if there is only one other non-customer order or market maker quotation at the best price, 40 percent if there are two other non-customer orders and/or market maker quotes at the best price, and 30 percent if there are more than two other non-customer orders and/or market maker quotes at the best price. In addition, the PMM has precedence to execute orders of five contracts of fewer if it is quoting at the best price. The proposal provides that the PMM cannot receive any portion of an allocation unless it is quoting at the best price at the time the System receives the executable order. Moreover, the size associated with the PMM's quote must be sufficient to fill the portion of the order that would be allocated to it according to the participation rights.

The Exchange proposes to implement the PMM five contract preference as a one-year pilot program.[6] During that time, ISE proposes to evaluate what percentage of the volume executed on the Exchange, excluding volume resulting from the execution of orders in the facilitation mechanism, is comprised of orders for five contracts or fewer executed by PMMs, and will reduce the size of the orders included in this provision if such percentage is over 40 percent.[7] In addition, during this pilot period, ISE proposes to provide certain data to the Commission on a quarterly basis, with respect to OCC cleared transaction: (1) The percentage of volume executed on the Exchange (excluding facilitation orders) that results from the execution of orders of five contracts or fewer ("Five Contract Volume"); (2) the percentage of Five Contract Volume executed by PMMs; (3) the ratio of PMM and CMM trades; and (4) the ratio of the PMM contract volume divided by the total of PMM and CMM contract volume.[8]

III. Summary of Comments

The Commission received three comment letters on the proposal.[9] These commenters opposed ISE's proposed rule change, as originally proposed. The commenters argued that the ISE's proposed allocation algorithm would discourage competition among market participants by requiring that other market makers and non-customers be quoting at the best bid or offer on ISE to participate in the execution of an incoming order. Thus, ISE Rule 713 would allow a PMM to trade with 100 percent of an incoming order when it was along at the ISE's best bid or offer.[10] In addition, commenters asserted that the algorithm would permit a PMM to internalize order flow by giving PMMs at the best bid or offer an absolute right to trade against all orders of five contracts or fewer.[11] Commenters characterize this proposed guarantee as essentially a small order referencing rule giving PMMs a distinct economic advantage over all other non-customer trading interest entered into the ISE. In connection with the proposed allocation procedure, the commenters argued that these rules build an infrastructure for percentage and crossing, and guarantee that the orders routed to ISE will not be exposed to the level of price competition necessary to protect the public interest.[12]

Commenters also disagreed with ISE's characterization of five contracts as an "odd lot," noting that five contracts represent 500 shares of underlying stock and that orders of five contracts or fewer constitute a significant portion of all portion of all options order flow.[13] According to commenters, the proposed five contract precedence for PMMs will result in referencing arrangements, internalization, and payment for order flow to attract these low-risk orders, and is anticompetitive because it reduces incentives for other market makers to quote aggressively due to their inability to attract these smaller orders.[14]

In response to commenters' objections, the ISE notes that the percentage of an order that a PMM executes is uncertain from the outset, and far from a "guarantee."[15] Instead, the allocation is dependent on the number of public customer orders, the price and size of the PMM's quote, and the number of non-customers competing with the PMM at the same price. The ISE argues that, contrary to the commenters' characterization of an absolute "guarantee," the algorithm provides only that if an order is not completely executed after public customer orders are executed, the PMM has preference as to the balance, but only if quoting at the best price and only if it has displayed sufficient size. Thus, according to the ISE, a PMM must be competitive on price in order to receive any allocation, and must be competitive on size—otherwise its allocation is limited by the size associated with its quote.[16]

Similarly, the ISE argues that the commenters' assertions that the PMM preference as to orders of five contracts or fewer will lead to decreased competition for small orders, preferencing, internalization, and payment for order flow is erroneous because it is based on the flawed premise that this preference is an "exclusive right" and absolute "guarantee."[17] The ISE further claims that preferencing and payment for order flow arrangements are unlikely because orders for five contracts or fewer are expected to constitute only a small percentage of order flow.[18] Moreover, the ISE maintains that because its market is based on intramarket price and size competition and incoming orders are executed automatically, market participants, including the PMM, would not have the opportunity to know the size of an incoming order, nor would market participants know whether the PMM would be quoting at the best with sufficient size.[19]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–00–01 and should be submitted by June 20, 2000.

V. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act.[21]

Under Section 6(b)(5) of the Act, a registered national securities exchange must have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions is securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that ISE's proposed amendments to Supplementary Material .01 to ISE Rule 713 are consistent with Sections 6(b)(5) of the Act.[22] The Commission believes that ISE's proposed amendment to the commentary to ISE Rule 713 establishing its algorithm governing the allocation of orders to market participants, including PMMs, is reasonable. Moreover, because PMMs, like specialists on floor-based options exchanges, perform important functions and undertake responsibilities greater than those of other market makers, the Commission believes it is reasonable for the ISE to choose to offer its PMMs an elevated level of participation rights like other options exchanges currently provide to their specialists.

Although the Commission recognizes that intramarket competition, as well as protection of public customers, could be compromised if such a participation right constituted an absolute guarantee or if it consumed too great a percentage of order flow, the Commission believes that the ISE's proposal sets forth reasonable safeguards against such potential harms. The ISE's proposal prioritizes public customer limit orders on the book. Indeed, if sufficient existing customer interest exists, a PMM might not receive *any* allocation of a given incoming order. Moreover, a PMM's participation is directly dependent on the competitiveness of the PMM's quote as well as the number of non-customers who have entered competitive quotes at the same price at the time an order is received by the market. In addition, the size of a PMM's quote is important, because a PMM's execution is limited by the size of its quote, regardless of any participation right that ISE's allocation algorithm would otherwise prescribe. The Commission believes that these limits on a PMM's participation right should assure reasonable protection for public customers and prevent impediments to a free and open market that might otherwise result from an absolute specialist guarantee.

The Commission further finds that the ISE's proposal to provide on a one-year pilot basis PMMs with a preference for orders of five contracts or fewer is consistent with Section 6(b)(5) of the Act.[23] The Commission acknowledges the potential competitive issues noted by commenters, and intends to use the one-year pilot period to monitor the rule's impact on competition. To assist the Commission in evaluating the pilot program, the ISE will provide four types of specific data to the Commission, on a quarterly basis and should allow the ISE to achieve its stated goal of limiting execution for five contracts or fewer by PMMs to 40 percent or less of total exchange volume (excluding facilitation orders).[24]

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 1 clarifies the proposed rule change and is responsive to the issues raised by commenters. By approving this proposal as a one-year pilot program and requesting certain statistics from the ISE on a quarterly basis regarding the volume of orders for five contracts or fewer executed by PMMs, the Commission should be able to adequately assess the operation of this proposal and determine whether the competitive issues raised by commenters pose a concern. Because Amendment No. 1 does not significantly

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[5] *See* letter from Katherine Simmons, Vice President and Associate General Counsel, ISE, to Deborah Flynn, Senior Special Counsel, Division of Market Regulation, SEC, dated May 19, 2000 ("Amendment No. 1"). In Amendment No. 1, the ISE requests that the Commission approve its proposal with respect to its proposed five contract preference as a one-year pilot program. Consistent with this request, the ISE proposes to revise paragraph .01(c) of Supplementary Material to ISE Rule 713 to require that the ISE provide the following information to the Commission on a quarterly basis, with respect to OCC cleared transactions: (1) The percentage of volume executed on the Exchange (excluding facilitation orders) that results from the execution of orders of five contracts or fewer ("Five Contract Volume"); (2) the percentage of Five Contract Volume executed by Primary Market Makers ("PMMs"); (3) the ratio of PMM trades to the total of PMM and Competitive Market Maker ("CMM") trades; and (4) the ratio of PMM contract volume to the total of PMM and CMM contract volume.

[6] *See* Amendment No. 1, *supra* note 5.

[7] *Id.*

[8] *Id.*

[9] *See* note 4, *supra*.

[10] *See* CBOE Letter.

[11] *See* SA&B Letter, Phlx Letter; CBOE Letter.

[12] *Id.*

[13] *See* CBOE Letter.

[14] *Id.*

[15] *See* letter to Jonathan G. Katz, Secretary, SEC, from Katherine Simmons, Vice President and Associate General Counsel, ISE, dated May 19, 2000 ("ISE Response Letter").

[16] *See* ISE Response Letter.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] *Id.*

[24] *See* Amendment No. 1, *supra* note 5.

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alter the original proposal, which was subject to a full notice and comment period, and addresses the issues raised by commenters, the Commission finds that granting accelerated approval to Amendment No. 1 is consistent with Section 19(b)(2) of the Act.[25]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–ISE–00–01), including Amendment No. 1, is approved, and that PMM five contract preference proposal contained in Amendment No. 1 is approved as a one-year pilot to expire on May 22, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13414 Filed 5–26–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42806; File No. SR–NASD–99–33]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Relating to the Establishment of Trade and Quote Halt Authority for the National Association of Securities Dealers, Inc.'s Over-the-Counter Bulletin Board Service

May 22, 2000.

I. Introduction

On July 14, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") submitted to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish trade and quote halt authority for the NASD's over-the-counter Bulletin Board Service ("OTCBB").

The proposed rule change, including Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on January 25, 2000.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The OTCBB is an NASD system which, pursuant to delegated authority, Nasdaq is responsible for operating. In the proposed rule change, the NASD and Nasdaq propose to expand Nasdaq's authority so that Nasdaq may impose quotation and trading halts in OTCBB securities when: (1) The OTCBB security or the securities underlying the OTCBB American Depository Receipt ("ADR") is dually listed or registered and a foreign regulatory authority or market halts trading in the security; (2) the OTCBB security is a derivative or component of a security listed on Nasdaq, a domestic exchange, or foreign exchange/market (*e.g.*, a convertible security or warrant) and Nasdaq, the exchange, or foreign exchange/market halts trading in the underlying security; or (3) the OTCBB issues does not timely provide the NASD with information required by Rule 10b–17 under the Act.[4]

Currently, NASD Rule 4120 authorizes Nasdaq to impose trading halts in Nasdaq-listed securities and securities listed on a national securities exchange and traded in the third market. There are, however, no rules that grant Nasdaq authority to impose trading or quotation halts in OTCBB securities. Additionally, unlike the Nasdaq market, there is no listing agreement between Nasdaq and OTCBB issuers, and thus Nasdaq does not have the ability to compel such issuers to disclose information to Nasdaq. Accordingly, it is difficult for Nasdaq to unilaterally impose trade and quote halts in an OTCBB security because, in most cases, information from the issuer is necessary before the NASD can assess the situation and determine if a halt and/or resumption of trading is appropriate.[5] In light of the foregoing, the NASD and Nasdaq are proposing to vest Nasdaq with trade and quote halt authority as described below.

Foreign Regulatory Authority Halts. First, the NASD and Nasdaq are proposing to impose trading and quotation halts in OTCBB eligible securities[6] when a foreign market or regulatory authority has imposed a trade halt in the security in its open market for regulatory reasons. This authority would permit Nasdaq to impose a trade and quotation halt on an OTCBB security or OTCBB ADRs when a foreign market on which the OTCBB security is also traded, or a regulatory authority that has oversight authority for the OTCBB security, halts trading in the security or the security underlying the ADR for "regulatory" reasons. (Nasdaq currently has similar trading-halt authority for Nasdaq-listed securities.)[7] Under the proposal, upon receipt of information from a foreign securities market on which the OTCBB security or the security underlying the OTCBB ADR is listed or registered or from a regulatory authority overseeing such issuer, exchange, or market, Nasdaq's Stockwatch section will evaluate the information (generally, a trade-halt order issued by the foreign market or regulatory authority) and determine whether a trade and quotation halt in the OTCBB security is appropriate. Nasdaq will impose such a halt only when the foreign market or regulatory authority has imposed its halt because of potential fraudulent conduct or other public interest concerns. Nasdaq will not impose a halt if the foreign entity's halt is based on the dissemination of material news, an issuer's failure to meet regulatory filing requirements imposed by a foreign market or regulatory authority, or for operational reasons (*e.g.*, order imbalance in the foreign market).[8]

For this and the proposed halts described below, an OTCBB halt would be lifted if Nasdaq determines that the basis of the halt no longer exists or upon the passage of five trading days, which ever occurs first.[9] If quoting and trading in a security stock is halted for five or more consecutive business days and then the halt is lifted, at the time the halt is lifted, market makers will be required to fulfill their obligation under Rule 15c2–11 under the Act prior to initiating a priced or unpriced quotation in the security.[10] Nasdaq will notify market participants and the public of halts through the NASD Regulation and Nasdaq Websites (*e.g.*, OTCBB.com, Nasdaqtrader.com, NASDR.com), as well as the Nasdaq NEWS frame on the Nasdaq Workstation II.

Halts in Derivative Securities. Nasdaq currently has the authority to halt trading in a Nasdaq-listed derivative security when a national securities exchange or Nasdaq halts trading in the underlying equity security that is listed on the exchange or Nasdaq.[11] Halt authority only extends to derivatives listed on Nasdaq, and does not extend to derivatives quoted in the OTCBB. Thus, for example, Nasdaq or an exchange may halt trading in a security, but trading may continue in the OTCBB derivative security. Since the trading price of the OTCBB derivative is dependent on the price of the underlying listed security, it is difficult to accurately price the derivative security when there is no current pricing information on the underlying security. Such difficulty in pricing may lead to disorderly markets and investor confusion. Accordingly, the NASD and Nasdaq are proposing to halt trading and quotations in OTCBB securities when the OTCBB security is a derivative or component of a security listed on a domestic exchange, foreign market/exchange, or Nasdaq and the exchange or foreign market/exchange or Nasdaq imposes a trading halt in the underlying listed security.

OTCBB Halts for Failure to Comply with Rule 10b–17 under the Act. Finally, the NASD and Nasdaq are proposing to halt quotations and trading in an OTCBB security if the issuer fails to comply with the requirements of Rule 10B–17 under the Act regarding Untimely Announcements of Record Dates.[12] Rule 10b–17 requires issuers to give the NASD, in a timely fashion, information relating to: (1) A dividend or other distribution in cash or in kind; (2) a stock split or reverse split; and (3) a rights or other subscription offering. Under Rule 10b–17, the issuer is required to provide this information to the NASD no later than 10 prior to the record date or, in case of a rights subscription or other offering if such 10 days advance notice is not practical, on or before the record date.[13]

For both Nasdaq-listed and OTCBB securities, Nasdaq publishes the record date of the action and the ex-date in its "Daily List" on the Nasdaq Websites. This provides information to broker-dealers, clearing agencies, and the public regarding the record date and settlement date of such trades. For Nasdaq-listed securities, if an issuer does not provide the information in a timely manner, Nasdaq may request the Rule 10b–17 information from the issuer and halt trading pending receipt of such information.[14] Nasdaq may then issue a Uniform Practice Code ("UPC") notice informing members of the status of the record date and underlying event in order to clarify any confusion in the marketplace regarding the price or settlement of these trades.

While OTCBB issuers are also required to give the NASD information required by Rule 10b–17 in a timely manner, Nasdaq does not currently have the authority to institute a trading halt in an OTCBB security when this information has not been timely provided. Under the proposed rule change, the NASD and Nasdaq will have the authority to halt trading and quotations in an OTCBB security when the issuer fails to give the NASD notice of the inforamtion specified in Rule 10b–17.

Finally, the NASD and Nasdaq are proposing to amend the Plan Of Allocation And Delegation Of Functions by NASD To Subsidiaries to clarify that the Stockwatch section of Nasdaq would have authority to effectuate OTCBB halts.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission believes that the proposed rule is consistent with the requirements of Sections 11A(c)(1)(A),[15] 11A(c)(1)(B),[16] 15A(b)(6)[17] and 15A(b)(11)[18] of the Act.

The Commission believes that the proposed rule change is consistent with the goals expressed in Sections 11A(c)(1)(A)[19] and 11A(c)(1)(B)[20] of the Act, which give the Commission the authority to promulgate rules designed to prevent the use, distribution or publication of fraudulent, deceptive, or manipulative information with respect to quotations, and to assure that those responsible for disseminating securities information obtain such information on fair and reasonable terms. The Commission believes that allowing Nasdaq to halt quotation and trading in OTCBB securities when there is a threat that quotations may be inaccurate because of fraudulent conduct discovered by foreign regulatory authorities, will further the goals of those sections. The Commission finds that the proposed rule will help prevent the dissemination of quotations that are based on fraudulent information and will help ensure that quotes in the OTCBB are accurate.

Further, the Commission finds the proposed rule is consistent with the Section 15A(b)(6)[21] requirements that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission finds the proposed rule is consistent with Section 15A(b)(11),[22] which requires that the rules of the association be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

Proposed Rule 6545 will enhance Nasdaq's authority to initiate trade and quotation halts in OTCBB securities based on regulatory halts imposed by foreign securities exchanges or foreign regulatory authorities. The Rule will allow Nasdaq to halt trading and quotations in OTCBB securities when a foreign securities exchange or foreign regulatory authority has imposed a halt because of potential fraudulent conduct or other public interest concerns. The Commission believes that granting

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[25] 15 U.S.C. 78f(b)(2).

[26] *Id.*

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 42345 (January 18, 2000), 65 FR 4002.

[4] 17 CFR 240.10b–17. For a description of the rule, *see* text accompanying notes 12 and 13 *infra*.

[5] Under Section 12(k) of the Act, the Commission may impose trading suspensions in the U.S. securities markets. See 15 U.S.C. 78*l*(k). Additionally, NASD Rule 3340 prohibits members from trading any security as to which a trading suspension is in effect. When the Commission suspends trading in an OTCBB security, Nasdaq announces the trading ban via the NEWS frame on the Nasdaq Workstation II and prohibits trading and quotations on the OTCBB.

[6] NASD Rules 6530 and 6540 impose certain regulatory filing requirements for securities to be included in the OTCBB.

[7] *See* NASD Rule 4120(a)(4).

[8] The NASD and Nasdaq do not proposed to halt for material news because Nasdaq does not have a formal listing agreement with OTCBB issuers, and thus cannot compel the full disclosure and dissemination of material news. The NASD and Nasdaq do not propose to halt trading if an issuer fails to meet filing or disclosure requirements imposed by a foreign regulatory authority or market, because Nasdaq would, in essence, be importing filing obligations of a foreign regulatory authority on OTCBB issuers when such requirements may not currently exist in the United States for such issuers. Lastly, the NASD and Nasdaq are not proposing to halt trading based on a foreign exchange's operational halt, such as an order imbalance, because Nasdaq generally does not halt for operational reasons.

[9] Of course, if an issuer failed to meet the eligibility requirements contained in NASD Rules 6530 and 6540, the security would be removed from the OTCBB.

[10] That is, the Nasdaq directs all members to cease quoting a security for five or more consecutive business days, pursuant to NASD Rule 6740 and Rule 15c2–11, members will be required a file a Form 211 prior to the resumption of quotations in the OTCBB. See 17 CFR 240.15c–11. The Commission issued for comment a reproposal of amendments to Rule 15c2–11. *See* Securities Exchange Act Release No. 41110 (February 25, 1999), 64 FR 11124 (March 8, 1999). The NASD and Nasdaq will monitor developments regarding Rule 15c2–11 and plan to make any necessary changes to conform the rules proposed in this filing with and changes to Rules 15c2–11.

[11] *See* NASD Rule 4120(a)(3)(ii).

[12] *See* 17 CFR 240.10b–17.

[13] *Id.*

[14] *See* NASD Rule 4120(a)(5).

[15] 15 U.S.C. 78k–1(c)(1)(A).

[16] 15 U.S.C. 78k–1(c)(1)(B).

[17] 15 U.S.C. 78*o*–3(b)(6).

[18] 15 U.S.C. 78*o*–3(b)(11).

[19] 15 U.S.C. 78k–1(c)(1)(A).

[20] 15 U.S.C. 78k–1(c)(1)(B).

[21] 15 U.S.C. 78*o*–3(b)(6).

[22] 15 U.S.C. 78*o*–3(b)(11).

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Nasdaq this authority will help prevent fraudulent practices and protect investors in accordance with Section 15A(b)(6) of the Act.[23] Moreover, this authority will help ensure that Nasdaq disseminates fair and accurate quotes, and that the dissemination of quotes is done in an orderly manner pursuant to the requirements of Section 15A(b)(11) of the Act.[24]

The Commission believes the proposed rule will benefit investors because it will grant Nasdaq the authority to halt trading and quotations in OTCBB securities when the OTCBB security is a derivative or component of a security listed on a domestic exchange, foreign exchange or Nasdaq and the domestic exchange, foreign exchange or Nasdaq imposes a trading halt in the underlying listed security. This will help assure accurate pricing of OTCBB derivatives and components, as the price of these securities is derived from the price of the underlying security. Market makers will be unable to quote or trade an OTCBB derivative or component when no accurate pricing information on the underlying security is available.

In addition, without this rule in place, the purpose of a trade halt in the underlying security could be frustrated. For example, if Nasdaq imposed a trade halt on a Nasdaq security in order to allow for dissemination of material news regarding the issuer, but quoting and trading of a derivative of that security continued on the OTCBB, the goal of the original halt would not be fully accomplished. Rather, before the material news could be fully absorbed by the public, trading based on incomplete or inaccurate information would take place. The NASD's new rule will prevent this.

Finally, the proposed rule will authorize Nasdaq to halt trading in an OTCBB security when there is a failure to timely provide the NASD with information mandated by Rule 10b–17 under the Act, which if not timely disseminated could have an impact on the pricing and trading of OTCBB issues. Thus, the Commission finds that the proposed rule is designed to protect investors and to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6) and 15(b)(11).[25]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[26] that the proposed rule change (SR–NASD–99–33) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

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[23] 15 U.S.C. 78o–3(b)(6).

[24] 15 U.S.C. 78o–3(b)(11).

[25] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42805; File No. SR–PHLX–00–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Reduce the Value of the Over-the-Counter Prime Index ("OTX")

May 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2000, the Philadelphia Stock Exchange, ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b–4(f)(6)[3] of the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act,[4] proposes to reduce the value of its Over-The-Counter prime Index ("Index") option ("OTX") to one-fourth its present value by quadrupling the base market divisor used to calculate the Index. In addition, the position and exercise limits applicable to OTX will be quadrupled until the last expiration then trading. The Index is a price weighted, A.M. settled index composed of fifteen stocks which are considered to be the "most active" stocks traded on the Nasdaq market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change, as discussed more fully below, is to attract additional liquidity to OTX.

a. Background. The Exchange began trading OTX in 1998.[5] As of March 21, 2000, the index value was 714 and the near-month in-the-money call premium was $57.75 per contract. The Exchange proposes to conduct a "four-for-one split"of the Index, such that the value would be reduced to one-quarter of the current value. The number of OTX contracts will be quadrupled, such that for each OTX contract currently held, the holder would receive four contracts at the reduced value with a strike price one quarter of the original strike price. For instance, the holder of an OTX 800 call will receive four OTX 200 calls. In addition to the strike price being reduced by one-quarter, the position and exercise limits applicable to OTX will be quadrupled, from 25,000 contracts to 100,000 contracts until the last expiration then trading. The result would be an index value of 178.50 and a near-month at-the-money call premium of $14.44. This procedure is similar to the one employed respecting equity options where the underlying security is subject to a four-for-one stock split. The trading symbol will remain as OTX.

In conjunction with the split, the Exchange will list strike prices surrounding the new, lower index

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 17 CFR 240.19b–4

[5] See Securities Exchange Act Release No. 40058 (June 2, 1998), 63 FR 31543 (June 9, 1998).

value, pursuant to Phlx Rule 1101A. The Exchange will announce the effective date by way of an Exchange memorandum to the membership, also serving as notice of the strike price and position exercise limit changes.

b. *Purpose.* As stated above, the purpose of the proposal is to attract additional liquidity to OTX. A four-for-one split, thus reducing the value of the Index, should have a positive effect on overall transaction volumes by making the option premiums more attractive for retail investors. A reduced value should thus encourage additional investor interest. By reducing the value of the Index, investors will be able to utilize this trading vehicle while extending a smaller outlay of capital. This should attract additional investors, and, in turn, create a more active and liquid trading environment.

2. Statutory Basis

For these reasons, Phlx believes that the proposed rule change is consistent with Section 6 of the Act[6] in general, and in particular, with Section 6(b)(5),[7] in that it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest, by establishing a lower index value, which should, in turn, facilitate trading in OTX options. The Exchange believes that reducing the value of the Index should not raise manipulation concerns and should not cause adverse market impact, because the Exchange will continue to employ its surveillance procedures and has proposed an orderly procedure to achieve the index split, including adequate prior notice to market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate,[10] it has become effective pursuant to Section 19(b)(3)(A)[11] of the Act and Rule 19b–4(f)(6)[12] thereunder. The Exchange has requested that the Commission accelerate the operative date of the rule change to permit the Exchange to implement it immediately. The Commission has determined, consistent with the protection of investors and the public interest, to make the proposed rule change operative upon filing, pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii). Under Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. The Commission believes that it is consistent with the protection of investors and the public interest to make the proposed rule change operative upon filing because reducing the value of the Index should enable more investors to participate in the market, thereby promoting liquidity in the marketplace. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–00–10 and should be submitted by June 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13415 Filed 5–26–00; 8:45 am]

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[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] The Exchange provided the Commission with the five business day notice required by Rule 19b–4(f)(6) of the Act on March 3, 2000.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42800; File No. SR–Phlx–00–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Divide Its Allocation, Evaluation and Securities Committee Into Two Separate Committees: the Equity Allocation, Evaluation and Securities Committee and the Option Allocation, Evaluation and Securities Committee

May 19, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange By-Law, Article X, Section 10–7 and Exchange Rule 500, each concerning its Allocation, Evaluation and Securities Committee ("AESC"), to divide the AESC into two separate committees: the Equity Allocation, Evaluation and Securities Committee and the Option Allocation, Evaluation

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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and Securities Committee. The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed change to By-Law Article X, Section 10–7 is intended to divide the Exchange's current Allocation, Evaluation and Securities Committee into two separate committees, one for equities and one for options. The proposed change to Rule 500 is intended to allow the rules governing the Committees to conform to the new By-Law.

Currently, the AESC is composed of persons who are active on both the equity and options trading floors, persons who conduct a public securities business, one Public Governor, and one Non-Industry Governor, and one Non-Industry Governor.[3] The full AESC is responsible for appointment of specialist units on each floor;[4] approving the transfer of equities and options among specialist units on each floor;[5] allocating both equities and options to applicant specialist units on each floor;[6] evaluating the performance of specialist units on each floor;[7] reallocating equities and options when warranted due to performance issues from one specialist unit to another on each floor;[8] and supervising questions pertaining to securities admitted to dealings on the Exchange.[9]

The proposal to divide the AESC into separate committees—the Equity Allocation, Evaluation and Securities Committee and the Option Allocation, Evaluation and Securities Committee—would serve to provide expertise on each new committee in allocating securities to, and evaluating performance of, specialist units on each trading floor on which the committee members work and have experience.

Currently, AESC members evaluate specialists and vote to allocate securities to equity specialist units and to option specialist units, regardless of whether their particular experience is in equities or options. The proposed new committees would consist, in part, of members with experience specific to the type of security to be allocated and in the type of specialists to be evaluated.

Each committee would consist of nine members. Five persons would be members of both new committees: three off-floor persons who conduct a securities business, one Non-Industry Governor, and one Public Governor. One of the Governors would chair both committees. The remainder of the Equity Allocation, Evaluation and Securities Committee would consist of four persons who are active on the equity trading floor as floor brokers or specialists. The remainder of the Option Allocation, Evaluation and Securities Committee would consist of one person who is active on the options trading floor as a floor broker and three persons who are active on the options trading floor as specialists, registered options traders, or floor brokers.

Each new committee would consist of core members, who would serve a three-year term that would be renewable once, and annual members, who would serve a one-year term that would be renewable twice. The core members of the Equity Allocation, Evaluation and Securities Committee would consist of three persons who conduct a public securities business and two persons who are active on the equity trading floor as specialists or floor brokers. The annual members of the Equity Allocation, Evaluation and Securities Committee would consist of two persons who are active on the equity trading floor as specialists or floor brokers, the Public Governor, and the Non-Industry Governor. The core members of the Option Allocation, Evaluation and Securities Committee would consist of three persons who conduct a public securities business, one person who is active on the options trading floor as a floor broker, and one person who is active on the options trading floor as a specialist, registered options trader, or floor broker. The annual members of the Option Allocation, Evaluation and Security Committee would consist of two persons who are active on the options trading floor as specialists, registered options traders, or floor brokers; the Public Governor; and the Non-Industry Governor.[10]

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act.[11] Specifically, the Phlx believes that the proposal would aid in the perfection of the mechanisms of a free and open market and a national market system, and would protect investors and the public interest, by appointing to an appropriate committee individuals who have specific experience and expertise relating either to equities or to options. By so doing, the two new committees would have greater expertise in allocating securities (either equities or options) and evaluating specialists than the single existing committee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or with such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[3] *See* Exchange Rule 500.
[4] *See* Exchange Rule 501.
[5] *See* Exchange Rule 508.
[6] *See* Exchange Rule 511(b).
[7] *See* Exchange Rules 511(c) to 511(e) and 515.
[8] *See id.*
[9] *See* Exchange Rules 800 to 899.

[10] The original proposal did not include a description of the core members and the annual members of each of the two new committees. However, the text of the proposed new Exchange rules describes the committees and that description was added to the proposal with the consent of the Phlx. Phone conversation between Richard S. Rudolph, Counsel, Phlx, and Michael Gaw, Attorney, Division of Market Regulation, Commission, on April 11, 2000.

[11] 15 U.S.C. 78f(b)(5).

including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of Phlx. All submissions should refer to File No. SR–Phlx–00–28 and should be submitted by June 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13416 Filed 5–26–00; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Electronic Death Registration (EDR) Survey—0960–NEW.

Background Information

In January 1997, the report "Toward an Electronic Death Registration System in the United States: Report of the Steering Committee to Reengineer the Death Registration Process" was prepared by a task force representing federal agencies (the National Center for Health Statistics and the Social Security Administration) and professional organizations representing funeral directors, physicians, medical examiners, coroners, hospitals, medical records professionals, and vital records and statistics officials (NAPHSIS). The committee examined in detail the feasibility of developing electronic death registration in the United States. The conclusion of the report was that the introduction of automated registration processes in the States is a viable means to resolve several historical and continuing problems in the process of death registration.

Death certificates are used in the United States for administrative and public health purposes. For nearly a century the States have maintained centralized vital records agencies to collect, process and archive death certificates. Death records are universally recognized as the primary source of death information, but registration processes remain labor intensive, employ disparate and limited automated procedures, and require several professionals at different locations to complete each of the more than 2.3 million death certificates registered each year.

Even though each State has laws requiring the registration of death records within a specific time period, a significant number of certificates are not appropriately filed, may contain incorrect or inconsistent entries, or are not finalized until many weeks after the death occurred.

The States and federal agencies understand the shortcomings of death registration methods currently practiced in the United Sates. Now that recent advances in computer and network access technology allow for the practical and efficient development and implementation of automated systems to register death information, several registration areas have independently pioneered electronic death registration methods. These different approaches will serve as the basis for developing standardized EDR attributes, methods and processes in order that the States may successfully implement electronic death registration to satisfy administrative and statistical death information needs.

Information Collection

In support of the EDR project, SSA entered into a contract with the National Association for Public Health Statistics and Information Systems to foster the adoption of a standardized form of EDR throughout the country. As the beginning step in the process, this survey is planned to provide a current picture of the readiness of the States to adopt EDR. This will, in turn, assist SSA to direct available funding anticipated in future years to those States that demonstrate sufficient resources, available technical expertise, and the political will and statutory readiness to implement EDR within the contract timeframe. Respondents to the survey will be officials from States, U.S. Territories and the city of New York with the knowledge and expertise to complete the survey. One survey will be sent to each State and territory and New York City.

Number of Respondents: 55.
Frequency of Response: 1.
Average Burden Per Response: 2 hours.
Estimated Annual Burden: 110 hours.

2. 0960–NEW. Information Collections Conducted by Adolescent Employment Readiness Center (AERC) of Children's Research Institute on behalf of SSA.

Background

Opening Doors to the Future for Adolescents with Special Health Care Needs, Executive Order (E.O.) 13078 dated March 13, 1998, Increasing Employment for Adults with Disabilities, directs that a National Task Force be established to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population. E.O. 13078 specifies that the Task Force "evaluate and, where appropriate, coordinate and collaborate on research and demonstration priorities of Task Force member agencies related to employment of adults with disabilities." In conjunction with the Task Force's Committee on Access to Employment and Lifelong Learning, the Subcommittee on Expanding Employment Opportunities for Young People with Disabilities was created.

In acknowledgment of its commitment to serving Supplemental

[12] 17 CFR 200.30–3(a)(12).

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Security Income (SSI) youth with disabilities, SSA awarded a Cooperative Agreement contract in accordance with E.O. 13078 in September of 1999. The project is designed to teach disabled school-age children, who live in an urban setting, that preparation for employment must begin at an early age to have maximum effect. Health care professionals and service providers from partnering agencies will be trained to prepare and implement 1,000 individualized transition plans for SSI recipients in the District of Columbia, between the ages of 11 and 21. Of those SSI youth with transition plans, 150 will be given direct vocational rehabilitation and follow-up services through the AERC, such as career counseling, interest and ability testing, job-seeking skills training, post-secondary education counseling, parent counseling, and mentor programs.

Information Collection

AERC counselors will collect information from project participants through personal interviews. The data will provide information on the need for and use of comprehensive transition services, the utilization and efficiency of transition services, the cost effectiveness of transition services, and the value of program replication. This will contribute significantly to SSA's knowledge about transitioning youth with disabilities to employment and adult activities. Respondents are disabled school-aged SSI recipients in the Washington, D.C. Metropolitan area identified to participate in the project.

Number of Respondents: 1000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 500 hours.

3. 0960–NEW. Medical Parking Permit Application. SSA issues medical parking assignments at SSA-owned and leased facilities to individuals who have a medical condition that meets the criteria for medical parking. In order to issue a medical parking permit, SSA must obtain medical evidence from the applicant's physician. SSA uses the information to determine whether the individual qualifies for a medical parking permit and to issue the permit. The respondents are physicians of applicants for medical parking permits.

Physician

Number of Respondents: 144.
Frequency of Response: 1.
Average Burden Per Response: 1 hour.
Estimated Annual Burden: 144 hours.

4. 0960–NEW. Authorization for Source to Release Information to the Social Security Administration (SSA). SSA must obtain sufficient medical evidence to make eligibility determinations for Social Security disability benefits and SSI payments. For SSA to obtain medical evidence, an applicant must authorize his or her medical source(s) to release the information to SSA. The applicant may use one of the forms SSA–827, SSA–827–OP1 or SSA–827–OP2 to provide consent for the release of information. Generally, the State Disability Determination Services completes the form(s), based on information provided by the applicant, and sends the form(s) to the designated medical source(s).

Number of Respondents: 3,853,928.
Frequency of Response (Average per case): 4.
Average Burden Per Response: 3 minutes.
Estimated Annual Burden: 770,786 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. 0960–NEW. Student Statement Regarding School Attendance. The information on Form SSA–1372–TEST is needed to determine whether children of an insured worker are eligible for benefits as a student. SSA will conduct a limited trial of the revised SSA–1372 (Student Statement Regarding School Attendance) designed as SSA–1372–TEST. This limited test will study the efficacy and usability of the new format. Results of the testing will formulate SSA's decision to reject, modify or institute the revised form. The respondents are student claimants for Social Security benefits and their respective schools.

Number of respondents: 2,000.
Number of Response: 1.
Average burden per response: 10.
Estimated Annual Burden: 333.

(SSA Address): Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235, (OMB Address): Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

Dated: May 23, 2000.

Nicholas E. Tagliareni

Director, Center for Publications Management, Social Security Administration.

[FR Doc. 00–13409 Filed 5–26–00; 8:45 am]

BILLING CODE 4190–01–P

DEPARTMENT OF STATE

[Public Notice 3319]

Culturally Significant Objects Imported for Exhibition Determinations: "Distant Shores: The Odyssey of Rockwell Kent"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Distant Shores: The Odyssey of Rockwell Kent" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Norman Rockwell Museum in Stockbridge, MA, from June 24, 2000 through October 29, 2000, the Appleton Museum of Art in Ocala, FL from November 18, 2000 through January 28, 2001, the Terra Museum of American Art in Chicago, IL from February 24, 2001 through May 20, 2001 and the Anchorage Museum of History and Art in Anchorage, AK from June 17, 2001 through September 23, 2001 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: May 19, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–13451 Filed 5–26–00; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–186]

WTO Consultations Regarding Section 337 of the Tariff Act of 1930

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the European Communities ("EC") has requested consultations with the United States under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and the related rules of practice and procedure of the International Trade Commission contained in chapter II of Title 19 of the U.S. Code of Federal Regulations. The EC alleges that section 337 is inconsistent with Article III of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and Articles 2 (in conjunction with Article 2 of the Paris Convention), 3, 9 (in conjunction with Article 5 of the Berne Convention), 27, 41, 42, 49, 50, and 51 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"). A first round of consultations with the EC was held on February 28, 2000, in Geneva, Switzerland. The Government of Canada and the Government of Japan participated as third parties. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before June 30 to be assured of timely consideration by USTR.

ADDRESSES: Comments may be submitted to the Monitoring and Enforcement Unit, Office of the General Counsel, Attn: Section 337 Dispute, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508, (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: Rhonda K. Schnare, Associate General Counsel, Office of the General Counsel, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested by the EC concerning whether section 337 of the Tariff Act of 1930 is inconsistent with the United States' obligations under GATT 1994 and the TRIPS Agreement. The EC has not requested the establishment of a dispute settlement panel. If the EC decides to proceed to a dispute settlement panel, under normal circumatances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the European Communities

Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) addresses unfair methods of competition and unfair acts in the importation and sale of products in the United States, the threat or effect of which is to destroy or substantially injure a domestic industry, prevent the establishment of such an industry, or restrain or monopolize trade and commerce in the United States. However, in cases of alleged infringement of a valid and enforcable U.S. patent, registered trademark, copyright, or mask work, there is no injury requirement.

In 1989, a GATT panel established at the request of the EC concluded that section 337 was inconsistent with GATT Article III. Subsequently, section 337 was amended by the URAA to bring it into conformity with the findings of the GATT panel report.

In January 2000, the EC requested consultations with the United States under certain WTO agreements regarding section 337. The EC's consultation request alleged that the amendments to section 337 failed to bring it into compliance with the GATT and that section 337 continues to provide less favorable treatment to imported goods than to domestic goods in violation of GATT Article III. The EC's consultation request also alleged that section 337 is inconsistent with Articles 2 (in conjunction with Article 2 of the Paris Convention), 3, 9 (in conjunction with Article 5 of the Berne Convention), 27, 41, 42, 49, 50, and 51 of the TRIPS Agreement. A first round of consultations with the EC was held in February 2000 in Geneva, Switzerland. The EC has not requested the establishment of a dispute settlement panel, but maintains the right to do so.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–186, Section 337 Dispute) may be made by calling Brenda Webb, (202) 395–

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6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–13419 Filed 5–26–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–192]

WTO Dispute Settlement Proceeding Regarding United States—Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of Pakistan's request for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO"). Pakistan challenges the United States' action of imposing a transitional safeguard on imports of combed cotton yarn from Pakistan. In this dispute, Pakistan alleges that ths safeguard measure is inconsistent with certain ogligations under the WTO Agreement on Textiles and Clothing. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by July 7, 2000, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Combed Cotton Yarn, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC, 20508.

FOR FURTHER INFORMATION CONTACT: Demetrios Marantis, Associate General Counsel at (202) 395–3581 or Caroyl Miller, Deputy Chief Textile Negotiator at 395–3026.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that Pakistan has submitted a request for the establishment of a WTO dispute settlement panel to examine the U.S. transitional safeguard measure on imports of combed cotton yarn from Pakistan. The WTO Dispute Settlement Body ("DSB") is expected to establish a panel for this purpose in June 2000.

Major Issues Raised and Legal Basis of the Complaint

Pakistan challenges the transitional safeguard measure the United States imposed on March 17, 1999, on imports of combed cotton yarn from Pakistan. In its request for a panel to examine the measure, Pakistan alleges that the U.S. transitional safeguard measure is inconsistent with Article 2.4 of the WTO Agreement on Textiles and Clothing ("ATC") and is not justified by Article 6 of the ATC. Pakistan further maintains that the U.S. measure does not meet the requirements for transitional safeguards set out in paragraphs 2, 3, 4, and 7 of Article 6 of the ATC because the United States allegedly:

- Made its determination of serious damage, or actual threat thereof, to its domestic industry producing like and/or directly competitive products, by (a) excluding from its determination a significant proportion of the production of like products by its domestic industry and (b) without taking into account all factors relevant to the state of its domestic industry;
- Failed to demonstrate that the alleged serious damage, or actual threat thereof to the domestic industry was being caused by increased imports;
- Attributed the alleged damage, or actual threat thereof, to its domestic industry solely to imports from Pakistan to the exclusion of imports from other sources, including unrestrained sources;
- Based its determination of serious damage, or actual threat thereof, on a comparison of data for an eight-month period in 1997 and 1998, which is in the view of Pakistan a period too short to determine whether the alleged damage, or actual threat thereof, was serious; and
- Relied on partial and unverified information.

The United States and Pakistan consulted on this issue on February 10 and 11, 1999, but were unable to reach a mutually satisfactory solution to the matter. The WTO Textile Monitoring Body ("TMB") reviewed the U.S. measure on April 29, 1999, but determined in its report that "it was not in a position to assess without doubt whether or not serious damage had been caused to the US' industry producing products like and/or directly competitive with combed cotton yarn * * *" (G/TMB/18). The TMB therefore recommended that the United States rescind the measure. On May 27, 1999, the United States informed the TMB that it was unable to conform to this recommendation. The TMB subsequently reviewed and reaffirmed its recommendation, and in an August 6, 1999, letter to the TMB the United States renewed its determination to retain the temporary safeguard measure. Pakistan considers this matter to be unresolved and that the parties have—through the TMB—satisfied the consultation requirement of Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputers ("DSU"). Accordingly, on April 3, 2000, Pakistan requested the establishment of a dispute settlement panel pursuant to Article 8:10 of the ATC, Article XXIII:2 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 6 of the DSU.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy. Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–192, "Combed Cotton Yarn—Pakistan") may be made by calling Brenda Webb, (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–13427 Filed 5–26–00; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending May 19, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application

Docket Number: OST–2000–7385.

Date Filed: May 17, 2000.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 EUR 0309 dated 2 May 2000 r1–r17;

PTC2 EUR 0310 dated 2 May 2000 r18;

PTC2 EUR 0311 dated 2 May 2000 r19–r20;

PTC2 EUR 0312 dated 2 May 2000 r21–r22;

Within Europe Resolutions r1–r22;

Minutes—PTC2 EUR 0308 dated 28 April 2000;

Tables—None;

Intended effective date: 15 June, 1 August, 1 September, 1 October 2000.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–13360 Filed 5–26–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Meeting

AGENCY: Office of the Secretary, DOT

ACTION: Notice of meeting.

SUMMARY: The US Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on Friday, June 16, 2000, at 10 a.m., at the US Department of Transportation, Nassif Building, room 10214, 400 Seventh Street, SW., Washington, DC 20590. The room is located on the 10th floor.

TYPE OF MEETING: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

POINT OF CONTACT: Jean B. Lenderking, Corporate Human Resource Leadership Division, M–13, US Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 7411, Washington, DC 20590, (202) 366–8085.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to present the draft DOT Labor-Relations Strategic Plan; brief the members on DOT Labor-Management report to OMB/OPM; and welcome the American Federation of State, County and Municipal Employees to membership on the Council.

Public Participation: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Ms. Jean Lenderking at the address shown above. Comments should be received by June 5, 2000 in order to be considered at the June 16th meeting.

Issued in Washington, D.C., on May 22, 2000.

For the U.S. Department of Transportation.

John E. Budnik,

Acting Director, Office of Human Resource Management.

[FR Doc. 00–13359 Filed 5–26–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–19]

Petitions for Exemption: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 19, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____ 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

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Issued in Washington, DC, on May 23, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No: 29986
Petitioner: LifePort, Inc.
Regulations Affected: 14 CFR 25.785(b) and 25.562.
Description of Relief Sought: To permit installation of a medical stretcher for carriage of non-ambulatory persons on a Cessna Citation 560XL airplane.

Docket No.: 29981.
Petitioner: Delta Air Lines, Inc.
Regulations Affected: 14 CFR § 25.857(c), 25.858, 121.314(c).
Description of Relief Sought: To allow Delta Air Lines to operate, until September 20, 2001, nine L–1011 airplanes beyond the cargo compartment modification deadline of March 19, 2001.

Docket No: 29941.
Petitioner: Hawaiian Airlines, Inc.
Regulations Affected: 14 CFR 25.857(c), 25.858, 121.314(c).
Description of Relief Sought: To allow Hawaiian Airlines to operate, until May 15, 2001, one DC10–10 airplane beyond the cargo compartment modification deadline of March 20, 2001.

Docket No: 28257.
Petitioner: Flight Structures.
Regulations Affected: 14 CFR 25.813(b), 25.857(e), 25.785(d), 25.1447(c)(3)(ii).
Description of Relief Sought: To allow carriage of one additional supernumerary increasing the total occupants to 9 on the Airbus Model A300–B4–103, –203 series airplanes.

Docket No: 29923.
Petitioner: Regional Airline Association.
Section of the FAR Affected: 14 CFR paragraphs 2 and 3 of appendix H to part 121.
Description of Relief Sought: To permit RAA–member airline to qualify pilots for initial or upgrade pilot-in-command simulation training and checking when the pilots are not currently serving as second-in-command in airplanes of the same group.

Dispositions of Petitions

Docket No.: 24052.
Petitioner: U.S. Navy Flight Demonstration Squadron a.k.a. The Blue Angels.
Section of the FAR Affected: 14 CFR 91.117(a) and (b), 91.119(c), and 91.303(c), (d), and (e).
Description of Relief Sought/Disposition: To permit the Blue Angels to conduct demonstration rehearsals involving low-level, high-speed, and acrobatic flight, subject to certain conditions and limitations. *GRANT, 3/15/00, Exemption No. 4504F.*

Docket No.: 28317.
Petitioner: Eagle Canyon Airlines, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit ECA to operate certain Cessna aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *GRANT, 3/15/00, Exemption No. 7147.*

Docket No.: 29903.
Petitioner: Bain Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit BAI to operate certain Cessna aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *GRANT, 3/15/00, Exemption No. 7146.*

Docket No.: 29952.
Petitioner: Frontier Flying Service, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Frontier to operate certain Cessna aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *GRANT, 3/9/00, Exemption No. 7144.*

Docket No.: 28174.
Petitioner: Air Carriage.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Air Carriage to operate certain Cessna aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *GRANT, 3/9/00 Exemption No. 6108A.*

Docket No.: 28787.
Petitioner: Ameriflight, Inc.
Section of the FAR Affected: 14 CFR 61.5(a) and (c) and 91.203(a) and (b).
Description of Relief Sought/Disposition: To permit Ameriflight to operate temporarily its aircraft without those aircraft's airworthiness and registration certificates onboard (and properly displayed in the case of airworthiness certificates) while obtaining replacements, subject to certain conditions and limitations. This exemption also permits Ameriflight's pilots to operate temporarily Ameriflight's aircraft without those pilots having their pilot and medical certificates in their personal possession, subject to certain conditions and limitations. *GRANT, 3/3/00, Exemption No. 7143.*

[FR Doc. 00–13369 Filed 5–26–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1040–ES, 1040–ES (NR), and 1040–ES (Espanol)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning 1040–ES, Estimated Tax for Individuals, 1040–ES (NR), U.S. Estimated Tax for Nonresident Alien Individuals, and 1040–ES (Espanol), Contribuciones Federales Estimadas Del Trabajo Por Cuenta Propia Y Sobre el Empleo De Empleados Domesticos—Puerto Rico.

DATES: Written comments should be received on or before July 31, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: 1040–ES, Estimated Tax for Individuals, 1040–ES (NR), U.S. Estimated Tax for Nonresident Alien Individuals, and 1040–ES (Espanol), Contribuciones Federales Estimadas Del Trabajo Por Cuenta Propia Y Sobre el Empleo De Empleados Domesticos—Puerto Rico.

OMB Number: 1545–0087.

Form Number: 1040–ES, 1040–ES (NR), and 1040–ES (Espanol).

Abstract: Form 1040–ES is used by U.S citizens and resident aliens to make estimated tax payment of income (and self-employment) tax due in excess of tax withheld. Form 1040–ES(NR) is used by nonresident aliens to pay any income tax due in excess of tax withheld. Form 1040–ES (Espanol) is printed in Spanish for use in Puerto Rico and includes payment vouchers for payment of self-employment tax on a current basis.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 40,991,991.

Estimated Time Per Response: 2 hours, 19 minutes.

Estimated Total Annual Burden Hours: 94,589,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 16, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–13327 Filed 5–26–00; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–IC–DISC, Schedules K and P

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120-IC-DISC, Interest Charge Domestic International Sales Corporation Return, Schedule K (Form 1120–IC–DISC), Shareholder's Statement of IC–DISC Distributions, and Schedule P (Form 1120–IC–DISC), Intercompany Transfer Price or Commission.

DATES: Written comments should be received on or before July 31, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 1120–IC–DISC, Interest Charge Domestic International Sales Corporation Return, Schedule K (Form 1120–IC–DISC), Shareholder's Statement of IC–DISC Distributions, and Schedule P (Form 1120–IC–DISC), Intercompany Transfer Price or Commission.

OMB Number: 1545–0938.

Form Numbers: 1120–IC–DISC, Schedules K and P.

Abstract: U.S. corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120–IC–DISC to report their income and deductions. The IC–DISC is not taxed, but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule K (Form 1120–IC–DISC) is used to report income to shareholders. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers.

Current Actions: Questions 2, 7, and 8 on Form 1120–IC–DISC (Schedule O) were deleted. The three deleted questions are a part of the new Schedule N (Form 1120), Foreign Operations of U.S. Corporations, that corporations will attach to their Form 1120–IC–DISC for the 2000 tax year.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 191 hours, 28 minutes.

Estimated Total Annual Burden Hours: 229,747.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–13336 Filed 5–26–00; 8:45 am]
BILLING CODE 4830–01–U

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120S, Schedule D, and Schedule K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120S, U.S. Income Tax Return for an S Corporation, Schedule D (Form 1120S), Capital Gains and Losses and Built-In Gains, and Schedule K–1 (Form 1120S), Shareholder's Share of Income, Credits, Deductions, etc.

DATES: Written comments should be received on or before July 31, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 1120S, U.S. Income Tax Return for an S

Corporation, Schedule D (Form 1120S), Capital Gains and Losses and Built-In Gains, and Schedule K–1 (Form 1120S), Shareholder's Share of Income, Credits, Deductions, etc.

OMB Number: 1545–0130.

Form Number: Form 1120S, Schedule D, and Schedule K–1.

Abstract: Form 1120S, Schedule D (Form 1120S), and Schedule

K–1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule D is used to report gain or loss from sales or exchanges of capital assets and the computation of tax on certain capital gains imposed by Internal Revenue Code section 1374. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 1,880,000.

Estimated Time Per Respondent: 248 hours, 12 minutes.

Estimated Total Annual Burden Hours: 466,602,460.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 12, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–13337 Filed 5–26–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8613

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8613, Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

DATES: Written comments should be received on or before July 31, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

OMB Number: 1545–1016.

Form Number: 8613.

Abstract: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under Internal Revenue Code section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business of other for-profit organizations.

Estimated Number of Respondents: 1,500

Estimated Time Per Respondent: 11 hr., 53 min.

Estimated Total Annual Burden Hours: 17,835

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 23, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–13458 Filed 5–26–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0001]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's eligibility, dependency, and income, as appropriate, for compensation and/or pension benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 31, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0001" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veteran's Application for Compensation and/or Pension, VA Form 21–526.

OMB Control Number: 2900–0001.

Type of Review: Revision of a currently approved collection.

Abstract: This form is used as an original application for veterans to apply for compensation and/or pension benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 592,500 hours.

Estimated Average Burden Per Respondent: 1 hour and 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 395,000.

Dated: March 17, 2000.

By direction of the Secretary.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–13396 Filed 5–26–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel; Republication

Editorial Note: FR Doc. 00–12867 was originally published in the issue of Tuesday, May 23, 2000. The corrected document is republished in its entirety due to the omission of text.

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudictions and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers

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deleted, may be obtained by contacting the VA official named above.

New Precedent Opinions

VAOPGCPREC 01–2000

Question Presented

a. Is the last sentence of 38 CFR 3.272 (h) consistent with 38 U.S.C. 1503(a)(3) in providing that expenses of a veterans' last illness paid by a surviving spouse subsequent to the veteran's death, but prior to the date of entitlement to improved death pension, may not be excluded form countable income for the purpose of determining death pension entitlement?

b. If so: (1) What is the basis for the differing treatment accorded by section 3.272(h) to expenses paid prior to the date of death and those paid after the date of death but before the date of entitlement; and, (2) does Congress' intent is enacting Pub. L. No. 98–369 to limit retroactive payments of pension in the case of claimants who file claims more than 45 days after the date of a veteran's death provide an adequate basis for prohibiting consideration of expenses in determining prospective entitlement for the period following the date of claim?

Held

a. The last sentence of 38 CFR 3.272(h) is inconsistent with 38 U.S.C. 1503(a)(3) in providing that expenses of a veteran's last illness paid by the veteran's surviving spouse subsequent to the veteran's death, but prior to the date of the surviving spouse's entitlement to death pension, may not be deducted from countable income for the purpose of determining entitlement to improved death pension. VA may not rely upon the last sentence of 38 CFR 3.272(h) as a basis for denying a death pension claim or reducing the amount of benefits payable.

b. (1) There is no basis for the differing treatment currently accorded under 38 CFR 3.272(h) for expenses of a veteran's last illness paid prior to the date of a veteran's death and those paid after the date of death but before the date of a surviving spouse's entitlement to death pension.

(2) Congress' intent in enacting Pub. L. No. 98–369 to limit retroactive payments of pension in the case of claimants who file claims more than 45 days after the date of a veteran's death does not provide an adequate basis for prohibiting consideration of expenses of a veteran's last illness in determining prospective entitlement for the period following the date of a claim for improved death pension.

Effective Date: March 28, 2000

VAOPGCPREC 02–2000

Question Presented

May the Department of Veterans Affairs (VA) through rulemaking authorize special monthly compensation under 38 U.S.C. 1114(k) (k-rate SMC) for a service-connected mastectomy?

Held

Section 1114(k) of title 38, United States Code, authorizes a special rate of compensation for the disabilities specified in that provision. Neither section 1114(k) nor VA's general rulemaking authority, 38 U.S.C. 501(a), delegates to VA authority to recognize by rulemaking additional injuries or conditions not specified in section 1114(k) "for which the special rate of compensation will be paid. By authorizing that rate of compensation for anatomical loss or loss of use of one or more creative organs," Congress intended to compensate for loss of a procreative, or reproductive, organ, which does not include the breast. Therefore, VA may not by rulemaking authorize special monthly compensation under section 1114(k) for a service-connected mastectomy.

Effective Date: April 3, 2000

VAOPGCPREC 03–2000

Question Presented

a. When the Department of Veterans Affairs (VA) issues an amendment to a provision of its rating schedule while a claim for an increased rating is pending, what is the proper analysis for determining whether, and to what extent, the pending claim is governed by the prior rating-schedule provision or the revised rating-schedule provision?

b. When the Board of Veterans' Appeals (Board) addresses an increased-rating claim involving a disability for which the rating criteria have changed during the pendency of the appeal, should the Board make separate findings of fact and conclusions of law, and provide reasons or bases in its decision, with respect to application of both the old and the new rating criteria?

c. Where there has been a change in rating criteria during the pendency of an appeal, should all evidence of record be considered when determining whether an increased rating is warranted, or should only the evidence which pre-dates or post-dates the effective date of the change in law be taken into consideration when addressing the rating prior to and after the change in law, respectively?

Held

a. When a provision of the Department of Veterans Affairs (VA) rating schedule is amended while a claim for an increased rating under that provision is pending, the Board should first determine whether the amended regulation is more favorable to the claimant. It may be necessary for the Board to separately apply the pre-amendment and post-amendment version of the regulation to the facts of the case in order to determine which provision is more favorable, unless it is clear from a facial comparison of both versions that one version is more favorable. If the amended regulation is more favorable to the claimant, then the retroactive reach of the regulation is governed by 38 U.S.C. 5110(g), which provides that VA may, if warranted by the facts of the claim, award an increased rating based on a change in law retroactive to, but no earlier than, the effective date of the change. Accordingly, the Board should apply the amended regulation to rate the veteran's disability for periods from and after the effective date of the amendment. The Board should apply the prior version of the regulation to rate the veteran's disability for any period preceding the effective date of the amendment.

b. Pursuant to 38 U.S.C. 7104(d)(1), decisions of the Board of Veterans' Appeals (Board) must contain separate findings, conclusions, and statements of the reasons or bases therefore, with respect to findings and conclusions on issues "material" to the Board's decision. Determinations of which version of an amended rating-schedule provision is more favorable to a claimant and rating of a disability using the rating criteria applicable for a particular period are issues material to a claim for an increased rating. Accordingly, the Board would be required to comply with 38 U.S.C. 7104(d)(1) in making those determinations.

c. Pursuant to 38 U.S.C. 7104(a), the Board's decisions must be based on consideration of all evidence and material of record, rather than merely evidence which pre-dates or post-dates a pertinent change to VA's rating schedule. In determining the extent of disability existing prior to a regulatory change, the Board may not simply ignore documents post-dating the regulatory change, since such documents could provide evidence that an increase in disability occurred at an earlier time. Likewise, in determining the level of disability existing subsequent to a regulatory change, the Board may not simply ignore evidence pre-dating the change, since such evidence may bear upon the level of disability existing subsequently.

Effective Date: April 10, 2000.

VAOPGCPREC 04–2000

Question Presented

A. Do provisions of paragraph 7.21 in Veterans Benefits Administration (VBA) Adjudication Procedure Manual M21–1 (Manual M21–1), Part VI, pertaining to claims involving asbestos-related diseases constitute regulations which are binding on the Department of Veterans Affairs (VA)?

B. Is medical-nexus evidence required to establish a well-grounded claim for service connection for an asbestos-related disease referenced in paragraph 7.21 of VBA Manual M21–1, Part VI, and allegedly due to in-service asbestos exposure?

Held

A. (1) Paragraph 7.21a., b., c., and d.(3) of Veterans Benefits Administration Adjudication Procedure Manual M21–1, Part VI, and the fourth and fifth sentences of paragraph 7.21d.(1) of that manual are not substantive in nature. However, relevant factors discussed in paragraphs 7.21a., b., and c. must be considered and addressed by the Board in assessing the evidence regarding an asbestos-related claim in order to fulfill the Board's obligation under 38 U.S.C. 7104(d)(1) to provide an adequate statement of the reasons and bases for a decision.

(2) The first three sentences of paragraph 7.21d (1) of Veterans Benefits Administration Adjudication Procedure Manual M21–1, Part VI, establish a procedure which, in light of current case law, adjudicators are required to follow in claims involving asbestos-related diseases. However, to the extent that paragraph 7.21d(1) of that manual establishes claim-development procedures, those procedures are only applicable in the case of a well-grounded claim.

(3) Paragraph 7.21d.(2) of Veterans Benefits Administration Adjudication Procedure Manual M21–1, Part VI, should be regarded as substantive. However, that paragraph should not be treated as binding to the extent it may adversely affect a claimant by requiring that a particular asbestos-related disease be rated by analogy to a specified condition, where a rating more favorable to the claimant would be obtained by reference to current rating criteria for the particular disease in VA's rating schedule. Similarly, where the current rating schedule contains no criteria specific to the asbestos-related disease, paragraph 7.21d.(2) should be treated as binding to the extent it would adversely affect a claimant by requiring that asbestos-related disease be rated by analogy to a particular condition, where a rating more favorable to the claimant would be obtained by rating by analogy to another disease pursuant to 38 CFR 4.20.

B. Medical-nexus evidence is required to establish a well-grounded claim for service connection for an asbestos-related disease related disease referenced in paragraph 7.21 of Veterans Benefits Administration Adjudication Procedure Manual M21–1, Part VI, and allegedly due to in-service asbestos exposure.

Effective Date: April 13, 2000.

Withdrawn Precedent Opinion

VAOPGCPREC 13–94

"* * * G.C. Prec. 13–94 [VAOPGCPREC 13–94] held the following:

Service connection may not be established for a disability incurred following the date on which a veteran was discharged from active-duty credit granted by a Board for Correction of Military Records to a date after the date on which injury occurred, because the veteran was not engaged in active service at that time."

VAOPGCPREC 13–94 was overruled by *Spencer* v. *West*, 2000 WL 266117 (Vet. App., March 13, 2000). Accordingly, VAOPGCPREC 13–94 is hereby withdrawn.

Effective Date: March 13, 2000.

By Direction of the Secretary.

Leigh A. Bradley,

General Counsel.

Editorial Note: FR Doc. 00–12867 was originally published in the issue of Tuesday, May 23, 2000. The corrected document is republished in its entirety due to the omission of text.

[FR Doc. 00–12867 Filed 5–22–00 and 5–26–00; 8:45 am]

BILLING CODE 8320–01–M and 1505–01–D

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Corrections

Federal Register
Vol. 65, No. 104
Tuesday, May 30, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2930

[WO–250–1220–PA–24 1A]

RIN 1004–AD25

Permits for Recreation on Public Lands

Correction

In Proposed rule document 00–12124 beginning on page 31234 in the issue of Tuesday, May 16, 2000, make the following correction:

§2932.11 [Corrected]

On page 31241, in the first column in §2932.11, in paragraph (a), "§2932.1" should read "§2932.12".

[FR Doc. C0–12124 Filed 5–26–00; 8:45 am]
BILLING CODE 1505–01–D

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 716

Privacy of Consumer Financial Information; Requirements for Insurance

Correction

In rule document 00–12014, beginning on page 31722, in the issue of Thursday, May 18, 2000, make the following correction:

On page 31740, in the first column, the part heading, "**PART 16**" should read "**PART 716**".

[FR Doc. C0–12014 Filed 5–26–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8880]

RIN 1545–AU46

Relief From Disqualification for Plans Accepting Rollovers

Correction

In rule document 00–9815, beginning on page 21312, in the issue of Friday, April 21, 2000, make the following correction:

§ 1.401(a)(31)–1 [Corrected]

On page 21314, in the second column, in § 1.401(a)(31)–1, in paragraph (c) Example 1.(i), in the seventh line. "700 ½" should read "70 ½".

[FR Doc. C0–9815 Filed 5–26–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
May 30, 2000

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 158
Passenger Facility Charges; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. FAA–2000–7402; Amendment No. 158–2]

RIN 2120–AH05

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends regulations pertaining to passenger facility charges (PFC's) to incorporate administrative and statutory changes in the procedures to establish PFC's based on recent enactments by Congress and records of decision by the FAA. This action is issued as a final rule without prior notice and comment because the changes are administrative and/or required by statute. Also the immediate adoption of these regulations is in the public interest and is necessary for public safety.

DATES: Effective June 29, 2000.

FOR FURTHER INFORMATION CONTACT: Eric Gabler, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone: (202) 267–3845.

SUPPLEMENTARY INFORMATION:

Final Rule Procedure

This final rule amends 14 CFR part 158 to incorporate administrative and statutory changes to the PFC program. The FAA has determined that this action can be issued as a final rule without prior public notice and comment because the amendments are rules of agency procedure required by statute. Further, the FAA has found prior public notice and comment on this action is contrary to the public interest. The PFC's approved pursuant to this action are needed without delay to provide funds for public safety projects, security projects, and other projects of public benefit.

While this rule is effective 30 days after publication, applications for PFC authority may be submitted immediately. Also, the FAA anticipates issuing guidance to assist public agencies applying for authority to impose PFC's.

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone (703) 321–3339), and/or the Government Printing Office's electronic bulletin board service (telephone (202) 512–1661).

Internet users may access recently published rulemaking documents through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/nara*.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The PFC program was established by the Aviation Safety and Capacity Expansion Act of 1990. The Act was enacted on November 5, 1990 and is codified at 49 U.S.C. 40117. On May 29, 1991, the Department of Transportation adopted new regulations to establish the PFC program, under which the FAA Administrator, under authority delegated by the Secretary of Transportation, could authorize a public agency to impose a PFC of $1, $2, or $3 per enplaned passenger at a commercial service airport the public agency controls. The proceeds from such PFC's are to be used to finance FAA-approved eligible airport-related projects that preserve or enhance safety, security, or capacity of the national airport system; reduce noise from an airport that is part of such system; or furnish opportunities for enhanced competition between or among air carriers. The rule, which added a new part 158, became effective on June 28, 1991. As of March 1, 2000, 825 PFC applications had been approved or partially approved for 314 airport locations, with all but one airport location collecting at the $3 PFC level.

On April 5, 2000, President Clinton signed into law the "Wendell H. Ford Aviation Investment and Reform Act for the 21st Century" (AIR 21). This law made several modifications to the PFC program, including allowing a public agency to apply to the FAA to increase the PFC level that it may charge to $4 or $4.50.

These changes, as well as those administrative and statutory changes required by the Federal Aviation Administration Authorization Act of 1994 (1994 Act), the Federal Aviation Reauthorization Act of 1996 (1996 Act), and the recodification of the Federal Aviation Act of 1958 are adopted in part 158 by this action.

Section-by-Section Analysis

Subpart A—General

Section 158.3 Definitions

The following definitions are added or revised:

Allowable cost. Prior to April 5, 2000, allowable cost was defined to include only those costs incurred on or after November 5, 1990. AIR 21 expands this definition to include costs of terminal development referred to in § 158.15(b)(3) but incurred after August 1, 1986, provided the development is at an airport smaller than a medium hub airport and the total passenger boardings at that airport declined by at least 16 percent between calendar year 1989 and calendar year 1997.

Commercial service airport. This section is amended by removing the citation "49 U.S.C. app. 2202(17)."

Covered airport. Before PFC's are approved for collection, AIR 21 requires a "covered airport" to file a competition plan. AIR 21 defines "covered airport" as a medium or large hub airport at which one or two air carriers control more than 50 percent of the passenger boardings.

Frequent flier award coupon. The 1994 Act prohibits collection of a PFC from a passenger who obtained the ticket for air transportation with a frequent flier award coupon. Frequent flier award coupon means a zero-fare award of air transportation provided by an air carrier to a passenger in exchange for accumulated travel mileage credits in a customer loyalty program, but does not include the redemption of accumulated credits for additional or upgraded service on trips for which the passenger has paid a published fare. "Two-for-the-price-of-one" and similar marketing programs, and air transportation purchased for the passenger by other parties are not included in the definition. Since 1994, the FAA has incorporated the definition of frequent flier award coupon in its individual PFC records of decision.

Medium or large hub airport. Since the enactment of the PFC program, there have been additional conditions on approval of PFC's at commercial service airports if the airports have more than 0.25 percent of the total number of passenger boardings at all such airports in the U.S. for the prior calendar year. The FAA consistently has referred to such an airport with more than 0.25 percent and up to 1 percent of the total number of passenger boardings to be a "medium hub" airport, and an airport with more than 1 percent of the total number of passenger boardings to be a "large hub" airport. The FAA is replacing references to an airport with more than 0.25 percent of commercial service enplanements in the regulation with the term "medium or large hub."

Nonrevenue passenger. The 1994 Act prohibits collection of a PFC from a nonrevenue passenger. Nonrevenue passenger means a passenger receiving air transportation from an air carrier for which remuneration is not received by the air carrier. Air carrier employees or others receiving air transportation, for which token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charged also are considered nonrevenue passengers. Since 1994, the FAA has incorporated the definition of nonrevenue passenger in its individual PFC records of decision.

Public agency. This definition has been expanded to allow a private sponsor of an airport participating in the Pilot Program for Private Airport Ownership to apply for PFC authority under the terms and conditions that apply to a public agency. The Pilot Program on Private Ownership of Airports was established by Congress in 1996 and directs the FAA to allow program participants to apply for PFC authority.

Section 158.5 Authority To Impose PFC's

The FAA is amending this section to include PFC levels of $4 and $4.50, as authorized by AIR 21, in addition to the pre-existing levels of $1, $2, and $3.

Section 158.7 Exclusivity of Authority

AIR 21 clarifies and strengthens the independent status of a public agency's PFC authority relative to State or other political subdivisions. This section is amended in accordance with the specific terms of AIR 21.

Section 158.9 Limitations

The following statutory limitations are added to the previously-listed prohibitions: (1) Collection of a PFC from nonrevenue passengers; (2) collection of a PFC from a passenger who obtained the ticket for air transportation with a frequent flier award coupon; (3) imposition of a fee on passengers on flights, including flight segments, between 2 or more points in Hawaii; or (4) imposition of a fee on passengers on an aircraft having a seating capacity of less than 60 passengers in Alaska.

Section 158.11 Public Agency Request Not To Require Collection of PFC's by a Class of Air Carriers or Foreign Air Carriers or for Service to Isolated Communities

This section is amended to include new provisions of AIR 21 that allow a public agency to request that certain classes or categories of air transportation not collect the PFC. These provisions include passengers enplaned on a flight to an airport receiving scheduled passenger service and having fewer than 2,500 passenger boardings each year; and to an airport in a community that has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State. The public agency may request any or all of these exclusions.

Section 158.15 Project Eligibility at PFC Levels of $1, $2, or $3

This section is revised to explicitly include the 1994 statutory requirement that all proposed projects be adequately justified to receive PFC funding—a standard the FAA has been applying since the implementation of part 158 in 1991 in PFC records of decision. Also, AIR 21 makes other revisions necessary in this section. AIR 21 creates a special category of project eligibility for terminal development work associated with construction of gates and related areas if the project will enable additional air service by an air carrier with less than 50 percent of annual passenger boardings at an airport.

Section 158.17 Project Eligibility at PFC Levels of $4 or $4.50

Section 158.17 is added to provide eligibility requirements for PFC's at the $4 or $4.50 level. Applicants requesting authority to impose PFC's at the $4 or $4.50 level must meet these eligibility requirements in addition to those in section § 158.15.

AIR 21 allows a project to be funded at a $4 or $4.50 PFC level if the project cannot be paid for from funds reasonably expected to be available through programs referred to in 49 U.S.C. 48103 (the Airport Improvement Program (AIP)).

Section 158.17 also incorporates the statutory provision that conditions funding of a surface transportation or terminal project at the $4 or $4.50 level on a finding that the public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates. The FAA will use financial and planning data, information in the PFC application, and information on funding availability under AIP, to determine eligibility.

Also, AIR 21 establishes an additional requirement for projects at medium and large hub airports. In particular, a project for a medium or large airport is eligible for PFC funding at levels of $4 or $4.50, only if the project will make a significant contribution to: improving air safety and security; increasing competition among air carriers; reducing current or anticipated congestion; or reducing the impact of aviation noise on people living near the airport.

The FAA will develop specific criteria for the "significant contribution" requirement through individual PFC records of decision. As with prior records of decision, the FAA will consider all relevant factors, including but not limited to the following in assessing whether the significant contribution requirement has been met:

Safety and security—Does the project advance airport security and/or safety? Projects that address security and safety requirements of 14 CFR part 107 and part 139, respectively, are usually given highest priority for AIP discretionary funds.

Capacity—Does the project support or is it part of a capacity project to which the FAA has allocated Federal resources or that would qualify for such resources? For example, is the project included in an AIP letter of intent or does it satisfy the FAA's benefit-cost criteria for large AIP discretionary investments? Has the project been identified in an FAA Airport Capacity Enhancement Plan? Does the project alleviate a constraint on airport growth or service?

Noise—Does the project affect the noise-impacted areas around the airport? Historically, projects addressing noisier areas than projects that would address less noisy areas, all other factors being equal, have been given higher priority for AIP discretionary grants.

Competition—Does the project mitigate or remove barriers to increased airline competition at the airport (*e.g.*, cause an increase in common use gates at a gate-constrained airport)? Has the project been identified as an essential component in the airport's competition plan or other similar documents submitted to the FAA?

Section 158.19 Requirement for Competition Plans

A new section has been added to implement a requirement to develop a competition plan. Under AIR 21, no

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public agency controlling a covered airport, defined as a medium or large hub airport at which one or two air carriers account for more than 50 percent of the passenger boardings, may impose a PFC unless the public agency has submitted a competition plan to the FAA. AIR 21 requires that each plan meet statutory requirements and that the plan must be reviewed periodically to ensure successful implementation. The requirement to develop a plan does not apply to PFC authority in effect before April 5, 2000.

Covered airports are required to submit competition plans to receive new AIP grants in FY 2001 and thereafter. Because there are more covered airports under the AIP than there are participating in the PFC program, and because AIP grants are issued on an annual basis, instructions for such plans are provided under the AIP. Such plans prepared for AIP may be used for PFC projects.

Subpart B—Application and Approval

Section 158.23 Consultation With Air Carriers and Foreign Air Carriers

The requirement under § 158.23(a)(2) that a public agency consult with its air carriers and foreign air carriers on "the PFC level" is amended to read "the PFC level for each project. * * *" The FAA anticipates that PFC applications may include several projects qualifying at different PFC levels, depending on the contribution of each project.

Section 158.25 Applications

This section is amended to allow for processing competition plans required by § 158.19 and determination of the PFC level for each project required in revised § 158.23.

Section 158.29 The Administrator's Decision

Section 158.29 is amended to require all projects approved for collection of PFC's to meet the requirements of § 158.15. In addition, projects approved for collection of a PFC at a level of more than $3 must meet the requirements of § 158.17. Previously, paragraphs (a)(1)(ii), (a)(1)(iii), (b)(1)(ii) and (b)(1)(iii) referenced separate components of § 158.15.

Under the 1994 Act, the FAA is prohibited from approving a PFC application if an airport is not in compliance with 49 U.S.C. 47107(b) governing the use of airport revenues. The FAA includes a determination that the public agency has not been found in violation of 49 U.S.C. 47107(b) in its PFC records of decision. Section 158.29 is amended to reflect this requirement.

A new paragraph is added to § 158.29 to acknowledge that, if applicable, the public agency must submit a competition plan.

Section 158.29 also is amended to require the Administrator to specify a PFC level "for the application," and total approved PFC revenue "including the amounts approved at $3 and less, $4, and/or $4.50." The FAA anticipates that PFC applications may include various projects, some qualifying at a level of $3 or less, and others at $4 or $4.50. The public has the opportunity to comment on the PFC levels for these projects in the notice and comment process provided in § 158.27(e)

Section 158.31 Duration of Authority To Impose a PFC After Project Implementation

Section 158.31 is amended to remove the words "section of 9304(c) or 9703 of the Airport Noise and Capacity Act of 1990 (Pub. L. 101–508, Title IX, subtitle D."

Section 158.37 Amendment of Approved PFC

Section 158.37(b) is amended to reflect the new requirements of §§ 158.17 and 158.19 to obtain authority to increase a previously approved PFC level to $4 or $4.50.

Subpart C—Collection, Handling, and Remittance of PFC's

Section 158.45 Collection of PFC's on Tickets Issued in the U.S.

AIR 21 adds several new classes of passengers from whom a PFC may not be collected and this section is revised accordingly.

Section 158.49 Handling of PFC's

The 1996 Act included a provision clarifying that PFC's held by air carriers after collection constitute a trust fund held for the beneficial interest of public agencies. Section 158.49 is amended in accordance with the specific terms of this provision.

Subpart D—Reporting, Recordkeeping and Audits

Section 158.63 Reporting Requirements: Public Agency

Section 158.63 is amended to require the public agency to indicate the PFC level the FAA approved for each project as authorized by AIR 21. In addition, the phrase "medium or large hub airports" replaces the phrase "airports enplaning 0.25 percent or more of the total annual enplanements in the U.S. for the prior calendar year as determined by the Administrator" (see discussion pertaining to new definitions in § 158.3).

Subpart F—Reduction in Airport Improvement Program Apportionment

Section 158.93 Public Agencies Subject to Reduction

Section 158.93 is amended to substitute the phrase "medium or large hub" in place of "enplanes 0.25 percent or more of the total annual enplanements in the U.S." (see discussion pertaining to new definitions in § 158.3).

Section 158.95 Implementation of Reduction

This section is amended to reflect AIR 21 requirement that the effective date of AIP apportionment reduction is changed to "the first fiscal year following the year in which the collection of the fee imposed under § 40117 is begun." Also, AIR 21 establishes separate reduction levels for airports depending on the level of PFC imposed. Specifically, in the case of a PFC level of $3 or less, the reduction is maintained at the previous level of 50 percent of the projected revenues from the PFC in the fiscal year but not more than 50 percent of the amount of AIP formula monies that otherwise would be apportioned. However, in the case of a PFC level of more than $3, the reduction is set at 75 percent of the projected revenues from the PFC in the fiscal year but not more than 75 percent of the amount of AIP formula monies that otherwise would be apportioned. Section 158.95 is amended to reflect these statutory provisions. This means, in the case of an airport raising its PFC level from $3 to more than $3, the higher reduction of apportionments would take place in the first fiscal year following the year in which the collection of the PFC level of more than $3 is begun.

Section 158.97 Special Rule for Transitioning Airports

AIR 21 provides that certain small hub airports transitioning to medium hub airport status are protected through FY 2003 against a loss in combined year-to-year AIP apportionment and PFC revenues caused by entitlement reductions under 49 U.S.C. 47114(f) (the amended § 158.95). Accordingly, a new section § 158.97 is added in accordance with this statutory requirement. This provision applies to FY 2000 through FY 2003.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreement Act of 1979 directs agencies to assess the effect of regulatory changes on international trade. Fourth, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector. In conducting these analyses, the FAA has determined this final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. This final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This final rule would not have a significant impact on a substantial number of small entities. In addition, this rule would not constitute a barrier to international trade. Finally, the FAA has determined that the proposal would not impose a federal mandate on state, local, or tribal governments, or the private sector of $100 million per year.

Benefit-Cost Analysis

This final rule amends part 158 to be consistent with current statutes governing the PFC program. These new statutory provisions will enable airport authorities to increase the PFC in order to collect more funds for enhancing the safety, security and capacity of their facilities; reducing noise in nearby communities; and enhancing airline competition to the benefit of air travelers. The FAA estimates that up to $750 million annually in PFC funds will be made available to airports to make these improvements. As a result of the higher percentage of returned AIP apportioned funds attributable to these higher PFC collections, an additional $72 million in AIP funding could be available to small airports by FY 2002. Under the provisions of the statute, this amount would be almost doubled through FY 2003 if AIP funds are appropriated at $3.2 billion or more. Some air travelers will incur a small increase (1–2 percent) in the cost of their ticket to obtain these benefits although over the long run these passengers will receive compensating benefits from improved infrastructure financed with the higher PFC funds. These costs reflect the voluntary action of airports and are not required either by statute or the current amendment to the rule. The costs of implementing the mandated changes in the PFC program application and administrative procedures are costs attributable to the statute and are not costs of this rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at *http://www.faa.gov/avr/arm/sbrefa.htm* and may send electronic inquiries to the following Internet address: *9-AWA-SBREFA@faa.gov*.

Paperwork Reduction Act

Information collection requirements in the amendment to part 158 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0557. Some relatively minor requirements for information collections are associated with this amendment, and these are required by AIR 21. The additional paperwork submission requirements will not become mandatory until FAA provides for notice and comment, and the changes are submitted to OMB for review and approval.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

All costs are fully recoverable through the PFC, if approved. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant impact on a substantial number of small entities.

International Trade

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential affect of this final rule and has determined that it will impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact.

Executive Order 13132, Federalism

The FAA has analyzed this action under the principles and criteria of Executive Order 13132, Federalism. We

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determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this action does not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act) codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year. While PFC collections are likely to increase by at least $100 million per year, the cause of that impact is not the rule but the statute that permits the increase in the maximum PFC level. The increase will be triggered by the decisions of individual public agencies to seek the increase and not by any action of the federal government. If a project meets the statutory criteria for approval, the FAA must approve the project. Moreover, any increase costs associated with obtaining approval to impose the higher fee are fully recoverable through PFC funding.

Environmental Analysis

The FAA concludes that issuance of this final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. The potential environmental effects of any project funded with PFC revenues are already addressed under § 158.29(b)(1)(iv), which requires all applicable requirements pertaining to the National Environmental Policy Act of 1969 (NEPA) to be satisfied before the Administrator may approve the project to use PFC funds. A copy of this assessment has been placed in the docket.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 158

Air carriers, Airports, Passenger facility charge, Public agencies, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 158 of Title 14 of the Code of Federal Regulations as follows:

PART 158—PASSENGER FACILITY CHARGES (PFC'S)

1. The authority citation for part 158 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40116–40117, 47106, 47111, 47114–47116, 47524, 47526.

2. Revise § 158.1 to read as follows:

§ 158.1 Applicability.

This part applies to passenger facility charges (PFC's) as may be approved by the Administrator of the Federal Aviation Administration (FAA) and imposed by a public agency that controls a commercial service airport. This part also describes the procedures for reducing funds to a large or medium hub airport that imposes a PFC.

3. Amend § 158.3 as follows:

a. Amend the definition of *Allowable cost* by adding a new sentence at the end of the definition.

b. Revise the definitions of *Commercial service airport* and *Public agency;*

c. Add definitions of *Covered airport, Frequent flyer award coupon, Medium or large hub airport,* and *Nonrevenue passenger,* in alphabetical order. The revisions and additions read as follows:

§ 158.3 Definitions.

* * * * *

Allowable cost * * * Costs of terminal development incurred after August 1, 1986, at an airport that did not have more than .25 percent of the total annual passenger boardings in the U.S. in the most recent calendar year for which data is available and at which total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997 are allowable.

* * * * *

Commercial service airport means a public airport that annually enplanes 2,500 or more passengers and receives scheduled passenger service of aircraft.

Covered airport means a medium or large hub airport at which one or two air carriers control more than 50 percent of passenger boardings.

* * * * *

Frequent flier award coupon means a zero-fare award of air transportation that an air carrier or foreign air carrier provides to a passenger in exchange for accumulated travel mileage credits in a customer loyalty program, whether or not the term "frequent flier" is used in the definition of that program. The definition of "frequent flier award coupon" does not extend to redemption of accumulated credits for awards of additional or upgraded service on trips for which the passenger has paid a published fare, "two-for-the-price-of-one" and similar marketing programs, or to air transportation purchased for a passenger by other parties.

* * * * *

Medium or large hub airport means a commercial service airport that has more than 0.25 percent of the total number of passenger boardings at all such airports in the U.S. for the prior calendar year, as determined by the Administrator.

Nonrevenue passenger means a passenger receiving air transportation from an air carrier or foreign air carrier for which remuneration is not received by the air carrier or foreign air carrier as defined under Department of Transportation Regulations or as otherwise determined by the Administrator. Air carrier employees or others receiving air transportation against whom token service charges are levied are considered nonrevenue passengers. Infants for whom a token fare is charged are also considered nonrevenue passengers.

* * * * *

Public agency means a State or any agency of one or more States; a municipality or other political subdivision of a State; an authority created by Federal, State or local law; a tax-supported organization; an Indian tribe or pueblo that controls a commercial service airport; or for the purposes of this part, a private sponsor of an airport approved to participate in the Pilot Program on Private Ownership of Airports.

* * * * *

4. Amend § 158.5 by revising the first sentence to read as follows:

§ 158.5 Authority to impose PFC's.

Subject to the provisions of this part, the Administrator may grant authority to a public agency that controls a commercial service airport to impose a PFC of $1, $2, $3, $4, or $4.50 on passengers enplaned at such an airport.

* * *

5. Amend § 158.7 by revising paragraph (a) to read as follows:

§ 158.7 Exclusivity of authority.

(a) A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible public agency may not tax, regulate, prohibit, or otherwise attempt to control in any manner the imposition or collection of a PFC or the use of PFC revenue.

* * * * *

6. Amend § 158.9 by revising paragraph (a) to read as follows:

§ 158.9 Limitations.

(a) No public agency may impose a PFC on any passenger—

(1) For more than 2 boardings on a one-way trip or in each direction of a round trip;

(2) On any flight to an eligible point on an air carrier that receives essential air service compensation on that route. The Administrator makes available a list of carriers and eligible routes determined by the Department of Transportation for which PFC's may not be imposed under this section;

(3) Who is a nonrevenue passenger or obtained the ticket for air transportation with a frequent flier award coupon;

(4) On flights, including flight segments, between 2 or more points in Hawaii; or

(5) In Alaska aboard an aircraft having a certificated seating capacity of less than 60 passengers.

* * * * *

7. Revise § 158.11 to read as follows:

§ 158.11 Public agency request not to require collection of PFC's by a class of air carriers or foreign air carriers or for service to isolated communities.

(a) Subject to the requirements of this part, a public agency may request that collection of PFC's not be required for—

(1) Passengers enplaned by any class of air carrier or foreign air carrier if the number of passengers enplaned by the carriers in the class constitutes not more than one percent of the total number of passengers enplaned annually at the airport at which the fee is imposed; or

(2) Passengers enplaned on a flight to an airport—

(i) That has fewer than 2,500 passenger boardings each year and receives scheduled passenger service; or

(ii) In a community that has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State.

(b) The public agency may request this exclusion authority under paragraph (a)(1) or (a)(2) of this section or both.

8. Amend § 158.15 by revising the section heading, by revising paragraphs (b) introductory text and (b)(1) through (b)(5), by adding a new sentence to the end of paragraph (b)(6), and by adding new paragraph (c) to read as follows:

§ 158.15 Project eligibility at PFC levels of $1, $2, or $3.

* * * * *

(b) Eligible projects are any of the following projects—

(1) Airport development eligible under subchapter I of chapter 471 of 49 U.S.C.;

(2) Airport planning eligible under subchapter I of chapter 471 of 49 U.S.C.;

(3) Terminal development as described in 49 U.S.C. 47110(d);

(4) Airport noise compatibility planning as described in 49 U.S.C. 47505;

(5) Noise compatibility measures eligible for Federal assistance under 49 U.S.C. 47504, without regard to whether the measures have been approved pursuant to 49 U.S.C. 47504; or

(6) * * * In the case of a project required to enable additional air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport, a project for constructing gates and related areas may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door, and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities adjacent to the gate.

(c) An eligible project must be adequately justified to qualify for PFC funding.

9. Add § 158.17 to subpart A to read as follows:

§ 158.17 Project eligibility at PFC levels of $4 or $4.50.

(a) A project for any airport is eligible for PFC funding at levels of $4 or $4.50 if—

(1) The project meets the eligibility requirements of § 158.15;

(2) The project costs requested for collection at $4 or $4.50 cannot be paid for from funds reasonably expected to be available for the programs referred to in 49 U.S.C. 48103; and

(3) In the case of a surface transportation or terminal project, the public agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.

(b) In addition, a project for a medium or large airport is only eligible for PFC funding at levels of $4 or $4.50 if the project will make a significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport.

10. Add § 158.19 to subpart A to read as follows:

§ 158.19 Requirement for competition plans.

(a) Beginning in fiscal year 2001, no public agency may impose a PFC with respect to a covered airport unless the public agency has submitted a written competition plan. This requirement does not apply to PFC authority approved prior to April 5, 2000.

(b) The Administrator will review any plan submitted under paragraph (a) of this section to ensure that it meets the requirements of 49 U.S.C. 47106(f) and periodically will review its implementation to ensure that each covered airport successfully implements its plan.

11. Amend § 158.23 by revising paragraph (a)(2) to read as follows:

§ 158.23 Consultation with air carriers and foreign air carriers.

(a) * * *

(2) The PFC level for each project, the proposed charge effective date, the estimated charge expiration date, and the estimated total PFC revenue;

* * * * *

12. Amend § 158.25 by revising paragraphs (b)(7) and (b)(8) to read as follows:

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§ 158.25 Applications.

* * * * *

(b) * * *

(7) The project justification, including the extent to which the project achieves one or more of the objectives set forth in § 158.15(a) and (if a PFC level above $3 is requested) the requirements of § 158.17. In addition—

(i) For any project for terminal development, including gates and related areas, the public agency shall discuss any existing conditions that limit competition between and among air carriers and foreign air carriers at the airport, any initiatives it proposes to foster opportunities for enhanced competition between and among such carriers, and the expected results of such initiatives; or

(ii) For any terminal development project at a covered airport, the public agency shall submit a competition plan in accordance with § 158.19.

(8) The charge to be imposed for each project.

* * * * *

13. Amend § 158.29 by revising paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (a)(1)(vi), (a)(2), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv) and (b)(2) and by adding paragraphs (a)(1)(vii) and (a)(1)(viii) to read as follows:

§ 158.29 The Administrator's decision.

(a) * * *

(1) * * *

(ii) The project will achieve the objectives and criteria set forth in § 158.15;

(iii) If a PFC level above $3 is being approved, the project meets the criteria set forth in § 158.17;

* * * * *

(v) The public agency has not been found to be in violation of 49 U.S.C. 47524 and 47526;

(vi) The public agency has not been found to be in violation of 49 U.S.C. 47107(b) governing the use of airport revenue;

(vii) If the public agency has not applied for authority to use PFC revenue, a finding that there are alternative uses of the PFC revenue to ensure that such revenue will be used on approved projects; and

(viii) If applicable, the public agency has submitted a competition plan in accordance with § 158.19.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the projects and alternative uses that may qualify for PFC financing under § 158.15, and (if a PFC level above $3 is being approved) § 158.17, PFC level, total approved PFC revenue including the amounts approved at $3 and less, $4, and/or $4.50, duration of authority to impose and earliest permissible charge effective date.

(b) * * *

(1) * * *

(ii) The project will achieve the objectives and criteria set forth in § 158.15;

(iii) If a PFC level above $3 is being approved, the project meets the criteria set forth in § 158.17; and

(iv) All applicable requirements pertaining to the ALP for the airport, airspace studies for the project, and the National Environmental Policy Act of 1969 (NEPA), have been satisfied.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the approved projects, PFC level, total approved PFC revenue, total approved for collection, including the amounts approved at $3 and less, $4, and/or $4.50, and any limit on the duration of authority to impose a PFC as prescribed under § 158.33.

* * * * *

§ 158.31 [Amended]

14. In § 158.31(d), remove the words "section 9304(e) or 9703 of the Airport Noise and Capacity Act of 1990 (Pub. L. 101–508, Title IX, subtitle D)" and add, in their place, the words "49 U.S.C. 47524 and 47526".

15. Amend § 158.37 by revising paragraph (b)(1) and adding three sentences at the end of paragraph (b)(2) to read as follows:

§ 158.37 Amendment of approved PFC.

* * * * *

(b) * * *

(1) With the exception of a change in PFC level to more than $3 or an amendment of a PFC that is subject to a competition plan under § 158.19, in the event of no carrier disagreement with a change proposed under this paragraph (b), the public agency may institute the proposed amendment unless, within 30 days after providing the notification required under this paragraph (b), it is notified otherwise by the Administrator.

(i) If a PFC level of more than $3 is requested, the Administrator notifies the public agency that the conditions of § 158.17 have been met before the higher level can be instituted.

(ii) If a PFC amendment that is subject to the competition plan requirement is submitted, the Administrator notifies the public agency that the plan satisfies the requirements of § 158.19.

(iii) The public agency shall notify the carriers of the effective date of any change to the approved PFC resulting from the amendment, subject to the limitation that the effective date of any new charge shall be no earlier than the first day of a month which is at least 60 days from the time the public agency notifies the carriers.

(2) * * * If a PFC level of more than $3 is requested, the Administrator must find that the conditions of § 158.17, and § 158.19 if applicable, have been met before that PFC level can be instituted. If the amendment is approved, the Administrator advises the public agency and notification to the carriers will be as provided under paragraph (b)(1) of this section. The notification to the carrier includes any findings required by § 158.17 or § 158.19.

16. Amend § 158.45 by revising paragraph (d) to read as follows:

§ 158.45 Collection of PFC's on tickets issued in the U.S.

* * * * *

(d) In addition to the restriction in paragraph (c) of this section, issuing carriers and their agents shall not collect PFC's from a passenger covered by any of the other limitations described in § 158.9(a).

* * * * *

17. Amend § 158.49 by revising paragraph (b) to read as follows:

§ 158.49 Handling of PFC's.

* * * * *

(b) PFC revenue must be accounted for separately by collecting carriers, but the revenue may be commingled with the carrier's other sources of revenue. The PFC revenues that are held by an air carrier or an agent of the carrier after collection of a PFC constitute a trust fund that is held by the air carrier or agent for the beneficial interest of the public agency imposing the PFC. Such carrier or agent holds neither legal nor equitable interest in the PFC revenues except for any handling fee or retention of interest collected on unremitted proceeds as authorized in § 158.53.

* * * * *

18. Amend § 158.63 by revising paragraphs (a) and (c) to read as follows:

§ 158.63 Reporting requirements: Public agency.

(a) The public agency shall provide quarterly reports to carriers collecting PFC's for the public agency with a copy to the appropriate FAA Airports office. The quarterly report shall include PFC revenue received from collecting carriers, interest earned, and expenditures for the quarter; cumulative PFC revenue received, interest earned, expenditures, and the amount committed for use on currently approved projects, including the quarter; the PFC level for each project; and the current project schedule.

* * * * *

(c) For medium or large hub airports, the public agency must provide the FAA, by August 1 of each year, an estimate of PFC revenue to be collected for each such airport in the ensuing fiscal year.

§§ 158.71, 158.81, and 158.83 [Amended]

19. Remove the words "section 1113(e) of the Federal Aviation Act" and add, in their place, the words "49 U.S.C. 40117" in the following places:

a. § 158.71(a) and (b);

b. § 158.81; and

c. § 158.83.

§ 158.87 [Amended]

20. In § 158.87, in paragraph (a) remove the words "section 507 of the AAIA of 1982, 49 U.S.C. App. 2206" and add, in their place, the words "49 U.S.C. 47114"; and, in paragraph (c) remove the words "49 U.S.C. App. 2218" and add, in their place, the words "49 U.S.C. 47111(d)".

§ 158.93 [Amended]

21. In § 158.93 introductory text, remove the words "section 507(a)(1) of the Airport and Airway Improvement Act of 1982" and add, in their place, the words "49 U.S.C. 47114".

22. Section 158.95 is amended by revising paragraphs (a) and (b) to read as follows:

§ 158.95 Implementation of reduction.

(a) A reduction in apportioned funds will not take effect until the first fiscal year following the year in which the collection of the PFC is begun and will be applied in each succeeding fiscal year in which the public agency imposes the PFC.

(b) The reduction in apportioned funds is calculated at the beginning of each fiscal year and shall be an amount equal to—

(1) In the case of a fee of $3 or less, 50 percent of the projected revenues from the fee in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section; and

(2) In the case of a fee of more than $3, 75 percent of the projected revenues from the fee in the fiscal year but not by more than 75 percent of the amount that otherwise would be apportioned under this section.

* * * * *

23. Add § 158.97 to subpart F to read as follows:

§ 158.97 Special rule for transitioning airports.

(a) Beginning with the fiscal year following the first calendar year in which an airport has more than .25 percent of the total number of boardings in the U.S., the sum of the amount that would be apportioned under 49 U.S.C. 47114 to the public agency controlling that airport in a fiscal year, after application of § 158.95, and the projected PFC revenues to be collected in such fiscal year, shall not be less than the sum of the apportionment to such airport for the preceding fiscal year and the PFC revenues collected in the preceding fiscal year.

(b) Paragraph (a) of this section shall apply for fiscal years 2000 through 2003.

Appendix A to Part 158 [Amended]

24. In Appendix A to part 158, in paragraph A.2 remove the words "the Aviation Safety and Capacity Expansion Act of 1990" and add, in their place, the words "49 U.S.C. 40117"; and in paragraph B.12 remove the words "sections 9304 and 9307 of the Airport Noise and Capacity Act of 1990" and add, in their place, the words "49 U.S.C. 47524 and 47526".

Issued in Washington, DC, May 23, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–13348 Filed 5–23–00; 4:23 pm]

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Federal Register

Tuesday,
May 30, 2000

Part III

Department of Education

[CFDA No. 84.214A]

Migrant Education Even Start Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000; Notice

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DEPARTMENT OF EDUCATION

[CFDA No. 84.214A]

Migrant Education Even Start Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

AGENCY: Department of Education.

Note to Applicants

This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations, the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program

The Migrant Education Even Start (MEES) program is designed to help break the cycle of poverty and improve the literacy of participating migrant families by integrating early childhood education, adult literacy or adult basic education (including English language training, as appropriate), and parenting education into a unified family literacy program.

Eligible Applicants

While any entity is eligible to apply for a grant under the MEES program, the Secretary specifically invites applications from State educational agencies (SEAs) that administer migrant education programs; local educational agencies (LEAs) that have a high percentage of migrant students; and non-profit community-based organizations that work with migrant families.

Deadlines and Awards

Deadline for Transmittal of Applications: July 14, 2000.

Deadline for Intergovernmental Review: September 12, 2000.

Available Funds: For FY 2000, approximately $3,600,000 is available for new grants under this program.

Estimated Range of Awards: $75,000–$300,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 16–18.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations as follows:

(1) 34 CFR Part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Non-procurement)) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 97 (Protection of Human Subjects).

(10) 34 CFR Part 98 (Student Rights in Research, Experimental Programs, and Testing).

(11) 34 CFR Part 99 (Family Educational Rights and Privacy).

(b) The definitions of a migratory child, a migratory agricultural worker and a migratory fisher contained in 34 CFR 200.40.

Description of Program

Under the authority of section 1202(a)(1)(A) of the Elementary and Secondary Education Act, as amended (ESEA), the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) awards grants to eligible applicants under the MEES program for projects that—

(1) Improve the educational opportunities of migrant families by integrating early childhood education, adult literacy or adult basic education (including English language training, as appropriate), and parenting education into a unified program of family literacy services.

Note: The term "family literacy services" is defined in ESEA section 1202(e) as services provided to participants on a voluntary basis that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family, and that integrate all of the following activities:

(A) Interactive literacy activities between parents and their children.

(B) Training for parents regarding how to be the primary teacher for their children and full partners in the education of their children.

(C) Parent literacy training that leads to economic self-sufficiency.

(D) An age-appropriate education to prepare children for success in school and life experiences.

(2) Implement cooperative activities that build on existing community resources to create a new range of services to migrant families.

(3) Promote school readiness, early reading acquisition, adult literacy and lifelong learning, and parent involvement and participation in their child's education.

(4) Where possible, use research-based strategies for developing literacy and reading proficiency and, where applicable, second language acquisition.

(5) Assist children and adults from migrant families to achieve challenging State content standards and challenging State student performance standards.

Program Requirements

(a) Eligible Participants

Eligible MEES participants consist of migratory children and their parents as defined in 34 CFR 200.30 and 200.40 who also meet the following conditions specified in section 1206(a) of the ESEA:

(1) The parent or parents—

(i) Are eligible for participation in an adult basic education program under the Adult Education Act and Family Literacy Act; or

(ii) Are within the State's compulsory school attendance age range, so long as a local educational agency provides (or ensures the availability of) the basic education component required under this part; and

(2) The child or children must be younger than eight years of age.

Note: Family members of eligible participants described in paragraphs (a)(1) and (a)(2) may also participate in MEES activities. These participants include siblings, grandparents, and other family members as long as one or more eligible children and their parents or guardian participate in the core services. In addition, section 1206(b) of the ESEA permits families to remain eligible for MEES services until all family members become ineligible to participate. For example, in the case of a family in which the parent or parents lose eligibility because of their educational advancement, the parent or parents can still participate in MEES activities until all children in the family reach age eight. If all children in the family have reached the age of eight, the family continues to be eligible for Even Start services for two more years (until the youngest participating child turns ten) or until the parents are no longer eligible for adult basic education under the Adult Education and Family Literacy Act, whichever occurs first. In addition, the Department interprets 34 CFR 200.30 together with section 1206(b) of ESEA to mean that MEES services can continue to be provided to a parent or child who is no longer migratory, provided that the family has at least one parent or child who is a migratory worker or migratory child as these terms are defined under 34 CFR 200.40.

(b) Required Program Elements

Any MEES project must, at a minimum, incorporate the following program elements specified in section 1205 of the ESEA:

- Identification and recruitment of migrant families most in need of MEES services, as indicated by a low level of income, a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators. (**Note:** MEES program services may be provided in communities where migratory families have resided for extended periods of time. 34 CFR 200.30 and 200.40 make children eligible for MEES services up to three years after they make a move that makes the children eligible for the Migrant Education Program (MEP). However, in developing and using their need-related indicators to identify and recruit those migrant families most in need of MEES program services, the Secretary believes that the most effective MEES projects are likely to focus on families that are highly mobile or who have only recently moved to the communities that those projects serve. In this regard, the MEP statute (section 1304(d) of the ESEA) provides that migrant students whose education has been interrupted and who are at most risk of failing must be given a priority in services that the program offers. While this MEP priority is not an explicit requirement of the MEES program, one would assume, because of the purpose of the MEES program, that the highly mobile families whose children receive a priority under the MEP also have the greatest need for MEES services.)
- Screening and preparation of parents, including teenage parents, to enable these parents to participate fully in program activities and services, including testing, referral to counseling, other developmental and support services, and related services.
- High-quality, intensive instructional programs that promote adult literacy and empower parents to support the educational growth of their children, developmentally appropriate early childhood educational services, and preparation of children for success in the regular school programs.
- A design for service delivery that accommodates the participants' work schedules and other responsibilities, including the provision of support services, when such services are unavailable from other sources, necessary for participation in project activities, such as—

Scheduling and locating of services to allow joint participation by parents and children;

Child care for the period that parents are involved in the project activities.

- Transportation for the purpose of enabling parents and their children to participate in project activities.
- Special training of staff, including child care staff, to develop the skills necessary to work with parents and young children in the full range of instructional services offered through the Even Start Family Literacy program.
- Providing and monitoring integrated instructional services to participating parents and children through home-based activities.
- Operation on a year-round basis, including the provision of some program services, instructional or enrichment, during the summer months.
- Appropriate coordination with other programs funded under the ESEA, any relevant programs under the Adult Education and Family Literacy Act, the Individuals with Disabilities Education Act, the Workforce Investment (Employment Training) Act, Head Start, volunteer literacy programs, and other relevant programs. (**Note:** In addition, to promote strong community collaboration, sections 1202(e) and 1207(a) of the ESEA require applicants for grants under the basic Even Start Family Literacy program administered by SEAs to be partnerships composed of (1) a local educational agency (LEA), and (2) a non-profit community-based organization, a public agency other than an LEA, an institution of higher education, or a public or private nonprofit organization of demonstrated quality other than an LEA. While these provisions are not requirements of the MEES program, the Secretary believes that the most effective MEES projects are also likely to contain strong, on-going collaborative relationships among these kinds of local entities.)
- Ensure that the project will serve families most in need of MEES family literacy services.
- An independent local evaluation. (**Note:** The Secretary encourages projects to use local evaluators for MEES projects who understand the family literacy model, are able to work with the project as a partner in designing the evaluation, and will help the project use its evaluation results in an on-going way for continuous program improvement.)

(c) Federal and Local Funding

A MEES project's funding is comprised of both a Federal portion of funds (Federal share) and a portion contributed by the eligible applicant (local share). However, the Federal share of the program may not exceed—

- 90 percent of the total cost of the project in the first year;
- 80 percent in the second year;
- 70 percent in the third year;
- 60 percent in the fourth year;
- 50 percent in the fifth, sixth, seventh, and eighth years; and
- 35 percent in any following year.

The local share of the MEES project may be provided in cash or in kind and may be obtained from any source, including other Federal programs funded under the ESEA. Indirect costs are not an allowable cost either for the Federal share or the matching portion of a MEES project.

Invitational Priority

The Secretary is especially interested in receiving applications that include a plan demonstrating that grant activities will focus on one or more approaches described in this section. However, an application that meets one of more of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Coordination across SEAs and local school districts is at the heart of migrant education's purpose: To mitigate disruptions in the education of qualifying migrant students. Short-term MEES seasonal projects can provide intensity of services to migratory families, but those projects may not be of sufficient duration to demonstrate long-term gains for students or to increase the level of economic self-sufficiency of migrant parents, and may be another disruption in completing the family's educational goals.

Therefore, to promote opportunities for continuous learning by migrant families, the Secretary is particularly interested in receiving applications that propose to include one or more of the following activities—

- Coordinate continuing family literacy services across State and local school district boundaries to meet the needs of highly mobile migrant agricultural families.
- Coordinate their activities with State and local endeavors to improve family literacy services; promote early reading proficiency, employ Federal Work-Study tutoring programs; create partnerships for family involvement in education; or other initiatives that foster early school success.

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• Support the unique needs of single parent migrant families whose needs for child care and instructional services do not align with traditional schedules for educational and family support services.

• Build networks with agricultural employers to coordinate and integrate resources that support English literacy for migrant agricultural families with limited English proficiency needs.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for grants under this competition.

(1) The maximum score for all of these criteria is 100 points.

(2) The maximum score for each criterion is indicated in parentheses.

(a) Meeting the Purposes of the Authorizing Statute (5 Points)

The Secretary reviews each application to determine how well the project will—

(1) Improve the educational opportunities of migrant families by integrating early childhood education, adult literacy or adult basic education (including English language training, as appropriate), and parenting education into a unified family literacy program.

(2) Be implemented through cooperative projects that build on existing community resources to create a new range of services to migrant families.

(3) Promote the achievement of family literacy goals (particularly the goals that address school readiness, student achievement, adult literacy, and parent involvement and participation in their child's early education) through research-based reading and English-language acquisition practices that meet the diverse needs of the migrant community of learners.

(4) Assist children and adults from migrant families to achieve the challenging State content standards and challenging State student performance standards.

(b) Need for Project (20 Points)

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(2) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals (*i.e.*, eligible migrant agricultural or fishing families).

(3) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

Note: Applicants are free to address criterion (b) in any way that they wish. However, given the purpose of the MEES program, the Secretary believes that high-quality applications will likely include a discussion of the following key elements:

(i) How the project would be located in an area or areas with high percentages or large numbers of migratory children and their parents, guardians, or primary caretakers in need of MEES services.

(ii) How the project will address the lack of existing comprehensive family literacy services for the migrant population.

(iii) How community resources will be used to benefit project participants both during the participants' period of eligibility for migrant education services, and in the event that participating families lose their eligibility for MEES services during the project period.

(iv) How the project will integrate child development, adult literacy, and parenting activities.

(v) How the project will assist migrant children and adults to achieve the State content standards and student performance standards.

In addition, some migrant families may settle in a community during their enrollment and therefore cease to meet the eligibility requirements outlined in the Program Requirements section of this notice; therefore, the Secretary also believes that high-quality applications will likely include a plan for ensuring that these families have ongoing access to family literacy services when their enrollment can no longer be supported with basic MEP or MEES program funds. In this regard, an applicant might, for example, consider providing a succinct description of how the project will fill any gaps in services, or how it will connect families with existing resources or services as they settle in the community.

(c) Quality of the Project Design (20 Points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(2) The extent to which the project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(3) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

Note: Applicants are free to address criterion (c) in any way that they wish. However, the Secretary believes that, in designing their project, high-quality applications likely will address each of the required program elements in section 1205 of the ESEA and listed in the Program Requirements section of this notice. In this regard, the Secretary believes that a high-quality application likely would explain how its proposed design addresses each one of those requirements in order to fully meet the needs of its target population. For example, given the mobility of the migrant population to be served by the MEES program, the Secretary believes that high-quality applications will likely include strategies that support family education plans whether or not families are resident in a community throughout a given project year or its continuation years.

In addressing the requirement that projects conduct family literacy services year-round, the Secretary acknowledges that migrant families may reside in communities for varying lengths of time. Therefore, the Secretary interprets the requirement that projects operate on a year-round basis to mean that project activities must be conducted not only throughout the period in which participating migrant families reside in the project area, as well as times when alternative activities or services, or both, are offered. The Secretary strongly encourages applicants to explore ways to maintain contact and continue to monitor the progress of highly mobile families whether or not they are resident in the applicant's community.

Examples of strategies that address the requirement for year-round operations and ongoing family participation when families do not reside in the project area may include distance learning; capacity building and partnership efforts with sending and receiving States and school districts; self-paced learning packages; and other materials, technologies, and activities that make year-round literacy services viable and family-friendly for migrant workers.

(d) Quality of Project Services (20 Points)

The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(2) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(3) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(4) The extent to which the services provided by the proposed project are focused on those with the greatest needs.

(5) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(e) *Adequacy of Resources* (15 Points)

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(4) The extent to which costs are reasonable in relation to the number of persons to be served and the anticipated results and benefits.

(f) Quality of the Project Evaluation. (20 Points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project.

In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(3) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(4) The extent to which methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(5) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Note: Applicants are free to address criterion (f) in any way they wish. However, Section 1205(10)of the ESEA requires applicants must conduct an independent evaluation of their project. In addition, they must participate in the national Even Start data collection effort. Given these two requirements, the Secretary believes that high-quality applications are likely to address this criterion by explaining how the project will conduct an ongoing, independent, local evaluation to ensure that the quality of the proposed family literacy services are validated and improved over the course of the four-year project period.

In addition, the Secretary believes that high-quality applicants would likely bear in mind the following information in considering how they intend to report the effectiveness of their project. Funded projects are required to complete an annual performance report on their progress in meeting the approved objectives of their grant to ensure continued funding. These reports and other evaluation information provide local projects, the Department, and the Congress with objective data about the activities and services provided by the project, the participants served, the retention rates of those participants, and the success of the families in the project. The Department has also developed a set of performance indicators for the Even Start Family Literacy Program in accordance with the Government Performance and Results Act (GPRA) that relate to participant outcomes and project management. These indicators are appended to this application package. The Secretary encourages applicants to refer to these indicators when developing their evaluation plans, as the Department uses these indicators in reporting to the Congress on the overall effectiveness of the program.

The following items are not part of the program's selection criteria, but provide additional information for applicants.

National Evaluation

The Department is conducting a national evaluation of Even Start Family Literacy projects. MEES program grantees must cooperate with the Department's efforts by adopting an evaluation plan that is consistent with the national evaluation (as well as with the grantee's responsibilities under section 1205(10) of the ESEA and 34 CFR 74.51, 75.118, 75.253, and 80.40).

The Secretary suggests that each applicant budget for evaluation activities as follows: in addition to the costs of planning and conducting an independent local evaluation, a project with an estimated budget of up to $120,000 should designate $5,000 for this purpose; and a project with an estimated cost of over $120,000 should designate $10,000 for these activities. These funds will be used for expenditures related to the collection and entry of data required for the Department's national evaluation. The Secretary also recommends that applicants budget for the cost of travel to Washington, DC and three nights' lodging for the project director and project evaluator, for their participation in annual technical assistance/evaluation meetings.

Government Performance Results Act: Even Start Performance Indicators

Even Start Family Literacy Program Performance Plan: Objectives and Indicators

Objective 1. The literacy of participating families will improve.

1.1 Adult literacy achievement. Increasing percentages of Even Start adults will achieve significant learning gains on measures of math and reading skills.

1.2 Adult educational attainment. Increasing percentages of adult secondary education Even Start participants will obtain their high school diploma or equivalent.

1.3 Children's language development and reading readiness.

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Increasing percentages of Even Start children will achieve significant gains on measures of language development and reading readiness.

1.4 Parenting skills. Increasing percentages of parents will show significant improvement on measures of parenting skills, home environment, and expectations for their children.

Objective 2. Even Start projects will reach their target population of families who are most in need of services.

2.1 Recruitment of most in need. The projects will continue to recruit low-income, disadvantaged families with low literacy levels.

Objective 3. Local Even Start projects will provide high-quality, comprehensive instructional and support services to all families in a cost-effective manner.

3.1 Service hours. Increasing percentages of projects will offer at least 60 hours of adult education per month, at least 20 hours of parenting education per month, and at least 65 hours of early childhood education per month.

3.2 Participation, retention and continuity. Projects will increasingly improve retention and continuity of services.

Information by Project and Budget Periods

Under 34 CFR 75.112 and 75.117, an eligible applicant must propose a project period, and provide budgetary information for each budget period of that proposed project period. The Secretary requires that the budgetary information include an amount for all key project components with an accompanying breakdown of any subcomponents, along with a written justification for all requested amounts. (A form for reporting this information is contained in the appendix of this notice.)

Section 75.112(b) also requires that an applicant describe how and when, in each budget period of the project, it plans to meet each objective of the project.

(Note: The Department will use this information, in conjunction with the grantee's annual performance report required under 34 CFR 75.118(a), to determine whether a continuation award for the subsequent budget year should be made. Under 34 CFR 75.253, a grantee can receive a continuation award only if it demonstrates that it either has made substantial progress toward meeting the objectives of the approved project, or has received the Assistant Secretary's approval of changes in the project to enable it to meet the objectives in the succeeding budget periods.)

As indicated in the **Note** to the selection criterion (f) (Quality of project evaluation), each project must conduct an independent local evaluation. In budgeting for the cost of this independent local evaluation, you may wish to contact potential local evaluators, such as researchers or teachers at local community colleges or universities, to ascertain a typical hourly rate.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each State under the Executive order. You may view the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: http://www.whitehouse.gov/omb/grants

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.214A, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Note: Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials:

- Estimated Public Reporting Burden.
- Assurances—Non-Construction Programs (Standard Form 424B).
- Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 12/98).
- Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (**Note:** ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)
- Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

You may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

For Further Information Contact

DonnaMarie Marlow, U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, 400 Maryland Avenue, SW., Room 3E313, Washington, DC 20202–6135. Telephone: (202) 260–1164. The program contact may also be reached via e-mail at donnamarie_marlow@ed.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, an applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U. S. Department of Education, Application Control Center, Attention: (CFDA #84.214A), Washington, DC 20202–4725.

(2) Hand deliver the original and two copies of the application by 4:30 p.m.

(Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.214A), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Contrcl Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 6362(a)(1)(A).

Dated: May 24, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project.

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package. (**Note:** While applicants can address the criteria in any way that is reasonable, given the required emphasis of any MEES project on an integrated program of early childhood education, adult literacy or adult basic education, and parenting education, the Secretary believes that a reasonable plan of operation would likely address how the proposed project will provide high-quality instruction in these three areas that, with interactive literacy activities between parents and children (PACT), is integrated into a unified family literacy program. Moreover, consistent with 34 CFR 75.112(b), which requires that the application describe how and when, in each budget period, the applicant plans to meet each project objective, the Secretary believes that applicants would want particularly to describe each goal in terms of measurable objectives, specific activities that are proposed to meet each objective, time lines associated with these activities, the resources believed to be needed to achieve each objective, and how each objective will be evaluated.)

3. Provide the following information in response to the attached **NOTICE TO ALL APPLICANTS:** (1) A reference to the portion of the application in which the applicant has described the steps that the applicant proposes to take to remove barriers to equitable access to, and equitable participation in, project activities; or (2) a separate statement that includes this information.

4. Include any other pertinent information that might assist the Secretary in reviewing the application.

Page Limit: The application narrative (Part III of the application) is where the applicant addresses the selection criteria reviewers use to evaluate your application. The recommended page limit for this application is 50 pages (appendices excepted), using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

Instruction for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1810–0541. (Expiration date: 04/30/2003). The time required to complete this information collection is estimated to average 60 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: US Department of Education, Washington, DC 20202–4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Migrant Education, US Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6135.

(Information collection approved under OMB control number 1810—0541. Expiration date: 04/30/2003.)

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OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name:
Address:
City / State / County / ZIP Code + 4
Organizational Unit

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 8 4 . 2 1 4 A → Title: Migrant Education Even Start Program

5. Project Director:
Address:
City / State / ZIP Code + 4
Tel. #: ( ) Fax #: ( )
E-Mail Address:

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)*

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*:

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/___
☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: ___/___/___ End Date: ___/___/___

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
a. If "Yes," Exemption(s) #:
OR
b. Assurance of Compliance #:
c. IRB approval date: ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative
b. Title
c. Tel. #: ( ) Fax #: ( )
d. E-Mail Address:
e. Signature of Authorized Representative — Date: ___/___/___

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ED 424

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Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intldunc.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructionsin **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a , **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gow humansub.htm.

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004
Expiration Date: 02/28/2003

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

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OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 00-13429 Filed 5-26-00; 8:45 am]
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 2412/P.L. 106–203

To designate the Federal building and United States courthouse located at 1300 South Harrison Street in Fort Wayne, Indiana, as the "E. Ross Adair Federal Building and United States Courthouse". (May 22, 2000; 114 Stat. 310)

S. 2370/P.L. 106–204

To designate the Federal building located at 500 Pearl Street in New York City, New York, as the "Daniel Patrick Moynihan United States Courthouse". (May 23, 2000; 114 Stat. 311)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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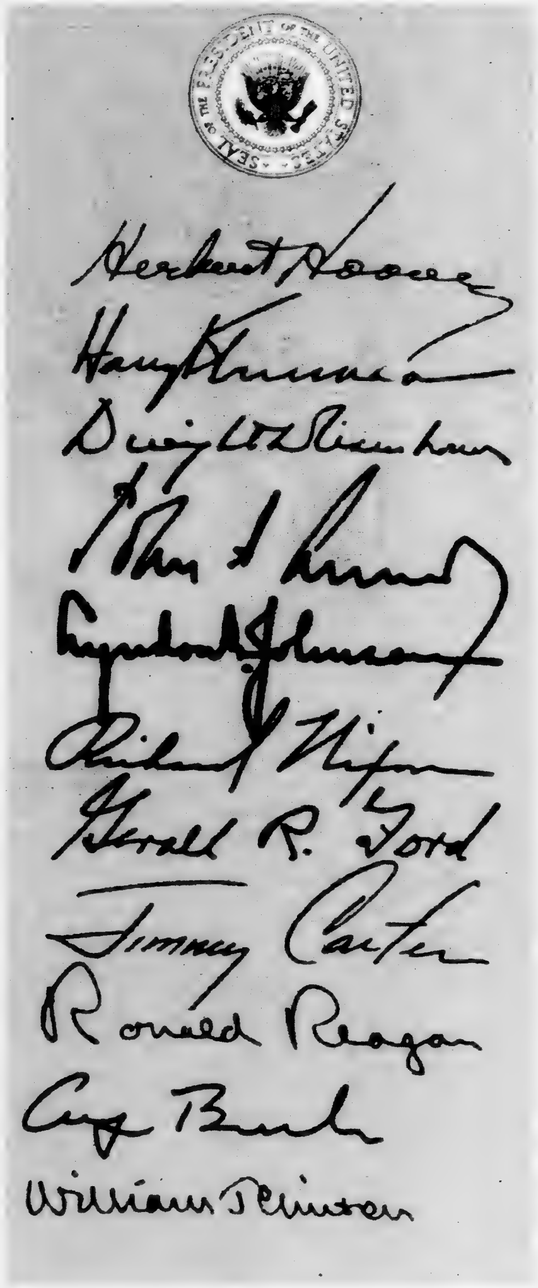

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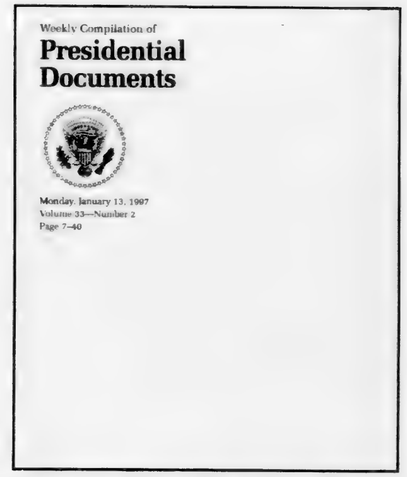

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Presidential Documents

Title 3—

The President

Proclamation 7313 of May 24, 2000

Day of Honor, 2000

By the President of the United States of America

A Proclamation

Fifty-five years ago this month, the torch of freedom burned bright in Europe once again as Nazi Germany surrendered to the Allied Forces. Four months later, with the defeat of Imperial Japan, World War II—history's bloodiest and most destructive conflict—finally came to an end.

That war's unprecedented threat to world peace, freedom, and human rights called forth an unprecedented response from the American people. United and determined after the attack on Pearl Harbor in 1941, American men and women poured into factories and shipyards, working around the clock to build ships, planes, tanks, and guns. Millions of others risked their lives to defend our Nation and preserve the ideals of democracy. By the war's end, some 15 million had served in our Armed Forces, including more than 1,200,000 African Americans, 300,000 Hispanic Americans, 50,000 Asian Americans, 20,000 Native Americans, 6,000 Native Hawaiians and Pacific Islanders, and 3,000 Native Alaskans.

These minority members of our Armed Forces served with honor and distinction in battles around the globe. Many of them—like the Tuskegee Airmen, the Japanese American troops of the Army's "Go For Broke" regiment, and the Native American Code Talkers who played a vital role in winning the war in the Pacific—were renowned for their bravery and dedication. America's minority veterans fought other important battles as well—battles against prejudice, ignorance, and discrimination. Many gave their lives on foreign soil for the freedom they had never fully shared at home. Many of those who survived returned home from the war and worked to make real in America the ideals for which they had fought so hard and for which so many of their comrades in arms had died.

On this Day of Honor, we have the opportunity—and the responsibility—to acknowledge the contributions our minority veterans have made to the peace and freedom we enjoy today. I ask my fellow citizens to join me in saluting the African American, Hispanic American, Asian American, Native American, Native Hawaiian, Pacific Islander, Native Alaskan, and other minority members who served so valiantly in our Armed Forces during World War II and to remember those who died in service to our country. Their extraordinary devotion to duty is a reminder to us all that our Nation's diversity is not a cause for division, but rather one of our greatest strengths.

The Congress, by Senate Joint Resolution 44, has authorized and requested the President to issue a proclamation in recognition of the minority veterans who served in World War II.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 25, 2000, as the Day of Honor, 2000. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities paying tribute to the service and sacrifice of the minority veterans of our Armed Forces who served during World War II.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–99–002]

RIN 0581–AB60

Refrigeration Requirements for Shell Eggs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, without change, an interim final rule that amended the voluntary shell egg grading program regulations by adding a definition of the term "ambient temperature," by amending the refrigeration requirements, and by adding a labeling requirement. Mandatory amendments to the Egg Products Inspection Act (EPIA) in 1991 and USDA Food Safety and Inspection Service (FSIS) regulations in 9 CFR part 590 implementing those amendments involved refrigeration and labeling requirements. We made changes to 7 CFR part 56 to conform to the FSIS requirements.

EFFECTIVE DATE: June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Douglas C. Bailey, Chief, Standardization Branch, 202/720–3506.

SUPPLEMENTARY INFORMATION:

Background

An interim final rule effective October 25, 1999, was published in the **Federal Register** on October 22, 1999 (64 FR 56945–56947, Docket No. PY–99–002). We amended 7 CFR part 56 (the regulations) by adding a definition of the term "ambient temperature," by amending the refrigeration requirements, and by adding a labeling requirement.

Comments

Comments on the interim final rule were required to be received on or before December 21, 1999. We received five comments. They were from a research firm, an organization representing State department of agriculture officials, a consumer organization, and two industry associations.

In the interim final rule, we explained that new FSIS temperature and labeling requirements in 9 CFR part 590 became effective August 27, 1999. These new requirements implemented mandatory 1991 amendments to the EPIA. The interim changes made by the Agricultural Marketing Service (AMS) to 7 CFR part 56 are deemed necessary to avoid a conflict between the temperature and labeling requirements published by FSIS and regulations of the AMS voluntary shell egg grading program.

The research firm that commented agreed with the temperature requirement, added a note of caution concerning storage temperature changes that can cause eggs to sweat, and recommended that this issue be addressed in the regulations. The regulations already contain the requirement that every reasonable precaution be exercised to prevent the "sweating" of eggs (§ 56.76(f)(2)).

The organization representing State department of agriculture officials supported the temperature requirement. The amendatory language states that eggs should be placed under refrigeration "promptly after packaging." This organization suggested that the meaning of "promptly" be clarified in either the regulations or the instructions to the graders. The Agency provides detailed information and explanation concerning technical aspects of the grading program in its *Shell Egg Graders Handbook*, where this issue will be addressed.

The consumer organization, while supporting the temperature and labeling requirements, felt that they did not go far enough. In response to food safety concerns, this organization recommended that the temperature requirement should be 41 °F instead of 45 °F, that only one specific labeling statement should be allowed, and that the statement's size and placement should be mandated. As we explained in our interim final rule, FSIS has already finalized its rule concerning refrigeration in order to comply with the legislative amendment. This amendment, dealing with voluntary grading of shell eggs, is intended to conform to the FSIS requirements of refrigeration and labeling found in 9 CFR part 590. The organization also commented that AMS should set a specific time limit for processors to move packaged eggs into coolers. AMS will address this issue in its *Shell Egg Graders Handbook*.

One industry association expressed concern about the industry's ability to comply with the temperature requirements established by FSIS regulations. Those regulations have been in effect since August 27, 1999. Any questions concerning them should be addressed to FSIS. The main purpose of this rule is to conform to those regulations.

The other industry association supported the refrigeration and labeling requirements, but wanted them to cover all shell eggs regulated under the EPIA and monitored under the shell egg surveillance program, not just those under the voluntary shell egg grading program. Shell eggs regulated under the EPIA are already covered by FSIS refrigeration and labeling requirements mandated in 9 CFR part 590, and the changes made by the interim final rule to 7 CFR part 56 does not alter that coverage.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000 (13 CFR 121.201). Approximately 550,000 egg laying hens are needed to produce enough eggs to gross $9,000,000. Thus, entities with less than 550,000 laying hens would meet the small business definition.

The Agricultural Marketing Act of 1946, as amended, authorizes a voluntary grading program for shell eggs, with implementing regulations in 7 CFR part 56. Shell egg processors that

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apply for service must pay for the services rendered. These user fees are proportional to the volume of shell eggs graded, so that costs are shared by all users. Shell egg processors who meet the facility and operating requirements are entitled to pack their eggs in packages bearing official USDA grade identification when AMS graders are present to certify that the eggs meet the requirements as labeled. Plants in which these grading services are performed are called official plants. There are about 700 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 159 are official plants that use USDA's grading service and would be subject to this rule. Of these 159 official plants, the AMS believes approximately 25 would meet the small business definition.

The EPIA, enacted in 1970, authorizes the mandatory inspection of egg products operations and the mandatory surveillance of the disposition of shell eggs that are undesirable for human consumption, with implementing regulations in 7 CFR part 59. Congress amended the refrigeration and labeling requirements of the EPIA as part of the Food, Agriculture, Conservation and Trade Act Amendments of 1991.

In 1992, the AMS proposed changes to 7 CFR part 59 to implement the 1991 EPIA amendments and to 7 CFR part 56 to make its temperature and labeling requirements consistent with part 59. Before AMS published the final rule, however, the Department consolidated food safety responsibilities under FSIS. Egg products inspection functions under the EPIA were delegated to FSIS, while shell egg surveillance and grading functions continued to be administered by AMS. FSIS promulgated a final rule with request for comments to implement the 1991 EPIA amendments in 7 CFR part 59, later redesignated as 9 CFR part 590, which became effective August 27, 1999. Among other changes, the amendments require a storage temperature at no greater than 45 °F (7.2 °C) for eggs after they have been packed into containers destined for the ultimate consumer.

Since the proposed changes to the shell egg grading regulations were not finalized, AMS is revising 7 CFR part 56 to conform to the FSIS temperature and labeling requirements mandated by the 1991 EPIA amendments. Because the proposed rule was published some years ago, AMS published this rule as an interim final rule with request for comments. We are only making changes deemed necessary to avoid conflict between the requirements of the final rule published by FSIS and the AMS shell egg grading program.

All shell egg processors that currently use or are likely to use USDA grading service typically have over 3,000 layers and are therefore required to comply with the provisions of the EPIA. Accordingly, all eggs these processors pack into consumer containers for the ultimate consumer must comply with EPIA refrigeration and labeling requirements. Additionally, industry practice is to refrigerate all processed and graded eggs the same way, whether packed into containers destined for the ultimate consumer, or only officially identified as U.S. Grade AA, A, or B.

Therefore, AMS has determined that the provisions of this rule will not impose any additional requirements on small or large egg handlers. Accordingly, it will not have a significant economic impact on a substantial number of small entities that use USDA's voluntary shell egg grading service. In addition, FSIS discussed its RFA analysis when it published its final rule for 7 CFR part 59, and determined that it would not have a significant economic impact on a substantial number of all small entities that produce and process chicken eggs.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements that appear in part 56 have been previously approved by the Office of Management and Budget (OMB) under OMB control number 0581–0128. There are no new requirements provided for in this rulemaking action.

After consideration of all relevant material presented, including the comments received, we are finalizing the interim rule without change.

List of Subjects in 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

PART 56—VOLUNTARY GRADING OF SHELL EGGS

Accordingly, the interim rule amending 7 CFR part 56 which was published at 64 FR 56945 on October 22, 1999, is adopted as a final rule without change.

Dated: May 24, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–13481 Filed 5–30–00; 8:45 am]

BILLING CODE 3410–02–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1306, 1307 and 1309

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission

ACTION: Final rule.

SUMMARY: The Northeast Dairy Compact Commission amends its over-order price regulation to establish a milk supply management plan. This new program addresses the requirement in the Northeast Interstate Dairy Compact that the Commission take such action as necessary and feasible to ensure that the over-order price regulation does not create an incentive for milk producers to generate additional supplies of milk. This rule establishes an assessment/refund plan under which the Commission will withhold 7.5 cents from the per hundredweight producer price in each month there is a Compact payment, so long as the resultant Compact producer price is at least 25 cents per hundredweight. The Commission will, on an annual basis, return the withheld funds to only those Compact eligible producers who increased their milk production at a rate of one percent or less, as compared to the prior year's milk production. The refund will be paid to eligible producers by distributing one-half of the assessed funds on an equal payment to each eligible producer and one-half on a per hundredweight basis of the total milk production for the program year, up to a maximum per hundredweight refund of $12,000. The program year will be from July 1 through June 30. This supply management plan is intended to ensure that the over-order price regulation does not create an incentive to generate additional supplies of milk and that it continues to meet the Commission's primary mission to assure the continued viability of dairy farming in the northeast and to assure New England consumers of an adequate and local supply of milk.

EFFECTIVE DATE: July 1, 2000.

ADDRESSES: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission ("Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact. In November 1999, the Congressional consent to the Compact was extended through September 30, 2001. 7 U.S.C. 7256(3), as amended by Pub. L. 106–113 § 4.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission has subsequently amended and extended the compact over-order price regulation. The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

The Compact requires the Commission, when establishing a compact over-order price, to "take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk." Compact Article IV, Section 9(f). As required by this section, the Commission has taken several steps to monitor milk production in New England since implementation of the over-order price regulation. In 1997, the Commission contracted with two Universities to conduct various studies, including an assessment of the cost of milk production in New England and an analysis of milk supply in the Compact region. In 1998, the Commission's Committee on Regulations and Rulemaking held five regional meetings to obtain information from the region's farmers regarding the increase in milk production in the region and the Commission's responsibilities under Article IV, Section 9(f) of the Compact. The Commission also conducted an historical review of milk supply control methods that have been attempted in the past on a national or regional level. Finally, the Commission initiated a series of informal rulemaking proceedings.

The Commission began informal rulemaking proceedings relating to milk supply management by issuing a notice on November 27, 1998. In that notice the Commission requested public comment and testimony on several subjects and issues, including whether additional supply management policies and provisions should be incorporated into the over-order price regulation.[2] The Commission specifically solicited comments on four distinct methods of addressing milk supply management through the Compact producer price payment. The four options were: (1) to establish a cap that would limit the milk eligible for the Compact payments to up to 95,000 pounds of a producer's monthly milk production; (2) to establish a cap that would limit the milk eligible for the Compact payments at the 1998 production level for farms producing in excess of 600,000 pounds per month; (3) a refund/assessment plan that would withhold an assessment from each Compact monthly pool and refund the assessed funds to only producers who did not increase their milk production during the program period; and (4) a split pool proposal that would withhold a certain amount from each monthly pool and then redistribute those funds to all eligible producers by dividing the total and paying a set percentage to all farms on an equal basis and the remainder on a per hundredweight basis.

The Commission held a public hearing to receive testimony on December 11, 1998 in Boxborough, Massachusetts and comments were received until 5:00 p.m. on December 31, 1998. At its January 13, 1999 meeting, the Commission voted to close the subjects and issues rulemaking proceeding and to refer the issues and comments and testimony received to the Committee on Regulations and Rulemaking for review and analysis. The Committee was directed to return to the Commission with its recommendations no later than the May 1999 meeting.

The Committee presented its recommendations to the Commission at the April 7, 1999 meeting. The Commission voted to initiate an informal rulemaking proceeding and to propose a specific assessment and refund program to address its responsibilities under Article IV, Section 9(f) of the Compact.[3] The assessment and refund program proposed assessing a flat rate of $250,000, or approximately four cents per hundredweight, from each producer pool. The assessment obligation would have carried forward to the next pool in any month without a Compact payment. The refund of the assessments would have been paid to only those producers who increased their milk production at a rate of one percent or less. The refund would be paid in two parts, the first at a flat rate to each eligible producer, and the second part to only those producers who reduced their milk production based on the hundredweight of milk that the current year's production was less than the prior year's production. The Commission held a public hearing on May 5, 1999 in Concord, New Hampshire and received comments until May 19, 1999.

At its meeting on June 2, 1999, and after considering the testimony and comments submitted in the rulemaking proceeding, the Commission voted to reopen the proceeding and to propose as a second option a base/excess plan, in addition to a modified assessment/refund plan.[4] The proposed base/excess plan would establish a monthly base production level for each producer, using the prior year's production in that month as the base. The producer would then only be eligible for Compact payments on the volume of milk produced in the current month up to the base volume of milk produced in the same month in the prior year. There would be no Compact payment on milk produced in excess of the base. The amended assessment and refund plan would establish an assessment of five cents per hundredweight against the producer pay price, but only in months with a Compact payment.

[1] 62 FR 29626, May 30, 1997.

[2] 63 FR 65563, Nov. 27, 1998.

[3] 64 FR 19084, Apr. 19, 1999.

[4] 64 FR 33027, June 21, 1999.

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The Commission held public hearings on July 7, 1999 in West Springfield, Massachusetts and August 4, 1999 in White River Junction, Vermont on the proposed base/excess and modified assessment/refund plans. The Commission received written comments through August 18, 1999.

At its September 1, 1999 meeting, the Commission voted to postpone deliberation on the proposed supply management rules pending resolution of legislation in Congress regarding reauthorization and expansion of the Compact. The Commission repeated this action at its October 6, 1999 and November 10, 1999 meetings.

Following Congressional reauthorization on November 29, 1999, the Commission began deliberations on the proposed supply management rules at its December 1, 1999 meeting. The Commission voted to reject the proposed base/excess plan, due to excessive administrative costs associated with that proposal, as demonstrated in the hearing record through testimony and comment, and to move forward with the analysis of the public comment on the proposed assessment/refund program. The Commission's Committee on Regulations and Rulemaking continued its analysis of the rulemaking record.

At the February 2, 2000 Commission meeting, because so much time had passed since the last public comment period and new milk production statistics were available, the Commission voted to close the pending supply management proceedings and instructed the Committee on Regulations to hold a public meeting and to return to the Commission's March meeting with a new proposed rule to address the Commission's responsibilities under Article IV, Section 9(f) of the Compact. The Committee held a public meeting on February 23, 2000 to discuss the Commission's supply management options.

On March 8, 2000 the Commission voted to propose a revised assessment/refund plan that would assess five cents against the producer price in each month with a Compact pool, and refund those funds to all producers who had maintained their milk production at or below one percent of the prior year's production. The refund would be distributed in two parts, with the first paid to all eligible producers at an equal payment to each producer and the second part on a per hundredweight basis of total milk production for the program year. The Commission held a public hearing on April 5, 2000 in Bedford, New Hampshire.[5] The Commission accepted written comments until April 19, 2000.

Based on the comments received in the public meetings on supply management in April and May 1998 and February 2000 and oral testimony and written comments and exhibits received in the December 1998 subjects and issues rulemaking proceeding, and the May, July and August 1999 and April 2000 public hearings and proposed rulemaking proceedings, the Commission implements a supply management plan through an assessment and refund payment to producers who maintain their milk production up to one percent of the prior year's production level. The comments and testimony received as part of the public participation in the rulemaking proceedings and the milk supply management plan are described in detail below.

II. Summary of Public Comments and Testimony

A. Summary of 1998 Proceedings

The Commission has closely monitored the milk supply in the New England states since the implementation of the over-order price regulation. In 1998, the Commission initiated a comprehensive investigation into the increase in milk production that occurred in the first three quarters of 1998 and to evaluate how best to address its obligations under Article IV, Section 9(f) of the Compact. These activities included holding five regional meetings of the Committee on Regulations and Rulemaking and the review and analysis of supply management options proposed for the United States Dairy Industry over the years. The Commission also initiated a subjects and issues rulemaking proceeding to obtain public comments and testimony regarding additional regulation of the New England milk supply.

The Commission held five regional meetings of its Committee on Regulations and Rulemaking in April and May of 1998. These meetings were held in Vermont, Massachusetts, Saratoga Springs, New York, Connecticut and Maine. The Commission received oral and written comments in response to those meetings. A summary of the oral[6] and written[7] comments is included in the December 1998 rulemaking record. Additional letters and telephone calls were received by the Commission in response to the regional meetings of the Committee on Regulations and Rulemaking and the letters are also included in the record.[8] The overwhelming opinion of dairy farmers was that the Compact over-order price was not responsible for the increase in milk supply, but rather that the favorable weather and grain prices and long term business plans were responsible. Still many individuals did express support for the adoption of a supply management plan by the Compact Commission.

In addition, the Commission reviewed the supply management options proposed for the United States dairy industry.[9] The review includes a discussion of Federal Milk Market Orders, The Dairy Price Support Program, Voluntary Supply Control Programs, such as the Milk Diversion Program, the Dairy Termination Program, and Refundable Assessment, as well as Mandatory Supply Control, such as allocating the "right of production" and a quota system. This review also includes a bibliography.

In December 1998, the Commission initiated a public hearing, at the request of the Massachusetts delegation to the Commission, to consider placing a limit on the amount of milk on which the Compact over-order producer price is paid. The purpose of the proposed limit, or cap, would be "to increase the level of income stability for the average sized farmers and to limit the incentives for increased production in the Compact region."[10] On November 27, 1998, the Commission published a notice of proposed rulemaking and requested testimony and comments on whether to amend the formula for distribution of monies from the producer-settlement fund, including whether to adopt a cap on the amount of milk, per producer, eligible for the Compact over-order producer price and whether additional supply management policies and provisions should be incorporated into the over-order price regulation.[11] The Commission held a public hearing on December 11, 1998 in Boxborough, Massachusetts and received written

[5] 65 FR 12146, Mar. 8, 2000.

[6] Summary of Testimony Concerning the Issue of Increased Milk Production in the Region, Written Comments December 1998 rulemaking record, hereinafter "WC 12/98" at 22–38.

[7] Written Statements Submitted at the Public Hearings, WC 12/98 at 57–163.

[8] Producer Letters and Phone Calls Concerning the Issue of Increased Milk Production, WC 12/98 at 164–257.

[9] Supply Management Options Proposed for the US Dairy Industry: Historical Review, WC 12/98 at 44–56.

[10] WC 12/98 at 39.

[11] 63 FR 65563, November 27, 1998.

comments and exhibits until December 31, 1998.

In its November 27, 1998 notice of proposed rulemaking, the Commission specifically solicited comments on four proposals: the Massachusetts Cap Proposal, a Proposal to Cap the Largest Producers, a Split Pool Proposal, and a Refund/Assessment Option.[12] These proposals were developed as a result of the Massachusetts delegation cap proposal and the comments submitted in response to the five regional meetings and the supply management option review.

The Commission's Regulations Administrator, Carmen Ross, prepared several comparison charts of the Massachusetts cap proposal and an additional split pool option, as an alternative method of addressing the concerns expressed by the Massachusetts delegation.[13] In addition, Mr. Ross included data from the Market Administrator Order #1 regarding the number of farms by size category and year for comparison purposes.[14] Using this data, Mr. Ross compiled another chart summarizing the milk production by farm size.[15]

The majority of the commenters addressed the cap proposal and supply management issues. Some commenters addressed the income distribution issues and others offered alternative proposals. A few commenters addressed the split pool and refund/assessment proposals.

1. Cap Proposals

The vast majority of the commenters opposed the cap proposals and a few commenters supported the cap. Other commenters simply recommended that the producer payment regulations should not be changed.

Most of the commenters who opposed a cap proposal were concerned that a cap would not be fair, would create a disincentive, would be divisive, and ultimately would not save the smaller farms, because farms go out of business for many reasons and not because of price in the short term. Many of these commenters emphasized the need for all size farms, that small farms benefit from the larger farms in their area, and the importance for individual farms to be able to decide how large, or small, they need or want to be.

2. Income Distribution

The majority of the commenters opposed changing the basic producer pay formula and expressed support for the Commission's current methodology. Many of the commenters who opposed a change in the income distribution formula emphasized that many of the so-called larger farms are family farms run by two or more family members and supporting several related families, and gave the same reasons as those opposing a cap proposal for their opposition such as the importance of fairness in the regulation and the concern that divisiveness among farmers would result from changing the income distribution formula.

3. Supply Management

Supply management was also opposed by a great majority of commenters, both at the hearing in Boxborough and at the Committee's hearings in the Spring of 1998. Many of those opposed to supply management also did not believe that the Compact was causing the increase in production in New England, but rather attributed the increase to warm weather and good quality feed at low prices. Others stated that they increased production as part of a long-term plan to expand. Many of the commenters, especially at the Spring 1998 meetings, expressed how helpful the Compact payments have been, but these same commenters also stated unequivocally that the Compact payments did not cause them to increase production. Other commenters questioned why supply management is needed when farms are still going out of business and New England continues to be dependent on milk from other states, primarily New York.

Some commenters did support the Compact Commission instituting some form of supply management. A few commenters did think that the Compact payments are the cause of increased production in New England.

4. Split Pool Proposal and Refund/Assessment Proposal

Few comments were received specifically addressing the split pool proposals or other two-tiered system, and these comments were offered only if the Commission determined that an amendment to the income distribution methodology was required. Similarly, the Refund and Assessment proposal received few comments.

B. Summary of 1999 Rulemaking Proceedings

At the January 13, 1999 Commission deliberative meeting, the December 1998 supply management rulemaking record was referred to the Committee on Regulations and Rulemaking for analysis and review. The Committee reported its recommendations to the Commission at the April 7, 1999 meeting and the Commission published a proposed rule on April 19, 1999.[16] The proposed rule would have established an assessment/refund program under which the Commission would withhold up to $3 million dollars per year, at the rate of $250,000 from each Compact monthly pool. In months without a Compact pool, the assessment would accrue to the next monthly pool. At the end of the calendar year, the Commission would refund the assessed funds to producers who had increased production of 1% or less, as compared to the prior year's production. One-half of the assessment would be refunded at a flat rate to each eligible producer. The remaining half would be refunded only to those producers who decreased production, on a per hundredweight payment based on the volume of reduced production. The Commission held a public hearing on May 5, 1999 in Bedford, New Hampshire and received written comments until May 19, 1999.

The Commission received testimony from its Regulations Administrator, Carmen Ross, and four other witnesses at the May 5, 1999 public hearing on the first proposed assessment/refund rule. Mr. Ross' testimony was an explanation of the Commission's proposed rule.[17]

One commenter generally supported the Commission's proposal, but offered an alternative approach involving an individual base for each farmer. Another commenter expressed the view that New England is not the cause of the national oversupply of milk. This commenter opposed a supply management plan, because the only producers to reduce production are those who had a bad year and felt the existing regulation works well. He expressed the view that the 2.8 percent of income that the Compact payments represent, is not enough to make management decisions. He felt that his farm is set up for a certain number of cows, and to reduce the number would start a domino effect of decreased production.

One commenter presented testimony on behalf of three farmer cooperatives, in which he generally felt a supply management plan was not necessary, but as an alternative offered a plan to establish a base for each producer. This commenter felt by making Compact payments only up to the prior year's production level would address the incentive aspect of Article IV, Section 9(f) of the Compact. This commenter also opposed making refund payments

[12] 63 FR 65564, November 27, 1998.

[13] Carmen Ross, Tr. 14 and WC 12/98 at 2–16; 63 FR 65564.

[14] Ross, WC 12/98 at 17–19.

[15] Ross, WC 12/98 at 20.

[16] 64 FR 19084 (April 19, 1999).

[17] Carmen Ross, May 1999 Transcript ("Tr. 5/99") at 4–61.

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on the volume of reduced production. This opinion was shared by another commenter.

The Commission also received eighteen written comments. Of these, eleven supported the Commission's actions to address milk supply issues and eight opposed any supply management plan. Of those opposing a supply management plan, the commenters expressed concern for how the plan would affect small or new farms or younger farmers trying to grow their businesses. Others felt that the Commission has already taken sufficient steps to ensure the Compact payments do not create an incentive to generate additional supplies of milk, through the payments to the Commodity Credit Corporation and refunding the balance to farmers who did not increase production, implementation of the diversion and transfer rule and by setting the Compact price at a floor of $16.94.

Many of the commenters supporting the proposed assessment and refund plan felt that the assessment would have to be higher than four cents, some recommended up to twenty cents or twenty per cent of the monthly Compact producer price, to be effective. Another commenter felt the five cent assessment was adequate, but should be capped at $2.5 million for the program year.

Several commenters objected to the proposed plan to make part of the refund payment on the reduced volume of milk production, instead of the historical dairy pricing policy of payments based on total milk produced. Many commenters urged the Commission to match the base of comparison, not to the prior year's production volume, but rather to a producers contribution to a milk supply volume balanced to the New England consumer demand. Other commenters objected to the accrual of the assessment obligation to the next pool, in months with no Compact payment.

At its June 2, 1999 meeting, the Commission considered the testimony and comments received and voted to modify the proposed assessment/refund rule and to alternatively propose a base/excess rule.[18] The assessment/refund plan was modified to withhold five cents from each Compact pool, without an assessment accruing in months without a Compact pool. The modified proposal also included a $12,000 cap on the amount of the refund to be paid out on a per hundredweight basis.[19]

The Commission also proposed, as an alternative, a base/excess plan. Under that proposal, all compact qualified producers would be assigned a base production level for each month. The base would be the equivalent of the volume of milk produced in the same month in the prior calendar year. Producers would then receive compact payments on only their base production volume, or actual production volume, whichever is less. Any amount of milk produced in excess of the base would not receive Compact payments. Adjustments to the base would be dependent on the rate of increased production in the Compact region as compared to the national average. The Commission held public hearings on July 7, 1999 in West Springfield, Massachusetts and on August 4, 1999 in White River Junction, Vermont. Both of these public hearings were held in the evening to accommodate summer farm work schedules and to encourage farmers to attend. Comments were received through August 18, 1999.

The Commission received testimony from twenty-seven witnesses in those two public hearings and received eleven additional written comments. Of these commenters, one commenter supported a supply management plan, and suggested that supply be matched to consumer demand and twenty-eight opposed the Commission taking any action regarding supply management, but nine would support the base/excess plan, if the Commission felt it was necessary. The reasons given for opposing a supply management plan included that it is not necessary because milk production is due to weather conditions and feed quality and price, the Commission has already taken sufficient actions and that milk supply is a national problem and the small amount of money represented by the Compact payments to New England milk producers cannot effect the national milk supply.

Two of the witnesses appeared at the request of the Commission. They were David Walker, Federal Order #4 Market Administrator and Eric Rasmussen, Federal Order #1 Market Administrator. These witnesses testified to their administrative experience with plans similar to those proposed by the Commission. Mr. Walker explained the heavy administrative aspect of implementing a base/excess plan and Mr. Rasmussen explained the experience with administering and auditing functions his office performed for the Commission in the 1999 refund of the balance in the Commodity Credit Corporation escrow account to producers who did not increase their milk production.

The Commission notes that the commenters participating in the rulemaking proceedings described above provided comments of exceptional quality. Many commenters thoroughly analyzed the charts presented by the Commission and of those who presented alternative proposals, many produced their own charts and compared the results to the charts presented by the Commission. The Commission appreciates the thoughtful participation and assistance offered by these commenters and has found the opinions, data and comments of great value.

C. Summary of Current Proceeding

The Commission proposed the instant rule on March 8, 2000.[20] The Commission proposed a revised assessment and refund plan that would withhold five cents from the producer price in each Compact monthly pool. The Commission would refund the assessment on an annual basis to those producers who had increased production at a rate of one percent or less, as compared to the prior calendar year's production. One-half of the assessed funds would be distributed to all eligible producers at a flat rate and one-half would be distributed based on the total volume of milk produced for the year, up to a maximum per hundredweight refund of $12,000. This proposed rule responded to previous comments by deleting the provision that would have the assessment accrue to the next pool, in months without a Compact payment and by paying the per hundredweight refund to all eligible producers, instead of only those who actually decreased production, and by making that payment on the total volume of milk produced, rather than on the volume of reduced production.

The Commission received testimony from three witnesses and three written comments. All those commenting supported a supply management plan. Three commenters felt the assessment should be higher than the proposed five cents, and suggested at least ten cents, and one commenter supported the proposal but only if the assessment is no more than five cents.

D. Analysis of Comments Received

The Commission concludes that the adopted milk supply management plan is both necessary and feasible and is therefore required by Article IV, Section 9(f) of the Compact. The Commission further concludes that its responsibility under that section is met with this program and the other actions previously taken by the Commission to ensure that the over-order price regulation does not create an incentive to producers to generate additional supplies of milk, while assuring the viability of dairy farming in the northeast.

The Commission does not disagree with the many commenters who noted that a national milk supply management program should be considered and not just a program applicable in the northeast. However, the Commission notes its peculiar responsibility relative to milk supply in the northeast under the Compact and concludes that this program is appropriate.

The Commission also does not disagree with the numerous commenters that milk supply is greatly effected by weather conditions and feed quality and cost. Nevertheless, the Commission is charged with taking action that is necessary and feasible relative to milk supply and concludes that the assessment/refund plan adopted by this amendment meets that obligation.

The Commission also recognizes the many statements from producers that the Compact has not caused them to increase their milk production. The Commission does not disagree with their statements that good weather, good quality feed and low feed cost contributed to the milk production increase in the New England states in 1998 and 1999. However, the Commission also defers to the results of its commissioned study that concludes that even taking those factors into account, one percent of the milk production increase between July 1997 and June 1998 is attributable to the Compact payments.[21]

The Commission concludes that the assessment and refund plan is sufficient to meet the requirements of Article IV, Section 9(f) of the Compact. Many commenters suggested that the proposed rate of five cents per hundredweight was insufficient and some suggested up to twenty percent of the Compact producer price be set as the assessed rate. The Commission agrees that five cents may be insufficient, but that ten cents is more than necessary in light of current milk production data that shows New England production below the national average. Therefore, the Commission concludes that 7.5 cents reduction in the producer price for twelve months is sufficient to result in a supply management refund pool that will encourage producers to stabilize their milk production at one percent or less. A stable milk supply in New England is a goal for the Compact and will assure consumers of an adequate and local supply of milk. Therefore, the Commission adopts an assessment rate of 7.5 cents against the producer price in each month there is a Compact payment.

However, the Commission is concerned that when federal milk prices are high, that is a signal that more milk is needed, and therefore will not impose the 7.5 cents assessments when it would result in a producer pay price of less than 25 cents.

The Commission agrees with the numerous commenters that the refund should be paid on total production, and not on reduced production. The Commission understands the opposition of some commenters to the two-tier refund design of the supply management plan. However, the Commission recognizes the different impacts on different size farms and different pressures on farms in more populated states. The Commission concludes that the two-tier refund design will best assure a local supply of milk throughout New England.

The milk supply management plan implemented by this rule is a voluntary plan. This rule does not require young or new farmers to restrict their business growth plans. However, it does provide an incentive for farmers to stabilize their production.

The Commission has been very cognizant of the repeated requests from those participating in the public meetings and hearings that any plan be equitable and fair to all farmers. The Commission adopts this supply management plan after much careful consideration and deliberation and concludes that this plan allows many factors to be balanced while providing equity and fairness to all farmers through this voluntary supply management plan.

III. Milk Supply Management Plan

The milk supply management plan implemented by this rule is designed to meet the Commission's responsibilities under Article IV, Section 9(f) of the Compact. That provision provides that "[w]hen establishing a compact over-order price, the commission shall take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk." The supply management plan is relatively straightforward to administer and implement and therefore the Commission concludes that it is a feasible method of addressing supply management. The proposed supply management plan is necessary to ensure that the Compact Over-order price does not create an incentive for producers to generate additional supplies of milk, as required by Article IV, Section 9(f) of the Compact.

Since promulgation of the Compact Over-order Price Regulation in 1997, the Commission has closely monitored milk production levels in New England. One of the main goals in initially promulgating the Over-order Price Regulation was to at least stabilize the dairy industry supplying the New England consumer milk markets and to increase the local supply of milk.[22]

The Commission received the results of a study, conducted by the University of Vermont, of the milk supply in the first year of the Compact Over-order Price Regulation. The study concluded that the Over-order Price Regulation was meeting its initial goal of stabilizing the milk supply and that one percent of the increase in milk supply between July 1997 and June 1998 was due to the Compact payments.[23] This study analyzed the milk supply in New England and factored in many variables, including weather and feed quality and prices in concluding that the Compact Over-order Price Regulation was increasing milk supply by one percent, a stated goal of the Commission in implementing the price regulation in 1997. The study does not include an analysis of the impact of the price regulation after June 1998.

Table 1 shows the total volume of milk in the Compact pool between July 1997 and December 1999. The volume of milk includes milk produced outside of New England, and distributed within New England, and does not include milk excluded pursuant to the Compact limitations on qualification of diverted and transferred milk.

[18] 64 FR 33027 (June 21, 1999)

[19] The proposal also indicated the Commission would modify the rule relative to the Commodity Credit Corporation to return remaining funds from a CCC reserve account to the producer-settlement fund. The current rule requires such funds to be returned to producers who did not increase their milk production and is not changed by this final rule.

[20] 65 FR 12146, Mar. 8, 2000.

[21] Executive Summary, Milk Market Impacts of the Northeast Dairy Compact, Department of Community Development and Applied Economics, University of Vermont November 1999.

[22] 62 FR 23039–40, April 28, 1997; 62 FR 29635, May 30, 1997; 62 FR 62814, Nov. 25, 1997.

[23] Impacts of the Northeast Interstate Dairy Compact on New England Milk Supply, Charles F. Nicholson, Budy Resosudarmo and Rick Wackernagel, Department of Community Development and Applied Economics, The University of Vermont.

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TABLE 1.—VOLUME OF MILK IN THE COMPACT POOL JULY 1997 THROUGH DECEMBER 1999

[In million pounds]

Month	1997	1998	1999
Jan	.....	544.2	568.3
Feb	.....	508.1	528.3
Mar	.....	561.2	563.0
Apr	.....	541.8	568.5
May	.....	580.8	599.0
June	.....	552.1	569.2
July	531.0	567.9	564.3
Aug	532.2	551.3	559.8
Sept	503.9	529.5	530.4
Oct	517.3	544.3	545.9
Nov	498.0	527.3	525.3
Dec	535.1	566.0	560.7
Average	519.6	547.9	556.9

Table 2 shows the volume of milk that has been depooled, or excluded from qualification for Compact payments, pursuant to the Compact limitations on diverted and transferred milk.[24] The limitations on diverted and transferred milk became effective in January 1999 and applied to the first Compact pool in April 1999. The applicable regulations are codified at 7 CFR 1301.23(d) and 1304.2(c).

TABLE 2.—VOLUME OF DEPOOLED MILK JANUARY 1999 THROUGH DECEMBER 1999

[In million pounds]

Month	Depooled Milk
Jan	.....
Feb	.....
Mar	.....
Apr	4.3
May	1.2
June	.9
July	1.5
Aug	4.8
Sept	4.7
Oct	2.0
Nov	2.2
Dec	1.4
Total	23.0

Table 3 shows the total volume of milk qualified for Compact payments, after exclusions pursuant to the diverted and transferred milk limitations, by quarter. Table 3 also shows the percent increase in milk volume over the same quarter in the prior year.

TABLE 3.—COMPACT PRODUCER MILK BY QUARTER, JULY 1997 THROUGH DECEMBER 1999

Quarter	1997 million pounds	1998 million pounds	1999 million pounds	1997/1998 (percent)	1998/1999 (percent)
Jan-Mar	.....	1,613.5	1,659.6	.....	2.9
Apr-June	.....	1,674.7	1,736.7	.....	3.7
Jul-Sep	1,567.1	1,648.7	1,654.5	5.2	0.4
Oct-Dec	1,550.4	1,637.6	1,631.9	5.6	−0.4
Average	1,558.75	1,643.6	1,670.7	5.4	1.6

Table 4 shows the federal blend price, the Compact producer price and the percent of total producer price attributed to Compact payments.

TABLE 4.—TOTAL PRODUCER PRICE AND PERCENT ATTRIBUTED TO COMPACT PAYMENTS

Month	Federal blend price (zone 21)	Compact producer price	Total producer price	% of total due to compact
July 1997	11.97	1.28	13.25	9.66

[24] 63 FR 65517, Nov. 27, 1998.

TABLE 4.—TOTAL PRODUCER PRICE AND PERCENT ATTRIBUTED TO COMPACT PAYMENTS—Continued

Month	Federal blend price (zone 21)	Compact producer price	Total producer price	% of total due to compact
August	12.26	1.31	13.57	9.65
September	12.54	1.36	13.90	9.78
October	13.60	0.81	14.41	5.62
November	14.10	0.44	14.54	3.03
December	14.06	0.40	14.46	2.77
January 1998	14.02	0.34	14.36	2.37
February	14.30	0.04	14.34	0.28
March	14.10	0.16	14.26	1.12
April	13.96	0.14	14.10	1.00
May	13.38	0.33	13.71	2.41
June	13.68	0.71	14.39	2.41
July	13.14	1.02	14.16	7.20
August	15.00	0.24	15.24	1.57
September	16.47	0.00	16.47	0
October	16.76	0.00	16.76	0
November	16.67	0.00	16.67	0
December	17.18	0.00	17.18	0
January 1999	17.29	0.00	17.29	0
February	15.82	0.00	15.82	0
March	15.69	0.00	15.69	0
April	11.76	1.43	13.19	10.8
May	12.42	0.82	13.24	6.2
June	12.79	0.73	13.52	5.4
July	12.97	1.01	13.98	7.22
August	13.64	0.70	14.34	4.88
September	15.34	0.21	15.55	1.35
October	15.47	0.00	15.47	0
November	15.41	0.00	15.41	0
December	12.15	1.00	13.15	7.60
Average	14.26	0.49	14.75	3.32

In addition to the public comment and testimony discussed above, the Commission considered the data shown in Tables 1 through 4, and published as part of the proposed rule, and the data and conclusions provided in the University of Vermont Milk Supply studies, as well as milk production data published by the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS) and milk supply and demand data and estimates published by the USDA World Agricultural Outlook Board (WAOB), to design a feasible supply management plan. The supply management plan adopted by the Commission, and approved by producers, is designed (1) to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk, and (2) to be consistent with the Commission's primary responsibility of assuring the viability of dairy farming in the northeast, and to assure consumers of an adequate, local supply of pure and wholesome milk. Compact Article I, Section 1 and Article IV, Section 9(f). The Commission concludes that establishing a voluntary supply management plan, that includes an allowance for an annual increase of one percent, will meet these dual objectives.

In implementing this program the Commission notes that the Compact producer price, since the inception of the price regulation in July 1997, has averaged only 3.3% of the total producer pay price, and therefore the Commission recognizes there are some limitations on the ability to affect producer decisions through the Compact price. The Commission also acknowledges that weather and other circumstances, such as feed quality, that affect milk production and supply, are unaffected by the Compact price.

The Commission finds, based on the University of Vermont studies, that changes in production technology, such as genetic advances and improvements to feeding systems, milking systems and other farm management practices, led to a 2% growth rate in average annual milk production per cow in New England for the ten-year period between 1988 and 1998.[25] Those same studies also found that milk production increased at a rate of 1.3% in the Compact region, between July 1997 and June 1998, of which 1% was attributable to the Compact producer price.

Therefore, the Commission recognizes that milk production is partially determined by price and partially determined by weather and other factors that are uncontrolled by the producer and unaffected by price levels. The Commission intends the supply management plan to affect, through the incentive aspects of the Compact price, the producer decisions regarding milk production that are directly related to the Compact price.

On the demand side, the Commission notes that USDA projects commercial disappearance of dairy products to grow at approximately 1% annually for the next decade.[26] The Commission finds that a 1% annual growth in demand justifies the conservative allowance of a 1% annual increase in supply to encourage a stable milk production level

[25] Impacts of the Northeast Interstate Dairy Compact on New England Milk Supply, Charles F. Nicholson, Budy Resosudarmo and Rick Wackernagel, Department of Community Development and Applied Economics, The University of Vermont.

[26] "USDA Agricultural Baseline Projections to 2009," Staff Report WAOB–2000–1, Office of the Chief Economist, USDA.

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consistent with demand for milk in New England and to accomplish the expressed goals of the Compact.

The Commission also concludes that the 1% allowance is supported by the relative equilibrium between milk supply and demand in New England since the implementation, on January 1, 1999,[27] of the rule limiting Compact payments on milk diverted and transferred out of the region. Pursuant to that rule, some milk has been excluded from the monthly Compact pool, as reflected in Table 2. However, the low percentage of depooled milk (e.g. 0.15% in June 1999 and 0.7% in April 1999) indicates a relative equilibrium between supply and demand in the New England milk market.

This demonstrates that since the inception of the compact price regulation in July 1997, including the 1% increase in milk supply in New England attributable to the Compact producer price, as determined by the University of Vermont studies, a relative equilibrium between milk supply and demand in New England has been achieved.

The Commission finds, based on the public comment and testimony in this proceeding and the findings in prior rulemaking proceedings regarding price level, that the established level Compact Class I price of $16.94 per hundredweight will continue to be sufficient to ensure an adequate supply of milk to New England consumers. The Commission acknowledges that those producers who increase production greater than one percent will receive slightly less compact price at the end of the program year. However, those who maintain a stable level of milk production will receive slightly more. The Commission concludes that the adopted supply management program, as applied to all producers supplying the New England market, will ensure that the Compact producer price does not create an incentive to generate additional supplies of milk.

The supply management plan assesses 7.5 cents per hundredweight from the producer price in each monthly Compact pool. By taking an equal rate from each producer pool, the Commission intends that the impact on the monthly producer pay price will be minimized and predictable, thereby continuing to ensure a sufficient and stable pay price to producers to cover their costs of production. These funds will be accumulated in a separate interest-bearing account throughout the twelve-month plan year in a supply management-settlement fund.

[27] 63 FR 65517 (Nov. 27, 1998).

At the conclusion of the plan year, producers will have 45 days to submit an application to the Commission for a refund from the supply management-settlement fund. Producers will be eligible for the refund if they maintained their milk production volume at a rate of increase of 1%, or less, compared to the prior year's production. One-half of the supply management-settlement fund will be distributed to eligible producers on a per producer basis, with each producer receiving an equal payment. The amount of the flat rate refund will be determined by dividing the total number of eligible producers into one-half the value of the supply management-settlement fund.

In addition, eligible producers will receive a refund amount based on a price per hundredweight of their total volume of milk produced in the plan year, up to a maximum of $12,000. The second-half of the supply management-settlement fund will be distributed on the per hundredweight basis. The amount of this half of the refund will be determined by dividing the total volume of milk produced by eligible producers into one-half the value of the supply management-settlement fund to determine the rate per hundredweight each eligible producer will receive.

The assessment/refund program will provide a reward to those producers who stabilize their milk production and will create an incentive for all producers to maintain a stable, local supply of milk for the New England milk market.

All producers will share equally in the burden of funding this program through a reduction in the producer pay price. Only those producers who reduce or maintain their production level at 1% or less will be eligible for a refund. However, the program will not otherwise restrict the milk production of those producers who, for business reasons unrelated to the compact payments, choose to increase their milk production at a rate greater than 1% per year. All producers, and in particular, young and new farmers must be permitted to operate their businesses according to their own plan. With improvements in genetics and farm efficiency, milk production volume on an individual farm will increase even if the same herd size is maintained. Therefore, the Commission has designed this supply management plan to be voluntary in nature.

It is the intention and judgment of the Commission that the combination of this supply management assessment/refund plan and the rules limiting compact payments on diverted and transferred milk will operate in coordination to regulate the supply of milk in New England relative to the consumer demand and to ensure that the compact payments do not create an incentive to generate supplies of milk in excess of the tolerance levels prescribed for diverted and transferred milk.

IV. Technical Amendments to the Over-Order Price Regulation

The Commission amends section 1306.3 and adds a new Part 1309 to provide the necessary regulations to implement the supply management assessment/refund plan. The Commission also makes corresponding technical changes required by the specific amendments and additions to the current regulations.

The Commission amends section 1306.3, by first redesignating existing paragraphs (e) through (g) as paragraphs (f) through (h) and adding a new paragraph (e). The new paragraph specifies that the Commission will withhold 7.5 cents from each monthly producer pool to fund the supply management-settlement fund, but only if the resultant over-order producer price is at least 25 cents.

A new Part 1309 is added to provide the regulations to implement the supply management plan. Section 1309.1 defines producer qualifications for the refund program and designates the plan year as between July 1 and June 30. Section 1309.2 defines the procedure for computing the refund prices to be paid to qualified producers. Section 1309.3 provides the authority for the establishment of a supply management-settlement fund and specifies that assessed funds will be returned to the producer-settlement fund if the supply management plan year is six months or less. Finally, section 1309.4 would describe the procedure for issuing payments to producers eligible for a refund under the supply management plan.

V. Summary of Required Findings

Article V, Section 12 of the Compact directs the Commission to make four findings of fact before an amendment of the Over-order Price Regulation can become effective. Each required finding is discussed below.

A. Whether the Public Interest Will Be Served by the Amendments

The first finding considers whether the amendment of the Over-order Price Regulation serves the public interest. The Commission previously determined that an Over-order Price Regulation

serves the public interest,[28] and the Commission reaffirms that determination. The Commission also finds that the public interest will be served by amendment of the Over-order Price Regulation to establish a milk supply management plan to ensure that the price regulation does not create an incentive to generate additional supplies of milk.

The Commission emphasizes that the amendments establishing a milk supply management plan do not impact on the New England milk consumers. The Over-order Price Regulation is structured so that assessments and obligations are based on Class I milk distributed in the New England market. The milk supply management plan affects only the distribution of the obligations collected to milk producers, and is therefore, cost-neutral to New England consumers.

B. The Impact on the Price Level Needed To Assure a Sufficient Price to Producers and an Adequate Local Supply of Milk

The second finding considers the impact of the amendments on the level of producer price needed to cover costs of production and to assure an adequate local supply of milk for the inhabitants of the regulated area.[29]

The Commission reaffirms its prior findings regarding the sufficiency of pay prices for milk needed to meet the New England market demand.[30] In adopting these amendments, the Commission notes that the primary impact of the assessment/refund plan will be to reduce the pay price to those producers whose milk production increased greater than one percent over the prior year's production level by 7.5 cents per hundredweight from the Compact Class I price of $16.94. Therefore, the Commission concludes that the amendments will not negatively impact on the price level paid to producers that is needed to assure an adequate local supply of milk for New England consumers. The Commission concludes that the over-order price regulation, including these amendments, will assure a sufficient price to producers and an adequate local supply of milk.

In reaching this conclusion, the Commission recognizes the vital role the Compact producer price has made in stabilizing the milk production in the New England region since implementation in July 1997 and the importance of ensuring that the Compact price does not create an incentive to producers to generate excessive amounts of milk. The Commission also recognizes that the historical supply of milk making up the New England milkshed requires substantial contributions of milk from outside the New England states.

The Commission notes that the Compact payments to producers are intended to assure the continued viability of dairy farming in the northeast. Compact Article 1, Section 1. The Over-order Price Regulation, as amended, balances this purpose with the equally important purpose of assuring an adequate, local supply of pure and wholesome milk for the Compact area consumers. Compact Article 1, Section 1. The Compact specifically charges the Commission to also "take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk." Compact Article IV, Section 9(f). The Commission concludes that the amended regulation meets all three of these objectives and best preserves the integrity of the Compact by appropriately balancing these objectives.

C. Whether the Major Provisions of the Order, Other Than Those Fixing Minimum Milk Prices, Are in the Public Interest and Are Reasonably Designed To Achieve the Purposes of the Order

The third finding requires a determination of whether the provisions of the regulation other than those establishing minimum milk prices are in the public interest. The amendments establish a voluntary milk supply management plan. Therefore, the matter of the public interest is addressed under the first required finding and not under this finding. In any event, the Commission finds that the price regulation, as hereby amended, is in the public interest in the manner contemplated by this finding.

D. Whether the Terms of the Proposed Amendment Are Approved by Producers.

The fourth finding, requiring a determination of whether the amendment has been approved by producer referendum pursuant to Article V, Section 13 of the Compact is invoked in this instance given that the amendments will affect the level of the price regulation on the producer side. In this final rule, as in the previous final rules, the Commission makes this finding premised upon certification of the results of the producer referendum. The procedure for the producer referendum and certification of the results is set forth in 7 CFR part 1371.

Pursuant to 7 CFR 1371.3, and the referendum procedure certified by the Commission, a referendum was held during the period of May 12, 2000 through May 22, 2000. All producers who were producing milk pooled in the Federal Order #1, or for consumption in New England during December 1999, the representative period determined by the Commission, were deemed eligible to vote. Ballots were mailed to these producers on or before May 12, 2000 by the Federal Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by 5:00 p.m. on May 22, 2000. The ballots were opened and counted in the Commission offices on May 23, 2000 under the direction and supervision of Robert Starr, designated "Referendum Agent."

Ten Cooperative Associations were notified of the procedures necessary to block vote. Cooperatives were required to provide prior written notice of their intention to block vote to all members on a form provided by the Commission, and to certify to the Commission that (1) timely notice was provided, and (2) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that the Cooperative Association block vote had to be received in the Commission office by 5:00 p.m. on May 22, 2000. Certified and notarized notification to its members of the Cooperative's intent to block vote or not to block vote had to be mailed by May 16, 2000 with notice mailed to the Commission offices no later than May 18, 2000.

Notice of Referendum Results

On May 23, 2000 the duly authorized referendum agent verified all ballots according to procedures and criteria established by the Commission. A total of 3983 ballots were mailed to eligible producers. All producer ballots and cooperative block vote ballots received by the Commission were opened and counted. Producer ballots and cooperative block vote ballots were verified or disqualified based on criteria established by the Commission, including timeliness, completeness, appearance of authenticity, appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots.

[28] 62 FR 29638, May 30, 1997; 62 FR 62825, Nov. 25, 1997.

[29] As noted in prior rulemaking proceedings, the Commission limits its assessment to issues relating to the fluid milk market. See e.g., 62 FR 29632, May 30, 1997 and 62 FR 62812, Nov. 25, 1997.

[30] See e.g., 62 FR 29632–29637, May 30, 1997 and 62 FR 62812–622817, Nov. 25, 1997.

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Block votes cast by Cooperative Associations were then counted. Producer votes against their cooperative associations block vote were then counted for each cooperative association. These votes were deducted from the cooperative association's total and were counted appropriately. Ballots returned by cooperative members who cast votes in agreement with their cooperative block vote were disqualified as duplicative of the cooperative block vote.

Votes of independent producers, not members of any cooperative association, were then counted.

The referendum agent then certified the following:

A total of 3983 ballots were mailed to eligible producers.
A total of 1700 ballots were returned to the Commission.
A total of 24 ballots were disqualified—late, incomplete or duplicate.
A total of 1648 ballots were verified.
A total of 1513 verified ballots were cast in favor of the price regulation.
A total of 135 verified ballots were cast in opposition to the price regulation.

Accordingly, notice is hereby provided that of the verified ballots cast, 1648, 91.8%, or 1513, a minimum of two-thirds were in the affirmative.

Therefore, the Commission concludes that the terms of the proposed amendment are approved by producers.

VI. Required Findings of Fact

Pursuant to Compact Article V, Section 12, the Compact Commission hereby finds:

(1) That the public interest will be served by the amendment of minimum milk price regulation to dairy farmers under Article IV to establish a milk supply management plan through an assessment and refund program.

(2) That a level price of $16.94 (Class I, Suffolk County, Massachusetts) to dairy farmers under Article IV will assure that producers supplying the New England market receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) That the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) That the terms of the proposed amendments are approved by producers pursuant to a producer referendum required by Article V, section 13.

List of Subjects in 7 CFR Parts 1306, 1307 and 1309

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission amends 7 CFR parts 1306 and 1307 and adds a new part 1309 as follows:

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

1. The authority citation for part 1306 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. In § 1306.3 redesignate paragraphs (e) through (g) as paragraphs (f) through (h) and add a new paragraph (e) to read as follows:

§ 1306.8 Computation of basic over-order producer price.

* * * * *

(e) Subtract 7.5 cents per hundredweight from the basic over-order producer price computed pursuant to this section and deposit that amount in the supply management-settlement fund, provided that the resultant over-order producer price is at least 25 cents.

* * * * *

PART 1307—PAYMENTS FOR MILK

3. The authority citation for part 1307 continues to read as follows:

Authority: 7 U.S.C. 7256.

4. Section 1307.1 is amended in paragraphs (a), (b) and (c) by removing "1306.3(f)" and adding "1306.3(h)" in its place and by adding in paragraph (c) "1306.3(d)" after "1306.3(c),".

5. A new part 1309 is added to read as follows:

PART 1309—SUPPLY MANAGEMENT REFUND PROGRAM

Sec.
1309.1 Producer qualification for supply management refund program.
1309.2 Computation of supply management refund prices.
1309.3 Supply management-settlement fund.
1309.4 Payment to producers of supply management refund.

Authority: 7 U.S.C. 7256.

§ 1309.1 Producer qualification for supply management refund program.

A dairy farmer who is a qualified producer pursuant to § 1301.11(a) or (b) of this chapter for the entire refund year, July 1 through June 30, and the dairy farmer's milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding refund year.

§ 1309.2 Computation of supply management refund prices.

The compact commission shall compute the supply management refund prices applicable to all qualified milk as follows:

(a) Combine into one total the values, including all interest earned, deducted pursuant to § 1306.3(e) of this chapter for the refund year;

(b) Subtract 50% from the total value computed pursuant to paragraph (a) of this section to be used for the per farm payments to producers who submitted documentation pursuant to § 1309.4(a);

(c) Divide the resulting amount by the sum of all milk production reported by producers qualified pursuant to § 1309.1 and who submitted documentation pursuant to § 1309.4(a).

§ 1309.3 Supply management-settlement fund.

(a) The compact commission shall establish and maintain a separate fund known as the supply management-settlement fund. It shall deposit into the fund all amounts deducted pursuant to § 1306.3(e) of this chapter. It shall pay from the fund all amounts due producers pursuant to § 1309.4;

(b) All amounts subtracted under § 1309.2(c), including interest earned thereon, shall remain in the supply management-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1309.4;

(c) The compact commission shall place all monies subtracted under § 1306.3(e) of this chapter in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities;

(d) If, after payments to producers of supply management refund pursuant to § 1309.4 there is a surplus in the fund, it is to be returned to the producer-settlement fund.

(e) The supply management program will continue through the operation of the compact over-order price regulation. If the refund year is six months or less, the supply management-settlement fund is to be returned to the producer-settlement fund.

§ 1309.4 Payment to producers of supply management refund.

(a) All producers who are qualified pursuant to § 1309.1 shall become eligible to receive payment of the supply management refund computed pursuant to § 1309.2 by submitting to the compact commission documentation that the producer milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year. Such documentation shall be filed with the commission not later than 45 days after the end of the refund year.

(b) The commission will make payment to all producers qualified pursuant to § 1309.1 and eligible pursuant to paragraph (a) of this section in the following manner:

(1) A per farm payment computed by dividing the amount subtracted pursuant to § 1309.2(b) by the total eligible producers; and

(2) The value determined by multiplying the supply management refund price computed pursuant to § 1309.2(e) by the producer's milk pounds, not to exceed $12,000.

Dated: May 24, 2000.

Kenneth M. Becker,

Executive Director.

[FR Doc. 00–13507 Filed 5–30–00; 8:45 am]
BILLING CODE 1650–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 714

Leasing

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The final leasing rule updates and redesignates NCUA's long-standing policy statement on leasing, Interpretive Ruling and Policy Statement (IRPS) 83–3, as an NCUA regulation. IRPS 83–3 authorizes federal credit unions (FCUs) to engage in either direct or indirect leasing and either open-end or closed-end leasing of personal property to their members if such leasing arrangements are the functional equivalent of secured loans. In addition, the final rule formalizes NCUA's position, set forth in legal opinion letters, that FCUs do not have to own the leased property in an indirect leasing arrangement if certain requirements are satisfied.

DATES: This rule is effective June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Paul M. Peterson, Staff Attorney, Division of Operations, Office of the General Counsel, (703) 518–6555.

SUPPLEMENTARY INFORMATION:

A. Background

In 1983, the NCUA Board issued Interpretive Ruling and Policy Statement (IRPS) 83–3, Federal Credit Union Leasing of Personal Property to Members, 48 FR 52560 (November 21, 1983), stating that FCUs may lease personal property to their members if the leasing of the personal property is the functional equivalent of secured lending. In 1997, the NCUA Board determined that IRPS 83–3 would be better suited as a regulation. 62 FR 11773 (March 13, 1997). In 1998, the Board issued a notice of proposed rulemaking (NPRM) and request for comment on leasing. 63 FR 57950 (October 29, 1998). The Board evaluated the comments received and incorporated many of the suggested changes. Due to these changes to the original proposed leasing regulation, the Board issued a second NPRM and request for comment. 64 FR 55866 (October 15, 1999). The comment period for the second NPRM expired on December 17, 1999.

B. Comments

NCUA received twelve comments on the second proposed leasing regulation. Comments were received from three federal credit unions, two credit union trade associations, four credit union leagues, one bank trade association, one insurance company, and one leasing company. In general, the commenters support the rule, although most commenters suggest modifications. Those commenters who compared the second proposed rule to the first think the second proposal is an improvement. Specific comments are addressed in the section-by-section analysis below.

C. Format

In drafting the proposed leasing regulation, the NCUA Board chose to use a plain English, question and answer format. The Board supports plain English as a means to increase regulatory comprehension and improve compliance among those affected by the regulation. Plain English drafting emphasizes the use of informative headings (often written as a question), lists and charts where appropriate, non-technical language, and sentences in the active voice. The NCUA wrote this proposed regulation as a series of questions and answers. The word "you" in an answer refers to an FCU.

D. Section-by-Section Analysis

This analysis contains a section-by-section summary of the second proposed rule; discusses the comments received on each section, if any; and describes any changes made as a result of those comments. The phrase "proposed section" as used below refers to draft language in the second NPRM.

Section 714.1—What Does This Part Cover?

Proposed § 714.1 stated that part 714 covers the standards and requirements that an FCU must follow when engaged in the lease financing of personal property. We received no comments and made no changes in the final rule.

Section 714.2—What are the Permissible Leasing Arrangements?

Proposed § 714.2 stated that FCUs may engage in direct or indirect leasing, and closed-end or open-end leasing.

Proposed § 714.2(c) provides "[i]n an open-end lease, your member assumes the risk and responsibility for any difference in the estimated residual value and the actual value of the property at lease end." Proposed § 714.2(d) provides that for a closed-end lease the FCU assumes the risk and responsibility for that same difference. Two commenters note that any excessive wear and tear on the leased property will be included in the difference between the estimated residual value and the actual value of the property at lease end so that the proposed rule apparently assigns the responsibility for excessive wear and tear differently depending on whether the lease is open-end or closed-end. One of these commenters suggests that § 714.2 be modified to place the risk and responsibility for excess wear and tear on the lessor FCU, regardless of the form of leasing. The other commenter suggests that the responsibility for excess wear and tear should always be with the member lessee.

As stated in the preamble to IRPS 83–3, the lessee is always responsible for a decrease in value due to excessive wear and tear. The lessee, with possession of the leased property, is in the best position to protect the property from excess wear and tear regardless of whether the lease is open-end or closed end. Accordingly, the Board amends § 714.2(d) to clarify that, in closed-end leasing, the member lessee will be responsible for excessive wear and tear and the FCU will be responsible for the remainder of the difference between the estimated residual value and the actual value. Proposed § 714.2(c) on open-end leasing already places the responsibility for excessive wear and tear on the member lessee and needs no modification in the final rule.

The following example illustrates the allocation of risks in closed-end leasing. Assume you, an FCU, lease a $12,000 car under a closed-end leasing arrangement. At lease inception, the car has an estimated residual value of $3,000. The lease is not covered by any

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residual value insurance or third-party guarantee. Assume further that, during the term of the lease, the used car market for this particular make and model softens. When the car is returned at the end of the lease, you sell it at public auction for only $2,000, which is $1,000 less than your estimated residual value. If the car suffers from normal wear and tear, you are responsible for the entire difference between the estimated residual value and the actual residual value. If, however, excess wear and tear reduced the car's actual residual value by $500, the member will be responsible for $500 and you will be responsible only for the remaining $500 of residual value loss.

Section 714.3—Must You Own the Leased Property in an Indirect Leasing Arrangement?

Proposed § 714.3 stated that an FCU does not have to own the leased property in an indirect leasing arrangement if the FCU: (1) Receives a full assignment of the lease; (2) is named as the sole lienholder of the property; (3) enters into a security agreement with the leasing company to protect the FCU's lien on the property; and (4) takes all necessary steps to record and perfect the security interest.

One commenter supports the full assignment requirement. Three other commenters believe that the full assignment of the lease is unnecessary and decisions about how much of the lease should be assigned are best left to the discretion of the FCU. One of these three commenters noted that the Office of the Comptroller of the Currency (OCC) has no full assignment requirement in its leasing rules for national banks, and another argued that full assignment was unnecessary if the FCU "can protect its interest by possession." The commenters opposed to full assignment did not specify any particular harm to FCUs arising from the requirement. Also, the Board notes that the one leasing company that commented on the second NPRM stated that full assignment was "unnecessary but not objectionable." (emphasis added).

The final rule leaves the full assignment requirement intact. The full assignment requirement stems from two main concerns. First, in the event of a leasing company's bankruptcy, the failure to obtain a complete assignment of the lease may permit the bankruptcy trustee to argue that the trustee owns the lease and can treat it as an executory contract subject to repudiation. Second, the Board is concerned that advancing the funds to allow a nonmember leasing company to purchase property for leasing, and then allowing that nonmember to retain both lease and title to the underlying property, is tantamount to making a loan to a nonmember. While banks regulated by the OCC may lend money to anyone, FCUs may only lend money to members. 12 U.S.C. 1757. The second NPRM contains additional discussion of these concerns. 64 FR 55866, 55867 (October 15, 1999). Also, with regard to the comment about protection of its interest by "possession," the FCU may protect its lease assignment by possession of the original lease documents or by an appropriate filing. U.C.C. § 9–102(1)(b) (sale of chattel paper), § 9–304(1), § 9–305. However, the FCU must still obtain a full assignment.

Two commenters object to the following statement in the preamble to the proposed § 714.3: "It (the security agreement) must set forth the terms and conditions upon which the leasing company or the member may be in default and thus entitle the FCU to take immediate possession of the property." These commenters read the quoted language as requiring the security agreement to contain an exhaustive list of every obligation under the lease and every possible form of default.

The Board does not intend to mandate that every leasing security agreement include an exhaustive listing of obligations and defaults on those obligations. The Board does believe that an FCU "should consider the contingencies that may seriously affect (its) security and see that the security agreement specifies them as events of default." James J. White and Robert S. Summers, Uniform Commercial Code, § 34–2 (4th ed. 1995). Section 714.3 provides that the FCU must have the right to take possession and dispose of the leased property in the event of "a default by the lessee, a default in the leasing company's obligations to you, or a material adverse change in the leasing company's financial condition." Ultimately, the FCU must determine for itself how much detail about these and other default contingencies is included in the security agreement.

Another commenter asked whether NCUA intended to require a detailed security agreement for each lease, or whether the substance of a well-drafted security agreement could be subsumed into a lease program agreement. The Board believes that obligations and defaults may be described in the security agreement itself or may be incorporated by clear reference to some other document such as the master leasing agreement or contract. Also, a single security agreement may cover multiple leases, so long as the agreement sufficiently describes which leases are covered.

One commenter suggests that the rule should reinstate the requirement for an irrevocable power of attorney contained in the first NPRM but dropped from the second. The NCUA Board believes that a power of attorney is unnecessary for an FCU holding a well-defined and perfected security interest in the leased property. In the event of a default by a leasing company or lessee, an FCU should be able to take possession and dispose of the collateral without the power of attorney. Accordingly, the final rule no longer contains any requirement for a power of attorney. The Board notes, however, that the final rule does not prohibit an FCU from employing a power of attorney, in addition to a security agreement.

Section 714.4—What Are the Lease Requirements?

Proposed § 714.4 stated that leases must be net, full payout leases, with a maximum estimated residual value of 25% of the original cost of the leased property unless guaranteed. In a full payout lease, the FCU must recoup its entire investment in the leased property, plus the cost of financing that investment, from the lessee's payments and the estimated residual value of the leased property.

Numerous comments were directed to the guarantee requirement. Some commenters want the requirement eliminated, some want the 25% threshold raised, and others want the requirement maintained at 25% or lowered.

The commenters who want to eliminate the guarantee requirement cite the authority of national banks and federal thrifts to engage in certain leasing transactions without any guarantee. As discussed below, however, the legal authority supporting FCU leasing varies from that for national banks and federal thrifts. Unlike banks and thrifts, which have express authority to lease, FCUs have no express authority.

Prior to 1982, all federal depository institutions relied on the same source of legal authority for leasing: their express authority to lend money and the argument that leasing is incidental to this express lending authority. A lease under this incidental authority must be the equivalent of a secured loan. Dependence on the residual value to recover the depository institution's costs involves risks that are unlike those of secured lending and, hence, the residual value must "contribute insubstantially" to the institution's recovery of its costs. *M&M Leasing Corporation* v. *Seattle First National Bank*, 563 F.2d 1377, 1384 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978). For national banks, the OCC quantified *M&M Leasing*'s "insubstantial" contribution at 25%, and required any reliance above 25% be guaranteed. 12 CFR 23.21(a)(2). The NCUA adopted this same 25% limit on the unguaranteed portion of the residual value in IRPS 83–3.

In the 1980s, Congress provided national banks and federal thrifts with additional, express statutory authority to conduct leasing activities in an aggregate amount not to exceed ten percent of assets. See the Garn—St. Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, § 330(3), codified at 12 U.S.C. 1464(c)(2)(A); and the Competitive Banking Equality Act of 1987 (CEBA), Pub. L. No. 100–86, § 108, codified at 12 U.S.C. 24(Tenth). This express leasing authority empowers national banks and federal thrifts to assume increased risks in areas unique to leasing, including residual value risk. For example, in the Senate Report accompanying CEBA's grant of express authority to national banks, the Senate Committee on Banking, Housing, and Urban Affairs stated its expectation that with the express authority to lease "the Comptroller will relax or eliminate the residual value limitation [on national banks] in the Comptroller's regulation in a manner consistent with sound banking practices." S. Rep. No. 100–19, at 42 (1987). Accordingly, neither OCC nor OTS require residual value guarantees for leases aggregating less than ten percent of assets and so covered by express leasing authority. See 12 CFR part 23, subpart B; 12 CFR 560.41(d). However, both the OCC and OTS still require residual value guarantees for banks and thrifts for leases in excess of ten percent of assets and thus subject to the restrictions on residual value risk enunciated in M&M Leasing. See 12 CFR part 23, subpart C; 12 CFR 560.41(c), (b)(2).

One commenter that supported elimination of the guarantee requirement asks, in the alternative, if credit unions with a demonstrated ability to handle risk could set the unguaranteed portion of the residual at some level higher than 25% of original cost. Other commenters support the guarantee at its current 25% level or feel that the 25% level should be lowered. The Board has carefully considered whether it should set the unguaranteed portion of the residual at some level other than the 25% figure contained in IRPS 83–3. As discussed below, the Board is not inclined to vary from the long-standing 25% limitation.

Any increase in the unguaranteed residual value above 25% may cause the unguaranteed residual to "contribute substantially" to the recovery of an FCU's costs and thus render the FCU's leasing program illegal under *M&M Leasing*. The line between "substantial" and "insubstantial" is imprecise and not susceptible to exact quantification. Nevertheless, the Board considers a 25% contribution to cost recovery as insubstantial, and any figure larger than 25% as problematic. The OCC has used the current 25% figure for decades.

Also, the Board believes that the economic impact of the guarantee requirement is not significant. Insurance companies offer reasonably-priced residual value insurance that satisfies the current 25% requirement. In vehicle leasing, for example, a policy with a 25% deductible can generally be obtained for a small, one-time premium of between one-half to one percent of the estimated residual value. In addition, the Board is aware of FCUs that purchase residual insurance in coverage amounts exceeding the requirements of the rule and yet remain competitive in their vehicle leasing markets.

The Board also considered the possibility of tightening the 25% guarantee requirement. The Board notes that, with the authority to put up to 25% of the original cost at risk, credit unions may still suffer significant losses if actual residual values fall short of estimates. Nevertheless, in the past FCUs have handled this risk well. The Board is willing to allow FCUs to use their business judgment in deciding how to handle residual value risks up to the 25% level.

One commenter suggests that instead of tying the guarantee to 25% of the original cost, it should be tied to "a certain percentage of the blue book value." The Board believes that the guarantee requirement is best tied to an FCU's actual investment in the property, as the key to loss avoidance in leasing is recovery of costs. Also, the leasing regulation covers leasing of all personal property, not just vehicles. No particular publication such as the "blue book" provides property values on every form of personal property. The leasing rule's guarantee requirement is stated in terms flexible enough to cover all personal property leasing.

Five commenters request that any guarantee requirement extend only to the amount of the estimated residual needed to satisfy the full payout test. These commenters believe that the proposed rule, which separates the residual value guarantee requirement from the full payout test, is inconsistent with the OCC leasing rule and IRPS 83–3. The Board concurs with these commenters. The full payout test requires that FCUs plan to recover all leasing costs from the combination of lease payments and the estimated residual value. The guarantee requirement is intended to protect an FCU against the possibility of excessive residual losses. The Board believes that an FCU should only be required to guarantee the portion of the estimated residual value that is above 25% of the original investment that is needed to meet the full payout requirement, meaning the amount an FCU relies on to recover its costs. The Board has changed the final rule to connect the guarantee requirement clearly with the full payout test. This connection results in a lesser guarantee requirement and a corresponding reduction in the burden on FCUs. An illustration of the effect of the final rule follows.

Assume you, an FCU, pay $12,000 for a car and lease it under a closed-end leasing arrangement. Assume that your internal cost of financing is $2,000 and that lease payments over the life of the lease will be $8,500. To meet the full payout requirement, you must recover $14,000 (your investment and the cost of financing) from the lease payments and your estimated residual value. Thus, in addition to the $8,500 in lease payments, you will be relying on $5,500 in residual value to meet the full payout requirement. You only have to guarantee the portion of the residual value on which you rely to meet the full payout requirement that exceeds 25% of the cost of the car, in this case, $3,000. Thus, the amount of the residual value that must be guaranteed will be $2,500 ($5,500–$3,000).

For leases with estimated residual values in excess of 25% of original cost and subject to the guarantee requirement, two commenters were uncertain whether an FCU may assume the first dollars of residual risk or must guarantee the first dollars. These commenters request clarification.

Neither the proposed rule nor the IRPS require that FCUs guarantee the first dollars of residual risk. Conversely, neither the rule nor the IRPS require that FCUs assume the first dollar of residual risk. FCUs are free to guarantee or assume the first dollars of residual risk as they deem appropriate. The Board is aware that insurers offer residual value policies with deductibles that place the first dollars of risk on the FCU. Such policies are an acceptable form of guarantee.

The Board also notes that residual value insurance policies offer different payout formulae. For example, one form

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of insurance pays the difference between the estimated residual value and the actual sales price of the property at the time of disposition. Another, more common form pays the difference between the estimated residual value and the average price being obtained for the given type of property at the time of disposition. Either of these payout formulae, with appropriate deductibles, is permissible for FCUs. However, if the FCU elects to purchase residual insurance that relies on average sale prices rather than the specific sale proceeds from the property at lease end, the FCU should ensure the terms of insurance are reasonable in relation to the method the FCU uses to dispose of the leased property. For example, if the FCU expects to dispose of leased vehicles at wholesale auction, it should use residual insurance that pays based on wholesale prices. Likewise, if the FCU expects to get most of its leased vehicles back in "average" condition, it should look for insurance tied to that condition.

Seven commenters object to language in the preamble to the second NPRM on the financing of certain costs associated with the lease. The preamble states that the financing of mechanical breakdown protection, credit life and disability premiums, and license and registration fees raised safety and soundness concerns and these services should not be financed. The preamble cites a specific concern that an FCU will have little or no value in the collateral to secure the financing of the additional costs. The commenters generally recognized the problem with undercollateralization but do not believe a blanket prohibition on the financing of particular items was the best response. As one commenter put it, "the problem of undercollateralization is best determined by how much is financed relative to the collateral, not by what expenses are financed." Some commenters note that the current industry practice among banks and credit unions is to finance some or all of these costs in particular cases. Some commenters suggest that FCUs should adopt lease-to-value guidelines similar to the loan-to-value guidelines used in lending programs, such as a maximum lease investment (or loan investment) of 110% of the vehicle's MSRP.

The Board remains concerned that FCUs not overextend themselves but recognizes that a blanket prohibition on the financing of certain enumerated services is not the best approach to this issue. Instead, the Board recommends that FCUs take appropriate measures to ensure that their leases are properly collateralized and their leasing programs remain the functional equivalent of secured lending.

Section 714.5—What is Required if You Rely on an Estimated Residual Value Greater than 25% of the Original Cost of the Leased Property?

Proposed § 714.5 provided that an estimated residual value greater than 25% of the original cost of the leased property may be used if a financially capable party guarantees the amount above 25% of the original cost of the property. If the guarantor is an insurance company, the guarantor must have an A.M. Best rating of at least a B+ or the equivalent from another major rating company. The FCU must have financial documentation on hand demonstrating that the guarantor has the resources to meet the guarantee.

Two commenters object to the establishment of a minimum rating for insurance companies. One of these commenters cites state regulation of insurance companies as sufficient to establish any particular company's soundness. A third commenter agreed with the concept of a minimum rating but thought it should be tougher than B+, such as a minimum "A" or "AA" rating.

The NCUA Board believes that establishing a minimum rating standard ensures that an insurance company guarantor will have the resources to meet the guarantee. A Best's rating of B+ is the lowest rating that is considered by Best to be "secure," while any rating lower than a B+ is considered to be "vulnerable." FCUs that satisfy the guarantee requirement through residual insurance are dependent on the insurance company's ability to pay residual claims when the leases end, often years into the future. The Board believes that FCUs should not use insurers who are identifiable as financially vulnerable.

The requirement for a residual insurer to maintain a B+ rating also makes it easier for an FCU using an insurance company to satisfy the financial documentation requirement of § 714.5. An FCU that maintains a recent report indicating that their residual insurer is rated B+ or better would meet the minimum documentation requirements. If the FCU desires to use the Internet, an up-to-date rating can be obtained at any time both cheaply and quickly.

One commenter, citing IRPS 83–3 and current OCC rules, requests that § 714.5 be amended to specifically exclude an affiliate of the FCU from acting as residual value guarantor. The Board notes that credit union service organizations (CUSOs) have specified, limited powers. 12 CFR part 712. Although CUSOs may engage in insurance brokerage or agency activities, they have no authority to assume insurable risks, such as residual value risk, for FCUs or other entities. 12 U.S.C. 1757(7); 12 CFR 712.5, 712.6; 51 FR 10353, 10357 (March 26, 1986). The Board does not believe a modification to § 714.5 is necessary.

Section 714.6—Are You Required to Retain Salvage Powers Over the Leased Property?

Proposed § 714.6 states that an FCU must retain salvage powers over the leased property. NCUA received no comments on this section, and it remains unchanged.

Section 714.7—What are the Insurance Requirements Applicable to Leasing?

Proposed § 714.7 provides that the FCU must maintain a contingent liability insurance policy with an endorsement for leasing or be named as the co-insured. The insurance company must have a rating of at least B+. The lessee must carry the normal liability and collateral protection insurance on the leased property, and the FCU must be named as an additional insured on the liability insurance policy and as the loss payee on the collateral protection insurance policy.

Two commenters suggest that the phrase "collateral protection insurance" be replaced with "physical damage" or "property insurance" to more accurately reflect the type of insurance a lessee would purchase. The Board concurs with these commenters. The Board replaced the phrase "collateral protection insurance" with "property insurance," which would include protection from physical damage, loss, or theft.

Section 714.8—What Rate of Interest May be Charged Under a Lease?

Proposed § 714.8 stated that the interest rate provisions of the NCUA lending rule are not applicable to lease transactions. Proposed § 714.8 also exempted lease transactions from the NCUA lending rules on early payment. NCUA received no comments on this section, and it remains unchanged in the final version.

Section 714.9—When Engaged in Indirect Leasing, Must You Comply With the Purchase of Eligible Obligation Rules Set Forth in § 701.23 of This Chapter?

Proposed § 714.9 provided that indirect leasing arrangements are not subject to the purchase of eligible obligation rules set forth in § 701.23 if the lease complies with the FCU's

leasing polices and the FCU receives a full assignment of the lease no more than five business days after it is signed by the member and the leasing company.

Two commenters object to the five-business-day requirement. One commenter believes the time required to transfer paper in indirect lending is similar to that required in indirect leasing and states that many retail installment contracts are not received within five days. This commenter recommends changing the five-business-day requirement to thirty business days. The other commenter states that the five-day language does not mirror the "very soon" language employed in the eligible obligations rule and that the difference may cause confusion. The eligible obligations rule has a provision specifying which indirect lending and indirect leasing obligations will be classified as loans and not as eligible obligations for purposes of the aggregate 5% limitation imposed on eligible obligations. 12 CFR 701.23(b)(3)(iv). One of the specified criteria for excluding indirect leasing arrangements from this 5% limitation is that the "lease contract [be] assigned to the federal credit union very soon after it is signed." The latter commenter prefers that the "very soon" language of the eligible obligations rule be used in § 714.9, the corresponding provision of the leasing rule. For consistency between the leasing rule and the eligible obligations rule and to maintain flexibility, the Board has replaced the language of the proposed § 714.9 with a direct reference to § 701.23(b)(3)(iv) including a restatement of its requirements.

Section 714.10—What Other Laws Must You Comply With When Engaged in Leasing?

Proposed § 714.10 set forth the additional laws with which an FCU must comply when engaged in leasing. One commenter notes that national bank and federal thrift leasing activities are subject to lending limits and recommends that our regulatory limits on loans to one borrower and loans to officials limitations be incorporated into the final leasing regulation. The Board notes that the proposed § 714.10 already required FCUs engaged in leasing to comply with the greater part of the NCUA lending rule, § 701.21, including the lending limits found at §§ 701.21(c)(5) and (d). Accordingly, no change to § 714.10 was made in the final rule.

E. Other Comments

Two commenters ask that we address the risks of balloon lending in the leasing regulation. Assured-value balloon loans, or "lease-look-alike" loans, allow the borrower to return the financed property at the end of the loan term in lieu of making the remaining balloon payment. The commenters argue that these loans carry residual risks for FCUs very similar to those in traditional closed-end leasing and should be regulated similarly.

As was discussed in the preamble to the second NPRM, the primary distinction between a loan and a lease is who owns the underlying property. In a loan, the borrower owns the property and the lender is a lienholder. In a lease, the borrower-lessee has no ownership or lienhold interest in the property. Accordingly, it is the NCUA Board's position that programs, which involve loans and not leases, are significantly different from leasing arrangements, and should not be addressed in a leasing regulation.

F. Regulatory Procedures

Paperwork Reduction Act

The NCUA Board determined that the requirement in § 714.5 that an FCU must obtain or have on file statistics documenting that a guarantor has the resources to meet an estimated residual value guarantee constitutes a collection of information under the Paperwork Reduction Act. Both NPRMs contained a description of the requirement and an estimate of the associated workload. No comments were received on the estimated workload. OMB assigned control number 3133–0151 to this collection. 12 CFR part 795.

Regulatory Flexibility Act

The NCUA Board certifies that the proposed regulation will not have a significant economic impact on a substantial number of small credit unions. Small credit unions are defined by NCUA, pursuant to its authority to define "small organizations," as those credit unions with assets of $1 million or less. 5 U.S.C. 601(4), (6); NCUA IRPS 81–4, 46 FR 29248 (1981); NCUA IRPS 87–2, 12 CFR 791.8(a). As of December 31, 1999, there were 1,069 FCUs that met the small organization standard. Of these 1,069 FCUs, only seven report any leasing activity, with a total of only 66 leases amongst these credit unions. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 13132

Executive Order 13132, Federalism, dated August 4, 1999, prescribes certain requirements for executive branch policies "that have federalism implications." Policies that have federalism implications include any regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Independent regulatory agencies, such as NCUA, are not required to follow EO 13132 but are encouraged to do so, and NCUA voluntarily complies with EO 13132. The final leasing rule, however, will only apply to federally-chartered credit unions. The rule has no substantial direct effects on States or on the relationship or distribution of power and responsibility between the national government and the States. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. No. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. No. 104–21) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 it is not a major rule.

List of Subjects in 12 CFR Part 714

Credit unions, Leasing.

By the National Credit Union Administration Board on May 24, 2000.

Becky Baker,

Secretary to the Board.

For the reasons set forth above, NCUA adds 12 CFR part 714 to read as follows:

PART 714—LEASING

Sec.

714.1 What does this part cover?
714.2 What are the permissible leasing arrangements?
714.3 Must you own the leased property in an indirect leasing arrangement?

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714.4 What are the lease requirements?
714.5 What is required if you rely on an estimated residual value greater than 25% of the original cost of the leased property?
714.6 Are you required to retain salvage powers over the leased property?
714.7 What are the insurance requirements applicable to leasing?
714.8 Are the early payment provisions, or interest rate provisions, applicable in leasing arrangements?
714.9 Are indirect leasing arrangements subject to the purchase of eligible obligation limit set forth in § 701.23 of this chapter?
714.10 What other laws must you comply with when engaged in leasing?

Authority: 12 U.S.C. 1756, 1757, 1766, 1785, 1789.

§ 714.1 What does this part cover?

This part covers the standards and requirements that you, a federal credit union, must follow when engaged in the leasing of personal property.

§ 714.2 What are the permissible leasing arrangements?

(a) You may engage in direct leasing. In direct leasing, you purchase personal property from a vendor, becoming the owner of the property at the request of your member, and then lease the property to that member.

(b) You may engage in indirect leasing. In indirect leasing, a third party leases property to your member and you then purchase that lease from the third party for the purpose of leasing the property to your member. You do not have to purchase the leased property if you comply with the requirements of § 714.3.

(c) You may engage in open-end leasing. In an open-end lease, your member assumes the risk and responsibility for any difference in the estimated residual value and the actual value of the property at lease end.

(d) You may engage in closed-end leasing. In a closed-end lease, you assume the risk and responsibility for any difference in the estimated residual value and the actual value of the property at lease end. However, your member is always responsible for any excess wear and tear and excess mileage charges as established under the lease.

§ 714.3 Must you own the leased property in an indirect leasing arrangement?

You do not have to own the leased property in an indirect leasing arrangement if:

(a) You obtain a full assignment of the lease. A full assignment is the assignment of all the rights, interests, obligations, and title in a lease to you, that is, you become the owner of the lease;

(b) You are named as the sole lienholder of the leased property;

(c) You receive a security agreement, signed by the leasing company, granting you a sole lien in the leased property and the right to take possession and dispose of the leased property in the event of a default by the lessee, a default in the leasing company's obligations to you, or a material adverse change in the leasing company's financial condition; and

(d) You take all necessary steps to record and perfect your security interest in the leased property. Your state's Commercial Code may treat the automobiles as inventory, and require a filing with the Secretary of State.

§ 714.4 What are the lease requirements?

(a) Your lease must be a net lease. In a net lease, your member assumes all the burdens of ownership including maintenance and repair, licensing and registration, taxes, and insurance;

(b) Your lease must be a full payout lease. In a full payout lease, you must reasonably expect to recoup your entire investment in the leased property, plus the estimated cost of financing, from the lessee's payments and the estimated residual value of the leased property at the expiration of the lease term; and

(c) The amount of the estimated residual value you rely upon to satisfy the full payout lease requirement may not exceed 25% of the original cost of the leased property unless the amount above 25% is guaranteed. Estimated residual value is the projected value of the leased property at lease end. Estimated residual value must be reasonable in light of the nature of the leased property and all circumstances relevant to the leasing arrangement.

§ 714.5 What is required if you rely on an estimated residual value greater than 25% of the original cost of the leased property?

If the amount of the estimated residual value you rely upon to satisfy the full payout lease requirement of § 714.4(b) exceeds 25% of the original cost of the leased property, a financially capable party must guarantee the excess. The guarantor may be the manufacturer. The guarantor may also be an insurance company with an A.M. Best rating of at least a B+, or with at least the equivalent of an A.M. Best B+ rating from another major rating company. You must obtain or have on file financial documentation demonstrating that the guarantor has the resources to meet the guarantee.

§ 714.6 Are you required to retain salvage powers over the leased property?

You must retain salvage powers over the leased property. Salvage powers protect you from a loss and provide you with the power to take action if there is an unanticipated change in conditions that threatens your financial position by significantly increasing your exposure to risk. Salvage powers allow you:

(a) As the owner and lessor, to take reasonable and appropriate action to salvage or protect the value of the property or your interests arising under the lease; or

(b) As the assignee of a lease, to become the owner and lessor of the leased property pursuant to your contractual rights, or take any reasonable and appropriate action to salvage or protect the value of the property or your interests arising under the lease.

§ 714.7 What are the insurance requirements applicable to leasing?

(a) You must maintain a contingent liability insurance policy with an endorsement for leasing or be named as the co-insured if you do not own the leased property. Contingent liability insurance protects you should you be sued as the owner of the leased property. You must use an insurance company with a nationally recognized industry rating of at least a B+.

(b) Your member must carry the normal liability and property insurance on the leased property. You must be named as an additional insured on the liability insurance policy and as the loss payee on the property insurance policy.

§ 714.8 Are the early payment provisions, or interest rate provisions, applicable in leasing arrangements?

You are not subject to the early payment provisions set forth in § 701.21(c)(6) of this chapter. You are also not subject to the interest rate provisions in § 701.21(c)(7).

§ 714.9 Are indirect leasing arrangements subject to the purchase of eligible obligation limit set forth in § 701.23 of this chapter?

Your indirect leasing arrangements are not subject to the eligible obligation limit if they satisfy the provisions of § 701.23(b)(3)(iv) that require that you make the final underwriting decision and that the lease contract is assigned to you very soon after it is signed by the member and the dealer or leasing company.

§ 714.10 What other laws must you comply with when engaged in leasing?

You must comply with the Consumer Leasing Act, 15 U.S.C. 1667–67f, and its implementing regulation, Regulation M, 12 CFR part 213. You must comply with state laws on consumer leasing, but only to the extent that the state leasing laws are consistent with the Consumer Leasing Act, 15 U.S.C. 1667e, or provide the member with greater protections or benefits than the Consumer Leasing Act. You are also subject to the lending rules set forth in § 701.21 of this chapter, except as provided in § 714.8 and § 714.9 of this part. The lending rules in § 701.21 address the preemption of other state and federal laws that impact on credit transactions.

[FR Doc. 00–13509 Filed 5–30–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 00F–0786]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of chlorine dioxide produced by treating an aqueous solution of sodium chlorite with hydrogen peroxide in the presence of sulfuric acid. This action is in response to a petition filed by Eka Chemicals, Inc.

DATES: This rule is effective May 31, 2000. Submit written objections and requests for a hearing by June 30, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 2, 2000 (65 FR 11319), FDA announced that a food additive petition (FAP 0A4716) had been filed by Eka Chemicals, Inc., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 173.300 *Chlorine dioxide* (21 CFR 173.300) to provide for the safe use of chlorine dioxide produced by treating an aqueous solution of sodium chlorite with hydrogen peroxide in the presence of sulfuric acid.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and, therefore, that the regulation in § 173.300 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

In the notice of filing, FDA gave interested parties an opportunity to submit comments on the petitioner's environmental assessment. FDA received no comments in response to that notice.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by June 30, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.300 is amended by revising paragraph (a) to read as follows:

§ 173.300 Chlorine dioxide.

* * * * *

(a) The additive is generated by one of the following methods: Treating an aqueous solution of sodium chlorite with either chlorine gas or a mixture of sodium hypochlorite and hydrochloric acid, or treating an aqueous solution of sodium chlorate with hydrogen peroxide in the presence of sulfuric acid. In either case, the generator effluent contains at least 90 percent (by weight) of chlorine dioxide with respect to all chlorine species as determined by Method 4500–ClO_2 E in the "Standard Methods for the Examination of Water and Wastewater," 18th ed., 1992, or an equivalent method. Method 4500–ClO_2 E is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, and the American Public Health Association, 1015 Fifteenth St. NW., Washington, DC 20005, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

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Dated: May 19, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–13477 Filed 5–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 270

[RIN 0790–AG67]

Compensation of Certain Former Operatives Incarcerated by the Democratic Republic of Vietnam

AGENCY: Office of Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This rule adopts as final an interim rule implementing section 657 of the National Defense Authorization Act for Fiscal Year 1997, which authorizes the Secretary of Defense to make payments to persons captured and incarcerated by the Democratic Republic of Vietnam. The rule established policy and procedures concerning the payments to these persons. The rule amended regulations to reflect changes necessary as a result of new language in section 658 of the FY99 National Defense Authorization Act. Section 658 expands the field of beneficiaries of the Vietnamese Commandos Compensation Commission to parents and siblings of deceased Commandos. It also added words "notwithstanding any agreement (including a power of attorney) to the contrary, the actual disbursement" must be made directly to the person who is eligible for the payment. The rule also amended regulations to reflect necessary technical changes to accommodate the new language. The Department of Defense is adopting the Interim Final Rule as a Final Rule without change.

EFFECTIVE DATE: This rule is effective October 17, 1998.

FOR FURTHER INFORMATION CONTACT: LTC Frank Hudson, (703) 588–6570 or Mr. Chuck Witschonke, (703) 693–1059, Directorate of Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, DC, 20301

SUPPLEMENTARY INFORMATION: The Department of Defense published an Interim Final Rule with a request for comments on December 10, 1998 (63 FR 68194). The following comments were received:

Comment: *The Statute Requires Prompt Payment In A Manner Requested By The Awardee.*

Section 657(d)(2) of Pub. L. 104–201, as amended, states that "Subject to subsection (f), if the Secretary determines that the claimant is eligible for the payment, the Secretary *shall promptly pay* the claim." (Emphasis added.) Subsection (f) provides notwithstanding any agreement (including a power of attorney) to the contrary, the actual disbursement of a payment under this section may be made only to the person who is eligible for payment under subsection (a) or (b) and only—upon the appearance of that person, in person, at the designated distribution office in the United States or its territories; or as such other location or in such manner as that person may request in writing.

The only change made to this subsection by the FY 99 National Defense Authorization Act was the addition of "[n]otwithstanding any agreement (including a power of attorney) to the contrary" at the beginning of Subsection (f)(1).

The statutory requirements for disbursement are clearly stated. First, the payment must be disbursed to the person eligible for payment. Thus, the check must be made payable to the intended beneficiary and not to a third party, such as the person's attorney or another designee or assignee, regardless of any agreement to the contrary.

The second condition for payment is that it be made: (1) in person at a designated distribution office in the United States or its territories or, (2) if the beneficiary requests in writing, at such other location or in such other manner as that person may request. The statute recognizes that many payment recipients may not be able to appear in person to receive their payments. Many, for instance, still live in Vietnam under a repressive government that denies them the ability to travel or even to correspond freely. Hence the statute allows the eligible person to request alternative methods of payment.

The Secretary of Defense has complete discretion in determining whether a claim is justified and such determinations are considered final and conclusive. Pub. L. 104–201, section 6570). However, once DoD has determined that a person is eligible for payment under the provisions of the Vietnamese Commando Compensation Act, that discretion ends. The agency is mandated by statute to promptly pay the claim. DoD may not establish unreasonable regulations that hinder payments to those persons eligible for the compensation established by Congress. In fact, section 657(f)(2) provides that DoD shall hold funds in trust for eligible persons only until such time as "*the person makes an election*" (emphasis added) to appear in person at a disbursing office or to request payment at another location or in another manner.

Response: Section 657(f) provides that the actual disbursement of a payment may be made only to an eligible claimant, not withstanding any agreement to the contrary. The statute does not require that payment be made in any manner requested by a claimant; rather, it authorizes the Department, in its discretion, to grant requests by eligible claimants to receive their payments at a particular location or in a manner other than the personal appearance of the claimant at a designated distribution office. This provision does not negate the independent requirement that only eligible claimants may receive payments.

Comment: *The Interim Regulation Violates The Statute And Inflicts Hardship.*

The interim regulation drastically curtails the statutory right of eligible persons to receive their payments in the manner they request. As revised, regulation states that:

> The Commission [on Compensation] may, in its discretion, require the person who is eligible for the payment to appear at any designated Defense Finance Accounting Service disbursement office in the United States to receive payment. The Commission may, in its discretion, coordinate with other U.S. governmental agencies to facilitate disbursement of payments to persons eligible for payments who reside outside the United States. If an eligible person makes a written request that payment be made at an alternate location or in an alternative manner, the Commission may, in its discretion, grant such request, provided that the *actual payment (i.e., the physical delivery of the payment) is made only to the eligible person.* The Commission will not disburse payment to any person other than an eligible person, notwithstanding any written request, assignment of rights, power of attorney, or other agreement.

32 CFR 270.11. (Emphasis added.)

By requiring that all payments be made by "physical delivery of the payment" only to the eligible person, DoD has imposed an unreasonable burden on the intended beneficiaries of the Congressionally mandated compensation. By imposing such an arbitrary condition on payments, DoD set an unnecessary hurdle which many persons eligible for compensation will be unable to clear. Such arbitrary action violates DoD's statutory obligation to promptly pay the claims after eligibility has been determined.

It does little good for DoD to state that it will hold the funds in trust for the person authorized to receive payment "until such time as the person complies with the conditions for disbursement." 32 CFR 270.11. For the most part, the Commandos and their beneficiaries, especially those still living in Vietnam, are poor and need the money now. The Commandos themselves are middle-aged or older and many are in very poor health. Disbursing payments only if the awardees can figure out some way to get to a Defense Finance Accounting Service office or can arrange some other face-to-face meeting with a Defense Department representative authorized to disburse payments would frustrate the intent of Congress to pay claimants as fairly and expeditiously as possible.

In fact, the statutory language found in section 657(f)(2) does not authorize the Commission to withhold payment until "the person complies with the conditions for disbursement" but rather until "the person makes an election under such paragraph (i.e., appear in person at a designated disbursement office or request payment at another location or in another manner)." The statute gives the awardee, and not DoD, the right to elect how payment will be made. If that request is reasonable, i.e., if the eligible person will receive the funds to which he or she is entitled, DoD may not deny the request without a valid reason.

DoD states that it is required to make physical delivery of the payment to the eligible person because of new language in section 668 of the FY 99 National Defense Authorization Act, Pub. L. 105–261, which amended section 657(f)(1) of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201). The amendment simply added the words "Notwithstanding any agreement (including a power of attorney) to the contrary" before the description of how "actual disbursement" will be made. DoD's revised regulation, however, equates "actual disbursement" to "the physical delivery of payment." 63 FR 68195. Such a distortion of the term "actual disbursement" is completely unreasonable.

"Disbursement" does not equate to "physical delivery." As defined in the American Heritage College Dictionary, to disburse means "to pay out; expend." The Federal Government typically makes disbursements of payments by issuing checks or initiating electronic funds transfers ("EFTs"). *See, e.g.,* 31 CFR 205.3, 206.2, 208.2(c). The Department of Defense, as a matter of course, disburses payments by mail or EFT to service members and civilian employees, as well as to other persons eligible for government payments. *See, e.g.,* 32 CFR 63.6 (procedures for direct payment of retired pay to former spouses). Therefore, to equate disbursement with the actual physical delivery of a payment to the beneficiary is unreasonable and flies in the face of the Government's normal way of doing business.

The statutory language mandating payments to eligible individuals provides no authority for DoD to withhold payment until "physical delivery" of the payment can be made. DoD seems to believe that some remarks contained in the Congressional Record justify its avoidance of the statutory mandate to make prompt payment for approved claims. Such a position is entirely insupportable.

It is a basic canon of statutory construction that, absent a clearly expressed legislative intention to the contrary, the language of the statute must ordinarily be regarded as conclusive. *United States* v. *Turkette* 452 U.S. 576, 580 (1981); *Consumer Products Safety Comm'n* v. *GTE Sylvania, Inc,* 447 U.S. 102, 108 (1980). Given a "straightforward statutory command, there is no reason to resort to legislative history." *United States* v. *Gonzales,* 520 U.S. 1, 10 (1997) (quoting *Connecticut Nat. Bank* v. *Germain* 503 U.S. 249, 254 (1992)). There is no ambiguity in the language of section 657(f) that would necessitate looking beyond the four corners of the statute to decipher its meaning.

Even if the statutory language were not clear regarding disbursement of payment, a review of the scant legislative history associated with the modification of the disbursement language in section 657(f)(1) lends no support to DoD's position that payments must be made physically to the eligible person. In remarks made on the floor of the Senate on June 23, 1998, Senator John McCain (R-Arizona), one of the sponsors of the amendment explained that the amendment "would ensure that the Vietnamese commandos receive their rightful share of the funds authorized and appropriated by Congress." 142 Cong. Rec. S6849 (daily ed. July 23, 1998). Senator McCain stated that the amendment "seeks to clarify that the actual disbursement of a payment under our 1996 legislation may be made only to the person eligible for the payment, notwithstanding any agreement, including a power of attorney, to the contrary." *Id.*

Nothing in the Senator's brief remarks supports a conclusion that payments must be made by means of "physcial delivery" to the eligible persons. The statute and the Senator's remarks clearly establish that payments can be made only to the eligible recipients. Hence, a payment check could not be made out to a third person for later payment to the recipient. However, an eligible recipient can request that his or her check be mailed to a particular address or that the funds be electronically transferred to a particular account. Unless DoD had a reasonable basis for concluding that the recipient would not receive the payment to which he or she was entitled if the payment request were honored, the statute *requires* the Commission to follow the reasonable payment request of an eligible recipient.

Response: As discussed above, the regulation implements the plain language of the statute, and ensures that eligible claimants receive all of the money they are owed in the most secure and expeditious manner possible.

Comment: *The Regulation Can Be Revised To Comply With The Statute.*

For all of these reasons, the amendment to 32 CFR 270.11 must be modified. In order to comply with Section 657(f) of Pub. L. 104–201, as amended, the following revised language is suggested:

§ 270.11 Limitation on disbursement

(a) Subject to subparagraph (b) below, if the Secretary determines that a claimant is eligible for the payment of compensation, the Commission shall promptly pay the claim.

(b) Notwithstanding any agreement (including a power of attorney) to the contrary, the Commission will make a disbursement of a payment under this part only to the person who is eligible for payment. Payment will be made only in one of the following ways:

(1) Upon appearance of the eligible person, in person at any designated Defense Finance Accounting Service disbursement office in the United States or its territories;

or

(2) At such other location or in such other manner as the eligible person may request in writing.

The Commission will comply with any reasonable request for payment, as described in (2) above, unless the Commission believes that the requested method of payment is likely to result in the eligible person not receiving his or her rightful share of the funds authorized and appropriated by Congress. Methods of payment approved by a Federal court or agency of appropriate jurisdiction will be considered as reasonable *per se.*

(c) In the case of a claim approved for payment but not disbursed as the result of operation of paragraph (b) above, the Commission shall hold the funds in trust for the eligible person in an interest bearing account until such time as the person makes an election under paragraph (b).

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This revised language would allow the Commandos and their beneficiaries to receive their rightful share of the money Congress intended them to have, while at the same time allowing DoD to exercise control if the payments are not in conformance with the law. DoD is strongly urged to implement this proposed revision in place of the unfair, unworkable, and unreasonable language proposed in the Interim Final Rule.

Response: The suggested change to the regulation is not consistent with or required by the statute. This statute makes clear that the compensation must be paid directly to the claimants, notwithstanding a power of attorney indicating that another disposition is preferred.

Executive Order 12866, Regulatory Planning and Review

It has been determined that 32 CFR part 270 is not a major rule. It does not have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities.

Public Law 96–354, Regulatory Flexibility Act (5 U.S.C. 601)

It has been certified that 32 CFR part 270 is not subjet to the Regulatory Flexibility Act (5 U.S.C. 601) because it does not, it promulgated, have a significant economic impact on a substantial number of small entities. The primary reason for this rule is to provide compensation for a limited number of Vietnamese Commandos who were incarcerated in North Vietnam, and as such, does not affect small entiites.

Public Law 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 270 does not impose reporting and recordkeepting requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements are exempt from this Act, as it directly involves active litigation in which the U.S. is a party.

The specific exemption from the Paperwork Reduction Act is found in 5 CFR part 1320. The information collection in this final rule is exempt from OMB approval under Section 1320.4(a)(2), "Controlling Paperwork Burdens on the Public; Regulatory Chnges Reflecting Recodification of the Paperwork Reduction Act".

Public Law 104–4, Unfunded Mandates Report Act of 1995 (UMRA)

It has been determined that 32 CFR part 270 does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year.

Accordingly, the interm rule amending 32 CFR Part 270, which was published at 63 FR 68194 on December 10, 1998, is adopted as a final rule without change.

Dated: May 22, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–13285 Filed 5–30–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990922260–0141–02; I.D. 083199E]

RIN 0648–AM84

Designating the Cook Inlet, Alaska, Stock of Beluga Whale as Depleted Under the Marine Mammal Protection Act (MMPA)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, response to comments.

SUMMARY: Based upon the available information regarding the status of the Cook Inlet stock of beluga whales, NMFS has determined that the Cook Inlet stock of beluga whales is below its Optimum Sustainable Population (OSP) levels and, therefore, is depleted as defined in the MMPA. This action is a step in the process under the MMPA to address the sharp decline in the number of Cook Inlet beluga whales. It is intended as a conservation measure to reverse the decline and to promote recovery of the stock of beluga whales.

DATES: Effective June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Payne, NOAA/NMFS, Alaska Region, (907) 586–7235, Barbara Mahoney, NOAA/NMFS, Alaska Region, Anchorage Field Office, (907) 271–5006, or Thomas Eagle, Office of Protected Resources, (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Background

Section 3(1) of the MMPA (16 U.S.C. 1362(1))defines the term, "depletion" or "depleted", as

* * *any case in which

(A) The Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals * * *determines that a species or population stock is below its optimum sustainable population.

(B) A state, to which authority for the conservation and management of a species or population stock is transferred * * *determines that such species or population stock is below its optimum sustainable population.

(C) A species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973 * * *

Section 3(9) of the MMPA (16 U.S.C. 1362(9)) further defines OSP as " * * *with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity (K) of the habitat and the health of the ecosystem of which they form a constituent element."

NMFS regulations at 50 CFR 216.3 clarify the definition of OSP as a population size that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (K) to its maximum net productivity level (MNPL). Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population from reproduction, less losses due to natural mortality.

Section 2 of the MMPA (13 U.S.C. 1361) states that marine species, populations and/or stocks should not be permitted to fall below their OSP level. Historically, MNPL has been expressed as a range of values (generally 50 to 70 percent of K) determined theoretically by estimating what size stock in relation to the original stock size will produce the maximum net increase in population (42 FR 12010, 1 March 1977). In 1977, the midpoint of this range (60 percent) was used to determine whether dolphin stocks in the eastern tropical Pacific Ocean were depleted (42 FR 64548, 27 December 1977). The 60–percent value was included in the final rule governing the taking of marine mammals incidental to commercial fishing operations (45 FR 72178, 31 October 1980).

On November 19, 1998, NMFS initiated a Status Review of the Cook Inlet beluga whale stock (63 FR 64228). The comment period on the status review extended from November 19, 1998, through January 19, 1999, and was initiated at the same time that workshops were being convened to review beluga whale stocks throughout Alaska. The workshops were held by the Alaska Beluga Whale Committee (November 16–17, 1998) and the Alaska Scientific Review Group (November 18–20, 1998), a body established under the MMPA to provide scientific advice to NMFS and the U.S. Fish and Wildlife Service. Additionally, NMFS received a petition from the State of Alaska on January 21, 1999, to designate this stock as depleted under the MMPA.

NMFS also received two petitions, one on March 3, 1999, and another on March 10, 1999, to list Cook Inlet beluga whales as endangered under the Endangered Species Act (ESA). One petition requested emergency listing under section 4(b)(7) of the ESA and designation of critical habitat. Both petitions requested immediate action to implement regulations for the subsistence harvest. This notice addresses neither these petitions nor comments received relating solely to the possible ESA listing. NMFS determined that the petitioned actions may be warranted (64 FR 17347, April 9, 1999), but no determination on whether listing this stock as a threatened or endangered species under the ESA has been made at this time.

To further ensure that the status review was comprehensive and based on the best available scientific data, the comment period was followed by a NMFS-sponsored workshop on March 8–9, 1999, that provided a review of relevant scientific information on this stock. At this workshop, NMFS received additional public comments and recommendations. The proceedings and abstracts of presentations from this workshop are available (NMFS, 1999).

Following a review of public comments and of the available information presented at the workshops, NMFS published a proposed rule to designate the Cook Inlet stock of beluga whales as depleted (64 FR 56298, 19 October 1999) and allowed a 60-day comment period, which was later extended until January 19, 2000. NMFS also conducted a public hearing on November 22, 1999, on the proposed designation of the Cook Inlet stock of beluga whales as depleted under the MMPA.

NMFS received 800 letters from the public during the comment period on the proposed rule. Many letters contained comments regarding a finding under the ESA; however, comments and responses in this notice are limited only to those related to the depletion designation under the MMPA.

Comments and Responses

Comment 1: Many comments (783) concurred with NMFS' decision to designate the Cook Inlet beluga whale stock as depleted under the MMPA. Many commenters further recommended that NMFS proceed immediately in listing the stock as endangered under the ESA and in designating critical habitat.

Response: With regard to the depleted determination, NMFS concurs with the comment. The Cook Inlet beluga whale stock is below OSP and, therefore, depleted under the MMPA. This final rule designates the stock as depleted. No final determination has been made under the ESA at this time.

Comment 2: Seven commenters supported a depleted designation only, and five would add their support only if it is necessary to help regulate a hunt under a co-management agreement with Alaska Native organizations and until the population recovers.

Response: NMFS has determined that the stock is below its OSP; therefore, the stock meets the definition of depleted under the MMPA. NMFS is designating the stock as depleted. The MMPA provides that, while the Alaska Native subsistence harvest is generally exempt from its provisions, the Federal government can restrict subsistence harvests of populations or stocks that are depleted.

Comment 3: Ten commenters were opposed to designating the Cook Inlet beluga whale as depleted under the MMPA or threatened or endangered under the ESA.

Response: Because the stock meets the definition of depleted under the MMPA, NMFS must designate the stock as depleted and begin developing conservation and management strategies for the stock's recovery.

Comment 4: Two commenters stated that NMFS has the authority and responsibility to manage the beluga harvest in Cook Inlet without listing the stock under either the MMPA or the ESA.

Response: NMFS recognizes its responsibility to conserve all stocks of marine mammals regardless of their status; however, the MMPA establishes a specific procedure for the Federal government to regulate subsistence harvest, which has been identified as the major factor responsible for the decline of the stock, once a stock is designated as depleted.

Comment 5: Four commenters urged NMFS to expeditiously enter into a co-management agreement for the beluga harvest, and three of these stated that this should be the ultimate application of the depleted listing.

Response: NMFS is pursuing a co-management agreement for the conservation of Cook Inlet beluga and the management of the beluga harvest. The depletion finding is a necessary component of an effective co-management agreement because enforceable harvest restrictions are dependent upon a depleted determination.

Comment 6: Three commenters urged NMFS to enter into a co-management agreement with the Cook Inlet Marine Mammal Council (CIMMC).

Response: During 1999, NMFS engaged in negotiations with CIMMC for the management of the beluga harvest. Although these negotiations have not yet produced an agreement, NMFS plans to continue to work with CIMMC to complete an enforceable co-management agreement to conserve the stock and co-manage subsistence use.

Comment 7: One commenter noted NMFS failure to enter into a co-management agreement and stated that NMFS should give the co-management process a chance before making a depleted determination.

Response: NMFS will continue to negotiate with Alaska Native organizations to enter a co-management agreement to promote recovery of the stock. Please see response to comment 5.

Comment 8: One commenter stated that NMFS refused CIMMC's attempts to negotiate a co-management agreement.

Response: NMFS has not refused CIMMC's attempts to negotiate a co-management agreement. NMFS and CIMMC met in January 1997 to discuss a draft co-management agreement that CIMMC had prepared. During this meeting, NMFS and CIMMC discussed limitations on authority to restrict the harvest of Cook Inlet beluga and agreed that negotiations on stock or area-specific agreements should be postponed until after NMFS and the Indigenous Peoples' Council for Marine Mammals completed an umbrella co-management agreement. Since then, NMFS and CIMMC have held several discussions to promote conservation of Cook Inlet beluga, including those that resulted in NMFS's contracting with CIMMC to provide an estimate of annual harvest; however, these discussions have not yet produced an agreement on the harvest of Cook Inlet beluga.

Comment 9: One commenter urged NMFS to promulgate regulations to control the harvest before the Congressional moratorium expires in September of 2000.

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Response: This final rule is the first step in promulgating such regulations. NMFS intends to consult closely with affected Alaska Native organizations in preparing such regulations to avoid misunderstanding that could slow their completion. Regulations to restrict subsistence harvest of marine mammals cannot be completed until a formal rulemaking hearing has been held in accordance with section 103(d) of the MMPA.

Comment 10: One commenter asked why NMFS has not proposed new emergency policies or enforcement strategies to protect Cook Inlet beluga.

Response: The MMPA and ESA establish a specific regulatory process for limiting subsistence harvest, and neither statute includes emergency provisions to eliminate portions of the process. No cause other than the subsistence harvest has been directly linked to the decline; therefore, other emergency polices, strategies, or actions would not likely promote recovery. Special legislation has protected Cook Inlet beluga whales from subsistence harvest since May 21, 1999. This final rule is the first step in promulgating regulations governing the subsistence harvest when the special legislation expires on October 1, 2000.

Comment 11: One commenter stated that beluga hunting should be limited to personal and family subsistence needs, and two others suggested that NMFS prohibit the sale of beluga products.

Response: The MMPA has specific provisions related to

Alaska Native use of marine mammals for subsistence or handicraft purposes, and these include a limited sale of edible products within Alaska Native villages or for Native consumption.

Comment 12: One commenter stated that the MMPA does not permit the wasteful taking or the primarily commercial harvest of beluga. Further, Congress intended that NMFS regulate any commercial sale beyond that which constitutes a limited cash economy.

Response: Comment noted.

Comment 13: One commenter urged NMFS to use its full authority under the MMPA to implement protective measures on areas of ecological significance to beluga.

Response: The MMPA allows NMFS to implement conservation or management measures to alleviate impacts on rookeries, mating grounds, or other areas of similar significance to marine mammals where it can be demonstrated that the impacts may be causing a decline or impeding recovery of a strategic stock. Other than subsistence harvest, NMFS has not identified impacts that are having such an effect on the stock.

Comment 14: Five commenters asked NMFS to publish clearly defined criteria for delisting beluga.

Response: Although delisting is an action under the ESA, NMFS interprets the comment to mean criteria for determining the stock has recovered from depletion. The criterion for determining that the stock has recovered would be that the stock is no longer below the lower bound of its OSP.

Comment 15: Many commenters stated that Cook Inlet beluga face threats from anthropogenic sources, urged NMFS to evaluate the possible effects of these activities on beluga in Cook Inlet, and suggested that NMFS consider any impacts in a conservation plan. These commenters cited a variety of threats, including the following: contaminants (toxins such as PCBs, pesticides, heavy metals, hydrocarbons); oil and gas development with associated seismic activity, drilling and refineries; chemical plants; noise pollution (Anchorage Airport); mass strandings; commercial fishery interactions (entanglements) and food competition; shipping/vessel traffic; urban runoff/non-point source pollution; municipal wastewater/sewage discharges; recreational and commercial (whale watching) boat traffic/personal water craft; killer whale predation; forestry activities/logging; fish farms; dredging; and development.

Response: NMFS is currently preparing a draft Environmental Impact Statement (DEIS) that reviews the impacts of a range of anthropogenic activities on Cook Inlet beluga. This DEIS will also evaluate the impacts of subsistence harvest on the beluga whale recovery. A conservation plan will be prepared unless it would not promote the conservation of the stock.

Comment 16: Two commenters stated that pollutants or commercial and industrial activities are not a factor in the "alleged" decline of Cook Inlet beluga.

Response: These factors will be evaluated within the DEIS.

Comment 17: Two commenters stated that water and sediment studies demonstrate that the oil and gas industry is not contaminating Cook Inlet. Additional studies show that oil and gas activities are not influencing the distribution of beluga in the inlet.

Response: Comment noted.

Comment 18: Four commenters stated that data from the municipality of Anchorage water monitoring and other water quality studies show no impact to Cook Inlet from industrial activities. Further, Federal and state studies have demonstrated that pollution is not a factor in the beluga decline.

Response: Comment noted.

Comment 19: One commenter stated that local, state and Federal studies have demonstrated that industrial activity is not a detriment to Cook Inlet beluga.

Response: Comment noted.

Comment 20: Several commenters expressed concern that a depleted designation would restrict commercial and industrial activity in Cook Inlet, with widespread economic repercussions.

Response: A depleted designation does not, in itself, mandate any restrictions on these or any other activities within the Cook Inlet region. Rather, it formally recognizes that the stock is below its OSP.

Comment 21: One commenter stated that, although NMFS presumes that the subsistence harvest is the cause of the beluga decline, no research has been conducted on the impacts to beluga from oil and gas discharges, sewage discharges, or non-point source runoff on beluga.

Response: Although NMFS has not initiated research specifically to determine whether or not these factors were affecting the stock, the Status Review (NMFS, 1999) examined existing information and indicated that habitat modification related to these activities could not account for the decline in the stock. Details of this analysis are included in the DEIS.

Comment 22: One commenter stated that the entire decline of beluga in Cook Inlet cannot be attributed to subsistence harvest alone; other factors need to be evaluated.

Response: The information included in the Status Review clearly shows that the harvest from 1994 through 1998, the period when reliable abundance estimates were available, was sufficient to account for the decline.

Comment 23: One commenter stated that Cook Inlet is the only U.S. drilling area exempt from regulations prohibiting the dumping of certain toxins and heavy metals.

Response: Comment noted.

Comment 24: One commenter recommended that NMFS refine its capacity to adequately assess and diagnose declines in the Cook Inlet beluga whale population.

Response: Since 1994, when NMFS first became aware that mortality of Cook Inlet beluga was exceeding sustainable levels, NMFS directed substantial resources into scientific research assessing the trend of the stock, determining stock boundaries, and estimating annual mortality. The resulting program produced a series of abundance estimates from 1994 through 1998, and these estimates have met scientific scrutiny. Reviews of these NMFS projects have been conducted through the peer-review process inherent in completing scientific publications and through comments received from annual meetings of the Alaska Scientific Review Group (which was established specifically to provide a critical review of NMFS research). Aerial surveys are conducted under standardized protocols, which were established in 1994. These protocols allow reliable inter-year comparisons of estimates. Analytical procedures were improved during the period from 1994 to 1998, and these improvements were applied to all of the abundance estimates from 1994 to 1999 to maintain consistence when trends in abundance are estimated. Thus, NMFS has, indeed, improved its capacity to assess this stock.

Comment 25: One commenter stated that NMFS must take the time to improve the quality of the science before considering any listing of this species.

Response: NMFS interpreted the phrase "any listing" in this comment and any subsequent comment to mean a listing as threatened or endangered under the ESA or a designation as depleted under the MMPA. The MMPA requires that NMFS base its determination on the best available scientific information. The scientific basis for the determination is discussed in the response to comment 24, and it is clearly sufficient to determine that the stock is below its OSP and, therefore, is depleted.

Comment 26: One commenter stated that data on beluga are scarce and derived from questionable methodologies and that a listing determination should be delayed until better data can be obtained.

Response: NMFS disagrees that the existing data are inadequate to be used as a basis for the depleted determination. The data from 1994 through 1998 indicate a high probability that the stock has declined below its OSP. Furthermore, the limited information from the 1960s through the 1980s suggest the actual historical abundance exceeded the estimate from 1994, and the stock is even farther below its OSP than the data from 1994 through 1999 indicate.

Comment 27: One commenter stated that NMFS is currently relying on ineffective and inadequate methods for assessing the beluga population.

Response: See previous response to comment 24.

Comment 28: One commenter noted that the 1998 draft abundance estimate was revised abruptly to a level far lower than the original and that a critical analysis of the new estimate was not made available for public scientific review.

Response: The 1998 abundance estimate was revised after analyses of the survey data from 1994 through 1998 were completed. These revised estimates have been thoroughly reviewed in the scientific community and constitute the best available scientific information.

Comment 29: One commenter asserted that, since previous (historical) uncorrected counts of Cook Inlet Beluga have ranged between 300 to 500 whales, NMFS should base OSP at 500 animals rather than at 1,000 animals, the agency's current use for OSP.

Response: Uncorrected counts are not an accurate estimate of population abundance because they fail to include estimates of animals that were present but not counted during surveys, such as animals that are below the surface at the time of the count. Such estimates of animals present but not counted are commonly used in the scientific literature and are accepted statistical practices for making conservation or management decisions.

Uncorrected counts are valuable for assessing population trends, and those available for the Cook Inlet beluga population show variation but no specific trend prior to the 1994–1999 surveys. Therefore, NMFS concluded that the abundance was relatively stable during the period for which the Alaska Department of Fish and Game conducted its surveys.

Comment 30: Two commenters stated that a new abundance estimate formula was used on the uncorrected (raw) counts from each year resulting in a percentage decline ranging from 38 percent to 62 percent between 1994 and 1998 depending upon which analysis (old or new) was used on the raw count. This new formula should be published and reviewed before it is used as the basis of any new listing.

Response: See previous response to comment 24 for a discussion of formulas and survey design for estimating abundance of Cook Inlet beluga. NMFS used one analytical technique in the initial abundance estimates (e.g., 1994) and reported these estimates. By 1998, NMFS had improved the analytical technique and used the new technique to re-analyze all abundance estimates during the period 1994 through 1999. Such an approach allowed NMFS to make its determination on estimates that were collected under a standard protocol and analyzed by the same analytical techniques. The formulas upon which the analytical techniques were based and the specific application of these analytical techniques to the 1994 through 1998 beluga surveys has been subjected to peer review.

Comment 31: Two commenters stated that NMFS has used a number of different population numbers, including raw counts, abundance estimates, minimum abundance estimates, and anecdotal accounts in making listing decisions and that the agency should halt this practice and choose one value for evaluation.

Response: When making a finding on a stock of marine mammals that is used for subsistence harvest, NMFS must, by statutory requirement, ensure that the finding is supported by substantial evidence on the basis of the record as a whole. Therefore, NMFS has considered all sources of evidence in evaluating the status of Cook Inlet beluga.

Comment 32: One commenter states that NMFS's population trend data is imprecise and that beluga in Cook Inlet may not be depleted.

Response: Although the estimates and data upon which they are based are not perfect, they are sufficient to conclude that the stock is depleted. As explained in the previous response to comment 24, NMFS supports the abundance estimates upon which this determination is based.

Comment 33: One commenter questioned why NMFS used the most recent population estimate of 347 and not the more conservative figure of 217 beluga whales as its 1998 population estimate.

Response: NMFS scientists counted 193 beluga during its 1998 aerial survey and 217 during the 1999 survey. These counts are not abundance estimates. Instead, abundance estimates include calculations for the number of animals that were not seen during the count but were present during the survey. Such an approach is a standard statistical practice and is overwhelmingly supported in the scientific literature. The abundance estimate from the 1998 surveys is 347 beluga.

Comment 34: One commenter stated that the abundance estimates are confusing and questionable.

Response: NMFS understands that statistical procedures used in abundance estimates are often complex; however, they provide the best available scientific information.

Comment 35: One commenter stated that the data and conclusions do not match when applying NMFS harvest figures against NMFS population estimates.

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Response: The relationship between the harvest and the population trend is within the margins of error for the estimates.

Comment 36: One commenter stated that more research is needed on food resource availability for beluga especially in regard to the Susitna River salmon stocks.

Response: Comment noted.

Comment 37: Two commenters suggested that NMFS establish a research protocol for the Cook Inlet beluga that involves an advisory committee of Federal and state agencies, CIMMC, oil and gas industry, fishing, transportation, municipality, tourism, and environmental groups.

Response: Comment noted. NMFS also notes that the Alaska Scientific Review Group was established specifically to review and advise NMFS on research protocols and other scientific matters on marine mammals in Alaska. Although the Review Group does not include representatives from all the entities suggested in the comment, its meetings and workshops are open to the public.

Comment 38: One commenter stated that NMFS should take the time to improve the quality of its data before making any listing decisions.

Response: See response to comments 24 through 35.

Comment 39: One commenter stated that NMFS should direct resources for the collection of more biological data on beluga, including data to estimate life history parameters.

Response: Comment noted.

Comment 40: One commenter stated that more research is needed to determine where Cook Inlet beluga go during the winter months.

Response: Such information would improve our understanding of Cook Inlet beluga; however, winter distribution likely has little effect on the size and trend of the breeding population that is found in Cook Inlet. This comment, however, did cause NMFS to realize that the proposed rule would have included individuals from the stock only when they were in Cook Inlet. NMFS realizes that beluga may leave the confines of Cook Inlet during the winter and perhaps at other times during the year. To correct this oversight, NMFS has revised the final rule to modify the definition of the stock so that Cook Inlet beluga are included when they are outside of the inlet.

Comment 41: One commenter stated that NMFS needs to conduct additional DNA studies of beluga in Cook Inlet and Bristol Bay, as well as DNA studies of other whales sighted in Prince William Sound to determine whether the Cook Inlet Beluga population is isolated and unique.

Response: The models used to distinguish between aggregations of animals are very sensitive to animals moving between areas; thus, if more than a handful of individuals dispersed between the groups during an entire generation, the models would not distinguish them as separate. The existing data support a significant difference among all 5 stocks of beluga in Alaska, and the Cook Inlet stock is the most distinct. Given these findings, additional information is not likely to add meaningfully to the question of whether or not the stocks are distinct. Beluga occurrence in Prince William Sound is too rare to justify a dedicated sampling effort, but, when one or more beluga are seen there, NMFS will attempt to obtain tissue samples for genetic analysis as the opportunity arises.

Comment 42: One commenter stated that a better method for counting beluga whales needs to be developed and more aerial surveys of Cook Inlet beluga need to be performed in the summer months.

Response: Comment noted. NMFS plans to continue aerial surveys of Cook Inlet beluga in the late spring and early summer.

Comment 43: One commenter stated that limited food supplies might be affecting beluga health in Cook Inlet and that reports indicated that the beluga appeared thin.

Response: Comment noted.

Comment 44: Two commenters offered assistance to NMFS to improve assessment methods and provide practical, enhanced data collection methods.

Response: NMFS appreciates offers of assistance. Currently, NMFS is satisfied with its beluga assessment methods; however, NMFS staff are open to new ideas to improve assessment or conduct the assessments more efficiently.

Comment 45: One commenter stated that the extensive subsistence harvest is to blame for the decline in beluga.

Response: Comment noted.

Comment 46: One commenter expressed concern over the impact the depleted listing will have on their subsistence way of life.

Response: NMFS recognizes that subsistence harvests are important to Alaska Native culture and supports the provisions of the MMPA that enable such harvests to continue. Conservation measures may restrict harvest of the stock temporarily; however, the lack of conservation measures could lead to a continued decline or extirpation of the stock, which would have a profound and long-term effect on local subsistence harvest. Furthermore, NMFS does not intend to promulgate conservation measures unilaterally. Rather, NMFS intends to work with the local Alaska Native community through the co-management process to design conservation measures that would sustain the beluga population for subsistence use by future generations.

Comment 47: One commenter stated that tribal knowledge should be used to determine OSP and that the tribes should collect and analyze this data.

Response: NMFS welcomes information based upon tribal knowledge to be presented for use in conservation decisions. Tribal knowledge would be incorporated into the entire body of evidence supporting management decisions. NMFS, however, is directed to use the best available scientific information in making findings under the MMPA and would have to follow this direction in its decisions.

Comment 48: One commenter stated that NMFS cites Traditional Knowledge for its K in determining OSP, yet the agency does not adequately consider Traditional Knowledge when identifying the cause of the beluga decline and the appropriate remedies. The commenter noted that it is not appropriate for NMFS to use Traditional Knowledge to support one point while failing to consider it in other regards.

Response: NMFS considered all information available in making the depletion finding. The tangible evidence for historical abundance of Cook Inlet beluga is sparse and not well documented, and NMFS concluded that the historical abundance, which is used as an estimate of K, is unknown. Several lines of evidence, including observations by Alaska Natives and weakly-supported abundance estimates, were considered to estimate historical abundance.

For the purposes of the depletion finding, assigning the cause of the decline is of less importance than establishing whether the population is below its OSP. Addressing the cause or causes of the decline will be more critical in designing and implementing conservation measures to promote recovery of the stock. NMFS will give due consideration to all sources of information and intends to work closely with the affected Alaska Native community, as well as with other affected constituents, in identifying and designing appropriate conservation measures.

Comment 49: One commenter stated that NMFS has acknowledged that many hunters do not belong to organized native organizations and that they have not been cooperative about reducing the harvest of beluga.

Response: NMFS agrees that voluntary efforts have not been effective in limiting harvest to sustainable levels; however, NMFS has observed an overall cooperative approach to recognizing the problem and the need to promote recovery.

Comment 50: One commenter stated that NMFS decided to list the beluga as depleted because of pressure from conservation groups.

Response: NMFS is basing its depleted determination on the basis of the best available scientific information, as required by the MMPA. The best available scientific information indicates that the stock is below its OSP.

Comment 51: One commenter stated that NMFS's review of factors in the beluga's decline (other than harvest) was cursory. While NMFS's assumptions may prove to be correct, it appears that NMFS was pressured by political and commercial entities to downplay the role of anthropogenic factors in the beluga's decline.

Response: NMFS acknowledges that there is little information available to evaluate the range of factors (other than harvest) that may be involved in the decline. Thus, it is not surprising that such an evaluation appears cursory. NMFS maintains, however, that there is sufficient information available to conclude that the stock is depleted.

Comment 52: One commenter advised NMFS that if Cook Inlet and Bristol Bay beluga are found to co-mingle, the depleted determination should be revoked.

Response: If NMFS were to learn that individuals from Cook Inlet and Bristol Bay mix temporarily during the non-breeding seasons, NMFS would still not have the evidence upon which to conclude that the stock is no longer depleted. The genetic analyses demonstrate conclusively that there is insufficient interbreeding among the various stocks of beluga in Alaska to mask the genetic distinction of each stock or to have a measurable effect on population status and trends.

Comment 53: One commenter disagreed with NMFS's assertion that the Cook Inlet stock of beluga is an isolated stock that lives yearround in the Inlet.

Response: NMFS has not asserted that all members of the stock remain within the inlet yearround (see response to comment 40). NMFS has asserted, and continues to assert, that the stock within Cook Inlet is genetically distinct from other aggregations of beluga in Alaska, which inhabit areas north of the Aleutian Peninsula.

Comment 54: One commenter expressed a fear that, if NMFS designates the Cook Inlet beluga whale as depleted, it will regulate the harvest with little regard for the opinions of Native Alaskan hunters.

Response: NMFS recognizes the importance of beluga whales to the Cook Inlet communities and will work with local Alaska Natives to promote recovery of the beluga stock so that a sustainable harvest can be maintained for future generations.

Comment 55: One commenter stated that the MMPA does not provide sufficient habitat protection to Cook Inlet beluga.

Response: Comment noted.

Comment 56: One commenter urged NMFS to develop a regional contingency stranding plan under 16 U.S.C. 1421c(b).

Response: NMFS intends to develop a contingency stranding plan for the region.

Comment 57: One commenter expressed concern that beluga blubber from Cook Inlet is a source of significant contaminant exposure for human subsistence consumers.

Response: Comment noted.

Comment 58: One commenter urged NMFS to conduct studies on beluga tissue samples to assess the health of the population, determine contaminant body burdens, and determine the effects of various pollutants on the Cook Inlet stock of beluga whales.

Response: NMFS has conducted health, contaminant, and life-history studies on Cook Inlet beluga and intends to continue such studies.

Comment 59: One commenter, concerned about incidental mortality in fishing operations, suggested that NMFS reclassify fisheries in Cook Inlet from Category III to Category II fisheries to allow for additional data collection to assess the fisheries' impact on the beluga.

Response: These fisheries are currently included in Category III because NMFS believes they have only a remote likelihood of seriously injuring marine mammals. Because these fisheries have such a low mortality rate, NMFS would more likely use its limited resources to evaluate other mortality factors than to direct them into such an expensive activity that would likely provide little additional information.

Comment 60: Three commenters stated that NMFS lacks the data to determine the level of incidental take in fisheries. They recommended that NMFS place observers on Category III fishing vessels to determine the accurate level of incidental take, if any. The commenter insisted that these actions would help NMFS to better assess incidental take of beluga and to better understand what is happening to their food supply.

Response: See response to comment 59.

Comment 61: One commenter urged NMFS to expeditiously prepare a conservation plan under the MMPA for Cook Inlet beluga.

Response: NMFS will prepare a conservation plan as quickly as limited resources will allow. Initial conservation efforts will not, however, be delayed until such a plan is final.

Determination of "Population Stock" or "Stock"

To designate the Cook Inlet population of beluga whales as a depleted stock under the MMPA, it must first qualify as a "population stock" or "stock". Based on the best available information as discussed below, NMFS determined that beluga whales in Cook Inlet are a population stock or stock as defined by the MMPA.

Section 3(11) of the MMPA defines a population stock or stock as a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature. Although this definition is in part a legal interpretation, stocks, species, and populations are biological concepts that must be defined on the basis of the best scientific data available.

NMFS considered several lines of evidence regarding the population structure of Cook Inlet beluga whales in the proposed designation. They are summarized in the following discussion.

Distribution of beluga whales within Cook Inlet: The summer or open water distribution of Cook Inlet beluga whales is considered to be largely confined to waters of Cook Inlet (Laidre et al., In press). Analysis of aerial surveys for beluga whales and other survey data for the northern Gulf of Alaska suggests no large, persistent group of beluga whales exists other than in Cook Inlet. This distribution pattern is consistent with western and Arctic beluga whale stocks in Alaska, which regularly return to discrete coastal summering areas. Additionally, the Cook Inlet area is physically separated from the remaining four Alaskan beluga whale stocks by the Alaskan Peninsula, which may act as a partial barrier restricting movement between stocks.

Genetic Isolation: Genetic profiles have been obtained from approximately 470 beluga whales in Alaska and Canada, including 64 animals from Cook Inlet. Mitochondrial DNA analysis of beluga whale stocks from Cook Inlet, Bristol Bay, eastern Chukchi Sea,

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eastern Bering Sea, and Beaufort Sea indicated that they are all significantly different from each other (O'Corry-Crowe, *et al.*, 1997). Of these, the Cook Inlet beluga whales were found to be the most distinct.

Final Determination under the MMPA

Based on the best available scientific information available as discussed below, NMFS has determined that the Cook Inlet stock of beluga whales is below OSP and is, therefore, depleted.

Historical Abundance: The true K, which is the basis for OSP determinations, for this stock is unknown. Furthermore, reliable historical abundance estimates, which may be used as a substitute for K, are not available.

The available evidence for historical abundance prior to the 1994 surveys includes counts from the 1960s through the early 1980s conducted by the Alaska Department of Fish and Game. These counts ranged from about 200 to about 500 individuals. Based upon reports from these counts, Gehringer and Greenwalt (1978) concluded that the abundance in Cook Inlet was about 500 beluga and that the stock was considered to be at carrying capacity. More recent information and evaluation of the data upon which Gehringer and Greenwalt (1978) based their conclusions show that their conclusions were not correct.

There is a large body of literature on estimating the abundance of wild animals, including marine mammals. The literature is conclusive that direct counts are not an accurate estimate of actual abundance because animals are missed due to a variety of reasons: marine mammals may be underwater when the aircraft is in the area; wind and water conditions may be so rough that animals are missed; animals may be so close to one another that they are counted as one; and some animals (particularly juveniles) may be so small that they are missed in the count. To expand counts to an estimate of the actual abundance, the literature contains a variety of statistical models to estimate the number of individuals that were in the area, but were not counted during a survey. These models result in correction factors to expand direct counts into estimates of abundance.

Calkins (1984) used such a correction factor of 2.7, which was developed for beluga surveys in Bristol Bay. By applying this correction factor to his maximum count of 479 beluga in August 1979, Calkins estimated the abundance to be about 1,300 beluga in Cook Inlet.

NMFS scientists advise that, when a survey includes locating and counting animals on a single pass in an airplane, the correction factor may be as high as 3. Thus, Calkins's estimate of about 1,300 beluga in August 1979 appears reasonable. Furthermore, applying such a correction factor to other counts by the Alaska Department of Fish and Game suggests the historical abundance may have been 1,000 or more animals.

Additional evidence also supports an estimate of historical abundance exceeding 1,000 beluga. NMFS biologists have discussed beluga biology, distribution, and abundance with experienced Alaska Native hunters in the Cook Inlet region, and these hunters agreed that there may have been 1,000 or more beluga in the 1970s and early 1980s. Huntington (1999) interviewed Alaska Native elders and hunters regarding their knowledge of Cook Inlet beluga and reported their observation that fewer Cook Inlet beluga have appeared in upper Cook Inlet in recent years.

Recent Abundance: More recently, Hobbs *et al.* (in press) designed a research program to establish a reliable method to estimate the number of beluga in Cook Inlet and to provide such estimates of abundance. Their methods included repeated counts of groups of beluga by multiple observers and video-taping groups for an extended period to reduce the number of whales that were missed during the counts. The video, along with another enlarged image, was used to identify beluga that surfaced during the counting period and to distinguish between small animals that may have been counted as a single individual. Their survey design also used radio-tagged whales to estimate the duration of dives by individual whales so the abundance estimate could be further corrected to account for whales that were underwater for the entire period that the group was counted and video-taped.

Hobbs *et al.* (in press) flew standardized surveys of beluga whales in Cook Inlet during June/July of 1994–1999. An aerial survey was also conducted in 1993; however, the objectives of the 1993 survey were to establish optimal survey timing and conditions and to refine survey methods. The data collected in 1993 were insufficient for a reliable abundance estimate. Abundance estimates derived from their sighting data declined from 653 in 1994 to 347 in 1998 (Table 1). The 1999 abundance estimate was 357.

TABLE 1.—ESTIMATED ABUNDANCE OF BELUGA WHALES IN COOK INLET, ALASKA

Section	1994		1995		1996		1997		1998	
Northwest	580	(0.47)	444	(0.48)	542	(0.30)	362	(0.09)	292	(0.32)
Northeast	48	(1.08)	31	(0.43)	52	(0.37)	76	(0.69)	55	(0.60)
South	25	(0.19)	17	(0.43)	0	(0.00)	2	(0.43)	0	(0.00)
Total	653	(0.43)	491	(0.44)	594	(0.28)	440	(0.14)	347	(0.29)

Note: Numbers in parentheses are the coefficients of variation of each estimate.

Under ideal conditions, NMFS would compare the current population estimate with the true K and MNPL to make a determination whether a stock is depleted. However, such conditions do not exist in this case, and NMFS must make the determination considering the uncertainty that exists in the available evidence. Therefore, NMFS considered whether the reliable information available from the standardized surveys from 1994 through 1998 indicated that the population had declined more than 40 percent during that period. If this limited series of abundance estimates indicated such a decline, the stock would clearly be below its MNPL and, thus, depleted.

Monte Carlo simulations indicate a 71–percent probability that a 40–percent decline occurred between the June 1994 abundance survey of the Cook Inlet beluga whales and the June 1998 survey. The support for a depleted determination is strengthened by the fact that K was assumed to be the highest of NMFS's abundance estimates, in this case the 1994 estimate of 653 animals. The actual K, as represented by the historical abundance, of Cook Inlet is probably higher than this number based on previous counts, discussions with local Native Alaskan hunters, and anecdotal estimates of 1,000 or more animals in the early 1980s. Native subsistence harvest occurred throughout the 1980s and 1990s, which suggests that the 1994 abundance estimate likely reflected a population that had already been significantly reduced. If the historical abundance, thus K, were above 1,000 beluga, then the decline would be even greater. If K for the stock is more than 1,000, which is likely the situation, the stock would be less than 35 percent of its historical abundance, which is far below the MNPL.

References

Calkins, D.G. 1984. Belukha whale. Vol. IX, in Susitna hydroelectric project; final report; big game studies. Alaska Department of Fish and Game. Doc. No. 2328.

Gehringer, J.W. and L.A. Greenwalt. 1978. Final Environmental Impact Statement: Consideration of a waiver of the moratorium and return of management of certain marine mammals to the State of Alaska, Vol. 1, summary and text. U.S. Dep0artment of Commerce, NOAA, NMFS and U.S. Department of the Interior, Fish and Wildlife Service, Washington, DC.

Hobbs, R.C., D.J. Rugh, and D.P. Demaster. In press. Abundance of beluga whales, *Delphinapterus leucas*, in Cook Inlet, Alaska. Marine Fisheries Review.

Laidre, K.L., K.E.W. Shelden, D.J. Rugh, and B.A. Mahoney. In press. Distribution of beluga whales and survey effort in the Gulf of Alaska. Marine Fisheries Review.

National Marine Fisheries Service. 1999. Synthesis of available information on the Cook Inlet stock of beluga whales. Processed Report 99–06, National Marine Mammal Laboratory, Alaska Fisheries Science Center, NMFS, December 1999. 22 pp.

O'Corry Crowe, G.M., R.S. Suydam, A. Rosenberg, K.J. Frost, and A.E. Dizon. 1997. Phylogeography, population structure and dispersal patterns of the beluga whale *Delphinapterus leucas* in the western Nearctic revealed by mitochondrial DNA. Molecular Ecology 6:955–970.

Classification

The Assistant Administrator for Fisheries, NOAA (AA) has determined that this is not a significant rule under E.O. 12866. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

NMFS has determined that the depleted designation of this stock under the MMPA is excluded from the requirements of the National Environmental Policy Act of 1969 and that an Environmental Assessment or Environmental Impact Statement is not required. This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Exports, Imports, Marine mammals, Transportation.

Dated: May 19, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216–REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.* unless otherwise noted.

2. In § 216.15, a new paragraph (g) is added to read as follows:

§ 216.15 Depleted species.

* * * * *

(g) Cook Inlet, Alaska, stock of beluga whales (*Delphinapterus leucas*). The stock includes all beluga whales occurring in waters of the Gulf of Alaska north of 58° North latitude including, but not limited to, Cook Inlet, Kamishak Bay, Chinitna Bay, Tuxedni Bay, Prince William Sound, Yakutat Bay, Shelikof Strait, and off Kodiak Island and freshwater tributaries to these waters.

[FR Doc. 00–13371 Filed 5–30–00; 8:45 am]

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Proposed Rules

Federal Register
Vol. 65, No. 105
Wednesday, May 31, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 99–038–4]

Tuberculosis in Cattle, Bison, Goats, and Captive Cervids; State and Zone Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening and extension of comment period; notice of public hearings.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would amend the bovine tuberculosis regulations to establish new levels of tuberculosis risk classifications to be applied to States and zones within States. The proposed rule would also classify States and zones according to their tuberculosis risk with regard to captive cervids. Additionally, it would amend the regulations to specify that the regulations apply to goats as well as to cattle, bison, and captive cervids, and would increase the amount of testing that must be done before certain cattle, bison, and goats may be moved interstate. This action will allow interested persons additional time to prepare and submit comments. We are also advising the public that we are hosting two public hearings on the proposed rule.

DATES: We invite you to comment on Docket No. 99–038–1. We will consider all comments that we receive by June 16, 2000. We will also consider comments made at public hearings to be held in Albuquerque, NM, on June 14, 2000, from 8 a.m. to noon, and in Lansing, MI, on June 15, 2000, from 6 p.m. to 9 p.m.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–038–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–038–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

The public hearings will be held at the following locations:

(1) Albuquerque, NM: Racing Commission Conference Room, Lower Level, 300 San Mateo Boulevard NE, Albuquerque, NM.

(2) Lansing, MI: The Forum, 1st Floor, Michigan Library and Historical Center, 717 West Allegan Street, Lansing, MI.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, VS, APHIS, USDA, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION: On March 7, 2000, we published in the **Federal Register** (65 FR 11912–11940, Docket No. 99–038–1) a proposal to amend the bovine tuberculosis regulations, contained in 9 CFR part 77. We proposed to: (1) Establish several new levels of tuberculosis risk classifications to be applied to States and zones within States; (2) classify States and zones according to their tuberculosis risk with regard to captive cervids; (3) apply the regulations to goats as well as to cattle, bison, and captive cervids; and (4) increase the amount of testing required for the interstate movement of certain cattle, bison, and goats.

Comments on the proposed rule were required to be received on or before April 21, 2000. On March 24, 2000, we published in the **Federal Register** (65 FR 15877–15878, Docket No. 99–038–2) a correction to Docket No. 99–038–1. Comments on the proposed rule as corrected were required to be received on or before April 21, 2000.

In response to requests from commenters that we extend the comment period on Docket No. 99–038–1, we published a notice in the **Federal Register** on May 1, 2000 (65 FR 25292, Docket No. 99–038–3), that we were reopening and extending the comment period until May 8, 2000.

During the extended comment period, a number of commenters requested that we further extend the comment period to allow additional time for members of the public to review the proposed rule and to submit comments. In response to these requests, we are reopening and extending the comment period on Docket No. 99–038–1 until June 16, 2000. This action will allow interested persons additional time to prepare and submit comments.

Public Hearings

We are advising the public that we are hosting two public hearings on Docket No. 99–038–1. The first public hearing will be held in Albuquerque, NM, on Wednesday, June 14, 2000, in the Racing Commission Conference Room, Lower Level, 300 San Mateo Boulevard NE. The second public hearing will be held in Lansing, MI, on Thursday, June 15, 2000, at The Forum, 1st Floor, Michigan Library and Historical Center, 717 West Allegan Street.

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at the public hearings. Any interested persons may appear and be heard in person, by an attorney, or by another representative. Written statements may be submitted and will be made part of the hearing record. Persons who wish to speak at either of the public hearings will be asked to sign in with their name and organization to establish a record for the hearing. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

The public hearing in Albuquerque will begin at 8 a.m and is scheduled to end at noon, local time. The public hearing in Lansing will begin at 6 p.m. and is scheduled to end at 9 p.m., local time. However, the hearings may be terminated at any time if all persons desiring to speak have been heard.

If the number of speakers at a hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearings is to give interested persons an opportunity for oral presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearing, except to clarify or explain provisions of the proposed rule.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 25th day of May 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–13589 Filed 5–30–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 112

[Docket No. 96–034–2]

Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule to amend the regulations regarding the packaging and labeling of veterinary biological products. The proposed rule would have required the Animal and Plant Health Inspection Service product code number as well as an appropriate consumer contact telephone number to appear on labeling. In addition, the proposed rule would have clarified label requirements with respect to overshadowing the true name of the product and requirements for products shipped to a foreign country. The proposed rule also contained label requirements concerning the minimum age for product administration and the potential for maternal antibody interference. We are withdrawing the proposed rule due to the comments we received following its publication.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 112 set forth packaging and labeling requirements for veterinary biological products. On March 18, 1999, we published in the **Federal Register** (64 FR 13365–13368, Docket No. 96–034–1) a proposed rule to amend the regulations. First, we proposed to require labels for veterinary biological products to include the Animal and Plant Health Inspection Service (APHIS) product code number and a consumer contact telephone number. Second, we proposed to require labels for veterinary biological products to bear the true name of the product in a prominent fashion and more prominently than the trade name. Third, we proposed to amend the requirements for labels for exported products to state that labels that do not conform to the regulations may be used with an exported product if the labels do not contain false or misleading information and are acceptable to the appropriate regulatory officials of the foreign country to which the products are exported. We proposed that verification of foreign regulatory acceptance of the labels could be supplied to APHIS through the submission of a label mounting prepared as described in § 112.5(d)(2) that bears a stamp or other mark of approval of the appropriate foreign regulatory agency. Finally, we proposed to require labels for veterinary biological products, as described in the proposed rule, to consider the potential for maternal antibody interference with product efficacy and to specify a minimum age for product administration that is consistent with the efficacy and safety data developed for the product.

We solicited comments concerning our proposal for 60 days ending May 17, 1999. We received 11 comments by that date. The comments were from licensed veterinary biologics manufacturers, a national trade association representing U.S. manufacturers of animal health products, an organization representing veterinarians, and a university. Most of the commenters expressed concerns and opposition regarding certain provisions of the proposed rule, including concerns regarding the economic effects of the proposed provisions on veterinary biologics manufacturers and the estimated burden for information collection that was provided in the Paperwork Reduction Act section of the proposed rule.

After considering all of the comments we received, we have concluded that we must reevaluate the provisions of the proposed rule. Therefore, we are withdrawing the March 18, 1999, proposed rule referenced above. The concerns and recommendations of all of the commenters will be considered if any new proposed regulations regarding the packaging and labeling of veterinary biological products are developed.

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 24th day of May 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–13549 Filed 5–30–00; 8:45am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–71]

Nuclear Energy Institute; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute. The petition was docketed on April 12, 2000, and has been assigned Docket No. PRM–50–71. The petitioner requests that the NRC amend its regulations to allow nuclear power plant licensees to use zirconium-based cladding materials other than zircaloy or ZIRLO, provided the cladding materials meet the requirements for fuel cladding performance and have received approval by the NRC staff. The petitioner believes the proposed amendment would improve the efficiency of the regulatory process by eliminating the need for individual licensees to obtain exemptions to use advanced cladding materials which have already been approved by the NRC.

DATES: Submit comments by August 14, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

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Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

The petition, this notice of receipt, and any comments received on the petition are available on the NRC's rulemaking website at http://ruleforum.llnl.gov. This site also provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (*e-mail:cag@nrc.gov*).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7162 or Toll Free: 1–800–368–5642 or email: DLM1@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner is the Nuclear Energy Institute (NEI). NEI claims representational responsibility for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

The Petitioner's Request

The petitioner states that the NRC's current regulations require uranium oxide fuel pellets, used in commercial reactors, be contained in cladding material made of zircaloy or ZIRLO. The petitioner indicates that the requirement to use either of these materials is stated in 10 CFR 50.44 and 10 CFR 50.46.

The petitioner notes that subsequent to promulgation of these regulations, commercial fuel vendors have developed and continue to develop materials other than zircaloy or ZIRLO that NRC reviews and approves for use in commercial power reactors. Each of these approvals requires the NRC to grant an exemption to the license of the utility that requests use of fuel in these cladding materials. The petitioner requests that NRC amend its regulations to allow licensees discretion to use zirconium-based cladding materials other than zircaloy or ZIRLO, provided that the cladding materials meet the fuel cladding performance requirements and have been reviewed and approved by NRC staff.

Petitioner's Interest

The petitioner states that safe and reliable operation of nuclear power plants, including fuel performance is very important to its members, the country, and the international community. The petitioner states that the NRC regulates the use of radioactive materials and allows nuclear power plant licensees to use a variety of cladding materials once the material has been determined to have the required characteristics. The petitioner states that for the past nine years, NRC has permitted the use of cladding materials other than zircaloy or ZIRLO after approving a formal exemption request. The petitioner further notes there have been at least eight requests for exemptions during that time frame and each exemption costs in excess of $50,000. The petitioner states that the requests for exemption have become increasingly more frequent, causing significant administrative confusion and a potentially adverse affect on efficient and effective use of NRC, licensee, and vendor resources.

Justification for Petition

Sections A through D below contain the detailed discussion provided by the petitioner to support his request. The text contained in each of these sections reflects the petitioner's point of view word for word.

A. The Current Regulation Given the Diversity of Commercially Available Fuel Cladding Materials is too Narrow and Restrictive

The beneficial use of zirconium (Zr) has been recognized for many years. It has a very low neutron cross-section when separated from hafnium with which it is typically found in nature. It also has excellent corrosion resistance to oxidizing environments, such as steam and water. Certain impurities were found to decrease this corrosion resistance and early programs were established to develop alloys that produced more consistent corrosion resistance.

Primary additives were tin, as used initially in a variety of zirconium-based alloys commonly referred to as zircaloy, and niobium (Nb) favored in Canada and Russia.

Beginning in approximately the mid-1980's, nuclear fuel vendors began developing new alloy variations to improve cladding corrosion resistance in support of higher burnup fuel management strategies. The new alloy variants were initially within the ASTM [American Society for Testing and Materials] specifications for existing zirconium-based cladding. As fuel cycle burnups were projected to increase further, additional alloys were developed, some of which involved formulations outside the ASTM specifications for existing cladding material.

The tin (Sn) additive-based alloys were generally favored in the U.S. and were successfully developed in both BWR [boiling water reactor] and PWR [pressurized water reactor] reactors. Early Zr-Sn alloys tended to use relatively high tin concentrations until long term corrosion tests showed that there was an increase in the corrosion rate as a function of time. Subsequent developments of the alloy, currently defined as Zircaloy-2 and Zircaloy-4, limited tin concentration to between 1.2 percent and 1.7 percent. Most of the early zircaloy compositions were at a nominal 1.5 percent Sn. Subsequent testing of the alloy in high rated PWR plants has shown that the lower tin concentrations provide even better performance. Current zircaloy compositions tend to focus on a mean Sn composition of about 1.3 percent. That value has been established by producers to minimize the risk of manufacturing a product below the ASTM specified range. However, there is significant data to show that lower Sn compositions would provide even better corrosion resistance.

Excellent corrosion performance has also been achieved with the niobium additive-based alloys; however, these appear to be more sensitive to the coolant composition. For example, the corrosion resistance is superior to the tin additive-based alloy under PWR environments but tends to suffer from nodular-type oxidation under BWR conditions. The alloy is much less temperature sensitive and the oxide thickness is generally less than that of the corresponding corrosion layer on zircaloy irradiated under identical conditions. The optimum niobium content is probably about one percent, or such as is found in M5 or ZIRLO cladding alloys.

The major variant on the Zr-Sn and Zr-Nb systems is the Zr-Sn-Nb system developed in the US as ZIRLO and in Russia as E635.

As a result of these development programs, cladding materials now available include zircaloy, ZIRLO, Alloy A, M5, and Duplex. All of these alloys are zirconium-based. Since zircaloy and ZIRLO are currently the only cladding materials provided for in the regulations, utilities must obtain an exemption from the applicable regulatory requirements to use these other cladding materials. Exemption requests will become more frequent as use of new cladding materials becomes more prevalent. Once a specific cladding material is approved for use by NRC, the subsequent exemption requests do not increase safety or confidence in the performance of the cladding. They are strictly an administrative process necessitated by the restrictive language of the current regulations.

The rule should be modified to address the currently available alloys as well as those that may be developed in the future.

B. A More General Description of Cladding Material Facilitates Technical Improvements

Currently, a licensee desiring to use fuel with cladding materials other than zircaloy or ZIRLO must obtain NRC approval through an exemption request. The time delay in obtaining approval as well as expenses incurred in preparing exemption requests might cause some licensees to defer adopting new cladding materials despite performance advantages to be gained. The proposed amendments would permit use of improved cladding materials without expending NRC, licensee, and vendor resources to develop, review, and approve exemption requests for cladding materials that fully meet NRC performance requirements.

Since the current industry interest focuses on cladding materials for which the performance criteria in § 50.46(b) remain applicable, a new § 50.46(e) is proposed that provides a clear tie between the approved cladding material alloy mentioned in §§ 50.44 and 50.46 with the criteria noted in § 50.46(b).

Similarly, to facilitate technical innovation, the NRC staff often encourages licensees and vendors to conduct Lead Test Assembly (LTA) Programs to demonstrate the performance of the new fuel assembly materials. It has been the past practice of the NRC not to require licensees to obtain approval of the LTA Program before placing the LTAs in the reactor. It is not the intent of industry to change that practice by making reference to approved cylindrical zirconium-based alloys in §§ 50.44 and 50.46.

C. The Regulation as Applied to Nuclear Power Plant Fuel Loading Incurs Unwarranted Implementation Costs

The implication of the current rule language that only the use of zircaloy or ZIRLO clad fuel is appropriate requires utilities to request, and NRC to approve, exemptions to use other cladding materials. Each exemption request is estimated to cost approximately $50,000, exclusive of NRC's cost. It is also estimated that the proposed change to the regulations could avoid at least thirty exemption requests over the next 8 to 9 years.

D. The Proposed Amendment Allows the Use of Alternative Materials That Meet the Cladding Performance Requirements

The existing regulations address only zircaloy and ZIRLO cladding materials. The regulation needs to be generalized to avoid unnecessary burdens on the developers of new cladding alloys and utilities who will use those alloys. The language of this proposed amendment will encompass all zirconium-based cladding material for which the ECCS performance criteria of § 50.46(b) are applicable.

The proposed wording does not eliminate current NRC practices regarding review and approval of new cladding materials brought forward by fuel vendors. It does permit the NRC regulation to be more efficiently applied to those cladding materials demonstrated to meet the acceptance criteria of §§ 50.46(b)(1) and (b)(2).

Experience has shown that qualification of an acceptable material can only be achieved by testing. An applicant must perform high-temperature oxidation and quenching tests of the cladding material to demonstrate that the 2200-degrees F peak cladding temperature and 17 percent oxidation limits protect the cladding against embrittlement and prevent the oxidation from becoming autocatalytic. This is demonstrated by heating the cladding to various high temperatures for a variety of time periods and quickly quenching the cladding in a cold water bath.

These tests must demonstrate that failure did not occur until beyond the temperature limits and that no autocatalytic oxidation was observed. As long as the tests confirm that the 2200-degrees F and 17 percent oxidation are conservative for the cladding material, then the material design is acceptable for LOCA [loss-of-coolant accident] licensing analyses up to currently approved burn up limits.

Providing a new more general description of the fuel cladding is consistent with the NRC movement toward a performance-based, rather than prescriptive, regulatory philosophy.

Conclusion

The petitioner believes the foregoing reasons support why NRC should amend §§ 50.44 and 50.46, as stated above, to allow the use of other zirconium-based alloys in addition to those specified in the current regulation.

The petitioner recognizes that the stated goal of the existing regulations is to ensure adequate coolability for reactor fuel in case of a design-basis accident. However, the petitioner asserts that the proposed amendment does not degrade the ability to meet that goal. Rather, it removes an unwarranted licensing burden without increasing risk to public health and safety.

Proposed Amendments

According to the petitioner, the proposed amendments would continue to allow nuclear power plant licensees the discretion to use zircaloy or ZIRLO cladding to encase the uranium dioxide fuel pellets. The proposed amendments also would allow nuclear power plant licensees to use other cladding materials with material properties that meet accepted requirements for fuel cladding performance. The petitioner identifies the proposed amendments as follows:

PART 50—[AMENDED]

1. Section 50.44, paragraphs (a), (b), and (c)(1) are revised to read as follows:

§ 50.44 Standards for combustible gas control system in light-water-cooled nuclear power reactors.

(a) Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within approved cylindrical zirconium-based alloy cladding, must . . .

(b) Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within approved cylindrical zirconium-based alloy cladding must . . .

(c)(1) For each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within approved cylindrical zirconium-based alloy cladding, it must be shown that . . .

2. Section 50.46(a)(1)(i) is revised to read as follows:

§ 50.46 Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors.

(a)(1)(i) Each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within approved cylindrical zirconium-based alloy cladding must be provided with an

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emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section.

. . .

3. In Section 50.46, a new paragraph (e) is added to read as follows:

(e) Approved cylindrical zirconium-based alloys are those whose performance has been evaluated and determined by the NRC to conform to the acceptance criteria of paragraphs § 50.46(b)(1) and (b)(2).

Dated at Rockville, Maryland this 24th day of May, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–13515 Filed 5–30–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–15–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Artouste II and Artouste III Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Turbomeca Artouste II and Artouste III series turboshaft engines. This proposal would require installation of modification TU 24, TU 167 or TU 164, depending on the specific engine model. These modifications would prevent uncommanded partial closing or total closing of the electrical fuel cock, which would prevent uncommanded in-flight engine shutdown. From the effective date of this AD, and until the modifications are installed, this proposal would also limit the duration of the engine operating cycle. This proposal is prompted by reports of unexpected power loss during test flights. The actions specified by the proposed AD are intended to prevent unexpected power loss, which could result in an uncommanded in-flight engine shutdown, autorotation, and forced landing.

DATES: Comments must be received by July 31, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–15–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "9-ane-adcomment@faa.gov". Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Turbomeca, 40220 Tarnos, France; telephone 33 05 59 64 40 00, fax 33 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7132, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–15–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–15–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Director General de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Turbomeca Artouste II and Artouste III series turboshaft engines. The DGAC advises that it has received reports of unexpected power loss in service. This power loss is due to closing of the electrical fuel cock. This condition, if not corrected, could result in unexpected power loss, which could result in an uncommanded in-flight engine shutdown, autorotation, and forced landing.

Service Information

Turbomeca has issued Artouste II Service Bulletin (SB) No. 223 72 0070, dated January 21, 1999, that specifies procedures for installing modification TU 24, which provides an equipped relay inside the control unit. Turbomeca has also issued Artouste III SB No. 218 80 0098, dated January 14, 1999 and SB No. 218 80 0093, Revision 2, dated January 14, 1999 which state similar requirements and specify procedures for installation of modifications TU 164 and TU 167 respectively. The DGAC classified these SB's as mandatory and issued Airworthiness Directive (AD) 1999–005(A), dated January 13, 1999, and AD 1999–090(A), dated February 24, 1999, in order to ensure the airworthiness of these engines in France.

Bilateral Airworthiness Agreement

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines used on helicopters of the same type design registered in the United States, the proposed AD would require installation of modification TU 24, TU 164 or TU 167 at the earliest of the following:

- The next shop visit after the effective date of this AD, or
- Within 30 days after the effective date of this AD, or
- Within 120 cycles-in-service after the effective date of this AD.

The actions would be required to be accomplished in accordance with the SB's described previously. This proposal will also limit the duration of the engine operating cycle, from the effective date of this AD, to a two-hour cycle (engine start/stop) until the modifications are installed.

Economic Analysis

There are approximately 3,102 engines of the affected design in the worldwide fleet. The FAA estimates that 213 engines installed on aircraft of US registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $630 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $159,750. The manufacturer has advised the DGAC that it may provide modifications TU 164 and TU 167 at no cost to the operator, thereby substantially reducing the cost impact of this proposed rule.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Turbomeca: Docket No. 2000–NE–15–AD.

Applicability: This airworthiness directive (AD) applies to Turbomeca Artouste II and Artouste III B, B1 and D series turboshaft engines. These engines are installed on, but not limited to, Alouette II SE 3130, Alouette II SE 313 B, Eurocopter SA 315 LAMA and SA 316 Alouette III series helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent unexpected power loss, which could result in an uncommanded in-flight engine shutdown, autorotation, and forced landing, accomplish the following:

For Artouste II Engines

(a) As of the effective date of this AD, the duration of the operating cycle (start-up to shutdown) is limited to two hours total until modification TU 24 is installed in accordance with Turbomeca Artouste II Service Bulletin 218 80 0070, Section 2, dated January 21, 1999.

(b) At the next shop visit, within 30 days, or within 120 cycles after the effective date of this AD, whichever occurs first, install modification TU 24 in accordance with Turbomeca Artouste II Service Bulletin 218 80 0070, Section 2, dated January 21, 1999.

For Artouste III B and Artouste III B1 Engines

(c) As of the effective date of this AD, the duration of the operating cycle (start-up to shutdown) is limited to two hours total until modification TU 167 is installed in accordance with Turbomeca Artouste III Service Bulletin 218 80 0093, Revision 2, Section 2, dated January 14, 1999.

(d) At the next shop visit, within 30 days, or within 120 cycles after the effective date of this AD, whichever occurs first, install modification TU 167 in accordance with Turbomeca Artouste III Service Bulletin 218 80 0093, Revision 2, Section 2, dated January 14, 1999.

For Artouste III D Engines

(e) As of the effective date of this AD, the duration of the operating cycle (start-up to shutdown) is limited to two hours total until modification TU 164 is installed in accordance with Turbomeca Artouste III Service Bulletin 218 80 0098, Section 2, dated January 14, 1999.

(f) At the next shop visit, within 30 days, or within 120 cycles after the effective date of this AD, whichever occurs first, install modification TU 164 in accordance with Turbomeca Artouste III Service Bulletin 218 80 0098, Section 2, dated January 14, 1999.

Definition

(g) For the purpose of this AD, a shop visit is defined as any time when the engine is removed from the helicopter for maintenance.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive.

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if any, may be obtained from the Engine Certification Office.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on May 23, 2000.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–13567 Filed 5–30–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–206–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200, –300, –400, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that would have required a one-time inspection to determine whether H–11 steel bolts are installed as attach and support bolts at the trailing edge flap transmissions, and replacement of any H–11 steel bolt with an Inconel bolt. That proposal was prompted by reports of fracturing or cracking of H–11 steel bolts at the flap transmissions. This new action revises the proposed rule by expanding the applicability to include additional airplanes. The actions specified by this new proposed AD are intended to prevent loss of a flap transmission, which could reduce lateral controllability of the airplane.

DATES: Comments must be received by July 5, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–206–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–206–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–206–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 28, 1999 (64 FR 72582). That NPRM would have required a one-time inspection to determine whether H–11 steel bolts are installed as attach and support bolts at the trailing edge flap transmissions, and replacement of any H–11 steel bolt with an Inconel bolt. That NPRM was prompted by reports of fracturing or cracking of H–11 steel bolts at the flap transmissions. That condition, if not corrected, could result in loss of a flap transmission, which could reduce lateral controllability of the airplane.

Comments

Due consideration has been given to the comments received in response to the NPRM. Certain comments have resulted in changes to the NPRM.

Request To Expand Applicability

One commenter, an operator, requests that the FAA expand the applicability of the proposed rule to include all Model 747 series airplanes. The commenter points out that, though only Model 747 series airplanes having line numbers 1 through 871 inclusive were delivered with the affected bolts, the affected bolts may have been installed as spares on Model 747 series airplanes after line number 871. The commenter states that it found the subject bolts installed on airplanes in its fleet that are not included in the applicability of the proposed rule. The FAA concurs with the commenter's request and has revised the applicability statement of this supplemental NPRM to include all Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, –400F, and 747SR series airplanes.

Request To Revise "Cost Impact" Section

Several commenters request that the FAA revise the cost impact information provided in the preamble of the NPRM. One commenter states that the cost information in the NPRM is not consistent with the service bulletin, and requests that the cost impact information be revised to reflect the estimates in the service bulletin. Another commenter states that it does not understand the estimate of 6 work hours per airplane and estimates a total of 24 work hours will be necessary to accomplish both the inspection and replacement described in the NPRM. The same commenter further states, "The NPRM cost estimate does not include replacement costs nor does it even include the access costs required for the inspection. This is not industry-accepted practice."

The FAA partially concurs with the commenters' request. The cost impact information in AD rulemaking actions describes only the "direct" costs of the specific actions required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

The estimate of 6 work hours in the NPRM is based on the figures in the service bulletin of 0.25 work hour for inspection and 0.50 work hour for replacement of bolts, for a total of 0.75 hour per transmission, and 6.0 work hours per airplane. However, based on the comments received, the FAA finds that clarification of the breakdown of the costs associated with the proposed AD is necessary. Therefore, the FAA has revised the cost impact information in this supplemental NPRM to separate the cost estimates for inspection and bolt replacement (if necessary). In addition, the estimated parts cost has been included.

Request To Revise Language in "Discussion" Section

One commenter, the manufacturer, requests that the FAA revise certain language in the "Discussion" section of the NPRM. The subject sentence reads, "Broken bolts could lead to loss of a flap transmission, which could result in flap asymmetry, flap skew, or collateral system damage." The commenter requests that the sentence be revised to read, "* * * flap skew, *and/or* collateral system damage." The commenter states, "* * * in addition to the flap skew or asymmetry, a reduction in flight control system capability is also possible due to potential adjacent systems damage (e.g., hydraulic lines, cables, wiring, etc.)."

The FAA concurs with the intent of the commenter's request. However, the "Discussion" section is not restated in this supplemental NPRM; therefore, no change is necessary in this regard.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 1,240 airplanes of the affected design in the worldwide fleet. The FAA estimates that 281 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $33,720, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the bolt replacement, it will take approximately 4 work hours per airplane (0.5 hours per transmission) to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $5,049 per airplane. Based on these figures, the cost impact of the replacement is estimated to be $5,289 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–206–AD.

Applicability: All Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, –400F, and 747SR series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of a flap transmission, which could reduce lateral controllability of the airplane, accomplish the following:

Replacement

(a) Within 1 year after the effective date of this AD, perform a one-time general visual inspection to determine whether H–11 steel bolts are installed as attach and support bolts at the trailing edge flap transmissions, in accordance with Boeing Alert Service Bulletin 747–27A2376, dated July 1, 1999.

(1) If no H–11 steel bolt is found, no further action is required by this AD.

(2) If any H–11 steel bolt is found, prior to further flight, replace with an Inconel bolt, in accordance with the alert service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of

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access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13568 Filed 5–30–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Parts 4, 4a and 4b

[Docket No. 990723201–9201–01]

RIN 0605–AA14

Public Information, Freedom of Information and Privacy

AGENCY: Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed revisions of Department of Commerce (Department) regulations regarding the Freedom of Information Act (FOIA), Privacy Act (PA), and declassification and public availability of national security information. It contains new provisions implementing the Electronic Freedom of Information Act (EFOIA) Amendments of 1996, reflects the principles established by President Clinton and Attorney General Reno in their FOIA Policy Memoranda of October 4, 1993, incorporates updated cost figures to be used in charging fees, and streamlines and clarifies the regulations. The proposed PA revisions update and clarify certain provisions, and make technical changes. The proposed revisions of the regulations regarding declassification and public availability of national security information implement Executive Order 12958, and streamline and clarify the regulations.

DATES: Comments must be received on or before June 30, 2000.

ADDRESSES: Address all comments concerning this proposed rule to Andrew W. McCready, Attorney-Advisor, U.S. Department of Commerce, Office of the Assistant General Counsel for Administration, Room 5875, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Andrew W. McCready, 202–482–8044.

SUPPLEMENTARY INFORMATION: The Department issued a proposed rule to revise its FOIA and PA regulations on February 21, 1996 (61 FR 6585–6587), but will not issue that rule in final form because of the subsequent passage of the Electronic Freedom of Information Act (EFOIA) Amendments of 1996 (Pub. L. 104–231). Relevant portions of that proposed rule are incorporated into the proposed rule below.

The proposed amendment to 15 CFR part 4 adds new provisions to implement the EFOIA Amendments of 1996. New provisions implementing the amendments are found at § 4.2(b) (electronic reading rooms), § 4.6(b) (timing of responses), § 4.6(d) (multitrack processing), § 4.6(e) (expedited processing), § 4.7(a), (b)(3) (deletion marking and estimation of volume of information withheld), § 4.11(b)(3) (format of disclosure), and § 4.11(b)(8) (electronic searches).

Proposed revisions of the Department's fee schedule are at § 4.11. The duplication charge will increase from $.07 to $.15 per page. Section 4.1(a) includes a new statement of discretionary disclosure policy, which reflects the principles established by President Clinton and Attorney General Reno in their FOIA Memoranda of October 4, 1993.

The Department proposes to remove part 4b, which contains the Department's PA regulations, and to incorporate revised PA provisions as a new subpart B to part 4. The proposed subpart B expands the list of PA officers to include all FOIA officers; changes the official responsible for adjudicating PA appeals of denials of requests for access, correction, and amendment from the General Counsel to the Assistant General Counsel for Administration; and streamlines and clarifies the regulations.

Appendix A to part 4 is being removed. Appendix B and C are being redesignated as appendices A and B to part 4, and are being revised to include updated addresses and telephone numbers of public inspection facilities, and updated addresses for requests for records under the FOIA and PA. Appendices A and C to part 4b are being removed, and appendix B is being redesignated as appendix C to part 4.

The proposed amendment to 15 CFR part 4a implements Executive Order 12958; eliminates the requirement that the Department's Office of Security coordinate with the Office of the Assistant General Counsel for Administration with respect to declassification and FOIA matters; and streamlines and clarifies the regulations.

It has been determined that this rule is significant under Executive Order 12866.

This rule does not contain a "collection of information" as defined by the Paperwork Reduction Act.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, the fees the Department assesses are ordinarily nominal. Further, the number of "small entities" that make FOIA requests is relatively small compared to the number of individuals who make such requests.

List of Subjects

15 CFR Part 4

Administrative practice and procedure, Freedom of Information, Privacy, Public information.

15 CFR Part 4a

Administrative practice and procedure, Classified information.

15 CFR Part 4b

Privacy.

For the reasons stated in the preamble, the Department of Commerce proposes to amend 15 CFR Subtitle A as set forth below:

1. Revise Part 4 to read as follows:

PART 4—DISCLOSURE OF GOVERNMENT INFORMATION

Subpart A—Freedom of Information Act

Sec.
4.1 General.
4.2 Public reference facilities.
4.3 Records under the FOIA.
4.4 Requirements for making requests.
4.5 Responsibility for responding to requests.
4.6 Time limits and expedited processing.
4.7 Responses to requests.
4.8 Classified information.
4.9 Business Information.
4.10 Appeals from initial determinations or untimely delays.
4.11 Fees.

Subpart B—Privacy Act

4.21 Purpose and scope.
4.22 Definitions.
4.23 Procedures for making inquiries.
4.24 Procedures for making requests for records.
4.25 Disclosure of requested records to individuals.
4.26 Special procedures: Medical records.
4.27 Procedures for making requests for correction or amendment.
4.28 Agency review of requests for correction or amendment.
4.29 Appeal of initial adverse agency determination on correction or amendment.
4.30 Disclosure of record to person other than the individual to whom it pertains.
4.31 Fees.
4.32 Penalties.
4.33 General exemptions.
4.34 Specific exemptions.
Appendix A to Part 4—Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records Under the Freedom of Information Act, and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act
Appendix B to Part 4—Officials Authorized to Deny Requests for Records Under the Freedom of Information Act and Requests for Correction or Amendment under the Privacy Act
Appendix C to Part 4—Systems of Records Noticed by Other Federal Agencies and Applicable to Records of the Department, and Applicability of this Part Thereto

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 44 U.S.C. 3101, 3717; Reorganization Plan No. 5 of 1950.

Subpart A—Freedom of Information Act

§ 4.1 General.

(a) The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552). This part sets forth the procedures the Department of Commerce (Department) and its components follow to make publicly available the materials and indices specified in 5 U.S.C. 552(a)(2) and records requested under 5 U.S.C. 552(a)(3). Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this part. The Department's policy is to make discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(b) As used in this subpart, *component* means any office, division, bureau or other unit of the Department listed in Appendix A to this part.

§ 4.2 Public reference facilities.

(a) The Department maintains public reference facilities (listed in Appendix A to this part) that contain the records the FOIA requires to be made regularly available for public inspection and copying; furnish information and otherwise assist the public concerning Department operations under the FOIA; and receive and process requests for records under the FOIA. Each component of the Department is responsible for determining which of its records are required to be made available for public inspection and copying, and for making those records available either in its own public reference facility or in the Department's Central Reference and Records Inspection Facility. Each component shall maintain and make available for public inspection and copying a current subject-matter index of its public inspection facility records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. In accordance with 5 U.S.C. 552(a)(2), the Department has determined that it is unnecessary and impracticable to publish quarterly or more frequently and distribute copies of the index and supplements thereto.

(b) Components shall also make public inspection facility records created by the Department on or after November 1, 1996 available electronically through the Department's World Wide Web site (http://www.doc.gov). Information available at the site shall include:

(1) Each component's index of its public inspection facility records, which indicates which records are available electronically; and

(2) The general index referred to in paragraph (c)(3) of this section.

(c) The Department maintains and makes available for public inspection and copying:

(1) A current index providing identifying information for the public as to any matter that is issued, adopted, or promulgated after July 4, 1997, and that is retained as a record and is required to be made available or published. Copies of the index are available upon request after payment of the direct cost of duplication;

(2) Copies of records that have been released and that the agency determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records;

(3) A general index of the records described in paragraph (c)(2) of this section;

(4) Final opinions and orders, including concurring and dissenting opinions made in the adjudication of cases;

(5) Those statements of policy and interpretations that have been adopted by the component and are not published in the **Federal Register**; and

(6) Administrative staff manuals and instructions to staff that affect a member of the public.

§ 4.3 Records under the FOIA.

(a) Records under the FOIA include all Government records, regardless of format, medium or physical characteristics, and include electronic records and information, audiotapes, videotapes, and photographs.

(b) There is no obligation to create, compile, or obtain from outside the Department a record to satisfy a FOIA request. With regard to electronic data, the issue of whether records are created or merely extracted from an existing database is not always apparent. When responding to FOIA requests for electronic data where creation of a record or programming becomes an issue, the Department shall undertake reasonable efforts to search for the information in electronic format.

(c) Department officials may, upon request, create and provide new information pursuant to user fee statutes, such as the first paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. This is outside the scope of the FOIA.

(d) Components shall preserve all correspondence pertaining to the requests they receive under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 4.4 Requirements for making requests.

(a) A request for records of the Department which are not customarily made available to the public as part of the Department's regular informational services must be in writing, and shall be

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processed under the FOIA, regardless whether the FOIA is mentioned in the request. Requests should be sent to the Department component identified in Appendix A to this part that maintains those records (records the FOIA requires to be made regularly available for public inspection and copying are addressed in § 4.2(c)). If the proper component cannot be determined, the request should be addressed to the central facility identified in Appendix A to this part. The central facility will forward the request to the component(s) it believes most likely to have the requested records. For the quickest handling, the request letter and envelope should be marked "Freedom of Information Act Request." For requests for records about oneself, § 4.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to the requester or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.

(b) The records requested must be described in enough detail to enable Department personnel to locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record is located. Also, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included. If known, any file designations or descriptions for the requested records should be included. In general, the more specifically the request describes the records sought, the greater the likelihood that the Department will locate those records. If a component determines that a request does not reasonably describe records, it shall inform the requester what additional information is needed or why the request is otherwise insufficient. The component also shall give the requester an opportunity to discuss the request so that it may be modified to meet the requirements of this section.

§ 4.5 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraph (b) of this section, the proper component of the Department to respond to a request for records is the component that first receives the request and has responsive records, or the component to which the central facility identified in Appendix A to this part assigns responsibility for responding to the request, based on which component it believes has the majority of responsive records. In determining records responsive to a request, a component shall include only those records within the component's possession and control as of the date it receives the request.

(b) *Consultations and referrals.* If a component receives a request for a record in its possession in which another Federal agency subject to the FOIA has the primary interest, the component shall refer the record to that agency for direct response to the requester. A component shall consult with another Federal agency before responding to a requester if the component receives a request for a record in which another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or another Federal agency not subject to the FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it (see § 4.8 for additional information about referrals of classified information).

(c) *Notice of referral.* Whenever a component refers a document to another Federal agency for direct response to the requester, it ordinarily shall notify the requester in writing of the referral and inform the requester of the name of the agency to which the document was referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled according to the date the FOIA request was received by the first Federal agency.

(e) *Agreements regarding consultations and referrals.* Components may make agreements with other Federal agencies to eliminate the need for consultations or referrals for particular types of records.

§ 4.6 Time limits and expedited processing.

(a) *In general.* Components ordinarily shall respond to requests according to their order of receipt.

(b) *Initial response and appeal.* Subject to paragraph (c)(1) of this section, an initial response shall be made within 20 working days (i.e., excluding Saturdays, Sundays, and days on which Federal offices are closed) of the receipt of a request for a record under this part by the proper component identified in accordance with § 4.5(a), and an appeal shall be decided within 20 working days of its receipt by the Office of the General Counsel.

(c) *Unusual circumstances.* (1) In unusual circumstances as specified in paragraph (c)(2) of this section, an official listed in Appendix B to this part may extend the time limits in paragraph (b) of this section by notifying the requester in writing as soon as practicable of the unusual circumstances and of the date by which processing of the request is expected to be completed. Extensions of time for the initial determination and extensions on appeal may not exceed a total of ten working days, unless the requester agrees to a longer extension, or the component provides the requester with an opportunity either to limit the scope of the request so that it may be processed within the applicable time limit, or to arrange an alternative time frame for processing the request or a modified request.

(2) As used in this section, *unusual circumstances* means, but only to the extent reasonably necessary to properly process the particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another component or Federal agency having a substantial interest in the determination of the request.

(3) Unusual circumstances do not include a delay that results from a predictable agency workload of requests, unless the Department demonstrates reasonable progress in reducing its backlog of pending requests. Refusal to reasonably modify the scope of a request or arrange an alternate time frame may affect a requester's ability to obtain judicial review.

(4) If a component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, the component may aggregate them. Multiple requests involving unrelated matters will not be aggregated.

(d) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing

between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (e) of this section.

(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. A component doing so shall contact the requester by telephone or by letter, whichever is most efficient in each case.

(e) *Expedited processing.* (1) Requests and appeals shall be taken out of order and given expedited treatment whenever it is determined they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) The loss of substantial due process rights;

(iii) A matter of widespread and exceptional media interest in which there exist questions about the Government's integrity which affect public confidence; or

(iv) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing should be sent to the component listed in Appendix A to this part that maintains the records requested.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (e)(1)(iv) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category described in paragraph (e)(1)(iv) of this section must also establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 4.7 Responses to requests.

(a) *Grants of requests.* If a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee charged under § 4.11 and disclose records to the requester promptly upon payment of any applicable fee. Records disclosed in part shall be marked or annotated to show the applicable FOIA exemption(s) and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible.

(b) *Adverse determinations of requests.* If a component makes an adverse determination regarding a request, it shall notify the requester of that determination in writing. An adverse determination is a denial of a request in any respect, namely: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA (except that a determination under § 4.11(j) that records are to be made available under a fee statute other than the FOIA is not an adverse determination); a determination against the requester on any disputed fee matter, including a denial of a request for a fee waiver; or a denial of a request for expedited treatment. Each denial letter shall be signed by an official listed in Appendix B to this part, and shall include:

(1) The name and title or position of the denying official;

(2) A brief statement of the reason(s) for the denial, including applicable FOIA exemption(s);

(3) An estimate of the volume of records or information withheld, in number of pages or some other reasonable form of estimation. This estimate need not be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable FOIA exemption; and

(4) A statement that the denial may be appealed, and a list of the requirements for filing an appeal under § 4.10(b).

§ 4.8 Classified information.

In processing a request for information classified under Executive Order 12958 or any other executive order concerning the classification of records, the information shall be reviewed to determine whether it should remain classified. Ordinarily the component or other Federal agency that classified the information should conduct the review, except that if a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request to the component or agency that classified the underlying information. Information determined to no longer require classification shall not be withheld on the basis of FOIA Exemption 1 (5 U.S.C. 552(b)(1)). Appeals involving classified information shall be processed in accordance with § 4.10(c).

§ 4.9 Business information.

(a) *In general.* Business information obtained by the Department from a submitter will be disclosed under the FOIA only under this section.

(b) *Definitions.* For the purposes of this section:

(1) *Business information* means commercial or financial information, obtained by the Department from a submitter, which may be protected from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)).

(2) *Submitter* means any person or entity outside the Federal Government from whom the Department obtains business information, directly or indirectly. The term includes corporations; state, local and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under FOIA exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

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(d) *Notice to submitters.* A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information whenever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity under paragraph (f) of this section to object to disclosure of any specified portion of that information. Such written notice shall be sent via certified mail, return receipt request, or similar means. The notice shall either describe the business information requested or include copies of the requested records containing the information. When notification of a large number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(e) *When notice is required.* Notice shall be given to the submitter whenever:

(1) The information has been designated in good faith by the submitter as protected from disclosure under FOIA exemption 4; or

(2) The component has reason to believe that the information may be protected from disclosure under FOIA exemption 4.

(f) *Opportunity to object to disclosure.* A component shall allow a submitter seven working days (i.e., excluding Saturdays, Sundays, and days on which Federal offices are closed) from the date of receipt of the written notice described in paragraph (d) of this section to provide the component with a detailed statement of any objection to disclosure. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* A component shall consider a submitter's objections and specific grounds under the FOIA for nondisclosure in deciding whether to disclose business information. If a component decides to disclose business information over the objection of a submitter, the component shall give the submitter written notice via certified mail, return receipt requested, or similar means, which shall include:

(1) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(2) A description of the business information to be disclosed; and

(3) A statement that the component intends to disclose the information seven working days from the date the submitter receives the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, in which case the component shall provide the submitter written notice of any final decision to disclose the information seven working days from the date the submitter receives the notice.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the component shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the component shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component shall notify the requester(s).

§ 4.10 Appeals from initial determinations or untimely delays.

(a) If a request for records is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse initial determination regarding any other matter under this subpart (as described in § 4.7(b)), the requester may file a written appeal, which must be received by the Office of General Counsel within thirty calendar days of the date of the written denial or, if there has been no determination, may be submitted anytime after the due date, including the last extension under § 4.6(c), of the determination.

(b) Appeals shall be decided by the Assistant General Counsel for Administration (AGC-Admin), except that appeals for records which were initially denied by the AGC-Admin shall be decided by the General Counsel. Appeals should be addressed to the AGC-Admin, or the General Counsel if the records were initially denied by the AGC-Admin. The address of both is: U.S. Department of Commerce, Office of General Counsel, Room 5875, 14th and Constitution Avenue NW, Washington, DC 20230. Both the letter and the appeal envelope should be clearly marked "Freedom of Information Appeal". The appeal must include a copy of the original request and the initial denial, if any, and may include a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided.

(c) Appeals involving records initially denied on the basis of FOIA exemption 1 (5 U.S.C. 552(b)(1)) shall be forwarded to the Deputy Assistant Secretary for Security (DAS) for a declassification review. The DAS may overrule previous classification determinations in whole or in part when, in his judgment, continued protection in the interest of national security is no longer required, or no longer required at the same level. The DAS shall advise the AGC-Admin, or the General Counsel, as appropriate, of his decision.

(d) If an appeal is granted, the person making the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees determined in accordance with § 4.11.

(e) If no determination of an appeal has been sent to the requester within the twenty working day period specified in § 4.6(b) or the last extension thereof, the requester is deemed to have exhausted his administrative remedies with respect to the request, giving rise to a right of judicial review under 5 U.S.C. 552(a)(6)(C). If the person making a request initiates a court action against the Department based on the provision in this paragraph, the administrative appeal process may continue.

(f) A determination on appeal shall be in writing and, when it denies records in whole or in part, the letter to the requester shall include:

(1) A brief explanation of the basis for the denial, including a list of applicable FOIA exemptions and a description of how the exemptions apply;

(2) A statement that the decision is final for the Department;

(3) Notification that judicial review of the denial is available in the district in which the requester resides or has his

principal place of business, the district in which the agency records are located, or the District of Columbia; and

(4) The name and title or position of the official responsible for denying the appeal.

§ 4.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except when fees are limited under paragraph (d) of this section or when a waiver or reduction of fees is granted under paragraph (k) of this section. A component shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use of purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. Components shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses a component incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits), Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. A component shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format by the component responding to the request.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution, and that the records are sought to further scholarly research rather than for a commercial use.

(5) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research rather than for a commercial use.

(6) *Representative of the news media, or news media requester* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only if they can qualify as disseminators of "news") that make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible.

(c) *Fees.* In responding to FOIA requests, components shall charge the fees summarized in chart form in paragraphs (c)(1) and (c)(2) of this section and explained in paragraphs (c)(3) through (c)(5) of this section, unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

(1) The four categories and chargeable fees are:

Category	Chargeable fees
(i) Commercial Use Requesters	Search, Review, and Duplication.
(ii) Educational and Non-commercial Scientific Institution Requesters	Duplication (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters	Search and Duplication (excluding the cost of the first 2 hours of search and 100 pages).

(2) Uniform fee schedule.

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Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction	$.15 per page.
(B) Other reproduction (*e.g.*, computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
(iv) Review of records (includes preparation for release, *i.e.*, excising)	Actual salary rate of employee conducting review, plus 16 percent of salary rate.

(3) *Search.* (i) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (d) of this section. Components shall charge for time spent searching even if they do not locate any responsive record or if they withhold the record(s) located as entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs, attributable to the search, of operating a central processing unit and operator/programmer salary.

(4) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $.15 cents per page. For copies produced by computer, such as tapes or printouts, components shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, components will charge the direct costs of that duplication.

(5) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review—the review done when a component determines whether an exemption applies to a particular record at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(d) *Limitations on charging fees.*

(1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) Whenever a total fee calculated under paragraph (c) of this section is $20.00 or less for any request, no fee will be charged.

(5) The provisions of paragraphs (d)(3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $20.00.

(e) *Notice of anticipated fees over $20.00.* When a component determines or estimates that the fees to be charged under this section will be more than $20.00, the component shall notify the requester of the actual or estimated fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee. If the component has notified a requester that actual or estimated fees are more than $20.00, the component shall not consider the request received or process it further until the requester agrees to pay the anticipated total fee. Any such agreement should be memorialized in writing. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, components shall ordinarily charge the direct cost of special services. Such special services could include certifying that records are true copies or sending records by other than ordinary mail.

(g) *Charging interest.* Components shall charge interest on any unpaid bill starting on the 31st calendar day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and accrue from the date of the billing until payment is received by the component. Components shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* If a component reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30 calendar day period have been made in order to avoid fees. If requests are separated by a longer period, components shall aggregate them only if a solid basis exists for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters shall not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to make an advance payment: a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a payment before copies are sent to a requester) is not an advance payment.

(2) If a component determines or estimates that a total fee to be charged under this section will be more than $250.00, it shall require the requester to pay the entire anticipated fee before beginning to process the request, unless it receives a satisfactory assurance of full payment from a requester who has a history of prompt payment.

(3) If a requester has previously failed to pay a properly charged FOIA fee to any component or other Federal agency within 30 calendar days of the date of billing, a component shall require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which a component requires payment under paragraphs (i)(2) or (3) of this section, the request shall not be considered received and further work will not be done on it until the required payment is received.

(5) Upon the completion of processing of a request, when a specific fee is determined to be payable and appropriate notice has been given to the requester, a component shall make records available to the requester only upon receipt of full payment of the fee.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute (except for the FOIA) that specifically requires an agency to set and collect fees for particular types of records. If records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, components shall inform requesters of how to obtain records from those sources.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section if a component determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, components shall consider the following factors:

(i) *The subject of the request*: whether the subject of the requested records concerns the operations or activities of the Government. The subject of the requested records must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed*: whether the disclosure is "likely to contribute" to an understanding of Government operations or activities. The disclosable portions of the requested records must be meaningfully informative about Government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure*: whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media satisfies this consideration. It shall be presumed that a requester who merely provides information to media sources does not satisfy this consideration.

(iv) *The significance of the contribution to public understanding*: whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities. The public's understanding of the subject in question prior to the disclosure must be significantly enhanced by the disclosure.

(3) To determine whether the second fee waiver requirement is met, components shall consider the following factors:

(i) *The existence and magnitude of a commercial interest*: whether the requester has a commercial interest that would be furthered by the requested disclosure. Components shall consider any commercial interest of the requester (with reference to the definition of "commercial use request" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure*: whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified if the public interest standard (paragraph (k)(1)(i) of this section) is satisfied and the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market Government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) If only some of the records to be released satisfy the requirements for a fee waiver, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request.

Subpart B—Privacy Act

§ 4.21 Purpose and scope.

(a) The purpose of this subpart is to establish policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a). The main objectives are to facilitate full exercise of rights conferred on individuals under the Act and to ensure the protection of privacy as to individuals on whom the Department maintains records in systems of records under the Act. The Department accepts the responsibility to act promptly and in accordance with the Act upon receipt of any inquiry, request or appeal from a citizen of the United States or an alien lawfully admitted for permanent residence into the United States, regardless of the age of the individual. Further, the Department accepts the obligations to maintain only such information on individuals as is relevant and necessary to the performance of its lawful functions, to maintain that information with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness in determinations made by the Department about the individual, to obtain information from the individual to the extent practicable, and to take every reasonable step to protect that information from unwarranted disclosure. The Department will maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly

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authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity. An individual's name and address will not be sold or rented by the Department unless such action is specifically authorized by law; however, this provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(b) This subpart applies to all components of the Department. Components may promulgate supplementary orders and rules not inconsistent with this subpart.

(c) The Assistant Secretary for Administration is delegated responsibility for maintaining this subpart, for issuing such orders and directives internal to the Department as are necessary for full compliance with the Act, and for publishing all required notices concerning systems of records.

(d) Matters outside the scope of this subpart include the following:

(1) Requests for records which do not pertain to the individual making the request, or to the individual about whom the request is made if the requester is the parent or guardian of the individual;

(2) Requests involving information pertaining to an individual which is in a record or file but not within the scope of a system of records notice published in the **Federal Register**;

(3) Requests to correct a record where a grievance procedure is available to the individual either by regulation or by provision in a collective bargaining agreement with the Department or a component of the Department, and the individual has initiated, or has expressed in writing the intention of initiating, such grievance procedure. An individual selecting the grievance procedure waives the use of the procedures in this subpart to correct or amend a record; and,

(4) Requests for employee-employer services and counseling which were routinely granted prior to enactment of the Act, including, but not limited to, test calculations of retirement benefits, explanations of health and life insurance programs, and explanations of tax withholding options.

(e) Any request for records which pertains to the individual making the request, or to the individual about whom the request is made if the requester is the parent or guardian of the individual, shall be processed under the Act and this subpart and under the Freedom of Information Act and the Department's implementing regulations at subpart A of this part, regardless whether the Act or the Freedom of Information Act is mentioned in the request.

§ 4.22 Definitions.

(a) All terms used in this subpart which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this subpart:

(1) *Act* means the "Privacy Act of 1974, as amended (5 U.S.C. 552a)".

(2) *Appeal* means a request by an individual to review and reverse an initial denial of a request by that individual for correction or amendment.

(3) *Department* means the Department of Commerce.

(4) *Inquiry* means either a request for general information regarding the Act and this subpart or a request by an individual (or that individual's parent or guardian) that the Department determine whether it has any record in a system of records which pertains to that individual.

(5) *Person* means any human being and also shall include but not be limited to, corporations, associations, partnerships, trustees, receivers, personal representatives, and public or private organizations.

(6) *Privacy Officer* means those officials, identified in Appendix B to this part, who are authorized to receive and act upon inquiries, requests for access, and requests for correction or amendment.

(7) *Request for access* means a request by an individual or an individual's parent or guardian to see a record which is in a particular system of records and which pertains to that individual.

(8) *Request for correction or amendment* means the request by an individual or an individual's parent or guardian that the Department change (either by correction, amendment, addition or deletion) a particular record in a system of records which pertains to that individual.

(9) *Component* means any office, division, bureau or other unit of the Department listed in Appendix A to this part.

§ 4.23 Procedures for making inquiries

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit an inquiry to the Department. The inquiry should be made either in person or by mail addressed to the appropriate component identified in Appendix A to this part or to the official identified in the notification procedures paragraph of the systems of records notice published in the **Federal Register**. If an individual believes the Department maintains a record pertaining to that individual but does not know which system of records might contain such a record and/or which component of the Department maintains the system of records, assistance in person or by mail will be provided at the first address listed in Appendix A to this part.

(b) Inquiries submitted by mail should include the words "PRIVACY ACT INQUIRY" in capital letters at the top of the letter and on the face of the envelope. If the inquiry is for general information regarding the Act and this subpart, no particular information is required. The Department reserves the right to require compliance with the identification procedures appearing at § 4.24(d) where circumstances warrant. If the inquiry is a request that the Department determine whether it has, in a given system of records, a record which pertains to the individual, the following information should be submitted:

(1) Name of individual whose record is sought;

(2) Individual whose record is sought is either a U.S. citizen or an alien lawfully admitted for permanent residence;

(3) Identifying data that will help locate the record (for example, maiden name, occupational license number, period or place of employment, etc.);

(4) Record sought, by description and by record system name, if known;

(5) Action requested (that is, sending information on how to exercise rights under the Act; determining whether requested record exists; gaining access to requested record; or obtaining copy of requested record);

(6) Copy of court guardianship order or minor's birth certificate, as provided in § 4.24(f)(3), but only if requester is guardian or parent of individual whose record is sought;

(7) Requester's name (printed), signature, address, and telephone number (optional);

(8) Date; and,

(9) Certification of request by notary or other official, but only if

(i) Request is for notification that requested record exists, for access to requested record or for copy of requested record;

(ii) Record is not available to any person under 5 U.S.C. 552; and

(iii) Requester does not appear before an employee of the Department for verification of identity.

(c) Any inquiry which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in paragraph (b) of this section will be so addressed and marked

by Department personnel and forwarded immediately to the responsible Privacy Officer. An inquiry which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time period for response until actual receipt by the Privacy Officer. In each instance when an inquiry so forwarded is received, the Privacy Officer shall notify the individual that his or her inquiry was improperly addressed and the date the inquiry was received at the proper address.

(d)(1) Each inquiry received shall be acted upon promptly by the responsible Privacy Officer. Every effort will be made to respond within ten working days (*i.e.*, excluding Saturdays, Sundays and days on which Federal offices are closed) of the date of receipt. If a response cannot be made within ten working days, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry. The first correspondence sent by the Privacy Officer to the requester shall contain the Department's control number assigned to the request, as well as a note that the requester should use that number in all future contacts in order to facilitate processing. The Department shall use that control number in all subsequent correspondence.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided above, the requester may ask the Assistant General Counsel for Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(e) An individual shall not be required to state a reason or otherwise justify his or her inquiry.

(f) Special note should be taken of the fact that certain agencies are responsible for publishing notices of systems of records having Government-wide application to other agencies, including the Department. The agencies known to be publishing these general notices and the types of records covered therein appear in Appendix C to this part. These general notices do not identify the Privacy Officers in the Department to whom inquiries should be presented or mailed. The provisions of this section, and particularly paragraph (a) of this section, should be followed in making inquiries with respect to such records. Such records in the Department are subject to the provisions of this part to the extent indicated in Appendix C to this part. The exemptions, if any, determined by the agency publishing a general notice shall be invoked and applied by the Department after consultation, as necessary, with that other agency.

§ 4.24 Procedures for making requests for records.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for access to records to the Department. The request should be made either in person or by mail addressed to the appropriate office listed in Appendix A to this part.

(b) Requests submitted by mail should include the words "PRIVACY ACT REQUEST" in capital letters at the top of the letter and on the face of the envelope. Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in this paragraph will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. A request which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date when the request was received at the proper address.

(c) If the request follows an inquiry under § 4.23 in connection with which the individual's identity was established by the Department, the individual need only indicate the record to which access is sought, provide the Department control number assigned to the request, and sign and date the request. If the request is not preceded by an inquiry under § 4.23, the procedures of this section should be followed.

(d) The requirements for identification of individuals seeking access to records are as follows:

(1) *In person.* Each individual making a request in person shall be required to present satisfactory proof of identity. The means of proof, in the order of preference and priority, are:

(i) A document bearing the individual's photograph (for example, driver's license, passport or military or civilian identification card);

(ii) A document, preferably issued for participation in a federally sponsored program, bearing the individual's signature (for example, unemployment insurance book, employer's identification card, national credit card, and professional, craft or union membership card); and,

(iii) A document bearing neither the photograph nor the signature of the individual, preferably issued for participation in a federally sponsored program (for example, Medicaid card). In the event the individual can provide no suitable documentation of identity, the Department will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3) recited in § 4.32(a). In order to avoid any unwarranted disclosure of an individual's records, the Department reserves the right to determine the adequacy of proof of identity offered by any individual, particularly when the request involves a sensitive record.

(2) *Not in person.* If the individual making a request does not appear in person before a Privacy Officer or other employee authorized to determine identity, a certification of a notary public or equivalent officer empowered to administer oaths must accompany the request under the circumstances prescribed in § 4.23(b)(9). The certification in or attached to the letter must be substantially in accordance with the following text:

City of ____

County of ____:ss

(Name of individual), who affixed (his) (her) signature below in my presence, came before me, a (title), in and for the aforesaid County and State, this ____ day of _____, 20 ____, and established (his) (her) identity to my satisfaction.

My commission expires ____.

(Signature)

(3) *Parents of minors and legal guardians.* An individual acting as the parent of a minor or the legal guardian of the individual to whom a record pertains shall establish his or her personal identity in the same manner prescribed in either paragraph (d)(1) or (d)(2) of this section. In addition, such other individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. For purposes of the Act, a parent or legal guardian may represent only a

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living individual, not a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the provisions of § 4.25(f) are satisfied.

(e) When the provisions of this subpart are alleged to impede an individual in exercising his or her right to access, the Department will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

(f) An individual shall not be required to state a reason or otherwise justify his or her request for access to a record.

§ 4.25 Disclosure of requested records to individuals.

(a)(1) The responsible Privacy Officer shall act promptly upon each request. Every effort will be made to respond within ten working days (*i.e.*, excluding Saturdays, Sundays and days on which Federal offices are closed) of the date of receipt. If a response cannot be made within ten working days due to unusual circumstances, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the request and asking for any further information that may be necessary to process the request. "Unusual circumstances" shall include circumstances in which:

(i) A search for and collection of requested records from inactive storage, field facilities or other establishments is required,

(ii) A voluminous amount of data is involved,

(iii) Information on other individuals must be separated or expunged from the particular record, or

(iv) Consultations with other agencies having a substantial interest in the determination of the request are necessary.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided above, the requester may ask the Assistant General Counsel for Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(b) *Grant of access*—(1) Notification. An individual shall be granted access to a record pertaining to him or her, except where the provisions of paragraph (g)(1) of this section apply. The Privacy Officer shall notify the individual of a determination to grant access, and provide the following information:

(i) The methods of access, as set forth in paragraph (b)(2) of this section;

(ii) The place at which the record may be inspected;

(iii) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty calendar days from the date of notification;

(iv) The estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to § 4.31. In no event shall the estimated date be later than thirty calendar days from the date of notification;

(v) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to the procedures set forth in paragraph (f) of this section; and,

(vi) Any additional requirements needed to grant access to a specific record.

(2) Methods of access. The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be had in the office specified by the Privacy Officer granting access, during the hours indicated in Appendix A to this part;

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of the Department or involve unreasonable costs, in terms of both money and manpower; and,

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in § 4.31. The Department, at its own initiative, may elect to provide a copy by mail, in which case no fee will be charged the individual.

(c) Access to medical records is governed by the provisions of § 4.26.

(d) The Department shall supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(e) The Department reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data media such as tape or disc, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552a(k)(2)). In no event shall original records of the Department be made available to the individual except under the immediate supervision of the Privacy Officer or his designee.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. "Accompanied" includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing. The authorization shall include the name of the other individual, a specific description of the record to which access is sought, the Department control number assigned to the request, the date, and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the Privacy Officer. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

(g) *Initial denial of access*—(1) *Grounds.* Access by an individual to a record which pertains to that individual will be denied only upon a determination by the Privacy Officer that:

(i) The record is exempt under § 4.33 or 4.34, or exempt by determination of another agency publishing notice of the system of records, as described in § 4.23(f);

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of § 4.26 pertaining to medical records temporarily have been invoked; or,

(iv) The individual unreasonably has failed to comply with the procedural requirements of this part.

(2) *Notification.* The Privacy Officer shall give notice of denial of access to records to the individual in writing and shall include the following information:

(i) The Privacy Officer's name and title or position;

(ii) The date of the denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and this part;

(iv) The individual's opportunities, if any, for further administrative consideration, including the identity and address of the responsible official. If no further administrative consideration within the Department is available, the notice shall state that the denial is administratively final; and,

(v) If stated to be administratively final within the Department, the individual's right to judicial review provided under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(3) *Administrative review.* When an initial denial of a request is issued by the Privacy Officer, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, two opportunities for further consideration are available in the alternative:

(A) If the individual contests the application of the exemption to the records, review procedures in § 4.25(g)(3)(ii) shall apply; or,

(B) If the individual challenges the exemption itself, the procedure is a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). If the exemption was determined by the Department, such petition shall be filed with the Assistant Secretary for Administration. If the exemption was determined by another agency (as described in § 4.23(f)), the Department will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within the Department, no such denial is administratively final un'il such a petition has been filed by the individual and disposed of on the merits by the Assistant Secretary for Administration.

(ii) As to denial under paragraphs (g)(1)(ii), (g)(1)(iv) of this section or (to the limited extent provided in paragraph (g)(3)(i)(A) of this section) paragraph (g)(1)(i) of this section, the individual may file for review with the Assistant General Counsel for Administration, as indicated in the Privacy Officer's initial denial notification. The procedures appearing in § 4.28 shall be followed by both the individual and the Department to the maximum extent practicable.

(iii) As to denial under paragraph (g)(1)(iii) of this section, no further administrative consideration within the Department is available because the denial is not administratively final until expiration of the time period indicated in § 4.26(a).

(h) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 4.26 Special procedures: Medical records.

(a) No response to any request for access to medical records by an individual will be issued by the Privacy Officer for a period of seven working days (i.e., excluding Saturdays, Sundays and days on which Federal offices are closed) from the date of receipt.

(b) The Department has published as a routine use, for all systems of records containing medical records, consultations with an individual's physician or psychologist if, in the sole judgment of the Department, disclosure could have an adverse effect upon the individual. The mandatory waiting period set forth in paragraph (a) of this section will permit exercise of this routine use in appropriate cases. The Department will pay no cost of any such consultation.

(c) In every case of a request by an individual for access to medical records, the Privacy Officer shall:

(1) Inform the individual of the waiting period prescribed in paragraph (a) of this section;

(2) Obtain the name and address of the individual's physician and/or psychologist, if the individual consents to give them;

(3) Obtain specific, written consent for the Department to consult the individual's physician and/or psychologist in the event that the Department believes such consultation is advisable, if the individual consents to give such authorization;

(4) Obtain specific, written consent for the Department to provide the medical records to the individual's physician or psychologist in the event that the Department believes access to the record by the individual is best effected under the guidance of the individual's physician or psychologist, if the individual consents to give such authorization; and,

(5) Forward the individual's medical record to the Department's medical officer for review and a determination on whether consultation with or transmittal of the medical records to the individual's physician or psychologist is warranted. If the consultation with or transmittal of such records to the individual's physician or psychologist is determined to be warranted, the Department's medical officer shall so consult or transmit. Whether or not such a consultation or transmittal occurs, the Department's medical officer shall provide instruction to the Privacy Officer regarding the conditions of access by the individual to his or her medical records.

(d) If an individual refuses in writing to give the names and consents set forth in paragraphs (c)(2) through (c)(4) of this section and the Department has determined that disclosure could have an adverse effect upon the individual, the Department shall give the individual access to said records by means of a copy, provided without cost to the requester, sent registered mail return receipt requested.

§ 4.27 Procedures for making requests for correction or amendment.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for correction or amendment to the Department. The request should be made either in person or by mail addressed to the Privacy Officer who processed the individual's request for access to the record, and to whom is delegated authority to make initial determinations on requests for correction or amendment. The offices of Privacy Officers are open to the public between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday (excluding days on which Federal offices are closed).

(b) Requests submitted by mail should include the words "PRIVACY ACT REQUEST" in capital letters at the top of the letter and on the face of the envelope. Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in this paragraph will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. A request which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time period for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date the request was received at the proper address.

(c) Since the request, in all cases, will follow a request for access under § 4.25, the individual's identity will be established by his or her signature on the request and use of the Department control number assigned to the request.

(d) A request for correction or amendment should include the following:

(1) Specific identification of the record sought to be corrected or amended (for example, description, title, date, paragraph, sentence, line and words);

(2) The specific wording to be deleted, if any;

(3) The specific wording to be inserted or added, if any, and the exact place at which to be inserted or added; and,

(4) A statement of the basis for the requested correction or amendment, with all available supporting documents and materials which substantiate the statement. The statement should identify the criterion of the Act being

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invoked, that is, whether the information in the record is unnecessary, inaccurate, irrelevant, untimely or incomplete.

§ 4.28 Agency review of requests for correction or amendment.

(a)(1)(i) Not later than ten working days (i.e., excluding Saturdays, Sundays and days on which Federal offices are closed) after receipt of a request to correct or amend a record, the Privacy Officer shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary to process the request. The estimate of time may take into account unusual circumstances as described in § 4.25(a). No acknowledgment will be sent if the request can be reviewed, processed and the individual notified of the results of review (either compliance or denial) within the ten working days. Requests filed in person will be acknowledged in writing at the time submitted.

(ii) If the Privacy Officer fails to send the acknowledgment within ten working days, as provided in paragraph (a)(1)(i) of this section, the requester may ask the Assistant General Counsel for Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within the ten working days, the Privacy Officer shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or a statement as to the means whereby the correction or amendment was effected in cases where a copy cannot be provided (for example, erasure of information from a record maintained only in magnetically recorded computer files); or,

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The Privacy Officer's name and title or position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and this subpart; and,

(D) The procedures for appeal of the denial as set forth in § 4.29, including the address of the Assistant General Counsel for Administration.

(3) The term *promptly* in this section means within thirty working days (i.e., excluding Saturdays, Sundays and days on which Federal offices are closed). If the Privacy Officer cannot make the determination within thirty working days, the individual will be advised in writing of the reason therefor and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request by that individual, the Privacy Officer shall be responsible for notifying all persons and agencies to which the corrected or amended portion of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure required by the Act was made. The notification shall require a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record, and to apprise any agency or person to which it had disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the Privacy Officer in reviewing a request for correction or amendment:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information;

(3) The relevance and necessity of the information in terms of purpose for which it was collected;

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The degree of risk that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and,

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual.

(d) The Department will not undertake to gather evidence for the individual, but does reserve the right to verify the evidence which the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the Privacy Officer that:

(1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended is part of the official record in a terminated judicial, quasi-judicial or quasi-legislative proceeding to which the individual was a party or participant;

(3) The information in the record sought to be corrected or amended, or the record sought to be corrected or amended, is the subject of a pending judicial, quasi-judicial or quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or,

(5) The individual unreasonably has failed to comply with the procedural requirements of this part.

(f) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 4.29 Appeal of initial adverse agency determination on correction or amendment.

(a) When a request for correction or amendment has been denied initially under § 4.28, the individual may submit a written appeal within thirty working days (i.e., excluding Saturdays, Sundays and days on which Federal offices are closed) after the date of the initial denial. When an appeal is submitted by mail, the postmark is conclusive as to timeliness.

(b) An appeal should be addressed to the Assistant General Counsel for Administration, U.S. Department of Commerce, Room 5875, 14th and Constitution Avenue, NW, Washington, DC 20230. An appeal should include the words "PRIVACY APPEAL" in capital letters at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the Assistant General Counsel for Administration. An appeal which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time periods in this section until actual receipt by the Assistant General Counsel for Administration. In each instance when an appeal so forwarded is received, the Assistant General Counsel for Administration shall notify the individual that his or her appeal was improperly addressed and the date when the appeal was received at the proper address.

(c) The individual's appeal shall include a statement of the reasons why the initial denial is believed to be in error and the Department's control number assigned to the request. The appeal shall be signed by the individual. The record which the individual requests be corrected or amended and all correspondence between the Privacy Officer and the requester will be furnished by the Privacy Officer who issued the initial denial. Although the foregoing normally will comprise the entire record on appeal, the Assistant General Counsel for Administration may seek additional information necessary to assure that the final determination is fair and equitable and, in such instances, disclose the additional information to the individual to the greatest extent possible, and provide an opportunity for comment thereon.

(d) No personal appearance or hearing on appeal will be allowed.

(e) The Assistant General Counsel for Administration shall act upon the appeal and issue a final determination in writing not later than thirty working days (i.e., excluding Saturdays, Sundays and days on which Federal offices are closed) from the date on which the appeal is received, except that the Assistant General Counsel for Administration may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will issue. The estimated date should not be later than the sixtieth working day after receipt of the appeal unless unusual circumstances, as described in § 4.25(a), are met.

(f) If the appeal is determined in favor of the individual; the final determination shall include the specific corrections or amendments to be made and a copy thereof shall be transmitted promptly both to the individual and to the Privacy Officer who issued the initial denial. Upon receipt of such final determination, the Privacy Officer promptly shall take the actions set forth in § 4.28(a)(2)(i) and (b).

(g) If the appeal is denied, the final determination shall be transmitted promptly to the individual and state the reasons for the denial. The notice of final determination also shall inform the individual of the following:

(1) The right of the individual under the Act to file a concise statement of reasons for disagreeing with the final determination. The statement ordinarily should not exceed one page and the Department reserves the right to reject a statement of excessive length. Such a statement shall be filed with the Assistant General Counsel for Administration. It should provide the Department control number assigned to the request, indicate the date of the final determination and be signed by the individual. The Assistant General Counsel for Administration shall acknowledge receipt of such statement and inform the individual of the date on which it was received.

(2) The facts that any such disagreement statement filed by the individual will be noted in the disputed record, that the purposes and uses to which the statement will be put are those applicable to the record in which it is noted, and that a copy of the statement will be provided to persons and agencies to which the record is disclosed subsequent to the date of receipt of such statement;

(3) The fact that the Department will append to any such disagreement statement filed by the individual, a copy of the final determination or summary thereof which also will be provided to persons and agencies to which the disagreement statement is disclosed; and,

(4) The right of the individual to judicial review of the final determination under 5 U.S.C. 552a(g)(1)(A), as limited by 5 U.S.C. 552a(g)(5).

(h) In making the final determination, the Assistant General Counsel for Administration shall employ the criteria set forth in § 4.28(c) and shall deny an appeal only on the grounds set forth in § 4.28(e).

(i) If an appeal is partially granted and partially denied, the Assistant General Counsel for Administration shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

(j) Although a copy of the final determination or a summary thereof will be treated as part of the individual's record for purposes of disclosure in instances where the individual has filed a disagreement statement, it will not be subject to correction or amendment by the individual.

(k) The provisions of paragraphs (g)(1) through (g)(3) of this section satisfy the requirements of 5 U.S.C. 552a(e)(3).

§ 4.30 Disclosure of record to person other than the individual to whom it pertains.

(a) The Department may disclose a record pertaining to an individual to a person other than the individual to whom it pertains only in the following instances:

(1) Upon written request by the individual, including authorization under § 4.25(f);

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian under 5 U.S.C. 552a(h);

(4) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b); and

(5) When permitted under 5 U.S.C. 552a(b)(1) through (12), as follows: [1]

(i) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(ii) Required under 5 U.S.C. 552;

(iii) For a routine use as defined 5 U.S.C. 552a(a)(7) and described under 5 U.S.C. 552a(e)(4)(D);

(iv) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;

(v) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(x) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(xi) Pursuant to the order of a court of competent jurisdiction; or

[1] 5 U.S.C. 552a(b)(4) has no application within the Department.

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(xii) To a consumer reporting agency in accordance with section 3711(e) of Title 31.

(b) The situations referred to in paragraph (a)(4) of this section include the following:

(1) 5 U.S.C. 552a(c)(4) requires dissemination of a corrected or amended record or notation of a disagreement statement by the Department in certain circumstances;

(2) 5 U.S.C. 552a(d) requires disclosure of records to the individual to whom they pertain, upon request; and

(3) 5 U.S.C. 552a(g) authorizes civil action by an individual and requires disclosure by the Department to the court.

(c) The Privacy Officer shall make an accounting of each disclosure by him of any record contained in a system of records in accordance with 5 U.S.C. 552a(c) (1) and (2). Except for a disclosure made under 5 U.S.C. 552a(b)(7), the Privacy Officer shall make such accounting available to any individual, insofar as it pertains to that individual, on request submitted in accordance with § 4.24. The Privacy Officer shall make reasonable efforts to notify any individual when any record in a system of records is disclosed to any person under compulsory legal process, promptly upon being informed that such process has become a matter of public record.

§ 4.31 Fees.

The only fees to be charged to or collected from an individual under the provisions of this part are for duplication of records at the request of the individual. Components shall charge fees for duplication of records under the Act in the same way in which they charge duplication fees under § 4.11, except as provided in this section.

(a) No fees shall be charged or collected for the following: Search for and retrieval of the records; review of the records; copying at the initiative of the Department without a request from the individual; transportation of records and personnel; and first-class postage.

(b) It is the policy of the Department to provide an individual with one copy of each record corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment.

(c) As required by the United States Office of Personnel Management in its published regulations implementing the Act, the Department will charge no fee for a single copy of a personnel record covered by that agency's Government-wide published notice of systems of records.

§ 4.32 Penalties.

(a) The Act provides, in pertinent part:

> Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000. (5 U.S.C. 552a(i)(3)).

(b) A person who falsely or fraudulently attempts to obtain records under the Act also may be subject to prosecution under such other criminal statutes as 18 U.S.C. 494, 495 and 1001.

§ 4.33 General exemptions.

(a) Individuals may not have access to records maintained by the Department but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, the Department will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

(b) The general exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) *Individuals identified in Export Administration compliance proceedings or investigations*—COMMERCE/ITA–1. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to insure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement process, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceedings, to avoid disclosure of investigative techniques, and to avoid the endangering of law enforcement personnel. Section 7(c) of the Export Administration Act of 1969, as amended, also protects this information from disclosure.

(2) *Fisheries Law Enforcement Case Files—COMMERCE/NOAA–11.* Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to insure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

(3) *Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT.–12.* Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to insure the proper functions of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

§ 4.34 Specific exemptions.

(a)(1) Some systems of records under the Act which are maintained by the Department contain, from time to time, material subject to the exemption appearing at 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the **Federal Register** by the Department which are within this exemption are:

COMMERCE/ITA–1, COMMERCE/ITA–2, COMMERCE/ITA–3, COMMERCE/NOAA–11, COMMERCE/PAT–TM–4, COMMERCE/PAT–TM–6, COMMERCE/PAT–TM–7, COMMERCE/PAT–TM–8, COMMERCE/PAT–TM–9, COMMERCE/DEPT–12, COMMERCE/DEPT–13, and COMMERCE/DEPT–14.

(2) The Department hereby asserts a claim to exemption of such materials wherever they might appear in such systems of records, or any systems of records, at present or in the future. The materials would be exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The reason therefore is to protect the materials required by Executive order to be kept secret in the interest of the national defense and foreign policy.

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) Exempt under 5 U.S.C. 552a(k)(1). The systems of records exempt hereunder appear in paragraph (a) of this section. The claims for exemption of COMMERCE/DEPT–12, COMMERCE/ITA–1, and COMMERCE/NOAA–11 under this paragraph are subject to the condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid.

(2)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Individuals identified in Export Administration compliance proceedings or investigations—COMMERCE/ITA–1, but only on condition that the general exemption claimed in § 4.33(b)(1) is held to be invalid;

(B) Individuals involved in export transactions—COMMERCE/ITA–2;

(C) Fisheries Law Enforcement Case Files—COMMERCE/NOAA–11, but only on condition that the general exemption claimed in § 4.33(b)(2) is held to be invalid;

(D) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid;

(E) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—COMMERCE/DEPT–13;

(F) Litigation, Claims and Administrative Proceeding Records—COMMERCE/DEPT–14; and

(G) Non-Registered Persons Rendering Assistance to Patent Applicants—COMMERCE/PAT–TM–5.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel. Special note is taken of the fact that the proviso clause in this exemption imports due process and procedural protections for the individual. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(3)(i) Exempt under 5 U.S.C. 552a(k)(4). The systems of records exempt, the sections of the Act from which exempted, and the reasons therefore are as follows:

(A) Agricultural Census Records for 1964 (partial), 1969, and 1974—COMMERCE/CENSUS–1;

(B) Individual and Household Statistical Surveys and Special Census Studies Records—COMMERCE/CENSUS–3;

(C) Minority-Owned Business Enterprises Survey Records—COMMERCE/CENSUS–4;

(D) Population and Housing Census Records for 1960 and 1970—COMMERCE/CENSUS–5;

(E) Population Census Personal Service Records for 1900 and All Subsequent Decennial Censuses—COMMERCE/CENSUS–6; and

(F) Special Censuses of Population Conducted for State and Local Government—COMMERCE/CENSUS–7.

(ii) The foregoing are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G) (H), and (I), and (f). The reasons for asserting the exemption are to comply with the prescription of Title 13, United States Code, especially sections 8 and 9 relating to prohibitions against disclosure, and to avoid needless consideration of these records whose sole statistical use comports fully with a basic purpose of the Act, namely, no adverse determinations may be made from these records as to any identifiable individual.

(4)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the act from which exempted, and the reasons therefor are as follows:

(A) Applications to U.S. Merchant Marine Academy (USMMA)—COMMERCE/MA–1;

(B) USMMA Midshipman Medical Files—COMMERCE/MA–17;

(C) USMMA Midshipman Personnel Files—COMMERCE/MA–18;

(D) USMMA Non-Appropriated fund Employees—COMMERCE/MA–19;

(E) Applicants for the NOAA Corps—COMMERCE/NOAA–4;

(F) Commissioned Officer Official Personnel Folders—COMMERCE/NOAA–7;

(G) Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT–3;

(H) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid;

(I) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—COMMERCE/DEPT–13; and

(J) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT–14.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The reasons for asserting the exemption are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(c) At the present time, the Department claims no exemption under 5 U.S.C. 552a(k) (3), (6) and (7).

Appendix A to Part 4—Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act

Each address listed below is the respective component's mailing address for receipt and processing of requests for records under the Freedom of Information Act and Privacy Act, for requests for correction or amendment under the Privacy Act and, unless otherwise noted, its public inspection facility for records available to the public under the Freedom of Information Act. Public inspection facilities are open to the public Monday through Friday (except for days on which Federal offices are closed) between 9 a.m. and 4 p.m. local time of the facility at issue. Requests should be addressed to the component the requester knows or has reason to believe has possession, control, or primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility. The telephone number for each facility is included after its address.

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(1) Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, U.S. Department of Commerce, Room 6020, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–4115. This facility serves the Office of the Secretary, all other components of the Department not identified below, and those components identified below which do not have separate public inspection facilities.

(2) Bureau of the Census, Program and Policy Development Office, U.S. Department of Commerce, Federal Building 3, Room 2430, Suitland, Maryland 20233; (301) 457–2520. This agency maintains a separate public inspection facility in Room 2455, Federal Building 3, Suitland, Maryland 20233.

(3) Bureau of Economic Analysis/ Economics and Statistics Administration, Office of the Under Secretary for Economic Affairs, Department of Commerce, Room 4838, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–3308. This component does not maintain a separate public inspection facility.

(4) Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, Room 7005, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–4687. Mailing addresses of Regional EDA offices:

(i) Philadelphia Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Curtis Center, Suite 140 South, Independence Square West, Philadelphia, Pennsylvania 19106.

(ii) Atlanta Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 401 West Peachtree Street, NW, Suite 1820, Atlanta, GA 30308.

(iii) Denver Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Room 670, 1244 Speer Boulevard, Denver, Colorado 80204.

(iv) Chicago Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 111 North Canal Street, Suite 855, Chicago, IL 60606.

(v) Seattle Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Jackson Federal Building, Room 1856, 915 Second Avenue, Seattle WA 98174.

(vi) Austin Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Grant Building, Suite 201, 611 East 6th Street, Austin, Texas 78701.

(5) Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 4525, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–0109.

(6) International Trade Administration, Office of Organization and Management Support, U.S. Department of Commerce, Room 4001, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–3756.

(7) Minority Business Development Agency, Data Resources Division, U.S. Department of Commerce, Room 5084, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–2025. This agency does not maintain a separate public inspection facility.

(8) National Institute of Standards and Technology, Office of the Director, Room A–1105, Gaithersburg, Maryland 20234; (301) 975–2389. This agency maintains a separate public inspection facility in Room E–106, Administration Building, Gaithersburg, Maryland.

(9) National Oceanic and Atmospheric Administration, Central FOIA Facility, 1305 East-West Highway, SSMC–4, 8th floor, Station 8627, Silver Spring, Maryland 20910; (301) 713–3540.

(10) National Technical Information Service, Office of Administrative Management, Room 209, Forbes Building, Springfield, Virginia 22161; (703) 487–4736. This agency does not maintain a separate public inspection facility.

(11) National Telecommunications and Information Administration, Office of the Chief Counsel, U.S. Department of Commerce, Room 4713, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–1816. This agency maintains a separate public inspection facility in Room 1609.

(12) Office of Inspector General, Counsel to the Inspector General, U.S. Department of Commerce, Room 7892, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–5992. This component does not maintain a separate public inspection facility.

(13) Technology Administration, Office of the Under Secretary, U.S. Department of Commerce, Room 4835, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–1984. This component does not maintain a separate public inspection facility.

Appendix B to Part 4—Officials Authorized to Deny Requests for Records Under the Freedom of Information Act, and Requests for Records and Requests for Correction or Amendment Under the Privacy Act

The following officials of the Department, and their superiors, have been delegated authority with respect to the records for which each is responsible, to deny requests for records under the Freedom of Information Act, and requests for records and requests for correction or amendment under the Privacy Act. The Director for Executive Budgeting and Assistance Management is authorized to revise this appendix to reflect organizational changes or new delegations.

Office of the Secretary

Office of the Secretary: Executive Secretary
Freedom of Information Officer
Office of the Deputy Secretary: Associate Deputy Secretary
Office of Business Liaison: Director
Office of Consumer Affairs: Director
Office of the Press Secretary: Press Secretary; Deputy Press Secretary
Office of Public Affairs: Director
Office of Space Commerce: Director
Office of the Assistant Secretary for Legislative and Intergovernmental Affairs: Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
Office of the Inspector General: Counsel to the Inspector General; Deputy Counsel to the Inspector General
Office of the General Counsel: Deputy General Counsel; Assistant General Counsel for Administration
Office of Intelligence Liaison: Director

Assistant Secretary for Administration

Office of the Administrative Law Judge: Office Manager
Office of Civil Rights: Director
Office of Budget, Planning and Organization: Director
Office of Management and Organization: Director
Office of Budget: Director
Office of Information Policy and Technology: Director
Office of Information Planning and Review: Director
Office of Executive Budgeting and Assistance Management: Director
Office of Executive Assistance Management: Director
Office of Grants Administration: Office Manager
Departmental Freedom of Information Officer
Office of Financial Management: Director
Office of Human Resources Management: Director; Deputy Director
Office of Workforce Effectiveness and Executive Resources: Director
Office of Labor and Employee Relations: Director
Office of Automated Systems and Pay Administration: Director
Office of Administrative Services: Director
Office of Security: Director, Deputy Director
Office of Acquisition Management: Director
Office of Acquisition Services: Director
Office of Small and Disadvantaged Business Utilization: Director

Economics and Statistics Administration

Office of Administration: Director
Bureau of Economic Analysis: Director
Bureau of the Census: Chief, Program and Policy Development Office

Economic Development Administration

Freedom of Information Act Officer

Export Administration

Under Secretary
Deputy Under Secretary
Director for Administration
Director, Office of Planning, Evaluation and Management
Assistant Secretary for Export Administration
Deputy Assistant Secretary for Export Administration
Director, Office of Strategic Industries and Economic Security
Director, Office of Chemical and Biological Controls and Treaty Compliance
Director, Office of Nuclear and Missile Technology Controls
Director, Office of Strategic Trade and Foreign Policy Controls
Director, Office of Exporter Services
Assistant Secretary for Export Enforcement
Deputy Assistant Secretary for Export Enforcement
Director, Office of Export Enforcement
Director, Office of Enforcement Analysis
Director, Office of Antiboycott Compliance

International Trade Administration

Deputy Under Secretary for International Trade

Counselor to the Department
Director, Office of Public Affairs
Director, Office of Legislative and Intergovernmental Affairs

Administration

Director, Office of Organization and Management Support
Director, Office of Human Resources Management
Director, Office of Financial Management
Director, Office of Information Resources Management

U.S. and Foreign Commercial Service

Deputy Assistant Secretary for International Operations
Deputy Assistant Secretary for Export Promotion Services
Deputy Assistant Secretary for Domestic Operations
Director, Human Resources Development Staff
Director, Office of Planning

Market Access and Compliance

Director, Office of Multilateral Affairs
Director, Trade Compliance Center
NAFTA Secretary
Director, Office of Policy Coordination
Director, Office of Africa
Director, Office of the Near East
Director, Office of European Union and Regional Affairs
Director, Office of Eastern Europe, Russia and Independent States
Director, Office of Latin America and the Caribbean
Director, Office of NAFTA
Director, Office of Inter-American Affairs
Director, Office of China Economic Area
Director, Office of Korea and Southeast Asia
Director, Office of South Asia and Oceania
Director, Office of Japan Trade Policy
Director, Office of Japan Commercial Programs

Trade Development

Deputy Assistant Secretary for Environmental Technologies Exports
Deputy Assistant Secretary for Tourism Industries
Director, Trade Information Center
Director, Advocacy Center
Director, Office of Trade and Economic Analysis
Director, Office of Planning, Coordination and Resource Management
Director, Office of Aerospace
Director, Office of Computers and Business Equipment
Director, Office of Microelectronics, Medical Equipment and Instrumentation
Director, Office of Telecommunications
Director, Office of Textiles and Apparel
Director, Office of Consumer Goods
Director, Office of Automotive Affairs
Director, Office of Materials, Metals and Chemicals
Director, Office of Energy, Infrastructure and Machinery
Director, Office of Export Trading Company Affairs
Director, Office of Finance
Director, Office of Service Industries

Import Administration

Director of Policy and Analysis
Director, Foreign Trade Zones Staff
Director, Statutory Import Programs Staff
Director, Office of AD/CVD Enforcement I
Director, Office of AD/CVD Enforcement II
Director, Office of AD/CVD Enforcement III
Director, Office of AD/CVD Enforcement IV
Director, Office of AD/CVD Enforcement V
Director, Office of AD/CVD Enforcement VI
Director, Office of AD/CVD Enforcement VII
Director, Office of AD/CVD Enforcement VIII
Director, Office of AD/CVD Enforcement IX

Minority Business Development Administration

Freedom of Information Officer

National Oceanic and Atmospheric Administration

Under Secretary
Assistant Secretary
Director, Office of Public Affairs
Director, NOAA Corps
General Counsel
Assistant Administrator for Ocean Services and Coastal Zone Management
Assistant Administrator for Fisheries
Assistant Administrator for Weather Services
Assistant Administrator for Environmental Satellite, Data and Information Services
Assistant Administrator for Oceanic and Atmospheric Research
Director, Environmental Research Laboratories
Director, Office of Finance and Administration
Director, Eastern Administrative Support Center
Director, Western Administrative Support Center
Director, Mountain Administrative Support Center
Director, Central Administrative Support Center
Director, Procurement, Grants, and Administrative Services Office
Director, Systems Acquisition Office
NOAA FOIA Officer

National Telecommunications and Information Administration

Deputy Assistant Secretary
Chief Counsel
Deputy Chief Counsel

Technology Administration

Under Secretary for Technology
Deputy Under Secretary for Technology
Assistant Secretary for Technology Policy
Chief Counsel
Deputy Chief Counsel
National Institute of Standards and Technology: Director of Administration; Deputy Director of Administration
National Technical Information Service: Director; Director: Office of Administration

Appendix C to Part 4—Systems of Records Noticed by Other Federal Agencies and Applicable to Records of the Department and Applicability of This Part Thereto

Category of records	Other Federal agency
Federal Personnel Records.	Office of Personnel Management.[1]
Federal Employee Compensation Act Program.	Department of Labor.[2]
Equal Employment Opportunity Appeal Complaints.	Equal Employment Opportunity Commission.[3]
Formal Complaints/ Appeals of Adverse Personnel Actions.	Merit Systems Protection Board.[4]

[1] The provisions of this part do not apply to these records covered by notices of systems of records published by the Office of Personnel Management for all agencies. The regulations of OPM alone apply.

[1] The provisions of this part apply only initially to these records covered by notices of systems of records published by the U.S. Department of Labor for all agencies. The regulations of that Department attach at the point of any denial for access or for correction or amendment.

[3] The provisions of this part do not apply to these records covered by notices of systems of records published by the Equal Employment Opportunity Commission for all agencies. The regulations of the Commission alone apply.

[4] The provisions of this part do not apply to these records covered by notices of systems of records published by the Merit Systems Protection Board for all agencies. The regulations of the Board alone apply.

2. Part 4a is revised to read as follows:

PART 4a—CLASSIFICATION, DECLASSIFICATION, AND PUBLIC AVAILABILITY OF NATIONAL SECURITY INFORMATION

Sec.
4a.1 General
4a.2 Deputy Assistant Secretary for Security
4a.3 Classification levels
4a.4 Classification authority
4a.5 Duration of classification
4a.6 General
4a.7 Mandatory review for declassification
4a.8 Access to classified information by individuals outside the Government

Authority: E.O. 12958; 47 FR 14874, April 6, 1982; 47 FR 15557, April 12, 1982.

§ 4a.1 General.

Executive Order 12958 provides the only basis for classifying information within the Department of Commerce, except as provided in the Atomic Energy Act of 1954, as amended. The policy of the Department of Commerce is to make information concerning its activities available to the public consistent with the need to protect the national defense or foreign relations as required by the interests of the United

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States and its citizens. Accordingly, security classification shall be applied only to protect the national security.

§ 4a.2 Deputy Assistant Secretary for Security.

The Deputy Assistant Secretary for Security (DAS) is responsible for implementing E.O. 12958 and this part.

§ 4a.3 Classification levels.

Information may be classified as national security information by a designated original classifier of the Department when it is determined that the information concerns one or more of the categories described in § 1.5 of E.O. 12958. The levels established by E.O. 12958 (Top Secret, Secret, and Confidential) are the only terms which may be applied to national security information. Except as provided by statute, no other terms shall be used within the Department of Commerce in conjunction with any of the three classification levels.

§ 4a.4 Classification authority.

Authority to originally classify information as Secret or Confidential may be exercised only by the Secretary of Commerce and by officials to whom such authority is specifically delegated. No official of the Department of Commerce is authorized to originally classify information as Top Secret.

§ 4a.5 Duration of Classification.

(a) Information shall remain classified no longer than ten years from the date of its original classification, except as provided in § 1.6(d) of E.O. 12958. Under E.O. 12958, information may be exempted from declassification within ten years if the unauthorized disclosure of such information could reasonably be expected to cause damage to the national security for more than ten years and meets one of the eight criteria listed in § 1.6(d).

(b) Department of Commerce originally classified information marked for an indefinite duration of classification under predecessor orders to E.O. 12958 shall be declassified after twenty years. Classified information contained in archive records determined to have permanent historical value under title 44, United States Code, shall be automatically declassified no longer than 25 years from the date of its original classification, except as provided in § 3.4(d) of E.O. 12958.

§ 4a.6 General.

National security information over which the Department of Commerce exercises final classification jurisdiction shall be declassified or downgraded as soon as national security considerations permit. When information is declassified, it may continue to be exempt from public disclosure by the Freedom of Information Act (5 U.S.C. 552) or other applicable law.

§ 4a.7 Mandatory review for declassification.

(a) *Requests.* Classified information under the jurisdiction of the Department of Commerce is subject to review for declassification upon receipt of a written request that describes the information with sufficient specificity to locate it with a reasonable amount of effort. Requests must be submitted to the Deputy Assistant Secretary for Security, U.S. Department of Commerce, Room 1069, 14th and Constitution Avenue, NW, Washington, DC 20230.

(b) *Exemptions.* The following are exempt from mandatory review for declassification:

(1) Information that has been reviewed for declassification within the past two years;

(2) Information that is the subject of pending litigation;

(3) Information originated by the incumbent President, the incumbent President's White House Staff, committees, commissions, or boards appointed by the incumbent President, or other entities within the Executive Office of the President that solely advise and assist the incumbent President; and

(4) Information specifically exempt from such review by law.

(c) *Processing requirements.* (1) The DAS shall acknowledge receipt of the request directly to the requester. If a request does not adequately describe the information sought in accordance with paragraph (a) of this section, the requester shall be notified that unless additional information is provided, no further action will be taken. The request shall be forwarded to the operating unit or office which originated the information or which has primary interest in the subject matter. The unit or office assigned action shall review the information in accordance with § 4a.7(c)(2) through (4) within twenty working days.

(2) The action office shall determine whether, under the declassification provisions of the Department of Commerce National Security Manual, the entire document or portions thereof may be declassified. Declassification of the information shall be accomplished by a designated declassification authority. Upon declassification the information shall be remarked. If the information is not partially or entirely declassified, the reviewing official shall provide the reasons for denial by citing the applicable provisions of E.O. 12958. When the classification is a derivative decision based on classified source material of another Federal agency, the action office shall provide the information to the originator for review.

(3) If information is declassified, the action office shall also determine whether it is releasable under the Freedom of Information Act. If the information is not releasable, the action office shall advise the DAS that the information has been declassified but that it is exempt from disclosure, citing the appropriate exemption of the Freedom of Information Act.

(4) If the request for declassification is denied in whole or in part, the requester shall be notified of the right to appeal the determination within sixty calendar days and of the procedures for such an appeal. If declassified information remains exempt from disclosure under the Freedom of Information Act, the requester shall be advised of those appellate procedures.

(d) *Fees.* If the request requires the rendering of services for which fees may be charged, the unit assigned action may calculate the anticipated fees to be charged and ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action on the request in accordance with § 4.11 of the Department of Commerce Freedom of Information Act rules and § 4.31 of the Department's Privacy Act rules.

(e) *Right of appeal.* (1) A requester may appeal to the DAS when information requested under this section is not completely declassified and released after expiration of the applicable time limits. Within thirty working days (i.e., excluding Saturdays, Sundays, and days on which Federal offices are closed) of receipt of a written appeal,

(i) The DAS shall determine whether continued classification of the requested information is required in whole or in part; if information is declassified;

(ii) Determine whether it is releasable under the Freedom of Information Act; and

(iii) Notify the requester of his determination, making available any information determined to be releasable. If continued classification is required under the provisions of the Department of Commerce National Security Manual, the DAS shall notify the requester of his determination, including the reasons for denial based on applicable provisions of E.O. 12958, and of the right of final appeal to the Interagency Security Classification Appeals Panel.

(2) During the declassification review of information under appeal the DAS may overrule previous determinations in whole or in part when, in his judgment, continued protection in the interest of national security is no longer required. If the DAS determined that the information no longer requires classification, it shall be declassified and, unless it is otherwise exempt from disclosure under the Freedom of Information Act, released to the requester. The DAS shall advise the original reviewing Commerce office or unit of his decision.

§ 4a.8 Access to classified information by individuals outside the Government.

(a) *Industrial, Educational, and Commercial Entities.* Certain bidders, contractors, grantees, educational, scientific, or industrial organizations may receive classified information under the procedures prescribed by the National Industrial Security Program Operating Manual.

(b) *Access by historical researchers and former Presidential appointees.* An individual engaged in historical research projects or who has previously occupied a policy-making position to which he or she was appointed by the President may be authorized access to classified information for a limited period, provided that the head of the component with jurisdiction over the information:

(1) Determines in writing that:

(i) Access is consistent with national security,

(ii) The individual has a compelling need for access, and

(iii) The Department's best interest is served by providing access;

(2) Obtains in writing from the individual:

(i) Consent to a review by the Department of their resultant notes and manuscripts for the purpose of determining that no classified information is contained in them, and

(ii) Agreement to safeguard classified information in accordance with applicable requirements; and

(iii) A detailed description of the individual's research;

(3) Ensures that custody of classified information is maintained at a Department facility;

(4) Limits access granted to former Presidential appointees to items that the individual originated, reviewed, signed, or received while serving as a Presidential appointee; and

(5) Receives from the DAS:

(i) A determination that the individual is trustworthy; and

(ii) Approval to grant access to the individual.

(c) An individual seeking access should describe the information with sufficient specificity to locate and compile it with a reasonable amount of effort. If the access requested by a historical researcher or former Presidential appointee requires rendering services for which fair and equitable fees may be charged, the responsible component shall notify the individual in advance.

(d) This section applies only to classified information originated by the Department, or to information in the sole custody of the Department. Otherwise, the individual shall be referred to the classifying agency.

PART 4b—PRIVACY ACT [REMOVED]

3. Remove Part 4b.

Dated: May 17, 2000.

Susan Sutherland,

Acting Director for Executive Budgeting and Assistance Management.

[FR Doc. 00–13161 Filed 5–30–00; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–225–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kentucky regulatory program (Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Kentucky regulations pertaining to permitting, abating violations, and constructing roads above highwalls. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

DATES: If you submit written comments, they must be received by 4 p.m., (e.d.t.) on June 30, 2000. If requested, a public hearing on the proposed amendment will be held on June 26, 2000. Requests to speak at the hearing must be received by 4 p.m. (e.d.t.) on June 15, 2000.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to William J. Kovacic, Field Office Director, at the address listed below.

You may review copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503; telephone: (859) 260–8400. E-Mail: bkovacic@osmre.gov.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601; telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (859) 260–8400.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated May 9, 2000 (Administrative Record No. KY–1473), Kentucky submitted a proposed amendment to its program consisting of enacted House Bills (HB) 502 (partial), 599, and 792.

HB 502 is a budget bill and only Part IX, Item 36(b), which pertains to surface coal mining permits, was submitted. It provides that the permit block provisions of KRS 350.085(6) apply to either the applicant or any person who owns or controls the applicant who is currently in violation. It requires the cabinet to continue in effect the current administrative regulations on ownership and control, provided that a due process hearing is afforded at the time the cabinet makes a preliminary determination to impose a permit block. It requires the cabinet to conditionally issue a permit, permit renewal, or

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authorization to conduct surface coal mining and reclamation operations, if it finds that a direct administrative or judicial appeal is presently being pursued in good faith to contest the validity of the determination of ownership and control linkage. It requires the cabinet to conditionally issue permits if the applicant submits proof, including a settlement agreement, that the violation is being abated to the satisfaction of the issuing State or Federal agency. If the initial judicial appeal affirms the ownership and control linkage, the applicant has 30 days to submit proof that the violation has been or is in the process of being corrected. The applicant is not precluded from seeking further judicial relief.

HB 599 creates a new section of KRS Chapter 350. Subsection (1) recognizes an easement of necessity on behalf of the permittee or operator for the limited purposes of abating a violation if the permittee or operator has been issued a notice or order directing abatement of the violation on the basis of an imminent danger to health and safety of the public or significant imminent environmental harm. The notice or order must also require access to property for which the permittee or operator does not have legal right of entry and the landowner or legal occupant has refused access for this provision to apply.

Subsection (2) establishes conditions under which the cabinet shall terminate a notice of noncompliance or cessation order for a violation (other than a violation described in Subsection (1)), if the permittee or operator responsible for abatement of the violation has been denied access to the land necessary to allow abatement of the violation.

Subsection (3) prohibits the cabinet from terminating a notice or order under this section if it determines that the denial of access has been procured through collusion between the permittee or operator and the landowner or legal occupant who is refusing access. It defines "collusion" and provides that any such act shall subject the permittee or operator to penalties under KRS Chapter 350 for willful and knowing refusal to correct the violation.

Subsection (4) prohibits termination of a notice or order under this section if there is any common ownership or control between the permittee or operator and the landowner or legal occupant. It also prohibits termination if there is any other legal relationship between the permittee or operator and the landowner or legal occupant except where a court of competent jurisdiction has determined that the legal relationship does not provide for a right of access.

Subsection (5) requires the cabinet to direct abatement measures to be taken by the permittee or operator to prevent damage to lands for which access has not been denied.

Subsection (6) provides that termination of a notice or order under this section shall not affect the assessment of a civil penalty for the violation and provides that nothing in this section affects a person's right for damages or injunctive relief.

HB 792 amends KRS 350.445(3). It provides that the land above the highwall may be disturbed for construction of a permanent road only if the applicant affirmatively demonstrates, and the cabinet makes a detailed written determination, that the proposed disturbance facilitates compliance with KRS Chapter 350. It also requires that the land disturbed be limited to that amount necessary to facilitate compliance. The cabinet's determination must be made upon the applicant's demonstration that certain specific requirements will be met.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, be confined to issues pertinent to the notice, and explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file and avoid using special characters and any form of encryption. Please also include "Attn: SPATS No. KY–225–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you want us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you want to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. (local time), on June 15, 2000. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak, and who wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866 .

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 19, 2000.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 00–13551 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA57

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Methodology for Coverage of NIH-Sponsored Clinical Trials

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule modifies the general prohibition against CHAMPUS cost-sharing of unproven drugs, devices, and medical treatments or procedures by adding a provision allowing a waiver of the prohibition in connection with clinical trials sponsored or approved by the National Institutes of Health, if it is determined that such a waiver will promote access by covered beneficiaries to promising new treatments, and contribute to the development of such treatments.

DATES: Public comments must be received by July 31, 2000.

ADDRESSES: TRICARE Management Activity (TMA), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Kathleen Larkin, Office of the Assistant Secretary of Defense (Health Affairs)/ TRICARE Management Activity, telephone (703) 681–3628.

SUPPLEMENTARY INFORMATION:

I. Proposed Changes

Introduction and Background

On January 24, 1996, the Department provided notice in the **Federal Register** (61 FR 1899) of an expansion of an existing demonstration to provide coverage for all cancer treatment clinical trials under approved National Cancer Institute (NCI) clinical trials. The demonstration's purpose was to improve beneficiary access to promising new therapies, assist in meeting the National Cancer Institute's clinical trial

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goals, and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. The demonstration was further expanded on June 21, 1999 (64 FR 109) to include cancer prevention clinical trials. Based on the improved beneficiary access to these trials, and the contributions to the development of such treatments, it is in the best interest of the Department and its beneficiaries to continue to provide access through an authorized waiver as outlined in the proposed rule.

This proposed rule implements title 10, United States Code, section 1079(a)(13) which provides for a waiver of the general prohibition on coverage of unproven medical treatments or procedures in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense so determines that a waiver will promote access to promising new treatments and contributes to the development of such treatments.

II. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

The proposed rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the permanent final rule, anticipated approximately 60 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Claims, Fraud, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. Chapter 55.

2. Section 199.4 is proposed to be amended by adding new paragraph (e)(21) and revising paragraph (g)(15) introductory text to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(21) *National Institutes of Health clinical trials.* By law, the general prohibition against CHAMPUS cost-sharing of unproven drugs, devices, and medical treatments or procedures may be waived in connection with clinical trials sponsored or approved by the National Institutes of Health if it is determined that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments. A waiver shall only be exercised as authorized under this paragraph.

(i) *Demonstration waiver.* A waiver may be granted through a demonstration project established in accordance with § 199.1(o).

(ii) *Continuous waiver.* (A) *General.* As a result of a demonstration project under which a waiver has been granted in connection with a National Institutes of Health clinical trial, a determination may be made that it is in the best interest of the government and CHAMPUS beneficiaries to end the demonstration and continue to provide a wiaver for CHAMPUS cost-sharing of the specific clinical trial. Only those specific clinical trials identified under paragraph (e)(21)(ii) of this section have been authorized a continuous waiver under CHAMPUS.

(B) *National Cancer Institute (NCI) Sponsored Cancer Prevention, Screening, and Early Detection Clinical Trials.* A continuous waiver under paragraph (e)(21) of this section has been granted for CHAMPUS cost-sharing for those CHAMPUS-eligible patients selected to participated in NCI sponsored Phase II and Phase III studies for the prevention and treatment of cancer.

(*1*) CHAMPUS will cost-share all medical care and testing required to determine eligibility for an NCI-sponsored trial, including the evaluation for eligibility at the institution conducting the NCI-sponsored study. CHAMPUS will cost-share all medical care required as a result of participation in NCI-sponsored studies. This includes purchasing and administering all approved chemotherapy agents (except for NCI-funded investigational drugs), all inpatient and outpatient care, including diagnostic and laboratory services not otherwise reimbursed under an NCI grant program if the following conditions are met:

(*i*) The provider seeking treatment for a CHAMPUS-eligible patient in an NCI approved protocol has obtained preauthorization for the proposed treatment before initial evaluation; and,

(*ii*) Such treatments are NCI sponsored Phase II or Phase III protocols; and,

(*iii*) The patient continues to meet entry criteria for said protocol; and

(*iv*) The institutional and individual providers are CHAMPUS authorized providers.

(*2*) CHAMPUS will not provide reimbursement for care rendered in the National Institutes of Health Clinical Center or costs associated with non-treatment research activities associated with the clinical trials.

(*3*) Cost-shares and deductibles applicable to CHAMPUS will also apply under the NCI-sponsored clinical trials.

(*4*) The Director, OCHAMPUS, shall issue procedures and guidelines establishing NCI sponsorship of clinical trials and the administrative process by which individual patients apply for and receive cost-sharing under NCI sponsored cancer clinical trials.

* * * * *

(g) * * *

(15) *Unproven drugs, devices, and medical treatments or procedures.* By law, CHAMPUS can only cost-share medically necessary supplies and services. Any drug, device, or medical treatment or procedure, the safety and efficacy of which have not been established, as described in this paragraph (g)(15), is unproved and cannot be cost-shared by CHAMPUS *except* as authorized under § 199.4(e)(20) of this part.

* * * * *

Dated: May 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–13520 Filed 5–30–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2930, 3800, 8340, 8370, 8560, and 9260

[WO–250–1220–PA–24 1A]

RIN 1004–AD25

Permits for Recreation on Public Lands; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; correction.

SUMMARY: The Bureau of Land Management (BLM) published in the **Federal Register** of May 16, 2000 (65 FR 31234), a proposed rule on permits for recreation on public lands. In the Preamble of the proposed rule, a section number conversion table inadvertently listed several incorrect new section numbers. This document corrects those numbers.

DATES: The public comment period on the proposed rule ends on July 17, 2000.

FOR FURTHER INFORMATION CONTACT: Lee Larson at (202) 452–5168 as to the substance of the proposed rule, or Ted Hudson at (202) 452–5042 as to procedural matters. Persons who use a telecommunications device for the deaf (TDD) may contact either individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) published in the **Federal Register** of May 16, 2000 (65 FR 31234), a proposed rule on permits for recreation on public lands. In the Preamble of the proposed rule, the section number conversion table on page 31235 inadvertently listed several incorrect new section numbers. To make the proposed rule clearer, we need to correct those numbers.

In proposed rule FR Doc. 00–12124, published on May 16, 2000 (65 FR 31234), make the following corrections. On page 31235, in the first column, in the Section Conversion Table, for the following old section numbers, the correct new section numbers are:

Old section	New section
. . . . .	
§ 8372.2(a)	§ 2932.24(a)(1) and (2).
§ 8372.2(b)	§ 2932.24(a)(3).
. . . . .	
§ 8372.5(a)(1)	§ 2932.56(a), 2933.32.
. . . . .	
§ 8372.5(f)	§ 2932.56(b)(2).
. . . . .	

Michael H. Schwartz,

Group Manager, Regulatory Affairs.

[FR Doc. 00–13513 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 99–216; FCC 00–171]

2000 Biennial Review; Streamlining Technical Criteria and Registration for Customer Premises Equipment

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to streamline most elements of the process by which technical criteria are established for customer premises equipment (CPE or terminal equipment) that, once approved, local exchange carriers must allow to be connected to the public switched telephone network (PSTN). The document also proposes to minimize Commission assessment of product compliance with technical criteria for such equipment. The intended effect of this document is to seek comment on various options for streamlining these processes.

DATES: Comments are to be filed on or before June 23, 2000, and reply comments are due on or before July 7, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before July 31, 2000.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW–B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, (202) 418–2320 or email at *smagnott@fcc.gov* or Staci Pies at (202) 418–2794 or email at *spies@fcc.gov*. For additional information concerning the information collections contained in this NPRM contact Judy Boley at (202) 418–0214, or email at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted on May 15, 2000, and released on May 22, 2000. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center. The complete text may also be obtained through the world wide web, at *http:/www.fcc.gov/Bureaus/Common Carrier/Orders*, or may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036.

Paperwork Reduction Act

1. This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0056.

Title: Registration of Telephone and Data Terminal Equipment.

Form No.: FCC Form 730.

Type of Review: Revision of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 2400.

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Estimated Time Per Response: 24 hours.

Total Annual Burden: 57,600 hours.

Cost to Respondents: $2,700,000.

Needs and Uses: This information is needed to ascertain compliance of customer premises equipment with technical criteria designed to protect the public switched network from certain specific types of harm. The information would be used by the Commission in the event of a need for an adjudicatory proceeding regarding the level of compliance of specific pieces of customer premises equipment. It would be used by the public to locate the manufacturer of a specific piece of customer premises equipment. It would also be used by the U.S. Customs Service to determine whether customer premises equipment may be legally imported.

Synopsis of Notice of Proposed Rulemaking

2. CPE currently is regulated by part 68 of the rules, which establishes technical criteria designed to ensure that the CPE does not harm the PSTN or telephone company personnel and a registration process to verify which CPE complies with these criteria. Part 68 requires local exchange carriers to allow CPE that is registered as part 68 compliant to be connected to their networks. As part of the Commission's overall mandate to reduce regulation wherever possible, consistent with the public interest, the Commission proposes in this Notice largely to privatize two of part 68's functions—first, the establishment of technical criteria for CPE to ensure it will not harm the PSTN and, second, the registration process used to determine whether a particular model of equipment meets those standards. The reduction of governmental involvement in the setting of technical criteria and registration of CPE is expected to have a beneficial impact upon the pace of new or competitive CPE deployment, and therefore it is expected to increase the choices available to consumers.

3. The proposals in this Notice are based on positions that emerged from a series of industry fora the Commission held in July 1999 to explore the extent to which regulations in part 68, other than the hearing aid compatibility and volume control (HAC/VC) rules, may no longer be necessary. The Commission also includes proposals patterned after the rules establishing interconnection rules for cable television devices. In this Notice, the Commission proposes to retain in the rules proscriptions against certain harms to the PSTN that can be caused by offending CPE. The Commission also proposes that the rules continue to require that local exchange carriers (LECs) allow CPE that meets technical criteria for network protection to be connected freely to their networks. However, rather than the Commission's continuing to set such technical criteria, the Commission proposes in this Notice to use one of several potential industry standards-setting processes. The only technical criteria that the Commission proposes to retain in the rules are those that ensure access to telecommunications and services by persons with disabilities and those that deal with network demarcation and inside wire. To ensure that the public interest is adequately protected, the Commission proposes to provide for de novo Commission review and enforcement, where necessary, of the industry-established technical criteria in the event of an appeal regarding the criteria. The Commission expects, however, that such involvement would be extremely limited.

4. The Commission proposes three options for an industry standards-setting process. Under Option A the Commission would choose a "gatekeeper" SDO that will establish and publish technical criteria for CPE developed pursuant to American National Standards Institute (ANSI) procedures for consensus bodies. Thus, LECs would have to permit connection to the PSTN of any CPE that meets the technical criteria endorsed by the "gatekeeper" SDO. This option would not modify the existing industry standards setting process and the excellent cooperation that today exists among standards groups. Ideally, commenters that prefer this option would agree on what entity the Commission should designate as the "gatekeeper" SDO. Under Option B, we would rely directly on consensus positions achieved under standards development processes and organizations. This is essentially the same policy the Commission adopted for television "set top boxes" used in cable television and similar systems. The Commission's rules would establish general requirements that networks are to be protected from harms that could be caused when terminal equipment is connected and that customers have a right to connect terminal equipment that will not harm networks. The Commission's rules also would provide that terminal equipment that complies with technical specifications that are designed to protect networks from harm and that are consensus positions recommended by any national standards-setting organization would be presumed to comply with the Commission's general requirements on networks and customers' rights. Under Option C, the Commission proposes that interconnection standards be developed by national standards organizations and that specific standards be incorporated by reference into the Commission's rules.

5. The Commission also proposes to assign to private industry the process of verifying that specific CPE meets the established technical criteria. The Commission has already established a procedure whereby CPE manufacturers may submit their products to private Telecommunications Certifications Bodies (TCBs), rather than the Commission, for part 68 registration. In this Notice, the Commission proposes to replace Commission registration entirely with either expanded use of the TCBs for certification, or self-certification or verification.

6. The Commission maintains a data base of terminal equipment registered pursuant to part 68. Consistent with the proposal in this Notice to privatize many of the Commission's current part 68 functions, the Commission proposes that a private entity be responsible for sponsoring and maintaining a similar database. Entities obtaining equipment approval from TCBs and entities using either DoC or verification would be required to submit pertinent information regarding their identity and approved equipment to a database administrator. The only standards proposed for the database of approved CPE are that it be accurate and that it be readily available at a reasonable cost to users.

7. The Anti-Drug Abuse Act (ADAA), 21 USC 862; 47 CFR 1.2001 through 1.2003, requires an entity receiving a "federal benefit" to certify compliance with ADAA requirements. In its decision implementing the ADAA, the Commission applied the definition of "license" found in the APA to determine the scope of the term "license" as used in 47 U.S.C. section 5301 and thus to define the scope of federal benefits, see Amendment of Part 1 of the Commission's Rules to Implement Section 5301 of the Anti-Drug Abuse Act of 1988, Gen. Docket No. 90–312, Report and Order, 6 FCC Rcd 7551 (1991) (ADAA Report and Order). The APA defines "license" as including "the whole or part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission," 5 USC 551(8). Pursuant to this definition, Commission Part 68 registration of equipment was found to

be included within the scope of the ADAA.

8. The Commission seeks comment on whether the proposed DoC or verification procedures require ADAA certification. In addition, the Commission requests comment on whether any conflict would exist between use of the TCB procedure on the one hand, which currently requires certification under the ADAA, and the use of DoC and/or verification procedures on the other hand, which potentially might not be subject to ADAA requirements. The Commission requests comment on whether any ADAA certification continues to be required if it adopts the proposed privatization/streamlining proposals.

9. The Commission is committed to ensuring that persons with disabilities and other consumers continue to receive the full level of enforcement that they currently receive. There was, however, some discussion in the fora regarding the effect of changing the registration process to DoC or verification on compliance with rules intended to protect access by persons with disabilities. The Commission requests comment on whether changes in the registration process proposed in this Notice may unintentionally affect compliance with consumer protection and HAC/VC provisions of part 68. The Commission seeks comment on whether any of the changes to part 68 proposed in this Notice will have an adverse impact on consumer protection or part 68 HAC/VC rules.

10. In addition, any complaints regarding compliance with the technical criteria relating to part 68 HAC/VC and consumer protection in part 68 would come directly to the Commission, as they do now. The Commission seeks comment on whether the present part 68 complaint procedures regarding the HAC/VC rules should be replaced or augmented with the procedures developed pursuant to section 255 of the Communications Act, parts 6 and 7 of the Commission's Rules.

11. Parties generally agree, and the Commission so proposes, that the Commission should retain ultimate responsibility to enforce compliance with its rules, which would include industry-developed technical criteria that it may, upon appeal, review and enforce through a de novo review process. Moreover, the Commission proposes these enforcement policies notwithstanding which option for establishment of technical criteria it chooses, and which equipment approval option it chooses.

12. The Commission requests comment on whether it would be appropriate for the Commission to revise the part 68 complaint rules, solely for complaints arising from HAC/VC rules, to incorporate procedures recently adopted pursuant to section 255 and 225 of the Act. See Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996—Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96–198, FCC 99–181, Report and Order and Further Notice of Inquiry, 64 FR 63235 (Nov. 19, 1999); see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, FCC 00–56, Report and Order and Further Notice of Proposed Rulemaking,—FCC Rcd. (rel. Mar. 6, 2000). In these proceedings, the Commission made it easier for consumers to file complaints and for subject entities to move quickly to resolve them. Accordingly, the Commission requests comment on whether a similar approach would be beneficial for enforcement of part 68 HAC/VC rules.

13. The Commission proposes, solely for complaints arising from compliance with the technical criteria intended to prevent harm to the PSTN, that prior to filing a complaint with the Commission a party must follow an alternative dispute resolution process designed to minimize the number of complaints needing Commission de novo review. This provision requires the complainant to certify that it has made a good faith effort to discuss the possibility of settlement with each entity against which it is filing a complaint, and/or with the local exchange carrier. The Commission further requests comment on an alternative step: for equipment registered by a TCB, would it be appropriate to refer the complaint to the TCB that issued the registration? If these alternative dispute resolution procedures do not resolve the complaint, the complainant may then petition the Commission under the applicable complaint procedures.

Procedural Matters

A. Ex Parte Presentations

14. The matter in CC Docket No. 99–216, initiated by this NPRM, shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in the rules as well.

B. Initial Regulatory Flexibility Act Analysis

15. The following is a summary of the Initial Regulatory Flexibility Analysis (IRFA) created for the Notice. *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice of Proposed Rulemaking. The Commission will send a copy of the Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

16. *Need for, and Objectives of, the Proposed Rules.* This Notice of Proposed Rulemaking is a significant step forward in the Commission's initiative to largely privatize the process by which technical criteria are established for customer premises equipment (CPE or terminal equipment) that may be sold for connection to the public switched telephone network (PSTN), and for the registration of such equipment. The proposals in this Notice largely are based on the consensus positions of the participants in a series of industry forums the Commission held in July 1999 to explore the extent to which regulations in part 68, other than the HAC/VC rules, may no longer be necessary. The majority of commenters and forum participants generally argued that: (a) Carriers' networks must be protected; (b) one uniform set of national technical standards is necessary; (c) there are few, if any, unnecessary technical requirements in Part 68 at present; (d) the Commission should retain the authority to ensure that the telephone network is protected;

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and (e) the functions of technical criteria development, laboratory qualification, and registration of equipment, currently performed by the Commission, largely can be privatized.

17. In this Notice, the Commission proposes that the new part 68 would contain no detailed technical criteria for protection of the network, no descriptions and schematics of connectors, and none of the existing rules that pertain to application by manufacturers and importers directly to the Commission for equipment registration. The Commission proposes, in place of these rules, that local exchange carriers must permit connection to the PSTN of any CPE that meets the technical criteria set by an industry standards body or bodies. This Notice proposes alternative ways that the determination might be made whether a piece of CPE meets the industry's criteria, including certification by a telecommunications certification body (TCB) and self-certification by the manufacturer. Both the industry's technical criteria and the certification of individual CPE would be subject to a Commission de novo review or enforcement process. While the industry would make its determinations regarding technical criteria under the guidance of the Commission's policies and regulations, its technical criteria would not be binding on the Commission in the event of de novo review or enforcement. The industry's administration activity would assist us in the implementation of the Commission's objectives to permit connection of CPE to the PSTN without causing harm, but the industry standards body or bodies would not determine the final outcome of technical criteria matters. Therefore, as administrator of its technical criteria program governing the prevention of harm to the PSTN, the industry standards body or bodies would not be performing a Commission policy function. Although the proposals, to transfer the responsibility for the development and maintenance of CPE technical criteria from this Commission to an industry body subject to de novo review or enforcement, represent a new paradigm for part 68 regulation, this procedure is in fact a logical progression of the Commission's historic regulation of CPE and is similar to other deregulatory initiatives the Commission has used.

18. In addition, the Commission proposes to largely privatize equipment registration by devolving this function, currently performed solely by this Commission, to Telecommunications Certification Bodies (TCBs), which the Commission has previously established to streamline and privatize some of the regulatory processes. TCBs would use the technical criteria developed by industry to determine whether equipment meets the requirements for registration. The Commission also proposes to establish new procedures for manufacturer self-declaration of conformity or verification pursuant to the technical criteria, and the Commission requests comment on the details pertaining to these options. Thus, under the proposed new rules for part 68, if CPE meets the technical criteria, and if it is registered pursuant to the new privatized registration rules, then wireline telephone companies must permit the equipment to be connected to the PSTN.

19. *Legal Basis.* In this Notice of Proposed Rulemaking, the Commission tentatively concludes that the Commission has the necessary statutory authority to adjust the part 68 program as proposed herein. For example, the proposed changes are entirely in furtherance of the Commission's statutory mission "to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities. . . . 47 U.S.C. 151; see also North Carolina Utilities Commission v. FCC, 537 F.2d 787, 793–94 (4th Cir. 1976). Further, the proposed changes are justified, at least in part, on the basis of the same statutory authority which was relied upon in 1975 when the part 68 program was originally implemented, e.g., sections 4(i), 4(j), and 201–205. Finally, as noted previously, the proposed changes, if adopted, will further the competitive goals of the 1996 Act.

20. The proposal herein is further supported by the past regulatory framework for part 68. The part 68 First Report and Order stressed that the Commission's guiding objective for competitive CPE registration is that it would remain "simple and easy to administer as is reasonably possible with a minimum of government intervention." The Commission's goals were to produce an absolute minimum of expense to both the government and private industry, to the benefit of the ultimate consumer, while at the same time protecting the PSTN from harms that could be caused by the connection of faulty terminal equipment. Accordingly, the Commission tentatively concludes in this Notice of Proposed Rulemaking that, in view of the changes in the industry and the market for CPE over the past twenty-five years, the key objectives that led to the original adoption of the part 68 program can better be served through a different mix of government and private industry involvement.

21. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. Id. 601(3). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Id. 632.

22. RFA analyses and certifications need only address the impact of rules on small entities directly regulated by those rules, Mid-Tex Electric Cooperative, Inc. v. FERC, 773 F.2d 327, 342–43 (D.C. Cir. 1985). The Commission's equipment authorization rules directly regulate only manufacturers of equipment, which must satisfy the Commission's product approval requirements. Small test laboratories are not directly regulated by the proposed Commission rules. Thus, to the extent that any testing laboratories would be affected by these proposed rules, such entities are not addressed in this IRFA.

23. The Commission has not developed a definition of small manufacturers of telephone terminal equipment. The closest applicable definitions under SBA rules is for manufacturers of telephone and telegraph apparatus (SIC 3661), which defines a small manufacturer as one having 1,000 or fewer employees. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 3661.

24. According to 1992 Census Bureau data, there were 479 such manufacturers, and of those, 436 had 999 or fewer employees, and seven had between 1,000 and 1,499 employees. 1992 Economic Census, Industry and Employment Size of Firm, Table 1D (prepared by U.S. Census Bureau under contract to the U.S. Small Business Administration). The Commission estimates that there are fewer than 443 small manufacturers of terminal equipment that may be affected by the proposed rules.

25. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The Commission is proposing to remove the requirement that applicants for equipment authorization apply to the Commission, and instead propose that they apply to designated Telecommunications Certification Bodies. The Commission is proposing that instead of submitting part 68 application information to the Commission, the TCBs would be required to submit the data to a nationwide database instead, which shall be administered by a private entity. The Commission is also proposing to offer responsible parties the option to use either a Self-Declaration of Conformity or a verification process for equipment authorization. Such parties would have to submit data concerning their equipment to a nationwide database.

26. Further, the Commission is proposing to privatize development and maintenance of technical criteria for terminal equipment, other than those technical criteria required for compliance with the HAC/VC and consumer protection rules, which the Commission proposes to retain. Small entities with an interest in the development, interpretation, and waiver of such technical criteria would be required to seek the ruling of the standard development organization responsible for the standard at issue in the first instance. The Commission, however, proposes to retain full de novo review procedures for any industry decision.

27. The Commission also proposes to require that certain information regarding the equipment authorized under part 68 would be placed into a publicly available database. This information would be available for review of technical parameters of specific equipment, including parameters required for compliance with hearing aid compatibility, volume control, and other HAC/VC requirements. This requirement would not be a new information requirement since application data is currently required and kept in a Commission database.

28. Finally, the Commission proposes to unify the numbering system and the logo that must be imprinted on customer premises equipment. Currently, part 15 and part 68 have different labeling and different registration numbering systems.

29. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

30. The proposals in this Notice are designed to reduce the length of time for new technology to reach the market. This may benefit small entities especially because the proposals would cut any manufacturer's cost to bring an equipment design to market. Alternatives for making these reductions are included in the form of options for different methods of (1) industry development and maintenance of technical standards and (2) equipment registration. The Commission requests comment on these options.

31. The Commission requests comment on whether small entities would be adversely affected by the proposals herein, particularly whether the proposed enforcement procedures or any of the proposed options for establishing technical criteria would have a significant economic impact. The Commission believes that the proposals would have either no impact, or would reduce, any economic burdens on small entities.

32. *Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules.* None.

C. Comment Filing Procedures

33. Interested parties may file comments on or before June 23, 2000 and reply comments on or before July 7, 2000. Parties must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, Room TW–B204F, Washington, DC 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 68 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, CC Docket No. 99–216.

34. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before July 31, 2000. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov*.

35. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554.

List of Subjects in 47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Labeling, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13588 Filed 5–30–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 052300A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on June 14 and 15, 2000, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, June 14, 2000, beginning at

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9:30 a.m. and Thursday, June 15, beginning at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; telephone (603) 431–2300. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Wednesday, June 14, 2000

After introductions, the meeting will begin with a report from the Chairman of the Council's Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Committee (committee). The committee will seek Council guidance on issues to be considered for the development of comments during the Magnuson-Stevens Act reauthorization process and may ask for approval of preliminary draft comments. This agenda item will be followed by two presentations to be discussed by NMFS staff: An overview of the Vessel Monitoring System Program in the Northeast; and Applications of Vessel Monitoring Systems for Improved Fisheries Science and Management. Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and related topics will be discussed during the second half of the day. The Scallop Committee will present proposed Amendment 10 management alternatives. Alternatives selected for further development will be analyzed in terms of their scallop, habitat, bycatch, gear conflict, enforcement, and social and economic impacts in a Draft Supplemental Environmental Impact Statement. Under consideration are proposals for: Rotational area management (which would also require a re-estimation of the overfishing definition reference points, consistent with the expected change in size selection and other factors); a requirement for scallop nets to be modified to achieve the same selectivity and/or equivalent fishing mortality as dredges; a change in the fishing year and the annual review process; and possibly adjusting the present crew size limits. The Scallop Committee also will provide an update on the development of the annual adjustment to management measures for the FMP (Framework Adjustment 14) scheduled to take effect in March 2001.

Thursday, June 15, 2000

The second day of the meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the Regional Administrator, Northeast Region, NMFS (Regional Administrator), Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, NMFS Enforcement, and the Atlantic States Marine Fisheries Commission.

Announcement of Experimental Fishery Application

The Regional Administrator will discuss, during the reports portion of the agenda, the receipt of an experimental fishing proposal submitted by the Massachusetts Division of Marine Fisheries (MADMF) for which the issuance of Exempted Fishing Permits (EFPs) is required. The Regional Administrator has made a preliminary determination that the application is complete and warrants further consideration. The public may comment during the discussion at the Council meeting, or may submit comments in writing. Written comments must be received by June 15, 2000, and should be submitted to: Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Written comments may be submitted by facsimile (fax) to (978) 281–9135, but may not be submitted via e-mail or the Internet. The proposal is summarized here.

The MADMF proposes to continue the work they conducted beginning in 1997 to show that small-mesh whiting fishing with a raised footrope trawl configuration can effectively target whiting in areas east of Cape Cod. The experimental area, formerly referred to as Area 3 during the 1999 experiment, is proposed to be modified this year by shifting the western boundary farther west to the port of Chatham, MA (see coordinates below).

Point Number	Latitude	Longitude
4	42°14.05'	70°08.80'
7	42°09.20'	69°47.80'
8	41°54.85'	69°35.20'
9	41°41.50'	69°32.85'
10	41°39.00'	69°44.30'
11	41°45.60'	69°51.80'
12	41°52.30'	69°52.55'
13	41°55.50'	69°53.45'
4	42°14.05'	70°08.80'

This change in area would likely expand the participating fleet and improve our understanding of bycatch levels in the area through increased data collection and gear experimentation. The industry cooperative experiment is proposed to take place from September 1 to December 30, 2000. The experiment is likely to involve approximately 20 vessels; 5 vessels in the early part of the season (September through November) and an additional 15 beginning in late November through to December 2000. Enrollment would be established by the MADMF similar to last year, when historical participation and previous experience with the raised footope trawl gear operation played a role in the selection process conducted by the MADMF. It is expected that 100 percent of the participants would be vessels from Chatham, MA, during the early part of the season beginning in September through to October. In November and December, it is expected that approximately 50 percent of the participants would be from the ports of Gloucester and Provincetown, MA, with the remaining vessels continuing to be from Chatham. The purpose of the experimental fishery is to document bycatch levels in this area. If they are below the 5–percent regulated multispecies bycatch standard, the fishery could be found to be an exempted fishery.

The Council approved an exemption request for an area comprising the experimental Areas 2B and 4 under Framework 35 to the Northeast Fishery Management Plan (Framework 35). The MADMF did not request that Area 3 be included in the exemption due to the low sample size and inconclusive data results from previous year's experiments. Therefore, this year's experiment proposes to increase the sampling size (fleet size expansion) and improve the confidence level of data on bycatch of regulated multispecies, overall effort, species composition and gear performance.

The MADMF has stated that the gear specifications would be identical to those approved under Framework 35, including the minimum mesh size requirement of 2.5 inches (6.35 cm), the headrope, ground gear, footrope and drop chains settings and configurations, option to use the sweepless trawl, and a prohibition on use of net strengtheners. Also, net possession restrictions would be amended to allow fishermen to leave their large-mesh groundfish net aboard the vessel (in addition to the small mesh raised footrope trawl) when enrolled in the fishery.

The area defined by the MADMF for the experiment overlaps a portion of the Gulf of Maine Rolling Closure Area V (Rolling Closure Area) from October 1—November 30, 2000. NMFS is also requesting comments on MADMF's request that participants in the experimental fishery be allowed to fish in the Rolling Closure Area. The MADMF hopes that this overlap would help define a continuous exemption area including the area proposed in Framework 35 and the area proposed in this experiment.

The MADMF personnel would sea sample approximately 10–20 percent of the total trips during the course of the experimental fishery season; September through December of 2000. In addition, participants would be required to record catch information on a tow-by-tow basis on MADMF-supplied logs and submit all logs weekly to MADMF. If bycatch problems should develop, MADMF would take the appropriate remedial actions to amend the problem, as they have in past years.

EFPs would be issued to participating federally permitted whiting vessels to exempt them from DAS, mesh size and other gear restrictions required as part of the Northeast Multispecies FMP during the specified season.

Following reports and consideration of the experimental fishery proposal, the Groundfish Committee will report on the development of Amendment 13 to the Northeast Multispecies FMP. The Habitat Committee will report during the afternoon session. Included will be a presentation on the 2000 Habitat Annual Review Report, discussion and possible approval of recommendations concerning the establishment of one or more dedicated habitat research areas, and review and possible approval of a letter to the Minerals Management Service about proposed sand mining off the New Jersey coast.

Prior to addressing any other outstanding business, the Capacity and Herring Committees will update the Council on their most recent activities.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the Regional Administrator on any framework adjustment to a fishery management plan. If she concurs with the adjustment proposed by the Council, the Regional Administrator has the discretion to publish the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 24, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13569 Filed 5–30–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000524153–0153–01; I.D. 042100C]

RIN 0648–AO11

Fisheries off West Coast States and in the Western Pacific; Highly Migratory Species Fishery; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance Notice of Proposed Rulemaking; Notice of a control date for Pacific Coast Highly Migratory Species Fisheries; request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) is developing a Fishery Management Plan (FMP) for Highly Migratory Species (HMS) off the Pacific Coast that would place HMS species such as tuna, billfish, and sharks under Federal management. This document announces a control date of March 9, 2000, after which vessels participating in the commercial (troll, long line, drift gillnet, harpoon, purse seine), and charter boat fisheries for HMS may not be qualified if the Council determines that a program to limit entry to the fisheries is appropriate. The intended effect of this announcement is to discourage speculative entry into the Pacific Coast HMS fisheries while the Council determines whether, it will limit participation in the fisheries in the future. If the Council decides to limit future participation, it will decide on criteria at that time.

DATES: Comments must be submitted by June 30, 2000.

ADDRESSES: Comments on this advance notice of proposed rulemaking may be mailed to Jim Lone, Chairman, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The Council was established under section 302(a)(1)(F)) of the Magnuson-Stevens Fishery Conservation and Management Act. The Council has concluded that an HMS FMP is needed and has named a plan development team. The Council sponsored scoping sessions to obtain

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public comment on matters that should be considered in the FMP. Several people strongly supported the development of the FMP, but urged the Council to establish a control date so that there would not be a rush to enter the fishery during the plan development process. These persons were especially concerned that recent tight restrictions in the groundfish fishery and continued restrictions in the ocean salmon fishery might encourage entry to the HMS fisheries. The Council subsequently heard advice from its advisory subpanel in support of a control date and from the public (some of whom supported a control date) at its meeting in March 2000. After considering the comments and weighing the alternatives, the Council agreed that March 9, 2000, should be established as a control date for the commercial and charter boat sectors of the HMS fisheries. The Council requested that NMFS publish a notification of this control date in the **Federal Register**.

The Council anticipates that the plan development process will take approximately one year. The Council has not yet determined that limited entry in one or more fishery sectors is necessary or appropriate. However, the Council is aware that there is often a rush to enter any fishery for which a new FMP is being developed, in anticipation that a limited entry program could be proposed that would use historic and recent participation as criteria for eligibility for limited entry permits.

The implementation of any management measures for the fishery affecting one or more of these fishery sectors will require approval of the FMP and implementation of associated regulations. Any action will require a regulatory proposal with public input and supporting analysis, NMFS approval, and publication of the implementing regulation in the **Federal Register**. If catch history is used as a basis for eligibility for participation, it is likely that catch by persons entering after the control date will not be considered in determining eligibility for a limited entry permit. The Council also may decide to use participation prior to the control date as a permit eligibility criterion. Fishers are not guaranteed future participation in the HMS fishery, regardless of their date of entry or level of participation in the fishery.

This advance notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 24, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13570 Filed 5–30–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 65, No. 105

Wednesday, May 31, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Solicitation for Membership to the National Agricultural Research, Extension, Education, and Economics Advisory Board.

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: The United States Department of Agriculture announces solicitation for nominations to fill 10 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATE: Deadline for Advisory Board member nominations is June 23, 2000.

SUPPLEMENTARY INFORMATION: Section 802 of the Federal Agricultural Improvement and Reform Act of 1996 authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed in September 1996 and one-third of the 30 members were appointed for a 1, 2, and 3 year term, respectively.

As a result of the staggered appointments, the terms for 10 of the 30 members who represent 10 specific categories will expire September 30, 2000. Nominations for a 3–year appointment for all 10 of the vacant categories are sought. Nominees will be carefully reviewed for their broad expertise, leadership, and relevancy to a category. The 10 vacancies are:

A. National Farm Organization
C. Food Animal Commodity Producers
F. National Crop Commodity Organizations
K. National Human Health Associations
P. Hispanic-serving Institutions
Q. American Colleges of Veterinary Medicine
S. Transportation of Food and Agricultural Products (Foreign and domestic)
U. Food and Fiber Processors
Z. International Development/Private Sector Organizations
CC. National Social Science Associations

Nominations are being solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests. Nominations for one individual who fits several of the categories listed above, or for more than one person who fits one category will be accepted. Please indicate the specific membership category for each nominee. Each nominee must fill out a form AD–755, "Advisory Committee Membership Background Information" (which can be obtained from the contact person below) and will be vetted before selection. Send nominatee's name, resume, and their completed AD–755 to the Office of the Advisory Board, Research, Education, and Economics, Room 344A Jamie L. Whitten Building, Department of Agriculture, Washington, DC 20250–2255 no later than June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 344A, Jamie L. Whitten Research, Education, and Economics Advisory Board Office, Room 344A, Jamie L. Whitten Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, D.C. this 16th day of May 2000.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 00–13550 Filed 5–30–00; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–005N]

International Standard-Setting Activities

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (Codex), in accordance with section 491 of the Trade Agreements Act of 1979, as amended, and the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4809. It also provides a list of other standard-setting activities of Codex, including commodity standards, guidelines, codes of practice, and revised texts. This notice, which covers the time periods from June 1, 1999, to May 31, 2000, and June 1, 2000, to May 31, 2001, seeks comments on standards currently under consideration and recommendations for new standards.

ADDRESSES: Submit any written comments to: FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, Washington, DC 20250–3700. Please state that your comments refer to Codex and, if your comments relate to specific Codex committees, please identify those committees in your comments and submit a copy of your comments to the delegate from that particular committee. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., United States Manager for Codex, U.S. Department of Agriculture, Office of the Undersecretary for Food Safety, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700; (202) 205–7760. For information pertaining to particular committees, the delegate of that committee may be contacted. (A complete list of U.S. delegates and alternate delegates can be found in *Attachment* 2 to this notice.) Documents pertaining to Codex are accessible via the World Wide Web at the following

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address: http://www.fao.org/waicent/faoinfo/economic/esn/codex/. The U.S. Codex Office also maintains a website at http://www.fsis.usda.gov/OA/Codex/index.htm.

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institutional framework for the conduct of trade relations among its members in matters related to the Uruguay Round Trade Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade (GATT). U.S. membership in the WTO was approved and the Uruguay Round Agreements Act was signed into law by the President on December 8, 1994. The Uruguay Round Agreements became effective, with respect to the United States, on January 1, 1995. Pursuant to section 491 of the Trade Agreements Act of 1979, as amended, the President is required to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization, Codex, International Office of Epizootics, and the International Plant Protection Convention. The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the U.S. Department of Agriculture as the agency responsible for informing the public of sanitary and phytosanitary standard-setting activities of each international standard-setting organization. The Secretary of Agriculture has delegated to the Administrator, Food Safety and Inspection Service (FSIS), the responsibility to inform the public of the SPS standard-setting activities of Codex. The FSIS Administrator has, in turn, assigned the responsibility for informing the public of the SPS standard-setting activities of Codex to the U.S. Codex Office, FSIS.

Codex was created in 1962 by two U.N. organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the principal international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, the United States Department of Agriculture (USDA); the Food and Drug Administration (FDA), Department of Health and Human Services (HHS), and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

As the agency responsible for informing the public of the sanitary and phytosanitary standard-setting activities of Codex, FSIS publishes this notice in the **Federal Register** annually. Attachment 1 (Sanitary and Phytosanitary Activities of Codex) sets forth the following information:

1. The sanitary or phytosanitary standards under consideration or planned for consideration; and

2. For each sanitary or phytosanitary standard specified:

a. A description of the consideration or planned consideration of the standard;

b. Whether the United States is participating or plans to participate in the consideration of the standard;

c. The agenda for United States participation, if any; and

d. The agency responsible for representing the United States with respect to the standard.

To obtain copies of those standards listed in Attachment 1 that are under consideration by Codex, please contact the Codex delegate or the U.S. Codex Office. This notice also solicits public comment on those standards that are under consideration or planned for consideration and on recommendations for new standards. The delegate, in conjunction with the responsible agency, will take the comments received into account in participating in the consideration of the standards and in proposing matters to be considered by Codex.

The United States' delegate will facilitate public participation in the United States Government's activities relating to Codex Alimentarius. The United States' delegate will maintain a list of individuals, groups, and organizations that have expressed an interest in the activities of the Codex committees and will disseminate information regarding United States' delegation activities to interested parties. This information will include the current status of each agenda item; the United States Government's position or preliminary position on the agenda items; and the time and place of planning meetings and debriefing meetings following Codex committee sessions. U.S. Codex Alimentarius, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700, if you would like to receive information about specific committees.

The information provided in Attachment 1 describes the status of Codex standard-setting activities by the Codex Committees for the time periods from June 1, 1999 to May 31, 2000, and June 1, 2000 to May 31, 2001. In addition, the following attachments are included:

Attachment 2 List of U.S. Codex Officials (includes U.S. delegates and alternate delegates)

Attachment 3 Timetable of Codex Sessions (June 1999 through May 2001)

Attachment 4 Definitions for the Purpose of Codex Alimentarius

Attachment 5

Part 1—Uniform Procedure for the Elaboration of Codex Standards and Related Texts,

Part 2—Uniform Accelerated Procedure for the Elaboration of Codex Standards and Related Texts

Attachment 6 Nature of Codex Standards

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page, located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on May 22, 2000.

F. Edward Scarbrough,

United States Manager for Codex.

Attachment 1: Sanitary and Phytosanitary Activities of Codex,

Codex Alimentarius Commission and Executive Committee

The Codex Alimentarius Commission will hold its Twenty-fourth Session July 2–July 7, 2001, in Geneva, Switzerland. At that time it will consider the standards, codes of practice, and related matters brought to its attention by the general subject committees, commodity committees, and member delegations.

Prior to the Commission meeting, the Executive Committee will meet in June 2000 and June 2001. It is composed of the chairperson, vice-chairpersons and seven members elected from the Commission, one from each of the following geographic regions: Africa, Asia, Europe, Latin America and the Caribbean, Near East, North America, and South-West Pacific.

The Executive Committee at its June 2000 Session will consider matters arising from reports of Codex Committees including review of standards at step 5, requests for new work, and other items brought to its attention.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Residues of Veterinary Drugs in Foods

The Codex Committee on Residues of Veterinary Drugs in Foods determines priorities for the consideration of residues of veterinary drugs in foods and recommends Maximum Residue Limits (MRLs) for veterinary drugs. A Codex Maximum Limit for Veterinary Drugs (MRLVD) is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or ug/kg on a fresh weight basis) that is adopted by the Codex Alimentarius Commission to be permitted or recognized as acceptable in or on a food.

An MRLVD is based on the type and amount of residue considered to be without any toxicological hazard for human health as expressed by the Acceptable Daily Intake (ADI)*, or on the basis of a temporary ADI that utilizes an additional safety factor. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical analytical methods are available.

*Acceptable Daily Intake (ADI): An estimate by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) of the amount of a veterinary drug, expressed on a body weight basis, that can be ingested daily over a lifetime without appreciable health risk (standard man = 60 kg).

The following matters, contained in ALINORM 01/31, will be considered by the Codex Alimentarius Commission at its 24th Session.

To be considered at Step 8:

Danofloxacin
Gentamicin
Imodocarb
Sarofloxacin

To be considered at Step 5/8:

Dihydrosteptomycin/Streptomycin
Doramectin

To be considered at Step 5:

Neomycin
Phoxim
Porcine Somatotropin
Thiamphenicol

Priority List of Veterinary Drugs Requiring Evaluation or Reevaluation—Substances for which a firm commitment of data has been provided:

Cefuroxime sodium
Pirlimycin hydrochloride

The Committee is continuing work on:

- Discussion paper on antimicrobial resistance;
- Draft maximum residue limits for veterinary drugs;
- Risk Analysis in the CCRVDF;
- Proposed Draft Guidelines on Residues at Injection Sites;
- Guidelines on Control of Veterinary Drug Residues in Milk and Milk Products; and
- Methods of Analysis and Sampling Issues.

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Food Additives and Contaminants

The Codex Committee on Food Additives and Contaminants (CCFAC) (a) establishes or endorses permitted maximum or guideline levels for individual food additives, contaminants, and naturally occurring toxicants in food and animal feed; (b) prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); (c) recommends specifications of identity and purity for food additives for adoption by the Commission; (d) considers methods of analysis for food additives and contaminants; and (e) considers and elaborates standards and codes for related subjects such as labeling of food additives when sold as such and food irradiation. The 32nd Session of CCFAC met on March 20–24, 2000, in Beijing, the Peoples Republic of China. The following matters contained in ALINORM 01/12 are under consideration by the Commission and CCFAC.

Risk Analysis

The Discussion Paper entitled "Application of Risk Analysis Principles to the Work of the Codex Committee on Food Additives and Contaminants (CCFAC) and the Joint FAO/WHO Expert Committee on Food Additives (JECFA)" will be revised for circulation and consideration at the next session. The Codex Secretariat will report on this activity to the 15th Session of the Codex Committee on General Principles and the 47th Session of the Codex Executive Committee (June 2000).

Food Additives

- Annex A (Guidelines for the Estimation of Appropriate Levels of Use of Food Additives) to the Preamble of the General Standard for Food Additives (GSFA) for adoption at Step 8;
- Addition of provisions for the use of 15 additives to Table 1 and Table 2 of the Codex General Standard for Food Additives for adoption at Step 8 and Step 5/8;
- The Committee agreed to circulate for comment the inclusion of the following additives in Table 3 (Additives Permitted for Use in Food in General, Unless otherwise Specified, in Accordance with GMP) of the Draft GSFA at Step 3 of the accelerated procedure subject to confirmation by the 47th Session of the Codex Executive Committee: Processed Eucheuma seaweed, enzymatically hydrolyzed sodium carboxymethyl cellulose, gamma cyclodextrin, polyglycitol syrup, erythritol, curdlan, and sodium sulfate;
- The Committee has requested the Codex Secretariat to prepare a discussion paper on the relationship between Codex Commodity Standards and the further development of the GSFA; and
- The 32nd CCFAC agreed to reestablish its *ad hoc* working group on the GSFA for its 33rd Session under the chairmanship of the U.S.

International Numbering System

- The Committee agreed to forward the proposed addition of 4-

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hexylresorcinol (INS 586) for use as an antioxidant or color retention agent) and pectins (INS 440) to include its use as an emulsifier to the 24th CAC for final adoption of the accelerated procedure. The Committee also agreed to forward the following proposed revisions *(italicized text)* to the INS system at Step 3 by the accelerated procedure subject to the approval of the Commission:

- acesulfame potassium (INS 950) sweetener and *flavor enhancer;*
- enzymatically hydrolyzed *sodium* carboxymethyl cellulose (INS 469) as thickener and stabilizer;
- *monosodium succinate (INS 364i) as acidity regulator and flavor enhancer;*
- *disodium succinate (INS 364ii) as acidity regulator and flavor enhancer;*
- *curdlan (INS 424) as thickener and stabilizer;*
- *erythritol (INS 968) as sweetener, flavor enhancer, and humectant;*
- *sodium L-aspartate (INS 638) as flavor enhancer;*
- *DL-alanine (INS 639) as flavor enhancer;*
- *manasco rubin (INS 130) as color;*
- *gardenia yellow (INS 164) as color;*
- *gamma-cyclodextrin (INS 458) as stabilizer and binder; and*
- *polyglycitol syrup (INS 964) as sweetener.*

- The Committee also agreed to request comments on the technological functions and functional classes/subclasses in the framework of the INS system, the GSFA, and the Codex General Standard for the Labelling of Prepackaged Foods.

Draft Revisions to the Codex General Standard for Irradiated Foods

- The 32nd CCFAC agreed to ask WHO, IAEA and FAO to further revise the Codex General Standard for Irradiated Foods for circulation, comment and further consideration by the 33rd CCFAC; and
- The Committee also agreed to request the Codex Executive Committee to consider as new work the revision of the companion Codex Recommended International Code of Practice for the Operation of Irradiation Facilities Used for the Treatment of Foods (CAC/RCP 19–1979).

Food Additive Specifications

- The 32nd CCFAC agreed to forward specifications for 34 food additives and 58 flavoring agents, and specifications for 2 food additives after editorial changes including technical revisions to the 24th CAC for adoption as Codex Advisory Specifications; and
- The 32nd CCFAC agreed to reestablish its *ad hoc* working group for food additive specifications for its 33rd Session under the chairmanship of the U.S.

The Committee is continuing work on a discussion paper on processing aids.

The 32nd CCFAC agreed to discontinue further work on its discussion paper on the use of colors in food.

Contaminants

The Committee agreed to forward the following for final adoption:

- Draft Maximum Level of 50ug/kg in apple juice and apple juice ingredient in ready made soft drinks for adoption at Step 8; and
- Draft Maximum Levels for Lead (except for fish, crustaceans, bivalve mollusks and fruit juices) at Step 8.

The Committee is continuing work on:

- Methodology and Principles for Exposure Assessment in the Codex General Standard for Contaminants and Toxins in Food;
- Draft Maximum Level for Aflatoxin M1 in Milk at Step 6;
- Proposed Draft Maximum Levels for Ochratoxin A in Cereals and Cereal Products at Step 3;
- The Committee discussed two draft codes of practice for the prevention of mycotoxin contamination of cereals (ochratoxin A, zearalenone) and a position paper on fumonisins. Given the similarity of the various draft Codes of Practice, the Committee agreed that a General Code of Practice for the prevention of mycotoxin contamination in cereals with annexes containing guidance on practices to prevent cereal grain contamination by specific mycotoxins. Currently, the General Code of Practice is expected to contain annexes for ochratoxin A, zearalenone and fumonisins;
- Draft Code of Practice for Source Directed Measures to Reduce Contamination of Foodstuffs (paper to be revised for consideration at Step 3 by the 32nd CCFAC);
- Draft Maximum Levels for Lead for fish, crustaceans, bivalve mollusks and fruit juices to be circulated for comment and consideration at Step 6 by the 33rd CCFAC);
- Draft Maximum Levels for Cadmium for Cereals, Pulses and Legumes to be circulated for comment at Step 6. (Proposed draft maximum levels for Cadmium in other foods to be circulated at Step 3);
- Discussion Paper on Dioxins (Paper to be revised for circulation and comment by the 33rd CCFAC); and
- The 32nd CCFAC agreed to reestablish the *ad hoc* working group for contaminants for its 33rd Session under the chairmanship of Denmark.

Other Issues

- Position Paper on Chloropropanols: The Committee agreed that a discussion paper should be prepared to address the levels of 3-monochloropropane-1,2-diol and 1,3-dichloro-2-propanol in foods subject to approval by the 47th CCEXEC.

The 33rd Session of the CCFAC is tentatively scheduled for March 12–16, 2001 in The Hague, The Netherlands.

Responsible AGENCY: HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Pesticide Residues

The Codex Committee on Pesticide Residues recommends to the Codex Alimentarius Commission establishment of maximum limits for pesticide residues for specific food items or in groups of food. A Codex Maximum Residue Limit for Pesticide (MRLP) is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. Foods derived from commodities that comply with the respective MRLPs are intended to be toxicologically acceptable, that is, consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI*, should indicate that foods complying with Codex MRLPs are safe for human consumption.

Codex MRLPs are primarily intended to apply in international trade and are derived from reviews conducted by the Joint Meeting on Pesticide Residues (JMPR) following:

(a) Review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices (GAP). Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices; and

(b) Toxicological assessment of the pesticide and its residue.

The following items will have been considered by 32nd Session of the Codex Committee on Pesticide Residues at the Hague, the Netherlands, May 1–8, 2000. The final results will be in ALINORM 01/24.

- Consideration of Intake of Pesticide Residues:
- Acute Dietary Exposure Assessment;

- Report on Pesticide Residue Intake Studies; and
- Report on the Revision of Regional Diets and Information on Processing
- Consideration of Draft and Proposed Draft Residue Limits in Foods and Feeds at Steps 7 and 4:
- Harmonization of MRL setting for compounds used both as pesticides and as veterinary drugs;
- Which uses to support when chronic dietary intake estimate(s) exceed the ADI;
- Feasibility of establishing MRLs for genetically modified crops and for metabolite residues;
- Feasibility of establishing specific MRLs for cereal-based foods and infant formula; and
- Need for EMRL for camphechlor in fish.
- Recommendations for Methods of Analysis and Sampling;
- Establishment of Codex Priority Lists of Pesticides; and
- Problems Relative to Pesticide Residues in Food in Developing Countries.

* Acceptable Daily Intake (ADI) of a chemical is the daily intake which, during an entire lifetime, appears to be without appreciable risk to the health of the consumer on the basis of all the known facts at the time of the evaluation of the chemical by the Joint FAO/WHO Meeting on Pesticide Residues. It is expressed in milligrams of the chemical per kilogram of body weight.

Responsible Agency: EPA; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Methods of Analysis and Sampling

The Codex Committee on Methods of Analysis and Sampling:

(a) Defines the criteria appropriate to Codex Methods of Analysis and Sampling;

(b) Serves as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories;

(c) Specifies, on the basis of final recommendations submitted to it by the other bodies referred to in (b) above, Reference Methods of Analysis and Sampling appropriate to Codex Standards which are generally applicable to a number of foods;

(d) Considers, amends, if necessary, and endorses, as appropriate, methods of analysis and sampling proposed by Codex (Commodity) Committees, except that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives do not fall within the terms of reference of this Committee;

(e) Elaborates sampling plans and procedures, as may be required;

(f) Considers specific sampling and analysis problems submitted to it by the Commission or any of its Committees; and

(g) Defines procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The Committee will hold its 23rd Session in Budapest, Hungary, February 26–March 2, 2001. At that time the committee will consider the following:

- Principles for the Establishment of Codex Methods of Analysis and Sampling;
- Relations between Commodity Committees and General Committees;
- Proposed Draft General Guidelines on Sampling;
- Criteria for Evaluating Acceptable Methods of Analysis for Codex Purposes;
- Harmonization of Analytical Terminology "Measurement Limits";
- Harmonization of Reporting of Test Results Corrected for Recovery Factors;
- Measurement Uncertainty;
- In-House Method Validation; and
- Endorsement of Methods of Analysis and Sampling Provisions in Codex Standards.

Responsible Agency: HHS/FDA; USDA/AMS.

U.S. Participation: Yes.

Codex Committee on Food Import and Export Inspection and Certification Systems

The Codex Committee on Food Import and Export Inspection and Certification Systems is charged with developing principles and guidelines for food import and export inspection and certification systems to protect consumers and to facilitate trade. Additionally, the Committee develops principles and guidelines for the application of measures by competent authorities to provide assurance that foods comply with essential requirements, especially statutory health requirements. This encompasses work on: Equivalence of food inspection systems including equivalence agreements, processes and procedures to ensure that sanitary measures are implemented, and the determination of the judgement of equivalence; guidelines on food import control systems; and guidelines on food product certification and information exchange. The development of guidelines for the appropriate utilization of quality assurance systems to ensure that foodstuffs conform to requirements and to facilitate trade also are included in the Committee's terms of reference.

The Committee held its 8th Session at Adelaide, Australia, on February 21–25, 2000. The following matters will be considered by the Codex Alimentarius Commission at its 24th Session. The relevant document is ALINORM 01/30.

To be considered at Step 5:

- Proposed Draft Guidelines for Generic Official Certificate Formats and the Production and Issuance of Certificates.

The Committee is continuing work on:

- Proposed Draft Guidelines/Recommendations for Food Import Control Systems;
- Proposed Draft Guidelines for the Utilization and Promotion of Quality Assurance Systems; and
- Discussion Paper on the adequacy of existing Codex texts in food emergency control situations (including an existing CCFICS developed set of Guidelines for the Exchange of Information in Food Control Emergency Situations).

New Work:

- Proposed Draft Guidelines on the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems; and
- Proposed draft Guidelines on the Judgement of Equivalence of Technical Regulations Associated with Food Import and Export Inspection and Certification Systems.

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on General Principles

The Codex Committee on General Principles deals with procedure and general matters as are referred to it by the Codex Alimentarius Commission. The 15th Session of the Committee met in Paris on April 10–14, 2000. The relevant ALINORM is 01/33.

To be considered by the Commission:

- Adoption of an amendment to Rule VI.2 to the Rules of Procedure to clarify members' rights with respect to voting; and
- Practical measures intended to facilitate consensus.

The Committee continues to work on:

- Working Principles for Risk Analysis;
- Food Safety Objectives;
- Review of the Statement of Principles on the Role of Science and the Extent to which Other Factors are taken into account: Role of science and other factors in relation to risk analysis;
- Composition of the Executive Committee and related matters;

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• Revision of the Code of Ethics for International Trade in Foods; and
• Consumer Participation in Codex Work and related matters.
Responsible Agency: USDA/FSIS.
U.S. Participation: Yes.

Codex Committee on Food Labeling

The Codex Committee on Food Labeling is responsible for drafting provisions on labeling issues assigned by the Codex Alimentarius Commission. The Committee will have held its 28th Session in Ottawa on May 9–12, 2000. The following items will have been discussed. The documents will be in ALINORM 01/22.
Considered at Step 7:
• Draft Guidelines for the Production, Processing, Labeling and Marketing of Organically Produced Foods (Animal Production);
• Proposed Draft Amendment to the General Standard for the Labeling of Prepackaged Foods (Class Names) (milk protein/milk protein products); and
• Draft Amendment to the Standard for Quick Frozen Fish Sticks (Fish Fingers), Fish Portions and Fish Fillets, Breaded and in Batter (Declaration of Fish Core).
Considered at Step 4:
• Proposed Draft Recommendations for the Use of Health Claims;
• Proposed Draft Recommendations for the Labeling of Foods Obtained Through Biotechnology (Mandatory Labeling);
• Proposed Draft Recommendations to the Guidelines on Nutrition Labeling; and
• Proposed Draft Recommendations for the Use of the Term "Vegetarian".
Also considered:
• Discussion paper on Quantitative Ingredient Labeling.
Responsible Agency: HHS/FDA; USDA/FSIS.
U.S. Participation: Yes.

Codex Committee on Food Hygiene

The Codex Committee on Food Hygiene has three primary responsibilities. First, to draft basic provisions on food hygiene applicable to all food. These provisions normally take the form of Codes of Hygienic Practice for a specific commodity (*e.g.* bottled water) or group of commodities (*e.g.*, milk and milk products). Second, to consider, amend if necessary, and endorse food hygiene provisions that are incorporated into specific Codex commodity standards by the Codex commodity committees. These provisions normally contain generic wording referencing the *Recommended Code of Hygienic Practice: General Principles for Food Hygiene* (ref: CAC/RCP 1–1969, Rev. 3–1997) and the *Principles for the Establishment and Application of Microbiological Criteria for Foods* (CAC/GL 21–1997) but may also include other provisions. Third, to provide general guidance to the Commission on matters relating to food hygiene. This often takes the form of providing general guidance documents such as the *Draft Principles and Guidelines for the Conduct of Microbiological Risk Assessment* and *Draft Proposed Principles and Guidelines for the Conduct of Microbiological Risk Management*. The following items, found in ALINORM 01/13, will be considered by the Codex Alimentarius Commission at its 24th Session in June 2001:
To be considered at Step 8:
• Draft Code of Hygienic Practice for Bottled/Packaged Drinking Waters (other than natural Mineral Water); and
• Draft Code of Hygienic Practice for the Transport of Food in Bulk and Semi-Packed Food.
Codex texts to be considered by the Committee at its 33rd Session to be held October 23–27, 2000 are the following:
To be considered at Step 4:
• Proposed Draft Code of Hygienic Practice for Milk and Milk Products;
• Proposed Draft Code of Hygienic Practice for the Primary Production, Harvesting and Packaging of Fresh Fruits and Vegetables;
• Proposed Draft Code of Hygienic Practice for Pre-cut Vegetable Products Ready for Human Consumption;
• Proposed Draft Principles and Guidelines for the Conduct of Microbiological Risk Management;
• Proposed Draft Guidelines for the Control of *Listeria monocytogenes* in Foods;
• Proposed Draft Guidelines for the Hygienic Reuse of Processing Water in Food Plants; and
• Discussion on Risk Assessment of Certain Pathogens in Specific Commodities.
Other committee work:
• Discussion paper on the Application of HACCP in Small and/or Less Developed Businesses;
• Discussion paper on Priorities for the Revision of the Codes of Hygienic Practice;
• Discussion paper on Antibiotic Resistance in Bacteria in Food;
• Discussion paper on Guidelines for Validation of Food Hygienic Control Measures; and
• Discussion paper on Proposed Guidelines for Evaluating the Presence of Objectionable Matter
Responsible Agency: HHS/FDA.
U.S. Participation: Yes.

Codex Committee on Fresh Fruits and Vegetables

The Codex Committee on Fresh Fruits and Vegetables is responsible for elaborating worldwide standards and codes of practice for fresh fruits and vegetables. The Committee will hold its Ninth Session in Mexico City, Mexico, on October 9–13, 2000 and consider the following:
To be considered at Step 7:
• Draft Standard for Grapefruit, Pummelos, Limes (sizing provisions);
• Draft Standard for Tisquisque (White and Lilac);
• Draft Standard for Yellow Pitahayas;
• Draft Standard for Papaya;
• Draft Standard for Asparagus;
• Draft Standard for Oranges; and
• Draft Standard for Cape Gooseberry;
To be considered at Step 4:
• Proposed Draft Standard for Cassava;
• Proposed Draft Standard for Apples;
• Proposed Draft Standard for Tomatoes;
• Proposed Draft Standard for Table Grapes;
• Discussion paper on size tolerances, including sizing provisions of the Draft Standards for Grapefruits, Limes, Pummelos, and Oranges;
• Code of Practice for the Quality Inspection and Certification of Fresh Fruits and Vegetables;
• Inspection Site Requisites (Annex II of the Draft Code of Practice for the Quality Inspection and Certification of Fresh Fruits and Vegetables);
• Discussion paper on definitions of terms; and
• Brix levels in Codex Standard for Pineapples;
Responsible Agency: USDA/AMS.
U.S. Participation: Yes.

Codex Committee on Nutrition and Foods for Special Dietary Uses

The Codex Committee on Nutrition and Foods for Special Dietary Uses is responsible for studying nutritional problems referred by the Codex Alimentarius Commission. The Committee also drafts provisions on nutritional aspects for all foods and develops guidelines, general principles, and standards for foods for special dietary uses. The Committee holds its 22nd Session in Berlin, Germany, on June 19–23, 2000. At that Session, it will consider the following:
To be considered at Step 7:
• Draft Table of Conditions for Nutrient Contents (Part B), (Guidelines for Nutrient Claims) Fibre and Serving Size; and

• Proposed Draft Revised Standards for Gluten-Free Foods.
To be considered at Step 4:
• Proposed Draft Revised Standard for Processed Cereal-Based Foods for Infants and Young Children;
• Proposed Draft Revised Standard for Infant Formula;
• Proposed Draft Guidelines for Vitamin and Mineral Supplements and Discussion Paper to Facilitate Consideration of the Draft Guidelines; and
• Proposed Draft Revision of the Advisory List(s) of Mineral Salts and Vitamin Compounds for the Use in Foods for Infants and Children.
Other work:
• Discussion Paper on Criteria for Scientific Evidence Relative to Health Claims;
• Discussion Paper on Provisions of Fortification on Iodine, Iron and Vitamin A in the Guidelines of Nutrition Claims;
• Discussion Paper on Review of Provisions for Vitamins and Minerals in Codex Standards: Vitamins and Minerals in Foods for Special Medical Purposes;
• Discussion Paper on Proposal to Design the Basis for Derivation of Energy Conversion Factors in the Codex Guidelines on Nutrition Labelling;
• Discussion Paper on the Consideration of the Use of the Recommendations of the FAO/WHO Expert Consultation on Food Consumption and Exposure Assessment of Chemicals; and
• Consideration of the Need to Review the General Principles for the Addition of Essential Nutrients to Foods.
Responsible Agency: HHS/FDA.
U.S. Participation: Yes.

Codex Committee on Fish and Fishery Products

The Fish and Fishery Products Committee is responsible for elaborating standards for fresh and frozen fish, crustaceans and mollusks. The 24th Session of the Committee will be held on June 5–9, 2000, in Alesund, Norway. At that Session, the following items will be discussed:
To be considered at Step 7:
• Draft Standard for Dried Anchovies; and
• Draft Standard for Crackers from Marine and Freshwater Fish, Crustacean and Molluscan Shellfish.
To be considered at Step 4:
• Proposed Draft Amendment to the Standard for Canned Sardines and Sardine-Type Products (Inclusion of an additional species);
• Proposed Draft Standard for Salted Atlantic Herring and Salted Sprats;
• Proposed Draft Code of Practice for Fish and Fishery Products;
• Model Certificate for Fish and Fishery Products;
• Proposed Draft Standard for Smoked Fish; and
• Proposed Draft Standard for Molluscan Shellfish.
Responsible Agency: HHS/FDA, USDC/NOAA/NMFS.
U.S. Participation: Yes.

Codex Committee on Milk and Milk Products

The Codex Committee on Milk and Milk Products is responsible for establishing international codes and standards for milk and milk products. The following will be considered at the 24th Session of the Codex Alimentarius Commission in June 2001. The reference document is ALINORM 01/11.
To be considered at Step 8:
• Draft Group Standard for Unripened Cheese Including Fresh Cheese;
• Proposed Draft Revised Standard for Edible Casein Products at Step 5/8;
• Proposed Draft Amendment to the Codex General Standard for Cheese (Description) at Step 5/8; and (Proposed Draft Amendment to the Codex Group Standard for Cheeses in Brine (Sampling) at Step 5/8.
To be considered at Step 5:
• Proposed Draft Revised Standard for Cream, Whipped Creams, and Fermented Creams;
• Proposed Draft Revised Standard for Fermented Milks; and
• Proposed Draft Revised Standard for Whey Powders.
The Committee is continuing work on:
• Proposed Draft Amendment to the Codex General Standard for Cheese (Composition);
• Proposed Draft Amendment to the Codex General Standard for Cheese (Appendix on cheese rind, surface, and coating);
• Proposed Draft Revised Standard for Processed Cheese (minimum cheese content);
• Proposed Draft Revised Individual Standards for Cheese (including a new Standard for Mozzarella);
• Proposed Draft Standard for Dairy Spreads; and
• Model Export Certificates for Milk Products.
New Work:
• Standard for Products in Which Milk Components are Substituted by Non-Milk Components:
• Evaporated Skimmed Milk with Vegetable Fat
• Sweetened Condensed Skimmed Milk with Vegetable Fat
• Skimmed Milk Powder with Vegetable Fat
Responsible Agency: USDA/AMS; HHS/FDA.
U.S. Participation: Yes.

Codex Committee on Fats and Oils

The Codex Committee on Fats and Oils is responsible for elaborating standards for fats and oils of animal, vegetable, and marine origin. The Committee will hold its 17th Session in London, England, in March 2001 and consider the following:
To be considered at Step 7:
• Draft Standard for Olive Oils and Olive-Pomace Oils.
To be considered at Step 4:
• Proposed Draft Standard for Fat Spreads and Blended Spreads.
New Work:
• Amendments to the Draft Standard for Named Vegetable Oils:
• High Oleic Acid Sunflower Oil
• High Oleic Acid Safflower Oil
• Code of Practice for Storage and Transport of Fats & Oils in Bulk: List of Acceptable Previous Cargoes and of Banned Immediate Previous Cargoes.
Responsible Agency: HHS/FDA; USDA/ARS.
U.S. Participation: Yes.

Codex Committee on Cocoa Products and Chocolate

The Codex Committee on Cocoa Products and Chocolate is responsible for elaborating worldwide standards for cocoa products and chocolate. The 21st Session of the Commission endorsed the recommendation of the forty-second session of the Executive Committee to initiate the revision of the Cocoa Products and Chocolate Standards. The Committee will hold its 18th Session in Switzerland in November 2000 and consider the following:
To be considered at Step 7:
• Draft Revised Standard for Cocoa Butters;
• Draft Revised Standard for Cocoa (Cacao) Mass (Cocoa/Chocolate Liquor) and Cocoa Cake, for Use in the Manufacture of Cocoa and Chocolate Products; and
• Draft Revised Standard for Cocoa Powders (Cocoas) and Dry Cocoa-Sugar Mixture.
To be considered at Step 4:
• Proposed Draft Standard for Chocolate and Chocolate Products.
Responsible Agency: HHS/FDA.
U.S. Participation: Yes.

Codex Committee on Processed Fruits and Vegetables

The Codex Committee on Processed Fruits and Vegetables is responsible for elaborating standards for Processed Fruits and Vegetables. After having been adjourned sine die, the Committee

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reconvened in Washington, DC, in March 1998 to begin work revising the standards. The 20th Session of the Committee will be held in Washington, DC on September 11–15, 2000. The Committee will consider the following:

To be considered at step 7:

- Draft Standard for Canned Bamboo Shoots;
- Draft Standard for Pickles;
- Draft Standard for Kimchee;
- Draft Revised Standard for Canned Applesauce;
- Draft Revised Standard for Canned Pears; and
- Draft Standard for Aqueous Coconut Products.

To be considered at step 4:

- Proposed Draft Standard for Canned Stone Fruits;
- Proposed Draft Standard for Canned Citrus Fruits;
- Proposed Draft Standard for Canned Berry Fruits;
- Proposed Draft Standard for Jams, Jellies and Marmalades;
- Proposed Standard for Canned Vegetables;
- Proposed Draft Guidelines for Packing Media in Canned Fruits;
- Proposed Draft Guidelines for Packing Media in Canned Vegetables;
- Proposed Draft Revised Standard for Canned Mangoes;
- Proposed Draft Revised Standard for Canned Pineapple;
- Proposed Draft Revised Standard for Canned Fruit Cocktails;
- Proposed Draft Revised Standard for Canned Tropical Fruit Salad;
- Proposed Draft Revised Standard for Canned Chestnuts and Chestnut Puree;
- Proposed Draft Revised Standard for Canned Tomatoes;
- Proposed Draft Revised Standard for Canned Mushrooms;
- Proposed Draft Revised Standard for Mango Chutney;
- Proposed Draft Revised Standard for Pickled Cucumbers (Cucumber Pickles);
- Proposed Draft Revised Standard for Table Olives;
- Proposed Draft Revised Standard for Processed Tomato Concentrates;
- Proposed Draft Revised Standard for Dried Apricots;
- Proposed Draft Revised Standard for Dates;
- Proposed Draft Revised Standard for Raisins;
- Proposed Draft Revised Standard for Grated Desiccated Coconuts;
- Proposed Draft Revised Standard for Unshelled Pistachio Nuts;
- Proposed Draft Revised Standard for Dried Edible Fungi;
- Proposed Draft Revised Standard for Edible Fungi and Fungus Products;
- Proposed Draft Standard for Soy Sauce; and
- Proposed Draft Standard for Dried Figs.

Other Work:

- Methods of Analysis for Processed Fruits and Vegetables.

The committee has been tasked with considering the revision of the Standards for Quick Frozen Fruits and Vegetables including: Peas, Strawberries, Raspberries, Peaches, Bilberries, Spinach, Blueberries, Leek, Broccoli, Cauliflower, Brussels Sprouts, Green and Wax Beans, French Fried Potatoes, Whole Kernel Corn, Corn-on-the-Cob, Carrots.

Responsible Agency: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee for Natural Mineral Waters

The Codex Committee for Natural Mineral Waters (CCNMW) is responsible for elaborating standards for natural mineral waters. The Codex Alimentarius Commission at its 22nd meeting approved the development of a standard for bottled/packaged water other than natural mineral waters. The 7th Session of the Committee will meet October 30–November 1, 2000. The Committee will consider the following:

To be considered at Step 4:

- Proposed Draft General Standard for Bottled/Packaged Drinking Waters Other Than Natural Mineral Waters.

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Sugars

The Codex Committee on Sugars elaborated standards for all types of sugars and sugar products. The Committee was adjourned *sine die*, but was asked to revise the standards for sugar and honey. The Committee prepared the revised standard for sugar by correspondence. At its 23rd Session, the Codex Alimentarius Commission adopted the Draft Revised Standard for Sugar with the exception of the levels of arsenic and lead that will be reviewed by CCFAC. However, the Committee decided that it could not prepare a Draft Revised Standard for Honey by correspondence. The United Kingdom convened a Session of the Committee in London, England, on February 9–11, 2000 to discuss the Draft Revised Standard for Honey. The following standard will be considered by the 24th Session of the Commission in June 2001. The relevant document is ALINORM 01/25.

To be considered at Step 8:

- Draft Revised Standard for Honey; and
- Proposed Amendments to the Revised Codex Standard for Sugars:

(1) Definition of Raw Cane Sugar and Soft Sugars

(2) Food Additives and Contaminants

(3) Methods of Analysis for inclusion in the Standard

New work:

- Amendment to the Codex Standard for Sugar;
- Development of a Standard for Unifloral Honey; and
- Completion of an addendum to the Standard for Honey covering industrial uses.

Responsible Agency: USDA/ARS, HHS/FDA

U.S. Participation: Yes.

Certain Codex Commodity Committees

Several Codex Alimentarius Commodity Committees have adjourned *sine die*. The following Committees fall into this category:

- *Cereals, Pulses and Legumes**

Responsible Agency: HHS/FDA, USDA/GIPSA.

U.S. Participation: Yes.

- *Meat Hygiene**

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

- *Soups and Broths*

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

- Vegetable Proteins

Responsible Agency: USDA/ARS.

U.S. Participation: Yes.

*There is no planned activity for these Committees in the next year.

Brief reports on activities of the Codex Committees on Soups and Broths, and Vegetable Proteins follows:

Codex Committee on Soups and Broths

The Codex Committee on Soups and Broths elaborated worldwide standards for soups, broths, bouillons and consommes. The committee adjourned *sine die*. The main tasks of the Committee were completed. However, at its June 1997 meeting, the Codex Alimentarius Commission requested that the Committee commence work revising the Standard for Bouillons and Consommes. A Proposed Draft Revised Standard for Bouillons and Consommes was prepared by the Secretariat and has been circulated to member countries for comment at Step 3.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Vegetable Proteins

The Codex Committee on Vegetable Proteins elaborated worldwide standards for vegetable protein products deriving from any member of the plant kingdom. The committee was adjourned *sine die* in 1989. The Codex

Alimentarius Commission at its 23rd Session requested that the committee undertake a revision of the Codex Standard for Wheat Gluten. A Proposed Draft Standard for Wheat Protein Products has been circulated to member countries and other interested parties for comment at Step 3. The Proposed Draft will be revised and should be forwarded to the Executive Committee for adoption at Step 5.

Responsible Agency: USDA/ARS.

U.S.Participation: Yes.

Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology

The Commission, at its 23rd Session, established this task force to develop standards, guidelines, or recommendations, as appropriate, for foods derived from biotechnology or traits introduced into foods by biotechnology, on the basis of scientific evidence, risk analysis and having regard, where appropriate, to other legitimate factors relevant to the health of consumers and the promotion of fair trade practices. The Task Force met in Tokyo, Japan on March 20–24, 2000. The relevant document is ALINORM 01/34.

Matters under discussion by the task force at its next meeting:

- Consideration of proposed draft general principles of an over-arching nature for the application of risk analysis to foods derived from biotechnology;
- Consideration of proposed draft guidelines for risk assessment with reference to food safety and nutrition of foods derived from biotechnology;
- Consideration of transparency and involvement of stakeholders in the proposed draft principles/guidelines;
- Consideration of analytical methods;
- A Discussion Paper on Traceability; and
- An Information Paper on Familiarity.

Responsible Agency: HHS/FDA; USDA/APHIS.

U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on Animal Feeding

The Commission at its 23rd Session established the Task Force to develop guidelines or standards as appropriate on Good Animal Feeding practices. The task force will meet in Copenhagen, Denmark, on June 13–15, 2000. It will discuss the following items:

- Draft Code of Practice for Good Animal Feeding; and
- Other items that are important for food safety, such as problems related to toxic substances, pathogens, microbial resistance, new technologies, storage, control measures, traceability, etc.

Responsible Agency: HHS/FDA/CVM; USDA/APHIS.

U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices

The Commission at its 23rd Session established this Task Force to revise and consolidate the existing Codex standards and guidelines for fruit and vegetable juices and related products, giving preference to general standards. These standards were originally developed by the Joint UNECE/Codex Group of Experts on the Standardization of Fruit Juices, which had been abolished by its parent organizations. The Task Force will meet in Brasilia, Brazil, September 18–22, 2000.

Responsible Agency: HHS/FDA; USDA/AMS.

U.S. Participation: Yes.

FAO/WHO Regional Coordinating Committees

The Codex Alimentarius Commission is made up of an Executive Committee, as well as approximately 30 subsidiary bodies. Included in these subsidiary bodies are coordinating committees for groups of countries located in proximity to each other who share common concerns. There are currently six Regional Coordinating Committees:

- Coordinating Committee for Africa
- Coordinating Committee for Asia
- Coordinating Committee for Europe
- Coordinating Committee for Latin America and the Caribbean
- Coordinating Committee for the Near East
- Coordinating Committee for North America and the South-West Pacific

The United States participates as an active member of the Coordinating Committee for North America and the South-West Pacific, and is informed of the other coordinating committees through meeting documents, final reports, and representation at meetings. Each regional committee:

- Defines the problems and needs of the region concerning food standards and food control;
- Promotes within the committee contacts for the mutual exchange of information on proposed regulatory initiatives and problems arising from food control and stimulates the strengthening of food control infrastructures;
- Recommends to the Commission the development of world-wide standards for products of interest to the region, including products considered by the committee to have an international market potential in the future; and
- Exercises a general coordinating role for the region and such other functions as may be entrusted to it by the Commission.

Codex Coordinating Committee for North America and the South-West Pacific

The Coordinating Committee is responsible for defining problems and needs concerning food standards and food control of all Codex member countries of the region. The Sixth Session of the Committee will be held in December 2000, in Brisbane, Australia. Agenda topics will include the following:

- Review of acceptance and promotion of Codex standards by countries in the region;
- National reports on food control, food safety, and food standards in the region;
- National reports on the application of risk analysis;
- Promotion of Codex activities in the Region; and
- Report on activities of national Codex contact points and national Codex committees in the region

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Attachment 2

U.S. Codex Alimentarius Officials

Codex Committee Chairpersons

Codex Committee on Food Hygiene

Dr. I. Kaye Wachsmuth, Deputy Administrator, Office of Public Health and Science. Food Safety and Inspection Service, U.S. Department of Agriculture, Room 341–E, Jamie L. Whitten Federal Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700, Phone #: (202) 720–2644, Fax # (202) 690–2980, E-mail: kaye.wachsmuth@usda.gov

Codex Committee on Processed Fruits and Vegetables

Mr. David L. Priester, Head, Standardization Section, AMS Fruit & Vegetable Programs, Fresh Products Branch, USDA Stop 0140, Room 2049–S, 1400 Independence Avenue, SW, Washington, DC 20250–0240, Phone #: (202) 720–2185, Fax #: (202) 720–8871, E-mail: david.priester@usda.gov

Codex Committee on Residues of Veterinary Drugs in Foods

Dr. Stephen F. Sundlof, Director, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place (HFV–1), Rockville, MD 20855, Phone #: (301) 594–1740,

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Fax #: (301) 594–1830, E-mail: ssundlof@cvm.fda.gov

Codex Committee on Cereals, Pulses and Legumes (adjourned sine die)

Mr. Steven N. Tanner, Director, Technical Services Division, Grain Inspection, Packers & Stockyards Administration, U.S. Department of Agriculture, 10383 N. Executive Hills Blvd., Kansas City, MO 64153–1394, Phone #: (816) 891–0401, Fax #: (816) 891–0478, E-mail: stanner@tsd.fgiskc.usda.gov

Listing of U.S. Delegates and Alternate Delegates

Worldwide General Subject Codex Committees

Codex Committee on Residues of Veterinary Drugs in Foods

(Host Government—United States)

U.S. Delegate
Dr. Robert C. Livingston, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, Phone #: (301) 594–5903, Fax #: (301) 594–1830, E-mail: rlivings@bangate.fda.gov
Alternate Delegate VACANT

Codex Committee on Food Additives and Contaminants

(Host Government—The Netherlands)

U.S. Delegate
Dr. Alan Rulis, Director, Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW, Washington, DC 20204, Phone #: (202) 418–3100, Fax #: (202) 418–3131, E-mail: arulis@bangate.fda.gov
Alternate Delegate
Dr. Terry C. Troxell, Director, Office of Plant and Dairy Foods and Beverages (HFS–300), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW, (HFS–456), Washington, DC 20204, Phone #: (202) 205–4064, Fax #: (202) 205–4422, E-mail: ttroxell@bangate.fda.gov

Codex Committee on Pesticide Residues

(Host Government—The Netherlands)

U.S. Delegate
Mr. Fred Ives, Health Effects Division (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, Phone #: (703) 305–6378, Fax #: (703) 305–5147, E-mail: ives.fred@epamail.epa.gov
Alternate Delegate
Dr. Richard Parry, Jr., Assistant Administrator, Cooperative Interactions, Agricultural Research Service, U.S. Department of Agriculture, Room 358–A, Jamie L. Whitten Federal Building, Washington, DC 20250–3700, Phone #: (202) 720–3973, Fax #: (202) 720–5427, E-mail: rparry@ars.usda.gov

Codex Committee on Methods of Analysis and Sampling

(Host Government—Hungary)

U.S. Delegate
Dr. William Horwitz, Scientific Advisor (HFS–500), Center for Food Safety and Applied Nutrition, Food and Drug Administration, Room 3832, 200 C Street, SW, Washington, DC 20204, Phone #: (202) 205–4346, Fax #: (202) 401–7740, E-mail: whorwitz@bangate.fda.gov
Alternate Delegate
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Codex Committee on Food Import and Export Certification and Inspection Systems

(Host Government—Australia)

Delegate
Mr. L. Robert Lake, Director, Office of Regulations and Policy (HFS–4), U.S. Food and Drug Administration, 200 C Street, SW, Washington, DC 20204, Phone #: (202) 205–4160, Fax #: (202) 401–7739, E-mail: rlake@bangate.fda.gov
Alternate Delegate
Mr. Mark Manis, Director, International Policy Development Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 4434, South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700, Phone #: (202) 720–6400, Fax #: (202) 720–7990, E-mail: mark.manis@usda.gov

Codex Committee on General Principles

(Host Government—France)

Delegate

Note: A member of the Steering Committee heads the delegation to meetings of the General Principles Committee.

Codex Committee on Food Labelling

(Host Government—Canada)

Delegate
Dr. Christine Lewis, Director, Office of Nutritional Products, Labeling, and Dietary Substances Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW, Washington, DC 20204, Phone #: (202) 205–4434, Fax #: (202) 205–4594, E-mail: Christine.Lewis@cfsan.fda.gov
Alternate Delegate
Dr. Robert Post, Director, Labeling and Additive Policy Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Cotton Annex, Room 602, Washington, DC 20250–3700, Phone #: (202) 205–0279, Fax #: (202) 205–3625, E-mail: robert.post@usda.gov

Codex Committee on Food Hygiene

(Host Government—United States)

Delegate
Dr. Robert Buchanan, Senior Science Advisor, Food and Drug Administration, 200 C Street, SW, Washington, DC 20204, Phone #: (202) 205–5053, Fax #: (202) 205–4970, E-mail: rbuchana@bangate.fda.gov
Alternate Delegate
Dr. H. Michael Wehr (acting), Office of Constituent Operations, U.S. Food and Drug Administration, Room 5826 (HFS–550), 200 C St. SW, Washington, DC 20204, Phone #: (202) 260–2786, Fax #: (202) 205–0165, E-mail: mwehr@bangate.fda.gov

Codex Committee on Nutrition and Foods for Special Dietary Uses

(Host Government—Germany)

Delegate
Dr. Elizabeth Yetley, FDA Lead Scientist for Nutrition (HFS–450), Food and Drug Administration, 200 C Street, SW, Washington, DC 20204, Phone #: (202) 205–4168, Fax #: (202) 205–5295, E-mail: eyetley@bangate.fda.gov
Alternate Delegate
VACANT

Codex Committee on Fresh Fruits and Vegetables

(Host Government—Mexico)

Delegate
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Codex Committee on Fish and Fishery Products

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Codex Committee on Milk and Milk Products

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Codex Committee on Fats and Oils

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Codex Committee on Cocoa Products and Chocolate

(Host Government—Switzerland)

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Codex Committee on Natural Mineral Waters

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Codex Committee on Sugars

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Codex Committee on Cereals, Pulses and Legumes [1]

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Codex Committee on Soups and Broths [1]

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Codex Committee on Vegetable Proteins [1]

(Host Government—Canada)

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Codex Committee on Meat Hygiene [1]

(Host Government—New Zealand)

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Ad Hoc Intergovernmental Task Forces

Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices

(Host government—Brazil)

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Ad Hoc Intergovernmental Task Force on Foods Derived From Biotechnology

(Host government—Japan)

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Ad Hoc Intergovernmental Task Group on Animal Feeding

(Host government—Denmark)

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Subsidiary Bodies of the Codex Alimentarius

There are six regional coordinating committees:

Coordinating Committee for Africa
Coordinating Committee for Asia
Coordinating Committee for Europe
Coordinating Committee for Latin America and the Caribbean
Coordinating Committee for the Near East
Coordinating Committee for North America and the South-West Pacific

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Attachment 3

TIMETABLE OF CODEX SESSIONS
[June 1999 through June 2001]

1999:			
CX 702–46	Executive Committee of the Codex Alimentarius Commission (46th Session).	24–25 June	Rome.
CX 701–23	Codex Alimentarius Commission (23rd Session)	28 June–3 July	Rome.

[1] Adjourned sine die. The main tasks of these Committees are completed. However, the committees may be called to meet again if required.

TIMETABLE OF CODEX SESSIONS—Continued
[June 1999 through June 2001]

CX 727–12	Codex Regional Coordinating Committee for Asia (12th Session)	23–26 November	Chaing Mai.
CX 712–32	Codex Committee of Food Hygiene (32nd Session)	29 November–4 December	Washington, DC.
2000:			
CX 710–07	Codex Committee on Sugars (7th Session)	9–11 February	London.
CX 733–08	Codex Committee on Food Import and Export Certification and Inspection (8th Session).	21–25 February	Adelaide.
CX 703–04	Codex Committee on Milk and Milk Products (4th Session)	28 February–3 March	Wellington.
CX 802–01	*ad hoc* Intergovernmental Task Force on Biotechnology	14–17 March	Tokyo.
CX 711–32	Codex Committee on Food Additives and Contaminants (32nd Session).	20–24 March	Beijing.
CX 730–12	Codex Committee on Residues of Veterinary Drugs in Foods (12th Session).	28–31 March	Washington, DC.
CX 716–15	Codex Committee on General Principles (15th Session)	10–14 April	Paris.
CX 718–32	Codex Committee on Pesticide Residues (32nd Session)	1–8 May	The Hague.
CX 714–28	Codex Committee on Food Labelling (28th Session)	8–12 May	Ottawa.
CX 722–24	Codex Committee on Fish and Fishery Products (24th Session)	5–9 June	Alesund.
CX 803–01	*ad hoc* Intergovernmental Codex Task Force on Animal Feeding	13–15 June	Copenhagen.
CX 720–22	Codex Committee on Nutrition and Foods for Special Dietary Uses (22nd Session).	19–23 June	Berlin.
CX 702–47	Executive Committee of the Codex Alimentarius Commission (47th Session).	28–30 June	Geneva.
CX 713–20	Codex Committee on Processed Fruits and Vegetables (20th Session).	11–15 September	Washington, DC.
CX 801–01	*ad hoc* Intergovernmental Codex Task Force on Fruit Juices (1st Session).	18–22 September	Brasilia.
CX 706–22	Codex Regional Coordinating Committee for Europe	3–6 October	Madrid.
CX 731–09	Codex Committee on Fresh Fruits and Vegetables (9th Session)	9–13 October	Mexico City.
CX 712–33	Codex Committee on Food Hygiene (33rd Session)	23–27 October	TBA.
CX 719–07	Codex Committee on Natural Mineral Waters (7th Session)	30 October–1 November	TBA.
CX 708–18	Codex Committee on Cocoa Products and Chocolate (18th Session).	2–4 November	TBA.
CX 707–14	Codex Regional Coordinating Committee for Africa (14th Session).	27–30 November	Entebbe.
CX 732–06	Codex Regional Coordinating Committee for North America and the South-West Pacific (6th Session).	5–8 December	Perth.
2001:			
CX 734–01	Codex Regional Coordinating Committee for the Near East	29 January–1 February	Cairo.
CX 725–12	Codex Regional Committee for Latin America and the Caribbean (12th Session).	13–16 February	Santo Domingo.
CX 711–33	Codex Committee on Food Additives and Contaminants (33rd Session).	12–16 March	The Hague.
CX 715–23	Codex Committee on Methods of Analysis and Sampling (23rd Session).	26 February–2 March	Budapest.
CX 803–02	ad hoc Intergovernmental Task Force on Animal Feeding	19–21 March	Copenhagen.
CX 709–17	Codex Committee on Fats and Oils (17th Session)	26–30 March	London.
CX 718–33	Codex Committee on Pesticide Residues (33rd Session)	2–6 April	The Hague.
CX 716–16	Codex Committee on General Principles (16th Session)	23–27 April	Paris.
CX 714–29	Codex Committee on Food Labelling (29th Session)	30 April–4 May	Ottawa.
CX 702–48	Executive Committee of the Codex Alimentarius Commission (48th Session).	28–29 June	Geneva.
CX 701–24	Codex Alimentarius Committee (24th Session)	2–7 July	Geneva.

Attachment 4

Definitions for the Purpose of Codex Alimentarius

Words and phrases have specific meanings when used by the Codex Alimentarius. For the purposes of Codex, the following definitions apply:

1. *Food* means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum, and any substance which has been used in the manufacture, preparation or treatment of "food" but does not include cosmetics or tobacco or substances used only as drugs.

2. *Food hygiene* comprises conditions and measures necessary for the production, processing, storage and distribution of food designed to ensure a safe, sound, wholesome product fit for human consumption.

3. *Food additive* means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport, or holding of such food results, or may be reasonably expected to result, (directly or indirectly) in it or its by-products becoming a component of or otherwise affecting the characteristics of such foods. The food additive term does not include "contaminants" or substances added to food for maintaining or improving nutritional qualities.

4. *Contaminant* means any substance not intentionally added to food, which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry, and veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of

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environmental contamination. The term does not include insect fragments, rodent hairs and other extraneous matters.

5. *Pesticide* means any substance intended for preventing, destroying, attracting, repelling, or controlling any pest including unwanted species of plants or animals during the production, storage, transport, distribution and processing of food, agricultural commodities, or animal feeds or which may be administered to animals for the control of ectoparasites. The term includes substances intended for use as a plant-growth regulator, defoliant, desiccant, fruit thinning agent, or sprouting inhibitor and substances applied to crops either before of after harvest to protect the commodity from deterioration during storage and transport. The term pesticides excludes fertilizers, plant and animal nutrients, food additives, and animal drugs.

6. *Pesticide residue* means any specified substance in food, agricultural commodities, or animal feed resulting from the use of a pesticide. The term includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products, and impurities considered to be of toxological significance.

7. *Good Agricultural Practice in the Use of Pesticides (GAP)* includes the nationally authorized safe uses of pesticides under actual conditions necessary for effective and reliable pest control. It encompasses a range of levels of pesticide applications up to the highest authorized use, applied in a manner that leaves a residue which is the smallest amount practicable.

Authorized safe uses are determined at the national level and include nationally registered or recommended uses, which take into account public and occupational health and environmental safety considerations.

Actual conditions include any stage in the production, storage, transport, distribution and processing of food commodities and animal feed.

8. *Codex Maximum Limit for Pesticide Residues (MRLP)* is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. MRLPs are based on their toxological affects and on GAP data and foods derived from commodities that comply with the respective MRLPs are intended to be toxologically acceptable.

Codex MRLPs, which are primarily intended to apply in international trade, are derived from reviews conducted by the JMPR following:

(a) Toxological assessment of the pesticide and its residue, and

(b) Review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices. Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices.

Consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI, should indicate that foods complying with Codex MRLPs are safe for human consumption.

9. *Veterinary Drug* means any substance applied or administered to any food-producing animal, such as meat or milk-producing animals, poultry, fish or bees, whether used for therapeutic, prophylactic or diagnostic purposes or for modification of physiological functions or behavior.

10. *Residues of Veterinary Drugs* include the parent compounds and/or their metabolites in any edible portion of the animal product, and include residues of associated impurities of the veterinary drug concerned.

11. *Codex Maximum Limit for Residues of Veterinary Drugs (MRLVD)* is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or ug/kg on a fresh weight basis) that is recommended by the Codex Alimentarius Commission to be legally permitted or recognized as acceptable in or on food.

An MRLVD is based on the type and amount of residue considered to be without any toxological hazard for human health as expressed by the Acceptable Daily Intake (ADI), or on the basis of a temporary ADI that utilizes an additional safety factor. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical and analytical methods are available.

12. *Good Practice in the Use of Veterinary Drugs* (GPVD) is the official recommended or authorized usage including withdrawal periods approved by national authorities, of veterinary drugs under practicable conditions.

13. *Processing Aid* means any substance or material, not including apparatus or utensils, not consumed as a food ingredient by itself, intentionally used in the processing of raw materials, foods or its ingredients, to fulfill a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product.

Definitions of Risk Analysis Terms Related to Food Safety

Hazard: A biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect.

Risk: A function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard(s) in food.

Risk analysis: A process consisting of three components: risk assessment, risk management and risk communication.

Risk assessment: A scientifically based process consisting of the following steps: (i) Hazard identification, (ii) hazard characterization, (iii) exposure assessment, and (iv) risk characterization.

Hazard identification: The identification of biological, chemical, and physical agents capable of causing adverse health effects and which may be present in a particular food or group of foods.

Hazard characterization: The qualitative and/or quantitative evaluation of the nature of the adverse health effects associated with biological, chemical and physical agents that may be present in food. For chemical agents, a dose-response assessment should be performed. For biological or physical agents, a dose-response assessment should be performed if the data are obtainable.

Dose-response assessment: The determination of the relationship between the magnitude of exposure (dose) to a chemical, biological or physical agent and the severity and/or frequency of associated adverse health effects (response).

Exposure assessment: The qualitative and/or quantitative evaluation of the likely intake of biological, chemical, and physical agents via food as well as exposures from other sources if relevant.

Risk characterization: The qualitative and/or quantitative estimation, including attendant uncertainties, of the probability of occurrence and severity of known or potential adverse health effects in a given population based on hazard identification, hazard characterization and exposure assessment.

Risk management: The process, distinct from risk assessment, of weighing policy alternatives, in consultation with all interested parties, considering risk assessment and other factors relevant for the health protection of consumers and for the promotion of fair trade practices, and, if needed, selecting appropriate prevention and control options.

Risk communication: The interactive exchange of information and opinions throughout the risk analysis process concerning risk, related risk factors and risk perceptions, among risk assessors, risk managers, consumers, industry, the academic community and other interested parties, including the explanation of risk assessment findings and the basis of risk management decisions.

Attachment 5

Part 1—Uniform Procedure for the Elaboration of Codex Standards and Related Texts

Steps 1, 2 and 3

(1) The Commission decides, taking into account the "Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies," to elaborate a Worldwide Codex Standard and also decides which subsidiary body or other body should undertake the work. A decision to elaborate a Worldwide Codex Standard may also be taken by subsidiary bodies of the Commission in accordance with the above-mentioned criteria, subject to subsequent approval by the Commission or its Executive Committee at the earliest possible opportunity. In the case of Codex Regional Standards, the Commission shall base its decision on the proposal of the majority of members belonging to a given region or group of countries submitted at a session of the Codex Alimentarius Commission.

(2) The Secretariat arranges for the preparation of a proposed draft standard. In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues (JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to members of the Commission and interested international organizations for comment on all aspects including possible implications of the proposed draft standard for their economic interests.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5 [1]

The proposed draft standard is submitted through the Secretariat to the Commission or to the Executive Committee with a view to its adoption as a draft standard. When making any decision at this step, the Commission or the Executive Committee will give due consideration to any comments that may be submitted by any of its members regarding the implications which the proposed draft standard or any provisions of the standard may have for their economic interests. In the case of Regional Standards, all members of the Commission may present their comments, take part in the debate and propose amendments, but only the majority of the Members of the region or group of countries concerned attending the session can decide to amend or adopt the draft. When making any decisions at this step, the members of the region or group of countries concerned will give due consideration to any comments that may be submitted by any of the members of the Commission regarding the implications which the proposed draft standard or any provisions of the proposed draft standard may have for their economic interests.

Step 6

The draft standard is sent by the Secretariat to all members and interested international organizations for comment on all aspects, including possible implications of the draft standard for their economic interests.

Step 7

The comments received are sent by the Secretariat to the subsidiary body or other body concerned, which has the power to consider such comments and amend the draft standard.

Step 8

The draft standard is submitted through the Secretariat to the Commission together with any written proposals received from members and interested international organizations for amendments at Step 8 with a view to its adoption as a Codex Standard. In the case of Regional standards, all members and interested international organizations may present their comments, take part in the debate and propose amendments but only the majority of members of the region or group of countries concerned attending the session can decide to amend and adopt the draft.

Part 2 Uniform Accelerated Procedure for the Elaboration of Codex Standards and Related Texts

Steps 1, 2 and 3

(1) The Commission or the Executive Committee between Commission sessions, on the basis of a two-thirds majority of votes cast, taking into account the "Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies", shall identify those standards which shall be the subject of an accelerated elaboration process. The identification of such standards may also be made by subsidiary bodies of the Commission, on the basis of a two-thirds majority of votes cast, subject to confirmation at the earliest opportunity by the Commission or its Executive Committee by a two-thirds majority of votes cast.

(2) The Secretariat arranges for the preparation of a proposed draft standard. In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues (JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to Members of the Commission and interested international organizations

[1] Without prejudice to any decision that may be taken by the Commission at Step 5, the proposed draft standard may be sent by the Secretariat for government comment prior to its consideration at Step 5, when, in the opinion of the subsidiary body or other body concerned, the time between the relevant session of the Commission and the subsequent session of the subsidiary or other body concerned requires such actions in order to advance the work.

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for comment on all aspects including possible implications of the proposed draft standard for their economic interests. When standards are subject to an accelerated procedure, this fact shall be notified to the Members of the Commission and the interested international organizations.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5

In the case of standards identified as being subject to an accelerated elaboration procedure, the draft standard is submitted through the Secretariat to the Commission together with any written proposals received from Members and interested international organizations for amendments with a view to its adoption as a Codex standard. In taking any decision at this step, the Commission will give due consideration to any comments that may be submitted by any of its Members regarding the implications which the proposed draft standard or any provisions thereof may have for their economic interests.

Attachment 6

Nature of Codex Standards

Codex standards contain requirements for food aimed at ensuring for the consumer a sound, wholesome food product free from adulteration, and correctly labelled. A Codex standard for any food or foods should be drawn up in accordance with the Format for Codex Commodity Standards and contain, as appropriate, the criteria listed therein.

Format for Codex Commodity Standards Including Standards Elaborated Under the Code of Principles Concerning Milk and Milk Products

Introduction

The format is also intended for use as a guide by the subsidiary bodies of the Codex Alimentarius Commission in presenting their standards, with the object of achieving, as far as possible, a uniform presentation of commodity standards. The format also indicates the statements which should be included in standards as appropriate under the relevant headings of the standard. The sections of the format required to be completed for a standard are only those provisions that are appropriate to an international standard for the food in question.

Name of the Standard
Scope
Description
Essential Composition and Quality Factors
Food Additives
Contaminants
Hygiene
Weights and Measures
Labelling
Methods of Analysis and Sampling

Format for Codex Standards

Name of the Standard

The name of the standard should be clear and as concise as possible. It should usually be the common name by which the food covered by the standard is known or, if more than one food is dealt with in the standard, by a generic name covering them all. If a fully informative title is inordinately long, a subtitle could be added.

Scope

This section should contain a clear, concise statement as to the food or foods to which the standard is applicable unless the name of the standard clearly and concisely identifies the food or foods. A generic standard covering more than one specific product should clearly identify the specific products to which the standard applies.

Description

This section should contain a definition of the product or products with an indication, where appropriate, of the raw materials from which the product or products are derived and any necessary references to processes of manufacture. The description may also include references to types and styles of product and to type of pack. The description may also include additional definitions when these additional definition are required to clarify the meaning of the standard.

Essential Composition and Quality Factors

This section should contain all quantitative and other requirements as to composition including, where necessary, identity characteristics, provisions on packing media and requirements as to compulsory and optional ingredients. It should also include quality factors that are essential for the designation, definition, or composition of the product concerned. Such factors could include the quality of the raw material, with the object of protecting the health of the consumer, provisions on taste, odor, color, and texture which may be apprehended by the senses, and basic quality criteria for the finished products, with the object of preventing fraud. This section may refer to tolerances for defects, such as blemishes or imperfect material, but this information should be contained in appendix to the standard or in another advisory text.

Food Additives

This section should contain the names of the additives permitted and, where appropriate, the maximum amount permitted in the food. It should be prepared in accordance with guidance given on page 93 of the Codex Procedural Manual and may take the following form:

"The following provisions in respect of food additives and their specifications as contained in section * * * of the Codex Alimentarius are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants."

A tabulation should then follow, viz.: "*Name of additive, maximum level* (in percentage or mg/kg)."

Contaminants

(a) *Pesticide Residues:* This section should include, by reference, any levels for pesticide residues that have been established by the Codex Committee on Pesticide Residues for the product concerned.

(b) *Other Contaminants:* In addition, this section should contain the names of other contaminants and where appropriate the maximum level permitted in the food, and the text to appear in the standard may take the following form:

"The following provisions in respect of contaminants, other than pesticide residues, are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants."

A tabulation should then follow, viz.: "*Name of contaminant, maximum level* (in percentage or mg/kg)."

Hygiene

Any specific mandatory hygiene provisions considered necessary should be included in this section. They should be prepared in accordance with the guidance given on page 95 of the Codex Procedural Manual. Reference should also be made to applicable codes of hygienic practice. Any parts of such codes, including in particular any end-product specifications, should be set out in the standard, if it is considered necessary that they should be made mandatory. The following statement should also appear:

"The following provisions in respect of the food hygiene of the product are subject to endorsement [have been endorsed] by the Codex Committee on Food Hygiene."

Weights and Measures

This section should include all provisions, other than labelling provisions, relating to weights and measures, *e.g.* where appropriate, fill of container, weight, measure or count of units determined by an appropriate method of sampling and analysis. Weights and measures should be expressed in S.I. units. In the case of standards which include provisions for the sale of products in standardized amounts, *e.g.* multiples of 100 grams, S.I. units should be used, but this would not preclude additional statements in the standards of these standardized amounts in approximately similar amounts in other systems of weights and measures.

Labelling

This section should include all the labelling provisions contained in the standard and should be prepared in accordance with the guidance given on page 92 of the Codex Procedural Manual. Provisions should be included by reference to the General Standard for the Labelling of Prepackaged Foods. The section may also contain provisions which are exemptions from, additions to, or which are necessary for the interpretation of the General Standard in respect of the product concerned provided that these can be justified fully. The following statement should also appear:

"The following provisions in respect of the labelling of this product are subject to endorsement [have been endorsed] by the Codex Committee on Food Labelling."

Methods of Anaylsis and Sampling

This section should include, either specifically or by reference, all methods of analysis and sampling considered necessary and should be prepared in accordance with the guidance given on page 95 of the Codex Procedural Manual. If two or more methods have been proved to be equivalent by the Codex Committee on Methods of Analysis and Sampling, these could be regarded as alternative and included in this section either specifically or by reference. The following statement should also appear:

"The methods of analysis and sampling described hereunder are to be endorsed [have been endorsed] by the Codex Committee on Methods of Analysis and Sampling."

[FR Doc. 00–13292 Filed 5–30–00; 8:45 am]
BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–013N]

In-Distribution Inspection Activities and Initiatives; Public Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing a public meeting on June 9, 2000, to discuss its strategy for addressing the safety of meat and poultry products during distribution and to provide an overview and update on the in-distribution (ID) Inspection Project. The broader implications of ID activities in the Agency's projected inspection system will also be discussed.

DATES: The meeting will be held on June 9, 2000, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Washington Plaza Hotel in Washington, DC, 10 Thomas Circle NW. (at Massachusetts Avenue and 14th Street), Washington, DC 20005, (202) 842–1300.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, contact Ms. Ida Gambrell of the FSIS Planning Staff by telephone (202) 501–7260, FAX (202) 501–7615, or e-mail: ida.gambrell@usda.gov. Attendees who require a sign language interpreter or other special accommodations should contact Ms. Gambrell at the above numbers by June 2, 2000. For technical information contact Ms. Mary Cutshall by telephone (202) 720–3219, FAX (202) 690–0824, or e-mail: mary.cutshall@usda.gov.

SUPPLEMENTARY INFORMATION: As part of the implementation of the Agency's Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems final rule, published July 25, 1996 (61 FR 38806), the Agency is committed to developing strategies that address food safety hazards throughout the farm-to-table continuum.

Under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA), FSIS has the authority and responsibility to regulate not only the slaughter and processing but also the transportation, storage, and other handling of meat and poultry products.

FSIS compliance officers are charged with performing the tasks associated with ensuring the safety of meat and poultry products along the farm-to-table continuum (other than in-plant production). FSIS is now looking at alternative strategies for ensuring the safety of these products after they leave an inspected plant. One way of doing this is through the ID Inspection Project.

The Agency has assigned 11 inspectors to the ID Inspection Project. The Agency is also working with the State of Minnesota to develop an alternative strategy for addressing food safety hazards and other problems presented by federally inspected product in distribution. Under this developing approach, the State will advise FSIS of adulterated or misbranded federally inspected product that State inspectors find at retail/distribution/warehouse centers in the course of their regular inspections.

The purpose of the public meeting is to provide the public with information on the progress of these activities and on the Agency's tentative plans regarding future in-distribution activities.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Transcripts of this meeting will be made available in the FSIS Docket Room.

Done in Washington, DC, on May 24, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–13527 Filed 5–30–00; 8:45 am]
BILLING CODE 3410–DM–P

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DEPARTMENT OF AGRICULTURE

Forest Service

Bonners Ferry Ranger District Salvage Sales; Idaho Panhandle National Forests; Boundary County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of salvage harvesting up to 20,000 acres of dead and damaged trees in scattered areas located on the Bonners Ferry Ranger District, Idaho Panhandle National Forests. Harvest of these trees is proposed to reduce hazardous fuels, to restore productive stand conditions and/or ecological functioning in areas affected by windstorms, insects, disease and other damaging events. Salvage harvest of these threes will help provide products for local post and pole mills, small sawmills, and other forest product manufacturers.

DATES: Written comments and suggestions should be received on or before July 3, 2000. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in August 2000. A Final Environmental Impact Statement will be published to sooner than September 2000.

ADDRESSES: Submit written comments and suggestions on the proposal, or requests to be placed on the project mailing list, to District Ranger, Bonners Ferry Ranger District, Route 4, Box 4860, Bonners Ferry, Idaho 83805–9764.

FOR FURTHER INFORMATION CONTACT: Barry Wynsma, project leader, Bonners Ferry Ranger District, Idaho Panhandle National Forests, Route 4, Box 4860, Bonners Ferry, Idaho 83805–9764, e-mail address: *bwynsma@fs.fed.us*

SUPPLEMENTARY INFORMATION: Windstorms, heavy snowfall, insects and disease and other events annually result in mortality and damage to numerous timber stands across the Bonners Ferry Ranger District. If untreated, affected stands can display a significant reduction productivity, can increase fire risks, and can create favorable conditions for increases in insect populations that can spread to adjacent healthy stands. Salvage harvesting within affected stands can restore the stands to more desirable conditions.

Such events typically occur in small areas and are scattered across the District. Due to the scattered nature of these stands and the relatively small amount of salvageable material, salvage harvests have historically been accomplished through the use of small timber sales, generally purchased by local small timber operators. Small salvage sale contracts typically include between 50 to 100 thousand board feet of dead trees (about 10 to 20 log-truck loads) per contract. Trees salvaged from such areas are utilized for firewood, paper pulp, house logs, sawlogs and a wide variety of other value-added products such as rustic furniture and musical instruments. These small industries are considered an import component of the local economic structure. The District has historically offered and sold an average of two to three million board feet of forest products per year of these types of salvage sales.

Salvage harvest can have adverse effects on other resource values and is not appropriate in many areas. To reduce the potential for adverse effects and to clarify the analysis necessary to determine the effects of the proposed action, the District conducted a screening process to avoid areas of the forest that contain resource values highly sensitive to proposed salvage harvest activities.

The acres within which salvage activities would be allowed through this proposed action are outside of riparian buffer zones, sensitive plant protection areas, designated old-growth stands, roadless areas, wetland and cultural resource protection zones. Also, the proposed salvage areas and activities are compatible with management strategies and Recovery Plans for Threatened or Endangered Species or their habitat and also with visual resources.

Preliminary issues include potential effects to Threatened, Endangered, and Sensitive wildlife, fish and plant species and water quality.

The Forest Service will develop a range of alternatives, including a No Action alternative to respond to issues raised during this scoping period.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in August 2000. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register.** The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** A final environmental impact statement will be published after all comments are reviewed and responded to. A Record of Decision will be published at the time the Final EIS is released. The final decision will be subject to administrative review under CFR 215.17.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns regarding the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the reqester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

I am the responsible official for this environmental analysis. My address is Supervisor's Office, Idaho Panhandle National Forests, 315 Schreiber Way, Coeur d'Alene, ID 83814.

Dated: May 24, 2000.

David J. Wright,

Forest Supervisor.

[FR Doc. 00–13501 Filed 5–30–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on June 14 and 15, 2000, at the Town Hall in Fort Bragg, California. The meeting will be held from 10 a.m. to 5 p.m. on Wednesday, June 14, and from 8:30 a.m. to noon, on Thursday, June 15. The Town Hall is located at 363 No. Main St. in Fort Bragg. Agenda items to be covered include: (1) Issues criteria and process; (2) status of watershed analyses on federal lands in the Province, their effectiveness and prioritization; (3) Protection of federal habitat for remnant native fish stocks; (4) regional Ecosystem Office (REO) update to include Survey and Manage Environmental Impact Statement, PAC rechartering and Interagency Species Management List; (5) Regional Interagency Executive Committee (REIC) and Interagency Advisory Committee (IAC) communication with the PAC; (6) Megram Fire update; (7) presentation on the Forest Service Roadless Area Conservation proposal; (8) Northwest Forest Plan regional implementation monitoring schedule for 2000; (9) National Marine Fisheries Service presentation on impacts of Judge Rothstein's ruling; and (10) open public comment. All California Coast Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to James Fenwood, Forest Supervisor, or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934–3316.

Dated: May 23, 2000.

James D. Fenwood,

Forest Supervisor.

[FR Doc. 00–13555 Filed 5–25–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet from 9 a.m. to 12 p.m. on June 9, 2000 at Red Oaks Square, 1230 NE. 3rd, Suite A–262, Bend, Oregon. Agenda items include PAC comments for the Interior Columbia Basin Ecosystem Management Project, Info Sharing Around the Province, and a Public Forum from 11:30 a.m. till 12 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 N.E. 3rd., Bend, OR, 97701, Phone (541) 383–4769.

Dated: May 23, 2000.

Rebecca Heath,

Acting Deschutes National Forest Supervisor.

[FR Doc. 00–13500 Filed 5–30–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–807]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Arland DiGirolamo or Abdelali Elouaradia at (202) 482–1278 or (202) 482–0498, respectively; Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to 19 CFR Part 351 (1998).

Final Determination

We determine that cold-rolled flat-rolled carbon-quality steel products (cold-rolled steel products) from Indonesia are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

The preliminary determination in this investigation was issued on December 28, 1999. *See Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Indonesia,* 65 FR 1103 (January 7, 2000) (*Preliminary Determination*). The investigation covers one manufacturer/exporter, PT Krakatau Steel (Krakatau). The period of the investigation (POI) is April 1, 1998 through March 31, 1999.

From January 10 through January 14, 2000, the Department conducted a sales verification of Krakatau's sales data. The Department found that Krakatau had failed to report a large percentage of its U.S. sales of subject merchandise. Based on these findings, the Department canceled its cost verification of Krakatau, and issued a memorandum recommending the issuance of a final determination based on total facts available. *See* Memorandum from The Team to Holly Kuga, dated February 28, 2000 (*AFA Memo*). On March 7, 2000,

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the petitioners [1] submitted a case brief arguing that the Department, in selecting a facts available rate, should apply the highest calculated dumping margin for any non-aberrational U.S. sale. Krakatau did not file a case brief. No rebuttal briefs were filed, and the petitioners withdrew their request for a hearing.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

The above is simply a summary of the products covered by the investigation. For the dispositive description of the scope of this investigation, see the "Scope of Investigation" section of the Decision Memorandum, which is on file in Room B–099 of the Department's Main Building and available on the World Wide Web at www.ita.doc.gov/import_admin/ records/frn.

Analysis of Comments Received

All issues raised in the brief by the petitioners in this case are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Holly Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 22, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in B–099.

In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at www.ita.doc.gov/import_admin/ records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Given the magnitude of the unreported U.S. sales of subject merchandise, we have determined to base the final determination in this case on adverse facts available. *See* AFA Memo. As adverse facts available, we have relied upon the highest POI-wide, product-specific margin calculated in the preliminary determination (83.79 percent). *See* Decision Memorandum, accessible in B–099 and on the World Wide Web at *www.ita.doc.gov/import_admin/records/frn/*.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing Customs to continue to suspend liquidation of all entries of cold-rolled flat-rolled carbon-quality steel products from Indonesia that are entered, or withdrawn from warehouse, for consumption on or after January 7, 2000, the date of publication of the *Preliminary Determination*. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or de minimis or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the "all others" rate, the simple average of the margins in the petition. *See Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520 (February 4, 2000); *see also Notice of Final Determination of Sales at Less Than Fair Value: Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada ("Stainless Steel Plate from Canada")*, 64 FR 15457 (March 31, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy ("Stainless Steel Plate from Italy")*, 64 FR 15458, 15459 (March 21, 1999).

In this case, we have calculated the dumping margins for the sole Indonesian respondent based entirely on adverse facts available. Consistent with our practice, we have assigned to all other manufacturers/exporters the simple average of the margins in the petition, which is 43.90 percent.[2]

We determine that the following weighted-average dumping margins exist for April 1, 1998, through March 31, 1999:

Manufacturer/exporter	Weighted-average margin (percent)
PT Krakatau Steel	83.79
All Others	43.90

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

[1] Petitioners in this case are Bethlehem Steel Corporation, Gulf States Steel, Inc., Ispat Inland Inc., LTV Steel Company Inc., National Steel Company, Steel Dynamics, Inc., U.S. Steel Group, a unit of USX Corporation, Weirton Steel Corporation, United Steelworkers of America, and Independent Steelworkers Union (collectively, petitioners).

[2] We note that this was the only margin provided in the petition.

Dated: May 22, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memo

Comments and Responses

Facts Available.

[FR Doc. 00–13578 Filed 5–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–859–801]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Slovakia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Abdelali Elouaradia at (202) 482–1784 or (202) 482–0498, respectively; Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to 19 CFR Part 351 (April 1997).

Final Determination

We determine that cold-rolled flat-rolled carbon-quality steel products (cold-rolled steel) from Slovakia are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

The preliminary determination in this investigation was issued on December 28, 1999. *See Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Slovakia*, 65 FR 1110 (January 7, 2000). The investigation covers one manufacturer/exporter, VSZ, a.s. (VSZ). The period of the investigation (POI) is April 1, 1998, through March 31, 1999.

On January 7, 2000, VSZ requested that the Department rescind the initiation of the aforementioned investigation, arguing that the Department's retroactive revocation of Slovakia's NME status removed the legal basis for initiation, as the petitioners' [1] dumping allegations had been based on Slovakia's NME status. Petitioners objected to VSZ's request on January 18, 2000. On February 1, 2000, VSZ submitted a notification of withdrawal from the Department's verification.

On February 23, 2000, both the petitioners and VSZ filed case briefs. On March 1, 2000, petitioners submitted a rebuttal brief. No rebuttal briefs were filed by VSZ, and both parties withdrew their request for a hearing.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

The above is simply a summary of the products covered by the investigation. For the dispositive description of the scope of this investigation, see the "Scope of Investigation" section of the Decision Memorandum, which is on file in Room B–099 of the Department's Main Building and available on the World Wide Web at www.ita.doc.gov/import_admin/records/frn.

Analysis of Comments Received

All issues raised by the petitioners in their case briefs are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Holly Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 22, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099.

In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at www.ita.doc.gov/import_admin/ records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Because VSZ did not allow the Department to verify its submitted data, we have determined that the use of facts available is warranted under sections 776(a)(2)(C) and (D) of the Act. Moreover, we have determined that an adverse inference is warranted under section 776(b) of the Act, given that VSZ's refusal to allow verification constitutes failure to cooperate in this investigation by not acting to the best of its ability. As adverse facts available, we first assumed that the large number of U.S. sales for which the respondent had not received payment are in fact bad debt. We treated this bad debt expense as a direct selling expense, and made a circumstance of sale adjustment to normal value for these expenses. We then calculated margins for VSZ's reported sales using the reported data. From those calculations, we selected as adverse facts available the highest weighted-average, model-specific margin for the POI. *See* Decision Memorandum, accessible in room B–099 and on the Web at *www.ita.doc.gov/import_admin/records/frn/*.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing the Customs Service to continue to suspend

[1] Petitioners in this case are Bethlehem Steel Corporation, Gulf States Steel, Inc., Ispat Inland Inc., LTV Steel Company Inc., National Steel Company, Steel Dynamics, Inc., U.S. Steel Group, a unit of USX Corporation, Weirton Steel Corporation, United Steelworkers of America, and Independent Steelworkers Union (collectively, petitioners).

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liquidation of all entries of cold-rolled flat-rolled, carbon-quality steel products from Indonesia that are entered, or withdrawn from warehouse, for consumption on or after January 7, 2000, the date of publication of the *Preliminary Determination*. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the "all others" rate, the simple average of the margins in the petition. *See Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520 (February 4, 2000); *see also Notice of Final Determination of Sales at Less Than Fair Value: Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada ("Stainless Steel Plate from Canada")*, 64 FR 15457 (March 31, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy ("Stainless Steel Plate from Italy")*, 64 FR 15458, 15459 (March 21, 1999).

In this case, we have calculated the dumping margins for the sole Slovak respondent based entirely on adverse facts available. Given the circumstances of this case, and the discretion provided by Section 735(c)(5)(B) of the Act, we have selected a somewhat different methodology than that followed in other recent cases. Instead of relying on the simple average of the petition margins, we have relied on the weighted-average of the margins obtained for each product sold during the POI, by using the respondent's data and making the adverse inference that any U.S. sales for which payment was outstanding as of the respondent's latest submission was bad debt. The resulting margin, applicable to all other manufacturers/exporters, is 109.21 percent.

We determine that the following weighted-average dumping margins exist for April 1, 1998, through March 31, 1999:

Exporter/manufacturer	Weighted-average margin (percent)
VSZ, a.s	163.89
All Others	109.21

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue in antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 22, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memo

Comments and Responses

1. Rescission of Initiation
2. Facts Available

[FR Doc. 00–13579 Filed 5–30–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–834]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Keir Whitson, at (202) 482–3003 or (202) 482–1777, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations are to 19 CFR Part 351 (1999).

Final Determination

We determine that cold-rolled flat-rolled carbon-quality steel products (cold-rolled steel products) from Taiwan are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

The preliminary determination in this investigation was issued on December 28, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Taiwan*, 65 FR 1095 (January 7, 2000). The investigation initially covered two manufacturers/exporters: China Steel Corporation (CSC), and Taiwan Tokkin Corporation (Tokkin). Since the preliminary determination, the Department has concluded that the merchandise exported by Taiwan Tokkin, for the purpose of this investigation, is of Japanese origin. As a result, this final determination covers only CSC. *See Issues and Decision Memorandum (Decision Memorandum)* from Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 22, 2000, which is hereby adopted by this notice. The period of investigation is April 1, 1998, through March 31, 1999.

From January 17 through January 21, 2000, the Department conducted a verification of CSC's sales data.[1]

[1] The Department also conducted verification of the information submitted by Tokkin. However, as noted above, the Department has determined that Tokkin's merchandise exported to the United States during the POI to be of Japanese origin, such that this final determination covers only CSC.

Counsel to CSC requested a hearing on February 7, 2000, and withdrew the request on March 10, 2000. No other interested party requested a hearing. The petitioners [2] and CSC submitted case briefs on April 7, 2000, and rebuttal briefs on April 12, 2000. On April 25 and April 26, 2000, the petitioners submitted requests that the Department reject certain information contained in CSC's rebuttal brief, on the grounds that it contained new factual information that had been untimely filed. On April 26, 2000, CSC responded to the petitioners' claims that CSC's rebuttal brief contained new factual information. The Department determined that certain information was untimely filed, and disregarded that information in reaching its final determination. *See Memorandum to the File*, dated May 22, 2000.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

The above is simply a summary of the products covered by the investigation. For the dispositive description of the scope of this investigation, see the "Scope of Investigation" section of the *Decision Memorandum*, which is on file in Room B–099 of the Department's Main Building and available on the World Wide Web at www.ita.doc.gov/import—admin/records/frn.

[2] Petitioners in this case are Bethlehem Steel Corporation, Gulf States Steel, Inc., Ispat Inland Inc., LTV Steel Company Inc., National Steel Company, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, United Steelworkers of America, and Independent Steelworkers Union (collectively, the petitioners).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping proceeding are addressed in the *Issues and Decision Memorandum* ("Decision Memorandum") from Holly Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 22, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in B–099. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification and analysis of comments received, we have made adjustments to the preliminary determination calculation methodology in determining the final dumping margin in this proceeding. These adjustments are discussed in the *Decision Memorandum*.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing Customs to continue to suspend liquidation of all entries of cold-rolled flat-rolled carbon-quality steel products from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after January 7, 2000, the date of publication of the *Preliminary Determination*. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following weighted-average dumping margins exist for April 1, 1998, through March 31, 1999:

Manufacturer/exporter	Weighted-Average Margin (percent)
China Steel Corporation	14.97
All Others	14.97

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or are a threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation. The Department will also instruct the Customs Service to regard cold-rolled steel products manufactured by Tokkin, as described in the *Decision Memorandum*, to be of Japanese origin, and to terminate the suspension of liquidation of such products with respect to this proceeding. If the Department finds that Tokkin exports to the United States cold-rolled steel that the Department determines to be of Taiwan origin, those entries will be subject to the "all others" rate in this investigation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 22, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix

Issues Covered in Decision Memorandum

1. Country of Origin
2. Rejection of CSC's Special Incentive Program Discounts
3. Re-coding of certain CSC home market sales
4. Adverse inference for CSC's stevedoring expenses
5. Adverse inference for CSC's home market warranty expenses
6. Materials—scrap recovery
7. Materials—inventory valuation adjustments
8. General and administrative expense
9. General and administrative expense and financial expense ratios

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10. Exchange gains and losses
11. Non-operating income and expenses
12. Scrap revenue
13. Short-term interest income

[FR Doc. 00–13580 Filed 5–30–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–854]

Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230; telephone: (202) 482–0165.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 1999).

Final Determination

We determine that certain cold-rolled flat-rolled carbon quality steel products ("cold-rolled steel") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margin of sales are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 7, 2000. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the People's Republic of China*, 65 FR 1117 (January 7, 2000) ("*Preliminary Determination*"). Since the publication of the *Preliminary Determination*, the following events have occurred.

The Department issued supplemental questionnaires to Shanghai Baosteel Group Corporation ("Baosteel") on February 14 and 29, 2000. Baosteel filed submissions on January 7, January 18, February 28, and March 14, 2000. The Department began its verification of Baosteel's sales and factor of production questionnaire responses on March 13, 2000. On March 16, 2000, Mr. Chen Delin, Vice-Director of the Legal Department of Baosteel, advised the verifiers that Baosteel was terminating the verification as a result of competing demands on Baosteel's time. Additionally, counsel for Baosteel requested that the verifiers return all documentation that had been provided by Baosteel in support of the Department's review of certain areas of Baosteel's response. Therefore, the verification team immediately terminated the verification and returned all documents collected during the course of verification to Baosteel's counsel. *See Memorandum For Edward Yang; "Verification of Sales and Factors of Production for Shanghai Baosteel Group Corporation (Baosteel) in the Antidumping Duty Investigation of Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China,"* (March 22, 2000). This memorandum and all other Departmental memoranda referred to herein, are on file in the Central Records Unit, room B–099 of the main Commerce building.

On March 29, 2000, petitioners (Bethlehem Steel Corporation, Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation, (collectively "petitioners") submitted their case brief with respect to Baosteel. Baosteel did not submit any comments.

Period of Investigation

The period of investigation is October 1, 1998, through March 31, 1999.

Analysis of Comment Received

All issues raised in the case brief by parties to this investigation are addressed in the "Issues and Decision Memorandum" ("*Decision Memorandum*") from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 22, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in B–099. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Scope of Investigation

For a description of the scope of this investigation, see the "Scope of Investigation" section of the *Decision Memorandum*, which is on file in B–099 and available on the Web at www.ita.doc.gov/ import_admin/ records/frn/.

Use of Facts Available

For a discussion of our application of facts available, see the "Facts Available" section of the Decision Memorandum, which is on file in B–099 and available on the Web at www.ita.doc.gov/ import_admin/records/frn/.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after January 7, 2000 (the date of publication of the *Preliminary Determination* in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margin is as follows:

Manufacturer/exporter	Weighted-average margin (percent)
PRC-Wide rate	23.72

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 22, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memo

Comments and Responses

1. Adverse Facts Available.

[FR Doc. 00–13581 Filed 5–30–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–801] [A–588–806]

Revocation of Antidumping Duty Orders: Electrolytic Manganese Dioxide From Greece and Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of Antidumping Duty Orders: Electrolytic manganese dioxide from Greece and Japan.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan are not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 31348 (May 17, 2000)). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department of Commerce ("the Department") is revoking the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), the effective date of revocation is January 1, 2000.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Carole Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–3217, respectively.

Background

On May 3, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 23596 and 64 FR 23675, respectively) of the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan, pursuant to section 751(c) of the Act. As a result of the reviews, the Department found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the antidumping orders revoked.[1]

On May 17, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. (See Electrolytic Manganese Dioxide from Greece and Japan, 65 FR 31348 (May 17, 2000) and USITC Publication 3296, Investigations Nos. 731–TA–406 and 408 (Review) (May 2000).)

Scope

Imports covered by these orders are electrolytic manganese dioxide ("EMD") from Greece and Japan. EMD is manganese dioxide (MnO sub2) that has been refined in an electrolysis process. The subject merchandiseis an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip, or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the order.[2] This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") item number 2820.10.0000. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determination by the Commission that revocation of these antidumping duty orders is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), is revoking the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), this revocation is effective on January 1, 2000.

The Department will instruct the U.S. Customs Service to discontinue the suspension of liquidation and collection of cash deposits rate and to refund with interest any cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: May 24, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–13583 Filed 5–30–00; 8:45 am]
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[1] See Final Results of Expedited Sunset Review: Electrolytic Manganese Dioxide From Greece, 64 FR 67861(December 3, 1999); and Final Results of Expedited Sunset Review: Electrolytic Manganese Dioxide From Japan, 64 FR 67858 (December 3, 1999).

[2] There has been one scope clarification with regard to EMD from Japan. On January 6, 1992, the Department ruled that high-grade chemical manganese dioxide (CMD–U) is within the scope of the order. See Electrolytic Manganese Dioxide from Japan; Final Scope Ruling, 57 FR 395 (January 6, 1992).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea, Final Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review.

SUMMARY: On March 7, 2000, the Department of Commerce (the Department) published the notice of initiation and preliminary results of its changed circumstances administrative review concerning whether Toray

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Saehan, Inc. (TSI) is the successor firm to Saehan Industries, Inc. (Saehan) and whether the revocation issued for Cheil Synthetics, Inc. (Cheil), and applied to Saehan, applies to TSI. We have now completed that review. We have determined that TSI is the successor-in-interest to Saehan, and that the revocation issued for Cheil, and applied to Saehan, also applies to TSI.

EFFECTIVE DATE: May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney at (202) 482–4475 or Robert James at (202) 482–0649, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On July 5, 1996, the Department issued a partial revocation with respect to Cheil after finding zero or *de minimis* margins in three consecutive administrative reviews. (*See* Polyethtylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part, (61 FR 35177, July 5, 1996).) On January 26, 1998, the Department determined that Saehan was the successor-in-interest to Cheil, and that the partial revocation issued for Cheil applied to Saehan. (*See* Polyethtylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Changed Circumstances Antidumping Duty Administrative Review, (63 FR 3703, January 26, 1998).) On March 7, 2000, the Department published the preliminary results of this case. (*See* Polyethtylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review (65 FR 11982, March 7, 2000).) The Department preliminarily determined that TSI is the successor company to Saehan, and that the partial revocation issued to Cheil, and applied to Saehan, also applies to TSI. We received no comments on those preliminary results. The Department has conducted this administrative review in accordance with Section 751(b) of the Act.

Scope of the Review

The merchandise subject to this antidumping duty order are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate, film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films, and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule of the United States subheading 3920.62.00.00. The HTS subheading is provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

This changed circumstances administrative review covers TSI.

Final Results of Changed Circumstances Review

We determine that the July 5, 1996 partial revocation issued with respect to Cheil, and applied to Saehan as Cheil's successor company, also applies to TSI. We will notify the U.S. Customs Service of our decision and instruct Customs to liquidate without regard to antidumping duties, merchandise produced by TSI on or after October 15, 1999, the date on which TSI was established.

This changed circumstances review and notice are in accordance with section 751(b) of the Act, as amended (19 U.S.C. 1675(b)), and 19 CFR 351.216.

Dated: May 17, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–13582 Filed 5–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

South East Asia Telecommunications Matchmaker; Recruitment and Selection of Private Sector Participants; Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the following overseas trade missions that they also explain at the following website: *http://www.ita.doc.gov/doctm*. For a comprehensive description of the trade mission, obtain a copy of the mission statement from the project officer listed below. The recruitment and selection of private sector participants will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997.

Telecommunications Matchmaker
South East Asia
November 13–17, 2000

FOR FURTHER INFORMATION CONTACT: Molly Costa at the Department of Commerce in Washington, DC, Telephone number: (202) 482–0692 or Fax: (202) 482–0178.

John Klingelhut,

Director, Office of Public and Private Initiatives.

[FR Doc. 00–13502 Filed 5–30–00; 8:45 am]

BILLING CODE 3510–FP–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Business/Commerce, Citizen-At-Large, Commercial Shipping, Conservation, Fishing, Native Hawaiian, Ocean Recreation, Tourism, and Whale Watching. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the Council's Charter.

DATES: Applications are due by June 30, 2000.

ADDRESSES: Application kits may be obtained from Kellie Araki at 6700 Kalanianaole Hwy., Suite 104, Honolulu, Hawaii 96825. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Kellie Araki at (808) 397–2651, or kellie.araki@noaa.gov.

SUPPLEMENTARY INFORMATION: The HIHWNMS Council was originally established in March 1996 (the current Council was selected in July 1998) and has a broad representation consisting of 25 members. The Council represents the coordination link between the Sanctuary and the state and federal management agencies, Native Hawaiians, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping produce annual operating plans and reports by identifying education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

Authority: 16 U.S.C. Section 1431 et seq.

Dated: May 25, 2000.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 00–13584 Filed 5–30–00; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052400E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (PFMC) Groundfish Management Team (GMT) will hold a working meeting which is open to the public.

DATES: The GMT working meeting will begin Monday, June 19, 2000 at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, June 20 through Thursday, June 22 at 3 p.m.

ADDRESSES: The meetings will be held at NMFS Northwest Regional Office, 7600 Sand Point Way NE, Seattle, WA; telephone: (206) 526–6120.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator, (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the GMT meeting is to prepare reports and technical advice for the upcoming PFMC meeting and in support of PFMC decisions. The GMT will discuss, receive reports, and/or prepare reports on the following topics during this working session, (1) GMT organization and work plan for 2000; (2) draft groundfish strategic plan; (3) rockfish bycatch rates and related issues; (4) observer program issues; (5) sustainable groundfish harvest rates; (6) plan amendment for bycatch and other issues; (7) capacity reduction and permit issues; (8) rebuilding plans for canary and cowcod rockfish, and other species as necessary; (9) inseason catch monitoring, projections, and management; and (10) stock assessment priorities and biological sampling.

Although non-emergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice any any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservationa and Management Act, provided the publci has been notified of the Council's action to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Don McIsaac at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 24, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13573 Filed 5–30–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052400D]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Scientific and Statistical, Spiny Lobster, Advisory Panel Selection (closed), Shrimp, Snapper Grouper, Personnel (closed) and Marine Reserves Committees. The Council will also hold joint meetings of its Mackerel and Golden Crab Advisory Panels and Committees. Public Hearings will be held for Golden Crab Amendment 3 and on the Dolphin Wahoo Fishery Management Plan (FMP). Notices of these hearings with times, locations, and subject matter are addressed in separate **Federal Register** notices. A public scoping meeting on the use of tailing permits in the spiny lobster fishery will be held to determine if these permits should remain in use in the fishery. Public comment periods will be held on proposed framework actions for mackerel and the need for an Interim Rule Request for Snapper Grouper Amendment 12. There will also be a Council Session.

DATES: The meetings will be held from June 12–16, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Cheeca Lodge, Mile Marker 82, U.S.

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Highway 1, Islamorada, FL; telephone: (1–800) 327–2888 or (305) 664–4651.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

June 12, 2000, 8:30 a.m.–5:00 p.m.—Scientific and Statistical Committee Meeting;

The Scientific and Statistical Committee will review and comment on the: mackerel stock assessment report; social impact assessment and economic impact assessment guidelines; vessel capacity report; snapper grouper assessment; dolphin assessment draft dolphin/wahoo FMP; red drum stock assessment; snapper grouper assessment group report and draft position statement on the use of cultured fish for stock enhancement; Golden Crab Amendment 3; marine reserves public information document and scoping document; and bycatch reduction (BRD) protocol revisions.

June 13, 2000, 8:30 a.m.–12:00 Noon—Joint Mackerel Committee and Advisory Panel (AP);

The Mackerel Committee and AP will meet to review the Gulf king mackerel assessment; Scientific and Statistical Committee (SSC) comments; AP framework recommendations; hear a presentation on the king mackerel mercury issue; and develop Committee recommendations.

June 13, 2000, 1:30 p.m.–5:00 p.m.—Joint Golden Crab Committee and Advisory Panel;

The Golden Crab Committee and AP will meet to review public input on Amendment 3; review SSC comments; and develop AP and Committee recommendations on Amendment 3.

June 14, 2000, 8:30 a.m.–10:30 a.m.—Spiny Lobster Committee;

There will be a scoping meeting on the use of tailing permits in the spiny lobster fishery (8:30 a.m.) and the Committee will discuss the need and/or locations for additional scoping meetings.

June 14, 2000, 10:30 a.m.–12:00 noon—Advisory Panel Selection Committee (closed);

The AP Selection Committee will meet to review membership applications and develop recommendations.

June 14, 2000, 1:30 p.m.–3:30 p.m.—Shrimp Committee;

The Shrimp Committee will meet to review revised NMFS BRD Protocol and discuss a nighttime closure proposal.

June 14, 2000, 3:30 p.m.–5:30 p.m.—Snapper Grouper Committee;

The Snapper Grouper Committee will meet to review and discuss corporate permits and transfers; legal status of "individual" vs "corporation" permits; discuss other permit transfer issues; hear a report on harvest by powerheads; discuss the need for an Interim Rule for Snapper Grouper Amendment 12 and hear a presentation on overfishing definitions.

June 15, 2000, 8:30 a.m.–9:30 a.m.—Personnel Committee (closed);

The Personnel Committee will meet to discuss personnel issues.

June 15, 2000, 9:30 a.m.–12:00 noon Marine Reserves Committee;

The Marine Reserves Committee will meet to review the results of the informal meetings; review input received at the public scooping meetings; and review and develop committee recommendations on the Gray's Reef Memorandum of Understanding (MOU).

June 15, 2000, 1:30 p.m.–5:30 p.m.—Council Session;

From 1:30 p.m.–1:45 p.m., the Council will call the meeting to order, adopt the agenda and approve minutes from the March 2000 meeting.

From 1:45 p.m.–2:15 p.m., the Council will hear from the Mackerel Committee and take public comment on any proposed framework actions beginning at 1:45 p.m. The Council will also take framework action as appropriate.

From 2:15 p.m.–2:45 p.m., the Council will hear from the Golden Crab Committee and finalize and approve Amendment 3.

From 2:45 p.m.–3:00 p.m., the Council will hear a report from the Spiny Lobster Committee.

From 3:15 p.m.–3:45 p.m., the Council will hear from the Advisory Panel Selection Committee and appoint new advisory panel members (closed session).

From 3:45 p.m.–4:00 p.m., the Council will hear a report from the Personnel Committee (closed session).

From 4:00 p.m.–4:15 p.m., the Council will hear a report from the Shrimp Committee.

From 4:15 p.m.–4:45 p.m., the Council will hear from the Marine Reserves Committee and review and develop a position on the Gray's Reef MOU.

From 4:45 p.m.–5:30 p.m., the Council will hear a report from the Snapper Grouper Committee. The Council will take public comment on the need for an Interim Rule Request for Snapper Grouper Amendment 12 at 4:45 p.m.

June 16, 2000, 8:30 a.m.–12:30 p.m., Council Session;

The Council will hear a presentation from the US Coast Guard; a presentation on the South Carolina/NMFS Cooperative Law Enforcement Agreement; hear from the Dolphin Wahoo Committee regarding the status of public hearings and take actions relative to the draft FMP as necessary; hear an update on the Atlantic Coastal Cooperative Statistics Program (ACCSP); hear a presentation on the status of National policy on vessel monitoring systems; hear NMFS Status Reports on: 1999/2000 Mackerel Framework, Mackerel Amendment 12, Greater Amberjack trip limit resubmittal and Comprehensive Habitat Amendment final rule. The Council will also hear NMFS Status Reports on the landings for: Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, Snowy grouper and Golden tilefish, Wreckfish, Greater amberjack and South Atlantic Octocorals. The Council will hear agency and liaison reports and discuss other business and upcoming meetings.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by June 5, 2000.

Dated: May 24, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13571 Filed 5–30–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–35]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–35 with attached transmittal and policy justification.

Dated: May 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

11 MAY 2000
In reply refer to:
I-00/003804

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-35, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to New Zealand for defense articles and services estimated to cost $71 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-35

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: New Zealand

(ii) Total Estimated Value:

Major Defense Equipment*	$ 17 million
Other	$ 54 million
TOTAL	$ 71 million

(iii) Description of Articles or Services Offered: This proposed sale includes 99 AN/VRC-92E, 295 AN/VRC-90E, and 287 AN/PRC-119E SINCGARS radios. Also included are 55 manpack remote control units with Global Position System, 20 manpack retrans units, receivers, installation kits, adapters, spare and repairs parts, support equipment, personnel training and training equipment, publications, U.S. Government and contractor engineering and logistics services and other related elements of program support.

(iv) Military Department: Army (VIX, VIY, and VIW)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(vii) Date Report Delivered to Congress: 11 MAY 2000

* as defined in Section 47(6) of the Arms Export Control Act.

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POLICY JUSTIFICATION

New Zealand - SINCGARS Radios

The Government of New Zealand has requested a possible sale for 99 AN/VRC-92E, 295 AN/VRC-90E, and 287 AN/PRC-119E SINCGARS radios. Also included are 55 manpack remote control units with Global Position System, 20 manpack retrans units, receivers, installation kits, adapters, spare and repairs parts, support equipment, personnel training and training equipment, publications, U.S. Government and contractor engineering and logistics services and other related elements of program support. The estimated cost is $71 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of New Zealand and further weapon system standardization and interoperability with U.S. forces.

The proposed sale of this equipment will enable New Zealand to provide secure tactical radio transmission that is extremely hard for an enemy to intercept or jam. The New Zealand Defense Force requires the radios as apart of a long-term procurement process designed to increase interoperability with United States lead coalitions, U.S. Forces, and allies of the United States. New Zealand will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be ITT of Fort Wayne, Indiana. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government representatives to New Zealand. There will be 12 contractor representatives for three weeks in support of operator/maintenance training to New Zealand.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–13522 Filed 5–30–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–36]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, transmittal 00–36 with attached transmittal, policy justification, Sensitivity of Technology, and section 620C(d) of the Foreign Assistance Act of 1961.

Dated: May 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

5 MAY 2000
In reply refer to:
I-00/004180

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-36, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services estimated to cost $60 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-36

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

(i) Prospective Purchaser: Turkey

(ii) Total Estimated Value:

Major Defense Equipment*	$ 28 million
Other	$ 32 million
TOTAL	$ 60 million

(iii) Description of Articles or Services Offered: One FFG-7 PERRY class guided missile frigate for service with the Turkish Navy. Also included are: 800 rounds of 20mm cartridges, other ammunition items, shipyard/port support services and post transfer activities relating to "hot ship" turnover of one PERRY class frigate from the U.S. Navy, contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapon systems operational.

(iv) Military Department: Navy (SCS; AHS; AHT; GHS, Amendment 2; and BIS)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 5 MAY 2000

* as defined in Section 47(6) of the Arms Export Control Act.

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POLICY JUSTIFICATION

Turkey - FFG-7 PERRY Class Guided Missile Frigate

The Government of Turkey has requested a possible sale of one FFG-7 PERRY class guided missile frigate for service with the Turkish Navy. Also included are: 800 rounds of 20mm cartridges, other ammunition items, shipyard/port support services and post transfer activities relating to "hot ship" turnover of one PERRY class frigate from the U.S. Navy, contractor engineering and logistics personnel support services, publications, repair and calibration services for shipboard equipment, publications and technical data/drawings, training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapon systems operational. The estimated total cost is $60 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey, while enhancing weapon system standardization and interoperability.

Turkey already has six U.S. Navy PERRY class frigates in its Navy fleet. Turkey needs these frigates to continue its naval modernization program and enhance its Anti-Submarine Warfare (ASW) capability. The frigates will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The PERRY vessel will be transferred on a "hot ship" basis. The primary effort for transfer will be completed through the Naval Sea Systems Command. There are no prime contractors for provision of the weapon systems applicable to this platform. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two contractor representatives in-country for two months to provide engineering technical support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 00-36

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The PHALANX Close-In Weapon System crystals which contain the operating frequencies of the weapon system are considered critical technology and are classified Confidential. Select maintenance and operation publications are also classified Confidential.

2. AN/SLQ-32A(V)3 Improved ECM Set: Secret hardware. Due to USN requirements, this system must be removed and replaced with the basic AN/SLQ-32(V)2 system. Removal includes hardware, software, and technical manuals. When replaced with the basic AN/SLQ-32(V)2, the following release considerations apply: (1) hardware is Secret, (2) software is Confidential, (3) U.S. threat libraries are Secret and will not be released, and (4) technical manuals are Confidential and need to be sanitized.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

4. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

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Certification Under $ 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to $ 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (Sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Turkey one excess FFG-7 PERRY Class Guided Missile Frigate with 800 rounds of 20mm cartridges, other ammunition items, shipyard/port support services, contractor engineering and logistics personnel services, and other elements of spares and logistics support with an estimated cost of $60 million is consistent with the principles contained in $ 620C(b) of the Act.

This certification will be made part of the notification to Congress under $ 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Senior Adviser
for Arms Control and
International Security

[FR Doc. 00-13523 Filed 5-30-00; 8:45 am]
BILLING CODE 5001-10-C

DEPARTMENT OF THE AIR FORCE

Air Force A-76 Initiatives Cost Comparisons and Direct Conversions (As of 31 March 2000)

The Air Force is in the process of conducting the following A-76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of 31 March 2000, include the installation and state where the cost comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

COST COMPARISONS

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
ANDERSEN	GUAM	SUPPLY AND TRANSPORTATION	317	25-Jun-98	28-May-99
ANDREWS	MD	COMMUNICATION FUNCTIONS	181	04-Oct-99	11-May-01
ANDREWS	MD	HEATING SYSTEMS	22	17-Dec-98	18-Feb-00
ANDREWS	MD	GROUNDS MAINTENANCE	9	17-Dec-98	17-Apr-00
ANDREWS	MD	AIRCRAFT MAINTENANCE AND SUPPLY	815	25-Jul-97	26-May-99
AVON PARK	FL	RANGE OPERATIONS	38	22-Dec-99	15-Oct-00
BARKSDALE	LA	PROTECTIVE COATING	13	14-Dec-98	15-Apr-00
BEALE	CA	BASE OPERATING SUPPORT	383	08-Sep-99	07-Mar-01
BOLLING	DC	SUPPLY AND TRANSPORTATION	163	01-Dec-98	11-Jul-00
CARSWELL	TX	BASE OPERATING SUPPORT	69	03-Feb-00	05-Jun-01
CHEYENNE MTN	CO	CIVIL ENGINEERING	139	08-May-98	24-Sep-99
DAVIS MONTHAN	AZ	BASE SUPPLY	35	04-Jan-00	TBD
DOVER	DE	HEATING SYSTEMS	11	07-Jan-99	07-Jan-00
EDWARDS	CA	BASE OPERATING SUPPORT	553	09-Dec-98	08-Nov-00
EDWARDS	CA	TRANSIENT AIRCRAFT MAINTENANCE/ AEROSPACE GROUND EQUIPMENT.	146	06-Nov-98	15-May-00

COST COMPARISONS—Continued

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
EGLIN	FL	ADMINISTRATIVE SUPPORT	52	22-Sep-99	29-Sep-00
EGLIN	FL	CIVIL ENGINEERING	200	03-Dec-96	21-Jul-98
EIELSON	AK	COMMUNICATIONS OPERATIONS AND MAINTENANCE.	63	29-Oct-99	05-Jul-00
ELMENDORF	AK	BASE SUPPLY	208	26-Mar-99	15-Apr-00
ELMENDORF	AK	COMMUNICATIONS OPERATIONS AND MAINTENANCE.	81	05-Jan-00	03-Sep-00
FAIRCHILD	WA	HEATING SYSTEMS	16	16-Mar-99	01-Mar-00
GREATER PITTSBURGH	PA	BASE OPERATING SUPPORT	77	13-Jun-96	10-Nov-99
GRISSOM	IN	BASE OPERATING SUPPORT	133	13-Jun-96	01-Oct-99
HANSCOM AFB	MA	CIVIL ENGINEERING	201	09-Dec-98	25-Feb-00
HANSCOM AFB	MA	BASE SUPPLY	70	10-Nov-98	15-Apr-00
HANSCOM AFB	MA	EDUCATION/TRAINING AND PERSONNEL	17	25-Nov-98	15-Apr-00
HILL AFB	UT	BASE OPERATING SUPPORT	576	30-Sep-98	20-Sep-00
HOLLOMAN AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE.	66	12-May-97	14-Jan-00
HOLLOMAN AFB	NM	TEST TRACK	125	18-Nov-99	25-Aug-00
HOMESTEAD	FL	BASE OPERATING SUPPORT	106	13-Jun-96	15-Jan-00
HURLBURT COM FL	FL	ADMINISTRATIVE SUPPORT	37	28-Apr-99	09-Mar-01
HURLBURT COM FL	FL	COMMUNICATION FUNCTIONS	50	31-Jul-98	19-Jun-00
HURLBURT COM FL	FL	BASE SUPPLY	33	15-Jul-98	17-Feb-00
KEESLER	MS	MULTIPLE SUPPORT FUNCTIONS	741	21-Sep-99	TBD
KIRTLAND	NM	BASE COMMUNICATIONS	228	06-Nov-97	04-Jun-99
LACKLAND	TX	MULTIPLE SUPPORT FUNCTIONS	1440	26-Jan-99	09-Aug-99
LANGLEY	VA	GENERAL LIBRARY	11	22-Dec-98	15-May-00
MARCH	CA	BASE OPERATING SUPPORT	195	13-Jun-96	15-Nov-99
MAXWELL	AL	MULTIPLE SUPPORT FUNCTIONS	814	28-Apr-98	22-Mar-99
MCCHORD	WA	GROUNDS MAINTENANCE	10	14-Jun-99	17-Jun-00
MULTIPLE INSTL		ADMINISTRATIVE SWITCHBOARD	44	19-Jun-97	15-Apr-00
CROUGHTON	UK				
FAIRFORD	UK				
LAKENHEATH	UK				
MILDENHALL	UK				
MOLESWORTH	UK				
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE	15	07-Jul-99	30-Apr-00
LAKENHEATH	UK				
MILDENHALL	UK				
MULTIPLE INSTLNS		PRECISION MEASUREMENT EQUIPMENT LABORATORY (PMEL).	1516	24-Sep-98	29-Oct-99
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE	24	07-Jul-99	30-Apr-00
RAMSTEIN	GERMY				
SPANGDAHLEM	GERMY				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	141	11-Mar-99	17-Apr-00
GENERAL MITCHELL	WI				
WESTOVER	MA				
MINN-ST PAUL	MN				
YOUNGSTOWN	OH				
WILLOW GROVE	PA				
GRISSOM	IN				
PITTSBURGH	PA				
MARCH	CA				
HOMESTEAD	FL				
CARSWELL	TX				
NEW ORLEANS	LA				
MULTIPLE INSTLNS		ADMINISTRATIVE SWITCHBOARD	50	19-Jun-97	15-Apr-00
RAMSTEIN	GERMY				
SEMBACH	GERMY				
SPANGDAHLEM	GERMY				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	208	03-Aug-99	15-May-00
LANGLEY	VA				
HILL AFB	UT				
MULTIPLE INSTLNS		MULTIPLE SUPPORT FUNCTIONS	124	14-Jul-99	30-Dec-00
CROUGHTON	UK				
FAIRFORD	UK				
MOLESWORTH	UK				
MULTIPLE INSTLNS		EDUCATION SERVICES	153	07-Jan-99	21-Jan-00
HOWARD	PANMA				
MOODY	GA				
MINOT	ND				
MT HOME	ID				

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COST COMPARISONS—Continued

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
NELLIS	NV				
SHAW	SC				
WHITEMAN	MO				
LAJES	AZORE				
ELLSWORTH	SD				
SEYMOUR JOHNSON.	NC				
HOLLOMAN	NM				
DYESS	TX				
DAVIS MONTHAN	AZ				
CANNON	NM				
BARKSDALE	LA				
KEFLAVIK	ICELD				
LANGLEY	VA				
BEALE	CA				
NEW BOSTON	NH	BASE OPERATING SUPPORT	48	03–Dec–97	01–Jun–00
OFFUTT	NE	BASE OPERATING SUPPORT	1608	30–Sep–98	15–Aug–00
PATRICK	FL	SUPPLY AND TRANSPORTATION	43	14–May–98	12–Jun–00
PETERSON	CO	PERSONNEL SERVICES	92	05–Jan–00	01–Dec–00
ROBINS	GA	BASE SUPPLY	133	01–Apr–99	21–Jun–00
ROBINS	GA	EDUCATION SERVICES	57	07–Jan–99	26–Jun–00
ROBINS	GA	ADMINISTRATIVE TELEPHONE SWITCHBOARD.	17	17–Mar–99	07–Apr–00
SCOTT	IL	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	178	19–Mar–98	16–Aug–99
SCOTT	IL	PERSONNEL SERVICES	236	25–Jun–99	19–Feb–01
SEMBACH	GERMY	COMMUNICATION FUNCTIONS	48	18–Dec–98	15–Apr–00
SHEPPARD	TX	MULTIPLE SUPPORT FUNCTIONS	549	21–Sep–99	29–Jun–00
TINKER	OK	EDUCATION SERVICES	54	16–Nov–98	17–Nov–99
TINKER	OK	BASE SUPPLY	152	30–Nov–98	17–Nov–99
TINKER	OK	ENVIRONMENTAL	53	24–Nov–98	12–Nov–99
TRAVIS	CA	VEHICLE OPERATIONS AND MAINTENANCE	131	15–Jul–98	14–Apr–00
USAF ACADEMY	CO	BASE OPERATING SUPPORT	108	08–May–98	09–May–00
USAF ACADEMY	CO	CIVIL ENGINEERING	497	01–Dec–98	24–Mar–00
USAF ACADEMY	CO	FOOD SERVICES	297	08–May–98	21–Apr–99
USAF ACADEMY	CO	SERVICES ACTIVITIES	75	08–May–98	17–Sep–99
USAF ACADEMY	CO	COMMUNICATION FUNCTIONS	114	20–May–99	05–Jun–00
WHITEMAN	MO	UTILITIES PLANT	11	18–Aug–99	27–May–00
WILLOW GROVE	PA	BASE OPERATING SUPPORT	52	13–Jun–96	28–Sep–98
WRIGHT PATTERSON	OH	LABORATORY SUPPORT SERVICES	127	21–Aug–98	29–Oct–99
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	104	21–Aug–98	03–Mar–00

DIRECT CONVERSIONS

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
ANDERSEN	GUAM	AIR TRAFFIC CONTROL	12	14–Sep–99	27–May–00
ASHEVILLE	NC	COMPUTER SYSTEMS MAINTENANCE	10	17–Feb–99	01–Jun–00
BARKSDALE	LA	ADMINISTRATIVE SWITCHBOARD	10	04–Aug–98	22–Nov–99
CANNON	NM	PROTECTIVE COATING	2	07–Jan–99	01–Apr–00
CHEYENNE MTN	CO	COMMUNICATION FUNCTIONS	385	08–May–98	01–Dec–99
DAVIS MONTHAN	AZ	PROTECTIVE COATING	9	24–Jun–98	27–Mar–00
DAVIS MONTHAN	AZ	RAILROAD TRANSPORTATION SERVICES	2	11–Aug–98	21–Apr–00
EDWARDS	CA	LIBRARY	7	09–Dec–98	26–Jun–00
ELLSWORTH	SD	ENVIRONMENTAL	7	05–Nov–98	14–Apr–00
F E WARREN	WY	BASE COMMUNICATIONS	105	30–Oct–97	10–Apr–00
GRAND FORKS	ND	MUNITIONS MAINTENANCE	5	17–May–99	13–Oct–00
HICKAM	HI	AIR MOBILITY OPERATIONS CONTROL CENTER (AMOCC).	53	29–Oct–99	01–Jul–00
HURLBURT COM FL	FL	HOUSING MANAGEMENT	12	20–Jan–00	TBD
HURLBURT COM FL	FL	SUPPLY RETAIL SALES SECTION	10	15–Jul–98	17–Feb–00
KIRTLAND	NM	ENVIRONMENTAL	32	24–Nov–98	17–Jul–00
KIRTLAND	NM	GENERAL LIBRARY	4	12–Jan–99	17–Jul–00
KIRTLAND	NM	AIRCRAFT MAINTENANCE	165	05–Nov–99	14–Dec–99
KIRTLAND	NM	EDUCATION SERVICES	12	26–Oct–98	20–Mar–00
KIRTLAND	NM	RECREATIONAL SUPPORT	9	12–Jan–99	17–Jul–00
KIRTLAND	NM	FOOD SERVICES	15	29–Oct–99	30–Apr–00

DIRECT CONVERSIONS—Continued

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
KIRTLAND	NM	CIVIL ENGINEERING	360	09–Dec–98	16–Feb–00
LACKLAND	TX	FOOD SERVICES	20	20–Dec–99	05–Jun–00
LACKLAND	TX	FACILITIES SERVICES MAINTENANCE	63	07–Feb–00	14–May–00
LANGLEY	VA	COMMUNICATION FUNCTIONS	8	23–Mar–99	01–Aug–00
LANGLEY	VA	COMMUNICATIONS ADMINISTRATION AND INFORMATION FUNCTION.	13	31–Jan–00	01–Aug–00
LANGLEY	VA	DATA PROCESSING EQUIPMENT OPERATIONS.	15	04–Nov–99	15–Sep–00
LANGLEY	VA	TRANSIENT AIRCRAFT MAINTENANCE	21	27–Aug–98	27–Aug–99
LANGLEY	VA	AIRCRAFT FLEET SERVICES	11	29–Jun–99	15–Jun–00
MALMSTROM	MT	BASE COMMUNICATIONS	85	06–Oct–97	15–May–00
MAXWELL	AL	EDUCATION SERVICES	35	31–Jul–98	15–Jan–00
MCGUIRE	NJ	FURNISHINGS MANAGEMENT	2	14–May–99	07–Apr–00
MCGUIRE	NJ	HEATING SYSTEMS	6	04–May–99	31–Aug–00
MINOT	ND	GROUNDS MAINTENANCE	9	18–May–99	23–Oct–00
MT HOME	ID	GROUNDS MAINTENANCE	6	20–Jul–99	09–Jul–00
MT HOME	ID	TRANSIENT AIRCRAFT MAINTENANCE	7	27–Aug–98	29–Jul–99
MULTIPLE INSTLNS		LINEN	11	17–Jun–99	22–May–00
RAMSTEIN	GERMY				
SPANGDAHLEM	GERMY				
LAKENHEATH	UK				
MILDENHALL	UK				
NELLIS	NV	COMMUNICATION FUNCTIONS	9	22–Dec–98	18–Nov–99
OFFUTT	NE	COMPUTER OPERATIONS	76	17–Feb–99	30–May–00
POPE	NC	FURNISHINGS MANAGEMENT	1	07–Oct–98	27–Mar–00
RANDOLPH	TX	COURSEWARE DEVELOPMENT	38	30–Sep–99	TBD
ROBINS	GA	GENERAL LIBRARY	6	23–Nov–99	16–Jun–00
ROBINS	GA	PROTECTIVE COATING	8	18–Jan–00	08–Jun–00
SCHRIEVER	CO	FOOD SERVICES	18	02–Sep–99	01–Nov–00
SCOTT	IL	FURNISHINGS MANAGEMENT	3	07–Aug–98	01–Jul–00
SCOTT	IL	ADMINISTRATIVE SWITCHBOARD	86	05–Aug–99	TBD
SCOTT	IL	MISCELANEOUS ACTIVITIES	2	18–Mar–99	20–Mar–00
SHAW	SC	COMMUNICATION FUNCTIONS	3	18–May–99	09–May–00
SHAW	SC	ENVIRONMENTAL	2	22–Mar–00	10–Jul–00
TRAVIS	CA	FACILITIES SERVICES MAINTENANCE	2	20–Apr–98	04–Jun–00
TRAVIS	CA	HEATING SYSTEMS	5	20–Apr–98	15–Apr–00
VANCE	OK	SURVIVAL EQUIPMENT	22	04–Feb–00	21–Oct–99
VANDENBERG AFB	CA	MISSILE STORAGE & MAINTENANCE	66	14–Apr–99	18–Dec–99
WHITEMAN	MO	ADMINISTRATIVE SWITCHBOARD	9	22–Dec–98	03–Sep–99
WHITEMAN	MO	HOSPITAL SERVICES	2	17–Apr–98	17–Nov–98
WHITEMAN	MO	GROUNDS MAINTENANCE	5	08–Dec–98	29–Sep–99

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–13487 Filed 5–30–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Draft Environmental Impact Statement for the Proposed Destination Broadwater Resort, Biloxi, MS

AGENCY: Army Corps of Engineers, Mobile District, DoD.

ACTION: Notice of availability.

SUMMARY: This notice of availability announces the public release of the Draft Environmental Impact Statement (EIS) for the Proposed Destination Broadwater Resort, Biloxi, Mississippi. On August 18, 1998, President Casinos, LLC submitted a Joint Permit Application and Notification to the US Army Corps of Engineers, Mobile District, the Mississippi Department of Environmental Quality, Office of Pollution Control and the Mississippi Department of Marine Resources for the Destination Broadwater project. The proposed action involves the redevelopment and construction of a large-scale casino destination resort at the existing Broadwater Resort and President Casino adjacent to US Highway 90 in Biloxi, Harrison County, Mississippi. Based on a review of the level of impacts associated with the proposed action, the Mobile District published a Notice of Intent to Prepare an Environmental Impact Statement on May 11, 1999. The Draft EIS has been developed by the Corps of Engineers (lead agency) and eight cooperating Federal and state agencies. The Draft EIS provides a comprehensive environmental analysis to aid in the decision-making process to deny or approve the Department of the Army permit for the proposed Destination Broadwater Project.

DATES: The public comment period for the Draft EIS will extend through July 17, 2000.

ADDRESSES: To receive a copy of the Draft EIS, or to submit comments, contact U.S. Army Corps of Engineers, Mobile District, Coastal Environment Team, Post Office Box 2288, Mobile, AL 36628–0001. A copy of the full document may also be viewed in the library in Biloxi, Mississippi or in the Mobile District.

FOR FURTHER INFORMATION CONTACT: Susan Ivester Rees, Ph.D., EIS Manager, (334) 694–4141, facsimile number (334)

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690–2727 or e-mail address (susan.1.rees@sam.usace.army.mil).

SUPPLEMENTARY INFORMATION: Public comments can be submitted through a variety of methods. Written comments may be submitted to the Corps by mail, facsimile, or electronic methods, comments (written or oral) may be presented at a public meeting to be scheduled during the month of July, 2000 in Biloxi, Mississippi. Additional information on these meetings will be mailed in a public notice to the agencies and the public and announced in news releases.

John A. Hall,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 00–13576 Filed 5–30–00; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS)/Draft Environmental Impact Report (DEIR)/Feasibility Study for Coyote Creek at Rock Springs Flood Damage Reduction Study, City of San Jose, Santa Clara County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The purpose of this EIS/EIR is to identify and evaluate the environmental impacts of alternatives developed to provide flood damage reduction on Coyote Creek in the Rock Springs area in San Jose, California, as authorized by Section 205 of the 1948 Flood Control Act (33 U.S.C. 701s), as amended. To fulfill the requirements of Section 102(2)(c) of the National Environmental Policy Act, the Corps of Engineers has determined that the proposed action may have a significant effect on the quality of the human environment, and therefore, requires the preparation of an Environmental Impact Statement. This document will also serve as the Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA). Lead agency under CEQA is the Santa Clara Valley Water District. This environmental assessment is required by the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190). Section 102(2)(A) requires Federal agencies to: "Utilize a systematic interdisciplinary approach, which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making, which may have an impact on man's environment."

FOR FURTHER INFORMATION CONTACT: Written comments and questions regarding the scoping process or preparation of the EIS/EIR/FS may be directed to Tamara Terry, U.S. Army Corps of Engineers, San Francisco District, 333 Market Street, 717S, Seventh Floor, San Francisco, CA 94105–2197, (415) 977–8545, Fax: (415) 977–8695. E-mail: *tterry@spd.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Authority: Pursuant to Section 102(2)(c) of the National Environmental Policy Act. of 1969, as implemented by the Council on Environmental Quality Act (CEQA) regulations (40 CFR Parts 1500–1508), the California Environmental Quality Act (CEQA), the Department of the Army and Santa Clara Valley Water District hereby give notice of intent to prepare a joint Environmental Impact Statement/ Environmental Impact Report/ Feasibility Study (EIS/EIR/FS) for the Rock Springs Flood Damage Reduction Project, Santa Clara, California.

2. Comments/Scoping Meetings: Interested parties are requested to express their views concerning the proposed activity. The public is encouraged to provide written comments in addition to or in lieu of, oral comments at the scoping meeting. To be most helpful, scoping comments should clearly describe specific environmental topics or issues, which the commentator believes the document should address. Oral and written comments receive equal consideration. Two workshop-scoping sessions will be held on Thursday, June 29, 2000. The first, from 2:30–4:30 p.m., is intended primarily for local, state, and federal agencies and organizations. The second, from 7–9 p.m. is intended for all interested parties. Both meetings will be held at the Leininger Community Center, 1300 Senter Road, San Jose, California.

3. Availability of EIS/EIR/FS: The Draft EIS/EIR/FS should be available for public review in the spring of 2001.

4. Agencies Supporting Project: The U.S. Army Corps of Engineers and Santa Clara Valley Water District will be the lead agencies in preparing the combined EIS/EIR/FS. The EIS/EIR/FS will provide an analysis supporting both the requirements of NEPA and CEQA in addressing impacts to the environment, which may result from implementation of flood control measures.

5. Purpose and Need for Project: This project is intended to reduce flood damages from high water in Coyote Creek.

6. Study Area Description: The Rock Springs study area encompasses an area bounded by Phelan Avenue, Senter Drive, and Needles Drive, in the Rock Springs area of San Jose, Santa Clara County, California.

7. 1997 Flooding: In 1997, 25 apartment buildings were badly damaged during the January 27, 1997 flood on Coyote Creek, approximately a 15-year event. Water in some buildings was 4 to 5 feet deep.

8. Project Alternatives: a. No Action. This alternative assumes that no flood damage reduction measures, structural or non-structural, will be implemented in the project area by the Federal government or any other entity. Flooding would continue at the same frequency and intensity as it has in the past.

b. Flood Control Alternatives. Preliminary analysis suggests that flood damage reduction alternatives to be studied for the Coyote Creek at Rock Springs area would include both structural and non-structural measures. Structural alternatives identified at this time are an embankment levee and floodwall, or a setback levee.

9. Other Environmental Review and Consultation Requirements: The DEIS/EIR will be used as the primary information document to secure compliance the Clean Water Act Section 404(b)(1) guidelines, the Fish and Wildlife Coordination Act, and the Endangered Species Act. The DEIS/EIR will be used by the local sponsor to meet its responsibilities under the California Environmental Quality Act, and used by the San Francisco Regional Water Quality Control Board to meet its responsibilities under the Porter-Cologne Act. The DEIS/EIR will be used by the "trustee agency" reviews by the State of California.

10. DEIS/EIR Availability: The DEIS/EIR will be available to the public in the Spring of 2001.

Peter T. Grass,

LTC, EN, Commanding.

[FR Doc. 00–13577 Filed 5–30–00; 8:45 am]

BILLING CODE 3710–19–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 31, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 25, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Section 704 Annual Performance Report (Parts I and II).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 336; Burden Hours: 11,760.

Abstract: This form accomplishes the Statutory mandate for data collection in Title VII of Rehabilitation Act of 1973, as amended (Act) and implementing regulations. These data collection requirements are found in sections 13, 706, 721, and 725 of the Act and 34 CFR part 366. In meeting these statutory and regulatory requirements the 704 Reports serve as: annual performance reports and are a basis for further funding grantees submitting the reports; a report of the training and technical assistance survey; the basis for mandatory on-site compliance reviews conducted by the Education Department on 15% of Centers for Independent Living (CILs) funded through the CIL program; an annual compliance self-evaluation with standards and indicators; and as a source for an Annual Report to Congress.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–13564 Filed 5–30–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 30, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 25, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary.

Type of Review: New.

Title: Annual Performance Report for the Gaining Early Awareness for Undergraduate Programs (GEAR UP) Grantees.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 185;

Burden Hours: 6,475.

Abstract: The purpose of this information collection is accountability for program implementation and student outcomes for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP). The information collected enables the U.S. Department of Education to

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demonstrate its progress in meeting the GEAR UP performance objectives as reflected in the indicators.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–13563 Filed 5–30–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.215L]

Smaller Learning Communities Grant Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000 Funds; Correction

SUMMARY: On May 17, 2000 a notice inviting applications for new awards under the Smaller Learning Communities Grant program was published in the **Federal Register** (65 FR 31386). The notice was a complete application package and contained all of the information, application forms and instructions necessary to apply for grants under this program. One of the forms—Coversheet: Smaller Learning Communities (SLC) Grant Program Application Package—was printed incorrectly. Another form—Application for Federal Assistance (ED 424)—contained an incorrect CFDA number. The correct forms are included with this correction notice.

Also, in column two of page 31390, line 41, remove "Note: ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department." This form should be included with your application. In column three of the same page (65 FR 31390), there is an incorrect website address. Line 31 should read http://ocfo.ed.gov/fedreg.htm

On page 31393, column two, line 49, remove "9. GPRA."

FOR FURTHER INFORMATION CONTACT: John De Cleene or Todd May, Smaller Learning Communities Grant Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone: (202) 260–2195 (John De Cleene) or (202) 260–0960 (Todd May). E-mail: smallerlearningcommunities@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 8005.

Dated: May 25, 2000.

Patricia McNeil,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000–01–U

Coversheet

Smaller Learning Communities (SLC) Grant Program Application Package

1. Type of grant applied for. (Check just one.)

_____ Application for Planning Grant

_____ Application for Implementation Grant

2. LEA Name and Address:

NCES District ID:

3. Name and Address of Each School Named in the Accompanying SLC Application:

1. Name:
2. Name:
3. Name:
4. Name:
5. Name:
6. Name:

(Please list any additional schools on a separate page and attach.)

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number: |_|_|_|_|_|_|_|_|_|

3. Applicant's T-I-N |_|_|-|_|_|_|_|_|_|_|

4. Catalog of Federal Domestic Assistance #: **84.215L** →

5. Project Director: _____
Address: _____
City _____ State _____ Zip code + 4 _____
Tel. #: ( ) _____ Fax #: ( ) _____
E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ___Yes ___No
(If "Yes," attach an explanation.)
Title: _____

7. Type of Applicant *(Enter appropriate letter in the box.)* |_____|

A - State
B - County
C - Municipal
D - Township
E - Interstate
F - Intermunicipal
G - Special District
H - Independent School District
I - Public College or University
J - Private, Non-Profit College or University
K - Indian Tribe
L - Individual
M - Private, Profit-Making Organization
N - Other *(Specify)*: _____

8. Novice Applicant ___Yes ___No

Application Information

9. Type of Submission:
-PreApplication
___Construction
___Non-Construction
-Application
___Construction
___Non-Construction

10. Is application subject to review by Executive Order 12372 process?
___Yes *(Date made available to the Executive Order 12372 process for review)* ___/___/_____
___No *(If "No," check appropriate box below.)*
___Program is not covered by E.O. 12372
___Program has not been selected by State for review.

11. Proposed Project Dates: ___/___/_____ ___/___/_____
Start Date: **End Date:**

12. Are any research activities involving human subjects planned at any time during the proposed project period? ___Yes ___No
a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:
_____ *OR* _____
c. IRB approval date: ___Full IRB **or**
_____ ___Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$ _____.00
b. Applicant	$ _____.00
c. State	$ _____.00
d. Local	$ _____.00
e. Other	$ _____.00
f. Program Income	$ _____.00
g. TOTAL	$ _____.00

ED 424 (rev 11/12/99)

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative: _____
b. Title: _____
c. Tel. #: ( ) _____ Fax #: ( ) _____
d. E-mail Address: _____
e. **Signature of Authorized Representative** Date: ___/___/_____

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intiduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No."**

The remaining parts of item 11 are then not applicable.

If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application,

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is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

Protection of Human Subjects in Research (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned.

If you marked item 11 on the application "Yes" and designated exemptions in 11a , **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily*

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determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

[FR Doc. 00–13575 Filed 5–30–00; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed extension with revisions to the Form EIA–886, "Alternative Transportation Fuels and Alternative Fueled Vehicles Annual Survey."

DATES: Written comments must be submitted on or before July 31, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Jorge Luna-Camara, Energy Information Administration, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr Luna-Camara may be reached by phone at (202) 426–1170; by e-mail *jcluna@eia.doe.gov*, or by FAX (202)426–1929.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to (name of contact listed above) at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public.

This form is used to gather information on the supply of "alternative fueled vehicles" (AFV's). Specifically, the Form EIA–886 collects data annually on the number of AFV's which suppliers "made available" in the previous calendar year, and the number of AFV's which suppliers plan to "make available" in the following calendar year. Additionally, the EIA collects data from Federal Agencies, State and Local Governments, Fuel Providers, Transit Authorities, and School Districts; on the number of AFV's in use and their "alternate transportation fuel" (ATF) consumption. These data will be published annually in the *Alternative to Traditional Transportation Fuel* publication. The data will also be available through the EIA home page at *http://www.eia.doe.gov*.

II. Current Actions

The EIA requests a three-year extension through April 30, 2004. Changes to the form are mainly to simplify and/or clarify the reporting of data. No additional data items are requested for collection. All voluntary data, including the vehicle identification number (VIN), will no longer be collected.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. With the proposed changes, public reporting burden for this collection is estimated to average approximately three hours for the AFV providers part of the form or the AFV users part of the form. However, there may be some respondents which would be both (AFV providers as well as AFV users). For these respondents, the EIA estimates an average of approximately five hours per response. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information. Please comment on the accuracy of the estimate.

D. The agency estimates that the only costs to the respondents are for the time it will take them to complete the collection. Please comment if respondents will incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection.

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Authority: Sections 3507(h)(i) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, May 24, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group.

[FR Doc. 00–13526 Filed 5–30–00; 8:45 am]
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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–86–000]

DTE Energy Company, The Detroit Edison Company, International Transmission Company; Notice of Filing

May 24, 2000.

Take notice that on May 19, 2000, DTE Energy Company, The Detroit Edison Company and International Transmission Company filed an amendment to their joint application for authorization to transfer jurisdictional transmission assets pursuant to Section 203 of the Federal Power Act in the above-referenced docket.

Any person desiring to be heard or to protect such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 6, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13490 Filed 5–30–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–290–000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 23, 2000.

Take notice that on May 19, 2000, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed in Appendix A to the filing, to be effective July 1, 2000.

Nautilus states that the purpose of this filing is to revise Nautilus' Original Volume No. 1 FERC Gas Tariff to remove the maximum price cap or short-term capacity release transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13491 Filed 5–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF82–190–000, et al.]

SBR Associates and Ogden Haverhill Associates, et al.; Electric Rate and Corporate Regulation Filings

May 23, 2000.

Take notice that the following filings have been made with the Commission:

1. SBR Associates and Ogden Haverhill Associates

[Docket No. QF82–190–000]

Take notice that on May 15, 2000, SBR Associates and Ogden Haverhill Associates filed a Notice of Withdrawal of their January 29, 1999 Application for Recertification in the above-referenced proceeding.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. O.L.S. Energy-Chino

[Docket No. QF84–443–004]

Take notice that on May 18, 2000, O.L.S. Energy-Chino, c/o Delta Power Company, LLC, 89 Headquarters Plaza, North Tower, 14th Floor, Morristown, NJ 07960 filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's regulations.

The Facility is a topping cycle cogeneration facility consisting of one GE Model LM2500 gas turbine in combined cycle configuration. The Facility is interconnected with, sells power to and receives backup and maintenance power from Southern California Edison Company. Recertification of the Facility is being requested by Applicant to reflect recent changes in the ownership structure of the Facility.

Comment date: June 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. O.L.S. Energy-Camarillo

[Docket No. QF84–447–004]

Take notice that on May 18, 2000, O.L.S. Energy-Camarillo, c/o Delta Power Company, LLC, 89 Headquarters Plaza, North Tower, 14th Floor, Morristown, NJ 07960 filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's regulations.

The Facility is a topping cycle cogeneration facility consisting of one GE Model LM2500 gas turbine in combined cycle configuration. The Facility is interconnected with, sells power to and receives backup and maintenance power from Southern California Edison Company. Recertification of the Facility is being requested by Applicant to reflect recent changes in the ownership structure of the Facility.

Comment date: June 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Vineland Cogeneration Limited Partnership

[Docket No. QF90–176–002]

Take notice that on May 16, 2000, Vineland Cogeneration Limited Partnership, 536 West Elmer Road, Vineland, NJ 08360, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility in Docket No. QF90–176–001. Recertification is sought to reflect a change in the upstream ownership interests in the facility.

The facility is an approximately 46.6 MW (net0 topping-cycle cogeneration facility located in Vineland, New Jersey. The facility is interconnected with and supplied electric power to the Vineland Municipal Electric Utility.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Gregory Power Partners, L.P.

[Docket No. QF99–32–002]

Take notice that on May 16, 2000, Gregory Power Partners, LP, Old Town Square, Suite 130, 1 Chishom Trail, Round Rock, Texas 78664, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on April 12, 1999 in Docket No. QF99–32–000. On April 26, 2000, Applicant filed a Notice of Self-Recertification in Docket No. QF99–32–001. Recertification is sought to reflect a change in the upstream ownership interests in the facility, to inform the Commission of additional contracts with purchasers of the Facility's output, to update and clarify the ownership and description of certain on-site interconnection facilities and to report a contract for energy management services.

The facility is an approximately 427 MW (net) topping-cycle cogeneration facility located in Gregory, Texas. The facility is interconnected with Central Power & Light Company.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Ameren Services Company

[Docket No. ER00–1761–001]

Take notice that on May 18, 2000, Ameren Services Company (ASC), tendered for filing an executed Network Integration Transmission Service Agreement and an executed Network Operating Agreement, between ASC and the City of Owensville. ASC asserts that the purpose of the agreements is to permit ASC to provide service over its transmission and distribution facilities to the City of Owensville pursuant to the Ameren Open Access Tariff. The executed agreements supersede an unexecuted Network Service Agreement and an unexecuted Network Operating Agreement previously filed on March 1, 2000.

Comment date: June 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER00–2360–001]

Take notice that on May 16, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing a new Reliability Services Tariff and corresponding amendments to its Transmission Owner (TO) tariff, originally filed with the Commission on April 28, 2000 in Docket No. ER00–2360–000.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Baconton Power LLC

[Docket No. ER00–2534–000]

Take notice that on May 17, 2000, Baconton Power LLC (Baconton), tendered for filing, pursuant to Section 205 of the Federal Power Act, a certificate of concurrence with respect to SOWEGA Power LLC's (SOWEGA Power) filing of a Common Bus Ownership Agreement between SOWEGA Power and Baconton. The agreement concerns ownership interests in certain 230 kV bus facilities on the plant site shared by SOWEGA Power and Baconton that are used to connect the generators to Georgia Transmission Corporation.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

[Docket No. ER00–2536–000]

Take notice that on May 18, 2000, Commonwealth Edison Company (ComEd) submitted for filing two Short-Term Firm Transmission Service Agreements (Agreement) establishing MidAmerican Energy Company (MEC), and Avista Energy, Inc. (Avista), as short-term firm customers under the terms of ComEd's OATT.

ComEd requests an effective date of December 9, 1999 to coincide with the first day of service to MEC under this type of Service Agreement, and an effective date of July 3, 1999 to coincide with the first day of service to Avista under this type of Service Agreement.

Copies of this filing were served on MEC and Avista.

Comment date: June 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PPL Electric Utilities Corporation

[Docket No. ER00–2537–000]

Take notice that on May 18, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing a Power Sales Agreement between PPL Utilities and PPL EnergyPlus, LLC.

PPL Utilities has served a copy of this filing on PPL EnergyPlus, LLC.

Comment date: June 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket No. ER00–2539–000]

Take notice that on May 18, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement (the Service Agreement) under which NYSEG may provide capacity and/or energy to the County of Erie (County) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested waiver of the notice requirements so that the Service Agreement becomes effective as of May 19, 2000.

NYSEG has served copies of the filing upon the New York State Public Service Commission and County.

Comment date: June 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. PPL Electric Utilities Corporation

[Docket No. ER00–2540–000]

Take notice that on May 18, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.) (PPL), tendered for filing a Service Agreement dated April 20, 2000 with Cargill-Alliant, LLC (Cargill) under PPL's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Cargill as an eligible customer under the Tariff.

PPL requests an effective date of May 18, 2000, for the Service Agreement.

PPL states that copies of this filing have been supplied to Cargill and to the Pennsylvania Public Utility Commission.

Comment date: June 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket No. ER00–2541–000]

Take notice that on May 18, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company), tendered for filing Amendment No. 1 to Supplement No.

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11 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of December 1, 1999 to PG&E Energy Trading—Power, L.P.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER00–2542–000]

Take notice that on May 8, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and PG&E Energy Trading—Power, L.P. for acceptance by the Commission.

The ISO states that this filing has been served on PG&E Energy Trading—Power, L.P., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of April 26, 2000.

Comment date: June 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER00–2543–000]

Take notice that on May 18, 2000, the California Independent System Operator Corporation, tendered for filing a Participating Generator Agreement between the ISO and Nuevo Energy Company for acceptance by the Commission.

The ISO states that this filing has been served on Nuevo Energy Company and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective May 12, 2000.

Comment date: June 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13489 Filed 5–30–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6707–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Implementation of the Oil Pollution Act Facility Response Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Implementation of the Oil Pollution Act Facility Response Plan Requirements, EPA ICR No. 1630.03, OMB Control No. 2050–0135, expiring August 22, 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be submitted on or before July 31, 2000.

ADDRESSES: Materials relevant to this ICR may be inspected by visiting the Public (Superfund) Docket, located at 1235 Jefferson Davis Highway (ground floor), Arlington, Virginia 22202. The docket number for this notice is SPCC–12. The telephone number for the Public Docket is (703) 603–9232. A reasonable fee may be charged for copying docket material. Comments on specific aspects of the proposed information collection notice should be addressed to the Public Docket. The mailing address is: Superfund Docket, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, (703) 603–8823. Facsimile number: (703) 603–9116. Electronic address: *davis.barbara@epa.gov*. Note that questions, but not comments, will be accepted electronically. As noted above, comments should be sent to the Public Docket.

SUPPLEMENTARY INFORMATION:

Affected Entities

The owner or operator of a facility that is required to have a spill prevention control and countermeasure (SPCC) plan under the Oil Pollution Prevention regulation (40 CFR part 112) and that could cause "substantial harm" to the environment must prepare and submit to EPA a facility response plan. The criteria for a "substantial harm" facility include oil transfers over water and a total storage capacity over 42,000 gallons; or total oil storage capacity over one million gallons and insufficient secondary containment, proximity to sensitive environments, proximity to drinking water supplies, or recent large spills; or other factors considered by the Regional Administrator. (See 40 CFR 112.20(b)(1) and (f) for further information about the criteria for "substantial harm.")

The specific private industry sectors subject to this action include, but are not limited to: (1) Petroleum Bulk Stations and Terminals (NAICS 42271); (2) Electric Power Generation, Transmission, and Distribution (NAICS 2211); (3) Gasoline Stations/Automotive Rental and Leasing (NAICS 4471/5321); (4) Heating Oil Dealers (NAICS 454311); (5) Transportation, Pipelines, and Marinas (NAICS 482–486/488112–48819/4883/48849/492/71393); (6) Grain and Oilseed Milling (NAICS 3112); (7) Manufacturing (NAICS 31–33); (8) Warehousing and Storage (NAICS 493); (9) Crude Petroleum and Natural Gas Extraction (211111); (10) Mining and Heavy Construction (NAICS 2121/2123/213114/213116/234); (11) Schools (NAICS 6111–6113); (12) Hospitals (622–623); (13) Crop and Animal Production (NAICS 111–112); and (14) Other Commercial Facilities (miscellaneous).

Title

Implementation of the Oil Pollution Act Facility Response Plan Requirements, OMB Control Number: 2050–0135. EPA Control Number: 1630.03. Expiration Date: August 22, 2000.

Abstract

The authority for EPA's facility response plan requirements is derived from section 311 of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR 112.20. Facility response plans enhance EPA's ability to protect navigable waters and sensitive environments from oil discharges, help ensure that human health and safety are protected in the vicinity of the facility, and reduce the cost of spills to the regulated community and society. EPA is working to finalize proposed revisions to the rule to differentiate between animal fats and vegetable oils and other oils (64 FR 17227–17267, April 8, 1999).

Response Plan Certification

Under section 112.20(e), the owner or operator of a facility that does not meet the "substantial harm" criteria in section 112.20(f)(1) must complete and maintain at the facility the certification form contained in Appendix C to part 112.

Response Plan Development

Under section 112.20(a) or (b), the owner or operator of a facility that meets the "substantial harm" criteria in section 112.20(f)(1) must prepare and submit to the EPA Regional Administrator a facility response plan (FRP) following section 112.20(h). Such a facility may be a newly constructed facility or may be an existing facility that meets paragraph (f)(1) as a result of a planned change (paragraph (a)(2)(iii)) or an unplanned change (paragraph (a)(2)(iv)) in facility characteristics. Under paragraph (c), the owner or operator may be required to amend the FRP.

Response Plan Maintenance

Under section 112.20(g), the owner or operator must periodically review the FRP to ensure consistency with the National Oil and Hazardous Substances Pollution Contingency Plan and Area Contingency Plans. Under section 112.20(d), the facility owner or operator must revise and resubmit revised portions of the FRP after material changes at the facility. FRP changes that do not result in a material change in response capabilities shall be provided to the Regional Administrator as they occur. Periodic drills and exercises are required to test the effectiveness of the FRP.

Recordkeeping

Under section 112.20(e), an owner or operator who determines that the requirements do not apply must certify and retain a record of this determination. An owner or operator who is subject to the requirements must keep the FRP at the facility (section 112.20(a)), keep updates to the FRP (section 112.20(d)(1) and (2)), and log activities such as discharge prevention meetings, response training, and drills and exercises (section 112.20(h)(8)(iv)).

Purpose of Data Collection

A facility-specific response plan will help an owner or operator identify the necessary resources to respond to an oil spill in a timely manner. If implemented effectively, the FRP will reduce the impact and severity of oil spills and may prevent spills because of the identification of risks at the facility. Although the owner or operator is the primary data user, EPA also uses the data in certain situations to ensure that facilities comply with the regulation and to help allocate response resources. State and local governments may use the data, which are not generally available elsewhere and can greatly assist local emergency preparedness planning efforts.

EPA reviews submitted FRPs and must approve FRPs for those facilities whose discharges may cause "significant and substantial harm" to the environment in order to ensure that facilities believed to pose the highest risk have planned for adequate resources and procedures to respond to a spill. (See 40 CFR 112.20(f)(3) for further information about the criteria for "significant and substantial harm.")

Burden Statement

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide the information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems to collect, validate, and verify information, process and maintain information, and disclose and provide information; adjust methods to comply with any new requirements and instructions; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This notice provides the Agency's estimated burden to facilities to perform the required actions. The burden to regulated facilities is estimated in terms of the labor cost and time (hours) spent by facility personnel to review the rule, determine if plan preparation is required, and, if necessary, prepare and maintain FRPs. The Agency developed the burden hour estimates for facilities based on consultations with engineers familiar with Oil Pollution Prevention compliance and with EPA Regional staff involved directly with the implementation of the program. The burden hours calculated for each action are taken from the current ICR, and EPA anticipates using these burden hour estimates in the ICR renewal. Costs are from the current ICR, and the Agency-calculated labor wage rates are in 1996 dollars. In the supporting statement for the ICR renewal, EPA will update these rates for the different labor categories to reflect current wage rates.

In 1999, EPA submitted an Information Correction Worksheet to OMB to reflect an Agency policy change in how contractor costs are estimated. EPA expects that many facilities will use contractors to complete activities associated with FRP preparation and maintenance. Rather than including these contractor costs as part of operation and maintenance costs as the Agency has done in the past, the worksheet converts these contractor costs to burden hours to reflect this policy change. The approach for estimating contractor costs used in the 1999 worksheet will also be used in the ICR renewal.

Currently, approximately 5,500 existing facilities are assumed to be regulated under the FRP requirements. The owner or operator of each new facility that is regulated under SPCC requirements in 40 CFR part 112 must read the FRP provisions in section 112.20 to determine whether or not the facility fits the criteria for "substantial harm." EPA expects 4,355 new SPCC-regulated facilities to make this determination annually. Of those facilities, approximately 65 of them will fit the criteria for "substantial harm" and be required to submit an FRP. These estimates for existing and new facilities were made for the final year of the current ICR, August 1999 to August 2000. Based on assumptions in the current ICR, a one percent annual growth in the number of SPCC-regulated facilities and a 1.5 percent annual growth in the number of FRP-regulated facilities are expected.

In the current ICR and in the ICR renewal, facilities are categorized according to size and type of facility operations. EPA's small, medium, and large size categories are based on the volume of oil storage capacity at each facility. Facilities fall into three

additional categories based on how oil is used at the facility: consumption of oil as a raw material or end-use product (storage/consumption); marketing and distribution of oil as a wholesale or retail good (storage/distribution); or pumping oil from the ground as part of exploration or production activities (production).

An estimate of the number of existing FRP-regulated facilities in 2000 is shown in Exhibit 1. Exhibit 2 shows the number of new facilities expected to complete an FRP each year.

EXHIBIT 1.—NUMBER OF EXISTING FACILITIES MAINTAINING FRPS IN 2000

Model facility category	Facility size			Total
	Small	Medium	Large	
Storage/Consumption	0	160	1,973	2,133
Storage/Distribution	0	565	2,617	3,182
Production	0	215		215
Total	0	940	4,590	5,530

EXHIBIT 2.—ESTIMATED ANNUAL NUMBER OF NEW FACILITIES

Model facility category	Facility type			Total
	Small	Medium	Large	
Storage/Consumption	0	2	23	25
Storage/Distribution	0	7	31	38
Production	0	2		2
Total	0	11	54	65

Unit Burden Hour and Cost Estimates

In calculating the burden on all facilities subject to the FRP requirements, EPA uses a model-facility approach to characterize the diverse nature of regulated facilities. Facilities are categorized according to size and type of facility operations, based on the methodology used in the current ICR. The facility cost estimates for each category of activities, based on the Employment Cost Index (ECI) in terms of 1996 dollars, are: $58.61 for management, $40.17 for technical, $18.32 for clerical, $33.33 for foreman, and $22.22 for labor. In the supporting document for the current ICR, the Agency recognized that these wage rates may underestimate the actual wages received by some facility personnel but overestimate the actual wage rate received by other facility personnel. These costs will be updated in the supporting statement for the ICR renewal.

Exhibit 3 provides EPA's estimate of the per-facility ("unit") burden hours and costs for personnel to read the regulation, make a determination of whether the FRP requirements apply to the facility, and complete a certification form as necessary. Most regulated facilities already have made this one-time determination.

EXHIBIT 3.—UNIT BURDEN HOURS AND COSTS TO READ RULE, MAKE DETERMINATION, AND COMPLETE CERTIFICATION

Type of facility	Burden hours				Cost		
	Management ($58.61)	Technical ($40.17)	Clerical ($18.32)	Total unit burden	Capital	O&M	Total unit cost
Small	0.25	0	0	0.25	0	0	$15
Medium	1	0	0.5	1.5	0	0	68
Large	2	4	0.5	6.5	0	0	287

Exhibits 4 and 5 provide EPA's estimate of the unit burden hours and costs required to become familiar with the rule, and prepare an FRP, respectively. The number of small facilities expected to be required to prepare a facility response plan is assumed to be negligible. Initial preparation of an FRP is a one-time event for the owner or operator of a facility. The burden and cost described in Exhibits 4 and 5 would apply to facilities who have not previously submitted FRPs because they are new or recently identified as being "substantial harm" facilities.

EXHIBIT 4.—ESTIMATED FIRST-YEAR UNIT BURDEN HOURS AND COSTS FOR FACILITIES REQUIRED TO PREPARE FACILITY RESPONSE PLANS: RULE FAMILIARIZATION

Type of Facility	Burden hours						Cost		
	Managerial ($58.61)	Technical ($40.17)	Clerical ($18.32)	Foreman ($33.33)	Labor ($22.22)	Total unit burden	Capital	O&M	Total unit cost
Storage/Consumption:									
Small	0	0	0	0	0	0	0	0	0
Medium	3	6	1	0	0	10	0	0	$ 435
Large	4	8	1	0	0	13	0	0	574
Storage/Distribution:									
Small	0	0	0	0	0	0	0	0	0
Medium	6	3	1	0	0	10	0	0	490
Large	4	8	1	0	0	13	0	0	574
Production:									
Small	0	0	0	0	0	0	0	0	0
Medium	3	6	1	0	0	10	0	0	435
Large									

EXHIBIT 5.—ESTIMATED FIRST-YEAR UNIT BURDEN HOURS AND COSTS FOR FACILITIES REQUIRED TO PREPARE FACILITY RESPONSE PLANS: FRP PREPARATION

Type of facility	Burden hours						Cost		
	Managerial ($58.61)	Technical ($40.17)	Clerical ($18.32)	Foreman ($33.33)	Labor ($22.22)	Total unit burden	Capital	O&M	Total unit cost
Storage/Consumption:									
Small	0	0	0	0	0	0	0	0	0
Medium	30.25	82.5	16.5	10	16	155.25	245	0	$6,323
Large	53.75	156.25	32.0	22	64	328	452	0	12,620
Storage/Distribution:									
Small	0	0	0	0	0	0	0	0	0
Medium	34.75	92.5	17.5	10	16	170.75	250	0	7,012
Large	60.75	191.25	33.0	22	64	371	463	0	14,466
Production:									
Small	0	0	0	0	0	0	0	0	0
Medium	23.25	73.5	12.5	10	16	135.25	240	0	5,473
Large									

Exhibit 6 provides EPA's estimate of the unit burden hours and costs required to maintain an FRP (i.e., subsequent year burdens following initial year plan preparation burden). FRP maintenance includes activities such as completing records, conducting exercises, and reviewing and updating the FRP as necessary. The regulation does not contain significant recordkeeping requirements, but the estimated burden hours for clerical labor may include some recordkeeping activities. The estimates in Exhibit 6 apply to existing facilities with response plans.

EXHIBIT 6.—ESTIMATED UNIT BURDEN HOURS AND COSTS FOR MAINTAINING FACILITY RESPONSE PLANS

Type of facility	Burden hours						Cost		
	Managerial ($58.61)	Technical ($40.17)	Clerical ($18.32)	Foreman ($33.33)	Labor ($22.22)	Total unit burden	Capital	O&M	Total unit cost
Storage/Consumption:									
Small	0	0	0	0	0	0	0	0	0
Medium	7.5	18.5	2	10	16	54	0	0	$1,908
Large	15.0	45.0	8	22	64	154	0	0	4,989
Storage/Distribution:									
Small	0	0	0	0	0	0	0	0	0
Medium	7.5	19.5	2	10	16	55	0	0	1,948
Large	17.0	58.0	10	22	64	171	0	0	5,665
Production:									
Small	0	0	0	0	0	0	0	0	0
Medium	7.5	18.5	2	10	16	54	0	0	1,908
Large									

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Total Annual Expected Facility Burden and Cost

The total annual burden and cost for all existing facilities and all new facilities are shown in Exhibit 7. The current ICR that was submitted to the Office of Management and Budget includes similar burden and cost estimates for the first year of the current ICR, however the annual burdens presented in this notice are calculated based on the third and final year of the current ICR. Approximately 9,900 facilities are required to perform activities in the final year of the current ICR. Of these, over 4,300 new facilities will incur a combined burden of 2,600 hours and $130,000 to become familiar with the rule and determine that they are not required to prepare such plans. Each year approximately 65 new facilities will determine that they are required to prepare such plans and will incur a combined burden of 21,000 hours and $850,000 to do so. Approximately 5,500 existing facilities are required to maintain existing plans and will incur an annual combined burden of about 800,000 hours and $26,000,000 to do so.

EXHIBIT 7.—TOTAL ESTIMATED ANNUAL BURDEN HOURS AND COSTS FOR ALL NEW AND EXISTING FACILITIES

Type of facility	Burden hours						Cost		
	Managerial ($58.61)	Technical ($40.17)	Clerical ($18.32)	Foreman ($33.33)	Labor ($22.22)	Total burden	Capital	O&M	Total
Existing Facilities:									
Small	0	0	0	0	0	0	0	0	0
Medium	7,050	17,955.0	1,880.0	9,400	15,040	51,325	0	0	$1,817,325
Large	74,084	240,571.0	41,954.0	100,980	293,760	751,349	0	0	24,671,998
New Facilities that are Preparing FRPs:									
Small	0	0	0	0	0	0	0	0	0
Medium	404.25	1,004.5	191.5	110	176	1,886.25	2,720	0	77,860
Large	3,335.5	9,954.5	1,813.0	1,188	3,456	19,747	24,749	0	769,771
New Facilities that are not Preparing FRPs:									
Small	868	0	0	0	0	868	0	0	54,345
Medium	805	0	402.5	0	0	1,207.5	0	0	55,360
Large	156	312.0	39.0	0	0	507	0	0	22,469

As part of the Agency's efforts to reduce the overall paperwork burden on regulated facilities, EPA solicits comments on how the Agency could best reduce the total paperwork burden hours for this rule while maintaining an effective level of environmental protection. EPA also solicits public comments to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate technological collection techniques.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed at 40 CFR part 9. Send comments regarding these matters, or any other aspects of the information collection, including suggestions for reducing the burden, to the address listed under **ADDRESSES** near the top of this document.

Dated: May 23, 2000.

Stephen D. Luftig,

Director, Office of Emergency and Remedial, Response.

[FR Doc. 00–13560 Filed 5–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[SW–FRL–6707–3]

Notice of Final Decision on Request by FMC Corporation for an Extension of the Land Disposal Restrictions Effective Date for Five Waste Streams Generated at the Pocatello, Idaho Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision.

SUMMARY: The EPA is today approving the request submitted by FMC Corporation (FMC) for a one-year Case-by-Case (CBC) extension of the May 26, 2000, effective date of the RCRA land disposal restrictions (LDRs) applicable to hazardous wastes generated by FMC. This action responds to the request submitted by FMC, under the procedures for case-by-case extensions to an effective date, which allow any person to request the Administrator to approve, on a case-by-case basis, an extension of the applicable effective date of the LDRs. FMC requested the CBC extension due to the lack of available treatment capacity for five waste streams and the need for additional time to design, construct, and begin operation of an on-site treatment plant to treat those wastes. As discussed in the notice of proposed decision (See March 8, 2000), EPA concludes that FMC has adequately made each of the seven demonstrations required by statute in order for EPA to approve a CBC extension to the LDR effective date. As a result of today's action, FMC Pocatello can continue to manage the five subject wastes, as currently managed in on-site surface impoundments, until May 26, 2001, without being subject to the LDRs applicable to these wastes. If warranted, EPA may grant a renewal of this extension, for up to one year, which, at a maximum, would extend the effective date of the LDR for these wastestreams to May 26, 2002.

DATES: This case-by-case extension becomes effective on May 26, 2000.

ADDRESSES: The official record for this action is identified as Docket Number F–2000–FMCF–FFFFF. Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412-9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this CBC extension, contact William Kline, Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 308–8440, [e-mail address: kline.bill@epamail.epa.gov].

SUPPLEMENTARY INFORMATION: The index of supporting materials evaluated by EPA in reaching our determination to propose approval of the requested CBC extension is available on the Internet. You will find this index at <http://www.epa.gov/epaoswer/hazwaste/ldr/fmc.htm>.

The information in this section is organized as follows:

I. Background of This Notice of Final Decision

A. RCRA and Congressional Mandate
B. Related Regulatory Background
C. Summary of FMC's Request for a CBC Extension
D. Relationship of this CBC Extension with the RCRA Consent Decree for FMC Pocatello
E. Summary of EPA's Evaluation of FMC's Demonstrations Under 40 CFR 268.5(a)

II. What Are EPA's Responses to Comments Submitted on the Notice of Proposed Approval of CBC Extension?

A. Will the Proposed LDR Treatment Plant have Sufficient Capacity?
B. Do the Surface Impoundments (Ponds 17 and 18), to be Used During the Extension, Meet the Minimum Technological Requirements of 40 CFR 268.5 (h)(2)?
C. Has EPA Consulted Adequately with the Tribes?
D. Other Issues Not Directly Related to the CBC Extension

III. What Is EPA's Final Determination on FMC's Request for a CBC Extension?

IV. Administrative Requirements

I. Background of This Notice of Final Decision

A. RCRA and Congressional Mandate

The Resource Conservation and Recovery Act (RCRA) establishes a program for controlling hazardous waste from the time it is generated, through its treatment and storage, until its ultimate disposal. EPA's regulations implementing RCRA are listed in Title 40 of the Code of Federal Regulations (CFR). Within Title 40, the hazardous waste regulations are listed in Parts 260 through 268, and 270 through 272.

Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act. These amendments imposed additional responsibilities on persons managing hazardous wastes. Among other things, HSWA required EPA to develop regulations that prohibit the land disposal of certain hazardous wastes by specified dates in order to protect human health and the environment. EPA also was required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." Characteristic hazardous wastes must be treated not only to remove the characteristic property that identifies them as hazardous, but also to treat any hazardous constituents that may be present in the wastes in significant concentrations (so-called "underlying hazardous constituents"). See *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 14–17 (D.C. Cir. 1992).

Congress recognized that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment may not always be available by the applicable statutory effective dates. As such, EPA is authorized to grant a national capacity variance from the effective date which would otherwise apply to specific hazardous wastes, based on the earliest dates that such capacity will be available but not to exceed two years. In addition, EPA is authorized to grant an additional extension of the applicable LDR deadline, on a case-by-case basis, for up to one year. Such an extension is renewable once for up to one additional year. The specific requirements for obtaining a CBC extension of a Land Disposal Restriction (LDR) effective date, the subject of this notice of proposed decision, are found in Part 268—Land Disposal Restrictions, § 268.5(a), which rule essentially recites the statutory criteria found in RCRA section 3004 (h)(3).

B. Related Regulatory Background

On January 25, 1996 (61 FR 2338), EPA published a supplemental proposed rule that addressed land disposal restrictions applicable, among others, to characteristic mineral processing wastes. On behalf of its elemental phosphorous plant located in Pocatello, Idaho (FMC Pocatello), FMC submitted a petition to request a two-year national capacity variance from the Phase IV LDR requirements, citing the lack of available treatment capacity in the U.S. for certain wastes generated by its Pocatello, Idaho facility. FMC later submitted supplemental comments to its petition for a national capacity variance, informing EPA that it could not design a treatment unit for its wastes until the applicable treatment standards and the wastes subject to treatment were defined.

On May 12, 1997 (62 FR 26041), EPA proposed to grant a two-year national capacity variance for three waste streams (Medusa Scrubber Blowdown, Anderson Filter Media Rinsate, and Furnace Building Washdown) generated at the Pocatello, Idaho facility. FMC submitted comments, noting that the Anderson Filter Media Rinsate now had been eliminated, using pollution prevention. However, FMC identified three additional waste streams (Precipitator Slurry, NOSAP Slurry, and Phossy Water) generated in the same elemental phosphorous production process for which treatment capacity was not available and likewise needed to be granted the proposed two-year national capacity variance.

On May 26, 1998 (63 FR 28556), EPA promulgated the Final LDR Phase IV rule and granted a two-year national capacity variance for newly identified characteristic wastes from elemental phosphorous processing, including the five waste streams generated at FMC's facility in Pocatello, Idaho. This national capacity variance extended the LDR effective date for these wastes to May 26, 2000.

On July 12, 1999, FMC Corporation submitted to EPA a request, along with documentation to support the required seven demonstrations in section 268.5, for a one-year CBC extension of the LDR effective date for the five waste streams generated at its facility located in Pocatello, Idaho.

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On March 8, 2000, EPA proposed to approve the CBC extension requested by FMC Corporation to extend the LDR effective date for the five waste streams generated at its facility located in Pocatello, Idaho. (See 65 FR 12233 for details of the notice of proposed approval of this CBC extension.) The proposed extension would allow FMC Pocatello to continue managing these wastes in on-site surface impoundments until May 26, 2001, while FMC designs and constructs a treatment plant to treat these waste streams to BDAT standards. As discussed below in Section II—only the Fort Hall Business Council (on behalf of the Shoshone-Bannock Tribes) and FMC Corporation submitted comments on the notice of proposed approval of this CBC extension.

The Federal Trade Commission (FTC) approved the proposed plan by FMC and Solutia, Inc. to operate a joint venture company, known as Astaris Idaho LLC, comprising the combined phosphorous chemical businesses of FMC Corporation and Solutia, Inc. Effective April 17, 2000, Astaris Idaho LLC became the owner and operator of the Pocatello facility. As such, Astaris Idaho LLC is responsible for the construction, operation, and maintenance aspects of the LDR Treatment Plant. However, FMC retains responsibility for funding the capital costs and for implementing all RCRA Consent Decree projects, including the proposed LDR Treatment Plant. For the sake of simplicity, for the purposes of this notice of final decision on the requested CBC extension, we simply will refer to FMC as the applicant for the CBC extension. However, where appropriate, the name FMC also is construed as encompassing the FMC/Astaris Idaho LLC joint venture.

C. Summary of FMC's Request for a CBC Extension

FMC's CBC extension request is for five waste streams, generated in the production of elemental phosphorous: (1) Non-Hazardous Slurry Assurance Project (NOSAP) Slurry, (2) Medusa Scrubber Blowdown, (3) Furnace Building Washdown, (4) Precipitator Slurry, and (5) Phossy Water. These five waste streams are generated in large quantities (see the chart) and pose unique handling, treatment, and disposal considerations, given the presence of elemental phosphorous and cyanide, causing the wastes to exhibit the characteristic of reactivity for phosphine and hydrogen cyanide gas, and also to exhibit the characteristic of ignitability. Each of these waste streams also contains varying levels of Naturally Occurring Radioactive Material (NORM) which pose special treatment concerns for off-site commercial TSDs.

QUANTITY OF FMC WASTE STREAMS GENERATED

Waste	Quantity generated in millions of gallons per year
Precipitator Slurry	4
NOSAP Slurry (treated precipitator slurry)	21
Phossy Water	89
Medusa Scrubber Blowdown	55
Furnace Building Washdown	93

FMC requested the CBC extension due to the lack of available treatment capacity for these five waste streams and the need for additional time to design, construct, and begin operation of an on-site LDR Treatment Plant (System). This proposed treatment plant would use a combination of clarification, the Anoxic form of the Zimpro treatment process (an anoxic aggressive caustic hydrolysis at elevated temperature and pressure), pH adjustment, filtration, and stabilization to treat the FMC Pocatello waste streams to meet the applicable BDAT standards, including reducing the levels of elemental phosphorous and cyanide in the wastes such that the treated wastes do not exhibit the characteristic of reactivity for phosphine and hydrogen cyanide gas or exhibit the characteristic of ignitability.

Currently, these five waste streams are managed in on-site surface impoundments and must be kept covered with water to prevent ignition. The surface impoundments into which these wastes will be managed during the CBC extension were constructed to meet the RCRA minimum technological requirements of 40 CFR 268.5(h)(2). Specifically, the off-specification Precipitator Slurry, Furnace Building Washdown, Medusa Scrubber Blowdown, and Phossy Water waste streams are pumped to a surface impoundment, designated as Pond 18, for clarification. The NOSAP Slurry is pumped to another surface impoundment, Pond 17. Once the LDR Treatment Plant is operational, precipitator slurry will be treated by it and the discharge to Pond 17 will be eliminated, thereby eliminating the NOSAP Slurry waste stream. Operating the LDR Treatment Plant also will eliminate the need for the continued discharge of these five waste streams to the on-site ponds.

FMC has provided documentation showing that they initiated research and development efforts in 1990 to develop the technology needed to treat the Pocatello, Idaho facility's elemental phosphorous production waste streams to meet anticipated LDR standards. FMC also submitted the results of extensive surveys, involving approximately 200 commercial TSD facilities nationwide, that it conducted in an attempt to find off-site available treatment capacity. These surveys indicated that no commercial TSD facility contacted was able or willing to treat the Pocatello waste streams. The chemical properties of these waste streams, along with the volumes generated, are among the reasons given by commercial facilities for not being able or desiring to treat these waste streams. Corroborating FMC's documentation, EPA has not received any statement or other indication from commercial hazardous waste TSD facilities that treatment capacity exists for these FMC waste streams.

FMC spent considerable time and effort on identifying an appropriate treatment technology for these waste streams. However, FMC determined that it could not finalize development of the treatment technology, design the LDR Treatment Plant, obtain permits, construct the LDR Treatment Plant, and begin operating the LDR Treatment Plant within the two-year period of the current national capacity variance that expires on May 26, 2000. As such, in July 1999, FMC submitted its request to EPA for a CBC extension to further extend the LDR effective date for the subject five waste streams generated at its Pocatello, Idaho facility.

On March 8, 2000, EPA published a notice of intent (65 FR 12233) to approve FMC's request for a one-year extension of the LDR effective date, based upon a determination that FMC had fulfilled the criteria of 40 CFR 268.5(a) which sets forth the required demonstrations to be made in requesting a CBC extension of a LDR effective date.

D. Relationship of the CBC Extension With the RCRA Consent Decree for FMC Pocatello

To settle charges that it repeatedly had violated hazardous waste regulations, including numerous RCRA violations involving the mismanagement of ignitable and reactive wastes in on-site ponds, FMC negotiated a consent decree with the United States government to pay a civil penalty and commit to bringing the Pocatello facility into RCRA compliance. On July 13, 1999, the U.S. District Court for the District of Idaho entered as final a Consent Decree (*United States* v. *FMC Corp.*, Civ. 98–0406–E–BLW) requiring closure of certain on-site ponds, tank system upgrades to comply with RCRA standards, and the implementation of SEPs to address air quality. This Consent Decree also mandates certain requirements regarding the management of FMC Pocatello waste streams, including site-specific treatment requirements to deactivate ignitable and reactive waste streams, and the requirement to design, construct, and commence operation of a LDR Treatment Plant for these waste streams by no later than May 2002, prohibiting the discharge of untreated hazardous wastes to the facility's on-site ponds after May 26, 2002. (The terms "LDR Treatment System" and "LDR Treatment Plant," as used in the RCRA Consent Decree and the FMC CBC extension application, respectively, are essentially referring to the same treatment unit and associated ancillary equipment, needed to be designed, constructed, and operated in order to treat the FMC Pocatello hazardous waste streams to meet the applicable LDR requirements.) The RCRA Consent Decree does not negate the need for FMC to pursue CBC extension(s), as needed, to allow the continued discharge of the LDR subject wastes to on-site surface impoundments beyond the May 26, 2000 expiration date of the current national capacity variance. As we discussed in the March 8, 2000, notice of proposed approval of this CBC extension, although there is no direct connection between EPA's approval of FMC's request for a one year extension to the LDR effective date and the Consent Decree, EPA believes that FMC's compliance with the terms of the RCRA Consent Decree bolster certain of the demonstrations required by RCRA section 3004(h)(3) and the implementing rules to obtain the requested CBC extension. EPA views these courses of action as ensuring consistency of both the CBC extension and RCRA Consent Decree processes and complementary in compelling FMC toward providing the necessary treatment capacity to properly manage the subject waste streams. Conversely, approval of this CBC extension obviously does not alter any terms of the RCRA Consent Decree, since there is no direct connection between the Consent Decree and this proceeding.

E. Summary of EPA's Evaluations of FMC's Demonstrations Under 40 CFR 268.5(a)

The following is a summary of each of the seven demonstrations required under 40 CFR 268.5(a) to obtain a CBC extension and EPA's evaluation of the adequacy of the demonstrations made by FMC Pocatello.

1. Section 268.5(a)(1)—The Applicant (FMC) Has Made a Good-Faith Effort To Locate and Contract With Treatment, Recovery, or Disposal Facilities Nationwide To Manage Its Waste in Accordance With the LDR Effective Date of the Applicable Restriction (*i.e.*, May 26, 2000)

When faced with pending regulation under the Land Disposal Restrictions, FMC initially surveyed 168 treatment, storage, and disposal facilities (TSDs) throughout the nation, in an effort to locate commercial treatment or disposal capacity. None of these facilities was able or willing to provide treatment or disposal capacity for the FMC Pocatello waste streams. Various reasons were noted by the TSDs in declining to manage these waste streams, including the presence of elemental phosphorous, the potential for generation of phosphine gas, levels of naturally occurring radioactive materials (NORM), and the volume of wastes to be managed. Likewise, EPA was not aware of any available capacity for these waste streams. FMC provided these findings to EPA in support of its request for a national capacity variance for the subject waste streams. Given these findings, as well as EPA not being aware of the availability of treatment capacity for these waste streams, and no commercial (or other) entity providing waste treatment disputing these conclusions, EPA granted a national capacity variance for the FMC Pocatello waste streams, extending the LDR effective date for these waste streams to May 26, 2000. (See 63 FR 28556, May 26, 1998.)

In early 1999, FMC conducted a follow-up survey of available treatment capacity at TSDs to support its request for a CBC extension. This survey indicated that there still was no TSD facility able or willing to treat the FMC Pocatello waste streams.

EPA is convinced that FMC has made concerted and reasonable efforts to locate adequate, alternative treatment capacity for the five waste streams for which it is requesting a CBC extension of the LDR effective date, but that no such treatment capacity exists. EPA's own independent evaluation confirms absence of any available alternative treatment capacity for these wastes at this time. EPA thus finds that FMC has adequately fulfilled the requirements of this demonstration.

2. Section 268.5 (a)(2)—The Applicant (FMC) Has Entered Into a Binding Contractual Commitment To Construct or Otherwise Provide Alternative Treatment, Recovery, or Disposal Capacity That Meets the Treatment Standards Specified in 40 CFR Part 268, Subpart D or, Where Treatment Standards Have Not Been Specified, Such Treatment, Recovery, or Disposal Capacity Is Protective of Human Health and the Environment

FMC has provided documentation that it has entered into a contract with Raytheon Engineers and Constructors to design, engineer, and construct the LDR Treatment Plant. In addition to this contract, FMC also provided other documentation, including corporate approval of funds, purchase orders for equipment, supplies, and services that further support its demonstration of a binding contractual commitment to construct the LDR Treatment Plant.

EPA also notes that the RCRA Consent Decree imposes an additional binding legal commitment on FMC to construct the LDR Treatment System. Under the RCRA Consent Decree, FMC is compelled to design and construct the proposed LDR Treatment System by May 2002. If FMC fails to meet the stipulations of this RCRA Consent Decree, it will be subject to significant monetary penalties.

We conclude that FMC has provided the necessary documentation to meet this demonstration of its binding contractual commitment to provide the on-site treatment capacity needed to treat the subject waste streams generated at the Pocatello, Idaho facility to BDAT standards.

3. Section 268.5 (a)(3)—Due to Circumstances Beyond the Applicant's (FMC's) Control, Such Alternative Capacity Cannot Reasonably Be Made Available by the Applicable Effective Date. This Demonstration May Include a Showing That the Technical and Practical Difficulties Associated With Providing the Alternative Capacity Will Result in the Capacity Not Being Available by the Applicable Effective Date

The five waste streams for which FMC requests a CBC extension pose numerous and essentially unique treatment problems, as evidenced by the non-availability of commercial treatment capacity. Since the early 1990s, FMC has committed considerable resources toward determining and developing the most appropriate treatment technology for these waste streams, evaluating more than 50 potential waste treatment technologies.

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However, in addition to solving the technical problems posed by these waste streams, FMC also has needed to know the final Phase IV LDR treatment standards. FMC's documentation shows that it has made an intensive effort to determine the treatment technology most appropriate to treat the FMC Pocatello waste streams to meet the LDR requirements. Now that an appropriate treatment technology/process has been identified, FMC is proceeding with plans to construct the LDR Treatment Plant, incorporating the Zimpro anoxic hydrolysis process as the principal treatment technology in the treatment system.

We believe FMC has acted in good faith to provide the necessary treatment capacity but that such capacity could not reasonably be made available by May 26, 2000, the current effective date of the land disposal restriction for these waste streams. EPA believes the lack of treatment capacity for these waste streams is due to circumstances beyond the control of FMC. These waste streams pose unique handling, safety, and treatment considerations, including the presence of elemental phosphorous and cyanide, and the potential for generation of phosphine and hydrogen cyanide gas. FMC has demonstrated to EPA's satisfaction that it has aggressively pursued the development of technology capable of treating the FMC Pocatello waste streams to BDAT standards and is actively engaged in the design and construction of the treatment system employing this technology to provide the necessary treatment capacity. However, it is not possible for FMC to construct the LDR Treatment Plant needed to provide the treatment capacity and to be operating by May 26, 2000.

4. Section 268.5 (a)(4)—The Capacity Being Constructed or Otherwise Provided by the Applicant (FMC) Will Be Sufficient To Manage the Entire Quantity of Waste That Is the Subject of the Application

The proposed LDR Treatment uses a combination of lime treatment, anoxic hydrolysis, metals precipitation, filtration, and stabilization. FMC, in its application for a CBC extension, states that the LDR Treatment Plant to be constructed will have sufficient capacity to adequately treat the waste streams generated by the Pocatello, Idaho facility. FMC has provided documentation that demonstrates this treatment system will treat the subject waste streams to meet the LDR treatment standards, destroying elemental phosphorous and cyanide, and removing the hazardous characteristics from these waste streams. FMC has made available information, initially designated as CBI, regarding the process design flow and operating conditions of the proposed LDR Treatment Plant. The documentation shows that FMC plans to design, construct, and operate the LDR Treatment Plant with sufficient capacity to treat not only the annual production of the five waste streams that are the subject of the requested CBC extension but also treat, within five years of commencing operation of the LDR Treatment Plant, the accumulated solids in Pond 18, as is required by the RCRA Consent Decree. As discussed below, the Tribes, in comments provided to EPA, expressed concern that the proposed LDR Treatment Plant may not have sufficient capacity, in light of recent revised FMC estimates of the quantity of Pond 18 solids to be removed and treated. Based on the data submitted by FMC (as discussed in the March 8, 2000 FR notice) in support of its request for a CBC extension, the projected design capacity of the LDR Treatment Plant will be sufficient to treat the five subject waste streams and the Pond 18 solids. FMC also notes waste reduction initiatives being implemented at the Pocatello facility will further ensure that the LDR Treatment Plant will be able to accommodate the full annual production of the five waste streams and also meet the requirement to treat the Pond 18 solids. In a letter, dated April 24, 2000, FMC reaffirmed its commitment to ensure that the Pocatello facility definitely will have sufficient capacity to manage the five waste streams that are the subject of this CBC extension. FMC states that it does not anticipate reducing the production of elemental phosphorous during the one-year CBC extension, but, if necessary, it will reduce plant production to reduce the quantity of its waste streams in order to further ensure sufficient treatment capacity.

The RCRA Consent Decree likewise requires that the LDR Treatment System have sufficient capacity to treat the production wastes and the accumulated solids from Pond 18. At this point, FMC has completed approximately 20% of the design of the proposed LDR Treatment Plant. Design work is scheduled to be completed in January 2001. EPA is convinced that FMC is committed to providing the necessary treatment capacity to ensure that the entire quantity of these five waste streams, for which FMC is requesting a CBC extension, will meet applicable BDAT standards. FMC has noted it will need to request an extension of this CBC extension to provide additional time to complete the construction of the proposed LDR Treatment Plant. At that time, FMC will have completed the design of the LDR Treatment Plant and will need to provide further confirmation that sufficient treatment capacity is being constructed.

5. Section 268.5(a)(5)—The Applicant (FMC) Provides a Detailed Schedule for Obtaining Operating and Construction Permits or an Outline of How and When Alternative Capacity Will Be Available

FMC has provided EPA with a proposed schedule for the design, construction, and permitting of the LDR Treatment Plant to be constructed at its Pocatello, Idaho facility. This schedule, in effect, coincides with the schedule outlined under the Consent Decree for bringing the LDR Treatment System on-line by May 2002. This schedule provides the necessary design, construction and permitting milestones for bringing the LDR Treatment Plant on-line and therefore providing the treatment capacity needed to treat the subject waste streams to BDAT standards. EPA notes that the one-year CBC extension being approved today, extending the LDR effective date until May 26, 2001, likely will not provide sufficient time for FMC to bring the LDR Treatment Plant into operation. FMC likely will need to request a renewal of this CBC extension to provide additional time to complete construction and commence operation of the LDR Treatment Plant. As noted in the March 8, 2000 FR notice, FMC provided a number of milestones, including the startup of onsite construction in July 2000 and the completion of design and engineering work in January 2001. EPA will closely monitor the progress being made by FMC toward its stated schedule for the design, construction, and operation of the LDR Treatment Plant. FMC must provide a monthly progress report, as discussed below, that identifies any delay or possible delay in developing this treatment capacity and describes the actions being taken to remedy any such delay. EPA further will examine FMC's progress in meeting these milestones at such time when FMC reapplies for an additional CBC extension, as anticipated.

FMC has provided the necessary design, construction and permitting milestones for bringing the LDR Treatment Plant on-line and therefore providing the treatment capacity needed to treat the subject waste streams to BDAT standards.

6. Section 268.5(a)(6)—The Applicant (FMC) Has Arranged for Adequate Capacity to Manage Its Waste During an Extension, and Has Documented the Location of All Sites at Which the Waste Will Be Managed

During this CBC extension, FMC will continue to manage the five waste streams in two of its on-site surface impoundments, referred to as Ponds 17 and 18. FMC has provided data showing that each of these surface impoundments will have the necessary capacity available to manage these wastes during the extension, *i.e.*, until May 26, 2001. Further assurance of adequate capacity and proper management of these surface impoundments (ponds) will be provided by FMC's adherence to the Pond Management Plan, as required by the RCRA Consent Decree. Among other requirements, the Pond Management Plan requires that pond levels be maintained within defined minimum and maximum levels.

EPA concludes that FMC has provided the documentation necessary to satisfy this demonstration.

7. Section 268.5(a)(7)—Any Waste Managed in a Surface Impoundment or Landfill During the Extension Period Will Meet the Requirements of 40 CFR 268.5(h)(2)

As previously described, the subject waste streams will be piped directly to the on-site surface impoundments, *i.e.*, Ponds 17 and 18. FMC has provided information demonstrating that both of these surface impoundments were constructed to meet the RCRA minimum technological requirements of 40 CFR 268.5(h)(2), including such protective measures as double liners, leak detection, and groundwater monitoring wells. EPA concludes that FMC has provided the documentation necessary to satisfy this demonstration.

II. What Are EPA's Responses to Comments Submitted on the Notice of Proposed Approval of the CBC Extension?

The Fort Hall Business Council (representing the Shoshone-Bannock Tribes) and FMC Corporation submitted comments in response to the March 8, 2000 FR notice. These comments previously had been provided to EPA in response to EPA's advance communication with the Tribes on the draft notice " prior to the notice being published in the **Federal Register**. The comments provided by FMC essentially address each of the issues raised by the Tribes in these comments. Additional comments were submitted by the Fort Hall Business Council, subsequent to a meeting held with EPA on May 2, 2000. The following is a discussion of and EPA's response to each of the issues raised in the comments, pertinent to the proposed CBC extension for the five subject waste streams generated at FMC Pocatello.

A. Will the Proposed LDR Treatment Plant Have Sufficient Capacity?

FMC recently completed a dispersion modeling study of Pond 18 emissions to better understand the emissions of phosphine and hydrogen cyanide that will occur during removal of solids from Pond 18. FMC found that the potential magnitude of these emissions during removal of sediments within the five-year period is significantly greater than FMC had anticipated when the RCRA Consent Decree was negotiated. As such, FMC requested that the RCRA Consent Decree requirement to remove and treat the Pond 18 solids within five years of the start of the LDR Treatment System be extended to 10 years in order to comply with acute health standards for phosphine emissions. EPA denied the request. The Tribes also noted that FMC recently had informed them that the amount of sediment expected from Pond 18 would be greater than originally calculated. As such, the Shoshone-Bannock Tribes questioned whether the proposed LDR Treatment Plant was being designed to provide sufficient capacity to treat the five subject waste streams as well as the accumulated solids from Pond 18.

The removal and treatment of accumulated solids from Pond 18 within a five-year period are mandated by the RCRA Consent Decree and are not requirements of this CBC extension. However, the demonstration under § Section 268.5(a)(4), requiring FMC to design the LDR Treatment Plant with adequate treatment capacity, is impacted by the RCRA Consent Decree requirement that FMC remove and treat the Pond 18 solids within five years of the treatment plant commencing operation. As such, EPA must be assured that the proposed LDR Treatment Plant indeed will have sufficient capacity to treat not only the subject five waste streams but also the Pond 18 solids. Addressing this issue, FMC, in its comments of March 28, 2000, states "The LDR Treatment Plant is designed to manage the quantity of production wastes generated at FMC Pocatello as well as the Pond 18 dredged material that will be generated after start-up in early 2002." FMC, in a letter, dated April 24, 2000, further reaffirmed its commitment to ensure that the Pocatello facility definitely will have sufficient capacity to manage the five waste streams that are the subject of this CBC extension. FMC has indicated that, if necessary, it will reduce plant production to ensure adequate treatment capacity.

It is critical that FMC provides adequate treatment capacity to manage the entire quantity of waste it generates that is the subject of this CBC extension. Based on design capacity information provided by FMC to EPA in support of its request for a CBC extension, FMC's subsequent statements that further assure its commitment to provide adequate treatment capacity and to cut production, if needed, we conclude the proposed LDR Treatment Plant will be designed and operated so that sufficient capacity is available to treat the five subject waste streams as well as the Pond 18 solids. EPA will continue to monitor FMC's efforts to provide this treatment capacity. If information becomes available, leading EPA to conclude that FMC is no longer able or willing to meet its commitment to provide adequate treatment capacity, EPA will need to consider revoking this CBC extension.

B. Do the Surface Impoundments (Ponds 17 and 18) That Will be Used During the Extension, Meet the Minimum Technological Requirements of 40 CFR 268.5(h)(2)?

As previously discussed, FMC, under this CBC extension, will continue to pipe the five subject waste streams to the on-site surface impoundments, *i.e.*, Ponds 17 and 18. As such, both of these surface impoundments must meet the RCRA "minimum technology requirements" of 40 CFR 268.5(h)(2) which requires that impoundments receiving wastes subject to a CBC extension include such protective measures as double liners, leak detection, and groundwater monitoring wells. The Tribes stated that they do not believe that waste managed in these surface impoundments, during the extension period, will meet the requirements of 40 CFR 268.5(h)(2). However, no specific information was provided by the Tribes as to why they believe Ponds 17 and 18 do not meet these requirements. The Tribes further stated that 40 CFR 265.229 prohibits the placement of ignitable or reactive wastes in an impoundment unless the requirements of 40 CFR part 268 have been met and the waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that it no longer meets the definition of ignitable or reactive waste. FMC, in its comments, noted that the RCRA Consent Decree and the RCRA

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Pond Management Plan establish standards for properly managing these wastes so as to satisfy these alternative provisions. FMC notes that Occupational Safety and Health Administration (OSHA) standards will be followed to protect workers, that dredging will be performed by remotely controlled apparatus, that phosphine monitoring and response measures will be in-place, and that there are no residences or recreational areas within the projected area of offsite impact.

The Tribes also expressed concerns regarding the capacity and management of Ponds 17 and 18. In their comments, the Tribes questioned whether these ponds would have sufficient capacity given FMC's current design criteria for the planned LDR Treatment Plant, coupled with potential delays in construction and possible equipment failures during demonstration or other unexpected events. The Tribes also stated that FMC has not demonstrated the ability to manage waste and water in existing surface impoundments as evidenced by previous incidents of overtopping of other on-site ponds.

FMC has provided data showing that each of the two surface impoundments, that will be used during the CBC extension, have the necessary capacity available to manage these wastes during the extension, *i.e.*, until May 26, 2001. Although it is feasible that construction delays, equipment failure, etc. could occur, EPA cannot speculate on the probability of occurrence of such events. At this point, EPA is convinced that FMC is continuing to make a good-faith effort toward the design and construction of the proposed LDR Treatment Plant so that operation will commence by May 2002. Although there may have been past problems with certain other on-site FMC ponds, EPA continues to conclude that the two surface impoundments (Ponds 17 and 18) to be used during the CBC extension do meet the minimum technology requirements, and in addition, will be operated in a protective manner and in compliance with other applicable EPA rules during the one-year CBC extension.

EPA is convinced that the requirements of the RCRA Consent Decree and the Pond Management Program adequately address the proper design and operation of these surface impoundments—to meet the requirements for managing these wastes in Ponds 17 and 18 during this CBC extension. In addition to designing the ponds to meet the RCRA minimum technology requirements, FMC, for example:

- Treats precipitator slurry per the Non-Hazardous Slurry Assurance Project (NOSAP) system operating requirements prior to discharging this waste to Pond 17
- Provides electronic leak detection in Pond 18
- Provides a tertiary liner, to serve as the sacrificial liner, to allow removal of sediments from Pond 18 without jeopardizing the integrity of the other liners/leak detection system
- Provides around the clock, seven days a week, surveillance, inspections, and recordkeeping
- Manages pond water levels to minimize water level fluctuations so that solids in the ponds remain covered thereby preventing fires. Electronic level monitoring/alarm devices and a video surveillance system are used to continuously measure and record water levels.
- Manages volume of water generated during normal plant operation and a 100-year, 24-hour storm event to maintain adequate freeboard and prevent overtopping.
- Follows the Occupational Safety and Health Administration (OSHA) standards to protect workers.

Based on EPA's knowledge of these surface impoundments and the documentation provided by FMC, we continue to conclude that these surface impoundments (Ponds 17 and 18) do meet the minimum technology requirements, and in addition, will be operated in a protective manner and in compliance with other applicable EPA rules during the one-year CBC extension.

The Tribes also commented that certain air emission standards, in particular, the standards of 40 CFR part 265.1086, must be met for these two surface impoundments. As previously noted in the notice proposing to approve the requested CBC extension (65 FR 12233, March 8, 2000), EPA believes that the level of volatile organics, if any, in these wastes is below the threshold set out in EPA's regulations in 40 CFR parts 264 and 265 subpart CC so that these rules do not apply. These regulations address air emissions from hazardous waste surface impoundments (but see the limitation that only impoundments receiving certain types of volatile wastes are subject to the rules (40 CFR 265.1083(c)(1)). Should the rules be applicable, FMC must, of course, comply with them. FMC submitted a letter, along with data, to EPA, dated April 21, 2000, that reaffirms FMC's position that the regulatory threshold for 40 CFR Part 265, Subpart CC is not exceeded for materials entering the surface impoundments, based on direct measurements obtained from sampling the waste streams at the point of waste origination. Based on EPA's knowledge of these wastes and the information made available by FMC, EPA continues to believe that these rules do not apply to the two surface impoundments that FMC will use to manage the subject five waste streams during the CBC extension.

C. Has EPA Consulted Adequately With the Tribes?

The majority of the FMC Pocatello site, including most of the processing areas, is located on Shoshone-Bannock Tribes' lands, referred to as the Fort Hall Indian Reservation. As such, The United States recognizes and concurs that it does owe an important trust responsibility to the Tribes, on whose lands the FMC Pocatello facility is located, including a responsibility to perform its obligations under RCRA and other statutes intended to protect the environment. We also recognize the Tribes's concerns regarding the continued placement of untreated hazardous wastes in the FMC Pocatello on-site surface impoundments. The Tribes commented that they do not believe EPA has met the consultation mandate required of all federal agencies under the government-to-government relationship. EPA has taken numerous steps to meet the consultation requirement of the Presidential Memorandum of April 29, 1994. Specifically, EPA has:

- Requested FMC to make sure that the Tribes are provided the same information as is provided to EPA in evaluating this CBC extension request.
- Held staff level discussions to obtain feedback on the CBC extension.
- Provided the Tribes with an advance copy of the draft Federal Register notice of Proposed Decision and provided the Tribes three weeks for review and comment prior to publishing the FR notice. In conveying the draft Federal Register notice, EPA asked for information and comments on whether FMC adequately met the seven demonstrations required to qualify for a CBC extension.
- Sent a letter offering to meet with Staff and/or the Fort Hall Business Council to discuss their comments on the draft notice.
- Evaluated information submitted by the Tribes and, when appropriate, requested and reviewed additional information from FMC.
- Scheduled conference calls with the Chairman of the Fort Hall Business Council.

- Scheduled a meeting with the Fort Hall Business Council for government to government consultation, to follow up on their comments and further consult regarding final determination on FMC's request for a CBC extension.
- Subsequent to a meeting held on May 2, 2000, provided the Fort Hall Business Council with an additional opportunity to provide comments.

EPA believes it has made reasonable and timely efforts to consult with the Shoshone-Bannock Tribes on this matter. We will continue our efforts to consult with the Tribes on their concerns regarding this CBC extension and the anticipated request by FMC for a renewal, up to one additional year, of this CBC extension. EPA also will require that FMC provide the Tribes with a monthly progress report, as discussed below.

D. Other Issues Not Directly Related to the CBC Extension

The Tribes raised a number of concerns and issues in their comments, concerning the environmental impact of operations at the FMC facility, that are beyond the scope of EPA's consideration of FMC's request for this CBC extension. The ultimate and controlling issue in EPA's evaluation of FMC's request for a CBC extension is whether FMC has satisfied the statutory and regulatory conditions, as provided in section 3004(h)(3) of the statute and the rules in 268.5. These establish that an applicant who satisfies the conditions for a CBC extension will be granted one.

These other concerns, raised by the Tribes, are being addressed under the current RCRA Consent Decree or other ongoing EPA actions at FMC Pocatello. These concerns include:

- Groundwater and soil contamination from FMC's old ponds are being addressed under a CERCLA Record of Decision (ROD).
- Numerous efforts are ongoing/planned at FMC Pocatello to address air emissions, including:

(1) FMC's particulate air emissions are being addressed in the proposed Federal Implementation Plan.

(2) Off-gases from the LDR Treatment Plant must meet EPA's air emission (or MACT) standards, issued under the Clean Air Act. The consent decree requires that FMC document that the off-gas system will meet MACT standards for hazardous waste combustion units. Under the consent decree, FMC must submit design and operating plans for the off-gas system. These plans will allow the Region and the Tribes to evaluate the efficacy of the system.

(3) The consent decree requires numerous Supplemental Environmental Projects (SEPs), including the Fort Hall Environmental Health Assessment, that address air emissions from the FMC facility.

- Concerns about the radionuclide content of treatment residuals and FMC's plans to transport these waste residues off-site, across tribal lands, and dispose of them in an unlined landfill outside the reservation are being addressed by the State of Idaho and EPA Region 10.

III. What Is EPA's Final Determination on FMC's Request for a CBC Extension?

EPA concludes that FMC, owner/operator of the Pocatello, Idaho facility, at which a treatment plant will be constructed to provide treatment of the five subject wastes streams to meet BDAT standards, has made the necessary demonstrations to be granted a CBC extension. EPA concludes that FMC has made and is continuing to make a good-faith effort toward providing sufficient and appropriate treatment capacity for the five waste streams that are the subject of its request for a CBC extension of the LDR effective date request. Therefore, EPA is approving an extension of the applicable LDR effective date for these five waste streams: (1) NOSAP Slurry, (2) Medusa Scrubber Blowdown, (3) Furnace Building Washdown, (4) Precipitator Slurry, and (5) Phossy Water, generated at the Pocatello, Idaho facility, until May 26, 2001. As such, these wastes may continue to be managed in on-site surface impoundments (Ponds 17 and 18) until May 26, 2001 (unless the extension is renewed for up to one additional year, in which case the extension would expire no later than May 26, 2002), while the proposed LDR Treatment Plant is being constructed. This extension remains in effect unless the facility fails to make a good-faith effort to meet the schedule for completion, the Agency denies or revokes any required permit, conditions certified in the application change, or the facility violates any law or regulations implemented by EPA.

The majority of the FMC Pocatello site, including most of the processing areas, is located on Shoshone-Bannock Tribes' lands, referred to as the Fort Hall Indian Reservation. The Tribes oppose granting this CBC extension, continuing to believe that FMC's hazardous waste must be treated prior to being land disposed. The United States recognizes and concurs that it does owe an important trust responsibility to the Tribes, on whose lands the FMC Pocatello facility is located, including a responsibility to perform its obligations under RCRA and other statutes intended to protect the environment. We also recognize the Tribes' legitimate concerns regarding the continued placement of untreated hazardous wastes in the FMC Pocatello on-site surface impoundments. However, the controlling law here is section 3004(h)(3) of the statute and the rules in 268.5 which implement that provision. The ultimate and controlling issue in processing FMC's application consequently is whether the company has satisfied these statutory and regulatory conditions. As previously noted, we conclude that it is not yet feasible for FMC to treat these wastes prior to placement in the on-site surface impoundments, and that there is no available off-site commercial treatment capacity for these five waste streams. We continue to be convinced that the necessary treatment capacity and capability only will be available once the proposed LDR Treatment Plant is constructed and commences operation.

Having been granted this CBC extension of the LDR effective date, FMC must immediately notify EPA of any change in the demonstrations made in the petition (40 CFR 268.5(f)). FMC also must submit a monthly progress report that describes the progress being made toward its stated schedule for the design, construction, and operation of the LDR Treatment Plant. The monthly progress report also must identify any delay or possible delay in developing this treatment capacity and describe the mitigating actions being taken in response to the event (40 CFR 268.5(g)). FMC must submit the first monthly progress report by June 26, 2000. Subsequent monthly progress reports must be submitted, approximately every thirty (30) days, by the 26th day of each month for the duration of this CBC extension.

Four (4) copies of each monthly progress report must be submitted to the following address: Chief, Analysis and Information Branch, U.S. Environmental Protection Agency, Office of Solid Waste (5302W), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

A copy of the monthly progress report also must be provided to EPA Region 10 to the following address: Director, Office of Waste and Chemicals Management, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.

A copy of the monthly progress report must be provided to the Shoshone-Bannock Tribes to the following address: Director, CERCLA/RCRA Program, Shoshone-Bannock Tribes, P.O. Box 306, Fort Hall, Idaho 83203.

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EPA can revoke this CBC extension if FMC fails to make a good-faith effort to meet the schedule for completion, if EPA denies or revokes any required permit, if conditions certified in the CBC extension application change, or for a violation of any law or regulations in Parts 260–266 and 268 (see 268.5(g)).

IV. Administrative Requirements

As discussed in the FR notice of March 8, 2000, neither the requirements of Executive Order 13084 entitled Consultation and Coordination with Indian Tribal Governments nor Executive Order 13132, entitled "Federalism," apply to this action.

Today, EPA is approving FMC's request for a one-year CBC extension of the May 26, 2000, effective date of the RCRA land disposal restrictions for a facility located on Tribal Lands. This action will significantly or uniquely affect the communities of Indian tribal governments by permitting this facility to continue to treat, store, or dispose of five waste streams as currently managed in on-site surface impoundments (located on Tribal Lands) until May 26, 2001.

In their comments, the Tribes stated that by allowing FMC to continue to treat, store, and dispose of hazardous waste streams in the surface impoundments, EPA is also allowing the continued emissions of hydrogen cyanide, phosphine, and other toxic emissions onto the Fort Hall Indian Reservation. The Tribes stated they believe continuous monitoring of emissions from the ponds is necessary to assure compliance with Pond Management Plan in order to protect human health and the environment. The Tribes asserted this would result in direct compliance costs to the Shoshone-Bannock Tribes.

Monitoring of emissions from the ponds already is required of FMC under the Pond Management Plan, as incorporated into the RCRA Consent Decree. FMC is responsible for the costs of this monitoring until the ponds are closed. Unless the Tribes actually do their own additional monitoring, there are no costs incurred by the Tribes. As such, EPA concludes that this action will not impose any direct compliance costs on the Shoshone-Bannock Tribes community.

This notice also does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of this Executive Order likewise do not apply to this action.

Authority: Sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924).

Dated: May 25, 2000.

Cliff Rothenstein,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–13547 Filed 5–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64047; FRL 6588–5]

Notice of Receipt of Requests for Amendments To Delete Uses In Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on November 27, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Rm. 266A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person.* Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 224, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in 27 pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient and specific uses deleted.

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
*000352–00400	Dupont Oxamyl Technical 42 Insecticide/ Nematicide	Oxamyl	Non-bearing plum, non-bearing strawberry
000432–00663	Tetramethrin Technical 95%	Tetramethrin	Greenhouse uses
000432–00789	TetraPerm 8–20–40 WB Concentrate	Piperonyl butoxide; Tetramethrin; Permethrin, mixed *cis, trans*	Greenhouse uses

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
000432–00791	TetraPerm Total Release Indoor Fogger Q3	Piperonyl butoxide; Tetramethrin; Permethrin, mixed *cis, trans*	Greenhouse uses
000432–00793	TetraPerm Total Release Indoor Fogger Q4	Piperonyl butoxide; Tetramethrin; Permethrin, mixed *cis, trans*	Greenhouse uses
000432–00794	TetraPerm Total Release Indoor Fogger Q5	Piperonyl butoxide; Tetramethrin; Permethrin, mixed *cis, trans*	Greenhouse uses
000498–00163	SprayPak Indoor Insect Fogger Formula 6	Piperonyl butoxide; Tetramethrin; Permethrin, mixed *cis, trans*	Greenhouse uses
001021–01652	EVERICIDE Intermediate 2666	Tetramethrin; Esfenvalerate	Greenhouse uses
001021–01667	EVERICIDE House & Garden Spray 2664	Tetramethrin; Permethrin, mixed *cis, trans*	Greenhouse uses
001021–01715	EVERICIDE House & Garden Spray 21321	Tetramethrin; Permethrin, mixed *cis, trans*	Greenhouse uses
002724–00450	Zoecon 9001 EW	Propetamphos	Food/feed warehouses
004816–00391	Tetralate 25–20.6 WB Concentrate	Tetramethrin; Resmethrin	Greenhouse uses
004816–00392	Tetralate Intermediate Con centrate	Tetramethrin; Resmethrin	Greenhouse uses
004816–00493	Tetralate Multi-Purpose Insect Killer	Tetramethrin; Resmethrin	Greenhouse uses
004816–00499	Tetralate 2.0–0.44 WB	Tetramethrin; Resmethrin	Greenhouse uses
004816–00500	Tetralate 26.64–5.85 WB	Tetramethrin; Resmethrin	Greenhouse uses
004816–00503	Tetralate General Purpose 0.25–0.25% Insect Killer	Tetramethrin; Resmethrin	Greenhouse uses
004816–00504	Tetralate 2.5–2.5 WB	Tetramethrin; Resmethrin	Greenhouse uses
004816–00505	Tetralate 16.670–7.065	Tetramethrin; Resmethrin	Greenhouse uses
004816–00506	Tetralate 20.84–20.84 WB	Tetramethrin; Resmethrin	Greenhouse uses
004816–00509	Biotetralate 0.25–0.054 Pressurized Insecticide Spray	Tetramethrin; Bioresmethrin	Greenhouse uses
004816–00760	TetraPerm Total Release Indoor Fogger N 104	Piperonyl butoxide; Permethrin, mixed *cis, trans*; Te tramethrin	Greenhouse uses
010308–00001	Neo-Pynamin Technical Grade	Tetramethrin	Greenhouse uses
011715–00264	Neoperm Total Release Indoor Fogger	Piperonyl butoxide; Tetramethrin; Permethrin, mixed *cis, trans*	Greenhouse uses
011715–00278	Neoperm Total Release Indoor Fogger IV	Piperonyl butoxide; Tetramethrin; Permethrin, mixed *cis, trans*	Greenhouse uses
059906–00003	Py-Tech 1.5% + 15% Insecticide	Piperonyl butoxide; Pyrethrins	Use on dogs
059906–00004	Syn-Tech 2.5% + 10% Insecticide	Piperonyl butoxide; Resmethrin	Use on dogs

Note: * 30–day comment period

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before November 27, 2000 to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company Number	Company Name and Address
000352	DuPont Agricultural Products, Registration/Regulatory Affairs, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880.
000432	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
000498	Chase Products Co., P.O. Box 70, Maywood, IL 60153.
001021	McLaughlin Gormley King Co., 8810 Tenth Avenue North, Minneapolis, MN 55427.
002724	Wellmark International, 1000 Tower Lane, Bensenville, IL 60106.
004816	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
010308	Sumitomo Chemical Co., Ltd., 1330 Dillon Heights Ave., Baltimore, MD 21228.
059906	Pro-Tech Livestock Corp., P.O. Box 1450, Tomball, TX 77375.
011715	Speer Products, Inc., P.O. Box 18993, Memphis, TN 38181.

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III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail.* Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked November 27, 2000.

2. *In Person or by courier.* Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticide Programs, Environmental Protection Agency, Rm. 266A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically.* You may submit your withdrawal request electronically by e-mail to: hollins.james@epa.gov. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: May 16, 2000.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 00–13562 Filed 5–30–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6707–1]

Internet Availability of Evaluation Report on the Sector Facility Indexing Project and SFIP's Future Expansion

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of evaluation report and future expansion of the SFIP.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the Internet availability of an evaluation report on the Sector Facility Indexing Project (SFIP). Based upon the evaluation results, the EPA is also announcing the future expansion of the SFIP. The EPA is now working to add to the project a subset of federal facilities. The SFIP is a community-right-to-know and data integration project that currently provides environmental performance data for facilities within five industry sectors. The industry sectors currently profiled within the SFIP are automobile assembly; petroleum refining; pulp manufacturing; iron and steel; and primary smelting and refining of aluminum, copper, lead, and zinc (nonferrous metals). On May 1, 1998, the EPA released the Internet website containing the SFIP data. (See 63 FR 27281, May 18, 1998). The SFIP website is designed as an interactive tool that allows users to customize the information and delve into greater detail to look at information that is too voluminous to include in a hard copy report.

DATES: The SFIP evaluation report is currently available to the public on the Internet. A limited number of hard copies of the report are also now available. EPA's goal is to have the expansion to federal facilities completed and available on the website later this year.

ADDRESSES: The SFIP's data and the evaluation report on the project may be accessed electronically via the Internet at the following address: *http://www.epa.gov/oeca/sfi.* Requests for a hard copy of the evaluation report may be sent to: SFIP, 55 Wheeler Street, Cambridge, MA 02138. Requests may also be made to the SFIP telephone hotline at: (617) 520–3015.

FOR FURTHER INFORMATION CONTACT: Robert Lischinsky, U.S. Environmental Protection Agency, Office of Compliance (2223–A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: (202) 564–2628, fax: (202)564–0050; e-mail: lischinsky.robert@epa.gov

SUPPLEMENTARY INFORMATION: When EPA launched the SFIP website *(www.epa.gov/oeca/sfi)* in May 1998, the Agency was committed to monitoring and evaluating the progress of this project. Specifically, we wanted to look at SFIP's success in meeting the two goals of providing greater public access to accurate compliance and facility-level information, as well as improving multimedia facility profiling and sector-based analysis.

For the evaluation, EPA obtained input from user groups both inside and outside the Agency, including the EPA Regions, States, industry, environmental groups, and trade associations. The results have been positive. Extensively used, SFIP has enhanced public access to and knowledge of the environmental performance of individual, regulated facilities. The project has improved multimedia facility profiling; provided useful data in a "user-friendly" website; improved data quality in underlying databases; and served as an incentive to achieve and maintain compliance.

The evaluation also identified widespread interest for an expansion of SFIP that would build upon its success and make the project an even more valuable analytical tool. Thus, EPA is announcing that the SFIP will be expanding to include a subset of federal facilities. This expansion will encourage greater accountability on the part of federal facilities, and will allow the public to obtain important environmental information about these facilities located in their communities. EPA is working to arrive at a subset of the federal facility universe that is both manageable and provides useful information. Our goal is to have the expansion to federal facilities completed later this year.

As SFIP expands, we will ensure that we maintain the public's confidence in the integrity of the data. Once again Regions, States and the affected facilities will be given the opportunity to review the data and resolve any data quality issues through a coordinated EPA/State effort prior to release.

Dated: May 17, 2000.

Mamie R. Miller,

Chief, Manufacturing Branch, Manufacturing, Energy & Transportation Division, Office of Compliance.

[FR Doc. 00–13559 Filed 5–30–00; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank).

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

TIME AND PLACE: Thursday, June 15, 2000, at 9 am to 1 pm. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: This meeting will include a synopsis of the discussion at the Institute for International Economics' Conference on the Export-Import Bank and further discussions on several key issues arising from the Conference.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 9, 2000, Teri Stumpf, Room 1203, Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

John M. Niehuss,

General Counsel.

[FR Doc. 00–13488 Filed 5–30–00; 8:45 am]

BILLING CODE 6690–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Nominations of Members to the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary.

ACTION: Announcement of Request for Membership Nominations.

SUMMARY: The Office of the Secretary requests nominations of individuals to serve on the Advisory Committee on Blood Safety and Availability in accordance with its charter. Appointments will be made for a term of four years. It is now necessary to re-nominate individuals previously nominated.

DATES: All nominations must be received at the address below by no later than 4 p.m. EDT August 31, 2000.

ADDRESSES: All nominations shall be submitted to Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Phone (202) 690–5560.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Phone (202) 690–5560.

Nominations

In accordance with the Committee's charter, persons nominated for membership should be from among authorities knowledgeable in blood banking, transfusion medicine, bioethics and/or related disciplines. Members shall be selected from State and local organizations, blood and blood products industry including manufacturers and distributors, advocacy groups, consumer advocates, provider organizations, academic researchers, ethicists, private physicians, scientists, consumer advocates, legal organizations and from among communities of persons who are frequent recipients of blood and blood products.

Information Required

Each nominations shall consist of a package that, at a minimum, includes:

A. The name, return address, daytime telephone number and affiliation(s) of the individual being nominated, the basis for the individual's nomination, the category for which the individual is nominated, and a statement by the nominated individual that he or she is willing to serve as a member of the committee;

B. The name, return address and daytime telephone number at which the nominator may be contacted. Organizational nominations must identify a principal contact person in addition to the contact information;

C. A copy of the nominee's curriculum vitae.

All nomination information for a nominee must be provided in a complete single package. Incomplete nominations will not be considered. Nomination materials must bear original signatures, and facsimile transmissions or copies are not acceptable.

Dated: May 23, 2000.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 00–13483 Filed 5–30–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on Thursday, August 24, 2000, from 9 a.m. to 5 p.m. The meeting will take place at the Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001. The meeting will be entirely open to the public.

The Advisory Committee will review the role of various considerations in decision making related to new and existing blood safety measures.

Public comment will be solicited at the meeting. Public comment will be limited three minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business August 11, 2000.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Safety, 200 Independence Avenue SW., Rm 736E, Washington, DC 20201. Phone (202) 690–5560 FAX (202) 690–7560 e-mail stephendnightingale@osophs.dhhs.gov.

Dated: May 23, 2000.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 00–13482 Filed 5–30–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–37–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Implementation of Automated Management Information System (MIS) for Diabetes Control Programs—NEW—Centers for Disease Control and Prevention (CDC), National Center for Chronic Disease Prevention and Health Promotion, Division of Diabetes Translation. Diabetes is the seventh leading cause of death in the United States, contributing to more than 193,000 deaths each year. An estimated 10.3 million people in the United States have been diagnosed with diabetes, and an estimated 5.4 million people have undiagnosed diabetes. The Centers for Disease Control and Prevention (CDC), Division of Diabetes Translation (DDT), provides funding to health departments of States and territories to develop, implement, and evaluate systems-based Diabetes Control Programs (DCPs). DCPs are population-based, public health programs that design, implement, and evaluate public health prevention and control strategies that improve access to and quality of care for all and reach communities most impacted by the burden of diabetes (e.g., racial/ethnic populations, the elderly, rural dwellers and the economically disadvantaged). Support for these programs is a cornerstone of the DDT's strategy for reducing the burden of diabetes throughout the nation. The Diabetes Control Program is authorized under sections 301 and 317(k) of the Public Health Service Act [42 U.S.C. sections 241 and 247b(k)].

Funding recipients are required to submit quarterly status reports to CDC that are used by DDT managers and Program Development Officers (PDOs) to identify training and technical assistance needs; monitor compliance with cooperative agreement requirements; evaluate the progress made in achieving national and program-specific goals; and respond to inquiries regarding program activities and effectiveness. Funding recipients currently have a wide latitude in the content of the information they report with some recipients providing extensive and detailed programmatic progress information and others providing minimal detail regarding DCP operations. Historically, information has been collected and transmitted via hard-copy paper documents. The manual reporting system significantly impacts the DDT's staff ability to accomplish its responsibilities resulting from providing DCP funds, particularly with respect to compiling, summarizing, and reporting aggregate DCP program information.

The proposed change in data collection methodology is being driven by DDT's development of an automated management information system (MIS) to maintain individual DCP information and to normalize the information reported by these programs. The proposed data collection will employ a more formal, systematic method of collecting information that has historically been requested from individual DCPs and will standardize the content of this information. This will facilitate the DDT staff's ability to fulfill its obligations under the cooperative agreements; to monitor, evaluate, and compare individual programs; and to assess and report aggregate information regarding the overall effectiveness of the DCP program. It will also support DDT's broader mission of reducing the burden of diabetes by enabling DDT staff to more effectively identify the strengths and weaknesses of individual DCPs and to disseminate information related to successful public health interventions implemented by these organizations to prevent and control diabetes.

Respondents reside in each of the 50 States, 8 Territories, and the District of Columbia and provide progress reporting on a semi-annual frequency. The annual hour burden is estimated at 236 total hours based on 2 hours to complete a semi-annual report twice per year. The annual burden is estimated to be 236 hours.

ANNUALIZED BURDEN TO RESPONDENTS

Form name	Number of respondents	Number of responses/ respondents	Average burden/ response	Response burden/hrs.
Progress Report	59	2	2	236

Dated: May 24, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13504 Filed 5–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–40–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Evaluation of Effectiveness of Worker Notifications Conducted by NIOSH—(New)—The National Institute for Occupational Safety and Health

(NIOSH), Centers for Disease Control and Prevention (CDC) has conducted worker notification formally since 1988. This program informs workers in NIOSH-conducted epidemiological studies about the study results and hence, of their risks. NIOSH worker notification officers conducted a two-task evaluation project approved by OMB in 1993. Task 1 of the project evaluated the long-term impact of a high risk worker notification, and Task 2 evaluated the short-term impact and effectiveness of the notification materials themselves, with the goal of developing a monitoring instrument for routine use. A monitoring instrument was developed for routine use to evaluate effectiveness of ongoing worker notification activities. This instrument was refined over three field trials, involving a random sample set of 25 notified workers in each trial. A second instrument for use with other stakeholders (company and union officials) in the notifications also was developed. The design of these evaluation projects was descriptive in nature, gathering information from small groups of workers, for the purpose of learning how to improve the NIOSH worker notification program.

Having completed the data collection and final report for Task 2 of the evaluation project, we now are seeking approval to use the program monitoring worker survey instrument on a routine basis to assess effectiveness of ongoing letter notifications conducted by NIOSH notification officers. As with the design of the three trials in Task 2, ongoing routine assessment would include for each letter-type notification, our contacting by telephone a random sample of 250 workers who received notification letters and related materials, and at least one company representative and one union representative (where appropriate). A 15-minute telephone survey would be administered to the notified workers, and an up to 30 minute interview would be conducted with the other stakeholders (e.g., company and union representatives). The total annual cost to respondents for the study is $1,293.50. The total annualized burden hours for this project is 82.5 hours.

Respondent	Number of respondents	Number of responses/respondents	Avg. burden per response (hours)	Total burden (in hours)
Workers	250	1	15/60	62.5
Stakeholder	40	1	30/60	20.0
Total	290			82.5

Dated: May 24, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13505 Filed 5–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00106]

World Health Organization for Hepatitis; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for the World Health Organization (WHO) for hepatitis. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Immunization and Infectious Diseases. For the conference copy of "Healthy People 2010", visit the internet site http://www.health.gov/healthypeople.

The purpose of this cooperative agreement is to develop international programs for prevention and control of hepatitis A through immunization, hepatitis B immunization activities as part of national immunization programs of member states, supporting programs to prevent transmission of bloodborne hepatitis virus infections through unsafe injection and infection control practices, improving injection safety, and preventing transmission of hepatitis C virus (HCV) infections.

B. Eligible Applicants

Assistance will be provided only to the WHO. No other applications are solicited.

The WHO is the most appropriate and qualified agency to conduct the activities specified under this cooperative agreement because:

1. They are the only organization with the worldwide mandate to assist member nations in the control and prevention of vaccine preventable diseases.

2. They are responsible for implementation of the Expanded Programme on Immunization (EPI) and for the introduction of hepatitis B vaccine into the EPI of member states as stated by resolution of the World Health Assembly in 1992.

3. They are the only recognized international organization for providing the guidance and leadership needed to coordinate the multidisciplinary collaborations required to address elimination of unsafe injection, have an established activity to address this issue and serves as the secretariat for the Safe Injection Global Network (SIGN), a collaborative network comprised of member states and organizations.

4. They are the only recognized international organization to provide the guidance and leadership needed to coordinate the multidisciplinary collaborations required to address the control of hepatitis C virus infection and its chronic liver disease consequences and has an established activity to address this issue in their emerging infections program.

5. The proposed program is directly related to the achievement of WHO and the National Center for Infectious Diseases, CDC, objectives for the control and prevention of viral hepatitis, including hepatitis A, B, and C.

C. Availability of Funds

Approximately $300,000 is available in FY 2000 to fund this award. It is expected the award will begin on September 29, 2000, and will be made for a 12-month budget period within a project period of up to three years. The funding estimate may change.

A continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

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D. Where To Obtain Additional Information

This and other Centers for Disease Control announcements can be found on the Centers for Disease Control home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements".

To obtain additional information, contact: Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2748, E-mail address: oxb3@cdc.gov.

For program technical assistance, contact: Richard Conlon, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Division of Rickettsial Diseases, Hepatitis Branch, 1600 Clifton Road, NE, M/S G–37, Atlanta, GA 30333, Telephone: (404)371–5900, E-mail address: roc4@cdc.gov.

Dated: May 24, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13506 Filed 5–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5:30 p.m., June 22, 2000, and 8 a.m.–5:30 p.m., June 23, 2000.

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, VA, 22314.

Status: Open 8 a.m.–8:15 a.m., June 22, 2000. Closed 8:15 a.m.–5:30 p.m., June 22, 2000. Closed 8 a.m.–5:30 p.m., June 23, 2000.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters To Be Discussed: The meeting will convene in open session from 8–8:15 a.m. on June 22, 2000, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone 304/285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 24, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–13503 Filed 5–30–00; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Notice No. ACF/ACYF/RHYP 2000–01]

Notice of Availability of Financial Assistance for the Runaway and Homeless Youth Programs; Republication

Editorial Note: FR-Doc.00-12376 was originally published at 65 FR 31338-31343, Wednesday, May 17, 2000. Due to printing errors it is being republished in its entirety.

AGENCY: Family and Youth Services Bureau, Administration on Children, Youth and Families, ACF, HHS.

ACTION: This notice announces the availability of financial assistance for FY 2000 Basic Center Program for Runaway and Homeless Youth (BCP), FY 2001 Transitional Living Program (TLP), FY 2000 Street Outreach Program (SOP), and the FY 2000 Youth Development State Collaboration Demonstration Projects (SCDP).

This Notice announces the availability of the official FY 2000 Program Announcement. The official announcement must be used to apply for grant funding under the competitive grant areas and is available by calling or writing the ACYF Operations Center (address below) or by downloading the announcement from the FYSB website at *http://www.acf.dhhs.gov/programs/FYSB* under Policy and Funding Announcements.

Legislative Authority: Grants for Runaway and Homeless Youth programs are authorized by the Runaway and Homeless Youth Act (RHY Act) as amended by PL 106–71.

Deadlines

The deadlines for *receipt* of applications for new grants under this announcement are as follows:

CFDA#	Programs	Deadline dates	Deadline times
93.623	Basic Center Program	July 3, 2000	4:30 p.m. (EDT).
93.557	Street Outreach Program	July 3, 2000	4:30 p.m. (EDT).
93.550	Transitional Living Program	July 7, 2000	4:30 p.m. (EDT).
93.623	State Collaboration Demonstration Projects	August 3, 2000	4:30 p.m. (EDT).

Mailing and Delivery Instructions: Applications must be in hard copy. Mailed applications and applications hand delivered by applicants, applicant couriers, overnight/express mail couriers or any other method of hand delivery shall be considered as meeting an announced deadline if they are received on or before the deadline, at the following address: ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arllington, VA 22209, telephone: 1–800–351–2293, email: FYSB@lcgnet.com.

Applications may be hand delivered to the above address between the hours of 8:00 a.m. and 4:30 p.m. (EDT), Monday through Friday (excluding Federal Holidays).

Applicants are responsible for mailing and delivering applications well in advance of deadlines to ensure that the applications are received on time. Applications received after 4:30 p.m. (EDT) on the deadline date will be classified as late. Postmarks and other similar documents do not establish receipt of an application.

ACF will not accept applications delivered by fax or e-mail regardless of date or time of submission and receipt.

Late Applications: Applications which do not meet the criteria stated above and are not received by the deadline date and time are considered late applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

Extension of Deadline: ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

SUPPLEMENTARY INFORMATION: Grant awards for FY 2000 funds will be made by September 30, 2000 for the Basic Center and Street Outreach Program. Transitional Living Program grant awards for FY 2001 will be made after September 30, 2000. Grant awards for the Youth Development State Collaboration Demonstration Projects will be made by September 30, 2000, based on the availability of funds. If funds are not available for the State Collaboration Projects on September 30, 2000, we anticipate that successful applicants will be awarded funding during the second quarter of FY 2001 (January, February, and March, 2001).

The estimated funds available for new starts and the approximate number of new grants that may be awarded under this program announcement are as follows:

Competitive grant area	New start funds available	Estimated number of new grants
A. BCP	$14,500,000	126
B. TLP	5,500,000	32
C. SOP	5,900,000	59
D. *SCDP	600,000	5

*Subject to availability of funds

In addition to the new start grants, the Administration for Children and Families has provided for noncompetitive continuation funds to current grantees in the following programs:

Grant area	Funds available	Number of grants
A. BCP	$24,700,000	222
B. TLP	13,000,000	73
C. SOP	7,600,000	80
D. SCDP	1,000,000	9

Part 1. Competitive Grant Areas and Summaries of Evaluation Criteria

Applicants must refer to the specific evaluation criteria for each competitive area contained in the official Program Announcement in order to adequately prepare their applications.

A. Basic Centers Program, CFDA# 93.623 (Competitive Grant Area A)

Eligible Applicants: Any State, unit of local government, combination of units of local government, public or private nonprofit agency, organization or institution is eligible to apply for these funds. Federally recognized Indian Tribes are eligible to apply for Basic Center grants. Indian Tribes that are not federally recognized and urban Indian organizations are also eligible to apply for grants as private, nonprofit agencies.

Current Basic Center grantees with project periods ending on or before September 30, 2000, and all other eligible applicants not currently receiving Basic Center funds may apply for a new competitive Basic Center grant under this announcement.

Current Basic Center Program grantees (including subgrantees) with one or two years remaining on their current grant and the expectation of continuation funding in FY 2000 may not apply for a new Basic Center grant for the community they currently serve. These grantees will receive instructions from their respective ACF Regional Offices on the procedures for applying for noncompetitive continuation grants.

Program Purpose, Goals and Objectives: The purpose of this program is to establish or strengthen locally-controlled, community-based programs that address the immediate needs of runaway and homeless youth and their families. Services must be delivered outside of the law enforcement, child welfare, mental health and juvenile justice systems. The program goals and objectives of the Basic Center Program are to:

- Alleviate problems of runaway and homeless youth;
- Reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services;
- Strengthen family relationships and encourage stable living conditions for youth; and
- Help youth decide upon constructive courses of action.

Federal Share of Project Costs: Priority will be given to applicants that apply for less than $200,000 per year. The maximum Federal share for a 3-year project period $600,000.

Applicant Share of Project Costs: Basic Center grantees must provide a non-Federal share or match of at least ten percent of the Federal funds awarded. (There are certain exceptions for Tribes with "638" funding pursuant to Pub. L. 93–638, under which certain Federal grants may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the

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purposes for which grants under section 638 were made.) The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a three-year project costing $300,000 in Federal funds (based on an award of $100,000 per 12-month budget period) must include a match of at least $30,000 (10,000 per budget period).

Duration of Project: This announcement solicits applications for Basic Center programs of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for non-competitive continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

B. Transitional Living Program, CFDA #93.550 (Competitive Grant Area B)

Eligible Applicants: Any State, unit of local government (or a combination of units of local government), public or private nonprofit agency, organization, institution or other nonprofit entity. Federally recognized Indian Tribes are eligible to apply for TLP grants. Indian Tribes that are not federally recognized and urban Indian organizations are also eligible to apply for grants as private, nonprofit agencies.

Current TLP grantees with project periods ending on or before September 30, 2001, and all other eligible applicant not currently receiving TLP funds may apply for a new competitive TLP grant under this announcement for awards in FY 2001.

Current TLP grantees (including subgrantees) with one or two years remaining on their current awards and the expectation of continuation funding in Fiscal Year 2001 may not apply for a new TLP grant under this announcement. These grantees will receive instructions from their respective ACF Region/Hub Offices on the procedures for applying for non-competitive continuation grants.

Program Purpose, Goals and Objectives: The overall purpose of TLP for homeless youth is to establish and operate transitional living projects for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months. Transitional Living Program funds are to be used for the purpose of enhancing the capacities of youth-serving agencies in local communities to effectively address the service needs of homeless, older adolescents and young adults.

Federal Share of Project Costs: Applicants may apply for up to $200,000 per year, which equals a maximum of $600,000 for a 3-year project period.

Applicant Share of Project Cost: Transitional Living grantees provide a non-Federal share or match of at least ten percent of the Federal funds awarded. (There are certain exceptions for Tribes with "638" funding pursuant to P.L. 93–638, under which certain Federal grants may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the purposes for which grants under section 638 were made.) the non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a three-year project costing $300,000 in Federal funds (based on an award of $100,000 per 12-month budget period) must include a match of at least $30,00 ($10,000 per budget period).

Duration of Project: This announcement solicits applications for Transitional Living projects of up to three years (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for non-competing continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

C. Street Outreach Program, CFDA# 93.557 (Competitive Grant Area C)

Eligible Applicants: Any private, nonprofit agency is eligible to apply for these funds. Non-Federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private, non-profit agencies. Please note that public agencies are not eligible to apply for these funds.

Current Street Outreach Program grantees with project periods ending on or before September 30, 2000, and all other eligible applicants not currently receiving SOP funds may apply for a new competitive SOP grant under this announcement.

Current Street Outreach Program grantees (including subgrantees) with one or two years remaining on their current grant and the expectation of continuation funding in FY 2000 may not apply for a new Street Outreach grant for the community they currently serve. These grantees will receive instructions from their respective ACF Regional Offices on the procedures for applying for continuation grants.

Program Purpose, Goals and Objectives: The overall purpose of SOP is to provide education and prevention services to runaway, homeless and street youth who have been subjected to or are at risk of sexual exploitation or abuse. The goal of the program is to establish and build relationships between street youth and program outreach staff in order to help youth leave the streets. The objective of the program is to provide support services that will assist the youth in moving an adjusting to a safe and appropriate alternative living arrangement. These services include, at a minimum, treatment, counseling, provision of information and referral services. Street outreach programs must have access to local emergency shelter space that is an appropriate placement for young people and that can be made available for youth willing to come in off the streets. In addition, street outreach staff must have access to the shelter in order to maintain interaction with the youth during the time they are in the shelter.

Federal Share of Project Costs: Applicants may apply for up to $100,000 in Federal support each year, a maximum of $300,00 for a 3-year project period. The maximum Federal share of project costs is $100,000 for 12 months.

Applicants Share of Project Cost: SOP grantees must provide a non-Federal share or match of at least ten percent of the Federal funds awarded. (There are certain exceptions for Tribes with "638" funding pursuant to P.L. 93–638, under which certain Federal grants may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the purposes for which grants under section 638 were made.) The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, a project requesting $100,000 in Federal funds must include a match of at least $10,000.

Duration of Project: This announcement solicits applications for Street Outreach Program projects of up to three years (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for non-competing continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be considered subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

Summary of Evaluation Criteria for Competitive Areas A, B, and C (BCP, TLP, and SOP)

Criterion 1: Objectives and Need for Assistance (15 Points)

Applications will be judged on how clearly they identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated. Applications will need to specify the goals and objectives of the project and how implementation will fulfill the purposes of the program. Applications should describe the conditions of youth and families in the area to be served; the incidence and characteristics of runaway, homeless or street youth and their families; the existing support systems for at-risk youth and families in the area, including other agencies providing services to runaway and homeless youth in the area.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 2: Results or Benefits Excepted (20 Points)

Applications will be judged on how clearly they identify the results and benefits to be derived, specify services to be provided, who will receive services, where and how these services will be provided, and how the services will benefit the youth families and the community to be served. Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 3: Approach (35 Points)

Applications will be judged on how clearly they outline a plan of action which: describes the scope and detail of how the proposed work will be accomplished; accounts for all functions or activities identified in the application; cites factors which might accelerate or decelerate the work and reasons for taking the proposed approached rather than others. Applications are encouraged to describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Applications will be expected to provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of youth to be served and the results of those services, including data required for annual reporting to the Secretary of HHS. Applicants must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families and to submit the required Annual Report to the Secretary of HHS on program activities and accomplishments with statistical summaries and other required program and financial reports, as instructed by FYSB.

Applications will be judged on the extent to which they described the program's youth development approach or philosophy and indicate how it underlies and integrates all proposed activities. Applicants will be expected to list organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution; describe formal service linkages and plans for coordination with other agencies; describe plans for conducting outreach and encouraging awareness of and sensitivity to the diverse needs of runaway and homeless youth who represent particular ethnic and racial backgrounds and sexual orientations. Applicants are encouraged to describe the type, capacity and staff supervision of the shelter that will be available for youth.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 4: Staff and Position Data (10 Points)

Applicants will be judged on whether they provide a resume and biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed. Applicants will be expected to list organizations and consultants who will work on the program along with a short description of the nature of their effort or contribution.

Applicants will be expected to provide information on plans for training project staff as well as staff of cooperating organizations and individuals and state the expected or estimated ratio of staff to youth.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 5: Organization Profile (10 Points Plus 5 Possible Bonus Points)

Applicants will be expected to provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accounts. Any non-profit organization submitting an application must submit of its non-profit status in its application at the time of submission. Bonus points shall be awarded to applicant organizations who have demonstrated experience in providing services to runaway, homeless and street youth.

Applicants will be expected to provide a plan for project continuance beyond grant support, including a plan for securing resources and continuing project activities after Federal assistance has ceased and an annotated listing of applicant's funding sources. Such plans should include written agreements, if applicable, between grantees and subgrantees or subcontractors or other cooperating and letters of support and statements from community, public and commercial leaders that support the project proposed for funding.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 6: Budget and Budget Justification (10 Points)

Applicants will be expected to provide a detailed line item budget and a narrative budget justification that describes how the categorical costs are derived. Applicants will be judged on how clearly they discuss the necessity, reasonableness, and allocability of the proposed costs and how clearly they describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement and accurate accounting of funds received.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

D. Youth Development State Collaboration Demonstration Projects, CFD #93.623 (Competitive Grant Area D)

Eligible Applicants: Any State or Federally recognized Indian Tribe is eligible to apply for a Youth Development State Collaboration Demonstration Project grant. Only one application may be submitted by any State or Tribe. Preference will be given to State or Tribal applicants in regions IV, V, and VI, since there are no States or Tribes in these regions currently involved in the collaboration project. The States in these regions are: Region IV: Al, FL, GA, KY, MS, NC, SC, TN; Region V: IL, IN, MI, MN, OH, WI; Region VI: AR, LA, NM, OK, TX.

Program Purpose, Goals and Objectives: The objectives of the Youth Development State Collaboration Demonstration Projects are to facilitate the development of State or Tribal policies and initiatives that help communities support a youth development approach; to encourage collaboration among the State or Tribal agencies that address the needs and issues for adolescents; to promote and facilitate communication and coordination between the State or Tribe and youth serving agencies, including FYSB grantees; and to promote collaborative efforts among the State or Tribe, FYSB, and community-based, youth-serving organization.

Federal Share of Project Costs: Applicants may apply for up to $120,000 in Federal support each year which equals a maximum of $360,000 for a 3-year period.

Applicant Share of Project Costs: The applicant is required to provide a minimum of 25 percent of the total approved cost of the project. (There are certain exceptions for Tribes with "638" funding pursuant to P.L. 93–638, under which certain Federal grants may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the purposes for which grants under section 638 were made.) The total approved cost of the project is the sum of the Federal share and the applicant share of the project. For example, an applicant requesting $120,000 must match the federal funds with a non-Federal share of at least $40,000.

Duration of Project: This announcement solicits applications for Youth Development State Collaboration Demonstration Projects of up to three years (36-month project periods). Grant awards, made on a national competitive basis, will be for a one-year (12-month) budget period. Applications for continuation grants beyond the one-year budget period, but within the longer term project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the interest of the government.

Summary of Evaluation Criteria for Competitive Area D (SCDP)

Criterion 1: Objectives and Need for Assistance (15 Points)

Applications will be judged on how clearly they specify the goals and objectives to be addressed through the Youth Development State Collaboration Demonstration Project and how these objectives are relevant to youth-related needs within the State or Tribal jurisdiction. For the purpose of this project, youth are defined as individuals between the ages of 10–24.

Applicants are expected to discuss the State's or Tribe's current framework of philosophy for addressing youth issues, including how that framework is reflected in policies and existing youth services. Applicants are expected to describe any youth development activities that are currently in place at the State or Tribal level, how those activities affect local youth services and the need for further efforts in this area. Applicants should discuss the extent of current coordination among State or Tribal agencies and programs on youth issues and existing coordination with local youth service providers, as well as the need for additional collaboration.

Applicants should describe the ability to leverage strong commitment and support at the executive level for this project.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 2: Results or Benefits Expected (20 Points)

Applications will be judged on the extent to which they clearly describe interim and final results and benefits expected of this project, especially in regard to support of youth development and coordination around youth issues and services, including changes in policies, processes, programs and initiatives resulting from this grant, how these changes will be implemented, and the expected legislative, programmatic or administrative results.

Applicants are expected to describe planned results of efforts to strengthen and/or establish effective communication and collaboration and how these will enhance services to young people, providing concrete examples of desired changes in local services and State or Tribal policy making processes.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criteria 3: Approach (35 Points)

Applications will be judged on how clearly they outline a plan of action which describes the scope and detail of how the proposed work will be accomplished; accounts for all functions or activities identified in the application; includes information that clarifies the activities that will be undertaken to introduce and support a youth development approach at the State or Tribal and local levels; cites factors which might accelerate or decelerate the work and reasons for taking the proposed approach rather than others; describes any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Applicants are expected to discuss legislative, administrative and judicial factors that may be barriers to increased collaboration and the establishment and support of a youth development approach and should describe plans to address and overcome these barriers. Applicants are expected to clearly identify a State or Tribal Youth Development Coordinator who will be responsible for activities under this grant and must also identify where the project will be located organizationally.

Applications will be judged on how clearly they explain the methodology that will be used for interim and final evaluation of the project.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 4: Staff and Position Data (10 Points)

Applicants are expected to provide a resume and biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Applications should demonstrate sufficient personnel resources and staff competence to assure that project activities can be successfully carried out and list each consultant, or key individuals who will work on the project.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 5: Organization Profile (10 Points Plus 5 Possible Bonus Points)

Applicants are expected to provide information on the applicant organization(s) and cooperating partners, including information such as organization charts, along with a brief description of the nature of their contribution and knowledge of and experience with youth development, youth issues and youth and family services.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 6: Budget and Budget Justification (10 Points)

Applicants are expected to provide a detailed line item budget and a narrative budget justification that described how the categorical costs are derived; discusses the necessity, reasonableness, and allocability of the proposed costs; and discusses and justifies the costs of the proposed project in terms of types and quantities of activities to be implemented and the anticipated results and benefits.

Applicants are expected to describe the fiscal control and accounting procedures that will be used to ensure the prudent use, proper disbursement and accurate accounting of funds received under this program announcement.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Part 2. Required Notification of the Single Point of Contact

Most portions of this program are covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and American Samoa have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicant should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Application for Federal Assistance, Standard Form 424, item 16.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. A list of the Single Points of Contact for each State and Territory can be found on the web site *http://www.whitehouse.gov/omb/grants/spoc.html*. or by calling the ACYF Operations Center at 1–800–351–2293.

Dated: May 12, 2000.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth, and Families.

[FR Doc. 00–12376 Filed 5–16–00; 8:45 am]

BILLING CODE 4184–01–M

Editorial Note: FR-Doc.00-12376 was originally published at 65 FR 31338-31343, Wednesday, May 17, 2000. Due to printing errors it is being republished in its entirety.

[FR Doc. R0–12376 Filed 5–30–00; 8:45 am]

BILLING CODE 1505–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 99D–4575 and 99D–4576]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Food-Contact Substance Notification System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by June 30, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Title: Food-Contact Substances Notification System

Description: Section 409(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(h)) establishes a premarket notification (PMN) process for food-contact substances (FCS's). Section 409(h)(6) of the act defines a "food contact substance" as "any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food." Section 409(h)(3) of the act requires that the notification process be utilized for authorizing the marketing of FCS's, except where FDA determines that the submission and premarket review of a food additive petition (FAP) under section 409(b) of the act is necessary to provide adequate assurance of safety. Section 409(h)(1) of

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the act requires that a notification include information on the identity and the intended use of the FCS and the basis for the notifier's determination that the FCS is safe under the intended conditions of use. Because section 409(h)(1) of the act references the general safety standard for food additives, the data in a PMN should be comparable to the data in an FAP.

In the **Federal Register** of November 12, 1999 (64 FR 61648), FDA announced the availability for comment of two draft guidance documents that are part of the agency's implementation of the PMN program, which will largely replace the FAP process for those food additives that are FCS's. The information to be collected is information on the manufacture and intended use of the FCS, studies relating to the safety of the FCS, and other information necessary to demonstrate that the FCS is safe under the intended conditions of use. FDA also made available for comment FDA Form No. 3480, entitled "Notification for New Use of a Food Contact Substance," which is to be used for a notification for a new use of a FCS. FDA believes that this form will facilitate both preparation and review of notifications because the form will serve to organize information necessary to support the safety of the use of the FCS. The burden of filling out the appropriate form has been included in the burden estimate for the notification. The agency requested comments on the proposed collections of information.

One comment was received on FDA's paperwork reduction analysis for the notification program for FCS's. Portions of this comment concern the content of the guidance documents announced in the November 12, 1999, notice. FDA will consider these portions of the comment in preparing the final version of the guidance documents.

Portions of the comment addressed the format, content, and utility of the proposed FDA Form 3480. The comment stated that FDA Form 3480 would be more useful if it were made available in a common word processor format such as WordPerfect® or Word®. FDA has made the form available in a portable document format that is compatible with and can be read by most current versions of word processing software packages. Therefore, FDA disagrees that it is necessary for the form to be available in a word processor format in order for it to be useful. However, FDA does expect to make the form available in WordPerfect® and Word® formats once the form has been approved by OMB.

The comment further stated that the form should be pilot tested to insure its compatibility throughout the industry. FDA has designed Form 3480 to function as summary form for many types of notifications. FDA expects to modify the form to suit the needs of the agency and the various types of notifications and notifiers. FDA expects to make it possible for notifiers to fill out the form through the agency's Internet site, and to ultimately use the form to facilitate electronic submissions. FDA believes that the most efficient way to evaluate this form is to begin using it and examine the problems and any suggestions for improvement on a continuing basis. FDA expects to accomplish this through the periodic reauthorization of the form required by OMB.

The comment correctly states that, in many cases, only summary information may be included in the form and that more detailed information will need to be referenced and attached. Moreover, the comment states that this caused the form to be a many-segmented document forcing the reader to jump back and forth within the document. The comment also states that a summary form with all supporting information attached in a specified format would be more useful to FDA and the regulated industry. The comment further states that all notifications should contain the same information in the same place within the submission.

As explained above, FDA believes that FDA Form 3480 is the summary form that the comment suggests is needed. FDA has not mandated, and does not expect to mandate, a particular format for notifications in regulations. Therefore, notifiers are free to present and organize the supporting information exactly as the notifier wishes. FDA recognizes that all sections of FDA Form 3480 will not be applicable to all notifications nor to all notifiers. However, FDA believes that most if not all notifiers will find the form useful in organizing their submissions. In addition, FDA disagrees with the notifier that the form will not assist FDA in processing notifications because it will be a many-segmented document. FDA's review of notifications is generally segmented into chemical, toxicological, and environmental disciplines. FDA Form 3480 was designed with this review process in mind. The proposed Form 3480 will assist FDA reviewers in locating the pertinent portions of the data and information that relate specifically to their discipline and their specific review responsibilities.

Description of Respondents: Manufacturers of food-contact substances.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3480 [2]	200	1	200	25	5,000
FDA 3480 [3]	55	2	110	120	13,200
FDA 3480 [4]	45	2	90	150	13,500
FDA 3480 [5]	16	1	16	150	2,400
Total					34,100 [6]

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Duplicate notifications for uses of FCS's.
[3] Notifications for uses that would currently be the subject of exemptions under 21 CFR 170.39 or very simple FAP's.
[4] Notifications for uses that would currently be the subject of moderately complex FAP's.
[5] Notifications for uses that would currently be the subject of more complex FAP's.
[6] Due to a clerical error, the reporting burden hours for FDA 3480 [3] that appeared in the FEDERAL REGISTER of November 12, 1999 (64 FR 61648), were incorrect. Table 1 of this document contains the correct estimates.

The above estimate is based on the types of submissions that FDA currently receives for FCS's in the threshold of regulation (TOR) and the FAP processes and the following assumptions and information:

1. FDA estimates that the likely increase in PMN's over the number of FAP's and TOR requests will be approximately four times the highest recent influx of these submissions (50 and 54, respectively). This factor is based on an analysis of the number of companies producing various types of FCS's and the types of FCS's for which FAP's and TOR's are most commonly submitted to FDA.

2. FDA also has included 200 expected duplicate submissions in the second lowest tier. FDA expects that the burden for preparing these notifications will primarily consist of the notifier filling out FDA Form No. 3480, verifying that a previous notification is effective, and preparing necessary documentation.

3. Based on the amount of data typically submitted in FAP's and TOR requests, FDA identified three other tiers of PMN's that represent escalating levels of burden required to collect information.

4. FDA estimated the median number of hours necessary for collecting information for each type of notification within each of the three tiers, and the cost of developing necessary data based on input from industry sources.

Dated: May 23, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–13585 Filed 5–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–205/Supplement]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: Individual Market-Guarantee Issue Election Packet, and Supporting Regulations in 45 CFR 148, and Forms/Instructions.

Form No.: HCFA-R–205/Supplement (OMB# 0938-NEW).

Use: This collection is a Supplement of the existing collection for "Information Collection Requirements Referenced in HIPAA for the Individual Market, Supporting Regulations in 45 CFR 148, and forms/instructions (OMB 0938–0703). This supplement is intended to simplify the filing obligations of issuers who participate in the individual market of more than one direct enforcement state. A direct enforcement state is a state in which HCFA has the responsibility to enforce the requirements of HIPAA. This supplement allows the issuer to submit the requested information for multiple states at one time, rather than having to complete a separate transmittal form for each state.

Frequency: On occasion.

Affected Public: Business or other for-profit, Individuals or Households, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Number of Respondents: 15.

Total Annual Responses: 150.

Total Annual Hours: 566.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 8, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13544 Filed 5–30–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2076–N]

RIN 0938–AK16

Medicaid Infrastructure Grant Program To Support the Competitive Employment of People With Disabilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of HCFA funding, through grants, for eligible States under the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA). The grant program is designed to assist States in developing infrastructures to support the competitive employment of people with disabilities by facilitating targeted improvement to States' Medicaid programs. This notice contains information about the grants, application requirements, review procedures, and other relevant information.

DATES: States should submit a Notice of Intent to Apply for a grant by June 12, 2000. Grant applications must be submitted July 31, 2000, in order to be considered for funding beginning in October 2000. For an explanation of a timely submission, see Section V of this notice entitled "Applying for a Grant."

Application Requests: To receive an application package contact Marilyn Lewis-Taylor, (410) 786–5701, mlewistaylor@hcfa.gov.

ADDRESSES: Mail applications to the following: Health Care Financing Administration, Room C2–21–15, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Attn: Marilyn Lewis-Taylor, OICS, AGG, Grants Management Staff.

Please Note: While State agencies are only required to submit an original and two copies, submission of an original and *seven copies* will greatly expedite the application process.

Web Site Address for Additional Information: We have a website that provides additional details and

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information about the grants. The address for this website is: *http://www.hcfa.gov/medicaid/twwiia/twwiiahp.htm.*

SUPPLEMENTARY INFORMATION:

I. Background

The Ticket to Work and Work Incentives Improvement Act of 1999.

The Ticket to Work and Work Incentives Improvement Act of 1999 was signed by President Clinton on December 17, 1999. This law seeks to address many of the obstacles that people with disabilities face as they seek sustained employment. It expands Medicare and Medicaid coverage for certain categories of employed individuals with disabilities because people with disabilities have continually identified the loss of health care coverage as one of the major obstacles that they face as they return to work.

The infrastructure grants program was created to provide financial assistance to States to facilitate the competitive employment of people with disabilities through (a) Medicaid buy-in opportunities under the State Medicaid Plan, (b) demonstrations offering the ability to purchase Medicaid coverage for people with a severe impairment who do not yet meet the SSI disability test, (c) significant improvements to Medicaid services that support people with disabilities in their competitive employment efforts and/or (d) serving as a regional State-to-State Medicaid Infrastructure Center.

In addition to this infrastructure grant program, the Act provides States the option to offer Medicaid buy-ins to two optional eligibility groups. The first optional group is for individuals from age 16 through 64 who would meet the eligibility requirements for the Supplemental Security Income program but for higher earnings or resources. The second optional group, referred as the Medicaid Improvement Group, is for people who, at one time, were eligible under the first optional group but who are determined to have medically improved at a regularly scheduled continuing disability review (CDR).

Finally, the legislation creates a Medicaid Demonstration program that allows States to provide Medicaid benefits and services to a specified maximum number of working individuals who have a specific physical or mental impairment that is likely to lead to disability as defined by Social Security. This demonstration authority will allow States to assist working individuals by providing the necessary benefits and services required for people to manage to progression of their conditions and remain employed. A separate grant solicitation will be issued for this "Demonstration to Maintain Independence and Employment." However, Medicaid Infrastructure Grant program funds may be used to support the development of the Demonstration to Maintain Independence and Employment. Infrastructure grant funds may also be used to conduct outreach to beneficiaries and other stakeholders about the availability of such new options.

The Ticket to Work and Work Incentives Improvement Act of 1999 is a comprehensive law that changes programs operated by the Social Security Administration, the Department of Labor, and HCFA. We are working in a coordinated and strategic manner with our Federal agency partners to develop strong national policy. The Presidential Task Force on Employment of Adults with Disabilities is serving as the coordinating entity to this multi-agency process. Both the Department of Labor and the Social Security Administration are also issuing grant solicitations authorized under the Ticket to Work and Work Incentives Improvement Act to be implemented in fiscal year 2000. These grants share the common goal of supporting working-age individuals in securing and maintaining gainful employment.

II. The Medicaid Infrastructure Grants

The goal of this grant program is to support people with disabilities in securing and sustaining competitive employment in an integrated setting. The grant program will achieve this goal by assisting State Medicaid programs in implementing provisions of the Ticket to Work and Work Incentives Improvement Act of 1999 which relate to health and long term care coverage.

A. Who May Apply

Two types of State agencies *in eligible States* may apply: (a) the Single State Medicaid Agency or (b) any other State agency in partnership, agreement and active participation with the Single State Medicaid Agency. For purposes of this grant program, "State" is defined as each of the 50 States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands. Only one application will be accepted per State, unless a State wishes to separate its dissemination and learning component (or its proposal for a State-to-State Medical Infrasture Center) into a distinct application. In such a case, the combined budget total will still be subject to the overall State funding limit described below in Section C.

Eligible States are affected by a requirement adopted by Congress to promote the availability of personal assistance services necessary for many people to work. For purposes of this grant, "personal assistance services" means:

A range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily activities on and off the job that the individual would typically perform if the individual did not have a disability. Such services should be designed to increase the individual's control in life and the individual's ability to perform activities on and off the job.

We recognize that States currently vary in the adequacy of their personal assistance services. In an effort to enable broad participation in this grant program, HCFA is establishing a multi-tiered qualification system that will address the situation of different States. Personal assistance services used to qualify for this grant program, however, must conform to the intent of this law which aims to promote and support the competitive employment of people with disabilities. To do that, personal assistance services must be both available to people who need services outside their homes and not limited to one particular disability group.

As described in detail below, fully eligible and conditionally eligible States are those which offer personal assistance services through their Medicaid program in a statewide manner. Fully eligible and conditionally eligible States are able to apply for and receive multi-year grant awards. Transitionally eligible States are those that offer personal assistance services outside the home but do not provide these services statewide, and agree to convert their personal assistance service to statewide by the last day of the grant cycle. Typically, this category would include States with 1915(c) waivers supportive of those engaged in competitive employment that are limited to certain geographic regions of a State. Transitionally eligible States are able to receive first year funding (up to $625,000) but must apply for conditional eligibility status before receiving any additional funds. States with full, conditional or transitional eligibility will receive funding at the beginning of the grant cycle. Other States may have funding reserved for them.

To be considered sufficient, all of the eligibility categories require that

personal assistance services support the competitive employment of individuals with disabilities. Competitive employment means work—

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

In addition, the personal assistance services offered by a State must support competitive employment of disabled individuals that takes place either in the home or in an integrated work setting. An integrated work setting means a setting typically found in the community in which employed disabled individuals interact with non-disabled individuals, other than the non-disabled individuals who are providing the employment service. A person with a disability who is self-employed is considered to be engaged in competitive employment provided that such self-employment meets the definition of competitive employment.

B. Duration of Awards and Types of State Eligibility

Award duration (and therefore cumulative award amount) depends partly upon the degree to which the State's Medicaid personal assistance services effectively support competitive employment. States receiving awards may retain grant funds until they are expended. States may only seek subsequent competitive awards (as their eligibility permits) contingent upon the expenditure or obligation of previous grant awards. States may apply under the following circumstances:

1. Full Eligibility: Fully eligible States are defined in Appendix One which contains HCFA's operational definition of an effective personal assistance service that will qualify a State for full eligibility under the grants program. Those States with statewide personal assistance services meeting the criteria in Appendix One will enjoy full eligibility and may secure both (a) multi-year funding and (b) the ability to serve as State-to-State Medicaid Infrastructure Centers. States with personal assistance programs that meet the criteria described in Appendix One may apply for up to four years of funding. If a multi-year commitment is requested, funding beyond the first year will be reserved for such States for future grant years subject to the continued availability of funds under the grants program. At the end of four years, such State may re-apply and be eligible for further funding, contingent upon the availability of funds on a competitive basis.

- States seeking full eligibility must offer evidence that their personal assistance services under Medicaid fulfill the requirements in Appendix One of this grant solicitation.

2. Conditional Eligibility: Conditionally eligible States are those States with statewide personal assistance services of limited people scope capable of serving people with disabilities engaged in competitive employment of at least 40 hours per month. These States do not meet the criteria in Appendix One. Such States may apply for up to four years of funding; however, funding after year one is contingent upon the States meeting annual benchmarks which have been agreed to by HCFA in the Terms and Conditions of the grants. These benchmarks must represent design changes which will significantly improve a State's personal assistance services under Medicaid and move them closer to the criteria established in Appendix One. We expect that the benchmarks will be designed with the involvement of the disability community. Subsequent year funding will be released after the State has achieved the agreed upon benchmarks. At the end of four years, States may re-apply for funding on a competitive basis, contingent upon the availability of funds.

- To the extent that system improvements are sufficiently large that the State is later able to meet the criteria in Appendix One, the State may then apply for additional amounts and years of funding as a "fully eligible State."

3. Transitional Eligibility: Transitionally eligible States are those that offer personal assistance services sufficient to support individuals engaged in competitive employment of at least 40 hours per month, but not in a statewide manner. Transitionally eligible States must commit to transitioning their personal assistance services to statewide by the end of the grant year to be eligible for one year of funding. This commitment will allow us to consider the last day of the grant cycle as the first day for purposes of establishing statewideness. States receiving funding under this category may re-apply competitively for future funding as a conditionally eligible State. States can only qualify for funding under the transitional eligibility category on a one time basis.

- States seeking transitional eligibility must provide us with a letter of commitment outlining how the requirement of statewideness will be achieved by the end of the year.

We expect this commitment letter will be developed with the involvement of the disability community.

4. Reserved Eligibility: States that do not qualify for full, conditional, or transitional eligibility (those that do not have a personal assistance service and/or do not have capacity to deliver personal assistance services outside the home) may still apply and have first or second-year funds reserved for them, contingent upon later passage and implementation of coverage for personal assistance services capable of serving people with disabilities in competitive employment of at least 40 hours per month. Receipt of funding under this eligibility category is contingent upon the availability of funds. In addition, States seeking reserved eligibility must meet the following requirements:

(a) Obtain a commitment from the Single State Medicaid Agency, with the involvement of the disability community, to seek the necessary legislative and/or Gubernatorial approvals to implement a personal assistance services system capable of supporting competitive employment of at least 40 hours per month within two years of the grant application due date; and

(b) Provide evidence of such approval prior to the release of grant funds. Funds not claimed within the 2-year time period maybe released for competitive application by other States.

States that are determined by HCFA to be ineligible for funding by the end of year two, may re-apply for reserved eligibility.

C. Amounts and Timelines for Funding

HCFA anticipates announcing the first round of awards in October, 2000. The first grant period will run 15 months from October 1, 2000, through December 31, 2001. The minimum grant award for this first award cycle of 15 months will be $625,000 unless the State specifically requests less. The maximum award a State may request is the greater of:

- $500,000 per year ($625,000 for the first grant period of 25 months), or
- Ten percent of the Medicaid buy-in expenditures for people with disabilities, per year.

In no instance may this be more than $1,250,000 for the first grant-year or $1,500,000 for subsequent grant years. States are required to document such expenditures either in the form of expenditure reports for the previous fiscal year or actual budgeted expenditure levels approved by the legislature and Governor for the previous year, the current year or the

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grant year. All documentation regarding the buy-in expenditures must be included with the initial application.

The Medicaid Infrastructure Grants program is authorized in law for 11 years. Funding has been appropriated at $20 million for the first year, with gradually increasing annual amounts totaling $150 million for the first 5 years ($25 million in year two, $30 million in year three, etc). States may apply for 1 or more years of funding, as described below. We anticipate some form of grant solicitation annually, but also expect competition for the grants will increase significantly over time. No State or local matching funds are required.

D. Uses of Grant Funds

Funds may be used for infrastructure, that is, to establish or improve the capability to provide or manage necessary health care services or support for competitive employment of people with disabilities who may be Medicaid eligible. The infrastructure may be at the State and/or local level and may be provided or contracted by government or other organizations under contract with the responsible government agency.

Funds may not be used for the direct provision of services to people with disabilities except on a one-time, last resort, emergency basis for the purpose of sustaining the individual's competitive employment. An emergency use would consist of an intervention or support enduring no more than one day which is designed to compensate for the unexpected breakdown of a person's normal support system and for which other resources are not readily available to sustain a person's employment schedule or commitments. Examples might include: emergency rental of a replacement wheelchair or coverage for transportation breakdown.

Funds under this grant initiative cannot be used to match any other Federal funds. Grant funds may not be used for services, equipment, or supports that are the responsibility of another party under Federal or State law (such as vocational rehabilitation or education services) or under any civil rights laws including, but not limited to, modifications of a workplace or other reasonable accommodations that represent an obligation of the employer or other party. Grant funds may not be used to provide personal assistance services (except for an emergency use described above) or substitute in other ways for the absence of adequate personal assistance services in the State. Funds may not be used for infrastructure for which Federal Medicaid matching funds are available at the 90/10 matching rate, such as certain information systems projects.

States that receive funding commitments based on Full-Eligibility status or receive funding which exceeds the minimum grant award level ($625,000 for the first 15-month grant period) must agree to provide and/or contribute to some form of technical assistance to other States based on the learning achieved in the process of implementing its Medicaid employment initiative. Specific details will be negotiated based on the State's interest in providing assistance, the type of assistance already offered by other grantee States, the expressed desire of States which are requesting assistance, and the input of all States with regard to the best methods to assure a national infrastructure capability. Examples of assistance already requested by States can be found in Appendix Two.

Funds may be applied to one or more of the following four purposes:

1. Medicaid Buy-In: Planning, design, implementation and/or effective management of any of the Medicaid buy-in options under the 1997 Balanced Budget Act (section 1902(a)(10)(A)(ii)(XIII) of the Social Security Act (the Act)) and/or the Ticket to Work and Work Incentives Improvement Act (section 1902(a)(10)(A)(ii)(XV) or (XVI) of the Act. Examples include: time-limited staff planning costs; expenses for people with disabilities to participate in State planning and implementation events; automated information and eligibility systems modifications necessary for the Buy-In or for Medicaid payment of Medicare Part B premiums on behalf of subscribers to the Medicaid Buy-In; automated enrollee tracking systems; basic research and evaluation, etc. Also included is outreach to people with disabilities or employers to learn about the opportunities to work and to sustain health coverage under Medicaid and/or Medicare, to enroll in the Medicaid Buy-In, and to access needed supports to sustain competitive employment. Additional examples are provided in Appendix Two.

2. Medicaid Services: Planning, design, or initial management and/or evaluation of improvements to make the Medicaid State Plan (or Medicaid waivers) provide more effective support to workers with disabilities. Examples include: improvements to personal care, transportation, durable medical equipment, community-based treatment, or Medicaid waiver support of employment. Coordination between the activities of other State Agencies in support of working people with disabilities and the State Medicaid Program is permissible. Additional examples are provided in Appendix Two.

- On-going administration of Medicaid services is not a fundable activity unless such administration is part of a well-defined test of alternate and improved methods focused specifically on employment (*e.g.*, testing, implementation and management of new prior authorization criteria under Medicaid personal care designed to assess the need for additional support when people are employed).

3. Demonstration To Maintain Independence and Employment: Planning, design, and initial implementation of the demonstration authorized under section 204 of the Ticket to Work and Work Incentives Improvement Act. Separate funding (through a separate grants solicitation) is provided for State demonstrations that offer Medicaid coverage for people who do not meet the SSI disability test but have a potentially severe physical or mental impairment, as defined by the State. Medicaid infrastructure funds allocated pursuant to this solicitation may be used to design such a demonstration and to make necessary implementation preparations.

A separate solicitation will provide funding both for Medicaid services and also for on-going administration of the demonstration. If a State seeks Infrastructure Grant funding for design or initial implementation of the demonstration, the State must submit a response to the separate solicitation to participate in the Demonstration to Maintain Independence and Employment found on the HCFA website at www.hcfa.gov/medicaid/twwiia/twwiiahp.htm (it need not attach a copy to this solicitation response). To minimize the risk assumed by the State when going through consecutive competitive selection processes, a State may submit two versions of its budget under this solicitation. One would reflect the budget if a State is also approved for a demonstration, the second would reflect the budget if the State is not chosen as a demonstration participant.

4. State-to-State Medicaid Infrastructure Centers: States that (a) meet the full eligibility criteria and (b) also make a commitment to implement a Medicaid buy-in program for working adults with disabilities, may apply to use funds to form a regional technical assistance center. The Center would: help other States plan and design needed Medicaid infrastructure; disseminate information on "lessons learned"; facilitate the sharing of knowledge among States, employers and community organizations; support efforts to involve people with disabilities in the design and management of the Medicaid buy-ins; and replicate successful programs supporting the employment of people with disabilities by eliminating health care barriers.

Proposals to create these regional centers must make significant use of staff administering state programs affecting work incentives improvements who can share their experience with other States. One of the purposes of this regional resource network is to identify key actors with special knowledge and talents that can promote sharing of successful practices. State administrative staff must be available to the State-to-State Medicaid Infrastructure Center for purposes of traveling to other States to provide technical assistance. The indirect rate for State-to-State Infrastructure Centers is limited to the Single State Medicaid Agency's approved indirect rate not to exceed 9%.

III. Review Criteria and Process

Planning and Problem Analysis—15 Points: To what extent does the application evidence an understanding of the barriers that impede competitive employment of people with disabilities? To what extent does the planning and implementation process meaningfully involve people with disabilities? How well has the State been able to identify population groups who would benefit from a Medicaid buy-in program?

Significance—25 points: To what extent the application propose infrastructure development which will offer enduring and significant improvement in the ability of the system to provide adequate health coverage for people with disabilities who are competitively employed, provide needed personal assistance and other supports, and/or remove other significant employment barriers?

Methodology and Budget—40 points: To what extent do the methods, work plan, and timetable inspire confidence that the goals of the proposal will be met? For example, to what extent are:

- The needed partners aligned with the proposal;
- The goals and methods clearly and effectively delineated;
- The Medicaid buy-in, Medicaid services and/or Medicaid infrastructure complemented and coordinated with other important components of an effective system (e.g. benefits counseling, vocational rehabilitation, school to work programs, and other important pieces of the employment puzzle); or to what extent will the Medicaid infrastructure grant improve such coordination toward the common purpose of enabling competitive employment?

Is the budget reasonable; to what extent does the budget offer good value in relation to the achievements that are promised (that is, the size of the budget in relationship to the significant products or outcomes being achieved)?

Staffing—10 points: To what extent is evidence provided that key staff are qualified and possess the experience and skills to implement and conduct the program within the available time frames? To what extent is there evidence that key project staff, by virtue of their personal and/or first-hand professional experiences with disability, have the requisite knowledge to design and implement infrastructure for a customer-responsive health coverage system?

Dissemination and Learning—10 points: To what extent does the State have a plan for using its grant experiences to identify different or better ways to improve its buy-in or Medicaid services that support competitive employment efforts of people with disabilities? Does the State have a cogent plan for obtaining timely feedback from people enrolled in the Medicaid buy-in (including the Medicaid demonstration) and from the disability community?

Will the grantee State make such lessons available to key actors within the State? To what extent will it make such lessons available to other States (required for fully-eligible States and State receiving more than $500,000 per fiscal year)? To what extent does the applicant plan to: help other States design needed Medicaid infrastructure; facilitate the sharing of knowledge among States, employers and community organizations; support efforts to involve people with disabilities in the design and management of the Medicaid buy-ins, or replicate successful techniques?

- To what extent does the State's proposal indicate the staffing and technical capability to ensure such dissemination and learning (or include a cogent plan to develop/acquire such capability)?

In General

States that include people with disabilities in the development and implementation of their grant proposal and make a commitment to ongoing inclusion will receive scoring preference.

Panels of experts will conduct an independent review of all applications. The panelists will assess each application based on the areas specified previously to determine the merits of the proposal and the extent to which it furthers the purposes of the grant program. HCFA will review the recommendations of the panel. HCFA reserves the right to request that States revise or otherwise modify certain sections of their proposals based on the recommendations of the panel. HCFA reserves the right to assure reasonable geographic and other representation among States receiving grant awards, as well as assure the presence of at least one State-to-State Medicaid Infrastructure Center.

Final award decisions will be made by the HCFA Administrator after consideration of the comments and recommendations of the review panelists, and the availability of funds. HCFA anticipates announcing the awards in October, 2000. States will receive written notification of the final award decision.

IV. General Provisions

Although applicants have considerable flexibility in developing grant programs under this solicitation, the State must agree to the following:

Grantee Reporting

States receiving awards must agree to cooperate with any Federal evaluation of the program and provide quarterly and annual reports in a form prescribed by HCFA (including the SF–269a Financial Status Report forms). The reports will be designed to outline how grant funds were used and to describe program progress and barriers. States will also provide data on key aspects of their system improvements, scaled to the size of their grant award. For States with Medicaid buy-in programs, such data include the number of subscribers, prior Medicaid eligibility status, Medicare eligibility status, presence of other public or private third-party insurance, premium collections, employment status, and the number of subscribers who increase their employment level.

For States using grant funds to improve Medicaid services that support competitive employment, we will seek data on the nature and extent of the improvements as well as the number of people who benefit from such improvements. A report format will be supplied by HCFA and final details will be negotiated as part of the final grant award process.

Congress imposed a reporting requirement on grantee States when it created this program which involves tracking and reporting the number of

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Title II and Title XVI disability beneficiaries who return to work during each year of the grant program. HCFA will work with the Social Security Administration and the States to fulfill this reporting requirement.

Coordination With Medicare and Private Insurance

States that receive grant funds and that propose (or have) a Medicaid buy-in program or a project under the Medicaid Demonstration to Maintain Independence and Employment should plan on designing methods to coordinate the buy-in or demonstration effectively with private insurance and with Medicare (e.g. payment of Medicare Part B premiums to ensure full Medicare coverage and a reduction in eventual cost to Medicaid). HCFA will provide technical assistance on design elements that may be useful for States to consider.

Transition for On-Going Administration

States that use grant funds for any on-going administrative expenses must include a short plan for phasing out grant funds and ensuring that necessary, on-going administration will be assumed as a regular Medicaid administrative expense or paid for through other means.

Annual Meeting

All States receiving awards should plan to attend an annual meeting of grantee States. States proposing to serve as State-to-State Medicaid Infrastructure Centers should plan to attend two additional meetings. Proposed grant budgets must contain the necessary funds to send two representatives to the meetings and, for budgeting purposes, should be based on a Washington, DC, location.

Civil Rights

All grantees receiving awards under this grant program must meet the requirements of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Hill-Burton Community Service nondiscrimination provisions; and Title II, Subtitle A, of the Americans with Disabilities Act of 1990.

Intergovernmental Review of Federal Programs

Executive Order 12372 or "Intergovernmental Review of Federal Programs" (45 CFR Part 100) is not applicable to this program.

V. Applying for a Grant

Application Format

Appendix Three contains a format for submitting an application.

Notice of Intent To Apply

Appendix Four is a Notice of Intent to Apply. States that submit this form with questions before June 12, 2000 will receive answers to the questions at the Applicants' Conference which may help provide guidance for proposals. This form does not represent an obligation on the part of the State to apply and it is not a requirement for a successful State application.

Applicants' Conference

HCFA will conduct an open Applicants' Conference for all States interested in the Medicaid Infrastructure Grants. Participation in the Conference is not required but is recommended as a forum for States to ask questions and obtain additional information. The conference will be held in June, 2000.

Deadline for Submission

The closing date for proposals submitted under this solicitation is July 31, 2000. Applications mailed through the U.S. Postal Service or a commercial delivery service will be considered on time if they are received in HCFA's Grants Office or postmarked by this date. Submissions by facsimile (fax) transmission will not be accepted. A proposal postmarked after the closing date will be considered late. Late proposals will not be considered for an award in this round of applications and will be returned without review.

An original proposal should be sent with *seven copes* to: Attn: Marilyn Lewis-Taylor, Health Care Financing Administration, OICS, AGG, Grants Management Staff, Mailstop C2–21–15, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Phone: (410) 786–5701, e-mail: mlewistaylor@hcfa.gov

Please note: While State agencies are only required to submit an original and two copies, submission of an original and *seven copies* will greatly expedite the application process.

VI. Additional Information

For additional information regarding this solicitation, please contact: Medicaid Employment Infrastructure Grants Program, Disabled and Elderly Health Programs Group, Center for Medicaid and State Operations, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, (410) 786–6126, Attn: Joe Razes, Project Manager.

Information is also available on HCFA's dedicated Ticket to Work and Work Incentives Improvement Act website at the following address: http//:www.hcfa.gov/medicaid/twwiia/twwiiahp.htm

Authority: Section 203 of the Ticket to Work and Work Incentive Improvement Act of 1999, Public law 106–170.

(Catalog of Federal Domestic Assistance Program No. 93.779, Health Care Financing Research, Demonstration, and Evaluations)

Dated: May 22, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Appendix One: Personal Assistance Services

Personal assistance services sufficient to enable individuals to work:

For full eligibility under this grant program, entitling a State to receive multiple year funding, a State must offer personal assistance services statewide to the extent necessary to enable an individual to be employed competitively. For purposes of this grant program, "personal assistance services" means:

- A range of services, provided by 1 or more persons, designed to assist an individual with a disability to perform daily activities on and off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and the individual's ability to perform activities on and off the job.

Offering personal assistance services to the extent necessary to enable individuals with disabilities to remain competitively employed is defined as the following:

- Personal assistance services must be offered statewide through:

(a) The optional Medicaid personal care services benefit under the State Medicaid plan as defined in 42 CFR 440.167, or

(b) A section 1115 and/or section 1915(c) waiver and/or 1915(b) waiver which substitutes for statewide personal care coverage sufficient to support employment under the State Medicaid plan as defined below, or

(c) A combination of State Plan personal care option (or personal care within a Home Health State Plan service) and Medicaid waiver which collectively meet the statewideness and other criteria described below, and which is not substantially different for employed and unemployed individuals.

- The personal care benefit must be sufficient in amount, duration and scope such that an individual with a moderate to severe level of disability would be able to obtain the support needed to both live and get to and from work. Evidence must be available that the State has the ability, through mechanisms including individualized assessments, to match need for personal assistance services with the quantity of services delivered. Establishing caps on the number of days or the number of hours per day that services are available without regard to individual need will not satisfy this requirement. A State must have criteria for reviewing and responding to requests from qualified employed individuals with disabilities who believe they require more services than determined at their individuals assessment, or a different type of physical or cognitive assistance than that which has been made available. Such criteria should be developed in consultation with individuals with disabilities who use personal assistance services and are competitively employed.

- Workers receiving personal assistance services must be able to receive personal assistance services outside their home.

- Workers receiving personal assistance services must be able to receive personal assistance services at times during both the day and night seven days a week, subject to a finding of individual need.

- Unless an individual needs only assistance with activities of daily living, medical necessity definitions used by a State must not preclude the availability of personal assistance services for instrumental activities of daily living such as cooking, cleaning or shopping if such assistance is required for an individual to remain competitively employed.

Appendix Two: Examples of Permitted and Prohibited Uses of Grant Funds

A. Examples of Permitted Uses of Funds

1. Medicaid Buy-In Programs

Buy-In Design and Implementation: Design, cost-modeling, development and initial administrative implementation of medicaid buy-ins for the eligibility groups described in sections 1902(a)(10)(a)(ii)(XIII), (XV) and (XVI) of the Social Security Act including:

- Staffing or contracting costs (and related staff expenses) for planing, cost-modeling, initial implementation and management.
- Expenses incurred by people who have a disability who volunteer to participate in State planning, design, training, and implementation events.
- Expenses related to processes that actively involve people with disabilities in the design and/or implementation of the buy-in programs.
- Changes to the State's automated eligibility determination systems.
- Changes to the State's information systems necessary to: issue Medicaid cards; track enrollment; gather and track key information about enrollees (see grantee reporting requirements); manage premium collections and payments; coordinate benefits with Medicare and other third-party insurers; manage and track special asset disregards such as special earned-income savings accounts that a State may permit as part of its work incentives.
- Training materials, curricula, and events for training eligibility determination workers, SSA field staff, benefit counselors, independent living centers, advocacy organizations, and others.
- Software for managing premium collections or tracking special savings accounts permitted as an asset disregard.
- Outreach efforts to inform prospective enrollees and/or employers about the availability of the buy-in and provide information regarding costs and enrollment criteria.

Tracking, Reporting and Learning Systems: Costs to build and maintain capacity to:

- Meet the reporting requirements of this grant solicitation.
- Track key enrollee data (e.g. enrollee characteristics, prior Medicaid and Medicare status, employment, etc.).
- Conduct basic research on costs of services used by enrollees, utilization, or trends over time.
- Design and conduct effective methods to obtain enrollee feedback or input on the on the operation of the buy-in, the effectiveness of the coverage being provided, and methods to improve the manner in which the buy-in facilitates employment.

Coordination of benefits: Expenses involved in designing and implementing methods to coordinate the buy-in programs effectively with Medicare and with other public or private or insurance coverage.

2. Medicaid Services That Most Directly Support individuals with Disabilities Who Are Employed

- *Personal Care Under the State Plan:* Design, cost-modeling, and development of a Medicaid State Plan service to cover the personal care services optional benefit under the State plan.
- *Providers of PAS:* Development of provider capacity and reliability to support the provision of personal assistance services (PAS) seven days a week, during the day and night as needed by competitively employed individuals with disabilities; development of effective emergency or back-up systems for people who are competitively employed.
- *Adequacy of PAS:* Design and/or initial implementation of changes to the State's personal assistance services that substantially improve the extent to which the service supports the competitive employment of people with disabilities, such as: conversion of across-the-board service caps to authorizations based on individual need, inclusion of cueing as a component of personal assistance services, etc.
- *Training Medicaid Case Managers:* Training materials, curricula and events designed to train case managers funded by Medicaid regarding: the Medicaid buy-in; the availability of vocational rehabilitation services (VR) and the procedures for working with VR agencies; the availability of Section 1619 Medicaid protections for SSI beneficiaries who work; the inner workings of the SSI provision for Programs to Achieve Self-Sufficiency (PASS); provisions of the new Ticket to Work and Work Incentives Improvement Act; changes to Medicare extended periods of eligibility, and other programs which will assist people with disabilities to be employed competitively.
- *Medicaid Case Management Design:* Redesigning the content, scope, activities, and outcomes of Medicaid case management activities to incorporate valued social and economic roles, defined and desired by the individual with a disability, as an element of each case plan.
- *Self-Determination Designs:* Incorporating the new employment possibilities in the evolving field of self-determination within the Medicaid program, or redesigning traditional Medicaid services to incorporate self-determination principles with an employment focus.
- *Other Medicaid Services:* Improvements in the design, cost-modeling, development and initial implementation or evaluation of other Medicaid services which have a direct and significant impact on the ability of individuals with disabilities to sustain competitive employment, such as transportation services or modifications, assistive devices, communication aids, or community mental health services.

3. Medicaid Demonstration To Maintain Independence and Employment

- *Demonstration Design and Initial Implementation:* Design and development of a demonstration program to provide Medicaid coverage to a State defined maximum number of working individuals who have a specific physical or mental impairment likely to lead to disability (as created by Section 204 of the Ticket to Work and Work Incentives Improvement Act of 1999), including the examples cited above as permitted uses for the basic Medicaid buy-in programs.

4. State-to State Medicaid Infrastructure Centers

- *Staffing:* Staffing or contracting costs (and related expenses) for a technical assistance and resource center to assist other States to design or implement Medicaid buy-ins or a Medicaid demonstration project.
- *Training and Consulting:* Training materials, curricula development, training events, travel in-state or out-of-state, etc.
- *Peer and Network Education:* Fostering forums for the sharing of knowledge amongst peers, developing effective networks among States, employers, and people with disabilities to share new information, learn new problem-solving techniques, and advance the state-of-the-art in return to work programs.
- *Direct Technical Assistance:* Provision of direct technical assistance to other State agencies, legislatures, Governors, employers, consumer forums, or others on any topic related to the buy-ins (including the Medicaid demonstration) or to improving Medicaid services to support competitive employment of people with disabilities.
- *Informational Resources:* Construction of resources databases for use by others in cost-modeling, tracking progress and learning of other States across the country, compiling key design features and results of different States' buy-in programs or Medicaid demonstration.
- *Outreach and Communication Resources and Services:* Developing and distributing key outreach resource materials for use in other States, including printed material, videos, testimony, audio interviews, graphics, etc. Developing and maintaining web-sites, links translation services, employer outreach systems, and other communication infrastructure.

5. Other

- *Personal computers:* Personal computers and related software for any added staff

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capacity (hired or contracted) devoted to development or maintenance of an adequate infrastructure for the Medicaid buy-in programs (including the Medicaid demonstration).

• *Reasonable accommodation:* Reasonable accommodation expenses for staff with a disability who have been enlisted to improve design or implementation capability.

• *Outreach:* Outreach to stakeholders to increase awareness of the availability of the Medicaid options or Medicaid demonstration.

• *Inclusion:* Inclusion of the disability community in the design, implementation and outreach efforts around these options and demonstrations.

B. Prohibited Uses

• *Match:* State or local match to any services provided under the Medicaid program or other Federal program.

• *Medicaid 90/10 Projects:* Any infrastructure expense for which Federal Medicaid funds are available at the 90/10 matching ratio.

• *Non-Competitive Employment:* Any costs related to employment efforts which are not entirely designed to eventuate in the competitive employment of individuals with disabilities.

• *Other Target Groups:* Any infrastructure expense that is not designed to be used primarily for the benefit of people with disabilities who are employed.

• *Premiums:* Premiums for participants in a Medicaid buy-in or other cost-sharing under the Medicaid program.

• *Other Party Responsibility:* Services, equipment, or supports that are the responsibility of another party under Federal or State law (such as vocational rehabilitation or education services) or under any civil rights laws including, but not limited to, modifications of a workplace or other reasonable accommodations.

• *Direct Provision of Services:* Direct provision of services to people with disabilities except on a one-time, last resort, emergency basis for the purpose of sustaining the individual's competitive employment.

• *On-going Administration of Medicaid Services:* Ongoing administration is not a fundable activity unless such administration is part of a well-defined test of alternate and improved methods focused specifically on employment (e.g. testing, implementation and management of new prior authorization criteria under Medicaid personal care designed to assess the need for additional support when people are employed).

• *Benefits Counseling:* Benefits planning or counseling services that are not part of a single-session Medicaid outreach event, a Medicaid eligibility determination process, or a Medicaid buy-in enrollment process.

• *Data Processing Hardware:* Hardware in excess of the personal computers required for staff devoted to the Medicaid employment initiative.

Appendix Three: Application Format and Guidelines

Please use the format outlined below and submit materials in the order listed.

• The narrative portion of the proposal should not exceed 30 double-spaced typewritten pages, with one inch margins on all sides, in 12-point font. This page limit does not include the cover letter, budget, required appendices, or letters of support.

• Additional documentation may be appended; however, material should be limited to information relevant but not essential to the specific scope and purpose of the grant. Please do not include critical details in an appendix as appendices will not be included for purposes of the ratings process.

• States receiving awards may be asked for an electronic version of their proposals at a later date. States must submit their applications initially in paper (hard copy) format.

A complete proposal consists of a narrative application plus the required material noted below and a completed grant application kit. Application materials should be organized in order as follows:

1. State Agency's Cover Letter

A letter from the Director of the State Medicaid Agency* or other designated State Agency identifying his/her agency as the lead organization, indicating the title of the project, the principal contact person, the amount of funding requested, and the names of all organizations collaborating in the project. The letter should indicate that the State Agency has clear authority to oversee and coordinate the proposed activities and is capable of convening a suitable working group of all relevant partners.

• For purposes of this solicitation, State Medicaid Agency means the Single State Medicaid Agency or umbrella agency which houses the State Medicaid Program.

2. Application Kit Forms

Appendix Five contains the standard forms which must be completed with an original signature and enclosed as part of the proposal.

3. Letter of Agreement from Single State Medicaid Agency

If the State Medicaid Agency is not the lead organization, a letter from the Director of the Single State Medicaid Agency is required specifying the Medicaid Agency's agreement, endorsement and active participation in the grant program.

4. Project Abstract

A project abstract limited to one page. The abstract should serve as a succinct description of the proposed project and should include:

• The overall goals of the project; and

• The level of eligibility being applied for, number of years of funding requested, total budget; and

• A description of how the grant will be used to support or expand competitive employment opportunities for persons with disabilities.

5. Project Narrative

The narrative application should provide a concise and complete description of the proposed project. The narrative or body of the application *must not exceed 30 double-spaced pages* as described earlier. Please do not rely on appendices to describe key details. This narrative should contain the information necessary for reviewers to fully understand the proposed project and should be organized as follows:

A. Current Infrastructure

Provide a description of the State's current infrastructure for supporting competitive employment for people with disabilities. Please include the following:

• A description of people with disabilities currently competitively employed in your State;

• A description of services provided with State and Federal funds to people with disabilities who are competitively employed or seeking competitive employment in your State;

• A description of personal assistance services delivery systems currently in place in your State including who is served, how services are accessed and who funds the services; and

• An overall assessment of the strengths and weaknesses of your State's capacity to support people with disabilities seeking to return to work.

B. Use of Grant Funds

Provide a description of how the grant funds will be used to improve the existing infrastructure. Please include as much detail about the following components as possible:

1. Removal of Barriers

Discuss the major barriers to competitive employment for people with disabilities that will be addressed with grant funds. Describe the proposed grant projects in terms of their approach to barrier elimination. Provide a succinct statement of the problems for which Medicaid infrastructure funding will be an answer.

2. Health Systems Change

Because this Infrastructure Grant program is premised upon the positive correlation between access to health care benefits and employment, please describe the health systems changes that will result from Infrastructure Grant funding. Examples of health systems change include offering a Medicaid buy-in to people with disabilities who return to work, expanding personal care services, or identifying health system needs and strategies for improvement.

3. Communication/Access Plan

Discuss how the State intends to make known the availability of infrastructure improvement to the disability and employer communities.

4. Partnerships

Describe any partnership with employers, other State or local agencies and the disability community.

5. Monitoring Plan

Describe plans for monitoring the success of the program over time, including establishing a base estimate of the number of people with disabilities who are currently competitively employed.

6. Research/Program

Describe any ongoing research or program development efforts in this area.

C. Products and Timeline

The purpose of this section is to outline clearly what the State hopes to achieve with each grant. Describe milestones and work products to be accomplished during the grant period.

For States applying for *Conditional Eligibility*, States must clearly indicate the annual benchmarks for improvements to personal assistance services (PAS) that must be achieved before funding beyond the first year's will be released. These benchmarks should represent improvements in PAS that will move a State closer to meeting the level of PAS described in Appendix One.

For States applying for *Transitional eligibility*, States must provide a letter of commitment outlining how the requirement of providing PAS statewide by the end of the grant year will be achieved.

• Examples of work products include completed program designs, legislative campaigns, or proposed educational campaigns.

• A timetable for accomplishing the major tasks to be undertaken should include key dates relevant to the proposed project (*e.g.* State budget cycles and legislative sessions).

D. Organization and Staffing

Describe the project organization and staffing include:

• Proposed management structure and how key project staff will relate to the proposed project director, the Medicaid Agency, and any interagency or community working groups.

• Brief biographical sketches of the project director and key project personnel indicating their qualifications, and prior experience for the project. Resumes for the key project personnel should be provided as an attachment.

E. Endorsements and Support

Provide a set of endorsements of the support and commitments that have been pledged for the proposed project (e.g. cooperation from the disability community, other state agencies, the executive branch, the legislative branch, employers, business groups, etc.). Individual letters of support should be included as attachments.

6. Budget Narrative/Justification

For the budget recorded on form 424 (see Appendix Five), provide a breakdown of the aggregate number detailing their allocation to each major set of activities. If your State is applying to create a State-to-State Medicaid Infrastructure Center, the budget narrative must separate that activity. The proposed budget for the program should distinguish the proportion of grant funding designated for each grant activity. The budget must separate out funding that is administered directly by the lead agency from funding that will be subcontracted to other partners. If you have budgeted for Infrastructure Grant money to use toward the realization of a Demonstration to Maintain Independence project, you may submit a separate budget section reflecting how that money will be spent if the Demonstration project is not approved.

If your State has an approved State Plan amendment under section 1902(a)(10)(A)(ii)(XII) of the Social Security Act and is applying for funds in excess of $500,000 per fiscal year, please provide documentation of State and Federal spending for this optional categorically needy eligibility group.

7. Required Appendices

(a) Organizational Charts: Append one or more charts depicting the organizational relationship amongst the lead agency for this grant, the Single State Medicaid Agency (if different), the agency administering Home and Community-Based Service waivers (if different), and the State Vocational Rehabilitation Agency.

(b) Memoranda of Understanding: Append any relevant memoranda of understanding which might illustrate the breadth of the State's employment efforts and the extent of collaboration between relevant agencies.

(c) Key Staff Qualifications: Include a biographical sketch or resume of key staff describing their qualifications.

Appendix Four: Notice of Intent to Apply

Please return this form by June 12, 2000 to: Medicaid Infrastructure Grants Program, Disabled and Elderly Health Programs Group, Center for Medicaid and State Operations Health Care Financing Administration, 7500 Security Boulevard, S2–12–24, Baltimore, MD 21244–1850

1. State Name: _____
2. State Agency likely to serve as lead: _____
3. Contact Name and Title: _____
4. Address: _____
5. Phone: _____
6. Fax: _____
7. E-mail: _____
8. Eligibility Category: Full___
Conditional___
Transitional ___
Reserved___
9. Expected Duration of Grant Request: From _____ to _____
10. Infrastructure Center: Will You Propose to Serve as a State-to-State Medicaid Infrastructure Center? Yes__ No__
11. Expected amount of request: $ _____
12. Questions: Please attach any questions you would like to have answered before you complete your application.

Information will be sent in June with responses to questions posed by States that submit this Notice of Intent to Apply. This Notice of Intent is not a required document. States that do not submit a letter of intent may still apply. Similarly, submission of a letter of intent does not bind the State, nor will it cause a proposal to be reviewed more favorably. However, we cannot assure that answers to questions posed by States subsequent to issuance of this grant solicitation will be provided to States that do not submit a letter of intent.

Appendix 5

Grant Application Kit (standard forms)
(Please complete the attached forms:)
SF–424: Application for Federal Assistance
SF–424A: Budget Information
SF–424B: Assurances-Non Construction Programs
Biographical Sketch
Standard Form LLL: Disclosure of Lobbying Activities
Additional Assurances

If copies of these forms are needed, they may be obtained from the HCFA website at www.hcfa.gov under Research and Demonstration.

[FR Doc. 00–13554 Filed 5–26–00; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–14]

Notice of Proposed Information Collection: Comment Request; Request for Construction Change

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The Proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 31, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Business Products, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have

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practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Construction Change.

OMB Control Number, if applicable: 2502–0011.

Description of the need for the information and proposed use: Sections 207(b) of the National Housing Act (Public Law 479, 48 Stat. 1246, 12 U.S.C. 1701 et. seq.) authorizes the Secretary for the Department of Housing and Urban Development to insure mortgages for construction of rental housing projects. Forms HUD–92437, HUD–92442, HUD–92442–A, HUD–92442–CA and HUD–92442–A–CA, are used by the contractor, mortgagor and mortgagee to obtain the FHA Commissioner's approval of changes drawings and specifications.

Agency form numbers, if applicable: HUD–92437, HUD–92442, HUD–92442–A, HUD–92442–CA, HUD–92442–A–CA.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: HUD–92437 (number of respondents is 900, frequency of responses is 3, hours per response is 2 hours); HUD–92442 (number of respondents is 300, frequency of responses is 1, hours per response is 16 hours); HUD–92442–A (number of respondents is 300, frequency of responses is 1, hours per response is 16 hours); HUD–92442–CA (number of respondents is 300, frequency of responses is 1, hours per responses is 16 hours); HUD–92442–A–CA (number of respondents is 100, frequency of responses is 1, hours per response is 2 hours). The total number of respondents are 1,900 and the annual burden hours requested are 20,000.

Status of the proposed information collection: Reinstatement with change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 22, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–13468 Filed 5–30–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–34]

Notice of Submission of Proposed Information Collection to OMB Assessment of the American Housing Survey—Metropolitan Sample (AHS–MS)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 30, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) That members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: Assessment of the American Housing Survey—Metropolitan Sample (AHS–MS).

OMB Approval Number: 2528–XXXX.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Department of Housing and Urban Development (HUD) seeking to better understand how the AHS–MS data is used, and by whom. The information collected will enable HUD to balance geographic coverage, timeliness and cost considerations in designing the surveys, in order to develop an optinal data set for use by HUD, other public agencies, educational institutions, nonprofits, planners, and other interested parties. The respondents will consist of known users of AHS–MS data and potential users.

Respondents: business or other for-profits, Not-for-profits and Institution State, Federal Government and State, Local, or Tribal Governments.

Frequency of Submission: One Time Only.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Information Collection	200		1		.16		33

Total estimated burden hours: 33.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 22, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–13493 Filed 5–30–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice, information collection.

The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We have submitted a request to OMB to renew its approval of the collection of information for the Federal Subsistence Hunt Application and Permit, Designated Hunter Permit Application and Report, and Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application. We are requesting a 3-year term of approval of this information collection. Pursuant to our request for OMB approval of this formation collection, we invite comments on (1) whether the collection of information is necessary for the proper performance of out functions, including whether the information will have practical utility; (2) the accuracy of our estimate of burden, including the validity of the methodology and assumptions used, and (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 30, 2000.

ADDRESSES: Send comments and suggestions to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of the Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503; and a copy to our Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Charles Miller, Alaska Subsistence Office, 907/786–3888 or Rebecca Mullin, Service Information Collection Clearance Officer 703/358–2287.

Title: Federal Subsistence Hunt Application and Permit and Designated Hunter Permit Application and Permit.

OMB Approval Number: 1018–0075.

Service Form Number(s): 7–FW 1 and 7–FW 2 7–FW 3.

SUPPLEMENTARY INFORMATION: The Alaska National Interest Lands Conservation Act (ANILCA) and Fish and Wildlife Service regulations, found in 50 CFR 100, require that persons engaged in taking fish and wildlife must comply with reporting provisions of the Federal Subsistence Board. The harvest activity must be reported. In many cases, a special permit is required for the rural resident to be able to participate in special hunts. The harvest information is needed in order to evaluate subsistence harvest success; the effectiveness of season lengths, harvest quotas, and harvest restrictions; hunting patterns and practices; and hunter use. Once harvest success information is evaluated, the Federal Subsistence Board utilizes this information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence hunters without adversely impacting the health of existing wildlife populations. The Federal Subsistence Hunt Application and Permit also provides a mechanism to allow Federal subsistence users the opportunity to participate in special hunts that are not available to the general public but are provided for by Title VIII of ANILCA. Both reports provide for the collection of the necessary information; however, the Designated Hunter Report is unique in that it allows the reporting of the harvest of multiple animals by a single hunter who is acting for others. The Designated Hunter Application and Permit also serves as a special permit allowing qualified subsistence users to harvest fish or wildlife for others. The collection of information is needed prior the expiration of time periods established under 5 CFR 1320, and is essential to the missions of the Fish and Wildlife Service and the Federal Subsistence Board. Without this information public harm would occur as a result of the Service's inability to set subsistence seasons and harvest limits to meet users' needs without adversely impacting the health and the animal population.

Frequency: On occasion.

Title: Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application.

OMB Approval Number:

Service Form Number(s): 7–FW 3

Abstract: Under the Alaska National Interest Lands Conservation Act (ANILCA) allows the taking of fish and wildlife on public lands in Alaska for subsistence use. In order to take fish and wildlife in public lands for subsistence uses, users must possess and comply with the provisions of any pertinent permit, harvest tickets, or tags required by the State, or Federal permits, harvest tickets or tags as required by the Federal Subsistence Board (Board). All Alaskans who are residents of rural areas or communities are eligible to participate in subsistence taking of that stock or population under the regulations in 50 CFR 100.

Information on the fishermen, qualified subsistence users fished for, the fish/shellfish harvested, and the location of harvest is needed by the Board in making recommendations on subsistence use. Once harvest success information is evaluated, the Federal Subsistence Board utilizes this information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence fisherman without adversely impacting the health of existing fish/shellfish populations. The Federal Subsistence Hunt Application and Permit also provides a mechanism to allow Federal subsistence users the opportunity to participate in special fishing opportunities that are not available to the general public but are provided for by Title VIII of ANILCA.

Description of Respondents: Individuals and households.

Estimated Completion Time: The reporting burden is estimated to be .25 hours or 15 minutes each.

Annual Responses: 5,200 (Federal Subsistence Hunt Application and Permit); 700 (Designated Hunter Permit Application and Report); 1,000 (Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application).

Total Annual Burden Hours: 1,725 hours.

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Dated: May 11, 2000.

Rebecca A. Mullin,

U.S. Fish and Wildlife Service, Information Collection Officer.

[FR Doc. 00–13556 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C., App. 2, the Bureau of Indian Affairs announces a meeting of the Advisory Board for Exceptional Children in Bloomington, Minnesota, to discuss the impact of Public Law 105–17, the Individuals with Disabilities Education Act Amendments of 1997, on Indian children with disabilities.

DATES: The meeting will be held on Friday, June 9, 2000 beginning 9:00 a.m. to 4:00 p.m. and Saturday, June 10, 2000 beginning 9:00 a.m. and ending at 12:00 noon CST.

ADDRESSES: The meeting will be held at the DAYS INN, 1901 Killebrew Drive, Bloomington, Minnesota 55425. Telephone (612) 854–8400; Fax (612) 854–3615.

Written statements may be submitted to Mr. William A. Mehojah, Director, Office of Indian Education Programs, Bureau of Indian Affairs, 1849 C Street, NW, MS–3512, Washington, D.C. 20240; Telephone (202) 208–6123; Fax (202) 208–3312.

FOR FURTHER INFORMATION CONTACT: Dr. Angelita Felix, Lead Education Specialist, Division of School Program Support and Improvement, (505) 346–7529.

SUPPLEMENTARY INFORMATION: The purpose of the Board is to provide advice to the Secretary of the Interior, through the Assistant Secretary-Indian Affairs, on the needs of Indian children with disabilities, as mandated by the Individuals with Disabilities Education Act Amendments of 1997, Public Law 105–17, June 4, 1997.

The agenda for this meeting will cover funding allocations, newly established Division of School Program Support and Improvement, Office of Special Education Program Monitoring Report, Draft Improvement Plan, Parental Forums and the BIA's draft Eligibility document.

The meeting will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Board for its consideration. Written statements should be submitted to the address listed in the **ADDRESSES** section. Summaries of Board meeting may be requested from the Division of School Program Support and Improvement.

The Board will prepare and submit an annual report to the Secretary of the Interior and the Congress containing a description of the activities of the Board for the preceding year.

The next Board meeting will be held on or about December 14, 2000. Regional Parents Forum will be scheduled throughout the year. Location, date and time may be obtained from the Division of School Program Support and Improvement, telephone (505) 248–7529 or 7527; Fax (505) 248–7546.

Dated: May 22, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–13537 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State compacts; correction.

SUMMARY: The Bureau of Indian Affairs published a notice in the **Federal Register** on May 16, 2000 (65 FR 31189), concerning a list of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands in the State of California. The list of California Indian Tribes contained an incorrect name for a particular Tribe.

Correction

In the **Federal Register** of May 16, 2000, in FR Doc. 00–12322, on page 31189, in the second column, correct the **SUMMARY** caption listing the tribes, specifically, the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation to read: Santa Rosa Indian Community of the Santa Rosa Rancheria.

DATES: This action is effective May 31, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 18, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–13498 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment IV to the Tribal–State Compact for Regulation of Class III Gaming Between the Burns—Paiute Tribe and the State of Oregon, which was executed on March 31, 2000.

DATES: This action is effective May 31, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 18, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–13494 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment V to the Tribal-State Compact for Regulation of Class III Gaming Between the Warm Springs Reservation of Oregon and the State of Oregon Gaming Compact, which was executed on March 31, 2000.

DATES: This action is effective May 31, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 17, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–13497 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment VI to the Tribal-State Compact for Regulation of Class III Gaming between the Coquille Indian Tribe and the State of Oregon which was executed on March 31, 2000.

DATES: This action is effective May 31, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240 (202) 219–4066.

Dated: May 18, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–13495 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment VII to the Tribal-State Compact for Regulation of Class III Gaming Between The Klamath Tribes and the State of Oregon, which was executed on March 31, 2000.

DATES: This action is effective May 31, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 18, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–13496 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–00–1232–PA–AZ11; 8371]

Arizona: Fee Demonstration Pilot Program Supplementary Rules; Yuma, Maricopa, and La Paz Counties, Arizona, and Imperial County, CA

AGENCY: Bureau of Land Management, Interior

ACTION: Establish supplementary rules governing public occupancy, use, and conduct in areas designated by, and included in, the national Fee Demonstration Pilot Program.

SUMMARY: The Bureau of Land Management (BLM) Yuma Field Office is responsible for administering 1.7 million acres within southwestern Arizona and southeastern California. Recreational use accounts for several million visitor-days annually. This concentration of visitor use results in significant resource damage, social conflicts, and threats to visitor safety. In addition to the regulations which apply to all public lands, the following supplementary rules will apply to the designated fee sites within the Fee Demonstration Project Area, as listed below, and are designed to provide for public safety and welfare and to protect natural resources. The recreation sites that have been designated under the national Fee Demonstration Pilot Program, and for which these rules apply are Betty's Kitchen Watchable Wildlife and Interpretive Area, Squaw Lake Campground, Senator Wash Reservoir North Shore, Senator Wash Reservoir South Shore, Senator Wash Reservoir Boat Ramp and Day-Use area, Imperial Dam Long-Term Visitor Area, Oxbow Campground, Ehrenberg Sandbowl Off-Highway Vehicle Area, and the La Posa Long-Term Visitor Area. These rules will apply to the above identified sites and to any additional recreation sites that are formally added to the national Fee Demonstration Pilot Program.

Section 1: Definitions

Disorderly Conduct: A person commits disorderly conduct when his or her actions disturb the public peace, offends public morals, or undermines safety.

Fee Demonstration Project Area (FDPA): all lands owned by the United States and administrated by the Bureau of Land Management, Yuma Field Office that are designated and included in the National Fee Demonstration Pilot Program.

Fee Use Areas: any designated and posted area within the FDPA which requires a fee or payment for use.

Firearms: any loaded or unloaded pistol, rifle, shotgun, or other weapon which is designed to, or may be readily converted to expel a projectile by the ignition of a propellant, spring, or compressed air.

Hunting: taking or attempting to take wildlife.

Occupancy: the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag, or other bedding material for use; or parking a motor vehicle, motor home, or trailer.

Operator: a person who operates, drives, controls, or otherwise has charge of a motor vehicle or any other mechanical equipment.

Per Day: a calendar day which starts at 12 midnight and ends at 11:59 p.m. or on the 24 hour clock starting at 0000 hours and ending at 2359 hours.

Permit: a self-service fee envelop, form, window sticker, or written authorization from the Bureau of Land Management for the occupancy and/or use of the Fee Use Areas where use is

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otherwise prohibited, restricted, or regulated.

Person: an individual, firm, corporation, society, association, partnership, or private or public body.

Pet: any animal under human care.

Possession: exercising direct physical control or dominion, with or without ownership, over property.

Registered Owner: the person identified by the relevant state authority as being the individual to whom the motor vehicle is registered.

Vehicle: any motorized vehicle capable of or designed for travel on or immediately over land or roadways, whether or not the vehicle is registered.

Weapon: a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, sling shot explosive devise, or any other implement designed to discharge projectiles; also nu-chucks, clubs, and any device modified as a striking instrument.

Section 2: Permits

(a) Fee Use Permits must be purchased immediately upon entry. Fees must be pre-paid for each day of use of occupancy.

(b) Fee Use Permits must be displayed in a clearly visible manner in the front windshield of the vehicle, with all required information completed in order to be valid.

(c) An authorized Bureau of Land Management (BLM) officer may revoke without reimbursement any Fee Use Permit when the conduct of the permittee, permittee's family, or guests does not comply with the rules for use of that area or is inconsistent with the goals of BLM's Fee Use Permit program.

(d) Failure to comply with all terms and conditions of the permit may result in the revocation of the Fee Use Permit and/or issuance of a criminal citation.

(e) The operator of a vehicle is responsible for compliance with all requirements of the permit. In the absence of the operator, the registered owner of record is then responsible for compliance with all permit requirements.

(f) Permits issued from any area other than the Yuma Field Office are not valid for occupancy or use in Fee Use Areas administered by the Yuma Field Office.

Section 3: Public Use and Recreation

3.1 Firearms, Fireworks and Weapons

The following are prohibited in a Fee Use area.

(a) Possessing or using fireworks, explosives, or blasting agents within the Fee Use Areas, unless otherwise approved by an authorized BLM officer.

(b) Displaying, brandishing, or discharging of a firearm within the Fee Use Areas.

3.2 Pets

This section does not apply to dogs used by authorized Federal, State, or local law enforcement officers in the performance of their duties.

The following are prohibited in a Fee Use area:

(a) Allowing a pet to make noise that is unreasonable when considering the location, time of day or night, and the impact on public land users, or after designated quiet hours.

(b) Failure to remove waste deposited by a pet at any location within developed sites including campgrounds, picnic areas, parking areas, and visitor centers.

(c) Allowing a pet, other than a seeing-eye dog, hearing-ear dog, or other animal specifically trained to assist a handicapped person, to enter any building or any designated swimming area operated by the Bureau of Land Management.

(d) Leaving a pet unattended without adequate food, water, or shelter for any period of time.

(e) Failing to maintain a dog under physical restraint at all times, on a tether or leash no longer than six (6) feet in length.

3.3 Alcoholic Beverages

The use and possession of alcoholic beverages within the Fee Use Areas is permitted in accordance with the provisions of this section.

The following are prohibited in a Fee Use area:

(a) Leaving alcoholic beverages unattended and in plain view within a campsite.

(b) Selling or giving an alcoholic beverage to a person under 21 years of age.

(c) The presence by a person in the Fee Use Areas who is under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person and who causes any disturbance, or damages property or public land resources.

3.4 Disorderly Conduct

The following are prohibited in a Fee Use area:

(a) Committing any disorderly conduct (see Definitions above).

(b) Engaging in fighting, threatening, or violent behavior.

(c) Using language, utterances, gestures, or engaging in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict physical, mental, or emotional injury.

(d) Breaching the peace in any manner which is disruptive or interferes with other public lands users;

3.5 Occupancy

The Fee Use Area permittee is responsible for maintaining his/her campsite in a neat, orderly, and sanitary condition.

The following are prohibited in a Fee Use area:

(a) Failing to maintain a campsite free of trash, garbage, or waste on the ground.

(b) Digging, draining, digging a ditch, or leveling the ground at a campsite.

(c) Clearing, cutting, or damaging vegetation to enhance your campsite.

(d) Collecting wood or other plant materials for use in a campfire or for any other purpose.

(e) Failing to obtain a Fee Use Permit immediately upon entry or occupancy of any site within the Fee Use Area without first obtaining a permit.

(f) Violating the terms or conditions of any Fee Use Permit.

(g) Creating or sustaining unreasonable noise between the hours of 10:00 p.m. and 6:00 a.m.

(h) Possessing or using glass beverage containers is prohibited within 500 feet of any waterway or swimming area.

(i) Using paint, markers, or spray paint within any Fee Use Area except by authorized officials.

(j) Possessing paint, markers, or spray paint within the Fee Use Area except when such containers are located in the trunk of a motor vehicle or some other portion of the motor vehicle which is not readily accessible to the operator or passengers.

3.6 State Laws Applicable

Unless specifically addressed by regulations set forth in 43 CFR, it is violation of this supplementary rule to violate any law or provision of State law.

EFFECTIVE DATE: These supplemental rules become effective May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Outdoor Recreation Planner, Yuma Field Office, 2555 E. Gila Ridge Road, Yuma, AZ 85365; (520) 317–3200.

SUPPLEMENTARY INFORMATION: The authority for establishing supplementary rules is contained in 43 CFR 8365.1–6. These rules will be available in the local office having jurisdiction over the lands, sites, or facilities affected. Violations of these supplementary rules are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: May 19, 2000.

Gail Acheson,

Field Manager.

[FR Doc. 00–13545 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–150–1430–ES; COC–23561–02]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Colorado

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following public lands in Montrose County, Colorado have been examined and found suitable for classification for conveyance to Montrose County, Colorado under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Montrose County proposes to continue to use the lands as a sanitary landfill.

New Mexico Principal Meridian, Colorado

T. 49 N., R. 8 W.,
Sec. 7: lots 6, 8–10, 15 & 16
T. 49 N., R. 9 W.,
Sec. 12: lots 1, 4 & 5
Containing 178.95 acres more or less.

A portion of the lands described, approximately 125 acres, was previously classified as suitable for lease in 1976, and R&PP lease COC–23561–01 was issued to Montrose County for a sanitary landfill. The County proposes to continue using the lands for a sanitary landfill. The proposed conveyance area would allow for future landfill expansion. In the event of the sale, the mineral interest shall be conveyed simultaneously with the surface interest. The mineral interest being offered for conveyance has no known mineral value.

The lands are not needed for Federal purposes. Conveyance without reversionary interest is consistent with current BLM policy and land use planning and would be in the public interest. The patent would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States.

3. Those rights for road purposes as acknowledged under R.S. 2477 for the Bostwick Park County Road, right-of-way COC–42672.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments to the Uncompahgre Field Office Manager regarding the proposed classification or the conveyance of the subject lands.

Classification Comments

Interested parties may submit comments involving the suitability of the land for sanitary landfill purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the proposed conveyance, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a sanitary landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Contact the Bureau of Land Management, Uncompahgre Field Office, 2505 South Townsend, Montrose, Colorado 81401, attention: Teresa Pfifer.

Signed May 19, 2000.

Allan J. Belt,

Field Office Manager.

[FR Doc. 00–13485 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET; GP0–0222; WAOR–55695]

Proposed Withdrawal and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 765 acres of National Forest System lands, lying within the Wenatchee National Forest, to protect the investment of federal funds, and the lands being rehabilitated as part of the Holden Mine Rehabilitation Project. This notice closes the lands for up to 2 years from location and entry under the United States mining laws.

EFFECTIVE DATE: Comments and requests for a public meeting must be received by August 30, 2000.

ADDRESSES: Comments and meetings requests should be sent to the Forest Supervisor, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801.

FOR FURTHER INFORMATION CONTACT: Norman Day, Holden Mine Project Manager, Wenatchee National Forest, 509–662–4304, or Charles R. Roy, BLM Oregon/Washington State Office, 503–952–6189.

SUPPLEMENTARY INFORMATION: On April 17, 2000, the Forest Service filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Wenatchee National Forest

T. 31 N., R. 17 E.,
Sec. 7, S½N½, S½, excluding 195 acres of patented lands in Mineral Surveys numbered 713–A, 1208, 1213–B, 1221, 1232, and 1239;
Sec. 8, S½N½S½.

The areas described aggregate approximately 765 acres in Chelan County.

The purpose of the proposed withdrawal is to protect the investment of federal funds and the lands being rehabilitated as part the Holden Mine Rehabilitation Project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a

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written request to the Forest Supervisor at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The withdrawal application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

Dated: May 24, 2000.

Sherrie L. Reid,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 00–13574 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Watershed Cooperative Agreement Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Extension of time to submit applications for the Watershed Cooperative Agreement Program.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) published a **Federal Register** notice on December 27, 1999 (64 FR 72360), soliciting applications for funding under the Watershed Cooperative Agreement Program. This notice extends the time for submitting applications until September 15, 2000, or until all available funds have been awarded.

DATES: Applications for the cooperative agreements will be accepted until September 15, 2000, or until all available funds have been awarded. Applications should be submitted to the appropriate individual listed under **ADDRESSES AND FURTHER INFORMATION.**

ADDRESSES AND FURTHER INFORMATION: Requests for an application package, which includes additional information on the program, the application forms and evaluation criteria, should be directed to the appropriate Appalachian Clean Streams Coordinator: *Alabama:* Jeannie O'Dell, Birmingham Field Office, 135 Gemini Circle, Suite 215, Homewood, AL 35209, Telephone 205–290–7282, ext. 21; *Illinois:* Ken Foit, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Room 392, Indianapolis, IN 46204, Telephone 317–226–6166 ext 230; *Indiana:* Michael Kalagian, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Room 392, Indianapolis, IN 46204, Telephone 317–226–6166 ext 234; *Iowa:* Stephen Preston, Mid-Continent Regional Coordinating Center, Alton Federal Center, 501 Belle Street, Room 216, Alton, IL 62002, Telephone 618–463–6463 ext 120; *Kentucky:* Dave Beam, Lexington Field Office, 2675 Regency Road, Lexington, KY 40503, Telephone 859–260–8407; *Maryland:* Peter Hartman, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220, Telephone 412–937–2905; *Missouri:* Jeff Gillespie, Mid-Continent Regional Coordinating Center, Alton Federal Center, 501 Belle Street, Room 216, Alton, IL 62002, Telephone 618–463–6463 ext 128; *Ohio:* Max Luehrs, Columbus Area Office, 4480 Refugee Road, Suite 201, Columbus, OH 43232, Telephone 614–866–0578 ext. 110; *Oklahoma:* Daniel Trout, Tulsa Field Office, 5100 East Skelly Drive S–550, Tulsa, OK 74135, Telephone 918–581–6430 ext 25; *Pennsylvania:* David Hamilton, Harrisburg Field Office, 415 Market Street, Suite 3, Harrisburg, PA 17101, Telephone 717–782–2285, ext 15; *Tennessee:* Danny Ellis, Knoxville Field Office, 530 Gay Street, Suite 500, Knoxville, TN 37902, Telephone 423–545–4193 ext 147; *Virginia:* Ronnie Vicars, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, VA 24219, Telephone 540–523–0024, ext 33; *West Virginia:* Rick Buckley, Charleston Field Office, 1027 Virginia Street East, Charleston, WV 25301, Telephone 304–347–7162 ext 3024.

SUPPLEMENTARY INFORMATION: For Fiscal Year 2000, OSM expects to award up to 1.75 million dollars to eligible not-for-profit groups to undertake actual construction projects to clean up streams impacted by acid mine drainage. The cooperative agreements normally will be in the $5,000–$80,000 range in order to assist as many groups as possible. The cooperative agreements will have a performance period of two years. Eligible applicants are not-for-profit, established organizations with IRS 501(c)(3) status. Applicants must have partners, contributing either funding or in-kind services; the partners must provide a substantial portion of the total resources needed to complete the project.

Projects in the following States are eligible: Alabama, Illinois, Indiana, Iowa, Kentucky, Maryland, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia and West Virginia. Projects must meet eligibility criteria for coal projects outlined in Section 404 of the Surface Mining Control and Reclamation Act of 1977:

> Lands and water eligible for reclamation or drainage abatement expenditures under this title are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes * * * and abandoned or left in an adequate reclamation status prior to the date of enactment of this Act [August 3, 1977], and for which there is no continuing reclamation responsibility under State or other Federal laws.

There must be demonstrated public support for the project. The project should propose to use proven or innovative technology that has a high probability of success. The project must produce tangible results, *e.g.*, fishery restored, stream miles improved, educational and community benefits, pollutants removed from the streams. The funds must be used primarily for the construction phase of a project; reimbursement of administrative costs will be carefully scrutinized. There must be a plan to address any ongoing operation/maintenance considerations.

Two copies of a complete application should be submitted to the appropriate Appalachian Clean Streams Coordinator identified under **ADDRESSES AND FURTHER INFORMATION.** Awards are subject to the availability of funds. Applications will receive technical and financial management reviews.

The application deadline was June 1, 2000. However, because there are funds remaining, OSM is extending the application period. Applications will now be accepted through September 15, 2000, or until all available funds have been awarded.

Dated: May 23, 2000.

Kathrine Henry,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 00–13552 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection, Comment Request

ACTION: Notice of information collection under review: application for certificate of citizenship on behalf of an adopted child.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 22, 2000 at 65 FR 15355, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 30, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Certification of Citizenship in Behalf of an Adopted Child.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–643, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection allows United States citizen parents to apply for a certificate of citizenship on behalf of their adopted alien children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 11,159 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,159 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 24, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–13478 Filed 5–30–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Application for Certificate of Citizenship.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 22, 2000 at 65 FR 15354, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 30, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

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e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–600, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is provided by the Service as a uniform format for obtaining essential data necessary to determine the applicant's eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 67,936 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 67,936 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 24, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–13479 Filed 5–30–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 23, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096, ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King, ((202) 219–5096, ext. 151 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Consumer Price Index (CPI) Housing Survey (CADC).

OMB Number: 1220–0163.

Affected Public: Individuals or households; Business and other for-profit.

Total Respondents: 128,081 (4 year average).

Total Annual Responses: 163,394 (4 year average).

Burden per response: 7 Minutes.

Total Burden Hours: 19,299 (4 year average).

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: This request is for a three-year clearance for the collection of housing information based on Census data. The data (rents, and other housing costs) are used to construct the Items of Rent and Owners' Equivalent Rent. Together, these items comprise over 27 percent of the Consumer Price Index. Respondents include some owners and/or managers of rental properties throughout the country.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–13476 Filed 5–30–00; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determination Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated;

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely; and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,301; Western Moulding Co., Snowflake, AZ
TA–W–37,365; Borg-Warner Automotive, Air/Fluids Systems, Blytheville, AR
TA–W–37,359; General Electric, Warwick, RI
TA–W–37,320; Coats America, Bristol, RI
TA–W–37,286; Northern Automotive Systems, Design Div., LaCrosse, WI
TA–W–37,269; Strong Wood Products, Inc., Strong, ME
TA–W–37,363; George Bassi Distributing Co., Watsonsville, CA
TA–W–37,618; Minard Run Oil Co., Bradford, PA
TA–W–37,549; Labeling Systems, Inc., Oakland, NJ
TA–W–37,533; Hexcel Corp., Structures & Interiors, Kent, WA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37,541; Joshua L. Baily & Co., Inc., Hoboken, NJ
TA–W–37,612; AST Research, Inc. d/b/a ARI Services, Fort Worth, TX
TA–W–37,610; Tenk Machine & Tool Co., Cleveland, OH

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–37,572; Litton Data Systems, Agoura, CA
TA–W–37,200; Tower Automotive, Inc., Formerly active Tooling and Manufacturing Co., Detroit Tooling Center, Detroit, MI
TA–W–37,444; Kobratech Design, Inc., North Canton, OH
TA–W–37,498; Corbin, Ltd, Huntington, WV
TA–W–37,409; The Quaker Oats Co., St. Joseph, MO
TA–W–37,465; The Quaker Oats, Shiremanstown, PA
TA–W–37,348; AAF–McQuay, Inc. d/b/a McQuay International, Staunton, VA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,543; Chevron Products Co., El Paso, TX

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or an appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers and such determination.

TA–W–37,299; Standard Candy Co., Hard Stick Div., Nashville, TN: January 19, 1999.
TA–W–37,101; Royal Coat (Formerly Main Coat), Clifton, NJ: October 28, 1998.
TA–W–37,361; Motch Corp., Cleveland, OH: February 9, 1999.
TA–W–37,531; Swank Inc., Attleboro, MA: March 21, 1999.
TA–W–37,521; Woodgrain Millwork, Inc., Lakeview Operation, Lakeview, OR: March 15, 1999.
TA–W–37,408; Hubbell Corp., RACO Div., South Bend, IN: February 7, 1999.
TA–W–37,527; C.P. Lighting, Inc., Pottsville, PA: March 21, 1999.
TA–W–37,422; BTR Sealing Systems, Extrusion Plant, Maryland, TN: February 23, 1999.
TA–W–37,155; Greenfield Industries, Inc., Solon, OH: November 19, 1998.
TA–W–37,422; Carolina Knitwear, Lane, SC: February 28, 1999.
TA–W–37,577; Barry Manufacturing Co., Inc., Lynn, MA: March 10, 1999.
TA–W–37,488; Tyco Electronics, Marion, KY: March 7, 1999.
TA–W–37,594; Manchester Manufacturers, Inc., Manchester, OH: April 11, 1999.
TA–W–37,559; Anchor Lamina America, Inc., Cheshire, CT: March 27, 1999.
TA–W–37,580; Tally Sportswear, Inc., Lancaster, SC: April 3, 1999.
TA–W–37,529; Hartz & Co., Inc., Broadway, VA: March 24, 1999.
TA–W–37,095; Leggett and Platt, Springfield, MO: November 5, 1998.
TA–W–37,632; Clark Material Handling Co., Lexington, KY: April 22, 1999.
TA–W–37,372; Deer Valley Apparel, Inc., Chilhowie, VA: January 28, 1999.
TA–W–37,147; Hubbell Electrical Products, St. Louis, MO: November 24, 1998.
TA–W–37,601; Styl-Rite, Inc., Miami, FL: April 10, 1999.
TA–W–37,175; & A; Tuckaseigie Mills, Inc., Bryson City, NC and Sylva, NC: December 1, 1998.
TA–W–37, 373; Sawdust Pencil Co., Edison, NJ: February 14, 1999.
TA–W–37, 322; Herbert Grossman Enterprises, Inc., New York, NY: January 26, 1999.
TA–W–37, 615; Mr. Coffee, Div. of Sunbeam Products, Inc., Glenwillow, OH: April 14, 1999.
TA–W–37, 576; Bar-Sew, Inc., Lehighton, PA: March 31, 1999.
TA–W–37, 369; Ikeda Interior Systems, Inc., Sidney, OH: February 3, 1999.
TA–W–37, 352; Cranston Print Works Co., Cranston, RI: January 26, 1999.
TA–W–37, 556; Cin TAs Corp., Stevenson, AL: March 25, 1999.
TA–W–37, 485; Rising Eagle Enterprises, Inc., East TAwas, MI: March 20, 1999.
TA–W–37, 591; Issac Hazen & Co., Inc., d/b/a The Hazan Group, Cutting Dept., Secaucus, NJ: April 4, 1999.
TA–W–37, 329; Crown Yarn, South Attleboro, MA: February 2, 1999.
TA–W–37, 413; Cebeco Lilies, Inc., Aurora, OR: February 16, 1999.
TA–W–37, 491; Cherrybell Manufacturing Corp., Tucson, AZ: February 28, 1999.
TA–W–37, 238; Harborside Graphics Sportswear, Belfast, ME: December 10, 1998.
TA–W–37, 515; Sierra Pacific Apparel, Visalia, CA: March 14, 1999.
TA–W–37, 344; Monona Wire Corp., EMD Acquisition Subsidiary, Greenwood, MS: January 25, 1999.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

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(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03829; Hexcel Corp., Structures & Interiors, Kent, WA
NAFTA–TAA–03825; C & L Textiles Corp., Cooper City, FL
NAFTA–TAA–03796; C & L Textiles Corp., New York, NY
NAFTA–TAA–03793; PJC Sportswear, Inc., Brooklyn, NY
NAFTA–TAA–03787; Cherrybille Manufacturing Corp., Tucson, AZ
NAFTA–TAA–03777; The Quaker Coats Co., Shiremanstown, PA
NAFTA–TAA–03738; The Quaker Coats Co., St. Joseph, MO
NAFTA–TAA–03820; Labeling Systems, Inc., Oakland, NJ
NAFTA–TAA–03855; Minard Run Oil Co., Bradford, PA
NAFTA–TAA–03850; Tecumseh Products Co., Somerset, KY
NAFTA–TAA–03525; Acme Steel Co., Riverdale, IL
NAFTA–TAA–03489; Brighton Electric Steel Casting Co., Beaver Falls, Pa
NAFTA–TAA–03858; Rite Industries, Inc., High Point, NC

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–03863; Westwood Lighting, Inc., El Paso, TX
NAFTA–TAA–03861; Cross Oil and Well Service, Inc., d/b/a Cross Supply, Olney, IL

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03773; Hamrick's, Inc., Jonesville, SC: February 28, 1999.
NAFTA–TAA–03720; Ikeda Interior Systems, Inc., Sidney, OH: February 4, 1999.
NAFTA–TAA–03840; Tally Sportswear, Inc., Lancaster, SC: April 3, 1999.
NAFTA–TAA–03819; Anchor Lamina America, Inc., Cheshire, CT: March 2, 1999.
NAFTA–TAA–03799; Tyco Electronics, Marion KY: March 1, 1999.
NAFTA–TAA–03803; Rising Eagle Enterprises, East Tawas, MI: March 10, 1999.
NAFTA–TAA–03732; Custom Emblems, Inc., Tampa, FL: February 21, 1999.
NAFTA–TAA–03856; RHI Refractories America, Womelsdorf, PA: April 14, 1999.
NAFTA–TAA–03818; Sierra Pacific Apparel, Visalia, CA: March 14, 1999.
NAFTA–TAA–03612; Hubbell Electrical Products, St. Louis, MO: November 24, 1998.
NAFTA–TAA–03791; May Apparel Group, Whittakers, NC and Mebane, NC: March 7, 1999.
NAFTA–TAA–03835; American Industrial Container Corp. A Div. of Lenworth Metal Products Limited, Meadville, PA: March 28, 1999.
NAFTA–TAA–03871; Mr. Coff, Div. of Sunbeam Products, Inc., Glenwillow, OH: April 14, 1999.
NAFTA–TAA–03761; General Electric Meter Business, Single Phase Residential Meter Final Assembly, Somersworth, NH: February 28, 1999.
NAFTA–TAA–03830; Willamette Industries, Dallas, OR: May 29, 1999
NAFTA–TAA–03812; Exide Corp., Reading, PA: March 10, 1999
NAFTA–TAA–03878; Kongsberg Automotive, Livonia, MI: March 23, 1999.
NAFTA–TAA–03822; Kellwood Co. d/b/a American Recreation Products, Inc., Mineola, TX: March 23, 1999.

I hereby certify that the aforementioned determinations were issued during the month of May, 2000. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 19, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–13472 Filed 5–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,960 et al.]

CNG Transmission Corp. Clarksburg, West Virginia, et al.; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at CNG Transmission Corp., Clarksburg, West Virginia, Hope Gas, Inc., Clarksburg, West Virginia, East Ohio Gas, Cleveland, Ohio, Virginia Natural Gas, Norfolk, Virginia, CNG Producing Co., New Orleans, Louisiana, Peoples Natural Gas Co., Pittsburgh, Pennsylvania, CNG Cooperate, Pittsburgh, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,960; CNG Transmission Corp., Clarksburg, West Virginia
TA–W–36,960A; Hope Gas, Inc., Clarksburg, West Virginia
TA–W–36,960B; East Ohio Gas, Cleveland, Ohio
TA–W–36,960C; Virginia Natural Gas, Norfolk, Virginia
TA–W–36,960D; CNG Producing Co., New Orleans, Louisiana
TA–W–36,960E; Peoples Natural Gas Co., Pittsburgh, Pennsylvania
TA–W–36,960F; CNG Corporate, Pittsburgh, Pennsylvania (May 18, 2000)

Signed at Washington, DC this 18th day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–13475 Filed 5–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,461]

Epic Components Company, New Boston, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 13, 2000, in response to a petition filed on the same date on behalf of workers at Epic Components Company, New Boston, Michigan.

The Company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–13474 Filed 5–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,458 and TA–W–37,458A]

House of Perfection, Incorporated, Williston Manufacturing Co., Williston, SC and Capitol City Manufacturing Co., West Columbia, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Trade Adjustment Assistance on April 13, 2000, applicable to workers of House of Perfection, Inc., Williston Manufacturing Co., Williston, South Carolina. The notice was published in the **Federal Register** on May 11, 2000 (65 FR 30443).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in employment related to the production of children's apparel such as shorts, tops, blouses and pants for its parent company, House of Perfection, Incorporated, West Columbia, South Carolina. New information shows that Capitol City Manufacturing Co. is a division of House of Perfection, Incorporated. Worker separations will occur at the subject firm when it closes in June, 2000. The workers produce children's apparel such as shorts, tops, blouses and pants.

Accordingly, the Department is amending the certification to cover the workers of Capitol City Manufacturing Co., West Columbia, South Carolina.

The intent of the Department's certification is to include all workers of House of Perfection, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–37,458 is hereby issued as follows:

All workers of House of Perfection, Incorporated, Williston Manufacturing Co., Williston, South Carolina (TA–W–37,458) and Capitol City Manufacturing Co., West Columbia, South Carolina (TA–W–37,458A) who become totally or partially separated from employment on or after March 3, 1999 through April 13, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 18th day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–13471 Filed 5–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,587]

Milco Industries, New York, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 17, 2000, in response to a worker petition which was dated March 30, 2000 on behalf of workers at Milco Industries, New York, New York.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–13473 Filed 5–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Wagner-Peyser Act Final Planning Allotments for Program Year (PY) 2000

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final planning allotments for Program Year (PY) 2000 (July 1, 2000 through June 30, 2001) for basic labor exchange activities provided under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Timothy S. Felegie, Office of Workforce Security, 200 Constitution Avenue NW., Room S–4231, Washington, DC 20210. Telephone: (202) 219–5653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with Section 6(b)(5) of the Wagner-Peyser Act, 29 U.S.C. 49e(b)(5), the Employment and Training Administration is publishing final planning allotments for each State for Program Year (PY) 2000 (July 1, 2000, through June 30, 2001). Preliminary planning estimates were provided to each State on February 17, 2000. Funds are distributed in accordance with formula criteria established in Section 6(a) and (b) of the Wagner-Peyser Act. Civilian labor force (CLF) and unemployment data for Calendar Year 1999 are used in making the formula calculations.

The total amount of funds currently available for distribution is $761,735,000. The Secretary of Labor shall set aside up to 3 percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment services, as required by Section 6(b)(4) of the Act, 29 U.S.C. 49e(b)(4). In accordance with this provision, $22,312,050 is set aside for administrative formula allocation. These funds are included in the total planning allotment. The funds that are set aside are distributed in two steps to States which have lost in relative share of resources from the prior year. In Step 1, States which have a CLF below one million and are below the median CLF density are maintained at 100 percent of their relative share of prior year resources. The remainder is distributed in Step 2 to all other States losing in relative share from the prior year, but which do not meet the size and density criteria for Step 1.

Postage costs incurred by States during the conduct of employment

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service (ES) activities are billed directly to the Department of Labor by the U.S. Postal Service. The total final planning allotment reflects $18,000,000, or approximately 2.36 percent of the total amount available, withheld from distribution to finance postage costs associated with the conduct of ES business. Pursuant to Section 7(b) of the Act, 29 U.S.C. 49f(b), ten percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for public ES offices and programs; service for groups with special needs; and for the extra costs of exemplary models for delivering job services.

Differences between preliminary planning estimates and final planning allotments are caused by the use of Calendar Year 1999 data as opposed to the earlier data (12 months ending September 1999) used for preliminary planning estimates.

Signed at Washington, DC, this 16th day of May, 2000.

Raymond L. Bramucci,

Assistant Secretary.

BILLING CODE 4510-30-M

Appendix

Appendix

U. S. Department of Labor
Employment and Training Administration
Employment Service (Wagner-Peyser)
Final PY 2000 Allotments to States

Total	$761,735,000
Alabama	10,932,482
Alaska	8,084,754
Arizona	11,727,076
Arkansas	6,372,346
California	88,632,143
Colorado	10,421,973
Connecticut	8,535,669
Delaware	2,077,382
District of Columbia	3,481,968
Florida	35,215,846
Georgia	19,635,506
Hawaii	3,289,242
Idaho	6,736,039
Illinois	31,410,419
Indiana	14,363,969
Iowa	7,039,271
Kansas	6,564,128
Kentucky	9,829,102
Louisiana	11,004,411
Maine	4,005,859
Maryland	13,745,214
Massachusetts	15,683,634
Michigan	24,310,238
Minnesota	11,816,050
Mississippi	6,659,019
Missouri	13,675,963
Montana	5,504,726
Nebraska	6,615,599
Nevada	5,351,173
New Hampshire	2,973,251
New Jersey	21,431,869
New Mexico	6,177,271
New York	47,718,375
North Carolina	17,666,840
North Dakota	5,605,458
Ohio	28,254,643
Oklahoma	8,326,514
Oregon	9,593,535
Pennsylvania	30,262,541
Puerto Rico	10,536,279
Rhode Island	2,625,453
South Carolina	9,797,291
South Dakota	5,180,731
Tennessee	13,749,835
Texas	51,508,098
Utah	10,486,819
Vermont	2,426,951
Virginia	16,037,720
Washington	15,628,945
West Virginia	5,929,859
Wisconsin	13,263,090
Wyoming	4,019,463
State Total	741,922,032
Guam	348,011
Virgin Islands	1,464,957
Postage	18,000,000

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[FR Doc. 00–13469 Filed 5–30–00; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03791 and NAFTA–3791A]

House of Perfection, Incorporated, Williston Manufacturing Co. Williston, SC and Capitol City Manufacturing Co., West Columbia, SC; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with section 250(a), subchapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on April 13, 2000, applicable to workers of House of Perfection, Incorporated, Williston Manufacturing Co., Williston, South Carolina. The notice was published in the Federal Register on May 11, 2000 (65 FR 30444).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of children's apparel such as shorts, tops, blouses and pants for its parent company, House of Perfection, Incorporated, West Columbia, South Carolina. New information shows that Capitol City Manufacturing Co. is a division of House of Perfection, Incorporated. Worker separations will occur at the subject firm when it closes in June, 2000. The workers produce children's apparel such as shorts tops, blouses and pants.

Accordingly, the Department is amending the certification to cover workers of Capitol City Manufacturing Co., West Columbia, South Carolina.

The intent of the Department's certification is to include all workers of House of Perfection, Incorporated who were adversely affected by a shift of production to Mexico.

The amended notice applicable to NAFTA–03791 is hereby issued as follows:

All workers of House of Perfection, Incorporated, Williston Manufacturing, Williston, South Carolina (NAFTA–03791) and Capitol Manufacturing Co., West Columbia, South Carolina (NAFTA–03791A) who became totally or partially separated from employment on or after March 8, 1999 through April 13, 2002 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–13470 Filed 5–30–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Washington State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of subpart F to part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to a Federal standard change, the State submitted by letter dated November 9, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, a State standard amendment comparable to 29 CFR 1910.269, Electric Power Generation, Transmission and Distribution, as published in the **Federal Register** on January 31, 1994, (59 FR 4320), and subsequent corrections published in the **Federal Register** on June 30, 1994 (59 FR 33658). The State standards were adopted by Administrative Order 94–16 on September 30, 1994, with an effective date of November 20, 1994. A review of the standard revealed discrepancies and the submission was returned to the State for correction. On April 22, 1998, the State submitted by letter from Michael A. Silverstein, Assistant Director, to Richard S. Terrill, Regional Administrator, corrections to the discrepancies. The State standard amendments were adopted by Administrative Order 97–17 on March 6, 1998, with an effective date of May 6, 1998. A review of the amendments revealed new discrepancies and the submission was returned to the State for correction. On June 15, 1999, the State submitted by letter from Michael A. Silverstein, Assistant Director, to Richard S. Terrill, Regional Administrator, the requested corrections. The corrections were adopted by Administrative Order 99–04 on April 20, 1999, and became effective on August 1, 1999. The State standards are contained in Chapter 296–45 WAC, Safety Standards for Electrical Workers. OSHA has determined the following major differences between the State and Federal standards: (1) The State standards did not adopt provisions for live-line bare-hand work. The State requires that rubber gloves be only used on voltages of 5,000 or less between phases. (2) The State standards contain numerous supplemental requirements such as that for underground residential distribution. The State standards also incorporate the requirements of the 1997 National Electrical Safety Code (NESC) (ANSI-C2), Parts (1), (2) and (3) by reference.

On its own initiative, the State of Washington has submitted by letter dated July 27, 1998, from Michael A. Silverstein, Assistant Director, to Richard S. Terrill, Acting Regional Administrator, an amendment to its Construction Safety standard at WAC 296–155–130 for below the hook rigging. On December 18, 1998, the amendment was returned to the State for clarification of several issues. On February 22, 1999, in a letter from Michael A. Silverstein, to Richard S. Terrill, Regional Administrator, clarification was submitted and the standard was found to be comparable to Federal OSHA standards. The main difference is the State amendment was made so the rigging codes would be easier to follow and be located in one place in the Construction Safety standards rather than in various parts. The State's submission was adopted by Washington Administrative Order 96–20 on June 15, 1998, and became effective on August 15, 1998.

On its own initiative, the State has submitted by letter dated March 26, 1999, from Michael A. Silverstein, Assistant Director, to Richard S. Terrill, a State amendment to Washington Health Standards for Emergency Washing Facilities contained in Chapter 296–62. Prior to the change, the State's compliance and consultation officers relied on WAC 296–62–130, WRD 12.35, WRD 91–13A and ANSI Z358.1–1990 to verify compliance with emergency washing facility requirements. This action replaces WISHA Regional Directive 12.35 and WISHA Regional Directive 91–13A. The main difference is the State's amendment revises the current rule by explicitly incorporating certain ANSI requirements in order to eliminate confusion and provide more specific information to the employer. The State's submission was adopted by Washington Administrative Order 98–18 on March 17, 1999, effective June 17, 1999.

The administrative orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08.

2. Decision

OSHA has determined that the State standard amendments for Electric Power Generation, Transmission and Distribution are as least as effective as the comparable Federal standards, as required by section 18(c)(2) of the Act. The major differences in these amendments have been in effect since November 20, 1994. During that time OSHA has received no indication of significant objection to the State's different standard either as to its effectiveness in comparison to the Federal standard or as to its conformance with the product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA, therefore, approves these amendments. However, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

OSHA has determined that the State amendments to its Construction Safety Standard (below the hook rigging) and Emergency Washing Facilities are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. OSHA has also determined that the differences between these State amendments and the Federal amendments are minor. OSHA therefore approves these amendments; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; State of Washington Department of Labor and Industries, Division of Industrial Safety and Health, 7273 Linderson Way, SW., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue, NW., Washington, DC 20210. For electronic copies of this **Federal Register** notice, contact OSHA's Web Page at http://www.osha.gov/.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendments are as effective as the Federal standards which was promulgated in accordance with the Federal law including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective

(Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 11th day of 2000.

Richard S. Terrill,

Regional Administrator.

[FR Doc. 00–13484 Filed 5–30–00; 8:45 am]
BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts: Submission for OMB Review; Comment Request

May 30, 2000.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13, 44 U.S.C. chapter 35]. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Deputy for Guidelines, Panel, & Council Operations, A.B. Spellman 202/682–5421. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202/682–5496 between 10:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202/395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of all of its funding application guidelines and grantee reporting requirements. This entry is issued by the Endowment and contains the following information: (1) the title of the form; (2) how often the required information must be reported; (3) who will be required or asked to

report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. this entry is not subject to 44 U.S.C. 3504(h).

Agency: National Endowment for the Arts.

Title: Blanket Justification for NEA Funding Application Guidelines and Reporting Requirements FY 2001–FY 2004.

OMB Number: 3135–0112.

Frequency: Annually.

Affected Public: Nonprofit organizations, state & local arts agencies, and individuals.

Estimated Number of Repondents: 4,805.

Estimated Time Per Respondent: 22 hours (applications)/8 hours (reports).

Total Burden Hours: 120,407.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

Description: Guideline instructions and applications elicit relevant information from individuals, nonprofit organizations, and state and local arts agencies that apply for funding from the NEA. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the review process. According to OMB Circulars A–102 and A–110, recipients of federal funds are required to report on project activities and expenditures. Reporting requirements are necessary to ascertain that grant projects have been completed, and all terms and conditions fulfilled.

ADDRESSES: A.B. Spellman, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 516, Washington, DC 20506–0001, telephone 202/682–5421 (this is not a toll-free number), fax 202/682–5049.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 00–13519 Filed 5–30–00; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 65 FR 14320, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW, Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–306–1125 X2017.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title: National Science Foundation Grant Proposal Guide.

OMB Control Number: 3145–0080.

Summary of Collection: The Federal Acquisition Regulations (FAR) Subpart 15.4—"Solicitation and Receipt of Proposals" prescribes policies and procedures for preparing and issuing Requests for Proposals. The FAR System has been developed in accordance with the requirement of the Office of Federal Procurement Policy Act of 1974, as amended. The NSF Act of 1950, as amended, 42 U.S.C. 1870, Sec. II. states that NSF has the authority to:

(c) Enter into contracts or other arrangements, or modifications thereof, for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such scientific or engineering activities as the Foundation deems necessary to carry out the purposes of this Act, and, at the request of the Secretary of Defense, specific scientific or engineering activities in connection with matters relating to international cooperation or national security, and, when deemed appropriate by the Foundation, such contracts or other arrangements or modifications thereof, may be entered into without legal consideration, without performance or other bonds and without regard to section 5 of title 41, U.S.C.

Use of the Information: Request for Proposals (RFP) is used to competitively solicit proposals in response to NSF need for services. Impact will be on those individuals or organizations who elect to submit proposals in response to the RFP. Information gathered will be evaluated in light of NSF procurement requirements to determine who will be awarded a contract.

Estimate of Burden: The Foundation estimates that, on average, 558 hours per respondent will be required to complete the RFP.

Respondents: Individuals; business or other for-profit; not-for-profit institutions; Federal government; state, local, or tribal governments.

Estimated Number of Responses: 75.

Estimated Total Annual Burden on Respondents: 41, 580 hours.

Dated: May 24, 2000.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 00–13480 Filed 5–30–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

In the Matter of Florida Power Corporation (Crystal River Unit No. 3); Order Approving Application Regarding Proposed Acquisition by CP&L Holdings, Inc. of Florida Progress Corporation

I

Florida Power Corporation (FPC) is the majority owner and a holder of Facility Operating License No. DPR–72 for Crystal River Unit 3 (CR–3), which was issued December 3, 1976. FPC owns a 91.7806% interest in CR–3, with the remaining interest held by nine minority owners. FPC is the licensed operator of CR–3.

II

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, FPC filed an application dated January 31, 2000, requesting approval of the indirect transfer of control of FPC's interest in the CR–3 operating license that will occur under a proposed share exchange transaction between Florida Progress Corporation (Progress), the parent of FPC, and CP&L Holdings, Inc. (Holdings). Holdings is being formed by Carolina Power and Light Company (CP&L) as part of an internal CP&L reorganization. Upon consummation of the share exchange transaction, under which Holdings will acquire all of the outstanding shares of Progress, Progress will become a wholly owned subsidiary of Holdings. FPC, which will remain a wholly owned subsidiary of Progress, will also become an indirect subsidiary of Holdings upon completion of the acquisition of Progress by Holdings. FPC will retain its existing ownership interest in and the license for CR–3 and remain the licensed operator of CR–3 after the share exchange transaction. No physical changes to the facility or operational changes are being proposed in the application. Additional information concerning this indirect transfer is contained in a letter from CP&L to the U.S. Nuclear Regulatory Commission (Commission) dated February 14, 2000, and in a letter from FPC to the Commission dated March 28, 2000. Notice of the application and an opportunity for hearing was published in the **Federal Register** on March 17, 2000 (65 FR 14631). No hearing requests were filed.

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted by FPC in its application, and the other information before the Commission, the NRC staff has determined that the proposed acquisition of Progress by Holdings through the proposed share exchange transaction will not affect the qualifications of FPC as a holder of the license referenced above, and that the indirect transfer of the license, to the extent effected by the acquisition, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission subject to the conditions set forth herein. These findings are supported by a Safety Evaluation dated May 22, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o) and 2234; and 10 CFR 50.80, *It is hereby ordered* that the application regarding the subject acquisition is approved, subject to the following conditions:

(a) FPC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from FPC to its existing or proposed direct or indirect parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of FPC's consolidated net utility plant, as recorded on FPC's book of accounts,

(b) Should the acquisition of Progress by Holdings not be completed by June 1, 2001, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended. This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated January 31, 2000, additional information contained in a letter from CP&L to the Commission dated February 14, 2000, a letter from FPC to the Commission dated March 28, 2000, and the Safety Evaluation dated May 23, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 22nd day of May 2000.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–13517 Filed 5–30–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Renewal Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: This notice is to announce the renewal of the Advisory Committee on Nuclear Waste (ACNW) for a period of two years.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) has determined that the renewal of the charter for the Advisory Committee on Nuclear Waste for the two year period commencing on May 24, 2000, is in the public interest, in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the Advisory Committee on Nuclear Waste is to report to and advise the U.S. Nuclear Regulatory Commission (NRC) on nuclear waste management and other related activities, as directed by the Commission. This includes 10 CFR parts 60 and 61 and other applicable regulations and legislative mandates. In performing its work, the Committee will examine and report on those areas of concern referred to it by the Commission and may undertake studies and activities on its own initiative, as appropriate. Emphasis will be on protecting the public health and safety in the disposal of nuclear waste. The Committee will interact with representatives of NRC, ACRS, other federal agencies, state and local agencies, Indian Tribes, and private, international and other organizations as appropriate to fulfill its responsibilities.

FOR FURTHER INFORMATION CONTACT: John T. Larkins, Executive Director of the Committee, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7360.

Dated: May 24, 2000.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. 00–13514 Filed 5–30–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Intent To Prepare a Draft Supplement to the Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities and To Hold a Public Meeting for the Purpose of Scoping and To Solicit Public Input Into the Process

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) intends to prepare a draft supplement to the Final Generic Environmental Impact Statement (GEIS) on Decommissioning of Nuclear

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Facilities (NUREG–0586, August 1988) and to hold public scoping meetings for the purpose of soliciting comments. Although NUREG–0586 covered all NRC-licensed facilities, this supplement will address only the decommissioning of nuclear power reactors.

The NRC will hold public scoping meetings on June 13, 2000, at the Doubletree Guest Suites, Atlanta-Perimeter, 6120 Peachtree Dunwoody Road, Atlanta, Georgia 30328 (telephone: 770–668–0808), and on June 21, 2000, at the Ramada Plaza Hotel, 1231 Market Street, San Francisco, California 94103 (telephone: 415–626–8000) to present an overview of the proposed supplement to the GEIS and to accept public comment on its proposal. The public scoping meetings will begin at 7 p.m. and continue to 10 p.m.

The meeting will be transcribed and will include (1) a presentation by the NRC staff on the reasons for preparing a supplement to the GEIS and the environmental issues related to power reactor decommissioning to be addressed in the GEIS, and (2) the opportunity for interested government agencies, private organizations, and individuals to provide comments. Anyone wishing to attend or present oral comments at this meeting may preregister by contacting Mr. Dino C. Scaletti by telephone at 1–800–368–5642, extension 1104, or by Internet to the NRC at *DGEIS@nrc.gov*, 1 week prior to a specific meeting. Members of the public may also register to provide oral comments up to 15 minutes prior to the start of each meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Scaletti's attention no later than 1 week prior to a specific meeting, so that the NRC staff can determine whether the request can be accommodated.

Any interested party may submit comments related to the NRC's intent to supplement the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the intent to prepare the supplement must be received by July 15, 2000. Comments received after the due date will be considered if it is practical to do so. At this time, comments are being sought only on the intent to prepare the supplement. The NRC staff currently projects issuance of the draft supplement for comment in early 2001. Comments on the draft supplement will be solicited at that time. Written comments should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Mail Stop T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Submittal of electronic comments may be sent by the Internet to the NRC at *DGEIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., in Washington, DC. Also, publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room).

FOR FURTHER INFORMATION, CONTACT: Mr. Dino C. Scaletti, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Scaletti can be contacted at the aforementioned telephone number.

Dated at Rockville, Maryland, this 24th day of May 2000.

For the Nuclear Regulatory Commission.

Dino C. Scaletti,

Senior Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–13516 Filed 5–30–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of May 29, June 5, 12, 19, 26, and July 3, 2000.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 29

Tuesday, May 30

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Discussion of Intragovernmental Issues (Closed-Ex. 9b)

Week of June 5—Tentative

There are no meetings scheduled for the Week of June 5.

Week of June 12—Tentative

Tuesday, June 13

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Paul Lohaus, 301–415–3340)

1 p.m. Meeting with Korean Peninsula Energy Development Organization (KEDO) and State Department (Public Meeting) (Contact: Donna Chaney, 301–415–2644)

Week of June 19—Tentative

Tuesday, June 20, 2000

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on Final Rule—Part 70—Regulating Fuel Cycle Facilities (Public Meeting)

1:30 p.m. Briefing on Risk-Informed Part 50, Option 3 (Public Meeting)

Wednesday, June 21, 2000

10:30 a.m. All Employees Meeting (Public Meeting) ("The Green" Plaza Area)

1:30 p.m. All Employees Meeting (Public Meeting) ("The Green" Plaza Area)

Week of June 26—Tentative

There are not meetings scheduled for the Week of June 26.

Week of July 3—Tentative

There are no meetings scheduled for the Week of July 3.

Note: The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on May 25, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of a: HYDRO RESOURCES, INC., Docket No. 40–8968–ML, MEMORANDUM AND ORDER (Financial Assurance for Decommissioning Issues), LBP–99–13, 49 NRC 233 (March 9, 1999); and MEMORANDUM AND ORDER (Motion to Hold in Abeyance), LBP–99–40 (October 19, 1999); and, b: FINAL RULE: "ELIMINATION OF THE REQUIREMENT FOR NONCOMBUSTIBLE FIRE BARRIER PENETRATION SEAL MATERIALS AND OTHER MINOR CHANGES" (10 CFR PART 50) (WITS 199800128)" (PUBLIC MEETING) be held on May 25, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: May 25, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–13674 Filed 5–26–00; 12:46 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 6, 2000, through May 19, 2000. The last biweekly notice was published on May 17, 2000 (65 FR 31354).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 30, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 18, 2000.

Description of amendment request: The amendments would revise Technical Specifications (TS) 3.7.10 and 3.7.12 for Catawba Units 1 and 2. The proposed changes address degraded pressure boundaries on the Auxiliary Building Filtered Ventilation Exhaust System and the Control Room Area Ventilation System. The proposed changes in TS 3.7.10 and 3.7.12 would add Notes which allow the affected ventilation system boundaries to be opened intermittently under administrative controls. Also, it would add a new condition in TS 3.7.10 and 3.7.12. This new condition will require that the boundaries for these two systems be returned to an operable status within 24 hours, when both trains of these systems are inoperable due to an inoperable boundary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the criteria set forth in 10 CFR 50.91 and 50.92, Duke Energy Corporation has evaluated this license amendment request and determined it does not represent a significant hazards consideration. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The Control Room Area Ventilation System (CRAVS), Control Room pressure boundary, the Auxiliary Building Filtered Ventilation Exhaust System (ABFVES), or the Emergency Core Cooling System (ECCS) pump rooms area pressure boundary are not assumed to be initiators of any analyzed accident. Therefore, the proposed changes contained in this LAR [license amendment request] have no significant impact on the probability of occurrence of any previously analyzed accident.

The proposed new condition for the CRAVS and ABFVES Technical Specifications (TS) would permit a 24-hour period to take action to restore an inoperable pressure boundary to OPERABLE status. The consequences of implementing the 24 hour Completion Time are reasonable based upon: (1) The low probability of a design basis accident occurring during this time period, (2) additional actions that are available to the operator to minimize doses (*e.g.*, self contained breathing apparatus and alternate control room air intakes), and (3) the availability of an operable CRAVS/ABFVES train to provide a filtered environment (albeit with potential unfiltered leakage).

For cases where any of the affected control room or ECCS pump room area/pump rooms pressure boundaries are opened intermittently under administrative controls, appropriate compensatory measures would be required by the proposed TS to ensure the pressure boundary can be rapidly restored. Based on the compensatory measures available to the plant operators and the administrative controls required to rapidly restore an opened pressure boundary, the accident consequences do not cause an increase in dose above the applicable General Design Criteria, Standard Review Plan, or 10 CFR 100 limits. The plant operators will continue to maintain the ability to mitigate a design basis event.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. No changes are being made to actual plant hardware which will result in any new accident causal mechanisms. Also, no changes are being made to the way in which the plant is being operated. Therefore, no new accident causal mechanisms will be generated.

3. Does this change involve a significant reduction in a margin of safety?

No. Margin of safety is related to the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these barriers will not be significantly degraded by the proposed changes. The proposed changes would allow affected pressure boundaries to be degraded for a limited period of time (24 hours). However, the probability of a design basis event occurring during this time is low and additional actions (*e.g.*, breathing apparatus) would also be taken to minimize dose to the plant operators. When the boundaries are open on an intermittent basis, as permitted by the changes proposed in this LAR, administrative controls would be in place to ensure that the integrity of the pressure boundaries could be rapidly restored. Therefore, it is expected that the plant, and the operators, would maintain the ability to mitigate design basis events and none of the fission product barriers would be affected by this change. Therefore, the proposed change is not considered to result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard L. Emch, Jr.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: April 5, 2000.

Description of amendment request: The proposed amendment implements technical specification (TS) changes associated with thermal-hydraulic stability monitoring. New TS 3.3.1.3, "Oscillation Power Range Monitor (OPRM) Instrumentation," will provide the minimum operability requirements for the OPRM channels, the Required Actions when they become inoperable, and appropriate surveillance requirements. The OPRMs will provide automatic "detect and suppress" actions to replace the administrative controls currently in effect through operator training and manual actions. The amendment would remove monitoring guidance from TS 3.4.1, "Recirculation Loops Operating," that will no longer be necessary due to the activation of the automatic OPRM instrumentation. Finally, the amendment would update TS 5.6.5, "Core Operating Limits Report (COLR)," to require the applicable setpoints for the OPRMs to be included in the COLR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change specifies limiting conditions for operation, required actions and surveillance requirements for the Oscillation Power Range Monitor (OPRM) system, and allows operation in regions of the power to flow map currently restricted by the requirements of Interim Corrective Actions (ICAs) and certain limiting conditions of operation of Technical Specification (TS) 3.4.1. The restrictions of the ICAs and TS 3.4.1 were imposed to ensure adequate capability to detect and suppress conditions consistent with the onset of thermal-hydraulic (T–H) oscillations that may develop into a T–H instability event. A T–H instability event has the potential to challenge the Minimum Critical Power (MCPR) safety limit. The OPRM system can automatically detect and suppress conditions necessary for T–H instability. With the activation of the OPRM System, the restrictions of the ICAs and TS 3.4.1 will no longer be required.

The probability of a T–H instability event is impacted by power to flow conditions during operation inside specific regions of the power to flow map, in combination with power shape and inlet enthalpy conditions, such that only under such conditions can the occurrence of an instability event be postulated to occur. Operation in these regions may increase the probability that operation with conditions necessary for a T–H instability can occur. However, when the OPRM is OPERABLE with operating limits as specified in the Core Operating Limits Report (COLR), the OPRM can automatically detect the onset of significant local power oscillations and generate a trip signal. Actuation of a Reactor Protection System (RPS) trip will suppress conditions necessary for T–H instability and decrease the probability of a T–H instability event. In the event the trip capability of one or more of the OPRM channels is not maintained, the proposed change includes Required Actions which limit the period of time before the affected OPRM channel (or RPS system) must be placed in the tripped condition. If these actions would result in a trip function such as a scram, or if the OPRM trip capability is not maintained, an alternate method to detect and suppress thermal hydraulic oscillations is required, i.e., the same ICAs as are in place today. In either case the duration of the period of time allowed by the Required Actions is limited, and the probability of a T–H instability event during this limited time is not significantly increased.

Several changes to TS 3.4.1 are made which are more consistent with, or conservative with, respect to the reviewed and approved Standard Technical Specifications for Boiling Water Reactors. These generic changes are considered applicable to the Perry Nuclear Power Plant. They simply provide guidance on the operator actions to be taken and the associated time limits when the Specification is entered, and do not impact the probability of occurrence of an accident. For the above reasons, the proposed change does not result in a significant increase in the probability of an accident previously evaluated.

An unmitigated T–H instability event is postulated to cause a violation of the MCPR safety limit. The proposed change ensures mitigation of T–H instability events prior to challenging the MCPR safety limit if initiated from anticipated conditions, by detection of the onset of oscillations and actuation of an RPS trip signal. The OPRM also provides the capability of an RPS trip being generated for T–H instability events initiated from unanticipated but postulated conditions. These mitigating capabilities of the OPRM system will become available as a result of the proposed change and have the potential to reduce the consequences of anticipated and postulated T–H instability events. The OPRM installation has been evaluated to not adversely impact other installed equipment such as the Average Power Range Monitors (APRMs) or the RPS in a manner that could prevent response to various postulated events, so those events will not have increased consequences due to the OPRMs. Therefore, the proposed change does not significantly increase the consequences of an accident previously evaluated.

Therefore, the proposed change, which specifies limiting conditions for operation, required actions and surveillance requirements for the OPRM system, and allows operation in certain regions of the power to flow map, does not significantly increase either the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change specifies limiting conditions for operation, required actions and surveillance requirements of the OPRM system, and allows operation in regions of the power to flow map currently restricted by the requirements of ICAs and TS 3.4.1. The OPRM system uses input signals shared with APRM and rod block functions to monitor core conditions and generate an RPS trip when required. Quality requirements for software design, testing, implementation and module self-testing of the OPRM system provide assurance that new equipment malfunctions due to software errors are not created. The design of the OPRM system also ensures that neither operation nor malfunction of the OPRM system will adversely impact the operation of other systems and no accident or equipment malfunction of these other systems could cause the OPRM system to malfunction or cause a different kind of accident. Therefore, operation with the OPRM system does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation in regions currently restricted by the requirements of ICAs and TS 3.4.1 is within the nominal operating domain and ranges of plant systems and components, and within the range for which postulated accidents have been evaluated. Therefore operation within these regions does not

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create the possibility of a new or different kind of accident from any accident previously evaluated. The changes to TS 3.4.1 to be more consistent, or conservative, with respect to the reviewed and approved Standard Technical Specifications, simply provide guidance on the operator actions to be taken and the associated time limits when the Specification is entered, and also do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change, which specifies limiting conditions for operation, required actions and surveillance requirements of the OPRM system, and allows operation in certain regions of the power to flow map, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety.

The proposed change specifies limiting conditions for operation, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power to flow map currently restricted by the requirements of ICAs and TS 3.4.1.

The OPRM system monitors small groups of LPRM [local power range monitor] signals for indication of local variations of core power consistent with T-H oscillations, and generates an RPS trip when conditions consistent with the onset of oscillations are detected. An unmitigated T-H instability event has the potential to result in a challenge to the MCPR safety limit. The OPRM system provides the capability to automatically detect and suppress conditions which might result in a T–H instability event, and thereby maintains the margin of safety by providing automatic protection for the MCPR safety limit while reducing the burden on the control room operators. Therefore, operation with the OPRM system does not involve a significant reduction in a margin of safety. In the event an OPRM channel becomes inoperable, the proposed change includes actions which limit the period of time before the affected OPRM channel (or RPS system) must be placed in the tripp[ed] condition. If these actions would result in a trip function such as a scram (or if the OPRM trip capability is not maintained), the alternate method to detect and suppress thermal hydraulic oscillations (the current ICAs) is required to be put in place. The duration of the period of time allowed by the Required Actions is limited, and the probability of a significant T–H instability event during this limited time is not significantly increased.

Operation in regions currently restricted by the requirements of ICAs and Technical Specification [TS] 3.4.1 is within the nominal operating domain and ranges of plant systems and components, and within the range assumed for initial conditions considered in the analysis of anticipated operational occurrences and postulated accidents. Therefore, operation in these regions does not involve a significant reduction in the margin of safety. The changes to TS 3.4.1 to be more consistent, or conservative, with respect to the reviewed and approved Standard Technical Specifications, simply provide guidance on the operator actions to be taken and the associated time limits when the Specification is entered, and also do not significantly reduce the margin of safety.

Therefore, the proposed change, which specifies limiting conditions for operation, required actions and surveillance requirements of the OPRM system, and allows operation in certain regions of the power to flow map, does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, et al., Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: April 23, 2000.

Description of amendment request: **The proposed license amendment (PLA) is associated with the required timing for containment hydrogen recombiner post operation insulation resistance testing. This PLA revises Unit 1 Technical Specification 3/4.6.4.2, Electric Hydrogen Recombiners—W, to clarify the requirement for the post-operation insulation resistance test of Surveillance Requirement 4.6.4.2.b.4.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated. This PLA provides a clarification of the Technical Specification surveillance requirements for verifying hydrogen recombiner operability and reliability. This PLA has no affect on the testing requirements, test frequency, or acceptance criteria for recombiner operability. This change allows vendor recommended guidance and in-house methodology to be established when conducting recombiner heater resistance testing. This will enable consistency in testing and will allow trending for determination of the material condition of the recombiner heaters. The PLA change provides clarification and preserves the intent of the basis to monitor the material condition of the recombiner heaters. Additionally, this change provides consistency and is identical with the Unit 2 Technical Specification surveillance. As such, this change is considered administrative in nature.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. This PLA is considered administrative in nature and will not alter the way in which the hydrogen recombiner is operated or tested. This PLA allows vendor recommended guidance to be established in order to perform consistent testing and to allow meaningful trending of the results to verify recombiner operability. This PLA has no affect on the testing requirements, test frequency, or acceptance criteria for recombiner operability. This PLA does not result in any plant configuration changes or new failure modes.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a reduction in the margin of safety. This administrative PLA clarifies the surveillance requirement of the subject Technical Specification by allowing the establishment of vendor recommendations and in-house testing methodology to provide consistent testing conditions and allow meaningful trending of results. This PLA has no affect on the testing requirements, test frequency, or acceptance criteria for recombiner operability. As such, the assumptions and conclusions of the accident analyses in the UFSAR [Updated Final Safety Analysis Report] remain valid and the associated safety limits will continue to be met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company, Docket No. 50–251 and 50–252, Turkey Point Units 3 and 4 in Miami-Dade County

Date of amendment request: April 27, 2000.

Description of amendment request: Florida Power and Light Company (FPL) requests to amend the Turkey Point Unit 3 Facility Operating License DPR–31 Fire Protection license condition 3.G, and to amend the Turkey Point Unit 4 Facility Operating License DPR–41 Fire Protection license condition 3.F. The proposed revisions to the Facility Operating Licenses are required to incorporate references to NRC Safety Evaluations issued in support of 10 CFR 50 Appendix R granted exemptions. In addition, the proposed amendments requests to modify Appendix A of the Facility Operating Licenses DPR–31 and DPR–41 of the Turkey Point Units 3 and 4 Technical Specifications (TS), Section 4.7.6.g. Due to an oversight, the submittal for the request of License Amendments Nos. 201 and 195 for Section 6.0 "Administrative Controls," L–99–056, dated March 8, 1999, discussed revision to TS Section 4.7.6.g on TS Page 3/4 7–21, but inadvertently did not attach the revised marked up Page 3/4 7–21.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve an increase in the probability or consequences of an accident previously evaluated because the proposed changes are administrative in nature adding references to exemptions granted by the NRC and to reflect relocation of record retention requirements from the TS to the UFSAR. These amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Facility Operating Licenses and the Technical Specifications are administrative in nature and can not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative changes since the proposed changes do not involve the addition or modification of equipment nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The proposed changes to the Facility Operating License Conditions and the TS are administrative in nature and do not reduce any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 28, 2000.

Description of amendment request: **The Seabrook Station Technical Specifications (TSs) are proposed to be revised to implement the Relaxed Axial Offset Control (RAOC) operating strategy in support of the use of upgraded Westinghouse fuel with Intermediate Flow Mixers.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:**

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS 2.1.1, 3.2.1, 4.2.1.1, 4.2.2.2, 4.2.2.3, 4.2.2.4, 6.8.1.6.b, and changes to the aforementioned TS Bases, are in support of North Atlantic's long-term operating strategy to refuel and operate, commencing with Cycle 8, with Biweekly Notice Coordinator upgraded Westinghouse fuel with Intermediate Flow Mixers (VANTAGE+(w/IFMs)). Evaluations/analyses of accidents which are potentially affected by the parameters and assumptions associated with the fuel upgrade and RAOC strategy have shown that all design standards and applicable safety criteria will continue to be met. The consideration of these changes does not result in a situation where the design, material, and construction standards that were applicable prior to the change are altered. Therefore, the proposed changes occurring with the fuel upgrade will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident.

The proposed changes associated with the fuel upgrade and RAOC strategy do not affect plant systems such that their function in the control of radiological consequences is adversely affected. The actual plant configuration, performance of systems, and initiating event mechanisms are not being changed as a result of the proposed changes. The design standards and applicable safety criteria limits will continue to be met and therefore fission barrier integrity is not challenged. The proposed changes associated with fuel upgrade and RAOC strategy have been shown not to adversely affect the response of the plant to postulated accident scenarios. The proposed changes will therefore not affect the mitigation of the radiological consequences of any accident described in the Updated Final Safety Analysis Report (UFSAR).

The proposed changes to TS Table 2.2–1, TS 3.2.2, TS 3.2.3, and the title on page 3/4 2–6 are editorial changes to correct either typographical errors, simplification of statements, clarification of specific parameters associated with temperature pressure measurements, making some notations consistent with improved Standard Technical Specifications — Westinghouse Plants, NUREG–1431, Rev. 1, and relocating additional cycle-specific values for temperature, pressure and time constants to the [Core Operating Limits Report] COLR, or correcting an erroneous title. These changes do not result in a change to the design basis of any plant structure, system or component or parameters currently specified in the COLR, therefore, operation of the facility within the prescribed limits of TS remains unchanged.

The proposed change to TS 3.2.1, ACTION a.2, to delete the need to reduce the power range neutron flux high trip setpoints subsequent to reducing rated thermal power (RTP) to less than 50% whenever axial flux difference (AFD) is outside of the applicable limits specified in the COLR, does not significantly increase the

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probability or consequences of an accident previously evaluated.

Therefore, for the reasons stated above, the probability or consequences of an accident previously evaluated are not significantly increased for all the proposed TS changes presented herein.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident from any accident previously evaluated is not created since the proposed changes associated with the fuel upgrade and RAOC strategy do not result in a change to the design basis of any plant structure, system or component. These proposed changes do not cause the initiation of any accident nor create any new failure mechanisms. Equipment important to safety will continue to operate as designed. Component integrity is not challenged. The proposed changes do not result in any event previously deemed incredible being made credible.

The proposed changes are not expected to result in conditions that are more adverse and are not expected to result in any increase in the challenges to safety systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will assure continued compliance within the acceptance limits previously reviewed and approved by the NRC for use of upgraded fuel features with RAOC. All of the appropriate acceptance criteria for the various analyses and evaluations will continue to be met.

The proposed editorial changes do not change the current limits specified in Technical Specifications.

Removing the requirement for manually reducing the power range neutron flux high trip setpoint does not result in a significant reduction in a margin of safety. There are other levels of trip protection to terminate a rapid rise in power excursion, such as the overtemperature delta-temperature (OT–T) trip function and previous power range neutron flux high trip setpoint. In addition, a rapid rise in power to greater than 50 percent RTP with AFD outside limits does not immediately create an unacceptable situation. The increased potential for a reactor trip caused by the manual manipulation of the setpoint needlessly exposes the plant to an unnecessary trip with the potential for an undesirable plant transient which may unnecessarily challenge safety systems.

Therefore, the proposed aforementioned TS changes do not involve a signification reduction in a margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: February 1, 2000, as supplemented by letter dated April 13, 2000.

Description of amendment request: The proposed amendment proposes changes to the cable spreading room technical specifications to permit pressurizing the cable spreading room to a pressure that exceeds the pressure of the adjacent control room envelope area during testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification and Bases changes to exclude the requirements of Surveillance Requirements (SRs) 4.7.7.e.2, 4.7.8.c.2, and 4.7.8.c.3 during pressurization testing of the Cable Spreading Room (CSR) will not increase the probability of an accident previously evaluated. Operation of the Control Room Emergency Air Filtration System and the Control Room Envelope Pressurization System cannot cause an accident to occur.

The proposed Technical Specification and Bases changes to exclude the requirements of SRs 4.7.7.e.2, 4.7.8.c.2, and 4.7.8.c.3 during pressurization testing of the CSR may adversely impact the consequences of previously evaluated accidents. During CSR pressurization testing, the Control Room Emergency Air Filtration and the Control Room Envelope Pressurization Systems may not be able to pressurize and maintain the Control Room envelope at a positive pressure with respect to adjacent areas and the outside atmosphere. As a result, radioactivity released from a design basis accident may enter the Control Room envelope. However, since the CSR area will actually be at a higher pressure than the outside atmosphere (during CSR pressurization testing), radioactive leakage into the CSR area, and subsequently into the Control Room envelope, should not occur after the temporary fan has been stopped. Administrative controls will be established to immediately stop the temporary fan and rapidly depressurize the CSR area in the event Control Building isolation is necessary. Once the CSR area is depressurized, the Control Room Emergency Air Filtration System and the Control Room Envelope Pressurization System will be able to function as designed to mitigate the consequences of the accident. In addition, the probability of a design basis accident (DBA) occurring while the CSR is pressurized is low. Therefore, exempting the requirements of SRs 4.7.7.e.2, 4.7.8.c.2, and 4.7.8.c.3 during CSR pressurization testing will not result in a significant increase in the consequences of an accident previously evaluated.

The proposed Technical Specification and Bases change to clarify the mode of operation of the Control Room Emergency Air Filtration System when the pressurization requirement of SR 4.7.7.e.2 applies, will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed change can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification and Bases changes to exclude the requirements of SRs 4.7.7.e.2, 4.7.8.c.2, and 4.7.8.c.3 during pressurization testing of the CSR, and to clarify the mode of operation of the Control Room Emergency Air Filtration System when the pressurization requirement of SR 4.7.7.e.2 applies, will not alter the plant configuration (no new or different type of permanent equipment will be installed) or require any new or unusual operator actions. Temporary equipment will be utilized to pressurize the CSR, and administrative controls, using additional personnel beyond the normal shift complement, will be implemented to restore the CSR to a configuration that will allow the Control Room Emergency Air Filtration System and the Control Room Envelope Pressurization System to function as designed to mitigate the consequences of an accident. The temporary equipment and administrative controls that will be implemented to perform the CSR pressurization testing will not introduce any new failure modes that could result in a new accident. Also, the response of the plant and the operators following these accidents is unaffected by the changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification and Bases changes to exclude the requirements of SRs 4.7.7.e.2, 4.7.8.c.2, and 4.7.8.c.3 during pressurization testing of the CSR may adversely impact the ability of the Control Room Emergency Air Filtration System and the Control Room Envelope Pressurization System to function as designed to protect the Control Room Operators following a DBA, and to use other accident mitigation equipment contained within the Control Room envelope. However, the administrative controls that will be established to immediately stop the temporary fan and rapidly depressurize the CSR area if Control Building isolation is necessary will provide reasonable assurance that the habitability of the Control Room envelope will be maintained. Therefore, exempting the requirements of SRs 4.7.7.e.2, 4.7.8.c.2, and 4.7.8.c.3 during CSR pressurization testing will not result in a significant reduction in a margin of safety.

The proposed Technical Specification and Bases change to clarify the mode of operation of the Control Room Emergency Air Filtration System when the pressurization requirement of SR 4.7.7.e.2 applies will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. Therefore, there will be no significant reduction in a margin of safety.

The proposed changes do not alter the design, function, or operation of the equipment involved. The impact of the proposed changes has been analyzed, and it has been determined they do not involve a significant increase in the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident from any accident previously evaluated, and do not involve a significant reduction in a margin of safety. Therefore, NNECO has concluded the proposed changes do not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: May 4, 2000.

Description of amendment request: The proposed amendment would add new sections to the Technical Specifications (TSs) addressing missed surveillance test requirements and establishing a TS Bases control program, revise TS Chapter 6 to allow use of generic titles in lieu of plant-specific titles, allow an alternative when the radiation protection manager does not meet the qualifications of Regulatory Guide 1.8, relocate sections of TS Chapter 6 pertaining to onsite and offsite review and special inspections to the Operational Quality Assurance Plan, and correct typographical errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of the Monticello plant in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. None of the proposed changes involves a physical modification to the plant, a new mode of operation or a change to the Updated Safety Analysis Report transient analysis. These proposed amendments conform to the guidance of NUREG–1433, Revision 1, which was previously issued by the NRC.

The proposed changes do not reduce the level of qualification or training and the aggregate knowledge of the plant staff remains intact. In total, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not introduce a new mode of plant operation, surveillance test requirement or involve a physical modification to the plant. These proposed amendments generally conform to the guidance of NUREG–1433, Revision 1, which was previously issued by the NRC.

The proposed changes are administrative in nature. The changes propose to relocate specifications from the Technical Specifications to the Operational Quality Assurance Plan through which adequate control is maintained.

The proposed changes do not alter the design, function or operation of any plant component and therefore no new accident scenarios are created. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created by these amendments.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety because the current Technical Specification requirements for safe operation of the Monticello plant are maintained. The proposed changes are administrative in nature and do not involve a physical modification to the plant, a new mode of operation or a change to the Updated Safety Analysis Report transient analyses. The proposed changes do not alter the scope of equipment currently required to be operable or subject to surveillance testing nor does the proposed change affect any instrument setpoints or equipment safety functions.

Therefore, a significant reduction in the margin of safety would not be involved with these proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: May 3, 2000 (PCN–516).

Description of amendment requests: The amendment application proposes to revise the San Onofre Nuclear Generating Station, Units 2 and 3, Technical Specification (TS) 3.4.3, "RCS Pressure and Temperature (P/T) Limits," and the associated Bases. The proposed change would reduce the minimum boltup temperature from 86 °F to 65 °F for the reactor coolant system during the period of time when the reactor vessel head bolts are in tension.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed change is a request to revise Technical Specification 3.4.3, "Pressure Temperature Limits." The proposed change reduces the Minimum Boltup Temperature (MBT) from 86°F to 65°F. During operations below 86°F, the plant is in a shutdown mode, open to the atmosphere, and depressurized.

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This proposed change does not affect the shape of the Pressure Temperature Limits when Reactor Coolant System (RCS) temperature is above 86°F. Therefore, the probability or consequences of an accident previously evaluated will not be increased by operating the facility in accordance with this proposed change.

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed change does not change the design or configuration of the plant. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident that has been previously evaluated.

(3) Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

This proposed change involves reducing the MBT from 86°F to 65°F. This proposed change meets the American Society of Mechanical Engineers (ASME) Code requirements for establishing the minimum temperature in the reactor pressure vessel flange region when the pressure does not exceed 20% of the pre-operational hydrostatic test pressure. All margins of safety established by the ASME Code requirements are maintained. The operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1(WBN), Rhea County, Tennessee

Date of amendment request: April 10, 2000 (TS 99–013).

Description of amendment request: **The proposed amendment requests NRC's approval to use the F* alternate repair criterion in the tubesheet region of the steam generator (SG). The F* criterion addresses the action required when degradation has been detected in the top of the mechanically expanded portion of SG tubes within the SG tubesheet.**

The proposed change designates a portion of the tube for which tube degradation of a defined type does not necessitate remedial action, except as dictated for compliance with tube leakage limits as set forth in the WBN Technical Specifications (TS). The proposed amendment would modify the TS which provide tube inspection requirements and acceptance criteria to determine the level of degradation for which the tube may remain in service. The proposed amendment would add definitions required for the F* alternate plugging criterion and prescribe the portion of the tube subject to the criterion.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The presence of the tubesheet enhances the tube integrity in the region of the hardroll by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and tube collapse is strengthened by the presence of the tubesheet in that region. Hardrolling of the tube into the tubesheet results in an interference fit between the tube and the tubesheet. Tube rupture cannot occur because the contact between the tube and tubesheet does not permit sufficient movement of tube material. In a similar manner, the tubesheet does not permit sufficient movement of tube material to permit buckling collapse of the tube during postulated loss-of-coolant-accident (LOCA) loadings.

The type of degradation for which the alternate plugging criterion, F*, has been developed (cracking with a circumferential orientation) can theoretically lead to a postulated tube rupture event, provided that the postulated through-wall circumferential crack exists near the top of the tubesheet. An evaluation including analysis and testing has been performed to determine the resistive strength of roll expanded tubes within the tubesheet. That evaluation provides the basis for the acceptance criteria for tube degradation subject to the F* criterion.

The F* length of roll expansion is sufficient to preclude tube pullout from tube degradation located below the F* distance, regardless of the extent of the tube degradation. The existing technical specification leakage rate requirements and accident analysis assumptions remain unchanged in the unlikely event that significant leakage from this region does occur. As noted above, tube rupture and pullout are not expected for tubes using the F* alternate plugging criterion. Any leakage out of the tube from within the tubesheet at any elevation in the tubesheet is fully bounded by the existing steam generator tube rupture analysis included in the WBN Unit 1 Final Safety Analysis Report (FSAR). The proposed alternate plugging criterion (F*) does not adversely impact any other previously evaluated design basis accident.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed F* tubesheet alternate plugging criterion does not introduce any significant changes to the plant design basis. Use of the criterion does not provide a mechanism to result in an accident initiated outside of the region of the tubesheet expansion. A hypothetical accident as a result of any tube degradation in the expanded portion of the tube would be bounded by the existing tube rupture accident analysis. Tube bundle structural integrity and leaktightness are expected to be maintained. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The use of the tubesheet alternate plugging criterion has been demonstrated to maintain the integrity of the tube bundle commensurate with the requirements of Regulatory Guide 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes," for indications in the free span of tubes and the primary to secondary pressure boundary under normal and postulated accident conditions. Acceptable tube degradation for the F* criterion is any degradation indication in the tubesheet region, more than the F* distance below either the bottom of the transition between the roll expansion and the unexpanded tube, or the top of the tubesheet, whichever is lower. The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the American Society of Mechanical Engineering (ASME) Boiler and Pressure Vessel Code used in steam generator design. The F* distance has been verified by testing to be greater than the length of roll expansion required to preclude both tube pullout and significant leakage during normal and postulated accident conditions. Resistance to tube pullout is based upon the primary to secondary pressure differential as it acts on the surface area of the tube, which includes the tube wall cross-section, in addition to the inside diameter-based area of the tube. The leak testing acceptance criteria are based on the primary to secondary leakage limit in the technical specifications and the leakage assumptions used in the FSAR accident analyses.

Implementation of the alternate tubesheet plugging criterion will decrease the number of tubes which must be taken out of service with tube plugs or repaired with sleeves. Both plugs and sleeves reduce the RCS flow margin; thus, implementation of the F* alternate plugging criterion will maintain the margin of flow that would otherwise be reduced in the event of increased plugging or sleeving. Based on the above, it is concluded that the proposed change does not result in a significant reduction in a loss of margin with respect to plant safety as defined in the FSAR or the bases of the WBN technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Tennessee Valley Authority (TVA), Docket No. 50–390 Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: April 10, 2000 (TS 99–014).

Description of amendment request: **The proposed amendment would revise the WBN Unit 1 Technical Specification (TS) to incorporate new requirements associated with steam generator (SG) tube inspection and repair. The new requirements establish an alternate voltage based SG tube repair criteria at tube support plate and Flow Distribution Baffle plate intersections. This change is consistent with NRC Generic Letter 95–05 "Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected By Outside Diameter Stress Corrosion Cracking."**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Tube burst criteria are inherently satisfied during normal operating conditions due to the proximity of the tube support plate. Test data indicates that tube burst cannot occur within the tube support plate (TSP), even for tubes which have 100 percent through-wall electric discharge machining (EDM) notches, 0.75 inches long, provided that the TSP is adjacent to the notched area. Since tube to tube support plate proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics which maintain a margin of safety of 1.43 times the bounding faulted condition [main steam line break (MSLB)] differential pressure of 2405 psig. As previously stated, the Regulatory Guide (RG) 1.121 criterion requiring maintenance of a safety factor of 1.43 times the MSLB pressure differential on tube burst is satisfied by ¾-inch diameter tubing with bobbin coil indications with signal amplitudes less than V_{SL} = 6.03 volts, regardless of the indicated depth measurement. At the flow distribution baffle (FDB), a safety factor of 3 against the normal operating condition DP is applied; here a voltage of V_{SL} = 3.81 volts satisfies the burst capability recommendation.

The upper voltage repair limit (V_{URL}) will be determined prior to each outage using the most recently approved NRC database to determine the tube structural limit (V_{SL}). The structural limit is reduced by allowances for nondestructive examination (NDE) uncertainty (V_{NDE}) and growth (V_G) to establish V_{URL}. As an example, the NDE uncertainty component of 20 percent and a voltage growth allowance of 30 percent per full power year can be utilized to establish a V_{URL} of 3.71 volts for TSP indications, and 2.34 volts for the FDB indications. The 20 percent NDE uncertainty represents a square-root-sum-of-the-squares (SRSS) combination of probe wear uncertainty and analyst variability. The flaw growth allowance should be an average growth rate or 30 percent per effective full power year, whichever is larger. The 30 percent growth allowance used to determine V_{URL} is conservative for the current conditions at WBN Unit 1. The most current NRC approved database, contained in EPRI [Electric Power Research Institute] NP–7480–L, Addendum 2, was used to establish the V_{URL} values for the FDB and TSP intersections. Once approved by NRC, the industry protocol for updating the database will be followed by TVA, ensuring that the most current database is utilized for future applications of the criteria.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated MSLB outside of containment but upstream of the main steam isolation valves (MSIV) represents the most limiting radiological condition relative to the alternate voltage based repair criteria. In support of implementation of the revised repair limit, it will be determined whether the distribution of cracking indications at the tube support plate intersections during future cycles are projected to be such that primary to secondary leakage would result in site boundary doses within a fraction of the 10 CFR 100 guidelines or control room doses within the 10 CFR 50, Appendix A, General Design Criteria (GDC)–19 limit. A separate calculation has determined this allowable MSLB leakage limit to be 10 gallons per minute (gpm) in the faulted loop assuming a reactor coolant system (RCS) dose equivalent iodine concentration of 1.0 mCi/gm. The establishment of the 10 gpm leak rate value is controlled by the 0 to 2 hour offsite doses at the site boundary for the accident initiated iodine spike case, not control room dose.

The methods for calculating the radiological dose consequences for this MSLB are consistent with FSAR Chapter 15 and therefore, the WBN licensing basis. TVA bases the calculated thyroid dose consequences on conversion factors from the International Commission on Radiation Protection (ICRP) Publication 2.

In summary, the calculated radiological consequences of the exclusion area boundary and the low population zone are larger than previously reported for the postulated steamline break event due to the increased leakage and more conservative iodine spiking factors. However, the calculated radiological consequences remain in compliance with the guidelines in the Standard Review Plan, Chapter 15, 10 CFR 50, Appendix A, GDC–19 and 10 CFR 100 reported for the postulated steamline break event. Therefore, it is concluded that the proposed changes do not result in a significant increase in the radiological consequences of an accident previously analyzed.

Consistent with the guidance of Section 2.c of Generic Letter (GL) 95–05, the WBN Unit 1 MSLB leak rate analysis performed prior to returning the SGs to service may be performed based on the projected next end-of-cycle (EOC) voltage distribution or the actual measured distribution at a given outage. The method to be used for the first outage when outside diameter stress corrosion cracking (ODSCC) indication growth rates are available will be based on the indications found during that outage. As noted in GL 95–05, it may not always be practical to complete EOC calculations prior to returning the SGs to service. Under these circumstances, it is acceptable to use the actual measured bobbin voltage distribution instead of the projected EOC voltage distribution to determine whether the reporting criteria is being satisfied.

Therefore, as implementation of the 1.0 volt voltage-based repair criteria at WBN Unit 1 does not adversely affect steam generator tube integrity and implementation is shown to result in acceptable radiological dose consequences, the proposed TS change does not result in a significant increase in the probability or consequences of an accident previously evaluated within the WBN Final Safety Analysis Report (FSAR).

B. The proposed amendment does not create the possibility of a new or different kind of accident from previously analyzed.

Implementation of the proposed steam generator tube alternate voltage based repair criteria (1.0 volts) does not introduce any significant changes to the plant design basis. Neither a single or multiple tube rupture event would be expected in a steam generator in which the repair limit has been applied (during all plant conditions).

The bobbin probe voltage-based tube repair criteria of 1.0 volt is supplemented by: enhanced eddy current inspection guidelines to provide consistency in voltage normalization, a 100 percent eddy current inspection sample size at the tube support plate elevations, and rotating pancake coil (RPC) inspection requirements for the larger indications left in service to characterize the principal degradation as ODSCC.

TVA will implement a maximum normal operating condition primary to secondary leakage rate limit of 600 gallons per day (gpd) total primary to secondary leakage and 150 gpd primary to secondary leakage per steam generator to help preclude the potential for excessive leakage during all plant conditions. The 150 gpd leakage limit is more restrictive than the current TS operating leakage limit (of 500 gpd) and is intended to provide additional margin to accommodate a stress corrosion crack which might grow at a greater than expected rate or unexpectedly extend outside the thickness of the tube support

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plate. Leakage trending capability consistent with EPRI Report TR–104788, "Primary-to-Secondary Leak Guidelines" has been implemented at WBN Unit 1.

As steam generator tube integrity upon implementation of the 1.0 volt repair limit continues to be maintained through in-service inspection and primary to secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The use of the voltage-based bobbin probe tube support plate elevation repair criteria at WBN Unit 1 maintains steam generator tube integrity commensurate with the criteria of Regulatory Guide (RG) 1.121. RG 1.121 describes a method acceptable to the NRC staff for meeting GDCs 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by in-service inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the proposed criteria, even under the worst case conditions, the occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the tube support plate elevations is confirmed to result in acceptable primary to secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

As a preventative measure, a total of 214 tubes are excluded from the application of the ODSCC criteria because of the combined effects of loss-of-coolant-accident (LOCA) + safe shutdown earthquake (SSE) on the steam generator component (as required by GDC 2). It was determined that tube deformation or through-wall cracks could occur in these tubes.

As noted previously, implementation of the tube support plate intersection voltage-based repair criteria will decrease the number of tubes which must be repaired. The installation of steam generator tube plugs reduces the RCS flow margin. Thus, implementation of the 1.0 volt repair limit will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: November 23, 1999.

Brief description of amendments: The amendments changed Technical Specification 5.5.7.c.1, "Ventilation Filter Testing." The testing criteria have been changed to be consistent with the NRC request in Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal."

Date of issuance: May 16, 2000.

Effective date: May 16, 2000.

Amendment Nos.: 209 and 237.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73086) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: December 22, 1999, as supplemented on March 1, 2000.

Brief description of amendments: The amendments relocate Reactor Coolant System (RCS) related cycle-specific parameter limits from the technical specifications to, and thus expanding, the Core Operating Limits Reports (COLRs) for Byron, Units 1 and 2, and Braidwood, Units 1 and 2.

Date of issuance: May 15, 2000.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 113 and 106.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 23, 2000 (65 FR 9003). The March 1, 2000, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. STN 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: July 14, 1999, as supplemented on January 21, February 15, February 23, March 10, March 24, March 31 (two letters), April 7 and April 14, 2000.

Brief description of amendments: The amendments increase the maximum reactor core power level to 3489 megawatts thermal; an increase of 5 percent of rated core thermal power, for LaSalle County Station, Units 1 and 2. In addition, the proposed amendments correct a non-conservative value in the upper limit for drywell and suppression chamber internal pressure that was discovered during the course of the power uprate review.

Date of issuance: May 9, 2000.

Effective date: For Unit 1, immediately, to be implemented within 60 days; for Unit 2, immediately, to be implemented prior to start up of cycle 9.

Amendment Nos.: 140 and 125.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the license and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 25, 1999 (64 FR 46427). The letters dated January 21, February 15, February 23, March 10, March 24, two letters on March 31, April 7, and April 14, 2000, contain supplemental, clarifying information that did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 9, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket No. 50–374, LaSalle County Station, Unit 2, LaSalle County, Illinois

Date of application for amendment: February 28, 2000, as supplemented on April 28, 2000

Brief description of amendment: The amendment increases the Technical Specification safety limit for the Minimum Critical Power Ratio from 1.08 for two loop operation and 1.09 for single loop operation to 1.11 and 1.12, respectively.

Date of issuance: May 17, 2000.

Effective date: Immediately, to be implemented within 60 days.

Amendment No.: 126.

Facility Operating License No. NPF–18: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 22, 2000 (65 FR 15377). The April 28, 2000, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: August 4, 1999, as supplemented by letter dated April 19, 2000.

Brief description of amendments: The amendments revise the Technical Specifications (TS) Limiting Conditions for Operation for Reactor Coolant System (RCS) Subcooling Margin Monitor in TS Table 3.3.3–1 and revise the functions associated with surveillance requirements for RCS Loops-Test Exceptions in TS 3.4.17. By letter dated April 19, 2000, the licensee withdrew the proposal to relocate the Auxiliary Feedwater Loss of Offsite Power function from TS 3.3.2–1 to TS 3.3.2–1. The other changes requested by August 4,1999, application were addressed under separate correspondence.

Date of issuance: May 19, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 186 and 179.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 8, 1999 (64 FR 48861)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 2000.

No significant hazards consideration comments received: No

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: August 18, 1999, as supplemented by letter dated April 20, 2000.

Brief description of amendment: The requested change would revise Technical Specification 3.5.3, "Safety Feature Actuation System Setpoints," and its associated Bases to allow for an increase to the low reactor coolant system pressure setpoint. This setpoint change was requested to account for additional instrument uncertainties associated with cable insulation resistance effects and to allow for the plugging of up to 1200 tubes in each steam generator.

Date of issuance: May 10, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 207.

Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4270). The April 20, 2000, letter provided clarifying information that did not change the scope of the August 18, 1999, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 15, 1999, as supplemented by letters dated March 29, 2000, April 13, 2000, April 25, 2000, and May 9, 2000.

Brief description of amendment: The amendment changed the Technical Specifications to institute a Technical Specification Bases Control Program and to provide for record retention as specified in the Quality Assurance Program Manual.

Date of issuance: May 9, 2000.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 161

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4274). The supplements dated March 29, 2000, April 13, 2000, April 25, 2000, and May 9, 2000, did not change the scope of the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 2000. No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 19, 1999.

Brief description of amendment: The proposed change modifies Technical Specification 4.5.2.f.2 by increasing the performance requirement for the low pressure safety injection pumps.

Date of issuance: May 10, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No. 162.

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Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4277).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 29, 1999.

Brief description of amendment: The amendment changed the Technical Specifications (TS) to extend the allowable outage time to seven days for one containment spray system (CSS) train inoperable. A new ACTION has been added to provide a shutdown requirement for the inoperability of two CSSs. The associated changes to TS Bases are included. However, the licensee requested MODE 4 end state for TS 3.6.2.1 is being deferred.

Date of issuance: May 15, 2000.

Effective date: As of the date of issuance and shall be implemented 90 days from the date of issuance.

Amendment No.: 163.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 9, 2000 (65 FR 6406). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2000.

No significant hazards consideration comments received: No.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: June 22, 1999, as supplemented January 3, 2000.

Brief description of amendments: The amendments remove the recirculation system motor generator set stop surveillance requirement from the LGS Units 1 and 2 Technical Specifications.

Date of issuance: May 8, 2000.

Effective date: Both units—As of date of issuance, to be implemented within 30 days.

Amendment Nos.: 142 and 104.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 8, 1999 (64 FR 48864). The January 3, 2000, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** Notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 8, 2000.

No significant hazards consideration comments received: No

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing

(Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By June 14, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose

interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: May 8, 2000.

Description of amendment request: The amendment revises Technical Specification Surveillance Requirement 3.8.1.9 to increase the limit for the peak transient voltage measured following a full-load rejection by the emergency diesel generator that is being tested.

Date of issuance: May 9, 2000.

Effective date: As of its date of issuance and shall be implemented within 2 days.

Amendment No.: 140.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 9, 2000.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan, 48226.

NRC Section Chief: Claudia M. Craig.

Dated at Rockville, Maryland, this 24th day of May 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–13518 Filed 5–30–00; 8:45 am]

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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request; Evaluation of the "E–Z Trial"

ACTION: Notice.

SUMMARY: As part of its effort to reduce paperwork and the burden placed on survey recipients, the Occupational Safety and Health Review Commission (OSHRC) is conducting a preclearance consultation to provide the general public and Federal agencies with an opportunity to comment on a proposed collection of information in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13. OSHRC is soliciting comment concerning an information collection required to evaluate the Review Commission's "E–Z–Trial" program.

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DATES: Written comments must be submitted by July 28, 2000.

ADDRESSES: Comments are to be submitted to Ledia Esther Bernal, OSHRC Clearance Officer, Occupational Safety and Health Review Commission, 1120 20th Street, N.W., Ninth Floor, Washington, DC 20036–3419. They may also be sent by facsimile to (202) 606–5390.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection are available for inspection at the address above. They will be mailed to persons who request copies by telephoning Ledia Esther Bernal at (202) 606–5390.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Review Commission (OSHRC) published a rule in the **Federal Register** dated August 14, 1995 establishing the "E–Z Trial" program. The rule was subsequently amended to eliminate the sunset provisions in the original rule and to revise the procedural rules governing the "E–Z Trial" program effective July 31, 1997. We are evaluating the program as modified effective July 31, 1997. The evaluation will involve surveying employers and employer representatives regarding their satisfaction with the fairness and efficiency of the process. The evaluation will also analyze data on the rate at which "E–Z Trial" cases go to a hearing, and on the length and cost of hearings. Finally, the evaluation will study the cycle times of these cases as compared to those of conventional cases. Information will also be gathered from Occupational Safety and Health Administration (OSHA) staff and from the Solicitor of Labor.

II. Current Action

This notice requests comment on the proposed instruments to be used in connection with the evaluation.

Type of Review: Regular Submission (new).

Title: Evaluation of "E–Z Trial.

OMB Number: New.

Affected Public: Employers and/or their representatives, labor organizations and staff of the Office of the Solicitor of Labor who have been involved in cases with the Review Commission.

Frequency: Once.

Total Respondents: 100.

Average Time per Response: 45 minutes.

Estimated Total Reporting burden: 75 hours.

Total Annualized capital/startup costs: 0.

Total Operation and Maintenance costs: 0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. Comments will become a matter of public record.

Patricia A. Randle,

Executive Director.

[FR Doc. 00–13558 Filed 5–30–00; 8:45 am]

BILLING CODE 7600–01–U

PRESIDIO TRUST

Letterman Complex, The Presidio of San Francisco, Notice of approval of Record of Decision for the Final Environmental Impact Statement and Planning Guidelines

AGENCY: The Presidio Trust.

ACTION: Notice of Approval of Record of Decision.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–90 as amended), and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Presidio Trust (Trust) has prepared and approved a Record of Decision (ROD) for the Final Environmental Impact Statement and Planning Guidelines for New Development and Uses on 23 Acres within the Letterman Complex (FEIS), The Presidio of San Francisco, San Francisco, California (Presidio). The FEIS is a supplement to the 1994 Final General Management Plan Amendment (GMPA) EIS for the Presidio. The ROD documents the decision and rationale for selecting a development alternative for the 23-acre site in compliance with the mandates of the Presidio Trust Act and as guided by the GMPA. The ROD is a concise statement of the decision, alternatives considered, the nature of public involvement, and mitigating measures developed to avoid or minimize environmental impacts. Comments received on the FEIS and responses are also attached to the ROD.

DATES: The Trust has selected for implementation Alternative 5, the Digital Arts Center (identified as the proposed action in the FEIS), as the development alternative for the 23-acre site, and will implement the selected proposal as soon as practicable. This alternative and five other alternatives were fully examined in the Draft EIS that was publicly circulated and filed with the United States Environmental Protection Agency (EPA) on April 23, 1999 (64 FR 23296–97) and the FEIS that was publicly circulated and filed with the EPA on March 17, 2000 (65 FR 14558). The Presidio Trust Board of Directors reviewed and considered the ROD after an extended no-action period, and authorized the Trust's Executive Director to finalize and approve the ROD, which was signed on May 24, 2000.

MATERIALS AVAILABLE TO THE PUBLIC: The approved ROD is available for viewing on the Internet by clicking on "Library" and then "Postings" at the following website: http://www.presidiotrust.gov. Additionally, copies of the ROD are available by writing or calling: The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052, Phone: 415–561–5300; Fax: 415–561–5315.

The ROD is also available for review at:

The Presidio Trust Library, 34 Graham Street, San Francisco, CA 94129, Phone: 415–561–5300.

William Penn Mott, Jr. Visitor Center (Presidio) (open 7 days), Montgomery Street, Main Post, San Francisco, CA 94129, Phone: 415–561–4323.

GGNRA Park Headquarters, Building 201, Fort Mason, San Francisco, CA 94123, Phone: 415–561–4720.

San Francisco Main Library, Government Information Center, Civic Center, San Francisco, CA 94102, Phone: 415–557–4500.

San Francisco Library, Presidio Branch, 3150 Sacramento Street, San Francisco, CA 94115, Phone: 415–292–2155.

FOR FURTHER INFORMATION CONTACT: John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone 415–561–5300.

Dated: May 24, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–13508 Filed 5–30–00; 8:45 am]

BILLING CODE 4310–4R–U

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 206(4)–3, SEC File No. 270–218, OMB Control No. 3235–0242; Rule 206(4)–4, SEC File No. 270–304, OMB Control No. 3235–0345.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 206(4)–3, which is entitled "Cash Payments for Client Solicitations," provides restrictions on cash payments for client solicitations. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement. When an adviser will provide only impersonal advisory services to the prospective client, the rule imposes no disclosure requirements. When the solicitor is affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, indicate to prospective clients that he is affiliated with the adviser. When the solicitor is not affiliated with the adviser and the adviser will provide individualized services, the colitor must, at the time of the solicitation, provide the prospective client with a copy of the adviser's brochure and a disclosure document containing information specified in rule 206(4)–3. The information rule 206(4)–3 requires is necessary to inform advisory clients about the nature of the solicitor's financial interest in the recommendation so they may consider the solicitor's potential bias, and to protect investors against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duty to clients. Rule 206(4)–3 is applicable to all registered investment advisers. The Commission believes that approximately 1,588 of these advisers have cash referral fee arrangements. The rule requires approximately 7.04 burden hours per year adviser and results in a total of approximately 11,180 total burden hours (7.04 × 1,588) for all advisers.

Rule 206(4)–4, which is entitled "Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients," requires advisers to disclose certain financial and disciplinary information to clients. The disclosure requirements in rule 206(4)–4 are designed so that clients will have information about an adviser's financial condition and disciplinary events that may be material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients. We estimate that approximately 1,118 advisers are subject to this rule. The rule requires approximately 7.5 burden hours per year per adviser and amounts to approximately 8,385 total burden hours (7.5 × 1,118) for all advisers.

The estimates of burden hours set forth above are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: May 22, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13492 Filed 5–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17f–2(a); SEC File No. 270–34; OMB Control No. 3235–0034.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17f–2(a) Fingerprinting Requirements for Securities Professionals

Rule 17f–2(a) requires that securities professionals be fingerprinted. This requirement serves to identify security risk personnel, to allow an employer to make fully informed employment decisions, and to deter possible wrongdoers from seeking employment in the securities industry. Partners, directors, officers, and employees of exchanges, broker, dealers, transfer agents, and clearing agencies are included.

It is estimated that approximately 10,000 respondents will submit fingerprint cards. It is also estimated that each respondent will submit 55 fingerprint cards. The staff estimates that the average number of hours necessary to comply with the Rule 17f–2(a) is one-half hour. The total burden is 275,000 hours for respondents, based upon past submissions. The average cost per hour is approximately $50. Therefore, the total cost of compliance for respondents is $13,750,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utlity; (b) the accuracy of the agency's estimates for the curden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondends, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Barrett, Associated Executive Director, Office of Information Technology, Secretary and Exchange Commission. 450 5th Street, NW, Washington, DC 20549.

Dated: May 23, 2000.

Margarett H. McFarland,

Deputy Secretary.

[FR Doc. 00–13528 Filed 5–23–00; 8:45 am]

BILLING CODE 8010–01–M

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24464; 812–11938]

CIGNA Funds Group, et al.; Notice of Application

May 23, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit Life Insurance Company of North America ("LINA") to transfer some or all of its portfolio of "equity securities" of companies which comprise the "Standard & Poor's 500 Composite Stock Price Index" ("S&P 500 Securities" and "S&P 500," respectively) to a series of CIGNA Funds Group ("CFG") in exchange for shares of the series.

Applicants: CFG and LINA.

Filing Dates: The application was filed on January 12, 2000, and amended on May 22, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 15, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, Cigna Corporation, 900 Cottage Grove Road, Hartford, CT 06152–2215.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, (202) 942–0634, or Nadya B. Roytblat, Assistant Director, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTAL INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. CFG is an open-end management investment company registered under the Act. One of CFG's series is the Charter Large Company Stock Index Fund ("Fund"). The Fund is an index fund that replicates the composition of the S&P 500.

2. Times Square Capital Management, Inc. (the "Adviser") is an investment adviser registered under the Investment Adviser Act of 1940 and serves as the investment adviser to the Fund. The Adviser is an indirect wholly owned subsidiary of Cigna Corporaiton ("CIGNA").

3. LINA is a life insurance company and an indirect wholly owned subsidiary of CIGNA. LINA is a provider of group life insurance and investment products and services. LINA has invested a portion of its portfolio of assets in S&P 500 Securities.

4. Applicants state that four shareholders own approximately 98% of the outstanding shares of the Fund. Applicants seek relief to enable LINA to invest in-kind in the Fund in the event one or more of these four shareholders redeems some or all of their shares and the redemption results in the Fund's assets being reduced below a level required for the Fund to be economically viable.

5. Applicants propose that LINA would sell some or all of its S&P 500 Securities to the Fund in exchange for shares of the Fund (the "Transfer"). The Transfer will not affect the proportionate composition of the Fund's portfolio since the S&P 500 Securities transferred by LINA will replicate the composition of the S&P 500. The Transfer would take place as soon as practicable following a large redemption of Fund shares and a determination by the Adviser that the Transfer was necessary for the Fund to maintain critical mass.

6. The S&P 500 Securities would be valued at the last quoted sale price on the business day immediately prior to the Transfer, the same method that is used to calculate the Fund's new asset value. The number of shares to be issued by the Fund to LINA would be determined by dividing the value of the S&P 500 Securities by the current net asset value of the Fund's shares.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property.

2. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly controlling, controlled by, or under common control with the other person and (b) if the other person is an investment company, any investment adviser of that company. Applicants state that both CFG and LINA may be deemed to be an affiliated person of the other under section 2(a)(3) because they may be deemed to be under the common control of CIGNA. LINA thus is an affiliated person of an affiliated person of the Fund, and the Transfer may be prohibited by section 17(a).

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants submit that the terms of the Transfer satisfy the standards set forth in section 17(b). Applicants state the Fund's board of trustees ("Board"), including a majority of the trustees who are not interested persons as defined in section 2(a)(19) of the Act ("Disinterested Trustees"), found that participation in the Transfer is in the best interests of the Fund and that the interests of the existing shareholders of the Fund will not be diluted as a result of the Transfer. Applicants state that all the S&P 500 Securities to be transferred to the Fund fit into the categories of securities described in rule 17a–7(b) (1) through (3) under the Act. Applicants further state that no brokerage commission, fee (except for customary transfer fees) or other remuneration will be paid in connection with the Transfer.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The securities to be transferred to the Fund will be limited to the S&P 500 Securities.

2. The S&P 500 Securities transferred by LINA will be valued in the same manner as they would be valued for purposes of computing the Fund's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market.

3. At the next regular meeting following the Transfer, the Board, including a majority of the Disinterested Trustees will determine: (a) whether the S&P 500 Securities were valued in accordance with condition (2); and (b) whether the acquisition of the S&P 500 Securities was consistent with the policies of the Fund as reflected in the registration statement and reports filed under the Act.

4. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the Transfer occurs, the first two years in an easily accessible place, a written record of the Transfer setting forth a description of each security transferred, the terms of the transfer, and the information or materials upon which the determinations required by condition (3) were made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13529 Filed 5–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42816, File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Granting Approval of Amendment to the Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the International Securities Exchange LLC, the National Association of Securities Dealers, Inc., the New York Stock Exchange, the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

May 23, 2000.

Notice is hereby given that the Securities and Exchange Commission ("SEC" or "Commission") has issued on Order, pursuant to Sections 17(d) [1] and 11A(a)(3)(B) [2] of the Securities Exchange Act of 1934 ("Act"), granting approval of an amendment to the plan for allocating regulatory responsibility filed pursuant to Rule 17d–2 of the Act,[3] by the American Stock Exchange LLC ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the International Securities Exchange LLC ("ISE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively the "SRO participants").

[1] 15 U.S.C. 78q(d).

[2] 15 U.S.C. 78k–1(a)(3)(B).

[3] 17 CFR 240.17d–2.

I. Introduction

Section 19(g)(1) of the Act,[4] among other things, requires every national securities exchange and registered securities association ("SRO") to examine for, and enforce, compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or 19(g)(2) [5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[7] Rule 17d–1, adopted on April 20, 1976,[8] authorizes the Commission to name a single SRO as the designated examine authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals only with an SRO's obligations to enforce broker-dealer's compliance with the financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d–2 under the Act.[9] This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 8, 1983, the Commission approved the SRO participants' plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[10] The plan reduces regulatory duplication for a large number of firms currently members of two or more of the SRO participants by allocating regulatory responsibility for certain option-related sales practice matters to one of the SRO participants.

Under the plan, the SRO participant responsible for conducting options-related sales practice examinations of a firm, and investigating options-related customer complaints and terminations for cause of associated persons of that firm, is known as the firm's "Designated Options Examining Authority" ("DOEA"). Under the plan, only the Amex, the CBOE, the NASD and the NYSE are DOEAs. Pursuant to the plan, any other SRO of which the firm is a

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78s(g)(2).

[6] Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session, 32 (1975).

[7] 17 CFR 240.17d–1 and 17 CFR 240.17d–2.

[8] Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18809 (May 3, 1976).

[9] Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49093 (November 8, 1976).

[10] Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983).

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member is relieved of these responsibilities during the period the firm is assigned to a DOEA.

III. Proposed Amendment to the Plan

On May 8, 2000, the parties submitted a proposed amendment to the plan. The primary purpose of the amendment is to include the ISE as an SRO participant, and to update the corporate names of three of the current SRO participants. The text of the proposed amended 17d–2 plan is as follows (additions are italicized; deletions are bracketed):

Agreement among the American Stock Exchange [Inc.] *LLC*, the Chicago Board Options Exchange, Inc., the [Midwest] *Chicago* Stock Exchange, Inc., *the International Securities Exchange LLC*, the National Association of Association of Securities Dealers, Inc., the New York Stock Exchange, the Pacific [Stock] Exchange *Inc.* [Incorporated], and the Philadelphia Stock Exchange, Inc., Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934.

The Agreement, among the American Stock Exchange [Inc.] *LLC*, the Chicago Board Options Exchange, Inc., the [Midwest] *Chicago* Stock Exchange, Inc., *the International Securities Exchange LLC*, the National Association of Securities Dealers, Inc., the New York Stock Exchange, the Pacific [Stock] Exchange *Inc.* [Incorporated], and the Philadelphia Stock Exchange, Inc., hereinafter collectively referred to as the Self-Regulatory Organizations ("SROs"), is made this *8th* day of *May, 2000* pursuant to the provisions of SEC Rule 17d–2 under the Securities Exchange Act of 1934, which calls for agreements among self-regulatory organizations for plans to allocate regulatory responsibility.

WHEREAS, the SROs, are desirous of allocation regulatory responsibilities with respect to their common members (member of two or more of the SROs) for compliance with rules relating to the conduct by broker-dealers of accounts for options trading; and

WHEREAS, the SROs are desirous of executing a plan for this purpose pursuant to the provisions of Rule 17d–2 and filing such plan with the Securities and Exchange Commission ("Commission") for its approval,

NOW, THEREFORE, in consideration of the mutual covenants contained hereafter, the SROs agree as follows:

I. The SRO identified in Exhibit A hereto as Designated Options Examining Authority ("DOEA") for a common member will assume, except as noted below, inspection, examination and enforcement responsibility for such common member with respect to compliance by such member and persons associated with such member with (i) the rules of the SROs related to the conduct of accounts for option trading, and (ii) the provisions of the Securities Exchange Act of 1934 and the rules and regulations thereunder insofar as they apply to the conduct of accounts for options trading. Such responsibility in hereinafter referred to as the DOEA's "Regulatory Responsibility." It is explicitly understood that the DOEA's Regulatory Responsibility does not include, and each of the SROs shall (unless allocated pursuant to SEC Rule 17d–2 otherwise than under this Agreement) retain full responsibility for:

(i) Surveillance and enforcement with respect to trading activities or practices involving its own marketplace, including without limitation its rules relating to the rights and obligations of specialists and other market makers;

(ii) Registration pursuant to its applicable rules of broker-dealers' associated persons as registered options principals, senior registered options principals, and compliance registered options principles; and

(iii) The discharge of its duties and obligations as a Designated Examining Authority pursuant to SEC Rule 17d–1.

Furthermore, the DOEA's Regulatory Responsibility does not include evaluation of option-related advertising, responsibility for which shall remain with the SRO to which a common member submits same for approval. Except as otherwise expressly provided herein, only the DOEA will discharge Regulatory Responsibility under this Agreement.

II. For purposes of this Agreement, the term "Enforcement Responsibility, " as used in the first sentence of Section I, shall mean the conduct of disciplinary proceedings to determine whether violations of pertinent laws, rules or regulations by common members and persons associated therewith have occurred. Such proceedings shall be conducted by the DOEA, except as noted below, pursuant to its applicable procedures. In instances where the DOEA does not have jurisdiction over an alleged violation of rules, it shall refer the matter to the SRO which has such jurisdiction. The SRO to which such referral is made shall conduct the appropriate proceedings pursuant to its applicable procedures. Apparent violations of another SRO's rules discovered by the DOEA pursuant to the performance of its Regulatory Responsibility, but which rules are not within the scope of the DOEA's Enforcement Responsibility, shall be referred to the relevant SRO for enforcement proceedings as such other SRO deems appropriate. However, nothing contained herein shall preclude the DOEA in its discretion from requesting another SRO to conduct an enforcement proceeding on a matter for which it has Enforcement Responsibility. If such other SRO agrees to do so, the Enforcement Responsibility in such case shall be deemed transferred to such other SRO. The SROs each agree, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another SRO in an investigation or enforcement proceeding.

III. Notwithstanding the Regulatory Responsibility of the DOEA, the SROs recognize that each of them may continue to maintain an available and appropriate mechanism for considering and acting upon request for extensions of time for option transactions pursuant to Regulation T of the Federal Reserve Board. Such extension requests may thus continue to be considered and acted upon by each SRO. However, nothing herein shall restrict the right of any SRO to enter in an agreement with another SRO relative to the granting of Regulation T Extensions. The DOEA will supply all information with respect to relevant Regulation T enforcement actions to other SROs of which such common member is a member.

IV. This Agreement shall be administered by a committee known as the Options Self-Regulatory Council ("Council") which shall be composed of one representative designated by each of the SROs. Each SRO shall also designate one or more persons as its alternate representative(s). In the absence of the representative of an SRO, such alternate representative shall have the same powers, duties and responsibilities as the representative. Each SRO shall file with the Chairman of the Council a list identifying its representative and alternative representative. Each SRO may, at any time, by notice to the Chairman of the Council, replace its representative and/or its alternate representative on such Council. A majority of the full Council shall constitute a quorum and, unless specifically otherwise required, the affirmative vote of a majority of the Council members present (in person, by telephone or by written consent) shall be necessary to constitute action by the Council. On the first Monday of October in each year, the Council shall elect one member of the Council to serve as Chairman and another to serve as Vice Chairman (to substitute for the Chairman in the event of his unavailability). In each case, such official shall take office effective January 1 of the next following calendar year and hold such office through December 31 of the calendar year in which he took office. [Notwithstanding the preceding relative to the election and tenure of the Chairman and Vice Chairman, an initial Chairman and Vice Chairman, named in Exhibit B hereto, shall assume such offices on the date of this Agreement is executed by the SROs and shall hold such position through December 31 of the calendar year in which they first assumed office.] All notices and other communications for the Council shall be sent to it in care of the Chairman.

V. Once appointed the DOEA of a common member, an SRO shall remain; the DOEA unless either (i) such SRO requests to be relieved of such responsibility by giving 30 calendar days written notice thereof and the Council accepts such request by appointing another SRO as the DOEA (which it shall, barring extraordinary circumstances, so do), (ii) the common member ceases to be a member of the DOEA in which case the Council shall promptly review the matter and assign another SRO as DOEA for such firm, or (iii) the Council, by reallocation, relieves the DOEA of its responsibilities. In no case may an SRO of which a common member is not a member be appointed such common member's DOEA. For no longer than the first two years of the life of this Agreement (subject to provisions (i) through (iii) above), the designations made in Exhibit A hereto shall remain in effect. Thereafter, the Council shall make general reallocations of common members no less frequently than biennially. The Council shall make such general reallocations in accordance with the provisions of this Agreement, shall be free in its discretion to retain the DOEA of any common member, and shall make such reallocations on the basis of parity, unless an SRO explicitly waives such basis. Parity, as used in this sense, means that, to the extent feasible, each SRO shall after a reallocation process, be the DOEA for the same number of firms as it was prior to such reallocation. Upon making a reallocation, the Council shall not reappoint an SRO as DOEA of a common member if any other eligible participant which has not served as DOEA for such common member requests appointment as such. Further, it is intended that appointment of DOEAs to common members will be rotated among those SROs which seek appointment as such, insofar as practicable. All determinations by the Council under this Section V with respect to allocating common members to a DOEA shall be by the affirmative vote of a majority of those Council members which are, at the time of such determination, DOEA of any common members; and Council members which are not DOEA of any common members shall not be entitled to vote on any such determination; provided, further, that no Council member shall be entitled to vote on any determination by the Council under this Section V affecting a specific common member if such common member is not a member of such Council member's SRO. For purposes of this Section V, the [Midwest] *Chicago* Stock Exchange, Inc., *the International Securities Exchange LLC*, the Pacific [Stock] Exchange, [Incorporated] *Inc.* and the Philadelphia Stock Exchange, Inc. shall not be considered DOEAs. An SRO which is not considered a DOEA for allocation purposes under Section V may apply to the Council to be considered a DOEA at any meeting of the Council. All determinations by the Council with respect to such applications shall be by the affirmative vote of a majority of those Council members, including non-DOEAs, in attendance at such meeting. However, no such determinations by the Council shall affect existing 17d–2 agreements which participating SROs may have among themselves.

VI. The DOEA shall conduct a routine inspection and examination of each common member allocated to it on a cycle not less frequently than determined by the Council. The other SROs agree that relevant information in their respective files relative to a common member will be made available to the DOEA upon request. At each quarterly meeting of the Council, each DOEA will report on the status of its examination program. In the event a DOEA believes it will not be able to complete the annual examination cycle for its allocated firms, it will so advise the Council. The Council will undertake to remedy this situation by allocating selected firms and, if necessary, lengthening the cycles for selected firms.

VII. The Council shall, concurrent with the execution of this Agreement, adopt for use by the SROs minimum option examination and inspection standards. Such standards will be used by the DOEA in discharging its Regulatory Responsibility under this Agreement. Exhibit C hereto is the minimum option examination and inspection standards adopted by the SROs.

VIII. The DOEA will, upon request, promptly furnish a copy of the report of any examination made pursuant to the provisions of this Agreement to each other SRO of which the common member examined is a member.

IX. The DOEA will, routinely, forward to each other SRO of which a common member is a member, copies of all communications regarding deficiencies noted in a report of examination conducted by the DOEA. If an examination conducted by a DOEA reveals no deficiencies, such fact will also, upon request, be communicated by the DOEA to each other SRO of which the common member concerned is a member.

X. The DOEA's Regulatory Responsibility shall include investigations into terminations for cause of persons associated with a common member relating to options, unless such termination for cause is uniquely related to another SRO's market. In the latter instance, that SRO to whose market the termination for cause relates shall discharge Regulatory Responsibility with respect to such termination for cause. In connection with a DOEA's examination, investigation and/or enforcement proceeding regarding an option-related termination for cause, the other SROs of which the common member is a member shall furnish to the DOEA, upon request, copies of all pertinent materials related thereto in their possession.

XI. It shall be the responsibility of the DOEA to discharge the Regulatory Responsibility relative to a written option-related customer complaint relevant to a common member allocated to it, unless such complaint is uniquely related to another SRO's market. In the latter instance, the DOEA shall forward the complaint to that SRO to whose market the complaint relates, and the latter shall discharge Regulatory Responsibility with respect to such complaint. If an SRO which is not the DOEA shall receive a customer complaint within the DOEA's Regulatory Responsibility, such non-DOEA shall promptly forward a copy of such complaint to the DOEA.

XII. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, to each participating SRO entitled to receipt thereof, to the attention of the SRO representative on the Council at the SRO's then principal office.

XIII. The costs incurred by each DOEA in discharging its Regulatory Responsibility under this Agreement are not reimbursable. However, any SRO participants may agree that one or more will reimburse the other(s) for costs.

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XIV. The SROs shall notify the common members of this Agreement by means of a uniform joint notice approved by the Council.

XV. This Agreement may be amended in writing duly approved by each SRO.

XVI. Any of the SROs may manifest its intention to cancel its participation in this Agreement at any time upon the giving to the Council of written notice thereof at least 90 calendar days prior to such cancellation. Upon receipt of such notice the Council shall allocate, in accordance with the provisions of this Agreement, those common members for which the petitioning party was the DOEA. Until such time as the Council has completed the reallocation described above, the petitioning SRO shall retain all its rights, privileges, duties and obligations hereunder.

XVII. The cancellation of its participation in this Agreement by any SRO shall not terminate this Agreement as to the SROs which remain participants. This Agreement will only terminate when the then participants therein shall notify the Commission, in writing, that they will terminate the Agreement. Such notice shall be given at least six months prior to the intended date of termination.

Limitation of Liability

No SRO nor the Council nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, efforts or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for the failure to provide any such Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the SROs and caused by the willful misconduct of the other participants or their respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by any or all of the SROs or the Council with respect to any Regulatory Responsibility to be performed by each of them hereunder.

Relief from Responsibility

Pursuant to Section 17(d)(1)(A) of the Securities Exchange Act of 1934 and Rule 17d–2 promulgated pursuant thereto, the SROs join in requesting the Securities and Exchange Commission, upon its approval of this Agreement or any part thereof, to relieve those SROs which are from time to time participants in this Agreement which are not the DOEA as to a common member of any and all Regulatory Responsibility with respect to the matters allocated to the DOEA.

In Witness Whereof, the SROs hereto have executed this Agreement as of the date and year first above written.

Exhibit A—Designated Option Examining Authorities

American Stock Exchange, LLC

Chicago Board Options Exchange, Inc.

National Association of Securities Dealers, Inc.

New York Stock Exchange, Inc.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the amended plan. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the amended plan that are filed with the Commission, and all written communications relating to the amended plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of each of the SRO participants. All submissions should refer to File No. S7–966 and should be submitted by June 21, 2000.

V. Discussion

The Commission continues to believe that the proposed plan is an achievement in cooperation among the SRO participants, and will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related sales practice matters that would otherwise be performed by multiple SROs. The plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the plan, the plan promotes, and will continue to promote, investor protection.

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective.[11] In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add the ISE as an SRO participant. By approving it today, the amendment can be implemented prior to the ISE beginning its operations. In addition, the original plan was published for comment, and no comments were received.[12] The Commission does not believe that the amendment raises any new regulatory issues.

This order gives effect to the amended plan submitted to the Commission that is contained in File No. S7–966. The SRO participants shall notify all members affected by the amended plan of their rights and obligations under the amended plan.

It is therefore ordered, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Act, that the amended plan of the Amex, the CBOE, the CHX, the ISE, the NASD, the NYSE, the PCX, and the Phlx filed pursuant to Rule 17d–2 is approved.

It is further ordered that those SRO participants that are not the DOEA as to a particular member are relieved of those responsibilities allocated to the member's DOEA under the amended plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13530 Filed 5–30–00; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 240.17d–2(c).

[12] *See supra*, note 10.

[13] 17 CFR 200.30–3(a)(34)

[1] 15 U.S.C. 78q(d).

[2] 15 U.S.C. 78k–1(a)(3)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42815, File No. 4–431]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Granting Approval of Plan Allocating Regulatory Responsibility; International Securities Exchange LLC and National Association of Securities Dealers, Inc.

May 23, 2000.

Notice is hereby given that the Securities and Exchange Commission ("SEC or Commission") has issued an Order, pursuant to Sections 17(d) [1] and 11A(a)(3)(B) [2] of the Securities Exchange Act of 1934 ("Act"), granting approval of the plan, as amended, for allocating regulatory responsibility filed pursuant

to Rule 17d–2 of the Act,[3] by the International Securities Exchange LLC ("ISE") and the National Association of Securities Dealer, Inc. ("NASD").

Accordingly, the NASD shall assume, in addition to the regulatory responsibilities it already has under the Act, the regulatory responsibilities allocated to it under the plan, as amended. At the same time, the ISE is relieved of those regulatory responsibilities allocated to the NASD.

I. Introduction

Section 19(g)(1) of the Act,[4] among other things, requires every national securities exchange and registered securities association ("SRO") to examine for, and enforce, compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or 19(g)(2) [5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for, and enforce, compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 [7] and Rule 17d–2 under the Act. Rule 17d–1, adopted on April 20, 1976,[8] authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted rule 17d–2 under the Act.[9] This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

On April 19, 2000, the Commission published notice of the filing by the ISE and the NASD of a joint plan allocating regulatory responsibility for common members.[10] No comments were received. On May 1, the parties filed a technical amendment to the plan.[11] The amended plan is intended to reduce regulatory duplication for firms that are common members of the ISE and the NASD. Included in the plan is an attachment ("ISE Certification") that clearly delineates regulatory responsibilities with respect to ISE rules. The ISE Certification lists every ISE rule that, under the plan, the NASD would bear responsibility for overseeing and enforcing with respect to common members.

II. Discussion

The Commission finds that the proposed plan is consistent with the factors set forth in Section 17(d) of the Act and Rule 17d–2(c), in that the proposed plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among self-regulatory organizations, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed plan is an achievement in cooperation between the ISE and the NASD, which will reduce unnecessary regulatory duplication by allocating to the NASD certain responsibilities for common members that would otherwise be performed by both SROs.[12] The proposed plan promotes efficiency by reducing costs to common members. Furthermore, because the ISE and the NASD will coordinate their regulatory functions in accordance with the plan, the plan will promote investor protection.

III. Conclusion

This order gives effect to the amended plan filed with the Commission that is contained in File No. 4–431. The parties to the plan shall notify all members affected by the amended plan of their rights and obligations under the amended plan.

It is therefore ordered, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Act, that the plan of the ISE and the NASD, as amended, filed pursuant to Rule 17d–2 is approved.

It is therefore ordered that the ISE is relieved of those responsibilities allocated to the NASD under the plan, as amended.

[3] 17 CFR 240.17d–2.

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78s(g)(2).

[6] Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session, 32 (1975).

[7] 17 CFR 240.17d–1.

[8] Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18809 (May 3, 1976).

[9] Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49093 (November 8, 1976).

[10] Securities Exchange Act Release No. 42668 (April 11, 2000), 65 FR 21048 (April 19, 2000).

[11] *See* Letter from Sharon Zackula, Assistant General Counsel, NASD Regulation, to Belinda Blaine, Associate Director, Division of Market Regulation, Commission, dated May 1, 2000 ("Amendment No. 1"). Amendment No. 1 makes non-substantive changes to the provisions of the plan regarding Advertising Materials and Regulatory Responsibility.

[12] The ISE has further reduced regulatory duplication by becoming a participant in the plan allocating regulatory responsibility concerning options-related sales practice matters, filed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. in 1983 (the "Options 17d–2 Plan"). *See* Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983). On May 23, 2000, the Commission approved an amendment to the Options 17d–2 plan, which allows ISE to become a participant in the plan. *See* Securities Exchange Act Release No. 42816. The plan that is the subject of this approval order specifically excludes any obligation or responsibility by the NASD to examine common members for compliance with ISE rules for which the regulatory responsibility is allocated to an SRO under the Options Rule 17d–2 plan.

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13531 Filed 5–30–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42810; File No. SR–PCX–99–17]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change Permitting Floor Brokers To Represent Orders With a Ticket-to-Follow

May 23, 2000.

I. Introduction

On June 1, 1999, the Pacific Exchange, Inc. ("Exchange" or "PCX") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to amend its rules on options trading to permit Floor Brokers to immediately represent intra-floor telephonic orders in the trading crowd, with a written order ticket immediately to follow. Amendment No. 1 to the proposal was submitted on November 12, 1999.[3] Notice of the proposed rule change, including Amendment No. 1, appeared in the **Federal Register** on December 8, 1999.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Options Floor Brokers currently are not permitted to represent orders they receive over the telephone unless and until they have prepared, from outside the trading crowd, a written, time-stamped order ticket.[5] The Exchange now proposes to adopt new PCX Rule 6.2(h)(4)(C), which will permit a floor Broker in a trading crowd who receives an order from a Member or Member Firm representative located on the Trading Floor to represent that order immediately in the trading crowd, provided that: (i) an order ticket is prepared and time stamped in the member firm booth before the order is transmitted telephonically to the Floor Broker in the trading crowd; and (ii) a written, time-stamped order ticket for the order must be taken immediately to the Floor Broker in the trading crowd.[6]

The Exchange also proposes to amend PCX Rule 6.2(h)(4)(B) to eliminate the requirement that Floor Brokers who receive telephonic orders while in the trading crowd must step outside of the trading crowd, write up an order ticket and time-stamp it before representing the order in the crowd.[7] In addition, the Exchange proposes to add new section (d) to PCX Rule 6.67, which provides that a Floor Broker may represent a telephonic order, with the ticket to follow, as provided in PCX Rule 6.2(h)(4)(C). Further, the Exchange proposes to modify PCX Rule 6.85 by providing that PCX Rule 6.2(h)(4)(C) is an exception to the general rule that when a Floor Broker receives a verbal order form a Market Maker, or when a Floor Broker is requested by a Market Maker to alter an order in his possession in any way, the Floor Broker shall immediately prepare an order ticket from outside the trading crowd and time-stamp it. Accordingly, Floor Brokers who receive intra-floor telephonic orders from Market Makers will be permitted to represent those orders immediately, with the ticket immediately to follow.[8]

Under Options Floor Procedure Advice F–5 ("OFPA F–5"), hand signals may be used to increase or decrease the size of an order, to change the order's limit, to cancel an order or to activate a market order, as long as the cancellation or change to the order is "relayed to the Floor Broker in a time-stamped, written form immediately thereafter." The Exchange is proposing, as a matter of consistency, to eliminate the requirement from OFPA F–5 that changes to an order must be documented in writing outside of the crowd and the ticket time-stamped, before the revised order may be represented.

III. Discussion

Section 6(b)(5)[9] of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.[10] Section 11A(a)(1)(C)(i)[11] of the Act states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the economically efficient execution of securities transactions. Section 11A(a)(1)(C)(ii)[12] states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers. For the reasons set forth below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[13] Further, the Commission believes that the proposed rule change is consistent with the goals of Section 11A(a)(1)(C).[14]

The Commission believes that the proposal should serve to remove impediments to and perfect the mechanism of a free and open market by reducing the amount of time before telephonic orders may be represented in the trading crowd without compromising the Exchange's audit trail. In this regard, the Commission notes that an order ticket must be prepared and time stamped in the member firm booth before the order is transmitted telephonically to the Floor Broker in the trading crowd. The Commission believes that requiring floor members to prepare a written, time-stamped order ticket before the order is transmitted to the crowd is consistent with the Exchange's audit trail requirements. Further, the Commission believes that this requirement should enable the Exchange to conduct adequate surveillance for market manipulation and other violations of Exchange rules and the Act.

The Commission believes that the proposal may expedite and make more efficient the process by which customer orders can be received and executed on the floor of the Exchange. The Commission also believes that the proposed rule change should increase the efficiency of transmitting orders from a member firm booth to Floor Brokers in the trading crowd by reducing the amount of time required before these orders may be represented in the crowd.

In determining to approve this proposal, the Commission notes that the Exchange represents the proposal is necessary to ensure that, as the number of option orders transmitted and represented electronically on the Exchange increases, manual orders represented by Floor Brokers are not placed at a competitive disadvantage. The Commission believes that the proposal should foster coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by expediting and making more efficient the process by which orders can be received and executed on the floor of the Exchange. Accordingly, the Commission finds that the proposal is consistent with Section 6(b)(5)[15] of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–PCX–99–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13532 Filed 5–30–00; 8:45 am]

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[13] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Pierson, Director, Regulatory Policy, PCX, to John Roeser, Attorney, Division of Market Regulation, Commission, dated November 10, 1999 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 42188 (December 1, 1999), 64 FR 68714.

[5] *See* Securities Exchange Act Release No. 42557 (Mar. 21, 2000), 65 FR 16680 (Mar. 29, 2000) (SR–PCX–98–30) (order approving PCX Rule 6.2(h)(4)(B), "Floor Brokers who receive telephonic orders while in the trading crowd must step outside of the crowd, write up an order ticket and time stamp it before representing the order in the crowd"); *See also* PCX Rule 6.85, Com. .03 ("when a Floor Broker receives a verbal order from a Market Maker, or when a Floor Broker is requested by a Market Maker to alter an order in his possession in any way, the Floor Broker shall immediately prepare an order ticket from outside the trading crowd and time stamp it").

[6] *See* Amendment No. 1, *supra* note 3.

[7] *See supra* note 5.

[8] Under PCX Rule 6.2(h)(4), Floor Brokers are not permitted to communicate directly with persons located off the Trading Floor. *See supra* note 5.

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78k–1(a)(1)(C)(i).

[12] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1)(C)(i).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42811; File No. SR–PHLX–00–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Regarding Listing and Trading Options on the Wireless Telecom Sector Index

May 23, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 24, 2000,[3] the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to list and trade European style, cash-settled options, on the Wireless Telecom Sector Index ("Index"), an equal dollar-weighted, A.M.-settled, narrow-based, index of twenty companies, involved in various aspects of wireless telecommunications services and equipment. A list of the specific companies comprising the Index, their capitalizations, six-month share volumes and the percentage weightings of these companies, as of April 10, 2000, is available from the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to list for trading European style, cash-settled options on the Index, a new index developed pursuant to Exchange Rule 1009A(b). Options on the Index will provide an important hedging vehicle for basket traders who engage in trading securities that comprise this subsector of the telecommunications industry.

The following is a more detailed description of the proposed Index option:

Ticker Symbol: YLS.

Settlement Value Symbol: YSO.

Underlying Index: The Index is an equal dollar-weighted index composed of twenty stocks involved in wireless telecommunications services and equipment all of which are traded on the New York Stock Exchange ("NYSE") or Nasdaq Stock Market ("Nasdaq"), and are, therefore, reported securities as defined in Rule 11Aa3–1 under the Act. Further, all of the stocks presently meet the Exchange's listing criteria for equity options contained in Exchange Rule 1009 and are currently the subject of listed options on U.S. options exchanges.

The Exchange notes that most of the companies represented in the Index are U.S. companies. However, to the extent that non-U.S. companies are part of or are added to the Index (such as American Depository Receipts) and therefore are not subject to comprehensive surveillance sharing agreements, those components do not and will not account for more than 20% of the weight of the Index.

As of April 10, 2000, the market capitalization of all the stocks in the Index exceeded $1 trillion and such individual capitalizations ranged from approximately $1 billion to $176 billion. All twenty component issues in the Index had monthly trading volumes in excess of one million shares over each of the past six months.

Index Calculation: The methodology used to calculate the Index is an equal dollar-weighted method, meaning that each of the component stocks is represented in the Index in approximately equal dollar amounts. The Exchange believes that this method of calculation is appropriate because it will provide each component issue with equivalent influence on the movement of the Index value instead of allowing

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 30, 2000 and April 13, 2000, the Exchange submitted Amendment Nos. 1 and 2 to the proposed rule change, respectively, the substance of which has been incorporated into this notice. *See* letters from John Kenney, Jr., Counsel, Phlx, to John Roeser, Attorney, Commission, dated March 29, 2000 ("Amendment No. 1") and April 13, 2000 ("Amendment No. 2").

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one highly capitalized stock to dominate the movement of the Index. To determine the initial dollar weighting of the stocks, the Exchange calculated the number of shares of each that would represent an investment of approximately $10,000 in each of those stocks comprising the Index based on closing prices on July 16, 1999. The value of the Index equals the current market value of the sum of the assigned number of shares of all of the stocks in the Index divided by the current Index divisor. The Index divisor was set to yield an initial Index value of 150 at the opening on July 19, 1999.

Index Maintenance: To maintain the continuity of the Index, the divisor will be adjusted to reflect non-market changes in the price of the component securities as well as changes in the composition of the Index. Changes which may result in divisor adjustments include but are not limited to stock splits, dividends, spin-offs, mergers and acquisitions. In accordance with Exchange Rule 1009A, if any change in the nature of any component (*e.g.*, delisting, merger, acquisition or otherwise) in the Index will change the overall market character of the Index, the Exchange will take appropriate steps to remove the stock or replace it with another stock that the Exchange believes would be compatible with the intended market character of the Index. Any replacement components will be reported securities as defined in Rule 11Aa3–1 of the Act.[4]

Currently, the Index is composed of twenty component stocks. Absent Commission approval, the Exchange will not change the number of components to more than twenty-six or fewer than fourteen. The Exchange notes that the component stocks comprising the top 90% of the Index, by weight, will each maintain a minimum market capitalization of $75 million. The remaining 10% by weight, will each maintain a minimum market capitalization of $50 million. The component stocks comprising the top 90% of the Index, by weight, will maintain a trading volume of at least 500,000 shares per month. The trading volume for each of the component stocks constituting the bottom 10% of the Index, by weight, will maintain at least 400,000 shares per month. No fewer than 90% of the component issues by weight or fewer than 80% of the total number of the components qualify as stocks eligible for options trading.

If the Index fails at any time to satisfy one or more of the required maintenance criteria, the Exchange will notify the Commission staff immediately and will not open for trading any additional series of options on the Index, unless the above is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on the Index has been approved by the Commission under Section 19(b)(2) of the Act.[5] In addition to not opening for trading any additional series, the Exchange may, in consultation with the Commission, prohibit opening purchase transactions in series of options previously opened for trading to the extent that the Exchange deems such action necessary or appropriate.[6]

In addition to the maintenance criteria above, no single component of the index shall account for more than 25% of the Index and the five highest weighted component securities shall not account for more than 60% of the Index. If the Index fails to satisfy the maintenance listing standards set forth above, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of Index options has been approved by the Commission under Section 19(b)(2) of the Act.

Rebalancing: Following the close of trading on the third Friday of January, April, July and October the Index portfolio will be adjusted by changing the number of whole shares of each component so that each company is again represented in "equal" dollar amounts. If necessary, a divisor adjustment will be made at the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio will then become the basis for the Index's value on the first trading day following the adjustment.

The number of shares of each component stock in the Index portfolio will remain fixed between quarterly rebalances except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock dividend, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In the case of a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted to the nearest whole share to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the even of a stock addition or replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the new component, to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity. All stock replacements and the handling of non-routine corporate action will be announced at least ten business days in advance of such effective change, whenever possible. The Exchange will make this information available to the public through dissemination of an information circular.

Unit of Trading: Each options contract will represent $100, the Index multiplier, times the Index value. For example, an Index value of 200 will result in an option contract value of $20,000 ($100 x $200).

Exercise Price: The exercise prices will be set in accordance with Phlx Rule 1101A(a).

Settlement: A.M.-settled index options

Settlement Value: The Index value for purposes of settling outstanding Index option contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component stocks in their primary market on the last trading day prior to expiration. In the case of National Market System securities traded through Nasdaq, the first reported sale price will be used for the final settlement value for expiring Index option contracts. In the event that a component security does not open for trading on the last day before the expiration of a series of Index options, the last sale price for that security will be used in calculating the Index value. However, in the event that The Options Clearing Corporation ("OCC") determines that the current Index value is unreported or otherwise unavailable (including instances where the primary market for securities representing a substantial part of the value of the Index is not open for trading at the time when the current Index value used for exercise settlement purposes would be determined), the OCC shall determine an exercise settlement amount for the Index in accordance with Article XVII, Section 4 of the OCC By-Laws.[7]

Last Trading Day: Last business day prior to the third Friday of the month for options which expire on the Saturday following the third Friday of that month.

Trading Hours: 9:30 a.m. to 4:02 p.m., E. T.

Position and Exercise Limits: The Index is an industry or narrow-based index; therefore, the Exchange will employ position and exercise limits pursuant to Phlx Rules 1001A(b) and 1002A, respectively. The position and exercise limits will be 31, 500 contracts.

Expiration Cycles: Three months from the March, June, September, December cycle, plus two additional near-term months.

Exercise Style: European.

Premium Quotations: Premiums will be expressed in terms of dollars and fractions of dollars pursuant to Phlx Rule 1033A. For example, a bid or offer of 1½ will represent a premium per options contract of $150 (1½x100).

The Index value will be disseminated every 15 seconds during the trading day. The Phlx has contracted with Bridge Data Inc. to compute and do all the necessary maintenance of the Index.[8] Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority. The Index value will also be available on broker-dealer interrogation devices to subscribers of options information. The Exchange represents that it will not list or trade this Index unless and until it has sufficient capacity to process the additional message traffic generated by the Index.[9]

The options will be traded pursuant to current Phlx rules governing the trading of index options including provisions addressing sales practices, floor trading procedures, position and exercise limits, margin requirements and trading halts and suspensions.[10] The Exchange also represents that surveillance procedures currently used to monitor trading in index options will be applicable to this Index option. These procedures include having complete access to trading activity in the underlying securities which are all traded on the NYSE or Nasdaq. In addition, the Intermarket Surveillance Group Agreement dated July 14, 1983, as amended on January 29, 1990 and June 20, 1994 will be applicable to the trading of options on the Index.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designated to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. Specifically, the Exchange believes that the introduction of the proposed the Index will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risks associated with the securities issued by companies that comprise this subsector of the telecommunications industry. The trading of options on the Index will permit investors to participate in the price movements of the twenty securities on which the Index is based. The trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with these securities. Accordingly, the Exchange believes that options on the Index will provide investors with an additional trading and hedging mechanism that outweighs any potential for manipulation that would diminish public confidence. Further, the Exchange believes that the proposed Index will have a specific impact on efficiency, competition and capital formation consistent with Section 3(f) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange is filing this rule change as constituting a stated policy, practice or interpretation with respect to the administration of Phlx Rule 1009A within the meaning of Section 19(b)(3)(A) of the Act and subparagraph (f) of Rule 19b–4 thereunder.[11] Accordingly, pursuant to the Commission's Generic Index Option Approval Order ("Approval Order"),[12] the Exchange is requesting immediate effectiveness so that options on the Phlx Wireless Telecom Index may begin trading 30 days after the date of this filing. The Phlx believes that this product complies with the Approval Order, as described above.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–00–14 and should be submitted by June 21, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13533 Filed 5–30–00; 8:45 am]

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[4] 17 CFR 240.11Aa3–1.

[5] *See* Phlx Rule 1009A.

[6] *See* Phlx Rule 1010.

[7] *See, e.g.*, OCC Article XVII, Section 4 and Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 32471 (June 24,1996) (SR–OCC–95–19).

[8] As a back-up to Bridge Data Inc., the Phlx will utilize its own internal index calculation system called the Index Calculation Engine System.

[9] *See* Amendment No. 1, *supra* note 3. The Options Price Reporting Authority ("OPRA") represents that it has the capacity to handle the additional traffic generated by the Index. *See* letter from Joe Corrigan, Executive Director, OPRA, to Mathew Holm, Director, New Product Development, Phlx, dated March 23, 2000.

[10] *See* particularly, Phlx Rule 722, Phlx Rules 1000A through 1102A, and generally, Phlx Rules 1000 to 1080.

[11] In amendment No. 1, the Exchange designated the proposal as filed pursuant to subparagraph (f) of Rule 19b–4. *See supra* note 3.

[12] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

[13] 17 CFR 200.30–3(a)(12).

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SOCIAL SECURITY ADMINISTRATION

Program: Cooperative Agreements for Benefits Planning, Assistance, and Outreach Projects; Program Announcement No. SSA–OESP–00–1

AGENCY: Social Security Administration.

ACTION: Announcement of the availability of fiscal year (FY) 2000 and 2001 cooperative agreement funds and request for applications.

SUMMARY: The Social Security Administration (SSA) announces its intention to competitively award cooperative agreements to establish community-based benefits planning, assistance, and outreach projects in every State, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the U.S. Virgin Islands. (Throughout this announcement, the term "State" will be used to refer to all U.S. States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the U.S. Virgin Islands.) The purpose of these projects is to disseminate accurate information to beneficiaries with disabilities (including transition-to-work aged youth) about work incentives programs and issues related to such programs, to enable them to make informed choices about work.

President Clinton signed the bill that became Public Law 106–170 on December 17, 1999 to expand the availability of health care coverage for working individuals with disabilities, to establish a Ticket to Work and Self-Sufficiency Program in SSA to provide beneficiaries with disabilities meaningful opportunities to work, and to provide benefits planning and assistance services, and outreach to beneficiaries with disabilities, among other purposes. SSA must ensure that benefits planning, assistance, and outreach are available to all beneficiaries with disabilities nationally, on a statewide basis.

Note: A separate contract will be awarded, following publication of a separate notice in the *Commerce Business Daily*, to one or more organizations to develop and provide technical assistance and training on SSA's programs and work incentives, Medicare and Medicaid, and on other Federal work incentives programs to cooperative agreement award recipients.

SSA is conducting several pre-application seminars to provide interested applicants with guidance and technical assistance in preparing their applications. The following is information about where and when the seminars are scheduled:

Kansas City, Missouri

Date: June 6, 2000
Facility: Pierson Auditorium, University of Missouri at Kansas City, 5000 Holmes Avenue, Kansas City, MO 64110
Contact: Kelli Ellerbusch, 816–235–1758
Time: 2 pm to 6 pm

Oakland, California

Date: June 8, 2000
Facility: Oakland Federal Building, 1301 Clay Street, Oakland, CA 94612
Contacts: Brian McDonald, 510–251–4304; Chris Neilson, 510–628–0665
Time: 9 am to 1 pm

Washington, DC

Date: June 15, 2000
Facility: Frances Perkins Building Auditorium, 200 Constitution Avenue, NW, Washington, DC 20210
Time: 9 am to 2 pm

DATES: The closing date for receipt of cooperative agreement applications under this announcement is July 31, 2000.

FURTHER INFORMATION CONTACTS: The Internet is the primary means recommended for obtaining information on the program content of this announcement. If an applicant has a question about this announcement, that question should be referred to the following Internet email address: *TTWWIIA@ssa.gov*. When sending in a question, applicants should include program announcement number SSA–OESP–00–1 and the date of this announcement. Questions will not be answered individually; however, all questions and answers will be posted to *ssa.gov/work* web site on the *Frequently Asked Questions* page.

In the rare instances when an organization may not have access to the Internet, an applicant with a question about the program content may contact: Cindy Barcelles, Program Analyst, or Natalie Funk, Team Leader, Social Security Administration, Office of Employment Support Programs, Division of Employment Policy, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The telephone numbers are: Cindy Barcelles, (410) 966–2668, or Natalie Funk, (410) 965–0078. The fax number is (410) 966–1278.

To obtain an application kit, see the instructions under Part VI, Section A. General (non-programmatic) questions may also be referred to the Internet email address *TTWWIIA@ssa.gov* along with program announcement number SSA–OESP–00–1 and the date of this announcement. For general (non-programmatic) information regarding the announcement or application package where Internet access is not available, contact: E. Joe Smith, Grants Management Officer, Social Security Administration, Office of Acquisition and Grants, Grants Management Team, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207–5279. The telephone numbers are: E. Joe Smith (410) 965–9503, Dave Allshouse, (410) 965–9262, or Gary Stammer, (410) 965–9501. The fax numbers are (410) 966–9310 or 966–1261.

Prospective applicants are asked to submit, preferably by June 30, 2000, a fax, post card, or letter of intent that includes (1) This program announcement number (SSA–OESP–00–1) and title (Benefits Planning, Assistance, and Outreach Program); (2) the type of proposed agency or organization; and (3) the name, postal and email addresses, and the telephone and fax numbers of the organization's key contact person. The notice of intent is not required, is not binding, and does not enter into the review process of a subsequent application. The sole purpose of the notice of intent is to allow SSA staff to estimate the number of independent reviewers needed and to avoid potential conflicts of interest in the review. The notice of intent should specify "Attn: Benefits Planning, Assistance, and Outreach Program Notice of Intent (SSA–OESP–00–1)" and be faxed to: (410) 966–1278; mailed to: Social Security Administration, Office of Employment Support Programs, Division of Employment Policy, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235; or emailed to: *TTWWIIA@ssa.gov* along with program announcement number SSA-OESP–00–1 and the date of this announcement.

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Part I. Program Description

A. Introduction

Section 121 of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 requires the Commissioner of Social Security (the Commissioner) to establish a community-based work incentives planning and assistance program. Therefore, the Commissioner is establishing a competitive program of cooperative agreements, the Benefits Planning, Assistance, and Outreach Program, to disseminate accurate information to beneficiaries with disabilities about work incentives programs and issues related to such programs.

The Presidential Task Force on Employment of Adults with Disabilities (PTFEAD), established under Executive Order 13078, is facilitating interagency collaboration among SSA's cooperative agreement program, the Department of Labor's (DOL) Employment and Training Administration's grant program, and the Department of Health and Human Services' Health Care Financing Administration's (HCFA) grant program. Each of the three programs is being administered separately by the respective agencies but will be initiated in FY 2000. The Task Force will provide guidance to this multi-agency process as part of their charge to design a coordinated and aggressive national policy that will bring working-age individuals with disabilities into gainful employment at a rate approaching that of the general population.

Applicants may obtain information about SSA's cooperative agreements by accessing SSA's web site, *ssa.gov/oag/grants;* DOL's grant program on the grant and contracts page at DOL's web site, *doleta.gov;* and HCFA's grant programs by accessing the TWWIIA link on HCFA's web site, *hcfa.gov.* Applicants may also access the PTFEAD link accessible from DOL's home page at *dol.gov* for additional information about the Task Force.

B. Background

Even though there has been an increase in potential employment created by technology, legislation, and changes in societal attitudes, only a small percentage of Social Security Disability Insurance (SSDI) and/or disabled or blind Supplemental Security Income (SSI) beneficiaries leave the rolls because of work activity. There are a number of reasons for this. First, beneficiaries of SSDI and SSI based on disability or blindness, by definition, have serious disabilities, which limit choices in employment. However, disability advocates report that many individuals with disabilities who receive public assistance want to work, or increase their work activity, and may be able to work, with proper assistance and support. There is also evidence that many individuals with severe disabilities do work, and are not relying on income supports.

Additionally, people with disabilities who want to work face significant barriers. Many advocates and people with disabilities contend that the fear of losing health care benefits is the largest impediment. Public health insurance and long-term care services are usually tied to income support programs such as SSDI, SSI, and Temporary Assistance to Needy Families (TANF). Employment-based health insurance is frequently not available to those with disabilities due to pre-existing condition clauses or exclusions of treatment for mental illness. Private insurance is often unaffordable for people with serious illnesses and chronic or long-term impairments, since they are charged much higher than average premiums.

Further, while the SSDI, SSI, Medicare and Medicaid programs all contain valuable work incentives provisions which can extend cash benefits and medical coverage, they are under-used and, often, are poorly understood by beneficiaries and professionals alike. The complexity and nature of the work incentives, and the interrelationship of myriad Federal, State, and local programs on which beneficiaries rely, create uncertainty and fear. Beneficiaries are concerned that they may lose vital income supports and coverage for mental and physical health care if they attempt to work.

For example, many people with disabilities rely on a patchwork of financial supports that have different eligibility criteria and application procedures. The benefits derived from a number of these programs are means-tested. Increases in income can also cause rent increases in Section 8 housing, loss of food stamps or public assistance payments. Many individuals who may be willing to risk the loss of cash benefits from TANF, SSDI or SSI cannot absorb the loss of housing subsidies and other supports.

Despite these barriers, many people with severe disabilities have managed to use existing services and work incentives to reach their goals of financial self-sufficiency, while retaining necessary supports. However, those who are successful in returning to work frequently report that the availability of a knowledgeable advocate made a difference in their ability to navigate complex program requirements and in their willingness to return to work. Further, the support of that advocate provided them a sense of security needed to maintain work activity. The projects funded under this cooperative agreement program are part of SSA's Employment Strategy for People with Disabilities to increase the number of beneficiaries who return to work and achieve self-sufficiency by delivering direct services to beneficiaries.

C. Purpose of the Benefits Planning, Assistance, and Outreach Program

The purpose of the Benefits Planning, Assistance, and Outreach Program is to provide statewide benefits planning and assistance, including information on the availability of protection and advocacy services, to all SSDI and SSI beneficiaries with disabilities, and to conduct ongoing outreach to those beneficiaries with disabilities (and to their families) who are potentially eligible to participate in State or Federal work incentives programs.

The Benefits Planning, Assistance, and Outreach Program is required by TWWIIA and is part of SSA's Employment Strategy for People with Disabilities. SSA's general aim under TWWIAA is to ensure a substantial increase in the number of beneficiaries who return to work and achieve self-sufficiency. In support of this goal, SSA is seeking well-qualified applicants to provide SSDI and SSI beneficiaries with benefits planning, assistance, and outreach. While other parts of SSA's Employment Strategy provide direct employment services to help beneficiaries become employed or increase their level of employment, this Program aims to improve beneficiaries' understanding of work options so that they may make more informed choices regarding work.

D. Benefits Planning, Assistance, and Outreach Program Goals

The Government Performance Results Act mandates that SSA establish

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specific performance indicators that support SSA's strategic goals, and the Benefits Planning, Assistance and Outreach Program's objectives. SSA has instituted a comprehensive employment strategy for persons with disabilities to ensure a substantial increase in the number of beneficiaries who return to work and achieve self-sufficiency.

The goal of the Benefits Planning, Assistance, and Outreach Program is to support SSA's overall Employment Strategy for persons with disabilities by nationally providing statewide benefits planning and assistance, and conducting outreach to beneficiaries with disabilities, about Federal, State, and local work incentives programs and related issues.

To assist SSA in assessing the scope and utility of outreach and information provided under this Program, each project will be required to:

1. Collect data pertaining to benefits planning and assistance, and outreach activities as described in Part IV, Section D Data Collection and Reporting and

2. Cooperate with SSA in providing the information needed for a customer satisfaction survey on the quality of the benefits planning and assistance services being provided and for an assessment of the success of the Benefits Planning and Assistance, and Outreach Program.

Note: SSA plans to conduct such surveys in years two and five of the projects. More frequent surveys may be conducted if a need is indicated by the results of the first survey.

SSA will evaluate the data in 1. above and the results of the customer satisfaction surveys to determine the extent to which the projects were effective in providing benefits planning and assistance services, and outreach. The effectiveness of the projects will be measured by the range of beneficiaries served and responses regarding the knowledge of SSA work incentives and utility of benefits planning and assistance services. Data to be collected will include information about:

- Beneficiaries who receive comprehensive, coordinated benefits planning and assistance services, and outreach;
- Beneficiaries' demographic characteristics;
- Beneficiaries' income support characteristics (including earnings and SSA and non-SSA benefits);
- Beneficiaries' non-income support characteristics (including access to public and private health care); and
- Beneficiaries' work and benefit related goals and strategies.

Part II. Authority and Type of Awards

A. Statutory Authority and Catalog of Federal Domestic Assistance Number

Legislative authority for this cooperative agreement program is in section 1149 of the Social Security Act (Act) as established by section 121 of the TWWIIA, Public Law 106–170. The regulatory requirements that govern the administration of SSA awards are in the Code of Federal Regulations, Title 45, Parts 74 and 92. Applicants are urged to review the requirements in the applicable regulations. This program will be listed in the Catalog of Federal Domestic Assistance under Program No. 96.008, Social Security Administration—Benefits Planning, Assistance, and Outreach Program.

B. Type of Awards

All awards made under this program will be in the form of cooperative agreements. A cooperative agreement anticipates substantial involvement between SSA and the awardee during the performance of the project. Involvement will include collaboration or participation by SSA in the management of the activity as determined at the time of the award. For example, SSA will be involved in decisions involving strategy, hiring of personnel, deployment of resources, release of public information materials, quality assurance, and coordination of activities with other offices.

C. Number, Size, and Duration of Projects

Section 1149(d) of the Act authorizes annual appropriations not to exceed $23 million for FYs 2000 through 2004. Actual funding availability during this period is subject to annual appropriation by Congress. SSA will fund a limited number of awards in FY 2000 and additional awards in FY 2001. SSA anticipates all awards under this announcement will be made by December 31, 2000.

SSA will award a cooperative agreement to a qualified entity based in part on the number of beneficiaries with disabilities in the State where the project is located, with the following limitations:

- No entity shall receive a cooperative agreement for a fiscal year that is less than $50,000 or more than $300,000; and
- The total amount of all grants, cooperative agreements, or contracts awarded for the Benefits Planning, Assistance, and Outreach Program for any fiscal year (including amounts awarded for technical assistance and training contracts) may not exceed $23 million.

Within these limitations, SSA intends to establish as many projects as needed to ensure statewide benefits planning, assistance, and outreach to all SSDI and SSI beneficiaries nationally. The applicant must demonstrate in sufficient detail that the number of beneficiaries with disabilities within the targeted area is sufficient to support a minimum award ($50,000), considering that SSA must ensure that all disability beneficiaries have access to benefits planning, assistance, and outreach.

SSA intends to enter into cooperative agreements during the 5-year authorization period subject to the availability of annual appropriations by Congress. SSA may suspend or terminate any cooperative agreement in whole or in part at any time before the date of expiration, whenever it determines that the awardee has materially failed to comply with the terms and conditions of the cooperative agreement. SSA will promptly notify the awardee in writing of the determination and the reasons for suspension or termination together with the effective date.

D. Awardee Share of the Project Costs

Awardees of SSA cooperative agreements are required to contribute a non-Federal match of at least 5 percent toward the cost of each project. The cost of the project is the sum of the Federal share (up to 95 percent) and the non-Federal share (at least 5 percent). For example, an entity that is awarded a cooperative agreement of $100,000 would need a non-Federal share of at least $5,263. The non-Federal share may be cash or in-kind (property or services) contributions.

Part III. The Application Process

A. Eligible Applicants

A cooperative agreement may be awarded to any State or local government, public or private organization, or nonprofit or for-profit organization that the Commissioner determines is qualified to provide benefits planning, assistance, and outreach to all SSDI and SSI beneficiaries with disabilities, within the targeted geographic area. These may include Centers for Independent Living established under title VII of the Rehabilitation Act of 1973, protection and advocacy organizations, Native American tribal entities, client assistance programs established in accordance with section 112 of the Rehabilitation Act of 1973, State Developmental Disabilities Councils established in accordance with section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and State agencies administering the State program funded under part A of title IV of the Act. The Commissioner may also award a cooperative agreement to a State or local Workforce Investment Board, a Department of Labor (DOL) One-Stop Career Center System established under the Workforce Improvement Act of 1998, or a State VR agency.

SSA encourages applications from public or private agencies or organizations, including from local or divisional offices of larger or statewide agencies or organizations. Applications from local or divisional offices of larger entities, however, must demonstrate that the local or divisional office has authority to enter into cooperative agreements and to be ultimately responsible for funds.

Note: For-profit organizations may apply with the understanding that no grant funds may be paid as profit to any grant recipient. Profit is considered as any amount in excess of the allowable costs of the grant recipient. A for-profit organization is a corporation or other legal entity that is organized or operated for the profit or benefit of its shareholders or other owners and must be distinguishable or legally separable from that of an individual acting on his/her own behalf. Applications will not be accepted from applicants which do not meet the above eligibility criteria at the time of submission of applications.

Cooperative agreements may not be awarded to:

- Any individual;
- Social Security Administration Field Offices;
- Any State agency administering the State Medicaid program under title XIX of the Act;
- Any entity that the Commissioner determines would have a conflict of interest if the entity were to receive a cooperative agreement under the Benefits Planning, Assistance, and Outreach Program; or
- Any organization described in section 501(c)(4) of the Internal Revenue Code of 1968 that engages in lobbying (in accordance with section 18 of the Lobbying Disclosure Act of 1995, 2 U.S.C. 1611).

Note: Any protection and advocacy organization must fully explain how it will ensure there will be no conflict of interest between providing benefits planning and assistance services and outreach, and delivering protection and advocacy services to beneficiaries. In particular, they must show how they will ensure full protection and advocacy services will be provided when the complaint is against the Benefits Specialist or organization. Also, any organization that will apply to be an employment network under SSA's Ticket to Work and Self-Sufficiency Program, must fully explain how it will ensure there will be no conflict of interest if they also receive a cooperative agreement to provide benefits planning, assistance, and outreach. This is especially important in the area of assisting beneficiaries with PASS plans or other work incentives which will enable them to keep receiving benefits, thus delaying, or preventing entirely, payments to the employment network.

B. Targeted Geographic Area/ Population

To ensure statewide availability of benefits planning, assistance, and outreach, as required by section 1149 of the Act, SSA intends to award cooperative agreements partly on the basis of geographic area.

While SSA recognizes that not every SSDI or SSI beneficiary with a disability will access benefits planning, assistance, and outreach, it must be available to each via the project targeting a specific geographic area. Therefore, awarded projects must make those services available to all SSDI and SSI beneficiaries with disabilities within the geographic area. Because youth with disabilities is such an important population to target for those services, each project must make benefits planning, assistance, and outreach available to SSI recipients as young as age 14. In providing benefits planning, assistance, and outreach, projects must make concerted and aggressive efforts to address the needs of underserved individuals with disabilities from diverse ethnic and racial communities (e.g., Native Americans, Vietnamese). In particular, awardees should show how they intend to do outreach in ways that ensure interaction with diverse communities and must specify the geographic area they wish to cover.

Entities are encouraged to collaborate with other public and/or private organizations (e.g., DOL One-Stop Career Center), through interagency agreements or other mechanisms, if necessary, to integrate services to beneficiaries with disabilities. Entities should also consider collaboration with other organizations to prepare an application for a cooperative agreement to provide benefits planning, assistance, and outreach to all beneficiaries within a specific area. For example, Native American tribal governments may collaborate to develop a proposal to cover specified reservation lands.

All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-applicants, subgrantees or subcontractors. However, where more than the maximum award amount is requested, and would be awarded for the targeted geographic area, collaborating agencies should submit separate applications.

C. Application Process

The cooperative agreement application process consists of a one-stage, full application. Independent reviewers will competitively review the application against the evaluation criteria specified in this announcement (see Part V). Applications will be reviewed against others targeting the same State or locality; for example, an application targeting the State of Louisiana will be competitively reviewed against all other applications targeting Louisiana, including any that might target both Louisiana and Mississippi, or specific portions of Louisiana. (SSA must ensure that all beneficiaries with disabilities, nationally, have access to benefits planning, assistance, and outreach.)

D. Application Consideration

Applications will be initially screened for relevance to this announcement. If judged irrelevant, the application will be returned to the applicant. Also, applications that do not meet the applicant eligibility criteria in Section A above will not be accepted.

Applications that are complete and conform to the requirements of this announcement, the instructions in Form SSA–96–BK, and the separate instructions for completing Part III, Program Narrative (of the SSA–96–BK), will be reviewed competitively against the evaluation criteria specified in Part V of this announcement and evaluated by Federal and non-Federal personnel. See Part VI for instructions on obtaining Form SSA–96–BK. The results of this review and evaluation will assist the Commissioner in making award decisions. Although the results of this review are a primary factor considered in making the decisions, the review score is not the only factor used. In selecting eligible applicants to be funded, consideration will be given to achieving statewide accessibility to benefits planning, assistance, and outreach throughout the country and the U.S. territories, and to avoiding unnecessary duplication of effort.

The application requirements in Part IV are the minimum amount of required project information. Projects are responsible for collecting management information (MI) according to the guidelines provided, producing regular

reports according to the guidelines provided, and producing a final report which analyzes the successes and/or failures of the methodology used to provide benefits planning, assistance, and outreach to SSDI and SSI beneficiaries, and others.

All projects must adhere to SSA's Privacy and Confidentiality Regulations (20 CFR Part 401) for maintaining records of individuals, as well as provide specific safeguards surrounding beneficiary information sharing, paper/computer records/data, and other issues potentially arising from providing benefits planning, assistance, and outreach to SSDI and SSI beneficiaries with disabilities.

E. Application Approval

Cooperative agreement awards will be issued within the constraints of available Federal funds and at the discretion of SSA. The official award document is the "Notice of Cooperative Agreement Award." It will provide the amount of the award, the purpose of the award, the term of the agreement, the total project period for which support is contemplated, the amount of financial participation required, and any special terms and conditions of the cooperative agreement.

F. Costs

Federal cooperative agreement funds may be used for allowable costs incurred by awardees in conducting benefits planning, assistance, and outreach. These costs could include administrative and overall project management costs, within the limitations discussed earlier.

Federal cooperative agreement funds are not intended to cover costs that are reimbursable under an existing public or private program, such as social services, rehabilitation services, or education. No SSDI or SSI beneficiary can be charged for any service delivered under a Benefits Planning, Assistance, and Outreach Program cooperative agreement, including preparing a PASS. Benefits planning and assistance services are intended to be free and must be made accessible to all SSA beneficiaries with disabilities in the project's target geographical area. Project funds should not be used to create new benefits or extensions of existing benefits.

Part IV. Program Requirements

A. General Requirements

The cooperative agreement awardees shall:

1. Provide the location of the targeted service area(s) (by zip codes) to SSA as part of the application (see Part III, Section B Targeted Geographic Area/Population);

2. Work with SSA's technical assistance and training contractor in arranging training for Benefits Specialists;

3. Provide a brief project description to the contractor;

4. Employ Benefits Specialists and have them attend an initial 5-day face-to-face training session within 90 days of award of the cooperative agreement. SSA's technical assistance and training contractor will provide technical assistance and training to projects about SSA's programs and work incentives (*e.g.*, trial-work period (TWP), extended period of eligibility (EPE), impairment-related work expenses (IRWE), Plan for Achieving Self-Support (PASS), 1619(a) and (b), and Medicaid buy-in provisions/Balanced Budget Act); Medicare and Medicaid; and on other Federal work incentives programs. The applicant is responsible for providing technical assistance and training to Benefits Specialists about State and local programs. (SSA will attend that training session to provide a half-day orientation session for project directors.) Have Benefits Specialists attend refresher/follow-up and new hire training sessions, as needed, and take part in the evaluation of training activities and the evaluation of ongoing training needs evaluation by the contractor.

5. Within 90 days after award, the applicant will ensure Benefits Specialists have completed training, have developed outreach plans and begun initial outreach, and are prepared to provide benefits planning and assistance services to all SSDI and SSI beneficiaries with disabilities within the targeted geographic area who are requesting these services;

6. Finalize the Management Information (MI) system data collection elements (as defined by SSA) and procedures with SSA within 60 days after award;

7. Develop and submit quarterly reports that contain MI to SSA, Office of Acquisition and Grants (OAG);

8. Develop and submit quarterly financial reports to SSA, OAG;

9. Provide a description of all planned changes to the project design for approval by SSA prior to implementation;

10. Cooperate with SSA in scheduling and conducting site visits;

11. Develop and maintain a collaborative working relationship with the local servicing Social Security office;

12. Implement an ongoing management and quality assurance process that uses MI data; and

13. Attend scheduled conferences, participate in panel and small group discussions, and make project presentations.

B. Description of Projects

The project awardees shall:

- Provide individualized benefits planning and assistance, including information on the availability of protection and advocacy services, to beneficiaries with disabilities, including individuals participating in the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Act, the program established under section 1619 of the Act, and other programs that are designed to encourage disabled beneficiaries to work;
- Conduct ongoing outreach efforts to beneficiaries with disabilities (and to the families of such beneficiaries) who are potentially eligible to participate in Federal or State work incentives programs that are designed to assist beneficiaries with disabilities to work, by preparing and disseminating information and explaining such programs. In conducting benefits planning, assistance, and outreach activities, project awardees will work in cooperation with other Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities, and with agencies and organizations that focus on vocational rehabilitation and work-related training and counseling, including DOL One-Stop Career Centers.

In order to be considered for an award, applicants must describe:

- Their understanding of benefits planning and assistance, including the benefits programs with which they have worked in the past;
- How they will notify all SSDI and SSI beneficiaries with disabilities in the targeted geographic area about benefits planning and assistance and provide those services to beneficiaries;
- Their understanding of outreach, and how they will conduct outreach to all SSDI and SSI beneficiaries with disabilities (and their families) in the targeted geographic area who are potentially eligible to participate in Federal or State work incentives programs designed to assist beneficiaries with disabilities to work. Particularly, how the outreach strategies, information, and materials will be modified to seek out different ethnic and racial groups;
- The scope of the project; and
- How that project achieves the Benefits Planning, Assistance, and Outreach Program goals in Part I, Section D.

The applicants must also describe how they will address any special cultural requirements of populations *e.g.*, Native Americans) within the targeted geographic area, as well as non-English speaking populations *e.g.*, Vietnamese) and SSI recipients as young as age 14.

In providing benefits planning and assistance services, and conducting outreach, projects must be sensitive to issues such as cultural differences and non-English speaking populations within the areas they serve *e.g.*, Native Americans, Vietnamese). Specifically, projects must address the needs of underserved individuals with disabilities from diverse ethnic and racial communities and show how they intend to provide outreach in ways that ensure interaction with diverse communities.

Applicants must also provide information on:

- Collaborative relationships with relevant agencies, including SSA's field offices, and organizations *e.g.*, Centers for Independent Living, DOL One-Stop Career Centers);
- Specific services and supports that will be involved in the project and their roles;
- Case management and monitoring systems and techniques to be used;
- Methods of evaluating benefits planning, assistance, and outreach provided; and
- The MI and quality assurance process that will be used.

Applicants must also describe how Benefits Specialists will be trained on: numerous supports which are often used by people with disabilities, such as long-term care, subsidized housing, paratransit, and food stamps; variations in benefits and services in the State in which the applicant is located; that State's work incentives programs; workers' compensation and unemployment insurance programs; vocational rehabilitation services; work-related training and counseling programs; and other community-based support programs designed to enable people with disabilities to work.

Applicants must also describe how Benefits Specialists will be trained to conduct outreach by providing information, guidance, and planning to beneficiaries with disabilities on the:

- Availability and interrelation of any Federal or State work incentives programs designed to assist beneficiaries with disabilities for which the individual may be eligible to participate;
- Adequacy of any health benefits coverage that may be offered by an employer of the individual and the extent to which other health benefits coverage may be available to the individual; and
- Availability of protection and advocacy services for beneficiaries with disabilities and how to access such services.

Note: The technical assistance and training contractor may provide technical assistance materials to enable project Benefits Specialists to get information about the subjects in the preceding paragraphs. However, each awardee shall be responsible for ensuring that Benefits Specialists are well-versed in these areas.

Applicants must describe any plans they have to collaborate or coordinate with public and private organizations to achieve and/or improve their project goals and submit evidence to SSA of these organizations' capabilities, and willingness to participate (e.g., letters of intent, memoranda of understanding). Applicants should not request letters of intent or commitment from SSA field offices. SSA will assure field office cooperation.

Each applicant must describe the number of beneficiaries with disabilities it expects to serve. If the target group is not large enough to justify a minimum award of $50,000, the applicant will not be considered further.

Note: All SSDI and SSI beneficiaries (including SSI recipients as young as age 14) within the geographic area served by the project, must be able to access benefits planning, assistance, and outreach via the project.

The project may be part of a larger State initiative; e.g., a DOL One-Stop Career Center, that serves other individuals with disabilities, such as TANF recipients; however, funds provided by SSA under the cooperative agreements cannot be used to serve people with disabilities who are not beneficiaries of SSDI and/or SSI.

C. Benefits Specialist Responsibilities and Competencies

1. Responsibilities

Cooperative agreement awardees shall select individuals who will act as Benefits Specialists. Benefits Specialists will provide work incentives planning and assistance to beneficiaries with disabilities (and their families), who are potentially eligible to participate in Federal or State work incentives programs designed to assist disabled beneficiaries to work; conduct outreach efforts to beneficiaries with disabilities; and work in cooperation with Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities. Benefits Specialists will also provide information on: the adequacy of health benefits coverage that may be offered by an employer of a beneficiary with a disability; the extent to which other health benefits coverage may be available to that beneficiary; and the availability of protection and advocacy services for beneficiaries with disabilities, and how to access such services.

Benefits Planning. Benefits planning requires an in-depth understanding of the current status of a beneficiary being served. Initial benefits planning will support a beneficiary over a period of several weeks to several months, concluding when the beneficiary has received guidance to support informed choices. Benefits Specialists will establish plans for beneficiaries with disabilities, and develop long-term supports that may be needed to ensure success. Following the initial benefits planning process, they will provide periodic, follow-up planning services to ensure that the information, analysis, and guidance are updated as new conditions (with regard to the applicable programs or to the individual's situation) arise.

To provide benefits planning services, Benefits Specialists will:

- Obtain and evaluate comprehensive information about a beneficiary with a disability, on the following:

—Beneficiary background information
—Disability
—Employment and earnings
—Resources
—Federal and State benefits
—Health insurance
—Work expenses
—Work incentives
—Service(s) and supports;

- Assess the potential impacts of employment and/or other changes on a beneficiary's Federal and State benefits eligibility and overall financial well-being;
- Provide information and assist the beneficiary in understanding and assessing the potential impacts of employment and/or other actions or changes on his/her life situation, and provide specific guidance regarding the affects of various work incentives;
- Develop a comprehensive framework of possible options available to a beneficiary and projected results for each as part of the career development and employment process; and
- Ensure confidentiality of all information provided.

Benefits Assistance. Benefits assistance involves the delivery of information and direct supports for the

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purpose of assisting a beneficiary in dealing with benefit issues and effectively managing benefits. Benefits assistance also involves providing information and referral and problem-solving services as needed. Benefits management services will generally build on previous planning and assistance services and include periodic updates of an individual's specific information, reassessment of benefit(s) and overall impacts, education and advisement, and additional planning for monitoring and managing benefits and work incentives.

To provide benefits assistance services, Benefits Specialists will:

- Provide time-limited direct assistance to a beneficiary in the development of a comprehensive, long-term benefits management plan to guide the effective monitoring and management of Federal and State benefits and work incentives. Specific components of the plan must address:
  - —Desired benefit and work outcomes
  - —Related steps or activities necessary to achieve outcomes
  - —Associated dates or time frames
  - —Building on initial benefits planning efforts including information gathering, analysis and advisement
  - —Benefits/financial analysis (pre-and post-employment);
- Provide time-limited, intensive assistance to beneficiaries, their key stakeholders, and their support teams in making informed choices and establishing both employment-related goals as well as needed benefits management supports. Needed benefits assistance could include:
  - —How SSDI and SSI work incentives programs may lead to self-supporting employment by developing a PASS
  - —Developing a PASS which can be used to obtain training, education, and entrepreneurial opportunities
  - —How a PASS can be used to address some of the barriers to employment, such as obtaining a car for transportation needs
  - —The 1619(b) provisions and requirements;
- Advocate on behalf of a beneficiary with other agencies and programs, which requires in-person, telephone and/or written communication with the individual and other involved parties generally over a period of several weeks to several months;
- Provide time-limited follow-up assistance as needed to beneficiaries who have previously received benefits planning and/or other types of benefits assistance services and:
  - —Assist them and other involved parties to update information
  - —Reassess impact of employment and other changes on benefits and work incentives
  - —Provide additional guidance on benefit options, issues and management strategies;
- Assist beneficiaries as needed to update benefits management plan;
- Provide information, referral, and problem-solving support;
- Provide ongoing, comprehensive, benefits monitoring and management assistance to beneficiaries who are likely to experience employment, benefits, or other changes that may dramatically affect their benefit(s) status, health care, or overall financial well being; and
- Provide long-term benefits management on a scheduled, continuous basis, allowing for the planning and provision of supports at regular checkpoints, as well as critical transition points in an individual's benefits, employment and overall situation.

Outreach. Outreach activities are ongoing, systematic efforts to inform individuals of available work incentives, as well as the services and supports available to enable them to access and benefit from those work incentives. Outreach efforts should be targeted directly to SSDI and SSI beneficiaries with disabilities, their families, and to advocacy groups and service provider agencies that have regular contact with them. Outreach activities should be directed toward and sensitive to the needs of individuals from diverse ethnic backgrounds, persons with English as their second language, as well as non-English speaking persons, individuals residing in highly urban or rural areas, and other traditionally underserved groups.

To conduct ongoing outreach, Benefits Specialists will:

- Prepare and disseminate information explaining Federal or State work incentives programs and their interrelationships; and
- Work in cooperation with other Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities, and with agencies and organizations that focus on vocational rehabilitation and work-related training and counseling.

The Benefits Specialists will conduct outreach to SSDI and SSI beneficiaries with disabilities (and their families), who are potentially eligible to participate in Federal or State work incentives programs that are designed to assist beneficiaries with disabilities to work.

2. Competencies

A bachelor's degree is preferred. SSA may accept a combination of education and experience if the experience provides the knowledge, skills and abilities to successfully perform the duties of the position. Applicants must ensure that Benefits Specialists have the skills required to competently provide benefits planning and assistance services, and outreach.

Benefits Specialists should bring the following knowledge, skills, and abilities to the position:

- Basic math skills, with an emphasis on problem solving;
- Deductive ability with analytical thinking and creative problem solving skills;
- Acceptable interviewing skills;
- Ability to interpret Federal laws, regulations, and administrative code about public benefits;
- Communication skills (written and/or verbal);
- Knowledge of medical terminology and awareness of cultural and political issues pertaining to various populations and to various disabilities; and
- Basic computer skills.

Benefits Specialists will need to become proficient in the following knowledge, skills, and abilities:

- SSDI and SSI disability programs;
- Knowledge of all public benefits programs, including operations and inter-relationships;
- Translating technical information for lay individuals;
- Accessing information in a variety of ways (including the ability to be able to recognize when additional information is needed);
- Interpersonal skills (*e.g.*, recognize and help people manage anger and conflict, enjoy working with individuals);
- Counseling skills (ability to listen, evaluate alternatives, advise on potential cause of action);
- Knowledge of SSA field office structure and how to work with various work incentives coordinators (*e.g.*, PASS specialists, employment support representatives);
- Knowledge of the structure and design of public and private benefits systems and local community services; and
- Knowledge of ethics (*e.g.*, confidentiality, conflict of interest).

The applicant must clearly explain how it will ensure all individuals hired as Benefits Specialists will bring the previously described knowledge, skills, and abilities to the position, and how they will become proficient in the others. SSA will contract with a separate entity to provide technical assistance and training to projects on an ongoing basis about SSA's programs and work incentives, Medicare and Medicaid, and other Federal work incentives programs. The applicant is responsible for providing technical assistance and training to Benefits Specialists about State and local programs.

D. Management Information and Reporting

In addition to cooperating with the surveys outlined in Part I, Section D, entities must provide all collected data and report the results to SSA's Office of Acquisition and Grants, as described below.

Common data elements, as defined by SSA, will be collected by all projects. The awardee and SSA will use the management information (MI) data to manage the project and to determine what additional resources or other approaches may be needed to improve the process. The data will also be valuable to SSA in its analysis of and future planning for the SSDI and SSI programs.

All projects must adhere to SSA's Privacy and Confidentiality Regulations (20 CFR part 401) for maintaining records of individuals, as well as provide specific safeguards surrounding beneficiary information sharing, paper/computer records/data, and other issues potentially arising from providing benefits planning, assistance, and outreach to SSDI and SSI beneficiaries with disabilities.

All projects shall provide for the design, development, implementation, and maintenance of an MI system, which must be compatible with SSA database specifications that are fixed-format ASCII files. The MI system shall allow for necessary data collection on SSDI and SSI beneficiaries. For the purpose of providing MI to SSA in support of the implementation and management of the projects, projects will collect, analyze, and summarize the data listed below:

Beneficiary Background Information

1. Beneficiary/recipient name (Last, First, Middle)
2. Date of birth
3. Gender
4. Special language or other considerations
5. Mailing address
6. Telephone number
7. Social Security number
8. Representative payee (RP) name (if applicable)
9. RP address
10. Current level of education
11. Whether pursuing education currently and at what level (*e.g.*, post secondary, continuing adult education, special education, vocational education)
12. Proposed educational goals
13. Primary diagnosis
14. Secondary diagnosis (if applicable)
15. Employer health care coverage at outset (if working)
16. Other health care coverage

Employment Information (current and proposed goal—where applicable)

1. Self-employed or employee
2. Type of work
3. Beginning date
4. Hours per week
5. Monthly gross earned income
6. Monthly net earned income
7. Work-related expenses

Proposed Training Information

1. Work-related training/counseling program
2. Proposed other training

Benefits (current and expected changes if employment goals are reached)

1. SSDI
2. SSI
3. Concurrent (SSDI and SSI)
4. Medicare
5. Medicaid
6. Subsidized housing or other rental subsidies
7. Food Stamps
8. General Assistance
9. Workers Compensation benefits
10. Unemployment Insurance benefits
11. Other Federal, State, or local supports, including TANF (specify)

Incentives To Be Used

1. Trial-work period (TWP)
2. Extended period of eligibility (EPE)
3. Impairment-related work expenses (IRWE)
4. Plan for achieving self-support (PASS)
5. 1619(a)
6. 1619(b)
7. Medicaid buy-in provisions/Balanced Budget Act

Services To Be Used

1. Vocational Rehabilitation (VR) services
2. Paratransit services
3. Protection and Advocacy services
4. Work-related training/counseling program
5. DOL One-Stop Career Center services
6. Transitioning youth services (from school to post-secondary education or to work)

Monthly Benefits Planning, Assistance, and Outreach Activities Performed by Benefits Planning Organization

1. Number of SSDI/SSI beneficiaries (over age 18) requesting assistance (initial and repeat requests)
2. Number of SSDI/SSI beneficiaries (ages 14 to 18) requesting assistance (initial and repeat requests)
3. Number of new benefits management plans prepared
4. Number of updated benefits management plans prepared
5. Number of presentations given at forums, conferences, meetings, *etc.*

All data elements are to be collected in accordance with precise definitions to be provided by SSA during start-up activities. Adherence to such precise definitions is crucial to the comparability of the data across project sites.

Entities awarded cooperative agreements under this notice shall submit quarterly progress reports to SSA, OAG. SSA expects that the projects will need a period of time to begin providing services and collecting management information. Therefore, the first quarterly report shall include a description of the project, a status of data collection operations, actions that were taken, planned actions, and a description of how the project is addressing the needs of individuals with disabilities from diverse ethnic and racial communities, both in benefits planning and in carrying out outreach activities.

Subsequent reports shall provide: a status of the project, any problems or proposed changes in the project (*e.g.*, requests for technical assistance from contractor, interagency agreement change); specific information (baseline data/program statistics) required by SSA, including that listed above; a description of how the project is addressing the needs of individuals with disabilities from diverse ethnic and racial communities, both in benefits planning and in carrying out outreach activities; actions that were taken, and planned actions. The quarterly reports shall be submitted to SSA, OAG, within 30 days after the end of the quarter.

SSA personnel (SSA Project Officer and/or other staff) expect to visit each project at least once in each year of the cooperative agreement. The SSA Project Officer shall review site operations, including collection of management information, and evaluate how projects are finding ways to make benefits planning, assistance, and outreach activities more effective in achieving SSA's Benefits Planning, Assistance, and Outreach Program goals.

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Staff members from each project shall attend an initial training meeting that will include an orientation session by SSA, and subsequent scheduled conferences at SSA headquarters or alternate sites chosen by SSA. Those meetings will provide awardees of cooperative agreements with the opportunity to exchange information with SSA and other awardees.

E. Evaluation

Process Evaluation

The purpose of process evaluation is for SSA and the awardee to assess how the project functioned and how the process might be altered to more efficiently and/or successfully provide the services required under this section of the Act. The process evaluation will require both data collection and qualitative observational evaluation through site visits and/or project reporting.

Participant Experience

The goal of these cooperative agreements is the provision of services to enhance beneficiary awareness and understanding of SSA work incentives and thereby enhance beneficiaries' ability to make informed choices regarding work. The goal is not to provide employment services. Nevertheless, SSA is clearly interested in identifying participant outcomes under the Benefits Planning, Assistance, and Outreach Program to determine the extent to which participants achieve their employment, financial, and health care goals. SSA is thus requiring the collection of data to permit the assessment of the participants' situations (employment, benefit status, income, etc.) before service provision under these projects, and their goals after services have been provided. SSA intends to use this information to support the sample selection for participants in the customer satisfaction survey. This will allow SSA to include the experiences and outcomes of a broad range of beneficiaries.

Each project shall submit periodic reports (as described in Part IV, D Data Collection and Reporting) to SSA, OAG. Data and information that are used in preparing the reports can be used, for example, to improve: the efficiency of the project's operations, use of staff, linkages between the project and the programs for which benefits planning is needed to better meet the needs of target populations. In addition, the results from evaluation will be disseminated to other projects to promote learning, program refinements, and facilitate partnership and achievement of project objectives. Timely comprehensive MI data also allows for cost accounting, which help improve the efficiency of service approaches and may inform future policy decisions.

Part V. Application Review Process and Evaluation Criteria

A. Screening Requirements

All applications that meet the deadline will be screened to determine completeness and conformity to the requirements of this announcement. Complete and conforming applications will then be evaluated.

1. Number of Copies: The applicant must submit one original signed and dated application and a minimum of two copies. The submission of seven additional copies is optional and will expedite processing, but will not affect the evaluation or scoring of the application.

2. Length: The program narrative portion of the application (Part III of the SSA–96–BK) may not exceed 30 double-spaced pages (or 15 single-spaced pages) on one side of the paper only, using standard (8½" x 11") size paper, and 12-point font. Attachments that support the program narrative count towards the 30-page limit.

B. Evaluation Criteria

Applications that pass the screening process will be independently reviewed by at least three individuals (primarily qualified persons from outside of SSA), who will evaluate and score the applications based on the evaluation criteria. There are four categories of criteria used to score applications: capability; relevance/adequacy of program design; resources and management; and quality assurance plan. The total points possible for an application is 100, and sections are weighted as noted in the descriptions of criteria below. The score for each application is the sum of its parts. Although the results from the independent panel reviews are the primary factor used in making funding decisions, they are not the sole basis for making awards. The Commissioner will consider other factors as well when making funding decisions. For instance, the need to assure the required geographic distribution of projects may take precedence over rankings/scores of the review panel.

Following are the evaluation criteria that SSA will use in reviewing all applications (relative weights are shown in parentheses):

1. Capability (20 points)

The applicant's capability to deliver benefits planning and assistance services will be judged by:

- Description of how entity will test for Benefits Specialist competencies listed in Part IV and provide any needed training to ensure competencies will be maintained and/or enhanced; (8 points)
- Description of the proposed administration and organization of the project, including the existence of the necessary administrative resources to effectively carry out the project; and (7 points)
- Project Director's and key staff's documentation of experience and results of past projects of this nature (extra consideration may be given to applicants based on the quality and extent of their experience in return-to-work efforts for SSDI and SSI beneficiaries with disabilities). (5 points)

2. Relevance/Adequacy of Project Design (30 points)

The adequacy of project design will be judged by:

- A description of the project operations, including how the project will work (*e.g.*, identification and notification of potential project participants about availability of benefits planning and assistance services, location for providing services, ability to travel to beneficiary, etc.) and the quality of the project design; (6 points)
- A description of how the project will address provision of benefits planning, assistance, and outreach to transition-to-work aged SSI youth; (5 points)
- A description of how the project will address provision of benefits planning, assistance, and outreach to populations with special cultural or language requirements; (5 points)
- Evidence of collaboration with relevant agencies, including collocation within a DOL One-Stop Career Center organization, in providing benefits planning and assistance services; and extent and clarity of collaborative efforts with other organizations, including letters of intent or written assurances; and (5 points)
- A concise and clear statement of the project goals and objectives; MI data to be collected; specification of data sources; and how quality assurance will be realized; (4 points)
- Description of problems that may arise and how they will be resolved; *e.g.*, how dropouts and inadequate numbers of participants will be handled; and (3 points)

- Evidence of how the approach proposed will accomplish Benefits Planning, Assistance, and Outreach Program goals. (2 points)

3. Resources and Management (30 points)

Resources and management will be judged by:

- Appropriateness of qualifications of the project personnel, as evidenced by training and experience indicating that they have the skills required to competently provide benefits planning and assistance services, and outreach; (8 points)
- Evidence of successful previous experience related to benefits planning, assistance, and outreach programs; (4 points)
- Evidence that the applicant has a working knowledge of work incentives and the various programs available to beneficiaries with disabilities; (4 points)
- Evidence of adequate facilities (*e.g.*, collocation within a DOL One-Stop Career Center) and resources to deliver services; (4 points)
- Appropriateness of the case management and monitoring systems and techniques, including an MI system, quality assurance system, and a range of other monitoring and management options; (3 points)
- Extent and quality of project assurances that sufficient resources (including personnel, time, funds, and facilities) will be available to support services to beneficiaries; (3 points)
- Evidence that the applicant will meaningfully involve family members and other representatives of target groups, including advocates in the process of delivery services; and (2 points)
- Cost effectiveness, per client costs, and reasonableness of overall project cost relative to planned services. (2 points)

4. Quality Assurance (20 points)

The applicant's quality assurance plan will be judged by:

- Extent to which training is accommodated and planned for to ensure that all Benefits Specialists maintain knowledge, skills, and abilities, and acquire more; (6 points)
- Extent to which the awardee proposes to use MI data to improve processes and ensure that all information given is accurate and pertinent; (4 points)
- Extent to which the proposed quality assurance plan complies with the requirements of SSA, in terms of data collection, reporting, and ensuring that only accurate information is provided to beneficiaries and others; (4 points)
- Extent to which the proposed staff demonstrate expertise in the area of benefits planning and assistance; and (4 points)
- The extent to which staff have experience collecting, protecting, and analyzing data on beneficiaries with disabilities to provide benefits planning and assistance services, and outreach. (2 points)

Part VI. Instructions for Obtaining and Submitting Application

A. Availability of Forms

The Internet is the primary means recommended for obtaining an application kit under this program announcement. An application kit containing all of the prescribed forms and instructions needed to apply for a cooperative agreement under this announcement may be obtained at the following Internet address: *ssa.gov/oag/grants*.

However, in the rare instances when an organization may not have access to the Internet, an application kit may be obtained by writing to: Grants Management Team, Office of Operations Contracts and Grants, OAG, Social Security Administration, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207–5279.

Requests submitted by mail should include two return address labels. Also, please provide the name, title and telephone number of the individual to contact; and the organization's name, street address, city, State and zip code.

To ensure receipt of the proper kit, please include program announcement number SSA–OESP–00–1 and the date of this announcement.

B. Checklist for a Complete Application

The checklist below is a guide to ensure that the application package has been properly prepared.

—An original, signed and dated application plus at least two copies. Seven additional copies are optional but will expedite processing.

—The program narrative portion of the application (Part III of the SSA–96–BK) may not exceed thirty double-spaced pages (or fifteen single-spaced pages) on one side of the paper only, using standard (8½" x 11") size paper, and 12-point font. Attachments that support the program narrative count towards the 30-page limit.

—Attachments/Appendices, when included, should be used only to provide supporting documentation. Please do not include books or videotapes as they are not easily reproduced and are therefore inaccessible to reviewers.

—A complete application, which consists of the following items in this order:

(1) Part I (Face page)—Application for Federal Assistance (SF 424, REV 4–88);

(2) Table of Contents;

(3) Project Summary (not to exceed one page);

(4) Part II—Budget Information, Sections A through G (Form SSA–96–BK);

(5) Budget Justification (in Section B Budget Categories, explain how amounts were computed), including subcontract organization budgets;

(6) Part III—Application Narrative and Appendices;

(7) Part IV—Assurances;

(8) Additional Assurances and Certifications—regarding Lobbying and regarding Drug-Free Workplace; and

(9) Form SSA–3966–PC—acknowledgement of receipt of application (applicant's return address must be inserted on the form).

C. Guidelines for Application Submission

All applications for cooperative agreement projects under this announcement must be submitted on the prescribed forms included in the application kit. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the cooperative agreement award.

In item 11 of the Face Sheet (SF 424), the applicant must clearly indicate the application submitted is in response to this announcement (SSA–OESP–00–1). The applicant also is encouraged to select a SHORT descriptive project title.

Applications must be mailed or hand-delivered to: Grants Management Team, Office of Operations Contracts and Grants, OAG, DCFAM, Social Security Administration, Attention: SSA–OESP–00–1, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, MD 21207–5279.

Hand-delivered applications are accepted between the hours of 8 a.m. and 5 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received on or before the deadline date at the above address; or

2. Mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Packages must be postmarked by July 31, 2000. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a

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legibly dated receipt from a commercial carrier as evidence of timely mailing. Private-metered postmarks are not acceptable as proof of timely mailing.

Applications that do not meet the above criteria are considered late applications. SSA will not waive or extend the deadline for any application unless the deadline is waived or extended for all applications. SSA will notify each late applicant that its application will not be considered.

Paperwork Reduction Act

This notice contains reporting requirements. However, the information is collected using form SSA–96–BK, Federal Assistance Application, which has the Office of Management and Budget clearance number 0960–0184.

Dated: May 25, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 00–13649 Filed 5–30–00; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3321]

Culturally Significant Objects Imported for Exhibition Determinations: "Egyptian Treasures From the British Museum"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Egyptian Treasures from the British Museum" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Bowers Museum of Cultural Art, Santa Ana, CA from October 7, 2000 to January 2, 2001 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301—4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: May 19, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–13539 Filed 5–30–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3322]

Culturally Significant Objects Imported for Exhibition Determinations: "Gallery for the Arts of Korea"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Gallery for the Arts of Korea," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum, New York, NY from June 2000 to June 2002 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301—4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: May 19, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–13541 Filed 5–30–00; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF STATE

[Public Notice 3323]

Office of International Information Programs, Civnet Editorial Services; Request for Proposals

SUMMARY: The Office of Thematic Programs (IIP/T) announces an open competition for an editorial services/information technology program in support of Civnet, the civic education Internet resource. Private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501c(3), including civic education institutions, NGOs and other democracy advocates, may submit proposals to support international information activities that will assist civic education practitioners, advocates, and other interested professionals in developing programs, policies, and strategies, and in communicating with one another. The successful grantee will have substantial experience in civic education and/or democracy building, especially on the international level.

Program Information

Overview

Civnet is a web site on civic education (*http://www.civnet.org*), and presently contains, inter alia, information on the non-governmental organization (NGO), and civic education movement called CIVITAS, as well as civics teaching resources (*e.g.*, text books, curricula, syllabi, lesson plans, great documents, articles on teaching methodology), journal articles on civil society, directories of civic education/civil society organizations, and conference transcripts from CIVITAS meetings. Civnet was conceived to address the needs of three primary groups of civic education practitioners: (1) Teachers/school administrators (K–12) (particularly in new and emerging democracies), who need practical teaching resources and the capability to network with other practitioners; (2) scholars, experts, and academics interested in civics, democracy, and civic education issues; and (3) NGOs and their leaders who support civic education, civic participation, civic journalism and civil-society building in the U.S. and around the world.

The successful proposal will require information gathering, resource development, advocacy, and public relations—via the Internet—on behalf of the global civic education movement: to promote international adoption of civic education standards and curricula; to assist international organizations, governments, and foundations in adopting civic education reform as part of their criteria for awarding international assistance, and to persuade them to fund civic education programs; and to support, encourage, and report on the efforts of civic education NGOs in teacher training, textbook development, development of professional teacher organizations, and advocacy for civic education reform.

Detailed Information and Background

The grantee will conduct most or all of these activities using Web sites and listservs, so the grantee must have experience with Internet advocacy as well as civic education. In addition, the grantee will have to immerse itself (via telephone, email, and other communications) in the international civic education network and remain current in all efforts to promote civic education around the world. Grantee will be responsible to not only update the Civnet website regularly and thus serve as a critical communications hub, but will ensure that the site reports on all significant efforts and outcomes in the cause of advocating for civic education worldwide.

In addition to maintaining these operations, Civnet will be emphasizing the needs of civic education NGOs in the next year, and thus focussing on an additional audience: the governments, international organizations (*e.g.*, World Bank, EC, IADB), and private foundations to which the CIVITAS network will be advocating, persuading, lobbying, and seeking partnerships/funds.

The successful proposal will develop Civnet so that it becomes a means through which those in the CIVITAS network who are working to promote and strengthen civic education worldwide can shape strategy, recruit support, and share information. The grantee will demonstrate a willingness to immerse itself via telephone, email, and other forms of communications, in the worldwide CIVITAS network and remain current in all efforts to promote civic education around the world. The grantee will also maintain regular contact with the CIVITAS Steering Committee (and its Executive Board), membership, and Secretariat (located in Strasbourg, France), as well as CIVITAS liaison officers and contacts at the U.S. Department of State and other government agencies and international organizations. Grantee will also be current with all the literature and newsletters of the civic education community.

The successful applicant will serve as an Internet advocate for civic education. As such the applicant must not only understand the Internet medium, but also understand advocacy generally, and be willing to immerse itself in the burgeoning international civic education network/movement. Internet generalists without advocacy skills or a passion for this type of movement would not meet the requirements of this RFP.

Proposals from web designer or web master firms without education or democracy-building experience will not be successful. Likewise proposals from web design or IT firms that only subcontract for the subject-matter expertise will not be successful. Rather, the contractor must have a demonstrated background in the field of advocacy for education or democracy. Please do not make an inquiry or send in a proposal if you lack this fundamental criterion of the RFP.

Further Information

In addition to providing editorial services, the successful Grantee will also be responsible for serving as Civnet webmaster, HTML formatter/scripter, and will ensure that Civnet reports on a regular basis (daily or weekly depending on the advent of new developments, events, and information) on all efforts and outcomes in the cause of advocating for civic education worldwide. In particular, this will entail communicating CIVITAS messages and themes, and engaging in Internet advocacy/lobbying of governments and international organizations (IOs) to support CIVITAS efforts to implement its Actions Steps and goals.

Furthermore, the successful proposal will provide coverage of all upcoming developments that may have an impact on these efforts (such as pending legislation, IO policy changes/grants, NGO delegation meetings with IOs and other pertinent developments), and reporting on civic education meetings, workshops, and conferences.

The successful proposal will emphasize the needs of civic education NGOs in the near future, and thus focus on an additional audience: the governments, international organizations (*e.g.*, World Bank, EC, IDB), and private foundations with which the CIVITAS network will be advocating, persuading, lobbying, and seeking partnerships/funds.

While the Civnet web site must continue to fulfill its educational resource function, it must also grow to meets its intended promotional role and become a true advocacy site for civic education for democracy. Civnet must shift focus from its present general dialogue about civil society to a more deliberate strategy of strengthening the CIVITAS network and mobilizing it to press for more effective education for democracy.

One of the strongest assets the grantee should draw upon to accomplish this is the membership of the CIVITAS network itself: educators and NGO leaders engaged in efforts to implement educational reform in their own countries and to draw international support for their efforts. News and comment about these activities should become the central subject matter for Civnet in the year ahead. The grantee will have to offer strong and imaginative editorial leadership to successfully persuade the busy NGO leaders and organizers to communicate in clear and interesting ways about what they are doing or the challenges they confront. Material will have to be solicited and rewritten; inadequate contributions will have to be turned down, tactfully. Thought will have to be given to emerging issues. In addition, the grantee will engage in all basic Web mastering functions; *i.e.*, responsibility for designing, compiling, managing, and editing all aspects (even the non-advocacy aspects) of the Web site. This may entail carrying out varied tasks, including: (1) Maintaining regular and ongoing contacts with practitioners, potential contributors, and representatives of Civnet's potential audiences in the international civic education community (*e.g.* teachers, teacher trainers, educators, scholars, experts, and NGO players); (2) immersing itself and becoming well-versed in the subject matter of civic education and the current discourses on civil society; (3) collecting, compiling, and uploading civics teaching materials (for Civnet's teaching resource library), including lesson plans, syllabi, curricula, text books, and any other materials that would be useful for foreign teachers/educators/practitioners; (4) collecting (and in some cases commissioning or even writing) and proofreading articles (*e.g.*, originals, reprints, book synopses and reviews, manuals on civic standards, lectures) that may be of interest to scholars and NGO leaders; (5) maintaining the layout of Civnet as a home page that will be useful, organized, easily navigable, and appealing to Civnet's primary audiences, and that integrates all of Civnet's resources, including its library of teaching materials; (6) regularly updating the Civnet Calendar of Events; (7) utilizing listservs to promote Civnet; (8) uploading new information to Civnet's vast directory of organizations (this is maintained as an off-line database by the American Federation of

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Teachers); (9) promoting and marketing Civnet to its audiences and potential audiences (this is especially important); (10) collecting whatever graphics are appropriate for uploading to Civnet; (11) writing, editing, and introducing contents on Civnet's home page and sub-pages; (12) seeking, wherever necessary, agreements to publish copyrighted material on Civnet; (13) maintaining and updating Civnet's links to other Web sites; and (14) establishing Civnet as a dynamic, current, useful, creative, and exciting Web site for the civic education community.

Grantee will seek and receive guidance from the State Department officer assigned to oversee the grant, and grantee will also heed input from the CIVITAS Executive Board and Secretariat, and from State Department officials that work to promote civic education in new and emerging democracies and countries in transition from dictatorship, and those with regional expertise.

IIP reserves the right to review, edit, and clear any materials which grantee selects to appear on Civnet. While experience in Web mastering/editing is a requirement for the proposal, it cannot be overemphasized that the principal criterion for selection will be experience in issue advocacy, preferably in the field of democracy building or education. The winning applicant would ideally demonstrate experience with and passion for democracy building or civic education in new and emerging democracies, and countries in transition from dictatorship. In other words, the winning applicant must: (1) Demonstrate proficiency with Internet advocacy; (2) the ability to interact with and immerse itself within the field of civic education advocacy; and (3) understand the basics of persuasion, public relations, lobbying, NGO recruitment, and NGO grass-roots organizing as it would be applied through the Internet. An applicant with a primarily technical background would be unsatisfactory.

Moreover, this does not call for a passive Web manager, who would merely format materials that would be sent in for publishing. The successful grantee will be actively soliciting the materials, and will be expected to cajole people in the CIVITAS network and beyond to contribute such materials and information. The grantee must be willing to edit those materials, and have the diplomatic skills to reject some materials and deal with diverse individuals and groups all over the world.

However, a civic education NGO activist with no experience or proficiency in the web will be equally deficient. The winning applicant must demonstrate some experience with web sites or electronic publications, particularly those that advocate on behalf of organizations or causes. The grantee must engage in web formatting and layout on a regular basis, and will be responsible for all parts of the web site, including but not limited to the sections on teaching resource materials.

To reiterate, the winning applicant must have a track record demonstrating not only proficiency in web editing, but also a passion for democracy building and/or civic education. Grantee must have experience in web advocacy. Successful grantee will become the communications hub of the international civic education community, a regular conversationalist with key players all over the world, an eventual possessor of a definitive email/phone rolodex of civic education actors, and possibly a fixture at civic education events. A proficient web master who does not wish to immerse itself in this civic education movement or in civic education issues will not meet the threshold requirements of this RFP.

Guidelines

The grant is expected to commence o/a August 2000 and end a/o September 30, 2001. Grantee may subcontract for services related to Civnet, such as Web hosting, technical support, database support, and other services necessary to support the site, but no additional funds will be provided for these services.

Proposals must contain: (1) An outline for Civnet for the next year that will encompass the requirements detailed above; (2) a description of the human resources and capabilities of the applicant to demonstrate the necessary experience detailed above (if the applicant is a group/consortium or more than one individual, than it must be specified how tasks will be divided up, as well as the primary contact); and (3) a comprehensive pro forma budget delineating fees and rates for the various services required. The grant award under this RFP may not exceed $125,000. Any accompanying materials and URLs demonstrating prior work or supporting materials are welcome and encouraged.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines: Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Although Civnet will probably be maintained on IIP's host server, the grantee will be responsible for its own computer, communications, and office equipment for updating Civnet, accessing the Internet, emailing and FTPing files to the server, and contacting people within the CIVITAS network worldwide and those to whom grantee seeks to promote Civnet. IIP will not be responsible for supplying any equipment and communications services, including computers, modems, telephones, and Internet connections.

Requests for funds for commissioning articles on civic education, or for technical maintenance of Civnet, may be part of the proposal. The proposal may include modest commissions to participants in the CIVITAS network who follow professional developments that would interest their colleagues, but who ordinarily lack the time and incentive to communicate about these issues with their colleagues abroad.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number IIP/T–00–1.

FOR FURTHER INFORMATION, CONTACT: The Office of Thematic Programs, IIP/T/TP, Room 567, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone 202–619–4758, fax 202–619–6557, email *pagnew@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Pen Agnew on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfps*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Office of International Information Programs by 5 p.m. Washington, D.C. time on July 7, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and *number* copies of the application should be sent to: U.S. Department of State, SA–44, Office of International Information Programs, IIP/T/TP, Ref.: IIP/T–00–1, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries."

Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at *http://www.itpolicy.gsa.gov*.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as

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amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: May 16, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–13542 Filed 5–30–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3320]

Discretionary Grant Programs Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 2000 Applications

AGENCY: The Department of State invites application from domestic (U.S.) and international non-profit and educational organizations with interest and expertise in providing administrative and operational support to United States sponsored programs in Cyprus. The grantee will maintain and manage the Bicommunal Support Program (BSP) to be known as BSP 2000. The grant will be awarded through an evaluation process among the responding organizations.

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal, programmatic information, and closing dates for transmittal of applications for Fiscal Year 2000 award under a program administrated by the Department of State. The program seeks to implement, under the direction of the American Embassy, Cyprus, a minimum of twelve (12) bicommunal programs for Greek Cypriots and Turkish Cypriots over a fourteen-month period starting approximately forty-five days from the notification date of grant award, but not later than 5 September 2000. The actual number of programs will be determined by availability of funds and changes in political conditions on the island.

Organization Notice: This notice contains three parts. Part I list the closing date covered by this notice. Part II consist of a statement of work (SOW) for the program. Part III provides fiscal information and evaluation criteria for the program.

Part I—Closing Date for Transmittal of Applications

An application for award must be received by mail or hand delivered by 4 pm, local time, 30 June 2000.

Applications Delivered by Mail

An Application sent by mail must be addressed to: Dr. Holly Peirce, Bicommunal Coordinator, American Embassy Nicosia, FPO, AE 09836.

Any applications received by the advisory committee staff by mail after the closing time and date, will not be considered and will be returned unopened to the applicant.

It is the responsibility of the applicant to ensure any application is received on time.

Application Delivered by Hand

An application that is hand delivered must be to: American Embassy, North Gate, Metochiou and Ploutarchou Streets, Engomi, Nicosia, Cyprus, Attention: Holly Peirce (x2064) or Rita Shipillis (x2605).

The advisory committee staff will accept hand-delivered applications between 9 am and 4 pm, local time, daily, except Saturdays, Sundays, and Cypriot and U.S. Federal Holidays.

An application that is hand delivered will not be accepted after 4:00 PM on the closing date.

Part II—Program Information

Background

a. For decades, Cyprus has been an island divided by strife between the Greek Cypriot and Turkish Cypriot communities. As a result, Cyprus is a potential flash point between two NATO allies, Greece and Turkey. The U.S. is committed to finding a reasonable and practical federal solution to the Cyprus problem. We utilize two main means in our efforts. Track I focuses on bringing the leaders of the two communities to negotiate a resolution of their difficulties. Track II creates the atmosphere for the political leaders to reach a settlement, as well as encouraging cooperation after a political solution is reached, by bringing together Cypriot opinion and business leaders on projects and activities which emphasize a political settlement. The BSP is a key part of our Track II efforts.

b. The BSP was created in January 2000 to provide a funding mechanism consistent with the legislative intent of the Economic Support Funds (ESF) annual earmark for Cyprus.

c. The BSP mechanism will carry out U. S. Embassy-designed bicommunal programs that involve key people and institutions on politically sensitive topics in support of Track I policy goals. These programs will be distinct from but complementary to, the UNDP/UNOPS Bicommunal Development Program, which funds practical bicommunal projects and aims to strengthen institutional development and civil society, and with the Fulbright Commission-administered CASP, which funds scholarships, technical training and open-competition bicommunal programs.

d. The BSP program agent (the Grantee) will implement BSP programs by awarding sub-grants. In support of its base of operations, it will maintain a full-time resident representative in Cyprus in a Nicosia Field Office to organize bicommunal programs with input from the U. S. Embassy's Bicommunal Team, communicated via the Bicommunal Coordinator (BC) or other designee. Because of the political and economic conditions on the island, the full-time resident representative should be a locally hired American. After a grantee is selected, the U. S. Embassy BC will assist the grantee to identify qualified candidates on the island. Estimated recruitment cost of the Field Office Representative (FOR) (including advertising, travel, lodging, and per diem either for a grantee representative to come to Cyprus to select and train the FOR or for the FOR to go to the US for training) should be itemized in the budget submittal. The grantee has the option to send and provide a representative to hire and train the FOR in Cyprus, or conduct job interviews by phone and train the FOR at a location of their choice. After training, the grantee is to provide a facility and the FOR will establish and open the field office. The Grantee will implement bicommunal programs under the Embassy's direction, in furtherance of Track 1 policy goals. The BC or other Embassy designee will approve all sub-grants prior to award.

e. At present there is a Turkish-Cypriot ban on on-island bicommunal activities that necessitates that programs be conducted in the U.S. and third countries. When the ban is lifted, more programming will be done on-island. All programs will be bicommunal in nature; i.e. Greek Cypriots and Turkish Cypriots will receive training or attend conferences together. Occasionally it may be necessary to conduct separate, parallel training for both communities. Most training will be of a professional nature and focus on areas where both communities will work together in the future (*e.g.* environment, customs and immigration, finance, health, federal law enforcement, and federalism). Most training will include an element of conflict resolution skills. Groups will likely range from four to twenty participants off-island and more on-island. The typical program has lasted between one and three weeks, with an occasional smaller program of a longer duration. Potential workshop topics include, but are not limited to highway planning, fire fighting, emergency rescue techniques, NGO training, a Cyprus documentary, and ESOL teachers scholarships. The Bicommunal Coordinator will assist the FOR in bundling the selected programs for the purposes of RFPs.

Scope of Work

The Grantee shall implement the BSP program in accordance with the following:

The Grantee will:

(1) Provide at a minimum one permanent FOR, experienced in human resource development, institution strengthening, and technical assistance programming.

In addition:

(a) Grantee must be a Program Sponsor and be approved to write IAP66 forms for travel to the U. S. on J visas.

(b) Grantee must be aware that acquiring visas for Turkish Cypriots to most third-countries can be a lengthy process.

(c) Grantee must be aware that Turkish Cypriots must fly from Ercan airport to Turkey and onward from there. Most travel agents speak only Turkish, but are accustomed to working with U.S. Embassy programs.

(d) Grantee must be aware that Greek Cypriots fly from Larnaca airport. Most travel agents speak some English.

(e) The Joint Travel Regulations and the Fly America Act apply to all travel.

(2) Provide FOR(s) with administrative, logistics and programming support in the United States to carry out U.S.-based workshops.

The FOR(s) will:

(1) The FOR(s) must be competent in making travel and related arrangements, to include assisting Cypriots in acquiring visas to the U.S. and other countries, as well as arranging on-island speeches and programs.

(2) The FOR(s) must have excellent written and spoken English skills.

(3) The FOR(s) must seek and obtain policy guidance from the Embassy and demonstrate ability to work effectively in a highly charged and delicate political atmosphere. Familiarity with the Cyprus problem and/or experience working in internal conflict situations would be helpful.

(4) The FOR(s) must have the ability to function unimpeded in both communities (i.e., to cross the Green Line between the Greek Cypriot and Turkish Cypriot communities). Currently Cypriots are prevented from working in each other's communities. Due to the political sensitivity of the program, it is necessary that neither Greek Cypriots nor Turkish Cypriots be hired for this program. A local hire American citizen(s) should be contracted for the position. (See point d in Background section) Greek and/or Turkish language skills are desirable, but not necessary, as English is widely spoken in the south and among the target training audience. A translator may occasionally need to be employed for logistical dealings in the north.

Note: The Embassy will seek approval by the Government of Cyprus to grant the FOR administrative and technical (A and T) status, thereby enabling the Grantee to obtain a diplomatic pass, which facilitates travel to the north. If such status is granted to the Grantee, he/she becomes associated with the U.S. Embassy and will be asked adhere to U.S. Embassy standards of conduct. Note that spouses of diplomatic personnel have generally unimpeded access to the north and would not need A&T status.

Work Requirements

The Grantee will manage the U.S. Embassy Nicosia's BSP funds over a fourteen-month period. The Grantee will:

1. Take direction from the U.S. Embassy's Bicommunal Team via the Bicommunal Coordinator or other embassy designated individual.

2. Implement programs requested by the U.S. Embassy, via the Bicommunal Coordinator, to train U.S. Embassy-selected Greek Cypriot and Turkish Cypriot participants either in the U.S., Cyprus, or a third country.

3. Implement a minimum of twelve programs with the BSP 2000 funds within the fourteen-month period.

4. Coordinate with the Program Office any reprogramming of unspent BSP funds six months prior to the end of the grant.

5. Implement the program which will include, but is not limited to:

Cyprus-based:

(a) Draft Requests for Proposals (RFPs) for approval by the Bicommunal Coordinator and the U.S. Embassy's Bicommunal Team.

(b) Handle pre-departure logistics, including but not limited to: invitation letters, international air travel, health insurance for third-countries, passports, visas, military-service waivers, U.S. tax forms, and orientation in both communities.

(c) Consult with Bicommunal Coordinator and Public Affairs Officer (PAO) regarding favorable publicity opportunities.

(d) Issue participant reimbursements for miscellaneous expenses.

(e) Debrief participants in conjunction with Bicommunal Coordinator.

(f) Maintain accounting control over the funds provided by BSP by following standard U.S. accounting practices and the requirements of OMB Circulars A–122 and A–133.

(g) Obtain reports from sub-grantees within sixty (60) days of program completion for review by the Bicommunal Coordinator and U.S. Embassy's Bicommunal Team.

U.S.-based:

(h) Issue, receive and evaluate offers from RFPs submitted by potential sub-grantee(s). Provide recommendations to FOR and Bicommunal Coordinator.

(i) Negotiate package(s) with Embassy-selected sub-grantee.

(j) Acquire health insurance for participants in U.S.-based programs.

(k) Issue payments to sub-grantee(s).

(l) Maintain accounting control over the funds provided by BSP by following standard U.S. accounting practices and the requirements of OMB Circulars A–122 and A–133.

(m) Obtain reports from sub-grantees within sixty (60) days of program completion for review by the Bicommunal Coordinator and U.S. Embassy's Bicommunal Team.

6. Liaison with main office in United States.

7. Maintain office supervision of the Nicosia Field Office. The person

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responsible for supervising the Nicosia Field Office is required to visit Cyprus at least twice during the grant for consultations.

8. Ensure the Nicosia Field Office is adequately covered, either locally or from the U.S. office, during the local Grantee's vacations.

9. Obtain Embassy Nicosia concurrence for other employment, or membership in organizations, organized political or other activity which could give the impression of partiality to one side or the other.

10. Establish the Nicosia Field Office complete with phone, fax, email, and computer with Grantee resources and at the Grantee's expense.

11. Have the Nicosia Field Office functioning with the employee(s) in place and work space acquired no later than 45 days from the date which the Grantee is notified of its bid being accepted, or 5 September 2000, whichever is sooner. The Grantee will have at least half the RFPs announced by 29 September and at least two programs scheduled to begin no later than 1 December 2000.

Reporting Requirements

a. The Grantee shall furnish two short monthly reports (a Chronological Individual Program Update and a Financial Report) on the status of the programs (including, but not limited to: title, dates, location, purpose, numbers of participants, sub-grantee, cost of individual programs, remaining budget, and any problems encountered) of the requested workshops and activities to the Bicommunal Coordinator on or before the first Monday of each month. The Embassy Bicommunal Team, via the Bicommunal Coordinator or other designee, has the authority to request that additional information be included in the reports if deemed necessary by the Embassy.

b. Provide A/LM/AQM with one administrative copy of each report.

c. The Grantee shall furnish seven (7) copies of a quarterly report and a final report in a format similar to the monthly reports to the Embassy (Bicommunal Coordinator, ADMIN, PAO, ECON/USAID, POL, DCM, and Ambassador) and one (1) copy to A/LM/AQM and one (1) to the Cyprus Desk in Washington, DC. The quarterly reports shall include but are not limited to: title, dates, location, purpose, number of participants, sub-grantee, cost of individual programs, unspent budget funding, and any problems encountered by the requested workshops to the Bicommunal Coordinator no later than September 30, 2000, December 30, 2000, March 30, 2001, June 30, 2001, and September 30, 2001. The Embassy Bicommunal Team, via the Bicommunal Coordinator or other designee, may request additional information if required by the Embassy.

d. The Grantee will revise the Administrative Budget during the seventh month to accurately reflect the actual costs of the programs and assist in the budgeting of future programs. If actual costs have exceeded the fifteen (15%) percent of the original budget, a supplemental report must be submitted to the Grant Officer explaining the cause, with justification if possible, within ten working days of the report.

e. The Grantee will provide reports on each completed sub-grant, ensure that best practices are implemented by all participants, and make suggestions for programs/economies/efficiencies, as well as providing management and accounting reports to improve the operation of BSP.

f. Under no circumstances may the Grantee expend or obligate the U.S. government for costs in excess of this cooperative agreement.

Part III—Fiscal Information and Evaluation Criteria

Awards are contingent upon the availability of funds. Funding may be available at a level up to $1.6 million. The precise level of funding will not be known until legislative action is complete. In Fiscal Year 1999 the Congress appropriated "Economic Support Fund" of $15,000,000 to be used only for scholarships, administrative support of the scholarship program, bicommunal projects, and measures aimed at reunification of the island and designed to reduce tensions and promote peace and cooperation between the two communities on Cyprus. The funding for each area varies each year depending upon events and conditions on the island.

The Department cannot commit funds that may be appropriated in subsequent fiscal years. This potential multi-year program cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's grant to be made for up to three years after the grant's effective date.

Applications

Applications must be prepared and submitted in seven (7) copies in the form of a statement, the narrative part should not exceed 15 double spaced pages. A one page executive summary, an itemized budget and budget summary, and vitae of proposed staff must accompany this, with the exception of the FOR who may be hired locally after the award. Applicants may append other information they consider essential, although bulky submissions are discouraged and run the risk of being confusing, conflicting, and unclear. The one-page executive summary and budget submission should precede the narrative in the proposal.

The proposed program should be described fully, including goals and benefits for cooperation and reunification of the two communities. All applicants should provide detailed information about their plans and procedures for advertising, receiving, reviewing, and awarding a minimum of twelve programs, preferably in bundled RFPs.

A description of affirmative action policies and practices must be included in the application.

Applications should include certification of compliance with the provisions: (1) The Drug Free Workplace Act (PL 100–690) in accordance with Appendix C of 22 CFR 137, Subpart F; and (2) Section 319 of the Department of Interior and Related Agencies Appropriate Act (PL 101–121) in accordance with Appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Grants awarded to eligible organizations with less than four years experience in conducting international exchange programs will be limited to $60,000.

Budget

Applicants should familiarize themselves with Department of State grant regulations contained in 22 CFR 145, "Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations" OMB Circular A–110, "Grants and Agreements with Institutes of Higher Education * * * Uniform Administrative Requirements", and "Audits of Institutions of Higher Learning and other Non-profit Institutions" OMB Circular A–133, and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular A–21, "Cost Principles for Educational Institutions", or OMB Circular A–122, " Cost Principles for Non-profit Organizations";

(2) A detailed program budget indicating labor categories, number of employees proposed, hourly rates, and number of hours proposed, applicable overhead cost, administrative cost including rent, utilities, office equipment, travel expenses, supplies, etc, and overall indirect rates in cost and by percentage. It is the desire of the Department of State to have the maximum utilization of the limited funds used for program operation in lieu of administrative and indirect cost. A "Special Note" to offerors. While the grant may not be awarded on the basis of lowest overall cost, the program cost to administrative cost and the direct cost to indirect cost ratios will be an important issue in the final selection. Applicants requesting funds to supplement a program having other sources of support should submit a current budget for it showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts, when known, should be identified.

(3) The applicant's cost sharing proposal, if applicable containing appropriate details and cross-references to the requested budget.

(4) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address, and point of contact of the audit agency. Notice to Applicants: The threshold for grants that trigger an audit requirement under OMB Circular A–133 has been raised from $25,000.00 to $300,000.00.

(5) An indication of the offer's priorities if funding is being requested for more than one program or activity.

All payments will be made to the recipient through the Department of State.

Evaluation Factors and Proposal Selection

A Technical Evaluation Panel (TEP) will perform the technical review from the U.S. Embassy's Bicommunal Team in Nicosia.

A/LM/AQM will make the final selection after reviewing evaluation results and recommendations from the TEP. The applicant should describe its overall organizational and management structure. Domestic and international. It should describe how the capabilities of this structure will compliment actual operation and success of the program. It should describe all previous experience with similar programs and layout tentative operational plans that demonstrate complete understanding of the requirements of the Statement of Work. The proposal should reflect the institution's expertise in international affairs, especially those that pertain to the current political, economic, and social environment on the island of Cyprus. Since the BSP focuses on bringing together the Greek Cypriot and Turkish Cypriot communities on Cyprus, a perception of total impartiality in the application will also be a tantamount issue. The proposal should also demonstrate the applicant's overall management approach is rational and within reason. The technical elements of the proposal will be significantly more important than the cost proposal in the final selection process. The applicant should specifically address each of the evaluation criteria elements identified below. The proposal should address succinctly, but completely, the elements described below and follow the format requirements. Proposals should include the following items:

TAB A—Table of Contents and Executive Summary

TAB B—Narrative

The narrative should demonstrate proven ability to handle logistics as well as include the U.S. institution's mission and date of establishment.

TAB C—Budget Submission

The budget included with the proposal should be broken down into the administrative direct cost of the program and the indirect cost. Direct costs are those costs that are totally attributed to the cost of the program. Indirect costs are those costs that are attributed to the overall operation of the organization.

TAB D—Past Performance References

At a minimum, the applicant will provide the following information for three references:

- Name of the referenced organization
- Project name
- Project description
- Performance period of the contract/grant
- Amount of the contract/grant
- Technical contact person and telephone number for referenced organization
- Administrative contact person and telephone number for referenced organization

A/LM/AQM may contact representatives from the organizations cited in the examples to obtain information on the applicant's past performance. A/LM/AQM also may obtain past performance information from sources other than those identified by the applicant.

Resumes

Resumes of any key program staff, except the proposed FOR should be included in the submission. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. Resume should not exceed two pages.

The proposals will be considered on the following criteria in priority order:

A. Organizational Capabilities

1. Organizational experience and/or knowledge of the political, economic, and social environment on Cyprus.

2. Demonstrates sensitivity to political and cultural concerns of a divided Cyprus.

3. Demonstrates an understanding of the program.

4. Qualifications and experience of corporate staff.

5. The organizational structure and management capabilities of the offeror.

6. The international structure and experience of the offeror.

B. Program Capabilities

1. Ability to have Nicosia Field Office open by 21 August 2000.

2. Demonstrates understanding of program and experience and knowledge to provide the development of the Bicommunal programs.

C. Program/Administrative and Direct/Indirect Cost Comparisons and Overall Cost

Proposal Deadline

Seven copies of the proposal should be submitted by 30 June 2000, 4 pm local time to:

An Application sent by mail must be addressed to: Dr. Holly Peirce, Bicommunal Coordinator, American Embassy Nicosia, FPO, AE 09836.

An application that is hand delivered must be to: American Embassy, North Gate, Metochiou and Ploutarchou Streets, Engomi, Nicosia, Cyprus, Attention: Holly Peirce (x2064) or Rita Shipillis (x2605).

Scott McDonald,

Post Management Officer, Bureau of European Affairs, Department of State.

[FR Doc. 00–13538 Filed 5–30–00; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 3324]

Notice of Open Session of the Cultural Property Advisory Committee

Pursuant to the authority vested in me, under Department of State Delegation of Authority No. 236–2, the Cultural Property Advisory Committee will meet in open session from approximately 10 am to 12 noon, on Wednesday, June 28, 2000. The session will be held in the Trustees Room, 2nd Floor, The New York Public Library, Fifth Avenue and 42nd Street, New York, NY.

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This open session is solely for information exchange between the Cultural Property Advisory Committee and persons interested in the work of the Committee pursuant to 19 U.S.C. 2601, *et seq.*, the Convention on Cultural Property Implementation Act. Information about the Committee, the Act, and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property may be found at *http://exchanges.state.gov/education/culprop.*

The Committee will make presentations about its work and about implementation of the Act followed by a question and answer period. In order to allow the maximum participation possible, individuals will be limited to five minutes each for comments/questions.

Due to the Library's security procedures and limited seating, prior notification of attendance is required. Attendees must use the entrance on 42nd Street, between Fifth and Sixth Avenues. Interested persons should contact the Cultural Property Office at (202) 619–6612 by 5 pm (ESDT), June 23.

Dated: May 25, 2000.

William B. Bader,

Assistant Secretary of State for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–13543 Filed 5–30–00; 8:45 am]

BILLING CODE 4710–11–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dockets No. 301–62a and 301–100a]

Proceedings Concerning the European Communities' Regime for the Importation, Sale and Distribution of Bananas and the European Communities' Measures Concerning Meat and Meat Products

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments

SUMMARY: The interagency Section 301 Committee is soliciting written comments on possible modifications to actions taken by the United States as a result of the European Communities' (EC) failure to implement the recommendations and rulings of the World Trade Organization (WTO) Dispute Settlement Body in proceedings regarding (i) the EC's regime for the importation, sale, and distribution of bananas (the EC-Bananas case) and (ii) the EC's ban on the import of U.S. meat and meat products produced from animals treated with certain hormones (the EC-Beef Hormones case). Comments are requested with respect to the products listed in the annexes to this notice. The Section 301 Committee will consider the comments received in response to this notice, as well as comments previously received with respect to particular products. Accordingly, persons who have previously submitted comments with respect to particular products are requested not to resubmit such comments, although persons may wish to submit updates to previously submitted comments. The relevant statutory provision provides that the actions taken by the United States in the Beef and Bananas cases should be modified, unless (1) the USTR and the affected U.S. industries agree that such changes are unnecessary, or (2) resolution of the case is imminent.

DATES: To be assured of consideration, written comments should be submitted by 5 p.m. on June 14, 2000.

ADDRESSES: Comments should be addressed to: Chairman, Section 301 Committee, Attn: Implementation of WTO Recommendations, Room 100, 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395–3419, for questions concerning procedures for filing submissions in response to this notice; Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395–6127, for questions concerning the EC-Bananas case or the EC-Beef Hormones case; or William Busis, Associate General Counsel (202) 395–3150, for questions concerning procedures under Section 301 or the WTO Agreement.

SUPPLEMENTARY INFORMATION:

A. The EC-Bananas Case

The EC's regime governing the importation, sale, and distribution of bananas is discriminatory and has harmed the economic interests of the United States by denying to U.S. companies a major portion of their banana distribution business. WTO dispute settlement panels have confirmed that the EC's banana regime is inconsistent with the EC's obligations under the WTO Agreement. Furthermore, WTO arbitrators have determined that the EC's banana regime has nullified or impaired U.S. benefits under the WTO Agreement in the amount of $191.4 million per year. The procedural and substantive background of the U.S. investigation under Sections 301 to 309 of the Trade Act of 1974, as amended ("Section 301") and the associated WTO proceedings concerning the EC's banana regime is set forth in prior notices (64 FR 19,209, 63 FR 71,665, 63 FR 63,099, 63 FR 56,687, and 63 FR 8248)

As a result of the EC's failure to comply with recommendations and rulings of the WTO Dispute Settlement Body (DSB) to bring its discriminatory banana regime into compliance with WTO obligations, on April 19, 1999 the DSB authorized the United States to suspend the application to the EC, and member States thereof, of WTO tariff concessions and related obligations covering trade in an amount of $191.4 million per year. Pursuant to that authorization, the USTR announced a list of EC products, reprinted in Annex I to this notice, that would be subject to a 100 percent rate of duty (64 FR 19209).

Since that time, the United States and the EC have continued to consult in an effort to resolve this dispute. However, the EC has still failed to bring its banana regime into compliance with the EC's obligations under the WTO Agreement.

B. The EC-Beef Hormones Case

The EC bans the import of beef and beef products produced from animals to which certain hormones have been administered, despite the facts that such products have been consumed safely for decades and that no scientific basis exists for imposing such a ban. The effect of the EC ban is to prohibit the import of substantially all U.S.-produced beef and beef products. WTO panels have confirmed that the EC has no scientific basis for banning imports of U.S. beef, and that the EC ban is inconsistent with the EC's WTO obligations. Furthermore, WTO arbitrators have determined that the EC's import ban on U.S. beef and beef products has nullified or impaired U.S. benefits under the WTO Agreement in the amount of $116.8 million each year. The procedural and substantive background of the U.S. investigation under Section 301 and the associated WTO proceedings concerning the EC's beef import ban is set forth in prior notices (64 FR 40,638 and 64 FR 14,486).

As a result of the EC's failure to comply with DSB recommendations and rulings concerning its beef import ban, on July 26, 1999 the DSB authorized the United States to suspend the application to the EC, and member States thereof, of WTO tariff concessions and related obligations covering trade in an amount of $116.8 million per year. Pursuant to that authorization, the USTR announced a list of EC products, reprinted in Annex III to this notice, that would be subject to a 100 percent rate of duty (64 FR 40638).

Since that time, the United States and the EC have continued to consult in an effort to resolve this dispute. However, the EC has still failed to bring its measures governing the import of U.S. beef and beef products into compliance with the EC's obligations under the WTO Agreement.

C. Section 407 of the Trade and Development Act of 2000

Section 407 of the Trade and Development Act of 2000, Pub. L. 106–200, amends Section 301 by requiring the USTR to review retaliation lists or other actions under Section 301 and to revise them, in whole or in part, 120 days after their initial effective date, and every 180 days thereafter. The provision applies to actions taken under Section 301—such as the above-described actions in the EC-Bananas and the EC-Beef Hormones cases—as the result of a WTO Member's failure to implement DSB recommendations in a dispute settlement proceeding.

Section 407 provides exceptions in the event that (1) the USTR and the Section 301 petitioner (or, if USTR self-initiated the Section 301 investigation, the affected U.S. industry) agree that changing the retaliation list or other action under Section 301 is unnecessary, or (2) resolution of the case is imminent.

Section 407 provides that the standard for making changes is to select changes that are most likely to result in implementation of the DSB recommendations, or in achieving some other satisfactory resolution of the dispute. The conference report accompanying the legislation confirms that Congress intends for the USTR, in accordance with WTO dispute settlement rules, to ensure that the level of retaliation remains within the level authorized by the WTO DSB.

The provision also requires that retaliation lists—both initially and after each of the periodic changes—include reciprocal goods of the U.S. industries affected by a WTO Member's noncompliance. This reciprocity requirement applies to the retaliatory action in the EC-Beef Hormones case. However, Section 407 includes an exception that makes the reciprocity requirement inapplicable to the retaliatory action in the EC-Bananas case.

The Trade and Development Act of 2000 was enacted on May 18, 2000, and Section 407 of the Act entered into force on that date. Section 407 does not include a transition clause specifying the schedule for changes in existing retaliation lists (that is, the lists in the EC-Bananas and EC-Beef Hormones cases). The conference report accompanying the legislation states that the conferees expect initial action within 30 days after entry into force. The Section 301 Committee will work to develop recommendations consistent with this time frame and with the need to obtain and to examine public comments.

D. Request for Public Comments

The Section 301 Committee closely monitors actions taken under Section 301 to ensure that such actions remain practicable and effective in terms of obtaining the elimination of the acts, policies, or practices of foreign governments that are the subject of the 301 investigation. To assist in this monitoring and in the implementation of Section 407 of the Trade and Development Act of 2000, the USTR seeks public comments with respect to the products on the lists in the Annexes to this notice.

All products listed in the Annexes were included on preliminary lists with respect to which USTR had previously sought public comment. The Section 301 Committee will consider the comments received in response to this notice, as well as comments previously received with respect to particular products. Accordingly, persons who have previously submitted comments with respect to particular products are requested not to resubmit such comments, although persons may wish to submit updates to previously submitted comments. The Section 301 Committee will consider all public comments in developing its recommendations to the interagency Trade Policy Staff Committee, which in turn will provide recommendations to the United States Trade Representative (USTR).

Annex I consists of products, drawn from the list in Annex II, currently subject to 100 percent duties as a result of the EC's noncompliance in the EC-Bananas case. Annex II consists of a product list which the United States included in a request to the WTO DSB for authorization to suspend WTO concessions in connection with the EC-Bananas case. Annex III consists of products, drawn from the list in Annex IV, currently subject to 100 percent duties as a result of the EC's noncompliance in the EC-Beef Hormones case. Annex IV consists of a product list which the United States included in a request to the WTO DSB for authorization to suspend WTO concessions in connection with the EC-Beef Hormones case.

Concerning products currently subject to 100 percent duties (listed in Annex I for the EC-Bananas case and Annex III for the EC-Beef Hormones case), the Section 301 Committee invites comments with respect to whether the products should continue to be subject to such duties, and with respect to whether the current 100 percent rate of duty is high enough to have the intended effect of being prohibitive. Concerning products on the attached lists not currently subject to 100 percent duties (included in Annex II for the EC-Bananas case and Annex IV for the EC-Beef Hormones case), the Section 301 Committee invites comments with respect to whether the products should be subject to 100 percent duties, and with respect to whether a 100 percent rate of duty would be high enough to have the intended effect of being prohibitive.

The comments sought by the Section 301 Committee with respect to particular products include (i) whether maintaining or imposing prohibitive duties on a particular product would be practicable or effective in terms of encouraging a favorable resolution of the dispute, and (ii) whether maintaining or imposing prohibitive duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses.

In the annexed products lists, the items with respect to which comments are requested are (1) classified in the indicated headings and the subheadings of the Harmonized Tariff Schedule of the United States (HTS); and (2) the product of the indicated member States of the European Communities. The product descriptions in the annexes are for information purposes only; the product descriptions are not intended to delimit in any way the scope of products that are the subject of this notice. Rather, the numerical headings and subheadings of the HTS listed in the annexes govern the scope of this notice. In the instances where a 4-digit HTS heading appears in the left column of the lists, comments are requested with respect to any of the products classified in any of the 8-digit subheadings appearing in the HTS indented under those 4-digit headings.

To be assured of consideration, written comments should be submitted by 5:00 p.m. on June 14, 2000.

Submissions must include on the first page a clear reference in bold and/or underlining to: (1) to actions taken in the EC-Bananas case, the EC-Beef Hormones case, or both, and (2) the HTS number(s) and product(s) which are the subject of the submission. Submissions

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must state clearly the position taken and describe with particularity the supporting rationale, be in English, and be provided in twenty copies to: Chairman, Section 301 Committee, Attn: Implementation of WTO Recommendations, Room 100.

Written comments will be placed in files (Docket No. 301–62a for the EC-Beef Hormones case and No. 301–100a for the EC-Bananas case) open to public inspection pursuant to 15 CFR § 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR § 2006.15. Persons wishing to submit business confidential information must certify in writing that such information is confidential in accordance with 15 CFR § 2006.15(b), and such information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of twenty copies and must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary will be placed in the docket that is open to public inspection.

An appointment to review Docket Nos. 301–62a and 301–100a may be made by calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101 of the Office of the United States Trade Representative.

Dated: May 25, 2000.

William L. Busis,

Chairman, Section 301 Committee.

BILLING CODE 3190–01–U

ANNEX I

EC-Bananas - List of Products Currently Subject to Increased Duties

The products listed below are currently subject to 100 percent *ad valorem* duties as a result of the EC's noncompliance in the *EC-Bananas* case. Each of the products listed below is under consideration for continued inclusion on a revised retaliation list, and for the imposition of duties above the current 100 percent *ad valorem* rate. In particular, increased tariffs may continue to be applied to, or may be raised with respect to, articles that are (i) classified in the numerical subheadings of the Harmonized Tariff Schedule of the United States (HTS) listed below and (ii) products of one or more of the indicated member States of the European Communities. In all cases, the tariff nomenclatures in the HTS for the subheadings listed below are definitive; the product descriptions in this list are for **information purposes only**. The descriptions below are not intended to delimit in any way the scope of the products subject to increased duties.

Products of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom:

HTS No.	Product Description
33073050	Bath preparations, other than bath salts
42022215	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics
42023210	Articles of a kind normally carried in the pocket or handbag, with outer surface of reinforced or laminated plastics
48055000	Uncoated felt paper and paperboard in rolls or sheets
48192000	Folding cartons, boxes and cases of noncorrugated paper or paperboard
49119120	Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation
63022190	Bed linen, not knit or crochet, printed, of cotton, not containing any embroidery, lace, braid, edging, trimming, piping or applique work, not napped
85072080	Lead-acid storage batteries other than of a kind used for starting piston engines or as the primary source of power for certain electric vehicles principally designed for the transport of up to nine persons

Products of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom (same as above country list, except Italy):

85167100	Electrothermic coffee or tea makers, for domestic purposes

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ANNEX II

EC-Bananas - List of Products under Consideration for the Imposition of Increased Duties

The product list below **includes** the products, listed in Annex I, which are currently subject to increased duties as a result of the EC's noncompliance in the *EC-Bananas* case. All of the remaining products listed below are under consideration for the new imposition of increased duties of 100 percent *ad valorem* or more. In particular, increased tariffs may be applied to articles that are (i) classified in the numerical subheadings of the Harmonized Tariff Schedule of the United States (HTS) listed below and (ii) products of one or more of the indicated member States of European Communities. In all cases, the tariff nomenclatures in the HTS for the subheadings listed below are definitive; the product descriptions in this list are for **information purposes only**. The descriptions below are not intended to delimit in any way the scope of the products that would be subject to increased duties.

Products of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom:

HTS Number	Product Description
02101900	Meat of swine, other than hams, shoulders, bellies (streaky) and cuts thereof, salted, in brine, dried or smoked
04069057	Pecorino cheese, from sheep's milk, in original loaves, not suitable for grating
19053000	Sweet biscuits; waffles and wafers
33073050	Bath preparations, other than bath salts
34060000	Candles, tapers and the like
39202000	Nonadhesive plates, sheets, film, foil and strip, noncellular, not reinforced or combined with other materials, of polymers of propylene
42022215	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics
42023210	Articles of a kind normally carried in the pocket or handbag, with outer surface of reinforced or laminated plastics
48055000	Uncoated felt paper and paperboard in rolls or sheets
48192000	Folding cartons, boxes and cases of noncorrugated paper or paperboard
49090040	Printed cards (except postcards) bearing personal greetings, messages or announcements, with or without envelopes or trimmings
49119120	Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation
61101010	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, wholly of cashmere
63022190	Bed linen, not knit or crochet, printed, of cotton, not containing any embroidery, lace, braid, edging, trimming, piping or applique work, not napped
85072080	Lead-acid storage batteries other than of a kind used for starting piston engines or as the primary source of power for certain electric vehicles principally designed for the transport of up to nine persons
85167100	Electrothermic coffee or tea makers, for domestic purposes
94051080	Chandeliers and other electric ceiling or wall lighting fittings (other than used for public spaces), not of base metal

ANNEX III

EC-Beef Hormones - List of Products Currently Subject to Increased Duties

The products listed below are currently subject to 100 percent *ad valorem* duties as a result of the EC's noncompliance in the *EC-Beef Hormones* case. Each of the products listed below is under consideration for continued inclusion on a revised retaliation list, and for the imposition of duties above the current 100 percent *ad valorem* rate. In particular, increased tariffs may continue to be applied to, or may be raised with respect to, articles that are (i) classified in the numerical headings and subheadings of the Harmonized Tariff Schedule of the United States (HTS) listed below and (ii) products of one or more of the indicated member States of the European Communities. In the instances where a 4-digit HTS heading appears in the left column of this list, products classified in any of the 8-digit subheadings appearing in the HTS under those 4-digit headings are currently subject to increased duties. In all cases, the tariff nomenclatures in the HTS for the headings and subheadings listed below are definitive; the product descriptions in this list are for **information purposes only**. The descriptions below are not intended to delimit in any way the scope of the products that would be subject to increased duties.

Products of Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden:

HTS	Description
0201	MEAT OF BOVINE ANIMALS, FRESH OR CHILLED
0202	MEAT OF BOVINE ANIMALS, FROZEN
02031100	Meat of swine (pork), fresh or chilled, carcasses and half-carcasses
02031210	Meat of swine (pork), fresh or chilled, hams and shoulders and cuts thereof, bone in, processed
02031290	Meat of swine (pork), fresh or chilled, hams and shoulders and cuts thereof, bone in, other
02031920	Meat of swine (pork), fresh or chilled, other, processed
02031940	Meat of swine (pork), fresh or chilled, other
02032100	Meat of swine (pork), frozen, carcasses and half-carcasses
02032210	Meat of swine (pork), frozen, hams and shoulders and cuts thereof, bone in, processed
02032290	Meat of swine (pork), frozen, hams and shoulders and cuts thereof, bone in, other
02061000	Edible offal of bovine animals, fresh or chilled
02062100	Edible offal of bovine animals, frozen, tongues
02062200	Edible offal of bovine animals, frozen, livers
02062900	Edible offal of bovine animals, frozen, other
04064020	Roquefort cheese in original loaves, not grated or powdered, not processed
04064040	Roquefort cheese, other than in original loaves, not grated or powdered, not processed
07031040	Onions, other than onion sets or pearl onions not over 16 mm in diameter, and shallots, fresh or chilled
07095200	Truffles, fresh or chilled
07129010	Dried carrots, whole, cut, sliced, broken or in powder, but not further prepared

16022020	Prepared or preserved liver of goose
16022040	Prepared or preserved liver of any animal other than of goose
19054000	Rusks, toasted bread and similar toasted products
20098060	Juice of any other single fruit, (including cherries and berries), concentrated or not concentrated
21013000	Roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof
21033040	Prepared mustard

Products of France, the Federal Republic of Germany, or Italy:

20021000	Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid

Products of France or the Federal Republic of Germany:

05040000	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof
21041000	Soups and broths and preparations therefor
55101100	Yarn (other than sewing thread) containing 85% or more by weight of artificial staple fibers, singles, not put up for retail sale

Products of France:

15059000	Fatty substances derived from wool grease (including lanolin)
18063100	Chocolate and other cocoa preparations, in blocks, slabs or bars, filled, not in bulk
20079905	Lingonberry and raspberry jams
02101100	Hams, shoulders and cuts thereof with bone in, salted, in brine, dried or smoked
35061050	Products suitable for use as glues or adhesives, not exceeding 1 kg, put up for retail sale

ANNEX IV

EC-Beef Hormones - List of Products under Consideration for the Imposition of Increased Duties

The product list below **includes** the products, listed in Annex III, which are currently subject to increased duties as a result of the EC's noncompliance in the *EC-Beef Hormones* case. All of the remaining products listed below are under consideration for the new imposition of increased duties of 100 percent *ad valorem* or more. In particular, increased tariffs may be applied to articles that are (i) classified in the numerical headings and subheadings of the Harmonized Tariff Schedule of the United States (HTS) listed below and (ii) products of one or more of the member States of European Communities. In the instances where a 4-digit HTS heading appears in the left column of this list, products classified in any of the 8-digit subheadings appearing in the HTS under those 4-digit headings may be subject to increased duties. In all cases, the tariff nomenclatures in the HTS for the headings and subheadings listed below are definitive; the product descriptions in this list are for **information purposes only**. The descriptions below are not intended to delimit in any way the scope of the products that would be subject to increased duties.

HTS	Description
0201	MEAT OF BOVINE ANIMALS, FRESH OR CHILLED
0202	MEAT OF BOVINE ANIMALS, FROZEN
0203	MEAT OF SWINE (PORK), FRESH, CHILLED OR FROZEN
0206	EDIBLE OFFAL OF BOVINE ANIMALS, SWINE, SHEEP, GOATS, HORSES ETC., FRESH, CHILLED OR FROZEN
0207	MEAT AND EDIBLE OFFAL OF POULTRY (CHICKENS, DUCKS, GEESE, TURKEYS AND GUINEAS), FRESH, CHILLED OR FROZEN
02101100	Hams, shoulders and cuts thereof with bone in, salted, in brine, dried or smoked
02101200	Bellies (streaky) and cuts thereof of swine, salted, in brine, dried or smoked
02102000	Meat of bovine animals, salted, in brine, dried or smoked
02109020	Meat and edible offal of chickens, ducks, geese, turkeys and guineas, salted, in brine, dried or smoked; flour and meal of these animals
02109040	Meat and edible offal nesoi, salted, in brine, dried or smoked; flour and meal, nesoi
04064020	Roquefort cheese in original loaves, not grated or powdered, not processed
04064040	Roquefort cheese, other than in original loaves, not grated or powdered, not processed
05040000	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof
06039000	Cut flowers and flower buds, suitable for bouquets or ornamental purposes, dried, dyed, bleached, impregnated or otherwise prepared
06049100	Foliage, branches and other parts of plants without flowers or flower buds, and grasses, suitable for bouquets or ornamental purposes, fresh
06049930	Foliage, branches, parts of plants without flowers or buds, and grasses, suitable for bouquets or ornamental purposes, dried or bleached
07020020	Tomatoes, fresh or chilled, entered during Mar.1 to July 14, or the period Sept.1 to Nov.14 in any year

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HTS	Description
07020040	Tomatoes, fresh or chilled, entered during July 15 to Aug.31 in any year
07020060	Tomatoes, fresh or chilled, entered from Nov. 15 thru the last day of Feb. of the following year
07031040	Onions, other than onion sets or pearl onions not over 16 mm in diameter, and shallots, fresh or chilled
07095200	Truffles, fresh or chilled
07129010	Dried carrots, whole, cut, sliced, broken or in powder, but not further prepared
07129074	Dried tomatoes, in powder
07129075	Dried tomatoes, whole, cut, sliced, broken or in powder, but not further prepared
07129078	Dried tomatoes, whole, cut, sliced or broken but not further prepared
08024000	Chestnuts, fresh or dried, shelled or in shell
09042020	Paprika, dried or crushed or ground
10040000	Oats
11041200	Rolled or flaked grains of oats
11042200	Grains of oats, hulled, pearled, clipped, sliced, kibbled or otherwise worked, but not rolled or flaked
15059000	Fatty substances derived from wool grease (including lanolin)
1601	SAUSAGES AND SIMILAR PRODUCTS, OF MEAT, MEAT OFFAL OR BLOOD; FOOD PREPARATIONS BASED ON THESE PRODUCTS
16021000	Homogenized preparations of meat, meat offal or blood, nesoi
16022020	Prepared or preserved liver of goose
16022040	Prepared or preserved liver of any animal other than of goose
16023100	Prepared or preserved meat or meat offal of turkeys, nesoi
16023200	Prepared or preserved meat or meat offal of chickens, nesoi
16023900	Prepared or preserved meat or meat offal of ducks, geese or guineas, nesoi
16024110	Prepared or preserved pork ham and cuts thereof, containing cereals or vegetables
16024120	Pork hams and cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers
16024190	Prepared or preserved pork hams and cuts thereof, not containing cereals or vegetables, nesi
16024220	Pork shoulders and cuts thereof, boned and cooked and packed in airtight containers
16024240	Prepared or preserved pork shoulders and cuts thereof, other than boned and cooked and packed in airtight containers
16024910	Prepared or preserved pork offal, including mixtures
16024920	Pork other than ham and shoulder and cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers
16024940	Prepared or preserved pork, not containing cereals or vegetables, nesoi

HTS	Description
16024960	Prepared or preserved pork mixed with beef
16024990	Prepared or preserved pork, nesoi
16025005	Prepared or preserved offal of bovine animals
16025009	Prepared or preserved meat of bovine animals, cured or pickled, not containing cereals or vegetables
16025010	Corned beef in airtight containers
16025020	Prepared or preserved beef in airtight containers, other than corned beef, not containing cereals or vegetables
16025060	Prepared or preserved meat of bovine animals, not containing cereals or vegetables, nesoi
16025090	Prepared or preserved meat of bovine animals, containing cereals or vegetables
17041000	Chewing gum, not containing cocoa, whether or not sugar-coated
17049025	Sugar confectionary cough drops, not containing cocoa
18063100	Chocolate and other cocoa preparations, in blocks, slabs or bars, filled, not in bulk
19054000	Rusks, toasted bread and similar toasted products
20021000	Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid
20029000	Tomatoes, other than whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid
20029040	Tomatoes, in powder, prepared or preserved otherwise than by vinegar or acetic acid
20029080	Tomatoes (including paste and puree) prepared or preserved otherwise than by vinegar or acetic acid, nesoi
20079905	Lingonberry and raspberry jams
20083042	Satsumas, prepared or preserved, in airtight containers, aggregate quantity n/o 40,000 metric tons/calendar yr
20083046	Satsumas, prepared or preserved, in airtight containers, aggregate quantity o/40,000 metric tons/calendar yr
20084000	Pears, otherwise prepared or preserved, nesoi
20087000	Peaches (excluding nectarines), otherwise prepared or preserved, nesoi
20096000	Grape juice (including grape must), concentrated or not concentrated
20098060	Juice of any other single fruit, nesoi, (including cherries and berries), concentrated or not concentrated
20099040	Mixtures of fruit juices, or mixtures of vegetable and fruit juices, concentrated or not concentrated
21013000	Roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof
21033040	Prepared mustard
21041000	Soups and broths and preparations therefor
22011000	Mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored
23099010	Mixed feed or mixed feed ingredients used in animal feeding
35061050	Products suitable for use as glues or adhesives, nesoi, not exceeding 1 kg, put up for retail sale
55041000	Artificial staple fibers, not carded, combed or otherwise processed for spinning, of viscose rayon

HTS	Description
55101100	Yarn (other than sewing thread) containing 85% or more by weight of artificial staple fibers, singles, not put up for retail sale
85102000	Hair clippers, with self-contained electric motor
87112000	Motorcycles (incl. mopeds) and cycles, fitted w/recip. internal-combustion piston engine w/capacity o/50 but n/o 250 cc
87113000	Motorcycles (incl. mopeds) and cycles, fitted w/recip. internal-combustion piston engine w/capacity o/250 but n/o 500 cc

[FR Doc. 00–13548 Filed 5–26–00; 8:45 am]
BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on February 16, 2000 (65 FR 7913).

DATES: Comments must be submitted on or before June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. sections 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On February 16, 2000, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 65 FR 7913. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Railroad Locomotive Safety Standards and Event Recorder.

OMB Control Number: 2130–0004.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): FRA F 6180.49A.

Abstract: Under regulations issued pursuant to Congressional mandate, 49 U.S.C. 20137, trains must be equipped with event recorders. Event recorders are devices that record train speed, hot box detection, throttle position, brake application, brake operations, time and signal conditions, and any other function that FRA considers necessary to monitor the safety of train operations. Event recorders provide FRA with information about how trains are operated, and if a train is involved in an accident, the devices afford data to FRA and other investigators necessary to determine the probable causes of the accident. Moreover, under 49 CFR Part 229, railroads are required to conduct daily, periodic, annual, and biennial tests of locomotives to measure the level of compliance with Federal regulations. The collection of information requires railroads to prepare written records indicating the repairs needed, the person making the repairs, and the type of repairs made. This information provides a locomotive engineer with information that the locomotive has been inspected and is in proper condition for use in service, and enables FRA to monitor compliance with the regulatory standards.

Title: Railroad Signal System Requirements.

OMB Control Number: 2130–0006.

Type of Request: Extension of the currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.14; FRA F 6180.47.

Abstract: The regulations pertaining to railroad signal systems are contained in 49 CFR Parts 233 (Signal System Reporting Requirements), 235 (Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System), and 236 (Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Systems, Devices, and Appliances). Section 233.5 provides that each railroad must report to FRA within 24 hours after learning of an accident or incident arising from the failure of a signal appliance, device, method, or system to function or indicate as required by Part 236 of this title that

results in a more favorable aspect than intended or other condition hazardous to the movement of a train. Section 233.7 sets forth the specific requirements for reporting signal failures within 15 days in accordance with the instructions printed on Form FRA F 6180.14. Finally, Section 233.9 sets forth the specific requirements for the "Signal System Five Year Report." It requires that every five years each railroad must file a signal system status report. The report is to be prepared on a form issued by FRA in accordance with the instructions and definitions provided.

Title 49, part 235 of the Code of Federal Regulations, sets forth the specific conditions under which FRA approval of modification or discontinuance of railroad signal systems is required and prescribes the methods available to seek such approval. The application process prescribed under Part 235 provides a vehicle enabling FRA to obtain the necessary information to make logical and informed decisions concerning carrier requests to modify or discontinue signaling systems. Section 235.5 requires railroads to apply for FRA approval to discontinue or materially modify signaling systems. Section 235.7 defines "material modification" and identifies those changes that do not require agency approval. Section 235.8 provides that any railroad may petition FRA to seek relief from the requirements provided under 49 CFR Part 236.

Sections 236.10, 235.12, and 235.13 describe where the petition must be submitted, what information must be included, the organizational format, and the official authorized to sign the application. Section 235.20 sets forth the process for protesting the granting of a carrier application for signal changes or relief from the rules, standards, and instructions. This section provides the information that must be included in the protest, the address for filing the protest, the time limit for filing the protest, and the requirement that a person requesting a public hearing explain the need for such a forum. Section 236.110 required that the test results of certain signaling apparatus be recorded and specifically identify the tests required under §§ 236.102-109; §§ 236.376 to 236.387; §§ 236.576, 236.577; and §§ 236.586–236.589. Section 236.110 further provides that the test results must be recorded on pre-printed or computerized forms provided by the carrier and that the forms show the name of the railroad; place and date of the test conducted; equipment tested; tests results; repairs, replacements, and adjustments made; and the condition of the apparatus. This section also requires that the employee conducting the test must sign the form and the record be retained at the office of the supervisory official having proper authority. Results of tests made in compliance with § 236.587 must be retained for 92 days, and results of all other tests must be retained until the next record is filed, but in no case less than one year. Additionally, § 236.587 requires each railroad to make a departure test of cab signal, train stop, or train control devices on locomotives before that locomotive enters the equipped territory. This section further requires that whoever performs the test must certify in writing that the test was properly performed. The certification and the test results must be posted in the locomotive cab with a coy of the certification and test results retained at the office of a supervisory official having proper authority. However, if it is impractical to leave a copy of the certification and test results at the location of the test, the test results must be transmitted to either the dispatcher or one other designated official at each location, who must keep a written record of the test results and the name of the person performing the test. All records prepared under this section are required to be retained for 92 days. Finally, Section 236.590 requires the carrier to clean and inspect the pneumatic apparatus of automatic train stop, train control, or cab signal devices on locomotives every 736 days, and to stencil, tag, or otherwise mark the pneumatic apparatus indicating the last cleaning date.

Annual Estimated Burden Hours: 480,326 hours.

Title: Locomotive Certification (Noise Compliance Regulations).

OMB Control Number: 2130–0527.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: On January 14, 1976, the Environmental Protection Agency (EPA) issued noise emission standards pursuant to the Noise Control Act of 1972. The standards, 40 CFR Part 201, establish limits on the noise emissions generated by railroad locomotives under both stationary and moving conditions. Section 17 of the Noise Control Act also requires the Secretary of Transportation to enforce these regulations and promulgate separate regulations to ensure compliance with the same. On December 23, 1983, FRA published 49 CFR Part 210 to ensure compliance with the EPA standards. The certification and testing data ensure that locomotives built after December 31, 1979 have passed prescribed decibel standards for noise emissions under EPA regulations.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, N.W., Washington, D.C., 20503; Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on May 24, 2000.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–13534 Filed 5–30–00; 8:45 am]
BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6270]

Notice of Public Meeting and Internet Forum on the Safety Implications of Driver Distraction When Using In-Vehicle Technologies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting and internet forum.

SUMMARY: NHTSA is holding two public events that focus on the potential safety implications associated with driver distraction while using advanced in-vehicle technologies that receive, transmit, or display various types of information. The devices of interest include those that allow drivers to phone, fax, obtain route guidance, view infrared images on a head-up display, and use the Internet and other such devices.

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One event is an international Internet Forum which is expected to begin on July 5, 2000, and end on August 11, 2000. The Internet Forum will provide an opportunity for technical experts as well as the general public to download technical papers, ask questions about the papers, relate their experiences regarding the use of in-vehicle devices and their impact on safety in general and driving performance in particular, and participate in exchange of views on related technical issues. Researchers and technical experts are invited to submit papers for inclusion in the Internet Forum that focus on characterizing the current and future safety impact of driver distraction when using in-vehicle technologies, evaluating how device characteristics affect vehicle safety and determine the impact of driver distraction on safe operation of vehicles, identifying and evaluating approaches to minimize driver distraction, and recommending needed research and other safety initiatives. Overviews of ongoing research programs and descriptions of industry practices are also welcome.

NHTSA will also hold a public meeting on Tuesday, July 18, 2000, at which representatives of the public, industry, government, and safety groups are invited to share viewpoints, information, and recommendations regarding strategies to minimize potential adverse effects of driver distraction on safety when using such telematic devices. In particular, NHTSA is interested in hearing about different technologies and devices being proposed for use in vehicles which may have a bearing on safe driving, viewpoints regarding the roles of various entities in promoting best practices in the design of those devices and their use, approaches for evaluating the safety impacts of such systems, and what new research and other safety initiatives are needed. NHTSA will utilize the information from the public meeting and Internet Forum as a basis for discussions at a Technical Workshop of invited researchers and technology developers to be scheduled at a later date. The goal of the Technical Workshop is to generate recommendations for distraction reducing strategies, data needs, and research methodologies.

Persons interested in attending the public meeting might also be interested in attending the National Intelligent Vehicle Initiative Meeting, July 19–20, 2000, which will be held at the Ronald Reagan Building and International Trade Center in Washington, DC. This meeting, sponsored by the U.S. Department of Transportation and administered by SAE International, will promote public/stakeholder awareness of efforts to improve traffic safety using intelligent vehicle technologies, showcase accomplishments, and validate research and development efforts. Further information on this meeting can be found at http://www.its.dot.gov.

DATES: *Internet Forum:* The Internet Forum will be open for registration on June 23, 2000, while the technical papers will be posted on July 5, 2000. The Forum will remain active until August 11, 2000. Thereafter, the information will remain available through NHTSA's Web site for viewing only.

Public Meeting: NHTSA will hold the public meeting on Tuesday, July 18, 2000, starting at 8:30 a.m. and ending at about 5:00 p.m. or earlier as determined by the number of presenters. A preliminary agenda will be posted on NHTSA's Web site at URL http://www.nhtsa.dot.gov/nhtsa/announcements/meetings/, by June 30, 2000.

ADDRESSES: *Internet Forum:* The Internet Forum Web site address will be www.driverdistraction.org.

Public Meeting: The public meeting will be held in Room 2230, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590.

Written Comments: If you wish to submit written comments on the issues related to distraction or any topics discussed at the public meeting, those comments should be submitted to Docket No. NHTSA–99–6270 at the following address: Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. Docket hours for hand delivery are from 9:00 a.m. to 5:00 p.m. on weekdays. Comments can be sent by fax to 202–493–2251 or by electronic submission. The electronic submission procedure is described in the Docket Management section of NHTSA's Web site.

FOR FURTHER INFORMATION CONTACT:

For technical questions: Michael Perel, Office of Vehicle Safety Research, NRD–13, 400 Seventh Street, S.W., Washington, DC 20590 (telephone 202–366–5675, fax 202–366–7237, E-mail: mike.perel@nhtsa.dot.gov).

To participate in the public meeting: Rita Gibbons (telephone: 202–366–4862, fax: 202–366–5930, E-mail: rita.gibbons@nhtsa.dot.gov). E-mail or fax is preferred.

SUPPLEMENTARY INFORMATION:

A. Background

The increasing utilization of certain advanced technologies in automobiles brings both the promise of enhanced safety, comfort, security, and convenience as well as concerns about possible impact on safety if they distract driver attention from the driving task. Technologies which transmit, receive, or display information from a motor vehicle include devices such as wireless phones and Internet connections, navigation/route guidance systems, and fax capability collectively known as telematics, as well as night vision systems and others. Some in-vehicle technologies provide direct safety benefits, such as automatic crash notification to emergency medical services and hazard alerts to inform drivers of dangerous traffic and roadway conditions. However, any devices which require drivers to look at displays and/or process information, or which require drivers to perform various tasks in order to operate controls of in-vehicle devices, will also distract them and thus increase their crash risk. Distraction occurs from looking away from the road and from being mentally distracted while attending to traffic. Sometimes the activities required to operate these devices lead to drivers occasionally taking their hands off the steering wheel even for a short while. If the distraction coincides with any of such events as the sudden braking of a lead vehicle, a lead vehicle in an adjacent lane cutting in front, a pedestrian crossing the road, or an unanticipated obstacle or curve in the road simultaneously occurring, the likelihood of a crash increases substantially.

NHTSA has been concerned about the potential safety impact of driver distraction from using advanced, in-vehicle technologies for a number of years. In 1998, NHTSA published available information on the potential effects of wireless phones on traffic safety. In conjunction with the DOT Intelligent Vehicle Initiative, NHTSA completed several research studies that focused on measuring the effect of driver distraction from navigation systems on driving performance. Additional research is currently underway that focuses on drivers' use of wireless phones in naturalistic driving situations. In 1998, NHTSA sent a letter (available in Docket NHTSA–99–5098–01) to vehicle manufacturer executives urging them to personally ensure that the application of advanced technologies does not pose safety risks and to "maintain or establish rigorous internal design protocols to address this possibility." While the primary focus of that letter was inflatable restraints, the letter pointed out that the "introduction of all new technologies, such as navigation and warning systems, head-up displays, and other intelligent systems" must be accomplished in a way that is safe for drivers. In a February 10, 1999, public statement, the agency said that, "Manufacturers have an obligation to thoroughly and adequately test the safety of any new technology under real world conditions prior to introduction into the marketplace."

B. Internet Forum on the Safety Implications of Driver Distraction When Using In-Vehicle Technologies

To provide an opportunity for further technical discussions among a wider range of participants than is possible at the public meeting, NHTSA is initiating an international Internet Forum devoted to presentations of research studies and other initiatives related to the safety impact of driver distraction when using in-vehicle devices. It will also provide a forum for discussions of research and related issues by interested parties, technical professionals, and the public, both in the United States and internationally. NHTSA will also post on the Internet information on past and present research on driver distraction.

The key topics to be addressed in the Internet Forum are:

1. How do in-vehicle technologies influence driver distractions? What are the effects of distraction on safety and safe driving performance? How does distraction from in-vehicle technologies differ from and compare to distraction due to other sources?
2. Methodological challenges in measuring the influence of design features of devices, their operation, and their impact on distraction and safe driving performance.
3. Effective government, industry, and consumer actions to minimize distraction.
4. Current and future research necessary to support actions to minimize distraction.

Participation in the Internet Forum: Persons interested in submitting technical papers on current or past research or activities related to the above topics should send an electronic copy to Michael Perel by June 15, 2000. Technical papers should include an abstract, be in English, modeled after conference style proceedings, and should be about 4–5 pages in length (not including graphics). Overviews of ongoing research programs and discussions of industry practices are also welcome. NHTSA will review submissions and notify authors of acceptance within 2 weeks of receipt. Submissions will be reviewed according to the relevance of the paper to the Forum, the clarity of the writing, the validity of experimental methodology used, if any, the degree to which conclusions are supported by data, and the usefulness of the paper to decision makers in the government, practitioners, researchers, and others. Due to the relatively short time for preparation and review, persons interested in submitting material are strongly encouraged to contact Michael Perel in advance of submitting such material. The documents should be in Microsoft WORD, Corel Wordperfect, Adobe pdf, or ASCII text format. If authors have previously published studies and wish to have the studies included on the Internet Forum Web site as a resource for others interested in the topic, they should send the studies in electronic format or submit a Web site link to the material if it is already on line.

Persons not submitting a technical paper, may register to join the Forum to view technical papers, post questions to authors, join discussion groups on related topics, or answer questions about their experience using in-vehicle technologies. The Web site for registering for the conference will be www.driverdistraction.org.

Procedural matters: The Internet Forum will be open for registration on June 23, 2000. Technical papers will be posted on July 5, 2000. The Forum will be active until August 11, 2000. After that date, the material presented will be archived and remain available for viewing on NHTSA's Web site. Also, a summary of the Forum will be prepared and posted on this Web site.

C. Public Meeting

On July 18, 2000, NHTSA will conduct a public meeting, providing a forum for industry, safety, research groups, and the general public to discuss strategies for realizing the benefits of in-vehicle technologies without increasing the risk of crashes due to driver distraction. The objective of this meeting is to share viewpoints and information on the following general topics:

1. What new technologies and features are being planned for use by drivers
2. The role of various entities in promoting best practices in the design and use of these devices
3. How to evaluate the safety impacts of such systems and what are safety-relevant ways to measure driver distraction
4. Ongoing activities to promote safe use of in-vehicle technologies
5. Additional activities and research needed.

1. *Written Statements, Presentations, and Comments:* The agency has established Docket No. NHTSA–99–6270 as a repository for presentations, statements, and comments on issues related to the safety of in-vehicle technologies. Written or electronic submissions may be made to this docket at any time. For written materials, two copies should be submitted to Docket Management at the address given at the beginning of this document. The materials must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to the submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. Presentations made at the public meeting will also be posted in a separate section of the Internet Forum Web site if the presenter submits an electronic version of the presentation including a separate brief abstract or overview by July 5, 2000. Any comments made at the public meeting and a summary of the discussions that take place will be posted on the Internet after the meeting. The electronic submissions for the Internet Forum should be sent by E-mail (5 mb max), floppy disk, or CD ROM to Michael Perel at the address given above.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at 400 Seventh Street, SW., Washington, DC 20590. Additionally, two copies of the above document from which the purportedly confidential information has been deleted should be submitted to Docket Management. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR Part 512.

2. *Meeting Participation:* This is a public meeting, and attendance is open to all members of the public. You may attend as a participant or an observer. If you plan to attend the meeting, contact Rita Gibbons at the address, telephone, fax, or the E-mail listed above before July 5, 2000. E-mail or Fax is preferred. If you wish to present a prepared oral statement during the meeting, please send a copy of your statement to Mr. Perel by July 5, 2000.

3. *Procedural Matters:* A written transcript of the meeting will be made. Speakers will have a maximum of 15–

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20 minutes. Presenters may be questioned by a panel of government officials. Time permitting, audience members may submit written questions for the panel to ask the presenters.

Issued on: May 25, 2000.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 00–13535 Filed 5–30–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7361; Notice 1]

Freightliner Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

Freightliner Corporation (Freightliner) of Portland, Oregon, has determined that some of its vehicles fail to meet the brake release time requirements of paragraph S5.3.4.1(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems.* On May 8, 1997, Freightliner filed a noncompliance information report pursuant to 49 CFR Part 573.5. In that report, Freightliner indicated that it would file a petition for inconsequential noncompliance at a future date. Freightliner states that a Petition for Inconsequential Noncompliance dated October 10, 1997 was submitted to the agency but we have no record of it. Subsequently, on February 29, 2000, Freightliner resubmitted its Petition dated October 10, 1997.

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120, and does not represent an agency decision or other exercise of judgement concerning the merits of the application.

Under the requirements of S5.3.4.1(a) of FMVSS No. 121, each truck equipped with air brakes is required to have a pressure reduction from 95 psi to 5 psi, measured at each brake chamber of the truck, in not more than 0.55 second from the initial movement (release) of the service brake control. In addition, S5.3.4.1(b) requires that a truck which is equipped to tow another air-braked vehicle is required to have a pressure reduction from the initial test pressure equivalent to 95 psi in the truck's brake chambers, to 5 psi in not more than 0.75 second, measured in a 50-cubic-inch test reservoir attached to the control line coupling, upon initial movement (release) of the service brake control. Thus the pressure in the test reservoir is required to drop from approximately 95 psi to 5 psi in not more than 0.75 second upon release of the service brake control.

Number of Non-Complying Trucks

From January 1994 through April 1996, Freightliner produced approximately 3,145 Model FLD trucks that may not have had a quick-release valve installed at the control line coupling and therefore may not meet the release timing requirements in FMVSS No. 121. Data on the number of vehicles of the 3,145 affected truck population that were built without the quick release valve are as follows. According to Freightliner's noncompliance information report, a field inspection of 34 subject vehicles indicated that 5.9 percent (two trucks) did not have the quick release valves. According to Freightliner's petition for inconsequential noncompliance, an inspection (of an unspecified number) of trucks at the St. Thomas Manufacturing Plant where these vehicles were manufactured indicated that 69 percent were manufactured without the quick release valve. Freightliner also said in its petition that a field inspection of 38 subject trucks indicated that 9 percent did not have the quick release valve installed.

We telephoned Mr. Tony Moore of Freightliner's engineering department and Mr. Larry Winslow of Freightliner's compliance department on April 4, 2000, to clarify the numbers of non-compliant vehicles and two other subjects that are discussed below. The field inspection of 38 trucks indicated in the petition included the 34 trucks identified in the noncompliance information report. When asked about the number of vehicles inspected at the St. Thomas plant, Freightliner indicated that it has documentation showing that 303 trucks were inspected, and 70 trucks or 23 percent did not have quick release valves installed. Freightliner could not locate documentation regarding how the 69 percent number in the petition was derived and believes that this number is incorrect per the documentation it now has.

Brake Release Times of Non-Complying Trucks

FMVSS No. 121, paragraph S5.3.4.1(b), requires that the release timing measured in the test reservoir from initial pressure to 5 psi shall be 0.75 second. In its petition, Freightliner states that it conducted a test program to predict the actual release timing of the subject vehicles. The results are as indicated in the table below:

[Predicted] release timing (seconds)	Vehicle population	Percent of population
0.76–0.80	773	24.5
0.81–0.85	1759	55.9
0.86–0.90	602	19.1
0.91–0.95	1	0.03
0.96–1.00	10	0.3
over 1.00	0	0

In the April 4, 2000 telephone conversation, Freightliner indicated that this prediction of release timing is based upon the length of the air tubing from the treadle valve to the trailer service air line glad hand coupling. The overall length of the air tubing varies with tractor wheelbase and the resulting vehicle population numbers in the table were derived on this basis. Without the quick release valve, the air is released through the treadle valve. As indicated in Freightliner's petition, the installation of the quick release valve releases the air at the tractor end of the trailer service air line.

Freightliner Rationale for Inconsequentiality to Safety

Freightliner does not believe that tractor glad hand timing between 0.75 and 1.00 second poses any risk or compromises highway safety. It states that brake application pressures at a highway speed of 55 mph rarely exceed 20 psi, and that when comparing the release timing from 20 psi on vehicles that would have 0.90 and 0.75 second release timing when tested according to FMVSS No. 121, the actual time differential drops to less than 0.10 second. In the April 4, 2000, telephone conversation, Freightliner clarified that the 0.10 second timing is the time for the pressure to be reduced at the glad hand coupling from 20 psi to 5 psi on trucks with no quick release valve installed. Freightliner also indicated that it did not do a comparable analysis of release timing from 20 psi with the quick release valve installed.

Freightliner believes that glad hand timing requirements were established primarily for the purpose of improving the application timing balance of combination vehicles, not the release timing. Freightliner cites the summary in Docket No. 85–07, Notice 3, as follows:

> The purpose of the glad hand timing requirements is to ensure that the air delivery from towing vehicles to towed vehicles is fast enough to apply the brakes of all vehicles in the combination at approximately the same time, thereby avoiding a reduction in the combination stability (e.g., trailer bumping) caused by a slow glad hand.

Freightliner states that release timing is not mentioned, and that some commenters in the same docket questioned NHTSA's research in justifying the proposed release timing requirement. Freightliner indicates that one commenter stated that it is difficult to determine the effect of trailer release timing and tractor/trailer release differentials on compatibility and suggested testing indicated 0.90 second is sufficient. Freightliner also indicates that another commenter argued that a 1.00 second release timing would be more practical and accomplish the objective of the proposal, and that NHTSA stated that:

> A short glad hand release time is not as important for safety and, in fact, it is not desirable to have the glad hand release before the tractor brakes.

Freightliner believes that requiring the rearmost vehicle to release last tends to "stretch" out the unit (vehicle combination) and make it more stable, and that slower than the required release time may actually help overall stability.

Freightliner summarizes its petition by stating that an estimated 280 to 2170 tractors were manufactured without quick release valves such that the glad hand release timing may be slightly higher than the 0.75 second specified in FMVSS No. 121, and that nearly all (99.6 percent) do not exceed 0.90 second. Freightliner believes that this timing difference of 0.0 to 0.15 second has no discernable or measurable effect on braking performance and thus no detrimental effect on highway safety. Therefore, it requests that we grant its petition to exempt it from the notification and remedy requirements of the Motor Vehicle Safety Act.

Comments and Docket Submissions

Interested persons are invited to submit written data, views, and arguments on Freightliner's petition for inconsequential noncompliance described above. Comments should refer to the Docket Number and be submitted to Docket Management at the address given above under **ADDRESSES.**

All comments received before the close of business on the closing date indicated below will be considered. The application, supporting materials, and comments also will be filed in the docket. Comments received after the closing date will also be filed and considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 30, 2000.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: May 23, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–13536 Filed 5–30–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before July 31, 2000.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third Floor, Attention: 1557–0081, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC 20219 between 9 a.m. and 5 p.m. on business days. Appointments for inspection of comments may be made by calling (202) 874–5043.

Board: Written comments should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, submitted by electronic mail to regs.comments@federalreserve.gov, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number: (202) 898–3838; Internet address: comments@fdic.gov]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Draft copies of the two versions of the Call Report forms that are proposed to replace the current four versions of the Call Report may be obtained at the FFIEC's web site (www.ffiec.gov) and at the FDIC's web site.[1] Draft copies of

[1] On the FDIC's web site, draft copies of the proposed Call Report forms will be attachments to the Financial Institution Letter that transmits this proposal to all institutions that file Call Reports.

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these proposed revised Call Report forms also may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Mary M. West, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to revise the following currently approved collections of information:

Report Title: Consolidated Reports of Condition and Income.

Form Number: Current form numbers: FFIEC 031, 032, 033, and 034. Proposed form numbers: FFIEC 031 and 041.[2]

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

For OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 2,400 national banks.

Estimated Time per Response: 41.76 burden hours.

Estimated Total Annual Burden: 400,865 burden hours.

For Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 1,014 state member banks.

Estimated Time per Response: 47.56 burden hours.

Estimated Total Annual Burden: 192,903 burden hours.

For FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,734 insured state nonmember banks.

Estimated Time per Response: 30.81 burden hours.

Estimated Total Annual Burden: 706,633 burden hours.

The estimated time per response is an average which varies by agency because of differences in the composition of the banks under each agency's supervision (e.g., size distribution of banks, types of activities in which they are engaged, and number of banks with foreign offices). The time per response for a bank is estimated to range from 14 to 500 hours, depending on individual circumstances. In addition, the effect on the time per response of the proposed changes to the Call Report that are discussed in this notice will vary from bank to bank. After adjusting to the proposed revisions to the reporting requirements, many smaller banks should experience a decrease in time per response because they do not have trust powers and are not involved in the activities for which new information would be collected. In contrast, the time per response for some large banks is expected to increase because the proposed new information would be applicable to them and because the reporting of trust activities would be moved into the Call Report from two separate trust activities reports.[3]

General Description of Report

This information collection is mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). Except for selected items, this information collection is not given confidential treatment. Small businesses (i.e., small banks) are affected.

Abstract

Banks file Call Reports with the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of reporting banks and the industry as a whole. In addition, Call Reports provide the most current statistical data available for evaluating bank corporate applications such as mergers, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. Call Reports are also used to calculate all banks' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Actions

I. Overview

The agencies are requesting comment on proposed revisions to the Call Report that are intended to make the content of the report more relevant to the agencies. The more significant revisions include:

- An approximate 10 percent decrease in the number of currently existing separately reportable data items (outside of regulatory capital information) whose collection is no longer warranted;
- A new regulatory capital reporting approach that uses step-by-step "building blocks" to compute the key elements of the capital ratios;
- Combining the three separate report forms for banks of different sizes that have only domestic offices into a single form while retaining the separate form for banks with foreign offices;
- New information on:

—Nontraditional and higher risk bank activities, i.e., subprime loans, securitizations and asset sale activities, additional categories of noninterest income, and restructured derivative contracts; and

—Federal Home Loan Bank advances and other borrowings;

- Replacing the two separate trust activities reports with a single, streamlined trust Call Report schedule;
- Eliminating the confidential treatment for loans, leases, and other assets that are past due 30 through 89 days; and
- Eliminating the additional 15-day period that banks with more than one foreign office are given for submitting their Call Reports.

These revised reporting requirements are also designed to complement the agencies' emphasis on risk-focused supervision. Furthermore, the proposal addresses certain aspects of sections 307(b) and (c) of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Riegle Act). These sections direct the federal banking agencies to work jointly toward more uniform reporting, review the information that institutions currently report, and eliminate existing reporting requirements that are not warranted for safety and soundness or other public policy purposes.

Type of Review: Revision of a currently approved collection.

The proposed revisions to the Call Report have been approved for publication by the FFIEC. The agencies would implement these proposed Call Report changes as of the March 31, 2001, report date. Nonetheless, as is customary for Call Report changes, banks are advised that, for the March 31, 2001, report date only, reasonable estimates may be provided for any new or revised item for which the requested information is not readily available. The specific wording of the captions for the new and revised Call Report items and the numbering of the items in the report forms should be regarded as preliminary.

II. Streamlining the Existing Reporting Requirements

The agencies have carefully reviewed the purposes for which and extent to which they use each data item that they currently collect from banks in the Call Report. This process involved requesting feedback from the staffs within the three agencies on the specific uses of each Call Report item. The agencies also considered the magnitude of the aggregate amounts reported for each item in the Call Report, the number and size distribution of banks reporting amounts for each Call Report item, and bankers' comments about the most burdensome aspects of the Call Report. Based on this information, the agencies identified items that appeared to be of lesser significance to them, taking into account the effect that eliminating certain items and reducing the amount of detail in certain schedules would have on the agencies. In addition, the agencies considered ways to limit the number of banks that are required to complete certain items and schedules based on bank size or other criteria in order to focus the collection of this information on those institutions for which the data are most relevant.

Based on the agencies' evaluations of their users' input, the agencies are proposing to implement numerous revisions that will streamline the existing reporting requirements. While the effect of these revisions on reporting burden, either through the outright elimination of items or reductions in the amount of detail required in certain areas, will vary across the four existing sets of reporting requirements, many of the recommended revisions will affect information currently reported by substantially all banks. In other cases, the recommended changes will apply only to a subset of banks such as those with foreign offices or banks within a particular size range. This burden-reducing effort will produce an approximate 10 percent decrease in the number of separately reportable items on the four existing sets of Call Report forms (outside of regulatory capital information) before considering the agencies' new information needs, which are discussed in Section III below. These eliminations and reductions in detail will help the agencies achieve the objective set forth in section 307(c) of the Riegle Act, which directs the agencies to review the information that institutions currently report in the Call Report and eliminate existing reporting requirements that are not warranted for safety and soundness or other public policy purposes.

As part of the streamlining process, the agencies are proposing several reporting changes that will introduce more uniformity to certain aspects of bank regulatory reporting. These changes will provide more uniformity to the Call Report requirements themselves and will bring some elements of the regulatory reporting requirements for banks, savings associations, and bank holding companies into closer alignment.[4] In this regard, over the past several years, banking organizations have sought greater consistency among the reporting requirements imposed on banks, savings associations, and bank holding companies. Thus, for example, the agencies are proposing to eliminate the differing definitional schemes for loans that now exist within the Call Report for banks of different sizes and to conform other Call Report definitions to those used by savings associations. Moreover, the proposed new regulatory capital reporting approach incorporates some elements of the format used by bank holding companies to report regulatory capital information. Other proposed modifications to the Call Report are intended to make its form and content more closely resemble the manner in which information is presented in financial statements that banks prepare in accordance with generally accepted accounting principles (GAAP) for other financial reporting purposes.

An additional outcome of this streamlining effort is that the agencies believe that there is no longer a need for three separate versions of the Call Report based on asset size for banks with domestic offices only. The agencies are therefore proposing to combine these three reports (FFIEC 032, 033, and 034) into a single report (FFIEC 041). Nevertheless, within this single report, certain schedules or items would only be applicable to banks that meet specified criteria, e.g., asset size. The agencies would retain the separate version of the Call Report for banks with foreign offices (FFIEC 031).

Increasing the uniformity of the Call Report requirements, both among banks and among the different types of institutions supervised by the federal financial institution regulators, is a necessary step toward achieving the goal of a single set of reporting requirements for the filing of core information that is set forth in section 307(b) of the Riegle Act. It should also reduce reporting burden for banking organizations comprised of two or more separate entities that must file regulatory reports with their primary federal regulators.

A. Specific Proposed Deletions, Reductions in Detail, Changes To Increase Uniformity in Regulatory Reporting, and Revisions To Conform With GAAP (Outside of Regulatory Capital Reporting)

The agencies propose to delete existing items from or reduce the amount of detail currently required in most of the schedules of the Call Report. Other changes throughout the existing report will be made to bring about more uniformity in the reporting requirements for banks or among banks and other types of financial institutions insured or supervised by the agencies or to better conform with the requirements of GAAP. In addition, the specific location of certain items within the Call Report will be modified so that it better matches the presentation required by GAAP or followed in practice by most institutions. Some of these revisions will affect information that is now collected in all four versions of the Call Report (FFIEC 081, 032, 033, and 034) while other changes may affect only one report form.

A schedule-by-schedule listing of these proposed revisions, using the current numbers and captions for the affected items, follows:

Schedule RC—Balance Sheet: For all banks:

(1) Item 15.b, "Demand notes issued to the U.S. Treasury," would be eliminated as a separate item and would be reported instead as part of item 16, "Other borrowed money."

(2) Items 26.b, "Net unrealized holding gains (losses) on available-for-sale securities," 26.c, "Accumulated net gains (losses) on cash flow hedges," and 27, "Cumulative foreign currency translation adjustments," would be combined and reported as "Accumulated other comprehensive

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Financial Institution Letters can be accessed at http://www.fdic.gov/news/news/financial/2000/index.html.

[2] The FFIEC 031 report form would continue to be filed by banks with domestic and foreign offices. At present, the FFIEC 042 report form is filed by banks with domestic offices only and $300 million or more in total assets, the FFIEC 033 report form is filed by banks with domestic offices only and $100 million or more but less than $300 million in total assets, and the FFIEC 034 report form is filed by banks with domestic offices only and less than $100 million in total assets. The proposed FFIEC 041 report form would replace the FFIEC 032, 033, and 034 report forms and would be filed by all banks with domestic offices only.

[3] The Annual Report of Trust Assets (FFIEC 001) and the Annual Report of International Fiduciary Activities (FFIEC 006): for the OCC, OMB Number 1557–0127; for the Board, OMB Number 7100–0031; and for the FDIC, OMB Number 3064–0024. The FDIC does not collect the FFIEC 006.

[4] These three types of financial institutions file different regulatory report forms. Banks file Call Reports, savings associations file Thrift Financial Reports, and bank holding companies subject to consolidated reporting requirements file the FR Y–9C reports.

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income." [5] In addition, any minimum pension liability adjustment recognized in accordance with Financial Accounting Standards Board (FASB) Statement No. 87, *Employers' Accounting for Pensions*, which banks have to net against "Undivided profits and capital reserves" due to the constraints of the current Call Report balance sheet, would be included in this new item for "Accumulated other comprehensive income." This change would conform the presentation of the equity capital section of the Call Report balance sheet to FASB Statement No. 130, *Reporting Comprehensive Income*.

(3) Loans and leases held for sale are currently included on the balance sheet in item 4.a, "Loans and leases, net of unearned income," together with loans that the bank has the intent and ability to hold for the foreseeable future or until maturity or payoff, but loans and leases held for sale are separately identified in the loan schedule in Schedule RC–C, part I, Memorandum item 5. The agencies propose to move "Loans and leases held for sale" onto the balance sheet as an asset category separate from the loan portfolio. This change will bring the Call Report balance sheet presentation of these two categories of loans into conformity with GAAP. However, loans and leases held for sale would continue to be reported with the bank's other loans in the loan schedule (Schedule RC–C, part I).

(4) Item 4.c, "Allocated transfer risk reserve," would be deleted from the balance sheet, but would be reported in the new regulatory capital schedule, which is discussed in section II.B. below. Banks would report their loans and leases net of any allocated transfer risk reserve in the loan schedule (Schedule RC–C, part I).

(5) A new item for "Other equity capital components" would be added to the equity capital section of the balance sheet. This item would cover treasury stock and unearned Employee Stock Ownership Plan shares which, under GAAP, are to be reported in a contra-equity account on the balance sheet. Due to the constraints of the equity capital section of the current Call Report balance sheet, banks are forced to report these amounts as reductions of undivided profits. Thus, this change will make the equity capital section more consistent with GAAP and with the equity capital section of the balance sheet in the Thrift Financial Report.

[5] The first two of these components of "Accumulated other comprehensive income" would be separately identified in the proposed new regulatory capital schedule, which is discussed in Section II.B. below.

(6) Memorandum item 1 requires all banks to report the highest level of comprehensive external auditing work they have had performed during the previous year. In November 1999, the agencies issued a joint policy statement that encourages banks with less than $500 million in total assets to consider engaging an independent public accountant to perform a full scope annual audit or, alternatively, an attestation engagement to examine management's assessment of the effectiveness of their internal control structure over financial reporting or an audit of the bank's balance sheet. A new code category would be added to Memorandum item 1 to capture data on internal control attestations. Also, the instructions for code categories 1 and 2 of Memorandum item 1, which currently apply to full scope audits, would be revised to include balance sheet audits performed in accordance with generally accepted auditing standards.

Schedule RC–A—Cash and Balances Due From Depository Institutions: At present, this schedule appears only on the FFIEC 031, 032, and 033 forms, which means that the schedule is not completed by banks with domestic offices only and total assets of less than $100 million. The agencies are proposing to reduce the number of banks with domestic offices only to which this schedule applies by raising the size threshold for the schedule from $100 million to $300 million in total assets. All banks with foreign offices would continue to complete Schedule RC–A. However, for all banks to which the schedule would remain applicable, the agencies propose to delete, Memorandum item 1, "Noninterest-bearing balances due from commercial banks in the U.S."

Schedule RC–B—Securities: For all banks:

(1) The three separate items for "General obligations," "Revenue obligations," and "Industrial development and similar obligations" (items 3.a, 3.b., and 3.c, respectively) would be combined into a single item for "Securities issued by states and political subdivisions in the U.S."

(2) Item 6.b, "All other equity securities," *i.e.*, equity securities without readily determinable fair values, would be moved to a new item in Schedule RC–F—Other Assets. These equity securities are outside the scope of FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities*. Therefore, including them in the Call Report with available-for-sale securities in Schedule RC–B, albeit at historical cost rather than at fair value, has not been consistent with GAAP. Moving equity securities without readily determinable fair values to the other assets schedule is intended to eliminate this inconsistency.

(3) In Memorandum items 2.a and 2.b, which provide maturity and repricing data for debt securities (except collateralized mortgage obligations (CMOs), real estate mortgage investment conduits (REMICs), and stripped mortgage-backed securities), banks currently report their floating rate debt securities by repricing frequency. The agencies are proposing to change this reporting method so that floating rate debt securities would instead be reported based on their next repricing date in these two memorandum items. The interest rate risk measurement models in use at most banks take the next repricing date, not the repricing frequency, of floating rate debt securities into consideration. Therefore, this proposed change would bring the Call Report treatment of these securities into line with banks' internal risk measurement systems.

Additionally, banks now filing the FFIEC 034, *i.e.*, banks with domestic offices only and less than $100 million in total assets, would begin to report "Foreign debt securities" as a separate category of securities. These banks currently report foreign debt securities, if any, in item 5, "Other debt securities." Uniform reporting of foreign debt securities by all banks is consistent with the agencies' emphasis on risk-focused supervision. This proposed change would not significantly increase overall reporting burden because of the small percentage of banks filing the FFIEC 034 that hold "Foreign debt securities."

Schedule RC–C, Part I—Loans and Leases:

(1) For all banks:

(a) The definition of "Construction and land development" loans (item 1.a) and, hence, the definitions for the other categories of loans secured by real estate (items 1.b through 1.e) would be revised to make them consistent with reporting requirements in this area for savings associations on the Thrift Financial Report. The Call Report instructions for "Construction and land development" loans currently direct banks to exclude from this loan category: (i) Loans to acquire and hold vacant land and (ii) construction loans with original maturities greater than 60 months. These two types of loans are instead reported as loans secured by farmland, 1–4 family residential properties, multifamily residential properties, or nonfarm nonresidential properties, as appropriate. The agencies are proposing to revise the definitions for the five categories of "Loans secured by real estate" so that land loans and long-term construction loans are reported in a recaptioned item 1.a, "Construction, land development, and other land loans."

(b) The separate loan categories for "Loans to depository institutions" and "Acceptances of other banks" (items 2 and 5, respectively) would be combined.

(c) Item 6.a, "Credit cards and related plans" to individuals for household, family, and other personal expenditures, would be split into separate loan categories for "Credit cards" and "Other revolving credit plans." For banks with foreign offices, this breakdown would be provided for both the consolidated bank and for domestic offices; the amount of "Other" consumer loans, currently reported for the consolidated bank only, would also begin to be reported for domestic offices.

(d) A single memorandum item for the total amount of a bank's "Loans and leases restructured and in compliance with modified terms" would replace the multiple memorandum items in which banks must currently report information about such restructured credits (Memorandum items 1.a and 1.b on the FFIEC 034, Memorandum items 2.a and 2.b on the FFIEC 033, and Memorandum items 2.a through 2.c on the FFIEC 031 and 032). Restructured loans secured by 1–4 family residential properties and restructured consumer loans would continue to be excluded from the revised Memorandum item.

(e) In Memorandum items 2.a and 2.b on the FFIEC 034 and in Memorandum items 3.a and 3.b on the FFIEC 031, 032, and 033, which provide maturity and repricing data for loans and leases, banks currently report their floating rate loans by repricing frequency. The agencies are proposing to change this reporting method so that floating rate loans would instead be reported based on their next repricing date in these two memorandum items. The interest rate risk measurement models in use at most banks take the next repricing date, not the repricing frequency, of floating rate loans into consideration. Therefore, this proposed change would bring the Call Report treatment of these loans into line with banks' internal risk measurement systems.

(f) The Memorandum items for "Loans secured by nonfarm nonresidential properties with a remaining maturity of over five years" and "Commercial and industrial loans with a remaining maturity of over three years" (Memorandum items 2.d and 2.e on the FFIEC 034 and Memorandum items 3.d and 3.e on the FFIEC 031, 032, and 033) would be deleted.

(2) For banks that currently file the FFIEC 033, *i.e.*, banks with domestic offices only and total assets of $100 million or more but less than $300 million:

(a) The five-way breakdown of "Loans to depository institutions" (items 2.a.(1) through 2.c.(2)) would be replaced with a single item for the total amount of such loans (plus acceptances of other banks, as discussed above).

(b) The breakdown of "Commercial and industrial loans" between those to U.S. addressees and those to non-U.S. addressees (items 4.a and 4.b) would be eliminated in favor of a single item for total "Commercial and industrial loans."

(c) Item 9.a, "Loans for purchasing or carrying securities," and item 9.b, "All other loans," would be combined into a single item for "Other loans."

(3) Banks now filing the FFIEC 034, *i.e.*, banks with domestic offices only and less than $100 million in total assets, would begin to report "Loans to foreign governments and official institutions" as a separate loan category. At present, these banks report these loans, if any, in item 8, "All other loans." This proposed change would result in uniform reporting of these foreign exposures by all banks and would enhance the agencies' risk-focused supervision. However, it would not significantly increase overall reporting burden because of the nominal number of banks filing the FFIEC 034 that have "Loans to foreign governments and official institutions."

(4) Banks now filing the FFIEC 031 and 032, *i.e.*, banks with foreign offices or with $300 million or more in total assets, currently report a U.S.-non-U.S. addressee breakdown of their "Loans secured by real estate" when they report their past due and nonaccrual loans in Schedule RC–N and their loan charge-offs and recoveries in Schedule RI–B, part I. However, these banks are not currently required to report the amount of "Loans secured by real estate" to U.S. and non-U.S. addressees as of the report date in Schedule RC–C, part I. In order to enhance their ability to evaluate the performance of real estate loans by addressee, the agencies are proposing to add a memorandum item to Schedule RC–C, part I, for "Loans secured by real estate to non-U.S. addressees (domicile)" that would be completed by banks that would currently file the FFIEC 031 and 032.

Schedule RC–D—Trading Assets and Liabilities: This schedule must currently be completed by banks with either $1 billion or more in total assets or $2 billion or more in par/notional amount of derivative contracts. To reduce reporting burden for banks of this asset size that have minimal trading activity while, at the same time, focusing for the first time on banks with less than $1 billion in assets that are engaging in this activity, the criteria for completing this schedule would be revised. Thus, the agencies are proposing that banks that reported a quarterly average for trading assets of $2 million or more (in Schedule RC–K, item 7) for any quarter of the preceding year would complete Schedule RC–D. Banks with domestic offices only and less than $100 million in total assets would continue to be exempt from reporting this quarterly average and from completing Schedule RC–D.

Schedule RC–E—Deposit Liabilities: For all banks:

(1) The reporting of demand deposits by category of depositor in column B of the body of the deposits schedule would be eliminated, with banks reporting instead only the total amount of their demand deposits in this column. Banks would continue to provide a category-by-category breakdown of their total transaction accounts in column A, which includes their demand deposits, but the current duplicate reporting of demand deposits by category in both columns A and B would end.

(2) The number of categories of depositors used in the breakdowns of transaction and nontransaction accounts in the body of the deposit schedule would be reduced.

(a) "Certified and official checks" (item 6 on the FFIEC 034 and item 8 on the FFIEC 031, 032, and 033) would be combined with deposits of "Individuals, partnerships, and corporations" (item 1).

(b) Deposits of "Commercial banks in the U.S." (item 4) and "Other depository institutions in the U.S." (item 5) would be combined.

However, in order to achieve uniformity in depositor categories for all banks, institutions that currently file the FFIEC 034 would begin to report deposits of "Banks in foreign countries" separately from deposits of "Foreign governments and official institutions" instead of on a combined basis (in current item 7). This change for banks filing the FFIEC 034 would not significantly increase reporting burden because of the limited number of these banks that currently hold deposits from these categories of depositors.

(3) Memorandum item 3, "All NOW accounts," would be deleted.

(4) In Memorandum items 5.a and 6.a, which provide maturity and repricing data for time deposits, banks currently

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report their floating rate time deposits by repricing frequency. The agencies are proposing to change this reporting method so that floating time deposits would instead be reported based on their next repricing date in these two memorandum items. The interest rate risk measurement models in use at most banks take the next repricing date, not the repricing frequency, of floating rate time deposits into consideration. Therefore, this proposed change would bring the Call Report treatment of these deposits into line with banks' internal risk measurement systems.

In addition, for banks that file the FFIEC 031, *i.e.*, banks with foreign offices, the agencies are proposing to modify the reporting of deposits in foreign offices by category of depositor (in part II of Schedule RC–E). As was proposed above for domestic deposits, "Certified and official checks" in foreign offices (item 5) would be combined with deposits of "Individuals, partnerships, and corporations" (item 1). Deposits of U.S. depository institutions other than banks, currently reported in "All other deposits" in foreign offices (item 6), would be removed from this category and included with deposits of "U.S. banks" (item 2). This would leave only deposits of the U.S. Government and of states and political subdivisions in the U.S. remaining in what is now the "All other deposits" category, so this category would be recaptioned accordingly.

Schedule RC–F—Other Assets: For all banks:

(1) The scope of item 1, "Income earned, not collected on loans," would be expanded to cover all "Accrued interest receivable." Broadening this category to include interest earned, not collected on earning assets other than loans would be more consistent with the typical presentation of accrued interest receivable in financial statements prepared for other financial reporting purposes.

(2) The requirement that significant components of the residual "Other" assets item in Schedule RC–F (item 4) be itemized and described would be retained. However, to improve the usefulness of this information, the agencies plan to add preprinted captions for those components of "Other" assets most commonly itemized and described by banks.[6] At present, several banks may describe the same type of "Other" asset using different terminology, which makes it difficult for the agencies and other users of the Call Report to identify and compare banks holding particular types of "Other" assets in amounts exceeding the threshold for itemization. In addition to the specific captions that would be included for "Other" assets, the agencies would also provide blank text fields like those presently found in Schedule RC–F for assets not listed among the preprinted captions. Furthermore, the agencies request comment on suggested alternatives to the current threshold for itemizing and describing significant components of "Other" assets, *i.e.*, 25 percent of the total amount reported for "Other" assets.

(3) Memorandum item 1, "Deferred tax assets disallowed for regulatory capital purposes," would be moved to the revised regulatory capital schedule (Schedule RC–R), which is discussed in Section II.B. below. This proposed change is part of an effort by the agencies to place all items collected principally for regulatory capital calculation purposes in a revised Schedule RC–R rather than having these items scattered across various Call Report schedules as they are at present.

Schedule RC–G—Other Liabilities: For all banks:

(1) Item 3, "Minority interest in consolidated subsidiaries," would be moved to the liability side of the balance sheet (Schedule RC). As a result, the location where this liability category appears on the Call Report balance sheet would correspond to the location where banks and bank holding companies are instructed by Article 9 of the Securities and Exchange Commission's Regulation S–X to report any minority interest on balance sheets filed with the Securities and Exchange Commission.

(2) A specific new item for the "Allowance for credit losses on off-balance sheet credit exposures," which must be reported separately on the balance sheet from the allowance for loan and lease losses, would be added to Schedule RC–G. At present, the limited number of banks that have an allowance for credit losses on off-balance credit exposures combine this allowance with their allowance for loan and lease losses when completing Schedule RI–B, part II—Changes in Allowance for Credit Losses. Because the allowance for loan and lease losses is reported on the Call Report balance sheet (Schedule RC), the amount of the allowance for credit losses on off-balance sheet exposures can be derived. However, as discussed below, the agencies are proposing to revise the scope of Schedule RI–B, part II. That change creates the need for the proposed new item in Schedule RC–G so that the agencies can identify the amount, if any, of a bank's allowance for credit losses on off-balance sheet exposures.

(4) The requirement that significant components of the residual "Other" liabilities item in Schedule RC–G (item 4) be itemized and described would be retained. However, consistent with the proposed change described above for the "Other" assets item in Schedule RC–F, the agencies plan to add preprinted captions for those components of "Other" liabilities most commonly itemized and described by banks. Likewise, the agencies would provide blank text fields like those presently found in Schedule RC–G for liabilities not listed among the preprinted captions. The agencies also request comment on suggested alternatives to the current threshold for itemizing and describing significant components of "Other" liabilities, *i.e.*, 25 percent of the total amount reported for "Other" liabilities.

Schedule RC–H—Selected Balance Sheet Items for Domestic Offices (FFIEC 031 only): This schedule is completed by banks with foreign offices. Memorandum items 1 and 2 for the "Net due from the IBF of the domestic offices of the reporting bank" or the "Net due to the IBF" of these offices would be deleted. In addition, consistent with the proposed change to the reporting of equity securities without readily determinable fair values discussed under Schedule RC–B above, item 16.b of Schedule RC–H, "All other equity securities," would be renumbered so that it is no longer included as part of a bank's total held-to-maturity and available-for-sale securities in item 17 of Schedule RC–H.

Schedule RC–I—Selected Assets and Liabilities of IBFs (FFIEC 031 only): This schedule is completed by banks with IBFs and other types of foreign offices. The agencies are proposing to eliminate item 2, "Total IBF loans and lease financing receivables," item 3, "IBF commercial and industrial loans," item 5, "IBF deposit liabilities due to banks, including other IBFs," and item 6, "Other IBF deposit liabilities."

Schedule RC–K—Quarterly Averages: For all banks:

(1) The categories of securities for which averages would be collected would be uniform for all banks and would better correspond with the securities categories in Schedule RC–B. In addition, the number of quarterly averages of securities that banks are required to report would be reduced or remain the same. Banks would report quarterly averages for the three following categories of securities: (a) U.S. Treasury securities and U.S. Government agency obligations, (b) mortgage-backed securities; and (c) all other securities.

(2) The categories of loans (in domestic offices) for which averages would be collected would also be defined uniformly for all banks required to report these averages. The loan category definitions used by all banks in Schedule RC–K would correspond to the standard definitions used in the loan schedule, Schedule RC–C. This would end the separate loan reporting scheme for banks with domestic offices only and less than $300 million in assets which currently permits these banks to define for themselves which of their loans to include in the general loan categories used in Schedule RC–K (and three other schedules) on the FFIEC 033 and 034. Adopting uniform categories and standard definitions will enable the agencies to obtain more consistent loan information for monitoring trends and critical ratios across banks and within individual institutions and is a necessary step toward achieving the Riegle Act's goal of a single set of reporting requirements for core information.

Thus, banks would report a quarterly average for total loans (in domestic offices) and for the five following categories of loans (in domestic offices): (a) Loans secured by real estate; (b) loans to finance agricultural production and other loans to farmers (except as noted below); (c) commercial and industrial loans; (d) credit cards to individuals for household, family, and other personal expenditures; and (e) other consumer loans. Banks with foreign offices would also continue to report a quarterly average for their total loans in foreign offices. The agencies would retain the existing Schedule RC–K reporting threshold for agricultural loans for banks with domestic offices only and less than $300 million in assets. These banks would not be required to report a quarterly average for "Loans to finance agricultural production and other loans to farmers" if these loans are less than or equal to 5 percent of total loans. In addition, a request for comment on the reporting of average loans by loan category by banks with domestic offices only and less than $25 million in assets is addressed in Section V.B. below.

(3) The quarterly averages for "Money market deposit accounts" and "Other savings deposits" (items 9.a and 9.b on the FFIEC 034; items 11.a and 11.b on the FFIEC 031, 032, and 033) would be combined. Banks would report a single quarterly average for all "Savings deposits."

In addition, for banks that currently file the FFIEC 034, *i.e.*, banks with domestic offices only and less than $100 million in assets, the option to report the quarterly averages for securities, loans, leases, and total assets using an average of four month-end figures would be eliminated. These averages, like the other averages in Schedule RC–K, would be calculated using either daily or weekly figures for the quarter, which are the other options presently available to these banks.

Schedule RC–L—Off-Balance Sheet Items:

(1) For all banks:

(a) Item 6, "Participations in acceptances acquired by the reporting (nonaccepting) bank," and Memorandum item 3, "Unused commitments with an original maturity exceeding one year," would be collected only on the proposed new regulatory capital schedule, discussed in Section II.B. below, and would be deleted from Schedule RC–L.

(b) Item 7, "Securities borrowed," would no longer be collected from all banks. Instead, the amount of borrowed securities would be reported, when appropriate, in item 12, "Other off-balance sheet liabilities."

(c) The information collected in items 9.a, 9.b, and 9.c on the outstanding principal balance of and amount of recourse on three categories of financial asset transfers would be moved from Schedule RC–L and incorporated into the proposed new schedule on securitization and asset sale activities, which is discussed in Section III.B. below.

(d) The requirement that off-balance sheet liabilities and assets that exceed 25 percent of equity capital be itemized and described in items 12 and 13 would be retained. However, consistent with the proposed changes described above for "Other" assets and "Other" liabilities in Schedules RC–F and RC–G, the agencies plan to add preprinted captions for those off-balance sheet items most often itemized and described by banks.

The agencies would also retain blank text fields like those presently found in Schedule RC–L for off-balance sheet items not listed among the preprinted captions.

(e) Item 16.b for the gross notional amount of derivative contracts held for purposes other than trading that are not marked to market would be deleted. All derivative contracts, including those held for purposes other than trading, will be marked to market once a bank adopts FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*, which is effective for fiscal years beginning after June 15, 2000. Thus, item 16.b will no longer have any relevance in 2001.

(2) For banks that file the FFIEC 031, 032, and 033, *i.e.*, banks with foreign offices or with $100 million or more in total assets:

(a) Items 17.c.(1) and (2) for the gross positive and gross negative fair values of derivatives held for purposes other than trading that are not marked to market would be deleted because of the effect of FASB Statement No. 133.

(b) Memorandum item 3.a, "Participations in commitments with an original maturity exceeding one year conveyed to others," would be eliminated.

(3) For banks that file the FFIEC 031 and 032, *i.e.*, banks with foreign offices or with $300 million or more in total assets:

(a) Memorandum item 4, "Standby letters of credit (and foreign office guarantees) issued to non-U.S. addressees (domicile)," would be deleted.

(b) The information collected in Memorandum items 5.a, 5.b, and 5.c on three categories of consumer loans that have been securitized and sold would be moved from Schedule RC–L and incorporated into the proposed new schedule on securitization and asset sale activities, which is discussed in section III.B. below.

Schedule RC–M—Memoranda:

(1) For all banks:

(a) Items 4.a through 4.d, in which banks report a six-way breakdown of the "Outstanding principal balance of 1–4 family residential mortgage loans serviced for others" would be moved from Schedule RC–M and condensed into a two-way servicing breakdown in the proposed new schedule on securitization and asset sale activities, which is discussed in Section III.B. below.

(b) Item 6.e, "Amount of intangible assets that have been grandfathered or are otherwise qualifying for regulatory capital purposes," item 7, "Mandatory convertible debt, net of common or perpetual preferred stock dedicated to redeem the debt," item 9, "Noncumulative perpetual preferred stock and related surplus," and Memorandum item 1, "Reciprocal holdings of banking organizations' capital instruments," would no longer be collected as specific items in Schedule RC–M, but would be incorporated into the calculation of Tier 1, Tier 2, and total risk-based capital in the proposed new regulatory capital

[6] An example of a component of "Other" assets for which a preprinted caption would need to be added to the Call Report in 2001 would be "Derivatives held for purposes other than trading that have a positive fair value."

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schedule, which is discussed in Section II.B. below.

(c) Item 6.c, "Goodwill," would be moved from this schedule and would appear on the balance sheet (Schedule RC) as a specific item. This proposed change would be made to conform to the FASB's proposed accounting standard, *Business Combinations and Intangible Assets*, which would require all goodwill to be aggregated and presented as a separate line item on the balance sheet.

(d) Items 10.a through 10.f, which collect data on quarterly sales of annuities, mutual funds, and proprietary products, would be eliminated. In place of these items, each bank would respond to a "yes" or "no" question asking whether it sells private label or third party mutual funds and annuities. In addition, banks would report the total assets under the reporting bank's management in proprietary mutual funds and annuities. For banks with proprietary mutual funds and annuities, reporting the amount of assets under management should be significantly less burdensome than reporting the quarterly sales volume for these proprietary products.

(e) Item 11, "Net unamortized realized deferred gains (losses) on off-balance sheet derivative contracts included in assets and liabilities reported in Schedule RC," and item 12, "Amount of assets netted against nondeposit liabilities (and deposits in foreign offices) on the balance sheet (Schedule RC) in accordance with generally accepted accounting principles," would be eliminated.

(2) For banks that file the FFIEC 034, *i.e.*, banks with domestic offices only and less than $100 million in total assets, items 3.a, "Noninterest-bearing balances due from commercial banks in the U.S," and 3.b, "Currency and coin," would be deleted.

(3) For banks that file the FFIEC 031, 032, and 033, i.e., banks with foreign offices or with $100 million or more in total assets:

(a) Item 2, "Federal funds sold and securities purchased under agreements to resell with U.S. branches and agencies of foreign banks," would be deleted.

(b) Item 13, "Outstanding principal balance of loans other than 1–4 family residential mortgage loans that are serviced for others," would be moved from Schedule RC–M to the proposed new schedule on securitization and asset sales activities, which is discussed in section III.B. below. This information would continue to be reported when this balance is more than $10 million. The current requirement that the balance must also exceed 10 percent of total assets in order for it to be reported would be eliminated.

(4) For banks with $1 billion or more in total assets that file the FFIEC 031 and 032, the U.S.-non-U.S. addressee breakdown of "Customers" liability to this bank on acceptances outstanding" in items 5.a and 5.b would be eliminated.

Schedule RC–N—Past Due and Nonaccrual Loans, Leases, and Other Assets:

(1) The categories of loans and leases for which past due and nonaccrual information would be collected would be defined uniformly for all banks, but banks with foreign offices or with $300 million or more in total assets would provide more detail for certain loan categories and for leases than other banks would. The loan category definitions used by all banks in Schedule RC–N would correspond to the standard definitions used in the loan schedule, Schedule RC–C. As discussed above under Schedule RC–K, this proposed change would end the separate loan reporting scheme for banks currently filing the FFIEC 033 and 034 which permits these banks to define for themselves the composition of the general loan categories used in Schedule RC–N (and three other schedules). Thus, all banks would report past due and nonaccrual information for the following categories of loans and leases: (a) Loans secured by real estate using the current breakdown from the Memoranda section of the schedule (Memorandum item 4 on the FFIEC 033 and 034; Memorandum item 3 on the FFIEC 031 and 032);[7] (b) loans to depository institutions and acceptances of other banks; (c) loans to finance agricultural production and other loans to farmers (except as noted below); (d) commercial and industrial loans; (e) credit cards to individuals for household, family, and other personal expenditures; (f) all other consumer loans; (g) loans to foreign governments and official institutions; (h) all other loans; and (i) lease financing receivables.

Banks with foreign offices or with $300 million or more in assets would also continue to report past due and nonaccrual information for: (a) Loans secured by real estate to non-U.S. addressees; (b) loans to foreign banks; (c) commercial and industrial loans to non-U.S. addressees; and (d) lease financing receivables of non-U.S. addressees. The agencies would retain the existing Schedule RC–N reporting threshold for agricultural loans for banks with domestic offices only and less than $300 million in assets. These banks would not be required to report past due and nonaccrual data for "Loans to finance agricultural production and other loans to farmers" if these loans are less than or equal to 5 percent of total loans.

(2) For banks that currently file the FFIEC 031 and 032, i.e., banks with foreign offices or with $300 million or more in assets, Memorandum item 4.b, "Replacement cost of [past due derivative] contracts with a positive replacement cost," would be deleted. Once banks adopt FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*, all of their derivative contracts will be carried on the balance sheet at fair value. Since the replacement cost of a derivative contract is its fair value and its book value will also be its fair value, Memorandum items 4.a., "Book value of amounts carried as assets," and 4.b would duplicate each other. The caption for Memorandum item 4.a would be revised to read "Fair value of amounts carried as assets."

Schedule RI—Income Statement:

(1) For all banks:

(a) Consistent with the approach for reporting loan information discussed above under Schedules RC–K and RC–N, the categories of loans for which loan income (in domestic offices) would be collected would be defined uniformly for all banks required to report loan income by category. The loan category definitions used in Schedule RI would correspond to the standard definitions used in the loan schedule, Schedule RC–C. As previously discussed, this proposed change would end the separate loan reporting scheme for banks currently filing the FFIEC 033 and 034 which permits these banks to define for themselves the composition of the general loan categories used in Schedule RI (and three other schedules).

The agencies are proposing to have banks report interest and fee income for the following seven categories of loans (in domestic offices): (a) Loans secured by real estate; (b) loans to finance agricultural production and other loans to farmers (except as noted below); (c) commercial and industrial loans; (d) credit cards to individuals for household, family, and other personal expenditures; (e) all other consumer loans; (f) loans to foreign governments and official institutions; and (g) all other loans. Banks with foreign offices would also continue to report the total amount of their interest and fee income on loans in foreign offices. The agencies would retain the existing Schedule RI reporting threshold for agricultural loans for banks with domestic offices only and less than $300 million in assets. These banks would not be required to report interest and fee income on "Loans to finance agricultural production and other loans to farmers" if these loans are less than or equal to 5 percent of total loans. In addition, a request for comment on the reporting of loan income by loan category by banks with domestic offices only and less than $25 million in assets is addressed in section V.B. below.

(b) The method of reporting tax-exempt income from loans and leases to states and political subdivisions in the U.S. used by banks that currently file the FFIEC 034 would be extended to all banks. Thus, the agencies are proposing to have all banks report the combined amount of their tax-exempt loan and lease income in a single income statement Memorandum item. This would mean that, going forward, the body of the income statement (Schedule RI) would contain only a single item (item 1.b) for income from lease financing receivables and it would no longer contain any items for income on "Obligations (other than securities and leases) of states and political subdivisions in the U.S."

(c) The categories of securities for which interest and dividend income would be collected would be uniform for all banks and would correspond with the securities categories for which quarterly averages are collected in Schedule RC–K. In addition, the number of categories of securities income that banks are required to report would be reduced or remain the same. Banks would report their income for the three following categories of securities in the body of the income statement: (a) U.S. Treasury securities and U.S. Government agency obligations; (b) mortgage-backed securities; and (c) all other securities. Banks would report their "Income on tax-exempt securities issued by states and political subdivisions in the U.S." in a new income statement Memorandum item rather than in the income statement (Schedule RI) itself.

(d) The agencies are proposing to add a new item for "Other interest income" to the interest income section of Schedule RI. This new item would be used for reporting interest income on assets other than those properly reported in items 1 through 5 of the Call Report balance sheet (Schedule RC), e.g., interest income on interest-only strips receivable (not in the form of a security) that are reported in Schedule RC–F, item 3. In addition, because this proposed new item is currently included in the interest income section of the income statement in the Board's FR Y–9C bank holding company report, this change would increase the uniformity between that report's income statement and Call Report Schedule RI.

(e) The separate interest expense items for interest on "Money market deposit accounts" and "Other savings deposits" (items 2.a.(2)(a) and (b) on the FFIEC 032, 033, and 034; items 2.a.(1)(b)(1) and (2) on the FFIEC 031) would be combined. Banks would report an interest expense item for interest on all "Savings deposits."

(f) Item 4.a, "Provision for credit losses," would be revised so that it includes only the provision for loan and lease losses. Banks would report any provision for credit losses on off-balance sheet exposures in "Other noninterest expense" and they would itemize and describe this provision in Schedule RI–E—Explanations, if it is significant.

(g) Item 4.b, "Provision for allocated transfer risk," would be eliminated as a specific income statement item. Banks would report any provision for allocated transfer risk in "Other noninterest expense" and itemize and describe it in Schedule RI–E if it is significant.

(h) Memorandum item 12, "Deferred portion of total applicable income taxes included in Schedule RI, items 9 and 11," would be deleted.

(2) For banks currently filing the FFIEC 031, 032, and 033, i.e., banks with foreign offices or with total assets of $100 million or more:

(a) A threshold test would be added to determine which banks should complete Memorandum items 8.a through 8.d, which provide a breakdown of trading revenue by risk exposure. At present, regardless of the amount of a bank's trading revenue, the bank must report the breakdown. To take a more risk-focused approach to reporting this information, the agencies are proposing to require that only those banks that reported a quarterly average for trading assets of $2 million or more (in Schedule RC–K, item 7) for any quarter of the preceding year would report the trading revenue breakdown. This is the same threshold test proposed for Schedule RC–D—Trading Assets and Liabilities. In addition, Section III.C. below discusses the agencies' proposal to collect separate information on trading revenue from cash instruments from banks with $5 billion or more in notional amount of derivatives.

(b) Memorandum items 9.a through 9.c request banks to disclose the impact of derivatives held for purposes other than trading on interest income, interest expense, and noninterest income (expense). For reporting beginning in 2001 when FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*, is in effect, the instructions for these items, and possibly the items themselves, will need to be revised because all derivatives will be reported on the balance sheet at fair value and the accounting for fair value and cash flow hedges under Statement No. 133 differs from current hedge accounting practices. The agencies request comment on how the existing instructions for Memorandum items 9.a through 9.c, or these three items themselves, should be modified in response to Statement No. 133. In particular, banks are encouraged to describe the information they plan to provide for internal management purposes on the effect of derivatives held for purposes other than trading on their earnings.

(3) Banks currently filing the FFIEC 031 and 032, i.e., banks with foreign offices or with total assets of $300 million or more, must report the amount of "Credit losses on off-balance sheet derivatives" in Memorandum item 10. With all derivatives carried on the balance sheet at fair value after banks adopt FASB Statement No. 133, credit losses related to derivatives will be reflected in the fair value of these instruments and no allowances for credit losses on derivatives should be maintained. Thus, the agencies request comment on how the existing instructions for Memorandum item 10 should be revised in response to Statement No. 133. The agencies would be especially interested in comments explaining how banks plan to measure and report credit losses on derivatives for internal management purposes.

Schedule RI–A—Changes in Equity Capital: For all banks:

(1) The agencies are proposing to change the manner in which the previous year-end balance of equity capital is reported in this schedule so that it better corresponds with how this balance is presented in financial statements prepared in accordance with GAAP. At present, banks must report the "Total equity capital originally reported" in the Call Report for the previous year-end in item 1. If the bank has filed any amendments to this previous year-end Call Report that affected its originally reported total equity capital, these equity capital adjustments are reported in item 2, and the amended equity capital balance for

[7] In addition to the categories of loans secured by real estate in the current breakdown, banks that file the FFIEC 031, i.e., banks with foreign offices, would also separately report their past due and nonaccrual loans secured by real estate in foreign offices, but they would no longer separately report their past due and nonaccrual loans secured by real estate to U.S. addressees.

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the previous year-end is reported in item 3. The agencies are proposing to eliminate item 2 and, in effect, have banks report what is now reported in item 3 as their previous year-end equity capital balance. Thus, as Schedule RI–A would be revised, banks would report the "Total equity capital most recently reported" for the previous year-end in item 1. Next, the agencies propose to combine items 9, "Cumulative effect of changes in accounting principles from prior years," and 10, "Corrections of material accounting errors from prior years," and designate the combined items as item 2, "Restatements due to corrections of material accounting errors and changes in accounting principles," of revised Schedule RI–A. The next item in revised Schedule RI–A (item 3) would then be captioned "Balance end of previous calendar year as restated."

(2) The net amount of a bank's treasury stock transactions, which is now included in item 5, "Sale, conversion, acquisition, or retirement of capital stock, net," would be reported in a new item. This item would enable the agencies to monitor the volume and extent of this activity during the year-to-date reporting period. Moreover, this proposed change would bring the reporting of treasury stock transactions in Schedule RI–A into closer conformity with the reporting of these transactions in the corresponding schedule in the Board's FR Y–9C bank holding company report.

(3) Items 11.a, "Change in net unrealized holding gains (losses) on available-for-sale securities," and 11.b., "Change in accumulated net gains (losses) on cash flow hedges," (and, on the FFIEC 031 only, item 12, "Foreign currency translation adjustments") would be combined and replaced by an item for "Other comprehensive income." This item would also include any minimum pension liability adjustment recognized during the year-to-date in accordance with GAAP, which banks currently have to report elsewhere in Schedule RI–A. Identifying "Other comprehensive income" in the changes in equity capital schedule is consistent with FASB Statement No. 130, *Reporting Comprehensive Income*.

In addition, banks now filing the FFIEC 034, *i.e.*, banks with domestic offices only and less than $100 million in total assets, would begin to complete Schedule RI–A quarterly rather than annually as of December 31. Sound financial reporting practices dictate that an institution prepare a year-to-date reconcilement of equity capital in its workpapers each quarter to ensure that it properly measures the total equity capital to be reported on the Call Report balance sheet. Thus, completing Schedule RI–A each quarter should not represent a significant increase in burden for most banks that file the FFIEC 034. Compared to annual reporting, quarterly completion of this schedule should also improve the accuracy of the reported data by enabling the agencies to more promptly identify any direct entries to equity capital that should have been recorded in earnings or another account. In addition, banks that file the FFIEC 034 currently report the amount of cash dividends declared during the calendar year-to-date in Schedule RI, Memorandum item 5, in the quarters when they do not complete Schedule RI–A. As part of this proposed change, Memorandum item 5 would be deleted.

Schedule RI–B—Charge-Offs and Recoveries on Loans and Leases and Changes in Allowance for Credit Losses: For all banks:

(1) The proposed changes to the categories of loans and leases for which charge-offs and recoveries are reported in Part I of this schedule would be the same as those discussed above for past due and nonaccrual loans and leases in Schedule RC–N. Thus, the loan and lease categories in Schedule RI–B, part I, would be defined uniformly for all banks using the standard definitions from the loan schedule (Schedule RC–C), but banks with foreign offices or with $300 million or more in total assets would provide more detail for certain loan categories and for leases than other banks would. As previously mentioned, this proposed change would end the separate loan reporting scheme for banks currently filing the FFIEC 033 and 034 which permits these banks to define for themselves the composition of the general loan categories used in Schedule RI–B, part I. Thus, banks would report past due and nonaccrual information for the following categories of loans and leases: (a) Loans secured by real estate using the current breakdown from Memoranda item 5;[8] (b) loans to depository institutions and acceptances of other banks; (c) loans to finance agricultural production and other loans to farmers (except as noted below); (d) commercial and industrial loans; (e) credit cards to individuals for household, family, and other personal expenditures; (f) all other consumer loans; (g) loans to foreign governments and official institutions, (h) all other loans, and (i) lease financing receivables.

Banks with foreign offices and banks with domestic offices only and $300 million or more in assets would also continue to report past due and nonaccrual information for: (a) Loans secured by real estate to non-U.S. addressees; (b) loans to foreign banks; (c) commercial and industrial loans to non-U.S. addressees; and (d) lease financing receivables of non-U.S. addressees. The agencies would retain the existing Schedule RI–B, part I, reporting threshold for agricultural loans for banks with domestic offices only and less than $300 million in assets. These banks would not be required to report past due and nonaccrual data for "Loans to finance agricultural production and other loans to farmers" if these loans are less than or equal to 5 percent of total loans.

(2) The scope of part II would be revised to cover changes in the allowance deleted for loan and lease losses rather than the entire allowance for credit losses. In addition, similar to the proposal discussed above for Schedule RI–A—Changes in Equity Capital, the agencies would change the manner in which the previous year-end balance of the allowance is reported in Schedule RI–B, part II, so that it better corresponds with its presentation in financial statements prepared in accordance with GAAP. At present, banks report the balance of the allowance as "originally reported" in their previous year-end Call Report in item 1. The effects of any amendments to the previous year-end Call Report on the allowance as originally reported are included in item 5, "Adjustments." The agencies are proposing to revise item 1 to eliminate the need to report these adjustments from amended Call Reports in item 5. Thus, banks would report the "Balance most recently reported" for the previous year-end allowance for loan and lease losses in item 1.

In addition, banks now filing the FFIEC 034, *i.e.*, banks with domestic offices only and less than $100 million in total assets, would begin to complete Schedule RI–B, part II, quarterly rather than annually as of December 31 for the same reasons cited above in the discussion of quarterly reporting of Schedule RI–A. The principal items that enter into the year-to-date reconcilement of the allowance for loan and lease losses are charge-offs, recoveries, and the provision for loan and lease losses, all of which each bank already reports quarterly. Thus, completing Schedule RI–B, part II, each quarter should not represent a

[8] In addition to the categories of loans secured by real estate in the current breakdown, banks that file the FFIEC 031, i.e., banks with foreign offices, would also separately report their charge-offs and recoveries on loans secured by real estate in foreign offices, but they would no longer separately report their charge-offs and recoveries on loans secured by real estate to U.S. addressees.

significant increase in burden for most banks that file the FFIEC 034.

Schedule RI–D—Income From International Operations (FFIEC 031 only):

(1) In part I—Estimated Income From International Operations, the reporting of interest income and expense by booking location and related adjustments in items 1 and 2 would be streamlined and replaced with items that are more consistent with the approach used in the remainder of part I for international operations. Thus, those banks that are required to complete this schedule would report their "Gross interest income" and their "Gross interest expense" attributable to international operations. From these two figures, banks would report their "Net interest income attributable to international operations." Because of this streamlined approach, Memorandum items 1 and 2 on intracompany interest income and expense, respectively, would be deleted.

(2) Part II—Supplementary Details on Income from International Operations, which has been collected to accommodate certain data needs of the Departments of Commerce and Treasury, would be eliminated.

Schedule RI–E—Explanations: For all banks:

(1) The requirement that banks itemize and describe significant components of other noninterest income and other noninterest expense in items 1 and 2 would be retained. However, similar to proposals discussed above for Schedules RC–F, RC–G, and RC–L, the agencies propose to add preprinted captions for the most commonly itemized and described categories of other noninterest income and expense. Blank text fields like those presently contained in items 1 and 2 would be retained for noninterest income and expense items not specifically covered in the preprinted captions. Furthermore, the agencies request comment on the current thresholds for itemizing and describing significant components of other noninterest income and other noninterest expense, *i.e.*, 10 percent of the total amount reported for other noninterest income and other noninterest expense, respectively. In particular, the agencies request comment on whether it would be more appropriate to base the threshold for itemizing and describing significant components of both other noninterest income and other noninterest expense on the sum of "Net interest income" plus "Total noninterest income."

(2) Item 2.a, "Amortization expense of intangible assets," would be moved from Schedule RI–E to the income statement (Schedule RI), where it would be split into separate items for "Amortization expense of intangible assets (excluding goodwill)" in the noninterest expense section and "Goodwill charges." This latter item would be reported on a net-of-tax basis and placed after item 10, whose caption would be revised to read "Income (loss) before goodwill charges, extraordinary items, and other adjustments." The "Goodwill charges" item would be followed by a new item captioned "Income (loss) before extraordinary items and other adjustments." The agencies are proposing these changes in response to the FASB's proposed accounting standard, Business Combinations and Intangible Assets, which requires this method of financial statement presentation for goodwill charges and the amortization expense for intangible assets other than goodwill. The agencies will monitor the progress of this proposed accounting standard in order to ensure that the presentation of these items in the Call Report income statement conforms to the presentation required by the FASB's final standard on business combinations and intangible assets.

(3) To conform to the changes proposed above for Schedules RI–A and RI–B:

(a) Item 4, "Equity capital adjustments from amended Reports of Income (from Schedule RI–A, item 2)," would be deleted.

(b) Items 5, "Cumulative effect of changes in accounting principles from prior years (from Schedule RI–A, item 9)," and 6, "Corrections of material accounting errors from prior years (from Schedule RI–A, item 10)," would be combined and recaptioned as "Restatements due to corrections of material accounting errors and changes in accounting principles from prior years (from Schedule RI–A, item 2)."

(c) The scope of item 8 would be revised to cover "Adjustments to allowance for loan and lease losses (from Schedule RI–B, part II, item 4)."

As the preceding listing of proposed revisions shows, even though the agencies are proposing to reduce the number of different versions of the Call Report from four to two, there will continue to be differences in the amount of information that banks will be required to report to the agencies. These differences are primarily based on whether a bank has any foreign offices (as defined in the Call Report instructions) and on a bank's total assets.[9] For example, Schedule RC–A—Cash and Balances Due From Depository Institutions would be completed by all banks with foreign offices or with $300 million or more in total assets. In some cases, the threshold for determining which banks must report certain information is based on other criteria. For example, to implement a more risk-focused approach to the reporting of trading activity, the agencies are proposing that banks (with foreign offices or with $100 million or more in total assets) that reported a quarterly average for trading assets of $2 million or more (in Schedule RC–K, item 7) for any quarter of the preceding year must complete Schedule RC–D—Trading Assets and Liabilities each quarter of the current year.

However, questions have been raised as to whether using reporting thresholds, other than those based on total assets or other readily available information that all banks must report, is an effective method for exempting banks from reporting certain information in the Call Report and thereby reducing reporting burden. For example, if the agencies ask banks to report the amount of a certain type of asset only if a bank has more than a specified dollar amount of this type of asset, is this less burdensome than simply requiring all banks to report the amount of this type of asset? In other words, what effect would Call Report reporting thresholds of this type have on the reporting burden imposed on individual banks and on banks as a whole?

B. Proposed New Regulatory Capital Reporting Approach

The agencies propose to revise the regulatory capital schedule (Schedule RC–R) by incorporating many of the reporting concepts of the Call Report's optional regulatory capital worksheet as well as some of those contained in the regulatory capital schedule currently filed by bank holding companies on the FR Y–9C report form. Under the agencies' proposal, all banks would be required to complete the entire revised regulatory capital schedule.

In general, the proposed revised format would use a systematic, step-by-step "building block" approach under which all banks would report the various components and adjustments that determine Tier 1, Tier 2, and total capital, as well as risk-weighted assets. This means that all bank capital ratios—the Tier 1 leverage ratio, the Tier 1 risk-based capital ratio, and the total risk-based capital ratio—would be derived

[9] Unless otherwise specified, the measurement date for determining whether a bank meets a particular reporting threshold, such as the total assets threshold, is June 30 of the preceding year.

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directly from the items that banks report on this schedule. These ratios would also be disclosed in the schedule. To eliminate redundant reporting, the agencies expect that the Call Report preparation software products used by most banks would automatically take, *i.e.*, carry forward, the carrying values of all on-balance sheet asset values and the face value or notional amount of most off-balance sheet items used in the capital calculations from other areas of the Call Report and enter these amounts into the proposed revised schedule. These carried-forward values would function as "control totals" and banks would allocate these amounts to the appropriate risk weight categories in accordance with the risk-based capital guidelines.

Currently, banks with total assets of less than $1 billion that have total capital greater than or equal to 8 percent of "adjusted total assets," as defined, need to complete only existing items 1–3.f on Schedule RC–R. All other banks must complete the current version of Schedule RC–R in its entirety. Existing item 3 requires the reporting of the major capital categories—Tier 1, Tier 2, Tier 3, and total risk-based capital—as well as risk-weighted assets and average total assets, which is used in the Tier 1 leverage ratio. The amounts reported in these existing items should be the amounts determined by banks for their own internal capital analyses consistent with the applicable capital standards. These items, *i.e.*, items 3.a through 3.f, are so-called "self-reported" capital items. The first part of the proposed revised regulatory capital schedule would essentially replicate the steps that banks are already going through to determine the major capital categories on a "self-reported" basis and therefore should not impose significant additional reporting burden. Moreover, to facilitate this proposed step-by-step "building block" approach to computing these capital categories, the agencies propose to move a number of items that are collected principally for regulatory capital calculation purposes from their currently scattered locations in other Call Report schedules to their more logical position in the proposed revised capital schedule. For example, the item for "Deferred tax assets disallowed for regulatory capital purposes" that is currently collected in Schedule RC–F—Other Assets, would now be included in the proposed revised Schedule RC–R. In addition, existing Schedule RC–R items 2.a and 2.b, which require the reporting of qualifying limited-life capital instruments that are includible in Tier 2 capital, would be collected on a combined basis in the proposed revised schedule.

Existing items 4–9 of Schedule RC–R would be replaced with a format that closely resembles the format of Part 2 of the current Call Report optional regulatory capital worksheet (and portions of Schedule HC–I of the bank holding company FR Y–9C report). Banks' Call Report software would take the carrying values of banks' balance sheet asset categories, as reported on Schedule RC, and automatically carry these amounts forward to column A of the on-balance sheet portion of the proposed revised capital schedule. Banks would then allocate these asset values to the appropriate risk weight categories in accordance with the risk-based capital guidelines to the same extent that they do at present for their own internal capital analyses, which is part of the same process banks currently use when determining net risk-weighted assets for "self-reported" item 3.d.(1) of Schedule RC–R.[10] During the allocation, column B of the on-balance sheet portion of the proposed schedule would be used by banks to report assets that are not subject to risk weighting under the capital guidelines. For banks that currently complete Schedule RC–R in its entirety, column B would be equivalent to existing item 8 of Schedule RC–R.

Similarly, banks' Call Report software would automatically take the face value or notional amount of those off-balance sheet items included in the calculation of risk-weighted assets that are reported elsewhere in the Call Report (generally, in Schedule RC–L) and include these amounts in column A of the off-balance sheet portion of the proposed regulatory capital schedule. However, banks would need to separately identify the amounts of their low-level recourse transactions and other financial assets sold with recourse. The Call Report software products would likely embed the credit conversion factors applicable to the various off-balance sheet items into the software for this schedule.[11] The software should then calculate the credit equivalent amount for each off-balance sheet item (column B) by multiplying the face or notional amount by the credit conversion factor. Banks would next allocate the credit equivalent amounts to the appropriate risk weight categories like they do for their own internal risk-based capital analyses.[12] As with the on-balance sheet items, banks must currently follow this same allocation process for their off-balance sheet items in order to complete the calculation of their net risk-weighted assets for "self-reported" item 3.d.(1) of Schedule RC–R.

An advantage to this "building block" approach is that banks, the agencies, and other Call Report users would be assured that the sum of the amounts allocated to each risk weight category (plus the on-balance sheet items not subject to risk weighting) would agree to the balance sheet total for each asset category and the credit equivalent amount for each off-balance sheet item. This type of approach has been used for many years in the bank holding company FR Y–9C report and, from comments the agencies have received in the past, seems to be the preferred risk-based capital reporting format by bankers who must complete both the Call Report and the FR Y–9C. Furthermore, via the Call Report preparation software products used by most banks, a large portion of the inputs to the proposed schedule's risk-weighting process for both on- and off-balance sheet items would be taken automatically from other parts of the Call Report. These software products should also perform the final calculation of total risk-weighted assets as well as the risk-based and leverage capital ratios reported in the proposed schedule. Thus, the power of the software should help minimize reporting burden.

Overall, the agencies believe that the proposed revisions to the regulatory capital schedule of the Call Report provide a rational, systematic approach to reporting the elements of capital as well as the components of risk-weighted assets. The proposed approach should offer both enhanced and efficient reporting for both banks and Call Report users.

[10] For risk-based capital purposes, banks are not required to identify each on-balance sheet asset and off-balance sheet item that qualifies for a risk weight of less than 100 percent (50 percent for derivatives). Thus, when completing the proposed revised Schedule RC–R, each bank would decide for itself how detailed an analysis of its assets and off-balance sheet items it wishes to perform and how many of the specific lower risk-weighted items it wishes to identify. In other words, a bank can pick and choose among the asset items and the credit equivalent amounts of off-balance sheet items that have a risk weight that is less than the maximum and risk-weight them accordingly, or simply risk-weight some or all of these items at a 100 percent risk weight (50 percent for derivatives).

[11] For the retained recourse on financial assets sold with low-level recourse, banks would have the ability to apply their institution-specific factors if they use the "direct reduction method" for converting low-level exposures to credit equivalent amounts.

[12] For example, if a bank has $100 face value of performance standby letters of credit and the credit conversion factor for these letters of credit is 50 percent, then the credit equivalent amount is $50. The bank would assign the credit equivalent amount of $50 to the appropriate risk weight categories according to the obligor or, if relevant, the guarantor or the nature of the collateral in accordance with the risk-based capital guidelines.

III. Proposed New Information

In addition to streamlining the existing Call Report requirements by eliminating information that is no longer of significant value, the agencies are also endeavoring to improve the relevance of the Call Report by identifying new types of information that are considered critical to the agencies' supervisory data needs going forward. In so doing, the agencies have focused primarily on new activities and other recent developments that may expose institutions to new or different types of risk. The agencies expect that most of the proposed new reporting requirements discussed below will affect a relatively small percentage of banks because of the limited number of institutions that are involved in the activities these reporting requirements address.

Furthermore, by proposing to implement the following new reporting requirements in the same reporting period as the Call Report streamlining changes, banks will be able to make all of the necessary systems changes at one time. The agencies believe that combining these various types of revisions into a single package should result in lower start-up costs and reporting burden for banks from a systems perspective.

The agencies are currently reviewing various provisions of the Gramm-Leach-Bliley Act (Pub. L. 106–102, codified at 15 U.S.C. 6801 *et seq.*), which was signed into law on November 12, 1999. Because of the new affiliations that banks are permitted to have and the new activities in which banks and bank subsidiaries may engage, the agencies may need to implement changes to the Call Report in the future on account of this new law.

A. Subprime Loans

Subprime lending is a high-risk activity that poses increased risk to the institutions involved and to the deposit insurance funds if appropriate safeguards are not in place. Insured institutions have increasingly entered the subprime lending market in recent years, and industry analysts predict that many nonbank subprime specialists will seek to be acquired by insured institutions to take advantage of the relatively less expensive, more stable funding source that insured deposits provide. The exact number of institutions involved in subprime lending is not known with certainty; however, the FDIC has estimated that approximately 150 insured institutions currently have significant exposures in the subprime lending business. Despite a favorable economic environment, a disproportionate number of insured institutions that engage in subprime lending are problem institutions. The estimated number of insured subprime lenders represents just over one percent of all insured institutions, yet they account for nearly 20 percent of all problem institutions.

The actual extent of insured institutions' involvement in subprime lending is not known because there is no periodic reporting of this activity to the banking agencies. The estimates that have been made come from examination data, but the quality and timeliness of the subprime lending data gleaned from examination reports is constrained by inconsistent reporting and by the length of the examination cycle. The issue of timeliness is particularly troublesome from a safety and soundness perspective, since subprime lending tends to be a volume-oriented business that encourages rapid portfolio growth. Consequently, there is no reliable way to regularly monitor individual institutions' subprime lending programs. In several instances, this has resulted in the unexpected and severe deterioration in the condition of an institution from one examination to the next.

Accordingly, the agencies are proposing to add a number of new items to the Call Report on subprime lending. These proposed items would make possible the early detection and proper supervision of subprime lending programs through offsite monitoring procedures. Banks involved in subprime lending would report quarter-end data for the following eight categories of subprime loans in their loan portfolios: (1) Revolving, open-end loans secured by 1–4 family residential properties extended under lines of credit, (2) closed-end loans secured by first liens on 1–4 family residential properties, (3) closed-end loans secured by junior liens on 1–4 family residential properties, (4) loans secured by other properties, (5) credit cards to individuals for household, family, and other personal expenditures, (6) consumer loans secured by automobiles, (7) other consumer loans, and (8) other subprime loans. This information would be reported in new Memorandum items in the loan schedule (Schedule RC–C, part I). Thus, for example, the proposed Memorandum item for subprime closed-end loans secured by first liens on 1–4 family residential properties should contain all subprime loans that are included in Schedule RC–C, part I, item 1.c.(2)(a). Banks involved in subprime lending would also report their past due and nonaccrual subprime loans and the year-to-date charge-offs and recoveries on these loans in new Memorandum items in Schedules RC–N and RI–B, part I. In these two areas, two broader loan categories would be used: loans secured by real estate and loans not secured by real estate.

The quality and validity of the proposed subprime lending information to be collected in the Call Report hinges on a workable definition of subprime lending. Furthermore, subprime loans could be defined on the basis of either (a) loan portfolios or programs that possess certain characteristics or (b) individual loans with these characteristics. Whether the portfolio or program approach or the individual loan approach ultimately is adopted, the agencies are proposing the following definition of subprime loans for purposes of reporting information on these loans in the Call Report:

> Subprime loans are extensions of credit to borrowers who, at the time of the loan's origination, exhibit characteristics indicating a significantly higher risk of default than traditional bank lending customers. Risk of default may be measured by traditional credit risk measures, *e.g.*, credit/repayment history and debt-to-income levels, or by alternative measures such as credit scores. Subprime borrowers represent a broad spectrum of debtors ranging from those who have exhibited repayment problems prior to origination of their loans due to an adverse event, such as job loss or medical emergency, to those who persistently mismanage their finances and debt obligations. Subprime lending does not include loans to borrowers who have had minor, temporary credit difficulties since the origination of their loans but are now current. Subprime loans may take the form of direct extensions of credit; loans purchased from other lenders, including delinquent or credit impaired loans purchased at a discount; and automobile or other financing paper purchased from other lenders or dealers.

The agencies invite comment on all aspects of the proposed new Call Report items on subprime lending. In particular, the agencies seek comment on the proposed definition of subprime loans generally and on the following issues relating to this definition:

(1) Should all individual subprime loans be reported in the proposed new Call Report items or should only those subprime loans that are held in a segregated portfolio or program be reported? Do you foresee any difficulties in reporting individual subprime loans or segregated groups of subprime loans?

(2) Based on the proposed definition of subprime loans above, approximately what percentage of your bank's loan portfolio would currently be categorized

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as subprime? Using your bank's own internal definition of a subprime loan, what percentage of your loan portfolio does your bank currently classify as subprime? Please indicate whether these percentages are based on an individual subprime loan approach or a segregated portfolio or program approach. To the extent possible, provide percentages for your bank's loan portfolio under both approaches.

(3) What criteria does your bank use to determine which loans are subprime? Are the criteria the same for all types of loans, *e.g.*, mortgage, automobile, and credit cards? If not, how do they differ?

(4) In defining subprime loans, which factor(s) listed below are the best indicators of a higher risk of default?

(a) Higher loan fees.

(b) Higher interest rates. For example, should all loans made at a contract rate 200 basis points above the rate that is offered to a traditional bank customer for the same type of loan be included as subprime loans?

(c) Debt-to-income ratios. For example, should a loan to a borrower with a specific debt-to-income ratio above a stipulated level automatically be a subprime loan?

(d) Delinquency history. For example, should a loan be categorized as subprime if the customer's credit history at the time of the loan's origination indicates that he or she had two or more payments that were 30 days past due in the last 12 months or had loans charged off in the last 12 months? When would your bank consider that a customer's delinquency history makes that customer a subprime borrower?

(e) Loan-to-value ratio. Is there a loan-to-value ratio above which a loan secured by real estate would be considered subprime?

(f) Credit scores or other ratings. If your bank uses credit scoring to determine whether a loan should be categorized as subprime, are the scores custom or generic bureau scores?

(1) If generic bureau scores were used, below what score cutoff would a loan be considered subprime?

(2) Does the score cutoff differ by loan type?

(g) Bankruptcy status. For example, how far back in the customer's credit history would your bank go to determine whether a bankruptcy should affect your categorization of a loan?

(h) Lack of credit history.

(i) Other factors. Please identify any other factor that should be considered an indicator of a higher risk of default and explain why it should be considered.

(5) Should the definition of subprime be identical for all types of loans, or should it differ by type of loan, *e.g.*, mortgage, automobile, and credit cards?

(6) Can your bank determine from its records whether borrowers with subprime characteristics have credit support (*e.g.*, public or private guarantees, co-signers, and insurance) on specific loans? If yes, do you categorize loans with such credit support as subprime loans?

(7) The proposed subprime loan definition relies on differences between traditional and "higher risk" borrowers? How should the agencies take into account shifts in that difference (*e.g.*, what happens if "traditional" lending standards drop)?

(8) Should the subprime loan definition distinguish between institutions that target higher risk borrowers as opposed to those institutions that serve a community in an economically disadvantaged area where the repayment ability of area borrowers can be or has been adversely affected?

(9) Should there be a de minimus level of subprime loans below which reporting is not required?

(10) Should smaller institutions be treated differently from larger institutions for reporting purposes?

(11) What types of loans or lending programs, if any, should be excluded from the definition of subprime loans or, if included in the definition, reported separately from other subprime loans? Please explain the reasons for the exclusion or separate reporting.

(12) Should the proposed Call Report items on subprime loans be treated as confidential for a limited period of time in order to give banks time to resolve issues surrounding which loans should and should not be reported as subprime?

Although this proposal would create several new Call Report items, the burden of reporting this information will fall only upon those institutions engaged in subprime lending as it will be defined. Even if the number of banks involved in this activity turns out to be, say, four times the current estimate, these proposed new reporting requirements would affect only 6 percent of the banks that file Call Reports. The agencies would welcome any additional information commenters can provide on the number of banks that are subprime lenders in order to improve the agencies' assessment of the potential reporting burden of this proposal.

B. Bank Securitization and Asset Sale Activities

At present, the Call Report includes several items in various schedules that the agencies use to assess bank involvement in securitization and asset sale activities. The items generally focus on the securitization and sale of 1–4 family residential mortgages and consumer loans. However, over the past few years, the scope and volume of bank asset securitization activities have expanded significantly beyond the traditional 1–4 family residential mortgage and consumer loan areas into other areas, most notably into the areas of home equity and commercial lending. The agencies propose to revise and expand the information collected in the Call Report to facilitate more effective analysis of the impact of securitization and asset sale activities on bank credit exposures. In this regard, the agencies are proposing to introduce a separate new Call Report schedule (Schedule RC–S) that would comprehensively capture information related to bank securitization and asset sale activities.

Under this proposal, banks involved in securitization and asset sale activities would report quarter-end (or year-to-date) data for seven loan categories similar to the manner in which they report their loan portfolios. These data would cover 1–4 family residential loans, home equity lines, credit card receivables, auto loans, other consumer loans, commercial and industrial loans, and all other loans. For each loan category, banks would report: (1) The outstanding principal balance of assets sold and securitized with recourse or seller-provided credit enhancements, (2) the maximum amount of credit exposure arising from recourse or credit enhancements to securitization structures (separately for those sponsored by the reporting bank and those sponsored by other institutions), (3) the past due amounts and charge-offs and recoveries on the underlying securitized assets, (4) the amount of any commitments to provide liquidity to the securitization structures, (5) the outstanding principal balance of assets sold with recourse or seller-provided credit enhancements that have not been securitized, and (6) the maximum amount of credit exposure arising from assets sold with recourse or seller-provided credit enhancements that have not been securitized. A limited amount of information would also be collected on bank credit exposures to asset-backed commercial paper conduits.

For the home equity line, credit card receivable, and the commercial and industrial loan categories, banks would also report the amount of any ownership (or seller's) interests in securitizations that are carried as securities and the past due amounts and charge-offs and recoveries on the assets underlying these seller's interests. The agencies request comment on whether these proposed items for ownership (or seller's) interests in securitizations should also include seller's interests not in security form that continue to be carried as loans on the balance sheet or whether information on these non-security seller's interests should be collected separately. Expanding the proposal to incorporate data on seller's interests that are not in security form would provide the agencies a complete picture of this element of banks' securitization activities. The agencies also request comment on whether banks are engaging in transactions in which they retain ownership (or seller's) interests in asset securitizations that involve loans outside of the three categories included in the proposal (*i.e.*, home equity lines, credit card receivables, and commercial and industrial loans).

In addition, the agencies request comment on the manner in which banks' internal management reports capture information on asset securitization activities. In particular, do bank management reports primarily furnish information on the basis of whether the bank provides recourse or credit enhancements (which is the basis upon which proposed Schedule RC–S is structured, consistent with the agencies' risk-based capital requirements) or do these reports primarily furnish information on the basis of whether the bank performs the servicing on the underlying assets?

With the collection of this expanded information on bank securitization and asset sale activities, the following existing Call Report items on Schedule RC–L would be eliminated:

(1) For all banks, items 9.a.(1) and (2) on the outstanding principal balance and amount of recourse exposure on first lien 1–4 family residential mortgage loans sold with recourse, and items 9.b.(1) and (2) on the outstanding principal balance and amount of recourse exposure on other financial assets sold with recourse.

(2) For banks filing the FFIEC 031 and 032, *i.e.*, banks with foreign offices or with $300 million or more in total assets, Memorandum items 5.a, 5.b, and 5.c on the outstanding amount of auto loans, credit cards, and other consumer loans that have been securitized and sold (with servicing retained).

In addition, the six items on 1–4 family residential mortgage loan servicing that all banks currently complete on Schedule RC–M (items 4.a through 4.d) would be combined into two items and moved to the proposed new securitization and asset sale activities schedule. These two items would cover residential mortgages serviced for others with credit enhancements and with no credit enhancements. The separate Schedule RC–M item on the servicing of all other loans (item 13), which is currently reported by banks filing the FFIEC 031, 032, and 033, *i.e.*, banks with foreign offices or with $100 million or more in total assets, would be moved to the proposed new schedule and would be applicable to all banks. This servicing item would continue to be reported only if the amount is more than $10 million, but the agencies would eliminate the additional current threshold that it must exceed 10 percent of total assets in order to be reported.

Based on a review of the Call Report information currently collected on assets transferred with recourse, mortgages serviced with recourse, and securitized consumer loans, the agencies estimate that approximately 5 percent of all banks are currently involved in securitization and asset sale activities. Thus, although the proposed new schedule would collect a considerable amount of information on these activities, most banks will not be affected by Schedule RC–S and the increase in reporting burden associated with the schedule's new or expanded information will be confined to a relatively small segment of the banking industry.

On a related matter, the agencies also propose to collect information to facilitate more effective assessments of bank credit and other exposures related to their portfolios of asset-backed securities. Currently, virtually all non-mortgage asset-backed securities are reported in a single Call Report item, *i.e.*, Schedule RC–B, item 5, "Other debt securities." The proposed segregation of specific categories of asset-backed securities from "Other debt securities" would promote risk-focused supervision by enhancing the agencies' ability to assess credit exposures and asset concentrations. Under the proposal, banks would report quarter-end fair value and amortized cost information for six categories of asset-backed securities that are currently included in the item for "Other debt securities." The six categories are securities backed by: (1) Home equity lines, (2) credit card receivables, (3) auto loans, (4) other consumer loans, (5) commercial and industrial loans, and (6) all other loans.

C. Additional Categories of Noninterest Income

Noninterest income has grown substantially over the last few years as a source of revenue for banks. For 1999, noninterest income in the aggregate for commercial banks accounted for 42 percent of their net interest income plus noninterest income, 8 percentage points higher than in 1994. Most of this growth in noninterest income has come from new or expanded services provided by banks. A more detailed breakdown of noninterest income would provide the agencies with valuable supervisory information on the amount and type of fee-generating activities within the bank.

Therefore, the agencies are proposing to add several new noninterest income categories to those currently collected in the Call Report income statement (Schedule RI). These categories were selected in part based on a review of noninterest income information currently reported by banks in Schedule RI–E—Explanations. In this schedule, banks must itemize and describe, using their own terminology, their most significant categories of "Other noninterest income." Three of the proposed new income statement categories represent items, or modifications of items, for which specific preprinted captions currently appear in Schedule RI–E (items 1.a, 1.b, and 1.c and items 2.b, 2.c, and 2.d). As a result, these items would no longer be reported in Schedule RI–E.

The categories of noninterest income that would be added as specific items on the Call Report income statement are: (1) Investment banking, advisory, brokerage, and underwriting fees and commissions, (2) venture capital revenue, (3) net servicing fees, (4) net securitization income, (5) insurance commissions and fees, (6) loan and other credit-related fees (not reported as part of interest and fee income on loans), (7) net gains (losses) on sales of loans, (8) net gains (losses) on sales of other real estate owned, and (9) net gains (losses) on sales of other assets (excluding securities). The current income statement item for "Other fee income" (item 5.b.(1) on the FFIEC 034; item 5.f.(1) on the FFIEC 031, 032, and 033) would be discontinued. These new noninterest income items would be included on the report forms for all banks. However, in most cases, small banks are not likely to be involved in several of these activities or transactions and, therefore, will be subject to only limited additional reporting burden in this area.

The new noninterest income items would provide greater comparability among the categories of noninterest income currently reported by banks. Some of the proposed noninterest income categories would represent the only information provided in the Call

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Report on certain bank activities. By collecting more detailed noninterest income data, the significance of each of these activities can be compared to other income-generating activities of the bank.

Finally, for the limited number of large banks that have $5 billion or more in notional amount of derivatives held for trading, the agencies are proposing to modify the information currently collected on trading revenue by risk exposure (in Schedule RI, Memorandum item 8). In order to distinguish between trading revenue from cash instruments and from derivative contracts, these banks would begin to report their revenue from cash instruments by risk exposure in addition to their total trading revenue by risk exposure.

D. Federal Home Loan Bank Advances

As of year-end 1999, over 5,300 or approximately three fifths of the 8,600 insured commercial banks were members of the Federal Home Loan Bank System. Nearly all of the more than 1,600 thrift institutions, including FDIC-supervised savings banks, also were members. Many commercial banks have joined the Federal Home Loan Bank System in recent years in order to gain a new source of funding. As a result, the volume of Federal Home Loan Bank advances to commercial banks has risen dramatically. The Federal Home Loan Bank System had advances outstanding of $155 billion to about 3,700 commercial banks at the end of 1999 according to aggregate data that the Federal Housing Finance Board (FHFB) supplied to the agencies. These advances represented almost 40 percent of total advances of $392 billion to all Federal Home Loan Bank System members at the end of 1999. Federal Home Loan Bank advances to banks and thrifts are expected to further increase because recent legislation expands the types of assets that institutions can pledge as collateral for advances.

At present, Federal Home Loan Bank advances are reported as part of a bank's "Other borrowed money" in the Call Report (Schedule RC, item 16). The aggregate amount of "Other borrowed money" at commercial banks has increased significantly over the past few years, growing at a faster rate than the total liabilities of commercial banks. Between year-end 1994 and 1999, aggregate "Other borrowed money" more than doubled to $508 billion. Thus, about 30 percent of aggregate "Other borrowed money" currently consists of advances from Federal Home Loan Banks. While the agencies have been able to obtain information on advances indirectly through the FHFB and relate it to Call Report data on borrowings, the agencies' future ability to obtain timely and consistent data on advances may be more difficult after the FHFB implements its plan to give the 12 Federal Home Loan Banks more autonomy and reporting responsibility.

Therefore, to improve their monitoring and understanding of individual banks' funding sources, asset-liability management, and liquidity, the agencies are proposing to have banks report Federal Home Loan Bank advances separately from their remaining "Other borrowed money," including the existing three-way maturity breakdown of these borrowings. This would also provide more consistent information on borrowings by banks and savings associations because the latter already report the amount of their Federal Home Loan Bank advances on the Thrift Financial Report.

In addition to Federal Home Loan Bank advances, "Other borrowed money" includes other types of nondeposit liabilities to third parties that may be partially or fully secured by bank assets. Examples of these collateralized borrowings include loans sold under repurchase agreements that mature in more than one business day, mortgage indebtedness on bank premises, and borrowings from Federal Reserve Banks. The FDIC is currently evaluating the effect of bank assets that secure borrowings in the context of risk to the insurance funds and the setting of appropriate deposit insurance assessment rates. Accordingly, the agencies seek comment on the existing availability of information in bank records on the collateralization of bank borrowings and the amounts and types of collateral involved. To the extent it is not currently available, comment is requested on the burden associated with developing and maintaining this information. Data on the collateral securing bank borrowings would also enable the agencies to more efficiently evaluate the cost of resolving a failed or failing institution and market it to potential acquirers.

E. Restructured Derivative Contracts

The agencies propose to require that banks with foreign offices or with $300 million or more in total assets report the fair value of derivative contracts carried as assets that have been restructured or renegotiated for reasons related to the counterparty's financial difficulties. This new item would exclude derivative contracts that are 30 days or more past due. The purpose for adding this item is to obtain better and more complete information about the general credit quality and performance of banks' derivatives. Currently, the Call Report collects past due information on these contracts (Schedule RC-N, Memorandum item 4); however, this item rarely shows significant volumes of delinquent derivative contracts because the contracts are often either renegotiated and restructured or charged off before they become more than 30 days past due. Because counterparty credit risk is a significant consideration in the assessment of derivative transactions, information on restructured contracts is important for supervisory purposes and will complement the data that banks already report on past due derivatives and on credit losses on derivatives.

Based on December 31, 1999, Call Report data, less than 500 banks currently report that they have derivative contracts outstanding. Moreover, the seven largest commercial bank participants in the derivatives market hold 95 percent of the notional amount of all derivatives held by commercial banks. Approximately 90 percent of the Call Report information currently collected on derivative contracts is reported by banks with total assets of $1 billion or more. Thus, the burden associated with the collection of the proposed new item on restructured derivative contracts would be concentrated in large banks.

IV. Reporting of Trust Data

The agencies propose to change the manner in which banks report information on their trust activities. Thus, for banks, the agencies would replace the existing Annual Report of Trust Assets (FFIEC 001) and the Annual Report of International Fiduciary Activities (FFIEC 006) with a Fiduciary and Related Services Schedule (Fiduciary Schedule). This new schedule (Schedule RC-T) would become part of the bank Call Report. Under this proposal, banks that have total fiduciary assets greater than $100 million or fiduciary income greater than 10 percent of their combined net interest and noninterest income, as well as all nondeposit trust companies that file Call Reports, would be required to report certain trust information in Schedule RC–T quarterly.[13] This

[13] A number of entities that do not submit Call Reports to the agencies file the existing trust reports. In this regard, savings associations and savings and loan service corporations with trust powers currently file the FFIEC 001. Likewise, state-chartered nondeposit trust companies that are subsidiaries of a bank or savings association, bank holding company, savings and loan holding company, or savings and loan service corporation also file the FFIEC 001. Bank subsidiaries located outside the United States, and bank holding companies with subsidiaries or affiliates located outside the United States, that provide trust services at any foreign location currently file the FFIEC 006. This Call Report proposal does not address the trust reporting requirements that would be applicable to these entities in 2001.

information includes the number of accounts and the market value of trust assets for eight categories of fiduciary activities and a fiduciary and related services income statement. This group of quarterly reporters would include approximately one-half of the 2,300 institutions conducting fiduciary activities. In the aggregate, these institutions hold more than 90 percent of total fiduciary assets. These institutions would also report data on corporate trust activities, collective investment funds and common trust funds, fiduciary settlements and other losses, and types of assets held in personal trust and agency accounts at year-end only. The remaining trust institutions would report the preceding information, except the fiduciary income statement and fiduciary settlements and other losses, annually as they do at present. The fiduciary and related services income statement and the items on fiduciary settlements and other losses would be treated as confidential information on an individual institution basis, which would maintain the treatment accorded this information in the Annual Report of Trust Assets. The agencies have applied this confidential treatment to this trust income and loss information because these data generally pertain to only a portion of a reporting institution's total operations and not to the institution as a whole.

Collecting certain data in the new Fiduciary Schedule from the larger trust institutions each quarter will provide the agencies with critical supervisory information relating to both national and international fiduciary activities on a more timely basis. This will enable the agencies to identify trends and changing risk profiles relating to fiduciary activities more quickly.

Most of the 51 data items that would be reported quarterly in the Fiduciary Schedule are currently included in the annual trust reports. Modifications have been made to some of the existing items to improve their value and usefulness. An additional 48 data items would only be collected annually in the December 31 report. The total number of separately reportable data items in the proposed Fiduciary Schedule represents a decrease of almost 60 percent in the number of reportable items in the FFIEC 001 and FFIEC 006 combined. Although roughly half of the trust institutions would have a new quarterly filing requirement under which they would report trust data they now report only annually, these institutions should already have a reporting system in place to track this information. In addition, small trust institutions would at most have to provide trust data in 69 items once each year. Thus, the agencies believe this proposal should not produce a significant overall increase in reporting burden for trust institutions.

The agencies are proposing to add the new Fiduciary Schedule to the Call Report instead of retaining separate trust reports in order to facilitate the timely collection and processing of the information. Institutions filing the current annual trust reports generally must submit their reports within 45 days after year-end. Electronically submitted annual trust reports, first allowed for year-end 1998 reporting, have a 75-day filing deadline. By moving the reporting of fiduciary information into the Call Report, the submission deadline for the Call Report would apply to this reporting requirement. Consistent with the proposal discussed in Section V.D. below to shorten the Call Report submission period for banks with foreign offices, the length of time that trust institutions would have for completing the Fiduciary Schedule would be reduced from 45 days to 30 days for most institutions and from 75 days to 30 days for institutions that file electronically.

The agencies invite comment on all aspects of the proposed Fiduciary Schedule. In particular, the agencies seek comment on the following issues relating to this schedule:

(1) Do the proposed criteria for determining which institutions should report quarterly adequately capture those institutions that should report fiduciary activities more frequently than annually because of the extent of their involvement with these activities? If not, what should the criteria be?

(2) What types of difficulties, if any, will institutions encounter in complying with the proposed reduction in the amount of time for reporting trust information in spite of the significant decrease in the amount of data that institutions would be required to report?

(3) Are the categories of trust accounts for which asset and income information would be reported in the proposed Fiduciary Schedule an improvement over the current reporting structure of the Annual Report of Trust Assets (FFIEC 001) and are the proposed trust account categories clear? Is there an alternative categorization of trust accounts for asset and income reporting purposes that would increase the schedule's usefulness?

(4) Is net fiduciary and related services income, as it would be reported in the proposed schedule, a useful performance measure? Is the proposed single item for "Expenses" too broad or restrictive to allow for meaningful peer analysis? Should intracompany income credits be included, as proposed, in computing net fiduciary and related services income?

(5) Should individual institution fiduciary income and loss information continue to be accorded confidential treatment with only aggregate income and loss data made available to the public or should the agencies make some or all of this individual institution data publicly available?

(6) What fiduciary-related trends and ratios should be reported in the Bank Performance Report and how should they be presented?

(7) The FFIEC currently issues an annual publication, "Trust Assets of Financial Institutions," containing data reported in the Annual Report of Trust Assets (FFIEC 001). Should the FFIEC continue to produce such a publication and, if so, which types of data from the proposed schedule should the publication contain and how often should the FFIEC publish the data?

(8) The proposed schedule would replace the Annual Report of International Fiduciary Activities (FFIEC 006). The information on fiduciary accounts in foreign offices in the proposed schedule is currently reported in the FFIEC 006, but the agencies have not made the information collected in the FFIEC 006 available to the public. In contrast, the foreign office fiduciary account information in the proposed Fiduciary Schedule would be publicly available. Should the agencies continue to treat this foreign office information as confidential and, if so, for what reasons?

V. Other Issues for Which Public Comment is Requested

A. Subchapter S Bank Dividends Distributed to Cover Shareholders' Personal Tax Liabilities

Approximately 1,300 banks have so far elected Subchapter S status for federal income tax purposes, thereby shifting the liability for the payment of taxes on the bank's taxable income from the bank to its shareholders. As a result, Subchapter S banks typically increase their dividend payments to shareholders to provide them with sufficient funds to cover their personal tax liabilities for their share of the bank's earnings. However, the agencies have not been

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fully successful in estimating the effect that Subchapter S status has on a bank's earnings and dividends by adjusting for an assumed tax rate in the Uniform Bank Performance Report (UBPR). This approach has been questioned by bankers at some Subchapter S banks who have felt the results disclosed in the UBPR were inaccurate for their individual institutions. As a consequence, the agencies have found it difficult to make valid comparisons of the dividend rates and after-tax earnings of Subchapter S banks and banks that are subject to federal corporate income taxes, *i.e.*, Subchapter C banks.

For this reason, the agencies are considering whether to add a new Call Report item in which Subchapter S banks would report the dollar amount of dividends being distributed to shareholders to cover their personal tax liabilities for the bank's taxable income. Based on comments made by bankers from some Subchapter S banks, they already determine this dividend amount after consulting with their larger shareholders.

These bankers believe that it would be more accurate for the UBPR to adjust their reported earnings and dividends using these dollar amounts in place of a calculation that applies an assumed tax rate to bank earnings. Therefore, the agencies request comment on:

(1) Whether Subchapter S banks normally perform such an analysis as part of their dividend-setting process,

(2) How these banks determine the amount to distribute to shareholders given the shareholders' differing personal tax positions,

(3) Whether the amounts distributed to cover shareholders' personal tax liabilities are measured consistently from year to year, and

(4) Whether the agencies should add a new Call Report item in which Subchapter S banks would report the amount of dividends distributed to cover shareholders' personal tax liabilities.

B. Reporting of Loan Income and Averages by Small Banks

Banks with domestic offices only and less than $25 million in assets are not currently required to report a breakdown of their total loan income by loan category or their quarterly average for total loans by loan category. This reporting approach for the smallest banks took effect in 1984 and was intended to limit the reporting burden on these institutions at a time when their loan systems were believed to be primarily manual rather than automated. These small banks do, however, report a breakdown of their loan portfolios by loan category as of each quarter-end report date and they also report their past due and nonaccrual loans and their charge-offs and recoveries by loan category each quarter. With the increased use of technology, even by small banks, since 1984, and the requirement to file Call Reports electronically, the reason for exempting banks with less than $25 million in assets from reporting loan income and averages by loan category may no longer be valid.

Removing this small bank exemption would improve the agencies' offsite monitoring capability for these banks, thereby enhancing their risk-focused supervision. The agencies would be able to detect changes in the loan yields for the separate loan categories within an individual small bank's loan portfolio and compare this to changes in the loan volume in those categories and to the yields on these loan categories at peer group banks. This would provide the agencies a means to more promptly identify a small bank's move to higher risk, higher yielding loans. Removing this exemption would also increase the consistency of the information available on bank lending for all banks, which may prove useful to the management of small banks as they evaluate their own institution's performance.

If the exemption from reporting loan income and averages were eliminated for banks with domestic offices only and less than $25 million in assets, these banks would report a breakdown of their total interest and fee income on loans using the following loan categories: (1) Loans secured by real estate, (2) commercial and industrial loans, (3) credit cards to individuals for household, family, and other personal expenditures, (4) other consumer loans, (5) loans to foreign governments and official institutions, and (6) all other loans. In addition, those banks with less than $25 million in assets that have "Loans to finance agricultural production and other loans to farmers" (Schedule RC–C, part I, item 3) exceeding 5 percent of total loans would report the amount of income on these agricultural loans. Banks with domestic offices only and less than $25 million in assets would report quarterly averages for: (1) Loans secured by real estate, (2) commercial and industrial loans, (3) credit cards to individuals for household, family, and other personal expenditures, and (4) other consumer loans. Those banks meeting the 5 percent of total loans test would also report a quarterly average for their "Loans to finance agricultural production and other loans to farmers."

Thus, the agencies request comment on the merits of eliminating the exemption from reporting loan income and averages by loan category for banks with domestic offices only and less than $25 million in assets. In particular, the agencies request comment on the extent to which these banks' loan systems are automated and on the availability of this loan category information.

C. Eliminating Confidential Treatment for Certain Past Due and Nonaccrual Data

An important public policy issue for the agencies has been how to use market discipline to complement supervisory resources. Market discipline relies on market participants having information about the risks and financial condition of banking organizations. The Call Report, in particular, is widely used by securities analysts, rating agencies, and large institutional investors as sources of bank-specific data. Disclosure that increases transparency should lead to more accurate market assessments of risk and value. This, in turn, should result in more effective market discipline on banking organizations.

Despite this emphasis on market discipline, the FFIEC and the agencies currently accord confidential treatment to the information banks report in Schedule RC–N of the Call Report on the amounts of their loans, leases, and other assets that are past due 30 through 89 days and still accruing (and on the amount of restructured loans and leases that are past due 90 days or more and still accruing or in nonaccrual status). This is the only financial information currently collected on the Call Report that is treated as confidential on an individual bank basis. The agencies publish aggregate data derived from these confidential items. In contrast, the information banks report on the amounts of their loans, leases, and other assets that are 90 days or more past due and still accruing or that are in nonaccrual status has been publicly available since June 30, 1983. Nevertheless, the agencies have not precluded banks from publicly disclosing the past due and restructured data that the agencies treat as confidential, provided individual borrower information is not released. In order to give the public, including banks, more complete information on the level of and trends in bank asset quality at individual institutions, the agencies are proposing to eliminate the confidential treatment for the 30–89 days past due (and restructured) items beginning with the amounts reported as of March 31, 2001.

In addition, the agencies request comment on whether they should also make publicly available the individual bank 30–89 day past due (and restructured) Call Report information for some number of quarters prior to the first quarter of 2001. This would enable Call Report users outside the agencies to better understand the trend of delinquent loans by giving these users current data that they can compare to the 30–89 day past due (and restructured) information for quarters ending December 31, 2000. If prior quarters' data are made publicly available, comment is requested on which past quarter should be chosen as the earliest quarter for which the agencies make these data publicly available, *e.g.*, March 31, 2000, or March 31, 1996.

D. Shortening the Submission Period for Banks with Foreign Offices

Banks are required to submit their Call Reports electronically so that they are received by the banking agencies' electronic collection agent no later than 30 days after the quarter-end report date, *e.g.*, by April 30 for the March 31 report. However, banks that have (or have previously had) more than one foreign office, other than a "shell" branch or an International Banking Facility, are permitted an additional 15 days to file their Call Reports, *e.g.*, by May 15 for the March 31 report. These banks with foreign offices have been provided this additional time to complete and submit their reports since at least 1980. This privilege was granted, at least in part, because of the length of time it took these banks to receive information from overseas offices that was needed for Call Report purposes.

The agencies begin using individual bank Call Report data for monitoring and other analytical purposes as soon as the report has been received without waiting for the editing and validation process to be completed. However, for the banks with more than one foreign office, a group that includes the banking system's largest institutions, this process cannot begin until as much as 45 days after the quarter-end report date. Thus, the agencies' monitoring and analysis of risk exposures in individual banks and for the banking system as whole is impeded by the delayed submission of Call Report data by banks with more than one foreign office. Furthermore, with the technological advances over the past 20 years, bank systems have the ability to receive data from overseas offices on a much more timely basis.[14] The 15-day extension also gives banks with foreign offices a comparative advantage over the remainder of the industry that must submit its data within 30 days. The compilation and timely analysis of aggregate statistics on the banking industry's condition and performance also suffers from having to contend with the two different submission deadlines, particularly because the banks whose data are received the latest hold the bulk of the banking system's assets, liabilities, capital, and earnings.

Accordingly, the agencies believe that there may no longer be sufficient justification for banks with more than one foreign office to have a lengthier submission period than other institutions. The agencies are therefore proposing to eliminate the additional 15-day period that these banks have for filing their Call Reports. Banks that would be affected by this proposed change are specifically invited to comment on any difficulties that this change would present.

VI. Request for Comment

In addition to the issues upon which comment has been requested above, comments are invited on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Dated: May 22, 2000.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, May 23, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 22nd day of May, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–13511 Filed 5–30–00; 8:45 am]

BILLING CODES OCC: 4810–33–P, Board: 6210–01–P, FDIC: 6714–01–P

[14] For example, internationally active banking organizations routinely provide the securities markets with consolidated financial information long before their bank subsidiaries with foreign offices file their Call Reports.

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Corrections

Federal Register
Vol. 65, No. 105
Wednesday, May 31, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 97–98; FCC 00–116]

Rules and Policies Governing Pole Attachments

Correction

In rule document 00–11911 beginning on page 31270 in the issue of Wednesday, May 17, 2000, make the following corrections:

1. On page 31273, in the third equation from the top, in the third variable from the left, in the second line, "Depreciation on (Poles)" should read "Depreciation (Poles)".

§1.1404 [Corrected]

2. On page 31282, in the first column, in §1.1404, in paragraph (g)(1)(vii), in the second line, "paragraph (g)(i)(vi)" should read "paragraph (g)(1)(vi)".

3. On the same page, in the same column, in paragraph (g)(1)(viii), in the second line, "paragraph (g)(i)(vi)" should read "paragraph (g)(1)(vi)".

[FR Doc. C0–11911 Filed 5–30–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Lower Living Standard Income Level

Correction

In notice document 00–11978 beginning on page 30630 in the issue of Friday, May 12, 2000, make the following correction:

On page 30633, following "Table 3 ", add "Table 4 - Seventy Percent of Updated 2000 Lower Living Standard Income Level (LLSIL), by Family Size", as set forth below.

Table 4 - Seventy Percent of Updated 2000 Lower Living Standard Income Level (LLSIL), by Family Size

To use the seventy percent LLSIL value, where it is stipulated for WIA programs, individuals must begin by locating the region or metropolitan area where they reside. These are listed in Tables 1, 2 and 3. Individuals must locate their region or metropolitan statistical area and then find the seventy percent LLSIL amount for that location. The seventy percent LLSIL figures are listed in the last column to the right on each of the three tables. These figures apply to a family of four. Larger and smaller family eligibility is based on a percentage of the family of four. To determine eligibility for other size families consult the table below.

To use Table 4, locate the seventy percent LLSIL value that applies to the individual's region or metropolitan area from Tables 1, 2 or 3. Find the same number in the "family of four" column of Table 4. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the maximum household income the individual is permitted in order to qualify as economically disadvantaged under WIA.

Where the HHS poverty level for a particular family size is greater than the corresponding LLSIL figure, the LLSIL figure is indicated in parentheses. Individuals from these size families may consult the 2000 HHS poverty guidelines found in the Federal Register, Vol. 65, No. 31, February 15, 2000, pp. 7555-7557 (on the Internet at http://aspe.hhs.gov/poverty/00poverty.htm) to find the higher eligibility standard. Individuals from Alaska and Hawaii should consult the HHS guidelines for the generally higher poverty levels that apply in their states.

Family of One	Family of Two	Family of Three	Family of Four	Family of Five	Family of Six
($6,000)	($9,820)	($13,480)	($16,640)	($19,640)	$22,970
($6,180)	$10,130	($13,900)	$17,160	$20,250	$23,690
($6,240)	($10,220)	($14,030)	$17,320	$20,440	$23,910
($6,500)	($10,650)	$14,620	$18,040	$21,290	$24,900
($6,500)	($10,650)	$14,630	$18,050	$21,300	$24,910
($6,510)	($10,660)	$14,630	$18,060	$21,320	$24,930
($6,540)	($10,720)	$14,710	$18,160	$21,430	$25,070
($6,660)	($10,920)	$14,990	$18,500	$21,830	$25,530
($6,690)	($10,960)	$15,050	$18,570	$21,920	$25,630
($6,830)	($11,190)	$15,350	$18,950	$22,370	$26,160
($6,900)	$11,300	$15,520	$19,150	$22,600	$26,430
($6,920)	$11,330	$15,560	$19,200	$22,660	$26,500
($6,930)	$11,360	$15,590	$19,240	$22,710	$26,560
($6,940)	$11,370	$15,610	$19,260	$22,730	$26,580
($7,120)	$11,670	$16,020	$19,770	$23,330	$27,290
($7,180)	$11,760	$16,150	$19,930	$23,520	$27,510
($7,210)	$11,820	$16,220	$20,020	$23,630	$27,630
($7,220)	$11,830	$16,240	$20,040	$23,650	$27,660
($7,250)	$11,880	$16,310	$20,130	$23,760	$27,780
($7,310)	$11,980	$16,450	$20,300	$23,960	$28,020
($7,340)	$12,020	$16,500	$20,370	$24,040	$28,120
($7,400)	$12,120	$16,630	$20,530	$24,230	$28,340
($7,410)	$12,150	$16,670	$20,580	$24,290	$28,410
($7,640)	$12,520	$17,190	$21,210	$25,030	$29,270
($7,720)	$12,650	$17,360	$21,430	$25,290	$29,580
($7,810)	$12,800	$17,570	$21,680	$25,590	$29,920
($7,820)	$12,820	$17,600	$21,720	$25,630	$29,980
($7,900)	$12,950	$17,780	$21,940	$25,890	$30,280
($8,050)	$13,200	$18,120	$22,360	$26,390	$30,860
$9,010	$14,770	$20,270	$25,020	$29,530	$34,530
$9,110	$14,930	$20,500	$25,300	$29,860	$34,920
$9,560	$15,660	$21,490	$26,530	$31,310	$36,620
$9,620	$15,760	$21,640	$26,710	$31,520	$36,860

[FR Doc. C0–11978 Filed 5–30–00; 8:45 am]
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Federal Register

Wednesday,
May 31, 2000

Part II

Federal Emergency Management Agency

44 CFR Part 61

National Flood Insurance Program (NFIP); Insurance Coverage and Rates; Proposed Rule

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AD01

National Flood Insurance Program (NFIP); Insurance Coverage and Rates

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: We (the Federal Insurance Administration of FEMA) are proposing changes to the Standard Flood Insurance Policy (SFIP). The proposed changes include: rendering the SFIP in "plain language" and restructuring its format to resemble the homeowners policy. We are also using this opportunity to propose changes in the policy's coverage.

DATES: Please send your comments on the proposal on or before July 31, 2000.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: James S. P. Shortley, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, 202–646–3418, (facsimile) 202–646–4327, (email) *James.Shortley@fema.gov*.

SUPPLEMENTARY INFORMATION:

Plain Language Initiative

On June 1, 1998, President Clinton directed the heads of Federal departments and agencies to ensure that their communications with the public be in "plain language." That directive established January 1, 1999, as the date when Federal executive agencies and departments must use plain language in all proposed and final rules published in the **Federal Register**. This proposal to revise the three separate forms of the Standard Flood Insurance Policy (SFIP)—the Dwelling Form, the General Property Form, and the Residential Condominium Building Association Policy—complies with that directive.

Implementing Guidance

In drafting the proposed revisions of the SFIP, we followed the guidance on plain language developed by the National Partnership for Reinventing Government and provided on July 28, 1998 by Vice President Gore to the Federal executive agencies and departments and independent agencies.

Customer Review

On September 15, 1999, in Lancaster, Pennsylvania, we convened a focus group of eight flood insurance policyholders—four had suffered flood losses and four had never had a flood loss—to help us judge the readability of our draft revised flood insurance policy. The group compared the readability of the current Dwelling Form of the SFIP with a semi-final draft of our proposed revision. These are comments that the participants offered about our proposed rewrite: "Everything I looked at was easier." It had "more specific language" and was "worded much better." It was in "layman's terms you can understand," and it made it "easier to look up everything." Members of the focus group found that our proposed policy revision had shorter sentences than the current policy, had better organization, and used words that were easier to understand. The version of the SFIP we are proposing is essentially the version that the focus group reviewed with only minor editorial changes.

The focus group recommended several specific additions that would make the proposed rewrite even easier for policyholders to use:

- Include a table of contents,
- Add an index of key words at the end of the policy,
- Insert page headers of major section sections at the top of each page,
- Use a variety of graphic devices to highlight headings and subheadings, and
- Add a section on frequently asked questions.

We agree with most of these suggestions, which we will incorporate in the printed version of the SFIP that the policyholder receives and uses. They will not however appear in this proposed rule or in the Code of Federal Regulations.

The focus group also suggested that we post the SFIP on the internet. We are already doing that: the current Standard Flood Insurance Policy is one of the "Quick Links" found at our web site: *www.fema.gov/nfip*. We will continue that practice and post the revised policy too once we publish the final rule, as well as this proposed rule, on our web site.

We do not believe that adding a new section to the policy on frequently asked questions, however, is necessary. Our web site contains the link, "Basic Questions and Answers about Flood Insurance," which gives the public, policyholders, and insurance agents ready access to specific information about coverage. We have also developed printed public education and public information materials that serve that purpose as well.

External Customers

Our two largest external customer groups that use the SFIP are: (1) Roughly four million property owners who buy flood insurance and need to understand the terms of their contract for flood insurance, and (2) hundreds of thousands of private insurance agents across the country who sell and service the SFIP. Any revision to the SFIP must serve the needs of both groups: our policyholders for an easy-to-read flood insurance policy, and licensed private insurance agents for a flood insurance policy that is organized like the more familiar homeowners policy. There are also smaller, specialized customer groups that use the SFIP such as claims adjusters, insurance underwriters, auditors, etc., who will benefit from a policy that is clearer and easier to use.

Compatibility With the Homeowners Policy

Making the SFIP conform more closely with the homeowners has been a long-standing recommendation of our partners in the insurance industry. We have received comments in the past that the flood insurance policy and coverages available under it should as nearly as possible "look" like other insurance policies which are commonly bought by the public or sold and handled by insurance agents in order to promote the greatest utilization of the NFIP.

To help us make the SFIP conform with the homeowners policy, we contracted with Insurance Services Organization (ISO), Inc. ISO restructured the proposed rewrite of the SFIP so that it "looks" more like ISO's version of the homeowners policy, specifically HO–3. ISO also provided us an initial draft of that restructuring in plain language, which we used as a starting point to meet the Administration's standards for plain language communications with the public. By making the SFIP "look" and "feel" like homeowners policies, we believe the desk level staff in insurance agencies will be more comfortable with the SFIP since it will follow the same sequence and use the same format as its industry model. This we believe will help serve the goal of having more of the nation's property owners in flood-prone areas protected from uninsured flood losses.

Summary of Proposed Coverage Changes

We are also proposing some changes in coverage for the three policy forms.

The following tables compare the current coverage under the SFIP with the proposed changes:

TABLE 1.—LAND SUBSIDENCE, SEWER BACK-UP, AND SEEPAGE

Proposed change in SFIP coverage	Current SFIP coverage
The proposed changes would not affect the coverage for losses from "subsidence of land" along the shore of a lake or other body of water as a result of flood-related erosion.	Pay for losses from subsidence of land along the shore of a lake or other body of water as a result of flood-related erosion.
Not pay for any losses from other land subsidence	Pay for losses from other land subsidence under certain circumstances.
Pay for losses from sewer back-up and seepage if there is a general condition of flooding and the flood waters touch the structure.	Pay for losses from sewer back-up and seepage: If there is a general condition of flooding in the general area;
Remove the current requirements for replacement cost coverage on the building and for the loss occurring within 72 hours after the flood has receded for sewer back-up and seepage losses.	If the building has replacement cost coverage; and
Do not apply a separate deductible to claims for sewer back-up and seepage.	If the loss occurs within 72 hours after the flood has receded. Apply a separate deductible to claims for these losses.

As noted in the preceding table, we pay, in the current policy, for losses from sewer backup if flooding is "in the area." We are proposing a more verifiable standard to adjust sewer backup losses, namely, that flood waters must touch the insured building. This proposed change would give us a more objective standard for adjusting claims for sewer backup losses.

Also, as the preceding table shows, there are two references to the subsidence of land in the current policy. The first is in our definition of "flood." Section 1370 of the National Flood Insurance Act of 1968 mandates that the term "flood" shall also include "the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels." The second reference to land subsidence is in the Dwelling Form: currently we pay for losses from land subsidence when certain criteria are met such as amount of insurance coverage in force on the dwelling, the duration of flooding ("no later than 72 hours after the flood has receded"), and the proximity of the flood ("in the area"). The proposed changes do not include any revision to the statutory reference to "subsidence of land" in the policy's definition of "flood." The proposed revisions would however eliminate coverage for land subsidence in any other situation.

TABLE 2.—LOSS MITIGATION MEASURES AND LOSS ASSESSMENTS

Proposed change in SFIP coverage	Current SFIP coverage
Increase the amount we will pay for the labor and materials of certain mitigation activities (*e.g.*, sandbagging) to $1,000.	We currently pay up to $750 for materials and labor for mitigation efforts such as sandbagging.
Increase to $1,000 the amount we will pay for removal of personal property from a flood-threatened building.	We currently pay up to $500 for the removal of personal property in anticipation of the flood.

TABLE 3.—PERSONAL PROPERTY, MOTORIZED VEHICLES AND SPECIAL NEEDS

Proposed change in SFIP coverage	Current SFIP coverage
We will permit a renter to apply 10% of contents coverage to cooking stoves, ranges, or refrigerators belonging to the renter, as well as to improvements by the renter to the building.	No coverage under the Dwelling Form.
We will permit a condominium unit owner to apply 10% of the contents coverage to losses to interior walls, floors, and ceilings under the Dwelling Form.	No coverage.
We will increase to $2500 what we will pay for flood losses to collectibles, artwork, furs, etc., and add to the list business contents.	We now pay only up to $250 for eligible flood losses to collectibles, artwork, furs, etc.
Pay for losses to self-propelled vehicles that service the premises and assist handicapped persons provided the vehicles are in a building on the premises.	We only pay for losses to self-propelled vehicles that service the building.

TABLE 4.—LOSS SETTLEMENT FOR MANUFACTURED HOMES AND INTERPRETATION OF COMMON WALL

Proposed change in SFIP coverage	Current SFIP coverage
We propose to change how we settle losses for double-wide manufactured homes. We propose to settle losses for these structures with materials on a replacement cost basis but never more than 1.5 times the actual cash value.	Replacement cost interpreted for total losses as the value shown in NADA guide for mobile homes.

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TABLE 4.—LOSS SETTLEMENT FOR MANUFACTURED HOMES AND INTERPRETATION OF COMMON WALL—Continued

Proposed change in SFIP coverage	Current SFIP coverage
We propose to treat as part of the building additions or extensions attached by a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At the insured's option, these additions and extensions may be separately insured. If the addition or extension is attached by a common interior wall, it may not be insured as a separate building.	We currently only treat, as part of the building, extensions or additions that are connected by a common wall. Additions and extensions connected by a covered breezeway, for example, are treated as separate buildings—not as part of the building.

TABLE 5.—REDUCTION AND RESTORATION (REFORMATION) OF COVERAGE LIMITS

Proposed change in SFIP coverage	Current SFIP coverage
We propose to add a policy restoration (reformation) provision for situations when an application or endorsement is received without all the necessary information. We propose to require the applicant to submit the missing information within 60 days. If the missing information is not received within 60 days, and a loss occurs, the maximum amount of insurance available is limited to the lesser of: the amount originally requested or the amount of coverage the original premium paid would buy, using the correct rating information.	No such provision.

We are also proposing to add coverage in basements and in enclosures of elevated buildings for water softeners, water filters and faucets. In addition, we are proposing to add coverage for damage from the pressure of water against the structure with the requirement that there be surface flooding in the area as well. On the other hand, we are proposing to exclude from coverage scrip and stored value cards. The revisions to the policy we are proposing would also exclude any losses caused by the policyholder's failure to inspect and maintain the property after the flood recedes. We are also proposing to eliminate the option for a "scheduled building policy." The NFIP scheduled building policy has had little use. The only incentive for the insured to select this option, if eligible, is a small saving on the expense constant.

The proposed rule would change the "Closed Basin Lake" endorsement in all three policy forms. Currently, policyholders must have "NFIP flood insurance continuously in effect from a date established by FEMA until" the policyholder files a claim. The current rule is silent however about how much flood insurance needs to be continuously in force. This means that a policyholder could technically meet this criterion for continuous coverage by buying a minimal amount of flood coverage initially, keeping the minimal amount of coverage in effect, and then increasing the face amount of the policy when the structure is eligible for relocation. The proposed change would require that policyholders have the same amount of insurance in effect continuously from the date set by FEMA until the policyholder files a claim. The proposed change would still allow the policyholder to buy recommended increases in coverage at policy renewal to keep pace with inflation.

We are retaining in the proposed rule coverage for detached garages, but we are proposing also to eliminate coverage for detached carports since they do not have two walls—one of the criteria under the definition of building. We are also proposing to eliminate the requirement for a minimum premium. The proposed rule would add to the definition of "flood" the criteria we currently use for an event to qualify as a "flood." Those criteria—currently included in the list of exclusions—requires that a qualifying flood event under the policy must inundate two properties or two acres. The proposed consolidation of the criteria into the definition of "flood" would be much more useful for the policyholder to understand the scope of coverage under the policy.

Of special note is the proposed change on pollutants. The current SFIP has a pollution exclusion for Increased Cost of Compliance coverage only. We are proposing to add to the SFIP a general pollution exclusion, similar to that in the industry's HO–3 policy. The HO–3 policy's pollution exclusion only applies, however, if the pollution damage is caused by a peril other than the sixteen named perils in that policy's Personal Property Coverage. Since we cover only one peril, flood, our proposed pollution exclusion is for all coverage under the SFIP, and hence is broader than the HO–3's pollution exclusion.

We are also proposing to eliminate the reference to the policy's minimum premiums at 44 CFR 61.10 since our proposed revision of the policy would eliminate references to a minimum premium as well.

In addition to these proposed coverage changes, we are proposing to change how we define loss in progress to make our intent clearer on when coverage begins in connection with loan closings. Also, we are proposing a change to the "Mortgage" clause, which follows more closely the format of HO–3. While the latter proposals are not coverage changes per se, we believe, if adopted, they would make the benefits to and responsibilities of lenders clearer.

Exclusive Federal Jurisdiction and Applicable Law

Standard Flood Insurance Policies are sold by a number of private Write Your Own (WYO) insurance companies and directly to the public by the Federal Insurance Administration. Because the National Flood Insurance Program is national in scope and accomplishes a number of programmatic missions in addition to making affordable flood insurance generally available to the public, the SFIP provides that its terms cannot be altered, varied or waived except by the written authority of the Federal Insurance Administrator. The Administrator intends that the same benefits should be available to insureds wherever the insured property is located, or whether the policy is purchased from a WYO insurance company or from the Federal Government. Thus, there is a need for uniformity in the interpretation of and

standards applicable to the policies and their administration. Therefore, we have clarified the policy language pertaining to jurisdiction, venue and applicable law to emphasize that matters pertaining to the Standard Flood Insurance Policy, including issues relating to and arising out of claims handling, must be heard in Federal court and are governed exclusively by Federal law.

National Environmental Policy Act

This proposed rule falls within the exclusion category 44 CFR 10.8(d)(2)(ii) which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. Qualifying for this exclusion and because no other extraordinary circumstances have been identified, this proposed rule will not require the preparation of either an environmental assessment or environmental impact statement as defined by the National Environmental Policy Act.

Executive Order 12866, Regulatory Planning and Review

In the course of preparing this proposed rule we have considered the requirements of Executive Order 12866 of September 30, 1993, 58 FR 51735, and have concluded that this proposed rule is not a significant regulatory action within the meaning of section 2(f) of the Executive Order. The rule would accomplish three principal changes:

(1) It would render the SFIP in "plain English";

(2) It restructures the format to resemble the basic homeowners policy; and

(3) It would make several changes in the policy's coverage.

In all other substantive aspects the SFIP is unchanged from its past version.

Of 18 proposed changes that affect coverage, we summarize 11 in Tables 1 through 5 of this preamble. We summarize the remaining 7 changes in the paragraphs that immediately follow the tables. The 18 proposed changes are evenly divided between changes that add or increase coverage and changes that reduce or remove coverage or require certain coverage from a date certain to the time a claim is filed for "closed basin lake" claims.

For each revised policy provision, we made two estimates: the first was the percentage of claims that would be impacted by the revised provision; the second estimate was the dollar impact that provision would have on each affected claim. We multiplied these two amounts to develop the dollar impact of each change spread over all program claims. We then summed those dollar amounts to arrive at an estimated decrease of $83.12 in the average paid claim under these revised policy provisions. We estimate that during the first fiscal year after enactment the NFIP would have about 4.3 million policyholders and about 55,900 total flood losses. If so, that would result in an annual savings to the Program of approximately $4.6 million resulting from the proposed changes to the policy.

For the reasons stated we have concluded that this rule is not a significant regulatory action within the meaning of Executive Order 12866. The Office of Management and Budget has reviewed the proposed rule under the provisions of Executive Order 12866.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, as amended. OMB has assigned control numbers 3067–0021 and 3067–0022 to the collection of information under this proposed rule.

We estimate that the public reporting and recordkeeping burden for the collection of information titled "Claims for National Flood Insurance Program" to average 4.0 hours per claim. The estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information requirements. The information required under the terms of the Standard Flood Insurance Policy described in appendices A(1), A(2), and A(3) of the proposed rule is collected using the following FEMA forms:

FEMA Form No.	Title	Burden estimate
81–16 and 81–67	Application. Preferred Risk Application	12 minutes.*
81–17	Cancellation	7.5 minutes.
81–18	Endorsement	9 minutes.
81–25	V-Zone Risk Factor	15 minutes.
81–40	Worksheet-contents-personal property	2.5 hours.
81–41	Worksheet-building	2.5 hours.
81–41A	Worksheet-building (Cont'd)	1.0 hour.
81–42	Proof of loss	5–6 minutes.
81–42A	Increased Cost of Compliance Proof of Loss	2.0 hours.
81–43	Notice of loss	4 minutes.
81–44	Statement as to full cost to repair	6–7 minutes.
81–57	National Flood Insurance Program Preliminary report	4 minutes.
81–58	National Flood Insurance Program Final report	4 minutes.
81–59	National Flood Insurance Program Narrative report	5–6 minutes.
81–63	Cause of Loss and Subrogation report	45 minutes to 1 hour.
81–98	Increased Cost of Compliance Adjuster Report	15 minutes.
N/A	Renewal Premium Notice	3 minutes.
N/A	Request for Policy Processing and Renewal Information Letter	9 minutes.

*The Preferred Risk Applications and the regular Flood Insurance Applications are now processed and recorded together. There is no breakdown available to separate the burden of each application.

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Executive Order 13132, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 13132, Federalism, dated August 4, 1999.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 61

Claims, Flood insurance.

Accordingly, we propose to amend 44 CFR Part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

§ 61.10 [Removed]

2. We remove § 61.10.

3. We revise Appendix A(1) to Part 61, Dwelling Form, to read as follows:

APPENDIX A(1) TO PART 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy

DWELLING FORM

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions and exclusions. This policy covers only:

1. A non-condominium residential building designed for principal use as a dwelling place of one to four families, or

2. A single family dwelling unit in a condominium building.

I. Agreement

The Federal Emergency Management Agency provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its Amendments, and Title 44 of the Code of Federal Regulations.

We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the correct premium;

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

We have the right to review the information you give us at any time and to revise your policy based on our review.

II. Definitions

A. In this policy, "you" and "your" refer to the insured(s) shown on the Declarations Page of this policy. "We", "us" and "our" refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases. The precise definitions are intended to protect you.

Flood, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of at least two or more properties (one of which is your property) from:

a. The overflow of inland or tidal waters.

b. The unusual and rapid accumulation or runoff of surface waters from any source.

c. Mudflows.

2. The collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels which result in a flood as defined in *Flood*, paragraph A.1.a above.

B. The following are the other key definitions we use in this policy:

1. *Act.* The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued and the correct premium payment. The application is part of this flood insurance policy. For us to issue you a policy, the correct premium payment must accompany the application.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.

6. *Building.*

a. A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

b. A manufactured home (a "manufactured home," also known as a mobile home, is a structure that is built on a permanent chassis and affixed to a permanent foundation and that is transported to its site in one or more sections); or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank or a recreational vehicle, park trailer or other similar vehicle, except as described in 6.c., above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of real property in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners;

b. Other real property in which the unit owners have use rights; where membership in the entity is a required condition of unit ownership.

10. *Declarations Page.* A computer-generated summary of information you furnish in the application for insurance. The declarations page also describes the term of the policy, limits of coverage, and displays the premium and our name. The declarations page is a part of this flood insurance policy.

11. *Described Location.* The location where the building(s) or personal property are found. The described location is shown on the declarations page.

12. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. Direct physical loss must be evidenced by physical changes to the property.

13. *Dwelling.* A building designed for use as a residence for no more than four families or a single-family unit in a building under a condominium form of ownership.

14. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

15. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act.

16. *Expense Constant.* A flat charge that you must pay on each new or renewal policy to defray the expenses of the Federal Government related to flood insurance.

17. *Federal Policy Fee.* A flat charge that you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program. This fee covers expenses not covered by the expense constant.

18. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the insured dwelling or the apartment unit in which you reside.

19. *Mudflow.* A river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

20. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in title 44 of the Code of Federal Regulations, Subchapter B.

21. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and declarations page;

c. Any endorsements that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term.

Only one dwelling, specifically described by you in the application, may be insured under this policy.

22. *Pollutants.* Includes, but is not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed.

23. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

24. *Probation Premium.* A flat charge you must pay on each new or renewal policy issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

25. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

26. *Special Flood Hazard Area.* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–30, V1–30, VE, or V.

27. *Unit.* A single-family unit you own in a condominium building.

28. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Covered

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The dwelling at the described location, or for a period of 45 days at another location as set forth in III.C.2.b., Property Removed to Safety.

2. Additions and extensions attached to and in contact with the dwelling by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the dwelling and may not be separately insured.

3. A detached garage, used as such, at the described location. Coverage is limited to no more than 10% of the limit of liability on the dwelling. Use of this insurance is at your option but reduces the building limit of liability.

4. Materials and supplies to be used for construction, alteration or repair of the dwelling or a detached garage while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

5. A building under construction, alteration or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (See B.6.a.) then coverage applies:

(1) Only while such work is in progress; or

(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–30, AR, AR/AE, AR/AH, AR/A1–30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–30.

The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE, A1–30, AR, AR/AE, AR/AH, AR/A1–30, AR/A, AR/AO.

6. A manufactured home or a travel trailer as described in the Definitions Section (See II.B.6.b.and II.B.6.c.).

If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

7. The following items of property which are covered under Coverage A only:

a. Awnings and canopies;

b. Blinds;

c. Built-in dishwashers;

d. Built-in microwave ovens;

e. Carpet permanently installed over unfinished flooring;

f. Central air conditioners;

g. Elevator equipment;

h. Fire sprinkler systems;

i. Freezers, walk-in.

j. Furnaces and radiators;

k. Garbage disposal units;

l. Hot water heaters, including solar water heaters;

m. Light fixtures;

n. Outdoor antennas and aerials fastened to buildings;

o. Permanently installed cupboards, bookcases, cabinets, paneling, and wallpaper;

p. Plumbing fixtures;

q. Pumps and machinery for operating pumps;

r. Ranges, cooking stoves, and ovens;

s. Refrigerators; and

t. Wall mirrors, permanently installed.

8. Items of property in a building enclosure lower than the lowest elevated floor of an elevated post-FIRM building located in zones A1–30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–30, or VE, or in a basement, regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners;

(2) Cisterns and the water in them;

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(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;
(4) Electrical junction and circuit breaker boxes;
(5) Electrical outlets and switches;
(6) Elevators, dumbwaiters and related equipment, unless installed below the base flood elevation after September 30, 1987;
(7) Fuel tanks and the fuel in them;
(8) Furnaces and hot water heaters;
(9) Heat pumps;
(10) Nonflammable insulation in a basement;
(11) Oil tanks and oil in them;
(12) Pumps and tanks used in solar energy systems;
(13) Stairways and staircases attached to the building, not separated from it by elevated walkways;
(14) Sump pumps;
(15) Water softeners, water filters and faucets installed as an integral part of the plumbing system;
(16) Well water tanks and pumps;
(17) Required utility connections for any item in this list; and
(18) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.
b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure against direct physical loss by or from flood to personal property inside a building at the described location, if:
a. The property is owned by you or your household family members; and
b. At your option, the property is owned by guests and servants.
Personal property is also covered for a period of 45 days at another location as set forth in III.C.2.b., Property Removed to Safety.
Personal property in a building that is not fully enclosed must be secured to prevent flotation out of the building. If the personal property does float out during a flood, it will be conclusively presumed that it was not reasonably secured. In that case there is no coverage for such property.
2. Coverage for personal property includes the following property, subject to paragraph B.1. above, which is covered under Coverage B. only:
a. Air conditioning units—portable or window type;
b. Carpets, not permanently installed, over unfinished flooring;
c. Carpets over finished flooring;
d. Clothes washers and dryers;
e. "Cook-out" grills;
f. Food freezers, other than walk-in, and food in any freezer; and
g. Portable microwave ovens and portable dishwashers.
3. Coverage for items of property in a building enclosure lower than the lowest elevated floor of an elevated post-FIRM building located in zones A1–30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:
a. Air conditioning units—portable or window type;
b. Clothes washers and dryers; and
c. Food freezers, other than walk-in, and food in any freezer;
4. If you are a tenant and have insured personal property under Coverage B in this policy, we will cover such property, including your cooking stove or range and refrigerator. The policy will also cover improvements made or acquired solely at your expense in the dwelling or apartment unit in which you reside, but for not more than 10% of the limit of liability shown for personal property on the declarations page. Use of this insurance is at your option but reduces the personal property limit of liability.
5. If you are the owner of a unit and have insured personal property under Coverage B in this policy, we will also cover your interior walls, floor and ceiling (not otherwise covered under a flood insurance policy purchased by your condominium association) for not more than 10% of the limit of liability shown for personal property on the declarations page. Use of this insurance is at your option but reduces the personal property limit of liability.
6. Special Limits. We will pay no more than $2,500 for any one loss to one or more of the following kinds of personal property:
a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;
b. Rare books, manuscripts or autographed items;
c. Jewelry, watches, precious and semi-precious stones, articles of gold, silver or platinum;
d. Furs or any article containing fur which represents its principal value; or
e. Personal property used in any business.
7. We will pay only for the functional value of antiques.

C. Coverage C—Other Coverages

1. Debris Removal.
We will pay reasonable expenses to remove debris directly caused by flood, provided the debris is:
a. Debris from property:
(1) That you do not own;
(2) That originates from beyond the boundaries of the described location, and
(3) That is physically on or in the insured building; or
b. Debris of the insured property anywhere.
If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.
This coverage does not increase the Coverage A or Coverage B Limit of Liability.
2. Loss Avoidance Measures
a. Sandbags, Supplies and Labor
(1) We will pay up to $1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, including:
(a) Your reasonable expenses to buy:
(i) Sandbags, including sand to fill them;
(ii) Fill for temporary levees;
(iii) Pumps; and
(iv) Plastic sheeting and lumber used in connection with these items.
(b) The value of work, at the Federal minimum wage, that you or a member of your household perform.
(2) This coverage for Sandbags, Supplies and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:
(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or
(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.
This coverage does not increase the Coverage A or Coverage B Limit of Liability.
b. Property Removed to Safety
(1) We will pay up to $1,000 for the reasonable expenses you incur to move insured property to another place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood.
Reasonable expenses include the value of work, at the Federal minimum wage, that you or a member of your household perform.
(2) If you move insured property to another location other than the described location that contains the property, in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you first begin to move it there. The personal property that is moved must be placed in a fully enclosed building, or otherwise reasonably protected from the elements.
Any property removed, including a moveable home described in Definition 6. Building, paragraphs b. and c. must be placed above ground level or outside of the special flood hazard area.
This coverage does not increase the Coverage A or Coverage B Limit of Liability.
3. Condominium Loss Assessments.
a. If this policy insures a unit, we will pay, up to the Coverage A limit of liability, your share of loss assessments charged against you by the condominium association in accordance with the condominium association's articles of association, declarations and your deed.
The assessment must be made as a result of direct physical loss by or from flood during the policy term, to the building's common elements.
b. We will not pay any loss assessment charged against you:
(1) And the condominium association by any governmental body;
(2) That results from a deductible under the insurance purchased by the condominium association insuring common elements;
(3) That results from a loss to personal property, including contents of a condominium building;
(4) That results from a loss sustained by the condominium association that was not reimbursed under a flood insurance policy written in the name of the association under the Act because the building was not, at the time of loss, insured for an amount equal to the lesser of:
(a) 80% or more of its full replacement cost; or
(b) The maximum amount of insurance permitted under the Act;
(5) To the extent that payment under this policy for a condominium building loss, in combination with payments under any other NFIP policies for the same building loss, exceeds the maximum amount of insurance permitted under the Act for that kind of building; or
(6) To the extent that payment under this policy for a condominium building loss, in combination with any recovery available to you as a tenant in common under any NFIP condominium association policies for the same building loss, exceeds the amount of insurance permitted under the Act for a single-family dwelling.
Loss assessment coverage does not increase the Coverage A Limit of Liability.

D. Coverage D—Increased Cost of Compliance

A. General.
This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a structure suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your structure. Eligible floodproofing activities are limited to:
1. Non-residential structures.
2. Residential structures with basements that satisfy FEMA's standards published in the Code of Federal Regulations (44 CFR 60.6 (b) or (c)).
B. Limit of Liability.
$20,000 is the maximum we will pay you for this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance) cannot exceed the maximum permitted under the Act. We do NOT charge a separate deductible for a claim under Coverage D.
C. Eligibility.
1. A structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:
a. Be a "repetitive loss structure." A "repetitive loss structure" is one that meets the following conditions:
(1) The structure is covered by a contract of flood insurance issued under the NFIP.
(2) The structure has suffered flood damage on 2 occasions during a 10-year period which ends on the date of the second loss.
(3) The cost to repair the flood damage, on average, equaled or exceeded 25% of the market value of the structure at the time of each flood loss.
(4) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the structure; or
b. Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.
2. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:
a. Paragraph C. 1. a. above.
b. Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevation. . This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.
c. Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, i.e., that a structure must be elevated above the base flood elevation.
3. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of structures in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.
4. This coverage will also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion E.7. below.
5. This coverage will also pay to bring a flood-damaged structure into compliance with state or local floodplain management laws or ordinances even if the structure had received a variance before the present

loss from the applicable floodplain management requirements.

D. Conditions.

1. When a structure covered under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

2. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

E. Exclusions.

Under this Coverage D (Increased Cost of Compliance) we will not pay for:

1. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

2. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

3. The loss in value to any insured building or other structure due to the requirements of any ordinance or law.

4. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

5. Any Increased Cost of Compliance under this Coverage D:

a. Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

b. Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

6. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

7. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

8. Loss due to any ordinance or law that you were required to comply with before the current loss.

9. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

10. Increased Cost of Compliance for a garage or carport.

11. Any structure insured under an NFIP Group Flood Insurance Policy.

12. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

F. Other Provisions.

1. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80% insurance-to-value requirement for replacement cost coverage as set forth in Section VII. V. Loss Settlement.

2. All other conditions and provisions of the policy apply.

IV. Property Not Covered

We do not cover any of the following:

1. Personal property not inside a building;

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982;

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on or over water;

4. Recreational vehicles other than travel trailers described in the Definitions Section (see II.B.6.c.) whether affixed to a permanent foundation or on wheels;

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads that are:

a. Used mainly to service the described location or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location;

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;

8. Underground structures and equipment, including wells, septic tanks and septic systems;

9. Those portions of walks, walkways, decks, driveways, patios and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building or the building in which the insured unit is located;

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids;

11. Buildings or units and all their contents if more than 49% of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;

13. Aircraft or watercraft, or their furnishings and equipment;

14. Swimming pools, hot tubs, spas, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act and amendments to these Acts;

16. Loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

17. A detached garage used or held for use for residential (*i.e.* dwelling), business or farming purposes;

18. Personal property you own in common with other unit owners comprising the membership of a condominium association.

V. Exclusions

A. We only pay for direct physical loss by or from flood, which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law:

a. Requiring or regulating the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities that we describe in Coverage D—Increased Cost of Compliance; or

b. Requiring you or others to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effect of, any pollutant; or

7. Any other economic loss you suffer.

B. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:

1. The policy term begins; or

2. Coverage is added at your request.

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land area; or

6. Gradual erosion.

We do, however, pay for losses from erosion and mudflows that are specifically covered under our definition of flood.

D. We do not insure for direct physical loss caused directly or indirectly by any of the following:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the dwelling; or

b. That is within your control, including but not limited to:

(1) Design, structural or mechanical defects;

(2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump or related equipment; or

c. Seeps or leaks on or through the covered property, unless the property has been, at the same time, damaged by flood;

6. The pressure or weight of water unless the damaged property has been, at the same time, damaged by flood;

7. Power, heating or cooling failure unless the failure results from direct physical loss by or from flood to power, heating or cooling equipment on the described location;

8. Discharge, dispersal, seepage, migration, release, or escape of pollutants;

9. Theft, fire, explosion, wind, or windstorm;

10. Anything that you or any member of your household do or conspires to do to deliberately cause loss by flood; or

11. Alteration of the insured property that significantly increases the risk of flooding.

VI. Deductibles

A. When a loss is covered under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the declarations page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. The deductible does NOT apply to:

1. III.C.2. Loss Avoidance Measures;

2. III.C.3. Condominium Loss Assessments Coverage; or

3. III.D. Increased Cost of Compliance Coverage.

VII. General Conditions

A. Pair and Set Clause.

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged or destroyed article, minus its depreciation, or

2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged or destroyed article bears to the pair or set.

B. Concealment or Fraud and Policy Voidance.

1. With respect to all insureds under this policy, this policy:

a. Is void,

b. Has no legal force or effect,

c. Cannot be renewed, and

d. Cannot be replaced by a new flood policy, if, before or after a loss, you or any other insured or your agent have at any time:

(1) Intentionally concealed or misrepresented any material fact or circumstance,

(2) Engaged in fraudulent conduct, or

(3) Made false statements relating to this policy or any other NFIP insurance.

2. This policy will be void as of the date wrongful acts of B.1. above were committed.

3. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred; or

b. If the property listed on the application is otherwise not eligible for coverage under the NFIP.

C. Other Insurance.

1. If a loss covered by this policy is also covered by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless b. or c. below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in Paragraph C.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. If there is other insurance in the name of your condominium association covering the same property covered by this policy, then this policy will be in excess over the other insurance.

D. Amendments, Waivers, Assignment.

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This policy cannot be changed nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action that we take under the terms of this policy constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy covers only personal property; or

2. When this policy covers a structure during the course of construction.

E. Cancellation of the Policy by You.

1. You may cancel this policy at any time.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium under our applicable rules and regulations.

F. Non-Renewal of the Policy by Us.

Your policy will not be renewed:

1. If the community where your covered property is located stops participating in the NFIP, or

2. Your building has been declared ineligible under section 1316 of the Act.

G. Reduction and Restoration of Coverage.

1. If the premium we received from you was not enough to buy the kind and amount of coverage you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.

2. The amount of coverage resulting from the reduction described in 1. above can be restored to the amount you requested as follows:

a. Discovery of Insufficient Premium or Incomplete Rating Information Before a Loss.

(1) If we discover before you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If you or the mortgagee or trustee pay the additional premium within 30 days from the date of our bill, we will restore the amount of coverage to the originally requested amount effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If we determine before you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request. Once we determine the amount of additional premium for the current policy term, we will follow the procedure in (1) above.

(3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be restored by endorsement with any appropriate waiting period.

b. Discovery of Insufficient Premium or Incomplete Rating Information After a Loss.

(1) If we discover after you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current and the prior policy terms. If you or the mortgagee or trustee pay the additional premium within 30 days of the date of our bill, we will restore the amount of coverage to the originally requested amount effective to the beginning of the prior policy term.

(2) If we discover after you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior policy terms, we will follow the procedure in (1) above.

(3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be restored by endorsement subject to any appropriate waiting period.

3. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of Condition B. above apply.

H. Policy Renewal.

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that your renewal notice was not placed into the U.S. Postal Service, or if it was mailed properly, it was prepared in a way, *e.g.*, with an incorrect, incomplete, or illegible address, to delay its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the declarations page.

4. In connection with the renewal of this policy, we may ask you during the policy term to re-certify, on a Recertification Questionnaire that we will provide to you, the rating information used to rate your most recent application for or renewal of insurance.

I. Conditions Suspending or Restricting Insurance.

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

J. Requirements in Case of Loss.

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it;

3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts and related documents;

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

a. The date and time of loss;

b. A brief explanation of how the loss happened;

c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;

d. Details of any other insurance that may cover the loss;

e. Changes in title or occupancy of the covered property during the term of the policy;

f. Specifications of damaged buildings and detailed repair estimates;

g. Names of mortgagees or anyone else having a lien, charge or claim against the insured property;

h. Details about who occupied any insured building at the time of loss and for what purpose; and

i. The inventory of damaged personal property described in 3. above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with our adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is matter of courtesy only and you must still send us a proof of loss within sixty days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept an adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

K. Our Options After a Loss.

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:

a. Show us or our representative the damaged property;

b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and

c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other relevant documents if you are a unit owner in a condominium building; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged or destroyed property, including:

a. Quantities and costs;

b. Actual cash values or replacement cost (whichever is appropriate);

c. Amounts of loss claimed; and

d. Any written plans and specifications for repair of the damaged property that you can make reasonably available to us.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

a. Repair, rebuild or replace any part of the lost, damaged or destroyed property with material or property of like kind and quality or its functional equivalent; and

b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

L. No Benefit To Bailee.

No person or organization, other than you, having custody of covered property will benefit from this insurance.

M. Loss Payment.

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

a. We reach an agreement with you;

b. There is an entry of a final judgment; or

c. There is a filing of an appraisal award with us, as provided in VII. P.

2. If we reject your proof of loss in whole or in part you may:

a. Accept our denial of your claim;

b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss or within any extension of time allowed by the Administrator.

N. Abandonment.

You may not abandon to us damaged or undamaged property insured under this policy.

O. Salvage.

We may permit you to keep damaged property insured under this policy after a loss and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

P. *Appraisal.*

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of your damaged property to settle upon the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the covered property is located. The appraisers will separately state the actual cash value, the replacement cost and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

Q. Mortgage Clause.

The word "mortgagee" includes trustee.

Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

1. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;

2. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

All of the terms of this policy will then apply directly to the mortgagee.

If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

R. Suit Against Us.

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the covered property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

S. Subrogation.

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a

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loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. Continuous Lake Flooding.

1. Where an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in a covered loss to an insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location, and;

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before an insured building has been flooded continuously for 90 days, the provisions of this paragraph 1. will apply as long as the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph 1. above or this paragraph 2. (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake flood waters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement contained in the Federal Emergency Management Agency's (FEMA) "Policy Guidance for Closed Basin Lakes," to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures that it will allow on any portion of the property within the ASC are certain, simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph 2. If a U.S. Army Corps of Engineers-certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs T.1.a. through T.1.d. above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in paragraph T. 2.b. above.

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Sec. 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph T.2.b. above except that even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph T.2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under paragraph T.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph T.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph T.2. will be in effect for a community when the FEMA Regional Director for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in e. and f. above, and

(2) The date by which you must have flood insurance in effect.

U. Duplicate Policies Not Allowed.

1. We will not insure your property under more than one NFIP policy.

If we find that the duplication was not knowingly created, we will give you written notice. The notice will advise you that you may choose one of several options under the following procedures:

a. If you choose to keep in effect the policy with the earlier effective date, you may also choose to add the coverage limits of the later policy to the limits of the earlier policy. The change will become effective as of the effective date of the later policy.

b. If you choose to keep in effect the policy with the later effective date, you may also choose to add the coverage limits of the earlier policy to the limits of the later policy. The change will be effective as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the permissible limits of coverage under the Act or your insurable interest, whichever is less. We will make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect.

2. The insured's option under Condition U. Duplicate Policies Not Allowed to elect which NFIP policy to keep in effect does not apply when duplicates have been knowingly created. Losses occurring under such circumstances will be adjusted according to the terms and conditions of the earlier policy. The policy with the later effective date must be canceled.

V. Loss Settlement.

1. Introduction.

This policy provides three methods of settling losses, Replacement Cost, Special Loss Settlement and Actual Cash Value. Each method is used for a different type of property as explained in paragraphs V.1. a., b., and c. below.

a. Replacement Cost Loss Settlement described in 2. below applies to a single-family dwelling provided:

(1) It is your principal residence, which means, at the time of loss, you or your spouse lived there for 80% of:

(a) The 365 days immediately preceding the loss; or

(b) The period of your ownership, if you owned the dwelling for less than 365 days, and

(2) At the time of loss, the amount of insurance in this policy that applies to the dwelling is 80% or more of its full replacement cost immediately before the loss, or is the maximum amount of insurance available under the NFIP.

b. Special Loss Settlement described in 3. below applies to a single-family dwelling that is a travel trailer or a manufactured or mobile home.

c. Actual Cash Value loss settlement applies to a single-family dwelling not subject to replacement cost or special loss settlement, and to the property listed in paragraph V.4. below.

2. Replacement Cost Loss Settlement.

The following loss settlement conditions apply to a single-family dwelling described in paragraph V.1.a. above:

a. We will pay to repair or replace the damaged dwelling after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(1) The building limit of liability shown in the declarations;

(2) The replacement cost of that part of the dwelling damaged, with materials of like kind and quality and for like use; or

(3) The necessary amount actually spent to repair or replace the damaged part of the dwelling for like use.

b. If the dwelling is rebuilt at a new location, the cost described above is limited to the cost that would have been incurred if the dwelling had been rebuilt at its former location.

c. When the full cost of repair or replacement is more than $1000 or more than 5% of the whole amount of insurance that applies to the dwelling, we will not be liable for any loss under paragraph V.2.a. above or paragraph V.4.a.(2) below unless and until actual repair or replacement is completed.

d. You may disregard the replacement cost conditions above and make claim under this policy for loss to dwellings on an actual cash value basis. You may then make claim for any additional liability according to paragraphs 2.a., b., and c. above, provided you notify us of your intent to do so within 180 days after the date of loss.

e. If the community in which your dwelling is located has been converted from the Emergency Program to the Regular Program during the current policy term then we will consider the maximum amount of available NFIP insurance to be the amount that was available at the beginning of the current policy term.

3. Special Loss Settlement.

The following loss settlement conditions apply to a dwelling that is a manufactured or mobile home or a travel trailer, as defined in Section II Definitions, B., paragraphs 6.b. and c.:

a. If such a dwelling is at least 16 feet wide when fully assembled and has at least 600 square feet within its perimeter walls when fully assembled, and is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damaged condition, we will, at our discretion:

(1) Pay the least of the following amounts:

(a) The lesser of the replacement cost of the dwelling or 1.5 times the actual cash value.

(b) The Building Limit of liability shown on your Declarations Page.

b. If such a dwelling is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damaged condition, we will settle the loss according to the Replacement Cost conditions in paragraph V.2. above.

4. Actual Cash Value.

The types of property noted below are subject to actual cash value (or in the case of V.a.(2), proportional) loss settlement. "Actual cash value" is defined in Section II—Definitions.

a. A dwelling, at the time of loss, when the amount of insurance on the dwelling is both less than 80% of its full replacement cost immediately before the loss and less than the maximum amount of insurance available under the NFIP. In that case, we will pay the greater of the following amounts, but not more than the amount of insurance that applies to that dwelling:

(1) The actual cash value of the damaged part of the dwelling; or

(2) A proportion of the cost to repair or replace the damaged part of the dwelling, without deduction for physical depreciation and after application of the deductible.

This proportion is determined as follows: If 80% of the full replacement cost of the dwelling is less than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the amount of insurance that represents 80% of its full replacement cost. But if 80% of the full replacement cost of the dwelling is greater than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the maximum amount of insurance available under the NFIP.

b. A two, three or four family dwelling.

c. A unit that is not used exclusively for single-family dwelling purposes.

d. Detached garages.

e. Personal property.

f. Appliances, carpets and carpet pads.

g. Outdoor awnings, outdoor antennas or aerials of any type, and other outdoor equipment.

h. Any property covered under this policy that is abandoned after a loss and remains as debris anywhere on the described location.

i. A dwelling that is not the principal residence of the insured.

5. Amount of Insurance Required.

To determine the amount of insurance required for a dwelling immediately before the loss, do not include the value of:

a. Footings, foundations, piers, or any other structures or devices that are below the undersurface of the lowest basement floor and support all or part of the dwelling;

b. Those supports listed in a. above, that are below the surface of the ground inside the foundation walls if there is no basement; and

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c. Excavations and underground flues, pipes, wiring, and drains.

Note: The Coverage D limit of liability is not included in the determination of the amount of insurance required.

VIII. Liberalization Clause

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated in the Declarations Page.

IX. What Law Governs

This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Jo Ann Howard,

Administrator,

Federal Insurance Administration.

4. We revise Appendix A(2) to Part 61, General Property Form, to read as follows:

APPENDIX A(2) TO PART 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy

GENERAL PROPERTY POLICY

Please read the policy carefully. The flood insurance coverage provided is subject to limitations, restrictions and exclusions.

This policy provides no coverage:

1. In a regular program community, for a residential condominium building, as defined in this policy; and

2. Except for personal property coverage, for a unit in a condominium building.

I. Agreement

The Federal Emergency Management Agency provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its Amendments, and Title 44 of the Code of Federal Regulations.

We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the correct premium;

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

We have the right to review the information you give us at any time and to revise your policy based on our review.

II. Definitions

A. In this policy, "you" and "your" refer to the insured(s) shown on the Declarations Page of this policy. "We", "us" and "our" refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases. The precise definitions are intended to protect you.

Flood, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of at least two or more properties (one of which is your property) from:

a. The overflow of inland or tidal waters.

b. The unusual and rapid accumulation or runoff of surface waters from any source.

c. Mudflows.

2. The collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels which result in a flood as defined in paragraph A.1.a. above.

B. The following are the other key definitions we use in this policy:

1. *Act.* The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued and the correct premium payment. The application is part of this flood insurance policy. For us to issue you a policy, the correct premium payment must accompany the application.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.

6. *Building.*

a. A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

b. A manufactured home (a "manufactured home," also known as a mobile home, is a structure that is built on a permanent chassis and affixed to a permanent foundation and that is transported to its site in one or more sections); or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

d. *Building* does not mean a gas or liquid storage tank or a recreational vehicle, park trailer or other similar vehicle, except as described in paragraph 6. c., above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of real property in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity, formed by the unit owners, responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other real property in which the unit owners have use rights when membership in the entity is a required condition of unit ownership.

10. *Declarations Page.* A computer-generated summary of information you furnish in the application for insurance. The declarations page also describes the term of the policy, limits of coverage, and displays the premium and our name. The declarations page is a part of this flood insurance policy.

11. *Described Location.* The location where the building or personal property is found. The described location is shown on the declarations page.

12. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. Direct physical loss must be evidenced by physical changes to the property.

13. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

14. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act.

15. *Expense Constant.* A flat charge that you must pay on each new or renewal policy to defray the expenses of the Federal Government related to flood insurance.

16. *Federal Policy Fee.* A flat charge that you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program. This fee covers expenses not covered by the expense constant.

17. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the insured building.

18. *Mudflow.* A river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

19. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in title 44 of the Code of Federal Regulations, subchapter B.

20. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and declarations page;

c. Any endorsements that may be issued; and,

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term.

Only one building, specifically described by you in the application, may be insured under this policy.

21. *Pollutants.* Includes, but is not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed.

22. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

23. *Probation Premium.* A flat charge you must pay on each new or renewal policy issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

24. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

25. *Residential Condominium Building.* A building, owned and administered as a condominium, containing one or more family units and in which at least 75% of the floor area is residential.

26. *Special Flood Hazard Area.* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–30, V1–30, VE, V.

27. *Stock* means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping. *Stock* does not include any property not covered under Section IV. Property Not Covered, except the following:

a. Parts and equipment for self-propelled vehicles;

b. Furnishings and equipment for watercraft;

c. Spas and hot-tubs, including their equipment; and

d. Swimming pool equipment.

28. *Unit.* A unit in a condominium building.

29. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Covered

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. A building described in the declarations page at the described location. If the building is a condominium building and the named insured is the condominium association, Coverage A includes all units within the building and the improvements within the units, provided the units are owned in common by all unit owners.

2. We also insure building property for a period of 45 days at another location, as set forth in III.C.2.b., Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and may not be separately insured.

4. The following fixtures, machinery and equipment, all while within the building or fastened to the building, and owned by the named insured, which are covered under Coverage A only:

a. Awnings and canopies;

b. Blinds;

c. Carpet permanently installed over unfinished flooring;

d. Central air conditioners;

e. Elevator equipment;

f. Fire extinguishing apparatus;

g. Fire sprinkler systems;

h. Freezers, walk-in;

i. Furnaces;

j. Light fixtures;

k. Outdoor antennas and aerials attached to buildings;

l. Permanently installed corner cupboards, bookcases, paneling, and wallpaper;

m. Pumps and machinery for operating pumps;

n. Ventilating equipment; and

o. Wall mirrors, permanently installed.

p. In the units within the building, installed:

(1) Built-in dishwashers;

(2) Built-in microwave ovens;

(3) Garbage disposal units;

(4) Hot water heaters, including solar water heaters;

(5) Kitchen cabinets;

(6) Plumbing fixtures;

(7) Radiators;

(8) Ranges;

(9) Refrigerators; and

(10) Stoves.

5. Materials and supplies to be used for construction, alteration or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or an adjacent property.

6. A building under construction, alteration or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (See II.6.a.), then coverage applies:

(1) Only while such work is in progress; or

(2) The work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–30, AR, AR/AE, AR/AH, AR/A1–30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–30.

7. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE, A1–30, AR, AR/AE, AR/AH, AR/A1–30, AR/A, AR/AO.

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8. A manufactured home or a travel trailer as described in the Definitions Section (See II.B.6.b. and II.B.6.c.).

If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

9. Items of property in a building enclosure lower than the lowest elevated floor of an elevated post-FIRM building located in zones A1–30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–30, or VE, or in a basement, regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners;

(2) Cisterns and the water in them;

(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;

(4) Electrical junction and circuit breaker boxes;

(5) Electrical outlets and switches;

(6) Elevators, dumbwaiters and related equipment, unless installed below the base flood elevation after September 30, 1987;

(7) Fuel tanks and the fuel in them;

(8) Furnaces and hot water heaters;

(9) Heat pumps;

(10) Nonflammable insulation in a basement;

(11) Oil tanks and oil in them;

(12) Pumps and tanks used in solar energy system;

(13) Stairways and staircases attached to the building, not separated from it by elevated walkways;

(14) Sump pumps;

(15) Water softeners, water filters and faucets installed as an integral part of the plumbing system;

(16) Well water tanks and pumps;

(17) Required utility connections for any item in this list; and

(18) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure, subject to paragraphs B.2., 3. and 4. below, against direct physical loss by or from flood to personal property inside a fully enclosed insured building:

a. Owned solely by you, or in the case of a condominium, owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association; or

b. Owned in common by the unit owners of the condominium association.

We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b., Property Removed to Safety.

2. When this policy covers personal property, coverage will be either for household personal property or other than household personal property, while within the insured building, but not both.

a. If this policy covers household personal property, it will insure household personal property usual to a living quarters, that:

(1) Belongs to you, or a member of your household, or at your option:

(a) Your domestic worker;

(b) Your guest; or

(2) You may be legally liable for.

b. If this policy covers other than household personal property, it will insure your:

(1) Furniture and fixtures;

(2) Machinery and equipment;

(3) Stock; and

(4) All other personal property owned by you and used in your business.

3. Coverage for personal property includes the following property, subject to paragraphs B.1.a. and B.1.b. above, which is covered under Coverage B. only:

a. Air conditioning units installed in the building;

b. Carpet, not permanently installed, over unfinished flooring;

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. "Cook-out" grills;

f. Food freezers, other than walk-in, and the food in any freezer;

g. Outdoor equipment and furniture stored inside the insured building;

h. Ovens and the like;

i. Portable microwave ovens and portable dishwashers; and

j. Refrigerators.

4. Items of property in a building enclosure lower than the lowest elevated floor of an elevated post-FIRM building located in zones A1–30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units—portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and food in any freezer.

5. *Special Limits.* We will pay no more than $2,500 for any loss to one or more of the following kinds of personal property:

a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;

b. Rare books, manuscripts or autographed items;

c. Jewelry, watches, precious and semi-precious stones, articles of gold, silver or platinum;

d. Furs or any article containing fur which represents its principal value; or

6. We will pay only for the functional value of antiques.

7. If you are a tenant, you may apply up to 10% of the Coverage B limit to improvements:

a. Made a part of the building you occupy; and

b. You acquired, or made at your expense, even though you cannot legally remove.

This coverage does not increase the amount of insurance that applies to insured personal property.

8. If you are a condominium unit owner, you may apply up to 10% of the Coverage B limit to cover loss to interior:

a. Walls,

b. Floors, and

c. Ceilings, that are not covered under a policy issued to the condominium association insuring the condominium building.

This coverage does not increase the amount of insurance that applies to insured personal property.

9. If you are a tenant, personal property must be inside a fully enclosed building.

C. Coverage C—Other Coverages

1. Debris Removal.

We will pay reasonable expenses to remove debris directly caused by flood provided the debris is:

a. Debris from property:

(1) That you do not own;

(2) That originates from beyond the boundaries of the described location, and

(3) That is physically on or in the insured building; or

b. Debris of the insured property anywhere.

If you perform the removal work, the value of your work will be based on the Federal minimum wage.

This coverage does not increase the Coverage A or Coverage B Limit of Liability.

2. Loss Avoidance Measures.

a. Sandbags, Supplies and Labor.

(1) We will pay up to $1,000 for the costs you incur to protect the insured building from a flood or imminent danger of flood, including:

(a) Your reasonable expenses to buy:

(i) Sandbags, including sand to fill them;

(ii) Fill for temporary levees;

(iii) Pumps; and

(iv) Plastic sheeting and lumber used in connection with these items; and

(b) The value of work, at the Federal minimum wage, that you perform.

(2) This coverage for Sandbags, Supplies and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the insured building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the insured building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety.

(1) We will pay up to $1,000 for the reasonable expenses you incur to move insured property to another place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum wage, that you perform.

(2) If you move insured property to another location other than the described location that contains the property, in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you first begin to move it there. The personal property that is moved must be placed in a fully enclosed building, or otherwise reasonably protected from the elements.

Any property removed, including a moveable home described in II. Definitions, Building, paragraphs b. and c., must be placed above ground level or outside of the special flood hazard area.

This coverage does not increase the Coverage A or Coverage B limit of liability.

D. Coverage D—Increased Cost of Compliance Coverage

A. General.

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a structure suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your structure. Eligible floodproofing activities are limited to:

1. Non-residential structures.

2. Residential structures with basements that satisfy FEMA's standards published in the Code of Federal Regulations (44 CFR 60.6 (b) or (c)).

B. Limit of Liability.

$20,000 is the maximum we will pay you for this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance) cannot exceed the maximum permitted under the Act. We do NOT charge a separate deductible for a claim under Coverage D.

C. Eligibility.

1. A structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

a. Be a "repetitive loss structure." A "repetitive loss structure" is one that meets the following conditions:

(1) The structure is covered by a contract of flood insurance issued under the NFIP.

(2) The structure has suffered flood damage on 2 occasions during a 10-year period which ends on the date of the second loss.

(3) The cost to repair the flood damage, on average, equaled or exceeded 25% of the market value of the structure at the time of each flood loss.

(4) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the structure; or

b. Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

2. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

a. C.1.a. above.

b. Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

c. Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, *i.e.*, that a structure must be elevated above the base flood elevation.

3. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of structures in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

4. This coverage will also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion E.7. below.

5. This coverage will also pay to bring a flood-damaged structure into compliance with state or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

D. Conditions.

1. When a structure covered under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

2. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

E. Exclusions.

Under this Coverage D (Increased Cost of Compliance) we will not pay for:

1. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

2. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

3. The loss in value to any insured building or other structure due to the requirements of any ordinance or law.

4. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

5. Any Increased Cost of Compliance under this Coverage D:

a. Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

b. Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

6. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

7. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

8. Loss due to any ordinance or law that you were required to comply with before the current loss.

9. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

10. Increased Cost of Compliance for a garage or carport.

11. Any structure insured under an NFIP Group Flood Insurance Policy.

12. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

F. Other Provisions.

All other conditions and provisions of the policy apply.

IV. Property Not Covered

A. We do not cover any of the following property:

1. Personal property not inside a building;

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide, if it was constructed or substantially improved after September 30, 1982;

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on or over water;

4. Recreational vehicles other than travel trailers described in the II. Definitions, Building, paragraph c., whether affixed to a permanent foundation or on wheels;

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines, provided they are not licensed for use on public roads and are:

a. Used mainly to service the described location or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location;

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;

8. Underground structures and equipment, including wells, septic tanks and septic systems;

9. Those portions of walks, walkways, decks, driveways, patios and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building;

10. Containers including related equipment, such as, but not limited to, tanks containing gases or liquids;

11. Buildings or units and all their contents if more than 49% of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;

13. Aircraft or watercraft, or their furnishings and equipment;

14. Swimming pools, hot tubs, spas, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act of 1990 and amendments to these Acts; and

16. Loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

17. Personal property used in connection with any incidental commercial occupancy or use of the building;

18. Personal property owned by or in the care, custody or control of a unit owner, except for property of the type and under the circumstances set forth under III. Coverage B—Personal Property of this policy;

19. A residential condominium building located in a Regular Program community.

V. Exclusions

A. We only provide coverage for direct physical loss by or from flood, which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law:

a. Requiring or regulating the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities that we describe in Coverage D—Increased Cost of Compliance; or

b. Requiring you or others to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effect of, any pollutant; or

7. Any other economic loss.

B. We do not insure a loss directly or indirectly caused by a flood that is in progress at the time and date:

1. The policy term begins; or

2. Coverage is added at your request.

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or

6. Gradual erosion. We do, however, pay for losses from erosion and mudflows that are specifically covered under our definition of flood.

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the insured building; or

b. That is within your control including, but not limited to:

(1) Design, structural or mechanical defects;

(2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump or related equipment; or

c. Seeps or leaks on or through insured property,

unless the damaged insured property has been, at the same time, damaged by flood;

6. The pressure or weight of water unless the damaged insured property has been, at the same time, damaged by flood;

7. Power, heating or cooling failure unless the failure results from direct physical loss by or from flood to power, heating or cooling equipment situated on the described location;

8. Discharge, dispersal, seepage, migration, release, or escape of pollutants;

9. Theft, fire, explosion, wind, or windstorm;

10. Anything that you or your agents do or conspire to do to deliberately cause loss by flood; or

11. Alteration of the insured property that significantly increases the risk of flooding.

VI. Deductibles

A. When a loss is covered under this policy, we will pay only that part of the loss that exceeds the applicable deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the declarations page.

However, when a building under construction, alteration or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. No deductible applies to:

1. III.C.2. Loss Avoidance Measures; or

2. III.D. Increased Cost of Compliance Coverage.

VII. General Conditions

A. Pair and Set Clause.

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged or destroyed article, less depreciation, or

2. An amount which represents the fair proportion of the total value of the pair or set that the lost, damaged or destroyed article bears to the pair or set.

B. Concealment or Fraud and Policy Voidance.

1. With respect to all insureds under this policy, this policy:

a. Is void,

b. Has no legal force or effect,

c. Cannot be renewed, and

d. Cannot be replaced by a new flood policy,

if, before or after a loss, you or any other insured or your agent have at any time:

(1) Intentionally concealed or misrepresented any material fact or circumstance,

(2) Engaged in fraudulent conduct, or

(3) Made false statements

relating to this policy or any other NFIP insurance.

2. This policy will be void as of the date the wrongful acts described in B. 1. above were committed.

3. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property listed on the application is not eligible for coverage under the NFIP; or

b. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred.

C. Other Insurance.

1. If a loss covered by this policy is also covered by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless b. or c. below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in C.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. Where this policy covers a condominium association and there is a flood insurance policy in the name of a unit-owner that covers the same loss as this policy, then this policy will be primary.

D. Amendments, Waivers, Assignment.

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This policy cannot be changed nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action that we take under the terms of this policy can constitute a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy covers only personal property; or

2. When this policy covers a structure during the course of construction.

E. Cancellation of Policy by You.

1. You may cancel this policy at any time.

If you cancel this policy, you may be entitled to a full or partial refund of premium under our applicable rules and regulations.

F. Non-Renewal of the Policy by Us.

Your policy will not be renewed:

1. If the community where your covered property is located stops participating in the NFIP, or

2. Your building has been declared ineligible under section 1316 of the Act.

G. Reduction and Restoration of Coverage.

1. If the premium we received from you was not enough to buy the kind and amount of coverage you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.

2. The amount of coverage resulting from the reduction described in 1. above can be restored to the amount you requested as follows:

a. Discovery of Insufficient Premium or Incomplete Rating Information Before a Loss.

(1) If we discover before you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If you or the mortgagee or trustee pay the additional premium within 30 days from the date of our bill, we will restore the amount of coverage to the originally requested amount effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If we determine before you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request. Once we determine the amount of additional premium for the current policy term, we will follow the procedure in (1) above.

(3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be restored by endorsement subject to any appropriate waiting period.

b. Discovery of Insufficient Premium or Incomplete Rating Information After a Loss.

(1) If we discover after you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current and the prior policy terms. If you or the mortgagee or trustee pay the additional premium within 30 days of the date of our bill, we will restore the amount of coverage to the originally requested amount effective to the beginning of the prior policy term.

(2) If we discover after you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior policy terms, we will follow the procedure in (1) above.

(3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be restored by endorsement subject to any appropriate waiting period.

3. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of Condition B. above apply.

H. Policy Renewal.

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that your renewal notice was not placed into the U.S. Postal Service, or if it was mailed properly, it was prepared in a such a way, *e.g.*, with an incorrect, incomplete, or illegible address, as to delay its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of nonreceipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the declarations page.

4. In connection with the renewal of this policy, we may ask you during the policy term to re-certify, on a Recertification Questionnaire that we will provide to you, the rating information used to rate your most recent application for or renewal of insurance.

I. Conditions Suspending or Restricting Insurance

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

J. Requirements in Case of Loss.

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it;

3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts and related documents;

4. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

a. The date and time of loss;

b. A brief explanation of how the loss happened;

c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;

d. Details of any other insurance that may cover the loss;

e. Changes in title or occupancy of the insured property during the term of the policy;

f. Specifications of damaged buildings and detailed repair estimates;

g. Names of mortgagees or anyone else having a lien, charge or claim against the insured property;

h. Details about who occupied any insured building at the time of loss and for what purpose; and

i. The inventory of damaged property described in 3. above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with our adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within sixty days after the loss even if the adjuster does not furnish the form or help you to complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept an adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

K. Our Options After a Loss.

Options that we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:

a. Show us or our representative the damaged property;

b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and

c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, and rules and regulations; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged, or destroyed property, including:

a. Quantities and costs;

b. Actual cash value;

c. Amounts of loss claimed; and

d. Any written plans and specifications for repair of the damaged property that you can make reasonably available to us.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

a. Repair, rebuild or replace any part of the lost, damaged or destroyed property with material or property of like kind and quality or its functional equivalent; and

b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

L. No Benefit to Bailee.

No person or organization, other than you, having custody of covered property will benefit from this insurance.

M. Loss Payment.

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

a. We reach an agreement with you;

b. There is an entry of a final judgment; or

c. There is a filing of an appraisal award with us, as provided in VII. P.

2. If we reject your proof of loss in whole or in part you may:

a. Accept such denial of your claim;

b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss or within any extension of time allowed by the Administrator.

N. Abandonment.

You may not abandon damaged or undamaged insured property to us.

O. Salvage.

We may permit you to keep damaged insured property after a loss and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

P. Appraisal.

If you and we fail to agree on the actual cash value of the damaged property so as to determine the amount of loss, either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

Q. Mortgage Clause.

The word "mortgagee" includes trustee.

Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

1. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;

2. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

All of the terms of this policy will then apply directly to the mortgagee.

If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

R. Suit Against Us.

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

S. Subrogation.

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money

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or do anything which would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. Continuous Lake Flooding.

1. Where an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in a covered loss to an insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location, and;

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before an insured building has been flooded continuously for 90 days, the provisions of this paragraph 1. will apply as long as the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph 1. above or this paragraph 2. (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake flood waters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement contained in the Federal Emergency Management Agency's (FEMA) "Policy Guidance for Closed Basin Lakes," to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures that it will allow on any portion of the property within the ASC are certain, simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph T.2. If a U.S. Army Corps of Engineers-certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with T.1.a. through T.1.d. above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from your local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in T.2.b. above.

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Sec. 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of T.2.b. above except that even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of T.2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this paragraph 2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph T.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph T.2. will be in effect for a community when the FEMA Regional Director for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in T.2.e. and T.2.f. above, and

(2) The date by which you must have flood insurance in effect.

U. Duplicate Policies Not Allowed.

1. Property may not be insured under more than one NFIP policy.

If we find that the duplication was not knowingly created, we will give you written notice. The notice will advise you that you may choose one of several options under the following procedures:

a. If you choose to keep in effect the policy with the earlier effective date, you may also choose to add the coverage limits of the later policy to the limits of the earlier policy. The change will become effective as of the effective date of the later policy.

b. If you choose to keep in effect the policy with the later effective date, you may also choose to add the coverage limits of the earlier policy to the limits of the later policy. The change will be effective as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the permissible limits of coverage under the Act or your insurable interest, whichever is less. We will make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect.

2. The insured's option under this Condition U. Duplicate Policies Not Allowed to elect which NFIP policy to keep in effect does not apply when duplicates have been knowingly created. Losses occurring under such circumstances will be adjusted according to the terms and conditions of the earlier policy. The policy with the later effective date must be canceled.

V. Loss Settlement.

We will pay the least of the following amounts after application of the deductible:

1. The applicable amount of insurance under this policy;

2. The actual cash value; or

3. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

VIII. Liberalization Clause

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated in the Declarations Page.

IX. What Law Governs

This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Jo Ann Howard,

Administrator, Federal Insurance Administration.

5. We revise Appendix A(3) to Part 61, Residential Condominium Building Association Policy, to read as follows:

APPENDIX A(3) TO PART 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy

RESIDENTIAL CONDOMINIUM BUILDING ASSOCIATION POLICY

I. Agreement

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions and exclusions.

This policy covers only a residential condominium building in a regular program community. if the community reverts to emergency program status during the policy term and remains as an emergency program community at time of renewal, this policy cannot be renewed.

The Federal Emergency Management Agency provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its Amendments, and Title 44 of the Code of Federal Regulations.

We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the correct premium;

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

We have the right to review the information you give us at any time and to revise your policy based on our review.

II. Definitions

A. In this policy, "you" and "your" refer to the insured(s) shown on the Declarations Page of this policy. "We", "us" and "our" refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases. The precise definitions are intended to protect you.

"Flood", as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of at least two or more properties (one of which is your property) from:

a. The overflow of inland or tidal waters.

b. The unusual and rapid accumulation or runoff of surface waters from any source.

c. Mudflows.

2. The collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels which result in a flood as defined in "Flood" paragraph A.1.a above.

B. The following are the other key definitions we use in this policy:

1. *Act.* The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued and the correct premium payment. The application is part of this flood insurance policy for us to issue you a policy, the correct premium payment must accompany the application.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.

6. *Building.*

a. A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

b. A manufactured home (a "manufactured home", also known as a mobile home, is a structure that is built on a permanent chassis and affixed to a permanent foundation and that is transported to its site in one or more sections); or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank or a recreational vehicle, park trailer or other similar vehicle, except as described in 6.c., above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of real property in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity, formed by the unit owners, responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other real property in which the unit owners have use rights; when membership in the entity is a required condition of unit ownership.

10. *Declarations Page.* A computer-generated summary of information you furnish in the application for insurance.

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The declarations page also describes the term of the policy, limits of coverage, and displays the premium and our name. The declarations page is a part of this flood insurance policy.

11. *Described Location.* The location where the building or personal property are found. The described location is shown on the declarations page.

12. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. Direct physical loss must be evidenced by physical changes to the property.

13. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

14. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act.

15. *Expense Constant.* A flat charge that you must pay on each new or renewal policy to defray the expenses of the Federal Government related to flood insurance.

16. *Federal Policy Fee.* A flat charge that you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program. This fee covers expenses not covered by the expense constant.

17. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the residential condominium building, including improvements in the units.

18. *Mudflow.* A river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

19. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in title 44 of the Code of Federal Regulations, Subchapter B.

20. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and declarations page;

c. Any endorsements that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term.

Only one building, specifically described by you in the application, may be insured under this policy.

21. *Pollutants.* Includes, but is not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed.

22. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

23. *Probation Premium.* A flat charge you must pay on each new or renewal policy issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

24. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

25. *Residential Condominium Building.* A building, owned and administered as a condominium, containing one or more family units and in which at least 75% of the floor area is residential.

26. *Special Flood Hazard Area.* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–30, V1–30, VE, V.

27. *Unit.* A single-family unit in a residential condominium building.

28. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Covered

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The residential condominium building described in the declarations page at the described location, including all units within the building and the improvements within the units.

2. We also insure such building property for a period of 45 days at another location, as set forth in III.C.2.b., Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and may not be separately insured.

4. The following fixtures, machinery and equipment, all while within the building or fastened to the building, including its units, which are covered under Coverage A only:

a. Awnings and canopies;

b. Blinds;

c. Carpet permanently installed over unfinished flooring;

d. Central air conditioners;

e. Elevator equipment;

f. Fire extinguishing apparatus;

g. Fire sprinkler systems;

h. Freezers, walk-in;

i. Furnaces;

j. Light fixtures;

k. Outdoor antennas and aerials fastened to buildings;

l. Permanently installed corner cupboards, bookcases, paneling, and wallpaper;

m. Pumps and machinery for operating pumps;

n. Ventilating equipment; and

o. Wall mirrors, permanently installed.

p. In the units within the building, installed:

(1) Built-in dishwashers;

(2) Built-in microwave ovens;

(3) Garbage disposal units;

(4) Hot water heaters, including solar water heaters;

(5) Kitchen cabinets;

(6) Plumbing fixtures;

(7) Radiators;

(8) Ranges;

(9) Refrigerators; and

(10) Stoves.

5. Materials and supplies to be used for construction, alteration or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or an adjacent property.

6. A building under construction, alteration or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (see II. Definitions, B.6. Building, paragraph a.), then coverage applies:

(1) Only while such work is in progress; or

(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(3) Below the base flood elevation in Zones AH, AE, A1–30, AR, AR/AE, AR/AH, AR/A1–30, AR/A, AR/AO; or

(4) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–30.

The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE, A1–30, AR, AR/AE, AR/AH, AR/A1–30, AR/A, AR/AO.

7. A manufactured home or a travel trailer as described in the Definitions Section (See II. Definitions, B. Building, paragraphs b. and c.).

If the manufactured home is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property in a building enclosure lower than the lowest elevated floor of an elevated post-FIRM building located in zones A1–30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–30, or VE, or in a basement, regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners;

(2) Cisterns and the water in them;

(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;

(4) Electrical junction and circuit breaker boxes;

(5) Electrical outlets and switches;

(6) Elevators, dumbwaiters and related equipment, unless installed below the base flood elevation after September 30, 1987;

(7) Fuel tanks and the fuel in them;

(8) Furnaces and hot water heaters;

(9) Heat pumps;

(10) Nonflammable insulation in a basement;

(11) Oil tanks and oil in them;

(12) Pumps and tanks used in solar energy systems;

(13) Stairways and staircases attached to the building, not separated from it by elevated walkways;

(14) Sump pumps;

(15) Water softeners, water filters and faucets installed as an integral part of the plumbing system;

(16) Well water tanks and pumps;

(17) Required utility connections for any item in this list; and

(18) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure, subject to paragraphs 2. and 3. below, against direct physical loss by or from flood to personal property that is inside a fully enclosed insured building and is:

a. Owned by the unit owners of the condominium association in common, meaning property in which each unit owner has an undivided ownership interest; or

b. Owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association.

We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b., Property Removed to Safety.

2. Coverage for personal property includes the following property, subject to paragraph B.1., above, which is covered under Coverage B only:

a. Air conditioning units—portable or window type;

b. Carpet, not permanently installed, over unfinished flooring;

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. "Cook-out" grills;

f. Food freezers, other than walk-in, and the food in any freezer;

g. Outdoor equipment and furniture stored inside the insured building;

h. Ovens and the like;

i. Portable microwave ovens and portable dishwashers; and

j. Refrigerators.

3. Items of property in a building enclosure lower than the lowest elevated floor of an elevated post-FIRM building located in zones A1–30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units—portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and the food in any freezer.

4. Special Limits. We will pay no more than $2,500 for any one loss to one or more of the following kinds of personal property:

a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;

b. Rare books, manuscripts or autographed items;

c. Jewelry, watches, precious and semi-precious stones, articles of gold, silver or platinum;

d. Furs or any article containing fur which represents its principal value.

5. We will pay only for the functional value of antiques.

C. Coverage C—Other Coverages

1. Debris Removal.

We will pay reasonable expenses to remove debris directly caused by flood provided the debris is:

a. Debris from property:

(1) That you do not own;

(2) That originates from beyond the boundaries of the described location; and

(3) That is physically on or in the insured building; or

b. Debris of the insured property anywhere.

If you perform the removal work, the value of your work will be based on the Federal minimum wage.

This coverage does not increase the Coverage A or Coverage B Limit of Liability.

2. Loss Avoidance Measures.

a. Sandbags, Supplies and Labor.

(1) We will pay up to $1,000 for the costs you incur to protect the insured building from a flood or imminent danger of flood, including:

(a) Your reasonable expenses to buy:

(i) Sandbags, including sand to fill them;

(ii) Fill for temporary levees;

(iii) Pumps; and

(iv) Plastic sheeting and lumber used in connection with these items; and

(b) The value of work, at the Federal minimum wage, that you perform.

(2) This coverage for Sandbags, Supplies and Labor is subject to the following: Damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the insured building; or

(b) A legally authorized official must issue an evacuation order or other civil

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order for the community in which the insured building is located calling for measures to preserve life and property from the peril of flood.This coverage does not increase the Coverage A or Coverage B Limit of Liability.

b. Property Removed to Safety.

(1) We will pay up to $1,000 for the reasonable expenses you incur to move insured property to another place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood.

Reasonable expenses include the value of work, at the Federal minimum wage, that you perform.

(2) If you move insured property to another location other than the described location that contains the property, in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you first begin to move it there. The personal property that is moved must be placed in a fully enclosed building, or otherwise reasonably protected from the elements.

Any property removed, including a moveable home described in Definition 6. Building, paragraphs b. and c., must be placed above ground level or outside of the special flood hazard area.

This coverage does not increase the Coverage A or Coverage B Limit of Liability.

D. Coverage D—Increased Cost of Compliance Coverage

A. General.

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a structure suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your structure. Eligible floodproofing activities are limited to:

1. Non-residential structures.

2. Residential structures with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6 (b) or (c)].

B. Limit of Liability.

$20,000 is the maximum we will pay you for this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance) cannot exceed the maximum permitted under the Act. We do NOT charge a separate deductible for a claim under Coverage D.

C. Eligibility.

1. A structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

a. Be a "repetitive loss structure." A "repetitive loss structure" is one that meets the following conditions:

(1) The structure is covered by a contract of flood insurance issued under the NFIP.

(2) The structure has suffered flood damage on 2 occasions during a 10-year period which ends on the date of the second loss.

(3) The cost to repair the flood damage, on average, equaled or exceeded 25% of the market value of the structure at the time of each flood loss.

(4) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the structure; or

b. Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

2. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

a. C.1.a. above.

b. Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

c. Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, *i.e.*, that a structure must be elevated above the base flood elevation.

3. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), states and communities must require the elevation or floodproofing of structures in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

4. This coverage will also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion E.7. below relating to improvements.

5. This coverage will also pay to bring a flood-damaged structure into compliance with state or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

D. Conditions.

1. When a structure covered under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

2. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

E. Exclusions.

Under this Coverage D (Increased Cost of Compliance) we will not pay for:

1. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

2. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

3. The loss in value to any insured building or other structure due to the requirements of any ordinance or law.

4. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

5. Any Increased Cost of Compliance under this Coverage D:

a. Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

b. Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

6. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

7. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

8. Loss due to any ordinance or law that you were required to comply with before the current loss.

9. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

10. Increased Cost of Compliance for a garage or carport.

11. Any structure insured under an NFIP Group Flood Insurance Policy.

12. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

F. Other Provisions.

1. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the coinsurance requirement for replacement cost coverage under VIII. General Conditions, V. Loss Settlement.

2. All other conditions and provisions of the policy apply.

IV. Property Not Covered

We do not cover any of the following:

1. Personal property not inside a building;

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide, if constructed or substantially improved after September 30, 1982;

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on or over water;

4. Recreational vehicles other than travel trailers described in the Definitions Section (see II.B.6.c.) whether affixed to a permanent foundation or on wheels;

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines, provided they are not licensed for use on public roads that are:

a. Used mainly to service the described location or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location;

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;

8. Underground structures and equipment, including wells, septic tanks and septic systems;

9. Those portions of walks, walkways, decks, driveways, patios and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building;

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids;

11. Buildings and all their contents if more than 49% of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;

13. Aircraft or watercraft, or their furnishings and equipment;

14. Swimming pools, hot tubs, spas, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvements Act of 1990 and amendments to these Acts.

16. Loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

17. Personal property used in connection with any incidental commercial occupancy or use of the building.

V. Exclusions

A. We only pay for direct physical loss by or from flood, which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law:

a. Requiring or regulating the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities that we describe in Coverage D—Increased Cost of Compliance; or

b. Requiring you or others to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effect of, any pollutant; or

7. Any other economic loss.

B. We do not insure a loss directly or indirectly caused by a flood that is in progress at the time and date:

1. The policy term begins; or

2. Coverage is added at your request.

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or

6. Gradual erosion.

We do, however, pay for losses from erosion and mudflows that are specifically covered under our definition of flood.

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;
2. Freezing or thawing;
3. Rain, snow, sleet, hail, or water spray;
4. Water, moisture, mildew, or mold damage that results primarily from any condition:
a. Substantially confined to the insured building; or
b. That is within your control including, but not limited to:
(1) Design, structural or mechanical defects;
(2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures or equipment; or
(3) Failure to inspect and maintain the property after a flood recedes;
5. Water or water-borne material that:
a. Backs up through sewers or drains; or
b. Discharges or overflows from a sump, sump pump or related equipment; or
c. Seeps or leaks on or through insured property, unless the damaged insured property has been, at the same time, damaged by flood;
6. The pressure or weight of water unless the damaged insured property has been, at the same time, damaged by flood;
7. Power, heating or cooling failure unless the failure results from direct physical loss by or from flood to power, heating or cooling equipment situated on the described location;
8. Discharge, dispersal, seepage, migration, release, or escape of pollutants;
9. Theft, fire, explosion, wind, or windstorm;
10. Anything that you or your agents do or conspire to do to deliberately cause loss by flood; or
11. Alteration of the insured property that significantly increases the risk of flooding.

VI. Deductibles

A. When a loss is covered under this policy, we will pay only that part of the loss that exceeds the applicable deductible amount, subject to the limit of insurance that applies. The deductible amount is shown on the declarations page.

However, when a building under construction, alteration or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. No deductible applies to:
1. III.C.2. Loss Avoidance Measures; or
2. III.D. Increased Cost of Compliance Coverage.

VII. Coinsurance

A. This Coinsurance Section applies only to coverage on the building.

B. We will impose a penalty on loss payment unless the amount of insurance applicable to the damaged building is:
1. At least 80% of its replacement cost; or
2. The maximum amount of insurance available for that building under the NFIP, whichever is less.

C. If the actual amount of insurance on the building is less than the required amount in accordance with the terms of VII. B. above, then loss payment is determined as follows (subject to all other relevant conditions in this policy including those pertaining to valuation, adjustment, settlement and payment of loss):

1. Divide the actual amount of insurance carried on the building by the required amount of insurance.
2. Multiply the amount of loss, before application of the deductible, by the figure determined in C.1. above.
3. Subtract the deductible from the figure determined in C.2. above.

We will pay the amount determined in C.3. above, or the amount of insurance carried, whichever is less. The amount of insurance carried, if in excess of the applicable maximum amount of insurance available under the NFIP, is reduced accordingly.

Examples

EXAMPLE #1 (INADEQUATE INSURANCE)

Replacement value of the building	$250,000
Required amount of insurance (80% of replacement value of $250,000)	$200,000
Actual amount of insurance carried	$180,000
Amount of the loss	$150,000
Deductible	$500

Step 1: 180,000 ÷ 200,000 = .90
(90% of what should be carried.)
Step 2: 150,000 × .90 = 135,000
Step 3: 135,000 − 500 = 134,500

We will pay no more than $134,500. The remaining $15,500 is not covered due to the coinsurance penalty ($15,000) and application of the deductible ($500).

EXAMPLE #2 (ADEQUATE INSURANCE)

Replacement value of the building (80% of replacement value is $400,000)	$500,000
Required amount of insurance	$400,000
Actual amount of insurance carried	$400,000
Amount of the loss	$200,000
Deductible	$500

In this example there is no coinsurance penalty, because the actual amount of insurance carried meets the required amount. We will pay no more than $199,500 ($200,000 amount of loss minus the $500 deductible).

D. In calculating the full replacement cost of a building:

1. The replacement cost value of any covered building property will be included;
2. The replacement cost value of any building property not covered under this policy will not be included; and
3. Only the replacement cost value of improvements installed by the condominium association will be included.

VIII. General Conditions

A. Pair and Set Clause.

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged or destroyed article, less depreciation; or
2. An amount which represents the fair proportion of the total value of the pair or set that the lost, damaged or destroyed article bears to the pair or set.

B. Concealment or Fraud and Policy Voidance.

1. With respect to all insureds under this policy, this policy:
a. Is void,
b. Has no legal force or effect,
c. Cannot be renewed, and
d. Cannot be replaced by a new flood policy, if, before or after a loss, you or any other insured or your agent have at any time:
(1) Intentionally concealed or misrepresented any material fact or circumstance,
(2) Engaged in fraudulent conduct, or
(3) Made false statements, relating to this policy or any other NFIP insurance.
2. This policy will be void as of the date the wrongful acts described in B.1. above were committed.

3. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:
a. If the property listed on the application is not eligible for coverage under the NFIP; or
b. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred.

C. Other Insurance.

1. If a loss covered by this policy is also covered by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged or destroyed property insured under this policy subject to the following:
a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless paragraph C.1.b. or paragraph C.1.c. immediately below applies.
b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.
c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in paragraph C.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

Where there is a flood insurance policy in the name of a unit-owner that covers the same loss as this policy, then this policy will be primary.

D. Amendments, Waivers, Assignment.

This policy cannot be changed nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action that we take under the terms of this policy constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy covers only personal property; or
2. When this policy covers a structure during the course of construction.

E. Cancellation of Policy by You.

1. You may cancel this policy at any time.
2. If you cancel this policy, you may be entitled to a full or partial refund of premium under our applicable rules and regulations.

F. Non-Renewal of the Policy by Us.

Your policy will not be renewed:

1. If the community where your covered property is located stops participating in the NFIP, or
2. Your building has been declared ineligible under section 1316 of the Act.

G. Reduction and Restoration of Coverage.

1. If the premium we received from you was not enough to buy the kind and amount of coverage you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.
2. The amount of coverage resulting from the reduction described in 1. above can be restored to the amount you requested as follows:
a. Discovery of Insufficient Premium or Incomplete Rating Information Before a Loss.
(1) If we discover before you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If you or the mortgagee or trustee pay the additional premium within 30 days from the date of our bill, we will restore the amount of coverage to the originally requested amount effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).
(2) If we determine before you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request. Once we determine the amount of additional premium for the current policy term, we will follow the procedure in (1) above.
(3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be restored by endorsement subject to any appropriate waiting period.
b. Discovery of Insufficient Premium or Incomplete Rating Information After a Loss.
(1) If we discover after you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current and the prior policy terms. If you or the mortgagee or trustee pay the additional premium within 30 days of the date of our bill, we will restore the amount of coverage to the originally requested amount effective to the beginning of the prior policy term.
(2) If we discover after you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior policy terms, we will follow the procedure in (1) above.
(3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be restored by endorsement subject to any appropriate waiting period.
3. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of paragraph B. Concealment or Fraud and Policy Voidance above apply.

H. Policy Renewal.

1. This policy will expire at 12:01 a.m. on the last day of the policy term.
2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.
3. If we find, however, that your renewal notice was not placed into the U.S. Postal Service, or if it was mailed properly, it was prepared in such a way, e.g., with an incorrect, incomplete, or illegible address, as to delay its delivery to you before the due date for the renewal premium, then we will follow these procedures:
a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of nonreceipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.
b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the declarations page.

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4. In connection with the renewal of this policy, we may ask you during the policy term to re-certify, on a Recertification Questionnaire that we will provide to you, the rating information used to rate your most recent application for or renewal of insurance.

I. Conditions Suspending or Restricting Insurance.

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

J. Requirements in Case of Loss.

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it.

3. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts and related documents;

4. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

a. The date and time of loss;

b. A brief explanation of how the loss happened;

c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;

d. Details of any other insurance that may cover the loss;

e. Changes in title or occupancy of the insured property during the term of the policy;

f. Specifications of damaged insured buildings and detailed repair estimates;

g. Names of mortgagees or anyone else having a lien, charge or claim against the insured property;

h. Details about who occupied any insured building at the time of loss and for what purpose; and

i. The inventory of damaged personal property described in 3. above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with our adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is a matter of courtesy only and you must still send us a proof of loss within sixty days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept an adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

K. Our Options After a Loss.

Options that we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:

a. Show us or our representative the damaged property;

b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and

c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, and rules and regulations; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged, or destroyed property, including:

a. Quantities and costs;

b. Actual cash values or replacement cost (whichever is appropriate);

c. Amounts of loss claimed; and

d. Any written plans and specifications for repair of the damaged property that you can make reasonably available to us.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

a. Repair, rebuild or replace any part of the lost, damaged or destroyed property with material or property of like kind and quality or its functional equivalent; and

b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

L. No Benefit to Bailee.

No person or organization, other than you, having custody of covered property will benefit from this insurance.

M. Loss Payment.

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

a. We reach an agreement with you;

b. There is an entry of a final judgment; or

c. There is a filing of an appraisal award with us, as provided in VIII. P.

2. If we reject your proof of loss in whole or in part you may:

a. Accept such denial of your claim;

b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss or within any extension of time allowed by the Administrator.

N. Abandonment.

You may not abandon damaged or undamaged insured property to us.

O. Salvage.

We may permit you to keep damaged insured property after a loss and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

P. Appraisal.

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of the damaged property so as to determine the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value, the replacement cost and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

Q. Mortgage Clause.

The word "mortgagee" includes trustee.

Any loss payable under Coverage A—Building will be paid to any mortgagee of whom we have actual notice and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

1. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;

2. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

All of the terms of this policy will then apply directly to the mortgagee.

If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property.

Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

R. Suit Against Us.

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

S. Subrogation.

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. Continuous Lake Flooding.

1. Where an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in a covered loss to an insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location and;

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before an insured building has been flooded continuously for 90 days, the provisions of this paragraph T.1. will apply as long as the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph T.1. above or this paragraph T.2. (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake flood waters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement contained in the Federal Emergency Management Agency's (FEMA) "Policy Guidance for Closed Basin Lakes," to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures that it will allow on any portion of the property within the ASC are certain, simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph T.2. If a U.S. Army Corps of Engineers-certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs T.1.a. through T.1.d. above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from your local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in paragraph T.2.b. above.

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Sec. 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of T.2.b. above except that even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-

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restricted, consistent with the provisions of T.2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this paragraph T.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph T.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph T.2. will be in effect for a community when the FEMA Regional Director for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs T.2.e. and T.2.f. above, and

(2) The date by which you must have flood insurance in effect.

U. Duplicate Policies Not Allowed.

1. We will not insure your property under more than one NFIP policy.

If we find that the duplication was not knowingly created, we will give you written notice. The notice will advise you that you may choose one of several options under the following procedures:

a. If you choose to keep in effect the policy with the earlier effective date, you may also choose to add the coverage limits of the later policy to the limits of the earlier policy. The change will become effective as of the effective date of the later policy.

b. If you choose to keep in effect the policy with the later effective date, you may also choose to add the coverage limits of the earlier policy to the limits of the later policy. The change will be effective as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the permissible limits of coverage under the Act or your insurable interest, whichever is less. We will make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect.

2. The insured's option under this condition U. Duplicate Policies Not Allowed to elect which NFIP policy to keep in effect does not apply when duplicates have been knowingly created. Losses occurring under such circumstances will be adjusted according to the terms and conditions of the earlier policy. The policy with the later effective date must be canceled.

V. Loss Settlement.

1. Introduction.

This policy provides three methods of settling losses, Replacement Cost, Special Loss Settlement and Actual Cash Value. Each method is used for a different type of property as explained in paragraphs V.1.a., b., and c. below.

a. Replacement Cost Loss Settlement described in paragraph V.2. below applies to buildings.

b. Special Loss Settlement described in paragraph V.3. below applies to a travel trailer or a manufactured home.

c. Actual Cash Value loss settlement applies to all other property covered under this policy, as outlined in paragraph V.4. below.

2. Replacement Cost Loss Settlement

a. We will pay to repair or replace a damaged or destroyed building, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(1) The amount of insurance in this policy that applies to the building;

(2) The replacement cost of that part of the building damaged, with materials of like kind and quality and for like occupancy and use; or

(3) The necessary amount actually spent to repair or replace the damaged part of the building for like occupancy and use.

b. We will not be liable for any loss on a Replacement Cost Coverage basis unless and until actual repair or replacement of the damaged building or parts thereof, is completed.

c. If a building is rebuilt at a location other than the described location, we will pay no more than it would have cost to repair or rebuild at the described location, subject to all other terms of Replacement Cost Loss Settlement.

3. Special Loss Settlement.

The following loss settlement conditions apply to a manufactured home or a travel trailer, as defined in Section II—Definitions, B., paragraphs 6.b. and c.:

a. If such a manufactured home or travel trailer is at least 16 feet wide when fully assembled and has at least 600 square feet within its perimeter walls when fully assembled, and is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damaged condition, we will, at our discretion pay the least of the following amounts:

(1) The lesser of the replacement cost of the manufactured home or travel trailer or 1.5 times the actual cash value; or

(2) The Building Limit of liability shown on your Declarations Page.

b. If such a manufactured home or travel trailer is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damaged condition, we will settle the loss according to the Replacement Cost Loss Settlement conditions in paragraph V.2. above.

4. Actual Cash Value.

a. The types of property noted below are subject to actual cash value loss settlement. "Actual cash value" is defined in II. Definitions.

(1) Personal property;

(2) Insured property abandoned after a loss and that remains as debris at the described location.

(3) Outside antennas and aerials, awning, and other outdoor equipment, all whether attached to the buildings or not;

(4) Carpeting and pads; and

(5) Appliances.

b. We will pay the least of the following amounts:

(1) The applicable amount of insurance under this policy;

(2) The actual cash value; or

(3) The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

VIII. Liberalization Clause

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated in the Declarations Page.

IX. What Law Governs

This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Jo Ann Howard,

Administrator,

Federal Insurance Administration.

(Catalog of Federal Domestic Assistance No. 83.100,"Flood Insurance")

Dated: May 18, 2000.

Jo Ann Howard,

Administrator, Federal Insurance Administration.

[FR Doc. 00–13298 Filed 5–30–00; 8:45 am]

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Part III

Department of Health and Human Services

42 CFR Part 130
Ricky Ray Hemophilia Relief Fund Program; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 130

RIN 0906–AA56

Ricky Ray Hemophilia Relief Fund Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Ricky Ray Hemophilia Relief Fund Act of 1998, established the Ricky Ray Hemophilia Relief Fund Program designed to provide compassionate payments to certain individuals with blood-clotting disorders, such as hemophilia, who contracted HIV through the use of antihemophilic factor administered between July 1, 1982, and December 31, 1987. The Act also provides for payments to certain persons who contracted HIV from the foregoing individuals. Specified survivors of these categories of individuals may also receive payments. The Department is seeking public comment on this interim final rule to establish procedures and requirements for documentation of eligibility and to establish a mechanism for providing compassionate payments to individuals who are eligible for payment under the statute.

DATES: This regulation is effective on July 31, 2000. Written comments must be submitted on or before June 30, 2000. Petitions may be postmarked, or accompanied by a receipt from a commercial carrier or U.S. Postal Service, on but not before July 31, 2000.

ADDRESSES: All comments concerning this interim final rule should be submitted to the Ricky Ray Program Office, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8A–54, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Comments will be available for public inspection at the above address in room 8A–54, BHPr/HRSA, between the hours of 8:30 a.m. and 5 p.m. on Federal Government work days.

FOR FURTHER INFORMATION CONTACT: Neil H. Sampson, Deputy Associate Administrator for Health Professions, Bureau of Health Professions, Health Resources and Services Administration, (301) 443–2330.

SUPPLEMENTARY INFORMATION: The Ricky Ray Hemophilia Relief Fund Act of 1998 (Pub. L. 105–369) established a Trust Fund with an authorization of $750 million to "provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated antihemophilic factor * * *" The statute mandates payments of $100,000 to any individual with HIV infection who has any blood-clotting disorder and was treated with antihemophilic factor at any time between July 1, 1982, and December 31, 1987. The spouse or former spouse of such an individual who acquired HIV from that individual is eligible for payment, and children who acquired HIV through perinatal transmission from a parent who is or was one of the persons described above may also be eligible for payment. In addition to these individuals, certain survivors also may be eligible for payment: a lawful spouse of the person with HIV; if there is no surviving spouse, the payment is to be made in equal shares to all children of the person with HIV; if there is no surviving spouse or children, the parents of the person with HIV will receive the payment in equal shares. If none of these individuals is living, the money will remain in the Fund. There is no provision for payment to be made to an estate or any individual other than those explicitly mentioned.

In order to receive a payment, either the individual who is eligible for payment, or his or her personal representative, must file a petition for payment with sufficient documentation to prove that he or she meets the requirements of the statute. The statute mandates that the Secretary of Health and Human Services establish requirements for documentation and establish a mechanism for paying the eligible individuals.

The purpose of this interim final rule is to seek public comment on the documentation we will require for payment as well as on our payment process.

Background

When the statute was passed in 1998, it included, as noted above, an authorization for $750 million, and a directive to pay $100,000 to eligible individuals. At that time, however, there were no funds appropriated to implement this statute. We were concerned that the statute expired 5 years from enactment, and we did not know when, if ever, Congress would appropriate funds to implement it. There was also the possibility that funds might be appropriated in later years, forcing us to begin the actual implementation process near the time when the statute would expire. We sought a solution to preserve the rights of eligible individuals so that they would not be disadvantaged should one of the less desirable funding scenarios develop.

The solution we devised was to allow individuals who believed that they were eligible for payment under this statute to file Notices of Intent. We wanted to preserve the rights of these individuals while at the same time, keeping the burden on them to a minimum. Since we did not know if funds would ever be made available, we did not want people to spend great time and effort rushing to file their petitions with the documentation required to prove they were eligible. Consequently, we published a notice in the **Federal Register** on March 24, 1999 (64 FR 14251), asking for Notices of Intent from individuals who believed they were eligible for payment. These Notices of Intent were minimal: the petitioner's name, address, and phone number, and similar information about the petitioner's attorney or other representative. We stated that eligible individuals would be able to file a formal petition for payment if and when we were provided the funds to implement the statute. We received more than 6,000 notices. We made clear in the **Federal Register** that these notices did not qualify individuals for payment, but simply preserved their rights under the statute. Payments would be based on petitions filed with appropriate documentation at a later time. As explained below, now that funds have been appropriated, we have begun the payment process which requires a formal petition. This process supersedes the Notice of Intent process, and, therefore, a Notice of Intent is no longer necessary.

In November 1999, we received an appropriation of $75 million to implement the statute, of which up to $10 million may be used for administrative expenses. We continued our work to establish the administrative mechanisms to pay individuals. These mechanisms include the organizational structure to manage the program, a Ricky Ray Fund in the Department of the Treasury, Privacy Act/Confidentiality regulations, and accounting procedures. We have also met with a wide range of organizations and expert individuals, seeking their input on how best to implement the statute. We also intensified our efforts to establish the proper regulatory framework for implementation; hence this rule.

The Current Appropriation

The statute requires payments of $100,000 to eligible individuals. The appropriation for this statute in FY 2000 is $75 million, of which up to $10 million may be used for administrative expenses. Since the FY 2000 appropriation is less than the $750 million that was authorized for the Ricky Ray Hemophilia Relief Fund, there are insufficient funds at this time to pay all individuals we believe will be eligible (up to 7,500) a $100,000 payment. We will pay the full $100,000 to individuals who file petitions "in the order received" until all appropriated funds are expended. Further petitions that are reviewed and determined to be eligible will remain in queue for payment from subsequent appropriations. The FY 2000 Supplemental Appropriations Bill requests an additional $100 million for the Fund. The President's budget for FY 2001 proposes $100 million, of which up to $10 million may be used for administrative expenses, for the Ricky Ray Fund. Assuming funds are provided in subsequent years, our intention is to continue the payment process until all eligible petitions have been paid before the Fund expires in FY 2004, as required under current statute.

Summary of Regulation

This regulation can be conceptualized in three parts: the process for payment, the documentation required to prove eligibility, and the reconsideration process.

The Process for Payment

Given the fact that the statute requires payments to be made to individuals who file petitions "in the order received," we need to establish a process to ensure this provision is met. First, we need to establish a date on which we will begin to accept petitions. It is important to set this specific date to allow all eligible individuals an equal opportunity to file. We are establishing July 31, 2000, as the first day we will accept petitions. No petition sent (*i.e.*, postmarked) earlier will be accepted, and we will return any petition postmarked before that date. The fact that someone filed a Notice of Intent in response to the **Federal Register** notice of March 24, 1999, does not establish a place in queue. In addition, there is no need to file a Notice of Intent before a full petition is filed. As noted above, the Notice of Intent was our method for preserving the right to file in case funds were not appropriated in sufficient time to allow for a reasonable process for filing petitions within the statutory deadline. To the extent feasible, we hope to forward a copy of the petition form to all individuals who filed a Notice of Intent.

Since we have only enough money under this year's appropriation to pay a relatively small number of eligible individuals, we need to establish an equitable process to determine the "order received." We are establishing July 31, 2000, as the date on which we will begin to accept petitions. Any petition postmarked on that date, or stamped by a commercial carrier or the U.S. Postal Service on that date, will be considered as "first to arrive." Petitions postmarked later will be sorted after those postmarked on the initial date. Petitions with earlier postmarks *will be returned*. Furthermore, no private meter postmarks will be allowed and, to assure fairness to all petitioners, we will not accept hand-delivered petitions.

We expect that there will be many petitions postmarked on the initial date. Therefore, these petitions will be the "first received." To ensure fairness in the payment process, we will begin a random selection procedure to determine the order in which petitions will be processed among the "first received." This process will be equitable to allow sufficient time for distant mailings.

It is our intention to begin to select envelopes containing the petitions "first received" in a random manner and begin numbering them from one until all are numbered. We will continue this procedure for petitions postmarked on later days. We will then begin with number one and continue to process petitions and make payments as long as funds are available.

Important Notice

The process described above, in light of limited appropriations, means that those who file complete petitions earlier will be paid before those who file later or who file without complete documentation. We encourage all potential petitioners to complete their petitions and to compile all required documents, so that they can have their petitions postmarked on or as close to the initial date as possible.

We are required under the statute to determine whether a petition is eligible for payment "not later than 120 days after the date the petition is filed." We anticipate receiving thousands of petitions within a short time. We cannot process them all simultaneously and have insufficient funds to pay all petitions that are processed. Therefore, we intend to implement this provision based on the date we determine that a petition is complete.

As a part of this process, if we open a petition and determine it is incomplete, we will notify the petitioner of this and give the petitioner 60 calendar days from the date of notification to submit the missing information. In the event that the petitioner is unable to secure the required documentation to complete the petition, the petitioner may submit a statement to the Secretary within 60 calendar days which shows good cause why the required legal and/or medical documentation is not available. If the petition is completed within that timeframe or if we determine that the petitioner has provided an adequate showing of good cause for not submitting the required documentation, and the petitioner is eligible for payment, we will pay that petitioner based on the number assigned in the random numbering process. If the required documentation is not included even after the opportunity to complete this documentation within 60 days, or if an adequate showing of good cause why the documentation is unavailable is not provided, the petition will be denied, subject to a right of reconsideration. Any subsequent filing of a petition will result in that petition being assigned a new number based on the date it is postmarked.

Filing Deadlines

First, we note that the Ricky Ray Hemophilia Relief Fund Act states that the Secretary may not pay a petition unless it is filed within 3 years after the date of the enactment of the Act. This statute was enacted on November 12, 1998; thus, the statutory filing deadline is November 11, 2001. However, since November 11, 2001, is a Sunday and is the Veteran's Day holiday, and since November 12, 2001, is the day on which Veteran's Day holiday is observed by the Federal Government, we have extended the deadline for filing a petition to Tuesday, November 13, 2001.

Second, we are calling special attention to the deadline for filing full petitions as it relates to our Notice of Intent procedures described in the **Federal Register** of March 24, 1999. The Notice of Intent was described in that March 24 document as satisfying the statutory filing deadline of November 11, 2001. However, as noted above, that procedure was an interim one that we developed before we knew whether Congress would provide funds to operate the program. Now that we have funds for paying petitions and for operating the program, we are able to establish a procedure which requires compliance with the statutory deadline. Therefore, even if a timely Notice of Intent was filed, a petitioner must file a full petition by the November 13, 2001, deadline. Furthermore, any individual who has not filed a Notice of Intent

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need not file such a notice; it is only the filing of a full petition that will establish eligibility under the statute. Finally, those who filed a Notice of Intent should understand that their place in queue for processing and payment will be determined by the date of submission of their full petitions and will not be related to the date they filed their Notices of Intent or to the case numbers assigned to those notices.

We would also like to note other deadlines that apply under the regulation. First, where a petitioner submits a petition which is denied payment, the petitioner may file a new petition, which includes documentation that was not included in the original petition. The deadline for filing this new petition is November 13, 2001. Second, where a petitioner submits a petition and the Secretary has not yet made the determination whether the petition meets the requirements of the Act, the petitioner may supplement the original petition with additional documentation. The petitioner may file this supplemental documentation at any time until the date of the Secretary's determination. Third, where a survivor files an amendment to a petition, which is required when a petition has already been submitted but the petitioner has died before payment is made, the deadline for filing this amendment is the date of the Secretary's determination of eligibility or the date of payment, whichever is later. Survivors must file amendments to petitions in order to retain the original assigned order number and to receive payment under the Act.

Documentation Required

It is extremely important to establish the medical and legal documentation required so that we can begin to make payments to individuals who are eligible for payment. We are attempting to balance our fiduciary and accountability responsibilities with our desire to impose a minimal burden on those who file a petition. We are therefore, providing two options to meet the medical documentation requirement. The first is medical records, test results, prescription information, or other documentation deemed credible by the Secretary (which may include, but is not limited to, infusion logs and packing slips). The second is a sworn affidavit by a doctor or nurse practitioner verifying that the relevant medical requirements have been satisfied. We are also requiring a variety of legal documents from most petitioners. We encourage all petitioners to consult the Petition Documentation Checklist to determine the specific documentation required for each petition.

A. Persons with HIV

The terms used below refer to the relationship to the individual with a blood-clotting disorder and HIV.

1. To prove an individual with a blood-clotting disorder is eligible for payment, the petition must include medical documentation that the individual had a blood-clotting disorder, such as hemophilia, and was treated with antihemophilic factor at any time between July 1, 1982, and December 31, 1987, and contracted an HIV infection.

2. For lawful spouses with HIV who are filing, in addition to the medical documentation for the individual with a blood-clotting disorder, the petition must include evidence of marriage consisting of a marriage certificate or other proof of a lawful marriage and proof that the spouse has HIV.

3. For former lawful spouses with HIV, we are requiring the medical documentation for the individual with a blood-clotting disorder, proof that he or she was married to the individual with a blood-clotting disorder at any time after the individual's treatment with antihemophilic factor (the date of treatment must have been between July 1, 1982, and December 31, 1987), proof of the termination of the marriage (such as a divorce certificate), and medical documentation which shows with reasonable certainty that the former spouse contracted HIV from the individual with a blood-clotting disorder.

4. For the child with HIV who is filing (or for whom a personal representative is filing) because the parent is or was one of the persons described above, in addition to medical documentation for the individual with a blood-clotting disorder, we are requiring a birth certificate or other proof that the person filing is, in fact, the child of an individual with a blood-clotting disorder or his or her spouse or former spouse, a marriage certificate or other proof of a lawful marriage between the individual with a blood-clotting disorder and his spouse or former spouse, and medical documentation that the child acquired HIV infection through perinatal transmission from the individual with a blood-clotting disorder or his or her former spouse.

B. Survivors of Persons with HIV

1. For the surviving spouse of a person with HIV, in addition to the medical and legal documentation for the person with HIV, we are requiring evidence of the death of the person with HIV, evidence of a lawful marriage, and a sworn statement that they were married at the time of the death of the person with HIV.

2. For the surviving child/children of a person with HIV, in addition to the medical and legal documentation for the person with HIV, we are requiring evidence of the death of the person with HIV, evidence that the petitioner is, in fact, the child or stepchild of the person with HIV, and a sworn statement that either states that there are no other survivors eligible for payment or provides information about others who are eligible.

3. For the surviving parent of a person with HIV, in addition to the medical and legal documentation for the person with HIV, we are requiring proof of the death of the person with HIV, evidence to prove that the petitioner is, in fact, the parent, and a sworn statement that either states that there are no other survivors eligible for payment or provides information about others who are eligible.

In cases in which more than one (*i.e.*, multiple) surviving children or surviving parents are filing, they may file one petition form jointly, which will contain the required documentation for all survivors, or they can file separate petition forms, which together will contain all of the required documentation for all survivors. In either case, survivors who have submitted all required documentation and are otherwise eligible for payment under the Act, will be paid their share(s) of the payment. Payment share(s) for multiple surviving children or surviving parents who do not submit the required documentation will remain in the Fund until such time as they complete their petitions by submitting such documentation or, if they have not submitted the documentation until the time that the Fund terminates, will revert back to the Treasury.

Petitioners Who Filed Claims Under the Factor Concentrate Settlement

We expect that many petitioners have previously filed claims under the "Factor Concentrate Settlement" (that is, under the class settlement in the case of *Susan Walker* v. *Bayer Corporation, et al.*). In order for these petitioners to satisfy the documentation requirements, they may submit original or duplicate copies of the documents submitted in the class action. However, while the settlement documents may be submitted, they do not necessarily meet all of the documentation requirements under the Ricky Ray Hemophilia Relief Fund Act. Thus, if the documents submitted in the class action do not consist of all documentation required under the Act, these petitioners must submit additional documentation in order to establish eligibility under the Act.

The Reconsideration Process

Every individual who filed a petition and is denied payment may ask for a reconsideration. The request must be sent to the Deputy Associate Administrator for Health Professions, Health Resources and Services Administration, at the address designated in the regulation. The request must be received by the Department within 60 calendar days of the date the Department denied payment. The request should state the reasons for the reconsideration, but may not include any additional documentation not previously provided. The Deputy Associate Administrator will convene a panel to review all requests. The panel will consist of three individuals who are independent of the Ricky Ray Program Office and who are qualified to evaluate the petitions. The panel will review the case and make a recommendation to the Deputy Associate Administrator, who will review the recommendation and make a final determination as to whether or not the petitioner is eligible for payment. If the petition is deemed eligible for payment, it will be processed as soon as practicable in accordance with available funds.

Assistance Available to the Public

The Ricky Ray Program office will respond to inquiries from petitioners and other individuals regarding program policies and Trust Fund status, as well as questions relating to the content, format and procedure for filing a full petition. This information may be obtained by telephoning the Ricky Ray Program Office at 1–888–496–0338 between the hours of 8:30 a.m. and 5 p.m. (Eastern Standard Time). This is a toll-free number. Interested parties may also contact the Program office by regular or electronic mail. The e-mail address is *Rray__program@hrsa.gov*. Additional program information, including downloadable versions of all forms needed to file a petition, may be obtained at the Ricky Ray Program Office website located at *http://www.hrsa.gov/bhpr/rickyray*. The website will be regularly updated.

Justification for Omitting Notice of Proposed Rulemaking

The Department has decided to issue this document as an interim final regulation with a comment period of 30 days after publication in the **Federal Register**. Under 5 U.S.C. 553(b), the Secretary has determined that it is contrary to the public interest to follow proposed rulemaking procedures before issuance of these regulations. We make this finding for the following reasons:

The purpose of the statute is to provide compassionate payments to individuals with blood-clotting disorders and HIV, to certain other individuals, and to their survivors. These are individuals with significant medical and other financial needs, and a delay in their ability to obtain the compassionate payments to which they are entitled would be inconsistent with the statutory purpose, with their needs, and thus, with the public interest. In addition, should any such individual die without one of the survivors described in the statute, no payment is permitted to be made to that individual's estate. The sooner the rule becomes effective, the more eligible individuals will be able to recover the statutory payment.

In addition, we believe that the streamlined filing procedures provided for by this rule will impose a minimal burden on petitioners and thus should not result in any controversy. Nevertheless, we are providing for a 30-day comment period which will expire 30 days before the effective date of the rule specified above. Thus, should we receive any significant comments that would cause us to revise this rule in any way that would affect the filing of the petitions, we will be able to do so, or to advise potential petitioners of our intent to do so, before they take any final action to file.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act (RFA) of 1980, if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department has determined that resources to implement this rule are required only of petitioners in submitting their petitions and of the Department in reviewing them. Therefore, in accordance with the RFA of 1980, and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities. The Secretary has also determined that this rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures.

We have determined that the rule is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. We have made this decision because Congress, not the Department, determined the amount of compensation to be disbursed to eligible petitioners under the Act. In promulgating this rule, the Department is not exercising any discretion as to the amount of money given to petitioners deemed eligible under the Act.

Nor on the basis of family well-being will the provisions of this rule for the payment of awards to petitioners affect the following family elements: family safety, family stability; marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999. This rule does not have an effect on disposable income because it provides compassionate payments to eligible petitioners without imposing a corresponding burden on petitioners.

Paperwork Reduction Act of 1995

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA) of 1995, the Department is required to solicit public comments, and receive final Office of Management and Budget (OMB) approval, on any information collection requirements set forth in rulemaking. As indicated, in order to implement the Ricky Ray Hemophilia Relief Fund Act of 1998, certain information is required as set forth in §§ 130.20, 130.21, 130.22, 130.23, 130.30, and 130.31 in this rule.

In accordance with the PRA, we are submitting to OMB at this time the

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following requirements for seeking emergency review of these provisions. We are requesting an emergency review because the data collection and reporting of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320, to ensure the timely availability of data as necessary to ensure payment to eligible petitioners. Delaying the data collection would delay implementation of the statutory purpose of providing compassionate payments to individuals with blood-clotting disorders and HIV, to certain other persons, and to their survivors. It is clear that eligible petitioners have significant medical and financial needs, and the emergency review will minimize any delay in their ability to obtain the compassionate payments to which they are entitled in accordance with the statutory purpose. Further, by statute, if an individual dies before receiving payment and there is no eligible survivor, as described in the statute, the $100,000 will revert to the Trust Fund. Implementing this regulation and making payments as soon as possible will ensure that Congress' intent in making compassionate payments to eligible individuals will be implemented, to the extent possible. We are requesting OMB's review and approval of this collection within 15 days from the date of publication of this rule, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below within 13 days from the date of publication of this rule. During this 180-day approval period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on the requirements set forth.

Collection of Information: The Ricky Ray Hemophilia Relief Fund Program.

Description of Respondents: Individuals who have an HIV infection and have any form of blood-clotting disorder, such as hemophilia, and were treated with antihemophilic factor at any time between July 1, 1982, and December 31, 1987. The spouse and former spouse of such individuals who acquired HIV from that individual qualify for payment, and children who acquired HIV through perinatal transmission from an eligible parent also qualify. In addition to these individuals, certain survivors also qualify.

Estimated Annual Reporting: The estimated annual reporting for this data collection is three hours for completing the petition and providing supporting documentation and one hour for the physician documentation. The estimated annual response burden is as follows:

Form	Number of respondents *	Responses per respondent	Hourly response	Total burden hours	Wage rate	Total hour cost
Petition Form and Supporting Documentation	5,000	1	3	15,000	$15	$225,000
Physician Documentation	1,000	1	1	1,000	40	40,000
Total	6,000			16,000		265,000

* It is estimated that no more than 7,500 individuals would be eligible for payment under the statute, and all petitions must be submitted by November 13, 2001. The burden estimate in this table is calculated by annualizing the predicted number of respondents over an 18-month period in which a petition may be filed. Approximately 6,000 of these eligible individuals may have existing documentation resulting from the class settlement *Susan Walker* v. *Bayer Corporation et al.*

The annual burden estimate includes the time required to review and complete the petition as well as the time to obtain and provide further medical and legal documentation of eligibility. Comments on this information collection activity should be sent to Wendy A. Taylor, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street, NW., Washington, DC 20053; FAX: (202) 395–6974.

List of Subjects in 42 CFR Part 130

Blood diseases, Federal aid programs, HIV/AIDS, Indemnity payments, Reporting and recordkeeping requirements.

Dated: April 26, 2000.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Approved: May 12, 2000.

Donna E. Shalala,

Secretary.

For the reasons stated above, the Department of Health and Human Services adds to Chapter I of Title 42 CFR, a new Subchapter L, and within Subchapter L a new Part 130 to read as follows:

SUBCHAPTER L—COMPASSIONATE PAYMENTS

PART 130—RICKY RAY HEMOPHILIA RELIEF FUND PROGRAM

Subpart A—General Provisions

Sec.

130.1 Purpose.
130.2 Definitions.
130.3 Amount of payments.

Subpart B—Criteria for Eligibility

130.10 Who is eligible for payment under the Act—living persons with HIV.
130.11 Who is eligible for payment under the Act—survivors of persons with HIV.

Subpart C—Documentation Required for Complete Petitions

130.20 Form of medical documentation.
130.21 What documentation is required for petitions filed by living persons with HIV?
130.22 What documentation is required for petitions filed by survivors of persons with HIV, which are filed in cases where the person with HIV dies before filing a petition?
130.23 What documentation is required for amendments to petitions, which are filed by survivors of persons with HIV?

Subpart D—Procedures for Filing and Paying Complete Petitions

130.30 Who may file a petition for payment or an amendment to a petition?
130.31 How and when is a petition for payment filed?
130.32 How and when will the Secretary determine the order of receipt of petitions?
130.33 How will the Secretary determine whether a petition is complete?
130.34 How will the Secretary determine whether to pay a petition?
130.35 How and when will the Secretary pay a petition?

Subpart E—Reconsideration Procedures

130.40 Reconsideration of denial of petitions.

Subpart F—Attorney Fees

130.50 Limitation on agent and attorney fees.

APPENDIX A TO PART 130—DEFINITION OF HIV INFECTION OR HIV

APPENDIX B TO PART 130—CONFIDENTIAL PHYSICIAN OR NURSE PRACTITIONER AFFIDAVIT

APPENDIX C TO PART 130—PETITION FORM, PETITION INSTRUCTIONS, AND DOCUMENTATION CHECKLIST

Authority: Secs. 101–108 of Pub. L. 105–369, 112 Stat. 3368 (42 U.S.C. 300c–22 note); sec. 215 of the Public Health Service Act (42 U.S.C. 216).

Subpart A—General Provisions

§ 130.1 Purpose.

This part establishes criteria and procedures for implementation of the Ricky Ray Hemophilia Relief Fund Act of 1998 (the Act). This statute provides for compassionate payments to certain individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus (HIV) due to contaminated antihemophilic factor within a specified time period, as well as to certain persons who contracted HIV from these individuals. In the event the individual eligible for payment is deceased, the Act also provides for payments to certain survivors of this individual.

§ 130.2 Definitions.

As used in this part:

(a) *Act* means the Ricky Ray Hemophilia Relief Fund Act of 1998, 42 U.S.C. 300c–22 note, as amended.

(b) *Antihemophilic factor* means any blood product (including, but not limited to, fresh frozen plasma, cryoprecipitate, factor VIII concentrate, and factor IX concentrate) used to treat a blood-clotting disorder.

(c) *Blood-clotting disorder* means a disorder (including, but not limited to, hemophilia and von Willebrand's disease) in which the blood does not clot normally, usually resulting in prolonged bleeding.

(d) *Child with HIV* means the individual described in § 130.10(c).

(e) *Former lawful spouse* means a person to whom an individual described in § 130.10(a):

(1) Was married according to the laws of the place where the person resided at any time after the date of the individual's treatment with antihemophilic factor (this date of treatment must have been between July 1, 1982, and December 31, 1987); and

(2) Is no longer married.

(f) *Former lawful spouse with HIV* means the individual described in § 130.10(b)(2).

(g) *Fund* means the "Ricky Ray Hemophilia Relief Fund," which is a Trust Fund established in the Treasury of the United States and administered by the Secretary of the Treasury.

(h) *Hemophilia* means a bleeding disorder in which a clotting factor (including, but not limited to, factors VIII or IX) is missing or does not function normally.

(i) *HIV infection* or *HIV* means any of the following:

(1) *For individuals diagnosed with the HIV infection at any age, including infants:* the presence of an opportunistic disease characteristic of AIDS, sufficient to satisfy the definition of HIV infection as set forth in Appendix A to this part; or

(2) *For individuals diagnosed with the HIV infection at over 15 months of age:* the presence of laboratory evidence of HIV based on identification of:

(i) HIV antibodies;

(ii) HIV viral antigens;

(iii) HIV viral cultures; or

(iv) Plasma HIV RNA; or

(3) *For infants diagnosed with the HIV infection due to perinatal transmission at or before 15 months of age:* identification of the presence of HIV by a positive virologic test (*i.e.*, detection of HIV by culture, HIV antigen, or HIV DNA or RNA polymerase chain reaction [PCR]).

(j) *Individual with a blood-clotting disorder and HIV* means the individual described in § 130.10(a).

(k) *Lawful spouse* means a person to whom an individual described in § 130.10(a) is married according to the laws of the place where the person resides on the date the petition is filed. If the laws of the place where the person resides consider an individual who is legally separated or in a common law marriage to be married, then such a person is a lawful spouse.

(l) *Lawful spouse with HIV* means the individual described in § 130.10(b)(1).

(m) *Perinatal transmission* means transmission of HIV infection from mother to child that occurs during pregnancy, delivery, or breastfeeding.

(n) *Person(s) with HIV* means all of the individuals described in § 130.10(a), (b) or (c).

(o) *Place* means any State of the United States of America, the District of Columbia, and United States territories, commonwealths, and possessions.

(p) *Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department to whom the authority involved has been delegated.

§ 130.3 Amount of payments.

If there are sufficient amounts in the Fund to make payments, the Secretary will make a single payment of $100,000 to eligible individuals, as defined in accordance with subpart B of this part.

Subpart B—Criteria for Eligibility

§ 130.10 Who is eligible for payment under the Act—living persons with HIV.

The following individuals are eligible for payment under the Act if they are living at the time that payment is to be made on a petition and have an HIV infection:

(a) An individual who has any form of blood-clotting disorder, such as hemophilia, who was treated with antihemophilic factor at any place defined in § 130.2(o), or at any diplomatic area or military installation of the United States, at any time during the time period from July 1, 1982, to December 31, 1987.

(b) An individual who is:

(1) The lawful spouse of the individual with a blood-clotting disorder and HIV; or

(2) The former lawful spouse of the individual with a blood-clotting disorder and HIV, if the former lawful spouse can assert with reasonable certainty, through medical documentation, transmission of HIV from the individual with a blood-clotting disorder and HIV.

(c) An individual who acquired the HIV infection through perinatal transmission from a parent who is the individual with a blood-clotting disorder and HIV, the lawful spouse with HIV or the former lawful spouse with HIV.

§ 130.11 Who is eligible for payment under the Act—survivors of persons with HIV.

(a) Survivors of persons with HIV, as described in § 130.10, are eligible for payment under the Act if:

(1) The person with HIV dies before filing a petition under the Act. In this case, an eligible survivor may file a petition as a survivor of the person with HIV, as set forth in § 130.22; or

(2) The person with HIV has filed a petition under the Act, but dies before payment is made. In this case, an eligible survivor must file an amendment to the petition in order to retain the assigned order number and to receive payment under the Act, as set forth in § 130.23.

(b) Payments to survivors shall be made in the following order:

(1) If the person with HIV is survived by a spouse who is living at the time of payment, the payment shall be made to the surviving spouse (*hereinafter* referred to as "the surviving spouse").

(2) If the person with HIV is not survived by a living spouse, the payment shall be made in equal shares to all children of the individual who are living at the time of payment (*hereinafter* referred to as "the surviving child/children").

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(3) If the person with HIV is not survived by a spouse or children who are living at the time of payment, the payment shall be made in equal shares to the parents of the individual who are living at the time of payment (*hereinafter* referred to as "the surviving parent(s)".

(c) If the person with HIV is not survived at the time payment is to be made by any of the survivors listed in paragraph (b) of this section, no payments will be made for the person with HIV and the payment will revert back to the Fund.

(d) For purposes of this section, the following definitions apply:

(1) The term *spouse* means a person who was lawfully married to the person with HIV according to the laws of the place where the person resided at the time of death.

(2) The term *child* includes a recognized natural child, a stepchild who lived with the person with HIV in a regular parent-child relationship, and an adopted child.

(3) The term *parent* includes fathers and mothers through adoption.

Subpart C—Documentation Required for Complete Petitions

§ 130.20 Form of medical documentation.

In all instances in which medical documentation is referred to, medical documentation may be submitted in the following forms:

(a) Copies of relevant portions of medical records, records maintained by a physician, nurse, or other licensed health care provider, test results, prescription information, or other documentation deemed credible by the Secretary; or

(b) An affidavit, signed under penalty of perjury, by a physician or nurse practitioner, verifying that the medical criteria necessary for a petitioner to be eligible for payment under the Act are satisfied. Such an affidavit must include the physician or nurse practitioner's State and license number. A sample affidavit is set forth at Appendix B to this part.

§ 130.21 What documentation is required for petitions filed by living persons with HIV?

The following rules apply to all petitions filed by persons with HIV:

(a) All petitions filed under the Act must include written medical documentation showing the following:

(1) That the individual described in § 130.10(a) has (or had) a blood-clotting disorder, such as hemophilia;

(2) That the individual with a blood-clotting disorder and HIV was treated with antihemophilic factor at any time between July 1, 1982, to December 31, 1987; and

(3) That the individual with a blood-clotting disorder and HIV has (or had) an HIV infection under any of the criteria set out in the definition of HIV infection at § 130.2(i).

(b) *The individual.* Petitions filed by the individual with a blood-clotting disorder and HIV need only include the documentation described in paragraph (a) of this section.

(c) *The lawful spouse.* Petitions filed by the lawful spouse with HIV must include the following written documentation:

(1) The documentation described in paragraph (a) of this section;

(2) Medical documentation showing that the lawful spouse with HIV has an HIV infection; and

(3) A marriage certificate or other proof of a lawful marriage, which shows that the lawful spouse with HIV and the individual with a blood-clotting disorder and HIV are married.

(d) *The former lawful spouse.* Petitions filed by the former lawful spouse with HIV must include the following written documentation:

(1) The documentation described in paragraph (a) of this section;

(2) Medical documentation showing that the former lawful spouse with HIV has an HIV infection;

(3) A marriage certificate or other proof of a lawful marriage, which shows that the former lawful spouse with HIV and the individual with a blood-clotting disorder and HIV were married at any time after the date of the individual's treatment with antihemophilic factor (this date of treatment must have been between July 1, 1982, to December 31, 1987);

(4) A divorce certificate or other proof of termination of the marriage between the former lawful spouse with HIV and the individual with a blood-clotting disorder and HIV; and

(5) Medical documentation which shows with reasonable certainty that the former lawful spouse with HIV contracted HIV from the person with a blood-clotting disorder and HIV.

(e) *The child.* Petitions filed by the child with HIV must include the following written documentation:

(1) The documentation described in paragraph (a) of this section;

(2) Medical documentation showing that the child with HIV has an HIV infection;

(3) A birth certificate or other proof, which shows that the child with HIV is the child of:

(i) The individual with a blood-clotting disorder and HIV;

(ii) The lawful spouse with HIV; or

(iii) The former lawful spouse with HIV;

(4) A marriage certificate or other proof of a lawful marriage, which shows that the lawful spouse with HIV or the former lawful spouse with HIV and the individual with a blood-clotting disorder and HIV are/were married, *except* where the individual with a blood-clotting disorder and HIV is the mother of the child with HIV;

(5) Medical documentation showing that the child with HIV acquired an HIV infection through perinatal transmission from a parent who is:

(i) The individual with a blood-clotting disorder and HIV;

(ii) The lawful spouse with HIV; or

(iii) The former lawful spouse with HIV; and

(6) Where the child with HIV acquired an HIV infection through perinatal transmission from the former lawful spouse with HIV, medical documentation which shows with reasonable certainty that the former lawful spouse with HIV contracted HIV from the person with the blood-clotting disorder and HIV.

§ 130.22 What documentation is required for petitions filed by survivors of persons with HIV, which are filed in cases where the person with HIV dies before filing a petition?

(a) In those cases in which the person with HIV, as described in § 130.10, dies before filing a petition under the Act, a survivor of that person, as described in § 130.11, may file a petition.

(b) Petitions filed by survivors must include two types of information:

(1) Documentation regarding the person with HIV; and

(2) Documentation regarding the eligibility of the survivor to receive payments as a survivor of the person with HIV.

(c) Petitions filed by survivors must include the following information regarding the person with HIV:

(1) *The individual.* Petitions filed by a survivor of the individual with a blood-clotting disorder and HIV must include the documentation described in § 130.21(b).

(2) *The lawful spouse.* Petitions filed by a survivor of the lawful spouse with HIV must include the documentation described in § 130.21(c).

(3) *The former lawful spouse.* Petitions filed by a survivor of the former lawful spouse with HIV must include the documentation described in § 130.21(d).

(4) *The child.* Petitions filed by a survivor of the child with HIV must include the documentation described in § 130.21(e).

(d) Petitions filed by survivors must include the following information regarding the relationship between the survivor and the person with HIV:

(1) *The surviving spouse.* Petitions filed by the surviving spouse must include the following written documentation:

(i) A death certificate for the person with HIV, or other evidence of that individual's death;

(ii) A marriage certificate or other proof of a lawful marriage, which shows that the survivor was the spouse, as defined in § 130.11(d)(1), of the person with HIV; and

(iii) A sworn statement signed by the surviving spouse which states that the surviving spouse and the person with HIV were married at the time of that individual's death.

(2) *The surviving child/children.* Petitions filed by the surviving child/children must include the following written documentation:

(i) A death certificate for the person with HIV, or other evidence of that individual's death;

(ii) A birth certificate, adoption certificate, documentation that shows that the survivor is the stepchild of the person with HIV (for example, a certificate of marriage between the survivor's parent and the person with HIV), or other documentation which shows that the survivor is the child, as defined in § 130.11(d)(2), of the person with HIV; and

(iii) A sworn statement signed by the surviving child/children which either:

(A) States that, to the best of the petitioner's knowledge, there are no other survivors who are eligible for payment under the Act, as described in § 130.11 (*i.e.*, no eligible surviving spouses or other surviving children); or

(B) Provides information regarding other survivors who are eligible for payment under the Act.

(3) *The surviving parent(s).* Petitions filed by the surviving parent(s) must include the following written documentation:

(i) A death certificate for the person with HIV, or other evidence of that individual's death;

(ii) A birth certificate, adoption certificate or other documentation which shows that the survivor is the parent, as defined in § 130.11(d)(3), of the person with HIV; and

(iii) A sworn statement signed by the surviving parent(s) which either:

(A) States that, to the best of the petitioner's knowledge, there are no other survivors who are eligible for payment under the Act, as described in § 130.11 (*i.e.*, no eligible surviving spouse, surviving children or other surviving parents); or

(B) Provides information regarding other survivors who are eligible for payment under the Act.

§ 130.23 What documentation is required for amendments to petitions, which are filed by survivors of persons with HIV?

(a) The following survivors must file amendments to petitions in order to retain the assigned order number described in § 130.32 and to receive payment under the Act:

(1) A survivor of the person with HIV, when the person with HIV has filed a petition under the Act, but then died before receiving payment;

(2) The next-ranked survivor eligible to receive payment under the Act, as described in § 130.11(b), when a previously-ranked survivor has filed a petition or an amendment to a petition as a survivor of the person with HIV, but then died before receiving payment; and

(3) In the case of petitions filed by multiple survivors (*i.e.*, multiple surviving children or multiple surviving parents), where one of the survivors dies before receiving payment, the other survivors must file an amendment in order to notify the Secretary that the payment should be made to, and divided among, only the remaining survivors.

(b) Survivors described in paragraph (a) of this section shall amend the original petition by filing the petition form set forth at Appendix C to this part, including the section pertaining to amendments to petitions.

(c) Amendments to petitions filed by survivors must include the following documentation:

(1) Survivors described in paragraph (a)(1) of this section must include the documentation described in § 130.22(d), which shows that the survivor is eligible to file a petition as a survivor of the person with HIV.

(2) Survivors described in paragraph (a)(2) of this section must include:

(i) The documentation described in § 130.22(d), which shows that the survivor is eligible to file a petition as a survivor of the person with HIV; and

(ii) A death certificate for the survivor whose petition is being amended, or other evidence of that survivor's death.

(3) Survivors described in paragraph (a)(3) of this section must include a death certificate for the survivor who has died, or other evidence of that survivor's death.

(d) Amendments to petitions filed by survivors described in paragraph (a) of this section will retain the same order number assigned to the original petition.

(e) In those cases in which the Secretary has reviewed the original petition prior to receiving an amendment to the petition, the Secretary will determine whether to pay the survivors described in paragraph (a) as follows:

(1) If the Secretary has determined that the original petition does not include all of the documentation described in this Subpart C (*i.e.*, it is incomplete), the survivor will be given the opportunity to complete the petition prior to a final determination in accordance with the procedures set forth at § 130.33.

(2) If the Secretary has determined that the original petition does not meet the requirements of the Act, the survivor will be so notified and payment will not be made. The survivor may seek reconsideration under § 130.40.

(3) If the Secretary has determined that the original petition meets the requirements of the Act, and the survivor meets the survivor requirements of the Act, the survivor will receive payment as described in § 130.3.

(f) In those cases in which the Secretary has not yet made the determination whether the original petition meets the requirements of the Act, the Secretary will review the amended petition according to the order number assigned to the original petition, and then determine whether the petition is complete and whether to pay the petition as described in paragraph (e) of this section.

Subpart D—Procedures for Filing and Paying Complete Petitions

§ 130.30 Who may file a petition for payment or an amendment to a petition?

The following individuals may file a petition for payment under the Act:

(a) All eligible individuals, as described in subpart B of this part, including living persons with HIV and survivors of persons with HIV; and

(b) Personal representatives of eligible individuals:

(1) Where the eligible individual does not have the legal capacity to receive payment under the Act, as described in § 130.35(e); or

(2) Where the eligible individual does have the legal capacity to receive payment under the Act and signs the sworn statement included at the end of the petition.

§ 130.31 How and when is a petition for payment filed?

(a) In order to receive payment under the Act, all eligible individuals, as described in subpart B of this part, must file a complete petition with the Secretary. A complete petition is one

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that contains all of the required documentation described in Subpart C of this part.

(b) A copy of the petition form, which must be filed by all eligible individuals, including individuals with a blood-clotting disorder and HIV, the lawful spouse with HIV, the former lawful spouse with HIV, the child with HIV, and the survivors of persons with HIV, is set forth at Appendix C to this part. Appendix C includes the petition form, the instructions for filing the petition form, and a documentation checklist.

(c) Where there are multiple surviving children or surviving parents, payments on the petition will be made to each survivor separately. The survivors shall:

(1) File one petition form jointly, which will contain the required documentation for all survivors, and which will be signed by at least one survivor; or

(2) File separate petition forms, which together will contain all of the required documentation for all survivors, and which will be signed by each survivor.

(d) Petitions may be *obtained* from the Ricky Ray Program Office, Bureau of Health Professions, HRSA, Room 8A–54, 5600 Fishers Lane, Rockville, Maryland 20857.

(e) All petitions must be *submitted* to the Ricky Ray Program Office, Bureau of Health Professions, HRSA, Room 8A–54, 5600 Fishers Lane, Rockville, Maryland 20857.

(f) The date on which the Secretary will begin accepting petitions is July 31, 2000.

(1) In order to be eligible for review, petitions may be postmarked on or after this date. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Petitions that are postmarked by a private meter will not be accepted.

(2) Petitions that are postmarked, or accompanied by a receipt from a commercial carrier or U.S. Postal Service, prior to this date *will be returned* to the petitioner. Petitions that are delivered by hand at any time *will be returned* to the petitioner.

(g) *Deadlines.* The *deadline for filing a petition is November 13, 2001.* To meet this deadline, the petition must be postmarked, or accompanied by a receipt from a commercial carrier or U.S. Postal Service, by such date. Any new petition filed after such date will be returned to the petitioner as ineligible for payment, even if the petitioner filed a timely Notice of Intent as provided in the procedure described in the **Federal Register** of March 24, 1999 (64 FR 14251).

(1) If a petitioner submits a petition to the Secretary by November 13, 2001, and the Secretary has determined, in accordance with § 130.34, that the petition does not meet the requirements of the Act, the petitioner may submit a new petition for payment, which includes additional documentation that was not included in the original petition. The deadline for filing this new petition is November 13, 2001.

(2) If a petitioner submits a petition to the Secretary by November 13, 2001, and the Secretary has not yet made the determination whether the petition meets the requirements of the Act, the petitioner may supplement the original petition with additional documentation at any time until the date of the Secretary's determination.

(3) If a petitioner files an amendment to a petition, as described in § 130.23, the deadline for filing this amendment is the date of the Secretary's determination of eligibility or the date of payment, whichever is later.

(h) *Petitioners who filed claims under the Factor Concentrate Settlement.* Petitioners who filed claims under the class settlement in the case of *Susan Walker* v. *Bayer Corporation, et al.*, 96–C–5024 (N.D. Ill.) (*i.e.*, the Factor Concentrate Settlement) must file a complete petition with the Secretary, together with all required documentation, as described in subpart C of this part.

(1) If the petitioner submitted a claim in the Factor Concentrate Settlement which included all of the documents required to establish eligibility under the Act, he or she may submit original or duplicate copies of those documents to the Secretary.

(2) If the petitioner submitted a claim in the Factor Concentrate Settlement which included some, but not all, of the documents required to establish eligibility under the Act, he or she may submit original or duplicate documents as described in paragraph (h)(1) of this section, together with the additional documents required under the Act.

(3) If the petition is filed by someone other than an individual who filed a claim in the Factor Concentrate Settlement (*e.g.*, survivors of the person with HIV, personal representatives), he or she may submit original or duplicate documents as described in paragraph (h)(1) or (h)(2) of this section in order to satisfy that portion of the petition relating to the person with HIV.

§ 130.32 How and when will the Secretary determine the order of receipt of petitions?

(a) The order that the petition was received by the Secretary will be determined by the postmark date or the date indicated by a commercial carrier or the U.S. Postal Service, in accordance with § 130.31(f).

(b) If the Secretary receives more than one petition which is either postmarked or dated by a commercial carrier or the U.S. Postal Service on the same date, the Department will conduct a random selection of each day's submissions to determine the order within each group of petitions.

(c) A number will be assigned to each petition indicating the order in which it is selected.

§ 130.33 How will the Secretary determine whether a petition is complete?

(a) If the Secretary determines that a petition does not include all of the documentation described in subpart C of this part (*i.e.*, it is incomplete), the petitioner will be given the opportunity to complete the petition prior to a final determination.

(b) The petitioner will be notified that the Secretary has determined that the petition is incomplete and, for purposes of retaining the assigned order number described in § 130.32, will be given 60 calendar days from the date of the notice to submit the missing information. If the petitioner submits the missing information within 60 calendar days, and the Secretary determines that the petition meets the requirements of the Act, the petitioner will be paid according to the assigned order number.

(c) If the petitioner is unable to complete the petition, the petitioner may submit written documentation to the Secretary, within 60 calendar days, which shows good cause why the required medical or legal documentation is unavailable. If the Secretary determines that the petitioner has provided an adequate showing of good cause and is otherwise eligible for payment under the Act, the petitioner will be paid according to the assigned order number.

(d) The Secretary will process the petition according to § 130.34 if:

(1) The petition does not include the required documentation, as described in subpart C, even after the opportunity is given to complete it;

(2) The 60-day deadline to complete the petition is not met; or

(3) An adequate showing of good cause why the required medical or legal documentation is unavailable is not provided.

§ 130.34 How will the Secretary determine whether to pay a petition?

(a) Subject to available resources, the Secretary will review each petition filed under the Act and make one of the following determinations:

(1) If the Secretary concludes that the petition does not meet the requirements of the Act, the petitioner will be so notified and payment will not be made. These petitioners may seek reconsideration under § 130.40.

(2) If the Secretary concludes that the petition does meet the requirements of the Act, the petitioner will receive payment as described in § 130.3.

(b) Petitions will be reviewed based upon the assigned number indicating the order of receipt, as described in § 130.32.

§ 130.35 How and when will the Secretary pay a petition?

(a) To the extent practicable, determinations on complete petitions will be made not later than 120 calendar days after the date that the Secretary determines that the petition is complete.

(b) Payments on petitions will be made as soon as practicable after a determination that a complete petition meets the requirements of the Act.

(c) For each eligible individual, as described in subpart B of this part, the Secretary will make only one payment on a petition.

(d) Where there are multiple surviving children or surviving parents, survivors who have submitted all required documentation and are otherwise eligible for payment under the Act, will be paid their share(s) of the payment, as described in § 130.11(b)(2) and (3). If any surviving children or surviving parents who are otherwise eligible for payment have not submitted the required documentation, their share(s) of the payment will remain in the Fund until such time as they complete their petitions by submitting such documentation. If they have not submitted the required documentation by the time that the Fund terminates, their share(s) will revert back to the Treasury.

(e) Payments on petitions will be made to eligible individuals, as described in subpart B, unless the eligible individual is legally incompetent to receive payment. A personal representative may receive payment for a legally incompetent individual by submitting the following written documentation to the Secretary:

(1) Proof showing that the eligible individual does not have the legal capacity to receive payment under the Act, such as a birth certificate showing that the eligible individual is a minor, or other evidence showing that the eligible individual is legally incompetent; and

(2) Proof showing that the personal representative has the authority to receive payment for the eligible individual, such as proof of legal guardianship.

Subpart E—Reconsideration Procedures

§ 130.40 Reconsideration of denial of petitions.

(a) *Right of reconsideration.* Every individual who has filed a petition and has been denied payment may seek reconsideration. To seek such reconsideration, the petitioner must put a request for reconsideration in writing and send it to the Deputy Associate Administrator for Health Professions, Health Resources and Services Administration, Room 8A–54, 5600 Fishers Lane, Rockville, Maryland 20857. The request for reconsideration must be received by the Deputy Associate Administrator for Health Professions within 60 calendar days of the date the Department denied the petition for payment.

(b) *Request for reconsideration.* The request for reconsideration must state the reasons why the petitioner is seeking reconsideration. However, the request for reconsideration may not include any additional documentation that was not included in the completed petition.

(c) *Review process.* When the Deputy Associate Administrator for Health Professions receives a request for reconsideration, he will convene a panel of three individuals, who are independent of the Ricky Ray Program Office, to review the initial determination and make a recommendation regarding payment. The Deputy Associate Administrator for Health Professions will review the panel's recommendation and then determine whether the petitioner is eligible for payment under the Act. The Deputy Associate Administrator for Health Professions' determination will constitute the Department's final action on the request for reconsideration. If the determination is that the petitioner is eligible for payment, the petitioner will receive payment as described in § 130.3. If the determination is that the petitioner is not eligible for payment, the Deputy Associate Administrator for Health Professions will inform the petitioner in writing of the reasons for this determination.

Subpart F—Attorney Fees

§ 130.50 Limitation on agent and attorney fees.

As provided by section 107 of the Act:

(a) Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the petition of an individual under this Act, more than 5 percent of a payment made under this Act (*i.e.*, $5,000) on the petition.

(b) Any such representative who violates this section is subject to a fine of not more than $50,000.

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Appendix A to Part 130—Definition of HIV Infection or HIV

APPENDIX A

Definition of HIV infection or HIV for purposes of §130.2(i)(1):

(1) Except as provided in section (2) below, a diagnosis of HIV infection under 130.2(i)(1) may be made on the basis of a diagnosis of one or more of the following opportunistic diseases:

- Candidiasis of bronchi, trachea, or lungs
- Candidiasis, esophageal
- Cervical cancer, invasive
- Chronic lymphoid interstitial pneumonitis (in a child under 13 years of age)
- Coccidioidomycosis, disseminated or extrapulmonary
- Cryptococcosis, extrapulmonary
- Cryptosporidiosis, chronic intestinal (greater than 1 month's duration)
- Cytomegalovirus disease (other than liver, spleen, or nodes)
- Cytomegalovirus retinitis (with loss of vision)
- Encephalopathy, HIV-related
- Herpes simplex: chronic ulcer(s) (greater than 1 month's duration); or bronchitis, pneumonitis, or esophagitis
- Histoplasmosis, disseminated or extrapulmonary
- Isosporiasis, chronic intestinal (greater than 1 month's duration)
- Kaposi's sarcoma
- Lymphoma, Burkitt's (or equivalent term)
- Lymphoma, immunoblastic (or equivalent term)
- Lymphoma, non-Hodgkin's
- Lymphoma, primary, or brain
- Mycobacterium avium complex or M. kansasii, disseminated or extrapulmonary
- Mycobacterium tuberculosis, any site (pulmonary or extrapulmonary)
- Mycobacterium, other species or unidentified species, disseminated or extrapulmonary
- Pneumocystis carinii pneumonia
- Pneumonia, recurrent
- Progressive multifocal leukoencephalopathy
- Salmonella septicemia, recurrent
- Toxoplasmosis of brain
- Wasting syndrome due to HIV

(2) The opportunistic diseases listed in section (1) above may be used to diagnose an HIV infection, unless: the opportunistic diseases are diagnosed based on a known immunodeficiency disease other than HIV infection, including, but not limited to: (i) Primary immunodeficiency diseases - severe combined immunodeficiency, DiGeorge syndrome, Wiskott-Aldrich syndrome, ataxia-telangiectasia, graft versus host disease, neutropenia, neutrophil function abnormality, agammaglobulinemia, or hypogammaglobulinemia with raised IgM; and (ii) Secondary immunodeficiency associated with immunosuppressive therapy, lymphoreticular malignancy (if less than 3 months after the diagnosis of the aforementioned opportunistic disease), or starvation.

These excerpts were taken from:

Current Trends Update: Acquired Immunodeficiency Syndrome (AIDS) - United States, MMWR 32(52); 688-91, January 6, 1984.

Current Trends Revision of the Case Definition of Acquired Immunodeficiency Syndrome for National Reporting - United States, MMWR 34(25); 373-75, June 28, 1985.

1993 Revised Classification System for HIV Infection and Expanded Surveillance Case Definition for AIDS Among Adolescents and Adults, MMWR 41(RR-17), December 18, 1992.

For further information, please consult these documents.

Appendix B to Part 130—Confidential Physician or Nurse Practitioner Affidavit

OMB No. 0915-0244
Expiration date: 02-14-2001

RICKY RAY HEMOPHILIA RELIEF FUND
CONFIDENTIAL PHYSICIAN OR NURSE PRACTITIONER AFFIDAVIT

The U.S. Congress enacted the Ricky Ray Hemophilia Relief Fund Act in 1998 to make compassionate payments of $100,000 to certain individuals with blood-clotting disorders, such as hemophilia, who were treated with antihemophilic factor between July 1, 1982, and December 31, 1987, and who contracted HIV(referred to in Section A below). Certain spouses, former spouses and children (referred to in Section B below) who contracted HIV from these individuals may also be eligible for compassionate payments. Specified survivors of these individuals may also receive payments.

This affidavit regarding medical documentation is to be completed and signed by a physician or nurse practitioner in lieu of medical records or test results. Although you may be asked to provide additional information, complete only those portions of this affidavit that you can answer based on your personal knowledge or a review of medical records.

PRIVACY ACT STATEMENT

Section 103 of Public Law 105-369 and the Debt Collection Improvement Act of 1996 authorize collection of this information. It will be used to determine your eligibility to receive payments. This information will be disclosed to the Department of Health and Human Services and its consultants; and Federal, State or local law enforcement agencies if the Government becomes aware of a possible violation of civil or criminal law. Furnishing the information on this form, including the Social Security Number, is voluntary, but failure to do so may delay or prevent the receipt of a payment. The information collected will be maintained confidentially pursuant to the Privacy Act.

CHECK APPLICABLE BOXES AND PROVIDE INFORMATION AS REQUESTED.

I am a physician or a nurse practitioner. I have been requested by an individual to complete this affidavit and to provide information that I understand will be kept strictly confidential and be used solely to determine eligibility for a compassionate payment under the Ricky Ray Hemophilia Relief Fund Program.

SECTION A. INFORMATION ON INDIVIDUAL WITH BLOOD CLOTTING DISORDER AND HIV

He or she is a person with blood-clotting disorder who has/had HIV and was treated with antihemophilic factor at any time between July 1, 1982, and December 31, 1987.

Name of Individual: _____

Note: the information requested in the following three statements is required for all individuals described in Section A.

[ ] He/she has/had the following blood-clotting disorder:

[ ] He/she received an antihemophilic factor between July 1, 1982, and December 31, 1987.

[ ] He/she was diagnosed as having HIV.

SECTION B. INFORMATION ON ELIGIBLE INDIVIDUAL WITH HIV IF DIFFERENT FROM SECTION A

This section pertains to other individuals who may be eligible for payment under the Program because of their familial relationship to the person described in Section A.

Name of Individual: _____

[ ] He/she was diagnosed as having HIV. **(Note: this information is required for all individuals in Section B).**

(Section B continued, next page)

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RICKY RAY HEMOPHILIA RELIEF FUND – AFFIDAVIT

[ ] There is reasonable certainty that this individual contracted HIV from the individual identified in Section A. "Reasonable certainty" is defined as having no knowledge based on medical records or other documents that the individual contracted HIV from a source other than the individual identified in Section A. **(Note: This information is required only for an individual filing a petition as the former spouse of the individual described in Section A).**

[ ] This individual acquired HIV through perinatal transmission (transmission of HIV infection from mother to child that occurs during pregnancy, delivery, or breast feeding) from _____ _____. **(Note: This information is required only for an individual filing a petition because he/she acquired HIV through perinatal transmission from the individual in Section A or that individual's current or former spouse).**

SECTION C. SIGNATURE AND SWORN STATEMENT OF PHYSICIAN OR NURSE PRACTITIONER

I swear or affirm under penalty of perjury that the answers I have given to the medical questions listed above in this affidavit are true and correct to the best of my knowledge, information, and belief. (18 U.S.C. § 1621)

Signature: _____ Date: _____

Name (typed or printed legibly): _____

License Number and State Where Licensed: _____

Full Address (number and street): _____

City, State, and Zip Code: _____

Phone: _____

Refer to the definitions for several medical terms in the Rule, 42 CFR Part 130: antihemophilic factor §130.2(b), blood-clotting disorder §130.2(c), hemophilia §130.2(h), HIV infection or HIV §130.2(i), perinatal transmission §130.2(m).

PUBLIC BURDEN STATEMENT

An agency may not conduct or sponsor, and any person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for this project is 0915-0244. Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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Appendix C to Part 130—Petition Form, Petition Instructions, and Documentation Checklist

OMB No. 0915-0244
Expiration date: 02-14-2001

RICKY RAY HEMOPHILIA RELIEF FUND
PETITION

This petition is to be used by all parties who may be eligible for payment under the Ricky Ray Hemophilia Relief Fund Act. Refer to the Ricky Ray Documentation Checklist for the supporting documentation that you must provide with the petition. **The petition and its documentation are subject to audit by the U.S. Department of Health and Human Services' Office of Inspector General.**

PRIVACY ACT STATEMENT

Section 103 of Public Law 105-369 and the Debt Collection Improvement Act of 1996 authorize collection of this information. It will be used to determine your eligibility to receive payments. This information will be disclosed to the Department of Health and Human Services and its consultants; and Federal, State or local law enforcement agencies if the Government becomes aware of a possible violation of civil or criminal law. Furnishing the information on this form, including the Social Security Number, is voluntary, but failure to do so may delay or prevent the receipt of a payment. The information collected will be maintained confidentially pursuant to the Privacy Act.

SECTION A. INDIVIDUAL WITH BLOOD-CLOTTING DISORDER AND HIV

This section is mandatory for all petitioners

Check the instructions for Section A.

Name: _____

Social Security Number: _____ Date of Birth: _____

If no longer living, provide date of death: _____

Complete address information if individual is living

Address: _____

City: _____ State: _____ Zip: _____

Daytime phone: _____

SECTION B. ELIGIBLE PERSON WITH HIV (OTHER THAN INDIVIDUAL IDENTIFIED IN SECTION A)

This section is required for the lawful spouse, former lawful spouse, child and their survivors

Check the instructions for Section B.

Name: _____

Social Security Number: _____ Date of Birth: _____

If no longer living, provide date of death: _____

Complete address information if individual is living

Address: _____

City: _____ State: _____ Zip: _____

Daytime phone: _____

RELATIONSHIP TO INDIVIDUAL IN SECTION A *(check one)*:

[ ] Lawful spouse (husband or wife) with HIV
[ ] Former lawful spouse (husband or wife) with HIV
[ ] Child with HIV (if person in Section A is the mother)
[ ] Child with HIV of the lawful wife with HIV
[ ] Child with HIV of the former lawful wife with HIV

SECTION C. SURVIVOR OF ELIGIBLE PERSON WITH HIV

This section is required of all survivors

Check the instructions for Section C.

Name: _____

Social Security Number: _____ Date of Birth: _____

Address: _____

City: _____ State: _____ Zip: _____

Daytime phone: _____

SURVIVORSHIP *(check one)*:

[ ] I am filing the petition as a survivor of the individual in Section A –OR –
[ ] I am filing the petition as a survivor of the person in Section B

NATURE OF THE SURVIVOR'S RELATIONSHIP TO THE INDIVIDUAL IN SECTION A OR THE PERSON IN SECTION B *(check one)*:

[ ] Lawful husband or wife at the time of the person's death, and I attest, to the best of my knowledge, that the person with HIV and I were married according to the laws of the place where the person with HIV and I resided at the time of his/her death
[ ] Child or stepchild and there is no surviving spouse
[ ] Parent and there is no surviving spouse or surviving children

SURVIVING CHILDREN AND PARENTS MUST CHECK THE APPROPRIATE BOX *(check one)*:

[ ] To the best of my knowledge, there are no other survivors who are eligible for payment under the Act (i.e., for child survivors, there is no eligible surviving spouse and no other surviving children; for parent survivors, there are no eligible surviving spouses, surviving children, or other surviving parent);
[ ] There are other survivors who are eligible for payment under the Act. I am providing all of their full names and their relationship to the person we survived.
If this box is checked, list survivors:

Name: _____ Name: _____
Relationship: _____ Relationship: _____
Name: _____ Name: _____
Relationship: _____ Relationship: _____

(If you need more space, add another page listing all of the eligible survivors as described above.)

AMENDMENT TO A PREVIOUSLY SUBMITTED PETITION

Use only if the following applies to you. If so, check the box and provide the name requested.

- **If you are a survivor of an individual who has already submitted a petition, but who died before receiving a compassionate payment, please check the box below and fill in the name of that deceased person.**
- **If another survivor filed a petition or an amendment to a previously submitted petition, but then died before receiving a payment, check the box below and fill in the name of that deceased person.**
- **If the original petition was filed by multiple surviving children or parents and any of those survivors has died, check the box below and fill in the name of the survivor who filed the previous petition.**

[ ] I am amending the petition previously submitted by _____.

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SECTION D. PERSONAL REPRESENTATIVE

Complete this section if you are the attorney or other representative for the eligible individual. If this section is completed, all communications related to this petition will go to the personal representative.

Check instructions for Section D.

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Daytime phone: _____ Filing for: _____

Nature of relationship to eligible individual (e.g., attorney, guardian, other): _____

Does the eligible individual have the legal capacity to receive payments?

[ ] Yes – OR –

[ ] No. (e.g., a minor or an individual who is otherwise incompetent).

If no, please explain: _____

Signature of Personal Representative: _____

SECTION E. SIGNATURE OF PETITIONER

This section is required of all petitioners

Check the instructions for Section E.

Reminder: Attach all necessary documentation. See Documentation Checklist.

I swear or affirm under penalty of perjury that the information in this petition and all submitted documentation is true and correct to the best of my knowledge, information, and belief (18 USC §1621).

Name (printed clearly or typed): _____

Signature: _____ Date: _____

Submit this petition and the required medical and legal documentation to: Ricky Ray Program Office
Bureau of Health Professions
5600 Fishers Lane, Room 8A-54
Rockville, MD 20857

PUBLIC BURDEN STATEMENT

An agency may not conduct or sponsor, and any person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for this project is 0915-0244. Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

RICKY RAY HEMOPHILIA RELIEF FUND
PETITION INSTRUCTIONS

The U.S. Congress enacted the Ricky Ray Hemophilia Relief Fund Act in 1998 (the Act) to make compassionate payments of $100,000 to certain individuals with blood-clotting disorders, such as hemophilia, who were treated with antihemophilic factor between July 1, 1982, and December 31, 1987, and contracted HIV. Such individuals must have been treated with the antihemophilic factor in any State of the United States of America, the District of Columbia, U.S. territories, commonwealths and possessions, or at any diplomatic area or military installation of the United States. Husbands and wives who contracted HIV from those individuals; children who acquired HIV from their mothers during pregnancy, delivery, or breast feeding; and certain surviving family members may also be eligible for payments.

A. Complete the relevant sections of the petition. ***All petitioners must complete Section A***, which requests information regarding the individual with the blood-clotting disorder and HIV. *All information you supply will be kept strictly confidential in accordance with the Privacy Act, and will be used solely to determine your eligibility to receive payments under the Ricky Ray Hemophilia Relief Fund Act.* For more information, consult the Notification of New System of Records, 64 Fed. Reg. 69,274 (Dec. 10, 1999).

B. Consult the Documentation Checklist for the category that best describes you. Then provide the required medical and legal documentation listed with your category to support your petition. This documentation must be submitted before your petition may be approved for payment.

C. Send your completed petition package to:

The Ricky Ray Program Office
Bureau of Health Professions
5600 Fishers Lane, Room 8A-54
Rockville, MD 20857

All petitions must be postmarked or accompanied by a receipt from a commercial carrier or the U.S. Postal Service no sooner than July 31, 2000 and no later than November 13, 2001. Petitions postmarked before July 31, 2000 or after November 13, 2001 will be returned unopened.

GENERAL INSTRUCTIONS FOR ALL PETITIONERS

1. A separate petition must be submitted for each HIV-infected person who is eligible for payment (the individual with a blood-clotting disorder, the lawful spouse, the former lawful spouse or the child).
2. If you qualify for multiple payments (e.g., you are an eligible, HIV-infected person and you are a survivor of another HIV-infected person; you are a survivor of two HIV-infected persons), you must submit a separate petition for each claim.

(General Instructions continued, next page)

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

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3. Multiple surviving children or surviving parents may submit one joint petition for the one, shared payment (e.g., the surviving children when there is no surviving spouse, or the surviving parents when there is no surviving spouse or surviving children). Survivors may also submit separate petitions.

4. Keep a copy of all forms and documentation for your own records.

CHANGES IN INFORMATION PROVIDED

Should there be a change in the information you provided with your Petition, you are required to notify the Ricky Ray Program Office at the address above. Please note that if you fail to provide us with this information, we may not be able to contact you directly with information on the next steps in processing your petition.

FILLING OUT THE PETITION

SECTION A – INSTRUCTIONS

This section is required for all petitioners

This section describes the individual with a blood-clotting disorder, who was treated with antihemophilic factor, and who has HIV. Enter the requested information.

- **Name**: The full name of the individual with a blood-clotting disorder and HIV.
- **Social Security Number**: That individual's 9-digit Social Security Number.
- **Date of Birth**: That individual's date of birth (month, day, and year).
- **If the individual is no longer living, provide the date of death:** That individual's date of death, if applicable (month, day, and year).
- **If the individual with a blood-clotting disorder and HIV is living**:
  - **Address:** That individual's current home address.
  - **City:** That individual's current city of residence.
  - **State**: That individual's current state of residence.
  - **Zip:** The 5 or 9 digit zip code of that individual's current residence.
  - **Daytime phone**: That individual's daytime telephone number, including the area code.

  If the individual with a blood-clotting disorder and HIV lives outside of the United States of America, in the State field, enter the country. In the Zip field, use any applicable mailing code. In the phone field, include the international dialing code for the country.

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

SECTION B – INSTRUCTIONS

Complete this section if you are the lawful spouse with HIV of the individual with a blood-clotting disorder and HIV, a former lawful spouse with HIV, a child who acquired HIV through perinatal transmission, or their survivor(s)

This section describes a lawful spouse with HIV, a former lawful spouse with HIV, or a child who acquired HIV perinatally. Enter the requested information.

- **Name:** The full name of the lawful spouse with HIV, the former lawful spouse with HIV, or the child who acquired HIV through perinatal transmission.
- **Social Security Number**: That person's 9-digit Social Security Number.
- **Date of Birth**: That person's date of birth (month, day, and year).
- **If the individual is no longer living, provide the date of death**. That person's date of death, if applicable (month, day, and year).
- **If the person is living**:
  - **Address:** That person's current home address.
  - **City:** That's person's current city of residence.
  - **State**: That person's current state of residence.
  - **Zip:** 5 or 9 digit zip code of that person's current residence.
  - **Daytime phone**: The daytime telephone number, including the area code.

  If the lawful spouse with HIV, the former lawful spouse with HIV, or the child who acquired HIV perinatally lives outside of the United States of America, in the State field, enter the country. In the Zip field, use any applicable mailing code. In the phone field, include the international dialing code for the country.
- **Relationship to individual in Section A (Check one):** Check the appropriate box indicating whether the person identified in Section B is the lawful spouse (husband or wife) with HIV; the former lawful spouse (husband or wife) with HIV, or the child with HIV. If the person identified in Section B is the child with HIV, check the third box if the individual identified in Section A is the child's birth mother; check the fourth box if the child's birth mother is the lawful spouse of the individual identified in Section A; check the fifth box if the child's birth mother was the former lawful spouse of the individual identified in Section A. Note that a child with HIV who checked the fifth box may be eligible for payment even if the individual identified in Section A is not the child's father.

SECTION C – INSTRUCTIONS

Complete this section if you are filing a petition as a survivor

This section describes a surviving spouse, child, or parent of a deceased person with HIV. The lawful spouse can always file a petition. The surviving child or children can file a petition if there is no surviving spouse. The surviving parent or parents can file a petition if there is no surviving spouse or are no surviving children. Enter the requested information.

(Section C continued, next page)

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

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- **Name:** The survivor's full name.
- **Social Security Number**: The survivor's 9-digit Social Security Number.
- **Date of Birth**: The survivor's date of birth (month, day, and year).
- **Address:** The survivor's current home address.
- **City:** The survivor's current city of residence.
- **State**: The survivor's current state of residence.
- **Zip:** 5 or 9 digit zip code of the survivor's current residence.
- **Daytime phone**: The survivor's daytime telephone number, including the area code.

If the survivor filing the petition lives outside of the United States of America, in the State field, enter the country. In the Zip field, use any applicable mailing code. In the phone field, include the international code for the country.

- **Survivorship (check one)**: Check the first box if you are a survivor of the individual with HIV and a blood-clotting disorder. Check the second box if you are a survivor of a person with HIV who is not the individual with a blood-clotting disorder (e.g., the lawful spouse, the former lawful spouse or the child). If you are a survivor of both, you may be eligible for two payments. In that case, file two separate petitions; check the first box in one petition and the second box in the other.
- **Nature of the survivor's relationship to the individual in Section A or the person in Section B (check one):** Check the appropriate box to indicate whether you were the lawful husband or wife at the time of the death of the person with HIV; the child or stepchild, where there is no surviving spouse; or the parent, where there is no surviving spouse or surviving children.
- **Surviving children or parents (check one):** Check the first box if you are the only survivor of the person with HIV who is eligible for payment under the Act. Check the second box if there are other eligible survivors. If you checked the second box, provide further information for each of the other eligible survivors:
  - **Name**: The name of the survivor(s) other than yourself; and
  - **Relationship**: The relationship to the person with HIV who died. (e.g., child, parent).

  Four areas are provided on the form. If you need more space, use additional paper and list all eligible survivors.

AMENDMENT TO A PREVIOUSLY SUBMITTED PETITION – INSTRUCTIONS

Complete this section only if you are a survivor amending a petition

Under three specific circumstances described below, survivors of persons with HIV must file an amendment to a previously submitted petition in order to retain the original assigned order number and to receive payment under the Act. Survivors must use the petition form to amend a petition. If you meet any of the three circumstances, check the box and fill in the full name of the petitioner whose petition you are amending.

- If you are a survivor of a person who has already submitted a petition, but who died before receiving a compassionate payment, check the box and fill in the name of that deceased individual.

(Amendment continued, next page)

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

- If another survivor filed a petition or an amendment to a previously submitted petition, but then died before receiving a payment, check the box and fill in the name of that deceased person.
- If the original petition was filed by multiple surviving children or parents and any of those survivors has died, check the box and fill in the name of the survivor who filed the previous petition.

SECTION D – INSTRUCTIONS

Complete this section if you are a personal representative of any eligible individual

This section describes an attorney or other representative for the eligible individual, if any. If this section is completed, all communications related to the petition will go directly to the personal representative. Enter the requested information.

- **Name:** The personal representative's full name.
- **Address:** The personal representative's current home or office address.
- **City:** The personal representative's current city of office or residence.
- **State**: The personal representative's current state of office or residence.
- **Zip:** 5 or 9 digit zip code of the personal representative's current office or residence.
- **Daytime phone**: The daytime telephone number of the personal representative, including the area code.
- **Filing for:** The name of the eligible individual on whose behalf you are filing a petition.
- **Nature of relationship to eligible individual**. Fill in the blank indicating attorney, guardian or other (be specific).
- **Does the eligible individual have the legal capacity to receive payments?** Check the "Yes" box if the person you are representing has the legal capacity. Check the "No" box if the person you are representing does not have the legal capacity to receive payments (e.g., you represent a minor or an individual who is otherwise incompetent). In the space provided, please explain.

If the personal representative lives or works outside of the United States of America, in the State field, enter the country. In the Zip field, use any applicable mailing code. In the phone field, include the international dialing code for the country.

- **Signature of Personal Representative:** The personal representative's original signature in ink.

SECTION E – INSTRUCTIONS

All petitioners or their representatives must complete this section

All eligible individuals must sign the petition, unless he/she does not have the legal capacity to receive payments under the Act. In that case, a personal representative must sign for the individual (even if the personal representative also signed in Section D above). If multiple surviving children or surviving parents are filing jointly, at least one of these survivors must sign the petition. Enter the requested information.

- **Name (printed clearly or typed):** The name of the person signing the petition, presented legibly.

(Section E continued, next page)

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

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- **Signature:** An original signature in ink.
- **Date:** Date petition was signed (month, day, and year).

USE OF SOCIAL SECURITY NUMBERS

Pursuant to the Debt Collection Improvement Act of 1996, and in furtherance of the Ricky Ray Hemophilia Relief Fund Act of 1998, the Petition asks petitioners to provide social security account numbers. This information will be used by the Department of Health and Human Services to verify the identity of individuals filing petitions and to determine their eligibility for payment. This information will also be used by the Department of the Treasury to transmit payment data, by electronic means, to the financial institutions of individuals deemed eligible for a compassionate payment. Furnishing this information on the Petition is voluntary, but failure to do so may delay or prevent the receipt of a compassionate payment.

RICKY RAY HEMOPHILIA RELIEF FUND
PETITION DOCUMENTATION CHECKLIST

To determine the documentation you need to complete your petition, please check those options below that apply to you, and provide the documentation as described. Also, all petitions must be filled out completely and signed under penalty of perjury.

CHECK BOX	CATEGORY OF ELIGIBILITY	REQUIRED DOCUMENTATION
	1. PERSONS WITH HIV	
☐	**The individual with a blood-clotting disorder and HIV.** An HIV infected individual who has a blood-clotting disorder, such as hemophilia, who was treated with antihemophilic factor at any time during the period from July 1, 1982, to December 31, 1987, in any state of the United States of America, the District of Columbia, U.S. territories, commonwealths, and possessions, or at any diplomatic area or military installation of the United States.	**Medical documentation showing that the individual with a blood-clotting disorder and HIV:** (1) has a blood-clotting disorder, such as hemophilia; (2) was treated with antihemophilic factor at any time between July 1, 1982, and December 31, 1987; and (3) has an HIV infection. This medical documentation may be submitted in the following forms: (a) copies of relevant portions of medical records, records maintained by a doctor, nurse, or other licensed health care provider, test results, prescription information, or other documentation possibly deemed credible by the Secretary (e.g., infusion logs and packing slips); or (b) an affidavit, signed under penalty of perjury, by a doctor or nurse practitioner, verifying that the medical criteria necessary for a petitioner to be eligible for payment under the Act are satisfied. The affidavit must include the doctor's or nurse practitioner's state and license number. The affidavit is contained in Appendix B.

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CHECK BOX	CATEGORY OF ELIGIBILITY	REQUIRED DOCUMENTATION
	PERSONS WITH HIV *(Continued)*	
☐	**The lawful spouse with HIV.** An HIV infected person who is the lawful spouse of an individual with a blood-clotting disorder and HIV, according to the laws of the place where the lawful spouse resides on the date this petition is filed.	**Medical documentation showing that the individual with a blood-clotting disorder and HIV:** (1) has (or had) a blood-clotting disorder, such as hemophilia; (2) was treated with antihemophilic factor at any time between July 1, 1982, and December 31, 1987; and (3) has (or had) an HIV infection. **Medical documentation showing that the lawful spouse with HIV has an HIV infection.** The required medical documentation may be submitted in the following forms: (a) copies of relevant portions of medical records, records maintained by a doctor, nurse, or other licensed health care provider, test results, prescription information, or other documentation possibly deemed credible by the Secretary (e.g., infusion logs and packing slips); or (b) an affidavit, signed under penalty of perjury, by a doctor or nurse practitioner, verifying that the medical criteria necessary for a petitioner to be eligible for payment under the Act are satisfied. The affidavit must include the doctor's or nurse practitioner's state and license number. This affidavit is contained in Appendix B. **Legal documentation:** A marriage certificate or other proof of a lawful marriage that shows that the lawful spouse with HIV and the individual with a blood-clotting disorder and HIV are married.

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

CHECK BOX	CATEGORY OF ELIGIBILITY	REQUIRED DOCUMENTATION
	PERSONS WITH HIV *(Continued)*	
☐	**The former lawful spouse with HIV.** An HIV infected person who is the former lawful spouse of the individual with a blood-clotting disorder and HIV and (1) was the lawful spouse of the individual with a blood-clotting disorder and HIV at any time after the date of the individual's treatment with antihemophilic factor (this date of treatment must have been between July 1, 1982, and December 31, 1987), and (2) is no longer married	**Medical documentation showing that the individual with a blood-clotting disorder and HIV:** (1) has (or had) a blood-clotting disorder, such as hemophilia; (2) was treated with antihemophilic factor at any time between July 1, 1982, and December 31, 1987; and (3) has (or had) an HIV infection. **Medical documentation showing that the former lawful spouse with HIV:** (1) has an HIV infection; and (2) with reasonable certainty contracted HIV from the individual with a blood-clotting disorder and HIV. The required medical documentation may be submitted in the following forms: (a) copies of relevant portions of medical records, records maintained by a doctor, nurse, or other licensed health care provider, test results, prescription information, or other documentation possibly deemed credible by the Secretary (e.g., infusion logs and packing slips); or (b) an affidavit, signed under penalty of perjury, by a doctor or nurse practitioner, verifying that the medical criteria necessary for a petitioner to be eligible for payment under the Act are satisfied. The affidavit must include the doctor's or nurse practitioner's state and license number. The affidavit is contained in Appendix B. **Legal documentation:** (1) A marriage certificate or other proof of a lawful marriage, which shows that the former lawful spouse with HIV and the individual with a blood-clotting disorder and HIV were married at any time after the date of the individual's treatment with antihemophilic factor (this date of treatment must have been between July 1, 1982, and December 31, 1987); and (2) A divorce certificate or other proof of termination of the marriage.

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

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CHECK BOX	CATEGORY OF ELIGIBILITY	REQUIRED DOCUMENTATION
	PERSONS WITH HIV *(Continued)*	
☐	**The child with HIV** who acquired an HIV infection through perinatal transmission from a mother who is the individual with a blood-clotting disorder and HIV.	**Medical documentation showing that the individual with a blood-clotting disorder and HIV:** (1) has (or had) a blood-clotting disorder, such as hemophilia; (2) was treated with antihemophilic factor at any time between July 1, 1982, and December 31, 1987; and (3) has (or had) an HIV infection. **Medical documentation showing that the child with HIV:** (1) has an HIV infection; and (2) acquired an HIV infection through perinatal transmission from a birth mother who is the individual with a blood-clotting disorder and HIV. The required medical documentation may be submitted in the following forms: (a) copies of relevant portions of medical records, records maintained by a doctor, nurse, or other licensed health care provider, test results, prescription information, or other documentation possibly deemed credible by the Secretary (e.g., infusion logs and packing slips); or (b) an affidavit, signed under penalty of perjury, by a doctor or nurse practitioner, verifying that the medical criteria necessary for a petitioner to be eligible for payment under the Act are satisfied. The affidavit must include the doctor's or nurse practitioner's state and license number. The affidavit is contained in Appendix B. **Legal documentation:** A birth certificate or other proof showing that the child with HIV is the child of a mother, who is the individual with a blood-clotting disorder and HIV.

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

CHECK BOX	CATEGORY OF ELIGIBILITY	REQUIRED DOCUMENTATION
	PERSONS WITH HIV *(Continued)*	
☐	**The child with HIV** who acquired an HIV infection through perinatal transmission from a mother who is the lawful spouse of an individual with a blood-clotting disorder and HIV.	**Medical documentation showing that the individual with a blood-clotting disorder and HIV:** (1) has (or had) a blood-clotting disorder, such as hemophilia; (2) was treated with antihemophilic factor at any time between July 1, 1982, and December 31, 1987; and (3) has (or had) an HIV infection. **Medical documentation showing that the child with HIV:** (1) has an HIV infection; (2) acquired an HIV infection through perinatal transmission from a birth mother who is the lawful spouse with HIV. The required medical documentation may be submitted in the following forms: (a) copies of relevant portions of medical records, records maintained by a doctor, nurse, or other licensed health care provider, test results, prescription information, or other documentation possibly deemed credible by the Secretary (e.g., infusion logs and packing slips); or (b) an affidavit, signed under penalty of perjury, by a doctor or nurse practitioner, verifying that the medical criteria necessary for a petitioner to be eligible for payment under the Act are satisfied. The affidavit must include the doctor's or nurse practitioner's state and license number. The affidavit is contained in Appendix B. **Legal documentation:** a) A birth certificate or other proof showing that the child with HIV is the child of the mother with HIV; and b) A marriage certificate or other proof showing that the father with the blood-clotting disorder and HIV and the mother with HIV were lawfully married.

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

CHECK BOX	CATEGORY OF ELIGIBILITY	REQUIRED DOCUMENTATION
	PERSONS WITH HIV *(Continued)*	
☐	**The child with HIV** who acquired an HIV infection through perinatal transmission from a mother who is the former lawful spouse of an individual with a blood-clotting disorder and HIV.	**Medical documentation showing that the individual with a blood-clotting disorder and HIV:** (1) has (or had) a blood-clotting disorder, such as hemophilia; (2) was treated with antihemophilic factor at any time between July 1, 1982, and December 31, 1987; and (3) has (or had) an HIV infection. **Medical Documentation showing that the child with HIV:** (1) has an HIV infection; and (2) acquired an HIV infection through perinatal transmission from a birth mother who is/was the former lawful spouse with HIV. **Medical documentation showing that the mother with HIV:** with reasonable certainty contracted HIV from the individual with a blood-clotting disorder and HIV. The required medical documentation may be submitted in the following forms: (a) copies of relevant portions of medical records, records maintained by a doctor, nurse, or other licensed health care provider, test results, prescription information, or other documentation possibly deemed credible by the Secretary (e.g., infusion logs and packing slips); or (b) an affidavit, signed under penalty of perjury, by a doctor or nurse practitioner, verifying that the medical criteria necessary for a petitioner to be eligible for payment under the Act are satisfied. The affidavit must include the doctor's or nurse practitioner's state and license number. The affidavit is contained in Appendix B. **Legal documentation:** a) A birth certificate or other proof showing that the child with HIV is the child of the mother with HIV; and b) A marriage certificate or other proof showing that the man with the blood-clotting disorder and HIV and the mother with HIV were lawfully married.

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

CHECK BOX	CATEGORY OF ELIGIBILITY	REQUIRED DOCUMENTATION
	2. SURVIVORS OF PERSONS WITH HIV	
☐	**Surviving spouse of a person with HIV.**	**All medical and legal documentation** required for the person with HIV (i.e., the individual with a blood-clotting disorder and HIV, the lawful spouse with HIV, the former lawful spouse with HIV, or the child with HIV), as described in Section 1 above. **Legal documentation:** (1) a death certificate for the person with HIV, or other evidence of that person's death; and (2) a marriage certificate or other proof of lawful marriage, which shows that you were the spouse of the person with HIV.
☐	**Surviving child or children of a person with HIV.**	**All medical and legal documentation** required for the person with HIV (i.e., the individual with a blood-clotting disorder and HIV, the lawful spouse with HIV, the former lawful spouse with HIV, or the child with HIV), as described in Section 1 above. **Legal documentation:** (1) a death certificate for the person with HIV, or other evidence of that person's death; and (2) a birth certificate, adoption certificate, documentation showing that you are the stepchild of the person with HIV (i.e., a certificate of marriage between your parent and the person with HIV), or other documentation showing that you are the child of the person with HIV.
☐	**Surviving parent or parents of a person with HIV.**	**All medical and legal documentation** required for the person with HIV (i.e., the individual with a blood-clotting disorder and HIV, the lawful spouse with HIV, the former lawful spouse with HIV, or the child with HIV), as described in Section 1 above. **Legal documentation:** (1) a death certificate for the person with HIV, or other evidence of that person's death; and (2) for each surviving parent, a birth certificate, adoption certificate, or other documentation which shows that you are the parent of the person with HIV.

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

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CHECK BOX	CATEGORY OF ELIGIBILITY	REQUIRED DOCUMENTATION
	3. SURVIVORS FILING AN AMENDMENT TO A PRIOR PETITION	
☐	**Survivor or survivors of a person with HIV where the person with HIV filed a petition, but then died before receiving payment.**	**Legal documentation for spouse survivors:** (1) a death certificate for the person with HIV, or other evidence of that person's death; and (2) a marriage certificate or other proof of lawful marriage, which shows that you were the spouse of the person with HIV. **Legal documentation for child survivors:** (1) a death certificate for the person with HIV, or other evidence of that person's death; (2) for each surviving child, a birth certificate, adoption certificate, documentation that shows that you are the stepchild of the person with HIV (i.e., a certificate of marriage between your parent and the person with HIV), or other documentation which shows that you are the child of the person with HIV. **Legal documentation for parent survivors:** (1) a death certificate for the person with HIV, or other evidence of that person's death; and (2) for each surviving parent, a birth certificate, adoption certificate, or other documentation which shows that you are the parent of the person with HIV.

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

CHECK BOX	CATEGORY OF ELIGIBILITY	REQUIRED DOCUMENTATION
	SURVIVORS FILING AN AMENDMENT TO A PRIOR PETITION *(Continued)*	
☐	**The next eligible survivor or survivors of a person with HIV where another survivor filed a petition or an amendment to a petition, but then died before receiving payment.**	**Legal documentation for spouse survivors:** (1) a death certificate for the person with HIV, or other evidence of that person's death; (2) a marriage certificate or other proof of lawful marriage, which shows that you were the spouse of the person with HIV; and (3) a death certificate for the person who was listed as a survivor on the original petition or amendment who has died, or other evidence of that person's death. **Legal documentation for child survivors:** (1) a death certificate for the person with HIV, or other evidence of that person's death; (2) for each surviving child, a birth certificate, adoption certificate, documentation that shows that you are the stepchild of the child with HIV (i.e., a certificate of marriage between your parent and the person with HIV), or other documentation which shows that you are the child of the person with HIV; and (3) a death certificate for the person who was listed as a survivor on the original petition or amendment who has died, or other evidence of that person's death. **Legal documentation for parent survivors:** (1) a death certificate for the person with HIV, or other evidence of that person's death; (2) for each surviving parent, a birth certificate, adoption certificate, or other documentation which shows that you are the parent(s) of the person with HIV; and (3) a death certificate for the person who was listed as a survivor on the original petition or amendment who has died, or other evidence of that person's death.
☐	**Survivor or survivors of a person with HIV where multiple surviving children or surviving parents filed a petition, but one of the survivors died before receiving payment.**	**Legal documentation:** A death certificate for the person who was listed as a survivor on the original petition or amendment who has died, or other evidence of that person's death.

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

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CHECK BOX	CATEGORY OF ELIGIBILITY	REQUIRED DOCUMENTATION
	4. PERSONAL REPRESENTATIVES	
☐	**Personal Representatives:** Personal representatives may file a petition for an individual who is eligible to receive payment under the Act: (1) where the eligible individual does not have the legal capacity to receive payment under the Act, as described in §130.35(e); or (2) where the eligible individual does have the capacity to receive payment under the Act, but only if the sworn statement included at the end of the petition is signed by the eligible individual.	**In all cases, the personal representative must submit all medical and legal documentation required for the eligible individual.** In those cases in which the eligible individual does not have the legal capacity to receive payment under the Act, a personal representative may receive payment for a legally incompetent individual by submitting the following written documentation: (1) proof showing the eligible individual does not have the legal capacity to receive payment under the Act (e.g., a birth certificate showing that the eligible individual is a minor or other evidence showing that the eligible individual is legally incompetent); and (2) proof showing that you have the authority to receive payment for the eligible individual (e.g., proof of legal guardianship).

If you have any questions, go to the Ricky Ray web-site, www.hrsa.gov/bhpr/rickyray, or call the toll-free number, 1-888-496-0338.

[FR Doc. 00–13418 Filed 5–26–00; 8:45 am]
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Federal Register

Wednesday,
May 31, 2000

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 5, 8, et al.
Federal Acquisition Regulation; Definitions for "Contract Action" and "Contracting Action"; Proposed Rule

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DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 8, 17, 19, 32, and 52

[FAR Case 2000–402]

RIN 9000–AI76

Federal Acquisition Regulation; Definitions for "Contract Action" and "Contracting Action"

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to provide for consistent use of the term "contract action." The proposed revisions are intended to reorganize, simplify, and clarify the FAR. The Councils do not intend to make any substantive change to the FAR by this proposal. Comments should address any potential unintended substantive changes to the FAR resulting from the proposed revisions. This case is one of a series of cases that implement the White House memorandum, Plain Language in Government Writing, dated June 1, 1999.

DATES: Interested parties should submit comments on or before July 31, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to General Services Administration, FAR Secretariat (MVR), Attn: Ms. Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000–402@gsa.gov.

Please submit comments only and cite FAR case 2000–402 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405; (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2000–402.

SUPPLEMENTARY INFORMATION:

A. Background

The rule amends the Federal Acquisition Regulation (FAR) to address perceived inconsistencies in the use of the terms "contract action" and "contracting action." The rule changes the term "contracting action" to "contract action" throughout the FAR. In the current FAR, the terms are used interchangeably, with "contract action" used most often. Also, the rule deletes the existing definitions of "contracting action" in FAR part 5 (defined but not used in part 5) and "contract action" in part 32 and moves the content to the policy section of each part, because the definitions really serve to narrow the scope of each part.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, while we are making changes in accordance with plain language guidelines, we are not substantively changing procedures for award and administration of contracts. Therefore, an Initial Regulatory Flexibility Analysis is not required. We invite comments from small businesses and other interested parties. We will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Small entities must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–402), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 5, 8, 17, 19, 32, and 52

Government procurement.

Dated: May 24, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose to amend 48 CFR parts 1, 5, 8, 17, 19, 32, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 5, 8, 17, 19, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Revise section 1.403 to read as follows:

1.403 Individual deviations.

Individual deviations affect only one contract action, and, unless section 1.405(e) is applicable, may be authorized by the agency head. The contracting officer must document the justification and agency approval in the contract file.

3. Revise the introductory paragraph of section 1.404 to read as follows:

1.404 Class deviations.

Class deviations affect more than one contract action. When an agency knows that it will require a class deviation on a permanent basis, it should propose a FAR revision. Civilian agencies, other than NASA, must furnish a copy of each approved class deviation to the FAR Secretariat.

* * * * *

4. Revise paragraph (b) of section 1.705 to read as follows:

1.705 Supersession and modification.

* * * * *

(b) The contracting officer need not cancel the solicitation if the D&F, as modified, supports the contract action.

PART 5—PUBLICIZING CONTRACT ACTIONS

5. Revise section 5.000 to read as follows:

5.000 Scope of part.

This part prescribes policies and procedures for publicizing contract opportunities and award information. The policies apply to actions resulting in a contract, including actions for additional supplies or services outside the existing contract scope. The policies do not apply to actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

5.001 [Removed and Reserved]

6. Remove and reserve section 5.001.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

7. Revise section 8.102 to read as follows:

8.102 Policy.

When practicable, agencies must use excess personal property as the first source of supply for agency and cost-reimbursement contractor requirements. Agency personnel must make positive efforts to satisfy agency requirements by obtaining and using excess personal property (including that suitable for adaptation or substitution) before initiating a contract action.

PART 17—SPECIAL CONTRACTING METHODS

17.104 [Amended]

8. Amend the second sentence of paragraph (b) of section 17.104 by removing "contracting action" and inserting "contract".

9. Revise the introductory text of paragraph (b) of section 17.503 to read as follows:

* * * * *

17.503 Determinations and findings requirements.

* * * * *

(b) If the Economy Act order requires contract action by the servicing agency, the D & F must also include a statement that at least one of the following circumstances applies—

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

10. In section 19.302, revise the first sentence of paragraph (h)(4) to read as follows:

19.302 Protesting a small business representation.

* * * * *

(h) * * *

(4) If a protest is received that challenges the small business status of an offeror not being considered for award, the contracting officer is not required to suspend contract action.

* * *

* * * * * *

11. Revise paragraph (c)(2) of 19.505 (and remove the undesignated paragraph following paragraph (c)(2)) to read as follows:

19.505 Rejecting Small Business Administration recommendations.

* * * * *

(c) * * *

(2) The SBA must be allowed 15 working days after making such a written request, within which the Administrator of SBA—

(i) May appeal to the Secretary of the Department concerned; and

(ii) Must notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, the contracting officer must assume that the SBA request to suspend the contract action has been withdrawn and that an appeal to the Secretary was not taken.

* * * * *

PART 32—CONTRACT FINANCING

12. Revise the introductory text of section 32.000 to read as follows:

32.000 Scope of part.

This part prescribes policies and procedures for contract financing and other payment matters related to actions resulting in a contract, including actions for additional supplies or services outside the existing contract scope. This part does not apply to actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This part addresses—

* * * * * *

32.001 [Amended]

13. Amend section 32.001 by removing the definition of "Contract action".

14. Amend section 32.703–2 by revising the first sentence to read as follows:

32.703–2 Contracts conditioned upon availability of funds.

(a) *Fiscal year contracts.* The contracting officer may initiate a contract action properly chargeable to funds of the new fiscal year before these funds are available, provided, that the contract includes the clause at 52.232–18, Availability of Funds (see 32.705–1(a)).

* * * * * *

15. Revise paragraph (a) of 32.705–1 to read as follows:

32.705–1 Clauses for contracting in advance of funds.

(a) Insert the clause at 52.232–18, Availability of Funds, in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contract action will be initiated before the funds are available.

* * * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Revise the introductory text of 52.232–18 to read as follows:

52.232–18 Availability of funds.

As prescribed in 32.705–1(a), insert the following clause:

* * * * * *

[FR Doc. 00–13465 Filed 5–30–00; 8:45 am]

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Part V

The President

Proclamation 7314—To Modify the Quantitative Limitations Applicable to Imports of Wheat Gluten

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Presidential Documents

Title 3—

The President

Proclamation 7314 of May 26, 2000

To Modify the Quantitative Limitations Applicable to Imports of Wheat Gluten

By the President of the United States of America

A Proclamation

1. On May 30, 1998, pursuant to section 203 of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2253), I issued Proclamation 7103, which imposed quantitative limitations on certain wheat gluten imports provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States (HTS) for a period of 3 years plus 1 day, with annual increases in such quota limits of 6 percent during the second and the third year. I exempted imports of wheat gluten that is the product of certain countries, including designated beneficiary countries under the Generalized System of Preferences ("GSP countries"), from the application of the quantitative limitations.

2. On December 1, 1999, the United States International Trade Commission (USITC) issued a report, as required under section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)), on the results of its monitoring of developments with respect to the domestic wheat gluten industry. The USITC report notes that in the 12-month period prior to the imposition of the quota (June 1, 1997–May 31, 1998), 440,000 pounds of wheat gluten entered the United States from Poland. During the first quota year (June 1, 1998–May 31, 1999), imports from Poland grew to 5,004,000 pounds, or more than eleven times the amount of the previous year, accounting for 2.9 percent of total U.S. imports. The USITC report has been provided to me (Investigation Number TA–204–2). More recent data from the United States Customs Service indicate that in the first 10 months of the second quota year (June 1999–March 2000), imports from Poland totaled 8,965,800 pounds, accounting for 6.9 percent of total U.S. imports.

3. Section 204(b)(1)(A) of the Trade Act (19 U.S.C. 2254(b)(1)(A)) authorizes the President, after taking into account the report of the USITC required under section 204(a)(2) of the Trade Act and seeking advice from the Secretary of Commerce and the Secretary of Labor, to reduce, modify, or terminate an action taken under section 203 of the Trade Act when the President determines that changed economic circumstances so warrant.

4. After taking into account the information provided in the USITC's report, and after receiving advice from the Secretary of Commerce and the Secretary of Labor, I have determined, on the basis that increased imports of wheat gluten the product of Poland have impaired the effectiveness of the action I proclaimed in 1998 under section 203 of the Trade Act, that changed economic circumstances warrant a modification in the action. Accordingly, I have decided to include in the action imports of wheat gluten the product of Poland, beginning June 1, 2000.

5. Pursuant to section 203(g) of the Trade Act (19 U.S.C. 2253(g)), I have further determined to provide for the efficient and fair administration of the quantitative limitation on imports of wheat gluten by allocating on a quarterly basis the quantitative limitations applicable during the third year of the action.

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6. Pursuant to section 503(b)(2) of the Trade Act (19 U.S.C. 2463(b)(2)), no article shall be eligible for duty-free treatment provided under section 501 of the Trade Act if that article is subject to an action proclaimed under section 203.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 204, 503, and 604 of the Trade Act, do proclaim that:

(1) In order to modify the scope of the quantitative limitations applicable to imports of wheat gluten under HTS heading 1109, and to allocate the quota quantities for the third quota year on a quarterly basis, subchapter III of chapter 99 of the HTS is modified as set forth in the Annex to this proclamation.

(2) Such imported wheat gluten that is the product of Poland shall be included within the scope of the quantitative limitations during the third quota year, as provided in the Annex.

(3) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(4) Effective at the close of June 1, 2002, or such other date that is 1 year from the close of the action taken under section 203 of the Trade Act, as modified by this proclamation, HTS subheadings 9903.11.08 through 9903.11.11 and the superior text thereto shall be deleted from the HTS.

(5) Pursuant to section 503(b)(2) of the Trade Act (19 U.S.C. 2463(b)(2)), duty-free treatment for certain wheat gluten that is the product of beneficiary countries under the Generalized System of Preferences (GSP) (Title V of the Trade Act, as amended (19 U.S.C. 2461–2467)), is suspended.

(6) The modifications to the HTS made by this proclamation and the Annex thereto shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EDT June 1, 2000, and shall continue in effect through the close of June 1, 2001, unless such actions are earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

Billing code 3195–01–P

ANNEX

Section A

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:00 a.m. EDT June 1, 2000, subheading 1109.00.10 and subheading 1109.00.90 of the Harmonized Tariff Schedule of the United States are each modified by deleting the symbol "A" in the rates of duty 1-special subcolumn.

Section B

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:00 a.m. EDT June 1, 2000, subheading 9903.11.07 is deleted and the following new subheadings and superior text thereto are inserted in lieu thereof, with the superior text at the same level of indentation as the article description of subheading 9903.11.06:

	":Wheat gluten, whether or not dried, except products of Canada, of Mexico, of Israel, of beneficiary countries under the Caribbean Basin Economic Recovery Act (as enumerated in general note 7 to this schedule) or the Andean Trade Preference Act (as enumerated in general note 11 to this schedule), or of countries (except Poland) enumerated in general note 4(a) to this schedule as that note existed on June 1, 1998 (provided for in subheadings 1109.00.10 and 1109.00.90), if entered during the period from June 1, 2000, through June 1, 2001, inclusive:	
9903.11.08	If entered during the period from June 1, 2000, through August 31, 2000, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no wheat gluten the product of such country may be entered during the remainder of such period:	
	Australia	7,953,500 kg
	European Community	6,885,750 kg
	Other countries	1,318,250 kg
9903.11.09	If entered during the period from September 1, 2000, through through November 30, 2000, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no wheat gluten the product of such country may be entered during the remainder of such period:	
	Australia	7,953,500 kg
	European Community	6,885,750 kg
	Other countries	1,318,250 kg
9903.11.10	If entered during the period from December 1, 2000, through February 28, 2001, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no wheat gluten the product of such country may be entered during the remainder of such period:	
	Australia	7,953,500 kg
	European Community	6,885,750 kg
	Other countries	1,318,250 kg

9903.11.11	: If entered during the period from March 1, 2001, through June 1, 2001, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no wheat gluten the product of such country may be entered during the remainder of such period:	:
	: Australia	: 7,953,500 kg
	: European Community	: 6,885,750 kg
	: Other countries	: 1,318,250 kg"

[FR Doc. 00–13789
Filed 5–30–00; 8:45 am]
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May 31, 2000

Part VI

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 390, 394, 395, and 398
Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations; Correction; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 390, 394, 395, and 398

RIN 2126–AA23

Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of May 2, 2000, regarding Hours of Service of Drivers and Driver Rest and Sleep for Safe Operations. This correction removes a statement included by error that the proposed rule would *not* have a significant economic impact on a substantial number of small entities. As we stated in the proposed rule, the FMCSA does not know with certainty the full economic impact of the proposal and therefore withdraws its negative certification.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, (202) 366–1790.

Correction

In proposed rule FR Doc. 00–10703, beginning on 25540 in the issue of May 2, 2000, make the following correction in the Supplementary Information section. On page 25596 in column three, remove the second full paragraph that reads:

"Therefore, the FMCSA, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has considered the economic impacts of these requirements on small entities and certifies that this rule would not have a significant economic impact on a substantial number of small entities."

Authority: 49 U.S.C. 504, 14122, 31133, 31136, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

Issued on: May 26, 2000.

Julie Anna Cirillo,

Acting Assistant Administrator.

[FR Doc. 00–13790 Filed 5–30–00; 9:12 am]

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May 31, 2000

Part VII

The President

Proclamation 7315—Prayer for Peace, Memorial Day, 2000

Executive Order 13158—Marine Protected Areas

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Presidential Documents

Title 3—

The President

Proclamation 7315 of May 26, 2000

Prayer for Peace, Memorial Day, 2000

By the President of the United States of America

A Proclamation

For many Americans, Memorial Day has come to signify the beginning of summer, the opening of the neighborhood pool, and a time for picnics and barbecues. In the midst of these festivities, however, we can too often overlook the holiday's true meaning. Memorial Day was first observed in 1868 in remembrance of those who died in the Civil War; since then our Nation has set this day aside as a solemn occasion on which to pay tribute to all the men and women who have died in service to our country.

Throughout our Nation's history, brave Americans have donned our country's uniform to defend our freedom and uphold our values, often far from home and in the face of grave danger. From the battles of the Revolutionary War through the epic struggles of World Wars I and II to today's peacekeeping missions in a world with sophisticated weapons and terrorist threats, the men and women of our Armed Forces have served with skill and courage. While the challenges they face have changed with each passing year, their devotion to duty and to country has remained steadfast.

For more than a million Americans, that devotion cost them their lives but secured for us priceless freedom, peace, and security. While we should remember these patriots every day for the profound contribution they have made to our Nation, we should honor them with special gratitude on Memorial Day.

This year, to reaffirm the true meaning of Memorial Day, we begin a new tradition by observing a "National Moment of Remembrance." I ask all Americans to unite on Memorial Day in acknowledging the service of America's fallen heroes. Let us reflect on the profound debt we owe to those brave men and women who gave their lives for our Nation, and let us teach current and future generations that our freedom, peace, and prosperity were achieved only through the sacrifice of those who came before them.

In recognition of those courageous Americans, the Congress, by joint resolution approved on May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the American people might unite in prayer. In support of the new tradition of a National Moment of Remembrance, the Congress has passed H.Con.Res. 302 calling on the people of the United States to observe a National Moment of Remembrance on Memorial Day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Memorial Day, May 29, 2000, as a day of prayer for permanent peace, and I designate 3:00 p.m. local time on that day as the time to join in prayer and to observe the National Moment of Remembrance. I urge the press, radio, television, and all other media to participate in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon on this Memorial

Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–13829
Filed 5–30–00; 12:14 pm]
Billing code 3195–01–P

Presidential Documents

Executive Order 13158 of May 26, 2000

Marine Protected Areas

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*), National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-ee), National Park Service Organic Act (16 U.S.C. 1 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), Wilderness Act (16 U.S.C. 1131 *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*), National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), Outer Continental Shelf Lands Act (42 U.S.C. 1331 *et seq.*), and other pertinent statutes, it is ordered as follows:

Section 1. *Purpose.* This Executive Order will help protect the significant natural and cultural resources within the marine environment for the benefit of present and future generations by strengthening and expanding the Nation's system of marine protected areas (MPAs). An expanded and strengthened comprehensive system of marine protected areas throughout the marine environment would enhance the conservation of our Nation's natural and cultural marine heritage and the ecologically and economically sustainable use of the marine environment for future generations. To this end, the purpose of this order is to, consistent with domestic and international law: (a) strengthen the management, protection, and conservation of existing marine protected areas and establish new or expanded MPAs; (b) develop a scientifically based, comprehensive national system of MPAs representing diverse U.S. marine ecosystems, and the Nation's natural and cultural resources; and (c) avoid causing harm to MPAs through federally conducted, approved, or funded activities.

Sec. 2. *Definitions.* For the purposes of this order: (a) "Marine protected area" means any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.

(b) "Marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.

(c) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

Sec. 3. *MPA Establishment, Protection, and Management.* Each Federal agency whose authorities provide for the establishment or management of MPAs shall take appropriate actions to enhance or expand protection of existing MPAs and establish or recommend, as appropriate, new MPAs. Agencies implementing this section shall consult with the agencies identified in subsection 4(a) of this order, consistent with existing requirements.

Sec. 4. *National System of MPAs.* (a) To the extent permitted by law and subject to the availability of appropriations, the Department of Commerce and the Department of the Interior, in consultation with the Department

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of Defense, the Department of State, the United States Agency for International Development, the Department of Transportation, the Environmental Protection Agency, the National Science Foundation, and other pertinent Federal agencies shall develop a national system of MPAs. They shall coordinate and share information, tools, and strategies, and provide guidance to enable and encourage the use of the following in the exercise of each agency's respective authorities to further enhance and expand protection of existing MPAs and to establish or recommend new MPAs, as appropriate:

(1) science-based identification and prioritization of natural and cultural resources for additional protection;

(2) integrated assessments of ecological linkages among MPAs, including ecological reserves in which consumptive uses of resources are prohibited, to provide synergistic benefits;

(3) a biological assessment of the minimum area where consumptive uses would be prohibited that is necessary to preserve representative habitats in different geographic areas of the marine environment;

(4) an assessment of threats and gaps in levels of protection currently afforded to natural and cultural resources, as appropriate;

(5) practical, science-based criteria and protocols for monitoring and evaluating the effectiveness of MPAs;

(6) identification of emerging threats and user conflicts affecting MPAs and appropriate, practical, and equitable management solutions, including effective enforcement strategies, to eliminate or reduce such threats and conflicts;

(7) assessment of the economic effects of the preferred management solutions; and

(8) identification of opportunities to improve linkages with, and technical assistance to, international marine protected area programs.

(b) In carrying out the requirements of section 4 of this order, the Department of Commerce and the Department of the Interior shall consult with those States that contain portions of the marine environment, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, tribes, Regional Fishery Management Councils, and other entities, as appropriate, to promote coordination of Federal, State, territorial, and tribal actions to establish and manage MPAs.

(c) In carrying out the requirements of this section, the Department of Commerce and the Department of the Interior shall seek the expert advice and recommendations of non-Federal scientists, resource managers, and other interested persons and organizations through a Marine Protected Area Federal Advisory Committee. The Committee shall be established by the Department of Commerce.

(d) The Secretary of Commerce and the Secretary of the Interior shall establish and jointly manage a website for information on MPAs and Federal agency reports required by this order. They shall also publish and maintain a list of MPAs that meet the definition of MPA for the purposes of this order.

(e) The Department of Commerce's National Oceanic and Atmospheric Administration shall establish a Marine Protected Area Center to carry out, in cooperation with the Department of the Interior, the requirements of subsection 4(a) of this order, coordinate the website established pursuant to subsection 4(d) of this order, and partner with governmental and nongovernmental entities to conduct necessary research, analysis, and exploration. The goal of the MPA Center shall be, in cooperation with the Department of the Interior, to develop a framework for a national system of MPAs, and to provide Federal, State, territorial, tribal, and local governments with the information, technologies, and strategies to support the system. This national system framework and the work of the MPA Center is intended to support, not interfere with, agencies' independent exercise of their own existing authorities.

(f) To better protect beaches, coasts, and the marine environment from pollution, the Environmental Protection Agency (EPA), relying upon existing Clean Water Act authorities, shall expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment. Such regulations may include the identification of areas that warrant additional pollution protections and the enhancement of marine water quality standards. The EPA shall consult with the Federal agencies identified in subsection 4(a) of this order, States, territories, tribes, and the public in the development of such new regulations.

Sec. 5. *Agency Responsibilities.* Each Federal agency whose actions affect the natural or cultural resources that are protected by an MPA shall identify such actions. To the extent permitted by law and to the maximum extent practicable, each Federal agency, in taking such actions, shall avoid harm to the natural and cultural resources that are protected by an MPA. In implementing this section, each Federal agency shall refer to the MPAs identified under subsection 4(d) of this order.

Sec. 6. *Accountability.* Each Federal agency that is required to take actions under this order shall prepare and make public annually a concise description of actions taken by it in the previous year to implement the order, including a description of written comments by any person or organization stating that the agency has not complied with this order and a response to such comments by the agency.

Sec. 7. *International Law.* Federal agencies taking actions pursuant to this Executive Order must act in accordance with international law and with Presidential Proclamation 5928 of December 27, 1988, on the Territorial Sea of the United States of America, Presidential Proclamation 5030 of March 10, 1983, on the Exclusive Economic Zone of the United States of America, and Presidential Proclamation 7219 of September 2, 1999, on the Contiguous Zone of the United States.

Sec. 8. *General.* (a) Nothing in this order shall be construed as altering existing authorities regarding the establishment of Federal MPAs in areas of the marine environment subject to the jurisdiction and control of States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and Indian tribes.

(b) This order does not diminish, affect, or abrogate Indian treaty rights or United States trust responsibilities to Indian tribes.

(c) This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
May 26, 2000.

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S.J. Res. 44/P.L. 106–205
Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)

H.R. 154/P.L. 106–206
To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)

H.R. 371/P.L. 106–207
Hmong Veterans' Naturalization Act of 2000 (May 26, 2000; 114 Stat. 316)

H.R. 834/P.L. 106–208
National Historic Preservation Act Amendments of 2000 (May 26, 2000; 114 Stat. 318)

H.R. 1377/P.L. 106–209
To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the "John J. Buchanan Post Office Building". (May 26, 2000; 114 Stat. 320)

H.R. 1832/P.L. 106–210
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H.R. 3629/P.L. 106–211
To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)

H.R. 3707/P.L. 106–212
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S. 1836/P.L. 106–213
To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)

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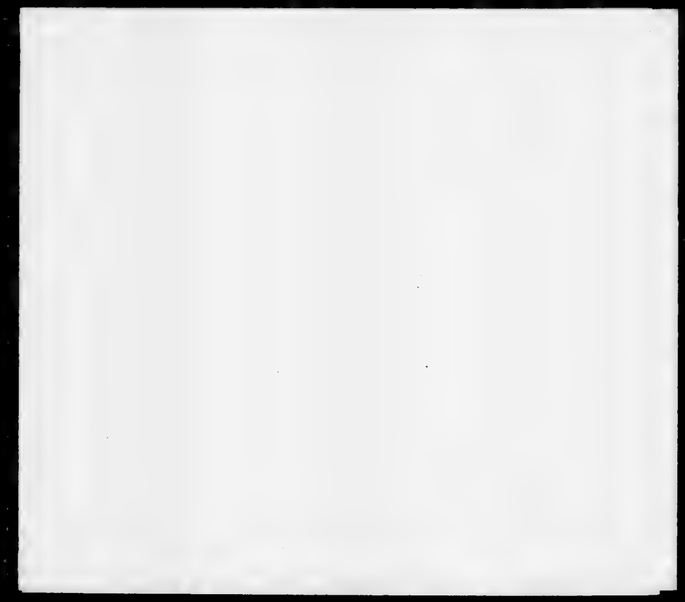

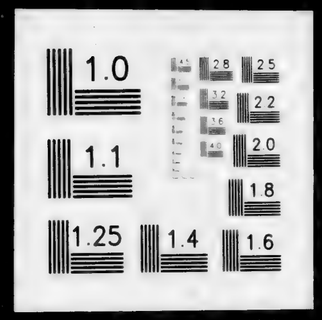

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RIN 3150–AF95

Monitoring the Effectiveness of Maintenance at Nuclear Power Plants; Confirmation of Effective Date and Availability of Guidance

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Confirmation of effective date and availability of guidance.

SUMMARY: The Nuclear Regulatory Commission amended its regulation concerning requirements for monitoring the effectiveness of maintenance at nuclear power plants on July 19, 1999 (64 FR 38551). The effective date of this amendment was deferred until guidance on assessing and managing increases in risk associated with maintenance activities was issued to nuclear power plant licensees. This document announces the availability of that guidance (Regulatory Guide 1.182, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants") and specifies the effective date for the July 19, 1999, amendment to the maintenance rule.

EFFECTIVE DATE: November 28, 2000.

ADDRESSES: Regulations, certain regulatory guides, and certain endorsed NUMARC documents are available for inspection or downloading at the NRC's web site, <*WWW.NRC.GOV*>. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by email to <*DISTRIBUTION@NRC.GOV*>. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Copies of regulations, regulatory guides, and endorsed NUMARC documents are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; telephone (202) 634–3273 or (800) 397–4209; fax (202) 634–3343; email <PDR@NRC.GOV>.

Comments and suggestions in connection with items for inclusion in regulations and regulatory guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: W.E. Scott, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415–1020; email <WES@NRC.GOV>.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission amended its maintenance rule, 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," on July 19, 1999 (64 FR 38551). This amendment requires nuclear power plant licensees to assess and manage the increase in risk that may result from proposed maintenance activities. The implementation date of this amendment was made dependent upon guidance being issued to nuclear power plant licensees on assessing and managing increases in risk associated with maintenance activities.

Rather than issue Revision 3 to Regulatory Guide 1.160, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," the NRC staff decided to issue Regulatory Guide 1.182, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants," as guidance to nuclear power plant licensees on assessing and managing risk before maintenance activities are conducted at the nuclear power plant. Regulatory Guide 1.182 is being issued as a companion guide to Regulatory Guide 1.160, which provides guidance on the structure of the licensees' maintenance effectiveness monitoring programs.

Regulatory Guide 1.160 endorses a document prepared by the Nuclear Energy Institute (formerly NUMARC), NUMARC 93-01, "Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants." Regulatory Guide 1.182 endorses a revised Section 11, "Assessment of Risk Resulting from Performance of Maintenance Activities," of NUMARC 93–01. Regulatory Guide 1.182 was published for public comment (64 FR 70098, December 15, 1999) as DG–1082, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants." There were no public comments on the draft guide, and NEI addressed the comments on Section 11 of NUMARC 93–01 with minor revisions, and the NRC staff concurs in these revisions.

Therefore, the effective date of the July 19, 1999, amendment to 10 CFR 50.65 is November 28, 2000.

Dated at Rockville, Maryland, this 26th day of May, 2000.

For the Nuclear Regulatory Commission.

J. Samuel Walker,

Acting Secretary of the Commission.

[FR Doc. 00–13746 Filed 5–31–00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG26

Emergency Core Cooling System Evaluation Models

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to allow holders of operating licenses for nuclear power plants to reduce the assumed reactor power level used in evaluations of emergency core cooling system (ECCS) performance. This amendment provides licensees the option to apply a reduced margin for ECCS evaluation or to maintain the value of reactor power that had been mandated in the regulation. This action allows interested licensees to pursue small, but cost-beneficial, power uprates and reduces unnecessary regulatory

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burden without compromising the margin of safety of a facility.

EFFECTIVE DATE: The rule becomes effective July 31, 2000.

ADDRESSES: The final rule and any related documents are available on the NRC's rulemaking website at http://ruleforum.llnl.gov. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: cag@nrc.gov).

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Donoghue, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1131; or by Internet electronic mail to jed1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

A holder of an operating license (i.e., the licensee) for a light-water power reactor is required by regulations issued by the NRC to submit a safety analysis report that contains an evaluation of emergency core cooling system (ECCS) performance under loss-of-coolant accident (LOCA) conditions. 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors," requires that ECCS performance under LOCA conditions be evaluated and that the estimated performance satisfy certain criteria. Licensees may conduct an analysis that "realistically describes the behavior of the reactor system during a LOCA" (often termed a "best-estimate analysis"), or they may develop a model that conforms with the requirements of Appendix K to 10 CFR part 50. Most ECCS evaluations are based on Appendix K requirements. Before this revision, the opening sentence of Appendix K specified that a power level of 102 percent be assumed when conducting ECCS analyses. Licensees have proposed using instrumentation that would reduce the uncertainties associated with measurement of reactor power when compared with existing methods of power measurement. This development could justify a reduced margin between the licensed power level and the power level assumed for ECCS evaluations. This final rule amends this provision in Appendix K and allows licensees the option of using a value lower than 102 percent of licensed power in their ECCS analyses where justified.

Several licensees have expressed interest in using updated feedwater flow measurement technology discussed later in "Calorimetric Uncertainty and Feedwater Flow Measurement" as a basis for seeking exemptions from the Appendix K power level requirement and to implement power uprates. One licensee, TXU Electric Company, obtained an exemption from the Appendix K requirement for Comanche Peak Units 1 and 2 as well as an increase in licensed power based, in part, on more accurate feedwater flow measurement capability. The prospect of additional exemption requests from other licensees provides the impetus for the final rule.

The objective of this rulemaking is to reduce an unnecessarily burdensome regulatory requirement. Appendix K was originally issued to ensure an adequate performance margin of the ECCS in the event a design-basis LOCA were to occur. The margin is provided by conservative features and requirements of the evaluation models and by the ECCS performance criteria. The original regulation did not require that the power measurement uncertainty be demonstrated, but rather mandated a 2-percent margin. The final rule allows licensees to justify a smaller margin for power measurement uncertainty. Because there will continue to be substantial conservatism in other Appendix K requirements, sufficient margin to ECCS performance in the event of a LOCA will be preserved, which is the underlying purpose of Appendix K. The final rule does not significantly affect plant risk, as discussed in the section entitled, "ECCS Evaluation Conservatism."

Another objective is to avoid unnecessary exemption requests. A licensee has obtained an exemption from the 2-percent margin requirement in 10 CFR part 50, Appendix K. The final rule eliminates the need for licensees to obtain exemptions.

The final rule gives licensees the option of applying a reduced margin between the licensed power level and the assumed power level for ECCS evaluation, or maintaining the current margin of 2-percent power. As discussed in the section entitled "ECCS Evaluation Conservatism," the NRC has concluded that the 2 percent power margin requirement in the original rule appeared to be based solely on considerations associated with power measurement extant at the time of the original ECCS rulemaking. The original rule unnecessarily restricted operation for licensees that can show that the uncertainties associated with power measurement instrumentation errors are less than 2 percent.

This amendment gives licensees the opportunity to use a reduced margin if they determine that there is a sufficient benefit. Licensees may apply the margin to gain benefits from operation at higher power, or the margin could be used to relax ECCS-related technical specifications (*e.g.*, pump flows). Another potential benefit could be in modifying fuel management strategies (*e.g.*, possibly by altering core power peaking factors). However, the final rule, by itself, does not allow increases in licensed power levels. Because licensed power level for a plant is a technical specification limit, proposals to raise the licensed power level must be reviewed and approved under the license amendment process. The license amendment request should include a justification of the reduced power measurement uncertainty and the basis for the modified ECCS analysis, including the justification for reduced power measurement uncertainty, should then be included in documentation supporting the ECCS analysis (see Section-by-Section Analysis).

As licensees apply the final rule and the NRC gains experience reviewing related license amendment requests, the NRC will consider the need for specific guidance to help licensees appropriately account for power measurement uncertainty in safety analyses. In the absence of specific guidance, the NRC expects that power uprate amendment requests based on this amendment to the regulations will address the suitability of non-LOCA analyses for operation at proposed higher power levels. Licensees can refer to available instrumentation guidance such as the Instrument Society of America Standard ISA 67.04, 1982, "Safety-Related Instrumentation Used in Nuclear Power Plants," and NRC Regulatory Guide 1.105, Revision 2, "Instrument Setpoints for Safety-Related Systems."

Conservatisms in Appendix K ECCS Evaluation Model

Appendix K defines conservative analysis assumptions for ECCS performance evaluations during design-basis LOCAs. Large safety margins are provided by conservatively selecting the ECCS performance criteria as well as conservatively establishing ECCS calculational requirements. The major analytical parameters and assumptions that contribute to the conservatisms in Appendix K are set forth in sections A through D of the rule: (A) "Sources of Heat During the LOCA" (the 102-percent power provision is a key factor); (B) "Swelling and Rupture of the Cladding and Fuel Rod Thermal Parameters;" (C) "Blowdown Phenomena;" and (D) "Post-Blowdown Phenomena: Heat Removal by ECCS." In each of these areas, several assumptions are typically used to ensure substantial conservatism in the analysis results. For

instance: under "Sources of Heat During the LOCA," decay heat is modeled on the basis of an American Nuclear Society standard with an added 20-percent penalty, and the power distribution shape and peaking factors expected during the operating cycle are chosen to yield the most conservative results. In "Blowdown Phenomena," the rule requires use of the Moody model and the discharge coefficient that yields the highest peak cladding temperature. "Post-Blowdown Phenomena; Heat Removal by the ECCS," requires that the analysis assume the most damaging single failure of ECCS equipment.

One of several conservative requirements in section A of the original Appendix K was to assume that the reactor was operating at 102 percent power when the LOCA occurred "to allow for such uncertainties as instrumentation error * * *." (Appendix K, section I.A., first sentence, emphasis added). The phrase, "such as," suggested that the two percent power margin was intended to address uncertainties related to heat source considerations beyond instrument measurement uncertainties. However, the basis for the required assumption of 102 percent power (2 percent power margin) does not appear to be contained in the rulemaking record for the ECCS rules, 10 CFR 50.46 and Appendix K. These rules were adopted in 1974 (39 FR 1001; January 4, 1974), and were preceded by a formal rulemaking hearing which ultimately resulted in a Commission decision on the proposed rulemaking, CLI–73–39, 6 AEC 1085 (December 28, 1973). Neither the statement of considerations (SOC) for the final rule nor the Commission decision appear to provide specific basis for the required assumption of 102 percent power.

The SOC for the January 4, 1974, final rule discusses the 102 percent power assumption in general terms, and does not mention instrumentation uncertainty:

> The Commission believes that the implementation of the new regulations will ensure an adequate margin of performance of the ECCS should a design basis LOCA ever occur. This margin is provided by conservative features of the evaluation models and by the criteria themselves. Some of the major points that contribute to the conservative nature of the evaluations and the criteria are as follows:
>
> (1) *Stored heat.* The assumption of 102 percent of maximum power, highest allowed peaking factor, and highest estimated thermal resistance between the UO_2 and the cladding provides a calculated stored heat that is possible but unlikely to occur at the time of a hypothetical accident. While not necessarily a margin over the extreme condition, it represents at least an assumption that an accident happens at a time which is not typical. 39 FR at 1002 (first column).[1]

Thus, while the pre-accident power level assumption is connected with the modeling of the rate of heat generation after the LOCA occurs, a clear basis for the 102 percent assumed power level requirement is not provided, nor does the SOC explain whether there are other uncertainties besides instrumentation uncertainties for which the 102 percent assumed power level is intended to compensate.

The Commission's decision in the ECCS rulemaking hearing also does not explain whether the 102 percent assumed power level was intended to address uncertainties other than instrumentation uncertainties. Section I of the Commission decision was the basis for the SOC discussion on the 102 percent assumed power level (see 6 AEC at 1093–94). Section III. A. of the Commission's decision, "Required and Acceptable Features of the Evaluation Model," does not offer a detailed technical basis for the power level chosen, but instead uses the language ultimately adopted in the original Appendix K rule:

> For the heat sources listed in paragraphs 1 to 4 below it shall be assumed that the reactor has been operating continuously at a power level at least 1.02 times the licensed power level (to allow for such uncertainties as instrumentation error), with the maximum peaking factor allowed by the technical specifications (6 AEC at 1100).

Thus, the Commission's decision does not shed further light on the basis for the 102 percent assumed power level, nor whether the Commission had in mind uncertainties other than those associated with the instrumentation for measurement of power level.

NRC review of the ECCS rulemaking hearing record did not disclose presentations relating to quantification of power measurement uncertainties, or the magnitude of other uncertainties that the 102 percent assumed power level may have been intended to address. The Commission decision (CLI–73–39, 6 AEC 1085, December 28, 1973) cited three documents in the rulemaking hearing record.

The first, cited in the Commission decision as Exhibit 1113, was "Supplemental Testimony of the AEC Regulatory Staff on the Interim Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Cooled Power Reactors" (filed October 26, 1972). In section 10 of the document, stored energy in the fuel was considered, specifically the expected power distributions in fuel rods. The 102-percent power analysis requirement is not discussed.

The second item, cited in the Commission decision as Exhibit 1137 was "Redirect and Rebuttal Testimony of Dr. Donald H. Roy on Behalf of Babcock & Wilcox," (October 26, 1972) in which the characteristic of the decay heat release following reactor shutdown was discussed. In this document, the 102-percent assumption is associated with the predicted decay heat generation rate. The over-power condition is associated with a "design-basis maneuvering operation," but the basis for the value of power chosen for the analysis (*i.e.*, 102 percent) is not disclosed.

Finally, in the "Concluding Statement of Position of the Regulatory Staff—Public Rulemaking Hearing on: Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Cooled Nuclear Power Reactors," April 16, 1973 (the Concluding Statement), the power level assumption is included as part of the proposed rule itself. The proposed rule language clearly states that the power level assumption is to "allow for instrumentation error." The term "such as" does not appear here. It is unclear when or why the proposed language in this regard was changed to its current form. The power level assumption is mentioned again in the Concluding Statement indirectly in association with power level changes before the LOCA and the effect on decay heat generation. But it is discussed most directly with regard to initial stored energy in the fuel. In the discussion on stored energy, the 102-percent assumption is attributed to "uncertainties inherent in the measurement of the operating power level of the core" (page 144 of the Concluding Statement). Reasons for choosing 102-percent as the value are not discussed.

When Appendix K was first issued, as is the case today, the thermal power generated by a nuclear power plant was determined by steam plant calorimetry, which is the process of performing a heat balance around the nuclear steam supply system (called a calorimetric). The heat balance depends upon measurement of several plant parameters, including flow rates and fluid temperatures. The differential pressure across a venturi installed in the feedwater flow path is a key element in the calorimetric measurement. Licensees have proposed using instrumentation other than a venturi-

[1] This statement in the SOC was taken unchanged from section I of the Commission's ECCS decision. See CLI–73–39, 6 AEC 1085, 1093–94 (December 28, 1973).

based system to obtain feedwater flow rate for calorimetrics. The lower uncertainty associated with the new instrumentation is information that was apparently not available during the original Appendix K rulemaking.

In view of the regulatory history for Appendix K, the Commission now believes that the 2-percent margin embodied in the requirement for a 102-percent assumed power level in Appendix K was based solely on uncertainties associated with the measurement of reactor power level.

Reduction in 102 Percent Assumed Power Level

The Commission believes that other requirements of Appendix K modeling contain substantial conservatisms of much greater magnitude than the 2 percent margin embodied in the requirement for a 102 percent assumed power level. This point was discussed in "Conservatisms in Appendix K ECCS Evaluation Model," above.

The Commission is also aware of new information gained since the 1974 rulemaking which shows that the Appendix K model contains additional conservatisms not recognized in 1974. Evidence from experiments designed to simulate LOCA phenomena suggest that these conservatisms added hundreds of degrees Fahrenheit to the prediction of peak fuel cladding temperature than would actually occur during a LOCA. The significant conservatism was necessary when the rule was written because of a lack of experimental evidence at that time with respect to the relative effects of analysis input parameters, including pre-accident power level. Since that time, there has been substantial additional research on LOCA. NUREG–1230, "Compendium of ECCS Research for Realistic LOCA Analysis," December 1988, contains the technical basis for improved understanding of LOCA progression and ECCS evaluation gained after the ECCS rule was issued. The NUREG includes a discussion of the basis for uncertainties in detailed fuel bundle power calculations as part of the consideration of overall calculational uncertainty inherent in best-estimate evaluations. Chapters 7 and 8 of the NUREG include consideration of the changes in licensed power level that could result from application of best-estimate evaluation methods. The discussion includes an estimated sensitivity of predicted peak clad temperature (PCT) associated with changes in pre-accident power level. From that estimate, the NRC expects peak cladding temperature changes of approximately 15 °F to result from 1-percent changes in plant power level that could result from the final rule.

In view of: (i) Substantial conservatisms known in 1974 that were embodied in the Appendix K requirements for ECCS evaluations; (ii) new information developed since the 1974 rulemaking which shows additional conservatism in the Appendix K modeling requirements beyond that understood by the Commission when it adopted the 1974 rule; and (iii) the relative insensitivity of the calculated clad temperatures to assumed power level, the Commission concludes that it is acceptable to allow a reduction in the currently-required 102 percent power level assumption if justified by the actual power level measurement instrumentation uncertainty. Accordingly, the Commission is amending the Appendix K requirement for an assumed 102 percent power level. This amendment allows a licensee to use an assumed power level of less than 102 percent (but not less than 100 percent), if the licensee has determined that the uncertainties in the measurement of core power level justifies the reduced margin.

Calorimetric Uncertainty and Feedwater Flow Measurement

The NRC staff has approved an exemption to the 102-percent power level requirement for Comanche Peak Units 1 and 2. The basis for the action is application of upgraded feedwater flow measurement technology at the plant. As indicated, the prospect of additional licensees requesting similar action has prompted the final rule. Other methods, systems, or analyses could be used as the basis for demonstrating reduced power measurement uncertainty.

In most nuclear power plants, operators obtain a continuous indication of core thermal power from nuclear instruments that provide a measurement of neutron flux. The nuclear instruments must be periodically calibrated to counteract the effects of changes in flux pattern, fuel burnup, and instrument drift. Steam plant calorimetry, which is the process of performing a heat balance around the nuclear steam supply system (called a calorimetric), is used to determine core thermal power and is the basis for the calibration. The differential pressure across a venturi installed in the feedwater flow path is a key element in the calorimetric measurement. Some plants use this calorimetric value directly to indicate thermal power; the nuclear instruments are used as anticipatory indicators for transients and for reactivity adjustments made with the control rods.

The system in use at Comanche Peak Units 1 and 2 is the Leading Edge Flowmeter (LEFM), manufactured by Caldon, Inc. The LEFM system is an ultrasonic flow meter that measures the transit times of pulses traveling along parallel acoustic paths through the flowing fluid. LEFM technology has been employed in non-nuclear applications, such as petroleum, chemical, and hydroelectric plants for several years. This operating experience will provide reliability data, supplementing data from nuclear applications. Additional information on the Comanche Peak Appendix K exemption and on the Caldon, Inc. LEFM system appears in safety evaluations issued by the NRC staff on March 8, 1999, and May 6, 1999.

The NRC issued a safety evaluation on March 20, 2000, on the ABB Combustion Engineering ultrasonic flow-measuring system known as Crossflow. The Crossflow system is expected to be part of a licensee amendment request for power uprate in the near future.

Public Comment

In the proposed rulemaking (64 FR 53270; October 1, 1999), the NRC sought comments from the public on four issues related to the revision of Appendix K. The NRC received comments from four utility companies, the Nuclear Energy Institute (NEI), and Caldon, Inc., manufacturer of the LEFM system. All of the commenters supported the proposed rule. NEI and Caldon offered comments on the four issues that the Commission included in the proposed rule. NEI and the New York Power Authority commented on several other issues as well.

The issues that accompanied the proposed rule were:

1. The current rule states that the required 2-percent analysis margin is to account for "*such* uncertainties *as* instrumentation error * * *." (emphasis added). This suggests that the 2-percent margin was intended to account for other sources of uncertainty in addition to instrumentation error. However, explicit documentation of the basis for the value of the margin does not appear to be contained in the rulemaking record for the original 1974 ECCS rulemaking. The Commission was interested in whether there were other sources of uncertainty, relevant to sources of heat following a LOCA, that should be considered when licensees seek to reduce the margin in the Appendix K requirement for assumed power.

As discussed in the section entitled, "Conservatisms in Appendix K ECCS Evaluation Model," the Commission considered the rulemaking historical record for Appendix K and concluded that instrument uncertainty was likely the only source of uncertainty that was to be accounted for by the 2-percent margin. NEI and Caldon have not identified other sources of uncertainty, relevant to sources of heat following a LOCA, that are connected with the power level assumption.

2. Were there rulemaking alternatives to the proposed rule that were not considered in the regulatory analysis?

The Commission considered rulemaking alternatives in the accompanying regulatory analysis. The alternatives were: (i) No rule change; (ii) removal of the 102 percent requirement while requiring justification of a power level margin; (iii) the approach taken in the amended rule to maintain the 102 percent requirement and offer the option to reduce the margin; (iv) elimination of the power level margin; and (v) broad revision of Appendix K addressing all analysis requirements. Additional alternatives were not identified in the comments received for the proposed rule.

3. What criteria should be used for determining whether a proposed reduction in the 2 percent power margin has been justified, based upon a determination of instrumentation error? For example, should a demonstrated instrumentation error of 1 percent in power level be presumptive of an acceptable reduction in assumed power margin of 1 percent?

The comments from NEI on this point emphasized that any criteria developed to evaluate proposed reductions in ECCS analysis power margin should be based only on the instrumentation error associated with power measurement. NEI said that the conservatism inherent in the ECCS analysis requirements embodied in Appendix K provide sufficient margin to maintain safety so that instrumentation uncertainty should be the only basis for the power level assumption. The comments also stated that the overall impact on safety should be considered and that degradation in safety should not be allowed.

The Commission agrees that the main criteria determining the suitability of proposed power level margin reductions should be the details associated with uncertainties in power level measurement. The Commission also agrees that the overall impact on plant safety should be considered, preferably in a risk-informed manner. However, the commenter contended that a lower probability of exceeding the analyzed power level translates to an overall improved level of safety at a facility. The Commission does not necessarily equate a lower probability of exceeding an analysis limit with improved safety for facilities that obtain approvals to increase reactor thermal power or make other changes based on the amendment. For example, when plants obtain power uprates in conjunction with the relaxation in the amended rule, other factors come into play that may reduce the overall margin of safety, albeit probably only slightly for the small power increases anticipated with the amendment. Such changes in safety margin, if small and controlled, can be acceptable in light of other substantial conservatisms or associated risk-related information.

Caldon offered detailed comments on this issue. Their comments went beyond general instrumentation uncertainty considerations by proposing a list of criteria that appeared to be based on application of the LEFM to power measurement at a plant. Although the Commission considers the criteria provided by Caldon to be helpful, the Commission is not yet prepared to formalize any criteria for evaluating reductions in the power level margin for ECCS analysis. The safety evaluations associated with the Appendix K exemption and power uprate for Comanche Peak granted to TXU Electric Company set forth basic review criteria, including many of those proposed by Caldon. In those reviews, the NRC staff referred to available instrumentation guidance such as the Instrument Society of America Standard ISA 67.04, 1982, "Safety-Related Instrumentation Used in Nuclear Power Plants," and NRC Regulatory Guide 1.105, Revision 2, "Instrument Setpoints for Safety-Related Systems."

The NRC staff intends to gain further experience with licensee proposals that pursue the relaxation offered by the amendment before deciding whether a regulatory guide providing detailed acceptance criteria needs to be developed. Licensee proposals may involve use of advanced flow measurement systems or other approaches to determine the level of power measurement uncertainty and to reduce it. However, the Commission does not believe that generic acceptance criteria should be too closely based on any particular measurement technology or analysis method.

4. How should the rule address cases in which licensees determine that power measurement instrument error is greater than 2 percent?

Both NEI and Caldon offered comments on this issue. Caldon maintained that current regulatory processes provide a sufficient basis for dealing with such situations. NEI recommended that licensees should conduct Appendix K ECCS evaluations at rated thermal power level plus the value of power measurement uncertainties, regardless of the magnitude of the uncertainty. The comments clearly stated that this position also applies for uncertainties determined to be greater than 2 percent. NEI considered the need for licensees to ensure that safety analyses are valid for their facility. According to NEI, if the required margin for power level measurement were found to be insufficient to account for actual uncertainty levels, then licensees must take appropriate action, including lowering the operating power level. NEI offered alternatives for licensees to accommodate uncertainties above 2 percent, including demonstration that the PCT margin for a facility could accommodate greater-than-expected uncertainty. Also, NEI indicated that other conservatisms in Appendix K methodologies could be applied to "offset" the excessive power measurement uncertainty.

The Commission agrees that licensees who find that the power measurement uncertainty for their facilities is greater than expected should take action to ensure that their plant is operated within the assumptions used in safety analyses. This follows from the requirement in 10 CFR 50 Appendix B, section III, "Design Control." The Appendix B requirement states that design control measures will be applied to items such as accident analyses, and that design changes shall be subject to design control measures. Therefore, licensees must take action if the power measurement uncertainty is greater than typically expected or as determined in a plant-specific analysis. The expected magnitude of uncertainty at a facility could be the 2-percent margin that is preserved in the final rule, or it could be based on a plant-specific analysis supporting a smaller value. As already considered, the basis for the value in the rule is not clearly illuminated in the rulemaking history of Appendix K. However, the Commission believes that the Appendix K value represents a typical value for power measurement uncertainty, unless demonstrated otherwise for a particular facility.

The Commission does not believe that it is necessary to allow application of safety margins based on other conservative factors in an Appendix K ECCS evaluation to offset excessive uncertainties discovered in power measurement for a plant. By proposing

to use safety margin "offsets" to justify higher-than-expected power measurement uncertainties, NEI is proposing an alternative to Appendix K ECCS evaluation methods already permitted by § 50.46. The Commission considers the available analysis alternatives offered by § 50.46 (*i.e.*, those based on Appendix K and the so-called best estimate methods) to offer sufficient flexibility to licensees without introducing large complexities to the review and approval process that could be anticipated if Appendix K were to be applied in a "piecemeal" fashion.

The Commission originally instituted the ECCS evaluation requirements with the understanding that substantial conservatisms existed. Later, the relative contributions of various conservative factors were estimated on a largely generic basis to demonstrate the feasibility of best-estimate evaluations. However, when the revisions to § 50.46 were considered in 1988, the Commission deliberately maintained two distinct options: (i) Licensees could use the method defined by Appendix K; or (ii) they could develop a best-estimate approach. The alternatives discussed in the NEI comment can be accommodated by a licensee using the best-estimate option offered by § 50.46, rather than applying Appendix K in a "piecemeal" fashion.

On the basis of the "best-estimate" alternative to Appendix K requirements available in § 50.46, the Commission takes the position that Appendix K requirements should not be applied in a "piecemeal" fashion, as discussed in the NEI comment. Rather than searching for customized adjustments to Appendix K requirements, licensees should develop a "best-estimate" method, as permitted in § 50.46. The Commission position does not present licensees with an onerous burden. Licensees discovering that actual power measurement uncertainty at their plant is greater than the uncertainty assumed in safety analysis can take corrective action to address the problem while continuing plant operation. For example, plant power level may be reduced while the problem is addressed. Therefore, in the final rule the Commission has not adopted the NEI approach of applying offsetting uncertainties.

The comments received from NEI addressed four additional areas:

1. *Uncertainties from additional heat sources.* NEI commented that utilities would be able to use the amended rule to reduce the decay heat input used in Appendix K evaluations. NEI proposed that licensees could use the power measurement uncertainty to, "ensure that the expected decay heat bounds the full rated plant power plus the uncertainty value."

The NEI comment expands the scope of the proposed revision to Appendix K, bringing into consideration decay heat uncertainty, which is a separate analysis requirement in the rule. The Commission agrees that the decay heat level used in the Appendix K analysis could be reduced commensurate with a lower assumed power level. However, the reduced power level assumption must be justified by an acceptable analysis of the power measurement uncertainty. Also, the decay heat level used in the analysis must continue to meet the requirement in Appendix K(I)(A)(4), "Fission Product Decay." Discussion of the uncertainty involved with decay heat value required by Appendix K(I)(A)(4) is beyond the scope of this rulemaking. Licensees who wish to address the uncertainty of the decay heat level in their ECCS analysis should develop a "best-estimate" method which addresses uncertainties of all of the ECCS analysis parameters.

2. *Consistency among NRC documents.* NEI pointed out that other Commission documents besides Appendix K contain the 1.02 power level multiplier. In the regulatory analysis accompanying the rule, the Standard Review Plan sections and Regulatory Guide 1.49 are listed as part of the current regulatory framework considered during the rulemaking.

The NRC staff agrees with the comment that changes to guidance documents may be necessary and will make the necessary revisions to these documents to maintain consistency with the amended rule.

3. *Requirement for upgrade to feedwater flow measurement.* NEI commented that the proposed rule appeared to be based upon application of upgraded feedwater flow technology. NEI recommended that the rule or associated guidance make clear that availability of the relaxation offered by the final rule is not restricted to licensees applying upgraded flow measurement technology.

The preamble for the proposed rule does indeed discuss application of improved flow measurement technology. This discussion is appropriate because this new technology is the impetus for the exemption granted to one licensee and is a key justification for the Commission action in amending the current rule. In the section, "Calorimetric Uncertainty and Feedwater Flow Measurement," the Commission pointed out that methods other than application of improved flow measurement technology could be used as the basis for demonstrating reduced power measurement uncertainty. Also, in its discussion of the Caldon comments on issue number 3, the Commission acknowledged that licensee proposals may involve use of advanced flow measurement systems or other approaches. To prevent misinterpretation of the rule, the Section-by-Section analysis has been modified to reiterate that other methods not considered in the rulemaking could be used to justify a reduced power measurement uncertainty allowance. Although various approaches to reduce the uncertainty involved with PCT calculation may be used, the only uncertainty considered under this amendment is that associated with power level measurement.

4. *Reportability under 10 CFR 50.46(a)(3).* NEI cited the Section-by-Section analysis of the proposed rule, where the Commission stated that, "estimated changes in ECCS performance due to final analysis inputs are reported under section 50.46 (a)(3), at least annually." NEI recommended clarification of the statement to reflect an interpretation of § 50.46 so as to relate only to evaluation model parameters, but not to plant design parameters. NEI contended that plant parameters change from cycle to cycle and that changes in PCT caused by plant specific input parameter changes to design information fall outside the scope of reportability under 10 CFR 50.46(a)(3).

Although the Commission accepts that the results of ECCS evaluations could change as a result of cycle specific variations in model inputs, the Commission does not agree with NEI on this point. In their comment, NEI drew a distinction between design inputs and model inputs to ECCS evaluations. The amended rule does not change the reporting requirements of 10 CFR 50.46 for changes to ECCS evaluations. The regulations are clear on the definition of an ECCS evaluation model and when reports are required. 10 CFR 50.46 (c)(2) defines ECCS evaluation models and provides a list of the elements including, "one or more computer programs and all other information necessary for application of the calculational framework to a specific LOCA, such as * * * values of parameters, and all other information necessary to specify the calculational procedure." In other words, the ECCS evaluation model is comprised of the computer code or codes, the input parameters (including plant-specific design parameters), and the calculational results. The Commission should be informed as described in 10 CFR 50.46(a)(3) when even a relatively small change to the calculational framework is made, especially when the PCT result is affected. As discussed in the statement of considerations to the September 16, 1988, final rule (53 FR 35996), the Commission needs to be cognizant of such changes to be able to confirm licensee or vendor assessments of the significance of the changes and to ensure that approved models continue to be used.

10 CFR 50.46 (a)(ii) contains an unambiguous requirement that changes to the ECCS evaluation must be reported at least annually: "For each change to or error discovered in an acceptable evaluation model or in the application of such a model that affects the temperature calculation, the applicant or licensee shall report the nature of the change or error and its estimated effect on the limiting ECCS analysis to the Commission at least annually as specified in § 50.4." Therefore, on the basis of the definition of an evaluation model in § 50.46, the Commission does not accept the distinction made by NEI between "model parameters" and "design parameters." Based on the requirements of § 50.46, changes to the ECCS evaluation model under the amended Appendix K rule which affect the temperature calculation must be reported at least annually.

The comments from one licensee, the New York Power Authority (NYPA), considered two areas not already discussed:

1. *Other potential benefits.* NYPA commented that licensees could seek benefits other than increasing licensed power under the amended rule. The commenter offered two examples of such benefits—revised containment analyses conducted at power levels below 102 percent power and relaxation of operating restrictions on ultimate heat sink temperatures.

The Commission agrees that licensees could request the relaxation offered by the amended rule while not pursuing a power level increase. In the Background section the Commission recognized that other benefits are available to licensees and that power level increase is just one option. The examples offered by the NYPA comments may be suitable to a licensee, depending on plant characteristics and plant-specific safety analyses.

2. *Changes to technical specifications.* NYPA interpreted statements in the proposed rule to suggest that licensees pursuing the relaxation offered in the amendment would need to change their plant technical specifications to include a limiting condition for operation for new feedwater flow instrumentation. Further, the comments suggested that clarification was needed to address when license amendments were required for changes associated with the rule.

In the Section-by-Section Analysis, the Commission discusses technical specification modifications that might be necessary when a power measurement uncertainty reduction is used in safety analyses. Typically, when an ECCS methodology is changed, a revision is made to the technical specification list of references associated with plant safety analysis methods. Technical specifications for nuclear power plants do not contain explicit requirements for feedwater flow instrumentation. The Commission does not believe that technical specification requirements for feedwater flow instruments are necessary for licensees to use the relaxation offered by the amended rule. Clarification regarding this point has been added to the Section-by-Section Analysis.

Section-by-Section Analysis

Appendix K to Part 50—ECCS Evaluation Models (I)(A)—Sources of Heat During the LOCA

This section is amended by removing words from the first sentence in the section to specifically associate the power level requirement with instrumentation error, and by adding a sentence immediately following the first sentence in the section. The new sentence indicates that licensees may assume a power level lower than 102 percent, but not less than 100 percent, if the proposed lower alternative value can be shown to account for core thermal power measurement instrumentation uncertainty. Licensee proposals may involve use of advanced flow measurement systems or other approaches to determine the level of power measurement uncertainty and to support reduction of the power level assumption. Only the uncertainty associated with power level measurement is considered in this amendment.

Appendix K, part II (1)(a) requires that the values of analysis parameters or their basis be sufficiently documented to allow NRC review. The requirement applies to all analysis input parameters, including those related to other plant instrumentation, such as temperature and pressure. Changes to other inputs are documented in the same manner as the power measurement uncertainty would be documented under the final rule. NRC review and approval is not needed to change a parameter in an approved ECCS evaluation model unless the change is associated with technical specification or license condition modfications, or a final safety analysis report change not covered by § 50.59, "Changes, tests and experiments." Estimated changes in ECCS performance due to revised analysis inputs are reported under § 50.46 (a)(3), at least annually. As discussed in the Statement of Considerations for a final rule amending Appendix K (53 FR 36001; September 16, 1988), the annual reports keep NRC apprised of changes. This should ensure that the NRC staff can evaluate a licensee's assessment of the significance of changes and maintain cognizance of modifications made to NRC-approved evaluation models. The licensee must include revised parameters and other changes in the ECCS evaluation model as required by § 50.46 (a)(3) when a single change or an accumulation of changes is expected to affect peak cladding temperature by 50°F or more. The basis for the revised analysis parameter (i.e., the assumed power level) should be included in documentation of the evaluation model, as required by Appendix K, Part II (1)(a).

Licensees could take advantage of the amended rule without a change to technical specifications or to the plant license by simply updating the ECCS analysis and following the reporting requirements of § 50.46. However, in most cases the NRC expects that the analysis supporting the power measurement uncertainty, as well as the description of the relevant instrumentation and associated plant-specific parameters involved in the uncertainty analysis, would be submitted for NRC review and approval before being used. These requests are expected because most licensees have adopted Generic Letter 88–16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications." The generic letter provided guidance for licensees to transfer cycle-specific parameters from their technical specifications to a Core Operating Limits Report (COLR). Licensees following the generic letter guidance added an administrative requirement to their technical specifications that specifically identifies NRC-reviewed and approved methods used to determine core operating limits (*e.g.*, topical reports). Because a number of core operating limits are based on LOCA analysis results, ECCS evaluation methods are included in the technical specification list. Therefore, most licensees opting to use the relaxation in the final rule will need to amend technical specifications to include a reference to an NRC-approved topical report that includes the uncertainty

analysis justifying reduced power measurement uncertainty. However, a technical specification requirement specifically related to feedwater flow measurement system operability is not needed.

An additional technical specification consideration for licensees pursuing changes based on the final rule could involve nuclear instrument (NI) requirements. Existing plant technical specifications include surveillance requirements to calibrate the power range NIs based on the calorimetric measuring reactor thermal power. The NIs provide the indication of reactor power used as an input for safety systems. Licensees obtaining the relaxation offered in the final rule are expected to change some operating parameter of the plant, whether it be power level, required ECCS flow, etc. By incorporating the justification of reduced uncertainty in power measurement in the basis for their ECCS analysis, licensees would be placing a condition on an input to the calorimetric. The NI calibration required by the plant licensee would then be based on a calorimetric assuming the reduced power measurement uncertainty. If, for some reason, during the course of plant operation the reduced uncertainty did not apply (*e.g.*, the new feedwater flow meter was no longer operating), the calorimetric would no longer be a valid source of calibration for the NIs. Licensees would need to take action to maintain compliance with their technical specification, for example, by using an alternate input to the calorimetric. The power measurement uncertainties associated with the alternate input would then apply and the plant would need to adjust its operating condition (possibly lower its operating power level) to satisfy the final rule and to maintain the validity of applicable safety analyses. A change to technical specifications for NIs is not required in this situation.

Referenced Documents

Copies of GL–88–16, and CLI–73–39, and "Supplemental Testimony of the AEC Regulatory Staff on the Interim Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Cooled Power Reactors," and "Redirect and Rebuttal Testimony of Dr. Donald H. Roy on Behalf of Babcock & Wilcox," and "Concluding Statement of Position of the Regulatory Staff—Public Rulemaking Hearing on: Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Cooled Nuclear Power Reactors," and NRC safety evaluations are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. GL–88–16 is also available via the Internet at http://www.nrc.gov/NRC/GENACT/GC/index.html#GL.

NUREG–1230 is available from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082 or from the National Technical Information Service, Springfield, VA 22161.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC provides holders of operating licenses for nuclear power plants the option of reducing the assumed reactor power level used in ECCS evaluations. This action constitutes a modification to an existing government-unique standard, 10 CFR part 50, Appendix K issued by the NRC on January 4, 1974. The NRC is not aware of any voluntary consensus standard that could be adopted instead of the government-unique standard. The NRC considered using a voluntary consensus standard. However, an appropriate standard was not identified.

Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, that this regulation is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The action is likely to result in relatively small changes to ECCS analyses or to the licensed power of nuclear reactor facilities. The NRC staff expects that no significant environmental impact will result from the final rule, because licensee actions based on the rule should not significantly increase the probability or consequences of accidents; no changes will be made in the types of any effluents that may be released off site; and there should be no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the action. The action does not involve non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the final rule.

The determination of the environmental assessment is that there will be no significant offsite impact on the public from this action. Also, the NRC has committed itself to complying in all its actions with Executive Order (E.O.) 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," dated February 11, 1994. The NRC has determined that there are no disproportionately high and adverse impacts on minority and low-income populations. The NRC uses the following working definition of environmental justice: Environmental justice means the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or educational level with respect to the development, implementation and enforcement of environmental laws, regulations, and policies. In the letter and spirit of E.O. 12898, the NRC requested public comments on environmental justice considerations or other questions related to this rule, but none were received.

Paperwork Reduction Act Statement

This final rule increases the burden on licensees opting to use a reduced power level assumption for ECCS analysis (i.e., below 102 percent) to include the change in their annual report required under 10 CFR 50.46 (a)(3)(ii). The public burden to modify the annual report is estimated to average one-half hour per response. The estimated public burden for record keeping, analysis, and other effort associated with this information collection will be included in the Office of Management and Budget FY2000 Information Collection Budget. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. Copies of the regulatory analysis may be obtained as indicated in the **ADDRESSES** section.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. This final rule would affect only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the definition of "small entities" found in the Regulatory Flexibility Act or within the size standards established by the NRC in 10 CFR 2.810.

Backfit Analysis

The NRC has determined that the backfit rule in 10 CFR 50.109 does not apply to this final rule and that a backfit analysis is not required for this amendment because the change does not involve any provisions that impose backfits as defined in 10 CFR 50.109(a)(1). The final rule establishes an alternative approach for ECCS performance evaluations that may be voluntarily adopted by licensees. Licensees may continue to comply with existing requirements in Appendix K. The final rule does not impose a new requirement on current licensees and therefore, does not constitute a backfit as defined in 10 CFR 50.109(a)(1).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Sections 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Appendix K to part 50 is amended by revising the introductory paragraph of I. A., "Sources of heat during the LOCA," to read as follows:

Appendix K to Part 50—ECCS Evaluation Models

I. Required and Acceptable Features of the Evaluation Models

A. *Sources of heat during the LOCA.* For the heat sources listed in paragraphs I.A.1 to 4 of this appendix it must be assumed that the reactor has been operating continuously at a power level at least 1.02 times the licensed power level (to allow for instrumentation error), with the maximum peaking factor allowed by the technical specifications. An assumed power level lower than the level specified in this paragraph (but not less than the licensed power level) may be used provided the proposed alternative value has been demonstrated to account for uncertainties due to power level instrumentation error. A range of power distribution shapes and peaking factors representing power distributions that may occur over the core lifetime must be studied. The selected combination of power distribution shape and peaking factor should be the one that results in the most severe calculated consequences for the spectrum of postulated breaks and single failures that are analyzed.

* * * * *

Dated at Rockville, Maryland, this 26th day of May 2000.

For the Nuclear Regulatory Commission.

J. Samuel Walker,

Acting Secretary of the Commission.

[FR Doc. 00–13745 Filed 5–31–00; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA is issuing a final rule amending its share insurance rules. The amendments simplify and clarify these rules and provide parity between them and the Federal Deposit Insurance Corporation's (FDIC) deposit insurance rules. Specifically, the amendments: increase available share insurance coverage on some revocable trust accounts; simplify the method for determining the insurance coverage a member has in one or more joint accounts; treat a revocable trust account held in connection with a living trust as any other revocable trust accounts, if the living trust meets all requirements pertaining to revocable trusts; provide separate insurance coverage for qualifying joint revocable trust accounts; treat Roth IRAs as traditional IRAs and Education IRAs as irrevocable trusts for insurance purposes; liberalize insurance coverage for some kinds of public unit accounts; clarify the degree of control state or local law has on share insurance determinations and revise the substance and format of the Appendix to part 745.

DATES: This rule is effective July 3, 2000.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In accordance with NCUA's regulatory review process, at year end 1998, NCUA staff identified part 745 as one of its regulations in need of updating, clarification and simplification. On April 15, 1999, the NCUA Board issued an interim final rule adopting changes to its share insurance rules regarding joint accounts and revocable trust accounts. 64 FR 19685 (April 22, 1999). The FDIC adopted similar changes to its deposit insurance rules on March 23, 1999. 64 FR 15653 (April 1, 1999). When issuing the interim rule, NCUA was aware that additional changes to part 745 were necessary and would be forthcoming,

but believed it was important to implement the interim rule at that time to maintain parity between NCUA's and FDIC's insurance programs. Subsequently, NCUA conducted a more comprehensive review of part 745. NCUA issued a proposed rule on November 18, 1999 that suggested additional amendments as discussed below. 64 FR 66812 (November 30, 1999).

The interim and proposed rules solicited comments from the public. Those comments have been given careful consideration and are reflected in the final amendments to the interim and proposed rules discussed below.

1. Interim Rule

The interim rule amended the share insurance rules pertaining to revocable trust accounts and joint accounts. Revocable trust accounts are accounts that evidence an intention on the part of the owner to pass funds onto one or more beneficiaries upon the owner's death. They include payable-on-death accounts, and tentative or "Totten" trust accounts. Prior to the interim rule, these accounts were insured separately from other accounts of the owner only if the beneficiary was the owner's spouse, child or grandchild. If there were multiple beneficiaries, and each beneficiary was either a spouse, child or grandchild of the owner, then the account would have been insured up to $100,000 for each beneficiary. For example, if an account was held by a husband "in trust for" his wife and three children, then the account would have been insured for up to $400,000. That coverage was separate from any insurance the husband, wife or children may have had on their own accounts. For these accounts, insurance was provided on a per beneficiary basis for the spouse, child or grandchild. If, however, prior to the interim rule, a credit union member named a parent or sibling as a beneficiary, a common practice particularly for single individuals, then the account would have been added to the individual account of the owner and insured up to $100,000. There was no separate coverage for those beneficiaries even though there was a close familial relationship.

The interim rule added parents and siblings to the list of family members who qualify as beneficiaries for separate coverage. The interim rule also clarified that the degree of kinship for named beneficiaries includes relationships through blood, adoption or by virtue of remarriage.

Prior to the interim rule, NCUA's joint account regulation did not expressly refer to a two-step process in determining insurance coverage for those accounts, as did the FDIC's rule. Insurance coverage was determined, however, by applying two regulatory subsections where an individual had several joint accounts, some with different joint owners. First, under § 745.8(d), joint accounts with the same combination of owners were added together and insured up to $100,000. Even though there was more than one account, if the owners were the same, the accounts were treated as one. Then, under § 745.8(e), a person's interest in all joint accounts he or she owned with different combinations of owners was added together and insured up to $100,000. Thus, NCUA followed the same type of two-step process used by the FDIC.

The application of this process resulted in certain inequities. If a person had ownership interests in several different joint accounts, each with a different combination of joint owners, his or her interest in each of those accounts would have been added together and insured to $100,000. The same would have been done for each of the other joint owners as well. If instead, that person had had one or more joint accounts with the same combination of joint owners, the maximum insurance available to all of those joint owners combined would have been limited to $100,000. Thus, in one instance, each joint owner's interest could have been insured up to $100,000, while in the other, total coverage on the account was limited to $100,000, notwithstanding the amount of each of the joint owner's interest.

The interim rule simplified coverage on joint accounts. It is no longer necessary to add together all joint accounts owned by the same combination of individuals. Under the interim rule, each person's interest in all qualifying joint accounts will be added together and insured to a maximum of $100,000. The interim rule also eliminated the signature requirement for share certificates and accounts maintained by certain fiduciaries for joint owners as long as the credit union's records reflect that there are joint owners.

2. Proposed Rule

The proposed rule suggested amendments to the share insurance rules regarding living trusts, joint revocable trusts, IRA accounts, public unit accounts, guardian accounts, the application of local law to share insurance determinations and the substance and format of the Appendix to part 745.

A living trust is a formal trust that an owner creates and retains control over during his or her lifetime. NCUA proposed to treat a revocable trust account that is held in connection with a living trust in the same manner it treats all other revocable trust accounts, if the living trust otherwise meets all requirements pertaining to revocable trust accounts. Living trusts that include conditions that could prevent a beneficiary from acquiring a vested and non-contingent interest in the account funds upon the owner's death, however, would not qualify for this coverage.

Joint revocable trust accounts are revocable trust accounts, as described in § 745.4 of NCUA's regulations, established by more than one owner and held for the benefit of others. NCUA proposed to provide separate insurance coverage for qualifying accounts of this kind.

NCUA also proposed to clarify the degree of control that state or local law has on share insurance determinations to maintain uniform national rules and consistent insurance determinations. When the proposed rule was issued, § 745.2(a) provided that, to the extent local law enters into a share insurance determination, the law of the jurisdiction in which the insured credit union's principal office is located will govern. The proposal indicated that this meant the law of the jurisdiction in which the insured credit union's principal office is located will control over the law of other jurisdictions where the insured credit union may have branch offices or service facilities. It further clarified that this provision in no way effects the supremacy of federal law.

NCUA proposed to include Roth IRAs and Education IRAs among member accounts eligible for share insurance. Federal tax laws first made these accounts available to consumers on January 1, 1998. The proposal also stated that although both are colloquially known as IRA accounts, only Roth IRAs would be treated as traditional IRAs, for share insurance purposes, under § 745.9–2 of NCUA's regulations. Education IRAs would be treated as irrevocable trust accounts, for share insurance purposes, under § 745.9–1 of NCUA's regulations.

NCUA proposed to liberalize its share insurance coverage for some kinds of public unit accounts. At the time the proposal was issued, public funds were generally separately insured up to $100,000 if invested by an official custodian of funds of: (1) The United States; (2) any state of the United States or any county, municipality, or political subdivision thereof; (3) the District of Columbia; (4) specified territories or possessions of the United States; and (5) tribal funds of any Indian tribe. NCUA proposed to distinguish share draft accounts from share certificate and regular share accounts in this context. The result would be to provide separate insurance coverage up to $100,000 for share draft accounts, and up to an additional $100,000 for share certificate and regular share accounts combined. This more liberal coverage would only be available where an official custodian establishes public unit accounts in an authorized, federally-insured credit union that is located within the jurisdiction from which the custodian's authority is derived. Accounts established outside of that jurisdiction would be limited to the current $100,000 limit without regard to whether the funds are held in share draft accounts or share certificate and regular share accounts.

Funds held in the name of a guardian, custodian or conservator for the benefit of a ward or minor are insured up to $100,000 in the aggregate, separately from any other accounts of the guardian, custodian, conservator, ward or minor. FDIC, however, treats these accounts as agency or nominee accounts and does not provide separate insurance coverage. Rather, FDIC adds the guardian account together with the individual accounts of the beneficiary of the guardian account and insures that aggregate up to $100,000. NCUA proposed to treat these accounts in a manner consistent with FDIC's treatment. This would have resulted in a reduction in insurance coverage.

The Appendix to part 745 provides examples that illustrate the application of share insurance coverage. The Appendix is not expected to answer every share insurance question that could conceivably be asked. Rather, its function is to address and clarify the most common insurance coverage issues in a simple and manageable format. NCUA proposed to enhance the usefulness of the Appendix by incorporating additional information and examples and putting it into an easy to read question-and-answer format.

B. Summary of Comments

1. Interim Rule

NCUA received twelve comment letters regarding the interim rule. Four from credit union trade associations, three from federal credit unions, two from banking trade associations, one from a state chartered credit union, one from an association of state credit union supervisors and one from a law firm. All of the commenters generally supported the interim rule. The commenters also raised other points.

Eight commenters offered their opinions whether examples illustrating insurance coverage should be moved to the body of the regulations or kept in their present location in the Appendix to the regulations. There was an even split of opinion among the commenters. The examples will remain in the Appendix where they are easily accessible and cannot be confused as part of the regulatory language.

Three commenters expressed concern over NCUA's use of the term "revocable trust account." They noted that there are many different terms used to describe this kind of account and that this might cause confusion among some credit unions. NCUA believes the language used in § 745.4 of NCUA's rules will minimize any confusion in this context. Additionally, "revocable trust account" is the term used in the FDIC's deposit insurance rules and its use in NCUA's rules should avoid confusion for the public when comparing coverage.

Several general comments pertaining to livings trusts and joint revocable trusts were also received in connection with the interim rule. Those comments have been considered in conjunction with the comments to the proposed rule as discussed below.

2. Proposed Rule

NCUA received seventeen comment letters regarding the proposed rule. Eight from credit union trade associations, seven from federal credit unions, one from an association of state credit union supervisors and one from a banking trade association. All of the commenters generally supported the proposed rule. The commenters also raised other points.

Three commenters expressed concern over the proposal to exclude from revocable trust insurance coverage any living trust that includes conditions that could prevent a beneficiary from acquiring a vested and non-contingent interest in the account funds upon the owner's death. Specifically, they noted that credit unions might have difficulty determining whether a living trust contains such a defeating contingency. NCUA does not intend for credit unions to make this kind of determination. The burden is on the member to create a living trust that qualifies for insurance coverage. Credit unions may choose to advise members to have their living trusts reviewed by private counsel for legal and regulatory sufficiency prior to account opening.

Two commenters asked NCUA to clarify how a one-owner living trust account or other revocable trust account would be insured if there were qualifying and non-qualifying beneficiaries. Assuming the living trust is treated as any other revocable trust account and eligible for coverage, shares in the account attributable to the qualifying beneficiaries would be insured up to $100,000 for each qualifying beneficiary. Shares in the account attributable to the non-qualifying beneficiaries would be added to any individual accounts of the owner and insured up to $100,000.

Two commenters questioned whether the Education IRA should be insured as an irrevocable trust because, under some circumstances, the beneficiary of an Education IRA could be changed to a member of the designated beneficiary's family. The structure and exclusive purpose of Education IRAs, and the restrictions imposed on them by the Internal Revenue Service, demonstrate that these trusts are irrevocable in nature. We do not believe a limited ability to change beneficiaries diminishes the irrevocable nature of these trusts or warrants treating them as anything other than irrevocable. The FDIC also insures Education IRAs as irrevocable trusts.

Nine commenters strongly opposed the proposal to eliminate separate insurance coverage for guardian accounts. They contended that separate insurance for guardian accounts poses no threat to the National Credit Union Share Insurance Fund and that eliminating separate coverage would create more confusion and problems for credit union members than achieve good. They also noted that, while parity between NCUA's and FDIC's insurance is generally desirable, the two programs need not be identical especially to the detriment of credit union members. We find these arguments persuasive. Accordingly, NCUA has determined not to take action to eliminate the existing separate coverage for custodial accounts at this time.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any final regulation may have on a substantial number of small entities. For purposes of this analysis, credit unions under $1 million in assets will be considered small entities. As of June 30, 1999, there were 1,690 such entities with a total of $807.3 million in assets, with an average asset size of $0.5 million. These small entities make up 15.6 percent of all credit unions, but

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only 0.2 percent of all credit union assets.

The NCUA Board has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The reason for this determination is that the final rule clarifies and simplifies the share insurance regulations. It does not impose any additional costs or significant regulatory requirements on small entities. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will apply to all federally-insured credit unions, but it will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR Part 745

Credit unions, Pension plans, Share insurance, Trustee.

By the National Credit Union Administration Board, this 24th day of May 2000.

Becky Baker,

Secretary of the Board.

For the reasons stated above, the interim final rule amending 12 CFR part 745 that was published at 64 FR 19685 on April 22, 1999 is adopted as a final rule without change. NCUA also amends 12 CFR part 745 as follows:

PART 745—SHARE INSURANCE AND APPENDIX

1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

2. Section 745.2(a) is amended by revising the last sentence to read as follows:

§ 745.2 General principles applicable in determining insurance of accounts.

(a) * * * While the provisions of this part govern in determining share insurance coverage, to the extent local law enters into a share insurance determination, the local law of the jurisdiction in which the insured credit union's principal office is located will control over the local law of other jurisdictions where the insured credit union has offices or service facilities.

* * * * *

3. Section 745.4 is amended by adding paragraphs (e) and (f) to read as follows:

§ 745.4 Revocable trust accounts.

* * * * *

(e) *Living trusts.* Insurance treatment under this section also applies to revocable trust accounts held in connection with a so-called "living trust," meaning a formal trust that an owner creates and retains control over during his or her lifetime. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the share account held in connection with the living trust may be eligible for share insurance under this section, assuming compliance with all the provisions of this part. If the living trust includes a defeating contingency that relates to a beneficiary's interest in the trust assets, then insurance coverage under this section will not be provided. For purposes of this section, a defeating contingency is defined as a condition that would prevent the beneficiary from acquiring a vested and non-contingent interest in the funds in the share account upon the owner's death.

(f) *Joint revocable trust accounts.* Where an account described in paragraph (a) of this section is established by more than one owner and held for the benefit of others, some or all of whom are within the qualifying degree of kinship, the respective interests of each owner held for the benefit of each qualifying beneficiary will be separately insured up to $100,000. The interest of each co-owner will be deemed equal unless otherwise stated in the share account records of the federally-insured credit union. Interests held for non-qualifying beneficiaries will be added to the individual accounts of the owners. Where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, the account will not be insured according to the provisions of this section, but will instead be insured in accordance with the joint account provisions of § 745.8.

4. Section 745.9–1 is amended by adding paragraph (c) to read as follows:

§ 745.9–1 Trust accounts.

* * * * *

(c) This section applies to trust interests created in Education IRAs established in connection with section 530 of the Internal Revenue Code (26 U.S.C. 530).

5. Section 745.9–2(a) is revised to read as follows:

§ 745.9–2 IRA/Keogh accounts.

(a) The present vested ascertainable interest of a participant or designated beneficiary in a trust or custodial account maintained pursuant to a pension or profit-sharing plan described under section 401(d) (Keogh account), section 408(a) (IRA) and section 408A (Roth IRA) of the Internal Revenue Code (26 U.S.C. 401(d), 408(a) and 408A) will be insured up to $100,000 separately from other accounts of the participant or designated beneficiary. For insurance purposes, IRA and Roth IRA accounts will be combined together and insured in the aggregate up to $100,000. A Keogh account will be separately insured from an IRA account, Roth IRA account or, where applicable, aggregated IRA and Roth IRA accounts.

* * * * *

6. Section 745.10 is amended by revising paragraphs (a)(1) through (a)(5) and (b) and adding a second sentence to paragraph (c) to read as follows:

§ 745.10 Public unit accounts.

(a) * * *

(1) Each official custodian of funds of the United States lawfully investing the same in a federally-insured credit union will be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all share draft accounts; and

(ii) Up to $100,000 in the aggregate for all share certificate and regular share accounts;

(2) Each official custodian of funds of any state of the United States or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in the same state will be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all share draft accounts; and

(ii) Up to $100,000 in the aggregate for all share certificate and regular share accounts;

(3) Each official custodian of funds of the District of Columbia lawfully investing the same in a federally-insured credit union in the District of Columbia will be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all share draft accounts; and

(ii) Up to $100,000 in the aggregate for all share certificate and regular share accounts;

(4) Each official custodian of funds of the Commonwealth of Puerto Rico, the Panama Canal Zone, or any territory or possession of the United States, or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively, will be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all share draft accounts; and

(ii) Up to $100,000 in the aggregate for all share certificate and regular share accounts;

(5) Each official custodian of tribal funds of any Indian tribe (as defined in section 3(c) of the Indian Financing Act of 1974) or agency thereof lawfully investing the same in a federally-insured credit union will be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all share draft accounts; and

(ii) Up to $100,000 in the aggregate for all share certificate and regular share accounts;

(b) Each official custodian referred to in paragraphs (a)(2), (3), and (4) of this section lawfully investing such funds in share accounts in a federally-insured credit union outside of their respective jurisdictions shall be separately insured up to $100,000 in the aggregate for all such accounts regardless of whether they are share draft, share certificate or regular share accounts.

(c) * * * Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set aside to discharge a debt owed to the holders of notes or bonds issued by the public unit, any investment of such funds in an account in a federally-insured credit union will be deemed to be a share account established by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the share account will be separately insured up to $100,000.

* * * * *

7. The appendix to part 745 is amended by:

A. Adding a heading to the introductory text;

B. Revising the heading of Part A;

C. Revising the heading of Part B and adding Example 4;

D. Revising the heading of Part C;

E. Revising the heading of Part D;

F. Revising the heading of Part E, the first introductory paragraph and Examples 4 through 7, and adding new Example 9;

G. Revising the heading of Part F; and

H. Revising the heading of Part G and the second sentence of the seventh introductory paragraph.

The additions and revisions read as follows:

Appendix to Part 745—Examples of Insurance Coverage Afforded Accounts in Credit Unions Insured by the National Credit Union Share Insurance Fund

What Is the Purpose of This Appendix?

* * * * *

A. How Are Single Ownership Accounts Insured?

* * * * *

B. How Are Revocable Trust Accounts Insured?

* * * * *

Example 4

Question: Member H invests $200,000 in a revocable trust account held in connection with a living trust with his son, S, and his daughter, D, as named beneficiaries. What is the insurance coverage?

Answer: Since S and D are children of H, the owner of the account, the funds would normally be insured under the rules governing revocable trust accounts up to $100,000 as to each beneficiary (§ 745.4(b)). However, because this account is held in connection with a living trust whose named beneficiaries are qualifying beneficiaries under § 745.4, it must be scrutinized to determine whether the account complies with all other provisions of this part and whether the living trust contains any defeating contingencies. Assuming there are no defeating contingencies and that the account complies with all other requirements of this part, then it will be treated as any other revocable trust. In this instance, it will be insured up to $100,000 as to each beneficiary (§ 745.4(e)). Assuming that S and D have equal beneficial interests ($100,000 each), H is fully insured for this account.

C. How Are Accounts Held by Executors or Administrators Insured?

* * * * *

D. How Are Accounts Held by a Corporation, Partnership or Unincorporated Association Insured?

* * * * *

E. How Are Public Unit Accounts Insured?

For insurance purposes, the official custodian of funds belonging to a public unit, rather than the public unit itself, is insured as the account holder. All funds belonging to a public unit and invested by the same custodian in a federally-insured credit union are categorized as either share draft accounts or share certificate and regular share accounts. If these accounts are invested in a federally-insured credit union located in the jurisdiction from which the official custodian derives his authority, then the share draft accounts will be insured separately from the share certificate and regular share accounts. Under this circumstance, all share draft accounts are added together and insured to the $100,000 maximum and all share certificate and regular share accounts are also added together and separately insured up to the $100,000 maximum. If, however, these accounts are invested in a federally-insured credit union located outside of the jurisdiction from which the official custodian derives his authority, then insurance coverage is limited to $100,000 for all accounts regardless of whether they are share draft, share certificate or regular share accounts. If there is more than one official custodian for the same public unit, the funds invested by each custodian are separately insured. If the same person is custodian of funds for more than one public unit, he is separately insured with respect to the funds of each unit held by him in properly designated accounts.

* * * * *

Example 4

Question: A city treasurer invests city funds in each of the following accounts: "General Operating Account," "School Transportation Fund," "Local Maintenance Fund," and "Payroll Fund." Each account is available to the custodian upon demand. By administrative direction, the city treasurer has allocated the funds for the use of and control by separate departments of the city. What is the insurance coverage?

Answer: All of the accounts are added together and insured in the aggregate to $100,000. Because the allocation of the city's

funds is not by statute or ordinance for the specific use of and control by separate departments of the city, separate insurance coverage to the maximum of $100,000 is not afforded to each account (§§ 745.1(d) and 745.10(a)(2)).

Example 5

Question: A, the custodian of retirement funds of a military exchange, invests $1,000,000 in an account in an insured credit union. The military exchange, a non-appropriated fund instrumentally of the United States, is deemed to be a public unit. The employees of the exchange are the beneficiaries of the retirement funds but are not members of the credit union. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for $100,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore, $900,000 is uninsured (§ 745.10(a)(1)).

Example 6

Question: A is the custodian of the County's employee retirement funds. He deposits $1,000,000 in retirement funds in an account in an insured credit union. The "beneficiaries" of the retirement fund are not themselves public units nor are they within the credit union's field of membership. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for $100,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore, $900,000 is uninsured (§ 745.10(a)(2)).

Example 7

Question: A county treasurer establishes the following share draft accounts in an insured credit union each with $100,000:

"General Operating Fund"
"County Roads Department Fund"
"County Water District Fund"
"County Public Improvement District Fund"
"County Emergency Fund"

What is the insurance coverage?

Answer: The "County Roads Department," "County Water District" and "County Public Improvement District" accounts would each be separately insured to $100,000 if the funds in each such account have been allocated by law for the exclusive use of a separate county department or subdivision expressly authorized by State statute. Funds in the "General Operating" and "Emergency Fund" accounts would be added together and insured in the aggregate to $100,000, if such funds are for countywide use and not for the exclusive use of any subdivision or principal department of the county, expressly authorized by State statute (§§ 745.1(d) and 745.10(a)(2)).

* * * * *

Example 9

Question: A, an official custodian of funds of a state of the United States, lawfully invests $250,000 of state funds in a federally-insured credit union located in the state from which he derives his authority as an official custodian. What is the insurance coverage?

Answer: If A invested the entire $250,000 in a share draft account, then $100,000 would be insured and $150,000 would be uninsured. If A invested $125,000 in share draft accounts and another $125,000 in share certificate and regular share accounts, then A would be insured for $100,000 for the share draft accounts and $100,000 for the share certificate and regular share accounts leaving $50,000 uninsured (§ 745.10(a)(2)). If A had invested the $250,000 in a federally-insured credit union located outside the state from which he derives his authority as an official custodian, then $100,000 would be insured for all accounts regardless of whether they were share draft, share certificate or regular share accounts, leaving $150,000 uninsured (§ 745.10(b)).

F. How Are Joint Accounts Insured?

* * * * *

G. How Are Trust Accounts and Retirement Accounts Insured?

* * * * *

* * * Although credit unions may serve as trustees or custodians for self-directed IRA, Roth IRA and Keogh accounts, once the funds in those accounts are taken out of the credit union, they are no longer insured.

* * * * *

[FR Doc. 00–13510 Filed 5–31–00; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–109–AD; Amendment 39–11751; AD 2000–11–03]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000, Mystere-Falcon 900, Falcon 900EX, Fan Jet Falcon, Mystere-Falcon 50, Mystere-Falcon 20, and Mystere-Falcon 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Dassault Model Falcon 2000, Mystere-Falcon 900, Falcon 900EX, Fan Jet Falcon, Mystere-Falcon 50, Mystere-Falcon 20, and Mystere-Falcon 200 series airplanes. This action requires revising the Airplane Flight Manual to include speed limitations in the event of failure indications of the pitch feel system. These limitations are intended to mitigate severe pitch oscillations of the airplane.

DATES: Effective June 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 16, 2000.

Comments for inclusion in the Rules Docket must be received on or before July 3, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–109–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–109–AD" in the subject line and need not be submitted in triplicate.

The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Dassault Model Mystere-Falcon 900, Falcon 900EX, Fan Jet Falcon, Mystere-Falcon 50, Mystere-Falcon 20, and Mystere-Falcon 200 series airplanes. The DGAC advises that two Mystere-Falcon 900 series airplanes have experienced severe pitch oscillations during descent.

The exact cause of the pitch oscillation is unknown at this time, and is still under investigation. However, in one case, it was considered that failure of the pitch feel system may have contributed to the severity of the pitch oscillations. Since this system is similar

in design to that of Dassault Model Falcon 2000, Falcon 900EX, Fan Jet Falcon, Mystere-Falcon 50, Mystere-Falcon 20, and Mystere-Falcon 200 series airplanes, these airplanes may be subject to the same unsafe condition revealed on the Mystere-Falcon 900 series airplanes.

Explanation of Relevant Service Information

Dassault Aviation has issued the following Airplane Flight Manual (AFM) Temporary Revisions and Temporary Changes:

- Temporary Revision 19, DTM589/590/591/592, Temporary Revision 19 DTM592, and Temporary Revision 11, DTM918, each dated October 27, 1999 (for Model Fan Jet Falcon series airplanes.)
- Temporary Change 20, DTM30528, dated October 27, 1999 (for Model Mystere-Falcon 20 series airplanes.)
- Temporary Change 29, DTM308A, dated October 27, 1999 (for Model Mystere-Falcon 200 series airplanes.)
- Temporary Change 50, DTM813, dated October 27, 1999 (for Model Mystere-Falcon 50 series airplanes.)
- Temporary Change 49, FM813EX, dated October 27, 1999 (for Model Mystere-Falcon 50EX series airplanes.)
- Temporary Change 80, DTM20103, and Temporary Change 4, FM900C, each dated October 27, 1999 (for Model Mystere-Falcon 900 series airplanes.)
- Temporary Change 46, DTM561, dated October 27, 1999 (for Model Falcon 900EX.)

Procedures described in the Temporary Revisions and Temporary Changes provide instructions to reduce the airspeed to 260 knots indicated airspeed or 0.76 mach indicated if the pitch feel system light (*i.e.*, PITCH, AQ PITCH, AQ ROLL, PITCH FEEL, or Q UNIT) is illuminated. The DGAC classified these temporary revisions and temporary changes as mandatory and issued French airworthiness directives 1999–464–029(B), dated November 17, 1999, as revised by Erratum, dated December 15, 1999 (for Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes); and 1999–467–026(B), dated November 17, 1999, as revised by Erratum, dated December 15, 1999 (for Model Fan Jet Falcon, Mystere-Falcon 20, and Mystere-Falcon 200 series airplanes); in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to provide the flight crew with speed limitations in the event of failure indications of the pitch feel system. These limitations are intended to mitigate severe pitch oscillations of the airplane. The actions are required to be accomplished in accordance with the AFM Temporary Revisions and Temporary Changes described previously, except as discussed below.

Explanation of Applicability

Operators should note that the applicability of this AD includes all Model Falcon 2000 series airplanes, whereas this airplane model is not included in the previously identified French airworthiness directives. Since Model Falcon 2000 series airplanes are similar in design to those airplanes identified in the French airworthiness directives, the FAA has determined that Model Falcon 2000 series airplanes may be subject to the same unsafe condition and, therefore, must be included in the applicability of this AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–109–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive

Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–03 Dassault Aviation: Amendment 39–11751. Docket 2000–NM–109–AD.

Applicability: All Model Falcon 2000, Mystere-Falcon 900, Falcon 900EX, Fan Jet Falcon, Mystere-Falcon 50, Mystere-Falcon 20, and Mystere-Falcon 200 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To provide the flight crew with speed limitations, which are intended to mitigate severe pitch ocillations in the event of failure indications of the pitch feel system, accomplish the following:

Airplane Flight Manual (AFM) Revision

(a) Within 7 days after the effective date of this AD, revise the Limitations Section and Abnormal Procedures Section of the FAA-approved AFM, in accordance with paragraph (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8), as applicable, of this AD.

(1) For Model Fan Jet Falcon series airplanes: Insert Dassault Aviation Temporary Revision 19, DTM589/590/591/592, Temporary Revision 19, DTM592, and Dassault Aviation Temporary Revision 11, DTM918, each dated October 27, 1999, into the AFM.

(2) For Model Mystere-Falcon 20 series airplanes: Insert Dassault Aviation Temporary Change 20, DTM30528, dated October 27, 1999, into the AFM.

(3) For Model Mystere-Falcon 200 series airplanes: Insert Dassault Aviation Temporary Change 29, DTM308A, dated October 27, 1999, into the AFM.

(4) For Model Mystere-Falcon 50 series airplanes: Insert Dassault Aviation Temporary Change 50, DTM813, dated October 27, 1999, into the AFM.

(5) For Model Mystere-Falcon 50EX series airplanes: Insert Dassault Aviation Temporary Change 49, FM813EX, dated October 27, 1999, into the AFM.

(6) For Model Mystere-Falcon 900 series airplanes: Insert Dassault Aviation Temporary Change 80, DTM20103, and Temporary Change 4, FM900C, each dated October 27, 1999, into the AFM.

(7) For Model Falcon 900EX series airplanes: Insert Dassault Aviation Temporary Change 46, DTM561, dated October 27, 1999, into the AFM.

(8) For Model Falcon 2000 series airplanes: Insert the following statement into the AFM. This may also be accomplished by inserting a copy of this AD into the AFM.

"If the PITCH FEEL warning light is on, reduce the airspeed to 260 KIAS or MI 0.76 max."

Note 1: When the Temporary Changes and Temporary Revisions specified in paragraph (a) of this AD have been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the Temporary Changes and Temporary Revisions.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch,

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Except as provided by paragraph (a)(8) of this AD, the Airplane Flight Manual revisions shall be done in accordance with Dassault Aviation Temporary Revision 19, DTM589/590/591/592, dated October 27, 1999; Dassault Aviation Temporary Revision 19, DTM592, dated October 27, 1999; Dassault Aviation Temporary Revision 11, DTM918, dated October 27, 1999; Dassault Aviation Temporary Change 20, DTM30528, dated October 27, 1999; Dassault Aviation Temporary Change 29, DTM308A, dated October 27, 1999; Dassault Aviation Temporary Change 50, DTM813, dated October 27, 1999; Dassault Aviation Temporary Change 49, FM813EX, dated October 27, 1999; Dassault Aviation Temporary Change 80, DTM20103, dated October 27, 1999; Dassault Aviation Temporary Change 4, FM900C, dated October 27, 1999; and Dassault Aviation Temporary Change 46, DTM561, dated October 27, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 1999–464–029(B), dated November 17, 1999, as revised by Erratum, dated December 15, 1999; and 1999–467–026(B), dated November 17, 1999, as revised by Erratum, dated December 15, 1999.

(e) This amendment becomes effective on June 16, 2000.

Issued in Renton, Washington, on May 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13330 Filed 5–31–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–316–AD; Amendment 39–11754; AD 2000–11–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767 series airplanes. This AD requires repetitive inspections to detect discrepancies of the wiring and surrounding Teflon sleeves of the fuel tank boost pumps and override/jettison pumps; replacement of the sleeves with new sleeves, for certain airplanes; and repair or replacement of the wiring and sleeves with new parts, as necessary.

This amendment is prompted by reports of chafing of Teflon sleeves that surround and protect electrical wires inside conduits installed in the fuel tanks. The actions specified by this AD are intended to ensure adequate protection to the fuel pump wire insulation. Such chafing of the wire insulation could eventually result in exposure of electrical conductor, permit arcing from the wire to the conduit, and create a potential for a fuel tank fire or explosion.

DATES: Effective July 6, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 6, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes was published in the **Federal Register** on November 15, 1999 (64 FR 61798). That action proposed to require repetitive inspections to detect discrepancies of the wiring and surrounding Teflon sleeves of the fuel tank boost pumps and override/jettison pumps; replacement of the sleeves with new sleeves, for certain airplanes; and repair or replacement of the wiring and sleeves with new parts, as necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule.

Credit for Inspections Accomplished Previously

One commenter requests that the FAA revise the proposed rule to clarify that airplanes inspected prior to the effective date of this AD in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated April 1, 1999, do not have to be inspected again until 60,000 flight hours or 30,000 flight cycles after the last inspection, whichever occurs first. The commenter states that there is no mechanism in the notice of proposed rulemaking (NPRM) to provide credit for inspections accomplished previously.

The FAA concurs with the intent of the commenter's request. Airplanes that have been inspected prior to the effective date of this AD in accordance with the referenced service bulletin should be inspected next according to the repetitive interval (60,000 flight hours or 30,000 flight cycles after the most recent inspection, whichever occurs first) specified in this AD. However, credit for applicable actions accomplished prior to the effective date of an AD is always provided by means of the statement in the body of the AD, "Compliance: Required as indicated, unless accomplished previously." Therefore, no change to the final rule is necessary in this regard.

Revise Reporting Requirement

One commenter requests that the FAA revise paragraph (e) of the proposed rule to eliminate the requirement to include, in any report of positive inspection findings, "a statement indicating whether any wire has ever been removed and inspected during maintenance, along with the date (if known) of any such inspection." The commenter states that it would be "virtually impossible" to meet this requirement, and only a review of maintenance records would show if a wire was inspected. Further, the commenter states that, because operators are only required to retain maintenance records for one year, a review of maintenance records would only show whether such an inspection was completed within the past year.

The FAA concurs with the commenter's request to revise the reporting requirement of this AD. As the commenter states, a review of maintenance records would be the most effective method for determining if wiring of the fuel tank boost pumps had previously been removed and inspected. The FAA also acknowledges that an operator may not have maintenance records extending back for more than one year for its airplanes. Therefore, the subject statement in paragraph (e) of this AD has been revised to specify that the report of positive inspection findings should include, "a statement indicating, *if known*, whether any wire has ever been removed and inspected during maintenance, along with the date (if known) of any such inspection." However, the FAA expects that any available maintenance records will be thoroughly reviewed to determine if boost pump wiring has been removed and inspected previously.

Correct Typographical Error

One commenter requests that the proposed rule be revised to correct a typographical error. The commenter points out that "NOTE 1" of the NPRM refers to paragraph (e), but should refer to paragraph (f). The FAA concurs with the commenter's request, and "NOTE 1" of this final rule has been revised accordingly.

Consider Actions Accomplished in Accordance With AD 98–10–10

One commenter requests that the proposed rule be revised to exclude Model 767 series airplanes on which wiring and Teflon sleeving were replaced in accordance with the requirements of AD 98–10–10, amendment 39–10522 (63 FR 26063, July 13, 1998), provided that lacing ties were not installed on the outside of the sleeving (except at sleeve ends). The commenter points out that AD 98–10–10 requires a one-time visual inspection to confirm installation of Teflon sleeves over the electrical wires to the fuel tank boost pumps installed inside conduits in the main and center wing tanks of certain Boeing Model 767 series airplanes. The commenter states that it accomplished the inspection required by that AD on its entire fleet of Model 767 series airplanes and installed new wiring and Teflon sleeving through the conduits to the boost pumps in all locations. The commenter notes that it detected no damage during examination of the removed wiring.

The FAA partially concurs with the commenter's request. The FAA concurs with the commenter's summary of the requirements of AD 98–10–10 with respect to Model 767 series airplanes. However, this AD requires actions that differ from those required by AD 98–10–10. While AD 98–10–10 confirms the installation of the Teflon sleeves and requires additional inspections to detect chafing of wiring on airplanes on which Teflon sleeves are found to be missing, this AD requires inspection of the Teflon sleeves over the fuel pump wires to detect and correct damage or installation discrepancies. Therefore, the FAA finds that it would be

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inappropriate to reference AD 98–10–10 in establishing compliance with this AD. However, as provided in paragraph (f) of this AD, the commenter may request approval of actions accomplished in accordance with the requirements of AD 98–10–10 as an alternative method of compliance for the actions required by this AD. No change to the final rule is necessary in this regard.

Extend Inspection Compliance Time for Certain Airplanes

One commenter requests that the FAA revise the proposed rule to extend the initial compliance threshold for the inspection of Model 767 series airplanes having line numbers 721 and subsequent. The commenter states that the intent of Boeing Service Bulletin 767–28A0053, Revision 1 (which was referenced in the proposed rule as the appropriate source of service information for the proposed actions), has been incorporated during production on airplanes having line numbers 721 and subsequent, and any discrepancies (e.g., splices, cuts, splits, holes, worn areas, and lacing ties installed on the outside) of the Teflon sleeves surrounding the wiring of the fuel boost pumps and override/jettison pumps have been corrected.

The FAA concurs with the intent of the commenter's request. However, the manufacturer has been unable to verify that all of the actions recommended in Boeing Service Bulletin 767–28A0053, Revision 1, were accomplished during production on Model 767 series airplanes having line numbers 721 and higher. The FAA finds that it would be inappropriate to delay the issuance of this AD for identification of the line numbers on which the intent of the service bulletin was accomplished during production. However, as provided in paragraph (f) of this AD, once the correct line numbers have been identified, the commenter may request approval of actions accomplished during production as an alternative method of compliance for the actions required by this AD. No change to the final rule is necessary in this regard.

Revise Discussion Section Language

One commenter, the manufacturer, requests that the proposed rule be revised to remove the word "significant" from the following sentence in the "Discussion" section of the NPRM: "The inspections revealed significant chafing through the Teflon sleeves that enclose wire bundles inside the conduits located in the fuel tanks." The commenter states that it has reviewed inspection results received from operators of Boeing Model 767 series airplanes, and the results show that no chafing through both layers of the Teflon sleeves or of the wiring inside the Teflon sleeves has been found.

The FAA does not concur with the commenter's request to not refer to the degree of chafing as "significant." As stated previously, the FAA has issued AD 98–10–10, which requires a one-time visual inspection to confirm installation of Teflon sleeves over the electrical wires to the boost pumps installed inside conduits in the main and center wing tanks of certain Boeing Model 767 series airplanes. A review of the data from inspections accomplished in accordance with that AD revealed three instances of chafing through both layers of Teflon sleeves. Therefore, the FAA does consider chafing through the Teflon sleeves to be significant. However, the section of the proposal to which the commenter refers is not restated in this final rule; thus, no change to the final rule is necessary in this regard.

Credit for Inspections Accomplished Using Validation Service Bulletin

One commenter requests that the FAA revise paragraph (a) of the proposed rule to specify a compliance time of 36 months after the effective date of this AD for airplanes inspected previously in accordance with Boeing Service Bulletin 767–28A0053 "Preliminary." The commenter states that the FAA should not require airplanes on which the proposed actions were accomplished in accordance with the preliminary service bulletin to be inspected again within 18 months after the effective date of this AD. The commenter asserts that Teflon sleeves inspected previously will not be worn within 18 months.

The FAA concludes that the "preliminary" service bulletin to which the commenter refers is the validation copy of Boeing Alert Service Bulletin 767–28A0053, dated May 21, 1998. The FAA does not concur with the commenter's request to provide credit for inspections accomplished in accordance with the validation copy of the service bulletin. The FAA finds that the validation copy did not provide instructions for inspecting or replacing the Teflon sleeves. Also, because the validation copy of the service bulletin was effective for only a small number of airplanes, the FAA finds that it would be inappropriate to complicate this AD by including specific instructions for airplanes inspected in accordance with that issue of the service bulletin. However, as provided in paragraph (f) of this AD, the commenter may request approval of inspections accomplished in accordance with the validation copy of the service bulletin as an alternative method of compliance with this AD. No change to the final rule is necessary in this regard.

Exempt Airplanes With Deactivated Center Fuel Tank

One commenter requests that the FAA revise the proposed rule to state that airplanes on which the center fuel tank is deactivated are not subject to the inspections specified in the proposed AD. The commenter states that it operates several Boeing Model 767 series airplanes on which the center fuel tank has been deactivated in accordance with certain Boeing service bulletins. The commenter states that the airplanes are configured with the override/jettison pumps' motor winding circuits opened at the P36 and P37 panels, and, with no power available to these wires, the possibility of arcing is eliminated. The commenter also requests that, if the FAA does not revise the proposed rule to exempt airplanes with the center fuel tank deactivated, paragraph (d) of the proposed rule be revised to state that, if the center fuel tank is deactivated, the test of the override fuel pumps must be accomplished prior to reactivation of the center fuel tank (rather than prior to further flight).

The FAA does not concur with the commenter's request to revise this AD to accommodate airplanes on which the center fuel tank is deactivated. The FAA acknowledges that it may not be necessary for operators to perform initial or repetitive inspections of the override/jettison fuel pump wiring on airplanes with deactivated center fuel tanks. However, as stated in NOTE 1 of the proposed rule (as well as the final rule), for airplanes that have been modified, altered, or repaired so that the performance of the requirements of the proposed rule is affected, the operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. No change to the final rule is necessary in this regard.

Explanation of Change in Service Bulletin Reference

In the NPRM, the FAA referred to Boeing Service Bulletin 767–28A0053, Revision 1, as an "alert" service bulletin. However, while the original issue of the service bulletin was considered an "alert" service bulletin, Revision 1 is not. Therefore, this final rule has been revised to remove the word "alert" from the service bulletin references throughout the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 716 airplanes of the affected design in the worldwide fleet. The FAA estimates that 253 airplanes of U.S. registry will be affected by this AD. It will take approximately 5 work hours per airplane (for airplanes with jettison pumps) or 3 work hours per airplane (for airplanes without jettison pumps) to accomplish the required inspection/replacement, at an average labor rate of $60 per work hour. Parts, if required, will cost $336 for the sleeve replacement required by this AD. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $636 or $516 per airplane, if required to accomplish the replacement action; and $300 or $180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–06 Boeing: Amendment 39–11754. Docket 98–NM–316–AD.

Applicability: All Model 767 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent exposure of electrical conductor, which could permit arcing from the wire to the conduit and create a potential for a fuel tank fire or explosion, accomplish the following:

Inspections

(a) Perform a detailed visual inspection to detect discrepancies—including the presence of splices, cuts, splits, holes, worn areas, and lacing ties installed on the outside of the sleeves (except at the sleeve ends)—of the Teflon sleeves surrounding the wiring of the fuel tank boost pumps and override/jettison pumps, at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated April 1, 1999. Repeat the inspection thereafter at intervals not to exceed 60,000 flight hours or 30,000 flight cycles, whichever occurs first.

(1) Prior to the accumulation of 50,000 total flight hours, or within 90 days after the effective date of this AD, whichever occurs later.

(2) Within 18 months after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(b) If any discrepancy is detected during any inspection required by paragraph (a) of this AD: Prior to further flight, remove the Teflon sleeves and perform a detailed visual inspection to detect damage of the wiring, in accordance with paragraph D. of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated April 1, 1999.

(1) If no damage to the wiring is detected, prior to further flight, install new Teflon sleeves in accordance with the service bulletin.

(2) If any damage to the wiring is detected, prior to further flight, accomplish the requirements of paragraph (c) of this AD.

(c) If any damage to the wiring is detected during any inspection required by paragraph (b) of this AD: Prior to further flight, perform a detailed visual inspection to determine if the wiring damage was caused by arcing, in accordance with paragraph D. of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated April 1, 1999.

(1) If the wire damage was not caused by arcing: Prior to further flight, repair any damaged wires or replace the wires with new or serviceable wires, as applicable, and install new Teflon sleeves; in accordance with the service bulletin.

(2) If any damage caused by arcing is found: Prior to further flight, perform an inspection for signs of fuel inside the conduit or on the wires, in accordance with the service bulletin.

(i) If no sign of fuel is found, accomplish the actions specified by paragraphs (c)(2)(i)(A), (c)(2)(i)(B), (c)(2)(i)(C), and (c)(2)(i)(D) of this AD.

(A) Prior to further flight, repair the wires or replace the wires with new or serviceable wires, as applicable, in accordance with the service bulletin.

(B) Prior to further flight, install new Teflon sleeves, in accordance with the service bulletin.

(C) Repeat the inspection for signs of fuel inside the conduit thereafter at intervals not to exceed 500 flight hours, until the requirements of paragraph (c)(2)(i)(D) of this AD have been accomplished. If any fuel is found inside the conduit during any inspection required by this paragraph, prior to further flight, replace the conduit with a new or serviceable conduit in accordance with the service bulletin. Thereafter, repeat the inspection specified in paragraph (a) of

this AD at intervals not to exceed 60,000 flight hours or 30,000 flight cycles, whichever occurs first.

(D) Within 6,000 flight hours or 18 months after the initial fuel inspection specified by paragraph (c)(2) of this AD, whichever occurs first, replace the conduit with a new or serviceable conduit, in accordance with the service bulletin. Such conduit replacement constitutes terminating action for the repetitive fuel inspections required by paragraph (c)(2)(i)(C) of this AD.

(ii) If any fuel is found in the conduit or on any wire: Prior to further flight, replace the conduit with a new or serviceable conduit, replace damaged wires with new or serviceable wires, and install new Teflon sleeves; in accordance with the service bulletin. Thereafter, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed 60,000 flight hours or 30,000 flight cycles, whichever occurs first.

Pump Retest

(d) For any wire bundle removed and reinstalled during any inspection required by this AD: Prior to further flight after such reinstallation, retest the fuel pump in accordance with paragraph G., H., I., or J., as applicable, of the Accomplishment Instructions, of Boeing Service Bulletin 767–28A0053, Revision 1, dated April 1, 1999.

Reporting Requirement

(e) Submit a report of positive inspection findings (findings of discrepancies only), along with any damaged wiring and sleeves, to the Seattle Manufacturing Inspection District Office (MIDO), 2500 East Valley Road, Suite C–2, Renton, Washington 98055–4056; fax (425) 227–1159; at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the airplane serial number; the number of total flight hours and flight cycles on the airplane; the location of the electrical cable on the airplane; and a statement indicating, if known, whether any wire has ever been removed and inspected during maintenance, along with the date (if known) of any such inspection. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the initial inspection required by paragraph (a) of this AD is accomplished after the effective date of this AD: Submit the report within 10 days after performing the initial inspection.

(2) For airplanes on which the initial inspection required by paragraph (a) of this AD has been accomplished prior to the effective date of this AD: Submit the report for the initial inspection within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions shall be done in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated April 1, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on July 6, 2000.

Issued in Renton, Washington, on May 23, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13449 Filed 5–31–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–30–AD; Amendment 39–11755; AD 2000–11–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200, –300, and –400 series airplanes, that currently requires repetitive high frequency eddy current (HFEC) inspections to detect cracking of the front spar web of the center section of the wing, and repair, if necessary. This amendment requires that the existing inspection be accomplished at a reduced threshold, and adds a requirement that the existing HFEC inspection be accomplished on repaired areas. This amendment is prompted by reports of cracking in repaired areas of the front spar web and cracking of the front spar web on an airplane that had accumulated fewer flight cycles than the inspection threshold of the existing AD. The actions specified by this AD are intended to prevent the leakage of fuel into the forward cargo bay, as a result of fatigue cracking in the front spar web, which could result in a potential fire hazard.

DATES: Effective July 6, 2000.

The incorporation by reference of Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997, and Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999, as listed in the regulations, is approved by the Director of the Federal Register as of July 6, 2000.

The incorporation by reference of Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 2, 1997 (62 FR 8613, February 26, 1997).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–05–01, amendment 39–9945 (62 FR 8613, February 26, 1997), which is applicable to certain Boeing Model 747–200, –300, and –400 series airplanes, was published in the **Federal Register** on December 21, 1999 (64 FR 71336). The action proposed to require that the repetitive high frequency eddy current (HFEC) inspections to detect cracking of the front spar web of the center section of the wing required by the existing AD be accomplished at a reduced threshold. The action also proposed to require that

the HFEC inspection be accomplished on repaired areas.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Reference Additional Source of Service Information

One commenter requests that the FAA revise paragraph (b) of the proposed rule to allow the HFEC inspection described in that paragraph to be accomplished in accordance with Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996. [The proposed rule references Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997, and Revision 3, dated January 7, 1999, as appropriate sources of service information for accomplishment of the actions required by paragraph (b).] The commenter states that the inspection method to detect cracking of the forward side of the front spar web in Revision 1 of the alert service bulletin is identical to the method described in Revisions 2 and 3. The commenter also states that operators who have accomplished the HFEC inspection in accordance with paragraph (a)(1) of AD 97–05–01 [which is restated as paragraph (a)(1) of this AD] should be given credit for performing the inspection. To this end, the commenter requests that the compliance time of paragraph (b) of this AD be revised from "Prior to accumulation of 12,000 total landings, or within 12 months after the effective date of this AD, whichever occurs later," to incorporate an option for the inspection to be accomplished "within 1,400 landings after the previous HFEC inspection."

The FAA partially concurs with the commenter's request. Although the inspection method is identical in Revisions 1, 2, and 3 of the service bulletin, as explained in the preamble of the proposed rule, Revisions 2 and 3 of the service bulletin describe an inspection of the aft side of the front spar web for areas where a repair is located on the forward side. For this reason, paragraph (b) of the proposed rule requires inspection in accordance with Revision 2 or 3 of the service bulletin. However, because the inspection is the same for airplanes without repairs in the area of the inspection, the FAA finds that inspections accomplished prior to the effective date of this AD in accordance with Revision 1 of the alert service bulletin are acceptable for compliance with the initial inspection required by paragraph (b) of this AD, *provided that the airplane does not have a repair installed in the inspection area.* A new "Note 2" has been added to this final rule accordingly. However, the FAA has determined that the accomplishment instructions in Revisions 2 and 3 of the service bulletin are clearer than those in Revision 1 of the alert service bulletin; therefore, inspections in accordance with paragraph (b) of this AD accomplished after the effective date of this AD are required to be accomplished in accordance with Revision 2 or 3 of the service bulletin.

With regard to the commenter's request to revise the compliance time for the actions required by paragraph (b) of this AD, the FAA finds that no change to the final rule is required beyond the inclusion of the new "Note 2," as described above. Credit is always given for actions accomplished prior to the effective date of an AD by means of the phrase, "Compliance: Required as indicated, unless accomplished previously."

Request To Revise Cost Impact Information

One commenter requests that the FAA revise the estimated number of work hours stated in the cost impact section of the preamble of the proposed rule from 8 work hours to 48 work hours per airplane. The commenter points out that the manufacturer estimates 48 work hours per airplane in Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999. The commenter states that, based on its experience, the proposed actions take approximately 48 work hours.

The FAA does not concur with the commenter's request. The estimate of 48 work hours given in the service bulletin includes time for gaining access and closing up. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. The number of work hours necessary to accomplish the required actions, specified as 8 in the cost impact information in the proposal and restated below, represents the time necessary to perform only the actions actually required by this AD (that is, the inspection). No change to the final rule is necessary in this regard.

Request To Clarify "Terminating Action" Statement in Paragraph (b)

One commenter, the airplane manufacturer, states that one operator was confused by the statement in paragraph (b) of the proposed rule that, "Accomplishment of the HFEC inspection constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD." The operator was confused because paragraph (a) of the proposed rule specifies repetitive inspections at intervals not to exceed 1,400 landings. The operator found these statements contradictory.

The commenter makes no specific request for a change to the proposed rule. The FAA infers that the operator to whom the commenter refers does not understand the meaning of "terminating action." Paragraph (a) of this AD states that the inspection in that paragraph is to be performed "at the time specified in paragraph (a)(1) or (a)(2) of this AD, * * * until accomplishment of the requirements of paragraph (b) of this AD." As stated previously, paragraph (b) of this AD states that "Accomplishment of the HFEC inspection constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD." Once the initial inspection in accordance with paragraph (b) of this Ad has been accomplished, the repetitive inspections in paragraph (a) of this Ad are no longer necessary and need not be accomplished. The repetitive inspections specified in paragraph (b) of this AD must be accomplished at intervals not to exceed 1,400 landings (as stated in that paragraph). The FAA finds that no further clarification is necessary, and no change to the final rule is necessary in this regard.

Request To Revise AD Referencing Supplemental Structural Inspection Items

One commenter requests that the FAA revise AD 94–15–18, amendment 39–8989 (59 FR 41233, August 11, 1994), to exclude Supplemental Structural Inspection Document (SSID) Items W–3A and W–3B on SSID-candidate airplanes that are included in the effectivity listing of Boeing Service Bulletin 747–57A2298. The commenter states that the SSID inspections allow detailed visual and surveillance inspections of the front spar web at "D"-check intervals using sampling methods. This AD requires HFEC inspections of the front spar web at intervals not to exceed 1,400 landings

for all airplanes included in the applicability of this AD.

The FAA does not concur with the commenter's request. The commenter's request is not relevant to this proposed rule. In the future, should the FAA consider further rulemaking to revise AD 94–15–18, the issue raised by the commenter would be appropriate to address. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 485 Model 747–200, –300, and –400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 105 airplanes of U.S. registry will be affected by this AD.

The inspections that are currently required by AD 97–05–01 and retained in this AD, take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $50,400, or $480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9945 (62 FR 8613, February 26, 1997), and by adding a new airworthiness directive (AD), amendment 39–11755, to read as follows:

2000–11–07 Boeing: Amendment 39–11755. Docket 99–NM–30–AD. Supersedes AD 97–05–01, Amendment 39–9945.

Applicability: Model 747–200, –300, and –400 series airplanes; up to and including line number 744; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the leakage of fuel into the forward cargo bay, as a result of fatigue cracking in the front spar web, which could result in a potential fire hazard, accomplish the following:

Restatement of Requirement of AD 97–05–01

Repetitive Inspections

(a) Perform a high frequency eddy current (HFEC) inspection to detect cracking of the front spar web of the center section of the wing, in accordance with Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996; Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997; or Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, until accomplishment of the requirements of paragraph (b) of this AD.

(1) For airplanes that have accumulated 12,000 to 17,999 total landings as of April 2, 1997 (the effective date of AD 97–05–01, amendment 39–9945): Perform the initial inspection within 12 months after April 2, 1997, unless previously accomplished within the last 12 months prior to April 2, 1997. Perform this inspection again prior to the accumulation of 18,000 total landings or within 1,400 landings, whichever occurs later; after accomplishing the initial inspection, and thereafter at intervals not to exceed 1,400 landings.

(2) For all other airplanes: Perform the initial inspection prior to the accumulation of 18,000 total landings or within 12 months after April 2, 1997, whichever occurs later. Repeat this inspection thereafter at intervals not to exceed 1,400 landings.

New Requirements of This AD

Repetitive Inspections

(b) Prior to accumulation of 12,000 total landings, or within 12 months after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracking of the front spar web of the center section of the wing, in accordance with Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997; or Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999. Repeat the HFEC inspection thereafter at intervals not to exceed 1,400 landings. Accomplishment of the HFEC inspection constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

Note 2: Inspections accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996, are acceptable for compliance with the initial inspection required by paragraph (b) of this AD, provided that the airplane does not have a repair installed in the inspection area.

Repair

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, confirm the cracking with secondary procedures in accordance with Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997, or Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999. Thereafter repeat the HFEC inspection required by paragraph (a) or (b) of this AD at intervals not to exceed 1,400 landings.

(1) If any vertical crack is found that is less than 10 inches in length and has not extended in a diagonal direction, prior to further flight, repair in accordance with the service bulletin.

(2) If any vertical crack is found that is 10 inches or greater in length; or if any crack is found that has extended in a diagonal direction (regardless of the length); or if any crack is found that would affect an existing repair, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (c)(2) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996; Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997; or Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(1) The incorporation by reference of Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997; and Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996; was approved previously by the Director of the Federal Register as of April 2, 1997 (62 FR 8613, February 26, 1997).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on July 6, 2000.

Issued in Renton, Washington, on May 23, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13448 Filed 5–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–228–AD; Amendment 39–11756; AD 2000–11–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes Powered by General Electric Model CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 and 767 series airplanes, that currently requires revising the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of certain fuels; and either replacing an existing placard with a new placard, or replacing all dribble flow fuel nozzles (DFFN) with standard fuel nozzles, which terminates the requirements for the new placard and AFM revision. This amendment continues these requirements and adds identical requirements applicable to airplanes on which standard fuel nozzles are not installed. This amendment is prompted by a report of an engine flameout due to use of JP–4 or Jet B fuel during certification testing on an engine with DFFN's installed. The actions specified by this AD are intended to prevent such engine flameouts and consequent engine shutdown.

DATES: Effective July 6, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 6, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 1, 1998 (63 FR 18817, April 16, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dionne M. Krebs, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2250; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–08–23, amendment 39–10472 (63 FR 18817, April 16, 1998), which is applicable to certain Boeing Model 747 and 767 series airplanes, was published in the **Federal Register** on December 15, 1999 (64 FR 69964). The action proposed to continue the requirements of AD 98–08–23 and add identical requirements applicable to airplanes on which standard fuel nozzles are not installed.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Add New Part Number to Table 1

Two commenters request that Table 1 of the proposed rule be revised to include a certain General Electric (GE) fuel flow nozzle. Table 1 of the proposed rule lists GE fuel nozzles that are acceptable for installation. The commenters state that the GE fuel flow nozzle having part number 9331M72P22 is a previously certified standard (*i.e.*, non-dribble) fuel nozzle configuration that should be included on this list. The FAA concurs with the commenters' request and has revised Table 1 of this final rule accordingly.

Request To List Dribble Flow Fuel Nozzle Part Numbers

One commenter requests that, in order to preclude the need for future rulemaking, the FAA revise the proposed rule to list the part numbers for the dribble flow fuel nozzles (DFFN), rather than the acceptable part numbers, in Table 1 of this AD or to reference the GE service bulletin. The commenter notes that the proposed rule references acceptable GE fuel nozzle part numbers

instead of DFFN part numbers to avoid the need for future AD revisions as new DFFN part numbers are approved. However, the commenter points out that, as GE improves its products, the list of acceptable part numbers may expand beyond those listed in Table 1 of the proposed rule. The commenter also indicates that the wording of the proposed rule is confusing because the existing AD referenced DFFN part numbers directly.

The FAA does not concur with the commenter's request. The FAA concurs with the commenter's statement that listing standard fuel nozzle part numbers in Table 1 of the proposed rule is intended to avoid future AD revisions as new DFFN part numbers are approved. However, if the FAA was to continue to list DFFN part numbers in the proposed AD, the only way to require a restriction on wide cut fuels for Model 747 and 767 series airplanes equipped with DFFN's certified in the future would be to supersede this AD. The FAA finds it inappropriate to impose the additional administrative burden of a supersedure of this AD on operators (as well as on the FAA itself). Also, the FAA notes that standard fuel nozzle part numbers certified in the future (and, therefore, not listed in Table 1 of the proposed rule) can be approved as an alternative method of compliance to this AD, in accordance with paragraph (g)(1) of this AD. No change to the final rule is necessary in this regard.

Request To Revise Applicable Service Bulletins

One commenter requests that the applicable service bulletins be revised to include in the effectivity listing only airplanes that are currently operating with DFFN's. The commenter notes that Boeing Alert Service Bulletin 747–11A2052, Revision 1, dated August 5, 1999, includes additional airplanes in the effectivity listing. The commenter states that these airplanes were added to the effectivity listing to ensure that all affected airplanes are modified in accordance with the alert service bulletin. The commenter also states that the proposed rule does not consider airplanes having documentation that specifies compliant delivery configurations. The commenter notes that some operators that have airplanes already in full compliance with this AD will have to apply to the FAA for relief, which will cost additional time and effort for both the FAA and affected operators. The commenter states that its airplanes are not subject to the requirements of the existing AD, but under the proposed rule, it will have to show compliance for airplanes that are not affected.

The FAA acknowledges that Boeing Alert Service Bulletin 747–11A2052, Revision 1, adds airplanes to the effectivity listing of that service bulletin. However, the FAA does not concur with the commenter that airplanes added to the effectivity listing of Revision 1 of the alert service bulletin are not subject to the existing AD. AD 98–08–23 is applicable to all Boeing Model 747 and 767 series airplanes powered by GE Model CF6–80C2 series engines. The airplanes added to the effectivity listing of Revision 1 of the service bulletin were added to make the service bulletin consistent with the applicability of AD 98–08–23. The applicability of the proposed rule is the same as that of the existing AD. The FAA finds that no change to the service bulletin is necessary.

The FAA also does not concur with the commenter that the proposed rule does not provide for airplanes with documentation that specifies compliant delivery configurations. If an operator has documentation provided by the manufacturer upon delivery of a new airplane that positively shows that the airplane is equipped with fuel nozzles having part numbers listed in Table 1 of this AD, no further action is necessary, provided that all of the other airplanes in the operator's fleet are equipped with standard (non-DFFN) nozzles.

The FAA also does not concur with the commenter that its airplanes are not subject to the existing AD because the operator's fleet includes only airplanes equipped with standard fuel flow nozzles. As explained previously, AD 98–08–23 applies to all Boeing Model 747 and 767 series airplanes powered by GE CF6–80C2 series engines. Therefore, the Model 747 and 767 series airplanes powered by General Electric CF6–80C2 series engines in the commenter's fleet are subject to the requirements of AD 98–08–23. The fact that the operator has no airplane equipped with DFFN's having the affected part numbers means that the operator is not required to restrict the use of wide cut fuels. However, if the operator introduces an airplane with DFFN's into its fleet, it would be required to comply with the Airplane Flight Manual (AFM) revision and placarding requirements described in AD 98–08–23 and retained in this AD. No change to the final rule is necessary in this regard.

Request To Make Paragraph (c)(1) Consistent With AFM

One commenter requests that the FAA revise paragraph (c)(1) of the proposed rule to be consistent with the wording used in the applicable Boeing AFM. The commenter states that the Boeing AFM's do not add the sentence identified in paragraphs (a)(1)(ii) and (c)(2) of the proposed rule to paragraph 2 of the Engine Fuel System section of the AFM. Instead, the sentence is included in paragraph 1 of the Engine Fuel System section of the AFM. Therefore, the commenter proposes moving the sentence in paragraphs (a)(1)(ii) and (c)(2) to the end of the paragraphs provided in paragraphs (a)(1)(i) and (c)(1) of the proposed rule.

The FAA does not concur with the commenter's request. The proposed rule carries over the requirements of AD 98–08–23, including the changes to the text of the AFM. Because the commenter's proposal does not substantively change the intent of the proposed AFM revision, the FAA considers such a change to the proposed rule to be unnecessary and potentially confusing. The operator may choose to obtain approval for its proposed wording by requesting an alternative method of compliance in accordance with paragraph (g)(1) of this AD. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 430 Model 747 and 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry will be affected by this AD.

The AFM revision that is currently required by AD 98–08–23, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this current requirement on U.S. operators is estimated to be $6,900, or $60 per airplane.

The placard replacement that is currently required by AD 98–08–23, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $12 per airplane. Based on these figures, the cost impact of this current requirement on U.S. operators is estimated to be $8,280, or $72 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10472 (63 FR 18817, April 16, 1998), and by adding a new airworthiness directive (AD), amendment 39–11756, to read as follows:

2000–11–08 Boeing: Amendment 39–11756. Docket 99–NM–228–AD. Supersedes AD 98–08–23, amendment 39–10472.

Applicability: Model 747 and 767 series airplanes, powered by General Electric Model CF6–80C2 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine flameouts due to the use of JP–4 or Jet B fuel on certain engines with dribble flow fuel nozzles (DFFN) installed, and consequent engine shutdown; accomplish the following:

Restatement of Requirements of AD 98–08–23

Airplane Flight Manual Revision

(a) If a DFFN having General Electric part number 9331M72P33, 9331M72P34, or 9331M72P41 is installed on any airplane in a specific operator's fleet, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD; in accordance with either Boeing Alert Service Bulletin 747–11A2052, dated September 11, 1997, or Revision 1, dated August 5, 1999 (for Model 747 series airplanes); or Boeing Alert Service Bulletin 767–11A0031, dated September 11, 1997, or Revision 1, dated August 12, 1999 (for Model 767 series airplanes); as applicable.

(1) Within 14 days after May 1, 1998 (the effective date of AD 98–08–23), all airplanes in a specific operator's fleet must revise Section 1 of the Limitations Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

(i) Revise paragraph 1 of the Engine Fuel System section to read as follows: "The fuel designation is General Electric (GE) Specification D50TF2, as revised. Fuel conforming to commercial jet fuel specification ASTM–D–1655, Jet A, and Jet A–1 are authorized for unlimited use in this engine. Fuels conforming to MIL–T–5624 grade JP–5 and MIL–T–83113 grade JP–8 are acceptable alternatives. The engine will operate satisfactorily with any of the foregoing fuels or any mixture thereof." And,

(ii) Add the following sentence to paragraph 2 of the Engine Fuel System section: "The use of Jet B and JP–4 fuel is prohibited."

Modification

(2) Within 30 days after May 1, 1998, all airplanes in a specific operator's fleet must accomplish the requirements of paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) Remove the existing placard on the door of the fueling control panel and replace it with a new placard that restricts the use of JP–4 and Jet B fuels (wide cut fuels), in accordance with the applicable alert service bulletin. Or

(ii) Remove the DFFN's, and replace them with standard fuel nozzles, in accordance with the applicable alert service bulletin. When an operator's entire fleet has had all DFFN's replaced with standard fuel nozzles, the AFM revision required by paragraphs (a)(1)(i) and (a)(1)(ii) of this AD may be removed from the AFM, and the placard required by paragraph (a)(2)(i) of this AD may be removed from each airplane.

Spares

(b) As of May 1, 1998, no person shall install any DFFN having General Electric part number 9331M72P33, 9331M72P34, or 9331M72P41 on any airplane unless the requirements specified by paragraphs (a)(1)(i), (a)(1)(ii), and (a)(2)(i) of this AD have been accomplished for the operator's entire fleet.

New Requirements of This AD

Airplane Flight Manual Revision

(c) If a fuel nozzle NOT having one of the General Electric part numbers listed in Table 1 of this AD is installed on any airplane in a specific operator's fleet: Within 14 days after the effective date of this AD, revise Section 1 of the Limitations Section of the FAA-approved AFM for each airplane in the operator's fleet to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

TABLE 1.—GENERAL ELECTRIC FUEL NOZZLES ACCEPTABLE FOR INSTALLATION

Part Number
9331M72P14
9331M72P20
9331M72P21
9331M72P22
9331M72P23
9331M72P24
9331M72P27
9331M72P28
9331M72P39
9331M72P40
1968M49P03
1968M49P04
1968M49P05
1968M49P06

(1) Revise paragraph 1 of the Engine Fuel System section to read as follows: "The fuel designation is General Electric (GE) Specification D50TF2, as revised. Fuel conforming to commercial jet fuel specification ASTM–D–1655, Jet A, and Jet A–1 are authorized for unlimited use in this engine. Fuels conforming to MIL–T–5624 grade JP–5 and MIL–T–83113 grade JP–8 are acceptable alternatives. The engine will operate satisfactorily with any of the foregoing fuels or any mixture thereof." And.

(2) Add the following sentence to paragraph 2 of the Engine Fuel System section: "The use of Jet B and JP–4 fuel is prohibited."

Modification

(d) If a fuel nozzle NOT having one of the General Electric part numbers listed in Table 1 of this AD is installed on any airplane in a specific operator's fleet: Within 30 days after the effective date of this AD, accomplish the requirements of paragraph (d)(1) or (d)(2) of this AD on each airplane in the operator's fleet, in accordance with either Boeing Alert Service Bulletin 747–11A2052, Revision 1, dated August 5, 1999 (for Model 747 series airplanes); or Boeing Alert Service Bulletin 767–11A0031, Revision 1, dated August 12, 1999 (for Model 767 series airplanes); as applicable.

(1) Remove the existing placard on the door of the fueling control panel and replace it with a new placard that restricts the use of JP–4 and Jet B fuels (wide cut fuels), in accordance with the applicable alert service bulletin. Or

(2) Remove any fuel nozzle having a part number NOT listed in Table 1 of this AD, and replace it with a fuel nozzle having a part number listed in Table 1 of this AD, in accordance with the applicable alert service bulletin. When an operator's entire fleet has only fuel nozzles having a part number listed in Table 1 of this AD installed, the AFM revision required by paragraph (c) of this AD may be removed from the AFM, and the placard required by paragraph (d)(1) of this AD may be removed from each airplane.

(e) Except as provided by paragraphs (b) and (f) of this AD, if all fuel nozzles installed on any airplane in a specific operator's fleet have one of the General Electric part numbers listed in Table 1 of this AD, no further action is required by this AD.

Spares

(f) As of the effective date of this AD, no person shall install any fuel nozzle NOT having one of the General Electric part numbers listed in Table 1 of this AD on any airplane unless the requirements specified by paragraphs (c)(1), (c)(2), and (d)(1) of this AD have been accomplished for the operator's entire fleet.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–08–23, amendment 39–10472, are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–11A2052, dated September 11, 1997, or Boeing Alert Service Bulletin 747–11A2052, Revision 1, dated August 5, 1999 (for Model 747 series airplanes); or Boeing Alert Service Bulletin 767–11A0031, dated September 11, 1997, or Boeing Alert Service Bulletin 767–11A0031, Revision 1, dated August 12, 1999 (for Model 767 series airplanes); as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin 747–11A2052, Revision 1, dated August 5, 1999; and Boeing Alert Service Bulletin 767–11A0031, Revision 1, dated August 12, 1999; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–11A2052, dated September 11, 1997; and Boeing Alert Service Bulletin 767–11A0031, dated September 11, 1997; was approved previously by the Director of the Federal Register as of May 1, 1998 (63 FR 18817, April 16, 1998).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on July 6, 2000.

Issued in Renton, Washington, on May 23, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13447 Filed 5–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–343–AD; Amendment 39–11757; AD 2000–11–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires repetitive inspections of the sliding tube subassembly on the main landing gear (MLG) to detect cracks, and replacement of a cracked subassembly with a new subassembly. This amendment also eventually requires a more extensive, one-time inspection of the same area and corrective actions, if necessary; which terminates the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent cracking of the MLG sliding tube subassembly, which could result in collapse of the MLG.

DATES: Effective July 6, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 6, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on February 15, 2000 (65 FR 7465). That action proposed to require repetitive inspections of the sliding tube subassembly on the main landing gear (MLG) to detect cracks, and replacement of a cracked subassembly with a new subassembly. That action also proposed to eventually require a more extensive, one-time inspection of the same area and corrective actions, if necessary; which would terminate the repetitive inspections.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Previous Inspections of MLG Sliding Tubes

Two commenters request that the applicability of the proposed AD be revised to exclude airplanes on which certain conditions regarding the MLG sliding tubes are met. Specifically, the commenters request that airplanes be excluded if it can be determined that (1) the MLG sliding tubes have never been removed; (2) a magnetic particle non-destructive test (NDT2) inspection has never been accomplished on the installed MLG sliding tubes; or, (3) an NDT2 inspection has been accomplished on the installed MLG sliding tubes only after removal of attaching hardware and bushings. One commenter states that, contrary to the assertion in the proposed AD that these conditions cannot be easily determined, each operator is required to track such information for its airplanes. The commenter notes that, since an MLG sliding tube is a safe life-limited item, operators are required to maintain complete records of maintenance and overhaul. And, since the NDT2 inspection can be performed only in a shop environment, there should be no concern that such an inspection could have occurred "on-wing," without generation of proper maintenance records.

The FAA acknowledges that operators are required to maintain status records for each safe life-limited part with regard to the life limits of that part, i.e., hours or cycles of operation. However, not all operators maintain complete maintenance records for the life of the part, and such records would be necessary in order to make a definitive determination of the conditions defined above. The FAA has no objection to revising the applicability of the AD to exclude those airplanes on which one of these conditions can be definitively shown. The FAA has revised the applicability accordingly, and has added a "NOTE" to the final rule to specify that complete maintenance records are considered necessary in order to determine whether one of the above conditions has been met.

Exemption from Requirements of AD

One commenter, an operator, states that its airplanes have never been subjected to an NDT2 inspection (as referenced in Airbus Service Bulletin A320–32–1189, dated December 23, 1998), and hence are exempt from the repetitive inspections required by the proposed AD.

The FAA considers that reiteration of the requirements of the specified applicability of the proposed AD is necessary. The commenter is referring to a determination that an NDT2 inspection has never been accomplished [as described in condition (2) above] on its airplanes. All operators should be aware that the applicability of this AD (or any other AD) takes precedence over the effectivity listed in the referenced service bulletin. The exemption declared by the commenter, based on the information in the service bulletin, was NOT included in the applicability of the proposed AD, for reasons described in the "Differences" section of the preamble of the proposed AD. Therefore, the commenter was indeed subject to the requirements of the AD with the applicability as proposed. However, since the applicability of the final rule has been revised, as discussed above, the commenter may now reevaluate its determination of affected airplanes based on the applicability specified in the final rule.

Revision to Applicability of AD

One commenter states that the applicability of the proposed AD is confusing, and suggests that it be revised to include airplanes "only if the initial issue of Messier-Dowty SB 200–32–250 has been accomplished." (The original Messier-Dowty service bulletin called for an NDT2 inspection without specifying removal of the jacking dome bushings. If the jacking dome bushings were not removed, high temperature damage could have occurred to the MLG bore and bushings.) The commenter states that Airbus Service Bulletin A320–32–1189, dated December 23, 1998, was issued to alert operators of potential cracking that can occur if the NDT2 inspection procedures in the original Messier-Dowty service bulletin were used.

The FAA does not concur with limiting the applicability as suggested, due to potential difficulties in determining the complete inspection history of installed MLG sliding tubes, as described previously. However, the FAA has determined that an inadvertent error in the proposed applicability may have created confusion. The applicability of the proposed AD includes airplanes ". . . except those on which Airbus Service Bulletin A320–32–1189, dated December 23, 1998, has been accomplished." Since the actions described in Airbus Service Bulletin A320–32–1189 are actually required by this AD, the FAA's intent in the proposed applicability was to exclude airplanes on which all actions described in Service Bulletin A320–32–1189 have been accomplished. Therefore, the FAA has determined that the applicability should have read ". . . except those on which Airbus Service Bulletin A320–32–1189, dated December 23, 1998, has been accomplished." The final rule has been revised accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 179 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required "Part A" (repetitive) inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the "Part A" (repetitive) inspection on U.S. operators is estimated to be $10,740, or $60 per airplane, per inspection cycle.

It will take approximately 6 work hours per airplane to accomplish the required "Part B" (one-time) inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the "Part B" (one-time) inspection on U.S. operators is estimated to be $64,440, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–09 Airbus: Amendment 39–11757. Docket 99–NM–343–AD.

Applicability: Model A319, A320, and A321 series airplanes; manufacturer serial numbers through 0875 inclusive; certificated in any category; except those on which Airbus Service Bulletin A320–32–1189, dated December 23, 1998, has been accomplished; and except those on which it can be shown that one of the following conditions has been met (also see NOTE 1):

(1) The main landing gear (MLG) sliding tubes have never been removed from the airplane;

(2) A magnetic particle non-destructive test (NDT2) inspection has never been accomplished on any of the MLG sliding tubes installed on the airplane; or

(3) If an NDT2 inspection has been accomplished on any of the MLG sliding tubes installed on the airplane, it was accomplished only after removal of the attaching hardware and bushings.

Note 1: Operators should note that complete maintenance records for the life of each MLG sliding tube are necessary in order to make a definitive determination of whether any condition specified in the Applicability of the AD has been met.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the sliding tube subassembly of the main landing gear (MLG), which could result in collapse of the MLG, accomplish the following:

Inspections

(a) Within 500 flight hours after the effective date of this AD, perform a detailed visual inspection to detect cracking of the left-hand and right-hand MLG sliding tube subassemblies, in accordance with paragraph 2.B.(1) of the Accomplishment Instructions of Airbus Service Bulletin A320–32–1189, dated December 23, 1998.

(1) If no crack is found, repeat the inspection at intervals not to exceed 500 flight hours, until the requirements of paragraph (b) of this AD have been accomplished.

(2) If any crack is found, prior to further flight, replace the sliding tube subassembly with a new subassembly, in accordance with the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 500 flight hours, until the requirements of paragraph (b) of this AD have been accomplished.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "an intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Within 15 months after the effective date of this AD: Remove the jacking dome, the stop washer, the jacking dome bushing, and the harness supports; and perform detailed visual inspections to detect discrepancies (including cracking of the left and right MLG sliding tube subassemblies, and overheat damage of the jacking dome bushing), in accordance with paragraph 2.B.(2) of the Accomplishment Instructions of Airbus Service Bulletin A320–32–1189, dated December 23, 1998. Accomplishment of the requirements of this paragraph constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) If no discrepancy is found, prior to further flight, install a new stop washer and jacking dome bushing, in accordance with the service bulletin. No further action is required by this AD.

(2) If any discrepancy is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as required by paragraph (b)(2), the actions shall be done in accordance with Airbus Service Bulletin A320–32–1189, dated December 23, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–358–137(B) R1, dated October 20, 1999.

(f) This amendment becomes effective on July 6, 2000.

Issued in Renton, Washington, on May 23, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13446 Filed 5–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–81–AD; Amendment 39–11752; AD 2000–11–04]

RIN 2120–AA64

Airworthiness Directives; Commander Aircraft Company Model 114TC Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Commander Aircraft Company (Commander) Model 114TC airplanes. This AD requires you to replace the existing Aeroquip V-band exhaust clamp with a new clamp of improved design. This AD is the result of reports of this clamp failing on 4 of the affected airplanes. This clamp attaches the exhaust stack to the turbocharger. The actions specified in this AD are intended to prevent the exhaust stack from detaching from the turbocharger due to failure of the V-band exhaust clamp. This could result in the release of high temperature gases inside the engine compartment with a consequent airplane cabin fire.

DATES: This AD becomes effective on June 23, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of June 23, 2000.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before July 28, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–81–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from the Commander Aircraft Company, Wiley Post Airport Hangar 8, 7200 NW 63rd Street, Bethany, Oklahoma 73008; telephone: (405) 495–8080; facsimile: (405) 495–8383. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–81–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alma Ramirez-Hodge, Aerospace Engineer, Airplane Certification Office, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76137; telephone: (817) 222–5147; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received four reports of failure of the Aeroquip V-band exhaust clamp (Aeroquip part number 00624–55677–340M or Lycoming alternate part number 40D21162–340M) on Commander Aircraft Company Model 114TC airplanes. The V-band exhaust clamp attaches the exhaust stack to the turbocharger.

What are the consequences if the condition is not corrected? The exhaust stack detaching from the turbocharger could result in the release of high temperature gases inside the engine compartment with a consequent airplane cabin fire.

Relevant Service Information

Is there service information that applies to this subject? Commander Aircraft Company has issued Service Bulletin No. SB–114–33A, dated May 9, 2000.

What are the provisions of this service bulletin? The service bulletin includes procedures for replacing the Aeroquip V-band exhaust clamp (Aeroquip part number 00624–55677–340M or Lycoming alternate part number 40D21162–340M) with a part of improved design (Aeroquip part number NH1009399–10).

The FAA's Determination and an Explanation of the Provisions of the AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, FAA has determined that:

—The above-referenced unsafe condition exists or could develop on other Commander Model 114TC airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to prevent the exhaust stack from detaching from the turbocharger due to failure of the V-band exhaust clamp. This could result in the release of high temperature gases inside the engine compartment with a consequent airplane cabin fire.

What does this AD require? This AD requires you to accomplish the actions in Commander Aircraft Company Service Bulletin No. SB–114–33A, dated May 9, 2000.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in the release of high temperature gases inside the engine compartment, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–81–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

2000–11–04 Commander Aircraft Company: Amendment 39–11752; Docket No. 99–CE–81–AD.

(a) *What airplanes are affected by this AD?* Model 114TC airplanes, serial numbers 20001 through 20027, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions required by this AD are intended to prevent the exhaust stack from detaching from the turbocharger due to failure of the V-band exhaust clamp. This could result in the release of high temperature gases inside the engine compartment with a consequent airplane cabin fire.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	Compliance time	Procedures
(1) Replace the Aeroquip V-band exhaust clamp (Aeroquip part number 00624–55677–340M or Lycoming alternate part number 40D21162–340M) with a part of improved design (Aeroquip part number NH1009399–10).	Accomplish this action within the next 25 hours time-in-service after June 23, 2000 (the effective date of this AD).	Perform this action in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of commander Aircraft Company Service Bulletin No. SB–114–33A, dated May 9, 2000.
(2) Do NOT install an Aeroquip V-band exhaust clamp (Aeroquip part number 00624–55677–340M or Lycoming alternate part number 40D21162–340M) on any affected airplane.	As of June 23, 2000 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Fort Worth Airplane Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5147; facsimile: (817) 222–5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Commander Aircraft Company Service Bulletin No. SB–114–33A, dated May 9, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from the Commander Aircraft Company, Wiley Post Airport Hangar 8, 7200 NW 63rd Street, Bethany, Oklahoma 73008. You may look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on June 23, 2000.

Issued in Kansas City, Missouri, on May 22, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13444 Filed 5–31–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 760

[Docket No. 000424111–0111–01]

RIN 0694–AA11

Restrictive Trade Practices or Boycotts

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (EAR) to make certain editorial revisions and clarifications to the antiboycott provisions of the EAR.

DATES: This rule is effective June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Robert A. Diamond, Director, Compliance Policy Division, Office of Antiboycott Compliance, Bureau of Export Administration, Telephone: (202) 482–2381.

SUPPLEMENTARY INFORMATION: The Bureau of Export Administration's (BXA) Office of Antiboycott Compliance is responsible for the enforcement of the antiboycott provisions of the Export Administration Act (the Act), as amended. The Act encourages, and in some cases requires, U.S. persons to refuse to participate in foreign boycotts that the United States does not sanction. U.S. persons are also required to report receipt of boycott-related requests. The antiboycott provisions of the Act are implemented in part 760 of the Export Administration Regulations (EAR). Examples accompany the text of the regulations to aid in their interpretation.

The antiboycott provisions of the EAR became effective on January 18, 1978 and provided for a six-month grace period ending June 21, 1978, when enforcement of certain of the sections of the regulations commenced. The purpose of the delayed effective date, which was provided by Section 4A(a)(2)(B) of the Export Administration Act of 1977, as amended, was to allow the regulated public time to adjust their practices to the new regulations.

This rule removes all references to the 1978 grace period, including deletions of language in the text of the regulations and the interpretative examples that no longer apply. In some cases, new text has been added to preserve the substantive meaning of the regulation or example. The rule also removes the phrase "effective date of this part" and replaces it with the January 18, 1978 date of publication of the original rule. In addition, this rule corrects paragraph references, particularly in the interpretative Supplements. It also provides clarifying language in instances where the original text was unclear, as well as making typographical corrections, as appropriate.

This rule also addresses issues raised by a proposed rule published by the Department on September 26, 1989 (54 FR 39415). The proposed rule contained revisions and clarifications to the antiboycott provisions of the EAR that, at the time, the Department found "[were] still debated or confusing."

Since 1989, the Department has had an additional ten years of experience in implementing the antiboycott provisions of the EAR and has concluded that some of the changes proposed in 1989 rule remain useful. These have been incorporated into the final rule. In some cases, proposed changes are incorporated with additional revisions or clarifying language as appropriate. Other proposed changes addressed issues which the Department no longer considers "debated or confusing" and have not been adopted in the final rule.

The 1989 Proposed Rule addressed the following issues:

(1) The intent provision to the reporting requirement;

(2) The jurisdictional requirements relating to the implementation of letters of credit;

(3) The furnishing information prohibitions about the nationality of directors and blacklisted persons;

(4) The shipping requirement exception to refusals to use blacklisted vessels; and

(5) The import and shipping document exception to information about the nationality of carriers and residence of manufacturers or suppliers.

At the end of the 30-day comment period, three comments were received. Two additional comments were received after the comment period closed. All five comments were taken into account in developing this final rule. Having reviewed the comments received on this proposed rule, BXA is now issuing this rule in final form.

Readers should note that part 769 was redesignated as part 760 on March 25, 1996. All comments were received prior to that date refer to part 769. Accordingly, in the following discussion, all references by commenters to part 769 have been changed to part 760 and its corresponding sections.

The Intent Provision to the Reporting Requirement

One commenter contended that the two proposed changes to the intent provisions fail to clarify the applicable standards of intent. The Department's proposal removed example (ix) and the accompanying Note following example (x) to § 760.1(e). The commenter believed that elimination of this example would expand the scope of the prohibitions, because the example is an illustration of situations where the prohibitions of § 760.2(d) may not apply because either there is no intent to violate the regulations, or the information supplied is of a type generally used for a legitimate business purpose.

Example (ix) would permit U.S. company A to furnish information "demonstrat[ing] that A does at least as much business in [boycotting country] Y and other countries engaged in a boycott of [boycotted country X] as it does in X." By furnishing this information relating to country X, A would be violating § 760.2(d)(1) which prohibits a U.S. person from furnishing information concerning "his . . . past, present or proposed business relationships . . . with or in a boycotted country. . . ." By stating that A could furnish this information, the example can lead to unnecessary confusion concerning the meaning of the intent requirement. The commenter's suggestion was not adopted, and example (ix) and the accompanying Note following example (x) were deleted.

The commenter also contended that the Department's proposed revision to § 760.1(e)(3), which would remove the intent as an element of the reporting requirement, implied that a failure to comply with the reporting requirements would be a strict liability offense.

The intent requirement is set forth in section 8(a) of the Export Administration Act (Act). The obligation to report, however, arises from section 8(b)(2). In addition, § 760.1(e)(3) of the regulations was adopted when part 760 included only the prohibitions in § 760.2. When the reporting requirements in § 760.5 were later revised to reflect the requirements of the 1977 amendments to the Export Administration Act, the language of § 760.1(e)(3) was apparently overlooked and not changed. The proposed rule would revise the general statement in paragraph (e)(3) to make it clear that intent is an element only of a violation of the prohibitions set forth in § 760.2 of the regulations.

Furthermore, § 760.5(a)(2) provides that requests are reportable if the U.S. person "knows or has reason to know" that the purpose of the request is to further a boycott or restrictive trade practice. Thus, it is clear that failure to report is not a strict liability violation, and the proposed rule is adopted by incorporating the change proposed to be made in § 760.1(e)(3).

Jurisdictional Requirements Relating to the Implementation of Letters of Credit

One commenter opposed the proposed revision of § 760.1(d)(20), which replaced the language "by this part" with the phrase "by the prohibition of § 760.2(f)." The commenter contended that the effect of this revision would be to subject the implementation of letters of credit to the other prohibitions contained in part

760, not only to the prohibition of § 760.2(f), which specifically addresses the implementation of letters of credit. The final rule makes no change to § 760.1(d)(20) because the Department has concluded that the issue is no longer debated or confusing.

One commenter suggested that an additional example be included in the regulations concerning a contract with a form of a letter of credit that contains a number of preprinted provisions. These provisions would include a stipulation that documents covering goods of Israeli origin are not acceptable. However, the letter of credit would simultaneously contain a provision imposing the requirement that the documents must certify that the goods are 100 percent of U.S. origin. This additional example was not adopted because the Department believes it is not of general interest.

Furnishing Information About the Nationality of Directors and About Blacklisted Persons

The proposed rule would have changed example (vii) to § 760.2(c), relating to Furnishing Information about Race, Religion, Sex or National Origin. The proposed revision stated that furnishing permissible information about the nationalities of directors or corporate officers would not violate § 760.2(c) but "would violate § 760.2(d)—the prohibition on furnishing information about business relationships." Two commenters pointed out that the proposed revision to example (vii) is in conflict with other provisions of the regulations and with the Act's legislative history.

One of the two commenters further contended that furnishing information on the nationality of officers, directors, or employees should be presumed to be normal commercial information sought for legitimate business purposes, unless there are reasons or facts available to the exporter indicating otherwise. Information sought about an employment relationship should not be considered to be information about a business relationship as that term is commonly understood.

The final rule makes no change to example (vii) because the Department has concluded after ten years of additional experience that furnishing information concerning nationalities of officers, directors, or employees has not been confused with violations of § 760.2(d), furnishing information about business relationships.

The Shipping Requirement Exception to Refusals To Use Blacklisted Vessels

The proposed rule added example (vi) to § 760.3(b) relating to Examples of Compliance with the Shipping Requirements of a Boycotting Country. The Department received no comments on example (vi), and the final rule adopts this example.

Import and Shipping Document Exception to Information About the Nationality of Carriers and Residence of Manufacturers or Suppliers

The proposed rule revised subparagraphs (ii), (iv), and (v) of the text of § 760.3(c)(1) by adding a reference to the "nationality" of the carrier, and a reference to the "residence" of the supplier of the shipment and the provider of other services, with respect to compliance with import and shipping document requirements. No comments were received on these revisions. The final rule adopts the proposed revision to subparagraph (ii), and adds the word "address" to subparagraphs (iv) and (v). The Department believes that "address" is a more commonly used term than "residence" in import and shipping documents.

One commenter suggested that § 760.3(c)(2) be revised to provide that not only the names, but the nationalities, "of carriers or routes of shipments" may be stated "in negative terms in conjunction with shipments to a boycotting country. . . ." The final rule adopts this suggestion. The Department has long taken the position that furnishing information about the nationality of a carrier may be supplied in negative terms. This information relates to requirements protecting against war risks or confiscation.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121) and August 13, 1999 (64 FR 44101).

Rule Making Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current valid OMB Control Number. This rule involves collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0012. There are neither additions nor subtractions to this collection due to this rule.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Kirsten Mortimer, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects in 15 CFR Part 760

Boycotts, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 760 of the Export Administration Regulations (15 CFR Parts 730 through 799) is amended as follows:

1. The authority citation for 15 CFR Part 760 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

PART 760—[AMENDED]

§ 760.1 [Amended]

2. Section 760.1 is amended:

a. By revising the phrase "of any violation of this part" to read "of any violation of any of the prohibitions under § 760.2 " in paragraph (e)(3);

b. By removing example (ix) and the Note that follows example (x) in paragraph (e)(7) under the heading "Examples of 'Intent' ";

c. By redesignating example (x) as example (ix) in paragraph (e)(7) under the heading "Examples of 'Intent' "; and

d. By revising the phrase "would betaken" to read "would be taken" in the newly designated example (ix) in paragraph (e)(7) under the heading "Examples of 'Intent' ".

3. Section 760.2 is amended:

a. By revising the phrase "see § 760.3(c) of this part" to read "see § 760.3(d)" in paragraph (a)(7);

b. By revising examples (xii), (xviii), and (xxi) in paragraph (a)(10) under the heading "Refusals To Do Business";

c. By revising examples (ii), (v), and (vi) in paragraph (a)(10) under the heading "Agreements To Refuse To Do Business";

d. By revising example (xviii) in paragraph (d)(5) under the heading "Examples Concerning Furnishing of Information";

e. By revising example (v) in paragraph (f)(10) under the heading "Implementation of Letters of Credit in United States Commerce"; and

f. By revising examples (iv), (vi), and (x), and removing and reserving example (vii), in paragraph (f)(10) under the heading "Prohibition Against Implementing Letters of Credit", as follows:

§ 760.2 Prohibitions.

(a) * * *

(10) * * *

Refusals To Do Business

* * * * *

(xii) Company A, a U.S. oil company, purchases drill bits from U.S. suppliers for export to boycotting country Y. In its purchase orders, A includes a provision requiring the supplier to make delivery to A's facilities in Y and providing that title to the goods does not pass until delivery has been made. As is customary under such an arrangement, the supplier bears all risks of loss, including loss from fire, theft, perils of the sea, and inability to clear customs, until title passes.

Insistence on such an arrangement does not constitute a refusal to do business, because this requirement is imposed on all suppliers whether they are blacklisted or not. (But see § 760.4 on "Evasion".)

* * * * *

(xviii) A, a U.S. engineering firm under contract to construct a dam in boycotting country Y, compiles, on a non-boycott basis, a list of potential heavy equipment suppliers, including information on their qualifications and prior experience. A then solicits bids from the top three firms on its list—B, C, and D—because they are the best qualified. None of them happens to be blacklisted. A does not solicit bids from E, F, or G, the next three firms on the list, one of whom is on Y's blacklist.

A's decision to solicit bids from only B, C, and D, is not a refusal to do business with any person, because the solicited bidders were not selected for boycott reasons.

* * * * *

(xxi) U.S. bank A receives a letter of credit from a bank in boycotting country Y in favor of U.S. beneficiary B. The letter of credit requires B to provide a certification from the steamship line that the vessel carrying the goods is eligible to enter the ports in Y. B seeks payment from A and meets all other conditions of the letter of credit. A refuses to pay B solely because B cannot or will not provide the certification.

A has neither refused, nor required another person to refuse, to do business with another person pursuant to a boycott requirement or request because a request for a vessel eligibility certificate to be furnished by the steamship line is not a prohibited condition. (See Supplement No. 1 to this part, paragraph (l)(B), "Shipping Certificate".)

* * * * *

Agreements To Refuse To Do Business

* * * * *

(ii) A, a U.S. manufacturer of commercial refrigerators and freezers, receives an invitation to bid from boycotting country Y. The tender states that the bidder must agree not to deal with companies on Y's blacklist. A does not know which companies are on the blacklist; however, A submits a bid without taking exception to the boycott conditions. A's bid makes no commitment regarding not dealing with certain companies.

At the point when A submits its bid without taking exception to the boycott request in Y's tender, A has agreed to refuse to do business with blacklisted persons, because the terms of Y's tender require A to agree to refuse to do business.

* * * * *

(v) Same as (iv), except that the contract contains a clause that A and its employees will comply with the laws of boycotting country Y, "including boycott laws."

A's agreeing, without qualification, to comply with local boycott laws constitutes an agreement to refuse to do business.

(vi) Same as (v), except that A inserts a proviso "except insofar as Y's laws conflict with U.S. laws," or words to that effect.

Such an agreement is not an agreement to refuse to do business.

* * * * *

(d) * * *

(5) * * *

Examples Concerning Furnishing of Information

* * * * *

(xviii) U.S. company A is asked by boycotting country Y to certify that it is not the mother company, sister company, subsidiary, or branch of any blacklisted company, and that it is not in any way affiliated with any blacklisted company.

A may not furnish the certification, because it is information about whether A has a business relationship with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

* * * * *

(f) * * *

(10) * * *

Implementation of Letters of Credit in United States Commerce

* * * * *

(v) A, a U.S. bank branch located outside the United States, opens a letter of credit which specifies a beneficiary with a U.S. address. The letter of credit calls for documents indicating shipment of foreign-origin goods.

The letter of credit is presumed to be in favor of a U.S. beneficiary but to apply to a transaction outside U.S. commerce, because it calls for documents indicating shipment of foreign-origin goods. The presumption of non-U.S. commerce may be rebutted by facts showing that A could reasonably conclude that the underlying transaction involves shipment of U.S.-origin goods or goods from the United States.

* * * * *

Prohibition Against Implementing Letters of Credit

* * * * *

(iv) Same as (iii), except that U.S. company B, based in part on

information received from U.S. bank A, desires to obtain an amendment to the letter of credit which would eliminate or nullify the language in the letter of credit which prevents A from paying or otherwise implementing it.

Either company B or bank A may undertake, and the other may cooperate and assist in, this endeavor. A could then pay or otherwise implement the revised letter of credit, so long as the original prohibited boycott condition is of no force or effect.

* * * * *

(vi) Boycotting country Y orders goods from U.S. company B. U.S. bank A is asked to implement, for the benefit of B, a letter of credit which contains a clause requiring documentation that the goods shipped are not of boycotted country X origin.

A may not implement the letter of credit with a prohibited condition, and may accept only a positive certificate of origin as satisfactory documentation. (See § 760.3(c) on "Import and Shipping Document Requirements.")

(vii) [Reserved]

* * * * *

(x) Boycotting country Y orders goods from U.S. exporter B and requests a foreign bank in Y to open a letter of credit in favor of B to cover the cost. The letter of credit contains a prohibited boycott clause. The foreign bank asks U.S. bank A to advise and confirm the letter of credit. Through inadvertence, A does not notice the prohibited clause and confirms the letter of credit. A thereafter notices the clause and then refuses to honor B's draft against the letter of credit. B sues bank A for payment.

A has an absolute defense against the obligation to make payment under this letter of credit. (Note: Examples (ix) and (x) do not alter any other obligations or liabilities of the parties under appropriate law.)

* * * * *

4. Section 760.3 is amended:

a. By revising examples (i), (ii), and (iii) in paragraph (a)(3) under the heading "Examples of Compliance with Import Requirements of a Boycotting Country";

b. By adding example (vi) in paragraph (b)(3) under the heading "Examples of Compliance with the Shipping Requirements of a Boycotting Country";

c. By revising paragraphs (c)(1)(ii), (iv) and (v);

d. By revising paragraph (c)(2) introductory text;

e. By revising examples (i), (iv), (v), and (vi), and by removing and reserving example (iii), and removing example (xiii), in paragraph (c)(2) under the heading "Examples of Compliance With Import and Shipping Document Requirements";

f. By revising paragraph heading (d) and paragraph (d)(1);

g. By revising the last example heading "Examples of Discrimination on Basis of Race, Religion, Sex or National Origin" in paragraph (d)(18) to read "Example of Discrimination on Basis of Race, Religion, Sex or National Origin";

h. By revising example (vii) in paragraph (f)(4) under the heading "Examples of Compliance With Immigration, Passport, Visa, or Employment Requirements of a Boycotting Country";

i. By revising examples (iv) and (vi) in paragraph (g)(3) under the heading "Examples of Bona Fide Residency";

j. By revising paragraph (i)(4);

k. By revising the example heading "Imports for U.S. Person's Own Use" in paragraph (i)(10) to read "Imports for U.S. Person's Own Use Within Boycotting Country"; and

l. By removing the example heading "For Use Within Boycotting Country" in paragraph (i)(10) and by designating the example following this newly removed heading as (xii), as follows:

§ 760.3 Exceptions to prohibitions.

(a) * * *

(3) * * *

Examples of Compliance With Import Requirements of a Boycotting Country

(i) A, a U.S. manufacturer, receives an order from boycotting country Y for its products. Country X is boycotted by country Y, and the import laws of Y prohibit the importation of goods produced or manufactured in X. In filling this type of order, A would usually include some component parts produced in X.

For the purpose of filling this order, A may substitute comparable component parts in place of parts produced in X, because the import laws of Y prohibit the importation of goods manufactured in X.

(ii) Same as (i), except that A's contract with Y expressly provides that in fulfilling the contract A "may not include parts or components produced or manufactured in boycotted country X."

A may agree to and comply with this contract provision, because Y prohibits the importation of goods from X. However, A may not furnish negative certifications regarding the origin of components in response to import and shipping document requirements.

(iii) A, a U.S. building contractor, is awarded a contract to construct a plant in boycotting country Y. A accepts bids on goods required under the contract, and the lowest bid is made by B, a business concern organized under the laws of X, a country boycotted by Y. Y prohibits the import of goods produced by companies organized under the laws of X.

For purposes of this contract, A may reject B's bid and accept another, because B's goods would be refused entry into Y because of Y's boycott against X.

* * * * *

(b) * * *

(3) * * *

Examples of Compliance With the Shipping Requirements of a Boycotting Country

* * * * *

(vi) Boycotting country Y orders goods from A, a U.S. manufacturer. The order specifies that goods shipped by A "must not be shipped on vessels blacklisted by country Y".

A may not agree to comply with this condition because it is not a restriction limited to the use of carriers of the boycotted country.

(c) * * *

(1) * * *

(ii) The name and nationality of the carrier;

(iii) * * *

(iv) The name, residence, or address of the supplier of the shipment;

(v) The name, residence, or address of the provider of other services.

(2) Such information must be stated in positive, non-blacklisting, non-exclusionary terms except for information with respect to the names or nationalities of carriers or routes of shipment, which may continue to be stated in negative terms in conjunction with shipments to a boycotting country, in order to comply with precautionary requirements protecting against war risks or confiscation.

Examples of Compliance With Import and Shipping Document Requirements

(i) Boycotting country Y contracts with A, a U.S. petroleum equipment manufacturer, for certain equipment. Y requires that goods being imported into Y must be accompanied by a certification that the goods being supplied did not originate in boycotted country X.

A may not supply such a certification in negative terms but may identify instead the country of origin of the goods in positive terms only.

* * * * *

(iii) [Reserved]

(iv) A, a U.S. apparel manufacturer, has contracted to sell certain of its products to B, a national of boycotting country Y. The form that must be submitted to customs officials of Y requires the shipper to certify that the goods contained in the shipment have not been supplied by "blacklisted" persons.

A may not furnish the information in negative terms but may certify, in positive terms only, the name of the supplier of the goods.

(v) Same as (iv), except the customs form requires certification that the insurer and freight forwarder used are not "blacklisted."

A may not comply with the request but may supply a certification stating, in positive terms only, the names of the insurer and freight forwarder.

(vi) A, a U.S. petrochemical manufacturer, executes a sales contract with B, a resident of boycotting country Y. A provision of A's contract with B requires that the bill of lading and other shipping documents contain certifications that the goods have not been shipped on a "blacklisted" carrier.

A may not agree to supply a certification that the carrier is not "blacklisted" but may certify the name of the carrier in positive terms only.

* * * * *

(d) *Unilateral and specific selection.*

Compliance with Unilateral and Specific Selection

(1) A United States person may comply or agree to comply in the normal course of business with the unilateral and specific selection by a boycotting country, a national of a boycotting country, or a resident of a boycotting country (including a United States person who is a bona fide resident of a boycotting country) of carriers, insurers, suppliers of services to be performed within the boycotting country, or specific goods, provided that with respect to services, it is necessary and customary that a not insignificant part of the services be performed within the boycotting country. With respect to goods, the items, in the normal course of business, must be identifiable as to their source or origin at the time of their entry into the boycotting country by (a) uniqueness of design or appearance or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging.

* * * * *

(f) * * *

(4) * * *

(vii) A, a U.S. contractor, selects U.S. subcontractor B to perform certain engineering services in connection with A's project in boycotting country Y. The work visa application submitted by the employee whom B has proposed as chief engineer of this project is rejected by Y because his national origin is of boycotted country X. Subcontractor B thereupon withdraws.

A may continue with the project and select another subcontractor, because A is not acting in contravention of any prohibition of this part.

(g) * * *

(3) * * *

Examples of Bona Fide Residency

* * * * *

(iv) Same as (iii), except A's personnel are required by Y's laws to furnish certain non-discriminatory boycott information in order to establish a branch in Y.

In these limited circumstances, A's personnel may furnish the non-discriminatory boycott information necessary to establish residency to the same extent a U.S. person who is a bona fide resident in that country could. If this information could not be furnished in such limited circumstances, the exception would be available only to firms resident in a boycotting country before January 18, 1978.

* * * * *

(vi) Same as (v), except that A is considering establishing an office in boycotting country Y. A's personnel visit Y in order to register A to do business in that country. A intends to establish ongoing construction operations in Y. A's personnel are required by Y's laws to furnish certain non-discriminatory boycott information in order to register A to do business or incorporate a subsidiary in Y.

In these limited circumstances, A's personnel may furnish non-discriminatory boycott information necessary to establish residency to the same extent a U.S. person who is a bona fide resident in that country could. If this information could not be furnished in such limited circumstances, the exception would be available only to firms resident in a boycotting country before January 18, 1978.

* * * * *

(i) * * *

(4) For purposes of this exception, the test that governs whether goods or components of goods are specifically identifiable is identical to the test applied in paragraph (d) of this section on "Compliance With Unilateral and Specific Selection" to determine whether they are identifiable as to their source or origin in the normal course of business.

* * * * *

5. Section 760.4 is amended:

a. By revising the phrase "§ 760.3(a) through (g) of this part" to read "§ 760.3(a) through (i)" in paragraph (b);

b. By revising the phrase "January 21, 1978" to read "January 18, 1978" in paragraph (d); and

c. By revising examples (iii), (iv), (x), (xi), (xii), (xv), and (xvi) in paragraph (e) under the heading "Examples", as follows:

§ 760.4 Evasion.

* * * * *

(e) * * *

Examples

* * * * *

(iii) A, a U.S. company, has been selling sewing machines to boycotting country Y for a number of years. A receives a request for a negative certificate of origin from a new customer. A is aware that furnishing such certificates are prohibited; therefore, A arranges to have all future shipments run through a foreign corporation in a third country which will affix the necessary negative certificate before forwarding the machines on to Y.

A's action constitutes evasion of this part, because it is a device to mask prohibited activity carried out on A's behalf.

(iv) A, a U.S. company, has been selling calculators to distributor B in country C for a number of years and routinely supplies positive certificates of origin. A receives an order from country Y which requires negative certificates of origin. A arranges to make all future sales to distributor B in country C. A knows B will step in and make the sales to Y which A would otherwise have made directly. B will make the necessary negative certifications. A's warranty, which it will continue to honor, runs to the purchaser in Y.

A's action constitutes evasion, because the diverting of orders to B is a device to mask prohibited activity carried out on A's behalf.

* * * * *

(x) Same as (ix), except that shortly after January 18, 1978, A, a U.S. company, insists that its suppliers sign contracts which provide that even after title passes from the supplier to A, the supplier will bear the risk of loss and indemnify A if goods which the supplier has furnished are denied entry into Y for boycott reasons.

A's action constitutes evasion of this part, because it is a device or scheme which is intended to place a special burden on blacklisted persons because of Y's boycott.

(xi) Same as (x), except that A customarily insisted on such an arrangement with its supplier prior to January 18, 1978.

A's action is presumed not to constitute evasion, because use of this contractual arrangement was customary for A prior to January 18, 1978.

(xii) A, a U.S. company, has a contract to supply automobile sub-assembly units to boycotting country Y. Shortly after January 18, 1978, A insists that its suppliers sign contracts which provide that even after title passes to A, the supplier will bear the risk of loss and indemnify A if goods which the supplier has furnished are denied entry into boycotting country Y for any reason.

A's insistence on this arrangement is presumed to constitute evasion, because it is a device which is intended to place a special burden on blacklisted firms because of Y's boycott. The presumption may be rebutted by competent evidence showing that use of such an arrangement is customary without regard to the boycotting or non-boycotting character of the country to which it relates and that there is a legitimate non-boycott business reason for its use.

* * * * *

(xv) U.S. bank A is contacted by U.S. company B to finance B's transaction with boycotting country Y. Payment will be effected through a letter of credit in favor of B at its U.S. address. A knows that the letter of credit will contain restrictive boycott conditions which would bar its implementation by A if the beneficiary were a U.S. person. A advises B of the boycott condition and suggests to B that the beneficiary should be changed to C, a shell corporation in non-boycotting country M. The beneficiary is changed accordingly.

The actions of both A and B constitute evasion of this part, because the arrangement is a device to mask prohibited activities.

(xvi) Same as (xv), except that U.S. company B, the beneficiary of the letter of credit, arranges to change the beneficiary to B's foreign subsidiary so that A can implement the letter of credit. A knows that this has been done.

A's implementation of the letter of credit in the face of its knowledge of B's action constitutes evasion of this part, because A's action is part of a device to mask prohibited activity by both parties.

* * * * *

6. Section 760.5 is amended:

a. By revising the phrase "Room 6099C" in paragraph (b)(4) to read "Room 6098";

b. By revising paragraphs (b)(4)(i) and (b)(4)(ii); and

c. By revising examples (xxix), (xxx), (xxxiv), and (xxxv) in paragraph (c)(4) under the heading "Examples", to read as follows:

§ 760.5 Reporting requirements.

* * * * *

(b) * * *

(4) * * *

(i) Where the person receiving the request is a United States person located in the United States, each report of requests must be postmarked by the last day of the month following the calendar quarter in which the request was received (e.g., April 30 for the quarter consisting of January, February, and March).

(ii) Where the person receiving the request is a United States person located outside the United States, each report of requests must be postmarked by the last day of the second month following the calendar quarter in which the request was received (e.g., May 31 for the quarter consisting of January, February, and March).

* * * * *

(c) * * *

(4) * * *

Examples

* * * * *

(xxix) A, a U.S. manufacturer, is engaged from time-to-time in supplying drilling rigs to company B in boycotting country Y. B insists that its suppliers sign contracts which provide that, even after title passes from the supplier to B, the supplier will bear the risk of loss and indemnify B if goods which the supplier has furnished are denied entry into Y for whatever reason. A knows or has reason to know that this contractual provision is required by B because of Y's boycott, and that B has been using the provision since 1977. A receives an order from B which contains such a clause.

B's request is not reportable by A, because the request is deemed to be not reportable by these regulations if the provision was in use by B prior to January 18, 1978.

(xxx) Same as (xxix), except that A does not know when B began using the provision.

Unless A receives information from B that B introduced the term prior to January 18, 1978, A must report receipt of the request.

* * * * *

(xxxiv) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to state on the bill of lading that the vessel is allowed to enter Y's ports. The request further states that a certificate from the owner or master of the vessel to that effect is acceptable.

The request A received from his customer in Y is not reportable because it is a request of a type deemed to be not reportable by these regulations. (A may not make such a statement on the bill of lading himself, if he knows or has reason to know it is requested for a boycott purpose.)

(xxxv) U.S. exporter A, in shipping goods to boycotting country Y, receives a request from the customer in Y to furnish a certificate from the owner of the vessel that the vessel is permitted to call at Y's ports.

The request A received from his customer in Y is not reportable because it is a request of a type deemed to be not reportable by these regulations.

* * * * *

7. Supplement No. 1 to Part 760 is amended:

a. By revising the "Interpretation" under the heading "B. *Shipping certificate.*" in section "I. Certifications";

b. By revising the "Interpretation" under the heading "C: *Insurance certificate.*" in section "I. Certifications"; and

c. By revising the "Interpretation" under the heading "A. *Contractual clause regarding import laws of boycotting country.*" in section "II. Contractual Clauses", as follows:

Supplement No. 1 to Part 760—Interpretations

* * * * *

I. Certifications

* * * * *

B. *Shipping certificate* * * *

Interpretation

It is the Department's position that furnishing a certificate, such as the one set out above, stating: (1) The name of the vessel, (2) The nationality of the vessel, and (3) The owner of the vessel and further declaring that the vessel: (a) Is not registered in a boycotted country, (b) Is not owned by nationals or residents of a boycotted country, and (c) Will not call at or pass through a boycotted country port enroute to its destination in a boycotting country falls within the exception contained in § 760.3(c) for compliance with the import and shipping document requirements of a boycotting country. See § 760.3(c) and examples (vii), (viii), and (ix) thereunder.

It is also the Department's position that the owner, charterer, or master of a vessel may certify that the vessel is "eligible" or "otherwise eligible" to enter into the ports of a boycotting country in conformity with its laws and regulations. Furnishing such a statement pertaining to one's own eligibility offends no prohibition under this part 760. See § 760.2(f), example (xiv).

On the other hand, where a boycott is in force, a declaration that a vessel is "eligible" or "otherwise eligible" to enter the ports of the boycotting country necessarily conveys the information that the vessel is not blacklisted or otherwise restricted from having a business relationship with the boycotting country. See § 760.3(c) examples (vi), (xi), and (xii). Where a person other than the vessel's owner, charterer, or master furnishes such a statement, that is tantamount to his furnishing a statement that he is not doing business with a blacklisted person or is doing business only with non-blacklisted persons. Therefore, it is the Department's position that furnishing such a certification (which does not reflect customary international commercial practice) by anyone other than the owner, charterer, or master of a vessel would fall within the prohibition set forth in § 760.2(d) unless it is clear from all the facts and circumstances that the certification is not required for a boycott reason. See § 760.2(d)(3) and (4). See also part A., "Permissible Furnishing of Information," of Supplement No. 5 to this part.

C. Insurance certificate. * * *

Interpretation

It is the Department's position that furnishing the name of the insurance company falls within the exception contained in § 760.3(c) for compliance with the import and shipping document requirements of a boycotting country. See § 760.3(c)(1)(v) and examples (v) and (x) thereunder. In addition, it is the Department's position that furnishing a certificate, such as the one set out above, stating the address of the insurance company's principal office and its country of incorporation offends no prohibition under this part 760 unless the U.S. person furnishing the certificate knows or has reason to know that the information is sought for the purpose of determining that the insurance company is neither headquartered nor incorporated in a boycotted country. See § 760.2(d)(1)(i).

It is also the Department's position that the insurer, himself, may certify that he has a duly qualified and appointed agent or representative in the boycotting country and may furnish the name and address of his agent or representative. Furnishing such a statement pertaining to one's own status offends no prohibition under this part 760. See § 760.2(f), example (xiv).

On the other hand, where a boycott is in force, a declaration that an insurer "has a duly qualified and appointed agent or representative" in the boycotting country necessarily conveys the information that the insurer is not blacklisted or otherwise restricted from having a business relationship with the boycotting country. See § 760.3(c), example (v). Therefore, it is the Department's position that furnishing such a certification by anyone other than the insurer would fall within the prohibition set forth in § 760.2(d) unless it is clear from all the facts and circumstances that the certification is not required for a boycott reason. See § 760.2(d)(3) and (4).

* * * * *

II. Contractual Clauses

* * * * *

A. *Contractual clause regarding import laws of boycotting country.* * * *

Interpretation

It is the Department's position that an agreement, such as the one set out in the first sentence above, that the import and customs requirements of a boycotting country shall apply to the performance of a contract does not, in and of itself, offend any prohibition under this part 760. See § 760.2(a)(5) and example (iii) under "Examples of Agreements To Refuse To Do Business." It is also the Department's position that an agreement to comply generally with the import and customs requirements of a boycotting country does not, in and of itself, offend any prohibition under this part 760. See § 760.2(a)(5) and examples (iv) and (v) under "Examples of Agreements To Refuse To Do Business." In addition, it is the Department's position that an agreement, such as the one set out in the second sentence above, to comply with the boycotting country's import and customs requirements prohibiting the importation of products or components: (1) Originating in the boycotted country; (2) Manufactured, produced, or furnished by companies organized under the laws of the boycotted country; or (3) Manufactured, produced, or furnished by nationals or residents of the boycotted country falls within the exception contained in § 760.3(a) for compliance with the import requirements of a boycotting country. See § 760.3(a) and example (ii) thereunder.

The Department notes that a United States person may not furnish a negative certification regarding the origin of goods or their components even though the certification is furnished in response to the import and shipping document requirements of the boycotting country. See § 760.3(c) and examples (i) and (ii) thereunder, and § 760.3(a) and example (ii) thereunder.

* * * * *

8. Supplement No. 2 to Part 760 is amended:

a. By revising the phrase "receipt of requests for such shipping and insurance certificates from Saudi Arabia is not reportable" to read "receipts of requests for such shipping and insurance certificates from Saudi Arabia are not reportable" in the undesignated paragraph which begins with the phrase "On the basis of this clarification"; and

b. By revising the phrase "receipt of requests for such certifications is reportable" to read "receipts of requests for such certifications are reportable" in the undesignated paragraph which begins with the phrase "It is still the Department's position".

9. Supplement No. 4 to Part 760 is amended by revising the second undesignated paragraph as follows:

Supplement No. 4 to Part 760—Interpretation

* * * * *

Section 760.1(d)(12) provides the general guidelines for determining when U.S.-origin goods shipped from a controlled in fact foreign subsidiary are outside U.S. commerce. The two key tests of that provision are that the goods were "(i) * * * acquired without reference to a specific order from or transaction with a person outside the United States; and (ii) * * * further manufactured, incorporated into, refined into, or reprocessed into another product." Because the application of these two tests to spare parts does not conclusively answer the U.S. commerce question, the Department is presenting this clarification.

* * * * *

10. Supplement No. 5 to part 760 is amended by revising the phrase "Section 760.3(f) of this part" to read "Section 760.3(g)" in the undesignated paragraph following the heading "B. *Availability of the Compliance with Local Law Exception to Establish a Foreign Branch*".

11. Supplement No. 6 to part 760 is amended by revising paragraph (a) as follows:

Supplement No. 6 to Part 760—Interpretation

* * * * *

(a) * * *

This term is very common in letters of credit from Kuwait and may also appear from time-to-time in invitations to bid, contracts, or other trade documents. It imposes a condition or requirement compliance with which is prohibited, but permitted by an exception under the Regulations (see § 760.2(a) and § 760.3(a)). It is reportable by those parties to the letter of credit or other transaction that are required to take or refrain from taking some boycott related action by the request. Thus the bank must report the request because it is a term or condition of the letter of credit that it is handling, and the exporter-beneficiary must report the request because the exporter determines the origin of the goods. The freight forwarder does not have to report this request because the forwarder has no role or obligation in selecting the goods. However, the freight forwarder would have to report a request to furnish a certificate that the goods do not originate in or contain components from a boycotted country. See § 760.5, examples (xii)–(xvii).

* * * * *

12. Supplement No. 7 to part 760 is amended:

a. By revising the phrase "§ 760.3(c) of this part" to read "§ 760.3(d)" in the second undesignated paragraph; and

b. By revising the third undesignated paragraph as follows:

Supplement No. 7 to Part 760—Interpretation

* * * * *

"A United States person may comply or agree to comply in the normal course of business with the unilateral and specific selection by a boycotting country * * * of * * * specific goods, * * * provided that * * * with respect to goods, the items, in the normal course of business, are identifiable as to their source or origin at the time of their entry into the boycotting country by (a) uniqueness of design or appearance or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging."

* * * * *

13. Supplement No. 8 to part 760 is amended by revising the phrase "§ 760.1(d)(13) of this part" to read "§ 760.1(d)(3)" in the third undesignated paragraph.

14. Supplement No. 9 to part 760 is amended by revising the phrase "§ 760.3(f) of this part" to read "§ 760.3(g)" the first undesignated paragraph.

15. Supplement No. 10 to part 760 is amended by revising the phrase "non exclusionary, non blacklisting statement" to read "non-exclusionary, non-blacklisting statement" in the undesignated paragraph that follows paragraph heading (b).

16. Supplement No. 11 to part 760 is amended:

a. By placing quotation marks around the undesignated paragraph that follows the phrase "§ 760.5(a)(4) of this part status in part"; and

b. By revising the parenthetical phrase "(§ 760.5(a)(6) of this part)" to read "(§ 760.5(b)(6)" in the last undesignated paragraph.

17. Supplement No. 12 to part 760 is amended:

a. By placing beginning and ending quotation marks around the first and second undesignated paragraphs, respectively, that follow the phrase "Example (v) under § 760.4 of this part (Evasion) provides:"

b. By revising the phrase "recently imposed by the government" to read "imposed by the government" in the undesignated paragraph that begins with the phrase "This interpretation deals with"; and

c. By placing quotation marks around the undesignated paragraph that begins with the phrase "Declaration: I, the undersigned".

18. Supplement No. 13 to part 760 is amended:

a. By revising the phrase "§ 760.3(c) of this part" to read "§ 760.3(d)" in the undesignated paragraph following the heading "Summary";

b. By placing quotation marks around the third undesignated paragraph following the heading "Regulatory Background";

c. By revising the phrase "§ 760.3(c)" part" to read "§ 760.3(d)" in the fourth undesignated paragraph following the heading "Regulatory Background";

d. By revising the heading "Analysis of the New Contractual Language" to read "Analysis of Additional Contractual Language";

e. By revising the phrase "of a new contractual clause" to read "of a contractual clause" in the undesignated paragraph following the newly revised heading "Analysis of the New Contractual Language";

f. By revising the heading "Boycott of Boycotted Country" to read "Boycott of [Name of Boycotted Country]";

g. By revising the phrase "§ 760.3(c) of this part" to read "§ 760.3(d)" in the last undesignated paragraph of this supplement.

19. Supplement No. 14 to part 760 is amended:

a. By placing beginning and ending quotation marks around the first and second undesignated paragraphs, respectively, following the sentence "The following language has appeared in tender documents issued by a boycotting country:" in paragraph (a);

b. By revising the phrase "Agreement to Refuse to Do Business" to read "Agreements to Refuse to Do Business" in the last sentence of the third undesignated paragraph following the sentence "The following language has appeared in tender documents issued by a boycotting country:" in paragraph (a);

c. By revising the phrase "§ 760.6(a)(1) of this part" to read "§ 760.5(a)(1) of this part" in the last undesignated paragraph following the sentence "The following language has appeared in tender documents issued by a boycotting country:" in paragraph (a); and

d. By placing beginning and ending quotation marks around the first and second undesignated paragraphs, respectively, that follow the sentence "The following terms frequently appear on letters of credit covering shipment to Iraq:" in paragraph (b).

Dated: May 18, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–13251 Filed 5–31–00; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AD91

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Medical and Other Evidence of Your Impairment(s) and Definition of Medical Consultant

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the Social Security and Supplemental Security Income (SSI) disability regulations regarding sources of evidence for establishing the existence of a medically determinable impairment under title II and title XVI of the Social Security Act (the Act). We are doing this to clarify and expand the list of acceptable medical sources and to revise the definition of the term "medical consultant" to include additional acceptable medical sources.

DATES: These rules are effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, 1–410–965–3632 or TTY 1–800–966–5609. For information about eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: The Act provides, in title II, for the payment of disability benefits to persons insured under the Act. Title II also provides, under certain circumstances, for the payment of child's insurance benefits based on disability and widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured persons. In addition, the Act provides, in title XVI, for SSI payments to persons who are aged, blind, or disabled and who have limited income and resources.

For adults under both the title II and title XVI programs (including persons claiming child's insurance benefits based on disability under title II), "disability" means the inability to engage in any substantial gainful activity. For an individual under age 18 claiming SSI benefits based on disability, "disability" means that an impairment(s) causes "marked and severe functional limitations." (Our regulations at § 416.902 explain that, *"[m]arked and severe functional limitations,* when used as a phrase, * * * is a level of severity that meets or medically or functionally equals the severity of a listing in the Listing of Impairments in appendix 1 of subpart P of part 404 * * *.") Under both title II and title XVI, disability must be the result of a medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

The Act also provides that an individual shall not be considered to be under a disability unless he or she furnishes such medical and other evidence of the existence of such impairment(s) as the Commissioner may require.

Explanation of Revisions

Sections 404.1513 and 416.913 provide that we need reports about an individual's impairments from acceptable medical sources; they also provide a list of "acceptable medical sources." Acceptable medical sources are individuals who have the training and expertise to provide us with the signs and laboratory findings based on medically acceptable clinical and laboratory diagnostic techniques that establish the existence of a medically determinable physical or mental impairment.

We are amending §§ 404.1513 and 416.913 by revising the list of acceptable medical sources and making other changes to these and other sections of our regulations as explained below.

For clarity, we refer to the new rules, as revised in this regulatory publication, as "final" rules and to the rules that are being changed by these final rules as the "prior" rules. However, these final rules do not go into effect until 30 days after the date of this publication. Therefore, the "prior" rules will still be in effect for another 30 days.

Sections 404.1513 and 416.913 Medical Evidence of Your Impairment

We are revising the heading to read, "*Medical and other evidence of your impairment(s)*" to more accurately identify the subject of these sections. Even though these prior sections were called "*Medical evidence of your impairment,*" they have always described how we use evidence from both acceptable medical sources and other sources, such as (but not limited to) nurse-practitioners, chiropractors, school teachers, and social workers. Sections 223(d)(3) and 1614(a)(3)(D) of the Act require that an individual have a medically determinable physical or mental impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. To establish the existence of a medically determinable impairment, we require evidence from acceptable medical sources. However, as indicated in both the prior §§ 404.1513(e) and 416.913(e) and the final §§ 404.1513(d) and 416.913(d), we also may use evidence from other sources to help us understand how an adult's impairment(s) affects the ability to work and how a child's impairment(s) affects the ability to function.

We are revising the heading of §§ 404.1513(a) and 416.913(a) to "*Sources who can provide evidence to establish an impairment*" and the provisions of these paragraphs as well. These revisions make it clear that we need evidence from acceptable medical sources to establish the existence of a medically determinable impairment. We then continue to list the sources that we consider acceptable medical sources in final paragraphs (a)(1) through (a)(5). In addition, as described below, we are making some revisions to this list of acceptable medical sources. We are also adding a cross-reference to § 404.1508 in § 404.1513(a) and a cross-reference to § 416.908 in § 416.913(a). The regulations to which we are cross-referring, both entitled "*What is needed to show an impairment,*" describe the type of medical evidence we require to establish the existence of a medically determinable impairment.

We are revising prior paragraph (a)(1) ("Licensed physicians") by combining it with prior paragraph (a)(2) ("Licensed osteopaths") because osteopaths are physicians. Their medical degree is usually Doctor of Osteopathy (D.O.), rather than Doctor of Medicine (M.D.). Thus, a licensed physician may be either a medical or an osteopathic physician. Because of this consolidation of two paragraphs, we are renumbering prior paragraphs (a)(3) and (a)(4) as final paragraphs (a)(2) and (a)(3).

We have also added language to final paragraph (a)(2) (prior paragraph (a)(3), "Licensed or certified psychologists") to provide that licensed or certified school psychologists, or licensed or certified individuals with other titles who perform the same function as a school psychologist in a school setting, are acceptable medical sources for establishing the existence of mental retardation, learning disabilities, and borderline intellectual functioning. The final provision reflects our longstanding operating instructions. It also includes an additional change, which did not appear in the proposed rules, that we have made in response to public comments.

Before including school psychologists as acceptable medical sources in our operating instructions for purposes of establishing the existence of mental retardation and learning disabilities, we conducted a State-by-State analysis of the educational qualifications and other requirements for their licensure or certification, and we had discussions with representatives of the National Association of School Psychologists on the issue of what school psychologists are uniformly qualified to do nationwide. Although the term "licensed or certified psychologists" encompasses school psychologists, we found that there was a lack of national uniformity among the States as to what school psychologists are allowed to do beyond assessing cognitive functioning, such as in the areas of mental retardation and learning disabilities. We determined, however, that licensed or certified school psychologists (or licensed or certified individuals with other titles who perform the same functions as school psychologists in school settings) are able to provide us with a complete medical report of manifestations related to these kinds of disorders. Therefore, we concluded that all individuals who are licensed or certified by their States as school psychologists (or approved in Michigan, which is equivalent to licensure or certification in other States) are medical sources who can establish the existence of mental retardation and learning disabilities. We discuss an additional change below in the *Public Comments* section, where we summarize and respond to the public comments we received following our publication of these regulatory provisions in the **Federal Register** as proposed rules on October 9, 1998 (63 FR 54417). The additional change is that we have concluded that these individuals are also acceptable medical sources for the purpose of establishing the existence of borderline intellectual functioning.

We are adding a new paragraph (a)(4) to include licensed podiatrists as acceptable medical sources for impairments of the foot, or foot and ankle, depending on the delineation in the State licensure. We have included these sources in our operating instructions for many years as acceptable medical sources for purposes of establishing the existence of a medically determinable impairment of the foot, or foot and ankle, because they are licensed to practice medicine and perform surgery on a specific part of the body. They can do everything that a physician is licensed to do with respect

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to the foot, or foot and ankle, and have equal standing to physicians in this respect. Final paragraph (a)(4) provides that whether evidence from a given podiatrist can be used to establish the existence of a medically determinable impairment of the foot only, or the foot and ankle, will depend on the scope of practice of podiatry in a State; *i.e.*, whether the State in which the podiatrist practices permits the practice of podiatry on the foot only, or on the foot and ankle. Medical reports from podiatrists can provide us with all the evidence we require to establish the existence of a medically determinable impairment of the foot, or foot and ankle.

We are deleting prior paragraph (a)(5), which provided that persons authorized to send us a copy or summary of the medical records of a hospital or other institution were acceptable medical sources. Regardless of who is authorized to send us a medical report, the evidence itself must be provided by an acceptable medical source identified in final paragraphs (a)(1) through (a)(5). Similarly, we are deleting prior paragraph (a)(6) (that appears only in § 416.913), which provided that reports of an interdisciplinary team were acceptable medical sources as long as they contained the evaluation and signature of an acceptable medical source. It does not matter whether the evaluation by an acceptable medical source identified in final paragraphs (a)(1) through (a)(5) is included in an interdisciplinary team report or is contained in a separate report. Because acceptable medical sources are individuals, it is redundant and somewhat misleading to provide that an interdisciplinary team report containing the evaluation and signature of an acceptable medical source is such a source.

We are adding a new paragraph (a)(5) to include qualified speech-language pathologists as acceptable medical sources who can establish the existence of a speech or language impairment. For several years, we have included these individuals in our operating instructions as medical sources who can provide evidence to establish the existence of a medically determinable speech or language impairment in SSI childhood disability cases in which the child is found disabled. The final regulation now provides that these individuals are acceptable medical sources for speech and language impairments regardless of whether the determination or decision is favorable to the individual, and is applicable to both adults and children and to disability claims under both titles of the Act.

Before including qualified speech-language pathologists in our operating instructions, we conducted a State-by-State analysis of the educational qualifications and other requirements for licensure or certification of speech-language pathologists, and we had discussions with representatives of the American Speech-Language-Hearing Association. We determined that the evaluation report of a qualified speech-language pathologist can provide us with the detailed evidence we need about a person's communicative ability that enables us to determine the existence of a medically determinable speech or language impairment.

Final paragraph (a)(5) provides that "qualified" speech-language pathologists are individuals who are licensed by the State professional licensing agency, or fully certified by their State's education agency, or who hold a Certificate of Clinical Competence from the American Speech-Language-Hearing Association. We have cited State licensure as the first credential for speech-language pathologists to be consistent with the paragraphs for physicians and other acceptable medical sources in this section, all of which require that the individual be "licensed." We have cited the State education agency certification as an alternative credential because some States do not have licensing agencies for speech-language pathologists; thus, the only State credential that speech-language pathologists have in such States is State education agency certification. To maintain either State licensure or State education agency certification, an individual must meet certain criteria (e.g., must obtain 20 continuing education units in the field over a 2-year period). We have also cited a Certificate of Clinical Competence from the American Speech-Language-Hearing Association as another acceptable credential because it indicates that a speech-language pathologist has met the stringent criteria for education, training, examination, and clinical practice set forth by the American Speech-Language-Hearing Association.

Finally, we have made minor editorial revisions to the provisions in §§ 404.1513(a)(1) through (a)(5) and 416.913(a)(1) through (a)(5). The revisions, mostly to correct punctuation, are not substantive and are not intended to change the meaning of the provisions.

We are redesignating prior §§ 404.1513(d) and 416.913(d), "*Completeness,*" as §§ 404.1513(e) and 416.913(e). We are redesignating prior paragraph (e) of those sections, "*Information from other sources,*" as paragraph (d). Our intent in switching the positions of these two paragraphs is to make it clearer that, when we decide whether the evidence in a case is complete enough for a determination, we consider all the evidence in the case record, including the medical evidence from acceptable medical sources identified in paragraph (a), information from the individual, and any evidence that may have been provided by other sources, such as those identified in final paragraph (d).

We are also revising the language in final §§ 404.1513(d) and 416.913(d) (prior paragraph (e)) by making technical changes for clarity and for consistency between these provisions in parts 404 and 416, which contained some differences in our prior rules. We are also reorganizing and renumbering the subparagraphs in final paragraph (d). In addition, we are deleting the words "*Information from*" in the heading.

We are revising the first sentence of § 404.1513(d) to read: "In addition to evidence from the acceptable medical sources listed in paragraph (a) of this section, we may also use evidence from other sources to show the severity of your impairment(s) and how it affects your ability to work." We are also revising the first sentence of § 416.913(d) to read: "In addition to evidence from the acceptable medical sources listed in paragraph (a) of this section, we may also use evidence from other sources to show the severity of your impairment(s) and how it affects your ability to work or, if you are a child, your functioning." In both of these sentences, we are adding a reference to the severity of the individual's impairment(s) because we may use evidence from other sources to show impairment severity, as well as how it affects the ability to work or, in § 416.913(d), a child's functioning. In final § 416.913(d), we are changing the language "or, if you are a child, your ability to function independently, appropriately, and effectively in an age-appropriate manner" to "or, if you are a child, your functioning," in response to section 211 of Public Law 104–193 which, on August 22, 1996, added a new paragraph 1614(a)(3)(C) to the Act that changed the definition of disability for individuals under age 18 claiming SSI benefits.

We are adding the phrase "but are not limited to" to the second sentence of final § 404.1513(d) to clarify that the list of other sources is not an exclusive list and to make it consistent with the language in prior § 416.913(e) (final § 416.913(d)). We also have deleted the words "may" and "and" from the second sentence of final § 416.913(d), and inserted the word "but" after the phrase "Other sources include" to make it consistent with the second sentence of final § 404.1513(d).

In making these changes in the two sections, we are consolidating the provisions from prior §§ 416.913(e)(3) and (e)(4) in final paragraph (d)(1) and modifying the example of therapists that was in the proposed rules so that it is not restricted to just physical therapists. The examples in the proposed rules should not have been limited to physical therapists because there are other types of therapists, such as occupational therapists, as identified in prior § 416.913(e)(4), recreational therapists, and kinesiotherapists. We are deleting "speech and language therapists" from the examples that were in prior § 416.913(e)(4) because, as discussed earlier in this preamble, we are amending the regulations to include these individuals as acceptable medical sources. (However, in final § 404.1513(a)(5) and 416.913(a)(5), we use the term "speech-language pathologists" because it is a more accurate title for these health care professionals.)

We are clarifying in final §§ 404.1513(d)(1) and 416.913(d)(1), the list of individuals, such as nurse-practitioners and audiologists, who provide some medical services by adding the phrase, "Medical sources not listed in paragraph (a) of this section." We are including in §§ 404.1513(d)(1) and 416.913(d)(1) some of the examples of other medical sources that previously were contained only in prior § 404.1513(e)(3) or only in prior § 416.913(e)(3) and (e)(4). The prior provisions did not provide all the same examples, and the final rules are now consistent in parts 404 and 416.

Final §§ 404.1513(d)(2) and 416.913(d)(2) reflect provisions that were only in prior § 416.913(e)(5).

We are adding the word "personnel" in final §§ 404.1513(d)(3) and 416.913(d)(3). The prior sections (§§ 404.1513(e)(1) and 416.913(e)(1)) referred to public and private social welfare "agencies." However, when we refer to "sources" in these rules, we mean people, not entities. This change also makes the provision similar to other provisions within these sections.

We begin final §§ 404.1513(d)(4) and 416.913(d)(4) with the phrase, "Other non-medical sources," instead of "Observations by," to make the construction of final paragraph (d)(4) parallel to that of final paragraphs (d)(1) through (d)(3). We are also adding the language "(for example, spouses, parents and other caregivers, siblings, other relatives, friends, neighbors, and clergy)" to final § 404.1513(d)(4) to make it consistent with the language in prior § 416.913(e)(2) (final § 416.913(d)(4)).

As is discussed below in the *Public Comments* section, we revised the proposed first sentence of final §§ 404.1513(e) and 416.913(e) (prior paragraph (d)) to read: "The evidence in your case record, including the medical evidence from acceptable medical sources (containing the clinical and laboratory findings) and other medical sources not listed in paragraph (a), information you give us about your medical condition(s) and how it affects you, and other evidence from other sources, must be complete and detailed enough to allow us to make a determination or decision about whether you are disabled or blind." In the Notice of Proposed Rulemaking (NPRM), we proposed to simplify the sentence by deleting any reference to the medical evidence and referring only to "the evidence" in a claim. A commenter believed that it would be better to retain reference to the medical evidence and simply to refer to the types of evidence we obtain. As in the proposed rules, the change in the final rules will clarify that we do not look only at medical evidence from the acceptable medical sources identified in paragraph (a), but also at information provided by the individual and any evidence that might have been provided by other sources, as described in final paragraph (d), when we make a determination whether the individual is disabled or blind.

We have revised final paragraph (e)(1) by deleting the term "limiting effects" and substituting in its place the word "severity," which more accurately conveys the statutory requirement that an individual must have a severe impairment to be found disabled. We are revising the language in final paragraph (e)(2) to more accurately refer to whether the duration requirement, as described in §§ 404.1509 and 416.909, is met.

We are revising final paragraph (e)(3) by qualifying the language about residual functional capacity because the combined evidence must be complete and detailed enough to allow us to determine the individual's residual functional capacity only when the evaluation steps described in §§ 404.1520(e) or (f)(1) and 416.920(e) or (f)(1) apply. We are also adding the phrase "or, if you are a child, your functioning" to § 416.913(e)(3) because ability to function is the relevant issue that we must determine for a child, not residual functional capacity.

Other Changes

Sections 404.1503 and 416.903 Who Makes Disability and Blindness Determinations.

We have removed the last sentence in paragraph (e) because it addressed only the role in disability determinations of psychological consultants, and did not address the parallel situations of speech-language pathologists and other consultants. We now provide more comprehensive rules in revised paragraphs (c) and (f) of §§ 404.1616 and 416.1016. We explain that non-physician medical consultants and psychological consultants can only evaluate impairments within their area of expertise.

Sections 404.1512 and 416.912 Evidence of Your Impairment.

We are changing the cross-reference in paragraph (b)(4) from paragraph (e) to paragraph (d) to reflect the reversal and redesignation of these two paragraphs already explained above.

Sections 404.1526 and 416.926 Medical Equivalence

We are revising the second sentence in paragraph (c) of §§ 404.1526 and 416.926 to indicate that a medical consultant must be an acceptable medical source identified in §§ 404.1513(a)(1) or (a)(3) through (a)(5) and 416.913(a)(1) or (a)(3) through (a)(5). We believe the acceptable medical sources identified in these sections, in addition to physicians, are fully qualified to serve as medical consultants within their areas of expertise.

As we discuss below in the *Public Comments* section, we received comments indicating that our intent was unclear. Accordingly, we are also revising the last sentence of paragraph (c), the parenthetical cross-references to §§ 404.1616 and 416.1016. The additional language we have included in final §§ 404.1616 and 416.1016 clarifies that medical consultants who are not physicians are limited to evaluating impairments within their specialties; for example, a speech-language pathologist functioning as a medical consultant would be able to provide an opinion about medical equivalence only with respect to a speech or language impairment.

Sections 404.1615 and 416.1015 Making Disability Determinations

We are removing the last sentence in paragraph (d). In the NPRM, we inadvertently failed to propose deleting this last sentence, which is the exact same provision contained in the last

sentence we are removing in paragraph (e) of §§ 404.1503 and 416.903. Therefore, for the same reasons discussed earlier for the deletion in §§ 404.1503 and 416.903, we are deleting this last sentence as well from §§ 404.1615(d) and 416,1015(d).

Sections 404.1616 and 416.1016 Medical or Psychological Consultants

In the NPRM, we proposed to revise the first sentence in §§ 404.1616 and 416.1016 to indicate that a medical consultant must be an acceptable medical source identified in §§ 404.1513(a)(1) or (a)(3) through (a)(5) and 416.913(a)(1) or (a)(3) through (a)(5). As we discuss below in the *Public Comments* section, we received a number of comments that indicated to us that our intent was unclear or that recommended additional rules defining the authority of medical consultants who are not physicians. Accordingly, we have extensively revised §§ 404.1616 and 416.1016.

The final rules now contain six paragraphs, designated (a) through (f). Paragraph (a), "*What is a medical consultant?*" explains that a "medical consultant" is a person who is a member of a team that makes disability determinations in a State agency, as explained in §§ 404.1615 and 416.1015, or who is a member of a team that makes disability determinations for us when we make disability determinations ourselves.

Paragraph (b), "*What qualifications must a medical consultant have?*" provides that a medical consultant must be an acceptable medical source identified in §§ 404.1513(a)(1) and (a)(3) through (a)(5) and 416.913(a)(1) and (a)(3) through (a)(5) and names all of the acceptable medical sources, in addition to cross-referencing these provisions as we had done in the NPRM. We believe that this is a clearer way to explain who is included. The paragraph also provides that the medical consultant must meet any appropriate qualifications for his or her specialty as explained in § § 404.1513(a) or 416.913(a).

Final paragraph (c) is called, "*Are there any limitations on what medical consultants who are not physicians can evaluate?*" In this paragraph, we clarify in response to comments what was always our intent: that even though any individual who is an acceptable medical source may be a medical consultant, medical consultants who are not physicians are limited to evaluations to the same extent that they would be limited in providing evidence of a medically determinable impairment. We provide an example explaining the limitations of a State agency medical consultant who, as a team member that makes disability determinations, is a speech-language pathologist.

Paragraph (d) is called, "*What is a psychological consultant?*" It explains that a psychological consultant may function in the same capacity as any of the individuals in paragraph (a) except that they are limited to the evaluation of mental impairments.

Paragraph (e) incorporates the second and third sentences of the opening paragraph of prior §§ 404.1616 and 416.1016, and paragraphs (a), (b), and (c) of those sections. We have incorporated the provisions verbatim. The only differences are in the letter and number designations of the paragraph and subparagraphs and the new heading we added to final paragraph (e) for consistency with the headings of the previous paragraphs. The prior provisions did not use headings.

Paragraph (f) is called, "*Are there any limitations on what a psychological consultant can evaluate?*" It parallels paragraph (c) of this section, discussed above.

Public Comments

We published these regulatory provisions in the **Federal Register** as an NPRM on October 9, 1998 (63 FR 54417). The comment period closed on December 8, 1998. We received comments in response to this notice from 12 individuals and organizations, including government agencies whose interests and responsibilities require them to have some expertise in the evaluation of medical evidence used in making disability determinations under titles II and XVI of the Act. We also received comments from a private, non-profit organization for the disabled, an individual attorney, health care professional organizations, and an employee union.

Most of the commenters stated that they supported the proposed rules. However, a number of commenters offered suggestions for revisions and additions, as explained below. Three commenters supported the rules without making any recommendations. One commenter opposed all of the rules. Because some of the comments were similar, we condensed, summarized, or paraphrased them. We have, however, tried to summarize the commenters' views accurately and to respond to all of the significant issues raised by the commenters that are within the scope of these rules.

Comment: Two commenters recommended that we revise paragraph (a)(2) of §§ 404.1513 and 416.913 to include borderline intellectual functioning in the list of impairments that can be established by evidence from licensed or certified school psychologists.

Response: We adopted the comments. As one of the commenters noted, borderline intellectual functioning is a medically determinable mental impairment that results from psychological abnormalities demonstrable by medically acceptable clinical and laboratory diagnostic techniques. It is usually assigned to individuals who have an intelligence quotient (IQ) score in the 71–84 range and for whom the diagnosis of mental retardation has been excluded. School psychologists are qualified to assess cognitive abilities at all levels, and we agree that they can establish the existence of borderline intellectual functioning.

Comment: One commenter recommended that we expand proposed paragraph (a)(5) of §§ 404.1513 and 416.913 to permit qualified speech-language pathologists to establish speech, language, "or related (*e.g.*, swallowing)" impairments. The commenter also recommended that we expand the qualification criterion in the proposed rules concerning meeting State education agency standards to say: "* * * provided such standards are consistent with the highest requirements for State-approved or State-recognized certification, licensing, registration, or other comparable requirements for speech-language pathologists." The commenter believed that this would make clear that the word "qualified" refers to individuals who have met the requirements in the State, and would ensure that only those individuals with sufficient training and clinical expertise are allowed to provide evidence used in making a disability determination.

Response: We are not adopting the recommendation to consider speech-language pathologists as acceptable medical sources for "related (*e.g.*, swallowing)" impairments. Because of the complex anatomical and physiological construct involved in the swallowing mechanism, specific knowledge and training that encompass the medical areas of neurology, otolaryngology, and gastroenterology are required for the proper interpretation of laboratory and imaging studies necessary in arriving at the diagnosis, prognosis, and treatment regimen pertaining to the variety of disorders associated with swallowing. Therefore, we will continue to require evidence from a licensed physician to establish the existence of a medically determinable swallowing impairment.

We are also not adopting the second comment about State education agency standards being consistent with the highest State requirements because it would not be feasible for us to constantly monitor such standards and requirements in each State.

For reasons already noted above in the summary of the changes in these final rules, we have cited State licensure as the first credential in the rule.

Comment: One commenter recommended that we not delete paragraph (a)(6) of § 416.913, the paragraph that addresses interdisciplinary assessments in which there is a signature from an acceptable medical source. The commenter believed that this paragraph helps to avoid confusion about the acceptability of evidence that is signed by both a medical and a nonmedical source. The commenter also recommended that we add the same provision to § 404.1513.

Response: We did not adopt the comment because the construction of paragraph (a)(6) is confusing and not parallel to the construction of the other paragraphs in paragraph (a). Paragraph (a) concerns who is an acceptable medical source, not what is "acceptable medical evidence." Moreover, an acceptable medical source must be a person, not "[a] report" as stated in paragraph (a)(6). The fact that an interdisciplinary team report is co-signed by both a medical and nonmedical source does not mean that the report cannot be considered "acceptable medical evidence," *i.e.*, evidence from an acceptable medical source. Provided that the medical source is an acceptable medical source identified in final paragraphs (a)(1) through (a)(5) of § § 404.1513 and 416.913, it does not matter whether an evaluation signed by an acceptable medical source is included in an interdisciplinary team report or is contained in a separate report.

Comment: Three commenters recommended that we include other medical professionals in our list of acceptable medical sources. One commenter recommended that we include optometrists for the determination of other aspects of eye diseases, in addition to the measurement of visual acuity and visual fields. Another commenter recommended that we recognize audiologists as acceptable medical sources for purposes of establishing hearing or related (*e.g.*, balance) impairments only. This source recommended criteria for establishing that an audiologist is "qualified" for our program. The third commenter recommended that we include pediatric nurse-practitioners for establishing the existence of medically determinable impairments in children.

Response: We did not adopt the comments. Sections 223(d)(3) and 1614(a)(3)(D) of the Act require that an individual have a medically determinable physical or mental impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. In keeping with these statutory provisions, we generally consider licensed physicians and licensed or certified psychologists, who are the most qualified health care professionals, as "acceptable medical sources" who can establish the existence of a medically determinable impairment. We have also provided in these final rules that podiatrists and speech-language pathologists may be acceptable medical sources, not only because of their unique qualifications, but because we have determined that there is sufficient standardization of their qualifications across the States for us to provide rules for their general use in claims. We have not determined this for other specialties. Therefore, we believe it would be inappropriate to include these additional specialties at this time.

However, we want to make clear that we consider information from the sources named in the comments to be important evidence when we determine the severity of an individual's impairment. The rules on who is an acceptable medical source address a single, narrow issue in our disability evaluations: who can provide evidence to establish whether an individual has a medically determinable impairment as required by the Act. Once an individual has crossed this threshold, we can and do consider all evidence that helps us to determine the severity of the impairment and its effects on the individual. For this critical aspect of the disability determination process, we will continue to use information from the sources named in the comments.

Comment: One commenter disagreed with our inclusion of licensed or certified psychologists, school psychologists and speech-language pathologists as "acceptable medical sources" in our regulations. The commenter said that we should clarify that these sources are acceptable sources of evidence but that they are not "medical" sources. The commenter believed that "medical" sources should refer only to physicians and that Congress did not intend for us to include any of the other sources.

Response: We did not adopt the comment. Sections 223(d)(3) and 1614(a)(3)(D) of the Act define a medically determinable impairment as one that results from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." As we noted in the preamble to the proposed rules, we have included licensed or certified school psychologists (or licensed or certified individuals with other titles who perform the same function as a school psychologist in a school setting) and speech-language pathologists as "acceptable medical sources" because we have determined that they can provide us with medical evidence to establish the existence of a medically determinable impairment within their areas of specialty using "medically acceptable clinical and laboratory diagnostic techniques," as defined in section 223(d)(3) of the Act. We have included licensed or certified psychologists in our regulations defining acceptable medical sources for many years, and, in fact, section 221(h) of the Act refers to these sources as qualified to complete the medical portion of our case review where there is evidence which indicates the existence of a mental impairment.

Comment: Five of the commenters commented about the provisions in § § 404.1526(c), 404.1616, 416.926(c) and 416.1016 of the proposed rules that would define the term "medical consultant" to include any acceptable medical source in § § 404.1513(a)(1) or (a)(3) to (a)(5) and 416.913(a)(1) or (a)(3) to (a)(5). One commenter simply noted that this would permit licensed optometrists, licensed podiatrists, and qualified speech-language pathologists to function as "medical consultants," but the commenter did not note approval or disapproval or make any recommendations. Two commenters indicated that such sources would have limited usefulness as medical consultants in the State agencies that make disability determinations for us because their expertise is so narrow. One of these commenters recommended that we should include provisions defining the authority of these individuals in § § 404.1526(c) and 416.926(c), our regulations on "*Who is a designated medical or psychological consultant*" for purposes of determining medical equivalence, and in § § 404.1616 and 416.1016, our regulations defining the standards for

who can be a medical or psychological consultant.

Two commenters opposed expanding the definition of medical consultant to include optometrists, podiatrists, and speech-language pathologists as medical consultants. One commenter believed that there was no rational justification in the proposed regulations for the "dramatic" change, and was concerned that the change would jeopardize the integrity of the disability programs, especially if it is implemented in conjunction with some of the Disability Redesign proposals. This commenter, while opposing the use of the sources as medical consultants, otherwise generally agreed with our proposal to consider these sources to be acceptable medical sources for purposes of providing medical evidence we need to establish the existence of a medically determinable impairment.

The last commenter, who opposed using these sources even as "acceptable medical sources" for establishing the existence of medically determinable impairments, focused on the proposal as it affected §§ 404.1526 and 416.926. This commenter indicated that the sources were "nonqualified." The commenter provided a number of specific reasons that they should not be permitted to make determinations of medical equivalence, primarily because they would be making decisions regarding areas for which they have no training or expertise and for which they are unlicensed under the law of any State. The commenter also recommended that we revise the medical equivalence regulations to clarify the various ways in which we make findings of medical equivalence. The commenter also stated that we should specify that all claims of combined mental and physical disorders should be reviewed by a psychiatrist to ensure that all aspects of mental and physical disorders are considered in rating the severity of impairment at any step of our process for determining disability.

Response: We are revising §§ 404.1616 and 416.1016 in response to these comments. We are also adding a cross-reference to §§ 404.1616 and 416.1016 for medical consultants who are not physicians at the end of §§ 404.1526(c) and 416.926(c) as we have noted in the explanation of the changes.

As two of the commenters recognized, our intent in the NPRM was to limit the authority of licensed optometrists, licensed podiatrists, and qualified speech-language pathologists to evaluate impairments with regard to their areas of expertise delineated in proposed §§ 404.1513(a) and 416.913(a). However, the comments made us realize that our intent was not clear and could be misinterpreted. Therefore, we have expanded final §§ 404.1616 and 416.1016 to provide explicitly that acceptable medical sources other than physicians (*i.e.*, licensed optometrists, licensed podiatrists, and qualified speech-language pathologists) may function as medical consultants, but their authority in helping to make determinations and in providing opinions about medical equivalence and elsewhere is limited to their area of expertise.

Although it was unclear from the comment which disability redesign proposals one of the commenters referred to, we disagree with that comment. We believe that providing State agencies with the opportunity to use these additional specialists in a consulting capacity will improve their ability to make timely, accurate decisions.

With regard to the comment asking us to include the various ways we make findings of medical equivalence, we believe that the change is outside the scope of our authority because we did not propose the change. However, we will consider this comment when we propose other changes in the future.

In making the revisions to §§ 404.1616 and 416.1016 in response to these comments, we added new paragraphs with letter and number designations. Therefore, we had to redesignate the paragraph letters and numbers from the prior rules that describe qualified psychologists. Apart from the change in the designations of the letters and numbers of the paragraphs, we did not change the language of those paragraphs.

In response to the last comment, regarding review by a psychiatrist of any case involving a combination of mental and physical disorders, we are providing in final paragraph (c) of §§ 404.1616 and 416.1016 that a physician must evaluate the case record, except when the mental impairment alone would justify a finding of disability. However, we do not agree with the commenter that a psychiatrist will be the best physician to assess a combination of mental and physical disorders in all claims. There are claims in which it is more appropriate to use other specialists for the overall review in consultation with a psychiatrist or psychologist.

Comment: One of the foregoing commenters also pointed out that the first sentence of prior §§ 404.1616 and 416.1016 seemed incomplete. The commenter noted that the heading of these regulations referred to "*Medical or psychological consultant,*" yet the first sentence referred only to medical consultants. The commenter provided a recommended revision that would include psychological consultants.

Response: We adopted the comment, although not in the exact way suggested by the commenter. In response to this, and the comments already noted, we have revised the entire sections to clarify their provisions.

Comment: One commenter suggested that we revise proposed §§ 404.1513(e) and 416.913(e) (prior §§ 404.1513(d) and 416.913(d)) to read: "The medical evidence, including the clinical and laboratory find[ing]s, and other evidence from other sources must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind." The commenter believed that it would be better to retain reference in our regulations to the medical and other evidence we need to establish the existence of a medically determinable impairment and its severity.

Response: We adopted the comment, but did not use the exact language proposed by the commenter. We believe that the commenter's proposed language could be misinterpreted to mean that each piece of evidence must be complete and detailed enough in and of itself for us to make the various findings listed in these regulation sections, or that we must try to obtain all available evidence, even after the record is complete and detailed enough for us to make a determination or decision.

Therefore, the final rule provides: "The evidence in your case record, including the medical evidence from acceptable medical sources (containing the clinical and laboratory findings) and other medical sources not listed in paragraph (a), information you give us about your medical condition(s) and how it affects you, and other evidence from other sources, must be complete and detailed enough to allow us to make a determination or decision about whether you are disabled or blind." We changed the phrase near the end to "make a determination or decision" for technical reasons. Under our regulations §§ 404.901 and 416.1401, the term "determination" means the initial or reconsidered determination, and the term "decision" means the decision made by an administrative law judge or the Appeals Council. This is not a substantive change in the rule, only a clarification of its meaning to show that it applies to all of our adjudicators.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Therefore, they were not subject to OMB review. We have also determined that these rules meet the plain language requirements of E.O. 12866 and the President's memorandum of June 1, 1998.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations impose no new reporting or recordkeeping requirements subject to OMB clearance. (Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: May 22, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts P and Q of part 404 and subparts I and J of part 416 of 20 CFR chapter III are amended as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

§ 404.1503 [Amended]

2. Section 404.1503 is amended by removing the last sentence of paragraph (e).

3. Section 404.1512 is amended by revising paragraph (b)(4) to read as follows:

§ 404.1512 Evidence of your impairment.

* * * * *

(b) * * *

(4) Information from other sources, as described in § 404.1513(d);

* * * * *

4. Section 404.1513 is amended by revising the heading and paragraphs (a), (d), and (e) to read as follows:

§ 404.1513 Medical and other evidence of your impairment(s).

(a) *Sources who can provide evidence to establish an impairment.* We need evidence from acceptable medical sources to establish whether you have a medically determinable impairment(s). See § 404.1508. Acceptable medical sources are—

(1) Licensed physicians (medical or osteopathic doctors);

(2) Licensed or certified psychologists. Included are school psychologists, or other licensed or certified individuals with other titles who perform the same function as a school psychologist in a school setting, for purposes of establishing mental retardation, learning disabilities, and borderline intellectual functioning only;

(3) Licensed optometrists, for the measurement of visual acuity and visual fields (we may need a report from a physician to determine other aspects of eye diseases);

(4) Licensed podiatrists, for purposes of establishing impairments of the foot, or foot and ankle only, depending on whether the State in which the podiatrist practices permits the practice of podiatry on the foot only, or the foot and ankle; and

(5) Qualified speech-language pathologists, for purposes of establishing speech or language impairments only. For this source, "qualified" means that the speech-language pathologist must be licensed by the State professional licensing agency, or be fully certified by the State education agency in the State in which he or she practices, or hold a Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

* * * * *

(d) *Other sources.* In addition to evidence from the acceptable medical sources listed in paragraph (a) of this section, we may also use evidence from other sources to show the severity of your impairment(s) and how it affects your ability to work. Other sources include, but are not limited to—

(1) Medical sources not listed in paragraph (a) of this section (for example, nurse-practitioners, physicians' assistants, naturopaths, chiropractors, audiologists, and therapists);

(2) Educational personnel (for example, school teachers, counselors, early intervention team members, developmental center workers, and daycare center workers);

(3) Public and private social welfare agency personnel; and

(4) Other non-medical sources (for example, spouses, parents and other caregivers, siblings, other relatives, friends, neighbors, and clergy).

(e) *Completeness.* The evidence in your case record, including the medical evidence from acceptable medical sources (containing the clinical and laboratory findings) and other medical sources not listed in paragraph (a) of this section, information you give us about your medical condition(s) and how it affects you, and other evidence from other sources, must be complete and detailed enough to allow us to make a determination or decision about whether you are disabled or blind. It must allow us to determine—

(1) The nature and severity of your impairment(s) for any period in question;

(2) Whether the duration requirement described in § 404.1509 is met; and

(3) Your residual functional capacity to do work-related physical and mental activities, when the evaluation steps described in § 404.1520(e) or (f)(1) apply.

5. Section 404.1526 is amended by revising the second and fourth sentences of paragraph (c) to read as follows:

§ 404.1526 Medical equivalence.

* * * * *

(c) *Who is a designated medical or psychological consultant.* * * * A medical consultant must be an acceptable medical source identified in § 404.1513(a)(1) or (a)(3) through (a)(5). * * * (See § 404.1616 for limitations on what medical consultants who are not physicians can evaluate and the qualifications we consider necessary for a psychologist to be a consultant.)

Subpart Q—[Amended]

6. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

§ 404.1615 [Amended]

7. Section 404.1615 is amended by removing the last sentence of paragraph (d).

8. Section 404.1616 is revised to read as follows:

§ 404.1616 Medical or psychological consultants.

(a) *What is a medical consultant?* A medical consultant is a person who is a member of a team that makes disability determinations in a State agency, as explained in § 404.1615, or who is a member of a team that makes disability determinations for us when we make disability determinations ourselves.

(b) *What qualifications must a medical consultant have?* A medical consultant must be an acceptable medical source identified in § 404.1513(a)(1) or (a)(3) through (a)(5); that is, a licensed physician (medical or osteopathic), a licensed optometrist, a licensed podiatrist, or a qualified speech-language pathologist. The medical consultant must meet any appropriate qualifications for his or her specialty as explained in § 404.1513(a).

(c) *Are there any limitations on what medical consultants who are not physicians can evaluate?* Medical consultants who are not physicians are limited to evaluating the impairments for which they are qualified, as described in § 404.1513(a). Medical consultants who are not physicians also are limited as to when they may serve as a member of a team that makes a disability determination. For example, a speech-language pathologist who is a medical consultant in a State agency may be a member of a team that makes a disability determination in a claim only if a speech or language impairment is the only impairment in the claim or if there is a combination of a speech or language impairment with another impairment but the speech or language impairment alone would justify a finding of disability. In all other cases, a physician will be a member of the team that makes a disability determination, except in cases in which this function may be performed by a psychological consultant as discussed in paragraph (f) of this section and § 404.1615(d).

(d) *What is a psychological consultant?* A psychological consultant is a psychologist who has the same responsibilities as a medical consultant explained in paragraph (a) of this section, but who can evaluate only mental impairments.

(e) *What qualifications must a psychological consultant have?* A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. For disability program purposes, a psychologist will not be considered qualified unless he or she:

(1) Is licensed or certified as a psychologist at the independent practice level of psychology by the State in which he or she practices; and

(2)(i) Possesses a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or

(ii) Is listed in a national register of health service providers in psychology which the Commissioner of Social Security deems appropriate; and

(3) Possesses 2 years of supervised clinical experience as a psychologist in health service, at least 1 year of which is post masters degree.

(f) *Are there any limitations on what a psychological consultant can evaluate?* Psychological consultants are limited to the evaluation of mental impairments, as explained in § 404.1615(d). Psychological consultants also are limited as to when they can serve as a member of a team that makes a disability determination. They may do so only when a mental impairment is the only impairment in the claim or when there is a combination of a mental impairment with another impairment but the mental impairment alone would justify a finding of disability.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

9. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)-(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

§ 416.903 [Amended]

10. Section 416.903 is amended by removing the last sentence of paragraph (e).

11. Section 416.912 is amended by revising paragraph (b)(4) to read as follows:

§ 416.912 Evidence of your impairment.

* * * * *

(b) * * *

(4) Information from other sources, as described in § 416.913(d);

* * * * *

12. Section 416.913 is amended by revising the heading and paragraphs (a), (d), and (e) to read as follows:

§ 416.913 Medical and other evidence of your impairment(s).

(a) *Sources who can provide evidence to establish an impairment.* We need evidence from acceptable medical sources to establish whether you have a medically determinable impairment(s). See § 416.908. Acceptable medical sources are—

(1) Licensed physicians (medical or osteopathic doctors);

(2) Licensed or certified psychologists. Included are school psychologists, or other licensed or certified individuals with other titles who perform the same function as a school psychologist in a school setting, for purposes of establishing mental retardation, learning disabilities, and borderline intellectual functioning only;

(3) Licensed optometrists, for the measurement of visual acuity and visual fields (see paragraph (f) of this section for the evidence needed for statutory blindness);

(4) Licensed podiatrists, for purposes of establishing impairments of the foot, or foot and ankle only, depending on whether the State in which the podiatrist practices permits the practice of podiatry on the foot only, or the foot and ankle; and

(5) Qualified speech-language pathologists, for purposes of establishing speech or language impairments only. For this source, "qualified" means that the speech-language pathologist must be licensed by the State professional licensing agency, or be fully certified by the State education agency in the State in which he or she practices, or hold a Certificate of Clinical Competence from the American-Speech-Language-Hearing Association.

* * * * *

(d) *Other sources.* In addition to evidence from the acceptable medical sources listed in paragraph (a) of this section, we may also use evidence from other sources to show the severity of your impairment(s) and how it affects your ability to work or, if you are a child, your functioning. Other sources include, but are not limited to—

(1) Medical sources not listed in paragraph (a) of this section (for example, nurse-practitioners, physicians' assistants, naturopaths, chiropractors, audiologists, and therapists);

(2) Educational personnel (for example, school teachers, counselors, early intervention team members, developmental center workers, and daycare center workers);

(3) Public and private social welfare agency personnel; and

(4) Other non-medical sources (for example, spouses, parents and other caregivers, siblings, other relatives, friends, neighbors, and clergy).

(e) *Completeness.* The evidence in your case record, including the medical evidence from acceptable medical sources (containing the clinical and laboratory findings) and other medical sources not listed in paragraph (a) of this section, information you give us about your medical condition(s) and how it affects you, and other evidence from other sources, must be complete and detailed enough to allow us to make a determination or decision about whether you are disabled or blind. It must allow us to determine—

(1) The nature and severity of your impairment(s) for any period in question;

(2) Whether the duration requirement described in § 416.909 is met; and

(3) Your residual functional capacity to do work-related physical and mental activities, when the evaluation steps described in § 416.920(e) or (f)(1) apply, or, if you are a child, your functioning.

* * * * *

13. Section 416.926 is amended by revising the second and fourth sentences of paragraph (c) to read as follows:

§ 416.926 Medical equivalence for adults and children.

* * * * *

(c) Who is a designated medical or psychological consultant. * * * A medical consultant must be an acceptable medical source identified in § 416.913(a)(1) or (a)(3) through (a)(5). * * * (See § 416.1016 for limitations on what medical consultants who are not physicians can evaluate and the qualifications we consider necessary for a psychologist to be a consultant.)

* * * * *

Subpart J—[Amended]

14. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

§ 416.1015 [Amended]

15. Section 416.1015 is amended by removing the last sentence of paragraph (d).

16. Section 416.1016 is revised to read as follows:

§ 416.1016 Medical or psychological consultants.

(a) What is a medical consultant? A medical consultant is a person who is a member of a team that makes disability determinations in a State agency, as explained in § 416.1015, or who is a member of a team that makes disability determinations for us when we make disability determinations ourselves.

(b) What qualifications must a medical consultant have? A medical consultant must be an acceptable medical source identified in § 416.913(a)(1) or (a)(3) through (a)(5); that is, a licensed physician (medical or osteopathic), a licensed optometrist, a licensed podiatrist, or a qualified speech-language pathologist. The medical consultant must meet any appropriate qualifications for his or her specialty as explained in § 416.913(a).

(c) Are there any limitations on what medical consultants who are not physicians can evaluate? Medical consultants who are not physicians are limited to evaluating the impairments for which they are qualified, as described in § 416.913(a). Medical consultants who are not physicians also are limited as to when they may serve as a member of a team that makes a disability determination. For example, a speech-language pathologist who is a medical consultant in a State agency may be a member of a team that makes a disability determination in a claim only if a speech or language impairment is the only impairment in the claim or if there is a combination of a speech or language impairment with another impairment but the speech or language impairment alone would justify a finding of disability. In all other cases, a physician will be a member of the team that makes a disability determination, except in cases in which this function may be performed by a psychological consultant as discussed in paragraph (f) of this section and § 416.1015(d).

(d) What is a psychological consultant? A psychological consultant is a psychologist who has the same responsibilities as a medical consultant explained in paragraph (a) of this section, but who can evaluate only mental impairments.

(e) What qualifications must a psychological consultant have? A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. For disability program purposes, a psychologist will not be considered qualified unless he or she:

(1) Is licensed or certified as a psychologist at the independent practice level of psychology by the State in which he or she practices; and

(2)(i) Possesses a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or

(ii) Is listed in a national register of health service providers in psychology which the Commissioner of Social Security deems appropriate; and

(3) Possesses 2 years of supervised clinical experience as a psychologist in health service, at least 1 year of which is post masters degree.

(f) Are there any limitations on what a psychological consultant can evaluate? Psychological consultants are limited to the evaluation of mental impairments, as explained in § 416.1015(d). Psychological consultants also are limited as to when they can serve as a member of a team that makes a disability determination. They may do so only when a mental impairment is the only impairment in the claim or when there is a combination of a mental impairment with another impairment but the mental impairment alone would justify a finding of disability.

[FR Doc. 00–13607 Filed 5–31–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the general redelegations of authority from the Commissioner of Food and Drugs to other officers of FDA. On June 20, 1999, the Commissioner of Food and Drugs restructured FDA "to create a more streamlined and efficient Office of the Commissioner that will provide leadership without compromising programmatic effectiveness." In this restructuring, organizational

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components were abolished and established and functions and personnel were transferred. Therefore, FDA is updating the delegations of authority regulations to reflect these changes and to delegate authority to positions in newly established components. FDA is also updating some position titles that may have been affected by previous reorganizations.

DATES: This rule is effective June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Donna G. Page, Division of Management Programs (HFA–330), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority regulations in various sections of 21 CFR part 5, subpart B, *Redelegations of Authority from the Commissioner of Food and Drugs*, to reflect the most significant changes that resulted from the June 20, 1999, restructuring. (See 64 FR 36361–36368, July 6, 1999, and 64 FR 38675, July 19, 1999.) The changes are as follows:

1. Updating the order of succession and who may perform all of the functions of the Commissioner of Food and Drugs.

2. Clarifying certain delegations of authority to appropriately reflect the Deputy Commissioners' authorities—there will be one principal Deputy Commissioner; however, two other Deputy Commissioner titles (International and Constituent Relations and Management and Systems) will be retained for incumbents only.

3. Amending certain delegations of authority and associated position titles to reflect the establishment of the Office of the Senior Associate Commissioner and the transfer of the Ombudsman, Executive Secretariat, Advisory Committee Oversight, Public Affairs, and Orphan Products Development functions to that component.

4. Removing position titles and delegations of authority associated with the abolished Office of Operations.

5. Removing references to the abolished Offices of Policy and External Affairs and updating position titles and associated delegations of authority, where appropriate, to reflect their conversions to the Office of Policy, Planning, and Legislation and the Office of International and Constituent Relations, respectively.

6. Updating position titles and associated delegations of authority to reflect the transfer of the health assessment, patent term extension, and scheduling controlled substances functions to the Center for Drug Evaluation and Research.

7. Updating position titles and associated delegations of authority to reflect the transfer of 21 CFR part 16 hearings functions; and to reflect the delegation of authority to make due diligence determinations, which pertain to patent term extensions, to the Office of the Ombudsman.

Unless stated otherwise, these authorities may not be further redelegated. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis, unless prohibited by a restriction in the document designating him/her as "acting" or unless not legally permissible.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. Section 5.20 is amended by revising paragraphs (b), (c), (e), (f), and (g); by redesignating paragraph (i) as paragraph (j); and by adding a new paragraph (i) to read as follows:

§ 5.20 General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.

* * * * *

(b) The following officials are authorized to perform all of the functions of the Commissioner of Food and Drugs and this authority may not be further redelegated:

(1) Deputy Commissioner;

(2) Associate Commissioner for Regulatory Affairs;

(3) Senior Associate Commissioner;

(4) Deputy Commissioner for Management and Systems;

(5) Senior Associate Commissioner for Policy, Planning, and Legislation; and

(6) Deputy Commissioner for International and Constituent Relations.

(c)(1) During the absence or disability of the Commissioner, or in the event of a vacancy in that position, the first official who is available in the following positions, or who has been designated by the Commissioner to act in such position, shall act as Commissioner:

(i) Deputy Commissioner;

(ii) Associate Commissioner for Regulatory Affairs; or

(iii) Senior Associate Commissioner.

(2) This authority may not be further redelegated. However, for a planned period of absence, the Commissioner of Food and Drugs (or someone "acting" on his/her behalf) may specify a different order of succession.

* * * * *

(e)(1) The Senior Associate Commissioner is authorized to make determinations that advisory committee meetings are concerned with matters listed in 5 U.S.C. 552(b) and therefore may be closed to the public in accordance with § 5.10(a)(18). This authority may not be further redelegated.

(2) The Senior Associate Commissioner is authorized to perform other associated advisory committee functions (e.g., establishing technical and scientific review groups (advisory committees)); appointing and paying members; approving waivers to appoint members to established advisory committees; renewing and rechartering of established advisory committees; amending charters of established advisory committees; and terminating established advisory committees. This authority may not be further redelegated.

(3) The Senior Associate Commissioner is authorized to approve conflict of interest waivers for special Government employees serving on advisory committees in accordance with 18 U.S.C. 208(b)(3), as amended. This authority may not be further redelegated.

(4) The Senior Associate Commissioner is authorized to select temporary members to advisory committees if such voting members are serving on an advisory committee managed by another center. This authority may not be further redelegated.

(f)(1) The Senior Associate Commissioner for Policy, Planning, and Legislation and the Associate Commissioner for Policy are authorized to perform any of the functions of the Commissioner of Food and Drugs with respect to the issuance of **Federal Register** notices and proposed and final regulations of the Food and Drug Administration. This authority may not be further redelegated.

(2) The Senior Associate Commissioner for Policy, Planning, and Legislation and the Associate Commissioner for Policy are authorized to issue responses to the following matters under part 10 of this chapter as follows, and this authority may not be further redelegated:

(i) Requests for waiver, suspension, or modification of procedural requirements under § 10.19 of this chapter;

(ii) Citizen petitions under § 10.30 of this chapter;

(iii) Petitions for reconsideration under § 10.33 of this chapter;

(iv) Petitions for stay under § 10.35 of this chapter; or

(v) Requests for advisory opinions under § 10.85 of this chapter.

(3) With respect to any matter delegated to the Senior Associate Commissioner for Policy, Planning, and Legislation and the Associate Commissioner for Policy under paragraph (f) of this section, the Senior Associate Commissioner for Policy, Planning, and Legislation and the Associate Commissioner for Policy are authorized to perform the function of the Commissioner of Food and Drugs under §§ 10.40, 10.45, 10.50, 10.55, 10.60, 10.65, 10.80, 10.90, and 10.95 of this chapter and of the Deputy Commissioner under § 10.206(g) and (h) of this chapter. This authority may not be further redelegated.

(4) The Senior Associate Commissioner for Policy, Planning, and Legislation and the Associate Commissioner for Policy are authorized under the Regulatory Flexibility Act (5 U.S.C. 605(b)) to certify that a proposed or final rule, if issued, will not have a significant economic impact on a substantial number of small entities. This authority may be further redelegated.

(g) The following officials are authorized to perform all of the functions of the officials under them in their respective offices, and this authority may not be further redelegated:

(1) Senior Associate Commissioner;

(2) Deputy Commissioner for International and Constituent Relations;

(3) Deputy Commissioner for Management and Systems; or

(4) Senior Associate Commissioner for Policy, Planning, and Legislation.

* * * * *

(i) The Deputy Commissioner is authorized to perform the due diligence determinations and informal hearings functions under 35 U.S.C. 156(d)(2)(B)(ii), as amended, relative to patent term extensions. This authority may not be further redelegated.

* * * * *

3. Section 5.22 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(6), (a)(7), (a)(10)(ii), (a)(11)(ii), (a)(12)(ii), (b)(1), (b)(2), and (b)(3); by redesignating paragraph (c) as paragraph (d) and revising newly redesignated paragraph (d); and by adding new paragraph (c) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(1) The Deputy Commissioner, the Deputy Commissioner for International and Constituent Relations, and the Deputy Commissioner for Management and Systems.

(2) The Senior Associate Commissioners, the Associate and Deputy Associate Commissioners, and the Chief Counsel and Deputies.

(3) The Director, Office of the Executive Secretariat, Office of the Senior Associate Commissioner, Office of the Commissioner.

* * * * *

(6)(i) The Director, Office of Human Resources and Management Services, Office of Management and Systems, Office of the Commissioner.

(ii) The Director, Division of Management Programs, Office of Human Resources and Management Services, Office of Management and Systems, Office of the Commissioner.

(iii) The Chief, Dockets Management Branch, Division of Management Programs, Office of Human Resources and Management Services, Office of Management and Systems, Office of the Commissioner.

(7)(i) The Associate Commissioner for Public Affairs, Office of Public Affairs, Office of the Senior Associate Commissioner, Office of the Commissioner.

(ii) The Director, Freedom of Information Staff, Office of Public Affairs, Office of the Senior Associate Commissioner, Office of the Commissioner.

* * * * *

(10) * * *

(ii) The Director and Deputy Director, Office of Management and Communications, Center for Veterinary Medicine (CVM).

* * * * *

(11) * * *

(ii) The Director and Deputy Director, Office of Management and Communications, CVM.

* * * * *

(12) * * *

(ii) The Director, Office of Management, Facilities, and Research Support, NCTR.

* * * * *

(b) * * *

(1) The Deputy Commissioner, the Deputy Commissioner for International and Constituent Relations, and the Deputy Commissioner for Management and Systems.

(2) The Senior Associate Commissioners, the Associate and Deputy Associate Commissioners, and the Chief Counsel and Deputies.

(3) The Director, Office of Human Resources and Management Services, Office of Management and Systems, Office of the Commissioner.

(c) The authorities under § 5.22 (a) and (b), where appropriate, may be further redelegated by the Deputy Commissioners; Senior Associate Commissioners; Associate Commissioner for Regulatory Affairs and Deputy; Chief Counsel and Deputies; Center Directors and Deputies; and Executive Officers (i.e., Executive Assistant, Office of the Commissioner; Director, Office of Management, CBER; Director, Office of Management, CDER; Director, Office of Management and Systems, CFSAN; Director, Office of Systems and Management, CDRH; Director, Office of Management and Communications, CVM; Director, Office of Management, Facilities, and Research Support, NCTR; and the Director, Office of Resource Management, ORA).

(d) The Chief, Regulations Editorial Section; Regulations Policy and Management Staff; Office of Policy, Planning, and Legislation; Office of the Commissioner, and his/her alternates are authorized to certify true copies of **Federal Register** documents. The Chief, Regulations Editorial Section; Regulations Policy and Management Staff; Office of Policy, Planning, and Legislation; and the Office of the Commissioner may designate alternates as required.

4. Section 5.23 is amended by revising paragraphs (a)(1), (a)(2), (a)(4), and (d).

§ 5.23 Disclosure of official records.

(a) * * *

(1) The Deputy Commissioner, the Deputy Commissioner for International and Constituent Relations, the Deputy Commissioner for Management and Systems, Senior Associate Commissioners, Associate and Deputy Associate Commissioners.

(2)(i) The Executive Assistant to the Commissioner, Office of the Commissioner.

(ii) The Director, Office of the Executive Secretariat, Office of the

Senior Associate Commissioner, Office of the Commissioner.

* * * * *

(4)(i) The Director, Office of Human Resources and Management Services, Office of Management and Systems, Office of the Commissioner.

(ii) The Director, Division of Management Programs, Office of Human Resources and Management Services, Office of Management and Systems, Office of the Commissioner.

(iii) The Chief, Dockets Management Branch, Division of Management Programs; Office of Human Resources and Management Services, Office of Management Services, Office of the Commissioner.

* * * * *

(d) The Director, Office of Resource Management, Office of Regulatory Affairs is authorized to sign affidavits regarding the presence or absence of records in the files of that office.

* * * * *

5. Section 5.25 is amended by revising paragraphs (a)(7) and (c) to read as follows:

§ 5.25 Research, investigation, and testing programs and health information and health promotion programs.

(a) * * *

(7) The Director, Office of Orphan Products Development, Office of the Senior Associate Commissioner, Office of the Commissioner.

* * * * *

(c) The Deputy Commissioner for Management and Systems, Office of Management and Systems, Office of the Commissioner; the Director and Deputy Director, Office of Facilities, Acquisitions, and Central Services, Office of Management and Systems, Office of the Commissioner; the Director, Division of Contracts and Procurement Management, Office of Facilities, Acquisitions, and Central Services, Office of Management and Systems, Office of the Commissioner; and the Chief Grants Management Officer and the Grants Management Officer, Division of Contracts and Procurement Management, Office of Facilities, Acquisitions, and Central Services, Office of Management Systems, Office of the Commissioner are authorized to sign and issue all notices of grant awards and amendments thereto and sign and issue notices of suspension and termination thereof for grants approved under the authority delegated in paragraphs (a) and (b) of this section.

* * * * *

6. Section 5.27 is revised to read as follows:

§ 5.27 Patent term extensions for human drug products, medical devices, and food and color additives; and due diligence determinations.

(a) The Director, Center for Drug Evaluation and Research (CDER) and the Associate Director for Policy, CDER, are authorized to perform the functions delegated to the Commissioner of Food and Drugs under 35 U.S.C. 156, as amended, except for making due diligence determinations and holding of informal hearings under 35 U.S.C. 156(d)(2)(B).

(b) The Chief Mediator and Ombudsman, Office of the Ombudsman, Office of the Senior Associate Commissioner, Office of the Commissioner, is authorized to perform the functions delegated to the Commissioner to make due diligence determinations under 35 U.S.C. 156(d)(2)(B), as amended, except for holding of informal hearings under 35 U.S.C. 156(d)(2)(B)(ii).

7. Section 5.30 is amended by revising paragraph (c)(1) to read as follows:

§ 5.30 Hearings.

* * * * *

(c) * * *

(1) The Chief Mediator and Ombudsman, Office of the Ombudsman, Office of the Senior Associate Commissioner, Office of the Commissioner.

* * * * *

8. Section 5.32 is revised to read as follows:

§ 5.32 Authority relating to determination of product classification and assignment of primary jurisdiction.

The Chief Mediator and Ombudsman, Office of the Ombudsman, Office of the Senior Associate Commissioner, Office of the Commissioner, as product jurisdiction officer is authorized to make a determination under section 563 of the Federal Food, Drug, and Cosmetic Act (the act) respecting the classification of a product as a drug, biological product, device, or a combination product subject to section 503(g) of the act, and to assign primary responsibility respecting the organizational component of the Food and Drug Administration that will regulate the product.

9. Section 5.34 is amended by revising paragraph (a) to read as follows:

§ 5.34 Authority to select temporary voting members for advisory committees and authority to sign conflict of interest waivers.

(a) Each center director is authorized to select members of, and consultants to, scientific and technical FDA advisory committees under that center's management to serve temporarily as voting members on another advisory committee under that center's management when expertise is required that is not available among current voting standing members of a committee or to comprise a quorum when, because of unforeseen circumstances, a quorum will be lacking. When additional voting members are added to a committee to provide needed expertise not available among current voting standing members of a committee, a quorum will be based on the total of regular and added members. Authority to select temporary voting members to advisory committees if such voting members are serving on an advisory committee managed by another center has not been redelegated. This authority will continue to be exercised by the Commissioner or the Senior Associate Commissioner, Office of the Commissioner.

* * * * *

10. Section 5.58 is amended by revising introductory text of paragraphs (a) and (b) to read as follows:

§ 5.58 Orphan products.

(a) The Director, Office of Orphan Products Development, Office of the Senior Associate Commissioner, Office of the Commissioner, is authorized to issue notices, and amendments thereto, inviting sponsorship for orphan products (human and animal drugs, biological products, and medical devices) and submission of:

* * * * *

(b) The Director, Office of Orphan Products Development, Office of the Senior Associate Commissioner, Office of the Commissioner, is authorized:

* * * * *

11. Section 5.81 is revised to read as follows:

§ 5.81 Responses to Drug Enforcement Administration temporary scheduling notices.

The Director, Center for Drug Evaluation and Research (CDER) and the Director, Executive Operations Staff, Office of the Center Director, CDER are authorized to provide responses to the Drug Enforcement Administration's temporary scheduling notices under the Controlled Substances Act, as amended (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 811(h)(4), as amended hereafter). The delegation excludes the authority to submit reports to Congress. Further redelegation may only be authorized with the Commissioner of Food and Drugs' approval.

Dated: May 17, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–13586 Filed 5–31–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 97N–0030]

Investigational New Drug Applications; Amendment to Clinical Hold Regulations for Products Intended for Life-Threatening Diseases and Conditions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations governing investigational new drug applications (IND's) to permit FDA to place a clinical hold on one or more studies under an IND involving a drug that is intended to treat a life-threatening disease or condition affecting both genders. The amendments permit the agency to place a clinical hold on such studies if *men or women* with reproductive potential who have the disease or condition are otherwise eligible but are categorically excluded from participation solely because of a perceived risk or potential risk of reproductive or developmental toxicity from use of the investigational drug. This rule was developed in response to the past practice of excluding women with reproductive potential from early clinical trials because of a perceived risk or potential risk of reproductive or developmental toxicity. The final rule does not impose requirements to enroll or recruit a specific number of men or women with reproductive potential.

DATES: The regulation is effective July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrea C. Masciale, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 24, 1997 (62 FR 49946), FDA proposed to amend its regulations in § 312.42 (21 CFR 312.42) governing clinical holds. A clinical hold is an order that FDA may issue to a sponsor to delay a proposed clinical investigation or to suspend an ongoing investigation for the development of a new drug or biological product (§ 312.42(a)). Under the proposed amendments, FDA could impose a clinical hold on any proposed or ongoing clinical trial for a life-threatening disease or condition that affects both genders if men or women with reproductive potential who have the disease or condition being studied were excluded from eligibility in any phase of the clinical investigation solely because of a risk or potential risk of reproductive toxicity or developmental toxicity from use of the investigational drug. As explained in the preamble to the proposed rule (62 FR 49946 at 49947), the amendments address the exclusion from clinical trials of members of either gender who have a life-threatening disease or condition. Because such exclusions have in the past been applied primarily to women, however, it is expected that the impact of the amendments will be to ensure that women who have a life-threatening disease or condition are not categorically excluded from investigational trials of drug products for that disease or condition solely because of a perceived risk or potential risk of reproductive or developmental toxicity from the use of the investigational drug. FDA provided 90 days for public comment on the proposed rule.

II. Description of the Final Rule

FDA regulations identify the grounds for placing a clinical hold on proposed or ongoing phase 1 studies (§ 312.42(b)(1)) and on proposed or ongoing phase 2 or phase 3 studies (§ 312.42(b)(2)). FDA is amending these clinical hold regulations to provide an additional ground for placing a phase 1, phase 2, or phase 3 study on clinical hold. Under these amendments, FDA may impose a clinical hold on any proposed or ongoing clinical trial for a life-threatening disease or condition that affects both genders if men or women with reproductive potential who have the disease being studied are excluded from eligibility in any phase of the investigation because of a risk or potential risk of reproductive or developmental toxicity from use of the investigational drug.

The proposed rule refers to studies under an IND involving a drug that is intended to treat a life-threatening illness or disease affecting both genders. As stated in the proposal (62 FR 49946 at 49951), the definition of life-threatening illness or disease is intended to be consistent with the agency's IND regulations (§ 312.81(a)(1)). Under the IND regulations, the term life-threatening is applied to "conditions" or "diseases." To remain consistent with current terminology, the agency is amending the final rule to refer to "life-threatening diseases or conditions."

The clinical hold under these amendments would not apply to clinical studies conducted under special circumstances, such as studies pertinent to only one gender (e.g., to evaluate the excretion of a drug in semen or its effects on menstrual function).

As described in the proposed rule, a clinical hold would not be applied to a clinical study conducted in men, as long as a study that does not exclude subjects with reproductive potential has been planned or is being conducted in women. The agency expects that in an active IND, studies that do not exclude women or men with reproductive potential will be underway or will commence in a timely manner. To clarify this expectation, the final rule has been modified to state that a clinical hold would not be ordered for a study conducted only in men or only in women, as long as a study that does not exclude members of the other gender with reproductive potential is being conducted concurrently or will take place within a reasonable time agreed upon by the agency (§ 312.42(b)(1)(v)(B)). FDA expects that a discussion between the sponsor and the agency concerning a reasonabie time for carrying out the study would take place at a pre-IND meeting or with the submission of the IND.

As stated in the proposed rule, this amendment to the IND regulations would not apply to clinical studies conducted exclusively in healthy volunteers (62 FR 49946 at 49951). The final rule has been modified in § 312.42(b)(1)(v) by adding paragraph (C) to clarify that the rule applies to clinical investigations that are conducted only in subjects who have the disease or condition that the drug is intended to treat.

III. Comments on the Proposed Rule

FDA received 26 letters, including letters from manufacturers, individuals, advocacy groups, and trade associations, commenting on the proposed rule. The majority of comments supported FDA's proposal to prohibit the exclusion of women from investigational studies through the clinical hold mechanism. Many comments suggested changes that would have narrowed or broadened the proposal.

A. General Comments

1. Several comments indicated that if women with reproductive potential are capable of acquiring a disease, such women should be included in clinical trials regardless of their ability to become pregnant. Many comments stated that FDA's goal of ensuring that women with reproductive potential who have a life-threatening disease are not categorically excluded from trials in the future is "an unassailable position." Another comment strongly recommended that FDA finalize the proposed rule, noting that despite FDA's 1993 "Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs," there has been little improvement in opening enrollments (especially in phase 1 and phase 2 trials) to fertile women and in increasing enrollment of women overall. The agency agrees with these comments.

2. One comment stated that women of reproductive age with life-threatening diseases who are fully informed should be included in all stages of product development. The same comment urged FDA to closely monitor the implementation of the new rule and to continue the development of policies that would minimize risks while allowing productive research on women and men.

FDA will monitor the implementation of this final rule as part of the general IND process and will continue to encourage research on the treatment and prevention of diseases and conditions in all individuals.

B. Applicability/Scope of the Proposed Rule

3. Section 312.42(a) states that "[w]hen an ongoing study is placed on a clinical hold, * * * patients already in the study should be taken off therapy involving the investigational drug unless specifically permitted by FDA in the interest of patient safety." One comment noted that FDA did not define "patient safety" in the preamble to the proposed rule. The comment requested that the agency consider indirect harm to patients in an evaluation of whether continuation of therapy involving an investigational drug is in the interest of patient safety.

Generally, studies are placed on clinical hold because FDA considers it unsafe to carry the studies forward. In the present case, the hold does not imply such a conclusion. FDA generally intends to place trials that inappropriately exclude individuals with reproductive potential on hold at the time of protocol submission. However, if a trial that has begun is placed on clinical hold under this rule, it usually should not be necessary to stop an individual subject's treatment.

4. Three comments discussed the definition of the term "life-threatening." Two comments expressed concern that the definition could be construed to include acute and chronic illnesses, such as status asthmaticus, epilepticus, anaphylaxis, diabetes, hypertension, and severe hypercholesterolemia. One proposed narrowing the definition to encompass only those diseases identified in the proposed rule as being of concern to FDA. The third comment suggested broadening the definition to include chronic conditions such as epilepsy.

The definition of life-threatening is not intended to be limited to only those diseases and conditions where death is imminent, or broad enough to include acute or chronic diseases where death from the disease or condition is unlikely. The definition of life-threatening encompasses any disease or condition where the likelihood of death is high unless the course of the disease is interrupted. This rule is grounded in FDA's belief that people who are suffering from a disease or condition that is life-threatening despite available therapy should have an opportunity to participate in a clinical trial intended to address the disease or condition. Although many acute and chronic illnesses are adequately controlled by existing therapies, some of these illnesses may have stages or aspects that continue to carry a high likelihood of death despite existing therapies. Such a condition or disease would be considered life-threatening within the meaning of this rule.

5. The agency received two comments addressing the need to balance access to investigational drugs and risks to study participants. One comment stated that while risks can be minimized through mechanisms such as informed consent and study design, the rule needs to be sufficiently flexible to address exceptional circumstances where potential risks of a drug may outweigh the potential benefit. Another comment stated that balancing the need for access to investigational drugs and minimizing patient risk would be better served by data-driven dialogue between sponsors and FDA than by the rule.

The agency acknowledges that balancing access and patient risk is complex and that the specific circumstances of the trial may be pertinent. Physicians and patients are generally willing to accept greater risks from use of medical products that treat life-threatening diseases or conditions than they would accept from those that treat less serious conditions (53 FR 41516 at 41518, October 21, 1988; 62 FR 49946 at 49949). Nonetheless, institutional review boards (IRB's) must still determine that risks to study participants are minimized by the use of procedures consistent with sound research design and that the risks to study participants are reasonable in relation to anticipated benefits (21 CFR 56.111(a)(1) and (a)(2)).

FDA provides frequent opportunities for sponsors to meet with the agency to discuss the details of clinical investigations. For example, the clinical hold regulations specifically encourage discussion about deficiencies in an investigation. FDA will attempt to discuss and satisfactorily resolve the matter with the sponsor before issuing the clinical hold order (§ 312.42(c)). As stated in the proposed rule, a study would be placed on clinical hold only as a last resort (62 FR 49946 at 49953).

6. The agency received divergent comments about the scope of the rule. Two comments stated that FDA should expand the regulation to include all clinical trials.

The agency declines the suggestion to expand the scope of the regulation to include all trials. At this time, there is an ethical basis for seeking to ensure that women with reproductive potential are not categorically excluded from trials of products being developed to treat life-threatening diseases and conditions. As discussed in the preamble to the proposed rule (62 FR 49946 at 49949), FDA has concluded that all trials involving patients with life-threatening diseases or conditions should, for the purposes of the rule, be considered to have therapeutic benefit. The ethical principle of justice does not support categorical exclusion of one group that might benefit from participation in clinical research for life-threatening diseases and conditions. Although similar considerations might apply to all human drug trials, the agency recognizes that the potential detriment of being excluded from a trial is greater when the subjects have life-threatening diseases or conditions.

7. One comment stated that because all new drugs are potentially teratogenic, FDA should not permit administration of any drug to women with reproductive potential until there is evidence of general safety and effectiveness from phase 1 and phase 2 trials.

Although a risk or potential risk of developmental toxicity might exist from participation in a study, benefits that might accrue to a woman with reproductive potential who has the life-threatening disease or condition could outweigh such a risk. Furthermore, such risks can be reduced or eliminated (62 FR 49946 at 49949).

The risk of fetal exposure is eliminated by preventing pregnancy. Sponsors and IRB's can require the use of pregnancy testing to detect unsuspected pregnancy prior to initiation of study treatment and at intervals during the course of drug exposure. When the study design permits, sponsors can minimize potential fetal exposure in the short term by timing studies to coincide with the early follicular phase of the menstrual cycle. Women and men can eliminate the possibility of pregnancy through abstinence and can reduce the possibility of pregnancy through the use of one or more methods of contraception for the duration of drug exposure (62 FR 49946 at 49950). The agency finds that exclusion of women from early trials is not medically necessary because the risk of fetal exposure can be minimized. Initial determinations about whether the risk is adequately addressed are properly left to patients, physicians, local IRB's, and sponsors, with appropriate review and guidance by FDA (58 FR 39406 at 39408, July 22, 1993).

8. The agency received multiple comments stating that historically, IRB's have been a source of exclusionary policies without scientific justification, and FDA needs to be active in ensuring that IRB's do not wrongly exclude women with reproductive potential. One comment suggested that FDA adopt new procedures to carefully monitor IRB's and encouraged quick enforcement of this rule if women with reproductive potential are inappropriately excluded.

Initial determinations about risk and other aspects of the safety of proposed investigations are properly left to patients, physicians, sponsors, and local IRB's with appropriate review and guidance by FDA (58 FR 39408). FDA has established procedures for IRB's at part 56 (21 CFR part 56). Although IRB's play a role in the determination of eligibility criteria for investigations, FDA plans to ensure compliance with this rule primarily through review of IND submissions for drugs that are intended to treat life-threatening diseases and conditions. If the agency makes an initial determination that unwarranted restrictions were placed on the eligibility of women, FDA will attempt to discuss and satisfactorily resolve the matter with the sponsor prior to issuing the clinical hold order (§ 312.42(c)). If a satisfactory resolution cannot be found, an IND may be placed on clinical hold.

9. Another comment recommended that FDA encourage trial sponsors and IRB's to broadly interpret "de facto exclusion" to avoid unnecessarily excluding women with reproductive potential.

The exclusion of subjects with reproductive potential addressed by this rule includes both explicit exclusion and de facto exclusion. De facto exclusion would result from study criteria that are not essential to accomplish the goals of the study and that have the effect of precluding enrollment of participants with reproductive potential (e.g., requiring sterilization or requiring weight or other physical characteristics).

10. Two comments suggested that the agency strengthen its policies by requiring that data collected under IND's be analyzed by gender.

The suggestions are outside the scope of this rulemaking, but in the **Federal Register** of February 11, 1998 (63 FR 6854), FDA issued the demographic subgroup rule, which revised new drug application (NDA) content and format regulations at 21 CFR 314.50(d)(5). The regulation requires that effectiveness and safety data be presented in each NDA for demographic subgroups, including gender subgroups. This regulation will ensure that data collected under IND's and submitted to the agency will be analyzed by gender.

11. Many comments expressed disappointment that the proposed rule did not contain requirements to enroll or recruit a significant number of women with reproductive potential in clinical trials. Several other comments misunderstood the intent of the rule and questioned its adequacy in ensuring appropriate enrollment and retention of women in trials. An additional comment stated that the proposed rule did not address requirements for appropriate recruitment strategies to ensure that low-income women are represented in clinical trials.

As stated in the preamble to the proposed rule, the primary goal of the rule is to ensure that women with reproductive potential who have a life-threatening disease or condition are not categorically excluded from participation in clinical investigations because of their reproductive capacity (62 FR 49946 at 49947). This rule is thus concerned with eligibility criteria for individual studies. Issues related to the enrollment of significant numbers of women with reproductive potential in clinical trials are under consideration by the agency.

The demographic subgroup rule also includes a requirement (21 CFR 312.33(a)(2)) that IND annual reports provide demographic data on subjects of trials. Although the demographic subgroup rule does not require the inclusion of a particular number of individuals from specific subgroups, it will further focus sponsors' attention throughout the drug development process on clinical trial enrollment. The demographic subgroup rule should also help sponsors better evaluate in their applications the safety and efficacy profiles of drugs for various subgroups, including gender.

12. The agency received one comment stating that pregnant women have the same right to make informed decisions about their own treatment as other women with reproductive potential. The comment concluded by recommending that the proposed regulation also apply if pregnant women are excluded from clinical trials for life-threatening diseases.

For the purpose of this rulemaking, FDA does not intend the phrase "women with reproductive potential" to include pregnant women (62 FR 49946 at 49947). The agency does not question the ability of pregnant women to provide informed consent. There is, however, increased complexity in conducting clinical trials with pregnant women because of their changing physiology. FDA will continue to explore this issue in other forums.

13. One comment recommended that the final rule clearly state that it applies to the exclusion of men in clinical trials and that the agency will carefully monitor the use of the clinical hold in studies that exclude men.

As explained in the preamble to the proposed rule, although men have rarely been excluded from studies because of reproductive potential, the rule addresses the exclusion from clinical trials of members of either gender who have a life-threatening disease (62 FR 49946 at 49947). Section 312.42(b)(1)(v) and (b)(2)(i) state that FDA may place any phase of a proposed or ongoing investigation on clinical hold if

> [t]he IND is for the study of an investigational drug intended to treat a life-threatening disease or condition that affects both genders, and *men or women* with reproductive potential who have the disease being studied are excluded from eligibility in any phase of clinical investigation because of a risk or potential risk of reproductive * * * or developmental * * * toxicity * * *.

(emphasis added). As part of the IND process, FDA reviews protocol inclusion and exclusion criteria, including gender-related eligibility.

14. In the preamble to the proposed rule, the agency stated that it is important for potential study participants to be provided with an

opportunity to discuss their involvement in a clinical trial with their sexual partner. FDA further stated that when deciding whether to participate in a clinical trial for an investigational drug, potential participants should be able to weigh the potential risks of their participation in consultation with their spouse or partner, their health care provider, and their researcher (62 FR 49946 at 49950). Two comments expressed concern that these statements could be construed to mean that such consultation with a partner must occur prior to enrollment. One comment indicated that many women are not sufficiently empowered to resist intimidation by their partner to make an independent decision if their partner agrees or disagrees with participation in a clinical trial. The second comment indicated that not all potential participants have one sexual partner and that no one should be excluded from participating in a clinical trial because of multiple sexual partners. This comment also indicated that women who are unable to negotiate the terms of sexual behavior or the cooperation of their partner(s) with contraceptives should not be categorically excluded from participation in clinical trials.

Women and men can eliminate the possibility of pregnancy through abstinence and can reduce the possibility of pregnancy through the use of contraception for the duration of drug exposure, which may exceed the length of the clinical trial. The cooperation of an individual's sexual partner(s) may be needed to ensure that abstinence occurs or that appropriate contraceptive methods are used, but such cooperation is not always essential. Potential participants should be able to make autonomous decisions about contraception. Potential study participants should discuss with investigators their ability to maintain adequate contraception prior to determining whether they should participate in the study. The rule is not intended to ignore the risks associated with an unintended pregnancy, including the potential for developmental toxicity; rather it is based on the view that IRB's, investigators, and subjects can manage those risks.

Risks to participants in early clinical trials can also be reduced through the proper use of the informed consent process. Potential participants who are heterosexually active must be aware of the need to ensure that appropriate contraceptive measures are taken to prevent pregnancy and of any additional risks in the event of pregnancy. While individuals should be encouraged to involve their sexual partner(s) in their decisionmaking process, the ultimate decision concerning whether to volunteer for a clinical trial should rest with the individual.

C. Reduction of Risks to Participants

15. The agency received several comments on the discussion of the informed consent process in the preamble to the proposed rule. The majority of comments concerning informed consent supported the agency's reliance on this process and other mechanisms to protect participants in early clinical trials. Two comments stated that the informed consent process may encourage potential study participants to act responsibly and make their own risk-benefit analysis. One comment stated that participants need to be adequately informed about available information and about areas in which data are lacking. Two other comments noted the importance of animal reproductive toxicity studies and the inclusion of information obtained as a result of such studies in the informed consent process.

There are a number of mechanisms, including the proper use of informed consent, to protect participants in clinical trials. Sponsors, investigators, and IRB's have responsibility for ensuring participant safety and protecting the rights of participants. FDA's informed consent regulations require that potential study participants be adequately informed that the study involves research, that there may be foreseeable risks or discomforts, and that there may be unforeseeable risks, such as potential risks to the embryo or fetus if a female study participant becomes pregnant (§ 50.25(b)(1) (21 CFR 50.25)(b)(1)). The existence of appropriate alternative procedures or courses of treatment, if any, must also be disclosed to the potential study participant (§ 50.25(a)(4)). Any reasonably foreseeable risks to the participant shown from the results of completed animal reproductive toxicity studies must be discussed in informed consent. When preclinical teratology and reproductive toxicity studies are not completed prior to the initial studies in humans, male and female study subjects should be informed about the lack of full characterization of the test article as well as the potential and unknown effects of the test agent on conception and fetal development. All study subjects should be provided with new pertinent information arising from preclinical studies as it becomes available, and informed consent documents should be updated when appropriate. If there is no relevant information, the informed consent should explicitly state this fact and should indicate the risks that cannot be ruled out.

16. The agency stated in the preamble to the proposed rule (62 FR 49946 at 49950) that when the teratogenic effects of a drug are well established, the agency, sponsor, or IRB may require the use of contraception to prevent pregnancy in sexually active individuals with reproductive potential. One comment noted this statement and suggested that the regulation clearly state that all women in all clinical trials have the right to be fully informed and to balance the risks and benefits of participation.

In most circumstances, a study protocol does not need to require specific contraceptive approaches. In accordance with good medical practice, it is expected that volunteers in clinical trials will take appropriate precautions against becoming pregnant. The agency, sponsor, or IRB may require that a protocol provide for instructions to the volunteer about effective measures to avoid pregnancy. Other appropriate precautions include efforts to ensure that a woman volunteer is not pregnant at the time a trial begins, such as pregnancy testing to detect the beta subunit of the human chorionic gonadotropin molecule. Pregnancy testing may need to continue during the trial and after the drug administration portion of the trial has ended, based on the half-life of the drug under study and other considerations. Contraceptive counseling by a qualified health care provider should be offered and provided to trial participants with a focus on the use of highly effective contraception, allowing for abstinence if a woman has successfully used that as her chosen method of birth control. Although women retain control over their reproductive decisions, women and the investigator should consider together the benefits and risks of participation, including the risks resulting from an inability to maintain adequate contraception. In some cases, notably where a drug is clearly teratogenic, a protocol may need to require specific approaches to contraception.

17. One comment stated that sponsors must retain the right to exclude women of childbearing age from clinical trials involving compounds with the potential for teratogenic effects, unless Congress enacts meaningful protection against liability. The comment based its concern on the potential liability of sponsors for any adverse effect on the offspring of study participants. The comment noted that many States permit

a child adversely affected by a parent's medical decision, who has reached the age of majority, to sue for injuries alleged to have been caused by the drug. The comment also noted that, in some States, a parent's consent based on information in an FDA-approved warning does not preclude lawsuits by adult children.

FDA recognizes that, in some States, a child who has reached the age of majority or spouse may have the right to sue for injuries caused by a parent's medical decision to use a drug. To succeed in such a lawsuit, the child or spouse must show, among other things, that warnings about the use of the drug were inadequate or that consent was not fully informed.

FDA also recognizes that, in some States, parental consent based on FDA-approved warnings for marketed drugs might not preclude a child from filing a lawsuit. In States permitting such lawsuits, the courts have described FDA standards for such warnings as minimum requirements for disclosing risk information. Because manufacturers and sponsors have the ultimate responsibility to provide risk information to FDA as well as to consumers, in some States, FDA approval of warning statements for marketed drugs is evidence of the warning's adequacy but is not dispositive. These cases suggest that a warning might be inadequate when a sponsor or manufacturer obscures or withholds risk information from FDA, or delays submission of supplemental risk information obtained after the product was approved.

The sponsor or investigator, with IRB oversight, is responsible for providing risk information to subjects and obtaining informed consent from them. (See § 312.50 and 21 CFR 312.53(c)(1)(vi)(*d*); part 50 (21 CFR part 50) and part 56.) Few liability cases have been reported involving injuries from experimental drugs and even fewer involving such injuries to offspring. In those cases involving injuries to the offspring of mothers who ingested experimental drugs, the inadequacy of warnings, or the lack of informed consent, was an essential element of the lawsuit. (See *Craft* v. *Vanderbilt University*, 940 F. Supp. 1185 (M.D. Tenn. 1996); *Wetherill* v. *iversity of Chicago*, 570 F. Supp. 1124 (N.D. Ill. 1983); *Mink* v. *University of Chicago*, 460 F. Supp. 713 (N.D. Ill. 1978); and *Diaz* v. *Hillsborough County Hospital Authority*, 165 F.R.D. 689 (M.D. Fla. 1996).) Although these cases involved research subjects who were pregnant women, they show that liability can be precluded when patients are informed adequately about a study and its risks. The women who brought these lawsuits claimed that they were not told that research was being conducted, much less asked for informed consent. The present rule is firmly grounded on informed consent and a fully informed patient.

The agency has found no reported case in which a sponsor or manufacturer of a drug was held liable when warnings were found to be adequate or the consent to be informed. In all of the strict liability cases involving marketed drug products, the adequacy of the warnings remains an essential element for avoiding liability. In determining the adequacy of a warning for prescription drug products, the standard generally applied is the drug maker's actual or constructive knowledge of the risk at the time the product was sold or distributed.

Considering all the relevant cases, the comment's concern about liability for injuries to offspring of study participants appears overstated. If anything, these cases show that the risk of liability for injuries to offspring resulting from their mother's ingestion of an experimental drug is remote. Sponsors and manufacturers can generally avoid liability by providing adequate warnings and obtaining fully informed consent.

This final rule applies to one narrow category of beneficial drugs, that is, experimental drugs being studied for their safety and effectiveness in treating life-threatening diseases or conditions. The rule also reduces the exposure to liability lawsuits by applying only to studies that seek subjects who are suffering from the life-threatening disease or condition at issue. The risk of liability is further minimized when the sponsor uses informed consent with careful study design, pregnancy screening techniques, and counseling about contraception and abstinence.

18. One comment expressed concern that informed consent alone may not be adequate to reduce the risk of injury to a participant and, thus, the risk of liability to a sponsor. Specifically, the comment states that, in many situations, the full nature and extent of any potential reproductive toxicity may not be sufficiently characterized at the time of desired access to a given investigational therapy to allow IRB's, investigators, or potential study subjects to make a complete determination of any potential risk. To provide patients with complete risk and benefit information for certain developmental compounds or studies, consent forms would have to be worded in a way that could effectively discourage participation in these trials by the very population intended to benefit from the proposed regulation.

An inherent danger in the use of every experimental drug is that unknown safety risks may exist for human research subjects. The purpose of informed consent is to provide research volunteers with sufficient information to determine for themselves whether the risks are justified. Informed consent regulations require a sponsor, when appropriate, to describe the reasonably foreseeable risks, and currently unforeseeable risks, to the participant or to an embryo or fetus in the event the participant should become pregnant during the study (§ 50.26(b)(1)). That the disclosure of complete risk and benefit information might discourage participation is not a reason to withhold information or to preempt the opportunity to participate in a study. On the contrary, disclosure serves the interests of self-determination regarding a person's decision to participate in medical research and ensures informed decisionmaking as to whether the risks are indeed outweighed by the benefits.

19. One comment stated that exceptional circumstances may exist where the potential risk of the drug to the participant outweighs the potential benefit. As an example, the comment indicated that it may not be advisable to include treatment-naive human immunodeficiency virus (HIV)-infected women with reproductive potential in clinical trials for a drug that has a high (or undetermined) risk to a fetus if there are other effective and safe agents in the same class available for use in these women.

HIV-infected women who are treatment-naive should not be excluded from participating in clinical trials solely because of their reproductive potential. HIV-infected women should have a choice, as should HIV-infected men, of enrolling in clinical trials, as long as there is a proper informed consent process that acknowledges the availability of safe and effective treatment options and, if the potential participants are sexually active, abstinence or contraception is used. After sponsor, FDA, and local IRB decisions on the protocol, the ultimate risk-benefit analysis in such circumstances is best left to the patient and the physician.

D. Increased Costs

20. Two comments supported the agency's position that the societal benefits outweigh the increased costs associated with the participation of women with reproductive potential who have a life-threatening disease in

clinical trials. Both comments specifically highlighted the advantage of obtaining gender-specific data in this population.

Based on the analysis of economic impacts described in the proposed rule, the agency believes that the societal benefits outweigh the potential minimal additional costs because a considerable patient population (i.e., women with reproductive potential who have a life-threatening disease or condition) could receive a potentially beneficial new therapy (62 FR 49946 at 49953).

E. The Use of a Clinical Hold

21. The agency received divergent comments about the use of a clinical hold to achieve the objectives of the proposal. One comment stated a belief that it is appropriate for FDA to use its ability to place a clinical trial on hold if the sponsor excludes women for inappropriate reasons. However, another comment asserted that the use of a clinical hold in these circumstances is not consistent with the original intent of the clinical hold regulations and turns a clinical hold into a punitive measure.

A clinical hold is an order that FDA may issue to a sponsor to delay a proposed clinical investigation or to suspend an ongoing investigation for the development of a new drug or biological product (§ 312.42). The agency has determined that it is appropriate to impose a clinical hold on an investigation that categorically excludes women or men with reproductive potential who have a life-threatening disease or condition.

The imposition of a clinical hold under these amendments to § 312.42 is not punitive. The aim of these amendments is to ensure that women with reproductive potential who have a life-threatening disease or condition are not categorically excluded from participation in clinical trials. The rationale for this action, as discussed in the preamble to the proposed rule (62 FR 49946 at 49949 through 49951), is based on four factors: (1) FDA is committed to expanding access to and accelerating approval of new therapies for life-threatening diseases and conditions; (2) important ethical principles underlie the belief that neither gender should be excluded from early clinical trials involving a life-threatening disease or condition because of reproductive potential; (3) the mechanisms are in place, or are available, to protect individuals who participate in clinical trials from potential risks; and (4) FDA is committed to expanding the collection of gender-specific data on investigative therapies, especially for those populations who ultimately will be using the therapies. Furthermore, FDA intends to issue a clinical hold order as a last resort, only after the review division's attempt to discuss and satisfactorily resolve the matter with the sponsor (§ 312.42(c)). As explained in Center for Drug Evaluation and Research (CDER) internal policy statements, CDER experience is that most potential holds can be avoided through such discussion (CDER Manual of Policy and Procedure (MAPP) 6030.1).

In the preamble to the proposed rule (62 FR 49946 at 49951), FDA discussed its legal authority to issue this rule under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)). Since publication of the proposed rule, on November 21, 1997, the President signed into law the Food and Drug Administration Modernization Act of 1997 (the Modernization Act) (Public Law 105–115). Section 117 of the Modernization Act amends section 505(i) of the act to include specific provisions authorizing the imposition of a clinical hold on an investigation if "the drug involved represents an unreasonable risk to the safety of the persons who are the subjects of the clinical investigation * * * or * * * for such other reasons as the Secretary may by regulation establish" (section 505(i)(3)(B) of the act). The Modernization Act makes explicit the agency's authority to issue regulations for the imposition of a clinical hold for reasons other than unreasonable risks to the safety of the subjects involved in the investigation.

22. One comment noted a distinction between a clinical hold imposed for a regulatory purpose (e.g., because a sponsor has not made adequate provision for the inclusion of women with reproductive potential in a clinical trial) and one imposed due to safety concerns. The comment suggested that the agency establish a new set of regulations for this "regulatory clinical hold," rather than provide for it in the already-established clinical hold regulations.

FDA's regulations governing IND's are located in part 312 (21 CFR part 312), and the agency's clinical hold regulations are in § 312.42. FDA declines the suggestion to create a new set of regulations to accommodate these amendments because this change would serve no purpose and would be confusing, placing bases for clinical holds in two locations although the procedures for holds in both cases are identical. Furthermore, since President Clinton issued the "Regulatory Reinvention Initiative" memorandum on March 4, 1995, FDA has sought to consolidate its regulations and to eliminate duplicative ones. The creation of a new set of clinical hold regulations would be contrary to the objectives of regulatory reinvention.

23. One comment proposed safeguards to protect the interests of subjects already participating in a clinical trial and to ensure that a clinical hold is used only as a last resort. The comment proposed the following safeguards: (1) A limitation of the rule to those clinical trials that are intended to demonstrate effectiveness and (2) procedures to ensure a dialogue between the sponsor and the agency to help avoid the imposition of the clinical hold. The comment recommended that when a clinical hold is issued for inadequate participation of women in the trial, procedural safeguards should include: (1) The concurrence of the Center Director after personal consultation between the Division Director and the sponsor; (2) communication of the reason for the hold to the sponsor in writing within 10 days of the imposition of a clinical hold; and (3) review by the Clinical Hold Review Committee at the first meeting following the hold.

The comment states that under this rule, a clinical hold may be issued for inadequate participation of women in a clinical trial. This statement erroneously implies that the rule imposes requirements to enroll or recruit a specific number of women in trials. To the contrary, the rule prohibits the exclusion of women with reproductive potential but does not require a quota or specific number of women for any trial.

The agency declines the suggestion to limit the scope of the rule to those clinical trials that are intended to demonstrate effectiveness. As explained in the preamble to the proposed rule (62 FR 49946 at 49949), many early clinical studies involving life-threatening diseases offer the potential for therapeutic benefit, especially when participation in an early clinical study is a prerequisite for enrollment in later studies. FDA has concluded that all trials involving patients with life-threatening diseases and conditions should, for purposes of this rule, be considered to have therapeutic potential. This rule, therefore, applies to studies in any phase of a clinical investigation that enroll participants with a life-threatening disease or condition.

The agency's clinical hold regulations provide a process for discussion between a sponsor and FDA about deficiencies in an investigation to ensure that a clinical hold is imposed as a measure of last resort. Whenever FDA concludes that a deficiency exists in a clinical investigation that may be grounds for the imposition of a clinical hold, FDA will, unless patients are exposed to immediate and serious risk, attempt to discuss and satisfactorily resolve the matter with the sponsor before issuing the clinical hold order (§ 312.42(c)).

Under FDA regulations, the Division Director that is responsible for reviewing the application for the underlying drug product has the authority to determine whether to impose a clinical hold (§ 312.42(d)). The agency does not find that concurrence by the Center Director is necessary to ensure that a clinical hold is imposed only as a last resort because, as discussed above, the agency's regulations and internal procedures already provide for discussion between the sponsor and the agency concerning the need for the clinical hold. Division directors in CDER and the Center for Biologics Evaluation and Research (CBER) have the authority to ensure that agency personnel follow these regulations and procedures.

FDA regulations state that the agency will communicate to the sponsor in writing the reasons for a clinical hold as soon as possible, and no more than 30 days after imposing the hold (§ 312.42(d)). A clinical hold is usually imposed only after discussion between FDA and a sponsor. Because the Division Director, or designee, generally provides a brief explanation of the reasons for the hold by telephone at the time the clinical hold is ordered, the agency finds it unnecessary to shorten the 30-day requirement for a written explanation.

CDER and CBER have established committees to review clinical holds and promote consistency throughout the Centers in issuing clinical holds. Under CDER policy, the CDER Clinical Holds Peer Review Committee meets quarterly to review all commercial IND clinical holds issued during the previous quarter (CDER MAPP 6030.1). The CBER Clinical Hold Oversight Committee reviews selected clinical holds that have been issued. The procedures for these committees will apply to clinical holds imposed by CDER or CBER under this rule.

24. Two comments indicated that this use of a clinical hold is not the optimal mechanism to achieve the agency's objectives and may threaten other agency goals (e.g., expediting the development of innovative therapies to treat life-threatening diseases and conditions in both men and women). One comment further noted that the best way to ensure that women and men of reproductive potential are able to participate in clinical trials is to address the issue during the development of the protocol for the trial early in the IND process. The comment recommended that a plan be developed in the IND process for including women of reproductive potential in clinical studies or articulating a clear rationale for their exclusion. The sponsor and the agency should agree on the plan as part of the IND with compliance tied to the plan and progress reported in routine annual reports to the IND.

Although developing data bases that include both men and women is an important goal, this rule does not address the content of an NDA or biologics license application (BLA) data set. Rather, this rule seeks to prevent exclusions of people suffering from life-threatening conditions or diseases from participation in trials based on reproductive potential.

Overall protocol development is addressed under several regulatory programs for the development and review of products that are intended to treat life-threatening diseases or conditions. The agency recognizes that agreement between a sponsor and FDA on a protocol for a clinical trial is an important step towards ensuring that women with reproductive potential who have a life-threatening disease or condition are not excluded from the clinical trial. Under the agency's regulations at §§ 312.80 through 312.88, sponsors are encouraged to work with the agency during the development of drugs intended to treat life-threatening and severely debilitating illnesses. Sponsors may ask to meet with FDA early in the drug development process to review and reach agreement on the design of necessary preclinical and clinical studies (§ 312.82). Such meetings may take place prior to the submission of the IND or at the end of phase 1. Furthermore, under section 112 of the Modernization Act, the agency has developed procedures to facilitate the development and expedite the review of products that are intended to treat serious or life-threatening conditions and demonstrate the potential to address an unmet medical need. Such procedures, described in the FDA guidance entitled "Fast Track Drug Development Programs—Designation, Development, and Application Review" (October 1998), encourage appropriately timed meetings and regular contact between sponsors and FDA.

Section 119(a) of the Modernization Act directs FDA to work towards, and achieve, agreement with sponsors and applicants on the design and size of clinical trials intended to form the primary basis of an effectiveness claim in an NDA or BLA. In conjunction with the reauthorization of the Prescription Drug User Fee Act in November 1997, FDA agreed to specific performance goals for the management of activities associated with the development and approval of products in human drug applications that are defined in section 735(1) of the act (21 U.S.C. 379g(1)). Under the goals, FDA will, upon request by a sponsor, evaluate certain protocols and issues relating to the protocols to assess whether their design is adequate to meet scientific and regulatory requirements identified by the sponsor. One type of protocol that is eligible for this special protocol assessment is a clinical protocol for a phase 3 trial whose data will form the primary basis for an efficacy claim. Section 119(a) of the Modernization Act and the performance goals recognize the importance of early agency review and agreement with sponsors regarding protocols for clinical trials.

Sponsors are required to submit information regarding the progress of IND's in their annual reports to the agency (§ 312.33). Any specific information regarding a clinical protocol agreement should be included in the annual report. Furthermore, sponsors of clinical studies for drug and biologic products are now required to tabulate in annual reports the numbers of subjects enrolled in the trial, specifying gender and other demographic subgroups (§ 312.33) (see 63 FR 6854).

F. International Issues

25. FDA received two comments concerning the effect of the regulation on international drug development. One comment questioned how the regulation will affect compliance with the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) "Draft Guideline on the Timing of Nonclinical Studies for the Conduct of Human Clinical Trials for Pharmaceuticals." The comment stated that the impact of the rule on global drug development remains unclear and questioned whether data collected from trials conducted under the rule would be acceptable to the regulatory agencies in Europe or Japan. Another comment raised the possibility of regulatory difficulties in including women of reproductive potential in some early studies when those studies are subject to regulation by agencies in other countries. The comment urged FDA to consider the effects of the proposed rule on multicountry studies.

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The final rule is consistent with ICH initiatives. In July 1997, FDA issued a final ICH guidance entitled "M3 Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals" (ICH M3 guidance) (published in 62 FR 62922, November 25,1997). The ICH M3 guidance, which supersedes the draft guideline cited in the comment, notes that there are regional differences in the timing of reproductive toxicity studies to support the inclusion of women with reproductive potential in clinical trials for all pharmaceuticals. As described in the ICH M3 guidance, women with reproductive potential may be included in early, carefully monitored studies in the United States without reproduction toxicity studies provided appropriate precautions are taken to minimize risk. Such precautions include pregnancy testing, use of a highly effective method of birth control, and entry after a confirmed menstrual period. Continued testing and monitoring during the trial should be sufficient to ensure compliance with the measures for avoiding pregnancy during the period of drug exposure (which may exceed the length of the study). To support this approach, informed consent should include any known pertinent information related to reproductive toxicity, such as a general assessment of potential toxicity of pharmaceuticals with related structures or pharmacological effects. If no relevant information is available, the informed consent should clearly note the potential for risk (ICH M3 guidance, p. 7).

In multicountry studies, provided that there is not a categorical exclusion based on reproductive potential in the United States, FDA does not intend to impose a hold for such exclusions on studies in foreign sites. Foreign data with such exclusions may be submitted to the agency.

G. HIV/Acquired Immune Deficiency Syndrome (AIDS)

26. One comment discussed the Center for Disease Control's reports of a steady decline in AIDS incidence and mortality rates in the United States since 1993 and highlighted the disparities related to women. The comment noted that the number of AIDS deaths in 1996 declined among all racial/ethnic groups but increased 3 percent among women and among those who acquired the infection through heterosexual contact. The comment emphasized the treatment and prevention challenges affecting HIV-infected women, highlighted the need for gender-specific data, and advocated the enrollment of women in clinical trials in numbers equivalent to the prevalence of women with AIDS in America.

As discussed in the preamble to the proposed rule (62 FR 49946 at 49950 and 49951), FDA is committed to expanding the collection of gender-specific data on investigative therapies, especially for those populations who are likely to use an investigational agent once it is marketed. Because many of the women who are affected by HIV and AIDS are women with reproductive potential, this rule will prevent their exclusion from participation in clinical trials for such diseases solely because of a perceived risk or potential risk of reproductive or developmental toxicity.

The Division of Antiviral Drug Products in CDER and other components in CDER and CBER that review HIV/AIDS-related products encourage sponsors to include women of all age groups early in the drug development process and support the concept of allowing each eligible female participant to make her own informed decision regarding the risks and benefits of participating in a trial.

The comment suggested that women be enrolled in clinical trials for AIDS therapies in numbers equivalent to the prevalence of women with AIDS in America. The comment is outside the scope of this rule. The rule does not require that particular numbers of women be enrolled in trials for investigational therapies. The rule only prohibits the exclusion of women with reproductive potential from eligibility for a clinical trial.

27. One comment indicated that the proposal is a broad-based solution to a focused problem that the agency has identified within a single drug class—antiviral drugs.

Although FDA prepared this proposal largely in response to recommendations made by the National Task Force on AIDS Drug Development and the Presidential Advisory Council on HIV/AIDS, the recommendations are applicable to all life-threatening diseases and conditions, and the agency has concluded that this problem is a general one. Additionally, when conducting its cost analysis, the agency used a protocol data base that included information from four CDER review divisions. Of the 43 protocols involving life-threatening diseases or conditions that were identified as having precluded the opportunity for women with reproductive potential to participate in trials, 28 percent were from the Division of Antiviral Drug Products, 67 percent were from the Division of Cardio-Renal Drug Products, and the remaining 5 percent were from the Division of Medical Imaging, Surgical, and Dental Drug Products and the Pilot Drug Evaluation Staff. The project did not include representation of all divisions in CDER and CBER. However, it was assumed that the available data were representative of all CDER and CBER review divisions regarding the exclusion of women with reproductive potential.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits or available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages). Under the Regulatory Flexibility Act (5 U.S.C. 601–612), unless an agency certifies that a rule will not have a significant economic impact on small entities, the agency must analyze regulatory options that would minimize the impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act (Public Law 104–7) (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

The agency has reviewed this rule and has determined that it is consistent with the regulatory philosophy and principles identified in Executive Order 12866, and in these two statutes. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order. With respect to the Regulatory Flexibility Act, the agency certifies that the rule will not have a significant effect on a substantial number or small entities. Because the final rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in a 1-year expenditure of $100 million or more, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

A. Costs

The Costs section of the Analysis of Impacts in the proposed rule (62 FR 49952) remains essentially unchanged and is not repeated here. However, two items require additional comment.

None of the cost estimates in the proposed rule were corrected for the incidence of pregnant women having diseases under study (but not having been included in the studies). Hence, the cost estimates discussed in the proposed rule were overstated. The agency believes that the effect of this overstatement is relatively insignificant.

The agency is aware of industry's concerns about liability exposure associated with the inclusion of women with reproductive potential in clinical trials and the potential for harm to offspring. Although there are cases of injury to offspring of mothers who ingested experimental drugs, the inadequacy of warnings or the lack of informed consent has been an essential element of such lawsuits. The agency is not aware of any reported case in which a sponsor of an investigational drug was held liable for injuries to offspring when the sponsor provided adequate warnings and obtained fully informed consent. Therefore, the agency assumes that this rule adds nothing to current liability costs under existing law.

B. Small Entities

The analysis in the proposed rule identified protocols sponsored by small businesses. The largest additional pregnancy testing cost incurred by a small business in the reviewed protocols under the rule was $990. Projected across all CDER and CBER review divisions and annualized, FDA expects no more than 9 protocol submissions per year from small businesses that might incur increased costs. Few small firms are likely to be affected in any given year, and most of these firms would incur no significant additional costs. Therefore, under the Regulatory Flexibility Act, the Commissioner of Food and Drugs certifies that this rule will not have a significant effect on a substantial number of small entities.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 312 is amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371; 42 U.S.C. 262.

2. Section 312.42 is amended by adding new paragraph (b)(1)(v) and by revising paragraph (b)(2)(i) to read as follows:

§ 312.42 Clinical holds and requests for modification.

* * * * *

(b) * * *

(1) * * *

(v) The IND is for the study of an investigational drug intended to treat a life-threatening disease or condition that affects both genders, and men or women with reproductive potential who have the disease or condition being studied are excluded from eligibility because of a risk or potential risk from use of the investigational drug of reproductive toxicity (i.e., affecting reproductive organs) or developmental toxicity (i.e., affecting potential offspring). The phrase "women with reproductive potential" does not include pregnant women. For purposes of this paragraph, "life-threatening illnesses or diseases" are defined as "diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted." The clinical hold would not apply under this paragraph to clinical studies conducted:

(A) Under special circumstances, such as studies pertinent only to one gender (e.g., studies evaluating the excretion of a drug in semen or the effects on menstrual function);

(B) Only in men or women, as long as a study that does not exclude members of the other gender with reproductive potential is being conducted concurrently, has been conducted, or will take place within a reasonable time agreed upon by the agency; or

(C) Only in subjects who do not suffer from the disease or condition for which the drug is being studied.

(2) * * *

(i) Any of the conditions in paragraphs (b)(1)(i) through (b)(1)(v) of this section apply; or

* * * * *

Dated: May 24, 2000.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 00–13664 Filed 5–31–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–133]

RIN 2115–AA97

Safety Zone: Fireworks Display, East River, Wards Island

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display located on the East River, New York. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the East River.

DATES: This rule is effective from 8:30 p.m. (e.s.t.) on June 29, 2000 until 10 p.m. (e.s.t.) on June 30, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–133) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4012.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the following reasons: due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and still publish the final rule with more than 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from: the hazards associated with this fireworks display. This is a local event with minimal impact on the waterway, vessels may still transit through the East River during the event, the zone is only in affect for 1½ hours and vessels can be given permission to transit the zone except for about 45 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Background and Purpose

The Coast Guard has received an application to hold a fireworks program on the waters of the East River, New York. This regulation establishes a safety zone in all waters of the East River within a 150-yard radius of the fireworks land shoot in approximate position 40°46′55.5″ N 073°55′33″ W (NAD 1983), about 200 yards northeast of the Triborough Bridge. The safety zone is in effect from 8:30 p.m. (e.s.t.) until 10 p.m. (e.s.t.) on Thursday, June 29, 2000. If the event is cancelled due to inclement weather, then this section is effective from 8:30 p.m. (e.s.t.) until 10 p.m. (e.s.t.) on Friday, June 30, 2000. The safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Recreational and commercial vessel traffic will be able to transit through the eastern 430 feet of the 1060-foot wide East River during the event. This safety zone precludes the waterway users from entering only the safety zone itself. Public notifications will be made prior to the event via the Local Notice to Mariners.

This event is currently regulated under 33 CFR 100.114 as an annually occurring event on July 1st. Due to the extensive increase of marine traffic in the Port of New York/New Jersey due to OPSAIL 2000 and the International Naval Review 2000 the sponsor is changing their event date for this year.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through the East River during the event, and advance notifications which will be made.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 4″ mortars fired from shore combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates*. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–133 to read as follows:

§ 165.T01–133 Safety Zone: Fireworks Display, East River, Wards Island.

(a) *Location.* The following area is a safety zone: All waters of the East River within a 150-yard radius of the fireworks land shoot in approximate position 40°46′55.5″ N 073°55′33″ W (NAD 1983), about 200 yards northeast of the Triborough Bridge.

(b) *Effective period.* This section is effective from 8:30 p.m. (e.s.t.) until 10 p.m. (e.s.t.) on June 29, 2000. If the event is cancelled due to inclement weather, then this section is effective from 8:30 p.m. (e.s.t.) until 10 p.m. (e.s.t.) on June 30, 2000.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard.

Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 22, 2000.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–13811 Filed 5–30–00; 12:39 pm]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1260

RIN 3095–AA67

Records Declassification

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule updates NARA regulations related to declassification of national security-classified information in records transferred to NARA's legal custody. It incorporates changes resulting from Executive Order 12958, Classified National Security Information, including:

Revising the timeline for systematic review from 30 years to 25 years;

Redefining declassification responsibilities to reflect the E.O. 12958 requirement for agencies to maintain systematic review programs;

Adding requirements for agencies that elect to review their accessioned records at NARA;

Adding requirements for loaning records to agencies for declassification review; and Revising requirements for reclassification of information to meet the provisions of E.O. 12958;

The rule affects members of the public who file mandatory review requests and Federal agencies.

DATES: This rule is effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Allard or Shawn Morton at 301–713–7360.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on February 17, 2000, at 65 FR 8077. The comment period ended on April 17, 2000. NARA received comments from 9 Federal agencies and 1 professional organization. Of the comments from the Federal agencies, 3 concurred with the proposed rule, 5 recommended clarifications or changes and 1 offered "no comment."

Following is a summary of the comments and a discussion of the changes that we made to the proposed rule to address those comments.

Automatic Declassification

One commenter stated that we should add a provision to account for the automatic declassification provisions in section 3.4 of Executive Order 12958. Executive Order 13142, issued on November 19, 1999, amended Executive Order 12958 section 3.4 to delay the application of automatic declassification for records accessioned into NARA until April 17, 2003. We have made appropriate reference to the automatic declassification requirements in the regulation.

As we reviewed §§ 1260.20 and 1260.40 to incorporate the reference, we further clarified these sections by removing the distinctions between records that are older and younger than 25 years to focus on the responsibilities for declassifying the information.

Restricted Data and Formerly Restricted Data

One Federal agency commented that the regulation does not address declassification responsibilities for nuclear-related information classified as Restricted Data and Formerly Restricted Data. This type of information is classified under the Atomic Energy Act of 1954, as amended, and is exempt from all requirements under Executive Order 12958. We added the language suggested by the commenter as § 1260.28, which specifies that only designated individuals in the Department of Energy may declassify records containing Restricted Data, and that only designated officials within the Department of Defense or the Department of Energy may declassify Formerly Restricted Data.

Mandatory Review Requests for White House Originated Information

The National Security Council recommended deleting § 1260.62 which explains how agencies should handle mandatory review requests for White House originated materials from a past administration that are in their custody. This section would have required agencies to forward the request, copies of the requested records, and a recommendation to grant or deny the request to the Archivist. The Archivist would then decide whether or not to declassify the information. The commenter noted that Federal agencies do not segregate White House originated information in their custody from their Federal records, and, therefore, follow the process for responding to Mandatory Review and FOIA requests for Federal records. We have accepted the comment after consulting with the Information Security Oversight Office.

Referring Documents Back to Agencies for Declassification Determinations

One Federal agency commented that § 1260.50 should be modified in several ways. The commenter pointed out that at times, the association of an agency with a particular document can be in itself a classified fact requiring protection. NARA currently does not tell requesters which agencies it has referred documents to. We have modified § 1260.50(d) according to the commenter's suggestion to clarify this existing practice.

The agency also offered alternative language in this section to clarify when NARA would send a document back to an agency for declassification. The commenter suggested that we insert the phrase, "Where the originating agency has not provided systematic declassification guidance, or where there is a question regarding the declassification guidance provided" at the beginning of the second sentence in § 1260.50(b). We have accepted this comment with modification. We cannot specify that we will refer the information only if we are missing guidance from the originating agency. When NARA declassifies information using agency systematic guidance, we must use the guidance of every agency that has equities in the information. If we do not have guidance from an agency that has equities in the information, even when it is not the originating agency, we review the information using the guidance that we do have, and then refer the information to the agency(ies) for which we do not have guidance for final action.

Appeals

We received a comment that NARA should act as the recipient for all appeals for adverse declassification decisions from other agencies. The

commenter indicated that this would be more efficient and consistent, and it would also allow, in the case of multiple referrals, NARA to act as a central point of contact for the appeal. If an agency's association with a particular document is classified, the commenter argued that this would provide a mechanism for protecting that fact.

NARA does not have the resources to handle all appeals for the entire Executive branch. In addition, the public would perceive this as an attempt to delay the appeals process by inserting another layer of bureaucracy into it. In order to address the commenter's concern of masking the association of particular agencies with particular information, NARA will send to the requester whatever appeal contact information the agency desires. Agencies may request other agencies to act as a contact point for appeals.

Responsibility for Declassification of Intelligence and Cryptological Information

A Federal agency commented that § 1260.26 improperly states that the Central Intelligence Agency (CIA) is "responsible" for declassifying information on intelligence sources and methods, and that the Secretary of Defense is "responsible" for declassifying information on cryptography. Sections 3.5(c) and 3.6(d) of Executive Order 12958 state that "the Director of Central Intelligence may establish special procedures for the declassification of information pertaining to intelligence." It does not state that the CIA is the sole responsible entity for this action. The Executive Order also states that "the Secretary of Defense may establish special procedures for declassification of cryptologic information." We have modified the regulation to more closely match the Executive Order.

This rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities because it applies to Federal agencies. This rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1260

Archives and records.

For the reasons stated in the preamble, the National Archives and Records Administration revises 36 CFR Part 1260 to read as follows:

SUBCHAPTER D—DECLASSIFICATION

PART 1260—DECLASSIFICATION OF NATIONAL SECURITY INFORMATION

Subpart A—General Information

Sec.

1260.1 What is the purpose of this regulation?
1260.2 Definitions.
1260.4 What NARA holdings are covered by this regulation?
1260.6 What is the authority for this regulation?

Subpart B—Responsibilities

1260.20 Who is responsible for the declassification of national security-classified Executive Branch information that has been accessioned by NARA?
1260.22 Who is responsible for the declassification of national security-classified White House originated information in NARA's holdings?
1260.24 Who is responsible for declassification of foreign government information in NARA's holdings?
1260.26 Who is responsible for issuing special procedures for declassification of information concerning intelligence or cryptography in NARA's holdings?
1260.28 Who is responsible for declassifying records that contain nuclear-related information classified under the Atomic Energy Act of 1954, as amended, commonly referred to as Restricted Data and Formerly Restricted Data?

Subpart C—Systematic Review

1260.40 How will records at NARA be reviewed for declassification?
1260.42 What are the procedures for agency personnel to review records at a NARA facility?
1260.44 Will NARA loan accessioned records back to the agencies to conduct declassification review?

Subpart D—Mandatory Review

Executive Branch Records

1260.50 What procedures does NARA follow when it receives a request for Executive Branch records under mandatory review?
1260.52 What are agency responsibilities when it receives a mandatory review request forwarded by NARA?
1260.54 What is the appeal process when a mandatory review request for Executive Branch information is denied?

White House Originated Information

1260.56 Is White House originated information subject to mandatory review?
1260.58 What are the procedures for requesting a mandatory review of White House originated information?
1260.60 What are agency responsibilities with regard to mandatory review requests for White House originated information?
1260.62 What is the appeal process when a mandatory review request for White House originated information is denied?

Subpart E—Reclassification

1260.70 Can Executive Branch information be reclassified?
1260.72 Can White House information be reclassified?
1260.74 Can NARA appeal a request to reclassify information?

Authority: 44 USC 2101 to 2118; 5 USC 552; EO 12958, 60 FR19825, 3 CFR, 1995 Comp., p.333; EO 13142, 64 FR 66089, 3 CFR, 1999 Comp., p. 236.

Subpart A—General Information

§ 1260.1 What is the purpose of this regulation?

This regulation defines the responsibilities of NARA and other Federal agencies for declassification of national security classified information in the holdings of NARA. This part also provides procedures for conducting systematic reviews of NARA holdings and for processing mandatory review requests for NARA holdings. Regulations for researchers wishing to request Federal records under the Freedom of Information Act (FOIA) or under mandatory review can be found in 36 CFR 1254.38.

§ 1260.2 Definitions.

(a) *Systematic declassification review* means the review for declassification of national security-classified information contained in records that have been determined by the Archivist of the United States to have permanent value in accordance with 44 U.S.C. 2107.

(b) *Mandatory declassification review* means the review for declassification of national security-classified information in response to a request for declassification that meets the requirements under section 3.6 of Executive Order 12958.

§ 1260.4 What NARA holdings are covered by this regulation?

The NARA holdings covered by this regulation are records legally transferred to the National Archives and Records Administration (NARA), including Federal records accessioned into the National Archives of the United States; Presidential records; Nixon Presidential materials; and donated historical materials in Presidential Libraries and in the National Archives of the United States.

§ 1260.6 What is the authority for this regulation?

Declassification of and public access to national security information is governed by Executive Order 12958 of April 17, 1995 (3 CFR 1995 Comp., p. 333), Executive Order 13142 of November 19, 1999 (3 CFR 1999 Comp., p. 236), and by the Information Security Oversight Office Implementing Directive for Executive Order 12958 (32 CFR Part 2001).

Subpart B—Responsibilities

§ 1260.20 Who is responsible for the declassification of national security-classified Executive Branch information that has been accessioned by NARA?

(a) Consistent with the requirements of section 3.4 of Executive Order 12958 and Executive Order 13142 on automatic declassification, the originating agency is responsible for its declassification, but may delegate declassification authority to NARA in the form of declassification guidance.

(b) If an agency does not delegate declassification authority to NARA, the agency is responsible for reviewing the records prior to the date that the records become eligible for automatic declassification.

(c) NARA is responsible for the declassification of records of a defunct agency that has no successor in function. NARA will consult with agencies having primary subject matter interest before making declassification determinations.

§ 1260.22 Who is responsible for the declassification of national security-classified White House originated information in NARA's holdings?

(a) NARA is responsible for declassification of information from a previous administration that was originated by:

(1) The President;

(2) The White House staff;

(3) Committees, commissions, or boards appointed by the President; or

(4) Others specifically providing advice and counsel to the President or acting on behalf of the President.

(b) NARA will consult with agencies having primary subject matter interest before making declassification determinations.

§ 1260.24 Who is responsible for declassification of foreign government information in NARA's holdings?

(a) The agency that received or classified the information is responsible for its declassification.

(b) In the case of a defunct agency, NARA is responsible for declassification of foreign government information in its holdings and will consult with the agencies having primary subject matter interest before making declassification determinations.

§ 1260.26 Who is responsible for issuing special procedures for declassification of information concerning intelligence or cryptography in NARA's holdings?

(a) The Director of Central Intelligence is responsible for issuing special procedures for declassification of information concerning intelligence activities and intelligence sources and methods.

(b) The Secretary of Defense is responsible for issuing special procedures for declassification of information concerning cryptography.

§ 1260.28 Who is responsible for declassifying records that contain nuclear-related information classified under the Atomic Energy Act of 1954, as amended, commonly referred to as Restricted Data and Formerly Restricted Data?

Only designated officials within the Department of Energy may declassify records containing Restricted Data. Records containing Formerly Restricted Data may only be declassified by designated individuals within the Department of Energy or by appropriate individuals in the Department of Defense.

Subpart C—Systematic Review

§ 1260.40 How will records at NARA be reviewed for declassification?

(a) Consistent with the requirements of section 3.4 of Executive Order 12958 and Executive Order 13142 on automatic declassification, NARA staff will systematically review for declassification records for which the originating agencies have provided declassification guidance. The originating agency must review records for which it has not provided declassification guidance.

(b) Agencies may choose to review their own records that have been accessioned by NARA by sending personnel to the NARA facility where the records are located to conduct the declassification review.

§ 1260.42 What are the procedures for agency personnel to review records at a NARA facility?

(a) NARA will make the records available to properly cleared agency reviewers. NARA will provide space for agency reviewers in the facility in which the records are located as space is available. NARA will also provide training and guidance for agency reviewers on the proper handling of archival materials.

(b) Agency reviewers must:

(1) Follow NARA security regulations and abide by NARA procedures for handling archival materials;

(2) Follow NARA procedures for identifying and marking documents that cannot be declassified; and

(3) Obtain permission from NARA before bringing into a NARA facility computers, scanners, tape recorders, microfilm readers and other equipment necessary to view or copy records. NARA will not allow the use of any equipment that poses an unacceptable risk of damage to archival materials. See 36 CFR 1254.26 and 1254.27 for more information on acceptable equipment.

§ 1260.44 Will NARA loan accessioned records back to the agencies to conduct declassification review?

In rare cases, when agency reviewers cannot be accommodated at a NARA facility, NARA will consider a request to loan records back to an originating agency in the Washington, DC, metropolitan area for declassification review. Each request will be judged on a case-by-case basis. The requesting agency must:

(a) Ensure that the facility in which the documents will be stored and reviewed passes a NARA inspection to ensure that the facility maintains:

(1) The correct archival environment for the storage of permanent records; and

(2) The correct security conditions for the storage and handling of national security-classified materials.

(b) Meet NARA requirements for ensuring the safety of the records;

(c) Abide by NARA procedures for handling of archival materials;

(d) Identify and mark documents that cannot be declassified in accordance with NARA procedures; and

(e) Obtain NARA approval of any equipment such as scanners, copiers, or cameras to ensure that they do not pose an unacceptable risk of damage to archival materials.

Subpart D—Mandatory Review

Executive Branch Records

§ 1260.50 What procedures does NARA follow when it receives a request for Executive Branch records under mandatory review?

(a) If the requested records are less than 25 years old, NARA refers copies of the records to the originating agency and to agencies that have equities in the information for declassification review. Agencies may also send personnel to a NARA facility where the records are located to conduct a declassification review, or may delegate declassification authority to NARA in the form of declassification guidance.

(b) If the requested records are more than 25 years old, NARA will review the

records using systematic declassification guidance provided by the originating agency and agencies having equities in the information. If the originating agency, or agencies having equities in the information have not provided systematic declassification guidance, or if there is a question regarding the guidance, NARA will refer any requested documents it is unable to declassify to the appropriate agency or agencies for declassification determinations.

(c) When the records were originated by a defunct agency that has no successor agency, NARA is responsible for making the declassification determinations, but will consult with agencies having primary subject matter interest.

(d) In every case, NARA will acknowledge receipt of the request and inform the requester of the action taken. If additional time is necessary to make a declassification determination on material for which NARA has delegated authority, NARA will tell the requester how long it will take to process the request. NARA will also tell the requester if part or all of the requested information is referred to other agencies for declassification review, subject to section 3.7(a) of Executive Order 12958.

§ 1260.52 What are agency responsibilities when it receives a mandatory review request forwarded by NARA?

(a) The agency must make a determination within 180 calendar days after receiving the request or inform NARA of the additional time needed to process the request. If an initial decision has not been made on the request within 1 year after the original date of the request, the requester may appeal to the Interagency Security Classification Appeals Panel (ISCAP).

(b) The agency must notify NARA of any other agency to which it forwards the request in those cases requiring the declassification determination of another agency.

(c) The agency must return to NARA a complete copy of each declassified document with the agency determination. If documents cannot be declassified in their entirety, the agency must return to NARA a copy of the documents with those portions that must be withheld clearly marked.

(d) The agency must also furnish, for transmission to the requester, a brief statement of the reasons the requested information cannot be declassified and a statement of the requester's right to appeal the decision, along with the procedures for filing an appeal. The agency must also supply for transmission to the requester a contact name and title and the address where the appeal must be sent.

§ 1260.54 What is the appeal process when a mandatory review request for Executive Branch information is denied?

(a) If an agency denies a declassification request under mandatory review, the requester may appeal directly to the appeal authority at that agency.

(b) If requested by the agency, NARA will supply the agency with:

(1) Copies of NARA's letter to the requester transmitting the agency denial; and

(2) Copies of any documents denied in part that were furnished to the requester.

(c) The agency appeal authority must notify NARA in writing of the final determination and of the reasons for any denial.

(d) The agency must furnish to NARA a complete copy of any document they released to the requester only in part, clearly marked to indicate the portions that remain classified. NARA will give the requester a copy of any notifications from the agencies that describe what information has been denied and what the requesters appeal rights are.

(e) In the case of an appeal for information originated by a defunct agency, NARA will notify the requester of the results and furnish copies of documents declassified in full and in part. If the request cannot be declassified in its entirety, NARA will send the requester a brief statement of why the requested information cannot be declassified and a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

White House Originated Information

§ 1260.56 Is White House originated information subject to mandatory review?

White House originated information of former Presidents is subject to mandatory review consistent with the Presidential Records Act, 44 U.S.C. 2203, the Presidential Recordings and Materials Preservation Act, 44 U.S.C. 2111 note, and any deeds of gift that pertain to the materials or the respective Presidential administrations pursuant to 44 U.S.C. 2107 and 2111. Unless precluded by such laws or agreements, White House originated information is subject to mandatory or an equivalent agency review for current classification when the materials have been archivally processed or can be identified with specificity. However, records covered by the Presidential Records Act are closed for 5 years after the end of the Presidential administration, or until an integral file segment has been archivally processed, whichever occurs first, pursuant to 44 U.S.C. 2204.

§ 1260.58 What are the procedures for requesting a mandatory review of White House originated information?

(a) NARA will promptly acknowledge to the requester the receipt of a request for White House originated information.

(b) If the requested information is less than 25 years old, NARA will consult with agencies having primary subject matter interest. NARA will forward copies of the requested materials to the agencies and request their recommendations regarding declassification.

(c) If the requested records are more than 25 years old, NARA will review the records using systematic declassification guidance provided by the originating agency and agencies having equities in the information. If the originating agency, or agencies having equities in the information have not provided systematic declassification guidance, or if there is a question regarding the guidance, NARA will refer any requested documents it is unable to declassify to the appropriate agency or agencies for their recommendations regarding declassification.

(d) NARA will notify the requester of the results and furnish copies of the documents declassified in full and in part. If the requested records are not declassified in their entirety, NARA will send the requester a brief statement of the reasons the information cannot be declassified and a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

§ 1260.60 What are agency responsibilities with regard to mandatory review requests for White House originated information?

When an agency receives a mandatory review request from NARA for consultation on declassification of White House originated material, whether it is an initial request of an appeal, the agency must:

(a) Advise the Archivist whether the information should be declassified in whole or in part or should continue to be exempt from declassification;

(b) Provide NARA a brief statement of the reasons for any denial of declassification; and

(c) Return all reproductions referred for consultation, including a complete copy of each document that should be released only in part, clearly marked to indicate the portions that remain classified.

§ 1260.62 What is the appeal process when a mandatory review request for White House originated information is denied?

(a) When the Deputy Archivist of the United States receives an appeal, he/she will review the decision to deny the information and consult with the appellate authorities in the agencies having primary subject matter interest in the information.

(b) NARA will notify the requester of the determination and make available any additional information that has been declassified as a result of the requester's appeal.

(c) NARA will also notify the requester of the right to appeal denials of access to the Executive Secretary of the Interagency Security Classification Appeals Panel, Attn: Mandatory Review Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room 18N, Washington, DC 20408.

Subpart E—Reclassification

§ 1260.70 Can Executive Branch information be reclassified?

(a) An agency may ask NARA to temporarily close, re-review, and possibly reclassify records and donated historical materials originated by the agency. Records that were declassified in accordance with E.O. 12958 (or predecessor orders) may be reclassified only if the information is less than 25 years old and has not been previously disclosed to the public. Agencies must submit in writing requests to reclassify Executive Branch records to the Assistant Archivist for Records Services—Washington, DC, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Requests to reclassify information in Presidential libraries must be submitted in writing to the Assistant Archivist for Presidential Libraries, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. In the request, the agency must:

(1) Identify the records or donated materials involved as specifically as possible;

(2) Explain the reason the re-review and possible reclassification may be necessary; and

(3) Provide any information the agency may have concerning any previous public disclosure of the information.

(b) If the urgency of the request precludes a written request, an authorized agency official may make a preliminary request by telephone and follow up with a written request within 5 workdays.

§ 1260.72 Can White House originated information be reclassified?

An agency may ask NARA to temporarily close, re-review, and possibly reclassify White House originated information that has been declassified in accordance with E.O. 12958 (or predecessor orders) only if it has not been previously disclosed to the public. The agency must follow the same procedures as a request for reclassification of agency originated information in 36 CFR 1260.70, but it must submit the request to the Assistant Archivist for Presidential Libraries, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

§ 1260.74 Can NARA appeal a request to reclassify information?

NARA may appeal to the Director of the Information Security Oversight Office any re-review or reclassification request from an agency when, in the Archivist's opinion, the facts of previous disclosure suggest that such action is unwarranted or unjustified. NARA will notify the requesting agency that it is appealing the request at the same time that it initiates the appeal.

Dated: May 26, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–13809 Filed 5–31–00; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

RIN 3095–AA06

Public Use of NARA Facilities

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: NARA is revising its regulations for use of its facilities. This rule entirely rewrites and reorganizes this portion of NARA's regulations to incorporate several changes, and also to clarify it using plain language. The regulation has been updated to include new rules for public use of the National Archives at College Park, MD, and it also lowers the age at which an unaccompanied child can visit a NARA facility from 16 to 14 years old. This change conforms with an earlier revision of 36 CFR part 1254 that lowered the age at which an individual can conduct research in NARA facilities to 14 years old. This revised regulation governs the public's activity while on NARA property; however, it does not contain rules for conducting research at NARA facilities. Those rules are found in 36 CFR part 1254.

DATES: This rule is effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Allard or Shawn Morton at (301) 713–7360.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on March 23, 2000 at 65 FR 15592. The comment period ended on May 22, 2000. NARA received no public comments.

Upon further consideration, we have withdrawn the proposed provisions for the use of the Exhibition Hall in the National Archives Building for outside events. Instead, we have modified Subpart D to clarify that we allow Federal, State, and local government entities to use the Exhibition Hall for official functions, with NARA as a cosponsor, and that we may use the Exhibition Hall for activities that further the NARA Strategic Plan. No other changes have been made to the rule.

Information Collections Subject to the Paperwork Reduction Act

The information collections in §§ 1280.48 and 1280.74 are subject to the Paperwork Reduction Act. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. OMB has approved the information collection in § 1280.48 with the control number 3095–0040. OMB has approved the information collection in § 1280.74 with the control number 3095–0043.

This rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities because this regulation will affect individuals wishing to visit a NARA facility, a small number of news organizations wishing to film, and organizations wishing to use NARA public areas for events. This rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1280

Archives and records, Federal buildings and facilities, Reports and recordkeeping requirements.

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For the reasons stated in the preamble, the National Archives and Records Administration revises 36 CFR part 1280 to read as follows:

PART 1280—PUBLIC USE OF NARA FACILITIES

Subpart A—What Are the General Rules of Conduct on NARA Property?

General Information on Using NARA Facilities

Sec.
1280.1 What is the purpose of this part?
1280.2 What property is under the control of the Archivist of the United States?
1280.4 Can children under the age of 14 use NARA facilities?
1280.6 May I bring a seeing-eye dog or other assistance animal?
1280.8 Will my belongings be searched?
1280.10 Are there special rules for driving on NARA property?
1280.12 Is parking available?
1280.14 May I use the shuttle bus to travel to the National Archives at College Park or to the National Archives Building in Washington, DC?
1280.16 Are there additional rules posted?

Prohibited Activities

1280.18 May I bring guns or other weapons onto NARA property?
1280.20 What is your policy on illegal drugs and alcohol?
1280.22 Is gambling allowed on NARA property?
1280.24 Is smoking allowed on NARA property?
1280.26 May I pass out fliers on NARA property?
1280.28 Where can I eat and drink on NARA property?
1280.30 Are soliciting, vending, and debt collection allowed on NARA property?
1280.32 What other behavior is not permitted?

Subpart B—What Are the Rules for Filming, Photographing, or Videotaping on NARA Property?

1280.40 Definitions.
1280.42 When do the rules in this subpart apply?
1280.44 May I film, photograph, or videotape on NARA property for commercial purposes?
1280.46 What are the rules for filming, photographing, or videotaping on NARA property for personal use?
1280.48 How do I apply to film, photograph, or videotape on NARA property for news purposes?
1280.50 What will I be allowed to film, photograph, or videotape for news purposes?
1280.52 What are the rules for filming, photographing, or videotaping on NARA property for news purposes?

Subpart C—What Are the Additional Rules for Using NARA Facilities in the Washington, DC, Area?

1280.60 Where do I enter the National Archives Building in Washington, DC?
1280.62 When is the Exhibition Hall open?
1280.64 What entrance should I use to enter the National Archives at College Park?
1280.66 May I use the National Archives Library?
1280.68 May I use the cafeteria at the National Archives at College Park?

Subpart D—How Do I Request to Use Washington, DC, Area NARA Facilities for an Event?

1280.70 When does NARA allow other groups to use its public areas for events?
1280.72 What are the general rules for using NARA public areas?
1280.74 How do I apply to use NARA public areas in Washington, DC, area facilities?
1280.76 What will I have to pay to use a NARA public area for an event?
1280.78 How will NARA handle my request to use a lecture room, the auditorium, the Theater, or the Archivist's Reception Room?
1280.80 May I ask to use the Exhibition Hall?

Subpart E—What Additional Rules Apply for Use of Facilities in Presidential Libraries?

1280.90 What are the rules of conduct while visiting the Presidential libraries?
1280.92 When are the Presidential library museums open to the public?
1280.94 When do Presidential libraries allow other groups to use their public areas for events?
1280.96 Supplemental rules.

Subpart F—What Additional Rules Apply for Use of Public Areas at Regional Records Services Facilities?

1280.100 What are the rules of conduct at NARA regional records services facilities?
1280.102 When do NARA regional records services facilities allow other groups to use their public areas for events?

Authority: 44 U.S.C. 2104(a).

Subpart A—What Are the General Rules of Conduct on NARA Property?

General Information on Using NARA Facilities

§ 1280.1 What is the purpose of this part?

(a) This part tells you what rules you must follow when you use property under the control of the Archivist of the United States (the National Archives Building, the National Archives at College Park, and the Presidential libraries).

(b) When you are using other NARA facilities, the General Services Administration (GSA) regulations, Conduct on Federal Property, at 41 CFR subpart 101–20.3 apply to you. These facilities are the NARA regional records services facilities, the Washington National Records Center in Suitland, MD, and the National Personnel Records Center in St. Louis, MO. The rules in Subpart B of this part also apply to you if you wish to film, take photographs, or make videotapes. The rules in Subpart F of this part also apply to you if you wish to use the NARA-assigned conference rooms in those facilities.

(c) If you are using records in a NARA research room in a NARA facility, you must also follow the rules in 36 CFR part 1254.

§ 1280.2 What property is under the control of the Archivist of the United States?

The following property is under the control of the Archivist of the United States and is defined as "NARA property" in this part 1280:

(a) *The National Archives Building.* Property under the control of the Archivist includes:

(1) The Pennsylvania Avenue, NW, entrance between 7th and 9th Streets including the area within the retaining walls on either side of the entrance, inclusive of the statues, and the steps and ramps leading up to the entrance of the building;

(2) On the 7th Street, 9th Street, and Constitution Avenue, NW, sides of the building, all property between the National Archives Building and the curb line of the street, including the sidewalks and other grounds, the steps leading up to the Constitution Avenue entrance, the Constitution Avenue entrance, and the portico area between the steps and the Constitution Avenue entrance.

(3) The National Park Service controls the areas on the Pennsylvania Avenue side of the National Archives Building that are not under the control of the Archivist of the United States.

(b) *The National Archives at College Park.* Property under control of the Archivist includes approximately 37 acres bounded:

(1) On the west by Adelphi Road;

(2) On the north by the Potomac Electric Power Company right-of-way;

(3) On the east by Metzerott Road; and

(4) On the south by the University of Maryland.

(c) *The Presidential Libraries.* Property under control of the Archivist includes the Presidential Libraries and Museums that are listed in 36 CFR 1253.3.

§ 1280.4 Can children under the age of 14 use NARA facilities?

Children under the age of 14 will be admitted to NARA facilities only if they are accompanied by an adult who will supervise them at all times while on NARA property. The director of a NARA facility may authorize a lower age limit for admission of unaccompanied children to meet special circumstances (e.g., students who have been given permission to conduct research without adult supervision).

§ 1280.6 May I bring a seeing-eye dog or other assistance animal?

Yes, persons with disabilities may bring guide dogs or other animals used for guidance and assistance onto NARA property. You may not bring any other animals into a NARA facility except for official purposes.

§ 1280.8 Will my belongings be searched?

Yes, at any time NARA may inspect all packages, briefcases, and other containers that you bring onto NARA property, including when you are entering or exiting NARA property.

§ 1280.10 Are there special rules for driving on NARA property?

(a) You must obey speed limits, posted signs, and other traffic laws, and park only in designated spaces.

(b) NARA will tow, at the owner's expense, any vehicle that is parked illegally. Except in emergencies, you may not park in spaces reserved for holders of NARA parking permits. If an emergency forces you to leave your vehicle in an illegal area, you must notify the security guards at that NARA facility as soon as possible. We will not tow your illegally parked car if you have notified a security guard of an emergency unless it is creating a hazard or blocking an entrance or an exit.

(c) We may deny any vehicle access to NARA property for public safety or security reasons.

§ 1280.12 Is parking available?

(a) *The National Archives Building.* There is no parking available for researchers or visitors to the National Archives Building. However, this building is easily accessible by bus or subway and there are several commercial parking lots located near the building.

(b) *The National Archives at College Park.* The National Archives at College Park has limited public parking space. The garage is open to the public on a first-come, first-served basis during the hours the research rooms are open. There is public bus service to this building. Individuals and groups visiting the National Archives at College Park are encouraged to use public transportation or car pool to get to the building as the parking lot is often full during our busiest hours.

(c) *Regional records services facilities.* Most regional records services facilities have onsite parking available for researchers. Parking at these facilities and at the Washington National Records Center is governed by GSA regulations, Management of Buildings and Grounds, found at 41 CFR part 101–20. The regional archives on Market Street in Philadelphia and the regional archives in New York City do not have onsite parking. However, there is ample parking in commercial parking garages near these facilities.

(d) *Presidential Libraries.* All of the Presidential Libraries have onsite parking for researchers and museum visitors. Some of the spaces are reserved for staff and for security reasons.

§ 1280.14 May I use the shuttle bus to travel to the National Archives at College Park or to the National Archives Building in Washington, DC?

The NARA shuttle, which travels concurrently each hour between the National Archives Building and the National Archives at College Park, is intended for NARA employees. Other Government employees on official business or researchers may also use the shuttle if space is available. The shuttle operates Monday through Friday, excluding Federal holidays, 8:00 a.m. to 5:00 p.m.

§ 1280.16 Are there additional rules posted?

Yes, there are additional rules posted on NARA property. You must, at all times while on NARA property, comply with official NARA signs and with the directions of the guards and NARA staff.

Prohibited Activities

§ 1280.18 May I bring guns or other weapons onto NARA property?

No, you may not bring firearms or other dangerous or deadly weapons either openly or concealed onto NARA property except for official business. You also may not bring explosives, or items intended to be used to fabricate an explosive or incendiary device, onto NARA property. State-issued concealed-carry permits are not valid on NARA property.

§ 1280.20 What is your policy on illegal drugs and alcohol?

You may not use or be in possession of illegal drugs on NARA property. You also may not enter NARA property while under the influence of illegal drugs or alcohol. Using alcoholic beverages on NARA property is prohibited except for occasions when the Archivist of the United States or his/her designee has granted an exemption in writing.

§ 1280.22 Is gambling allowed on NARA property?

(a) No, you may not participate in any type of gambling while on NARA property. This includes:

(1) Participating in games for money or other personal property;

(2) Operating gambling devices;

(3) Conducting a lottery or pool; or

(4) Selling or purchasing numbers tickets.

(b) This rule does not apply to licensed blind operators of vending facilities who are selling chances for any lottery set forth in a State law and conducted by an agency of a State as authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*)

§ 1280.24 Is smoking allowed on NARA property?

Smoking is not allowed inside any NARA facility.

§ 1280.26 May I pass out fliers on NARA property?

No, you may not distribute or post handbills, fliers, pamphlets or other materials on bulletin boards or elsewhere on NARA property, except in those spaces designated by NARA as public forums. This prohibition does not apply to displays or notices distributed as part of authorized Government activities or bulletin boards used by employees to post personal notices.

§ 1280.28 Where can I eat and drink on NARA property?

You may only eat and drink in designated areas in NARA facilities. Eating and drinking is prohibited in the research, records storage, and museum areas unless specifically authorized by the Archivist or designee.

§ 1280.30 Are soliciting, vending, and debt collection allowed on NARA property?

(a) No, on NARA property you may not:

(1) Solicit for personal, charitable, or commercial causes;

(2) Sell any products;

(3) Display or distribute commercial advertising; or

(4) Collect private debts.

(b) If you are a NARA employee or contractor, you may participate in national or local drives for funds for welfare, health or other purposes that are authorized by the Office of Personnel Management and/or approved by NARA (e.g. the Combined Federal Campaign). Also, nothing in this section prohibits employees from activities permitted under the Standards of Ethical Conduct and Office of Government Ethics rules.

§ 1280.32 What other behavior is not permitted?

We reserve the right to remove anyone from NARA property who is:

(a) Stealing NARA property;
(b) Willfully damaging or destroying NARA property;
(c) Creating any hazard to persons or things;
(d) Throwing anything from or at a NARA building;
(e) Improperly disposing of rubbish.
(f) Acting in a disorderly fashion;
(g) Acting in a manner that creates a loud or unusual noise or a nuisance;
(h) Acting in a manner that unreasonably obstructs the usual use of NARA facilities;
(i) Acting in a manner that otherwise impedes or disrupts the performance of official duties by Government and contract employees;
(j) Acting in a manner that prevents the general public from obtaining NARA-provided services in a timely manner; or
(k) Loitering.

Subpart B—What Are the Rules for Filming, Photographing, or Videotaping on NARA Property?

§ 1280.40 Definitions.

(a) *Filming, photographing, or videotaping for commercial purposes.* Any filming, photographing, or videotaping to promote commercial enterprises or commodities.
(b) *News filming, photographing, or videotaping.* Any filming, photographing, or videotaping done by a commercial or non-profit news organization that is intended for use in a television or radio news broadcast, newspaper, or periodical.
(c) *Personal use filming, photographing, or videotaping.* Any filming, photographing, or videotaping intended solely for personal use that will not be commercially distributed.

§ 1280.42 When do the rules in this subpart apply?

(a) These rules apply to anyone who is filming, photographing, or videotaping inside any NARA-run facility and while on NARA property.
(b) Filming, photographing, and videotaping on the grounds of any NARA regional records services facility, or on the grounds surrounding the Washington National Records Center are governed by GSA regulations, Management of Buildings and Grounds, found at 41 CFR part 101–20, and must be approved by a GSA official.

§ 1280.44 May I film, photograph, or videotape on NARA property for commercial purposes?

No, filming, photographing, and videotaping on NARA property for commercial purposes is prohibited.

§ 1280.46 What are the rules for filming, photographing, or videotaping on NARA property for personal use?

(a) You may film, photograph, or videotape outside a NARA facility so long as you do not impede vehicular or pedestrian traffic.
(b) You may film, photograph, or videotape inside a NARA facility during regular business hours in public areas, including research rooms and exhibition areas, under the following conditions:
(1) You may not use a flash or other supplemental lighting;
(2) You may not use a tripod or similar equipment; and
(3) You may not film, photograph, or videotape while on the interior steps or ramp leading to the Declaration of Independence, the Constitution, and the Bill of Rights in the Exhibition Hall of the National Archives Building.

§ 1280.48 How do I apply to film, photograph, or videotape on NARA property for news purposes?

(a) If you wish to film, photograph, or videotape for news purposes at the National Archives Building, the National Archives at College Park, or the Washington National Records Center, you must request permission from the NARA Public Affairs Officer, 8601 Adelphi Road, College Park, Maryland, 20740–6001.
(b) If you wish to film, photograph, or videotape for news purposes at a Presidential library or at a regional records services facility, you must contact the director of the library (see 36 CFR 1253.3 for contact information) or regional records services facility (see 36 CFR 1253.6 for contact information) to request permission.
(c) Your request for permission to film, photograph, or videotape for news purposes must contain the following information:
(1) The name of the organization you are working for;
(2) Areas you wish to film, photograph, or videotape;
(3) Documents, if any, you wish to film;
(4) The purpose of the project you are working on;
(5) What you intend to do with the film, photograph, or videotape; and
(6) How long you will need to complete your work on NARA property.
(d) You must request permission at least one week in advance of your desired filming date. If you make a request within a shorter time period, we may not be able to accommodate your request.
(e) OMB control number 3095—0040 has been assigned to the information collection contained in this section.
(f) This section does not apply to you if you have permission to use your own microfilming equipment to film archival records and donated historical materials under the provisions of 36 CFR 1254.90 through 1254.102. You must follow the procedures in 36 CFR part 1254 for permission to film archival records and donated materials for research purposes or for microfilm publications.

§ 1280.50 What will I be allowed to film, photograph, or videotape for news purposes?

(a) NARA will permit you to film, photograph, or videotape sections of the interior or exterior of any NARA facility only for stories about:
(1) NARA programs;
(2) NARA exhibits;
(3) NARA holdings;
(4) NARA services;
(5) A former President;
(6) A researcher who has made or is making use of NARA holdings (provided that the researcher also approves your request); or
(7) Any other NARA-related activity approved by the appropriate NARA representative.
(b) NARA reserves the right to reject any request that does not meet the criteria set forth in 36 CFR 1280.50(a) and (c) or because of scheduling or staffing constraints.
(c) We will not grant you permission to film, photograph, or videotape if you intend to use the film, photographs, or videotape for commercial, partisan political, sectarian, or similar activities.

§ 1280.52 What are the rules for filming, photographing, or videotaping on NARA property for news purposes?

The following conditions and restrictions apply to anyone that has been granted permission to film, photograph, or videotape for news purposes under Subpart B:
(a) NARA may limit or prohibit use of artificial light in connection with the filming, photographing, or videotaping of documents for news purposes. You may not use any supplemental lighting devices while filming, photographing, or videotaping inside a NARA facility in the Washington, DC, area without the prior permission of the NARA Public Affairs Officer. If the Public Affairs Officer approves your use of artificial lighting in the Exhibition Hall, NARA will use facsimiles in place of the Declaration of Independence, the Constitution, and the Bill of Rights. If NARA approves your use of high intensity lighting, NARA will cover or replace with facsimiles all other exhibited documents that fall within the boundaries of such illumination. You may not use any supplemental lighting devices at the Presidential Libraries and the regional records services facilities without permission from a NARA representative at that facility.
(b) On a case-by-case basis, the Public Affairs Officer or other appropriate NARA representative may grant you permission to film, photograph, or videotape in stack areas containing unclassified records.
(c) While filming, photographing, or videotaping, you are liable for injuries to people or property that result from your activities on NARA property.
(d) At all times while on NARA property, you must conduct your activities in accordance with all applicable NARA regulations contained in this part.
(e) Your filming, photographing, or videotaping activity may not impede people who are entering or exiting any NARA facility unless otherwise authorized by the facility's director, or by the NARA Public Affairs Officer for Washington, DC, area facilities.
(f) You must be accompanied by a NARA staff member when filming, photographing, or videotaping the interior of any NARA facility.
(g) NARA will approve your request to do press interviews of NARA personnel on NARA property only when such employees are being interviewed in connection with official business. Interviews with NARA staff and researchers may take place only in areas designated by the NARA Public Affairs Officer for Washington, DC, area facilities, or by the appropriate NARA representative at other NARA facilities.
(h) You may film and photograph documents only in those areas which the NARA Public Affairs Staff designates in the National Archives Building, the National Archives at College Park, or the Washington National Records Center or in those areas designated as appropriate by the staff liaison at other NARA facilities.
(i) We will limit your film and photography sessions to two hours.
(j) You may not state or imply that NARA approves of or will sponsor:
(1) Your activities or views; or
(2) The uses to which you put images depicting any NARA facility.

Subpart C—What Are the Additional Rules for Using NARA Facilities in the Washington, DC, Area?

§ 1280.60 Where do I enter the National Archives Building in Washington, DC?

(a) To conduct research or official business, you must enter the Pennsylvania Avenue entrance of the National Archives Building.
(b) To visit the Exhibition Hall of the National Archives Building, you must enter through the Constitution Avenue entrance. However, the guards are authorized to admit through the Pennsylvania Avenue entrance and the Main Floor gates visitors who:
(1) Are using wheelchairs or other medical appliances;
(2) Are pushing strollers; or
(3) Have other medical or physical conditions that preclude using the steps at the Constitution Avenue entrance.

§ 1280.62 When is the Exhibition Hall open?

You may enter the Exhibition Hall from 10 a.m. to 9 p.m. except during winter months (the day after Labor Day through March 31) when the Exhibition Hall closes at 5:30 p.m. The Archivist of the United States reserves the authority to close the Exhibition Hall to the public at any time for special events or other purposes. The building is closed on December 25.

§ 1280.64 What entrance should I use to enter the National Archives at College Park?

You may enter the National Archives at College Park facility only through the main entrance on Adelphi Road. This entrance will be open to visitors during normal business hours described in 36 CFR 1253.2. Commercial deliveries must be made at the loading dock which is accessible only from Metzerott Road.

§ 1280.66 May I use the National Archives Library?

The National Archives Library facilities in the National Archives Building and in the National Archives at College Park are operated to meet the needs of researchers and NARA staff members. If you are not conducting research in archival materials at NARA, NARA Library staff will refer you to public libraries and other possible sources for such published materials.

§ 1280.68 May I use the cafeteria at the National Archives at College Park?

Yes, the cafeteria at the National Archives at College Park is open to the public during normal business hours.

Subpart D—How Do I Request to Use Washington, DC, Area NARA Facilities for an Event?

§ 1280.70 When does NARA allow other groups to use its public areas for events?

(a) All public areas in NARA facilities are intended for official NARA functions. However, if NARA does not have an event scheduled in a particular area, we may allow the use of that area for an event sponsored by another Federal agency or private group. The event must comply with the conditions in this subpart.
(b) In the National Archives Building, you may request to use the following areas:

Area	Capacity
Theater	216 persons.
Archivist's reception room.	70 to 150 persons.
Conference rooms	30 to 70 persons.

(c) In the National Archives at College Park, you may request to use the following areas:

Area	Capacity
Auditorium	332 persons.
Lecture rooms	30 to 70 persons (or up to 300 with all dividers removed).

§ 1280.72 What are the general rules for using NARA public areas?

You must adhere to the following rules when using any NARA facility for an event:
(a) Any use of NARA public areas for an event must be for the benefit of or in connection with the archival and records activities administered by NARA and must be consistent with the public perception of NARA as a research and cultural institution as articulated in our Strategic Plan.
(b) The event must be sponsored, cosponsored, or authorized by NARA.
(c) You are not allowed to charge an admission fee or make any indirect assessment for admission, and you may not otherwise collect money at the event unless specifically authorized by the Archivist of the United States for special not-for-profit events which are held by organizations sponsored by NARA. Commercial advertising or the sale of any items is not permitted.
(d) No areas on NARA property may be used to promote commercial enterprises or products or for partisan political, sectarian, or similar purposes.
(e) Use of NARA public areas will not be authorized for any organization or group that engages in discriminatory practices proscribed by the Civil Rights Act of 1964, as amended.
(f) You must not misrepresent your identity to the public nor conduct any activities in a misleading or fraudulent manner.
(g) You must ensure that no Government property is destroyed, displaced, or damaged during your use of NARA public areas. You must take prompt action to replace, return, restore, repair or repay NARA for any damage

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caused to Government property during the use of NARA facilities.

(h) Most areas are available from 8 a.m. until 9:30 p.m., Monday through Friday, and from 9:00 a.m. until 4:30 p.m. on Saturday. A NARA staff member must be present at all times when the NARA facility is in use. If the facilities and staff are available, NARA may approve requests for events that would be held before or after these hours.

(i) You must provide support people as needed to register guests, distribute approved literature, name tags, and other material; and

(j) NARA must approve any item that you plan to distribute or display at the event, and any notice or advertisement that mentions NARA, the National Archives Trust Fund Board, or incorporates any of the seals described in 36 CFR 1200.2.

§ 1280.74 How do I apply to use NARA public areas in Washington, DC, area facilities?

(a) *How do I request to use a NARA public space for an event?* To request the use of a NARA public space in the Washington, DC, area, you must complete NA Form 16008, Application for Use of Space. OMB control number 3095–0043 has been assigned to the information collection contained in this section. Copies of the form are available from the Facilities and Materiel Management Services Division, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001. Completed forms must be sent to this address.

(b) *When do I need to submit my request?* You must submit requests for use of NARA public areas at least 30 calendar days before the proposed event is to occur.

§ 1280.76 What will I have to pay to use a NARA public area for an event?

(a) Non-Federal organizations will be required to make a contribution to the National Archives Trust Fund to maintain the public area and to cover the cost of additional cleaning, guard and other required services. NARA will determine how much your contribution will be, based upon the level of NARA-provided services for your event.

(b) Federal agencies using these spaces for official government functions must reimburse NARA only for the cost of additional cleaning, security, and other staff services.

(c) An estimate of the costs can be obtained by contacting the Facilities and Materiel Management Services Division, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001.

§ 1280.78 How will NARA handle my request to use a lecture room, the auditorium, the Theater, or the Archivist's Reception Room?

(a) When you request use of a NARA lecture room, auditorium, the Theater, or the Archivist's Reception Room, the Facilities and Materiel Management Services Division will review your request:

(1) To ensure that it meets all of the provisions in this subpart;

(2) To determine if the room you have requested is available on the date and time you have requested; and

(3) To determine the cost of the event.

(b) When the Facilities and Materiel Management Services Division has completed this review, they will notify you of their decision. They may ask for additional information before deciding whether or not to approve your event.

(c) NARA reserves the right to reject or require changes in any material, activity, or caterer you intend to use for the event.

§ 1280.80 May I ask to use the Exhibition Hall?

(a) The Exhibition Hall is primarily used for the public exhibition of the Charters of Freedom and other documents from NARA's holdings. NARA also uses the Exhibition Hall for activities that further its Strategic Plan. Therefore, the use of the Exhibition Hall for private events is not permitted. In rare circumstances, NARA does, upon application, permit other Federal agencies, quasi-Federal agencies, and State and local governments to use the Exhibition Hall for official functions, with NARA as a co-sponsor. Governmental groups that use the Exhibition Hall for official functions must reimburse NARA for the cost of additional cleaning, security, and other staff services.

Subpart E—What Additional Rules Apply for Use of Facilities in Presidential Libraries?

§ 1280.90 What are the rules of conduct while visiting the Presidential libraries?

In addition to the rules in Subpart A, when visiting the museums of the Presidential Libraries, you may be required to check all of your parcels and luggage in areas designated by Library staff.

§ 1280.92 When are the Presidential library museums open to the public?

(a) The hours of operation at Presidential Library museums vary. Please contact the individual facility you wish to visit for the hours of operation. See 36 CFR 1253.3 for Presidential Library contact information. All Presidential Library museums are closed on Thanksgiving, December 25, and January 1, with the exception of the Lyndon Baines Johnson Library Museum, which is closed only on December 25.

(b) See 36 CFR 1253.3 for the operating hours of the research rooms of the Presidential Libraries.

§ 1280.94 When do Presidential libraries allow other groups to use their public areas for events?

(a) Although Presidential Library buildings and grounds are intended primarily for the libraries' use in carrying out their programs, you may request the use of Presidential Library facilities when the proposed activity is:

(1) Sponsored, cosponsored, or authorized by the library;

(2) Conducted to further the library's interests; and

(3) Scheduled so as not to interfere with the normal operation of the library.

(b) Your event at the library must be for the benefit of or in connection with the mission and programs of the library and must be consistent with the public perception of the library as a research and cultural institution.

(c) To request the use of a library area, you must apply in writing to the library director (see 36 CFR 1253.3 for the address) and complete NA Form 16011, Application for Use of Space in Presidential Libraries. OMB control number 3095–0024 has been assigned to the information collection contained in this section.

(d) You may not use library facilities for any activities that involve:

(1) Profit making;

(2) Commercial advertising and sales;

(3) Partisan political activities;

(4) Sectarian activities, or other similar activities; or

(5) Any use inconsistent with those authorized in this section.

(e) You may not charge admission fees, indirect assessment, or take any other kind of monetary collection at the event. NARA will charge normal admission fees to the museum if that area is used for the event.

(f) You will be assessed additional charges by the library director to reimburse the Government for expenses incurred as a result of your use of the library facility.

§ 1280.96 Supplemental rules.

Library directors may establish appropriate supplemental rules governing use of Presidential libraries and adjacent buildings and areas under NARA control.

Subpart F—What Additional Rules Apply for Use of Public Areas at Regional Records Services Facilities?

§ 1280.100 What are the rules of conduct at NARA regional records services facilities?

While at any NARA regional records services facility, you are subject to the GSA regulations, Conduct on Federal Property (41 CFR subpart 101–20.3).

§ 1280.102 When do NARA regional records services facilities allow other groups to use their public areas for events?

(a) Although NARA regional records services facility auditoriums and other public spaces in the facility buildings and the facility grounds are intended primarily for the use of the NARA regional records services facility in carrying out its programs, you may request to use one of these areas for lectures, seminars, meetings, and similar activities when these activities are:

(1) Sponsored, cosponsored, or authorized by the NARA regional records services facility;

(2) To further NARA's interests; and

(3) Scheduled so as not to interfere with the normal operation of the NARA regional records services facility.

(b) Your event at the NARA regional records services facility must be for the benefit of or in connection with the mission and programs of NARA.

(c) You must ask permission to use a public area at a NARA regional records services facility from the director of that facility (see 36 CFR 1253.6 for a list of addresses).

(d) NARA regional records services facilities will not allow use of any auditoriums or other public spaces for any activities that involve:

(1) Profit making;

(2) Commercial advertising and sales;

(3) Partisan political activities;

(4) Sectarian activities, or other similar activities; or

(5) Any use inconsistent with those authorized in this section.

(e) You may not charge admission fees, indirect assessment, or take any other kind of monetary collection at the event.

(f) You will be assessed a charge by the facility director to reimburse the Government for expenses incurred as a result of the your use of the facility.

Dated: May 26, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–13810 Filed 5–31–00; 8:45 am]

BILLING CODE 7515–01–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–36

[FPMR Amendment H–205]

RIN 3090–AF39

Disposition of Excess Personal Property; Correction

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error contained in a final rule appearing in Part III of the **Federal Register** of Tuesday, May 16, 2000 (64 FR 31218). The rule revised the Federal Property Management Regulations (FPMR) by moving coverage on the disposition of excess personal property into the Federal Management Regulation (FMR) and adding a cross-reference to the FPMR to direct readers to the coverage in the FMR.

EFFECTIVE DATE: May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Director, Personal Property Management Policy Division (MTP), 202–501–3828.

SUPPLEMENTARY INFORMATION: In rule document 00–11921 beginning on page 31218 in the issue of Tuesday, May 16, 2000, make the following correction:

§ 102–36.330 [Corrected]

1. On page 31228, in the second column, in § 102–36.330, paragraph (1) is correctly designated as paragraph (a); paragraph (2) is correctly designated as paragraph (b); paragraph (3) is correctly designated as paragraph (c).

Dated: May 26, 2000.

Sharon A. Kiser,

Federal Acquisition Policy Division, Office of Governmentwide Policy.

[FR Doc. 00–13669 Filed 5–31–00; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 403

[HCFA–4005–IFC]

RIN 0938–AJ67

Medicare Program; State Health Insurance Assistance Program (SHIP)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule explains the terms and conditions that apply to grants to States for counseling and assistance to Medicare beneficiaries, and makes several minor technical clarifications about program compliance. We also specify our policies regarding the treatment of funds associated with the management of this program, including user fee assessments not in effect when prior regulations were issued. This interim final rule is issued in accordance with section 4360 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) and section 1857(e)(2) of the Social Security Act (the Act).

DATES: *Effective date:* These regulations are effective on July 3, 2000.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on July 31, 2000.

ADDRESSES: Mail an original and 3 copies of written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–4005–IFC, P.O. Box 8010, Baltimore, MD 21244–8010.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–4005–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m., phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Eric Lang, (410) 786–3199.

I. Background

A. OBRA '90

Section 4360 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508, requires us to make grants to States, Commonwealths, and Territories for health insurance advisory service programs for Medicare beneficiaries. (Hereinafter, unless otherwise indicated, the term "State" or

"States" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.) Grants are available to provide information, counseling, and assistance relating to Medicare, Medicaid, Medicare supplemental policies, long-term care insurance, and other health insurance benefit information. This funding program is known as the State Health Insurance Assistance Program (SHIP), formerly called the Health Insurance Information Counseling and Assistance (ICA) Grants Program. The name of this program was changed to SHIP in FY 1998 when it became apparent that the most recent name of the program, Beneficiary Services and Information Grants Program (BSI), severely lacked public recognition.

On August 26, 1992, we published a final rule with comment period (57 FR 38616) that established the funding level for health insurance grants during Federal fiscal year (FY) 1992–1993. The provisions incorporated into our regulations at 42 CFR part 403, subpart E, defined program eligibility criteria, minimum funding levels, limitations and reporting requirements. On October 7, 1994, we published a final rule with comment period (59 FR 51125) that included amendments to the 1992 rule and established a regulatory basis for continued funding beyond FY 1993. As set forth in that rule, grant awards are based on a 12-month period, with an option to renew at the close of the fiscal year.

Section 403.502 of our regulations, Availability of grants, specifies that HCFA awards funds to States subject to Congressional appropriations of funds and, if applicable, subject to the satisfactory progress in the State's project during the preceding grant period. The criteria by which progress is evaluated and the performance standards for determining whether satisfactory progress has been made is specified in the notice of grant award sent to each State. HCFA advises each State as to when to make application and provides information as to the timing of the grant award and the duration of the grant award. HCFA also provides an estimate of the amount of funds that may be available to the State.

Section 403.504, Number and size of grants, establishes that each eligible State submitting an acceptable application receives a grant for new programs and enhancement of existing programs.

Section 403.504(b)(1) provides that each State, with the exception of American Samoa, the Virgin Islands and Guam, is eligible to receive a "fixed" award of $75,000. American Samoa, the Virgin Islands and Guam are each eligible to receive a fixed grant award of $25,000. The fixed grant constitutes the minimum level of funding required by section 4360(a) of OBRA '90. In addition, § 403.504(b)(2) provides that each State is also eligible to receive a "variable" award, that is calculated according to the formula set forth therein.

Previously, HCFA depended upon specific Congressional appropriations to fund SHIP. In 1995, the Congressional appropriations were discontinued and funding for the program since that time has been made from the HCFA program management budget. Additional funds are available from the Medicare+Choice (M+C) user fee assessment, as discussed below.

SHIP grants are now in the seventh and final period of the initial solicitation that was issued in FY 1992. DHHS grant administration requirements, set forth in HHS Chapter 1–85, Grants Administration Manual, section 1–85–40A, Incremental Funding-Project Periods and Frequency of Competition, specify that no project may be supported longer than 7 years without recompetition. When we apply for a continuation of funding for the SHIP next year, we will also send out new solicitation and grant application packages to the States.

B. BBA of 1997

Amendments to the Act have led to the creation of additional funding for SHIP. On August 5, 1997, the Act was amended by the Balanced Budget Act (the BBA) of 1997, which established a new Part C of the Medicare program, sections 1851 through 1859, known as the "Medicare+Choice Program" (M+C).

Section 1851(d)(1) of the Act, "Providing information to promote informed choice," requires us to provide for activities to broadly disseminate information to Medicare beneficiaries (and prospective Medicare beneficiaries) on available M+C coverage options in order to promote an active, informed selection among these options. Section 1857(e)(2)(A) of the Act, "Cost-sharing in enrollment-related costs," authorizes us to charge and collect an administration or user fee from M+C organizations for the purpose of administering this information dissemination program. Any amounts collected in accordance with section 1857(e)(2) are specifically authorized to be appropriate only for the purpose of carrying out section 1851 (relating to enrollment and dissemination of information) and section 4360 of OBRA '90 (SHIP).

II. Provisions of the Interim Final Rule

We are amending our regulations to provide for a 2-tiered approach for making grants under SHIP. Section 403.504(a) is revised to provide that for aggregate annual expenditures of up to $10 million, grants will be made according to the current procedures set forth in § 403.504. That is, each eligible State will receive a fixed as well as variable amount as set forth in paragraphs (b) and (c) of that section. We plan to continue to fund this first tier of grants from our program management budget and through any Congressional appropriations made for the purpose of implementing this program.

With respect to the second tier, any grants that exceed a total of $10 million annually will be made at our discretion according to criteria that will be communicated to States through the grant solicitation process (See revised § 403.504(a)). We have decided to notify States of the criteria for awarding the grants rather than publish specific criteria in our regulations in order to give us the flexibility required by the dynamic nature of the health care industry.

The statutory foundation for the current SHIP directed the focus of this program primarily on informing beneficiaries about their rights and options in regard to supplemental insurance. Since that time, changes in the climate of the health care industry, including, for example, Medicare reform, the implementation of the M+C program, and ongoing consolidation within the managed care industry, have introduced a host of issues that have profoundly changed access to services, and greatly increased the need for accurate and unbiased information to support informed choice and decision-making among beneficiaries.

Significant issues have emerged that affect and confuse beneficiaries. For example, health care options available today require coverage and payment choices by beneficiaries. Rapidly emerging issues, such as managed care plan withdrawals, create an urgent need for quick response to the concerns of affected beneficiaries and their care givers. Greater choice for beneficiaries requires SHIPs to modify, and in many instances, expand, their programs, both in the size and scope of services they provide.

Our policies must have the flexibility to accommodate changes facing the Medicare program and its beneficiaries. Therefore, we will use our discretion to allocate the additional funds in ways that will best serve beneficiaries through SHIP. This will allow us to adapt to the particular needs of beneficiaries at a given time.

We are revising § 403.502, Availability of grants, to reflect the change in the source of grant awards. This change clarifies that we award grants to States subject to fund availability, and if applicable, subject to the satisfactory progress in the State's project during the preceding grant period.

We are revising § 403.504, Number and size of grants, at paragraph (a) to specify that, for available grant funds, up to and including $10,000,000, grants will be apportioned to States according to the grant award process currently in place. We are also revising paragraph (b) to highlight the availability of funds as a condition of award.

We are revising § 403.508, Limitations, at paragraph (a) to emphasize the fact that States receiving grants under this subpart must use the grant money in accordance with the terms and conditions specified in the notice of grant award.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all relevant comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and provide a period for public comment before the provisions of a rule are made final. Publication of a notice of proposed rulemaking may be waived if we find there is good cause that prior notice and comment are impractical, unnecessary, or contrary to public interest. Because the changes effected in this rule are not substantive, but, rather are procedural and technical in nature, and serve primarily to explain our policies, we have determined that notice and comment is not required. In addition, under 42 U.S.C. 1395hh (a)–(b), notice and comment is not required where a statute specifically permits a regulation to be issued in interim final form. Section 4207(j) of Public Law No. 101–508, the same legislation (OBRA '90) containing section 4360, which established the grants that are the subject of this regulation, specifically authorizes the Secretary to implement section 4360 by interim final rule. Nevertheless, we are providing a 60-day period for public comment on this rule. We will consider relevant comments that are received timely, and will respond to those comments and make changes in a subsequent document as appropriate and necessary.

V. Collection of Information Requirements

This interim final rule does not impose any information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Statement

We have examined the impacts of this interim final rule as required by Executive Order (E.O.) 12866, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the Regulatory Flexibility Act (RFA) (5 U.S.C. sections 601–612) (Public Law 96–354), and section 1102(b) of the Social Security Act.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for significant regulatory action that may have economically significant effects ($100 million or more annually). For purpose of E.O. 12866, this interim final rule is not expected to have an impact that meets the economically significant threshold.

The Unfunded Mandates Reform Act of 1995 (UMRA) applies to general notices of proposed rulemaking and final rules for which a general notice of proposed rulemaking was published. Thus, this interim final rule is not subject to the requirements of the UMRA. Despite its inapplicability, this rule is not a "significant regulatory action" within the meaning of the UMRA. Section 202 of the Unfunded Mandates Reform Act of 1995 requires agencies to prepare an assessment of anticipated costs and benefits before publishing any rule that may result in an expenditure in any year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more. We have determined that this interim final rule will not result in such an expenditure.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, certain non-profit organizations and small governmental jurisdictions. We generally prepare a regulatory flexibility analysis that is consistent with the RFA unless we certify that an interim final rule will not have a significant impact on a substantial number of small entities. The impact of this rule will fall primarily on States and individuals. For purposes of the RFA, we do not consider States or individuals to be small entities. We have not prepared an analysis for the RFA because we have determined, and certify, that this interim final rule has no significant economic impact on small entities.

Section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis (RIA) if a rule or regulation may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We have not prepared an analysis for section 1102(b) of the Act because we have determined that this interim final rule has no significant economic impact on a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this interim final rule with comment period was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 403

Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and Recordkeeping requirements.

42 CFR part 403 is amended as follows:

PART 403—SPECIAL PROGRAMS AND PROJECTS

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 403.502 is revised to read as follows:

§ 403.502 Availability of grants.

HCFA awards grants to States subject to availability of funds, and if applicable, subject to the satisfactory progress in the State's project during the preceding grant period. The criteria by which progress is evaluated and the performance standards for determining

whether satisfactory progress has been made are specified in the terms and conditions included in the notice of grant award sent to each State. HCFA advises each State as to when to make application, what to include in the application, and provides information as to the timing of the grant award and the duration of the grant award. HCFA also provides an estimate of the amount of funds that may be available to the State.

3. In § 403.504, paragraph (a) and the introductory text of paragraph (b), are revised to read as follows:

§ 403.504 Number and size of grants.

(a) *General.* For available grant funds, up to and including $10,000,000, grants will be made to States according to the terms and formula in paragraphs (b) and (c) of this section. For any available grant funds in excess of $10,000,000, distribution of grants will be at the discretion of HCFA, and will be made according to criteria that HCFA will communicate to the States via grant solicitation. HCFA will provide information to each State as to what must be included in the application for grant funds. HCFA awards the following type of grants:

(1) New program grants.

(2) Existing program enhancement grants.

(b) *Grant Award.* Subject to the availability of funds, each eligible State that submits an acceptable application receives a grant that includes a fixed amount (minimum funding level) and a variable amount.

* * * * *

4. Section 403.508(a) is revised to read as follows:

§ 403.508 Limitations.

(a) *Use of grants.* Except as specified in paragraph (b) of this section, and in the terms and conditions in the notice of grant award, a State that receives a grant under this subpart may use the grant for any reasonable expenses for planning, developing, implementing, and/or operating the program for which the grant is made as described in the solicitation for application for the grant.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 3, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: March 27, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–13601 Filed 5–31–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

45 CFR Part 5b

RIN 0991–AA99

Privacy Act; Implementation

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule exempts the new system of records, the Healthcare Integrity and Protection Data Bank (HIPDB), from certain provisions of the Privacy Act (5 U.S.C. 552a). The establishment of the HIPDB is required by section 1128E of the Social Security Act (the Act), as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 1128E of the Act directed the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers or practitioners, and to maintain a data base of final adverse actions taken against health care providers, suppliers and practitioners. Regulations implementing the new HIPDB were published in the **Federal Register** on October 26, 1999 (64 FR 57740). The exemption being set forth in this rule applies to investigative materials compiled for law enforcement purposes.

EFFECTIVE DATE: This rule is effective on June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Rick Burgueires, Investigative Policy and Information Management Staff, Office of Investigations, (202) 205–5200.

SUPPLEMENTARY INFORMATION:

I. The Healthcare Integrity and Protection Data Bank

The Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191, requires the Secretary, acting through the Office of Inspector General (OIG) and the United States Attorney General, to establish a new health care fraud and abuse control program to combat health care fraud and abuse (see section 1128C of the Act, as enacted by section 201(a) of HIPAA). Among the major steps in this program is the establishment of a national data bank to receive and disclose certain final adverse actions against health care providers, suppliers, or practitioners (see section 1128C(a)(1)(E) of the Act). The establishment of the data bank is required by section 1128E of the Act (added by section 221(a) of HIPAA), which directs the Secretary to maintain a data base of such final adverse actions. Final adverse actions include: (1) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier, or practitioner related to the delivery of a health care item or service; (3) actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or practitioners; (4) exclusion of a health care provider, supplier, or practitioner from participation in Federal or State health care programs; and (5) any other adjudicated actions or decisions that the Secretary establishes by regulations. Settlements in which no findings or admissions of liability have been made will be excluded from reporting. However, any final adverse action that emanates from such settlements, and that would otherwise be reportable under the statute, is to be reported to the data bank. Final adverse actions are to be reported, regardless of whether such actions are being appealed by the subject of the report (see section 1128E(b)(2)(C) of the Act). Final regulations implementing the statutory requirements of section 1128E of the Act and establishing the new HIPDB were published in the **Federal Register** on October 26, 1999 (64 FR 57740).

Groups that have access to this new data bank system include Federal and State government agencies; health plans; and self queries from health care suppliers, providers and practitioners. Reporting is limited to the same groups that have access to the information. One of the primary purposes of these data will be use of this information by a Federal or State government agency charged with the responsibility of investigating or prosecuting a case where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature. The information in this system

may also be used in the preparation for a trial or hearing for such violation.

II. Summary of the Proposed Rule

On October 26, 1999, the Department also published, through the Office of Inspector General, a proposed rule (64 FR 57619) to exempt this new records system from certain provisions of the Privacy Act.[1] This proposed exemption was intended to protect, from release to the record subject, information on law enforcement queries to the data bank, to exempt the data bank from Privacy Act access and amendment procedures in order to establish access and amendment procedures in the HIPDB regulations. The proposed rule specifically sought public comments on the proposed exemption.

In accordance with the rulemaking, record subjects would be guaranteed access to, and correction rights for, substantive information reported to the HIPDB. The procedures, set out in 45 CFR part 61, use the Privacy Act access and correction procedures as a basic framework while, at the same time, providing significant additional rights (such as automatic notification to the record subject of any report filed with the data bank). Data bank subjects would also have broader rights on HIPDB correction procedures, including the right to file a statement of disagreement as soon as a report is filed with the data bank.

III. Response to Public Comments

In response to the proposed rule, we received timely-filed public comments from two health professional organizations. Set forth below is a summary of those comments and our response to those concerns.

Comment: One commenter believed that the provisions to exempt the HIPDB from provisions of the Privacy Act were duplicative and unnecessary. The commenter believed that this waiver was not necessary since the Privacy Act already contains an exemption for law enforcement queries.

Response: The commenter is correct that a law enforcement agency may request information from the HIPDB by having an appropriate official formally file a written request under 5 U.S.C. 552a(b)(7). Such queries are not available to the subject of the Privacy Act record under 5 U.S.C. 552a(c)(3). However, requiring law enforcement agencies to use the more cumbersome process of submitting requests in writing defeats one of the primary purposes of the HIPDB, which is to provide for instant, online access to data for its designated users, including law enforcement agencies.[2] Therefore, disclosures to law enforcement agencies will generally be made in accordance with the routine use provision of the Privacy Act, 5 U.S.C. 552a(b)(3), and this exemption is necessary to protect the queries from release to the record subject.

Comment: One commenter stated that the proposed modification to 45 CFR 5b.11(b)(2)(ii) appeared to exempt *all* queries from the history disclosure requirement of the Privacy Act, rather than just those that are made by law enforcement agencies. The commenter indicated, however, that nothing in proposed subparagraph (F) of this section would limit the exemption to law enforcement queries.

Response: As stated in the proposed rule, subjects will have access to information on all other queries to the data bank. The exemption is only intended to protect against harm to ongoing investigations. Under the HIPDB implementing regulations (October 26, 1999; 64 FR 57740), information reports made available to the report subjects will include all other query information.

Comment: One association indicated their support of the proposed modification regarding the exemption of law enforcement agencies from the Privacy Act, but recommended that the regulatory agencies, such as dental boards, also be included in the exemption.

Response: As indicated above, the exemption is designed to protect only law enforcement queries permitted by the statute. If a governmental agency is entitled to access the HIPDB for law enforcement purposes, that query would be covered by the exemption. Questions on what types of queries are "law enforcement" queries can always be raised with the OIG's Office of Investigations' Investigative Policy and Information Management Staff at (202) 205–5200.

IV. Regulatory Impact Statement

The Office of Management and Budget has reviewed this final rule in accordance with the provisions of Executive Order 12866, the Unfunded Mandates Reform Act and Executive Order 13132, and has determined that this rule does not meet the criteria for an economically siginificant regulatory action.

Specifically, Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health, safety distributive and equity effects. Section 202 of the Unfunded Mandates reform Act, Public Law 104–4, requires that agencies prepare an assessment of anticipated costs and benefits on any rule that may result in an expenditure by State, local or tribe governments, or by the private sector, of $100 million or more in any given year. In addition, under the Small Business Enforcement Act (SBEA) of 1996, if a rule has a significant economic effect on a substantial number of small businesses, the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule. Further, Executive Order 13132, Federalism, requires agencies to determine if a rule will have a significant effect on States, on their relationship with the Federal Government, and on the distribution of power and responsibility among the various levels of government.

In accordance with the exemption being set forth in this rule, while the reports of adverse actions to the HIPDB will be known to the subjects of the records in the data bank, the access and use of such information by law enforcement agencies would not be known to the subjects of the records. As indicated above, we believe that disclosure of this information could have a negative impact and compromise ongoing law enforcement activities.

We believe that the aggregate economic impact of this final rule is minimal and will have no effect of the economy or on Federal or State expenditures. Similarly, we believe that there are no significant costs associated with this Privacy Act exemption that will impose any mandates on State, local or tribal governments or on the private sector that will result in an expenditure of $100 million or more in any given year. In addition, in accordance with the provisions of the

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[1] Subsections (c)(3), (d)(1)–(4), and (e)(4)(G) and (H) of the Privacy Act, in accordance with 5 U.S.C. 522a(k)(2) and 45 CFR 5b.11(b)(ii)(F).

[2] The HIPAA, which mandates that the HIPDB information be available to law enforcement agencies, requires that the HIPDB be established to function in coordination with the existing National Practitioner Data Bank—a computerized system that functions exclusively by electronic reporting and on-line access by users (42 U.S.C. 1320a07e(f)). Further, section IV of the *Health Care Fraud and Abuse Control Program and Guidelines*, issued by the Attorney General and the Secretary of HHS under HIPAA, calls for the establishment of an adverse action data bank with electronic reporting and on-line access by authorized users to minimize costs and maximize response times.

SEBA and the threshold criteria of Executive Order 13132, the Secretary certifies that this exemption will not have a significant impact on a substantial number of small entities, and will not significantly affect the rights, roles and responsibilities of States, and that a full analysis under these Acts is not necessary.

List of Subjects in 5 CFR Part 5b

Privacy.

Accordingly, the Department's Privacy Act regulations at 45 CFR part 5b are amended as set forth below:

PART 5b—[AMENDED]

Part 5b are amended as follows:

1. The authority citation for part 5b continue to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11 is amended by adding a new paragraph (b)(2)(ii)(F) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) *Specific systems of records exempt.* * * *

(2) * * *

(ii) * * *

(F) Investigative materials compiled for law enforcement purposes for the Healthcare Integrity and Protection Data Bank (HIPDB), of the Office of Inspector General. (See § 61.15 of this title for access and correction rights under the HIPDB by subjects of the Data Bank.)

* * * * *

Dated: March 7, 2000.

June Gibbs Brown,

Inspector General.

Approved: March 20, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–13602 Filed 5–31–00; 8:45 am]

BILLING CODE 4152–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1122; MM Docket No. 98–198; RM–9304, RM–9492, RM–9548, RM–9547]

Radio Broadcasting Services; Cross Plains, Allen, Benbrook, Brownwood, Burkburnett, Campbell, Clifton, Coleman, Commerce, Detroit, Graham, Granbury, Haskell, Kerens, Mason, Jacksboro, McKinney, Muenster, San Saba, Snyder, Terrell, Vernon, Waco, and Wichita Falls, TX; Alva, Anadarko, Antlers, Ardmore, Atoka, Comanche, Dickson, Duncan, Durant, Eldorado, Hugo, and Lone Grove, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: In response to a request by Jayson D. Fritz and Janice M. Fritz, this document dismisses a Petition for Partial Reconsideration directed to the *Report and Order* in this proceeding. *See* 63 FR 63016, November 10, 1998. With this action, this docketed proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Order* in MM Docket No. 98–198 adopted May 18, 2000, and released May 19, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center at Portals II, CY–A257, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 20th Street, NW, Washington, D.C. 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13595 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1062; MM Docket No. 99–341; RM–9776]

Radio Broadcasting Services; Gwinn, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 262C3 to Gwinn, Michigan, in response to a petition filed by AFB/Gwinn Broadcasting. *See* 64 FR 68665, December 8, 1999. The coordinates for Channel 262C3 at Gwinn are 46–17–20 NL and 87–21–10 WL. There is a site restriction 6.8 kilometers (4.3 miles) east of the community. Canadian concurrence has been received for the allotment of Channel 262C3 at Gwinn. With this action, this docketed proceeding is terminated. A filing window for Channel 262C3 at Gwinn will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–341, adopted May 3, 2000, and released May 12, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Gwinn, Channel 262C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13594 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1053; MM Docket No. 99–270; RM–9703]

Radio Broadcasting Services; Taos, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Darren Cordova, allots Channel 240A to Taos, NM, as the community's third local FM service. *See* 64 FR 47484, August 31, 1999. Channel 240A can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) southeast, at coordinates 36–21–48 NL; 105–28–51 WL, to avoid a short-spacing to the proposed allotment of Channel 240A at Chama, NM. *See*, MM Docket 99–116, 64 FR 23036, April 29, 1999. A filing window for Channel 240A at Taos will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–270, adopted May 3, 2000, and released May 12, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 240A at Taos.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13593 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1000; MM Docket No. 99–337; RM–9524]

Radio Broadcasting Services; Santa Anna, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 288C3 at Santa Anna, Texas, in response to a petition filed by Wagonwheel Broadcasting of Santa Anna. *See* 64 FR 68663, December 8, 1999. The coordinates for Channel 288C3 at Santa Anna are 31–37–38 NL and 99–20–03 WL. There is a site restriction 12.7 kilometers (7.9 miles) south of the community. Mexican concurrence has been received for Channel 288C3 at Santa Anna. With this action, this docketed proceeding is terminated. A filing window for Channel 288C3 at Santa Anna will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–337, adopted April 26, 2000, and released May 12, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Santa Anna, Channel 288C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13703 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1061; MM Docket No. 99–359; RM–9784]

Radio Broadcasting Services; Powers, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 297C3 to Powers, Michigan, in response to a petition filed by Lyle R. Evans. *See* 64 FR 73461, December 30, 1999. The coordinates for Channel 297C3 at Powers are 45–41–12 NL and 87–31–30 WL. Canadian concurrence has been received for the allotment of Channel 297C3 at Powers. With this action, this docketed proceeding is terminated. A filing window for Channel 297C3 at Powers will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–359, adopted May 3, 2000 and released May 12, 2000. The full text of this

Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street NW, Washington, DC 20036; (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Powers, Channel 297C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13704 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1063; MM Docket No. 99–334; RM–9772]

Radio Broadcasting Services; Carney, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Carney, Michigan, in response to a petition filed by Escanaba License Corp. *See* 64 FR 68664, December 8, 1999. The coordinates for Channel 260A at Carney are 45–35–30 NL and 87–39–37 WL. There is a site restriction 7.8 kilometers (4.9 miles) west of the community. Canadian concurrence has been received for the allotment of Channel 260A at Carney. With this action, this docketed proceeding is terminated. A filing window for Channel 260A at Carney will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–334, adopted May 3, 2000, and released May 12, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Carney, Channel 260A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13705 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1054; MM Docket Nos. 98–130, 99–56; RM–9297, RM–9655, RM–9459]

Radio Broadcasting Services; Saratoga, Green River, Big Piney and LaBarge, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain Tower Broadcasting, dismisses the petition for rulemaking requesting the allotment of Channel 259C at Saratoga, Wyoming, and grants the counterproposal filed by Mount Rushmore Broadcasting, Inc. requesting the allotment of Channel 259A at Saratoga, as the community's first aural transmission service and the allotment of Channel 259C1 at Green River, Wyoming, as the community's second FM transmission service. It also dismisses as moot the request of Robert R. Rule d/b/a Rule Communications requesting that a site restriction be placed on Channel 259C at Saratoga, to clear its application for Station KRRR(FM) Cheyenne, Wyoming. *See* 63 FR 39803 (July 24, 1998) (MM Docket No. 98–130). This document also dismisses as defective the petition for rule making filed by Mountain West Broadcasting (MM Docket No. 99–56) 64 FR 08786 (February 23, 1999), requesting the allotment of Channel 259C at Big Piney, Wyoming because it was short-spaced to Channel 259C1 at Green River when it was filed. Counterproposals for Channels 251A at Big Piney and 261A at La Barge, Wyoming filed in response to the dismissed Big Piney proposal will be considered as petitions for rule making in a separate proceeding. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket Nos. 98–130 and 99–56, adopted May 3, 2000, and released May 12, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Channel 259A can be allotted to Saratoga at coordinates 41–27–12 and 106–48–30, and Channel 259C1 can be allotted to Green River, Wyoming, at coordinates 41–31–36 and 109–28–06 in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction. A filing window for Channels 259A and 259C1 will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent Order.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Saratoga, Channel 259A and Channel 259C1 at Green River.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13699 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1108; MM Docket Nos. 99–140, 99–146; RM–9490, RM–9723, RM–9724, RM–9725]

Radio Broadcasting Services; North Tunica and Friars Point, Mississippi, Kennett, Missouri, Munford, Tennessee, and Marianna, Arkansas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Allocations Branch combines two proceedings, MM Docket Nos. 99–140 and 99–146. This document reallots Channel 255C from Kennett, Missouri to Munford, Tennessee, as the community's first local aural transmission service as requested by Legend Broadcasting in a counterproposal in MM Docket No. 99–140. It also allots Channel 254A at Friars Point, Mississippi, requested in separate counterproposals filed by Legend and Delta Radio Inc. in MM Docket No. 99–146. It also grants Fred Flinn's request to dismiss his petition for rulemaking for the allotment of Channel 254A at North Tunica, Mississippi in MM Docket No. 99–146. Pursuant to agreements between Legend Broadcasting and Ken Reynolds d/b/a Bear Creek Radio, and Olvie Sisk, this document dismisses Bear Creek Radio's counterproposal filed in MM Docket No. 99–140 requesting the allotment of Channel 254A at Marianna, Arkansas and Olvie Sisk's comments in MM Docket No. 99–146 in support of the allotment of Channel 254A at North Tunica, Mississippi. *See Supplementary Information.*

DATES: Effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Victoriâ M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket Nos. 99–140 and 99–146, adopted May 10, 2000, and released May 19, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Channel 255C can be reallotted to Munford, Tennessee, at coordinates 35–46–53 and 89–36–46, at a site 41.2 kilometers (25.6 miles) northeast of the community, and Channel 254A can be allotted to Friars Point, Mississippi, at coordinates 34–24–09 and 90–38–51 at a site 4.2 kilometers (2.6 miles) north of the community, in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments. A filing window for Channels 254A at Friars Point will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi is amended by adding Friars Point, Channel 254A.

3. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 255C at Kennett.

4. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Munford, Channel 255C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13700 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 052600B]

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the second seasonal apportionment of the 2000 halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 28, 2000, until 1200 hrs, A.l.t., July 4, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by the Final 2000 Harvest Specifications for Groundfish for the GOA (65 FR 8298, February 18, 2000) for the second season, the period April 1, 2000, through July 3, 2000, as 100 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2000 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught. Consequently, NMFS is

prohibiting directed fishing for species included in the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species."

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the second seasonal apportionment of the 2000 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the second seasonal bycatch allowance of Pacific halibut. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 26, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13684 Filed 5–26–00; 2:35 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 052600C]

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Greenland turbot in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Greenland turbot in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 28, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2000 TAC of Greenland turbot in the Bering Sea subarea was established by Final 2000 Harvest Specifications of Groundfish for the BSAI (65 FR 8282, February 18, 2000) as 5,764 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC for Greenland turbot in the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,564 mt, and is setting aside the remaining 1,200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the Bering Sea subarea.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Greenland turbot for the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 26, 2000

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13683 Filed 5–26–00; 2:35 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 106
Thursday, June 1, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 B2 and B4 series airplanes, that currently requires inspection of the fuselage longitudinal lap joints and circumferential joints, and of the stringers and doublers for bonding delamination and cracks; and repairs, as necessary. This action would require expansions of certain inspection areas; revisions of certain inspection thresholds or intervals; changes in references to inspection methods; and the addition of a modification to certain longitudinal lap joints. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent delamination and cracking of the fuselage, which could result in rapid decompression of the airplane.

DATES: Comments must be received by July 3, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–184–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 27, 1985, the FAA issued AD 85–07–09, amendment 39–5033 (50 FR 13548, April 5, 1985), applicable to certain Airbus Industrie Model A300 B2 and B4 series airplanes, to require inspection of the fuselage longitudinal lap joints and circumferential joints, and of the stringers and doublers for bonding delamination and cracks; and repairs, as necessary. That action was prompted by reports of bonding delamination of these components. The requirements of that AD are intended to prevent rapid decompression of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 85–07–09, the manufacturer has issued three revised service bulletins that describe expansions of certain inspection areas; revisions of certain inspection thresholds or intervals; and certain changes in references to inspection methods. The manufacturer also has issued a service bulletin that describes procedures for a modification to certain longitudinal lap joints. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised that those revised or additional actions are necessary in order to adequately protect against bonding delamination or bulging of the fuselage longitudinal lap joints and circumferential joints, or delamination of fuselage stringers and doublers.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–53–148, Revision 11, dated September 8, 1998, which describes procedures for inspection of certain fuselage bonded lap joints and circumferential joints to detect bonding delamination; and repair, if necessary.

Airbus also has issued Service Bulletin A300–53–178, Revision 10, dated September 8, 1998, which describes procedures for inspection of certain fuselage bonded lap joints and circumferential joints to detect corrosion and cracks; and repair, if necessary.

Airbus also has issued Service Bulletin A300–53–149, Revision 14, dated September 8, 1998, which describes procedures for inspection of bonded stringers and doublers to detect debonding; and repair, if necessary.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 1984–140–064(B) R3, dated October 6, 1999, in order to assure the continued airworthiness of these airplanes in France.

Airbus also has issued Service Bulletin A300–53–0209, Revision 10, dated July 5, 1999, which describes procedures for the modification of bonded longitudinal lap joints. The modification involves the installation of doublers on longitudinal lap joints at stringers 29 and 35 in section 18. This modification is intended to eliminate the need for bonded lap joint inspections for stringers 29 and 35 in section 18, as specified in Airbus Service Bulletin A300–53–148, Revision 11. The DGAC classified Service Bulletin A300–53–0209 as mandatory and issued French airworthiness directive 97–371–235(B), dated December 3, 1997, in order to assure the continued airworthiness of these airplanes in France.

Accomplishment of the actions specified in the service bulletins described in this section is intended to adequately address the identified unsafe condition.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 85–07–09 to require accomplishment of the actions specified in the service bulletins described previously, except as discussed below. Additionally, repetitive inspections are required in paragraph (c) of AD 85–07–09 (as indicated by paragraph (c)(2)), but have been more clearly specified in this proposed AD.

Differences Between Proposed Rule and Service Information

Operators should note that, unlike certain procedures described in the service information, this proposed AD would not permit further flight if cracking or corrosion is detected in the fuselage longitudinal lap joints or circumferential joints, or in the bond of the stringers and doublers. The FAA has determined that, because of the safety implications and consequences associated with such cracking and corrosion, any subject longitudinal lap joint, circumferential joint, or bond of the stringers and doublers that is found to be cracked or corroded must be repaired or modified prior to further flight.

Cost Impact

There are approximately 20 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection of the bonded longitudinal lap joints and circumferential joints to detect bonding delamination that is currently required by AD 85–07–09, and retained in this AD, takes approximately 146 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these currently required actions on U.S. operators is estimated to be $175,200, or $8,760 per airplane, per inspection cycle.

The inspection of the bonded longitudinal lap joints and circumferential joints in to detect corrosion and cracking that is currently required by AD 85–07–09, and retained in this AD, takes approximately 72 work hours per airplane to accomplish. Based on these figures, the cost impact of these currently required actions on U.S. operators is estimated to be $86,400, or $4,320 per airplane, per inspection cycle.

The inspections of the bonded stringers and doublers to detect debonding that are currently required by AD 85–07–09, and retained in this AD, take approximately 129 work hours per airplane to accomplish. Based on these figures, the cost impact of these currently required actions on U.S. operators is estimated to be $154,800, or $7,740 per airplane, per inspection cycle.

The modification of the bonded longitudinal lap joint that is proposed in this AD action would take as much as 581 work hours (not including access and close) per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost as much as $16,148 per airplane, depending on kits purchased. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be as high as $1,020,160, or $51,008 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5033 (50 FR 13548, April 5, 1985), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 97–NM–184–AD. Supersedes AD 85–07–09, Amendment 39–5033.

Applicability: Model A300 B2 and B4 series airplanes, manufacturer serial numbers 003 through 156 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid decompression of the airplane due to bonding delamination and cracking of the fuselage, accomplish the following:

Restatement of Requirements of AD 85–07–09

Delamination Inspections of Longitudinal Lap and Circumferential Joints

(a) Except as required by paragraph (d) of this AD: Prior to the threshold limits specified in Table 1 of Airbus Service Bulletin A300–53–148, Revision 6, dated October 10, 1984, or within 6 months after May 13, 1985 (the effective date of AD 85–07–09), whichever occurs later, inspect the fuselage longitudinal lap joints and circumferential joints for bonding delamination, in accordance with the service bulletin.

(1) If no delamination is detected, repeat these inspections in accordance with the schedule shown in Table 1 of the service bulletin.

(2) If delamination is detected during any inspection, prior to further flight, perform the actions indicated in Figure 3, "Follow-up Action," of the service bulletin.

Corrosion and Crack Inspections of Longitudinal Lap and Circumferential Joints

(b) Except as required by paragraph (d) of this AD: Prior to the threshold limits specified in Figure 1, "Inspection Program," of Airbus Service Bulletin A300–53–178, Revision 4, dated October 10, 1984, or within 6 months after May 13, 1985, whichever occurs later, visually inspect for corrosion and cracks, and repair if necessary, the bonded longitudinal lap joints and circumferential joints specified in Figure 1 of the service bulletin, in accordance with the service bulletin. Repeat the inspections thereafter in accordance with the schedule shown in Figure 1 of the service bulletin.

Delamination Inspections of Stringers and Doublers

(c) Except as required by paragraph (d) of this AD: Prior to the threshold limits specified in Figure 1, "Inspection Frequency," of Airbus Service Bulletin A300–53–149, Revision 6, dated October 10, 1984, or within 6 months after May 13, 1985, whichever occurs later, inspect for debonding, and repair, if necessary, bonded stringers and bonded doublers in the area between frame 1 and frame 18 and between frame 40 and frame 80 on all airplanes up to and including serial number 156, and in the area between frame 18 and frame 40 on all airplanes up to and including serial number 104. Repeat the inspections thereafter at intervals specified in Figure 1 of the service bulletin, except for repaired areas. The inspections of stringers are divided into three areas, as indicated in Figure 2 of the service bulletin, with the following options:

(1) Inspection in Area 1 is not required if Modification No. 2904, described in Airbus Service Bulletin A300–53–146, dated November 28, 1980, has been incorporated.

(2) Preventive riveting of stringers located in Area 2 in accordance with Airbus Service Bulletin A300–53–197, dated October 10, 1984, allows for an extension of the interval of subsequent repetitive inspections to the interval required for Area 3.

New Requirements of This AD

Later Service Bulletin Revisions

(d) After the effective date of this new AD, only the following service bulletin revisions shall be used for compliance thresholds and intervals and for accomplishment instructions for the actions required by this AD, as specified in paragraphs (d)(1), (d)(2), and (d)(3) of this AD. For any airplane that, as of the effective date of this AD, has exceeded a revised threshold or interval for any specified action, accomplish that action within 6 months after the effective date of this AD.

(1) Airbus Service Bulletin A300–53–148, Revision 11, dated September 8, 1998, shall be used for the requirements of paragraph (a) of this AD. For corrective actions and follow-on inspections, Figure 5, "Follow-up Action," of the service bulletin shall be used.

(2) Airbus Service Bulletin A300–53–178, Revision 10, dated September 8, 1998, shall be used for the requirements of paragraph (b) of this AD. For inspection thresholds and intervals, Paragraph C., "Description," of the service bulletin shall be used.

(3) Airbus Service Bulletin A300–53–149, Revision 14, including Appendix 01, dated September 8, 1998, shall be used for the requirements of paragraph (c) of this AD. For inspection thresholds and intervals, Figure 1, Sheet 1, "Inspection Frequency," of the service bulletin shall be used.

Modification of Lap Joints (Partial Terminating Action)

(e) Within 60 months after the effective date of this AD, modify the bonded longitudinal lap joints in accordance with Airbus Service Bulletin A300–53–0209, Revision 10, dated July 5, 1999. Accomplishment of the modification terminates the repetitive inspections required by paragraph (a) of this AD for stringers 29 and 35 in section 18 only.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 97–371–235(B), dated December 3, 1997, and 1984–140–064(B)R3, dated October 6, 1999.

Issued in Renton, Washington, on May 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13695 Filed 5–31–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 930

[Docket No. 990723202–9202–01]

RIN 0648—AM88

Coastal Zone Management Act Federal Consistency Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: On April 14, 2000, the National Oceanic and Atmospheric Administration (NOAA) proposed to revise the federal consistency regulations. The comment period expired on May 30, 2000. This document reopens the public comment period on the proposed rule until June 15, 2000.

DATES: Comments on the proposed rule will be considered if mailed on or before June 15, 2000.

ADDRESSES: All comments concerning these proposed regulations should be mailed to Joseph A. Uravitch, Chief, Coastal Programs Division, Office of Ocean and Coastal Resource Management (N/ORM3), 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David W. Kaiser, Federal Consistency Coordinator, Office of Ocean and Coastal Resource Management (N/ORM3), 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910, Telephone: 301–713–3098, extension 144.

SUPPLEMENTARY INFORMATION: On April 14, 2000, the National Oceanic and Atmospheric Administration (NOA) proposed to revise the federal consistency regulations, 65 FR 20270, April 14, 2000. The time for public comment expired on May 30, 2000. Prior to the expiration of the comment period, OCRM received several requests to extend the time for public comment on the proposed rule. OCRM has decided to extend the original 45 day comment period to 60 days. Because the comment period has already expired, this document reopens the public comment period. The time for the public to submit comments now ends on June 15, 2000.

Dated: May 26, 2000.

John Oliver,

Director, Management and Budget Office, National Ocean Service.

[FR Doc. 00–13685 Filed 5–31–00; 8:45 am]

BILLING CODE 3510–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 434

[FRL–6707–5]

Coal Mining Point Source Category; Amendments to Effluent Limitations Guidelines and New Source Performance Standards; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public meetings.

SUMMARY: On April 11, 2000, EPA proposed amendments to the effluent limitations guidelines and new source performance standards for the Coal Mining Point Source Category (65 FR 19440). The comment period on this proposal will close on July 10, 2000. EPA will conduct public meetings at six locations during the comment period. EPA is inviting all interested members of the public to attend these meetings and to present comments. No meeting materials will be distributed in advance.

DATES: EPA will conduct three public meetings in June regarding the proposed regulations for the Coal Remining Subcategory and three additional meetings, also in June, for the Western Alkaline Subcategory. The dates and locations are listed below in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: John Tinger at (202) 260–4992 or by e-mail at *"Tinger.John@epa.gov."* The **Federal Register** notice of proposed rulemaking, fact sheet, and support documents can be obtained from *http://www.epa.gov/OST/guide.*

SUPPLEMENTARY INFORMATION:

Public meetings regarding proposal of effluent limitations and standards for the Coal Remining Subcategory will be held at the following times and locations:

June 13, 2000, starting at 6:00 pm at the West Virginia Division of Environmental Protection, Office of Mining and Reclamation, Training Room, 10 McJunkin Rd., Nitro, WV.

June 14, 2000, starting at 6:00 pm at the Kentucky Department for Surface Mining Reclamation and Enforcement, Training Room, 2 Hudson Hollow Rd., Frankfort, KY.

June 15, 2000, starting at 6:00 pm at the Muskingum Valley Conference Center, Holiday Inn, 4645 East Pike, Zanesville, OH.

Public meetings regarding proposal of effluent limitations and standards for the Western Alkaline Coal Mining Subcategory will be held at the following times and locations:

June 22, 2000, starting at 1:00 pm at the Institute for Tribal Environmental Professionals at Northern Arizona University, University Union Building 30, Havasupai Conference Room, Knoles Drive, Flagstaff, AZ.

June 28, 2000, starting at 9:00 am at the U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Room 3340, Denver, CO.

June 29, 2000, starting at 1:00 pm at the Best Western Tower West Lodge, 109 North US 14, Gillette, WY.

These meetings will not be recorded by a reporter or transcribed for inclusion in the public record. Comments and speakers are invited at the meetings, but comments to be included in the record must either be submitted in writing at the meetings, or submitted in writing in accordance with the instructions in the notice of proposed rulemaking (65 FR 19440).

Dated: May 22, 2000.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 00–13561 Filed 5–31–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1079; MM Docket No. 00–79, RM–9802]

Radio Broadcasting Services; Jackson and Salyersville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition jointly filed by Intermountain Broadcasting Company and Wallingford Broadcasting Company, Inc., requesting the substitution of Channel 247C2 for Channel 293A at Jackson, Kentucky, and the modification of Station WKSN(FM)'s license accordingly; and the substitution of Channel 293C3 for Channel 247C3 at Salyersville, Kentucky, and the modification of Station WRLV–FM's construction permit accordingly. Channel 247C2 can be allotted at Jackson in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.1 kilometers (8.2 miles) north at Station WJSN(FM)'s requested site. The coordinates for Channel 247C2 at Jackson are 37–40–19 North Latitude and 83–24–21 West Longitude. Additionally, Channel 293C3 can be allotted to Salyersville without the imposition of a site restriction at Station WRLV–FM's requested site. The coordinates for Channel 293C3 at Salyersville are 37–49–05 North Latitude and 83–17–01 West Longitude.

DATES: Comments must be filed on or before July 7, 2000, reply comments on or before July 24, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW, Suite 200, Washington, DC 20006 (Counsel for Intermountain Broadcasting Company); and Mark N. Lipp, Esq., Shook, Hardy & Bacon, L.L.P., 600 14th Street, NW, Suite 800, Washington, DC 20005 (Counsel for Wallingford Broadcasting Company, Inc.).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–79, adopted May 10, 2000, and released May 16, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13599 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1111, MM Docket No. 00–82, RM–9841; MM Docket No. 00–83, RM–9842; MM Docket No. 00–84, RM–9855; MM Docket No. 00–85, RM–9868; MM Docket No. 00–86, RM–9869; MM Docket No. 00–87, RM–9870; MM Docket No. 00–88, RM–9871; MM Docket No. 00–89, RM–9872]

Radio Broadcasting Services; McCook, NE; Butte Falls, OR; Jacksonville, GA; Las Vegas, NM; Vale, OR; Brightwood, OR; Dillsboro, NC; Waynesboro, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on eight petitions for rule making requesting FM channel allotments at McCook, NE, Butte Falls, OR, Jacksonville, GA, Las Vegas, NM, Vale, OR, Brightwood, OR, Dillsboro, NC, and Waynesboro, GA.

DATES: Comments must be filed on or before July 10, 2000, and reply comments on or before July 25, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David M. Stout, Managing Member, McCook Radio Group, LLC, 1811 West "O" Street, McCook, NE 69001 (Petitioner in RM–9841); James S. Bumpous, Partner, Butte Falls Radio, 13915 Lakeview Drive, Austin, TX 78732 (Petitioner in RM–9849); Clyde and Connie Lee Scott,d/b/a EME Communications, 293 JC Saunders Road, Moultrie, GA 31768 (Petitioner in RM–9855); Sangre de Christo Broadcasting Co., Inc., c/o Ernest T. Sanchez, 2000 L Street, NW, Suite 200, Washington, DC 20036 (Counsel to petitioner in RM–9868); Robin B. Thomas, President, New West Broadcasting, 1001 Weatherby Drive, Cheyenne, WY 82007 (Petitioner in RM–9869); Muddy Broadcasting Company, c/o Dawn M. Sciarrino, Clifford M. Harrington and Paul A. Cicelski, Shaw Pittman, 2300 N Street, NW, Washington, DC 20037 (Counsel to petitioner in RM–9870); Sutton Radiocasting Corporation, c/o John F. Garziglia, Patricia M. Chuh, Pepper & Corazzini, LLP, 1776 K Street, NW, Suite 200, Washington, DC 20006–2334 (Counsel to petitioner in RM–9871); C. Michael Adkins, SSR Communications Incorporated, 5116 Wesleyan Circle, Macon, GA 31210 (Petitioner in RM–9872).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket Nos. 00–82, 00–83, 00–84, 00–85, 00–86, 00–87, 00–88, and 00–89, adopted May 10, 2000, and released May 19, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Channel 280C2 can be allotted to McCook, NE, without the imposition of a site restriction, at coordinates 40–12–18 NL; 100–37–36 WL. Channel 255A can be allotted to Butte Falls, OR, with a site restriction of 1.9 kilometers (1.2 miles) northwest, at coordinates 42–33–05 NL; 122–35–18 WL, to avoid a short-spacing to Station KAGO-FM, Channel 258C1, Klamath Falls, OR. Channel 272A can be allotted to Jacksonville, GA, with a site restriction of 13.5 kilometers (8.4 miles) northwest, at coordinates 31–51–54 NL; 83–06–16 WL, to avoid a short-spacing to Stations WZAT, Channel 271C, Savannah, GA, WBGA, Channel 273C1, Waycross, GA, and WYSC, Channel 274A, McRae, GA. Channel 224A can be assigned to Las Vegas, NM, without the imposition of a site restriction, at coordinates 35–36–00 NL; 105–13–00 WL. Channel 288C can be allotted to Vale, OR, with a site restriction of 9.6 kilometers (6.0 miles) west, at coordinates 44–00–06 NL; 117–21–32 WL, to avoid a short-spacing to Stations KJOT, Channel 286C, Boise, ID, and KCIX, Channel 290C, Garden City, ID. Channel 251C3 can be allotted to Brightwood, OR, with a site restriction of 20.6 kilometers (12.8 miles) southeast, at coordinates 45–17–20 NL; 121–47–04 WL, to avoid a short-spacing to Station KUPL–FM, Channel 254C1, Portland, OR. Channel 237A can be allotted to Dillsboro, NC, with a site restriction of 10.7 kilometers (6.6 miles) southeast, at coordinates 35–18–21 NL; 83-09–50 WL, to avoid a short-spacing to Stations WIKQ, Channel 235C, Greeneville, TN, and WYFC, Channel 237A, Clinton, TN. Channel 225A can be allotted to Waynesboro, GA, with a site restriction of 2.0 kilometers (1.3 miles) northeast, at coordinates 33–06–23 NL; 82–00–14 WL, to avoid a short-spacing to Stations WKKZ, Channel 224C2, Dublin, GA, and WEAS-FM, Channel 226C1, Savannah, GA.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13598 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1110; MM Docket No. 00–28; RM–9796]

Radio Broadcasting Services; Christine, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a proposal filed by Christine Radio Broadcasting Company requesting the allotment of Channel 245A at Christine, Texas, as the community's first local service. *See* 65 FR 11537, March 3, 2000. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted. Since there has been no interest expressed for the allotment of a channel at Christine, the *Report and Order* dismisses the proposal.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 00–28, adopted May 10, 2000, and released May 19, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13597 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1109; MM Docket No. 99–115; RM–9378]

Radio Broadcasting Services; Clio and Tuscola, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: The *Notice* in this proceeding proposed the reallotment of Channel 268A from Tuscola, Michigan, to Clio, Michigan, and modification of the license for Station WWBN accordingly. The *Notice* was issued in response to a petition filed by Faircom Flint Inc. See 64 FR 18569, 1999. Based on the information submitted, it has been determined that the reallotment from Tuscola to Clio does not provide a public interest benefit of enough significance to outweigh the loss of a transmission service to Tuscola or offset the disruption of an existing service. Therefore, the proposed reallotment from Tuscola to Clio has been denied. With this action, this docketed proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–115, adopted May 10, 2000, and released May 19, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13596 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–2000–6859]

RIN 2127–AC64

Consumer Information Regulations; Federal Motor Vehicle Safety Standards; Rollover Prevention

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: The agency believes that consumer information on the rollover risk of passenger cars and light multipurpose passenger vehicles and trucks would reduce the number of injuries and fatalities from rollover crashes. This information would enable prospective purchasers to make choices about new vehicles based on differences in rollover risk and serve as a market incentive to manufacturers in striving to design their vehicles with greater rollover resistance. The consumer information program would also inform drivers who choose vehicles with less rollover resistance that their risk of harm can be greatly reduced with seat belt use to avoid ejection.

The agency has tentatively decided that the Static Stability Factor should be used to indicate overall rollover risk in single-vehicle crashes. This document seeks comment on whether the information should be presented as part of NHTSA's New Car Assessment Program (NCAP), which provides consumer information concerning frontal and side impact protection.

DATES: Comment Date: Comments must be received by July 31, 2000.

ADDRESSES: All comments should refer to Docket No. NHTSA–2000–6859 and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are from 10 am to 5 pm Monday through Friday.

For public comments and other information related to previous notices on this subject, please refer to Docket No. 91–68; Notice 3, NHTSA Docket, Room 5111, 400 Seventh Street, SW, Washington, DC 20590. NHTSA Docket hours are from 9:30 am to 4 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gayle Dalrymple, NPS–23, Office of Safety Performance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Ms. Dalrymple can be reached by phone at (202) 366–5559 or by facsimile at (202) 366–4329.

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I. Executive Summary

This notice requests comment from the public on NHTSA's intent to include a vehicle measure of rollover resistance, its Static Stability Factor, as an addition to the 2001 New Car Assessment Program (NCAP).

According to the 1997 Fatality Analysis Reporting System (FARS), 9,529 people were killed as occupants in light vehicle rollovers. FARS shows that 53 percent of light vehicle occupant fatalities in single-vehicle crashes involved rollover. The proportion differs greatly by vehicle type: 45 percent of car occupant fatalities in single-vehicle crashes involved rollover, compared to 60 percent for pickup trucks, 65 percent for vans, and 79 percent for sport utility vehicles (SUVs). The 1995–1997 National Automotive Sampling System (NASS) estimates that 228,000 light vehicles were towed from a rollover crash each year (on average), and that 25,000 occupants of these vehicles were seriously injured.

The action described by this notice follows a decision by the agency in 1994 (59 CFR 33254) to terminate rulemaking on a minimum standard for rollover resistance and to propose a consumer information approach instead. We have decided to pursue consumer information, through NCAP, to enable consumers to make informed choices about the tradeoffs in vehicle attributes, such as high ground clearance, and rollover resistance. NCAP provides practical advantages over the mandatory consumer information regulation proposed in 1994:

- Implementation would be faster. The program would be able to start almost immediately, so consumers would have the information sooner.
- NHTSA retains control of vehicle measurement so the consumer will know exactly which vehicle model/equipment combination was tested.
- It takes advantage of the existing NCAP organization within NHTSA equipped to perform vehicle tests and disseminate consumer information and avoids the need for a compliance function within NHTSA to collect and process manufacturers' test reports and provide to manufacturers the vehicle ranges required on the labels.

The agency believes that consumer information on the rollover risk of passenger cars and light multipurpose passenger vehicles and trucks, based on the vehicle's Static Stability Factor, would reduce the number of injuries and fatalities from rollover crashes. This information would enable prospective purchasers to make choices about new vehicles based on differences in rollover risk and serve as a market incentive to manufacturers in striving to design their vehicles with greater rollover resistance.

It would inform drivers of the general difference in rollover resistance between light trucks and cars and among vehicles within the various classes. Consumers who need, or desire, a particularly large cargo space, high ground clearance, or narrow track width, would not be denied the chance to purchase such vehicles. However, consumers who choose vehicles with relatively low rollover resistance could do so with knowledge of that fact, something that is not very likely today. The consumer information program would also inform drivers who choose vehicles with less rollover resistance that their risk of harm can be greatly reduced with seat belt use to avoid ejection.

In 1994, the agency proposed a vehicle labeling requirement for rollover information, but we believe that including rollover information in the NCAP program instead may be preferable. The labeling of vehicles with one safety attribute to the exclusion of others may be misleading. A 1996 study by the National Academy of Sciences (NAS) recommended the development of an overall measure of vehicle safety. Until that goal can be met, the presentation of our proposed measure of rollover risk, in the context of our established measures of frontal and side impact crashworthiness in NCAP, would go a long way toward addressing NAS's concern for presenting overall vehicle safety.

II. Background

Rollover crashes are complex events that reflect the interaction of driver, road, vehicle, and environmental factors. We can describe the relationship between these factors and the risk of rollover using information from the agency's crash data programs. We limit our discussion here to light vehicles, which are defined as the combination of (1) passenger cars and (2) multipurpose passenger vehicles and trucks under 4,536 kilograms (10,000 pounds) gross vehicle weight rating (collectively, "light trucks").[1]

According to the 1997 Fatality Analysis Reporting System (FARS), 9,529 people were killed as occupants in light vehicle rollovers, including 7,697 killed in single-vehicle rollovers. Eighty percent of the people who died in single-vehicle rollovers were not using a safety belt, and 63 percent were ejected from the vehicle (including 52 percent who were completely ejected). FARS shows that 53 percent of light vehicle occupant fatalities in single-vehicle crashes involved rollover. The proportion differs greatly by vehicle type: 45 percent of car occupant fatalities in single-vehicle crashes involved rollover, compared to 60 percent for pickup trucks, 65 percent for vans, and 79 percent for sport utility vehicles (SUVs).

The 1995–1997 National Automotive Sampling System (NASS) estimates that 228,000 light vehicles were towed from a rollover crash each year (on average), and that 25,000 occupants of these vehicles were seriously injured (defined as an Abbreviated Injury Scale rating of at least 3).[2] This includes 186,000 single-vehicle tow-away rollovers with 17,000 serious injuries. Seventy-six percent of those people who suffered a serious injury in single-vehicle tow-away rollovers were not using a safety

[1] Light trucks include vans, minivans, SUVs, and pickup trucks under 4,536 kilograms (10,000 pounds) GVWR.

[2] A broken hip is an example of an AIS 3 injury.

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belt, and 56 percent were ejected (including 48 percent who were completely ejected). Estimates from NASS are that 82 percent of tow-away rollovers occurred in single-vehicle crashes, and 85 percent (159,000) of the single-vehicle rollover crashes occurred off the roadway.

The 1995–1997 General Estimates System (GES) data produce estimates that 240,000 light vehicles rolled over each year (on average) in police-reported crashes, and that 55,000 occupants in rollover crashes received injuries rated as K or *A* on the police injury scale. (The police KABCO scale calls these injuries "incapacitating," but their actual severity depends on local practice. "Incapacitating" injury may mean that the injury was visible to the reporting officer or that the officer called for medical assistance.) This includes 207,000 single-vehicle rollovers with 45,000 K or A injuries. Fifty-two percent of those with *K* or *A* injury in single-vehicle rollovers were not using a safety belt, and 18 percent were ejected from the vehicle (including 16 percent who were completely ejected). Estimates from GES are that 16 percent of light vehicles in police-reported single-vehicle crashes rolled over. The estimated risk of rollover differs by vehicle type: 13 percent of cars and 14 percent of vans in police-reported single-vehicle crashes rolled over, compared to 24 percent of pickup trucks and 30 percent of SUVs.

III. Rulemaking History

In 1973 NHTSA issued an Advance Notice of Proposed Rulemaking (ANPRM) on resistance to rollover (38 FR 9598; April 18, 1973). The agency was considering a safety standard "* * * that would specify minimum performance requirements for the resistance of vehicles to rollover in simulations of extreme driving conditions encountered in attempting to avoid accidents." Research projects were undertaken to investigate handling and stability of different types of vehicles in severe steering maneuvers associated with untripped rollovers. The relevant conclusions of the research were that "vehicle rollover response is dominated by the vehicle's rigid body geometry (with dynamic contributions from suspension effects)," and that "untripped rollover, even on high skid-resistance surfaces, is difficult to predict and accomplish." The research recommended computer simulation of dynamic testing as a more repeatable alternative to full-scale track testing. Further work on untripped rollover was discontinued in the late 70's.

In September 1986, Congressman Timothy Wirth petitioned NHTSA to establish a safety standard for rollover resistance by setting a minimum allowable Static Stability Factor (SSF) of 1.2. The agency denied the petition in December of 1987 (52 FR 49033, December 29, 1987) stating that "* * * while a vehicle's stability factor can reasonably predict whether a vehicle which is already involved in a single-vehicle accident will roll over, it does not accurately determine its likelihood of becoming involved in an accident that includes rollover." An SSF of 1.2 "* * * would neither adequately encompass the causes of vehicle rollover nor satisfactorily ameliorate the problem." In order to consider a minimum standard, the agency believed it was necessary to understand vehicle characteristics making a single-vehicle crash more likely as well as those predictive of the rollover outcome of a single-vehicle crash.

In June 1988 the Consumers Union (CU) petitioned NHTSA to establish a safety standard to protect occupants against "unreasonable risk of rollover." CU did not suggest a specific remedy. The agency granted the petition in September 1988. From 1988–1993 NHTSA undertook the most comprehensive vehicle and data analysis in its history, studying over 100,000 single-vehicle rollover crashes. This study eventually focused on two vehicle static measurements which seemed promising: Tilt Table Angle and Critical Sliding Velocity. Tilt Table Angle is the angle at which a vehicle will begin to tip off a gradually tilted platform. Critical Sliding Velocity is the minimum velocity needed to trip a vehicle which is sliding sideways. Both of these measurements address the situation in which a vehicle encounters something that trips it into a rollover, such as a curb, soft dirt, or its own tire rim digging into the pavement.

The NHTSA Authorization Act of 1991 (the Act) (part of the Intermodal Surface Transportation Efficiency Act) required the agency to address several vehicle safety subjects through rulemaking. One of the safety subjects was protection against unreasonable risk of rollovers of passenger cars and light trucks. The Act required that NHTSA publish, no later than May 31, 1992, an ANPRM or a notice of proposed rulemaking (NPRM) on this subject. The Act also required the agency to complete a rulemaking action on rollover within 26 months of publishing the ANPRM. The Act explained that this rulemaking would be considered completed when NHTSA either published a final rule or decided and announced that it would not promulgate a rule.

On January 3, 1992 NHTSA fulfilled the first mandate of the Act by publishing an ANPRM (57 FR 242). In the ANPRM the agency stated that it was considering various regulatory actions to reduce the frequency of vehicle rollovers and/or the number and severity of injuries resulting from vehicle rollovers. The agency requested comments on potential regulatory actions in the areas of: improved stability, improved crashworthiness, and consumer information. NHTSA said that it might issue a rule or rules in any one of these three categories, or in any combination of them.

The ANPRM discussed the agency's statistical analyses of the interaction of driver characteristics, vehicle stability metrics, roadway and environmental conditions. The notice described the following vehicle stability metrics as having a potentially significant role in vehicle rollover: center of gravity height; static stability factor; tilt table ratio; side pull ratio; wheelbase; critical sliding velocity; rollover prevention metric; braking stability metric; and percent of total vehicle weight on the rear axle. A vehicle stability metric is a measured vehicle parameter thought to be related to the vehicle's likelihood of rollover involvement. To supplement the ANPRM, a Technical Assessment Paper that discussed testing activities, testing results, crash data collection, and analysis of the data was placed in the docket on January 6, 1992 (NHTSA–1996–1683–4). A description of the individual metrics can be found in the Technical Assessment Paper.

During the development of the ANPRM and after receiving and analyzing comments to the ANPRM, it became obvious that no single type of rulemaking could solve all, or even a majority of, the problems associated with rollover. This view was strengthened by the agency's review and analysis of the comments on the ANPRM. To emphasize this conclusion and inform the public further about the complicated nature of the light duty vehicle rollover problem, the agency released a document titled "Planning Document for Rollover Prevention and Injury Mitigation" at a Society of Automotive Engineers (SAE) meeting on rollover on September 23, 1992. The Planning Document gave an overview of the rollover problem and a list of alternative actions that NHTSA was examining to address the problem. Activities described in that document were: crash avoidance research on vehicle measures for rollover resistance, research on antilock brake effectiveness, rulemaking on upper interior padding to prevent head injury, research into improved roof crush resistance to prevent head and spinal injury, research on improved side window glazing and door latches to prevent occupant ejection, and consumer information to alert people to the severity of rollover crashes and the benefits of safety belt use in this type of crash. The document was placed in Docket No. 91–68; Notice 02, on the same day. NHTSA published a notice in the **Federal Register** announcing the availability of the Planning Document and requesting comment (September 29, 1992; 57 FR 44721).

In June 1994 NHTSA terminated rulemaking to establish a minimum standard, fulfilling the second mandate of the Act, because it found (using statistical simulation of crash outcome) that increasing several vehicle rollover metrics to a level higher than is currently seen in most compact sport utility vehicles would not appreciably decrease crash fatalities and injuries in rollovers (59 FR 33254). In the termination notice NHTSA said, "The agency believes that no single type of rulemaking or other agency action could solve all, or even a majority of, the problems associated with rollover. Accordingly, it is pursuing a broad range of actions to address those problems." The notice discussed the wide range of ongoing agency activities to address the rollover problem and referred to the Planning Document.

In the same June 1994 notice NHTSA proposed to require manufacturers to label their vehicles with information on their rollover stability using either Tilt Table Angle (TTA) or Critical Sliding Velocity (CSV). However, in September 1994, in NHTSA's fiscal 1995 Appropriations Act, Congress stated that NHTSA shall not issue any final rule on vehicle rollover labeling until the agency had reviewed a study by the National Academy of Sciences (NAS) on how to most effectively communicate motor vehicle safety information to consumers. The NAS study, "Shopping for Safety—Providing Consumer Automotive Safety Information," was released in March 1996 (TRB Special Report 248). The NAS study recommended that NHTSA expand the scope of consumer information it provides to the public. In the long term, the study recommends the development of one overall measure that combines the relative importance of crashworthiness and crash avoidance features for a vehicle.

In May 1996 NHTSA issued the "Status Report for Rollover Prevention and Injury Mitigation" (NHTSA–1996–1811–2). This document updated the progress of the programs discussed in the Planning Document and added the description of a planned project: development of a dynamic test for rollover and control stability in light vehicles.

On June 5, 1996, NHTSA reopened the comment period on its proposed labeling rule (61 FR 28560). In that notice NHTSA noted that it was reviewing the 1994 proposal in light of the NAS study. On the same day NHTSA published a notice denying a July 1994 petition for reconsideration of the termination of rulemaking on a rollover standard from the Advocates for Highway and Auto Safety and the Insurance Institute for Highway Safety. In the denial the agency noted that it had reviewed and expanded its work on the benefits and cost of a standard based on static vehicle measurements and found the same results: such a standard would eliminate a very popular vehicle type (compact sport utility vehicles) and would not decrease appreciably injuries and fatalities in rollover crashes.

In August 1996 NHTSA received a petition from Consumers Union (CU) asking the agency to develop a test of vehicle emergency handling capability and to provide test results on new vehicles to the public as consumer information. The type of rollover that would be addressed by such a test is known as on-road, untripped rollover, or maneuver-induced rollover. This type of rollover was believed to represent approximately 10 percent of annual rollovers. Since the May 1996 Status Report, the agency had been planning to start a program on dynamic stability testing. Funding for this research was received for fiscal year 1997, and therefore the agency granted the CU petition in May 1997 saying, "NHTSA will initially focus on exploring whether it can develop a practicable, repeatable and appropriate dynamic emergency handling test that assesses, among other issues, a vehicle's propensity for involvement in an on-road, untripped rollover crash." Section IV of this notice details the additional research which has been done since the 1996 CU petition.

Since the vast majority of rollovers are tripped, we have now decided that primary consumer information should be based on factors relevant to tripped as well as untripped rollover, and we have reconsidered the merits of Static Stability Factor as an indicator of rollover risk for consumer information.

IV. Recent Research on Maneuver-Induced Rollover Crashes

A. Why Study Untripped Rollovers?

The causes of *tripped* rollover are well understood. Any vehicle will roll over if it impacts a tripping mechanism with sufficient lateral velocity (such as when the wheels on one side of a vehicle that is sliding sideways hit a curb and the vehicle tips over). A vehicle's static and dynamic rollover metrics are related to the theoretical minimum lateral velocity required for a tripped rollover to occur. Improving a vehicle's static and dynamic rollover metrics increases that theoretical minimum lateral velocity and decreases the potential for rollover.[3] Unfortunately, as we reported in 1994, there is currently no vehicle measurement that can be used in a minimum vehicle safety standard that would decrease the risk of rollover involvement without necessitating drastic design changes to a vehicle type that is sought after by consumers, namely compact SUVs. This is because the rollover rate of an individual make/model is not very sensitive to small changes in metrics, and larger changes in metrics great enough to positively influence rollover rate would necessitate vehicle dimensional changes that would prevent the manufacture of current designs of compact light truck (pickups and SUVs)[4].

In comparison, the causes of *untripped*, on-road rollover are not well understood. Past agency research has never found a light vehicle for which, when empty, the sharpest attainable steady state (constant radius) turn exceeds the vehicle's rollover threshold (although, in our recent track testing, a compact pickup did tip up in a step-steer test). However, our crash data show that light vehicles *do* roll over on the roadway, without tripping, due to abrupt maneuvers. Currently-undefined transient maneuvers may exist that cause rollover for at least some light vehicles. Various crash data studies

[3] Tripped rollovers result from a vehicle's sideways motion, as opposed to its forward motion. When sideways motion is suddenly interrupted, for example, when a vehicle is sliding sideways and its tires on one side encounter something that stops them from sliding, the vehicle may roll over. Whether or not the vehicle rolls over in that situation depends on its speed in a sideways direction (lateral velocity). By measuring certain vehicle dimensions, it is possible to calculate each make/model's theoretical minimum lateral velocity for this type of rollover to occur. These calcualted speeds are relatively low, usually below 15mph, but would be higher in actual crashes.

[4] "Potential Reductions in Fatalities and Injuries in Single-vehicle Rollover Crashes as a Result of a Minimum Rollover Stability Standard;" NHTSA; 1994.

have indicated that loss of vehicle directional control is a prelude to rollover in 50 to 80 percent of all rollover crashes [5]. These traits would be particularly important in on-road, untripped rollovers and rollovers resulting from loss of control due to a poor road edge recovery maneuver.

An agency test project done in the mid-1970's on light truck handling reported several interesting findings on braking in a turn, trapezoidal steer, sinusoidal steer, trapezoidal steer while braking, and crosswind sensitivity for light trucks (including utility vehicles) [6]. This study concentrated on discovering the handling properties of "recreational vehicles" in use at the time. The goal was not necessarily to discover maneuvers that would lead to rollover for particular vehicles. It was intended instead to "demonstrate the handling behavior of recreational vehicles when an external disturbance is encountered or while engaged in a variety of evasive actions * * *" Maneuvers were not chosen for their relevance to crash data. No crash data study was done to determine what maneuvers and situations were common to most rollover crashes.

We decided that in order to cover all possible avenues, for even a small portion of the rollover problem, we should take a new look at untripped rollovers. Our goal was two-fold: To determine the extent of the national incidence of untripped rollover, and to examine commonly used track tests for their potential in acting as an indicator of vehicle tendency to roll over as the result of an on-road maneuver. Admittedly, this type of crash is a small percentage of all rollovers. However, we judged this new research to be worthwhile because this type of crash is very important to consumers (based on comments to the NPRM, at the 1994 town meetings, telephone calls to agency staff, and media interest). It represents the most egregious type of crash, where vehicle performance could be said to be most involved, and it could be the type of crash most affected by a crash avoidance standard if an effective maneuver could be developed.

Our goal was to find a test procedure that would be relevant to what actually happens to today's vehicles on the road. The best way to develop such a procedure was to investigate which situations and driving maneuvers are most common in untripped rollover crashes. Once these maneuvers and situations were identified, field testing could reveal which maneuvers can be performed reliably and repeatably.

B. Estimate of the Annual National Incidence of On-Road, Untripped Rollover Crashes

One important element in determining whether a new Federal Motor Vehicle Safety Standard (FMVSS) for untripped rollover prevention should be established is to determine how often that type of crash actually occurs. Even if it does not occur very often, if we were to develop a standard that would prevent a great majority of these crashes, a benefit would still accrue to the motoring public. We have known for many years that the incidence of untripped, on-road rollover is less than 10 percent of all rollovers. However, exactly how much less was not known and had not been investigated.

The National Automotive Sampling System Crashworthiness Data System (NASS CDS) is a sample of all crashes in the United States that involve damage to a passenger vehicle (car, light truck or van) of sufficient severity to require towing. NASS CDS contains variables describing the type of rollover for vehicles involved in rollover crashes. NHTSA's National Center for Statistics and Analysis recently completed an estimate of the national incidence of untripped rollover using 1992–96 NASS data and a review of rollover crashes completed by NHTSA in 1998. [7] NCSA found that over those years an average of 7,866 untripped rollovers happen each year (standard error 2,340), 4.4 percent of all rollover crashes.

C. Dynamic Test Program

Our interest in untripped rollover, combined with public interest in vehicle stability arising in part from Consumers Union double-lane change tests, [8] led us to undertake a new rollover test program. It was apparent that, since the 1992 ANPRM, the light truck market had expanded and was continuing to grow.

Thus, in late 1996, we started planning a test program in which the goal was to evaluate the best available dynamic rollover resistance test procedures which could be used either in a new vehicle safety standard or in a consumer information program to reduce light vehicle rollover risk. The test program we envisioned would be a full scale evaluation using production vehicles with an emphasis on dynamic track testing as opposed to static laboratory measurements, the latter having been well researched and documented already by that time.

1. Preliminary Steps

As a first step, we identified the candidate procedures for the purpose of measuring light vehicle rollover resistance from among many available possibilities, with consideration given to current "best practices" and to actual rollover crash experience. We took the following steps before conducting the full scale test program:

a. Review of a selection of NASS CDS cases in which untripped rollover was the primary harmful event. The review gave a general idea of the circumstances surrounding on-road, untripped rollover crashes and provided some perspective on the types of track testing that would be appropriate to reflect actual crashes of that kind.

b. Review of consumer complaints involving rollovers of light vehicles. The complaints came from an agency database maintained by NHTSA's Office of Defects Investigation (ODI).

c. Comprehensive review of a variety of test procedures from several available sources.

Each of these activities is briefly discussed below.

a. NASS Case Studies

The NASS CDS database for the calendar years 1992 to 1995 included 15 light vehicle rollover crashes which met all of the following criteria:

- the crash was coded "turnover", which indicates an untripped rollover,[9]
- a single vehicle was involved and turned over on the road or paved shoulder,
- the rollover was the first harmful event,
- the vehicle was a 1990 or later model year,
- the driver was not impaired, there were no mechanical failures such as a tire blow-out prior to the rollover, and
- the rolled vehicle was not towing a trailer.

These restrictions limited the cases to a selection which could be described as "maneuver-induced" rollovers, that is, rollover crashes in which tire-road friction, rather than some other factor such as a collision or contact with a tripping mechanism, can be assumed to have been the primary source of overturning force.

We reviewed hard copy files from each of those 15 cases. The following are the pertinent observations from that review:

- Thirteen of the cases involved LTVs (vans, pickups, or SUVs); the other two rollovers involved sub-compact cars in a loaded condition (three or more occupants).
- In ten of the 15 cases, the vehicle was entering, exiting, or traveling on highways, divided roadways, or interstates with posted speeds of 55 mph or greater and associated entrance/exit ramps prior to crashing. According to the files, two cases involved excessive speed prior to the incident. The remaining five cases occurred in lower speed zones (posted 35 mph or less).
- Only one of the 15 rollovers occurred in an urban setting; the remainder occurred in a rural setting or other non-urban location.
- None of the 15 cases appeared to involve a driver attempting to avoid a stationary or slow-moving object in the roadway. In several cases, the driver swerved or lost control of the vehicle, but the reason for swerving was reported as a moving vehicle, or unknown.
- It appears that driving conditions were generally good in all of the cases (level roads, no precipitation, in daylight or on lighted roadways) except for wet pavement in a few of the instances.

These observations indicated that single-vehicle, untripped rollover crashes most often occur on rural highways; the speeds at which the rollover crashes occur are relatively high compared to, for example, those experienced in the Consumers Union obstacle avoidance maneuver (approximately 30 to 40 mph, depending on the vehicle); and they occur because drivers lose control of their vehicles, sometimes in attempting to recover from having completely or partially left the roadway, as opposed to avoiding an obstacle.

The information derived from these case studies led us to conclude that, in order to evaluate untripped rollover stability of production vehicles, at least one of the test procedures should involve a highway scenario with the test vehicle moving at close to highway speeds (45 mph or greater) and attempting to re-enter the roadway from a shoulder or from some partially off-road disposition.

In reviewing available test procedures, we found mention of a test procedure proposed at one time by General Motors that emulates a roadway recovery scenario. In addition, at a meeting with NHTSA representatives in March, 1997, Suzuki submitted information on three variations of a scenario in which a vehicle leaves or partially leaves a roadway and then rolls over after attempting to re-enter the roadway. One of the three scenarios suggested by Suzuki is similar to the roadway recovery scenario indicated in several of the NASS cases.

An expanded search of NASS CDS data with fewer restrictions than those listed above for the 15 NASS CDS cases yielded 60 untripped rollover cases. In many of those cases, the cause of rollover was coded as "obstacle avoidance." This supported inclusion of an obstacle avoidance test procedure in addition to the roadway recovery test in the NHTSA test program.

b. ODI Complaints

We reviewed a number of complaints of light vehicle rollover in the database maintained by ODI. As of March, 1997, 144 incidences of rollover involving passenger cars, light trucks, SUVs, and vans were found in the database (four other rollover complaints were rejected because they involved other types of vehicles like motor homes and heavy trucks).

Of the 144 complaints, roughly two-thirds were the result of an alleged component failure of some kind. In other words, the rollovers occurred, either directly or indirectly, because a critical component of the vehicle suddenly or unexpectedly broke (*e.g.*, "axle separated"), seized (*e.g.*, "brakes locked"), or otherwise failed (*e.g.*, "steering wobbled") while the vehicle was in motion. The following are some examples of typical complaint descriptions taken verbatim from the ODI files:

- "Axle ring broke, causing vehicle to swerve/lose control/rollover,"
- "Wheel assembly locked up, causing uncontrollable spin/rollover,"
- "ABS brake locked up after reducing speed to 35 mph, vehicle slid then rolled over."
- "Inner tie rod broke at threads near outer tie rod. Vehicle swerved and rolled over."

The most commonly reported component failures in the rollover complaints were:

- brake lock-up (both conventional and ABS systems),
- other braking system failure (including parking brake),
- steering or suspension component lock-up, separation, or other failure,
- wheel rim, axle, or bearing, separation or failure,
- tire went flat or other tire failure, and
- sudden acceleration

(Note that these failures were allegedly associated with the rollovers as reported in the complaint records, and there was no way to confirm them independently.)

In twenty-four of the complaints, no component failure was cited, and severe vehicle maneuvers were indicated. In these instances, the lack of vehicle rollover resistance appeared to be a primary causal factor, if not the ultimate cause. But this assumption is based solely on the minimal event description given in the ODI database. The following are some examples of the descriptions in which vehicle instability appeared to be a key factor:

- "Truck rolled over when making clockwise wide arc turn, came to rest on its top."
- "While driving at 55 mph, went around an animal on highway, vehicle went out of control, rear fish-tailed, vehicle rolled; injured head, back, shoulder, and arm."
- "Lack of reinforcement around sunroof; high center of gravity resulted in rollover."

There was insufficient information in the database in the remainder of the ODI complaints to allow speculation on the cause of the rollover.

Sixty-four percent of the ODI complaints (92 of 144) involved light trucks, vans, and sport utility vehicles as compared with passenger cars.

c. Survey of Available Test Procedures

We reviewed information on a wide range of test procedures related to vehicle handling and stability, including test methods already in use by vehicle manufacturers, technical standards organizations like SAE and the International Standards Organization, and consumer groups.

We also met with a number of major vehicle manufacturers to discuss their approach to vehicle design and testing with respect to rollover.[10] Each of the manufacturers had a somewhat different approach. In terms of track testing vehicles, manufacturers generally used a

[5] "Report to Congress: Rollover Prevention and Roof Crush," NHTSA, 1992.

[6] "Handling Test Procedures for Light Trucks, Vans, and Recreational Vehicles," NHTSA, DOT-HS-4-00853, February 1976.

[7] Research Note, "Passenger Vehicles in Untripped Rollovers," NHTSA National Center for Statistics and Analysis, September 1999.

[8] Consumers Union of Yonkers, New York, publishes vehicle evaluations in their Consumer Reports magazine. Part of their evaluation is to have experienced test drivers run each test vehicle through an obstacle avoidance course marked out with traffic cones. The test attempts to simulate an emergency in which a driver, initially traveling straight in a traffic lane, is suddenly forced to swerve to the left into the adjacent lane by an obstacle encroaching into his path from the right, and then swerve back into the original lane. Thus the term "double-lane change."

[9] This review of NASS CDS rollover cases was made prior to the 1998 audit of NASS rollover coding. The audit found that many "turnover" cases should have been coded as other types, primarily "trip over". A discussion of the NASS CDS audit is included in the Research Note cited in this notice.

[10] The meetings are documented in docket NHTSA–1998–3206.

battery of maneuvers to assess both handling and stability; no single test was dedicated solely to rollover resistance. Evaluations of rollover resistance were usually associated with more general handling evaluation tests.

One notable exception was a detailed engineering procedure for a "fishhook" test devised specifically for rollover propensity testing and submitted to the agency by Toyota Motor Corporation. Some tests were specifically mentioned by other vehicle manufacturers. These included step-steer (J-Turn), steering reversal, slalom, double lane change, and a resonant steering test. Two variations of the "fishhook" and two variations of a J-turn test were eventually used in the agency's untripped rollover test program (see sections 2 through 4, below).

Of particular importance among the vehicle manufacturers was their reliance to a very great extent on their own experienced test drivers to provide feedback on vehicle stability. It was evident that, in the realm of a manufacturer's vehicle development and testing programs, there was little incentive to use the most objective procedures possible, such as using a programmable steering controller. For the manufacturers' own purposes in designing the handling and stability characteristics of their vehicles, the skill and experience of test drivers was sufficient.

In NHTSA's review of dynamic rollover resistance test procedures, the initial objective had been to choose an available procedure which could be used, with minimal adaptation, in a test program with a large group of vehicle models. However, after review of available procedures, we concluded that there did not appear to be a single, prominent test among industry users, or one or two test procedures that were clearly superior in most respects for the purpose of rollover resistance testing. We were unable to conclude from the documentation that we reviewed whether any of the test procedures alone would provide an acceptable, practical, and repeatable measure of rollover stability, and one that would be accurate enough to effectively distinguish among many vehicle models of the same vehicle type. Furthermore, there were many procedures that were merely variations of some of the more basic ones. For example, we found reference to at least a half dozen variations on an obstacle avoidance test and each one was essentially a double-lane change.

Since there was insufficient information available on which to make a definitive test procedure selection, we decided to pursue a two phase test program. The first phase would focus on evaluating the various types of test procedures found in our initial review. This evaluation would allow us to eliminate any impractical, repetitive, or inapplicable test procedures. The second phase would then focus on an in-depth analysis of the relatively few test procedures remaining.

2. Track Testing—Phase Ia

For Phase I testing, we selected three popular SUVs in order to experiment with a number of possible test procedures. By using only a few vehicle models in Phase I, we were able to focus on narrowing down the extensive list of possible test procedures to a relatively few choices.

The three Phase I test vehicles were selected based on our desire to gain experience with SUVs in particular, as opposed to passenger cars, vans, or pickups. Also, it was necessary to choose vehicles from the same class to address the original goal of the test program, which was to determine whether dynamic test procedures could differentiate performance among vehicles of the same type. Once it had been decided to concentrate on SUVs in Phase I, the choice of models was made in large part on what we had in hand at the time or could obtain quickly and at low cost. The three models selected were: A 1997 Jeep Cherokee 4-door, four-wheel drive, a 1990 Toyota 4Runner 4-door, four-wheel-drive, and a 1984 Ford Bronco II, 2-door, four-wheel-drive. The suspension of each of these vehicles was mechanically refurbished as necessary prior to testing.

The test procedures that we evaluated in Phase I track testing included the following:

- Step-steer ("J-Turn")
- J-Turn with pulse braking
- Toyota Fishhook maneuver (with pulse braking)
- Modified Toyota Fishhook maneuver (no pulse braking)
- Steering reversal
- Double lane change (path-following)
- Split-mu (wet epoxy and asphalt)
- Braking in a turn ("Brake and Steer")

Some of these procedures, such as J-Turn, are generic and can be performed using a range of input parameters including various steering amplitudes and speeds. Although we began Phase I with specific variations of these test procedures in mind, each having predetermined test parameters, we did not limit our evaluation to any predetermined parameters. Instead, the specific test procedure parameters were used as starting points. As we gained experience during the course of Phase I, we made judgements about what were appropriate modifications to suit our testing objectives. For example, the Double Lane Change test was initially modeled after the Consumer's Union Short Course, using the same dimensions and cone spacing, but we experimented with a variety of course layouts by adjusting the cone spacing to give a different steering inputs. In another example, we used a modification of the Toyota Fishhook maneuver to represent a loss of control associated with driving errors in road edge recovery.

The result of Phase I testing was the selection of five procedures for further evaluation in Phase II. The selected maneuvers included two variations of the "Fishhook" steering-reversal test, two variations of the J-Turn (one with and one without a pulse brake application), plus a Resonant Steering procedure.

Perhaps the most significant outcome of Phase I testing was our decision to eliminate "path-following" maneuvers, including double-lane changes, from further consideration. Our experience in Phase I with path-following maneuvers indicated that they are too subjective. The reason for this was that steering inputs could vary widely over any course demarcated with cones or barriers. When speeds were high enough to push the vehicle to a limit condition, the steering inputs could not be repeated from one run to another. This result was significant because path-following tests, particularly double-lane change (obstacle avoidance) tests such as the so-called "moose" test were popular with consumer groups and had received fairly extensive public attention.

Our NASS CDS case studies had indicated that road-edge recovery was a possible factor in five of the 15 rollover crashes reviewed in subsection 1(a) above. The circumstances of these crashes were complex, usually involving a vehicle leaving the paved travel lanes, at least partially, so that two or more of its wheels were on the shoulder. Typically, the rollovers in these cases occurred after the vehicle's driver attempted to steer back onto the paved lanes. Since this scenario is difficult to recreate on a test track, we attempted to simulate it by driving test vehicles on a "split mu" surface, that is, with the wheels on one side of the vehicle on dry asphalt and the wheels on the opposite side on a slick surface. In this procedure, the wheels on the slick surface contributed little to the turning force as the vehicle was sharply steered towards the dry side of the test track lane. The intent was to simulate the lack of traction that exists when two wheels are off the road, tending to resist the driver's effort to steer back onto the paved surface. Unfortunately, this procedure was of limited usefulness. The results were inconsistent from run to run, the lack of traction on one side causing erratic trajectories and leading to spin-outs in some cases. Overall, it was an ineffective simulation of the intended scenario.

A fundamental criticism of any dynamic, path-following maneuver having one or more steering reversals is that it could arbitrarily excite a "roll resonance" in some vehicles. That is, the timing of the steering reversal, which would be determined by the geometry of the course layout, had the potential to become synchronized with the vehicle's natural roll response so as to increase the roll motion. The test would be much more severe for any vehicles at roll resonance than for vehicles not at resonance. However, the test results might differ significantly merely by changing the course geometry, so that a different vehicle might have its roll resonance excited.

To address this resonance potential, it was necessary to either identify the conditions for resonance and demonstrate its effect on vehicle stability by intentionally inducing those conditions in a test maneuver, or else show that resonance is not a significant factor in rollover because of suspension damping or for some other reason that mitigates the theoretical effect.

The roll resonance issue led us to choose, as one of the candidate maneuvers for Phase IIa "resonant steering" test procedure. In that procedure, the first step was to attempt to determine each test vehicle's roll resonance frequency, and then to drive the test vehicle while oscillating the steering at the resonant frequency and increasing either the velocity or steer magnitude until the vehicle became unstable.[11] Ultimately, as discussed in the Phase II report, the test vehicles appeared to be well-damped and it was not possible to identify a distinct roll resonant frequency. This is an area where we would like to conduct further research and testing.

3. Track Testing—Phase Ib

After gaining some experience with dynamic maneuvers in the early part of Phase I, we decided that some issues that had come up during track testing warranted further exploration.[12] These issues included:

- the effect of tire wear in successive, severe test runs,
- repeatability of steering inputs from one driver to another, and
- the effect of outriggers on vehicle dynamics.

A key development during Phase Ib was the opportunity to experiment with a Programmable Steering Machine (PSM). This device could be mounted in any of the test vehicles and had the capability of inputting high steering rates and amplitudes. This device proved to be a valuable tool for dynamic testing and, to a great extent, addressed the driver variability issue.

Even with the PSM, the driver was still in the vehicle for braking and acceleration. Therefore, outriggers were still necessary. Testing found that outriggers added only slightly to the vehicle's moment of inertia.

Testing in Phase Ib found that tire shoulder wear was significant and caused lateral acceleration to increase with repeated test runs on the same tires. This problem was addressed by implementing a schedule of tire replacement based on the number of test runs.

Another important consideration in Phase I testing was that two-wheel-lift (TWL) could be difficult to recognize by visual observation of test runs. Some instances of TWL could be so small that they might not be apparent to test observers. We considered various methods for positively determining whether TWL occurred, as well as methods for measuring the degree or height of TWL. Ultimately, this issue was not resolved prior to commencement of Phase II. In Phase II, TWL was identified and measured either by direct visual observation of tests or by close examination of videotape records of them.

4. Track Testing—Phase II

a. Test Vehicle Selection

As a first step in conducting the Phase II test program, test vehicle make/models were selected to represent as many light vehicle types as possible of those currently in use on U.S. roads. First, light vehicles were categorized into four types: passenger cars, vans (and mini-vans), pickups, and SUVs. We decided that three vehicles in each category was the minimum sufficient number needed to represent each type and should consist of one compact, one mid-size and one large example from each type, making a total of twelve test vehicles. Additional criteria for selection were the following:

- Only late model vehicles (MY1997–98) to ensure that new vehicles could be procured for testing, and
- Only popular (high-selling) vehicles which had been in production without significant design changes for at least three years to ensure that they were represented in available crash data.[13]

b. Results

The Phase II results are reported in detail in the Phase II Final Report. In general, the results confirmed that light trucks have a lower resistance to tip up as a consequence of sharp steering inputs (high magnitude and rate) than passenger cars. Among the light trucks tested in Phase II, those with more truck-like characteristics (four-wheel drive, higher center of gravity) had a higher tendency to tip up than those with more car-like characteristics (two-wheel drive, lower center-of-gravity).

Furthermore, the dynamic tests results were consistent to a great extent with static measures of rollover resistance. Thus, the dynamic tests confirmed the significance of static metrics as predictors of untripped rollover propensity. This result is significant because, previously, the relationship of static metrics to tripped rollover was well-established, but the same has not necessarily been true of untripped rollover. Certainly, center-of-gravity height and track width do influence untripped rollover.

It is important to mention the influence of test driver safety on the Phase II test program. Even though outriggers were used consistently, the high speeds and abrupt direction changes required in the dynamic tests made it necessary to curtail some test sequences at a point where the test vehicle was starting to become unstable. That is, when a vehicle showed a tendency to begin to lift wheels at a certain speed, repeated runs at that speed may or may not have been attempted depending on safety considerations. Also, whereas runs at even higher speeds might have indicated whether major TWL would occur, higher speed runs were not attempted after the initial indications of tip-up were reached. The question of

[11] "Unstable" means two wheels on the same side of the vehicle lift completely off the roadway, to any height for any amount of time.

[12] Since these issues were researched separately, this phase of the test program was designated as "Phase Ib" to distinguish it from the earlier part of Phase I which focused on evaluation of the maneuvers. The earlier part of Phase I has since been referred to as "Phase Ia." Eventually, it is our intention to make separate reports available coverting Phases Ia and Ib.

[13] The final selection of twelve make/models is documented in the Phase II final report which can be found in the DOT docket management system under number NHTSA–1998–3206.

whether minor TWL would become major TWL at higher speeds could not be answered due to the concern for test driver safety.

Based on the results of Phase II testing, we concluded from this research that dynamic test methods are not currently superior to simpler, less costly methods, particularly static metrics. The dynamic test results did not conflict with predictions from static metrics. Further, dynamic tests did not provide greater capability to indicate the rollover resistance, either untripped or tripped, of light vehicles. Therefore, we do not believe that dynamic test procedures are developed to the point necessary to be used for a minimum standard or consumer information at this time.

One of the rather surprising results of our track testing was that three vehicles experienced a similar tire problem, "de-beading", which resulted in minor or moderate TWL for two of the vehicles. De-beading occurs when the tire loses all of its air due to a separation of the tire bead from its wheel rim. This condition occurred in one SUV, one pickup, and one car. TWL resulted for the two light trucks. All tires were OEM and inflated as prescribed by the vehicles' manufacturers. Why does this de-beading concern us? When the tire separates from the wheel rim, the exposed rim can contact the surface over which the vehicle is sliding. The rim can then dig into the surface and act as a tripping mechanism to initiate a rollover crash. While these crashes are not untripped, they can be on-road and maneuver-induced.

After this unexpected result on the test track, we were interested to know whether this type of rollover initiation is happening in the real world. The NASS CDS data base does not have a specific variable for rollover initiation by tripping on the wheel rim, so a combination of NASS variables was used to estimate the nationwide incidence of this problem. NASS cases were tabulated for single-vehicle rollovers coded "trip-over" in which the pre-impact stability state was "skidding laterally" (either clockwise or counterclockwise), the "rollover object contacted" was "ground", the tripping location on the vehicle was "wheels/tires", and the rollover initiation occurred on the roadway or a paved shoulder. Using NASS years 1992 thru 1997, we estimate this combination of conditions occurs in an annual average of 11,896 crashes. This preliminary analysis was the best way to estimate the incidence of rollover crashes involving tire de-beading. Maneuver-induced tire debeading is a subject of further research.

5. Plans for Continuing Dynamic Test Research

As stated above, of the five maneuvers evaluated in Phase II, no single one in particular demonstrated greater suitability than the others for the intended purpose of comparing the rollover propensity of the test vehicles. Instead, the occurrences of TWL at any level were distributed among the different maneuvers, and the same is true of TWLs of greater than a minor amount. Thus, we did not succeed in finding just one or two dynamic tests that can effectively distinguish untripped rollover resistance. Also, it would be useful to investigate why the same maneuver run in different directions, for example a left versus right J-turn at a given speed, sometimes yielded different results. This, the resonant steer issue, and steering-induced tire debeading are some of several areas where we plan to continue research on dynamic rollover resistance testing.

D. How Do Dynamic Rollover Test Results Compare With Metrics?

As discussed above, TWL was the primary criterion for evaluating vehicle stability in Phase II dynamic tests. The basic pattern of TWL outcomes in the tests was fairly evident: vehicles with more truck-like characteristics (SUVs, 4WD pick-ups, and full-size vans) tended to have a higher frequency and a greater degree of TWL than vehicles with more car-like characteristics (minivans, two-wheel drive pickups, and passenger cars). As such, it was possible, without detailed analysis of the test results, to draw general conclusions about each vehicle's relative stability and about the various test maneuvers.

Nevertheless, it was desirable to compare the TWL outcomes with some objective indicators of vehicle stability, particularly metrics including SSF, Critical Sliding Velocity (CSV), and Tilt Table Angle (TTA) and to attempt to quantify the relationship between TWL and these metrics to the greatest extent possible using statistical methods.

To do so, the twelve test vehicles first were grouped according to whether they had any TWL in the Phase II tests. It was readily apparent that vehicles with lower metric values (less stable) experienced more frequent and/or a greater degree of TWL than vehicles with higher metric values (more stable). This was true using SSF, TTA, or CSV. Also, test vehicles with below median metric values (considering only the 12 test vehicles) were the only ones that had any TWL (there were two exceptions involving minor TWL, but in one case a tire problem may have influenced the outcome and in the other case the vehicle's CSV value was just slightly above the median). In statistical terms, a strong association was demonstrated between each metric and TWL as a yes/no variable by the fact that TWL occurred only on vehicles with below median SSF, CSV, and TTA values.

Next, the 12 test vehicles were grouped according to whether or not they had any *major* TWL in Phase II, the level of TWL which was thought to represent an actual rollover. Since only one vehicle had major TWL, this grouping meant that the eleven test vehicles without major TWL were all lumped into one category even though they represented a substantial range of metric values. The result was that the statistical tests did not identify a significant correlation between metric values and major TWL.

In a third analysis, the vehicles were grouped according to the highest level of TWL which they experienced during the Phase II tests. Numerical values were assigned as follows:

0=no TWL
1=minor TWL
2=moderate TWL
3=major TWL

When degree of TWL was identified using these designations, the association with metric values was statistically significant and a positive correlation between TWL level and metric values was indicated. (Note that correlations among various static metrics including SSF, TTA, and CSV, has already been established in past agency work [14].)

Overall, the results of the statistical analyses were somewhat ambiguous, as was expected given the low incidence of TWL during testing and the very small sample size overall.

V. Why Choose SSF?

A. Description of Metrics

The agency, vehicle manufacturers and others have used various "metrics" and driving maneuvers to characterize the rollover resistance of vehicles in particular situations. Metrics are usually measurements of dimensional, mass and inertial properties of vehicles or calculations combining these properties in ways intended to represent rollover resistance. They have also taken the form of the results of simple static tests

[14] "Technical Assessment Paper: Relationship between Rollover and Vehicle Factors"; NHTSA; July 1991.

such as tilt table ratio or the combination of static measurements and simple driving maneuver tests such as "stability margin". In its ongoing rollover studies, the agency has used several metrics including Static Stability Factor, Tilt Table Angle or Ratio, Critical Sliding Velocity and Side Pull Ratio and various driving maneuvers including J-turn and fishhook maneuvers and sinusoidal steering.

Each of these indicators of rollover resistance has both advantages and disadvantages, and several would be acceptable candidates for comparative consumer information. The agency favors static stability factor because it is applicable to both tripped and untripped rollover. The causal basis for its good correlation to crash outcomes is clear. It is relatively simple for consumers to understand and can be measured inexpensively with good accuracy and repeatability. Also, changes in vehicles to improve static stability factor are very unlikely to cause unintended consequences.

The Static Stability Factor (SSF) of a vehicle is one half the track width, t, divided by h, the height of the center of gravity above the road. The inertial force which causes a vehicle to sway on its suspension (and roll over in extreme cases) in response to cornering, rapid steering reversals or striking a tripping mechanism, like a curb, when sliding laterally may be thought of as a force acting at the center of gravity (c.g.) to pull the vehicle body laterally. A reduction in c.g. height increases the lateral inertial force necessary to cause rollover by reducing its leverage, and the advantage is represented by an increase in the computed value of SSF. A wider track width also increases the lateral force necessary to cause rollover by increasing the leverage of the vehicle's weight in resisting rollover, and that advantage also increases the computed value of SSF. The factor of two in the computation "t over 2h" makes SSF equal to the lateral acceleration in g's at which rollover begins in the most simplified rollover analysis of a vehicle represented by a rigid body without suspension movement or tire deflections. In this form, it is easy to compare to the related metrics, Tilt Table Angle and Side Pull Ratio, which are similar except for the inclusion of suspension movement and tire deflections.

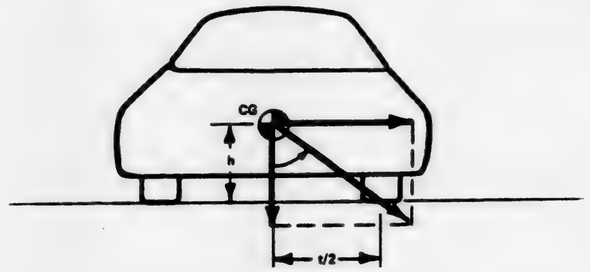

Figure 1. Components of SSF Shown at Critical Lateral Acceleration

A simple test of rollover resistance is to place a vehicle entirely on a table which tilts about a longitudinal axis and raises one side of the vehicle higher than another. As the table continues to tilt, it eventually reaches an angle at which the high side tires lift from the table, and the vehicle rolls over if not restrained. The critical angle is called the Tilt Table Angle. The trigonometric function, tangent, of this angle is the Tilt Table Ratio (TTR), which is the ratio of the component of the tilted vehicle's weight which acts laterally to overturn it, to the component perpendicular to the table which resists overturning. For an idealized vehicle without suspension movements, the TTR is the same as the SSF. The suspension movements of actual vehicles reduce the TTR about 10 to 15 percent relative to the SSF.

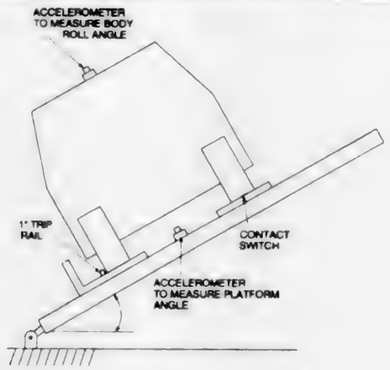

Figure 2 Vehicle on Tilt Table

The Side Pull Ratio (SPR) is the lateral force acting at the vehicle's c.g. necessary to cause two wheel lift, divided by the vehicle's weight. It is determined by a test which is conceptually identical to the tilt table test but which uses an externally applied lateral force to cause the wheels on one side of a vehicle parked on a horizontal surface to lift up. It exercises the vehicle suspension more realistically because the whole weight of the vehicle remains on its suspension. In the tilt table test, the vehicle can rise somewhat relative to the table surface because the component of the vehicle weight which compresses the suspension springs steadily diminishes as the angle of the table increases. For an idealized vehicle without suspension movements, the SPR also is the same as the SSF. Again, the suspension movements of actual vehicles reduce the SPR relative to the SSF by about 10 to 15 percent.

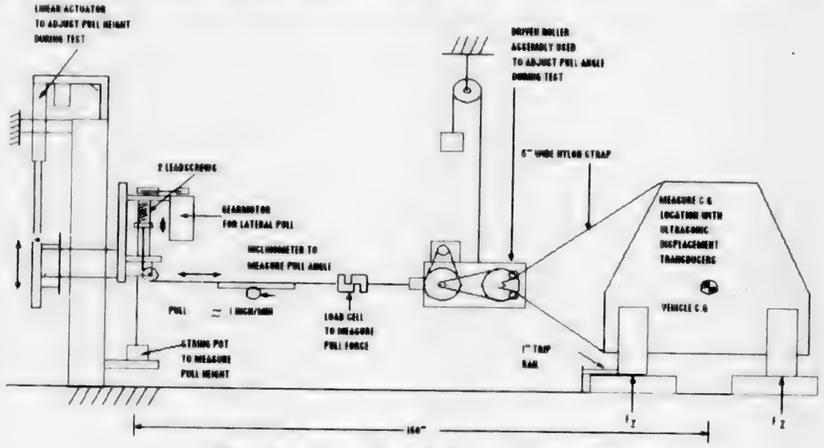

Figure 3 Side Pull Ratio Measurement

Critical Sliding Velocity (CSV) is a metric tied directly to tripped rollover. It is a calculation of the lateral velocity necessary to cause a rigid body representation of a vehicle to overturn upon impact with a rigid tripping mechanism. It includes the c.g. height, track width, mass and roll mass moment of inertia of the vehicle in the calculation.

Stability Margin is a metric directed toward on-road untripped rollover. It is the difference between the Side Pull Ratio of a vehicle and its maximum lateral acceleration in g's, as measured in a steady state cornering test. The steady state cornering test consists of finding the maximum speed the vehicle can maintain while following a circular path. The idea is that if the cornering acceleration the vehicle can produce is less than the SPR, it would not be possible for a rollover to occur simply as a result of steering maneuvers. GM recommends a margin of 0.2 g's because lateral accelerations in maneuvers with rapid steering reversals and/or brake release in a curve can be greater than those measured in a steady state test.

B. Tripped and Untripped Rollover

The terms on-road and off-road rollover are sometimes thought of as surrogates for tripped and untripped rollover. Off-road rollover does not refer to vehicles rolling over while trying to negotiate difficult trails away from public roads. It refers to vehicles leaving the road in the course of a crash and rolling over off the pavement. Usually, but not always, a curb, a soft shoulder, a ditch, loose gravel, a guard rail or another tripping mechanism initiates the rollover. In contrast, most people associate only the frictional force between the tires and the pavement rather than a tripping force with on-road rollover involving a single vehicle. This is also called maneuver-induced rollover.

Past NHTSA studies of crash data from the state of Maryland [15] and NASS [16] suggested that between 8 and 10 percent of single-vehicle rollover crashes were on-road rollover. However, a recent study of audited NASS CDS data (a data sampling system with projection factors to represent the national trends) estimated that while over 13 percent of rollovers in single-vehicle crashes occur on-road or on a paved shoulder, only 4.2 percent are untripped. Examples of on-road tripped rollovers are instances in which potholes or differences in pavement level acted as tripping mechanisms and the more common instances in which the wheel rim dug into the pavement (possibly as a result of tire de-beading). The study also estimated that only 0.2 percent of rollovers are untripped and off-road.

The agency has conducted studies of on-road untripped rollover because these events are considered egregious by the public and because the prospects of developing objective, repeatable and realistic vehicle tests of untripped rollover appeared to be more favorable than for tripped rollover, in which the circumstances are limitless. Many of the vehicle attributes that improve resistance to untripped rollover also improve resistance to tripped rollover. Certainly, a low c.g. and a wide track width are beneficial in resisting rollover in general.

However, even objective and repeatable steering maneuver tests present a dilemma. Suppose the first vehicle responds to steering maneuvers up to a high test speed and two wheel lift occurs. Suppose the second vehicle spins out or plows out at a significantly lower speed, but two wheel lift does not occur. Which vehicle has better performance in rollover resistance? If untripped on-road rollover is the only criterion, the second vehicle has demonstrated better performance because it cannot be controlled through a test maneuver severe enough to cause two wheel lift. But the test tells us nothing about the far more likely risk of tripped rollover. We do not know how the second vehicle would have performed under the same lateral acceleration that caused two wheel lift in the first vehicle.

Stability Margin shares the dilemma for vehicle comparisons described above. The SPR component of stability margin compares vehicles on an equal basis that would be meaningful for tripped or untripped rollover, but the subtraction of the maximum on-road lateral acceleration limits the applicability of the margin to on-road untripped rollover. Simply fitting the same vehicle with lower traction tires increases the stability margin without making any difference when a tripping mechanism is encountered. Even when the scope of interest is limited to on-road untripped rollover, Stability Margin is unsuitable for comparative purposes. A greater stability margin does not necessarily mean more safety. A margin in excess of the minimum necessary to avoid untripped rollover may simply represent poor cornering capability.

The steering maneuver tests studied by the agency were consistent with SSF, TTR and CSV. The only vehicles that experienced two wheel lift in the maneuvers were those at the lower range of the metrics. However, the steering maneuver tests studied do not distinguish between those vehicle attributes that increase rollover resistance in all circumstances and those applicable only in the narrow risk category of on-road untripped rollover. Therefore, the steering maneuver tests recently studied are not considered as appropriate for general consumer information on rollover as SSF, TTR or CSV.

C. Correlation and Causation

Correlation means that two events generally occur together. However, the fact that event B occurs when event A occurs does not mean that event B occurs because event A has occurred. Thomas Sowell, the economist and columnist, notes that youngsters who voyage on the Queen Elizabeth II or ride on the Concorde tend to make more money as adults, but that we don't recommend buying tickets for these as a way to increase a child's earning potential. Childhood luxury trips are correlated to future earnings, but do not cause the higher income.

A causal relationship, on the other hand, means that event B occurs because event A has occurred. These events are not simply linked in time, like in a correlation, but event A is a necessary element for event B to occur. In a simple form, the plant grows because of the light. Light is not the only thing needed for the plant to grow, and the plant may die even if it receives plenty of light, but there is a causal relationship between inadequate light and plant death.

Just as with light and plants, a low SSF is not the only thing that is needed for a rollover and a rollover may occur even if a vehicle has an excellent SSF, but there is a causal relationship between SSF and rollover. At the initiation of either tripped or untripped rollover, the moment arm for the principal overturning force is the c.g. height, and the moment arm of the principal restoring force is the track width divided by two. In the case of tripped rollover, the severity of the impact with a tripping mechanism determines the principal overturning force. Depending on the circumstances, roll moment of inertia, suspension deflections, tire properties and other vehicle properties influence rollover—but never to the exclusion of c.g. height and track width. Among the many causal factors included in mathematical models of various rollover scenarios, c.g. height and track width are always present and usually exert the most influence.

While the vehicle properties represented by SSF, TTR, SPR and CSV are directly and causally related to vehicle rollover, that alone does not prove that the vehicle properties exert enough influence to be noticed in the context of the driver and roadway variables. Especially in the context of tripped rollover, the circumstances of the crashes and the nature of the tripping mechanisms may be nearly unique from crash to crash. Examination of a large number of crashes may be necessary to detect even powerful influences with any degree of certainty. Statistical correlation of the metrics to the rate of rollover occurrences of representative vehicles in actual crashes is the usual method of determining their influence. The agency has demonstrated significant correlations between SSF, TTR and CSV and the rate of rollovers

[15] E.A. Harwin and L. Emery; "The Crash-avoidance Rollover Study: a Database for the Investigation of Single-vehicle Rollover Crashes;" 12th International Technical Conference on Experimental Safety Vehicles, Goteburg, Sweden, May 29–June 1, 1989; Vol 1, p. 470–477.

[16] "Technical Assessment Paper: Relationship between Rollover and Vehicle Factors"; July 1991. Computation of untripped rollover based on 1989 NASS.

per single-vehicle crash in past studies of the crash reports recorded by particular states.[17,18] The agency has consistently found that given a single-vehicle crash, the SSF, TTR or CSV of the vehicle is a good statistical predictor of the likelihood that it will roll over. The number of single-vehicle crashes has been used as an index of exposure to rollover because it eliminates the additional complexity of multi-vehicle impacts and because about 82 percent of light vehicle rollovers occur in single-vehicle crashes.

The statistical study described in the Appendix to this notice was undertaken to develop a relationship between SSF and rollover rate representative of the whole country rather than a particular state. The average rollover/single-vehicle crash rate varies from state to state because of differences in reporting thresholds for single-vehicle crashes and real differences in road conditions, vehicles and drivers. A relationship between rollover rate and SSF normalized to the national rollover rate and to a nationally representative set of driver and road use variables was developed as a basis for a comparative rating system for rollover risk in the event of a single-vehicle crash. We had available crash reports of 185,000 single-vehicle crashes from six states from 1994 to 1997 in which it was possible to determine the make/model of the vehicles and whether rollover occurred in the course of a single-vehicle crash, and for which SSF data were also available. We also had the NASS GES data sampling system, with far fewer but nationally representative crash reports, to determine the national average rollover rate for the population of vehicles investigated in the state reports.

The study of state reports of single-vehicle crashes was performed as a regression analysis, in which the square of the coefficient of regression (the R^2 statistic) indicates the degree to which the differences between the data samples can be explained by the independent variables. In this case, the R^2 calculated for the rollover rates of about 100 vehicle make/models as a function of SSF ranged from 0.53 to 0.76 across the states. This means that between 53 percent and 76 percent of the differences in rollover rate of the subject vehicles can be explained by differences in SSF.

However, an analysis using only SSF does not preclude the possibility that cross correlations of SSF with other factors could create a level of correlation beyond the causal relationship of SSF to rollover. For example, if the drivers of vehicles with low SSF were generally more aggressive, the degree of correlation could be raised by the greater chance of these vehicles leaving the road at high speed. Likewise, if vehicles in a particular range of SSF were operated more often than others on poor road surfaces, their exposure to tripping mechanisms as well as their rollover resistance would be reflected in a correlation with SSF. Because of the possibility that the apparent influence of SSF on rollover could be due in part to cross correlations, the agency also performed a stepwise regression analysis in which the available variables describing driver and road characteristics were given the first opportunity to explain the differences among vehicles in rollover rate. In this analysis, cross correlations would reduce the apparent influence of SSF because part of its effect would have already been included in a cross correlated driver or road variable. The driver and road use characteristics recorded in the crash reports of the various states included gender, age, alcohol involvement, number of occupants, day or night, stormy weather, road speed limit over 50 mph, bad road or road surface, rural location, curve, and hill. When only the driver and road use variables, but not the SSF, for each vehicle were considered, it was found that their cumulative information could explain between 53 and 69 percent (differing with State) of the variability between vehicles in rollover rate. When SSF was added to the available driver and road characteristics, the explanatory power of the information increased to between 85 and 90 percent. The addition of SSF explained between 64 and 80 percent of the variability remaining after consideration of the driver and road variables.

The six-state model that included all 185,000 single-vehicle crashes yielded similar results. When only the SSF of the vehicles is considered (with a correction for systematic differences between States) the R^2 statistic was 0.73; when the driver and road variables rather than SSF were entered, the R^2 statistic was 0.58; and when the SSF was added to the driver and road variables R^2 statistic rose to 0.88. In the direct correlation, SSF appeared to explain about 72 percent of the variability in rollover rate between crash experiences of about 100 vehicle/make models in six states. If cross correlations between the vehicle SSF and driver and road variables cause the direct correlation to be optimistic, the same cross correlations would diminish the apparent influence of SSF in the stepwise regression in which the driver and road variables alone were entered first. However, SSF remained influential in the stepwise regression with the power to explain 72 percent of the remaining variability after the entry of the driver and road use variables. (Note: The similarity of 72 and 73 percent in the two analyses is merely a coincidence. While 73 percent is the R^2 statistic in the direct correlation, 72 percent is the ratio $(0.88 - 0.58)/(1.0 - 0.58)$ in the stepwise analysis.)

Rollover is a very complex event, heavily influenced by driver and road characteristics as well as vehicle properties. The most important non-vehicle variable may be the speed at which the vehicle leaves the roadway, for which some of the driver and road use variables are only broadly indicative. However, the directly causal influence of SSF is sufficient to explain a large portion of the variability among vehicles in real-world crash experiences in either a direct correlation or stepwise analysis of the variability remaining after consideration of driver and road use variables. It is not lost in the noise of complex circumstances, and its explanatory power exceeds the cumulative explanatory power of all other available driver and road use variables in most instances.

The same analyses using TTR or CSV would be expected to yield similar results based on past agency studies. In fact, CSV might show slightly higher correlations because most rollovers are tripped. However, the choice of a rating metric was not made simply for incremental gains in R^2 among metrics, since each one provides a high level of correlation to rollover crash rates. The simplicity and generality of SSF have value in a rating system intended for consumers. In addition, there is only modest room for improvement over a metric which already explains 73 percent of the variability in rollover rates left after application of driver and road use variables.

In some analyses, the inclusion of wheelbase, which is simple, improves the correlation coefficient. Wheelbase has not been included here because, unlike the components of SSF, it does not have a direct causal relationship with rollover. It may be a surrogate for roll moment of inertia, yaw moment of inertia, or pitch moment of inertia, each of which may influence rollover in certain circumstances. Alternatively, wheelbase may be a surrogate for owner demographics within certain vehicle classes. We have chosen not to include factors which correlate to rollover through cross correlation to other undefined factors.

[17] *Ibid.*

[18] E.A. Harwin and Howell K. Brewer: "Analysis of the Relationship between Vehicle Rollover Stability and Rollover Risk using the NHTSA CARDfile;" NHTSA, 1989.

D. Simplicity and Measurability

The principle of SSF is obvious. The fact that an object which is more top heavy or narrower at its base can be turned over more easily is encountered repeatedly in common experience and is intuitive for most consumers. Track width is a straightforward dimensional measurement which can be measured very accurately given sufficient care, and special fixtures and calipers can be constructed to make the task easy. In past comments to the agency, lack of repeatability of c.g. height measurement between various labs was cited. However, improvements in equipment and technique have taken place. The agency's own lab and a contractor using similar equipment report errors no greater than one half of one percent in c.g. height measurement of vehicles.[19]

Tilt Table measurements expressed either as TTR or TTA also have the advantage of accuracy and relative ease of measurement. The process of tilt table measurement should make intuitive sense to the public, but the conversion from an angle to a trigonometric ratio may not. The reporting of the angle is less complicated, but it creates a non-linear measurement that does not increase as rapidly as the actual improvement of rollover resistance expressed in TTR.

CSV would be easier for the public to understand were it the result of a full scale vehicle test rather than the computation of a simplified model. While the public should understand track width and c.g. height, the additional concept of roll moment of inertia is outside common experience. The simplified model also results in CSVs that are unrealistic in absolute value, though useful for comparison of vehicles. The computation predicts that lateral speeds of 10 to 15 mph are sufficient for tripped rollover of virtually all light vehicles from large cars to compact SUVs. The low threshold may not appear to be credible to consumers who have experienced hard curb contact with only wheel and tire damage and may trivialize the information by causing consumers without such experience to conclude that all vehicles will turn over so easily that differences between vehicles are not worth consideration.

In fact, the lateral speeds for tripped rollovers of actual vehicles in common circumstances would always be greater than the computed CSV. Instead of being available to raise the vehicle's c.g. to the rollover point, much of the kinetic energy from the vehicle's lateral speed would be dissipated by tire contact with the ground, stored or dissipated in tire and suspension deflections, and dissipated in the permanent deformation of vehicle suspension components and of the tripping mechanism. The calculation of CSV requires a measurement of roll moment of inertia in addition to the measurements needed to calculate SSF, but that is not an obstacle. The agency's own lab and a contractor using similar equipment report errors no greater than two percent in roll moment of inertia measurements of vehicles.

Side Pull Ratio has intuitive appeal if one can understand that the inertial forces which cause tripped or untripped rollover can be represented by forces applied in a laboratory with a cable pulling at the c.g.. However, it is difficult to coordinate the movement of the outboard end of the cable with vehicle roll motion and to avoid applying extraneous vertical forces. For this reason SPR is often estimated from SSF with modifying factors for the roll stiffness of the vehicle and its general suspension type.

The simplicity and relative ease of measurement of SSF and TTR are advantageous for consumer information.

E. Unintended Consequences

In comments to the 1992 ANPRM on rollover issues, several manufacturers pointed out that some changes that could improve a vehicle's tilt table performance may degrade its control and handling attributes. Aspects of suspension design, such as choices of front to rear roll stiffness ratio and overall roll stiffness, could be different from those now chosen to balance ride quality, handling, tire wear and other important features if they were influenced by a desire to maximize TTR. Commenters to the same docket claimed that measurements of c.g. height were difficult and not repeatable in comparison to the tilt table measurement.

These comments presented the agency with a dilemma. The most practical rollover resistance metric from a measurement viewpoint, TTR, had the potential to introduce new trade-offs for suspension designers. Obviously, the agency does not want vehicle manufacturers to depart from designs which they believe optimize safe handling and directional control. Improvements in the methods of measuring the c.g. height of vehicles have occurred that resolve the concerns raised in the comments. SSF is now as practical and repeatable a measurement as TTR.

Changes in track width or c.g. height to improve SSF do not require trade-offs of handling and control. In general, those particular changes would make it easier to achieve good handling. A potential trade-off discussed in the agency's 1987 denial of a rulemaking petition for a minimum level of SSF was the possibility of manufacturers reducing the strength of the upper structure of vehicles in order to lower the c.g.. At that time, FMVSS No. 216 on roof crush resistance did not apply to SUVs, vans or pickup trucks. Beginning with the 1995 model year, the roof crush resistance of light trucks including SUVs and vans has been included in the regulation, making that potential choice to compromise safety even less likely.

VI. Why Not a Standard?

The action contemplated by this notice follows a decision by the agency (59 CFR 33254) to terminate rulemaking on a minimum standard for rollover resistance and to pursue the consumer information approach instead. In the analysis leading to that decision, the agency concluded that both Tilt Table Angle and Critical Sliding Velocity were causally related to rollover and had a strong statistical relationship to rollover frequency. However, the benefits achieved by setting a minimum level for a rollover metric, even well beyond that of truck-based SUVs or full size vans, were not great enough to compel the costs of fundamental vehicle changes and the loss of attributes desired by customers. Also the redesign could result in the elimination of some classes of vehicles, such as compact SUVs.

The above conclusions about a general rollover standard recognized that most rollovers are tripped. The circumstances of tripped rollover usually involve leaving the road surface unintentionally and hitting a tripping mechanisms such as a curb, a ditch or soft soil. There is a nearly infinite variety of tripping mechanisms and ways in which vehicle can strike them. Basic changes in the geometric properties of vehicles, as reflected in SSF, TTA, and CSV, are necessary for realistic improvements in tripped rollover resistence. However, improvements in on-road untripped rollover performance may not require

[19] Heydinger, G.J., et al; "Measured Vehicle Inertial Parameters—NHTSA's Data through November 1998;" Society of Automotive Engineers 1999–01–1336; March, 1999.

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geometric changes at odds with the attributes consumers seek in certain classes of vehicles. While tripped rollover is much more common than untripped rollover, there is public concern about the danger of untripped rollover. The agency remains interested in the possibility of a minimum performance standard to address the problem of untripped on-road rollover. Its seeks comment on the need for a standard addressing on-road untripped rollover and requirements that may be appropriate for such a standard.

The analysis of benefits in the 1994 notice to terminate rulemaking for a minimum standard was concerned primarily with tripped rollover. The expected benefits of a potential minimum standard were based on a logistic regression analysis of the sensitivity of rollover risk in single-vehicle crashes to changes in rollover resistance metrics. Rollover metrics such as TTA, CSV, and SSF are relevant to tripped rollover. The outcome of each crash in a data base of 90,000 single-vehicle crashes reported by the state of Michigan was re-evaluated individually changing the rollover resistance metric but retaining the other vehicle, driver, and road characteristics of the actual crashes. The result was a set of predictions by vehicle class of the sensitivity of rollover rate to incremental changes in the rollover resistance metric, while preserving the potentially influential demographic and environmental factors associated with actual crashes of vehicles in particular classes. The percent improvement in rollover rate for a vehicle class was determined from the production volume, single-vehicle crash rate, and amount of change in the rollover resistance metric demanded by a potential standard for the vehicles in that class. The benefits were calculated from the reduction in rollover rate for the vehicle class, the total number of fatalities and injuries occurring in vehicles of that class, and the degree of harm mitigation accomplished when a crash is prevented from becoming a rollover crash.

Rollover prevention was not considered crash prevention but rather a reduction in the severity of crashes by 52 percent in fatalities and 25 percent in injuries. The mitigation value of rollover prevention was estimated by comparing the harm to occupants in single vehicle crashes with and without rollover in the NASS database for the years 1988–91.

Note that the demographic variables are handled differently for estimating the sensitivity of rollover risk to vehicle metrics for analyses of a minimum standard versus consumer information. In the case of a minimum standard, it is assumed that the driver and roadway demographics of a vehicle class remains unchanged but that the vehicle metric of some vehicles in the class changes. In the case of consumer information, the rollover risk of all vehicles is estimated using the same set of average demographic variables because individual consumers do not change their age, gender or driving environment as a result of vehicle choice.

At a minimum TTA of 46.4 degrees (equal to a TTR of 1.05 and equivalent to a minimum SSF of about 1.18), reductions of 63 fatalities and 61 serious injuries were estimated. No standard van and few, if any, compact SUVs with permanent top structures could meet that hypothetical standard, and a third to a half of compact pickups, minivans and standard full size SUVs were found to be unable to meet it. A parallel analysis using CSV instead of TTA yielded similar results except that standard vans were unaffected because their large roll moments of inertia improve CSV. Most of the benefits were calculated on the basis of increasing the rollover resistance of some compact pickups and many compact SUVs on the order of 10 percent of the TTR.

Changes in c.g. height or track width of vehicles to increase rollover resistance by 10 percent are substantial and compromise some of the attributes consumers desire. For example, a 10 percent increase in track width (which would increase TTR about equally) is nearly 6 inches for a typical compact SUV. Substantial chassis changes would be required to accomplish that large an increase in track width, and body changes would be necessary to cover the wheels. These changes would tend to narrow the size distinction between compact and standard SUVs. Similarly, lower c.g. heights reduce ground clearance and possibly the size of objects that may be hauled. Vehicles actually designed for off-road driving where narrow width and high ground clearance is necessary would be eliminated by minimum requirements for TTA, SSF or CSV found to have even modest benefits. Compact SUVs with enough ground clearance to negotiate roads with unplowed snow would likely have to be redesigned for greater width.

The agency decided instead to pursue a consumer information program to enable consumers to make informed choices about the tradeoffs in vehicle attributes, such as high ground clearance, and rollover resistance. It would inform drivers of the general difference in rollover resistance between light trucks and cars and among vehicles within the various classes. Consumers who need or desire a particularly high cargo space or off-road driving adaptations such as a large amount of ground clearance and narrow track width would not be denied the chance to purchase such vehicles. However, consumers who choose vehicles with relatively low rollover resistance would do so with knowledge of that fact, something that is not true today. The consumer information program would also inform drivers who choose vehicles with less rollover resistance that their risk of harm can be greatly reduced with seat belt use to avoid ejection. In addition, NHTSA believes that a consumer information program would serve as a market incentive to manufacturers in striving to design new vehicles with greater rollover resistance.

As explained above, NHTSA has previously decided that it will not set a vehicle rollover standard at a level that would effectively force nearly all light trucks to be redesigned to be more like passenger cars (in the 1987 denial of the Wirth petition, 52 FR 49033). NHTSA has also previously decided that we will not set a vehicle rollover standard at a level that would effectively force a redesign of some vehicle types like small pickups and small sport utility vehicles (in the 1994 termination of rulemaking to establish a minimum vehicle standard for rollover resistance based on TTA or CSV, 59 FR 33254). Even though we cannot justify prohibiting the manufacture and sale of these vehicles, we are now proposing to provide the public with accurate and meaningful information about the rollover resistance of these vehicles and allowing the public to make fully informed choices when selecting a new vehicle.

Some have previously argued that NHTSA cannot and should not provide consumer information about the relative performance of vehicles until the agency has first established a minimum performance standard for performance in that area. The implicit underpinning of this argument is that the American public deserves the protection of a minimum performance standard if NHTSA can show that performance in an area is sufficiently related to on-road safety performance. Only after the agency has established a minimum performance standard, according to this argument, can NHTSA supplement the standard with consumer information if additional measures are needed.

Whatever the merits of this position generally, NHTSA does not find this argument persuasive in the context of light vehicle rollover. Following this position, NHTSA must devote time and resources to establish a minimum standard for SSF. Given the agency's previous conclusions about standards that eliminate classes of light trucks, the standard would likely be set at a level that would not effectively eliminate recognized vehicle types. Thus it would have to be set at a level that small pickups and small SUVs could meet. Such a standard would have extremely small benefits. After the rulemaking for this minimal-benefit standard was complete, NHTSA could then try to develop a meaningful consumer information program along the lines laid out in this request for comments. The effect of the minimal-benefit rulemaking appears to be primarily to delay giving the American public meaningful rollover information. However, commenters who advocate this approach are invited to clarify why they believe such an approach is appropriate in the context of rollover and how this approach would serve the safety interests of the American people.

NHTSA agrees that it has a high burden when it proposes to establish a program for relative consumer information in an area where the agency has not established a minimum safety standard. In the case of light vehicle rollover, however, we believe there is a compelling case to provide SSF as consumer information. The physics of SSF and its causal relationship to rollover are indisputable. SSF is not an untried approach that NHTSA has just discovered in some research. Instead, the formula for calculating SSF is well-known and widely-accepted. Each of the manufacturers with which NHTSA has discussed light vehicle rollover said that they know the SSF for each of the vehicles they manufacture. The correlation of SSF to rollovers per single vehicle crash is remarkably robust in an area as complex as rollover, as detailed in the Appendix to this notice. When the science suggests a causal relationship between a vehicle metric and a safety problem, real world data confirm that relationship, the metric that will be provided as consumer information is already in general use by the industry, and can be repeatably measured at different facilities, we believe that information ought to be shared with the American people to allow them to make informed purchase decisions *regardless* of whether the vehicle metric is also part of a minimum safety standard. Again, public comment is requested on this position.

VII. Consumer Information Presentation

A. How Consumers Want To See Information Displayed

Eighty percent of respondents to a 1997 NHTSA survey felt that comparative safety ratings of motor vehicles should be available to the public. Therefore, we assume that consumers would be interested in comparative rollover information. In April 1999, we conducted a series of six focus groups to examine ways of presenting comparative rollover information. Two focus groups were conducted in each of three locations: Dallas, Texas; Overland Park, Kansas (a suburb of Kansas City); and Richmond, Virginia.

Our study found that:

- Participants underestimated the size of the rollover problem and were surprised when informed of the actual size.
- Participants enthusiastically supported the idea of having rollover information available in both point-of-purchase (label) and brochure formats.
- Among the options presented, participants were most comfortable with ratings based on stars.
- Participants also agreed that a graphic showing a tilted car would be the clearest in conveying the message of rollover and would have the most impact on purchasers.

We have placed the complete focus group report in the docket for interested parties. While the focus group results support use of either stars or a tilting vehicle graphic to represent the ratings, NHTSA is considering the use of stars. Stars are already used for the front and side NCAP ratings, and thus use of stars for rollover would be consistent.

B. Converting SSF Measurements to Star Ratings

Since the consumer focus groups recommended a simple representation of comparative risk using stars, we have devised a procedure to rank vehicles for rollover risk and assign stars based on the statistical study described in the Appendix, which estimated the relationship between the SSF of a vehicle and the incidence of rollover in single-vehicle crashes (82 percent of rollover crashes are single-vehicle crashes).

To repeat, any vehicle can be made to roll over if it strikes an effective tripping mechanism at a great enough lateral speed. The combinations of conditions in real-world single-vehicle crashes are limitless. Some conditions are so severe that any vehicle would roll, and others would not trip even the least stable vehicle. Nevertheless, when a statistical sample of real-world crashes is taken, it is clear that vehicles with a low SSF roll over more frequently than those with a high SSF despite the unique circumstances of individual crashes. The observed rollover rate for a particular make/model in the statistical study was not included unless it was based on at least 25 single-vehicle crashes in a particular state, and it received less weighting unless it was based on at least 250 single-vehicles crashes in that state. Likewise, the adjustment of individual vehicle rollover rates to a common demographic base in estimating the risk relationship with SSF was a step to reduce the influence of the variety of conditions in single-vehicle crashes.

The result of the study was an equation relating the SSF to the estimated number of rollovers per single-vehicle crash, after accounting for differences in driver, road and environmental factors. This estimate of rollovers per single-vehicle crash represents the risk of rollover given a single-vehicle crash:

$$\text{Estimated rollovers per single-vehicle crash} = 13.25 * e^{(-3.3731 * SSF)}.$$

The computation of SSF at meaningful increments of estimated rollover risk, using this equation, offers a basis for a star rating. The risk of rollover indicated by the star rating pertains to the likelihood of rollover in the event of a single vehicle crash of sufficient severity to cause a police report. It broadly estimates the risk, per event, of a single vehicle crash becoming a rollover; it is not a measure of the risk of rollover over the life of the vehicle. We are defining the rating intervals as follows:

ONE STAR (★): Risk of Rollover 40 percent or greater is associated with SSF 1.04 or less.

TWO STARS (★★): Risk of Rollover greater than 30 percent but less than 40 percent is associated with SSF 1.05 to 1.12.

THREE STARS (★★★): Risk of Rollover greater than 20 percent but less than 30 percent is associated with SSF 1.13 to 1.24.

FOUR STARS (★★★★): Risk of Rollover greater than 10 percent but less than 20 percent is associated with SSF 1.25 to 1.44.

FIVE STARS (★★★★★): Risk of Rollover less than 10 percent is associated with SSF 1.45 or more.

The relationship between SSF and rollovers per single vehicle crash which is reflected in the star ratings above was derived by the statistical method described in the Appendix to best

estimate the national trend between rollover risk and SSF. The relationship appears to be constant over the four years of state crash data analyzed, but the agency intends to continue to monitor it as newer crash data becomes available. Should changes in road conditions, demographics, or vehicles alter the relationship, the levels of risk associated with the star ratings would be adjusted.

The rollover ratings should be distinguished from the frontal and side crash star ratings. The present star ratings are measures of the crashworthiness of the body structure and restraint systems of a vehicle in the event of a frontal or side crash. The rollover risk rating does not pertain to the crashworthiness of the vehicle in a rollover crash. Instead, it estimates the likelihood that a rollover will occur in the event of a single vehicle crash. The majority of rollovers occur in single vehicle run-off-the-road crashes, and the majority of deaths in rollover crashes are the result of ejection from the vehicle. The frontal and side crash ratings are direct estimates of the probability of serious injury in those types of crashes. The rollover star rating will estimate the probability of a single vehicle crash becoming a rollover, but the probability of a serious or fatal injury in a rollover depends heavily on the occupant's decision to protect himself or herself against ejection through the use of seat belts.

Like frontal and side NCAP ratings, the rollover rating is concerned with vehicle attributes that affect the outcome of a crash. None of the ratings attempt to describe the probability of a vehicle's involvement in crashes in the first place. It can be argued that vehicles with anti-lock brakes are less likely to have frontal crashes, but that possibility does not alter the frontal crashworthiness star rating. Likewise, it may be argued that short wheelbase vehicles are more likely to be involved in single vehicle run-off-the-road crashes, but that possibility would not alter the star rating of the probability of a rollover given the event of a single vehicle crash. Stability control and other advanced vehicle systems are being developed to reduce the instances of loss of control which can cause run-off-the-road crashes. However, such advanced systems would not affect the probability of rollover in those single vehicle run-off-the-road crashes still occurring even with those systems, and would not affect the rollover star rating given a vehicle. While the effectiveness of stability control technology in crash reduction is presently unproven, its potential is of great interest. If stability control technologies are proven to have a significant effect on the exposure of vehicles to off-road crashes, we would consider adding information about the equipment to the presentation of the rollover information. Commenters are invited to share any data they may have on the effectiveness of these stability control technologies in preventing single vehicle crashes.

Of course, as in all NCAP information, the numerical measurements as well as the star interpretation of risk would be available to consumers. The NAS study recommended that NHTSA provide consumer information in a hierarchy of detail, so consumers can find information at the level they are comfortable with. In addition, various focus groups have suggested that making the more detailed information available increases consumer confidence in the ratings, even if the consumer does not actually use the information.

VIII. Rollover Information Dissemination Through NCAP

A. Why NCAP Rather Than Vehicle Labeling?

In the 1994 NPRM the agency proposed a consumer information regulation for rollover. The proposal called for each new vehicle to be labeled with information about its rollover resistance and information about the range of rollover resistance for cars and light trucks. This regulation would have mandated participation of the vehicle manufacturers. The testing and labeling would have been done by the manufacturers, and associated costs borne by them. Manufacturers would have been required to report a rollover resistance metric (TTA and CSV were discussed in the proposal) for each make/model to NHTSA by January 1 of each year. Manufacturers would decide how to group vehicle models for reporting. NHTSA would mandate a specific test procedure and accuracy tolerance for reported data, to prevent either over- or understatement of the rollover metric. NHTSA would then receive and process the information reported by the manufacturers to provide the manufacturers with the ranges of metrics for cars and for light trucks by April 1.[20]

By September 1 each year all new vehicles would have been required to have a window sticker showing this rollover information. Again, the format, location, and language of the label would have been set forth by regulation. The regulation would also have required specific information about rollover to appear in each vehicle owner's manual.

The agency estimated, in 1994, that the costs to manufacturers associated with this mandatory program would be between 3.93 and 6.35 million dollars, depending on which specific vehicle metric was required. These costs would come from generating the metric for the labels, printing the labels and affixing the labels to the vehicles.

The advantage of a vehicle labeling requirement is that the information is provided to all consumers without the need to ask for it. This advantage was reflected in the focus group study. However, the labeling of vehicles with one safety attribute to the exclusion of others may be misleading. Also, using a label listing a single-vehicle safety attribute would be contrary to the principles of the NAS study on consumer information that the agency was directed to consider. That 1996 study recommended the development of an overall measure of vehicle safety. Until that goal can be met, the presentation of our proposed measure of rollover risk, in the context of our established measures of frontal and side impact crashworthiness in NCAP, would, in our opinion, go a long way toward addressing NAS's concern for presenting overall vehicle safety. It also provides some practical advantages:

- Implementation would be faster. The program would be able to start almost immediately, so consumers would have the information sooner.
- NHTSA retains control of vehicle measurement so the consumer will know exactly which vehicle model/equipment combination was tested.
- It takes advantage of the existing NCAP organization within NHTSA equipped to perform vehicle tests and disseminate consumer information and avoids the need for a compliance function within NHTSA to collect and process manufacturers' test reports and provide to manufacturers the vehicle ranges required on the labels.

While we believe NCAP is the most immediate, inexpensive, and efficient way to get rollover information to the consumer, we would like to receive comments from the public on the merits of this type of program as compared to labeling individual vehicles so that consumers receive the information at the point of sale. NHTSA, in partnership with AAA, distributes approximately 600,000 Buying a Safer Car brochures annually. Buying a Safer Car provides NCAP ratings and other safety feature information for new models. In addition, NHTSA gets approximately 22,000 visitors per week (or approximately a million visitors a year) to the web site location for the NCAP ratings.

[20] Under this proposal the actual measurement, not a star ranking, would have been reported on the label, along with the range of data from all manufacturers for cars and for light trucks, so the consumer could see where each vehicle fell in range of available choices.

B. Addition of Rollover Stability Stars to NCAP

The agency has tentatively decided to go forward with a pilot consumer information program on vehicle rollover resistance, using the SSF as a basis for the rating system. This program would be part of NCAP, which currently gives consumers information on frontal and side-impact crashworthiness. We hope to have the pilot rollover information program ready for the 2001 model year.

The rollover information program would operate very much as the current NCAP does today. New models would be selected for testing before the beginning of the model year. Selection would be based primarily on production levels predicted by the manufacturers and submitted to the agency confidentially. Consideration would also be given to vehicles scheduled for major changes, or new models with specific features that may affect their SSF's. The vehicles chosen for NCAP testing would be procured and measured by NHTSA as the vehicles become available. Vehicles would be procured with popular equipment, typical of a rental fleet, and the equipment with possible influence on SSF would be included in the vehicle description. Two wheel drive and four wheel drive versions of a vehicle would be treated as separate models because a four wheel drive option can have a significant effect on SSF. As provided for in the present NCAP, manufacturers can, at their option, pay for tests of vehicles, models or configurations not included in NHTSA's test plan if they wish to inform consumers through the program. (Vehicle purchase and testing is done by a NHTSA-approved testing laboratory.) The SSF would be converted to a "star" rating according to the curve presented earlier. The rollover "star" information would be published by NHTSA and placed on the agency's web site. The brochures and the web site presentation would explain the basis of the ratings, make available the SSF measurements, and discuss the magnitude of rollover harm prevention provided by safety belt use.

As part of the presentation on rollover in NHTSA brochures and on our web site, we will include explanatory language for consumers. The following two paragraphs are illustrative of the information that would be presented:

Rollover is a very complex event, heavily influenced by driver and road characteristics as well as the design of the vehicle. Most rollovers occur when a single vehicle runs off the road and is tripped by a ditch, soft soil, a curb or other object. The speed at which the vehicle leaves the roadway is always important to the risk of rollover. The NCAP rating is based on Static Stability Factor, essentially a measure of how "top heavy" a vehicle is. Static Stability Factor can be used to predict the risk of rollover in the real world. In fact, a statistical study of 185,000 single vehicle crashes in six states involving 100 popular vehicle models confirmed Static Stability Factor's relationship to the actual occurrence of rollover crashes. Vehicles with greater Static Stability Factors are less "top heavy" and are awarded more stars in proportion to their reduced risk of rollover in the event of a single-vehicle crash.

Regardless of vehicle choice, the consumer and his or her passengers can reduce their risk of being killed in a rollover crash dramatically by simply using their seat belts. Seat belt use has an even greater effect on reducing the deadliness of rollover crashes than on other crashes because so many victims of rollover crashes die as a result of being partially or fully thrown from the vehicle. NHTSA estimates that belted occupants are about 75% less likely to be killed in a rollover crash than unbelted occupants.

IX. Rulemaking Analyses and Notices

Executive Order 12866

This request for comment was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this request for comment and determined that it is not a "significant regulatory action" within the meaning of Executive Order 12866. The agency anticipates that providing information on rollover risk under NHTSA's New Car Assessment Program would impose no regulatory costs on the industry.

X. Submission of Comments

A. How Can I Influence NHTSA's Thinking on This Document?

In developing this document, we tried to address the concerns of all our stakeholders. Your comments will help us improve this notice. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this document may affect you, or other relevant information. We welcome your views on all aspects of this document, but request comments on specific issues throughout this document. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts of this document you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of this document, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

B. How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

C. How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

D. How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION**

CONTACT. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

E. Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

F. How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on "search."

(3) On the next page *(http://dms.dot.gov/search/)*, type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

G. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

Issued on: May 24, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

Appendix: Association Between SSF and Rollover Risk Estimated From Crash Data

A. Purpose of the Analysis

Our purpose is to describe the relationship between the Static Stability Factor (SSF) and the risk of rollover in single-vehicle crashes given the average mix of road use characteristics nationwide. We know that environmental, road, and driver factors affect rollover risk, and we suspect that vehicles with low SSFs may tend to be used differently than vehicles with high SSFs. (Another way to describe this is to say that SSF may be confounded with road use characteristics.) For example, some vehicles with a low SSF may tend to be used on curved roads or by young drivers, and these may be conditions that increase rollover risk. Therefore, our description of the association between the SSF and rollover risk will be no better than our ability to remove the confounding effects of differences in road use.

B. Data Availability

To compare the performance of different vehicle models, we need a large number of single-vehicle crashes. The National Automotive Sampling System (NASS) provides good data, but NASS is limited to towaway crashes and includes too few cases for this type of analysis. The Fatality Analysis Reporting System (FARS) includes a large number of cases, but the restriction to fatal crashes limits its use for comparisons of rollover propensity. The General Estimates System (GES) includes a large number of cases of all crash severities, and these data will be valuable when used in conjunction with the larger volume of cases available in the state crash files.

The agency routinely obtains crash files from seventeen states as part of its State Data System (SDS). We questioned whether a single state could represent the national experience (given state-to-state differences in road use and reporting practices), so we decided to use as many states as possible. This allowed us to compare the results among states and to combine the results to produce our best national estimate of the relationship between the SSF and rollover risk. Participants in the SDS include nine states that have the Vehicle Identification Number (VIN) on their crash files; we will call them the "VIN states" here. We need the VIN to completely and accurately describe the vehicle, and this is an essential part of our analysis. We eliminated three VIN states: Illinois (because we have not yet obtained the 1996 and 1997 data from this state) and New Mexico and Ohio (because we know that a rollover is recorded in these states only if the police identify it as the first harmful event in the crash). The 1994–1997 calendar year files for the other six VIN states in the SDS (Florida, Maryland, Missouri, North Carolina, Pennsylvania, and Utah) are the basis of our analysis. We used GES to verify and calibrate the results obtained from the six state files, but these six states include 26 times as many cases as GES alone.

C. Determination of the SSF

The main criterion for selecting the vehicles used in this analysis was the availability of a reasonable estimate of the SSF, and our goal was to include as many vehicle models as possible. We started with an existing compilation of all the SSF measurements made by the agency through 1998, but limited the study vehicles to model years 1988 and later. We added measurements provided by the General Motors Corporation (GM) for other vehicles, but we limited these additions to passenger cars and vans because the GM data did not distinguish between two- and four-wheel drive versions of pickup trucks and sport utility vehicles. We used data from vehicles tested with a single passenger when these were available, and from zero- or two-passenger loading when one-passenger loading was not available. A handful of SSF values were imputed, as in the follbwing example: We assigned a late-generation four-wheel drive S-series Blazer (model years 1995 to 1998, for which we had no SSF measurement) the same SSF as the two-wheel drive version because there was no difference in the SSF between the two- and four-wheel drive versions in the earlier generation of that model (model years 1983 to 1994).

The result was a list of a hundred vehicle models (vehicle models tested by the agency, identified by GM, or imputed as described above). The list includes the following number of vehicle models for each of four light vehicle types: 36 cars, 30 sport utility vehicles, 13 vans, and 21 pickup trucks. The number of vehicle models in the study (a hundred) is a nice round number, but this was not by design. Our goal was to include as many models as possible, and one hundred was the number that was possible.

D. Data Processing

We identified vehicles for which we had a SSF value (including corporate cousins of the tested vehicles) in the state and national crash files based on the VIN and with the help of the 1998 version of The Polk Company's PC VINA® software. The list of vehicle models used in the analysis is shown as Tables A–1 through A–4; note that some vehicle groups include more than one vehicle model because the tested vehicles had corporate cousins. We restricted the crash data to single-vehicle events, which we defined to exclude crashes with another motor vehicle in transport or with a nonmotorist (such as a pedestrian or pedalcyclist), animal, or train. We eliminated any vehicle without a driver and all vehicles that were parked, pulling a trailer, designed for certain special or emergency uses (ambulance, fire, police, or military), or on an emergency run at the time of the crash.

All the files we used include variables that describe the conditions of the road and driver, and these are useful for understanding the risk of rollover. A detailed review of the agency's GES and SDS documentation showed that the following information is available for most of the six states and for GES. The name of the variable created from this information is shown in capital letters, in parentheses:

(1) Did the vehicle roll over? (ROLL)

(2) Was it dark when the crash occurred? (DARK)

(3) Was the weather inclement? (STORM)

(4) Did the crash occur in a rural area? (RURAL)

(5) Was the speed limit 50 mph or greater? (FAST)

(6) Did the crash occur on a grade, dip, or summit? (HILL)

(7) Did the crash occur on a curve? (CURVE)

(8) Were there potholes or other bad road conditions? (BADROAD)

(9) Was the road wet or icy or have another bad surface condition? (BADSURF)

(10) Was the driver male? (MALE)

(11) Was the driver under 25 years old? (YOUNG)

(12) Was the driver uninsured? (NOINSURE)

(13) Was drinking or illegal drug use noted for the driver? (DRINK)

(14) How many occupants were in the vehicle? (NUMOCC)

For each state and GES, we calculated the following summary statistics for each of the hundred vehicle groups in the study:

(1) Number of single-vehicle crashes during these four years;

(2) Number of rollovers per single-vehicle crash;

(3) Involvement of the following per single-vehicle crash (as available on each file): DARK, STORM, RURAL, FAST, HILL, CURVE, BADROAD, BADSURF, MALE, YOUNG, NOINSURE, and DRINK; and

(4) Average number of occupants per vehicle in these crashes.

We used these summary-level data (summarized as counts and averages per vehicle group) as the basis for our analysis. Each summary record, representing a vehicle model group, is a data point in our linear regressions.

E. State-by-State Data Analysis

For each state, we limited the analysis to vehicle groups with at least 25 single-vehicle crashes. This threshold is somewhat arbitrary, but it is the one we used in an earlier analysis of single-vehicle crashes in state data.[21] There are two valuable results: (1) There is at least one rollover for each vehicle group included in the model, and (2) there is no vehicle group for which every single-vehicle crash resulted in a rollover. That is, the rollover rate is greater than zero and less than one for every vehicle group we included in the study. We could have had as many as 600 data points (six states, each with up to 100 vehicle groups) for this analysis. We actually had (because of the threshold for inclusion) 481 data points, which represent the experience of 184,726 single-vehicle crashes. A similar restriction on the GES data file produced 60 data points representing the experience of 7,022 vehicles. The number of vehicle groups available for our analysis and the total number of single-vehicle crashes represented by these groups are shown in the first two data rows of Table A–5.

The number of rollovers per single-vehicle crash varies by state (from a low of 0.127 for Missouri to a high of 0.363 for Utah). There are two major reasons for this variation: (1) Real differences among the states in road conditions, vehicles, and drivers, and (2) state-to-state reporting differences (and, in particular, the conventions for reporting nonrollover, nontowaway crashes). However, it is encouraging that the average number of rollovers per single-vehicle crash for the study vehicles was 0.198 for the six states combined, which is the same as the proportion estimated from GES for the same vehicles and time period.

We performed a number of stepwise linear regressions (using forward variable selection and a significance level of 0.15 for entry and removal from the model) on the individual states as preparation for an analysis of the six states combined. In each case, we modeled the natural logarithm of the number of rollovers per single-vehicle crash, LN(ROLL), as a function of a linear combination of the road, vehicle, and driver variables available in that state's crash file. We chose this transformation for three reasons: (1) A visual inspection of the data suggested that this form describes the relationship between rollover risk and the SSF better than a simple linear fit, (2) this form was consistent with our understanding of the process (we expected the biggest differences in the number of rollovers per single-vehicle crash to occur at relatively low values of the SSF, with diminishing effects for higher values of the SSF), and (3) this transformation has convenient mathematical properties. The form of the model implies that arithmetic changes in the SSF (for example, an additional 0.01 in the value) are associated with geometric changes in the number of rollovers per single-vehicle crash (about 3 percent fewer rollovers observed per single-vehicle crash for any 0.01 increase in the SSF, before accounting for differences in road use).

We ran stepwise regression models using the option that gives more weight to data points that are based on more observations, so vehicle groups with more crashes count for more in the analysis. Each data point was weighted by the number of single-vehicle crashes it represented, but the weighting was capped at 250. That is, data points based on more than 250 observations were weighted by 250. The weighting threshold is somewhat arbitrary, but it was chosen because it is 10 times the threshold for inclusion in the analysis. The rationale for weighting the data for the regression is that data points based on more observations are more reliable; the rationale for capping the weights is that at some point there are only marginal improvements in our estimates, and we want estimates that fit well over the entire range of the data (that is, for low-SSF and for high-SSF vehicles).

Florida can be used to illustrate our procedure. There are 85 vehicle groups available for our analysis, which represent the experiences of 34,521 vehicles in single-vehicle crashes during 1994-1997. There were 0.208 rollovers per single-vehicle crash in these data. A weighted linear regression of LN(ROLL) as a function of the SSF alone has an R-squared of 0.7074, which means that the SSF alone explains 71 percent of the variability in the data. This suggests that the SSF has great explanatory power for the number of rollovers per single-vehicle crash, but we are concerned that differences among vehicle groups in the mix of road use characteristics may be confounding the relationship. Therefore, we also used more-complex models that explicitly include these potentially confounding factors.

A weighted linear regression using a stepwise approach to include the best of the road use variables alone (that is, without the SSF) produced an equation with an R-squared of 0.5313. A second weighted linear regression using a stepwise approach to include the best of the road use variables plus the SSF produced an equation with an R-squared of 0.9041. The variability unexplained by the first model is:

$1 - 0.5313 = 0.4687$ (without the SSF),

and the variability unexplained by the second model is:

$1 - 0.9041 = 0.0959$ (with the SSF).

This means that 80 percent of the variability in the data remaining after the effects of the best of the road use variables are used is eliminated by allowing the SSF to enter the stepwise procedure. This is calculated as:

$(0.4687 - 0.0950)/0.4687 = 0.80$.

We consider 80 percent to be the value of the SSF in explaining the number of rollovers per single-vehicle crash.

We used the results of the model to adjust the observed number of rollovers per single-vehicle crash to account for differences among vehicle groups in their road use

[21] As described in our July 1991, Technical Assessment Paper: Relationship between Rollover and Vehicle Factors.

characteristics in single-vehicle crashes. For each data point, we used the regression results (the coefficients of the explanatory road use variables, FAST, CURVE, MALE, YOUNG, and DRINK) and the typical road use (the observed averages of these road use characteristics for the study vehicles as a group) to estimate what LN(ROLL) would have been if road use for that vehicle group had been the typical road use for all the vehicles in the Florida study. The approach is similar to that described in our July 1991 Technical Assessment Paper. The average adjusted number of rollovers per single-vehicle crash for all the study vehicles in Florida is, by design, 0.208 (that is, the same as the number estimated from the unadjusted data). The line through the adjusted data is described by:

LN(ROLL) = 3.1691 − 3.7935 × SSF.

Exponentiating both sides of the equation produces an estimate that the number of rollovers per single-vehicle crash is approximated by the curve described by:

ROLL = 23.79 × e(−3.7935 × SSF).

This model form has very useful properties.

The equation can be used to estimate the number of rollovers per single-vehicle crash as a function of SSF alone, for the average mix of road use characteristics for the study vehicles in Florida during the years 1994–1997. For example, we can use the statistical model to identify the increase in the SSF that is associated with an estimate of half as many rollovers per single-vehicle crash. Note that our model has the same form as that used to describe radioactive decay as a function of time (with SSF used in place of time as the independent variable). Using the terminology and theory from the physical application, 3.7935 is the decay constant, and the half-life of the process is estimated as:

Half-life = LN(2)/(3.7935)
= 0.18.

This means that the increase in the SSF that is associated with halving the number of rollovers per single-vehicle crash in Florida is estimated as 0.18. For example, the number of rollovers per single-vehicle crash under average conditions in Florida for the study vehicles as a group is estimated as:

0.40 for a SSF of 1.08
0.20 for a SSF of 1.26, and
0.10 for a SSF of 1.44.

Thus, rollover risk drops by a half when the SSF increases from 1.08 to 1.26, and it drops in half again when the SSF increases from 1.26 to 1.44.

F. Comparison of the State Results

The results for the six individual states and GES are shown in Table A–5. The value of the SSF in explaining rollovers per single-vehicle crash (measured as the decrease in unexplained variability when SSF is allowed to enter the stepwise regression) for the six states ranges from 64 percent for Utah to 80 percent for Florida; the value estimated from GES is 54 percent. The estimated increase in the SSF that is associated with halving the number of rollovers per single-vehicle crash is similar across the six states, ranging from 0.18 (Florida and Missouri) to 0.24 (Pennsylvania and Utah); the value estimated from GES is 0.18.

There are also similarities in which explanatory variables were chosen by the stepwise regression procedure. The best models for the states (the models that include SSF and those road use variables that are most useful in explaining the number of rollovers per single-vehicle crash in each state) include the following variables:

DARK: 2 states,
STORM: 1 state,
RURAL: 2 states (not available in 2 other states),
FAST: 5 states,
HILL: 2 states,
CURVE: 4 states,
BADROAD: 1 state (not available in 2 other states),
BADSURF: 1 state,
MALE: 6 states,
YOUNG: 5 states,
DRINK: 4 states, and
NUMOCC: 2 states (not available in 1 other state).

The similarities among the individual state models suggests that the six states can be combined to form a best estimate of the relationship between the SSF and the number of rollovers per single-vehicle crash if the differences among the states in road use and crash reporting can be addressed. We would not be surprised if a multi-state stepwise regression selected FAST, CURVE, MALE, YOUNG, and DRINK as explanatory variables because these factors are important in the individual state analyses. Note that combining the data from individual states is already done by FARS (a census of traffic fatalities in all states) and by GES (a survey of police-reported crashes in sampled states), and this combination is done without adjustment for differences in reporting practices. Our efforts to model the combined data from the six available VIN states are described below.

G. Combined Six-State Data Analysis

We performed a weighted stepwise linear regression analysis for the six states combined using the 481 data points that represent at least 25 single-vehicle crashes, with the weighting capped at 250. These 481 data points represent the experience of 184,726 single-vehicle crashes in the six-state combined data, including the following number of data points for each of four light vehicle types:

204 for cars,
124 for sport utility vehicles,
45 for vans, and
108 for pickup trucks.

The road use variables considered by the model were those that are available in all six states: DARK, STORM, FAST, HILL, CURVE, BADSURF, MALE, YOUNG, and DRINK.

We modeled LN(ROLL) as a function of these road use variables, and we created five dummy variables (DUMMY_FL, DUMMY_MD, DUMMY_NG, DUMMY_PA, and DUMMY_UT) to capture state-to-state differences. We needed dummy variables to combine the state data because the states have different reporting thresholds and practices, which produce different levels of rollovers per single-vehicle crash even after accounting for differences in road use. We chose Missouri as the baseline state for two reasons. First, Missouri has the lowest rollover rate (both before and after accounting for differences in road use), and this means that the coefficients of all the state dummy variables will be positive; this makes the results a little easier to describe, but it has no analytical implications. And second, there are significant differences between Missouri and each of the other five states in the number of rollovers per single-vehicle crash; this allows all five state dummy variables to enter the model and lets us measure the relative reporting effect of every state.

For example, the dummy variable DUMMY_FL was defined as "one" for each of the 85 Florida data points, and it was defined as "zero" for each of the 396 data point from the other five states. The coefficient of DUMMY_FL estimated by the regression analysis is interpreted as the incremental risk of rollover in Florida (compared to Missouri, the baseline state), after considering differences in road use. The other four dummy variables were handled analogously. All five dummy variables were defined as "zero" for all the Missouri data points.

The best model without SSF has an R-squared of 0.5753, and the best model with SSF has an R-squared of 0.8829. This means that allowing the SSF to enter the model explains 72 percent of the variation that was not explained by the model without SSF, and so we say that the value of the SSF to our model is 72 percent. The stepwise regression procedure with SSF chose three variables that describe the driving situation (DARK, FAST, and CURVE), three variables that describe the driver (MALE, YOUNG, and DRINK), and all five state dummy variables.

We used forward variable selection and a significance level of 0.15 for entry and removal from the model, but only one variable in the best model that included the SSF had a significance level greater than 0.0001 (DARK, at 0.0663). The F-statistic for the model as a whole was 294, and the probability of a value this high by chance alone is less than 0.0001. More details on the fit of the model are included as Table A–6.

The variables FAST, MALE, and YOUNG are unambiguous, and it seems likely that they are consistently reported by all six states (though there are some differences in the rates of missing data). The coding of DARK and CURVE may vary somewhat by state (states may differ in how they code twilight conditions, and states where most roads curve may tend to call a slightly-curved road "straight"). The coding of DRINK probably differs among the states. The state dummy variables describe systematic differences between states, including differences in the reporting threshold.

We used the results of the model to adjust the observed number of rollovers per single-vehicle crash to account for differences among states and vehicle groups in their road use characteristics in single-vehicle crashes. For each data point, we used the regression results to calculate how many rollovers per single-vehicle crash we would have expected if road use for that vehicle group had been the typical road use for all the vehicles in the study. (The effects of the adjustments on individual data points are sometimes large. For example, one pickup truck group had 0.46 rollovers per single-vehicle crash in Florida, in part because drivers of this vehicle in Florida tended to be young. If the vehicle had been driven like the average of all the vehicles in the study, we estimate that there would have been 0.35 rollovers per single-vehicle crash. This second number is what we are calling the "adjusted" rollover risk.)

The average adjusted number of rollovers per single-vehicle crash for all the study vehicles is, by design, 0.198 (that is, it is the number estimated from both the six-state data and GES). The fit of the curve through the adjusted data is described by:

Estimated rollovers per single-vehicle crash = 13.25 × e(−3.7831 × SSF).

This is the curve determined from the observed number of rollovers per single-vehicle crash, the results of the weighted regression model, and with an average of 0.198 rollovers per single-vehicle crash for all the vehicles used in the study. Figure A–1 shows the adjusted value of the rollover risk for each vehicle group averaged over all six states and the curve that describes the pattern of rollover risk as a function of the SSF. Our national estimate of the number of rollovers per single-vehicle crash declines by half for any increase of 0.21 in the SSF.

H. Discussion

The observed relationship between the SSF and the number of rollovers per single-vehicle crash is confounded by (1) The relationship between the SSF and road use factors that directly affect the risk of rollover and (2) state-to-state differences in reporting practices, including the reporting threshold. We attempted to correct for these biases in order to isolate the effect of the SSF on rollover risk, and the curve through the adjusted data is our best estimate of the relationship between the SSF and the risk of rollover. The fit of the model (an R-squared of 0.88), the significance of the SSF in the model (the probability of a greater value of the t statistic is less than 0.0001), the value of the SSF in this model (a 72 percent reduction in the R-squared compared to the best model without the SSF), and the implications from the model (rollovers decrease by half for any increase of 0.21 in the SSF) suggest a strong relationship between the SSF and rollover risk. However, this (in common with all statistical models) is a simplification of a complex process.

There are important factors that were not included in the model because they are not available on the state data files. Some of the unmeasured factors that may influence rollover risk include driver skill (including attitudes, habits, and experience) and after-market changes to the vehicle's SSF (including those caused by differences in tire inflation, vehicle loading, and wheel size). None of these factors was explicitly included in the analysis, but some of them may be included through their association with other, measured variables. For example, differences in driver skill as a function of vehicle group are captured to the extent that driver skill is a function of age (as measured by YOUNG).

Statistical models are a method for dealing with uncertainty. The results can suggest an underlying process, but they do not (except in the most trivial cases) produce deterministic predictions. For example, Figure A–1 shows some scatter around the fitted curve. This may reflect omitted variables, the effect of having only a few vehicle groups at each level of the SSF, or the effects of natural statistical variability (reflecting, in part, sample size limitations). We can put this unexplained variability in perspective, and we will use Florida for illustrative purposes.

Figure A–2 shows the Florida data adjusted to the typical road use for all vehicles in the study. (The amount of scatter in the Florida data appears similar to that for the average of the six states shown in Figure A–1.) The natural variability in the data is suggested by how much the rollover risk for a single vehicle group varies from year-to-year. Figure A–3 shows the number of rollovers per single-vehicle crash (calculated directly from the Florida data, without any adjustments for confounding factors) for each vehicle group for two calendar year groups: 1994–1995 versus 1996–1997. For this purpose, the data were limited to vehicle groups that had at least 25 single-vehicles crashes in both time periods. The line fit to these data (weighting each vehicle group by the number of single-vehicle crashes in Florida during these four years, with the weighting capped at 250) has an R-squared of 0.89 and the equation:

Rollover risk in 1996–1997 = 0.0111 + 0.946 × Rollover risk in 1994–1995.

That is, our model of rollover risk as a function of SSF across vehicle groups seems to fit the data about as well as a model of year-to-year changes for each vehicle group, which seems like a reasonably good fit for such a complex process.

TABLE A–1.—THE SSF FOR PASSENGER CARS

Vehicle group	Make/model	Model years	SSF
1	Dodge Neon, Plymouth Neon	95–98	1.44
2	Ford Crown Victoria	92–97	1.42
3	Ford Escort	91–96	1.38
4	Ford Escort, Mercury Tracer	97–98	1.37
5	Ford Mustang	88–93	1.38
6	Ford Probe	93–97	1.41
7	Ford Taurus, Mercury Sable	88–95	1.45
8	Lincoln Town Car	90–96	1.44
9	Buick Century, Chevrolet Celebrity, Oldsmobile Cutlass Ciera/Ciera, Pontiac 6000	88–96	1.38
10	Buick Regal, Pontiac Grand Prix	88–96	1.41
11	Chevrolet Lumina	95–98	1.34
12	Buick Lesabre, Pontiac Bonneville	92–96	1.39
13	Buick Park Avenue, Oldsmobile 98	91–96	1.38
14	Buick Skylark/Somerset, Oldsmobile Cutlass Calais/Calais, Pontiac Grand Am	88–91	1.35
15	Buick Skylark, Oldsmobile Achieva, Pontiac Grand Am	92–97	1.38
16	Chevrolet Camaro, Pontiac Firebird	88–92	1.53
17	Chevrolet Camaro, Pontiac Firebird	93–98	1.50
18	Buick Roadmaster, Chevrolet Caprice	91–96	1.40
19	Buick Skyhawk, Chevrolet Cavalier, Pontiac Sunbird	88–94	1.32
20	Chevrolet Corsica	88–96	1.30
21	Chevrolet Geo Metro, Suzuki Swift	89–94	1.32
22	Chevrolet Geo Metro, Suzuki Swift	95–98	1.29
23	Saturn SL	90–95	1.39
24	Saturn SL	96–98	1.35
25	Chevrolet Geo Prizm	89–92	1.38
26	Honda Civic	92–95	1.48
27	Honda Civic	96–98	1.43
28	Honda Accord	90–93	1.47
29	Mazda Protégé	95–98	1.40
30	Nissan Maxima	89–94	1.44

TABLE A–1.—THE SSF FOR PASSENGER CARS—Continued

Vehicle group	Make/model	Model years	SSF
31	Nissan Sentra	91–94	1.46
32	Nissan Sentra	95–98	1.40
33	Toyota Camry	92–96	1.46
34	Toyota Corolla	89–92	1.36
35	Toyota Tercel	91–94	1.41
36	Toyota Tercel	95–98	1.39

TABLE A–2.—THE SSF FOR SUVS

Vehicle group	Make/model	Model years	Drive wheels	SSF
37	Dodge Ramcharger	88–93	4	1.13
38	Ford Bronco	88–96	4	1.13
39	Ford Bronco II	88–90	2	1.04
40	Ford Bronco II	88–90	4	1.04
41	Ford Explorer	91–94	2	1.07
42	Ford Explorer	91–94	4	1.08
43	Ford Explorer	95–98	2	1.06
44	Ford Explorer	95–98	4	1.06
45	Chevrolet S–10 Blazer, GMC S–1500 Jimmy	88–94	2	1.10
46	Chevrolet S–10 Blazer, GMC S–1500 Jimmy	88–94	4	1.10
47	Chevrolet Blazer, GMC Jimmy	95–98	2a1.09	
48	Chevrolet Blazer, GMC Jimmy	95–98	4	1.09
49	Chevrolet V10/K10/K1500 Blazer	88–91	4	1.09
50	Chevrolet K1500 Blazer/Tahoe, GMC Yukon	92–98	4	1.12
51	Chevrolet V1500/V2500 Suburban, GMC V1500/V2500 Suburban	88–91	4	1.10
52	Chevrolet K1500/K2500 Suburban, GMC K1500/K2500 Suburban	92–98	4	1.08
53	Chevrolet Geo Tracker, Suzuki Sidekick	89–98	4	1.13
54	Honda CR–V	97–98	4	1.19
55	Honda Passport, Isuzu Rodeo	91–97	4	1.06
56	Isuzu Trooper	88–91	4	1.02
57	Isuzu Trooper	92–94	4	1.07
58	Jeep Cherokee	88–97	4	1.08
59	Acura SLX, Isuzu Trooper	95–98	4	1.09
60	Jeep Grand Cherokee	93–98	4	1.07
61	Jeep Wrangler	88–96	4	1.20
62	Nissan Pathfinder	88–95	4	1.07
63	Nissan Pathfinder	96–98	4	1.10
64	Suzuki Samurai	88–95	4	1.09
65	Toyota 4Runner	88–96	4	1.00
66	Toyota 4Runner	97–98	4	1.06

TABLE A–3.—THE SSF FOR VANS

Vehicle group	Make/Model	Model years	Drive wheels	SSF
67	Dodge Caravan/Grand Caravan, Plymouth Voyager/Grand Voyager	88–95	2	1.21
68	Chrysler Town & Country, Dodge Caravan/Grand Caravan, Plymouth Voyager/Grand Voyager	96–98	2	1.23
69	Dodge B–150 Ram Wagon	88–98	2	1.09
70	Ford Aerostar	88–98	2	1.10
71	Ford E–150 Clubwagon	88–91	2	1.11
72	Ford E–150 Clubwagon	92–97	2	1.11
73	Ford Windstar	95–98	2	1.24
74	Chevrolet Astro, GMC Safari	88–98	2	1.12
75	Chevrolet Lumina APV, Oldsmobile Silhouette, Pontiac Transport	90–96	2	1.12
76	Chevrolet Venture, Oldsmobile Silhouette, Pontiac Transport	97–98	2	1.18

TABLE A–3.—THE SSF FOR VANS—Continued

Vehicle group	Make/Model	Model years	Drive wheels	SSF
77	Chevrolet G10/G20 Sportsvan, GMC G1500/G2500 Rally van	88–95	2	1.08
78	Mazda MPV	89–97	2	1.17
79	Toyota Previa	91–97	2	1.23

TABLE A–4.—THE SSF FOR PICKUP TRUCKS

Vehicle group	Make/model	Model years	Drive wheels	SSF
80	Dodge Dakota	97–98	2	1.25
81	Dodge Ram 1500	94–98	2	1.22
82	Dodge D–150 Ram	88–93	2	1.28
83	Ford F–150	88–96	2	1.19
84	Ford F–150	88–96	4	1.15
85	Ford F–150	97–98	2	1.18
86	Ford Ranger	88–92	2	1.13
87	Ford Ranger	88–92	4	1.03
88	Ford Ranger, Mazda B-series	93–97	2	1.17
89	Ford Ranger, Mazda B-series	93–97	4	1.07
90	Chevrolet C–1500, GMC C–1500/Sierra	88–98	2	1.22
91	Chevrolet K–1500, GMC K–1500/Sierra	88–98	4	1.14
92	Chevrolet S–10, GMC S–15/Sonoma	88–93	2	1.19
93	Chevrolet S–10, GMC S–15/Sonoma	88–93	4	1.19
94	Chevrolet S–10, GMC S–15/Sonoma, Isuzu Hombre	94–98	2	1.14
95	Chevrolet S–10, GMC S–15/Sonoma	94–98	4	1.14
96	Nissan Pickup	88–97	2	1.20
97	Nissan Pickup	88–97	4	1.11
98	Toyota Pickup	89–94	2	1.23
99	Toyota Pickup	89–94	4	1.07
100	Toyota Tacoma	95–98	2	1.26

TABLE A–5.—ROLLOVERS PER SINGLE-VEHICLE (SV) CRASH AS A FUNCTION OF THE SSF AND ROAD USE VARIABLES

	FL	MD	MO	NC	PA	UT	Six states	GES
Vehicle groups for study	85	81	82	86	86	61	481	60
Single-vehicle crashes	34,521	17,683	31,517	45,440	48,519	7,046	184,726	7,022
Rollovers per SV crash	0.208	0.159	0.127	0.177	0.246	0.363	0.198	0.198
R-squared for models of LN (ROLL) with:								
SSF only	0.7074	0.6072	0.7266	0.5304	0.7281	0.7606	0.5386	0.4456
SSF and state							0.7334	
Road use only	0.5313	0.6550	0.5520	0.5479	0.6878	0.5461		0.4147
Road use and state							0.5753	
SSF plus road use	0.9041	0.8818	0.8559	0.8945	0.8879	0.8548		0.7332
SSF, road use, and state							0.8829	
Value of SSF	80%	66%	68%	77%	64%	68%	72%	54%
Best model of ROLL:								
Intercept	23.79	8.28	15.15	13.53	8.33	11.39	13.25	5.84
Coefficient of SSF	−3.7935	−3.1414	−3.8627	−3.4328	−2.8494	−2.8784	−3.3731	−2.6943
Standard error of coefficient of SSF	0.1729	0.2552	0.2141	0.1798	0.1488	0.2391	0.0761	0.3192
Increase in SSF to halve rollovers per SV crash	0.18	0.22	0.18	0.20	0.24	0.24	0.21	0.18

TABLE A–6.—FIT OF THE MODEL OF ROLLOVERS PER SINGLE-VEHICLE CRASH AS A FUNCTION OF THE SSF AND ROAD USE VARIABLES

[R-square=0.88290867 C(p)=10.21256387]

	DF	Sum of squares	Mean square	F	Prob>F
Regression	12	27480.16301362	2290.01358447	294.07	0.0001
Error	468	3644.41878744	7.78721963		
Total	480	31124.58180106			

Variable	Parameter estimate	Standard error	Type II—Sum of squares	F	Prob>F
INTERCEP	0.98462872	0.19748866	193.57224437	24.86	0.0001
SSF	−3.37314841	0.07612591	15289.32722322	1963.39	0.0001

Variable	Parameter estimate	Standard error	Type II—Sum of squares	F	Prob>F
DARK	−0.38680987	0.21016386	26.37918835	3.39	0.0663
FAST	1.52493695	0.19916920	456.50110043	58.62	0.0001
CURVE	1.55970317	0.25046223	301.98254463	38.78	0.0001
MALE	−1.33399065	0.10621334	1228.37181405	157.74	0.0001
YOUNG	0.86034711	0.09977145	579.05158823	74.36	0.0001
DRINK	1.73507462	0.27938756	300.33406907	38.57	0.0001
DUMMY_FL	1.17092992	0.07322547	1991.22295614	255.70	0.0001
DUMMY_MD	0.64541483	0.09276482	376.95864460	48.41	0.0001
DUMMY_NC	0.50232907	0.03749136	1397.96646995	179.52	0.0001
DUMMY_PA	1.17247270	0.06537935	2504.41755183	321.61	0.0001
DUMMY_UT	0.83176783	0.05431222	1826.38170253	234.54	0.0001

Figure A-1:
Rollovers per Single-Vehicle Crash Estimated from Six States
(Averages Across States for Each Vehicle Group)

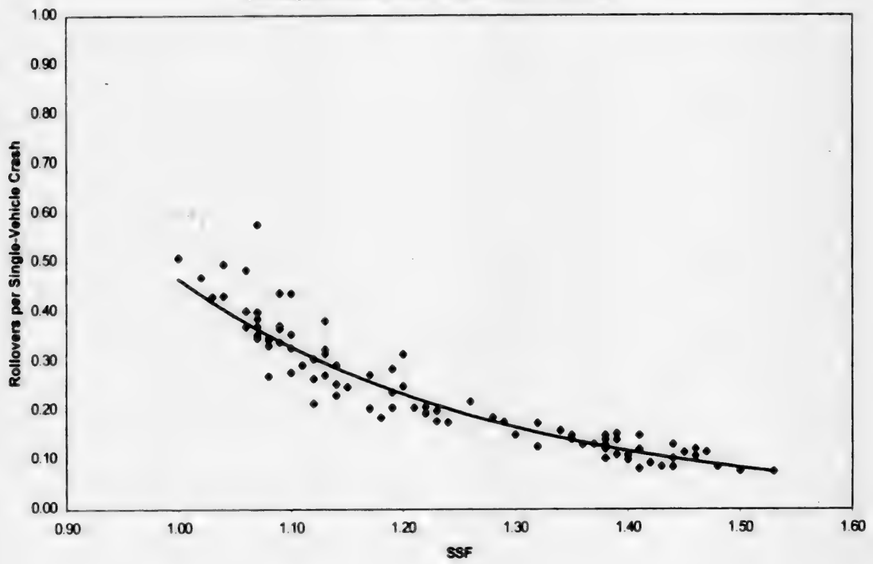

Figure A-2:
Rollovers per Single-Vehicle Crash in Florida
(Estimated from an Adjustment Developed from Six States)

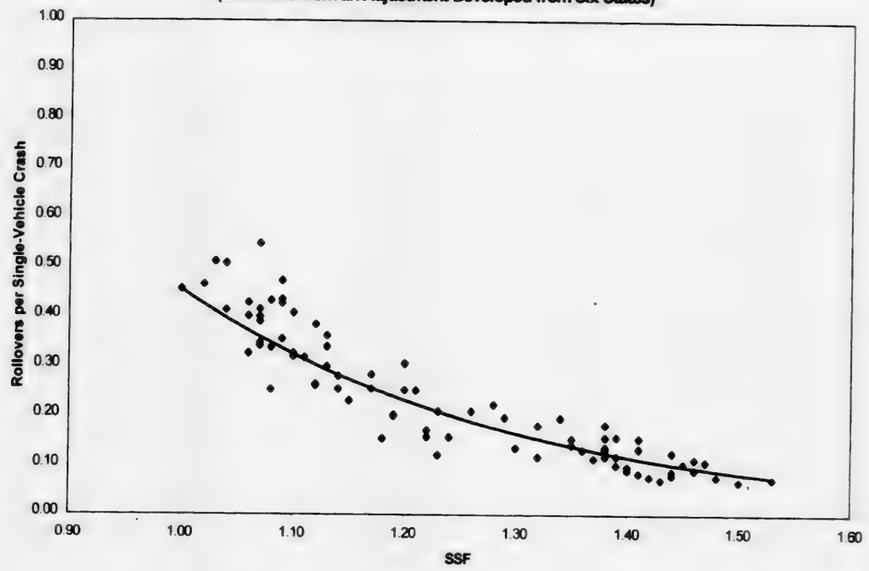

Figure A-3:
Rollovers per Single-Vehicle Crash in Florida
(Comparison for Each Vehicle Group in Two Time Periods)

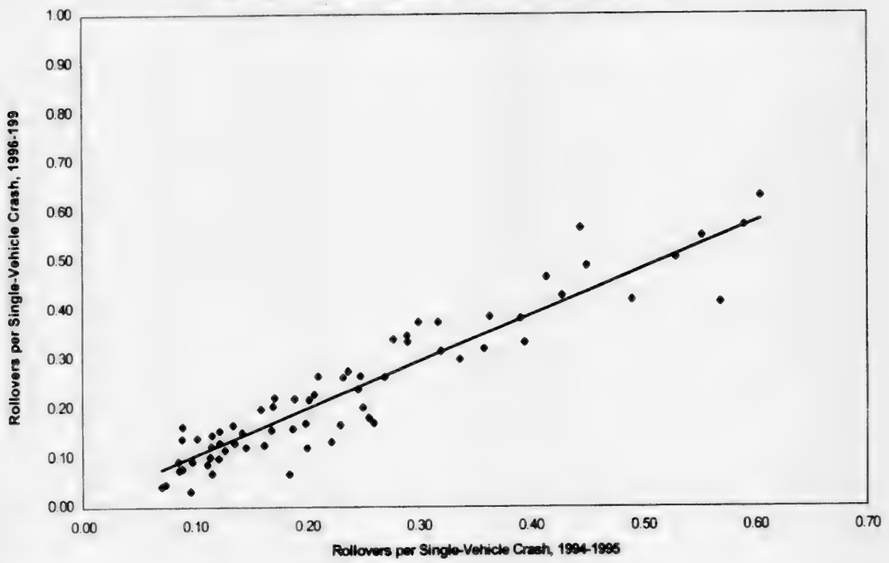

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG09

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Plants From the Mariana Islands and Guam

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for three plants (no common names): *Nesogenes rotensis*, *Osmoxylon mariannense*, and *Tabernaemontana rotensis*. *Nesogenes rotensis* and *O. mariannense* are found only on the island of Rota in the U.S. Commonwealth of the Northern Mariana Islands (CNMI). *Tabernaemontana rotensis* occurs on both Rota and the United States Territory of Guam. The three plant species and their habitats have been affected or are now threatened by one or more of the following: habitat degradation or destruction by feral deer and pigs; competition for space, light, water, and nutrients with introduced vegetation; road construction and maintenance activities; recreational activities; natural disasters or random environmental events; fire; vandalism; development of agricultural homesteads; resorts and golf courses; limited reproductive vigor; and potential insect, mouse, or rat predation. This proposal, if made final, would implement the Federal protection and recovery provisions of the Act.

DATES: Comments from all interested parties must be received by July 31, 2000. Public hearing requests must be received by July 17, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

(1) You may submit written comments to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, Hawaii 96850;

(2) You may send comments by e-mail to 3mplants_pr@fws.gov (see **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing); or

(3) You may hand-deliver comments to our Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, at the above address (telephone 808–541–3441; facsimile 808–541–3470).

SUPPLEMENTARY INFORMATION:

Background

Nesogenes rotensis, *Osmoxylon mariannense*, and *Tabernaemontana rotensis* occur on the island of Rota in the United States Commonwealth of Northern Mariana Islands (CNMI). *Tabernaemontana rotensis* also occurs in the United States Territory of Guam.

The island of Rota (lat. 14 degrees 01 minutes, long. 145 degrees) is located approximately 134 kilometers (km) (80 miles (mi)) northwest of the Territory of Guam. In general, the islands are raised limestone terraces on extinct volcanic peaks and slopes, with limited areas of volcanic soils protruding through limestone. Rota, 86 square kilometers (sq km) (33 square miles (sq mi)), is significantly smaller in area than Guam, which is approximately 500 sq km (200 sq mi), although both islands have similar maximum elevation of 490 meters (m) (1,612 feet (ft)) and 406 m (1,167 ft) above sea level, respectively.

The climate on Rota and Guam is tropical marine with high humidity and uniform temperatures throughout the year. Average daytime temperatures are approximately 26.4° Celsius (80° Fahrenheit) with approximately 200 centimeters (cm) (80 inches (in)) of rainfall and about 80 percent humidity. Rainfall averages 26.8 cm (10.7 in) per month during the wet season and 9.5 cm (3.8 in) per month during the dry season (Resources Northwest 1997). The dry season generally occurs from January to June, and trade winds of 24 to 40 km (15 to 25 mi) per hour from the east and northeast are common. The trade winds degenerate during the rainy season, which generally occurs from July to December. During this period, westward moving storms develop along and above the equator in an area known as the Intertropical Convergence Zone. These storms occasionally reach typhoon strength and can cause extensive damage to crops, homes, community infrastructure, and island forests (Resources Northwest 1997).

The vegetation of Rota and Guam falls into four general classes: forest, secondary vegetation, agroforest, and nonforest areas (Falanruw *et al.* 1989). The forest class includes five primary types: native limestone forest, introduced trees, mangrove (*Rhizophora* spp.) forest, ironwood (*Casuarina* sp.) forest, and atoll forest (Falanruw *et al.* 1989). Historically, native limestone forest varied from semidry forest to more or less dry-season deciduous forests on the lower terraces to wet cloud forest on the highest terraces. *Osmoxylon mariannense* occurs in the cloud forest on the highest terrace, or sabana, of Rota. *Tabernaemontana rotensis* occurs in or on the edges of the drier semideciduous limestone forests. *Nesogenes rotensis* occurs along the lowest terrace or coastal plain in strand vegetation on open limestone sea cliffs. Much of the original native forests on Rota and Guam was cleared for agriculture and timber harvest or by military activities, including bombing during World War II (Fosberg 1960). However, both Rota and Guam have extensive secondary native forests of medium stature that have regrown since the peak disturbance period associated with Japanese and American occupation of the islands during World War II. These forests, however, have subsequently been degraded by agricultural practices, logging, and development (Fosberg 1960).

These three plant species occur on private land, land owned by the CNMI (public park area), and Federal land (Andersen Air Force Base).

Discussion of the Three Plant Species

Nesogenes Rotensis

The type collection of *Nesogenes rotensis*, collected on April 23, 1982, by Derral Herbst and Marjorie Falanruw, was from Haaniya Point (Poña Point Fishing Cliff), Palie area, on the island of Rota, growing on exposed, dry raised limestone, at 100 m (328 ft) elevation (Fosberg and Herbst 1983). It was growing in association with *Scaevola sericea* (nanaso), *Terminalia samoensis* (talisai ganu), *Hedyotis strigulosa* (paodédó), *Pogonatherum paniceum*, and *Bikkia tetrandra* (gausali). Fosberg and Herbst (1983) formally described and published the name *Nesogenes rotensis* and placed it in the family Chloanthaceae, a largely Australian family. This placement was a change from the historic placement of the genus in the family Verbenaceae and its subsequent placement in its own family, Nesogenaceae. Presently, Mabberly (1990) recognizes *Nesogenes* as a genus of Verbenaceae, but states that it may simply be a matter of preference as to how to treat the genus *Nesogenes*.

Nesogenes rotensis is an herbaceous plant with small, opposite, broadly lanceolate, coarsely toothed leaves. Flowers are axillary and tubular, with five white petals; often a flowering branch grows upright, which might aid in pollination or seed dispersal (Raulerson and Rinehart 1997). Each plant typically branches near the base at about five to seven nodes, and is subprostrate to ascending, scrambling over appressed shrubs, with whole plants up to almost 1 m (3 ft) in diameter (Fosberg and Herbst 1983).

One population of fewer than 100 plants was reported in 1982 by Derral Herbst at the Poña Point Fishing Cliff, public park land owned by the CNMI (under jurisdiction of the CNMI Department of Land and Natural Resources (DLNR)) and the site of the only known population (Loyal Mehrhoff, Service, pers. comm. 1993). In 1994, Raulerson and Rinehart (1997) reported a population of about 20 plants, occupying 200 sq m (240 sq yards (yd)) of habitat, at the Poña Point Fishing Cliff. Apparently, this was the same population as was reported by Herbst in 1983; Herbst was uncertain of the original location when he made the herbarium sheet (D. Herbst, Bishop Museum, pers. comm. 1997).

Based on information from collections, *Nesogenes rotensis* flowered April 23, 1982 (Herbst and Falanruw 6739), and was fruiting and flowering in November 1994 (Raulerson 26222). In January (Dan Grout, Service, pers. comm. 1997) and February 1997 (Christa Russell, Service, *in litt.* 1997), no plants were found at this site. In January 1998, approximately 30 plants were observed in seed, but not in flower (Guy Hughes, Service, pers. comm. 1998). There were several volunteer seedlings near the larger plants, and the entire population was scattered over an area of approximately 200 sq m (240 sq yd). Many of the larger individuals were senescent, with many dried branches and only a few green leaves on one or a few of the branches. The dried branches were lined with cuplike structures that contained seeds. All the available information and recent observations suggest that these plants are perennials, but their above-ground parts die back annually.

The only known population of this species occurs in an area that has increasingly been overutilized by people. Because of activities, such as collecting, trampling by fishermen and tourists, or expansion of the park's facilities, human activities has become the primary threat to the species. The nonnative *Casuarina equisetifolia* (ironwood) is presently colonizing the Poña Point Fishing Cliff area and also represents a major threat to *N. rotensis*. *Casuarina equisetifolia* is a large, fast-growing tree that reaches up to 20 m (65 ft) in height (Wagner *et al.* 1990). It forms monotypic stands, shades out other plants, takes up much of the available nutrients, and possibly releases a chemical agent that prevents other plants from growing beneath it (Neal 1965, Smith 1985). In addition, given the limited distribution of *N. rotensis*, random environmental events, such as typhoons, storm surges, and high surf, also threaten the one remaining population.

Osmoxylon Mariannense

Osmoxylon mariannense was first collected on Rota by French naturalist Alfred Marche, an active botanical explorer in the Mariana Islands from 1887–1889 (Stone 1970). It was not until 1933, when a study of Marche's collection was made, that Kanehira first described the species as *Boerlagiodendron mariannense* (Kanehira 1933). In 1980, Fosberg and Sachet (1980) published the currently accepted recombination, *Osmoxylon mariannense*, which has been upheld by Raulerson and Rinehart (1991).

Osmoxylon mariannense, endemic to Rota, is a spindly, soft-wooded tree in the Ginseng family (Araliaceae), which can reach 10 m (33 ft) in height. It has several ascending, gray-barked branches that bear conspicuous leaf scars. Leaves vary in size; mature leaves are palmately lobed and about 30 cm (1 ft) long and 50 cm (1.7 ft) wide. The seven to nine lobes are coarsely toothed, and each lobe has a conspicuous, depressed mid-vein. The leaves are alternate, or whorled, at branch tips; the petioles are 35–40 cm (1–1.5 ft) long and based in distinctive, conspicuous green multiple "sockets" (Raulerson and Rinehart 1991).

Historically, *Osmoxylon mariannense* occurred in dense primary forest at about 400 m (1,320 ft) elevation (Kanehira 1933). Reports from 1980 to 1995 indicate that approximately 20 individuals from one scattered population were in the same vicinity as reported by Kanehira (Lynn Raulerson, University of Guam, pers. comm. 1998; D. Grout and L. Mehrhoff, pers. comms. 1997). Currently, all known individuals of this species occur in small subpopulations along a simple system of unimproved roads crossing the top of the sabana (highest elevation terraces) of Rota. One of the larger subpopulations had approximately nine individuals in 1994, but typhoons appeared to have damaged many of the trees, and only two were visible in 1997 (Raulerson and Rinehart 1997).

Osmoxylon mariannense can be found on both private (approximately 2 individuals) and publicly owned (CNMI) (approximately 18 individuals) land in limestone forests. It occurs as an understory species in *Pisonia umbellifera* and *Hernandia labyrinthica* forests, and is often hard to see until some trunks are tall enough to mingle with the trunks of the other two species (Raulerson and Rinehart 1997). In January 1998, shortly after typhoon Paka, five of the subpopulations, containing a total of eight trees, were located along the sabana road (Estanislau Taisacan, CNMI, Division of Fish and Wildlife (DFW) and G. Hughes, pers. comms. 1998). The plants in each subpopulation were completely defoliated and damaged by the high typhoon winds. E. Taisacan [supported by Raulerson and Rinehart (1997)] indicated that the total population of *Osmoxylon mariannense* had significantly declined in the past 10 years (G. Hughes, pers. comm. 1998). Ten years before, many of the subpopulations visited in 1998 had several trees each (E. Taisacan, pers. comm. 1998). Almost all of these subpopulations have now been reduced to a single tree, and none of these trees are reproducing naturally (G. Hughes, pers. comm. 1998).

Due to several exacerbating factors, the primary threat to *Osmoxylon mariannense* is the lack of regeneration in disturbed forests. Although Rota has historically experienced typhoon disturbances, intense typhoons and super typhoons have occurred with high frequency in the past 10 years. These repeated storms have considerably opened the canopy of the sabana forest, creating conditions favored by invasive alien plants and vines and perhaps prohibiting the regeneration of *O. mariannense* (L. Mehrhoff, *in. litt.* 1995). For example, during the 1998 site visit, Taisacan indicated the once many-branched, 10 m (33 ft) high tree appearing in the photograph in Raulerson and Rinehart's (1991) *Guide to the Trees and Shrubs of the Mariana Islands*, had been reduced to a small stump 2 m (6.5 ft) high with scandent leaves after a decade of exposure to frequent typhoons (G. Hughes, pers. comm. 1998). Feral pigs (*Sus scrofa*) and deer (*Cervus mariannus*) occur on Rota, and their browsing and trampling are a potential threat to unfenced individuals (G. Hughes, pers. comm. 1998). Insect, mouse (*Mus musculus*), or rat (*Rattus* spp.) predation of seeds on the ground is a suspected cause of the lack of reproductive vigor exhibited by this species. Since several individuals occur close to roadways, bulldozers could destroy plants during routine maintenance or road improvement. Finally, the identification of rare species through management activities such as fencing and signage may result in vandalism from individuals who perceive rare species as threats to development (Raulerson and Rinehart 1997).

Tabernaemontana Rotensis

Kanehira (1936) first described the species as *Ervatamia rotensis* from his type collection from Rota (Kanehira 3666). Stone (1965, 1970) recognized the species from the Rota and Guam collections (Stone 5256, Kanehira 3666, Hosokawa 9832) as *Tabernaemontana rotensis*. Leeuwenburg (1991) examined 1,400 specimens and adopted a very broad species concept when he lumped 52 species (including *T. rotensis*), ranging from China, Taiwan, Thailand, Java, Sabah, Australia, and Micronesia, into a single species, *T. pandacaqui*. However, Forster (1992) challenged Leeuwenberg's broad species concept for *Tabernaemontana* species in Australia. Forster's research led to the conclusion that there are two species in Australia, *T. orientalis* and *T. pandacaqui*. Based on Forster's analysis, Derral Herbst, Bishop Museum, speculated that Leeuwenberg's broad concept of lumping all *Tabernaemontana* species into one species is not valid (D. Herbst, pers. comm. 2000). This concept of combining species, which occur both on the Asian mainland and scattered, isolated islands covering a very wide geographic range, was also rejected by Dr. Fosberg of the Smithsonian Institution (L. Raulerson, pers. comm. 1997). In addition, no genetic investigations have been published that would support Leeuwenberg's conclusion. Therefore, although the taxonomy of this species is still in dispute, we have determined that we have sufficient information to consider *T. rotensis* as a species in its own right.

Tabernaemontana rotensis is a small tree in the Dogbane family (Apocynaceae). It grows to heights of perhaps 6 m (20 ft) and is rather weak and spindly in appearance, with large, yellow-green to dark-green leaves and thin, milky sap. The inflorescence consists of a few to over 30 flowers with 5 spirally arranged, united white petals that appear slightly folded until they flare at the tips. The fruits occur singly or twinned and have one to three ridges. Each fruit is relatively small, 3 to 7 cm (1.2 to 2.8 in) long, dehiscent (they open at maturity), and contains 4 to 10 seeds in a red pulp. Herbarium specimens show flowering in Guam plants has occurred in January, May, and July; specimens collected on Rota were in flower in October and November.

Historically, *Tabernaemontana rotensis* was known from lowland dry forest on Rota, where Kanehira (1936) described it as "very abundant in the northern side of the island, but not found elsewhere." On Guam, *T. rotensis* was known from individual specimens in the limestone forests along clifflines at Asanite, on the University of Guam campus, and at the "Japanese Overlook" of the Naval Magazine (Raulerson and Rinehart 1997). While the tree at the University of Guam may possibly still exist, it has not recently been surveyed. However, the tree at the Naval Magazine was destroyed in a typhoon when other trees fell on it, and the tree at the Asanite cliffs was not found during a recent survey (Raulerson and Rinehart 1997).

Currently, there is one scattered population of *Tabernaemontana rotensis* on Rota, consisting of two individuals. One of the trees occurs in the Mochong area on CNMI land, and the other individual occurs in the Chenchon area on private land. Both individuals are located close to roads. In January 1998, both individuals were observed to be healthy and in flower, but it is not known if these plants have ever produced fruit (G. Hughes, pers. comm. 1998).

Regarding the population on Guam, Gary Wiles, Guam Division of Aquatic and Wildlife Resources (DAWR), recently reported a scattered population of about 28 mature trees from Pati Point westward to Ritidian Point within the overlay refuge on Andersen Air Force Base (G. Wiles, DAWR, pers. comm. 2000). The overlay refuge is part of the Guam National Wildlife Refuge (GNWR) that is on land owned and administered by Andersen Air Force Base, but managed for wildlife purposes through a Memorandum of Agreement with us. This population also includes 4 trees and approximately 30 saplings and seedlings within Area 50, a 24-hectare (ha) (60-acre (ac)) section of forest being intensively managed to determine the effects of removal of feral ungulates and brown tree snakes on native limestone forest habitat. In addition, 2 mature trees, approximately 30 saplings, and 70 seedlings have been located along the road to Ritidian Point within GNWR. Finally, a single tree exists under the powerline near the main road connecting the main airfield and the Munitions Storage Area on Andersen Air Force Base. Two trees are also known from the Ano Conservation Reserve, on Government of Guam land (G. Wiles, in litt. 1998).

The primary threat to *Tabernaemontana rotensis* is the lack of reproductive vigor and seed distribution due to reduced numbers of individuals. This situation includes a lack of observed seed production on Rota, which may be due to either the lack of a pollinator or predation by insects, mice, or rats (G. Hughes, pers. comm. 1998). On Guam, seeds have been observed to mold in the seed case without separating from the fruit, indicating that birds may be useful in distributing the seeds (G. Wiles, *in litt.* 1998). Competition with the nonnative vines *Momordica charantia* (balsam pear), *Mikania scandens* (mile-a-minute vine), and *Passiflora suberosa* (wild passionfruit) may threaten seedlings and saplings (G. Wiles, *in litt.* 1998). Since *T. rotensis* appears to be an edge species and now grows along roadsides, it is threatened by road widening or maintenance activities. One of the two remaining individuals on Rota was nearly destroyed by a bulldozer in the Chenchon area. Also, wildfires on Guam and fires apparently set by deer poachers on Rota have increased in frequency during the past decade and are a significant threat to this species. In 1996, an intentionally set fire burned nearby sections of the Chenchon area, one of the two known locations of this species on Rota (E. Taisacan, pers. comm. 1998). Signs of feral pig are abundant in the Northwest Field of Andersen Air Force Base, and browsing and trampling are a potential threat to unfenced individuals on Guam (G. Hughes, per. comm. 1998). Finally, this species is threatened by vandalism from local residents who perceive rare species as a threat to development, as a *T. rotensis* tree on Rota was cut down and set on fire after its location was given to people planning a golf course in the area (Raulerson and Rhinehart 1997).

Previous Federal Action

Federal action on these plants began with the publication on February 28, 1996, of the Notice of Review (NOR) of Plant and Animal Taxa (61 FR 7596). In this document, *Nesogenes rotensis*, *Osmoxylon mariannense*, and *Tabernaemontana rotensis* were considered candidate species. These three species were, again, listed as candidate species in the September 19, 1997, NOR (62 FR 49398). Candidate species are those for which we have sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened species.

The processing of this proposed rule conforms with our Final Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority (Priority 3) is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority (Priority 4). The processing of this proposed rule is a Priority 3 action.

Summary of Factors Affecting the Species

The procedures for adding species to the Federal Lists are found in section 4 of the Act (16 U.S.C. 1531 *et seq.*) and the accompanying regulations (50 CFR part 424). A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section 4(a)(1). The primary threats facing the three species in this proposed rule are summarized in Table 1.

TABLE 1.—SUMMARY OF PRIMARY THREATS

Species	Feral animals	Fire	Mice/rats	Non-native plants	Invertabrates	Development/ road work	Typhoons/ storms	Collecting/ trampling by humans	Vandalism	Limited numbers
Nesogenes rotensis.	.....	.....	.....	.....	.....	Significant threat.	Significant threat.	Significant threat.	Potential threat.	Significant threat.[1]
Osmoxylon mariannense.	Potential threat.	.....	Potential threat.	Significant threat.	Potential threat.	Significant threat.	Significant threat.	.....	Potential threat.	Significant threat.[1] *
Tabernaemontana rotensis.	Potential threat.	Significant threat.	.....	Potential threat.	Potential threat	Significant threat.	Significant threat.	.....	Significant threat.	Significant threat.

*= No more than 25 individuals; 1 = No more than 1 population.

These factors and their application to *Nesogenes rotensis* Fosberg and Herbst, *Osmoxylon mariannense* (Kanehira) Fosberg & Sachet, and *Tabernaemontana rotensis* (Kanehira) Fosberg ex Stone are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Native vegetation on Guam and Rota has undergone extreme alteration because of past and present land use practices, including ranching, deliberate and unintentional alien animal and plant introductions, agricultural development, and military activities, including bombing, during World War II (Falanruw *et al.* 1989, Fosberg 1960). On Guam, land development and feral animals altered most of the island's native vegetation. Probably no more than 30 percent of Guam's land area is covered by native limestone and ravine forest; federally owned lands in northern Guam represent the largest contiguous forest areas.

Rota experienced extensive agricultural development by the Japanese prior to World War II, but was not invaded by allied forces during World War II. The absence of an invasion, combined with rugged topography, resulted in the persistence of stands of native forest. However, today, Rota retains less than 60 percent of its native forest (Falanruw *et al.* 1989). The continued loss of native forest is being exacerbated by the Agricultural Homestead Act of 1990, which allows for the distribution of 1-ha (2.5-ac) parcels of public land to eligible participants. Past land use plans have proposed approximately 45 percent of Rota should be designated private agricultural homestead land or as land likely to be converted to agricultural homesteads. Currently, about 324 ha (809 ac), or 4 percent of Rota, in the Chenchon area, where one of the two individuals of *Tabernaemontana rotensis* occurs, is being considered for future agricultural homesteads. This agricultural development, along with the completion of an 18-hole golf resort and plans for additional, large-scale development, continue to threaten the remaining limestone forest with fragmentation and degradation.

Throughout the Mariana Islands, goats, pigs, cattle, and deer have caused severe damage to forest vegetation by browsing on plants, causing erosion (Kessler 1997, Marshall *et al.* 1995), and retarding forest growth and regeneration (Lemke 1992). Thus, all of these islands retain only a fraction of their historical forested habitat, and this remaining habitat is threatened by the fragmentation and degradation associated with development of resorts, agricultural fields, and bulldozing for road maintenance and widening (D. Grout and L. Mehrhoff, pers. comms. 1997). For example, individuals of *Osmoxylon mariannense* and *Tabernaemontana rotensis* on Rota were almost destroyed during recent road-widening activities (D. Grout and L. Mehrhoff, pers. comms. 1997).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* At this time, overutilization is not known to be an important factor, but unrestricted scientific or horticultural collecting or excessive visits by individuals interested in seeing rare plants could seriously impact all three species, whose low numbers make them especially vulnerable to disturbances. In addition, the only known population of *Nesogenes rotensis*, located in a public park, is threatened with trampling by tourists and fishermen. Vandalism is also a threat to all three species, as evidenced by the destruction of a *Tabernaemontana rotensis* tree on Rota, which was hacked to the ground and set on fire after its location was given to people planning a golf course in the area (Raulerson and Rinehart 1997).

C. *Disease and predation.* No diseases or predators of these three species have been documented. However, an unidentified caterpillar was observed causing defoliation damage to one *Tabernaemontana rotensis* tree (L. Mehrhoff and C. Russell, Service, pers. comms. 1997), and individuals of *Osmoxylon mariannense* have reportedly suffered defoliation by an unknown agent (E. Taisacan, pers. comm. 1997). Although why *O. mariannense* is declining is unclear, invertebrate pests, rats, or disease are suspected, judging by the poor health of the leaves, the lack of seedlings or juveniles, and the fact that several of the previously mapped older individuals have died in recent years (D. Grout, pers. comm. 1997).

In the Hawaiian Islands, two rat species, the black rat (*Rattus rattus*) and the Polynesian rat (*R. exulans*), and to a lesser extent other introduced rodents such as the European house mouse (*Mus domesticus*), eat large, fleshy fruits and strip the bark of some native plants (Cuddihy and Stone 1990, Tomich 1986, Wagner *et al.* 1985). Introduced rats (*R. tanezumi* and *R. exulans*) or house mice (M. musculus) on Rota also may be a threat to *Osmoxylon mariannense* and *Tabernaemontana rotensis*, since no regeneration of these species has been observed (Earl Campbell, U.S. Geological Survey, Biological Resources Division, pers. comm. 1998).

Although no predation or trampling by ungulates has been documented, *Osmoxylon mariannense* and *Tabernaemontana rotensis* on both islands are potentially threatened by adverse effects from feral pigs and deer. Four of the *T. rotensis* trees on Guam are protected from ungulates inside Area 50, which is fenced, though whether the trees' occurrence in this location resulted from the exclusion of ungulates is not clear. However, three individuals of *T. rotensis* on Guam are not currently fenced and could be browsed or trampled by feral animals. On Rota, cooperative efforts between the Service and the Rota Division of Fish and Wildlife resulted in the construction of fenced exclosures around the two known *T. rotensis* trees and several individuals of *O. mariannense*.

D. *The inadequacy of existing regulatory mechanisms.* Currently, these species receive no formal protection from Federal, Government of Guam, or CNMI laws. While Government of Guam laws would prohibit the take of endangered species, the CNMI has no similar regulations to protect listed species, although they sometimes provide limited species protection to specific islands regardless of overall species distributions (*e.g.*, Mariana fruit bat). A Habitat Conservation Plan (HCP) for the island of Rota is now under development (Resources Northwest 1997) by the CNMI Government and local Rota residents with technical assistance from the U.S. Fish and Wildlife Service, Pacific Islands Office. Initiated largely for the conservation of the Mariana crow (*Corvus kubaryi*), most of the land that is under discussion for possible inclusion in conservation areas under the HCP is limestone forest, which may provide potential habitat for these three plant species. However, the HCP has not yet been submitted as part of an application for an Endangered Species Act section 10 permit, and we have not made any decision regarding whether it would meet statutory issuance criteria.

The Guam National Wildlife refuge overlay was established to develop and implement a long-term comprehensive program to conserve and restore endangered and threatened species and other native flora and fauna, consistent with the national defense mission of the Air Force. For example, some of the *Tabernaemontana rotensis* individuals occurring in the overlay refuge are within Area 50, a protected section of forest. However, as discussed in Factor C, other individuals of this species are not currently fenced and could be browsed or trampled by feral animals. In addition, while the Air Force consults with us on actions that may affect listed, proposed, and candidate species and their habitats, nothing in the cooperative agreements establishing the overlay refuge would prohibit the Air Force from carrying out its mission on such lands, consistent with applicable law. Therefore, military missions such as troop training actions that occur within habitat supporting candidate species (*e.g., T. rotensis*) could take precedence over conservation of candidate species.

E. *Other natural or manmade factors affecting its continued existence.* The combination of increased storm disturbance frequency and competition from alien species may be significantly altering the condition of habitat occupied by *Tabernaemontana rotensis* and *Osmoxylon mariannense*. Guam and Rota have a long history of disturbances by tropical typhoons (Weir 1991), and the native biota may be adapted to these events; however, in the past decade, frequent typhoons have severely impacted both islands. In addition, all three species are threatened by competition from one or more nonnative plant species. *Tabernaemontana rotensis* may be threatened by *Momordica charantia*, *Mikania scandens*, and *Passiflora suberosa*. *Nesogenes rotensis* is threatened by *Casuarina equisetifolia*, which is becoming established in the coastal strand habitat at Poña Point Fishing Cliff. *C. equisetifolia* will likely spread and may significantly change the coastal scrubland into a forest habitat with no understory plants or available sunlight. Destruction of the sabana forest canopy by typhoons in recent years has not only destroyed individual *O. mariannense* trees (Raulerson and Rinehart 1997), but has also altered subcanopy habitat conditions over the long term by opening up and drying out older, closed forest habitat (E. Taisacan, pers. comm. 1998). In opened forest areas, various opportunistic, weedy vines such as *M. charantia*, *M. scandens*, and *P. suberosa* cover the ground (Fosberg 1960; Guy Hughes, pers. comm. 1998) and may not provide the conditions for seed germination and seedling growth as is provided in closed-canopy, high-stature forests covered with mosses and various epiphytic species like orchids.

The small number of individuals of the three species covered by this proposed rule increases the potential for extinction from natural or human-caused random events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or whole populations. For example, a typhoon could cause the destruction of the remaining individuals of *Tabernaemontana rotensis* on the Guam Naval Magazine, or a storm surge could destroy the only remaining population of *Nesogenes rotensis*.

We have carefully assessed the best scientific and commercial information available on the past, present, and future threats facing these species in determining to propose this rule. Based on this evaluation, we propose to list *Nesogenes rotensis*, *Osmoxylon mariannense*, and *Tabernaemontana rotensis* as endangered. These three species are threatened by one or more of the following: habitat degradation or destruction by feral deer and pigs; competition for space, light, water, and nutrients with naturalized, introduced plant species; road construction and maintenance activities; recreational activities; natural disasters or random environmental events; fire; vandalism; development of agricultural homesteads, resorts, and golf courses; limited reproductive vigor; and potentially insect, mouse, or rat predation. *Osmoxylon mariannense* is known from 1 scattered population of approximately 20 individuals, while *Nesogenes rotensis* is known from 1 population of approximately 30 plants. Only around 30 adult *Tabernaemontana rotensis* trees are known from two

scattered populations on Guam and Rota. Small population size and limited distribution make these species particularly vulnerable to extinction from reduced reproductive vigor or random environmental events.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

"Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species.

We propose that critical habitat is prudent for *Nesogenes rotensis*, *Osmoxylon mariannense*, and *Tabernaemontana rotensis*. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that the designation of critical habitat for these species would be prudent.

Due to the small population sizes, the three species are vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, although we are aware of specific evidence of vandalism, we do not believe that the designation of critical habitat will increase the degree of threat. In addition, we have not found specific evidence of collection or trade of these species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to these species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if any benefits would result from critical habitat designation, then a prudent finding is warranted. In the case of these species, some benefits may result from designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in some instances section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also provide some educational or informational benefits. Therefore, we find that critical habitat is prudent for these three species.

However, we cannot propose critical habitat designations for these species at this time. Our Hawaiian field office, which would have the lead for such proposals, is in the process of complying with the court order in *Conservation Council for Hawaii* v. *Babbitt*, CIV NO. 97–00098 ACK (D. Haw. Mar. 9 and Aug. 10, 1998). In that case, the United States District Court for the District of Hawaii remanded to the Service its "not prudent" findings on critical habitat designation for 245 species of Hawaiian plants. The court ordered us not only to reconsider these findings, but also to designate critical habitat for any species for which we determine on remand that critical habitat designation is prudent. Proposed designations or nondesignations for 100 species are to be published by November 30, 2000. Proposed designations or nondesignations for the remaining 145 species are to be published by April 30, 2002. Final designations or nondesignations are to be published within 1 year of each proposal. Compliance with this court order is a huge undertaking involving critical habitat determinations for over one-fifth of all species that have ever been listed under the Endangered Species Act, and over one-third of all listed plant species. In addition, we have been ordered to include in this effort critical habitat designations for an additional 10 plants that are the subject of another lawsuit. See *Conservation Council for Hawaii* v. *Babbitt*, CIV. NO. 99–00283 HG. We cannot develop proposed critical habitat designations for these three plant species without significant disruption of the field office's intensive efforts to comply with these court orders.

To attempt to do so could also affect the listing program Region-wide. Administratively, the Service is divided into seven geographic regions. These three species are under the jurisdiction of Region 1, which includes California, Oregon, Washington, Idaho, Nevada, Hawaii, and other Pacific Islands. About one-half of all listed species occur in Region 1. Region 1 receives by far the largest share of listing funds of any Service region because it has the heaviest listing workload. Region 1 must also expend its listing resources to comply with existing court orders or settlement agreements. In fact, in the last fiscal year, all of the Region's funding allocation for critical habitat actions were expended to comply with court orders. If we were to immediately prepare proposed critical habitat designations for these 3 species notwithstanding the court order pertaining to 245 Hawaiian plant species, efforts to provide protection to many other species that are not yet listed would be delayed. While we believe there may be some benefits to designating critical habitat for these species, these benefits are significantly fewer in comparison to the benefits of listing a species under the Endangered Species Act because, as discussed above, the primary regulatory effect of critical habitat is limited to the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat.

As explained in detail in the Final Listing Priority Guidance for FY2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. Deferral of a proposal to designate critical habitat for these three species will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of these three Mariana Islands plants without further delay. Therefore, given the current workload in Region 1 and, particularly, the Hawaiian field office, we expect that we will be unable to develop a proposal to designate critical habitat for these three plants until FY2004.

We will make the final critical habitat determination with the final listing determination for these three species. If this final critical habitat determination is that critical habitat is prudent, we will develop a proposal to designate critical habitat for these species as soon as feasible, considering our workload priorities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agency actions that require conference and/or consultation as described in the preceding paragraph may include, but not be limited to: Army Corps of Engineers projects, such as the construction of roads, firebreaks and bridges; various U.S. armed forces activities on Guam, and possibly the northern Mariana Islands, such as combat and mobility training, and construction; Natural Resource Conservation Service projects; Federal Emergency Management Agency activities; and U.S. Department of Housing and Urban Development projects. Conservation of these plant species may be consistent with some ongoing operations at these sites; however, the proposed listing of these species in Guam and the CNMI could result in some restrictions on certain activities and the use of certain lands.

Listing *Nesogenes rotensis*, *Osmoxylon mariannense*, and *Tabernaemontana rotensis* provides for the development and implementation of a recovery plan for these species. These plans will bring together Federal, State, and regional agency efforts for conservation of the species. Recovery plans will establish a framework for agencies to coordinate their recovery efforts. The plans will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. They will also describe the site-specific management actions necessary to achieve conservation and survival of these species.

The Act and its implementing regulations, found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general prohibitions and exceptions that apply to all endangered plant species. Under these prohibitions, it is illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove any such species from areas under Federal jurisdiction. In addition, the Act prohibits the malicious damage or destruction of areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State/Commonwealth/Territory law or regulation, or in the course of a violation of State/Commonwealth/Territory criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few permits would ever be sought or issued because these three species are not common in cultivation or in the wild.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness as to the effects of the listing on future and ongoing activities within a species' range. Only one of these species, *Tabernaemontana rotensis*, has a population on Federal land under U.S. Air Force jurisdiction within the Guam National Wildlife Refuge. Collection, damage, or destruction of this species on Federal land is prohibited without a Federal permit. Such activities involving any of the three species on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of Government of Guam or CNMI laws or regulations. The Service is not aware of any trade in these species.

Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Pacific Islands Office (see **ADDRESSES** section). Requests for copies of the regulations for listed plants and inquiries about prohibitions and permits may be addressed to the Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503–231–2063; FAX 503–231–6243).

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Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and effective as possible. Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are requested. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and reasons why any habitat should or should not be designated as critical habitat;

(3) Additional information on the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final issuance of regulations for these three species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal. In accordance with interagency policy published on July 1, 1994 (59 FR 34270), upon publication of this proposed rule in the **Federal Register**, we will solicit expert reviews by at least three specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomic, biological, and ecological information for the three species. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts. We will summarize the opinions of these reviewers in the final decision document. The final determination may differ from this proposal based upon the information we receive.

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your requests to the Field Supervisor (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Electronic Access and Filing

You may send comments by e-mail to 3mplants_pr@fws.gov. Please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AG09" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Pacific Islands Office at phone number 808–541–3441.

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to the following: (1) Are the requirements of the rule clear? (2) Is the discussion of the rule in the Supplementary Information section of the preamble helpful to understanding the rule? (3) What else could we do to make the rule easier to understand?

National Environmental Policy Act

We have determined that preparation of an environmental assessment or environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, is not necessary when issuing regulations adopted under section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this decision in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion Office. (See **ADDRESSES** section.)

Author: The author of this proposed rule is Guy D. Hughes (see **ADDRESSES** section) (808/541–3441).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
•	•	•	•	•	•	•	•
Nesoqenes rotensis	None	Western Pacific Ocean—U.S.A. (Commonwealth of the Northern Mariana Islands).	Verbenaceae	E		NA	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
•	•	•	•	•	•	•	•
Osmoxylon mariannense.	None	Western Pacific Ocean—U.S.A. (Commonwealth of the Northern Mariana Islands).	Araliaceae	E		NA	NA
•	•	•	•	•	•	•	•
Tabernaemontana rotensis.	None	Western Pacific Ocean—U.S.A. (Commonwealth of the Northern Mariana Islands and Guam).	Apocynaceae	E		NA	NA
•	•	•	•	•	•	•	•

Dated: May 2, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–13707 Filed 5–31–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG04

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Buena Vista Lake Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Buena Vista Lake shrew, *Sorex ornatus relictus*, as endangered pursuant to the Endangered Species Act of 1973, as amended (Act). Prior to 1986, this subspecies had not been observed since it was first described in 1932. In 1986, three Buena Vista Lake shrews were observed at a permanent pond located within a former preserve, approximately 26 kilometers (km) (16 miles (mi)) south of Bakersfield, CA. No more than 38 individuals have been observed since they were rediscovered in 1986. The only known extant Buena Vista Lake shrew population is threatened primarily by agricultural activities, modifications and potential impacts to local hydrology, uncertainty of water delivery, possible toxic effects from selenium poisoning, and random naturally occurring events. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for the Buena Vista Lake shrew.

DATES: We must receive comments from all interested parties by July 31, 2000. Public hearing requests must be received by July 17, 2000.

ADDRESSES: Send your comments and materials concerning this proposal to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Rm W–2605, Sacramento, California 95825. Comments and materials received, as well as the supporting documentation used in preparing the rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dwight Harvey, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

The Buena Vista Lake shrew, *Sorex ornatus relictus*, is one of nine subspecies within the ornate shrew *Sorex ornatus* species complex known to occur in California (Hall 1981; Owen and Hoffmann 1983; Maldonado 1992). *Sorex ornatus* belongs to the order Insectivora and family Soricidae, subfamily Soricinae, and the tribe Soricini, with three subgenera (Owen and Hoffmann 1983; Junge and Hoffmann 1981).

Sorex ornatus relictus are primarily insectivorous mammals that are the approximate size of a mouse. They have a long snout, tiny bead-like eyes, ears that are concealed, or nearly concealed, by soft fur, and five toes on each foot (Ingles 1965; Burt and Grossenheider 1964). *Sorex ornatus relictus* are active day or night. When they are not sleeping, they are searching for food. These shrews eat more than their own weight each day (Burt and Grossenheider 1964) to withstand starvation and maintain their body weight at high rates of metabolism (McNab 1991). *Sorex ornatus relictus* can have an impact on surrounding plant communities by consuming large quantities of insects, slugs, and other invertebrates that can influence such things as plant succession and control the irruptions of pest insects (Maldonado 1992; Williams 1991). *Sorex ornatus relictus* also may be an important prey species for raptors, snakes, and carnivores (Maldonado 1992).

Grinnell (1932) was the first to describe *Sorex ornatus relictus*. According to Grinnell's description, the Buena Vista Lake shrew's back is predominantly black with a buffy-brown speckling pattern, its sides are more buffy-brown than the upper surface, and its underside is smoke-gray. The tail is faintly bicolor and blackens toward the end both above and below. The Buena Vista Lake shrew weighs approximately 4 grams (g) (0.14 ounces (oz)) (Kathy Freas, Stanford University, pers. comm. 1994) and has a total length ranging from 98 to 105 millimeters (mm) (3.85 to 4.13 inches (in.)) with a tail length of 35 to 39 mm (1.38 to 1.54 in.) (Grinnell 1932). The Buena Vista Lake shrew differs from its geographically closest subspecies, the ornate shrew *Sorex ornatus* spp. *ornatus*, by having darker, grayish-black coloration, rather than brown. In addition, *S. o.* ssp. *relictus* has a slightly larger body size; shorter tail; skull with a shorter, heavier rostrum; and a higher and more angular brain-case in dorsal view than *S. o.* ssp. *ornatus* (Grinnell 1932).

Ornate shrews, on the average, rarely live longer than 12 months, and evidence indicates that the normal

lifespan does not exceed 16 months (Rudd 1955). In montane woodlands, shrews have a well-defined reproductive season that lasts from mid-May through August (Williams 1991). They give birth to up to two litters per year containing four to six young. The number of litters depends on how early or late in the year the young are born and can become sexually active (Owen and Hoffmann 1983). The Buena Vista Lake shrew has a breeding season that begins in February or March, and may either extend later in the year, based on habitat quality and availability of water, or end with the onset of the dry season in May or June (Jesus Maldonado, University of California-Los Angeles, pers. comm. 1998).

The Buena Vista Lake shrew was originally described by Grinnell (1932) as a new subspecies, *Sorex ornatus relictus*, based on the type specimen and two other specimens collected around the old Buena Vista Lake bed. On October 21, 1909, a single specimen of *S. o.* ssp. *relictus* was collected at Buttonwillow, a town approximately 40 km (25 mi) northwest of Buena Vista Lake (Williams 1986; Doug Long, California Academy of Sciences, pers. comm. 1998). Grinnell (1932) noted evidence that integration between the subspecies *Sorex ornatus ornatus* and *S. o.* ssp. *relictus* occurred in areas of geographic overlap. This integration prompted Freas (1990) to question the legitimacy of the Buena Vista Lake shrew's status as a distinct subspecies. Currently, the entire *Sorex ornatus* complex (consisting of eight subspecies in California and one in Baja California) is undergoing additional genetic and morphological evaluation (J. Maldonado, pers. comm. 1998). Preliminary results from strictly morphological measurements for this group were equivocal throughout California. However, mitochondrial DNA and micro-satellite nuclear sequences and allozyme data have aided in determining subspecies ranges. From these data, researchers determined that the Buena Vista Lake shrew is a distinct subspecies from other S. ornatus subspecies; it is unlike any other sampled throughout the southern San Joaquin Valley (J. Maldonado, pers. comm. 1998).

Based on Grinnell's (1933) records in the Museum of Vertebrate Zoology at Berkeley (three museum specimens and related field notes), the distribution of the Buena Vista Lake shrew was historically limited to the marshlands of the southern San Joaquin Valley south from approximately where the waters of the Kings River divide toward the San Joaquin River and bed of Tulare Lake, with the animals living in the swampy margins of Kern, Buena Vista, Goose, and Tulare Lakes. However, by the time the shrew was discovered, Grinnell stated that the beds of these lakes were already dry and mostly cultivated with only sparse remnants of the original fauna (Grinnell 1932). Williams (1986) stated that nearly all of the valley floor in the Tulare Basin is cultivated and that most of the lakes and marshes had been drained and cultivated.

The Buena Vista Lake shrew was likely historically distributed in the marshlands of the San Joaquin Valley throughout most of the Tulare Basin (Grinnell 1933; U.S. Fish and Wildlife Service 1997). The Buena Vista Lake shrew occurs on property owned by the J.R. Boswell Company (Company), formerly known as the Kern Lake Preserve (Preserve), on the old Kern Lake bed, in Kern County, California (California Natural Diversity Data Base (CNDDB)1986). This property totals about 33.5 hectares (ha) (83 acres (ac)), and the only known viable population of Buena Vista Lake shrews inhabits a small 1.2-ha (3-ac) wetland area that exists there. Although the Preserve has remained relatively unchanged since the Buena Vista Lake shrew was detected at this site in 1986, the future management of the Preserve and the future existence of this subspecies is uncertain.

Water is a necessary component of the Buena Vista Lake shrew's environment. Moisture is required to support a diverse insect fauna, which is the primary food source needed to maintain the shrew's high metabolism. During surveys conducted on the Preserve in 1988 and 1990, Freas (1990) found a clear trend in preference of moderately moist (mesic) habitats over drier (xeric) habitats by the shrew, with 25 animals being captured in the mesic environments and none in xeric habitat. Maldonado (1992) also acknowledged this type of habitat preference, stating that the shrew is closely associated with dense, riparian understories that provide food, cover, and moisture.

The permanent pond where the subspecies occurs is located within the Preserve, called Gator Pond, which is not an artesian system. It is dry for many years, filling only when there is adequate flood runoff, or as in 1986, when the Company used the area for storage of excess water (The Nature Conservancy (TNC) *in litt.* 1986; Rick Hewett, TNC, *in litt.* 1987). The Rim Ditch forms the southern border of the Preserve, and another ditch was installed by the Company to convey irrigation flows to agricultural land north of the Rim Ditch. The land in and around the pond has a high (perched) water table because it is underlined with a natural hardpan soil layer that is somewhat impervious to water. In the past, this hardpan soil layer kept the area very wet and prevented it from being productively farmed. In 1982, the company installed a system of perforated tile line (drain pipes), which drains water from west to east under the Preserve, then northeast to the South Sump. Within 1 year, the perched water table began to subside, and the pond remained dry for the next 3 years (CNDDB 1986). As a result of the installation of the tile line, the areas northeast of the pond and southwest of the South Sump became arable allowing wheat and sorghum to be grown in these areas (TNC, *in litt.* 1986). The land west of the pond has never been farmed, but weeds are cleared off once a year. The land around the pond was disked annually until 1985, when TNC signed a lease and took over the management of the 33.5-ha (83-ac) Preserve. Only about 12 ha (30 ac) around the pond is now suitable habitat for the shrew (J. Maldonado, pers. comm. 1994).

All water that runs north from the Rim Ditch into the tile lines ends up in the South Sump. The water, referred to as tail water, is pumped back to the Rim Ditch. The Company agreed they could supply the excess tail water to the Preserve in the early fall for the TNC leased area. June through August are the critical irrigation months for the Company's cotton and alfalfa production. During that period, all available water is presumably used for these purposes. In 1986, the Company allowed TNC to install a separate pipe from the Rim Ditch directly to the pond as a way of providing water to this area. Three Buena Vista Lake shrew were discovered during the digging of a ditch for this pipe. (CNDDB 1986).

The Company originally supplied sufficient water to maintain the marshes on the Preserve. This water was sold to TNC through a lease agreement (Company, *in litt.* 1995). The Company committed to supplying water only during the years when quantities would be available in excess of that required for other corporate uses, primarily agriculture. Without this supplemental water supply, the remaining marshlands will dry up (J. Maldonado, pers. comm. 1994). In 1994, the Fish and Wildlife Service asked the Company to commit to a conservation agreement that would support the long-term maintenance of the Preserve and the survival of the Buena Vista Lake shrew, but the Company declined. (Edward Gierman, J.G. Boswell Company, *in litt.* 1995). TNC was concerned about the long-term health of the Preserve, but considered it a "non-defensible parcel" because the land surrounding the Preserve has been converted to cotton (Reed Tollefson, TNC, pers. comm. 1994). Water diverted away from the Preserve for agricultural purposes has caused a drop in the already shallow water table, thereby eliminating most of the habitat that historically supported the shrew (R. Hewett, *in litt.* 1987). TNC staff estimated that proper management of the Preserve would require 1.9–2.5 hectare-meters (15–20 acre-feet) of water per year (R. Tollefson, pers. comm. 1995). Without a reliable water source, TNC declined to renew the lease and terminated their arrangement with the Company to maintain the Preserve (Sabin Phelps, TNC, pers. comm. 1995).

Since the rediscovery of the Buena Vista Lake shrew at the Preserve, the subspecies has been found only three other times. In 1992, one shrew was found alive under a sprinkler cover, and another was found dead in a manager's residence at the Kern National Wildlife Refuge (Refuge), Kern County, California (Morgan Cook, Service, pers. comm. 1995). One additional shrew was found dead in 1994 within the same residence on the Refuge. This residence is currently the Refuge headquarters and is one of two buildings located on a 4-ha (10-ac) compound surrounded by lawns and trees (Jack Allen, Service, pers. comm. 1998). The Refuge is located approximately 80 km (50 mi) northwest of the Preserve (Joseph Engler, Service, *in litt.* 1994).

Water management practices at the Refuge have focused on waterfowl, and riparian habitat has not received adequate water over the years to maintain riparian diversity (J. Engler, *in litt.* 1994). If *Sorex ornatus relictus* still exists, it would probably be found around a 323-ha (800-ac) marsh unit located on the south side of the Refuge where emergent vegetation, such as willows and cottonwoods exist. The marsh unit also remains moist longer than most other marshes on the Refuge (J. Allen, pers. comm. 1998). The constant lawn, shrub, and tree watering and the ponds at the Refuge headquarters may be sufficient to maintain any potential shrew populations (J. Engler, *in litt.* 1994).

Recent genetic data have confirmed that the shrews found at the Refuge were Buena Vista Lake shrews (J. Maldonado, pers. comm. 1998). No additional Buena Vista Lake shrews, nor any other shrew species, have been found at the Refuge.

The elimination of most of the riparian vegetation with associated marsh habitat that once occurred in the southern San Joaquin Valley has drastically reduced the amount of suitable habitat available to the shrew, and may have restricted the animal to the Preserve. Rapid agricultural, urban, and energy developments since the early 1900s have severely reduced and fragmented native habitats. Historically, the Tulare Basin, including the former Tulare, Buena Vista, Goose, and Kern Lakes with their respective overflow marshes, provided 19 percent of the Tulare Basin valley floor habitat (Werschkull *et al.* 1992). Around the turn of the 20th century, the Tulare Basin had 104,890 ha (259,189 ac) of valley fresh water marsh, 177,005 ha (437,388 ac) of valley mixed riparian forests, and 105,333 ha (260,283 ac) of valley sink scrub, making a total of 387,229 ha (956,860 ac) of potentially suitable Buena Vista Lake shrew habitat. By the early 1980s, the combined total had been reduced to 19,019 ha (46,996 ac), less than 5 percent of the original habitat (Werschkull *et al.* 1992). As of 1995, intensive irrigated agriculture comprised 1,239,961 ha (3,064,000 ac) or about 96 percent of the total lands within the Tulare Basin. Cotton, grapes, and alfalfa represented the top three crops (California Department of Water Resources (DWR) 1998).

All of the natural plant communities in the Tulare Basin have been affected by the transformation of this area to production of food, fiber, and fuel at the expense of the natural biological diversity (Spiegel and Anderson 1992; Griggs *et al.* 1992). As more canals were built, and more water was diverted for irrigation of the floodplains of the major rivers of the southern San Joaquin Valley, less water was available to keep the riparian forests alive, and less water reached the lakes. By the early 1930s, the former Tulare, Buena Vista, Goose, and Kern Lakes were virtually dry and open for cultivation (Griggs 1992).

Irrigation, combined with subsurface drainage, have caused naturally occurring selenium to be leached from agricultural soils in the San Joaquin Valley. Elevated concentrations of selenium are believed to have caused major wildlife mortalities in places like the Kesterson National Wildlife Refuge (Kesterson) (Moore *et al.* 1989). The leaching of selenium has increased in recent times due to the increased supply of irrigation water for the cultivation of crops in the Tulare Basin. In 1984, elevated selenium levels in the blood and liver were measured in several small and large mammals from Kesterson (Clark 1987; Clark *et al.* 1989). Ornate shrews captured around Kesterson showed selenium concentrations (parts per million (ppm) dry weight) 3 to 25 times greater than those found for any other small mammal at the same site (Clark 1987). As with other forms of wildlife, selenium toxicity represents a serious threat to the continued existence of the Buena Vista Lake shrew.

Previous Federal Action

The September 18, 1985, Notice of Review (50 FR 37958), included the Buena Vista Lake shrew as a category 2 candidate species for possible future listing as threatened or endangered. Category 2 candidates were those taxa for which listing as threatened or endangered might be warranted, but for which adequate data on biological vulnerability and threats were not available to support issuance of listing proposals.

We received a petition dated April 18, 1988, from Ms. Doris Dixon of The Interfaith Council for the Protection of Animals and Nature to list the Buena Vista Lake shrew and three additional shrew species as endangered species. We determined that the petition presented substantial information indicating that the requested action may be warranted. We announced this finding in the **Federal Register** on December 30, 1988 (53 FR 53030). The Buena Vista Lake shrew remained a category 2 candidate in the January 6, 1989, Notice of Review (54 FR 554). In the November 21, 1991, Notice of Review (56 FR 58804), the Buena Vista Lake shrew was elevated to category 1 status based on new information received by us. Category 1 taxa were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal.

The processing of this proposed rule conforms with our listing priority guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). This guidance clarifies the order in which we will process future rulemakings. The highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). The second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. The third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. This proposed rule ranks as a Priority 3 action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1533 *et seq.*), and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife. A species may be determined to be endangered or threatened based on one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Buena Vista Lake shrew, *Sorex ornatus relictus*, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The amount of suitable habitat for the Buena Vista Lake shrew has been significantly reduced over time due to the systematic drainage of land and shallow lakes for the purpose of agricultural crop production. As a result, over 95 percent of the riparian vegetation and associated marsh habitat of the southern San Joaquin Valley has been eliminated. The Buena Vista Lake shrew appears to be restricted to the Preserve location.

Clark *et al.* (1982) were unsuccessful in capturing any Buena Vista Lake shrews in suitable habitat found on TNC's Paine Wildflower Preserve or at the Voice of America site west of Delano. The Paine Wildflower Preserve is about 13 km (8 mi) south of the Kern National Wildlife Refuge and 72 km (45 mi) northwest of the Preserve. The Voice of America site is located 40 km (25 mi) due east of the Kern Refuge and 80 km (50 mi) north of the Preserve. No Buena Vista Lake shrews were found after conducting surveys for small mammals along the Kern River Parkway in 1987 (Beedy *et al.* 1992). This area supports 68 ha (168 ac) of riparian woodlands, as well as 9 ha (22 ac) of freshwater marshes, and it is located 30 km (19 mi) due north of the Preserve. In 1991, surveys were conducted in suitable habitat on the Tule Elk State Reserve, 32 km (20 mi) northwest of the Preserve. No shrews were captured in these surveys (Maldonado 1992). In a 1995 survey at the Preserve, a total of 10 individuals were trapped (Maldonado 1998).

The only known remaining population of Buena Vista Lake shrews exists on the Preserve. Water delivery to maintain the Preserve and support the Buena Vista Lake shrew habitat cannot be assured because the natural water table has been lowered by past and present agricultural practices on and around the Preserve. Despite available water supplies, the Company supplies water to the Preserve only during years of high runoff, at times when excess water is available at the end of the growing season, and after commercial crop needs are met. This process occurs through an informal agreement between the Company and the lease holder of the property. Without a dependable water supply of approximately 1.9–2.5 hectare-meters (15–20 acre-feet) required to maintain the Preserve's marshes, the continued existence of the Buena Vista Lake shrew is unlikely.

Other remnant patches of suitable habitat that might support the Buena Vista Lake shrew include areas within the Buena Vista Lake Aquatic Recreation Area, the Buena Vista Golf Course, and along the Buena Vista Slough, Goose Lake Slough, and the Kern River west of Bakersfield, CA (Maldonado 1994; J. Maldonado, pers. comm. 1998; U.S. Fish and Wildlife Service 1997). Additional areas of suitable moist locations that might provide remnant shrew habitat occur within the Pixley National Wildlife Refuge west of the former Tulare Lake bed, as well as around the former Goose Lake bed. However, small habitat patches within these areas are marginal at best and would not likely support a significant number of animals (J. Maldonado, pers. comm. 1998). In addition, these areas represent highly disjunct and fragmented habitat that may not be reconnected in the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The subspecies has no known commercial or recreational value. The only known extant population of the Buena Vista Lake shrew is on private property.

C. Disease or Predation

Although there are no documented cases of disease related to Buena Vista Lake shrews, the possibility of disease and associated threats exists. The small population size and restricted distribution increases their vulnerability to epidemic diseases. Buena Vista Lake shrews, like most small mammals, are host to numerous internal and external parasites, such as round worms, mites, ticks, and fleas, that may infest individuals and local populations in varying degrees with varying adverse effects (J. Maldonado, pers. comm. 1998). However, the significance of the threat of disease and parasites to the Buena Vista Lake shrew is not known.

Most carnivores of the Tulare Basin, such as coyotes, foxes, weasels, raccoons, feral cats and dogs, as well as certain avian predators such as hawks, owls, herons, jays and egrets, are all known predators of small mammals (Ingles 1965; J. Maldonado, pers. comm. 1998).

D. The Inadequacy of Existing Regulatory Mechanisms

The primary cause of decline of the Buena Vista Lake shrew is the loss and fragmentation of habitat due to human activities. Federal, State, and local laws have not been adequate in preventing destruction of the limited Buena Vista Lake shrew habitat.

Under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, including wetlands. Section 404 regulations require applicants to obtain a permit for projects that involve the discharge of fill material into waters of the United States. However, many farming activities do not require a permit due to their exemption under the Clean Water Act (53 FR 20764; R. Wayland III, Environmental Protection Agency (EPA), *in litt.* 1996). Projects that are subject to regulation may qualify for authorization to place fill material into headwaters and isolated waters, including wetlands, under several nationwide permits. Moreover, these projects can normally be permitted with minimal environmental review by the Corps. An individual permit may be required by the Corps if a project otherwise qualifying under a nationwide permit would have greater than minimal adverse environmental impacts. No activity that is likely to jeopardize the continued existence of a threatened or endangered species, or that is likely to destroy or adversely modify the critical habitat of such species, is authorized under any nationwide permit.

However, the Corps typically confines its evaluation of impacts only to those areas under its jurisdiction (*i.e.*, wetlands and other waters of the United States). Impacts to uplands and mitigation for upland habitat losses are not typically addressed by the Corps unless such actions affect a listed species. More importantly, the termination of water sales to the Preserve does not fall under Corps jurisdiction. The lack of a guaranteed water supply is one of the major reasons TNC determined that the habitat on the Preserve could not remain viable and led to TNC's refusal to renew the lease and manage the Preserve (S. Phelps, pers. comm. 1995).

The California Environmental Quality Act (CEQA) (Public Resources Code § 21000–21177) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over a project is designated as the lead agency and, therefore, is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines, as amended, requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA § 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed endangered species and/or their habitat. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

As stated previously, selenium toxicity represents a serious threat to the continued existence of the Buena Vista Lake shrew. No cases of widespread selenium poisoning (selenosis) among native mammals in nature have been well documented. The lowest dietary threshold for mammalian toxicity was 1.4 parts per million (ppm) (dry weight) as associated with sublethal effects from lifetime exposure in rats (Eisler 1985). Longevity was reduced at 3 ppm in the lifetime diet. Olson (1986) reports a minimum dietary exposure associated with reproductive selenosis in rats of 3 ppm. Although stomach content data for the Buena Vista Lake shrew is lacking, aquatic insects such as brine flies *Diptera ephydridae*, damselflies *Odonata zygoptera*, and midge flies *Diptera chironomidae*, have been found in the stomachs of other shrew species (Churchfield 1991), and could be a dietary source for the highly insectivorous Buena Vista Lake shrew. Selenium concentrations have been measured in the above species of flies collected at agricultural drainage evaporation ponds throughout the Tulare Basin (Moore *et al.* 1989). Concentrations of selenium have been measured from 1.4 to 26.9 ppm (dry weight) in these flies from six evaporation ponds located a few miles west of the Preserve to the northern border of the Kern National Wildlife Refuge (Moore *et al.* 1989). The potential dietary selenium concentration levels are well within the known range that is toxic to small mammals (Olsen 1986), and could potentially adversely affect the Buena Vista Lake shrew. Such effects could include, but may not be limited to, reduced reproductive output or premature death (Eisler 1985).

Some of the highest selenium levels (greater than 200 parts per billion) have been measured from ground water throughout the historic range of the Buena Vista Lake shrew within the Tulare Basin, and specifically, in evaporation ponds within the agricultural lands immediately surrounding the only known population of shrews at the Preserve (DWR 1997). The increased supply of imported water and little or no exported drain water has resulted in the raising of the ground water table throughout the Tulare Basin (DWR 1997). Water table levels have been measured at 1.5 to 3 m (5 to 10 ft) beneath the Preserve and have steadily moved upwards since 1988 (DWR 1997). As selenium and other dissolved salts move upward with the elevated water table (perched water table), the surface vegetation takes up selenium with the water via root transpiration and enters the food chain of the shrew by becoming concentrated in insects that forage on the vegetation or reside in aquifers that concentrate these salts (Saiki and Lowe 1987; Moore *et al.* 1989).

Due to the hardpan soil layer beneath the Preserve, the water table is high and frequently floods despite the installation of tile drains. In dry years, the water supply is controlled by a single ditch or small pipe. These unpredictable variables limit the maintenance of suitable moist habitat for this population of Buena Vista Lake shrews. These conditions restrict alternative land management practices for shrews on the Preserve in the event of drought, flooding, harsh winter conditions, or human-induced environmental impacts.

The only known population of Buena Vista Lake shrews is vulnerable to the risks associated with small, restricted populations. Impacts to species populations that can lead to extinction include the loss or alteration of essential elements, such as habitat or food, the introduction of limiting factors into the environment, such as poison or predators, and catastrophic random changes or environmental perturbations, such as floods, droughts, or disease (Gilpin and Soulé 1986). Many extinctions are the result of a severe reduction of population size by some deterministic event, followed by a random natural event that extirpates the species. The smaller a population is, the greater its vulnerability to such perturbations (Terbough and Winter 1980; Gilpin and Soulé 1986; Shaffer 1987). The elements of risk that are amplified in very small populations include: (1) The impact of high death rates or low birth rates; (2) the effects of genetic drift (random fluctuations in gene frequencies) and inbreeding; and (3) deterioration in environmental quality (Gilpin and Soulé 1986). When the number of individuals in the sole population of a species or subspecies is sufficiently low, the effects of inbreeding may result in the expression of deleterious genes in the population (Gilpin 1987). Deleterious genes reduce individual fitness in various ways, most typically by decreasing survivorship of young. Genetic drift in small populations decreases genetic variation due to random changes in gene frequency from one generation to the next. This reduction of variability within a population limits the ability of that population to adapt to environmental changes.

One scenario where loss of habitat may lead to extinction is when the species is a local endemic (because of its isolation and restricted range) (Gilpin and Soulé 1986). The Buena Vista Lake shrew is a limited local endemic subspecies (Williams and Kilburn 1992), which has never been found to be locally abundant, and lives in very restricted areas of marshy wetland habitat (Bradford 1992). Because the sole population is small (only 10 known individuals as of 1995) and occurs in a single small location (12 ha (30 ac)), the Buena Vista Lake shrew is extremely vulnerable to natural or human-caused environmental impacts. No known viable populations of Buena Vista Lake shrews exist outside the former Kern Lake Preserve for recolonization if a catastrophic event were to occur at this site. While the subspecies still occurs within its limited range, whether the population is declining, how habitat conditions may be affecting the population, or how small population size may be affecting genetic and behavioral stability is unknown. Based on the vulnerability of this small population in its limited range and the extremely limited potential for suitable habitat outside this range, we believe that threats to currently occupied or potential habitat and individuals put this subspecies at a high risk for extinction.

In developing this proposed rule, we have carefully assessed the best

scientific and commercial information available regarding the past, present, and future threats facing this subspecies. The Buena Vista Lake shrew is threatened primarily by agricultural activities, modifications and potential impacts to local hydrology, uncertainty of water delivery to the Preserve, possible toxic effects from selenium poisoning, and by random naturally occurring events. Only one known population exists, and any decrease in its numbers could result in decreased genetic variability. Because of the high potential that these threats, if realized, will result in the extinction of the Buena Vista Lake shrew, the preferred action is to list the subspecies as endangered. Not listing the subspecies or listing it as threatened would not provide adequate protection and would not be consistent with the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

We propose that critical habitat is prudent for *Sorex ornatus relictus*. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat would be prudent for *Sorex ornatus relictus*.

In the absence of a finding that critical habitat would increase threats to a species, if any benefits would result from critical habitat designation, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in some instances, section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also provide some educational or informational benefits. Therefore, we find that critical habitat is prudent for the Buena Vista Lake shrew.

As explained in detail in the Final Listing Priority Guidance for FY 2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. Deferral of the critical habitat designation for the Buena Vista Lake shrew will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the Buena Vista Lake shrew without further delay. We will make the final critical habitat determination with the final listing determination for the shrew. If this final critical habitat determination is that critical habitat designation is prudent, we will develop a proposal to designate critical habitat for the Buena Vista Lake shrew as soon as feasible, considering our workload priorities.

Available Conservation Measures

Conservation measures provided for species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified in 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include the U.S. Army Corps of Engineers and their authorization of projects such as the construction of drainage diversions, roads, bridges, and dredging projects subject to section 404 of the Clean Water Act.

The Buena Vista Lake shrew has been included as a candidate species in the Recovery Plan for Upland Species of the San Joaquin Valley of California (Recovery Plan) (U.S. Fish and Wildlife Service 1998). Historically, the Buena Vista Lake shrew was most common in wetland habitat, and all of its extant and potential habitat is included within the habitats of the listed species that use alkali sink and associated communities. Because the subspecies is not federally listed as endangered or threatened, the recovery actions are identified as conservation actions and are designed to ensure long-term conservation. The recovery actions include additional surveys in areas of potentially suitable

habitat, habitat restoration and creation on private as well as public lands, and study of the feasibility of reintroduction at the Tule Elk State Reserve near Tupman, California. Also identified as needed conservation actions are population genetic studies, as well as the continuous monitoring of the only known viable population at the Preserve.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may also be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272) our policy, to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within a species' range.

We believe that, based on the best available information, the following actions will not likely result in a violation of section 9, provided these actions are carried out in accordance with any existing regulations and permit requirements:

(1) Actions that may affect the Buena Vista Lake shrew that are authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with a biological opinion issued by us pursuant to section 7 of the Act; and

(2) Actions that may affect the Buena Vista Lake shrew when the action is a part of an approved habitat conservation plan and conducted in accordance with an incidental take permit issued by us pursuant to section 10(a)(1)(B) of the Act.

Activities that we believe could likely result in a violation of section 9 include, but are not limited to:

(1) Actions not authorized under section 7 or 10 of the Act that lead to the destruction or alteration of occupied Buena Vista Lake shrew habitat through the discharge of fill material, draining, ditching, tiling, pond construction, rock removal, stream channelization, or diversion of ground water flow into or out of riparian habitat of this subspecies that are associated with activities such as the construction or installation of roads, impoundments, discharge or drain pipes, and storm water detention basins;

(2) Burning, cutting, or mowing of riparian vegetation that results in death of injury to Buena Vista Lake shrews or that results in degradation of their occupied habitat;

(3) Application of pesticides that results in death of or injury to Buena Vista Lake shrews; and

(4) Discharging or dumping toxic chemicals or other pollutants (such as sewage, oil, or gasoline) that results in death of or injury to Buena Vista Lake shrews.

Direct your questions regarding whether specific activities may constitute a violation of section 9 to the Field Supervisor of the Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed wildlife and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. We will follow our current peer review policy (59 FR 34270) in the processing of this rule. Comments are sought particularly concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the Buena Vista Lake shrew;

(2) The location of any additional populations of this subspecies and habitat association (including specific vegetation and soil type), and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size and genetics of this subspecies;

(4) Current or planned activities in the subject area and their possible impacts on this subspecies; and

(5) Additional relevant information concerning the life-history, habits, and dispersal of this subspecies.

A final determination for this subspecies will take into consideration the comments and any additional information received by us. Such communications may lead to a final determination that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined in the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.21 and 17.22.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Fish

and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Dwight Harvey, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulations Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 6 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
.	.	.	.	.	.	.	.
Shrew, Buena Vista Lake.	*Sorex ornatus relictus.*	U.S.A. (CA)	Entire	E	699	NA	NA
.	.	.	.	.	.	.	.

Dated: May 16, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–13706 Filed 5–31–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000511131–0131–01; I.D. 021500A]

RIN 0648–AM75

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Amendment 12

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement Amendment 12 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 12). This rule would extend the current moratorium on the issuance of commercial vessel permits for king mackerel through October 15, 2005. The intended effects of this proposed rule are to prevent speculative entry into the fishery and provide stability in the fishery.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on July 3, 2000.

ADDRESSES: Written comments on the proposed rule must be sent to Dr. Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of Amendment 12, which includes an environmental assessment and a regulatory impact review (RIR), may be obtained from the Gulf of Mexico Fishery Management Council, Suite 1000, 3018 U.S. Highway 301 North, Tampa, FL 33619; telephone: 813–228–2815; fax: 813–225–7015; e-mail: Gulf.Council@noaa.gov; or from the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; e-mail: Safmc@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter; telephone: 727–570–5305; fax: 727–570–5583; e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared jointly by the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council (Councils), approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Amendment 8 to the FMP, implemented in March 1998 (63 FR 10561, March 4, 1998), established a moratorium on commercial king mackerel permits through October 15, 2000. To obtain a king mackerel permit under the moratorium, a vessel owner must have owned a vessel with a commercial vessel permit for king mackerel on or before October 16, 1995, the control date for the king mackerel fishery (60 FR 53576, October 16, 1995). The intent of the moratorium is to prevent further increases in effort, to stabilize the economic performance of current participants, and possibly to reduce the number of permittees in the king mackerel fishery. The Councils noted that the number of commercial vessel permits for mackerel had increased from 1,280 to 2,754 between the 1987–88 and 1997–98 fishing years. As of March 25, 1999, the number of king and Spanish mackerel permits has declined to 2,109.

Under section 303(d)(1)(A) of the Magnuson-Stevens Act, the Councils are precluded from submitting to NMFS, prior to October 1, 2000, an individual fishing quota (IFQ) program or an individual transferable quota (ITQ) program for agency review, approval, and implementation. The Gulf Council's development of Amendment 8 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, which was to establish a limited entry program for the commercial red snapper fishery in the Gulf (i.e., an ITQ system), required more than one year to complete. Based on this experience, the Councils have concluded that there would be insufficient time to develop a limited access program for the commercial king mackerel fishery prior to the expiration of the current moratorium.

Currently, the commercial king mackerel fisheries of both the South Atlantic and Gulf of Mexico are valued at approximately $7 million annually and are subject to closures when the quotas are filled. For the western Gulf zone, the fishery is open for approximately 6 weeks, beginning on July 1 of each year. For the eastern Gulf zone, the Florida west coast gillnet fishery closes in a matter of days after the fishery begins in January; the Florida west coast hook-and-line fishery for Gulf group king mackerel has usually closed in February or March, after a July 1 opening. The Florida east coast fishery for Gulf group king mackerel has usually closed in March after a November 1 opening; and the commercial hook-and-line fishery for Atlantic group king mackerel has reached its quota in two of the last 3 years. These annual closures indicate that fleet size and fishery effort are still excessive to harvest the allowable quotas.

The Atlantic stocks of king mackerel have rebounded from an overfished status and are no longer considered overfished and overfishing is not occurring. This upturn in status is the result of recent restrictions on fishing effort (i.e., adjustment of size, bag, and trip limits; the prohibition of net gear in Florida state waters; and the imposition of a moratorium on the number of permits issued in the fishery.) In response to the current status of the Atlantic king mackerel stock the South Atlantic Council has recommended a modest quota increase for this group, giving fishers the opportunity to harvest more fish and realize an increased economic benefit. This increase in quota is within the range recommended by the Mackerel Stock Assessment Panel and the Scientific and Statistical Committee. Such a relaxation of restrictions on the harvest, and thus the insurance of the increased availability of long term benefits for users, can be achieved by maintaining other measures currently in place.

Both the Gulf and South Atlantic Councils agree that allowing the moratorium to expire would result in an increased number of participants in these mackerel fisheries, most likely negating any reductions in effort that have been achieved as a result of the current moratorium. Any increase in participants would: Exacerbate the current derby fisheries that occur in the western Gulf zone and in the Florida west coast gillnet fishery, lead to even earlier closures, probably result in closures of the Atlantic group king mackerel fishery, and have an impact on the economic performance of the current participants. Increased participation would also compound the complexity of the Council's future actions to develop a controlled access system for this fishery. For example, new entrants may lose a good part of their new investments if the future assignment of fishing privileges is weighted more toward historical rather than current participation.

The Councils concluded that an extension of the existing moratorium on the issuance of commercial vessel permits for king mackerel is necessary to avoid these negative impacts and to provide adequate time for the Councils to evaluate and develop an alternative limited access or limited entry program. Therefore, this proposed rule would extend the expiration date of the existing moratorium from October 16, 2000, through October 15, 2005, or to the date of implementation of a license limitation, limited access, and/or IFQ or ITQ program that replaces the moratorium, whichever occurs first.

Changes Proposed by NMFS

To simplify the regulations, NMFS proposes to delete language in § 622.4 regarding implementation of the original moratorium on issuance of commercial vessel permits for king mackerel that is no longer pertinent.

Consistent with a recent change of the name of Dade County, FL, to Miami-Dade County, FL, NMFS proposes to revise all references to Dade County, FL, to read Miami-Dade County, FL, throughout 50 CFR part 622.

Classification

At this time, NMFS has not determined that the amendment this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 12.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule includes collection-of-information requirements that are subject to the PRA. The first collection-of-information pertains to applications for commercial vessel permits. That collection is currently approved under OMB Control No. 0648–0205 and its public reporting burden is estimated at 20 minutes per response. The second collection-of-information pertains to fishing records of vessels permitted in the commercial king or Spanish mackerel fisheries. That collection is currently approved under OMB Control No. 0648–0016 and its public reporting burden is estimated at 15 minutes per response. These burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule contains a single provision to extend the commercial king mackerel permit moratorium from its current expiration date of October 15, 2000, to October 15, 2005, or until replaced with a license limitation, limited access, and/or individual fishing quota or individual transferable quota system, whichever occurs earlier. The action covers both the Gulf of Mexico and South Atlantic Federal waters. The moratorium on new permits was first instituted in March 1998 and will expire on October 15, 2000. There is a need to extend the current moratorium on new permits because progress toward designing and implementing the intended limited access system has not been as rapid as originally envisioned. Comprehensive limited access systems are difficult to develop and implement; at this point, there is insufficient

time to institute a new limited access system for the king mackerel fishery by October 15, 2000. Hence, the current action is being proposed to provide the Councils with additional time to develop a new limited access system and to ensure that the current permit moratorium does not lapse before they have completed this task.

The entities that could be affected by changes in the current system governing the ability of individual firms to engage in the lawful harvest of king mackerel in the Gulf of Mexico and the South Atlantic consist of those firms holding commercial harvest permits. There are currently about 2,100 commercial permit holders and all could be potentially affected by the proposed action. Also, all the firms holding the permits qualify as small business entities per the definition used by the Small Business Administration. Hence, a substantial number of small business entities could be affected by the action.

The concept of status quo has a somewhat unusual context in terms of this particular proposed action. Specifically, the status quo (taking no action) means that the current permit moratorium would expire, the fishery would revert to open access, and the number of permitted fishermen would likely increase. Conversely, under the proposed action, the permit moratorium, which has existed since 1998, would remain in effect until replaced by a new limited access system.

If the status quo alternative (let the current permit moratorium expire) is taken, then there would be a number of economic effects related to a reversion of the fishery to open access. For example, given that there were over 2,600 permitted entities based on the original control date for the fishery, and about 2,100 currently, it is obvious that additional vessel owners would apply for and receive permits if the moratorium is lifted. While some of these new entrants would likely obtain a permit with the intention of only establishing fishing rights in the king mackerel fishery and would not actively participate in the fishery, other new entrants would likely participate in the fishery for one or more reasons. Some new entrants might land a minimum quantity of king mackerel on the basis that having a permit, in combination with a history of at least some level of landings, would further enhance their claim to future fishery participation rights. Other new entrants would likely become active participants in the fishery. This is probable based on the fact that a number of permit transfers occur each year, and a market has developed for these transferable king mackerel permits. The price range associated with an existing permit is not known, but permits for other species in the Gulf of Mexico and South Atlantic are known to be valued at several thousand dollars. With the moratorium lifted, new entry would be possible by paying only the administrative permit fee, currently $50 for a new permit or $20 for a king mackerel endorsement to an existing permit for another species. The value conferred on current permits by the moratorium will be lost.

It is noted that at the present time under the permit moratorium, the entity giving up a permit by transfer must exit the fishery, and current exit behavior is clearly influenced by a number of factors, including the current value of a permit. Recently available logbook data for this fishery indicates that some of the current participants do not land a large amount of king mackerel on an annual basis. These are the participants who are most likely to sell their existing permits to new entrants under the continuing condition of a permit moratorium. The reasoning is that the expected net present value of their profits (net revenues) derived from their small catches are exceeded by the current market value of their king mackerel permit. As such, the permit moratorium has resulted in a reduction in the number of permits in the king mackerel fishery.

New entrants in the king mackerel fisheries will not necessarily result in a large overall increase in catch. This is because the commercial king mackerel fishery operates under an annual quota that is enforced through fishery closures. The quota for the Gulf of Mexico fishery has typically been met each year. Although not met in recent years, the quota for the South Atlantic fishery historically has been met. However, even if the new entrants do not result in a significant increase in overall landings, an increase in the rate at which king mackerel is harvested should result, particularly in the Gulf of Mexico fishery. This scenario would exacerbate the existing derby fishery in the Gulf and would tend to lead to lower overall exvessel prices because the quota would be landed in a shorter period of time.

In summary, maintaining the status quo and thereby allowing the permit moratorium to expire would result in an increase in the number of permits, a possible increase in the annual catch, a likely decrease in exvessel prices, and a loss of the existing transfer value of existing permits. The result would be a negative economic impact on all the current permit holders, including those permit holders who might otherwise be expected to sell their permits and exit the fishery under the current system. There would also be positive impacts for at least some of the new entrants because they could obtain a permit for $20 to $50 instead of paying the existing higher market price for a permit. Some of these new entrants would be expected to participate in the fishery at a significant and profitable level. In addition to these rather straightforward impacts on current and potential new entrants, the increase in the rate at which king mackerel are harvested, especially in the Gulf where a restrictive quota pertains, would intensify the existing derby fishery and the attendant loss in economic benefits typically associated with such fisheries. Reverting to an open access fishery also means that the Councils would once again have to undertake the preliminary steps necessary to establish a comprehensive limited access system. It is likely that repeating these steps would have additional negative economic impacts on at least some of those participants who are currently permitted. For example, they may have to reestablish a fishing history or take other actions necessary to continue fishing under any new limited access system.

The overall conclusion is that if the status quo alternative was chosen and the permit moratorium allowed to expire on October 15, 2000, there would be a number of negative impacts on existing participants in the king mackerel fishery in Federal waters of the Gulf of Mexico and South Atlantic. While there would likely be some positive economic impacts for a portion of any new entrants, the negative impacts of the status quo action are expected to exceed the positive impacts. An increased number of king mackerel permits would likely create a derby fishery, particularly in the Gulf where current annual quotas constrain harvests. Taking action to extend the current permit moratorium means that the likely negative economic impacts of the status quo alternative will not occur. In other words, the proposed action of extending the permit moratorium until October 15, 2005, should forestall adverse economic changes and impacts associated with the status quo scenario of letting the moratorium expire. For these reasons, it follows that the proposed action will not result in a significant economic impact on a substantial number of small business entities.

As a result, a regulatory flexibility analysis was not required. A copy of the RIR is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 24, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.4, the last two sentences of paragraph (a)(2)(iii), the last sentence of paragraph (a)(2)(iv), and paragraph (q) are revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(iii) * * * To obtain or renew a commercial vessel permit for king mackerel, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application. See paragraph (q) of this section regarding a moratorium on commercial vessel permits for king mackerel, transfers of permits during the moratorium, and limited exceptions to the earned income or gross sales requirement for a permit.

(iv) * * * To obtain or renew a commercial vessel permit for Spanish mackerel, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application.

* * * * *

(q) *Moratorium on commercial vessel permits for king mackerel.* This paragraph (q) is effective through October 15, 2005.

(1) NMFS will not accept applications for additional commercial vessel permits for king mackerel. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (q)(2) through (q)(5) of this section, and are subject to the requirement for timely renewal in paragraph (q)(6) of this section.

(2) An owner of a permitted vessel may transfer a commercial vessel permit for king mackerel to another vessel owned by the same entity.

(3) An owner whose percentage of earned income or gross sales qualified him/her for a commercial vessel permit for king mackerel may request that NMFS transfer that permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. NMFS may issue a commercial vessel permit for king mackerel to such owner of another vessel, or new owner. NMFS may renew the permit through April 15 following the first full calendar year after the permit is transferred, without the owner meeting the percentage of earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income or gross sales requirement not later than the first full calendar year after the permit is transferred.

(4) If a permit is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, the owner of the vessel may request that NMFS transfer the permit to the income-qualifying operator if such operator becomes an owner of a vessel.

(5) If a permit is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, the owner of the vessel may request that NMFS remove the operator qualification on the permit by returning the original permit to the RA with an application for the changed permit. NMFS may renew the permit without such qualification through April 15 following the first full calendar year after NMFS removes the operator qualification, without the owner meeting the earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income or gross sales requirement not later than the first full calendar year after NMFS removes the operator qualification.

(6) NMFS will not reissue a commercial vessel permit for king mackerel if the permit is revoked or if the RA does not receive an application for renewal within 1 year of the permit's expiration date.

§§ 622.2, 622.6, 622.41, 622.44 [Amended]

3. In addition to the amendments set forth above, in 50 CFR part 622, remove the word "Dade" and add, in its place, the words "Miami-Dade" in the following places:

(a) Section 622.2, in paragraph (2) of the definition of "Migratory group";

(b) Section 622.6(b)(2);

(c) Section 622.41(c)(3)(ii)(B); and

(d) Section 622.44(a)(1)(iii).

[FR Doc. 00–13572 Filed 5–31–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 106
Thursday, June 1, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[00–02–a]

Opportunity for Designation in the Virginia, Frankfort (IN), and Indianapolis (IN) Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in January and February 2001. GIPSA is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies:

Virginia Department of Agriculture and Consumer Services (Virginia);
Frankfort Grain Inspection, Inc. (Frankfort); and
Indianapolis Grain Inspection and Weighing Service, Inc. (Indianapolis).

DATES: Applications and comments must be postmarked or sent by telecopier (FAX) on or before June 30, 2000.

ADDRESSES: Applications may be obtained at www.usda.gov/gipsa/, under Designation Application Forms. Applications and comments must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604. If an application or comment is submitted by FAX, 202–690–2755, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations Being Announced for Renewal

Official agency	Main office	Current designation terms
Virginia	Richmond, VA	02/01/1998–01/31/2001
Frankfort	Frankfort, IN	03/01/1998–02/28/2001
Indianapolis	Indianapolis, IN	03/01/1998–02/28/2001

a. Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Virginia, except those export port locations within the State, is assigned to Virginia.

b. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to Frankfort.

Bounded on the North by the northern Fulton County line;

Bounded on the East by the eastern Fulton County line south to State Route 19; State Route 19 south to State Route 114; State Route 114 southeast to the eastern Fulton and Miami County lines; the northern Grant County line east to County Highway 900E; County Highway 900E south to State Route 18; State Route 18 east to the Grant County line; the eastern and southern Grant County lines; the eastern Tipton County line; the eastern Hamilton County line south to State Route 32;

Bounded on the South by State Route 32 west to the Boone County line; the eastern and southern Boone County lines; the southern Montgomery County line; and

Bounded on the West by the western and northern Montgomery County lines; the western Clinton County line; the western Carroll County line north to State Route 25; State Route 25 northeast to Cass County; the western Cass and Fulton County lines.

Frankfort's assigned geographic area does not include the following grain elevators inside Frankfort's area which have been and will continue to be serviced by the following official agency: Titus Grain Inspection, Inc.: The Andersons, Delphi, Carroll County; Frick Services, Inc., Leiters Ford, Fulton County; and Cargill, Inc., Linden, Montgomery County.

c. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to Indianapolis.

Bartholomew; Brown; Hamilton, south of State Route 32; Hancock; Hendricks; Johnson; Madison, west of State Route 13 and south of State Route 132; Marion; Monroe; Morgan; and Shelby Counties.

2. Opportunity for Designation

Interested persons, including Virginia, Frankfort, and Indianapolis are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Designation Terms

Virginia
02/01/2001–12/31/2003
Frankfort and Indianapolis
03/01/2001–12/31/2003

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Virginia, Frankfort, and Indianapolis official agencies. Commenters are encouraged to submit pertinent data concerning the Virginia, Frankfort, and Indianapolis official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 17, 2000.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 00–13322 Filed 5–31–00; 8:45 am]

BILLING CODE 3410–EN–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 12:30 p.m. on Tuesday, June 20, 2000, at the U.S. Commission on Civil Rights, 5th Floor Conference Room (Room 540), 624 9th Street N.W., Washington, DC 20425. The Committee will develop questions for prospective panelists in preparation for its upcoming forum on access to financial services in the District of Columbia, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lewis M. Anthony, 202–483–3262, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–13676 Filed 5–31–00; 8:45 am]

BILLING CODE 6335–01–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 4:00 p.m. on Friday, June 30, 2000, at the Delaware River Port Authority, Multipurpose Room, 11th Floor, One Port Center, Two River Drive, Camden, New Jersey 08103. The purpose of the meeting is to gather information on (1) the State civil rights enforcement effort and (2) the racial profiling by law enforcement officers in New Jersey. The Committee will also plan and review project activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 25, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–13678 Filed 5–31–00; 8:45 am]

BILLING CODE 6335–01–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn at 5:00 p.m. on Thursday, June 22, 2000, at the Sheraton University Hotel, 801 University Avenue, Syracuse, NY 13210. The Committee will (1) review its project proposal, *Police-Community Relations* in New York (2) plan a series of forums around the state based on the proposal and (3) be briefed by community advocates and officials on police-community relations in Syracuse.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 25, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–13676 Filed 5–31–00; 8:45 am]

BILLING CODE 6335–01–F

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on June 21, 2000, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Public Session

1. Election of Chairman.
2. Presentation of public papers or comments.
3. Update on status of Wassenaar Arrangement proposals.
4. Update on Missile Technology Control Regime.
5. Report on Bureau of Export Administration initiatives.
6. Discussion of possible Commerce Control List changes.

Closed Session

7. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that the public forward the materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA, MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 12, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c) (1) shall be exempt from the provisions relating to public meeting found in section 10(a) (1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call (202) 482–2583.

Dated: May 26, 2000.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 00–13740 Filed 5–31–00; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New-Shipper Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new-shipper antidumping administrative review.

SUMMARY: The Department of Commerce (the Department) has received a request from China Kingdoma Import & Export Co., Ltd. (China Kingdoma), Rizhao Riyuan Marine and Food Products Co., Ltd. (Rizhao Riyuan), Nantong Shengfa Frozen Food Co., Ltd. (Nantong Shengfa), and Weshan Fukang Foodstuffs Co., Ltd. (Weishan Fukang) to conduct new-shipper administrative reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). In accordance with the Department's current regulations, we are initiating this administrative review.

EFFECTIVE DATE: June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0648 or (202) 482–3020, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR Part 351, (1999).

Background

On March 29, 2000 and March 31, 2000, the Department received timely requests, in accordance with section 751 (a)(2)(B) of the Act and 19 CFR 351.214(c), for new shipper reviews of this antidumping duty order which has a September anniversary date.

Initiation of Review

In its March 29, 2000 request for review, Rizhao Riyuan certified that it did not export the subject merchandise to the United States during the period of investigation (POI) and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Rizhao Riyuan further certified that its export activities are not controlled by the central government of the PRC.

In its March 29, 2000 request for review, Nantong Shengfa certified that it did not export the subject merchandise to the United States during the POI and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Nantong Shengfa further certified that its export activities are not controlled by the central government of the PRC.

In its March 31, 2000 request for review, China Kingdoma certified that it did not export the subject merchandise to the United States during the POI and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. China Kingdoma further certified that its export activities are not controlled by the central government of the PRC.

In its March 31, 2000 request for review, Weishan Fukang certified that it did not export the subject merchandise to the United States during the POI and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Weishan Fukang further certified that its export activities are not controlled by the central government of the PRC. All of the above requests also included all documentation required under 19 C.F.R. 351.214(b)(2)(iv).

In accordance with section 751(a)(2)(B) and 19 CFR 351.214(d), we are initiating new-shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC.

In accordance with 19 CFR 351.214(g)(B) of the Department's regulations, the period of review (POR) for a new-shipper review initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for these new-shippers is:

Antidumping duty proceeding	Period to be reviewed
Fresh Water Crawfish Tail Meat from the PRC, A–570–848:	
China Kingdoma Import & Export Co., Ltd	9/01/99–2/29/00
Rizhao Riyuan Marine and Food Products Co. Ltd	9/01/99–2/29/00
Nantong Shengfa Frozen Food Co., Ltd	9/01/99–2/29/00
Weshan Fukang Foodstuffs Co., Ltd	9/01/99–2/29/00

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the companies listed above, until the completion of the review.

The interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: May 25, 2000.

Edward C. Yang,

Acting Deputy Assistant Secretary, Ad/CVD Enforcement Group III.

[FR Doc. 00–13709 Filed 5–31–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121699A]

Small Takes of Marine Mammals Incidental to Specified Activities; San Francisco-Oakland Bay Bridge, Pile Installation Demonstration Project, San Francisco Bay, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the Federal Highway Administration (FHWA), on behalf of the California Department of Transportation (CALTRANS), to take small numbers of Pacific harbor seals and California sea lions, by harassment, incidental to a pile installation demonstration project (PIDP) at the San Francisco-Oakland Bay Bridge (SF–OBB), San Francisco Bay (the Bay), CA.

DATES: This authorization is effective from May 23, 2000, through May 22, 2001.

ADDRESSES: A copy of the application may be obtained by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Christina Fahy, Southwest Regional Office, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "... an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines "harassment" as:

...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On November 22, 1999, NMFS received an application from the FHWA on behalf of CALTRANS, requesting an IHA for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*) incidental to conducting the PIDP at the SF–OBB.

CALTRANS is currently in the planning stages of the SF–OBB East Span Seismic Safety Project (ESSSP). The ESSSP would include driving large piles into the Bay bottom. One of the hammers anticipated to be used for this task is larger than any pile-driving hammer previously used in the Bay. Due to the untested nature of these hammers and piles in the Bay, a pile installation demonstration is needed. The PIDP will provide CALTRANS with an opportunity to measure resulting sound pressure levels (SPL), both in air and under water, record impacts to marine mammals and experiment with measures to reduce potential harm to marine mammals prior to general use on SF–OBB piles.

The PIDP site is located between Yerba Buena Island (YBI) and Oakland, in the area to the north of and between existing SF–OBB east span piers E6 and E9 (see figures 1 and 2 of the application). The PIDP site is approximately 2.0 km (1.24 mi) from northeast of the YBI harbor seal haul-out site, which is located immediately to the west of the lighthouse on the southernmost tip of the island.

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The anticipated pier foundations for the ESSSP will consist of large diameter (up to 110–m (361–ft) long), steel pipe piles that will be driven into the Bay floor. Current plans anticipate using 2.5–m (8.2–ft) diameter piles for a majority of the foundations and smaller 1.5–m (4.9–ft) diameter pipe piles for others.

Accurately predicting the characteristics of pile driving prior to field-testing is not possible because piles of this size and length have not previously been installed in Bay substrates and there is limited experience with driving piles of this size. Therefore, given the unprecedented nature of this work in the Bay, this PIDP will provide CALTRANS with an opportunity to gather important data regarding in-air and underwater SPLs generated by the pile driving activities. In addition, it will also provide an opportunity to gather data from experimental measures to attenuate elevated SPLs, thereby reducing the potential for harm to marine mammals. Information obtained from this demonstration potentially may prove valuable for forecasting anticipated impacts of pile installation activities associated with the larger ESSSP construction, which will require the installation of approximately 350 piles of variable diameter.

Project Description

The PIDP includes driving three full-scale steel pipe piles (2.438 m (8.0 ft) in diameter, 110 m (361 ft) long) at two locations (two at a primary site and one at an alternate site) near the existing SF–OBB east span alignment. Each pile consists of four segments of variable length and wall thickness that will each be driven, subsequently welded to another segment, and driven again until the full desired length and depth of the pile is achieved. Due to the nature of this work, the majority of the project time will be spent on surface support activities, such as picking up the pile segments, placing the segment in the correct spot and welding the segments together. Actual pile driving will only occur for a small fraction of the project's duration. Please refer to the CALTRANS application for a complete description of the pile driving order of work.

Piles will be driven open-ended by hydraulic or steam hammers. These are large offshore hammers capable of driving large-diameter, thick-walled steel pipe piles. No other types of hammers (e.g. drop hammers, diesel hammers or vibratory hammers) will be used on this project. According to project specifications, two sizes of hammers are required. A "smaller" hammer having a maximum rated energy of not less than 500 kilojoules (kJ) but not more than 1,000 kJ will be used to drive initial segments of the piles. This hammer will be similar in size to the pile driving hammer that was used for activities associated with the retrofitting of the San Mateo-Hayward Bridge, also in the Bay. A larger hammer, having a maximum rated energy of not less than 1,700 kJ will be employed to drive subsequent segments of each pile. No upper limit is placed on the maximum rated energy of the larger hammer; however, there is little motivation to use a larger hammer than necessary unless there are no other hammers available at that time. Furthermore, the piles must be able to support the weight of the hammer, limiting the size of the hammer that can be used.

The PIDP is expected to take place in late summer 2000. All necessary equipment for the PIDP will be brought to the project site on barges, tugboats and other marine vessels. Due to the high cost of the equipment being used for this project and the nature of pile installation, work will need to proceed 24 hours a day, 7 days a week for approximately 20 days barring unforeseen circumstances (i.e. broken equipment, adverse weather conditions). Actual impact hammering will only occur for a total of about 12 to 16 hours over the estimated 20 days. Continuous impact hammering would likely occur for a maximum amount of 2–3 hours at a time when the fourth segment is being driven at an elevated energy level. As only 3 full-scale piles are being driven, this maximum would only be reached on 3 days out of the 20 days of the PIDP. The hammer is expected to hit the piles at an average rate of 30–45 blows per minute.

Due to the amount of time needed between driving consecutive pile segments, it is extremely unlikely that more than two segments will be driven in a 24–hour period. It is important to note that once the driving of a pile segment begins it cannot be halted until that segment has reached its desired depth. This is not only because of the expense of keeping the equipment idle but also due to the nature of the predominantly clay soil types underlying the Bay. As piles are driven, the soil gradually loses resistance. If driving is stopped, the soil has a chance to regain its strength, and resistance to the pile increases. This can make it more difficult or even impossible to continue driving the pile, particularly if the pile tip is in a highly resistant layer at that point. Consequently, once hammering resumes, it could potentially take a longer time at increased energy levels. This could amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment heights and wall thickness have been specially designed for this project to take the location of highly resistant sediment layers into account, so that when work is stopped at the desired depths between segments, the pile tip is never resting in highly resistant sediment layers. In addition, stopping in the middle of pile driving a segment may interfere with the goal of understanding the characteristics of pile driving within this new setting. If pile driving is permitted to be regularly interrupted, meaningful data regarding how the piles behave may be difficult to obtain.

Comments and Responses

A notice of receipt of the application and proposed authorization was published on January 7, 2000 (65 FR 1083), and a 30-day public comment period was provided on the application and proposed authorization. Comments were received from the Marine Mammal Commission (MMC) and CALTRANS. The MMC believes that NMFS' preliminary determination that the activity would have no more than a negligible impact on affected pinniped stocks is reasonable and sufficiently supported by the information and analyses provided in the **Federal Register** notice and in CALTRANS' request for a small take authorization. The MMC also believes that the monitoring program is adequate to verify that only small numbers of marine mammals are taken, that the taking is by harassment only, and that the impacts on the affected species and stocks are negligible. CALTRANS provided editorial comments that have resulted in minor modifications to this document and several broader comments which are addressed here.

Comment 1: CALTRANS is concerned about the shape of the no-entry buffer zone around YBI. With the harbor seal haulout on the southwest side of the southern tip of the island, and a U.S. Coast Guard (USCG) facility on the southeast side, CALTRANS proposes modifying the no-entry buffer zone to exempt the area of the USCG facility because of the need for the USCG's search-and-rescue to access the surrounding waters. This would minimize the potential for interference with the operation of the USCG facility while protecting hauled-out seals from potential harassment by project-related vessels.

Response: NMFS notes that the revised YBI safety zone proposed by CALTRANS is a 90–degree pie-shaped wedge with its southern limit extending southeasterly from the southern tip of YBI so that it encompasses an area within the seals' line of sight from the haul-out site, but not extending eastward around the southern tip of the island. NMFS believes however, that this proposal does not account for the harbor seal's line of sight to the southwest and west of the haulout. As a result, NMFS has established the western boundary of the YBI safety zone beginning at the first rock outcropping to the west of the seal haulout. However, it should be recognized that this mitigation measure does not supercede NMFS guidelines that require boats in California waters to remain at least 91 m (300 ft) from seals and sea lions that are on land or rocks. Therefore, in waters east and west of the CALTRANS' safety zone, NMFS' guideline provides additional protection to seals and sea lions that are ashore at YBI.

Comment 2: CALTRANS has requested USCG authorization for the placement of buoys around the haul-out site.

Response: NMFS understands that CALTRANS has two options: CALTRANS can either require contractors to stay out of the safety zone around the haul-out site, or it could buoy the area. However, if the area is buoyed, CALTRANS would have to go through the Private Aid to Navigation permitting process. Conditions of the permit would require notice to mariners because mariners may get confused if they see the buoys and do not know what they are for. Since the safety zone is primarily to reduce disturbance to marine mammals from the PIDP, and not for the exclusion of all boating activity, and because NMFS guidelines require boats in California waters must remain at least 91 m (300 ft) from seals and sea lions that are on land or rocks, NMFS does not consider buoying the area to be a required mitigation measure. CALTRANS can proceed on this issue as it chooses.

Comment 3: CALTRANS foresees a potential problem with a mitigation measure that it proposed in its application. Essentially, CALTRANS notes that there is no provision for proceeding with work if a marine mammal enters the safety zone and remains visible, or if a seal or sea lion dives and reappears in the safety zone within the 15–minute time limit. Would the project be delayed indefinitely while the contractor waits for the marine mammal to leave the safety zone? If so, and the proposed authorization does not allow the contractor to drive a marine mammal from the safety zone or lure it away from the zone, the mitigation may not be practical. However, CALTRANS does not advocate that such activities be added to its authorization.

Response: As noted by CALTRANS in its letter, harbor seals avoid human activity, California sea lions are unlikely to be in the vicinity of the project, and molting harbor seals will more likely be ashore than in the water at the time of the project. As a result, the scenario described by CALTRANS is not likely to occur. However, NMFS believes it would be inappropriate to include these types of intentional takings as a mitigation measure. If this develops into a problem, NMFS may take other action to resolve it.

Comment 4: CALTRANS proposes a modification to the proposed authorization that would allow a pile-driving operation to begin after the first 15-minute waiting period whether or not a marine mammal is within the safety zone. CALTRANS believes that 15 minutes is sufficient time for a marine mammal to move outside the safety zone and yet allow the contractor to have some assurance of being able to proceed within a reasonable time frame. CALTRANS also believes that this change should not alter NMFS' preliminary conclusion that the PIDP would have the potential to harass only a small number of marine mammals.

Response: In the proposed authorization, NMFS preliminarily concurred with CALTRANS that a safety zone should be established at a distance approximately 500 m (1,640 ft) from the PIDP. At this distance, CALTRANS estimated that the SPL from the pile driving would be 180 dB re 1 μPa-m_{RMS}. In its application, CALTRANS used guidance provided by NMFS that impulse-generated SPLs greater than 180 dB had the potential to cause a temporary threshold shift (TTS) in marine mammal hearing levels and that, at some unknown level above 180 dB, marine mammals had the potential to incur a permanent shift (i.e., elevation) in hearing thresholds. While the previous NMFS statement remains true in general, present scientific consensus indicates that a safe level for impulse sounds for pinnipeds from incurring TTS is higher than the level indicated for cetaceans. As a result, scientists have preliminarily established an SPL of 190 dB re 1 μPa-m_{RMS} as a safe level for pinnipeds underwater. NMFS adopts this information as the best scientific information available and will allow CALTRANS to establish a safety zone at the distance from the PIDP where the SPL diminishes to 190 dB re 1 μPa-m_{RMS}. However, in order to implement this provision, CALTRANS must measure the distance acoustically for each hammer used and, until this distance is measured and an appropriate safety zone implemented, CALTRANS must retain a safety zone of 180 dB re 1 μPa-m_{RMS}.

NMFS believes the smaller safety zone for pinnipeds will allow CALTRANS to remain on schedule. If problems arise, NMFS will consider other appropriate actions, as necessary.

Comment 5: CALTRANS has expressed concern with NMFS' proposal to require at least 50 percent of pile driving to be performed during daylight. CALTRANS believes that it will be nearly impossible to measure percentages of total pile driving time as construction proceeds. Instead, CALTRANS proposes that NMFS modify the previously mentioned monitoring measure and require pile driving "episodes" rather than total pile driving time. CALTRANS proposes to install the first 2 segments of each pile during daylight hours (for a total of 6 pile driving episodes). The third and fourth segments, which are the most likely to refuse or freeze, would be driven when ready (taking into account the 15–minute delay for marine mammal presence) and this may or may not be during daylight hours. CALTRANS further proposes to conduct all restriking of the piles (5 episodes) during daylight hours. The larger hammer would be required for restriking, thereby meeting the proposed requirement that both hammer sizes be used during daylight. Furthermore, while the hammer would operate for a shorter time during restriking, it would be more likely to operate at the highest capacity. It is probable that the hardest driving and thus the loudest noise would be generated during re-striking.

Response: As noted by CALTRANS in its letter, NMFS' intention for a requirement that 50 percent of strikings occur during the daytime was to obtain more meaningful data on seal and sea lion response to pile driving. As a result, NMFS concurs with the suggested modification.

Description of the Marine Mammals Affected by the Activity

General information on harbor seals, California sea lions, and other marine mammal species found in Central California waters can be found in Barlow *et al.* (1997, 1998). The marine mammals likely to be found in the SF–OBB area are limited to the California sea lion and harbor seal.

California Sea Lions

While California sea lions are known to have historically used the Bay, they are rarely observed hauled out in the Bay (Bauer, 1999). However, since at least 1987, sea lions have been observed occupying the docks near Pier 39 in San Francisco, about 5.7 km (3.5 mi) from the project site. The number of sea lions hauled out at Pier 39 ranged from 63 to 737 in 1998 and from 5 to 906 in 1997 (Marine Mammal Center, Sausalito data). For both years, the lows occurred in June and the highs occurred in August. Most recently, 831 sea lions were observed on K dock at Pier 39 in October 1999. While they are present in large numbers, approximately 85 percent of the animals hauled out at this site are males, and no pupping has been observed at this site or any other site in the Bay (Lander pers. comm. to CALTRANS, 1999). At this time, no other sea lion haul-out sites have been identified in the Bay. About 90 percent of the U.S. stock breeds on the southern California Channel Islands, over 483 km (300 mi) from the PIDP site (Schoenherr, 1995; Howorth and Abbott, 1999). Pier 39 has now become a regular haul-out site for sea lions. The sea lions, most of whom are male, appear at the site after returning from the Channel Islands at the beginning of August (Bauer, 1999). Around late spring, sea lions begin to travel south to the breeding grounds, and numbers at the haul-out site decline. Lowest numbers of sea lions are usually observed from May through July. Numbers of sea lions at the haul-out site fluctuate quite a bit throughout the year and even from one week to the next. For example, in June of 1998, a maximum of 574 sea lions was observed on June 7th while a low count of 63 was observed on June 25th (Lander pers. comm. to CALTRANS, 1999).

While little information is available on the foraging patterns of California sea lions in the Bay, individual sea lions have been observed feeding in the shipping channel to the south of YBI on a fairly regular basis (Grigg pers. comm. to CALTRANS, 1999). Foraging by sea lions that utilize the Pier 39 haul-out site primarily occurs in the Bay, where they feed on Pacific herring, northern anchovy and sardines, among other prey (Hanni, 1995).

Pacific Harbor Seals

Pacific harbor seals are the only species of marine mammal that breed and bear young in the Bay (Howorth and Abbott, 1999). There are 12 haul-out sites and rookeries in the Bay and of those, only eight are used by more than a few animals at a time. Only three sites in the Bay are regularly used by more than 40 harbor seals at any one time; these are Mowry Slough, located in the South Bay, YBI, and Castro Rocks, located in the Central Bay (Spencer, 1997). The three closest haul-out sites to the project location are at YBI, Angel Island, and Castro Rocks. The most recent aerial harbor seal count, conducted this year by D. Hanan of the California Department of Fish and Game, found 477 individuals in the Bay (Green pers. comm. to CALTRANS, 1999). It is important to note that not all harbor seals were counted, as some may have been under water during the survey.

Harbor seals are present in the Bay year-round and use it for foraging, resting and reproduction. Peak numbers of hauled-out harbor seals vary by haul-out site depending on the season. Results of a study of 39 radio-tagged harbor seals in the Bay found that most active diving occurred at night and a majority of the diving time was spent in seven feeding areas in the Bay. The two feeding areas located closest to the project site are just to the south of YBI and north of Treasure Island. This study also found that the seals dove for a mean time of 0.50 minutes to 3.33 minutes. Mean surface intervals or the mean time the seals spent at the surface between dives ranged from 0.33 minutes to 1.04 minutes. Mean haul-out periods ranged from 80 minutes to 24 hours (Harvey and Torok, 1994).

Pupping season in the Bay begins in mid-March and continues until about mid-May. Pups nurse for only 4 weeks and mating begins after pups are weaned. In the Bay, mating occurs from April to July and molting season is from June until August (Schoenherr, 1995; Kopec and Harvey, 1995).

Haul-Out Sites in the Vicinity of the PIDP

YBI is located in the Central Bay, adjacent to man-made Treasure Island. The SF–OBB passes through a tunnel on YBI. An important harbor seal haul-out site is located on a rocky beach on the southwest side of YBI (Kopec and Harvey, 1995). Work for the PIDP will be performed approximately 2 km (1.24 mi) from this harbor seal haul-out site, facing the northeast side of the island.

Although seals haul out year-round on YBI, it is not considered a pupping site for harbor seals as no births have been observed at the site. Occasionally, pups have been seen at an average of 1 pup per year, though more recently, 7 pups were observed at one time in May, 1999 (San Francisco State University unpublished records, 1998–9). In a study of the haul-out site conducted between 1989 and 1992, males comprised 83.1 percent of the seals whose gender could be determined (Spencer, 1997). Peak numbers of harbor seals at this haul-out site have been observed from November to February. The maximum reported number of seals hauled out at one time is 344, counted in January 1992 (Kopec and Harvey, 1995). More recently, the number of seals counted at YBI ranged from 0 to 296 for the period May 1998 to present. The maximum count of 296 was recorded in January 1999. Mean monthly counts for the same period range from 14.5 in September 1998 to 107.3 in June 1999 (San Francisco State University, unpublished records 1998–9). The abundance of harbor seals at this site during the winter months likely coincides with the presence of spawning Pacific herring near the island. Re-sightings at the haul-out site indicate long-term usage of the site (Spencer, 1997).

Angel Island is a small haul-out site located approximately 7.4 km (4.6 mi) from the project site. A maximum count of 15 seals was observed in the 1980s, and more recently, six harbor seals were seen in 1989. No pupping has been observed at the site.

The next closest haul-out site is approximately 14 km (8.7 mi) away at Castro Rocks, near the Richmond end of the Richmond-San Rafael Bridge. The Castro Rocks haul-out site is a recognized pupping site. A maximum of 176 harbor seals were observed at Castro Rocks in October 1999 (San Francisco State University unpublished records, 1998–9).

Potential Effects on Marine Mammals

It is possible that California sea lions and harbor seals swimming in the project vicinity may be subject to elevated SPLs that could produce a temporary shift in the animal's hearing threshold. Pile driving noise and human activity around the PIDP could also potentially result in behavioral changes in nearby pinnipeds. California sea lions and harbor seals may temporarily cease normal activities, such as feeding, or pop their heads up above water in response to the noise. They may also be curious and choose to investigate the project site. However, existing evidence shows that most marine mammals tend to avoid loud noises (Richardson, personal communication to CALTRANS, 1999). It is likely then that harbor seals and sea lions in the water in the project vicinity may be temporarily displaced if they choose to avoid the area in response to the high SPLs. Due to the short-term nature of the pile driving (approximately 12 to 16 hours over 20 days) and its distance from the YBI haul-out site, the PIDP is not expected to result in long-term behavioral impacts to Bay seals or sea lions.

Based on in-air hammer noise measurements conducted elsewhere, the average received SPLs were 107 dB re 20 μPa measured at 10–20 meters (33–66 feet) from the hammer and between 70 dB and 44 dB re 20 μPa at 2,400 meters (7,874 feet or 1.5 miles) from the hammer. While a direct comparison is not possible due to different atmospheric and geographic conditions, it is anticipated that in-air noise levels at the YBI haul-out site, located approximately 2.0 km (1.24 miles) from the project site and physically shielded by the island, will attenuate to levels insufficient to cause injury to the seals and sea lions. It is also likely that harbor seals at this site will not be disturbed by the sound and leave the beach for the water, although they will most likely hear the pile driving noise.

Consequently, while it is likely that hauled-out marine mammals will hear the pile driving activities, noise levels are not expected to adversely impact them. Impact hammering could potentially harass those harbor seals that are in the water closer to the project site, whether their heads are above or below the surface. Potential impacts could include a temporary elevation in hearing threshold and/or changes in behavior patterns. However, potential harassment would only occur during those times when piles are being hammered, estimated at approximately 12 to 16 hours over 20 days.

It is difficult to estimate the number of California sea lions that could potentially be affected by the PIDP due to the lack of information on the number of sea lions in the Bay except for the Pier 39 haul-out site. However, assuming the sea lion population at Pier 39 starts to decline in the late spring as the sea lions migrate south to the rookeries, only a fraction of the animals would be left in the Bay at the time of the PIDP (late summer 2000). According to the Marine Mammal Center in Sausalito, the maximum number of sea lions observed at the Pier 39 haul-out site during the spring and summer seasons was 820 in April 1999. The mean numbers of sea lions observed at Pier 39 during spring and summer seasons were 340 in 1998 and 453 in 1997 (Lander, personal communication to CALTRANS, 1999). Because the Pier 39 haul-out site is located 5.7 km (3.5 mi) away from the project site, only a fraction of those sea lions left in the Bay at the time of the project could potentially be in the project vicinity at any one time. Although California sea lions are known to forage in groups, available evidence suggests that they are not regularly seen in groups in the Bay waters near the PIDP site. In surveys conducted from May 1998 to the present, sea lions have been observed foraging in the shipping channel to the south of YBI. However, these sea lions are typically alone and do not seem to be associated with any other sea lions (Grigg, personal communication 1999). Given this anecdotal evidence, the number of sea lions expected to be present at the PIDP site during pile driving activities is expected to be low.

Noise levels from the project are not expected to result in harassment of the sea lions hauled out at Pier 39 as SPLs would be expected to attenuate by the time they reach the haul-out site, 5.7 kilometers (3.5 miles) from the project site. As most of the sea lions observed at Pier 39 are males, and the project will occur during the time when females and adult males are in waters off southern California for the breeding and pupping season, it is anticipated that most of the California sea lions impacted would be subadult males.

Kopec and Harvey (1995) reported harbor seal counts for several haul-out sites in the Bay for the period 1989–1992.

Peak numbers of harbor seals haul out at YBI in the winter months. The maximum recorded number of harbor seals observed at YBI is 344, recorded in January 1992. The PIDP is likely to occur in late summer of 2000. According to Kopec and Harvey (1995), the maximum number of seals observed at the YBI haul-out site during the pupping season (March–July) was 127 in 1992. More recently, for the same season, the Richmond Bridge Harbor Seal Survey reported a maximum count of 213 harbor seals observed in July 1998 (San Francisco State University, unpublished records 1998–9). Kopec and Harvey reported mean harbor seal numbers of 35.7, 41.1, 63.5 and 65.6 during the pupping seasons (March 15–May 31) of 1989 to 1992, respectively (1995). The mean number of harbor seals observed during the pupping and molting seasons (March 15 to August 15) in 1998 and 1999 were 75.2 and 78.4, respectively (San Francisco State University, unpublished records 1998–9). Keeping in mind that these mean counts were taken for slightly different periods of time (March–July in 1989–1992 and March–August in 1998–1999) and the number of surveys taken varies by count, the average of the mean counts is 60.

Mitigation

Based upon previous discussion in this document, CALTRANS will establish a safety zone around the pile driving site. The safety zone is intended to include all areas where the underwater sound pressure levels are anticipated to equal or exceed 190 dB re 1 μPa_{RMS}. Once pile driving begins, SPLs will be recorded to determine where this radius should be established. It is anticipated that safety zone radii will differ between the larger and smaller hammers.

Before pile driving of a pile segment begins, NMFS-approved observers on boats will survey the safety zone to ensure that no marine mammals are seen within the zone. If marine mammals are found within the safety zone, pile driving of the segment will be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor will wait 15 minutes and if no marine mammals are observed in that time it will be assumed that the animal has moved beyond the safety zone. Harbor seals in the Bay are known to dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994). However, due to the limitations of monitoring from a boat, there can be no assurance that the safety zone will be devoid of all marine mammals. If the presence of seals or sea lions within the safety zone seriously compromises CALTRANS' activity, CALTRANS will contact the Regional Administrator, NMFS, for appropriate resolution.

If marine mammals enter the safety zone after pile driving of a segment has commenced, hammering will continue unabated and marine mammal observers will monitor and record their numbers and behavior. For reasons mentioned previously, once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay.

Pile driving will be restricted to times when the safety zone can be monitored for 15 minutes immediately prior to the start-up of pile driving. Also, in order to obtain information on the behavioral effects to harbor seals and California sea lions, NMFS will require that, to the maximum extent practicable, a minimum of 50 percent of the 17 pile driving episodes be scheduled during daylight hours. Daylight pile driving must include both hammer types. In order to meet this mitigation measure, CALTRANS will drive the first two segments of each pile in daylight; the third and fourth segment of each pile will be driven when ready; and all

restriking of the piles will be performed in daylight.

A 500–m (1640–ft), pie-shaped wedge no-entry buffer zone will be established around the haul-out site on YBI to minimize the impact of project-related vessel traffic during the PIDP on marine mammals. This buffer zone will be established in coordination with the USCG. The exclusion zone will either be delineated with USCG-compliant temporary buoys to insure compliance, or all employees and contractors associated with the PIDP will be informed of the no-entry zone. In addition, CALTRANS will establish strict standards on vessel speed for all project-related crafts traveling in the Bay.

The PIDP is expected to take place in late summer 2000. This timing would not coincide with the period of peak abundance at the YBI harbor seal haul-out site (November through February). Harbor seal molting season in the Bay begins in June. If the PIDP occurs during the harbor seal molting season, a greater proportion of harbor seals should be hauled out and, therefore, not subject to the potentially elevated in-water SPLs from pile driving.

Finally, CALTRANS proposes to use this demonstration period to test the effectiveness of potential mitigation techniques. One potential mitigation measure is an underwater sound barrier based on the noise-attenuating properties of air bubbles in water. At least two experimental techniques for creating underwater sound barriers will be tested by CALTRANS. Underwater SPLs will be recorded at various distances from pile driving activities in order to assess which measures, if any, prove practical and effective in reducing sound pressure levels.

Monitoring

Monitoring of the safety zone will be conducted during all active pile driving. Monitoring of the safety zone will be conducted by a minimum of three qualified observers (CALTRANS states that they will employ three observers in daytime and 6 observers during darkness (January 31, 2000, letter to NMFS)). The observers will begin monitoring at least 30 minutes prior to startup of the pile driving. Observers will likely conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF–OBB) may not be practical.

Observations will be made using binoculars during daylight hours. For operations at night, infrared or image intensifying equipment will be used. In addition to monitoring from boats, monitoring of the YBI haul-out will be conducted on land during all active pile driving. Data on all observations will be recorded and will include items such as species, numbers, time of observation, location, behavior, etc.

Both underwater and airborne SPL measurements will be made.

Underwater Sound Monitoring

Waterborne sound from the pile driving will be measured at approximately four locations. These locations will typically be in some combination of: (1) close to the pile driving activity, (2) two mid-point locations, and (3) one distant location. Each measuring system will consist of a hydrophone with charge type conditioning amplifier connected to a sound level readout device and an instrumentation-grade digital audio tape (DAT) recorder. "Real-time" amplitude DAT measurements of underwater sound levels will be provided. The hydrophone will be deployed from a skiff to an appropriate depth at each location. A portable geostationary positioning system (GPS) unit will document the location coordinates of the skiff. It is anticipated that the sound level and frequency spectrum of the recorded noise signals will also be analyzed in a laboratory subsequent to the test.

Airborne Sound Monitoring

Airborne sound from the pile driving will be measured at approximately four locations that are coincident with the underwater measurement locations (i.e., typically a combination of: (1) close to the pile driving activity, (2) two mid-point locations, and (3) one distant location). In addition, airborne sound will also be measured at YBI, as close as practicable to the haul-out site. Each measuring system will consist of a Type 1 Sound Level Meter (SLM) connected to an instrumentation-grade DAT recorder. "Real-time" amplitude measurements of airborne sound levels will be provided. The SLM will be equipped with a windscreen and tripod mounted on a skiff at approximately 1.2 meters above water level. As previously stated, a portable GPS unit will document the location coordinates of the skiff. It is anticipated that the sound level and frequency spectrum of the recorded noise signals will be analyzed in a laboratory subsequent to the test.

Reporting

CALTRANS will notify NMFS prior to the initiation of the PIDP, and coordination with NMFS will occur on a weekly basis, or more often, as necessary. NMFS will be informed of the initial SPL measurements taken to estimate the 190 dB re 1 μPa_{RMS} contour and the final safety-zone radii established. Monitoring reports will be faxed to NMFS on a daily basis. The daily report will include species and numbers of marine mammals observed, time and location of observation, and behavior. In addition the report will include an estimate of the number of California sea lions and Pacific harbor seals that may have been harassed as a result of the pile driving activities.

CALTRANS will provide NMFS with a final report detailing the monitoring protocol, a summary of the data recorded during monitoring, an estimate of the numbers of marine mammals that may have been harassed due to pile driving, and conclusions drawn from measurements with and without the attenuation measures.

Conclusions

Based on the previous discussion, NMFS has determined that the PIDP may unintentionally cause the harassment of California sea lions and Pacific harbor seals. Although CALTRANS has requested an authorization for Level B harassment, as a result of a behavioral modification to avoid either pile driving noise or human activity, NMFS notes that, on occasion, monitoring the safety zone may not be 100 percent effective. As a result, some harbor seals or California sea lions, while underwater in the vicinity of the PIDP, may incur levels above 190 dB re 1 μPa_{RMS}. At and above an SPL of this level, marine mammals may incur a temporary threshold shift (TTS) in hearing, lasting from a few minutes to a few hours. However, no take by death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned above.

The PIDP is expected to have no more than an insignificant impact to marine mammals or their habitat. Harbor seals on YBI are commonly subjected to high levels of disturbance, primarily from watercraft, especially during the summer, when the numbers of small boats, jet skis, kayaks, etc. in the Bay increase. Abandonment of the haul-out site is not anticipated as sound levels from pile driving, both in water and in air, are expected to attenuate to sufficiently low levels by the time the SPLs reach the YBI haulout site. Although harbor seal pups have been observed at the YBI haul-out site, it is not a recognized pupping site and, therefore, no significant impacts on species recruitment are anticipated. Other haul-out sites for sea lions and harbor seals area are at a sufficient distance from the project site that they will not be affected.

Since NMFS is assured that the taking will not result in more than the incidental harassment (as defined by the MMPA) of small numbers of Pacific harbor seals and California sea lions, and would result in the least practicable impact on these stocks, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued.

Authorization

For the previously stated reasons, NMFS has issued an IHA for a 1-year period, for the harassment of harbor seals and California sea lions incidental to a PIDP at the SF–OBB, San Francisco Bay, California, provided the above mentioned mitigation, monitoring and reporting requirements mentioned earlier are incorporated.

Dated: May 23, 2000.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–13712 Filed 5–31–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052400F]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet June 26–30, 2000. The Council meeting will begin on Tuesday, June 27, at 8:30 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 8:30 a.m. on Tuesday, June 27 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings and hearing will be held at the Doubletree Hotel—Columbia River, 1401 Hayden Island Drive, Portland, OR 97217; telephone: (503) 283–2111.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions, Roll Call
2. Roll Call
3. Executive Director's Report
4. Status of Federal Regulation Implementation
5. Council Action: Approve Agenda

B. Salmon Management

1. Salmon Management Agenda Overview
2. Sequence of Events and Status of Fisheries
3. Salmon Methodology Reviews
4. Status of Amendment 14 and Implications for 2001 Overfishing Concerns
5. Update on Review of Oregon Coastal Natural Coho Management Criteria

C. Marine Reserves

1. Staff Report on Phase I Considerations of Marine Reserves as a Management Measure

D. Groundfish Management

1. Groundfish Management Agenda Overview
2. Status of Federal Groundfish Activities
3. Strategic Plan
4. Stock Assessment Priorities for 2001
5. Status of Fisheries and Inseason Adjustments
6. Sablefish Three-Tier Fishery—Inseason Adjustments
7. Rockfish Bycatch Rates
8. Plan Amendment to Address Bycatch and Management Measure Issues
9. American Fisheries Act Management Measures
10. Process for Technical Review and Monitoring of Rebuilding Plans
11. Canary Rockfish Rebuilding Plan Development
12. Cowcod Rebuilding Plan Development
13. Default Maximum Sustainable Yield (MSY) Fishing Rate within the Harvest Rate Policy
14. Preliminary Feedback on the 2000 Stock Assessment Review Panel Meetings (Draft Stock Assessments for 2001)
15. Fishing Capacity Reduction Measures
16. Observer Program

E. Highly Migratory Species Management

1. Highly Migratory Species Management Agenda Overview
2. Update on Plan Development

F. Coastal Pelagic Species Management

1. Coastal Pelagic Species (CPS) Management Agenda Overview
2. Exempted Fishing Permits to Harvest Anchovy in Closed Area
3. Preliminary Harvest Levels and Other Specifications for 2001
4. Pacific Sardine Harvest Guideline Suballocation
5. CPS Finfish Limited Entry Permit Issues: Capacity Goal and Squid Permit Transferability
6. Status of CPS Fishery Management Plan (FMP) Amendments for Bycatch and Market Squid MSY, Acceptable Biological Catch, and Tribal Fishing Rights

G. Habitat Issues

1. Report of the Habitat Steering Group (HSG)
2. Process for Designating Habitat Areas of Particular Concern

H. Administrative and Other Matters

1. Report of the Budget Committee
2. Status of Legislation
3. Changes in Council Operations and Protocols
4. Report on the Council Chairmans' Meeting
5. Research and Data Needs/Economic Data Plan
6. Council Staff Workload Priorities and Schedules
7. Appointment to the Groundfish Advisory Subpanel
8. Draft Agenda for September 2000

Schedule of Ancillary Meetings

Monday, June 26, 2000

Council Secretariat—7 a.m.; Deschutes Room
Groundfish Management Team—8 a.m.; Yakima Room
Scientific and Statistical—8 a.m.; Umatilla Room
Habitat Steering Group—9 a.m.; Tualatin Room
Budget Committee—2 p.m.; Umpqua Room
Groundfish Advisory Subpanel—11 a.m.; Willamette Room
Legal Gear/Habitat Impacts—6 p.m.; Tualatin Room

Tuesday, June 27, 2000

Council Secretariat—7 a.m.; Deschutes Room
California State Delegation—7 a.m.; Yakima Room
Oregon State Delegation—7 a.m.; Willamette Room
Washington State Delegation—7 a.m.; Umatilla Room
Groundfish Advisory Subpanel—8 a.m.; Willamette Room
Groundfish Management Team—8 a.m.; Yakima Room
Scientific and Statistical—8 a.m.; Umatilla Room
Enforcement Consultants—5:30 p.m.; Tualatin Room
Ad-Hoc Groundfish Strategic Plan Development Committee Briefing—7 p.m.; Willamette Room

Wednesday, June 28, 2000

Council Secretariat—7 a.m.; Deschutes Room
California State Delegation—7 a.m.; Yakima Room
Oregon State Delegation—7 a.m.; Willamette Room
Washington State Delegation—7 a.m.; Umatilla Room
Scientific and Statistical—8 a.m.; Umatilla Room
Enforcement Consultants—As Needed; TBD
Groundfish Advisory Subpanel—As Needed; Willamette Room
Groundfish Management Team—As Needed; Yakima Room

Thursday, June 29, 2000

Council Secretariat—7 a.m.; Deschutes Room

California State Delegation—7 a.m.; Yakima Room
Oregon State Delegation—7 a.m.; Willamette Room
Washington State Delegation—7 a.m.; Umatilla Room
Enforcement Consultants—As Needed; TBD
Groundfish Advisory Subpanel—As Needed; Willamette Room
Groundfish Management Team—As Needed; Yakima Room
Highly Migratory Species Advisory—10 a.m.; Umatilla Room

Friday, June 30, 2000

Council Secretariat—7 a.m.; Deschutes Room
California State Delegation—7 a.m.; Yakima Room
Oregon State Delegation—7 a.m.; Willamette Room
Washington State Delegation—7 a.m.; Umatilla Room
Enforcement Consultants—As Needed; TBD

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John S. Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 25, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13713 Filed 5–31–00; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 3, 2000 unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act System Notice Manager, Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0215–3 DAPE

SYSTEM NAME:

NAF Personnel Records *(January 20, 2000, 65 FR 3217).*

CHANGE:

SYSTEM IDENTIFIER

Delete entry and replace with 'A0215–3 SAMR'.

* * * * *

A0215–3 SAMR

SYSTEM NAME:

NAF Personnel Records.

SYSTEM LOCATION:

Civilian Personnel Offices and at Army installations; National Personnel Records Center, (Civilian), 111 Winnebago Street, St. Louis, MO 63118–4199. Where duplicates of these records are stored in a manager' s employment file, e.g., an administrative office closer to where the employee actually works, this notice applies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have applied for employment with, are employed by, or were employed by nonappropriated fund (NAF) activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for employment, documents relating to testings, ratings, qualifications, prior employment, appointment, suitability, security, retirement, group insurance, medical certificates; performance evaluations; job descriptions; training and career development records; awards and commendations data, tax withholding authorizations; documents relating to injury and death compensation, unemployment compensation, travel and transportation, Business Based Action (BBA), adverse actions, conflict-of-interest and/or conduct, and similar relevant matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; E.O. 9397 (SSN); and Army Regulation 215–3, Nonappropriated Funds and Related Activities Personnel Policies and Procedures.

PURPOSE(S):

These records are maintained to carry out a personnel management program for Department of the Army non-appropriated fund instrumentalities. Records are used to recruit, appoint, assign, pay, evaluate, recognize, discipline, train and develop, and separate individuals; to administer employee benefits; and to conduct labor-management relations, employee-management relations, and responsibilities inherent in managerial and supervisory functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to appropriate Federal agencies, such as the Department of Labor and the Equal Employment Opportunity Commission, to resolve and/or adjudicate matters falling within their jurisdiction.

Records may also be disclosed to labor organizations in response to requests for names of employees and identifying information.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, kardex files, and electronic storage media.

RETRIEVABILITY:

Paper records are retrieved by surname and electronic retrieval is both surname and Social security Number.

SAFEGUARDS:

Records are maintained in areas restricted to authorized persons having official need therefor; all information is regarded as if it were marked 'For Official Use Only'.

RETENTION AND DISPOSAL:

Records are permanent; after employee separates, records are retired to the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, MO 63118–4199 within 30 days. Copies of these records maintained in an administrative office or by the supervisor are retained until the employee transfers or separates; destroyed 30 days later.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Assistant Secretary of the Army, Manpower and Reserve Affairs, 200 Stovall Street, Alexandria, VA 22332–0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local Civilian Personnel Officer; former nonappropriated fund employees should write to the National Personnel Records Center (Civilian) 111 Winnebago Street, St. Louis, MO 63118–4199.

Individual should provide his/her full name, current address and telephone number, a specific description of the information/records sought, and any identifying numbers such as Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the local Civilian Personnel Officer; former nonappropriated fund employees should write to the National Personnel Records Center (Civilian) 111 Winnebago Street, St. Louis, MO 63118–4199.

Individual should provide his/her full name, current address and telephone number, a specific description of the information/records sought, and any identifying numbers such as Social Security Number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the applicant; statements or correspondence from persons having knowledge of the individual; official records; actions affecting individual's employment and/or pay.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0190–13 CFSC

SYSTEM NAME:

Security Badge/Identification Card Files *(February 22, 1993, 58 FR 10002).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–14 DAPE'.

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters, Department of the Army, staff and field operating agencies, states' adjutant general offices, and any Army installations/activities/offices world-wide that issue security badges and identification cards authorized by Army Regulations. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add to entry 'Individuals issued a security badge/identification card by the Department of the Army. These include, but are not limited to . . .'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add Army Regulation 600–8–14, Identification Cards for Members of the Uniformed Services, Their Family Members, and Other Eligible Personnel.

* * * * *

A0600–8–14 DAPE

SYSTEM NAME:

Security Badge/Identification Card Files.

SYSTEM LOCATION:

Headquarters, Department of the Army, staff and field operating agencies, states' adjutant general offices, and any Army installations/activities/offices world-wide that issue security badges and identification cards authorized by Army Regulations. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals issued a security badge/identification card by the Department of the Army. These include, but are not limited to active duty, reserve, and retired military personnel and authorized dependents; Department of Defense civilians and their dependents; Embassy personnel and their dependents, Medal of Honor recipients; visitors authorized for official purposes, e.g., vendors, delivery men, utility and special equipment servicemen; accident investigators; contractor personnel and their authorized dependents; Red Cross personnel; and persons authorized by the Geneva Convention to accompany the Armed Forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application on appropriate Department of Army and Department of Defense forms specified by Army Regulation 600–8–14 (the original of which may be filed in the individual's personnel file) for identification and/or building security pass/badge issuance; individual's photograph, fingerprint record, special credentials, and allied papers; registers/logs reflecting sequential numbering of badges/cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 190–13, The Army Physical Security Program; Army Regulation 600–8–14, Identification Cards for Members of the Uniformed Services, Their Family Members, and Other Eligible Personnel; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record of security badges and identification cards issued: to restrict entry into installations/activities; and to ensure positive identification of personnel authorized access to restricted areas. Registers/logs maintain accountability for issuance and disposition of badges and identification cards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records

or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Use' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders; magnetic tapes; discs; cassettes; computer printouts; and microfiche.

RETRIEVABILITY:

By individual's name, Social Security Number, card/badge number.

SAFEGUARDS:

Data are maintained in secure buildings and are accessed only by authorized personnel who are trained and cleared for access. Information in computer facilities is further protected by alarms and established procedures for the control of computer access.

RETENTION AND DISPOSAL:

Applications for military identification cards are maintained by the issuing office for 1 year; those for civilian cards are retained 4 years, after which they are destroyed. Registers/logs are destroyed 3 years after last badge has been accounted for.

Limited area credentials are replaced after 3 years or when a total of 5 of the total have been lost or unaccounted for, whichever occurs earlier, exclusion area credentials are replaced at least once every 3 years; controlled area credentials are replaced at the discretion of the major commander.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the issuing office where the individual obtained the identification card or to the system manager.

Individual should provide the full name, number of the identification card, current address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the issuing officer at the appropriate installation.

Individual should provide the full name, number of the identification card, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–13524 Filed 5–31–00; 8:45 am]

BILLING CODE 5000–10–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 3, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 25, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Paul Douglas Teacher Scholarship Program Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden: Responses; 57 Burden Hours: 684.

Abstract: This program has not received funding since 1994. It was originally designed to assist State agencies to provide scholarships to talented and meritorious students who were seeking careers as teaching professionals.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–13645 Filed 5–31–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 3, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 25, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Performance Report for the Ronald E. McNair Postbaccalaureate Achievement Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 156.

Burden Hours: 702.

Abstract: The Ronald E. McNair Postbaccalaureate Achievement Program grantees are required to submit the report annually. The reports are used to monitor the performance of grantees prior to awarding continuation grants and to assess a grantee's prior experience at the end of each budget period. The Department will also aggregate the data to provide descriptive information and analyze program impact.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–13646 Filed 5–31–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[Docket No. EA–223]

Application To Export Electric Energy; CMS Marketing, Services and Trading Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: CMS Marketing, Services and Trading Company (CMS MS&T) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before July 3, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16U.S.C. § 824a(e)).

On May 12, 2000, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from CMS MS&T to transmit electric energy from the United States to Canada. CMS MS&T, a Michigan corporation, is a wholly owned subsidiary of CMS Enterprises Company which is in turn a wholly owned subsidiary of CMS Energy Corporation. CMS MS&T is a power marketer that does not own or control any electric generation or transmission facilities nor does it have any franchised electric service territory in the United States. CMS MS&T will purchase the electric energy to be exported at wholesale from electric utilities and Federal Power Marketing Administrations in the United States.

CMS MS&T proposes to arrange for the delivery of electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction of each of the international transmission facilities to be utilized by CMS MS&T, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the CMS MS&T application to export electric energy to Canada should be clearly marked with

Docket EA–223. Additional copies are to be filed directly with Francis X. Berkemeier, Attorney, 212 W. Michigan Avenue, Jackson, MI 49201.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory" Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on May 19, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–13668 Filed 5–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–292–000]

ANR Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

May 25, 2000.

Take notice that on May 19, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to be effective July 1, 2000.

Eighth Revised Sheet No. 70

ANR states that this filing, made in accordance with the provisions of Section 154.204 of the Commission's regulations, is to modify certain of ANR's pro forma service agreements so that discount agreements may provide for adjustments to rate components upward or downward to achieve an agreed upon overall rate as long as all rate components remain within the applicable minimum and maximum rates specified in the tariff.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13628 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–565–000]

Arizona Public Service Company; Notice of Filing

May 25, 2000.

Take notice that on December 9, 1998, Arizona Public Service Company (APS), tendered for filing a request for withdrawal of its revised tariff sheets filed with the Commission in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 5, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13634 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–369–015 and RP98–54–031]

Colorado Interstate Gas Company; Notice of Refund Report

May 25, 2000.

Take notice that on May 18, 2000, Colorado Interstate Gas Company (CIG) tendered for filing its third annual refund report in Docket Nos. RP97–369 and RP98–54.

CIG states that this filing and refunds were made to comply with the Commission's order of September 10, 1997. CIG states that refunds were paid by CIG on May 1, 1998 and June 10, 1998.

CIG states that the May 18, 2000, refund report summarizes the refunds made as of that date by CIG for Kansas ad valorem tax overpayments, pursuant to the Commission's September 10, 1997, Order. CIG asserts that no lump sum cash refunds were made by CIG to its former jurisdictional sales customers since its second annual refund report filed in 1999. Instances where payment has not been made within thirty days of receipt from the producers, appropriate interest will be computed as provided for in the order.

CIG states that copies of the filing have been served on CIG's former jurisdictional sales customers, interested states' commissions and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 1, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc. fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13624 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–004]

Dominion Transmission, Inc. (Formerly CNG Transmission Corporation); Notice of Negotiated Rate Filing

May 25, 2000.

Take notice that on May 19, 2000, Dominion Transmission, Inc. (Dominion) (formerly CNG Transmission Corporation) tendered for filing the following contract for disclosure of a recently negotiated rate transaction:

Letter Agreement between Dominion Transmission, Inc. and Oswego Harbor Power, L.L.C. Dated May 1, 2000

FT Service Agreement No. 200215 between Dominion Transmission, Inc. and Oswego Harbor Power, L.L.C. Dated May 1, 2000

Amendment to MCS Service Agreement No. MCS113 between Dominion Transmission, Inc. and Oswego Harbor Power, L.L.C. Dated May 1, 2000

Dominion requests an effective date of May 1, 2000 for this negotiated rate agreement.

Dominion states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13633 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1816–000 and ER00–1816–001]

DTE River Rouge No. 1, LLC; Notice of Issuance of Order

May 25, 2000.

On March 6, 2000, DTE River Rouge No. 1 LLC (DTE River Rouge) filed a petition requesting that the Commission authorize DTE River Rouge to engage in the sale of electric energy capacity at market-based rates and the reassign transmission capacity. In its filing, DTE River Rouge also requested certain waivers and authorizations. In particular, DTE River Rouge requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by DTE River Rouge. On May 17, 2000, the Commission issued an Order Accepting Filing And Rejecting Complaint (Order), in the above-docketed proceeding.

The Commission's May 17, 2000 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (J):

(G) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by DTE River Rouge should file a motion in intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practrice and Procedure, 18 CFR 385.211 and 385.214.

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, DTE River Rouge is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of DTE River Rouge, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(J) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of DTE River Rouge's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 16, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 first Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13637 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–293–000]

El Paso Natural Gas Company; Notice of Extension of Time

May 25, 2000.

Take notice that on May 19, 2000, ursuant to Rules 212 and 2008 of the Commission's Rules of Practice and Procedure, 18 CFR 385.212 and 385.2088, El Paso Natural Gas Company (El Paso) tendered for filing a requests for an extension of time in which to comply with that portion of the Commission's directive in Order No. 637 requiring the filing of *pro forma* tariff sheets to implement segmentation of pipeline capacity.

El Paso seeks an extension of time with regard to the issue of capacity segmentation because of its inability to determine whether, and to what extent, capacity segmentation will be possible on its system.

El Paso requests that it be granted an extension of time in which to make its Order No. 637 compliance filing on the issue of capacity segmentation. El Paso proposes to file its *pro forma* segmentation tariff sheets no later than 45 days after the earlier of (i) the filing of an uncontested settlement on the capacity allocation issue, or (ii) the issuance of an order by the Commission in the complaint proceeding establishing the appropriate methodology for allocating El Paso's receipt and delivery point capacity. El Paso asserts that if neither of the foregoing events occurs prior to the

endof calendar year 2000 and a negotiated settlement does not appear to be imminent, El Paso will file, no later than January 15, 2001, *pro forma* tariff sheets that assume the continuation of *pro rata* allocation of El Paso's capacity.

El Paso requests that the Commission act expeditiously on its motion for extension of time. El Paso states that it is currently in the process of preparing its June 15 compliance filing, and it must proceed to formulate a segmentation proposal to include in that filing if this motion is not granted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 1, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13629 Filed 5–31??–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–2074–000 and ER00–2093–000 (Not consolidated)]

Elkem Metals Company, Elkem Metals Company-Alloy, Inc.; Notice of Issuance of Order

May 25, 2000.

Elkem Metals Company and Elkem Metals Company-Alloy, Inc. (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On May 17, 2000, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's May 17, 2000 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities* * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 16, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. This issuance may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222) for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13635 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2248–000]

Energy Trading Company, Inc.; Notice of Issuance of Order

May 25, 2000.

Energy Trading Company, Inc. (Energy Trading) submitted for filing a rate schedule under which Energy Trading will engage in wholesale electric power and energy transactions as a marketer. Energy Trading also requested waiver of various Commission regulations. In particular, Energy Trading requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Energy Trading.

On May 18, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Energy Trading should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Energy Trading is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Energy Trading's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 19, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington DC 20426. The Order may also be viewed on the Internet at

http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13638 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–252–001]

Florida Gas Transmission Company; Notice of Proposed Compliance Filing

May 25, 2000.

Take notice that on May 22, 2000, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective June 1, 2000:

Fortieth Revised Sheet No. 8A
Thirty-Second Revised Sheet No. 8A.01
Thirty-Second Revised Sheet No. 8A.02
Thirty-Sixth Revised Sheet No. 8B
Twenty-Ninth Revised Sheet No. 8B.01

FGT states that on February 29, 2000, in Docket No. RP00–194–000, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 2.99% for the six-month Summer Period beginning April 1, 2000. The Base FRCP of 2.99% was accepted by Commission letter order issued March 23, 2000. Subsequently, on April 19, 2000, FGT filed a flex adjustment of 0.01% to be effective May 1, 2000, which resulted in an Effective FRCP of 3.00% when combined with the Base FRCP of 2.99%. In an order dated May, 2000, the Commission accepted the adjustment effective May 18, 2000, but directed FGT to file tariff sheets within seven days to revise the Effective FRCP to 2.99% effective June 1, 2000. FGT is making the instant filing in compliance with the Commission's May 18, order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13626 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–290–005

Michigan Gas Storage Company; Notice of Refund Report

May 25, 2000.

Take notice that on May 22, 2000, Michigan Gas Storage Company (MGSCo) tendered for filing its Refund Report made to comply with the Commission's November 1, 1999 order on Rehearing and February 23, 2000 letter order accepting tariff sheets in this docket.

MGSCo states that the report shows that on April 21, 2000 it refunded $10,303,132.90, including interest, to affected customers for the period January 1997 through February 2000.

MGSCo states that copies of the filing have been served on all customers and applicable state regulatory agencies as well as those on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 1, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 00–13623 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–39–022]

Northern Natural Gas Company; Notice of Filing of Annual Report

May 25, 2000.

Take notice that on May 18, 2000, Northern Natural Gas Company (Northern) submitted its annual report pursuant to the Commissioner's Order in *Public Service Company of Colorado et al.*, Docket Nos. RP97–369–000, *et al.*

Northern further states that copies of the filing have been mailed to each of its affected jurisdictional sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 1, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13625 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–366–000]

Northwest Pipeline Corporation; Notice of Application

May 25, 2000.

Take notice that on May 16, 2000, Northwest Pipeline Corporation (Northwest or Applicant), 295 Chipeta Way, Salt Lake City, Utah 84108, filed an application pursuant to and in accordance with Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting a certificate of public convenience and necessity authorizing the construction and operation of approximately 260 feet of 30-inch mainline loop adjacent to the

Washougal Compressor Station (C.S.) in Clark County, Washington, all as more fully set forth in the application which is on file with the Commission and open to the public inspection. The application may be viewed on the web at *http://www.ferc.us/online/rims.htm* (call 202–208–2222 for assistance).

The proposed pipeline looping will complete Northwest's 30-inch mainline loop between the Washougal C.S. and the Chehalis C.S. Northwest proposes to install the 260 feet of 30-inch pipeline loop and appurtenances (including a pig receiver and drip, a 2-inch dripline from the pig receiver, and an access road to the pig receiver) on existing permanent right-of-way. The proposed facilities will extend northwest from the outlet of the existing Washougal C.S. to connect with Northwest's existing 30-inch mainline loop. According to Northwest, the completion of this final section of loop will not increase the design capacity of its mainline. However, Northwest contends that the 30-inch mainline loop will enhance the reliability of service to its shippers and will allow more flexible and efficient operation of the Washougal C.S.

Northwest estimates that the cost of the proposed facilities will be approximately $938,000, of which approximately $543,000 for the 30-inch loop extension, and approximately $395,000 for the associated auxiliary facilities. Northwest requests expedited Commission approval by August 1, 2000, so that the project can be completed prior to the rainy season in the Pacific Northwest. Northwest states that since the proposed project is designed to maintain reliability and improve efficiency and flexibility, application of the FERC's Policy Statement issued September 15, 1999 in Docket No. PL99–3–000 dictates that all project costs should be permitted rolled-in treatment in Northwest's next rate case.

Any questions regarding this application should be directed to Gary Kotter, Certificates Manager for Northwest, P.O. Box 58900, Salt Lake City, Utah 84158–0900 at (801) 584–7117, or Richard N. Stapler, Jr., Senior Attorney, P.O. Box 58900, Salt Lake City, Utah 84158–0900 at (801) 584–7068.

Any person desiring to be heard or to make protest with reference to said application should on or before June 15, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Commission and will receive copies of all documents filed by the Applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13619 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2235–000]

Ouachita Power, L.L.C., Notice of Issuance of Order

May 25, 2000.

Ouachita Power, L.L.C. (Ouachita Power) submitted for filing a rate schedule under which Ouachita Power will engage in wholesale electric power and energy transactions as a marketer. Ouachita Power also requested waiver of various Commission regulations. In particular, Ouachita Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Ouachita Power.

On May 18, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Ouachita Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Ouachita Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Ouachita Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 19, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13640 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00 2134 00]

PG&E Dispersed Generating Company, LLC; Notice of Issuance of Order

May 25, 2000.

PG&E Dispersed Generating Company, LLC (PG&E Dispersed Generating Company) submitted for filing a rate schedule under which PG&E Dispersed Generating Company will engage in wholesale electric power and energy transactions as a marketer. PG&E Dispersed Generating Company also requested waiver of various Commission regulations. In particular, PG&E Dispersed Generating Company requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by PG&E Dispersed Generating Company.

On May 16, 2000, pursuant to delegated authority, the Director, Division of Corporation Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PG&E Dispersed Generating Company should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, PG&E Dispersed Generating Company is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PG&E Dispersed Generating Company's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 15, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13636 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–296–000]

South Georgia Natural Gas Company; Request for Waiver of Filing Proposed Changes to FERC Gas Tariff

May 25, 2000.

Take notice that on May 22, 2000, South Georgia Natural Gas Company (South Georgia) tendered for filing the following request for a waiver of filing revised sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

South Georgia states that the request for waiver is submitted pursuant to Section 19.2 of the General Terms and Conditions of its Tariff to adjust its fuel retention percentage (FRP) for all transportation services on its system. The derivation of the revised FRP is based on South Georgia's gas required for operations (GRO) for the twelve-month period ending April 30, 2000, adjusted for the balance accumulated in the Deferred GRO Account at the end of said period, divided by the transportation volumes received during the same twelve-month period. In the filing, South Georgia requests a waiver due to the Stipulation and Agreement ("S&A") filed by Southern Natural Gas Company (Southern Natural) on March 10, 2000 in Docket No. RP99–496.

The S&A proposes, upon authorization of the Commission, South Georgia will be terminated as a separate pipeline company and South Georgia's facilities will be included in Southern Natural's system. Approval of the stipulation by the Commission will constitute approval by the Commission of various certificate and abandonment applications. The addition of the South Georgia facilities to the Southern Natural system will be made effective as of the later of: (a) August 1, 2000; or (b) the first day of the second month following: (i) A final FERC order approving the stipulation; and (ii) the issuance of any other FERC authorization that may be required. As a result, South Georgia is requesting this waiver of Section 19.2 of the General Terms and Conditions of its Tariff to postpone changing its FRP pending approval of the S&A. Upon approval of the S&A, South Georgia proposes to true-up its fuel over or undercollection for the period beginning May 1, 1999 and ending immediately prior to the merger of South Georgia with Southern Natural through a one time cash-out of such over or undercollection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 1, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13632 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–295–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

May 25, 2000.

Take notice that on May 22, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing, for inclusion in Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1, Fifth Revised Sheet No. 356, with an effective date of June 21, 2000.

Tennessee states that the purpose of this filing is to modify its Tariff to extend the time period for payment after receipt of invoice by shippers who are entities of foreign governments and whose compliance with required governmental accounting practices do not conform to the invoice and payment provisions of Tennessee's Tariff. Tennessee further states that, if the proposed modifications are accepted, it will avoid the necessity of making individual filings of transportation service agreements entered into with these shippers because these transportation services agreements may contain "material deviations" from the pro forma transportation service agreements. Tennessee requests an effective date of June 21, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13631 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1780–000 and ER00–1780–001]

Texas Electric Marketing, L.L.C., Notice of Issuance of Order

May 25, 2000.

Texas Electric Marketing, L.L.C. (Texas Electric) submitted for filing a rate schedule under which Texas Electric will engage in wholesale electric power and energy transactions as a marketer. Texas Electric also requested waiver of various Commission regulations. In particular, Texas Electric requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Texas Electric.

On May 18, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Texas Electric should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Texas Electric is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Texas Electric's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline of filing motions to intervene or protests, as set forth above, is June 19, 2000.

Copies of the full text of the Order are available from the Commissions's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Interenet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13639 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–294–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

May 25, 2000.

Take notice that on May 22, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet Nos. 205 and 206 and Second Revised Sheet No. 206A, to be effective June 1, 2000.

In Order No. 587–G, in Docket No. RM96–1–007 the Commission required that interstate pipeline companies conduct all business transactions using internet communication, implementing standards for these communications. The original implementation date for these requirements was June 1, 1999. However, in Order No. 587–1, the Commission deferred the implementation date to June 1, 2000. The purpose of this filing was to make changes to TransColorado's tariff associated with implementation of internet communications effective June 1, 2000.

TransColorado states that a copy of this filing has been served upon TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13630 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–291–000]

Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

May 25, 2000.

Take notice that on May 19, 2000, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, the tariff sheets listed on Appendix A to the filing, with an effective date of July 1, 2000.

TLNG states that the filing is being made in accordance with the provisions of Section 154.202 of the Commission's Regulations, to implement Rate Schedule LLS for LNG Lending Service on TLNG's system pursuant to TLNG's blanket authority under Part 284 of the Commission's Regulations. In addition to Rate Schedule LLS and its form of service agreement, TLNG is also proposing certain conforming changes to the General Terms and Conditions.

TLNG states that copies of the filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13627 Filed 5–31–00; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–038; North Carolina]

Yadkin, Inc.; Notice of Availability of Environmental Assessment

May 25, 2000.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental effects of a request to amend the license to authorize upgrades of turbines and generators at three of the four developments of the Yadkin Hydroelectric Project located on the Yadkin-Pee Dee River in Montgomery, Stanly, Davidson, Rowan, and Davie Counties, North Carolina. The Yadkin Hydroelectric Project contains the following reservoirs: High Rock, Tuckertown, Narrows (Badin) and Falls.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. The proposed upgrade would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the EA assistance. Copies are also available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

Anyone may file comments on the EA. The public, federal and state resource agencies are encouraged to provide comments. All written comments must be filed within 30 days of the issuance date of this notice shown above. Send an original and eight copies of all comments marked with the project number P–2197–038 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. If you have any questions regarding this notice, please contact R. Feller at telephone: (202) 219–2796 or e-mail: rainer.feller@ferc.fed.us

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13620 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2365–001, et al.]

Ameren Service Company, et al.; Electric Rate and Corporate Regulation Filings

May 24, 2000.

Take notice that the following filings have been made with the Commission:

1. Ameren Service Company

[Docket No. ER00–2365–001]

Take notice that on May 19, 2000, Ameren Services Company (Ameren), tendered for filing a substitute revised unexecuted Network Integration Transmission Service Agreement (revised Agreement) with Clay Electric Cooperative, Inc. (Clay) under Ameren's Open Access Transmission Tariff. This revised Agreement is intended as a substitute for the document filed in the above-captioned proceeding on May 1, 2000. Ameren states that it has corrected a misstated rate in the document in Paragraph 7.0 and that this correction is the only change in the document.

Ameren continues to seek an effective date of June 1, 2000.

Copies of the filing have been served on Clay and the Illinois Commerce Commission.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc.

[Docket Nos. ER00–2501–001 and ER00–2502–001]

Take notice that on May 19, 2000, Western Resources, Inc. (Western), tendered for filing corrected Service Schedule WTU–5/2000, which will supercede Service Schedule WTU–3/94. Service Schedule WTU–5/2000, as corrected, substitutes for Service Schedule WTU–6/2000 previously filed in Docket No. ER00–2502–000, but not yet accepted by the Commission and is proposed to be effective as of May 1, 2000.

In addition, Western requests an effective date of May 1, 2000, for the related contract amendments filed in Docket No. ER00–2501–000.

A copy of this filing was served upon the Kansas Corporation Commission and the wholesale customers who take service under the aforementioned Service Schedule.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

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3. Commonwealth Edison Company

[Docket No. ER00–2531–000]

Take notice that on May 19, 2000, Commonwealth Edison Company, tendered for filing an executed signature page inadvertently omitted from its May 17, 2000, filing made with the Commission in the above-referenced docket.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. MidAmerican Energy Company

[Docket No. ER00–2544–000]

Take notice that on May 19, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Sempra Energy Trading Corporation, dated May 11, 2000, and a Non-Firm Transmission Service Agreement with Sempra Energy, dated May 11, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of May 11, 2000, for the Agreements with Sempra Energy, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Sempra Energy, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER00–2545–000]

Take notice that on May 19, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with Cargill-Alliant, LLC, dated April 25, 2000, and a Non-Firm Transmission Service Agreement with Cargill-Alliant, dated April 25, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of April 25, 2000, for the Agreements with Cargill-Alliant, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Cargill-Alliant, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2546–000]

Take notice that on May 19, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) tendered for filing Amendment No. 2 to Supplement No. 11 to the Market Rate Tariff to incorporate a Netting Agreement with PG&E Energy Trading-Power, L.P., into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of May 4, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER00–2547–000]

Take notice that on May 19, 2000, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies) tendered for filing the Generator Backup Service Agreement by and between West Georgia Generating Company L.P. (West Georgia) and Southern Companies (the Service Agreement) under Southern Companies' Generator Backup Service Tariff (FERC Electric Tariff, Original Volume No. 9). The Service Agreement supplies West Georgia with unscheduled capacity and energy in connection with sales from its electric generating facility as a replacement for unintentional differences between the facility's actual metered generation and its scheduled generation. The Service Agreement is dated as of May 11, 2000, and shall terminate upon twelve months prior written notice of either party.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER00–2548–000]

Take notice that on May 19, 2000, Arizona Public Service Company (APS), tendered for filing amendments to the Four Corners Co-tenancy Agreement and the Four Corners Operating Agreement.

A copy of this filing has been served on El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Tucson Electric Power Company, the Arizona Corporation Commission, the California Public Utilities Commission, the Texas Public Utilities Commission and the New Mexico Public Service Commission.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

[Docket No. ER00–2549–000]

Take notice that on May 19, 2000, Commonwealth Edison Company (ComEd) tendered for filing executed service agreements for Nicor Energy L.L.C. (Nicor) and Dynegy Energy Services, Inc. (Dynegy) under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of May 16, 2000 for the service agreements and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Nicor and Dynegy.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Columbia Energy Power Marketing Corporation

[Docket No. ER00–2550–000]

Take notice that on May 19, 2000, Columbia Energy Power Marketing Corporation tendered for filing an amendment to its rate schedule to prohibit sales under the rate schedule to affiliates with franchised retail electric service territories.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Detroit Edison Company

[Docket No. ER00–2551–000]

Take notice that on May 19, 2000, Detroit Edison Company tendered for filing a Temporary Parallel Operation Interconnection Agreement between Detroit Edison Company and Dearborn Industrial Generation, L.L.C.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. PJM Interconnection, L.L.C.

[Docket No. ER00–2552–000]

Take notice that on May 19, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing a firm point-to-point transmission service agreement with Delmarva Power & Light Company, and a network integration transmission service agreement with UGI Utilities, Inc., under the PJM Open Access Transmission Tariff.

Copies of this filing were served upon the parties to the service agreements and the state commissions within the PJM control area.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13667 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 25, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11839–000.

c. *Date filed:* May 8, 2000.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Emsworth L&D Project.

f. *Location:* On the Ohio River in Allegheny County, Pennsylvania. Would utilize the U.S. Army Corps of Engineer's Emsworth L&D.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44302, (330) 535–7115.

i. *FERC Contact:* Robert Bell, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *The proposed project utilizing the existing U.S. Army Corps of Engineer's Emsworth L&D would consist of:* (1) A proposed intake; (2) 14 proposed 80-foot-long, 92-inch diameter steel penstocks; (3) a proposed powerhouse containing 14 generating units having a total installed capacity of 18 MW; (4) a proposed Tailrace; (5) a proposed 200-foot-long, 14.7 kV transmission line; and (6) appurtenant facilities.

The project would have an annual generation of 110 GWh and project power would be sold to a local utility.

1. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202)208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT

TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13621 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 25, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11840–000.

c. *Date filed:* May 8, 2000.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Tygart Dam Project.

f. *Location:* On the Tygart River in Grafton County, West Virginia. Would utilize the U.S. Army Corps of Engineer's Tygart Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44302, (330) 535–7115.

i. *FERC Contact:* Robert Bell, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *The proposed project utilizing the existing U.S. Army of Engineer's Emsworth L&D would consist of:* (1) A proposed intake; (2) a proposed 350-foot-long, 192-inch diameter steel penstocks; (3) a proposed powerhouse containing two generating units have a total installed capacity of 14 MW; (4) a proposed Tailrace; (5) a proposed 400-foot-long, 14.7 kV transmission line; and (6) appurtenant facilities.

The project would have an annual generation of 85.8 GWh and project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not filed comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13622 Filed 5–31–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–170005; FRL–6559–3]

Pesticides; Guidance on Pesticide Import Tolerances and Residue Data for Imported Food; Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comment.

SUMMARY: This document provides detailed guidance on applying current U.S. data requirements for the establishment or continuance of tolerances for pesticide residues in or on imported foods. The purpose of this guidance is to promote greater transparency and provide clear guidance to interested parties on how to obtain an import tolerance. This guidance includes information on how to adapt data requirements for U.S. food uses to import tolerances, both for establishing new import tolerances and for modifying or maintaining existing U.S. tolerances for import purposes when U.S. uses or registrations are canceled. The Agency is soliciting comments on the approach reflected in this detailed guidance.

In addition, the Agency expects to consider certain information on pesticide use outside the U.S. and resulting pesticide chemical residues in or on imported food to establish or modify tolerances when there is a corresponding U.S. registration and use. EPA may also require additional information and/or data to better characterize the nature of residues in or on imports when such information and/or data are necessary to make the required safety finding during registration, reregistration, or tolerance reassessment. This would apply to a limited number of cases when imported commodities comprise a high percentage of U.S. consumption; domestic residue data are not likely to be representative of growing conditions in other countries; and U.S. consumers would likely be exposed to significant residues in imported foods. The Agency is developing criteria to implement this requirement and is soliciting comments.

In addition to meeting the requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), this guidance has been developed consistent with the goals of the North American Free Trade Agreement (NAFTA), including minimizing trade irritants among the NAFTA countries. This document also addresses the U.S. obligations under the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures.

DATES: Comments, identified by the docket number OPP–170005, must be received on or before July 31, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Lowe, Office of Pesticide Programs, Special Review and Reregistration Division (7508C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: 703–308–8059; fax number: 703–308–8041, e-mail address: lowe.kimberly@epa.gov

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be affected by this notice if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Potentially affected categories and entities may include, but are not limited to the following:

Category	NAICS Codes	Examples of Potentially Affected Entities
Food manufacturers	311	Commercial food processors
Pesticide manufacturers	32532	Pesticide registrants Pesticide producers

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. If you have any questions regarding the applicability of this action to a particular entity, you can consult with the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information or Copies of this Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**— Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

2. *In person or by phone.* If you have any questions or need additional information about this action, you may contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this notice, including the public version, has been established under docket control number OPP–170005, (including comments and data submitted electronically as described

below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket number (i.e., "OPP–170005") in your correspondence.

1. *By mail.* Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be Confidential Business Information (CBI). Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–170005. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

IV. Guidance on Import Tolerances

A. Introduction

This document describes the EPA guidance regarding pesticide residues in or on imported foods. In particular, by this document, EPA is informing interested parties of the steps they must take to obtain a new import tolerance (a tolerance that does not have a related U.S. registration) or to maintain an existing tolerance as an import tolerance when the corresponding domestic use has been canceled. In addition, EPA is proposing guidance identifying the information and data that EPA believes are necessary to accurately reflect residues in or on imported food for certain tolerances with corresponding domestic uses and to make a safety finding for those tolerances. The same food safety standards apply to tolerances proposed for both domestically-produced and imported food; as a result, domestic and foreign growers are treated equally. Interested persons are invited to comment on any aspect of this document, and in particular, on the questions raised in Unit IV.G.

EPA intends to achieve several objectives by describing its historical, current, and proposed process for establishing, modifying and maintaining tolerances with no corresponding domestic registration and for tolerances with domestic registrations:

1. Assure a safe food supply for the general population and sensitive subpopulations in particular, such as infants and children.

2. Target import data requirements to circumstances that are likely to affect the risk assessment.

3. Maintain the Agency's schedule for reassessing tolerances under the Food Quality Protection Act (FQPA).

4. Ensure that tolerance policies remain consistent with international obligations such as the provisions of the World Trade Organization (WTO) Agreements and the North American Free Trade Agreement (NAFTA) chapter on Sanitary and Phytosanitary (SPS) Measures.

5. Promote greater transparency in Agency policies by providing written guidance and soliciting public comment.

A U.S. tolerance (the equivalent of a tolerance is sometimes called a maximum residue limit, or MRL, in other countries) is the maximum residue level of a pesticide permitted in or on food or feed grown in the U.S. and food or feed imported into the U.S. from other countries. Food may not lawfully be sold in, or imported into, the United States if the food contains detectable pesticide residues above the level permitted by a tolerance, or at any level if no tolerance, or exemption from the requirement of a tolerance, has been established. Generally, tolerances are set for raw agricultural commodities and also apply to processed foods derived from the commodities. This is because, in most cases, processing results in residues at or below the levels in the raw commodity; EPA requires processing data to ascertain this. If residues in processed food concentrate to higher levels than in the raw commodity, separate tolerances will need to be established to cover residues in the processed food.

Typically, EPA establishes a tolerance or tolerance exemption for a food commodity at the same time that it registers the use of a pesticide for that commodity in the U.S. Where no U.S. registration exists, interested persons may submit a petition requesting that EPA establish a tolerance or a tolerance exemption for a pesticide residue on a commodity that would allow treated food to be legally imported into the United States. The term "import tolerance" is used as a convenience to refer to a tolerance that exists where there is no accompanying U.S. registration. There is no statutory or regulatory distinction between an "import tolerance" and any other tolerance issued by EPA.

With this document, EPA provides further clarification of its requirements for import tolerances, and proposes a modification of its approach to registration to permit greater consideration of residues in or on imported food in establishing or maintaining tolerances or tolerance exemptions for food uses registered in the U.S. This document explains the need for foreign residue data for both purposes and a process for the early notification of other countries of the potential for revocation of tolerances following cancellation of a related U.S. registration. This Notice also explains that EPA intends to make use of existing information to the greatest extent appropriate, including data (and associated reviews) that may have been submitted in support of MRLs established by the international Codex Alimentarius Commission, or to regulatory authorities in Canada, Mexico, or other countries.

Also, the U.S. is working with its NAFTA partners in developing import tolerance policies and other related policies that will maintain and enhance food safety while minimizing trade irritants. The publication of U.S. import tolerance guidance is one step in this process.

The remainder of this unit provides information on the legal basis for requiring data for import tolerances and how import tolerances fit in with EPA's general policies on pesticides; a general description of the data requirements for import tolerances; an outline of the types of screening information on residues in or on imported food that EPA is proposing to require; and a brief discussion of EPA's obligations under such international agreements as the WTO and NAFTA SPS Agreements. Unit V. of this Notice provides more specific information on how to apply existing U.S. data requirements to tolerances that do not have corresponding registration for U.S. food uses.

B. Statutory Basis for Guidance

EPA regulates pesticides under two major statutes: the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). FIFRA requires that pesticides be registered (licensed) by EPA before they may be sold or distributed for use in the United States. Section 408 of the FFDCA authorizes EPA to establish, modify, or maintain tolerances or tolerance exemptions for pesticide residues in or on food. Once established, a tolerance or tolerance exemption applies equally to domestically-produced and imported food. Any food with pesticide residues not covered by a tolerance or tolerance exemption (or with residues in excess of the tolerance) may be subject to regulatory action by the U.S. government (including seizure). Pesticide tolerances and exemptions are enforced by individual states and the U.S. Food and Drug Administration (FDA) for most foods, and by the U.S. Department of Agriculture (USDA) for meat, poultry, and some egg products.

EPA has an obligation under section 408 of the FFDCA to establish tolerances for pesticide chemicals at levels that are "safe." EPA also has an obligation to ensure that the tolerances continue to be "safe" over time, since new information may alter the Agency's earlier safety finding under the FFDCA.

The Food Quality Protection Act of 1996 (FQPA) made several changes to the U.S. laws affecting pesticides (FIFRA and FFDCA). Many of these changes affect how tolerances are set, notably: Establishing a single, health-based standard (the "reasonable certainty of no harm" standard) for all pesticide residues in food; eliminating past inconsistencies in how raw foods and processed foods were dealt with; specifying a broader assessment of potential risks, with special emphasis on potentially sensitive groups such as infants and children; significantly limiting the extent to which benefits can be used in modifying or maintaining existing tolerances; and requiring reassessment of all existing tolerances in accordance with the new safety standard. All tolerances (including import tolerances) must be evaluated according to this new health standard.

In granting new tolerances and reassessing existing tolerances to determine if they meet FQPA standards, EPA must consider available information on aggregate non-occupational exposure from the pesticide (including exposure from food, drinking water, and pesticides used in and around the home), cumulative effects from pesticides with a common mechanism or mode of toxicity; the potential increased susceptibility of infants and children or other sensitive subpopulations; and the potential for estrogenic or other endocrine effects.

Three additional provisions of FFDCA as amended by FQPA are particularly important for this import tolerance guidance: Section 408(b)(4) International Standards; section 408(f) Special Data Requirements; and section 408(l)(2) Revocation of Tolerance or Exemption Following Cancellation of Associated Registrations.

In establishing a tolerance, FFDCA section 408(b)(4) requires EPA to determine if the Codex Alimentarius Commission has established a maximum residue level. If EPA does not adopt the Codex level, then the Agency must publish a notice for public comment explaining the reasons for the deviation.

If EPA needs additional data to support the continuance of a tolerance or exemption, but there are no U.S. registrants from whom the Agency can obtain the data under FIFRA, EPA may require data under section 408(f) of FFDCA, and EPA intends to use that authority to impose data requirements. Section 408(f) of FFDCA allows the Agency to publish a Notice in the **Federal Register** describing the type of data needed and inviting persons willing to submit the necessary data to support the tolerance to identify themselves. Tolerances may be revoked if no person commits to supply the necessary data or if the appropriate data are not submitted in a timely manner.

Finally, section 408(l) requires EPA to revoke a tolerance within 180 days of the cancellation of a FIFRA use if the use was canceled for dietary risk reasons.

Companies and others interested in supporting a tolerance for import purposes should familiarize themselves with the changes in FFDCA brought about by FQPA, since these changes will affect how potential risks are assessed and, ultimately, the Agency's decision on whether to grant a tolerance.

C. Summary of Guidance

To establish or modify a tolerance, or to maintain an existing tolerance, EPA must determine that the proposed or existing tolerance is safe under section 408 of the FFDCA as amended by FQPA. This safety finding is based, among other things, on information about the toxicity of the pesticide, likely residues in or on the food in question, and consumption patterns. For new tolerances with no accompanying U.S. registrations, the Agency will continue to require that tolerance petitioners provide EPA with the information and/or data that EPA needs to make the required safety finding. This usually will include residue data representative of the pesticide's use in other countries that export food to the U.S.

In addition, as domestic uses are canceled during the pesticide reregistration process, or for any other reason (other than dietary risk), EPA will consider requests for modifying or maintaining the corresponding tolerance to allow the continued import of treated food into the U.S. As stated above, EPA is required to make a safety finding and may determine that additional data reflecting foreign use patterns and likely residues in or on imported food are necessary for EPA to conclude that the tolerance is safe. For example, if a tolerance has not been reassessed and the corresponding domestic registration is being or has been canceled, old data may not reflect current use patterns, including uses abroad. To determine what data are necessary, EPA will consider information such as that described in Unit IV.D. Therefore, it is important that the data requirements for import tolerances be clearly stated and that the international community understands the need for these data to ensure the safety of imported food for the American public.

Similarly, in those cases where EPA establishes or maintains a tolerance where there is a corresponding registered U.S. food use, the Agency typically has not estimated the specific

contribution to the diet of residues in or on imported food. This is because EPA assumes that residues in or on imported food will be the same as residues in or on food that is domestically-produced; information such as monitoring data is generally consistent with that assumption. However, in some instances this assumption may under- or overestimate residues in or on imported food, and, as such, may under- or overestimate the overall risks from consumption of the imported food. Therefore, the Agency expects to consider additional data and/or information about pesticide use in other countries and residues in or on imported food. Such information may indicate the need to require additional data and/or information when necessary to support the establishment or reassessment of tolerances with corresponding domestic registrations (i.e., to make the required safety finding) such as information on foreign use patterns and residues in or on imported food. Such a requirement for additional information would apply in a limited number of cases in which imported commodities comprise a high percentage of U.S. consumption, domestic residue data are not likely to be representative of growing conditions in other countries, and U.S. consumers would likely be exposed to significant residues in imported foods.

Accordingly, the Agency is issuing current guidance for establishing import tolerances and maintaining or modifying tolerances where the domestic use has been canceled, and soliciting comments on further guidance for determining when data on imported foods are necessary to support establishment of tolerances for selected domestic registrations. Generally, EPA intends to use the same kinds of information and general concepts to determine whether additional data reflecting residues in or on imported food are necessary to modify or maintain a tolerance where the use has been canceled and to establish, modify, or maintain a tolerance with a corresponding U.S. registered use.

1. *Current guidance for establishing, modifying, or maintaining import tolerances—a. Establishing new tolerances with no accompanying U.S. registration.* EPA will continue to require toxicology data and data representative of residues in or on imported foods in making the required safety findings. EPA generally requires the same toxicology data and residue data as are needed for U.S. food uses, except that the data requirements covering residues in or on imported food are geared to use conditions in the exporting countries. In the past, these data have been required on a case-by-case basis. Unit V. of this Notice provides more detailed written guidance on the data requirements to establish a tolerance for import purposes.

b. *Modifying or maintaining tolerances for imported food following cancellation of U.S. uses.* Registered pesticide uses may be canceled for a variety of reasons including internal business reasons, dietary risk concerns, or non-dietary risk concerns. In many cases, a tolerance is no longer needed after a registered use in this country is canceled, and EPA routinely proposes to revoke such tolerances. However, use in other countries may continue and, unless a use was canceled due to dietary risk concerns, EPA will consider requests (normally by petition) to modify or maintain a tolerance as an "import tolerance." EPA plans to use a variety of means to provide an opportunity for interested parties to support the modification or maintenance of a tolerance in these circumstances. In cases where a cancellation of a pesticide is for dietary risk reasons, FFDCA section 408(l) requires revocation of the tolerances within 180 days of the cancellation.

When a pesticide is canceled based on non-dietary risk concerns, such as adverse effects on non-target species, the corresponding tolerance may be maintained provided that there is a need for the tolerance because the pesticide is used outside of the U.S. on commodities intended for the U.S. market and a proponent of the tolerance supplies sufficient data or information to demonstrate that a tolerance meets the food safety requirements of FFDCA. EPA's tolerance setting authority is based on food safety considerations. The Agency has no authority to regulate pesticide use in other countries. At the same time, however, EPA promotes public health and environmental protection worldwide by providing information designed to encourage safer, well-informed pest control decisions on an international level, consistent with the Agency's mandates under FIFRA. This includes Agency actions based on non-dietary as well as dietary risks. Whenever EPA takes significant cancellation actions based on non-dietary risks, EPA will notify other countries and share information with other regulatory authorities for their use in deciding whether conditions in their countries warrant continued use of the pesticide. Where appropriate, EPA will also propose to include pesticides canceled, whether or not for non-dietary concerns in the international system of information exchange known as the "prior informed consent" system.

When a registrant requests that a registered use be deleted voluntarily, the Agency will propose to cancel that use in a **Federal Register** Notice in accordance with section 6(f) of FIFRA. Following the cancellation of a use, EPA will typically propose to revoke the tolerance. To provide interested parties an early notification of the potential revocation of the tolerance, the section 6(f) Notice will inform the public that once the use is canceled, the Agency may propose to revoke the tolerance unless there is a request to modify or maintain it as an import tolerance. In addition, the interested party must commit to supply the information necessary for the Agency to make a safety finding. The Notice will state the Agency's willingness to consider requests to modify or maintain a tolerance following the cancellation of the accompanying registration and indicate the process for doing so. Interested parties may notify EPA of their interest in supporting maintenance or modification of a tolerance to cover residues in or on imported food in comments on the Notice. EPA will also provide the public with information on the EPA web site (www.epa.gov/pesticides) about the potential loss of the related tolerance and about how to maintain a tolerance as an import tolerance if the corresponding use is canceled. These notices will also be provided to other countries through the WTO notification process.

If EPA receives a request to modify or maintain a tolerance in response to a section 6(f) Notice, the interested party may identify or provide (consistent with relevant provisions of FIFRA) existing domestic or foreign data and the Agency will determine if the data are sufficient. EPA will consider the kind of information specified in Unit IV.D. to determine if additional data and/or information are needed (and data requirements must be satisfied) to support continuation of the tolerance. If so, the Agency may issue a Notice under section 408(f) of FFDCA informing the public of the data requirements and stating the time period for submitting the required data. Persons supporting the maintenance or modification of tolerances to cover residues in or on imported food have the burden of demonstrating the relevance of any existing domestic data to foreign growing conditions.

If EPA does not receive any indication of support for an import tolerance following the cancellation of the registered food use, the Agency will publish a **Federal Register** Notice that proposes to revoke the tolerance. The Notice will again give interested parties the opportunity to come forward to support the maintenance of the tolerance. To avoid the issuance of the final tolerance revocation, interested parties must demonstrate a need to retain the tolerance and commit to support the tolerance. Retaining the tolerance may likely require submission of data so that EPA can make safety findings under FFDCA. EPA's data requirements for import tolerances are further described in Unit V.

2. *Further guidance under development regarding U.S. registration with an import component.* The Agency expects to require information on residues in or on imported food in a limited number of circumstances when registering new U.S. uses and when reassessing tolerances as required by FQPA. In the past, EPA has not expressly considered the unique contribution of residues in or on imported food when establishing (or reassessing) tolerances with accompanying U.S. registrations. Currently, EPA assumes that the residues in imported commodities will be the same as in domestically-produced commodities. Additional information will be required when EPA's assumption that residues in or on imported foods will be the same as residues in or on domestic foods is not expected to be correct and/or additional data to better reflect residues in or on imports are necessary to support the safety finding. Because, in this instance, EPA's assumption may under- or overestimate risks from imported food, and existing monitoring programs may not provide sufficient information in all cases to support the assumption and safety finding, the Agency is developing criteria to help determine the circumstances in which residue data based on pesticide use on crops destined for import into the U.S. should be required. When imported foods may contribute significantly to dietary exposure to the pesticides, those interested in establishing or supporting continuation of a tolerance with a U.S. registered food use must provide basic screening information about potential residues in imported foods, as discussed below, so that the Agency can determine if additional data are needed.

It is important to emphasize that the Agency expects that additional data will be needed in very limited cases where a high percentage of the commodity is imported potentially resulting in substantial dietary exposure. EPA is seeking comment on the adequacy and appropriateness of requiring this information, as well as on the specific questions posed on this issue later in this document. While seeking comment on this document and developing more formal guidance, the Agency reserves the right to require data based on pesticide use in other countries on a case-by-case basis, e.g., when a high percentage of the commodity is imported, and, thus, such information is clearly necessary to make the required safety findings under FFDCA.

D. Screening Information

The following types of screening information will be considered in establishing or reassessing a tolerance or tolerance exemption to help the Agency decide if additional information or data are needed on imported foods, regardless of whether the data are supporting import tolerance or a domestic registration with a significant import component:

- What international tolerances or MRLs exist?
- Which countries export the commodity to the U.S.?
- Major seasonal variations in imports of the commodity.
- Percent of U.S. consumption which is imported.
- Percent of crop treated in the exporting countries.
- Significance of the food in the U.S. diet (see Table 10 in Unit VII.).
- Effect of processing on the residues.
- Available information on levels of residues found in samples of imported food (based on FDA, USDA, or other monitoring data).
- Other information that would help the Agency determine if residues in or on imported food are likely to contribute significantly to dietary exposure or risk in the U.S. or to differ significantly from residues in or on domestically-produced foods.

Following are two examples of how the Agency may use the above information in determining the need for further data:

Example 1. A petitioner seeks a U.S. registration and tolerance for a new pesticide use on cranberries. Less than 1% of cranberries consumed in the U.S. are imported. Almost all imports are from Canada, where growing conditions (e.g., use patterns, weather conditions, soil type) are similar to those in the U.S. Cranberries account for an extremely low percentage of the U.S. diet. In this case, EPA would probably not require submission of foreign residue data because dietary exposure to residues in imported cranberries is very low and EPA determines that U.S. field trials would be representative of growing conditions in Canada.

Example 2. A petitioner seeks to maintain a tolerance for residues of a pesticide in bananas following the cancellation of the banana use in the U.S. The vast majority of bananas consumed in the U.S. are imported. Bananas are imported from Central and South America, and cultural practices for bananas grown in the U.S. differ from those in Latin America. Existing residue data consist of five U.S. field trials in Hawaii and Puerto Rico. Bananas represent a relatively high percentage of the U.S. diet, especially for children. To assess the safety of the tolerance, EPA would likely require submission of additional residue data based on the pesticide's use in major banana exporting countries for the following reasons: Most of what is consumed in the U.S. is imported and EPA has no data on such foreign uses; cultural practices in other countries appear to differ from those in the U.S.; and bananas represent a relatively high percentage of the diet of a potentially sensitive subpopulation (children). The tolerance petitioner would not necessarily have to conduct new trials; however, since there may be existing, reliable residue data that supported a Codex submission or an MRL approved by another regulatory body.

These examples are only for illustrative purposes to suggest how the Agency might use the screening information in deciding whether to require additional residue data. Other factors that would likely affect the Agency's decision include the toxicity of the chemical, available information on conditions of pesticide use in exporting countries, and available monitoring data.

E. Data Requirements

Import tolerances generally require the same types of data as are needed for tolerances with U.S. registrations, including toxicology data, residue chemistry data, and data representative of actual growing conditions. EPA needs these data to assess the potential dietary risk and to make the required safety finding. EPA does not require worker exposure and environmental fate and effects data to establish import tolerances since these data are not needed to assess dietary risk, although they would be required if the pesticide were to be registered for use in the U.S. The data requirements described in Unit V. interpret 40 CFR part 158 for purposes of characterizing residues in or on imports, and are intended to apply to all new tolerance petitions where there is no U.S. registration and to requests to modify or maintain a tolerance for imports where the

corresponding U.S. use has been canceled.

The data requirements described in this Notice are the existing EPA field trial guidance for U.S. registrations adapted to growing conditions in other countries. In the past, EPA did not have written guidance for the number and location of field trials to support tolerances for residues in or on food imported from other countries. Rather, the Agency provided case-by-case advice on adapting the data requirements to import situations. Unit V. provides written guidance on how to determine the number and location of field trials for new tolerances on imported commodities.

F. Consistency with International Obligations

1. *Codex.* The Codex Alimentarius Commission of the Joint Food and Agriculture Organization/World Health Organization (FAO/WHO) Food Standards Program establishes international food standards, including maximum pesticide residue limits, to protect public health and promote international trade. It is EPA's policy to harmonize its tolerances with the levels established by Codex provided that the Agency has sufficient information to make a determination that the Codex Maximum Residue Limits (MRLs) will be protective of the health of the U.S. public and meet FFDCA standards. FQPA requires EPA to publish a notice for public comment whenever the Agency establishes a tolerance that differs from an established Codex MRL. EPA may set a tolerance that differs from the Codex MRL if EPA explains the reason for the difference. For example, EPA may determine that the Codex MRL does not meet FFDCA standards or is inadequate in light of pesticide use practices in the U.S.

2. *International trade agreements.* The U.S. is a party to both the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) Agreements. Both agreements contain provisions applicable to Sanitary and Phytosanitary (SPS) Measures that include food safety measures such as tolerances. Under these agreements, individual countries have the right to establish levels of protection for human, animal, or plant life or health that they deem appropriate and to implement measures that will achieve these levels of protection. Measures are to be based on available international standards, including Codex MRLs, but may be more stringent than international standards if there is a scientific justification or to achieve a greater level of protection. Measures are to be based on scientific principles, not be maintained without sufficient scientific evidence, and be based on an assessment, as appropriate to the circumstances, of the risks; may not arbitrarily or unjustifiably discriminate between domestic and imported goods or goods from different importers; and are to be established through an open, transparent process. The NAFTA further states explicitly that efforts toward greater harmonization and equivalence in regulatory standards are to be undertaken "without reducing the level of protection of human, animal, or plant life or health."

As stated in this Notice, EPA's policy is to harmonize its tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. Publication of this Notice will enhance the transparency of EPA's requirements governing pesticide residues in imported foods by providing better guidance on the type of data needed to support a tolerance. The tolerance policies outlined in this Notice are nondiscriminatory and designed to ensure that both domestically-produced and imported foods meet the food safety standards (level of protection) established by the FFDCA. The same food safety standards apply to domestically-produced and imported foods.

3. *NAFTA activities.* As part of NAFTA, a North American Pesticide Initiative was created to improve cooperation and sharing of data reviews for pesticides among the three countries. The U.S. is participating with its NAFTA partners (Canada and Mexico) in harmonizing data requirements and policies to the extent possible. Canada and the U.S. have made substantial progress in harmonizing their data requirements and have established zone maps to permit pesticide residue data from one country to be used by the other for estimating MRLs and tolerances. A similar effort is underway to develop zone maps that will permit the use of data from similar growing regions in Mexico and the U.S. In addition, this U.S. import tolerance guidance is intended to form the basis for a NAFTA guidance on import tolerances. EPA has been working with its NAFTA partners in developing this guidance.

G. Request for Comments

The Agency is interested in comments on this Notice and, in particular, on its proposed guidance for requiring data and information on potential residues in or on imported foods when there is a corresponding U.S. registration. EPA is specifically soliciting comments on the following questions:

1. Under what circumstances should EPA require data reflecting growing conditions in other countries when a pesticide also has U.S. registration for the same food use?

2. Do the data requirements outlined in this Notice provide a sufficient basis for making the food safety determination required by the FFDCA?

3. If a commenter believes that data reflecting growing conditions in other countries should not be required when a pesticide is registered for the same use in the U.S., how should the Agency account for potential exposure to residues in or on imported foods in conducting its dietary risk assessments?

4. Should EPA be concerned with potential shifts in the sources of imported foods and changes in pesticide use practices in exporting countries over time? If so, how frequently should data needs be reassessed? (After an initial tolerance is granted, the crop in question could be grown in other countries that have different application methods and climate, possibly resulting in different residues in or on imported food.)

5. Pesticides with U.S. registrations require periodic review under U.S. laws to ensure that the data supporting the registration (and associated tolerances) continue to meet up-to-date scientific standards. How should EPA ensure that import tolerances, which have no corresponding U.S. registrations, are similarly reviewed and updated? (The Agency notes that FFDCA requires a review of tolerances after five years whenever anticipated residue data are used in risk assessment.)

6. What criteria should be used in deciding if further data are needed to better capture the imported food contribution to dietary risk when there is a tolerance with a corresponding domestic registration?

V. Import Tolerance Data Requirements

The data requirements in this Unit apply to the following two scenarios discussed in Unit IV:

1. Establishing new tolerances with no accompanying U.S. registration.

2. Modifying or maintaining tolerances for imported food following cancellation of U.S. uses.

This part clarifies how existing U.S. food use pesticide data requirements for product chemistry, residue chemistry, and toxicology studies apply to petitions for tolerances to cover residues in or on imported commodities (scenario 1). These data requirements also serve as target data requirements for scenario 2.

There are no additional types of studies needed for import tolerances, compared to tolerances that do have corresponding domestic registrations. In general, fewer studies are required than for tolerances associated with U.S. registrations because only those studies specifically associated with a tolerance petition are required. The guideline requirement that requires the most clarification for import tolerances is OPPTS Guideline 860.1500, Field Trials. These are the core studies from which most tolerance values are estimated.

If a registrant has an existing tolerance and registered U.S. use, but intends to withdraw the registered use and maintain the tolerance for import purposes, the Agency may need additional residue data to better determine the dietary exposure of U.S. consumers to the pesticide. In such cases, the registrant or other proponent of the tolerance is advised to consult with the Agency to determine what studies are required to support the tolerance.

The import tolerance petitioner may not need to conduct new studies to fulfill the data requirements. Interested parties may support a new import tolerance, or support maintenance or modification of an existing tolerance, with studies developed for a registration in another country, for a Codex MRL, and/or in support of the previous U.S. registration and tolerance, provided that they are able to demonstrate the applicability of the studies to the requirements in this Notice. The petitioner or other interested parties may consult with the Agency before submitting the existing studies. All studies must be formatted in accordance with PR Notice 86-5, and, as such, should contain a statement describing the applicability of the U.S. (40 CFR part 160) or Organization for Economic Cooperation and Development (OECD) requirements for Good Laboratory Practices. The Agency strongly recommends that petitioners attach a copy of the study evaluation by the registering country or by Codex to the study report as an appendix.

An earlier version of the import tolerances data requirements included in this unit was presented to the FIFRA Science Advisory Panel (SAP) in June 1997. The SAP was supportive of the approach for determining number and location of field trials and encouraged international harmonization to the extent possible. In addition to the SAP, comments have been received from Canada's Pest Management Regulatory Agency (PMRA) and the American Crop Protection Association (ACPA) and taken into consideration in this Notice.

A. Description of Format and Data Requirements for an Import Tolerance Petition

Tolerance petition requirements are summarized in 40 CFR 180.7(b). Each petition must contain seven parts, labeled A through G. The requirements for each section are listed below with a description of the specific information needed to establish an import tolerance. This information is the same as or similar to information needed to support an existing tolerance where the corresponding U.S. use has been canceled.

1. *Section A—The name, chemical identity, and composition of the pesticide chemical.* Petitioners usually reference product chemistry studies that were submitted in support of a product registration to fulfill these requirements. Table 1 lists guideline numbers for product chemistry studies along with the information needed specifically for import tolerances. The petitioner must disclose the inert ingredients in the formulation. Residue and safety data for List 1 inert ingredients may be required if List 1 inerts are present in the formulation so that a dietary risk assessment for the inert can be done by the Agency. (A reference for the inert classification system may be found at 54 FR 48314, November 22, 1989)

2. *Section B—The amount, frequency, and time of application of the pesticide chemical.* For all countries in which a pesticide chemical is marketed and may result in residues in food exported to the U.S., the petitioner must submit a description of the use of the pesticide chemical. It is preferable to submit copies of labels translated to English. The information must include, but is not limited to, the maximum single application rate, the maximum annual application rate, application timing (as it relates to plant growth stage), re-treatment interval, application tank-mix preparation, volume of spray mix per unit area, application equipment, and the pre-harvest interval (PHI). The application rates should be expressed in units of pounds active ingredient per acre (or kilograms per hectare). If the pesticide chemical is applied directly to livestock, then the use information should include a description of the application method (dip, spray, ear tag, etc.), amount of active ingredient applied per unit body weight, re-treatment intervals, maximum application rate per year, and the pre-slaughter interval.

3. *Section C—Safety data.* Toxicology data required to support an import tolerance are largely the same as those required to support a domestic tolerance with the notable exceptions of most acute toxicity studies and studies reflecting administration via the dermal or inhalation routes. In the case of pesticides having at least one tolerance associated with a U.S. registration, this data subset would already have been submitted to the Agency. Toxicology data requirement guidelines are given in Table 2 in Unit VI.

4. *Section D—The results of test on the amount of residue remaining, including a description of the analytical method used.* Studies conducted under the OPPTS Guideline 860 series (formerly 171-4) are listed in this section. These include metabolism studies, analytical methods used, information relating to the storage stability of the parent compound and metabolites of concern on the appropriate commodity, and magnitude of residue studies. Specific requirements are further described below in the section on residue chemistry studies.

5. *Section E—Practicable methods for removing residue.* This section is primarily of concern if the proposed tolerance results in an unacceptable risk, when assuming that residues will be ingested at the proposed tolerance level. The petitioner may conduct studies describing reduction of residues through typical practices, including washing, peeling, cooking, etc.

6. *Section F—Proposed tolerance for the pesticide chemical if tolerances are proposed.* The petitioner must propose a tolerance based on the maximum residues found in the magnitude of residue studies. The Agency may choose to adopt the Codex MRL, if one has been established, as described in the following section on residue chemistry studies.

7. *Section G—Reasonable grounds in support of the petition.* The petitioner should present a rationale describing how the residue data support the proposed tolerance. A detailed discussion of the information that should be presented may be found in OPPTS Guideline 860.1560.

B. Toxicology Data Requirements

Table 2 in Unit VI. lists the full complement of toxicology data required to support a tolerance as listed at 40 CFR part 158. Whether or not a given study is required to support an import tolerance is noted as are several explanatory footnotes. The petitioner is urged to refer to 40 CFR part 158 for the test substance(s) and conditions under which each study is required. Detailed guidance on the conduct of the

individual studies may be found in the references cited at the end of this Unit. In addition to the required studies, the Agency welcomes the submission of studies not required to support an import tolerance if they have been conducted to satisfy the registration/tolerance-setting requirements of one or more countries outside of the U.S. The Agency also reserves the right to require any study, including special studies, if deemed necessary to assess the human hazard, dietary risk, mode of toxicity, or other aspect of the pesticide in question.

C. Residue Chemistry Data Requirements

Table 3 in Unit VI. lists the Residue Chemistry studies required to support tolerances as outlined in 40 CFR part 158. The data required to support an import tolerance are essentially the same as for a tolerance associated with a U.S. registration, but fewer studies may be required under certain conditions. More detailed guidance for each type of study may be obtained from the list of references at the end of this Unit. Following is a description of the differences in data requirements (compared to requirements for a tolerance associated with a domestic use) for field trials, processing studies, and livestock studies.

1. *Field Trials (OPPTS Guideline 860.1500).* Field trials are conducted to determine the maximum residue that may be expected in or on a raw agricultural commodity as a result of the legal use of the pesticide. The trials must reflect label directions that would be expected to result in the maximum residue levels, e.g., the maximum label rates, maximum number of applications, minimum re-treatment interval, and minimum PHI.

The Agency has prepared two tables (Tables 4 and 5 in Unit VI.), that can be used to determine the number of field trials that should be conducted for an import tolerance. The number of field trials recommended was derived from the number required for a tolerance associated with a U.S. registration, and also takes into consideration the consumption of the commodity as a percentage of the U.S. diet and the relative amount imported into the U.S. (percent imported averaged over 5 years). Detailed instructions on determining the number and location of field trials and examples are provided in Unit VII. of this document. Table 10 in Unit VII. provides information on relative significance of each food in the U.S. diet.

The U.S. and Canada use zone maps to determine where field trials should be conducted for tolerances associated with a domestic registration. These maps divide North America into regions where growing conditions are similar. Field trials conducted within the same zone are considered interchangeable. In the absence of zone maps for other countries developed using similar principles, the Agency requests data on a country-by-country basis. Trials should be conducted in countries in relative proportion to the amount each country exports into the United States. Only those countries in which the pesticide is marketed or proposed to be marketed need to be represented. Trials will generally need to be conducted in all countries that export at least 5% of the total amount of a specific commodity imported into the U.S. The petitioner should seek Agency approval if substitution of data from one country to another is desired. All major growing areas within a country should be represented, as is required for U.S. registrations in OPPTS Guideline 860.1500. At least two individually composited samples must be taken from each test plot and analyzed.

All major formulation classes should be represented. Petitioners are referred to the section on formulations in the residue chemistry OPPTS Test Guideline, 860.1500(e)(2)(x). A full set of trials must be conducted for each major class. For later season uses, it will likely be necessary to conduct trials on the different formulations within a class. If a petitioner has a chemical with a 2–day PHI that is formulated as an emulsifiable concentrate and a wettable powder, a full set of trials would be required for both formulations, unless side-by-side plots at a few sites show comparable residues from such products. In the latter case, some reduction of the total number of trials may be warranted. Petitioners are advised to consult the guidelines or Agency staff if a reduced number of trials is intended.

For crops requiring 8 or more trials, the number of trials may be reduced up to 25% if metabolism studies indicate that residues are likely to be below the limit of quantitation. If some trials show quantifiable residues, then the full number of trials must be conducted. The limit of quantitation should be sufficiently low from an analytical chemistry standpoint and for risk assessment purposes. The 25% reduction in the number of field trials may not be applied to representative commodities used to support crop group tolerances. For additional information, the petitioner is advised to consult OPPTS Guideline 860.1500(e)(2)(viii).

Data generated in the United States or countries other than where the petitioner has existing or proposed uses may be substituted for up to half of the required number of foreign trials, but a minimum of three trials must be from the countries in which the pesticide is marketed. The petitioner should demonstrate that crop cultural practices, climatological conditions, and use patterns are substantially similar between the subject regions and regions represented by the U.S. (or other) data. The burden of proof is on the petitioner.

In the case of tolerances to cover treated commodities imported from Canada or Mexico only, it may be acceptable for more than 50% of the trials to be conducted in the U.S. As mentioned above, as part of the harmonization process under the NAFTA, the crop field trial regions in the U.S. guidelines have been extended into Canada, and efforts are underway to do the same into Mexico. This would allow trials in the U.S. to support registration and tolerances in Canada and Mexico or vice versa. As a result, among these three countries, for certain crops most or all of the field trials could be conducted in a different country than the one in which the pesticide use is registered. For example, if a tolerance is desired to cover the export of cranberries from Canada to the U.S., most of the trials could be conducted in the northern regions of the U.S. even though the pesticide is to be registered in Canada. Similarly, for certain crops being imported from Mexico, many of the trials could be done in the southwestern U.S. In the future, if other countries develop zone maps employing similar concepts, and the regions and cultural practices are demonstrated to be substantially similar to U.S. regions, then the Agency may consider substitution of U.S. data for those countries as well.

Generally, a minimum of three trials are required for any crop. In certain cases, a petitioner may conduct fewer than three trials if there is a low dietary intake of commodity and if the amount imported is relatively small. In such cases, a greater number of samples would be required from the test plot. Petitioners should consult OPPTS Guideline 860.1500 or submit a protocol for review and comment by the Agency.

Table 9 in Unit VII. lists the number of field trials and locations for commodities for which import tolerances are most frequently requested. Petitioners interested in establishing import tolerances for a crop group are advised to consult with the Agency for direction on number and location of trials for each representative commodity within the crop group.

2. *Processing Studies (OPPTS Guideline 860.1520).* Processing studies must be conducted if there is likely to be processing of the commodity once it has been imported into the U.S. or if the processed commodity is imported into the U.S. Table 1 of the residue chemistry testing guidelines (OPPTS Guideline 860.1000) lists the processed commodities for which data are required. The petitioner is advised to consult the Agency if the petitioner believes a processing study is not necessary when it normally would be required. In a processing study, the raw agricultural commodity (RAC) is processed in a manner simulating typical commercial practice. The RAC should have detectable residues so a concentration factor may be calculated. Exaggerated rates and/or reduced PHIs may be necessary to ensure that the RAC to be processed bears quantifiable residues.

3. *Nature of the Residue—Animals (OPPTS Guideline 860.1300).* If the raw agricultural commodity or processed commodity associated with the crop to be treated in the subject petition could be used as an animal feed, oral livestock metabolism and magnitude of residue studies are required. Dermal metabolism studies are required if the pesticide is marketed as a dermal treatment for livestock in countries that export a significant quantity of animal products to the U.S. The purpose of these studies is to determine the identity of the biotransformation products of the pesticide. Ruminant and poultry studies are normally required. EPA will assume that all feed items included in Table 1 of OPPTS Guideline 860.1000 are feed items for import tolerance purposes. Any claims that these items are not significant feed items in the country(s) of concern will be considered only if they are convincingly documented by the petitioner.

Livestock metabolism, magnitude of residue, and/or analytical method studies would not be required under the following conditions: (i) If animal metabolism studies indicate that there is no reasonable expectation of finite residues in the animal commodity; (ii) if it is unlikely the imported plant commodity or its processed products would be significant feed items (in the U.S. or exporting country); or (iii) there are not significant exports of livestock-derived food products or commodities from the countries of interest to the U.S. and the commodity is not a feed item in the U.S.

D. JMPR/Codex Considerations

The Agency requires the submission of complete toxicology studies for import tolerances even if they have previously been submitted to the Joint Meeting on Pesticide Residues (JMPR). The Agency will conduct an independent review of the data. Summaries and/or JMPR reviews are not an acceptable substitute, although they may be submitted as supplemental materials. However, in the future, harmonization of OECD test guidelines and data evaluations may allow the Agency to use toxicology data reviews from other countries for hazard identification and risk assessment.

If a Codex MRL has been established, the Agency may conduct a more limited review of the residue chemistry data under certain conditions. A detailed description of the conditions and an overview of how the Agency may consider Codex MRLs as they relate to the data requirements may be found in Unit VIII. EPA is more likely to accept Codex MRL levels as tolerance levels with limited review if U.S. tolerances for the pesticide are already established on other commodities. Standard data and review requirements would be applied where exposure and/or risk from the pesticide is high.

E. Good Laboratory Practice Considerations

As described in 40 CFR 160.1(a) and 160.3(4) all submissions for pesticide registrations and tolerance petitions should be in accordance with Good Laboratory Practices (GLP). If the study deviates from GLPs, a statement must be included in the study stating any deviations and the effect on the study. Any deviations should be duly noted in the report.

F. Submittal of Samples

Registrants and petitioners are normally required to submit samples of the pesticide technical grade active ingredient (TGAI) under OPPTS Guideline 830.1900 and analytical standards of the parent compound and regulated metabolites under OPPTS Guideline 860.1650. Unless the TGAI is to be registered in the U.S., petitioners for an import tolerance are not required to submit samples of the product because this is a requirement only for the registration of a product. However, the petitioners are still required to submit the analytical standard under OPPTS Guideline 860.1650 because this is a requirement for a pesticide tolerance petition.

G. Conclusion

Data requirements for a pesticide tolerance in the absence of a U.S. registration (i.e., import tolerance) have been outlined in this part. Before conducting any toxicology, product chemistry, or residue chemistry studies, prospective petitioners are strongly urged to consult the OPPTS Guideline series 870, 830, and 860. Petitioners should submit protocols to EPA for review and comment if they have any questions regarding study design and conduct. The Agency will attempt to harmonize U.S. tolerances with international standards to the maximum extent possible, consistent with the food safety standards of the FFDCA, and is continuing to work towards greater harmonization in international fora.

VI. Tables

The following tables are provided as additional information and are referenced in this guidance document.

TABLE 1.—PRODUCT CHEMISTRY DATA REQUIREMENTS FOR IMPORT TOLERANCES

Guideline No.	Study Title	Application to Import Tolerances	Test Substance [1]
830.1550	Product Identity	No—Product Specific Requirement	N/A
830.1600 830.1620 830.1650	Description of Manufacturing Process	Yes	TGAI
830.1670	Discussion on Formation of Impurities	Yes—Agency is especially concerned with impurities of toxicological concern (e.g. dioxins, HCB, nitrosamines)	TGAI
830.1700	Preliminary Analysis	Yes	TGAI

TABLE 1.—PRODUCT CHEMISTRY DATA REQUIREMENTS FOR IMPORT TOLERANCES—Continued

Guideline No.	Study Title	Application to Import Tolerances	Test Substance [1]
830.1750	Certified Limits	No—Product Specific Requirement	N/A
830.1800	Enforcement Analytical Methods	No—Product Specific Requirement	N/A
830.6302	Color	Yes	TGAI
830.6303	Physical State	Yes	TGAI
830.6304	Odor	Yes	TGAI
830.7200	Melting Point	Yes	TGAI
830.7220	Boiling Point	Yes	TGAI
830.7300	Density	Yes	TGAI
830.7840 830.7860	Water Solubility	Yes	TGAI or PAI
830.7950	Vapor Pressure	Yes	TGAI or PAI
830.7370	Dissociation Constant	Yes	TGAI or PAI
830.7550 830.7560 830.7570	Octanol/Water Partition Coefficient	Yes	PAI
830.7000	pH	Yes	TGAI
830.6313	Stability	Yes	TGAI
830.6314	Oxidation/Reduction	No—Product Specific Requirement	N/A
830.6315	Flammability	No—Product Specific Requirement	N/A
830.6316	Explodability	No—Product Specific Requirement	N/A
830.6317	Storage Stability	No—Product Specific Requirement	N/A
830.6319	Miscibility	No—Product Specific Requirement	N/A
830.6320	Corrosion Characteristics	No—Product Specific Requirement	N/A
830.6321	Dielectric Breakdown Voltage	No—Product Specific Requirement	N/A
830.7100	Viscosity	No—Product Specific Requirement	N/A
830.7050	UV/Visible Absorption	No—Product Specific Requirement	N/A

[1] TGAI = technical grade active ingredient; PAI = pure active ingredient

TABLE 2.—TOXICOLOGY DATA REQUIREMENTS FOR IMPORT TOLERANCES

Guideline Reference Number	Study Title	Applicable to Import Tolerance	Footnote Number
870.1100	Acute oral toxicity—rat	Yes	
870.1200	Acute dermal toxicity	No	1, 2
870.1300	Acute inhalation toxicity—rat	No	1, 2
870.2400	Acute eye irritation—rabbit	No	1, 2
870.2500	Acute dermal irritation	No	1, 2
870.2600	Skin sensitization	No	1, 2
870.3100	90-Day Oral Toxicity—rodent	Yes	
870.3150	90-Day Oral Toxicity—non-rodent	Yes	
870.3200	21-Day dermal toxicity	No	2

TABLE 2.—TOXICOLOGY DATA REQUIREMENTS FOR IMPORT TOLERANCES—Continued

Guideline Reference Number	Study Title	Applicable to Import Tolerance	Footnote Number
870.3250	90-Day dermal toxicity	No	2
870.3465	90-Day inhalation—rat	No	2
870.3700	Developmental toxicity study	Yes	
870.3800	Multi-Generation Reproduction	Yes	
870.4100	Chronic Toxicity	Yes	
870.4200	Carcinogenicity study	Yes	
870.4300	Combined chronic toxicity/carcinogenicity	Yes	
870.5100 to 870.5915	Mutagenicity	Yes	3
870.6200	Neurotoxicity screening battery	Yes	
870.7200	Companion animal safety	No	4
870.7485	Metabolism and pharmacokinetics	Yes	
870.7600	Dermal penetration	No	2

[1] Study used largely to determine appropriate hazard statements required on U.S. pesticide product labels.
[2] Study reflects a route of exposure (dermal or inhalation) not expected to be applicable to dietary exposure, the only exposure route assumed to be relevant to U.S. citizens via imported foods/feeds.
[3] An initial battery of the following three tests must be conducted: (1) Ames assay (*S. typhimurium*), (2) Mammalian cells in culture forward gene mutation assay, and (3) *in vivo* cytogenetics assay. Details of the screening protocol may be found in Addendum 4 to the Series 84 guidelines, Document PB91-158394, available from the National Technical Information Service.
[4] Study is applicable only to direct application to domestic animals as opposed to dietary exposure via treated feed.

TABLE 3.—RESIDUE CHEMISTRY DATA REQUIREMENTS FOR IMPORT TOLERANCES

Guideline No.	Study Title	Required for Import Tolerance [1]
860.1300	Nature of the Residue—Plants	R
860.1300	Nature of the Residue—Animals	CR [2]
860.1340	Residue Analytical Methods—Plants and Animals	R
860.1360	Multiresidue Methods	R
860.1380	Storage Stability	R
860.1480	Magnitude of Residue—Meat, Milk, Poultry, and Eggs	CR [3]
860.1500	Crop Field Trials	R
860.1520	Processing Studies	CR [4]
860.1850	Confined Rotational Crop	NR
860.1900	Field Rotational Crop	NR

[1] R = Required; CR = Conditionally Required; NR = Not Required.
[2] Required if subject crop is an animal feed item, or if the pesticide will be applied directly to livestock exported to the U.S.
[3] May not be required if crop is not an animal feed item, or if livestock metabolism studies indicate no potential for finite residues in edible commodities. Refer to text of this document for additional information.
[4] May not be required if crop is not likely to be processed after export to the U.S., or if processed commodity is not shipped to the U.S. Refer to text of this document for additional information.

TABLE 4.—NUMBER OF FIELD TRIALS REQUIRED FOR AN IMPORT TOLERANCE (LESS THAN 75% OF CROP AVAILABLE FOR CONSUMPTION IMPORTED INTO U.S.) [1]

Required No. of Field Trials for a U.S. Registration	Percentage of Commodity Imported into U.S. (Weight Basis)		
	0–10%	10–35%	35–75%
20	5	16	20
16 (15) [2]	5	12	16

TABLE 4.—NUMBER OF FIELD TRIALS REQUIRED FOR AN IMPORT TOLERANCE (LESS THAN 75% OF CROP AVAILABLE FOR CONSUMPTION IMPORTED INTO U.S.) [1]—Continued

Required No. of Field Trials for a U.S. Registration	Percentage of Commodity Imported into U.S. (Weight Basis)		
	0–10%	10–35%	35–75%
12	3	8	12
8 (9) [2]	3	5	8
5 (6) [2]	3 [3]	3	5
3	2 [3]	3 [3]	3

[1] The number of trials determined using this table may be reduced by 25% for crops needing 8 or more trials if metabolism studies and all the trials show residues less than the limit of quantitation of the analytical method. Crops being used as representative commodities to obtain crop group tolerances may not be reduced by an additional 25% even if metabolism studies and all the trials show residues of less than the limit of quantitation.

[2] The numbers in parentheses refer to the number of trials required for representative crops being used toward a crop group tolerance. As described in OPPTS Guideline 860.1500, the number of field trials required for representative commodities that are being used to support a crop group tolerance is 25% less than the number required to support a tolerance of a single commodity, provided greater than 8 trials are required for the tolerance.

[3] Fewer than three trials may be conducted if the dietary consumption is very low and a relatively small amount of the commodity is imported into the U.S. Four independent samples must be collected from each test plot if less than three trials are conducted. Petitioners should either consult OPPTS Guideline 860.1500 or contact the Agency before proceeding if they believe that fewer trials are warranted.

TABLE 5.—NUMBER OF FIELD TRIALS REQUIRED FOR AN IMPORT TOLERANCE (GREATER THAN 75% OF CROP AVAILABLE FOR CONSUMPTION IMPORTED INTO U.S.) [1]

Maximum Percent of U.S. Diet [2]	No. of Trials Required
0—0.05	3 [3]
0.05—0.2	8
0.2—1.0	12
>1.0	16

[1] The number of trials determined using this table may be reduced by 25% for crops needing 8 or more trials if metabolism studies and all the trials show residues less than the limit of quantitation of the analytical method and the crops are not being used as representative commodities to obtain crop group tolerances.

[2] Highest percentage in the U.S. diet for any of the following subgroups: general population, children ages 1 to 6, and infants. Information on percentages in the diet may be found in Table 10 of this document.

[3] Fewer than three trials may be conducted if the dietary consumption is very low and a relatively small amount of the commodity is imported into the U.S. Four independent samples must be collected from each test plot if less than three trials are conducted. Petitioners should either consult OPPTS Guideline 860.1500 or contact the Agency before proceeding if they believe that fewer trials are warranted.

VII. Instructions for Determining Number and Location of Field Trials

Following is a step-by-step guide to calculating the minimum number of field trials that must be conducted using Tables 4 and 5 in Unit VI. and Table 10 in this unit.

1. Average the amount of the crop imported into the U.S. for the last 5 years (on a weight basis) from the countries in which the pesticide is marketed. Averaging over the previous 5 years allows for seasonal variability. Information on agricultural imports may be obtained from the U.S. Dept. of Agriculture, the U.S. Dept. of Commerce, and various private sources. All forms of the commodity that are imported (in significant amounts) must be taken into consideration including (but not limited to) juice, juice concentrate, wine, and fresh produce. The source of the import information should be reported.

2. Using the value determined in step 1, calculate the percent of the crop imported into the U.S. relative to the total amount available for consumption in the U.S. If less than 75% of the commodity available for consumption in the U.S. is imported, proceed to step 3. If greater than 75% of the commodity available for consumption in the U.S. is imported, proceed to step 4.

3. Refer to Table 4 in Unit VI. and Table 10 in this unit. Determine the number of field trials required for a U.S. registration for the commodity of interest from Table 10. Using that value and the percentage imported into the U.S., determine the minimum number of field trials required for an import tolerance using Table 4. Go to Step 5.

4. Refer to Table 5 in Unit VI. and Table 10 in this unit. for commodities for which the U.S. imports greater than 75% available for U.S. consumption. The maximum percentage in the diet for any commodity may be found in Table 10. Determine the minimum number of field trials from Table 5 in Unit VI. using the percentage in diet value. Go to Step 5.

5. Determine the countries in which the field trials should be conducted. All countries (in which the pesticide is marketed or intended to be marketed) must be represented if the amount that they export to the U.S. represents 5% or more of U.S. imports of the subject crop. A greater number of total trials and trials per country than that determined in steps 3 and 4 may be required to ensure that all relevant countries and the major growing regions within the individual countries are represented.

Note 1: The number determined in steps 3 and 4 is only the minimum number required. Additional trials may be required to ensure all major formulation classes are represented.

Note 2: If the petitioner does not market or does not intend to market the subject pesticide in one of the top two or three countries that export the subject crop to the U.S., then the total percent imported should not include the countries in which the pesticide is not marketed or intended to be marketed.

Examples of Calculating Number of Field Trials

Several examples are provided below illustrating different considerations when calculating the numbers of field trials. These are for illustrative purposes only. Before submitting data or conducting field trials, petitioners should consult with the Agency.

i. The ABC Chemical Company markets a granular nematicide for use on bananas. This pesticide is marketed in major banana producing countries. ABC Chemical Company would like the U.S. to establish a tolerance for their chemical. No Codex MRL has been set.

a. Approximately 99.8% of all bananas available in the U.S. are imported. The highest consumption level for any population sub-group is 0.96% of the diet for infants. Referring to Table 5 in Unit VI., a minimum of 12 trials would be required.

b. Table 6 below lists the countries and amounts of bananas imported into the U.S. To ensure that all countries that account for greater than 5% of the amount imported are represented, and that the countries with the most production are most heavily represented, 12 trials will have to be conducted (and 24 treated samples analyzed) distributed among exporting companies as listed below. Both bagged and unbagged samples need to be analyzed for bananas. Petitioners have the option of analyzing one bagged sample and one unbagged sample from each site.

Costa Rica—3 trials
Ecuador—3 trials
Honduras—2 trials
Guatemala—1 trial
Colombia—2 trials
Mexico 1—trial

TABLE 6.—BANANAS IMPORTED TO THE UNITED STATES (1991–1995 AVERAGE)

Trading Country	Import Quantity (thousand lbs)	Import Quantity (%)
Ecuador	2,076,329	25.55
Costa Rica	1,994,840	24.55
Colombia	1,312,890	16.16
Honduras	1,032,646	12.71
Guatemala	866,371	10.66
Mexico	559,385	6.88
Panama	191,409	2.36
Venezuela	11,416	0.14
Other Countries	81,366	1.00
Total	8,126,652	100.01

ii. The XYZ Pesticide company intends to register a new insecticide for oranges in most countries, but is not pursuing a U.S. use.

a. Approximately 21% of all oranges available in the U.S. (as juice or fresh fruit) over the last 5 years were imported. Referring to Table 10 in this unit, 16 field trials are required for a U.S registration. Using Table 4, oranges fall in the range of 10-35% imported; therefore a minimum of 12 trials (24 samples) must be conducted.

b. The countries that export fresh fruit and juice to the U.S. are listed in Table 7 along with the amount imported. Considering only the countries in which the pesticide is marketed and represent greater than 5% of the U.S. imports, nine trials should be done in Brazil, and three should be done in Mexico.

iii. The registrant also intends to register another insecticide on oranges in Mexico only, but does not intend to market it elsewhere.

(1) Approximately 3% of all oranges available in the U.S. (as juice or fresh fruit) over the last 5 years were imported from Mexico. Referring to Table 10 below, 16 field trials are required for a U.S registration. Using Table 4 in Unit VI, oranges fall in the range of 0-10% imported, Therefore a minimum of 5 trials (10 samples) must be conducted. All 5 trials would be conducted in Mexico.

TABLE 7.—QUANTITY OF ORANGES AND ORANGE JUICE IMPORTED INTO U.S.

Trading Country	Orange Juice, (Thousand liters)	Weight Orange Juice (Thousand lb) [1]	Weight Fresh Market Oranges (Thousand lb)	Total Weight Imported (Thousand lb)	Percent Imported Total
Brazil	1,042,756	2,294,063	(see footnote 2)	2,294,061	80.73
Mexico	140,403	308,887	29,938	338,825	11.92
Belize	29,784	65,525	—	65,525	2.31
Costa Rica	12,891	28,360	—	28,360	1.00
Honduras	12,440	27,368	—	27,368	0.96
Other (<1% from each country)	9,769	21,492	7,050	28,542	1.00
Spain	(see footnote 3)	—	26,332	26,325	0.93
Morocco	—	0	12,841	12,841	0.45
Australia	—	0	9,691	9,691	0.34

TABLE 7.—QUANTITY OF ORANGES AND ORANGE JUICE IMPORTED INTO U.S.—Continued

Trading Country	Orange Juice, (Thousand liters)	Weight Orange Juice (Thousand lb) [1]	Weight Fresh Market Oranges (Thousand lb)	Total Weight Imported (Thousand lb)	Percent Imported Total
Dominican Republic	—	0	6,873	6,873	0.24
Israel	—	0	3,312	3,312	0.12
Total	1,248,040	2,745,689	96,035	2,841,723	100.00

[1] Assuming each liter of orange juice weighs 2.2 lbs.
[2] Fresh market oranges imported from this country represent less than 1% of the total orange imports and are therefore included in the "other" category.
[3] Orange juice imported from this country represents less than 1% of the total orange juice imports and is therefore included in the "other" category.

iv. MRE Pesticides has petitioned the Agency for an import tolerance on cherries for an insecticide used to kill an insect found only in warmer climates. They have proposed conducting only three trials using only the WP formulation, but an emulsifiable concentrate is registered as well.

a. Approximately 2.3% of all cherries available for U.S. consumption over the last 5 years have been imported. However, since the pesticide will not be marketed in Canada, the percent imported into the U.S. drops to 2%. Eight trials are required for a tolerance with a U.S. registration, according to Table 10 in Unit VII. Referring to Table 4 in Unit VI., a minimum of 3 trials are required for an import tolerance. However since both formulations should be tested, a minimum of 6 trials (12 treated samples) are required, 3 with each formulation.

b. Table 8 below shows the amount imported into the U.S. Normally trials would be required for both Chile and Canada, but the pest controlled by the product is only found in warmer climates. Therefore all six trials should be conducted in Chile.

TABLE 8.—AMOUNT OF CHERRIES IMPORTED INTO THE U.S.

Trading Country	Average Amount Fruit/yr. (short tons)	% of Imports
Chile	1,633	85.50
Canada	252	13.19
Swaziland	12	0.63
Others (<1% each)	13	0.68
Total	1,910	100.00

TABLE 9.—NUMBER OF FIELD TRIALS REQUIRED FOR COMMODITIES FOR WHICH IMPORT TOLERANCES ARE COMMONLY REQUESTED

Commodity	Number of Field Trials Required	Countries in Which Trials Should be Conducted [1]
Coffee	8	Brazil (3), Columbia (3), Mexico (2)
Grapes	8	Chile (3), Italy (2), France (1), Mexico (1), Argentina (1)
Oranges	12	Brazil (9), Mexico (3)
Bananas	12	Ecuador (3), Costa Rica (3), Colombia (2), Honduras (2), Guatemala (1), Mexico (1)
Apples	12	Argentina (5), Germany (4), Chile (3)
Stone Fruit		
Peaches	3	Chile (3)
Cherries	3	Chile (2), Canada (1)
Plums	5 [2]	Chile (5) [2]
Tomatoes	12	Mexico (10), Italy (1), Chile (1)
Mangoes	3	Mexico
Kiwi	3	Chile (2), New Zealand (1)

[1] The number in the parentheses indicates the number of trials that should be conducted in the country specified.
[2] The number of field trials for plums may be reduced to 3 if a tolerance for the stone fruits crop group is proposed.

TABLE 10.—PERCENT IN DIET VALUES AND NUMBER OF FIELD TRIALS REQUIRED FOR A TOLERANCE ASSOCIATED WITH A U.S. REGISTRATION FOR MOST COMMODITIES

Raw Agricultural Commodity	% Contribution to Total Exposure			No. of Field Trials for Tolerance with A U.S. Registration
	1989-91 U.S. Population	1989-91 Children (ages 1-6)	1989-91 Infants	
Acerola	0.000000	0.000000	0.000000	1 [1]
Almonds	0.007583	0.000043	0.000000	5
Apples	1.808737	4.012164	1.969677	16
Apricot	0.027213	0.032773	0.048144	5
Artichokes—Jerusalem	0.000000	0.000000	0.000000	3
Artichokes—globe	0.005846	0.001192	0.000000	3
Asparagus	0.023181	0.001589	0.000000	8
Atemoya	0.000000	0.000000	0.000000	1 [1]
Avocados	0.017335	0.005760	0.000000	5
Banana	0.577720	0.791826	0.957257	5
Barley	0.178596	0.023041	0.013825	12
Beans—Dry [2]	0.180813	0.133279	0.005965	12
Beans—Succulent [2]	0.320303	0.392089	0.220857	8 [3]
Beans—Lima— Dry Succulent [2]	0.036485	0.029198	0.008702	8 [3]
Beets—Garden—Total	0.018545	0.010687	0.035230	5
Bitter Melon	0.000000	0.000000	0.000000	5
Blackberries—Total	0.006047	0.007746	0.000211	3 [4]
Blueberries	0.026205	0.025126	0.011018	8
Boysenberries	0.003024	0.005264	0.000140	2 [1]
Broccoli, Chinese (Gai Lon)	0.000000	0.000000	0.000000	2 [1]
Broccoli	0.229796	0.276191	0.008562	8
Brussels Sprouts	0.009071	0.000596	0.000983	3
Buckwheat	0.001209	0.000596	0.000000	5
Cabbage—green and red	0.146949	0.081040	0.001895	8
Cabbage—Chinese/celery/bok choy	0.003225	0.003575	0.000000	3
Calabaza	0.000000	0.000000	0.000000	2 [1]
Canola Oil, Rape Seed Oil	0.009071	0.007746	0.001053	8
Carambola (Starfruit)	0.000000	0.000000	0.000000	2 [1]
Carob	0.000000	0.000199	0.000000	3
Carrots	0.352959	0.302509	0.683836	8
Casabas	0.000403	0.000000	0.000000	3
Cassava (Yuca Blanca)	0.003024	0.002483	0.014387	2 [1]
Cauliflower	0.039912	0.013805	0.000070	8
Celery	0.121550	0.087495	0.003439	8

TABLE 10.—PERCENT IN DIET VALUES AND NUMBER OF FIELD TRIALS REQUIRED FOR A TOLERANCE ASSOCIATED WITH A U.S. REGISTRATION FOR MOST COMMODITIES—CONTINUED

Raw Agricultural Commodity	% Contribution to Total Exposure			No. of Field Trials for Tolerance with A U.S. Registration
	1989-91 U.S. Population	1989-91 Children (ages 1-6)	1989-91 Infants	
Cherries (sweet & sour)	0.040517	0.042605	0.014036	8 [5]
Chestnuts	0.000000	0.000000	0.000000	3
Chicory (french/belgian endive)	0.004435	0.000695	0.000000	2 [1]
Chocolate (cocoa bean)	0.067125	0.089978	0.002737	3
Coconut	0.056844	0.018075	1.023086	5
Cocoyam (tanier)	0.000000	0.000000	0.000000	2 [1]
Coffee	0.052006	0.000199	0.000000	5
Collards	0.023383	0.007746	0.000000	5
Corn/pop	0.047370	0.036249	0.000000	3
Corn/sweet	0.430767	0.556453	0.043863	12
Corn	1.828693	2.117263	0.883428	20
Cottonseed	0.052006	0.057006	0.004703	12
Crabapples	0.000000	0.000000	0.000000	3
Cranberry	0.052813	0.045883	0.005053	5
Crenshaws	0.000000	0.000000	0.000000	3
Cress—upland	0.000000	0.000000	0.000000	1 [1]
Cucumbers	0.145941	0.084717	0.000983	8
Currants	0.000000	0.000000	0.000000	2 [1]
Dandelion-greens	0.000202	0.000000	0.000000	1 [1]
Dates	0.002419	0.001887	0.002948	3
Dill	0.000000	0.000000	0.000000	2 [1]
Eggplant	0.006249	0.001589	0.000000	3
Elderberries	0.000000	0.000000	0.000000	3
Endive—curly and Escarole	0.005443	0.000695	0.000000	3
Figs	0.004838	0.004767	0.000000	3
Filberts (hazelnuts)	0.000403	0.000497	0.000000	3
Flax Seed	0.000000	0.000000	0.000000	5
Garlic	0.009272	0.007945	0.000842	3
Genip (Spanish Lime)	0.000000	0.000000	0.000000	1 [1]
Ginger	0.000403	0.000298	0.000000	2 [1]
Ginseng	0.000000	0.000000	0.000000	3
Gooseberries	0.000000	0.000000	0.000000	3
Grapefruit	0.255799	0.059290	0.000772	8
Grapes	0.894629	1.213610	0.449785	12

TABLE 10.—PERCENT IN DIET VALUES AND NUMBER OF FIELD TRIALS REQUIRED FOR A TOLERANCE ASSOCIATED WITH A U.S. REGISTRATION FOR MOST COMMODITIES—CONTINUED

Raw Agricultural Commodity	% Contribution to Total Exposure			No. of Field Trials for Tolerance with A U.S. Registration
	1989-91 U.S. Population	1989-91 Children (ages 1-6)	1989-91 Infants	
Guar Beans	0.000000	0.000000	0.000000	3
Guava	0.002217	0.001688	0.000000	2 [1]
Hops	0.002217	0.000000	0.000000	3
Horseradish	0.000806	0.000298	0.000000	3
Huckleberries	0.000000	0.000000	0.000000	3
Kale	0.005039	0.005959	0.000000	3
Kiwi Fruit	0.007257	0.011818	0.000000	3
Kohlrabi	0.000000	0.000000	0.000000	3
Kumquats	0.000000	0.000000	0.000000	1 [1]
Leeks	0.000000	0.000000	0.000000	3
Lemons	0.056441	0.034164	0.000561	5
Lentils	0.003628	0.001589	0.000000	3
Lettuce (head & leaf)	0.412020	0.161881	0.002456	8 [6]
Limes	0.008869	0.004866	0.000211	3
Loganberries	0.000000	0.000000	0.000000	2 [1]
Longan	0.000000	0.000000	0.000000	1 [1]
Lotus Roots	0.000000	0.000298	0.000000	1 [1]
Lychees	0.000000	0.000000	0.000000	1 [1]
Macadamia Nuts (bush nuts)	0.000000	0.000000	0.000000	3
Maney (Mammee Apple)	0.000000	0.000000	0.000000	2 [1]
Mangoes	0.008869	0.003476	0.004070	3
Melon (including cantaloupe & honeydew)	0.138079	0.062468	0.000000	5 and 8 [7]
Millet	0.000202	0.000000	0.000000	5
Mint	0.000000	0.000000	0.000000	5 [8]
Mulberries	0.000202	0.000397	0.000000	3
Mung Beans (sprouts)	0.026205	0.034859	0.000491	8
Mushrooms	0.059263	0.041811	0.001404	3
Mustard Greens	0.005846	0.001390	0.014036	5 [9]
Nectarines	0.026608	0.015791	0.000000	8
Oats	0.230602	0.455352	0.287037	16
Okra	0.016328	0.007449	0.000000	5
Olive	0.032655	0.021253	0.000983	3
Onion—Dry Bulb	0.333809	0.242921	0.038178	8
Onions-green	0.018747	0.011421	0.000211	3

TABLE 10.—PERCENT IN DIET VALUES AND NUMBER OF FIELD TRIALS REQUIRED FOR A TOLERANCE ASSOCIATED WITH A U.S. REGISTRATION FOR MOST COMMODITIES—CONTINUED

Raw Agricultural Commodity	% Contribution to Total Exposure			No. of Field Trials for Tolerance with A U.S. Registration
	1989-91 U.S. Population	1989-91 Children (ages 1-6)	1989-91 Infants	
Orange	1.155632	1.651185	0.246403	16
Papaya	0.007660	0.001589	0.000000	3
Parsley	0.006652	0.007349	0.001263	3
Parsnips	0.000605	0.000000	0.000000	3
Passion Fruit	0.017134	0.037739	0.000070	2
Pawpaws	0.000000	0.000000	0.000000	3
Peaches	0.263056	0.343327	0.655904	12
Peanuts	0.154407	0.265266	0.005614	12
Pears	0.218508	0.240934	1.361074	8
Peas—dried [2]	0.009474	0.006157	0.005053	5 [3]
Peas—succulent [2]	0.235239	0.265862	0.167029	8 [3]
Pecans	0.006249	0.006157	0.000140	5
Pepper/black	0.001209	0.001092	0.001053	3
Peppers—sweet (garden)	0.080025	0.044890	0.002386	8
Peppers—non-bell	0.019754	0.006357	0.000000	3
Persimmons	0.000403	0.000000	0.005334	3
Pimento	0.003628	0.004270	0.000070	2 [1]
Pineapple	0.160656	0.218192	0.144431	8
Pistachio	0.001411	0.000000	0.000000	3
Plantains	0.013304	0.004866	0.003720	3
Plum	0.062690	0.061972	0.124360	8
Pomegranates	0.000000	0.000000	0.000000	3
Potato	1.791805	1.587823	0.217278	16
Pumpkin	0.010684	0.016784	0.015580	5
Quinces	0.000000	0.000000	0.000000	3
Radishes	0.010684	0.002681	0.000000	5
Radishes—Japanese (daikon)	0.000000	0.000000	0.000000	2 [1]
Raspberries	0.007861	0.003476	0.011650	3 [4]
Rhubarb	0.011691	0.007051	0.000000	2 [1]
Rice	0.463422	0.486456	0.652956	16
Rice-wild	0.001814	0.000199	0.000000	5
Rutabagas—tops and roots	0.002217	0.000000	0.000000	3
Rye	0.013707	0.006853	0.000000	5
Safflower—seed and oil	0.000202	0.000000	0.000000	5
Salsify (oyster plant)	0.000000	0.000000	0.000000	3

TABLE 10.—PERCENT IN DIET VALUES AND NUMBER OF FIELD TRIALS REQUIRED FOR A TOLERANCE ASSOCIATED WITH A U.S. REGISTRATION FOR MOST COMMODITIES—CONTINUED

Raw Agricultural Commodity	% Contribution to Total Exposure			No. of Field Trials for Tolerance with A U.S. Registration
	1989-91 U.S. Population	1989-91 Children (ages 1-6)	1989-91 Infants	
Sesame	0.000403	0.000497	0.000000	3
Shallots	0.000000	0.000000	0.000000	1 [1]
Snowpeas	0.006854	0.005264	0.000000	3
Sorghum (including milo)	0.000000	0.000000	0.000000	12
Soybeans	0.801061	0.710290	1.257067	20
Spinach	0.053216	0.052835	0.034037	8
Squash—summer	0.079824	0.042804	0.000000	5
Squash—winter	0.038703	0.015791	0.459189	5
Strawberry	0.099578	0.107954	0.001263	8
Sugar Cane	0.520065	0.576415	0.312933	8
Sugar Apples (sweetssop)	0.000000	0.000000	0.000000	2 [1]
Sugar-beet	0.443458	0.491502	0.271878	12
Sunflower	0.007055	0.007449	0.000000	8
Sweet Potatoes (including yams)	0.055433	0.026219	0.355252	8
Swiss Chard	0.001008	0.000099	0.000000	3
Tangelos	0.000000	0.000000	0.000000	3
Tangerine	0.011490	0.016883	0.000000	5
Taro-root	0.002016	0.001092	0.014808	2 [1]
Tomato	1.662796	1.485630	0.218331	16
Turnip	0.021367	0.009931	0.000421	5
Walnuts	0.006854	0.005760	0.000140	3
Watercress	0.001209	0.000000	0.000000	2 [1]
Watermelon	0.141506	0.203096	0.012422	8
Wheat	2.983519	3.370301	0.360305	20

[1] If one or two field trials are required, then four samples must be collected from each test plot.

[2] The percent in diet figures for peas, beans, and dry beans include different varieties that may require separate field trials. Petitioners are advised to consult OPPTS Guideline 860.1500 for additional information on numbers of field trials for individual varieties.

[3] These bean/pea commodities include more than one type of bean/pea. The specific commodities included in each of these groups are shown below. The specific representative commodity for which field trials should be run in each case are those representative commodities provided in crop subgroup in 40 CFR 180.41. Bean, edible podded: include those commodities listed in subgroup 6-A as *Phaseolus spp.*, *Vigna spp.*, jackbeans, soybeans (immature seed) and sword bean. Pea, edible podded: include those commodities listed in subgroup 6-A as Pisum spp. and pigeon pea. Bean, succulent shelled: include those commodities listed in subgroup 6-B as *Phaseolus spp.*, *Vigna spp.* and broad bean. Pea, succulent shelled: include those commodities listed in subgroup 6-B as *Pisum spp.* and pigeon pea. Bean, dried shelled (except soybean): include those commodities listed in subgroup 6-C as *Lupinus spp.*, *Phaseolus spp.*, *Vigna spp.*, guar and lablab beans. Pea, dried shelled: include those commodities listed in subgroup 6-C as *Pisum spp.*, lentil and pigeon pea. A minimum of three trials is required for field pea forage and hay with Austrian winter pea the preferred cultivar. Field pea seeds will be considered dried shelled peas and required a minimum of five trials. The number of trials required for dried shelled pea is based on combined acreage and consumption of dried garden pea (*Pisum spp.*) and lentil.

[4] A minimum of 5 trials (and 10 samples) is required on any one blackberry or any one raspberry if a tolerance is sought on "caneberries." A minimum of 3 trials (and 6 samples) is required if a tolerance is sought only on blackberries or only on raspberries.

[5] Eight trials each for sweet and sour cherries are required.

[6] Eight trials each for head and leaf lettuce are required.

[7] Five trials are required for honeydew melons and eight trials are required for cantaloupe. A tolerance for muskmelons may be obtained using residue data for cantaloupes.

[8] A tolerance for mint may be obtained using residue data for spearmint and/or peppermint. If a tolerance is sought for either spearmint or peppermint separately, five trials are still required.

[9] A minimum of 8 trials (and 16 samples) are required on mustard greens if a tolerance is sought on the crop subgroup leafy Brassica greens.

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VIII. Consideration of Codex MRLs When Establishing Import Tolerances

The 1996 FQPA amendments to FFDCA codified a longstanding Agency policy to harmonize U.S. tolerances with Codex MRLs to the extent possible. Recent trade agreements such as the NAFTA and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures further encourage the use of international standards such as Codex MRLs.

When establishing or reassessing tolerances (including import tolerances), the Agency takes into consideration the Codex MRL level, the Codex commodity definition, and the metabolite(s) included in the Codex MRL definition. If use patterns and risk assessments permit, the Agency will harmonize tolerances with the Codex levels. If not, the Agency must explain why they cannot be harmonized, in accordance with FQPA.

If an existing U.S. tolerance exceeds the Codex MRL and is sufficient to cover the import use, there is no need for a revision to accommodate the MRL. During tolerance reassessment, the Agency will evaluate whether the U.S. tolerance can be lowered to the Codex level and still accommodate any existing U.S. use and/or import tolerance needs. If that is not possible, relevant information should be provided to Codex in order to support a higher Codex limit. If the Codex MRL exceeds the existing U.S. tolerance or the proposed import tolerance, then the Codex MRL may be adopted as the U.S. tolerance, provided the data support the safety findings required by the FFDCA at that level.

In the context of establishing import tolerances, four common situations are presented below that take into consideration the presence or absence of U.S. tolerances and Codex MRLs. The potential effects of Codex MRLs on data requirements for import tolerances are described, as are the Agency's approaches to harmonizing new and existing tolerances with MRLs.

1. *A U.S. tolerance and Codex MRL have been established for the chemical/commodity combination of concern.* This situation might be encountered when a U.S. registration is withdrawn or proposed for cancellation and is most likely to occur during the tolerance reassessment or reregistration process. Depending upon the status of the data base, additional data may be required to support maintenance of the U.S. tolerance as an import tolerance. Persons seeking to maintain the tolerance should review this guidance on the required number and location of field trials when determining what additional studies may be needed to support the tolerance.

During the review of the data base, the Agency will make every attempt to harmonize with the Codex level in all respects, including the numerical level and definition of residue.

2. *A Codex MRL has been established for the chemical/commodity combination of concern, but there is no U.S. tolerance.* This situation may occur when a tolerance petition for imported commodities has been submitted and there are no corresponding U.S. registrations for the commodities of interest. Normally under these circumstances the full range of data must be provided to support an import tolerance. Product chemistry data and an acceptable tolerance enforcement method must be submitted. At the same time, efforts should be made to harmonize proposed tolerance levels with Codex MRLs.

If the following conditions are met, the petitioner may propose the Codex MRL as the tolerance level, and the Agency may be able to complete its assessment of the tolerance based on a more limited review of the residue chemistry data:

i. The dietary exposure to the pesticide residue will be low, either due to low consumption of the commodity in the U.S. diet, or due to minimal expected exposure to residues in higher consumption commodities (for example, if all residues are non-detectable).

ii. A U.S. use(s) or U.S. tolerance(s) for the subject commodity(ies) has not been canceled, suspended, revoked, or denied or is not under consideration for the same as a result of human dietary risk concerns.

iii. Residues resulting from the importation of the subject commodity(ies) meet U.S. food safety standards under FFDCA.

iv. An acceptable analytical method is submitted with the petition (i.e., the method should undergo an independent lab validation and an EPA lab validation if it is not already approved for enforcement, and the applicability of multi-residue method testing for the parent compound and residues of concern should be evaluated).

v. U.S./Codex commodity and residue definitions are or can be made compatible.

If the above criteria are not met, standard data and review requirements would apply. In either case, a dietary risk assessment will be done using the Codex MRL. The Codex MRL will be established as the tolerance if FFDCA food safety standards are satisfied.

An assessment will need to be made as to whether the Codex MRL will accommodate the import tolerance need. If the Codex MRL is not high enough to accommodate the import tolerance need, it will not be adopted as the U.S. tolerance level. In these circumstances, data must be provided to support the higher level before EPA can evaluate the establishment of an import tolerance. The Agency would also recommend that the tolerance petitioner provide the relevant data to Codex to support a revised Codex limit.

3. *A U.S. tolerance has been established but there is no Codex MRL for the chemical/commodity combination of concern.* Assessment of the need for an import tolerance will need to take into account whether the U.S. tolerance supports an existing U.S. use for the commodity in question or whether the U.S. tolerance has been maintained to accommodate residues in or on imported commodities after a U.S. use has been canceled. If the former, the assessment will need to determine whether the existing U.S. tolerance will accommodate the import tolerance need. If so, no import tolerance petition is necessary. If not, the data requirements outlined in this guidance apply. Persons supporting maintenance or modification of a U.S. tolerance that has been maintained after cancellation of U.S. uses also may need to provide additional data. Residue field trial data requirements may be partly satisfied by U.S. data, if adequately justified.

In either case, the Agency also recommends that the petitioner provide the relevant data to Codex to support a Codex limit for the subject commodities.

4. *Neither a Codex MRL nor a U.S. tolerance has been established for the chemical/commodity combination of concern.* All toxicology and product and residue chemistry studies as described in this document are required for establishment of the import tolerance. U.S. import tolerances will be established provided that FFDCA food safety standards are met. The Agency also recommends that the petitioner provide the relevant data to Codex to support establishment of a Codex limit for the subject commodities.

Examples:

Following are two examples illustrating the consideration of Codex MRLs and other factors in deciding whether the Agency can conduct a more limited review of an import tolerance petition.

Example 1. ABC Company has petitioned for an import tolerance for an insecticide used on olives. There are U.S. tolerances and registrations for several other commodities, and a Codex MRL has been established for olives. The U.S. and Codex have the same definition of "olives." The U.S. tolerance expression and the Codex MRL definition are compatible. There are no dietary risk concerns with the existing tolerances, and the data base supporting them is up-to-date. There is an acceptable enforcement method in the FDA Pesticide Analytical Manual for plant commodities.

In this case, only a limited review of this chemical would be required initially. Olives are a low consumption commodity, 0.033% of the U.S. diet. A risk assessment would be done using the Codex MRL. If the assessment concludes that there are no dietary risk concerns, no further data would be required.

Example 2. Acme Chemicals would like to obtain an import tolerance for an insecticide on lima beans, and no tolerance has been established in the U.S. for this commodity. This chemical is undergoing reregistration in the U.S. and is used on several commodities. Dietary risk concerns have delayed the Reregistration Eligibility Decision. A Codex MRL has been established and the company has proposed conducting a risk assessment using the Codex MRL without submitting data. The U.S. tolerance expression for other commodities includes the parent compound, a sulfoxide, and a sulfone metabolite. The Codex MRL includes the parent only.

This proposed tolerance is not a good candidate for limited review. Although it involves a low consumption food item (0.036% of the U.S. diet), there is an existing risk concern with the chemical. Additionally, the tolerance expression differs from the Codex MRL expression, and the Agency's review must therefore include consideration of harmonization in the residue chemistry assessment.

IX. References

The following is a list of documents that are referenced in this guidance document, and that are available as described in Unit II.

1. PR Notice 96-1, "Tolerance Enforcement Methods—Independent Laboratory Validation by Petitioner," February 7, 1996. (http://www.epa.gov/opppmsd1/PR—Notices)

2. PR Notice 86-5, "Standard Format for Data Submitted Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Certain Provisions of the Federal Food, Drug, and Cosmetic Act (FFDCA)," July 29, 1986. (http://www.epa.gov/opppmsd1/PR—Notices)

3. OPPTS Test Guidelines, Series 830, Product Chemistry (August 1996). (http://www.epa.gov/docs/OPPTS—Harmonized/830—Product—Properties—Test—Guidelines/)

4. OPPTS Test Guidelines, Series 860, Residue Chemistry (August 1996). (http://www.epa.gov/docs/OPPTS—Harmonized/860—Residue—Chemistry—Test—Guidelines/)

5. OPPTS Test Guidelines, Series 870, Health Effects (August 1998). (http://www.epa.gov/docs/OPPTS—Harmonized/870—Health—Effects—Test—Guidelines/)

6. **Federal Register**. 54 FR 48314; November 22, 1989, List 1 and 2 Inert Ingredients.

7. Pesticide Assessment Guidelines, Subdivision F, Hazard Evaluation—Human and Domestic Animals. Series 84, Mutagenicity. Addendum 9. (1991). (Available from the National Technical Information Service under order number PB91-158394INZ. To order, call 1–800–553–6847 or e-mail orders@ntis.fedworld.gov.)

X. Intended Legal Effect of this Guidance Document

This document provides detailed guidance for EPA staff and outside parties on how U.S. data requirements apply for the establishment or continuance of tolerances for pesticide residues in or on imported foods. The purpose of this guidance is to promote greater transparency and provide clear guidance to interested parties on how to obtain an import tolerance. As guidance, this document is not binding on either EPA or any outside parties, and this document is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States.

Although this guidance provides information on the applicability of U.S. data requirements for the establishment or continuance of tolerances for pesticide residues in or on imported foods, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that the application of this guidance is not appropriate for a specific circumstance or that the circumstances surrounding a specific pesticide demonstrate that this guidance should not be applied.

In addition, the Agency is providing an opportunity for public comment on the guidance provided in this document and may also request feedback through other venues. After reviewing comments received, this document may be revised and the Agency may announce its availability in the **Federal Register**. This guidance may be used by both EPA staff and outside parties in the interim. If additional changes are necessary at some point in the future, the Agency may revise, clarify, or update the text of this guidance without public notice.

XI. Regulatory Assessment

A. General Requirements

As indicated previously, this document provides guidance for EPA staff and outside parties and is not a rulemaking. As such, the regulatory assessment requirements imposed on rulemakings do not apply to this action.

B. Paperwork Reduction Act Notice

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9 and 48 CFR chapter 15, and included on the related collection instrument.

This guidance document does not contain any new information collection requirements that would require additional OMB review and approval. The information collection activities related to the process and informational needs for requesting that the Agency establish or provide an exemption from the establishment of a tolerance or maximum residue level for the use of a pesticide on food or feed crops, which are contained in 40 CFR part 180, are already approved by OMB under OMB control number 2070–0024 (EPA ICR No. 597). The annual respondent burden for the information collection activities in 40 CFR part 180 is estimated to average 1,726 hours per petition, including time for reading the regulations, processing, compiling and reviewing the requested data, generating the request, storing, filing, and maintaining the data.

As defined by the PRA and 5 CFR 1320.3(b), "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Comments regarding the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, should be sent to the Director, Collection Strategies Division, Office of Environmental Information, U.S. Environmental Protection Agency (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Include the OMB control number in any correspondence, but do not submit the requested information to this address. The requested information should be submitted in accordance with the instructions accompanying the form, or as specified in the corresponding regulation.

XII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Tolerance and tolerances, Import and Imports, Reporting and recordkeeping requirements.

Dated: May 23, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–13708 Filed 5–31–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 24, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 31, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Number of Respondents: 1,500.

Estimated Time Per Response: 3.5 hrs. (avg.).

Frequency of Response: On occasion.

Total Annual Burden: 5,250 hours.

Total Annual Costs: $1,050,000.

Needs and Uses: The amendments to the Commission's narrowband Personal Communications Services rules adopted in this proceeding will improve the efficiency of spectrum use, reduce the regulatory burden on spectrum users, encourage competition, and promote service to the largest feasible number of users.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13591 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 24, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 3, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket 98–168.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 140.

Estimated Time Per Response: .50 to 4 hours.

Frequency of Response: On occasion and one-time reporting requirement.

Total Annual Burden: 980 hours.

Total Annual Cost: N/A.

Needs and Uses: This new information collection requirement allows the Commission to offer 218–219 MHz service licensees various options for their existing installment payment options. This will allow licensees to meet their financial obligations and ensure rapid provision for the 218–219 MHz service to the public.

The information reporting requirements in WT Docket No. 98–168, Report and Order, will be used to advise the Commission for the option chosen by the Eligible Licensees. Additionally, the Commission will know the amount due under the various options selected by the Eligible Licensees. This will permit the Commission to determine if a licensee subsequently defaults. In addition, this information will allow the Commission to offer the licenses returned under the Amnesty and Prepayment options in a subsequent auction.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13592 Filed 5–31–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: *Tuesday, June 6, 2000, at 10 a.m.*

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: *Thursday, June 8, 2000, at 10 a.m.*

PLACE: 999 E Street, N.W. Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 1999–38–Ken Calvert for Congress Committee by counsel. Nicholas C. Vasels.

Draft Advisory Opinion 2000–08–Philip D. Harvey.

Final Rules and Explanation and Justification on Mandatory Electronic Filing: (11 CFR§ 104.18).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–12220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 00–13889 Filed 5–30–00; 3:15 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011548–004.

Title: Hanjin/Sinotrans Cross Space Charter & Sailing Agreement.

Parties: Hanjin Shipping Co., Ltd., China National Foreign Trade Transportation Corp.

Synopsis: The proposed modification changes the agreement's name; restates the geographic scope; specifies the number of the vessels to be provided by each party, their capacity, and initial rotation; changes slot allocations; and makes other conforming and administrative changes.

Agreement No.: 011648–003.

Title: APL/Crowley/Lykes/MLL Space Charter and Sailing Agreement.

Parties: American President Lines, Ltd., APL Co. PTE Ltd,. Crowley Liner Services, Inc., Crowley American Transport, Lykes Lines Limited, LLC, Mexican Lines Limited, Transportacion Maritima Grancolombiana, S.A. ("TMG").

Synopsis: The proposed amendment deletes TMG as a party to the Agreement; revises the Agreement's termination and withdrawal provisions; and updates provisions related to vessels, slot allocations, and sub-chartering.

By Order of the Federal Maritime Commission.

Dated: May 26, 2000.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 00–13738 Filed 5–31–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Latin Freight International, Inc., 1348 N.W. 78th Avenue, Miami, FL 33126. Officers: Eduardo Blanco, President (Qualifying Individual), Rebeca Blanco, Vice President.

Horizon International Shipping, Inc., 9165 N.W. 101 Street, Medley, FL 33178. Officer: Maria V. Daenecke Director (Qualifying Individual).

Xing Ya Shipping LLC, 23929 W. Valencia Blvd., Suite #204, Valencia, CA 91354. Officers: Roger Yang, Operations Manager (Qualifying Individual), Zang Yi Bai, General Manager.

AGI Logistics Corporation, 168–18 South Conduit Avenue, Jamaica, NY 11434. Officer: James Minutello, President (Qualifying Individual).

FRS Freight Services, Inc., 69–05 Roosevelt Avenue, Roosevelt Avenue, Woodside, NY 11377. Officers: Alejandro P. Arce, President Qualifying Individual), Luis Gregorio P. Arce, Secretary.

United World Express, Inc., 1951 McGarry Street, Los Angeles, CA 90058. Officers: Stella Pyon, Secretary

(Qualifying Individual), Byung Yul Chang, C.E.O.
Aruba Caribbean Cargo, Inc., 2746 NW 112 Avenue, Miami, FL 33172. Officer: Lydia Arends, President (Qualifying Individual).
Estes Express Lines, 3901 W. Broad Street, Richmond, VA 23230. Officer: Paul Dugent, Vice President (Qualifying Individual).
Relogistics International, Inc., 16 Bonnievale Drive, Bedford, MA 01730. Officer: Mary A. Sortal, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

American Country Gourmet Collection, Inc., 2334 Oak Drive, Steilacoom, WA 98388. Officer: Jesse R. Womack, President (Qualifying Individual).
FedEx Supply Chain Services, Inc., d/b/a FedEx Logistics, 5455 Darrow Road, Hudson, OH 44236. Officers: Rodney M. Miller, Vice President (Qualifying Individual), Gary D. Gilbert, President.
Foreign Cargo Management Corp. d/b/a FCM Transport, 80–104 Orville Drive, Bohemia, NY 11718. Officers: Paul Thompson, Vice President (Qualifying Individual), Thomas Anderson, President.
EKKA Forwarding Inc., 530 Main Street, Suite #1, Fort Lee, NJ 07024. Officers: Harry Chung (Kihwa Chung), Managing Director (Qualifying Individual), Jae Y. Chang, President.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

DCM Logistics, Inc., 540 Rams Way, Tucker, GA 30084. Officer: Demetri C. Miltiades, President.
Treatmont Chartering (USA), Inc., Two Lakeway, 3850 N. Causeway Blvd., Suite 827, Metairie, LA 70002. Officers: Leo Mercado, Vice President (Qualifying Individual), Michael H. Belmer, President.

Dated: May 26, 2000.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 00–13737 Filed 5–31–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the license of Ned Shipping Co., Inc. is being rescinded by the Federal Maritime Commission pursuant to sections 14 and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No. and Name/Address

2045—Ned Shipping Co., Inc., 5247 Wisconsin Ave., N.W. #3, Washington, D.C. 20015

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–13739 Filed 5–31–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 14, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Sharon Lord Caskey, Georgetown, Texas, Roger Griffin Lord, Belton, Texas, and John Arthur Kirkpatrick, Leander, Texas; to acquire voting shares of First Texas Bancorp, Inc., Georgetown, Texas, and thereby indirectly acquire voting shares of First Texas Bank, Lampasas, Texas; First Texas Bank, Round Rock, Texas; First Texas Bank, Killeen, Texas; First Texas Bank, Georgetown, Texas; and First Texas Bank, Belton, Texas.

Board of Governors of the Federal Reserve System, May 25, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13603 Filed 5–31–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 23, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Northwest Financial Corp., Spencer, Iowa; to acquire at least 98.49 percent of the voting shares of Marquette Bank Oelwein, N.A., Oelwein, Iowa.

Board of Governors of the Federal Reserve System, May 25, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13604 Filed 5–31–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 00–13255) published on page 34182 of the issue for Friday, May 26, 2000.

Under the Federal Reserve Bank of St. Louis heading, the entry for Heritage Group, Inc., Aurora, Nebraska, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Heritage Group, Inc., Aurora, Nebraska; to acquire 100 percent of the voting shares of City National Bank and Trust Company, Hastings, Nebraska.

Comments on this application must be received by June 19, 2000.

Board of Governors of the Federal Reserve System, May 26, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13710 Filed 5–31–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 26, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. North Bay Bancorp, Napa, California; to acquire 100 percent of the voting shares of Solano Bank (in organization), Vacaville, California.

Board of Governors of the Federal Reserve System, May 26, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13711 Filed 5–31–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 14, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Silicon Valley Bancshares, Inc., Santa Clara, California; to engage *de novo* through its subsidiary, SVB Strategic Investors Fund, L.P., Santa Clara, California, in acting as investment or financial advisor directly or indirectly, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, May 25, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13605 Filed 5–31–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 21, 2000

In accordance with § 71.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 21, 2000.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 6 percent.

By order of the Federal Open Market Committee, May 24, 2000.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 00–13644 Filed 5–31–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11 a.m., Monday, June 5, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

[1] Copies of the Minutes of the Federal Open Market Committee meeting of March 21, 2000, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 26, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13781 Filed 5–26–00; 4:36 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–39–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. The State and Local Area Integrated Survey (SLAITS)—(0920–0406) The Health Resources and Services Administration/Maternal and Child Health Bureau, in partnership with the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC) is conducting a new national survey on children with special health care needs (CSHCN) to be conducted in all states and the District of Columbia. The survey is part of NCHS's State and Local Area Integrated Telephone Survey (SLAITS), a telephone survey platform which uses the National Immunization Survey sample frame and was described in a **Federal Register** notice dated October 22, 1998 (Volume 63, Number 204, pages 56654–56655). This collection of data is authorized by 42 U.S.C. 242k.

The survey will provide, for the first time, uniform national and state-specific data on CSHCN prevalence and impact. In addition, the survey will provide baseline estimates for federal and state performance measures, the year 2010 national prevention objectives, and data for each State's Title V five-year needs assessment. Health care coverage information will be collected on children with and without special health care needs. Those without any health care coverage will be asked a brief set of questions about their familiarity with the State Children's Health Insurance Program.

A screening interview will be completed with parents and guardians in randomly selected households in order to identify children (0–17 years of age) with special health care needs. This initial screening interview will include a brief battery of questions about the presence of special health care needs, as well as demographic questions needed to manage the sample design and estimation process. Approximately 14% to 18% of the screened children are expected to have a special health care need. When a child is identified with a special need, a 15-minute supplemental interview will be completed, including questions on demographics and household income; health and functional status; health insurance; adequacy of health care coverage; access to care; utilization of care; care coordination; satisfaction with care; and impact on the family. For screened children who do not have special health care needs, a sub-sample of parents and guardians will complete a short supplemental interview on health insurance so that state-specific estimates of health insurance coverage for all children can be produced.

Screening interviews will be conducted with about 3,400 families in each state with a goal of identifying 750 children with special health care needs. This sample size will permit accurate and reliable state-level estimates of the prevalence of special health care needs and of associated characteristics such as insurance coverage. State samples of 3,000 children without special health care needs will be asked health insurance coverage questions and about 26,000 families will be asked SCHIP awareness questions. The survey is scheduled to begin in July, 2000, and will remain in the field for 12 months. There is no dollar cost to respondents. The approved burden budget for SLAITS includes the burden hours for this survey. The total burden hours are estimated at 34,819.

Respondents	No. of respondents	No. of responses/ respondents	Average burden/ response (in hrs.)	Total burden (in hrs.)
Screened Households	102,479	1	6/60	18,248
Families of children with special health care needs	39,750	1	15/60	9,938
Families of children without special health care needs—insurance status	159,000	1	2/60	5,300
SCHIP for uninsured children	26,659	1	3/60	1,333
Total				34,819

Dated: May 25, 2000.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13650 Filed 5–31–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–38–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Preventive Health and Health Services Block Grant, Annual Application and Reports (0920–0106)—Extension—The Centers for Disease Control and Prevention (CDC), National Center for Chronic Disease Prevention and Health Promotion—In 1997, the Office of Management and Budget approved the collection of information provided in the grant applications and annual reports for the Preventive Health and Health Services Block Grant (0920–0106). This approval expires on November 30, 2000. CDC is requesting an extension of OMB clearance for this legislatively mandated information collection until November 30, 2001. The extension is limited to one year to allow for the development and adherence to *Healthy People 2010* to be released the Spring of 2000. The Preventive Health and Health Services Block Grant is mandated according to section 1904 to adhere to the Healthy People framework, therefore, the current application and report format will be restructured to coincide with 2010 and resubmitted for OMB clearance at that time.

This information collected through the applications from the official State health agencies is required from section 1905 of the Public Health Service Act. There is no change in the proposed information collection from previous years. The information collected from the annual reports is required by section 1906, specifically the requirement for uniform data sets matching the uses of funds. The total estimated annual burden is 5490 hours.

Respondents	No. of respondents	No. of responses/ respondent	Average burden per response (in hrs.)	Total burden
Application	61	1	30	1830
Report	61	1	60	3660
Total				5490

Dated: May 25, 2000.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13651 Filed 5–31–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00092]

Grant Program for the Hale Empowerment and Revitalization Organization (HERO); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a grant program to the Hale Empowerment and Revitalization Organization (HERO). CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010" a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to focus area to increase Access to Quality Health Services. For the conference copy of "Healthy People 2010," visit the internet site: http://www.health.gov/healthypeople.

The purpose of this program is to increase the health and social status of the population in Hale County, Alabama by eliminating barriers to health and social services. This goal will be attained though the voluntary collaboration of organizations and individuals concerned with the welfare of under-served and disparately affected populations of Hale County, Alabama.

B. Eligible Applicant

Assistance will be provided only to the Hale Empowerment and Revitalization Organization (HERO), Hale County, Alabama. No other applications are solicited. The Conference Report (H.R. Rep. 106–479, at 601 (1999) to the Consolidated Appropriations Act, 2000, Public Law 106–113, directs CDC to fund the Hale County, Alabama, HERO program.

C. Availability of Funds

Approximately $130,000 is available in FY 2000, to fund the Hale Empowerment and Revitalization Organization in Hale County, Alabama. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of one year. Funding estimates may change.

D. Where To Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management/technical assistance may be obtained from: Barry Copeland, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Announcement Number 00092, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone (770) 488–2762, E-mail address: bjc8@cdc.gov.

This and other CDC announcement can be found on the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance, contact: James B. Holt, M.P.A., Deputy

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Director, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Atlanta, GA 30341–3724, telephone: 404–488–5269; E-mail address: jgh4@cdc.gov.

Dated: May 24, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13648 Filed 5–31–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 00087]

Cooperative Agreement Between CDC and ASTHO; Tobacco Control Information and Resource Network (ASTHO)

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 2000 for a cooperative agreement with the Association of State and Territorial Health Officials (ASTHO) to enhance its capacity to provide information and technical assistance to State Health Officials (SHOs) and affiliate member groups. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Tobacco use and the areas related to chronic disease prevention and control. For the conference copy of "Healthy People 2010", visit the Internet site: <http://www.health.gov/healthypeople>.

The purpose of this program is to address issues related to:

1. Tobacco-use prevention and control programs;
2. The following four goal areas outlined in CDC's National Tobacco Control Program:
   a. Eliminate exposure to environmental tobacco smoke;
   b. Promote quitting among young people and adults;
   c. Prevent initiation among young people; and
   d. Identify and eliminate disparities among population groups);
3. Maintain a forum where State tobacco control managers can communicate among themselves and with SHOs and ASTHO affiliates about tobacco-related issues impacting their States; and,
4. Chronic disease prevention and control programs as they relate to tobacco use prevention and control.

B. Eligible Applicant

Assistance will be provided only to ASTHO. No other applications are solicited.

ASTHO is the only organization that represents all State and territorial public health officials, including a network of State health department tobacco-control representatives.

ASTHO was created specifically to represent this group of State agencies to the Federal government and other national organizations and is unique in its role as a liaison among these officials. It has served as a capacity-building organization in public health matters for many years and one of its major objectives is the sharing of information among State health departments.

ASTHO has established a unique network of public health professionals in each State and territory who are concerned with tobacco-use and chronic disease prevention and control programs. ASTHO has maintained active involvement in tobacco-related issues through their Tobacco Control Resource Council. The Resource Council has: (1) Developed a network of tobacco-control representatives representing the ten U.S. Public Health Service Regions, (2) conducted regular mailings and communications with State health officials, and (3) coordinated activities between Federal agencies and States.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $350,000 is available in FY 2000 to fund this award. It is expected that the award will be made on or about July 1, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities under 2. (CDC Activities):

1. Recipient Activities

a. Advance comprehensive tobacco and chronic disease prevention and control programs.

(1) Promote and foster support for comprehensive tobacco and chronic disease prevention and control programs to raise tobacco and chronic disease prevention and control as a priority within ASTHO and among State health officials, affiliates, and other key partners.

(2) Identify and develop opportunities to promote successful State health department tobacco and chronic disease prevention and control efforts at ASTHO's regional and national meetings.

(3) Provide opportunities, in regional and national forums, where health officials and other key decisionmakers can discuss and develop policy positions on tobacco use and chronic disease prevention and control issues.

(4) Maintain liaison with the National Association of City and County Health Officials (NACCHO), the National Association of Local Boards of Health (NALBOH), and other national public health organizations interested in tobacco, chronic disease and health to encourage support for comprehensive tobacco and chronic disease prevention and control programs.

(5) Coordinate communication between the Tobacco Resource Council and ASTHO affiliates to foster communication between tobacco control program managers and affiliates regarding State tobacco control efforts. Disseminate state-based summaries of these efforts to SHOs, affiliates and other partners on a regular basis.

b. Identify and promote opportunities to educate State Health Officials and affiliate member leadership programs, as well as, guidelines and "Best Practices" for comprehensive tobacco control programs, as well as, about guidelines and recommendations related to chronic disease prevention and control. This could include use of state-of-the-art technologies such as distance-based learning, web-based information exchange forums, and skill building conferences/workshops.

c. Provide staff support to the ASTHO Tobacco Resource Council to facilitate information exchange and problem solving among tobacco control program managers in every region (10 U.S. Public Health Service Regions and the Pacific Islands).

d. Identify opportunities for ASTHO affiliates to work collaboratively with the Tobacco Resource Council to develop, support and/or implement comprehensive tobacco control programs.

e. Monitor the implementation of the ASTHO Policy on Tobacco Use Prevention and Control. Monitor current events and, as appropriate, share information with States and collaborating agencies. Before undertaking any data collection efforts, conduct an assessment of data available through other sources.

f. Maintain a mechanism (*e.g.*, website, e-mail updates, newsletter), for sharing timely information about tobacco-related issues with SHOs, State tobacco control contacts and affiliate membership. Provide links to websites that would be useful to ASTHO's constituents.

g. Develop an annual action plan and SMART (specific, measurable, achievable, realistic and time-phased) objectives. Develop a mechanism for evaluating overall effectiveness of the plan.

h. Provide a full-time staff person to coordinate and oversee the project.

2. CDC Activities

a. Provide consultation and technical assistance in the planning, implementation and evaluation of program activities.

b. Provide up-to-date information that includes diffusion of best practices and current research and data in the areas of tobacco use and chronic disease prevention and control.

c. Collaborate in the planning and support of workshops, conferences, and other professional gatherings that serve a public health purpose, and provide speakers for meetings that are national in scope.

d. Provide analytical expertise and assist in preparation of material for publication that includes information on State tobacco prevention and control activities.

e. Provide technical assistance to ASTHO and its affiliates regarding tobacco control and chronic disease programs and policies.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria section to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 pages double-spaced pages, printed on one side, with one inch margins, and unreduced font.

1. Provide a description of the tobacco and chronic disease prevention and control activities performed and the results achieved during the previous project period which started in fiscal year 1997.
2. Identify strategies and activities for increasing ASTHO's involvement in promoting and supporting comprehensive tobacco and chronic disease prevention and control programs over the next five years.
3. Describe how ASTHO's affiliate members will be involved with ASTHO's tobacco and chronic disease prevention and control activities.
4. Describe how the Tobacco Control Resource Council will facilitate communication between tobacco control managers and SHO's.
5. Provide an Annual Action Plan that includes objectives that are specific, measurable, achievable, relevant and time-phased. Objectives must relate to CDC's National Tobacco Control Program objectives (four goal areas) and the elements listed under the "Recipient Activities" section of this announcement.
6. Define and provide an operational plan for each activity necessary to achieve the objectives.
7. Provide an evaluation plan that clearly describes the methods proposed to evaluate each objective.

Measurements must be established to evaluate the level of achievement of all project objectives and elements listed under the "Recipient Activities" section of this announcement.

8. Provide an organizational chart highlighting line and staff authority. Include a description of the activities for each position.
9. Submit a detailed budget and line-item justification that is consistent with the purpose of the program and the proposed project objectives.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB 0937–0189). Forms are available at the following Internet address: http://www.cdc.gov/. Forms, or in the application kit. On or before June 23, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if it is either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (The applicants must request a legibly dated U.S. Postal Service postmark, or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late Application: The application which does not meet the criteria in (a) or (b) above is considered a late application, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria (100 Points)

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Five-year Vision (15 Percent)

The extent to which the applicant articulates its vision, seeks meaningful changes for a five year period, and ties the vision to the Healthy People 2010 Objectives.

2. Annual Action Plan (30 percent)

a. The extent to which the objectives are realistic and related to identified needs and purpose of the program.

b. The extent to which activities are realistic and feasible and will help accomplish the objectives.

c. The extent to which there are realistic plans to promote and foster support for comprehensive Tobacco Control Programs and chronic disease prevention and control programs to raise tobacco and chronic disease prevention and control as a priority within ASTHO and among State health officials, affiliates, and other key partners.

3. Project Management and Staffing Plan (30 Percent)

a. The extent to which the applicant identifies staff that have the responsibility, capability, and authority to carry out the activities, as evidenced by job descriptions, and curriculum vitae.

b. The extent to which the plan to manage the project and to overcome challenges is logical, resourceful, and adequate to accomplish the purpose of the project.

4. Evaluation (25 Percent)

The extent to which the applicant realistically and adequately proposes to measure progress in tracking and meeting objectives and presents a reasonable plan for obtaining data, reporting the results and using the results for programmatic decisions.

5. Budget and Accompanying Justification (Not Scored)

The extent to which the budget is reasonable, itemized, clearly justified and consistent with the work plan and intended use of funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Progress reports (semiannual)
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are acceptable to this program. For a complete description of each, see Attachment I in the application kit.

AR–7—Executive Order 12372 Review
AR–9—Paperwork Reduction Act Requirements
AR–11—Health People 2010
AR–12—Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized by Section 317(k)(2) [42 U.S.C. 247b(2)], Section 301 of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC Homepage Internet address: http://www.cdc.gov click on "Funding" then "Grants and Cooperative Agreements."

Business management technical assistance may be obtained from: Kimberly Pope, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Announcement Number 00087, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2767, FAX: (770) 488–2777, Email address: kgp6@cdc.gov

Program technical assistance may be obtained from: Barbara Park, Project Officer, Program Services Branch, Office on Smoking and Health, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, Telephone number: (770) 488–1249, FAX: (770) 488–1147, Email address: bzp@cdc.gov

Dated: May 24, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13647 Filed 5–31–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Prevention Research Centers, Program Announcement 98047

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Prevention Research Centers, Program Announcement #98047, meeting.

Times and Dates: 8:30 a.m.–9 a.m., July 11, 2000 (Open). 9 a.m.–5 p.m., July 11, 2000 (Closed). 8 a.m.–5 p.m., July 12, 2000 (Closed).

Place: Sheraton Colony Square Hotel, 188 14th St., NE, Atlanta, GA. Telephone 404/892–6000.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #98047.

Contact Person for More Information: David Elswick, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway m/s F30, Atlanta, GA., 30341. Telephone 770/488–5395, email dce1@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 24, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 00–13652 Filed 5–31–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Childhood Agricultural Safety and Health Research, RFA–OH–00–001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Childhood Agricultural Safety and Health Research, RFA–OH–00–001.

Times and Dates: 12 p.m.–12:30 p.m., June 21, 2000 (Open). 12:30 a.m.–5 p.m., June 21, 2000 (Closed). 8 a.m.–5 p.m., June 22, 2000 (Closed).

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA–OH–00–001.

Contact Person for More Information: Michael J. Galvin, Jr., Ph.D., National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, N.E., m/s D30 Atlanta, Georgia 30333. Telephone 404/639–3525, e-mail mtg3@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 00–13653 Filed 5–31–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: The National Occupational Research Agenda (NORA), RFA OH–00–002, Intervention Effectiveness Research in Occupational Safety and Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: The National Occupational Research Agenda (NORA), RFA OH–00–002, Intervention Effectiveness Research in Occupational Safety and Health.

Times and Date: 8 a.m.–8:30 a.m., June 20, 2000 (Open). 8:30 a.m.–5 p.m., June 20, 2000 (Closed).

Place: Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria, VA 22134.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to the NORA RFA OH–00–002.

Contact Person for More Information: Price Connor, Ph.D., National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, N.E., m/s D30 Atlanta, Georgia 30333. Telephone 404/639–2383, e-mail spc3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances+ and Disease Registry.

Dated: May 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13654 Filed 5–31–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0002]

Agency Information Collection Activities; Announcement of OMB Approval; Application for Exemption From Federal Preemption of State and Local Medical Device Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Application for Exemption From Federal Preemption of State and Local Medical Device Requirements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 13, 2000 (65 FR 19915), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0129. The approval expires on May 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 26, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–13742 Filed 5–31–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4933]

Agency Information Collection Activities; Announcement of OMB Approval; FDA Safety Alert/Public Health Advisory Readership Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "FDA Safety Alert/Public Health Advisory Readership Survey" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 22, 2000 (65 FR 15345), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–341. The approval expires on May 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 26, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–13743 Filed 5–31–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–5222]

Agency Information Collection Activities; Announcement of OMB Approval; Notice of a Claim for GRAS Exemption Based on a GRAS Determination

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Notice of a Claim for GRAS Exemption Based on a GRAS Determination" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 31, 2000 (65 FR 17284), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0342. The approval expires on May 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 26, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–13744 Filed 5–31–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Nonprescription Drugs Advisory Committee and the Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 13 and 14, 2000, 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I, II, III, and IV, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Sandra L. Titus or Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 13 and 14, 2000, the committees will consider new drug applications (NDA) proposing over-the-counter (OTC) use of cholesterol lowering agents. On July 13, 2000, the committees will consider OTC availability of Mevacor®, NDA 21–213, (lovastatin, 10 milligrams (mg) tablets), Merck and Co., proposed to treat individuals with total cholesterol levels of 200–240 mg/dl (deciliter) and low density lipoprotein levels (LDL) over 130 mg/dl. The proposed indication is for men over 40 years of age and postmenopausal women who do not have established cardiovascular disease or diabetes. On July 14, 2000, the committees will consider OTC availability of Pravachol® NDA 21–198, (pravastatin sodium, 10 mg tablets), Bristol-Myers Squibb, proposed to treat individuals with total cholesterol levels of 200 and 240 mg/dl and LDL over 130 mg/dl. The proposed indication is for individuals who do not have established cardiovascular disease or diabetes.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 6, 2000. Oral presentations from the public will be scheduled between approximately 8 a.m. to 9 a.m. on July 13, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 6, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 17, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–13741 Filed 5–31–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: June 1, 2000.

Time: 12 PM to 1 PM.

Agenda: To discuss topics raised at the DCLG April 17–18, 2000 meeting.

Place: NIH, Federal Building, 7550 Wisconsin Ave., Room 6C10, Bethesda, MD 20892–2580 (Telephone Conference Call).

Contact Person: Elaine Lee, Acting Executive Secretary, Office of Liaison Activities, National Cancer Institute, National Institutes of Health, Federal Building, Room 6C10, Bethesda, MD 20892–2580, (301) 594–3194.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13722 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training.

Date: June 14–16, 2000.

Time: 6:30 pm to 8 am.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Mary Bell, Phd, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, PHS, DHHS, 6116 Executive Boulevard, Room 8058, Bethesda, MD 20892, 301/496–7978.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13727 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: July 11–12, 2000.

Time: 8:30 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 10852.

Contact Person: John C. Chah, Scientific Review Administrator, National Institutes of Health, NCCAM, Building 31, Room 5B50, 9000 Rockville Pike, Bethesda, MD 20892, 301–402–4334, johnc@od.nih.gov.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: July 12–14, 2000.

Time: 8:30 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sheryl K Brining, National Center for Complementary and Alternative Medicine, National Institutes of Health, 31 Center Drive, Room 5B50, Bethesda, MD 20892–2182, (301) 496–7498, sb44k@nih.gov.

Dated: May 25, 2000.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13721 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: June 16, 2000.

Time: 2:00 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: D.G. Patel, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0824.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: May 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13730 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: July 5–6, 2000.

Time: July 5, 2000, 10:00 pm to Recess.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Time: July 6, 2000, 8:30 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93. 172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 25, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13714 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group Genome Research Review Committee.

Date: June 5, 2000.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ken D. Nakamura, PHD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 25, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13718 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 16, 2000.

Time: 9:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Neurosciences Center, 6001 Executive Boulevard, Bethesda, MD 20852.

Contact Person: Asikiya Walcourt, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6138, MSC 9606, Bethesda, MD 20892-9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 11–12, 2000.

Time: 8:00 am to 9:00 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 25, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13715 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: July 12, 2000.

Time: 8:30 AM to 3 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tommy L. Broadwater, PHD, Chief, Grants Review Branch, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25U, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Muscuoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 25, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13717 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel To review Individual National Research Service Award Applications.

Date: June 23, 2000.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Building 45, Room 3AN–18B, MD 20892 (Telephone Conference Call).

Contact Person: Mary J. Stephens-Frazier, PHD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 25, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13719 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: June 1, 2000.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: June 28, 2000.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 25, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13720 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: June 1, 2000.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: June 28, 2000.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 25, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13721 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Viral Hepatitis and HIV in Drug and Alcohol Users.

Date: July 27, 2000.

Time: 9:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P Street NW, Washington, DC 20037.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards, 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS).

Dated: May 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13725 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets cr commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Specil Emphasis Panel, Molecular Mechanisms of Signaling in Aging and AD.

Date: May 31–June 1, 2000.

Time: 7:00 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel, 808 20th Street, South Birmingham, AL.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, The Mechanisms of Alternations of Sleep with Age.

Date: June 28, 2000.

Time: 2:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin, Suite 502C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeffrey M. Chernak, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13726 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 9, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW, Washington, DC 20007.

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13728 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(b) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 22, 2000.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 24, 2000.

Time: 2 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13729 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Ledley SEP.

Date: June 14–15, 2000.

Time: June 14, 2000, 6:30 pm to 9:30 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, The Chevy Chase Pavilion, 4300 Military Road NW, Wisconsin at Western Avenue, Washington, DC 20015.

Time: June 15, 2000, 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, The Chevy Chase Pavilion, 4300 Military Road NW, Wisconsin at Western Avenue, Washington, DC 20015.

Contact Person: Sharee Pepper, PhD, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive Suite 301, Bethesda, MD 20892, (301) 594–4933.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 25, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13716 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 8–9, 2000.

Open: June 8, 2000, 9 am to 10:30 am.

Agenda: Administration reports and program developments.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: June 8, 2000, 10:30 am to 5 pm.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room Bldg 38, Rm 2E–09, Bethesda, MD 20894.

Closed: June 9, 2000, 8:30 am to 12:30 pm.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, BA, Chief, Bibliographic Services Division, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38A.Room 4N419, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 00–13724 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 5452b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Pathophysiological Sciences Integrated Review Group, General Medicine A Subcommittee 2.

Date: June 12–13, 2000.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Washington Monarch Hotel, 2401 M Street NW, Washington, DC 20037.

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center of Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, Khanm@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group Reproductive Endocrinology Study Section.

Date: June 12–13, 2000.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway Gaithersburg, MD 20877.

Contact Person: Abubaker A. Shaikh, DVM, PhD, Scientific Review Administrator, Center of Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, General Medicine A Subcommittee 1.

Date: June 12–13, 2000.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776, davidsoh@csr.nih.gov

This notice if being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Alcohol and Toxicology Subcommittee 3.

Date: June 12–13, 2000.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Washington Monarch Hotel, 2401 M Street NW, Washington, DC 20037.

Contact Person: Christine Melchior, PhD, Scientific Review Administrator, Center of Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group Oral Biology and Medicine Subcommittee 2.

Date: June 12–13, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Priscilla Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group Biochemical Endocrinology Study Section.
Date: June 12, 2000.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd, Wisconsin at Western Ave., Washington, DC 20015.
Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group Diagnostic Imaging Study Section.
Date: June 12–13, 2000.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 12, 2000.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Integrated Review Group Mammalian Genetics Study Section.
Date: June 12–13, 2000.
Time: 9 a.m. to 3 p.m.
Agenda: Grant applications.
Place: The Governor's House Hotel, 1615 Rhode Island Avenue, NW, Washington, DC 20036.
Contact Person: Camilla Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1037, dayc@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 12, 2000.
Time: 4 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 12–13, 2000.
Time: 7:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.
Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301)–435–1245, richard.marcus@nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitatons imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group Alcohol and Toxicology Subcommittee 1.
Date: June 13–14, 2000.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW, Washington, DC 20037.
Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 13–14, 2000.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Doyle Hotel, 1500 New Hampshire Avenue, NW, Washington, DC 20036.
Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301)435–1178, fujiij@drg.nih.gov

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group Diagnostic Radiology Study Section.
Date: June 13–14, 2000.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@csr.nih.gov

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Virology Study Section.
Date: June 13–14, 2000.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.
Contact Person: Rita Anand, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.

Name of Committee: Cell Development and Function Integrated Review Group Cell Development and Function 3.
Date: June 13–14, 2000.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.csr.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 13, 2000.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 13, 2000.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Governor's House Hotel, 1615 Rhode Island Avenue, N.W., Washington, DC 20036.
Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1037, dayc@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 13, 2000.

Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@csr.nih.gov

Name of Committee: Oncological Sciences Integrated Review Group Chemical Pathology Study Section.
Date: June 14–16, 2000.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.
Contact Person: Syed Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Visual Sciences B Study Section.
Date: June 14–15, 2000.
Time: 8:30 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham City Center, 1143 New Hampshire Avenue, NW, Washington, DC 20037.
Contact Person: Leonard Jakubczak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, Bethesda, MD 20892, (301) 435–1247.

Name of Committee: Immunological Sciences Integrated Review Group Immunobiology Study Section.
Date: June 14–15, 2000.
Time: 9:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 14–16, 2000.
Time: 7:00 p.m. to 11:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hampton Inn, North, 2300 Green Road, Ann Arbor, MI 48105.
Contact Person: Nadarajen A. Vydelingum, PhD, Scientific Review Administrator, Special Study Section–8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 14, 2000.
Time: 7:00 p.m. to 10:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Alec S. Liacouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

(Catalogue of Federal Domestic Assistance Program nos. 93..306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–13723 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Antitumor Macrocyclic Lactones, Compositions and Methods of Use" and "Vacuolar-Type (H+)-ATPase-Inhibiting Compounds, Compositions, and Uses Thereof"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. § 209 (c) (1) and 37 CFR § 404.7 (a) (1) (i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Application 60/053,784 entitled, "Antitumor Macrocyclic Lactones, Compositions and Methods of Use" filed on July 25, 1997; U.S. Patent Application 60/122,953 and 60/169,564 entitled, "Vacuolar-Type (H+)-ATPase-Inhibiting Compounds, Compositions, and Uses Thereof" filed on March 5, 1999 and December 8, 1999 respectively to BioChem Pharma Inc. of Quebec, Canada. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to composition of antitumor macrocyclic lactones and their uses as cancer therapeutic in humans.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before July 31, 2000 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Girish C. Barua, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: (301) 496–7056, ext. 263; Facsimile (301) 402–0220; E-mail BaruaG@od.nih.gov.

SUPPLEMENTARY INFORMATION: The U.S. Patent Application 60/053,784 claims a series of macrocyclic lactones based on compounds isolated from certain sponges and tunicates collected from Western Australia. The U.S. Patent Applications 60/122,953 and 60/169,564 describe inventions relating to vacuolar-type (H+)-ATPase-inhibitory activity of macrocyclic lactones. Vacuolar-type ATPases (V-ATPases) have been described as a universal proton pump which are important for a myriad of physiological functions such as sorting of membrane and organellar proteins; proinsulin conversion; neurotransmitter uptake, receptor recycling, and cellular degradative processes. Licensee of these inventions will be required to comport with all applicable federal and country-of-collection policies relating to biodiversity.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. § 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. § 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. § 552.

Dated: May 23, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–13732 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Recombinant Virus Expressing Human Carcinoembryonic Antigen and Methods of Use Thereof

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health and Human Services is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Applications S/N 07/695,024 filed on May 6, 1991, S/N 07/879,649 filed on May 6, 1992, S/N 08/198,691 filed on February 18, 1994, and S/N 08/270,106 filed on July 1, 1994 (U.S. Patent 5,698,530 issued on December 16, 1997), entitled "Recombinant Virus Expressing Human Carcinoembryonic Antigen and Methods of Use Thereof," to Therion Biologics Corporation of Cambridge, Massachusetts. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to the use of recombinant poxviruses, excluding vaccinia and swinepox viruses, expressing the carcinoembryonic antigen (CEA) gene or portions thereof with the aim of eliciting an immunogenic response. The immune response *in vivo*, elicited after exposure to the recombinant virus, would be directed against malignant cells expressing CEA. The purpose of the prospective license is to develop poxvirus based vaccines directed against cancers expressing CEA.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before July 31, 2000 will be considered.

ADDRESSES: Requests for copies of these patents/patent applications, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Elaine F. Gese, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: (301) 496–7056, x282; Facsimile (301) 402–0220; E-mail eg46t@nih.gov.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 23, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–13731 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Anti-Notch Antibodies and Pharmaceutical Compositions for the Therapeutic Treatment of Tumors Which Over Express Notch Protein"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to U.S. Patent Applications 60/124,119, entitled: "Anti-Notch-1 Monoclonal Antibodies for Inducing Cellular Differentiation and Apoptosis" and 60/102,816, entitled: "Apoptosis Inducing Agents and Methods" plus, if available, corresponding foreign patent applications to Viragen, Inc. having a place of business in Plantation, Florida. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or applications for a license which are received by NIH on or before July 31, 2000 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: J.R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804. Telephone: (301) 496–7735 ext. 206; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The technology disclosed in USPA SN: 60/124,119 and 60/102,816 relates to a method, pharmaceutical composition, and antibodies to treat tumors by causing apoptosis in tumor cells that over express Notch protein.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the use of anti-Notch antibodies and pharmaceutical composition for the diagnosis and therapeutic treatment of tumors which over express Notch protein.

Applications for a license [*i.e.*, completed "Application for License to Public Health Service Inventions] in the field of use of anti-Notch antibodies and pharmaceutical composition for the therapeutic treatment of tumors which over express Notch protein filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 22, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–13733 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), National Toxicology Program (NTP); Notice of Peer Review Meeting on the Revised Up-and-Down Procedure (UDP) as an Alternative Test Method for Assessing Acute Oral Toxicity; Request for Comments

Summary

Pursuant to Public Law 103–43, notice is hereby given of a public meeting coordinated by the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) and sponsored by NIEHS and the NTP. The agenda topic is the scientific peer review of the revised Up-and-Down Procedure, a method proposed as a replacement for the existing LD50 test for evaluating the acute oral toxicity potential of chemicals. The meeting will take place on July 25, 2000, from 8:30 a.m. to 5:30 p.m. at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. The meeting is open to the public.

Background

ICCVAM, with participation by 14 Federal regulatory and research agencies and programs, was established in 1997 to coordinate issues relating to the development, validation, acceptance, and national/international harmonization of toxicological test methods. ICCVAM seeks to promote the scientific validation and regulatory acceptance of new and improved test methods applicable to Federal agencies including methods that may reduce and replace animal use, or that refine animal use to reduce or eliminate pain and distress. The Committee's functions include the coordination of interagency reviews of toxicological test methods and communication with stakeholders throughout the process of test method development and validation. The following Federal regulatory and research agencies and organizations participate in this effort:

Consumer Product Safety Commission
Department of Defense
Department of Energy
Department of Health and Human Services
  Agency for Toxic Substances and Disease Registry
  Food and Drug Administration
  National Institute for Occupational Safety and Health/CDC
  National Institutes of Health
  National Cancer Institute
  National Institute of Environmental Health Sciences
  National Library of Medicine
Department of the Interior
Department of Labor
  Occupational Safety and Health Administration
Department of Transportation
  Research and Special Programs Administration
Environmental Protection Agency

The NTP Center for the Evaluation of Alternative Toxicological Methods (NICEATM) was established in 1998 and provides operational support for the ICCVAM. NICEATM and ICCVAM seek to promote the validation and regulatory acceptance of new test methods that will enhance agencies' abilities to assess risks, and that will refine, reduce, and replace animal use. NICEATM and ICCVAM collaborate to carry out activities associated with the development, validation, and regulatory acceptance of proposed new and improved test methods. These activities may include:

Independent Peer Review Panel Meetings, which are typically convened following the completion of comprehensive validation studies on a test method. Independent peer review has been determined to be an essential prerequisite for consideration of a test method for regulatory acceptance. Peer Review Panels are asked to develop scientific consensus on the usefulness and limitations of test methods to generate information for specific human health and/or ecological risk assessment purposes. Following the independent peer review of a test method, ICCVAM forwards recommendations on their usefulness to agencies for their consideration. Federal agencies then determine the regulatory acceptability of a method according to their mandates.

Expert Panel Meetings, which are typically convened to evaluate the validation status of a method following the completion of initial development and pre-validation studies. An Expert Panel is asked to recommend additional validation studies that might be helpful in further characterizing the usefulness of a method and to identify any additional research and development efforts that might enhance the effectiveness of a method.

Test Method Workshops, which are convened, as needed, to evaluate the adequacy of current methods for assessing specific toxicities, to identify areas in need of improved or new testing methods, to identify research efforts that may be needed to develop new test methods, and to identify appropriate development and validation activities for proposed new methods.

Agenda

The agenda topic is the scientific peer review evaluation of the validation status of the revised Up-and-Down Procedure (UDP). This procedure is an updated version of the Organization for Economic Cooperation and Development (OECD) Test Guideline 425 (OECD Guideline for the Testing of Chemicals, Acute Oral Toxicity: Up-and-Down Procedure. Guideline 425, adopted September 21, 1998, OECD, Paris, France, *http://www.oecd.org/ehs/test*). The revised UDP is proposed as a substitute for the existing OECD Test Guideline 401 (OECD Guideline for the Testing of Chemicals, Acute Oral Toxicity, Guideline 401, adopted February 24, 1987, OECD, Paris, France). OECD has proposed that Guideline 401 should be deleted since three alternative methods are now available [OECD Document ENV/JM (99) 19, Test Guidelines Programme, Acute Oral Toxicity Testing: Data Needs and Animal Welfare Considerations, 29th Joint Meeting, June 8–11, 1999, Paris, France]. Prior to deletion of Guideline 401, U.S. agencies have requested that ICCVAM conduct an independent peer review of the revised UDP to determine the validity of the method as a substitute for Guideline 401. An Independent Peer Review Panel will (1) evaluate the extent to which established validation and acceptance criteria ("Validation and Regulatory Acceptance of Toxicological Test Methods: A Report of the ad hoc Interagency Coordinating Committee on the Validation of Alternative Methods," NIH Publication No. 97–3981, *http://ntpserver.niehs.nih.gov/htdocs/ICCVAM/iccvam.html*) have been addressed, and (2) will provide conclusions and recommendations regarding the usefulness and limitations of the method as a substitute for the traditional acute oral toxicity test method (OECD Guideline 401, 1987). The UDP has the potential to reduce the number of animals required to classify chemicals for acute oral toxicity compared to Guideline 401. A request for nominations of expert scientists for the Panel was previously published (FR 65, 8385–8386, February 18, 2000).

The meeting will begin at 8:30 a.m. on July 25 and will conclude by 5 p.m. There will be a brief orientation on ICCVAM and the ICCVAM review process, followed by a peer review of the revised UDP and supporting

information. The Peer Review Panel will discuss the usefulness of the UDP as an alternative to the traditional LD50 methods currently accepted by government regulatory authorities for the assessment of acute oral toxicity potential of chemicals.

Background Document Available for Comment

NICEATM has prepared a Background Review Document that includes the revised UDP protocol and documents supporting the basis and validity of the test method. Copies of the Up-and-Down Procedure Background Review Document and supporting documentation may be obtained from NICEATM, MD EC–17, P.O. Box 12233, Research Triangle Park, NC, 27709, Phone: 919–541–3398, Fax: 919–541–0947, E-mail: *ICCVAM@niehs.nih.gov*. A copy of the Background Review Document and comments submitted will be available for viewing Monday through Friday, from 12 noon to 4 p.m. EST at the U. S. Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances, Non-Confidential Information Center, Room 607B, Northeast Mall, 401 M Street, SW, Washington, DC 20460. Thirty days prior to the meeting, a detailed agenda will be available on the web at: *http://iccvam.niehs.nih.gov* or by contacting NICEATM.

Persons requesting additional information regarding the rationale for the OECD proposal to delete the OECD Guideline 401 can contact William T. Meyer, U.S. Environmental Protection Agency, Office of Pesticide Programs, Phone: 703–305–7188; E-mail: *Meyer.WilliamT@epa.gov*. Mail address: Ariel Rios Bldg., 1200 Pennsylvania Ave., NW, Mail Code 7506C, Washington, DC 20460; Federal Express address: 1921 Jefferson Davis Highway, Room 1104H, Arlington, VA 22202.

Request for Comments

NICEATM invites the submission of written comments on the revised Up-and-Down Procedure, and submission of other available information and data on the UDP, including information about completed, ongoing, or planned studies. Written comments and additional information should include name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any), and should be sent by mail, fax, or e-mail to NICEATM at the address listed above. Comments may be submitted anytime before the meeting; however, comments should be submitted by June 15 in order to ensure time for adequate review by the Panel. Written comments will be made available to the Peer Review Panel members, ICCVAM agency representatives and experts, and attendees at the meeting and will be included in the resource materials assembled on the UDP.

The Expert Panel Meeting will be open to the public, and time will be provided for presentation of public oral comments at designated times during the meeting. Speakers will be assigned on a first-come, first-serve basis and up to seven minutes will be allotted to each speaker. In order to facilitate planning, members of the public who wish to present oral statements at the meeting should contact NICEATM as soon as possible, but no later than July 18, 2000. Persons registering to make comments are asked to provide, if possible, a written copy of their statement in advance so that copies can be made and distributed to the Peer Review Panel members for their timely consideration prior to the meeting. Written statements can supplement and expand the oral presentation, and each speaker is asked to provide his/her name, affiliation, mailing address, phone, fax, e-mail and supporting organization (if any). Registration for making public comments will also be available on-site. If registering on-site to speak and reading oral comments from printed copy, the speaker is asked to bring 50 copies of the text. These copies will be distributed to the Panel and supplement the record.

Summary minutes from the meeting and the final report from the Peer Review Panel will be prepared and made available upon request to NICEATM (address provided above). These documents will also be made available via the internet at the website: *http://iccvam.niehs.nih.gov*.

Additional information about ICCVAM and NICEATM can be found at the website:*http://iccvam.niehs.nih.gov*.

Dated: May 22, 2000.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 00–13734 Filed 5–31–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–06]

Notice of Proposed Information Collection for Tenant Opportunities Semi-Annual Report

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 31, 2000.

ADDRESSES: Interested Persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Tenant Opportunities Semi-Annual Report.

OMB Control Number: 2577–0087.

Description of the need for the information and proposed use: Grantees participating in TOP are required to submit Semiannual Report (Form HUD–52370), which will evaluate the progress in carrying out the approved TOP workplan/budget. Grantees shall submit the report on a semiannual basis for the periods ending June 30 and December 31. The reports must be submitted to HUD within 30 days after the end of each semiannual reporting period. No grant payments will be approved for drawdown through the Line of Credit Control System/Voice Response System (LOCCS/VRS) for grantees with overdue progress reports. Form HUD–52371, Tenant Opportunities Program Consultant/Trainer Checklist is canceled.

Agency form numbers: HUD–52370.

Members of affected public: State, Local or Tribal government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 958 TOP grantees, semiannual, two hours per response, 3,832 hours total reporting burden.

Status of the proposed information collection: Reinstatement.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 24, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Tenant Opportunities
Semi-Annual Report
Program: _____

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577 -0087
(exp. 5/31/2000)

See page 4 for instructions for completing this form and the Public reporting burden for this collection of information

Part I. Grant Data

1. Date of Report (mm/dd/yyyy) _____ Reporting Period (Check one and enter year) ☐ a. Jan 1 - Jun 30, (yyyy) _____ ☐ b. Jul 1 - Dec 31, (yyyy) _____ ☐ c. Final

2. Grantee Name & Address (Include street, suite/room/apt. no., city, state, zip)	3. Grant Number	4. HA Wide? (See Instructions) ☐ Yes ☐ No
	5a. Start Date (mm/dd/yyyy)	5b. End Date (mm/dd/yyyy)
	6. Phone Ext.	7. Fax

8. **Executive Officers Section (Housing Authorities do not fill in this section)**

	First Name	Last Name	Phone	Ext.	Fax
8a. President/Chairperson (Mr./Ms./Miss/Mrs.)					
8b. Vice President/Vice Chairperson (Mr./Ms./Miss/Mrs.)					
8c. Secretary (Mr./Ms./Miss/Mrs.)					
8d. Treasurer (Mr./Ms./Miss/Mrs.)					
8e. Grant Manager/Contact Person (Mr./Ms./Miss/Mrs.)					
8f. Other (specify) (Mr./Ms./Miss/Mrs.)					

9. Housing Authority Contact Person

10. Housing Authority Number

11. Name of Development(s)	Project Number	Number of Units

12. **Co-Applicants or Significant Partners**

12a. Organization Name & Address (Include street, suite/room/apt. no., city, State, zip)	Type of Organization (i.e. non-profit, etc.) / Name of Contact Person / Phone Ext. / Fax
12b. Organization Name & Address (Include street, suite/room/apt. no., city, State, zip)	Type of Organization (i.e. non-profit, etc.) / Name of Contact Person / Phone Ext. / Fax
12c. Organization Name & Address (Include street, suite/room/apt. no., city, State, zip)	Type of Organization (i.e. non-profit, etc.) / Name of Contact Person / Phone Ext. / Fax

Part II. Financial Summary

Item	Amount
1. Initial Grant Award	$
2. Grant Amendment (if any added during report period)	$
3. Funds drawn from LOCCS	$
4. Funds Grantee is obligated to pay under contract to others but not yet spent	$
5. Balance of funds in bank account at the end of report period	$

Part III. Progress Summary

Category	Yes	No	Date (mm/dd/yyyy)
1. Is there a financial management system in place for grant funds that meet HUD's requirements?			
2. Has the financial management systen been certified by a CPA?			
3. Has the Grantee adopted Bylaws?			
4. Do the Grantee's Bylaws meet HUD guidelines?			
5. Has the Grantee signed a Memorandum of Understanding (MOU) with the housing authority?			
6. Has the Grantee contracted with or hired a consultant/trainiher?			
7. Has the Grantee comleted financial management training?			
8. Has the Grantee completed training on HUD regulations/policies regarding public housing?			
9. Has the Grantee completed leadership and organization capacity training?			
10. Has the Grantee received other types of training? ☐ Yes ☐ No (if "yes" please list below)			
11. Has the Grantee completed a feasibility study/needs assessment?			
12. Has the Grantee been incorporated?			
13. Has the Grantee applied for 501(c)(3) tax exempt status?			
14. Has the Grantee been granted a 501(c)(3) tax exemption?			
15. Do the Grantee's incorporation documents meet HUD guidelines?			

Part IV. Grantee Accomplishments Since Effective Date of Grant

Status of Management Contract(s)	Yes	No	Date (mm/dd/yyyy)
1. Has the Grantee entered into a management contract(s) with the housing authority?			
2. Is there a contract for/involving ☐ dual ☐ full property management? (check one)			
3. s there a contract for/involving lawn service?			
4. Is there a contract for/involving painting?			
5. Is there a contract for/involving the repair and maintenance of units?			
6. Is there a contract for/involving rent collection?			
7. Other (describe)			
8. Other (describe)			

9. Total number of management contract jobs for residents	
10. Vacancy rate prior to TOP grant	
11. Current vacancy rate	
12. Rate of rent collection prior to TOP grant	
13. Current rate of rent collection	

Resident Owned Businesses Created/Assisted by Grantee

14. Type of Business	Yes	No	Start Date (mm/dd/yyyy)	Total number of jobs for residents
a. Lawn service business				
b. Painting business				
c. Repair business				
d. Day Care business				
e. Laundromat business				
f. Store				
g. Other business (describe)				
h. Other business (describe)				
i. Other business (describe)				

Job Training Programs Created/Assisted by Grantee

15. Type of Job Training Program	Number of residents trained	Number of jobs for residents
a.		
b.		
c.		
d.		
e.		
f.		

Community/Social Services Provided by Grantee

16. Type of Community/Social Service	Number of resident participants
a. Youth education/tutoring	
b. Youth recreational/cultural activities	
c. Youth mentoring	
d. Adult education/literacy programs	
e. Parenting/family support programs	
f. Substance abuse counseling/treatment	
g. Resident anti-crime patrols	
h. Neighborhood watch program	
i. Other	

17. Is Grantee pursuing a homeownership program? ☐ Yes ☐ No

18. Homeownership feasibility study completed? ☐ Yes Date (mm/dd/yyyy) _____ ☐ No

19. Number of families interested in homeownership? _____

Additional Remarks

Remarks continued on additional page ☐ Yes ☐ No

This collection of information requires that each grantee participating in the Tenant Opportunity Program (TOP) submit semi-annual reports that enable HUD to evaluate the progress in carrying out the approved TOP Work Plan/Budget. No grant payments will be approved for drawdown through the Line of Credit Control System/Voice Response System (LOCCS/VRS) for grantees with overdue progress reports. This information will be used by HUD to monitor grantees and their administration of the grant to ensure that Federal funds are spent according to the work plan/budget. Responses to this collection of information are voluntary. Authority for this collection of information is Sections 23(c) and (g) of the U.S. Housing Act of 1937 as amended by 554 of the Cranston-Gonzales National Affordable Housing Act P.L. 101-625. The information requested does not lend itself to confidentiality.

Freedom of Information Act: Semi-Annual reports submitted are subject to disclosure under the Freedom of Information Act (FOIA). To assist HUD in determining whether to release information contained in the report in the event a FOIA request is received, the recipient may, through clear earmarking or otherwise, indicate those portions of its report that it believes should not be disclosed. The recipient's views will be used solely to aid HUD in preparing its response to a FOIA request; HUD is required by the FOIA to make an independent evaluation of the information. HUD suggests that the recipient provide as basis, when possible, for its belief that confidential treatment is appropriate; general assertions or blanket requests for confidentiality, without more information, are of limited value to HUD in making determinations concerning the release of information under FOIA. HUD is required to segregate disclosable information from non-disclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested. HUD emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of reports submitted in response to this solicitation.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collecton displays a valid OMB control number.

Instructions for Completing the Semi-Annual Report

Be sure to identify the Program area in the form Title

Part I. Grant Data

1. Enter date of report and check the Reporting period either 1a or 1b and enter the year.

1c. Place an "x" in the box if all program activities are completed and this is the final report for this program.

2. Enter the full name and complete address of your organization.

3. Enter the Technical Assistance Grant number.

4 Answer yes or no if grant applies HA wide. If you are a city-wide organization, list in Item 11 the name of all developments that you are representing.

5a Enter date Work Plan activities began.

5b. Enter date Work Plan activities were completed.

6. Enter phone number and area code of the organization's office/official's phone number, include extension.

7. Enter organization's fax number include area code.

8. **Executive Officers Section**

8a thru 8d Enter full name and title, phone number, and fax number (if different than Item 7) of the President, Vice President, Secretary, and Treasurer.

8e. List the full name and title, phone number, and fax number (if different than Item 7) of person who is familiar with the TOP/TAG Work Plan/budget. (Use the same name that appears on the HUD 1044 TAG, block 10.)

8f. Other/specify. List the full name and title, phone number, and fax number (if different than Item 7) of an alternate contact person. (the name of one other RC officer or a staff person at the HA)

9. List the name of a contact person at the housing authority.

10. Enter housing authority code.

11. Enter the name of your development, project number, and number of units. If you are a city-wide organization, list the name, project number(s), and number of units for all developments that you are representing.

12. **Co-applicants or Significant Partners.** This section is optional. Grantees are encouraged to fill it out for other organizations that are helping grantees carry out their program.

Part II. Financial Summary

1. Enter amount of the initial grant award.

2. Enter amount of any monies added to the initial grant award.

3. Enter total amount of funds drawn from the LOCCS.

4 Enter the amount of funds for which you have obligated through an executed contract for services **but not yet spent**.

5. Enter the amount of funds you have in the orgnaization's bank account.

Part III. Progress Summary

For each Item, check the **yes** or **no** box as applicable and enter the date in which the action was executed.

10. If the Grantee received other types of training check "yes, " and list types of training and the date completed.

Part IV. Grantee Accomplishments

Status of Management Contract(s)

For each Item, check the **yes** or **no** box as applicable and enter date contract was executed with HA.

7. List any other contract you have with the HA.

8. List any other contract you have with the HA.

9. Enter total number of residents employed as a result of the contracts you list above.

10. Enter the vacancy rate at your development prior to receiving the grant (You may need to consult with your local Housing Authority for this data).

11. Enter the current vacancy rate (You may need to consult with your local Housing Authority for this data).

12. Enter the percentage of the tenant accounts receivables (TARs) prior to receiving the grant (You may need to consult with your local Housing Authority for this data).

13. Enter the current TARs at the development (You may need to consult with your local Housing Authority for this data).

Resident Owned Businesses Created/Assisted by Grantee.

14. Check **yes** or **no** as applicable, the start date of the business(s), and the total the number of jobs for residents.(resident-owned businesses created and/or assisted as a result of the grant funds) (list businesses by individual residents or RC/RMC).

Job Training Programs Created/Assisted by Grantee.

15. List the job training programs, number of residents trained, and number of jobs created for residents.

Community/Social Services Provided by Grantee

16. List the type of community/social services provided and the number of residents participating in the programs listed.

17. Check **yes** or **no** as applicable

18. Check **yes** or **no** as applicable and enter the date completed.

19. Enter the number of families in your development interested in homeownership opportunities.

Use the **"Additional Remarks"** secton, as well as additional sheets as needed, for further comments/explanations.

Send this report to:

Aspen Systems
Resident Initiatives Clearinghouse
Mail Stop 3K
1600 Research Blvd
Rockville, MD 20850

and one copy to the local HUD Field Office.

[FR Doc. 00–13609 Filed 5–31–00; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before July 3, 2000.

ADDRESSES: Send your comments on the requirement to the Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503, and to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street NW, Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at (703) 358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) has submitted a request to OMB to renew its approval of the collection of information for the Sandhill Crane Harvest Survey. We are requesting a 3-year term of approval for this information collection activity. A previous 60-day notice on this information collection requirement was published in the December 2, 1999 (64 FR 67583) **Federal Register** inviting public comment. No comments on the previous notice were received. This notice provides an additional 30 days in which to comment on the following information.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0023.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well-being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird populations. The Sandhill Crane Harvest Survey is an essential part of the migratory bird management program. The survey helps determine sandhill crane harvests and harvest rates that are used to regulate sandhill crane populations (by promulgating hunting regulations) and to encourage hunting opportunity, especially where crop depredations are chronic and/or lightly harvested populations occur.

The annual questionnaire surveys people who obtained a sandhill crane hunting permit. At the end of the hunting season, we randomly select a sample of permit holders and send those people a questionnaire that asks them to report the date, State, county, and number of birds harvested for each of their sandhill crane hunts. Their responses provide estimates of the temporal and geographic distribution of the harvest as well as the average harvest per hunter, which, combined with the total number of sandhill crane permits issued, enables us to estimate the total harvest of sandhill cranes.

The Sandhill Crane Harvest Survey enables us to annually estimate the magnitude of the harvest, and the portion it constitutes of the total mid-continent sandhill crane population. Based on information from this survey, sandhill crane hunting regulations are adjusted as needed to optimize harvest at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

Title: Sandhill Crane Harvest Survey.

Approval Number: 1018–0023.

Service Form Number: 3–530, 3–530A, and 3–2056N.

Frequency of Collection: Annually.

Description of Respondents: Individuals and households.

Total Annual Burden Hours: The reporting burden is estimated to average 5 minutes per respondent. The Total Annual Burden Hours is 614 hours.

Total Annual Responses: About 7,400 individuals are expected to participate in the survey.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: April 4, 2000.

Paul R. Schmidt,

Acting Assistant Director for Refuges and Wildlife.

[FR Doc. 00–13663 Filed 5–31–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "kenneth_graham@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to the Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written data or comments on these applications must be received, at the address given below, by July 3, 2000.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Ken Graham, Permits Biologist). Telephone: 404/679–7358; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Ken Graham, Telephone: 404/679–7358; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION:

Applicant: Christopher A. Taylor, Illinois Natural History Survey, Champaign, Illinois, TE027337–0

The applicant requests a permit to capture the Nashville crayfish, *Orconectes shoupi*, and to collect one specimen for genetic/systematics research on the species, in order to clarify species classification and for enhancement of management and survival of the species.

Applicant: Dr. Paul Yokely, Jr., Florence, Alabama, TE027307–0

The applicant requests authorization to take (capture, identify, release, collect dead freshwater snail and mussel shells, and to relocate captured specimens upstream away from potential harm due to construction activities) federally-listed fish, snails, and mussels during the course of aquatic surveys throughout Alabama, Georgia, Mississippi, and Tennessee. Any taking would occur during routine biological surveys and monitoring, for the purpose of enhancement of survival of the species.

Applicant: Michael R. Hurst, Chattahoochee-Oconee National Forest, Gainesville, Georgia, TE027344–0

The applicant requests authorization to take (capture, band, and harass during nest monitoring, construction of artificial cavities, and placement of restrictor plates) the endangered red-cockaded woodpecker, *Picoides borealis*, on and adjacent to the Oconee National Forest in Georgia, for the purpose of enhancement of survival of the species.

Applicant: Stuart W. McGregor, Geological Survey of Alabama, Tuscaloosa, Alabama, TE027346–0

The applicant requests authorization to take (survey for, capture, handle, identify, and release) 44 species of federally-listed freshwater mussels that could be potentially encountered during routine biological surveys throughout Alabama and in the upper Tombigbee River system in Mississippi, for the purpose of conducting status surveys and enhancement of survival of the species.

Applicant: Steven D. Maloney, Griggs & Maloney Incorporated, Murfreesboro, Tennessee, TE027376–0

The applicant requests authorization to take (capture, identify, and relocate) the endangered Nashville Crayfish, *Orconectes shoupi*, throughout the species range in Tennessee, for the purpose of enhancement of survival of the species.

Dated: May 25, 2000.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–13656 Filed 5–31–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Safe Harbor Agreement With Assurances and Receipt of an Application for an Incidental Take Permit for Activities on Certain State Lands, by the Arizona Department of Transportation

SUMMARY: The Arizona Department of Transportation (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–026887–0. The requested permit, which is for a period of 10 years, would authorize the incidental take of the endangered Gila topminnow (*Poeciliopsis occidentalis*) and the endangered desert pupufish (*Cyprinodon macularius*). The proposed take may occur on certain State Lands owned by the Arizona Department of Transportation in the State of Arizona.

Non-federal landowners, who commit to implementing conservation for listed species through a Safe Harbor Agreement, will receive assurances from the Service. The assurances are that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed. The Service has prepared the Categorical Exclusion for the enhancement of survival permit application. A determination of whether jeopardy to the species would occur will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before July 3, 2000. The agreement, along with any supporting documentation, is available for public review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within the comment period to the address specified below.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the Safe Harbor Agreement and Categorical Exclusion may obtain a copy by contacting Doug Duncan, U.S. Fish and Wildlife Service, Ecological Services Tucson Sub Office, 300 West Congress, Room 6J, Tucson, AZ 85701 (520/670–4860) or David Harlow, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021 (602/640–2720; fax 602/640–2730). Documents will be available for public inspection by written request, by appointment only, during normal business hours (7:30 to 4:30) at the offices above. Written data or comments concerning the application, Safe Harbor Agreement, and Categorical Exclusion should be submitted to the Field

Supervisor, Ecological Services Field Office, Phoenix, AZ, (see address above). Please refer to permit number TE–026887–0 when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Doug Duncan at the above Tucson Sub Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of threatened and endangered species such as the Gila topminnow and desert pupfish. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The proposed action is issuance of an enhancement of survival permit and implementation of the Safe Harbor Agreement as submitted by the Applicant. The Safe Harbor Agreement provides for actions that promote conservation and recovery of the Gila topminnow and desert pupfish by providing refugia sites. One refugium site in Tempe, Arizona, is proposed for release of Gila topminnow and desert pupfish. Other sites owned by the Arizona Department of Transportation within the natural ranges of the species may be used as refugia for either species. Sites will be determined mutually by the Service and the Arizona Department of Transportation. The Safe Harbor Agreement is designed to provide a net conservation benefit to the Gila topminnow and desert pupfish. The Safe Harbor Agreement has stipulations for monitoring of species populations and habitats and functioning of the Safe Harbor Agreement. The Safe Harbor Agreement also provides for funding the mitigation measures and monitoring.

APPLICANT: The Arizona Department of Transportation intends to manage certain retention basins and other sites for Gila topminnow and desert pupfish. The incidental take of these fish may occur at the release sites during certain management activities. The Service anticipates that this Safe Harbor Agreement will provide a net conservation benefit for these two species of native Arizona fish.

Geoffrey L. Haskett,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–13691 Filed 5–31–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment and Preliminary Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for Residential, Commercial, and School Board Development in Northern Indian River County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Indian River County Board of County Commissioners and City of Sebastian City Council (Applicants) request an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicants anticipate taking up to seven families of the threatened Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay), over the next 30 years incidental to the clearing of land associated with residential construction in northern Indian River County, including infill in the existing Sebastian Highlands subdivision located within the city limits of Sebastian. Take is also requested for commercial development on about 88 acres of property owned by the City of Sebastian. Indian River County School Board anticipates that take of scrub-jays may also occur in the future due to expansion of school facilities on about four acres. The anticipated take and measures to minimize and mitigate these takings will occur in sections 18, 19, 20, 29, and 30, Township 31 South, Range 39 East and sections 13, 14, 23, 24, 25, and 26, Township 31 South, Range 38 East, northern Indian River County, Florida.

The issuance of land clearing permits by the City of Sebastian will destroy about 79 acres of habitat occupied by the scrub-jay in residential areas. Another 88 acres of habitat within commercial property owned by the City of Sebastian and about 4 acres of property owned by the School Board is currently unoccupied by scrub-jays, but may become occupied due to proposed habitat management activities. Future development within these parcels may also result in take of scrub-jays. Measures to mitigate for taking of scrub-jays are proposed by the Applicants. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the scrub-jay are outlined in the Applicant's Habitat Conservation Plan (HCP), the Service's draft Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of a draft EA and HCP for the incidental take application. Copies of the draft EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The preliminary Finding of No Significant Impact (FONSI) is based on information contained in the draft EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action, including the identification of any other aspects of the human environment not already identified in the Service's draft EA. Further, the Service is specifically soliciting information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "david_dell@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the ITP application, draft EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before July 3, 2000.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post Office Box 2676, Vero Beach, Florida 32961–2676. Written data or comments concerning the application, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Please reference permit number TE026007–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Field Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 561/562–3909.

SUPPLEMENTARY INFORMATION: The scrub-jay is geographically isolated from other species of scrub-jays found in Mexico and the Western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak dominated scrub). Increasing urban and agricultural development have resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in eastern Florida has likely been greater than in most regions of the State. Eastern coastal Florida has experienced tremendous urban growth in the past 50 years and much of this commercial and residential development has occurred on the dry soils which historically supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal east Florida occurs along a narrow stretch of historic sand dunes that are situated on a north-south axis from Dade to Flagler County. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Remnant patches of suitable scrub-jay habitat remain in northern Indian River County, particularly within the large residential subdivision of Sebastian Highlands. Seven families of scrub-jay are known to persist in 317 single-family residential lots. Scrub-jays within Sebastian Highlands are part of a larger complex of scrub-jays that occupy xeric uplands of eastern coastal Florida. This complex of scrub-jay families (metapopulation) ranges from central Brevard County south to northern Indian River County and represents one of the largest metapopulations of scrub-jays remaining in the State. Scrub-jays within Sebastian Highlands represent the southern-most distribution of this metapopulation. The continued survival of scrub-jays in this metapopulation will depend on the maintenance of suitable habitat and the restoration of unsuitable habitat in key locations.

Scrub-jay use of Sebastian Highlands has been reported periodically since 1991. Early surveys documented the presence of about 26 families of scrub-jays in and near Sebastian Highlands. Since that time there has been a steady decline in the numbers and distribution of scrub-jays in northern Indian River County. Habitat degradation and continued habitat fragmentation are believed responsible for this decline. Scrub-jays currently occupy about 79 acres within Sebastian Highlands subdivision.

The Applicants recognize that the conservation of scrub-jays and fulfillment of existing land-use plans which call for residential infill within Sebastian Highlands cannot reasonably be achieved on a lot-by-lot basis through existing regulatory mechanisms. As a result, the Applicants jointly agreed to address the conservation needs of this species through preparation of an HCP for northern Indian River County.

Land clearing permits issued by the City of Sebastian in preparation for residential, commercial, or School Board construction will destroy habitat and result in death of, or injury to, scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential development will reduce the availability of feeding, nesting, sheltering habitat for scrub-jays. About 79 acres of habitat currently occupied by scrub-jays is expected to be destroyed incrementally as residential build-out occurs in Sebastian Highlands over the next 30 years. Another 92 acres encompassing city-owned commercial property and School Board property may also result in the take of scrub-jays. However, these sites are not currently occupied by scrub-jays and would only become so due to conservation measures proposed in the HCP. These interim conservation measures could provide habitat for scrub-jays until such time that demand for commercial facilities or school expansion are necessary. If these sites are managed well in the interim and scrub-jay subsequently recolonize them, future take may occur during construction activities.

The Applicant's HCP and the Service's EA describe the following minimization and mitigation strategy to be employed by the Applicants to offset the impacts of the Project to the scrub-jay:

- The Applicants agree to perpetually preserve and manage about 324 acres of scrub-jay habitat in northern Indian River County in a manner that will create a mosaic of habitats suitable for this species.
- The Applicants agree to perpetually preserve and manage about 253 acres of unsuitable scrub-jay habitat for use as buffers areas and dispersal corridors for the scrub-jay.
- The Applicants agree to restore and manage 92 acres of potentially suitable scrub-jay habitat on an interim basis, until such time that demand for commercial facilities and/or school expansion require construction within these areas.

The EA considers the environmental consequences of two action alternatives which would require issuance of an ITP. The no action alternative (not issue the ITP) will ultimately result in loss of

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scrub-jay habitat within the Project site due to habitat degradation. The no action alternative may also expose the Applicants under Section 9 of the Act. The preferred alternative would affect about 79 acres of occupied scrub-jay habitat and possibly 92 acres of currently unoccupied but restorable habitat, while protecting and enhancing 324 acres of occupied habitat and unoccupied but restorable habitat in northern Indian River County. With management of habitat, existing conditions are expected to improve over the long-term for scrub-jays in northern Indian River County.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the draft EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: May 25, 2000.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–13655 Filed 5–31–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Draft Assessment Plan

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI), as a natural resource trustee, announces the release for public review of the Draft Assessment Plan (AP) for the Natural Resource Damage Assessment and Restoration of the August 27, 1998, Clinch River Chemical Spill. The Draft AP describes the DOI's proposal to assess natural resources injured as a result of chemical spill in the Clinch River in Tazewell County, Virginia.

DATES: Written comments must be submitted on or before July 1, 2000.

ADDRESSES: Requests for copies of the Draft AP may be made to: Susan Lingenfelser, Ph.D., U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

Written comments or materials regarding the Draft AP should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Susan Lingenfelser, Ph.D., Environmental Contaminants Branch, U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061. Interested parties may also call (804) 693–6694. Ext. 113, or send e-mail to susan_lingenfelser@fws.gov for further information.

SUPPLEMENTARY INFORMATION: On August 27, 1998, a tanker truck overturned on U.S. Route 460 in Tazewell County, Virginia. The truck released approximately 1,250 gallons of Octocure 554-revised, a rubber accelerant, into an unnamed tributary about 500 feet from its confluence with the Clinch River. The spill turned the river a snowy white color and appeared to have killed most aquatic organisms, including three species of federally listed endangered mussels, for at least 6.6 miles downstream.

Under the authority of the Comprehensive Response, Compensation and Liability Act of 1980, as amended (CERCLA), "natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages." Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste or spill site, and provide a process whereby the natural resource trustees can determine the proper compensation to the public for injury to natural resources. The natural resource damage assessment process seeks to: (1) Determine whether injury to, or loss of, trust resources has occurred: (2) ascertain the magnitude of the injury or loss: (3) calculate the appropriate compensation for the injury, including the cost of restoration; and (4) develop a restoration plan that will restore, rehabilitate, replace, and/or acquire equivalent resources for those resources that were injured or lost.

The Draft AP presents the trustee's approaches for determining the quantifying natural resource injuries and calculating the damages associated with those injuries. By developing an Assessment Plan, the trustee can ensure that the natural resource damage assessment will be completed at a reasonable cost relative to the magnitude of damages. this Assessment Plan presents proposed assessment methodologies to potentially responsible parties, other trustees, affected agencies, and to the public, so that these groups can productively participate in the assessment process. The Draft AP is being released in accordance with the Natural Resource Damage Assessment Regulations found at Title 43 of the Code of Federal Regulation Part II.

Interested members of the public are invited to review and comment on the Draft AP. Copies of the Draft AP are available from the U.S. Fish and Wildlife Service's Virginia Field Office at 6669 Short Lane, Gloucester, Virginia 23061. Additionally the Draft AP is available for review at the Tazewell County Main Library, 310 East Main Street. Tazewell, Virginia 24651 and the Tazewell County Library, Richlands Branch, 102 Suffolk Avenue, Richlands, Virginia 24641. All comments received on the Draft AP will be considered and a response provided either through revision of this Draft AP and incorporation into the Final Assessment Plan, or by letter to the commentor.

Author

The primary author of this notice is Susan Lingenfelser, Ph.D., U.S. Fish and Wildlife Service, Virginia Field Office at 6669 Short Lane, Gloucester, Virginia 23061.

Authority: The authority for this action is the Comprehensive Environmental Response. Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C.

Dated: May 22, 2000.

Mamie A. Parker,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 00–13614 Filed 5–31–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Right-of-Way Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service will issue a right-of-way permit to Petroleum Properties Corporation for the construction of a 20-inch underground natural gas pipeline on lands of the Sutter National Wildlife Refuge in Sutter County, California, described as follows: Mount Diablo Meridian, Township 14 N, Range 2 E, Section 9. The right-of-way would run about 0.1 to 0.2 miles south of Hughes Road.

DATES: The permit will be issued within 30 days of June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Anne Cullen, Division of Realty, 911 NE 11th Avenue, Portland, Oregon, 97232–4181, telephone (503) 231–6201.

Dated: May 25, 2000.

Carolyn A. Bohan,

Acting Regional Director, Portland, Oregon.

[FR Doc. 00–13657 Filed 5–31–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Programmatic Environmental Impact Statement for the Proposed Navajo Ten-Year Forest Management Plan, Navajo Nation, Arizona/New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice; Reopening of comment period.

SUMMARY: This notice reopens the public comment period published in the **Federal Register** on May 12, 2000 (65 FR 30605) for the Final Programmatic Environmental Impact Statement (FPEIS) for the Proposed Navajo Ten-Year Forest Management Plan, Navajo Nation, Arizona/New Mexico. The new public comment period closes on June 30, 2000. Except for the closing date for the public comment period, the information on the FPEIS published in the **Federal Register** on April 14, 2000 (65 FR 20197) remains unchanged.

DATES: The date by which written comments must arrive is June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Harold D. Russell, (520) 729–7228.

Dated: May 25, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–13661 Filed 5–31–00; 8:45 am]

BILLING CODE 4310–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Amendment to Pueblo of Laguna Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983). I certify that Resolution No. 49–99 of the Pueblo of Laguna was duly adopted by the Pueblo of Laguna Tribal Council on August 11, 1999. This Amendment to the Pueblo of Laguna Liquor Control Ordinance regulates the issuance of licenses for the sale of alcohol beverages in package or by the drink for consumption on the premises and for the sale of liquor on Sunday or any tribal, state or federal election day to the same extent authorized by the State of New Mexico.

DATES: This Amendment is effective as of June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Jim D. James, Office of Tribal Services, 1849 C Street, NW, MS–4660–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The amendments to the Pueblo of Laguna Liquor Control Ordinance, Resolution No. 49–99, shall read as follows:

Section 5 (C): "Authorized sales. Liquor may be sold in package or by the drink for consumption on the premises as determined in the sole discretion of the Tribal Council. The license or permit issued shall state whether the license or permit authorizes package sales and/or liquor by the drink sales and if the permit authorizes liquor by the drink whether or not the license is limited to a particular type or types of liquor," and;

Section 5 (E): "Sunday and Election Day Sales. Sale of liquor may be allowed on Sunday or any tribal, state or federal election day to the same extent authorized by the State of New Mexico. No sales should be allowed on any day or any time determined by the Tribal Council that liquor sales shall be prohibited."

Dated: May 23, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–13612 Filed 5–31–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Amendment to Stockbridge-Munsee Community Band of Mohican Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983). I certify that Resolution No. 058–99 and Resolution No. 074–99 of the Stockbridge-Munsee Community Band of Mohican Indians were duly adopted by the Stockbridge-Munsee Tribal Council on September 7, 1999 and November 2, 1999, respectively. These Amendments to the Stockbridge-Munsee Liquor Control Ordinance, published on December 11, 1992 (57 FR 58938) with an amendment on May 13, 1998 (63 FR 26621), regulate the issuance of licenses for the sale of alcohol beverages within buildings used for casinos, entertainment facilities, convenience stores, special outdoor events and restaurant-bar operations, including the sale of beer for consumption on the golf course owned and regulated by the Stockbridge-Munsee Community.

DATES: This Amendment is effective as of June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Jim D. James, Office of Tribal Services, 1849 C Street NW, MS 4660–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The amendment to the Stockbridge-Munsee Liquor Control Ordinance shall read as follows:

Section 31.1 (A) "Licenses for the sale of alcohol beverages may be issued for sale of such beverages for casinos, entertainment facilities, convenience stores and restaurant-bar operations owned and regulated by the Stockbridge-Munsee Community. This license includes sales for special outdoor events and the sale of beer for consumption on the golf course."

Dated: May 22, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–13611 Filed 5–31–00; 8:45 am]

BILLING CODE 4310–02–P

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–(962)–1410–HY–P]

Alaska: Notice for Publication, F–14908–B; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the modified decision to issue conveyance to Sitnasuak Native Corporation, notice of which was published in the **Federal Register** on October 22, 1999, is hereby vacated in part.

A notice, of the modified decision being vacated in part, will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until July 3, 2000 to file an appeal on the issues in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Except as vacated in part, the modified decision, notice of which was given October 22, 1999, is final.

Jane Miller,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 00–13658 Filed 5–31–00; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1820–XQ]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Alturas, California, DOI.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Wednesday and Thursday, June 28 and 29, 2000, at the Veterans Memorial Hall, 500 Main St., Alturas, California. On Wednesday, the council will tour the Cedar Creek project area, and on Thursday, the council convenes in a regular business session. Both the tour and meeting are open to the public. Members of the public attending the tour must provide their own four-wheel-drive transportation and beverages. A barbecue lunch will be available for a fee.

SUPPLEMENTARY INFORMATION: Members of the council and interested members of the public will meet at Wednesday at 9 a.m. at the Likely Fire Station in Likely, California, and depart immediately for the tour. The group will complete the tour and return to Alturas, California by about 6 p.m.

On Thursday, the meeting begins at 8 a.m. Agenda items include discussion of the BLM's development of an off-highway vehicle management strategy, review of off-highway vehicle guidelines developed by a RAC subcommittee, discussion of juniper management, review of BLM-California's proposed landscape publications, and discussion of emerging issues for the BLM. Time will be set aside for public comments at 10:45 a.m. Members of the public interested in off-highway vehicle management on public lands are encouraged to attend the meeting to provide comments to the advisory council, which will be forwarding comments to BLM's leadership. These public comments will help the BLM develop a resource management strategy for management of off highway vehicle use. The strategy will recognize the interests of OHV users, while providing resource protection. Depending on the number of persons wishing to speak, a time limit may be established.

FOR FURTHER INFORMATION CONTACT: Tim Burke, Alturas field manager, (530) 233–4666, or Public Affairs Officer Jeff Fontana at (530) 257–5381.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–13692 Filed 5–31–00; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–00–024]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: June 9, 2000 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Agenda for future meeting: None.

2. Minutes.

3. Ratification List.

4. Inv. No. 731–TA–847 and 850 (Final) (Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe and Tube from Japan and South Africa)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on June 16, 2000.).

5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 25, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13804 Filed 5–30–00; 10:18 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[USITC SE–00–023]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: June 5, 2000 at 2 p.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.

2. Minutes.

3. Ratification List.

4. Inv. No. 731–TA–851 (Final) (Synthetic Indigo from China)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on June 12, 2000.).

5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 25, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13805 Filed 5–30–00; 10:18 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[USITC SE–00–022]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: June 2, 2000 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.

2. Minutes.

3. Ratification List.

4. Inv. No. 731–TA–853 (Final) (Structural Steel Beams from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on June 9, 2000.)

5. Inv. Nos. AA1921–143 and 731–TA–341, 343–345, 391–397, and 399 (Review) (Certain Bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on June 16, 2000.)

6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 23, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13808 Filed 5–30–00; 10:17 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Videotape: Community Education on Jails

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections, Jail Division, is seeking applications for the development of a broadcast quality videotape on the basic issues, functions, and roles common to local jails.

Background

Historically, jails have functioned in relative obscurity within their own communities. Although the community may generally acknowledge the need for a jail, the jail itself is ignored; kept out of sight and out of mind. The community wants only to know that dangerous criminals are removed from the streets and locked away. And, although jail practitioners decry the community's lack of knowledge, they have done little to remedy this. Traditionally, jail administrators have focused to intently on their internal role in the jail that they have neglected their role external to the jail—fostering public understanding of and involvement with jail issues and operations. As a result, jails, which should be viewed as a community service, are, in fact, isolated from their communities.

As a result of this isolation, the public shapes its perceptions of the jail, staff, and inmates from negative images presented in film and television drama. Jails are portrayed as dirty and dangerous, and jail staff as lazy, incompetent, and meanspirited. Inmates are portrayed as either dangerous and inhuman or valiant warriors against the system. This unflattering perception is then compounded if negative events force the jail to the forefront of the news.

The jail's isolation does a disservice to the community and to the jail itself. The jail belongs to the community and should reflect the community's values, both in its role in the criminal justice system and in its internal operations. This, however, is not possible if the community has no understanding of the jail, and no inclination to learn, given the negative image it has. When local government officials do not understand the role of the jail and the complexity of its operations, they are likely to underfund even basic functions, often creating dangerous and unhealthy conditions in the facility and putting the community at risk. This, then, leads to a high degree of liability, and the local government may find itself the target of a costly lawsuit. Jails struggle to find and retain qualified staff, but recruiting quality staff is close to impossible when the jail is viewed as a most undesirable work environment. The inadequate staffing levels and the poorly qualified staff in many jails only compound liability issues.

Project Objectives

A primary remedy for the problems faced by jails is public education. This videotape will be a highly effective tool for jail administrators and sheriffs embarking on an education program for the community. The video format will be a visual counterpoint to existing public perceptions, providing specific information about the role and operation of the jail, the work and commitment of the staff, and the identity and needs of the inmates. The video format will also allow the message to be portrayed easily to various community members, including business people, educators, local officials, and general community groups. The videotape will provide the foundation for the efforts of sheriffs and jail administrators to inform the public about jails generally, their jail specifically, and the need for community involvement in the jail.

Scope of Work

Videotape Length: About 30 minutes.

Videotape Audience: Local community members and local officials.

Use of Videotape: The videotape will be used as a tool to educate its audience about local jails. It will be shown to local community members and local officials. Sheriffs and jail administrators will use the videotape as a foundation to inform the audience about jails generally, their jails specifically, and the need for community involvement in the jail.

Videotape Distribution: NIC expects to widely distribute the videotape. It will be made available, upon request and free of charge, through the NIC Information Center. Local officials, detention practitioners, professional corrections organizations, private corrections consultants, and professionals in related fields will be able to request the use of this videotape.

Videotape Content: The videotape will provide specific information about the role and operations of jails, introducing some differences among jails in the United States and highlighting the things that all jails have in common. These commonalities include basic functions, complexity of operations, and chronic needs and problems. The videotape will also provide information about the work of jail staff and the characteristics of inmates. It will illustrate information through professional narration, interviews, graphics, animation, scenes from jails, and/or other strategies

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designed to most effectively demonstrate concepts.

Project Description: The production company will see the videotape production through from beginning to end. The company is expected to provide the staff, equipment, and other resources necessary to script-writing, directing, producing, filming, off-line editing, on-line editing, and all other activities necessary to videotape production.

The production company is asked to assign one staff to oversee the project and work closely with NIC staff on all phases of videotape production. NIC staff must review and approve the treatment, scripting, creative ideas, filming sites, shooting days, persons interviewed, music, graphics, animation, editing, and screening dates. NIC staff will have all editing rights and final approval of rough drafts. NIC staff will accompany the film crew to at least two of the filming sites.

In general, NIC staff will work closely with the production company throughout the project to make sure personnel understand the role of the local jail and that information is portrayed accurately in every detail of the videotape. NIC staff will be available to the production company to assist with questions or problems that arise. It is important, therefore, that the production company staff are readily available for in-person meetings with NIC staff, some at short notice.

This project will require research to locate historic photographs and footage to illustrate changes in conditions and requirements for local jails. This project will also require travel to film at up to five jail sites. These sites will be determined by NIC staff, and will be located throughout the United States, including the Northeast, Southeast, Midwest, Southwest, and West. At each site, filming will include exterior views of the jail, various interior views of the jail, and interviews with up to eight individuals, including county commissioners, judges, sheriffs, jail administrators, jail staff, and community members. NIC staff will coordinate the filming with each jail site. Filming at each site may require 2–3 days, not including travel time. In addition, this project will require filming of up to four interviews in Longmont, Colorado.

The production company will videotape in betacam or digital format. Once the videotape is completed, the production company will provide NIC one broadcast quality (betacam or digital) master, 100 copies of the tape in VHS format, with sleeves and coded with the Department of Justice seal, and one digitized videotape for broadcast, on CD ROM, to be placed on the NIC web page. All videotape used in this production is the property of the U.S. Government and is to be delivered to NIC upon completion of this project.

Production Schedule: The list below shows the major activities required to complete the project. Videotape production will begin upon award of this agreement and must be completed ten months after the award date. The schedule for completion of activities should include the following, at a minimum.

- Production company's kickoff meeting with NIC staff for a project overview;
- Production company's review of materials provided by NIC;
- Production company's research of roles and functions of jails;
- Production company's tour of a jail (arranged through NIC staff);
- NIC project staff develops an outline of key concepts to be included in videotape with suggestions for illustrating;
- Scripted treatment;
- Script written and presented to NIC for approval;
- Script revisions and NIC staff's final approval;
- Filming and interviews scheduled and coordinated with sites and NIC staff;
- Story board developed and presented to NIC staff for review;
- Story board revisions and NIC staff's final approval;
- Filming;
- Off-line editing;
- Screening of off-line edit by production company and NIC staff;
- On-line graphics/animation planned, then presented to and approved by NIC staff;
- On-line graphics/animation created;
- On-line narration reordered;
- On-line edit;
- On-line screening by production company and NIC staff;
- Review and approval of final edit by NIC staff;
- Final products delivered.

Authority: Public Law 93-415.

Funds Available

The award will be limited to $125,000 (direct and indirect costs) and project activity must be completed within ten months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Jails Division.

Application Procedures

Applications must be submitted in six copies to the Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. At least one copy of the application must have the applicant's original signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

Applications must be prepared according to the procedures given in the NIC Guideline Manual: Instructions for Applying for Federal Assistance and must be submitted on OMB Standard Form 424, Federal Assistance. The applications should be concisely written, typed double-spaced, and referenced to the project by the number and title given in this cooperative agreement announcement.

The narrative portion of this grant application should include, at a minimum:

- A brief paragraph that indicates the applicant's understanding of the purpose of the videotape and the issues to be addressed;
- A brief paragraph that summarizes the project goals and objectives;
- A clear description of the methodology that will be used to complete the project and achieve its goals;
- A statement or chart of measurable project milestones and time lines for the completion of each;
- A description of the staffing plan for the project, including the role of each project staff, the time commitment for each, the relationship among the staff (who reports to whom), and an indication that all required staff will be available;
- A description of the qualifications of the applicant organization and each project staff;
- A budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed (budget should be divided into object class categories as shown on application Standard Form 424A).

Documentation of the principal's and associate's relevant knowledge, skills, and abilities to carry out the described tasks must be included in the application. The application must be accompanied by a resume of the applicant's work and a brief sample(s) of completed video productions. The applicant organization must specify its roles in the production of the sample videos.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on Monday, July 17, 2000. They should be addressed to Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Addresses and Further Information: Requests for the application kit should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 159, 202–307–3106, ext. 159, or email: *jevens@bop.gov*. A copy of this announcement, application forms, and additional information may also be obtained through the NIC web site: http://www.nicic.org (click on "What's New" and "Cooperative Agreements"). All technical and/or programmatic questions concerning this announcement should be directed to Kris Keller at 1960 Industrial Circle, Longmont, CO 80501, or by calling 800–995–6429, ext. 119 or 303–682–0382, ext. 119, or by email: *kdkeller@bop.gov*.

Eligibility Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team, or individual with requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to a NIC three to five member Peer Review Process. Among the criteria used to evaluate the applications are:

- Indication of a clear understanding of the project requirements;
- Background, experience, and expertise of the proposed project staff, including any subcontractors;
- Previous video production experience with local jails;
- Effectiveness of the creative approach to the project;
- Clear, concise description of all elements and tasks of the project, with sufficient and realistic time frames necessary to complete the tasks;
- Technical soundness of project design and methodology;
- Financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes;
- Sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the budget proposed;
- Indication of availability to meet with NIC staff, possibly at short notice, at key points in videotape production (at a minimum, those listed under "Project Description").

Number of Awards: One (1).

NIC Application Number: 00J01 Videotape Community Education on Jails. This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424.

Catalog of Federal Domestic Assistance Number: 16.601

Dated: May 26, 2000.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 00–13665 Filed 5–31–00; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a cooperative agreement—Regional Meetings on Prison Workforce Issues

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2000 for a cooperative agreement to provide funding for conducting four regional one and a half (1½) day meetings to identify critical issues that impact the effectiveness of the prison workforce as well as innovative strategies to assist correctional departments in meeting their human resource needs.

Background

Baby Boomers, Generation X, and Gray Panthers are a few of the identified groups changing the profile of the workplace. With unprecedented growth in technology and high competition for workers, many correctional agencies are finding it increasingly difficult to recruit and retain staff. Even when staff are hired, there are a variety of differences in the work ethic of these workers. A number of systems have even been faced with building institutions and then having them sit idle because of lack of staff. In other instances, systems have expanded so rapidly that staff with minimal or limited experience are being "prematurely promoted" to manage this eclectic workforce. With these varying dilemmas impacting the prison workforce, it is imperative that agencies find out what is working and what is not regarding the human resource aspect of managing prison systems.

Private industry and other government entities are likewise facing challenges in a variety of workforce areas. Some have implemented innovative approaches (such as training contracts, paid educational advancement, etc.) that are providing at least somewhat successful. Learning how to identify and implement innovative strategies for today's workforce, and especially recommendations for 24-hour operations located in rural settings, is the goal of these discussion or "focus" groups.

A total of $79,600 is reserved for this project which will support one cooperative agreement for a 9 month period. The recipient of the award will be selected through a competitive solicitation process. BeLinda Watson Barney is the designated NIC project manager.

Project Scope: The goals of this cooperative agreement include the following:

- Identification and selection of sites for the four (4) regional meetings.
- Manage all logistical planning for the four (4) regional meetings and manage on-site logistics.
- Identify a format, discussion points and facilitators for the discussion groups.
- Identify potential participants for the discussion groups.
- Develop a summary report of the findings from the regional meetings.

All work on this project will be done in collaboration with NIC who will retain final approval on all aspects of these meetings. All travel for meetings will be funded, arranged and managed by the recipient of this award.

Specific Requirements: The successful applicant will propose a project approach that will ensure accomplishment of each of the stated goals of this project. At a minimum, the following requirements will be met in pursuit of the stated goals:

- Selection of participants that include corrections, other government and private sector representatives who can contribute to a discussion of how to address workforce issues in corrections or who can provide examples of innovative strategies used in their own sector.
- Focus of the discussion should be in identifying solutions (as opposed to listing problems).
- Compilation of findings and summary of issues raised at the regional meetings, including recommendations for further work/assistance by NIC.
- Coordination with the NIC project director at critical points in project development and as necessary to ensure clarity and accomplishments of goals and a satisfactory outcome.

Additional, specific requirements related to the training package are as follows:

Following review in draft form by the project coordinator, the summary report must be professionally edited and submitted in camera-ready hard copy and 3.5" computer disk or zip drive disk using WordPerfect 7.0 or higher software for use with IBM compatible computers with Windows operating systems.

It will be the responsibility of the award recipient to secure written approval to use any copyrighted materials or photographs and to provide the original approval with the documents.

Authority: Public Law 93–415.

Funds Available: The award will be limited to a maximum of $79,600 (direct and indirect costs) and project activity must be completed within 9 months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Prisons Division.

Application Requirements: Applicants are required to submit a proposal that specifically defines their plan for meeting the goals and objectives of this project. The proposal must: provide a detailed plan that describes the methodology to be used in pursuing the project goals, including a timetable for accomplishment of objectives and criteria for selection of work group participants; demonstrate a knowledge of current workforce issues in the public and private sectors, including an awareness of agencies or organizations that have implemented innovative workforce strategies; and identify project staff who have made a commitment of time to this project and the specific skills they possess that will support the endeavors of the project. The conceptual framework of the proposal must demonstrate the applicants understanding of the nature of government employment practices and specifically, those that pertain to the correctional workforce.

Funding for this project has been established at $79,600. The applicant must provide a budget and budget narrative that clearly identifies the allocation of funds for achievement of the goals of the cooperative agreement. The rationale for the expenditures must be provided in the budget narrative unless patently obvious in the proposal.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m., EDT, on Friday, June 30, 2000. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Addresses and Further Information: Requests for the application kit, should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, N.W., Room 5007, Washington, D.C. 20534 or by calling 800–995–6423, ext. 159, 202–307–3106, ext. 159, or email: jevens@bop.gov. A copy of this announcement and application forms may also be obtained through the NIC web site: http//www.nicic.org (click on "What's New" and "Cooperative Agreements"). All technical and/or programmatic questions concerning this announcement should be directed to BeLinda Watson Barney at the above address or by calling 800–995–6423 or 202–307–1300, ext. 152, or by E-mail via bbarney@bop.gov.

Project Completion: The award recipient will be responsible to submit all required reports and corrections or revisions of materials in a timely manner. The project period is 9 months from the date of the award and the project will not be deemed to have been completed until a final draft is accepted by the project coordinator.

Eligible Applicants: An eligible applicant is any state or general unit of local government, public or private, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process. It is anticipated that the award will be made within 60–90 days following the application due date.

Number of Awards: One (1).

NIC Application Number: 00P06 This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424.

Executive Order 12372: This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit, along with further instructions on proposed projects serving more than one State.

Catalog of Federal Domestic Assistance Number: 16.603.

Dated: May 25, 2000.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 00–13666 Filed 5–31–00; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision the information collection of the GPRA-Complaint Program Performance and Participant Outcomes Data System (OMB Control No. 1205–0392), now titled the Trade Act Participant Report.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 31, 2000.

ADDRESSES: Curtis K. Kooser, Program Analyst, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–4318, 200 Constitution Ave., NW., Washington, DC 20210, telephone 202–219–4845, ext. 111 (this is not a toll-free number), FAX 202–219–5753, e-mail ckooser@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 16, 1998, the Office of Management and Budget approved a GPRA-complaint performance and participant outcomes data system for the Division of Trade Adjustment Assistance (DTAA); this system is now known as the Trade Act Participant Report (TAPR). States implemented the TAPR beginning with the first quarter of fiscal year 1999 (October through December, 1998), and have continued to collect and report data every quarter since then.

Because both Trade Adjustment Assistance (TAA) and Title III of the Job Training Partnership Act (JTPA) serve adult dislocated workers, the TAPR was modeled on the Standardized Program Information Report (SPIR) system used by the JTPA programs. The passage of the Workforce Investment Act of 1998 (WIA), which replaced JTPA, made substantial changes in Federal employment and training programs, including changes in the way participant data are defined, gathered, and reported.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed revision of information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

In order to maintain coordination and continuity with the dislocated worker program under Title One of WIA, and to make other improvements, DTAA is proposing revisions to the TAPR that make it substantially the same as the system to be used by the WIA programs. The major changes are the following:

1. The definitions of Race and Ethnicity are now compliant with the most recent OMB definitions.

2. Date for defining and judging outcomes for participants are now based upon Wage Record data rather than surveys of individuals program exiters. It is estimated that this will substantially reduce the reporting burden on the States.

3. Minor revisions in the sequence and definitions of some of the TAPR fields have been made in order to increase the degree of continuity with the new system to be used by the dislocated workers program under WIA Title I.

4. The format for reporting dates has been changed from MMDDYYYY to YYYYMMDD to conform with the new WIA-Based system.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Trade Act Participant Reporrt (TAPR).

OMB Number: 1205–0392.

Affected Public: State governments.

Frequency: Quarterly.

Total Responses: 200 (50 per quarter).

Average Time per Response: 40 hours per quarter.

Estimated Total Burden Hours: 8,000.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $120,000.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 25, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–13613 Filed 5–31–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0108(2000)]

Ethylene Oxide (EtO) Standard (29 CFR 1910.1047); Extension of the Office of Management of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information-collection requirements contained in the Ethylene Oxide Standard (the "EtO Standard") (29 CFR 1910.1047).

Request For Comment

The Agency has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

DATES: Submit written comments on or before July 31, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0108(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW, Washington, DC; telephone: (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information-collection requirements in the EtO Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd R. Owen at (202) 693–2444. For electronic copies of the ICR on the EtO Standard, contact OSHA on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C.(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of the 1970 (the

Act) authorizes information colelction by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information-collection requirements specificied in the EtO Standard protect employees from the adverse health effects that may result from their exposure to EtO. The major information-collection requirements of the EtO Standard include notifying employees of their EtO exposures, implementing a written compliance program, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-examination results, maintaining employees' exposure-monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and their authorized representatives.

II. Proposed Actions

OSHA proposed to increase the existing burden-hour estimate, and to extend OMB's approval, of the collection-of-information (paperwork) requirements contained in the EtO Standard. The Agency is increasing its previous estimate, 50,300 hours, by 989 hours. This increase occurred because of the increase in the number of hospitals using EtO sterilizers. OSHA will summarize the commentss submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information-collection requirements contained in the EtO Standard.

Type of Review: Extension of currently approved information-collection requirements.

Title: Ethylene Oxide Standard (29 CFR 1910.1047).

OMB Number: 1218–0108.

Affected Public: Business or other for-profit; Federal government; State, Local or Tribal government.

Number of Respondents: 5,782.

Frequency: On occasion.

Total Responses: 232,564.

Average Time per Response: Varies from 5 minutes to provide information to the examining physician to 10 hours to develop a compliance plan.

Estimated Total Burden Hours: 51,289.

Estimated Cost (Operation and Maintenance): $7,074,850.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the prepreation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No 6–96 (62 FR 111).

Signed at Washington, D.C., on May 25, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–13696 Filed 5–31–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0190 (2000)]

Electrical Power Generation, Transmission, and Distribution (29 CFR 1910.269) and Electrical Protective Equipment (29 CFR 1910.137)); Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Request

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed extension of the information collection requirements contained in the standards on Electrical Power Generation, Transmission, and Distribution, 29 CFR 1910.269, and Electrical Protective Equipment, 29 CFR 1910.137.

Request For Comment: The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information transmission and collection techniques.

DATES: Submit written comments on or before July 31, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0190(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room 3–3609, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements contained in the standards on Electrical Power Generation, Transmission, and Distribution (29 CFR 1910.269) and Electrical Protective Equipment (29 CFR 1910.137) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/comp-links.html, and click on "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

1. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing informatin collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In this regard, the information collection requirement contained in 29 CFR 1910.269 will ensure that employers train employees in all aspects of electrical power generation, transmission, and distribution. The information collection requirement in 29 CFR 1910.137 will ensure that equipment used by exposed employees is in reliable working condition.

II. Proposed Actions

OSHA proposes to decrease its earlier estimate of 40,086 burden hours to 11,178 burden hours for the collections of information found in 29 CFR 1910.269 (Electrical Power Generation, Transmission, and Distribution), and 29 CFR 1910.137 (Electrical Protective Equipment). OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the above standards.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Electrical Power Generation, Transmission, and Distribution (29 CFR 1910.269) and Electrical Protective Equipment (29 CFR 1910.137).

OMB Number: 1218–0190.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; state, local or tribal government.

Number of Respondents: 362,000.

Frequency: On occasion; annually; semi-annually.

Average Time per Response: 2 minutes (0.03 hour) to 15 minutes (0.25 hour).

Estimated Total Burden Hours: 11,178.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC, this 26 day of May 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–13747 Filed 5–31–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10654]

Withdrawal of Notice of Proposed Exemption Involving Fish Lake Beach, Inc. Profit Sharing Plan (the Plan); Located in Round Lake, Illinois

In the **Federal Register** dated February 29, 2000 (65 FR 10826), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned the prospective cash sale of a certain parcel of real property by the Plan to the trust of Emilie Keil, a party in interest with respect to the Plan.

On April 7, 2000, the applicant informed the Department that it wished to withdraw the notice of proposed exemption.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 25th day of May, 2000.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–13642 Filed 5–31–00; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemptions 2000–25, et al.; Application Nos. D–10119 and D–10120, et al.]

Morgan Guaranty Trust Company of New York, et al.

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Grant of Individual Exemptions.[1]

SUMMARY: This document contains individual exemptions issued by the Department of Labor (the Department) from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by the Internal Revenue Code of 1986 (the Code). The exemptions permit purchases of securities by the applicants' asset management affiliate, on behalf of employee benefit plans for which such asset management affiliate is a fiduciary, from underwriting or selling syndicates where the applicants' broker-dealer affiliate participates as a manager or syndicate member. The exemptions affect participants and beneficiaries of the plans investing in such securities.

EFFECTIVE DATE: The exemptions are effective as of February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea W. Selvaggio or Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 8, 2000, the Department published a notice of pendency in the **Federal Register** (65 FR 6229) of the proposed exemptions from the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code. The exemptions were requested in separate applications filed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), by the following entities: Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management Inc. (together, J.P. Morgan) Goldman, Sachs & Co. (Goldman), The Chase Manhattan Bank (Chase), Citigroup Inc. (Citigroup), and Morgan Stanley Dean Witter & Co. (Morgan Stanley).

Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), generally transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, these exemptions are being issued solely by the Department.[2] For convenience, each applicant and its affiliates shall be referred to in the exemption in generic terms that denote certain roles, namely, "the Applicant," "the Asset Manager,"[3] or "the Affiliated Broker-Dealer."[4]

The notice of pendency invited all interested persons to submit written comments or request a public hearing concerning the proposed exemptions by March 24, 2000. The Department received six written comments and no requests for a hearing in response to the notice. Each of the five Applicants

[1] The term "Individual Exemptions" refers to the following Prohibited Transaction Exemptions (PTEs): PTE 2000–25 (Application Nos. D–10119 and D–10120, Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management Inc.); PTE 2000–26 (Application No. D–10587, Goldman, Sachs & Co.); PTE 2000–27 (Application No. D–10779, The Chase Manhattan Bank); PTE 2000–28 (Application No. D–10820, Citigroup Inc); and PTE 2000–29 (Application No. D–10832, Morgan Stanley Dean Witter & Co.).

[2] All references to specific provisions of Title I of the Act herein shall refer also to the corresponding provisions of the Code (if any).

[3] To the extent that the Applicant has more than one asset management affiliate, all references to the Asset Manager herein shall refer also to the other asset management entity or entities.

[4] To the extent that the Applicant has more than one registered broker-dealer affiliate that participates in underwriting or selling syndicates, all references to the Affiliated Broker-Dealer herein shall refer also to the other broker-dealer entity or entities.

submitted a comment. In addition, a law firm, located in Hartford, Connecticut, representing an unidentified financial institution, submitted a comment. Based upon the information contained in the entire record, the Department has determined to grant the proposed exemptions, subject to certain modifications. The comments and modifications are discussed below.

Discussion of the Comments

1. Three of the Applicants, Goldman, Chase, and Citigroup, wished to correct or clarify certain representations made in the Summary of Facts and Representations (the Summary) contained in the notice of proposed exemption (the Notice) (see 65 FR 6229).

a. Goldman stated that the fourth sentence in Item 2 of the Summary (65 FR at 6230) should be revised to read,

> The Investment Management Division of the Applicant (hereinafter, the Asset Manager) includes Goldman Sachs Asset Management and is a separate operating division of the Applicant * * *

b. Chase stated that, as a technical matter, the precise name of its registered investment adviser subsidiary is "Chase Asset Management, Inc.," not "Chase Asset Management," as appears in the second sentence of Item 3 of the Summary (65 FR at 6230).

c. Citigroup stated that the last two sentences in Item 4 of the Summary (65 FR at 6230) should be revised to read,

> It is represented that, as of December 31, 1999, the last day of its most recent fiscal year, all of Citigroup's asset management affiliates had, in the aggregate, client assets under management of approximately $364.4 billion. As of that date, approximately 3.9% of client assets under management were attributable to Client Plans, including those investing in a Pooled Fund.

d. In addition, Citigroup requested that, in clause (e) of the last "Summary" paragraph (65 FR at 6234) of the Summary, the phrase "* * * for the account of a Client Plan" be added at the end of the clause after "Asset Manager."

The Department acknowledges the Applicants' corrections to the Summary and concurs in the clarifying revision to clause (e) on page 6234 of the Summary.

The remainder of the comments requested certain modifications to the proposed operative language in this final exemption.

2. Section I(b)—Issuer Requirements and Exceptions

Three of the Applicants, J.P. Morgan, Goldman, and Morgan Stanley, requested clarification of Section I(b) of the Notice (65 FR at 6237), which requires the issuer of the securities to have been in continuous operation for not less than three years, with certain exceptions. Specifically, Section I(b)(3) provides an exception where the securities are fully guaranteed by a person who has issued securities described in certain other provisions of the exemption "* * * and this paragraph (b)." The Applicants stated that this language is circular because it is not clear which part of Section I(b) is being referred to.

The Department concurs in the Applicants' request for clarification, and the language of Section I(b) has been revised in the final exemption so that Section I(b)(3) refers explicitly to a guarantee by a person who "has been in continuous operation for not less than three years, including the operation of any predecessors," as described in the lead-in language of paragraph (b).

3. Section I(c) & (d)—Three Percent Limitations and Pooled Funds

The five Applicants requested the deletion of references to "Pooled Funds" in connection with the three percent limitations in Section I(c) and (d) of the Notice. Section I(c) requires that the amount of securities purchased by the Asset Manager on behalf of a particular Client Plan or Pooled Fund may not exceed three percent of the total amount of securities being offered, subject to certain aggregate percentage limitations. Section I(d) requires that the consideration paid by the Client Plan or Pooled Fund for such securities may not exceed three percent of the fair market value of such Client Plan's or Pooled Fund's total net assets.

The Applicants noted that imposing the three percent limitations contained in both Section I(c) and (d) of the Notice on a Pooled Fund as a whole would result in a Client Plan's being treated differently, depending on whether it invests in a Pooled Fund or whether its assets are managed by the Asset Manager directly. They argued that there was no basis for the different treatment, given that Pooled Funds are "look-through" vehicles under the Department's "plan assets" regulation (29 CFR 2510.3–101). Therefore, the Applicants believe that the three percent limitations should be applied on a plan-by-plan basis.

For example, J.P. Morgan noted that a Pooled Fund is a commingled investment pool with multiple Client Plan investors, which, by its nature, spreads risks among those investors. A single Client Plan's risk would be limited to its proportionate share of any assets of the Pooled Fund. Thus, for a Client Plan with a five percent interest in a Pooled Fund, even if the Pooled Fund were to purchase 10 percent of an offering, such Client Plan's exposure to the offering would be only one-half of one percent. As another example, Chase stated that, if six Client Plans are in a Pooled Fund, the Pooled Fund should be permitted to purchase 18 percent of an offering, subject to the aggregate percentage limitations in Section I(c).

The Applicants stated that the same rationale supports the elimination of the three percent limitation on the consideration paid by a Pooled Fund for such securities in Section I(d) of the Notice. Therefore, in their view, the three percent limitation should apply only to the net assets of each Client Plan in the Pooled Fund.

The Department concurs in the Applicants' request to modify Section I(c) and (d) of the Notice so that both provisions impose a three percent limitation on each Client Plan investing in a Pooled Fund, rather than on the Pooled Fund as a whole. Accordingly, the Department has deleted the references to "Pooled Funds" in connection with the three percent limitations in Section I(c) and (d) of the final exemption. However, the Department notes that a Pooled Fund would remain subject to the percentage limitations described in Section I(c) of the exemption on the aggregate amount of securities that may be purchased in an offering by the Asset Manager for all its Client Plans.

4. Section I(a)(1)(ii) & (a)(2), (b), and (c)—

Characterization of Asset-Backed Securities

Among the securities that may be purchased under the exemption are pass-through certificates representing interests in asset pools. Such certificates are often referred to as "mortgage-backed" securities or "asset-backed" securities and may have characteristics of both equity and debt. The five Applicants requested clarification that asset-backed securities will be treated as "debt" for purposes of the exemption.

For example, Section I(c) of the Notice imposes certain aggregate percentage limitations on the amount of securities that may be purchased in an offering by the Asset Manager for all its managed Client Plans. These percentage limitations differ, depending on whether the securities involved are equity securities, debt securities rated in one of the four highest rating categories, or debt securities rated in the fifth or sixth highest rating categories.

The Applicants noted that asset-backed securities, which entitle the holder to pass-through payments of principal and interest relating to assets held in the underlying pool, are normally rated by nationally recognized statistical rating organizations and are regarded in the market as debt securities. The Applicants argued, therefore, that asset-backed securities should be categorized as debt for purposes of the exemption.

Other relevant provisions, in addition to Section I(c), are as follows: Section I(a)(1)(ii), which requires that, in the case of equity securities in an Eligible Rule 144A Offering, the offering syndicate must obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum; Section I(a)(2), which provides an exception for debt securities from the general requirement that the securities are purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering; and Section I(b), which provides an exception for certain debt securities from the general requirement that the issuer of the securities must have been in continuous operation for not less than three years.

The Department concurs in the Applicants' suggestion that, solely for purposes of the exemption, appropriately rated mortgage-backed or other asset-backed securities should be treated as debt securities. Accordingly, this clarification has been added to the definition of "security" in Section II of the final exemption.

The Department is persuaded to take this position within the limited context of this exemption in recognition of the fact that most purchasers view asset-backed securities as debt securities. However, the Department is providing no opinion herein as to whether asset-backed securities should be considered either equity or debt securities for any other purposes outside the scope of this exemption.[5]

5. Section I(i)(1) and (k)(1)—Notice of Proposed Exemption

Two of the Applicants, Goldman and Morgan Stanley, requested the deletion of the requirement in Section I(i)(1) and (k)(1) of the Notice (65 FR at 6238) that a copy of such Notice, as published in the **Federal Register** on February 8, 2000, in addition to a copy of the final exemption, be provided to the Independent Fiduciaries of the Client Plans. They argued that providing both documents is unnecessary and that most of the Client Plans will already have received a copy of the Notice in connection with the Department's procedural requirements regarding notice to interested persons.

In response to the comments, the Department notes that new Client Plans will not have received a copy of the Notice. The Department believes that the proposed exemption provides useful information about the underwriting business that may be helpful to the Independent Fiduciaries monitoring covered transactions. Accordingly, the Department has retained the disclosure requirements pertaining to the Notice in the final exemption.

6. Section I(n)(1)—Quarterly Report Information

The five Applicants requested the deletion in Section I(n)(1) of the Notice (65 FR 6239) of various items of information about the purchased securities required to be provided on a quarterly basis to the Independent Fiduciaries. According to the Applicants, this information is unnecessary and should be disclosed to the Independent Fiduciaries only upon request, as required in Section I(n)(3) of the Notice (65 FR at 6239).

The items in Section I(n)(1) of the Notice that the Applicants do not wish to specifically disclose in the quarterly reports to the Client Plans are as follows.

a. The first day on which any sale was made during the offering (iii).

b. The size of the issue (iv).

c. The identity of the underwriter from whom the securities were purchased (vi)—this deletion was requested only by J.P. Morgan and Citigroup.

d. The spread on the underwriting (vii)—this deletion was requested only by J.P. Morgan and Citigroup.

e. In addition, Citigroup requested that item (ix) be revised to read, "* * * the price at which any *such* securities purchased during the period were sold" [added word underlined], in order to clarify that the securities referred to are those purchased for a Client Plan under the exemption.

In this regard, the Department concurs in the revision to item (ix) of Section I(n)(1) of the Notice, as requested by Citigroup. However, the Department believes that the information required to be reported in items (iii), (iv), (vi), and (vii) of Section I(n)(1) of the Notice are relevant for purposes of monitoring covered transactions by the Independent Fiduciaries. As explained in the proposed exemption, the items listed in Section I(n)(1) are virtually identical to the information already required by Securities and Exchange Commission (SEC) Rule 10f–3 under the Investment Company Act of 1940 (the 1940 Act), which the Applicants encouraged the Department to use as a model for this exemption. Under Rule 10f–3, the independent directors of mutual funds are charged with reviewing transactions where a mutual fund buys securities from a syndicate in which the fund's affiliate is a "principal underwriter," as defined in Section 2(a)(29) of the 1940 Act.[6]

The Department continues to believe that the quarterly report, which summarizes all the key elements of the subject transactions, will provide the Independent Fiduciaries with a convenient way to regularly monitor compliance with the exemption. Accordingly, the Department has retained the requirement in the final exemption to report the information listed in items (iii), (iv), (vi), and (vii) on a quarterly basis to the Independent Fiduciaries.

7. Section I(n)(2)—Quarterly Affiliated Broker-Dealer Certification

Four of the Applicants, J.P. Morgan, Goldman, Chase, and Morgan Stanley, commented on Section I(n)(2) of the Notice (65 FR at 6239), which requires that the written certification from the Affiliated Broker-Dealer mandated by Section I(g)(2) of the Notice be made part of the quarterly reports to the Independent Fiduciaries.

[5] The Department notes that under Title I of the Act, and the "plan assets" regulation, "a beneficial interest in a trust [is] an equity interest," 29 CFR 2510.3–101(b)(1). As noted in the proposed exemption, footnote 13 (FR 65 at 6234), certain purchases of asset-backed securities may result in other prohibited transactions requiring additional exemptive relief because these securities are not publicly offered and the "significant participation" exception to the "look-through rule" of the "plan assets" regulation (29 CFR 2510.3–101(b)(3)) would not apply. A list of individual exemptions then existing for asset-backed securities may be found in PTE 97–34 (62 FR 39021, July 21, 1997), which granted an amendment to these exemptions.

[6] The Department understands that the Applicants, or their affiliates, are covered by Rule 10f–3 and, hence, are familiar with quarterly reporting of certain underwriting transactions. As a point of clarification, the Department notes that under the SEC's definition of "principal underwriter," underwriters, whether managers or members, have the same reporting requirements pursuant to Rule 10f–3. PTE 75–1, Part III, on the other hand, distinguishes between managers and members, defining a manager as an underwriter "* * * authorized to act on behalf of all members * * * or who receives compensation from the members of the syndicate for its services as a manager * * *" in situations where an Applicant is a member, not a manager, the Applicant may continue to rely on PTE 75–1, Part III, to purchase securities covered by that exemption. These individual exemptions also permit the purchase of Eligible Rule 144A Securities. Where an Applicant wishes to obtain the additional relief granted in these exemptions, the same conditions apply to both managers and members. To further clarify, the Department has added the definition of "manager," as defined in PTE 75–1, Part III, to the definition of "Affiliated Broker-Dealer" in Section II of the final exemption.

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a. Chase requested that Section I(n)(2) of the Notice be modified so that the time frame for providing the certification would be no later than the report covering the second calendar quarter after the quarter in which an underwriting occurred. In addition, Chase requested clarification regarding any difference in meaning behind the different terminology used to denote time periods in Section I(n)(4) and (n)(2) of the Notice—"next quarterly report" and "preceding quarter" versus "past quarter."

b. J.P. Morgan, Goldman, and Morgan Stanley argued that it is unnecessary to provide the actual certification, which will likely look the same from quarter to quarter and which will be maintained pursuant to the exemption's recordkeeping conditions. Therefore, the Applicants requested that the Asset Manager be required instead to merely state in its quarterly reports that it has received such certification from the Affiliated Broker-Dealer, and that a copy of such certification will be provided to the Independent Fiduciaries upon request.

With respect to the modification to Section I(n)(2) of the Notice requested by Chase regarding an extension of time for providing the certification to the Independent Fiduciaries, the Department believes that 45 days following the period in which an underwriting occurred is a sufficient time to provide the certification. In addition, the Department wishes to clarify that no difference in meaning was intended by the different terminology used to denote time periods in Section I(n)(4) and (n)(2) of the Notice. Therefore, the language of Section I(n)(4) has been revised in the final exemption to eliminate any appearance of inconsistency. Specifically, the phrase "next quarterly report" has been changed to "quarterly report," and the phrase "preceding quarter" to "past quarter."

With respect to the modification to Section I(n)(2) of the Notice requested by J.P. Morgan, Goldman, and Morgan Stanley, the Department concurs in the Applicants' suggestion that a representation regarding the certification in the quarterly reports may be made in lieu of providing the actual certification to the Independent Fiduciaries. The representation in the quarterly reports must state that the certification relates to each covered transaction during the past quarter. Accordingly, the Department has modified Section I(n)(2) in the final exemption.

8. Section I(n)(4)—Quarterly Reporting on Trading Restrictions

The five Applicants raised concerns that the language in Section I(n)(4) of the Notice (65 FR at 6239), which requires the disclosure in the quarterly reports of restrictions on trading in the covered securities, may be broader than necessary.

The Department notes that, according to the Applicants, their business separation policies are designed, among other things, to limit the flow of information that could restrict the Asset Manager's flexibility in managing client assets (65 FR at 6232). In deciding to propose the exemptions, the Department was reassured by those representations. Should this flexibility be limited, for example, by a restriction that precluded the Asset Manager's sale of the securities purchased in the underwriting, the Department believes that any such restriction should be disclosed to the Independent Fiduciaries. After consideration of the issue, the Department has determined to narrow the language in Section I(n)(4) in the final exemption by substituting the term "selling" in place of the term "trading in." In addition, the Department has revised the condition so that it refers explicitly to covered securities purchased during the past quarter.

9. Section I(i)(3), (j) & (k)(3), (l) and (m)—Termination Form

Four of the Applicants, J.P. Morgan, Goldman, Morgan Stanley, and Citigroup, requested deletion of the requirement that a "termination form" be provided annually that enables the Independent Fiduciaries to terminate authorization, without penalty, for the Asset Manager to engage in transactions pursuant to the exemption. In addition, Chase commented that the reference in Section I(j) of the Notice to Section I(i)(3) is duplicative and should be deleted.

Section I(i)(3) of the Notice (65 FR at 6238) requires that the termination form be provided as part of the initial disclosure to the Independent Fiduciaries of single Client Plans, while Section I(j) of the Notice (65 FR at 6238) requires that such a termination form also be provided at least annually. Section I(k)(3), (l), and (m) of the Notice (65 FR at 6238, 6239) contain parallel requirements for the Independent Fiduciaries of Client Plans investing in a Pooled Fund. The Applicants argued that termination forms are unnecessary, given the type of sophisticated plans that would be covered by the exemption and the quarterly disclosures that would also be required. They stated that a more practical and efficient alternative would be the addition to the quarterly reports of a reminder that a Client Plan's prior consent to the covered transactions may be withdrawn at any time.

For a single Client Plan, it was suggested that such notification explicitly state that the authorization to engage in the covered transactions, as described in the quarterly report, may be terminated without penalty by the Independent Fiduciary on no more than five days' notice and would identify a contact person. For Client Plans investing a Pooled Fund that engages in the covered transactions, the notification would explicitly state that the Independent Fiduciary may terminate investment in the Pooled Fund without penalty and would identify a contact person.

The Department concurs in the Applicants' request to eliminate initial termination forms for single Client Plans and annual termination forms for both single Client Plans and Client Plans investing in a Pooled Fund. However, the Department believes that it is important for Client Plans in a Pooled Fund to receive a termination form as part of the initial disclosure materials, since withdrawing from the Pooled Fund is the only option available to a Client Plan not wishing to authorize use of the exemption. In lieu of annual termination forms, notification to the Independent Fiduciaries regarding their right to terminate authorization may be made in the quarterly reports, provided that such notification is prominently displayed. These modifications are reflected in Section I(i)(3), (j) & (k)(3), (l) and (m) of the final exemption. In this regard, the Department notes that the cross-reference in the original Section I(m) of the Notice to Section I(k)(3) was a typographical error that should have been a cross-reference to Section I(k)(2). To clarify, the Department has deleted such cross-references in parallel conditions Section I(j) and (m) of the final exemption and written out the relevant language concerning the requirement for making ongoing disclosures to the Independent Fiduciaries. The Department believes that these revisions are also responsive to Chase's comment regarding Section I(j) of the Notice.

10. Section I(o)—$50 Million Plan Size Requirement

A comment concerning Section I(o) of the Notice was submitted by an unidentified financial institution which supports the grant of this final exemption by the Department. Although not one of the original Applicants, the unidentified financial institution raised a concern that may be shared by other similarly situated financial institutions interested in the subject transactions.

The commentator noted that Section I(o) of the Notice limited exemptive relief to Client Plans with total net assets of $50 million or more, or to Pooled Funds where at least 50 percent of the units of beneficial interest in such Pooled Fund are held by Client Plans having total net assets of at least $50 million. The Department stated, in paragraph 13 of the Discussion of the Proposed Exemption in the Notice (65 FR at 6236), that the minimum plan size requirements will help insure that Client Plans have the resources and investment sophistication needed to monitor the Asset Manager's investment performance with respect to the covered transactions. However, the commentator argued that some smaller companies with qualified plans having total assets in the range of $10 million to $50 million are very sophisticated. The commentator stated that lowering the minimum plan size requirement would afford smaller companies and newer plans access to desirable investment opportunities.

After consideration of the issue, the Department has determined that the present minimum plan size requirements are necessary to insure an appropriate level of plan investor sophistication for the covered transactions. Of course, upon proper application, the Department would be prepared to consider additional relief for transactions that do not meet all the conditions of this exemption, provided that the findings under section 408(a) of the Act may be made.

11. Section I(o)—Single Master Trust Requirement

Three of the Applicants, J.P. Morgan, Goldman, and Morgan Stanley, requested a modification to Section I(o) of the Notice. The second paragraph of Section I(o) provides that the assets of a group of Client Plans maintained by a single employer, or controlled group of employers, may be aggregated for purposes of meeting the minimum size requirements therein, but only if the assets are pooled for investment purposes in a single master trust. Under the modification requested by the Applicants, aggregation of plan assets would be permitted even when such assets are not in a single master trust, if managed by a single Independent Fiduciary.

As noted in Item 10, above, the minimum size requirements for Client Plans and Pooled Funds in Section I(o) are designed to insure a certain level of investment sophistication on the part of the Independent Fiduciaries who will be responsible for approving and monitoring the covered transactions. However, the Applicants argued that, if the assets of related plans are not pooled in a single master trust, that fact is not necessarily indicative of a lack of sophistication on the part of a single fiduciary who may be managing such assets.

After consideration of the issue, the Department is not persuaded by the arguments submitted in favor of modifying the exception to the minimum plan size requirements. Accordingly, the Department has retained the condition that aggregation of certain plan assets for purposes of meeting the minimum size requirements in Section I(o) of the final exemption is permitted only if the assets are held in a single master trust.

12. Section I(q)—10 Percent Limitation on In-house Plan Investment in Pooled Funds

Four of the Applicants, J.P. Morgan, Goldman, Chase, and Morgan Stanley, requested deletion of the requirement in Section I(q) of the Notice that no more than 10 percent of the assets of a Pooled Fund may be comprised of assets of employee benefit plans maintained by the Asset Manager, Affiliated Broker-Dealer, or an affiliate thereof, for their own employees (an In-house Plan), for which the Asset Manager, Affiliated Broker-Dealer, or an affiliate exercises investment discretion. This condition would be measured at the time of a covered transaction.

The Applicants stated that this 10 percent limitation has no direct bearing on the covered transactions themselves, insofar as permissible fees or the disclosure and approval process for Client Plans. Further, In-house Plans are limited in their ability to invest in Pooled Funds, even in situations where an additional investment may be in the interests of the In-house Plans. As an alternative to eliminating any percentage limitation altogether, J.P. Morgan suggested that a 25 percent limitation be substituted for the 10 percent limitation in Section I(q) of the Notice.

With respect to the Applicants' request to eliminate the 10 percent limitation in Section I(q) of the Notice, the Department is not persuaded by the arguments submitted in favor of deletion of this percentage requirement. The Department believes that elimination of this condition could result in a failure to insure a sufficient level of independent client oversight over transactions involving a Pooled Fund.

However, the Department believes that a 20 percent limitation would still insure a sufficient level of independent investor oversight of the Asset Manager and would not unduly restrict the investment opportunities available for In-house Plans. Accordingly, the Department has substituted a 20 percent limitation on In-house Plan investment in Pooled Funds in Section I(q) of the final exemption.

13. Section II(g)—Definition of Independent Fiduciary

The five Applicants commented that Section II(g) of the Notice defining the term "Independent Fiduciary" for purposes of the subject transactions is too narrow. Specifically, Section II(g)(2) deems a fiduciary not to be "independent" of the Asset Manager if such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary, is an officer, director, partner, or employee of the Asset Manager (or is a relative of such persons). The Applicants noted that it is too administratively burdensome to be required to track all such relationships to specific individuals who may be employed by such large organizations, especially when most of these persons would have no power to influence any decisions of the fiduciary on matters relating to the exemption.

As a solution to this problem, Chase favored the deletion of a separate definition of "Independent Fiduciary" and noted that users of certain class exemptions, such as PTE 94–20 (59 FR 8022, February 17, 1994)[7] and PTE 98–54 (63 FR 63503, November 13, 1998),[8] determine themselves whether a fiduciary is independent. Chase, along with Goldman and Morgan Stanley, suggested the adoption of the functional test for an Independent Fiduciary, as used in PTE 86–128 (51 FR 41686, November 18, 1986).[9] In Section I(f) of PTE 86–128, a plan fiduciary is deemed to be independent of a person in the absence of a relationship or interest in such person that might affect the

[7] PTE 94–20 provides a class exemption, under certain conditions, for the purchase and sale of foreign currencies between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof, which is a party in interest with respect to such plan.

[8] PTE 98–54 provides a class exemption, under certain conditions, for foreign exchange transactions executed pursuant to standing instructions.

[9] PTE 86–128 provides a class exemption, under certain conditions, permitting persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of such plans.

exercise of such fiduciary's best judgment in connection with the subject transactions.

As a third possibility, J.P. Morgan, Goldman, Morgan Stanley, and Citigroup requested an expansion of the "carve-out" provision, in Section II(g) of the Notice, for the Asset Manager's personnel who serve as directors of other organizations. Under the expanded "carve-out" provision, another organization may still be deemed "independent" of the Asset Manager, if such organization's officer, partner, or employee, as well as director, (or a relative of such persons), who is affiliated with the Asset Manager, abstains from participation in certain decisions relating to the retention of the Asset Manager and the required authorizations under the exemption. In this regard, J.P. Morgan suggested specific language to be added to the end of Section II(g) of the Notice.

The Department concurs in the Applicants' request for a revision to the definition of "Independent Fiduciary" in Section II(g) of the Notice. After discussion with all of the Applicants, the Department is persuaded that such definition can be revised in a manner calculated to minimize administrative burdens in connection with the exemption, while restricting those persons whose independent judgment might be compromised from acting as a fiduciary for a Client Plan because of certain relationships to the Asset Manager. Accordingly, the Department has modified the definition of "Independent Fiduciary" in Section II(g) of the final exemption to read as follows:

(g)(1) The term "Independent Fiduciary" means a fiduciary of a Client Plan who is unrelated to, and independent of, the Asset Manager and the Affiliated Broker-Dealer. For purposes of this exemption, a Client Plan fiduciary will be deemed to be unrelated to, and independent of, the Asset Manager and the Affiliated Broker-Dealer if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager or the Affiliated Broker-Dealer and represents that such fiduciary shall advise the Asset Manager if those facts change.

(2) Notwithstanding anything to the contrary in this Section II(g), a fiduciary is not independent if:

(i) such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager or the Affiliated Broker-Dealer;

(ii) such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager or the Affiliated Broker-Dealer for his or her own personal account in connection with any transaction described in this exemption;

(iii) any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Client Plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Client Plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section II (g)(2)(iii) shall not apply.

(3) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(4) In the case of existing Client Plans in a Pooled Fund, at the time the Asset Manager provides such Client Plans with initial notice pursuant to this exemption, the Asset Manager will notify the fiduciaries of such Client Plans that they must advise the Asset Manager, in writing, if they are not independent, within the meaning of this Section II (g).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, that a fiduciary discharge his or her duties respecting a plan solely in the interest of the participants and beneficiaries of such plan and in a prudent manner in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, the Department finds that the exemptions are administratively feasible, in the interests of the affected plans and their participants and beneficiaries, and protective of the rights of those participants and beneficiaries; and

(3) The exemptions are supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction.

(4) The exemptions are subject to the express condition that the material facts and representations contained in the applications accurately describe all material terms of the transactions that are the subject of the exemptions.

Exemption

Under the authority of section 408(a) of the Employee Retirement Income Security Act (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department grants the following individual Prohibited Transaction Exemptions (PTEs): PTE 2000–, Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management Inc.; PTE 2000–, Goldman, Sachs & Co.; PTE 2000–, The Chase Manhattan Bank; PTE 2000–, Citigroup Inc; and PTE 2000–, Morgan Stanley Dean Witter & Co.

Section I—Transactions

Effective February 8, 2000, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the purchase of any securities by the Asset Manager on behalf of employee benefit plans (Client Plans), including Client Plans investing in a pooled fund (Pooled Fund), for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where the Affiliated Broker-Dealer is a manager or member of such syndicate, provided that the following conditions are satisfied:

(a) The securities to be purchased are—

(1) either:

(i) part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*) or, if exempt from such registration requirement, are (A) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) issued by a bank, (C) exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or (D) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of that Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding 12 months; or

(ii) part of an issue that is an "Eligible Rule 144A Offering," as defined in SEC Rule 10f-3 (17 CFR 270.10f-3(a)(4)). Where the Eligible Rule 144A Offering is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities, except that—

(i) if such securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) if such securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, provided that the interest rates on comparable debt securities offered to the public subsequent to the first day and prior to the purchase are less than the interest rate of the debt securities being purchased; and

(3) offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if—

(i) such securities are purchased by others pursuant to a rights offering; or

(ii) such securities are offered pursuant to an over-allotment option.

(b) The issuer of such securities has been in continuous operation for not less than three years, including the operation of any predecessors, unless—

(1) such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.*, Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); or

(2) such securities are issued or fully guaranteed by a person described in paragraph (a)(1)(i)(A) of this exemption; or

(3) such securities are fully guaranteed by a person who has issued securities described in (a)(1)(i)(B), (C), or (D), and who has been in continuous operation for not less than three years, including the operation of any predecessors.

(c) The amount of such securities to be purchased by the Asset Manager on behalf of a Client Plan does not exceed three percent of the total amount of the securities being offered. Notwithstanding the foregoing, the aggregate amount of any securities purchased with assets of all Client Plans (including Pooled Funds) managed by the Asset Manager (or with respect to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c)) does not exceed:

(1) 10 percent of the total amount of any equity securities being offered;

(2) 35 percent of the total amount of any debt securities being offered that are rated in one of the four highest rating categories by at least one of the Rating Organizations; or

(3) 25 percent of the total amount of any debt securities being offered that are rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; and

(4) if purchased in an Eligible Rule 144A Offering, the total amount of the securities being offered for purposes of determining the percentages for (1)–(3) above is the total of:

(i) the principal amount of the offering of such class sold by underwriters or members of the selling syndicate to "qualified institutional buyers" (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) the principal amount of the offering of such class in any concurrent public offering.

(d) The consideration to be paid by the Client Plan in purchasing such securities does not exceed three percent of the fair market value of the total net assets of the Client Plan, as of the last day of the most recent fiscal quarter of the Client Plan prior to such transaction.

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.

(f) The Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is based upon the amount of securities purchased by Client Plans pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designations generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

(g)(1) The amount the Affiliated Broker-Dealer receives in management, underwriting or other compensation is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those securities sold pursuant to this exemption. Except as described above, nothing in this paragraph shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other consideration that is not based upon the amount of securities purchased by the Asset Manager on behalf of Client Plans pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section I, paragraphs (e), (f), or (g), of this exemption.

(h) In the case of a single Client Plan, the covered transaction is performed under a written authorization executed in advance by an independent fiduciary (Independent Fiduciary) of the Client Plan.

(i) Prior to the execution of the written authorization described in paragraph (h) above, the following information and materials must be provided by the Asset Manager to the Independent Fiduciary of each single Client Plan:

(1) a copy of the notice of proposed exemption and of the final exemption, as published in the **Federal Register**; and

(2) any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(j) Subsequent to an Independent Fiduciary's initial authorization permitting the Asset Manager to engage in the covered transactions on behalf of a single Client Plan, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(k) In the case of existing plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager has provided the written information described below to the Independent Fiduciary of each plan participating in the Pooled Fund. The following information and materials shall be provided not less than 45 days prior to the Asset Manager's engaging in the covered transactions on behalf of the Pooled Fund pursuant to the exemption:

(1) A notice of the Pooled Fund's intent to purchase securities pursuant to this exemption and a copy of the notice of proposed exemption and of the final exemption, as published in the **Federal Register**;

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and

(3) A termination form expressly providing an election for the Independent Fiduciary to terminate the plan's investment in the Pooled Fund without penalty to the plan. Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that the plan has an opportunity to withdraw its assets from the Pooled Fund for a period at least 30 days after the plan's receipt of the initial notice described in subparagraph (1) above and that the failure of the Independent Fiduciary to return the termination form by the specified date shall be deemed to be an approval by the plan of its participation in covered transactions as a Pooled Fund investor. Further, the instructions will identify the Asset Manager and its Affiliated Broker-Dealer and state that this exemption may be unavailable unless the Independent Fiduciary is, in fact, independent of those persons. Such fiduciary must advise the Asset Manager, in writing, if it is not an "independent Fiduciary," as that term is defined in Section II(g) of this exemption.

For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicant or an affiliate thereof. However, in-house plans must notify the Asset Manager, as provided above.

(l) In the case of a plan whose assets are proposed to be invested in a Pooled Fund subsequent to implementation of the procedures to engage in the covered transactions, the plan's investment in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary, following the receipt by the Independent Fiduciary of the materials described in subparagraphs (1) and (2) of paragraph (k). For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicant or an affiliate thereof.

(m) Subsequent to an Independent Fiduciary's initial authorization of a plan's investment in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall:

(1) furnish the Independent Fiduciary of each single Client Plan, and of each plan investing in a Pooled Fund, with a report (which may be provided electronically) disclosing all securities purchased on behalf of that Client Plan or Pooled Fund pursuant to the exemption during the period to which such report relates, and the terms of the transactions, including:

(i) the type of security (including the rating of any debt security);

(ii) the price at which the securities were purchased;

(iii) the first day on which any sale was made during this offering;

(iv) the size of the issue;

(v) the number of securities purchased by the Asset Manager for the specific Client Plan or Pooled Fund;

(vi) the identity of the underwriter from whom the securities were purchased;

(vii) the spread on the underwriting;

(ix) the price at which any such securities purchased during the period were sold; and

(x) the market value at the end of such period of each security purchased during the period and not sold;

(2) provide to the Independent Fiduciary in the quarterly report a representation that the Asset Manager has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described in paragraph (g)(2), affirming that, as to each offering covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section I, paragraphs (e), (f), and (g) of this exemption, and that a copy of such certification will be provided to the Independent Fiduciary upon request;

(3) disclose to the Independent Fiduciary that, upon request, any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests will be provided, including, but not limited to:

(i) the date on which the securities were purchased on behalf of the plan;

(ii) the percentage of the offering purchased on behalf of all Client Plans and Pooled Funds; and

(iii) the identity of all members of the underwriting syndicate;

(4) disclose to the Independent Fiduciary in the quarterly report, any instance during the past quarter where the Asset Manager was precluded for any period of time from selling a security purchased under this exemption in that quarter because of its status as an affiliate of the Affiliated Broker-Dealer and the reason for this restriction;

(5) provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a single Client Plan, that the authorization to engage in the covered transactions may be terminated, without penalty, by the Independent Fiduciary on no more than five days' notice by contacting an identified person; and

(6) provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a Client Plan investing a Pooled Fund, that the Independent Fiduciary may terminate investment in the Pooled Fund, without penalty, by contacting an identified person.

(o) Each single Client Plan shall have total net assets with a value of at least $50 million. In addition, in the case of a transaction involving an Eligible Rule 144A Offering on behalf of a single Client Plan, each such Client Plan shall have at least $100 million in securities, as determined pursuant to SEC Rule 144A (17 CFR 230.144A). In the case of a Pooled Fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets with a value of at least $50 million. For purchases involving an Eligible Rule 144A Offering on behalf of a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset tests described above, where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement or the $100 million net asset requirement may be met by aggregating the assets of such Client Plans, if the assets are pooled for investment purposes in a single master trust.

(p) The Asset Manager qualifies as a "qualified professional asset manager" (QPAM), as that term is defined under Part V(a) of Prohibited Transaction Exemption 84–14 (49 FR 9494, 9506, March 13, 1984) and, in addition, has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

(q) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of employee benefit plans maintained by the Asset Manager, the Affiliated Broker-Dealer, or an affiliate for their own employees, for which the Asset Manager, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The Asset Manager and the Affiliated Broker-Dealer maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph(s) of this exemption to determine whether the conditions of this exemption have been met, except that—

(1) no party in interest with respect to a Client Plan, other than the Asset Manager and the Affiliated Broker-Dealer, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph (s); and

(2) a prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the Asset Manager or the Affiliated Broker-Dealer, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided in subparagraph (2) of this paragraph (s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) are unconditionally available at their customary location for examination during normal business hours by—

(i) any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) any fiduciary of a Client Plan, or any duly authorized employee or representative of such fiduciary; or

(iii) any employer of participants and beneficiaries and any employee organization whose members are covered by a Client Plan, or any authorized employee or representative of these entities; or

(iv) any participant or beneficiary of a Client Plan, or duly authorized employee or representative of such participant or beneficiary;

(2) none of the persons described in paragraphs (s)(1)(ii)–(iv) shall be authorized to examine trade secrets of the Asset Manager or the Affiliated Broker-Dealer, or commercial or financial information which is privileged or confidential; and

(3) should the Asset Manager or the Affiliated Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (s)(2) above, the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

(a) The term "Asset Manager" means any asset management affiliate of the Applicant (as "affiliate" is defined in paragraph (c)) that meets the requirements of this exemption.

(b) The term "Affiliated Broker-Dealer" means any broker-dealer affiliate of the Applicant (as "affiliate" is defined in paragraph (c)) that meets the requirements of this exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term "manager" means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered, or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term "affiliate" of a person includes:

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and

(3) any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term "Client Plan" means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets are under the management of the Asset Manager, including a plan investing in a Pooled Fund (as "Pooled Fund" is defined in paragraph (f) below).

(f) The term "Pooled Fund" means a common or collective trust fund or pooled investment fund maintained by the Asset Manager.

(g)(1) The term "Independent Fiduciary" means a fiduciary of a Client Plan who is unrelated to, and independent of, the Asset Manager and the Affiliated Broker-Dealer. For purposes of this exemption, a Client Plan fiduciary will be deemed to be unrelated to, and independent of, the Asset Manager and the Affiliated Broker-Dealer if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager or the Affiliated Broker-Dealer and represents that such fiduciary shall advise the Asset Manager if those facts change.

(2) Notwithstanding anything to the contrary in this Section II(g), a fiduciary is not independent if:

(i) such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager or the Affiliated Broker-Dealer;

(ii) such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager or the Affiliated Broker-Dealer for his or her own personal account in connection with any transaction described in this exemption;

(iii) any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the

Code) of the Client Plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Client Plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section II (g)(2)(iii) shall not apply.

(3) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(4) In the case of existing Client Plans in a Pooled Fund, at the time the Asset Manager provides such Client Plans with initial notice pursuant to this exemption, the Asset Manager will notify the fiduciaries of such Client Plans that they must advise the Asset Manager, in writing, if they are not independent, within the meaning of this Section II (g).

(h) The term "security" shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)(1996)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by a Rating Organization will be treated as debt securities.

(i) The term "Eligible Rule 144A Offering" shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270. 10f–3(a)(4)) under the 1940 Act.

(j) The term "qualified institutional buyer" or "QIB" shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(k) The term "Rating Organizations" means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.

Signed at Washington, D.C., this 25th day of May, 2000.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–13641 Filed 5–31–00; 8:45 am]

BILLING CODE 4510–29–P

PENSION AND WELFARE BENEFITS ADMINISTRATION

[Application Nos. D–10809 and D–10865]

Notice of Proposed Individual Exemption to Amend and Replace Prohibited Transaction Exemption (PTE) 99–15, Involving Salomon Smith Barney Inc., Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Notice of proposed individual exemption to modify and replace PTEs 99–15.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed and replacement individual exemption which, if granted, would amend PTE 99–15 (64 FR 1648, April 5, 1999), an exemption granted to Salomon Smith Barney. PTE 99–15 relates to the operation of the TRAK Personalized Investment Advisory Service product (the TRAK Program) and the Trust for Consulting Group Capital Markets Funds (the Trust). If granted, the proposed exemption would affect participants and beneficiaries of and fiduciaries with respect to employee benefit plans (the Plans) participating in the TRAK Program.

EFFECTIVE DATE: If granted, the proposed amendment will be effective as of April 1, 2000.

DATES: Written comments and requests for a public hearing should be received by the Department on or before July 17, 2000.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application Nos. D–10809 and D–10865. The applications pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would amend and replace PTE 99–15. PTE 99–15, provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, PTE 99–15 provides exemptive relief from the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, for the purchase or redemption of shares in the Trust by an employee benefit plan, an individual retirement account (the IRA), a retirement plan for a self-employed individual (the Keogh Plan), or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the Section 403(b) Plan).

PTE 99–15 also provides exemptive relief from the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, with respect to the provision, by the Consulting Group of Salomon Smith Barney (the Consulting Group), of (1) investment advisory services or (2) an automatic reallocation option to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary) which may result in such fiduciary's selection of a portfolio (the Portfolio) in the TRAK Program for the investment of Plan assets.[1]

[1] PTE 99–15 also (a) described a series of corporate mergers which changed the names of the parties identified in two prior TRAK exemptions which it superseded [*i.e.*, PTE 94–50 (59 FR 32024, June 21, 1994) and PTE 92–77 (55 FR 45833, October 5, 1992)] and which would permit broader distribution of TRAK-related products; (b) implemented a recordkeeping reimbursement offset procedure under the TRAK Program; (c) adopted an automated reallocation option under the TRAK Program that would reduce the asset allocation (or "outside") fee paid to Salomon Smith Barney by a Plan investor; and (d) expanded the scope of the exemption to include Section 403(b) Plans.

PTE 94–50 permitted Smith, Barney Inc. (Smith Barney), Salomon Smith Barney's predecessor, to add a daily-traded collective investment fund (the GIC Fund) to the existing Fund portfolios and to describe the various entities operating the GIC Fund. PTE 94–50 also replaced references to Shearson Lehman Brothers, Inc. (Shearson Lehman) with Smith Barney and amended and replaced PTE 92–77.

Finally, PTE 92–77 permitted Shearson Lehman to make the TRAK Program available to Plans that acquired shares in the former Trust for TRAK Investments and allowed the Consulting Group to provide investment advisory services to an Independent Plan Fiduciary which might result in such fiduciary's selection of a Portfolio in the TRAK Program for the investment of Plan assets.

[2] The Department deems PTE 94–50 as having been effectively superseded by PTE 99–15. Therefore, the proposed amendments described herein will not apply to PTE 94–50.

As of December 31, 1998, the TRAK Program held assets that were in excess of $9.6 billion. Of those assets, approximately $1.9 billion were held in 407 Plan accounts having cash or deferred compensation arrangements and approximately $4.2 billion were held in more than 59,000 employee benefit plan and IRA/Keogh-type Plan accounts. At present, the Trust consists of 17 Portfolios that are managed by the Consulting Group and advised by one or more unaffiliated sub-advisers selected by Salomon Smith Barney.

Salomon Smith Barney requests a modification of PTE 99–15 and a replacement of that exemption with a new exemption for purposes of uniformity.[2] Specifically, Salomon Smith Barney requests that the term "affiliate," as set forth in PTE 99–15, in Section II(h) of the General Conditions and in Section III(b) of the Definitions, be amended and clarified to avoid possible misinterpretation. In this regard, Salomon Smith Barney also requests that the term "officer" be defined and incorporated into the proposed exemption, in new Section III(d), to limit the affiliate definition to persons who have a significant management role. Further, Salomon Smith Barney requests that Section II(i) of PTE 99–15 be amended to permit an independent sub-adviser (the Sub-Adviser), under certain circumstances, to exceed the current one percent limitation on the acquisition of securities that are issued by Salomon Smith Barney and/or its affiliates, notably in the Sub-Adviser's replication of a third-party index. If granted, the proposed exemption would be effective as of April 1, 2000.

The proposed exemption has been requested in an application filed on behalf of Salomon Smith Barney pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor.

Accordingly, the proposed exemption is being issued solely by the Department.

I. Proposed Modification of the Term "Affiliate"

Salomon Smith Barney represents that in early December 1999, Citigroup and State Street Corporation announced an agreement to form a joint venture called CitiStreet LLC, a Delaware limited liability company (the Joint Venture). The Joint Venture, which was closed on April 1, 2000, is each 50 percent owned by Keeper Holdings LLC (Citi), a wholly owned subsidiary of Citigroup, and by State Street Bank and Trust Company (State Street), a wholly owned subsidiary of State Street Corporation. Both Citigroup and State Street Corporation are publicly-held corporations.

Salomon Smith Barney explains that the formation of the Joint Venture may have resulted in the disqualification of State Street Global Advisers (SSgA), a division of State Street, from acting as a Sub-Adviser in the TRAK Program due to certain ambiguities in the meaning of the word "affiliate." Salomon Smith Barney represents that SSgA is currently a Sub-Adviser with respect to approximately $800 million in assets in the International Equity Investments Portfolio and the Emerging Markets Equity Investments Portfolio.

A. Sections II(h) and III(b)

Section II(h) of PTE 99–15 provides that—

> Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio will be independent of Salomon Smith Barney and its affiliates.

Although the term "independent" is not defined in the exemption, Salomon Smith Barney notes that this condition was added to the original Shearson Lehman exemption request when Shearson Lehman agreed not to use affiliated Sub-Advisers. Therefore, Salomon Smith Barney presumes that the term "independent" means "not an affiliate."

Salomon Smith Barney represents that Section III(b) of PTE 99–15 defines the term "affiliate" of Salomon Smith Barney to include:

> (1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Salomon Smith Barney. (For purposes of this subparagraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)
>
> (2) Any officer, director or partner in such person, and
>
> (3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

Salomon Smith Barney notes that problems of interpretation have arisen because subparagraphs (2) and (3) of the affiliate definition use the term "such person" rather than referring directly to Salomon Smith Barney. Salomon Smith Barney explains that when defining an "affiliate" of Salomon Smith Barney, the definition may be construed to encompass only relationships with Salomon Smith Barney that involve shared control, influence or economic interests or it could be interpreted to cover affiliates of Salomon Smith Barney's affiliates, where there is no basis for common management or identical economic interests, because subparagraphs (2) and (3) have no clear antecedents.

Salomon Smith Barney asserts that State Street is not under common corporate control with either it or any of its corporate affiliates. Instead, State Street is a subsidiary of an independently-owned and managed public company. Therefore, there is no control relationship, as contemplated in subparagraph (1) of Section III(b), between Citigroup and State Street Corporation, the respective parent companies of Salomon Smith Barney and of State Street. Salomon Smith Barney also states that the Joint Venture is not necessarily its affiliate under subparagraph (1) of the definition because Salomon Smith Barney's indirect 50 percent ownership interest in the Joint Venture is not a "controlling interest." Therefore, if the Joint Venture is not an affiliate, Salomon Smith Barney believes that State Street is not a partner of Salomon Smith Barney, nor an officer or director of Salomon Smith Barney, as contemplated in subparagraph (2) of Section III(b). Further, Salomon Smith Barney explains that State Street's exclusive ownership by State Street Corporation does not trigger the ownership provisions of subparagraph (3) of Section III(b).

In addition to the above, Salomon Smith Barney states that it will not exercise control or influence in the operation of the Joint Venture that will inure to State Street. In addition, Salomon Smith Barney represents that Citi will not exercise control of the Joint Venture because it has only a 50 percent interest. Further, since all significant corporate actions of the Joint Venture will require unanimity, Salomon Smith Barney explains that neither Citi nor State Street will be able to exercise exclusive control over the Joint Venture.

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B. Proposed Amendment

Salomon Smith Barney submits that subparagraph (1) of Section III(b) does not require any clarification. However, it proposes that subparagraphs (2) and (3) of the affiliate definition be modified to cover only those persons and entities that have a significant role in the decisions made by Salomon Smith Barney or which are managed or influenced by Salomon Smith Barney. These entities or persons include individual officers, directors and partners in Salomon Smith Barney and its corporate affiliates, and corporations and partnerships in which Salomon Smith Barney and its corporate affiliates have a 10 percent or greater interest. Salomon Smith Barney believes that this tailoring of the affiliate definition will avoid future problems in determining the independence of the Sub-Advisers, including SSgA.

Thus, on the basis of the foregoing, Section III(b) of PTE 99–15 is hereby modified in this notice of proposed exemption to read as follows:

(b) An "affiliate" of Salomon Smith Barney includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Salomon Smith Barney; (For purposes of this subparagraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any individual who is an officer, director or partner in Salomon Smith Barney or a person who is described in subparagraph (b)(1);

(3) Any corporation or partnership of which Salomon Smith Barney or an affiliate described in subparagraph (b)(1), is a 10 percent or more partner or owner; and

(4) Any corporation or partnership of which any individual which is an officer or director of Salomon Smith Barney, is a 10 percent or more partner or owner.

In connection with the revised affiliate definition, Salomon Smith Barney requests that the term "officer" be defined in new subparagraph (d) of Section III to limit this portion of the affiliate definition to individuals who have a significant management role. Salomon Smith Barney points out that there are job titles at fairly modest levels of authority within it as well as in any company, and it wishes to ensure that future factual inquiries into an individual's status as an affiliate do not require that it contact virtually every official in its corporate population in a due diligence effort. Therefore, Salomon Smith Barney proposes that Section III(d) should read as follows:

The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

Under the foregoing modifications, Salomon Smith Barney believes that Sections II(h) and III(b) of the proposed exemption will no longer have conflicting meanings.

II. Proposed Modification of the One Percent Limitation on Stock Issued by Salomon Smith Barney and/or Its Affiliates

Salomon Smith Barney represents that there are a number of established market indexes that have been created by parties which are unaffiliated with Citigroup, its indirect parent. For example, the S&P 500 Index is a widely-used benchmark index of domestic equity performance. This index consists of 500 stocks that have been selected by the Standard & Poor's Company (S&P) for market capitalization, liquidity and industry group representation. The index is market-value weighted so the performance of the larger of the included companies has a greater impact on the performance of the index as a whole. Currently, the common stock (the Common Stock) of Citigroup represents 1.57 percent of the S&P 500 Index.

In addition to the S&P 500 Index, Salomon Smith Barney explains that the Russell 3000 Index is composed of the 3,000 largest United States companies, based upon total market capitalization. Salomon Smith Barney also points out that there are a number of Russell Indexes which are based on subsets of the Russell 3000 Index. These Indexes include (a) the Russell 2000 Index, which measures the performance of the smallest 2,000 United States companies in the Russell 3000 Index and therefore, excludes Citigroup; and (b) the Russell 1000 Index, which measures the performance of the 1,000 largest United States companies in the Russell 3000 Value Index and includes Citigroup. In addition, Salomon Smith Barney represents that there are further subsets of the Russell Indexes which are based upon Russell's characterization of stock as either "Growth" or "Value." For example, Salomon Smith Barney explains that Citigroup is included within these subsets. As of March 31, 2000, Citigroup Common Stock represented 3.8981 percent of the Russell 1000 Value Index and 3.6343 percent of the Russell 3000 Value Index.

A. Section II(i)

Based upon the foregoing descriptions of the stock indexes, Salomon Smith Barney requests that Section II(i) of PTE 99–15 be modified in order to permit an independent Sub-Adviser which manages the assets in a Portfolio to exceed the one percent investment limitation on securities issued by Salomon Smith Barney and/or its affiliates under certain circumstances. As currently drafted, Section II(i) states that—

Immediately following the acquisition by a Portfolio of any securities that are issued by Salomon Smith Barney and/or its affiliates, the percentage of that Portfolio's net assets invested in such securities will not exceed one percent.

In other words, the exception will apply to "any higher percentage" which may result from a Sub-Adviser's management of an index fund (the Index Fund) Portfolio which includes Citigroup Common Stock. The index will be an established third party index and the Sub-Adviser will track the index results using the "passive full replication" trading method.[3]

Because the Sub-Adviser will purchase and sell Citigroup Common Stock to approximate the performance of an index rather than reflect the Sub-Adviser's evaluation of the Common Stock in its individual merits, Salomon Smith Barney states that any additional investment by a Portfolio in Citigroup Common Stock over the one percent threshold will result from the implementation of the trading method and not from the Sub-Adviser's exercise of investment discretion.

Due to the one percent limitation of Section II(i), Salomon Smith Barney states that active Sub-Advisers for the Consulting Group may not own or trade Citigroup Common Stock and they will continue to be prohibited from trading in Citigroup Common Stock. However, Salomon Smith Barney proposes that passive or pure Index Fund Sub-Advisers be permitted to hold Citigroup Common Stock in their portfolios which exceed the one percent limitation to the extent such higher percentage is necessary to replicate the underlying index.[4] Salomon Smith Barney points out that pure index Sub-Advisers that are responsible for investing only a portion of the assets in the Consulting Group Capital Markets Large Cap Value Fund and the Large Cap Growth Consulting Group Capital Markets Fund, are currently in compliance with the one percent limitation. These Portfolios, which consist of both an actively-managed portion and a distinct, passively-managed portion, held less than one percent of the their total assets in Citigroup Common Stock.

If an index-based Sub-Adviser were to manage a greater portion or all of either of the aforementioned Portfolios, Salomon Smith Barney explains that the total Portfolio may include Citigroup Common Stock which breaches the one percent threshold. Similarly, Salomon Smith Barney notes that if the entire Portfolio, such as the Consulting Group Capital Markets S&P 500 Index Investment Fund Portfolio, has the investment objective of providing results that correspond to the price and yield performance of the S&P 500 Index, the Sub-Adviser would be expected to approximate the cited percentage of 1.57 percent for Citigroup Common Stock in the S&P 500 Index. This would also violate the one percent investment limitation.

Salomon Smith Barney states that the present one percent limitation placed on Citigroup Common Stock increases the likelihood that the performance of an Index Fund Portfolio will not replicate the applicable index. Because Citigroup is among the largest companies on the basis of capitalization in the S&P 500, Salomon Smith Barney states that Citigroup's performance can have a significant impact in index performance calculations. However, if Citigroup Common Stock is not proportionately represented, Salomon Smith Barney explains that Index Fund performance will deviate from the index whether Citigroup Common Stock does well or underperforms.

In any event, Salomon Smith Barney believes that the one percent limitation has the effect of depriving a Plan of the opportunity to invest in a Fund (available to non-Plan investors) that might otherwise track the applicable index more exactly. Because many Plan sponsors are anxious to have an Index Fund available through the TRAK Program, Salomon Smith Barney wishes to move quickly to accommodate the Plan market's design preferences.

For these reasons, Salomon Smith Barney requests that the current one percent restriction be lifted and allowed to be exceeded with respect to Portfolio investments that are made by passive Sub-Advisers in Citigroup Common Stock in their replication of third-party indexes. In addition, Salomon Smith Barney seeks the flexibility to have the Portfolios consist, in whole or in part, of Index Funds that are managed by passive Sub-Advisers. However, the ownership by a Portfolio of Citigroup Common Stock which is in excess of the one percent limitation would result solely from the activities of the passive Sub-Adviser in replicating an index.

B. Exemptive Safeguards

Section II(i) of the proposed exemption has been further expanded to include a number of substantive safeguards for the protection of Plans investing under the TRAK Program. In this regard, Section II(i) requires that the amount held by the Sub-Adviser in managing an Index Fund Portfolio be held in order to replicate an established third party index. In addition, Section II(i) states that the index must represent the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. In this regard, the organization creating the index must be (a) engaged in the business of providing financial information; (b) a publisher of financial news information; or (c) a public stock exchange or association of securities dealers. The index must also be created and maintained by an organization independent of Salomon Smith Barney and its affiliates and must be a generally-accepted standardized index of securities which is not specifically tailored for use by Salomon Smith Barney and its affiliates.

Moreover, Section II(i) requires that the acquisition or disposition of Citigroup Common Stock must not include any agreement, arrangement or understanding regarding the design or operation of the Portfolio acquiring the Citigroup Common Stock, which is intended to benefit Salomon Smith Barney or any party in which Salomon Smith Barney may have an interest.

Finally, Section II(i) requires that an Independent Plan Fiduciary authorize the investment of a Plan's assets in an Index Fund Portfolio which purchases and/or holds Citigroup Common Stock while the Sub-Adviser will be responsible for voting any shares of Citigroup Common Stock that are held by an Index Fund on any matter in which shareholders of Citigroup Common Stock are required or permitted to vote.

Notice to Interested Persons

Notice of the proposed exemption will be mailed by first class mail to the Independent Plan Fiduciary Plan of each Plan currently participating in the TRAK Program, or, in the case of a Section 404(c) Plan, to the recordholder of Trust shares. Such notice will be given within 15 days of the publication of the notice of pendency in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 45 days of the publication of the proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

[3] According to Salomon Smith Barney, there are two forms of index trading—passive full replication (wherein each stock in the same weightings as the index is owned by a mutual fund) and sampling (in which each sector, but not necessarily all stocks in such sector, in the same weightings as the index is also owned by a mutual fund). Salomon Smith Barney notes that sampling is used most often when a portfolio is smaller and cannot efficiently replicate the entire index.

[4] In its management of a "pure" Index Fund, the Sub-Adviser does not evaluate individual companies to identify attractive investment candidates or to eliminate underperforming investments. Instead, the Sub-Adviser attempts to mirror the composition of the relevant index as closely as possible by adjusting the Portfolio holdings daily to reflect the companies included in the index and their relative weightings. Because performance of the Index Fund is tied to the performance of the index that it tracks, investors are advised that this investment strategy may mean losses if the applicable index performs poorly relative to other indexes or individual stocks.

The performance of a pure Index Fund generally does not mirror the index performance exactly. The index is merely a composite performance figure, based upon an established selection of companies. It does not represent actual assets being managed so there are no expenses deducted from its performance results. In contrast, an Index Fund Portfolio represents actual assets under management and has liquidity requirements associated with Fund operation. To meet redemption requests and to pay expenses, the Index Fund must maintain a portion of its assets in cash and cash equivalents.

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 99–15 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Covered Transactions

A. If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (the IRA), a retirement plan for self-employed individuals (the Keogh Plan), or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the Section 403(b) Plan; collectively, the Plans) in the Trust for Consulting Group Capital Market Funds (the Trust), established by Salomon Smith Barney, in connection with such Plans' participation in the TRAK Personalized Investment Advisory Service product (the TRAK Program).

B. If the exemption is granted, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, to the provision, by the Consulting Group, of (1) investment advisory services or (2) an automatic reallocation option (the Automatic Reallocation Option) to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary), which may result in such fiduciary's selection of a portfolio (the Portfolio) in the TRAK Program for the investment of Plan assets.

This proposed exemption is subject to the following conditions that are set forth below in Section II.

Section II. General Conditions

(a) The participation of Plans in the TRAK Program will be approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of Salomon Smith Barney and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(b) The total fees paid to the Consulting Group and its affiliates will constitute no more than reasonable compensation.

(c) No Plan will pay a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares shall remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Consulting Group will provide written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by the Consulting Group to an Independent Plan Fiduciary will be implemented only at the express direction of such Independent Plan Fiduciary, provided, however, that—

(1) If such Independent Plan Fiduciary shall have elected in writing (the Election), on a form designated by Salomon Smith Barney from time to time for such purpose, to participate in the Automatic Reallocation Option under the TRAK Program, the affected Plan or participant account will be automatically reallocated whenever the Consulting Group modifies the particular asset allocation recommendation which the Independent Plan Fiduciary has chosen. Such Election shall continue in effect until revoked or terminated by the Independent Plan Fiduciary in writing.

(2) Except as set forth below in paragraph II(f)(3), at the time of a change in the Consulting Group's asset allocation recommendation, each account based upon the asset allocation model (the Allocation Model) affected by such change would be adjusted on the business day of the release of the new Allocation Model by the Consulting Group, except to the extent that market conditions, and order purchase and redemption procedures may delay such processing through a series of purchase and redemption transactions to shift assets among the affected Portfolios.

(3) If the change in the Consulting Group's asset allocation recommendation exceeds an increase or decrease of more than 10 percent in the absolute percentage allocated to any one investment medium (*e.g.*, a suggested increase in a 15 percent allocation to greater than 25 percent, or a decrease of such 15 percent allocation to less than 5 percent), Salomon Smith Barney will send out a written notice (the Notice) to all Independent Plan Fiduciaries whose current investment allocation would be affected, describing the proposed reallocation and the date on which such allocation is to be instituted (the Effective Date). If the Independent Plan Fiduciary notifies Salomon Smith Barney, in writing, at any time within the period of 30 calendar days prior to the proposed Effective Date that such fiduciary does not wish to follow such revised asset allocation recommendation, the Allocation Model will remain at the current level, or at such other level as the Independent Plan Fiduciary then expressly designates, in writing. If the Independent Plan Fiduciary does not affirmatively "opt out" of the new Consulting Group recommendation, in writing, prior to the proposed Effective Date, such new recommendation will be automatically effected by a dollar-for-dollar liquidation and purchase of the required amounts in the respective account.

(4) An Independent Plan Fiduciary will receive a trade confirmation of each reallocation transaction. In this regard, for all Plan investors other than Section 404(c) Plan accounts (*i.e.*, 401(k) Plan accounts), Salomon Smith Barney will mail trade confirmations on the next business day after the reallocation trades are executed. In the case of Section 404(c) Plan participants, notification will depend upon the notification provisions agreed to by the Plan recordkeeper.

(g) The Consulting Group will generally give investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios. However, in the case of a Plan providing for participant-directed investments (the Section 404(c) Plan), the Consulting Group will provide investment advice that is limited to the Portfolios made available under the Plan.

(h) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio will be independent of Salomon Smith Barney and its affiliates.

(i) Immediately following the acquisition by a Portfolio of any securities that are issued by Salomon Smith Barney and/or its affiliates, such as Citigroup Inc. common stock (the Citigroup Common Stock), the percentage of that Portfolio's net assets invested in such securities will not exceed one percent. However, this percentage limitation may be exceeded if—

(1) The amount held by a Sub-Adviser in managing a Portfolio is held in order to replicate an established third party index.

(2) The index represents the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating the index must be—

(i) Engaged in the business of providing financial information;

(ii) A publisher of financial news information; or

(iii) A public stock exchange or association of securities dealers.

The index is created and maintained by an organization independent of Salomon Smith Barney and its affiliates and is a generally-accepted standardized index of securities which is not specifically tailored for use by Salomon Smith Barney and its affiliates.

(3) The acquisition or disposition of Citigroup Common Stock does not include any agreement, arrangement or understanding regarding the design or operation of the Portfolio acquiring the Citigroup Common Stock, which is intended to benefit Salomon Smith Barney or any party in which Salomon Smith Barney may have an interest.

(4) The Independent Plan Fiduciary authorizes the investment of a Plan's assets in an Index Fund which purchases and/or holds Citigroup Common Stock and the Sub-Adviser is responsible for voting any shares of Citigroup Common Stock that are held by an Index Fund on any matter in which shareholders of Citigroup Common Stock are required or permitted to vote.

(j) The quarterly investment advisory fee that is paid by a Plan to the Consulting Group for investment advisory services rendered to such Plan will be offset by such amount as is necessary to assure that the Consulting Group retains no more than 20 basis points from any Portfolio (with the exception of the Government Money Investments Portfolio and the GIC Fund Portfolio for which the Consulting Group and the Trust will retain no investment management fee) which contains investments attributable to the Plan investor.

(k) With respect to its participation in the TRAK Program prior to purchasing Trust shares,

(1) Each Plan will receive the following written or oral disclosures from the Consulting Group:

(A) A copy of the Prospectus for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between the Consulting Group, Salomon Smith Barney and its subsidiaries and the compensation paid to such entities.[5]

(B) Upon written or oral request to Salomon Smith Barney, a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) A copy of the investment advisory agreement between the Consulting Group and such Plan relating to participation in the TRAK Program and, if applicable, informing Plan investors of the Automatic Reallocation Option.

(D) Upon written request of Salomon Smith Barney, a copy of the respective investment advisory agreement between the Consulting Group and the Sub-Advisers.

(E) In the case of a Section 404(c) Plan, if required by the arrangement negotiated between the Consulting Group and the Plan, an explanation by a Salomon Smith Barney Financial Consultant (the Financial Consultant) to eligible participants in such Plan, of the services offered under the TRAK Program and the operation and objectives of the Portfolios.

(F) A copy of the proposed exemption and the final exemption, if granted, pertaining to the exemptive relief described herein.

(2) If accepted as an investor in the TRAK Program, an Independent Plan Fiduciary of an IRA or Keogh Plan, is required to acknowledge, in writing, prior to purchasing Trust shares that such fiduciary has received copies of the documents described above in subparagraph (k)(1) of this Section.

(3) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents will be provided by the Independent Plan Fiduciary (i.e., the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares). Such Independent Plan Fiduciary will be required to represent in writing to Salomon Smith Barney that such fiduciary is (a) independent of Salomon Smith Barney and its affiliates and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(4) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to Salomon Smith Barney that such fiduciary is (a) independent of Salomon Smith Barney and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(l) Subsequent to its participation in the TRAK Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation in the TRAK Program:

(1) The Trust's semi-annual and annual report which will include financial statement for the Trust and investment management fees paid by each Portfolio.

(2) A written quarterly monitoring statement containing an analysis and an

[5] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the Independent Plan Fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. In this regard, the Department expects the Independent Plan Fiduciary to consider carefully the totality of the fees and expenses to be paid by the Plan, including the fees paid directly to Salomon Smith Barney or to other third parties.

evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(3) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly, detailed investment performance monitoring report, in writing, provided to an Independent Plan Fiduciary of such Plan showing, Plan level asset allocations, Plan cash flow analysis and annualized risk adjusted rates of return for Plan investments. In addition, if required by such arrangement, Financial Consultants will meet periodically with Independent Plan Fiduciaries of Section 404(c) Plans to discuss the report as well as with eligible participants to review their accounts' performance.

(4) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly participant performance monitoring report provided to a Plan participant which accompanies the participant's benefit statement and describes the investment performance of the Portfolios, the investment performance of the participant's individual investment in the TRAK Program, and gives market commentary and toll-free numbers that will enable the participant to obtain more information about the TRAK Program or to amend his or her investment allocations.

(5) On a quarterly and annual basis, written disclosures to all Plans of the (a) percentage of each Portfolio's brokerage commissions that are paid to Salomon Smith Barney and its affiliates and (b) the average brokerage commission per share paid by each Portfolio to Salomon Smith Barney and its affiliates, as compared to the average brokerage commission per share paid by the Trust to brokers other than Salomon Smith Barney and its affiliates, both expressed as cents per share.

(m) Salomon Smith Barney shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (n) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Salomon Smith Barney and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than Salomon Smith Barney shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (n) below.

(n)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subparagraphs (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (m) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Service;

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B)-(D) of this paragraph (n) shall be authorized to examine the trade secrets of Salomon Smith Barney or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term "Salomon Smith Barney" means Salomon Smith Barney Inc. and any affiliate of Salomon Smith Barney, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Salomon Smith Barney includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Salomon Smith Barney; (For purposes of this subparagraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any individual who is an officer (as defined in Section III(d) hereof), director or partner in Salomon Smith Barney or a person described in subparagraph (b)(1);

(3) Any corporation or partnership of which Salomon Smith Barney or an affiliate described in subparagraphs(b)(1), is a 10 percent or more partner or owner; and

(4) Any corporation or partnership of which any individual which is an officer or director of Salomon Smith Barney, is a 10 percent or more partner or owner.

(c) An "Independent Plan Fiduciary" is a Plan fiduciary which is independent of Salomon Smith Barney and its affiliates and is either—

(1) A Plan administrator, sponsor, trustee or named fiduciary, as the recordholder of Trust shares under a Section 404(c) Plan;

(2) A participant in a Keogh Plan;

(3) An individual covered under (i) a self-directed IRA or (ii) a Section 403(b) Plan, which invests in Trust shares;

(4) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act; or

(5) A participant in a Plan, such as a Section 404(c) Plan, who is permitted under the terms of such Plan to direct, and who elects to direct the investment of assets of his or her account in such Plan.

(d) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policymaking function for the entity.

Section IV. Effective Dates

If granted, this proposed exemption will be effective as of April 1, 2000, with respect to the amendments to Section II(i) and Section III(b) and the inclusion of new Section III(d).

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 92–77, PTE 94–50 and PTE 99–15, refer to the proposed exemptions and the grant notices which are cited above.

Signed at Washington, D.C., this 25th day of May, 2000.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–13643 Filed 5–31–00; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Polar Programs (1209).

Date and Time: June 27–29, 2000; 8:30 am–5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 330, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Polly A. Penhale, Program Manager, Antarctic Biology and Medicine, Office of Polar Programs, Rm. 755 S, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1033.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to Life in Extreme Environments (LExEN) NSF–00–37 as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 26, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–13681 Filed 5–31–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw part of its December 14, 1999, application as supplemented February 11, March 30, and April 26, 2000, for proposed amendment to Facility Operating License No. DPR–65 for the Millstone Nuclear Power Station, Unit No. 2, located in Waterford, Connecticut.

By letter dated April 28, 2000, we issued Amendment No. 245 approving the proposed changes with the exception of those changes related to technical specification (TS) Section 3.9.11, "Refueling Operations—Water Level—Reactor Vessel." These proposed changes would have revised the terminology, applicability, surveillance requirements, and the associated action statement for TS Section 3.9.11, "Refueling Operations—Water Level—Reactor Vessel."

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 17, 2000 (65 FR 14632). However, by letter dated April 26, 2000, the licensee withdrew a portion of the amendment request.

For further details with respect to this action, see the application for amendment dated December 14, 1999, as supplemented February 11, March 30, and April 26, 2000, and the licensee's letter dated April 26, 2000, which withdrew the portion of the application related to TS Section 3.9.11. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 24th day of May 2000.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–13690 Filed 5–31–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24474; 812–12008]

Armada Funds, et al.; Notice of Application

May 24, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain series of Armada Funds ("Armada") to acquire all of the assets and liabilities of all of the series of The Parkstone Group of Funds ("Parkstone") (the "Reorganization"). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Armada, Parkstone, and National City Investment Management Company ("NCIMC").

FILING DATES: The application was filed on March 1, 2000, and amended on May 23, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 15, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the winter's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Armada, Parkstone, One Freedom Valley Drive, Oaks, Pennsylvania 19456; NCIMC, 1900 East Ninth Street, Cleveland, Ohio 44114.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, (202) 942–0634 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Parkstone, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is comprised of 16 series (the "Acquired Funds"). Armada, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Armada is compared of 28 series, 16 of which will participate in the Reorganization. Eleven of these series are currently operating (the "Operating Acquiring Funds") and 5 are newly organized shell series (the "Shell Acquiring Funds," and together with the Operating Acquiring Funds, the "Acquiring Funds"). The Acquiring Funds and the Acquired Funds are collectively referred to as the Funds." Applicants state that the investment that the objectives, policies and restrictions of each Acquired Fund and its

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corresponding Acquiring Fund are substantially similar.

2. NCIMC is registered under the Investment Advisers Act of 1940 and is the investment adviser for the Acquired Funds and Operating Acquiring Funds and will be the investment adviser for the Shell Acquiring Funds. NCIMC is a wholly-owned subsidiary of National City Corporation ("NCC").

3. National City Bank, a subsidiary of NCC, and certain of its affiliated companies ("National City Group"), hold of record, in their name and in the names of their nominees, more than 5% (and with respect to certain Funds more than 25%) of the outstanding voting securities of certain of the Funds. All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity, except that certain of the companies of National City Group may, at times, own economic interests in certain money market Funds for their own account.

4. On November 19, 1998, May 11, 1999, July 20–21, 1999 and November 17, 1999, the boards of trustees of Armada and Parkstone (the "Boards") including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Trustees"), approved Plans of Reorganization (each a "Plan" and collectively, the "Plans") between Armada and Parkstone. Pursuant to the Plans, each Acquiring Fund will acquire all of the assets and liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Funds.[1]

5. Armada has four classes of shares: Class A, Class B, Class C and Class I. Class C shares will not be involved in the Reorganization. Parkstone has three classes of shares: Investor A, Investor B, and Institutional. The number of Acquiring Fund shares to be issued to shareholders of the Acquired Fund will be determined by dividing the aggregate net assets of each Acquired Fund class by the net asset value per share of the corresponding Acquiring Fund class, each computed as of the close of business on the closing date ("Closing Date"). Shareholders of Investor A, Investor B, and Institutional shares of the Acquired Funds will receive Class A, Class B, and Class I shares, respectively, of the corresponding Acquiring Fund. The Plans provide that these Acquiring Fund shares will be distributed pro rata to the shareholders of record in the applicable Acquired Fund class, determined as of the close of business on the Closing Date, in complete liquidation of each Acquired Fund. Applicants anticipate that the Closing Date will be on or around June 16, 2000.

6. Applicants state that the investment objectives, policies, and restrictions of each Acquiring Fund are substantially similar to those of its corresponding Acquired Fund. Class A and Investor A shares are subject to a front end sales charge and a rule 12b–1 distribution fee and certain shareholders may be subject to a deferred sales charge. Class B and Investor B shares are subject to a contingent deferred sales charge[2] and a rule 12b–1 distribution fee. Class I and Institutional shares are subject to a rule 12b–1 distribution fee but not a sales charge. No sales charge will be imposed in connection with the Reorganization. For purposes of calculating the deferred sales charge, shareholders of Investor A and Investor B shares of the Acquired Funds will be deemed to have held Class A and Class B shares of the corresponding Acquiring Fund since the date the shareholders initially purchased the shares of the Acquired Fund.

7. The Boards, including a majority of the Disinterested Trustees, found that participation in the Reorganization is in the best interest of each Fund and that the interests of existing shareholders of the Funds will not be diluted as a result of the Reorganization. In approving the Reorganization, the Boards considered, among other things: (a) The potential effect of the Reorganization; (b) the expense ratios of the Acquiring Funds and the Acquired Funds; (c) the compatibility of the investment objectives and investment strategies of the Acquiring Funds and Acquired Funds; (d) the terms and conditions of the Plans; and (e) the tax-free nature of the Reorganization. The Acquiring Funds' Board also considered that Armada and National City Bank will equally bear the expenses associated with the Reorganization, except that Armada will bear any registration fees payable under federal and state law.

8. The Plans may be terminated by mutual written consent of the Acquiring Fund and Acquired Fund at any time prior to the Closing Date. In addition, either party may terminate a Plan in writing without liability to the terminating party if certain conditions are not satisfied prior to the Closing Date.

9. Definitive proxy solicitation materials have been filed with the SEC and were mailed to the Acquired Fund's shareholders on or about March 31, 2000. A special meeting of the Acquired Funds' shareholders was held on May 10, 2000, and the Acquired Funds' shareholders approved the Plans.

10. The consummation of the Reorganization is subject to the following conditions: (a) A registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; (b) the Acquired Fund shareholders will have approved the Plans; (c) applicants will have received exemptive relief from the SEC with respect to the issues in the application; (d) the Funds will have received an opinion of counsel concerning the tax-free nature of the Reorganization; and (e) each Acquired Fund that is not reorganizing into a corresponding Shell Acquiring Fund will have declared a dividend to distribute substantially all of its investment company taxable income and net capital gain, if any, to its shareholders. Applicants agree not to make any material changes to the Plans that affect the application without prior SEC staff approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that the National City Group holds of record more than 5% (and in some cases more than 25%) of the outstanding voting securities of certain of the Funds. Because of this ownership, applicants state that the Funds may be deemed affiliated persons for reasons other than those set forth in rule 17a–8 and therefore unable to rely on the rule. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b). Applicants note that the Boards, including a majority of the Disinterested Trustees, found that participation in the Reorganization is in the best interests of each Fund and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants also note that the Reorganization will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13615 Filed 5–31–00; 8:45 am]

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[1] The Acquired Funds and their corresponding Acquiring Funds are: (1) Parkstone Prime Obligations Fund and Armada Money Market Fund; (2) Parkstone U.S. Government Obligations Fund and Armada Government Money Market Fund; (3) Parkstone Tax-Free Fund and Armada Tax Exempt Money Market Fund; (4) Parkstone Bond Fund and Armada Bond Fund; (5) Parkstone Limited Maturity Bond Fund and Armada Enhanced Income Fund; (6) Parkstone Intermediate Government Obligations Fund and Armada Intermediate Bond Fund; (7) Parkstone Income Fund and Armada Equity Income Fund; (8) Parkstone Small Capitalization Fund and Armada Small Cap Growth Fund; (9) Parkstone International Discovery Fund and Armada International Equity Fund; (10) Parkstone Balanced Allocation Fund and Armada Allocation Fund; (11) Parkstone National Tax-Exempt Bond Fund and Armada National Tax-Exempt Bond Fund; (12) Parkstone Large Capitalization Fund and Armada Large Cap Ultra Fund; (13) Parkstone U.S. Government Income Fund and Armada U.S. Government Income Fund; (14) Parkstone Mid Capitalization Fund and Armada Mid Cap Growth Fund; (15) Armada Michigan Municipal Bond Fund and Armada Michigan Municipal Bond Fund; and (16) Parkstone Treasury Fund and Armada Treasury Plus Money Market Fund.

[2] Class A and B shares of Armada Money Market Fund, Armada Government Money Market Fund, Armada Tax Exempt Money Market Fund, and Armada Treasury Plus Money Market Fund and Investor A and B shares of Parkstone Prime Obligations Fund, Parkstone U.S. Government Obligations Fund, Parkstone Tax-Free Fund, and Parkstone Treasury Fund are not subject to any sales charge.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42817; File No. SR–OPRA–99–01]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Participation Fee Payable by Each New Party to the Plan

May 24, 2000.

On August 16, 1999, pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] the Options Price Reporting Authority ("OPRA")[2] submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The proposed amendment would add provisions applicable to a participation fee payable by each new party to the OPRA Plan and codifies procedures applicable to the admission of new parties to the OPRA Plan. Notice of the proposed OPRA Plan amendment was published in the **Federal Register** on October 20, 1999.[3] The Commission received three comment letters on the proposed OPRA Plan amendment.[4] On January 3, 2000, April 28, 2000, and May 18, 2000, OPRA submitted Amendments Nos. 1, 2, and 3, respectively.[5] The Commission is publishing this notice and order to grant accelerated approval to the proposed OPRA Plan amendment, as revised by Amendment No. 3, and to solicit comments from interested persons on Amendment No. 3.

I. Background

Currently, the OPRA Plan provides that any national securities exchange or registered securities association whose rules governing the trading of standardized options have been approved by the Commission may become a party to the OPRA Plan, provided it agrees to conform to the terms and conditions of the OPRA Plan. However, the OPRA Plan does not provide procedures for the application process or for a participation fee to be paid by an exchange at the time it becomes a party to the OPRA Plan.

In response to the application recently received from the International Securities Exchange ("ISE") to become a party to the OPRA Plan and in anticipation of the receipt of additional applications from other new options exchanges, OPRA's initial filing proposed to incorporate into the OPRA Plan certain application forms and procedures to be used to apply to become a party to the OPRA Plan and to obtain interim access to the OPRA system and to the OPRA Processor for planning and testing purposes. The initial filing also proposed to add to the OPRA Plan provisions for a one-time participation fee payable by each new party to the OPRA Plan.

The Commission received three comment letters on the proposed OPRA Plan amendment.[6] None of the commenters oppose the proposed establishment of an OPRA participation fee. However, the commenters raise concerns regarding the factors OPRA proposed to consider in determining the amount of the participation fee, asserting that the proposed OPRA Plan amendment could create a barrier to entry into the options industry that could harm competition. In response to

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("Amex"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("Phlx").

[3] *See* Securities Exchange Act Release No. 42002 (October 13, 1999), 64 FR 56543.

[4] *See* letters from Gerald D. Putnam, Chief Executive Officer, Archipelago, L.L.C., to Jonathan G. Katz, Secretary, Commission, dated November 10, 1999 ("Archipelago Letter"); the United States Department of Justice, to the Commission, dated November 10, 1999 ("Justice Letter"); and Michael J. Simon, Senior Vice President, General Counsel, and Secretary, International Securities Exchange, to Jonathan G. Katz, Secretary, Commission, dated November 17, 1999 ("ISE Letter").

[5] *See* letters to Deborah L. Flynn, Division of Market Regulation, Commission, from Joseph Corrigan, Executive Director, OPRA, dated December 31, 1999 ("Amendment No. 1") and April 26, 2000 ("Amendment No. 2"). *See also* letter to John Roeser, Division of Market Regulation, Commission, from Joseph Corrigan, Executive Director, OPRA, dated May 17, 2000 ("Amendment No. 3"). In Amendment No. 1, OPRA responded to the issues raised by commenters, but proposed no changes to its original filing. In Amendment No. 2, OPRA proposed to revise the list of factors to be considered in the determination of a participation fee and to implement the proposed fee structure on a temporary basis to expire at the end of calendar year 2000. In Amendment No. 3, as described below, OPRA proposes to modify its initial filing to incorporate into the OPRA Plan the concept of a participation fee, with the specific standards applicable to the determination of the amount of a participation fee to be added by a future OPRA Plan amendment, subject to Commission approval. OPRA also proposes to make conforming changes to its Application Agreement.

[6] *See* Archipelago Letter, Justice Letter, and ISE Letter, *supra* note 4.

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the commenters, OPRA proposes to modify the proposal.[7]

II. Description and Purpose of Amendment No. 3 to the Plan Amendment

The purpose of Amendment No. 3 to the proposed OPRA Plan amendment, as described above, is to further modify that part of the proposed OPRA Plan amendment concerning the participation fee, and to make conforming changes to the Application Agreement filed as part of the original filing. Because the OPRA Plan participants and the Commission have not yet reached agreement on the precise standards to be applied in determining the amount of the participation fee, OPRA proposes, in Amendment No. 3 to the OPRA Plan amendment, to eliminate the proposed factors to be considered in determining the participation fee and the requirement that the fee be paid as a condition to becoming a party to the OPRA Plan.[8] Instead, Amendment No. 3 would incorporate into the OPRA Plan only the concept of a participation fee, with the specific standards applicable to the determination of the amount of the fee to be added by a future OPRA Plan amendment that would be subject to a separate filing and Commission approval. Although any new party to the OPRA Plan would be subject to the new participation fee, the fee would not be payable until after the applicable standards have been approved by the Commission and a specific fee based on those standards has been agreed upon by OPRA and the new participant.

A new exchange would not have a vote on the adoption of the specific standards applicable to the determination of the fee to be paid by that party or on the determination of the amount of the fee based on those standards, although it may participate with the other parties in the discussion of the specific standards to be adopted. As was provided in the proposed OPRA Plan amendment as originally filed, in the event OPRA and the new participant do not agree on the amount of the participation fee, the amount of the fee will be subject to review by the Commission pursuant to Section 11A(b)(5) of the Act.[9]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3 to the proposed OPRA Plan amendment, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to Amendment No. 3 to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the Amendment No. 3 to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–99–01 and should be submitted by June 22, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed OPRA Plan Amendment

After careful review, the Commission finds that the proposed OPRA Plan amendment as revised by Amendment No. 3, is consistent with the requirements of the Act and the rules and regulations thereunder.[10] Specifically, the Commission believes that Amendment No. 3 to the proposed OPRA Plan amendment is consistent with Rule 11Aa3–2 [11] in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system. The Commission notes that any new party to the OPRA Plan would be subject to a participation fee. The fee, however, would not be payable until after specific standards for determining the fee have been approved by the Commission and a specific fee based on those standards has been agreed upon by OPRA and the new participant.

The Commission believes that is reasonable for the OPRA Plan to provide for an initial participation fee to be paid by new parties to the OPRA Plan. Until specific standards can be agreed upon by the OPRA participants and approved by the Commission, however, the Commission believes it is appropriate for new exchanges to be admitted as parties to the OPRA Plan without requiring such new parties to pay a participation fee immediately.

In addition, Amendment No. 3 to the OPRA Plan amendment would allow new parties to the OPRA Plan to participate in discussions regarding the specific standards on which the participation fee is to be based, but would prohibit new parties from voting on the adoption of such standards. The Commission believes that because specific standards would be the subject of a separate filing and published by the Commission for notice and comment, new parties would have a voice, if not a vote, regarding the propriety of such standards. Further, the Commission notes that such standards will ultimately be subject to Commission approval, which will ensure further review of this issue.

The Commission finds good cause to accelerate the approval of Amendment No. 3 to the proposed OPRA Plan amendment prior to the thirtieth day after the date of publication in the **Federal Register**. The Commission notes that Amendment No. 3 to the proposed OPRA Plan amendment is responsive to concerns expressed by commenters and Commission staff regarding the propriety of the proposed factors to be considered in the determination of a participation fee. In addition, approving Amendment No. 3 to the proposed OPRA Plan amendment on an accelerated basis will permit the OPRA Plan to provide for a fee as ISE becomes a party to the OPRA Plan. The Commission believes that approving the amended proposal on an accelerated basis will provide the OPRA Plan participants additional time to develop appropriate standards upon which a participation fee should be based, without unnecessarily delaying ISE's bid to become a party to the OPRA Plan. The Commission finds, therefore, that granting accelerated approval of Amendment No. 3 to the proposed OPRA Plan amendment is consistent with Section 11A of the Act.[12]

V. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 of the Act,[13] that the proposed OPRA Plan amendment, as amended by Amendment No. 3, (SR–OPRA–99–01) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13616 Filed 5–31–00; 8:45 am]

BILLING CODE 8010–01–M

[7] See Amendment No. 3, *supra* note 5.

[8] See Amendment No. 3, *supra* note 5.

[9] 15 U.S.C. 78k–1(b)(5).

[10] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[11] 17 CFR 240.11A3–2.

[12] 15 U.S.C. 78k–1.

[13] 17 CFR 240.11Aa3–2.

[14] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42821; File No. SR–CBOE–00–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Interpret Rules Relating to Customer Communications

May 24, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 20, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to issue a Regulatory Circular to its membership setting forth a clarifying interpretation to Exchange Rule 9.21, *Communications to Customers*, which governs communications from member firms to customers or members of the public. The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 9.21, *Communications to Customers*, governs communications between Exchange members and their customers and other members of the public. The Exchange, along with the other options exchanges, has published *Guidelines for Options Communications* ("Guidelines")[3] to explain the customer communications rules of the options exchanges and the interpretations of these rules. The Exchange proposes to issue a Regulatory Circular to formally install a clarifying interpretation that has long been applied by the Exchange. This interpretation deals with the requirement to discuss tax considerations when engaging in certain option strategies. Although the Exchange believes this interpretation to be consistent with and fairly implied by Rule 9.21 and the Guidelines, the Exchange believes that clarification in a Regulatory Circular would be beneficial to its members.

Although Rule 9.21 is silent regarding tax considerations in customer communications, the Guidelines and the Exchange's internal checklist ("Checklist"), which CBOE's Department of Financial and Sales Practice Compliance uses in reviewing communication materials, do require that tax considerations be discussed in communications in certain circumstances. The Guidelines state, "depending upon the technical or specific nature of such communication, any one or more of the following points should be addressed." The Guidelines go on to list various considerations, including the following statement about taxes, "[s]ince options transactions may involve complex tax considerations, it would misleading to omit the mention of such strategies from any communication that discusses or recommends options strategies." In response to comments and recommendations made by the Commission's Office of Compliance Inspections and Examinations, the Exchange in February 1994 added language to its Checklist reflecting the Exchange's long-standing practice in reviewing communications for tax considerations. That practice was, and is, to require a discussion of tax considerations if the communication is educational material or sales literature that is strategy specific and complex.

The Exchange believes that more clarification could be provided to its members regarding this topic and has, therefore, decided to issue an interpretation in a Regulatory Circular clarifying which communications require a mention about tax considerations. The language in the interpretation mimics the language contained in the Exchange's Checklist. The proposed interpretation states that an advisory concerning taxes is required for educational material and sales literature involving specific, detailed and complex option strategies. In addition, the proposed interpretation states an advisory regarding taxes is not necessary where the communication is of a general, noncomplex nature or involves common basic options strategies (*e.g.*, purchasing, covered writing or cash secured put writing). An example of an appropriate advisory concerning taxes, where one is needed, would be, "[b]ecause of the importance of tax considerations to all option transactions, the investor considering options should consult with his/her tax advisor as to how taxes affect the outcome of contemplated options transactions."

Again, although the proposed interpretation merely restates the Exchange's long-standing policy in reviewing customer communications for the inclusion of discussions of tax considerations, the Exchange believes that this policy also makes sense from a practical standpoint. The Exchange believes that in common, basic option strategies the tax consequences are straightforward. Therefore, the Exchange believes that the inclusion of a tax advisory in all communications might serve to lessen the impact of the advisory in those cases where the advisory serves a useful purpose.

The Exchange believes that formal clarification of this interpretation of Rule 9.21 is warranted; however, the Exchange also believes that its long-standing interpretation is appropriate and supported by the language of the Guidelines.

2. Statutory Basis

The CBOE believes the proposed Regulatory Circular interpretation of Exchange Rule 9.21 is consistent with and further the objectives of Section 6(b)(5)[4] of the Act in that it is designed to remove impediments to a free and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 29682 (September 13, 1991), 56 FR 47973 (September 23, 1991) (File Nos. SR–Amex–90–38; SR–CBOE–90–27; SR–NASD–91–02; SR–NYSE–90–51; and SR–PSE–90–41).

[4] 15 U.S.C. 78f(b)(5).

open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed Regulatory Circular interpretation of Exchange Rule 9.21 will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed Regulatory Circular interpretation of Exchange Rule 9.21.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and coping at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–18 and should be submitted by June 22, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13671 Filed 5–31–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42822; File No. SR–PCX–00–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the PCX Application's Mid-Point Price Profile

May 24, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2000, the Pacific Exchange, Inc. ("Exchange" or "PCX"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposed rule change to modify the definition of the term "Orders" under Exchange Rule 15.1(f) of its Rules of the Board of Governors, as such term is used for purposes of the PCX Application of the OptiMark System ("PCX Application"), and to add Commentary .04 to Rule 5.3, Rules of the Board of Governors, Equities Trading, Trading Differentials, to provide for separate minimum trading differentials for certain profiles in the PCX Application. The proposed rule change would permit certain PCX Application Profiles to receive an execution under specified circumstances at price increments finer than the minimum trading differential permitted under the Exchange's rules for other transactions on the Exchange. The text of the proposed rule change is available at the Exchange and at the Commission.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 17, 1997, the Commission approved the PCX Application.[3] The PCX Application is a computerized, screen-based trading service for use by Exchange members and their customers to purchase or sell equity securities listed or traded on the Exchange ("PCX Securities"). The PCX Application is a supplement to the Exchange's traditional floor facilities and allows PCX members and their customers to submit expressions of trading interest known as "Profiles" anonymously from their computer terminal. As stated in the Approval Order, Profiles do not constitute "bids" or "offers" within the meaning of Exchange Act Rule 11Ac1–1, the "Firm Quote Rule." Rather, each Profile "is only a generalized expression of interest with conditions attached and is not eligible for execution until the completion of the Cycle."[4]

The PCX Application includes several types of Profiles where price can be pegged to reflect changes in a specific market parameter. The midpoint price ("MP") Profile is a type of pegged Profile. An MP Profile allows a user to enter a Profile to be priced at the midpoint of the national best bid or offer ("NBBO") posted on the consolidated Quotation System ("CQS") at the time of a matching cycle of the PCX Application. The MP feature will automatically update the price of any buy or sell Profile designated by the user of the PCX Application to conform to the midpoint of the NBBO displayed on CQS. All Profiles, other than the CQS Profiles and those Profiles created from the PCX Specialist's book, are eligible to be designated as an MP Profile.

[3] *See* Securities Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997) (SR–PCX–97–18)("Approval Order"). The PCX Application has been in operation on the Exchange since January 1999.

[4] *Id.* at 50046.

The tracking of the relevant CQS information for MP Profiles occurs on a real-time basis in a dynamic fashion, such that the price of each designated MP Profile, irrespective of the NBBO when it was entered, is based on most current available NBBO. For example, if the matching cycle of the PCX Application (known as a "Call") for a particular PCX Security is scheduled to take place at 11:30 a.m. Eastern time, the price of each MP Profile will be updated to reflect the midpoint between the consolidated best bid and offer prices immediately prior to commencement of the Call at 11:30. From a functional standpoint, it would be as if the user of the PCX Application had entered a Profile at that instant with the associated price equal to the midpoint of the NBBO. Accordingly, all MP Profiles receive a new entry time at the beginning of each matching cycle in which they are included.[5] Of course, all Profiles received by the OptiMark System, whether or not designated as MP, will be centrally processed based on a computer algorithm. As specified in Exchange Rule 15.3(c), eligible coordinates from such buy and sell Profiles will be matched based on the stated principles of priority, and Profiles so matched will result in orders capable of immediate execution.[6]

The Exchange proposes to modify its rules so that an MP Profile can be executed at a trading differential finer than permitted under Exchange rules. Currently, the Exchange's minimum price variation is 1/16 ("teenie"). Over the course of the first year of operation of the PCX Application, OptiMark and the Exchange have become aware of a limitation affecting MP Profiles when the NBBO in a matching cycle is an odd teenie or a single teenie. As described above, an MP Profile should be priced at the midpoint of the NBBO. For an even teenie spread of 1/8 or greater, the midpoint can be determined precisely (*e.g.*, the midpoint of an NBBO of $20–$20 1/8 is $20 1/16). Midpoint pricing is more difficult for an odd teenie spread because the true midpoint can only be expressed in one thirty seconds. For example, the midpoint of an NBBO of $20–$20 3/16 is $20 3/32. Because the Exchange's minimum trading differential is 1/16, a true midpoint cannot be achieved. Thus, OptiMark would effect a match between buy and sell MP Profiles at either $20 1/8 or $20 1/16, depending upon whether the buy or sell Profile had time priority. A similar problem arises when the NBBO is 1/16 because the true midpoint can only be expressed in one thirty seconds (*e.g.*, an NBBO of $20–$20 1/16). In this situation, OptiMark will not effect a match of MP Profiles.

Institutional customers of OptiMark have asked the Exchange to revise the midpoint pricing feature so that a real midpoint trade can take place in odd teenie markets and 1/16 markets.[7] To achieve this, the Exchange proposes to allow executions of MP Profiles to take place in the PCX Applications at finer trading differentials than 1/16. Thus, the Exchange proposes to amend its Rules to allow an MP Profile to be executed at a price increment as small as 1/64 or, upon conversion to decimal pricing, to one half of the minimum price variation.[8]

Exchange Rule 5.3(b) provides the Exchange with the authority to determine the trading increments for equity securities traded on the Exchange by filing a proposed rule change with the Commission pursuant to Section 19(b)(3)(A) of the Act.[9] The PCX believes that a trading differential of 1/64 is appropriate for MP Profiles so that a true midpoint trade can be effected in the PCX Application. The PCX notes that several other exchanges operate auxiliary matching systems that price in finer increments than available in regular trading.[10] The Exchange believes that a finer trading differential for executions of MP Profiles will facilitate enhanced Profile interaction at prices consistent with the continued movement in the industry to reduce the minimum trading increment. This is a value-added service that has been requested by many customers and supported by PCX members in discussions with PCX staff and OptiMark personnel.

The Exchange notes that all transactions resulting from midpoint pricing will be identified with a special sale condition so that members, public investors and others can distinguish such trades from other trade reports executed on the Exchange.[11] It is important to note that these new finer price increments apply only to executed trades and not to the entry of Profiles or to publish bids and offers. In other words, trades resulting from the MP service may be executed on the basis of 1/64 increments; however, it will still not be possible to enter Profiles, bids, or offers in 1/64 increments.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the provisions of Section 6(b)(5) of the Act[12] in that the PCX Application is a facility that is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, or dealers. In addition, the Exchange believes that the proposed rule change is consistent with provisions of Section 11A(a)(1)(B) of the Act,[13] which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] The Exchange has represented that Optimark will make information on the operation of the MP Profile available to users of the PCX Application.

[6] All MP Profiles in a matching cycle on the same side of the market are prioritized according to time of entry of the Profile into the PCX Application. After a cycle, all unexecuted MP Profiles that are not cancelled are automatically entered into the next matching cycle at the beginning of the cycle.

[7] Customers that use indexation strategies or are passive investors are particularly interested in using the midpoint pricing feature.

[8] Under Exchange Rule 5.3(b), most PCX Securities trade in minimum increments of 1/16 of a dollar. In 1998, the Commission approved the Exchange's proposal to permit trading on the Exchange Floor at increments of 1/32 or 1/64 in order to match bids and offers displayed by other markets for the purpose of preventing Intermarket Trading System trade-throughs. *See* Securities Exchange Act Release No. 40199 (July 14, 1998), 63 FR 39366 (July 22, 1998) (SR–PCX–97–46).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] For example, the Philadelphia Stock Exchange ("Phlx") operates a VWAP matching system which report trades in fractions rounded to the nearest 1/256. See Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15847 (April 1, 1999) (SR–PHLX–96–14). The Commission also approved a modified trading variation for the Chicago Match System. *See* Securities Exchange Act Release No. 35030 (November 30, 1994), 59 FR 63141 (December 7, 1994).

[11] The Exchange confirmed with the Securities Industry Automation Corporation ("SIAC") that it is feasible to report through the Consolidated Trade System ("CTS") any transactions resulting from midpoint pricing in price increments as small as 1/64 of a dollar, and that such transactions will be reported to CTS with the sale condition "B" to indicate midpoint pricing. Telephone conversation between Brian P. Faughnan, Managing Director, MDS/NMS Planning and CTS/CQS Development, SIAC, and David DiCenso, Director, Equity Operations, PCX on March 21, 2000.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1)(B).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation of Exchange Rule 5.3(b) and therefore, has become immediately effective pursuant to Section 19(b)(3)(A) of the Act [14] and subparagraph (f)(1) of Rule 19b–4 thereunder.[15] The Commission further notes that Commentary .01 of the Exchange's rules states that the Exchange may change the trading differentials for securities traded on the Exchange by filing a proposed rule change with the Commission pursuant to Section 19(b)(3)(A) of the Act.[16] This proposed rule change would change the trading differentials for the PCX Application, which constitutes trading on the Exchange. The language changes to Rule 5.3(b) and Rule 15 merely effectuate this change in trading differentials for Profile sin the PCX Application.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–00–10 and should be submitted by June 22, 2000.[17]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 00–13673 Filed 5–31–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42814; File No. SR–Phlx–00–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Reduce the Value of Its Computer Box Maker Index Option ("BMX")

May 23, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce the value of its Computer Box Maker Index ("Index") option ("BMX") to one-half its present value by doubling the base market divisor used to calculate the index. Additionally, the Exchange proposes to double the position and exercise limits applicable to BMX until the last expiration then trading. The index is a price weighted, narrow-based, A.M. settled index comprised of nine stocks issued by companies that manufacture, market, and support desktop and notebook personal computers and fault tolerant systems.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to attract additional liquidity to BMX. The Exchange began trading BMX in 1998.[5] On March 31, 2000, the index value was 451.24 and the near-month in-the-money call premium was $35.125 per contract. The Exchange proposes to conduct a "two-for-one split" of the index, to reduce the value of index to one-half its current value. The split would double the number of BMX contracts so that for each BMX contract held at the time of the split, a contract holder would receive two contracts at the reduced value, with a strike price one-half of the original strike price.[6] Additionally, the Exchange proposes to double the position and exercise limits applicable to BMX, from 25,0000 contracts to 50,000 contracts, until the last expiration then trading. The Exchange represents that the proposed changes would result in an index value of 225.50 and a near-month in-the-money call premium of $17.56.[7]

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(1).

[16] See Securities Exchange Act Release No. 38780 (June 26, 1997), 62 FR 36087 (July 3, 1997)(SR–PCX–97–15).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The index is comprised of the following stocks (primary markets in parentheses): Apple Computer, Inc. (Nasdaq); Compaq Corp. (NYSE); Dell Computer Corp. (Nasdaq); Gateway 2000, Inc. (NYSE); Hewlitt Packard Co. (NYSE); International Business Machines (NYSE); Micron Technology, Inc. (NYSE); Sun Microsystems, Inc. (Nasdaq); and Unisys Corp. (NYSE).

[5] See Securities Exchange Act Release No. 39895 (April 21, 1998), 63 FR 23327 (April 28, 1998).

[6] For instance, the holder of a BMX 800 call will receive two BMX 400 calls.

[7] The Exchange represents that this procedure is similar to the type used for equity options, where the underlying security is subject to a two-for-one stock split.

In conjunction with the split, the Exchange will list strike prices surrounding the new, lower index value, pursuant to Phlx Rule 1101A. The trading symbol will remain as BMX. The Exchange will announce the effective date, the strike price, and the position limit changes by way of an Exchange memorandum to the membership.

The Exchange is proposing this rule change to attract additional liquidity to BMX. The Phlx believes a two-for-one split will reduce the value of the index and will have a positive effect on overall transaction volumes by making the option premiums more attractive for retail investors. Additionally, the Exchange believes that a reduced index value will encourage additional investor interest because investors will be able to utilize this trading vehicle with a smaller amount of capital. The Exchange believes that attracting additional investors will create a more active and liquid trading environment.

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[8] in general, and in particular, with Section 6(b)(5),[9] in that it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest, by establishing a lower index value, which should, in turn, facilitate trading in BMX options. The Exchange believes that reducing the value of the index should not raise manipulation concerns or adversely impact the market, because the Exchange will continue to employ its surveillance procedures and has proposed an orderly procedure to achieve the index split, including adequate notice of the split to market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate,[12] it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

The Exchange has requested that the Commission accelerate the operative date of the rule change to permit the Exchange to implement it immediately. The Commission has determined, consistent with the protection of investors and the public interest, to make the proposed rule change operative upon filing, pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii).[15] Under Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.[16] The Commission believes that it is consistent with the protection of investors and the public interest to make the proposed rule change operative upon filing because reducing the value of the Index should enable more investors to participate in the market, thereby promoting liquidity in the market place.[17] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[10] 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] The Exchange provided the Commission with the five business day notice required by Rule 19b–4(f)(6) of the Act on March 3, 2000.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii)

[16] *Id.*

[17] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–11 and should be submitted by June 22, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13672 Filed 5–31–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0285]

Capital Resource Company of Connecticut; Notice of Surrender of License

Notice is hereby given that Capital Resource Company of Connecticut ("CRC"), Two Bridgewater Road, Farmington, Connecticut 06032–2256, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the "Act"). CRC was licensed by the U.S. Small Business Administration on March 23, 1977.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 5, 2000, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

[18] 17 CFR 200.30–3(a)(12).

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 23, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–13600 Filed 5–31–00; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. *Request for Withdrawal of Application—0960–0015.* Form SSA–521 is completed by the Social Security Administration (SSA) when an individual wishes to withdraw his or her application for Social Security benefits. The respondents are individuals who wish to withdraw their applications for benefits.

Number of Respondents: 100,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 8,333 hours.

2. *Statement of Self-Employment Income—0960–0046.* SSA uses the information on Form SSA–766 to expedite the payment of Social Security Benefits to an individual who is self-employed and who is establishing insured status in the current year. The respondents are self-employed persons.

Number of Respondents: 5,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 417 hours.

3. *Certification by Religious Group—0960–0093.* The data that SSA collects via form SSA–1458 will be used to determine if the religious group meets the qualifications set out in section 1402(g) of the Internal Revenue Code permitting its members to be exempt from payment of certain Social Security taxes. The respondents are spokespersons for a religious group or sect.

Number of Respondents: 180.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 45 hours.

4. *You Can Make Your Payment by Credit Card—0960–0462.* Forms SSA–4588 and SSA–4589 provide information to SSA on the debtor's name, Social Security Number, credit card number, the amount being paid and the credit card type so that a remittance can be credited to the debtor's account. The respondents are Title II (Old-Age, Survivors and Disbility Insurance) and Title XVI (Supplemental Security Income) debtors; and citizens requesting material through SSA.

Number of Respondents: 19,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 1,583 hours.

5. *Statement Regarding Contributions—0960–0020.* To determine eligibility of child applicants to Social Security benefits, SSA must collect information about the source of support and the amount of contributions. SSA uses the form SSA–783 for this purpose. The respondents are individuals who provide information to SSA about the child's sources of support.

Number of Respondents: 30,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 7,500 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

Statement of Claimant or Other Person—0960–0045. In special situations when there is no standard form or questionnaire, Form SSA–795 is used by SSA to obtain information from claimants or other persons having knowledge of facts in connection with claims for Social Security or Supplementary Supplemental Security Income. The information collected is used to process claims for benefits. The respondents are applicants for SocialSecurity or Supplemental Security Income benefits.

Number of Respondents: 305,500.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 76,375 hours.

(SSA Address) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., Baltimore, MD 21235

(OMB Address) Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

Dated: May 25, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–13608 Filed 5–31–00; 8:45 am]

BILLING CODE 4191–02–P

TENNESSEE VALLEY AUTHORITY

Routine Maintenance of Electric Generating Stations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of availability.

SUMMARY: TVA is announcing the availability of a technical report, Routine Maintenance of Electric Generating Stations (February 2000). This report describes common practices on the TVA electric power system and elsewhere in the electric utility industry that are necessary to maintain the efficiency, reliability, and availability of steam electric generating units.

ADDRESSES: A copy of this report may be obtained by contacting Jerry L. Golden at (423) 751–6779; email address: jlgolden@tva.gov. TVA is currently planning on posting this report on TVA's website www.tva.gov.

FOR FURTHER INFORMATION CONTACT: Jerry L. Golden, Manager Production Technology, at (423) 751–6779.

SUPPLEMENTARY INFORMATION:

Background

Under section 14 of the TVA Act, 16 U.S.C. 831m, TVA is directed to collect data and report on practices, methods, facilities, and equipment and the economic integration of plants and systems "best suited to promote the public interest, efficiency, and the wider and more economical use of electric energy." In accordance with this directive and authority, TVA reported on its generating unit maintenance practices and experiences in a report entitled, TVA's Power Plant Maintenance Program, Philosophy and Experience, T. H. Gladney and H. S. Fox (April 1972). Today, TVA is announcing the availability of an updated report on utility maintenance practices, Routine Maintenance of Electric Generating Stations, Jerry L. Golden (February 2000).

Congress has tasked TVA with the development and conservation of the resources of the Tennessee Valley region in order to foster the region's economic and social well-being. One component of TVA's regional resource development program is the generation, transmission, and sale of electric power. TVA's electric power system now serves approximately 8 million people in parts of seven southeastern states.

TVA has more than 65 years of experience in maintaining various kinds of power-generating technologies. These technologies include hydro-electric units, nuclear units, combustion turbines, a pumped storage facility, and 11 coal-fired power plants. TVA's coal-fired power plants consist of 59 units with a diverse mix of burner types and configurations. The size of units currently being operated ranges from 125 megawatts to 1,300 megawatts (nameplate capacities). These boiler types and sizes are typical for more than 90 percent of the coal-fired boiler fleet in the United States. TVA's February 2000 technical report describes common utility maintenance practices and philosophies and provides case studies of a number of maintenance projects on the TVA system and elsewhere.

Other Information and Report Summary

A steam-electricity generating unit is a complicated machine consisting of thousands of separate parts and components that must be operated together in an integrated fashion to produce electricity. Like any complex mechanical system, a electricity-generating unit may suffer impaired performance caused by defects in design or manufacture, extreme operating conditions, normal wear of components, or catastrophic failure. This impaired mechanical performance affects the economic performance of the unit and employee safety. To ensure reliable integration of the thousands of different parts and continued reliable performance, TVA and other electric power systems must have an active generating unit maintenance program.

Maintaining integrated operation of all components is difficult because of the large number of components and the varying stresses on components. Failure of a component can affect unit operating efficiencies and can even prevent the unit from operating at all. This is true regardless of the size of the component. A critical electric relay, sensing device, or valve can shut a unit down as easily as the failure of a unit component such as an economizer or a reheater.

The maintenance, repair, and replacement of unit components are necessary to achieve reliable and safe operation of a generating unit throughout its useful life. To do this, TVA and other electric utilities routinely conduct maintenance activities that are proactive, reactive, and predictive. Proactive maintenance practices try to forestall component failure and degradation. This includes such things as lubricating equipment, replacement of fluids, and the regular replacement of gaskets. Reactive maintenance practices correct a component failure or degradation when it occurs. Such reactive maintenance can be limited to specific component elements, include surrounding or adjacent elements that may have suffered the same stress, or involve the replacement of an entire component. Predictive maintenance takes advantage of the most recent advancements in assessment and measurement technologies. Through predictive maintenance practices, TVA and other utilities try to predict when a component element or entire component may fail or suffer unacceptable degradation. Utilities then replace elements and components in advance of actual failure so that damage to other components is reduced and generating units are not suddenly lost.

It has been routine practice within TVA and the utility industry for decades to replace components and systems with state-of-the-art equipment and materials to ensure that the most reliable and efficient equipment is used rather than original equipment or components that may not only be obsolete but no longer even available on the market. TVA's 1972 maintenance report described the routine use of improved materials and designs, and this practice continues throughout the industry today.

TVA's 2000 maintenance report provides case studies of four typical utility maintenance practices: replacement of cyclones, reheaters, economizers and forced draft fan systems. Based on a review of data from the TVA and other coal-fired utility systems, TVA found that replacement of cyclones occurred as early as 10 years after initial operation of a unit to as late as 37 years after initial operation. Reheaters were replaced from 5 to 44 years after initial operation. Economizers were replaced from 6 to 55 years after initial operation. The conversion of forced draft fan systems to balanced draft systems has occurred at units from 4 to 36 years after initial operation.

TVA concludes that components are routinely replaced throughout the lives of units and can occur very early after initial operation of a unit. The many factors that influence equipment or component replacement include design or fabrication errors, unanticipated operating conditions, operational errors, and technology advancements.

Dated: May 19, 2000.

Joseph R. Bynum,

Executive Vice President, Fossil Power Group.

[FR Doc. 00–13680 Filed 5–31–00; 8:45 am]

BILLING CODE 8120–08–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Major Investment Study/Scoping Process and Environmental Impact Statement: Butler, Hamilton, Miami, Montgomery, and Warren Counties, Ohio and Kenton County, KY

AGENCY: Federal Highway Administration (FHWA), DOT in conjunction with Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the I–75 Corridor Major Investment Study (MIS) will serve as the formal scoping process for the preparation of one or more environmental documents—environmental assessment(s) (EA) and/or environmental impact statement(s) (EIS)—which may be prepared for proposed transportation improvements in one or more of the listed counties in Ohio and Kentucky as detailed above.

FOR FURTHER INFORMATION CONTACT: Mark L. Vonder Embse, Urban Programs

Engineer, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6854.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation (ODOT), the Kentucky Transportation Cabinet (KYTC), the Ohio-Kentucky-Indiana Regional Council of Governments (OKI), and the Miami Valley Regional Planning Commission (MVRPC), are conducting an MIS. The study will focus on the primary north/south transportation corridor through the Cincinnati and Dayton urban areas, bounded by Boone County south of the Ohio River to the City of Piqua 85 miles north of the Ohio River. The outcome of the I–75 Corridor MIS will be to identify various regional transportation strategies for improving the safety and efficiency of the existing transportation system operating mainly along I–75 and adjacent roadways from south of Cincinnati to north of Dayton, Ohio. The I–75 Corridor MIS will analyze a wide range of potential transportation improvements including: (1) Take no action; (2) Transportation System Management (TSM)/ Transportation Demand Management (TDM) strategies to improve the existing system and minimize existing/future travel demand with minimal new construction; (3) construct various highway improvements (*e.g.*, additional capacity (lanes), new ramps or interchanges on new or existing alignment(s)); (4) freight rail improvements; and (5) transit improvements.

Letters describing the MIS process and soliciting comments and participation in the study will be sent to appropriate Federal, State, regional and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this project. A wide range of public involvement activities, including a series of public meetings and forums, will be held in the study and beginning with a formal public scoping meeting.

To ensure that the full range of issues related to this proposed action(s) are addressed and all significant issues identified, comments and suggests are invited from all interested parties. Comments or questions concerning this MIS, the scoping process or the range of proposed future action(s), including the preparation of any environmental document(s) should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 23, 2000.

Mark L. Vonder Embse,

Urban Programs Engineer, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 00–13679 Filed 5–31–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), US DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council meeting on Sunday, July 16, 2000. The following designations are made for each item: (A) is an "action" item; (I) is an "information item;" and (D) is a "discussion" item. The agenda includes the following: (1) Call to Order and Introductions (I); (2) Statements of Introductions (I); (3) Antitrust Statement (I); (4) Approval of Previous Minutes (A); (5) Federal Report (I/D); (6) President's Report (I); (7) Federal Communications Commission Advice on Dedicated Short Range Communication at 5.9GHz (A); (8) New Regional Institutions—What is the ITS America Role? (I/D); (9) Workshop Orientation (I/D); (10) Committee Reports (I); (11) Future Coordinating Council Meeting Dates (I/D); (12) Adjournment.

DATES: The Coordinating Council of ITS AMERICA will meet on Sunday, July 16, 2000, from 2 p.m.–5 p.m. (Eastern Standard time).

ADDRESSES: Radisson Hotel—Berkley Marina, 200 Marina Boulevard, Berkley, CA 94710 Phone: (510) 548–7920; Fax: (510) 548–7944.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons needing further information or to request to speak at this meeting should contact Larry Schulman at ITS AMERICA by telephone at (202) 484–4847, or by Fax at (202) 484–3483.

The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, D.C. 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: Wednesday, May 24, 2000.

Jeffrey Paniati,

Deputy Director, ITS Joint Program Office.

[FR Doc. 00–13698 Filed 5–31–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 22, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 3, 2000, to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0033.

Form Number: POD Form 1672.

Type of Review: Extension.

Title: Application of Undertaker for Payment of Funeral Expenses From Funds to the Credit of a Deceased Depositor.

Description: This form is used by the undertaker to apply for payment of a postal savings account of a deceased depositor to apply for funeral expenses. This form is supported by a certificate from a relative (POD 1690) and an itemized funeral bill. Payment is made to the funeral home.

Respondents: Individual or households.

Estimated Number of Respondents: 15.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 144, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–13686 Filed 5–31–00; 8:45 am]

BILLING CODE 4810–35–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 23, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 3, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1060.

Form Number: IRS Form 8288–B.

Type of Review: Extension.

Title: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interest.

Description: Form 8288–B is used to apply for a withholding certificate from IRS to reduce or eliminate the withholding required by section 145.

Respondents: Business or other for-profit, Individual or households.

Estimated Number of Respondents/ Recordkeepers: 5,079.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	2 hr., 4 min.
Learning about the law or the form.	2 hr., 2 min.
Preparing the form	1 hr., 1 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 27,782 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–13687 Filed 5–31–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 25, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 3, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0184.

Form Number: IRS Form 4797.

Type of Review: Extension.

Title: Sales of Business Property.

Description: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets, other than capital assets and involuntary conversions of capital assets held more than one year. It is also used to compute ordinary income from recapture and the recapture of prior year section 1231 losses.

Respondents: Individual or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,396,388.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	33 hr., 14 min.
Learning about the law or the form.	7 hr., 39 min.
Preparing the form	8 hr., 3 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 69,009,495 hours.

OMB Number: 1545–1008.

Form Number: IRS Form 8582.

Type of Review: Revision.

Title: Passive Activity Loss Limitations.

Description: Under Internal Revenue Code section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/ Recordkeepers: 3,622,282.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hr., 5 min.
Learning about the law or the form.	1 hr., 43 min.
Preparing the form	1 hr., 31 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 17,254,834 hours.

OMB Number: 1545–1065.

Form Number: IRS Form 9003.

Type of Review: Extension .

Title: Additional Questions to be Completed by All Applicants for Permanent Residence in the United States.

Description: Form 9003 is used by the State Department and the Immigration and Naturalization Service to gather certain additional information from "green card" applicants for the IRS as required by section 6039E of the Internal Revenue Code of 1986. The answers are transcribed into a database for IRS computer processing.

Respondents: Individuals or households.

Estimated Number of Respondents: 933,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: Other (When applying for green card).

Estimated Total Reporting Burden: 77,750 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–13688 Filed 5–31–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Activities of S&L Holding Companies.

DATES: Submit written comments on or before July 31, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention 1550–0063. Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW, from 9 a.m. to 4 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Activities of S&L Holding Companies.

OMB Number: 1550–0063.

Form Number: OTS Form 1564.

Abstract: Title 12 CFR Section 584.2–1 requires prior notification to the OTS by savings and loan holding companies proposing to engage in prescribed services and activities. The OTS uses this information to track activities and decide the advisability of other actions.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 2.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 4 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 23, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–13617 Filed 5–31–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on Operating Subsidiaries.

DATES: Submit written comments on or before July 31, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550-0077. Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Operating Subsidiaries.

OMB Number: 1550–0077.

Form Number: OTS Form 1579.

Abstract: Title 12 CFR part 559 requires a savings association proposing to establish or acquire an operating subsidiary or conduct new activities in an existing operating subsidiary to either notify the OTS or obtain the prior approval of the OTS. The regulation also requires a savings association to create and maintain certain documents.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 139.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 1,139 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 23, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–13618 Filed 5–31–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0262]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to identify persons authorized to certify reports on behalf of an educational institution or job training establishment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 31, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0262" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Designation of Certifying Official(s), VA Form 22–8794.

OMB Control Number: 2900–0262.

Type of Review: Extension of a currently approved collection.

Abstract: The law requires specific certifications from an educational institution or job training establishment that provides approved training for veterans and other eligible persons. VA Form 22–8794 serves as the report from the school or job training establishment as to those persons authorized to submit these certifications. The information is used to ensure that educational benefits are not made improperly based on a report from someone other than a designated certifying official.

Affected Public: Business or other for-profit, Not for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 417 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,500.

Dated: April 28, 2000.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–13735 Filed 5–31–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0079]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 3, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0079."

SUPPLEMENTARY INFORMATION:

Title: Employment Questionnaire, VA Forms 21–4140, 21–4140–1 and 21–4140a.

OMB Control Number: 2900–0079.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: 38 CFR 4.16 permits VA to pay 100 percent disability compensation benefits to a veteran based on unemployability where, otherwise, the schedular rating is less than 100 percent. VA Forms 21–4140, 21–4140a and 21–4140–1 are used to gather information to determine continued entitlement to benefits based on unemployment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 21, 1999 at pages 56839–56840.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,790 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 45,480.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0079" in any correspondence.

Dated: April 27, 2000.

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By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–13736 Filed 5–31–00; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
June 1, 2000

Part II

Department of the Treasury

Office of the Comptroller of the Currency

Office of Thrift Supervision

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 40, 216, 332, and 573

Privacy of Consumer Financial Information; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 40

[Docket No. 00–10]

RIN 1557–AB77

FEDERAL RESERVE SYSTEM

12 CFR Part 216

[Docket No. R–1058]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

RIN 3064–AC32

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 573

[Docket No. 2000–45]

RIN 1550–AB36

Privacy of Consumer Financial Information

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint final rule.

SUMMARY: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, (collectively, the Agencies) are publishing final privacy rules pursuant to section 504 of the Gramm-Leach-Bliley Act (the GLB Act or Act). Section 504 authorizes the Agencies to issue regulations as may be necessary to implement notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. Pursuant to section 503 of the GLB Act, a financial institution must provide its customers with a notice of its privacy policies and practices. Section 502 prohibits a financial institution from disclosing nonpublic personal information about a consumer to nonaffiliated third parties unless the institution satisfies various notice and opt-out requirements and the consumer has not elected to opt out of the disclosure. These final rules implement the requirements outlined above.

EFFECTIVE DATE: This joint rule is effective November 13, 2000. However, compliance will be optional until July 1, 2001.

FOR FURTHER INFORMATION CONTACT:

OCC: Amy Friend, Assistant Chief Counsel, (202) 874–5200; Jeffery Abrahamson, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090; Michael Bylsma, Director, Community and Consumer Law, (202) 874–5750; Steve Van Meter, Senior Attorney, Community and Consumer Law, (202) 874–5750; Karen Furst, Policy Analyst, Economic and Policy Analysis, (202) 874–4509; Paul Utterback, National Bank Examiner, Bank Supervision Policy, (202) 874–5461, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Oliver I. Ireland, Associate General Counsel, (202) 452–3625, Stephanie Martin, Managing Senior Counsel, (202) 452–3198, or Thomas Scanlon, Attorney, (202) 452–3594, Legal Division; or Adrienne D. Hurt, Assistant Director, (202) 452–2412, Jane J. Gell, Managing Counsel, (202) 452–3667, James H. Mann, Attorney, (202) 452–2412, or Minh-Duc T. Le, Attorney, (202) 452–3667, Division of Consumer and Community Affairs. For the hearing impaired only, contact Janice Simms, Telecommunications Device for the Deaf (TDD) (202) 872–4984, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: James K. Baebel, Senior Review Examiner, Division of Compliance and Consumer Affairs, (202) 736–0229; Deanna Caldwell, Community Affairs Officer, Division of Compliance and Consumer Affairs, (202) 736–0141; Robert A. Patrick, Counsel, Regulations and Legislation Section, (202) 898–3757; Marc J. Goldstrom, Counsel, Regulations and Legislation Section, (202) 898–8807; Marilyn E. Anderson, Senior Counsel, Regulations and Legislation Section, (202) 898–3522; Nancy Schucker Recchia, Counsel, Regulations and Legislation Section, (202) 898–8885, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Christine Harrington, Counsel (Banking and Finance), (202) 906–7957, or Paul Robin, Assistant Chief Counsel, (202) 906–6648, Regulations and Legislation Division; or Cindy Baltierra, Program Analyst, Compliance Policy, (202) 906–6540, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Background
II. Overview of Comments Received
III. Section-by-Section Analysis
IV. Guidance for Certain Institutions
V. Regulatory Analysis
  A. Paperwork Reduction Act
  B. Regulatory Flexibility Act
  C. Executive Order 12866
  D. Unfunded Mandates Act of 1995

I. Background

On November 12, 1999, President Clinton signed the GLB Act (Pub. L. 106–102) into law. Subtitle A of title V of the Act, captioned Disclosure of Nonpublic Personal Information (codified at 15 U.S.C. 6801 *et seq.*), limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties. Title V also requires the Agencies, the Secretary of the Treasury, the National Credit Union Administration (NCUA), the Federal Trade Commission (FTC), and the Securities and Exchange Commission (SEC), after consulting with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, to prescribe such regulations as may be necessary to carry out the purposes of the provisions in title V that govern disclosure of nonpublic personal information.

The Agencies have prepared final rules to implement subtitle A that are consistent and comparable to the extent possible, as is required by the statute.[1] The texts of the Agencies' proposed regulations are substantively identical, and differ only with respect to the citations of authority for each Agency's rulemaking and definitions appropriate for institutions within each Agency's primary jurisdiction.

II. Overview of Comments Received

On February 22, 2000, the Agencies published a joint notice of proposed rulemaking (the proposal or proposed rule) in the **Federal Register** (65 FR 8770).[2] The Agencies collectively received a total of 8,126 comments in response to the proposal, although many commenters sent copies of the same letter to each of the Agencies.[3] Of these, several thousand were received from individuals, virtually all of whom encouraged the Agencies to provide greater protection of individuals' financial privacy. Many individuals noted their concerns generally about the loss of privacy and the receipt of unwanted solicitations by marketers. A large number of individuals also requested the Agencies to support legislation that the commenters believe would provide additional protections.

Several letters were received from members of Congress. In two letters signed by several members of the House of Representatives, the Agencies were encouraged to exercise their rulemaking authority to provide more protections than were proposed. Other Congressmen requested, in separate letters, that the Agencies (a) create an exception under limited circumstances to the prohibition against the sharing of account numbers for marketing purposes, (b) ensure that social security numbers are considered "nonpublic personal information," and (c) refrain from extending the effective date of the rule.

The National Association of Insurance Commissioners (NAIC) submitted a comment on behalf of the State insurance authorities that generally supported the Agencies' proposed rule. The NAIC also proposed various measures to provide certain protections for consumers, such as specifying means to exercise the right to opt out of the disclosure of information. The NAIC further advised the Agencies to clarify the boundary of Federal and State jurisdiction over privacy regulations and ensure that the financial privacy rules under the Act are compatible with the privacy rules relating to medical information that are to be issued by the Secretary of the Department of Health and Human Services (HHS) under the Health Insurance Portability and Accountability Act (HIPPA) of 1996.[4]

Other comments were received from consumer groups and others advocating that the Agencies extend privacy protections in a number of ways, such as by requiring (a) financial institutions to provide consumers with access to their information maintained by the institutions and the opportunity to correct errors, (b) more detailed disclosures of the information collected and disclosed, and (c) disclosures of a financial institution's privacy policies and practices earlier in the process of establishing a customer relationship. In a letter signed by 33 State Attorneys General, the Agencies were requested to add certain consumer protections to the disclosure requirements and to the provision permitting financial institutions to enter into joint marketing agreements.

The majority of the remainder of comments received by the Agencies were from insured depository institutions or their representatives. These commenters offered a large number of suggested changes, with the most commonly advanced suggestions including: an extension of the effective date of the rule; an amendment to the definition of "nonpublic personal information" to focus more clearly on "financial" information; a streamlining of information required in the initial and annual disclosures; a clarification of how one or more of the statutory exceptions operate; an exclusion from, or clarification of, the definitions of "consumer" and "customer" in various contexts; and the addition of flexibility to provide initial notices at some point other than "prior to" the time a customer relationship is established.

Representatives of a wide variety of other interests, including the health care industry, retail merchants, insurance companies, securities firms, private investigators, and higher education, also suggested changes to the proposed rule.

The Agencies have modified the proposed rule in light of the comments received. These comments, and the Agencies' responses thereto, are discussed in the following section-by-section analysis. As was done in the preamble discussion of the proposal, the citations are to sections only, leaving citations to the part numbers used by each Agency blank. Following the section-by-section analysis, the Agencies have provided guidance for certain institutions that is intended to provide additional guidance on how these institutions may comply with the rule in a way that avoids unnecessary burden.

III. Section-by-Section Analysis

As an initial matter, the Agencies note that the final rule, unlike the proposal, presents the various sections in subparts that consist of related sections. This change was made to group related concepts together and thereby make the rule easier to follow. A derivation table is included following this preamble to assist readers in locating provisions as set out in the proposal. The Agencies also have added an Appendix A to the final rule, setting out sample disclosures for financial institutions to consider.

Section __.1 Purpose and Scope

Proposed § __.1 identified the purposes and scope of the rules. As stated in the proposal, the rule is intended to require a financial institution to provide notice to customers about its privacy policies and practices; to describe the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and to provide a method for consumers to prevent a financial institution from disclosing that information to certain nonaffiliated third parties by "opting out" of that disclosure, subject to various exceptions as stated in the rule. The Agencies invited comment on whether the rules should apply to foreign financial institutions that solicit business in the United States but that do not have an office in the United States.

Most of the comments received on this section focused on the scope of the rules. Several commenters suggested that the Agencies clarify how the rule applies to insurance companies. The Agencies note that section 505 of GLB Act, which sets out the enforcement authority of the Agencies, extends this authority to subsidiaries of entities within each Agency's primary jurisdiction. That section then explicitly excludes "persons providing insurance" from each Agency's enforcement authority (and, by operation of section 504(a)(1) of GLB Act, from the Agencies' rulemaking authority). The Agencies affected by this provision have concluded that the exclusion of "persons providing insurance" is not intended to remove insurance activities conducted directly by an insured depository institution from the scope of the rule. Consistent with this reading of the statute, each Agency's final rule states that the exclusion of persons providing insurance applies only to persons doing so in a subsidiary of an entity within the primary jurisdiction of that Agency. *See* § 40.1(b) (OCC rule); § 216.3(q) (Board rule); § 332.3(q) (FDIC rule); and § 573.1(b) (OTS rule). The OTS notes that, while it regulates savings and loan holding companies, a different Federal functional regulator, a state insurance authority, or the FTC may enforce privacy rules as to that holding company, under § 505 of the

[1] The NCUA, FTC, SEC, and the Treasury Department also have participated in the rulemaking process, and the NCUA, FTC, and SEC will separately issue comparable final rules.

[2] The NCUA, FTC, and SEC published separate proposed rules on different dates. These proposed rules, which were consistent and comparable with the proposals published by the Agencies, appeared in the **Federal Register** at 65 FR 10988 (March 1, 2000) (NCUA), 65 FR 11174 (March 1, 2000) (FTC), and 65 FR 12354 (March 8, 2000) (SEC).

[3] The NCUA, FTC, and SEC received 99, 640, and 112 comments, respectively, in response to their proposed rules.

[4] These proposed regulations were published for comment at 64 FR 59918 (Nov. 3, 1999).

Act, depending on the nature of a savings and loan holding company's activities.

Several other commenters asked that the final rule state that certain transactions that are exempt from the coverage of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) and Regulation Z (Reg. Z, 12 CFR part 226) also be treated as beyond the scope of the privacy rule. TILA and Reg. Z, which impose disclosure requirements on credit extended to consumers under certain circumstances, exempt several transactions, including those involving business, commercial, or agricultural credit. 15 U.S.C. 1603(1); 12 CFR 226.3(a). The Agencies agree that transactions that fit within the exemptions from TILA and Reg. Z for these types of credit also would fall outside the scope of the privacy rule, and have amended § __.1(b) accordingly. Thus, financial institutions may look at how this exemption is applied under Reg. Z for guidance on the scope of covered transactions under the privacy rule. It should be noted, however, that TILA exempts several other types of transactions that would be covered under the privacy rule if they are for the purpose of an individual obtaining a financial product or service as that term is defined in the privacy regulation. *See* 15 U.S.C. 1603(2) and (3).

A few commenters stated that the rule should apply to foreign entities who solicit business from people in the United States. The OCC, FRB, and FDIC each have been given explicit authority to enforce the privacy rule with respect to foreign institutions within their respective jurisdictions that have offices in the U.S. Those commenters who favored applying the regulation to foreign offices of financial institutions that do not have offices within the U.S. suggested that an expanded scope would provide additional protections to consumers and would eliminate what they perceive to be a competitive disadvantage of domestic institutions. While the Agencies support consistent protections for consumers regardless of the entity from whom a financial product or service is obtained, at this stage the Agencies do not believe that it is appropriate to attempt to apply the rule to offshore offices of financial institutions.

Several comments suggested that the rule should not apply to entities that must comply with regulations issued by HHS that implement HIPAA. Given the broad definition of "financial institution" under the GLB Act, certain entities, such as health insurers, are subject to these privacy rules as well as rules promulgated under HIPAA regarding the appropriate handling of protected health information. Accordingly, financial institutions may be covered both by this privacy rule and by the regulations promulgated by HHS under the authority of sections 262 and 264 of HIPAA once those regulations are finalized. Based on the proposed HIPAA rules, it appears likely that there will be areas of overlap between the HIPAA and financial privacy rules. For instance, under the proposed HIPAA regulations, consumers must provide affirmative authorization before a covered institution may disclose medical information in certain instances whereas under the financial privacy rules, institutions need only provide consumers with the opportunity to opt out of disclosures. In this case, the Agencies anticipate that compliance with the affirmative authorization requirement, consistent with the procedures required under HIPAA, would satisfy the opt out requirement under the financial privacy rules. After HHS publishes its final rules, the Agencies will consult with HHS to avoid the imposition of duplicative or inconsistent requirements.

Section __.2 Rule of Construction

Proposed § __.2 of the rules set out a rule of construction intended to clarify the effect of the examples used in the rules. As noted in the proposal, these examples are not intended to be exhaustive; rather, they are intended to provide guidance about how the rules would apply in specific situations.

Commenters generally agreed that examples are helpful in clarifying how the rule will work in specific circumstances and suggested that the Agencies should include more examples. Many commenters requested the Agencies to provide examples of model disclosures. Commenters also generally agreed that it is useful to state that the list of examples is not intended to be exhaustive, and that compliance with one of the examples would be deemed compliance with the regulation. A few commenters suggested that the regulation state that a financial institution is not obligated to comply with an example but has the latitude to comply with the general rules in other ways. Others stated that the examples ought to be identical in each privacy regulation adopted by the Agencies, the FTC, NCUA, and SEC.

The Agencies believe that more examples would be helpful, and have included additional examples in appropriate places throughout the rule. The Agencies also have provided sample clauses in Appendix A to each Agency's rule to aid financial institutions in their drafting of privacy notices. The sample clauses are provided to illustrate the level of detail the Agencies believe is appropriate. The Agencies caution financial institutions against relying on the sample disclosures without determining the relevance or appropriateness of the disclosure for their operations. The Agencies have used statutory terms, such as "nonpublic personal information" and "nonaffiliated third parties," in the sample clauses to convey generally the subject of the clauses. However, a financial institution that uses these terms must provide sufficient information to enable consumers to understand what these terms mean in the context of the institution's notices. Moreover, the Agencies note that, in providing the sample disclosures, the Agencies are addressing solely the level of detail required and are not attempting to provide guidance on issues such as type size, margin width, and so on.

The Agencies have not added a statement in the final rule regarding a financial institution's ability to comply with the rule in ways other than as suggested in the examples, but instead retain the statement that the examples are not exclusive. The rule also states that compliance with the examples will constitute compliance with the rule. The Agencies believe that, when read together, these provisions give financial institutions sufficient flexibility to comply with the regulation but also sufficient guidance about the use of examples.

The Agencies note that an example that mentions a particular activity does not, by itself, authorize a financial institution to engage in that activity. Any such authority must have a different source.

Section __.3 Definitions

a. Affiliate

The proposal adopted the definition of "affiliate" that is used in section 509(6) of the GLB Act. An affiliation exists when one company "controls" (which is defined in § __.3(g), below), is controlled by, or is under common control with another company. The definition includes both financial institutions and entities that are not financial institutions.

The Agencies received comparatively few comments in response to this definition. One commenter requested that the final rule state that a bank service company will be deemed to be an affiliate of every bank that has an interest in it. The Agencies have declined to adopt this suggestion. If the relationship between a financial institution and a bank service company satisfies the test for affiliation set out in the statute and regulation, then an affiliation exists.

In light of the comparatively few comments received and the nature of those comments, the Agencies adopt the definition of "affiliate" as proposed.

b. Clear and Conspicuous

Under the proposed rules, various notices must be "clear and conspicuous." The proposed rules defined this term to mean that the notice must be reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice. The proposal did not mandate the use of any particular technique for making the notices clear and conspicuous, but provided examples of how a notice may be made clear and conspicuous. As noted in the preamble to the proposed rule, each financial institution retains the flexibility to decide for itself how best to comply with this requirement.

The Agencies received a large number of comments on this proposed definition. Several commenters favored adopting the definition as proposed, with some of these advocating that the final rule add a requirement that disclosures be on a separate piece of paper in order to ensure that they will be conspicuous. Others stated that the definition was unnecessary, given the experience financial institutions have in complying with requirements that disclosures mandated by other laws be clear and conspicuous. Several commenters maintained that the rule proposed is inconsistent with requirements in other consumer protection regulations such as Reg. Z and the Truth in Savings regulation (Regulation DD, 12 CFR part 230), which require only that a disclosure be reasonably understandable. Many of these commenters expressed concern that the examples would invite litigation because of ambiguities inherent in terms used in the examples in the proposed rule such as "ample line spacing," "wide margins," and "explanations * * * subject to different interpretations." A few commenters questioned how the requirement would work in a document that contains several disclosures that each must be clearly and conspicuously disclosed, while others raised questions about how a disclosure may be clear and conspicuous on a website. These comments are addressed below.

New standard for "clear and conspicuous." The Agencies recognize that the proposed definition develops the concept of "clear and conspicuous" beyond what is currently understood by the term. However, the Agencies added the phrase "designed to call attention to the nature and significance of the information contained" to provide meaning to the term "conspicuous." The Agencies believe that this standard, when coupled with the existing standard requiring that a disclosure be readily understandable, likely will result in notices to consumers that communicate effectively the information needed by consumers to make an informed choice about the privacy of their information, including whether to transact business with a financial institution.

The standard for clear and conspicuous adopted by the Agencies in this rulemaking applies solely to disclosures required under the privacy rules. Disclosures governed by other rules requiring clear and conspicuous disclosures (such as Reg. Z) are beyond the scope of this rulemaking.

Examples of "clear and conspicuous." The Agencies recognize that many of the examples are imprecise. The Agencies believe, however, that more prescriptive examples, while perhaps easier to conform to, likely would result in requirements that would be inappropriate in a given circumstance. To avoid this result, the examples provide generally applicable guidance about ways in which a financial institution may make a disclosure clear and conspicuous. The Agencies note that the examples of how to make a disclosure clear and conspicuous are not mandatory. A financial institution must decide for itself how best to comply with the general rule, and may use techniques not listed in the examples. To address concerns about the imprecision of the examples, the Agencies have incorporated several of the commenters' suggestions in the final rule for ways to make the guidance more helpful.

Combination of several "clear and conspicuous" notices. A document may combine several disclosures that each must be clear and conspicuous. The final rule provides an example, in § __.3(b)(2)(ii)(E), of how a financial institution may make disclosures conspicuous, including disclosures on a combined notice. In order to avoid the potential conflicts envisioned by several commenters between two different rules requiring that different sets of disclosures each be provided clearly and conspicuously, the final rule does not mandate precise specifications for how various disclosures must be presented.

Because the Agencies believe that privacy disclosures may be clear and conspicuous when contained in a document containing other disclosures, the rule does not mandate that disclosures be provided on a separate piece of paper. Such a requirement is not necessary and would significantly increase the burden on financial institutions.

Disclosures on web pages. Several commenters requested guidance on how they may clearly and conspicuously disclose privacy-related information on their Internet sites. The Agencies recognize that disclosures over the Internet present some issues that will not arise in paper-based disclosures. There may be web pages within a financial institution's website that consumers may view in a different order each time they access the site, aided by hypertext links. Depending on the customer hardware and software used to access the Internet, some web pages may require consumers to scroll down to view the entire page. To address these issues, the Agencies have included a statement in the example in § __.3(b)(2)(iii) concerning Internet disclosures informing financial institutions that they may comply with the rule if they use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice. In addition, a financial institution is to place either a notice or a conspicuous link on a page frequently accessed by consumers, such as a page on which transactions are conducted.

Given current technology, there are a range of approaches a financial institution could take to comply with the rule. For example, a financial institution could use a dialog box that pops up to provide the disclosure before a consumer provides information to the institution. Another approach would be a simple, clearly labeled graphic located near the top of the page or in close proximity to the financial institution's logo, directing the customer, through a hypertext link or hotlink, to the privacy disclosures on a separate web page.

For the reasons advanced above, the Agencies have adopted the definition of "clear and conspicuous," with the changes previously described and with certain other changes intended to make the definition easier to read.

c. Collect

The statute requires a financial institution to include in its initial and annual notices a disclosure of the categories of nonpublic personal

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information that the institution collects. The proposal defined "collect" to mean obtaining any information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information. This definition was included to provide guidance about the information that a financial institution must include in its notices and to clarify that the obligations arise regardless of whether the financial institution obtains the information from a consumer or from some other source.

Commenters suggested that the final rule treat information that is not organized and retrievable in an automated fashion as not "collected." This approach would exclude separate documents not included in a file. The Agencies disagree that information should not be deemed to be collected simply because it is not retrievable in an automated fashion. The Agencies believe that the method of retrieval is irrelevant to whether information should be protected under the rule. The Agencies agree, however, that the scope of the regulation should be refined, and have changed the definition of "collect" by using language taken from the Privacy Act of 1974 (5 U.S.C. 552a).

Other commenters requested that the rule clarify that information that is received by a financial institution but then immediately passed along without maintaining a copy of the information is not "collected" as this term is used in the final rule. The Agencies believe that merely receiving information without maintaining it would not be "collecting" the information. The final rule reflects this by stating that the information must be organized or retrievable by the financial institution. Otherwise, the definition of "collect" is adopted as proposed.

d. Company

The proposal defined "company," which is used in the definition of "affiliate," as any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

The Agencies received no substantive comments on this proposed definition. Accordingly, the Agencies adopt the definition of "company" as proposed.

e. Consumer

The GLB Act distinguishes "consumers" from "customers" for purposes of the notice requirements imposed by the Act. A financial institution is required to give a "consumer" the notices required under Title V only if the institution intends to disclose nonpublic personal information about the consumer to a nonaffiliated third party for purposes other than as permitted by section 502(e) of the statute (as implemented by §§ __.14 and __.15 of the final rule). By contrast, a financial institution must give all "customers" a notice of the institution's privacy policy at the time of establishing a customer relationship and annually thereafter during the continuation of the customer relationship.

The proposal defined "consumer" to mean an individual (and his or her legal representative) who obtains, from a financial institution, financial products or services that are to be used primarily for personal, family, or household purposes. Because "financial product or service" is defined to include the evaluation by a financial institution of an application to obtain a financial product or service (*see* further discussion of this point, below) a person becomes a consumer even if the application is denied or withdrawn. An individual also would be deemed to be a consumer for purposes of a financial institution if that institution purchases the individual's account from some other institution.

The Agencies received a large number of comments on this proposed definition, raising questions about how the definition would apply in a variety of situations. These comments are addressed below.

Distinction between "consumer" and "customer." While many agreed with the distinction drawn in the proposal between "consumer" and "customer," a few commenters suggested that no distinction between "consumer" and "customer" should be made, given that, in these commenters" views, the statute appears to use the terms interchangeably. The Agencies believe, however, that the distinction was deliberate and that the rule should implement it accordingly. A plain reading of the statute supports the conclusion that Congress created one set of protections (*i.e.*, a financial institution's privacy policy and opt out notice, and the right to opt out if a financial institution intends to disclose nonpublic personal information to nonaffiliated third parties) for anyone who obtains a financial product or service and an additional set of protections (*i.e.*, the initial notices at the time of establishing a customer relationship and annual notices thereafter) for anyone who establishes a relationship of a more lasting nature than an isolated transaction with a financial institution. Thus, the statute tailors the notice requirements to the type of relationship an individual has with a financial institution. This distinction is preserved in the final rule.

Applicants as consumers. Many of the comments on the proposed definition of "consumer" disagreed that someone should be deemed a consumer of a financial institution by virtue of the institution evaluating that individual's application for a financial product or service. These commenters maintained that the individual has not obtained a financial product or service, as is required by the GLB Act. The Agencies remain of the view, however, that it is consistent with both the spirit and the letter of the Act to consider an individual as having obtained a financial product or service when a financial institution evaluates information provided to it from the individual for the purpose of obtaining some other financial product or service. Financial institutions routinely provide several services that are integral to the delivery of a financial product. Frequently among these services is the evaluation by the financial institution of information provided by an individual. In certain instances, such as when an individual is shopping for the best rate on a mortgage loan or the lowest premium for an insurance policy, that evaluation may be the sole financial product or service delivered. In other instances, that evaluation may be one of several services provided in connection with establishing a customer relationship. In some cases financial institutions impose separate charges for considering applications or assessing an individual's credit worthiness, recognizing both the cost to the institution and the value to the individual of this service.

In addition to being consistent with the language of the statute, the proposed definition of "consumer" is consistent with one of the primary purposes of Title V of GLB Act, namely, to enable an individual to limit the sharing of nonpublic personal information by a financial institution with a nonaffiliated third party. The information provided by a person to a financial institution before a customer relationship is established is likely to contain the types of information that the statute is designed to protect. This information is no less deserving of protection simply because an application is denied or withdrawn. For these reasons, the Agencies have retained within the definition of "consumer" individuals whose applications are evaluated by a financial institution. *See* § __.3(e)(2)(i).

Loan sales. Several commenters requested clarification of whether an individual becomes a consumer in various other scenarios involving loans.

Commenters posited a wide variety of examples, which, if each were to be addressed specifically in the rule, would require a final rule of enormous complexity and detail. The Agencies believe that a rule setting forth a general principle that is flexible enough to be applied in the array of loan transactions posited by the commenters is more appropriate.

Towards this end, the Agencies have stated in the final rule, at § __.3(e)(2)(iv), that a person will be a consumer of any entity that holds ownership or servicing rights to an individual's loan. (The Agencies note that such a person may not be a customer, however; *see* explanation of how the definition "customer" will be applied in the loan context, in the discussion of the definition of "customer" below. *See also* §§ __.4(c)(2) and __.4(c)(3)(ii) for further discussion concerning when a borrower establishes a customer relationship in the context of a loan sale.) The Agencies believe that financial institutions that own or service a loan are providing a financial product or service to the individual borrower in question. In some cases, the product or service is the funding of the loan, directly or indirectly. In other cases, the product or service is the processing of payments, sending account-related notices, responding to consumer questions and complaints about the handling of the account, and so on. The final rule defines "consumer" in a way that covers individuals receiving financial products or services in each of these situations.

Agents of financial institutions. Several commenters agreed with the principle set out in the proposed rule that an individual should not be considered to be a consumer of an entity that is acting as agent for a financial institution. These commenters noted that the financial institution that hires the agent is responsible for that agent's conduct in carrying out the agency responsibilities. The Agencies agree and continue to believe that the financial institution is the entity that has a consumer relationship, even if it uses agents to help it deliver its products or services. Accordingly, the proposed rule retains the rule governing agents, with modifications made to improve its clarity. See § __.3(e)(2)(v).

Legal representative. The Agencies also agree with the suggestion made by several commenters that the definition of "consumer" should clarify that the obligations stemming from a consumer relationship may be satisfied by dealing either with the individual who obtains a financial product or service from a financial institution *or* that individual's representative. The Agencies do not intend for the rule to require a financial institution to send opt out and initial notices to *both* the individual and the individual's legal representatives, and have amended the final rule accordingly in § __.3(e)(1).

Trusts. The Agencies received several comments concerning whether an individual who obtains financial services in connection with trusts is a consumer or customer of a financial institution. Several commenters urged the Agencies to generally exempt a financial institution from the requirements of the rule when it acts as a fiduciary, or, in the alternative, clarify the categories of individuals that are considered to be customers. Commenters proposed, for example, that individuals who are beneficiaries with current interests should be identified as customers, whereas individuals who are only contingent beneficiaries should not be customers. Other commenters stated that when the financial institution serves as trustee of a trust, neither the grantor nor beneficiary is a consumer or customer under the rule. In these commenters' view, the trust itself is the institution's "customer," and, therefore, the rule should not apply to a financial institution when it acts as trustee. These commenters also stated that when a financial institution is a trustee, it serves as a fiduciary and is subject to other obligations to protect the confidentiality of the beneficiaries' information that are more stringent than those under the provisions in the GLB Act. Similarly, these and other commenters claimed that an individual who is a participant in an employee benefit plan administered or advised by a financial institution does not qualify as a consumer or customer. The commenters opined that the plan sponsor, or the plan itself, is the "customer" for the purposes of the proposed rule. These commenters contended that plan participants have no direct relationship with the financial institution and, in any event, the financial institution is authorized to use information that would be covered under the GLB Act only in accordance with the directions of the plan sponsor. The commenters concluded, therefore, that the regulations should specifically exclude individuals who are participants in an employee benefit plan from the definition of customer.

The Agencies believe that the definition of "consumer" in the GLB Act does not squarely resolve whether the beneficiary of a trust is a consumer of the financial institution that is the trustee. The Agencies agree with the commenters who concluded that, when the financial institution serves as trustee of a trust, neither the grantor nor beneficiary is a consumer or customer under the rule. Instead, the trust itself is the institution's "customer," and therefore, the rule does not apply because the trust is not an individual. The Agencies note that a financial institution that is a trustee assumes obligations as a fiduciary, including the duty to protect the confidentiality of the beneficiaries' information, that are consistent with the purposes of the GLB Act and enforceable under state law. Accordingly, the Agencies have excluded an individual who is a beneficiary of a trust or a plan participant of an employee benefit plan from the definitions of "consumer" and "customer." Nevertheless, the Agencies believe that an individual who selects a financial institution to be a custodian of securities or assets in an IRA is a "consumer" under the GLB Act. The Agencies have included examples in the rule that appropriately illustrate this interpretation of the GLB Act in §§ __.3(e)(2)(vi)–(viii) and § __.3(i)(2)(i)(D).

Requirements arising from consumer relationship. While the proposed and final rules define "consumer" broadly, the Agencies note that this will not result in any additional burden to a financial institution in situations where (a) no customer relationship is established and (b) the institution does not intend to disclose nonpublic personal information about a consumer to nonaffiliated third parties. Under the approach taken in the final rule, a financial institution is under no obligation to provide a consumer with any privacy disclosures unless it intends to disclose the consumer's nonpublic personal information to nonaffiliated third parties outside the exemptions in §§ __.14 and __.15. A financial institution that wants to disclose a consumer's nonpublic personal information to nonaffiliated third parties is not prohibited under the final rule from doing so, if the requisite notices are delivered and the consumer does not opt out. Thus, as it applies to consumers who are not customers, the rule allows a financial institution to avoid all of the rule's requirements if it chooses to do so. Conversely, if a financial institution determines that the benefits of disclosing consumers' nonpublic personal information to nonaffiliated third parties outweighs the attendant burdens, the financial institution is free to do so, provided it notifies consumers about the disclosure and affords them a reasonable opportunity to opt out. In this way, the

rule attempts to strike a balance between protecting an individual's nonpublic personal information and minimizing the burden on a financial institution.

f. Consumer Reporting Agency

The proposal adopted the definition of "consumer reporting agency" that is used in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)). This term was used in proposed §§ __.11 and __.13.

The Agencies received no comments suggesting any changes to this definition. Accordingly, the definition is adopted as proposed. It is used in §§ __.6(f), __.12(a), and __.15(a)(5) of the final rule.

g. Control

The proposal defined "control" using the tests applied in section 23A of the Federal Reserve Act (12 U.S.C. 371c). This definition is used to determine when companies are affiliated (see discussion of § __.3(a), above), and would result in financial institutions being considered as affiliates regardless of whether the control is by a company or individual.

The Agencies received few comments in response to this definition. The one substantive suggestion received was to adopt a test focused solely on percent of stock owned in a company so as to avoid the uncertainties arising from a "control in fact" test. The Agencies believe, however, that any test based only on stock ownership is unlikely to be flexible enough to address all situations in which companies are appropriately deemed to be affiliated. Accordingly, the Agencies adopt the definition of "control" as proposed.

h. Customer

The proposal defined "customer" as any consumer who has a "customer relationship" with a particular financial institution. As is explained more fully in the discussion of § __.4, below, a consumer is a customer of a financial institution when the consumer has a continuing relationship with the institution.

The Agencies received a large number of comments on the definition of "customer" and "customer relationship." Given the interdependence of the two terms, the following analysis of the comments received will address both under the heading "customer relationship."

i. Customer Relationship

The proposed rules defined "customer relationship" as a continuing relationship between a consumer and a financial institution whereby the institution provides a financial product or service that is to be used by the consumer primarily for personal, family, or household purposes.[5] As noted in the proposal, a one-time transaction may be sufficient to establish a customer relationship, depending on the nature of the transaction. A consumer would not become a customer simply by repeatedly engaging in isolated transactions that by themselves would be insufficient to establish a customer relationship, such as withdrawing funds at regular intervals from an ATM owned by an institution at which the consumer has no account. The proposal also stated that a consumer would have a customer relationship with a financial institution that makes a loan to the consumer and then sells the loan but retains the servicing rights. The Agencies received a large number of comments on this definition, as discussed below.

Point at which one becomes a customer. The Agencies received many comments in response to the definitions of "customer" and "customer relationship." Commenters criticized what they considered to be the ill-defined line distinguishing consumers from customers. These commenters stated that the proposed distinction makes it difficult for a financial institution to know when the obligations attendant to a customer relationship arise. Several suggested that the distinction should be based on when a consumer and financial institution enter into a written contract for a financial product or service.

The Agencies recognize that the distinction between consumers and customers will, in some instances, require a financial institution to make a judgment about whether a customer relationship is established. In those cases where an individual engages in a transaction for which it is reasonable to expect no further communication about that transaction from the financial institution (such as ATM transactions, purchases of money orders, or cashing of checks), the individual will not have established a customer relationship as a result of that transaction. In other situations where a consumer typically would receive some measure of continued service following, or in connection with, a transaction (such as would be the case when a consumer opens a deposit account, borrows money, or obtains investment advice), a customer relationship will be established. The Agencies believe that the distinction set out in the proposed rule, as further clarified by the examples in the final rule of when a customer relationship is, and is not, established, provides a sufficiently clear line while retaining flexibility to address less clear-cut situations on a case-by-case basis.

Customer relationship defined by written contract. The Agencies agree with those commenters who consider the execution of a written contract by a consumer and financial institution as clear evidence that a customer relationship has been established. The proposed rule cited the execution of a written contract as an example of when a customer relationship is established, and the final rule retains that example in § __.4(c)(3)(i)(B). However, a test based solely on whether there is a written contract could inappropriately exclude situations in which an individual is a customer of a financial institution as a result of obtaining, for instance, financial, economic, or investment advisory services from a financial institution. Accordingly, the final rule does not define a customer relationship solely by the execution of a written contract.

Use of "isolated transaction" test. The final rule also does not define the distinction between consumer and customer based solely on whether the transaction is an isolated event. The Agencies used this concept in several examples in the proposed rule to illustrate one of the factors that may go into whether a relationship is of a continuing nature. Several commenters suggested that this approach was insufficiently precise to serve as a workable distinction between consumers and customers. The Agencies agree that the test may not be useful in all instances, but believe that it will help clarify the status of relationships in certain situations. Accordingly, the final rule retains examples in §§ __.3(i)(2)(ii)(A) and (C) that cite the isolated nature of a given transaction as an indication that the transaction in question does not establish a customer relationship.

Purchase of insurance. Other commenters suggested that, in the context of financial institutions that engage in the sale of insurance and that are regulated by the Agencies, the customer should be the policyholder and not the beneficiary. The Agencies agree, and note that the final rule retains the example § __.3(i)(2)(i)(D) of purchasing an insurance product as one situation in which a customer relationship is formed. In this case, the person obtaining a financial product or service from the financial institution is the person purchasing the policy.

Sales of loans. As previously noted, several commenters raised questions in the context of loan sales. Many commenters stated that, under the final rule, a person should not be considered a customer of two financial institutions when the originating bank sells the servicing rights. A point consistently made by these commenters was that a borrower would be equally well protected with less risk of confusion if the borrower is deemed to be a customer of only one entity in connection with a loan, with that entity perhaps being the party with whom the borrower communicates about the loan. The Agencies believe that it is appropriate to consider a loan transaction as giving rise to only one customer relationship, with the recognition that this customer relationship may be transferred in connection with a sale of part or all of the loan. In this way, the borrower will not be inundated by privacy notices, many of which might be from secondary market purchasers that the borrower did not know had any connection to his or her loan. The Agencies note, however, that a customer will remain a consumer of the entity that transfers the servicing rights, as well as a consumer of any other entity that holds an interest in the loan.

In order to satisfy the statutory requirement that a customer receive an annual notice from a financial institution until that relationship terminates, the final rule provides that the borrower must be deemed to have a customer relationship with at least one of the entities that hold an interest in the loan. In the case of a financial institution that makes a loan, retains it in its portfolio, and provides servicing for the loan, the borrower clearly would have a customer relationship with that institution. Less clear, however, are situations in which servicing is sold or investors purchase a partial interest in a loan. The Agencies have adopted an approach designed to ensure that a customer receives annual notices for the duration of the customer relationship from the most appropriate financial institution.

Under the final rule as stated in § __.3(i)(2)(i)(B), a customer relationship will be established as a general rule with the financial institution that makes a loan to an individual. This customer relationship then will attach to the entity providing servicing. Thus, if the originating lender retains the servicing, it will continue to have a customer relationship with the borrower and will be obligated to provide annual notices for the duration of the customer relationship. If the servicing is sold, then the purchaser of the servicing rights will establish a customer relationship (and the originating lender will have a consumer relationship with the borrower). *See* § __.3(i)(2)(ii)(B). In this way, the borrower will be entitled to receive an initial notice and annual notices from the loan servicer, but will not receive initial and annual notices from entities that hold interests in the loan but are unknown to the consumer.

Mortgage brokers. Several commenters suggested that the use of a mortgage broker should not create a customer relationship. The Agencies disagree. A relationship between a mortgage broker and a consumer is more than an isolated transaction, given that the mortgage broker is likely to provide many services for a consumer, such as analyzing financial information, performing credit checks, negotiating with other financial institutions on the consumer's behalf, and assisting with loan closings. In light of the similarities between the services provided by a mortgage broker and those provided by, for instance, an insured depository institution that makes a mortgage loan, the Agencies believe it is appropriate to consider a mortgage broker to be a financial institution that establishes a customer relationship when the broker enters into an agreement or understanding with a consumer whereby the broker undertakes to arrange or broker a home mortgage loan for the consumer. The final rule reflects this in § __.3(i)(2)(i)(F).

Trusts. The final rule adds an example in § __.3(i)(2)(i)(E) to clarify that an individual will be deemed to establish a customer relationship when a bank acts as a custodian for securities or assets in an IRA. This example is consistent with the explanation set out above in the discussion of "consumer" concerning trusts.

j. Federal Functional Regulator

The proposal sought comment on a definition of "government regulator" that included each of the Agencies participating in this rulemaking, the Secretary of the Treasury, the NCUA, FTC, SEC, and State insurance authorities under the circumstances identified in the definition. This term was used in the exception set out in proposed § __.11(a)(4) for disclosures to law enforcement agencies, "including government regulators."

The few comments that were received on this definition suggested that it be expanded to include additional governmental entities. The Agencies note that, for purposes of the privacy rule, this term is relevant only in the discussion of when a financial institution may disclose information to a law enforcement agency. The exception as stated in the statute uses the term "federal functional regulator" (*see* section 502(e)(5)), which term is defined in the statute at section 509(2) and also includes the Secretary of the Treasury for purposes of the exception permitting disclosures to law enforcement agencies. The Agencies have decided that it is appropriate simply to use the term that is used in the statute and adopt its definition.

k. Financial Institution

The proposal defined "financial institution" as any institution the business of which is engaging in activities that are financial in nature, or incidental to such financial activities, as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). The proposal exempted from the definition of "financial institution" those entities specifically excluded by the GLB Act.

Commenters suggested that the final rule contain several exclusions to this definition, including those for securitization trusts, debt buyers, and credit bureaus. The Agencies have not included these exceptions in the final rule, in part because the Agencies believe that it is inappropriate to exclude many of the activities suggested by commenters and in part because the objective of the suggested exclusions can be achieved in other ways. Even if an entity is a financial institution as that term is used in the GLB Act, it will not have any disclosure responsibilities under the Act or this rule if it does not provide a financial product or service to a consumer. In most of the situations posited by the commenters, the entity in question will not meet that test and, therefore, will fall outside the scope of the rule with respect to privacy disclosures.[6]

For the reasons discussed above, the Agencies adopt the definition of "financial institution" as proposed.

l. Financial Product or Service

The proposal defined "financial product or service" as a product or service that a financial institution could offer as an activity that is financial in nature, or incidental to such a financial activity, under section 4(k) of the Bank Holding Company Act of 1956, as amended. An activity that is complementary to a financial activity, as described in section 4(k), was not included in the proposed definition of "financial product or service." The proposal's definition included the financial institution's evaluation of information collected in connection

[5] As noted in the preamble to the proposed rule, "customer" may be defined differently for purposes of other regulations. *See, e.g.*, 12 CFR 7.4002.

[6] However, these entities will be subject to the limits on redisclosures under § __.11 with respect to any nonpublic personal information they receive from a nonaffiliated financial institution that has disclosure obligations under this rule.

with an application by a consumer for a financial product or service even if the application ultimately is rejected or withdrawn. It also included the distribution of information about a consumer for the purpose of assisting the consumer in obtaining a financial product or service.

Several commenters in response to this proposed definition criticized the Agencies' interpretation of the Act and suggested that the evaluation of application information should not be considered a financial product or service. For the reasons advanced above in the discussion of the definition of "consumer," the Agencies continue to believe that it is appropriate to retain evaluation or brokerage of information as within the scope of financial products or services covered by the rule. Accordingly, the final rule adopts the definition of "financial product or service" as proposed.

m. Nonaffiliated Third Party

The proposal defined "nonaffiliated third party" as any person (which includes natural persons as well as corporate entities) except (1) an affiliate of a financial institution and (2) a joint employee of a financial institution and a third party. The proposal clarified the circumstances under which a company that is controlled by a financial institution pursuant to that institution's merchant banking activities or insurance company activities would be a "nonaffiliated third party" of that financial institution.

The Agencies received very few comments in response to this proposed definition. One commenter requested that the final rule state that a disclosure of information to someone who is serving as a joint employee of two financial institutions should be deemed to have been disclosed to both financial institutions. The Agencies disagree with this result. Instead, the Agencies believe it is appropriate to deem the information to have been given to the financial institution that is providing the financial product or service in question. Thus, for instance, if an employee of an insured depository institution is a dual employee with a securities firm, information received by that person in connection with a securities transaction conducted with the securities firm would be deemed to have been received by the securities firm.

In light of the comments received, the Agencies adopt the definition of "nonaffiliated third party" as proposed.

n. Nonpublic Personal Information

Section 509(4) of the GLB Act defines "nonpublic personal information" to mean "personally identifiable financial information" that is provided by a consumer to a financial institution, results from any transaction with the consumer or any service performed for the consumer, or is otherwise obtained by the financial institution. It also includes any "list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information other than publicly available information." The statute excludes publicly available information (unless provided as part of the list, description or other grouping described above), as well as a list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using nonpublic personal information. The statute does not define either "personally identifiable financial information" or "publicly available information."

The proposed rules implemented this provision of the GLB Act by restating the categories of information described above. The proposed rules presented two alternative approaches to identifying what information would be regarded as publicly available (and therefore, as a general rule, outside the definition of "nonpublic personal information"). Alternative A deemed information as publicly available only if a financial institution *actually obtained* the information from a public source while Alternative B treated information as publicly available if a financial institution *could* obtain it from such a source. Both Alternatives A and B included within the definition of "nonpublic personal information" publicly available information that is provided as part of a list, description, or other grouping of consumers.

Commenters favoring Alternative A noted that it provided the greatest protection for consumers by treating anything the consumer gives to a financial institution to obtain a financial product or service as nonpublic personal information. Under Alternative A, this protection would be lost only if a financial institution actually obtained the information from a public source. These commenters also preferred the bright-line distinction drawn by treating as nonpublic personal information any information given by a consumer to obtain a financial product or service or information that results from transactions between a financial institution and a consumer. However, the majority of those commenting on this issue favored Alternative B, noting that this alternative was consistent with the statute and would be far less burdensome on financial institutions. These commenters suggested that a requirement that the information actually be obtained from a public source would impose needless burden on financial institutions (by requiring, for instance, that a financial institution "tag" information they obtained from public records) and is not required by the statute.

The final rule adopts an approach that the Agencies believe incorporates the benefits of both alternatives. Under the final rule, information will be deemed to be "publicly available" and therefore excluded from the definition of "nonpublic personal information" if a financial institution has a reasonable basis to believe that the information is lawfully made available to the general public from one of the three categories of sources listed in the rule. *See* § __.3(p)(1). The final rule states that a financial institution will have a "reasonable basis" for believing that information is lawfully made available if it has taken steps to determine that the information is of the type that is available to the general public and, if an individual could direct that the information not be made available to the general public, whether the individual has done so. In this way, a financial institution will be able to avoid the burden of having to actually obtain information from a public source, but will not be free simply to assume that information is publicly available without some reasonable basis for that belief. The final rule cites, as an example of information a financial institution might reasonably believe to be publicly available, the fact that someone has a loan that is secured by a mortgage in jurisdictions where mortgages are recorded. *See* § __.3(p)(3)(iii)(A). The rule also states that a financial institution will have a reasonable basis to believe that a telephone number is publicly available if the institution either located the number in a telephone book or was informed by the consumer that the number is not unlisted. *See* § __.3(p)(3)(iii)(B).

This approach is based on the underlying principle that, if a consumer has some measure of control over the public availability of his or her information, a financial institution should not automatically assume that the information is in fact publicly available. In the case of a mortgage in most jurisdictions, the borrower has no choice about whether the lender will make the mortgage a matter of public record; a lender must do so in order to protect its security interest. In the case of a telephone number, a person may request that his or her number be unlisted. Thus, in evaluating whether it is reasonable to believe that information is publicly available, a financial institution should consider whether the information is of a type that a consumer could keep from being a matter of public record.

To implement the complex definition of "nonpublic personal information" that is provided in the statute, the final rule adopts a definition that consists, generally speaking, of (1) personally identifiable financial information, plus (2) a consumer list (and publicly available information pertaining to the consumers) that is derived using any personally identifiable financial information that is *not* publicly available. From that body of information, the final rule excludes publicly available information (except as noted above) and any consumer list that is derived without using personally identifiable financial information that is not publicly available. *See* §§ __.3(n)(1) and (2). Examples are provided in § __.3(n)(3) to illustrate how this definition applies in the context of consumer lists.

o. Personally Identifiable Financial Information

The proposed rules defined "personally identifiable financial information" to include information that a consumer provides a financial institution in order to obtain a financial product or service, information resulting from any transaction between the consumer and the financial institution involving a financial product or service, and information about a consumer a financial institution otherwise obtains in connection with providing a financial product or service to the consumer. The proposed rule also treated the fact that someone is a customer of a financial institution as personally identifiable financial information. In essence, the proposed rules treated any personally identifiable information as financial if it was obtained by a financial institution in connection with providing a financial product or service to a consumer. The Agencies noted in the preamble to the proposed rule that this interpretation may result in certain information being covered by the rules that may not be considered intrinsically financial, such as health status.

The Agencies received a large number of comments in response to this definition, most of which maintained that the definition inappropriately included certain identifying information that is not financial, such as name, address, and telephone number. Many others maintained that "personally identifiable financial information" should not include the fact that someone is a customer of a financial institution. These commenters typically noted that many customer relationships are matters of public record (such as would be the case, for instance, anytime a transaction results in the recordation of a security interest) while other customer relationships are matters of public knowledge (because consumers frequently disclose the relationships by writing checks, using credit cards, and so on). Many commenters stated that aggregate data about a financial institution's customers that lack personal identifiers should not be considered personally identifiable financial information.

Treatment of identifying information as financial. The Agencies continue to believe that it is appropriate to treat any information as financial information if it is requested by a financial institution for the purpose of providing a financial product or service. The Agencies also believe this approach is consistent with the express language of the statute. Although the statute does not define the term "financial," it does include a broad definition of "financial institution" which encompasses a large number of entities (such as travel agencies, insurance companies, and data processors) that engage in activities not traditionally considered financial. As a consequence of that definition, the range of information that has a bearing on the terms and availability of a financial product or service or that is used by a financial institution in connection with providing a financial product or service is extremely broad and may include, for instance, medical information and other sorts of information that might not be thought of as financial. Further, the information that the agencies have defined as financial is the information that the institution itself has determined is relevant to providing a financial product or service, as evidenced by the fact that the institution requests the information from the consumer, obtains it from a transaction involving a financial product or service with the consumer, or otherwise obtains it in connection with providing a financial product or service to a consumer.

The Agencies are sensitive to the concern expressed by many commenters, including several hundred private investigators, about the need for ready access to identifying information to locate people attempting to evade their financial obligations. These commenters consistently suggested that names, addresses, and telephone numbers should not be treated as financial information. However, financial institutions rely on a broad range of information, including information such as addresses and telephone numbers, when providing financial products or services. Location information is used by financial institutions to provide a wide variety of financial services, from the sending of checking account statements to the disbursing of funds to a consumer. Other information, such as the maiden name of a consumer's mother often will be used by a financial institution to verify the consumer's identity. The Agencies concluded that it would be inappropriate to exclude certain items of information from the definition of personally identifiable financial information simply because a particular financial institution might not rely on those items when providing a particular financial product or service.

The Agencies note that names, addresses, and telephone numbers, if publicly available, will not be subject to the opt out provisions of the statute unless that information is "derivative information" (*i.e.*, information that is part of a list, description, or other grouping of consumers that is derived from personally identifiable financial information that is not publicly available). Thus, in instances involving specific requests about individuals, a financial institution still may disclose information about the individual that the institution reasonably believes to be publicly available, provided that in so doing the institution does not disclose the existence of a customer relationship that is not a matter of public record. Moreover, in instances when a consumer does not opt out, a financial institution may disclose any nonpublic personal information to a nonaffiliated third party provided that the disclosure is consistent with the institution's opt out and privacy notices.

Customer relationship as "personally identifiable financial information." The Agencies disagree with those commenters who maintain that customer relationships should not be considered to be personally identifiable financial information. Clearly, information that a particular person has a customer relationship identifies that person, and thus is personally identifiable. The Agencies believe that this information also is financial under the express terms of the statute, because it communicates that the person in question has a transaction involving a financial product or service with a

financial institution. While this information could in certain cases be a matter of public record, that does not change the analysis of whether the information is personally identifiable financial information.

Changes made to the definition. The final rule makes various stylistic changes to the definition that are intended to make it easier to read and understand. In addition, the final rule adds to the examples of information covered by the rule any information that the institution collects through an information collecting device from a web server, often referred to as a "cookie." See § __.3(o)(2)(F). This illustrates one of the various means by which a financial institution may "otherwise obtain" information about a consumer in connection with providing a financial product or service to that consumer.

The final rule also includes, as a negative example in § __.3(o)(2)(ii)(B), a statement that aggregate information or blind data lacking personal identifiers is not covered by the definition of "personally identifiable financial information." The Agencies agree with those commenters who opined that such data, by definition, do not identify any individual.

p. Publicly Available Information

The proposal defined "publicly available information" to include information that is lawfully available to the general public from official public records (such as real estate recordations or security interest filings), information from widely distributed media (such as a telephone book, television or radio program, or newspaper), and information that is required to be disclosed to the general public by Federal, State, or local law (such as securities disclosure documents). The proposed rules stated that publicly available information from widely distributed media would include information from an Internet site that is available to the general public without requiring a password or similar restriction.

As previously explained in the discussion of "nonpublic personal information," the proposed rules invited comment on two versions of the definition of "publicly available information." The Agencies have adopted an approach in the final rule that they believe closely tracks the statute while providing much of the benefit provided under Alternative A.

Several commenters questioned the appropriateness of excluding information from the definition of "publicly available information" if a person who seeks to obtain the information over the Internet must have a password or comply with a similar restriction. These commenters made the point that many Internet sites are available to a large number of people, each of whom need a user name and identification number to access the sites. Several of these commenters suggested that it is more appropriate to focus on whether the information was lawfully placed on the Internet.

The Agencies agree with these comments, and have amended the final rule to remove the reference to passwords or similar restrictions from the example of the Internet as a "widely distributed" medium of communication. In its place, the Agencies have substituted a standard that requires the information, whether from the Internet or otherwise, to be available on an unrestricted basis. Information that an individual specifically requests be compiled, such as information that a locator or "look up" service provides with respect to a particular individual that may combine confidential information in addition to publicly available information, will not be considered available to the general public on an unrestricted basis, regardless of whether the information is provided over the Internet or otherwise.

On the other hand, the rule states that an Internet site is not restricted merely because an Internet service provider or a site operator requires a fee or password as long as access is otherwise available to the general public. The traditional use of passwords is to confine the access of individual customers to specific, individual information. However, website operators, in particular, may require user identifications and passwords as a method of tracking access rather than restricting access to the information available through the website. Fees may be levied to obtain access to the Internet or to particular sites rather than restrict access to particular information. For example, Internet service providers may charge a fee for accessing the Internet. Other sites available to the general public, such as daily newspapers, also may charge a fee to access archived information. Therefore, the Agencies believe that the definition of "widely distributed media" should properly focus on whether the information is lawfully available to the general public, rather than on the type of medium from which information is obtained.

The Agencies note that the concept of information being lawfully obtained was included in the proposal, and is retained in the final rule. Thus, information unlawfully obtained will not be deemed to be publicly available notwithstanding that it may be available to the general public through widely distributed media.

To help understand how "nonpublic personal information," "personally identifiable financial information," and "publicly available information" will work under the final rule, the following example is offered. Assume that Mary provides her bank with various information in order to obtain a mortgage loan and to open a deposit account. Under the final rule, all of this information would be personally identifiable financial information. Once Mary establishes the customer relationships she seeks, the fact that Mary is a mortgage loan customer and a deposit accountholder at the bank also would be personally identifiable financial information.

It may be that certain information provided by Mary, such as her name and address, is publicly available. If the bank has a reasonable basis to believe that this information is publicly available, and if the information was included on a list of the bank's mortgage loan customers that was derived using only publicly available information, then her name and address would fall outside the definition of "nonpublic personal information" in those jurisdictions where mortgages are a matter of public record. However, Mary's name and address would be protected as nonpublic personal information if the bank wanted to include those items on a list of its deposit accountholders. The difference in treatment stems from the distinction drawn in the statute between lists prepared using publicly available information (as would be the case in the mortgage loan hypothetical) and lists prepared using information that is not publicly available (as would be the case in the deposit account hypothetical).

The Agencies recognize the complexity of this approach, but believe that it is mandated by the way the statute defines "nonpublic personal information." It also is consistent with the fact that certain relationships are matters of public record, and, therefore, arguably deserving of less protection from disclosure.

q. You

Several Agencies used the pronoun "you" to refer to entities within their primary jurisdiction in the proposal and defined "you" to mean those entities.[7]

The Agencies received very few comments in response to this definition. While one commenter preferred the term "bank" to "you," those Agencies using the term "you" believe that it makes the rule easier to read and have, therefore, adopted the definition substantially as proposed. The Board has revised its definition of "you" to clarify that insurance, broker dealer, investment adviser, and investment company subsidiaries of the financial institutions within its primary jurisdiction are not covered.

[7] The OCC used the term "bank" instead of "you" in its regulation.

Section __.4 Initial Privacy Notice to Consumers Required

The GLB Act requires a financial institution to provide an initial notice of its privacy policies and practices in two circumstances. For customers, the notice must be provided at the time of establishing a customer relationship. For consumers who are not customers, the notice must be provided prior to disclosing nonpublic personal information about the consumer to a nonaffiliated third party.

The proposed rule implemented these requirements by mandating that a financial institution provide the initial notice to an individual prior to the time a customer relationship is established and the opt out notice prior to disclosing nonpublic personal information to nonaffiliated third parties. These disclosures were required under the rule to be clear and conspicuous and to accurately reflect the institution's privacy policies and practices. The proposal also set out rules governing when a customer relationship is established and how a financial institution is to provide notice.

The Agencies received many comments raising concerns about a large number of issues arising under proposed § __.4. Most of the comments raised questions about the time by which initial notices must be provided, whether new notices are required for each new financial product or service obtained by a customer, the point at which a customer relationship is established, and how initial notices may be provided.

Providing Initial Notices "Prior To" Time Customer Relationship Is Established

Many commenters stated that, because the statute requires only that the initial notice be provided "at the time of establishing a customer relationship," the regulation should not require that the notice be provided "prior to" the point at which a customer relationship is established. These commenters were concerned that the rule could be interpreted as requiring a financial institution to provide disclosures at a point different from when they must provide other federally mandated consumer disclosures during the process of establishing a customer relationship.

In response to these comments, the Agencies have clarified the timing for providing initial notices. The final rule states that, as a general rule, the initial notice must be given not later than the time when a financial institution establishes a customer relationship. *See* § __.4(a)(1). As stated in the preamble to the proposed rule, the initial notices may be provided at the same time a financial institution is required to give other notices, such as those required by the Board's regulations implementing the TILA. This approach, like the approach taken in the proposed rule, strikes a balance between (1) ensuring that consumers will receive privacy notices at a meaningful point along the continuum of "establishing a customer relationship" and (2) minimizing unnecessary burden on financial institutions that may otherwise result if the final rule were to require financial institutions to provide consumers with a series of notices at different times in a transaction.

Providing Notices After Customer Relationship Is Established

Several commenters stated that the rule should provide financial institutions with the flexibility to deliver the initial notice *after* the customer relationship is established under certain circumstances. These commenters posited several situations in which a customer relationship is established without face-to-face contact between the consumer and financial institution. The commenters stated that delivery of the initial notice *before* the customer relationship is established in these situations would be impractical, and a requirement along those lines would have a significant adverse effect on the ability to provide a financial product or service to a consumer as quickly as the consumer desires.

The Agencies believe that it is appropriate for financial institutions to have flexibility in certain circumstances to provide the initial notice at a point after the customer relationship is established. To accommodate the wider range of situations presented by the commenters, the Agencies have modified the examples set out in the proposal of when a subsequent delivery of the initial notice is appropriate so that they now are more broadly applicable. As stated in the final rule in § __.4(e), a financial institution may provide the initial notice within a reasonable time after establishing a customer relationship in two instances. First, notice may be provided after the fact if the establishment of the customer relationship is not at the customer's election. See § __.4(e)(1)(i). This might occur, for instance, when a deposit account is sold. Second, a notice may be sent after establishing a customer relationship when to do otherwise would substantially delay the consumer's transaction and the consumer agrees to receive the notice at a later time. See § __.4(e)(1)(ii). An example of this would be when a transaction is conducted over the telephone and the customer desires prompt delivery of the item purchased. Another example of when this might occur is when a bank establishes a customer relationship with an individual under a student loan program as described in the final rule where loan proceeds are disbursed promptly without prior communication between the bank and the customer.

The Agencies note that in most situations, and particularly in situations involving the establishment of a customer relationship in person, a financial institution should give the initial notice at a point when the consumer still has a meaningful choice about whether to enter into the customer relationship. The exceptions listed in the examples, while not exhaustive, are intended to illustrate the less frequent situations when delivery either would pose a significant impediment to the conduct of a routine business practice or the consumer agrees to receive the notice later in order to obtain a financial product or service immediately.

In circumstances when it is appropriate to deliver an initial notice after the customer relationship is established, a financial institution should deliver the notice within a reasonable time thereafter. Several commenters requested that the final rule specify precisely how many days a financial institution has in which to deliver the notice under these circumstances. However, the Agencies believe that a rule prescribing the maximum number of days would be inappropriate because (a) the circumstances of when an after-the-fact notice is appropriate are likely to vary significantly, and (b) a rule that attempts to accommodate every circumstance is likely to provide more time than is appropriate in many instances. Thus, rather than establish a rule that the Agencies believe may be viewed as applicable in all circumstances, the Agencies have elected to retain the more general rule as set out in the proposal in § __.4(e)(1).

As the Agencies noted in the preamble to the proposed rule, nothing in the rule is intended to discourage a financial institution from providing an individual with a privacy notice at an earlier point in the relationship if the institution wishes to do so in order to make it easier for the individual to compare its privacy policies and practices with those of other institutions in advance of conducting transactions.

New Notices Not Required for Each New Financial Product or Service

Several commenters asked whether a new initial notice is required every time a consumer obtains a financial product or service from that financial institution. These commenters suggested that a consumer would not materially benefit from repeated disclosures of the same information, and that requiring additional initial notices to be provided to the same consumer would be burdensome on financial institutions.

The Agencies agree that it would be burdensome with little corresponding benefit to the consumer to require a financial institution to provide the same consumer with additional copies of its initial notice every time the consumer obtains a financial product or service. Accordingly, the final rule states, in § __.4(d), that a financial institution will satisfy the notice requirements when an existing customer obtains a new financial product or service if the institution's initial, revised, or annual notice (as appropriate) is accurate with respect to the new financial product or service.

Joint Accountholders

The majority of comments on how to provide notice suggested that the final rule state that a financial institution is not obligated to provide more than one notice to joint accountholders. Several of these commenters noted that disclosure obligations arising from joint accounts are well settled under other rules, such as the regulations implementing the Equal Credit Opportunity Act (Regulation B, 12 CFR part 202,) and TILA. Commenters noted that under both Reg. B and Reg. Z, a financial institution is permitted to give only one notice. The authorities cited include requirements that the financial institution give disclosures, as appropriate, to the "primary applicant" if this is readily apparent (in the case of Reg. B; *see* 12 CFR 202.9(f)) or to a person "primarily liable on the account" (in the case of Reg. Z; *see* 12 CFR 226.5(b)).

The Agencies agree that a financial institution should be allowed to provide initial notices in a manner consistent with other disclosure obligations. Accordingly, the final rule clarifies, in § __.9(g), that only one notice is required to be sent in connection with a joint account. A financial institution may, in its discretion, provide notices to each party to the account. This situation might arise, for instance, when a financial institution does not want one opt out election to apply automatically to all joint accountholders (*see* discussion of how to provide opt out notices, below).

Mergers

A few commenters requested guidance on what notices are required in the event of a merger of two financial institutions or an acquisition of one financial institution by another. In such a situation, the need to provide new initial (and opt out) notices to the customers of the entity that ceases to exist will depend on whether the notices previously given to those customers accurately reflect the policies and practices of the surviving entity. If they do, the surviving entity will not be required under the rule to provide new notices.

As was stated in the preamble to the proposed rule, a financial institution may not fail to maintain the protections that it represents in the notice that it will provide. The Agencies expect that financial institutions will take appropriate measures to adhere to their stated policies and practices.

Section __.5 Annual Privacy Notice to Customers Required

Section 503 of the GLB Act requires a financial institution to provide notices of its privacy policies and practices at least annually to its customers "during the continuation" of a customer relationship. The proposed rules implemented this requirement by requiring a clear and conspicuous notice that accurately reflects the privacy policies and practices then in effect to be provided at least once during any period of twelve consecutive months. The proposed rules noted that rules governing how to provide an initial notice also would apply to annual notices, and stated that a financial institution would not be required to provide annual notices to a customer with whom it no longer has a continuing relationship.

Several commenters requested that the final rule permit annual notices to be given each calendar year, instead of every twelve months. A variation suggested by a few commenters was to state that notices must be provided during each calendar year, with no more than 15 months elapsing between mailings. To clarify the extent of financial institutions' flexibility, the final rule retains the general rule requiring annual notices but then provides an example, in § __.5(a)(2)(ii), stating that a financial institution may select a calendar year as the 12-month period within which notices will be provided and provide the first annual notice at any point in the calendar year following the year in which the customer relationship was established. The final rule also requires that a financial institution apply the 12-month cycle to its consumers on a consistent basis.

Several commenters suggested that a financial institution be permitted to make the annual notice available upon request only, particularly if there have been no material changes to the notice since it was last delivered. These commenters maintained that little value is added by providing customers with additional copies each year of the same information. Some suggested that financial institutions be permitted to provide a "short-form" annual notice, in which the institution informs its customers that there has been no change to its privacy policies and practices and that the customers may obtain a copy upon request.

The Agencies have not amended the final rule to permit this approach, for two reasons. First, the Agencies view the statute as contemplating complete disclosures annually to all customers during the duration of the customer relationship. Section 503 of the GLB Act states that "not less than annually during the continuation of [a customer] relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer [*i.e.*, one with whom a customer relationship has been formed], * * * of such financial institution's policies and practices with respect to" the information enumerated in the statute. The Agencies believe that this provision contemplates a full set of disclosures to each customer once a year.

Second, the clarifications made in the final rule to the disclosure provisions make it clear that a financial institution is not required to provide a lengthy and detailed privacy notice to comply with the rule. Small institutions that do not share information with third parties beyond the statutory exceptions should be able to provide a short, streamlined notice. The rule also permits a financial institution to provide annual notices to customers over the institution's web site if the customer conducts transactions electronically and agrees to such disclosures (*see* additional discussion of this flexibility, below, in § __.9). As a result, the final rule achieves much of the burden reduction sought by those requesting a short-form annual notice option.

Most of the remaining comments received in response to proposed § __.5 addressed the rules governing when a customer relationship is terminated. Several focused on whether "dormancy" of a deposit account, which was presented as an example in the proposed rule of when a customer relationship is terminated, should be determined according to state law or a financial institution's internal policies. These commenters were unanimous in their view that "dormancy" should be determined according to an institution's own policies, without reliance on state laws that may produce conflicting results and unnecessary burden for institutions operating in more than one state. A few commenters suggested that the final rule use "inactive" instead of "dormant" in order to avoid unintended consequences of classifying an account as dormant. In light of these comments, the final rule retains in the examples of when a customer relationship will be terminated the situation where there is no activity in a deposit account according to a financial institution's policies. The Agencies also have used the term "inactive" rather than "dormant" in § __.5(b)(2)(i) to avoid the unintended consequences posited by the comments.

A few commenters stated that the example of no communication with a customer for twelve months should be amended to clarify that promotional materials would not be considered a communication about the relationship sufficient to extend the duration of the customer relationship. These commenters generally suggested that the rule be tied to communications initiated by the customer. The Agencies agree that a communication that merely informs a person about, or seeks to encourage use of, a financial institution's products or services is not the type of communication that signifies an ongoing relationship. The final rule has been amended in § __.5(b)(2)(iv) to reflect that the distribution of promotional materials will not prolong a customer relationship under the rule. The Agencies disagree, however, that the test should focus on whether there has been any customer-initiated contact, because there will be instances in which the customer will not initiate a contact with a financial institution within the relevant time period but nonetheless has an ongoing relationship.

Section __.6 Information To Be Included in Initial and Annual Privacy Notices

Section 503 of the GLB Act identifies the items of information that must be included in a financial institution's initial and annual notices. Section 503(a) of the GLB Act sets out the general requirement that a financial institution must provide customers with a notice describing the institution's policies and practices with respect to, among other things, disclosing nonpublic personal information to affiliates and nonaffiliated third parties. Section 503(b) of the Act identifies certain elements that must be addressed in that notice.

The proposed rule implemented section 503 by requiring a financial institution to provide information concerning:

- The categories of nonpublic personal information that a financial institution may collect;
- The categories of nonpublic personal information that a financial institution may disclose;
- The categories of affiliates and nonaffiliated third parties to whom a financial institution discloses nonpublic personal information, other than those to whom information is disclosed pursuant to an exception in section 502(e) of the GLB Act;
- The financial institution's policies with respect to sharing information about former customers;
- The categories of information that are disclosed pursuant to agreements with third party service providers and joint marketers and the categories of third parties providing the services;
- A consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties;
- Any disclosures regarding affiliate information sharing opt outs a financial institution is providing under the FCRA; and
- The bank's policies and practices with respect to protecting the confidentiality, security, and integrity of nonpublic personal information.

The Agencies received a large number of comments concerning these requirements, with the majority of comments making the points summarized below.

Level of Detail Required

Many commenters offered the general observation that the level of detail that would be required under the proposed rule would result in lengthy, complicated, and ultimately confusing disclosures. These comments have led the Agencies to conclude that additional clarification is required concerning the level of detail that the Agencies expect a financial institution's initial and annual disclosures to contain.

The Agencies do not believe that the statute requires—nor do the Agencies intend to require—a financial institution to publish lengthy disclosures that identify with precision every type of information collected or disclosed, the name of every entity with whom the financial institution shares information, and a complete description of the technical specifications of how the institution protects its customers' records or the identity of each employee who has access to such records. Instead, the Agencies have concluded that the statute, by focusing on "categories" of information and recipients of information, is intended to require notices that provide consumers with a general description of the third parties to whom a financial institution discloses nonpublic personal information, the types of information it discloses, and the other information about the institution's privacy policies and practices listed above. The final rule, like the proposal, permits a financial institution to comply with these notice requirements by providing a description that is representative of its privacy policies and practices. The Agencies believe that in most cases the initial and annual disclosure requirements can be satisfied by disclosures contained in a tri-fold brochure.

To address commenters' concerns about the likelihood that consumers will not read long, detailed disclosures, the Agencies have revised the examples of the disclosures set out in proposed § __.6(c) to clarify the level of detail that the Agencies think is appropriate under the statute. Sample clauses have been provided in Appendix A to the rules, and guidance for certain institutions has been set out later in this preamble. Because the examples are not exclusive, the final rule permits a financial institution to use different categories than those provided in the examples, thereby providing additional flexibility for financial institutions in complying with the disclosure requirements. In addition, the language in § __.6(a) that precedes the items of information to be addressed in the initial notice has been amended to clarify that a financial institution is required only to address those items that apply to the institution. Thus, for instance, if a financial institution does not disclose nonpublic personal information to third parties, it may simply omit any reference to the categories of affiliates and nonaffiliated third parties to whom the institution

discloses nonpublic personal information.

As was noted in the preamble to the proposed rule, the required content is the same for both the initial and annual notices of privacy policies and practices. While the information contained in the notices must be accurate as of the time the notices are provided, a financial institution may prepare its notices based on current and anticipated policies and practices.

Short-Form Initial Notice

The Agencies have reconsidered the need to give consumers a copy of a financial institution's complete initial notice when there is no customer relationship. In these circumstances, the Agencies believe that the objectives of the statute can be accomplished in a less burdensome way than was proposed. Accordingly, the Agencies have exercised their exemptive authority as provided in section 504(b) to create an exception to the general rule that otherwise requires a financial institution to provide both the initial and opt out notices to a consumer before disclosing nonpublic personal information about that consumer to nonaffiliated third parties.

This exception is set out in § __.6(d) of the final rule, which states that a financial institution may provide a "short-form" initial privacy policy notice along with the opt out notice to a consumer with whom the institution does not have a customer relationship. The short-form notice must clearly and conspicuously state that the disclosure containing information about the institution's privacy policies and practices is available upon request and provide one or more reasonable means by which the consumer may obtain a copy of the notice. This approach reflects the Agencies' belief that a consumer who does not become a customer of a financial institution generally may have less interest in certain elements of the institution's privacy policies. Relative to other aspects of the transaction, the consumer may receive greater benefit from obtaining a concise, but meaningful, opt out notice that informs the consumer about the categories of his or her information the institution may disclose and the categories of nonaffiliated third parties that may receive the information. The rule also requires a financial institution to provide a consumer who is interested in the more complete privacy disclosures with a reasonable means to obtain them.

Information About Affiliate Sharing

Another point made by several commenters in response to proposed § __.6 was that the rule should not include a requirement that categories of affiliates with whom a financial institution shares information be included in the initial and annual notices. These commenters pointed out that the statute specifically requires disclosures of categories of nonaffiliated third parties only, and that the only statutorily mandated disclosures concerning affiliate sharing are disclosures required, if any, concerning affiliate sharing pursuant to section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681a(d)(2)(A)(iii)).[8] These commenters concluded that the Agencies, by expanding the disclosure requirements in the manner prescribed in the proposed rule, would be exceeding their rulemaking authority and imposing unnecessary burden on financial institutions.

The Agencies believe that the language and legislative history of section 503 support requiring disclosures of affiliate sharing beyond what may be required by the FCRA. First, section 503(b) does not state that the items listed therein are to be the only items set out in a financial institution's initial and annual disclosures. Instead, it uses the nonrestrictive phrase "shall include" when discussing the contents of the disclosures, thereby preserving flexibility for the Agencies (which were expressly granted authority under section 503(a) to prescribe rules governing these notices) to require that additional items be addressed in the disclosures consistent with those specifically enumerated.

Second, section 503(a) states that the financial institution shall provide in its initial and annual notices "a clear and conspicuous disclosure * * * of such financial institution's policies and practices with respect to—(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 502, including the categories of information that may be disclosed; * * *" While the FCRA disclosures would be a subset of the disclosures required by section 503(a)(1), they may not be sufficient to fully satisfy that requirement.

Third, the legislative history of the GLB Act suggests that Congress intended for the disclosures to provide more information about affiliate sharing than what may be required under the FCRA.[9] That history underscores the Congressional intent of ensuring that individuals are given the opportunity to make informed decisions about the privacy policies and practices of financial institutions. The Agencies believe that limiting the disclosures about affiliate sharing just to those disclosures that may be required under the FCRA would frustrate that purpose.

Disclosures of the FCRA Opt Out Right

Another commonly advanced argument was that a financial institution should not be required to include FCRA disclosures in its annual notices. As previously discussed, section 503(b)(4) of the GLB Act requires a financial institution's initial and annual notice to include the disclosures required, if any, under section 603(d)(2)(A)(iii) of the FCRA. The proposed rules implemented section 503(b)(4) of the GLB Act by including the requirement that a financial institution's initial and annual notice include any disclosures a financial institution makes under section 603(d)(2)(A)(iii) of the FCRA. Several commenters pointed out that the FCRA requires disclosures of a consumer's right to opt out of affiliate sharing only once. They noted that the GLB Act states, in section 506(c), that nothing in the GLB Act is to be construed to modify, limit, or supersede the operation of the FCRA. These commenters maintain that the "if any" language of section 503(b)(4), read in the context of section 506, suggests that, since at most only one notice must be provided under the FCRA, section 503 should require only one FCRA disclosure under the privacy rule. The commenters concluded that, by requiring more notices than are required

[8] Section 603(d)(2)(A)(iii) excludes from the definition of "consumer report" the communication of certain consumer information among affiliated entities if the consumer is notified about the disclosure of such information and given an opportunity to opt out of the disclosure of that information. The information that can be disclosed to affiliates under this provision includes, for instance, information from consumer reports and applications for financial products or services. In general, this information represents personal information provided directly by the consumer to the institution, such as income and assets, in addition to information contained within consumer reports.

[9] *See, e.g.*, remarks of Sen. Gramm (noting that the privacy bill contains "for the first time a full disclosure requirement. It requires every bank in America, when you open your account to tell you precisely what their policy is: Do they share personal financial information within the bank? Do they share it outside the bank?"), 145 Cong. Rec. S13786 (daily ed. Nov. 3, 1999); remarks of Sen. Hagel, *id.* at S13876 ("Financial institutions would be required to disclose their privacy policies to their customers on a timely basis. If customers do not believe adequate protections exist at their institution, they can take their business elsewhere.").

under the FCRA, the Agencies would be violating this express preservation of the FCRA.

As discussed above, the Agencies believe that a financial institution, in order to comply with the requirement that it disclose its policies and practices with respect to sharing information with affiliated and nonaffiliated third parties, must describe the circumstances under which it will be sharing information with affiliates. Clearly, the ability of consumers to opt out of affiliate information sharing under the FCRA affects a financial institution's policies and practices with respect to disclosing information to its affiliates. Failing to include this information and an explanation of how the opt out right may be exercised would, in the view of the Agencies, make the disclosures incomplete. Thus, a financial institution will need to include this information in its initial and annual notices.

The Agencies note, moreover, that they disagree with the commenters' reading of sections 503 and 506. Section 503 does not distinguish between the disclosures to be provided in the initial notice from those to be provided in the annual notice. Thus, a plain reading of section 503 suggests that any disclosures that are required under the FCRA must be included in both the initial and annual notices.

The Agencies interpret the "if any" language as a recognition that not all institutions provide FCRA notices because not all institutions engage in the type of affiliate sharing covered by the FCRA. By requiring the FCRA notice to appear as part of the annual notice under the privacy rule, the Agencies believe that they are not modifying, limiting, or superseding the operation of the FCRA; financial institutions will have exactly the same FCRA obligations following the effective date of the privacy rule as they had before. The only difference will be that, as is required by the GLB Act, a financial institution's initial and annual disclosures about its privacy policy and practices will need to reflect how the financial institution complies with the affiliate sharing provisions of the FCRA.

Disclosures of the Right to Opt Out

Other commenters suggested that the final rule eliminate the requirement that the initial and annual notices contain disclosures about a consumer's right to opt out. These commenters pointed out that the statute does not specifically require these disclosures.

As previously discussed, section 503(a) of the statute requires a financial institution to disclose its policies and practices with respect to sharing information, both with affiliated and nonaffiliated third parties. Given that a financial institution's practices with respect to sharing nonpublic personal information with nonaffiliated third parties will be affected by the opt out rights created by the statute, an institution will need to describe these opt out rights in order to provide a complete disclosure that satisfies the statute.

Other Comments

The Agencies received many comments expressing support for a number of the provisions in proposed §__.6. For instance, several commenters noted their agreement with the approach of permitting a financial institution to state generally that it makes disclosures to nonaffiliated third parties "as permitted by law" to describe disclosures made pursuant to one of the exceptions. Others agreed with the proposed flexibility to allow a disclosure to be based on current and contemplated information sharing. In light of these comments, the Agencies have adopted proposed §__.6 with changes as discussed above. The final rule makes several other stylistic changes to the material in §__.6 that are intended to make the rule easier to read.[10]

Section __.7 Form of Opt Out Notice to Consumers; Opt Out Methods

Paragraph (a) of proposed §__.8 required that any opt out notice provided by a financial institution be clear and conspicuous and accurately explain the right to opt out. The proposed rule also required a financial institution to provide the consumer with a reasonable means by which to opt out, required a financial institution to honor an opt out election as soon as reasonably practicable, and stated that an opt out election survived until revoked by the consumer. The Agencies received a large number of comments in response to each of these provisions, addressing the application of these rules to joint accounts, the means by which an opt out right may be exercised, duration of an opt out, the level of detail required in the opt out notice, and the time by which an opt out election must be honored. These points are addressed below.

Joint Accounts

Most of the commenters on this issue stated that a financial institution should have the option of providing one notice per account, regardless of the number of persons on the account. The Agencies agree that this is appropriate, and have added a new §__.7(d) to address this issue. Under the final rule, a financial institution has the option of providing only one initial, annual, and opt out notice per account. However, any of the accountholders must have the right to opt out. The final rule requires a financial institution to state in the opt out notice provided to a joint accountholder whether the institution will consider an opt out by a joint accountholder as an opt out by all of the associated accountholders or whether each accountholder is permitted to opt out separately.

Means of Opting Out

Another issue addressed by many commenters concerned the means by which consumers may opt out. Several suggested that a financial institution, after having provided reasonable means of opting out, should be able to require consumers to use those means exclusively. The Agencies agree with this suggestion, recognizing that a financial institution may not have trained personnel or systems in place to handle opt out elections at each point of contact between a consumer and financial institution. Assuming a financial institution offers one or more of the opt out means provided in the examples in the final rule or a means of opting out that is comparably convenient for a consumer, the institution may require consumers to opt out in accordance with those means and choose not to honor opt out elections communicated to the institution through alternative means. A new paragraph (iv) has been added to §__.7(a)(2)(iv) to reflect this.

The final rule adds an example of a toll-free telephone number in §__.7(a)(2)(ii)(D) as another way by which financial institutions may allow consumers to opt out. As stated in §__.7(a)(2)(iii)(A), a financial institution may not require a consumer to write his or her own letter in order to opt out.

Duration of Opt Out

Several commenters requested that the rule concerning duration of an opt out, as provided in §__.8(e) of the proposal, be changed to require a more workable approach. These commenters noted that, under the proposal, a financial institution would be required to keep track of opt out elections forever. To illustrate their point, the commenters posited the example of a person who opts out during the course of establishing a customer relationship with a financial institution, terminates that relationship, and then establishes

[10] The Agencies expect to publish proposed standards in the near future relating to administrative, technical, and physical safeguards as required by section 501(b) of the GLB Act.

another customer relationship several years later, perhaps under a different name or with someone on a joint account. The commenters suggested that it would be more appropriate in these circumstances to treat the opt out election made in connection with the first relationship as applying solely to that relationship.

The Agencies agree with the commenters' suggestions. Thus, under the final rule, a financial institution is to treat an opt out election made by a customer in connection with a prior customer relationship as applying solely to the nonpublic personal information that the financial institution collected during, or related to, that relationship. That opt out will continue until the customer revokes it. However, if the customer relationship terminates and a new one is established at a later point, the financial institution must then provide a new opt out notice to the customer in connection with the new relationship and any prior opt out election does not apply to the new relationship.

Level of Detail Required in Opt Out Notice

A few commenters expressed concern about the level of detail they perceived the proposed rule to require in an opt out notice. These commenters interpreted the statement in proposed §__.8(a)(2) that a financial institution "provides adequate notice * * * if [the institution] identifies all of the categories of nonpublic personal information that [the institution] discloses or reserves the right to disclose to nonaffiliated third parties as described in [§__.6]" as requiring a more detailed disclosure of categories of nonpublic personal information and nonaffiliated third parties than is required in the initial and annual notices.

The Agencies did not intend this result, and specifically referred to §__.6 in the proposed opt out provision to address precisely the concern raised by these commenters. The disclosures in the initial and annual notices of the categories of nonpublic personal information being disclosed and the categories of nonaffiliated third parties to whom the information is disclosed will suffice for purposes of the opt out notices as well. If the opt out notice is a part of the same document that contains the disclosures that must be included in the initial notice, then the financial institution is not required to restate the same information in the opt out notice. In this instance, the rule requires only that the categories of nonpublic personal information the institution intends to share and the categories of nonaffiliated third parties with whom it will share are clearly disclosed to the consumer when the opt out and privacy notices are read together.

One commenter suggested that, while a financial institution should have the option of providing an opt out notice that is sufficiently broad to cover anticipated disclosures, the financial institution also should be permitted to provide a customer who already has opted out with a new opt out notice in connection with a new financial product or service and, if the consumer does not opt out a second time, be free to disclose nonpublic personal information obtained in connection with that financial product or service to nonaffiliated third parties. The Agencies believe that a financial institution should be permitted the flexibility to provide opt out notices that are either narrowly tailored to specific types of nonpublic personal information and types of nonaffiliated third parties or that are more broadly worded to anticipate future disclosure plans. However, if a consumer opts out after receiving an opt out notice from a financial institution that is broad enough to cover the new type of information sharing desired by that institution, the failure of the consumer to opt out again does not revoke the earlier opt out election.

Time by Which Opt Out Must Be Honored

Under the proposal, a financial institution is directed to comply with an opt out election "as soon as reasonably practicable." A large number of comments asked the Agencies to clarify in the final rule how long a financial institution has after receiving an opt out election to cease disclosing nonpublic personal information to nonaffiliated third parties. Suggestions for a more precise standard ranged from mandating that a financial institution stop disclosing information immediately to a mandatory cessation within several months of receiving the opt out. As was the case with other suggestions for bright-line standards in different contexts, the Agencies believe that it is appropriate to retain a more general rule in light of the wide range of practices throughout the financial institutions industry. A potential drawback of a more prescriptive rule is that an institution might use the standard as a safe harbor in all instances and thus fail to honor an opt out election as early as it is otherwise capable of doing. Another drawback is that a standard that is set in light of current industry practices and capabilities is likely to become outmoded quickly as advances in technology increase efficiency. The Agencies therefore decline to adopt a more rigid standard, and instead retain the rule as set out in §__.7(e) of the final rule.

For the reasons stated above, the Agencies adopt, in §__.7, the rule governing the form of opt out notices and methods of opting out as discussed above. This section contains other stylistic changes to what was proposed in order to make the final rule easier to read.

Section __.8 Revised Privacy Notices

The proposed rule, in § __.8(c), prohibited a financial institution, directly or through its affiliates, from disclosing nonpublic personal information about its consumers to nonaffiliated third parties unless the institution first provided a copy of its privacy notice and opt out notice. The proposal also required that these notices be accurate when given. Thus, if an institution wants to disclose nonpublic personal information in a way that is not accurately described in its notices, the institution would be required under the proposed rule to provide new notices before making the disclosure in question.

The Agencies received no comments raising questions about these requirements. Accordingly, the final rule adopts them, but sets them out in a separate section (§ __.8) in the final rule for emphasis. The final rule sets out examples in § __.8(b) of when a new notice would, and would not, be required.

Section __.9 Delivering Privacy and Opt Out Notices

The proposed rules governing delivery of initial, annual, and opt out notices were set out in proposed §§ __.4(d), __.5(b), and __.8(b), respectively. Given the substantial similarities between the three sets of rules, the Agencies have decided to combine the rules in one section in order to make it easier for the reader. Accordingly, the final rule states these rules in § __.9.

The general rule requires that notices be provided in a manner so that each consumer can reasonably be expected to receive actual notice in writing, or, if the consumer agrees, electronically. The Agencies received a number of comments on the various provisions governing delivery, as discussed below.

Posting Initial Notices on a Web Site

A few commenters suggested that a financial institution be allowed to deliver initial notices simply by posting its notice on the institution's web site. The Agencies recognize that there will be instances when a notice on a web site may be delivered in a way that will enable the financial institution to reasonably expect that the consumer will receive it. The final rule retains, as an example of one way to comply with the rule, the posting of a notice on a web site and requiring a consumer to acknowledge receipt of the notice as a step in the process of obtaining a financial product or service. *See* § __.9(b)(1)(iii). However, the Agencies believe that the mere posting of a notice on a web site would not be sufficient in all cases for the financial institution to reasonably expect its consumers to receive the notice. Accordingly, the Agencies have declined to expand the rule beyond the circumstance described in the example provided.

Posting Annual Notices on a Web Site

Several commenters requested that a privacy notice posted by a financial institution on its web site be deemed to satisfy the annual notice requirement, at least for customers who agree to receive notices on the institution's web site. The Agencies believe that it is appropriate to provide annual notices in this way for customers who conduct transactions electronically and agree to accept notices on a web site. Accordingly, the Agencies have amended the rule by adding a new § __.9(c)(1) to clarify that a financial institution may reasonably expect a customer who uses the institution's web site to access financial products or services will receive actual notice if the customer has agreed to accept notices at the institution's web site and the financial institution posts a current notice of its privacy policies and practices continuously and in a clear and conspicuous manner on the web site. The Agencies believe that this will reduce burden on financial institutions while ensuring that customers who transact business electronically will have continuous access to institutions' privacy policies and practices.

Disclosures to Customers Requesting No Communication

Several commenters suggested the Agencies clarify in the final rule how the disclosure obligations may be met in the case of a customer who requests that the institution refrain from sending information about the customer's relationship. These commenters stated that, in this case, the customer's request should be honored.

The Agencies agree. When a customer provides explicit instructions for a financial institution not to communicate with that customer, the Agencies believe that the request should be honored. The final rule clarifies, in § __.9(c), that financial institutions need not send notices to a customer who requests no communication, provided that a notice is available upon request.

Reaccessing a Notice

A few commenters stated that the requirement that a privacy policy be provided in a way that enables a customer to either retain or reaccess the notice should clarify that the rule obligates a financial institution to make available only the privacy policy currently in effect. These commenters were concerned about the potential for confusion and the burden stemming from a rule that would require a financial institution to make available every version of its privacy policies. The Agencies agree that it is appropriate to require only that the current privacy policy be made available to someone seeking to obtain it after having received the initial notice, and have amended the rule accordingly in § __.9(e)(2)(iii).

Joint Notices

Other commenters requested that the rule clarify that the privacy policies and practices of several different affiliated financial institutions may be described on a single notice. Related to this point, commenters requested that the final rule address whether affiliated financial institutions, each of whom has a customer relationship with the same consumer, may elect to send only one notice to the consumer on behalf of all of the affiliates covered by the notice and have that one notice satisfy the disclosure obligations under § __.4 of each affiliate. The Agencies believe that financial institutions should be able to combine initial disclosures in one document. The Agencies also believe that it is appropriate to permit financial institutions that prepare a combined initial, annual, or revised notice to give, on a collective basis, a consumer only one copy of the notice. The final rule reflects this flexibility, in § __.9(f). The Agencies emphasize that the notice must be accurate for all financial institutions using the notice and must identify by name each of the institutions.

Section __.10 Limits on Disclosure of Nonpublic Personal Information to Nonaffiliated Third Parties

Section 502(a) of the GLB Act generally prohibits a financial institution, directly or through its affiliates, from sharing nonpublic personal information about a consumer with a nonaffiliated third party unless the institution provides the consumer with a notice of the institution's privacy policies and practices. Section 502(b) further requires that the financial institution provide the consumer with a clear and conspicuous notice that the consumer's nonpublic personal information may be disclosed to nonaffiliated third parties, that the consumer be given an opportunity to opt out of that disclosure, and that the consumer be informed of how to opt out. Section __.7 of the proposed rules implemented these provisions by requiring a financial institution to give the consumer the initial notice required by § __.4, the opt out notice required by § __.8, and a reasonable opportunity to opt out.

Most of the comments on this section focused on the question of what is a reasonable opportunity to opt out. Suggestions ranged from a financial institution having the right to begin sharing information immediately (when the opt out and initial notices are provided as part of a transaction being conducted electronically, such as might be the case in an ATM transaction) up to a mandatory delay of 120 days from the time the notices are provided.

The Agencies believe that the wide variety of suggestions underscores the appropriateness of a more general test that avoids setting a mandatory waiting period applicable in all cases. For isolated transactions where a financial institution intends to disclose nonpublic personal information that it obtains through an electronic transaction and the consumer is provided a convenient means of opting out as part of the transaction, it would be reasonable not to force the financial institution to wait a set period of time before sharing the information. An example of this is provided at § __.10(a)(3)(iii). For notices that are provided by mail, the Agencies believe it is appropriate to allow the consumer additional time. In these latter instances, the Agencies consider it reasonable to permit the consumer to opt out by mailing back a form, by calling a toll-free number, or by any other reasonable means within 30 days from the date the opt out notice was mailed. *See* § __.10(a)(3)(i). The final rule also provides an example of a reasonable opportunity for opting out in connection with accounts opened on-line. *See* § __.10(a)(3)(ii). However, rather than try to anticipate every scenario and establish a time frame that would accommodate each, the Agencies think it is appropriate simply to state that the consumer must be given a reasonable opportunity to opt out and then provide a few illustrative examples

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of what would be reasonable in different contexts.

Other comments pointed out that proposed § __.7(a)(3)(i) (§ __.10(a)(3)(i) of the final rule) inappropriately implied that the opportunity to opt out by mail is available only when a consumer has a customer relationship with the financial institution. The final rule deletes the reference to a customer relationship in that section to avoid creating that implication.

Section __.11 Limits on Redisclosure and Reuse of Information

Section 502(c) of the GLB Act provides that a nonaffiliated third party that receives nonpublic personal information from a financial institution shall not, directly or indirectly through an affiliate, disclose the information to any person that is not affiliated with both the financial institution and the third party, unless the disclosure would be lawful if made directly by the financial institution. A financial institution may generally disclose nonpublic personal information to a nonaffiliated third party for any purpose subject to notice and opt out, for certain service and joint marketing arrangements under section 502(b), and in accordance with specific enumerated exceptions under section 502(e).

The limits on redisclosure and reuse that were set out in the proposal reflected the Agencies' belief that implicit in the joint marketing and the enumerated exceptions is the idea that information may only be used for the purposes for which the third party received it.[11] The proposed rule implemented section 502(c) by imposing limits on redisclosure that apply both to a financial institution that receives information from a nonaffiliated financial institution and to any nonaffiliated third party that receives nonpublic personal information from a financial institution. The proposed rule implemented the implicit limitations on use by imposing limits on the ability of financial institutions and nonaffiliated third parties to reuse nonpublic personal information they receive. The Agencies sought comment on whether the final rule should limit the ability of an entity that receives nonpublic personal information pursuant to an exception to use that information only for the purpose of that exception. The Agencies also sought comment on what the term "lawful" means in the context of section 502(c), and whether a recipient of nonpublic personal information could "lawfully" disclose information if the disclosure complied with a notice provided by the institution that made the disclosure initially. Finally, the Agencies invited comment on whether the rules should require a financial institution that discloses nonpublic personal information to a nonaffiliated third party to develop policies and procedures to ensure that the third party complies with the limits on redisclosure of that information.

The Agencies received a large number of comments in response to this proposed section. A few maintained that the Agencies would exceed their rulemaking authority if the final rule were to retain the limits on reuse of information, given that section 502(c) expressly addresses only redisclosures and not reuse. Most comments concerning proposed § __.12 stated that financial institutions should not have to monitor compliance with the redisclosure and reuse provisions of the rule, although these commenters said that financial institutions typically will contractually limit the recipient's ability to reuse information for purposes other than those for which the information was disclosed. These issues are addressed below.

Limits on Reuse and Redisclosure

The position advanced by those critical of imposing limits on reuse is premised on the conclusion that Congress, by addressing limits on redisclosures in section 502(c), provided the only limits that may be imposed on what a recipient of nonpublic personal information can do with that information. The Agencies disagree with this premise. Although section 502(c) does not expressly address reuse, reuse limitations are, as indicated, implicit in the provisions authorizing or permitting disclosures. For example, it would be inconsistent with the purposes of the Act to permit information disclosed in accordance with section 502(e)(1) (which permits disclosures as necessary to effect, administer, or enforce a transaction with a consumer or in connection with certain routine activities related to such a transaction) to be used for the third party recipient's marketing purposes. Moreover, permitting reuse without limits would undermine the protections afforded to a consumer who does not establish a customer relationship. Such a person is not put on notice that the disclosures under section 502(e) are even made because these disclosures do not entitle the consumer to any privacy or opt out notice. Thus, the limits on reuse are the only protection the individual has arising under the statute. Accordingly, the Agencies have concluded that it is appropriate to exercise their rulemaking authority under section 504(a)(1) (which authorizes the Agencies to write regulations necessary to carry out the purposes of Subtitle A of Title V) to impose limits on reuse when information is received under an exception in section 502(e) of the GLB Act.

By contrast, when a consumer decides not to opt out after being given adequate notices and the opportunity to do so, that consumer has made a decision to permit the sharing of his or her nonpublic personal information with the categories of entities identified in the financial institution's notices. The consumer's primary protection in the case of a disclosure falling outside the section 502(e) exceptions comes from receiving the mandatory disclosures and the right to opt out. The statute provides only the additional protection in section 502(c), restricting a recipient's ability to redisclose information to entities that are not affiliated with either the recipient or the financial institution making the disclosure initially. Thus, if a consumer permits a financial institution to disclose nonpublic personal information to the categories of nonaffiliated third parties that are described in the institution's notices, recipients of that nonpublic personal information appear authorized under the statute to make disclosures that comply with those notices.

To implement this statutory scheme, the Agencies have imposed the following limits on redisclosure and reuse, which will vary depending on whether the information was provided pursuant to one of the 502(e) exceptions or otherwise.

Limits on redisclosure and reuse when information is received pursuant to section 502(e). For nonpublic personal information provided pursuant to section 502(e), a financial institution receiving the information may disclose the information to its affiliates or to affiliates of the financial institution from which the information was received. It may also disclose and use the information pursuant to an exception in §§ __.14 or __.15 in the ordinary course of business to carry out the activity covered by the exception under which the institution received the information. The financial institution's affiliates may disclose and use the information, but only to the extent permissible for the financial institution.

These same general rules apply to a non-financial institution third party that receives nonpublic personal information from a financial institution under section 502(e). Thus, the third party receiving the information pursuant to one of the section 502(e) exceptions may disclose the information to its affiliates or to the affiliates of the financial institution that made the disclosure. The third party also may disclose and use the information pursuant to one of the section 502(e) exceptions as noted in the rule. The affiliates of the third party may disclose and use the information only to the extent permissible for the third party.

Limits on redisclosure when information is not received pursuant to section 502(e). For nonpublic personal information provided *outside* one of the section 502(e) exceptions, the financial institution receiving the information may disclose the information to its affiliates or to the affiliates of the financial institution that made the initial disclosure. It may also disclose the information to any other person, if the disclosure would be lawful if made directly by the financial institution from which the information was received. This would enable the receiving institution to disclose pursuant to one of the section 502(e) exceptions. It also would permit the receiving institution to redisclose information in accordance with the opt out and privacy notices given by the institution making the initial disclosures, as limited by any opt out elections received by that institution. The affiliates of a financial institution that receives nonpublic personal information may disclose only to the extent that the financial institution may disclose the information.

If a third party receives information from a financial institution outside one of the section 502(e) exceptions, the third party may disclose to its affiliates or to the affiliates of the financial institution. It may also disclose to any other person if the disclosure would be lawful if made by the financial institution. The third party's affiliates may disclose and use the information to the same extent permissible for the third party.

In cases where an entity receives information outside of one of the section 502(e) exceptions, that entity will in essence "step into the shoes" of the financial institution that made the initial disclosures. Thus, if the financial institution made the initial disclosures after representing to its consumers that it had carefully screened the entities to whom it intended to disclose the information, the receiving entity must comply with those representations. Otherwise, the subsequent disclosure by the receiving entity would not be in accordance with the notices given to consumers and would not, therefore, be lawful. Even if such representations do not prevent the recipient from redisclosing the information, the recipient's ability to redisclose will be limited by whatever opt out instructions were given to the institution making the initial disclosures and by whatever new opt out instructions that are given after the initial disclosure. The receiving entity, therefore, must have procedures in place to continually monitor the status of who opts out and to what extent. Given these practical limitations on the ability of a recipient to disclose pursuant to another institution's privacy and opt out notices, redisclosure of information is most likely to arise under one of the section 502(e) exceptions (as implemented by §§ __.14 and __.15 of the final rule).

Monitoring Third Parties

The Agencies have decided not to amend their respective rules to impose a specific duty on financial institutions to monitor third parties' use of nonpublic personal information provided by the institutions. This does not address whether obligations to do so may arise in other contexts. The Agencies note, for instance, that most of the commenters who requested that the Agencies not impose such a duty stated that they have contracts in place that limit what the recipient may do with the information. The Agencies also note that the limits on reuse as stated in the final rule provide a basis for an action to be brought against an entity that violates those limits.

Section __.12 Limits on Sharing Account Number Information for Marketing Purposes

Section 502(d) of the GLB Act prohibits a financial institution from disclosing, "other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer." Proposed § __.13 applied this statutory prohibition to disclosures made directly or indirectly by a financial institution, and sought comment on whether one or more exceptions to the flat prohibition should be created.

The Agencies received comments from people who suggested that various exceptions be created as well as from people who believe that a flat prohibition is necessary to protect consumers from unscrupulous practices. After considering the suggestions from all of the commenters addressing this issue, the Agencies have decided to amend proposed § __.13 by (a) adding two exceptions that the Agencies believe are necessary for financial institutions to engage in legitimate, routine business practices and that are unlikely to pose a significant potential for abuse and (b) clarifying that the prohibition does not apply in two circumstances frequently mentioned in the comments. These exceptions and clarifications are discussed below.

Disclosures to a Financial Institution's Agent or Service Provider

Many financial institutions noted that they use agents or service providers to conduct marketing on the institution's behalf. This might occur, for instance, when an insured depository institution instructs a service provider that assists in the delivery of monthly statements to include a "statement stuffer" with the statement informing consumers about a financial product or service offered by the institution. The Agencies recognize the need to disclose account numbers in this instance, and believe that there is little risk to the consumer presented by such disclosure.

Similarly, the Agencies recognize that a financial institution may use agents to market the institution's own financial products and services. Commenters advocating that the final rule exclude disclosures to agents stated that the agents effectively act as the financial institution in the marketing of the institution's financial products and services. These commenters suggested that there was no more reason to preclude sharing the account numbers with an agent hired to market the institution's financial products and services than there would be to preclude sharing between two departments of the same institution. The Agencies are concerned, however, about the possibility of transactions being consummated by a financial institution's agent who may be engaging in practices contrary to the institution's instructions. While the Agencies recognize that a financial institution frequently will use agents to assist it in marketing its products, the Agencies believe that a consumer's protections are potentially eroded by allowing agents to have access to a consumer's account. Accordingly, the Agencies have added an exception in § __.12(b)(1) that would permit disclosures of account numbers by a financial institution to an agent for the purpose of marketing the financial institution's financial product or services, but have qualified that exception by requiring

[11] For example, as discussed further below, permitted use for an enumerated exception would not include use for marketing purposes.

that the agent have no authority to initiate charges to the account.

Private Label Credit Cards and Affinity Programs

Many commenters stated that the final rule should not prevent the disclosure of account numbers in the situation where a consumer chooses to participate in a private label credit card program or other affinity program. Under these programs, a consumer typically will be offered certain benefits, often by a retail merchant, in return for using a credit card that is issued by a particular financial institution. The commenters suggested that, in the example of an affinity program, the consumer understands the need for the merchant and financial institution to share the consumer's account number. The Agencies agree that this type of disclosure is appropriate and does not create a significant risk to the consumer. Accordingly, § __.12(b)(2) has been added to the final rule to exclude the sharing of account numbers where the participants are identified to the consumer at the time the consumer enters into the program.

Encrypted Numbers

Many commenters urged the Agencies to exercise their exemptive authority to permit the transmission of account numbers in encrypted form. Several commenters noted that encrypted account numbers and other internal identifiers of an account are frequently used to ensure that a consumer's instructions are properly executed, and that the inability to continue using these internal identifiers would increase the likelihood of errors in processing a consumer's instructions. These commenters also point out that if internal identifiers may not be used, a consumer would need to provide an account number in order to ensure proper handling of a request, which would expose the consumer to a greater risk than would the use of an internal tracking system that preserves the confidentiality of a number that may be used to access the account.

The Agencies believe an encrypted account number without the key is something different from the number itself and thus falls outside the prohibition in section 502(d). In essence, it operates as an identifier attached to an account for internal tracking purposes only. The statute, by contrast, focuses on numbers that provide *access* to an account. Without the key to decrypt an account number, an encrypted number does not permit someone to access an account.

In light of the statutory focus on access numbers, and given the demonstrated need to be able to identify which account a financial institution should debit or credit in connection with a transaction, the Agencies have included a clarification in § __.12(c)(1) of the final rule stating that an account number, or similar form of access number or access code, does not include a number or code in an encrypted number form, as long as the financial institution does not provide the recipient with the means to decrypt the number. The Agencies believe that consumers will be adequately protected by disclosures of encrypted account numbers that do not enable the recipient to access the consumer's account.

Definition of "Transaction Account"

Several commenters suggested that the final rule clarify that accounts to which no charge may be posted are not covered by the prohibition against disclosing account numbers. These commenters frequently cited mortgage loan accounts as typical of those that should fall outside the scope of the prohibition. The Agencies agree with the principle behind these suggestions. However, the Agencies note that there have been instances in which a borrower's monthly payments on a mortgage loan have been increased in connection with the marketing of a financial product or service without the borrower's knowledge or permission. Accordingly, the final rule clarifies, in § __.12(c)(2), that a transaction account is an account other than a deposit account or a credit card account, and does not include an account to which third parties cannot initiate charges. If it would be possible, for instance, for a third party marketer to initiate a charge to a mortgage loan account, then the final rule would prohibit the disclosure of that account number to the marketer.

Section __.13 Exception to Opt Out Requirements for Service Providers and Joint Marketing

Section 502(b) of the GLB Act creates an exception to the opt out rules for the disclosure of information to a nonaffiliated third party for use by the third party to perform services for, or functions on behalf of, the financial institution, including the marketing of the financial institution's own products or services or financial products or services offered pursuant to a joint agreement between two or more financial institutions. A consumer will not have the right to opt out of disclosing nonpublic personal information about the consumer to nonaffiliated third parties under these circumstances, if the financial institution "fully discloses" to the consumer that it will provide this information to the nonaffiliated third party before the information is shared and enters into a contract with the third party that requires the third party to maintain the confidentiality of the information. As noted in the proposed rule, this contract should be designed to ensure that the third party (a) will maintain the confidentiality of the information at least to the same extent as is required for the financial institution that discloses it, and (b) will use the information solely for the purposes for which the information is disclosed or as otherwise permitted by §§ __.10 and __.11 of the proposed rules.

The majority of the comments on this exception expressed concern that routine servicing agreements between a financial institution and, for instance, a loan servicer would be subject to the requirements of proposed § __.9 (§ __.13 in the final rule). These commenters consistently pointed out that section 502(e) of the GLB Act contains several exceptions for the sharing of information by a financial institution that is necessary to permit a third party to perform services for a financial institution. The commenters requested clarification that disclosures made pursuant to one of the section 502(e) exceptions are not subject to the requirements imposed on disclosures made pursuant to section 502(b)(2) of the GLB Act. The Agencies agree that when a disclosure may be made under section 502(e), the statute permits that disclosure without the financial institution first complying with the requirements imposed by section 502(b)(2).

A related issue is whether a financial institution must satisfy the disclosure obligations of section 502(b)(2) and have a confidentiality agreement in the case of a service provider that is performing an activity governed by section 502(b)(2) (*i.e.*, those that are not covered by one of the section 502(e) exceptions). Several commenters maintained that it is illogical to impose a set of requirements on disclosures to the section 502(b)(2) service providers when no such requirements are imposed on the section 502(e) service providers. The Agencies believe, however, that a plain reading of section 502(b)(2) leads to that result.[12] The Agencies read the phrase

[12] The statute states, in relevant part, that section 502(b) "* * * shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including the marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 504, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information."

"if the financial institution fully discloses * * *" as used in section 502(b)(2) as modifying the phrase "This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, * * *" The Agencies thus have concluded that any disclosure to a service provider not covered by section 502(e) must satisfy the disclosure and written contract requirements of section 502(b)(2).

Several other commenters addressed the question of whether the rule should include safeguards beyond those provided by the statute to protect a financial institution from the risks that can arise from agreements with third parties. Most suggested that safety and soundness concerns were more appropriately addressed in a forum other than a rule designed to protect consumers' financial privacy. Others opined that financial institutions did not need the rule to mandate certain protections on their behalf. The Agencies have concluded that the protections set out in the statute, as implemented by § __.13(a)(1), are adequate for purposes of the privacy rule. Those protections require a financial institution to provide the initial notice required by § __.4 of the final rule as well as enter into a contractual agreement with a third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the bank disclosed the information, including use under an exception in §§ __.14 or __.15 in the ordinary course of business to carry out those purposes. These limitations will preclude recipients from sharing a consumer's nonpublic personal information pursuant to a chain of third party joint marketing agreements.

Several commenters asked whether a financial institution would have to modify existing contracts with third parties to comply with the rule. The Agencies believe that a balance must be struck that minimizes interference with existing contracts while preventing evasions of the regulation. To achieve these goals, the final rule states, in § __.18(c), that contracts entered into on or before July 1, 2000 must be brought into compliance with the provisions of § __.13 by July 1, 2002.

For the reasons expressed above, the Agencies have adopted, in § __.13 of the final rule, the provisions that were set out in § __.9 of the proposal with the changes noted above. The Agencies note that financial institutions should remain vigilant in their efforts to ensure that agreements they enter into with third parties do not expose the institutions to undue risks. These risks are particularly prevalent in arrangements whereby a financial institution endorses or sponsors a financial product or service offered by the third party.

Section __.14 Exceptions to Notice and Opt Out Requirements for Processing and Servicing Transactions

As previously discussed, section 502(e) of the GLB Act creates exceptions to the requirements that apply to the disclosure of nonpublic personal information to nonaffiliated third parties. Paragraph (1) of that section sets out certain exceptions for disclosures made, generally speaking, in connection with the administration, processing, servicing, and sale of a consumer's account. Proposed § __.10 implemented those exceptions by restating them with only stylistic changes that were intended to make the exceptions easier to read. The preamble to that proposed section noted that the exceptions set out in proposed § __.10 (as well as the exceptions set out in § __.11 of the proposal) do not affect a financial institution's obligation to provide initial notices of its privacy policies and practices prior to the time it establishes a customer relationship and annual notices thereafter.

The Agencies received several comments from institutions pointing out that, by deleting the statutory phrase "in connection with" from the exceptions for information shared (a) to service or process a financial product or service requested by the consumer or (b) to maintain or service a customer account, the Agencies narrowed the application of the exception. The Agencies did not intend this result, and have changed the final rule accordingly. See § __.14(a).

Several other commenters requested that the final rule specifically state that certain services, such as those provided by attorneys, appraisers, and debt collectors (as appropriate), are "necessary" to effect, administer, or enforce a transaction, as that term is used in paragraph (a) and defined in paragraph (b) of proposed § __.10. Others cited examples of entities seeking to verify funds availability or obtain loan payoff information as instances where a disclosure would fall within the exceptions described in proposed § __.10. The Agencies believe that disclosures to these types of professionals and under the circumstances posited by the commenters may be necessary to effect, administer, or enforce a transaction in a given situation. However, the Agencies have not listed specific types of disclosures in the regulation as necessarily falling within the scope of the exception because they are concerned that a general statement could be applied inappropriately to shelter disclosures that, in fact, are not necessary to effect, administer, or enforce a transaction.

Other commenters suggested that the final rule clarify, in situations where a financial institution uses an agent to provide services to a consumer, that the consumer need not have directly requested or authorized the service provider to provide the financial product or service but may request it from the principal instead. The Agencies agree that the communication may be between the consumer and the service provider, and note that the rule governing agents as set out in the definition of "consumer," above, provides the flexibility sought by the commenters. Briefly stated, an individual will not be a consumer of an entity that is acting as agent for another financial institution in connection with that financial institution's providing a financial product or service to the consumer.

Section __.15 Other Exceptions to Notice and Opt Out Requirements

As noted above, section 502(e) contains several exceptions to the requirements that otherwise would apply to the disclosures of nonpublic personal information to nonaffiliated third parties. Proposed § __.11 set out those exceptions for disclosures that are not made in connection with the administration, processing, servicing, and sale of a consumer's account, and made stylistic changes to the statutory language intended to clarify the exceptions. The proposal also provided an example of the consent exception in the context of a financial institution that has received an application from a consumer for a mortgage loan informing a nonaffiliated insurance company that the consumer has applied for a loan. The Agencies invited comment on whether safeguards should be added to the exception for consent in order to minimize the potential for consumer confusion.

Several commenters responded to the request for comment on whether the consent exception should include

safeguards, such as a requirement that the consent be written, be indicated by a signature on a separate line, or automatically terminate after a certain period of time. Of these, some favored the additional safeguards discussed in the proposal, while others maintained that safeguards are unnecessary. Several suggested that the consent exception include a provision noting that participation in a program where a consumer receives "bundled" products and services (such as would be the case, for instance, in an affinity program) necessarily implies consent to the disclosure of information between the entities that provide the bundled products or services. Others suggested that certain terms and conditions be imposed on any consent agreement, such as a time by which the financial institution must stop disclosing nonpublic personal information once a consent is revoked.

The Agencies have declined to elaborate on the requirements for obtaining consent or the consumer safeguards that should be in place when a consumer consents. The Agencies believe that the resolution of this issue is appropriately left to the particular circumstances of a given transaction. The Agencies note that any financial institution that obtains the consent of a consumer to disclose nonpublic personal information should take steps to ensure that the limits of the consent are well understood by both the financial institution and the consumer. If misunderstandings arise, consumers may have means of redress, such as in situations when a financial institution obtains consent through a deceptive or fraudulent practice. Moreover, a consumer may always revoke his or her consent. In light of the safeguards already in place, the Agencies have decided not to add safeguards to the consent exception.

Many commenters offered specific suggestions for additional exceptions or amendments to the proposed exceptions. In many cases, the suggestions are accommodated elsewhere in the regulation (such as is the case, for instance, for exceptions to permit (a) verification of available funds or (b) disclosures to or by appraisers, flood insurers, attorneys, insurance agents, or mortgage brokers to effect a transaction). In other cases, the suggestions are inconsistent with the statute (as is the case, for instance, with one commenter's suggestion that the Agencies completely exempt a financial institution from all of the statute's requirements if the institution makes no disclosures other than what is permitted by section 502(e)). While the Agencies recognize the merits of many of the remaining suggestions, they believe that the volume and complexity of these suggestions exceed what is appropriate in a regulation. Accordingly, the Agencies have retained, in § __.15, the statement of the exceptions as proposed and invite interested parties to pursue with the Agencies clarifications as necessary in their particular circumstance.

Section __.16 Protection of Fair Credit Reporting Act

Section 506 of the GLB Act makes several amendments to the FCRA to vest rulemaking authority in various agencies and to restore the Agencies' regular examination authority. Paragraph (c) of section 506 states that, except for the amendments noted regarding rulemaking authority, nothing in Title V of the GLB Act is to be construed to modify, limit, or supersede the operation of the FCRA, and no inference is to be drawn on the basis of the provisions of Title V whether information is transaction or experience information under section 603 of the FCRA. Proposed § __.14 implemented section 506(c) of the GLB Act by restating the statute, making only minor stylistic changes intended to make the rule clearer.

Comments about this provision focused on whether the Agencies, by requiring annual notice of a consumer's right to opt out under the FCRA, were modifying, limiting, or superseding the operation of the FCRA. For the reasons explained in the discussion of § __.6, above, the Agencies do not believe that the annual disclosure mandated by the GLB Act affects in any way the obligations imposed by the FCRA.

The Agencies received no other comment on this section, and, therefore, adopt the text set out in § __.14 of the proposal. See §__.16.

Section __.17 Relation to State Laws

Section 507 of the GLB Act states, in essence, that Title V does not preempt any State law that provides greater protections than are provided by Title V. Determinations of whether a State law or Title V provides greater protections are to be made by the Federal Trade Commission (FTC) after consultation with the agency that regulates either the party filing a complaint or the financial institution about whom the complaint was filed, and may be initiated by any interested party or on the FTC's own motion. Proposed § __.15 essentially restated section 507, noting that the proposed rules (as opposed to the statute) do not preempt State laws that provide greater protection for consumers than do the rules.

Comments on this section ranged from those who suggested that federal law should preempt state law in every case where there is a conflict to those who encouraged the Agencies to support the rights of states to enact greater protections. Some requested clarification of whether a particular state law would be considered more restrictive, while others suggested that the Agencies establish in the final rule a choice of law principle for financial institutions operating in more than one state. The Agencies believe that these and other suggestions made by the commenters exceed the scope of this rulemaking and are better addressed, to the extent the Agencies have authority to address them, in other forums. Accordingly, the Agencies have adopted the text set out in proposed § __.15. See § __.17 of the final rule.

Section __.18 Effective Date; Transition Rule

Section 510 of the GLB Act states that, as a general rule, the relevant provisions of Title V take effect 6 months after the date on which rules are required to be prescribed, *i.e.*, November 12, 2000. However, section 510(1) authorizes the Agencies to prescribe a later date in the rules enacted pursuant to section 504. The proposed rule sought comment on the effective date prescribed by the statute. It also would have required that financial institutions provide initial notices, within 30 days of the effective date of the final rule, to people who were customers as of the effective date. The preamble to the proposed rule noted that a financial institution would have to provide opt out notices before the rule's effective date if the institution wanted to continue sharing nonpublic personal information with nonaffiliated third parties without interruption.

The overwhelming majority of commenters addressing this provision requested additional time to comply with the final rule. Commenters stated that six months would not be sufficient to take the steps needed to comply with the regulation, including preparing new disclosure forms, developing software needed to track opt outs, training employees, creating management oversight systems, and undergoing internal examination and auditing to ensure compliance. Several commenters suggested that it would be less effective and potentially more confusing for consumers to receive several notices all around the end of the year 2000 than it would be for the notices to be delivered during a rolling phase-in. Others noted that the proposed effective date would place a severe strain on financial institutions at a time when other year-end notices need to be prepared and delivered. Several commenters noted that financial institutions have not budgeted for the expenses in the current year that likely will be incurred. They also noted that the disclosures regarding the standards to be followed to protect customers' records have not been proposed for comment, thereby making it impossible for financial institutions to know how to prepare at least that part of the initial privacy notices. Requests for extensions of the effective date typically ranged from 12 months to 24 months from the date the final rules are published.

Many commenters also stated that a 30-day phase-in for initial notices to existing customers is not feasible, given the large number of notices, the short period of time allowed, and the competing demands on financial institutions at the time when the initial notices must be sent. A few suggested that the rule require initial notices to be sent only to people who establish customer relationships after the effective date of the rule, and allow a financial institution to send annual notices to existing customers at some point during the next 12 months and annually thereafter.

The Agencies agree that six months may be insufficient in certain instances for a financial institution to have ensured that its forms, systems, and procedures comply with the rule. In order to accommodate situations requiring additional time, the Agencies have retained the effective date of November 13, but, consistent with their authority under section 510(1) of the GLB Act to extend the effective date, the Agencies will give financial institutions until July 1, 2001 to be in full compliance with the regulation. Financial institutions are expected, however, to begin compliance efforts promptly, to use the period prior to June 30, 2001, to implement and test their systems, and to be in full compliance by July 1, 2001. Given that this provides financial institutions with slightly over 13 months in which to comply with the rule, the Agencies have determined that there no longer is any need for a separate phase-in for providing initial notices. Thus, a financial institution will need to deliver all required opt out notices and initial notices before July 1, 2001.

Financial institutions are encouraged to provide disclosures as soon as practicable. Institutions that do not disclose nonpublic personal information to third parties have fewer burdens under the regulation (both in terms of the notice requirements and opt out mechanism) and should therefore be able to provide privacy notices to their consumers more expeditiously. Depending on the readiness of an institution to process opt out elections, institutions might wish to consider including the privacy and opt out notices in the same mailing as is used to provide tax information to consumers in the first quarter of 2001 to increase the likelihood that a consumer will not mistake the notices for an unwanted solicitation. The Agencies believe that this extension represents a fair balance between those seeking prompt implementation of the protections afforded by the statute and those concerned about the reliability of the systems that are put in place.

The Agencies have concluded that the extension of the date by which financial institutions must be in full compliance provides much of the relief sought by those who suggested that initial notices should not be required for existing customers. By allowing financial institutions to deliver notices over a significantly longer period of time than was proposed, the concentrated burden that would have been imposed by the proposed rule is avoided. Accordingly, the Agencies have decided not to adopt the suggestion that initial notices be required only for new customers after the effective date of the rule.

Initial notices need not be given to customers whose relationships have terminated prior to the date by which institutions must be in compliance with the rule. Thus, if an account is inactive according to a financial institution's policies before July 1, 2001, then no initial notice would be required in connection with that account. However, because these former customers would remain consumers, a financial institution would have to provide a privacy and opt out notice to them if the financial institution intended to disclose their nonpublic personal information to nonaffiliated third parties beyond the exceptions in §§ __.14 and __.15.

The Agencies note that full compliance with the rule's restrictions on disclosures is required on July 1, 2001. To be in full compliance, institutions must have provided their existing customers with a privacy notice, an opt out notice, and a reasonable amount of time to opt out prior to that date. If these have not been provided, the disclosure restrictions will apply. This means that an institution would have to cease sharing customers' nonpublic personal information with nonaffiliated third parties on that date, unless it may share the information pursuant to an exception under §§ __.14 or __.15. Financial institutions that both provide the required notices and allow a reasonable period of time to opt out before July 1, 2001, may continue to share nonpublic personal information after that date for customers who do not opt out.

Appendix A—Sample Clauses

In order to provide additional guidance to financial institutions concerning the level of detail the Agencies believe is appropriate under the statute, the Agencies have prepared a variety of sample clauses for financial institutions to consider. The Agencies urge financial institutions to carefully review whether these clauses accurately reflect a given institution's policies and practices before using the clauses. Financial institutions are free to use different language and to include additional detail as they think is appropriate in their notices.

Derivation Chart

Below is a chart showing the derivation of the sections in the final privacy rule from the proposal. Only changes are noted.

Proposal	Content of provision	Final rule
4(d)	How to provide initial notice	9(a)
N/A	New product for existing customer	4(d)
4(d)(3)	Oral delivery	9(d)
4(d)(4)	Retainable notice	9(e)
N/A	Joint relationships (privacy notice)	9(g)
5(b)	How to provide annual notice	9(a)
5(b)	Actual notice of annual notice	9(c)
5(c)	Terminated customer relationships	5(b)
N/A	Delivering short-form initial notices	6(d)
7	Main operative provision	10

Proposal	Content of provision	Final rule
8(a)	Opt out methods and opt out notice content	7(a)
8(b)(1)	How to deliver opt out notices	9(a)
8(b)(2)	Oral delivery	9(d)
8(b)(3)	Same form as initial notice	7(b)
8(b)(4)	Initial notice must accompany opt out notice	7(c)
N/A	Joint relationships (opt out notice)	7(d)
8(d)	Time to comply with opt out; continuing right to opt out	7(e) & (f)
8(e)	Duration of opt out	7(g)
8(c)(1)	Revised notices	8(a)
8(c)(2)	How to deliver revised notice	8(c)
8(c)(3)	Examples of when revised notice is required	8(b)
9	Exception for service providers and joint marketers	13
10	Exceptions for processing and servicing transactions	14
11	Other exceptions	15
12	Redisclosure and reuse	11
13	Sharing account number information	12
14	FCRA	16
15	State law	17
16	Effective date	18

IV. Guidance for Certain Institutions

To minimize the burden and costs to a financial institution ("you") and generally clarify the operation of the final rule, the Agencies have included this guidance that you may use in conjunction with the sample clauses in Appendix A. This guidance specifically applies to you if you:

(1) Do not have any affiliates;

(2) Only disclose nonpublic personal information to nonaffiliated third parties in accordance with an exception under §§ __.14 or __.15, such as in connection with servicing or processing a financial product or service that a consumer requests or authorizes; and

(3) Do not reserve the right to disclose nonpublic personal information to nonaffiliated third parties, except under §§ __.14 and __.15.[13]

In addition, if you disclose nonpublic personal information in accordance with the exception in § __.13, for service providers and joint marketers, you also must include an accurate description of that information, as illustrated by the sample clause in section (K) below.

In general, if you disclose nonpublic personal information to nonaffiliated third parties only as authorized under an exception, then your only responsibilities under the regulation are to provide initial and annual notices to each of your customers. You do not need to provide an opt out notice or opt out rights to your customers.

[13] If you disclose or reserve the right to disclose nonpublic personal information to a nonaffiliated third party under other circumstances, you must comply with other provisions in the rule, notably §§ __.7, __.8, and __.13, if applicable. If you disclose or reserve the right to disclose nonpublic personal information to an affiliate you must comply with other provisions in the rule, notably § __.6(a)(7), as applicable.

A. Initial Notice to Customers

You must provide an initial notice to each of your customers. A customer is a natural person who has a continuing relationship with you, as described in § __.4(c). For instance, an individual who opens a credit card or checking account with you is your customer. By contrast, an individual who uses your ATM to withdraw funds from a checking account at *another* financial institution is not your customer. Even if an individual repeatedly uses your ATM that individual is not your customer. In other words, you must provide initial and annual notices to each of your customers, but not to others.

B. Time to Provide Initial Notice

You must provide an initial privacy notice to each of your customers not later than when you establish a customer relationship (§ __.4(a)(1)). For instance, you must provide a privacy notice to an individual not later than when that individual executes the contract to open a checking account. Thus, you can provide the notice to a checking account customer together with the account agreement and signature card.

Similarly, in the case of a loan, you must provide a privacy notice to an individual not later than when that individual executes the loan contract. For example, you can provide the notice to an individual together with the documents (or other forms) that constitute the loan contract. You may always deliver your privacy notices earlier than required.

If one of your existing customers obtains a new financial product or service from you, then you need not provide another initial notice to that customer (§ __.4(d)) if that earlier notice covered the subsequent product.

For instance, if Alison Individual walks into Bank for the first time on July 2, 2001, to open a checking account, then Bank complies with § __.4(a)(1) of the rule if it provides an initial notice to Alison together with the deposit contract. When Alison opens her checking account, she becomes a customer of Bank. Alison maintains her checking account and, six months later, returns to Bank to obtain a loan. If the initial notice that Bank provided to Alison was accurate with respect to that loan, then Bank need not provide another initial notice to her when she obtains the loan because it has provided a notice to Alison that covered the loan when she opened her checking account.

C. Method of Providing the Initial Notice

You must provide your initial notice so that each customer can reasonably be expected to receive actual notice of it, in writing (§ __.9(a)). For example, you may provide the initial notice by mailing a printed copy of it together with a loan contract. Similarly, you may provide the initial notice by hand-delivering a printed copy of it to the customer together with a deposit account agreement.

D. Compliance With Initial Notice Requirement for Existing Customers by Effective Date

You must provide an initial notice to each of your current customers not later than July 1, 2001 (§ __.18(b)). You may do so by mailing a printed copy of the notice to the customer's last known address.

E. Annual Notice

During the continuation of the customer relationship, you must provide an annual notice to the customer, as described in § __.5(a). You must provide an annual notice to each customer at least once in any period of 12 consecutive months during which the customer relationship exists. You may define the 12-consecutive-month period, but must consistently apply that period to the customer. You may define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice.

For example, assume that Bank defines the 12-consecutive-month period as a calendar year and provides annual notices to all of its customers on October 1 of each year. If Alison Individual opens a checking account with a Bank on July 2, 2001, thereby becoming a customer, then Bank must provide an initial notice to Alison together with the deposit agreement or earlier. Bank must provide an annual notice to Alison by December 31, 2002. If Bank provides an annual notice to Alison on October 1, 2002, as it does for other customers, then it must provide the next annual notice to Alison not later than October 1, 2003.

F. Method of Providing the Annual Notice

Like the initial notice, you must provide the annual notice so that each customer can reasonably be expected to receive actual notice of it, in writing (§ __.9(a)). You may do so by mailing a printed copy of the notice to the customer's last known address.

G. Joint Accounts

If two or more customers jointly obtain a financial product or service, then you may provide one initial notice to those customers jointly. Similarly, you may provide one annual notice to those customers jointly (§ __.9(g)).

H. Information Described in the Initial and Annual Notices

The initial and annual notices must include an accurate description of the following four items of information:

1. The categories of nonpublic personal information that you collect (§ __.6(a)(1));

2. The fact that you do not disclose nonpublic personal information about your current and former customers to affiliates or nonaffiliated third parties, except as authorized by §§ __.14 and __.15 (§ __.6(a)(2)–(4)). When describing the categories with respect to those parties, you are required to state only that you make disclosures to other nonaffiliated third parties as permitted by law (§ __.6(c));

3. Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information (§ __.6(a)(8)).

For each of these items of information above, you may use a sample clause from Appendix A. The Agencies emphasize that you may use a sample clause only if that clause accurately describes your actual policies and practices.

I. Example of Notice

A financial institution ("Bank") that (i) does not have any affiliates and (ii) only discloses nonpublic personal information to nonaffiliated third parties as authorized under §§ __.14 and __.15, may comply with the requirements of § __.6 of the rule by using the following notice, if applicable.

Bank collects nonpublic personal information about you from the following sources:

- *Information we receive from you on applications or other forms;*
- *Information about your transactions with us or others; and*
- *Information we receive from a consumer reporting agency.*[14]

We do not disclose any nonpublic personal information about you to anyone, except as permitted by law.

If you decide to close your account(s) or become an inactive customer, we will adhere to the privacy policies and practices as described in this notice.

Bank restricts access to your personal and account information to those employees who need to know that information to provide products or services to you. Bank maintains physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

J. Initial and Annual Notices Must Be Clear and Conspicuous

The Agencies emphasize that you must ensure that both the initial and annual notices are clear and conspicuous, as defined in § __.3(b).

K. Example of Notice for Disclosure to Service Providers and Joint Marketers

If you disclose nonpublic personal information in accordance with the exception in §__.13, for service providers and joint marketers, you also must include an accurate description of that information. You may comply with the requirements of __.13 of the rule by including the following sample clause, if applicable, in the example of notice described in section (I) above:

We may disclose all of the information we collect, as described [describe location in the notice, such as "above" or "below"] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

[14] You need to describe only those general categories that apply to your policies and practices. Accordingly, if you do not collect information from "a consumer reporting agency," for instance, then you need not describe that category in your notices.

V. Regulatory Analysis

A. Paperwork Reduction Act

The Agencies may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers are listed below.

OCC: 1557–0216.
Board: 7100–0294.
FDIC: 3064–0136.
OTS: 1550–0103.

The Agencies sought comment on the burden estimates for the information collections listed below. Many commenters suggested, in response to specific proposed sections, that the rule would impose significant burden on them. Most of those suggestions concerned requirements that are imposed by the statute (such as the need to provide annual notices if an institution's previous notice remains accurate or the need to provide any notices at all in situations where an institution does not disclose nonpublic personal information to nonaffiliated third parties). The Agencies have attempted to address other concerns by amending several provisions as discussed above and by clarifying the Agencies' expectations as far as disclosures are concerned. Below is a brief summary of the remaining paperwork burdens implemented by this final rule.

The final rule contains several disclosure requirements. The respondents must prepare and provide the initial notice to all current customers and all new customers not later than when a respondent establishes a customer relationship (§__.4(a)). Subsequently, an annual notice must be provided to all customers at least once during a twelve-month period during the continuation of the customer relationship (§__.5(a)). The opt out notice (and partial opt out notice, if applicable; see §__.10(c)) must be provided prior to disclosing nonpublic personal information to certain nonaffiliated third parties. If a financial institution wishes to disclose information in a way that is inconsistent with the notices previously given to a

consumer, the institution must provide consumers with revised notices (§__.8(a)).

The final regulation also contains affirmative actions that consumers must take to exercise their rights. In order for consumers to prevent financial institutions from sharing their information with nonaffiliated third parties, they must opt out (§§__.7(a)(2)(ii)), __.10(a)(2) and __.10(c)). At any time during their continued relationship with the institution, consumers have the right to change or update their opt out status with the institution (§§__.7(f) and (g)).

OCC: The rule requires the collection of certain information from national banks, District of Columbia banks, and Federal branches and agencies of foreign banks. OMB has reviewed and approved the collections of information contained in the final rule under control number 1557–0216, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). OMB clearance will expire on March 31, 2003. There are 2,400 respondents with a total annual burden of 108,000 hours.

Board: The rule requires the collection of certain information from state member banks, bank holding companies, affiliates and certain non-bank subsidiaries of bank holding companies, uninsured state agencies and branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board approved the rule under the authority delegated to the Board by OMB. The OMB control number is 7100–0294. There are 9,500 respondents with a total annual burden of 427,500 hours.

FDIC: The rule requires the collection of certain information from insured nonmember banks, insured state branches of foreign banks, and certain subsidiaries of these entities. The Office of Management and Budget (OMB) has reviewed and approved the collections of information contained in the final rule under control number 3064–0136, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). OMB clearance will expire on April 30, 2003. There are 5,764 respondents with a total annual burden of 259,380 hours.

OTS: The rule requires the collection of certain information from savings associations and certain of their subsidiaries. OMB has reviewed and approved the collections of information contained in the final rule under control number 1550–0103, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). OMB clearance will expire on April 30, 2003. There are 1,104 respondents with a total annual burden of 49,680 hours.

The Agencies have a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments, at any time, regarding any aspect of these collections of information. Comments may be sent to:

OCC: Communications Division, Attention: 1557–0216, Office of the Comptroller of the Currency, 250 E Street, SW, Third Floor, Washington, DC 20219.

Board: Mary M. West, Federal Reserve Board Clearance Officer, Mail Stop 97, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FDIC: Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F–4080, 550 17th Street NW., Washington, DC 20429.

OTS: Dissemination Branch (1550–0103), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

A copy of all comments should also be sent to Office of Management and Budget, Paperwork Reduction Project (include OMB control number), Washington, D.C. 20503.

B. Regulatory Flexibility Act

OCC: Under the Regulatory Flexibility Act (RFA), the OCC must either provide a Final Regulatory Flexibility Analysis (FRFA) with a final rule or certify that the final rule "will not, if promulgated," have a significant economic impact on a substantial number of small entities.[15] Given that the burden imposed on small institutions stems in large part from the statute, and in light of the significant number of changes described previously that reduce the rule's burden on financial institutions of all sizes, the OCC does not expect that the rule will have a significant economic impact on a substantial number of small entities. However, because the statute creates a set of requirements that are new both to the OCC and to financial institutions in general, the OCC has prepared the following FRFA and intends to publish a compliance guide for small entities.

[15] The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to definitions published by the Small Business Administration (SBA). The SBA has defined a "small entity" for banking purposes as a national or commercial bank, savings institution or credit union with less than $100 million in assets. See 13 CFR 121.201.

Need for and Objectives of the Final Rule; Legal Basis for the Rule

The final rule implements the provisions of Title V, Subtitle A of the GLB Act addressing consumer privacy. In general, these statutory provisions require banks to provide notice to consumers about a bank's privacy policies and practices, restricts institutions from sharing nonpublic personal information about consumers to nonaffiliated third parties, and permits consumers to prevent institutions from disclosing nonpublic personal information about them to certain non-affiliated third parties by "opting out" of that disclosure.

Section 504 of the GLB Act authorizes the OCC to prescribe "such regulations as may be necessary" to carry out the purposes of Title V, Subtitle A. If no regulations were promulgated, substantive burdens imposed by the Act (*e.g.*, the notice, information sharing restrictions, and opt out requirements) would have become effective and binding on banks one year from the date the Act was signed into law. The OCC believes that a regulatory promulgation gives the private sector greater certainty about how to comply with the statute and clearer guidance regarding how it will be enforced.

Small Entities to Which the Rule Will Apply

The proposed rule would apply to all banks, regardless of size, including those with assets of under $100 million. As of December 1999, 1203 (of 2365 total) national banks had assets of under $100 million. As explained below, Title V, Subtitle A of the GLB Act did not provide a general exception for small banks, nor did it appear that such an exception would be consistent with the purposes of the Act.

Compliance Requirements and Effects of the Final Rule on Small Entities

A detailed description of the final rule's requirements is set forth above in the section-by-section analysis (Supplementary Information, part III). Among other things, a bank will generally be required to prepare a notice of its privacy policies and practices and provide that notice to consumers under conditions as specified in the rule (*e.g.*, a privacy notice must be provided no later than the time that a customer relationship is established and then once annually for the duration of that customer relationship). Banks that disclose nonpublic personal information about consumers to nonaffiliated third parties will be subject to additional mandates, including a requirement to provide an opt out notice to consumers along with a reasonable opportunity to opt out of certain disclosures.

There are a host of exceptions to the general rules stated above. For example, a bank may share a consumer's nonpublic personal information with nonaffiliated third parties without having to give an opt out notice if such sharing is necessary to effect, administer, or enforce a transaction requested or authorized by the consumer. These exceptions have the effect of minimizing the burden on institutions of all sizes.

To comply with the final rule, banks will need to, among other things, prepare disclosure forms, make various operational changes, and train staff. Professional skills needed to comply with the final rule may include clerical, computer systems, personnel training, as well as legal drafting and advice.

The compliance requirements and costs are likely to vary considerably among institutions, depending upon a number of factors, such as:

—Whether a bank intends to disclose covered information. A bank that does not disclose nonpublic personal information about consumers to third parties (or shares only to the extent permitted under the exceptions) (i) could have a streamlined privacy notice, (ii) will not need to provide an opt out notice to consumers, and (iii) will not need to implement procedures to honor the wishes of consumers that choose to opt out of certain information sharing.

—Whether the bank already has a notice describing its privacy policy. Various surveys suggest that a majority of banks already have privacy policies in place as part of usual and customary business practices. For these institutions, the costs for revising that policy to comply with the regulation are likely to be significantly less than would be the costs for those institutions having to develop a new policy.

—Whether the bank already has an opt-out mechanism in place pursuant to the Fair Credit Reporting Act (FCRA). Under the FCRA, a bank must provide opt out notices and have an opt out mechanism in place if the bank (i) shares certain consumer information (*i.e.*, application or credit report information) with its affiliates, and (ii) does not want to be treated as a consumer reporting agency under the Act. A bank that already gives FCRA notices and wants to share nonpublic personal information with nonaffiliated third parties should be able to adapt its existing opt out mechanism to accommodate the requirements of the final rule.

Summary of Significant Issues Raised by the Public Comments; Description of Steps the Agency Has Taken To Minimize Burden

One approach to minimizing the burden on small entities would be to provide a specific exemption for such institutions. The OCC has no authority under the statute to grant an exception that would remove small institutions from the entire scope of the rule. The OCC does have exemptive authority under section 504(b) to grant such exceptions to the opt out provisions "as are deemed consistent with the purposes of" the statute. The OCC believes that a wholesale exemption for small banks from the opt out provisions would be inconsistent with the purposes of the Act. As stated in section 501(a) of the Act, "It is the policy of the Congress that *each* financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information." (Emphasis added.) The OCC believes the privacy of someone's nonpublic personal information is no less deserving of protection simply because the information is obtained by a small bank.

The final rule does, however, provide substantial flexibility so that any bank, regardless of size, may tailor its practices to its individual needs. For example, to minimize the burden and costs of distributing privacy policies, the final rule (i) allows each bank to choose the method by which it will distribute required notices (*e.g.*, banks may include an annual privacy notice with periodic account statements that the bank already sends to the customer) and (ii) allows for the initial privacy notice to be provided with other Federally mandated consumer disclosures, such as those required under the Truth-in-Lending Act.

In addition, the OCC carefully considered comments that suggested a variety of other alternatives to reduce burden. In response to these comments, the agency attempted to minimize the burden on all businesses, including small entities, in a manner consistent with providing the privacy protections mandated by the Act. The discussion below reviews some of the changes adopted in the final rule to accomplish this purpose. For a more complete discussion of significant issues raised by public comments and the changes adopted in the final rule, *see* the section-by-section analysis above, which is incorporated herein by reference (Supplementary Information, part III).

Content of disclosures. Many commenters interpreted the rule as requiring long, detailed privacy disclosures that, in these commenters' view, would be of little benefit to consumers. To address these comments, the final rule clarifies the level of detail that the OCC believes is appropriate under the statute. In particular, the final rule substantially revises the examples of disclosures that would satisfy the rule; Appendix A includes sample clauses that might be used; and the preamble states that the Agencies believe disclosures required by the rule could fit on a typical tri-fold brochure. Also, the Agencies have provided additional guidance under the caption Guidance for Certain Financial Institutions (Guidance) (Supplementary Information, Part IV). This Guidance, as well as the sample clauses in Appendix A, are intended to minimize the burden and costs for all banks, particularly small banks that will not generally be sharing nonpublic personal information with nonaffiliated third parties (except pursuant to the exceptions). In addition, the final rule permits a bank to provide a short-form privacy notice to a consumer that does not become a customer, provided the bank gives the consumer an opt out notice and notifies the consumer of a reasonably convenient method by which to obtain a copy of the full privacy notice.

Definition of nonpublic personal information. A bank that wants to share nonpublic personal information about a consumer with a nonaffiliated third party generally must comply with the opt out restrictions in the rule. However, information that is considered "publicly available information" is excluded from the definition of nonpublic personal information. The proposed rule offered two alternatives. Under Alternative A, information that is generally available from a public source would not be considered "publicly available information" unless a bank actually obtains the information from a public source. Under Alternative B, the fact that the information could be obtained from a public source is sufficient for the information to be considered publicly available. For the reasons stated earlier in the preamble, the OCC adopted a slightly revised version of Alternative B, the less burdensome option.

Effective date. By operation of section 510 of the statute, the relevant provisions of Title V take effective November 12, 2000. However, the statute authorizes the agencies to

prescribe a later date if implementing regulations are adopted. The proposed rule used the effective date prescribed by the statute. The OCC received a large number of comments from banks, including many from small entities, that requested more time to comply. Many such comments suggested that overall compliance costs could be reduced by delaying the effective date. For the reasons stated earlier in the preamble, the OCC believes it would be appropriate to give banks until July 1, 2001, to comply with the rule.

New notices not required for each new financial product or service. Some banks, including small entities, expressed concern that the proposed rule may require a new initial notice each time a consumer obtains a new financial product or service. This would be especially burdensome for banks that adopt a universal privacy policy that covers multiple products and services. To address these concerns and minimize economic burden, the final rule clarifies that a new initial notice is not required if the bank has given the customer the bank's initial notice, and that the bank's initial notice remains accurate with respect to the new product or service.

Annual notice requirement. Many banks, including small entities, suggested alternative, less burdensome methods for complying with the requirement that banks provide their customers with an annual privacy notice. As discussed earlier in the preamble, the OCC responded to these comments with a provision in the final rule that permits a bank to comply with the annual privacy notice requirements for customers under certain circumstances by continually posting the notice on the bank's web site in a clear and conspicuous manner.

Notice to joint account holders. As noted earlier in the preamble, the final rule allows banks to provide one notice to joint account holders, with the understanding being that a decision to opt out made by one of the account holders will, absent a provision in the opt out notice to the contrary, prevent the bank from disclosing any nonpublic personal information about any of the account holders. This is particularly advantageous for banks, including small entities, that do not intend to share nonpublic personal information with nonaffiliated third parties (except as permitted under the exceptions).

The OCC, along with the other Agencies, intends to publish a small entity compliance guide—separate from and in addition to the guidance for certain financial institutions included as part of this **Federal Register** notice—that will clarify the operation of and compliance with the rule.

Board: The Regulatory Flexibility Act (5 U.S.C. 604) requires an agency to publish a final regulatory flexibility analysis when promulgating a final rule that was subject to notice and comment.

Need for and Objectives of Rule

As discussed above, this rule implements the privacy provisions in sections 502–510 of the GLB Act. The rule's objectives are to protect nonpublic personal information about consumers collected by financial institutions by:

(1) Requiring a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describing the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Providing a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure, subject to certain exceptions.

Comments on the Initial Regulatory Flexibility Analysis

Although few commenters addressed the initial regulatory flexibility analysis specifically, many commenters addressed the regulatory burdens that were discussed in that analysis. Commenters provided a wide range of estimates of the costs of compliance, demonstrating the difficulty of precisely measuring the implementation costs for GLB Act privacy provisions. For example, one commenter representing a $4 billion dollar multi-bank holding company with ten financial institutions, estimated compliance costs at $160,000/year (an average of $16,000 per institution), contrasted with a $500 million institution that estimated compliance costs at $40,000/year. Another commenter representing an $18 billion dollar bank holding company estimated compliance costs at $2.1 million, while one of the nation's largest financial institutions estimated compliance costs between $2.5–$18 million. In another comment, a public policy group estimated that the costs of the rule "may likely exceed $223 million annually" based on a sample of deposit accounts and estimated loan accounts at 54 "major institutions" around the United States.

Many commenters principally discussed the burdens that would be imposed by the proposed rule due to the effective date and the amount of detail that financial institutions would have to describe in their initial and annual notices.

Many commenters urged the Board to extend the proposed November 13, 2000, effective date, for periods ranging from six months to two years. Most of these commenters argued that complying with the rule by November 13, 2000, would place an extraordinary burden on their businesses, particularly because the notices required by the rule would mandate changes to computer software, employee training, and compliance systems. To address these concerns, compliance with the final rule will be deferred until July 1, 2001.

Many commenters urged the Board to reduce the level of detail that they perceived would be required in the notices under the proposed rule. Commenters argued, for instance, that requiring a detailed description of all of the sources of information that they use to collect information about their customers would make the notices too lengthy and complicated. In a similar vein, many commenters proposed that the Board should issue model forms to demonstrate the kinds of notices that would be permitted by the rule.

The Board believes that the intent of the original proposal on the level of detail expected under the proposed rule was widely misinterpreted. The notices section has been redrafted in an effort to clarify the requirements. This should lead to modular provisions based on examples in the regulations that could be used by most institutions. The Board and the other Agencies have included, in an appendix to the final rule, sample clauses illustrating elements of the notice requirements for a small institution that does not sell information for marketing purposes and a large holding company with multiple affiliates that distributes information broadly. To further assist institutions in complying with the rule, the Board and the other Agencies have included in this **Federal Register** notice guidance for certain institutions that do not disclose nonpublic personal information to nonaffiliated third parties outside of the statutory exceptions.

Nevertheless, some institutions may have to craft notice provisions to cover unique aspects of their privacy practices. This is necessary because it is impossible for the Board to anticipate all disclosure practices. In the absence of knowledge of these practices, any attempt to craft "model notices" that could be used by all institutions runs a substantial risk of being misleading.

The Board also modified the final rule to clarify that a financial institution need not provide another initial notice to an existing customer who obtains a new financial product or service so long as the previous notice provided to that customer was accurate with respect to the new financial product or service. The Board believes that this provision will enable a financial institution to adopt a single, comprehensive privacy policy for its financial products and services, and at the same time, reduce the costs to ensure that it delivers an accurate copy of its policy to each customer.

The Board also clarified the final rule to permit a financial institution to provide one copy of the initial, annual, and revised notices, respectively, to consumers who jointly obtain a financial product or service. Correspondingly, the Board clarified that a financial institution may provide one opt out notice, if applicable, to consumers who jointly obtain a financial product or service.

Institutions Covered

The Board's final rule will apply to approximately 9,500 institutions, including state member banks, bank holding companies and certain of their nonbank subsidiaries or affiliates, state uninsured branches and agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge and Agreement corporations. The Board estimates that over 4,500 of the institutions are small institutions with assets less than $100 million.

New Compliance Requirements

The final rule contains new compliance requirements for all covered institutions, most of which are required by the GLB Act. The institutions will be required to prepare notices of their privacy policies and practices and provide those notices to consumers as specified in the rule. Institutions that disclose nonpublic personal information about consumers to nonaffiliated third parties will be required to provide opt out notices to consumers as well as a reasonable opportunity to opt out of certain disclosures. These institutions will have to develop systems for keeping track of consumers' opt out directions. Some institutions, particularly those that disclose nonpublic information about consumers to nonaffiliated third parties, will likely need the advice of legal counsel to ensure that they comply with the rule, and may also require computer programming changes and additional staff training.

Minimizing Impact on Small Institutions

The Board believes the requirements of the Act and this rule will create additional burden for covered institutions, particularly those that disclose nonpublic personal information about consumers to nonaffiliated third parties. The rule applies to all covered institutions, regardless of size. The Act does not provide the Board with the authority to exempt a small institution from the requirement to provide a notice of its privacy policies and practices to its customers. Although the Board could exempt small institutions from providing a notice and opportunity for consumers to opt out of certain information disclosures, the Board does not believe that such an exemption would be appropriate, given that one of the purposes of the Act is to provide notice to consumers about the disclosure of nonpublic personal information.

The Board believes that the burden is significantly lower for institutions that do not disclose nonpublic personal information about consumers to nonaffiliated third parties. These institutions may provide relatively simple initial and annual notices to consumers with whom they establish customer relationships. Also, the Board intends to publish a small entity compliance guide—separate from and in addition to the guidance for certain financial institutions included as part of this **Federal Register** notice—aimed to generally clarify the operation of and compliance with the rule.

FDIC: The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires, subject to certain exceptions, that federal agencies prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule and a final regulatory flexibility analysis (FRFA) with a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. [16] At the time of issuance of the proposed rule, the FDIC could not make such a determination for certification, therefore the FDIC issued an IRFA pursuant to section 603 of the RFA. After considering the comments submitted in response to the proposed rule, the FDIC believes that it does not have sufficient information to determine whether the final rule would have a significant economic impact on a substantial number of small entities. Therefore, pursuant to section 604 of the RFA, the FDIC provides the following FRFA.

This FRFA incorporates the FDIC's initial findings, as set forth in the IRFA; addresses the comments submitted in response to the IRFA; and describes the steps the FDIC has taken in the final rule to minimize the impact on small entities, consistent with the objectives of the GLB Act. Also, in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the FDIC will in the near future issue a Small Entity Compliance Guide to assist small entities in complying with this rule.

Statement of the Need/Objectives of the Rule

The final rule implements the provisions of Title V, Subtitle A of the GLB Act addressing consumer privacy. In general, these statutory provisions require banks to provide notice to consumers about an institution's privacy policies and practices, restrict institutions from sharing nonpublic personal information about consumers with nonaffiliated third parties, and permit consumers to prevent institutions from disclosing nonpublic personal information about them to certain non-affiliated third parties by "opting out" of that disclosure. Section 504 of the GLB Act requires the FDIC, in consultation with representatives of State insurance authorities, to prescribe "such regulations as may be necessary" to carry out the purposes of Title V, Subtitle A. If no regulations were promulgated, substantive burdens imposed by the Act (*e.g.*, the notice, information sharing restrictions, and opt out requirements) would have become effective and binding on banks one year from the date the Act was signed into law. The FDIC believes that the final rule gives the private sector greater certainty on how to comply with the statute and clearer guidance regarding how it will be enforced.

Summary of Significant Issues Raised in Public Comments

In the IRFA, the FDIC specifically requested information on the costs of creating privacy policy disclosures, distributing privacy policy disclosures, implementing "opt out" disclosure and processing requirements, and complying with the proposed rule in its entirety. The FDIC received few comments responsive to the issue of implementation costs. While the majority of commenters representing the financial services industry indicated that compliance with the regulation

[16] The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to definitions published by the Small Business Administration (SBA). The SBA has defined a "small entity for banking purposes as a national or commercial bank, savings institution or credit union with less than $100 million in assets. See 13 CFR 121.201.

would require significant effort, these comments most often requested additional time to comply with the final rule, and did not address estimated costs to comply with the regulation.

The few comments that the FDIC did receive quantifying the economic costs of compliance reflected a wide range of estimates, demonstrating the difficulty of precisely measuring the implementation costs for GLB Act privacy provisions. For example, one commenter representing a $4 billion dollar multi-bank holding company with ten financial institutions, estimated compliance costs at $160,000/year (an average of $16,000 per institution), contrasted with a $500 million dollar institution that estimated compliance costs at $40,000/year. Another commenter representing an $18 billion dollar bank holding company estimated compliance costs at $2.1 million, while one of the nation's largest financial institutions estimated compliance costs between $2.5–$18 million. In another comment, a public policy group estimated that the costs of the rule "may likely exceed $223 million annually" based on a sample of deposit accounts and estimated loan accounts at 54 "major institutions" around the United States [17].

Summary of the Agency Assessment of Issues Raised in Public Comments

Both the limited numbers of comments received that discussed compliance costs and the wide range of estimates provided, reflect the uncertainty of estimating the costs of implementing the GLB Act requirements. The new compliance requirements will indeed create additional economic costs for institutions, especially those that disclose information to nonaffiliated third parties. These costs include, but are not limited to (1) reviewing current information sharing practices; (2) determining operational changes necessary; (3) identifying sources/uses of customer information; (4) preparing disclosure forms; and (5) training staff. Most, if not, all of these costs result from requirements expressly mandated by the GLB Act.

After a careful review of the comments received, the FDIC does not have a practicable or reliable basis for quantifying the costs of implementing the requirements of the GLB Act. We expect that compliance costs will vary significantly between institutions depending on information sharing practices. The FDIC continues to believe that the costs of implementing the opt out provisions of the final rule will be insubstantial for financial institutions that do not disclose nonpublic personal information to nonaffiliated third parties or only do so pursuant to the exceptions provided under sections 332.14 and 332.15. FDIC's determination is based on the observations of FDIC examiners, which were discussed in the IRFA, and the analysis of comments received in response to the proposed rule. These institutions may provide relatively simple initial and annual notices to consumers with whom they establish customer relationships. However, the FDIC cannot determine either the number or identity of institutions that will not disclose nonpublic personal information about consumers to nonaffiliated third parties or that only do so pursuant to the exceptions provided under sections 332.14 and 332.15.

Description/Estimate of Small Entities To Which the Rule Will Apply

The final rule will apply to approximately 3,700 FDIC-insured State nonmember banks that are small entities (assets less than $100 million) as defined by the RFA.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final rule contains new compliance requirements for all covered institutions, most of which are required by the GLB Act. The institutions will be required to prepare notices of their privacy policies and practices, and provide those notices to consumers as specified in the rule. Institutions that disclose nonpublic personal information about consumers to nonaffiliated third parties will be required to provide opt out notices to consumers, as well as a reasonable opportunity to opt out of certain disclosures. These institutions will have to develop systems for keeping track of consumers' opt out directions. Some institutions, particularly those that disclose nonpublic information about consumers to nonaffiliated third parties, will likely need the advice of legal counsel to ensure that they comply with the rule, and may also require computer programming changes and additional staff training. As discussed earlier, the FDIC does not have a practicable or reliable basis for quantifying the compliance costs of the final rule. Nor can the FDIC determine the number of small entities that will disclose nonpublic personal information about consumers to nonaffiliated third parties.

Steps Agency Has Taken To Minimize the Significant Economic Impact on Small Entities

The final rule incorporates new compliance requirements, which are expressly mandated by the GLB Act. The GLB Act mandates (1) providing notice of privacy policies/practices; (2) restricting the conditions under which a financial institution may disclose nonpublic personal information to nonaffiliated third parties; and (3) providing a method for consumers to prevent their nonpublic personal information from being shared with nonaffiliated third parties. The FDIC has sought to minimize the burden on all businesses, including small entities, in promulgating this final rule. Nonetheless, the statute does not authorize the FDIC to create exemptions from the GLB Act based on an institution's size. While the final rule attempts to clarify, consolidate, and simplify the statutory requirements for all entities, the FDIC has little discretion, if any, to mandate different compliance standards for small entities. Moreover, different compliance standards would be inconsistent with the purposes of GLB Act.

Throughout this rulemaking proceeding, the FDIC sought to gather information regarding the economic impact of the GLB Act's requirements for all financial institutions, including small entities. The proposed rule and the IRFA included a number of questions for public comment regarding the costs associated with complying with the rule and the impact on small entities. In addition, the FDIC held a public forum on privacy [18] during the comment period, which included representatives of small insured depository institutions and topics designed to elicit information about the rule's economic impact. The FDIC carefully considered comments that suggested a variety of alternatives that could minimize the economic and overall burden of complying with the final rule. The discussion below reviews some of the significant changes adopted in the final rule to accomplish this purpose. For a more complete discussion of the changes adopted in the final rule, see the "Section-by-section analysis" under Supplementary Information, Part III.

1. Sample disclosure clauses (Appendix A to Part 332) and guidance for certain institutions (supplementary information, part IV). Many commenters expressed concern over the amount of detail that appears to be required in both initial and annual Notices. In addition many of the commenters requested model forms for guidance as to the level of detail required. The FDIC did not intend for the disclosures to be overly detailed and thus, burdensome for institutions and potentially overwhelming for consumers. In response to these comments, Appendix A to Part 332 contains sample clauses to clarify the level of detail that the FDIC believes is necessary and appropriate to be consistent with the statute. The FDIC has also provided additional assistance under the caption Guidance for Certain Institutions (Guidance) (Supplementary Information, Part IV). The Guidance generally clarifies the operation of the final rule. It also provides an example of a notice for institutions that only share nonpublic personal information with nonaffiliated third parties pursuant to the exceptions provided in Sections 332.14 and 332.15. The Guidance may be used in conjunction with the sample clauses contained in Appendix A.

The sample clauses under Appendix A and the Guidance are intended to minimize the burden and costs to financial institutions, including small entities. This is especially true for small institutions that do not share nonpublic personal information with nonaffiliated third parties or only do so pursuant to the exceptions provided in sections 332.14 and 332.15. These institutions may provide relatively simple initial and annual notices to consumers with whom they establish customer relationships.

2. Definition of nonpublic personal information. In the proposed rule, the FDIC provided two alternatives for defining nonpublic personal information. The first, (Alternative A) deemed information as publicly available only if a financial institution *actually obtained* the information from a public source, whereas the second (Alternative B) treated information as publicly available if a financial institution *could* obtain it from such a source. A significant majority of commenters who commented on Alternatives A and B favored Alternative B. Many commenters suggested that implementing Alternative A would be overly burdensome. Institutions would have to develop some sort of methodology to distinguish between information obtained from consumers, versus information obtained through public sources. In response to these comments, the final rule adopts a modified version of Alternative B (refer to Section-by-section analysis for additional information) that treats information as publicly available if a financial institution could obtain the information from a public source. The final rule addresses the concerns of financial institutions—including small institutions—by adopting the less economically burdensome definition of nonpublic personal information.

3. Effective date. Section 510 of the GLB Act states that, as a general rule, the relevant provisions of Title V take effect 6 months after the date on which rules are required to be prescribed, *i.e.*, November 12, 2000. However, section 510(1) authorizes the Agencies to prescribe a later date in the rules enacted pursuant to section 504. The proposed rule sought comment on the effective date prescribed by the statute. The overwhelming majority of financial institution commenters requested additional time to comply with the final rule. Several commenters noted that financial institutions may encounter difficulty managing the expenses and resources required to comply with the final rule as the institution's budget for the current year was established prior to the issuance of the proposed regulation. This may be especially true for small institutions that face already tight budgetary constraints due to heightened competition. For the reasons stated in the preamble, the FDIC has retained the effective date of November 13, 2000, but, in order to provide sufficient time for institutions to establish policies and systems to comply with the requirements of this part, the FDIC has extended the time for compliance with this part until July 1, 2001. This additional time will allow financial institutions to properly budget for any necessary expenses and staff resources required to comply with this rule and to make all necessary operational changes.

4. New notices not required for each new financial product or service. Some commenters expressed concern that the proposed rule may require a new initial notice each time a consumer obtains a new financial product or service. This would be especially burdensome for institutions that adopt a universal privacy policy that covers multiple products and services. To address these concerns and minimize economic burden, the final rule was clarified to instruct institutions that a new initial notice is not required if the institution has given the customer the institution's initial notice, and that the institution's initial notice remains accurate with respect to the new product or service.

5. Short form initial notice for consumers. In the proposed rule, financial institutions were required to provide consumers a copy of their complete initial notice when there is no customer relationship. In response to comments that suggested that the objectives of the initial notice requirements of the statute could be accomplished in a less burdensome way, the FDIC has exercised its exemptive authority as provided in section 504(b) to create an exception to the general rule that otherwise requires a financial institution to provide both the initial and opt out notices to a consumer before disclosing nonpublic personal information about that consumer to nonaffiliated third parties. A financial institution may provide a "short-form" initial notice along with the opt out notice to a consumer with whom the institution does not have a customer relationship. This short-form notice must state that the disclosure containing information about the institution's privacy policies and practices is available upon request and provide one or more reasonable means by which the consumer may obtain a copy of the notice. This provision in the final rule will lessen the burden on financial institutions, including small entities.

6. Notice to joint account holders. As noted earlier in the preamble, the final rule allows financial institutions to provide one notice to joint account holders, with the understanding that a decision to opt out made by one of the account holders will, absent a provision in the opt out notice to the contrary, prevent the institution from disclosing any nonpublic personal information about any of the account holders. This is particularly advantageous for institutions, including small entities, that do not intend to share nonpublic personal information with nonaffiliated third parties (except as permitted under the exceptions).

OTS: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires OTS to prepare a final regulatory flexibility analysis with a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[19] OTS does not believe this rule will have a significant economic impact on a significant number of thrifts or thrift subsidiaries because the burden imposed on small thrifts stems in large part from the GLB Act rather than from the final rule. The rule restates and clarifies the statutory requirements. These clarifications should reduce the burden of complying with the GLB Act

[17] This estimate was not limited to FDIC-supervised institutions, but rather was based on all financial institutions subject to the GLB Act.

[18] FDIC Forum, "Is it Any of Your Business? Consumer Information, Privacy, and the Financial Services Industry" (March 23, 2000).

[19] For purposes of the Regulatory Flexibility Act, a small savings association is one with less than $100 million in assets. 13 CFR 121.201 (Division H).

provisions. OTS has revised the proposed rule to reduce the regulatory burden on financial institutions of all sizes, as discussed below. In addition, OTS intends to publish a compliance guide to assist institutions in complying with this rule. However, because the GLB Act creates requirements that are new to both the OTS and to the thrift industry, and because OTS is uncertain what the economic impact will be of compliance with the new requirements, OTS has prepared the following final regulatory flexibility analysis.

Need for and Objectives of the Rule; Compliance Requirements; Institutions Covered

The final rule is needed to implement the provisions of Title V, Subtitle A of the GLB Act addressing consumer privacy. The objectives of the rule are to protect nonpublic personal information that financial institutions collect by:

(1) Requiring each financial institution to provide notice to customers about its privacy policies and practices;

(2) Describing the conditions under which a financial institution may disclose nonpublic personal information to nonaffiliated third parties;

(3) Providing a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by opting out of that disclosure, subject to certain exceptions.

The compliance requirements of the rule are detailed earlier in this preamble.

Financial institutions will need professional skills to comply with this rule. To prepare the required privacy disclosures and opt out disclosures, institutions may need legal or other professional advice and drafting. This is true for the initial disclosures and notices, as well as for any subsequent changes to those documents. For institutions that publish privacy notices electronically or accept electronic opt outs, computer expertise will be necessary to convert the documents to the appropriate electronic form. Financial institutions that contract with nonaffiliates to perform services for the institution may require legal advice and drafting to ensure that such contracts contain the required restrictions on the nonaffiliates' use of information it receives. Financial institutions that make disclosures from which consumers may opt out may require professional skills to process opt out directions. Some institutions may use clerical or computer programmer skills to perform these tasks. Some degree of personnel training will be necessary, such as to train staff on the procedures for entering opt out data into a computer database.

This rule will apply to approximately 486 small thrifts, approximately 97 of which have subsidiaries.

Effects of the Final Rule

Commenters provided a wide range of estimates of the costs of compliance, demonstrating the difficulty of measuring the costs of implementing the GLB Act privacy provisions.

Complying with consumers' opt out directions will account for a significant portion of the implementation costs. Measuring the costs of complying with opt outs is especially difficult because of two uncertainties. First, OTS does not know how many financial institutions now make the type of information disclosures that will give rise to consumer opt out rights. Some institutions that currently make such disclosures may cease doing so. OTS cannot predict how many institutions will make such disclosures in the future. A second uncertainty is the number of consumers who will opt out of information disclosures. Because such opt out rights are new, OTS has no basis upon which to predict future consumer elections. Thus, OTS does not know how many institutions will need to comply with opt out directions, and does not know how many opt out directions those institutions will receive. For these reasons, OTS cannot provide a practicable or reliable quantification of the effects of the rule or of any of the significant alternatives OTS considered.

OTS expects that compliance costs will vary significantly between thrifts depending on their information sharing practices. OTS expects that the costs of implementing the opt out provisions will be insubstantial for thrifts that do not disclose nonpublic personal information to nonaffiliated third parties. These institutions need only provide relatively simple initial and annual privacy notices to their customers.

OTS, consistent with the other Agencies, has revised some requirements in this rule so that they are less burdensome. The discussion below reviews the significant changes to reduce regulatory burden.

Summary of Significant Issues Raised in Public Comments; Significant Alternatives

Although few commenters addressed the initial regulatory flexibility analysis, many commenters addressed the regulatory burdens. These commenters included both large and small institutions. In response, OTS considered different alternatives, and made certain changes to the rule to reduce undue regulatory burden, consistent with the purposes of GLB. These efforts to reduce regulatory burden will affect both large and small institutions. The significant alternatives that commenters discussed and that OTS considered are as follows.

Effective date. One of the most significant comments on burden discussed the rule's effective date. Many industry commenters urged OTS to extend the rule's proposed November 13, 2000 effective date. As discussed above, many of these commenters argued that complying with the rule by November 13, 2000 would place an extraordinary burden on their businesses, particularly because the required privacy and opt out notices would necessitate changes to computer software and would require employee training. After considering these concerns, OTS has delayed mandatory compliance with the regulation until July 1, 2001. However, OTS encourages thrifts to comply with the rule before that date.

Content of privacy notices. Many commenters were concerned that the rule would require an inappropriate level of detail in privacy notices, making those notices too lengthy. Some commenters noted that detailed privacy notices would require burdensome and costly frequent revisions. Many commenters suggested that OTS issue model privacy disclosures. OTS responded to such comments by clarifying the requirements for the content of privacy notices, as discussed more fully in the preceding section-by-section analysis. These clarifications should ease the compliance burden of this rule.

Further, OTS has included an appendix to the rule, containing a variety of sample clauses for privacy notices. OTS also has included in this **Federal Register** notice a Compliance Guide. Both the Appendix and the Compliance Guide are designed to assist financial institutions, especially small institutions, in complying with this new rule.

Exemption for small institutions. Some commenters suggested that small institutions be exempt from many requirements of this rule. However, OTS does not believe the GLB Act allows alternative privacy rules based on a financial institution's size. As Congress stated in § 501(a) of the Act, "It is the policy of the Congress that *each* financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect

the security and confidentiality of those customers' nonpublic personal information." (Emphasis added.) OTS believes a person's privacy is equally deserving no matter the size of the financial institutions with which the person interacts. OTS did not, therefore, exempt small institutions from this rule.

Number of notices. Many commenters believe that the proposed rule would have required an undue number of privacy notices. In response, as discussed above, OTS considered alternative methods to reduce the burden of providing redundant or unhelpful privacy notices. First, the final rule makes clear that financial institutions do not need to provide a repetitive privacy notice each time an existing customer obtains a new financial product or service, as long as that customer already received a notice covering the new product or service.

Second, the final rule clarifies the notice requirements in connection with joint accounts. It makes clear that financial institutions do not necessarily have to provide privacy and opt out notices to each joint account holder.

Third, the final rule does not require a financial institution to provide a full initial notice to consumers who do not establish a customer relationship with the institution, if the institution will not share that consumer's nonpublic personal information with nonaffiliated third parties. In these situations, the institution may instead provide a short-form initial notice, and give the consumer a reasonable means to obtain the full initial notice if the consumer wishes to do so. A full initial notice would not be helpful in these cases to consumers who have no continuing relationship with the institution. The institution is still restricted from disclosing that consumer's nonpublic personal information to nonaffiliated parties without first providing opt out rights, as GLB requires.

Fourth, the final rule requires fewer notices than the proposed rule would have required, concerning loans that involve multiple financial institutions. The proposed rule would have required privacy notices to consumers from each financial institution that owns any part of, or that services, a single consumer loan. Commenters suggested that multiple privacy notices in these cases would be unnecessarily burdensome. In response to these comments, OTS has included a special rule for loans, discussed more fully earlier in this preamble, that would reduce the number of privacy notices required in these cases.

These changes are designed to reduce the number of redundant and unhelpful notices required, and thereby reduce the regulatory burden of this rule, without eroding consumer protections.

Annual notices. Many commenters requested that OTS reduce regulatory burden by requiring less frequent or shorter annual notices. The GLB Act plainly requires annual privacy notices to customers, so OTS lacks authority to eliminate the requirement altogether. However, as discussed earlier, the final rule does allow institutions under certain circumstances to provide annual notices on their web sites. This change should reduce costs of providing required annual notices, consistent with GLB Act mandates.

Outside service providers. Some commenters expressed concern that the proposed rule would have required burdensome contractual terms in connection with outside service providers. Disclosures a financial institution makes to its service providers are exempt from opt out requirements under § 573.13, but require the disclosing financial institution to restrict, by contract, the service provider's ability to use the information. Other disclosures are exempt from the rule's notice and opt out requirements under §§ 573.14 and 573.15, but, unlike § 573.13, §§ 573.14 and 573.15 do not require contractual restrictions on recipients' use of information. Commenters noted that some disclosures simultaneously quality for exemption under § 573.13 and under §§ 573.14 or 573.15. These commenters requested that the final rule clarify whether, in such cases, the specific contractual requirements in § 573.13 apply. The final rule clarifies that they do not, as discussed more fully in the preceding section-by-section analysis.

This clarification may be especially important to smaller institutions because they may be more likely than large institutions to use outside parties to service transactions. Further, small institutions may be less likely to have in-house counsel available to advise them on, and to draft, the contractual terms that § 573.13 would have required without this clarification. Without this change, small institutions may have needed to seek expensive outside legal advice to comply with the rule. This clarification will allow small institutions to outsource transaction processing without having to use unnecessarily burdensome and costly contractual language.

Nonpublic Personal Information. Nonpublic personal information gets certain protections under this rule, but it is defined to exclude publicly available information. The proposed rule included two alternative definitions. Under proposed Alternative A, information would be considered publicly available if a financial institution were to actually obtain the information from a public source. Under proposed Alternative B, information would be considered publicly available if a financial institution could obtain it from a public source. Many commenters urged OTS to adopt Alternative B. They pointed out that Alternative A would require institutions to develop and maintain an information tracking system to determine whether particular information is publicly available. In response to these concerns, the final rule includes a definition of nonpublic personal information, discussed more fully above, that does not require financial institutions to create tracking systems for publicly available information.

Plain language. Some commenters, including small institutions, complained that the proposed rule was complex. Institutions expressed concerns that they could be exposed to legal liability because they could not understand what the rule requires. OTS responded to these comments by revising the proposed rule to be more understandable. The final rule is reorganized, is broken down into more sections, and has similar sections grouped together in subparts. This makes provisions of the rule easier to find. Additionally, OTS reworded its final rule to use more direct and clear language.

The OTS, along with the other Agencies, intends to publish a small entity compliance guide—separate from and in addition to the guidance for certain financial institutions included as part of this **Federal Register** notice—that will clarify the operation of and compliance with the rule.

C. Executive Order 12866

OCC and OTS: The Comptroller of the Currency and Director of the Office of Thrift Supervision each has determined that this rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866. The rule follows closely the requirements of title V, subtitle A of the GLB Act. Since, the GLB Act establishes the minimum requirements for this activity, the OCC and OTS have little discretion to propose regulatory options that might significantly reduce costs or other burdens. However, even absent the requirements of the GLB Act, if the OCC and OTS issued the rule under its own authority, the rule would not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

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For a financial institution that does not intend to disclose nonpublic personal information about its consumers or customers to nonaffiliated third parties, the burden created by the statute and implementing regulation is that of preparing and distributing an initial and annual notice of the institution's privacy policies and practices. The institution need not provide an opt out notice or establish a system for consumers to opt out. For institutions that do intend to make such disclosures, they will do so only after determining that the benefits of making the disclosures of nonpublic personal information outweigh the costs. Accordingly, the regulation's provisions governing opt outs impose no net burden on those institutions disclosing nonpublic personal information. The final rule makes a large number of significant changes to the requirements governing initial and annual notices that reduce burden while preserving the consumer protections created by the statute.

D. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. However, an agency is not required to assess the effects of its regulatory actions on the private sector to the extent that such regulations incorporate requirements specifically set forth in law. 2 U.S.C. 1531. Most of the rule's provisions are already mandated by the applicable provisions in Title V of the GLB Act, which would become effective and binding on the private sector even without a regulatory promulgation. Therefore, the OCC and OTS have determined that this regulation will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 40

Banks, banking, Consumer protection, National banks, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 216

Banks, banking, Consumer protection, Federal Reserve System, Foreign banking, Holding companies, Information, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 332

Banks, banking, Consumer protection, Foreign banking, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 573

Consumer protection, Privacy, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations by adding a new part 40 to read as follows:

PART 40—PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.

40.1 Purpose and scope.
40.2 Rule of construction.
40.3 Definitions.

Subpart A—Privacy and Opt Out Notices

40.4 Initial privacy notice to consumers required.
40.5 Annual privacy notice to customers required.
40.6 Information to be included in privacy notices.
40.7 Form of opt out notice to consumers; opt out methods.
40.8 Revised privacy notices.
40.9 Delivering privacy and opt out notices.

Subpart B—Limits on Disclosures

40.10 Limitation on disclosure of nonpublic personal information to nonaffiliated third parties.
40.11 Limits on redisclosure and reuse of information.
40.12 Limits on sharing account number information for marketing purposes.

Subpart C—Exceptions

40.13 Exception to opt out requirements for service providers and joint marketing.
40.14 Exceptions to notice and opt out requirements for processing and servicing transactions.
40.15 Other exceptions to notice and opt out requirements.

Subpart D—Relation to Other Laws; Effective Date

40.16 Protection of Fair Credit Reporting Act.
40.17 Relation to State laws.
40.18 Effective date; transition rule.

Appendix A to Part 40—Sample Clauses

Authority: 12 U.S.C. 93a; 15 U.S.C. 6801 *et seq.*

§ 40.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure, subject to the exceptions in §§ 40.13, 40.14, and 40.15.

(b) *Scope.* (1) This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to United States offices of entities for which the Office of the Comptroller of the Currency has primary supervisory authority. They are referred to in this part as "the bank." These are national banks, District of Columbia banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities except a broker or dealer that is registered under the Securities Exchange Act of 1934, a registered investment adviser (with respect to the investment advisory activities of the adviser and activities incidental to those investment advisory activities), an investment company registered under the Investment Company Act of 1940, an insurance company that is subject to supervision by a State insurance regulator (with respect to insurance activities of the company and activities incidental to those insurance activities), and an entity that is subject to regulation by the Commodity Futures Trading Commission.

(2) Nothing in this part modifies, limits, or supersedes the standards

governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–1320d–8).

§ 40.2 Rule of construction.

The examples in this part and the sample clauses in appendix A of this part are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this part.

§ 40.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples.* (i) *Reasonably understandable.* A bank makes its notice reasonably understandable if it:

(A) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Uses short explanatory sentences or bullet lists whenever possible;

(C) Uses definite, concrete, everyday words and active voice whenever possible;

(D) Avoids multiple negatives;

(E) Avoids legal and highly technical business terminology whenever possible; and

(F) Avoids explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* A bank designs its notice to call attention to the nature and significance of the information in it if the bank:

(A) Uses a plain-language heading to call attention to the notice;

(B) Uses a typeface and type size that are easy to read;

(C) Provides wide margins and ample line spacing;

(D) Uses boldface or italics for key words; and

(E) In a form that combines the bank's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars, when you combine your notice with other information.

(iii) *Notices on web sites.* If a bank provides a notice on a web page, the bank designs its notice to call attention to the nature and significance of the information in it if the bank uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and the bank either:

(A) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(c) *Collect* means to obtain information that the bank organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from a bank that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) *Examples.* (i) An individual who applies to a bank for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to a bank in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides nonpublic personal information to a bank in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer regardless of whether the bank establishes a continuing advisory relationship.

(iv) If a bank holds ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is the bank's consumer, even if the bank holds those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which a bank has ownership or servicing rights is the bank's consumer, even if the bank, or another institution with those rights, hires an agent to collect on the loan.

(v) An individual who is a consumer of another financial institution is not a bank's consumer solely because the bank acts as agent for, or provides processing or other services to, that financial institution.

(vi) An individual is not a bank's consumer solely because he or she has designated the bank as trustee for a trust.

(vii) An individual is not a bank's consumer solely because he or she is a beneficiary of a trust for which the bank is a trustee.

(viii) An individual is not a bank's consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that the bank sponsors or for which the bank acts as a trustee or fiduciary.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the OCC determines.

(h) *Customer* means a consumer who has a customer relationship with a bank.

(i)(1) *Customer relationship* means a continuing relationship between a consumer and a bank under which the bank provides one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) *Examples.* (i) *Continuing relationship.* A consumer has a continuing relationship with a bank if the consumer:

(A) Has a deposit or investment account with the bank;

(B) Obtains a loan from the bank;

(C) Has a loan for which you own the servicing rights;

(D) Purchases an insurance product from the bank;

(E) Holds an investment product through the bank, such as when the bank acts as a custodian for securities or for assets in an Individual Retirement Arrangement;

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(F) Enters into an agreement or understanding with the bank whereby the bank undertakes to arrange or broker a home mortgage loan for the consumer;

(G) Enters into a lease of personal property with the bank; or

(H) Obtains financial, investment, or economic advisory services from the bank for a fee.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with a bank if:

(A) The consumer obtains a financial product or service only in isolated transactions, such as using the bank's ATM to withdraw cash from an account at another financial institution or purchasing a cashier's check or money order;

(B) The bank sells the consumer's loan and does not retain the rights to service that loan; or

(C) The bank sells the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions.

(j) *Federal functional regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Director of the Office of Thrift Supervision;

(5) The National Credit Union Administration Board; and

(6) The Securities and Exchange Commission.

(k)(1) *Financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(l)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes a bank's evaluation or brokerage of information that the bank collects in connection with a request or an application from a consumer for a financial product or service.

(m)(1) *Nonaffiliated third party* means any person except:

(i) A bank's affiliate; or

(ii) A person employed jointly by a bank and any company that is not the bank's affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

(2) *Nonaffiliated third party* includes any company that is an affiliate solely by virtue of a bank's (or its affiliate's) direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(4)(H) and (I)).

(n)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (n)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) *Examples of lists.* (i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(o)(1) *Personally identifiable financial information* means any information:

(i) A consumer provides to a bank to obtain a financial product or service from the bank;

(ii) About a consumer resulting from any transaction involving a financial product or service between a bank and a consumer; or

(iii) The bank otherwise obtains about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples.* (i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to a bank on an application to obtain a loan, credit card, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of the bank's customers or has obtained a financial product or service from the bank;

(D) Any information about the bank's consumer if it is disclosed in a manner that indicates that the individual is or has been the bank's consumer;

(E) Any information that a consumer provides to a bank or that the bank or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(F) Any information the bank collects through an Internet "cookie" (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(p)(1) *Publicly available information* means any information that a bank has a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, State, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, State, or local law.

(2) *Reasonable basis.* A bank has a reasonable basis to believe that information is lawfully made available to the general public if the bank has taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that the bank's consumer has not done so.

(3) *Examples.* (i) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis.* (A) A bank has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the bank has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) A bank has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the bank has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

Subpart A—Privacy and Opt Out Notices

§ 40.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* A bank must provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(1) *Customer.* An individual who becomes the bank's customer, not later than when the bank establishes a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer.* A consumer, before the bank discloses any nonpublic personal information about the consumer to any nonaffiliated third party, if the bank makes such a disclosure other than as authorized by §§ 40.14 and 40.15.

(b) *When initial notice to a consumer is not required.* A bank is not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) The bank does not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 40.14 and 40.15; and

(2) The bank does not have a customer relationship with the consumer.

(c) *When the bank establishes a customer relationship.* (1) *General rule.* A bank establishes a customer relationship when it and the consumer enter into a continuing relationship.

(2) *Special rule for loans.* A bank establishes a customer relationship with a consumer when the bank originates a loan to the consumer for personal, family, or household purposes. If the bank subsequently transfers the servicing rights to that loan to another financial institution, the customer relationship transfers with the servicing rights.

(3)(i) *Examples of establishing customer relationship.* A bank establishes a customer relationship when the consumer:

(A) Opens a credit card account with the bank;

(B) Executes the contract to open a deposit account with the bank, obtains credit from the bank, or purchases insurance from the bank;

(C) Agrees to obtain financial, economic, or investment advisory services from the bank for a fee; or

(D) Becomes the bank's client for the purpose of the bank's providing credit counseling or tax preparation services.

(ii) *Examples of loan rule.* A bank establishes a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when the bank:

(A) Originates the loan to the consumer; or

(B) Purchases the servicing rights to the consumer's loan.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from a bank that is to be used primarily for personal, family, or household purposes, the bank satisfies the initial notice requirements of paragraph (a) of this section as follows:

(1) The bank may provide a revised privacy notice, under § 40.8, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that the bank most recently provided to that customer was accurate with respect to the new financial product or service, the bank does not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) A bank may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after the bank establishes a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when the bank establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) *Examples of exceptions.* (i) *Not at customer's election.* Establishing a customer relationship is not at the customer's election if a bank acquires a customer's deposit liability or the servicing rights to a customer's loan from another financial institution and the customer does not have a choice about the bank's acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when a bank establishes a customer relationship would substantially delay the customer's transaction when:

(A) The bank and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) The bank establishes a customer relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between the bank and the customer.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when a bank establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the bank's office or through other means by which the customer may view the notice, such as on a web site.

(f) *Delivery.* When a bank is required to deliver an initial privacy notice by this section, the bank must deliver it according to § 40.9. If the bank uses a short-form initial notice for non-customers according to § 40.6(d), the bank may deliver its privacy notice according to § 40.6(d)(3).

§ 40.5 Annual privacy notice to customers required.

(a)(1) *General rule.* A bank must provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less

than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. A bank may define the 12-consecutive-month period, but the bank must apply it to the customer on a consistent basis.

(2) *Example.* A bank provides a notice annually if it defines the 12-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the bank provided the initial notice. For example, if a customer opens an account on any day of year 1, the bank must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* A bank is not required to provide an annual notice to a former customer.

(2) *Examples.* A bank's customer becomes a former customer when:

(i) In the case of a deposit account, the account is inactive under the bank's policies;

(ii) In the case of a closed-end loan, the customer pays the loan in full, the bank charges off the loan, or the bank sells the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship, the bank no longer provides any statements or notices to the customer concerning that relationship or the bank sells the credit card receivables without retaining servicing rights; or

(iv) The bank has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans.* If a bank does not have a customer relationship with a consumer under the special rule for loans in § 40.4(c)(2), then the bank need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When a bank is required to deliver an annual privacy notice by this section, the bank must deliver it according to § 40.9.

§ 40.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that a bank provides under §§ 40.4, 40.5, and 40.8 must include each of the following items of information, in addition to any other information the bank wishes to provide, that applies to the bank and to the consumers to whom the bank sends its privacy notice:

(1) The categories of nonpublic personal information that the bank collects;

(2) The categories of nonpublic personal information that the bank discloses;

(3) The categories of affiliates and nonaffiliated third parties to whom the bank discloses nonpublic personal information, other than those parties to whom the bank discloses information under §§ 40.14 and 40.15;

(4) The categories of nonpublic personal information about the bank's former customers that the bank discloses and the categories of affiliates and nonaffiliated third parties to whom the bank discloses nonpublic personal information about the bank's former customers, other than those parties to whom the bank discloses information under §§ 40.14 and 40.15;

(5) If a bank discloses nonpublic personal information to a nonaffiliated third party under § 40.13 (and no other exception in §§ 40.14 or 40.15 applies to that disclosure), a separate statement of the categories of information the bank discloses and the categories of third parties with whom the bank has contracted;

(6) An explanation of the consumer's right under § 40.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that the bank makes under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) The bank's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that the bank makes under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If a bank discloses nonpublic personal information to third parties as authorized under §§ 40.14 and 40.15, the bank is not required to list those exceptions in the initial or annual privacy notices required by §§ 40.4 and 40.5. When describing the categories with respect to those parties, the bank is required to state only that it makes disclosures to other nonaffiliated third parties as permitted by law.

(c) *Examples.* (1) *Categories of nonpublic personal information that the bank collects.* A bank satisfies the requirement to categorize the nonpublic personal information that it collects if it lists the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with the bank or its affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information the bank discloses.* (i) A bank satisfies the requirement to categorize the nonpublic personal information that it discloses if the bank lists the categories described in paragraph (e)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If a bank reserves the right to disclose all of the nonpublic personal information about consumers that it collects, it may simply state that fact without describing the categories or examples of the nonpublic personal information it discloses.

(3) *Categories of affiliates and nonaffiliated third parties to whom the bank discloses.* A bank satisfies the requirement to categorize the affiliates and nonaffiliated third parties to whom it discloses nonpublic personal information if the bank lists the following categories, as applicable, and a few examples to illustrate the types of third parties in each category:

(i) Financial service providers;

(ii) Non-financial companies; and

(iii) Others.

(4) *Disclosures under exception for service providers and joint marketers.* If a bank discloses nonpublic personal information under the exception in § 40.13 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the bank satisfies the disclosure requirement of paragraph (a)(5) of this section if it:

(i) Lists the categories of nonpublic personal information it discloses, using the same categories and examples the bank used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) States whether the third party is:

(A) A service provider that performs marketing services on the bank's behalf or on behalf of the bank and another financial institution; or

(B) A financial institution with whom the bank has a joint marketing agreement.

(5) *Simplified notices.* If a bank does not disclose, and does not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§ 40.14 and 40.15, the bank may simply state that fact, in addition to the information it must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) *Confidentiality and security.* A bank describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if it does both of the following:

(i) Describes in general terms who is authorized to have access to the information; and

(ii) States whether the bank has security practices and procedures in place to ensure the confidentiality of the information in accordance with the bank's policy. The bank is not required to describe technical information about the safeguards it uses.

(d) *Short-form initial notice with opt out notice for non-customers.* (1) A bank may satisfy the initial notice requirements in §§ 40.4(a)(2), 40.7(b), and 40.7(c) for a consumer who is not a customer by providing a short-form initial notice at the same time as the bank delivers an opt out notice as required in § 40.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that the bank's privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) The bank must deliver its short-form initial notice according to § 40.9. The bank is not required to deliver its privacy notice with its short-form initial notice. The bank instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the bank's short-form notice requests the bank's privacy notice, the bank must deliver its privacy notice according to § 40.9.

(4) *Examples of obtaining privacy notice.* The bank provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the bank:

(i) Provides a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at the bank's office, maintain copies of the notice on hand that the bank provides to the consumer immediately upon request.

(e) *Future disclosures.* The bank's notice may include:

(1) Categories of nonpublic personal information that the bank reserves the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom the bank reserves the right in the future to disclose, but to whom the bank does not currently disclose, nonpublic personal information.

(f) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this part.

§ 40.7 Form of opt out notice to consumers; opt out methods.

(a) (1) *Form of opt out notice.* If a bank is required to provide an opt out notice under § 40.10(a), it must provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That the bank discloses or reserves the right to disclose nonpublic personal information about its consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.* (i) *Adequate opt out notice.* A bank provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if the bank:

(A) Identifies all of the categories of nonpublic personal information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the bank discloses the information, as described in § 40.6(a)(2) and (3), and states that the consumer can opt out of the disclosure of that information; and

(B) Identifies the financial products or services that the consumer obtains from the bank, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* A bank provides a reasonable means to exercise an opt out right if it:

(A) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Includes a reply form together with the opt out notice;

(C) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the bank's web site, if the consumer agrees to the electronic delivery of information; or

(D) Provides a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* A bank *does not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the bank provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* A bank may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* A bank may provide the opt out notice together with or on the same written or electronic form as the initial notice the bank provides in accordance with § 40.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If a bank provides the opt out notice later than required for the initial notice in accordance with § 40.4, the bank must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships.* (1) If two or more consumers jointly obtain a financial product or service from a bank, the bank may provide a single opt out notice. The bank's opt out notice must explain how the bank will treat an opt out direction by a joint consumer (as explained in paragraph (d)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. The bank may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If a bank permits each joint consumer to opt out separately, the bank must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A bank may not require *all* joint consumers to opt out before it implements *any* opt out direction.

(5) *Example.* If John and Mary have a joint checking account with a bank and arranges for the bank to send statements to John's address, the bank may do any of the following, but it must explain in its opt out notice which opt out policy the bank will follow:

(i) Send a single opt out notice to John's address, but the bank must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If the bank does so and John opts out, the bank may not require

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Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If the bank does so:

(A) It must permit John and Mary to opt out for each other;

(B) If both opt out, the bank must permit both of them to notify it in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, the bank may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) *Time to comply with opt out.* A bank must comply with a consumer's opt out direction as soon as reasonably practicable after the bank receives it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction.* (1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that the bank collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the bank, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery.* When a bank is required to deliver an opt out notice by this section, the bank must deliver it according to § 40.9.

§ 40.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, a bank must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that the bank provided to that consumer under § 40.4, unless:

(1) The bank has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(2) The bank has provided to the consumer a new opt out notice;

(3) The bank has given the consumer a reasonable opportunity, before the bank discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples.* (1) Except as otherwise permitted by §§ 40.13, 40.14, and 40.15, a bank must provide a revised notice before it:

(i) Discloses a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Discloses nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Discloses nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if the bank discloses nonpublic personal information to a new nonaffiliated third party that the bank adequately described in its prior notice.

(c) *Delivery.* When a bank is required to deliver a revised privacy notice by this section, the bank must deliver it according to § 40.9.

§ 40.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* A bank must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) *Examples of reasonable expectation of actual notice.* A bank may reasonably expect that a consumer will receive actual notice if the bank:

(i) Hand-delivers a printed copy of the notice to the consumer;

(ii) Mails a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, posts the notice on the ATM screen and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* A bank may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(i) Only posts a sign in its branch or office or generally publish advertisements of its privacy policies and practices;

(ii) Sends the notice via electronic mail to a consumer who does not obtain a financial product or service from the bank electronically.

(c) *Annual notices only.* A bank may reasonably expect that a customer will receive actual notice of the bank's annual privacy notice if:

(1) The customer uses the bank's web site to access financial products and services electronically and agrees to receive notices at the web site and the bank posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that the bank refrain from sending any information regarding the customer relationship, and the bank's current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* A bank may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers.* (1) For customers only, a bank must provide the initial notice required by § 40.4(a)(1), the annual notice required by § 40.5(a), and the revised notice required by § 40.8 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* A bank provides a privacy notice to the customer so that the customer can retain it or obtain it later if the bank:

(i) Hand-delivers a printed copy of the notice to the customer;

(ii) Mails a printed copy of the notice to the last known address of the customer; or

(iii) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* A bank may provide a joint notice from it and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the bank and the other institutions.

(g) *Joint relationships.* If two or more consumers jointly obtain a financial product or service from a bank, the bank may satisfy the initial, annual, and revised notice requirements of §§ 40.4(a), 40.5(a), and 40.8(a), respectively, by providing one notice to those consumers jointly.

Subpart B—Limits on Disclosures

§ 40.10 Limits on disclosure of non-public personal information to nonaffiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, a bank may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) The bank has provided to the consumer an initial notice as required under § 40.4;

(ii) The bank has provided to the consumer an opt out notice as required in § 40.7;

(iii) The bank has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that the bank not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 40.13, 40.14, and 40.15.

(3) *Examples of reasonable opportunity to opt out.* A bank provides a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* The bank mails the notices required in paragraph (a)(1) of this section to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date the bank mailed the notices.

(ii) *By electronic means.* A customer opens an on-line account with a bank and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and the bank allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a cashier's check by a consumer, a bank provides the consumer with a reasonable opportunity to opt out if the bank provides the notices required in paragraph (a)(1) of this section at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.* (1) A bank must comply with this section, regardless of whether the bank and the consumer have established a customer relationship.

(2) Unless a bank complies with this section, the bank may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that the bank has collected, regardless of whether the bank collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* A bank may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 40.11 Limits on redisclosure and reuse of information.

(a)(1) *Information the bank receives under an exception.* If a bank receives nonpublic personal information from a nonaffiliated financial institution under an exception in §§ 40.14 or 40.15 of this part, the bank's disclosure and use of that information is limited as follows:

(i) The bank may disclose the information to the affiliates of the financial institution from which the bank received the information;

(ii) The bank may disclose the information to its affiliates, but the bank's affiliates may, in turn, disclose and use the information only to the extent that the bank may disclose and use the information; and

(iii) The bank may disclose and use the information pursuant to an exception in §§ 40.14 or 40.15 in the ordinary course of business to carry out the activity covered by the exception under which the bank received the information.

(2) *Example.* If a bank receives a customer list from a nonaffiliated financial institution in order to provide account processing services under the exception in § 40.14(a), the bank may disclose that information under any exception in §§ 40.14 or 40.15 in the ordinary course of business in order to provide those services. For example, the bank could disclose the information in response to a properly authorized subpoena or to its attorneys, accountants, and auditors. The bank could not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(b)(1) *Information a bank receives outside of an exception.* If a bank receives nonpublic personal information from a nonaffiliated financial institution other than under an exception in §§ 40.14 or 40.15 of this part, the bank may disclose the information only:

(i) To the affiliates of the financial institution from which the bank received the information;

(ii) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the bank can disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the bank received the information.

(2) *Example.* If a bank obtains a customer list from a nonaffiliated financial institution outside of the exceptions in §§ 40.14 and 40.15:

(i) The bank may use that list for its own purposes; and

(ii) The bank may disclose that list to another nonaffiliated third party only if the financial institution from which the bank purchased the list could have lawfully disclosed the list to that third party. That is, the bank may disclose the list in accordance with the privacy policy of the financial institution from which the bank received the list, as limited by the opt out direction of each consumer whose nonpublic personal information the bank intends to disclose and the bank may disclose the list in accordance with an exception in §§ 40.14 or 40.15, such as to the bank's attorneys or accountants.

(c) *Information a bank discloses under an exception.* If a bank discloses nonpublic personal information to a nonaffiliated third party under an exception in §§ 40.14 or 40.15 of this part, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to the bank's affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in §§ 40.14 or 40.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information a bank discloses outside of an exception.* If a bank discloses nonpublic personal information to a nonaffiliated third party other than under an exception in §§ 40.14 or 40.15 of this part, the third party may disclose the information only:

(1) To the bank's affiliates;

(2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if the bank made it directly to that person.

§ 40.12 Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* A bank must not, directly or through an affiliate, disclose, other than to a consumer reporting

agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if a bank discloses an account number or similar form of access number or access code:

(1) To the bank's agent or service provider solely in order to perform marketing for the bank's own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Examples.* (1) *Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the bank does not provide the recipient with a means to decode the number or code.

(2) *Transaction account.* A transaction account is an account other than a deposit account or a credit card account. A transaction account does not include an account to which third parties cannot initiate charges.

Subpart C—Exceptions

§ 40.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in §§ 40.7 and 40.10 do not apply when a bank provides nonpublic personal information to a nonaffiliated third party to perform services for the bank or functions on the bank's behalf, if the bank:

(i) Provides the initial notice in accordance with § 40.4; and

(ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the bank disclosed the information, including use under an exception in § 40.14 or 40.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If a bank discloses nonpublic personal information under this section to a financial institution with which the bank performs joint marketing, the bank's contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in §§ 40.14 or 40.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for a bank under paragraph (a) of this section may include marketing of the bank's own products or services or marketing of financial products or services offered pursuant to joint agreements between the bank and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, *joint agreement* means a written contract pursuant to which a bank and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 40.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 40.4(a)(2), the opt out in §§ 40.7 and 40.10 and service providers and joint marketing in § 40.13 do not apply if the bank discloses nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with a bank, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce the bank's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a bank or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law;

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

§ 40.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice to consumers in § 40.4(a)(2), the opt out in §§ 40.7 and 40.10, and service providers and joint marketing in § 40.13 do not apply when a bank discloses nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2) (i) To protect the confidentiality or security of a bank's records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a bank, persons that are assessing the bank's compliance with industry standards, and the bank's attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's State that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*); or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with Federal, State, or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, State, or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over a bank for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to a bank's disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to the bank for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 40.7(f).

Subpart D—Relation to Other Laws; Effective Date

§ 40.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 40.17 Relation to State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such State statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the OCC, on the Federal Trade Commission's own motion, or upon the petition of any interested party.

§ 40.18 Effective date; transition rule.

(a) *Effective date.* This part is effective November 13, 2000. In order to provide sufficient time for banks to establish policies and systems to comply with the requirements of this part, the OCC has extended the time for compliance with this part until July 1, 2001.

(b)(1) *Notice requirement for consumers who are the bank's customers on the compliance date.* By July 1, 2001, a bank must have provided an initial notice, as required by § 40.4, to consumers who are the bank's customers on July 1, 2001.

(2) *Example.* A bank provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the bank has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the bank's existing customers.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that a bank has entered into with a nonaffiliated third party to perform services for the bank or functions on the bank's behalf satisfies the provisions of § 40.13(a)(1)(ii) of this part, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the bank entered into the agreement on or before July 1, 2000.

Appendix A to Part 40—Sample Clauses

Financial institutions, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A–1—Categories of information a bank collects (all institutions)

A bank may use this clause, as applicable, to meet the requirement of § 40.6(a)(1) to describe the categories of nonpublic personal information the bank collects.

Sample Clause A–1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A–2—Categories of information a bank discloses (institutions that disclose outside of the exceptions)

A bank may use one of these clauses, as applicable, to meet the requirement of § 40.6(a)(2) to describe the categories of nonpublic personal information the bank discloses. The bank may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in §§ 40.13, 40.14, and 40.15.

Sample Clause A–2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

Sample Clause A–2, Alternative 2:

We may disclose all of the information that we collect, as described [*describe location in the notice, such as "above" or "below"*].

A–3—Categories of information a bank discloses and parties to whom the bank discloses (institutions that do not disclose outside of the exceptions)

A bank may use this clause, as applicable, to meet the requirements of §§ 40.6(a)(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that the bank discloses and the categories of affiliates and nonaffiliated third parties to whom the bank discloses. A bank may use this clause if the bank does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§ 40.14, and 40.15.

Sample Clause A–3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A–4—Categories of parties to whom a bank discloses (institutions that disclose outside of the exceptions)

A bank may use this clause, as applicable, to meet the requirement of § 40.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom the bank discloses nonpublic personal information. The bank may use this clause if the bank discloses nonpublic personal information other than as permitted by the exceptions in §§ 40.13, 40.14, and 40.15, as well as when permitted by the exceptions in §§ 40.14 and 40.15.

Sample Clause A–4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [*provide illustrative examples, such as "mortgage bankers, securities broker-dealers, and insurance agents"*];
- Non-financial companies, such as [*provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"*]; and
- Others, such as [*provide illustrative examples, such as "non-profit organizations"*].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A–5—Service provider/joint marketing exception

A bank may use one of these clauses, as applicable, to meet the requirements of § 40.6(a)(5) related to the exception for service providers and joint marketers in § 40.13. If a bank discloses nonpublic personal information under this exception, the bank must describe the categories of nonpublic personal information the bank discloses and the categories of third parties with whom the bank has contracted.

Sample Clause A–5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

Sample Clause A–5, Alternative 2:

We may disclose all of the information we collect, as described [*describe location in the notice, such as "above" or "below"*] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A–6—Explanation of opt out right (institutions that disclose outside of the exceptions)

A bank may use this clause, as applicable, to meet the requirement of § 40.6(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The bank may use this clause if the bank discloses nonpublic personal information other than as permitted by the exceptions in §§ 40.13, 40.14, and 40.15.

Sample Clause A–6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)*].

A–7—Confidentiality and security (all institutions)

A bank may use this clause, as applicable, to meet the requirement of § 40.6(a)(8) to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A–7:

We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"*]. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

Dated: May 9, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the joint preamble, Title 12, Chapter II, of the Code of Federal Regulations is amended by adding a new part 216 to read as follows:

PART 216—PRIVACY OF CONSUMER FINANCIAL INFORMATION (REGULATION P)

Sec.

216.1 Purpose and scope.
216.2 Rule of construction.
216.3 Definitions.

Subpart A—Privacy and Opt Out Notices

216.4 Initial privacy notice to consumers required.
216.5 Annual privacy notice to customers required.
216.6 Information to be included in privacy notices.
216.7 Form of opt out notice to consumers; opt out methods.
216.8 Revised privacy notices.
216.9 Delivering privacy and opt out notices.

Subpart B—Limits on Disclosures

216.10 Limitation on disclosure of nonpublic personal information to nonaffiliated third parties.
216.11 Limits on redisclosure and reuse of information.
216.12 Limits on sharing account number information for marketing purposes.

Subpart C—Exceptions

216.13 Exception to opt out requirements for service providers and joint marketing.
216.14 Exceptions to notice and opt out requirements for processing and servicing transactions.
216.15 Other exceptions to notice and opt out requirements.

Subpart D—Relation to Other Laws; Effective Date

216.16 Protection of Fair Credit Reporting Act.
216.17 Relation to State laws.
216.18 Effective date; transition rule.

Appendix A to Part 216—Sample Clauses

Authority: 15 U.S.C. 6801 *et seq.*

§ 216.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure, subject to the exceptions in §§ 216.13, 216.14, and 216.15.

(b) *Scope.* (1) This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to the U. S. offices of entities for which the Board has primary supervisory authority. They are referred to in this part as "you." These are: State member banks, bank holding companies and certain of their nonbank subsidiaries or affiliates, State uninsured branches and agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge and Agreement corporations.

(2) Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–1320d-8).

§ 216.2 Rule of construction.

The examples in this part and the sample clauses in appendix A of this part are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this part.

§ 216.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) (1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples*—(i) *Reasonably understandable.* You make your notice reasonably understandable if you:

(A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Use short explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology whenever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read;

(C) Provide wide margins and ample line spacing;

(D) Use boldface or italics for key words; and

(E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, when you combine your notice with other information.

(iii) *Notices on web sites.* If you provide a notice on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

(A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(c) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) *Examples*—(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer regardless of whether you establish a continuing advisory relationship.

(iv) If you hold ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(v) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(vi) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vii) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(viii) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the Board determines.

(h) *Customer* means a consumer who has a customer relationship with you.

(i)(1) *Customer relationship* means a continuing relationship between a

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consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) *Examples*—(i) *Continuing relationship.* A consumer has a continuing relationship with you if the consumer:

(A) Has a deposit or investment account with you;

(B) Obtains a loan from you;

(C) Has a loan for which you own the servicing rights;

(D) Purchases an insurance product from you;

(E) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(F) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan for the consumer;

(G) Enters into a lease of personal property with you; or

(H) Obtains financial, investment, or economic advisory services from you for a fee.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution or purchasing a cashier's check or money order;

(B) You sell the consumer's loan and do not retain the rights to service that loan; or

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions.

(j) *Federal functional regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Director of the Office of Thrift Supervision;

(5) The National Credit Union Administration Board; and

(6) The Securities and Exchange Commission.

(k)(1) *Financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(l)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(m)(1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

(2) *Nonaffiliated third party* includes any company that is an affiliate solely by virtue of your or your affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(4)(H) and (I)).

(n)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (n)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) *Examples of lists*—(i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(o)(1) *Personally identifiable financial information* means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples*—(i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on a loan or servicing a loan;

(F) Any information you collect through an Internet "cookie" (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(p)(1) *Publicly available information* means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, State, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, State, or local law.

(2) *Reasonable basis.* You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your consumer has not done so.

(3) *Examples*—(i) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis*—(A) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(q) *You* means:

(1) A State member bank, as defined in 12 CFR 208.3(g);

(2) A bank holding company, as defined in 12 CFR 225.2(c);

(3) A subsidiary (as defined in 12 CFR 225.2(o)) or affiliate of a bank holding company and a subsidiary of a State member bank, except for:

(i) A national bank or a State bank that is not a member of the Federal Reserve System;

(ii) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(iii) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any State, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(iv) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or

(v) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a State insurance regulator;

(4) A State agency or State branch of a foreign bank, as those terms are defined in 12 U.S.C. 3101(b) (11) and (12), the deposits of which agency or branch are not insured by the Federal Deposit Insurance Corporation;

(5) A commercial lending company, as defined in 12 CFR 211.21(f), that is owned or controlled by a foreign bank, as defined in 12 CFR 211.21(m); or

(6) A corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611–631) or a corporation having an agreement or undertaking with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601–604a).

Subpart A—Privacy and Opt Out Notices

§ 216.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) *Customer.* An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer.* A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 216.14 and 216.15.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 216.14 and 216.15; and

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship*—(1) *General rule.* You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) *Special rule for loans.*—You establish a customer relationship with a consumer when you originate a loan to the consumer for personal, family, or household purposes. If you subsequently transfer the servicing rights to that loan to another financial institution, the customer relationship transfers with the servicing rights.

(3)(i) *Examples of establishing customer relationship.* You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to open a deposit account with you, obtains credit from you, or purchases insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee; or

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services.

(ii) *Examples of loan rule.* You establish a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when you:

(A) Originate the loan to the consumer; or

(B) Purchase the servicing rights to the consumer's loan.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice, under § 216.8, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide

the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) *Examples of exceptions*—(i) *Not at customer's election.* Establishing a customer relationship is not at the customer's election if you acquire a customer's deposit liability or the servicing rights to a customer's loan from another financial institution and the customer does not have a choice about your acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when:

(A) You and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) You establish a customer relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the customer.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a web site.

(f) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to § 216.9. If you use a short-form initial notice for non-customers according to § 216.6(d), you may deliver your privacy notice according to § 216.6(d)(3).

§ 216.5 Annual privacy notice to customers required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a former customer.

(2) *Examples.* Your customer becomes a former customer when:

(i) In the case of a deposit account, the account is inactive under your policies;

(ii) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship, you no longer provide any statements or notices to the customer concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(iv) You have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans.* If you do not have a customer relationship with a consumer under the special rule for loans in § 216.4(c)(2), then you need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to § 216.9.

§ 216.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that you provide under §§ 216.4, 216.5, and 216.8 must include each of the following items of information, in addition to any other information you wish to provide, that applies to you and to the consumers to whom you send your privacy notice:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 216.14 and 216.15;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 216.14 and 216.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 216.13 (and no other exception in § 216.14 or 216.15 applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under § 216.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 216.14 and 216.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 216.4 and 216.5. When describing the categories with respect to those parties, you are required to state only that you make disclosures to other nonaffiliated third parties as permitted by law.

(c) *Examples*—(1) *Categories of nonpublic personal information that you collect.* You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information you disclose*—(i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (c)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list the following categories, as applicable, and a few examples to illustrate the types of third parties in each category.

(i) Financial service providers;

(ii) Non-financial companies; and

(iii) Others.

(4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal information under the exception in § 216.13 to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with whom you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§ 216.14 and 216.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) *Short-form initial notice with opt out notice for non-customers*—(1) You may satisfy the initial notice requirements in §§ 216.4(a)(2), 216.7(b), and 216.7(c) for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt out notice as required in § 216.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to § 216.9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 216.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in appendix A of this part.

§ 216.7 Form of opt out notice to consumers; opt out methods.

(a)(1) *Form of opt out notice.* If you are required to provide an opt out notice under § 216.10(a), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples*—(i) *Adequate opt out notice.* You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of nonaffiliated third parties to which you disclose the information, as described in § 216.6(a)(2) and (3), and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice;

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You *do not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 216.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out

notice later than required for the initial notice in accordance with § 216.4, you must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships*—(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (d)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint checking account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) *Time to comply with opt out.* You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction*—(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to § 216.9.

§ 216.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under § 216.4, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples*—(1) Except as otherwise permitted by §§ 216.13, 216.14, and 216.15, you must provide a revised notice before you:

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to § 216.9.

§ 216.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may *not*, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(1) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site, and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers*—(1) For customers only, you must provide the initial notice required by § 216.4(a)(1), the annual notice required by § 216.5(a), and the revised notice required by § 216.8 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer; or

(iii) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships.* If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§ 216.4(a), 216.5(a), and 216.8(a), respectively, by providing one notice to those consumers jointly.

Subpart B—Limits on Disclosures

§ 216.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a) (1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 216.4;

(ii) You have provided to the consumer an opt out notice as required in § 216.7;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 216.13, 216.14, and 216.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) *By electronic means.* A customer opens an on-line account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a cashier's check by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information*—(1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 216.11 Limits on redisclosure and reuse of information.

(a)(1) *Information you receive under an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in § 216.14 or 216.15 of this part, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in § 216.14 or 216.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) *Example.* If you receive a customer list from a nonaffiliated financial institution in order to provide account processing services under the exception in § 216.14(a), you may disclose that information under any exception in § 216.14 or 216.15 in the ordinary course of business in order to provide those services. For example, you could disclose the information in response to a properly authorized subpoena or to your attorneys, accountants, and auditors. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b)(1) *Information you receive outside of an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution other than under an exception in § 216.14 or 216.15 of this part, you may disclose the information only:

(i) To the affiliates of the financial institution from which you received the information;

(ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.

(2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in § 216.14 and 216.15:

(i) You may use that list for your own purposes; and

(ii) You may disclose that list to another nonaffiliated third party only if the financial institution from which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the opt out direction of each consumer whose nonpublic personal information you intend to disclose, and you may disclose the list in accordance with an exception in § 216.14 or 216.15, such as to your attorneys or accountants.

(c) *Information you disclose under an exception.* If you disclose nonpublic personal information to a nonaffiliated third party under an exception in

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§ 216.14 or 216.15 of this part, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in § 216.14 or 216.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in § 216.14 or 216.15 of this part, the third party may disclose the information only:

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if you made it directly to that person.

§ 216.12 Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Examples*—(1) *Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

(2) *Transaction account.* A transaction account is an account other than a deposit account or a credit card account. A transaction account does not include an account to which third parties cannot initiate charges.

Subpart C—Exceptions

§ 216.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in §§ 216.7 and 216.10 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(i) Provide the initial notice in accordance with § 216.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in § 216.14 or 216.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in § 216.14 or 216.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, joint agreement means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 216.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 216.4(a)(2), for the opt out in §§ 216.7 and 216.10, and for service providers and joint marketing in § 216.13 do not apply if you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

§ 216.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice in § 216.4(a)(2), for the opt out in §§ 216.7 and 216.10, and for service providers and joint marketing in § 216.13 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's State that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with Federal, State, or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, State, or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 216.7(f).

Subpart D—Relation to Other Laws; Effective Date

§ 216.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 216.17 Relation to State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such State statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the Board, on the Federal Trade Commission's own motion, or upon the petition of any interested party.

§ 216.18 Effective date; transition rule.

(a) *Effective date.* This part is effective November 13, 2000. In order to provide sufficient time for you to establish policies and systems to comply with the requirements of this part, the Board has extended the time for compliance with this part until July 1, 2001.

(b)(1) *Notice requirement for consumers who are your customers on the compliance date.* By July 1, 2001, you must have provided an initial notice, as required by § 216.4, to consumers who are your customers on July 1, 2001.

(2) *Example.* You provide an initial notice to consumers who are your customers on July 1, 2001, if, by that date, you have established a system for providing an initial notice to all new customers and have mailed the initial notice to all your existing customers.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 216.13(a)(1)(ii) of this part, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as you entered into the contract on or before July 1, 2000.

Appendix A to Part 216—Sample Clauses

Financial institutions, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A–1—Categories of information you collect (all institutions)

You may use this clause, as applicable, to meet the requirement of § 216.6(a)(1) to describe the categories of nonpublic personal information you collect.

Sample Clause A–1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and

• Information we receive from a consumer reporting agency.

A–2—Categories of information you disclose (institutions that disclose outside of the exceptions)

You may use one of these clauses, as applicable, to meet the requirement of § 216.6(a)(2) to describe the categories of nonpublic personal information you disclose. You may use these clauses if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 216.13, 216.14, and 216.15.

Sample Clause A–2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

• Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];

• Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and

• Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

Sample Clause A–2, Alternative 2:

We may disclose all of the information that we collect, as described [*describe location in the notice, such as "above" or "below"*].

A–3—Categories of information you disclose and parties to whom you disclose (institutions that do not disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirements of §§ 216.6(a)(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. You may use this clause if you do not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§ 216.14, and 216.15.

Sample Clause A–3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A–4—Categories of parties to whom you disclose (institutions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of § 216.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 216.13, 216.14, and 216.15, as well as when permitted by the exceptions in §§ 216.14, and 216.15.

Sample Clause A–4:

We may disclose nonpublic personal information about you to the following types of third parties:

• Financial service providers, such as [*provide illustrative examples, such as "mortgage bankers, securities broker-dealers, and insurance agents"*];

• Non-financial companies, such as [*provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"*]; and

• Others, such as [*provide illustrative examples, such as "non-profit organizations"*].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A–5—Service provider/joint marketing exception

You may use one of these clauses, as applicable, to meet the requirements of § 216.6(a)(5) related to the exception for service providers and joint marketers in § 216.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A–5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

• Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];

• Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and

• Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

Sample Clause A–5, Alternative 2:

We may disclose all of the information we collect, as described [*describe location in the notice, such as "above" or "below"*] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A–6—Explanation of opt out right (institutions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of § 216.6(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 216.13, 216.14, and 216.15.

Sample Clause A–6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)"*].

A–7—Confidentiality and security (all institutions)

You may use this clause, as applicable, to meet the requirement of § 216.6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A–7:

We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"*]. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

By order of the Board of Governors of the Federal Reserve System, May 17, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set out in the joint preamble, the Federal Deposit Insurance Corporation amends Title 12, Chapter III of the Code of Federal Regulations by adding a new part 332 to read as follows.

PART 332—PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.
332.1 Purpose and scope.
332.2 Rule of construction.
332.3 Definitions.

Subpart A—Privacy and Opt Out Notices

332.4 Initial privacy notice to consumers required.
332.5 Annual privacy notice to customers required.
332.6 Information to be included in privacy notices.
332.7 Form of opt out notice to consumers; opt out methods.
332.8 Revised privacy notices.
332.9 Delivering privacy and opt out notices.

Subpart B—Limits on Disclosures

332.10 Limitation on disclosure of nonpublic personal information to nonaffiliated third parties.
332.11 Limits on redisclosure and reuse of information.
332.12 Limits on sharing account number information for marketing purposes.

Subpart C—Exceptions

332.13 Exception to opt out requirements for service providers and joint marketing.
332.14 Exceptions to notice and opt out requirements for processing and servicing transactions.
332.15 Other exceptions to notice and opt out requirements.

Subpart D—Relation to Other Laws; Effective Date

332.16 Protection of Fair Credit Reporting Act.
332.17 Relation to State laws.
332.18 Effective date; transition rule.

Appendix A to Part 332—Sample Clauses

Authority: 12 U.S.C. 1819 (Seventh and Tenth); 15 U.S.C. 6801 *et seq.*

§ 332.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure, subject to the exceptions in §§ 332.13, 332.14, and 332.15.

(b) *Scope.* (1) This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to the United States offices of entities for which the Federal Deposit Insurance Corporation (FDIC) has primary federal supervisory authority. They are referred to in this part as "you." These are: banks insured by the FDIC (other than members of the Federal Reserve System), insured state branches of foreign banks, and certain subsidiaries of such entities.

(2) Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–1320d–8).

§ 332.2 Rule of construction.

The examples in this part and the sample clauses in Appendix A of this part are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this part.

§ 332.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples*—(i) *Reasonably understandable.* You make your notice reasonably understandable if you:

(A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Use short explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology whenever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read;

(C) Provide wide margins and ample line spacing;

(D) Use boldface or italics for key words; and

(E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, when you combine your notice with other information.

(iii) *Notices on web sites.* If you provide a notice on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

(A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(c) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) *Examples*—(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer regardless of whether you establish a continuing advisory relationship.

(iv) If you hold ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(v) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(vi) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vii) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(viii) An individual is not your consumer solely because he or she is a

participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the FDIC determines.

(h) *Customer* means a consumer who has a customer relationship with you.

(i)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) *Examples*—(i) *Continuing relationship.* A consumer has a continuing relationship with you if the consumer:

(A) Has a deposit or investment account with you;

(B) Obtains a loan from you;

(C) Has a loan for which you own the servicing rights;

(D) Purchases an insurance product from you;

(E) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(F) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan for the consumer;

(G) Enters into a lease of personal property with you; or

(H) Obtains financial, investment, or economic advisory services from you for a fee.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution or purchasing a cashier's check or money order;

(B) You sell the consumer's loan and do not retain the rights to service that loan; or

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions.

(j) *Federal functional regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Director of the Office of Thrift Supervision;

(5) The National Credit Union Administration Board; and

(6) The Securities and Exchange Commission.

(k)(1) *Financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(l)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(m)(1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

(2) *Nonaffiliated third party* includes any company that is an affiliate solely by virtue of your or your affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(4)(H) and (I)).

(n)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (n)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) *Examples of lists*—(i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(o)(1) *Personally identifiable financial information* means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples*—(i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on a loan or servicing a loan;

(F) Any information you collect through an Internet "cookie" (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(p)(1) *Publicly available information* means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, State, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, State, or local law.

(2) *Reasonable basis.* You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your consumer has not done so.

(3) *Examples—(i) Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis*— (A) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(q) *You* means:

(1) A bank insured by the FDIC (other than a member of the Federal Reserve System);

(2) An insured state branch of a foreign bank; and

(3) A subsidiary of either such entity except:

(i) A broker or dealer that is registered under the Securities and Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(ii) A registered investment adviser, properly registered by or on behalf of either the Securities Exchange Commission or any State, with respect to its investment advisory activities and its activities incidental to those investment advisory activities;

(iii) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or

(iv) An insurance company, with respect to its insurance activities and its activities incidental to those insurance activities, that is subject to supervision by a State insurance regulator.

Subpart A—Privacy and Opt Out Notices

§ 332.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) *Customer.* An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer.* A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 332.14 and 332.15.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 332.14 and 332.15; and

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship*—(1) *General rule.* You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) *Special rule for loans.*—You establish a customer relationship with a consumer when you originate a loan to the consumer for personal, family, or household purposes. If you subsequently transfer the servicing rights to that loan to another financial institution, the customer relationship transfers with the servicing rights.

(3)(i) *Examples of establishing customer relationship.* You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to open a deposit account with you, obtains credit from you, or purchases insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee; or

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services.

(ii) *Examples of loan rule.* You establish a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when you:

(A) Originate the loan to the consumer; or

(B) Purchase the servicing rights to the consumer's loan.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice, under § 332.8, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) *Examples of exceptions*—(i) *Not at customer's election.* Establishing a customer relationship is not at the customer's election if you acquire a customer's deposit liability or the servicing rights to a customer's loan from another financial institution and the customer does not have a choice about your acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when:

(A) You and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) You establish a customer relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the customer.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a web site.

(f) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to § 332.9. If you use a short-form initial notice for non-customers according to § 332.6(d), you may deliver your privacy notice according to § 332.6(d)(3).

§ 332.5 Annual privacy notice to customers required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a former customer.

(2) *Examples.* Your customer becomes a former customer when:

(i) In the case of a deposit account, the account is inactive under your policies;

(ii) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship, you no longer provide any statements or notices to the customer concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(iv) You have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans.* If you do not have a customer relationship with a consumer under the special rule for loans in § 332.4(c)(2), then you need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to § 332.9.

§ 332.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual and revised privacy notices that you provide under §§ 332.4, 332.5, and 332.8 must include each of the following items of information, in addition to any other information you wish to provide, that applies to you and to the consumers to whom you send your privacy notice:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 332.14 and 332.15;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 332.14 and 332.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 332.13 (and no other exception in § 332.14 or 332.15 applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under § 332.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 332.14 and 332.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 332.4 and 332.5. When describing the categories with respect to those parties, you are required to state only that you make disclosures to other nonaffiliated third parties as permitted by law.

(c) *Examples*—(1) *Categories of nonpublic personal information that you collect.* You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information you disclose*—(i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (c)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list the following categories, as applicable, and a few examples to illustrate the types of third parties in each category.

(i) Financial service providers;

(ii) Non-financial companies; and

(iii) Others.

(4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal information under the exception in § 332.13 to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with whom you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§ 332.14 and 332.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) *Short-form initial notice with opt out notice for non-customers*—(1) You may satisfy the initial notice requirements in §§ 332.4(a)(2), 332.7(b), and 332.7(c) for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt out notice as required in § 332.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to § 332.9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 332.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in appendix A of this part.

§ 332.7 Form of opt out notice to consumers; opt out methods.

(a) (1) *Form of opt out notice.* If you are required to provide an opt out notice under § 332.10(a), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples*—(i) *Adequate opt out notice.* You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of nonaffiliated third parties to which you disclose the information, as described in § 332.6(a)(2) and (3), and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice;

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You *do not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provide with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial

notice you provide in accordance with § 332.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice later than required for the initial notice in accordance with § 332.4, you must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships*—(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (d)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint checking account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) *Time to comply with opt out.* You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction*—(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to § 332.9.

§ 332.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under § 332.4, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples*—(1) Except as otherwise permitted by §§ 332.13, 332.14, and 332.15, you must provide a revised notice before you:

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to § 332.9.

§ 332.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may *not*, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(1) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site, and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers*—(1) For customers only, you must provide the initial notice required by § 332.4(a)(1), the annual notice required by § 332.5(a), and the revised notice required by § 332.8 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer; or

(iii) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships.* If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§ 332.4(a), 332.5(a), and 332.8(a), respectively, by providing one notice to those consumers jointly.

Subpart B—Limits on Disclosures

§ 332.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a) (1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 332.4;

(ii) You have provided to the consumer an opt out notice as required in § 332.7;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 332.13, 332.14, and 332.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) *By electronic means.* A customer opens an on-line account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a cashier's check by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information*—(1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 332.11 Limits on redisclosure and reuse of information.

(a)(1) *Information you receive under an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in § 332.14 or 332.15 of this part, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in § 332.14 or 332.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) *Example.* If you receive a customer list from a nonaffiliated financial institution in order to provide account processing services under the exception in § 332.14(a), you may disclose that information under any exception in § 332.14 or 332.15 in the ordinary course of business in order to provide those services. For example, you could disclose the information in response to a properly authorized subpoena or to your attorneys, accountants, and auditors. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b)(1) *Information you receive outside of an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution other than under an exception in § 332.14 or 332.15 of this part, you may disclose the information only:

(i) To the affiliates of the financial institution from which you received the information;

(ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.

(2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in § 332.14 and 332.15:

(i) You may use that list for your own purposes; and

(ii) You may disclose that list to another nonaffiliated third party only if the financial institution from which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the opt out direction of each consumer whose nonpublic personal information you intend to disclose, and you may disclose the list in accordance with an exception in § 332.14 or 332.15, such as to your attorneys or accountants.

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(c) *Information you disclose under an exception.* If you disclose nonpublic personal information to a nonaffiliated third party under an exception in § 332.14 or 332.15 of this part, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in § 332.14 or 332.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in § 332.14 or 332.15 of this part, the third party may disclose the information only:

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if you made it directly to that person.

§ 332.12 Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Examples*—(1) *Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

(2) *Transaction account.* A transaction account is an account other than a deposit account or a credit card account. A transaction account does not include an account to which third parties cannot initiate charges.

Subpart C—Exceptions

§ 332.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in §§ 332.7 and 332.10 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(i) Provide the initial notice in accordance with § 332.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in § 332.14 or 332.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in § 332.14 or 332.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, joint agreement means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 332.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 332.4(a)(2), for the opt out in §§ 332.7 and 332.10 and for service providers and joint marketing in § 332.13 do not apply if you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

§ 332.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice in § 332.4(a)(2), for the opt out in §§ 332.7 and 332.10, and for service providers and joint marketing in § 332.13 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2) (i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance a thority's State that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5) (i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7) (i) To comply with Federal, State, or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, State, or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 332.7(f).

Subpart D—Relation to Other Laws; Effective Date

§ 332.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 332.17 Relation to State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such State statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the FDIC, on the Federal Trade Commission's own motion, or upon the petition of any interested party.

§ 332.18 Effective date; transition rule.

(a) *Effective date.* This part is effective November 13, 2000. In order to provide sufficient time for you to establish policies and systems to comply with the requirements of this part, the FDIC has extended the time for compliance with this part until July 1, 2001.

(b)(1) *Notice requirement for consumers who are your customers on the compliance date.* By July 1, 2001, you must have provided an initial notice, as required by § 332.4, to consumers who are your customers on July 1, 2001.

(2) *Example.* You provide an initial notice to consumers who are your customers on July 1, 2001, if, by that date, you have established a system for providing an initial notice to all new customers and have mailed the initial notice to all your existing customers.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 332.13(a)(1)(ii) of this part, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as you entered into the contract on or before July 1, 2000.

Appendix A to Part 332—Sample Clauses

Financial institutions, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets and income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A–1—Categories of information you collect (all institutions)

You may use this clause, as applicable, to meet the requirement of § 332.6(a)(1) to

describe the categories of nonpublic personal information you collect.

Sample Clause A–1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A–2—Categories of information you disclose (institutions that disclose outside of the exceptions)

You may use one of these clauses, as applicable, to meet the requirement of § 332.6(a)(2) to describe the categories of nonpublic personal information you disclose. You may use these clauses if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 332.13, 332.14, and 332.15.

Sample Clause A–2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

Sample Clause A–2, Alternative 2:

We may disclose all of the information that we collect, as described [*describe location in the notice, such as "above" or "below"*].

A–3—Categories of information you disclose and parties to whom you disclose (institutions that do not disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirements of §§ 332.6(a) (2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. You may use this clause if you do not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§ 332.14 and 332.15.

Sample Clause A–3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A–4—Categories of parties to whom you disclose (institutions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of § 332.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 332.13, 332.14, and 332.15, as well as when permitted by the exceptions in §§ 332.14 and 332.15.

Sample Clause A–4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [*provide illustrative examples, such as "mortgage bankers, securities broker-dealers, and insurance agents"*];
- Non-financial companies, such as [*provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"*]; and
- Others, such as [*provide illustrative examples, such as "non-profit organizations"*].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A–5—Service provider/joint marketing exception

You may use one of these clauses, as applicable, to meet the requirements of § 332.6(a)(5) related to the exception for service providers and joint marketers in § 332.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A–5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

Sample Clause A–5, Alternative 2:

We may disclose all of the information we collect, as described [*describe location in the notice, such as "above" or "below"*] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A–6—Explanation of opt out right (institutions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of § 332.6(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 332.13, 332.14, and 332.15.

Sample Clause A–6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)*].

A–7—Confidentiality and security (all institutions)

You may use this clause, as applicable, to meet the requirement of § 332.6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A–7:

We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"*]. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 10th day of May, 2000.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set out in the joint preamble, OTS amends Chapter V, Title 12 of the Code of Federal Regulations by adding part 573 to read as follows:

PART 573—PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.

573.1 Purpose and scope.
573.2 Rule of construction.
573.3 Definitions.

Subpart A—Privacy and Opt Out Notices

573.4 Initial privacy notice to consumers required.
573.5 Annual privacy notice to customers required.
573.6 Information to be included in privacy notices.
573.7 Form of opt out notice to consumers; opt out methods.
573.8 Revised privacy notices.
573.9 Delivering privacy and opt out notices.

Subpart B—Limits on Disclosures

573.10 Limitation on disclosure of nonpublic personal information to nonaffiliated third parties.
573.11 Limits on redisclosure and reuse of information.
573.12 Limits on sharing account number information for marketing purposes.

Subpart C—Exceptions

573.13 Exception to opt out requirements for service providers and joint marketing.
573.14 Exceptions to notice and opt out requirements for processing and servicing transactions.
573.15 Other exceptions to notice and opt out requirements.

Subpart D—Relation to Other Laws; Effective Date

573.16 Protection of Fair Credit Reporting Act.
573.17 Relation to State laws.
573.18 Effective date; transition rule.

Appendix A to Part 573—Sample Clauses

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828; 15 U.S.C. 6801 *et seq.*

§ 573.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure, subject to the exceptions in §§ 573.13, 573.14, and 573.15.

(b) *Scope.* (1) This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to savings associations whose deposits are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations, but not subsidiaries that are brokers, dealers, persons providing insurance, investment companies, or investment advisers. This part refers to these entities as "you."

(2) Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–1320d–8).

§ 573.2 Rule of construction.

The examples in this part and the sample clauses in appendix A of this part are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this part.

§ 573.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples*—(i) *Reasonably understandable.* You make your notice reasonably understandable if you:

(A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Use short explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology whenever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read;

(C) Provide wide margins and ample line spacing;

(D) Use boldface or italics for key words; and

(E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, when you combine your notice with other information.

(iii) *Notices on web sites.* If you provide a notice on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

(A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(c) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) *Examples*—(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer regardless of whether you establish a continuing advisory relationship.

(iv) If you hold ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(v) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

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(vi) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vii) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(viii) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the OTS determines.

(h) *Customer* means a consumer who has a customer relationship with you.

(i)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) *Examples*—(i) *Continuing relationship.* A consumer has a continuing relationship with you if the consumer:

(A) Has a deposit or investment account with you;

(B) Obtains a loan from you;

(C) Has a loan for which you own the servicing rights;

(D) Purchases an insurance product from you;

(E) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(F) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan for the consumer;

(G) Enters into a lease of personal property with you; or

(H) Obtains financial, investment, or economic advisory services from you for a fee.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution or purchasing a cashier's check or money order;

(B) You sell the consumer's loan and do not retain the rights to service that loan; or

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions.

(j) Federal functional regulator means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Director of the Office of Thrift Supervision;

(5) The National Credit Union Administration Board; and

(6) The Securities and Exchange Commission.

(k)(1) *Financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(l)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(m)(1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

(2) *Nonaffiliated third party* includes any company that is an affiliate solely by virtue of your or your affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(4)(H) and (I)).

(n)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (n)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) *Examples of lists*—(i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(o)(1) *Personally identifiable financial information* means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples*—(i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on a loan or servicing a loan;

(F) Any information you collect through an Internet "cookie" (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(p)(1) *Publicly available information* means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, State, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, State, or local law.

(2) *Reasonable basis.* You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your consumer has not done so.

(3) *Examples*—(i) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis*—(A) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

Subpart A—Privacy and Opt Out Notices

§ 573.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) *Customer.* An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer.* A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 573.14 and 573.15.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 573.14 and 573.15; and

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship*—(1) *General rule.* You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) *Special rule for loans.*—You establish a customer relationship with a consumer when you originate a loan to the consumer for personal, family, or household purposes. If you subsequently transfer the servicing rights to that loan to another financial institution, the customer relationship transfers with the servicing rights.

(3)(i) *Examples of establishing customer relationship.* You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to open a deposit account with you, obtains credit from you, or purchases insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee; or

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services.

(ii) *Examples of loan rule.* You establish a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when you:

(A) Originate the loan to the consumer; or

(B) Purchase the servicing rights to the consumer's loan.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice, under § 573.8, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) *Examples of exceptions*—(i) *Not at customer's election.* Establishing a customer relationship is not at the customer's election if you acquire a

customer's deposit liability or the servicing rights to a customer's loan from another financial institution and the customer does not have a choice about your acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when:

(A) You and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) You establish a customer relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the customer.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a web site.

(f) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to § 573.9. If you use a short-form initial notice for non-customers according to § 573.6(d), you may deliver your privacy notice according to § 573.6(d)(3).

§ 573.5 Annual privacy notice to customers required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a former customer.

(2) *Examples.* Your customer becomes a former customer when:

(i) In the case of a deposit account, the account is inactive under your policies;

(ii) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(iii) In the case of a credit card relationship or other open-end credit relationship, you no longer provide any statements or notices to the customer concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(iv) You have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans.* If you do not have a customer relationship with a consumer under the special rule for loans in § 573.4(c)(2), then you need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to § 573.9.

§ 573.6 Information to be included privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that you provide under §§ 573.4, 573.5, 573.8 must include each of the following items of information, in addition to any other information you wish to provide, that applies to you and to the consumers to whom you send your privacy notice:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 573.14 and 573.15;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 573.14 and 573.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 573.13 (and no other exception in § 573.14 or 573.15 applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under § 573.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 573.14 and 573.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 573.4 and 573.5. When describing the categories with respect to those parties, you are required to state only that you make disclosures to other nonaffiliated third parties as permitted by law.

(c) *Examples*—(1) *Categories of nonpublic personal information that you collect.* You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information you disclose*—(i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (c)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list the following categories, as applicable, and a few examples to illustrate the types of third parties in each category.

(i) Financial service providers;

(ii) Non-financial companies; and

(iii) Others.

(4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal information under the exception in § 573.13 to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with whom you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§ 573.14 and 573.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) *Short-form initial notice with opt out notice for non-customers*—(1) You may satisfy the initial notice requirements in §§ 573.4(a)(2), 573.7(b), and 573.7(c) for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt out notice as required in § 573.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to § 573.9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 573.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in appendix A of this part.

§ 573.7 Form of opt out notice to consumers; opt out methods.

(a)(1) *Form of opt out notice.* If you are required to provide an opt out notice under § 573.10(a), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples*—(i) *Adequate opt out notice.* You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of nonaffiliated third parties to which you disclose the information, as described in § 573.6(a)(2) and (3), and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice;

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You *do not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 573.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice later than required for the initial notice in accordance with § 573.4, you must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships*–(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (d)(5) of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

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(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint checking account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) *Time to comply with opt out.* You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction*–(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to § 573.9.

§ 573.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under § 573.4, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples*—(1) Except as otherwise permitted by §§ 573.13, 573.14, and 573.15, you must provide a revised notice before you:

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to § 573.9.

§ 573.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may *not*, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices;

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(1) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site, and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers*–(1) For customers only, you must provide the initial notice required by § 573.4(a)(1), the annual notice required by § 573.5(a), and the revised notice required by § 573.8 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer; or

(iii) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships.* If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§ 573.4(a), 573.5(a), and 573.8(a), respectively, by providing one notice to those consumers jointly.

Subpart B—Limits on Disclosures

§ 573.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 573.4;

(ii) You have provided to the consumer an opt out notice as required in § 573.7;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 573.13, 573.14, and 573.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) *By electronic means.* A customer opens an on-line account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a cashier's check by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information*—(1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 573.11 Limits on redisclosure and reuse of information.

(a)(1) *Information you receive under an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in § 573.14 or 573.15 of this part, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in § 573.14 or 573.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) *Example.* If you receive a customer list from a nonaffiliated financial institution in order to provide account processing services under the exception in § 573.14(a), you may disclose that information under any exception in § 573.14 or 573.15 in the ordinary course of business in order to provide those services. For example, you could disclose the information in response to a properly authorized subpoena or to your attorneys, accountants, and auditors. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b)(1) *Information you receive outside of an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution other than under an exception in § 573.14 or 573.15 of this part, you may disclose the information only:

(i) To the affiliates of the financial institution from which you received the information;

(ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.

(2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in § 573.14 and 573.15:

(i) You may use that list for your own purposes; and

(ii) You may disclose that list to another nonaffiliated third party only if the financial institution from which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the opt out direction of each consumer whose nonpublic personal information you intend to disclose, and you may disclose the list in accordance with an exception in § 573.14 or 573.15, such as to your attorneys or accountants.

(c) *Information you disclose under an exception.* If you disclose nonpublic personal information to a nonaffiliated third party under an exception in § 573.14 or 573.15 of this part, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in § 573.14 or 573.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

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(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in § 573.14 or 573.15 of this part, the third party may disclose the information only:

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if you made it directly to that person.

§ 573.12 Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Examples*—(1) *Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

(2) *Transaction account.* A transaction account is an account other than a deposit account or a credit card account. A transaction account does not include an account to which third parties cannot initiate charges.

Subpart C—Exceptions

§ 573.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in §§ 573.7 and 573.10 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(i) Provide the initial notice in accordance with § 573.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in § 573.14 or 573.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in § 573.14 or 573.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, *joint agreement* means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 573.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 573.4(a)(2), for the opt out in §§ 573.7 and 573.10, and for service providers and joint marketing in § 573.13 do not apply if you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law;

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

§ 573.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice in § 573.4(a)(2), for the opt out in §§ 573.7 and 573.10, and for service providers and joint marketing in § 573.13 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's State that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with Federal, State, or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, State, or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 573.7(f).

Subpart D—Relation to Other Laws; Effective Date

§ 573.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 573.17 Relation to State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such State statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the OTS, on the Federal Trade Commission's own motion, or upon the petition of any interested party.

§ 573.18 Effective date; transition rule.

(a) *Effective date.* This part is effective November 13, 2000. In order to provide sufficient time for you to establish policies and systems to comply with the requirements of this part, the OTS has extended the time for compliance with this part until July 1, 2001.

(b)(1) *Notice requirement for consumers who are your customers on the compliance date.* By July 1, 2001, you must have provided an initial notice, as required by § 573.4, to consumers who are your customers on July 1, 2001.

(2) *Example.* You provide an initial notice to consumers who are your customers on July 1, 2001, if, by that date, you have established a system for providing an initial notice to all new customers and have mailed the initial notice to all your existing customers.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 573.13(a)(1)(ii) of this part, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as you entered into the contract on or before July 1, 2000.

Appendix A to Part 573—Sample Clauses

Financial institutions, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A–1—Categories of information you collect (all institutions)

You may use this clause, as applicable, to meet the requirement of § 573.6(a)(1) to describe the categories of nonpublic personal information you collect.

Sample Clause A–1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A–2—Categories of information you disclose (institutions that disclose outside of the exceptions)

You may use one of these clauses, as applicable, to meet the requirement of § 573.6(a)(2) to describe the categories of nonpublic personal information you disclose. You may use these clauses if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 573.13, 573.14, and 573.15.

Sample Clause A–2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name,*

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address, social security number, assets, and income"];

• Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and

• Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

Sample Clause A–2, Alternative 2:

We may disclose all of the information that we collect, as described [*describe location in the notice, such as "above" or "below"*].

A–3—Categories of information you disclose and parties to whom you disclose (institutions that do not disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirements of §§ 573.6(a)(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. You may use this clause if you do not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§ 573.14, and 573.15.

Sample Clause A–3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A–4—Categories of parties to whom you disclose (institutions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of § 573.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 573.13, 573.14, and 573.15, as well as when permitted by the exceptions in §§ 573.14, and 573.15.

Sample Clause A–4:

We may disclose nonpublic personal information about you to the following types of third parties:

• Financial service providers, such as [*provide illustrative examples, such as "mortgage bankers, securities broker-dealers, and insurance agents"*];

• Non-financial companies, such as [*provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"*]; and

• Others, such as [*provide illustrative examples, such as "non-profit organizations;"*].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A–5—Service provider/joint marketing exception

You may use one of these clauses, as applicable, to meet the requirements of § 573.6(a)(5) related to the exception for service providers and joint marketers in § 573.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A–5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

• Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];

• Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and

• Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

Sample Clause A–5, Alternative 2:

We may disclose all of the information we collect, as described [*describe location in the notice, such as "above" or "below"*] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A–6—Explanation of opt out right (institutions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of § 573.6(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 573.13, 573.14, and 573.15.

Sample Clause A–6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)"*].

A–7—Confidentiality and security (all institutions)

You may use this clause, as applicable, to meet the requirement of § 573.6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A–7:

We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"*]. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

Dated: May 10, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–13124 Filed 5–31–00; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

Federal Register

Thursday,
June 1, 2000

Part III

Department of Education

Upward Bound Program Participant Expansion Initiative; Notice

DEPARTMENT OF EDUCATION

Upward Bound Program Participant Expansion Initiative

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Secretary of Education proposes to establish an absolute priority to provide supplemental funds of up to $85,600 in fiscal year 2000 to on-going Upward Bound projects that serve at least one target high school in which at least 50 percent of the students were eligible for a free lunch under the National School Lunch Act during the 1999–2000 school year.

The purpose of this initiative is to increase the number of the neediest eligible students who are served by the Upward Bound program. The neediest students are generally those from the lowest income levels. The Secretary believes that limiting supplemental funds to projects that serve the above-described target schools is a good way to measure whether projects serve the lowest income students because the Free Lunch program is limited to students from families with the lowest family income.

Under this priority, supplements up to $85,600 will be awarded to projects currently funded under the Upward Bound Program. An estimated 150 current Upward Bound projects could receive supplemental funds to serve not more than twenty (20) additional students.

Projects that receive supplemental funds under this priority are strongly encouraged to select eligible participants who have the greatest need for Upward Bound services.

DATES: We must receive your comments on or before July 3, 2000.

ADDRESSES: Address all comments about this proposed priority to Dr. Robert L. Belle, U.S. Department of Education, 1990 K Street, NW., Room 7044, Washington, DC 20006–8510. If you prefer to send your comments through the Internet, use the following address: peggy_whitehead@ed.gov.

FOR FURTHER INFORMATION CONTACT: Peggy Whitehead, Sheryl Wilson, or Gaby Watts, U.S. Department of Education, 1990 K Street, NW., Room 7020, Washington, DC 20006–8510. Telephone (202) 502–7600. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority. During and after the comment period, you may inspect all public comments about this priority in room 7039, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m. Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, you may call (202) 502–7600. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Background

In fiscal year 2000, the Congress provided more funds than the Administration requested for the Federal TRIO Programs. In examining the options available to the Secretary for allocating these additional funds, the Secretary determined that a portion of the funds should be used to increase support to the Upward Bound program. The Upward Bound program, authorized under section 402C of the Higher Education Act of 1965 as amended (HEA), 20 U.S.C. 1070a–13, serves low-income, potential first-generation, college students helping them generate the skills and motivation necessary for success in education beyond secondary school.

Proposed Absolute Priority

Under 34 CFR 75.105(c), the Secretary proposes to give an absolute preference to applications that meet the following absolute priority. The Secretary will provide supplemental funds of $85,600 only to Upward Bound projects serving a target high school in which at least 50 percent of the students were eligible for the Free Lunch program during the 1999–2000 school year.

If more applications are received than can be funded under this initiative, the Secretary will use numerical scores assigned by field readers during the fiscal year 1999 Upward Bound competition. The Secretary will provide supplemental funds to the projects eligible for the proposed absolute priority that received the highest average scores from the three field readers. For the purposes of this proposed absolute priority, the prior experience score will not be considered. Only currently funded projects are eligible to apply for these supplemental funds.

Veteran Upward Bound projects and Upward Bound Math/Science projects *are not* eligible to participate in this initiative.

Upward Bound projects that wish to receive supplemental funds will be required to submit:

- For the 1999–2000 school year, the number of students eligible for the Free Lunch program at each of the target high schools served by the project and the total number of students enrolled at those target schools;
- The number of additional students, not to exceed 20, that the project plans to serve;
- A revised budget; and
- A narrative describing how the supplemental funds will be used.

Invitational Priority

The Secretary strongly encourages projects that receive supplemental funds to enhance their recruitment strategies and services to target high schools to select and serve students who are at greatest risk of not graduating from high school or pursuing postsecondary education. As is the case currently in the Upward Bound program, program participants must be low-income or potential first-generation college students who have an academic need for the services of this program. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and action for the program.

Applicable Program Regulations: 34 CFR Part 645.

Program Authority: 20 U.S.C. 1070.

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Dated: May 26, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–13662 Filed 5–31–00; 8:45 am]

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Federal Register

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June 1, 2000

Part IV

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

Availability of a Final Addendum to the Handbook for Habitat Conservation Planning and Incidental Take Permitting Process; Notice

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 981208299–0049–02]

RIN:1018–AG06, 0648–XA14

Notice of Availability of a Final Addendum to the Handbook for Habitat Conservation Planning and Incidental Take Permitting Process

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of final policy.

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service (the Services) are publishing a final addendum to the Handbook for Habitat Conservation Planning and Incidental Take Permitting Process (HCP Handbook). This addendum, which is also known as the five-point policy guidance, is printed entirely within this notice. Like the HCP Handbook, the addendum provides clarifying guidance for the Services in conducting the incidental take permit program and for those applying for an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act (ESA). This guidance will promote efficiency and nationwide consistency within and between the Services and improve the Habitat Conservation Planning program.

DATES: This policy is effective July 3, 2000.

ADDRESSES: Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203 (facsimile 703/358–1735); or Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910 (facsimile 301/713–0376).

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (telephone 703/358–2171, facsimile 703/358–1735), or Wanda Cain, Chief, Endangered Species Division, National Marine Fisheries Service (telephone 301/713–1401, facsimile 301/713–0376) at the above addresses.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (ESA) was amended in 1982 to allow the Secretaries to authorize the taking of listed species incidentally to an otherwise lawful activity by non-Federal entities such as states, counties, local governments, and private landowners (section 10(a)(1)(B)). To receive a permit, the applicant submits a conservation plan (also referred to as an HCP) that meets the criteria included in the ESA and its implementing regulations (50 CFR parts 17 and 222).

The section 10 incidental take permitting process (or HCP process) provides additional flexibility for landowners by including planning for unlisted species, which enables the process to embrace an ecosystem and landscape-level approach. This proactive approach can reduce future conflicts and may even preclude listing of species, furthering the purposes of the ESA. As the Services have made many refinements to the process, we have also experienced tremendous growth in the demand for Habitat Conservation Plans (HCPs) in recent years. In 1992, 14 HCPs had been approved. As of today, we have more than 260 HCP permits covering more than twenty million acres of land, providing conservation for approximately 200 listed species. More than 200 HCPs are under some stage of development. The HCP process provides an opportunity to develop strong partnerships with local governments and the private sector.

Based on the Services' experience in developing HCPs and lessons learned since 1983, the Services developed comprehensive guidance on conducting the incidental take permit program. This guidance was developed into the HCP Handbook, which was made available for public review and comment on December 21, 1994 (59 FR 65782). It was issued in final form on December 2, 1996 (61 FR 63854).

With the 1982 amendments, Congress envisioned and allowed the Federal government to provide regulatory assurances to non-Federal property owners through the section 10 incidental take permit process. We decided that a clearer policy associated with the permit regulations in 50 CFR 17.22, 17.32, and 222.307 regarding the assurances provided to landowners entering into an HCP was needed. This prompted us to develop the "No Surprises" policy, which was based on the 1982 Congressional Report language and a decade of working with private landowners during the development and implementation of HCPs. The Services believed that non-Federal property owners should be provided economic and regulatory certainty regarding the overall cost of species conservation and mitigation, provided that the affected species were adequately covered, and the permittee was properly implementing the HCP and complying with the terms and conditions of the HCP, permit, and Implementing Agreement (IA), if used. The Services codified the "No Surprises" policy into a final rule, 50 CFR 17.22(b)(5), 17.32(b)(5) and 222.307(g), on February 23, 1998 (63 FR 8859). It was at this time that the Services announced our intent to revise the HCP Handbook, both to reflect the final No Surprises rule and to further enhance the effectiveness of the HCP process in general through expanded use of five concepts, including permit duration, public participation, adaptive management, monitoring provisions, and biological goals.

On March 9, 1999, the Services published the draft five-point policy (64 FR 11485) for public review and comment. This notice establishes the five-point policy as a final addendum to the HCP Handbook. The addendum supplements the HCP Handbook and No Surprises final rule and will be applied within the context of the existing statute and regulations. This final addendum is considered agency policy, and the Services are fully committed to its implementation. The concepts and definitions of terms used in the addendum are found in the ESA, implementing regulations, and HCP Handbook. Further information about HCPs may be obtained from the FWS webpage at http://www.fws.gov/r9endspp/hcp/hcp.html.

Summary of Comments Received

The Services received more than 200 letters of comment on the draft addendum from individuals, conservation groups, trade associations, local governments, Federal and State agencies, businesses and corporations, and private organizations. Because most of these letters included similar comments (many were form letters) we grouped the comments according to issues. We further divided these issues into two sets. The issues in the first set deal with the policy as a whole and HCPs in general. The issues in the second set pertain to the individual sections of the policy and are organized accordingly. The following is a summary of the relevant comments and the Services' responses.

General Five-Point Policy or HCP Issues

Issue 1: Many commenters were concerned that the policy would not be complied with unless it was regulatory in nature and, therefore, suggested codifying the policy into regulation rather than issuing the addendum as policy.

Response 1: We believe that publishing the addendum as policy at this time is appropriate, because, like the HCP Handbook itself, the addendum provides specific guidance for implementation of the statute and regulations. The intent of the addendum is to clarify the concepts identified in existing policy and regulations and ensure consistency in their use. The Services will follow the guidance in the HCP Handbook including this addendum.

Issue 2: Many commenters stated that HCPs should incorporate recovery goals. The comments were primarily referring to the biological goals of the HCP, but also requested the incorporation of recovery goals into adaptive management and monitoring. Other comments included the suggestion of minimum scientific standards for the five points addressed in the addendum or for HCPs in general. Conversely, one commenter stated that biological goals and objectives should simply be that the HCP "not appreciably reduce the likelihood of survival and recovery," which is one of the statutory criteria for permit issuance. Other suggested methods of incorporating recovery into HCPs include developing an overall strategy of recovery that includes HCPs, or tying adaptive management back into the recovery goals of a species.

Response 2: The HCP program standards are contained within the statutory and regulatory criteria. Two of the statutory criteria for obtaining an incidental take permit are that the proposed activity, along with the HCP, does not appreciably reduce the likelihood of survival and recovery of the species, and that the HCP minimizes and mitigates the impact of the taking to the maximum extent practicable. The Services believe that guidance is necessary for identifying biological goals and objectives that translate these statutory and regulatory criteria or standards into meaningful biological measures, specific to a particular HCP situation and in a manner that will facilitate monitoring.

The Services also agree that the biological goals and objectives should be consistent with recovery but in a manner that is commensurate with the scope of the HCP. Under section 10 of the ESA, we do not explicitly require an HCP to recover listed species or contribute to the recovery objectives outlined in a recovery plan, but do not intend to permit activities that preclude recovery. This approach reflects the intent of the section 10(a)(1)(B) incidental take permit process to provide for authorization of incidental take, not to mandate recovery. However, the extent to which an HCP may contribute to recovery is an important consideration in any HCP effort, and applicants should be encouraged to develop HCPs that produce a net positive effect on a species. The Services can use recovery goals to frame the biological goals and objectives. Recovery plans are also used as sources for possible minimization and mitigation measures for the HCP.

If a recovery plan is not available, we must rely upon other available sources of biological information to encourage the development of HCPs that would aid in a species' recovery. If a recovery plan is available, the Services and applicants should refer to it for information on uncertainty associated with the species' biology and/or its conservation in order to determine if an adaptive management strategy is necessary.

By defining what adaptive management means for HCPs in the addendum, we established a standard for its use. An adaptive management strategy is used to address significant uncertainty associated with a particular HCP, but it is not practicable (or possible) to require that all adaptive management strategies impose an elaborate experimental design. However, an adaptive management strategy must be tied to the biological goals and objectives of the HCP and based on the best scientific information available. We may also obtain strategies to deal with the uncertainty from recovery plans that can be incorporated into an HCP's adaptive management program.

Similarly, a monitoring program's standard for HCPs is based on the best scientific information available, but an HCP's monitoring program also is scaled to the particular HCP. The Services should be aware of the types of monitoring programs that are ongoing in order to coordinate efforts between HCPs. It may be more economical for smaller HCPs to participate in larger monitoring programs by contributing to or incorporating those programs.

Issue 3: Many comments referred to the No Surprises policy, requesting either an increase or decrease in the amount of assurances associated with incidental take permits.

Response 3: The Services published the final rule on the No Surprises policy on February 23, 1998 (63 FR 8859). The final rule codified into 50 CFR parts 17 and 222 the nature of the assurances provided to incidental take permittees. All permits issued after March 25, 1998, under section 10(a)(1)(B) of the ESA receive No Surprises assurances as specified in 50 CFR 17.22(b)(5), 17.32(b)(5), 222.307(g), and 222.307(h). This policy addendum does not alter the assurances provided to permittees by regulation.

The No Surprises assurances apply only to incidental take permits issued in accordance with the requirements of the Services' regulations where the HCP is properly implemented. The assurances extend only to those species adequately covered by the HCP. The term "No Surprises" refers to regulatory assurances, *not* biological assurances, and applies only to the extent of mitigation required by the incidental take permit in response to unforeseen circumstances or changed circumstances not provided for in the HCP. Specifically, permittees, who are properly implementing their HCP, will not be required to provide additional conservation and mitigation measures involving the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources without their consent.

The No Surprises assurances encourage contingency planning. Changes in circumstances that can be reasonably anticipated during the implementation of an HCP can be planned for in the HCP. Such HCPs should describe the modifications in the project or activity that will be implemented if these circumstances occur. Precisely because nature is so dynamic, planning for changed circumstances and adopting adaptive management strategies within the HCP, permit, or IA, if used, will better serve both the needs of permittees and endangered species conservation.

Issue 4: Based largely on a study on HCPs supported by the American Institute of Biological Sciences and National Center for Ecological Analysis and Synthesis, several commenters raised questions about biological uncertainty in decisions to issue incidental take permits. Some commenters requested a moratorium on issuing 10(a)(1)(B) incidental take permits, stating that there is not enough known about the species to lock in long-term conservation actions provided by HCPs and the assurances given with these permits. One commenter specifically stated that incidental take permits should not be issued if there is any uncertainty. Instead, efforts should

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be spent on filling those data gaps before issuing permits.

Response 4: The Services believe that covered species, both listed and unlisted, will be afforded more protection because of the conservation measures gained through the HCP process. Permitting incidental take that includes carefully constructed conservation actions will benefit most covered species. Part of the careful construction of an HCP is incorporation of contingency plans, whether it is through planning for changed circumstances or developing and implementing an adaptive management strategy.

A moratorium on incidental take permits would not serve species or the public well and would not be in accordance with the ESA. Section 10(a)(2)(B) of the ESA states that an incidental take permit that meets the issuance criteria shall be issued. The partnerships this program encourages are needed to promote endangered and threatened species conservation on non-Federal lands.

The Services appreciate the suggestions provided in the study sponsored by the American Institute of Biological Sciences and the National Center for Ecological Analysis and Synthesis. Nevertheless, we believe, and the study confirmed, that the HCPs currently in place are based on the best available scientific and commercial information. If we lack critical information regarding the biological needs of a species proposed to be covered under an HCP, we will not issue the permit until such information is obtained or an acceptable adaptive management strategy is incorporated into the HCP to address the uncertainty.

Issue 5: Some comments stated that the addendum should allow citizen suits to ensure that permittees are properly implementing their HCPs.

Response 5: The addendum does not in any way alter the ability of citizens to bring lawsuits using the citizen suit provision of the ESA.

Issue 6: One commenter stated that the addendum should provide for compensation for loss of Tribal resources due to implementation of HCPs.

Response 6: The Secretarial Order regarding American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act was issued on June 5, 1997, by the Secretaries of the Interior and of Commerce pursuant to the ESA, the Federal-Tribal trust relationship, and other Federal law. This Order clarifies the responsibilities of the Services when ESA actions affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights. The order does not require HCP applicants to include the tribes in actual negotiations or require compensation for loss of Tribal resources.

Issue 7: One comment stated that the draft addendum did not adhere to the policy on the use of plain English in Government documents.

Response 7: The final addendum is written to incorporate the principles of plain English. However, most of the concepts within this addendum and within the HCP Program are biological or otherwise technical in nature. Therefore, we must use certain terminology that is associated with those concepts.

Issue 8: One commenter suggested that all five points addressed by the addendum should be proportional to the scale of the HCP.

Response 8: The Services agree that application of each of the 5 points (*i.e.*, the biological goals and objectives, an adaptive management strategy, the monitoring program of an HCP, the determination of the duration of an incidental take permit, and the scope of public involvement) should be commensurate with the scope of the HCP. Each individual section within the addendum discusses the relationship between each of the five points and the scope of the HCP.

Biological Goals Issues

Issue 9: There were comments about who should determine the biological goals and objectives of an HCP. One commenter suggested that the person(s) with the most experience with the species should determine the biological goals and objectives of an HCP. Additional comments suggested that we confer with State agencies in determining biological goals and objectives. Another commenter stated that the Services should provide applicants assistance in developing the biological goals and objectives.

Response 9: In addition to the applicants, the Services play an integral role in determining the biological goals and objectives. We agree that species experts should be consulted during development of an HCP, including determining the biological goals and objectives. We have revised the biological goals and objectives section to articulate the methods available for their development. Service biologists frequently confer informally with species experts or other specialty experts (*e.g.*, population modeling, habitat assessment, restoration).

The Services also agree that State agencies should be involved with HCPs, including HCPs that cover non-listed species, and we encourage applicants to include the State wildlife agencies during the development of their HCPs. The addendum reflects this commitment.

Issue 10: There were comments about whether species would benefit more from habitat-based biological goals versus goals specific to the number of individuals or populations. Some suggested that habitat-based goals would be sufficient. Others stated that there should only be species-based goals and that they should account for all life stages of that species and any natural fluctuations in population levels.

Response 10: As discussed in the draft addendum, an appropriate HCP biological goal for a species will depend upon the particular species, the nature of the impact, the nature of the conservation measures in the HCP, and to what extent the populations or other ecological factors fluctuate. The addendum states the following:

> The biological goals and objectives may be either habitat or species based. Habitat-based goals are expressed in terms of amount and/or quality of habitat to be achieved. Species-based goals are expressed in terms specific to individuals or populations of that species. Complex multispecies or regional HCPs may use combination of habitat- and species-specific goals and objectives. However, according to 50 CFR 17.22, 17.32, 222.102, and 222.307, each covered species must be addressed as if it were listed and named on the permit. Although the goals and objectives may be stated in habitat terms, each covered species that falls under that goal or objective must be accounted for individually.

The Services chose to broadly define the application of biological goals and objectives, not only in terms of whether they should be habitat-based or species-based, but also how the goals and objectives should be measured (*e.g.*, numbers, life history stages, acres). This broad definition allows for flexibility in determining appropriate biological goals and objectives. The Services and applicants must determine the appropriate unit of measure such as numbers of individuals at a particular life stage, all lifestages, or quantity or quality of habitat for each individual HCP. The Services and applicants should also consult with appropriate experts to determine those goals (see above discussion).

Regardless of the type of goal used, at some point, all HCPs must undergo a species by species analysis. If an HCP is planned on a habitat basis, a species-by-species analysis must be made to determine if the HCP adequately covers the species. The relationship of habitat goals to specific species will help the Services and applicant determine if a species is adequately covered by an HCP. Also, this consideration of individual species provides a safety net for those species that may not neatly fit into a purely habitat-based plan. For example, populations of a narrow endemic species that occur within a wider ranging habitat type may not be adequately covered by an HCP that depends solely on amount of habitat conserved in a broad general area and does not specify particular locations where the habitat for that species is conserved.

Issue 11: Some commenters addressed quantifying take within an HCP and during its implementation. Some stated that quantifying take should not be required, and others stated that it should always be required.

Response 11: Although identifying the amount or extent of take within an HCP and the permit does not directly refer to development of biological goals and objectives, it is related and will be addressed here. Section 10(a)(2)(A) requires that an HCP specify the impact which will likely result from the take to be permitted. Both Services require applicants to include certain information about the species to be covered by an HCP. FWS permit application criteria require identification of the number, age, and sex of such species, if known (50 CFR 17.22, 17.32). NMFS application criteria require a description of the anticipated impact, including amount, extent, and type of anticipated taking (50 CFR 222.307). While evaluating an HCP, we use the amount of incidental take as a main indicator of the impact the proposed project will likely have on the species. Identifying the amount of incidental take contributes to the analysis of whether the proposed incidental take permit will appreciably reduce the likelihood of survival and recovery of the species.

There are situations where precisely quantifying the number of individuals that are anticipated to be taken is a less effective method than estimating the amount or extent of take in terms of the amount of habitat altered. What is most important is that we are able to assess the impact of the anticipated take on the species. Regardless of how the incidental take is quantified, it must be indicated in the biological opinion the Services complete for the issuance of the permit and on the permit itself.

Adaptive Management Issues

Issue 12: Many commenters raised the issue as to the correct definition, and, therefore, correct application of adaptive management. Additionally, these commenters stated that under the "scientific definition" of adaptive management, true adaptive management is impossible under No Surprises.

Response 12: The Services recognize the use of the term within the scientific literature. However, the phrase "adaptive management" is used in many other disciplines and contexts and has different meanings to different people. The scientific definition typically follows Holling (1978) and Walters (1986) (see also Walters and Holling, 1990; McLain and Lee, 1996; Walters 1997). This definition is described as a process that tackles the uncertainty in management of natural resources through experimentation. Most frequently, this involves modeling to determine a course of action for on-the-ground implementation with monitoring to test the model's predictions. Walters (1986) breaks down categories of learning through implementation as "active" and "passive" adaptive management. Passive adaptation is where information obtained is used to determine a single best course of action. Active adaptation is developing and testing a range of alternative strategies (Walters and Holling 1990). For the purposes of the HCP program, we are defining adaptive management as a method for examining alternative strategies for meeting measurable biological goals and objectives, and then, if necessary, adjusting future conservation management actions according to what is learned.

The Services are incorporating a broad perspective of adaptive management, with the key components that make an adaptive process in HCPs meaningful. These components include careful planning through identification of uncertainty, incorporating a range of alternatives, implementing a sufficient monitoring program to determine success of the alternatives, and a feedback loop from the results of the monitoring program that allows for change in the management strategies. Because the Services and applicant provide these elements up front in the HCP, they are consistent with No Surprises.

The addendum makes a distinction between adaptive management that would have a more experimental approach versus contingency planning for the implementation of measures in the event of changed circumstances where there is little uncertainty. An HCP can provide provisions for changed circumstances that does not involve adaptive management.

Issue 13: One commenter stated that all HCPs should contain adaptive management.

Response 13: As stated in the addendum, the Services will incorporate adaptive management strategies when appropriate. Adaptive management is necessary for those plans "that would otherwise pose a significant risk to the species at the time the permit is issued due to significant data or information gaps." Not all HCPs warrant adaptive management, although any HCP may incorporate an adaptive management strategy if agreed upon by the applicant and the Services.

In addition, the ability for applicants and the Services to build contingency measures into an HCP's operating conservation strategy does not depend solely on the use of adaptive management. For instance, the No Surprises final rule provides for planning for changed circumstances. This planning involves providing alternative actions for possible events that may alter the ability of an HCP to meet its biological goals and objectives. An adaptive management strategy would not be necessary if there were no significant uncertainty associated with identifying appropriate responses to potential changed circumstances.

Issue 14: One commenter stated that adaptive management not only increases the complexity of an HCP (and, therefore, the time and effort involved in its development and implementation), but the uncertainty poses an economic risk to permittees.

Response 14: We agree that adaptive management may increase the complexity of an HCP. However, adaptive management strategies should be commensurate with the scope of the HCP (*e.g.*, the smaller the scope or impacts, the less complex the HCP and any adaptive management if warranted). Additionally, all HCPs must meet statutory and regulatory issuance criteria prior to approval and issuance of a permit. Adaptive management is one tool available to applicants and the Services that can be used to meet the issuance criteria. It is also a means for increasing the flexibility of an HCP. A results-oriented implementation program lets a permittee apply a number of different methods for achieving a certain goal, rather than adhering to an inflexible list of prescriptions. A results-oriented program actually provides some certainty to the permittee by establishing a framework to modify the operating conservation strategy. Results are periodically assessed, and, if shortcomings are evident, previously agreed-upon alternative strategies are implemented, thereby streamlining

additional discussions between the Services and permittee.

Setting the sideboards and structure during development of the HCP provides applicants certainty in the extent of requirements for implementing an adaptive management strategy. As stated in the No Surprises final rule, we will not require a permittee to make additional mitigation commitments, including any adaptive management provisions, beyond what was agreed to in the HCP, permit, and IA, if used.

Issue 15: One commenter stated that adaptive management should not replace good, up-front conservation measures.

Response 15: The Services agree that adaptive management should not be used in place of developing good up-front conservation measures or to postpone addressing difficult issues. However, adaptive management may be necessary to craft a framework for addressing uncertainty in the operating conservation program to ensure that the measures fulfill the biological goals and objectives of an HCP.

Monitoring Issues

Issue 16: Several commenters stated that the Services should establish minimum standards or require scientific standards for the monitoring program within an HCP.

Response 16: The implementing regulations for an HCP (50 CFR 17.22, 17.32, and 222.307) require a monitoring component. The HCP Handbook includes guidance on what the monitoring component of an HCP should look like. However, we have refined that guidance and have incorporated it into the addendum. The Services agree that any methodology and techniques involved in biological aspects of monitoring should be based on science. The addendum does state that "The monitoring program will be based on sound science. Standard survey or other previously-established monitoring protocols should be used. Although the specific methods used to gather necessary data may differ depending on the species and habitat types, monitoring programs should use a multispecies approach when appropriate." Monitoring approaches that are consistent with the Handbook and addendum should be adequate for assessing whether the HCP is achieving its biological goals and objectives.

Issue 17: Some commenters stated that it was difficult to distinguish between compliance monitoring and effects and effectiveness monitoring.

Response 17: The Services recognize that it may be difficult to distinguish between the two types of monitoring particularly when the actual monitoring actions may overlap. One way to distinguish between the two types is that compliance monitoring verifies that the permittee is carrying out the terms of the HCP, permit, and IA (if one is used) while effects and effectiveness monitoring evaluates the biological effects of the permitted action and determines whether the effectiveness of the operating conservation program of the HCP is consistent with the assumptions and predictions made when the HCP was developed and approved. The permittee is primarily responsible for ensuring that their HCP is working as planned and the Services are primarily responsible for monitoring whether the permittee is complying with permit requirements.

Issue 18: A few commenters suggested that the Services identify, in the addendum, minimum qualifications for personnel conducting monitoring.

Response 18: The addendum does state that the personnel conducting the monitoring should be qualified. However, the necessary qualifications depend upon what is being monitored. Since HCPs are highly variable, the addendum is flexible about the minimum qualifications of personnel conducting the monitoring, and the Services' staff will determine whether the person or company conducting the monitoring is qualified.

Issue 19: One commenter suggested the Services require all monitoring programs to include population counts.

Response 19: Population monitoring may not be appropriate for all HCPs. The scope of any HCP monitoring program should be in proportion to the scope of that HCP. If an HCP affects only a portion of a population, the permittee should not be responsible for monitoring the entire population. In addition, it may or may not be appropriate for a particular HCP to include counting of populations or individuals. The appropriate unit of measure in a monitoring program depends upon the specific impacts and operating conservation program within an HCP and the biological goals and objectives of the HCP. The unit of measure also depends on how the species uses the habitat to be affected. However, the Services should coordinate monitoring programs to obtain a larger picture of the status of a population.

Issue 20: Some commenters suggested that self-reporting should not be used as a means to demonstrate that the permittee is in compliance with the terms of an HCP.

Response 20: We are not limited to self-reporting for compliance monitoring. However, the limited resources available to the Services to conduct monitoring necessitates our reliance on the working relationships between us and the permittees to verify compliance. As discussed in the addendum, where appropriate, we may conduct our own evaluation, including site visits. The Services should be able to use the periodic reports made by permittees as one method in determining whether the permittee is in compliance. Periodic reports may be our first source of information about the implementation of an HCP. From these reports, we may catch discrepancies that alert us to possible implementation problems. Also, the information obtained to determine effects and effectiveness may be the same information needed to determine compliance. We do not want to use limited resources on duplicative monitoring efforts.

Permit Duration Issues

Issue 21: One commenter suggested that the Services link the duration of the permit to recovery of the species covered by an HCP.

Response 21: We assume that this comment refers to linking duration of the permit to completion of recovery goals where HCPs have a "recovery standard." We discuss the relationship of the HCP program and recovery in the above responses.

Issue 22: Some commenters stated that we should not place time limits on mitigation measures.

Response 22: This comment seems to reflect a misunderstanding regarding the duration of an incidental take permit. Permit duration is the length of time during which the permittee has incidental take authorization. HCPs may be designed such that mitigation measures are in effect for longer periods of time, including in perpetuity, than the time the incidental take permit is in effect.

Public Participation Issues

Issue 23: Many comments pertained to whether the Services or the applicant decides who participates in the development of HCPs. Most commenters stated that the applicant should not decide who participates, and offered alternatives including mandatory stakeholder or interested party participation, and leaving the decision up to the Services.

Response 23: The experience of the Services shows that the more public participation in the development phase of an HCP, the more likely it will be accepted by the public. However, we maintain that the inclusion of other interested parties in the development of an HCP is ultimately the decision of the applicant. The ESA and its implementing regulations do not mandate public participation before an applicant submits a permit application; only a public comment period after it is submitted and published in the **Federal Register**. We strongly encourage applicants to include more public participation at all stages of development.

Issue 24: Some commenters suggested that scientists should be involved in the development of HCPs. Another commenter stated that all HCPs should be subject to peer review.

Response 24: During consideration of whether to issue an incidental take permit, the Services are required to use the best available scientific and commercial information. Such data come from a variety of sources: scientific literature and peer-reviewed publications, in-house expertise, other State or Federal agencies, academia, and non-governmental organizations, to name a few. For listed species, the Services can draw upon a number of existing information sources, all of which have gone through peer and public review. ESA listing packages are used to gain further species-specific biological information, and where possible, the Services will draw upon recovery plans to identify conservation and monitoring measures and objectives for listed species. The addendum encourages applicants to use scientific advisory committees during the development and implementation of an HCP, especially large-scale ones.

The applicant's integration of a scientific advisory committee and perhaps other stakeholders improves the development and implementation of any adaptive management strategy. Advisory committees can assist the Services and applicants in identifying key components of uncertainty and determine alternative strategies for addressing that uncertainty. We also encourage the use of peer-review for an HCP. An applicant, with guidance from the Services, may seek independent scientific review of specific sections of an HCP and its operating conservation strategy to ensure the use of the best scientific information for HCP development.

Issue 25: One commenter requested that the public comment period under the National Environmental Policy Act (NEPA) for HCPs not be extended. Another comment suggested that the Services process incidental take permits with Environmental Impact Statements within nine months, and, if that deadline is not met, we would be required to issue the permit within 30 days.

Response 25: The addendum contains changes to the existing HCP public comment period but does not change any public input required by the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508).

The intent of the addendum is to ensure the public has sufficient opportunity to review and provide comment on all HCPs, regardless of the public review requirements of NEPA. To accomplish this, the addendum lays out the various public review requirements for HCPs with different levels of impact. For example, low-effect HCPs, which are categorically excluded from the NEPA process, will have a minimum 30-day public review and comment period. The public review period for large, complex HCPs is 90 days, unless there is significant public involvement during development. All other HCPs (including large complex HCPs with significant public involvement) will be made available for review and comment for a minimum of 60 days.

The addendum contains target time frames for us to process an incidental take permit application. The target processing time frame for an HCP that includes an Environmental Impact Statement (EIS) is up to one year, including the 90-day comment period (or 60-days if significant public participation has occurred). However, we cannot issue a permit until we have determined that it meets the issuance criteria under section 10(a)(2)(B) of the ESA. Because of the complexity associated with an HCP that has an EIS, we need the target processing time frame of one year to determine whether to issue the permit. One method to reduce the amount of time needed to process a permit application is for an applicant to include up-front public participation during HCP development.

Required Determinations

Regulatory Planning and Review, Regulatory Flexibility Act, and Small Business Regulatory Enforcement Fairness Act

This final policy was subject to Office of Management and Budget (OMB) review under Executive Order 12866.

a. This policy will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The primary purpose of the addendum is to incorporate the 5-point policy, which was published in draft form on March 9, 1999, into the final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process. This HCP Handbook addendum provides additional guidance on five concepts that, although treated only briefly in the handbook, are in widespread use in existing and developing HCPs. The main purpose of this addendum is to provide a consistent approach to these concepts for future HCPs. The five concepts addressed in this addendum include biological goals and objectives, adaptive management, monitoring, permit duration, and public participation.

The HCP program and the associated section 10 permits have been in place for approximately 17 years. The 1982 amendments to the ESA created a statutory framework for the HCP program that was built primarily around four permit application criteria and four permit issuance criteria. We promulgated regulations in 1985 in order to implement the Congressionally created HCP program. The statutory and regulatory framework for HCPs has remained unchanged since it was first put into place. The five concepts addressed in this addendum are an outgrowth of the statute and regulations. This addendum does not create these concepts, nor does it change the current regulations or general application of the concepts in practice.

In order to analyze the economic effect of this addendum, we reviewed the potential of this policy to have an effect on HCPs in three different areas: the cost of HCP development, the cost of HCP minimization and mitigation, and The cost of HCP implementation. Past and current experience with the HCP program leads us to predict that we will complete and approve approximately 35 new HCPs each year into the foreseeable future. We expect that the size and complexity of the expected 35 HCPs per year will continue to vary from the extremely small, single-species HCP to multi-species HCPs covering more than a million-acre planning area (see Table 1). Based on past and current experience, we predict that 20 of the expected 35 HCPs per year will be relatively small and simple HCPs covering one or a few listed species (of which 8 may be deemed "low effect"). The HCPs of medium size and complexity are expected to account for another 12 of the 35 HCPs, and the remaining three HCPs are expected to be large, complex HCPs.

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TABLE 1.—SIZE DISTRIBUTION OF HCPS ACCORDING TO PLANNING AREA, AS OF DECEMBER 31, 1999

[Some plans have both short-term and long-term HCPs, where the total amount of area addressed in the short-term HCP is included within the total area of the subsequent long-term HCP. Therefore, the numbers of HCPs accounted for above will not total the number of HCPs that have been issued. A few HCPs were not included in this tally because they addressed the planning areas in linear miles instead of acres.]

Size of HCPs	Number of HCPs
Less than 1 acre	44
Between 1–10 acres	64
Between 10–100 acres	56
Between 100–500 acres	37
Between 500–1,000 acres	11
Between 1,000–10,000 acres	17
Between 10,000–100,000 acres	14
Between 100,000–500,000 acres	10
Between 500,000–1,000,000 acres	4
Greater than 1,000,000 acres	2

The Effect of Additional Policy Guidance on Biological Goals and Objectives

This addendum emphasizes the benefit of explicitly articulating why the minimization and mitigation efforts in an HCP are being provided and what they are expected to accomplish. The thrust of this concept is aimed at the HCP preparation phase. We have no reason to believe it will have any effect on an HCP's minimization and mitigation or on HCP implementation. From the very beginning of the HCP program, biological goals and objectives have been incorporated into HCPs, sometimes in an explicit manner and in other cases in an implicit manner. For example, in the first HCP, which was used by Congress as a model for the 1982 amendments to the ESA, the HCP states that the "purpose of the [HCP] is to provide for the indefinite perpetuation of the Mission Blue and Callippe Silverspot butterflies on San Bruno Mountain, as well as to conserve * * * the value * * * as a remnant ecosystem. * * * The more pervasive goal is to simultaneously provide for the perpetuation and enhancement of the grassland habitat which supports the butterflies. * * * The focus of preservation is on the grassland because this is thought * * * to be the ancestral native habitat. * * *" [*San Bruno Mountain Area Habitat Conservation Plan*, Final 1991]. A more recent example from an HCP developed in Texas states "the main goal of the HCP is to * * * minimize and mitigate the impacts. * * * This main goal is achieved by onsite conservation measures * * * and the acquisition and dedication of preserve lands for the warbler adjacent to an existing habitat preserve and within the same warbler recovery unit as the proposed development." [*Environmental Assessment and Habitat Conservation Plan, Issuance of an Endangered Species Section 10(a) Permit for the Incidental Take of the Golden-cheeked Warbler (Dendroica chrysoparia) during construction and Operation of the Approximate 24-acre Single Family Residential Development, Canyon Ridge, Phase A, Section 3, Austin, Travis County, Texas*, December, 1994].

The second issuance criterion in section 10 of the ESA requires a finding that the applicant "will, to the maximum extent practicable, minimize and mitigate the impacts. * * *" This criterion inherently requires a discussion of the minimization and mitigation efforts and their relationship to the project impact and the desired outcome of the HCP. We believe that the decision documents examining this criterion are of higher quality when biological goals and objectives are made explicit. This addendum is directed towards agency personnel and does not seek to alter the permit application criteria or otherwise require anything new of permit applicants. We already encourage HCP applicants to provide an explicit discussion of biological goals and objectives, but this addendum will not mandate such a discussion in the HCP. Instead, this addendum will ensure that the agency decision documents that analyze the HCP contain an explicit discussion of biological goals and objectives.

We do not expect that policy guidance requiring an explicit articulation of biological goals and objectives that already exist in some form in the HCP will require any significant additional time or effort. The incorporation of this addendum into the handbook reflects support for existing practice more than it does a new policy development. As such, and given the relative ease of explaining the goals of conservation measures, we believe that this policy will have little to no economic effect on small entities or any other entity. In addition, we have determined that providing a numerical or quantitative description of this deminimus effect is not practical and we have, therefore, provided a narrative analysis instead.

The Effect of Additional Policy Guidance on Adaptive Management

The HCP Handbook already provides policy guidance on adaptive management, and thus this addendum merely provides additional refinement. The concept of adaptive management has been both broadly and narrowly defined by the disciplines that use the concept. We are embracing a somewhat broad definition of the term as supported by the scientific literature, and one of the reasons for additional policy guidance on this concept is to explain our application of the concept of adaptive management compared to the narrower definition favored in some academic circles.

Adaptive management has been widely used in the HCP program from the very beginning. The first HCP, San Bruno Mountain, utilized the concept, stating: "notwithstanding the considerable knowledge gained through the biological study, the Habitat Conservation Plan, in concept and in implementation, is novel and in many ways, experimental. There are many biological uncertainties which inescapably remain at the outset of such an ambitious undertaking which can only be resolved through an ongoing program of applied research designed specifically to direct Plan implementation." [*San Bruno Mountain Area Habitat Conservation Plan*, Final 1991, emphasis in original]. Since the San Bruno plan, many HCPs, especially the larger and more complex HCPs, have utilized adaptive management concepts in one form or another. Examples include the Washington County HCP in Utah and the Plum Creek Timber Company I–90 Corridor HCP in Washington. Arguably some of the measures in these HCPs that can be categorized as adaptive management were included in an attempt to meet regulatory requirements concerning unforeseen and changed circumstances. The section 10 regulations require that permit applicants develop procedures to address unforeseen circumstances (50 CFR 17.22(b)(1)(iii)(B), 17.32(b)(1)(iii)(B) for FWS and 50 CFR 222.307(g) for NMFS) and make the existence of these procedures a precondition to permit issuance. See 50 CFR 17.22(b)(2)(iii) and 17.32(b)(2)(iii) for FWS and 50 CFR 222.307(g) for NMFS. The No Surprises rulemaking expanded on the contingency planning aspects of the HCP program by requiring contingency planning for changed circumstances that are foreseeable [See 63 FR 8859 (February 23, 1998)]. This addendum on adaptive management does not mandate the contingency planning identified above, even if some of the procedures adopted fall under the heading of adaptive management.

The addendum states that adaptive management will be used for HCPs that are faced with significant data gaps. We believe that an HCP that fails to address significant data gaps will not meet the issuance criteria of the ESA. It is, therefore, not the addendum itself that mandates the use of adaptive management in cases of significant data gaps, but is instead the applicant's need to overcome data gaps and still meet the permit issuance criteria established in the ESA. Current practice on the ground is to rely on adaptive management to overcome data gaps. This addendum provides policy support for this existing practice, but does not change the status quo. We, therefore, determine that the addendum's coverage of adaptive management will not effect small entities to any measurable degree.

The Effect of Additional Policy Guidance on HCP Monitoring

This addendum does not impose any new monitoring requirements. Monitoring is already required by the section 10 regulations. In the preamble to the final rule promulgating the section 10 regulations, we agreed with a commenter that the Service should monitor the implementation of a conservation plan and accordingly finalized revisions to sections 17.22(b)(1)(iii)(B), 17.22(b)(3), 17.32(b)(1)(iii)(B) and 17.32(b)(3) to require that conservation plans specify the monitoring measures to be used and to authorize imposition of necessary monitoring as a condition of each permit." 50 FR 39681, 39684 (September 30, 1985). NMFS also included a monitoring requirement in their section 10 regulations (50 CFR 307 (d)).

This addendum seeks to refine existing monitoring policy by organizing the types of monitoring being conducted into categories, including compliance monitoring, effect monitoring, and effectiveness monitoring. The addendum also seeks greater compatibility of monitoring data across HCPs. Neither of these policy additions is expected to have any economic impact. Current practice entails the HCP applicant and the Services working together to arrive at a monitoring program that, based on the specifics of the HCP and the species involved, is robust enough to provide the information the parties feel will be needed. This addendum does not alter current practice and instead reiterates the regulatory requirement and provides policy recognition and support for the current practice.

The Effect of Policy Guidance on Permit Duration

The section 10 regulations provide factors that the Director should consider in determining permit duration. The Handbook did not provide any treatment of the issue of permit duration. This addendum would add a short provision to the Handbook that essentially repeats verbatim the regulatory language on permit duration. Even though the addendum does not expand on the regulations' treatment of permit duration, we believe that the Handbook should provide coverage of all aspects of the program and it will thus be beneficial to include this provision in the Handbook. The policy guidance on permit duration will not affect the current approach to determining permit duration and will, therefore, not have any effect.

The Effect of Additional Policy Guidance on Public Participation

In the area of public participation, this addendum signals a departure from the current practice in the Handbook by increasing the length of the public comment period for many HCPs by thirty days. The ESA requires a minimum of a thirty day public comment period, but does not prohibit longer public comment periods. This addendum provides that "low effect" HCPs will, as a general matter, continue to be provided to the public for a thirty day comment period. The addendum thus does not change the current approach for low effect HCPs, which we expect will comprise eight of the predicted thirty-five new HCPs per year. The addendum indicates most other HCPs will be provided to the public for a sixty day comment period. Finally the addendum states that large, complex HCPs will need to have a ninety day public comment period unless the applicant has taken steps to involve the public earlier in the HCP process, in which case the HCP will qualify for the sixty day comment period.

This policy guidance on public participation has the potential to affect twenty-seven HCPs per year. The large, complex HCPs, predicted to account for three of the new HCPs per year, have historically been associated with extensive public notice and involvement, often through the EIS process under NEPA. This type of public involvement would qualify these HCPs for the sixty day comment period. The parallel NEPA process will typically require significant comment time periods, often matching or exceeding the time periods established by this addendum. We have also observed that the large HCPs of the past were noticed for more than the minimum thirty days required by section 10 simply because of their size and complexity and in response to requests for extensions from the public. We have, therefore, determined that this addendum will not alter the current practice with regard to the length of public comment periods and large HCPs. Based on this determination, we conclude that this policy guidance on public participation will not have an economic effect.

Of the remaining twenty-four expected HCPs per year, we expect at least four of those HCPs would have longer than the minimum public comment period because of reasonable public requests for extensions. There are, therefore, twenty HCPs per year that could potentially be effected by the policy guidance on public participation. Of these twenty HCPs, only a small number are expected to actually have all local approvals in hand and be ready to proceed before the conclusion of HCP processing, including the public comment period. Unless an HCP applicant is otherwise ready to begin project implementation, we do not believe an additional thirty days of public comment will have any economic effect. For the small number of HCPs that may be waiting for the HCP process to be completed, the economic effect of a thirty day extension to the process will depend tremendously on the scale and type of project. In addition, many projects will be able to proceed in part prior to permit issuance, providing there is no incidental take of species or a preclusion of the development of reasonable and prudent alternatives. See 16 U.S.C. 1536(d). HCP applicants will be fully aware of the addendum's public participation time lines and will, therefore, be able to factor the additional public comment period into their HCP planning early. This early recognition of the time lines may prove beneficial compared to planning on a thirty day comment period only to find near the end of that period that the Services has decided sound grounds exist for an extension. Based on this narrative analysis, we conclude that an increase in public comment periods will have a negligible economic effect.

In summary, the 5 Point HCP addendum provides recognition and policy support for existing practices in each of the five concept areas discussed above. The addendum does not change the current statutory or regulatory framework and merely provides refinements to existing policy. As a result, the addendum will not have a significant economic effect.

b. This addendum will not create inconsistencies with other agencies' actions. The addendum to the HCP Handbook does change the existing requirements for a HCP. The addendum

is intended to assist Government employees and as such may also assist the public. The only change to the HCP Handbook included in the addendum is to provide adequate time for public comment when developing HCPs.

c. This policy will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The addendum to the HCP Handbook was developed solely to provide consistency to the HCP program and is intended as guidance for the Government.

d. This policy will not raise novel legal or policy issues. The addendum to the HCP Handbook was developed to provide clarification for the HCP process and does not change regulations or significantly change existing policy.

The Departments of Interior and Commerce certify that this policy will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There are more than 248 existing HCPs of which 106 are for small entities and 142 are for corporations or other large entities. The addendum does not change the ability of small entities to develop HCPs in the future. The Services expect small entities will have the same proportion of future HCPs.

This policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This policy:

1. Does not have an annual effect on the economy of $100 million or more.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The purpose of the addendum is to provide Federal employees the guidance required for the consistent application of the Handbook for developing HCPs. The addendum will provide some simplification to the HCP Program due to clarification of processes.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This addendum will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The HCP Handbook provides guidance to Federal employees involved in reviewing and approving incidental take permits that include habitat conservation plans. The HCPs and permits generally are coordinated with appropriate State and local governments to include their views on the activities covered by the permit (in many cases, the activities also require State or local government authorization). In some instances, the applicant is the local government seeking incidental take permits for activities planned and conducted within its area of jurisdiction. The addendum does not change this process by encouraging applicants to coordinate with State agencies. As with all other applications, this addendum will not have an effect on small governments.

b. This policy will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. See discussion in the section titled "Regulatory Planning and Review, Regulatory Flexibility Act, and Small Business Regulatory Enforcement Fairness Act."

Takings Implication Assessment

In accordance with Executive Order 12630, the policy does not have significant takings implications. A takings implication assessment is not required. The addendum guides employees in the evaluation and approval of applications for incidental take permits under existing law.

Federalism Assessment

In accordance with Executive Order 13132, the policy does not have sufficient Federalism implications to warrant preparation of a Federalism assessment. This addendum does not change the relationship between the Services and applicants, nor does it alter the Services' relationship with State and local governments within the HCP Program.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act.

This addendum does not require an information collection under the Paperwork Reduction Act. A related information collection associated with incidental take permits is covered by existing OMB approvals (#1018–0094 for FWS #0648–0230 for NMFS).

National Environmental Policy Act

The Department of the Interior has determined that the issuance of the policy is categorically excluded under the Department's National Environmental Policy Act procedures in 516 DM 2, Appendix 1.10. The National Oceanic and Atmospheric Administration (NOAA) has determined that the issuance of this guidance qualifies for a categorical exclusion as defined by the NOAA 216–6 Administrative Order, Environmental Review Procedure.

Section 7 Consultation

The Services do not need to complete a section 7 consultation on this final policy. An intra-Service consultation is completed prior to issuing incidental take permits under 10(a)(1)(B) of the Endangered Species Act associated with individual HCPs.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Addendum to The HCP Handbook

The five sections (or five-points) of the final addendum are contained entirely within this notice. The Services will adhere to the guidance provided in the addendum. Nothing in this guidance is intended to supersede or alter any aspect of Federal law or regulation pertaining to the conservation of threatened or endangered species.

Biological Goals And Objectives

What Are an HCP's Biological Goals and Objectives?

HCPs have always been designed to achieve a biological purpose, yet they may not have specifically stated those biological goals. In the future, the Services and HCP applicants will clearly and consistently define the expected outcome, *i.e.*, biological goal(s). This rather simple concept will facilitate communication among the scientific community, the agencies, and the applicants by providing direction for the development of HCPs.

The HCP Handbook discusses identifying biological goals and objectives (Chapter 3). Since biological goals and objectives are inherent to the HCP process, HCPs have had implied biological goals and objectives, and many recent HCPs include explicit biological goals or objectives. Explicit biological goals and objectives clarify the purpose and direction of an HCP's operating conservation program. They create parameters and benchmarks for developing conservation measures, provide the rationale behind the HCP's terms and conditions, promote an effective monitoring program, and, where appropriate, help determine the focus of an adaptive management strategy.

What Are Biological Goals and Objectives in HCPs?

In the context of HCPs, biological goals are the broad, guiding principles for the operating conservation program of the HCP. They are the rationale behind the minimization and mitigation strategies. For more complex HCPs, biological objectives can be used to step down the biological goals into manageable, and, therefore, more understandable units. Multiple species HCPs may categorize goals by species or by habitat, depending on the structure of the operating conservation program. HCPs that are smaller in scope would have simpler biological goals that may not need to be stepped down into objectives. It should be noted that the biological goals of an individual HCP are not necessarily equivalent to the range-wide recovery goals and conservation of the species. However, if viewed collectively, the biological goals and objectives of HCPs covering the same species should support the recovery goals and conservation.

The biological goals and objectives of an HCP are commensurate with the specific impacts and duration of the applicant's proposed action. For example, low-effect HCPs generally have simple measurable biological goals, such as contributing to a regional preserve design through a mitigation bank or avoiding breeding habitat of a particular species.

How Do I Incorporate Biological Goals and Ojectives Into an HCP?

Determination of the biological goals and objectives is integral to the development of the operating conservation program. Conservation measures identified in an HCP, its accompanying incidental take permit, and/or IA, if used, provide the means for achieving the biological goals and objectives. We will work with the applicant to develop the biological goals and objectives by examining the applicant's proposed action and the overall conservation needs of the covered species and/or its habitat.

The biological goals and objectives are refined as the operating conservation program takes shape. Initial biological goals and objectives of an HCP begin by articulating the rationale behind the operating conservation program. The Services and applicant improve the initial biological goals by compiling the known information of the species, estimating the anticipated effects to the species, and stating any assumptions made. If the operating conservation program is relatively complex, the biological goal is divided into manageable and measurable objectives. Biological objectives are the different components needed to achieve the biological goal such as preserving sufficient habitat, managing the habitat to meet certain criteria, or ensuring the persistence of a specific minimum number of individuals. The specifics of the operating conservation program are the actions anticipated to obtain the biological objectives; therefore, we can use these objectives to strengthen the initial operating conservation program.

Elzinga *et al.* (1998) provide guidance for developing measurable objectives for rare plant monitoring that can be used for other species. Biological objectives should include the following: species or habitat indicator, location, action, quantity/state, and timeframe needed to meet the objective. They can be described as a condition to be met or as a change to be achieved relative to the existing condition. Biological objectives may be addressed in parallel. Conversely, achieving the biological objectives may need to occur in sequence. For instance, parallel objectives may be (1) maintaining the preserve site free of nonnative weeds and (2) enhancing the population from 4 individuals to 7 individuals. Sequential objectives may be (1) restoring of an area of habitat and then (2) reintroducing the species.

The Services and applicants have many resources to draw upon when determining the biological goals and objectives of an HCP. Both can use the available literature, State conservation strategies, candidate conservation plans, draft or final recovery plans or outlines, and other sources of relevant scientific and commercial information as guides in setting biological goals and objectives. Both can consult with species experts, State wildlife agencies, recovery teams, and/or scientific advisory committees.

What Is the Difference Between a Habitat-Based Goal and a Species-Based Goal?

The biological goals and objectives may be either habitat or species based. Habitat-based goals are expressed in terms of amount and/or quality of habitat. Species-based goals are expressed in terms specific to individuals or populations of that species. Complex multispecies or regional HCPs may use a combination of habitat- and species-specific goals and objectives. However, according to 50 CFR 17.22, 17.32, 222.102, and 222.307, each covered species must be addressed as if it were listed and named on the permit. Although the goals and objectives may be stated in habitat terms, each covered species that falls under that goal or objective must be accounted for individually as it relates to that habitat.

Are Permittees Required To Achieve the Biological Goals and Objectives of the HCP?

How the biological goals fit with the implementation of an HCP may be framed as a series of prescriptive measures to be carried out (a prescription-based HCP) or the ability to use any number of measures that achieve certain results (a results-based HCP). A prescription-based HCP outlines a series of tasks that are designed to meet the biological goals and objectives. This type of HCP may be most appropriate for smaller permits where the permittee would not have an ongoing management responsibility. A results-based HCP has flexibility in its management so that the permittee may institute the actions that are necessary as long as they achieve the intended result (*i.e.*, the biological goals and objectives), especially if they have a long-term commitment to the conservation program of the HCP. HCPs can also be a mix of the two strategies.

The Services and the applicant should determine the range of acceptable and anticipated management adjustments necessary to respond to new information. This process will enable the applicant to assess the potential economic impacts of adjustments before agreeing to the HCP while allowing for flexibility in the implementation of the HCP in order to meet the biological goals.

Regardless of the type of goals and objectives used and how they fit within implementation of the HCP, the Services will ensure that the biological goals are consistent with conservation actions needed to adequately minimize and mitigate impacts to the covered species to the maximum extent practicable. Whether the HCP is based on prescriptions, results, or both, the permittee's obligation for meeting the biological goals and objectives is proper implementation of the operating conservation program of the HCP. In other words, under the No Surprises assurances, a permittee is required only to implement the HCP, IA, if used, and terms and conditions of the permit. Implementation may include provisions for ongoing changes in actions in order

to achieve results or due to results from an adaptive management strategy.

Adaptive Management

What Is Adaptive Management?

Adaptive management is an integrated method for addressing uncertainty in natural resource management (Holling 1978, Walters 1986, Gundersen 1999). It also refers to a structured process for learning by doing. The concept is used in a number of different contexts, including the social science aspects of learning and change in natural resource management. The term adaptive management was adopted by Holling (1978) for natural resource management, who described adaptive management as an interactive process that not only reduces, but benefits from, uncertainty. Additionally, Walters (1986) breaks down categories of learning through implementation as "active" and "passive" adaptive management. Passive adaptation is where information obtained is used to determine a single best course of action. Active adaptation is developing and testing a range of alternative strategies (Walters and Holling 1990). The Services believe that both of these types of adaptive management are appropriate to consider when developing a strategy to address uncertainty. Therefore, we are defining adaptive management broadly as a method for examining alternative strategies for meeting measurable biological goals and objectives, and then, if necessary, adjusting future conservation management actions according to what is learned.

Implementation of adaptive strategies has been criticized for failing to resolve uncertainty or effectively implementing good experimental design (Walters 1997; Lee 1999). These failures are typically attributed to agency or stakeholder unwillingness to accept the risk involved in experimentation. The Services do have certain constraints in the HCP Program that may inhibit experimental design. For instance, stakeholder involvement in the development of many HCPs, including the adaptive management design, is largely at the discretion of the applicant.

Another restriction we face collectively (Services, applicants, other stakeholders) is the possible risks to species that may arise with using an experimental design. Many adaptive management processes with public/stakeholder involvement address large-scale management issues (*e.g.*, Florida Everglades, Grand Canyon). This type of process is complicated and involved, but appropriate for the scale of the issue. Similarly, more active and involved approaches to adaptive management are appropriate for large-scale HCPs. However, an active approach may pose too much of a risk to the species; therefore, a more passive approach may be the best course of action. An active approach may also be too cumbersome for the scope of the HCP and, therefore, a passive approach may be more appropriate.

Despite the potential obstacles to incorporating a comprehensive adaptive management strategy in an HCP, the Services incorporate adaptive management strategies when appropriate. We believe it is important that small- to medium-sized HCPs incorporate the flexibility to change implementation strategies after permit issuance. The HCP Program is flexible enough to develop adaptive management strategies that will facilitate and improve the decision-making process for the operating conservation program of a given HCP as well as provide for informative decision-making.

When Should Adaptive Management Be Incorporated Into an HCP?

The Services will consider adaptive management as a tool to address uncertainty in the conservation of a species covered by an HCP. Whenever an adaptive management strategy is used, the approved HCP must outline the agreed-upon future changes to the operating conservation program. Not all HCPs or all species covered in an incidental take permit need an adaptive management strategy. However, an adaptive management strategy is essential for HCPs that would otherwise pose a significant risk to the species at the time the permit is issued due to significant data or information gaps. Possible significant data gaps that may require an adaptive management strategy include, but are not limited to, a significant lack of specific information about the ecology of the species or its habitat (*e.g.*, food preferences, relative importance of predators, territory size), uncertainty in the effectiveness of habitat or species management techniques, or lack of knowledge on the degree of potential effects of the activity on the species covered in the incidental take permit.

Often, a direct relationship exists between the level of biological uncertainty for a covered species and the degree of risk that an incidental take permit could pose for that species. Therefore, the operating conservation program may need to be relatively cautious initially and adjusted later based on new information, even though a cautious approach may limit the number of alternative strategies that may be tested. A practical adaptive management strategy within the operating conservation program of a long-term incidental take permit will include milestones that are reviewed at scheduled intervals during the lifetime of the incidental take permit and permitted action. If a relatively high degree of risk exists, milestones and adjustments may need to occur early and often.

Adaptive management should not be a catchall for every uncertainty or a means to address issues that could not be resolved during negotiations of the HCP. There may be some circumstances with such a high degree of uncertainty and potential significant effects that a species should not receive coverage in an incidental take permit at all until additional research is conducted.

What Are the Elements of an Adaptive Management Strategy in HCPs?

In an HCP, adaptive management strategies can assist the Services and the applicant in developing an adequate operating conservation program and improving its effectiveness. An adaptive management strategy should (1) identify the uncertainty and the questions that need to be addressed to resolve the uncertainty; (2) develop alternative strategies and determine which experimental strategies to implement; (3) integrate a monitoring program that is able to detect the necessary information for strategy evaluation; and (4) incorporate feedback loops that link implementation and monitoring to a decision-making process (which may be similar to a dispute-resolution process) that result in appropriate changes in management. If you are developing adaptive management strategies, we encourage you to review the scientific literature that discusses adaptive management (for a starting point see literature cited at the end of the addendum).

Identifying the uncertainty to be addressed is the foundation of the adaptive management strategy. Other components include a description of the goal of the operating conservation program (*i.e.*, the biological goals and objectives of the HCP) and the identification of the parameters that potentially affect that goal. This requires communication between the applicant and the Services to identify expectations for the adaptive management strategy and may also involve assistance from scientists. After this step, we (the Services, applicants, and any other participants) will develop the range of possible "experimental" strategies which may involve some type of modeling (which can be as simple as a written description of the expected outcomes or as complex as a mathematical model demonstrating expected outcomes) of the resource in question. If modeling is involved, we must clearly articulate the assumptions and limitations of the model used. Many factors may influence the type of alternatives to explore, including, but not limited to, economics, policies and regulations, and amount of risk to the species. This stage may be an appropriate time to involve other stakeholders to help identify the alternative strategies.

Next, a monitoring program needs to be designed that will adequately detect the results of the adaptive management strategy. Integration of the HCP's monitoring program into the adaptive management strategy is essential. The monitoring program plays an essential role of determining whether the chosen strategy(ies) is providing the desired outcome (*i.e.*, achieving the biological goals of the HCP). If a scientific advisory committee is being used, this may be an appropriate item for their review. An applicant may also submit a monitoring program for independent peer review.

Finally, an adaptive management strategy must define the feedback process that will be used to ensure that the new information gained from the monitoring program results in effective change in management of the resource.

How Does Adaptive Management Affect No Surprises Assurances?

HCP assurances (No Surprises) and the use of adaptive management strategies are compatible. The assurances apply once all appropriate HCP provisions have been mutually crafted and agreed upon and approved by the Services and the applicant. Adaptive management strategies, if used, are part of those provisions, and their implementation becomes part of a properly implemented conservation plan. When an HCP, permit, and IA, if used, incorporate an adaptive management strategy, it should clearly state the range of possible operating conservation program adjustments due to significant new information, risk, or uncertainty. This range defines the limits of what resource commitments may be required of the permittee. This process will enable the applicant to assess the potential economic impacts of adjustments before agreeing to the HCP.

Is Adaptive Management the Only Method for Changing the Operating Conservation Program of an HCP?

HCPs may be designed to provide flexibility other than through the use of adaptive management. The No Surprises final rule lays a foundation for contingency planning in HCPs that may or may not include adaptive management. This contingency planning is addressed largely under the topic of "changed circumstances." Changed circumstances are circumstances that can be reasonably anticipated, and the HCP can incorporate measures to be implemented if the circumstances occur. The permittee or another responsible party may need the flexibility provided by the "changed circumstances" regulation to employ alternative methods or strategies within the operating conservation program to achieve the biological goals and objectives. This flexibility also allows previously agreed upon management and/or mitigation actions to be implemented or discontinued, as needed, in response to changed circumstances. These actions are not necessarily adaptive management and may be a process for implementing change to the operating program or simply a different conservation measure. The HCP, incidental take permit, and IA, if any, must describe the agreed upon range of management and/or mitigation actions and the process by which the management and funding decisions are made and implemented.

How Can an HCP Use Adaptive Management Without a Large and Expensive Experimental Design?

Adaptive management has traditionally been viewed and designed for large-scale systems. However, in some situations we may want to retain the flexibility of addressing uncertainty through an adaptive management strategy at a smaller scale. In such situations, an adaptive management strategy could take many forms including creating a simple feedback loop so that management changes could be implemented based on results of the HCP's monitoring program. Similarly, the agreed-upon strategy may be integration of an HCP with any ongoing research, recovery planning, and conservation planning by Federal, State, and local agencies. This integration is an efficient way to address uncertainty and provide the information needed to guide changes in small to medium sized HCPs. We can also view smaller, yet similar HCPs collectively across a landscape in order to adapt our approaches in future HCPs (Johnson 1999). This approach will require us to coordinate information among similar HCPs, including communication with the individual applicants regarding their role in such a landscape approach.

Monitoring

What Is Monitoring in the HCP Program?

Monitoring is a mandatory element of all HCPs (See 50 CFR 17.22, 17.32, and 222.307). When properly designed and implemented, monitoring programs for HCPs should provide the information necessary to assess compliance and project impacts, and verify progress toward the biological goals and objectives. Monitoring also provides the scientific data necessary to evaluate the success of the HCP's operating conservation programs with respect to the possible use of those strategies in future HCPs or other programs that contribute to the conservation of species and their habitat. The HCP Handbook already provides guidance for developing monitoring measures (Chapter 3, section B.4.) and discusses reporting requirements (Chapter 6, section E.4.). The following information further clarifies and provides additional guidance for the monitoring component of an HCP, permit, or IA.

What Are the Types of Monitoring That Can Be Incorporated Into HCPs?

The Services and the applicant must ensure that the monitoring program of an HCP provides information to: (1) Evaluate compliance; (2) determine if biological goals and objectives are being met; and (3) provide feedback information for an adaptive management strategy, if one is used. HCP monitoring is divided into two types. *Compliance Monitoring* is verifying that the permittee is carrying out the terms of the HCP, permit, and IA, if one is used. *Effects and Effectiveness Monitoring* evaluates the effects of the permitted action and determines whether the effectiveness of the operating conservation program of the HCP are consistent with the assumptions and predictions made when the HCP was developed and approved; in other words, is the HCP achieving the biological goals and objectives.

Scientific literature discussing monitoring uses similar terms as the addendum but the terms may have different meanings. For instance, the term "validation monitoring" is the same concept as the addendum's term "effectiveness monitoring." However, "effectiveness monitoring" in the scientific literature simply means measuring the status of species. "Implementation monitoring" is roughly equivalent to the addendum's term "compliance monitoring" with the added regulatory nature of the involvement of a permit.

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What Determines the Extent of a Monitoring Program?

The scope of the monitoring program should be commensurate with the scope and duration of the operating conservation program and the project impacts. Biological goals and objectives provide a framework for developing a monitoring program that measures progress toward meeting those goals and objectives. If an HCP, permit, and/or IA has an adaptive management strategy, integrating the monitoring program into this strategy is crucial in order to guide any necessary changes in management.

Monitoring programs for large-scale or regional planning efforts may be elaborate and track more than one component of the HCP (*e.g.*, habitat quality or collection of mitigation fees). Conversely, monitoring programs for HCPs with smaller impacts of short duration might only need to file simple reports that document whether the HCP has been implemented as described. For example, if an HCP affects only a portion of a population, the permittee should not generally be responsible for monitoring the entire population. In addition, it may not be appropriate for a monitoring program to involve counting of populations or individuals or making an assessment of habitat. The appropriate unit of measure in a monitoring program depends upon the specific impacts and operating conservation program within an HCP. The Services are responsible for ensuring that the appropriate units of measure and protocols are used and should coordinate monitoring programs to obtain a larger view of the status of a population. The applicant and the Services should also design the monitoring program to reflect the structure of the biological goals and objectives.

The monitoring program should reflect the measurable biological goals and objectives. The following components are essential for most monitoring protocols (the size and scope of the HCP will dictate the actual level of detail in each item): (1) Assess the implementation and effectiveness of the HCP terms and conditions (*e.g.*, financial responsibilities and obligations, management responsibilities, and other aspects of the incidental take permit, HCP, and the IA, if applicable); (2) determine the level of incidental take of the covered species; (3) determine the biological conditions resulting from the operating conservation program (*e.g.*, change in the species' status or a change in the habitat conditions); and (4) provide any information needed to implement an adaptive management strategy, if utilized. An effective monitoring program is flexible enough to allow modifications, if necessary, to obtain the appropriate information.

Monitoring programs will vary based on whether they are for low-effect or for regional, multispecies HCPs; however, the general elements of each program are similar. Post-activity or post-construction monitoring, along with a single report at the end of the monitoring period, will often satisfy the monitoring requirements for low-effect HCPs. For other HCPs, monitoring programs will be more comprehensive and may include milestones, timelines, and/or trigger points for change.

Effects and effectiveness monitoring includes, but is not limited to, the following:

1. Periodic accounting of incidental take that occurred in conjunction with the permitted activity;
2. Surveys to determine species status, appropriately measured for the particular operating conservation program (*e.g.*, presence, density, or reproductive rates);
3. Assessments of habitat condition;
4. Progress reports on fulfillment of the operating conservation program (*e.g.*, habitat acres acquired and/or restored); and
5. Evaluations of the operating conservation program and its progress toward its intended biological goals.

What Units Should Be Monitored in an HCP?

Each HCP's monitoring program should be customized to reflect the biological goals, the scope, and the particular implementation tasks of the HCP. In order to obtain meaningful information, the applicant and the Services should structure the monitoring methods and standards so that we can compare the results from one reporting period to another period or compare different areas, and the monitoring protocol responds to the question(s) asked. Monitored units should reflect the biological objective's measurable units (*e.g.*, if the biological objective is in terms of numbers of individuals, the monitoring program should measure the number of individuals). The monitoring program will be based on sound science. Standard survey or other previously-established monitoring protocols should be used. Although the specific methods used to gather necessary data may differ depending on the species and habitat types, monitoring programs should use a multispecies approach when appropriate.

What Role Do the Services Have in Monitoring?

Both the Services and the permittee are responsible for monitoring the implementation of the HCP. The Services' primary monitoring responsibilities (with the assistance of the permittee) are ensuring compliance with the permit's terms and conditions, including proper implementation of the HCP by the permittee. Permittee assistance with compliance monitoring includes monitoring the implementation and reporting their findings/results. The permittee, with the assistance of the Services, is responsible for verifying the effects and effectiveness of the HCP. To monitor all aspects of an HCP effectively, and to ensure its ultimate success, the entire monitoring program should incorporate both types of monitoring. The Services and the applicant should coordinate the two aspects of monitoring, and the monitoring program should also clearly designate who is responsible for the various aspects of monitoring.

The Services are responsible for ensuring that the permittee is meeting the terms and conditions of the HCP, its accompanying incidental take permit, and IA, if any (*i.e.*, compliance monitoring). The Services should verify adherence to the terms and conditions of the incidental take permit, HCP, IA, and any other related agreements and should ensure that incidental take of the covered species does not exceed the level authorized under the incidental take permit. Regulations at 50 CFR §§ 13.45 and 222.301, provide the authority for the Services to require periodic reports unless otherwise specified by the incidental take permit. Also, the Services will ensure that the reporting requirements are tailored for documenting compliance with the incidental take permit (*e.g.*, documentation of habitat acquisition, use of photographs). These reports help determine whether the permittee is properly implementing the terms and conditions of the HCP, its incidental take permit, and any IA, and will provide a long-term administrative record documenting progress made under the incidental take permit.

In addition to reviewing reports submitted by the permittee, it is important for the Services to make field visits to verify the accuracy of monitoring data submitted by the permittees. These visits allow the Services to check for information, identify unanticipated deficiencies or benefits, develop closer cooperative ties with the permittee, prevent accidental violations of the incidental take permit's terms and conditions, and assist the permittee and Services in developing corrective actions when necessary.

For large-scale or regional HCPs, oversight committees, made up of representatives from significantly affected entities (*e.g.*, State Fish and Wildlife agencies), are often used to ensure proper and periodic review of the monitoring program and to ensure that each program properly implements the terms and conditions of the incidental take permit. For example, the Wisconsin Statewide HCP for the Karner blue butterfly includes an auditing approach to ensure incidental take permit compliance. The lead permittee, Wisconsin Department of Natural Resources (Wisconsin DNR), will initially conduct annual on-site audits of each partner. FWS will audit the Wisconsin DNR in a similar fashion. In addition, FWS will accompany the Wisconsin DNR on the partner audits as appropriate to understand partner compliance levels. Over time, if performance levels are acceptable, Wisconsin DNR will conduct the audits less frequently. Each partner will provide an annual monitoring report and will submit these along with their audit report to FWS.

For large-scale or regional HCPs, oversight committees should periodically evaluate the permittee's implementation of the HCP, its incidental take permit, and IA and the success of the operating conservation program in reaching its identified biological goals and objectives. Such committees usually include species experts and representatives of the permittee, the Services, and other affected agencies and entities. Submitting the committee's findings to recognized experts in pertinent fields (*e.g.*, conservation biologists or restoration specialists) for review or having technical experts conduct field investigations to assess implementation of the terms and conditions would also be beneficial. Because the formation of these committees may be subject to the Federal Advisory Committee Act, the role of the participants and the purpose of the meetings must be clearly identified. Oversight committees should meet at least annually and review implementation of the monitoring program and filing of reports as defined in the HCP, permit, and/or IA, if one is used.

What Role Does the Permittee Have in Monitoring?

Not only do permittees provide regular implementation reports, they are also involved in effects and effectiveness monitoring. Effects monitoring determines the extent of impacts from the permitted activity. Effectiveness monitoring, in the HCP program, assesses progress toward the biological goals and objectives of the HCP (*e.g.*, if the conservation strategies are producing the desired habitat conditions or population numbers). Effects and effectiveness monitoring may also involve assessing threats and population trends of the covered species related to the permitted activities, as well as monitoring the development of targeted habitat conditions. Permittees, with assistance from the Services, should ensure that the HCP includes provisions for monitoring the effects and effectiveness of the HCP. The Services and the HCP permittee will cooperatively develop the effects and effectiveness monitoring program and determine responsibility for its various components. In multi-party HCPs, different parties may monitor different aspects of the HCP. The Services must periodically review any monitoring program to confirm that it is conducted according to their standards.

What Should Be Included in Monitoring Reports?

The Services will streamline the reporting requirements for monitoring programs by requesting all reports in a single document. The HCP, permit, or IA should specifically state the level of detail and quantification needed in the monitoring report and tailor report due dates to the activities conducted under the incidental take permit (*e.g.*, due at the end of a particular stage of the project or the anniversary date of incidental take permit issuance). Most monitoring programs require reports annually, usually due on the anniversary date of incidental take permit issuance. Wherever possible, the Services will coordinate the due dates with other reporting requirements (*e.g.*, State reports), so the permittee can satisfy more than one reporting requirement with a single report. The following list represents the information generally needed in a monitoring report:

1. Biological goals and objectives of the HCP (which may need to be reported only once);
2. Objectives for the monitoring program (which may need to be reported only once);
3. Effects on the covered species or habitat;
4. Location of sampling sites;
5. Methods for data collection and variables measured;
6. Frequency, timing, and duration of sampling for the variables;
7. Description of the data analysis and who conducted the analyses; and
8. Evaluation of progress toward achieving measurable biological goals and objectives and other terms and conditions as required by the incidental take permit or IA.

These elements may be simplified for periods of no activity or low-effect HCPs. If a required report is not submitted by the date specified in the HCP or incidental take permit terms and conditions, or is inadequate, the Services will notify the permittee. The Services have discretion to offer the permittee an extension of time to demonstrate compliance. The Services have examined this reporting guidance under the Paperwork Reduction Act of 1995 and found that it does not contain requests for additional information or an increase in the collection requirements other than those already approved for incidental take permits (OMB approval for FWS, # 1018–0094; for NMFS, # 0648–0230).

How Are Monitoring Programs Funded?

The ESA and the implementing regulations (50 CFR 17 and 222) require that HCPs specify the measures the permittee will adopt to ensure adequate funding for the HCP. The Services should not approve an HCP that does not contain an adequate funding commitment from the applicant/permittee to support an acceptable monitoring program unless the HCP establishes alternative funding mechanisms. The Services and the applicant should work together to develop the monitoring program and determine who will be responsible for monitoring the various components of the HCP. Specific monitoring tasks may be assigned to entities other than the permittee (*e.g.*, State or Tribal agencies) as long as the Services and parties responsible for implementing the HCP approve of the monitoring assignment. The terms of the HCP, incidental take permit, and IA may contain funding mechanisms that provide for a public (*e.g.*, local, State, or Federal) or a private entity to conduct all or portions of the monitoring. This funding mechanism must be agreed upon by the Services and the parties responsible for implementing the HCP.

Permit Duration

How Do We Decide the Length of Time for Which the Permit Is in Place?

Both FWS and NMFS regulations for incidental take permits outline factors to consider when determining incidental take permit duration (50 CFR 17.32 and 222.307). These factors include duration of the applicant's proposed activities and the expected positive and negative

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effects on covered species associated with the proposed duration, including the extent to which the operating conservation program will increase the long-term survivability of the listed species and/or enhance its habitat. For instance, if the permittee's action or the implementation of the conservation measures continually occur over a long period of time, such as with timber harvest management, the permit would need to encompass that time period.

The Services will also consider the extent of information underlying the HCP, the length of time necessary to implement and achieve the benefits of the operating conservation program, and the extent to which the program incorporates adaptive management strategies. Significant biological uncertainty may necessitate an adaptive management strategy. The gathering of new information through the monitoring program requires an appropriate period of time for meaningful interpretation of new information into changes in management; this analysis could necessitate a permit with a longer duration. However, if an adaptive management strategy that significantly reduces the risk of the HCP to that species cannot be devised and implemented, then, if the issuance criteria are met, a shorter duration may be appropriate.

The varying biological impacts resulting from the proposed activity (e.g., variations in the length of timber rotations and treatments versus a real estate subdivision buildout) and the nature or scope of the permitted activity and conservation program in the HCP (e.g., housing or commercial developments versus long-term sustainable forestry; conservation easements) account for variation in permit duration. Longer permits may be necessary to ensure long-term active commitments to the HCP and typically include up-front contingency planning for changed circumstances to allow appropriate changes in the conservation measures.

Public Participation

What Is the Public Participation Requirement for HCPs?

As stated in the HCP Handbook in Chapter 6.B, we currently require a minimum 30-day public comment period for all HCP applications. This comment period is required by section 10(c) of the ESA and the implementing regulations at 50 CFR 17 and 222. The Services recognize the concern of the public regarding an inadequate time for the public comment period, especially for large-scale HCPs. With a few exceptions, we are extending the minimum comment period to 60 days for most HCPs. The exceptions to a 60-day comment period would be for low-effect HCPs, individual permits under a programmatic HCP, and large-scale, regional, or exceptionally complex HCPs.

The Services believe the current 30-day public comment period provides enough time for interested parties to review major HCP amendments and low-effect HCPs. Low-effect HCPs have a categorical exclusion from NEPA and, therefore, do not have a NEPA public participation requirement. Similarly, in some cases, individual permits issued under a programmatic HCP may not need additional public review since the larger, programmatic HCP would have undergone more extensive review.

However, for large-scale, regional, or exceptionally complex HCPs, the Services are increasingly encouraging applicants to use informational meetings and/or advisory committees. In addition, the minimum comment period for these HCPs is now 90 days, unless significant public participation occurs during HCP development. With the extension of the public comment periods, the recommended timeline targets for processing incidental take permits are extended accordingly: The target timeline from receipt of a complete application to the issuance of a permit for low-effect HCPs will remain up to 3 months, HCPs with an Environmental Assessment (EA) will be 4 to 6 months, and HCPs with a 90-day comment period and/or an Environmental Impact Statement (EIS) may be up to 12 months.

How Do the Services Let Interested Parties Know About the HCP's Comment Period?

During the public comment period, any member of the public may review and comment on the HCP and the accompanying NEPA document, if applicable. If an EIS is required, the public can also participate during the scoping process. We announce all complete applications received in the **Federal Register**. When practicable, the Services will announce the availability of HCPs in electronic format and in local newspapers of general circulation.

How Do the Services or Applicants Incorporate Public Participation During the Development of an HCP?

The Services will strongly encourage potential applicants to allow for public participation during the development of an HCP, particularly if non-Federal public agencies (e.g., State Fish and Wildlife agencies) are involved. Although the development of an HCP is the applicant's responsibility, the Services will encourage applicants for most large-scale, regional HCP efforts to provide extensive opportunities for public involvement during the planning and implementation process.

The Services encourage the use of scientific advisory committees during the development and implementation of an HCP. The integration of a scientific advisory committee and perhaps other stakeholders improves the development and implementation of any adaptive management strategy. Advisory committees can assist the Services and applicants in identifying key components of uncertainty and determining alternative strategies for addressing that uncertainty. We also encourage the use of peer review for an HCP. An applicant, with guidance from the Services, may seek independent scientific review of specific sections of an HCP and its operating conservation strategy to ensure the use of the best scientific information.

How Do the Services Consider Tribal Interest in an HCP?

We recommend that applicants include participation by affected Native American tribes during the development of the HCP. If an applicant chooses not to consult with Tribes, under the Secretarial Order on Federal-Tribal Trust Responsibilities and ESA, the Services will consult with the affected Tribes to evaluate the effects of the proposed HCP on tribal trust resources. We will also provide the information gained from the consulted tribal government to the HCP applicant prior to the submission of the draft HCP for public comment and will advocate the incorporation of measures that will conserve, restore, or enhance Tribal trust resources. After consultation with the tribal government and the applicant and after careful consideration of the Tribe's concerns, we will clearly state the rationale for the recommended final decision and explain how the decision relates to the Services' trust responsibility.

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Dated: April 4, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

Dated: May 19, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13553 Filed 5–31–00; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S.J. Res. 44/P.L. 106–205
Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)

H.R. 154/P.L. 106–206
To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)

H.R. 371/P.L. 106–207
Hmong Veterans' Naturalization Act of 2000 (May 26, 2000; 114 Stat. 316)

H.R. 834/P.L. 106–208
National Historic Preservation Act Amendments of 2000 (May 26, 2000; 114 Stat. 318)

H.R. 1377/P.L. 106–209
To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the "John J. Buchanan Post Office Building". (May 26, 2000; 114 Stat. 320)

H.R. 1832/P.L. 106–210
Muhammad Ali Boxing Reform Act (May 26, 2000; 114 Stat. 321)

H.R. 3629/P.L. 106–211
To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)

H.R. 3707/P.L. 106–212
American Institute in Taiwan Facilities Enhancement Act (May 26, 2000; 114 Stat. 332)

S. 1836/P.L. 106–213
To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)

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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206 AJ03 (3206 AI63)

Federal Employees Health Benefits (FEHB) Program and Department of Defense (DoD) Demonstration Project

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: OPM is issuing a final regulation to implement the portion of the National Defense Authorization Act for 1999 that establishes authority for a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans in certain geographic areas under the Federal Employees Health Benefits (FEHB) Program. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. This regulation specifies only the requirements that differ from existing FEHB Program regulations because of unique aspects of the demonstration project.

DATES: The effective date of this regulation is July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, Policy Analyst, Insurance Policy and Information Division, OPM, Room 3425, 1900 E Street, NW., Washington, DC 20415–0001. He can also be reached at (202) 606–0004 or by electronic mail (E-mail) at: mwkaszyn@opm.gov.

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to implement the portion of the National Defense Authorization Act for 1999, Public Law 105–261, that amended chapter 55 of title 10, United States Code, and chapter 89 of title 5, United States Code, to establish a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans offered under the FEHB Program. The legislation was signed into law on October 17, 1998. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. DoD, with OPM concurrence, has selected eight geographic areas to serve as demonstration areas. The legislation requires that between 6 and 10 geographic areas be selected. No more than 66,000 individuals can participate in the demonstration project at any one time. Beneficiaries who are provided coverage under the demonstration project will not be eligible to receive care at a military medical treatment facility or to enroll in a health care plan under DoD's TRICARE program. Individuals who disenroll or cancel enrollment from the demonstration project are not eligible to reenroll in the demonstration project. OPM will establish separate risk pools for developing demonstration project enrollee premium rates. The government contribution for demonstration enrollees will be paid by DoD and cannot exceed the maximum percentage or dollar amount that the government would have contributed had the enrollee been enrolled as a regular FEHB enrollee in the same health benefits plan and at the same level of benefits.

The legislation requires OPM and DoD to jointly produce and submit two reports to Congress designed to assess the viability of expanding access to the FEHB Program to certain Medicare and other eligible DoD beneficiaries permanently. The first report is due by April 1, 2001; the second is due by December 31, 2002. The reports will focus on enrollee participation levels, impact on Medicare Part B enrollment, premium rates and costs as compared to those for regular FEHB enrollees, impact on accessibility of care in military treatment facilities, impact on medical readiness and training in military treatment facilities, impact on the cost, accessibility, and availability of prescription drugs for DoD beneficiaries, and recommendations on eligibility and enrollment.

OPM has determined it necessary to specify certain differences from existing FEHB Program regulations because of the unique features of the demonstration project. This regulation amends Part 890 of title 5, Code of Federal Regulations (CFR) to authorize these differences. Should the program be extended beyond the three year demonstration project period, we will regulate to address any necessary changes to these provisions.

On July 6,1999, OPM published an interim regulation in the **Federal Register** (64 FR 36237). OPM subsequently received one comment from a trade association representing FEHB fee-for-service/PPO plans. The commenter indicated that the regulation does not address whether FEHB carriers must issue certificates of creditable coverage required under the Health Insurance Portability and Accountability Act (HIPAA) and asked if this was required under the demonstration project. The regulation is intended to change normal FEHB Program practice where specifically indicated. It is not intended to affect practices that have not been specifically addressed. Therefore, carriers must issue certificates of creditable coverage to meet the requirements of HIPAA for demonstration project enrollees the same as they do for regular FEHB Program enrollees.

Other minor clarifying changes have been made to the regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health insurance carriers under the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq, Kuwait, Lebanon, Reporting and record keeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

For the reasons set forth in the preamble, OPM is amending 5 CFR part 890 as follows:

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PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

2. A new Subpart M is revised to read as follows:

Subpart M—Department of Defense Federal Employees Health Benefits Program Demonstration Project

Sec.

890.1301 Purpose.
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Subpart M—Department of Defense Federal Employees Health Benefits Program Demonstration Project

§ 890.1301 Purpose.

The purpose of this subpart is to implement section 721 of the National Defense Authorization Act for 1999, Public Law 105–261. This section amended chapter 55 of title 10, United States Code, and chapter 89 of title 5, United States Code, to establish a demonstration project under which certain Medicare and other eligible Department of Defense (DoD) beneficiaries can enroll in health benefit plans offered under the Federal Employees Health Benefits (FEHB) Program in certain geographic areas. The legislation was signed into law on October 17, 1998. The demonstration project will run for a period of three years. The legislation requires the Office of Personnel Management (OPM) and DoD to jointly produce and submit two reports to Congress designed to assess the viability of expanding access to the FEHB Program to certain Medicare and other eligible DoD beneficiaries permanently. OPM is authorizing certain differences from regular FEHB Program practices in order to ensure the successful implementation of the demonstration project. This regulation authorizes those differences.

§ 890.1302 Duration.

The demonstration project will run from January 1, 2000, through December 31, 2002.

§ 890.1303 Eligibility.

(a) To enroll in the demonstration project, an individual must live within one of the demonstration areas and meet the definition of an eligible beneficiary in 10 U.S.C. 1108(b). An eligible beneficiary under this subpart is—

(1) A member or former member of the uniformed services described in section 1074(b) of title 10, United States Code, who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c *et seq.*);

(2) An individual who is an unremarried former spouse of a member or former member described in section 1072(2)(F) or section 1072(2)(G) of title 10, United States Code;

(3) An individual who is—

(i) A dependent of a deceased member or former member described in section 1076(b) or 1076(a)(2)(B) of title 10, United States Code, or of a member who died while on active duty for a period of more than 30 days; and

(ii) A "member of family" as defined in section 8901(5) of title 5, United States Code; or

(4) An individual who is—

(i) A dependent of a living member or former member described in section 1076(b)(1) of title 10, United States Code, who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act, regardless of the member's or former member's eligibility for such hospital insurance benefits; and

(ii) A "member of family" as defined in section 8901(5) of title 5, United States Code.

(b) An eligible beneficiary may enroll in an FEHB plan under chapter 89 of title 5, United States Code, for self-only coverage or for self and family coverage. A self and family enrollment will include coverage of a dependent of the military member or former member who meets the definition of a "member of family" in section 8901(5) of title 5, United States Code. A self and family enrollment will not cover a person related to the eligible beneficiary that does not qualify as a "member of family" (as defined in section 8901(5) of title 5, United States Code) of the military member or former member.

(c) A person eligible for coverage under this subpart shall not be required to satisfy any eligibility criteria specified in chapter 89 of title 5, United States Code, or in other subparts of this part (except as provided in paragraphs (a)(3), (a)(4), and (b) of this section) as a condition for enrollment in health benefit plans offered through the FEHB Program under the demonstration project.

(d) When determining whether an individual is a "member of family" under section 8901(5) of title 5, United States Code, for purposes of paragraph (a)(3) and (a)(4) of this section, a DoD member or former member described in section 1076(b) or 1076(a)(2)(B) of title 10, United States Code, shall be deemed to be an employee under chapter 89 of title 5, United States Code. The sole purpose for deeming these members or former members of the uniformed services employees under chapter 89 of title 5, United States Code, is to determine which of their dependents can enroll as eligible beneficiaries in the demonstration project.

(e) A person who is eligible to enroll in the FEHB Program as an employee as defined in section 8901(1) of title 5, United States Code, is not eligible to enroll in an FEHB plan under the demonstration project.

§ 890.1304 Enrollment.

(a) Open Season for eligible beneficiaries will be held concurrent with the Open Season for regular FEHB enrollees. Open Seasons will be held in the years 1999, 2000 and 2001. Eligible beneficiaries will be able to enroll for coverage, change enrollment tiers (e.g., self-only or self and family), or change health benefit plans or plan options during these periods.

(b) Enrolled eligible beneficiaries are required to pay associate membership dues if they enroll in open employee organization sponsored plans that are participating in the demonstration project.

(c) DoD will deny enrollment of eligible beneficiaries when the total number of eligible beneficiaries and family members enrolled in the demonstration project reaches 66,000.

(d) Eligible beneficiaries can enroll only in health plans offered by health benefit carriers who are participating in the demonstration project.

(e) Eligible beneficiaries and family members enrolled in the demonstration project are not eligible to obtain services from military medical treatment facilities or to enroll in a health care plan under the TRICARE Program.

(f) An eligible beneficiary enrolled in an FEHB plan under the demonstration project may change health benefits plans and coverage in the same manner as any other FEHB Program enrollee, except as provided for in this subpart.

§ 890.1305 Termination and cancellation.

(a) If an enrolled eligible beneficiary moves out of a demonstration area, the enrollment of the eligible beneficiary and all family members will be terminated. If an enrolled eligible beneficiary moves to an area located within a demonstration area, he or she will continue to be eligible to participate in the demonstration project. If the eligible beneficiary was enrolled prior to the move in an HMO that does not serve the new demonstration area, the eligible beneficiary will have an opportunity to select a new health plan offered by a carrier participating in the demonstration project in the new area. If the eligible beneficiary was enrolled in a fee-for-service plan prior to the move and moves to another area that is within an existing demonstration area, the eligible beneficiary can maintain his or her current coverage.

(b) If an enrolled eligible beneficiary disenrolls, cancels, or terminates enrollment for any reason, he or she will not be eligible to reenroll in the demonstration project. Once coverage ends, eligible beneficiaries and all family members have the right to resume all of the benefits to which they are entitled to under title 10 of the United States Code. Medicare-covered eligible beneficiaries and their eligible family members who had Medigap policies prior to their enrollment in the demonstration project are entitled to reinstate that coverage under the conditions stated in section 1108(l) of title 10, United States Code.

(c) Eligible beneficiaries and their family members are eligible for Temporary Continuation of Coverage (TCC) under the conditions and for the durations described in subpart K or until the end of the demonstration project, whichever occurs first. The effective date of TCC for eligible beneficiaries or their eligible family members will be the day after other coverage under this subpart ends. Eligible beneficiaries or their eligible family members selecting TCC must enroll in a health plan offered by a carrier participating in the demonstration project. If an eligible beneficiary or eligible family member enrolled in DoD TCC moves from a demonstration project area, coverage ends. DoD TCC enrollees will be responsible for paying the entire DoD premium rate (OPM's approved net-to-carrier DoD rate plus 4 percent for contingency and administration reserves) plus 2 percent of this premium rate for administration of the program. DoD will make arrangements to collect premiums plus the 2 percent administrative charge from eligible beneficiaries and forward them to OPM's Employees Health Benefits Fund. OPM will establish procedures for receiving the 2 percent administrative payment into the Employees Health Benefits Fund and making this amount available to DoD for administration of the program.

(d) Enrolled eligible beneficiaries are not eligible for the temporary extension of coverage and conversion opportunities described in subpart D of this part.

§ 890.1306 Government premium contributions.

The Secretary of Defense is responsible for the government contribution for enrolled eligible beneficiaries and family members. The government contribution toward demonstration project premium rates will be determined in accordance with subpart E of this part.

§ 890.1307 Data collection.

Each carrier will compile, maintain, and when requested by OPM or DoD, report data on its plan's experience necessary to produce reports containing the following information and analysis:

(a) The number of eligible beneficiaries who elect to participate in the demonstration project.

(b) The number of eligible beneficiaries who elected to participate in the demonstration project and did not have Medicare Part B coverage before electing to participate.

(c) The costs of health benefits charges and the costs (direct and indirect) of administering the benefits and services provided to eligible beneficiaries who elect to participate in the demonstration project as compared to similarly situated enrollees in the FEHB Program.

(d) Prescription drug costs for demonstration project beneficiaries.

§ 890.1308 Carrier participation.

(a) All carriers who participate in the FEHB Program and provide benefits to enrollees in the geographic areas selected as demonstration project areas must participate in the demonstration project, except as provided for in paragraphs (b), (c), and (d) of this section.

(b) Carriers who have less than 300 FEHB enrollees may, but are not required to, participate in the demonstration project.

(c) Carriers may, but are not required to, participate in the demonstration project if their service area overlaps a small portion (as determined by OPM) of a demonstration project geographic area.

(d) Carriers offering fee-for-service plans with enrollment limited to specific groups will not participate in the demonstration project.

[FR Doc. 00–13850 Filed 6–1–00; 8:45 am]
BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–034–1]

Plum Pox

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining part of Adams County, PA, due to the detection of plum pox in that region and are restricting the interstate movement of certain articles from the quarantined area that present a risk of transmitting plum pox. This action is necessary on an emergency basis to prevent the spread of plum pox to noninfested areas of the United States.

DATES: This interim rule is effective on June 2, 2000. We invite you to comment on this docket. We will consider all comments that we receive by August 1, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–034–1 Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–034–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, USDA,

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APHIS, PPQ, 4700 River Road Unit 134, Riverdale, MD 20737; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart, "Plum Pox," composed of new §§ 301.74 through 301.74–4 and referred to below as the regulations. These regulations quarantine portions of Adams County, PA, due to the detection of plum pox and restrict the interstate movement of certain articles from the quarantined area that present a risk of transmitting plum pox.

Plum pox is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. A number of wild and ornamental *Prunus* species may also be susceptible to this disease. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. Plum pox virus is transmitted locally by a variety of aphid species as well as by budding and grafting with infected plant material. It spreads over longer distances through movement of infected budwood, nursery stock, and other plant parts. The strain of plum pox detected in Adams County, PA—the D strain—is not known to be transmitted by seed or fruit. This particular strain in Pennsylvania is also not known to infect cherry. There are no effective methods for treating trees or other plant material infested with plum pox. There are also no effective treatments to prevent the onset of plum pox other than eradication of nearby plant material already identified as infected. In Europe, plum pox has been present for a number of years and is considered to be the most serious disease affecting susceptible *Prunus* varieties.

Recent delimiting surveys of orchards have established that portions of Adams County, PA, in the area of Latimore Township and Huntington Township are infested with plum pox. Prior to this discovery, plum pox had not been detected in the United States.

Officials of the Animal and Plant Health Inspection Service (APHIS) and the Pennsylvania Department of Agriculture (PDA) have begun an intensive survey and eradication program in and around the infested area. The PDA has also instituted a quarantine encompassing Latimore and Huntington Townships in Adams County, PA, the area where plum pox is now known to be present. The PDA quarantine prohibits any movement of stone fruit trees (including nursery stock) and stone fruit budwood within the quarantined area as well as movement of these same regulated articles out of the quarantined area into other regions of Pennsylvania. There is no restriction on the movement of fruit since there is no evidence that the virus is spread from the fruit. Federal regulations are necessary in order to restrict the interstate movement of these same regulated articles and prevent the spread of plum pox to noninfested areas of the United States. This interim rule establishes those Federal regulations, which are described below.

Section 301.74—Restrictions on Interstate Movement of Regulated Articles

Section 301.74 prohibits the interstate movement of regulated articles from quarantined areas except in accordance with the regulations.

Section 301.74–1—Definitions

Section 301.74–1 contains definitions of the following terms: *Administrator, Animal and Plant Health Inspection Service, Departmental permit, infestation (infested, infected), inspector, interstate, moved (move, movement), person, Plant Protection and Quarantine, plum pox, quarantined area, regulated article,* and *State.*

Section 301.74–2—Regulated Articles

Certain articles present a significant risk of spreading plum pox if they are moved from quarantined areas without restrictions. We call these articles regulated articles. Paragraphs (a) and (b) of § 301.74–2 list the following as regulated articles:

- All plant material and plant parts of *Prunus* (stone fruit) species other than *P. avium, P. cerasus, P. effusa, P. laurocerasus, P. mahaleb, P. padus, P. sargentii, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. yedoensis,* and *P. virginiana,* except for seeds and fruit that is free of leaves and other plant parts. This includes, but is not limited to, trees, seedlings, root stock, budwood, branches, twigs, and leaves.
- Any other product or article that an inspector determines to present a risk of spreading plum pox when the inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations.

Section 301.74–3—Quarantined Areas

Paragraph (a) of § 301.74–3 provides the criteria for the inclusion of States, or portions of States, in the list of quarantined areas. Any State or portion of a State in which plum pox is detected through inspection and laboratory testing, or in which the Administrator has reason to believe that plum pox is present, will be listed as a quarantined area. In addition, an area will be designated as a quarantined area when the Administrator considers it necessary due to the area's inseparability for quarantine enforcement purposes from localities in which plum pox has been detected.

Paragraph (a) of § 301.74–3 also provides that we will designate less than an entire State as a quarantined area if we determine that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and that the designation of less than the entire State as a quarantined area will prevent the interstate spread of plum pox.

The boundary lines that delimit the portion of a State to be designated as a quarantined area may vary due to factors such as the location of host material that is a source of infestation, nearby transportation centers such as bus stations and airports, the pattern of persons moving in that State, the number and patterns of transmission of plum pox, and the availability of clearly identifiable lines to serve as boundaries.

We have determined that it is not necessary to designate the entire State of Pennsylvania as a quarantined area because plum pox has not been detected in areas outside of Adams County, PA. In addition, Pennsylvania has adopted and is enforcing restrictions on the intrastate movement of regulated articles, and those restrictions are substantially the same as those we are imposing on the interstate movement of regulated articles. Therefore, in accordance with the criteria described in the previous paragraph, we have designated the following as quarantined areas: Latimore Township and Huntington Township, both of which are located in Adams County, PA.

Paragraph (b) of § 301.74–3 provides that we may temporarily designate any other area in a State as a quarantined area should we determine that the nonquarantined area meets the criteria for designation as a quarantined area described in § 301.74–3(a). In such cases, we will give the owner or person in possession of the area a copy of the regulations along with written notice of the area's temporary designation as a quarantined area, after which time the interstate movement of any regulated article from the area will be subject to the regulations. This provision is necessary to prevent the interstate spread of plum pox during the interval between the time of detection and the time a document establishing the quarantined area can be made effective and published in the **Federal Register**. If an area's designation as a temporary quarantined area is terminated, we will provide written notice of that termination to the owner or person in possession of the area as soon as is practicable.

Section 301.74–4—Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas

This section prohibits the interstate movement of regulated articles from a quarantined area with two exceptions. First, an article can be moved by APHIS or another agency of the U.S. Department of Agriculture for experimental or scientific purposes. Such articles must be moved in accordance with a Departmental permit issued by the Administrator under conditions specified on the permit to prevent the spread of plum pox.

Second, articles which originate from outside the quarantine area may pass through the quarantine area as long as the shipment includes a waybill that indicates the point of origin. Such articles that are merely passing through the quarantined area must be moved in an enclosed vehicle or completely covered to prevent access by aphids while traveling through the quarantined area. Such articles must not be uncovered, unpacked, or unloaded while in the quarantined area.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the spread of plum pox to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule quarantines part of Adams County, PA, due to the detection of plum pox and restricts the interstate movement of certain articles from the quarantined area that present a risk of transmitting the strain of plum pox. This action is necessary on an emergency basis to prevent the spread of plum pox to noninfested areas of the United States.

The overall economic effect of this interim rule is expected to be small. The quarantine to be imposed on Latimore Township and Huntington Township prohibits the movement of most stone fruit budwood, root stock, and other plant material from the quarantined area. Since the fruit itself is not a vector of the disease, the quarantine imposes no restrictions on the movement of fruit out of the quarantined area. Therefore, growers in the quarantined area are able to sell and move their fruit production without restriction.

The quarantine does prohibit the movement of susceptible budwood and root stock. However, stone fruit growers move small quantities of plant material for commercial purposes. In 1999, there was a movement of 700 bud sticks (worth about $1 apiece) out of the quarantined area. In some years, there have been no movements.

The prohibition on the movement of susceptible plant material would also affect nurseries. There is one small nursery in the quarantined area. However, it does very little, if any, business in the products subject to regulation under the quarantine. There are two other nurseries within Adams County, PA, but outside the quarantined area that have been affected by the plum pox outbreak, although not by these regulations. Because these nurseries received plant material from the quarantined area, trees from their spring 2000 and spring 2001 peach, nectarine, plum, and apricot crop are unsalable. The losses are estimated to total $700,000. In addition, these two nurseries have also had to alter their operations due to their proximity to and association with the quarantined area where plum pox has been detected.

Effect on Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. The Small Business Administration (SBA) defines a firm engaged in agriculture as "small" if it has less than $500,000 in annual receipts.

Within the quarantined area of Latimore Township and Huntington Township, there are seven peach, plum, and nectarine producers with orchards totaling approximately 800 acres. Four of these producers are known to have orchards where plum pox has been detected. None of the producers in the quarantined area would be considered small under SBA guidelines. In Adams County as a whole, there are 124 stone fruit growers. Of these, about two-thirds would be considered small under SBA guidelines.

There is one small nursery in the quarantined area. However, it does very little, if any, business in products subject to regulation under the quarantine. There are two nurseries in Adams County, PA, but outside the quarantined area, which have been affected indirectly by their proximity to plum pox detection in the quarantined area. Neither of these nurseries outside the quarantined area are considered small under SBA guidelines. Neither is affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for the plum pox program in Pennsylvania. The assessment provides a basis for the conclusion that implementing a quarantine to prevent the spread of plum pox to noninfested areas of the United States under the conditions specified in the interim rule

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will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart Plum Pox," §§ 301.74 through 301.74–4, to read as follows:

Subpart—Plum Pox

Sec.

301.74 Restrictions on interstate movement of regulated articles.
301.74–1 Definitions.
301.74–2 Regulated articles.
301.74–3 Quarantined areas.
301.74–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Subpart—Plum Pox

§ 301.74 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

§ 301.74–1 Definitions.

The following definitions apply to this subpart.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.74–4 of this subpart.

Infestation (infested, infected). The presence of plum pox or circumstances or symptoms that makes it reasonable to believe that plum pox is present.

Inspector. Any employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

Interstate. From any State into or through any other State.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Plant Protection and Quarantine. Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Plum pox. A plant disease caused by plum pox potyvirus that can affect many *Prunus* (stone fruit) species, including, but not limited to, almond, apricot, nectarine, peach, plum, and sweet and tart cherry. The strain of plum pox in Pennsylvania does not affect cherry trees.

Quarantined area. Any State, or any portion of a State, listed in § 301.74–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.74–3(b) of this subpart.

Regulated article. Any article listed in § 301.74–2(a) or otherwise designated as a regulated article in accordance with § 301.74–2(b), based on its susceptibility to the form or strain of plum pox detected in the quarantined area.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

§ 301.74–2 Regulated articles.

The following are regulated articles:

(a) All plant material and plant parts of *Prunus* (stone fruit) species other than *P. avium, P. cerasus, P. effusa, P. laurocerasus, P. mahaleb, P. padus, P. sargentii, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. yedoensis,* and *P. virginiana,* except for seeds and fruit that is free of leaves and other plant parts. This includes, but is not limited to, trees, seedlings, root stock, budwood, branches, twigs, and leaves.

(b) Any other product or article that an inspector determines to present a risk of spreading plum pox when the inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations.

§ 301.74–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which plum pox has been detected through inspection and laboratory testing, or in which the Administrator has reason to believe that plum pox is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which plum pox has been detected. Less than an entire State will be designated as a quarantined area if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of plum pox.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which the quarantine designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

Pennsylvania

Adams County. The townships of Latimore and Huntington.

§ 301.74–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

The interstate movement of any regulated article from a quarantined area[2] is prohibited except when:

(a) The regulated article is moved by the United States Department of Agriculture:

(1) For an experimental or scientific purpose;

(2) Pursuant to a Departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of plum pox; and

(4) With a tag or label bearing the number of the Departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container; or

(b) The regulated article originated outside the quarantined area and:

(1) Is moved in an enclosed vehicle or is completely enclosed by a covering (such as canvas, plastic, or other closely woven cloth) adequate to prevent access by aphids or other transmission agents of plum pox while in the quarantined area;

(2) The regulated article's point of origin is indicated on the waybill; and

(3) The regulated article must not be uncovered, unpacked, or unloaded while moving through the quarantined area.

Done in Washington, DC, this 30th day of May 2000.

William R. DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–13931 Filed 6–1–00; 8:45 am]

BILLING CODE 3410–34–U

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles a provided in seciton 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd AND 150ff).

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV00–930–4 IFR]

Tart Cherries Grown in the States of Michigan, et al.; Authorization of Japan as an Eligible Export Outlet for Diversion and Exemption Purposes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes Japan as an eligible export market under the diversion and exemption provisions of the Federal tart cherry marketing order (order). Currently, shipments to Canada, Mexico, or Japan do not qualify for diversion credit and may not be approved as exempt uses. The Cherry Industry Administrative Board (Board) recommended allowing shipments to Japan to qualify as exempt use shipments and to be eligible for diversion credit. The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is administered locally by the Board.

DATES: Effective June 5, 2000; comments received by August 1, 2000 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax: (202) 720–5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 5D03, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243; Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department or USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an

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inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule authorizes shipments of tart cherries to Japan to qualify as exempt use shipments and to be eligible for diversion credit. Currently, exports to countries other than Canada, Mexico, or Japan may receive diversion credit, and may qualify as exempt shipments. Japan has not been eligible for diversion and exemption in the past because, according to the Board, tart cherry markets were well established in that country. The Board, at its March 2, 2000, meeting, recommended allowing Japan to become an eligible export outlet for diversion credit and exempt uses in order to stimulate export sales to that country. This is because exports to Japan have greatly decreased.

The order authorizes the use of volume regulation. In years when volume regulation is implemented to stabilize supplies, a certain percentage of the cherry crop is required to be set aside as restricted tonnage, and the balance may be marketed freely as free tonnage. The restricted tonnage is required to be maintained in handler-owned inventory reserve pools. Handlers in volume regulated States may fulfill their restricted tonnage requirements with diversion credits earned by diverting cherries or cherry products. Handlers are permitted to divert (at plant or with grower-diversion certificates from growers choosing not to deliver their crop) as much of their restricted percentage (reserve pool) requirements as they deem appropriate. Handlers also may divert cherries by using cherries or cherry products for exempt purposes, including the development of export markets. Presently, these markets do not include Canada, Mexico, and Japan.

Section 930.62 of the order (Exemptions) provides that cherries which are diverted in accordance with § 930.59, which are used for new product and new market development, which are used for experimental purposes, or which are used for any other purposes designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries was utilized, may be exempted from the assessment, quality control, volume regulation, and reserve provisions of the order.

Currently, § 930.162 of the rules and regulations under the order authorizes exemptions for the sale of cherries and cherry products, including the development of sales for new and different tart cherry products or the expansion of sales for existing tart cherry products, to countries other than Canada, Mexico, and Japan.

When the Board initially recommended regulations for exempt uses and handler diversion in 1997, exports to Japan were at an average of 3.0 million pounds. The industry considered Japan, as well as Canada and Mexico, to be premium markets for tart cherries, not outlets for which exemptions and diversion credit could be given. However, in 1998, sales to Japan fell to 1.6 million pounds. The Board therefore recommended that exports to Japan be eligible for diversion and exemption. This, in the Board's opinion, would provide incentive for handlers to make shipments to that country and stimulate market activity.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of tart cherry producers and handlers may be classified as small entities.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995/96 through 1999/00, approximately 90 percent of the U.S. tart cherry crop, or 280.3 million pounds, was processed annually. Of the 280.3 million pounds of tart cherries processed, 63 percent was frozen, 29 percent was canned and 8 percent was utilized for juice. Exports to Japan in 1998 were 1.6 million pounds.

This rule authorizes tart cherry shipments to Japan to qualify as exempt use shipments and to be eligible for diversion credit. The objective of this action is to stimulate and expand sales of tart cherries to that country. Authority for this action is found in §§ 930.59 and 930.62.

The impact of this rule would be beneficial to growers and handlers. It would assist growers to market a greater proportion of their crop to handlers who have access to export markets. Handlers, instead of diverting product at-plant or in-orchard or placing product in reserves, could ship product to Japan and receive diversion certificates that could be used to offset any restricted percentage obligations. Handlers also would benefit from this action as they would be able to process greater amounts of tart cherries, as a result of receiving more product from growers for shipment to Japan, through their facilities, thus spreading their operation costs and increasing returns to growers.

One alternative to this action would be to continue to disallow exemptions and diversion credit for shipments to Japan. However, this would not be favorable to cherry growers and handlers and could cause a further decline in the Japanese market.

This rule would not impose any additional recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend them and participate in Board deliberations. Like all Board meetings, the March 2000 meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on authorizing Japan as an eligible export outlet for purposes of the diversion and exemption provisions under the order.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements by providing an additional opportunity for handlers to receive an exemption or diversion credit; (2) the Board needs this rule to be in place by July 1, 2000, so handlers can take advantage of this option; (3) the Board recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 930.159 [Amended]

2. In § 930.159, paragraph (a) is amended by removing the word "Japan" and adding the word "and" in between the words "Canada" and "Mexico".

§ 930.162 [Amended]

3. In § 930.162, paragraph (a) and paragraph (b)(3) are amended by removing the word "Japan" and adding the word "and" in between the words "Canada" and "Mexico".

Dated: May 26, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–13782 Filed 6–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–21–AD; Amendment 39–11753; AD 2000–11–05]

RIN 2120–AA64

Airworthiness Directives; Air Tractor Incorporated Models AT–301, AT–401, and AT–501 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Air Tractor Incorporated (Air Tractor) Models AT–301, AT–401, and AT–501 airplanes that are equipped with a 3/16-inch thick aluminum fin front spar fitting and an all metal rudder. This AD requires that you repetitively inspect the vertical fin front spar attachment fittings for fatigue cracks, and rework the vertical fin if any cracks are found. This AD is the result of reports of a vertical fin front spar fitting failure on a Model AT–401 airplane. The actions specified by this AD are intended to detect and correct cracks in the vertical fin front spar attachment fittings, which could result in failure of the vertical fin. This condition could lead to loss of directional control and eventual loss of airplane control.

DATES: This AD becomes effective on June 23, 2000.

The Director of the Federal Register previously approved the incorporation by reference of Snow Engineering Company Service Letter #138, Revised August 7, 1996, as of August 25, 1997.

The Director of the Federal Register approved the incorporation by reference of Snow Engineering Company Service Letter #196, Revised March 7, 2000, as of June 23, 2000.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before July 28, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–21–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from Air Tractor Incorporated, P.O. Box 485, Olney, Texas 76374. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–21–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rob Romero, Aerospace Engineer, Airplane Certification Office, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76137; telephone: (817) 222–5102; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received a report of an incident involving an Air Tractor Model AT–401 airplane. The following describe this incident:

1. The vertical fin front spar plate cracked and caused failure of the vertical fin front spar fitting;

2. The rear spar consequently failed and the fin contacted the elevator, which caused difficulty in controlling the airplane; and

3. The front spar failure occurred in the 3/16-inch thick aluminum fin front spar fitting across one of the bolt holes where the fitting attaches to the fuselage frame.

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What are the consequences if the condition is not corrected? Fatigue cracking of the vertical fin front spar attachment fittings, if not detected and corrected, could result in structural failure of the front spar and consequently the rear spar. This could result in loss of directional control and loss of control of the airplane.

Is there service information that applies to this subject? Snow Engineering Company has issued the following service information that relates to this subject:

Service letter #	Issue/revision dates	Procedures for
Service Letter #196	Issued February 9, 2000; Revised March 7, 2000	Reworking the vertical fin.
Service Letter #138	Issued July 29, 1995; Revised August 7, 1996	Repetitively inspecting the vertical fin front spar attachment fittings for fatigue cracks.

The FAA's Determination and an Explanation of the Provisions of the AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, we determined that:

—An unsafe condition exists or could develop on certain Air Tractor Models AT–301, AT–401, and AT–501 airplanes of the same type design to the incident airplane that are equipped with a 3/16-inch thick aluminum fin front spar fitting and an all metal rudder; and

—AD action should be taken in order to detect and correct cracks in the vertical fin front spar attachment fittings, which could result in failure of the vertical fin. This condition could lead to loss of directional control and eventual loss of airplane control.

What does this AD require? This AD requires you to:

1. repetitively inspect vertical fin front spar attachment fittings for fatigue cracks; and

2. rework the vertical fin if any cracks are found.

Once you rework the vertical fin, you may discontinue the repetitive inspections.

The applicability of Snow Engineering Company Service Letter #138 refers to different airplanes than are referenced in this AD action. AD 97–14–05, Amendment 39–10063 (62 FR 38445, July 18, 1997), covers the airplanes referenced in Service Letter #138. The inspection procedures also apply for the airplanes referenced in this AD action. Therefore, Snow Engineering Company Service Letter #138 also applies to this AD, as well as AD 97–14–05. This service letter also specifies repetitive inspection intervals of 25 hours time-in-service (TIS). Paragraph (d)(2) of this AD requires the repetitive inspections at 100 hours TIS.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in loss of directional control and eventual loss of airplane control, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–21–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. We have determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If FAA determines that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation. You may obtain a copy of the evaluation (if required) from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

2000–11–05 Air Tractor Incorporated: Amendment 39–11753; Docket No. 2000–CE–21–AD.

(a) *What airplanes are affected by this AD?* The following airplane models and serial numbers that are:

(1) Certificated in any category; and

(2) Equipped with a 3/16-inch fin front spar fitting and an all metal rudder.

Models	Serial numbers
AT–301	301–0100 through 301–0736
AT–401	401–0662 through 401–0736
AT–501	501–0002 through 501–0030

Note: This AD does not affect the requirements of AD 97–14–05, Amendment 39–10063 (62 FR 38445, July 18, 1997). AD 97–14–05 requires similar actions to this AD on Models AT–302, AT–400, AT–400A airplanes, and certain Models AT301, AT–401, and AT–501 airplanes that are not affected by this AD.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register.

(c) *What problem does this AD address?* The actions required by this AD are intended to detect and correct cracks in the spar plates, which could result in failure of the vertical fin. This condition could lead to loss of directional control and eventual loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following:

Action	Compliance time	Procedures
(1) Initial inspection of the fin front spar attachment fittings for fatigue cracks.	At whichever of the following that occurs later. (i) Upon accumulating 4,000 hours time-in-service (TIS); or,. (ii) Within the next 25 hours TIS after the June 23, 2000 (the effective date of this AD).	Accomplish in accordance with the Inspection Requirements section of Snow Engineering Company Service Letter #138, Issued July 29, 1995; Revised August 7, 1996.
(2) Repetitive inspections of the fin front spar attachment fittings. Repetitive inspection requirement only applies if no cracks are found and you choose not to rework the fin front spar attachment.	Within 100 hours TIS after the initial inspection and thereafter at intervals not to exceed 100 hours TIS if you have no cracks and choose not to rework the fin front spar attachment.	Accomplish in accordance with the Inspection Requirements section of Snow Engineering Company Service Letter #138, Issued July 29, 1995; Revised August 7, 1996.
(3) Rework the fin front spar attachment fittings	(i) Prior to further flight after any inspection where a crack is found in the front or rear spar area. (ii) This eliminates the repetitive inspection requirement of this AD.	Accomplish in accordance with the Vertical Fin Rework Instructions section of Snow Engineering Company Service letter #196, Issued February 9, 2000; Revised March 7, 2000.
(4) Optional rework of the fin front spar attachment fittings	Any time to eliminate the repetitive inspection requirement of this AD.	Accomplish in accordance with the Vertical Fin Rework Instructions section of Snow Engineering Company Service Letter #196, Issued February 9, 2000; Revised March 7, 2000.

Note: The applicability of Snow Engineering Company Service Letter #138 refers to different airplanes than are referenced in this document. AD 97–14–05, Amendment 39–10063 (62 FR 38445, July 18, 1997), covers the airplanes referenced in Snow Engineering Company Service Letter #138. The inspection procedures also apply for the airplanes referenced in this AD. Therefore, Snow Engineering Company Service Letter #138 also applies to this AD, as well as AD 97–14–05. This service letter also specifies repetitive inspection intervals of 25 hours TIS. Paragraph (d)(2) of this AD requires the repetitive inspections at 100 hours TIS.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Fort Worth Airplane Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specify actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Rob Romero, Aerospace Engineer, FAA, Fort Worth ACO, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* You must accomplish the actions required by this AD in accordance with Snow Engineering Company Service Letter #138, Revised August 7, 1996, and Snow Engineering Company Service Letter #196, Revised March 7, 2000.

(i) The Director of the Federal Register previously approved the incorporation by

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reference of Snow Engineering Company Service Letter #138, Revised August 7, 1996, as of August 25, 1997.

(2) The Director of the Federal Register approved the incorporation by reference of Snow Engineering Company Service Letter #196, Revised March 7, 2000 under 5 U.S.C. 552(a) and 1 CFR part 51.

(3) You may get copies from Air Tractor Incorporated, P.O. Box 485, Olney, Texas 76374. You may look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on June 23, 2000.

Issued in Kansas City, Missouri, on May 22, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13445 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–36–AD; Amendment 39–11762; AD 2000–11–14]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes that are equipped with pneumatic deicing boots. This AD requires you to revise the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident (on airplanes other than the affected Pilatus airplanes) that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The Pilatus Models PC–12 and PC–12/45 airplanes have a similar type design (as it relates to airframe pneumatic ice boots) to the incident and accident airplanes. The actions specified by this AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: July 17, 2000.

ADDRESSES: You may examine information related to this AD at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–36–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What Caused This AD?

This AD is the result of reports of in-flight incidents and an accident (on airplanes other than the affected Pilatus airplanes) that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The Pilatus Models PC–12 and PC–12/45 airplanes have a similar type design (as it relates to airframe pneumatic ice boots) to the incident and accident airplanes.

What Is the Potential Impact If FAA Took No Action?

The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Models PC–12 and PC–12/45 airplanes that are equipped with pneumatic deicing boots. This proposal published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 8, 1999 (64 FR 54833). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the Public Invited To Comment?

The FAA invited interested persons to participate in the making of this amendment. Following is a summary of the two comments received with FAA's response.

Comment Issue No. 1: Allow the Use of Recent Airplane Flight Manual (AFM) Additions

What Is the Commenter's Concern?

Pilatus requests that FAA allow the operators of the affected airplanes to use as an alternative method of compliance the most recent information for Section 2, Limitations, of the Pilatus PC12 Airplane Flight Manual (AFM). This information is included in Report No.: 01973–001, page 2–12, Revision 9: September 1, 1999, and includes the following language:

> The wing and tail leading edge pneumatic deicing boot system must be activated at the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system (if installed), whichever occurs first.
>
> The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the aircraft is determined to be clear of ice.

What Is FAA's Response to the Concern?

We have determined that inserting this report into the Section 2, Limitations, of the Pilatus PC12 AFM provides an equivalent level of safety to the actions included in the NPRM. Therefore, we are changing the AD to include the option of incorporating into the AFM the information proposed in the NPRM or Report No.: 01973–001, page 2–12, Revision 9: September 1, 1999.

Comment Issue No. 2: Information is Already Included in the Normal Procedures Section of the AFM

What Are the Commenter's Concerns?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, believes that the intent of this AD is already covered in the Pilatus PC12 AFM. The FOCA's concerns are as follows:

1. The appropriate time to activate the pneumatic deice boots on the affected Pilatus airplanes is prior to entry into icing conditions, and until the airfoils are free of ice after exiting icing conditions. This information is included in Section 4.10 (Normal Procedures) of the PC12 AFM;

2. These instructions are not necessary in the Limitations Section of the AFM. The Limitations Section should only include limitations relating to speeds, environment (temperatures),

or system functions (time limits or configurations). Guidance for this is in FAA Advisory Circular (AC) 25.1419–1, dated August 18, 1999. Paragraph 12(b)(2) of this AC identifies the Procedures Section as the proper place for information ". . . when the ice protection system should be activated."

The FOCA requests FAA withdraw the NPRM.

What Is FAA's Response to the Concerns?

We concur that the information is currently in the Normal Procedures section of the Pilatus PC12 AFM and that previous guidance (advisory circulars) provides information for putting this information in such a section. However, section 91.9 of the Federal Aviation Regulations (14 CFR 91.9) only mandates the operating limitations (Limitations Section): "no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual."

Based upon the importance of operating the deice boots at the appropriate time, we determined that the information is mandatory. The only method FAA has of changing the Limitations Section of an AFM is through AD action, provided an unsafe condition is demonstrated.

Therefore, we do not concur that the NPRM should be withdrawn. We are not changing the AD as a result of this comment.

The FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the following:

—Including the option of incorporating Report No.: 01973–001, page 2–12, Revision 9: September 1, 1999, into Section 2, Limitations, of the Pilatus PC12 AFM; and

—Minor editorial corrections.

How Does Including This Option and the Minor Editorial Corrections Affect the AD?

We have determined that including the AFM option and the minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 100 airplanes in the U.S. registry.

What Is the Cost Impact of the Affected Airplanes on the U.S. Register?

There is no dollar cost impact. We estimate 1 workhour for you to insert the AFM revision. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Therefore, the only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–11–14 PILATUS AIRCRAFT LTD.: Amendment 39–11762; Docket No. 99–CE–36–AD.

(a) *What airplanes are affected by this AD?* Models PC–12 and PC–12/45 airplanes, all serial numbers, that are:

(1) equipped with pneumatic deicing boots; and

(2) certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic de-icing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after July 17, 2000 (the effective date of this AD), unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after:

—Leaving known or observed/detected icing that the flight crew has visually observed on the aircraft or was identified by the on-board sensors; and

—After the airplane is determined to be clear of ice.

Note: The FAA recommends periodic treatment of deicing boots with approved ice release agents, such as ICEX$_{TM}$, in accordance with the manufacturer's application instructions.

(e) *Have I accomplished the intent of this AD if I have incorporated the latest Pilatus PC12 AFM report into Section 2, Limitations?*

As an alternative method of compliance to the actions required by paragraphs (a), (a)(1), and (a)(2) of this AD, you may incorporate Report No.: 01973–001, page 2–12, Revision 9: September 1, 1999, into Section 2, Limitations, of the Pilatus PC12 AFM.

(f) *Can the pilot accomplish the action?* Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records, showing compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(g) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(h) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(i) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(j) *When does this amendment become effective?* This amendment becomes effective on July 17, 2000.

Issued in Kansas City, Missouri, on May 24, 2000.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13874 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–18]

RIN 2120–AA66

Realignment and Establishment of VOR Federal Airways; KY and TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns Federal Airway V–517 in the vicinity of Snowbird, TN, and establishes two Federal airways, V–347 between London, KY, and Hinch Mountain, TN, and V–384 between Livingston, TN, and Volunteer, TN. This action improves navigational routings and enhances service for users, and provides for more efficient handling of air traffic between the Indianapolis and the Atlanta Air Route Traffic Control Centers' (ARTCC) airspace.

EFFECTIVE DATE: 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On March 8, 1998, the FAA proposed to amend 14 CFR part 71 (part 71) to realign Federal Airway V–517 in the vicinity of Snowbird, TN, and to establish two Federal Airways, V–347 between London, KY, and Hinch Mountain, TN, and V–384 between Livingston, TN, and Volunteer, TN (64 FR 10962).

Interested parties were invited to participate in this rulemaking proceeding by submitting comments. No comments to the proposal were received. Except for editorial changes, this rule is the same as that proposed in the notice.

The Rule

This amendment to part 71 realigns V–517 in the vicinity of Snowbird, TN, by changing the origination point of the airway from the Volunteer, TN, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) station, to the Snowbird, TN, VORTAC. Currently, V–517 extends from Volunteer, through the Miami Intersection, to London, KY, which is not a direct route. However, a direct route between Volunteer and London does exist via V–97. On the other hand, there is currently no published direct route between Snowbird and London. This amendment enhances the flow of air traffic by realigning V–517 so as to provide a direct route between Snowbird and London. This change better accommodates northwest-southeast-bound traffic in that area.

This rule also establishes two Federal airways in the Kentucky-Tennessee area: V–347 between London, KY, and Hinch Mountain, TN; and V–384 between Livingston, TN, and Volunteer, TN. These new airways provide direct routes between the affected navigation facilities which match known traffic flows, simplify flight plan filing, and reduce air traffic control communications requirements, thus resulting in enhanced service for users. These additional airways also provide air traffic controllers with more nonradar routes between Indianapolis ARTCC and Atlanta ARTCC airspace, thereby facilitating the efficient handling of nonradar-routed traffic between the two ARTCC's.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6010(a)—Domestic VOR Federal Airways

V–347 [New]

From London, KY; to Hinch Mountain, TN.

* * * * *

V–384 [New]

From Livingston, TN; INT Livingston 121° and Volunteer, TN, 307° radials; to Volunteer.

* * * * *

V–517 [Revised]

From Snowbird, TN; INT Snowbird 329° and London, KY, 141° radials; London; INT London 004° and Falmouth, KY, 164° radials; Falmouth; Cincinnati, OH; INT Cincinnati 336° and Richmond, IN, 190° radials; Richmond; to Dayton, OH.

* * * * *

Issued in Washington, DC, on May 25, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–13750 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 00–ANM–06]

RIN 2120–AA66

Change Using Agency for Restricted Area R–2602, Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the name of the using agency for Restricted Area R–2602 (R–2602), from "USAF, Air Force Space Command, 2nd Space Wing, Falcon Air Force Base, CO," to "USAF Space Command, 2nd Space Wing, Schriever Air Force Base, CO." This is an administrative change that was initiated by the U.S. Air Force (USAF) to reflect the name change of Falcon Air Force Base (AFB), CO, to Schriever AFB, CO.

EFFECTIVE DATE: 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of an Air Force decision to rename Falcon AFB, CO, to Schriever AFB, CO, the using agency for R–2602 is being changed from "USAF, Air Force Space Command, 2nd Space Wing, Falcon Air Force Base, CO," to "USAF Space Command, 2nd Space Wing, Schriever Air Force Base, CO. The USAF requested this change to correct the current description for R–2602.

The Rule

This action amends 14 CFR part 73 by changing the name of the using agency for R–2602 from "U.S. Air Force Space Command, 2nd Space Wing, Falcon AFB, CO," to "USAF Space Command, 2nd Space Wing, Schriever AFB, CO." This administrative change will not alter the existing boundaries, altitudes, times of designation, or the activities conducted within the affected restricted area.

Therefore, since this action simply changes the using agency for the existing restricted area and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C 553(b) are unnecessary.

Section 73.26 of part 73 was republished in FAA Order 7400.8G, dated September 1, 1999.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is a minor administrative change amending the name of the using agency for an existing restricted area. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§73.26 [Amended]

2. § 73.26 is amended as follows:

* * * * *

R–2602 Colorado Springs, CO [Amended]

By removing the words "Using agency, USAF, Air Force Space Command, 2nd Space Wing, Falcon AFB, CO," and substituting the words "Using agency, USAF Space Command, 2nd Space Wing, Schriever AFB, CO."

* * * * *

Issued in Washington, DC on May 18, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–13748 Filed 6–1–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30057; Amdt. No. 1993]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require taking them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on May 26, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amendment, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective August 10, 2000*

Glendale, AZ, Glendale Muni, RNAV RWY 19, Orig
Ocala, FL, Ocala Regional/Jim Taylor Field, VOR RWY 36, Amdt 17
Ocala, FL, Ocala Regional/Jim Taylor Field, NDB RWY 36, Amdt 5
Eastman, GA, Heart of Georgia Regional, VOR/DME OR GPS–A, Amdt 6
Ames, IA, Ames Muni, RNAV RWY 1, Orig
Hampton, IA, Hampton Muni, RNAV RWY 17, Orig
Hampton, IA, Hampton Muni, RNAV RWY 35, Orig
Newton, IA, Newton Muni, VOR RWY 32, Amdt 9A
Alexandria, LA, Alexandria Intl, ILS/DME RWY 14, Amdt 1, CANCELLED
Alexandria, LA, Alexandria Intl, ILS RWY 14 Orig
Leonardtown, MD, St. Mary's County, VOR RWY 11, Amdt 4, CANCELLED
Kansas City, MO, Kansas City Intl, NDB RWY 19L, Orig-A
St. Louis, MO, Spirit of St. Louis, NDB RWY 8R, Amdt 11B
St. Louis, MO, Spirit of St. Louis, NDB OR GPS RWY 26L, Amdt 2A
Kimball, NE, Kimball Muni/Robert E. Arraj Field, GPS RWY 28, Orig-A
Lexington, NE, Lexington/Jim Kelly Field, GPS RWY 32, Orig-A
Lincoln, NE, Lincoln Muni, VOR OR GPS RWY 17R, Amdt 11B
Lincoln, NE, Lincoln Muni, NDB OR GPS RWY 35L, Amdt 8B
North Platte, NE, North Platte Regional Airport/Lee Bird Field, VOR OR GPS RWY 35, Amdt 17B
North Platte, NE, North Platte Regional Airport/Lee Bird Field, NDB OR GPS RWY 30, Amdt 3B
Omaha, NE, Eppley Airfield, NDB RWY 32L, Amdt 1A
Scottsbluff, NE, Western Nebraska Regional/William B. Heilig Field, VOR/DME OR GPS RWY 5, Amdt 4A
Scottsbluff, NE, Western Nebraska Regional/William B. Heilig Field, VOR OR TACAN OR GPS RWY 23, Amdt 11A
Scottsbluff, NE, Western Nebraska Regional/William B. Heilig Field, LOC BC RWY 12, Amdt 8A
Scottsbluff, NE, Western Nebraska Regional/William B. Heilig Field, NDB OR GPS RWY 12, Amdt 8A
Hobbs, NM, Lea County (Hobbs), VOR OR TACAN RWY 3, Amdt 20A
Hobbs, NM, Lea County (Hobbs), VOR/DME OR TACAN RWY 21, Amdt 8A
Hobbs, NM, Lea County (Hobbs), LOC/DME BC RWY 21, Amdt 5B
Oklahoma City, OK, Sundance Airpark, VOR RWY 17, Amdt 1
Oklahoma City, OK, Will Rogers World, VOR RWY 17L, Amdt 2
Baytown, TX, RWJ Airpark, RNAV RWY 26, Orig
Brownwood, TX, Brownwood Regional, RNAV RWY 17, Orig
Brownwood, TX, Brownwood Regional, RNAV RWY 35, Orig
Fort Worth, TX, Fort Worth Alliance, ILS RWY 16L, Amdt 5
Fort Worth, TX, Fort Worth Alliance, ILS RWY 34R, Amdt 4
Fort Worth, TX, Fort Worth Alliance, RNAV RWY 16L, Orig
Fort Worth, TX, Fort Worth Alliance, RNAV RWY 34R, Orig
Fort Worth, TX, Fort Worth Alliance, GPS RWY 16L, Orig-B, CANCELLED
Fort Worth, TX, Fort Worth Alliance, GPS RWY 34R, Orig-B, CANCELLED
Killeen, TX, Killeen Muni, NDB OR GPS RWY 1, Amdt 5B
McAllen, TX, McAllen Miller Intl, VOR RWY 13, Amdt 15A
McAllen, TX, McAllen Miller Intl, NDB RWY 13, Amdt 6A
San Antonio, TX, San Antonio Intl, NDB RWY 12R, Amdt 20C
San Antonio, TX, San Antonio Intl, NDB RWY 30L, Amdt 11B
Elkins, WV, Elkins-Randolph County-Jennings Randolph Field, NDB–A, Orig, CANCELLED
Green Bay, WI, Austin Straubel Intl, VOR OR GPS RWY 12, Amdt 18, CANCELLED
Green Bay, WI, Austin Straubel Intl, VOR–A, Orig
Green Bay, WI, Austin Straubel Intl, VOR/DME OR TACAN RWY 36, Amdt 8
Green Bay, WI, Austin Straubel Intl, NDB RWY 6, Amdt 17
Green Bay, WI, Austin Straubel Intl, ILS RWY 36, Amdt 7
Green Bay, WI, Austin Straubel Intl, RADAR–1, Amdt 9
Green Bay, WI, Austin Straubel Intl, RNAV RWY 6, Orig
Green Bay, WI, Austin Straubel Intl, RNAV RWY 36, Orig

** * * Effective October 5, 2000*

Fort Smith, AR, Fort Smith Muni, VOR OR TACAN OR GPS RWY 25, Amdt 20B
Fort Smith, AR, Fort Smith Muni, NDB RWY 25, Amdt 24A
Little Rock, AR, Adams Field, GPS RWY 4L, Orig-A
Little Rock, AR, Adams Field, GPS RWY 4R, Orig-A
Little Rock, AR, Adams Field, GPS RWY 22L, Orig-A
Topeka, KS, Forbes Field, VOR/DME RNAV RWY 13, Amdt 4A
Point Lookout, MO, M. Graham Clark, NDB RWY 29, Amdt 7A
Point Lookout, MO, M. Graham Clark, VOR/DME RNAV OR GPS RWY 29, Amdt 2B
Point Lookout, MO, M. Graham Clark, GPS RWY 11, Orig-B
Grand Island, NE, Central Nebraska Regional, LOC/DME BC RWY 17, Amdt 9B
Lincoln, NE, Lincoln Muni, VOR OR GPS RWY 17L, Amdt 6C
Lincoln, NE, Lincoln Muni, GPS RWY 14, Orig-A
McCook, NE, McCook Muni, VOR OR GPS RWY 21, Amdt 4C
Sidney, NE, Sidney Muni, GPS RWY 30, Orig-B
Omaha, NE, Eppley Airfield, NDB OR GPS RWY 14R, Amdt 24A
Oklahoma City, OK, Will Rogers World, NDB RWY 17R, Amdt 24A
Oklahoma City, OK, Will Rogers World, NDB RWY 35R, Amdt 5B
Victoria, TX, Victoria Regional, NDB RWY 12L, Amdt 4A
Waco, TX, McGregor Muni, GPS RWY 17, Orig-A

[FR Doc. 00–13833 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30058; Amdt. No. 1994]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

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For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria for the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on May 26, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER, SIAPs, identified as follows:

FDC date	State	City	Airport	FDC number	SIAP
04/20/00	IA	Ottumwa	Ottumwa Industrial	FDC 0/3913	LOC/DME BC RWY 13, AMDT 2B...
04/20/00	VA	Marion/Wytheville	Mountain Empire	FDC 0/1361	NDB RWY 26 AMDT 1...
04/20/00	VA	Marion/Wytheville	Mountain Empire	FDC 0/1363	GPS RWY 26 ORIG...
05/10/00	GA	Douglas	Douglas Muni	FDC 0/4874	GPS RWY 22, ORIG...
05/10/00	GA	Douglas	Douglas Muni	FDC 0/4875	GPW RWY 4, ORIG...
05/10/00	GA	Douglas	Douglas Muni	FDC 0/4877	LOC RWY 4, AMDT 2A...

FDC date	State	City	Airport	FDC number	SIAP
05/10/00	TN	Memphis	Memphis Intl	FDC 0/4868	ILS RWY 27, AMDT 2A...
05/10/00	WA	Ephrata	Ephrata Muni	FDC 0/4898	VOR/DME OR GPS RWY 2, AMDT 3...
05/10/00	WA	Spokane	Felts Field	FDC 0/4885	VOR OR GPS RWY 3L, AMDT 2A...
05/10/00	WA	Walla Walla	Walla Walla Regional	FDC 0/4870	VOR OR GPS RWY 16, AMDT 11...
05/10/00	WA	Walla Walla	Walla Walla Regional	FDC 0/4887	VOR RWY 2, AMDT 10...
05/11/00	CA	Napa	Napa County	FDC 0/4818	VOR OR GPS RWY 6, AMDT 11...
05/11/00	CA	Napa	Napa County	FDC 0/4943	LOC RWY 36L AMDT 2B...
05/11/00	CA	Sacramento	Sacramento Mather	FDC 0/4920	VOR OR GPS RWY 4R ORIG–A...
05/11/00	CA	South Lake Tahoe	Lake Tahoe	FDC 0/4921	VOR/DME OR GPS–A, AMDT 3...
05/11/00	GUA	Agana	Guam Intl	FDC 0/4940	GPS RWY 24R ORIG...
05/11/00	MO	New Madrid	County Memorial	FDC 0/4969	NDB RWY 18, AMDT 2...
05/11/00	MO	New Madrid	County Memorial	FDC 0/4970	VOR/DME RNAV OR GPS RWY 18, AMDT 1...
05/11/00	WA	Ephrata	Ephrata Muni	FDC 0/4926	VOR OR GPS RWY 20, AMDT 18...
05/12/00	CA	Chico	Chico	FDC 0/4986	GPS RWY 31R ORIG...
05/12/00	GA	Douglas	Douglas Muni	FDC 0/4995	NDB RWY 4, AMDT 2A...
05/12/00	KY	Flemingsburg	Fleming-Mason	FDC 0/5008	NDB RWY 25, ORIG...
05/12/00	WA	Burlington/Mount Vernon.	Skagit Regional	FDC 0/4989	GPS RWY 28, ORIG...
05/12/00	WA	Burlington/Mount Vernon.	Skagit Regional	FDC 0/4991	GPS RWY 10, AMDT 1...
05/12/00	WA	Burlington/Mount Vernon.	Skagit Regional	FDC 0/4993	NDB RWY 10, AMDT 3...
05/15/00	KY	Flemingsburg	Fleming-Mason	FDC 0/5054	VOR/DME OR GPS–A, AMDT 5...
05/15/00	WI	Madison	Dane County Regional-Truax Field.	FDC 0/5080	ILS RWY 36, AMDT 29B...
05/16/00	OK	Tulsa	Tulsa Intl	FDC 0/5163	RADAR–1, AMDT 17C...
05/17/00	GA	Camilla	Camilla-Mitchell County	FDC 0/5234	NDB OR GPS RWY 8, AMDT 1...
05/18/00	OH	Columbus	Ohio State University	FDC 0/5291	GPS RWY 94, ORIG–B...
05/18/00	OH	Wooster	Wayne County	FDC 0/5280	VOR RWY 28, ORIG–B...
05/18/00	OH	Wooster	Wayne County	FDC 0/5281	GPS RWY 28, AMDT 1...
05/18/00	OH	Wooster	Wayne County	FDC 0/5282	NDB RWY 28, AMDT 7B...
05/18/00	OH	Wooster	Wayne County	FDC 0/5283	VOR OR GPS RWY 10, ORIG–B...
05/19/00	FL	Orlando	Executive	FDC 0/5358	GPS RWY 25, ORIG–B...
05/19/00	KS	Garden City	Garden City Regional	FDC 0/5354	VOR/DME OR GPS RWY 30, ORIG... THIS REPLACES FDC 0/4496
05/19/00	MO	St Joseph	Rosecrans Memorial	FDC 0/5348	VOR OR TACAN RWY 17, AMDT 13...
05/19/00	TX	Abilene	Abilene Regional	FDC 0/5330	ILS RWY 35R, AMDT 6A...
05/19/00	TX	Abilene	Abilene Regional	FDC 0/5331	NDB RWY 35R, AMDT 5B...
05/19/00	TX	Abilene	Abilene Regional	FDC 0/5334	GPS RWY 35R, ORIG–A...
05/22/00	CA	Concord	Buchanan Field	FDC 0/5407	LDA RWY 19R, AMDT 7B...
05/22/00	CA	Concord	Buchanan Field	FDC 0/5408	VOR RWY 19R, AMDT 12B...
05/22/00	MI	Hancock	Houghton County Memorial	FDC 0/5425	VOR RWY 31, AMDT 14...
05/22/00	MI	Hancock	Houghton County Memorial	FDC 0/5426	VOR OR GPS RWY 25, AMDT 17...
05/22/00	MI	Hancock	Houghton County Memorial	FDC 0/5427	VOR OR GPS RWY 13, AMDT 15...
05/23/00	GA	Milledgeville	Baldwin County	FDC 0/5436	GPS RWY 10, ORIG–A...
05/23/00	GA	Milledgeville	Baldwin County	FDC 0/5437	NDB RWY 28, ORIG–A...
05/23/00	GA	Milledgeville	Baldwin County	FDC 0/5439	GPS RWY 28, ORIG–A...
05/24/00	MI	Hancock	Houghton County Memorial	FDC 0/5488	LOC/DME BC RWY 13, AMDT 11A...

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[FR Doc. 00–13834 Filed 6–1–00; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–198]

RIN 2115–AA97

Safety Zone: Parade of Tall Ships Newport 2000, Newport, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone around vessels participating in the Newport, RI, parade of Tall Ships on July 2, 2000. The moving safety zone will extend two hundred (200) yards ahead of the lead vessel to two hundred (200) yards astern of the last vessel in the parade, and two hundred (200) yards abeam of each parading vessel along the designated parade route. The safety zone is needed to protect each of the Tall Ships, which will have limited maneuverability, from damage as well as protect passing and spectator vessels. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

DATES: This rule is effective from 10 a.m. until 4 p.m. on July 2, 2000.

ADDRESSES: Comments and material received from the public as well as documents indicated in this preamble as being available in the docket are available for inspection or copying at Coast Guard Marine Safety Office Providence, 20 Risho Avenue, Providence, Rhode Island 02914 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO John W. Winter at Marine Safety Office Providence, (401) 435–2335.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 22, 2000, we published a notice of proposed rulemaking (NPRM) entitled Parade of Tall Ships Newport 2000, Newport, RI in the **Federal Register** (65 FR 15283). We received no comments. No public hearing was requested, and none was held.

Background and Purpose

This rule is needed to ensure the safe navigation of the Tall Ships and other smaller sailing vessels participating in a parade of sail on Sunday, July 2, 2000, as well as the safety of spectator craft. The entire parade event is scheduled to last approximately six hours, beginning at 10 a.m. and ending at 4 p.m. The parading vessels will transit outbound from Newport Harbor, then north through the East Passage, Narragansett Bay, underneath the Newport Bridge, westward around Gould Island, and then southbound out to sea.

The parade of sail route extends through the East Passage of Narragansett Bay and passes through the following points: (see NOAA Charts(s) #13218, 13221, 13223).

Latitude	Longitude
41°30′18″N	71°20′58″W
41°31′43″N	71°20′00″W
41°33′29″N	71°19′14″W
41°33′29″N	71°20′55″W
41°32′19″N	71°21′12″W
41°28′45″N	71°20′45″W
41°27′44″N	71°22′24″W

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This safety zone involves only the southeast portion of Narragansett Bay and will shut down the East passage to commercial and recreation traffic during the event. The effect of this regulation will not be significant because this rule would be in effect for only 6 hours. Recreational vessel traffic could pass safely around the safety zone through the West passage, and maritime advisories will be made well in advance allowing large commercial traffic to schedule around the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a small portion of Narragansett Bay from 10 a.m. and 4 p.m. on July 2, 2000.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect for 6 hours; recreational vessel traffic can pass safely around the safety zone through the West passage; and, before the effective period, we will issue maritime advisories widely available to users of the bay, allowing large commercial traffic ample time to schedule around the event.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. No requests for assistance were received. Small businesses may send comments on the actions of the Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule will call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets the standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of implementing this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and Recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C.1231; 50 U.S.C. 191; 33 CFR 1.05(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–198 to read as follows:

§ 165.T01–198 Safety Zone: Parade of Tall Ships Newport 2000, Rhode Island, Lower Narragansett Bay, East Passage.

(a) *Location.* A moving safety zone 200 yards ahead of the lead vessel in the parade, 200 yards astern of the last vessel in the parade, and 200 yards abeam of each vessel participating in the Tall Ships Newport 2000 parade of sail. The parade of sail route extends through the East Passage of Narragansett Bay and passes through the following points: (see NOAA Charts(s) #13218, 13221, 13223)

Latitude	Longitude
41°30′18″N	71°20′58″W
41°31′43″N	71°20′00″W
41°33′29″N	71°19′14″W
41°33′29″N	71°20′55″W
41°32′19″N	71°21′12″W
41°28′45″N	71°20′45″W
41°27′44″N	71°22′24″W

(b) *Effective period.* Paragraph (a) of this section is effective between 10 a.m. and 4 p.m. on Sunday, July 2, 2000. Departure time is dependent on the tide, weather and granting of authority for departure by the Captain of the Port, Providence.

(c) *Regulations.* (1) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed.

Dated: May 22, 2000.

Peter A. Popko,

Captain, U.S. Coast Guard, Captain of the Port, Marine Safety Office Providence.

[FR Doc. 00–13815 Filed 6–1–00; 8:45 am]
BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–197]

RIN 2115–AA97

Safety Zone: Fireworks Display, Naval Station Newport, Newport, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone within a five hundred (500) yard radius of the fireworks launching site at Naval Station Newport, Newport, RI on June 30, 2000. The safety zone is needed to safeguard the public from possible hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

DATES: This rule is effective from 8 p.m. until 11 p.m. on June 30, 2000 until 11 p.m. July 2, 2000.

ADDRESSES: Comments and material received from the public as well as documents indicated in this preamble as being available in the docket are available for inspection or copying at Coast Guard Marine Safety Office Providence, 20 Risho Avenue, Providence, Rhode Island 02914 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO John W. Winter at Marine Safety Office Providence, (401) 435–2335.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 22, 2000, we published a notice of proposed rulemaking (NPRM) entitled Fireworks Display, Naval Station Newport, Newport, RI in the **Federal Register** (65 FR 15285). We received one comment. No public hearing was requested, and none was held.

Background and Purpose

The safety zone is needed to protect the public from debris and other hazards associated with a fireworks display at Naval Station Newport, starting at 8 p.m. on June 30, 2000, or in the event of rain, on July 2, 2000. The event, which is sponsored by Tall Ships Newport Salute 2000, will last approximately 3 hours.

Discussion of Comments and Changes

One comments was received from the sponsor, Tall Ships Newport Salute 2000, requesting that the rule include a rain date of July 2, 2000. A rain date was incorporated into the final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This safety zone involves a very small area of Narragansett Bay. The effect of

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this regulation will not be significant due to the small area affected; all vessel traffic may safely transit around this safety zone; and the extensive marine advisories that will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Narragansett Bay from 8 p.m. to 11 p.m. on June 30, 2000 (rain date, July 2, 2000).

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only three hours, commercial and recreational vessel traffic can pass safely around the safety zone, and before the effective period, we will issue maritime advisories widely available to users of Narragansett Bay.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. No requests for assistance were received. Small businesses may send comments on the actions of the Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule will call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of implementing this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and Recordkeeping Requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–197 to read as follows:

§ 165.T01–197 Safety Zone: Fireworks Display, Naval Station Newport, Newport, Rhode Island.

(a) *Location.* All waters within a five hundred (500) yard radius of the fireworks launching platform located approximately 300 yards off shore from Coasters Island and Naval Station Newport, Newport, Rhode Island, in approximate position 41°31′00″ N and 071°20′00″ W.

(b) *Effective Period.* This section will be enforced from 8 p.m. until 11 p.m. on June 30, 2000. If the fireworks display is cancelled because of bad weather, this section will be enforced on July 2, 2000, at the same times.

(c) *Regulations.* (1) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 22, 2000.

Peter A. Popko,

Captain, U.S. Coast Guard, Captain of the Port, Marine Safety Office Providence.

[FR Doc. 00–13814 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3, 17, and 21

RIN 2900–AJ25

Children Suffering from Spina Bifida Who Are Children of Vietnam Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) regulations concerning benefits for children suffering from spina bifida who are children of Vietnam veterans. This is necessary to implement statutory changes contained in the Veterans' Benefits Act of 1997.

DATES: *Effective Date:* October 1, 1997.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 421 of Pub. L. 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits to children suffering from spina bifida who are the natural children of Vietnam veterans. VA published three sets of regulations to implement the provisions of section 421 of Pub. L. 104–204, i.e. regulations concerning monetary allowances, provision of healthcare, and provision of vocational training and rehabilitation, in the **Federal Register** of September 30, 1997 (62 FR 51273–51296).

Section 404 of Pub. L. 105–114, the Veterans' Benefits Act of 1997, enacted on November 21, 1997, amended chapter 18 of title 38, United States Code. This document revises VA's regulations to implement those statutory amendments. The changes concerning the definition of "Vietnam veteran," the definition of "child," and the submission of social security numbers concern all three sets of regulations. The other changes made by this document only concern the monetary allowance regulations.

Public Law No. 104–204 defined the term "Vietnam veteran" as a "veteran" who performed active military, naval, or air service in the Republic of Vietnam "during the Vietnam era." Public Law No. 105–114 amended that definition to refer to an "individual" who performed active military, naval, or air service in the Republic of Vietnam "during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to the characterization of the individual's service." We are amending 38 CFR 3.814(c)(1) of the monetary allowance regulations accordingly. This change also affects the spina bifida regulations concerning provision of healthcare (see 38 CFR 17.901) and provision of vocational training and rehabilitation (see 38 CFR 21.8012).

Public Law No. 104–204 defined the term "child" as meaning a natural child of a Vietnam veteran, regardless of age or marital status, who was conceived after the date on which the veteran first entered the Republic of Vietnam "during the Vietnam era." Public Law No. 105–114 amended the definition of "child" by changing "during the Vietnam era" to "during the period beginning on January 9, 1962, and ending on May 7, 1975." We are amending 38 CFR 3.814(c)(2) of the monetary allowance regulations accordingly. This change also affects the spina bifida regulations concerning provision of healthcare (see 38 CFR 17.901) and provision of vocational training and rehabilitation (see 38 CFR 21.8012).

Public Law No. 105–114 revised 38 U.S.C. 1806 so that various administrative provisions of title 38, United States Code, including the following, are applicable to those applying for or receiving spina bifida benefits: 38 U.S.C. 5101(c), 5110(a), 5110(b)(2), 5110(g), 5110(i), 5111, 5112(a), 5112(b)(9), and 5112(b)(10). Accordingly, we are making the following changes.

- We are amending 38 CFR 3.216 to provide that anyone applying for or receiving benefits for a child suffering from spina bifida, as a condition for receipt or continued receipt of benefits, must furnish VA, upon request, his or her social security number, and the social security number of anyone based upon whom benefits are sought or received (38 U.S.C. 5101(c)).
- We are amending 38 CFR 3.814 of the monetary allowance regulations to provide that the effective date of a monthly award for a child suffering from spina bifida based on an original claim, a claim reopened after final adjudication, or a claim for increase will be fixed in accordance with the facts found, but will not be earlier than the date of receipt of the application for benefits (38 U.S.C. 5110(a)).
- We are amending 38 CFR 3.814 to provide that the effective date of an increased monthly award for a child suffering from spina bifida will be the earliest date as of which it is ascertainable that an increase in disability had occurred, if application is received by VA within one year of that date (38 U.S.C. 5110(b)(2)).
- We are amending 38 CFR 3.114 to provide that any award or increase of a monthly award for a child suffering from spina bifida pursuant to any law or administrative issue will not be effective prior to the effective date of the law or administrative issue and will not be retroactive more than one year from the date of application or the date of administrative determination of entitlement, whichever is earlier (38 U.S.C. 5110(g)).
- We are amending 38 CFR 3.814 to provide that a monthly award for a child suffering from spina bifida benefits based on a disallowed claim reopened on the basis of a correction of military records will be effective on the date application was made for the correction, or the date the disallowed claim was filed, whichever is later, but not retroactive for more than one year from the reopening of the disallowed claim (38 U.S.C. 5110(i)).
- We are amending 38 CFR 3.31 to provide that the payment of a monthly award for a child suffering from spina bifida may not be made for any period before the first day of the month following the month in which the award or increase became effective (38 U.S.C. 5111).
- We are amending 38 CFR 3.814 to provide that the effective date of a reduction or discontinuance of a monthly award for a child suffering from spina bifida will be fixed in accordance with the facts found, that reduction or discontinuance of such benefits by reason of beneficiary error will be the effective date of the award, and that reduction or discontinuance of such benefits by reason of administrative error will be effective as of the date of last payment (38 U.S.C. 5112(a), (b)(9), (b)(10)).

Public Law No. 104–204 provided that the amounts of the monthly monetary allowance to a child with spina bifida are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*). 38 U.S.C. 5312(c)(2) provides that whenever rates are so increased, the Secretary may round those rates in such manner as the Secretary considers equitable and appropriate. The Secretary has determined that since all other benefits administered under VA's adjudication regulations (38 CFR part 3) are paid in even dollar amounts, for ease of administration it is appropriate to round rate increases concerning the spina bifida monetary benefit.

Under procedures established at 38 CFR 3.29, when adjusting the annual basic benefit rates for the pension programs and parents' dependency and indemnity compensation, if the resulting amounts are not even dollar amounts, VA rounds them to the next higher dollar. In computing monthly rates from the adjusted annual rates, if the resulting amounts are not even dollar amounts, VA rounds to the next lower dollar. Since Pub. L. 104–204 authorized the monetary allowance for spina bifida at a monthly rate rather than an annual rate, it is necessary to round only one time when determining a revised rate. Under 38 CFR 3.29, if rounding is necessary after the first calculation, the resulting rate is always

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rounded up. We believe therefore that since only one rounding is required to revise the monetary allowance for spina bifida, it is both equitable and appropriate to round up. We are amending § 3.29 accordingly.

Public Law No. 105–114 provides that the amendments to chapter 18 of title 38, United States Code, are effective as of October 1, 1997.

This final rule reflects statutory requirements and reflects issues relating to agency management. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

No regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. The final rule will not directly affect any small entities. Only VA beneficiaries are directly affected.

The Catalog of Federal Domestic Assistance program number is 64.127.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Reporting and recordkeeping requirements, Veterans, Vietnam.

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 2, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 3, 17, and 21 are amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.29, paragraph (c) is added, to read as follows:

§ 3.29 Rounding.

* * * * *

(c) *Monthly rates under 38 U.S.C. 1805.* When increasing the monthly monetary allowance rates under § 3.814 for children suffering from spina bifida (see § 3.27(c)), VA will round any resulting rate that is not an even dollar amount to the next higher dollar.

Authority: 38 U.S.C. 1805(b)(3), 5312(c)(2)).

3. Section 3.31 is amended as follows:

a. The introductory text is amended in the first sentence by removing "compensation, pension or dependency and indemnity compensation" and adding, in its place, "compensation, pension, dependency and indemnity compensation, or the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran"; and

b. Paragraph (c)(4)(ii) and the authority citation at the end of the section are revised to read as follows:

§ 3.31 Commencement of the period of payment.

* * * * *

(c) * * *

(4) * * *

(ii) Increases in Improved Pension, parents' dependency and indemnity compensation, or the monetary allowance for children suffering from spina bifida pursuant to § 3.27, or

* * * * *

Authority: 38 U.S.C. 1806, 5111.

4. Section 3.114 is amended as follows:

a. Paragraph (a) introductory text is amended by removing "Where pension, compensation, or dependency and indemnity compensation" in each place it appears and adding, in its place, "Where pension, compensation, dependency and indemnity compensation, or the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran"; and

b. The authority citation at the end of paragraph (a) is revised to read as follows:

§ 3.114 Change of law or Department of Veterans Affairs issue.

* * * * *

Authority: 38 U.S.C. 1806, 5110(g)).

* * * * *

5. In § 3.216, the section heading is amended by removing "number" and adding, in its place, "numbers"; the first sentence is amended immediately following "of this part" by adding ", or the monetary allowance for a child suffering from spina bifida who is a child of a Vietnam veteran under § 3.814 of this part,"; and the authority citation is revised to read as follows:

§ 3.216 Mandatory disclosure of social security numbers.

* * * * *

Authority: 38 U.S.C. 1806, 5101(c)).

6. Section 3.814 is amended as follows:

a. Paragraph (c)(1) is amended by removing "a veteran" and adding, in its place, "an individual"; by removing "during the Vietnam era" and adding, in its place, "during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to the characterization of the individual's service";

b. Paragraph (c)(2) is amended by removing "during the Vietnam era" and adding, in its place, "during the period beginning on January 9, 1962, and ending on May 7, 1975"; and

c. Paragraphs (e) and (f) are added immediately following paragraph (d)(5) and the authority citation at the end of the section is revised to read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.

* * * * *

(e) *Effective dates.* Except as otherwise provided, VA will award the monetary allowance for children suffering from spina bifida based on an original claim, a claim reopened after final disallowance, or a claim for increase as of the date VA received the claim or the date entitlement arose, whichever is later.

(1) VA will increase benefits as of the earliest date the evidence establishes that the level of severity increased, but only if the beneficiary applies for an increase within one year of that date.

(2) If a claimant reopens a previously disallowed claim based on corrected military records, VA will award the benefit from the latest of the following dates: the date the veteran or beneficiary applied for a correction of the military records; the date the disallowed claim was filed; or, the date one year before the date of receipt of the reopened claim.

(f) *Reductions and discontinuances.* VA will generally reduce or discontinue awards according to the facts found except as provided in §§ 3.105 and 3.114(b).

(1) If benefits were paid erroneously because of beneficiary error, VA will reduce or discontinue benefits as of the effective date of the erroneous award.

(2) If benefits were paid erroneously because of administrative error, VA will reduce or discontinue benefits as of the date of last payment.

* * * * *

Authority: 38 U.S.C. 1805, 1806, 5110, 5112.

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721 unless otherwise noted.

2. The authority citation at the end of § 17.901 is revised to read as follows:

§ 17.901 Definitions.

* * * * *

Authority: 38 U.S.C. 101(2), 1801–1806, Pub. L. 105–114.

3. The authority citation at the end of § 17.902 is revised to read as follows:

§ 17.902 Preauthorization.

* * * * *

Authority: 38 U.S.C. 101(2), 1801–1806, Pub. L. 105–114.

4. The authority citation at the end of § 17.903 is revised to read as follows:

§ 17.903 Payment.

* * * * *

Authority: 38 U.S.C. 101(2), 1801–1806, Pub. L. 105–114.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart M—Vocational Training and Rehabilitation for Vietnam Veterans' Children With Spina Bifida

1. The authority citation for part 21, subpart M continues to read as follows:

Authority: 38 U.S.C. 101, 501, 512, 1151 note, 1801–1806, 5112, unless otherwise noted.

2. The authority citation at the end of § 21.8012 is revised to read as follows:

§ 21.8012 Definitions and abbreviations.

* * * * *

Authority: 38 U.S.C. 101(2), 1801, 1804, Pub. L. 105–114.

3. The authority citation at the end of § 21.8014 is revised to read as follows:

§ 21.8014 Application.

* * * * *

Authority: 38 U.S.C. 101(2), 1801, 1804, Public Law 105–114).

[FR Doc. 00–13660 Filed 6–1–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–6707–7]

RIN 2040–AC08

Revocation of the Selenium Criterion Maximum Concentration for the Final Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial revocation of final rule.

SUMMARY: In March 1995, EPA promulgated acute and chronic aquatic life criteria for selenium as part of the Final Water Quality Guidance for the Great Lakes System (40 CFR part 132). In 1996 the U.S. Court of Appeals for the District of Columbia Circuit issued an order vacating the acute criterion for selenium. *AISI* v. *EPA*, 115 F. 3d 979 (1997) (order dated September 10, 1996). EPA did not immediately publish a notice removing the vacated acute criterion from the Code of Federal Regulations because it anticipated promulgating a new acute criterion within one year. Although EPA proposed a new criterion in November 1996, it has not yet promulgated a final criterion. Based on comments received on the proposal, as well as earlier comments EPA had received on the methodology used to develop the national selenium criteria, EPA decided to subject the selenium criteria methodology to a broader workgroup and peer review process. While the selenium workgroup and peer reviewers have made good progress they are still months away from making final recommendations on the acute criterion for selenium. In the meantime, to avoid potential confusion about the status of the vacated acute criterion, EPA has decided to remove it from the final Great Lakes Guidance in 40 CFR part 132. EPA plans to propose a new replacement acute criterion once the workgroup and peer review process is complete. In the interim, EPA is recommending that States and Tribes rely on the chronic aquatic life criterion for selenium in setting permit limits. Today's action will not affect that chronic aquatic life criterion.

EFFECTIVE DATE: June 2, 2000.

ADDRESSES: The public docket for this and earlier rulemakings concerning the Water Quality Guidance for the Great Lakes System, including the proposal, public comments in response to the proposal, other major supporting documents, and the index to the docket are available for inspection and copying at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 by appointment only. Appointments may be made by calling Mary Willis Jackson (telephone 312–886–3717).

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460 (202–260–0312).

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Potentially Affected Entities

Citizens concerned with water quality in the Great Lakes System may be interested in this rulemaking. Also, entities potentially affected by today's action are those discharging or intending to discharge selenium to waters of the United States in the Great Lakes System. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging or intending to discharge selenium to waters in the Great Lakes System as defined in 40 CFR 132.2.
Municipalities	Publicly owned treatment works discharging or intending to discharge selenium to waters of the Great Lakes System as defined in 40 CFR 132.2.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the definition of "Great Lakes System" in 40 CFR 132.2 and examine the preamble to 40 CFR part 132, which describes the part 132 regulations. See 60 FR 15366 (March 23,1995). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

On March 23, 1995, EPA promulgated the Final Water Quality Guidance for the Great Lakes System (Guidance) required under section 118(c)(2) of the Clean Water Act, 33 U.S.C. 1268(c)(2). See 60 FR 15366 (March 23, 1995). The Guidance protects the waters of the Great Lakes and their tributaries by establishing water quality criteria for 29 pollutants to protect aquatic life, wildlife and human health, and detailed methodologies to develop criteria for additional pollutants. It also establishes implementation procedures to help Great Lakes States and Tribes develop more consistent, enforceable water-quality based effluent limits in discharge permits, as well as more consistent total maximum daily loads for the Great Lakes System. For a description of the environmental significance of the Great Lakes System and the serious environmental threats it faces (particularly from persistent, bioaccumulative chemicals), see the April 16, 1993, preamble to the proposed Guidance (58 FR 20802).

The ambient water quality criteria included in the Guidance to protect aquatic life set maximum ambient concentrations for harmful pollutants to be met in all waters in the Great Lakes System. See 40 CFR part 132, Tables 1 and 2. Great Lakes States and Tribes were required to adopt criteria consistent with EPA's criteria by March 1997. CWA section 118(c)(2)(c). If any State or Tribe fails to adopt criteria, EPA must promulgate criteria applying in that State or Tribe's jurisdiction. *Id.* Once the criteria take effect, permits for discharges of such pollutants into the Great Lakes System must include limits as necessary to attain the criteria.

EPA promulgated aquatic life criteria for 15 toxic pollutants including selenium. The selenium criterion was based on field data from Belews Lake in North Carolina. The chronic criterion, or Criterion Continuous Concentration (CCC), was set at 5 micrograms per liter (μg/L) (the concentration of selenium in a portion of Belews Lake where no chronic effects were observed). The acute criterion, or Criterion Maximum Concentration (CMC), was calculated as 19.34 μg/L (by multiplying the CCC by a laboratory-derived acute to chronic ratio and dividing by two). The total recoverable criteria published for selenium in part 132 were derived with the same data as provided in the criteria document, "Ambient Water Quality Criteria for Selenium—1987" (EPA 440/5–87–008).

Several industries and trade associations challenged the acute aquatic life criterion, or CMC, for selenium. *AISI* v. *EPA*, 115 F. 3d 979 (1997). Among the issues they raised was that inorganic selenium has two oxidation states, selenite and selenate, that have different toxicities to aquatic life, and that EPA erred by promulgating a single acute criterion that failed to properly account for the two oxidation states. EPA re-examined the issue, and decided, that it would be in the public interest to propose and provide an opportunity to comment on a new approach for deriving a CMC for selenium that takes into account not only the different toxicities of the two oxidation states described above, but also new data indicating that all forms of selenium are additive. EPA requested the reviewing Court to remand the acute criterion to allow EPA to propose revisions. On September 19, 1996, the U.S. Court of Appeals for the District of Columbia Circuit issued an order vacating the acute criterion.

C. Decision to Remove the Aquatic Life CMC for Selenium

EPA proposed a revised CMC for aquatic life for selenium on November 14, 1996 (61 FR 58444). Because EPA intended to promulgate a new selenium criterion soon after its 1996 proposal, EPA did not immediately withdraw the vacated regulation from the Code of Federal Regulations as is its normal practice. However, based on comments received on the proposal, as well as earlier comments EPA had received on the methodology used to develop the national selenium criteria, EPA decided to subject the selenium criteria methodology to a broader workgroup and peer review process. While the selenium workgroup and peer reviewers have made good progress they are still months away from making final recommendations on the selenium CMC. At least one member of the public has raised concern that, since the criterion continues to appear in the CFR, it appears to remain in effect. EPA agrees that the criterion is not in effect, and, since EPA has not been able to replace it promptly, removing it will reduce the potential for confusion. Therefore, EPA has decided to withdraw the selenium CMC from part 132, Table 1(a).

EPA plans to propose a new selenium CMC for the Great Lakes Guidance once the workgroup and peer review process is complete. EPA is not removing the 1995 CCC for selenium codified in Table 2(a) to part 132. EPA is not withdrawing the Clean Water Act section 304(a) criteria document for either the acute or the chronic criterion for selenium recommended for use in the national program because criteria developed for the national program are guidance and States and Tribes may adopt other criteria that are scientifically defensible. "Ambient Water Quality Criteria for Selenium—1987" (EPA 440/5–87–008). EPA will consider revising the national document after the workgroup and peer reviewers complete their work, and sometime later EPA will propose a new Great Lakes criterion. The Court's order does not affect the status of either the 1995 CCC for the Guidance or any portion of the national criteria document.

D. Consequences of Today's Action

As a result of today's action, States and Tribes need not adopt or submit to EPA for review an aquatic life CMC for selenium for waters of the Great Lakes Basin. In the interim, EPA is recommending that States and Tribes rely on the aquatic life CCC for selenium in Table 2(a) of part 132 when setting

permit limits. States and Tribes have submitted aquatic life CCC for selenium that are as protective as the 1995 Guidance CCC for selenium.

II. "Good Cause" Under the Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA finds it "unnecessary" to provide an opportunity to comment on the strictly legal issue of the impact of the *AISI* decision on the March 1995 selenium CMC. The U.S. Court of Appeals for the District of Columbia Circuit issued an order vacating the acute criterion for selenium in 1996. This rule merely removes the criterion from the CFR to eliminate confusion. Thus, notice and public procedure are contrary to the public interest. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). For this reason, EPA has also determined that it has "good cause" under 5 U.S.C. 553(d) to make the rule immediately effective upon publication.

III. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

IV. Submission to Congress and the General Accounting Office

The Congressional Review Act (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of June 2, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see section II), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

VI. Unfunded Mandates Reform Act

Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see section II), it is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

VII. Paperwork Reduction Act

There are no information collection requirements in this final rule and therefore there is no need to obtain OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

VIII. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of the Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Because the *AISI* Court vacated the aquatic life CMC for selenium in 1996, EPA is removing it from the final Great Lakes Guidance in 40 CFR part 132. As a result, States and Tribes need not adopt or submit to EPA for review an aquatic life CMC for selenium for waters of the Great Lakes Basin as part of their part 132 submission. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

IX. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the

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Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on them. Today's final rule only withdraws the selenium CMC from part 132, Table 1(a) of the final Great Lakes Guidance. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

X. Executive Order 13045 on Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, this rule does not concern an environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children. This final rule merely removes the aquatic life CMC for selenium from part 132, Table 1(a) of the Guidance, consistent with the 1996 Court order vacating the acute (CMC) criterion for selenium. In the interim, EPA is recommending that States and Tribes rely on the aquatic life CCC for selenium in Table 2(a) of part 132 when setting permit limits. States and Tribes have submitted aquatic life CCC for selenium that are as protective as the 1995 Guidance CCC for selenium.

XI. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 132

Environmental protection, Administrative practice and procedure, Great Lakes, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: May 25, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

1. The authority citation for part 132 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Table 1(a) to part 132 is amended by removing the entry for selenium.

[FR Doc. 00–13771 Filed 6–1–00; 8:45 am]
BILLING CODE 6560–50–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–8, 51–9, and 51–10

Change in Committee Mailing Address

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: The Committee is making changes in its regulations to correct its mailing address after a recent office move.

EFFECTIVE DATE: June 2, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: G. John Heyer (703) 603–0665. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: The Committee is amending those provisions of its regulations which state its mailing address, as the address changed on May 12, 2000. The provisions appear in the Committee's Freedom of Information Act, Privacy Act, and nondiscrimination regulations at 41 CFR parts 51–8, 51–9, and 51–10 respectively. This amendment is exempt under 5 U.S.C. 553(a)(2) from notice-and-comment rulemaking because it is a matter of internal agency management.

Regulatory Flexibility Act

This final rule is exempt from the Regulatory Flexibility Act because it does not meet the definition of a "rule" in that Act.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this final rule because it contains no new information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, this final rule is not a significant regulatory action as defined in the Executive Order.

List of Subjects

41 CFR Part 51–8

Freedom of information.

41 CFR Part 51–9

Privacy.

41 CFR Part 51–10

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Handicapped.

For the reasons set out in the preamble, Parts 51–8, 51–9 and 51–10 of Title 41, Chapter 51 of the Code of Federal Regulations are amended as follows:

PART 51–8—PUBLIC AVAILABILITY OF AGENCY MATERIALS

1. The authority citation for Part 51–8 continues to read as follows:

Authority: 5 U.S.C. 552.

§§ 51–8.4 and 51–8.5 [Amended]

2. Remove the words "Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302" and add, in their place, the words "Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259" in the following places:

a. Section 51–8.4; and

b. Section 51–8.5(a).

PART 51–9—PRIVACY ACT RULES

3. The authority citation for Part 51–9 continues to read as follows:

Authority: 5 U.S.C. 552a.

§§ 51–9.401 and 51–9.405 [Amended]

4. Remove the words "Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302" and add, in their place, the words "Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259" in the following places:

a. Section 51–9.401(a); and

b. Section 51–9.405(a).

PART 51–10—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

5. The authority citation for Part 51–10 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 51–10.170 [Amended]

6. In § 51–10.170(c), remove the words "Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302" and add, in their place, the words "Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259".

Dated: May 30, 2000.

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–13859 Filed 6–1–00; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 390

[Docket No. FMCSA–98–3947 (Formerly Docket No. FHWA–98–3947)]

RIN 2126–AA14 (Formerly 2125–AD49)

Federal Motor Carrier Safety Regulations; General; Commercial Motor Vehicle Marking

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA is revising its requirements concerning the marking of commercial motor vehicles (CMVs) and for the submission of a Motor Carrier Identification Report (Form MCS–150) to the agency. The FMCSA is eliminating the marking regulations of the former Interstate Commerce Commission (ICC), and requiring motor carriers to apply markings that conform to the requirements of this final rule. The agency is also amending its marking requirements to require that CMVs be marked with the legal name of the business entity that owns or controls the motor carrier operation, or the "doing business as" (DBA) name, as it appears on the Form MCS–150. Motor carriers will be allowed two years to comply with the requirement to affix the USDOT number to both sides of their CMVs, and five years to comply with the additional requirements to display the legal name or a single trade name on the CMVs currently in their fleet. The FMCSA is redesignating the regulation that requires motor carriers to submit the Form MCS–150, and requiring that *all* new interstate motor carriers submit a Form MCS–150 to the FMCSA before (rather than within 90 days after) commencing operations. These revisions are intended to enhance the ability of the FMCSA, the States, and the general public to identify motor carriers. The FMCSA also revises the listing for locations of motor carrier safety Service Centers to reflect recent changes to the agency organizational structure. They were originally included in the NPRM concerning safety fitness procedures [RIN 2126–AA42, formerly RIN 2125–AE56, Docket No. OMCS–99–5467 (formerly Docket No. FHWA–99–5467)] (64 FR 44460, August 16, 1999).

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Operations, Routing Code MC–PSV, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL):*http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communication software from the Government Printing Offices's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

On January 28, 1992, the FHWA published a final rule (57 FR 3142) which required interstate motor carriers to mark their interstate CMVs with specific information, including the USDOT number (see 49 CFR 390.21). The final rule, however, provided an exception for motor carriers authorized by the former ICC to conduct operations as a for-hire motor carrier. These motor carriers were required to comply only with the marking provisions in former 49 CFR part 1058, now redesignated as 49 CFR 390.401, 390.403, 390.405, and 390.407 (61 FR 54706, 54710, October 21, 1996).

The ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803) was enacted on December 29, 1995, and became effective on January 1, 1996. The ICCTA abolished the ICC, amended subtitle IV of title 49, United States Code, reformed the economic regulation of transportation, and transferred the assets, personnel, and many of the duties and functions of the ICC to the Secretary of Transportation (Secretary).

On June 16, 1998, the FHWA published a notice of proposed

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rulemaking (NPRM) (63 FR 32801) to amend its regulations concerning the marking of CMVs and the submission of the Form MCS–150. The agency proposed (1) To eliminate the marking regulations of the former ICC and to require motor carriers to replace the vehicle markings specified by those requirements with markings that conform to 49 CFR 390.21; (2) to amend its current rule to require that CMVs be marked with the legal name of the business entity that owns or controls the motor carrier operation, or the "doing business as" name, and the city and State for the principal place of business as they appear on the Form MCS–150; (3) to allow motor carriers two years to comply with the marking requirement (*i.e.*, to display the USDOT number on both sides of their self-propelled CMVs), and five years to comply with the additional requirements to display the address of the principal place of business and the legal name, or a single trade name; (4) to amend the regulations to require all new interstate motor carriers submit a Form MCS–150 to the FMCSA before (rather than within 90 days after) commencing operations; and (5) to move the regulations that require motor carriers to submit the Form MCS–150 from 49 CFR part 385 to part 390.

Discussion of Comments to the NPRM

The FMCSA received 196 comments in response to the NPRM.

The commenters were: the American Trucking Associations (ATA) ; the New York State Motor Truck Association Inc. (NYSMTA); the National Automobile Dealers Association (NADA); the National Automobile Transporters Association (NATA); Bonanza Bus Lines; Yellow Corporation; the Association of Waste Hazardous Materials Transporters (AWHMT); ATC Leasing Company; the New Jersey Motor Truck Association; the Iowa Department of Transportation; United Parcel Service (UPS); the Missouri Division of Motor Carrier and Railroad Safety (Missouri DMCRS); Consolidated Freightways (CF); the South Carolina Trucking Association, Inc.; GROWMARK, Inc.; the Truck Renting and Leasing Association (TRALA); the Georgia Public Service Commission; Distribution & LTL Carriers Association; the National Private Truck Council (NPTC); J.B. Hunt; ConAgra Inc.; North American Van Lines, Inc. (NAVL); the Truckload Carriers Association (TCA); the National Association of Small Trucking Companies (NASTC); the Illinois State Police; the Colorado Department of Public Safety; Roadway Express; the American Moving and Storage Association (AMSA); the State of New York Department of Transportation; Peninsula Transport, Inc., and an additional 167 motor carriers. The following is a summary of the comments on some of the key items addressed in the notice.

Relationship to Unified Motor Carrier Registration System Rulemaking

Although most commenters did not oppose in principle the FMCSA's proposal to require self-propelled CMVs to be marked with a USDOT number, several of them, including the ATA, UPS, and the Distribution & LTL Carriers Association, recommended that the FMCSA delay this rulemaking pending the implementation of the congressionally mandated Unified Motor Carrier Registration System (Unified System). The Unified System is intended to provide a comprehensive foundation for registration, insurance, and safety information. The commenters asserted that the Unified System would help solve many of the problems mentioned in the NPRM, including matching the motor carrier (MC) and USDOT numbers. Commenters also suggest that the Unified System could be designed to include all of a motor carrier's DBA names and other identifying information.

The New York State DOT notes that it is participating in discussions with the U.S. DOT and others concerning the consolidation of the Unified System and the Single State Registration System (SSRS). New York believes there is conceptual agreement among the majority of SSRS States concerning assignment of USDOT numbers for both interstate and intrastate motor carriers, and asks that the FMCSA's regulation facilitate this approach. The Illinois State Police believes that many States already have the infrastructure in place to support a national motor carrier identification system.

The NASTC categorically opposes the NPRM, believing that the MC number is necessary for State and Federal officials, and the traveling public, to distinguish for-hire from private motor carriers.

FMCSA Response

Section 103 of the ICCTA, which, among other things, added 49 U.S.C. 13908, required the Secretary to initiate a rulemaking proceeding to replace the current Department of Transportation identification number system, the SSRS under 49 U.S.C. 14504, the registration/licensing system contained in 49 U.S.C. 13901–13905, and the financial responsibility information system under 49 U.S.C. 13906 with a single, online Federal system.

On August 26, 1996, the agency published an advance notice of proposed rulemaking (ANPRM) on the Motor Carrier Replacement Information/Registration System which posed several questions and requested comments on all of these issues raised by the commenters.

The FMCSA agrees there are items proposed in the Commercial Motor Vehicle Marking NPRM that are related to the Registration rulemaking. However, the FMCSA considers the requirement to mark a CMV with the USDOT number as a vehicle identification issue, not a registration issue. Therefore, the FMCSA will move forward with its requirement to mark CMVs with the USDOT number assigned to each motor carrier.

The filing of the Form MCS–150 is not considered a registration issue in the context of the Motor Carrier Replacement Information/Registration System because the agency is not changing the applicability of the regulation, only the time the document must be filed. The current requirement allows a new motor carrier to file the Form MCS-150 within 90 days after beginning operations. The FMCSA believes it is important that CMVs be properly marked before they are placed into service on the highway. Such markings will assist State officials conducting roadside inspections and accident investigations in attributing important safety data to the correct motor carrier. It will also ensure the public has an effective means to identify motor carriers operating in an unsafe manner.

The FMCSA has streamlined the process for filing the Form MCS–150 by making it available on the Internet. Motor carriers seeking a copy of Form MCS–150 may obtain it from the Internet through the Federal Motor Carrier Safety Administration web page at: *http://www.mcs.dot.gov/factsfigs/formspubs.htm* under "DOT Number—Application Form." Motor carriers may download the Form MCS–150, complete it, and submit it by mail or by facsimile. Motor carriers may also obtain copies of the form from any of the four FMCSA Service Centers or the fifty-two Division Offices. A for-hire motor carrier should submit the Form MCS–150 along with its application for operating authority (Form OP–1) to the appropriate address referenced on that form or may submit it separately to the address mentioned on the web page.

The FMCSA has also made a determination that the USDOT number will be the number used to identify all motor carriers in the information/registration system of the future.

Currently, all interstate motor carriers (both for-hire and private) are assigned USDOT numbers. Also, several States require intrastate motor carriers to complete Form MCS–150 and obtain a USDOT identification number. These motor carriers are listed in the Motor Carrier Management Information System (MCMIS) as intrastate-only carriers. The addition of these motor carriers to the MCMIS enables the States to work together in determining the number of active motor carriers operating in the United States, and to monitor the safety performance of the motor carriers.

Another reason to use the USDOT number as the key identifier for all motor carriers is the role that it plays in the Performance and Registration Information Systems Management (PRISM) project. The PRISM project is a cooperative Federal/State program that makes motor carrier safety a requirement for obtaining and keeping commercial motor vehicle registration privileges. The performance of unsafe motor carriers is improved through a program of progressively more stringent sanctions leading to a possible Federal operations out-of-service order and suspension of their State issued vehicle registration privileges. The vehicle registration records contain the USDOT number as a unique identifier of the motor carrier responsible for the safety of the CMVs.

Single Trade Name

ConAgra, Inc., the ATA, the TCA, NAVL, and other commenters oppose the single trade name proposal and believe the FMCSA should allow small subsidiaries and divisions of large national carriers to maintain their own identities. They contend that local operations of national carriers want to maintain the connection to the local communities they served over the years. They claim that limiting carriers to a single trade name will dramatically impact a number of large carriers in ways that the FMCSA may not have fully considered.

FMCSA Response

The FMCSA agrees with the commenters. The FMCSA will consider requests for assignment of individual USDOT numbers to corporate divisions on a case-by-case basis. While the FMCSA does not wish to limit an organization's flexibility, or its ability to promote a trade name, we nevertheless must consider whether the assignment of multiple USDOT numbers to a single corporate entity will compromise the integrity of the collection and processing of safety data.

Principal Place of Business Address

With regard to the proposed language concerning the requirement for motor carriers to display only the location of their principal place of business, the ATA, the NPTC, UPS, CF, Roadway Express, Yellow Corporation, NAVL, the Georgia Public Service Commission, and a number of other motor carriers and associations strongly oppose any change to the existing regulation. Most argue that the principal place of business address, being the third way to identify the motor carrier (after the USDOT number and the single trade name), does not help much if the first two are correct or incorrect. While most commenters agree that some type of number is needed to help match safety records, they don't believe that the address of the principal place of business provides the same benefit. They believe the cost to the motor carrier to accomplish the change definitely outweighs any perceived advantage.

The New York State DOT opposes the proposal because it believes that motor carriers would be prohibited from displaying the location where a CMV is customarily based. The agency cited an example of a motor carrier of passengers that has acquired various New York based carriers. New York prefers to retain the location identification to aid them in tracking the performance of the individual subsidiaries.

FMCSA Response

The FMCSA agrees with the commenters; the motor carrier name and the unique USDOT number should be sufficient to properly identify the motor carrier. The FMCSA does not believe it is necessary to include in the final rule the requirement to display the city and State. As UPS noted, unless there is an error in the collection of the original data, there should be no instance in which two motor carriers have both the same name and the same USDOT number. The use of an address does not ensure the accurate collection of data and imposes an additional and unjustified burden on the industry.

As for the comments of the New York State DOT, the final rule does not require motor carriers to mark their motor vehicles with the city and State, but does not prohibit the practice either. The FMCSA believes that many motor carriers will continue to display the city and State for marketing purposes and to maintain a connection to the local communities they serve.

Periodic Update of the Form MCS–150

The ATA, Distribution and LTL Carriers Association, New York State DOT, and AWHMT have suggested the FMCSA require motor carriers to periodically update the information contained on the MCS–150. They say the information initially reported on the Form MCS–150 may change over time. Inasmuch as the FMCSA uses this information to calculate a motor carrier's accident rate for safety rating purposes, the commenters believe the FMCSA has a vested interest in requiring a periodic update of Form MCS–150 to ensure the integrity of the data.

FMCSA Response

The 1996 ANPRM on the unified information/registration system (61 FR 43816) addresses this issue. One of the questions included there was the same as that asked by the AWHMT, the ATA, and the New York DOT.

Section 217 of the Motor Carrier Safety Improvement Act of 1999 requires the FMCSA to require motor carriers to periodically update the information they provide in the form MCS–150. An initial update is required by December 2000. Periodic updates would be required not more frequently than once every two years. The FMCSA will address this provision in a separate rulemaking action.

Marking of Foreign and Intrastate Motor Carriers' Power Units

The AWHMT requested that the FMCSA consider if there is a potential for reciprocity between the CMV marking requirements of Canada and Mexico and those currently contained in and proposed for the FMCSRs.

UPS commented that motor carriers subject to the FMCSA's regulations that operate portions of their fleets within single jurisdictions are subject to the additional marking requirements of those jurisdictions. For example, State Public Utilities Commissions often impose their own marking requirements. UPS stated that it, as well as other motor carriers and the ATA, had filed comments in Docket MC 96–25 [Motor Carrier Replacement Information/Registration System, now DOT Docket 1997–2349] recommending that the USDOT's marking requirements be the sole method to identify CMVs operated by motor carriers under the FMCSA's jurisdiction.

The NYSMTA asked the FMCSA to consider preempting the marking requirements of State or local jurisdictions for vehicles bearing USDOT numbers that are not domiciled within that jurisdiction. The NYSMTA noted that a city requires the marking of a street address. The Missouri DMCRS requested that States be allowed to

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continue to require display of additional information, such as the GVW or the GVWR, on power units that are registered solely for intrastate operation.

GROWMARK was concerned that States may require different timeframes from the FMCSA for implementing a marking requirement.

The AWHMT referenced the Hazardous Materials Transportation Act (Public Law 101–615, 104 Stat. 3244, November 16, 1990) safety permit provisions, not yet implemented by the FMCSA. It asked if the FMCSA might consider a requirement for displaying the USDOT number on the CMVs of motor carriers engaged in the transportation of hazardous materials in intrastate commerce as an initial step toward implementing the permit system.

FMCSA Response

Concerning reciprocal marking requirements among the United States, Canada, and Mexico, the general requirements contained in § 390.21 have been in place since 1954 for for-hire motor carriers operating in interstate commerce. They have been in place since 1988 for private motor carriers operating in interstate commerce. No other commenters raised this issue, and the FMCSA is not aware that the provisions have caused compliance difficulties for foreign-based motor carriers.

Concerning the questions raised by the NYSMTA about a local jurisdiction's requirement for listing a full street address, and the Missouri DMCSR's question about a State's requirement for the display of a GVW or GVWR on intrastate-only CMVs, any other identifying information may continue to be displayed, as long as it is not inconsistent with other § 390.21 requirements. Responding to GROWMARK's comment, the marking requirement proposed will apply only to motor carriers operating in interstate commerce. The FMCSA anticipates that States would allow these motor carriers the phase-in period established in this rulemaking action.

Finally, concerning the AWHMT's comment concerning the potential for issuing USDOT numbers to intrastate motor carriers transporting hazardous materials, the agency is continuing to address permitting in a separate rulemaking action.

Submittal of MCS–150 and Display of USDOT Number Upon Commencing Operations

The FMCSA's current regulation requires that all new motor carriers submit a Form MCS–150 to the agency within 90 days of commencing operations. The NPRM proposed that all new motor carriers submit a Form MCS–150 to the FMCSA before commencing operations. The NPRM also proposed that all CMVs added to a motor carrier's fleet on or after the effective date of the rule must display the motor carrier's USDOT number before being put into service.

The FMCSA received no adverse comments on this provision of the NPRM. The final rule will implement it as proposed.

Time to Comply With Regulations

Commenters' responses pertaining to the proposed length of time for motor carriers to comply with the marking requirements (two years for the USDOT number and five years for the principal place of business and single trade name) varied widely. Commenters suggested phase-in periods that varied from two years for some of the smaller motor carriers to seven years for those carriers having large fleets. Some commenters suggested the FMCSA consider a single date for motor carriers to meet all the requirements. Yellow Corporation, for example, suggested a conversion period of three years, claiming it would reduce the overall costs to carriers and would provide adequate time for the training of enforcement officials. Other commenters, such as the NPTC and NAVL, contended that five years was a more appropriate phase-in period because many fleets turn over their equipment over that interval. They did support the provision in the NPRM requiring vehicles added to a fleet be marked with the USDOT number when placed into service.

FMCSA Response

The FMCSA has decided to proceed with the original time frames outlined in the NPRM. The final rule requires the motor carrier to display its USDOT number within two years of the effective date of this rule and its single trade name or DBA name within five years on CMVs that are currently in service. All new CMVs entering the fleet must meet all the marking requirements before being put into service. The FMCSA believes that these time frames will allow motor carriers to meet the marking requirements without creating either an administrative or economic hardship.

As stated previously, the FMCSA will eliminate the requirement for motor carriers to display the city and State on the side of their vehicles.

Marking of Driveaway and Short-Term Rental Vehicles

The ATC Leasing Company and the NATA requested that the provisions of § 390.407, which were written specifically to recognize the unique operational needs of driveaway combinations, be left intact. These commenters claim that the elimination of this section would not provide any economic or safety benefit to the public, but would burden those carriers that operate driveaway combinations with unnecessary and costly duplication.

UPS addressed the issue of marking short-term rental CMVs. UPS noted, among other things, that § 390.21(e) does not require the use of a temporary identification device.

FMCSA Response

The FMCSA agrees with the comments submitted by ATC Leasing and the NATA on behalf of the driveaway industry. The requirements of § 390.407 concerning removable devices are being retained and incorporated into § 390.21. The FMCSA responds to UPS that the proposed language for § 390.21(e) is substantially identical to that of the current § 390.23(e), except that the agency will no longer require display of the lessor's city or community and State. Neither the current nor the proposed regulation require use of a temporary identification device on short-term rental vehicles.

Contracts and Certificates of Insurance

The ATA, the NASTC, and approximately 170 motor carriers commented that many of their written contracts and certificates of insurance made available to the shipping public identify them by their MC number. They contend the FMCSA has not estimated the cost to the shipper and broker community of changing existing contracts to use a new system so that each motor carrier can be identified by a USDOT number. They also believe it is important for public warehousing purposes that the existing "MC number" in their contract appear on the door of the equipment making pickups. This allows verification that the freight is being tendered to the properly licensed and insured motor carrier with whom a contract was signed. The majority of the motor carriers commenting suggested the FMCSA allow "for hire" carriers to continue to use the MC number as a primary identifier for all aspects of their operation and let the private carriers continue to use the USDOT number.

FMCSA Response

There is no Federal requirement that motor carriers display their MC number on contracts or certificates of insurance. This practice was developed by the motor carrier industry for its own purposes and may be continued if the industry chooses. The regulation requires motor carriers to display the USDOT number on both sides of their power units. It does *not* require motor carriers to remove the MC number, although they are encouraged to refrain from displaying the MC number on new or repainted CMVs once the rule becomes final.

The FMCSA's use of the USDOT number for CMV identification is premised upon its use in a safety context. The MC number is used by the FMCSA, process agents, and insurance companies to track the process of a for-hire motor carrier's application for registration, status of insurance, and other requirements. The FMCSA's MCMIS includes both the MC and USDOT numbers, as do many other records used by motor carriers. Shippers and others can verify the identification of a for-hire motor carrier with the FMCSA online, or via telephone, using either number. Motor carriers should also make their clients aware of the change in the regulations. Taken together, these measures should aid them in verifying that the freight is being tendered to the properly licensed and insured motor carrier with whom a contract was signed.

States Assigning USDOT Numbers

The New York and the Iowa Departments of Transportation both commented on the States' issuance of interstate and intrastate USDOT numbers. Each State supports the use of the USDOT number as the unique identifier essential for tracking motor carrier safety performance data. In addition, both States wanted the final rule to make perfectly clear that States can issue USDOT numbers to both interstate and intrastate motor carriers. New York recommended the FMCSA provide batch filing to the States to convert intrastate carriers to a USDOT numbering system (using a unique State suffix). The NYDOT argued that the present system is too cumbersome and time consuming; it would take five years to convert all the intrastate carriers in New York to the USDOT number using the current mechanisms. New York says batch processing is an absolute must and the FMCSA should directly assist the States in converting intrastate carriers in as short a time frame as possible.

FMCSA Response

The States involved in the PRISM project have been given access to the MCMIS Census database to issue USDOT numbers to interstate carriers. As part of the project, prior to the issuance of International Registration Plan (IRP) documents, the entity registering vehicles is required to have a USDOT number and each vehicle must have a USDOT number assigned to it. If a carrier does not have a USDOT number at the time of registration, a Form MCS–150 must be provided so that the State can issue the USDOT number necessary to complete the vehicle registration process.

The FMCSA has given the States an option to issue USDOT numbers to their intrastate carriers. Currently, 11 States are adding the Form MCS–150 information for these carriers individually through direct access to the MCMIS Census database. The system issues a USDOT number as each carrier is entered into the database.

New York already has existing databases on their intrastate carriers and has requested that the FMCSA develop a process for the batch issuance of USDOT numbers. The FMCSA has developed procedures necessary to support this process and expects to begin pilot testing by mid-2000. The agency anticipates that the first test State will be New York and that the pilot test will last for several months. Assuming the pilot test is successful, other interested States will then be able to use this process.

Marking of Intermodal Container Chassis and Trailers

The South Carolina Trucking Association and the New Jersey Motor Truck Association requested the FMCSA to define an intermodal container chassis as a CMV and its owner as a motor carrier engaged in interstate commerce. They believe that intermodal chassis equipment is unique enough to require the owners to display their own USDOT number, and that this requirement would go a long way towards establishing responsibility for the care, maintenance, and condition of chassis equipment.

Bonanza Bus Lines recommends that all trailers display a USDOT number on both sides and on the rear.

FMCSA Response

Maintenance of intermodal container chassis and trailers is being addressed in a separate agency action, and will not be addressed in this final rule. In response to a petition filed by the ATA and the ATA Intermodal Conference, the agency published an ANPRM (64 FR 7849, February 17, 1999). The petitioners contended that motor carriers have minimal opportunity to maintain intermodal container chassis and that the parties who do have the opportunity often fail to do so. The FMCSA agreed to consider revisions to the requirements in parts 390 and 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) that place upon motor carriers the responsibility for maintaining this equipment. As part of this process, the FMCSA held three public hearings in late 1999 to gather information on the extent of this problem and to receive feedback on the solution proposed by petitioners, *i.e.*, to mandate joint responsibility between the "equipment provider" and the motor carrier for maintaining this type of intermodal equipment. The FMCSA will decide these issues and others raised by the commenters in the rulemaking involving intermodal containers, chassis and trailers. Accordingly, comments of the South Carolina Trucking Association and the New Jersey Motor Truck Association will be submitted to that docket for consideration.

With respect to Bonanza Bus Lines' comment, the NPRM did not consider marking of CMVs other than power units; extending its provisions to cover them would be beyond the scope of this rulemaking. The ICC first required self-propelled CMVs to be marked in 1954. The agency has undertaken several rulemakings concerning CMV marking in the last 12 years. Although the agency has occasionally received correspondence concerning marking of trailers, the FMCSA does not believe this additional marking is necessary.

Marking of Small For-Hire Passenger Vehicles

The Georgia Public Service Commission requested the FMCSA to clarify the marking requirements applicable to smaller for-hire passenger vehicles (designed to transport 7 to 15 passengers) that are subject to the FMCSA's registration requirements, but not to the remainder of the FMCSRs.

FMCSA Response

On September 3, 1999, the agency published an NPRM (64 FR 48518) concerning the applicability of specific provisions of the FMCSRs to this class of passenger vehicles. That action responded to congressional direction contained in section 4008(a) of the Transportation Equity Act of the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107, June 9, 1999), which amended the definition of the term "commercial motor vehicle" found at 49 U.S.C. 31132 to cover vehicles "designed or used to transport more than 8 passengers (including the driver) for

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compensation." Among other things, the September 3 NPRM proposed to require that motor carriers operating CMVs designed or used to transport between 9 and 15 passengers (including the driver) for compensation file a motor carrier identification report and mark their CMVs with a USDOT number and other identifying information (*i.e.*, name or trade name and address of the principal place of business). In an interim final rule published that same day, the agency amended the statutory definition of a CMV to be consistent with the TEA–21 definition, but it exempted this class of motor carriers from the FMCSRs for six months, to allow the FMCSA time to gather additional information on this population of carriers and to complete the rulemaking action. The FMCSA is reviewing comments to that docket and plans to issue a final rule in the near future.

Marking of Pick-Up Trucks

The Colorado Department of Public Safety suggested the FMCSA adopt a rule that it has implemented. Many pick-up trucks do not meet the definition of a CMV except when pulling a trailer. Colorado allows the trailer, instead of the power unit, to be marked if the power unit has a GVWR of 10,000 pounds or less. This allows some farmers, contractors, and small businesses to use their vehicles for personal conveyance, such as vacations and errands. Many homeowner associations have covenants prohibiting commercial vehicles from parking in their residential areas. In many cases, this would include a pick-up subject to the present marking requirements in § 390.21.

FMCSA Response

The FMCSA believes that the power unit should carry the motor carrier identification. The motor carrier continues to have the responsibility for ensuring the trailer it accepts meets the safety requirements of the FMCSRs. Motor carriers who use their personal pick-ups for business purposes can affix temporary signs and remove them when necessary.

Vehicles Under Intermittent Lease and Short-Term Rental

The TRALA stated it supported the NPRM as written. The AMSA and NAVL requested the FMCSA to consider adding a new, unique rule that would address the household goods, intermittent lease issue. The main focus would mirror the concept adopted by the International Fuel Tax Agreement (IFTA) in that a vehicle leased intermittently to a household goods carrier would be allowed to display both the agent's and the motor carrier's marking information linked by the phrase "Interleased to."

FMCSA Response

A special provision in the marking rule for the household goods industry is not necessary. If the industry wishes to display the household goods agent's name and authority number, in conjunction with the household goods carrier's name and USDOT number, the FMCSA would not object. The rule already allows for other identifying information to be displayed on the CMV as long as it is not inconsistent with the information required in § 390.21.

FMCSA Estimates of the Costs and Benefits

The FMCSA has completed a final regulatory evaluation (FRE) comparing the projected safety benefits of a retrofitting requirement to the potential economic impact on the motor carrier industry. The following discussion summarizes the FMCSA's analysis. A copy of the complete FRE is available for review in the docket.

Cost

This rule would require all former ICC motor common and contract carriers to mark their CMVs with a "USDOT Number" and the legal name of the business entity that owns or controls the motor carrier operation, or the "doing business as" name, as they appear on the Form MCS–150. Many carriers with authority from the former ICC already include their legal, or DBA name, on the both sides of their vehicles.

The vast majority of carriers will use either stencils or decals for marking, as these are the cheapest methods. The FMCSA assumed that small carriers will use individual stencil kits, medium carriers will use larger kits, and large carriers will use individually developed decals. Price estimates are shown in table 1. We assumed that changing a name is 50 percent more expensive than changing a DOT number.

The agency estimates that the average time to affix a DOT number would be about 12 minutes. Adding a new name was also assumed to require 12 minutes.

Because this is a simple procedure, we assumed that the marking would be placed by class 3 mechanics, at an average cost of $15 per hour. Therefore, the labor cost is $3 to apply a DOT number and an additional $3 for a name change. Table 1 displays these figures, along with the total labor and material cost.

The FMCSA has determined that the opportunity cost of this rule is negligible or nonexistent, for two reasons. First, vehicles will only be placed out of service for 12 to 36 minutes, which is too brief a period to have earned any measurable amount of revenue. Second, virtually all vehicles would be available at no opportunity cost (in non-revenue producing service and not being serviced) for 12 to 36 minutes sometime in the two-year phase-in period. Therefore, the FMCSA does not believe there is an opportunity cost associated with this rule.

TABLE 1.—ESTIMATED COST OF MARKING, BY CARRIER SIZE

Carrier size, by number of power units	Material cost, per vehicle		Labor cost, per vehicle		Total cost, per vehicle
	DOT number	Name	DOT number	Name	
1–6	$8	$12	$3	$3	$26
7–20	6	9	3	3	21
21–99	4	6	3	3	16
100–999	2	3	3	3	11
1000+	1	1.50	3	3	9
Unspecified	6	9	3	3	21

There are 75,737 carriers with authority from the former ICC, but the ICC did not collect information about the number of vehicles operated per carrier. However, FMCSA's MCMIS has information on the number of power units per carrier.

Table 2 shows how the agency estimated the number of power units per carrier size class. We applied the MCMIS distribution of carriers by size to the 75,737 carriers registered by the former ICC. The first column shows the breakdown of for-hire carriers by number of power units from MCMIS. The term "unspecified" means that the FMCSA has no information on the number of vehicles operated by the motor carrier. The third column from the left shows the assumed number of carriers in each size group regulated by the former ICC. The last column shows the estimated number of power units in each size class. We assumed that unspecified carriers have at least three vehicles, since the FMCSA tends to have the least information about the smaller carriers.

TABLE 2.—ESTIMATED NUMBER OF FOR-HIRE CARRIERS AND VEHICLES REGULATED BY THE FORMER ICC, BY CARRIER SIZE

Carriers by number of vehicles	Percent of MCMIS carriers	Estimated number of carriers regulated by former ICC	Estimated number of vehicles regulated by former ICC
1–6	55.2	41,800	87,665
7–20	10.1	7,624	88,109
21–99	5	3,772	158,033
100+	1	778	323,636
Unspecified	28.7	21,763	65,289
Total	100	75,737	722,732

Motor carriers are currently required to place either the MC or the USDOT number on their vehicles. In addition, the majority of carriers already display either their legal names or their DBA names. We were unable to locate any information concerning the percent of vehicles regulated by the former ICC that currently display a USDOT number or a legal, or DBA, name. For our baseline analysis, we conservatively estimated that only 10 percent of eligible carriers already display a USDOT number, while 80 percent already display their legal, or DBA, names. Therefore, the FMCSA estimates that 90 percent of eligible carriers or 650,458 vehicles will require a new DOT number (.9 × 722,732), and 20 percent of eligible carriers or 144,546 will need a new name (.2 × 722,732). If a greater percentage of vehicles already display either a DOT number or a valid name, the cost of this rule will be lower than the FMCSA's estimate.

The total undiscounted cost of this rule is $5.7 million. With a 7 percent discount rate and assuming that 1/x of all vehicles are marked each year (where x equals the phase-in period—two years to comply with the requirement to affix the USDOT number to both sides of their CMVs, and five years to comply with the additional requirements to display the legal name or a single trade name on the CMVs currently in their fleet) the total discounted cost equals $5 million. Table 3 shows the breakdown of costs by carrier size.

TABLE 3.—UNDISCOUNTED COST OF PROPOSAL BY CARRIER SIZE

Size	Material	Labor	Total	Percent total cost	Per carrier
1–6	$841,587	$289,295	$1,130,882	19.9	$27.05
7–20	634,382	290,759	925,141	16.2	121.35
21–99	758,557	521,508	1,280,066	22.5	339.36
100+	607,416	1,067,999	1,675,4152	29.4	2,153.49
Unspecified	470,079	215,453	685,532	12.0	31.50
Total	3,312,021	2,385,014	5,697,036	100.0	2,672.75

Not surprisingly, the cost per carrier increases with carrier size. This rule would cost the smallest carriers (those with fewer than six power-units) about $27 and the largest carriers approximately $2,150. The same pattern is evident within each size class (*i.e.*, carriers with one vehicle pay less than those with six). As a result of this, small carriers, which compose 65 percent of all carriers regulated by the former ICC, bear approximately 20 percent of the total cost of this rule.

Given the relatively modest cost of this rule, only a small number of accidents would need to be prevented to make it cost beneficial. We estimate that this rule would cost carriers $5.7 million (undiscounted), with the cost spread through the five years following promulgation. The DOT guidelines mandate use of a threshold value per fatality prevented of $2.7 million. Thus, the benefits of this rule would approximately equal the costs if two fatalities were prevented over five years. Other combinations of crashes avoided (fatality, injury, and property-damage-only) could also drive the benefits of this rule above its costs, with the precise figures depending on the severity of the non-fatality accidents. The FMCSA believes that this rule is based on a reasoned determination that the benefits justify the cost. The FMCSA also believes that this rule could lead to the prevention of a small number of accidents, and thus prove cost beneficial.

Benefits

The benefits of this rule, although significant, are difficult to quantify. The primary benefit would be an improvement in the FMCSA's ability to identify problem carriers and take action to reduce the potential for harm to the public from these carriers. The action taken would depend upon the severity of the problem. Extremely dangerous carriers, such as those with a

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consistently high out-of-service (OOS) rate or with a greater than expected number of accidents, could be forced to discontinue operations. Carriers with less severe problems could be targeted for educational outreach and other enforcement actions. While the FMCSA programs cannot entirely eliminate the threat from unsafe carriers, we believe they can help reduce the negligent behavior that leads to accidents. The extreme action of taking a carrier out of business would eliminate the dangerous behavior of risky carriers entirely.

The FMCSA is not aware of any alternatives which accomplish the same goals with less burden. The goal of this regulation is to improve the agency's ability to assign inspections and crashes to the correct motor carriers. To accomplish this goal, the agency must be able to correctly identify the operator of a motor vehicle during an inspection or after a crash. High tech identification methods exist, but they require vehicles to be equipped with a transponder that broadcasts a unique "fingerprint." The cost of these units is significantly higher than the cost of adding a USDOT number or a new name to a power-unit. In addition, transponder readers would be needed to identify a vehicle's owner. While it would be possible (albeit expensive) to provide all inspectors with readers, this would be prohibitively expensive for accident investigators, given the large number of crashes, their geographic dispersion, and the number of police officers who report only a small number of crashes.

As an alternative to marking both sides of the CMV with the USDOT number, the agency also considered allowing a driver to maintain the required information on paper inside the vehicle. While this would be less expensive, there were several problems with this approach. First, drivers already maintain a number of documents with similar information, and they may have an incentive to provide an investigating officer with the incorrect document (or maintain that they do not have the appropriate document) under some circumstances. In addition, during crashes investigators may not have access to an onboard document due to such things as fires, jammed doors due to a crash, or a hazardous material spill.

In order to minimize the impact of this rule, the FMCSA is requiring a two-year phase-in period for the USDOT number requirement and a five-year phase-in for the legal name or single trade name requirement. This will give small carriers (and others) ample time to comply with the marking rule without significantly disrupting their operations.

The FMCSA's intention is not only to improve safety, but to achieve consistency and uniformity and lower the cost of enforcement and compliance for the government, the motor carrier industry, and the general public.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and significant within the meaning of the Department of Transportation's regulatory policies and procedures. The FMCSA has prepared a final regulatory evaluation of the economic impact the regulatory changes will have on the motor carrier industry. A copy of the final regulatory evaluation is included in the docket file.

Prior to the elimination of the ICC, most for-hire motor carriers were required to obtain ICC authority in order to operate in interstate commerce. Carriers which were granted ICC operating authority were also given an ICC docket number, which they were required to display on both sides of each power unit.

Carriers are also required to display their name and address (city and State) on both sides of their power units. A carrier may display any name under which it operates. The address must be the principal place of business or the terminal where the vehicle is located.

The FMCSA uses the USDOT number to track carrier performance, primarily via the MCMIS, a mainframe computer system. It contains motor carrier data from a variety of sources: roadside inspections, accident reports, safety and compliance reviews, and enforcement actions.

The MCMIS is the linchpin of a number of the FMCSA's programs. Federal and State field personnel use the MCMIS to initiate enforcement actions and educational outreach programs. By using the data, potentially unsafe carriers can be targeted for attention, often including compliance reviews. Carriers could be flagged as unsafe if a high percentage of their vehicles were placed out-of-service during a roadside safety inspection, or if they experience an above average number of accidents. The FMCSA analysts and managers use the database for analysis purposes, including monitoring overall trends and evaluating program effectiveness.

In order to connect information from disparate sources, a unique identifier is required. For MCMIS, the USDOT number serves as the unique identifier. Without this number, there is no way to assign accidents, inspections, and other events to the correct motor carrier.

The existence of two identification numbers, the ICC/MC and the USDOT numbers, combined with a lack of consistency in the names displayed on vehicles, limits the effectiveness of the FMCSA's safety programs. Identification problems (such as those listed above) could result in a failure of the FMCSA to attribute a crash, or an OOS inspection, to the correct carrier. In FY 1996, the FMCSA was unable to match 12 percent of roadside inspections to the correct motor carrier. For accidents, the non-match rate was 30 percent. This failure rate means that the FMCSA is unaware of some carriers' poor safety records, and these carriers do not receive the attention their safety record merits, such as a safety review or educational assistance. As a result, crashes occur that this oversight might have forestalled.

In order to eliminate these problems and improve safety and the well-being of the public, the FMCSA is requiring all for-hire interstate carriers formerly regulated by the ICC to display their USDOT number on their vehicles (private carriers are already subject to this requirement). This rule would require all commercial motor vehicles, new or used, added to a motor carrier's fleet to have a USDOT number displayed after the effective date of this final rule. Owners of these vehicles would also be required to place either their legal name, or a single trade name, on their vehicles.

Existing vehicles which do not undergo a change in ownership would be required to display a USDOT number within two years of the effective date of this rule. Owners of existing vehicles would have five years to comply with the name requirements.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities. The economic impacts of this rule are discussed in the regulatory flexibility analysis, a copy of which is in the docket. Based on its analysis, the FMCSA believes that this rule will affect a substantial number of small entities, but will not have a significant economic impact on them. In compliance with the Regulatory Flexibility Act, the FMCSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The FMCSA estimates that 41,800 carriers with six or fewer power units will be covered by this regulation, as will another 7,600 with 7 to 20 power units. Our estimates indicate motor carriers with fewer than six power-units would absorb about 26 percent of all costs. This rule would cost the smallest carriers (those with fewer than six power-units) about $27 per vehicle. Those small motor carriers with 7 to 20 vehicles would incur a cost of $21 per vehicle. As a result of this, the smallest carriers, which compose 65 percent of all carriers regulated by the former ICC, bear approximately 20 percent of $5,696,036, the total cost of this proposal. The FMCSA does not see this as a substantial financial burden on small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. It has been determined that this rulemaking does not have a substantial direct effect on States, nor would it limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. An analysis of this rule has been made by the FMCSA, and it has been determined that it will affect the approved form (MCS–150) associated with a currently-approved information collection covered by OMB Control No. 2126–0013 (formerly 2125–0544). The wording in the Notice section of the MCS–150 will change; burden hours and numbers of respondents will not change as a result of this Final Rule. However, a revised estimate that reflects more accurate numbers of respondents and the time to complete the MCS–150 was done and submitted to the OMB in June 1999. The OMB approved that revision to the information collection on October 4, 1999; the approval period runs through October 31, 2002.

The NPRM that was published on June 16, 1998, solicited public comments on these information collection requirements as a component of the NPRM action. A summary of the comments that addressing the MCS–150 was previously provided to the OMB. Comments were neutral to favorable; in fact, several commenters asked the FMCSA to consider requiring motor carriers to provide regular updates of information contained in the MCS–150. A single State commenter contended that the MCS–150 contains superfluous information, discouraging States from using it to identify intrastate motor carriers. However, that State did not cite specific examples of data elements or information categories it believed to be confusing or redundant.

Section 390.19(a) changes the requirement of when Form MCS–150 must be filed from "within 90 days after beginning operations" to "before commencing operations." This change will be reflected on Form MCS–150 in the Notice section on the form; however, it will not affect the burden hours for this information collection.

The NPRM also included a proposed requirement that certain motor carriers submit an updated Form MCS–150 to the FMCSA within 90 days from the effective date of the rule. This proposed, updated form would only have been required from those motor carriers that were using a name for their business that was not one of the two names on the MCS–150 had filed with the agency. The FMCSA has eliminated this proposed requirement from the final rule, along with the additional burden hours it would have created.

Estimated Annual Reporting Burden

Number of respondents: 50,000 @ 20 minutes per respondent.

Burden Hours: 16,667.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action does not have any effect on the quality of the environment.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. "2 U.S.C. 1531 *et seq.*"

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutional Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 385

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 390

Highway safety, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

Issued on: May 25, 2000.

Clyde J. Hart, Jr.,

Acting Deputy Administrator.

In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, chapter III, parts 385 and 390, as follows:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, 31502; and 49 CFR 1.73.

§§ 385.21 and 385.23 [Removed]

2. Remove §§ 385.21 and 385.23.

Appendix A to Part 385—[Removed and Reserved]

3. Remove and reserve appendix A to part 385, Form MCS–150, Motor Carrier Identification Report.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL [AMENDED]

4. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 31504; and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.73.

§ 390.19 [Redesignated as § 390.17]

5. Redesignate § 390.19 as § 390.17.

6. A New § 390.19 reads as follows:

§ 390.19 Motor carrier identification report.

(a) All motor carriers conducting operations in interstate commerce shall file a Motor Carrier Identification Report, Form MCS–150, before commencing operations.

(b) The Motor Carrier Identification Report, Form MCS–150, with complete instructions, is available from all FMCSA Service Centers and Division offices nationwide and from the FMCSA's web site at: *http://www.mcs.dot.gov/factsfigs/formspubs.htm* or by calling 1–800–832–5660.

(c) The completed Motor Carrier Identification Report, Form MCS–150, shall be filed with the FMCSA's Office of Data Analysis and Information Systems, 400 Seventh Street, SW., Washington, DC 20590. A for-hire motor carrier should submit the Form MCS–150 along with its application for operating authority (Form OP–1) to the appropriate address referenced on that form or may submit it separately to the address mentioned in this section.

(d) Only the legal name or a single trade name of the motor carrier may be used on the motor carrier identification report (Form MCS–150).

(e) A motor carrier that fails to file a Motor Carrier Identification Report, Form MCS–150, or furnishes misleading information or makes false statements upon Form MCS–150, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(f) Upon receipt and processing of the Motor Carrier Identification Report, Form MCS–150, the FMCSA will issue the motor carrier an identification number (USDOT number). The motor carrier must display the number on each self-propelled CMV, as defined in § 390.5, along with the additional information required by § 390.21.

[Approved by the Office of Management and Budget under control number 2126–0013]

7. Revise § 390.21 to read as follows:

§ 390.21 Marking of CMVs.

(a) *General.* Every self-propelled CMV, as defined in § 390.5, subject to subchapter B of this chapter must be marked as specified in paragraphs (b), (c), and (d) of this section.

(b) *Nature of marking.* The marking must display the following information:

(1) The legal name or a single trade name of the motor carrier operating the self-propelled CMV, as listed on the motor carrier identification report (Form MCS–150) and submitted in accordance with § 390.19.

(2) The motor carrier identification number issued by the FMCSA, preceded by the letters "USDOT".

(3) If the name of any person other than the operating carrier appears on the CMV, the name of the operating carrier must be followed by the information required by paragraphs (b)(1), and (2) of this section, and be preceded by the words "operated by."

(4) Other identifying information may be displayed on the vehicle if it is not inconsistent with the information required by this paragraph.

(5) Each motor carrier shall meet the following requirements pertaining to its operation:

(i) All CMVs that are part of a motor carrier's existing fleet on July 3, 2000, and which are marked with an ICCMC number must come into compliance with paragraph (b)(2) of this section by July 3, 2002.

(ii) All CMVs that are part of a motor carrier's existing fleet on July 3, 2000, and which are not marked with the legal name or a single trade name on both sides of their CMVs, as shown on the Motor Carrier Identification Report, Form MCS–150, must come into compliance with paragraph (b)(1) of this section by July 5, 2005.

(iii) All CMVs added to a motor carrier's fleet on or after July 3, 2000, must meet the requirements of this section before being put into service and operating on public ways.

(c) *Size, shape, location, and color of marking.* The marking must—

(1) Appear on both sides of the self-propelled CMV;

(2) Be in letters that contrast sharply in color with the background on which the letters are placed;

(3) Be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the CMV is stationary; and

(4) Be kept and maintained in a manner that retains the legibility required by paragraph (c)(3) of this section.

(d) *Construction and durability.* The marking may be painted on the CMV or may consist of a removable device, if that device meets the identification and legibility requirements of paragraph (c) of this section, and such marking must be maintained as required by paragraph (c)(4) of this section.

(e) *Rented CMVs.* A motor carrier operating a self-propelled CMV under a rental agreement having a term not in excess of 30 calendar days meets the requirements of this section if:

(1) The CMV is marked in accordance with the provisions of paragraphs (b) through (d) of this section; or

(2) The CMV is marked as set forth in paragraph (e)(2)(i) through (iv) of this section:

(i) The legal name or a single trade name of the lessor is displayed in accordance with paragraphs (c) and (d) of this section.

(ii) The lessor's identification number preceded by the letters "USDOT" is displayed in accordance with paragraphs (c) and (d) of this section; and

(iii) The rental agreement entered into by the lessor and the renting motor carrier conspicuously contains the following information:

(A) The name and complete physical address of the principal place of business of the renting motor carrier;

(B) The identification number issued the renting motor carrier by the FMCSA, preceded by the letters "USDOT," if the motor carrier has been issued such a number. In lieu of the identification number required in this paragraph, the following may be shown in the rental agreement:

(*1*) Information which indicates whether the motor carrier is engaged in "interstate" or "intrastate" commerce; and

(*2*) Information which indicates whether the renting motor carrier is transporting hazardous materials in the rented CMV;

(C) The sentence: "This lessor cooperates with all Federal, State, and local law enforcement officials nationwide to provide the identity of customers who operate this rental CMV"; and

(iv) The rental agreement entered into by the lessor and the renting motor carrier is carried on the rental CMV during the full term of the rental agreement. See the leasing regulations at 49 CFR 376 for information that should be included in all leasing documents.

(f) *Driveaway services.* In driveaway services, a removable device may be affixed on both sides or at the rear of a single driven vehicle. In a combination driveaway operation, the device may be affixed on both sides of any one unit or at the rear of the last unit. The removable device must display the legal name or a single trade name of the motor carrier and the motor carrier's USDOT number.

8. Revise § 390.27 to read as follows:

§ 390.27 Locations of motor carrier safety service centers.

Service center	Territory included	Location of office
Eastern	CT, DC, DE, MA, MD, ME, NJ, NH, NY, PA, PR, RI, VA, VT, WV.	City Crescent Building, #10 South Howard Street, Suite 4000, Baltimore, MD 21201–2819.
Midwestern	IA, IL, IN, KS, MI, MO, MN, NE, OH, WI	19900 Governors Drive, Suite 210, Olympia Fields, IL 60461–1021.
Southern	AL, AR, FL, GA, KY, LA, MS, NC, NM, OK, SC, TN, TX	61 Forsyth Street, SW, Suite 17T75, Atlanta, GA 30303–3104.
Western	American Samoa, AK, AZ, CA, CO, Guam, HI, ID, Mariana Islands, MT, ND, NV, OR, SD, UT, WA, WY.	201 Mission Street, Suite 2100, San Francisco, CA 94105–1838.

§§ 390.401, 390.403, 390.405 and 390.407 (Subpart D) [Removed]

9. In part 390, remove subpart D, consisting of §§ 390.401, 390.403, 390.405 and 390.407.

[FR Doc. 00–13697 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–22–P

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Proposed Rules

Federal Register
Vol. 65, No. 107
Friday, June 2, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[FV–00–1216–PR]

Peanut Promotion, Research, and Information Order; Amendment No. 1 To Add a Public Member to the National Peanut Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would add a public member and alternate to the National Peanut Board (Board). The Board administers the Peanut Promotion, Research, and Information Order (Order) under the supervision of the U.S. Department of Agriculture (USDA or the Department). This rule would also add the authority for producers in minor peanut-producing states to conduct nominations by mail ballot, make changes related to the addition of the public member, and eliminate obsolete language. The addition of a public member is to provide for additional input from the public and increase the opportunity for diversity on the Board. The other proposed changes are intended to facilitate effective administration of the program.

DATES: August 1, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW, Washington, DC 20250–0244. Comments should be submitted in triplicate by August 1, 2000 and will be made available for public inspection at the above address during regular business hours or on the Internet at www.ams.usda.gov/fv/rpb.html. Comments may also be submitted electronically to: Malinda.Farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Daniel R. Williams II, Research and Promotion Branch, FV, AMS, USDA, Room 2535–S, Stop 0244, Washington, DC 20250–0244; toll free telephone number (888) 720–9917, or facsimile (202) 205–2800.

SUPPLEMENTARY INFORMATION: The rule is issued under the Peanut Promotion, Research, and Information Order (Order) (7 CFR part 1216). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) (Pub. L. 104–427, 7 U.S.C. 7401–7425).

Question and Answer Overview

Why Is USDA Proposing To Add a Public Member to the National Peanut Board?

A public member and alternate could provide valuable feedback to the Board in developing its consumer programs. In addition, these non-industry positions would increase the opportunity for women, minorities, and persons with disabilities to serve on the Board.

Why Is USDA Proposing To Allow Producers in Minor Peanut-Producing States To Nominate Persons To Serve as the At-Large Member and Alternate of the Board by Mail Ballot?

Allowing producers in minor peanut-producing states to make nominations for the at-large member and alternate of the Board by mail ballot would help ensure grater participation in the nomination process, particularly in those states with a small number of producers who are not located in close proximity.

How Long Do I Have To Comment on This Proposed Rule?

You have 60 days to comment on this proposal. That means that your written comments must be received by August 1, 2000. You may mail, fax, or e-mail your comments. In addition, you have 60 days to provide written comments to OMB on the paperwork burden associated with this proposal. Those comments must be received by the same date.

Executive Orders 12866 and 12998 and the Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has examined the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

There are approximately 25,000 producers and 57 handlers of peanuts who are subject to the program. Most producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201), and most of the handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than $5 million, and small agricultural producers are defined as those having annual receipts of not more than $500,000 annually.

This rule would add a public member and alternate to the National Peanut Board (Board), add the authority for producers in minor peanut-producing states to conduct nominations by mail ballot, make changes related to the addition of the public member, make changes for the purpose of clarification and consistency, and eliminate obsolete language.

The information collection requirements, as discussed below, would be minimal. The addition of a public member and authorizing producers in minor peanut-producing states to conduct nominations for the at-large member and at-large alternate members to the Board by mail ballot would not impose a significant economic burden on producers. In fact, allowing producers in minor peanut-producing states to use mail balloting is expected to facilitate greater participation in the nomination process, particularly in those states with a small number of producers who are not located in close proximity.

USDA has not identified any relevant federal rules that duplicate, overlap, or conflict with this rule.

Accordingly, the Administrator of AMS has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, and invite comments from interested persons concerning the potential effects of the proposed rule on small entities.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the background information form, which represents the information collection requirements that may be imposed by this rule, were submitted to OMB and have been approved under OMB control number 0505–0001.

Title: Advisory Committee Membership Background Information.

OMB Number: 0505–0001.

Expiration Date of Approval: July 31, 2002.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the terms of the proposed amendment. The burden associated with the background information form is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.50 hours per response for each nominee.

Respondents: Public member and alternate nominees.

Estimated Number of Respondents: 4.

Estimated Number of Responses per Respondent: 1 every 3 years.

Estimated Total Annual Burden on Respondents: 2 hours.

The estimated annual cost of providing the information by an estimated two nominees for public member and two nominees for alternate public member would be a total annual cost of $20.00 or $5.00 per nominee.

The additional burden of four respondents will be added to the information collections approved for use under OMB Number 0505–0001.

Comments are invited on: (a) Whether the proposed collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–0001, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the times frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

The paperwork reduction requirements for the use of mail ballots within the minor peanut-producing states would not increase the burden previously submitted to and approved by OMB. Therefore, no additional burden will need approval concerning the proposed change of using mail ballots for nominations in minor peanut-producing states. The estimated annual cost of providing the information by an estimated number of 35 respondents is $29.17 annually or $0.83 per respondent (35 respondents × .25 hour = 8.75 × $10.00 per hour = 87.50 dollars per hour/3 years = 29.17 dollars per year)

Background

The Order became effective on July 30, 1999, after a national referendum among all peanut producers. Under the Order, peanut producers are assessed 1 percent of the total value of all farmers stock peanuts, which generates about $10 million in annual revenues. The program is administered by the National Peanut Board (Board) under USDA supervision. The initial Board held its first meeting in Washington, DC, in March 2000.

The Board is composed of 10 members and 10 alternates, nominated by producers and appointed by the Secretary of Agriculture. There is one member and alternate for each of the nine primary peanut-producing states and one at-large member and alternate representing all other peanut-producing states.

Currently, the nine major peanut-producing states are (in descending order) Georgia, Texas, Alabama, North Carolina, Florida, Virginia, Oklahoma, New Mexico, and South Carolina. The minor peanut-producing states are Arizona, California, Louisiana, Mississippi, and Tennessee.

This rule would add the authority for the addition of a public member and alternate public member to the Board, add the authority for producers in minor peanut-producing states to conduct nominations by mail ballot, make changes related to the addition of the public member, make changes for the purpose of clarification, and eliminate obsolete language as explained below.

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Section 1216.40(a) *Establishment and membership* would be amended to add the authority for a public member and alternate to be appointed by the Secretary from nominations submitted by the Board and to provide eligibility requirements for the public member and alternate.

On December 15, 1999, the Secretary of Agriculture's Task Force (Task Force) on Research and Promotion Programs issued recommendations, which covered numerous areas relating to the operation of national commodity promotion boards supervised by USDA. One of the recommendations was that all national boards should have at least one public or consumer member. Subsequently, the North Carolina Farm Bureau and the National Farmers Union requested that USDA amend the Order to add a public member and alternate to the Board.

Therefore, this rule would add a public member and alternate to the Board. The addition of the public member and alternate would carry out the recommendations of the Task Force. The goal of the public member position is to provide valuable feedback to the board in developing its consumer programs. The addition of a public member and alternate would also increase the opportunity for women, minorities, and persons with disabilities to serve on the Board. The section is rewritten to remove language concerning nominations. Such information appears in § 1216.41.

Section 1216.41(a) *Nominations* would be amended to authorize producers in minor peanut-producing states to conduct nominations for the at-large member and at-large alternate member of the Board by mail ballot. This amendment would help ensure greater participation in the nomination process, particularly in those states with a small number of producers who are not located in close proximity. The initial nomination meetings in Fall 1999 in the minor peanut-producing states for the at-large member and alternate member of the Board were not well attended. In addition, the producer associations in several of the minor peanut-producing states requested that they be allowed to conduct their nominations by mail ballot. Based on experience during the initial nominations process, the Department believes the option of conducting nominations by mail ballot in the minor peanut-producing states should be available to the producers in these states.

Paragraph (b) of § 1216.41 would be revised to eliminate obsolete language relating to the initial nominations to the Board and to correct a typographical error.

In addition, a new paragraph (f) would be added to § 1216.41 to require the Board to submit a minimum of two nominees for the public member position and a minimum of two nominees for the alternate member position by May 1 or such other date as required by the Secretary. Further, changes to § 1216.41 are made for clarity and consistency of language.

Also related to the proposed addition of a public member and alternate, a new sentence would be added at the end of § 1216.42 *Selection* which states that the Secretary shall select one public member and one alternate public member from all eligible nominations submitted by the Board.

In addition, § 1216.45 *Alternate members* would be amended to make the references to Board members more generic so that this provision would cover the public member and alternate as well as the producer members and alternates.

Further, paragraph (b) of § 1216.46 *Procedure* would be revised to provide that the public member has one vote with a zero value of production at Board meetings. This paragraph also would be revised to increase the minimum number of concurring votes for approval of a Board motion from five to six because the Board would have 11 rather than 10 members. In addition, editorial changes were made for the purpose of clarity.

All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer Information, Marketing agreements, Peanut promotion, Reporting and recordkeeping requirements.

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

For the reasons set forth in the preamble, 7 CFR part 1216 is proposed to be amended as follows:

1. The authority citation for part 1216 continues to read as follows:

Authority: 7 U.S.C. 7401–7425.

2. Revise § 1216.40(a) to read as follows:

§ 1216.40 Establishment and membership.

(a) Establishment of a National Peanut Board. There is hereby established a National Peanut Board, hereinafter called the Board, composed of 10 peanut producers, one public member, and their alternates appointed by the Secretary as follows:

(1) Ten producer members and alternates. One member and one alternate for each primary peanut-producing state and one at-large member and one at-large alternate representing, collectively, the minor peanut-producing states.

(2) One public member and one alternate member. The public member and alternate member shall not represent an agricultural interest and shall not have a financial interest in, or be associated with the production, processing, financing, or marketing of peanuts except as a consumer, nor shall such members be a director, officer, or employee of any firm so engaged.

* * * * *

3. Revise § 1216.41 to read as follows:

§ 1216.41 Nominations.

(a) All nominations authorized under § 1216.40 shall be submitted to the Secretary by May 1 of the year in which the terms of office expire, or such other date as provided by the Secretary. A minimum of two nominees must be submitted for each vacancy.

(b) Producer members and alternates representing the primary peanut-producing states shall be nominated by eligible peanut producer organizations within each state as certified pursuant to § 1216.70. Each organization shall select nominees at an open meeting among peanut producers eligible to serve on the Board.

(c) The at-large producer member and alternate representing minor peanut-producing states shall be nominated by eligible peanut producer organizations or other organizations that include peanut producers as part of their membership as certified pursuant to § 1216.70. Each such organization may select nominees at an open meeting among peanut producers eligible to serve on the Board or by mail ballot. Any certified peanut producer organization representing a minor peanut-producing state may nominate two eligible persons for each member and two eligible persons for each alternate member.

(d) The Board shall make the nominations for the public member and alternate member.

(e) The Board shall issue the call for nominations by March 1 of each year or such other date as provide by the Secretary.

(f) The nomination meeting shall be announced 30 days in advance:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as deemed advisable.

(g) At nominations meetings, Department personnel will be present to oversee and to verify eligibility and count ballots.

4. Revise § 1216.42 to read as follows:

§ 1216.42 Selection.

From the nominations, the Secretary shall select the members of the Board and alternates for each primary peanut-producing state. The Secretary shall select one member and one alternate from all nominations submitted by certified peanut producer organizations or other organizations representing minor peanut-producing states. The Secretary shall select one public member and one alternate public member from nominations submitted by the Board.

5. Revise § 1216.45 to read as follows:

§ 1216.45 Alternate members.

An alternate member of the Board, during the absence of the member shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that member shall act for the member until a successor for such member is selected and qualified. In the event that both the member and the alternate member are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

6. Revise paragraph (b) of § 1216.46 to read as follows:

§ 1216.46 Procedure.

* * * * *

(b) At assembled meetings, all votes shall be cast in person. Producer member votes shall be weighted by value of production. The vote of producer members from primary peanut-producing states shall be weighted by the primary peanut-producing state's three-year running average of total gross farm income derived from all peanut sales. The at-large producer member's vote shall be weighted by the collective value of production from the three-year running average of total gross farm income derived from all peanut sales in all minor peanut-producing states. The public member shall have one vote. Any Board action shall require the concurring votes of members or alternates from states representing more than 50 percent of total U.S. gross farm income derived from all peanut sales, plus an additional two votes from any other Board members, provided a minimum of six votes concur.

* * * * *

Dated: May 26, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–13783 Filed 6–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–21]

Proposed Establishment of Class E Airspace; Columbia, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Columbia, KY. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Westlake Regional Hospital. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

DATES: Comments must be received on or before July 3, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–21, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Columbia, KY. A GPS SIAP, helicopter point in space approach, has been developed for Westlake Regional Hospital. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999,

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which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12886; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Columbia, KY [New]

Westlake Regional Hospital
Point In Space Coordinates
(Lat. 37°05′30″ N, long. 85°17′01″ W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 37°05′30″ N, long. 85°17′01″ W) serving Westlake Regional Hospital.

* * * * *

Issued in College Park, Georgia, May 22, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–13831 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–20]

Proposed Establishment of Class E Airspace: Albany, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Albany, KY. A Global Positioning System (GSP) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Clinton County Hospital. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

DATES: Comments must be received on or before July 3, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–20, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing data for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Albany, KY. A GPS SIAP, helicopter point in space approach, has been developed for Clinton County Hospital. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO KY E5 Albany, KY [New]

Clinton County Hospital
Point In Space Coordinates
(Lat. 36°41′55″ N, long. 85°07′57″ W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°41′55″ N, long. 85°07′57″ W) serving Clinton County Hospital.

* * * * *

Issued in College Park, Georgia, May 22, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–13832 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–05]

Proposed Establishment of Jet Route J–713

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Jet Route 713 (J–713) through Utah, Montana, and Wyoming. The FAA is proposing this action to improve the management of air traffic operations at the Salt Lake City International Airport and to enhance safety.

DATES: Comments must be received on or before July 17, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 00–ANM–05, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ANM–05." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Superintendent of Document's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 (part 71) to establish J–713 between Utah, Montana, and Wyoming. The FAA is proposing to

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establish J–713 for the following reasons: (1) The need for high altitude arrival and departure routing to and from the north of Salt Lake City; (2) to assist in the balancing of traffic flow between Brigham City One arrivals into Salt Lake City International Airport; and (3) the addition of this route would improve the overall management of air traffic operations and thereby enhance safety.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–713 [New]

From Billings, MT, via Boysen Reservoir, WY; Big Piney, WY; to Salt Lake City, UT.

* * * * *

Issued in Washington, DC, on May 18, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–13749 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB54

Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers; Amendments to the Provisions Governing Subordination Agreements Included in the Net Capital of a Futures Commission Merchant or Independent Introducing Broker

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend certain provisions of Regulation 1.17(h) which governs the net capital treatment of subordination agreements. Currently, futures commission merchants ("FCMs") and independent introducing brokers ("IBIs") that are members of a self-regulatory organization ("SRO"—*i.e.*, a contract market or the National Futures Association) and that are securities brokers or dealers registered with the Securities and Exchange Commission ("SEC") are required to obtain the approval of both a futures SRO and a securities designated examining authority ("DEA") for any proposed subordination agreement, proposed prepayment of a subordinated loan, or proposed reduction in the outstanding principal balance of a secured demand note. The proposed amendments would ease the regulatory burden imposed upon SROs, FCMs, and IBIs by allowing SROs, subject to the conditions set forth below, to rely on a DEA's review and approval of a proposed subordination agreement, a proposed prepayment of a subordinated loan, or a proposed reduction in the outstanding principal balance of a secured demand note submitted to the DEA by an FCM or IBI.

DATES: Comments must be received on or before July 3, 2000.

ADDRESSES: Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile to (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to "Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers—Subordination Agreements."

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; telephone (202) 418–5495; electronic mail *tsmith@cftc.gov*; or Henry J. Matecki, Financial Audit and Review Branch, Commodity Futures Trading Commission, 300 S. Riverside Plaza, Room 1600–N, Chicago, IL 60606; telephone (312) 886–3217; electronic mail *hmatecki@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Subordination Agreements Included in the Net Capital of a Futures Commission Merchant or Independent Introducing Broker

A. Background

Commission Regulation 1.17 [1] requires FCMs and IBIs to maintain minimum levels of adjusted net capital. [2] In computing adjusted net capital, FCMs and IBIs are permitted to exclude from liabilities funds received which are subordinated to the claims of all general creditors of the FCM or IBI pursuant to a "satisfactory subordination agreement," as defined in Regulation 1.17(h).[3]

Subordination agreements may take the form of either subordinated loan agreements or secured demand notes. Subordinated loan agreements are agreements evidencing a subordinated borrowing of cash by the FCM or IBI. Secured demand notes are agreements evidencing or governing the contribution of a secured demand note to an FCM or IBI and the pledge of securities and/or cash as collateral to secure payment of such note. The outstanding principal balances of a subordinated loan and a secured demand note are recorded as liabilities of an FCM or IBI.[4]

Regulation 1.17(h) sets forth several minimum requirements for the subordination agreements and other conditions that must be met in order for the agreements to qualify as "satisfactory" subordination agreements.[5] One condition, set forth in Regulation 1.17(h)(3)(vi), provides that an FCM or IBI may not treat any subordination agreement as a "satisfactory" subordination agreement for net capital purposes until the FCM's or the IBI's designated-self regulatory organization ("DSRO"), or the Commission if the FCM or the IBI is not a member of a DSRO, has reviewed the agreement and determined that it satisfies the minimum requirements set forth in Regulation 1.17(h).

Commission regulations also impose restrictions on an FCM's or IBI's ability to make a payment on a subordinated loan prior to the scheduled maturity date of such loan or to effect a full or partial reduction in the outstanding principal balance of a secured demand note. In this regard, Regulation 1.17(h)(2)(vii)(C) requires an FCM or IBI to obtain the written approval of its DSRO, or the Commission if the FCM or IBI is not a member of a SRO, prior to making a prepayment on a subordinated loan or prior to effecting a full or partial reduction in the outstanding principal balance of a secured demand note.

The Joint Audit Committee ("JAC") has requested that the Commission amend Regulations 1.17(h)(3)(vi) and 1.17(h)(2)(vii)(C).[6] The JAC states that the Commission's regulations governing subordination agreements, including the provisions cited above, are consistent with requirements imposed by the SEC on registered securities brokers or dealers. Therefore, registered FCMs and IBIs that are also registered as securities brokers or dealers with the SEC (hereinafter referred to as "dually-registered" FCMs or IBIs) are required to obtain the approvals of a futures market SRO and a securities market DEA prior to excluding subordination agreements from liabilities in computing net capital or prior to making a prepayment on a subordinated loan or effecting a reduction in the outstanding principal balance of a secured demand note.[7]

The JAC requests that the Commission amend Regulations 1.17(h)(3)(vi) and 1.17(h)(2)(vii)(C) to allow DSROs to adopt procedures that would permit a DSRO to rely on a DEA's review and approval of a proposed subordination agreement, a proposed prepayment of a subordinated loan, or a proposed reduction in the outstanding principal balance of a secured demand note submitted by a dually-registered FCM or IBI. In support of its position, the JAC states that since the Commission's and SEC's regulations are consistent with respect to subordination agreements, permitting the DSRO to rely on the review performed by a DEA will reduce the regulatory burden imposed upon dually-registered FCMs and IBIs without increasing the risk of noncompliance with Commission regulations. The JAC also states that the amendments would allow a DSRO to more efficiently use its financial surveillance resources.

B. Proposed Rule Amendments

The Commission is proposing to amend Regulations 1.17(h)(2)(vii)(C) and 1.17(h)(3)(vi) to allow a DSRO to rely on a review performed by a DEA with respect to a proposed subordination agreement, a proposed prepayment of a subordinated loan, or a proposed reduction of the outstanding principal balance of a secured demand note submitted by a dually-registered FCM or IBI. As noted above, the Commission's regulations regarding subordination agreements are consistent in all material respects with the rules of the SEC for brokers or dealers. In this regard, SEC Rule 15c3–1d(c)(6)(i) (17 CFR 240.15c3–1d(c)(6)(i)) is consistent with CFTC Regulation 1.17(h)(3)(vi) in that it requires a registered securities broker or dealer to file copies of any proposed subordination agreement with its DEA prior to the effective date of the agreement. The rule further provides that no subordination agreement shall be deemed a "satisfactory" subordination agreement for capital purposes until the DEA has determined that the agreement satisfies the minimum requirements for a satisfactory subordination agreement as set forth in the SEC's rules.[8]

Furthermore, SEC Rule 15c3–1d(b)(7) (17 CFR 240.15c3–1d(b)(7)) is consistent with CFTC Regulation 1.17(h)(2)(vii)(C) in that it requires a broker or dealer to obtain the written approval of its DEA prior to making a prepayment of a subordinated loan before the scheduled maturity date of the payment and prior to effecting a reduction in the outstanding principal balance of a secured demand note. Therefore, as noted above, subordination agreements of dually-registered FCMs and IBIs are currently subject to review and approval by two separate regulatory authorities applying consistent standards.

The proposed amendments would provide that a DSRO may rely on a DEA's review of a proposed subordination agreement or a request to make a prepayment on a subordinated loan or to reduce the outstanding principal balance of a secured demand note, provided that the dually-registered FCM or IBI files signed copies of the proposals with its applicable DEA, in the manner and form provided by the DEA, prior to the proposed effective dates. The proposal would also direct the FCM or IBI to file copies of the proposals with its DSRO prior to the respective effective dates and to file copies of the DEA's approval of the transactions with the DSRO immediately upon receipt of such approval.

The requirement that the FCM or IBI file copies of the proposals with its DSRO provides the DSRO with an opportunity to review the transactions to ensure compliance with Commission regulations prior to the effective dates. The proposed amendments would

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[1] Commission regulations cited herein may be found at 17 CFR Ch. I (1999).

[2] Adjusted net capital is generally defined as current assets less liabilities. *See* Regulation 1.17(c)(5).

Regulation 1.17(a)(1)(i) requires FCMs to maintain minimum adjusted net capital of the greatest of: (1) $250,000; (2) four percent of the customer funds required to be segregated and set aside pursuant to the Act and the regulations, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid provided that the deduction for each customer is limited to the amount of customer funds in such customer's account(s); (3) the amount of adjusted net capital required by a registered futures association of which the FCM is a member; or (4) for securities brokers and dealers, the amount of net capital required by SEC Rule 15c3–1(a) (17 CFR 240.15c3–1(a)).

Regulation 1.17(a)(1)(ii) requires IBIs to maintain minimum adjusted net capital of the greatest of: (A) $30,000; (B) the amount of adjusted net capital required by a registered futures association of which the IBI is a member; or (C) for securities brokers and dealers, the amount of net capital required by SEC Rule 15c3–1(a).

[3] Regulation 1.17(c)(4)(i).

[4] *See* Regulation 1.17(h)(1).

[5] A contract market may impose, or an FCM or IBI may require, conditions or restrictions in addition to those established by the Commission provided that such conditions or restrictions do not cause the subordination agreement to fail to meet the minimum requirements of Regulation 1.17(h).

[6] The JAC is comprised of representatives of the audit and compliance departments of the self-regulatory organizations ("SROs") and National Futures Association. The JAC coordinates the industry's audit and ongoing surveillance activities to promote a uniform framework of self-regulation.

[7] Rule 15c3–1(c)(12) of the SEC, 17 CFR 240.15c3–1(c)(12), defines DEA as the national securities exchange or the national securities association of which the broker or dealer is a member, or if the broker or dealer is member of more than one such exchange or association, the exchange or association designated by the SEC as the examining authority of the broker or dealer.

[8] The SEC's minimum requirements for a satisfactory subordination agreement are set forth in Rule 15c3–1d(2) (17 CFR 240.15c3–1d(2)) and are comparable to the minimum requirements established by the Commission in Regulation 1.17(h)(2).

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further provide that the DEA's review and approval of the proposals would be deemed, absent objection by the DSRO, a finding by the DSRO that the proposals meet the minimum requirements and conditions set forth in Commission Regulation 1.17(h). The final responsibility for ensuring that the proposals satisfy the minimum Commission requirements, however, would remain with the DSROs.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The proposed rule amendments discussed herein would affect FCMs and IBIs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[9]

With respect to IBIs, the Commission stated that it is appropriate to evaluate within the context of a particular rule whether some or all introducing brokers should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[10] The proposed amendments to Regulations 1.17(h)(2)(vii)(C) and 1.17(h)(3)(vi) do not impose additional requirements on an IBI. Thus, on behalf of the Commission, the Chairman certifies that the proposed rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (Supp. I 1995), imposes certain requirements on federal agencies (including the Commission) to review rules and rule amendments to evaluate the information collection burden that they impose on the public. The Commission believes that the proposed amendments to Regulation 1.17(h) do not impose an information collection burden on the public.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6d, 6g and 12a(5), the Commission hereby proposes to amend chapter I of Title 17 of the Code of Federal Regulations as follows:

[9] 47 FR 18618, 18619–18620 (April 30, 1982).
[10] 48 FR 35248, 35275–78 (August 3, 1983).

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.17 is proposed to be amended by revising paragraphs (h)(2)(vii)(C) and (h)(3)(vi) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(h) * * *

(2) * * *

(vii) * * *

(C)(*1*) Notwithstanding the provisions of paragraphs (h)(2)(vii)(A) and (h)(2)(vii)(B) of this section, in the case of an applicant, no prepayment or special prepayment shall occur without the prior written approval of the National Futures Association; in the case of a registrant, no prepayment or special prepayment shall occur without the prior written approval of the designated self-regulatory organization, if any, or of the Commission if the registrant is not a member of a self-regulatory organization.

(*2*) A registrant may make a prepayment or special prepayment without the prior written approval of the designated self-regulatory organization: Provided, That the registrant: is a securities broker or dealer registered with the Securities and Exchange Commission; files a request to make a prepayment or special prepayment with its applicable securities designated examining authority, as defined in Rule 15c3–1(c)(12) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(12)), in the form and manner prescribed by the designated examining authority; files a copy of the prepayment request or special prepayment request with the designated self-regulatory organization at the time it files such request with the designated examining authority in the form and manner prescribed by the designated self-regulatory organization; and files a copy of the designated examining authority's approval of the prepayment or special prepayment with the designated self-regulatory organization immediately upon receipt of such approval. The approval of the prepayment or special prepayment by the designated examining authority will be deemed approval by the designated self-regulatory organization, unless the designated self-regulatory organization notifies the registrant that the designated examining authority's approval shall not constitute designated self-regulatory organization approval.

(*3*) The designated self-regulatory organization shall immediately provide the Commission with a copy of any notice of approval issued where the requested prepayment or special prepayment will result in the reduction of the registrant's net capital by 20 percent or more or the registrant's excess adjusted net capital by 30 percent or more.

(3) * * *

(vi) Filing. An applicant shall file a signed copy of any proposed subordination agreement (including nonconforming subordination agreements) with the National Futures Association at least ten days prior to the proposed effective date of the agreement or at such other time as the National Futures Association for good cause shall accept such filing. A registrant that is not a member of any designated self-regulatory organization shall file two signed copies of any proposed subordination agreement (including nonconforming subordination agreements) with the regional office of the Commission nearest the principal place of business of the registrant (except that a registrant under the jurisdiction of the Commission's Western Regional Office shall file such copies with the Commission's Southwestern Regional Office) at least ten days prior to the proposed effective date of the agreement or at such other time as the Commission for good cause shall accept such filing. A registrant that is a member of a designated self-regulatory organization shall file signed copies of any proposed subordination agreement (including nonconforming subordination agreements) with the designated self-regulatory organization in such quantities and at such time as the designated self-regulatory organization may require prior to the effective date. The applicant or registrant shall also file with said parties a statement setting forth the name and address of the lender, the business relationship of the lender to the applicant or registrant and whether the applicant or registrant carried funds or securities for the lender at or about the time the proposed agreement was so filed. A proposed agreement filed by an applicant with the National Futures Association shall be reviewed by the National Futures Association, and no such agreement shall be a satisfactory subordination agreement for the purposes of this section unless and until the National Futures Association has found the agreement acceptable and such agreement has become effective in the form found acceptable. A proposed agreement filed by a registrant shall be reviewed by the designated self-regulatory organization with whom such an agreement is required to be filed prior to its becoming effective or, if the registrant is not a member of any designated self-regulatory organization, by the regional office of the Commission where the agreement is required to be filed prior to its becoming effective. No proposed agreement shall be a satisfactory subordination agreement for the purposes of this section unless and until the designated self-regulatory organization or, if a registrant is not a member of any designated self-regulatory organization, the Commission, has found the agreement acceptable and such agreement has become effective in the form found acceptable: Provided, however, That a proposed agreement shall be a satisfactory subordination agreement for purpose of this section if the registrant: is a securities broker or dealer registered with the Securities and Exchange Commission; files signed copies of the proposed subordination agreement with the applicable securities designated examining authority, as defined in Rule 15c3–1(c)(12) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(12)), in the form and manner prescribed by the designated examining authority; files signed copies of the proposed subordination agreement with the designated self-regulatory organization at the time it files such copies with the designated examining authority in the form and manner prescribed by the designated self-regulatory organization; and files a copy of the designated examining authority's approval of the proposed subordination agreement with the designated self-regulatory organization immediately upon receipt of such approval. The designated examining authority's determination that the proposed subordination agreement satisfies the requirements for a satisfactory subordination agreement will be deemed a like finding by the designated self-regulatory organization, unless the designated self-regulatory organization notifies the registrant that the designated examining authority's determination shall not constitute a like finding by the designated self-regulatory organization.

* * * * *

Issued in Washington D.C. on May 25, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–13606 Filed 6–1–00; 8:45 am]

BILLING CODE 6351–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180

[OPP–300976; FRL–6491–9]

RIN 2070–AB78

Methyl Parathion; Notice of Proposed Tolerance Revocations and Channels of Trade Provision Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke the tolerances for the insecticide methyl parathion on the following commodities: apples, artichokes, beets (greens alone), beets (with or without tops), birdsfoot trefoil forage, birdsfoot trefoil hay, broccoli, Brussels sprouts, carrots, cauliflower, celery, cherries, collards, grapes, kale, lentils, kohlrabi, lettuce, mustard greens, nectarines, peaches, pears, plums (fresh prunes), rutabagas (with or without tops), rutabaga tops, spinach, tomatoes, turnips (with or without tops), turnip greens, vegetables leafy Brassica (cole), and vetch. Additionally, EPA proposes to amend the following tolerances: beans (amend to beans, dried), peas (amend to peas, dried) so that methyl parathion is not used on succulent beans and peas. Note that methyl parathion may still be used on lentils; however, residues on lentils are covered by the tolerance for peas, dried. Foods legally treated with methyl parathion may continue to be marketed under the provisions of the Federal Food, Drug, and Cosmetic Act (FFDCA). The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the FFDCA. By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. These tolerances were established under section 408 of the FFDCA, 21 U.S.C. 346a. EPA is proposing to revoke these tolerances because the Agency has canceled the pesticide registrations under FIFRA, 7 U.S.C. 136 *et seq.*, associated with them. EPA encourages you to comment on the tolerance revocations and on the proposed time frame for tolerance revocation.

The Food and Drug Administration (FDA) in a related notice published elsewhere in this issue of the **Federal Register** is announcing the availability of a proposed guidance document presenting FDA's policy on its planned enforcement approach for foods containing methyl parathion residues. This guidance will assist firms in understanding the types of showing under 408(1)(5) of the FFDCA (hereinafter referred to as the "channels of trade provision") that FDA may find satisfactory in accordance with its planned enforcement approach for such section. EPA and FDA are cooperating on this effort. FDA will be asking for comment on this proposed guidance and EPA also encourages you to comment on this guidance.

DATES: Comments, identified by the docket control number [OPP–300976], must be received on or before August 1, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** section of this proposed rule. Be sure to identify docket number OPP–300976.

FOR FURTHER INFORMATION CONTACT: Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Office location: CM #2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA, telephone: (703) 305–5776; e-mail: parsons.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Potentially affected categories and entities may include, but are not limited to the following:

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Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing
Agricultural Stakeholders		Growers/Agricultural Workers, Contractors (Certified/Commercial Applicators, Handlers, Advisors, etc.), Commercial Processors, Pesticide Manufacturers, User Groups, Food Consumers
Food Distributors		Wholesale Contractors, Retail Vendors, Commercial Traders/Importers
Inter governmental Stakeholders		State, Local, and/or Tribal Government Agencies
Foreign Entities		Governments, Growers, Trade Groups, Exporters

This listing is not exhaustive, but is a guide to entities likely to be affected by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300976. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–300976 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–300976. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. General

In August 1999, the methyl parathion registrants submitted requests to voluntarily cancel registration of products containing methyl parathion for certain uses as the result of an agreement reached between EPA and the registrants. Given the risks associated with use of methyl parathion under the existing terms and conditions of use, EPA granted the requests for voluntary cancellation. In the **Federal Register** of October 27, 1999 (64 FR 57877) (FRL–6387–8), EPA published a notice announcing the cancellation of all methyl parathion uses on fruits and most uses on vegetables. The notice of voluntary cancellation, the date of allowable use, and the intent to revoke the methyl parathion tolerances were widely publicized. The U.S. Department of Agriculture (USDA) sent notification to our trading partners through the World Trade Organization notification procedures. EPA also notified the regulatory authorities in over 145 countries as per FIFRA 17(b). For the canceled crops, use of existing stocks of methyl parathion was allowed until December 31, 1999.

On August 2, 1999, the EPA Administrator stated that while the current food supply is safe, the cancellation of certain uses of methyl parathion makes the food supply safer. This action is part of EPA's overall effort to reduce risks to the food supply under the Congressional mandate imposed by the Food Quality Protection Act (FQPA).

B. What Action Is The Agency Taking?

After consultation with FDA, USDA and stakeholders, EPA is proposing to revoke the tolerances for the insecticide methyl parathion on the following commodities: apples, artichokes, beets (greens alone), beets (with or without tops), birdsfoot trefoil forage, birdsfoot trefoil hay, broccoli, Brussels sprouts, carrots, cauliflower, celery, cherries, collards, grapes, kale, kohlrabi, lentils, lettuce, mustard greens, nectarines, peaches, pears, plums (fresh prunes), rutabagas (with or without tops), rutabaga tops, spinach, tomatoes, turnips (with or without tops), turnip greens, vegetables leafy *Brassica* (cole), and vetch. Additionally, EPA proposes to amend the following tolerances: beans (amend to beans, dried), peas (amend to peas, dried) so that methyl parathion is not used on succulent beans and peas. Note that methyl parathion may still be used on lentils; however, residues on lentils are covered by the tolerance for peas, dried, and therefore, the tolerance on lentils is proposed for revocation because it is unnecessary.

C. Why Is This Action Being Proposed?

Under FFDCA section 408(l)(2), if EPA cancels each FIFRA registration for the use of a pesticide on a food "due in whole or in part to dietary risks to humans posed by residues of that pesticide chemical on food," EPA is required to revoke any tolerance or exemption that in connection with the canceled use allows residues of the pesticide on food. This provision imposes a mandatory duty on EPA. Once EPA cancels a FIFRA use due to dietary risks, EPA must revoke the associated tolerances and exemptions. Under 408(l)(5), foods legally treated prior to the use cancellation may continue to be marketed.

On August 2, 1999, EPA completed a refined risk assessment of methyl parathion as part of the tolerance reassessment program under section 408(q) of the FFDCA. This dietary risk assessment was based on residues of methyl parathion detected in some foods from USDA's Pesticide Data Program which monitors for pesticides in certain foods at the distribution points just before release to supermarkets and grocery stores. The assessment was conducted applying an additional 10-fold safety factor to increase the margin of safety as mandated by FQPA. That refined risk assessment showed acute dietary risks from methyl parathion in food above the EPA's level of concern (Revised Human Health Risk Assessment for Methyl Parathion, August 1999). The registrants' request for cancellation was in response to potential Agency action to revoke the tolerances and cancel the registrations because of dietary risk, and thus the cancellation action was "due in whole or part to dietary risks to humans posed by residues of that pesticide chemical on food." Accordingly, under section 408(l)(2), the above-described tolerances must be revoked.

On October 27, 1999, EPA published a notice in the **Federal Register** (64 FR 57877) announcing the cancellation of multiple FIFRA registered uses including those commodities for which tolerance revocation has been proposed in the document.

Although this cancellation notice was requested by the methyl parathion registrants, the cancellation closely followed, and in EPA's view, was precipitated by EPA's determination that aggregate exposure to methyl parathion exceeded the revised, more stringent safety standard under the FQPA.

D. What Is the Agency's Authority for Taking This Action?

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. 21 U.S.C. 342(a). FFDCA section 301 prohibits, among other things, introduction or delivery for introduction into interstate commerce of any adulterated food. 21 U.S.C. 331(a). For a food-use pesticide to be sold and distributed, the pesticide must be registered under section 3, section 5, or section 18 of FIFRA (7 U.S.C. *et seq.*) Food-use pesticides not registered in the United States may have tolerances for residues of such pesticides in or on commodities imported into the United States.

Monitoring and enforcement of pesticide tolerances and exemptions are carried out by the FDA and the USDA. This includes monitoring for pesticide residues in or on commodities imported into the United States.

E. When Do These Actions Become Effective?

Under FFDCA section 408(l)(2), revocations required by that provision must take place not later than 180 days after the date such cancellation takes effect or the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later. The date for the cancellation of the FIFRA registrations for the affected methyl parathion uses is October 27, 1999. Use of methyl parathion on the affected crops became unlawful on December 31, 1999.

EPA intends to finalize this action as quickly as possible after consideration of comments. The tolerance revocation is proposed to be effective on the date of final publication.

F. Will Food Treated Prior to the Last Lawful Date of Application Be Permitted to Clear the Channels of Trade?

Any commodities listed in the regulatory text of this document that are treated with the methyl parathion, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the FQPA. Under this section, any residue of methyl parathion in or on such commodities shall not render the commodities adulterated so long as it is shown to the satisfaction of FDA that:

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1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. The channels of trade provision allows for the orderly marketing of foods that may currently contain legal residues resulting from lawful applications of methyl parathion.

Use of methyl parathion as to the canceled uses became unlawful under FIFRA on December 31, 1999, the last date on which use of existing stocks was permitted. Although application of methyl parathion outside the United States is outside the scope of the limitation on use of existing stocks and thus is not per se prohibited after December 31, 1999, EPA considers commodities with residues resulting from application outside the U.S. after that date not to be subject to the channels of trade provision in 408(l)(5). Therefore, both domestic and foreign commodities treated subsequent to December 31, 1999, would not be present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and thus, would not comply with the channels of trade provision.

FDA is announcing, elsewhere in this issue of the **Federal Register**, the availability of proposed guidance document on how it plans to enforce FFDCA section 408(l)(5) for both domestic and imported commodities. FDA will invite comment on this draft guidance before issuing any final guidance. EPA encourages all interested parties to comment on FDA's draft guidance.

G. May Interested Persons Comment on This Proposal?

Yes. EPA is requesting comment on this proposal. In particular, EPA requests comment on the following issues:

1. Under FQPA, EPA indentified dietary risk from certain uses of methyl parathion. In light of this risk, the methyl parathion registrants proposed voluntary cancellation of certain uses under the August 2, 1999 Memorandum of Agreement. EPA interprets 408(l)(2) of the FFDCA which calls for tolerance revocation within 180 days of final use to apply to both cancellations effected through FIFRA 6(f) (voluntary action by a registrant) and those effected through FIFRA 6(b) (an Agency initiated cancellation action). The Agency seeks comment on the application of 408(l)(2) to voluntarily initiated cancellations.

2. Are there any alternate approaches within the legal confines of the FFDCA for avoiding any potential problems to commerce or trade caused by revocation of these tolerances subject to the channels of trade provision?

3. EPA is also providing the opportunity to comment on the methyl parathion registrants requests to cancel various methyl parathion uses. See Unit IV.

H. What Can I Do If I Wish the Agency to Maintain a Tolerance That the Agency Is Proposing to Revoke?

Given the language of section 408(l)(2) and the dietary risks posed by these uses and tolerances for methyl parathion, EPA does not believe that these tolerances can be maintained in compliance with FFDCA. However, any person may petition EPA to establish new tolerances. Petitioners should consult EPA regulations and guidance on the necessary data and information to support tolerance petitions.

I. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August 2006. As of April 25, 2000, EPA has assessed over 3,471 tolerances. This document proposes to revoke 30 methyl parathion tolerances; however, 27 of these 30 tolerances are expressed as parathion which may be either ethyl parathion or methyl parathion and 3 of the 30 tolerances are methyl parathion alone. Therefore, 3 tolerances will be counted among reassessments made toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Proposed Actions Consistent With International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically-produced and imported foods. In addition, EPA is proposing to revoke these tolerances because it received voluntary requests to cancel the related methyl parathion registrations which was precipitated by EPA's risk assessment showing dietary risks from methyl parathion.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. The U.S. EPA has developed guidance concerning submissions for import tolerance support. This guidance will be made available to interested persons.

IV. Request for Comment on the Request for Cancellation of the Methyl Parathion Registrations

In a Memorandum of Agreement effective August 2, 1999, all registrants of products containing methyl parathion agreed to request cancellation of their registrations for use of methyl parathion on all fruits, many vegetables, and all non-food and non-feed uses. Those requests for cancellation were received shortly thereafter, and EPA published a notice in the **Federal Register** announcing those requests and accepting them (64 FR 57877). That notice informed the public of how it could comment on the request for cancellation but also stated that EPA was waiving the comment period and approving the cancellation request upon the date of publication of the notice.

Several parties have filed an action against the Agency claiming that EPA unlawfully did not allow comment on the request for cancellation of methyl parathion. Actually, EPA provided several opportunities for comment concerning methyl parathion. Comments on the risk assessment were provided by several parties. After considering these comments and reaching agreement with the methyl parathion registrants, EPA released its revised risk assessment of methyl parathion to the public on August 3, 1999. A small number of comments were received on this revised assessment which did not alter the risk conclusions. Additionally, no comments were submitted on the **Federal Register** notice announcing receipt and acceptance of the cancellation requests.

Nonetheless, to assure that all affected parties have an opportunity to comment on the methyl parathion cancellations, EPA is allowing further comments on the registrants' requests for cancellation of the above-referenced methyl parathion uses. Although these cancellation requests have already been accepted, such comments would still be relevant to Agency decision making. First, such comments may influence EPA regarding whether it is appropriate to press forward with the proposed tolerance revocation. If it can be shown that EPA erred in accepting these cancellation requests, EPA will need to consider whether revocation of associated tolerances is the proper course. Second, EPA believes that one of the primary purposes of the comment period on cancellation requests is to allow other parties to come forward and seek a registration for the affected pesticide. That opportunity still exists and any interested party can so notify EPA by filing a registration application. EPA would note, however, that such applicant would have to overcome the risk concerns that EPA has identified regarding methyl parathion.

V. How Do the Regulatory Assessment Requirements Apply to This Proposed Action?

This action is proposing to revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action, i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. The factual basis and the Agency's certification under section 605(b) for tolerance revocations published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Since no extraordinary circumstances exist as to the present revocation that would change EPA's previous analysis, the Agency is able to reference the general certification. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 19, 2000.

Jack E. Housenger,

Director, Special Review and Reregistration Division, Office of Pesticide Programs

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.121 is revised to read as follows:

§ 180.121 Parathion or its methyl homolog; tolerances for residues.

(a) General. (1) Tolerances are established for residues of the insecticide parathion (*O,O*-Diethyl-*O*-*p*-nitrophenyl thiophosphate) or its methyl homolog in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa (fresh)	1.25
Alfalfa (hay)	5
Almonds	0.1
Almond hulls	3
Apricots	1
Avocados	1
Barley	1
Beans, dried	1
Beets, sugar	0.1
Beets, sugar, (tops)	0.1
Blackberries	1
Blueberries (huckleberries)	1
Boysenberries	1
Cabbage	1
Clover	1
Corn	1
Corn, forage	1
Cotton, seed	0.75
Cranberries	1
Cucumbers	1
Currants	1
Dates	1
Dewberries	1
Eggplants	1
Endive (escarole)	1
Figs	1
Filberts	0.1
Garlic	1
Gooseberries	1
Grass (forage)	1
Guavas	1
Hops	1
Mangos	1
Melons	1
Mustard seed	0.2
Oats	1
Okra	1
Olives	1
Onions	1
Parsnips (with or without tops)	1
Parsnip greens (alone)	1
Peanuts	1
Peas, dried	1
Pea, forage	1
Pecans	0.1
Peppers	1

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Commodity	Parts per million
Pineapples	1
Potatoes	0.1
Pumpkins	1
Quinces	1
Radish (with or without tops)	1
Radish (tops)	1
Rape, seed	0.2
Raspberries	1
Rice	1
Safflower seed	0.1
Sorghum	0.1
Sorghum, fodder	3
Sorghum forage	3
Soybeans	0.1
Soybean hay	1
Squash	1
Strawberries	1
Summer squash	1
Sunflower seed	0.2
Sweet potatoes	0.1
Swiss chard	1
Walnuts	0.1
Wheat	1
Youngberries	1

(2) Tolerances are established for residues of the insecticide parathion (*O,O*-Dimethyl-*O*-*p*-nitrophenyl thiophosphate) the methyl homolog of parathion in or on the following raw agricultural commodities:

Commodity	Parts per million
Guar beans	0.2
Parsley	1

(3) Tolerances are established for residues of the insecticide parathion (*O,O*-Dimethyl-*O*-*p*-nitrophenyl thiophosphate) (ethyl parathion) in or on the following raw agricultural commodities:

Commodity	Parts per million
Apples	1
Artichokes	1
Beet greens (alone)	1
Beets (with or without tops)	1
Broccoli	1
Brussels sprouts	1
Carrots	1
Cauliflower	1
Celery	1
Cherries	1
Collards	1
Grapes	1
Kale	1
Kohlrabi	1
Lettuce	1
Mustard greens	1
Nectarines	1
Peaches	1
Pears	1
Plums (fresh prunes)	1
Rutabagas (with or without tops)	1
Rutabaga tops	1
Spinach	1
Tomatoes	1
Turnips (with or without tops)	1
Turnip greens	1
Vetch	1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

(e) *Revoked tolerances subject to the channel of trade provisions.* The following table lists commodities for which methyl parathion use was unlawful after December 31, 1999, and the revoked tolerances. Commodities with residues of methyl parathion resulting from lawful use are subject to the channels of trade provisions of section 408(1)(5) of the FFDCA.

Commodity	Parts per million
Apples	1
Artichokes	1
Beet greens (alone)	1
Beets (with or without tops)	1
Birdsfoot trefoil (forage)	1.25
Birdsfoot trefoil (hay)	5
Broccoli	1
Brussels sprouts	1
Carrots	1
Cauliflower	1
Celery	1
Cherries	1
Collards	1
Grapes	1
Kale	1
Kohlrabi	1
Lettuce	1
Mustard greens	1
Nectarines	1
Peaches	1
Pears	1
Plums (fresh prunes)	1
Rutabagas (with or without tops)	1
Rutabaga tops	1
Spinach	1
Tomatoes	1
Turnips (with or without tops)	1
Turnip greens	1
Vegetables leafy Brassica (cole)	1
Vetch	1

[FR Doc. 00–13311 Filed 6–1–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 00–99; FCC 00–186]

Availability of INTELSAT Space Segment Capacity To Direct Access Users

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission requests information and comment on whether users or service providers of telecommunications services have sufficient opportunity to access INTELSAT space segment capacity directly from INTELSAT to meet their service and capacity requirements. The Notice of Proposed Rulemaking also seeks comment on potential Commission action should it conclude that sufficient opportunity does not exist for users and service providers to access INTELSAT directly.

DATES: Submit comments on or before June 23, 2000; submit reply comments on or before July 6, 2000; and submit responses to reply comments on July 11, 2000.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption proceeding, however, commentors must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commentors should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commentors should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form<your e-mail address>." A sample form and directions will be sent in reply.

FOR FURTHER INFORMATION CONTACT: James Ball, 202–418–0427

Michael McCoin, 202–418–0774
Alexandria Field, 202–418–2064

SUPPLEMENTARY INFORMATION:

1. The Commission is required to conduct this rulemaking pursuant to the recently enacted Open-Market Reorganization for the Betterment of International Telecommunications Act (the ORBIT Act). Section 641(b) of the ORBIT Act requires the Commission to determine whether "sufficient opportunity" exists for users and service providers "to access INTELSAT space segment capacity directly from INTELSAT to meet their service and capacity requirements." If the Commission finds that "sufficient opportunity" does not exist, the Commission is required to "take appropriate action to facilitate direct access," and otherwise "to take such steps as may be necessary to prevent circumvention of the intent" of the section. Section 641(c) of the Act states that "nothing in this section shall be construed to permit the modification or abrogation of any contract."

2. In 1999, the Commission permitted users and service providers in the United States to obtain Level 3 direct access to INTELSAT space segment capacity. Direct Access to the INTELSAT System (Report and Order), 64 FR 54561 (October 7, 1999), 14 FCC Rcd 15703 (1999). Level 3 access permits non-signatory users and service providers to enter into contractual agreements with INTELSAT for space segment capacity at the same rates that INTELSAT charges its Signatories. The subsequently enacted ORBIT Act mandates that users and providers of telecommunications services shall be permitted to obtain Level 3 direct access to INTELSAT and requires the Commission to conduct this rulemaking.

3. The Notice requests comment on whether users and service providers have sufficient opportunity to access INTELSAT capacity directly to meet their service or capacity requirements. There are two parts to this issue: (1) The impact of INTELSAT's current distribution procedures on users and service providers seeking direct access, and (2) the availability of INTELSAT existing and planned space segment capacity to satisfy the needs of users and service providers. The Notice reviews INTELSAT's current distribution arrangements and tentatively concludes that these arrangements could disadvantage new direct access users in obtaining capacity. The Notice also seeks comment on the effect of post-privatization distribution arrangements on the ability of U.S. users and service providers to access INTELSAT directly.

4. Additionally, the Notice identifies those existing and planned satellites capable of serving the United States. It requires Comsat Corporation, the U.S. Signatory to INTELSAT, to provide information both as to what capacity on these satellites is uncommitted and what capacity has been committed, either to Comsat or other Signatories under INTELSAT's current distribution arrangements. The Notice requests users and service providers to comment on whether uncommitted capacity on existing and planned satellites will give them sufficient opportunity to access INTELSAT directly to meet their service and capacity requirements.

5. The Notice also requests comment on what alternatives exist for taking "appropriate action" if the Commission finds that "sufficient opportunity" does not exist for users and service providers to access INTELSAT directly. The Notice tentatively concludes that the first option for resolving capacity shortage problems should be commercial solutions between Comsat and users or service providers. The Notice further requests comment on regulatory actions that may be appropriate if commercial solutions appear unattainable. It requests comment on whether such actions may be necessary. Comsat has tied up future capacity on planned and yet-to-be launched satellites that is unique to the needs of a particular user or service provider because of operational requirements of its foreign correspondent or other operational, commercial, technical or economic considerations. The burden would be on the user or service provider to demonstrate that capacity is unique and regulatory action required.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in paragraphs 34 through 38. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. 5 U.S.C. 603(a). In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

[1] 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law. 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

I. Need for, and Objectives of, the Proposed Rules

The purpose of the Notice is to comply with the Orbit Act requirement that the Commission initiate a notice and comment proceeding to determine whether sufficient opportunity exists for users and service providers to access INTELSAT space segment capacity directly to meet their service or capacity requirements. If commentors believe that the proposals discussed in the Notice require additional RFA analysis, they should include a discussion of this in their comments.

II. Legal Basis

The authority for the Notice is pursuant to the authority contained in sections 1, 4(i), 4(j), 201, 202, 214 and Title III and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201, 202, 214, 301 *et seq.* and 403, and sections 102(c), 201(c)(2), and c(11), of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c), 741(c)(12) and (11), section 641 of the Open-Market Reorganization for the Betterment of International Telecommunications Act, Public Law 106–180, 114 Stat. 48 (2000) 641, the applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, and 5 U.S.C. 553 of the Administrative Procedures Act.

III. Description and Estimate of the Number of Small Entities to Which Proposed Rule Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization" and "small business concern" under Section 3 of the Small Business Act. A "small business concern" is one which is (1) independently owned and operated; (2) not dominant in its field of operation; (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). 15 U.S.C. 632.

The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration ("SBA") rules applicable to Communications Services

"Not Elsewhere Classified." This definition provides that a small entity is one with $11 million or less in annual receipts. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899. According to the SBA, the Census Bureau estimates that there are approximately 631 entities providing communications services, not elsewhere classified. Of those, between 401 and 631 reported annual receipts of less than $9.999 million or less and would qualify as small entities subject to the proposed rules.[2] More precise data is not available.

The proposed Notice requires Comsat Corporation ("Comsat") to provide information concerning existing and future capacity in the INTELSAT system necessary for us to make the determination required by the ORBIT Act. The Commission also may seek information directly from INTELSAT if necessary and appropriate. Comsat's 1999 revenues were in excess of $11 million. Thus, Comsat does not qualify as a small entity under the SBA's definition. U.S. carriers and users, including any small entities, that may be affected indirectly, would likely benefit from the proposed action.

IV. Description of Projected Reporting, Recordkeeping or Other Compliance Requirements

The proposals in the Notice are not expected to result in any additional reporting, recordkeeping and other compliance.

V. Steps Taken To Minimize Significant Economic Burden on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

Without prejudgment as to whether it will determine that "sufficient opportunity" exists, the Commission is seeking comment on alternatives for "appropriate action" should it determine that sufficient opportunity does not exist for users and service providers to access INTELSAT directly. The Commission tentatively concludes that the first option for resolving this problem should be commercial solutions between Comsat and users and service providers. It also seeks comment on possible regulatory action should commercial negotiations fail to yield a solution. The intent of any regulatory action would be to permit users and service providers, including small entities, to benefit from the availability of direct access to INTELSAT space segment capacity to meet service or capacity requirements. We do not expect the proposals to cause any economic burden to small entities, and seek comment on any issues pertinent to this.

VI. Federal Rules That Overlap, Duplicate, or Conflict With These Proposed Rules

None.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13759 Filed 6–1–00; 8:45 am]

BILLING CODE 6712–01–P

[2] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table D, Employment size of Firms: 1992, SIC Code 4899 (May 1995).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

Injurious Wildlife; Review of Information Concerning Black Carp (Mylopharyngodon piceus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service is reviewing available economic and biological information on the black carp (*Mylopharyngodon piceus*) for possible addition to the list of injurious wildlife under the Lacey Act. The importation and introduction of *M. piceus* into the natural ecosystem of the United States may pose a threat to native mollusk and fish populations. Listing *M. piceus* as injurious would prohibit its importation into, or transportation between, the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States, with limited exceptions. This notice seeks comments from the public to aid in determining if a proposed rule is warranted.

DATES: Comments must be submitted on or before August 1, 2000.

ADDRESSES: Comments may be mailed or sent by fax to the Chief, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, 1849 C Street, NW, Mail Stop 840 ARLSQ, Washington, DC 20240, of FAX (703) 358–2044.

FOR FURTHER INFORMATION CONTACT: Susan Mangin, Division of Fish and Wildlife Management Assistance at (703) 358–1718.

SUPPLEMENTARY INFORMATION: In a February 24, 2000, letter to the Director of the U.S. Fish and Wildlife Service, the Mississippi Interstate Cooperative Resource Association (MICRA) expressed concern that *Mylopharyngodon piceus* posed a threat to native fish and mollusk populations. MICRA requested that the Director take the necessary steps to list *M. piceus* as an injurious species of wildlife.

M. piceus is a freshwater fish that inhabits lakes and lower reaches of rivers. It is native to most major Pacific drainages of eastern Asia and highly esteemed as a food fish in China. *M. piceus* was introduced into the United States in the early 1970s as a "contaminant" in imported grass carp stocks. A second introduction occurred in the 1980s for yellow grub control and as a food fish.

M. piceus larvae and fingerlings feed on zooplankton, while larger *M. piceus* feed on benthic organisms with shells. Because the species commonly feeds on mollusks, *M. piceus* is considered an effective method of biological control of snails.

M. piceus spawn in rivers, and their eggs are pelagic or semipelagic and drift downstream. They are annual spawners, with spawning triggered by water temperature, rising water levels, and availability of food. Research has indicated that pond-cultured females can produce an average of 65,000 eggs per kg (29,000 per lb.) of body weight.

The Lacey Act (18 U.S.C. 42) and implementing regulation in 50 CFR part 16 restrict the importation into or the transportation of live wildlife or eggs thereof between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States of any nonindigenous species of wildlife determined to be injurious or potentially injurious to certain interests, including those of agriculture, horticulture, forestry, the health and welfare of human beings, and the welfare and survival of wildlife and wildlife resources in the United States. However, injurious wildlife may be imported by permit for zoological, educational, medical, or scientific purposes in accordance with permit regulations at 50 CFR 16.22, or by Federal agencies without a permit solely for their own use. If the process initiated by this notice results in the addition of *M. piceus* to the list of injurious wildlife contained in 50 CFR part 16, their importation into the United States would be prohibited except under the conditions, and for the purposes, described above.

This notice solicits economic, biologic, or other information concerning *M. piceus*. The information will be used to determine if the species is a threat, or potential threat, to those interests of the United States delineated above, and thus warrants addition to the list of injurious wildlife in 50 CFR 16.13. The information will also assist us in preparing impact analyses and examining alternative protective measures under the Regulatory Flexibility Act (5 U.S.C. 601).

Authority: This notice is issued under the authority of the Lacey Act (18 U.S.C. 42).

Dated: May 16, 2000.

Jamie Rappaport-Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–13557 Filed 6–1–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF45

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Public Hearing on Proposed Rule To List the Southwestern Washington/Columbia River Coastal Cutthroat Trout in Washington and Oregon as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) gives notice of a public hearing on the proposed rule to list the southwestern Washington/Columbia River coastal cutthroat trout in Washington and Oregon. In addition, the comment period which originally closed on May 15, 2000, will be reopened. The new comment period and hearing will allow all interested parties to submit oral or written comments on the proposal.

DATES: The comment period for this proposal now closes on July 3, 2000. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 1 p.m. until 3 p.m. and from 6 p.m. until 8 p.m. on June 20, 2000, in Ilwaco, Washington.

ADDRESSES: The public hearing will be held at the Ilwaco Heritage Museum, 115 SE Lake Street, Ilwaco, Washington. Written comments and materials should be sent to Kemper McMaster, State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above FWS address.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, at the above Portland, Oregon address, phone 503–231–6179, facsimile 503–231–6195, for written comments or Gerry Jackson, State Supervisor, Western Washington Fish and Wildlife Office, 510 Desmond Dr., Suite 102, Lacey, Washington, phone 360–753–9440, facsimile 503–231–9008 for information on the public hearing.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1999, the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS) published a notice in the **Federal Register** (64 FR 16397) proposing to list the coastal cutthroat trout (*Oncorhynchus clarki clarki*) population in southwestern Washington and the Columbia River, excluding the Willamette River above Willamette Falls, as threatened pursuant to the Endangered Species Act of 1973, as amended (Act). The FWS published a notice in the **Federal Register** (65 FR 20123) on April 14, 2000, to extend the deadline from April 5, 2000, to October 5, 2000 for the final action on the proposed rule to list this population in Washington and Oregon; and to provide a 30-day comment period. The 6-month extension was necessary to obtain and review new information needed to resolve substantial scientific disagreement about the status of this population.

In response to a request for a public hearing during the public comment period for the 6-month extension, the FWS will hold a public hearing on the date and address described in the **DATES** and **ADDRESSES** sections above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to the FWS at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to the FWS. Legal notices announcing the date, time, and location of the hearing will be published in newspapers concurrently with the **Federal Register** notice.

Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding: (1) Biological or other relevant data concerning any threat to cutthroat trout; (2) The range, distribution, and population size of coastal cutthroat trout in southwestern Washington and the Columbia River; (3) Current or planned activities in the subject area and their possible impacts on the species; (4) Cutthroat trout escapement, particularly escapement data partitioned into natural and hatchery components; (5) The proportion of naturally reproducing fish that were reared as juveniles in a hatchery; (6) Homing and straying of natural and hatchery fish; (7) The reproductive success of naturally reproducing hatchery fish and their relationship to southwestern Washington and the Columbia River coastal cutthroat trout populations; and (8) Efforts being made to protect native, naturally reproducing populations of coastal cutthroat trout.

Reopening of the comment period will enable the FWS to respond to the request for a public hearing on the proposed action. The comment period on this proposal closes on July 3, 2000. Written comments should be submitted to the FWS office listed in the **ADDRESSES** section.

Author

The primary author of this notice is Jim Muck (Fish and Wildlife Service, Western Washington Office, 510 Desmond Dr. SE, Suite 102, Lacey, Washington, 98503).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Dated: May 12, 2000.

Thomas J. Dwyer,

Acting Regional Director.

[FR Doc. 00–12494 Filed 6–1–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 051700B]

South Atlantic Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearing.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene a public hearing regarding draft options for Amendment 3 to the Golden Crab Fishery Management Plan (FMP). The amendment addresses gear restrictions, permitting processes, limits on vessel size, crew safety and zoning/participation conflicts.

The Council will take action on its proposed Amendment 3 during the full Council session at its June 2000 meeting.

DATES: The hearing will be held in June. See **SUPPLEMENTARY INFORMATION** for specific date and time of the public hearing.

ADDRESSES: Copies of the draft amendment are available from Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366. The draft options paper will also be available at the public hearing. The public hearing will be held in Florida. See **SUPPLEMENTARY INFORMATION** for specific hearing location.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; E-mail address: kim.iverson@safmc.noaa.gov.

SUPPLEMENTARY INFORMATION:

The Council is considering gear modifications that would extend the use of wire cable for main lines through December 31, 2002, and adjust the size of the escape panel or door; allow vessel size to increase by 20 percent; and remove the 5000–pound harvest requirement for the biannual permit. To address zoning and participation conflicts, the Council is considering creating a sub-zone for smaller vessels in the southern zone that would be reviewed on an annual basis. The Council is also considering allowing vessels from the middle and southern zones to fish in the northern zone for a limited time.

Time and Location of Public Hearing

The public hearing regarding draft options for Amendment 3 to the Golden Crab Fishery Management Plan will be held at the following location, date, and time.

June 12, 2000, 6:00 p.m., Cheeca Lodge, Mile Marker 82, U.S. Highway 1, Islamorada, FL 33036, Telephone: 800–327–2888 or 305–664–4651.

Copies of the draft options paper can be obtained from the Council (see **ADDRESSES**).

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by June 5, 2000.

Dated: May 26, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13751 Filed 6–1–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 65, No. 107

Friday, June 2, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–00–05]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB). The NOSB is a 15 member board that advises the Secretary on all aspects of the National Organic Program, and has responsibility for development of a proposed National List of Approved and Prohibited Substances. The U.S. Department of Agriculture (USDA) is requesting nominations to fill five upcoming vacancies on the NOSB. The Secretary of Agriculture will appoint nominees to serve 5-year terms of office scheduled to commence in January 2001. USDA encourages eligible minorities, women, and persons with disabilities to apply.

DATES: Written nominations, with resumes, must be postmarked on or before August 30, 2000.

ADDRESSES: Nominations should be sent to Mr. Keith Jones, Program Manager, National Organic Program, USDA–AMS–TMP–NOP, Room 2510–So., Ag Stop 0268, P.O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Jones, Telephone: (202) 720–3252; Fax: (202) 690–3924; e-mail: keith.jones@usda.gov.

SUPPLEMENTARY INFORMATION: The OFPA of 1990, as amended (7 U.S.C. Section 6501 *et seq.*), requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish a NOSB. The purpose of the NOSB is to assist in the development of a proposed National List of Approved and Prohibited Substances and to advise the Secretary on other aspects of the National Organic program.

The current NOSB has made recommendations to the Secretary regarding the establishment of the initial organic program. It is anticipated that the NOSB will continue to make recommendations on various matters including recommendations on substances it believes should be permitted to be used or prohibited for use in organic production and handling.

The NOSB is required to be composed of various individuals including owners or operators of an organic production organization, persons who represent public interest or consumer interest groups, and an individual who is a certifying agent. Nominations are sought for two positions for organic producer and two positions for consumer/public interest representatives. Additionally, nominations are being sought for the certifying agent position who will represent State and private certifiers. Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic production operation, a person who represents public or consumer interest groups, or a State or private organic certifying agent. Selection criteria will include such factors as: demonstrated experience and interest in organics; diverse commodity and geographic representation; support of consumer and public interest organizations; demonstrated experience with environmental matters; and other factors as may be appropriate for specific positions.

After applications have been reviewed, individuals receiving nominations will be contacted and supplied with biographical forms. The biographical information must be completed and returned to USDA within 10 working days of its receipt to expedite the clearance process that is required by the Secretary.

Equal opportunity practices will be followed in all appointments to the NOSB in accordance with USDA policies. To ensure that the recommendations for the NOSB have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Dated: May 26, 2000.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Transportation and Marketing.

[FR Doc. 00–13784 Filed 6–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Management Direction for the John Muir, Ansel Adams, Dinkey Lakes and Monarch Wilderness; Inyo, Sierra and Sequoia National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare a Revised Environmental Impact Statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service will prepare a revised draft environmental impact statement (EIS) to establish management direction for the John Muir, Ansel Adams, Dinkey Lakes and Monarch Wilderness areas. The Sierra and Inyo National Forests administer the John Muir and Ansel Adams Wildernesses; the Sierra National Forest administers the Dinkey Lakes Wilderness; and the Sierra and Sequois National Forests administer the Monarch Wilderness. These Wildernesses are located in Fresno, Inyo, Madera, and Mono, California. The decision to revise the draft EIS was based on the high level of interest and concern apparent from the public comments to the original draft. The proposed action has been more clearly defined, otherwise it remains unchanged from that described in the original NOI published in the August 12, 1992 issue of the **Federal Register** (57 FR 36061).

FOR FURTHER INFORMATION CONTACT: Direct questions regarding the proposed action and revised EIS to Mary Beth Hennessy, Wilderness Specialist, Inyo

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National Forest (760) 873–2400; or Teri Drivas, Recreation & Lands Officer, Sierra National Forest, (559) 297–0706.

SUPPLEMENTARY INFORMATION: The Inyo, Sierra, and Sequoia National Forests propose to amend their respective Forest Land and Resource Management Plans (LRMPs) to incorporate new management direction for the John Muir, Ansel Adams, Dinkey Lakes, and Monarch Wilderness areas. The National Environmental Policy Act will guide the planning process with implementation scheduled for summer, 2001. The revised draft EIS address three topics associated with overall forest level management direction for the three wildernesses: (1) Visitor Use; (2) Commercial Services and; (3) Recreational Packstock Management.

The analysis will consider a range of alternatives including no-action, which is the current management direction contained in each national forest's LRMP. The new management direction will be programmatic and would provide direction for the implementation of wilderness area decisions for the next 10 to 15 years. The management changes reflect Forest Service directives, changing social values, agency emphasis on ecosystem sustainability, new information, and research findings.

The draft EIS will be filed with the Environmental Protection Agency (EPA) and is expected to be available for public review by July 2000. The comment period on the draft EIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is expected to be completed March 2001.

The Forest Service believes, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power GN versus NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage maybe waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* versus *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* versus *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in the proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully be considered and responded to in the final EIS. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the proposal. Forest Supervisors of the Inyo, Sierra, and Sequoia National Forests are the Responsible Officials. As Responsible Officials they will decide whether to implement the proposal or a different alternative. The Responsible Officials will document the decision and the reasons for the decision in the Record of Decision (ROD). The decision will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Jeffery E. Bailey,

Forest Supervisor, Inyo National Forest.

Alan M. Quan,

Acting Forest Supervisor, Sierra National Forest.

Arthur L. Gaffery,

Forest Supervisor, Sequoia National Forest.

[FR Doc. 00–13797 Filed 6–1–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on June 21, 2000, at the Vahalla Building, Tallac Historic Site, Highway 89, South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held June 21, 2000, beginning at 9:00 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at Vahalla, Tallac Historic Site, Highway 89, South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: [1] Budget Subcommittee Report; [2] HUD Update; [3] Summer Event Update; [4] Washoe Cultural Center; [5] Public Comment; and [6] Field Trip to Review Federal Projects. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: May 26, 2000.

Maribeth Gustafson,

Acting Deputy Forest Supervisor.

[FR Doc. 00–13872 Filed 6–1–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA Forest Service .

ACTION: Action of Meeting.

SUMMARY: The first Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Salem, Oregon on Saturday, June 24, 2000. The meeting is scheduled to begin at 10:00 a.m., and will conclude at approximately 3:00 p.m. The meeting will be held in the Anderson Room A at the Salem Public Library; 585 Liberty St. SE; Salem, Oregon; (503) 588–6071.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (P.L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda includes:

(1) Forest Supervisor's opening comments, and introduction of Council Members and Forest Service Staff, (2) determine future meeting location and times, (3) overview of Advisory Council Charter and determine terms of appointment; (4) overview of the Opal Creek Act, (5) overview of the Federal Advisory Committee Act (FACA); (6) overview of the roles of the Advisory Council, Designated Forest Official, and chairperson, (7) overview of the planning and decision making process, and critical benchmarks, and (8) identify preliminary issues within the Scenic Recreation Area

The Public Forum is tentatively scheduled to begin at 2:00 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the June meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: May 26, 2000.

Darrel Kenops,

Forest Supervisor.

[FR Doc. 00–13800 Filed 6–1–00; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 3, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 24, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (65 FR 15897) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Tape, Electronic Data
7045–01–391–0947
7045–01–438–7086

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–13857 Filed 6–1–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: July 3, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3529.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement

List for production by the nonprofit agencies listed:

Administrative Services

Office of the Provost Marshal, Building 23020, Fort Hood, Texas
NPA: Physically Challenged Service Industries, Inc., San Antonio, Texas

Janitorial/Custodial

U.S. Army Space & Missile Defense Command, Arlington, Virginia
NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia

Operation of Central Issue Facility

Building 9640, Fort Lewis, Washington
NPA: AtWork!, Issaquah, Washington

Operation of Self Service Supply Store

U.S. Army Space & Missile Defense Command, Arlington, Virginia
NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–13858 Filed 6–1–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: June 2, 2000.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (1999), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than April 30, 2001.

	Period to be reviewed
Antidumping Duty Proceedings	
France: Sorbitol, A–427–001	4/1/99–3/31/00
Amylum France	
Amylum SPI Europe	
Greece: Electrolytic Manganese Dioxide, A–484–801	4/1/99–12/31/99
Tosoh Hellas A.I.C.	
Japan: Electrolytic Manganese Dioxide, A–588–806	4/1/99–12/31/99
Tosoh Corporation	
Taiwan: Static Random Access Memory Semiconductors, A–583–827	4/1/99–3/31/00
Integrated Silicon Solution, Inc./Integrated Silicon Solution (Taiwan), Inc.	
Galvantech, Inc., G-Link Technology Corporation, GSI Technology, Winbond Electronics Corporation	
The People's Republic of China: Brake Rotors * A–570–846	4/1/99–3/31/00
China National Automotive Industry Import & Export Co. (only as to merchandise produced by a firm other than Shandong Laizhou CAPCO Industry)	
Shandong Laizhou CAPCO Industry (only as to merchandise produced by a firm other than Shandong Laizhou CAPCO Industry)	
Shenyang Honbase Machinery Co., Ltd. (only as to merchandise produced by a firm other than either Shenyang Honbase Machinery Co., Ltd. or Laizhou Luyuan Automobile Fitting Co., Ltd.)	
Laizhou Luyuan Automobile Fitting Co., Ltd. (only as to merchandise produced by a firm other than either Shenyang Honbase Machinery Co., Ltd. or Laizhou Luyuan Automobile Fitting Co., Ltd.)	
China National Machinery and Equipment Import & Export (Xinjiang) Corporation, Ltd. (only as to merchandise produced by a firm other than Zibo Botai Manufacturing Co., Ltd.)	
The People's Republic of China: Coumarin * A–570–830	2/1/99–1/31/00
Netchem, Inc.	
Turkey: Certain Steel Concrete Reinforcing Bars A–489–807	4/1/99–3/31/00
Ekinciler Holding, A.S./Ekinciler Demir Celik A.S.	
Colakoglu Metalurji A.S./Colakoglu Dis Ticaret	
Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

* If one of the named companies does not qualify for a separate rate, all other exporters of brake rotors from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

* If one of the named companies does not qualify for a separate rate, all other exporters of coumarin from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: May 26, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 00–13883 Filed 6–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803, A–570–803]

Final Results of Full Sunset Reviews: Bars and Wedges and Hammers and Sledges From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Reviews: Bars and Wedges and Hammers and Sledges from the People's Republic of China.

SUMMARY: On January 24, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset reviews of antidumping duty orders on bars and wedges and hammers and sledges from the People's Republic of China (65 FR 3658) [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We did not receive comments from either domestic or respondent interested parties. As a result of these reviews, the Department finds that revocation of these orders would be likely to lead to continuation or recurrence of dumping at the rates indicated in the *Final Results of Review* section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Carole Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3217, respectively.

EFFECTIVE DATE: June 2, 2000.

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On January 24, 2000, the Department published a notice of preliminary results of the full sunset reviews of the antidumping duty orders on bars and wedges and hammers and sledges from the People's Republic of China ("PRC") (65 FR 3658) [2] pursuant to section 751(c) of the Act. In our preliminary results, we determined that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. In addition, we preliminarily determined that the following weighted-average dumping margins are likely to prevail if the orders were revoked: PRC-wide rate of 31.76 percent ad valorem for bars/wedges and 45.42 percent ad valorem for hammers/sledges.

Neither domestic nor respondent interested parties submitted case briefs within the deadline specified in 19 CFR 351.309(c)(1)(i).

Scope of Review

The products covered by these orders include bars/wedges and hammers/sledges from the PRC. Although we provide the full scope language for the order on heavy forged hand tools ("HFHTs") below, this determination applies only to the types of HFHTs which fall under the orders (A–570–803) on bars/wedges and hammers/sledges from the PRC. HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to the required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing, and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule ("HTS") item numbers 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kilograms (3.33 pounds) in weight and under, and hoes and rakes, and bars 18 inches in length and under. The HTS item numbers are provided for convenience and customs purposes only. The written description of the scope remains dispositive.

There has been one scope ruling with respect to the orders on HFHTs from the PRC in which the Forrest Tool Company's Max Multipurpose Tool was determined to be within the scope of the order (58 FR 59991, (November 12, 1993)).

Analysis of Comments Received

The Department did not receive a case brief from either domestic or respondent interested parties. We have not made any changes to our preliminary results of January 24, 2000 (65 FR 3658).[3]

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or

[1] See also Bars and Wedges and Hammers and Sledges from the People's Republic of China: Corrected Preliminary Results of Full Sunset Reviews, 65 FR 16167 (March 27, 2000).

[2] See footnote 1, supra.

[3] See footnote 1, supra.

recurrence of dumping at the rates listed below:

PRC wide	Margin (percent)
Bars/Wedges	31.76
Hammers/Sledges	45.42

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–13880 Filed 6–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received requests to conduct new shipper reviews of the antidumping duty order on brake rotors from the People's Republic of China. In accordance with 19 CFR 351.214(d), we are initiating reviews for Hongfa Machinery (Dalian) Co., Ltd. and Luoyang Haoxiang Brake Disc Factory. We are not initiating a review of Shenyang Jinde Machinery Co., Ltd.

EFFECTIVE DATE: June 2, 2000.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1280 or 482–1766, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations are to 19 CFR Part 351 (April 2000).

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests from Neotek Corporation ("Neotek"), Hongfa Machinery (Dalian) Co., Ltd. ("Hongfa"), and Luoyang Haoxiang Brake Disc Factory ("Luoyang"), in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on brake rotors from the People's Republic of China ("PRC"), which has an April anniversary date. Neotek originally claimed that it was an exporter, as well as an importer. However, on May 17, 2000, Neotek clarified that it was not the PRC exporter/producer of the subject merchandise. Therefore, Neotek sought to amend its request by filing on behalf of its affiliated PRC producer/exporter of the subject merchandise, Shenyang Jinde Machinery Co., Ltd. ("Shenyang Jinde").

As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), each of the three companies identified above has certified that it did not export brake rotors to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which did export brake rotors during the POI. Each company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Hongfa, Luoyang and Shenyang Jinde each submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the volume of that first shipment, and the date of the first sale to an unaffiliated customer in the United States.

We are not initiating a review with respect to Shenyang Jinde for two reasons. First, no request was made during the relevant anniversary month for review of entries exported by Shenyang Jinde (*i.e.*, because Sheyang Jinde's request was untimely). Second, the date on which Shenyang Jinde reportedly first sold and shipped subject merchandise to the United States was after the end of the period for which brake rotor can be reviewed at this time (*i.e.*, the period April 1, 1999, through March 31, 2000).

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper reviews for Hongfa and Luoyang.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly we will issue a questionnaire to Hongfa and Luoyang (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of brake rotors, each review will proceed. If, on the other hand, a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and that it did not establish entitlement to a separate rate, and the review of that respondent will be rescinded.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews of the antidumping duty order on brake rotors from the PRC. Therefore, we intend to issue the preliminary results of these reviews not later than 180 days after the date on which the reviews are initiated.

Antidumping duty proceeding	Period to be reviewed
PRC: Brake Rotors, A–570–846: Hongfa Machinery (Dalian) Co., Ltd., Luoyang Haoxiang Brake Disc Factory	04/01/99–03/31/00

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above-listed companies. This action is in accordance with 19 CFR 351.214(e).

Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: May 26, 2000.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 00–13882 Filed 6–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–703]

Continuation of Antidumping Duty Order: Internal Combustion Forklift Trucks From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Order: Internal Combustion Forklift Trucks from Japan.

SUMMARY: On August 5, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on internal combustion forklift trucks from Japan is likely to lead to continuation or recurrence of dumping (64 FR 42662). On April 10, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on internal combustion forklift trucks from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 19022). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on internal combustion forklift trucks from Japan.

EFFECTIVE DATE: April 17, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1999, the Department initiated, and the Commission instituted, a sunset review (64 FR 15727 and 64 FR 15786, respectively) of the antidumping duty order on internal combustion forklift trucks from Japan, pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Internal Combustion Forklift Trucks from Japan*, August 5, 1999 (65 FR 42662)).

On April 10, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on internal combustion forklift trucks from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Final Results of Expedited Sunset Review: Internal Combustion Forklift Trucks from Japan*, 65 FR 19022 (April 10, 2000) and USITC Publication 3287, Investigation No. 731–TA–377 (Review) (April 2000)).

Scope

The merchandise subject to this antidumping duty order is internal combustion industrial forklift trucks, with lifting capacity of 2,000 to 5,000 pounds, from Japan. The products covered are described as follows: assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles (*see Certain Internal Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 5592 (February 6, 1997)). Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order. Imports of these products were previously classified under items numbers 692.4025, 692.4030 and 692.4070 of the Tariff Schedules of the United States Annotated; currently, they classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 8427.20.00, 8427.90.00, and 8431.20.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

Determination

As a result of the determination by the Department and the Commission that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on internal combustion forklift trucks from Japan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and, immediately thereafter, will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. Therefore, the Department has explicitly indicated that the effective date of continuation of this order is April 17, 2000, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than March 2005.

Dated: May 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–13879 Filed 6–1–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

November 1999 Sunset Review: Final Results and Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Sunset Review and Revocation of Antidumping Duty Order: Professional Electric Cutting Tools from Japan (A–588–823).

SUMMARY: On November 2, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on professional electric cutting tools from Japan (64 FR 59160). Because the domestic interested parties have withdrawn, in full, their participation in the ongoing sunset review, the Department is revoking this order.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha Douthit or Lynn Barden, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3173, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued an antidumping duty order on professional electric cutting tools from Japan (58 FR 37461, July 12, 1993). On November 2, 1999, the Department initiated a sunset review of this order by publishing a notice of the initiation in the **Federal Register** (64 FR 59160). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of a sunset review of this order. In the sunset review of the antidumping duty order on professional electric cutting tools from Japan, we received a notice of intent to participate from Black & Decker (U.S.) Inc., and S–B Power Tool Company (collectively "the domestic interested parties") by the November 17, 1999, deadline. We also received a complete substantive response from the domestic interested parties within the applicable deadline (*see* section 351.218(d)(1)(i) of the Department's regulations).

On May 15, 2000, we received a notice from the domestic interested parties withdrawing in full their participation in the five-year (sunset) review of the antidumping duty order on professional electric cutting tools from Japan. The domestic interested parties further stated that they no longer have an interest in maintaining the antidumping duty order. As a result, the Department determined that no domestic party intends to participate in the sunset review and, on May 24, 2000, we notified the International Trade Commission that we intended to issue a final determination revoking this antidumping duty order.[1]

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the Department's regulations, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because the domestic interested parties withdrew both their notice of intent to participate and their complete substantive response from the review process, and no other domestic interested party filed a substantive response (*see* sections 351.218(d)(1)(i) and 351.218(d)(3) of the Department's regulations), we are revoking this antidumping duty order.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

[1] See May 24, 2000, Letter from Jeffrey A. May, Director, Office of Policy, Import Administration, to Lynn Featherstone, Director, Office of Investigations, International Trade Commission, RE: Sunset Review of Antidumping Duty Order on Professional Electric Cutting Tools from Japan (A–588–823).

Dated: May 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–13878 Filed 6–1–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–828; A–351–824]

Silicomanganese From the People's Republic of China and Brazil; Final Results of Antidumping Duty Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Expedited Sunset Reviews: Silicomanganese from the People's Republic of China and Brazil.

SUMMARY: On November 2, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset reviews of the antidumping duty orders on silicomanganese from the People's Republic of China ("China") and Brazil. The products covered by these orders are silicomanganese, which is sometimes called ferrosilicon manganese. On the basis of notices of intent to participate and adequate substantive comments filed on behalf of a domestic interested party and inadequate response (in these cases, no response) from respondent interested parties, we determined to conduct expedited reviews. Based on our analysis of the comments received, we find that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Reviews."

EFFECTIVE DATE: June 2, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"). The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On November 2, 1999, the Department published the notice of initiation of sunset reviews of the antidumping duty orders on silicomanganese from China and Brazil (64 FR 59160). We received a Notice of Intent to Participate on behalf of Eramet Marietta Inc. ("Eramet"), in each of the two sunset reviews, by November 17, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Eramet claimed interested-party status under section 771(9)(C) of the Act as a domestic producer of silicomanganese.[1]

We received a complete substantive response, in each of the two sunset reviews, on behalf of Eramet within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). In its substantive response, Eramet indicated that Elkem, now Eramet, was the petitioner in the original investigation and participated actively in these proceedings since their inception. We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day, reviews of these orders.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, the Department determined that the sunset reviews of the antidumping duty orders on silicomanganese from China and Brazil are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than May 30, 2000, in accordance with section 751(c)(5)(B) of the Act.[2]

Scope of Review

The merchandise covered by these antidumping duty orders is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous, and sulfur. Silicomanganese generally contains by weight not less than four percent iron, more than 30 percent manganese, more than eight percent silicon, and not more than three percent phosphorous. All compositions, forms, and sizes of silicomanganese are included within the scope of these reviews, including silicomanganese slag, fines, and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. These reviews cover all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these reviews remain dispositive.

These reviews cover all imports from all manufacturers and exporters of silicomanganese from China and Brazil.

Analysis of Comments Received

All issues raised in this case by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 30, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the orders to be revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on silicomanganese from China and Brazil would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

CHINA

Manufacturer/exporter	Margin (percent)
All Manufacturers/Producers/ Exporters	150.00

BRAZIL

Manufacturer/exporter	Margin (percent)
Companhia Paulista de Ferro-Ligas and Sibra Electro-Siderurgia Brasileria S.A.	64.93
All Others	17.60

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these determinations and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 17, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–13881 Filed 6–1–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] Eramet asserts that on June 30, 1999, Elkem Metals Company ("Elkem"), the original petitioner, sold its silicomanganese operations to Eramet SA. As a result, Eramet, a subsidiary of Eramet SA, now owns these operations.

[2] See Extension of Time Limit for Final Results of Five-Year Reviews, 65 FR 11761 (March 6, 2000).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053000A]

Submission for OMB Review; Proposed Information Collection; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Reporting Requirements for Commercial Fisheries Authorization under Section 118 of the Marine Mammal Protection Act.

Agency Form Number(s): None.

OMB Approval Number: 0648–0292.

Type of Request: Regular submission.

Burden Hours: 1,500.

Number of Respondents: 10,000.

Average Hours Per Response: 9 minutes.

Needs and Uses: Under provisions of the Marine Mammal Protection Act (MMPA), owners or operators of commercial fishing vessels must report all incidental mortality or serious injury of marine mammals in the course of commercial fishing operations.

Affected Public: Business or other for-profit institutions, and individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 25, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–13852 Filed 6–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053000B]

Submission for OMB Review; Proposed Information Collection; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Atlantic Highly Migratory Species Vessel Permits.

Agency Form Number(s): None.

OMB Approval Number: 0648–0327.

Type of Request: Regular submission.

Burden Hours: 4,700.

Number of Respondents: 25,000.

Average Hours Per Response: 30 minutes for initial applications, 6 minutes for renewal applications.

Needs and Uses: Persons wishing to participate in the Federal Atlantic Highly Migratory Species Fishery (Atlantic tunas, sharks, swordfish, and billfish) must apply for an annual fishing permit. The information in the applications is necessary for managing the fishery and complying with international obligations.

Affected Public: Business or other for-profit institutions, and, individuals.

Frequency: Annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 26, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–13853 Filed 6–1–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000526158–0158–01]

RIN 0648–XA52

Guidelines for Research, Exploration and Salvage of RMS Titanic

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Proposed guidelines; notice of hearing; request for comments.

SUMMARY: These proposed guidelines have been developed for future research on, exploration of, and if appropriate, salvage of RMS Titanic. As mandated by the RMS Titanic Maritime Memorial Act of 1986 (Act), the proposed guidelines were developed in consultation with the United Kingdom, France, Canada and others. The broad and diverse public interest in RMS Titanic was also considered in developing the proposed guidelines. While the proposed guidelines set forth a preferred policy of in situ preservation of RMS Titanic, they also set forth the parameters for the research, recovery and conservation of RMS Titanic artifacts for the benefit of the public. Comments are requested on these proposed guidelines. NOAA also specifically requests comments from interested members of academia and research institutions.

DATES: Comments on this proposal must be received at the appropriate address (See **ADDRESSES**) by 5:00 P.M. on July 3, 2000; public hearing, June 15, 2000, 9:30 A.M.; requests to present oral testimony must be received on or before June 13, 2000.

ADDRESSES: Comments on these proposed guidelines and requests to present oral testimony at the hearing should be sent to NOAA, 1305 East-West Highway, SSMC IV, Suite 11515, Silver Spring, MD 20910; attention Titanic guidelines comments. Comments may also be sent via a facsimile (fax) to (301) 713–0404. The hearing will be held in Room 4830 of the Department of Commerce Hoover Building, 1401 Constitution Avenue, N.W., Washington D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Craig McLean, (301) 713–3125 ext. 151, or Ole Varmer, (301) 713–2967 ext 211.

SUPPLEMENTARY INFORMATION: These proposed guidelines are issued under the authority of the RMS Titanic Maritime Memorial Act of 1986 (Act). Section 5(a) of the Act directs the National Oceanic and Atmospheric Administration (NOAA) to enter into consultations with the United Kingdom, France, Canada and others to develop international guidelines for research on, exploration of, and if appropriate, salvage of RMS Titanic. The guidelines are to (1) be consistent with the national and international scientific, cultural, and historical significance of RMS Titanic and the purposes of the Act, and (2) promote the safety of individuals involved in such operations.

The purposes of the Act are to: (1) Encourage international efforts to designate RMS Titanic as an international maritime memorial to those who lost their lives aboard the ship in 1912; (2) direct the United States to enter into negotiations with other interested nations to establish an international agreement that provides for designation of RMS Titanic as an international maritime memorial, and protects the scientific, cultural, and historical significance of RMS Titanic; (3) encourage, in those negotiations or in other fora, the development and implementation of international guidelines for conducting research on, exploration of, and if appropriate, salvage of RMS Titanic; and (4) express the sense of the United States Congress that, pending such international agreement or guidelines, no person should physically alter, disturb, or salvage RMS Titanic.

The Act directs NOAA to consult with the Secretary of State (DOS) and promote full participation by other interested Federal agencies, academic and research institutions, and members of the public with respect to how exploration and research should be conducted, and whether and under what conditions salvage of RMS Titanic should occur. NOAA and DOS have consulted with representatives of these interested groups in the course of developing these proposed guidelines. Public comment on the proposed guidelines should prove helpful in developing the final guidelines.

Section 6 of the Act directs DOS to enter into negotiations with the United Kingdom, France, Canada and other nations to develop an international agreement that provides for: (1) Designation of RMS Titanic as an international maritime memorial; and (2) research on, exploration of, and if appropriate, salvage of RMS Titanic consistent with the international guidelines developed pursuant to the purposes of the Act. The proposed guidelines are based primarily on the rules annexed to the January 5, 2000 draft international agreement that has been negotiated by the U.S., Canada, France and the United Kingdom.

Preparation of the Guidelines

The primary objective in developing the proposed guidelines has been to further the ongoing efforts to protect RMS Titanic as a maritime memorial and as an internationally significant resource of science, culture, and history. More than 1500 men, women and children lost their lives when RMS Titanic sank on April 15, 1912 and many of those were trapped in the ship's hull. This tragic loss of life and the encasement of the remains of many passengers and crew in RMS Titanic have caused many people around the world, including descendants of RMS Titanic's passengers and crew to view the shipwreck as a grave site. In addition, RMS Titanic is of great interest to scientists, archaeologists, historians, naval architects, educators, lawyers, salvors, the media, and the public. Accordingly, representatives of many diverse groups were consulted and their interests were considered in preparing these proposed guidelines.

The wreckage of RMS Titanic was discovered on September 1, 1985, during a joint French/U.S. expedition lead by Jean Luc Michel and Dr. Robert Ballard. Shortly thereafter, Dr. Ballard testified before Congress to encourage the enactment of legislation to designate RMS Titanic as a maritime memorial. On his second expedition in July 1986, Dr. Ballard placed a plaque on RMS Titanic providing notice to the world that it was discovered by a U.S./French expedition and that it should be left undisturbed as a memorial. Meanwhile, the U.S. Congress enacted and the President signed into law the RMS Titanic Maritime Memorial Act of 1986 to protect this unique shipwreck from potential harm caused by misguided salvage. To this end, the Act mandates that NOAA develop these guidelines.

In 1986, DOS contacted the referenced nations regarding the development of international guidelines and an international agreement. Despite the continued international interest in RMS Titanic, other countries exhibited little interest in developing international guidelines or an agreement as envisioned by the U.S. Congress. In 1995, the United Kingdom, France, Canada and the U.S initiated talks on negotiating guidelines and an agreement. The initiation of international discussion on the guidelines and agreement, at least in part, was based on information about the commercial salvage of RMS Titanic and the exhibition of recovered artifacts in the British National Maritime Museum.

In February 1995, the British National Maritime Museum sponsored a conference of experts in the fields of law, archaeology, history, science, and salvage in Greenwich, England to discuss the protection and management of RMS Titanic and other historic shipwrecks. Participants presented papers and discussions were held regarding the differences in approach between archaeologists and salvors, the Law of the Sea, the draft convention on underwater cultural heritage (UCH) prepared by the International Law Association, and the practices of various nations with respect to the protection and management of UCH.

In January 1996, the British National Maritime Museum held a second conference at the International Maritime Organization in London, England. The conference resulted in a statement of principle, called the Greenwich Declaration, concerning the management of UCH. The significance of UCH to humankind was recognized, as was the threat of its irrevocable loss unless its disturbance or removal is conducted in accordance with best archaeological practices and under the supervision of national authorities having jurisdiction over such activities. While Titanic was an impetus for the conferences, the focus was to provide protection for all UCH. The preparation of an international instrument by UNESCO for the protection of UCH was discussed as was the International Council of Monuments and Sites (ICOMOS) International Charter on the Protection and Management of Underwater Cultural Heritage. At both conferences there were also informal discussions on the international agreement and guidelines for research on, exploration of, and if determined appropriate, salvage of RMS Titanic.

Delegations representing the Governments of Canada, France, the United Kingdom of Great Britain and Northern Ireland, and the U.S. conducted negotiations between 1997 and 2000 in London and by video-conference to develop the text of an international agreement to protect RMS Titanic. Negotiations were held on September 29 and December 1, 1997; February 12, 1998; January 12, June 18, and December 2, 1999; and January 5, 2000. During the negotiation process, various experts in law, science, history, archaeology and salvage, including representatives of RMS Titanic Inc., were periodically consulted. While the Act directed the U.S. to develop guidelines and an international agreement, early in the process, there was a consensus that the guidelines should be incorporated into the international agreement. NOAA then drafted these proposed guidelines based primarily on the January 5 draft of the international agreement, particularly the annexed rules for activities aimed at RMS Titanic.

These proposed guidelines are based primarily on the rules annexed to the January 5, 2000 draft agreement resulting from the above-referenced negotiations. They are also based on widely accepted international and domestic professional archaeological standards, including the ICOMOS International Charter on the Protection and Management of Underwater Cultural Heritage, the UNESCO draft rules annexed to the draft Convention on the Protection of the Underwater Cultural Heritage, the Secretary of the

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Interior's Standards and Guidelines for Archeology and Historic Preservation, the National Park Service's Abandoned Shipwreck Act Guidelines, and NOAA's guidelines for archaeological research and recovery.

Scope and Definitions

These proposed guidelines are intended to guide the planning and conduct of activities aimed at RMS Titanic, including exploration, research, and if appropriate, salvage. As guidelines, they are advisory in nature. They are not enforceable by NOAA unless and until there is authorizing legislation enacted by Congress. As RMS Titanic is a British flagged vessel that lies well outside of the U.S. territorial sea and contiguous zone, the U.S. is not asserting jurisdiction over RMS Titanic in proposing these guidelines or otherwise. However, Congress has the authority to enact legislation regulating activities aimed at RMS Titanic. The U.S. enforcement regime in such legislation could rely on U.S. jurisdiction over its nationals, U.S. flagged vessels, port state jurisdiction, in personam jurisdiction and other jurisdiction consistent with international law.

For the purposes of the proposed guidelines, "RMS Titanic" means the shipwrecked vessel RMS Titanic; "Artifacts" means the cargo of RMS Titanic and other contents, including those associated objects that are scattered in its vicinity and any portion of the hull; "Project" means all activities aimed at RMS Titanic and/or its artifacts carried out in accordance with these guidelines; "Collection" means artifacts and records pertaining to a project.

Recent Salvage History of RMS Titanic

In 1987, Titanic Ventures, Inc. and the Institut Francais de Recherche pour l'Exploration de Mers (IFREMER) conducted a salvage expedition in which some 1,800 artifacts were recovered from the wreck site. In 1992, Titanic Ventures, Inc. filed an in rem action in the U.S. District Court for the Eastern District of Virginia. In 1993, RMS Titanic Inc. (RMST) acquired all of the assets and liabilities of Titanic Ventures, Inc. and conducted a second expedition with IFREMER. RMST and IFREMER conducted a third expedition in 1994 and a fourth expedition in 1998. Some 5,000 artifacts have been recovered to date.

Sale of Artifacts

The preferred policy is to preserve the artifacts at the site of RMS Titanic. If it is determined to be in the public interest to recover artifacts, the proposed guidelines provide that all artifacts recovered from RMS Titanic should be kept together and intact as project collections. Although not expressly delineated, following these guidelines would mean that individual artifacts would not be sold. However, this would not necessarily preclude the sale or transfer of an entire collection to a museum or other qualified institution, provided the collection is kept together and maintained for the benefit of the public consistent with these guidelines and the Act.

There are differences of opinion among professional scientists and others on whether the coal that was used to power RMS Titanic is a natural resource or a cultural artifact. Even if coal were determined not to come within the meaning of an artifact, such coal may still be useful for archaeological and scientific research. On the other hand, if the coal were determined to come within the meaning of an artifact, and, thus, covered by these guidelines, there are differences of opinion among professional scientists and others on whether all of the coal should be curated in perpetuity, or if it would be appropriate to keep only a representative sample following scientific analysis and study of all the coal. Current professional curation practices and standards provide museums or administrators with sufficient discretionary authority to include or exclude objects from the collection or to subsequently allow some of the objects to be deaccessioned from the collection. Deaccessioned objects can be disposed of in accordance with the museum's or administrator's deaccessioning policies and may include transfer to another institution, deposit as waste, or sale.

In Situ Preservation and Salvage

The proposed guidelines provide that in situ (or in-place) preservation is the preferred policy approach for memorializing RMS Titanic. This approach is consistent with widely accepted international and domestic professional archaeological standards and embodies the broader public interest in conservation of RMS Titanic. Under this policy, non-intrusive research and exploration of RMS Titanic is encouraged in order to protect the wrecksite for future research and access. The public interest in RMS Titanic is diverse. Congress and others view the site as a maritime memorial, a grave site and an underwater museum and laboratory. The hull and cargo are like a time capsule of that tragic event. Because intrusive activities may damage or destroy RMS Titanic, these proposed guidelines support the presumption that such activities should not be conducted unless justified by scientific, cultural or educational interests. This in situ preservation policy is compatible with non-destructive uses of the site, such as non-intrusive research, education, public viewing and even commercial use. This policy is also consistent with the treatment of RMS Titanic as the final resting place for many people, and the conservation of the surrounding natural environment.

The public interest in the recovery of shipwrecks and cargo under salvage law, in general, should now be reconciled with the public interest in the in situ preservation of RMS Titanic. However, in situ preservation does not preclude intrusive research, exploration or appropriate salvage in certain circumstances. Consistent with a precautionary management approach, once there is scientific, cultural or educational justification, then research, exploration or appropriate salvage activities could be permitted. However, to fulfill the public interest in RMS Titanic under salvage law and the Act, such salvage should only be conducted in accordance with the scientific and conservation standards set forth in the proposed guidelines.

Professional Scientific Approach

As noted above, these proposed guidelines are based on widely accepted international and domestic standards for professional scientific research. Most of those standards have already been subjected to professional scrutiny and public processes. In this case, those standards were revisited and specifically tailored for research, exploration and salvage of RMS Titanic and its artifacts. Among other interested parties, RMST and IFREMER were consulted in developing these proposed guidelines because they have had the most experience working at the wreck site.

Miscellaneous Requirements

Executive Order 12866

In deciding whether and how to regulate, federal agencies assess the costs and benefits of proposed regulations upon society, including individuals and business. While the proposed guidelines are non-binding, NOAA has considered the costs and benefits upon society arising from compliance with them. For those already applying the professional scientific approach to research, recovery and conservation of artifacts, NOAA does not expect that there will be any additional significant costs from complying with these proposed guidelines. However, for those explorers or salvors who do not as a matter of practice follow professional scientific standards and policies, then compliance with these proposed guidelines may result in additional costs. These costs could result in the expenditure of tens of thousands of dollars. Since an RMS Titanic salvage expedition can costs hundreds of thousands of dollars per day for ships, equipment and personnel, the additional costs for following the proposed guidelines are not expected to be significant. Although compliance with the guidelines may result in additional costs in the careful planning of the expedition, the application of the scientific approach generally results in a more efficient execution of the project and thus may save money in the end. The costs for compliance with the guidelines should also be weighed against the potential benefits to the society from protecting RMS Titanic and preserving the artifacts and research for present and future generations. Adherence to proper scientific methodology and approach is in the interest of the public because it preserves the integrity of the site, the artifacts recovered and the story contained at the wrecksite. Compliance with the proposed guidelines may also be viewed as an investment by those that have not followed the scientific standards in the past. The proper recording of information and conservation of artifacts increases the value of the collection to the salvors, researchers, museums and the general public. As a result, the additional costs involved in following the scientific approach are often offset by increased revenue from documentaries, films, and museum receipts. RMST has reported millions of dollars in annual revenues from the display of artifacts in museums. Some argue that keeping the collection together and intact is not as profitable as selling individual artifacts. However, it is difficult, if not impossible, to quantify the cost to society if the artifacts are sold such that the collection is no longer kept together for public use for research, education and viewing by the general public.

Executive Order 12630

Under this Order, federal agencies assess the takings implications of proposed policies and actions on private property protected by the Fifth Amendment. The goal is to better inform the agency decision makers about the potential agency activities. To the extent permitted by law, consistent with their statutory obligations, agencies are then better informed on how to minimize the impacts of such activities on constitutionally protected property rights. As these guidelines are non-binding in nature, they should not raise any regulatory takings implications under the Just Compensation Clause of the Fifth Amendment to the U.S. Constitution.

Executive Order 12114

The purpose of this Order is to enable responsible officials to be informed of pertinent environmental considerations and to take such consideration into account in agency decision making with regard to major federal actions significantly affecting the environment outside the United States, its territories and possessions. While based on independent authority, this Order furthers the National Environmental Policy Act ("NEPA") and other laws consistent with the foreign policy and national security policy of the United States. The proposed guidelines are not a "major federal action" as defined in DOC DAO 216–12 (Environmental Effects Abroad of Major Federal Actions). Since they are advisory in nature, they are not a "major federal action". In addition, compliance with the proposed guidelines would not have any significant adverse effects on the environment. However, compliance with the proposed guidelines would further the purposes of NEPA and other laws. Conservation of the environment was carefully considered in developing the proposed guidelines. Compliance with the proposed guidelines would preserve RMS Titanic and would correspondingly further preservation of the surrounding natural environment.

A primary objective of the proposed guidelines is in situ preservation of RMS Titanic and its surrounding natural environment. In addition, activities that would harm or destroy RMS Titanic would be discouraged by the proposed guidelines. Since intrusive archaeological research, recovery or salvage can often harm the natural environment, compliance with the in-situ preservation principles would correspondingly preserve the surrounding natural environment. The proposed guidelines encourage non-destructive and non-intrusive research. Since non-intrusive research inherently avoids destruction of the surrounding natural environment, this proposed guideline would also protect the natural environment. In the event that activities to be conducted may harm RMS Titanic and the surrounding natural environment, the proposed guidelines provide for an assessment of environmental consequences. Thus, the proposed guidelines would further the purposes of NEPA, other laws and Executive Order 12114 by conserving RMS Titanic and the surrounding natural environment.

National Historic Preservation Act

Under this law, agencies are to take into account the effect of any federal undertaking outside the United States which may directly and adversely affect a historic property. Compliance with the proposed guidelines will not adversely affect RMS Titanic. To the contrary, compliance with the proposed guidelines will fulfill the public's interest in conserving the national and international historical significance of RMS Titanic. The Advisory Council on Historic Preservation was consulted in developing the proposed guidelines. NOAA plans to consult further with the Advisory Council prior to issuing any final guidelines.

Paperwork Reduction Act (PRA)

These guidelines contain voluntary collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the PRA. These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information is estimated to average 12 hours to submit a project design and 12 hours to submit a report. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NOAA, 1305 East-West Highway, SSMC IV, Suite 11515, Silver Spring, MD 20910 (attention Titanic guidelines comments); and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Wash., DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply

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with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. James Baker,

Under Secretary for Oceans and Atmosphere and Administrator.

Guidelines for Research, Recovery and Salvage of RMS Titanic

Contents

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Authority: 16 U.S.C. 450rr to 450rr–6.

Introduction: It is the sense of Congress that research and limited exploration activities concerning the RMS Titanic should continue for the purpose of enhancing public knowledge of its scientific, cultural, and historical significance, Provided, That, pending the adoption of the international agreement or implementation of international guidelines, no person should conduct any such research or exploration activity which would physically alter, disturb, or salvage the RMS Titanic.

I. General Principles

1. The preferred policy for the preservation of RMS Titanic and its artifacts is in situ preservation. Recovery or excavation aimed at RMS Titanic and/or its artifacts should be granted only when justified by educational, scientific, or cultural interests, including the need to protect the integrity of RMS Titanic and/or its artifacts from a significant threat. All artifacts recovered from RMS Titanic shall be conserved and curated consistent with these guidelines and kept together and intact as project collections.

2. Activities shall avoid disturbance of human remains. In particular, entry into the hull sections of RMS Titanic shall be avoided so that they, other artifacts and any human remains are not disturbed.

3. Activities utilizing non-destructive techniques and non-intrusive surveys and sampling shall be preferred to those involving recovery or excavation aimed at RMS Titanic and/or its artifacts.

4. Activities shall have the minimum adverse impact on RMS Titanic and its artifacts.

5. Activities shall ensure proper recording and dissemination to the public of historical, cultural and archaeological information.

II. Project Design

6. Activities shall be the object of a project design that shall include:
(a) The objectives of the project;
(b) A general description of the methodology and techniques to be employed;
(c) A description of the anticipated funding;
(d) A provisional timetable for completion of the project;
(e) The composition, qualifications and responsibilities of the anticipated team;
(f) The proposal for or results of all preliminary work;
(g) If applicable, plans for post-fieldwork;
(h) If applicable, a conservation and curation plan;
(i) A documentation program;
(j) A safety policy;
(k) If applicable, arrangements for collaboration with museums and other institutions;
(l) Report preparation, contents, and dissemination;
(m) If applicable, the anticipated disposition of archives, including artifacts; and (n) if applicable, a program for publication.

7. If unexpected discoveries are made or circumstances change, the project design shall be reviewed and amended.

8. Each project shall be carried out in accordance with its project design.

III. Funding

9. Projects shall be designed to ensure adequate funding in advance to complete all stages of the project including the curation, conservation and documentation of any recovered artifacts, and the preparation and dissemination of the report.

10. The project design shall include contingency plans that will ensure conservation of recovered artifacts and supporting documentation in the event of any interruption of anticipated funding.

11. The project design shall demonstrate an ability to fund the project through completion.

12. Project funding shall not require the sale of artifacts or other material recovered or the use of any strategy that will cause artifacts and supporting documentation to be irretrievably dispersed.

IV. Duration—Timetable

13. Adequate time shall be assured in advance to complete all stages of the project, including the curation, conservation and documentation of any recovered artifacts, and the preparation and dissemination of the report.

14. The project design shall include contingency plans that will ensure conservation of artifacts and supporting documentation in the event of any interruption in the anticipated timetable.

V. Objectives, Methodology and Techniques

15. The project design shall include the objectives, proposed methodology and techniques.

16. The methodology shall comply with the project objectives and with the general principles in section I.

VI. Professional Qualifications

17. Projects shall only be undertaken under the guidance of and in the presence of qualified technical and/or professional experts with experience appropriate to the objectives. The project shall not commence until the identity, qualifications, experience and responsibilities of the team members have been notified to and approved by the relevant national authorities.

18. All persons on the project team shall be:
(a) qualified and have demonstrated experience appropriate to their project roles; and
(b) fully briefed and understand the work required.

VII. Preliminary Work

19. The project design shall include:
(a) An assessment that evaluates the vulnerability of RMS Titanic and artifacts to damage by the proposed activities; and
(b) A determination that the benefits of the project outweigh the potential risk of damage.

20. The assessment shall also include background studies and relevant bibliography of available historical and archaeological evidence, and environmental consequences of the proposed project for the long-term stability of RMS Titanic and artifacts.

VIII. Documentation

21. Projects shall be thoroughly documented in accordance with professional archaeological standards current at the time the project is to be undertaken.

22. Documentation shall include, at a minimum, the systematic and complete recording of the provenance of artifacts moved or removed in the course of the project, field notes, plans, sections, photographs and recording in other media.

IX. Artifact Conservation

23. The project design shall include a conservation plan that provides for treatment of the artifacts in transit and in the long term.

24. Conservation shall be carried out in accordance with professional standards current at the time the project is to be undertaken.

X. Safety

25. All persons on the team shall work according to a safety policy prepared according to professional requirements and set out in the project design.

XI. Reporting

26. Interim reports shall be made available according to a timetable set out in the project design, and provided to relevant national authorities.

27. Reports shall include:
(a) An account of the objectives;
(b) An account of the methodology and techniques employed;
(c) An account of the results achieved; and
(d) Recommendations concerning conservation of any artifacts removed during the course of the project.

XII. Curation of Project Collection

28. The project collection, including any artifacts recovered during the course of the project and a copy of all supporting documentation, shall be kept together and intact in a manner that provides for public access, curation and its availability for educational, scientific, cultural and other public purposes.

29. Arrangements for curation of the project collection shall be agreed before any project commences, and shall be set out in the project design.

30. The project collection shall be curated according to professional standards current at the time the project is to be undertaken.

XIII. Dissemination

31. Projects shall provide for public education and popular presentation of the results.

32. A final synthesis shall be provided to relevant national authorities and made available to the public as soon as possible, having regard to the complexity of the project.

[FR Doc. 00–13791 Filed 6–1–00; 8:45 am]
BILLING CODE 3510–08–U

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 10:00 a.m.–4:00 p.m., Tuesday, June 27, 2000.
PLACE: 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room.
STATUS: Open.
MATTERS TO BE CONSIDERED: Public Hearing on Regulatory Framework/ Trading Facilities.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.
[FR Doc. 00–14033 Filed 5–31–00; 3:47 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 10:00 a.m.–4:00 p.m., Wednesday, June 28, 2000.
PLACE: 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room.
STATUS: Open.
MATTERS TO BE CONSIDERED: Public Hearing on Regulatory Framework/ Intermediaries and Clearing.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.
[FR Doc. 00–14034 Filed 5–31–00; 3:47 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 10:00 a.m.–4:00 p.m., Thursday, June 29, 2000.
PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule Enforcement Review.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.
[FR Doc. 00–14035 Filed 5–31–00; 3:47 pm]
BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 10 June 2000 (900 a.m. to 1200 p.m.).

ADDRESSES: Defense Intelligence Agency, 7400 Defense Pentagon, Washington, DC 20301.

DATES: 19 June 2000 (1:00 pm to 5:00).

ADDRESSES: Defense Advanced Research Projects Agency (DARPA), 3701 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: May 26, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 00–13762 Filed 6–1–00; 8:45 am]
BILLING CODE 5001–10–M

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DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 19 June 2000 (900 a.m. to 1400 p.m.).

ADDRESSES: Thomas, Ramo, Wooldridge (TRW), 12900 Federal Systems Park Drive, Fairfax, VA 22033.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: May 26, 2000.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 00–13763 Filed 6–1–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Change in Meeting Date of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, June 20, 2000.

ADDRESSES: The meeting will be held Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: May 26, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–13764 Filed 6–1–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices.

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Friday, June 7, 2000.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc. 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDE&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. this microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended (5 U.S.C. App. 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1994), and that accordingly, this meeting will be closed to the public.

Dated: May 26, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–13765 Filed 6–1–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 3, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 26, 2000.

William Burrow,

Leader Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Fulbright-Hays Seminars Abroad Program.

Frequency: One time.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 500.

Burden Hours: 2,000.

Abstract: Forms to be used by applicants under the Fulbright-Hays Seminars Abroad Program which provides opportunities for U.S. educators to participate in short-term study seminars abroad in the subject areas of the social sciences, social studies and the humanities.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–13766 Filed 6–1–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 3, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 26, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Comprehensive Program Annual Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 140.

Burden Hours: 2,800.

Abstract: The Comprehensive Program is a discretionary grant program that makes competitive awards to support reform and innovations through projects that improve educational practice at the postsecndary level. Grantees annually submit a performance report to demonstrate that substantial progress is being made toward meeting the objectives of their projects. Reporting requirements are currently based on broad criteria from the Education Department General Administrative Regulations (EDGAR). This request is to use a reporting format that elicits needed information on program-specific outcomes within the annual report without posing additional burden to the grantee.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

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Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–13767 Filed 6–1–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 3, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 26, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: The Program for North American Mobility in Higher Education.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 20.

Burden Hours: 400.

Abstract: The Program for North American Mobility in Higher Education is a competition grant program which supports institutional cooperation and student exchange among the countries of the U.S., Mexico, and Canada. Funding supports the participation of U.S. institutions and students in trilateral consortia of institutions of higher education. Funding will be multi-year, with projects lasting up to four years.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–13768 Filed 6–1–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.235K]

Special Demonstration Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: To provide financial assistance to support projects or programs that expand and improve the provision of rehabilitation and other services for individuals with disabilities, including technical assistance that meets the needs of underserved populations.

Eligible Applicants: State vocational rehabilitation agencies; community rehabilitation programs; Indian tribes or tribal organizations; and public or nonprofit agencies or organizations, including institutions of higher education.

Deadline for Transmittal of Applications: August 1, 2000.

Deadline for Intergovernmental Review: September 30, 2000.

Applications Available: June 2, 2000.

Available Funds: $500,000.

Estimated Range of Award: $400,000 to $500,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months. The Assistant Secretary believes that a period of at least 36 months is necessary to accomplish the project objectives. The Assistant Secretary will assess, during the third year of the project period, whether there is a continuing need for the project and whether to provide funding beyond 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Priority

Background

According to section 21 of the Rehabilitation Act of 1973, as amended (Act), Native Americans have a rate of work-related disability that is about one and one-half times that of the general population. Patterns of inequitable treatment of minorities, including Native Americans, have been documented at all stages of the vocational rehabilitation process.

Priority

Under 34 CFR 75.105(c)(3) and section 303(b)(4)(C) and (5)(B)(vi) of the Act, the Assistant Secretary gives an absolute preference to applications that meet the following priority. The Assistant Secretary funds only an application that meets this absolute priority.

A project must create a National Technical Assistance Center that would provide technical assistance to tribes and tribal agencies, State vocational rehabilitation agencies, and other service agencies to increase employment opportunities and vocational outcomes for Native Americans with disabilities.

Allowable Activities

Activities that may be supported under this competition include, but are not limited to—

- Assisting tribes and other agencies to conduct market analyses and providing information on self-employment and business ownership for Native Americans with disabilities;
- Providing culturally relevant training to tribes on the provisions of the Americans with Disabilities Act;
- Identifying solutions related to the lack of infrastructure when developing employment opportunities for Native Americans with disabilities;
- Assisting tribes and other agencies to better understand other issues affecting Native Americans with disabilities, including, but not limited to—housing, transportation, current legislative initiatives such as the Workforce Investment Act and the Workforce Investment Improvement Act, the Individuals with Disabilities Education Act, Disability and Business Technical Assistance Centers, and relevant higher education initiatives, coordination of services available through the Bureau of Indian Affairs and the Indian Health Service, long-term care, independent living, and assistive technology.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (ed pubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.235K.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3314, Switzer Building, Washington, DC. 20202–2650. Telephone: (202) 205–8292. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.html
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 773(b).

Dated: May 26, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–13682 Filed 6–1–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–298–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 26, 2000.

Take notice that on May 24, 2000, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Pro Forma Sheet No. 5
Pro Forma Sheet No. 6
First Revised Sheet No. 15
First Revised Sheet No. 71
First Revised Sheet No. 171
Original Sheet No. 186
Sheet Nos. 187–299 (Reserved)
Original Sheet Nos. 423–426
Sheet Nos. 427–499 (Reserved)
First Revised Sheet No. 501
First Revised Sheet No. 601
First Revised Sheet No. 701
First Revised Sheet No. 901

Kern River states that the purpose of this filing is to establish provisions in Kern River's tariff that will enable Kern River to offer transportation service under its existing firm rate schedules using different rate options that coincide with the length of contract terms and investment recovery periods underlying the capacity commitments of different groups of shippers. These proposed extended-term rates will be available under certain conditions to any firm shipper that extends the term of an existing transportation service agreement.

Kern River states that a copy of this filing has been served upon Kern River's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13778 Filed 6–1–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–14–007]

Midwestern Gas Transmission Company; Notice of Negotiated Rate Filing

May 26, 2000.

Take notice that on May 18, 2000, Midwestern Gas Transmission Company (Midwestern), tendered for filing and acceptance a copy of an executed firm gas transportation service agreement pursuant to Midwestern's Rate Schedule FT–A between Midwestern and Dynegy Marketing and Trade (Dynegy) (Contract No. 33395); and a copy of an April 18, 2000 Firm Transportation Negotiated Rate Letter Agreement entered into by Midwestern and Dynegy for Contract No. 33395 (Letter Agreement). The filed Contract No. 33395 and the Letter Agreement reflect a negotiated rate arrangement between Midwestern and Dynegy (Negotiated Rate Arrangement). Midwestern seeks a June 1, 2000 effective date for the Negotiated Rate Arrangement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 1, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13776 Filed 6–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–297–000]

Mississippi River Transmission Corporation; Notice of Filing of Refund Report

May 26, 2000.

Take notice that on May 23, 2000, Mississippi River Transmission Corporation (MRT) filed a refund report allocating to MRT's former firm sales customers an Account No. 858 refund amount MRT received from CMS Trunkline Gas Co. and Trunkline LNG Co., related the sale of these companies to an unaffiliated entity, CMS, and further related to the settlement in Docket Nos. RP87–15–036, RP92–122, *et al.*

MRT states that pursuant to 16.2 of the General Terms and Conditions of MRT's Tariff and based on established Account No. 191 and 858 allocations to its former jurisdictional sales customers, MRT is allocating to each customer its pro-rata share of the $174,657 refund.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 1, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13777 Filed 6–1–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6607–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 15, 2000 Through May 19, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–L65344–AK Rating EC2, Emerald Bay Timber Sale, Implementation, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, U.S. Cost Guard Bridge Permit, NPDES Permit, and COE Section 10 and 404 Permits, Cleveland Peninsula, AK.

Summary: EPA expressed concerns about the lack of detailed information in the Environment and Effects chapter, the limited range of options covered in alternatives and that the alternatives were not completely developed and analyzed in the EIS. EPA recommends these issues be addressed in the final EIS.

ERP No. D–AFS–L65346–ID Rating EC2, Middle Fork Weiser River Watershed Project, Implementation of Vegetation Restoration, Landscape Fire Pattern and Watershed Restoration Objectives, Payette National Forest, Council Ranger District, Adams County, ID.

Summary: EPA expressed environmental concerns with potential impacts to water quality as well as the need for additional information on sediment delivery and other water quality related data.

ERP No. D–IBR–K39055–CA Rating, Salton Sea Restoration Project, Implementation, COE Section 404 Permit, Riverside and Imperial Counties, CA.

Summary: EPA concluded that the DEIS is inadequate and should be formally revised and reissued for public comment as a Supplemental Draft Environmental Impact Statement (SDEIS). On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the Council on Environmental Quality (CEQ). The basis for EPA's position is: (1) There are significant deficiencies in the environmental analysis, (2) the DEIS does not demonstrate that the project alternatives are feasible or sustainable or that they will achieve project objectives, (3) Salton Sea restoration should be evaluated within the context of the Lower Colorado River watershed, and (4) the project scope is too narrow.

Final EISs

ERP No. F–BLM–J02037–WY South Baggs Natural Gas Development Area, Proposal to Drill and Develop 50 Natural Gas Wells, Application for Permit to Drill and COE Section 404 Permit, Carbon County, WY.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–E06018–SC, Savannah River Site Spent Nuclear Fuel Management Plan, Implementation, Aiken County, SC.

Summary: EPA noted that the EIS provided a good explanation of the complex issues associated with this project, but the Agency has concerns about the project's cumulative environmental impacts.

Dated: May 30, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–13887 Filed 6–1–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6607–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements Filed May 22, 2000 Through May 26, 2000 Pursuant to 40 CFR 1506.9.

EIS No. 000157, DRAFT EIS, AFS, MT, Rocky Mountain Front Mineral Withdrawal, Implementation, Helena and Lewis and Clark National Forests, Great Falls, MT, Due: July 17, 2000, Contact: Rick Prausa (406) 791–7720.

EIS No. 000158, FINAL EIS, HUD, CA, City of Monterey Park Project, Construction and Operation of the Monterey Park Towne Plaza, North of the Pomona Freeway and west of Paramount Boulevard, Los Angeles County, CA, Due: July 03, 2000, Contact: Ray Hanada (626) 307–1463.

EIS No. 000159, FINAL EIS, BLM, WY, Pinedale Anticline Oil and Gas Exploration and Development Natural Gas Wells Project, Implementation, Sublette County, WY, Due: July 05, 2000, Contact: Joe Patti (307) 775–6101.

EIS No. 000160, DRAFT EIS, FHW, WV, Shawnee Highway Project, Construction between the Ghent Interchange of I–787 in the North and McDowell County 14 or McDowell County 17 in the South, Funding, McDowell, Raleigh and Wyoming Counties, WV, Due: July 28, 2000, Contact: Thomas J. Smith (304) 347–5928.

EIS No. 000161, DRAFT EIS, NPS, MA, Boston Harbor Islands National Recreation Area, Implementation, General Management Plan, Boston, MA, Due: August 01, 2000, Contact: George Price (617) 223–8666.

EIS No. 000162, FINAL EIS, BLM, CA, Soledad Canyon Sand and Gravel Mining Project, Proposal to Mine, Produce and Sell, "Split Estate" Private Owned and Federally Owned Lands, Transit Mixed Concrete, Los Angeles County, CA, Due: July 03, 2000, Contact: Elena Misquez (460) 251–4810.

EIS No. 000163, DRAFT EIS, COE, MS, Destination Broadwater Project, Proposed Redevelopment and Construction of a large-scale Casino Destination Resort in Biloxi, Approval of Permits for Section 10 of the River and Harbor Act and Section 404 of the CWA, Harrison County, MS, Due: July 17, 2000, Contact: Susan Ivester Rees (334) 694–4141.

EIS No. 000164, FINAL EIS, FAA, CT, Tweed-New Haven Airport Runway Safety Area and Taxiway Improvements, Safety Improvements to Runway 2/20 and Taxiways 'B' and 'E', Funding, COE Section 10 and 404 Permits, New Haven County, CT, Due: July 03, 2000, Contact: John Silva (781) 238–7602.

EIS No. 000165, DRAFT EIS, USN, HI, North Pacific Acoustic Laboratory Project, Reuse of Low Frequency Sound Source and Cable for Use in Acoustic Thermometry of Ocean Climate (ATOC) Research, Kauai, HI, Due: July 17, 2000, Contact: Dr. Jeff Simmen (703) 696–4204.

EIS No. 000166, DRAFT EIS, FTA, PA, North Shore Connector, Extending existing Light Rail Transit (LRT) System from Golden Triangle of downtown Pittsburgh to the North Shore, Funding, USCG Bridge Permit, NPDES Permit, and COE Section 10 and 404 Permits, Allegheny County, PA, Due: July 17, 2000, Contact: Robin Mayhew (215) 656–7100.

EIS No. 000167, FINAL EIS, FHW, NY, Albany Shaker Road and Watervliet Shakey Road Improvement Project, Construction and Reconstruction, Funding and COE Section 404 Permit, Town of Colonie, Albany County, NY, Due: July 03, 2000, Contact: Harold J. Brown (518) 431–4127.

EIS No. 000168, DRAFT EIS, AFS, ID, Starbucky Restoration Project, Implementation of Vegetative Treatment, Road Construction and Watershed Improvements, Nez Perce National Forest, Red River Ranger District, Idaho County, ID, Due: July 17, 2000, Contact: Kevin Martin (202) 842–2245.

EIS No. 000169, DRAFT EIS, AFS, NV, CA, Northern Sierra Amendment to the Toiyabe Land and Resource Management, To Unify and Revise Management Direction, Humboldt-Toiyabe National Forest, Carson Ranger District, Stanislaus National Forest, Lake Tahoe Basin Management Unit, Douglas and Washoe Counties, NV and Alpine and Toulomne Counties, CA, Due: August 31, 2000, Contact: Dave Loomis (775) 882–2766.

Dated: May 30, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–13888 Filed 6–1–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6708–3]

Investigator-Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for applications.

SUMMARY: This notice provides information on the availability of fiscal year 2000 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research area within the solicitation and are listed below.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research (8703R), 1200 Pennsylvania Avenue, N.W., Washington DC 20460, telephone (800) 490–9194. The complete announcement can be accessed on the Internet from the EPA

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home page: http://www.epa.gov/ncerqa under "announcements."

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Corporate Environmental Performance and the Effectiveness of Government Interventions; (2) Complex Chemical Mixtures (joint with NIOSH and NIEHS); and (3) Drinking Water. Applications must be received as follows: July 24, 2000, for topic (1); July 10, 2000, for topic (2); and July 31, 2000, for topic (3).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact persons for the Corporate Environmental Performance RFA are Matthew Clark (clark.matthew@epa.gov), telephone 202–564–6842, and Robert Menzer (menzer.robert@epa.gov), telephone 202–564–6849. Contact persons for the Complex Chemical Mixtures RFA are Chris Saint (saint.chris@epa.gov), telephone 202–564–6909, Thomas Veirs (veirs.thomas@epa.gov), telephone 202–564–6831, Michael Galvin (mtg3@cdc.gov), telephone 404–639–1533, and Claudia Thompson (thompso1@niehs.nih.gov), telephone 919–541–4638. Contact person for the Drinking Water RFA is Cynthia Nolt-Helms (nolt-helms.cynthia@epa.gov), telephone 202–564–6763.

Dated: May 19, 2000.

Peter Durant,

Acting Assistant Administrator for Research and Development.

[FR Doc. 00–13843 Filed 6–1–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6707–8]

Meeting of the Small Community Advisory Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Small Community Advisory Subcommittee will meet on June 19—20, 2000, in Washington, DC.

The Small Community Advisory Subcommittee was established by the U.S. Environmental Protection Agency as a standing subcommittee of the Local Government Advisory Committee. The June meeting will focus on Community Based Environmental Protection, Drinking Water Regulations and EPA's Regional Offices.

The Committee will hear comments from the public between 9:00 a.m. and 9:15 a.m. on June 19, 2000. Each individual or organization wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first serve basis.

DATES: The meeting will begin at 8:30 a.m. on Monday, June 19th and conclude at 5:00 p.m. on the 20th.

ADDRESSES: The meetings will be held at the EPA Office located at 1200 Pennsylvania Ave. NW., Washington, DC in room 5530 Ariel Rios North.

Requests for Minutes and other information can be obtained by writing the DFO at 1200 Pennsylvania Ave., NW. (1306A), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this Subcommittee is Steven Wilson. He is the point of contact for information concerning any Subcommittee matters and can be reached by calling (202) 564–3646.

Dated: May 18, 2000.

Steven Wilson,

Designated Federal Officer, Small Community Advisory Subcommittee.

[FR Doc. 00–13844 Filed 6–1–00; 8:45 am]

BILLING CODE 6560–50–P

Environmental Engineering Committee (EEC)—June 28, 2000

The Environmental Engineering Committee of the US EPA Science Advisory Board (SAB), will hold a consultative Workshop on the Diffusion and Adoption of Innovations in Environmental Protection on June 28, 2000 in conference room 5530, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting will begin by 9:00 a.m. and adjourn no later than 5:30 p.m.. The purpose of the meeting and availability of review materials were described in the **Federal Register** on May 22, 2000 (65 FR 32089–32090) when a public teleconference call to plan the workshop was announced.

For Further Information

Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Dr. Angela Nugent, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4562; FAX (202) 501–0582; or via e-mail at *nugent.angela@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Nugent by noon Eastern Standard Time on Wednesday, June 21, 2000.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 26, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–13847 Filed 6–1–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6708–8]

Guidance on Exercising CERCLA Enforcement Discretion in Anticipation of Full Cost Accounting Consistent With the "Statement of Federal Financial Accounting Standards No. 4"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Office of Enforcement and Compliance Assurance, Office of Site Remediation Enforcement is providing guidance to its regional components on the exercise of enforcement discretion, from May 30, 2000 through October 2, 2000, in anticipation of EPA's implementation of full cost accounting.

Attachments 1 and 2 were prepared by the Office of the Chief Financial Officer. They describe the reasons for full cost accounting and the methodology being used to implement full cost accounting.

EFFECTIVE DATE: May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Chad Littleton, Office of Enforcement and Compliance Assurance, Office of Site Remediation Enforcement, U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460 (MC 2273A); e-mail: littleton.chad@epa.gov; phone: (202) 564–6064.

SUPPLEMENTARY INFORMATION:

Memorandum

Subject: Guidance on Exercising CERCLA Enforcement Discretion In Anticipation of Full Cost Accounting Consistent with the *Statement of Federal Financial Accounting Standards No. 4*

From: Steven A. Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance

To:
Regional Administrators, Regions I–X
Deputy Regional Administrators, Regions I–X
Regional Counsel, Regions I–X
Superfund Division Directors, Regions I–X

This memorandum provides guidance to EPA personnel on how to exercise enforcement discretion as it relates to upcoming changes in EPA's indirect cost accounting methodology.

A. Upcoming Revisions to Indirect Cost Accounting

EPA's Office of the Chief Financial Officer (OCFO) recently announced that it is revising the Agency's methodology for allocating indirect costs to Superfund sites. These steps will bring Superfund into compliance with cost accounting standards issued by the Federal Accounting Standards Advisory Board (FASAB) on July 31, 1995, (*Statement of Federal Financial Accounting Standards No. 4 (SFFAS No. 4)*).[1] The principal goal of those standards is to make it possible for Federal agencies to determine and report the true costs of their programs and activities. The Federal Financial Management Improvement Act of 1996 (Title VIII, Public Law 104–208)[2] requires all Federal agencies to develop and use cost accounting methodologies that are consistent with the SFFAS No. 4 and other applicable standards.[3]

A copy of the OCFO memorandum announcing and describing EPA's implementation of an accounting methodology complying with the SFFAS No. 4 is attached for your reference (Attachment 1). That memorandum describes important background events and EPA's approach to implementing the revised methodology, defines many important accounting terms as they apply to EPA, lists preliminary estimated regional indirect rates based on the revised methodology, and states that OCFO will calculate actual indirect costs rates using the revised methodology (hereinafter "revised rates" or "revised indirect rates") for all fiscal years after 1989. The OCFO expects the revised rates to be completed and issued by October 2, 2000, at which time EPA will begin using the revised rates.

B. The Revised Rates and Superfund Site Costs

As described more fully in the attached OCFO memorandum, direct costs are costs an organization incurs when it produces a specific result. Most of the other costs of running the organization are indirect costs. EPA's current indirect cost accounting methodology allocates to Superfund sites only about one-third of the indirect costs that are incurred by EPA and properly allocable to sites. SFFAS No. 4 requires "full cost accounting," which means that Superfund indirect costs must be allocated to sites. For that reason, implementing an indirect cost methodology based on SFFAS No. 4 will increase the aggregate amount of indirect costs allocated to sites.

The effect of applying the revised rates will vary from site to site because the SFFAS-compliant methodology and the current methodology use different techniques for allocating indirect costs to individual sites. The SFFAS-compliant methodology allocates

[1] Available as *SFFAS 4* at www.financenet.gov/financenet/fed/fasab/concepts.htm.

[2] Available from the 104th Congress catalog at www.access.gpo.gov/nara/publaw/104publ.html.

[3] "(5) To rebuild the accountability and credibility of the Federal Government, and restore public confidence in the Federal Government, agencies must incorporate accounting standards and reporting objectives established for the Federal Government into their financial management systems so that all the assets and liabilities, revenues, and expenditures or expenses, and the full costs of programs and activities of the Federal Government can be consistently and accurately recorded, monitored, and uniformly reported throughout the Federal Government.

(6) Since its establishment in October 1990, the Federal Accounting Standards Advisory Board (hereinafter referred to as the "FASAB") has made substantial progress toward developing and recommending a comprehensive set of accounting concepts and standards for the Federal Government. When the accounting concepts and standards developed by FASAB are incorporated into Federal financial management systems, agencies will be able to provide cost and financial information that will assist the Congress and financial managers to evaluate the cost and performance of Federal programs and activities, and will therefore provide important information that has been lacking, but is needed for improved decision making by financial managers and the Congress." (*Public Law 104–208*, 110 STAT 3009–389–390).

"Each agency shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and the United States Government Standard General Ledger at the transaction level." (*Id.*)

indirect costs in proportion to direct costs, whereas the current methodology uses the number of Superfund staff hours charged to a site. As a result, sites with large direct Federal expenditures compared to the number of Superfund staff hours will generally see the largest indirect cost increases, and few if any decreases. Sites with smaller Federal expenditures compared to the number of Superfund staff hours, such as sites cleaned up by potentially responsible parties (PRPs) where EPA's costs are largely for oversight performed by EPA staff, will generally see smaller indirect cost increases, and are also more likely to see decreases.

C. Enforcement Discretion as It Relates to the Revised Indirect Rates

As noted above, the OCFO expects the revised rates to be available on October 2, 2000, and will begin using them as soon as they are issued. In general this means that after October 2, 2000, site costs, including oversight costs, will be calculated using the revised rates. The following sections address areas of particular enforcement interest and describe how the Agency intends to exercise its enforcement discretion in individual cases to provide a fair and efficient transition to the revised accounting methodology.

1. Concluded Matters

EPA has previously settled or litigated numerous claims for past response costs. The costs EPA sought in those cases included indirect costs based on the current rates. EPA recognizes the importance of repose and finality in those cases and therefore the Agency has no plans to re-open any concluded matters to apply the revised rates to claims for past costs that were presented and resolved in those matters. This includes consent decrees, litigated judgments and administrative orders on consent. It also includes ceilings established in settlements and judgments for oversight or other response costs that the Agency can bill to PRPs under those existing settlements or judgments.

2. Oversight Billings

The Agency has no plans to recompute oversight bills that were prepared and sent to PRPs before the revised rates are issued.

3. Claims in Litigation Prior to October 2, 2000

When EPA issues the revised indirect rates there will be a number of cost recovery cases pending in Federal courts. The past costs EPA is seeking in those cases will have been calculated using the current indirect rates. There may be special circumstances in those cases, especially if the litigation is at an advanced stage, that cause the case team to decide not to seek to amend the claim by applying the revised indirect rates. An example might be certain cases in which costs have already been presented to the court and the parties are awaiting the court's decision. These decisions will be made by the EPA/Department of Justice (DOJ) case team on a case-by-case basis. This approach is intended to be consistent with prior practice (*See*, Policy on Recovering Indirect Costs in CERCLA Section 107 Cost Recovery Actions, OSWER Directive 9832.5, June 27, 1986) (superseded by this guidance).

4. Interim Settlement Policy in Anticipation of the Revised Rates

This memorandum gives advance notice of the revised rates. One purpose of the advance notice is to provide PRPs who have unresolved cost recovery liabilities an opportunity to settle with the United States at the current rates. For sites where the revised rates would result in higher indirect costs, it may be advantageous for the PRPs to settle with the United States under the current rates. Therefore, until the revised rates are issued, which the OCFO expects to occur on October 2, 2000, the Agency will entertain settlement offers resolving the claims of the United States for CERCLA response costs based on the current indirect rates.

Generally, the Agency will consider a settlement offer based on site costs computed using the current indirect cost rates, if: (1) The offer is made prior to October 1, 2000; (2) the Agency determines, in its sole discretion, that there is sufficient information available on which to base a settlement decision; and (3) it appears to the Agency that the offer is likely to lead to an executed final settlement by March 30, 2001. For cases in litigation or that have been referred to DOJ, the DOJ/EPA case teams will determine the appropriate response to any settlement offer. For all other matters, regional case teams will determine the appropriate response to any settlement offer. Case teams may set alternative milestone dates for any individual PRP or site, if appropriate, based on PRP-specific or site-specific circumstances after consultation with the Regional Support Division (RSD) in the Office of Site Remediation Enforcement (OSRE).

After such an offer has been received, if settlement negotiations are unproductive or it becomes evident that the applicable milestone dates have not been met, or are not likely to be met, the Agency may, at its sole discretion, withdraw the opportunity to enter a settlement based on the current rates.

D. Proving Indirect Costs

Implementing the SFFAS accounting methodology will not alter the burden of proof that the Agency must meet when seeking recovery of indirect costs. EPA will continue to provide evidence acceptable in a court of law to prove that the indirect costs sought are allocable to the site that is the subject of the enforcement action.

E. National Consistency/Coordination

Except for the specific transition related adjustments noted above, existing policy and guidance applicable to considering or accepting settlement offers is unchanged. Implementing the revised indirect rates will not affect the discretion of the Agency or DOJ to settle or compromise cost recovery claims, including those cases where costs are based on the revised rates. Litigation risk, equitable considerations, and other factors that are considered in determining whether to settle or compromise claims may still be taken into account. As always, EPA will exercise its discretion to ensure that any resulting settlements are fair, reasonable, and consistent with CERCLA.

When EPA begins using the revised rates, we expect that the Agency will face questions about matters associated with the transition to the revised rates. EPA has a substantial interest in promoting a nationally consistent approach during this transition period. Therefore, I have asked the RSD to monitor EPA's implementation of the revised indirect rates. I also ask each regional office to designate a point of contact to assist RSD in our effort to quickly resolve key questions about EPA's use of the revised rates, and to promote national consistency among the regional offices. Please send the name and telephone number of your workgroup member to Maria Cintron-Silva, RSD, no later than three weeks after the date of this memorandum. Workgroup contacts will be expected to provide information regarding each of the offers received and their dispositions. For questions about this memorandum and OECA's implementation of the revised rates, please contact Chad Littleton, in the Office of Site Remediation Enforcement, at 202–564–6064.

Attachments

Dated: May 26, 2000.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

Memorandum

Subject: Accounting for Indirect Costs Associated with Superfund Site-Specific Activities

From: Joseph Dillon, Acting Comptroller (2731)

To: Senior Resource Officials

This Policy Announcement provides the policies and procedures for implementing Statement of Federal Financial Accounting Standards (SFFAS) No. 4, Managerial Cost Accounting Standards for the Federal Government, for the Superfund Site Cleanup Program by providing a revised indirect cost methodology. This methodology along with existing policies and procedures regarding direct costs results in accounting for the "full costs" of actions taken at or in connection with Superfund Sites.

Background

The Office of Management and Budget (OMB) issued SFFAS No. 4 on July 31, 1995, with an effective date of October 1, 1997. SFFAS No. 4 requires federal agencies to determine the full cost of their outputs (programs). The full cost of programs includes both those costs specifically identifiable with each particular program, or direct costs, and those costs which collectively support the many programs, or indirect costs.

Since 1985, EPA has been identifying the indirect costs associated with Superfund site-specific activities for all fiscal years after 1982. However, the indirect cost methodology developed at that time was conservative and did not result in allocating all indirect costs to sites. As a result, the General Accounting Office, the EPA Office of Inspector General, OMB and Congress have repeatedly criticized EPA's methodology. The Office of the Chief Financial Officer (OCFO) has developed an indirect cost methodology to compute indirect cost rates for Superfund site-specific activities in accordance with SFFAS No. 4. By incorporating the resulting indirect cost rates into their analyses, Superfund Managers will be able to compute the full cost of their program.

Policy and Procedures

The OCFO has developed a Superfund indirect cost methodology based upon full cost accounting concepts. Using that new methodology, OCFO is presently calculating and will issue indirect cost rates based upon the full cost accounting methodology ("revised rates"). The OCFO will issue revised rates for each Fiscal Year, by Region beginning with FY 1990. The revised rates will be issued after the date of this Policy Announcement and are expected to be completed and issued by October 2, 2000. Once the revised rates are issued, Superfund managers should use the revised rates to determine the full cost of Superfund site specific activities. In the meantime, EPA Superfund program managers may use the preliminary, estimated indirect cost rates identified in Attachment 1 as the basis for estimating the full cost of Superfund site-specific activities.

Beginning with FY 2001, the Agency will no longer compute nor issue, as provisional or final, indirect cost rates based upon the earlier Ernst & Whinney methodology.

A brief description of the full cost methodology is as follows: EPA's annual costs are analyzed to determine whether the costs represent general Agency or Regional support activities, program support activities, or program direct costs. Those general Agency support activities and the Superfund program support activities are included in calculations that allocate these costs to programs and produce a Superfund indirect cost pool for each region. Each Region's indirect cost pool, including appropriate Regional support costs, is divided by the Region's direct costs incurred for site-specific activities to determine the Region's indirect cost rate for the fiscal year, which is expressed as a percentage of direct site costs. The Region's indirect cost rate is multiplied against the direct costs incurred for a particular Superfund site to determine the amount of indirect costs that will be allocated to that site. By adding the direct site costs and the indirect costs allocated to a particular site, or group of sites, the total cost for that site or group of sites is determined.

For a more detailed description of the Superfund Indirect Cost Rate Methodology, please refer to Attachment 1.

Effective Date

OCFO expects to complete and issue the new Superfund Full Indirect Cost Rates by October 2, 2000, at which time they will be effective for all accounting purposes.

Additional Information

If you need further information on this Policy Announcement, please contact Charles Young of the Program and Cost Accounting Branch, Financial Management Division at (202) 564–4914.

Attachment 2

Superfund Full Cost Indirect Cost Rate Methodology

Background

OMB, the Secretary of the Treasury and the Comptroller General established the Federal Accounting Standards Advisory Board (FASAB) in October 1990 to set Federal Government Accounting Standards. In September 1993, the Vice President in his report on the National Performance Review recommended an action which required the FASAB to issue a set of cost accounting standards for all federal agencies. FASAB issued the Statement of Federal Financial Accounting Standards (SFFAS) No. 4, Managerial Cost Accounting Concepts and Standards for the Federal Government on July 31, 1995, which became effective for EPA on October 1, 1997. Title VIII of the Federal Financial Management Improvement Act of 1996 (Title VIII, Public Law 104–208) requires federal agencies to comply with the Federal Financial Accounting Standards and emphasizes that agencies' systems must report the total costs of programs and activities. EPA will comply with this requirement for all the Agency's programs, based on specific needs of each program and applicable accounting requirements. The methodology described in this Policy Announcement applies to EPA's Superfund site-specific activities as set forth below.

SFFAS No. 4 sets forth five fundamental elements of managerial cost accounting to provide information on the cost of federal programs. One of those elements is to determine the full cost of government goods and services. According to the Standard, full cost includes both direct and indirect costs. Direct costs are defined as "costs that can be specifically identified with an output." Indirect costs are costs that are common to multiple outputs but cannot be specifically identified with any particular output. In the context of the Superfund program, direct costs include those that are directly incurred by the United States for site-specific activities performed at or in connection with a particular site or a particular group of sites. Site-specific activities include the assessment, investigation and clean-up of a site, ancillary site-associated activities, and related enforcement actions. Indirect costs are those that support the Superfund program as a whole and cannot be identified to any one site or other "output" of the

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program. The government's full cost at a Superfund site consists of the direct costs incurred for site-specific activities and the proportionate share of all the costs that provide indirect support to the site.

In 1985, EPA, with the assistance of the accounting firm Ernst & Whinney, developed an indirect rate methodology for determining the government's cost of site-specific activities under CERCLA. The indirect rates developed were conservative. As a result of the conservative methodology, a substantial portion of the indirect cost pool was not allocated to individual Superfund sites, even though site-specific activities are the direct output that the indirect costs support. As a result, the General Accounting Office (GAO), the EPA Office of Inspector General (OIG), OMB and Congress have repeatedly criticized the methodology for failing to identify the full cost of Superfund site clean-ups and therefore failing to allow potential recovery of all indirect costs. The OIG considered this method of recovering less than full overhead costs as a Federal Manager Financial Integrity Act (FMFIA) "material weakness" and suggested the Agency identify it as such.

EPA has revised the Superfund indirect cost methodology to enable the Agency to report the full cost of the program in compliance with SFFAS No. 4 and with other federal mandates requiring the reporting of cost information. During the preparation of the revised methodology, EPA sought separate independent reviews of the methodology by both GAO and the national accounting firm KPMG. KPMG found the revised methodology in compliance with SFFAS No. 4, as well as "easier to understand, more thorough and more complete than the previous methodology." GAO reviewed the revised methodology and found "that the design of EPA's proposed Superfund indirect cost methodology complies with cost accounting standards for federal government" as well as the requirements of SFFAS No. 4.

Approach

EPA's approach to developing a full cost indirect cost methodology for Superfund is based on the guidance provided by SFFAS No. 4. In addition, certain other factors are also taken into account. These include the nature and classification of Agency costs, private sector cost accounting practices and the cost/benefit of obtaining the data necessary to compute indirect cost rates. Indirect cost rates will be developed for each region and each Fiscal Year beginning with FY 1990. We are beginning with FY 1990 because active Superfund sites have costs incurred in prior years generally no earlier than FY 1990, with limited exceptions. Thus, computing full cost indirect rates back to FY 1990 will allow Superfund managers to determine the full cost of site-specific activities for nearly all active sites, while going back before FY 1990 would be of primarily historic interest. Therefore, we consider it most cost effective to compute rates no further back than 1990; if managers need indirect cost information for years prior to 1990, the rates computed using the current methodology may be used for those earlier years. Use of the revised indirect cost rates will provide Superfund managers, other EPA management and Congress with the full cost of Superfund site-specific activities.

The current Superfund indirect cost methodology uses indirect rates which are expressed as a rate per hour of labor effort. This rate is computed using a base consisting of all labor hours (including both site and non-site labor), but is applied to only site labor hours. This results in an under-allocation of indirect costs. This approach, although acceptable from an accounting standpoint, is conservative in its allocation of indirect costs to individual sites and led to the criticisms noted above. The principal conceptual change the Agency will make as it moves to full cost accounting in compliance with SFFAS No. 4 with respect to Superfund site-specific activities, is to ensure that indirect costs that support site clean-up are fully allocated to site charges. In order to do so, EPA will allocate the appropriate indirect cost pool using total direct site costs as an allocation base. This will result in indirect cost rates expressed as a percentage of total direct site costs rather than a dollar rate per hour as is the current method. The change in the allocation base is the most important difference between the full cost accounting methodology and the prior methodology, with only minor changes to the indirect cost pool (further described below). The indirect cost pool identified for calculation of the new indirect cost rate will reflect only those costs which are appropriately allocable to and support the Superfund site-specific activities.

In determining the indirect costs associated with the Superfund program, certain costs funded from non-Superfund appropriations are included as indirect costs because they provide services that benefit the Superfund program and are necessary to reflect full cost. SFFAS No. 4 states that one of the components of full cost is the "cost of support services provided by other responsibility segments * * * and by other reporting entities." We include other appropriations because our approach determines the allocability of indirect costs according to the organizational unit that provides the support services regardless of which appropriation has been charged with the costs. We begin with the total costs of organizational units and then allocate these costs to all units receiving support services.

Not all appropriations, however, are included as indirect costs. For example, charges under the Oil Spill appropriation are not included. Oil Spill disbursements support only the Oil Spill program and should not be allocated to other programs. State and Tribal Assistance Grants appropriations are also excluded. These are grants to states, local and tribal governments which fund a variety of environmental programs and infrastructure projects pertaining to water quality initiatives. Funding under the Science and Technology appropriation is excluded. These funds support research and development initiatives. The treatment of research and development costs is discussed under the section on direct costs. The programs funded by the appropriations listed above are considered to be separate from Superfund and have their own outputs. These appropriations do not include any indirect costs that are allocable to the Superfund program.

As explained below under Exclusions from the Pool, costs associated with certain organizational units are also removed from the indirect cost pool depending on their relationship to the Superfund program.

The concept of full cost, according to the Standard, also requires that inter-entity costs or the costs of services received from other entities be recognized. Costs of employee benefits funded by the Office of Personnel Management (OPM) are considered inter-entity costs and will be included as indirect costs. Because methodologies to estimate the costs of services received from federal agencies other than OPM are still under development, these costs are not included in the indirect cost pool at this time.

The methodology for determining indirect costs allocable to Superfund site-specific activities is patterned after private sector models that group costs according to levels of organization and benefit. Indirect costs are classified hierarchically. At the highest level are Agency-wide costs, *i.e.*, national costs which benefit all organizations. Examples of these are facilities management, budget functions, human resource management, and OPM inter-

entity costs. The next level incorporates regional costs which benefit each of the Agency's ten regions. These are general costs which are essentially counterparts of national costs but benefit regions only. Examples include the costs of regional administration, support, and policy and planning functions. Superfund program management costs comprise the next two levels. These are the support costs incurred at both headquarters and regions to implement Superfund site-specific activities. Costs from each of these four levels form the basis of the indirect cost pool. The final product—separate indirect cost rates for each of EPA's ten regions—will be expressed as a percentage of direct (site-specific) costs for each region.

Direct Costs

In determining the direct costs of the Superfund program, we use SFFAS No. 4's definition of direct costs. However, the direct costs of the Superfund program as a whole, are not necessarily synonymous with the direct costs of Superfund site-specific activities. Superfund site-specific activity is one component of the Superfund program.

Site-Specific Costs

The major component of Superfund direct costs is the costs of site-specific activities, *i.e.* the cost of all activities that go toward the assessment, investigation and actual clean up of a site, related enforcement actions, and other site-associated activities. Examples include, but are not limited to, the costs of salaries and benefits of employees who work directly at the site or provide other site-related effort, contractor costs of removal or remedial activities, and analytical work performed for the site.

Certain other Superfund-related costs are also considered direct costs, although they may or may not be associated with site-specific activities. These costs are described in the next several paragraphs.

ZZ Costs

"ZZ" costs are expenses incurred for site work before a site is established as a Superfund site and assigned a site-specific identifier. If a site-specific identifier is established, the ZZ costs incurred in connection with the site are reclassified to that site-specific identifier. If reclassified, they become part of direct site-specific costs, but for purposes of the indirect rate calculation, ZZ costs are classified as direct costs even if not reclassified.

R&D Costs

Research and Development (R&D) costs are treated as direct costs. All costs incurred within the Office of Research and Development, a separate and distinct organizational unit within the Agency, are excluded from the indirect cost pool. Research and Development costs are considered to be directly incurred for production of R&D outputs. Superfund-related research and development costs are mainly related to the Superfund Innovative Technology (SITE) program. This program evaluates the application of emerging remediation technologies.

NIEHS Costs

Costs associated with the National Institute of Environmental Health Sciences (NIEHS) interagency agreement (IAG) are treated as direct costs. This indirect cost methodology is designed to determine the indirect costs that support Superfund site-specific activities. Therefore NIEHS costs are excluded in their entirety from the indirect cost pool.

OSWER Immediate Office Program Area Costs

Costs associated with certain offices within the Office of Solid Waste and Emergency Response (OSWER) Immediate Office are treated as direct costs. Although these costs are related to the Superfund program and are direct costs of the functions they perform, they are not allocable to Superfund site-specific activities and so are not included in the indirect cost pool for site-specific response costs. For example, the Chemical Emergency Preparedness and Prevention Office (CEPPO), which reports directly to the OSWER Assistant Administrator, implements Agency-wide chemical emergency preparedness and prevention programs. The costs connected with Federal Facilities activities, whether within OSWER or OECA, as well as the costs of activities associated with Brownfields and the Emergency Planning and Community Right-to-know Act, are also considered direct and thus excluded from the indirect cost pool.

Indirect Cost Pool

The indirect cost pool consists of all costs classified as indirect for all appropriations that fund administrative, management and support functions. The pool includes Superfund non-site-specific costs that provide support to Superfund site-specific activities and the other direct Superfund activities. The indirect cost pool includes the non-site portion of: Personnel compensation and benefits, travel, rent, communications, utilities, contracted services, materials and supplies costs. Depreciation and inter-entity costs are also included. The major organizational units contributing costs to the indirect cost pool are described below.

EPA headquarters organizations providing services on an Agency-wide or national basis include the Office of the Administrator, the Office of Administration and Resources Management (human resources, procurement, facilities), the Office of the Chief Financial Officer (Comptroller, budget, finance), the Office of Information Resources Management, the Office of Policy, Planning and Evaluation, the Office of the Inspector General and the Office of General Counsel. The ten EPA regional offices have corporate structures similar in function to those of headquarters. Each region has a regional administrator's office and offices providing general regional support services such as personnel, finance, policy and information management. Costs for these organizations comprise regional indirect costs.

Management and support costs associated with carrying out the Superfund program are another component of the indirect cost pool. These costs are incurred at both headquarters and the regions. At the headquarters level, these are the program management and support costs incurred by the Office of Solid Waste and Emergency Response (OSWER) and by the Office of Enforcement and Compliance Assurance (OECA). At the regional level, Superfund program management costs incurred by regional program divisions in support of Superfund site-specific activities are included in the indirect cost pool. Any of the offices noted above may also have Superfund site-specific charges. Those site-specific charges are subtracted from the total cost of the organization during the indirect cost computation.

The Superfund indirect cost pool, that is, the pool of indirect costs which is ultimately allocable to Superfund sites, will consist of proportionate amounts of Agency-wide, regional and program-related costs. In other words, the Superfund indirect cost pool will be comprised of only the portion of Agency-wide, regional and program-related costs which supports Superfund sites, with the remaining costs supporting all other Agency programs.

Exclusions From the Pool

Superfund non-site specific contractor costs, such as program management, that are distributed through the annual allocation process are excluded from the

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indirect cost pool. Annual allocation is the process by which response action contractor non-site support costs are allocated to sites on which the contractor worked. The site-allocable portion of these contracts is removed from the pool because it is allocated to individual sites under a separate process and is treated as a portion of direct site-specific costs incurred by EPA.

Costs of organizational units that provide no direct or indirect support to Superfund are excluded. Examples include the Office of International Activities and certain organizations within the Office of the Administrator, such as the Science Advisory Board and the Office of Administrative Law Judges.

Indirect Cost Base

To properly distribute costs, the indirect cost base must reflect the services provided to each organizational recipient and finally, to the Superfund sites themselves. There are several intermediate allocations of costs, as described below, which use appropriate allocation bases. The choice of allocation base depends on the type of cost to be allocated.

Agency-wide or national indirect costs, also referred to as general and administrative (G&A) costs, are allocated using one of two allocation bases. Facilities, human resources and OPM inter-entity costs are allocated to all EPA organizations based on personnel compensation and benefits (PC&B) costs. The rationale for using PC&B costs as the allocation statistic is that these indirect costs are purely workforce-related and would not otherwise be incurred. Costs associated with other organizations providing Agency-wide benefits, such as procurement, budget, finance, information management, policy, planning, general counsel and inspector general, are distributed across the entire Agency based on total Agency costs. Depreciation will be allocated to all EPA organizations using appropriate cost accounting principles. We are in the process of gathering these costs and determining the appropriate allocation base. Depreciation costs will be incorporated into the rates as soon as possible.

The next level of indirect costs is regional costs which provide general and administrative support similar to that provided at the Agency-wide level. Regional G&A cost pools, including each region's share of national G&A, personnel and facilities costs, depreciation and inter-entity costs are distributed across the entire region based on total regional costs. This is similar to the distribution of Agency-wide support costs across total Agency costs.

Headquarters program management and support costs incurred by OSWER and OECA must be allocated to program areas within each office of an EPA Assistant Administrator and to the regions. Program areas are designated by sub-organization or by funding vehicle such as interagency agreements which fund a particular type of activity. The allocation of headquarters program management and support costs is based on the total costs associated with each program area and region. The headquarters allocation base includes administrative and program costs from appropriations other than Superfund and Superfund site-specific and non-site-specific costs. The regional allocation base consists of regional site charges made within each office of an EPA Assistant Administrator.

The final Superfund indirect cost pool is allocated using Superfund site charges. These site charges include both headquarters and regional site charges, ZZ charges, site charges made under the Department of Justice (DOJ), Corps of Engineers, Bureau of Reclamation, *etc.*, interagency agreements and the Superfund response contract program management costs that are allocated to sites in a separate process. EPA charges arising from mixed funding settlements are direct site costs and are also included in the indirect cost base. The charges for the Agency for Toxic Substances and Disease Registry (ATSDR) are not included in the indirect cost base because their funding mechanism—a "transfer allocation"—does not result in a charge to EPA's accounting system. Again, instead of a rate per hour as in the current methodology, the indirect cost rate will be expressed as a percentage of direct (site) costs.

Computation of Indirect Cost Rates

Data used for the indirect cost computations are obtained from the Agency's Integrated Financial Management System.

The indirect cost pool supporting Superfund site-specific activities in each region for a given fiscal year consists of proportionate shares of the following: program management and support costs incurred by relevant units of EPA headquarters (including their share of nationwide G&A); the region's G&A; and the region's non-site Superfund costs.

The computation of the indirect cost rates consists of nine steps. A detailed document more fully describing the accounting methodology employed will be released with the calculated rates by region by fiscal year. That document will contain a detailed description of each of the nine steps. Briefly, steps 1 and 2 compute the nationwide G&A rate and step 3 computes the regional G&A rates. Steps 4 through 9 perform various allocations and refinements of costs ensuring that the regional Superfund cost pools, which are summarized in step 9, reflect only costs by region associated with Superfund site-specific activities.

Estimated Indirect Rates by Region

As noted above, the revised indirect cost rate methodology will for the first time provide information on the full costs of the outputs of Superfund site-specific activities. The process of computing rates using the full cost methodology is ongoing. As noted above, the revised rates by region by fiscal year will not be issued for several months. In the meantime, we are providing an approximation of the rates that can be used as a means to estimate the full cost of Superfund site-specific activities. These rates are based on the average of preliminary computed rates for fiscal years 1994, 1997 and 1998. It should be noted that rates for any given region may vary considerably from year to year; therefore, the final calculated rates may differ from the estimated average rates listed below.

Estimated Rates*

(*Subject to Change*)

Region 1—30.0%
Region 2—30.8%
Region 3—43.6%
Region 4—48.1%
Region 5—41.6%
Region 6—29.0%
Region 7—54.4%
Region 8—35.1%
Region 9—40.9%
Region 10—38.6%

* Based on the average of preliminary rates for Fiscal Years 1994, 1997 and 1998.

The overall effect of implementing the full cost accounting methodology for Superfund indirect costs will be to increase the aggregate amount of indirect costs allocated to site-specific activities. As compared to indirect costs allocated using the current methodology, the indirect costs allocated to individual sites may increase or decrease, depending on a number of factors, and will not be known with certainty until all the rates are computed. The estimated rates provided above, however, may be used to predict generally the amount of indirect costs to be allocated to a particular site using the full cost accounting methodology.

To apply these rates to an individual site, identify the total direct site-specific costs of that site (including any DOJ costs but excluding any ATSDR costs) and multiply that total by the appropriate region's indirect cost rate. If you have total site costs including indirect costs using the current labor hours-based rates, total direct site-specific costs consists of the total site costs minus the previously-assessed indirect costs. Adding the direct site-specific costs and the indirect costs calculated under the new methodology will result in the full cost of that site.

[FR Doc. 00–13845 Filed 6–1–00; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 25, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0927.
Expiration Date: 05/31/2003.
Title: Auditor's Annual Independence and Objectivity Certification.
Form No.: N/A.
Respondents: Business or other for profit.
Estimated Annual Burden: 7 respondents; 10 hours per response (avg). 70 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion; Annually.
Description: The Responsible Accounting Officer Letter (RAO) 28, released December 1, 1999 requires that carriers' independent auditors disclose in writing all relationships between the auditor and its related entities and the carrier and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence; confirm in writing in its professional judgment it is independent of the carrier; and discuss the auditor's independence. The information will be used to determine whether the auditors are performing their audits independently and unbiased of the carrier they audit. Obligation to respond: Mandatory.

OMB Control No.: 3060–0514.
Expiration Date: 05/31/2003.
Title: Section 43.21(b)—Holding Company Annual Report.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 20 respondents; 1 hour per response (avg.); 20 total annual burden hours.
Estimated Annul Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annually.
Description: The SEC 10K Form is needed from holding companies of communications common carriers to provide the Commission with the data required to fulfill its regulatory responsibilities and by the public in analyzing the industry. Selected information is compiled and published in the Commission's annual common carrier statistical publication. Obligation to respond: Mandatory.

OMB Control No.: 3060–0894.
Expiration Date: 05/31/2003.
Title: Certification Letter Accounting for Receipt of Federal Support, CC Docket Nos. 96–45 and 96–262.
Form No.: N/A.
Respondents: State, Local or Tribal Government.
Estimated Annual Burden: 51 respondents; 3 hours per response (avg.); 153 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion; Annually.
Description: The Commission requires states to certify that carriers within the state had accounted for its receipt of federal support in its rates or otherwise used the support pursuant with Section 254(e). A state may file a supplemental certification for carriers not subject to the state's annual certification. This information will be used to show that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. Further, the collection of information will be used to certify that the carriers have accounted for its receipt of federal support in its rates or otherwise used the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended in accordance with section 254(e). Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0755.
Expiration Date: 05/31/2003.
Title: 47 CFR Sections 59.1–59.4—Infrastructure Sharing.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 75 respondents; 31 hours per response (avg.); 2325 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion; Third party disclosure.
Description: In CC Docket No. 96–237, the Commission implemented the infrastructure sharing provisions of the Communications Act of 1934, as amended. Section 259 requires incumbent LECs to file any arrangements showing the conditions under which they share infrastructure. See also 47 CFR Section 59.2. (No. of respondents: 75; hours per response: 15; total annual burden: 375 hours). Section 259 also requires incumbent LECs to provide information on deployments of new services and equipment to qualifying carriers. See also 47 CFR Section 59.3 (No. of respondents: 75; hours per response: 24 hours; total annual burden: 1800 hours). The Commission requires incumbent LECs to provide 60-day notices prior to terminating section 259 agreements. See 47 CFR Section 59.2. (No. of respondents: 75; hours per response: 2 hours; total annual burden: 150 hours). The information collected under the requirement that incumbent LECs file any tariffs, contracts or other arrangements for infrastructure sharing would be made available for public inspection. The information collected under the requirement that incumbent LECs provide timely information on planned deployments of new services and equipment would be provided to third parties. The information collected under the requirement that providing incumbent LECs furnish sixty days notice prior to termination of a section 259 sharing agreement would be provided to third parties to protect customers from sudden changes in services. Obligation to respond: Mandatory.

OMB Control No.: 3060–0933.
Expiration Date: 11/30/2000.
Title: Community Broadband Deployment Database Reporting Form.
Form No.: FCC Form 460.
Respondents: Not-for-profit institutions; Federal Government; State, Local or Tribal Government.
Estimated Annual Burden: 30 respondents; .25 hours per response (avg.); 7 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

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Frequency of Response: On occasion.

Description: Pursuant to Section 419(b) of the Communications Act of 1934, as amended, on October 8, 1999, the FCC convened a Federal-State Joint Conference on Advanced Telecommunications Services to provide a forum for cooperative dialogue and information exchange between and among state and federal jurisdictions regarding the deployment of advanced telecommunications services. As part of this ongoing effort, a searchable on-line database of community broadband demand aggregation and deployment efforts is being established. Respondents will be able to make their submissions electronically to the Commission and the National Regulatory Research Institute (NRRI) Web sites. The information will be used by the Commission to prepare reports that help inform consumers and policy makers at the state and federal levels of the status of deployment of broadband services. We will use this information to better inform our understanding of broadband deployment in conjunction with our Congressionally required Section 706 reports. Obligation to respond: Voluntary.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13761 Filed 6–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 25, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 3, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0012.

Title: Application for Additional Time to Construct a Radio Station (under 47 CFR Part 21).

Form Number: FCC Form 701.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100.

Estimate Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 200 hours.

Total Annual Costs: $17,000.

Needs and Uses: The FCC Form 701 is being revised to eliminate services authorized under 47 CFR Parts 23, 25, and 101 from this form. Only services authorized under 47 CFR Part 21 will remain users of this form. In addition, fees information is being eliminated. The FCC Form 701 is used when applying for additional time to construct an MDS or international broadcast station. The Commission uses FCC Form 701 to determine whether to grant an applicant's request for an additional period of time to construct a radio station authorized under 47 CFR Part 21. Sections 308, 309, and 319 of the Communications Act of 1934, as amended, are the legal authorities for the requirement. Rule Part 21 promulgates the collection. In addition to the requirements contained in this form, applicants may be subject to other requirements.

OMB Control Number: 3060–0397.

Title: Special Temporary Authority, Section 15.7(a).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 2.

Estimate Time Per Response: 6 hours.

Frequency of Response: Recordkeeping; Three year reporting requirement.

Total Annual Burden: 12 hours.

Total Annual Costs: None.

Needs and Uses: In exceptional situations, a special temporary authorization to operate a radio frequency device not conforming to the subject rules will be issued. An applicant must show that the proposed operation is in the public interest, but that it cannot be conducted feasibly under the applicable rules.

OMB Control Number: 3060–XXXX.

Title: Application for a Low Power FM Broadcast Station License.

Form Number: FCC Form 319.

Type of Review: New collection.

Respondents: Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 1,200.

Estimate Time Per Response: 1.0 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,200 hours.

Total Annual Costs: $105,000.

Needs and Uses: The FCC adopted a report and order authorizing the licensing of two new classes of FM radio stations, generally referred to as low power FM (LPFM): an LP 100 class for stations operating at 50–100 watts effective radiated power (ERP), and an LP 10 class for stations operating at 1–10 watts ERP. These stations will be operated on a noncommercial educational basis by entities which do not hold attributable interests in any other broadcast station or other media subject to the FCC's ownership rules and will create a new class of radio stations designed to serve very localized communities or underrepresented groups within communities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13760 Filed 6–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, June 6, 2000, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Failed Institution Assets Held by Federal Reserve Banks.

Memorandum and resolution re: Notice of Proposed Rulemaking—Parts 364 and 308—Standards for Safeguarding Customer Information and Rescission of Year 2000 Standards for Safety and Soundness.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: May 30, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–13936 Filed 5–31–00; 11:06 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, June 7, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 31, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13935 Filed 5–31–00; 10:03 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–33–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch. New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects: Information Collection Procedures for Requesting Public Health Assessments—(0923–0002)—EXTENSION—The Agency for Toxic Substances and Disease Registry (ATSDR) is announcing the request for extension of the OMB approval for the Information Collection Procedures for Requesting Public Health Assessments. ATSDR is authorized to accept and respond to petitions from the public that request public health assessments of sites where there is a threat of exposure to hazardous substances (42 U.S.C. 9604(i)(6)(B)). The Agency conducts public health assessments of releases or facilities for which individuals provide information that people have been exposed to a hazardous substance, and for which the source of such exposure is a release, as defined under CERCLA. The general administrative procedures for conducting public health assessments, including the information that must be submitted with each request, is described at 42 CFR 90.3, 90.4, and 90.5. Procedures for responding to petitions, decision criteria, and methodology for determining priorities may be found at 57 FR 37382–89. There is no cost to the respondents other than their time.

ATSDR anticipates approximately 36 requests will be received each year. This estimate is based on the number of requests received since the enabling legislation was enacted and the expressions of interest (via telephone, letter, etc.) from members of the public, attorneys, and industry representatives.

The total burden hours are estimated to be 18.

Respondents	Annual number of respondents	Number of responses/ respondent	Avg.hourly burden/ response	Total burden hours
General public	36	1	.50	18

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Dated: May 26, 2000.
Charles W. Gollmar,
Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).
[FR Doc. 00–13801 Filed 6–1–00; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–35–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. An Evaluation Study of Tuberculosis Control and Prevention Measures Implemented in Large City and County Jails—New—The Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, TB Prevention (NCHSTP), Division of TB Elimination, Field Services proposes to conduct a survey to determine the extent that jails have implemented the 1996 recommendations of the Advisory Council for the Elimination of Tuberculosis, Prevention and Control of Tuberculosis in Correctional Facilities [MMWR 1996:45 (No. RR–8)]. The purpose of this evaluation is to determine to what extent the recommendations have been implemented and to identify barriers for implementation of the recommendations. The objectives are to define the knowledge of the recommendations among correctional staff, to identify barriers for the adoption and implementation of the recommendations, and to initiate a dialogue between public health and correctional officials on how to utilize the study results for improving TB control and prevention in the jails.

This project will assess the types and adequacy of the TB control measures that are in place in jails. The first component of this project is a survey of the largest jails to define the size of the TB problem in their populations, to review the infection control procedures that are in place, and determine the tracking mechanisms for information concerning skin test results and completion of therapy. The second component consists of on-site observation of the infection control process to observe the processing and evaluation of inmates and the infection control infrastructure (e.g., isolation procedures).

The evaluation project will be voluntary and only correctional staff will participate; no prisoners will be interviewed or asked to complete a written survey. The total burden hours are estimated to be 138.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Jail Health Administrator	46	1	1	46
Jail Medical Director	46	1	1	46
County/City Public Health Dept. TB Control Director	46	1	1	46
Total				138

Dated: May 26, 2000.
Charles W. Gollmar,
Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).
[FR Doc. 00–13802 Filed 6–1–00; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control and Prevention

[Program Announcement 00086]

Cooperative Agreements for National Networks for Tobacco Prevention and Control; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of funds for fiscal year (FY) 2000 for cooperative agreements with organizations that can work with the following eight (8) priority populations: 1. African-Americans (AAs); 2. Hispanics/Latinos (H/L); 3. Asian Americans/Pacific Islanders (AAPIs); 4. American Indians/Alaskan Natives (AI/AN); 5. women; 6. gays/lesbians; 7. low socioeconomic status (SES) adults; and, 8. young people to plan, initiate, coordinate, and evaluate tobacco use prevention and control activities to reduce tobacco use in their respective priority population. CDC intends to award cooperative agreements to organizations that can become an integral part of a broad national strategy to prevent and reduce the use of tobacco and exposure to environmental tobacco smoke.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Tobacco Use. For the conference copy of "Healthy People 2010", visit the Internet site: <http://www.health.gov/healthypeople>. Additionally, the program relates to the Department of Health and Human Services' (DHHS) initiatives to eliminate the disparities in health status and health outcomes among populations.

The purpose of the awards is to establish a Network of national organizations among the eight priority populations that can plan, initiate, coordinate, and evaluate tobacco use prevention and control activities to reduce tobacco use in their respective priority population and to facilitate the following: 1. creation of national Networks in which multiple organizations can work together to decrease tobacco use in their respective priority populations; 2. building and strengthening capacity and infrastructure within organizations and their Networks so they can mobilize constituents and the public to implement tobacco control efforts; 3. identification of culturally competent strategies and opportunities to reach and impact the priority populations

about tobacco control and prevention; and, 4. initiation and expansion of effective tobacco control measures and initiatives to educate Network members and the public.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, States and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Minimum Requirement

Eligible organizations must meet ALL of the criteria listed below and provide evidence of eligibility by attaching a copy of Addendum 5, Eligibility Certification Form to the application proposal.

Eligibility Criteria

1. Demonstrate that the applicant has at least two years experience in operating and administering coordinated tobacco control or other public health programs that serve their priority population on a regional (multi-state) or national scale.

2. Demonstrate a primary relationship to one of the priority populations listed above. A primary relationship is one in which there is a documented history of assisting, serving or representing the priority population as the most important component of the organization's mission.

3. Describe the specific agencies, organizations and individuals with whom collaboration is being conducted and whom you will invite to join the national Network. In addition, list up to 10 stakeholders that you perceive as most critical for planning and implementing your five-year vision. Describe why each is important.

4. Provide evidence of collaborative relationships with at least two (2) other organizations on the development and implementation of this program.

5. Provide supporting documents and/or letters of support from other potential agency and/or organizational partners.

6. Document that at least 51 percent of persons on the governing board of the lead organization are members of or primarily serve the priority population.

7. For those applicants applying as a private, nonprofit organization, proof of tax exempt status must be provided with the application. Tax-exempt status is determined by the Internal Revenue Service (IRS) Code, Section 501(c)(3).

Note: Public Law 104–65 states that an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

Pre-Application Telephone Conference

Applicants are invited by CDC to participate in a pre-application technical assistance telephone conference June 15, 2000 promptly at 2 p.m. (Eastern time) to discuss: programmatic issues regarding this program; funding availability for the eight priority population categories; suggested collaborations/partners; how to apply; and questions regarding the content of the program announcement. This telephone conference is expected to last one hour. The conference name is Tobacco. The telephone bridge number for Federal participants is 404–639–3277; for not-Federal participants call 1–800–311–3437. Participants will need to enter the following conference code when prompted to be connected 984402. All questions and comments will be recorded and published on the Internet at http://www.cdc.gov/funding as an attachment to this program announcement.

C. Availability of Funds

Approximately $3,000,000 is available in FY 2000 to fund approximately eight (8) awards (approximately 1 award in each priority population.) It is expected that the average award will be $330,000 ranging from $250,000 to $400,000. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to five (5) years. Funding estimates may change in subsequent years.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds cannot be used for construction or renovation, to purchase a facility to house project staff or carry out project activities, to support direct patient care, or to supplant existing support.

Although the applicant may subcontract with other organizations, a substantial portion of the activities (including program management and operations) for this project must be performed by the applicant.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting a range of activities under 1. (Recipient Activities), and CDC will be responsible for the activities under 2. (CDC Activities) below.

1. Recipient Activities

a. Develop a national Network of organizations to facilitate the collection and dissemination of general, scientific, and health-related information about tobacco.

b. Provide a mechanism for accessing tobacco control policies, materials, and assets of Network members.

c. Participate in a system for communicating with members of the Network.

d. Train Network members in capacity building and infrastructure development. This can include establishing ways to provide mentorship experiences, as well as assisting Network members in identifying tobacco control information and resources from States, foundations, and other sources.

e. Develop and disseminate reports that identify and describe strategies and opportunities for reaching and/or impacting the identified population vis-a-vis in the four tobacco control and prevention priority goal areas. See Addendum 2—Background.

f. Develop a National data base of tobacco prevention and control experts who can work with Network members to provide training and technical assistance to the priority populations. Assist in arranging linkages with these experts.

g. Provide leadership in the development, operation and administration of tobacco-related initiatives for Network members and on issues related to tobacco use prevention and control within the priority population. Activities may include providing technical assistance on the development of materials that are culturally competent as well as identifying opportunities to train constituents and others to strategically use the media, media advocacy, and other communications strategies.

h. Provide leadership in the development, implementation, and evaluation of an innovative program that addresses identified need(s) within the priority population and coincides with Healthy People 2010 objectives to reduce tobacco use.

i. Establish a working relationship with state-based tobacco control programs to facilitate collaboration with priority populations served by the Network.

j. Develop articles for publication in peer-reviewed journals and/or case studies and presentations for national/

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regional meetings, (*e.g.*, National Tobacco Prevention and Control Conference, Tobacco Training Institute, and regional conferences).

k. Plan workshops, trainings and skill building to increase capacity to understand and address issues and implement program activities.

l. Conduct a joint Network activity to coincide with a national conference, issue, or event such as World No Tobacco Day, the Great American Smokeout, the release of Surgeon General's Reports, MMWRs, *etc.*

m. Conduct both process and outcome evaluations to determine if Annual Action Plan objectives were met and to measure the effectiveness of major activities.

n. Provide a full-time employee to direct and coordinate proposed activities.

2. CDC Activities

a. Provide consultation and technical assistance in the planning, implementation and evaluation of program activities.

b. Provide up-to-date information that includes diffusion of best practices and current research and data in areas of tobacco use prevention and control.

c. Facilitate communication and activities among organizations including holding meetings, conferences and conference calls.

d. Assist in planning workshops, trainings and skill building to increase capacity to understand and address issues and implement program activities.

e. Support the development and maintenance of communications and foster the transfer of information, successful prevention interventions and program models between the grantees, the States and national partners.

E. Application Content

Letter of Intent

By postmarked date June 22, 2000 submit a letter of intent (LOI) to the Grants Management specialist identified in the "Where to Obtain Additional Information" section of this announcement. The LOI must identify the name, address, telephone number and email address for the applicant organization. Identify possible organizations of collaboration; the principal investigators name, business address and telephone number; and, the priority population served. This information will be used to enable CDC to determine the level of interest in this announcement.

Applications

Use the information in the Program Requirements, Other Requirements, Evaluation Criteria and information below to develop the application content. Your application will be evaluated on the evaluation criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

Applications submitted should include:

1. Executive Summary (3–4 Pages and Addendums 5 and 8)

a. Describe eligibility—type of organization and the priority population served;

b. Describe need for the project;

c. Describe applicant's capability to implement the proposed project(s)/activities;

d. Describe major proposed objectives and activities;

e. Provide a list of proposed organizations that will be included in the Network. See Addendum 7 in the application package for a sample of the matrix format.

f. Completed and signed copy of Addendum 5 in the application packet. Eligibility Certification Form.

2. Narrative (Not More Than 20 Pages)

a. Need

(1) Describe the need for tobacco prevention and control in the specified priority population.

(2) Describe the need for and benefits of convening a tobacco control and prevention national Network of organizations serving the priority population.

(3) Describe the feasibility of developing programs to meet the needs of the specified priority population.

b. Capacity

Describe relevant experience at the National, Regional and State levels that demonstrate the ability, capacity, and state of readiness to perform the program projects/activities, including but not limited to:

(1) Experience facilitating, building and maintaining workgroups, coalitions, and Networks. Include: (a) type of constituents; (b) number of constituents; and (c) location of constituents (intercity, rural, multi-state).

(2) Experience that will demonstrate the capacity and state of readiness to form linkages with public and private agencies including Federal agencies, State and local health departments, and community-based organizations.

(3) Experience in providing leadership in developing, operating and administering health-related programs, campaigns, and trainings within the respective priority population. Be specific (include dates and number of years) about experience with developing and implementing tobacco prevention and control initiatives and whether your public health experience has been at a local, State, multi-state or national level.

(4) Experience, in general, working with the priority population.

(5) Describe the applicant's organizational structure, and how that structure can support the development of a tobacco control agenda and Network. Submit a copy of the organizational chart.

(6) Demonstrate that the applicant has at least two years experience in operating and administering coordinated tobacco control or other public health programs that serve their priority population on a regional (multi-state) or national scale.

(7) Document that at least 51 percent of persons on the governing board of the lead organization are members of or primarily serve the priority population.

(8) Submit a copy of the applicant's tobacco control policy or a letter of commitment from the organization's President or Executive Director to develop one.

(9) Submit a copy of the organization's purpose, mission and goals.

(10) Submit a copy of the tax-exempt status under Section 501 (c)3, if applicable. (Addendum 5)

(11) Show evidence of capacity to carry out fiduciary responsibilities over administration and management of projects.

c. Five-Year Vision

Describe your five-year vision for achieving the tobacco prevention and control goals and objectives you have identified. Incorporate Healthy People 2010 Objectives for decreasing tobacco use, recommendations from Surgeon Generals' reports, (if applicable to the priority population), and your vision for decreasing tobacco-related health disparities within the priority populations.

d. Annual Action Plan (AAP)

Provide a narrative that describes your annual action plan. In addition to the narrative, applicants are encouraged to use the AAP format included as Addendum 6 to summarize the key elements of the plan.

The AAP should include the following:

(1) Objectives—state SMART objectives, provide: Specific; Measurable; Achievable; Relevant; and Time-phased objectives to be accomplished during the first year. Describe possible barriers to or facilitators for reaching each objective

(2) Strategies and activities: For each objective, describe the strategies to be used and activities (in detail) to be conducted to meet the objectives and accomplish the recipient activities. Include, at a minimum, the following:

(a) Describe plans to establish a national Network, and include the types of partners and organizations to be recruited, and the recruiting process.

(b) Describe the process for developing a report that identifies and describes strategies and opportunities to reach and impact the priority population around tobacco control and prevention and the four goal areas in the priority population.

(c) Describe how the recipient will build the capacity of Network members.

(3) Timeline: Provide a timeline that identifies major activities and assigns approximate dates for their inception and completion.

(4) Tracking progress: Provide indicators of how you will monitor and track progress toward accomplishing activities.

(5) Responsible party: What person or party is responsible for overseeing the activity.

The annual action plan may include the following:

(1) A plan to establish a national Network, and include the types of partners and organizations to be recruited, and the recruiting process.

(2) The process for developing a report that identifies and describes strategies and opportunities to reach and impact the priority population around tobacco use prevention and control.

(3) The methods that will be used to build the capacity of Network members.

(4) Responsible party for each activity. Designate who among the collaborative will oversee the process.

(5) Timelines—identify in what quarter(s) major activities will be conducted.

(6) Evaluation indicators—Provide indicators of how you will monitor and track progress toward accomplishing activities.

e. Project Management and Staffing Plan

(1) Describe how you will manage the project to accomplish recipient activities. Identify challenges you expect will arise and how you will problem solve to overcome them.

(2) Describe the proposed project staffing. Staffing should include the commitment of at least two full-time staff members to provide direction for the proposed activities.

(3) Demonstrate that staff members have the professional background, experience, and organizational support needed to fulfill the proposed responsibilities. Include curriculum vitae (limit to 2 pages) for each staff member and job descriptions for staff not yet identified.

(4) If other organizations (through contracts or in kind services) will participate in the collaborative and proposed activities, provide the name(s) of the organization(s), the capacity of the organization's staff, and their roles in carrying out the proposed activities.

f. Collaborative and Network Activities

(1) Describe the specific agencies, organizations and individuals with whom collaboration is being conducted and whom you will invite to join the national Network. In addition, list up to 10 stakeholders that you perceive as most critical for planning and implementing your five-year vision. Describe why each is important.

(2) Describe how collaborators were and will be involved in designing, implementing and providing input into activities. Be specific about their role and the activities in which you will seek collaboration.

(3) Provide evidence of collaborative relationships with at least two (2) other organizations on the development and implementation of this program.

(4) Provide supporting documents and/or letters of support from other potential agency and/or organizational partners.

g. Evaluation of the Annual Action Plan Goals and Objectives

Provide a description of the evaluation and monitoring process to be used to track and measure progress in meeting objectives in the annual action plan. The evaluation plan should include the means of tracking and measuring the objectives, activities, and the collaborative work with Network partners, and any other relevant process or outcome measures. Describe how the results will be reported and used. Designate who will oversee the evaluation design and process.

h. Budget and Accompanying Justification

Provide a line item budget and detailed justification for the first year. The budget should be consistent with stated goals and planned activities outlined in the annual action plan. To the extent necessary applicants are encouraged to include budget items for the following:

(1) If needed—a computer, modem, communicating software, and a dedicated telephone line to support routine participation in accessing and downloading information and communicating with partners via the Internet.

(2) Travel for the following meetings:

(a) Two individuals to participate in the annual three-day National Tobacco Control Conference;

(b) Two individuals for two trips to Atlanta to attend a two-day CDC sponsored training or technical assistance workshop;

(c) Two individuals to attend the five-day CDC Tobacco Use Training Institute.

(d) One individual to attend up to a three-day regional training in South Carolina

(e) Travel for members to attend one to two Network meetings. Location will be determined by the applicant.

If proposed contractors are known at the time of the application, provide the following:

(a) Name of contractor/consultant

(b) Method of selection

(c) Scope of service

(d) Period of performance

(e) Detailed budget

(f) Method of accountability

F. Submission and Deadlines

Letter of Intent

By postmarked date June 22, 2000, submit a letter of intent (LOI) to the Grants Management specialist identified in the "Where to Obtain Additional Information" section of this announcement. This information will be used to enable CDC to determine the level of interest in this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB 0937–0189). By postmarked date July 17, 2000, submit the application and appropriate information addressing sections 1 and 2 below to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this application.

Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Postmarked on or before the deadline date.

(Applicants must request a legibly dated U.S. Postal Service postmark, Private metered postmarks shall not be acceptable as proof of timely mailing)

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Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Need (10 Percent)

The extent to which the applicant identifies and justifies the need for tobacco prevention and control, and includes data and other supporting evidence of tobacco use in the priority population and problems involving environmental tobacco smoke, access to tobacco, tobacco industry advertising, tobacco use cessation and/or tobacco-related health disparities within the priority population.

The extent to which the applicant describes how a national Network of partners can help advance the tobacco control movement within the priority population.

2. Capacity (25 Percent)

The extent to which the applicant demonstrates the capacity and ability and state of readiness of their organization and collaborators to establish and maintain a national Network, and to facilitate building capacity of Network members, producing a report, and developing a major tobacco control initiative.

a. The extent to which the applicant describes the history, nature, and its relevant experience in organizing and facilitating the work of large groups.

b. The extent to which the applicant describes its linkages with Federal agencies, State and local health departments, and community-based organizations.

c. The extent to which the applicant and members of the collaborative document its experiences and successes in operating and/or administering a tobacco control or other public health program serving the priority population. The extent to which the experience is on a National, Regional or State level. Two years of relevant experience is needed.

d. Document that at least 51 percent of persons on the governing board of the lead organization are members of or primarily serve the priority population.

e. The extent to which the applicant documents its experiences and successes in the fiduciary administration and management of comparable projects.

f. The extent to which the applicant and members of the collaborative demonstrate a primary and working relationship with the priority population to achieve a desired outcome.

g. The extent to which the applicant or organizations making up the collaborative have at least two years experience as the lead or organizing body charged with convening multiple organizations.

h. The extent to which the applicant demonstrates that the organizational structure, mission, and policy, (or in the absence of a policy—a letter from the Director committing to the development of a tobacco control policy), will support the purpose of this project.

3. Five-year Vision (5 Percent)

The extent to which the applicant articulates the vision, seeks meaningful changes for a five-year period, and ties the vision to the Healthy People 2010 Objectives.

4. Annual Action Plan (15 Percent)

a. The extent to which the objectives are realistic and related to identified needs and purpose of the program.

b. The extend to which activities are realistic and feasible and will help accomplish the objectives.

c. The extent to which there are realistic plans to establish a national Network, a realistic process to develop and disseminate reports that identify and describe strategies and opportunities for reaching and/or impacting the identified population.

5. Collaborative and Network Activities (20 Percent)

a. The extent to which the applicant formed and worked with a collaborative of at least 2 other organizations in planning the application, and provides memoranda of agreement or other documents as evidence of agreed-upon collaborative relationships.

b. The extent to which the applicant will involve others in planning, implementing and evaluating activities throughout the project period.

c. The extent to which the applicant proposes to be inclusive and to recruit organizations into the Network with diverse skills and knowledge and that serve diverse populations.

d. The extent to which the applicant includes commitment letters and letters of support from diverse groups of partners, including organizations with experience in tobacco control.

e. The extent to which the applicant proposes to work with State tobacco control programs to reach the primary priority population.

6. Project Management and Staffing Plan (15 Percent)

a. The extent to which the applicant identifies staff that have the responsibility, capability, and authority to carry out the activities, as evidenced by job descriptions, curriculum vitae, and descriptions or memorandum of understandings with collaborating agencies.

b. The extent to which the plan to manage the project and to overcome challenges is logical, resourceful, and adequate to accomplish the purpose of the project.

7. Evaluation (10 Percent)

The extent to which the applicant realistically and adequately proposes to measure progress in tracking and meeting objectives and presents a reasonable plan for obtaining data, reporting the results and using the results for programmatic decisions.

8. Budget and Accompanying Justification (Not Scored)

The extent to which the budget is reasonable, itemized, clearly justified and consistent with the work plan and intended use of funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Progress reports (semiannual)
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

For descriptions of the following Other Requirements, see Addendum 1 in the application package. Some of the more complex requirements have some additional information provided below:

AR–7—Executive Order 12372 Review
AR–10—Smoke-Free Workplace Requirements
AR–11—Health People 2010
AR–12—Lobbying Restrictions
AR–15—Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Section 301(a), 317(k)(2), 241(a), and 247b(k)(2) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2754, FAX: (770) 488–2777, Email address: nea1@cdc.gov

This and other CDC announcements can be found on the CDC Homepage Internet address: http://www.cdc.gov.

For program technical assistance, please contact:

Michele Williams, Project Officer, Program Services Branch, Office on Smoking and Health, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, Atlanta, GA 30341–3717, Telephone number: (770) 488–1207, Email address: muw0@cdc.gov

or

Victor Medrano, Project Officer, Program Services Branch, Office on Smoking and Health, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE, Atlanta, GA 30341–3717, Telephone number: (770) 488–1125, Email address: vdm6@cdc.gov

Dated: May 26, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13799 Filed 6–1–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 2000–08]

Fiscal Year 2000 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Request for Applications under the Office of Community Services' Training, Technical Assistance and Capacity-Building Program.

SUMMARY: The Office of Community Services announces that competing applications will be accepted for new grants pursuant to the Secretary's authority under Section 674(b) of the Community Services Block Grant (CSBG) Act, as amended by the Community Opportunities, Accountability, and Training, and Educational Services (Coats) Human Services Reauthorization Act of 1998, (Pub. L. 105–285). This program announcement consists of seven parts. Part A provides information on the legislative authority and defines terms used in the program announcement. Part B describes the purposes of the program, the priority areas that will be considered for funding, and which organizations are eligible to apply in each priority area. Part C provides details on application prerequisites, anticipated amounts of funds available in each priority area, estimated number of grants to be awarded, and other grant-related information. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package. Part F provides instructions for completing an application. Part G details post-award requirements.

Closing Date: The closing date for submission of applications is July 19, 2000. Applications postmarked after the closing date will be classified as late. Applications that are handcarried will be classified as late if they are received after 4:30 p.m., EST, on the deadline date. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing. Detailed application submission instructions, including addresses where applications must be sent are found in Part D of this program announcement.

FOR FURTHER INFORMATION CONTACT: Margaret Washnitzer, Director, Division of State Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW, Washington, DC 20447 (202) 401–9343. This program announcement is accessible on the OCS web site for reading or downloading at: http://www.acf.dhhs.gov/programs/ocs/kits1.htm

Additional copies of this program announcement can be obtained by calling (202) 401–4787.

The Catalog of Federal Domestic Assistance number is "93.570." This Program announcement title is "Training, Technical Assistance, and Capacity-Building Program."

Part A—Preamble

1. Legislative Authority

Section 674(b)(2) of the Community Services Block Grant (CSBG) Act of 1981, (Pub. L. 97–35) as amended by the Coats Human Services Reauthorization Act of 1998, (Public Law 105–285) authorizes the Secretary of Health and Human Services to utilize a percentage of appropriated funds for training, technical assistance, planning, evaluation, performance measurement, monitoring to correct programmatic deficiencies of eligible entities, reporting and data collection activities related to programs or projects carried out under the CSBG Act . The Secretary may carry out these activities through grants, contracts, or cooperative agreements. For the purpose of improving program quality (including quality of financial management practices), management information and reporting systems, and measurement of program results, and for the purpose of ensuring responsiveness to identified local needs, the Secretary is required to distribute funds directly to eligible entities, or statewide or local organizations or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities. The Secretary may carry out the remaining activities through appropriate entities.

The process for determining the technical assistance, training and capacity-building activities to be carried out must (a) ensure that the needs of Community Action Agencies and programs relating to improving program quality, including financial management practices, are addressed to the maximum extent feasible; and (b) incorporate mechanisms to ensure responsiveness to local needs, including an on-going procedure for obtaining input from State and national networks of eligible entities. Thus, the CSBG Monitoring and Assessment Task Force (MATF) continues to focus on implementation of the Results-Oriented Management and Accountability (ROMA) system to increase program quality and management within the Community Services Network. The Task Force has taken a comprehensive

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approach to monitoring including establishing national goals and outcome measures; reviewing data needs relevant to these outcome measures; and assessing technical assistance and training provided toward capacity building within the Community Services Network.

2. Definitions of Terms

For purposes of the FY 2000 CSBG Training, Technical Assistance and Capacity-Building Program, the following definitions apply:

Eligible entity means any organization that was officially designated as a community action agency (CAA) or a community action program under Section 673(1) of the Community Services Block Grant Act, as amended by the Human Services Amendments of 1994 (Pub. L. 103–252), and meets all the requirements under Section 676B of the CSBG Act, as amended by the Coats Human Services Reauthorization Act of 1998. All eligible entities are current recipients of Community Services Block Grant funds, including migrant and seasonal farmworker organizations that received CSBG funding in the previous fiscal year. In cases where eligible entity status is unclear, a final determination will be made by OCS/ACF.

Performance Measure is a tool used to objectively assess how a program is accomplishing its mission through the delivery of products, services, and activities.

Outcome Measures are indicators, which focus on the direct results one wants to have on customers.

Results-Oriented Management and Accountability System (ROMA) is a partnership approach to the administration of the Community Services Block Grant program. It involves setting goals and strategies for developing plans and techniques that focus on a results-oriented performance based model for management.

Training is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, or conferences or programs of self-instructional activities.

Technical assistance is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems. Telephone or other communications systems may provide services on-site.

State means all of the States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also means Territory.

Territory refers to the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa, and the Commonwealth of the Northern Mariana Islands.

Local service providers are local public or private non-profit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

Nationwide refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the local service providers who administer CSBG funds.

Statewide refers to training, technical assistance and other capacity-building activities undertaken with grant funds and available to one or more Community Action Agencies in a State, as needed and appropriate.

Community Services Network refers to the various organizations involved in planning and implementing programs funded through the Community Services Block Grant or providing training, technical assistance or support to them. The network includes local Community Action Agencies and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations which collaborate and participate with Community Action Agencies and other eligible entities in their efforts on behalf of low-income people.

Program technology exchange refers to the process of sharing expert technical and programmatic information, models, strategies and approaches among the various partners in the Community Services Network. This may be done through written case studies, guides, seminars, technical assistance, and other mechanisms.

Capacity-building refers to activities that assist Community Action Agencies and other eligible entities to improve or enhance their overall or specific capability to plan, deliver, manage and evaluate programs efficiently and effectively to produce results. This may include upgrading internal financial management or computer systems, establishing new external linkages with other organizations, improving board functioning, adding or refining a program component or replicating techniques or programs piloted in another local community, or other cost effective improvements.

Regional Networks refers to CAA State Associations within a region.

Part B—Purposes/Program Priority Areas

The principal purpose of this T&TA funding is to stimulate and support planning, training, technical assistance and data collection activities that strengthen the Community Services Network. New and revised techniques and tools are needed to fundamentally change the way the Network does business on a daily basis.

In addition, there are specific changes in the CSBG Act as amended in 1998 that mandate that OCS implement data collection and performance measurement systems by Fiscal Year 2001. The system developed under the leadership of OCS is called the Results-Oriented Management and Accountability system (ROMA). Technical assistance and training activities described in this program announcement are also impacted by the Government Performance and Results Act of 1993 (Pub. L. 103–62), which requires that Federal programs describe expected program outcomes, and by the National Monitoring and Assessment Task Force (MATF) established by the Director of the Office of Community Services (OCS) to develop and implement a process (ROMA) to assist the Community Services Network to manage for results. Thus, the importance of strong technical assistance, training, planning and data collection is essential to ensure a results-oriented strategy for the management and delivery of services to low-income people.

OCS is soliciting applications that implement these legislative mandates in a systematic manner on a nationwide, statewide or local basis, as appropriate to the priority area. OCS believes that identifying training and technical assistance needs requires substantial involvement of eligible entities working in partnership at local, State and national levels. OCS also anticipates that the recipients of awards under the FY 2000 Training, Technical Assistance and Capacity-Building Program can be expected to implement the approved project(s) without substantial Federal agency involvement and direction. Therefore, funds will be provided in the form of grants.

Activities under Sub-Priority Areas 1.1, National Training and Technical Assistance, and 2.4, Strengthening CAA Capacity on Legal Issues Toward

Problem Solving will be carried out under a continuation grant in FY 2000 without further competition, and are included in the Availability of Funds section of this announcement. The National Association of Community Action Agencies is the grantee for Sub-Priority Area 1.1 and CAPLAW for Sub-Priority Area 2.4.

Priority areas of the Office of Community Services' Fiscal Year 2000 Training, Technical Assistance and Capacity-Building Program are as follows:

Priority Area 1.0: Training and Technical Assistance for the Community Services Network

Sub-Priority Areas

1.1 National Training and Technical Assistance
1.2 Statewide Partnership Grants to Implement ROMA
1.3 Technical Assistance for Special Initiatives
1.4 Technical Assistance to Measure Civic/Social Capital Development
1.5 Leadership Development

This priority area addresses the development and implementation of coordinated, comprehensive, nationwide or, where appropriate, statewide training and/or technical assistance programs to assist State CSBG staff, staff of State and regional organizations representing eligible entities, and staff of local service providers which receive funding under the CSBG Act, to acquire the skills and knowledge needed to plan, administer, implement, monitor, and evaluate programs designed to ameliorate the causes of poverty in local communities. Proposals should include a description of how the applicant will collaborate with State CSBG staff and local service providers.

Sub-Priority Area 1.1: National Training and Technical Assistance

Training and technical assistance under this sub-priority area are being supported as a continuation grant in FY 2000 and, therefore, will not be competed.

Sub-Priority Area 1.2: Statewide Partnership Grants To Implement ROMA

The purpose of this sub-priority area is to provide training and technical assistance to Community Action Agencies in implementing ROMA State CAA Associations, in partnership with State CSBG Administrators, are eligible to apply for grants under this sub-priority area. An applicant will be considered under this sub-priority area only if 90 percent of the CAAs in the State have begun implementing ROMA at the time the applicant's proposal is written. All eligible entities must provide evidence that there has been coordination with the appropriate State CSBG office in developing their applications. OCS is particularly interested in train-the-trainer curricula and implementation strategies. Consideration will be given to partnerships, which have demonstrated statewide train-the-trainer capacity and wish to broaden their outreach to other selected States. These statewide grants will be awarded to one entity per State.

Eligible applicants: State CAA Associations, in partnership with State CSBG Administrators.

Sub-Priority Area 1.3: Technical Assistance for Special Initiatives

Issues of crime, violence, drug abuse, unemployment, poverty, family breakdown, and inadequate education and training of many young people to attain productive employment in an increasingly technological labor market, threaten the safety and viability of many urban communities. Grantees funded under this sub-priority area will provide technical assistance to CAAs to assist them in developing and implementing collaborative community-wide strategies, effective organizational working relationships, and special initiatives among CAAs and other organization(s) focusing on issues of crime, violence, family breakdowns, drug abuse and poverty in a culturally sensitive way. Emphasis will be on assisting CAAs to assist in developing minority leadership and bring together the various community, business, labor, voluntary, educational, civil rights, and governmental sectors required to develop model local strategies to improve conditions in low-income, urban communities. Applicants are encouraged to develop applications in collaboration with at least one other national private, non-profit organization, which has a substantial track record in formulating strategies to improve conditions in low-income urban communities. This nationwide training and technical assistance program should be designed as a 3 year project. Funding for years 2 and 3 will be contingent upon the availability of funds and the agency's priorities.

Eligible applicants: Private non-profit organizations in collaboration with a national organization.

Sub-Priority Area 1.4: Technical Assistance to Measure Civic/Social Capital Development

Civic capital refers to the relationships and affiliations—social networks, norms, obligations, expectations, and information channels—that enable community stakeholders to coordinate their resources to address mutual problems. Empirical studies suggest that improvements in community conditions and the social, economic, and physical well-being of residents are closely associated with the extent of civic capital in that community. Communities experiencing socio-economic distress typically lack strong neighborhood institutions and associations that serve as centers for civic activity; residents suffer isolation, disengaged from the broader society, supportive institutions, and one another.

Elements of the ROMA Community Goals and Community Scaling Tool reflect the important role of CAAs in developing civic capital. Historically, CAAs provided a nexus for individuals and community organizations to engage in mutual problemsolving. In more recent years, funding requirements and scarce resources shifted CAA priorities toward delivering direct services.

OCS seeks to promote community action network efforts in conceiving and implementing strategies that strengthen civic capital within communities. OCS will fund one or more projects that address this issue in a pragmatic, practitioner-oriented manner, providing operational tools for CAAs. Proposals may focus on: (1) Identifying lessons from case studies of current community-based efforts to enhance civic capital; (2) preparing a manual on planning, organizing, and undertaking various approaches to civic capital development in different community contexts; (3) assessing the roles and relationships among community organizations, neighborhood governance systems, and local government in developing civic capital; (4) preparing and utilizing measures of civic capital; (5) undertaking demonstration projects to increase participation of community residents in civic activity; or (6) other projects which help CAAs to advance the field of civic capital development. Applications from partnerships of organizations with collective experience in development, operation, documentation, and evaluation of comprehensive community-building initiatives are encouraged. Such collaborations may include: CAAs, community groups and associations, schools, religious institutions, service providers, policy research institutes, local foundations, or already formed community partnerships which team with national organizations, *e.g.*, Free to Grow Initiative which focuses on building stronger communities as a way

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to battle a variety of substance abuses with Head Start and Robert Wood Johnson Foundation.

Applicant CAAs should have a demonstrated ability to bring multiple stakeholders together in order to address common issues or problems and experience in the use of scales to measure community-level outcomes. Applicants should include a plan that describes how results will be shared with the Community Services Network.

Eligible applicants: Community Action Agencies or CAAs in partnership with other organizations/institutions.

Sub-Priority Area 1.5: Leadership Development

Periodically institutions and organizations need to change if they are to remain vital. The ability to recognize this need and to facilitate the development of new visions to bring about change is called leadership. No matter how large or small an organization, it needs leadership to survive. OCS is interested in funding effective models of leadership training specifically adapted to the needs of the CAA network in the new millennium. The proposed model needs to have the capacity to serve a two or three region area, meeting both rural and urban needs. Applicants will be funded for three years and must be able to provide leadership training to all State and local CAA Directors and State CAA Directors and Board Chairpersons in the region during that period. Training must be in depth and focus on the changing face of poverty in the new millennium. The curriculum should cover effective new interventions; strategic planning around community needs, developing and managing performance based systems and outcome measurement, (ROMA); staff training, organizing and managing fiscal accountability systems, boards of directors development and governance and program specific modules to cover large programs such as Head Start, WIC, LIHEAP, *etc.*

Proposals should include: a description of which multi-regional setting is to be served; a plan for how a third of the targeted audience will be recruited and served; examples of the various curriculum and faculty to be used; commitments for partnerships with institutions of higher learning, if any. Commitments for innovative matching funding up to 20%; a description of an advisory panel mechanism to guide the project; and performance goals and measurement.

Eligible applicants: CAAs, private non-profits organization, or CAA Association/State partnerships.

Priority Area 2.0: CAA Capacity Building

Sub-Priority Areas

2.1 Collection, Analysis and Dissemination of Information on the CSBG Activities Nationwide
2.2 Local Capacity Building
2.3 Peer-to-Peer Intervention
2.4 Strengthening CAA Capacity to Address Legal Issues

This priority area addresses activities to assist Community Action Agencies (CAAs) to enhance their ability to plan, manage, deliver and evaluate programs to achieve results. This includes support for the continuation and improvement of: (a) CSBG voluntary data collection, analysis, dissemination and utilization; (b) program and management techniques; (c) computer skills and electronic networking; (d) peer-to-peer intervention to avert CAA crisis management; and (e) legal assistance to assist Community Action Agencies to further the understanding (*i.e.*, special initiatives) of legal frameworks.

Sub-Priority Area 2.1: Collection, Analysis, and Dissemination of Information on CSBG Activities Nationwide

The purpose of this sub-priority area is to fund a project to improve the collection, analysis, dissemination and utilization of data and information on CSBG activities and effective approaches to ameliorating poverty. This includes the development of a CSBG data collection instrument and a plan for the collection, analysis and dissemination of information on FY 1998, and FY 1999 programs on a nationwide basis through a process that relies on Voluntary State cooperation. The information should be comprehensive enough and disseminated in such formats as to enable State and local service providers to improve their planning, management and delivery of services and to assure that the general public has a clear understanding of those programs and their outcomes. Of particular importance is the continued knowledge building and development of the concepts and technologies of results-oriented management in order to meet the requirements of the CSBG Act as amended in 1998 and the Government Performance and Results Act of 1993. This priority also includes computer technology for Community Action Agencies and other partners in the Community Services Network for two specific objectives: (1) Their ability to participate in the information highway, and (2) their ability to use and disseminate data, research, and information regarding poverty issues, particularly activities and outcomes of the Community Services Network.

The project developed under this sub-priority area should be for a three-year period.

Eligible applicants: Private non-profit organizations with demonstrated expertise in data collection on a nationwide basis and knowledge of and experience with the Community Services Network.

Sub-Priority Area 2.2: Local Capacity Building

The purpose of this sub-priority area is to promote management efficiency and program productivity. It is essential that local CAAs and other partners in the Community Services Network share effective program/management techniques and information systems technology being used and/or developed by eligible entities to address various aspects of poverty and the implementation of ROMA by the Community Services Network. Grants under this sub-priority area will be made to Community Action Agencies to promote local CAA capacity building. Activities may include sharing of model needs assessment tools; sharing of effective data processing innovations; development of effective community organizing techniques; development of effective self assessment tools; demonstration of scaling techniques; use of tracking systems; internal and external communication networks; effective integration of information systems; and sharing successful leveraging strategies. Applicants must include a plan that describes how the results will be shared with the larger Community Services Network.

Eligible applicants: Community Action Agencies

Sub-Priority Area 2.3: Peer-to-Peer Crisis Intervention

The purpose of this sub-priority area is to strengthen the fiscal and management capacity of eligible entities. OCS will fund several organizations to develop and implement strategies to provide coordinated, timely peer-to-peer technical assistance and crisis aversion intervention strategies for CAAs which have identified themselves as experiencing programmatic, administrative, board, and/or fiscal management problems. Such technical assistance should be designed to prevent fiscal and management problems from deteriorating into crisis situations that could threaten the capacity of CAAs to provide quality services to their communities or give rise to possible termination. In a written agreement with selected CAAs, the applicant will coordinate and deploy the technical assistance resources of experienced individuals within the Community Services Network or other agencies which administer similar programs to assist low-income individuals in the identification and resolution of problems, through necessary actions, including training, to ensure that relevant and timely assistance is provided. Such assistance may be requested to assist the agency in resolving adverse program monitoring or audit findings, improve or upgrade financial management systems, prevent losses of funds, avert serious deterioration of the board of directors, or other immediate assistance to CAAs as requested. To the extent feasible, the applicant will be expected to develop an expert technical assistance resource bank of experienced individuals from the Community Services Network who may be deployed to provide peer technical assistance.

Eligible applicants: Community Action Agencies and other eligible entities and statewide organizations or associations of Community Action Agencies.

Sub-Priority Area 2.4: Strengthening CAA Capacity To Address Legal Issues

Technical assistance under this sub-priority area is being supported as a continuation grant in FY 2000 and, therefore, will not be competed.

Priority Area 3.0: State CSBG Capacity Building

This priority area addresses special activities to State CSBG Administrators to enhance their capacity to assist eligible entities in strengthening their administrative and programmatic capabilities to resolve special structural, financial and programmatic problems.

Sub-Priority Area 3.1: Special Technical Assistance

States are required under the Community Services Block Grant Act to determine whether eligible entities meet the performance goals, administrative standards, financial management requirements and other requirements of the States and to conduct regular on-site reviews of eligible entities. When a State determines that an eligible entity has a deficiency that must be corrected, the CSBG legislation mandates that the State offer an eligible entity training and technical assistance, if appropriate, to help correct such a deficiency. States may support this T&TA with the CSBG funds remaining after it has made grants to eligible entities. However OCS recognizes that in some instances the problem to be addressed may be of such a complex or pervasive nature that it cannot be adequately addressed with the resources available to the State CSBG Administrator.

The purpose of this Sub-Priority Area is to provide funding to States to support interventions in cases where an eligible entity is in a crisis situation. The goal of this sub-priority area is to stabilize eligible entities in crisis and to correct programmatic deficiencies to preclude the need for termination hearings and proceedings. The CSBG legislation mandates that States provide training and technical assistance prior to any termination procedures. It also requires States to carry out corrective activities and to monitor all eligible entities at least every three years.

Applications for funding under this sub-priority area may be submitted at any time prior to August 31, 2000. Application should include a description of the major problems; indication of who will provide the technical assistance, *i.e.*, peer, State, consultant, other; an agreed upon timetable with the "at risk" entity for assistance; and an abstract which summarizes the activities covered in this priority area.

Since the CSBG Act mandates that the Secretary assist States in carrying out activities to address corrective actions, States submitting applications under this Sub-Priority Area will not be competing with other States for funding. Applicants who supplement the funding provided under this Sub-Priority with other State funds will be looked upon favorably.

OCS will review each application based on the Criteria for Review and Evaluation of Applications Submitted under Sub-Priority Area 3.1 found in Part D of this Program Announcement. Applications receiving a score of 80 or more will be considered for funding.

Eligible Applicants: State CSBG Administrators

Part C—Application Prerequisites

1. Eligible Applicants

See individual sub-priority areas in Part B.

2. Availability of Funds

The total amount of funds available for grant awards in FY 2000 is expected to be $2,350,000 of which $700,000 is committed for continuation grants. Amounts expected to be available and numbers of grants under each sub-priority area stated in Part B are as follows:

Sub-priority area	Approx. funds available	Estimated number of grants
1.1 National Training and Technical Assistance (CB) [1]	500,000	1.
1.2 Statewide Partnership Grants to Implement ROMA Goals (RM)	600,000	Approximately 8 grants.
1.3 TA for Special Initiatives (UI)	100,000	1.
1.4 TA to Measure Civic/Social Capital Development (CS)	250,000	Approximately 2 grants.
1.5 Leadership Development (LD)	200,000	Approximately 2 grants.
2.1 Collection, Analysis, and Dissemination of Information on CSBG Activities Nationwide (IS)	450,000	1.
2.2 Local Capacity-Building (CP)	300,000	Approximately 10 grants.
2.3 Peer-to-Peer Crisis Intervention (PP)	500,000	Approximately 3 grants.
2.4 Strengthening CAA Capacity to Address Legal Issues (LF) [1]	200,000	1.
3.1 Special Technical Assistance (ST)	400,000	Approximately 20 grants.
Total	2,400,000	Approximately 49 grants.

[1] Represent continuation grants in the amount of $700,000.

3. Project and Budget Periods

For projects included in the FY 2000 CSBG T&TA Program Announcement, the project and budget periods are 12 months with the exception of grants under Sub-Priority Area 1.3 Technical Assistance for Special Initiatives, 1.5 Leadership Development and 2.1 which will be made for a 12 month budget period and a three year project period. Continuation grants under Sub-Priority Areas 1.1 and 2.4 will be made for 12-month budget periods. Future funding will be contingent upon the availability of funds and the agency's priorities.

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4. Project Beneficiaries

The overall intended beneficiaries of the projects to be funded under the FY 2000 CSBG T&TA Program Announcement are the various "partners" in the Community Services Network. Specific beneficiaries are indicated under each sub-priority area in Part B. It is the intent of OCS, through funding provided under this program announcement, to significantly strengthen the capacity of State and regional CAA associations to provide technical assistance and support to local service providers; to strengthen the capacity of State CSBG offices to collect and disseminate accurate and reliable data and to provide support for local service providers; and to enhance the capacities of local service providers themselves. The ultimate beneficiaries of improved program management, data and information collection and dissemination, and service quality of local service providers are low-income individuals, families, and communities.

5. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This prohibition does not bar the making of subgrants or subcontracting for specific services or activities needed to conduct the project. However, the applicant must have a substantive role in the implementation of the project for which funding is requested.

6. Number of Projects in Application

Separate applications must be made for each sub-priority area. An applicant will receive only one grant in a sub-priority area and no more than two grants under this FY 2000 CSBG T&TA Program Announcement. Applicants that receive more than one grant for a common budget and project period must be mindful that salaries and wages claimed for the same persons cannot collectively exceed 100% of total annual salary. The sub-priority area must be clearly identified by title and number.

7. Project Evaluations

Each application must include an assessment or self evaluation to determine the degree to which the goals and objectives of the project are met, such as client satisfaction surveys, administration of simple before/after tests of knowledge with comparison of scores to show grasp of teaching points, simple measures of the results of service delivery, and others as appropriate. Goal setting and goal measurement should be the framework for evaluation. Goals, to the extent suitable, should be impact-oriented.

Part D—Application Procedures

1. Availability of Forms

Applications for awards under the FY 2000 CSBG T&TA Program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part F and the attachments to this program announcement contain all the instructions and forms required for submission of an application. These forms may be photocopied for use in developing the application.

Part F also contains instructions for the project narrative. The project narrative must be submitted on plain bond paper along with the SF–424 and related forms.

A copy of this program announcement is available on the Internet through the OCS web site at: http://www.acf.dhhs.gov/programs/ocs/kits1.htm.

If the kit cannot be accessed through the OCS web site, it can be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION** at the beginning of this program announcement.

2. Deadlines

Refer to the section entitled "Closing Date" at the beginning of this program announcement for the last day on which applications should be submitted.

Mailed applications shall be considered as meeting the announced deadline if they are received on or before deadline date or postmarked on or before the deadline date and received by ACF in time for the independent review. Mailed applications must be sent to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, Aerospace Building, 4th Floor, 370 L'Enfant Promenade, SW, Washington, DC 20447.

Attention: CSBG Training, Technical Assistance and Capacity-Building Program

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with a note: Attention: CSBG Training, Technical Assistance, and Capacity-Building Program.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time or submission and time of receipt. Applications, once submitted, are considered final and no additional materials will be accepted.

Late applications. Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mail service. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

3. Number of Copies Required

One signed original application and four copies should be submitted.

4. Designation of Sub-Priority Area

The first page of the SF–424 must contain in the lower right-hand corner a designation indicating under which sub-priority funds are being requested. For example, if you are applying for Sub-Priority Area 2.2—Local Capacity Building, you must have a designation of 2.2 in the lower right-hand corner. Without this clear designation, your proposal may not be reviewed correctly.

5. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0970–0062, which expires October 31, 2001.

6. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and the Republic of Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372.

Applicants for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that OCS can obtain and review SPOC comments as a part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424A, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those Official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor Aerospace Center, 370 L'Enfant Promenade, SW, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment I to this program announcement.

7. Application Consideration

Applications that meet the screening requirements in Sections 8.a. and 8.b. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

Persons outside of the OCS unit that would be directly responsible for programmatic management of the grant will review applications. The results of these reviews will assist OCS in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will be ranked and generally considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors deemed relevant may be considered including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the past five years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance's on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

8. Criteria for Screening Applications

a. Initial Screening

All applicants will receive a written acknowledgment with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent communications concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–5103.

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF–424B) completed according to instructions published in Part F and Attachments A, B, and C of this program announcement.

(2) A project narrative must also accompany the standard forms.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant that has authority to obligate the organization legally.

b. Pre-Rating Review

Applications, which pass the initial screening, will be forwarded to reviewers and/or OCS staff to verify, prior to the programmatic review, that the applications comply with this program announcement in the following areas:

(*1*) *Eligibility:* Applicant meets the eligibility requirements found in Part B. Applicant also must be aware that the applicant's legal name as required on the SF 424 (item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

(*2*) *Duration of Project:* The application contains a project that can be successfully implemented in the project period.

(*3*) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to State staff administering CSBG funds, CAA State or regional associations, and/or local providers of CSBG-funded services and activities. Benefits to low-income consumers of CSBG services also must be identified.

(*4*) *Program Focus:* The application must address the purpose of the sub-priority area under which funding is being requested.

An application may be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications that pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score to each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each

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applicable criterion published in this announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in Part B.

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

(1) Criterion I: Need for Assistance: (Maximum 20 Points)

(a) The application documents that the project addresses vital needs related to the purposes stated under the appropriate sub-priority area discussed in this program announcement (Part B) and provides statistics and other data and information in support of its contention. (0–10 points).

(b) The application provides current supporting documentation or other testimonies regarding needs from *State* CSBG Directors, *local* service providers and/or State and Regional organizations of local service providers. (0–10 points)

(2) Criterion II: Work Program: (Maximum: 30 Points)

The work program is results-oriented, appropriately related to the legislative mandate and specifically related to the sub-priority area under which funds are being requested.

Applicant addresses the following: Specific outcomes to be achieved; performance targets that the project is committed to achieving, including reasons for not setting lower or higher target levels and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support including priority this project has for the agency; past performance in similar work; and specific resources contributed to the project that are critical to success.

Applicant defines the comprehensive nature of the project and methods that will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the priority area.

(3) Criterion III: Significant and Beneficial Impact: (Maximum 15 Points)

Applicant adequately describes how the project will assure long-term program and management improvements and have advantages over other products offered to achieve the same outcomes for State CSBG offices, CAA State and/or regional associations, and/or local providers of CSBG services and activities.

The applicant indicates the types and amounts of public and/or private resources it will mobilize, how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

If proposing a project with a training and technical assistance focus, applicant indicates the number of organizations and/or staff it will impact.

If proposing a project with a data collection focus, applicant provides a description of the mechanism it will use to collect data, how it can assure collections from a significant number of States, and the number of States willing to submit data to the applicant.

If proposing to develop a symposium series or other policy-related project(s), the applicant identifies the number and types of beneficiaries.

Methods of securing participant feedback and evaluations of activities are described in the application.

(4) Criterion IV: Evidence of Significant Collaborations: (Maximum 10 Points)

Applicant describes how it will involve partners in the Community Services Network in its activities. Where appropriate, applicant describes how it will interface with other related organizations.

If subcontracts are proposed, documentation of the willingness and capacity for the subcontracting organization(s) to participate is described.

(5) Criterion V: Ability of Applicant to Perform: (Maximum 20 Points)

(a) The applicant demonstrates that it has experience and a successful track record relevant to the specific activities and program area that it proposes to undertake.

If applicant is proposing to provide training and technical assistance, it details its competence in the specific program priority area and as a deliverer with expertise in the specific fields of training and technical assistance on a nationwide basis.

If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization. (0–10 points)

(b) Applicant fully describes, for example in a resume, the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project. (0–10 points)

(6) Criterion VI: Adequacy of Budget: (Maximum 5 Points)

(a) The resources requested are reasonable and adequate to accomplish the project. (0–3 points)

(b) Total costs are reasonable and consistent with anticipated results. (0–2 points)

Part E—Contents of Application and Receipt Process

1. Contents of Application

A cover letter containing an e-mail address and a facsimile (FAX) number, if available, should accompany the application. This will facilitate receipt of an acknowledgment from ACF that the application has been received. (See Part D., 8.a.)

Each application should include one original and three additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that, in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

b. "Budget Information-Non-Construction Programs" (SF–424A). (Attachment B)

c. A completed, signed and dated "Assurances—Non-Construction Programs" (SF–424B). (Attachment C)

d. Drug-free Certification. (The applicant is certifying that it will comply with this requirement by signing and submitting the SF–424.) (Attachment D)

e. Debarment Certification. (Attachment E)

f. Certification Regarding Environmental Tobacco Smoke. (The applicant is certifying that it will comply with this requirement by signing and submitting the SF–424.) (Attachment F)

g. Disclosure of Lobbying Activities, SF–LLL. Complete, sign and date form, as appropriate. (Attachment G)

h. A Project Abstract of 500 words or less. The abstract should provide a succinct description of the project need, goals, and a summary of work plan and the proposed impact.

i. A Project Narrative consisting of the following elements preceded by a consecutively numbered table of contents that will describe the project in the following order:

(i) Need for Assistance

(ii) Work Program

(iii) Significant and Beneficial Impact

(iv) Evidence of Significant Collaborations

(v) Ability of Applicant to Perform

(vi) Appendices including proof of non-profit status, such as IRS determination of non-profit status, where applicable; relevant sections of by-laws, articles of incorporation, and/or statement from appropriate State CSBG office which confirms eligibility; resumes; Single Point of Contact comments, where applicable; any partnership/collaboration agreements; *etc.*

The original must bear the signature of the authorizing official representing the applicant organization.

The total number of pages for the entire application package should not exceed 35 pages, including appendices. Pages should be numbered sequentially throughout.

If appendices include photocopied materials, they must be legible.

Applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications or applications enclosed in a binder are specifically discouraged.

Applications must be submitted on white 8½ × 11-inch paper only since OCS may find it necessary to duplicate them for review purposes. They must not include colored, oversized or folded materials; organizational brochures or other promotional materials; slides; films; clips; *etc.* They will be discarded if included.

Part F—Instructions for Completing Application Package

(Approved by the OMB under Control Number 0970–0062, expiration date 10/31/2001.)

The standard forms attached to this program announcement shall be used when submitting applications for all funds under this announcement.

It is recommended that the applicant reproduce the SF–424 (Attachment A), SF–424A (Attachment B), SF–424B (Attachment C) and that the application be typed on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, the applicant should write "NA" for "Not applicable."

The application should be prepared in accordance with the standard instructions in Attachments A and B corresponding to the forms, as well as the specific instructions set forth below:

1. SF–424 "Application for Federal Assistance"

Item

1. For the purposes of this program announcement, all projects are considered "Applications"; there are no "Pre-Applications."

5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status such as IRS determination, articles of incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are "New".

9. Enter "DHHS–ACF/OCS".

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is "93.570".

11. In addition to a brief descriptive title of the project, the following priority area designations must be used to indicate the priority and sub-priority areas for which funds are being requested:

RM—Sub-Priority Area 1.2—Statewide Partnership Grants to Implement ROMA Goals

UI—Sub-Priority Area 1.3—TA to Develop Special Initiatives Between CAAs and Organizations Addressing Urban Problems of Low-Income People

CS—Sub-Priority Area 1.4—TA to Measure Civic/Social Capital Development

LD—Sub-Priority Area 1.5—Leadership Development

IS—Sub-Priority Area 2.1—Collection, Analysis, and Dissemination of Information on CSBG Activities Nationwide

CP—Sub-Priority Area 2.2—Local Capacity Building

PP—Sub-Priority Area 2.3—Peer-to-Peer Crisis Intervention

ST —Sub-Priority Area 3.1—Special Technical Assistance

The title is "Office of Community Services" Discretionary CSBG Awards—Fiscal Year 2000 Training, Technical Assistance, and Capacity-Building Programs."

15a. For purposes of this announcement, this amount should reflect the amount requested for the entire project period.

15b–e. These items should reflect both cash and third party in-kind contributions for the total project period.

2. SF–424A—"Budget Information-Non-Construction Programs"

See instructions accompanying the form as well as the instructions set forth below:

In completing these sections, the Federal budget entries will relate to the requested OCS Training and Technical Assistance Program funds only, and Non-Federal will include mobilized funds from all other sources—applicant, State, and other. Federal funds, other than those requested from the Training and Technical Assistance Program, should be included in Non-Federal entries.

Sections A and D must contain entries for both Federal (OCS) and non-Federal (mobilized).

Section A—Budget Summary

Col. (a): Line 1—Enter "OCS Training and Technical Assistance Program".

Col. (b): Line 1—Enter "93.570".

Col. (c) and (d): Not Applicable.

Col. (e)–(g): For lines 1 enter in column (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.

Line 5—Enter the figures from Line 1 for all columns completed under (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1. Allowability of costs is governed by applicable cost principles set forth in 45 CFR Parts 74 and 92.

A separate itemized budget justification should be included to explain fully and justify major items, as indicated below. The budget justification should immediately follow the Table of Contents.

Column 5: Enter total requirements for Federal funds by the Object Class Categories of this section.

Line 6a-Personnel: Enter the total costs of salaries and wages.

Justification: Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal

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and Non-Federal) of the organization's staff who will be working on the project.

Line 6b-Fringe Benefits: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Line 6c-Travel: Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances.

Line 6d-Equipment: Enter the total costs of all non-expendable personal property to be acquired by the project. Equipment means tangible non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Line 6e-Supplies: Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Line 6h-Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local Travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6-Indirect Charges: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. With the exception of States and local governments, applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. For an educational institution, the indirect costs on training grants will be allowed at the lesser of the institution's actual indirect costs or 8 percent of the total direct costs.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates*, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be budgeted or charged as direct costs to the grant.

Line 6-Totals: The total amount shown in Section B, Column (5), should be the same as the amount shown in Section A, line 5, column (e).

Line 7-Program Income: Enter the estimated amount of income, if any is expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from column 1 to column 5 for all line items.

Justification: Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of Non-Federal resources that will be used to support the project. Non-Federal resources refer to other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Categories, section B.6) and whether it is cash or third party in-kind. The firm commitment of these required funds must be documented and submitted with the application.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8—

Col. (a): Enter the project title.

Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.

Col. (d): Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Col. (e): Enter the total of column (b), (c), and (d). Lines 9, 10, and 11 should be left blank.

Line 12—Carry the total of each column of line 8, (b) through (e). The amount in column (e) should be equal to the amount on section A, Line 5, and column (f).

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant for first year and by quarter, during the first 12-month budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14 for all columns.

Section E—Budget Estimates of Federal Funds Needed for Balance of the Project

To be completed by applicants applying for funds for a three year project period.

Section F—Other Budget Information

Line 21—Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B "Assurances Non-Construction"

Applicant must sign and return the "Assurances" found at Attachment C with its application.

4. Project Narrative

Each narrative section of the application must address one or more of the focus areas described in Part B and follow the format outlined below:

a. Need for Assistance
b. Work Program
c. Significant and Beneficial Impact
d. Evidence of Significant Collaborations
e. Ability of the Applicant to Perform

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award, which indicates, the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

In addition to the standard terms and conditions which will be applicable to grants, grantee will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–122 and A–87.

Grantees will be required to submit quarterly progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–128 and A–133.

Section 319 of Public Law 101–121, signed into law on October 23, 1989 imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier Contractors or subgrantee will pay with profits or *non-appropriated* funds on or after December 22, 1989, and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Public Law 103–227, Part C. Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through States or local governmental by Federal grant, contract, loan or loan guarantee. The law does not apply to facilities funded solely by Medicare of Medicaid funds, and portions of facilities used for in-patient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application, the applicant/grantee certifies that it will comply with the requirement of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any sub-awards, which contain provisions for children's services and that all subgrantees shall certify accordingly.

Attachment H indicates the regulations that apply to all applicants/grantees under this program.

Dated: May 25, 2000.

Donald Sykes,

Director, Office of Community Services.

CSBG Training, Technical Assistance and Capacity-Building Program; List of Attachments

A—Application for Federal Assistance, SF 424
B—Budget Information—Non-Construction Programs, SF 424A
C—Assurances—Non-Construction Programs, SF 424B
D—Certification Regarding Drug-Free Work Place
E—Debarment Certification
F—Certification Regarding Environmental Tobacco Smoke
G—Disclosure of Lobbying Activities, SF–LLL
H—Listing of Regulations Applicable to All Grantees
I—Listing of State Single Points of Contact

BILLING CODE 4184–01–P

Attachment A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐	**7. TYPE OF APPLICANT: *(enter appropriate letter in box)*** ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify) _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other *(specify)*: _____	**9. NAME OF FEDERAL AGENCY:**
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐ TITLE:	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:	

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**	
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____	
b. Applicant	$ .00		
c. State	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
d. Local	$ .00		
e. Other	$ .00		
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**	
g. TOTAL	$ .00	☐ Yes If "Yes," attach an explanation.	☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

Instructions for the SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return you completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplication and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given and opportunity to review the applicant's submission.

Item: and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in this space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (*e.g.*, State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION - Non-Construction Programs Attachment B OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348/004), Washington, DC.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1–4

Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the lines of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimate of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details are required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment C

Assurance—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing

data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will not be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional managerial and financial capability (including funds sufficient to pay the non-Federal share or project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after project of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable with provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 *et seq.*); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 *et seq.*).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 *et seq.*) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act amendments of 1996 and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Attachment D

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which

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reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award. If there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substancese Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

Attachment E

Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of a had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transactions, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participation in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Attachment G

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184–01–C

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the data of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, *e.g.*, the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (*e.g.*, Request for Proposal (RFP), number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposed control number assigned by the Federal agency). Include prefixes, *e.g.*, "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Attachment II—DHHS Regulations Applicable to Grants

The following DHHS regulations apply to all applicants/grantees under the CSBG Training, Technical Assistance and Capacity-Building Program.

Title 45 of the *Code of Federal Regulations*

Part 16—Procedures of the Departmental Grant Appeals Board
Part 74—Administration of grants (non-governmental)
Part 74—Administration of Grants (State and local Governments and Indian Tribal affiliates):
Sections
74.26 Non-Federal Audits
74.27 Allowable Costs for Hospitals and Other Non-profit Organizations
74.90 Final Decisions in Disputes
74.32 Real Property
74.34 Equipment and
74.35 Supplies
74.24 General Program Income
Part 74—20–28 Fiscal Management
Part 74—40–48 Procedure Standards
Part 74—50–53 Reports and Records
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance, Subpart—Drug Free Workplace Requirements
Part 80—Non-discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services, Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 84—Non-discrimination on the Basis of Handicap in Programs
Part 86—Nondiscrimination on the basis of sex in the admission of individuals to training programs
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (*Federal Register*, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment I—State Single Point of Contact Listing Maintained by OMB

In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," Section 4, "the Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development." This attached listing is the OFFICIAL OMB LISTING. This listing is also published in the Catalogue of Federal Domestic Assistance biannually.

August 23, 1999 OMB State Single Point of Contact Listing*

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, Fax: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, Fax: (501) 682–5206

California

Grants Coordination, State Clearinghouse, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 445–0613, Fax: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. Dupont Highway, Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, Fax: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W. Suite 1200, Washington, D.C. 20005, Telephone: (202) 727–1700 (direct), (202) 727–6537 (secretary), Fax: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, Fax: (850) 414–0479, Contact: Cherie Trainor, (850) 414–5495

Georgia

Deborah Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, S.W.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855, Fax: (404) 656–7901

Illinois

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, Fax: (312) 814–1800

Indiana

Renee Miller, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–2971 (directline), Fax: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, Fax: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, Fax: (502) 564–0437

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, Fax: (207) 287–6489

Maryland

Linda Janey, Manager, Plan & Project Review, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 767–4490, Fax: (410) 767–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, Fax: (313) 961–4869

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 550 High Street, 303 Walters Sillers Building, Jackson, Mississippi 39201–3087, Telephone: (601) 359–6762, Fax: (601) 359–6758

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Jefferson Building, 9th Floor, Jefferson City, Missouri 65102, Telephone: (314) 4834, Fax: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 220, Carson City, Nevada 89710, Telephone: (702) 687–4065, Fax: (702) 687–3983, Contact: Heather Elliot, (702) 687–6367

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2 1/2 Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, Fax: (603) 271–1728

New Mexico

Nick Mandell, Local Government Division, Room 201 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640, Fax: (505) 827–4984

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605, Fax: (518) 486–5617

North Carolina

Jeanette Furney, North Carolina Department of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003 Telephone: (919) 733–7232, Fax: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, Fax: (701) 224–2308

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, Fax: (401) 277–2083

South Carolina

Omeagia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201 Telephone: (803) 734–0494, Fax: (803) 734–0645

Texas

Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, Fax: (512) 936–2681

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116, State Capitol, Salt Lake City, Utah 84114 Telephone: (801) 538–1027, Fax: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, Fax: (304) 558–3248

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Wisconsin

Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, Fax: (608) 267–6931

Wyoming

Sandy Ross, State Single Point of Contact, Department of Administration and Information, 2001 Capitol Avenue, Room 214, Cheyenne, WY 82002, Telephone: (307) 777–5492, Fax: (307) 777–3696

Territories

Guam

Joseph Rivera, Acting Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96932, Telephone: (671) 475–9411 or 9412, Fax: (671) 472–2825

Puerto Rico

Jose Caballero-Mercado, Chairman, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (787) 727–4444, (787) 723–6190, Fax: (787) 724–3270

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256, Fax: (670) 664–2272, Contact person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, Fax: (670) 664–2272

Virgin Islands

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden, Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, Fax: (809) 776–0069.

If you would like a copy of this list faxed to your office, please call our publications office at: (202) 395–9068.

* In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITORY, COMMONWEALTH, ETC DOES NOT HAVE A "STATE SINGLE POINT OF CONTACT." STATES WITHOUT "STATE SINGLE POINTS OF CONTACT" INCLUDE: Alabama, Alaska; American Samoa; Colorado; Connecticut; Hawaii; Idaho; Kansas; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal domestic Assistance.

[FR Doc. 00–13689 Filed 6–1–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1309]

Draft Guidance for Industry: Channels of Trade Policy for Commodities With Methyl Parathion Residues; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a proposed guidance document entitled "Guidance for Industry: Channels of Trade Policy for Commodities With Methyl Parathion Residues" (the proposed guidance). The proposed guidance presents FDA's policy for implementing the channels of trade provision for the pesticide chemical methyl parathion in of the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act (FQPA) of 1996. The proposed guidance is intended to assist firms in understanding FDA's planned approach to the enforcement of this provision of the FQPA with regard to residues of methyl parathion in food.

DATES: Submit written comments concerning this guidance and the information collection by August 1, 2000.

ADDRESSES: Submit written comments concerning the proposed guidance and the collection of information provisions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the proposed guidance entitled "Guidance for Industry: Channels of Trade Policy for Commodities With Methyl Parathion Residues" to Donna L. Myers, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681. Send one self-adhesive address label to assist that office in processing your request. Comments and requests for copies should be identified with the docket number found in brackets in the heading of this document. A copy of the proposed guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681, FAX 202–205–4422, e-mail: mkashtoc@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 3, 1996, the FQPA was signed into law. This law, which amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FFDCA, established a new safety standard for pesticide residues in food, with an emphasis on protecting the health of infants and children. In accordance with the FQPA, the Environmental Protection Agency (EPA), the agency responsible for regulating the use of pesticides (under FIFRA) and establishing tolerances for residues of pesticide chemicals in food commodities (under the FFDCA), is in the process of reassessing the pesticide tolerances and exemptions that were in effect when the law was signed. When the determination is made that a pesticide's tolerance level does not meet the safety standard set forth by the FQPA, the registration for the pesticide may be canceled for all or certain uses. In addition, the tolerances for that pesticide may be lowered or revoked for the corresponding food commodities. Under section 408(l)(2) of the FFDCA (21 U.S.C. 346a(l)(2)), when the registration for a pesticide is canceled or modified due in whole or in part to dietary risks to humans posed by residues of that pesticide chemical on food, the effective date for the revocation of such tolerance (or exemption in some cases) must be no later than 180 days after the date such cancellation becomes effective or 180 days after the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later.

When EPA takes such actions, food derived from a commodity that was lawfully treated with the pesticide may not have cleared the channels of trade by the time the revocation or new tolerance level takes effect. The food could be found by FDA, the agency that is responsible for monitoring pesticide residue levels and enforcing the pesticide tolerances in most foods (the U.S. Department of Agriculture (USDA) has responsibility for meat, poultry, and certain egg products), to contain a residue of that pesticide that does not comply with the revoked or lowered tolerance. FDA would normally deem such food to be in violation of the law by virtue of it bearing an illegal pesticide residue. The food would be subject to FDA enforcement action as an "adulterated" food. However, the channels of trade provision of the FQPA address the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical for which the tolerance has been revoked, suspended, or modified by EPA. The channels of trade provision (section 408(l)(5) of the FFDCA) states the following:

PESTICIDE RESIDUES RESULTING FROM LAWFUL APPLICATION OF PESTICIDE.—Not withstanding any other provision of this Act, if a tolerance or exemption for a pesticide chemical residue in or on a food has been revoked, suspended, or modified under this section, an article of that food shall not be deemed unsafe solely because of the presence of such pesticide chemical residue in or on such food if it is shown to the satisfaction of the Secretary that—

(A) the residue is present as the result of an application or use of a pesticide at a time and in a manner that was lawful under the Federal Insecticide, Fungicide, and Rodenticide Act; and

(B) the residue does not exceed a level that was authorized at the time of that application or use to be present on the food under the tolerance, exemption, food additive regulation, or other sanction then in effect under this Act; unless, in the case of any tolerance or exemption revoked, suspended, or modified under this subsection or subsection (d) or (e), the Administrator has issued a determination that consumption of the legally treated food during the period of its likely availability in commerce will pose an unreasonable dietary risk.

As part of the tolerance reassessment process mandated by the FQPA, in a cancellation order published in the **Federal Register** of October 27, 1999 (64 FR 57877), EPA cancelled, effective on the same date, several registered food uses for the pesticide methyl parathion (Ref. 1). These canceled food uses are as follows: Apples, artichokes, beets (greens alone), beets (with or without tops), broccoli, brussels sprouts, carrots, cauliflower, celery, cherries, collards, grapes, kale, lentils, kohlrabi, lettuce, mustard greens, nectarines, peaches, pears, plums (fresh prunes), rutabagas (with or without tops), rutabaga tops, spinach, succulent beans and peas, tomatoes, turnips (with or without tops), turnips greens, vegetables leafy Brassica (cole), and vetch.

Under the terms of the cancellation, the application of the pesticide on the crops specified became unlawful after December 31, 1999. This action was precipitated by EPA's determination that the dietary risks from exposure to methyl parathion exceeded the safety standard under the FFDCA. Consistent with section 408(l)(2) of the FFDCA, EPA is proposing in this issue of the **Federal Register** to revoke the pesticide tolerances for methyl parathion corresponding to the canceled food uses.

FDA anticipates that some foods bearing methyl parathion residues resulting from lawful application of this pesticide will remain in the channels of trade after the revocation of the applicable tolerance for methyl parathion (Refs. 2 through 4). If FDA encounters such a food bearing a residue of methyl parathion, it intends to address the situation in accordance with this proposed guidance. FDA has developed this proposed guidance to set forth its policy for how FDA plans to approach its enforcement of the channels of trade provision with respect to the pesticide chemical methyl parathion.

With this document, FDA is announcing the availability of the proposed guidance. The proposed guidance represents FDA's current thinking on its planned enforcement approach to the channels of trade provision and how such provision relates to FDA-regulated products with methyl parathion residues. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. The proposed guidance is being distributed for comment purposes, in accordance with FDA's policy for Level 1 Good Guidance Practices documents as set out in the **Federal Register** of February 27, 1997 (62 FR 8961).

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision

Description: Under the pesticide tolerance reassessment process that EPA was mandated to carry out under the FQPA, EPA has proposed to revoke the tolerances for the pesticide chemical methyl parathion on several food commodities. The FQPA includes a provision in section 408(l)(5) of the FFDCA, referred to as the "channels of trade provision," that addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical whose tolerance has been revoked, suspended, or modified by EPA.

In general, FDA anticipates that the party responsible for food found to contain methyl parathion residues (within the former tolerance) after the tolerance for the pesticide chemical has been revoked, will be able to demonstrate that such food was packed or processed on or prior to December 31, 2000, by providing appropriate documentation to the agency as discussed in the proposed guidance. FDA is not suggesting that firms maintain a certain set list of documents where anything less or different would likely be considered unacceptable. Rather, the agency is leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so packed or processed.

Examples of documentation which FDA anticipates will serve this purpose may be divided into two categories: (1) Documentation associated with packing codes, batch records, and inventory records, and (2) other types of

documentation. The first category includes the types of documents that many food processors routinely generate as part of their basic food-production operations. The second category may include documentation that processors generate for the express purpose of compiling information that may satisfy the showing required in the channels of trade provision, such as copies of product specification requirements (requesting that the supplier not provide commodities treated with methyl parathion to the processor), written acknowledgement from the supplier that it intends to comply with the above request, and records demonstrating that the processor carried out an auditing program (e.g., spot checks) to verify that incoming commodities did not contain residues of methyl parathion.

Description of Respondents: The likely respondents to this collection of information are firms in the produce and food-processing industries who handle food products that may contain residues of methyl parathion after the tolerances for this pesticide chemical have been revoked.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
67	1	67	3	201

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
333	1	333	20	6,660

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimates for the annual reporting burden were determined by using the maximum number of samples collected throughout a year that FDA believes may be found to contain methyl parathion residues. Because all residues are expected to have dissipated from nonfrozen foods by the time FDA intends to question firms about when a food product was packed or processed (i.e., after December 31, 2000), FDA included only frozen food in its estimate (i.e., processors of foods stored under refrigerated and ambient conditions were excluded) (Ref. 2). Although residues within the former tolerance resulting from legal application of methyl parathion are not expected to be found in nonfrozen foods after December 31, 2000, under the channels of trade provision, firms will have an opportunity to make a showing that any such food was packed or processed on or before this date.

Considering the variation in and effects of food handling, particularly with regard to the time between pesticide application and freezing, FDA estimated that potentially half of all frozen food products sampled may contain methyl parathion residues, and therefore, the responsible party, under the approach set forth in this guidance, would be subject to the reporting requirement since it would be the burden of the responsible party to demonstrate that food found to contain methyl parathion residues within the former tolerance was packed or processed on or before December 31, 2000.

When determining the annual recordkeeping burden, importers and domestic processors of frozen food commodities affected by the revocation of the pesticide chemical methyl parathion were considered. FDA estimated that most firms (at least 90 percent) maintain (or maintain access to) Category I documentation (packing codes, batch records, inventory records, etc.) as part of their basic food production and/or import operations. It was presumed that the 10 percent of firms which do not maintain such documentation would likely begin maintaining (or maintaining access to) Category II documentation (other types of documentation, such as certification from the supplier that products do not contain methyl parathion) rather than instituting a system to begin maintaining Category I documentation. This being the case, a portion of the recordkeeping burden was calculated as the time required for the 10 percent of firms not currently maintaining Category I documentation, to develop and maintain (or maintain access to) Category II documentation.

As discussed in detail in the guidance, some firms (i.e., frozen juice manufacturers) may decide to maintain Category II documentation in addition to Category I documentation, as part of the showing under the channels of trade provision. FDA estimated that firms fitting this description represent approximately one third of the frozen fruit, vegetable, and juice-processing industry. Therefore, a portion of the annual recordkeeping burden estimate was calculated based upon the time required for these firms to develop and maintain Category II documentation.

Because all residues are expected to have dissipated from nonfrozen foods by the time FDA intends to ask for a showing under section 408(l)(5) of the FFDCA (i.e., after December 31, 2000), FDA used the number of frozen food processors when determining the annual recordkeeping burden. As with the annual reporting burden estimate, although nonfrozen food processors are entitled to make a showing under the channels of trade provision, they were excluded from this estimate because based upon residue dissipation estimates provided by EPA (Ref. 2), methyl parathion residues within the former tolerance resulting from legal application are not expected to be found in nonfrozen commodities after December 31, 2000.

III. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the proposed guidance by August 1, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The proposed guidance may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this draft guidance is available on the Internet at http://www.fda.gov/.

IV. References

The following references have been placed on display at the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Cancellation Order from the Environmental Protection Agency Canceling the Registration for Methyl Parathion Effective October 27, 1999 (www.epa.gov/fedrgstr/EPA-PEST/1999/October/Day-27/p27800.htm), **Federal Register** (64 FR 57877), October 27, 1999.

2. Environmental Protection Agency, Residue Dissipation Chart, Draft Estimates of Methyl Parathion Dissipation Rates in Commodities Under Various Storage Conditions, 1999.

3. American Frozen Food Institute, Letter to FDA Estimating the Amount of Time Frozen Fruits and Vegetables Are Likely to Remain in Commerce Prior to Being Purchased by the Consumer (i.e., How Long They Are Likely to Remain in the Channels of Trade), October 26, 1999.

4. National Food Processors Association, Letter to FDA Estimating the Amount of Time Processed Foods Are Likely to Remain in the Channels of Trade, August 23, 1999.

Dated: May 26, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–13813 Filed 6–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1965, HCFA–2649, HCFA–5011A & HCFA–5011B]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Hearing—Part B Medicare Claim and Supporting Regulations in 42 CFR 405.821; *Form No.:* HCFA–1965 (0938–0034); *Use:* Section 1869 of the Social Security Act authorizes a hearing for any individual who is dissatisfied with any determination and amount of benefit paid. This form is used so that a party may request a hearing by a Hearing Officer because the review determination failed to satisfy the appellant. *Frequency:* Annually, Quarterly and Monthly; *Affected Public:* Individual or households, and not-for-profit institutions; *Number of Respondents:* 55,000; *Total Annual Responses:* 55,000, *Total Annual Hours:* 9,167.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Reconsideration of Part A Insurance Benefits and Supporting Regulations in 42 CFR 405.711; *Form No.:* HCFA–2649 (0938–0045); *Use:* Section 1869 of the Social Security Act authorizes a hearing for any individual who is dissatisfied with the intermediary's Part A determination or the benefit amount paid. This form is used by a party to request a reconsideration of the initial determination of benefits. *Frequently:* Annually, quarterly and monthly; *Affected Public:* Individuals or households, and not-for-profit institutions; *Number of Respondents:* 62,000; *Total Annual Responses:* 62,000; *Total Annual Hours:* 15,500.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Part A Medicare Hearing by an Administrative Law Judge and Supporting Regulations in 42 CFR 498 Subpart D and E; *Form No.:* HCFA–5011A–U6 (0938–0486); *Use:* Section 1869 of the Social Security Act authorizes a hearing for any individual who is dissatisfied with the intermediary's Part A determination or the amount paid. This form is used by the beneficiary or other qualified appellant to request a hearing by an Administrative Law Judge is the reconsideration determination fails to satisfy the appellant. *Frequency:* Annually, Quarterly and Monthly; *Affected Public:* Individuals or households, and not-for-profit institutions; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 2,500.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Tital of Information Collection:* Request for Part B Medicare Hearing by an Administrative Law Judge and Supporting Regulations in 42 CFR 498 Subpart D and E; *Form No.:* HCFA–5011B–U6 (0938-0567); *Use:* Section 1869 of the Social Security Act authorizes a hearing for any individual who is dissatisfied with the carrier's Part B determination or the amount paid. This form is used by the beneficiary or other qualified appellant to request a hearing by an Administrative Law Judge if the hearing officer's decision fail's to satisfy the appellant. *Frequency:* Annually, quarterly and monthly; *Affected Public:* Individuals or households, and not-for-profit institutions; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 2,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 25, 2000.

John P. Burke, III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13860 Filed 6–1–00; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Request for Clearance To Conduct Voluntary Customer Satisfaction Surveys

SUMMARY: In compliance with the requirement of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Deafness and Other Communication Disorders (NIDCD), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Request for Clearance to Conduct Voluntary Customer Satisfaction Surveys. *Type of Information Collection Request:* NEW.

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Need and Use of Information Collection: The NIDCD was established to support biomedical and behavioral research and research training in hearing, smell, balance, taste, voice, speech and language. Although minorities and women will dominate the work force within the next decade, both groups are underrepresented in science and health professional fields. Because of this concern, the NIDCD, with assistance from the Office of Research on Minority Health, established the Partnership Program in 1994 to increase the number of minority scientists and health care professionals doing research on communication and communication disorders. The proposed survey will yield data about: (1) Reasons for participation in the program; (2) satisfaction of participants with the program and (3) how participation in the program has lead to the pursuit of a career in the health field. This survey will track the Partnership Program's success at increasing the number of women and minorities who are scientists. *Frequency of Response:* One. *Affected Public:* Individuals. *Type of Respondent:* Partnership Program Participants. The annual reporting burden is as follows: *Estimated Number of Respondents:* 62; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.5; and *Estimated Total Annual Burden Hours Requested:* 15.5. The annualized cost to respondents is estimated at: $155. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Note: The following table is acceptable for the Respondent and Burden Estimate Information, if appropriate, instead of the text as shown above.)

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
New Participants	16	1	.25	4
Past Participants	16	1	.25	4
Applicants	30	1	.25	7.5
Total	62			15.5

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for fulfillment of the NIDCD mission, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed data collection, including the validity of the methodology; (3) ways to enhance the quality, utility, and clarity of the data collection and (4) ways to minimize the burden of the collection of information on the respondents, including appropriate use of automated collection techniques and information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Mrs. Kay C. Johnson-Graham, EEO Officer, Office of Equal Employment Opportunity, NIDCD, NIH, Building 31, Room 3C08, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 402–6415 or E-mail your request, including your address to: <*kay_johnson@ms.nidcd.nih.gov*>.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before July 3, 2000.

Dated: May 23, 2000.

W. David Kerr,

Executive Officer, NIDCD.

[FR Doc. 00–13885 Filed 6–1–00; 8:45 am]

BILLING CODE 4140–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is available on the internet at the following website: *http://wmcare.samhsa.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150,

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38-H, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories*, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Integrated Regional Laboratories, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–777–0018, 800–522–0232, (Formerly: Cedars Medical Center, Department of Pathology)

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 11604 E. Indiana Ave., Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800, (Formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

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Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 858–279–2600/800–882–7272
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 248–373–9120/800–444–0106, (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485, (Formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947, (Formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006, (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728, (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590, (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995/858–677–7970
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300 / 800–339–4299, (Formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851

The following laboratory voluntarily withdrew from the NLCP program, effective May 16, 2000:

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733/800–574–2474, (Formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–13798 Filed 6–1–00; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–22]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 2, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7488.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD published a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 25, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–13610 Filed 6–1–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10© of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Mandalay Bay Resort and Casino, Las Vegas, NV, PRT–027740.

The applicant requests a permit to import five captive-bred saltwater crocodiles (*Crocodylus porosus*) from the Vancouver Aquarium in Canada to Shark Reef at Mandalay Bay Resort and Casino in Las Vegas, Nevada for public display, conservation education, and behavioral research to enhance survival of the species. The animals were produced at the Samutprakan Crocodile Farm & Zoo., Ltd. in Thailand.

Applicant: Henry Doorly Zoo, Omaha, NE, PRT–013269.

The applicant requests a permit to import biological samples from Gaur (*Bos gaurus*) collected from wild, wild caught, and captive born sources in Thailand, Laos, Cambodia, Malaysia, Nepal, and Vietnam for scientific research.

Applicant: Tom Stehn, Whooping Crane Recovery Plan Coordinator, U.S. Fish and Wildlife Service, Region 2, Austwell, TX, PRT–022747.

The applicant requests a permit to export/re-export captive-bred/captive hatched and wild live specimens, captive-bred/wild collected viable eggs, biological samples from captive-bred/wild specimens, and salvaged materials from captive-bred/wild specimens of Whooping cranes (*Grus americana*) to Canada, for completion of identified tasks and objectives mandated under the Whooping Crane Recovery Plan. Salvage materials may include, but are not limited to, whole or partial specimens, feathers, eggs, and egg shell fragments. This notification covers activities conducted by the applicant over the next 5 years.

Applicant: Ferdinand and Anton Fercos Hantig, Las Vegas, NV, PRT–005821.

The applicant requests a permit to export and re-import African leopard (*Panther pardus delacouri*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Atlanta/Fulton County Zoo, Inc. Atlanta, GA, PRT–027116.

The applicant requests a permit to import tissue samples from Drill (*Mandrillus leucophaeus*) taken from wild animals in Equatorial Guinea. Samples are to be imported for scientific research purposes.

Applicant: Ron Holiday, Umatilla, FL, PRT–801464.

The applicant requests a permit to re-export and re-import one captive born Clouded leopard (*Neofelis nebulosa*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Miller Equipment company, Inc., Hugo, OK, PRT–025867.

The applicant requests a permit to purchase in interstate commerce one male and four female Asian elephants (*Elephas maximus*) from Bucky Steele, Jefferson, Texas for conservation educational purposes.

Applicant: Larry Johnson, Boerne, TX, PRT–027396.

The applicant requests a permit to export one male and two females Ring-tail lemur (*Lemur catta*) to Gobierno del Edo. De Mexico, Toluca Edo de Mexico, Mexico for the purpose of enhancement of the survival of the species through propagation.

Applicant: Larry Johnson, Boerne, TX, PRT–027399.

The applicant requests a permit to export one pair of Siamang gibbons (*Hylobates syndactylus*) to Gobierno del Edo. De Mexico, Toluca Edo de Mexico, Mexico for the purpose of enhancement of the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 26, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–13788 Filed 6–1–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Reconsideration of an Environmental Assessment/Habitat Conservation Plan for Issuance of an Incidental Take Permit for the Construction and Operation of a Mixed-Use Development on a Portion of the 216-Acre Hart Triangle Property, Travis County, Texas.

SUMMARY: GDF Realty Investments Ltd. and Purcell Investments, L.P. (Landowners; Applicants) had applied to the U.S. Fish and Wildlife Service (Service) for seven incidental take permits for the Hart Triangle Property pursuant to Section 10(a) of the Endangered Species Act (Act). These permits were denied because the applications did not meet the statutory criteria for issuance. The EA/HCP made available by this notice is a draft EA/HCP that encompasses the entire area that was covered by the seven original permit applications. This EA/HCP was prepared by the Service based on information provided by the Applicants and other information acquired by the Service. The Applicants have been assigned permit number TE–027690–0. The permit, which is for a period of 30 years, would authorize the incidental

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take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*), and five karst invertebrates: Tooth Cave pseudoscorpion (*Tararocreagris texana*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave spider (*Neoleptoneta myopica*), and Tooth Cave ground beetle (*Rhadine persephone*). The proposed take would occur as a result of the construction and operation of mixed-use development on a portion of the 216-acre Hart Triangle property, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on this draft EA/HCP should be received on or before July 3, 2000.

ADDRESSES: Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Sybil Vosler, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service Office, Austin, Texas at the above address. Please refer to permit number TE–027690–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Sybil Vosler at the above U.S. Fish and Wildlife Service Office, Austin, TX.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler or the listed karst invertebrates. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicants

GDF Realty Investments Ltd. and Purcell Investments, L.P., plan to construct and operate a mixed-use development on the 216-acre Hart Triangle property. The Service, after denying the original seven applications, has developed the draft EA/HCP for the issuance of this permit. Two alternatives were developed. The Preferred Alternative 1 has two Options A and B. Alternative 1, Option A, includes a 75-acre karst preserve, a 77-acre golden-cheeked warbler preserve, and 64 acres for residential and commercial development, roads, and utilities. Preferred Alternative 1, Option B, includes a 75-acre karst preserve, a 36-acre golden-cheeked warbler preserve, and 105 acres for residential and commercial development, roads, and utilities. The action in Alternative 1, Option A, would eliminate approximately 16 acres of habitat and indirectly impact 23 additional acres of golden-cheeked warbler habitat. The action in Alternative 1, Option B, would eliminate approximately 55 acres of habitat and indirectly impact 45 additional acres of golden-cheeked warbler habitat.

Since the preferred alternative Options were developed to promote the long-term viability of the karst ecosystems, there would be minimal impacts to the listed karst species. However, some take of endangered karst invertebrates could occur during construction activities in the development area if voids containing the listed species are encountered during construction. The draft EA/HCP proposes to compensate for the incidental take of golden-cheeked warbler habitat by donating through fee simple or conservation easement to Travis County or other approved management entity, 77 acres of the Hart Triangle property (Preferred Alternative 1, Option A) or donating 35 acres on-site and purchasing 220 acres of golden-cheeked warbler habitat off-site (Preferred Alternative 1, Option B). This land is adjacent to the existing Balcones Canyonlands Preserve and will be managed by Travis County, or another conservation entity approved by the Service, as a preserve. Although impacts to the listed karst invertebrates are expected to be minimal, the draft EA/HCP proposes that the Landowners will sell or donate a 75-acre karst preserve to Travis County or another entity approved by the Service that will preserve and manage the preserves in perpetuity for either Preferred Alternative 1, Option A or Preferred Alternative 1, Option B.

Other alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible for the Landowners, and other alterations of the project design increased the level of impacts to the endangered species present on the property.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–13933 Filed 5–31–00; 11:04 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P]

Alaska Native Claims Selection, AA–6986–B and AA–6986–C; Notice for Publication

In accordance with Departmental regulations 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, (ANCSA), 43 U.S.C. 1601, 1613(b), will be issued to Cape Fox Corporation for approximately 745 acres. The lands involved are in the vicinity of Ketchikan, Alaska.

Serial No.	Land description	Acreage
AA–6986–B and AA–6986–C	Cooper River Meridian, Alaska: T. 74 S., R. 90 E., Secs., 4, 5, 8, 9 and 10	724.00

A notice of the decision will be published once a week, or four (4) consecutive weeks, in the Ketchikan Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5060).

Any party claiming a property interest which is adversely affected by the decision, shall have until July 3, 2000, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Glenn C. Elliott,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 00–13792 Filed 6–1–00; 8:45 am]

BILLING CODE 4310–SS–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Alaska Native Claims Selection, AA–6687–A; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Old Harbor Native Corporation for the village of Old Harbor. The lands involved are in the vicinity of Old Harbor, Alaska.

U.S. Survey No. 10920, Alaska

Containing 119.99 acres as shown on the plat of survey officially filed on November 25, 1992.

Seward Meridian, Alaska

T. 33. S., R. 23 W.,
Sec. 5, lot 2;
Sec. 6, lot 2;
Sec. 8, lot 2;
Sec. 9, lots 1 and 2;
Sec. 10, lot 1.

Containing 1,305.04 acres as shown on the plat of survey officially filed on April 16, 1999.

T. 33 S., R. 24 W.,
Sec. 12, lots 2, 3, and 4.

Containing 172.36 acres as shown on the plat of survey officially filed on December 3, 1999. Aggregating 1,597.39 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror newspaper. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599; (907) 271–5960.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 3, 2000, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Dennis R. Benson,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 00–13793 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–JA–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–00–1610–DE–002A]

Grand Canyon-Parashant National Monument Map and Boundary Description

AGENCY: Bureau of Land Management and National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice is to publish the official map and boundary description of Grand Canyon-Parashant National Monument, established by Presidential Proclamation on January 11, 2000.

FOR FURTHER INFORMATION CONTACT: Roger G. Taylor, Field Manager, Bureau of Land Management—Arizona Strip Field Office, 345 East Riverside Drive, St. George, Utah 84790. Telephone (435) 688–3200.

SUPPLEMENTARY INFORMATION: The Grand Canyon-Parashant National Monument is on federal lands in Mohave County, Arizona. The following description refers to the original map entitled "Grand Canyon-Parashant National Monument", on file at the Arizona Strip Field Office, St. George, Utah.

Beginning at a point where the Nevada-Arizona State Line intersects a line 300 feet landward from the high water mark of Lake Mead in Section 6, T. 32 N., R. 16 W., Gila and Salt River Meridian, Arizona;

Then northerly along the Nevada-Arizona State line some 31 miles to the point where the aforementioned state line intersects the hydrologic divide between the Virgin River and Cedar Wash along the crest of Virgin Peak Ridge; Then easterly along said hydrologic divide some 2.75 miles across Lime Kiln Pass;

Then northeasterly along the hydrologic divide between Tom and Cull Wash and the Virgin River, passing over the summits of Lime Kiln and Lead Mine mountains, some 13.2 miles to a point offset 30 feet northwest of the centerline of Mohave County Road #299;

Then easterly along a line offset 30′ north of the centerline of Mohave County Road #299 some 3,000 feet to the intersection with the road to Cougar Spring, then bearing right and continuing along the offset of County Road #299 some 875 feet to an intersection with a 30-foot offset east of the centerline of BLM Road #1004 which is the exterior boundary of Paiute Wilderness;

Then north along the Paiute Wilderness boundary some 275 feet to a point 30 feet south of the centerline of BLM Road #1004, at an intersection of the eastern fork of the road to Cougar Spring;

Then easterly along the south line of the open road corridor through the Paiute Wilderness Area (approximately 30′ south of the centerline of BLM Road #1004) some 6.5 miles to a point where the road corridor intersects the exterior boundary of Paiute Wilderness;

Then southeasterly along the wilderness boundary, (which passes Black Rock Lookout and follows a 100-foot offset east of the centerline of the Lookout access road, then a 100-foot offset south of the centerline of BLM Road #1004), some 6.7 miles to a point where BLM Road #1004 intersects with BLM Road #1051;

Then southerly continuing along the Paiute Wilderness boundary (offset 30′ west of the centerline of BLM Road #1051) for approximately 2,150′ to the hydrologic divide between Grand Wash and the Virgin River tributaries; Then southeasterly and southerly along said hydrologic divide some 22.4 miles to the point where the divide intersects with a line offset 30 feet east of the centerline of an unnumbered road in SW¼ of Section 7, T. 36 N., R. 12 W.;

Then south and southeast along a line offset 30 feet east of the centerline of said road some 5.8 miles through sections 7, 18 and 30, T. 36 N., R. 12 W., and sections 13 and 24, T. 36 N., R. 13 W., to a point some 500′ west of the section line between sections 32 and 33, T. 36 N., R. 12 W.;

Then south some 500′ to the eastern rim of Hidden Canyon; Then southerly along said rim some 5.7 miles to a point offset 100′ northwest of the centerline of Mohave County Road #103;

Then northeasterly along a line offset 100′ northwest of the centerline of Mohave County Road #103 some 1.3 miles to a point where this line intersects the section line between sections 15 and 22, T. 35 N., R. 12 W.;

Then easterly along said section line some 780 feet;

Then southeasterly toward the crest of a small ridge on the northwest side of Poverty Mountain in the NE¼, NE¼, Section 22, T. 35 N., R. 12 W., and continuing along the northern rim of Poverty Mountain some 10.9 miles to the head of an unnamed wash west of the center of Section 33, T. 35 N., R. 11 W.;

Then easterly along a line offset 30 feet south of the center of said wash some 1.2 miles to the intersection of a 30-foot offset east of an unnumbered road in the southwest corner of Section 34, T. 35 N., R. 11 W.;

Then south along a line offset 30 feet east of said road some 2000′ to a point offset 30 feet north of the centerline of BLM Road #1018;

Then easterly along a line offset 30 feet north of BLM Road #1018 some 1.8 miles to a point offset 30 feet west of the centerline of Ivanpatch Wash;

Then south along a line offset 30 feet west of the center of Ivanpatch Wash across the road some 75 feet to a point offset 30 feet south of the centerline of BLM Road #1018;

Then easterly along a line offset 30 feet south of said road some 2,000 feet to a departure point some 350 feet northwest of the center of Ivanpatch Pond #2;

Then, from said departure point, counterclockwise around the south and east of Ivanpatch Pond #2, some 1,400 feet to a point offset 30 feet south of the centerline of BLM Road #1018 where said road crosses an unnamed wash in SW¼, SE¼ of Section 36, T. 35 N., R. 11 W.;

Then easterly along a line offset 30 feet south of the centerline of Road #1018 some 0.5 miles to a point of intersection with the east boundary of Section 36, T. 35 N., R. 11 W.;

Then south along said section line approximately ¼ mile to the common corner of Tps. 34 and 35 N., Rs. 10 and 11 W.;

Then east along the section line between Section 6, T. 34 N., R. 10 W. and Section 31, T. 35 N., R. 10 W., some ¼ mile to the W. 1/16 section corner of sections 6 and 31, Tps. 34 and 35 N., R. 10 W.;

Then in T. 34 N., R. 10 W., south on the N. and S. centerline of the NW. ¼ section 6, to the NW. 1/16 corner, then east on the E. and W. centerline of the NW ¼, to the center north 1/16 corner section 6, then south on the N. and S. centerline section 6, to the center south 1/16 corner section 6, then east on the E. and W. centerlines of the SE ¼, section 6 and the SW ¼ section 5 to the SW. 1/16 corner section 5, then north on the N. and S. centerline of the W. ½ of section 5 to the W. 1/16 corner of sections 5 and 32, Tps. 34 and 35 N., R. 10 W.;

Then east on the line between Tps. 34 and 35 N., R. 10 W., to the corner of sections 3, 4, 33 and 34;

Then in T. 34 N., R. 10 W., south between sections 3 and 4, and sections 9 and 10, to the ¼ corner of sections 9 and 10, east on the E. and W. centerline of section 10, to the ¼ corner of sections 10 and 11, then north between sections 10 and 11, then east between sections 2 and 11 and sections 1 and 12, then north along the east line of section 1;

Then north between sections 31 and 36, and sections 25 and 30, T. 35 N., Rs. 9, 10, W., to a point offset 100 feet north of the centerline of Mohave Country Road #5;

Then easterly along a line offset 100 feet north from the centerline of County Road #5 some 4 miles to a point where the country road enters privately-owned land on the North and South center line of Section 22, T. 35 N., R. 9 W.;

Then south along the North-South center line (private land boundary) some 3,700 feet to the center of Section 27, T. 35 N., R. 9 W.;

Then east along the E. and W. centerline (private land boundary) some 0.5 mile to the section line between Sections 26 and 27, T. 35 N., R. 9 W. and north along the line between Sections 26 and 27, some 1,800 feet to a point 100 feet north of Mohave County Road #5;

Then easterly along a line offset 100 feet north of the centerline of County Road #5 some 0.75 miles to a point where the county road enters privately-owned land in the east one-half of the NE¼ of Section 26, T. 35 N., R. 9 W.;

Then south along the private land boundary some 0.5 mile to the section line between Sections 26 and 35, east on the line between sections 26 and 35, and sections 25 and 36, some 1.25 miles to the common corner of Sections 25, 30, 31 and 36, T. 35 N., Rs. 8 and 9, W., south some 0.5 miles to the ¼ corner of sections 31 and 36, T. 34 N., Rs. 8 and 9 W., east to the center ¼ section 31, north on the N. and S. centerline of sections 30 and 31, some 0.9 mile to a point 100 feet north of Mohave County Road #5;

Then easterly along a line offset 100 feet north of the centerline of Mohave County Road #5 some 3,000 feet to a point where the county road adjoins the private land boundary on the section line between Sections 29 and 30, T. 35 N., R. 8 W.;

Then south and east along the private land boundary some 0.5 miles to the North and South center line of Section 29, and north along N. and S. centerlines of sections 20 and 29 some 0.9 miles to a point 30 feet northwest of Mohave County Road #1530 where said road veers northeast from the private land boundary;

Then northeasterly along a line offset 30 feet north and west of Mohave County Road #1530 some 2 miles to a point where said road enters privately-owned land on the section line between Sections 9 and 16, T. 35 N., R. 8 W.;

Then east on the line between sections 9 and 16, and 10 and 15, some 1.3 miles to the common corner of sections 10, 11, 14 and 15, T. 35 N., R. 8 W., and north on the line between sections 10 and 11, and sections 2 and 3, some 1.5 miles to a point offset 100 feet north of the centerline of Mohave County Road #717;

Then easterly along a line offset 100 feet north of Mohave County Road #717 some 6 miles to a point offset 100 feet east of the centerline of Mohave County Road #5, which is the intersection of Mohave County Roads #717 and #5 in the SW¼ of Section 34, T. 36 N., R. 7 W.;

Then southeasterly along a line offset 100 feet east of the centerline of County Road #5 some 1,300 feet to the section line between Sections 34 and 3, Ts. 35, 36 N., R. 7 W.;

Then east along the section line between Sections 34 and 3, Ts. 35, 36 N., R. 7 W. to a point some 1,495 feet east of the north quarter corner of Section 3, T. 35 N., R. 7 W.;

Then southeasterly from said point some 500 feet to a point on the rim on the east side of Toroweap Valley at an elevation of 5,800 feet in the SE¼NW¼NE¼NE¼ of Section 3, T. 35 N., R. 7 W.;

Then southerly along the east rim of Toroweap Valley some 6 miles to a geographic point at the intersection of Toroweap Valley and Broad Canyon at an elevation of approximately 5,680 feet in Section 28, T. 35 N., R. 7 W.;

Then easterly along the northern rim of Broad Canyon some 3.6 miles to a point southwest of two small reservoirs in the northeast corner of Section 23, T. 35 N., R. 7 W.;

Then southerly across the wash to a point of equal elevation to the previous point and along the rim southwesterly and easterly to a point where said rim intersects with the boundary of Grand Canyon National Park on the section line between Sections 23 and 26, T. 35 N, R. 7 W.;

Then southerly and westerly along the Grand Canyon National Park boundary to a point 300 feet landward of the high water level of Lake Mead (Bureau of Reclamation withdrawal boundary) in Section 30, T. 32 N., R. 15 W., which is just north of Colorado River mile 277;

Then northerly and westerly along the Bureau of Reclamation withdrawal boundary, which is a line 300 feet landward of the high water mark of Lake Mead, to the point of beginning.

Note: Roads referenced in this document are as depicted on the following 7.5 minute topographic quadrangle maps (with date of publication): Poverty Knoll (1971), Poverty Spring (1971), Last Chance Canyon (1971), Jones Hill (1971), Mt. Trumbull NW (1967), Mt. Trumbull NE (1967), Mustang Knoll (1979), Wolf Hole Mtn. West (1979), St. George Canyon (1979) and Mt. Bangs (1985).

Becky J. Hammond,
Acting Field Manager.

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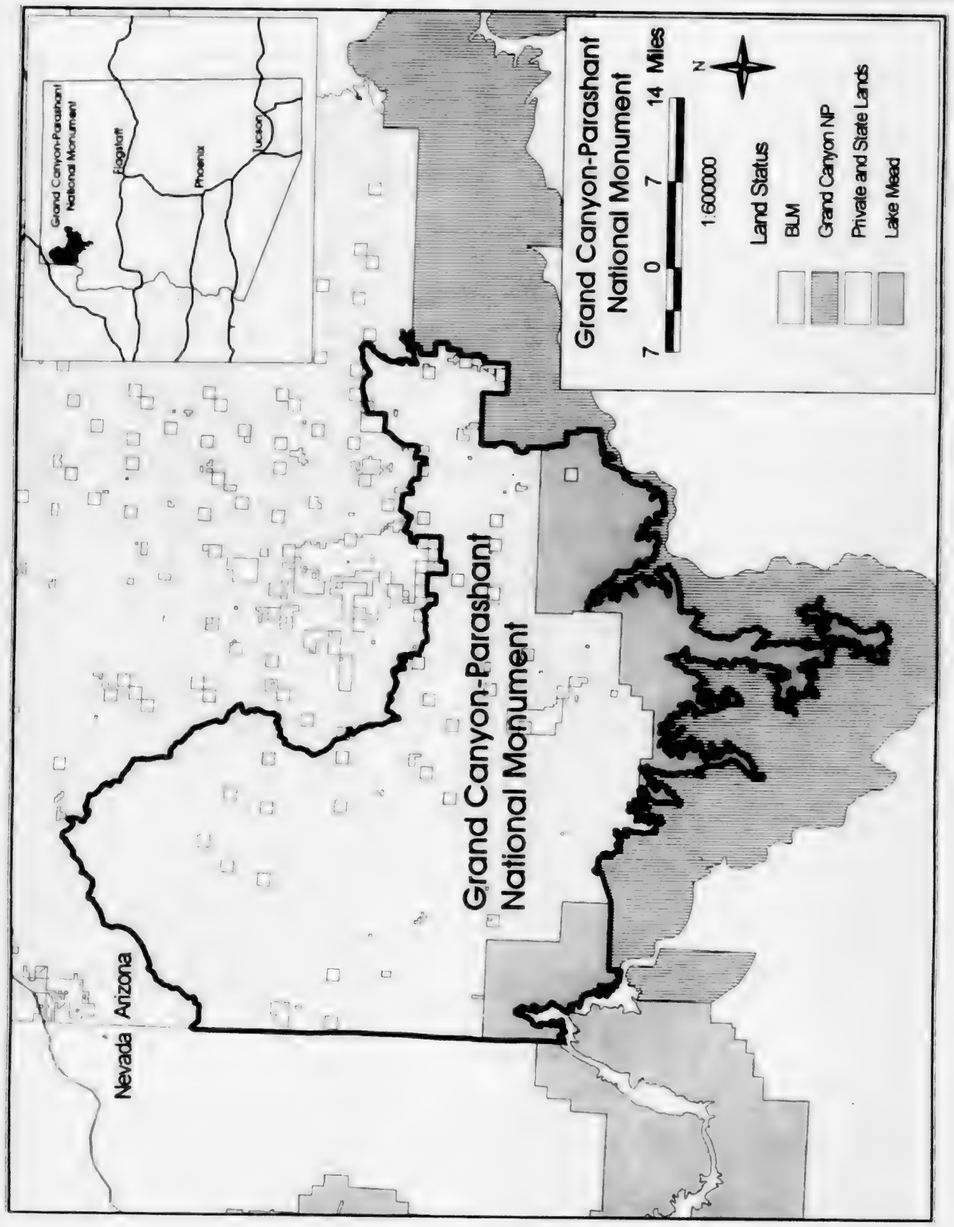

[FR Doc. 00–13863 Filed 6–1–00; 8:45 am]
BILLING CODE 4310–32–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1220–MA]

Notice of Closure of Public Lands to Motorized Vehicles

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure Order for Motorized Vehicle Travel on Public Lands.

SUMMARY: Notice is hereby given that certain public lands in Fremont County, Colorado are closed to all types of motorized vehicle (including but not limited to 4X4, ATVs, and motorcycles) travel. The purpose of this closure is to prevent further disturbance to soils and vegetation in and near the riparian area of Badger Creek, reduce sedimentation in Badger Creek, and preclude use of a washed out portion of the Badger Creek Road #5965 that is a safety hazard. The reason behind this closure is the recent washing out of a portion of the Badger Creek Road. This has caused some vehicle users to drive in Badger Creek as a way to get around the washout. In addition, renewed use of the channel of Badger Creek for vehicular passage is occurring throughout the closure area. This closure is made under the authority of 43 CFR 8364.1.

DATES: Effective immediately and remaining in effect unless revised, revoked or amended.

ADDRESSES: Bureau of Land Management, Royal Gorge Field Office, 3170 East Main Street, Canon City, Colorado 81212; telephone 719–269–8500.

FOR FURTHER INFORMATION CONTACT: Levi D. Deike, Associate Field Office Manager, at the above address and phone number, or John Nahomenuk, Outdoor Recreation Planner, Arkansas Headwaters Recreation Area, P.O. Box 126, Salida, CO 81201; telephone 719–539–7289.

SUPPLEMENTARY INFORMATION: The public lands affected by this closure are identified as follows:

New Mexico Principal Meridian

T.49N., R.10E.,
- Section 15: SW¼
- Section 16: S½SE¼
- Section 21: E½
- Section 22: W½
- Section 27: NW¼ and that portion of the SW¼ north of the railroad right-of-way
- Section 28: that portion of the NE¼, NE¼SE¼ north of the railroad right-of-way

This closure does not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. Violation of this order is punishable by fine and/or imprisonment as defined in 18 U.S.C. 3571. A copy of this **Federal Register** Notice and a map showing the closure area is posted in the Royal Gorge Field Office and in public places in the affected area.

Levi D. Deike,
Associate Field Office Manager.
[FR Doc. 00–13772 Filed 6–1–00; 8:45 am]
BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1820–DH–014B]

Headwaters Forest Reserve, California

AGENCY: Bureau of Land Management in Partnership with California Department of Fish and Game.

ACTION: Notice of preparation.

SUMMARY: This Notice of Preparation of an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the adoption of a Management Plan for the Headwaters Forest Reserve in the northcoast area of California is the result of the acquisition of the property by the U.S. Department of the Interior and the State of California by purchase in March 1999. The Federal legislation creating the Reserve prescribes management issues that the plan must address (1997 Interior Appropriations Bill). Land and resource management alternatives will be formulated to address the required issues in different ways that are consistent with the preservation of ecological integrity and other policy direction specified in the legislation. The "no action" alternative will consist of continuation of the current interim management strategy, established in 1999.

DATES: Three public meetings are scheduled to solicit public input for plan implementation and to impact the assessment of planning alternatives:

Eureka, California: June 13, 2000 at the Eureka Inn, 518 7th Street, Eureka, California; San Francisco, California: June 20, 2000 at Fort Mason, Landmark Building A, San Francisco, California; Sacramento, California: June 22, 2000 at the Scottish Rite Memorial Center, 6151 H Street, Sacramento, California.

SUPPLEMENTARY INFORMATION: Various management alternatives would affect environmental conditions in and adjacent to the Reserve in different ways. Environmental resources that could be impacted include forest ecosystem species, structure, and function; habitat for threatened and endangered species including marbled murrelet, northern spotted owl, coho salmon, chinook salmon and steelhead; water quality; fire hazard; and conditions on adjoining properties, including access, roads, and fire management. An internet web page describes in detail the scope of the proposed plan and provides background information on the Headwaters Forest Reserve. The web page contains instructions for submitting scoping comments, and coding of comments by subject is requested. The internet address of the web site of *www.ca.blm.gov/arcata/headwaters.html*. The deadline for submitting comments is Monday, July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Kovacs, California Department of Fish and Game, 707–441–5789 or the Headwaters Forest Reserve Management Plan Information Line, 916-737–3010, extension 4326. Email comments should be sent to *headwatersplan@att.net*, or comment letters should be mailed to P.O. Box 189445, Sacramento, California 95818–9445.

Lynda J. Roush,
Arcata Field Manager.
[FR Doc. 00–13794 Filed 6–1–00; 8:45 am]
BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1820–DH–014B]

Headwaters Forest Reserve, California

AGENCY: Bureau of Land Management in Partnership with California Department of Fish and Game.

ACTION: Notice of intent.

SUMMARY: This Notice of Intent to prepare an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the adoption of a Management Plan for the Headwaters Forest Reserve in the northcoast area of California is the result of the acquisition of the property by the U.S. Department of the Interior and the State of California by purchase in March 1999. The Federal legislation creating the Reserve prescribes management issues that the plan must address (1997 Interior Appropriations Bill). Land and resource management alternatives will be formulated to address the required

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issues in different ways that are consistent with the preservation of ecological integrity and other policy direction specified in the legislation. The "no action" alternative will consist of continuation of the current interim management strategy, established in 1999.

DATES: Three public meetings are scheduled to solicit public input for plan implementation and to impact the assessment of planning alternatives: Eureka, California: June 13, 2000 at the Eureka Inn, 518 7th Street, Eureka, California; San Francisco, California: June 20, 2000 at Fort Mason, Landmark Building A, San Francisco, California; Sacramento, California: June 22, 2000 at the Scottish Rite Memorial Center, 6151 H Street, Sacramento, California.

SUPPLEMENTARY INFORMATION: An internet web page describes in detail the scope of the proposed plan and provides background information on the Headwaters Forest Reserve. The web page contains instructions for submitting scoping comments, and coding of comments by subject is requested. The internet address of the web site of *www.ca.blm.gov/arcata/headwaters.html*. The deadline for submitting comments is Monday, July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Arcata Field Manager, at 707–825–2300 or Headwaters Forest Reserve Management Plan Information Line, 916–737–3010, extension 4326. Email comments should be sent to *headwatersplan@att.net*, or comment letters should be mailed to P.O. Box 189445, Sacramento, California 95818–9445.

Lynda J. Roush,

Arcata Field Manager.

[FR Doc. 00–13795 Filed 6–1–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–HX; AA–65185]

Public Land Order No. 7449; Partial Revocation of Public Land Order No. 725; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a public land order insofar as it affects 32.66 acres of National Forest System land withdrawn for use by the Forest Service for the Edna Bay Administrative Site. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Land not conveyed to the State is opened to such forms of disposition as may by law be made of National Forest System land, subject to other withdrawals or segregations of record.

EFFECTIVE DATE: June 2, 2000.

FOR FURTHER INFORMATION CONTACT: Shirley J. Macke, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 725, which withdrew National Forest System land for administrative sites or for other public purposes, is hereby revoked insofar as it affects the following described land:

Copper River Meridian

Tongass National Forest

T. 68 S., R. 76 E., Sec. 28, lots 11 and 12, and W½SE¼NW¼.

The area described contains 32.66 acres.

2. The State of Alaska application for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), is effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State is opened to such forms of disposition as may by law be made of National Forest System land subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: May 22, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–13865 Filed 6–1–00; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–ET; CACA 583, CACA 7767, CARI 3649, CARI 07692, and CACA 40671]

Public Land Order No. 7447; Transfer of Jurisdiction to the National Park Service; Partial Revocation of Executive Order dated February 26, 1852 and Public Land Order No. 4883, and Revocation of Public Land Order No. 5234; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order and a public land order insofar as they affect 18.72 acres of lands withdrawn for use by the Department of the Navy for military purposes and revokes another public land order in its entirety, which withdrew 6.88 acres for the National Park Service. The 18.72 acres are no longer needed for military purposes and the revocation of the 6.88 acres is a record-clearing action only. This order also permanently transfers the jurisdiction of all 25.60 acres to the National Park Service, for inclusion into the Cabrillo National Monument. The transferred lands and their related resource uses will be managed under the laws and regulations appropriate to a national monument.

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2800 Cottage Way, Sacramento, California 95825, 916–978–4675 or Gary Chulla, National Park Service, Pacific Land Resources Program Center, Pacific West Region, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372, 415–427–1410.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated February 26, 1852, and Public Land Order No. 4883, which withdrew public lands for military purposes are hereby revoked insofar as they affect the following described lands:

San Bernardino Meridian

(a) Bayside Trail

Those portions of lot 39 in T. 17 S., R. 3 W., and lot 37 in T. 17 S., R. 4 W., more particularly described in the notice published in the **Federal Register** on October 26, 1999 (64 FR 57650). The area described contains approximately 2.72 acres in San Diego County.

(b) Point Loma Tidepool Area

A portion of lot 37 in T. 17 S., R. 4 W., more particularly described in the notice published in the **Federal Register** on October 26, 1999 (64 FR 57650). The area described contains approximately 16 acres in San Diego County.

2. Public Land Order No. 5234, which withdrew public land for the National Park Service, is hereby revoked in its entirety as to the following described land:

San Bernardino Meridian

Point Loma Maintenance Area

A portion of lot 37 in T. 17 S., R. 4 W., more particularly described in Public Land Order No. 5234 published in the **Federal Register** on July 21, 1972 (37 FR 14571).

The area described contains approximately 6.88 acres in San Diego County.

3. Subject to valid existing rights, the administrative jurisdiction of the lands described in paragraphs 1(a), 1(b), and 2, and their related resource uses are hereby permanently transferred to the National Park Service. These lands and their related resource uses shall be managed as part of the Cabrillo National Monument and shall thereafter be subject to all laws and regulations applicable thereto. As a result of this transfer, the lands will not be opened and they are no longer subject to the operation of the general land laws, including the mining and the mineral leasing laws.

4. Pursuant to an agreement between the Department of the Navy and the National Park Service, the Navy may continue to use the Bayside Trail provided such use does not materially interfere with the use of said trail by the National Park Service in their management of the Cabrillo National Monument.

5. The transfer of jurisdiction for the land described as the Point Loma Maintenance Area made by this order is in furtherance of, and subject to the provisions of that certain Memorandum of Agreement, dated January 12, 1970, entered into between the Commander, Naval Electronics Laboratory Center, and Commander, Naval Undersea Research and Development Center, Department of the Navy, and the Superintendent, Cabrillo National Monument, National Park Service, Department of the Interior, as may be amended or supplemented.

Dated: May 22, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–13862 Filed 6–1–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–28647]

Public Land Order No. 7448; Opening of Land Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of section 24 of the Federal Power Act, 80 acres of National Forest System land withdrawn by a Secretarial order which established Bureau of Land Management Power Site Classification No. 361. This action will permit consummation of a pending Forest Service land exchange and retain the power rights to the United States. The land has been and will remain open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093; 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination of the Federal Energy Regulatory Commission in DVCO–555–000, it is ordered as follows:

1. At 9 a.m. on July 3, 2000, the following described National Forest System land withdrawn by the Secretarial Order dated October 24, 1944, which established Power Site Classification No. 361, will be opened to disposal subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission determination DVCO–555–000, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

Arapaho-Roosevelt National Forest

T. 6 N., R. 71 W.,
Sec. 31, SW¼NE¼ and SE¼NW¼.

The area described contains 80 acres in Larimer County.

Dated: May 22, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–13861 Filed 6–1–00; 8:45 am]

BILLING CODE 4310–JB–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NEV–042819]

Public Land Order No. 7450; Partial Revocation of Secretarial Order dated July 2, 1902; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 1,262.05 acres of public lands withdrawn for the Bureau of Reclamation's Newlands Project. The lands are no longer needed for reclamation purposes, and the revocation is necessary to facilitate a pending land exchange. The lands are temporarily closed to surface entry and mining due to an overlapping segregation for an exchange proposal. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520–0006, 775–861–6532.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated July 2, 1902, which withdrew public lands for the Bureau of Reclamation's Newlands Project, is hereby revoked insofar as it affects the following described lands:

Mount Diablo Meridian

T. 20 N., R. 25 E.,
Sec. 4, lot 5, lots 10 to 16, inclusive, lots 18 to 19, inclusive, lots 22 to 25, inclusive, and S½;
Sec. 6, lots 8 to 23, inclusive.

The areas described aggregate 1,262.05 acres in Washoe and Lyon Counties.

2. At 9 a.m. on July 3, 2000, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 3, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: May 22, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–13864 Filed 6–1–00; 8:45 am]

BILLING CODE 4310–HC–P

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-330-1030-JE-014B]

Headwaters Forest Reserve, California

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: Notice is hereby given related to the restriction of Bureau of Land Management (BLM) administered lands in accordance with regulations contained in 43 CFR 8364.1(a). This action affects approximately 7,400 acres of public land comprising the Headwaters Forest Reserve, located in Humboldt County, CA. Public access into the Reserve from the south along Felt Springs Road is allowed only during BLM guided hikes. The public must contact the BLM Arcata Field Office to make reservations. Employees, agents and permittees of the BLM may be exempt from this restriction as determined by the authorized officer.

DATES: This restriction order will be effective upon the date of publication and will terminate upon the completion and approval of a long range management plan for the area.

ADDRESSES: Maps and supporting documentation are available for review at the following location: Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, BLM, Arcata Field Manager (707) 825-2300.

SUPPLEMENTARY INFORMATION: Limiting public access into the Reserve from the south end is consistent with Environmental Assessment No. 99-15, "Headwaters Forest Reserve: Public Access (South)" and its Decision Record entitled "Public Access to the Southern Part of the Headwaters Forest Reserve." The decision provides for interim public access with BLM personnel accompanying visitors as they hike along Salmon Creek Trail. Guided hikes are needed to protect the fragile natural resources within the old-growth redwood groves of the Reserve. Limited public access from the south will be allowed from May 15th through November 15th with wet weather restrictions. There will be four guided hikes per week/one hike per day. Each hike is limited to 20-30 visitors. Two days per week are reserved for schools/educational programs.

Lynda J. Roush,

Arcata Field Manager.

[FR Doc. 00-13803 Filed 6-1-00; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-950-1420-00-P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

The plats of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., May 23, 2000.

The plat representing the dependent resurvey of a portion of the Ninth Auxillary Meridian West, through Township 54 North, between Ranges 76 and 77 West, a portion of the South boundary, the East and North boundaries and a portion of the subdivisional lines, T. 54 N., R. 76 W., Sixth Principal Meridian, Wyoming, Group No. 511, was accepted May 18, 2000.

The plat representing the dependent resurvey of a portion of the Ninth Auiliary Meridian West, through Township 55 North, between Ranges 76 and 77 West, the East boundary and a portion of the subdivisional lines, T. 55 N., R. 76 W., Sixth Principal Meridian, Wyoming, Group No. 511, was accepted May 18, 2000.

The plat representing the dependent resurvey of a portion of the Fourteenth Standard Parallel North, through Range 76 West, a portion of the South boundary, the East boundary and a portion of the subdivisional lines, T. 56 N., R. 76 W., Sixth Principal Meridian, Wyoming, Group No. 511, was accepted May 18, 2000.

The plat representing the dependent resurvey of a portion of the Thirteenth Standard Parallel North, through Range 76 West, the East boundary and a portion of the subdivisional lines, T. 53 N., R. 76 W., Sixth Principal Meridian, Wyoming, Group No. 585, was accepted May 18, 2000.

The plat representing the dependent resurvey of the subdivisional lines, T. 42 N., R. 74 W., Sixth Principal Meridian, Wyoming, Group No. 601, was accepted May 18, 2000.

The plat representing the dependent resurvey of a portion of the Tenth Standard Parallel North, through Range 74 West, the North boundary and the subdivisional lines, T. 41 N., R. 74 W., Sixth Principal Meridian, Wyoming, Group No. 601, was accepted May 18, 2000.

The plat representing the dependent resurvey of Mineral Survey No. 246, T. 29 N., Rs. 99 and 100 W., Sixth Principal Meridian, Wyoming, Group No. 627, was accepted May 18, 2000.

The plat representing the dependent resurvey of the South boundary and a portion of the East boundary, T. 43 N., R. 67 W., Sixth Principal Meridian, Wyoming, Group No. 635, was accepted May 18, 2000.

Dated: May 23, 2000.

John P. Lee,

Chief Cadastral Survey Group.

[FR Doc. 00-13866 Filed 6-1-00; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES 00-18]

Colusa Basin Drainage District's Integrated Resources Management Program for Flood Control in the Colusa Basin in Glenn, Colusa, and Yolo Counties, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the draft programmatic environmental impact statement/draft programmatic environmental impact report (DEIS/DEIR), and notice of public hearing.

SUMMARY: Pursuant to the National Environmental Policy Act and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the Colusa Basin Drainage District (District) have prepared a joint DEIS/DEIR for the Integrated Resources Management Program for Flood Control in the Colusa Basin (Program). The Program encompasses an area of about 1,036,000 acres within the Basin, extending from Orland in the north to Knights Landing in the south, and includes lands in Glenn, Colusa, and Yolo Counties. The Sacramento River and Coastal Range foothills form its eastern and western boundaries, respectively. Within this area, the District encompasses about 650,000 acres. The Program is comprised of three elements: construction of a series of flood detention dams and basins on selected ephemeral streams that cause flooding in the Basin; implementation of several upland, riparian, and wetland environmental restoration measures that will help reduce soil erosion and sedimentation and restore degraded habitat; and development of a water supply that could be used for environmental purposes. The DEIS/DEIR describes and presents the potential environmental effects of the three Program elements. A public hearing has been scheduled to receive comments on the DEIS/DEIR. Three public workshops will be held before the public hearing to allow interested parties to learn more about the Program and its potential environmental consequences.

DATES: Please submit written comments on the DEIS/DEIR on or before August 25, 2000. Comments may be submitted to Reclamation or the District at the addresses provided below.

The public workshop dates are:

- June 29, 2000, 7:00 p.m., Arbuckle, CA
- July 13, 2000, 7:00 p.m., Colusa, CA
- July 20, 2000, 7:00 p.m., Willows, CA

The public hearing on the DEIS/DEIR will be held on August 9, 2000, at 7:00 p.m.

ADDRESSES: The public workshop locations are:

- Arbuckle: Pierce High School Library, 960 Wildwood Road
- Colusa: Colusa Industrial Properties, Agricultural Building Conference Room, 100 Sunrise Boulevard
- Willows: Willows City Hall, 201 North Lassen Street

The public hearing will be held at the Willows City Hall, located at 201 North Lassen Street, Willows, California 95988

Written comments on the DEIS/DEIR should be addressed to Ms. Gaye Lopez, Colusa Basin Drainage District, P.O. Box 312, Woodland, CA 95776.

Copies of the DEIS/DEIR may be requested from Ms. Susan Lamb or Ms. Diane Hopkins by calling (916) 852-1300.

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the DEIS/DEIR are available for public inspection.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Ms. Gaye Lopez, Colusa Basin Drainage District, at (530) 795-3038 or Mr. Russ Smith, Reclamation, at (530) 275-1554.

SUPPLEMENTARY INFORMATION: The proposed action is to construct flood detention dams and basins on certain ephemeral streams in the foothills west of the Basin that cause the greatest flood damage. Reclamation and the District also propose to implement approximately 10,000 acres of environmental restoration measures to help restore degraded upland, riparian, and wetland habitats in the project area. In addition, the detention basins could provide a water supply that could be used for environmental purposes.

The goal of the Program is to substantially reduce flood damages and restore upland, riparian, and wetland habitats that have been historically degraded in the Colusa Basin. In addition to a No Program Alternative, which involves the continued use of the existing Colusa Basin Drain for drainage management and inadequate flood flow conveyance, six program alternatives are examined. Alternatives 1a, 2a, and 3a include the proposed construction of 14, 8, and 5 foothill flood detention dams and reservoirs, respectively, and about 10,000 acres of upland, riparian, and wetland restoration measures in the Colusa Basin. Alternatives 1b, 2b, and 3b include all the elements of Alternatives 1a, 2a, and 3a, respectively, and would also be operated to provide a water supply that could be used for environmental purposes, including the dedication of some reservoir space for water storage.

Copies of the DEIS/DEIR are available for public inspection at the following locations:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225; telephone: (303) 445-2072
- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento CA 95825-1898; telephone: (916) 978-5100
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240-0001
- Colusa County Library, 738 Market Street, Colusa CA 95932
- Sacramento State University Library, 6000 J Street, Sacramento CA 95521
- Princeton Public Library, P.O. Box 97, Princeton CA 95970-0097
- Elk Creek Library, Box 163, Elk Creek CA 95939-0163
- Bayliss Library, Rd 39 and West Bayliss, Bayless CA 95943
- Willows City Library, 201 N. Lassen Street, Willows CA 95988
- Woodland Public Library, 250 First Street, Woodland CA 95695
- Grimes Library, P.O. Box 275, Grimes CA 95950
- Orland City Library, 333 Mill Street, Orland CA 95963
- Shasta College Library, 1065 Old Oregon Trail, Redding, CA 96099
- Arbuckle Library, 7th & King, Arbuckle, CA 95912
- Butte Community College Library, 3536 Butte Campus Drive, Oroville, CA 95965
- Campus Library, Humboldt State University, Arcata, CA 95521
- Knights Landing Library, 42351 3rd Street, Knights Landing, CA 95645
- Willows Public Library, 201 North Lassen Street, Willows, CA 94988
- Shields Library, University of California-Davis, Davis, CA 95616

Hearing Process Information

Colusa Basin Drainage District staff will make a brief presentation to describe the proposed project, its purpose and need, and alternatives considered. The public may comment on environmental issues addressed in the DEIS/DEIR. If necessary due to large attendance, comments will be limited to 5 minutes per speaker. Written comments will also be accepted.

Dated: May 23, 2000.

Lester A. Snow,

Regional Director.

[FR Doc. 00-13854 Filed 6-1-00; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Availability of a Draft Agency Handbook on the National Environmental Policy Act; Extension of Public Comment Period

AGENCY: Bureau of Reclamation, Interior.

SUMMARY: Notice is hereby given that the public comment period for Reclamation's draft agency handbook is extended 16 days to end on July 5, 2000.

DATES: The end of the public comment period, as originally noted in the **Federal Register** (65 FR 21210) on April 20, 2000, was to be June 19, 2000. The public comment period is now extended to July 5, 2000.

ADDRESSES: Written comments on the NEPA Handbook should be addressed to Bureau of Reclamation, Office of Policy, Attention: Dr. Darrell Cauley, Manager—Environmental and Planning Coordination, D-5100, Denver Federal Center, PO Box 25007, Denver, CO 80225-0007.

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Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Copies of the NEPA Handbook may also be requested from Theresa Taylor at the above address, via the Internet at nepa@do.usbr.gov, or by calling (303) 445–2826. The entire document is available at http://www.usbr.gov/nepa on the Internet.

Copies of the NEPA Handbook are available for public inspection and review at the following locations:

- Bureau of Reclamation, Reclamation Service Center Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, Colorado 80225; telephone: (303) 445–2072
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington DC 20240–0001

FOR FURTHER INFORMATION CONTACT: Theresa Taylor, Bureau of Reclamation, Office of Policy, at (303) 445–2826.

SUPPLEMENTARY INFORMATION: Requests for the document have depleted our supply. To accommodate requests, more copies are being printed for distribution. Reclamation's goal is to give the public a reasonable opportunity to review and offer comments on the content of this handbook. The NEPA Handbook was developed to assist Reclamation employees who are required to comply with the National Environmental Policy Act and various other environmental laws as part of their daily work. Reclamation's NEPA Handbook was first published in 1984, not in 1991 as previously reported on April 20, 2000. After Reclamation was re-organized in 1994 to reflect a de-centralization of decision making and authority, the NEPA Handbook needed major revisions to reflect the re-organization and to update the content. The handbook was extensively revised and has gone through various stages of review both internally and with the Council on Environmental Quality. At the commencement of the extended public review period, comments received will be considered as part of a final revision of the handbook.

Dated: May 25, 2000.

Wayne O. Deason,

Associate Director.

[FR Doc. 00–13796 Filed 6–1–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for Requirements for Permits and Permit Processing, 30 CFR part 773.

DATES: Comments on the proposed information collection must be received by August 1, 2000, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease at the address listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collection that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 773, Requirements for Permits and Permit Processing.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Requirements for Permits and Permit Processing, 30 CFR Part 773.

OMB Control Number: 1029–0041.

Summary: The collection activities for this part ensure that the public has the opportunity to review permit applications prior to their approval, and that applicants for permanent program permits or their associates who are in violation of the Surface Mining Control and Reclamation Act do not receive surface coal mining permits pending resolution of their violations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mining and reclamation permits and State governments and Indian Tribes.

Total Annual Responses: 310.

Total Annual Burden Hours: 1,909.

Dated: May 30, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–13884 Filed 6–1–00; 8:45 am]

BILLING CODE 4310–05–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review: Comment Request

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on April 22, 1998, in 63 FR 19946, at which time a 60-calendar day comment period was announced. This comment period ended June 22, 1998. No comments were received in response to this notice. This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before July 2, 2000.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, N.W., Washington, D.C. 20503, 202/395–3897.

Summary of Form Under Review

Type of Request: Extension of currently approved form.

Title: Small Business Application for Political Risk Investment Insurance.

Form Number: OPIC–223.

Frequency of Use: Once per investor per project.

Type of Respondents: Small business or other institutions qualifying as small business under OPIC's definition (except farms); individuals qualifying as small business under OPIC's definition.

Standard Industrial Classification Codes: All.

Description of Affected Pubic: Small U.S. companies or citizens investing overseas.

Reporting Hours: 4 hours per project.

Number of Responses: 50 per year.

Federal Cost: $750 per year.

Authority for Information collection: Sections 231 and 234(a), 239(d), and 204A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The small business application is the principal document used by OPIC to determine the small business investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: May 24, 2000.

Laura Naide,

Senior Counsel for Administrative Affairs, Department of Legal Affairs.

[FR Doc. 00–13848 Filed 6–1–00; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–286 (Review) and 731–TA–365 (Review)]

Industrial Phosphoric Acid From Israel and Belgium

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the countervailing duty order on industrial phosphoric acid from Israel and the antidumping duty order on industrial phosphoric acid from Belgium would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on March 1, 1999 (64 FR 10017) and determined on June 3, 1999, that it would conduct full reviews (64 FR 31610, June 11, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on July 16, 1999 (64 FR 38474).[3] The hearing was held in Washington, DC, on March 30, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these reviews to the Secretary of Commerce on May 22, 2000. The views of the Commission are scontained in USITC Publication 3302 (May 2000), entitled Industrial Phosphoric Acid from Israel and Belgium: Investigations Nos. 701–TA–286 (Review) and 731–TA–365 (Review).

Issued: May 24, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13807 Filed 6–1–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Lynn M. Bragg not participating.

[3] The Commission subsequently revised its schedule, publishing notice in the **Federal Register** on January 7, 2000 (65 FR 1173).

INTERNATIONAL TRADE COMMISSION

Possible Modifications to the International Harmonized System Nomenclature

AGENCY: United States International Trade Commission.

ACTION: Request for Proposals To Amend the International Harmonized System.

SUMMARY: The Commission is soliciting proposals from interested parties and agencies to amend the international Harmonized Commodity Description and Coding System (Harmonized System), including the rules of interpretation, section and chapter notes, and the texts of the headings and subheadings, with a view to keeping the Harmonized System current with changes in patterns of technology and trade. Specific proposals in this connection will be reviewed by the Commission staff for potential submission to the Customs Co-operation Council, now known as the World Customs Organization (WCO), in Brussels, Belgium.

EFFECTIVE DATE: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202/205–2595, E-Mail rosengarden@usitc.gov) or Ronald Heller (202/205–2596, E-Mail rheller@usitc.gov). The O/TA&TA fax number is 202/205–2616.

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Background

Soon after the implementation of the Harmonized System (HS) in 1988, the Harmonized System (HS) Review Subcommittee (RSC) of the WCO began a series of reviews of the entire HS. The third review cycle begins this year, with an expected implementation date for changes of January 2007.

The HS was established by an international Convention, which, inter alia, provides that the Harmonized System should be kept up-to-date in light of changes in technology and patterns of international trade. The international HS nomenclature, which is administered by the WCO, provides a uniform structural basis for the customs tariff and statistical nomenclatures of all major trading countries of the world, including the United States. The Commission, the U.S. Customs Service and the Bureau of the Census are responsible for the development of U.S. technical proposals concerning the HS under section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3010). A 1988 notice issued by the United States Trade Representative (53 FR 45646, Nov. 10, 1988), establishes the Commission as the lead U.S. agency in considering proposals for HS amendments that are intended to ensure that it reflects such changes in technology and trade.

A copy of the U.S. Harmonized Tariff Schedule (HTSA), which incorporates the international Harmonized System in its overall structure, can be downloaded in compressed form (self-extracting files) at the USITC's World Wide Web (WWW) site on the following page (URL): http://www.usitc.gov/taffairs.htm. Hard copies and electronic copies of the HTSA can be found at many of the 1,400 federal Depository Libraries located throughout the United States and its territories; further information about these locations can be found on the WWW at the following location (URL): http://ww1.access.gpo.gov/GPOAccess/sitesearch/su_docs_fdlp/adpos003.html, or by contacting GPO Access at the Government Printing Office, 1–888–293–6498. Note that the international HS comprises the broadest levels of categories in the HTSA, that is, the General Rules for the Interpretation of the Nomenclature, Section and Chapter titles, Section and Chapter legal notes, and heading and subheading texts to the 6-digit level of detail. U.S. Legal Notes, further subdivisions (8- and 10-digit subheadings) and statistical notes, as well as the entire chapters 98 and 99, are national legal and statistical detail added for the administration of the tariff and statistical programs and are not within the scope of the international HS review process.

Request for Proposals: In accordance with the above mentioned USTR notice, the Commission is seeking proposals for specific modifications to the HS (including the rules of interpretation, section and chapter notes, and the texts of the headings and subheadings) that will further the above goals. No proposals for changes to the national-level provisions (which include U.S. 8-digit subheadings, statistical annotations and rates of duty) will be considered by the Commission as a part of this review. Interested parties, associations and government agencies should submit specific language for proposed amendments to the HS together with appropriate descriptive comments and, to the extent available, trade data.

As part of this review, the Commission particularly invites proposals concerning the following matters:

- The deletion of HS headings or subheadings with low trade volume.
- The separate identification in the HS of new products important in international trade.
- The simplification of the HS, *e.g.*, by the elimination of classification provisions which are difficult to administer.
- Modifications to the HS Explanatory Notes, a WCO publication which clarifies the scope of HS provisions.

As mentioned above, *no proposals for changes to national-level provisions (including Additional U.S. Notes, U.S. 8-digit subheadings, statistical annotations and rates of duty) will be considered by the Commission as a part of this review.* The changes in the international HS that will result from this review cycle will not necessarily affect tariff rates for products imported into the United States; as with the first two HS review cycles, the USITC plans eventually to develop a set of proposed HTS changes that will align the HTS with the international HS changes, pursuant to sec. 1205 of the 1988 Act.

Deadline: Suggestions must be received no later than the close of business June 30, 2000, in order to be considered by the Commission. Requests for extensions of time should be made in writing to the Secretary at the address indicated below.

Written Submissions: All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E St. SW, Room 112–A ,Washington, DC 20436. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons.

TDD Access: Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

World Wide Web Access: This notice, and any subsequent notices published pursuant to section 1210 of the 1988 Act, may be obtained from the ITC Internet web server: http://www.usitc.gov/.

By order of the Commission.

Issued: May 25, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13806 Filed 6–1–00; 8:45 am]

BILLING CODE 7020–02–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 25, 2000, and published in the **Federal Register** on March 6, 2000, (65 FR 44) Chattem Chemicals, Inc., 3708 St. Elmo Avenue, Chattanooga, Tennessee 34709, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of amphetamine (1100), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture amphetamine for distribution to its customers.

DEA has considered the factors in Title 21, United States code, Section 823(a) and determined that the registration of Chattem Chemicals, Inc. to manufacture amphetamine is consistent with the public interest at this time. DEA has investigated Chattem Chemicals, Inc. to ensure that the company's continued registration is consistent with the public interest. The investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 22, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–13785 Filed 6–1–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 22, 1999, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal which was received for processing April 12, 2000, to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 1, 2000.

Dated: May 24, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–13786 Filed 6–1–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 14, 2000, Sigma Aldrich Research Biochemicals, Inc., Attn: Richard Milius, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315).	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391).	I
4-Bromo-2, 5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3, 4-methylenedioxyamphetamine (7402).	I
3, 4-Methylenedioxy-N-ethylamphetamine (7404).	I
3, 4-Methylenedioxymethampheta-mine (7405).	I
Psilocybin (7437)	I
1-[1-(2-Thienyl) cyclohexyl] pi-peridine (7470).	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (LAAM) (9648).	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for laboratory reference standards and neurochemicals.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be file no later than August 1, 2000.

Dated: May 12, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–13787 Filed 6–1–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,303 and NAFTA–3688]

Motor Coils Manufacturing, Emporium, Pennsylvania; Notice of Revised Determination on Reconsideration

By application dated March 24, 2000, petitioners requested administrative reconsideration of the Department's denial of Trade Adjustment Assistance (TAA) petition number TA–W–37,303 and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) petition number NAFTA–3688, for workers and former workers of Motor Coils Manufacturing, Emporium, Pennsylvania. The notices of negative determination were issued March 8, 2000 and published in the **Federal Register** on March 31, 2000 (65 FR 17312) and (65 FR 17313), respectively.

The March 8, 2000 denial of TAA and NAFTA–TAA for workers of the subject firm engaged in employment related to the refurbishment of traction motors for locomotives at Motor Coils Manufacturing, Emporium, Pennsylvania, was based on the finding that the workers provided a service and did not produce an article within the meaning of the group eligibility requirements of section 222 and 250(a) of the Trade Act of 1974, as amended.

The Department, on reconsideration, has learned that the workers produce an article, and all the worker group eligibility requirements of section 222 of the Trade Act of 1974 have been met. There were declines in sales or

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production, employment, and increased imports of articles like or directly competitive with those produced by workers of the subject firm.

The Department has obtained information on reconsideration that there were increased company imports of traction motors for locomotives from Mexico during the relevant time period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Motor Coils Manufacturing, Emporium, Pennsylvania, were adversely affected by increased imports of articles, including those from Mexico, like or directly competitive with those produced at the subject firm.

All workers of Motor Coils Manufacturing, Emporium, Pennsylvania, who became totally or partially separated from employment on or after January 18, 1999 through two years from the date of the certification, are eligible to apply for worker adjustment assistance under section 223 of the Trade Act of 1974;

* * * and

All workers of Motor Coils Manufacturing, Emporium, Pennsylvania, separated from employment on or after January 17, 1999, through two years from the date of the certification, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC this 23rd day of May 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–13755 Filed 6–1–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 12, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 12, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 05/22/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,684	Colby Footwear, Inc (Co.)	Gonic, HN	05/04/2000	Women's Footwear.
37,685	Makco Manufacturing Co (Co.)	Edinboro, PA	05/03/2000	Metal Stamped Parts.
37,686	Calgon Corporation (Wkrs)	Pittsburgh, PA	05/11/2000	Water Treatment Chemicals.
37,687	Xantech Corporation (Co.)	Sylmar, CA	05/10/2000	Signal Processing and Control Systems.
37,688	Ripley Industries (Co.)	Lewiston, ME	05/12/2000	Women's Shoe Heels.
37,689	AGRI Sales (Wkrs)	Saginan, MI	05/10/2000	Dry Edible Beans.
37,690	PCC Olofsson (Wkrs)	Lansing, MI	05/03/2000	Slack Adjuster for Semi-Trucks.
37,691	Four Seasons Apparel Co. (Co.)	Murfreesboro, NC	05/05/2000	Sportswear.
37,692	Valley Recreation Product (Co.)	Sycamore, IL	05/10/2000	Electronic Dart Games.
37,693	PCS Nitrogen (Wkrs)	Camanche, IA	05/10/2000	Nitric Acid and Ammonium Nitrate.
37,694	Meritor Automotive, Inc (IAMAW)	Fairfield, IA	04/28/2000	Universal Joints for Trucks.
37,695	Ryan Press (Wkrs)	Ogdensburg, NY	04/23/2000	Commercial Printing.
37,696	Parker Hannifin (Wkrs)	Batesville, MS	05/04/2000	Hose Assemblies for Automobiles.
37,697	Scientific Research Co. (Co.)	Portland, OR	05/02/2000	Metal Parts for Trucks.
37,698	Grayson Enterprises (Wkrs)	Eaton, IN	04/28/2000	Sterile Sampling Bags.
37,699	Invensys Appliance Control (Co.)	Independence, VA	05/04/2000	Air Conditioning, Refrigeration Controls.
37,700	Cove Shoe Co. (UFCW)	Martinsburg, PA	05/15/2000	Leather Boots.
37,701	Oregon Woodworking (Co.)	Bend, OR	05/05/2000	Interior Jambs.
37,702	Spencer's (Wkrs)	Mt. Airy, NC	04/27/2000	Baby Clothes.
37,703	Beloit Corporation (PACE)	Neenah, WI	05/09/2000	Service Paper Machines & Parts.
37,704	Fenwood Magnetics (Wkrs)	Belvidere, NJ	04/23/2000	Magnetic Transistor Devices.
37,705	Competitive Engineering (Wkrs)	Tucson, AZ	05/06/2000	Pico Carriers.
37,706	Fruit of the Loom (Wkrs)	Frankford, KY	05/12/2000	Wilson Sports Products.
37,707	Oliver Rubber Co. (Wkrs)	Export, PA	05/09/2000	Cure Tread Rubber.
37,708	Stanley Tools (Co.)	Shelbyville, IN	05/09/2000	Hammers and Hand Saws.
37,709	Boeing (Wkrs)	St. Louis, MO	05/11/2000	Military Aircraft and Missiles.
37,710	A.T. Cross Co. (Co.)	Lincoln, RI	04/13/2000	Writing Instruments.
37,711	Dana Epic Technical Group (Wkrs)	Kendallville, IN	05/05/2000	Fuel Rails for Autos and Trucks.
37,712	Rite Industries, Inc (Comp)	High Point, NC	05/17/2000	Dyes for Textile and Paper Industries.

[FR Doc. 00–13754 Filed 6–1–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,016]

Deluxe Corporation, Financial Services Division, Springfield, Massachusetts; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Delux Corporation, Financial Services Division, Springfield, Massachusetts. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,106; Deluxe Corporation, Financial Services Division, Springfield, Massachusetts (May 23, 2000).

Signed at Washington, DC this 25th day of May 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–13757 Filed 6–1–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,541]

Joshua L. Bailey Co., Inc., Hoboken, New Jersey; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Joshua L. Bailey Co., Inc., Hoboken, New Jersey. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37, 541; Joshua L. Bailey Co., Hoboken, New Jersey (May 24, 2000).

Signed at Washington, DC this 25th day of May 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–13758 Filed 6–1–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,060]

Liz Claiborne, North Bergen, NJ; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 30, 2000, the Union of Needletrades, Industrial and Textile Employees (UNITE) request administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 29, 2000, and published in the **Federal Register** on March 17, 2000 (65 FR 14627).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The February 29, 2000 denial of TAA for workers producing samples and patterns at Liz Claiborne, North Bergen, New Jersey, was based on the finding that the "contributed importantly" test of the worker group eligibility requirements of Section 222 of the Trade Act of 1974 was not met. The investigation revealed that the layoffs at the subject firm were not related to increased imported but instead, a restructuring of operations at the subject facility.

The petitioners disagree with the statement in the denial notice that "Samples produced at the subject facility are used in the company's worldwide production of apparel and could not therefore, have been adversely affected by increased imports." UNITE believes that the Department set a precedent when it certified other sample-making workers.

The TAA certifications referenced by UNITE were applicable to workers of those companies where sample-making/cutting were shifted abroad and the samples were returning to the United States. That is not the case for the workers producing samples and patterns at Liz Claiborne in North Bergen, New Jersey. UNITE states North Bergen employees no longer produce certain sizes of sample garments. The Department's investigation, however, revealed that the company chose to reduce sample making and patterns at North Bergen.

UNITE suggests that the company's apparent decision to shift sample making and patterns abroad support a certification. However, there is no provision in the group eligibility requirements of Section 222 of the Trade Act of 1974 to certify workers based on a shift in production.

UNITE asserts that imports of articles at a later stage of processing have had an economic effect on the North Bergen workers comparable to the effect of importation of foreign-made sample garments and/or markers by definition in the Code of Federal Regulations, 29 CFR 90.2. The Department points out that the importation of the article (apparel) would have to have an economic effect on producers of the domestic article (samples and patterns) in the same stage as processing as the domestic article. In this case the importation of apparel is not in the same stage of processing as samples and patterns.

Conclusion

After review of the application and investigation findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 22nd day of May 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–13756 Filed 6–1–00; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than June 12, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 12, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 15th day of May 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 05/15/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,661	RHI Refractories (USWA)	Farber, MO	04/20/2000	Bricks for Steel Industry.
37,662	Cap Cod Cricket Lane (Comp)	W. Bridgewater, MA	04/27/2000	Ladies' Apparel.
37,663	Fruit of the Loom (Wrks)	New York, NY	04/24/2000	Apparel Patterns.
37,664	Hutchinson Technology (Wrks)	Eau Claire, WI	04/26/2000	Suspension Systems for Disc Drive.
37,665	Chetta B Evening Ltd (UNITE)	New York, NY	04/18/2000	Ladies' Dresses.
37,666	Jensports (Wrks)	New Kensington, PA	04/28/2000	Ladies' Sportswear.
37,667	AMF Reece, Inc. (Comp)	Mechanicsville, VA	04/26/2000	Industrial Sewing Machines.
37,668	Pope and Talbot, Inc. (Comp)	New Castle, WY	05/11/2000	Softwood Lumber.
37,669	Wheeling-LaBelle Nail Co. (Wrks)	Wheeling, WV	05/02/2000	Hardened Steel Cut Nails.
37,670	Berstone Knitting Mills (Wrks)	Brooklyn, NY	05/01/2000	Collars, Cuffs and Waist.
37,671	Hillsville Apparel, Inc. (Comp)	Hillsville, VA	05/02/2000	Knit Apparel.
37,672	Total Rental Tool (Wrks)	Rush Springs, OK	04/28/2000	Valves for Oil Equipment.
37,673	Dana Corp.—Marion Forge (IBB)	Marion, OH	05/04/2000	Axles and Ring Gears.
37,674	Marquip, Inc. (Comp)	Madison, WI	05/05/2000	Paper Making Machines and Parts.
37,675	Hagales Industries (Wrks)	Salem, MO	04/26/2000	Men's & Ladies' Pants and Shorts.
37,676	Schreiber Foods, Inc. (IBT)	Monroe, WI	04/27/2000	Processed Cheese Products.
37,677	Wheaton USA, Inc. (Comp)	Pennsville, NJ	04/18/2000	Silk Screens Glass Bottles.
37,678	Packard Bell/NEC, Inc. (Wrks)	Boxborough, MA	05/03/2000	Assemble Computer Servers.
37,679	National Semiconductor (Wrks)	South Portland, ME	05/08/2000	Die Products.
37,680	Chick Orchards, Inc. (Comp)	Monmouth, ME	05/01/2000	Apples and Apple Cider.
37,681	PJC Sportswear, Inc. (Wrks)	Brooklyn, NY	05/09/2000	Beachwear.
37,682	Johnson Controls, Inc. (Comp)	Goshen, IN	04/27/2000	Machining Equip for Parts.
37,683	LeFever Plastics, Inc. (Comp)	Huntsville, OH	05/05/2000	Plastic Injection Molded Grommets.

[FR Doc. 00–13753 Filed 6–1–00; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting; Federal Committee on Registered Apprenticeship

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. Law 92–463; 5 U.S.C. APP. 1), notice is hereby given of a meeting of the Federal Committee on Registered Apprenticeship (FCRA).

TIME AND DATE: The meeting will begin at 9:00 a.m. on Thursday, June 15, 2000 and continue until approximately 5:00 p.m. The meeting will reconvene at 9:00 a.m. on Friday, June 16, 2000, and continue until approximately 12:00 noon.

PLACE: The Jefferson Room East of the Hilton Washington and Towers, 1919 Connecticut Ave., N.W., Washington, D.C. 20009.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 219–5921 (this is not a toll-free number)

MATTERS TO BE CONSIDERED: The agenda will focus on the following topics:

(1) Reports on the FCRA Work Groups
  Marketing
  Quality
  Diversity
  Resources/Data
  Legislative
(2) Child Care Grants
(3) Discuss FCRA Recommendations
(4) Demonstration of apprenticeship Websites: Partnerships
(5) Progress Report on ATELS/BAT activities
(6) Next Meeting Dates and Location
(7) Public Comment

STATUS: Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Marion Winters at (202) 219–5921 no later than June 9, 2000, if special accommodations are needed.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending it to Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Such submissions should be sent by June 9, 2000, to be included in the record for the meeting.

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal official by June 9. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, D.C., on May 26, 2000.

Raymond L. Bramucci,

Assistant Secretary for Employment and Training.

[FR Doc. 00–13849 Filed 6–1–00; 8:45 am]

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DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled "General Wage determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume III

Florida
  FL000104 (Jun. 02, 2000)

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice General Wage Determination #ND000047. See #ND000034.

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effected unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of

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Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 25th day of May 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–13670 Filed 6–1–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Tuesday, June 6, 2000.

PLACE: Board Room, 7th Floor, Room 7047 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed IRPS 00–1, Amendments to NCUA's Chartering and Field of Membership Policies.
2. Request from a Federal Credit Union to Convert to a Community Charter.
3. Request from a Credit Union to Merge into a Federal Mutual Savings Association.
4. Proposed Rule: Amendments to Part 792, Subparts C & E, NCUA's Rules and Regulation, Privacy Act.
5. Proposed Rule: Appendix to Part 748, NCUA's Rules and Regulations, Privacy of Consumer Financial Information.
6. Final Rule: Amendments to Sections 716.4 and 716.7, NCUA's Rules and Regulations, Privacy of Consumer Financial Information.
7. Advance Notice of Proposed Rulemaking: Predatory Lending.

RECESS: 1:00 p.m.

TIME AND DATE: 2:30 p.m., Tuesday, June 6, 2000.

PLACE: Board Room, 7th Floor, Room 7047 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Field of Membership Appeal. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. One (1) Personnel Matter. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–13932 Filed 5–31–00; 10:02 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts, Special Projects Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Special Projects Advisory Panel (Research Section), to the National Council on the Arts will be held on June 12, 2000. The committee will meet from 1:30 a.m. to 5 p.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, to assist in developing parameters for a national study of jazz artists in four cities.

The agenda will tentatively include:

Discussion of the revised proposal and additional methodologies
Context—landscape for jazz artists in 4 cities
Definitions for the purpose of this study: What is jazz? What is a jazz artist?
Criteria for determining what is a jazz artist Response Driven Sampling (RDS) for interviews
Appropriateness of incentives for RDS
Kinds of analysis—context, data, comparisons, recommendations

This meeting will be open to the public on a space available basis. Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. Tom Bradshaw, Office of Policy Research & Analysis, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5527.

Dated: May 26, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–13693 Filed 6–1–00; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

AmerGen Energy Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50 issued to AmerGen Energy Company, LLC (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI–1), located in Dauphin County, Pennsylvania.

The proposed amendment would add new Technical Specifications (TSs) 3.7.2.a(ii) and 3.7.2.h to address voltage on the 230 kV (kilovolt) grid as a precondition of criticality and to provide a time limit for when the 230 kV grid voltage is found to be insufficient to support Loss-of-Coolant Accident (LOCA) electrical loading during power operation. The application also requests various minor editorial changes. The Bases have also been changed to reflect the addition of the two new TSs and to provide clarification of the components to which surveillance is applicable. The changes requested supplement an application dated August 20, 1999, which were noticed in the **Federal Register** on December 1, 1999 (64 FR 67334).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes to the TS 3.7.2 to incorporate an action statement for Post Contingency grid voltages are intended to provide greater confidence that the NSR [nuclear safety related] equipment power supplies are maintained. The proposed changes will enhance the ability of the undervoltage protection scheme to perform in accordance with its intended design, and will improve the ability to respond to low grid voltage conditions. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability [of occurrence] or the consequences of an accident previously evaluated in the SAR [Safety analysis Report].

2. The proposed changes to the TS 3.7.2 LCO [limiting condition for operation] and TS 3.7 Bases are consistent with the intended design of the degraded voltage protection scheme and do not introduce the possibility of any new failure modes to the protection scheme or the electrical distribution system. The proposed changes reduce the probability of operation of the Unit without sufficient voltages to NSR loads from off-site sources. Therefore, operation of the facility in accordance with the proposed changes do not create a possibility of a new or different kind [type] of accident than any accident previously evaluated in the SAR.

3. The proposed changes to the TS 3.7.2 LCO and TS 3.7 Bases are intended to provide sufficient time for the transmission system operator to take appropriate action to restore grid voltage levels and operability of the offsite sources. The risk analysis results for use of the proposed LCO time period is such that there is only a small incremental increase in the core damage frequency (CDF). These changes enhance the current Technical Specifications by limiting the unavailability of the offsite sources to supply NSR equipment during a LOCA. Therefore, operation of the facility in accordance with the proposed changes would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 3, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

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Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Edward J. Cullen, Jr., PECO Energy Company, 2301 Market Street (S23–1), Philadelphia, PA 19103, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 22, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 26th day of May 2000.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–13875 Filed 6–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–312]

Sacramento Municipal Utility District (SMUD), Rancho Seco Nuclear Generating Plant; Notice of Public Meeting

The NRC will conduct a public meeting in the Chabolla Community Center, 630 Chabolla Avenue, Galt, California, on June 20, 2000, to discuss SMUD plans to commence dismantlement and decontamination activities at the Rancho Seco Nuclear Generating Station, Herald, California. The meeting will begin at 7:00 p.m., with the doors opening at 6:30 p.m. The meeting will be chaired by Mr. Don Notolli, Supervisor, County Supervisory District 5, County of Sacramento, California, and will include short presentations by the NRC staff on the decommissioning process and NRC inspection program and by SMUD on its planned decommissioning activities. There will be an opportunity for members of the public to make comments and question the NRC staff and SMUD representatives.

On November 4, 1999, SMUD provided Amendment 2 to its Post-Shutdown Decommissioning Activities Report (PSDAR) to the NRC staff. This revision describes, in part, the licensee's plans to forego its initial option of hardened—SAFSTOR (*i.e.*, long-term safe storage) for the Rancho Seco facility to implement an accelerated schedule of dismantlement and decontamination that will result in license termination by 2008. This licensee decision was made, in part, on its success in the incremental decontamination and dismantlement of the facility as described in Amendment 1 to its PSDAR dated January 29, 1997.

The NRC staff believes that the licensee's decision to change from hardened-SAFSTOR to full-plant decontamination and dismantlement is a significant change to the activities and schedules identified in the original PSDAR submitted on March 20, 1997. As such, the NRC plans to inform the public of the licensee's new decommissioning schedule by conducting a public meeting at the Chabolla Community Center which is in the vicinity of the Rancho Seco facility. This meeting will also provide a forum for the public to gather information and ask questions or make comments.

For more information, contact Paul W. Harris, Project Directorate IV & Decommissioning, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1169 or email at PWH1@NRC.gov.

The PSDAR is available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW, Washington, DC, and is accessible electronically from the ADAMS Public Library (Amendment 2 Accession No. ML993160051) component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 26th day of May 2000.

For the Nuclear Regulatory Commission.

Paul W. Harris,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–13876 Filed 6–1–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24477; 812–11644]

UAM Funds, Inc. et al.; Notice of Application

May 25, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") exempting applicants from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF THE APPLICATION: The order would permit certain registered open-end investment companies to use cash collateral from securities lending transactions ("Cash Collateral") to purchase shares of affiliated money market funds or affiliated private investment companies, to deposit Cash Collateral in one or more joint accounts, and to pay fees based on a share of the revenue generated from securities lending transactions to an affiliated lending agent and other affiliated entities.

APPLICANTS: UAM Funds, Inc. ("Fund I"), UAM Funds, Inc. II ("Fund II"), UAM Funds Trust ("Fund III") (the "Lending Funds"), Acadian Asset Management LLC, Analytic Investors, Inc., C.S. McKee & Company, Inc., Cambiar Investors, Inc., Chicago Asset Management Company, Cooke & Bieler, Inc., Dewey Square Investors Corp., Dwight Asset Management Company, Fiduciary Management Associates, Inc., First Pacific Advisors LLC, Hanson Investment Management Company, Heitman/PRA Securities Advisors LLC, Investment Counselors of Maryland, Inc., JAM Asset Management L.P., Murray Johnstone International Ltd., NWQ Investment Management Company, Pacific Financial Research, Inc., Pell Rudman Trust Company, Rice, Hall, James & Associates, Sirach Capital Management, Inc., Sterling Capital Management Company, Thompson, Siegel & Walmsley, Inc., Tom Johnson Investment Management, Inc. and any entity controlling, controlled by, or under common control with United Asset Management Corporation ("UAM") that, in the future, acts as investment adviser to a Lending Fund or any other registered open-end management investment company (the "Investment Advisers"), UAM Trust Company (the "Trust Company"), UAM Global Securities Lending, Inc. (the "Servicing Agent"), and UAM Fund Services, Inc. (the "Administrator").

FILING DATES: The application was filed on June 4, 1999, and amended on May 24, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 19, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 211 Congress Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Funds I and II are Maryland corporations registered under the Act as open-end management investment companies comprised of multiple series. Fund III is a Delaware business trust registered under the Act as an open-end management investment company comprised of multiple series.

2. Applicants request that the order also apply to (a) all other registered open-end management investment companies for which the Investment Advisers may now or in the future act as investment adviser (the "Fund Lending Funds"); (b) unregistered investment vehicles relying on section 3(c)(1) or 3(c)(7) of the Act, currently in existence or proposed to be formed, and advised by a Private Fund Adviser (the "Private Funds"); and (c) any investment adviser controlling, controlled by, or under common control with UAM that, in the future, acts as investment adviser to a Private Fund (the "Private Fund Advisers").[1] Either the Trust Company or the Administrator may act in the role of "Lending Agent," as described below. In addition, either the Trust Company or the Administrator may act in the role of "Program Administrator," as described below. Existing and future series of the Lending Funds and the Future Lending Funds are collectively referred to as the "Portfolios." Portfolios that hold themselves out as money market funds are referred to as the "Money Market Portfolios."

3. The current Investment Advisers, except JAM Asset Management L.P., are wholly-owned subsidiaries of UAM, which is a holding company incorporated in Delaware. JAM Asset Management L.P. is a limited partnership, of which UAM is the sole limited partner. Pursuant to an investment advisory agreement between the respective Investment Adviser and the respective Lending Fund, on behalf of each respective Portfolio, each Investment Adviser manages one or more Portfolio's investments. Each of the Investment Advisers is registered under the Investment Advisers Act of 1940 (the "Advisers Act") except Pell Rudman Trust Company, which is exempt from registration pursuant to section 202(a)(11) of the Advisers Act.

4. The Lending Funds have each entered into a Fund Administration Agreement with the Administrator, pursuant to which the Administrator provides transfer agent, fund accounting and fund administration services to the Lending Funds. Chase Manhattan Bank, N.A. is the custodian of Fund I and Fund III. First Union National Bank is the custodian of Fund II. The Trust Company, a wholly-owned subsidiary of UAM and a Maryland chartered trust company, is exempt from registration as an investment adviser pursuant to section 202(a)(11) of the Advisers Act. The Trust Company serves as Private Fund Adviser to certain Private Funds. The Servicing Agent is an indirect wholly-owned subsidiary of UAM.

5. Each Lending Fund has the ability to increase its income by participating in a securities lending program (the "Program") under which it may lend portfolio securities to registered broker-dealers or other institutional investors deemed by its Investment Adviser to be of good standing, which meet minimum criteria established by the board of directors or trustees (the "Board") of the Lending Funds ("Borrowers"). The agreements governing such loans will require that the loans be continuously secured by collateral equal at all times in value to at least the market value of the securities loaned. Collateral for such loans may include cash, securities of the U.S. Government or its agencies, or any combination of cash and such securities.

6. Under the Program, the Lending Agent, Program Administrator, Administrator and Servicing Agent, together or individually with unaffiliated entities, will provide securities lending services and administrative services required for the operation of the Program to the Lending Funds.[2] The Lending Agent will be responsible for soliciting Borrowers for each Portfolio's securities subject to criteria established by the Board and guidelines provided by the Investment Advisers, monitoring daily the value of the loaned securities and collateral, and requesting that Borrowers add to the

[1] All registered investment companies, unregistered investment vehicles and investment advisers that currently intend to rely on the order are named as applicants. Any Future Lending Fund, Private Fund, future Investment Adviser, or future Private Fund Adviser that relies on the requested relief will do so only in compliance with the terms and conditions of the application.

[2] The personnel who will provide day-to-day lending agency services to the Lending Funds do not and will not provide investment advisory services to the Lending Funds, or participate in any way in the selection of the portfolio securities or other aspects of the management of the Lending Funds.

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collateral when required by the loan arrangements. The Lending Agent will contract with the Servicing Agent to provide product development support, including information about Borrowers and securities lending market data.

7. In transactions in which the collateral consists of U.S. Government securities or letters of credit, the Lending Agent will negotiate on behalf of the Lending Fund a lending fee to be paid by the Borrower to the Lending Fund. In transactions in which the collateral consists of cash, the Lending Fund, instead of receiving a separate lending fee, receives a portion of the return earned on the investment of the Cash Collateral by or under the direction of the Lending Fund's Investment Adviser. Depending on the arrangements negotiated with the Borrower by the Lending Agent, a percentage of the return on the investment of the Cash Collateral may be remitted on behalf of the Lending Fund to the Borrower.

8. Under the Program, it is proposed that the Lending Funds pay, and that the Lending Agent, Program Administrator, Administrator, and Servicing Agent accept, fees based on a share of the revenues generated from securities lending transactions for the Lending Funds. The Program Administrator and/or the Administrator will maintain accounting and financial records for the Portfolios of the Lending Funds that participate in the Program, and assist with communications and instructions by and among the Lending Funds, the Investment Advisers, Borrowers, and the managers and other personnel of the various investment vehicles in which the Cash Collateral will be invested.

9. Each of the Lending Funds will enter into a Securities Lending Program Administration Agreement with the Program Administrator. Services provided to the Lending Funds under this agreement include: monitoring the Program to ensure that loans are effected in accordance with the instructions of each Investment Adviser; maintaining financial and accounting records; communicating instructions by and among the Lending Funds, Investment Advisers and third parties; reviewing market prices of securities, daily reports of outstanding loan activity, collateral reinvestment and month-end security position reports.

10. The Program Administrator will enter into a Securities Lending Record Administration Agreement with the Administrator, pursuant to which the Program Administrator delegates certain of its recordkeeping obligations under the Securities Lending Program Administration Agreement to the Administrator. The Administrator will be compensated under that agreement based on a share of the securities lending program administration fees received by the Program Administrator from the Lending Funds.

11. The Lending Agent will enter into an Administrative Services Agreement with the Servicing Agent pursuant to which the Servicing Agent will assist in identification of prospective Borrowers, analyzing the creditworthiness of prospective Borrowers, identifying strategies for reinvestment of cash collateral consistent with the Investment Advisers' instructions, and provide research about industry trends and developments, and analyses of the economy as it may affect the Program. Under the applicable agreement, the Servicing Agent will be compensated based on a share of the fees received by the Lending Agent from the Lending Funds.

12. Applicants proposed that each of the Portfolios of the Lending Funds (the "Investing Portfolios") use Cash Collateral to purchase shares of the Money Market Portfolios. By investing Cash Collateral in the Money Market Portfolios, the Investing Portfolios are expected to reduce their transaction costs, create more liquidity, enjoy greater returns and further diversify their holdings.

13. Applicants also propose that the Investing Portfolios use Cash Collateral to purchase shares of beneficial interest, common stock or other units of beneficial ownership ("Shares") issued by the Private Funds. An Investment Adviser or other entity under common control with an Investment Adviser, such as the Trust Company, will serve as the trustee or other manager ("Trustee") of the Private Funds. In addition, a Private Fund Adviser will serve as investment adviser to the Private Funds. An affiliated person of an Investment Adviser may provide administrative, accounting, transfer agent and other services to the Private Funds. Private Funds utilized in the Program may operate as a money market portfolio and comply with the requirements of rule 2a–7 under the Act. Private Funds that do not comply with rule 2a–7 will be short-term fixed income funds with an average portfolio maturity of no more than 365 days. Each Private Fund will offer daily redemption of Shares at the current net asset value per share. The Private Funds will not impose any sales load or redemption or distribution fees.

14. Applicants also propose to deposit Cash Collateral in one or more joint trading accounts or subaccounts ("Joint Accounts") with their custodian bank or another unaffiliated custodian or sub-custodian approved by the Boards of the Lending Funds (the "Custodians"). The daily balance of the Joint Accounts will be invested in: (a) Repurchase agreements "collateralized fully" (as defined in rule 2a–7 under the Act);[R] (b) interest bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term taxable or tax-exempt money market instruments, including variable rate demand notes, that constitute "Eligible Securities" (as defined in rule 2a–7 under the Act) (collectively, "Short-Term Investments").

15. Any repurchase agreements entered into through a Joint Account will comply with Investment Company Act Release No. 13005 (February 2, 1983) and any other existing and future staff positions taken by the SEC and the staff by rule, release, letter or otherwise relating to repurchase agreement transactions. In the event that the SEC or the staff sets forth guidelines with respect to other Short-Term Investments, all such investments made through the Joint Accounts will comply with those guidelines. All purchases through the Joint Accounts will comply with all present and future SEC and staff positions relating to the investment of Cash Collateral in connection with securities lending activities.

16. Investing Portfolios will invest through a Joint Account only to the extent that, regardless of the Joint Accounts, they would desire to invest in short-term liquid investments that are consistent with their respective investment objectives, policies and restrictions. An Investing Portfolio's decision to use a Joint Account will be based on the same factors as its decision to make any other short-term liquid investment.

17. The Investment Advisers will be responsible for providing guidelines to the Program Administrator or the Administrator for investing funds held by the Joint Accounts, and, in conjunction with the Program Administrator or the Administrator, establishing accounting and control procedures, operating the Joint Accounts in accordance with the procedures discussed below, and ensuring fair treatment of the Investing Portfolios. The Investment Advisers will not participate monetarily in the Joint Accounts.

18. The applicants request relief to permit: (a) The Investing Portfolios to use Cash Collateral to purchase and redeem shares of the Money Market Portfolios and each Money Market Portfolio to sell shares to, and redeem such shares from the Investing Portfolios; (b) the Investing Portfolios to use Cash Collateral to purchase and redeem Shares of the Private Funds and the Private Funds to sell Shares to the Investing Portfolios and redeem Shares from the Investing Portfolios; (c) the Investing Portfolios to deposit Cash Collateral in the Joint Accounts; and (d) the Lending Funds and Future Lending Funds to pay, and the Lending Agent, Program Administrator, Administrator and Servicing Agent to accept, fees based on a share of the revenue generated from securities lending transactions for services provided by the lending Agent, program Administrator, Administrator and Servicing Agent.

[R] The Investing Portfolios will not enter into "hold-in-custody" repurchase agreements in which the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreements except in instances when cash is received very late in the business day or would otherwise be unavailable for investment.

Applicants' Legal Analysis

A. Investment of Cash Collateral in Money Market Portfolios and Private Funds

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors.

3. Applicants request an exemption under section 12(d)(1)(J) to permit each Investing Portfolio to use Cash Collateral to acquire shares of a Money Market Portfolio in excess of the limits imposed by section 12(d)(1)(A) if the Act. Applicants' proposed also would permit the Money Market Portfolios to sell their securities to an Investing Portfolio in excess of the percentage limitation in section 12(d)(1(B). Applicants represent that no Money Market Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. Applicants state that none of the abuses meant to be addressed by section 12(d)(1) of the Act is created by the proposed investment of Cash Collateral in Money Market Portfolios. Applicants further state that access to the Money Market Portfolios will enhance each Investing Portfolio's ability to manage and invest Cash Collateral. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because the Money Market Portfolios will not charge a sales load, redemption fee, distribution fee adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers, Inc. Conduct Rules ("NASD Conduct Rules")).

5. Sections 17(a)(1) and 17(a)(2) of the Act prohibit an affiliated person of a registered investment company, or any affiliated person of the affiliated person, acting as principal, from selling any security to, or purchasing any security from, the registered investment company. Section 2(a)(3) of the Act defines an "affilated person" of another person to include: Any person directly or indirectly controlling, controlled by, or under common control with, the other person; and, in the case of an investment company, its investment adviser. Control is defined in section 2(a)(9) of the Act to mean "the power to exercise a controlling influence over the management of policies of a company, unless such power is solely the results of an official position with such company." Because the Lending Funds share a common Board, each Portfolio of the Lending Funds may be deemed to be under common control with each of the other Portfolios of the Lending Funds. In addition, an Investment Adviser serves as investment adviser to each of the Investment Portfolios and the Money Market Portfolios, each such Investment Adviser could be deemed to control the Portfolio it advises, and the Investment Advisers are under common control. Therefore, the Investing Portfolios and the Money Market Portfolios could be deemed to be under common control and each Investing Portfolio is an affiliated person of each Money Market Portfolios. Accordingly, the sale of shares of the Money Market Portfolios to the Investing Portfolios, and redemption of such shares by the Investing Portfolios, is prohibited under section 17(a).

6. Because the Trust Company, an Investment Adviser, an entity under common control with an Investment Adviser or a Private Fund Adviser will serve as Private Fund Adviser or Trustee to each Private Fund, and each entity could be deemed to control the Private Fund, the Private Fund and each Lending Fund could be deemed to be under common control. Therefore, the sale or redemption by a Private Fund of its Shares to or from the Lending Funds is prohibited by section 17(a).

7. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

8. Section 6(c) of the Act authorizes the SEC to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

9. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Investing Portfolios to use Cash Collateral to purchase shares of the Money Market Portfolios and Shares of the Private Funds and to permit the redemption of the shares or Shares. Applicants maintain that the terms of the proposed transactions are reasonable and fair because the Investing Portfolios will be treated like any other investors in the Money Market Portfolios and Private Funds, and will purchase and sell shares of the Money Market Portfolios and Shares of the Private Funds on the same terms and on the same basis as all other shareholders of the Money Market Portfolios and Private Funds. Applicants assert that the proposed transactions comply with each Portfolio's investment restrictions and policies. Applicants state that Cash Collateral of an Investing Portfolio that is a Money Market Portfolio will not be used to acquire Shares of any Private Fund that does not comply with rule 2a–7 under the Act. Applicants further sate that the investment of Cash Collateral will comply with all present and future SEC and staff positions concerning securities lending. Applicants also state that the Private Funds will comply with the major

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substantive provisions of the Act, including the prohibitions against affiliated transactions, leveraging and issuing senior securities, and rights of redemption.

10. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter for a registered investment company, or any affiliated person of such a person or principal underwriter, acting as principle, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates, without an order of the SEC.

11. Applicants state that the Investing Portfolios (by purchasing and redeeming shares of the Money Market Portfolios and Shares of the Private Funds), the Investment Advisers (by managing the assets of the Investing Portfolios invested in the Money Market Portfolios and Private Funds and by managing the assets of the Money Market Portfolios), the Investment Advisers, Private Fund Advises, and Trust Company and their affiliated companies (by managing the assets of, and providing other services to, the Private Funds), the Lending Agent, Program Administrator, Servicing Agent, and Administrator (by facilitating the investment of Cash Collateral of the Investing Portfolios in the Money Market Portfolios and Private Funds), an the Money Market Portfolios (by selling shares to and redeeming Shares from the Investing Portfolios) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act. Applicants request an order in accordance with section 17(d) and rule 17d–1 to permit certain transactions incident to investments in the Money Market Portfolios and the Private Funds.

12. Under rule 17d–1, in passing on applicants for orders under section 17(d), the SEC considers whether the company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet these standards.

13. Applicants state that the investment by the Investing Portfolios in shares of the Money Market Portfolios and Shares of the Private Funds will be on the same basis and will be indistinguishable from any other shareholder account maintained by the Money Market Portfolios and Private Funds. Applicants also maintain that, to the extent any of the Investing Portfolios invests in the Money Market Portfolios and Private Funds as proposed, each Investing Portfolios will participate on a fair and reasonable basis in the returns and expenses of the Money Portfolios and Private Funds.

B. Investments in Joint Trading Accounts

1. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the SEC has approved the transaction. Applicants state that the Investing Portfolios may be considered "affiliated persons" because they may be deemed to be under the control of the Investment Advisers, which are under common control. Applicants state that the Investing Portfolios, by participating in the Joint Accounts, and the Investment Advisers, Program Administrator and Administrator, by managing the Joint Accounts, could be deemed to be "joint participants" in a transaction within the meaning of section 17(d). In addition, applicants state that each Joint Account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1.

2. Applicants submit that the proposed Joint Accounts meet the criteria of rule 17d–1 for issuance of an order. Applicants assert that no Investing Portfolio would be in a less favorable position than any other Investing Portfolio as a result of participating in the Joint Accounts. Each Investing Portfolio's liability on any Short-Term Investment will be limited to its interest in the Short-Term Investment. Applicants also assert that the proposed operation of the Joint Accounts will not result in any conflicts of interest among any of the Investing Portfolios, Investment Advisers, Program Administrator or Administrator.

3. Applicants state that the operation of the Joint Accounts could result in certain benefits to the Investing Portfolios. The Investing Portfolios may earn a higher rate of return on investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, applicants assert, it is possible to negotiate a rate of return on larger investments that is higher than the rate available on smaller investments. In addition, applicants state that the enhanced purchasing power available through a Joint Account may increase the number of dealers willing to enter into Short-Term Investments with the Investing Portfolios and may reduce the possibility that an Investing Portfolio's Cash Collateral would remain uninvested. Finally, the Joint Accounts may result in certain administrative efficiencies and lessen the potential for error by reducing the number of trade tickets and cash wires that counterparties, the Custodian and the Investment Advisers must process.

C. Payment of Lending Agent Fees to the Lending Agent, Program Administrator, Administrator and Servicing Agent

1. Applicants state that each of the Lending Agent, the Program Administrator, the Administrator, and the Servicing Agent, as an entity under common control with the Investment Advisers to the Lending Funds, is an affiliated person of an affiliated person of the Lending Funds. Applicants further state that a lending agent agreement between the Lending Funds and the Lending Agent, an administrative services agreement between the Lending Funds and the Program Administrator, an administrative services agreement between the Program Administrator and the Administrator, and an administrative and research services agreement between the Lending Agent and the Servicing Agent, under which compensation is based on a share of the revenue generated by the Program, may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d–1. Consequently, applicants request an order to permit the Lending Agent, Program Administrator, Administrator and Servicing Agent to receive a portion of the revenue generated by the Program.

2. Applicants propose that each Lending Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with the Lending Agent, the Program Administrator, the Administrator and the Servicing Agent will meet the standards of rule 17d–1:

(a) In connection with the approval of the Lending Agent as lending agent and the Program Administrator and/or the Administrator as administrator and the Servicing Agent as provider of administrative and research services for the Program and implementation of the proposed fee arrangement, a majority of the Board of the Lending Fund (including a majority of the directors or trustees who are not "interested persons" of the Lending Fund within the meaning of the Act (the "disinterested directors")) will determine that: (i) Each of the contracts between the Lending Funds and the Lending Agent, between the Lending Funds and the Program Administrator, between the Program Administrator and the Administrator, and between the Lending Agent and the Servicing Agent is in the best interests of the Lending Fund and its shareholders; (ii) the services to be performed by the Lending Agent, Program Administrator, Administrator and the Servicing Agent are appropriate for the Lending Fund; (iii) the nature and quality of the services provided by the Lending Agent, Program Administrator, Administrator and Servicing Agent are at least equal to those provided by others offering the same or similar services for similar compensation; and (iv) the fees for the Lending Agent's, Program Administrator's, Administrator's and Servicing Agent's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each Lending Fund's respective contract withe the Lending Agent for lending agent services, the Program Administrator for program administration, and the Program Administrator's contract with the Administrator for administrative services and the Lending Agent's contract with the Servicing Agent for related research and administrative services, will be reviewed annually and will be approved for continuation only if a majority of the Board of the Lending Fund (including a majority of the disinterested directors) makes the findings referred to paragraph (a) above.

(c) In connection with the initial implementation of an arrangement whereby the Lending Agent will be compensated as lending agent, the Program Administrator and/or the Administrator will be compensated as administrator and the Servicing Agent will be compensated for administrative and research services based on a percentage of the revenue generated by a Lending Fund's participation in the Program, the Board will obtain at least three competing quotes from independent entities providing Lending Agent, Program Administrator, Administrator and Servicing Agent services as a package, to assist the Board in making the findings referred to in paragraph (a) above.

(d) The Board, including a majority of the disinterested directors, will (i) at each regular quarterly meeting determine, on the basis of reports submitted by the Lending Agent, that the loan transactions during the prior quarter were conducted in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Lending Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application or otherwise followed in connection with lending securities pursuant to the Program and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which a determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. General

1. The securities lending program of each Lending Fund will comply with all present and future applicable guidelines of the SEC and its staff regarding securities lending arrangements.

2. Each Lending Fund, Future Lending Fund and Private Fund that relies on the order will be advised by an Investment Adviser or Private Fund Adviser controlling, controlled by or under common control with UAM.

3. Before a Lending Fund may participate in the Program, a majority of the Board (including a majority of the disinterested directors) of the Lending Fund will approve the Lending Fund's participation in the Program. The Board of each Lending Fund will evaluate the Program and its results no less frequently than annually and a majority of the Board (including a majority of the disinterested directors) will determine that investing Cash Collateral in any of the Money Market Portfolios, the Private Funds and/or Joint Accounts is in the best intersts of the shareholders of the Lending Fund.

B. Private Funds

1. Investment in Shares of a Private Fund by a particular Lending Fund will be consistent with the Lending Fund's investment objectives and policies.

2. A money market Lending Fund that complies with rule 2a–7 under the Act will not invest its Cash Collateral in a Private Fund that does not comply with the requirements of rule 2a–7.

3. Shares of a Private Fund will not be subject to a sales load, redemption fee or asset-based sales charge or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

4. The Private Funds will comply as to each investment series with the requirements of sections 17(a), (d), and (e), and 18 of the Act as if the Private Fund were a registered open-end investment company. With respect to all redemption requests made by a Lending Fund, the Private Fund will comply with section 22(e) of the Act. The Private Fund Adviser will, subject to approval by the Trustee, adopt procedures designed to ensure that the Private Fund complies with sections 17(a), (d) and (e), 18, and 22(e) of the Act. The Private Fund Adviser will also periodically review and periodically update as appropriate the procedures and will maintain books and records describing the procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and the staff.

5. The net asset value per share with respect to Shares of a Private Fund will be determined separately for each Private Fund by dividing the value of the assets belonging to that Private Fund, less the liabilities of that Private Fund, by the number of Shares outstanding with respect to that Private Fund.

6. Each Lending Fund will purchase and redeem Shares of a Private Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of a Private Fund. A separate account will be established in the shareholder records of a Private Fund for the account of each Lending Fund.

7. Private Funds will not acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

8. Each Private Fund that operates as a money market portfolio and uses the amortized cost method of valuation, as defined in rule 2a–7 under the Act, will

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comply with rule 2a–7. Each such Private Fund will value its shares, as of the close of business on each business day, using the amortized cost method to determine its net asset value per share. Each such Private Fund will adopt the monitoring procedures described in rule 2a–7(c)(7) and the Private Fund Adviser will comply with these procedures and take any other action as are required to be taken pursuant to these procedures.

C. Affiliated Money Market Funds

1. Shares of the Money Market Portfolios sold to and redeemed by the Investing Portfolios will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the 1940 Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

2. Investment of Cash Collateral in shares of the Money Market Portfolios will be in accordance with each Investing Portfolio's respective investment restrictions and will be consistent with each Investing Portfolio's policies as set forth in its prospectus and statement of additional information.

3. The Money Market Portfolios shall not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

D. Joint Accounts

1. One or more Joint Accounts will be established on behalf of the Lending Funds as separate cash accounts into which a Lending Fund may deposit daily all or a portion of its Cash Collateral. The Joint Accounts may be established with one or more custodians, and more than one Joint Account may be established with a custodian. The Joint Accounts will not be distinguishable from any other accounts maintained by the Lending Funds at their custodian except that monies from the Lending Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions that would otherwise require daily management by the Investment Advisers of Cash Collateral.

2. If a Lending Fund wishes to participate in a Joint Account that will be maintained by a custodian other than its regular custodian, the Lending Fund will appoint that custodian as its sub-custodian for the limited purpose of: (a) Receiving and disbursing cash; (b) holding any Short-Term Investment purchased by the Joint account; and (c) holding any collateral received from a transaction effected through the Joint Account. Any Lending Fund that appoints a sub-custodian will have taken all necessary actions to authorize that entity as its legal custodian, including all actions required under the Act.

3. Assets in the Joint Accounts will be invested in one or more of the following Short-Term Investments, as determined by the Investment Advisers: (a) Repurchase agreements "collateralized fully" (as defined in rule 2a-7 under the Act); (b) interest-bearing or discounted commercial paper, including dollar-denominated commercial paper of foreign issuers; and (c) any other short-term taxable and tax-exempt money market instruments, including variable rate demand notes, that constitute "eligible securities" (as defined in rule 2a-7 under the Act). Short-Term Investments that are repurchase agreements would have a remaining maturity of 60 days or less as calculated in accordance with rule 2a-7 under the Act. Cash Collateral in a Joint Account would be invested in Short-Term Investments that have a remaining maturity of 397 days or less, as calculated in accordance with rule 2a-7 under the Act. No Lending Fund will be permitted to invest in a Joint Account unless the Short-Term Investments in that Joint Account will comply with the investment policies and guidelines of that Lending Fund.

4. All assets held by the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable SEC or staff releases, rules, letters, or orders.

5. Each participating Lending Fund valuing its net assets in reliance on rule 2a-7 under the Act will use the average maturity of the instruments in the Joint Account in which the Lending Fund has an interest (determined on a dollar-weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

6. In order to ensure that there will be no opportunity for any Lending Fund to use any part of a balance of a Joint Account credited to another Lending Fund, no Lending Fund will be allowed to create a negative balance in any Joint Account for any reason. Each Lending Fund will be permitted to draw down its entire balance in a Joint Account at any time, provided that the Investment Adviser determines that such draw-down will have no significant adverse impact on any other Lending Fund participating in that Joint Account. Each Lending Fund's decision to invest in a Joint Account will be solely at its option, and no Lending Fund will be obligated to invest in a Joint Account or to maintain any minimum balance in a Joint Account. In addition, each Lending Fund will retain the sole rights of ownership to any of its assets invested in a Joint Account, including interest payable on such assets invested in the Joint Account.

7. The Investment Advisers will be responsible for investing funds held by the Joint Accounts. The Administrator or Program Administrator will administer the Joint Accounts in accordance with the standards and procedures established by the directors or trustees of the Lending Funds as part of its duties under the existing or any future administrative contract with the Lending Funds. The Administrator, the Program Administrator and the Investment Advisers will not receive additional or separate fees for advising or administering the Joint Accounts.

8. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g-1 under the Act.

9. The Board of each Lending Fund will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of this application will be met. Each Board will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, the Board of each Lending Fund will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the adopted procedures and will only permit a Lending Fund to continue to participate therein if it determines that there is a reasonable likelihood that the Lending Fund and its shareholders will benefit from its continued participation.

10. Each Investing Portfolio of a lending fund will participate in a Joint Account on the same basis as any other Investing Portfolio of a Lending Fund in conformity with its respective fundamental investment objectives, policies, and restrictions. Any Investing Portfolio of a Future Lending Fund that participates in a Joint Account will be required to do so on the same terms and conditions as the existing Investing Portfolios of the Lending Funds.

11. Any Short-Term Investments made through the Joint Accounts will satisfy the investment criteria of all Lending Funds participating in that investment.

12. Each Lending Fund's investment in a Joint Account will be documented daily on its books and on the books of its custodian. The Investment Adviser and the custodian of each participating Lending fund will maintain records documenting, for any given day, each Lending Fund's aggregate investment in a Joint Account and each Lending Fund's pro rata share of each investment made through such Joint Account. The records for each such Lending Fund shall be maintained in conformity with section 31 of the Act and the rules and regulations thereunder.

13. Every Lending Fund participating in the Joint Accounts will not necessarily have its Cash Collateral invested in every Short-Term Investment. However, to the extent that a Lending Fund's Cash Collateral is applied to a particular Short-Term Investment, the Lending Fund will participate in and own its proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with monies contributed by the Lending Fund.

14. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity unless: (a) The Investment Adviser believes the investment no longer presents minimal credit risk: (b) the investment no longer satisfies the investment criteria of all Lending funds participating in the investment because of a credit downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterpart defaults. The Investment Adviser may, however, sell any Short-Term Investment (of a fractional portion thereof) on behalf of some or all participating Lending Funds prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Lending Funds and the transaction will not adversely affect other Lending Funds participating in that Joint Account. In no case will an early termination by less than all participating Lending Funds be permitted if it would reduce the principal amount or yield received by other Lending funds in a particular Joint Account or otherwise adversely affect the other participating Lending Funds. Each Fund participating in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

15. Short-Term Investments held through a Joint Account will a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and subject to the restriction that the lending Fund may not invest more than 15%, or in the case of a money market fund, more than 10% (or such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities, if the Investment Adviser cannot sell the instrument, or the lending Fund's fractional interest in such instruments, pursuant to the preceding condition.

E. Payment of Fees to the Lending Agent, Program Administrator, Administrator and Servicing Agent

1. The approval of each Lending Fund's Board, including a majority of the disinterested directors, shall be required for: the initial and subsequent approvals of the Lending Agent's service as lending agent; for the Program Administrator's and the Administrator's services as administrator, and for the Servicing Agent's research and other services, respectively, for each Lending Fund pursuant to the Program; for the institution of all procedures relating to the Program as it relates to each lending Fund; and for any periodic review of loan transactions for which the lending Agent acted as lending agent pursuant to the program and the Program Administrator, and/or Administrator provided services as administrator and the Servicing Agent provided research and other services.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13779 Filed 6–1–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42829; File No. SR–SCCP–00–03]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Providing a Credit to Specialists

May 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 8, 2000, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to provide a credit of $.20 per trade to specialists trading equities through the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") System.[2] This credit will be effective on June 1, 2000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP has exceeded its budgetary volume projects this year and has thus generated revenue far in excess of its budget. SCCP anticipates that this trend will continue. Thus, in order to address this situation, the proposed credit would apply to specialists, who have generated much of this revenue, that trade through the PACE System. Specifically, specialists that clear through SCCP are the principal client base upon which SCCP relies to cover its expenses. For instance, PACE trades represent approximately 90 percent of the volume SCCP processes. Therefore, SCCP proposes to credit $.20 per trade to specialists using the PACE System. This credit will be applied to the fees of specialists trading through the PACE System and will be effective on June 1, 2000.

SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[4] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants.

[1] 15 U.S.C. 78s(b)(1).

[2] PACE is a real time order routing and execution system.

[3] The Commission has modified parts of these statements.

[4] 15 U.S.C. 78q–1(b)(3)(D).

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(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and Rule 19b–4(e)(2) thereunder.[6] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to File No. SR–SCCP–00–03 and should be submitted by June 23, 2000.

[5] U.S.C. 78s(b)(3)(A)(ii).
[6] 17 CFR 240.19b–4(e)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority. [7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13780 Filed 6–1–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice #3313]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy, reauthorized pursuant to P.L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will meet on Thursday, June 15, 2000 in Room 600, 301 4th St., SW, Washington, D.C. from 2:00pm to 3:00pm.

The Commission will discuss its plans for assessing the consolidation of USIA into the State Department and the effectiveness of U.S. public diplomacy in the former Soviet Union.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees. Persons who plan to attend should contact David J. Kramer, Executive Director, at (202) 619–4463.

Dated: May 30, 2000.

David J. Kramer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 00–13871 Filed 6–1–00; 8:45 am]

BILLING CODE 4710–11–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7373]

Guidelines for Assessing Merchant Mariners' Proficiency Through Demonstrations of Skills for Ratings Forming Part of a Navigational Watch

AGENCY: Coast Guard, DOT.

ACTION: Notice of Availability and Request for comments.

SUMMARY: The Coast Guard announces the availability of, and seeks public comments on, the national performance measures proposed here for use as guidelines when mariners demonstrate their proficiency in skills for ratings forming part of a navigational watch. A working group of the Merchant Marine Personnel Advisory Committee (MERPAC) developed and recommended national performance measures for this proficiency. The Coast Guard has adapted the measures recommended by MERPAC.

[7] 17 CFR 200.30–3(a)(12).

DATES: Comments and related material must reach the Docket Management Facility on or before August 1, 2000.

ADDRESSES: Please identify your comments and related material by the docket number of this rulemaking [USCG 2000–7373]. Then, to make sure they enter the docket just once, submit them by just one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this Notice. Comments and related material received from the public, as well as documents mentioned in this Notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

The measures proposed here are also available from Mr. Mark Gould, Maritime Personnel Qualifications Division, Office of Operating and Environmental Standards, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, telephone 202–267–0229.

FOR FURTHER INFORMATION CONTACT: For questions on this Notice or on the national performance measures proposed here, write or call Mr. Mark Gould where indicated under **ADDRESSES**. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

What Action Is the Coast Guard Taking?

Table A–II/4 of the Code accompanying the treaty on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended in 1995, articulates qualifications for merchant mariners' attaining the minimum standard of competence for ratings forming part of a navigational watch. The Coast Guard tasked MERPAC with referring to the Table, modifying and specifying it as it deemed necessary, and recommending national performance measures. The Coast Guard has adapted the measures recommended by MERPAC and is proposing them now for use as guidelines when assessing mariners' proficiency in skills for ratings forming part of a navigational watch.

Here follow the five skills that a mariner must demonstrate respecting ratings forming part of a navigational watch, with an example of a Performance Condition, a Performance Behavior, and four Performance Standards for one of those five skills:

Five Skills: Use magnetic and gyro-compasses; Respond to standard rudder orders (hard right [starboard] or left [port]; ease the rudder; midships; shift your rudder; meet her; steady as she goes; and steer on the range); Change over from automatic pilot to hand steering; Discharge certain responsibilities of the lookout (reporting sounds, lights and objects); and Know watch procedures that contribute to a safe watch (relief, maintenance and handover).

The Performance Condition for the skill entitled, "Change over from automatic pilot to hand steering" is: At sea speed, when hearing the command, "Put the steering into hand steering, * * *." This calls for, in the case of this skill, one Performance Behavior.

The Performance Behavior for the same skill is: The candidate will change the steering mode from automatic pilot to hand steering. This calls for, in the case of this skill, four Performance Standards.

The Performance Standards for the same skill are: Repeat order; Switch the steering mode from automatic pilot to hand steering; Test that the new steering mode is responding; and State, "She's in hand steering."

If the mariner properly meets all of the Performance Standards, he or she passes the practical demonstration. If he or she fails to properly carry out any of the Performance Standards, he or she fails the demonstration.

Why Is the Coast Guard Taking This Action?

The Coast Guard is taking this action to comply with STCW, as amended in 1995 and incorporated into domestic law at 46 CFR parts 10, 12, and 15 in 1997. Guidance from the International Maritime Organization on shipboard assessments of proficiency suggests that Parties develop standards and measures of performance for practical tests as part of their programs for training and assessing seafarers.

How May I Participate in This Action?

You may participate in this action by submitting comments and related material on the national performance measures proposed here. (Although the Coast Guard does not seek public comment on the measures recommended by MERPAC, as distinct from the measures proposed here, those measures are available on the Internet at the Homepage of MERPAC, http://www.uscg.mil/hq/g-m/advisory/merpac/merpac.htm.) These measures are available on the Internet at http://dms.dot.gov. They are also available from Mr. Mark Gould where indicated under **ADDRESSES**. If you submit written comments please include—

- Your name and address;
- The docket number for this Notice [USCG 2000–7373];
- The specific section of the performance measures to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and related material to the Docket Management Facility, using an address or fax number listed in **ADDRESSES.** Please do not submit the same comment or material more than once. If you mail or deliver your comments and material, they must be on 8½ by 11-inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and material and would like to know whether the Docket Management Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the 60-day comment period.

Once we have considered all comments and related material, we will publish a final version of the national performance measures for use as guidelines by the general public. Individuals and institutions assessing the competence of mariners may refine the final version of these measures and develop innovative alternatives. If you vary from the final version of these measures, however, you must submit your alternative to the National Maritime Center for approval by the Coast Guard under 46 CFR 10.303(e) before you use it as part of an approved course or training program.

Dated: May 16, 2000.

Howard L. Hime,

Acting, Director of Standards.

[FR Doc. 00–13869 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, U.S.C. Appendix 2), notice is hereby given for Program Management Committee (PMC) meeting to be held June 20, 2000, starting at 9 a.m. The meeting will be held at RTCA, Inc., 140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome and Introductions; (2) Review and Approve Summary of Previous Meeting; (3) Consider and Approval Publication of: (a) Final Draft, Requirements Specification for Avionics Computer Resource (RTCA Paper No. 131–00/SC182–105), prepared by SC–182; (b) Final Draft, Minimum Human Factors Standards for Air Traffic Services Provided Via Data Communications Utilizing the Aeronautical Telecommunications Network (ATN), Builds I and IA (RTCA Paper No. 132–00/SC194–021), prepared by SC–194; (4) Review Action Item 00–04, Update on NEXCOM; (5) Discuss SC–159 Work Program—GNSS Application to Airport Surface Operations; (6) Discuss Document Production; (7) Other Business; (8) Date and Location of Next Meeting; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

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Issued in Washington, DC, on May 25, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–13835 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–186 meeting to be held June 19–23, 2000, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome and Introductory Remarks; (2) Review of Meeting Agenda; (3) Review and Approval of the Previous Meeting Minutes; (4) Review SC–186 Activity Reports for the following Working Groups (WG): (a) WG–1, Operations & Implementation; (b) WG–2, Traffic Information Services—Broadcast (TIS–B) which is a new activity to develop Minimum Aviation System Performance Standards for TIS–B, (c) WG–3, 1090 MHz Minimum Operational Performance Standards (MOPS); (d) WG–4, Application Technical Requirements; (5) Free Flight Select Committee Surveillance Working Group Update; (6) Review EUROCARE WG–51 Reports for Subgroups 1 and 2; (7) Review/Approve MOPS for 1090 Mhz Automatic Dependant Surveillance—Broadcast (RTCA Paper No. 145–00/SC186–152); (8) Review/Approve MOPS for Cockpit Display of Traffic Information (RTCA Paper NO. 146–00/SC186–153); (9) Review Revision to Terms of Reference for SC–186; (10) Review Action Items/Work Program; (12) Date and Location of Next Meeting; (13) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 25, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–13836 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Environmental Impact Statement: Dubois County, Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Dubois County, Indiana.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dirks, Environmental Specialist, Federal Highway Administration, Room 254, Federal Office Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204, Telephone (317) 226–7492.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Transportation (INDOT), will prepare an EIS for a proposed project to improve the transportation system in the U.S. 231 corridor between Interstate 64 and State Road 56 in Dubois County, Indiana. The proposed project will involve the study of potential bypasses around Huntingburg and Jasper.

The proposed EIS and accompanying engineering analysis are the result of INDOT's identification of U.S. 231 in southwest Indiana for improvements as part of the current and ongoing transportation program. Given the current and projected traffic volumes and the existing geometric deficiencies, improvements to U.S. 231 are considered necessary to provide for a safe, efficient, and economical transportation network that will meet traffic demands in the area. The proposed improvements are also intended to be environmentally sound. System improvements will be examined based on the purposes of addressing roadway deficiencies, improving safety, reducing congestion, and enhancing system linkage.

Alternatives under consideration include: (1) Taking no action, (2) transportation system management, (3) upgrading and improving existing roadways, and (4) construction of two additional lanes adjacent to the existing two-lane roadway with bypasses of Huntingburg and Jasper on new alignment. Design variations of grade and alignment will be incorporated into and studied for the various build alternatives.

A scoping process has been initiated that involves all appropriate federal, state, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this project. Several public meetings were held during the location study for the proposed project to engage the regional community in the decision making process and to obtain public comment. A resource agency scoping meeting will be held in Indianapolis when appropriate. Letters describing the proposed action and soliciting comments will be sent to all appropriate federal, state, and local agencies, and private organizations and citizens who have expressed or are known to have interest in this project. A public meeting will be held in Jasper when appropriate. In addition, public hearings will be held to present the findings of the draft EIS (DEIS) and engineering analysis. Public notice will be given of the time and place of informational meetings and public hearing. The DEIS will be available for public and agency review and comment prior to the public hearings.

To ensure the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: May 22, 2000.

Robert Dirks,

Environmental Specialist, Indianapolis, Indiana.

[FR Doc. 00–13870 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on February 9, 2000 (65 FR 6438).

DATES: Comments must be submitted on or before July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On February 9, 2000, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 65 FR 6438. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Filing of Dedicated Cars.

OMB Control Number: 2130–0502.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: Title 49, Part 215 of the Code of Federal Regulations, prescribes certain conditions to be followed for the movement of freight cars that are not in compliance with this Part. These cars must be identified in a written report to FRA before they are assigned to dedicated service, and the words "Dedicated Service" must be stenciled on each side of the freight car body. FRA uses the information to determine that the equipment is safe to operate and that the operation qualifies for dedicated service. See 49 CFR 215.5 (c)(2), 215.5 (d).

Annual Estimated Burden Hours: 6 hours.

Title: Remotely Controlled Switch Operations.

OMB Control Number: 2130–0516.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: Title 49, Section 218.30 of the Code of Federal Regulations (CFR), ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for fifteen days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Annual Estimated Burden Hours: 240,267 hours.

Title: Bad Order and Home Shop Card.

OMB Control Number: 2130–0519.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: Under 49 CFR Part 215, each railroad is required to inspect freight cars placed in service and take the necessary remedial action when defects are identified. Part 215 defects are specific in nature and relate to items that have caused or could have caused accidents or incidents. Section 215.9 sets forth specific procedures that railroads must follow when it is necessary to move defective cars for repair purposes. For example, railroads must affix a "bad order" tag describing each defect to each side of the freight car. It is imperative that a defective car be tagged "bad order" so that it may be readily identified and moved to another location for repair purposes only. At the repair point, the "bad order" tag serves as a repair record. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. FRA and State inspectors review all pertinent records to determine whether defective cars presenting an immediate hazard are being moved in transportation.

Annual Estimated Burden Hours: 10,833 hours.

Title: Stenciling Reporting Mark on Freight Cars.

OMB Control Number: 2130–0520.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: Title 49, Section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stenciling to identify freight cars.

Annual Estimated Burden Hours: 26,250 hours.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR

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Part 209, Subpart D, implements the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Annual Estimated Burden Hours: 5 hours.

Title: Grade Crossing Signal System Safety Regulations.

OMB Control Number: 2130–0534.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.83.

Abstract: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures and malfunctions can be reduced. Motorists lose faith in warning systems that constantly warn of an oncoming train when none is present. Therefore, the fail-safe feature of a warning loses its effectiveness if the system is not repaired within a reasonable period of time. A greater risk of an accident is present when a warning system fails to activate as a train approaches a grade crossing. FRA regulations require railroads to take specific responses in the event of an activation failure. FRA uses the information to develop better solutions to the problems of grade crossing device malfunctions.

With this information, FRA is able to correlate accident data and equipment malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of grade crossing system failures and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective. FRA also uses the information collected to alert railroad employees and appropriate law enforcement authorities of warning system failures and malfunctions so that they can take the necessary measures to protect motorists and railroad workers at the grade crossing until repairs have been made.

Annual Estimated Burden Hours: 601 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW, Washington, DC, 20503; Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on May 26, 2000.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–13837 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory 2000–2

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Safety Advisory 2000–2.

SUMMARY: The FRA is issuing a safety advisory addressing recommended replacement of certain components in Harmon Industries' "Electro Code 4" and "Electro Code 4 Plus" intermediate signal units.

FOR FURTHER INFORMATION CONTACT: William Goodman, Signal and Train Control Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 (telephone 202–493–3625) or Mark Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 (telephone 202–493–6061), e-mail "mark.tessler@fra.dot.gov".

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1998, a Norfolk Southern Corporation (NS) freight train collided with a Consolidated Rail Corporation freight train in Butler, Indiana. The post-accident investigation of the accident revealed that an intermediate signal in the vicinity of the accident would randomly go dark. While it has been determined that the signal malfunction did not contribute to the accident, the malfunction was further investigated by the FRA, the National Transportation Safety Board (NTSB), NS and Harmon Industries (Harmon), manufacturer of the signal control equipment.

The investigation revealed that certain modules in Electro Code 4 and Electro Code 4 Plus intermediate signal units can contribute to intermittent dark signal occurrences.

On May 15, 1998, Harmon, through its Electro Pneumatic Corporation subsidiary, issued PIA [Product Improvement Announcement] 98–101 in which it recommended an upgrade to the "211S, 211SRP, and 212A" modules that are used in Electro Code 4 and Electro Code 4 Plus Intermediate signal units. Harmon offered to supply upgrades to the listed modules at no charge through December 31, 1999.

In its Product Improvement Announcement, Harmon discussed the 211S, 211SRP and 212A modules:

211S and 211SRP

The 211S and 211SRP modules are DC to DC converters that are used in Electro Code 4 and Electro Code 4 Plus Intermediate signal units. These modules provide isolated battery for signal lighting circuits and are located in the top of the chassis housing behind the front panel. A resistor in the module's mid stage driver circuit may be subject to excessive heating due to heavy lamp load and/or continuous duty cycle of the lamp-lighting circuits. Eventually this resistor can fail open. In the event this circumstance occurs, excessive noise can be passed through the converters to the balance of the lamp lighting circuits. Random noise on a lamp output can be interpreted by the dual microprocessors as false energy. In response, the processors will reset, resulting in a dark signal for a period lasting approximately 40 seconds. Ultimately, the processors will attempt to reinitialize the converters and restore the signal lighting. The frequency of the dark signal occurrence depends on many variables and may be recognized many times during a single day, or sporadically during the course of one or several months.

212A

The 212A module is also part of the signal lighting circuits within Electro Code 4 and Electro Code 4 *Plus* equipment. AC signals from the processor modules are combined on the 212A to provide the excitation voltages to the 211 converter modules. It has been recognized that several of the electrolytic capacitors on the 212A modules have failed, resulting in symmetry distortion of the AC signal passed to the 211 modules. This distortion may exaggerate the noise condition as described with the 211S and 211SRP above.

Harmon further stated that "[on the 211S and 211SRP modules, several components in addition to the resistor described above, will be replaced and added to the base design. This upgrade offer applies only to 211S and 211SRP converter modules * * * manufactured between March 1994 and March 1998 * * *"

Recommendation

In recognition of the need to assure safe reliable railroad signal operations, FRA strongly recommends that:

1. Each railroad having a signal system which uses any "Electro Code 4" or "Electro Code 4 Plus" Intermediate signal unit immediately identify each 211S, 211SRP, and 212A module within their signal system.

2. Each railroad replace or upgrade every 211S, 211SRP, or 212A module within their signal system as soon as possible.

3. Each railroad having 211S, 211SRP, or 212A modules contact Harmon Industries Riverside Operations, Attention Repair and Return, 7337 Central Avenue, Riverside, California 92504, phone no.: 800–854–4752 for further information pertaining to upgrades.

Issued in Washington, DC on May 25, 2000.

George Gavalla,

Associate Administrator for Safety.

[FR Doc. 00–13838 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7268]

Denial of Petition for Import Eligibility Decision

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under 49 U.S.C. 30141(a)(1)(A). The petition, which was submitted by Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne"), a registered importer of motor vehicles, requested NHTSA to decide that 1995–1996 Audi Cabriolet passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. In the petition, Champagne contended that these vehicles are eligible for importation on the basis that (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1995–1996 Audi Cabriolet), and (2) they are capable of being readily altered to conform to the standards.

NHTSA published a notice in the **Federal Register** on December 13, 1999 (64 FR 69583) that contained a thorough description of the petition, and solicited public comments upon it. One comment was received in response to the notice, from Volkswagen of America, Inc. ("Volkswagen"), the United States representative of Audi AG, the vehicle's manufacturer. In this comment, Volkswagen contended that non-U.S. certified 1995–1996 Audi Cabriolet passenger cars are ineligible for importation because they are not substantially similar to vehicles that were originally manufactured and certified for sale in the United States and are not capable of being readily altered to conform to the standards. Specifically, Volkswagen observed that the non-U.S. certified 1995–1996 Audi Cabriolet passenger cars that are the subject of the petition are equipped with a 2.6 liter V6 engine rated at 150 hp with front wheel drive and a manual 5-speed transmission. Volkswagen stated that the only engine installed on 1995–1996 Audi Cabriolet passenger cars certified for the U.S. market was a 2.8 liter V6 rated at 172 hp. As a consequence, Volkswagen asserted that the engine components of the non-U.S. certified 1995–1996 Audi Cabriolet were not certified to any of the Federal motor vehicle safety standards containing requirements that relate to engines. Volkswagen identified those standards as including Standard Nos. 103 *Windshield Defrosting and Defogging Systems*, 105 *Hydraulic Brake Systems*, 124 *Accelerator Control Systems*, and insofar as they require the dynamic crash testing of a vehicle, Standard Nos. 208 *Occupant Crash Protection*, 212 *Windshield Mounting*, 219 *Windshield Zone Intrusion*, and 301 *Fuel System Integrity*. Volkswagen additionally noted that the petitioner erroneously claimed that non-U.S. certified 1995–1996 Audi Cabriolet passenger cars comply with the Bumper Standard found at 49 CFR Part 581. Volkswagen observed that the bumper components on these vehicles differ from those installed on U.S. certified models.

NHTSA accorded Champagne an opportunity to respond to Volkswagen's comments. In its response, Champagne did not address any of the issues raised by Volkswagen, and requested that its petition be withdrawn. Because it had already solicited public comments on the petition, NHTSA could not accede to this request.

In light of Volkswagen's comments, NHTSA has concluded that the petition does not clearly demonstrate that non-U.S. certified 1995–1996 Audi Cabriolet passenger cars are eligible for importation. The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with 49 U.S.C. 30141(b)(1), NHTSA will not consider a new import eligibility petition covering this vehicle until at least three months from the date of this notice.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 30, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–13886 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 153X)]

Union Pacific Railroad Company—Abandonment Exemption—In Monroe County, IA

On May 15, 2000, Union Pacific Railroad Company (UP), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–10905 to abandon a line of railroad known as the Oskaloosa Subdivision, extending between milepost 312.1 near Eddyville and milepost 322.9 near Maxon, a distance of 10.8 miles in Monroe County, IA. The line traverses U.S. Postal Service Zip Codes 52531 and 52553, and includes the non-agency stations of Bridgeport (milepost 313) and Maxon (milepost 322.9).

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In addition to an exemption from 49 U.S.C. 10903, petitioner seeks exemption from 49 U.S.C. 10904 (offer of financial assistance procedures) and 49 U.S.C. 10905 (public use conditions). In support, UP contends that exemption from these provisions is necessary to permit its conveyance to the sole shipper on the line, Cargill, Inc. (Cargill), of a segment of the line between mileposts 312.1 and 315 for construction of a plant switching facility. The switching operation is necessary for construction by Cargill of a private rail line that will run south from the plant to The Burlington Northern and Santa Fe Railway Company's main line. UP also requests expedited consideration of the exemption petition, including effectiveness of the exemption on service of the final decision. UP avers that expedited action is necessary here because Cargill urgently needs the right-of-way. These requests will be addressed in the final decision.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 1, 2000.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 22, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 153X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001, and (2) James P. Gatlin, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830. Replies to the UP petition are due on or before June 22, 2000.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 25, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–13856 Filed 6–1–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 26, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 3, 2000, to be assured of consideration.

Departmental Offices/Office of International Investment

OMB Number: 1505–0121.

Form Number: None.

Type of Review: Extension.

Title: Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons.

Description: Treasury disseminates to other agencies that are members of the Committee on Foreign Investment in the United States (CFIUS) information collected under the regulations from parties involved in a foreign acquisition of a U.S. company in order to do a national security analysis of the acquisition.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 60 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 6,000 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–13877 Filed 6–1–00; 8:45 am]

BILLING CODE 4810–25–U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 00–12]

Notice of Request for Preemption Determination

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing for comment a written request for the OCC's determination of whether Federal law preempts certain provisions of the West Virginia Insurance Sales Consumer Protection Act (West Virginia Law). The purpose of this notice and request for comment is to provide interested persons with an opportunity to submit comments prior to the OCC's issuance of any final opinion in this matter.

DATES: Comments must be received on or before July 3, 2000.

ADDRESSES: Comments should be sent to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third Floor, Attention: Docket No. 00–12, Washington, DC 20219. You may submit comments electronically to regs.comments@occ.treas.gov or by facsimile transmission to (202) 874–5274. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: MaryAnn Orr Nash, Senior Attorney, or Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC has received a request from the West Virginia Bankers Association (Requester) for a determination that Federal law preempts certain provisions of the West Virginia Law.

Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (section 114), Pub. L. 103–328 (12 U.S.C. 43) generally requires the OCC to publish in the **Federal Register** a descriptive notice of certain requests that the OCC receives for preemption opinions. Under section 114, the OCC must publish notice before it issues any opinion letter or interpretive rule concluding that Federal law preempts the application to a national bank of any State law in four designated areas: community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches. Pursuant to section 114, interested persons have at least 30 days to submit written comments. Without making a determination as to whether section 114 applies to this request, the OCC has decided that it is appropriate to use notice and comment procedures given the broad interest in the issues presented. The OCC will publish in the **Federal Register** any final opinion letter or interpretive rule that concludes that Federal law preempts State law.

Specific Request for OCC Preemption Determination

The OCC has been asked to determine whether section 104 the Gramm-Leach-Bliley Act (GLBA) preempts certain provisions of West Virginia Law.

Section 104(d)(2)(A) of GLBA provides that "[i]n accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or cross marketing activity." However, GLBA does not preempt state actions that are "substantially the same as but no more burdensome or restrictive than" any of the thirteen specific actions described in section 104(d)(2)(B) of GLBA (Safe Harbors). The Requester asserts that the following provisions contained in seven sections of the West Virginia Law are preempted by the GLBA—

(1) Section 33–11A–6 of the West Virginia Law, entitled "Insurance sales separate from loan transaction," generally prohibits financial institution employees with lending responsibilities from soliciting the purchase or sale of insurance. Specifically, the law provides that:

(a) Solicitation for the purchase or sale of insurance by a financial institution shall be conducted only by individuals whose responsibilities do not include loan transactions or other transactions involving the extension of credit. Provided, That for a financial institution location having three or less individuals with lending authority, solicitation for the sale of insurance may be conducted by an individual with responsibilities for loan transactions or other transactions involving the extension of credit, as long as the individual primarily responsible for making the specific loan or extension of credit is not the same individual engaged in the solicitation of the purchase or sale of insurance for that same transaction.

(b) In the event that in any small office, the same individual is the licensed agent or broker and the sole individual with lending authority, the commissioner may grant a waiver of the requirements of this section upon a written request. Such request shall include documentation that, due to the small office staff, compliance is not possible, and include identification of other steps which will be taken to minimize the customer confusion prohibited by this article.

The Requester contends that Federal law preempts this provision because it does not fit within any of the Safe Harbors and, if given effect, would prevent or significantly interfere with the ability of financial institutions to engage in insurance activities. The Requester asserts that limitations on bank use of personnel will significantly interfere with the ability of community banks to offer insurance services to customers and generally will require the use of more personnel than may be needed to conduct the business. The Requester also contends that this provision will significantly limit the use of supermarket branches and developing technologies that are intended to minimize use of personnel.

(2) Section 33–11A–8 of the West Virginia Law, entitled "Tying of products prohibited," generally prohibits a financial institution from requiring or implying that the purchase of an insurance product from that institution is required as a condition to the approval of a loan. Specifically, that section provides that:

(a) No person shall require or imply that the purchase of an insurance product from a financial institution by a customer or prospective customer of the institution is required as a condition of the lending of money or extension of credit.

(b) No financial institution may offer an insurance product in combination with its other products, unless all the products are available separately from the financial institution.

The Requester contends that this provision is not within the Safe Harbor set forth in section 104(d)(2)(B)(viii) of GLBA, which protects state restrictions prohibiting the tying of loan and insurance products. The Requester asserts that this provision is preempted because it essentially prohibits a loan officer from mentioning to a customer that insurance products may be available at a discount as part of a package of bank services, and thus, would significantly interfere with bank sales of insurance products. The Requester also contends that this provision is more restrictive than the anti-tying provisions of the Bank Holding Company Act, 12 U.S.C. 1972 and the implementing Federal regulation.

(3) Section 33–11A–9 of the West Virginia Law, entitled "Disclosures," generally provides that a financial institution engaged in the sale of insurance must disclose to customers in writing the nature of the product sold. Specifically, the section provides that—

(a) A financial institution soliciting the purchase of or selling insurance, and any person soliciting the purchase of or selling insurance on the premises of, in connection with a product offering, or using a name identifiable with, a financial institution, shall prominently disclose to customers, in writing, in clear and concise language, including in any advertisement or promotional material, and orally during any

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customer contact, that insurance offered, recommended, sponsored, or sold:

(1) Is not a deposit;

(2) Is not insured by the federal deposit insurance corporation or, where applicable, the National Credit Union Share Insurance Fund;

(3) Is not guaranteed by any insured depository institution; and

(4) Where appropriate, involves investment risk, including potential loss of principal.

(b) Any financial institution engaged in the making of loans or other extensions of credit and the sale of insurance shall prominently disclose to customers in writing, in clear and concise language, that the insurance product may be purchased from an agent or broker of the customer's choice, and the customer's choice of another insurance provider will not affect the customer's credit relationship with the person. For purposes of this subsection, loans and extensions of credit shall not include financing in connection with the insurance product offered or sold.

(c) Any person required under subsections (a) or (b) of this section to make disclosures to a customer shall obtain a written acknowledgment of receipt by the customer of such disclosures, including the date of receipt and the customer's name, address, and account number, prior to or at the time of any application for insurance sold by the person. Such acknowledgment shall be in a separate document.

(d) The commissioner may grant a waiver of the requirements of this section to any person required to give the disclosures required by this section solely because that person has a name identifiable with a financial institution upon a written request by such person demonstrating that his, her or its customer would not reasonably benefit from, or might in fact be confused by, these required disclosures.

The Requester contends that Federal law preempts subsection (a) of this section because the requirement that a financial institution include the disclosure "in any advertisement or promotional material" is more burdensome and restrictive than the disclosure requirement contained in section 104(d)(2)(B)(x) of the Safe Harbors. The Requester further contends that this requirement is not protected by section 104(d)(2)(B)(iii) of the Safe Harbors, which permits restrictions prohibiting a bank from using misleading advertising. The Requester asserts that Federal law also preempts subsection (c) of this section because the requirement that the bank obtain the written disclosures in a separate document is unduly burdensome and restrictive, and thus, would significantly interfere with bank insurance sales.

(4) Section 33–11A–10 of the West Virginia Law, entitled "Timing of insurance solicitation," generally prohibits a financial institution from making an insurance-related referral or solicitation of a loan customer until after the loan has been approved. Specifically, the section provides that—

(a) No individual who is an employee or agent of a financial institution, or of a subsidiary or affiliate thereof, may, directly or indirectly, make an insurance-related referral to or solicit the purchase of any insurance from a customer knowing that such customer has applied for a loan or extension of credit from that financial institution before such times as the customer has received a written commitment with respect to such loan or extension of credit, or, in the event that no written commitment has or will be issued in connection with the loan or extension of credit, before such time as the customer receives notification of approval of the loan or extension of credit by the financial institution and the financial institution creates a written record of the loan or extension of credit approval.

(b) This provision shall not prohibit any individual subject to subsection (a) above from:

(1) Informing a customer that insurance is required in connection with a loan; or

(2) Contacting persons in the course of direct or mass mailing to a group of persons in a manner that bears no relation to the person's loan application or credit decision.

The Requester contends that Federal law preempts this provision because it does not fit within the Safe Harbors and would prevent or significantly interfere with the ability of a financial institution to engage in insurance sales activities by prohibiting loan officers from marketing the full range of products offered by an institution.

(5) Section 33–11A–11 of the West Virginia Law, entitled "Insurance in connection with the loan," generally provides that extensions of credit and insurance sales be completed independently and through separate documents. Specifically, the section provides that—

(a) If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents.

(b) A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer.

(c) No title insurance shall be issued until the title insurance company has obtained a title opinion of an attorney licensed to practice law in West Virginia, which attorney is not an employee, agent, or owner of the insured bank or its affiliates. Said attorney shall have conducted or cause to have conducted under the attorney's direct supervision a reasonable examination of the title. In no event shall the authority of a state-chartered bank to sell title insurance exceed the authority of a nationally chartered bank to do so.

The Requester contends that the use of the term "independently" removes the provision from the protection of section 104(d)(2)(B)(xiii) of the Safe Harbors which requires the maintenance of separate and distinct books and records relating to insurance transactions. The Requester also contends that Federal law should preempt this provision because the West Virginia Law would impose burdens on the bank and require its customers to make separate trips to the bank and sign separate documents to purchase bank and insurance products, thus significantly interfering with bank insurance sales.

(6) Section 33–11A–13 of the West Virginia Law, entitled "Confidentiality of insurance information obtained by financial institutions," generally prohibits a financial institution from using insurance information obtained in the making of a loan unless the customer consents to such use. Specifically, the section provides that—

(a) When a financial institution requires a borrower to provide insurance information in connection with the making of a loan or extension of credit, neither such financial institution nor an insurance agent or broker affiliated with such financial institution may later use the information so obtained to solicit or offer insurance to such borrower, unless the consent required in subsection (b) below is first obtained.

(b) A borrower may consent to the financial institution's disclosure of insurance information to an agent or broker affiliated with the financial institution, but any such consent must be in writing and be given at a time subsequent, which shall be no less than two days, to the time of the application for, approval of and making of the loan or extension of credit.

(c) Consent under subsection (b) of this section shall be obtained in a separate document, distinct from any other transaction, and shall not be required as a condition for performance of other services for the customer.

The Requester contends that this provision is more burdensome and restrictive than section 104(d)(2)(B)(vi) of the Safe Harbors, which protects restrictions on the release of insurance information to non-affiliated third parties for the purpose of soliciting or selling insurance. The Requester states that the West Virginia Law goes beyond the protection of the Safe Harbor because it prohibits transfers to affiliated as well as non-affiliated third parties. The Requester further contends that Federal law should preempt this provision because it significantly interferes with national bank insurance sales by limiting an institution's ability to identify customer needs and suitable products to meet the needs of those customers.

(7) Section 33–11A–14 of the West Virginia Law, entitled "Physical location of insurance sales," generally provides that the sale of an insurance product by a financial institution must take place in an office physically separated from the institution's lending and deposit-taking activities. Specifically, the section provides that —

The place of solicitation or sale of insurance by any financial institution or on the premises of any financial institution shall be clearly and conspicuously signed so as to be readily distinguishable by the public as separate and distinct from the financial institution's lending and deposit-taking activities. In the event that a person which would otherwise be subject to the requirements set forth in this provision does not have the physical space to so comply, the commissioner may grant a waiver of the requirements of this section upon a written request by such person demonstrating that, due to its small physical facilities, compliance is not possible, and including identification of other steps which will be taken to minimize customer confusion.

The Requester contends that Federal law preempts this provision because it does not fall within any Safe Harbor and would prevent or significantly interfere with the ability of a financial institution to engage in insurance sales activities by requiring physical separation of the insurance activities from core banking activities. The Requester states that this requirement would significantly interfere with bank sales of insurance products, particularly with regard to smaller institutions with limited space and personnel.

Request for Comments

The OCC requests comments on whether Federal law preempts the provisions of the West Virginia Law cited above.

Dated: May 25, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–13855 Filed 6–1–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending March 31, 2000.

Last name	First	Middle
ADAMS JR.	CLIFTON	
AHN	BYUNG	SUHN
AKA SISTER M. CHRISTOPHORIS	HELGA	IGLBRIND
ALATALO	ALVAR	
APPLEGATE	YANGSON	
ARCHER	MICHAEL	DIXON
ASHBROOK	JOHN	B.
AUYANG	WILLIAM	MANYUNG
BAKER	RICHARD	KARL
BANOS	MARIE	
BANOS	OSVALDO	
BARSAMIAN	SUZANNE	KOHAR
BENICY	FRANCOIS	J.
BERG	CHRISTIAN	
BERNARD	CHARLES	WILLIAM
BEUPRE	DENNISFF	ALBERT
BLOM	THOMAS	EDGAR
BOHANNON	CLINTON	NATHANIEL
BRADFORD	KEVIN	JOSEPH
BURKART	ELIZABETH	ANN
CAMU	PHILIPPE	LOUIS
CANDRAY	RONALD	CARLOS
CANTERBURY	DAVIDF	EDWARD
CARHART	JEFFREY	COLWILL
CATTIER	ANNE	SOPHIE
CHAN	KAM	TAI
CHANTLER	ANGELA	MARGARET-JENNIFER
CHIODO	ERIKA	ELISABETH
CHO	HYUN-CHAN	
CHO	YONG	CHA
CHO (AKA HYUN-CHAN CHO)	SUNGWOOK	
CLARK	JAMES	ADAMS
COCKSWORTH	GRAHAM	ROGER
CORNISH	FRANCESCA	SHARON

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Last name	First	Middle
COWAN	JOHN	WILLIAM
CRAMER	ALICE	CAROL
CRAMER	RICHARD	ALLEN
CUNTZE	JENS	FRANK
DAIMOND	TRICIA	
DE GRASPE BEAUBIEN-MATTRICK	NANON	
DE HAES	ELIZABETH	SPERRY
DE PENTHENY O'KELLY	LINDA	ELIZABETH
DE WIT	CYNTHIA	ANN
DEL BONO	ALBERTO	
DEL GRANADO	RAFAEL	FRANCISCO
DROULERS	GABRIEL	
DUDKOWSKI	BRITTNEY	LUNDIN
ECKHART	DIANA	KAREN
ECKHART	SUZANN	
ELKINS	JOAN	
ETTER	VERENA	BARBARA
EVEN-ZOHAR	ADINA	MICHAL
FENSTERMAKER	ROBERT	FRANCIS
FILLER	KERRY	FLYNN
FIRMENICH	SEBASTIAN	BERNARD
FITTON-IRVINE	KATE	
FORSTER	IRAENE	ERIKA
FUJITA	SUMIKO	
GALANTO	JUTTA	EVA
GALLA	RAMACHANDRA	NAIDA
GARRISON	PAUL	EUGENE
GESMAR-LARSEN	SUZANNE	PATRICIA
GOURLAY	GILDA	RAMES
GRANT	ROBERT	MICHAELE
GRAY	JANICE	L.
GROS	CARLOS	RANDOLPHO
GROS	FRANCISCO	HENRIQUE
GUDEFIN	PHILIPPE	G.
HABIE-DENBERG	ELIZABETH	
HARRISON	MICHAEL	J.
HECKMANN	ANDREA	KAY-EISBETH
HEITZMANN	JOSEE	CHRISTINE
HEMMEN	GABRIELE	MARIA
HENDRICKSON	HARLAND	REESE
HERMANN	JOEL	PAUL
HICKS	SIGVARD	URIEL
HILGERS	PHILIP	
HILL	JOHN	KENNETH-LINN
HOFMANN	ALOIS	HEINRICH
HOWE	THOMAS	DAVID
IRVINE	KATE	PITTON
JACKSON-GOLDET	ALICE	
JALBERT	DORIS	ERIKA
JEFFERIS	JANE	EASON
JENSEN	ESTHER	MARIE
JENSEN	ESTHER	MARIE
JERNIGAN	STEPHEN	A.
JOHANSEN, NEE WAGNER	FLORENCE	ELIZABETH
JONES	TEIA	LUVON
KAN	YAIR	DAVID
KANG	DAEIN	
KANG	KEUN	SOON
KAPPELER	THOMAS	
KARNATZ	VERNON	LEE
KIM	CHAE	MIN
KIM	JONG	CHUL
KIM	SON	OK
KIM-BARRASS	MOON	HUI
KLOZ	MICHAEL	JON
KNABEN	BJORN-HELGE	
KOVALA	MINNA	HILJA
LAWRIE	AILEEN	MARGARET
LEE	AMITA	ILCHUL
LEE	HELEN	EUNYONG
LEE	SANDY	JA
LEGGIO	MARIO	
LEMOS	ADAMANTIOE	MICHAEL
LEWIS	DAVID	H.

Last name	First	Middle
LEWIS	DOUGLAS	WINDSOR
LEWIS	LILIAN	I.
LEYA	HEIDI	
LICHTERMAN	HOWARD	
LIM	JOHN	HAN
LOMBARD	ALEXIS	OLIVER
MACDONALD	DONALD	VICTOR
MARDSEN	JUDY	SUSAN
MAROCCO	PIA	LUISA
MARUS	JEFFREY	CHAMP
MARUS	NANCY	MUSE
MATHUR	ANITA	SIMLOT
MATTHAEUS	SUSANNE	
MC CAW	SEAN	JAMEL
MCINTOSH	ISABEL	HELEN
MEISSNER	SHAHON	MINERVA
MERIZALDE	CAMILO	
MICKENS	DARRELL	DWAIN
MILTON	JOHN	CHARLES
MITCHELL	DORIS	ARLENE
MOORE	ALFRED	TURNEY
MORENO	PABLO	
MOSKO	GEORGE	JAMES
MURERO	MARIO	GERHART
MURRY JR.	WILLIAM	
NEWSON	SIMON	DAVID
NIPPA	JURGEN	HEINZ
OH	CHRISTOPHER	
OWENS	KARIN	BARBARA
OYASKI	JOSEPH	THOMAS
PAPANDREOU	GEORGE	JEFFREY
PEREZ-VELASCO	JULIEO	
PETERSEN	PER	NOVI
PETERSON	TANJA	SIGRID
PROSINGER	BERNHARD	AUGUST
RAKOBITSCH	AUGUSTINE	
REDOLFI	VERONIKA	
REID	BRUCE	HUNTER
RIIBER	SUZANNE	MAY
ROCKOWITZ	BRUCE	P.
ROEHR	KUNO	MANFRED
SABA	KFAR	
SAGIE	TOVA	
SAYHER	RONALD	BROOKS
SCHERRER	ERIC	RONALD
SHAH	SAMIR	SURENDRA
SHIU	MAN	HEI
SIMPSON	DONALD	MILLER
SINANAJ,NEE ALTHEIDE	MONA	MARIE
SMITH	KARIN	DOROTHY
SMITHEY	JEANIE	MARIA
SOBAK	STEVEN	JOHN
SPROWLS	SVEN	CHRISTOPHER
STEPHENSON	MANUELA	
STURMAN	VERA	
SUTTER	MARCIA	JEAN
TERWILLIGER	ERIC	WILLIAM
THULLEN	PATRICK	
TINTE JR.	JOACHIM	
TRETHOWAN	IRENE	SUSAN
TUEN	JUDY	ANN
UHM	SUNG	JIN
VAN GOETHEM	ROBERT	C.
VAN LOON	PHILIPPA	CATHERINE
VAN RIJCKEVORSEL	CEDRIC	ANDRE
VIERHEILIG	EVA	CHRISTINE
VON STRASDAS	HAI-TI	LEE
VON STRASDAS	VOLDEMAR	ARNOLD
WENMAN	CAROLE	L.
WICK	DOROTHY	BERYL
WILLIAMS JR.	CHARLES	EDWARD
WOLF	GREGOR	BALERIAN
WONG	WINSTON	SHUI WAH
YOUNG	PRATIMA	LEUNG-YUNG

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Last name	First	Middle
ZAHM	HANS	
ZAHM	MINA	
ZAVADIL	CAROLYN	MARIE

Approved: May 14, 2000.

Doug Rogers,

Chief, Special Projects Branch, International District.

[FR Doc. 00–13775 Filed 6–1–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

May 26, 2000.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

DATES: Submit written comments on or before July 3, 2000.

OMB Number: 1550—0011.

Form Number: Not applicable.

Type of Review: Regular.

Title: General Reporting and Recordkeeping by Savings Associations.

Description: This collection of information allows management of savings associations to exercise prudent controls and to provide OTS with a means of determining the integrity of savings association records and operations when examining for safety, soundness, and regulatory compliance.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Responses: 1,104.

Estimated Burden Hours Per Response: 3,369 hours.

Frequency of Response: Once per activity.

Estimated Total Reporting Burden: 3,718,911 hours.

Clearance Officer: Mary Rawlings-Milton, (202) 906–6028, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

John E. Werner,

Director, Information and Management Services.

[FR Doc. 00–13752 Filed 6–1–00; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 65, No. 107

Friday, June 2, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-050-00-1430-EU; AZA 29964, AZA 29970-AZA 29975, AZA 29977, AZA 29979-AZA 29983, AZA 29985-AZA 29989]

Arizona: Notice of Realty Action; Competitive Sale of Public Land in Quartzsite, La Paz County, AZ

Correction

In notice document 00–6530 appearing on page 14315 in the issue of March 16, 2000 make the following corrections:

In the second column, six lines from the bottom, the directions in "Sec. 23" should read as follows:

Sec. 23,
N½SW¼,S½NE¼SW¼SW¼,
NW¼SW¼SW¼,N½SE¼SW¼,
SW¼ SE¼SW¼;

[FR Doc. C0–6530 Filed 6–1–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 00–7013; Notice 1]

RIN 2127–AG70

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

Correction

In rule document 00–11577 beginning on page 30680 in the issue of Friday, May 12, 2000, make the following correction:

§571.208 [Corrected]

On page 30751, in the second column, in §571.208, in paragraph S15.3.2 (a), after the last line, insert the following equation:

$$\left[\frac{1}{(t_2 - t_1)}\int_{t_1}^{t_2} a_r\, dt\right]^{2.5}(t_2 - t_1)$$

[FR Doc. C0–11577 Filed 6–1–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

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Part II

Environmental Protection Agency

40 CFR Parts 69, 80, and 86
Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards; Highway Diesel Fuel Sulfur Control Requirements; Proposed Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 69, 80, and 86

[AMS–FRL–6705–2]

RIN 2060–AL69

Control of Air Pollution From New Motor Vehicles: Proposed Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Diesel engines contribute considerable pollution to our nation's continuing air quality problems. Even with more stringent heavy-duty highway engine standards set to take effect in 2004, these engines will continue to emit large amounts of nitrogen oxides and particulate matter, both of which contribute to serious public health problems in the United States. These problems include premature mortality, aggravation of respiratory and cardiovascular disease, aggravation of existing asthma, acute respiratory symptoms, chronic bronchitis, and decreased lung function. Numerous studies also link diesel exhaust to increased incidence of lung cancer.

The diesel engine is a vital workhorse in the United States, moving much of the nation's freight, and carrying out much of its farm, construction, and other labor. Diesel engine sales have grown over the last decade, so that now about a million new diesel engines are put to work in the U.S. every year. Diesels overwhelmingly dominate the bus and large truck markets and have been capturing a growing share of the light heavy-duty vehicle market over the last decade.

We are proposing a comprehensive national control program that would regulate the heavy-duty vehicle and its fuel as a single system. We are proposing new emission standards that would begin to take effect in 2007, and would apply to heavy-duty highway engines and vehicles. These proposed standards are based on the use of high-efficiency catalytic exhaust emission control devices or comparably effective advanced technologies. Because these devices are damaged by sulfur, we are aiso proposing to reduce the level of sulfur in highway diesel fuel significantly by the middle of 2006.

Diesel engines are more durable and get better fuel economy than gasoline engines, but also pollute significantly more. If this program is implemented as proposed, diesel trucks and buses will have dramatically reduced emission levels. This proposed program will bring heavy-duty diesel emissions on par with new cars. The results of this historic proposal would be comparable to the advent of the catalytic converter on cars, as the proposed standards would, for the first time, result in the widespread introduction of exhaust emission control devices on diesel engines.

By 2007, we estimate that heavy-duty trucks and buses will account for as much as 30 percent of nitrogen oxides emissions from transportation sources and 14 percent of particulate matter emissions. In some urban areas, the contribution will be even greater. The standards for heavy-duty vehicles proposed in this rule would have a substantial impact on the mobile source inventories of oxides of nitrogen and particulate matter. Beginning the program in the 2007 model year ensures that emission reductions start early enough to counter the upward trend in heavy-duty vehicle emissions that would otherwise occur because of the increasing number of vehicle miles traveled each year.

This proposed program would result in particulate matter and oxides of nitrogen emission levels that are 90% and 95% below current standards levels, respectively. In order to meet these more stringent standards for diesel engines, the proposal calls for a 97% reduction in the sulfur content of diesel fuel. As a result, diesel vehicles would achieve gasoline-like exhaust emission levels, in addition to their inherent advantages over gasoline vehicles with respect to fuel economy, lower greenhouse gas emissions, and lower evaporative hydrocarbon emissions. We are also proposing more stringent standards for heavy-duty gasoline vehicles.

The clean air impact of this program would be dramatic when fully implemented. By 2030, this program would reduce annual emissions of nitrogen oxides, nonmethane hydrocarbons, and particulate matter by a projected 2.8 million, 305,000 and 110,000 tons, respectively. We project that these reductions and the resulting significant environmental benefits of this program would come at an average cost increase of about $1,700 to $2,800 per new vehicle in the near term and about $1000 to $1600 per new vehicle in the long term, depending on the vehicle size. In comparison, new vehicle prices today can range up to $250,000 for larger heavy-duty vehicles. The cost of reducing the sulfur content of diesel fuel would result in an estimated increase of approximately four cents per gallon.

DATES: *Comments:* We must receive your comments by August 14, 2000.

Hearings: We will hold public hearings on June 19, 20, 22, 27, and 29, 2000. See **ADDRESSES** below for the locations of the hearings.

ADDRESSES: *Comments:* You may send written comments in paper form and/or by e-mail. We must receive them by the date indicated under "DATES" above. Send paper copies of written comments (in duplicate if possible) to the contact person listed below. Send e-mail comments to diesel@epa.gov.

EPA's Air Docket makes materials related to this rulemaking available for review in Docket No. A–99–06 located at U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, SW, Washington, DC 20460 (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Hearings: We will hold five public hearings at the following locations:

June 19, 2000, Crowne Plaza Hotel, 1605 Broadway, New York, NY, 10019

June 20, 2000, Rosemont Convention Center, 5555 N. River Rd., Rosemont, IL 60018

June 22, 2000, Renaissance Atlanta Hotel, 590 W. Peachtree St, NW, Atlanta, GA, 30308

June 27, 2000, Hyatt Regency, 711 S. Hope Street, Los Angeles, CA, 90017

June 29, 2000, Doubletree Hotel, 3203 Quebec St., Denver, CO, 80207

We request that parties who want to testify at a hearing notify the contact person listed below ten days before the date of the hearing. Please see section X, "Public Participation" below for more information on the comment procedure and public hearings.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor MI 48105; Telephone (734) 214–4334, FAX (734) 214–4816, E-mail borushko.margaret@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This proposed action would affect you if you produce or import new heavy-duty engines which are intended for use in highway vehicles such as trucks and buses or heavy-duty highway vehicles, or convert heavy-duty vehicles or heavy-duty engines used in highway vehicles to use alternative fuels. It would also affect you if you produce, distribute, or sell highway diesel fuel.

The table below gives some examples of entities that may have to follow the proposed regulations. But because these are only examples, you should carefully examine the proposed and existing regulations in 40 CFR parts 69, 80, and 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS Codes[a]	SIC Codes[b]	Examples of potentially regulated entities
Industry	336112 336120	3711	Engine and truck manufacturers.
Industry	811112	7533	Commercial importers of vehicles and vehicle components.
	811198	7549	
Industry	324110	2911	Petroleum refiners.
Industry	422710	5171	Diesel fuel marketers and distributors.
	422720	5172	
Industry	484220	4212	Diesel fuel carriers.
	484230	4213	

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

Today's proposal is available electronically on the day of publication from the Environmental Protection Agency Internet Web site listed below. Electronic copies of the preamble, regulatory language, Draft Regulatory Impact Analysis, and other documents associated with today's proposal are available from the EPA Office of Transportation and Air Quality (formerly the Office of Mobile Sources) Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you incur for connecting to the Internet.

Environmental Protection Agency Web Site:
http://www.epa.gov/fedrgstr/
(Either select a desired date or use the Search feature.)

Office of Transportation and Air Quality (OTAQ) Web Site:
http://www.epa.gov/otaq/
(Look in "What's New" or under the "Heavy Trucks/Busses" topic.)

Please note that due to differences between the software used to develop the document and the software into which document may be downloaded, changes in format, page length, etc. may occur.

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I. A Brief Overview

This proposal covers the second of two phases in a comprehensive nationwide program for controlling emissions from heavy-duty engines (HDEs) and vehicles. It builds upon the phase 1 program we proposed last October (64 FR 58472, October 29, 1999). That action reviewed and proposed to confirm the 2004 model year emission standards set in 1997 (62 FR 54693, October 21, 1997), proposed stringent new emission standards for gasoline-fueled heavy-duty vehicles (HDVs), and proposed other changes to the heavy-duty program, including provisions to ensure in-use emissions control. Today's proposal takes the provisions of the October 1999 proposal as a point of departure.

This second phase of the program looks beyond 2004, based on the use of high-efficiency exhaust emission control devices and the consideration of the vehicle and its fuel as a single system. In developing this proposal, we took into consideration comments received in response to an advance notice of proposed rulemaking (ANPRM) published in May of last year (64 FR 26142, May 13, 1999), and comments we received in response to our discussion of future standards in the heavy-duty 2004 standards proposal last October. We welcome comment on all facets of this proposal and its supporting analyses, including the levels and timing of the proposed emissions standards and diesel fuel quality requirements. We ask that commenters provide any technical information that supports the points made in their comments.

This proposed program would result in particulate matter (PM) and oxides of nitrogen (NO_x) emission levels that are 90% and 95% below current standards levels, respectively. In order to meet these more stringent standards for diesel engines, the proposal calls for a 97% reduction in the sulfur content of diesel fuel. This proposal would make clean diesel fuel available in time for implementation of the light-duty Tier 2 standards. The heavy-duty engine standards would be effective starting in the 2007 model year and the low sulfur diesel fuel needed to facilitate the standards would be widely available by the middle of 2006. As a result, diesel vehicles would achieve gasoline-like exhaust emission levels, in addition to their inherent advantages over gasoline vehicles with respect to fuel economy, lower greenhouse gas emissions, and lower evaporative hydrocarbon emissions. We are also proposing more stringent standards for heavy-duty gasoline vehicles.

The standards proposed would result in substantial benefits to public health and welfare and the environment through significant reductions in emissions of NO_x, PM, nonmethane hydrocarbons (NMHC), carbon monoxide (CO), sulfur oxides (SO_x), and air toxics. We project that by 2030, this proposed phase 2 program would reduce annual emissions of NO_x, NMHC, and PM by 2.8 million, 305,000 and 110,000 tons, respectively. Especially in the early years of this program, large reductions in the amount of direct and secondary PM caused by the existing fleet of heavy-duty vehicles would occur because of the improvement in diesel fuel quality.

A. What Is Being Proposed?

There are two basic parts to this proposal: (1) New exhaust emission standards for heavy-duty highway engines and vehicles, and (2) new quality standards for highway diesel fuel. The systems approach of combining the engine and fuel standards into a single program is critical to the success of our overall efforts to reduce emissions, because the emission standards would not be feasible without the fuel change. This is because the emission standards, if promulgated, are expected to result in the use of high-efficiency exhaust emission control devices that would be damaged by sulfur in the fuel. This proposal, by providing extremely low sulfur diesel fuel, would also enable cleaner diesel passenger vehicles and light-duty trucks. This is because the same pool of highway diesel fuel also services these light-duty diesel vehicles, and these vehicles can employ technologies similar to the high-efficiency heavy-duty exhaust emission control technologies that would be enabled by the fuel change. We believe these technologies are needed for diesel vehicles to comply with our recently adopted Tier 2 emissions standards for light-duty highway vehicles (65 FR 6698, February 10, 2000).

We believe that this systems approach is a comprehensive way to enable promising new technologies for clean diesel affecting all sizes of highway diesel engines and, eventually, diesel engines used in nonroad applications too. The fuel change, in addition to enabling new technologies, would also produce emissions and maintenance benefits in the existing fleet of highway diesel vehicles. These benefits would include reduced sulfate and sulfur oxides emissions, reduced engine wear and less frequent oil changes, and longer-lasting exhaust gas recirculation (EGR) components on engines equipped with EGR. Heavy-duty gasoline vehicles would also be expected to reach cleaner levels due to the transfer of recent technology developments for light-duty applications, and the recent action taken to reduce sulfur in gasoline as part of the Tier 2 rule.

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The basic elements of the proposal are outlined below. Detailed provisions and justifications for our proposal are discussed in subsequent sections.

1. Heavy-Duty Emission Standards

We are proposing a PM emissions standard for new heavy-duty engines of 0.01 grams per brake-horsepower-hour (g/bhp-hr), to take full effect in the 2007 HDE model year. We are also proposing standards for NO_X and NMHC of 0.20 g/bhp-hr and 0.14 g/bhp-hr, respectively. These NO_X and NMHC standards would be phased in together between 2007 and 2010, for diesel engines. The phase-in would be on a percent-of-sales basis: 25 percent in 2007, 50 percent in 2008, 75 percent in 2009, and 100 percent in 2010. Because of the more advanced state of gasoline engine emissions control technology, gasoline engines would be fully subject to these standards in the 2007 model year, although we request comment on phasing these standards in as well. A potential delay in the implementation date of the gasoline engine and vehicle standards to the 2008 model year arising from issues connected with the 2004 model year standards is discussed in section III.D.2. In addition, we are proposing a formaldehyde (HCHO) emissions standard of 0.016 g/bhp-hr for all heavy-duty engines, to be phased in with the NO_X and NMHC standards, and the inclusion of turbocharged diesels in the existing crankcase emissions prohibition, effective in 2007.

Proposed standards for complete HDVs would be implemented on the same schedule as for engine standards. For certification of complete vehicles between 8500 and 10,000 pounds gross vehicle weight rating (GVWR), the proposed standards are 0.2 grams per mile (g/mi) for NO_X, 0.02 g/mi for PM, 0.195 g/mi for NMHC, and 0.016 g/mi for formaldehyde.[1] For vehicles between 10,000 and 14,000 pounds, the proposed standards are 0.4 g/mi for NO_X, 0.02 g/mi for PM, 0.230 g/mi for NMHC, and 0.021 g/mi for formaldehyde. These standards levels are roughly comparable to the proposed engine-based standards in these size ranges. Note that these standards would not apply to vehicles above 8500 pounds that we classify as medium-duty passenger vehicles as part of our Tier 2 program.

Finally, we are proposing to revise the evaporative emissions standards for heavy-duty engines and vehicles, effective on the same schedule as the gasoline engine and vehicle exhaust emission standards. The proposed standards for 8500 to 14,000 pound vehicles are 1.4 and 1.75 grams per test for the 3-day diurnal and supplemental 2-day diurnal tests, respectively. Slightly higher standards levels of 1.9 and 2.3 grams per test would apply for vehicles over 14,000 pounds. These proposed standards represent more than a 50 percent reduction in the numerical standards as they exist today.

2. Fuel Quality Standards

We are proposing that diesel fuel sold to consumers for use in highway vehicles be limited in sulfur content to a level of 15 parts per million (ppm), beginning June 1, 2006. This proposed sulfur standard is based on our assessment of how sulfur-intolerant advanced exhaust emission control technologies will be, and a corresponding assessment of the feasibility of low-sulfur fuel production and distribution. We are seeking comment on voluntary options for providing refiners with flexibility in complying with the low sulfur highway diesel fuel program. In addition, we request comment on some potential flexibility provisions to assist small refiners in complying with the program.

With minor exceptions, existing compliance provisions for ensuring diesel fuel quality that have been in effect since 1993 would remain unchanged (55 FR 34120, August 21, 1990).

B. Why Is EPA Making This Proposal?

1. Heavy-Duty Vehicles Contribute to Serious Air Pollution Problems

As will be discussed in detail in section II, emissions from heavy-duty vehicles contribute greatly to a number of serious air pollution problems, and will continue to do so into the future absent further controls to reduce these emissions. First, heavy-duty vehicles contribute to the health and welfare effects of ozone, PM, NO_X, SO_X, and volatile organic compounds (VOCs), including toxic compounds such as formaldehyde. These adverse effects include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), changes in lung function and increased respiratory symptoms, changes to lung tissues and structures, altered respiratory defense mechanisms, chronic bronchitis, and decreased lung function. Ozone also causes crop and forestry losses, while PM also causes damage to materials, and soiling. Second, both NO_X and PM contribute to substantial visibility impairment in many parts of the U.S. Third, NO_X emissions from heavy-duty trucks contribute to the acidification, nitrification and eutrophication of water bodies.

Millions of Americans live in areas with unhealthful air quality that currently endangers public health and welfare. Without emission reductions from the proposed standards for heavy-duty vehicles, there is a significant risk that an appreciable number of areas across the country will violate the 1-hour ozone national ambient air quality standard (NAAQS) during the period when these standards will take effect. Furthermore, our analysis shows that PM_{10} concentrations in 10 areas with a combined population of 27 million people face a significant risk of exceeding the PM_{10} NAAQS without significant additional controls in 2007 or thereafter. Under the mandates and authorities in the Clean Air Act, federal, State, and local governments are working to bring ozone and particulate levels into compliance with the 1-hour ozone and PM_{10} NAAQS through State Implementation Plan (SIP) attainment and maintenance plans, and to ensure that future air quality reaches and continues to achieve these health-based standards. The reductions proposed in this rulemaking would play a critical part in these important efforts.

Emissions from heavy-duty vehicles account for substantial portions of the country's ambient PM and NO_X levels. (NO_X is a key precursor to ozone formation). By 2007, we estimate that heavy-duty vehicles will account for 29 percent of mobile source NO_X emissions and 14 percent of mobile source PM emissions. These proportions are even higher in some urban areas, such as in Albuquerque, where HDVs contribute 37 percent of the mobile source NO_X emissions and 20 percent of the mobile source PM emissions. The PM and NO_X standards for heavy-duty vehicles proposed in this rule would have a substantial impact on these emissions. By 2030, NO_X emissions from heavy-duty vehicles under today's proposed standards would be reduced by 2.8 million tons, and PM emissions would decline by about 110,000 tons, dramatically reducing this source of NO_X and PM emissions. Urban areas, which include many poorer neighborhoods, can be disproportionately impacted by HDV emissions, and these neighborhoods would thus receive a relatively larger portion of the benefits expected from new HDV emissions controls. Over time, the relative contribution of diesel engines to air quality problems will go even higher if diesel-equipped light-duty vehicles become more popular, as is expected by some automobile manufacturers.

In addition to its contribution to PM inventories, diesel exhaust PM is of special concern because it has been implicated in an increased risk of lung cancer and respiratory disease in human studies. The EPA draft Health Assessment Document for Diesel Emissions is currently being revised based on comments received from the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board. The current EPA position is that diesel exhaust is a likely human carcinogen and that this cancer hazard applies to environmental levels of exposure.[2] In the draft Health Assessment Document for Diesel Emissions, EPA provided a qualitative perspective that the upper bounds on environmental cancer risks may exceed 10^{-6} and could be as high as 10^{-3}. Several other agencies and governing bodies have designated diesel exhaust or diesel PM as a "potential" or "probable" human carcinogen. In addition, diesel PM poses nonmalignant respiratory hazards to humans, not unlike, in some respects, hazards from exposure to ambient $PM_{2.5}$, to which diesel PM contributes. State and local governments, in their efforts to protect the health of their citizens and comply with requirements of the Clean Air Act (CAA or "the Act"), have recognized the need to achieve major reductions in diesel PM emissions, and have been seeking Agency action in setting stringent new standards to bring this about.[3]

2. Technology-Based Solutions

Although the air quality problems caused by diesel exhaust are formidable, we believe they can be resolved through the application of high-efficiency emissions control technologies. As discussed in detail in section III, the development of diesel emissions control technology has advanced in recent years so that very large emission reductions (in excess of 90 percent) are possible, especially through the use of catalytic emission control devices installed in the vehicle's exhaust system (and integrated with the engine controls). These devices are often referred to as "exhaust emission control" or "aftertreatment" devices. Exhaust emission control devices, in the form of the well-known catalytic converter, have been used in gasoline-fueled automobiles for 25 years, but have had only limited application in diesel vehicles.

Because the Clean Air Act requires us to set heavy-duty engine standards that reflect the greatest degree of emission reduction achievable through the application of available technology (subject to a number of criteria as discussed in section I.B.3), this notice proposes these standards, and proposes a justification for their adoption based on the air quality need, their technological feasibility, costs, and other criteria listed in the Act (see section III of this document). As part of this proposal, we are also proposing changes to diesel fuel quality in order to enable these advanced technologies (section IV). Heavy-duty gasoline engines would also be able to reach the significantly cleaner levels envisioned in this proposal by relying on the transfer of recent technology developments for light-duty applications, given the recent action taken to reduce sulfur in gasoline (65 FR 6698, February 10, 2000).

We believe the proposed standards would require the application of high-efficiency PM and NO_X exhaust emission controls to heavy-duty diesel vehicles. High-efficiency PM exhaust emission control technology has been available for several years, although engine manufacturers have generally not needed this technology in order to meet our PM emission standards. This technology has continued to improve over the years, especially with respect to durability and robust operation in use. It has also proven extremely effective in reducing exhaust hydrocarbon emissions. Thousands of such advanced-technology systems are now in use in fleet programs, especially in Europe. However, as discussed in detail in section III, these advanced-technology systems are very sensitive to sulfur in the fuel. For the technology to be viable and capable of meeting the proposed standards, we believe, based on information currently available, that it will require diesel fuel with sulfur content at the 15 ppm level.

Similarly, high-efficiency NO_X exhaust emission control technology will be needed if heavy-duty vehicles are to attain the proposed standards. We believe this technology, like the PM technology, is dependent on 15 ppm diesel fuel sulfur levels to be feasible, marketable, and capable of achieving the proposed standards. High-efficiency NO_X exhaust emission control technology has been quite successful in gasoline direct injection engines that operate with an exhaust composition fairly similar to diesel exhaust. However, as discussed in section III, application of this technology to diesels has some additional challenges and so has not yet gotten to the field trial stage. We are confident that the certainty of low-sulfur diesel fuel that would be provided by promulgation of the proposed fuel standard would allow the application of this technology to diesels to progress rapidly, and would result in systems capable of achieving the proposed standards. However, we acknowledge that our proposed NO_X standard represents an ambitious target for this technology, and so we are asking for comment on the appropriateness of a technology review of diesel NO_X exhaust emission controls.

The need to reduce the sulfur in diesel fuel is driven by the requirements of the exhaust emission control technology that we project would be needed to meet the proposed standards. The challenge in accomplishing the sulfur reduction is driven by the feasibility of needed refinery modifications, and by the costs of making the modifications and running the equipment. In consideration of the impacts that sulfur has on the efficiency, reliability, and fuel economy impact of diesel engine exhaust emission control devices, we believe that controlling the sulfur content of highway diesel fuel to the 15 ppm level will be necessary. Furthermore, although the refinery modifications and process changes needed to meet a 15 ppm restriction are expected to be substantial, we propose that this level is both feasible and cost effective. However, we are asking for comment on various concepts to provide implementation flexibility for refiners.

3. Basis for Action Under the Clean Air Act

Section 202(a)(1) of the Act directs us to establish standards regulating the emission of any air pollutant from any class or classes of new motor vehicles or engines that, in the Administrator's judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. Section 202(a)(3) requires that EPA set standards for heavy-duty trucks that reflect the greatest degree of emission reduction achievable through the application of technology which we determine will be available for the

[1] Vehicle weight ratings in this proposal refer to GVWR (the curb weight of the vehicle plus its maximum recommended load of passengers and cargo) unless noted otherwise.

[2] Environmental Protection Agency (1999) Health Assessment Document for Diesel Emissions: SAB Review Draft. EPA/600/8–90/057D Office of Research and Development, Washington, D.C. The document is available electronically at www.epa.gov/ncea/diesel.htm

[3] For example, see letter dated July 13, 1999 from John Elston and Richard Baldwin on behalf of the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (docket A–99–06, item II–D–78).

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model year to which the standards apply. We are to give appropriate consideration to cost, energy, and safety factors associated with the application of such technology. We may revise such technology-based standards, taking costs into account, on the basis of information concerning the effects of air pollution from heavy-duty vehicles or engines and other sources of mobile source related pollutants on the public health and welfare. Section 202(a)(3)(C) requires that promulgated standards apply for no less than three years and go into effect no less than 4 years after promulgation. This proposal has been developed in conformance with these statutory requirements.

We believe the evidence provided in section III and the draft Regulatory Impact Analysis (RIA) indicates that the stringent technology-forcing standards proposed today are feasible and reflect the greatest degree of emission reduction achievable in the model years to which they apply. We have given appropriate consideration to costs in choosing these standards. Our review of the costs and cost-effectiveness of these proposed standards indicate that they would be reasonable and comparable to the cost-effectiveness of other emission reduction strategies that have been required or could be required in the future. We have also reviewed and given appropriate consideration to the energy factors of this rule in terms of fuel efficiency and effects on diesel production and distribution, as discussed below, as well as any safety factors associated with these proposed standards.

The information regarding air quality and the contribution of heavy-duty engines to air pollution in section II and the Draft RIA provides strong evidence that emissions from such engines significantly and adversely impact public health or welfare. First, there is a significant risk that several areas will fail to attain or maintain compliance with the NAAQS for 1-hour ozone concentrations or PM_{10} concentrations during the period that these proposed new vehicle and engine standards would be phased into the vehicle population, and that heavy-duty engines contribute to such concentrations, as well as to concentrations of other NAAQS-related pollutants. Second, EPA currently believes that diesel exhaust is a likely human carcinogen. The risk associated with exposure to diesel exhaust includes the particulate and gaseous components. Some of the toxic air pollutants associated with emissions from heavy-duty vehicles and engines include benzene, formaldehyde, acetaldehyde, dioxin, acrolein, and 1,3-butadiene. Third, emissions from heavy-duty engines contribute to regional haze and impaired visibility across the nation, as well as acid deposition, POM deposition, eutrophication and nitrification, all of which are serious environmental welfare problems.

Based on this evidence, EPA believes that, for purposes of section 202(a)(1), emissions of NO_X, VOCs, SO_X and PM from heavy-duty trucks can reasonably be anticipated to endanger the public health or welfare. In addition, this evidence indicates that it would not be appropriate to modify the technology based standards pursuant to section 202(a)(3)(B). EPA believes that it is required under section 202(a)(3)(A) to set technology based standards that meet the criteria of that provision, and is not required to make an affirmative determination under section 202(a)(1). Instead EPA is authorized to take air quality into consideration under section 202(a)(3)(B) in deciding whether to modify or not set standard under section 202(a)(3)(A). In this case, however, EPA believes the evidence would fully support a determination under section 202(a)(1) to set standards, and a determination not to modify such standards under section 202(a)(3)(B).

In addition, there is significant evidence that emissions from heavy-duty trucks contribute to levels of ozone such that large segments of the national population are expected to experience prolonged exposure over several hours at levels that present serious concern for the public health and welfare. The same is true for exposure to fine PM. These public health and welfare problems are expected to occur in many parts of the country, including areas that are in compliance with the 1-hour ozone and PM_{10} NAAQS (PM_{10} is particulate matter that is 10 microns or smaller). This evidence is an additional reason why the controls proposed today are justified and appropriate under the Act. While EPA sees this as additional support for this action, EPA also believes that the evidence of air pollution problems summarized above and described in greater detail elsewhere is an adequate justification for this rule independent of concern over prolonged exposure to ozone levels.

Section 211(c) of the CAA allows us to regulate fuels where emission products of the fuel either: (1) Cause or contribute to air pollution that reasonably may be anticipated to endanger public health or welfare, or (2) will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such a regulation to be promulgated. This proposal meets each of these criteria. The discussion of the first test is substantially the same as the above discussion for the heavy-duty engine standards, because SOx emissions from heavy-duty diesel vehicles are due to sulfur in diesel fuel. The substantial adverse effect of high diesel sulfur levels on diesel control devices or systems expected to be used to meet the heavy-duty standards is discussed in depth in section III.F and in the Draft RIA. In addition, our authority under section 211(c) is discussed in more detail in appendix A to the draft RIA.

C. Putting This Proposal in Perspective

There are several helpful perspectives to establish in understanding the context for this proposal: the growing popularity of diesel engines, past progress and new developments in diesel emissions control, Tier 2 light-duty emission standards and other related EPA initiatives (besides the above-discussed rulemaking for highway heavy-duty engine emission standards in 2004), and recent actions and plans to control diesel emissions by the States and in other countries.

1. Diesel Popularity

The diesel engine is increasingly becoming a vital workhorse in the United States, moving much of the nation's freight, and carrying out much of its farm, construction, and other labor. Diesel engine sales have grown impressively over the last decade, so that now about a million new diesel engines are put to work in the U.S. every year. Unfortunately, these diesel engines emit large quantities of harmful pollutants annually.

Furthermore, although diesel emissions in this country come mostly from heavy-duty trucks and nonroad equipment, an additional source may grow out of auto manufacturers' plans to greatly increase the sales of diesel-powered light-duty vehicles (LDVs) and especially of light-duty trucks (LDTs), a category that includes the fast-selling sport-utility vehicles, minivans, and pickup trucks. These plans reflect the continuation of an ongoing dieselization trend, a trend recently most evident in the growing popularity of diesel-powered light heavy-duty trucks (8500 to 19,500 pounds). Diesel market penetration is working its way from larger to smaller highway applications and to a broader array of nonroad equipment applications. Finally, especially in Europe where diesels have already gained a broad consumer acceptance, the diesel engine is increasingly viewed as an attractive technology option for reducing emissions of gases that contribute to global warming, because it has greater operating efficiency than a gasoline engine.

2. Past Progress and New Developments

Since the 1970's, highway diesel engine designers have employed numerous strategies to meet our emissions standards, beginning with smoke controls, and focusing in the 1990's on increasingly stringent NO_X, hydrocarbon, and PM standards. These strategies have generally focused on reducing engine-out emissions and not on exhaust emission controls, although low-efficiency oxidation catalysts have been applied in some designs to reduce PM (and even their effectiveness has been limited by sulfur in the fuel). On the fuel side, we set quality standards that provided emissions benefits by limiting the amount of sulfur and aromatics in highway diesel fuel beginning in 1993 (55 FR 34120, August 21, 1990). Our most recent round of standard setting for heavy-duty highway diesels occurred in 1997 (62 FR 54693, October 21, 1997), effective with the 2004 model year. These standards were recently reviewed in a proposed rulemaking (64 FR 58472, October 29, 1999), which proposed to confirm them. These actions will result in engines that emit only a fraction of the NO_X, hydrocarbons, and PM produced by engines manufactured just a decade ago. We consider this an important first phase of our current initiative to reconcile the diesel engine with the environment.

Nevertheless, certain characteristics inherent in the way diesel fuel combustion occurs have prevented achievement of emission levels comparable to those of today's gasoline-fueled vehicles. Although diesel engines provide advantages in terms of fuel economy, durability, and evaporative emissions, and have inherently low exhaust emissions of hydrocarbons and carbon monoxide, controlling NO_X emissions is a greater challenge for diesel engines than for gasoline engines, primarily because of the ineffectiveness of three-way catalysis in the oxygen-rich and relatively cool diesel exhaust environment. Similarly, PM emissions, which are inherently low for properly operating gasoline engines, are more difficult to control in diesel engines, because the diesel combustion process tends to form soot particles. The challenge is somewhat complicated by the fact that historical diesel NO_X control approaches tend to increase PM, and vice versa, but both are harmful pollutants that need to be controlled.

Considering the air quality impacts of diesel engines and the potential for growth of diesels in the lighter-duty portion of the market, it is imperative that progress in diesel emissions control continue. Fortunately, encouraging progress is now being made in the design of exhaust emission control devices for diesel applications, driven in part by the challenge presented by the stringent Tier 2 standards for light-duty vehicles. As discussed in detail in section III, promising new exhaust emission control technologies for NO_X, PM, and hydrocarbon reduction show potential for a major advancement in diesel emissions control of a magnitude comparable to that ushered in by the automotive catalytic converter in the 1970's. However, changes in diesel fuel quality will be needed to enable these high-efficiency exhaust emission control devices. With these promising technologies, diesel vehicles have potential to achieve gasoline-like exhaust emission levels, in addition to their inherent advantages over gasoline vehicles with respect to fuel economy, lower greenhouse gas emissions, and lower evaporative hydrocarbon emissions.

3. Tier 2 Emissions Standards

Auto manufacturers' design plans for new light-duty diesel vehicle models will be greatly affected by our recent adoption of stringent new emission standards for light-duty highway vehicles (referred to as "Tier 2" standards) that will phase in between 2004 and 2009. These Tier 2 standards will require significant improvements in electronic engine controls and catalysts on gasoline vehicles. (We anticipate that these advances will be transferred over to heavy-duty gasoline vehicles in meeting the standards proposed in this document). The Tier 2 NO_X and PM standards (that apply equally to gasoline and diesel vehicles) are far more challenging for diesel engine designers than the most stringent light- or heavy-duty vehicle standards promulgated to date, and so will require the use of advanced emission control technologies. However, the low sulfur highway diesel fuel proposed in this notice would make it possible for designers to employ advanced exhaust emission control technologies in these light-duty applications, and the timing of the proposed fuel change provides for the use of these devices in time to satisfy Tier 2 phase-in requirements.

The Tier 2 program phases in interim and final standards over a number of years, providing manufacturers the option of delaying some of their production of final Tier 2 designs until later in the phase-in. For vehicles up to 6000 lbs GVWR (LDVs) and light light-duty trucks (LLDTs)), the interim standards begin in 2004 and phase out by 2007, as they are replaced by the final Tier 2 standards. For vehicles between 6000 and 8500 lbs (heavy light-duty trucks (HLDTs)), the interim standards begin in 2004 and phase out by 2009 as they are replaced by the final Tier 2 standards. A new category of vehicles between 8,500 and 10,000 lbs, medium-duty passenger vehicles (MDPVs), will follow the same phase-in schedule as HLDTs.

Our assessment in the Tier 2 final rule is that the interim standards are feasible for diesel vehicles without a need for fuel quality changes. Manufacturers can take advantage of the flexibilities provided in the Tier 2 program to delay the need for light-duty diesels to meet the final Tier 2 levels until late in the phase-in period (as late as 2007 for LDVs and LLDTs, and 2009 for HLDTs and MDPVs). However, low sulfur fuel is expected to be needed for diesel vehicles designed to meet the final NO_X and PM standards, because these vehicles are likely to employ light-duty versions of the sulfur-sensitive exhaust emission control technologies discussed in Section III. The gasoline quality changes and light-duty gasoline engine developments that will result from the Tier 2 rule would also help make it feasible for heavy-duty gasoline engines to meet the standards proposed in this document.

4. Mobile Source Air Toxics Rulemaking

Passenger cars, on-highway trucks, and nonroad equipment emit hundreds of different compounds and elements. Several of these are considered to be known, likely, or possible human carcinogens. These include diesel exhaust, plus several VOCs such as acetaldehyde, benzene, 1,3-butadiene, formaldehyde, and acrolein. Trace metals may also be present in heavy-duty diesel engine emissions, resulting from metals in fuels and lubricating oil, and from engine wear. Several of these metals have carcinogenic and mutagenic effects.

These and other mobile source air toxics are already controlled under existing programs established under Clean Air Act sections 202(a) (on-highway engine requirements), 211 (the fuel requirements), and 213 (nonroad engine requirements). Although these programs are primarily designed for control of criteria pollutants, especially ozone and PM_{10}, they also achieve

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important reductions in air toxics through VOC and hydrocarbon controls.

In addition to these programs, section 202(l)(2) of the Act directs us to consider additional controls to reduce emissions of hazardous air pollutants from motor vehicles, their fuels, or both. Those standards are to reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into account existing standards, costs, noise, energy, and safety factors. We anticipate that this section 202(l)(2) rulemaking, which we expect to propose in July 2000 and finalize in December 2000, will consist of three parts. First, we will identify a list of hazardous air pollutants emitted from motor vehicles and determine which of these endanger human health and welfare. Diesel particulate matter will be considered as part of this determination because, as discussed in section II, human epidemiological studies have suggested that diesel exhaust is associated with increased risk of adverse respiratory effects and lung cancer. Second, we will consider more comprehensively the contribution of mobile sources to the nation's air toxics inventory and evaluate the toxics benefits of existing and proposed emission control programs. The benefits of the program proposed in today's action will be included in this analysis. Finally, we will consider whether additional controls are appropriate at this time, given technological feasibility, cost, and the other criteria specified in the Act.

5. Nonroad Engine Standards and Fuel

Although this proposal covers only highway diesel engines and fuel, it is clear that potential requirements for nonroad diesel engines and fuel are related. It is expected that nonroad diesel fuel quality, currently unregulated, may need to be controlled in the future in order to reduce the large contribution of nonroad engines to NO_X and PM inventories. Refiners, fuel distributors, states, environmental organizations, and others have asked that we provide as much information as possible about the future specifications for both types of fuel as early as possible.

We do plan to give further consideration to further control of nonroad engine emissions. As discussed below in section IX, an effective control program for these engines requires the resolution of several major issues relating to engine emission control technologies and how they are affected by fuel sulfur content. The many issues connected with any rulemaking for nonroad engines and fuel warrant serious attention, and we believe it would be premature today for us to attempt to propose resolutions to them. We plan to initiate action in the future to formulate thoughtful proposals covering both nonroad diesel fuel and engines.

6. Actions in California

The California Air Resources Board (ARB) and local air quality management districts within California are also pursuing measures to better control diesel emissions. Key among these efforts is work resulting from the Board's designation of particulate emissions from diesel-fueled engines as a toxic air contaminant (TAC) on August 27, 1998. TACs are air pollutants that may cause or contribute to an increase in death or serious illness or may pose a present or future hazard to human health. The TAC designation was based on research studies showing that emissions from diesel-fueled engines may cause cancer in animals and humans, and that workers exposed to higher levels of emissions from diesel-fueled engines are more likely to develop lung cancer.

The ARB has now begun a public process to evaluate the need to further reduce the public's exposure to organic gases and PM emissions from diesel-fueled engines, and the feasibility and cost of doing so.[4] This evaluation is being done in consultation with the local air districts, affected industries, and the public, and will result in a report on the appropriate degree of control. Based on this report, if cost effective measures are identified that will reduce public exposure, then specific control measures applicable in California will be developed in a public process.

The ARB also recently adopted stringent new emission requirements for urban transit buses and is considering similar requirements for school buses.[5] This program is aimed at encouraging the use of clean alternative fuels and high-efficiency diesel emission control technologies. Their program includes requirements for zero-emissions buses, fleet average NO_X levels, and retrofits for PM control, as well as model year 2007 NO_X and PM standards levels of 0.2 and 0.01 g/bhp-hr, respectively (equal to the levels proposed in this document). It also requires that all diesel fuel used by transit agencies after July 1, 2002 must meet a cap of 15 ppm sulfur. This is the same as the sulfur level proposed in this document, but in batch amounts and on a much earlier schedule to support the ARB's proposed PM retrofit schedule.

California's urban bus program is focused on only a portion of the highway diesel fleet and fuel, characterized by short-range trips and captive fuel supplies. The large amount of interstate truck traffic in California and the fact that these trucks can travel many miles between refuelings would dramatically reduce the effectiveness of a more comprehensive State program, and would also subject California businesses to competitive disadvantages. As a result, the ARB has stressed the need for action at a Federal level, and is depending on our efforts to control HDV NO_X and PM emissions and to regulate diesel fuel. We agree that a national program is appropriate to ensure the effectiveness of such a program.

7. Retrofit Programs

Many States facing air quality improvement challenges have expressed strong interest in programs that would reduce emissions from existing highway and nonroad diesel engines through the retrofitting of these engines with improved emission control devices. The urban bus program proposed by the California ARB includes such a retrofit requirement as one of its major components (see section I.C.6). These retrofit programs are appealing because the slow turnover of the diesel fleet to the new low-emitting engines makes it difficult to achieve near-term air quality goals through new engine programs alone. Some of the exhaust emission control technologies discussed in this proposal are especially appealing for use in retrofits because they can be fitted to an existing vehicle as add-on devices without major engine modifications, although some of the more sophisticated systems that require careful control of engine parameters may be more challenging.

Because of the uncertainty at this time in how and when such programs may be implemented, this proposal does not calculate any benefits from them. Nevertheless, we believe that this proposed program can enable the viability of these retrofit technologies. We expect that large emission benefits from the existing fleet could be realized as a result of the fuel changes we are proposing here, combined with retrofit versions of the technologies that would be developed in response to the proposed engine standards. These

[4] Regularly updated information on this effort can be obtained at a website maintained by the ARB staff: www.arb.ca.gov/toxics/diesel/diesel.htm

[5] "Notice of Public Hearing To Consider the Adoption of a Public Transit Bus Fleet Rule and Emission Standards For New Urban Buses", California ARB, November 30, 1999, and ARB Resolution 00–2, dated February 24, 2000.

benefits would be especially important in the early years of the program when new vehicles standards are just beginning to have an impact, and when States and local areas need to gain large reductions to attain air quality goals.

8. Actions in Other Countries

There is substantial activity taking place in many countries of the world related to the regulation of diesel fuel and engines. The large light-duty vehicle market share enjoyed by diesels in many European countries has helped to stir innovation in dealing with diesel emissions problems. Advanced emissions control technologies are being evaluated there in the in-use fleet and experience gained from these trials is helping to inform the diesel emissions control discussion in the U.S. In addition, several European countries have low sulfur diesel fuel, with maximum sulfur levels varying from 10 to 50 ppm, and so experience gained from the use of these fuels, though not completely transferable to the U.S. situation, also helps to inform the discussion. European Union countries will limit sulfur in diesel fuel to 50 ppm by 2005, and even more aggressive plans are being discussed or implemented. The United Kingdom made a rapid conversion to 50 ppm maximum sulfur diesel fuel last year by offering tax incentives. This change occurred with much smaller refinery investments than had been predicted, and some refinery production there is actually at levels well below the 50 ppm cap. Germany is moving forward with plans to introduce a 10 ppm sulfur cap for diesel fuel by 2003, also via tax incentives, and is attempting to get the 50 ppm specification that was adopted by the European Commission revised downward to the 10 ppm cap level.

One European country has had extensive experience with the transition to low sulfur diesel fuel. In the early 1990's, Sweden decided to take advantage of the environmental benefits of 10 ppm sulfur/low aromatics fuel by introducing it with a reduction in the diesel fuel tax. The program has been quite successful, and in excess of 90 percent of the road fuel used there is of this 10 ppm maximum sulfur class.[6] The ability of the Swedish fuel distributors to maintain these low sulfur levels at the fuel stations has also been quite good.

Section VII.H discusses how differences between the future fuel specifications in the U.S. and those in Canada and Mexico may affect the emissions control program proposed in this document.

II. The Air Quality Need and Projected Benefits

A. Overview

Heavy-duty vehicle emissions contribute to air pollution with a wide range of adverse health and welfare impacts. Emissions of VOC, CO, NO_X, SO_X, and PM from HD vehicles contribute a substantial percentage to ambient concentrations of ozone, PM, sulfur and nitrogen compounds, aldehydes, and substances known or considered likely to be carcinogens. VOC and diesel PM emissions include some specific substances known or suspected to cause cancer, and diesel exhaust emissions are associated with non-cancer health effects. These ambient concentrations in turn cause human health effects and many welfare effects including visibility reductions, acid rain, nitrification and eutrophication of water bodies.

Emissions from heavy-duty vehicles, which are predominantly diesel-powered, account for substantial portions of the country's ambient PM and ground-level ozone levels. (NO_X is a key precursor to ozone formation). By 2007, we estimate that heavy-duty vehicles would account for 29 percent of mobile source NO_X emissions, and 14 percent of mobile source PM emissions. These proportions are even higher in some urban areas, such as New York and Los Angeles. Urban areas, which include many poorer neighborhoods, can be disproportionately impacted by HDV emissions because of heavy traffic in and out of densely populated urban areas. Of particular concern is human epidemiological evidence linking diesel exhaust to an increased risk of lung cancer. Based on information provided in the draft Health Assessment Document for Diesel Emissions[7] and other sources of information, we believe that emissions from heavy-duty diesel vehicles contribute to air pollution that warrants regulatory attention under section 202(a)(3) of the Act.

Thirty-six metropolitan areas with a total population of 111 million people have recently violated or are currently violating the 1-hour ozone NAAQS, and have ozone modeling or other factors which indicate a risk of NAAQS violations in 2007 or beyond. Another six areas with 11 million people have recently experienced ozone concentrations within 10 percent of exceeding the NAAQS between 1996 and 1998 and have some evidence of a risk of future violations. Ten PM_{10} nonattainment areas with 27 million people face a significant risk of experiencing particulate matter levels that violate the PM_{10} standard during the time period when this proposal would take effect. Without reductions from these proposed standards, there is a significant risk that an appreciable number of these areas would violate the 1-hour ozone and PM_{10} standards during the time period when these proposed standards would apply to heavy-duty vehicles. Under the mandates and authorities in the Clean Air Act, federal, State, and local governments are working to bring ozone and particulate levels into compliance with the 1-hour ozone and PM_{10} NAAQS through SIP attainment and maintenance plans, and to ensure that future air quality continues to achieve these health-based standards. The reductions proposed in this rulemaking would assist these efforts.

The proposed heavy-duty vehicle and engine emission standards, along with the diesel fuel sulfur standard proposed today, would have a dramatic impact in reducing the large contribution of HDVs to air pollution. The proposed standards would result in substantial benefits to public health and welfare through significant annual reductions in emissions of NO_X, PM, NMHC, carbon monoxide, sulfur dioxide, and air toxics. For example, we project a 2 million ton reduction in NO_X emissions from HD vehicles in 2020, which would increase to 2.8 million tons in 2030 when the current HD vehicle fleet is completely replaced with newer HD vehicles that comply with these proposed emission standards. When coupled with the emission reductions projected to result from the Phase 1 (model year 2004) HDV standards, the emission reductions from heavy-duty vehicles are projected to be as large as the substantial reductions the Agency expects from light-duty vehicles as a result of its recently promulgated Tier 2 rulemaking.

B. Public Health and Welfare Concerns

The following subsections present the available information on the air pollution situation that is likely to exist without this rule for each ambient pollutant. We also present information on the improvement that would result from this rule. The Agency's analysis and this proposal are supported by the numerous letters received from States and environmental organizations calling for significant emission reductions from heavy-duty vehicles in order to enable

[6] Memo from Thomas M. Baines to Docket A–99–06, October 29, 1999, Docket #A–99–06, Item II–G–12.

[7] EPA is revising this draft document in response to comments by the CASAC.

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these areas to achieve and sustain clean, healthful air.[8]

1. Ozone and Its Precursors

a. Health and Welfare Effects From Short-Term Exposures to Ozone

NO_X and VOC are precursors in the photochemical reaction which forms tropospheric ozone. A large body of evidence shows that ozone can cause harmful respiratory effects including chest pain, coughing, and shortness of breath, which affect people with compromised respiratory systems most severely. When inhaled, ozone can cause acute respiratory problems; aggravate asthma; cause significant temporary decreases in lung function of 15 to over 20 percent in some healthy adults; cause inflammation of lung tissue; may increase hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses. Children and outdoor workers are likely to be exposed to elevated ambient levels of ozone during exercise and, therefore, are at greater risk of experiencing adverse health effects. Beyond its human health effects, ozone has been shown to injure plants, reducing crop yields.

b. Current and Future Nonattainment Status With the 1-Hour Ozone NAAQS

Exposure to levels of ozone that are not in compliance with the 1-hour ozone NAAQS are a serious public health and welfare concern. The following sections discuss the present situation and outlook regarding attainment in areas of the country where ozone levels presently fail to comply with this NAAQS, or where they have come close to failing to comply in recent years.

Over the last decade, emissions have declined and national air quality has improved for all six criteria pollutants, including ozone.[9] Some of the greatest emissions reductions have taken place in densely-populated urban areas, where emissions are heavily influenced by mobile sources such as cars and trucks. For example, VOC and NO_X emissions in several urban areas in the Northeast declined by 15 percent and 14 percent from 1990 to 1996.[10] However, when ozone trends are normalized for annual weather variations between 1989 and 1998, they reveal a downward trend in the early 1990's followed by a leveling off, or an upturn in ozone levels, over the past several years in many urban areas.[11]

Despite impressive improvements in air quality over the last decade, present concentrations of ground-level ozone continue to endanger public health and welfare in many areas. As of December, 1999, 92 million people (1990 census) lived in 32 metropolitan areas designated nonattainment under the 1-hour ozone NAAQS.[12] In addition, there are 14 areas with a 1996 population of 17 million people not currently listed as non-attainment areas because the 1-hour ozone standard was revoked for these areas (we have proposed to re-instate the standard).[13] These 14 areas are relevant to this proposal because ozone concentrations above the health-based ozone standard, should they occur, endanger public health and welfare independent of the applicability of the 1-hour standard or an area's official attainment or nonattainment status. Ozone also has negative environmental impacts. For example, exposure of vegetation to ozone can inhibit photosynthesis, and alter carbohydrate allocation, which in turn can suppress the growth of crops, trees, shrubs and other plants.

The next two sections present lists of metropolitan areas, in two tables, with potential for violating the ozone standard in the future. The first section presents a table with 33 metropolitan areas that were predicted by Tier 2 modeling to have exceedances in either 2007 or 2030, and accompanying text identifies an additional nine areas for which we have other evidence of a risk of future exceedances. The second section discusses the air quality prospects for these 42 areas, which are divided into several groups. These groups are presented in Table II.B–2.

i. Ozone Predictions Made in the Tier 2 Rulemaking and Other Information on Ozone Attainment Prospects

In conjunction with its Tier 2 rulemaking efforts, the Agency performed ozone air quality modeling for nearly the entire Eastern U.S. covering metropolitan areas from Texas to the Northeast, and for a western U.S. modeling domain. The ozone modeling we did as part of the Tier 2 rulemaking predicted that without further emission reductions, a significant number of areas recently experiencing ozone exceedances across the nation are at risk of failing to meet the 1-hour ozone NAAQS in 2007 and beyond, even with Tier 2 and other controls currently in place.

The general pattern observed from the Tier 2 ozone modeling is a broad reduction between 1996 and 2007 in the geographic extent of ozone concentrations above the 1-hour NAAQS, and in the frequency and severity of exceedances. Despite this improvement from 1996 to 2007, many ozone exceedances were predicted to occur in 2007 even with reductions from Tier 2 standards and other controls currently in place, affecting 33 metropolitan areas across the nation. Assuming no additional emission reductions beyond those that will be achieved by current control programs,[14] a slight decrease below 2007 levels in modeled concentrations and frequencies of exceedances was predicted for 2030 for most areas. Exceedances were still predicted in 2030 in most of the areas where they were predicted in 2007.[15]

Although we did not model ozone concentrations for years between 2007 and 2030, we may expect that they would broadly track the national emissions trends. Based on these emission trends alone, national ozone concentrations, on average, would be projected to decline after 2007 largely due to penetration of Tier-2 compliant vehicles into the light duty vehicle fleet, but begin to increase around 2015 or 2020 due to economic growth until they reach the 2030 levels just described. However, the change in ozone levels from the expected NO_X reduction is relatively small compared to the effects of variations in ozone due to meteorology. Furthermore, in some areas, where growth exceeds national averages, emissions levels would begin increasing sooner and reach higher levels in 2030.

[8] Letters from States and environmental organizations are located in the docket for this proposal.

[9] National Air Quality and Emissions Trends Report, 1997, US EPA, December 1998.

[10] National Emissions Trends database.

[11] Trends in Daily Maximum 1-hour Ozone in Selected Urban Areas, 1989–1998.

[12] Memorandum to Air Docket, January 12, 2000. Information on ozone nonattainment areas and population as of December 13, 1999 from US EPA website www.epa.gov/airs/nonattn.html. USA Air Quality Nonattainment Areas, Office of Air Quality Planning and Standards. The reader should note that the 32 areas mentioned here are designated nonattainment areas, while the 36 areas noted in the overview section have recent (1995–1998) or current violations, and predicted exceedances in 2007 or 2030 based on air quality modeling or other evidence discussed in more detail later in this preamble, and in the draft RIA.

[13] 64 FR 57424 (October 25, 1999)

[14] Current control programs assumed for the predictions summarized here included the Tier 2/Gasoline Sulfur program and some specific programs that are legally required but not yet fully adopted, such as the regional Ozone Transport Rule and not-yet-adopted MACT standards that will affect VOC emissions.

[15] Achieving attainment with the ozone standard is only one measure of air quality improvement. EPA found that the Tier 2 program significantly lowers the model-predicted number of exceedances of the ozone standard by one tenth in 2007, and by almost one-third in 2030 across the nation (Tier 2 RIA).

Table II.B–1 lists the 33 areas with predicted 1-hour ozone exceedances in 2007 and/or 2030 based on the Tier 2 modeling, after accounting for the emission reductions from the Tier 2 program and other controls.[16] There are areas that are not included in this table that will be discussed shortly. A factor to consider with respect to the ozone predictions in Table II.B–1 is that recent improvements to our estimates of the current and future mobile source NO_X inventory have resulted in an increase in our estimate of aggregate NO_X emissions from all sources by more than eight percent since the air quality modeling performed for the Tier 2 rule. The adjusted NO_X inventory level in 2015 is greater than the NO_X inventory used in the Tier 2 air quality analysis for 2030. If we were to repeat the ozone modeling now for the 2015 time frame, using the new emissions estimates, it would most likely predict exceedances in 2015 for all the areas that had 2030 exceedances predicted in the modeling done for the Tier 2 rulemaking. As summarized in Table II.B–1, the Tier 2 modeling predicted that there will be 33 areas in 2007 or 2030 with about 89 million people predicted to exceed the 1-hour ozone standard, even after Tier 2 and other controls currently in place. Additional information on ozone modeling is found in the draft RIA and the technical support document for the Tier 2 rule, which is in the docket for this rulemaking. We request comment on the inventory estimates and ozone air quality modeling analysis described in this proposal.

TABLE II.B–1.—METROPOLITAN AREAS WITH PREDICTED EXCEEDANCES IN 2007 OR 2030 FROM TIER 2 AIR QUALITY MODELING INCLUDING EMISSION REDUCTIONS FROM TIER 2 AND OTHER CURRENT/COMMITTED CONTROLS

CMSA/MSAs	2007 Control case	2030 Control case	1996 Population (millions)
Boston, MA CMSA	X	X	5.6
Chicago, IL CMSA	X	X	8.6
Cincinnati, OH CMSA**	X		1.9
Cleveland, OH CMSA*	X	X	2.9
Detroit, MI CMSA*	X	X	5.3
Houston, TX CMSA	X	X	4.3
Milwaukee, WI CMSA	X	X	1.6
New York City, NY CMSA	X	X	19.9
Philadelphia, PA CMSA	X	X	6.0
Washington,-Baltimore, DC-VA-WV-MD CMSA	X	X	7.2
Atlanta, GA MSA	X	X	3.5
Barnstable, MA MSA	X	X	0.2
Baton Rouge, LA MSA	X	X	0.6
Benton Harbor, MI MSA	X	X	0.2
Biloxi, MS MSA*	X	X	0.3
Birmingham, AL MSA	X	X	0.9
Charlotte, NC MSA	X	X	1.3
Grand Rapids, MI MSA	X	X	1.0
Hartford, CT MSA	X	X	1.1
Houma, LA MSA	X	X	0.2
Huntington, WV MSA	X		0.3
Indianapolis, IN MSA	X		1.5
Louisville, KY MSA	X	X	1.0
Memphis, TN MSA	X	X	1.1
Nashville, TN MSA	X	X	1.1
New London, CT MSA	X	X	1.3
New Orleans, LA MSA*	X	X	0.3
Pensacola, FL MSA*	X		0.4
Pittsburgh, PA MSA	X		2.4
Providence, RI MSA	X	X	1.1
Richmond, VA MSA	X		0.9
St. Louis, MO MSA	X	X	2.5
Tampa, FL MSA*	X	X	2.2
33 areas / 88.7 million people	32 areas/86.3 million people	28 areas/83.7 million people	

*These areas have registered recent (1995–1998) ozone levels within 10% of the 1-hour ozone standard.
**Based on more recent air quality monitoring data not considered in the Tier 2 analysis, and on 10-year emissions projections, we expect to redesignate Cincinnati-Hamilton to attainment soon.

Ozone modeling for the Tier 2 rulemaking did not look at the effect on ozone attainment and maintenance beyond current/committed controls and the Tier 2/Gasoline Sulfur Program itself. Therefore, Table II.B–1 should be interpreted as indicating what areas are at risk of ozone violations in 2007 or 2030 without federal or state measures that may be adopted and implemented after this rulemaking is proposed. We expect many of the areas listed in Table

[16] Table II.B–1 excludes areas for which the Tier 2 modeling predicted exceedances in 1996 but for which the actual ozone design values in 1995–1997 and 1996–1998 were both less than 90 percent of the NAAQS. For these areas, we considered the ozone model's predictions of 2007 or 2030 exceedances to be too uncertain to play a supportive role in our rulemaking determinations. Also, 2007 ozone was not modeled for western areas. For 2030, all areas were modeled for fewer episode days which, along with a general model under-prediction bias, may result in an underestimation of 2030 exceedances. Without these factors, there could have been more western areas listed in Table II.B–1, and more areas with predicted exceedances in 2030.

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II.B-1 to adopt additional emission reduction programs, but the Agency is unable to quantify the future reductions from additional State programs since they have not yet been adopted.

In addition, Table II.B–1 reflects only the ozone predictions made in the modeling for the Tier 2 rulemaking. The Tier 2 modeling did not predict (or did not provide information regarding) 2007 or 2030 violations for a number of areas for which other available ozone modeling has shown 2007 violations, or for which the history and current degree of nonattainment indicates some risk of ozone violations in 2007 or beyond. These nine areas had a 1996 population of 30 million people. They include seven ozone nonattainment areas in California (Los Angeles, San Diego, Southeast Desert, Sacramento, Ventura County, San Joaquin Valley, and San Francisco), and two Texas areas (Beaumont-Port Arthur and Dallas). A more detailed discussion is presented in the Draft RIA. The following section will discuss the air quality prospects of these 42 areas (*i.e.*, the 33 shown in Table II.B–1, plus the nine additional areas identified in this paragraph).

For the final rule, the Agency plans to use the same modeling system as was used in its Tier 2 air quality analysis with updated inventory estimates for 2030 and a further characterization of the inventory estimates for the interim period between 2007 and 2030 We plan to release the products of these revised analyses into the public record on a continuous basis as they are developed. Interested parties should check docket number A–99–06 periodically for updates.

ii. Areas At Risk of Exceeding the 1-Hour Ozone Standard

This section presents the Agency's conclusions about the risk of future nonattainment for the 42 areas identified above. These areas are listed in Table II.B–2, and are subdivided into three groups. The following discussion follows the groupings from top to bottom. A more detailed discussion is found in the Draft RIA.

In general, EPA believes that the proposed new standards for heavy-duty vehicles are warranted by a sufficient risk that without these standards, some areas would experience violations of the 1-hour NAAQS at some time during the period when this rulemaking would achieve its emission reductions, despite efforts that EPA, States and localities are now making through SIPs to reach attainment and to preserve attainment by developing and implementing maintenance plans. Because ozone concentrations causing violations of the 1-hour ozone standard are well established to endanger public health and welfare, this indicates that it is appropriate for the Agency to propose setting new standards for heavy-duty vehicles.

Our belief regarding the risk of future violations of the 1-hour NAAQS is based upon our consideration of predictive ozone air quality modeling and analysis we performed for U.S. metropolitan areas for the recent Tier 2 rulemaking, and the predictive ozone modeling and other information that has come to us through the SIP process, and other local air quality modeling for certain areas. We have assessed this information in light of our understanding of the factors that influence ozone concentrations, taking due consideration of current and future federal, state and local efforts to achieve and maintain the ozone standard through air quality planning and implementation.

Ten metropolitan areas that fall within ozone nonattainment areas have statutorily-defined attainment dates of 2007 or 2010, or have requested attainment date extensions to 2007 (including two requests on which we have not yet proposed any action). These 10 areas are listed at the top of Table II.B–2, and are New York City, Houston, Hartford, New London, Chicago, Milwaukee, Dallas, Beaumont-Port Arthur, Los Angeles, and Southeast Desert. The Los Angeles (South Coast Air Basin) ozone attainment demonstration is fully approved, but it is based in part on reductions from new technology measures and actions that have yet to be identified. Accordingly, the State will be able to benefit from, and will need, the reductions from this proposed rule in order to meet the NO_x and VOC shortfalls identified in the South Coast Air Basin's SIP. The 2007 attainment demonstration for the Southeast Desert area is also approved. However, because ozone travels from the South Coast to the Southeast Desert, attainment in the Southeast Desert may depend on progress in reducing ozone levels in the South Coast Air Basin.

The process of developing adequate attainment plans has been difficult. While the efforts by EPA and the States have been more prolonged than expected, they are nearing completion. Of the remaining eight areas discussed above, two—Chicago and Milwaukee—do not have EPA-identified shortfalls in their 1998 attainment demonstrations. However, these two areas are revising their local ozone air quality modeling, which will be taken into account in the final rule. We have recently proposed to approve attainment plans for New York, Houston, Hartford and New London, and we hope to receive attainment plans and propose such approval soon for Dallas and Beaumont-Port Arthur. EPA has proposed, or expects to propose, that attainment in 2007 in each of these six areas depends upon either achieving specified additional emission reductions in the area itself, or achieving ozone reductions in an upwind nonattainment area that has such a shortfall. Those areas with shortfalls will be able to take credit for the expected reductions from the proposed rule in their attainment demonstrations, once the rule is promulgated. We expect to rely in part on these reductions in reaching our final conclusion as to whether each of the eight areas for which we have reviewed an attainment demonstration, or expect to review an attainment demonstration soon, is more likely than not to attain on its respective date, whether or not the State formally relies on these reductions as part of its strategy to fill the identified shortfall in its attainment demonstration, if any.

The proposed new standards for heavy-duty vehicles would help address some of the uncertainties and risks that are inherent in predicting future air quality over a long period. Actual ozone levels may be affected by increased economic growth, unusually severe weather conditions, and unexpectedly large changes in vehicle miles traveled. For example, the emissions and air quality modeling that forms the basis for the 2007-to-2030 emissions and ozone trend described earlier used a 1.7 percent national VMT growth rate. Historical growth in national VMT for LDVs over the last 30 years has averaged 2.7 percent per year, but over the past 10 years, annual VMT growth has fluctuated from 1.2 percent to 3.5 percent. The growth rates can also vary from locality to locality. The reported annual VMT growth rate experienced in Atlanta, a fast-growing metropolitan area, was six percent from 1986–1997, or more than twice the 30-year national average, and year-to-year variations in Atlanta's reported annual VMT ranged from a 12% increase to no increase over the same period. While some factors influencing previous VMT growth rates, such as increased participation of women in the workforce, may be declining, other factors, such as widening suburbanization, more suburb-to-suburb commuting and the rise of healthier and wealthier older age drivers, may result in increased VMT growth rates.[17] Activity by other source types also varies due to economic factors. Actual future VMT and other economic growth in specific areas may vary from the best predictions that have been used in each attainment demonstration. Over a number of years, differences in annual growth can cause substantial differences in total emissions. These uncertainties, and others, dictate that a prudent course for the Agency is to protect public health by increasing our confidence that the necessary reductions will be in place. This proposed rulemaking would provide significant and needed reductions to those areas at risk of violating the 1-hour ozone standard during the time period when this rule would take effect.

[17] See Tier 2 Response to Comments document for a longer decision.

The reductions from this proposal would begin in 2007 and would continue to grow over time as the existing heavy-duty fleet is replaced by newer vehicles meeting the proposed emission standards. Even assuming attainment is achieved, areas that wish a redesignation to attainment may rely on further reductions generated by this rulemaking to support their 10-year maintenance plan. Even if an area does not choose to seek redesignation, the continuing reductions from this proposed rulemaking would help ensure maintenance with the 1-hour standard after attainment is reached.

Thus, a total of six metropolitan areas need additional measures to meet the shortfalls in the applicable attainment demonstrations, or are subject to ozone transport from an upwind area that has an identified shortfall. In addition, two areas are expected to need additional emission reductions to demonstrate attainment in future SIPs. EPA believes that the States responsible may need, among other reductions, the level of reductions provided by this rule in order to fill the shortfalls. We expect to rely in part on these reductions in reaching our final conclusion as to whether each of the eight areas for which we have reviewed an attainment demonstration is more likely than not to attain on its respective date, whether or not the State formally relies on these reductions as part of its strategy to fill the identified shortfall in its attainment demonstration. As to all ten areas, even if all shortfalls were filled by the States, there is some risk that at least some of the areas will not attain the standards by their attainment dates of 2007, or 2010 for Los Angeles. In that event, the reductions associated with this proposed program, which increase substantially after 2007, would help assure that any residual failures to attain are remedied. Finally, there is also some risk that the areas will be unable to maintain attainment after 2007. Considered collectively, there is a significant risk that some areas would not be in attainment throughout the period when the proposed rule would reduce heavy-duty vehicle emissions.

The next group of 26 areas have required attainment dates prior to 2007, or have no attainment date but are subject to a general obligation to have a SIP that provides for attainment and maintenance. EPA and the States are pursuing the established statutory processes for attaining and maintaining the ozone standard where it presently applies. EPA has also proposed to re-apply the ozone standard to the remaining areas. The Agency believes that there is a significant risk that future air quality in a number of these areas would exceed the ozone standard at some time in the 2007 and later period. This belief is based on three factors: (1) Recent exceedances in 1995–1997 or 1996–1998, (2) predicted exceedances in 2007 or 2030 after accounting for reductions from Tier 2 and other local or regional controls currently in place or required, and (3) our assessment of the magnitude of recent violations, the variability of meteorological conditions, transport from areas with later attainment dates, and other variables inherent in predicting future attainment such as the potential for some areas to experience unexpectedly high economic growth rates, growth in vehicle miles traveled, varying population growth from area to area, and differences in vehicle choice.

Only a subset of these areas have yet adopted specific control measures that have allowed the Agency to fully approve an attainment plan. For some of these areas, we have proposed a finding, based on all the available evidence, that the area will attain on its attainment date. In one case, we have proposed that an area will maintain over the required 10-year time period. However, in many cases, these proposals depend on the State adopting additional emission reduction measures. The draft RIA provides more information on our recent proposals on attainment demonstrations and maintenance plans.[18] Until the SIPs for these areas are actually submitted, reviewed and approved, there is some risk that these areas will not adopt fully approvable SIPs. Furthermore, some of these areas are not under a current requirement to obtain EPA approval for an attainment plan. The mechanisms to get to attainment in areas without a requirement to submit an attainment demonstration are less automatic, and more uncertain. Even with suitable plans, implementation success is uncertain, and therefore there is some risk that 2007 attainment, or maintenance thereafter, would not happen.

[18] We have recently proposed favorable action, in some cases with a condition that more emission reductions be obtained, on attainment demonstrations in these areas with attainment dates prior to 2007: Philadelphia, Washington-Baltimore, Atlanta, and St. Louis. We expect to give final approval soon to a maintenance plan and redesignation to attainment for Cincinnati.

Finally, there are six additional metropolitan areas, with another 11.4 million people in 1996, for which the available ozone modeling and other evidence is less clear regarding the need for additional reductions. These areas include Biloxi-Gulfport-Pascagoula, MS, Cleveland-Akron, OH, Detroit-Ann Arbor-Flint, MI, New Orleans, LA, Pensacola, FL, and Tampa, FL. Our own ozone modeling predicted these six areas to need further reductions to avoid exceedances in 2007 or 2030. The recent air quality monitoring data for these six areas shows ozone levels with less than a 10 percent margin below the NAAQS. This suggests that ozone concentrations in these areas may remain below the NAAQS for some time, but we believe there is still a risk of that future ozone levels will be above the NAAQS because meteorological conditions may be more severe in the future.

In sum, without these reductions, there is a significant risk that an appreciable number of the 42 areas, with a population of 123 million people in 1996, will violate the 1-hour ozone standard during the time period when these proposed standards will apply to heavy-duty vehicles. The 42 areas consist of the 27 areas with predicted exceedances in 2007 or 2030 under Tier 2 air quality modeling and recent violations of the 1-hour ozone standard, plus seven California areas (South Coast Air Basin, San Diego, Ventura County, Southeast Desert, San Francisco, San Joaquin Valley, Sacramento), two Texas areas (Dallas and Beaumont-Port Arthur), and six areas that have recent ozone concentrations within 10% of exceeding the standard and predicted exceedances. Additional information about these areas is provided in the draft RIA.

iii. Conclusion

We have reviewed the air quality situation of three broad groups of areas: (1) Those areas with recent violations of the ozone standard and attainment dates in 2007 or 2010, (2) those areas with recent violations and attainment dates (if any) prior to 2007, and (3) those areas with recent ozone concentrations within 10% of a violation of the 1-hour ozone

standard, with predicted exceedances, and without proposed or approved SIP attainment demonstrations. In general, the evidence summarized in this section, and presented in more detail in the draft RIA, supports the Agency's belief that emissions of NO_X and VOC from heavy-duty vehicles in 2007 and later will contribute to a national ozone air pollution problem that warrants regulatory attention under section 202(a)(3) of the Act.

TABLE II.B–2

Metropolitan area/State	Proposed reinstatement of ozone standard	1996 population (in millions)
Areas with 2007/2010 Attainment Dates (Established or Requested):		
New York City, NY-NJ-CT		19.9
Houston, TX		4.3
Hartford, CT		1.1
New London, CT		1.3
Chicago, IL-IN		8.6
Milwaukee, WI		1.6
Dallas, TX		4.6
Beaumont-Port Arthur, TX		0.4
Los Angeles, CA		15.5
Southeast Desert, CA		0.4
Subtotal of 10 areas		57.7
Areas with Pre-2007 Attainment Dates or No Specific Attainment Date, with a Recent History of Non-attainment:**		
Atlanta, GA		3.5
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD		6.0
Sacramento, CA		1.5
San Joaquin Valley, CA *possible future reclassification and change of attainment date to 2005		2.7
Ventura County, CA		0.7
Washington-Baltimore, DC-MD-VA-WV		7.2
Charlotte-Gastonia, NC	X	1.3
Grand Rapids, MI	X	1.0
Huntington-Ashland, WV-KY	X	0.3
Indianapolis, IN	X	1.5
Memphis, TN	X	1.1
Nashville, TN	X	1.1
Barnstable-Yarmouth, MA	X	0.2
Boston-Worcester-Lawrence, MA	X	5.6
Houma, LA	X	0.2
Providence-Fall River-Warwick, RI-MA	X	1.1
Richmond-Petersburg, VA	X	1.0
Benton Harbor, MI	X	0.2
Baton Rouge, LA		0.6
Birmingham, AL		0.9
Cincinnati-Hamilton, OH-KY-IN*		1.9
Louisville, KY-IN		0.3
Pittsburgh, PA MSA		2.4
San Diego, CA		2.8
San Francisco Bay Area, CA		6.2
St. Louis, MO-IL		2.5
Subtotal of 26 areas		53.8
Areas with Pre-2007 Attainment Dates and Recent Concentrations within 10% of an Exceedance, But With No Recent History of Nonattainment:		
Biloxi-Gulfport-Pascagoula, MS MSA	X	0.3
Cleveland-Akron, OH CMSA	X	2.9
Detroit-Ann Arbor-Flint, MI CMSA	X	5.3
New Orleans, LA MSA	X	0.3
Pensacola, FL MSA	X	0.4
Tampa, FL MSA	X	2.2
Subtotal of 6 areas		11.4
Total 1996 Population of All Areas at Risk of Exceeding the Ozone Standard in 2007 or Thereafter:		
42 Areas—total population		122.9

*Based on more recent air quality monitoring data not considered in the Tier 2 analysis, and on 10-year emissions projections, we expect to redesignate Cincinnati-Hamilton to attainment soon.
**The list includes certain areas that are currently not violating the 1-hour NAAQS.

c. Public Health and Welfare Concerns From Prolonged and Repeated Exposures to Ozone

A large body of scientific literature regarding health and welfare effects of ozone has associated health effects with certain patterns of ozone exposures that do not include any hourly ozone concentration above the 0.12 parts per million (ppm) level of the 1-hour NAAQS. The science indicates that there are health effects attributable to prolonged and repeated exposures to lower ozone concentrations. Studies of 6 to 8 hour exposures showed health effects from prolonged and repeated exposures at moderate levels of exertion to ozone concentrations as low as 0.08 ppm. Prolonged and repeated ozone concentrations at these levels are common in areas throughout the country, and are found in areas that are exceeding, and areas that are not exceeding, the 1-hour ozone standard. For example, in 1998, almost 62 million people lived in areas with 2 or more days with concentrations of 0.09 ppm or higher, excluding areas currently violating the 1-hour NAAQS. Since prolonged exposures at moderate levels of ozone are more widespread than exceedances of the 1-hour ozone standard, and given the continuing nature of the 1-hour ozone problem described above, adverse health effects from this type of ozone exposure can reasonably be anticipated to occur in the future in the absence of this rule. Adverse welfare effects can also be anticipated, primarily from damage to vegetation. See the draft RIA for further details.

Studies of acute health effects have shown transient pulmonary function responses, transient respiratory symptoms, effects on exercise performance, increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital and emergency room visits, and transient pulmonary respiratory inflammation. Such acute health effects have been observed following prolonged exposures at moderate levels of exertion at concentrations of ozone well below the current standard of 0.12 ppm. The effects are more pronounced at concentrations above 0.09 ppm, affecting more subjects or having a greater effect on a given subject in terms of functional changes or symptoms. A more detailed discussion may be found in the Draft RIA.

With regard to chronic health effects, the collective data have many ambiguities, but provide suggestive evidence of chronic effects in humans. There is a biologically plausible basis for considering the possibility that repeated inflammation associated with exposure to ozone over a lifetime, as can occur with prolonged exposure to moderate ozone levels below peak levels, may result in sufficient damage to respiratory tissue that individuals later in life may experience a reduced quality of life, although such relationships remain highly uncertain.

We believe that the evidence in the Draft RIA regarding the occurrence of adverse health effects due to prolonged and repeated exposure to ozone concentrations in the range discussed above, and regarding the populations that are expected to receive exposures at these levels, supports a conclusion that emissions of NO_X, and VOC from heavy-duty vehicles in 2007 and later will be contributing to a national air pollution problem that warrants regulatory attention under section 202(a)(3) of the Act.

Ozone has many welfare effects, with damage to plants being of most concern. Plant damage affects crop yields, forestry production, and ornamentals. The adverse effect of ozone on forests and other natural vegetation can in turn cause damage to associated ecosystems, with additional resulting economic losses. Ozone concentrations of 0.10 ppm can be phytotoxic to a large number of plant species, and can produce acute injury and reduced crop yield and biomass production. Ozone concentrations at or below 0.10 ppm have the potential over a longer duration of creating chronic stress on vegetation that can result in reduced plant growth and yield, shifts in competitive advantages in mixed populations, decreased vigor, and injury from other environmental stresses. The forestry, crop and other environmental damage from ozone in times and places where the 1-hour NAAQS is attained adds support to the Agency's belief that there will be air pollution in 2007 and thereafter that warrants regulatory attention under section 202(a)(3) of the Act.

2. Particulate Matter

a. Health and Welfare Effects

i. Particulate Matter Generally

Particulate matter (PM) represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. All particles equal to and less than 10 microns are called PM_{10}. Fine particles can be generally defined as those particles with an aerodynamic diameter of 2.5 microns or less (also known as $PM_{2.5}$), and coarse fraction particles are those particles with an aerodynamic diameter greater than 2.5 microns, but equal to or less than a nominal 10 microns. The health and environmental effects of PM are strongly related to the size of the particles.

The emission sources, formation processes, chemical composition, atmospheric residence times, transport distances and other parameters of fine and coarse particles are distinct. Fine particles are directly emitted from combustion sources and are formed secondarily from gaseous precursors such as sulfur dioxide, nitrogen oxides, or organic compounds. Fine particles are generally composed of sulfate, nitrate, chloride and ammonium compounds; organic and elemental carbon; and metals. Combustion of coal, oil, diesel, gasoline, and wood, as well as high temperature process sources such as smelters and steel mills, produce emissions that contribute to fine particle formation. In contrast, coarse particles are typically mechanically generated by crushing or grinding and are often dominated by resuspended dusts and crustal material from paved or unpaved roads or from construction, farming, and mining activities. Fine particles can remain in the atmosphere for days to weeks and travel through the atmosphere hundreds to thousands of kilometers, while coarse particles deposit to the earth within minutes to hours and within tens of kilometers from the emission source.

Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Scientific studies suggest a likely causal role of ambient particulate matter (which is attributable to a number of sources including diesel) in contributing to a series of health effects. The key health effects categories associated with ambient particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), aggravated asthma, acute respiratory symptoms, including aggravated coughing and difficult or painful breathing, chronic bronchitis, and decreased lung function that can be experienced as shortness of breath. For additional information on health effects, see the draft RIA. Both fine and coarse particles can accumulate in the respiratory system. Exposure to fine particles is most closely associated with such health effects as premature mortality or hospital admissions for cardiopulmonary disease. PM also causes damage to materials and soiling. It is a major cause of substantial visibility impairment in many parts of the U.S.

Diesel particles are a component of both coarse and fine PM, but fall mostly in the fine range. Noncancer health effects associated with exposure to diesel PM overlap with some health effects reported for ambient PM including respiratory symptoms (cough, labored breathing, chest tightness, wheezing), and chronic respiratory disease (cough, phlegm, chronic bronchitis and some evidence for decreases in pulmonary function).

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ii. Special Considerations for Diesel PM

Primary diesel particles mainly consist of carbonaceous material, ash (trace metals), and sulfuric acid. Many of these particles exist in the atmosphere as a carbon core with a coating of organic carbon compounds, sulfuric acid and ash, sulfuric acid aerosols, or sulfate particles associated with organic carbon.

Most diesel particles are in the fine and ultrafine size range. Diesel PM contains small quantities of numerous mutagenic and carcinogenic compounds. While representing a very small portion (less than one percent) of the national emissions of metals, and a small portion of diesel particulate matter (one to five percent), we note that several trace metals of toxicological significance are also emitted by diesel engines in small amounts including chromium, manganese, mercury and nickel. In addition, small amounts of dioxins have been measured in diesel exhaust, some of which may partition into the particle phase, though the impact of these emissions on human health is not clear.

Because the chemical composition of diesel PM includes these hazardous air pollutants, or air toxics, diesel PM emissions are of concern to the agency beyond their contribution to general ambient PM. Moreover, as discussed in detail in the draft RIA, there have been health studies specific to diesel PM emissions which indicate potential hazards to human health that appear to be specific to this emissions source. For chronic exposure, these hazards included respiratory system toxicity and carcinogenicity. Acute exposure also causes transient effects (a wide range of physiological symptoms stemming from irritation and inflammation mostly in the respiratory system) in humans though they are highly variable depending on individual human susceptibility.

b. Potential Cancer Effects of Diesel Exhaust

The EPA draft Health Assessment Document for Diesel Emissions (draft Assessment) is currently being revised based on comments received from the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board.[19] The current EPA position is that diesel exhaust is a likely human lung carcinogen and that this cancer hazard exists for occupational and environmental levels of exposure.[20]

In evaluating the available research for the draft Assessment, EPA found that individual epidemiological studies numbering about 30 show increased lung cancer risks associated with diesel emissions within the study populations of 20 to 89 percent depending on the study. Analytical results of pooling the positive study results show that on average the risks were increased by 33 to 47 percent. Questions remain about the influence of other factors (e.g., effect of smoking), the quality of the individual epidemiology studies, exposure levels, and consequently the precise magnitude of the increased risk of lung cancer. From a weight of the evidence perspective, EPA believes that the epidemiology evidence, as well as supporting data from certain animal and mode of action studies, support the Agency's proposed conclusion that exposure to diesel exhaust is likely to pose a human health hazard at occupational exposure levels, as well as to the general public exposed to typically lower environmental levels of diesel exhaust.

Risk assessments on epidemiological studies in the peer-reviewed literature which have attempted to assess the lifetime risk of lung cancer in workers occupationally exposed to diesel exhaust suggests that lung cancer risk may range from 10^{-4} to 10^{-3}.[21 22 23] The Agency recognizes the significant uncertainties in these studies, and has not used these estimates to assess the possible cancer unit risk associated with ambient exposure to diesel exhaust.

While available evidence supports EPA's conclusion that diesel exhaust is a likely human lung carcinogen, and thus is likely to pose a cancer hazard to humans, the absence of quantitative estimates of the lung cancer unit risk for diesel exhaust limits our ability to quantify with confidence the actual magnitude of the cancer risk. In the draft 1999 Assessment, EPA acknowledged these limitations and provided a discussion of the possible cancer risk consistent with general occupational epidemiological findings of increased lung cancer risk and relative exposure ranges in the occupational and environmental settings.[24] The Agency believes that the techniques that were used in the draft Assessment to qualitatively gauge the potential for and possible magnitude of risk are reasonable. The details of this approach are provided in the draft RIA.

In the absence of a quantitative unit cancer risk to assess environmental risk, EPA has considered the relevant epidemiological studies and principles for their assessment, the risk from occupational exposure as assessed by others, and relative exposure margins between occupational and ambient environmental levels of diesel exhaust exposure. Based on this epidemiological and other information, there is the potential that upper bounds on environmental cancer risks from diesel exhaust may exceed 10^{-6} and could be as high as 10^{-3}.[25] While uncertainty exists in estimating risk, the likely hazard to humans together with the potential for significant environmental risks leads the Agency to believe that diesel exhaust emissions should be reduced in order to protect the public's health. We believe that this is a prudent measure in light of the designation of diesel exhaust as a likely human carcinogen, the exposure of almost the entire population to diesel exhaust, the significant and consistent finding of an increase in lung cancer risk in workers exposed to diesel exhaust, and the potential overlap and/or small difference between some occupational and environmental exposures.

As discussed in section I.C.6, "Actions in California", the Office of Environmental Health Hazard Assessment (OEHHA, California EPA) has identified diesel PM as a toxic air contaminant.[26] California is in the process of determining the need for, and appropriate degree of control measures for diesel PM. Apart from the EPA draft Assessment and California EPA's actions, several other agencies and governing bodies have designated diesel exhaust or diesel PM as a "potential" or "probable" human carcinogen.[27 28 29] The International Agency for Research on Cancer (IARC) considers diesel exhaust a "probable" human carcinogen and the National Institutes for Occupational Safety and Health have classified diesel exhaust a "potential occupational carcinogen." Thus, the concern for the health hazard resulting from diesel exhaust exposures is widespread.

c. Noncancer Effects of Diesel Exhaust

The noncancer effects of diesel exhaust emissions are also of concern to the Agency. EPA believes that chronic diesel exhaust exposure, at sufficient exposure levels, increases the hazard and risk of an adverse consequence (including respiratory tract irritation/inflammation and changes in lung function). The draft 1999 Assessment discussed an existing inhalation reference concentration (RfC) for chronic effects that EPA intends to revise in the next draft Assessment in response to CASAC comments. The revised RfC will be reviewed by CASAC at a future meeting. An RfC provides an estimate of the continuous human inhalation exposure (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious noncancer effects during a lifetime.

d. Attainment and Maintenance of the PM_{10} NAAQS

Under the CAA, we are to regulate HD emissions if they contribute to air pollution that can reasonably be anticipated to endanger public health and welfare. We have already addressed the question of what concentration patterns of PM endanger public health, in setting the NAAQS for PM_{10} in 1987. The PM NAAQS were revised in 1997, largely by adding new standards for fine particles ($PM_{2.5}$) and modifying the form of the daily PM_{10} standard. On judicial review, the revised standards were remanded for further proceedings, and the revised PM_{10} standards were vacated. EPA has sought Supreme Court review of that decision; pending final resolution of the litigation, the 1987 PM_{10} standards continue to apply.

i. Current PM_{10} Nonattainment

The most recent PM_{10} monitoring data indicates that 12 designated PM_{10} nonattainment areas, with a population of 19 million in 1990, violated the PM_{10} NAAQS in the period 1996–1998. Table II.B–3 lists the 12 areas. The table also indicates the classification and 1990 population for each area.

TABLE II.B–3.—PM_{10} NONATTAINMENT AREAS VIOLATING THE PM_{10} NAAQS IN 1996–1998[a]

Area	Classification	1990 population (millions)
Clark Co., NV	Serious	0.741
El Paso, TX[b]	Moderate	0.515
Hayden/Miami, AZ	Moderate	0.003
Imperial Valley, CA[b]	Moderate	0.092
Owens Valley, CA	Serious	0.018
San Joaquin Valley, CA	Serious	2.564
Mono Basin, CA	Moderate	0.000
Phoenix, AZ	Serious	2.238
Fort Hall Reservation, ID	Moderate	0.001
Los Angeles South Coast Air Basin, CA	Serious	13.00
Nogales, AZ	Moderate	0.019
Wallula, WA[c]	Moderate	0.048
Total population		19.24

[a] In addition to these designated nonattainment areas, there are 15 unclassified counties, with a 1996 population of 4.2 million, for which States have reported PM_{10} monitoring data for this period indicating a PM_{10} NAAQS violation. Although we do not believe that we are limited to considering only designated nonattainment areas as part of this rulemaking, we have focused on the designated areas in the case of PM_{10}. An official designation of PM_{10} nonattainment indicates the existence of a confirmed PM_{10} problem that is more than a result of a one-time monitoring upset or a result of PM_{10} exceedances attributable to natural events. We have not yet excluded the possibility that one or the other of these is responsible for the monitored violations in 1996–1998 in the 15 unclassified areas. We adopted a policy in 1996 that allows areas whose PM_{10} exceedances are attributable to natural events to remain unclassified if the State is taking all reasonable measures to safeguard public health regardless of the source of PM_{10} emissions. Areas that remain unclassified areas are not required to submit attainment plans, but we work with each of these areas to understand the nature of the PM_{10} problem and to determine what best can be done to reduce it.

[b] EPA has determined that PM_{10} nonattainment in these areas is attributable to international transport. While reductions in heavy-duty vehicle emissions cannot be expected to result in attainment, they will reduce the degree of PM_{10} nonattainment to some degree.

[c] The violation in this area has been determined to be attributable to natural events.

ii. Risk of Future Exceedances of the PM_{10} Standard

The proposed new standards for heavy-duty vehicles will benefit public health and welfare through reductions in direct diesel particles and NO_X, VOCs, and SO_X which contribute to secondary formation of particulate matter. Because ambient particle concentrations causing violations of the PM_{10} standard are well established to endanger public health and welfare, this information supports the proposed new standards for heavy-duty vehicles. The Agency's recent PM modeling analysis

[19] U.S. EPA (1999) Health Assessment Document for Diesel Emissions: SAB Review Draft. EPA/600/8–90/057D Office of Research and Development, Washington, DC. The document is available electronically at www.epa.gov/ncea/diesel.htm.

[20] The EPA designation of diesel exhaust as a likely human carcinogen is subject to further comment by CASAC in 2000. The designation of diesel exhaust as a likely human carcinogen under the 1996 Proposed Guidelines for Carcinogen Risk Assessment is very similar to the current 1986 Guidelines for Carcinogen Risk Assessment that designate diesel exhaust as a probable carcinogen (B–1 carcinogen). The new guidelines, once finalized, will incorporate a narrative approach to assist the risk manager in the interpretation of the carcinogen's mode of action, the weight of evidence, and any risk related exposure-response or protective exposure recommendations.

[21] California Environmental Protection Agency, Office of Health Hazard Assessment (CAL-EPA, OEHHA) (1998) Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant. Appendix III Part B Health Risk Assessment for Diesel Exhaust. April 22, 1998.

[22] Steenland, K., Deddens, J., Stayner, L. (1998) Diesel Exhaust and Lung Cancer in the Trucking Industry: Exposure-Response Analyses and Risk Assessment. Am. J Indus. Medicine 34:220–228.

[23] Harris, J.E. (1983) Diesel emissions and Lung Cancer. Risk Anal. 3:83–100.

[24] See Chapter 8.3 and 9.6 of the draft Health Assessment for Diesel Exhaust. U.S. EPA (1999) Health Assessment Document for Diesel Emissions: SAB Review Draft. EPA/600/8–90/057D Office of Research and Development, Washington, D.C. The document is available electronically at www.epa.gov/ncea/diesel.htm.

[25] As used in this proposal, environmental risk is defined as the risk (i.e. a mathematical probability) that lung cancer would be observed in the population after a lifetime exposure to diesel exhaust. Exposure levels may be occupational lifetime or environmental lifetime exposures. A population risk in the magnitude of 10^{-6} translates as the probability of lung cancer being evidenced in one person in one million over a lifetime exposure.

[26] Office of Environmental Health Hazard Assessment (1998) Health risk assessment for diesel exhaust, April 1998. California Environmental Protection Agency, Sacramento, CA.

[27] National Institute for Occupational Safety and Health (NIOSH) (1988) Carcinogenic effects of exposure to diesel exhaust. NIOSH Current Intelligence Bulletin 50. DHHS, Publication No. 88–116. Centers for Disease Control, Atlanta, GA.

[28] International Agency for Research on Cancer (1989) Diesel and gasoline engine exhausts and some nitroarenes, Vol. 46. Monographs on the evaluation of carcinogenic risks to humans. World Heath Organization, International Agency for Research on Cancer, Lyon, France.

[29] World Health Organization (1996) Diesel fuel and exhaust emissions: International program on chemical safety. World Health Organization, Geneva, Switzerland.

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performed for the Tier 2 rulemaking predicts that a significant number of areas across the nation are at risk of failing to meet the PM_{10} NAAQS even with Tier 2 and other controls currently in place. These reductions will assist states as they work with the Agency through SIP development and implementation of local controls to move their areas into attainment by the applicable deadline, and maintain the standards thereafter.

The Agency believes that the PM_{10} concentrations in 10 areas shown in Table II.B–4 have a significant risk of exceeding the PM_{10} standard without further emission reductions during the time period when this rulemaking would take effect. This belief is based on the PM_{10} modeling conducted for the Tier 2 rulemaking. Table II.B–4 presents information about these 10 areas and subdivides them into two groups. The first group of six areas are designated PM_{10} nonattainment areas which had recent monitored violations of the PM_{10} NAAQS in 1996–1998 and were predicted to be in nonattainment in 2030 in our PM_{10} air quality modeling. These areas have a population of over 19 million. Included in the group are the nonattainment areas that are part of the Los Angeles, Phoenix, and Las Vegas metropolitan areas, where traffic from heavy-duty vehicles is substantial. These six areas would clearly benefit from the reductions in emissions that would occur from the proposed new standards for heavy-duty vehicles.

The second group of four counties listed in Table II.B–4 with a total of 8 million people in 1996 also had predicted exceedances of the PM_{10} standard. However, while these four areas registered, in either 1997 or 1998, single-year annual average monitored PM_{10} levels of at least 90 percent of the PM_{10} NAAQS, these areas did not exceed the formal definition of the PM_{10} NAAQS over the three-year period ending in 1998.[30] Unlike the situation for ozone, for which precursor emissions are generally declining over the next 10 years or so before beginning to increase, we estimate that emissions of PM_{10} will rise steadily unless new controls are implemented. The small margin of attainment which the four areas currently enjoy will likely erode; the PM air quality modeling suggests that it will be reversed. We therefore consider these four areas to each individually have a significant risk of exceeding the PM_{10} standard without further emission reductions. The emission reductions from the proposed new standards for heavy-duty vehicles would help these areas with attainment and maintain in conjunction with other processes that are currently moving these areas towards attainment.

TABLE II.B–4.—AREAS WITH SIGNIFICANT RISK OF EXCEEDING THE PM_{10} NAAQS WITHOUT FURTHER EMISSION REDUCTIONS

Area	1990 population (millions)
Areas Currently Exceeding the PM_{10} Standard:	
Clark Co., NV	0.741
El Paso, TX*	0.515
Imperial Valley, CA*	0.092
San Joaquin Valley, CA	2.564
Phoenix, AZ	2.238
Los Angeles South Coast Air Basin, CA	13.00
Subtotal for 6 Areas	19.15
Areas within 10% of Exceeding the PM_{10} Standard:	
New York Co., NY	1.49
Cuyahoga Co., OH	1.41
Harris, Co., TX	2.83
San Diego Co., CA	2.51
Subtotal for 4 Areas	8.24
Total 1996 Population of All 10 Areas at Risk of Exceeding the PM_{10} Standard: 10 Areas, Total 1990 Population	27.39

*EPA has determined that PM_{10} nonattainment in these areas is attributable to international transport. While reductions in heavy-duty vehicle emissions cannot be expected to result in attainment, they will reduce the degree of PM_{10} nonattainment to some degree.

Future concentrations of ambient particulate matter may be influenced by the potentially significant influx of diesel-powered cars and light trucks into the light duty vehicle fleet. At the present time, virtually all cars and light trucks being sold are gasoline fueled. However, the possibility exists that diesels will become more prevalent in the car and light-duty truck fleet, since automotive companies have announced their desire to increase their sales of diesel cars and light trucks. For the Tier 2 rulemaking, the Agency performed a sensitivity analysis using A.D.Little's "most likely" increased growth scenario of diesel penetration into the light duty vehicle fleet which culminated in a 9 percent and 24 percent penetration of diesel vehicles in the LDV and LDT markets, respectively, in 2015 (see Tier 2 RIA, Table III.A.–13). This scenario is relevant for the purpose of this rulemaking because, according to the analysis performed in Tier 2, an increased number of diesel-powered light duty vehicles will increase LDV PM emissions by about 13 percent in 2010 rising to 19 percent in 2030, even with the stringent new PM standards established under the Tier 2 rule. If manufacturers elect to certify a portion of their diesel-powered LDVs to the least-stringent PM standard available under the Tier 2 bin structure, the increase in LDV PM emissions could be

[30] In fact, in two of these areas, New York Co., NY and Harris Co., TX, the average PM_{10} level in 1998 was above the 50 micrograms per cubic meter value of the NAAQS. These two areas are not characterized in Table II.B–4 as areas with a high risk of failing to attain and maintain because lower PM_{10} levels in 1996 and 1997 caused their three-year average PM_{10} level to be lower than the NAAQS. Official nonattainment determinations for the annual PM_{10} NAAQS are made based on the average of 12 quarterly PM_{10} averages.

even greater, thus potentially exacerbating PM_{10} nonattainment problems.

EPA recognizes that the SIP process is ongoing and that many of the six current nonattainment areas in Table II.B–4 are in the process of, or will be adopting additional control measures to achieve the PM_{10} NAAQS in accordance with their attainment dates under the Clean Air Act. EPA believes, however, that as in the case of ozone, there are uncertainties inherent in any demonstration of attainment that is premised on forecasts of emission levels and meteorology in future years. Therefore, even if these areas adopt and submit SIPs that EPA is able to approve as demonstrating attainment of the PM_{10} standard, the modeling conducted for Tier 2 and the history of PM_{10} levels in these areas indicates that there is still a significant risk that these areas would need the reductions from the proposed heavy-duty vehicle standards to maintain the PM_{10} standards in the long term. The other four areas in Table II.B–4 also have a significant risk of experiencing violations of the PM_{10} standard.

In sum, the Agency believes that all 10 areas have a significant risk of experiencing particulate matter levels that violate the PM_{10} standard during the time period when this proposed rule would take effect. These 10 areas have a combined population of 27 million, and are located throughout the nation. In addition, this list does not fully consider the possibility that there are other areas which are now meeting the PM_{10} NAAQS that have at least a significant probability of requiring further reductions to continue to maintain it.

e. Public Health and Welfare Concerns From Exposure to Fine PM

Many epidemiologic studies have shown statistically significant associations of ambient PM levels with a variety of human health endpoints in sensitive populations, including mortality, hospital admissions and emergency room visits, respiratory illness and symptoms measured in community surveys, and physiologic changes in mechanical pulmonary function. These effects have been observed in many areas with ambient PM levels at or below the current PM_{10} NAAQS. The epidemiologic science points to fine PM as being more strongly associated with some health effects, such as premature mortality, than coarse fraction PM.

Associations of both short-term and long-term PM exposure with most of the above health endpoints have been consistently observed. (A more detailed discussion may be found in the RIA.) The general internal consistency of the epidemiologic data base and available findings have led to increasing public health concern, due to the severity of several studied endpoints and the frequent demonstration of associations of health and physiologic effects with ambient PM levels at or below the current PM_{10} NAAQS. The weight of epidemiologic evidence suggests that ambient PM exposure has affected the public health of U.S. populations. Specifically, increased mortality associated with fine PM was observed in cities with longer-term average fine PM concentrations in the range of 16 to 21 ug/m3. For example, over 113 million people (46 percent of continental US population, 1990) lived in areas in 1996 where long term ambient fine particulate matter levels were at or above 16 $\mu g/m^3$, which is the long term average $PM_{2.5}$ concentration that prevailed in Boston during the study which found that acute mortality was statistically significantly associated with daily fine PM concentrations.[31] It is reasonable to anticipate that sensitive populations exposed to similar or higher levels, now and in the 2007 and later time frame, will also be at increased risk of premature mortality associated with exposures to fine PM. In addition, statistically significant relationships have also been observed in U.S. cities between PM levels and increased respiratory symptoms and decreased lung functions in children.

While uncertainty remains in the published data base regarding specific aspects about the nature and magnitude of the overall public health risk imposed by ambient PM exposure, we believe that the body of health evidence is supportive of our view that PM exposures that can reasonably be anticipated to occur in the future are a serious public health concern warranting a requirement to reduce emissions from heavy-duty vehicles, even at levels below the PM_{10} NAAQS. EPA believes the risk is significant from an overall public health perspective because of the large number of individuals in sensitive populations that we expect to be exposed to ambient fine PM in the 2007 and later time frame, as well as the importance of the negative health affects.

We believe the evidence regarding the occurrence of adverse health effects due to exposure to fine PM concentrations, and regarding the populations that are expected to receive exposures at these levels, supports a proposed conclusion that emissions from heavy-duty vehicles that lead to the formation of fine PM in 2007 and later will be contributing to a national air pollution problem that warrants action under section 202(a)(3).

f. Visibility and Regional Haze Effects of Ambient PM

Visibility impairment, also called regional haze, is a complex problem caused by a variety of sources, both natural and anthropogenic (*e.g.*, motor vehicles). Regional haze masks objects on the horizon and reduces the contrast of nearby objects. The formation, extent, and intensity of regional haze are functions of meteorological and chemical processes, which sometimes cause fine particle loadings to remain suspended in the atmosphere for several days and to be transported hundreds of kilometers from their sources (NRC, 1993).

Visibility has been defined as the degree to which the atmosphere is transparent to visible light (NRC, 1993). Visibility impairment is caused by the scattering and absorption of light by particles and gases in the atmosphere. Fine particles (0.1 to 1.0 microns in diameter) are more effective per unit mass concentration at impairing visibility than either larger or smaller particles (NAPAP, 1991). Most of the diesel particle mass emitted by diesel engines falls within this fine particle size range. Light absorption is often caused by elemental carbon, a product of incomplete combustion from activities such as burning diesel fuel or wood. These particles cause light to be scattered or absorbed, thereby reducing visibility.

Heavy-duty vehicles contribute a significant portion of the emissions of direct PM, NO_X, and SO_X that result in ambient PM that contributes to regional haze and impaired visibility. The Grand Canyon Visibility Transport Commission's report found that reducing total mobile source emissions is an essential part of any program to protect visibility in the Western U.S. The Commission identified mobile source pollutants of concern as VOC, NO_X, and elemental and organic carbon. The Western Governors Association, in later commenting on the Regional Haze Rule and on protecting the 16 Class I

[31] In the absence of quality-assured $PM_{2.5}$ monitoring data, we have used an air quality model called Regional Modeling System for Aerosols and Deposition (REMSAD) to estimate recent $PM_{2.5}$ concentrations across the U.S. for 1996. Essentially, REMSAD is a three-dimensional grid-based Eulerian air quality model designed to simulate long-term (*e.g.*, annual) concentrations and deposition of atmospheric pollutants (*e.g.*, particulates and toxics) over large spatial scales (e.g., over the contiguous United States). A more detailed explanation of the methodology is found in the draft RIA.

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areas on the Colorado Plateau, stated that the federal government, and particularly EPA, must do its part in regulating emissions from mobile sources that contribute to regional haze in these areas. As described more fully later in this section, today's proposal would result in large reductions in these pollutants. These reductions are expected to provide an important step towards improving visibility across the nation. Emissions reductions being achieved to attain the 1-hour ozone and PM_{10} NAAQS will assist in visibility improvements, but not substantially. Moreover, the timing of the reductions from the proposed standards fits very well with the goals of the regional haze program. We will work with the regional planning bodies to make sure they have the information to take account of the reductions from any final rule resulting from this proposal in their planning efforts.

The Clean Air Act contains provisions designed to protect national parks and wilderness areas from visibility impairment. In 1999, EPA promulgated a rule that will require States to develop plans to dramatically improve visibility in national parks. Although it is difficult to determine natural visibility levels, we believe that average visual range in many Class I areas in the United States is significantly less (about 50–66% of natural visual range in the West, about 20% of natural visual range in the East) than the visual range that would exist without anthropogenic air pollution. The final Regional Haze Rule establishes a 60-year time period for planning purposes, with several near term regulatory requirements, and is applicable to all 50 states. One of the obligations is for States to conduct visibility monitoring in mandatory Class I Federal areas and determine baseline conditions using data for year 2000 to 2004. Reductions of particles, NO_x, sulfur, and VOCs from this rulemaking would have a significant impact on moving all states towards achieving long-term visibility goals, as outlined in the 1999 Regional Haze Rule.

g. Other Welfare Effects Associated With PM

The deposition of airborne particles reduces the aesthetic appeal of buildings, and promotes and accelerates the corrosion of metals, degrades paints, and deteriorates building materials such as concrete and limestone. This materials damage and soiling are related to the ambient levels of airborne particulates, which are emitted by heavy-duty vehicles. Although there was insufficient data to relate materials damage and soiling to specific concentrations, and thereby to allow the Agency to establish a secondary PM standard for these impacts, we believe that the welfare effects are real and that heavy-duty vehicle PM, NO_X, SO_X, and VOC contribute to materials damage and soiling.

h. Conclusions Regarding PM

There is a significant risk that, despite statutory requirements and EPA and state efforts towards attainment and maintenance, some areas of the U.S. will violate the PM_{10} NAAQS in 2007 and thereafter. We believe that the information provided in this section shows that there will be air pollution that warrants regulatory attention under section 202(a)(3) of the Act. Heavy-duty vehicles contribute substantially to PM_{10} levels, as shown in section II.C below.

It is also reasonable to anticipate that concentrations of fine PM, as represented for example by $PM_{2.5}$ concentrations, will endanger public health and welfare also even if all areas attain and maintain the PM_{10} NAAQS. Heavy-duty vehicles will also contribute to this air pollution problem.

There are also important environmental impacts of PM_{10}, such as regional haze which impairs visibility. Furthermore, while the evidence on soiling and materials damage is limited and the magnitude of the impact of heavy-duty vehicles on these welfare effects is difficult to quantify, these welfare effects support our belief information that this proposal is necessary and appropriate.

3. Other Criteria Pollutants

The standards being proposed today would help reduce levels of three other pollutants for which NAAQS have been established: carbon monoxide (CO), nitrogen dioxide (NO_2), and sulfur dioxide (SO_2). The extent of nonattainment for these three pollutants is small, so the primary effect of today's proposal would be to provide areas concerned with maintaining their attainment status a greater margin of safety. As of 1998, every area in the United States has been designated to be in attainment with the NO_2 NAAQS. As of 1997, only one area (Buchanan County, Missouri) did not meet the primary SO_2 short-term standard, due to emissions from the local power plant. In 1997, only 6 of 537 monitoring sites reported ambient CO levels in excess of the CO NAAQS. There are currently 20 designated CO nonattainment areas, with a combined population of 34 million. There are also 23 designated maintenance areas with an additional combined population of 34 million. The broad trends indicate that ambient levels of CO are declining.

4. Other Air Toxics

In addition to NO_x and particulates, heavy-duty vehicle emissions contain several other substances that are known or suspected human or animal carcinogens, or have serious noncancer health effects. These include benzene,1,3-butadiene, formaldehyde, acetaldehyde, acrolein, and dioxin. For some of these pollutants, heavy-duty engine emissions are believed to account for a significant proportion of total nation-wide emissions. Although these emissions will decrease in the short term, they are expected to increase in 2007–2020 without the proposed emission limits, as the number of miles traveled by heavy-duty trucks increases. In the Draft RIA, we present current and projected exposures to benzene, 1,3-butadiene, formaldehyde, and acetaldehyde from all on-highway motor vehicles.

By reducing hydrocarbon and other organic emissions, both in gas phase and bound to particles, the emission control program proposed in today's action would have a significant impact on direct emissions of air toxics from HDVs. We are also proposing a new formaldehyde standard for heavy-duty vehicles. Today's action would reduce exposure to these substances and therefore help reduce the impact of HDV emissions on cancer and non-cancer health effects. We are currently conducting a risk assessment to assess the risk of cancer in the population that can be attributed to motor vehicle emissions of benzene, 1,3-butadiene, formaldehyde, and acetaldehyde.

a. Benzene

Highway mobile sources account for 52 percent of nationwide emissions of benzene and HDVs account for 7 percent of all highway vehicle benzene emissions.[32] The EPA has recently reconfirmed that benzene is a known human carcinogen by all routes of exposure (including leukemia at high, prolonged air exposures), and is associated with additional health effects including genetic changes in humans and animals and increased proliferation

[32] 1990 Emissions Inventory of Forty Potential Section 112(k) Pollutants: Supporting Data for EPA's Section 112(k) Regulatory Strategy—Final Report. Emission Factors and Inventory Group, Office of Air Quality Planning and Standards, May, 1999.

of bone marrow cells in mice.[33 34 35] EPA believes that the data indicate a causal relationship between benzene exposure and acute lymphocytic leukemia and suggest a relationship between benzene exposure and chronic non-lymphocytic leukemia and chronic lymphocytic leukemia. Respiration is the major source of human exposure and at least half of this exposure is attributable to gasoline vapors and automotive emissions. A number of adverse noncancer health effects including blood disorders, such as preleukemia and aplastic anemia, have also been associated with low-dose, long-term exposure to benzene.

b. 1,3-Butadiene

Highway mobile sources account for 51 percent of the annual emissions of 1,3-butadiene and HDVs account for 15 percent of the highway vehicle portion. Today's program would play an important role in reducing in the mobile contribution of 1,3-butadiene. This compound causes a variety of reproductive and developmental effects in mice and rats exposed to long-term, low doses. There is, however, no human data on 1,3-butadiene. EPA's recently prepared draft health assessment document presents evidence that suggests this substance is a known human carcinogen.[36] The Environmental Health Committee of EPA's Science Advisory Board, in reviewing EPA's draft Health Assessment for 1,3-butadiene, recommended that 1,3-butadiene should be classified as a probable human carcinogen.[37]

c. Formaldehyde

Highway mobile sources contribute 27 percent of the national emissions of formaldehyde, and HDVs account for 35 percent of the highway portion. EPA has classified formaldehyde as a probable human carcinogen based on evidence in humans and in rats, mice, hamsters, and monkeys.[38] Epidemiological studies in occupationally exposed workers suggest that long-term inhalation of formaldehyde may be associated with tumors of the nasopharyngeal cavity (generally the area at the back of the mouth near the nose), nasal cavity, and sinus. Formaldehyde exposure also causes a range of noncancer health effects, including irritation of the eyes (tearing of the eyes and increased blinking) and mucous membranes. Sensitive individuals may experience these adverse effects at lower concentrations than the general population and in persons with bronchial asthma, the upper respiratory irritation caused by formaldehyde can precipitate an acute asthmatic attack.

d. Acetaldehyde

Highway mobile sources contribute 20 percent of the national acetaldehyde emissions and HDVs are responsible for approximately 33 percent of these highway mobile source emissions. Acetaldehyde is classified as a probable human carcinogen and is considered moderately toxic by the inhalation, oral, and intravenous routes. The primary acute effect of exposure to acetaldehyde vapors is irritation of the eyes, skin, and respiratory tract. At high concentrations, irritation and pulmonary effects can occur, which could facilitate the uptake of other contaminants.

e. Acrolein

HDVs are responsible for approximately 53 percent of the mobile source highway emissions and about 8% of the total inventory (1996 NTI). Acrolein is extremely toxic to humans when inhaled, with acute exposure resulting in upper respiratory tract irritation and congestion. The Agency has developed a reference concentration for inhalation (RfC) of acrolein of 0.02 micrograms/m^3.[39] Although no information is available on its carcinogenic effects in humans, based on laboratory animal data, EPA considers acrolein a possible human carcinogen.

f. Dioxins

Recent studies have confirmed that dioxins are formed by and emitted from heavy-duty diesel trucks. These trucks are estimated to account for 1.2 percent of total dioxin emissions. In general, dioxin exposures of concern have primarily been noninhalation exposures associated with human ingestion of certain foods (*e.g.*, beef, vegetables, and dairy products contaminated by dioxin). EPA has classified dioxin as a probable human carcinogen. Acute and chronic effects have also been reported for dioxin from oral and inhalation routes of exposure.[40]

5. Other Environmental Effects

a. Acid Deposition

Acid deposition, or acid rain as it is commonly known, occurs when SO_2 and NO_X react in the atmosphere with water, oxygen, and oxidants to form various acidic compounds that later fall to earth in the form of precipitation or dry deposition of acidic particles.[41] It contributes to damage of trees at high elevations and in extreme cases may cause lakes and streams to become so acidic that they cannot support aquatic life. In addition, acid deposition accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. To reduce damage to automotive paint caused by acid rain and acidic dry deposition, some manufacturers use acid-resistant paints, at an average cost of $5 per vehicle—a total of $61 million per year if applied to all new cars and trucks sold in the U.S.

Acid deposition primarily affects bodies of water that rest atop soil with a limited ability to neutralize acidic compounds. The National Surface Water Survey (NSWS) investigated the effects of acidic deposition in over 1,000 lakes larger than 10 acres and in thousands of miles of streams. It found that acid deposition was the primary cause of acidity in 75 percent of the acidic lakes and about 50 percent of the acidic streams, and that the areas most sensitive to acid rain were the Adirondacks, the mid-Appalachian highlands, the upper Midwest and the high elevation West. The NSWS found that approximately 580 streams in the Mid-Atlantic Coastal Plain are acidic primarily due to acidic deposition. Hundreds of the lakes in the Adirondacks surveyed in the NSWS

[33] International Agency for Research on Cancer, IARC monographs on the evaluation of carcinogenic risk of chemicals to humans, Volume 29, Some industrial chemicals and dyestuffs, International Agency for Research on Cancer, World Health Organization, Lyon, France, p. 345–389, 1982.

[34] Irons, R.D., W.S. Stillman, D.B. Calogiovanni, and V.A. Henry, Synergistic action of the benzene metabolite hydroquinone on myelopoietic stimulating activity of granulocyte/macrophage colony-stimulating factor *in vitro*, Proc. Natl. Acad. Sci. 89:3691–3695, 1992.

[35] Environmental Protection Agency, Carcinogenic Effects of Benzene: An Update, National Center for Environmental Assessment, Washington, DC. 1998.

[36] Environmental Protection Agency, Health Risk Assessment of 1,3-Butadiene. EPA/600/P–98/001A, February 1998.

[37] An SAB Report: Review of the Health Risk Assessment of 1,3-Butadiene. EPA–SAB–EHC–98, August, 1998.

[38] Environmental Protection Agency, Assessment of health risks to garment workers and certain home residents from exposure to formaldehyde, Office of Pesticides and Toxic Substances, April 1987.

[39] U.S. EPA (1993) Environmental Protection Agency, Integrated Risk Information System (IRIS), Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

[40] U.S. EPA (1994) Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) and Related Compounds: Volume III Summary Draft Document. EPA/600/BP–92/001c.

[41] Much of the information in this subsection was excerpted from the EPA document, Human Health Benefits from Sulfate Reduction, written under Title IV of the 1990 Clean Air Act Amendments, U.S. EPA, Office of Air and Radiation, Acid Rain Division, Washington, DC 20460, November 1995.

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have acidity levels incompatible with the survival of sensitive fish species. Many of the over 1,350 acidic streams in the Mid-Atlantic Highlands (mid-Appalachia) region have already experienced trout losses due to increased stream acidity. Emissions from U.S. sources contribute to acidic deposition in eastern Canada, where the Canadian government has estimated that 14,000 lakes are acidic. Acid deposition also has been implicated in contributing to degradation of high-elevation spruce forests that populate the ridges of the Appalachian Mountains from Maine to Georgia. This area includes national parks such as the Shenandoah and Great Smoky Mountain National Parks.

The SO_X and NO_X reductions from today's proposal would help reduce acid rain and acid deposition, thereby helping to reduce acidity levels in lakes and streams throughout the country and help accelerate the recovery of acidified lakes and streams and the revival of ecosystems adversely affected by acid deposition. Reduced acid deposition levels would also help reduce stress on forests, thereby accelerating reforestation efforts and improving timber production. Deterioration of our historic buildings and monuments, and of buildings, vehicles, and other structures exposed to acid rain and dry acid deposition also would be reduced, and the costs borne to prevent acid-related damage may also decline. While the reduction in sulfur and nitrogen acid deposition would be roughly proportional to the reduction in SO_X and NO_X emissions, respectively, the precise impact of today's proposal would differ across different areas.

b. Eutrophication and Nitrification

Nitrogen deposition into bodies of water can cause problems beyond those associated with acid rain. The Ecological Society of America has included discussion of the contribution of air emissions to increasing nitrogen levels in surface waters in a recent major review of causes and consequences of human alteration of the global nitrogen cycle in its Issues in Ecology series.[42] Long-term monitoring in the United States, Europe, and other developed regions of the world shows a substantial rise of nitrogen levels in surface waters, which are highly correlated with human-generated inputs of nitrogen to their watersheds. These nitrogen inputs are dominated by fertilizers and atmospheric deposition.

Human activity can increase the flow of nutrients into those waters and result in excess algae and plant growth. This increased growth can cause numerous adverse ecological effects and economic impacts, including nuisance algal blooms, dieback of underwater plants due to reduced light penetration, and toxic plankton blooms. Algal and plankton blooms can also reduce the level of dissolved oxygen, which can also adversely affect fish and shellfish populations. This problem is of particular concern in coastal areas with poor or stratified circulation patterns, such as the Chesapeake Bay, Long Island Sound, or the Gulf of Mexico. In such areas, the "overproduced" algae tends to sink to the bottom and decay, using all or most of the available oxygen and thereby reducing or eliminating populations of bottom-feeder fish and shellfish, distorting the normal population balance between different aquatic organisms, and in extreme cases causing dramatic fish kills.

Collectively, these effects are referred to as eutrophication, which the National Research Council recently identified as the most serious pollution problem facing the estuarine waters of the United States (NRC, 1993). Nitrogen is the primary cause of eutrophication in most coastal waters and estuaries.[43] On the New England coast, for example, the number of red and brown tides and shellfish problems from nuisance and toxic plankton blooms have increased over the past two decades, a development thought to be linked to increased nitrogen loadings in coastal waters. Airborne NO_X contributes from 12 to 44 percent of the total nitrogen loadings to United States coastal water bodies. For example, approximately one-quarter of the nitrogen in the Chesapeake Bay comes from atmospheric deposition.

Excessive fertilization with nitrogen-containing compounds can also affect terrestrial ecosystems.[44] Research suggests that nitrogen fertilization can alter growth patterns and change the balance of species in an ecosystem. In extreme cases, this process can result in nitrogen saturation when additions of nitrogen to soil over time exceed the capacity of the plants and microorganisms to utilize and retain the nitrogen. This phenomenon has already occurred in some areas of the U.S.

Deposition of nitrogen from heavy-duty vehicles contributes to these problems. In the Chesapeake Bay region, modeling shows that mobile source deposition occurs in relatively close proximity to highways, such as the I–95 corridor which covers part of the Bay surface. The proposed new standards for heavy-duty vehicles would reduce total NO_X emissions by 2.8 million tons in 2030. The NO_X reductions should reduce the eutrophication problems associated with atmospheric deposition of nitrogen into watersheds and onto bodies of water, particularly in aquatic systems where atmospheric deposition of nitrogen represents a significant portion of total nitrogen loadings.

c. POM Deposition

EPA's Great Waters Program has identified 15 pollutants whose deposition to water bodies has contributed to the overall contamination loadings to the these Great Waters.[45] One of these 15 pollutants, a group known as polycyclic organic matter (POM), are compounds that are mainly adhered to the particles emitted by mobile sources and later fall to earth in the form of precipitation or dry deposition of particles. The mobile source contribution of the 7 most toxic POM is at least 62 tons/year and represents only those POM that adhere to mobile source particulate emissions.[46] The majority of these emissions are produced by diesel engines.

POM is generally defined as a large class of chemicals consisting of organic compounds having multiple benzene rings and a boiling point greater than 100°C. Polycyclic aromatic hydrocarbons are a chemical class that is a subset of POM. POM are naturally occurring substances that are byproducts of the incomplete combustion of fossil fuels and plant and animal biomass (e.g., forest fires). Also, they occur as byproducts from steel and coke productions and waste incineration.

Evidence for potential human health effects associated with POM comes from studies in animals (fish, amphibians, rats) and in human cells culture assays. Reproductive, developmental, immunological, and endocrine (hormone) effects have been documented in these systems. Many of the compounds included in the class of compounds known as POM are classified by EPA as probable human carcinogens based on animal data.

The particulate reductions from today's proposal would help reduce not only the particulate emissions from highway diesel engines but also the deposition of the POM adhering to the particles, thereby helping to reduce health effects of POM in lakes and streams, accelerate the recovery of affected lakes and streams, and revive the ecosystems adversely affected.

C. Contribution from Heavy-Duty Vehicles

Nationwide, heavy-duty vehicles contribute about 15 percent of the total NO_X inventory, and 29 percent of the mobile source inventory. Heavy-duty NO_X emissions also contribute to fine particulate concentrations in ambient air due to the transformation in the atmosphere to nitrates. The NO_X reductions resulting from today's proposed standards would therefore have a considerable impact on the national NO_X inventory. Light and heavy-duty mobile sources account for 24 percent of the PM_{10} (excluding the contribution of miscellaneous and natural sources), and heavy-duty vehicles account for 14 percent of the mobile source portion of national PM_{10} emissions. The heavy-duty portion of the inventory is often greater in the cities, and the reductions proposed in this rulemaking would have a relatively greater benefit in those areas.

1. NO_X Emissions

Heavy-duty vehicles are important contributors to the national inventories of NO_X emissions, and they contribute moderately to national VOC pollution. The Draft RIA for this proposal describes in detail recent emission inventory modeling completed by EPA. HDVs are expected to contribute approximately 15 percent of annual NO_X emissions in 2007 (Table II.C–1).

TABLE II.C–1.—2007 HEAVY-DUTY VEHICLE CONTRIBUTION TO URBAN NO_X INVENTORIES

[Amounts in percent]

Metropolitan statistical area	Portion of total NO_X	Portion of mobile source NO_X
National	15%	29%
Albuquerque	25%	38%
Atlanta	23%	36%
San Francisco	23%	29%
Spokane	23%	29%
Seattle	22%	26%
Dallas	22%	28%
Charlotte	21%	34%
Washington	20%	37%
Los Angeles	20%	26%
San Antonio	20%	31%
New York	19%	30%
Miami	18%	23%
Phoenix	18%	28%
Philadelphia	18%	30%
Cleveland	17%	30%
St. Louis	16%	34%

The contribution of heavy-duty vehicles to NO_X inventories in many MSAs is significantly greater than that reflected in the national average. For example, HDV contributions to NO_X in Albuquerque, Atlanta, San Francisco, Spokane, Seattle, and Dallas are projected to be 22 to 25 percent of the MSA-specific inventories in 2007, which is significantly higher than the national average. These data are based largely on our Tier 2 inventories and have been adjusted to reflect new information regarding the VMT split between light-duty and heavy-duty vehicles as discussed in the draft RIA. These data will be further updated for the final rule to reflect more recent modeling.

2. PM Emissions

Nationally, we estimate that primary emissions of PM_{10} to be about 33.2 million tons/year in 2007. Fugitive dust, other miscellaneous sources and crustal material (wind erosion) comprise approximately 90 percent of the 2007 PM_{10} inventory. However, there is evidence from ambient studies that emissions of these materials may be overestimated and/or that once emitted they have less of an influence on monitored PM concentration than this inventory share would suggest. Mobile sources account for 24 percent of the PM_{10} inventory (excluding the contribution of miscellaneous and natural sources) and highway heavy-duty engines, the subject of today's action, account for 14 percent of the mobile source portion of national PM_{10} emissions.

The contribution of heavy-duty vehicle emissions to total PM emissions in some metropolitan areas is substantially higher than the national average. This is not surprising, given the high density of these engines operating in these areas. For example, in Albuquerque, Pittsburgh, St. Louis, and Atlanta, the estimated 2007 highway heavy-duty vehicle contribution to mobile source PM_{10} ranges from 16 to 21 percent, and the national percent contribution to mobile sources for 2007 is projected to be about 14 percent. As illustrated in Table II.C–2 , heavy-duty vehicles operated Washington, Fairbanks, Billings, and Detroit also account for a slightly higher portion of the mobile source PM inventory than the national average. These data are based largely on our Tier 2 inventories and have been adjusted to reflect new information regarding the VMT split between light-duty and heavy-duty vehicles as discussed in the draft RIA. These data will be further updated for the final rule to reflect more recent modeling. Importantly, these estimates do not include the contribution from secondary PM which is an important component of diesel PM.

TABLE II.C–2.—2007 HEAVY-DUTY VEHICLE CONTRIBUTION TO URBAN MOBILE SOURCE PM INVENTORIES

Metropolitan statistical area	PM_{10} contribution from HDVs (in percent)
National	14
Albuquerque	21
Pittsburgh	18
St. Louis	17
Atlanta	16
Washington	15
Fairbanks	15
Billings	15
Detroit	15

In addition to the national inventories, investigations have been conducted in certain urban areas which provide information about the contribution of HD diesel vehicles and engines to ambient $PM_{2.5}$ concentrations. This is particularly relevant as diesel PM, for the most part, is composed of fine particles under 2.5 microns. Information about ambient concentrations of diesel PM and the relative contribution of diesel engines to ambient PM levels is available from source-receptor models, dispersion models, and elemental carbon measurements. The most commonly used receptor model for quantifying concentrations of diesel PM at a

[42] Vitousek, Peter M., John Aber, Robert W Howarth, Gene E. Likens, et al. 1997. Human Alteration of the Global Nitrogen Cycle: Causes and Consequences. Issues in Ecology. Published by Ecological Society of America. Number 1. Spring 1997.

[43] Much of this information was taken from the following EPA document: Deposition of Air Pollutants to the Great Waters-Second Report to Congress, Office of Air Quality Planning and Standards. June 1997. EPA–453/R–97–011. A Third Report to Congress on Deposition of Air Pollutants to the Great Waters will be forthcoming the the next month. We will update this section with information from the Third Report in the final rule.

[44] Terrestrial nitrogen deposition can act as a fertilizer. In some agricultural areas, this effect can be beneficial.

[45] Much of this information was taken from the following EPA document: Deposition of Air Pollutants to the Great Waters-Second Report to Congress, Office of Air Quality Planning and Standards. June 1997. EPA–453/R–97–011. You are referred to that document for a more detailed discussion. A Third Report to Congress on Deposition of Air Pollutants to the Great Waters will be forthcoming the the next month. We will update this section with information from the Third Report in the final rule.

[46] The 1996 National Toxics Inventory. Office of Air Quality Planning and Standards. October 1999.

receptor site is the chemical mass balance model (CMB). Input to the CMB model includes PM measurements made at the receptor site as well as measurements made of each of the source types suspected to impact the site. Because of problems involving the elemental similarity between diesel and gasoline emission profiles and their co-emission in time and space, it is necessary to carefully quantify chemical molecular species that provide markers for separation of these sources. Recent advances in chemical analytical techniques have facilitated the development of sophisticated molecular source profiles, including detailed speciation of organic compounds, which allow the apportionment of PM to gasoline and diesel sources with increased certainty. Older studies that made use of only elemental source profiles have been published and are summarized here, but are subject to more uncertainty. It should be noted that since receptor modeling is based on the application of source profiles to ambient measurements, this estimate of diesel PM concentrations does not distinguish between on-road and non-road sources for diesel PM. In addition, this model accounts for primary emissions of diesel PM only; the contribution of secondary aerosols is not included.

Dispersion models estimate ambient levels of PM at a receptor site on the basis of emission factors for the relevant sources and the investigator's ability to model the advection, mixing, deposition, and chemical transformation of compounds from the source to the receptor site. Dispersion models can provide the ability to distinguish on-highway from off-highway diesel source contributions and can be used to estimate the concentrations of secondary aerosols from diesel exhaust. Dispersion modeling is being conducted by EPA to estimate county-specific concentrations of, and exposures to, several toxic species, including diesel PM. Results from this model are expected in 2000.

Elemental carbon is a major component of diesel exhaust, contributing approximately 60-80 percent of diesel particulate mass, depending on engine technology, fuel type, duty cycle, lube oil consumption, and state of engine maintenance.[47 48 49 50] In most ambient environments, diesel PM is one of the major contributors to elemental carbon, with other potential sources including gasoline exhaust; combustion of coal, oil, or wood; charbroiling; cigarette smoke; and road dust. Because of the large portion of elemental carbon in diesel PM, and the fact that diesel exhaust is one of the major contributors to elemental carbon in most ambient environments, diesel PM concentrations can be bounded using elemental carbon measurements. One approach for calculating diesel PM concentrations from elemental carbon measurements is presented in the draft Health Assessment Document for Diesel Emissions. The surrogate diesel PM calculation is a useful approach for estimating diesel PM in the absence of a more sophisticated modeling analysis for locations where elemental carbon concentrations are available.

Ambient concentrations of diesel PM reported for the period before 1990 when no nationwide PM controls were in place for HDVs suggest that annually averaged diesel PM levels in urban and suburban environments ranged from approximately 1.9 to 11.6 micrograms/m^3 (Table II.C–3a and Table II.C–3b). On individual days, diesel PM concentrations as high as 22 micrograms/m^3 were reported. Studies reporting annual average diesel PM concentrations in urban and suburban areas after 1990 indicate that diesel PM concentrations range from approximately 0.5 to 3.6 micrograms/m^3, with studies over short periods amidst dense bus traffic averaging 29.2 micrograms/m^3 and ranging up to 46.7 micrograms/m^3 (Table II.C–3a and Table II.C–3b). Dispersion modeling conducted in Southern California reported that the highway contribution to the reported diesel PM levels ranged from 63–89 percent of the total diesel PM (Table II.C–3b). In the two dispersion model studies reporting diesel PM in Southern California in August 1987 and September 1996, secondary formation of diesel PM accounted for 27 percent to 67 percent of the total diesel PM (Table II.C–3b). Using elemental carbon as a surrogate for diesel PM suggests that diesel PM concentrations measured in some urban and rural areas in the 1990s range from approximately 0.4 to 4.5 micrograms/m^3 in urban environments and 0.2 to 1.3 micrograms/m^3 in rural environments (Table II.C–3c).

TABLE II.C–3a.—AMBIENT DIESEL PM CONCENTRATIONS AND CONTRIBUTION TO TOTAL AMBIENT PM_{10} AND $PM_{2.5}$ FROM CHEMICAL MASS BALANCE STUDIES

Location	Year of sampling	Diesel $PM_{2.5}$ µg/m^3	Diesel PM % of total PM
West LA, CA	1982, annual	4.4	13
Pasadena, CA	1982, annual	5.3	19
Rubidoux, CA	1982, annual	5.4	13
Downtown LA, CA[a]	1982, annual	11.6	36
Phoenix area, AZ[b]	1989–90, Winter	*4–22	50
Phoenix, AZ[c]	1994–95, Winter	0–5.3	0–27
California, 15 Air Basins[d]	1988–92, annual	*0.2–3.6	†
Manhattan, NY[e]	1993, Spring, 3 d	*13.2–46.7	31–68
Welby and Brighton, CO[f]	1996–97, Winter, 60 d	0–7.3	0–26

*PM_{10}. The reader should note that 80–95% of diesel PM is $PM_{2.5}$.
†Not Available.
[a] Schauer, J.J., Rogge, W.F., Hildemann, L.M., Mazureik, M.A., Cass, G.R., and B.R.T. Simoneit (1996) Source Apportionment of Airborne particulate Matter Using Organic Compounds as Tracers. Atmos. Environ. 30(22):3837–3855.

[47] Zaebst, D.D., Clapp D.E., Blake L.M., Marlow D.A., Steenland K., Hornung R.W., Scheutzle D. and J. Butler (1991) Quantitative Determination of Trucking Industry Workers Exposures to Diesel Exhaust Particles. Am. Ind. Hyg. Assoc. J., 52:529–541.

[48] Grabeski, M.S., McCormick, R.L., Yanowitz, J., and L.B.A. Ryan (1998) Heavy-Duty Diesel Testing for the Northern Front Range Air Quality Study. Colorado Institute for Fuels and Engine Research.

[49] Warner-Selph, M.A., Dietzmann, H.E. (1984) Characterization of Heavy-Duty Motor Vehicle Emissions Under Transient Driving Conditions. Southwest Research Institute. EPA–600/3–84–104.

[50] Pierson, W.R., Brachazek, W.W. (1983) Particulate Matter Associated with Vehicles on the Road. Aerosol Sci. & Tech. 2:1–40.

[b] Chow, J.C., Watson, J.G., Richards, L.W., Haase, D.L., McDade, C., Dietrich, D.L., Moon, D., and C. Sloane (1991) The 1989–1990 Phoenix PM_{10} Study. Volume II: Source Apportionment. Final Report. DRI Document No. 8931.6F1, prepared for Arizona Department of Environmental Air Quality, Phoenix, AZ, by Desert Research Institute, Reno, NV.
[c] Maricopa Association of Governments. The 1999 Brown Cloud Project for the Maricopa Association of Governments Area, Revised Draft Report, November 1999.
[d] California Environmental Protection Agency (1998) Report to the Air Resources Board on the Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant. Appendix III, Part A: Exposure Assessment, April 1998.
[e] Wittorff, D.N., Gertler, A.W., Chow, J.C., Barnard, W.R. Jongedyk, H.A. The Impact of Diesel Particulate Emissions on Ambient Particulate Loadings. Air & Waste Management Association 87th Annual Meeting, Cincinnati, OH, June 19–24, 1994.
[f] Fujita, E., Watson, J.G., Chow, J.C., Robinson, N.F., Richards, L.W., Kumar, N. (1998) The Northern Front Rage Air Quality Study Final Report Volume C: Source Apportionment and Simulation Methods and Evaluation. http://nfraqs.cira.colostate.edu/

TABLE II.C–3b.—AMBIENT DIESEL PM CONCENTRATIONS AND CONTRIBUTION TO TOTAL AMBIENT $PM_{2.5}$ FROM DISPERSION MODELING STUDIES

Location	Year of sampling	Diesel $PM_{2.5}$ µ/m^3	Diesel PM % of total PM
Azusa, CA	1982, annual	**1.4	5
Pasadena, CA	1982, annual	**2.0	7
Anaheim, CA	1982, annual	**2.7	12
Long Beach, CA	1982, annual	**3.5	13
Downtown LA, CA	1982, annual	**3.5	11
Lennox, CA	1982, annual	**3.8	13
West LA, CA[a]	1982, annual	**3.8	16
Claremont, CA[b]	18–19 Aug 1987	2.4	8
Long Beach, CA	24 Sept 1996	+1.9(2.6)	8
Fullerton, CA	24 Sept 1996	+2.4(3.9)	9
Riverside, CA[c]	25 Sept 1996	+4.4(13.3)	12

+Value in parenthesis includes secondary diesel PM (nitrate, ammonium, sulfate and hydrocarbons) due to atmospheric reactions of primary diesel emissions of NO_x, SO_2 and hydrocarbons.
**On-road diesel vehicles only; All other values are for on-road plus nonroad diesel emissions.
[a] Cass, G.R. and H.A. Gray (1995) Regional Emissions and Atmospheric Concentrations of Diesel Engine Particulate Matter: Los Angeles as a Case Study. In: Diesel Exhaust: A Critical Analysis of Emissions, Exposure, and Health Effects. A Special Report of the Institute's Diesel Working Group. Health Effects Institute, Cambridge, MA, pp. 125–137.
[b] Kleeman, M.J., Cass, G.R. (1999a) Identifying the Effect of Individual Emissions Sources on Particulate Air Quality Within a Photochemical Aerosol Processes Trajectory Model. Atmos. Environ. 33:4597–4613.
[c] Kleeman, M.J., Hughes, L.S., Allen, J.O., Cass, G.R. (1999b) Source Contributions to the Size and Composition Distribution of Atmospheric Particles: Southern California in September 1996. Environ. Sci. Technol. 33:4331–4351.

TABLE II.C–3c.—AMBIENT DIESEL PM CONCENTRATIONS AND CONTRIBUTION TO TOTAL AMBIENT $PM_{2.5}$ FROM ELEMENTAL CARBON MEASUREMENTS

Location	Year of sampling	Diesel $PM_{2.5}$ µg/m^3	Diesel PM % of total PM
Boston, MA	1995, annual	0.7–1.7	3–15
Rochester, NY	1995, annual	0.4–0.8	2–9
Quabbin, MA	1995, annual	0.2–0.6	1–6
Reading, MA	1995, annual	0.4–1.3	2–7
Brockport, NY[a]	1995, annual	0.2–0.5	1–5
Washington, DC[b]	1992–1995, annual	1.3–1.8	6–10
South Coast Air Basin[c]	1995–1996, annual	‡2.4–4.5	†

‡The Multiple Air Toxics Exposure Study in the South Coast Air Basin reported average annual values for 8 sites in the South Coast Basin.
†Not Available.
[a] Salmon, L.G., Cass, G.R., Pedersen, D.U., Durant, J.L., Gibb, R., Lunts, A., and M. Utell (1997) Determination of fine particle concentration and chemical composition in the northeastern United States, 1995. Progress Report to Northeast States for Coordinated Air Use Management (NESCAUM), September 1999.
[b] Sisler, J.F. (1996) Spatial and Seasonal Patterns and Long Term Variability of the Composition of the Haze in the United States: An Analysis of Data from the IMPROVE Network. Cooperative Institute for Research in the Atmosphere. Colorado State University. ISSN: 0737–5352–32.
[c] South Coast Air Quality Management District (2000) Multiple Air Toxics Exposure Study in the South Coast Air Basin (MATES–II), Final Report and Appendices, March 2000.

The city-specific emission inventory analysis and independent investigations of ambient $PM_{2.5}$ summarized here indicate that the contribution of diesel engines to PM inventories in several urban areas around the U.S. is much higher than indicated by the national PM emission inventories only. One possible explanation for this is the concentrated use of diesel engines in certain local or regional areas which is not well represented by the national, yearly average presented in national PM emission inventories. Another reason may be underestimation of the in-use diesel PM emission rates. Our current modeling incorporates deterioration only as would be experienced in properly maintained, untampered vehicles. We are currently in the process of reassessing the rate of in-use deterioration of diesel engines and vehicles which could greatly increase the contribution of HDVs to diesel PM.

Moreover, heavy-duty vehicles will have a more important contributing role in ambient $PM_{2.5}$ concentrations than in ambient PM_{10} concentrations. In addition, the absolute contribution from heavy-duty vehicles is larger in relationship to the numerically lower $PM_{2.5}$ standard, making them more

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important to attainment and maintenance.

3. Environmental Justice

Environmental justice is a priority for EPA. The Federal government documented its concern over this issue through issuing Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994). This Order requires that federal agencies make achieving environmental justice part of their mission. Similarly, the EPA created an Office of Environmental Justice (originally the Office of Environmental Equity) in 1992, commissioned a task force to address environmental justice issues, oversees a Federal Advisory Committee addressing environmental justice issues (the National Environmental Justice Advisory Council), and has developed an implementation strategy as required under Executive Order 12898.

Environmental justice is a movement promoting the fair treatment of people of all races, income, and culture with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment implies that no person or group of people should shoulder a disproportionate share of any negative environmental impacts resulting from the execution of this country's domestic and foreign policy programs.

For the last several years, environmental organizations and community-based citizens groups have been working together to phase out diesel buses in urban areas. For example, the Natural Resources Defense Council initiated a "Dump Dirty Diesel" campaign in the mid-1990s to press for the phase out of diesel buses in New York City. Other environmental organizations operating in major cities such as Boston, Newark, and Los Angeles have joined this campaign. The Coalition for Clean Air worked with NRDC and other experts to perform exposure monitoring in communities located near distribution centers where diesel truck traffic is heavy. These two organizations concluded that facilities with heavy truck traffic are exposing local communities to diesel exhaust concentrations far above the average levels in outdoor air. The report states: "These affected communities, and the workers at these distribution facilities with heavy diesel truck traffic, are bearing a disproportionate burden of the health [51-62] risks." [63] Other diesel "hot spots" identified by the groups are bus terminals, truck and bus maintenance facilities, retail distribution centers, and busy streets and highways.

Although the new standards proposed in this rulemaking would not reroute heavy-duty truck traffic or relocate bus terminals, they would be expected to improve air quality across the country and would provide increased protection to the public against a wide range of health effects, including chronic bronchitis, respiratory illnesses, and aggravation of asthma symptoms. These air quality and public health benefits could be expected to mitigate some of the environmental justice concerns related to heavy-duty vehicles since the proposal would provide relatively larger benefits to heavily impacted areas.

D. Anticipated Emissions Benefits

This subsection presents the emission benefits we anticipate from heavy-duty vehicles as a result of our proposed NO_X, PM, and NMHC emission standards for heavy-duty engines. The graphs and tables that follow illustrate the Agency's projection of future emissions from heavy-duty vehicles for each pollutant. The baseline case represents future emissions from heavy-duty vehicles at present standards (including the MY2004 standards). The controlled case quantifies the future emissions of heavy-duty vehicles if the new standards proposed in this rulemaking are finalized and implemented.

1. NO_X Reductions

The Agency expects substantial NO_X reductions on both a percentage and a tonnage basis from this proposal. As illustrated in the following graph, the air quality benefit expected from this proposal is a reduction in NO_X emissions from HDVs of 2.0 million tons in 2020.[64] The Draft RIA provides additional projections between 2007 and 2030. As stated previously, HDVs contribute about 15 percent to the national NO_X inventory for all sources. The NO_X standards proposed in this rule would have a substantial impact on the total NO_X inventory so that in 2030, HDVs under today's proposed standards would account for only 3 percent of the national NO_X inventory. Figure II.D–1 shows our national projections of total NO_X emissions with and without the proposed engine controls. This includes both exhaust and crankcase emissions. The proposed standards should result in about a 90 percent reduction in NO_X from new engines.[65]

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[51-62] [Reserved]

[63] *Exhausted by Diesel: How America's Dependence on Diesel Engines Threatens Our Health*, Natural Resources Defense Council, Coalition for Clean Air, May 1998.

[64] The baseline used for this calculation is the 2004 HDV standards (64 FR 58472). These reductions are in addition to the NO_X emissions reductions projected to result from the 2004 HDV standards.

[65] We include in the NO_X projections excess emissions, developed by the EPA's Office of Enforcement and Compliance, that were emitted from many model year 1988–98 diesel engines. This is described in more detail in Chapter 2 of the draft RIA.

Figure II.D-1: Projected Nationwide Heavy-Duty Vehicle NOx Emissions

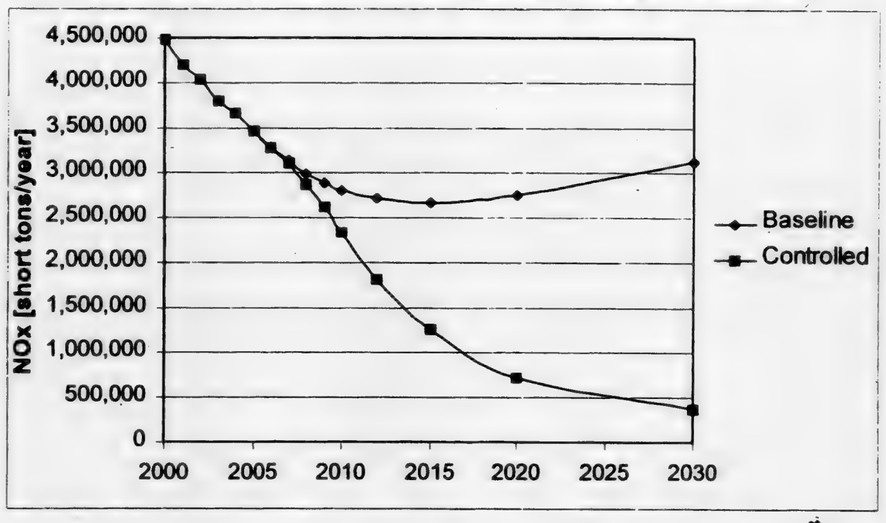

2. PM Reductions

As stated previously, HDVs contribute about 14 percent to the national PM_{10} inventory for mobile sources. The 90 percent reduction in the PM standard for HDVs proposed in this rule would have a substantial impact on the mobile source PM inventory, so that in 2030 HDVs under today's proposed standards would account for only 3 percent of the national mobile source PM inventory.

The majority of the projected PM reductions are directly a result of the proposed exhaust PM standard. However, a modest amount of PM reductions would come from reducing sulfur in the fuel. For the existing fleet of heavy-duty vehicles, a small fraction of the sulfur in diesel fuel is emitted directly into the atmosphere as direct sulfate, and a portion of the remaining fuel sulfur is transformed in the atmosphere into sulfate particles, referred to as indirect sulfate. Reducing sulfur in the fuel decreases the amount of direct sulfate PM emitted from heavy-duty diesel engines and the amount of heavy-duty diesel engine SO_X emissions that are transformed into indirect sulfate PM in the atmosphere.[66] For engines meeting the proposed standards, we consider low sulfur fuel to be necessary to enable the PM control technology. In other words, we do not claim an additional benefit beyond the proposed standard for reductions in direct sulfate PM. However, once the proposed low sulfur fuel requirements go into effect, pre-2007 model year engines would also be using low sulfur fuel. Because these engines would be certified with high sulfur fuel, they would achieve reductions in PM beyond their certification levels.

Figure II.D–2 shows our national projections of total HDV PM emissions with and without the proposed engine controls. This figure includes crankcase emissions and the direct sulfate PM benefits due to the use of low sulfur fuel by the existing fleet. These direct sulfate PM benefits from the existing fleet are also graphed separately. The proposed standards should result in about a 90 percent reduction in total PM from new engines. The proposed low sulfur fuel should result in about a 95 percent reduction in direct sulfate PM from pre-2007 engines. Due to complexities of the conversion and removal processes of sulfur dioxide, we do not attempt to quantify the indirect sulfate reductions that would be derived from this rulemaking. Nevertheless, the Agency believes that these indirect sulfate PM reductions are likely to contribute significant additional benefits to public health and welfare. The air quality benefit of the new PM standards and low sulfur diesel fuel are presented in Figure II.D–2, indicating a 83,000 ton direct PM reduction in 2020.

[66] Sulfate forms a significant portion of total fine particulate matter in the Northeast. Chemical speciation data in the Northeast collected in 1995 shows that the sulfate fraction of fine particulate matter ranges from 20 and 27 percent of the total fine particle mass. *Determination of Fine Particle and Coarse Particle Concentrations and Chemical Composition in the Northeastern United States, 1995*, NESCAUM, prepared by Cass, et al., September 1999.

Figure II.D-2: Projected Nationwide Heavy-Duty Vehicle PM Emissions and Direct Sulfate Emission Reductions

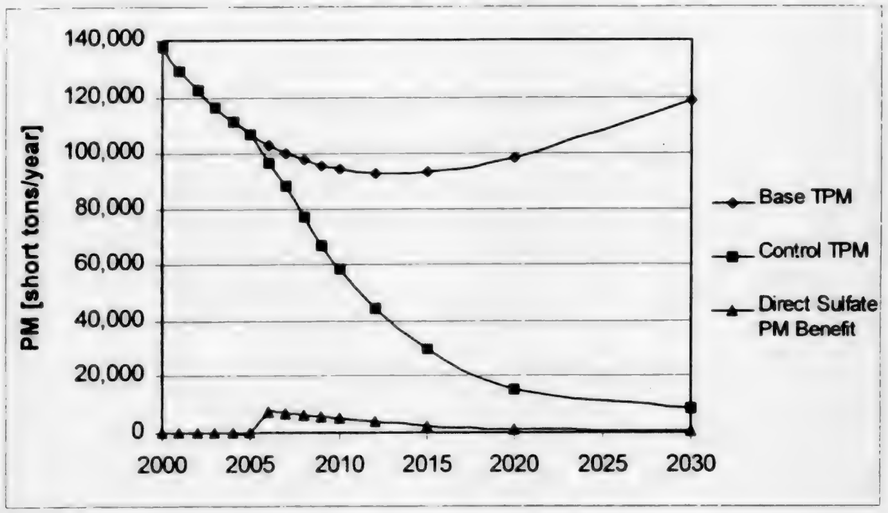

3. NMHC Reductions

The standards described in section III are designed to be feasible for both gasoline and diesel heavy-duty vehicles. The NMHC standards are expected to be more of a challenge for the gasoline vehicles than for the diesel vehicles, however. (The converse is true for the PM standards.) Based on our analysis of the aftertreatment technology described in section III, diesel engines meeting the proposed PM standard are expected to have NMHC emissions levels well below the standard in use. Furthermore, although the proposed standards give manufacturers the same phase-in for NMHC as for NO_X, we model the NMHC reductions for diesel vehicles to be fully in place in 2007. We believe the use of aftertreatment for PM control would cause the NMHC levels to be below the proposed standards as soon as the PM standard goes into effect in 2007. We request comment on this assumption.

HDVs account for about 3 percent of national VOC and 8 percent from mobile sources in 2007. Figure II.D–3 shows our national projections of total NMHC emissions with and without the proposed engine controls. This includes both exhaust emissions and evaporative emissions. As presented in Figure II.D–3, the Agency projects a reduction of 230,000 tons of NMHC in 2020 due to the proposed standards.

Figure II.D-3: Projected Nationwide Heavy-Duty Vehicle NMHC Emissions

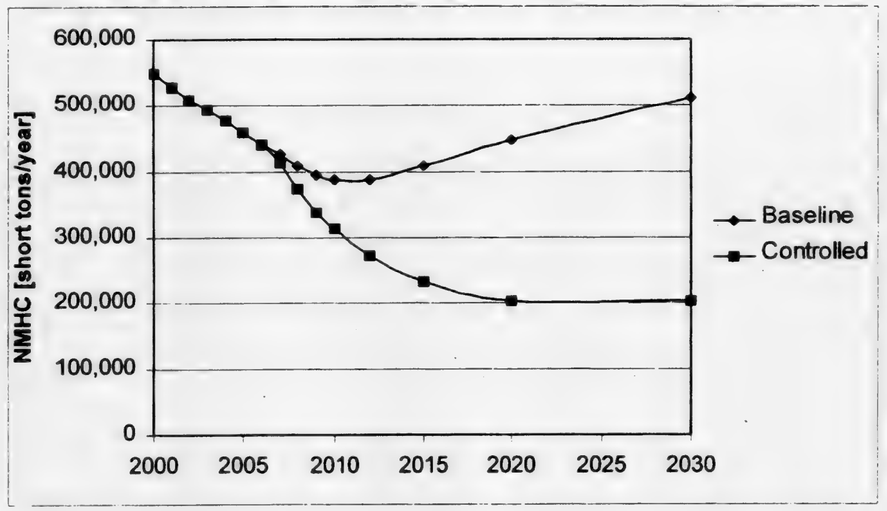

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4. Additional Emissions Benefits

This subsection looks at tons/year emission inventories of CO, SO_X, and air toxics from HDEs. Although we are not including stringent standards for these pollutants in our proposed standards, we believe the proposed standards would result in reductions in CO, SO_X, and air toxics. Here, we present our anticipated benefits.

a. CO Reductions

In 2007, HDVs are projected to contribute to approximately 5 percent of national CO and 9 percent of CO from mobile sources. Although it does not propose new CO emission standards, today's proposal would nevertheless be expected to result in a considerable reduction in CO emissions from heavy-duty vehicles. CO emissions from heavy-duty diesel vehicles, although already very low, would likely be reduced by an additional 90 percent due to the presence of aftertreatment devices. CO emissions from heavy-duty gasoline vehicles would also likely decline as the NMHC emissions are decreased. Table II.D–1 presents the projected reductions in CO emissions from HDVs.

TABLE II.D–1.—ESTIMATED REDUCTIONS IN CO

Calendar year	CO benefit (thousand short tons)
2007	71
2010	405
2015	911
2020	1,250
2030	1,640

b. SO_X Reductions

HDVs are projected to emit approximately 0.5 percent of national SO_X and 7 percent of mobile source SO_X in 2007. We are proposing significant reductions in diesel fuel sulfur to enable certain emission control devices to function properly. We expect SO_X emissions to decline as a direct benefit of low sulfur diesel fuel. The majority of these benefits would be from heavy-duty highway diesel vehicles; however, some benefits would also come from highway fuel burned in other applications. As discussed in greater detail in the section on PM reductions, the amount of sulfate particles (direct and indirect) formed as a result of diesel exhaust emissions would decline for all HD diesel engines operated on low sulfur diesel fuel, including the current on-highway HD diesel fleet, and those non-road HD diesel engines that may operate on low sulfur diesel fuel in the future. Table II.D–2 presents our estimates of SO_X reductions resulting from the proposed low sulfur fuel.

TABLE II.D–2.—ESTIMATED REDUCTIONS IN SO_X DUE TO LOW SULFUR FUEL

Calendar year	SO_X benefit (thousand short tons)
2007	101
2010	106
2015	115
2020	124
2030	139

c. Air Toxics Reductions

This proposal establishes new hydrocarbon and formaldehyde standards for heavy-duty vehicles. Hydrocarbons are a broad class of chemical compounds containing carbon and hydrogen. Many forms of hydrocarbons, such as formaldehyde, are directly hazardous and contribute to what are collectively called "air toxics." Air toxics are pollutants known to cause or suspected of causing cancer or other serious human health effects or ecosystem damage. The Agency has identified as least 20 compounds emitted from on-road gasoline vehicles that have toxicological potential, 19 of which are emitted by diesel vehicles as well as an additional 20 compounds which have been listed as toxic air

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contaminants by California ARB.[67,68] This proposal also seeks to reduce emissions of diesel exhaust and diesel particulate matter (see section II.B for a discussion of health effects).

Our assessment of heavy-duty vehicle (gasoline and diesel) air toxics focuses on the following compounds with cancer potency estimates that have significant emissions from heavy-duty vehicles: benzene, formaldehyde, acetaldehyde, and 1,3-butadiene. These compounds are an important, but limited, subset of the total number of air toxics that exist in exhaust and evaporative emissions from heavy-duty vehicles. The reductions in air toxics quantified in this section represent only a fraction of the total number and amount of air toxics reductions expected from the proposed new hydrocarbon standards.

For this analysis, we estimate that air toxic emissions are a constant fraction of hydrocarbon exhaust emissions. Because air toxics are a subset of hydrocarbons, and new emission controls are not expected to preferentially control one type of air toxic over another, the selected air toxics chosen for this analysis are expected to decline by the same percentage amount as hydrocarbon exhaust emissions. We have not performed a separate analysis for the new formaldehyde standard since compliance with the hydrocarbon standard should result in compliance with the formaldehyde standard for all petroleum-fueled engines. The Draft RIA provides more detail on this analysis. Table II.D–3 shows the estimated air toxics reductions associated with the anticipated reductions in hydrocarbons.

TABLE II.D–3.—ESTIMATED REDUCTIONS IN AIR TOXICS

[Short tons]

Calendar year	Benzene	Formaldehyde	Acetaldehyde	1,3-Butadiene
2007	153	831	318	65
2010	932	4,750	1,870	382
2015	2,080	11,400	4,460	909
2020	2,780	15,800	6,120	1,250
2030	3,510	20,500	7,850	1,600

E. Clean Heavy-Duty Vehicles and Low-Sulfur Diesel Fuel Are Critically Important for Improving Human Health and Welfare

Despite continuing progress in reducing emissions from heavy-duty engines, emissions from these engines continue to be a concern for human health and welfare. Ozone continues to be a significant public health problem, and affects not only people with impaired respiratory systems, such as asthmatics, but healthy children and adults as well. Ozone also causes damage to plants and has an adverse impact on agricultural yields. Diesel exhaust also continues to be a significant public health concern.

Today's proposal would reduce NO_X, VOC, CO, PM, and SO_X emissions from these heavy-duty vehicles substantially. These reductions would help reduce ozone levels nationwide and reduce the frequency and magnitude of predicted exceedances of the ozone standard. These reductions would also help reduce PM levels, both by reducing direct PM emissions and by reducing emissions that give rise to secondary PM. The NO_X and SO_X reductions would help reduce acidification problems, and the NO_X reductions would help reduce eutrophication problems. The PM and NO_X standard proposed today would help improve visibility. All of these reductions could be expected to have a beneficial impact on human health and welfare by reducing exposure to ozone, PM, and other air toxics and thus reducing the cancer and noncancer effects associated with exposure to these substances.

III. Heavy-Duty Engine and Vehicle Standards

In this section, we describe the vehicle and engine standards we are proposing today to respond to the serious air quality needs discussed in section II. Specifically, we discuss:

- The CAA and why we are proposing new heavy-duty standards.
- The technology opportunity for heavy-duty vehicles and engines.
- Our proposed HDV and HDE standards, and our proposed phase-in of those standards.
- Why we believe the stringent standards being proposed today are feasible in conjunction with the low-sulfur gasoline required under the recent Tier 2 rule and the low-sulfur diesel fuel being proposed today.
- The effects of diesel fuel sulfur on the ability to meet the proposed standards, and what happens if high sulfur diesel fuel is used.
- A possible reassessment of the technology and diesel fuel sulfur level needed for diesels to comply with today's proposed NO_X standard.

We welcome comment on the levels and timing of the proposed emissions standards, and on the technological feasibility discussion and supporting analyses. We also request comment on the timing of the proposed diesel fuel standard in conjunction with these proposed emission standards. We ask that commenters provide any technical information that supports the points made in their comments.

A. Why Are We Setting New Heavy-Duty Standards?

We are proposing heavy-duty vehicle and engine standards and related provisions under section 202(a)(3) of the CAA which authorizes EPA to establish emission standards for new heavy-duty motor vehicles (see 42 U.S.C. 7521(a)(3)). Section 202(a)(3)(A) requires that such standards "reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology." Section 202(a)(3)(B) allows EPA to take into account air quality information in revising such standards. Because heavy-duty engines contribute greatly to a number of serious air pollution problems, especially the health and welfare effects of ozone, PM, and air toxics, and because millions of Americans live in areas that exceed the national air quality standards for ozone or PM, we believe the air quality need for tighter heavy-duty standards is well founded. This, and our belief that a significant degree of emission reduction from heavy-duty vehicles and engines is achievable through the application of new diesel emission control technology, further refinement of well established gasoline emission controls, and reductions of diesel fuel sulfur levels, leads us to believe that new emission standards are warranted.

B. Technology Opportunity for Heavy-Duty Vehicles and Engines

For the past 30 or more years, emission control development for gasoline vehicles and engines has concentrated most aggressively on exhaust emission control devices. These devices currently provide as much as or more than 95 percent of the emission control on a gasoline vehicle. In contrast, the emission control development work for diesels has concentrated on improvements to the engine itself to limit the emissions leaving the combustion chamber.

However, during the past 15 years, more development effort has been put into diesel exhaust emission control devices, particularly in the area of PM control. Those developments, and recent developments in diesel NO_X control devices, make the advent of diesel exhaust emission controls feasible. Through use of these devices, we believe emission control similar to that attained by gasoline applications will be possible with diesel applications. However, without low-sulfur diesel fuel, these technologies cannot be implemented on heavy-duty or light-duty diesel applications.

Several exhaust emission control devices have been developed to control harmful diesel PM constituents—the diesel oxidation catalyst (DOC), and the many forms of particulate filters, or traps. DOCs have been shown to be durable in use, but they control only a relatively small fraction of the total PM and, consequently, do not address our PM concerns sufficiently. Uncatalyzed diesel particulate traps demonstrated high efficiencies many years ago, but the level of the PM standard was such that it could be met through less costly "in-cylinder" control techniques. Catalyzed diesel particulate traps have the potential to provide major reductions in diesel PM emissions and provide the durability and dependability required for diesel applications. Therefore, as discussed in the feasibility portion of this section, at this time we believe the catalyzed PM trap will be the control technology of choice for future control of diesel PM emissions. However, as discussed in detail in the draft RIA, we believe that catalyzed PM traps cannot be brought to market on diesel applications unless low-sulfur diesel fuel is available.

Diesel NO_X control is arguably at an earlier stage of development than is diesel PM control. Even so, several exhaust emission control technologies are being developed to control NO_X emissions, and the industry seems focused on a couple of these as the most promising technologies for enabling lower NO_X emission standards. Diesel selective catalytic reduction, or SCR, has been developed to the point of nearing market introduction in Europe. SCR has significant NO_X control potential, but it also has many roadblocks to marketability in this country. These roadblocks, discussed in more detail in the draft RIA, include infrastructure issues that we believe would prove exceedingly difficult and potentially costly to overcome. Because of that, we believe that the NO_X adsorber is the best technology for delivering significant diesel NO_X reductions while also providing market and operating characteristics necessary for the U.S. market.[69] However, as is discussed in detail in the draft RIA, the NO_X adsorber, like the catalyzed PM trap, cannot be brought to market on diesel applications unless low-sulfur diesel fuel is available.

Improvements have also been made to gasoline emission control technology during the past few years, even the past 12 months. Such improvements include those to catalyst designs in the form of improved washcoats and improved precious metal dispersion. Much effort has also been put into improved cold start strategies that allow for more rapid catalyst light-off. This can be done by retarding the spark timing to increase the temperature of the exhaust gases, and by using air-gap manifolds, exhaust pipes, and catalytic converter shells to decrease heat loss from the system.

These improvements to gasoline emission control have been made in response to the California LEV–II standards and the federal Tier 2 standards. Some of this development work was contributed by EPA in a very short timeframe and with very limited resources in support of our Tier 2 program.[70] These improvements should transfer well to the heavy-duty gasoline segment of the fleet. With such migration of light-duty technology to heavy-duty vehicles and engines, we believe that considerable improvements to heavy-duty emissions can be realized, thus enabling much more stringent standards.

The following discussion provides more detail on the technologies we believe are most capable of enabling very stringent heavy-duty emission standards. The goal of this discussion is to highlight the emission reduction capability of these emission control technologies and to highlight their critical need for diesel sulfur levels as low as those being proposed today. But first, we present the details of the emission standards being proposed today.

C. What Engine and Vehicle Standards Are We Proposing?

1. Heavy-Duty Engine Standards

a. Federal Test Procedure

The emission standards being proposed today for heavy-duty engines are summarized in Table III.C–1.

TABLE III.C–1.—PROPOSED FULL USEFUL LIFE HEAVY-DUTY ENGINE EMISSION STANDARDS AND PHASE-INS

		Standard (g/bhp-hr)	Phase-in by model year (In percent)			
			2007	2008	2009	2010
Diesel	NO_X	0.20				
	NMHC	0.14	25	50	75	100
	HCHO	0.016				
Gasoline	NO_X	0.20				
	NMHC	0.14	100			

[67] National Air Quality and Emissions Trends Report, 1997, (EPA 1998), p. 74.

[68] California Environmental Protection Agency (1998) Report to the Air Resources Board on the Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Appendix III, Part A: Exposure Assessment, April 1998.

[69] The NO_X adsorber was originally developed for stationary source emission control and was subsequently developed for use in the lean operating environment of gasoline direct injection engines.

[70] See Chapter IV.A of the final Tier 2 Regulatory Impact Analysis, contained in Air Docket A–97–10.

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TABLE III.C–1.—PROPOSED FULL USEFUL LIFE HEAVY-DUTY ENGINE EMISSION STANDARDS AND PHASE-INS—Continued

		Standard (g/bhp-hr)	Phase-in by model year (In percent)			
			2007	2008	2009	2010
Diesel & Gasoline	HCHO	0.016	100			
	PM	0.01				

With respect to PM, this proposed new standard would represent a 90 percent reduction for most heavy-duty diesel engines from the current PM standard, which was not proposed to change in model year 2004.[71] The current PM standard for most heavy-duty engines, 0.1 g/bhp-hr, was implemented in the 1994 model year; the PM standard for urban buses implemented in that same year was 0.05 g/bhp-hr. The proposed PM standard of 0.01 g/bhp-hr is projected to require the addition of a highly efficient PM trap to diesel engines, including urban buses; it is not expected to require the addition of any new hardware for gasoline engines. We request comment on the feasibility and appropriateness of this proposed PM standard.

With respect to NMHC and NO_X, these new standards would represent roughly a 90 percent reduction in diesel NO_X and roughly a 70 percent reduction in diesel NMHC levels compared to the 2004 heavy-duty diesel engine standard. The 2004 heavy-duty diesel engine standard is 2.5 g/bhp-hr NMHC+NO_X, with a cap on NMHC of 0.5 g/bhp-hr. Like the PM standard, the proposed NO_X standard is projected to require the addition of highly efficient NO_X aftertreatment to diesel engines. For gasoline engines, the standard proposed in the 2004 heavy-duty rule is 1.0 g/bhp-hr NMHC+NO_X. Therefore, for gasoline engines, the standards proposed today would represent roughly a 70 percent reduction. We request comment on the feasibility and appropriateness of these proposed NO_X and NMHC standards.

With respect to formaldehyde, a hazardous air pollutant that is emitted by heavy-duty engines and other mobile sources, we are proposing standards to prevent excessive emissions. The standards are comparable in stringency to the formaldehyde standards recently finalized in the Tier 2 rule for passenger vehicles; they are also consistent with the CARB LEV II formaldehyde standards. These standards would be especially important for methanol-fueled engines because formaldehyde is chemically similar to methanol and is one of the primary byproducts of incomplete combustion of methanol. Formaldehyde is also emitted by engines using petroleum fuels (i.e., gasoline or diesel fuel), but to a lesser degree than is typically emitted by methanol-fueled engines. We recognize that petroleum-fueled engines able to meet the proposed NMHC standards should comply with the formaldehyde standards with large compliance margins. Based upon the analysis of similar standards recently finalized for passenger vehicles, we believe that formaldehyde emissions from petroleum-fueled engines when complying with the PM, NMHC, and NO_X standards should be as much as 90 percent below the standards.[72] Thus, to reduce testing costs, we are proposing a provision that would permit manufacturers of petroleum-fueled engines to demonstrate compliance with the formaldehyde standards based on engineering analysis. This provision would require manufacturers to make a demonstration in their certification application that engines having similar size and emission control technology have been shown to exhibit compliance with the applicable formaldehyde standard for their full useful life. This demonstration would be similar to that recently finalized for light-duty vehicles to demonstrate compliance with the Tier 2 formaldehyde standards.

Because the NO_X exhaust emission control technology we expect would be required to meet the proposed NO_X standard is at an early stage of development, we believe a phase-in of the NO_X standard is appropriate. With a phase-in, manufacturers are able to introduce the new technology on a limited number of engines, thereby gaining valuable experience with the technology prior to implementing it on their entire fleet. Also, we are proposing that the NO_X, HCHO, and NMHC standards be phased-in together for diesel engines. That is, engines would be expected to meet each of these proposed new standards, not just one or the other. We propose this because the standard as proposed in the 2004 heavy-duty rule would be a combined NMHC+NO_X standard. Separating the phase-ins for NMHC and NO_X would create a problem because it would not be clear to what NMHC standard an engine would certify were it to certify to the proposed NO_X standard independent of certifying to the proposed NMHC standard (and vice versa for engines certifying to the proposed NMHC standard independent of the proposed NO_X standard).[73] We request comment on the phase-in for diesel engines of these proposed NO_X, HCHO, and NMHC standards and the requirement that they be phased-in together. We also request comment on alternative phase-in schedules and percentages, such as a phase-in over three years (2007–2009), a phase-in over two years (2007–2008), and no phase-in (100% in 2007). We are not proposing a phase-in for gasoline engines because we want to maintain consistency with the proposed heavy-duty gasoline vehicle standards which are not phased-in; those standards are discussed below.[74] Nonetheless, we request comment on possible alternative phase-ins for the proposed gasoline engine standards, such as a phase-in consistent with the proposed phase-in for diesel engine standards shown in Table III.C–1, or a phase-in consistent with that used for heavy light-duty trucks and medium-duty passenger vehicles under the light-duty highway Tier 2 program.

The specifics of the Averaging, Banking, and Trading program associated with today's proposed standards are discussed in section VII of this preamble. The reader should refer to that section for more details.

b. Not-to-Exceed and Supplemental Steady-State Test

To help ensure that heavy-duty engine emissions are controlled over the full range of speed and load combinations commonly experienced in use, we have previously proposed to apply Not-To-Exceed (NTE) limits to heavy-duty diesel engines (64 FR 58472, October 29, 1999). As proposed, the NTE approach establishes an area (the "NTE zone") under the torque curve of an engine where emissions must not exceed a specified value for any of the regulated pollutants.[75] As proposed, the specified value under which emissions must remain is 1.25 times the FTP standards. The NTE standard would apply under any conditions that could reasonably be expected to be seen by that engine in normal vehicle operation and use. In addition, we have proposed that the whole range of real ambient conditions be included in NTE testing.

Similarly, to help ensure that heavy-duty engine emissions are controlled during steady-state type driving (such as a line-haul truck operating on a freeway), we have previously proposed a new supplemental steady-state test (64 FR 58472, October 29, 1999). The supplemental steady-state test consists of 13 steady-state modes, each weighted according to the amount of time that might be expected at each mode during typical real world conditions. As proposed, the supplemental steady-state test has emission limits of 1.0 times the FTP standards.

Today's document proposes to apply the heavy-duty diesel NTE and supplemental steady-state test provisions intended to be finalized as part of the 2004 standards rulemaking. The October 29, 1999, proposal for that rule contained the description of these provisions. We expect that a number of modifications will be made to those provisions in the FRM for that rule based on feedback received during the comment period. While the details of the final provisions are not yet available, we will provide the necessary information in the docket for this rule as soon as it becomes available in order to allow for comment.

We have not proposed that the NTE requirements, or the supplemental steady-state test, apply to heavy-duty gasoline engines. However, we are working with several industry members to pursue a proposal in a separate action with the intention of having NTE requirements in place for heavy-duty gasoline engines beginning in the 2004 model year.[76] Today's proposal intends that those provisions, when developed, would apply to the gasoline engines subject to today's proposed standards as well. We currently have no intention of pursuing supplemental steady-state test requirements for heavy-duty gasoline engines.

We request comment and data on the feasibility of technology meeting the proposed emission standards in the context of the NTE and supplemental steady-state tests as proposed in the 2004 heavy-duty rule, and the potential changes to the supplemental tests should changes be made from what was proposed. As stated above, should such changes be made, we will provide the necessary information in the docket for this rule as soon as it becomes available in order to allow for comment.

c. Crankcase Emissions Control

Crankcase emissions are the pollutants that are emitted in the gases that are vented from an engine's crankcase. These gases are also referred to as "blowby gases" because they result from engine exhaust from the combustion chamber "blowing by" the piston rings into the crankcase. These gases are vented to prevent high pressures from occurring in the crankcase. Our existing emission standards prohibit crankcase emissions from all highway engines except turbocharged heavy-duty diesel engines. The most common way to eliminate crankcase emissions has been to vent the blowby gases into the engine air intake system, so that the gases can be recombusted. We made the exception for turbocharged heavy-duty diesel engines because of concerns in the past about fouling that could occur by routing the diesel particulates (including engine oil) into the turbocharger and aftercooler. Our concerns are now alleviated by newly developed closed crankcase filtration systems, specifically designed for turbocharged heavy-duty diesel engines. These new systems (discussed more fully in section III.E and in Chapter III of the draft RIA) are already required for new on-highway diesel engines under the EURO III emission standards.

We are proposing to eliminate the exception for turbocharged heavy-duty diesel engines starting in the 2007 model year. This is an environmentally significant proposal since most heavy-duty diesel trucks use turbocharged engines, and a single engine can emit over 100 pounds of NO_X, NMHC, and PM from the crankcase over the lifetime of the engine. We request comment on this proposal.

2. Heavy-Duty Vehicle Standards

a. Federal Test Procedure

The emission standards being proposed today for heavy-duty vehicles are summarized in Table III.C–2. We have already proposed that all complete heavy-duty gasoline vehicles, whether for transporting passengers or for work, be chassis certified (64 FR 58472, October 29, 1999). Current federal regulations do not require that complete diesel vehicles over 8,500 pounds be chassis certified, instead requiring certification of their engines. Today's proposal does not make changes to those requirements.

The Tier 2 final rule created a new vehicle category called "medium-duty passenger vehicles".[77] These vehicles, both gasoline and diesel, are required to meet requirements of the Tier 2 program, which carries with it a chassis certification requirement. As a result, applicable complete diesel vehicles must certify using the chassis certification test procedure. Today's proposed chassis standards for 2007 and later model year heavy-duty gasoline vehicles would apply to the remaining (work-oriented) complete gasoline vehicles under 14,000 pounds.

[71] From 64 FR 58472, October 29, 1999, "* * * diesel fuel quality, and in particular, diesel fuel sulfur level, can play an important role in enabling certain PM and NO_X control technologies. Some DOCs and continuously regenerable PM traps, as well as current generation lean NO_X adsorber catalysts can be poisoned by high sulfur levels. Given this information, EPA has not included more stringent PM standards for the 2004 model year or later in today's proposal."

[72] See the Tier 2 Response to Comments document contained in Air Docket A–97–10.

[73] Note that, despite the concurrent phase-in of NO_X and NMHC standards for diesel engines, the NMHC standards should be easily met through use of a PM trap as is fully discussed in section III.E. Since the PM standards would be implemented on 100 percent of new engines in the 2007 model year, all new engines would have a PM trap and would, therefore, control NMHC emissions to levels below the proposed standards. Therefore, while the NMHC standard is phased-in with NO_X due to the 2004 combining of the NO_X and NMHC standards, the proposed NMHC standards would be met by all new engines in the 2007 model year. This is reflected in our emission inventory analysis as was discussed in section II.

[74] Please refer to section III.D.2 below for a discussion of implementing these proposed standards in the 2007 or 2008 model years, and the relationship between today's proposed implementation and the implementation of the proposed 2004 emission standards.

[75] Torque is a measure of rotational force. The torque curve for an engine is determined by an engine "mapping" procedure specified in the Code of Federal Regulations. The intent of the mapping procedure is to determine the maximum available torque at all engine speeds. The torque curve is merely a graphical representation of the maximum torque across all engine speeds.

[76] Letters from Margo Oge, EPA, to Kelly Brown, Ford Motor Company, and Samuel. Leonard, General Motors Corp., both dated September 17, 1999; and letter from Samuel. Leonard, GM, and Kelly Brown, Ford, to Margo Oge, EPA, dated August 10,1999; all of these letters are available in EPA Air Docket #A–98–32.

[77] Medium-duty passenger vehicles are defined as any complete vehicle between 8,500 and 10,000 pounds GVWR designed primarily for the transportation of persons. The definition specifically excludes any vehicle that (1) has a capacity of more than 12 persons total or, (2) is designed to accommodate more than 9 persons in seating rearward of the driver's seat or, (3) has a cargo box (e.g., pick-up box or bed) of six feet or more in interior length. (See the Tier 2 final rulemaking, 65 FR 6698, February 10, 2000)

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TABLE III.C–2.—PROPOSED 2007+ FULL USEFUL LIFE HEAVY-DUTY VEHICLE EXHAUST EMISSION STANDARDS FOR COMPLETE GASOLINE VEHICLES*

[grams/mile]

Weight range (GVWR)	NO_X	NMHC	HCHO	PM
8500 to 10,000 lbs	0.2	0.195	0.016	0.02
10,000 to 14,000 lbs	0.4	0.230	0.021	0.02

* Does not include medium-duty passenger vehicles.

These NO_X standards represent a 78 percent reduction and a 60 percent reduction from the standards for 8,500–10,000 pound and 10,000–14,000 pound vehicles, respectively, proposed in the 2004 heavy-duty rule. The 2004 heavy-duty rule would require such vehicles to meet the California LEV–I NO_X standards of 0.9 g/mi and 1.0 g/mi, respectively. The proposed NO_X standards shown in Table III.C–2 are consistent with the CARB LEV–II NO_X standard for low emission vehicles (LEVs). We have proposed, and CARB has put into place in their LEV–II program, a slightly higher NO_X standard for 10,000 to 14,000 pound vehicles because these vehicles are tested at a heavier payload. The increased weight results in using more fuel per mile than vehicles tested at lighter payloads; therefore, they tend to emit slightly more grams per mile than lighter vehicles.[78]

The NMHC standards represent a 30 percent reduction from the proposed 2004 standards for 8500–10,000 and 10,000–14,000 pound vehicles. The 2004 heavy-duty rule would require such vehicles to meet NMHC standard levels of 0.28 g/mi and 0.33 g/mi, respectively (equal to the California LEV–I nonmethane organic gases (NMOG) standard levels). The proposed NMHC standards are consistent with the CARB LEV–II NMOG standards for LEVs in each respective weight class. The NMHC standard for 10,000–14,000 pound vehicles is higher than for 8,500–10,000 pound vehicles for the same reason as stated above for the higher NO_X standard for such vehicles.

The formaldehyde standards are comparable in stringency to the formaldehyde standards recently finalized in the Tier 2 rule for passenger vehicles; they are also consistent with today's proposed engine standards and the CARB LEV II formaldehyde standards. Formaldehyde is a hazardous air pollutant that is emitted by heavy-duty vehicles and other mobile sources, and we are proposing these formaldehyde standards to prevent excessive formaldehyde emissions. These standards would be especially important for methanol-fueled vehicles because formaldehyde is chemically similar to methanol and is one of the primary byproducts of incomplete combustion of methanol. Formaldehyde is also emitted by vehicles using petroleum fuels (i.e., gasoline or diesel fuel), but to a lesser degree than is typically emitted by methanol-fueled vehicles. We recognize that petroleum-fueled vehicles able to meet the proposed NMHC standards should comply with the formaldehyde standards with large compliance margins. Based upon the analysis of similar standards recently finalized for passenger vehicles, we believe that formaldehyde emissions from petroleum-fueled vehicles when complying with the PM, NMHC and NO_X standards should be as much as 90 percent below the standards.[79] Thus, to reduce testing costs, we are proposing a provision that would permit manufacturers of petroleum-fueled vehicles to demonstrate compliance with the formaldehyde standards based on engineering analysis. This provision would require manufacturers to make a demonstration in their certification application that vehicles having similar size and emission control technology have been shown to exhibit compliance with the applicable formaldehyde standard for their full useful life. This demonstration would be similar to that recently finalized for light-duty vehicles to demonstrate compliance with the Tier 2 formaldehyde standards.

The PM standard represents over an 80 percent reduction from the CARB LEV–II LEV category PM standard of 0.12 g/mi. Note that the PM standard shown in Table III.C–2 represents not only a stringent PM level, but a new standard for federal HDVs where none existed before. The California LEV–II program for heavy-duty vehicles, and the federal Tier 2 standards for over 8,500 pound vehicles designed for transporting passengers, both contain PM standards. The PM standard proposed today is consistent with the Tier 2 bin 8 level of 0.02 g/mi.

The standards shown in Table III.C–2 are, we believe, comparable in stringency to the proposed diesel and gasoline engine standards shown in Table III.C–1. We request comment on this issue, including any supporting data. We also request comment on other possible vehicle exhaust emission standards. For example, the CARB LEV–II ULEV standards are identical in NO_X levels, but have NMOG levels of 0.143 and 0.167 g/mi for 8,500 to 10,000 pound and 10,000 to 14,000 pound vehicles, respectively. We request comment on whether these standards (0.143 and 0.167 g/mi NMHC for 8,500 to 10,000 pound and 10,000 to 14,000 pound vehicles, respectively), or lower standards, may be more appropriate emission standards. We also request comment on whether we should instead include a 40 percent/60 percent split of standards at the LEV–II LEV and ULEV levels, respectively. To clarify, the CARB LEV–II program requires a compliance split of vehicles certified to the LEV versus the ULEV levels; that split is 40 percent LEV and 60 percent ULEV. We request comment on whether we should employ such a split.

We are not proposing a phase-in for the HDV standards. As proposed, the HDV standards would apply only to complete gasoline vehicles, consistent with our current regulations. We believe that emission control technology for gasoline engines is in an advanced enough state to justify a simple implementation requirement in the 2007 model year. However, please refer to section III.D.2, below, for a discussion of the appropriate implementation schedule associated with these proposed standards, and the relationship between today's proposed implementation and the implementation of the proposed 2004 emission standards. We believe that our proposed implementation schedule provides consistency with our Tier 2 standards and our expectation of probable certification levels for similarly sized light-duty trucks and medium-duty

[78] Engine standards, in contrast, are stated in terms of grams per unit power rather than grams per mile. Therefore, engine emission standards need not increase with weight because heavier engines do not necessarily emit more per horsepower even though they tend to emit more per mile.

[79] See the Tier 2 Response to Comments document contained in Air Docket A–97–10.

passenger vehicles. Although these vehicles are allowed to certify at fairly high emission levels under the Tier 2 bin structure, we believe that Tier 2 gasoline applications will be designed to certify to standards of 0.20 g/mi NO_X and 0.09 g/mi NMHC by the 2007 model year, and possibly lower to allow for diesels certifying in higher emission bins within the NO_X averaging scheme. This makes the proposed HDV standards and associated phase-in consistent with Tier 2. We request comment on the appropriateness of not having a phase-in associated with the vehicle standards. We also request comment on possible alternative phase-ins for the proposed gasoline vehicle standards, such as a phase-in consistent with the proposed phase-in for diesel engine standards shown in Table III.C–1, or a phase-in consistent with that used for heavy light-duty trucks and medium-duty passenger vehicles under the light-duty highway Tier 2 program.

Consistent with current regulations, we are not proposing to allow complete heavy-duty diesel vehicles to certify to the heavy-duty vehicle standards. Instead, manufacturers would be required to certify the engines intended for such vehicles to the engine standards shown in Table III.C–1. However, we request comment on whether complete heavy-duty diesel vehicles should be allowed, or perhaps should be required, to certify to the vehicle standards. Any comments on this topic should also address whether a phase-in, consistent with the phase-in of engine standards, would be appropriate.

The specifics of the Averaging, Banking, and Trading program associated with today's proposed standards are discussed in section VII of this document. The reader should refer to that section for more details.

We request comment on the feasibility and appropriateness of the proposed standards for heavy-duty complete vehicles shown in Table III.C–2.

b. Supplemental Federal Test Procedure

We are not proposing new supplemental FTP (SFTP) standards for heavy-duty vehicles. The SFTP standards control off-cycle emissions in a manner analogous to the NTE requirements for engines. We believe that the SFTP standards are an important part of our light-duty program just as we believe the NTE requirements will be an important part of our heavy-duty diesel engine program. Although we are not proposing SFTP standards for heavy-duty vehicles, we intend to do so via a separate rulemaking. We request comment on such an approach, and on appropriate SFTP levels for heavy-duty vehicles along with supporting data.

3. Heavy-Duty Evaporative Emission Standards

We are proposing new evaporative emission standards for heavy-duty vehicles and engines. The proposed standards are shown in Table III.C–3. These standards would apply to heavy-duty gasoline-fueled vehicles and engines, and methanol-fueled heavy-duty vehicles and engines. Consistent with existing standards, only the standard for the three day diurnal test sequence would apply to liquid petroleum gas (LPG) fueled and natural gas fueled HDVs.

TABLE III.C–3.—PROPOSED HEAVY-DUTY EVAPORATIVE EMISSION STANDARDS*

[Grams per test]

Category	3 day diurnal + hot soak	Supplemental 2 day diurnal + hot soak**
8,500–14,000 lbs	1.4	1.75
>14,000 lbs	1.9	2.3

* Proposed to be implemented on the same schedule as the proposed gasoline engine and vehicle exhaust emission standards shown in Tables III.C–1 and III.C–2. These proposed standards would not apply to medium-duty passenger vehicles, and would not apply to diesel fueled vehicles.

** Does not apply to LPG or natural gas fueled HDVs.

These proposed standards represent more than a 50 percent reduction in the numerical standards as they exist today. The 2004 heavy-duty rule (64 FR 58472, October 29, 1999) proposed no changes to the numerical value of the standard, but it did propose new evaporative emission test procedures for heavy-duty complete gasoline vehicles.[80] Those test procedures would effectively increase the stringency of the standards, even though the numerical value was not proposed to change. For establishing evaporative emission levels from complete heavy-duty vehicles, the standards shown in Table III.C–3 presume the test procedures proposed in the 2004 heavy-duty rule.

The proposed standards for 8,500 to 14,000 pound vehicles are consistent with the Tier 2 standards for medium-duty passenger vehicles (MDPV). MDPVs are of consistent size and have essentially identical evaporative emission control systems as the remaining work-oriented HDVs in the 8,500 to 10,000 pound weight range. Therefore, the evaporative emission standards should be equivalent. We are proposing those same standards for the 10,000 to 14,000 pound HDVs because, historically, the evaporative emission standards have been consistent throughout the 8,500 to 14,000 pound weight range. We believe that the HDVs in the 10,000 to 14,000 pound range are essentially equivalent in evaporative emission control system design as the lighter HDVs; therefore, continuing this historical approach is appropriate.

We are proposing slightly higher evaporative emission standards for the over 14,000 pound HDVs because of their slightly larger fuel tanks and vehicle sizes. This is consistent with past evaporative emission standards. The levels chosen for the over 14,000 pound HDVs maintains the same ratio relative to the 8,500 to 14,000 pound HDVs as exists with current evaporative standards. To clarify, the current standards for the 3 day diurnal test are 3 and 4 grams/test for the 8,500 to 14,000 and the over 14,000 pound categories, respectively. The ratio of 3:4 is maintained for the proposed 2007 standards, 1.4:1.9.

The proposed standards levels are slightly higher than the California LEV–II standards levels. The California standards levels are 1.0 and 1.25 for the 3-day and the 2-day tests, respectively. We believe that our standards are appropriate for federal vehicles certified on the higher-volatility federal test fuel.

We are proposing that the proposed evaporative emission standards be implemented on the same schedule as the proposed gasoline engine and vehicle exhaust standards shown in Tables III.C–1 and III.C–2. We request comment on this proposal. Also, we are proposing the revised durability provisions finalized in the Tier 2 rulemaking, which require durability demonstration using fuel containing at least 10 percent alcohol. Alcohol can break down the materials used in evaporative emission control systems. Therefore, a worst case durability demonstration would include a worst case alcohol level in the fuel (10 percent) as some areas of the country

[80] The proposed test procedure changes sought to codify a commonly approved waiver allowing heavy-duty gasoline vehicles to use the light-duty driving cycle for demonstrating evaporative emission compliance. The urban dynamometer driving schedule (UDDS) used for heavy-duty vehicles is somewhat shorter than that used for light-duty vehicles, both in terms of mileage covered and minutes driven. This results in considerably less time for canister purge under the heavy-duty procedure than under the light-duty procedure. We recognize this discrepancy and have routinely provided waivers under the enhanced evaporative program that allow the use of the light-duty procedures for heavy-duty certification testing. We do not believe that this approach impacts the stringency of the standards. Further, it is consistent with CARB's treatment of equivalent vehicles.

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use alcohol fuels to improve their air quality. We request comment on extending this durability provision to HDVs.

We request comment on the feasibility and appropriateness of the proposed evaporative emission standards shown in Table III.C–3.

D. Standards Implementation Issues

1. Alternative Approach to Phase-In

Although we are proposing the standards and diesel phase-ins shown in Section III.C, we request comment on the possibility of structuring the proposed diesel engine standards as a "declining" standard rather than the standard level "phase-in" being proposed. Under such an approach, the final NO_X and NMHC standards of 0.20 and 0.14 g/bhp-hr would be achieved via a ramping down of the standards from the NO_X and NMHC levels assumed under the 2004 NMHC+NO_X standard (i.e., 2.0 g NO_X and 0.5 g NHMC) to the final levels provided it did not compromise the air quality benefits in any given year. Such a declining standard would result in 2007 standards for all engines lower than the 2004 standards, but not as low as today's proposed standards. The 2008 standards for all engines would then be lower than the 2007 standards, and the 2009 standards for all engines would be lower than the 2008 standards. In 2010, the standards would become 0.20 g/bhr-hr NO_X and 0.14 g/bhp-hr NMHC.

Under such a declining standard approach, an engine manufacturer would probably have to redesign most, if not all, of its engines to reduce their emissions from the 2004 standard levels to the 2007 model year declining standard levels. In contrast, under the proposed approach, 25 percent of an engine manufacturer's engines would have to certify to the 0.20/0.14 g/bhp-hr standards. Although the phase-in levels would be more stringent, the manufacturer would have to redesign only that 25 percent of its engines during the 2007 model year. The same would be true for the ensuing years. Under the declining standard approach, some level of redesign would probably have to be done on every engine in every year to meet the declining standard unless a manufacturer had extensive ABT credits at its disposal to apply against the standard. Under the phase-in, each new model year would entail a redesign of only 25 percent of a manufacturer's engines. In the end, both approaches result in the entire fleet meeting the proposed standard levels in 2010, but both achieve that in different ways.

We request comment on this declining standard approach for the diesel engine standards. We also request suggestions on appropriate declining standards for each model year that would result in stringency levels and emission reductions consistent with those of the proposed phase-in approach.

We also request comment on the possibility of structuring the phase-in of the proposed diesel engine standards as a "cumulative" phase-in rather than the 25–50–75–100 percent phase-in being proposed. Under such an approach, a manufacturer could phase-in compliance with the proposed standards in whatever percentages were most beneficial to that manufacturer, provided the cumulative total in each year met or exceeded the cumulative total of the proposed phase-in. Whatever the phase-in schedule chosen by the manufacturer, all of its engines sold in model year 2010 would be required to demonstrate compliance with the proposed standards. For example, a manufacturer could phase-in its engines according to a schedule of 50–50–50–100 percent, or 35–50–65–100 percent, or 30–60–60–100, etc. Note that the cumulative percentages would have to be based on cumulative engine sales to avoid the possibility that variations in market conditions would not compromise air quality benefits. We believe that such a phase-in could provide manufacturers with more flexibility in product planning while possibly enhancing the air quality benefits of the proposed standards because some manufacturers may accelerate their phase-in. Manufacturers should indicate their interest in such an approach in their comments and should indicate how they might utilize it.

2. Implementation Schedule for Gasoline Engine and Vehicle Standards

The October 1999 proposal of new heavy-duty engine and vehicle standards included revised standards for gasoline heavy-duty engines and vehicles (64 FR 58472, October 29, 1999). These standards were proposed to take effect in the 2004 model year. Commenters on that proposal raised concerns that these standards could not take effect until model year 2005 or later because of the applicability of Clean Air Act section 202(a)(3)(C) to these engines and vehicles. Those commenters argued that this provision requires 4 years of implementation leadtime following the promulgation of new or revised standards, and that these standards had not been promulgated in a final rule in time to satisfy this leadtime provision. We are still in the process of finalizing this rule and so at this time we are not able to announce the outcome of the leadtime issue. However, we do expect that, should the gasoline engine and vehicle standards be delayed to model year 2005, the standards being proposed today for gasoline engines and vehicles would first apply in model year 2008, rather than 2007, due to another part of the Clean Air Act section 202(a)(3)(C) provision that requires 3 model years of stability between changed standards. We invite comment on the appropriateness of this expectation and on any issues that might arise in connection with the model year 2008 implementation schedule.

E. Feasibility of the Proposed New Standards

For more detail on the arguments supporting our assessment of the technological feasibility of today's proposed standards, please refer to the Draft RIA in the docket for this rule. The following discussion summarizes the more detailed discussion found in the Draft RIA.

1. Feasibility of Stringent Standards for Heavy-Duty Diesel

Diesel engines have made great progress in lowering engine-out emissions from 6.0 g/bhp-hr NO_X and 0.6 g/bhp-hr PM in 1990 to 4.0 g/bhp-hr NO_X and 0.1 g/bhp-hr PM in 1999. These reductions came initially with improvements to combustion and fuel systems. Introduction of electronic fuel systems in the early 1990s allowed lower NO_X and PM levels without sacrificing fuel economy. This, combined with increasing fuel injection pressures, has been the primary technology that has allowed emission levels to be reduced to current 1999 levels. Further engine-out NO_X reductions to the levels necessary to comply with the 2004 standard of 2.5 g/bhp-hr NO_X+NMHC will come primarily from the addition of cooled EGR.

Engine out emission reductions beyond the 2.5 g/bhp-hr level are expected with low sulfur fuel and more experience with cooled EGR systems. Low sulfur fuel will allow more EGR to be used at lower temperatures because of the reduced threat of sulfuric acid formation. In addition, recirculating the exhaust gases from downstream of a PM trap may allow different EGR pumping configurations to be feasible. Such pumping configurations could provide a better NO_X/fuel consumption tradeoff.

These potential engine-out emission reductions are expected to be modest and are not expected to be sufficient to meet the emission standards proposed today. However, they would allow greater flexibility in choosing the combination of technologies used to meet the proposed emission standards. With lower engine-out emissions, it might be most cost effective to use smaller and less expensive exhaust emission control devices, for instance. Also, the combination of engine-out and exhaust emission control could be chosen for the best fuel economy. The fuel economy trade-offs between lower engine-out emissions and more effective exhaust emission control might be such that a combination of the two methods provide fuel economy that is better than either method on its own. As a result, additional engine-out emission reductions are expected to add additional flexibility in combination with exhaust emission control in jointly optimizing costs, fuel economy, and emissions.

a. Meeting the Proposed PM Standard

Diesel PM consists of three primary constituents: unburned carbon particles, which make up the largest portion of the total PM; the soluble organic fraction (SOF), which consists of unburned hydrocarbons that have condensed into liquid droplets or have condensed onto unburned carbon particles; and sulfates, which result from oxidation of fuel borne sulfur in the engine's exhaust.

Several exhaust emission control devices have been developed to control harmful diesel PM constituents—the diesel oxidation catalyst (DOC), and the many forms of particulate filters, or traps. DOCs have been shown to be durable in use, but they effectively control only the SOF portion of the total PM which, especially on today's engines, constitutes only around 10 to 30 percent of the total PM. Therefore, the DOC does not address our PM concerns sufficiently.

At this time, only the PM trap is capable of providing the level of control sought by today's proposed PM standards. In the past, the PM trap has demonstrated highly efficient trapping efficiency, but regeneration of the collected PM has been a serious challenge. The PM trap works by passing the exhaust through a ceramic or metallic filter to collect the PM. The collected PM, mostly carbon particles but also the SOF portion, must then be burned off the filter before the filter becomes plugged. This burning off of collected PM is referred to as "regeneration," and can occur either:

- on a periodic basis by using base metal catalysts or an active regeneration system such as an electrical heater, a fuel burner, or a microwave heater; or,
- on a continuous basis by using precious metal catalysts.

Uncatalyzed diesel particulate traps demonstrated high PM trapping efficiencies many years ago, but the level of the PM standard was such that it could be met through less costly "in-cylinder" control techniques. Also, the regeneration characteristics were not dependable. As a result, some systems employed electrical heaters or fuel burners to improve upon regeneration, but these complicated the system design and still could not provide the durability and dependability required for HD diesel applications.

We believe the most desirable PM trap, and the type of trap that will prove to be the industry's technology of choice, is one capable of regenerating on an essentially continuous basis. We also believe that such traps are the most promising for enabling very low PM emissions because:

- They are highly efficient at trapping all forms of diesel PM;
- They employ precious metals to reduce the temperature at which regeneration occurs, thereby allowing for passive regeneration under normal operating conditions typical of a diesel engine;[81]
- Because they regenerate continuously, they have lower average backpressure thereby reducing potential fuel economy impacts; and,
- Because of their passive regeneration characteristics, they need no extra burners or heaters like would be required by an active regeneration system thereby reducing potential fuel economy impacts.

These catalyzed PM traps are able to provide in excess of 90 percent control of diesel PM. However, as discussed in detail in the Draft RIA, the catalyzed PM trap cannot regenerate properly with current fuel sulfur levels as such sulfur levels inhibit the NO to NO_2 reaction to the point of stopping trap regeneration.[82] Also, because SO_2 is so readily oxidized to SO_3, very low PM standards cannot be achieved with current sulfur levels because of the resultant increase in sulfate PM emissions.[83]

More than one exhaust emission control manufacturer is known to be developing these precious metal catalyzed, passively regenerating PM traps and to have them in broad field test programs in areas where low sulfur diesel fuel is currently available. In field trials, they have demonstrated highly efficient PM control and promising durability with some units accumulating in excess of 360,000 miles of field use.[84] The experience gained in these field tests also helps to clarify the need for very low sulfur diesel fuel. In Sweden and some European city centers where below 10 ppm diesel fuel sulfur is readily available, more than 3,000 catalyzed diesel particulate filters have been introduced into retrofit applications without a single failure. The field experience in areas where sulfur is capped at 50 ppm has been less definitive. In regions without extended periods of cold ambient conditions, such as the United Kingdom, field tests on 50 ppm cap low sulfur fuel have been extremely positive, matching the success at, 10 ppm. However, field tests in Finland where colder winter conditions are sometimes encountered (similar to northern parts of the United States) have revealed a failure rate of 10 percent. This 10 percent failure rate has been attributed to insufficient trap regeneration due to fuel sulfur in combination with low ambient temperatures.[85] As the ambient conditions in Sweden are expected to be no less harsh than Finland, we are left to conclude that the increased failure rates noted here are due to the higher fuel sulfur level in a 50 ppm cap fuel versus a 10 ppm cap fuel. From these results, we can also theorize that lighter applications (such as large pick-up trucks and other light heavy-duty applications), having lower exhaust temperatures than heavier applications, may experience similar results and would, therefore, need very low sulfur fuel. These results are understood to be due to the effect of sulfur on the trap's ability to create sufficient NO_2 to carry out proper trap regeneration. Without the NO_2, the trap continues to trap at high efficiency, but it is unable to oxidize, or regenerate, the trapped PM. The possible result is a plugged trap.

Diesel particulate traps reduce particulate matter (PM) by capturing and burning particles. Ninety percent of

[81] For PM trap regeneration without precious metals, temperatures in excess of 650°C must be obtained. At such high temperatures, carbon will burn provided sufficient oxygen is present. However, although the largest heavy-duty diesels may achieve temperatures of 650°C under some operating conditions, smaller diesel engines, particularly light-duty and light heavy-duty diesel engines, will rarely achieve such high temperatures. For example, exhaust temperatures on the HDE Federal Test Procedure cycle typically range from 100°C to 450°C. Precious metal catalyzed traps use platinum to oxidize NO in the exhaust to NO_2, which is capable of oxidizing carbon at temperatures as low as 250°C to 300°C.

[82] Cooper and Thoss, Johnson Matthey, SAE 890404.

[83] See the Draft RIA for more detail on the relationship of fuel sulfur to sulfate make.

[84] Allansson, et at., SAE 2000–01–0480.

[85] Letter from Dr. Barry Cooper to Don Lupinski US EPA. EPA Docket A–99–06.

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the PM mass resides in particle sizes that are less than 1000 nanometers (nm) in diameter, and half of these particles are less than 200 nm. Fortunately, PM traps have very high particle capture efficiencies. PM less than 200 nm is captured efficiently by diffusion onto surfaces within the trap walls. Larger particles are captured primarily by inertial impaction onto surfaces due to the tortuous path that exhaust gas must take to pass through the porous trap walls. Capture efficiency for elemental carbon (soot) and metallic ash is nearly 100 percent; therefore, significant PM can only form downstream of the trap. Volatile PM forms from sulfate or organic vapors via nucleation, condensation, and/or adsorption during initial dilution of raw exhaust into the atmosphere. Kleeman,[86] et. al., and Kittelson,[87] et. al., independently demonstrated that these volatile particles reside in the ultra-fine PM range (i.e. <100 nm range).

Modern catalyzed PM traps have been shown to be very effective at reducing PM mass. In addition, they can significantly reduce the overall number of emitted particles when operated on low sulfur fuel. Hawker, et al., found that a modern catalyzed PM trap reduced particle count by over 95 percent, including ultrafine particles (< 50 nm) at most of the tested conditions. The lowest observed efficiency in reducing particle number was 86 percent. No generation of particles by the PM trap was observed under any tested conditions.[88] Kittelson, et al., confirmed that ultrafine particles can be reduced by a factor of ten by oxidizing volatile organics, and by an additional factor of ten by reducing sulfur in the fuel. Catalyzed PM traps efficiently oxidize nearly all of the volatile organic PM precursors, and elimination of as much fuel sulfur as possible will dramatically reduce the number of ultrafine PM emitted from diesel engines. Therefore, the combination of PM traps with low sulfur fuel is expected to result in a very large reduction in PM mass, and ultrafine particles will be almost completely eliminated.

Now that greater than 90 percent effective PM emission control has been demonstrated, focus has turned to bringing PM exhaust emission control to market. One of the drivers is the Euro IV PM standard set to become effective in 2005.[89] This standard sets a PM trap forcing emission target. In anticipation of the 2005 introduction date, field tests are already underway in several countries with catalyzed particulate filters. We believe the experience gained in Europe with these technologies will coincide well with the emission standards in this proposal. The timing of today's proposal harmonizes the heavy-duty highway PM technologies with those expected to be used to meet the light-duty highway Tier 2 standards. Our own testing with fuel sulfur levels below 10 ppm shows that these systems are viable.[90] With this level of effort already under way, we believe that the proposed PM standards which would require a 90 percent reduction in the mass of particulate emissions could be met provided low sulfur fuel is made available.

The data currently available show that catalyzed particulate filters can provide significant reductions in PM. Catalyzed particulate filters, in conjunction with low sulfur fuel, have been shown to be more than 90 percent efficient over the FTP and at most supplemental steady-state modes.[91] However, with the application of exhaust emission control technology and depending on the sulfur level of the fuel, there is the potential for sulfate production during some operating modes covered by the NTE and the supplemental steady-state test. We believe that, with the 15 ppm diesel sulfur level proposed today, the NTE and the supplemental steady-state test, as proposed in the 2004 heavy-duty rule, would be feasible. This belief, as discussed in greater detail in the draft RIA, is supported by data generated as part of the Diesel Emission Control Sulfur Effects (DECSE) test program.[92] We request comment and relevant data on this issue.

We request comment on the potential need to remove, clean, and reverse these traps at regular intervals to remove ash build-up resulting from engine oil. Small amounts of oil can enter the exhaust via the combustion chamber (past the pistons, rings and valve seals), and via the crankcase ventilation system. This can lead to ash build-up, primarily as a result of the metallic oil additives used to provide pH control. Such pH control is necessary, in part, to neutralize sulfuric acid produced as a byproduct of burning fuel containing sulfur. However, with reduced fuel sulfur, these oil additives could be reduced, thereby reducing the rate of ash build-up and lengthening any potential cleaning intervals. It may also be possible to use oil additives that are less prone to ash formation to reduce the need for periodic maintenance. We believe that catalyzed PM traps should be able to meet the required emissions reduction goals over their useful life with minimal maintenance. Nonetheless, we request comment on the appropriate minimum allowable maintenance interval for PM traps. Commenters should consider whether the maintenance interval should include design provisions to ensure quick and easy maintenance and should make suggestions for how performance of the maintenance by the owner would be ensured.

b. Meeting the Proposed NO_X Standard

The NO_X standard proposed today requires approximately a 90 percent reduction in NO_X emissions beyond the levels expected from the 2004 emission standards. Historically, catalytic reduction of NO_X emissions in the oxygen-rich environment typical of diesel exhaust has been difficult because known NO_X reduction mechanisms tend to be highly selective for oxygen rather than NO_X. Nonetheless, there are exhaust emission control devices that reduce the NO_X to form harmless oxygen and nitrogen. These devices are the lean NO_X catalyst, the NO_X adsorber, selective catalytic reduction (SCR), and non-thermal plasma.

The lean NO_X catalyst has been shown to provide up to a 30 percent NO_X reduction under limited steady-state conditions. Despite a large amount of development effort, NO_X reductions over the heavy-duty transient federal test procedure (FTP) have been demonstrated only on the order of 12 percent.[93] Consequently, the lean NO_X catalyst does not appear to be capable of enabling the significantly lower NO_X emissions required by the proposed NO_X standard.

NO_X adsorbers were first introduced in the power generation market less than five years ago. Since then, NO_X adsorber systems in stationary source applications have enjoyed considerable success. In 1997, the South Coast Air Quality Management District of California determined that a NO_X adsorber system provided the "Best Available Control Technology" NO_X limit for gas turbine power systems.[94] Average NO_X control for these power generation facilities is in excess of 92 percent.[95]

Recently, the NO_X adsorber's stationary source success has caused some to turn their attention to applying NO_X adsorber technology to lean burn engines in mobile source applications. With only a few years of development effort, NO_X adsorber catalysts have been developed and are now in production for gasoline direct injection vehicles in Japan. The 2000 model year will see the first U.S. application of this technology with the introduction of the Honda Insight, which will be certified to the California LEV–I ULEV category standard.

Although diesel vehicle manufacturers have not yet announced production plans for NO_X adsorber-based systems, they are known to have development efforts underway to demonstrate their potential. In Europe, both Daimler-Chrysler and Volkswagen, driven by a need to meet stringent Euro IV emission standards, have published results showing how they would apply the NO_X adsorber technology to their diesel powered passenger cars. Volkswagen reports that it has already demonstrated NO_X emissions of 0.137 g/km (0.22 g/mi) on a diesel powered Passat passenger car equipped with a NO_X adsorber catalyst.[96]

Likewise, in the United States, heavy-duty engine manufacturers have begun investigating the use of NO_X adsorber technologies as a more cost effective means to control NO_X emissions when compared to more traditional in-cylinder approaches. Cummins Engine Company reported, at DOE's 1999 Diesel Engine Emissions Reduction workshop, that they had demonstrated an 80 percent reduction in NO_X emissions over the Supplemental Steady State test and 58 percent over the heavy-duty FTP cycle using a NO_X adsorber catalyst.

In spite of these promising developments, work in the United States on NO_X adsorbers has been limited in comparison to the rest of the world for at least a couple of reasons: (1) prior to today's proposal, emission standards have not necessitated the use of NO_X exhaust emission controls on heavy-duty diesel engines; and, (2) there has not been a commitment in the U.S. to guarantee the availability of low sulfur diesel fuel. This is in stark contrast to Europe where the Euro IV and Euro V emission standards, along with the commitment to low sulfur diesel fuel, have led to rapid advancements of NO_X exhaust emission control technology. We believe, based on input from industry members that develop and manufacture emission control devices such as NO_X adsorbers, that the prospect of low sulfur diesel fuel in the U.S. market will drive rapid advancement of this promising NO_X control technology.[97]

NO_X adsorbers work by providing a NO_X storage feature, a NO_X adsorber, during periods of fuel lean operation. This is then combined with the typical three-way catalyst, like those used for years in stoichiometric gasoline applications. The combination of adsorber plus three-way catalyst allows storage of NO_X on the adsorber during fuel lean-oxygen rich operation, then removal of NO_X from the adsorber and reduction of NO_X over the three-way catalyst during fuel rich-oxygen lean operation. This removal of NO_X from the adsorber is termed "NO_X regeneration" and generally requires purposeful controlled addition of small amounts of fuel into the exhaust stream at regular intervals.

Improving NO_X reduction efficiencies over the diesel exhaust temperature range is key to meeting the proposed standards. Current NO_X adsorbers, for instance, have a high reduction efficiency (over 90 percent NO_X reduction) over a fairly broad temperature range (exhaust temperatures from 250°C to 450°C) allowing today's proposed standard to be met over this range.[98] Extending the range of high NO_X reduction efficiency at both high temperatures and low temperatures will allow higher average reduction efficiencies over the FTP and in use. The performance of the NO_X adsorber may vary somewhat with exhaust temperature across the NTE. For that reason, engine-out NO_X emissions will have to be flattened over the NTE to accommodate these variations in NO_X reduction performance. We believe that such an approach would allow the NO_X NTE and supplemental steady-state composite to be met. We seek comment and data on the relationship between NO_X adsorber performance and engine operating mode.

The greatest hurdle to the application of the NO_X adsorber technology has been its sensitivity to sulfur in diesel fuel. The NO_X adsorber stores sulfur emissions in a manner directly analogous to its storage of NO_X under lean conditions. Unfortunately, the stored sulfur is not readily removed from the adsorber during the type of operating conditions under which NO_X is readily removed. This leads to an eventual loss of NO_X adsorber function and, thus, a loss of NO_X emission control. This potential loss of NO_X adsorber function can most effectively be addressed through the reduction of sulfur in diesel fuel. For a more complete description of the sensitivity of this technology to sulfur in diesel fuel, and for an explanation of the need for low sulfur diesel fuel, please refer to section III.F.

The preceding discussion of NO_X adsorbers assumes that SO_X (SO_2 and SO_3) emissions will be "trapped" on the surface of the catalyst effectively poisoning the device and requiring a "desulfation" (sulfur removal event) to recover catalyst efficiency. We believe that, at the proposed 15 ppm cap fuel sulfur level, this strategy will allow effective NO_X control with moderately frequent desulfation and with a modest fuel consumption of one percent, which we anticipate will be more that offset by reduced reliance on current more expensive (from a fuel economy standpoint) NO_X control strategies (see discussion in section III.F for estimates of overall fuel economy impacts). In order to reduce the fuel economy impact and to simplify engine control, some manufacturers are investigating the use of SO_X "traps" (sometimes called SO_X "adsorbers") to remove sulfur from the exhaust stream prior to it flowing through the NO_X adsorber catalyst.

The SO_X trap is, in essence, a modified NO_X adsorber designed to preferentially store (trap) sulfur on its surface rather than NO_X. It differs from a NO_X adsorber in that it is not effective at storing NO_X and it more easily releases stored sulfur. A SO_X trap placed upstream of a NO_X adsorber could effectively remove very modest

[86] Kleeman, M.J., Schauer, J.J., Cass, G.R., 2000, Size and Composition Distribution of Fine Particulate Matter Emitted From Motor Vehicles, Environmental Science and Technology, Vol. 34, No. 7.

[87] Kittelson, D.B., 2000, Presentation on Fuel and Lube Oil Sulfer and Oxidizing Aftertreatment System Effects on Nano-particle Emissions from Diesel Engines. Presented in United Kingdom April 12, 2000.

[88] Hawker, P., et al., Effect of a Continuously Regenerating Diesel Particulate Filter on Non-Regulated Emissions and Particle Size Distribution, SAE 980189.

[89] The Euro IV standards are 2.6 g/hp-hr NO_X and 0.015 g/hp-hr PM.

[90] Memorandum from Charles Schenk, EPA, to Air Docket A–99–06, "Summary of EPA PM Efficiency Data," May 8, 2000.

[91] Demonstration of Advanced Emission Control Technologies Enabling Diesel-Powered Heavy-Duty Engines to Achieve Low Emission Levels, Manufacturers of Emissions Controls Association, June 1999.

[92] Diesel Emission Control Sulfur Effects (DECSE) Program—Phase II Interim Data Report No. 4, Diesel Particulate Filters—Final Report, January 2000, Table C1, www.ott.doe.gov/decse.

[93] Kawanami, M., et al., Advanced Catalyst Studies of Diesel NO_X Reduction for On-Highway Trucks, SAE 950154.

[94] Letter from Barry Wallerstein, Acting Executive Officer, SCAQMD, to Rober Danziger, Goal Line Environmental Technologies, dated December 8, 1997, www.glet.com.

[95] Reyes and Cutshaw, $SCONO_X$ Catalytic Absorption System, December 8, 1998. www.glet.com.

[96] Pott, E., et al., Potential of NO_X-Trap Catalyst Application for DI–Diesel Engines.

[97] Letter from Bruce Bertelsen, Executive Director, Manufacturers of Emission Controls Association, to Margo Oge, EPA, dated April 5, 2000.

[98] Dou, D., Bailey, O., Investigation of NO_X Adsorber Catalyst Deactivation, SAE 982594.

amounts of sulfur from the exhaust, thereby limiting sulfur's effect on the NO_X adsorber. Unfortunately, the SO_X trap like the NO_X adsorber, will eventually fill every available storage site with sulfate and will cease to function unless the sulfur is removed. Desulfating the SO_X adsorber on the vehicle is problematic since it would be upstream of the NO_X adsorber which could then be poisoned quite rapidly by the SO_X released from the SO_X trap. This problem could presumably be solved through some form of NO_X adsorber by-pass during SO_X trap desulfation (although control of NO_X during this event may be problematic). Alternatively, removal and replacement of the SO_X adsorber on a fixed service interval would solve this problem, albeit at some cost. In an oral presentation made to EPA, an engine manufacturer estimated the storage capacity of a SO_X trap at approximately one pound of SO_2 per cubic foot of catalyst.[99] For fuel with a seven ppm average sulfur level, this would mean replacement of a 48 liter SO_X trap approximately every 100,000 miles.[100] This more than doubles the catalyst size we have projected for a typical heavy heavy-duty vehicle in this proposal, while only providing protection for a small fraction of its useful life. Because of practical limitations on SO_X trap size, we do not believe that the use of SO_X traps can avoid the need for very low-sulfur diesel fuel, and we have received no information from manufacturers that contradicts this belief. We invite comment on the use of a SO_X trap to protect NO_X adsorbers and on the appropriateness of SO_X traps being replaced on a fixed interval as described here. Further, we request comment and supporting data to indicate the interval at which SO_X traps would require replacement.

Selective Catalytic Reduction (SCR), like NO_X adsorber technology, was first developed for stationary applications and is currently being refined for the transient operation found in mobile applications.[101] With the SCR system, a urea solution is injected upstream of the catalyst which breaks down the urea into ammonia and carbon dioxide. Catalysts containing precious metals (platinum) can be used at the inlet and outlet of SCR systems designed for mobile applications to improve low temperature NO_X reduction performance and to oxidize any ammonia that may pass through the SCR, respectively. Such SCR systems are referred to as "Compact SCR." The use of these platinum catalysts enable Compact SCR systems to achieve large NO_X reductions, but introduce sensitivity to sulfur in much the same way as for diesel particulate filter technologies. Sulfur in diesel fuel inhibits low temperature performance and results in high sulfate make leading directly to higher particulate emissions. For a further discussion of Compact SCR system sensitivity to sulfur in diesel fuel, and of its need for low sulfur diesel fuel, refer to section III.F.

The reduction efficiency window for Compact SCR is similar to the NO_X adsorber, with greater than 80 percent efficiency at exhaust temperatures as low as 250°C.[102] Peak efficiency values of over 90 percent are possible under certain conditions, but the cool exhaust temperature characteristics of diesel engines make excursions outside the optimum efficiency window of current Compact SCR systems quite frequent. As a result, the cycle average NO_X reduction efficiency is on the order of 77 percent over the heavy-duty FTP.[103] Over the Supplemental Steady State test modes, the SCR has been shown to have 65–99 percent efficiency.[104] The high efficiency over a broad temperature range should also allow the NTE to be met. With additional development effort, we believe the NO_X reduction efficiency of SCR can be further improved to meet NO_X levels as low as those proposed today.

However, significant challenges remain for Compact SCR systems to be applied to mobile source applications. In addition to the need for very low sulfur diesel fuel to achieve high NO_X conversion efficiencies and to control sulfate PM emissions, Compact SCR systems require vehicles to be refueled with urea. The infrastructure for delivering urea at the pump needs to be in place for these devices to be feasible in the marketplace; and before development of the infrastructure can begin, the industry must decide upon a standardized method of delivery for the urea supply. In addition to this, there would need to be adequate safeguards in place to ensure the urea is used throughout the life of the vehicle, since, given the added cost of urea, there would be incentive not to refill the urea tank. Because urea is required for the SCR system to function, urea replenishment would need to be assured.

Another, very recent approach to NO_X reduction is the non-thermal plasma assisted catalyst. This system works by applying a high voltage across two metal plates in the exhaust stream to form ions that serve as oxidizers. Essentially, the plasma would displace a conventional platinum based oxidation catalyst in function. Once oxidized to NO_2, NO_X can be more readily reduced over a precious metal catalyst. While the concept is promising, this technology is so new that essentially no data exists showing its effectiveness at controlling NO_X. We expect that, if and when the non-thermal plasma approach to NO_X control becomes viable, it will also require the use of low sulfur diesel fuel due to its reliance on a precious metal catalyst to reduce the NO_2.[105]

Based on the discussion above, we believe that NO_X aftertreatment technology, in combination with low sulfur diesel fuel, is capable of meeting the very stringent NO_X standards we have proposed. The clear intent that this proposal provides to make very low sulfur diesel fuel available in the future and to establish emission standards which necessitate advanced NO_X controls should enable rapid development of these technologies. The NO_X adsorber technology has shown incredible advancement in the last five years, moving from stationary source applications to lean-burn gasoline, and now to heavy-duty diesel engines. Given this rapid progress, the availability of very low sulfur diesel fuel, and the lead time provided by today's proposal, we believe that applying NO_X adsorbers to heavy-duty diesel engines would enable manufacturers to comply with our proposed standards. Compact SCR has been slower in developing than NO_X adsorbers but could be applied to mobile source applications if the difficult urea infrastructure issues can be addressed.

[99] Memorandum from Byron Bunker, US EPA to Air Docket A–99–06, "Meeting between EPA, OMB, representatives of major oil companies, and representatives of major diesel engine manufacturers," Item II–E–17.

[100] This estimate assumes that a heavy-duty vehicle averages six miles per gallon of fuel, that diesel fuel weighs seven pounds per gallon, that diesel fuel has seven ppm sulfur, and that a sulfur trap could store one pound of SO_2 in a cubic foot of catalyst.

[101] SRC systems being developed for mobile applications are more appropriately called "compact SCR" systems, which incorporate on oxidation catalyst. Generally, reference to SCR throughout this preamble should be taken to mean compact SCR.

[102] Klein, H., et al., NO_X Reduction for Diesel Vehicles, Degussa-Huls AG, Corning Clean Diesel Workshop, Sept. 27–29, 1999.

[103] "Demonstration of Advanced Emission Control Technologies Enabling Diesel-Powered Heavy-Duty Engines to Achieve Low Emission Levels," Manufacturers of Emission Controls Association, June 1999.

[104] "Demonstration of Advanced Emission Control Technologies Enabling Diesel-Powered Heavy-Duty Engines to Achieve Low Emission Levels," Manufacturers of Emission Controls Association, June 1999.

[105] "The Impact of Sulfur in Diesel Fuel on Catalyst Emission Control Technology," report by the Manufacturers of Emission Controls Association, March 15, 1999.

c. Meeting the Proposed NMHC Standard

Meeting the NMHC standards proposed today should not present any special challenges to diesel manufacturers. Since all of the devices discussed above—catalyzed particulate filters, NO_X adsorbers, and SCR—contain platinum and other precious metals to oxidize NO to NO_2, they are also very efficient oxidizers of hydrocarbons. Reductions of greater than 95 percent have been shown over transient FTP and supplemental steady-state modes.[106] Given that typical engine-out NMHC is expected to be in the 0.2 g/bhp-hr range for engines meeting the 2004 standards, this level of NMHC reduction will easily allow the 0.14 g/bhp-hr NMHC standard to be met over the transient FTP, the supplemental steady-state test, and the NTE zone.

d. Meeting the Crankcase Emissions Requirements

The most common way to eliminate crankcase emissions has been to vent the blow-by gases into the engine air intake system, so that the gases can be recombusted. Until today's proposal, we have required that crankcase emissions be controlled only on naturally aspirated diesel engines. We have made an exception for turbocharged heavy-duty diesel engines because of concerns in the past about fouling that could occur by routing the diesel particulates (including engine oil) into the turbocharger and aftercooler. However, this is an environmentally significant exception since most heavy-duty diesel trucks use turbocharged engines, and a single engine can emit over 100 pounds of NO_X, NMHC, and PM from the crankcase over the lifetime of the engine.

Therefore, we have proposed to eliminate this exception. We anticipate that the heavy-duty diesel engine manufacturers will be able to control crankcase emissions through the use of closed crankcase filtration systems or by routing unfiltered blow-by gases directly into the exhaust system upstream of the emission control equipment. The closed crankcase filtration systems work by separating oil and particulate matter from the blow-by gases through single or dual stage filtration approaches, routing the blow-by gases into the engine's intake manifold and returning the filtered oil to the oil sump. These systems are required for new heavy-duty diesel vehicles in Europe starting this year. Oil separation efficiencies in excess of 90 percent have been demonstrated with production ready prototypes of two stage filtration systems.[107] By eliminating 90 percent of the oil that would normally be vented to the atmosphere, the system works to reduce oil consumption and to eliminate concerns over fouling of the intake system when the gases are routed through the turbocharger. An alternative approach would be to route the blow-by gases into the exhaust system upstream of the catalyzed diesel particulate filter which would be expected to effectively trap and oxidize the engine oil and diesel PM. This approach may require the use of low sulfur engine oil to ensure that oil carried in the blow-by gases does not compromise the performance of the sulfur sensitive emission control equipment. We request comment on the use of either approach to crankcase emissions control.

e. The Complete System

We expect that the technologies described above would be integrated into a complete emission control system. The engine-out emissions will be traded off against the exhaust emission control package in such a way that the result is the most beneficial from a cost, fuel economy and emissions standpoint. The engine-out characteristics will also have to be tailored to the needs of the exhaust emission control devices used. The NO_X adsorber, for instance, will require periods of oxygen depleted exhaust flow in order to regenerate. This may be most efficiently done by reducing the air-fuel ratio that the engine is operating under during the regeneration to reduce the oxygen content of the exhaust. Further, it is envisioned that the PM device will be integrated into the exhaust system upstream of the NO_X reduction device. This placement would allow the PM trap to take advantage of the engine-out NO_X as an oxidant for the particulate, while removing the particulate so that the NO_X exhaust emission control device will not have to deal with large PM deposits which may cause a deterioration in performance. Of course, there is also the possibility of integrating the PM and NO_X exhaust emission control devices into a single unit to replace a muffler and save space. Particulate free exhaust may also allow for new options in EGR system design to optimize its efficiency.

We expect that the exhaust emission control emission reduction efficiency will vary with temperature and space velocity[108] across the NTE zone. Consequently, to maintain the NTE emission cap, the engine-out emissions would have to be calibrated with exhaust emission control performance characteristics in mind. This would be accomplished by lowering engine-out emissions where the exhaust emission control was less efficient. Conversely, where the exhaust emission control is very efficient at reducing emissions, the engine-out emissions could be tuned for higher emissions and better fuel economy. These trade-offs between engine-out emissions and exhaust emission control performance characteristics are similar to those of gasoline engines with three-way catalysts in today's light-duty vehicles. Managing and optimizing these trade-offs will be crucial to effective implementation of exhaust emission control devices on diesel applications.

2. Feasibility of Stringent Standards for Heavy-Duty Gasoline

Gasoline emission control technology has evolved rapidly in recent years. Emission standards applicable to 1990 model year vehicles required roughly 90 percent reductions in exhaust NMHC and CO emissions and a 75 percent reduction in NO_X emissions compared to uncontrolled emissions. Today, some vehicles' emissions are well below those necessary to meet the current federal heavy-duty gasoline standards, the proposed 2004 heavy-duty gasoline standards, and the California Low-Emission Vehicle standards for medium-duty vehicles. The continuing emissions reductions have been brought about by ongoing improvements in engine air-fuel management hardware and software plus improvements in exhaust system and catalyst designs.

We believe that the types of changes being seen on current vehicles have not yet reached their technological limits and continuing improvement will allow them to meet today's proposed standards. The Draft RIA describes a range of specific emission control techniques that we believe could be used. There is no need to invent new technologies, although there will be a need to apply existing technology more effectively and more broadly. The focus of the effort will be in the application and optimization of these existing technologies.

[106] "The Impact of Sulfur in Diesel Fuel on Catalyst Emission Control Technology," report by the Manufacturers of Emission Controls Association, March 15, 1999, pp. 9 & 11.

[107] Letter from Marty Barris Donaldson Corporation to Byron Bunker US EPA, March 2000. EPA Air Docket A–99–06.

[108] The term, "space velocity," is a measure of the volume of exhaust gas that flows through a device.

In our light-duty Tier 2 rule, we have required that gasoline sulfur levels be reduced to a 30 ppm average, with an 80 ppm maximum. This sulfur level reduction is the primary enabler for the Tier 2 standards. Similarly, we believe that the gasoline sulfur reduction, along with refinements in existing gasoline emission control technology, will be sufficient to allow heavy-duty gasoline vehicles and engines to meet the emission standards sought by today's proposal.

However, we recognize that the emission standards are stringent, and considerable effort would have to be undertaken. For example, we expect that every engine would have to be recalibrated to improve upon its cold start emission performance. Manufacturers would have to migrate their light-duty calibration approaches to their heavy-duty offerings to provide cold start performance in line with what they will have to achieve to meet the Tier 2 standards.

We also project that the proposed 2007 heavy-duty standards would require the application of advanced engine and catalyst systems similar to those projected for their light-duty counterparts. Historically, manufacturers have introduced technology on light-duty gasoline applications and then applied those technologies to their heavy-duty gasoline applications. The proposal would allow manufacturers to take this same approach for 2007. In other words, we expect that manufacturers would meet the proposed 2007 standards through the application of technology developed to meet light-duty Tier 2 standards for 2004.

Improved calibration and systems management would be critical in optimizing the performance of the engine with the advanced catalyst system. Precise air/fuel control must be tailored for emissions performance and must be optimized for both FTP and SFTP type driving. Calibration refinements may also be needed for EGR system optimization and to reduce cold start emissions through methods such as spark timing retard. We also project that electronic control modules with expanded capabilities would be needed on some vehicles and engines.

We also expect increased use of other technologies in conjunction with those described above. We expect some increased use of air injection to improve upon cold start emissions. We may also see air-gap manifolds, exhaust pipes, and catalytic converter shells as a means of improving upon catalyst light-off times thereby reducing cold start emissions. Other, non-catalyst related improvements to gasoline emission control technology include, as already stated, higher speed computer processors which enable more sophisticated engine control algorithms and improved fuel injectors providing better fuel atomization thereby improving fuel combustion.

Catalyst system durability is, and will always be, a serious concern. Historically, catalysts have deteriorated when exposed to very high temperatures. This has long been a concern especially for heavy-duty work vehicles. However, catalyst manufacturers continue to make strides in the area of thermal stability and we expect that improvements in thermal stability will continue for the next generation of catalysts.

We believe that, by optimizing all of these technologies, manufacturers will be able to achieve the proposed emission levels. Advanced catalyst systems have already shown potential to reduce emissions to close to the proposed levels. Some current California vehicles are certified to levels below 0.2 g/mi NO_X. California tested an advanced catalyst system on a vehicle loaded to a test weight comparable to a heavy-duty vehicle test weight and achieved NO_X and NMOG levels of 0.1 g/mi and 0.16 g/mi, respectively. The California vehicle with the advanced catalyst had not been optimized as a system to take full advantage of the catalyst's capabilities.

The ABT program can also be an important tool for manufacturers in implementing a new standard. The program allows manufacturers to transition to the more stringent standards by introducing emissions controls over a longer period of time, as opposed to a single model year. Manufacturers plan their product introductions well in advance. With ABT, manufacturers can better manage their product lines so that the new standards don't interrupt their product introduction plans. Also, the program allows manufacturers to focus on higher sales volume vehicles first and use credits for low sales volume vehicles.

We request comment on the feasibility of the proposed standards and request data that would help us evaluate advanced system durability.

3. Feasibility of the Proposed Evaporative Emission Standards

The proposed evaporative emission standards appear to be feasible now. Many designs have been certified that already meet these standards. A review of 1998 model year certification data indicates that five of eight evaporative system families in the 8,500 to 14,000 pound range comply with the proposed 1.4 g/test standard, while all evaporative system families in the over 14,000 pound range comply with the proposed 1.9 g/test standard.

The proposed evaporative emission standards would not require the development of new materials or, in many cases, even the new application of existing materials. Low permeability materials and low loss connections and seals are already used to varying degrees on current vehicles. Today's proposed standards would likely ensure their consistent use and discourage manufacturers from switching to cheaper materials or designs to take advantage of the large safety margins they have under current standards.

There are two approaches to reducing evaporative emissions for a given fuel. One is to minimize the potential for permeation and leakage by reducing the number of hoses, fittings and connections. The second is to use less permeable hoses and lower loss fittings and connections. Manufacturers are already employing both approaches.

Most manufacturers are moving to "returnless" fuel injection systems. Through more precise fuel pumping and metering, these systems eliminate the return line in the fuel injection system. The return line carries unneeded fuel from the fuel injectors back to the fuel tank. Because the fuel injectors are in such close contact with the hot engine, the fuel returned from the injectors to the fuel tank has been heated. This returned fuel is a significant source of fuel tank heat and vapor generation. The elimination of the return line also reduces the total length of hose on the vehicle through which vapors can permeate, and it reduces the number of fittings and connections through which fuel can leak.

Low permeability hoses and seals, and low loss fittings are available and are already used on many vehicles. Fluoropolymer materials can be added as liners to hose and component materials to yield large reductions in permeability over such conventional materials as monowall nylon. In addition, fluoropolymer materials can greatly reduce the adverse impact of alcohols in gasoline on permeability of evaporative components, hoses and seals.

F. Need for Low-Sulfur Diesel Fuel

The following discussion will build upon the brief sulfur sensitivity points made earlier in this section by providing a more in depth discussion of sulfur's effect on the most promising diesel exhaust emission control technologies. In order to evaluate the effect of sulfur on diesel exhaust control technologies, we used three key factors to categorize the impact of sulfur in fuel on emission control function. These factors were efficiency, reliability, and fuel economy. Taken together these three factors lead us to believe that diesel fuel sulfur levels of 15 ppm will be required in order to make feasible the proposed heavy-duty vehicle emission standards (a discussion of higher sulfur fuel standards, and what they might mean is included in Section VI.B). Brief summaries of these factors are provided below. A more in-depth review is given in the following subsections and the RIA associated with this proposal.

The **efficiency** of emission control technologies to reduce harmful pollutants is directly affected by sulfur in diesel fuel. Initial and long term conversion efficiencies for NO_X, NMHC, CO and diesel PM emissions are significantly reduced by catalyst poisoning and catalyst inhibition due to sulfur. NO_X conversion efficiencies with the NO_X adsorber technology in particular are dramatically reduced in a very short time due to sulfur poisoning of the NO_X storage bed. In addition, total PM control efficiency is negatively impacted by the formation of sulfate PM. As explained in detail in the following sections, all of the advanced NO_X and PM technologies described here have the potential to make significant amounts of sulfate PM under operating conditions typical of heavy-duty vehicles. The formation of sulfate PM is likely to be in excess of the total PM standard proposed today, unless diesel fuel sulfur levels are at or below 15 ppm. Based on the strong negative impact of sulfur on emission control efficiencies for all of the technologies evaluated, we believe that 15 ppm represents an upper threshold of acceptable diesel fuel sulfur levels.

Reliability refers to the expectation that emission control technologies must continue to function as required under all operating conditions for the life of the vehicle. As discussed in the following sections, sulfur in diesel fuel can prevent proper operation of both NO_X and PM control technologies. This can lead to permanent loss in emission control effectiveness and even catastrophic failure of the systems. Sulfur in diesel fuel impacts reliability by decreasing catalyst efficiency (poisoning of the catalyst), increasing diesel particulate filter loading, and negatively impacting system regeneration functions. Among the most serious reliability concerns with sulfur levels greater than 15 ppm are those associated with failure to properly regenerate. In the case of the NO_X adsorber, failure to regenerate will lead to rapid loss of NO_X emission control as a result of sulfur poisoning of the NO_X adsorber bed. In the case of the diesel particulate filter, sulfur in the fuel reduces the reliability of the regeneration function. If regeneration does not occur, catastrophic failure of the filter could occur. It is only by the availability of very low-sulfur diesel fuels that these technologies become feasible. The analysis given in the following section makes clear that diesel fuel sulfur levels will need to be consistent with today's proposed standard in order to ensure robust operation of the technologies under the variety of operating conditions anticipated to be experienced in the field.

Fuel economy impacts due to sulfur in diesel fuel affect both NO_X and PM control technologies. The NO_X adsorber sulfur regeneration cycle (desulfation cycle) can consume significant amounts of fuel unless fuel sulfur levels are very low. The larger the amount of sulfur in diesel fuel, the greater the adverse effect on fuel economy. As sulfur levels increase above 15 ppm, the adverse effect on fuel economy becomes more significant, increasing above one percent and doubling with each doubling of fuel sulfur level. Likewise, PM trap regeneration is inhibited by sulfur in diesel fuel. This leads to increased PM loading in the diesel particulate filter and increased work to pump exhaust across this restriction. With very low sulfur diesel fuel, diesel particulate filter regeneration can be optimized to give a lower (on average) exhaust backpressure and thus better fuel economy. Thus for both NO_X and PM technologies the lower the fuel sulfur level the better.

1. Diesel Particulate Filters and the Need for Low-Sulfur Fuel

As discussed earlier in this section, un-catalyzed diesel particulate filters require exhaust temperatures in excess of 650°C in order for the collected PM to be oxidized by the oxygen available in diesel exhaust. That temperature threshold for oxidation of PM by exhaust oxygen can be decreased to 450°C through the use of base metal catalytic technologies. Unfortunately, for a broad range of operating conditions diesel exhaust is significantly cooler than 400°C. If oxidation of the trapped PM could be assured to occur at exhaust temperatures lower than 300°C, then diesel particulate filters would be expected to be robust for most applications and operating regimes. The only means that we are aware of to ensure oxidation of PM (regeneration of the trap) at such low exhaust temperatures is by using oxidants which are more readily reduced than oxygen. One such oxidant is NO_2.

NO_2 can be produced in diesel exhaust through the oxidation of the nitrogen monoxide (NO), created in the engine combustion process, across a catalyst. The resulting NO_2-rich exhaust is highly oxidizing in nature and can oxidize trapped diesel PM at temperatures as cool as 250°C.[109] Some platinum group metals are known to be good catalysts to promote the oxidation of NO to NO_2. Therefore in order to ensure passive regeneration of the diesel particulate filters, significant amounts of platinum group metals (primarily platinum) are being used in the wash-coat formulations of advanced diesel particulate filters. The use of platinum to promote the oxidation of NO to NO_2 introduces several system vulnerabilities affecting both the durability and the effectiveness of the catalyzed diesel particulate filter when sulfur is present in diesel exhaust. The two primary mechanisms by which sulfur in diesel fuel limits the robustness and effectiveness of diesel particulate filters are inhibition of trap regeneration (i.e., inhibition of the oxidation of NO to NO_2) and a dramatic loss in total PM control effectiveness due to the formation of sulfate PM. Unfortunately, these two mechanisms trade-off against one another in the design of diesel particulate filters. Changes to improve the reliability of regeneration by increasing catalyst loadings lead to increased sulfate emissions and thus loss of PM control effectiveness. Conversely, changes to improve PM control by reducing the use of platinum group metals and, therefore, limiting "sulfate make" leads to less reliable regeneration. We believe the only means of achieving good PM emission control and reliable operation is to reduce sulfur in diesel fuel to the level proposed today, as shown in the following subsections.

a. Inhibition of Trap Regeneration Due to Sulfur

The passively regenerating diesel particulate filter technologies rely on the generation of a very strong oxidant, NO_2, to ensure that the carbon captured by the PM trap's filtering media is oxidized under normal operating conditions. NO_2 is produced through the oxidation of NO in the exhaust across a platinum catalyst. This oxidation is inhibited by the presence of

[109] Hawker, P. et al. Experience with a New Particulate Trap Technology in Europe. SAE 970182.

SO_2 in the exhaust stream because the preferential reaction across the platinum is oxidation of SO_2 to SO_3, rather than oxidation of NO to NO_2.[110] This inhibition limits the total amount of NO_2 available for oxidation of the trapped diesel PM, thereby raising the minimum exhaust temperature required to ensure trap regeneration. Without sufficient NO_2, the amount of PM trapped in the diesel particulate filter will continue to increase and can lead to excessive exhaust back pressure, low engine power, and even catastrophic failure of the diesel particulate filter itself.

Full field test evaluations and retrofit applications of these catalytic trap technologies are occurring in parts of Europe where low-sulfur diesel fuel is already available.[111] The experience gained in these field tests helps to clarify the need for very low-sulfur diesel fuel. In Sweden and some European city centers where below 10 ppm diesel fuel sulfur is readily available, more than 3,000 catalyzed diesel particulate filters have been introduced into retrofit applications without a single failure. Given the large number of vehicles participating in these test programs and the extended time periods of operation (some vehicles have been operating with traps for more than 4 years and in excess of 300,000 miles [112]), this is a strong indication of the robustness of this technology on 10 ppm low-sulfur diesel fuel. The field experience in areas where sulfur is capped at 50 ppm has been less definitive. In regions without extended periods of cold ambient conditions, such as the United Kingdom, field tests on 50 ppm cap low-sulfur fuel have also been positive, matching the success at 10 ppm. However, field tests in Finland where colder winter conditions are sometimes encountered (similar to many parts of the United States) have revealed a failure rate of 10 percent. This 10 percent failure rate has been attributed to insufficient trap regeneration due to fuel sulfur in combination with low ambient temperatures.[113] As the ambient conditions in Sweden are expected to be no less harsh than Finland, we are left to conclude that the increased failure rates noted here are due to the higher fuel sulfur level in a 50 ppm cap fuel versus a 10 ppm cap fuel. The failure of some fraction of the traps to regenerate on 50 ppm cap fuel is believed to be primarily due to inhibition of the NO to NO_2 conversion as described here.

The failure mechanisms experienced by diesel particulate filters due to low NO_2 availability vary significantly in severity and long term consequences. In the most fundamental sense, the failure is defined as an inability to oxidize the stored particulate at a rate fast enough to prevent net particulate accumulation over time. The excessive accumulation of PM over time blocks the passages through the filtering media, making it more restrictive to exhaust flow. In order to continue to force the exhaust through the now more restrictive filter the exhaust pressure upstream of the filter must increase. This increase in exhaust pressure is commonly referred to as increasing "exhaust backpressure" on the engine.

The increased exhaust backpressure represents increased work being done by the engine to force the exhaust gas through the increasingly restrictive particulate filter. Unless the filter is frequently cleansed of the trapped PM, this increased work can lead to reductions in engine performance and increases in fuel consumption. This loss in performance may be noted by the vehicle operator in terms of poor acceleration and generally poor driveability of the vehicle. In some cases, engine performance can be so restricted that the engine stalls, stranding the vehicle. This progressive deterioration of engine performance as more and more PM is accumulated in the filter media is often referred to as "trap plugging." Trap plugging also has the potential to cause engine damage. If the exhaust backpressure gets high enough to open the exhaust valves prematurely, the exhaust valves can then strike the piston causing catastrophic engine failure. Whether trap plugging occurs, and the speed at which it occurs, will be a function of many variables in addition to the fuel sulfur level; these variables include the vehicle application, its duty cycle, and ambient conditions. However, if the fuel sulfur level is sufficient to prevent trap regeneration in any real world conditions experienced, trap plugging can occur. This is not to imply that any time a vehicle is refueled once with high sulfur fuel trap plugging will occur. Rather, it is important to know that the use of fuel with sulfur levels higher than 15 ppm significantly increases the chances of particulate filter failure.

Catastrophic failure of the filter can occur when excessive amounts of PM are trapped in the filter due to a lack of NO_2 for oxidation. This failure occurs when excessive amounts of trapped PM begin to oxidize at high temperatures (combustion-like temperatures of over 1000°C) leading to a "run-away" combustion of the PM. This can cause temperatures in the filter media to increase in excess of that which can be tolerated by the particulate filter itself. For the cordierite material commonly used as the trapping media for diesel particulate filters, the high thermal stresses caused by the high temperatures can cause the material to crack or melt. This can allow significant amounts of the diesel particulate to pass through the filter without being captured during the remainder of the vehicle's life. That is, the trap is destroyed and PM emission control is lost.

As shown above, sulfur in diesel fuel inhibits NO oxidation leading to increased exhaust backpressure, reduced fuel economy, compromised reliability, and potentially engine damage. Therefore, we believe that, in order to ensure reliable and economical operation over a wide range of expected operating conditions, diesel fuel sulfur levels should be at or below 15 ppm. With these very low sulfur levels we believe, as demonstrated by experience in Europe, that catalyzed diesel particulate filters will prove to be both durable and effective at controlling diesel particulate emissions to the very low levels that would be required by today's proposed standard. We request comment on the inhibition of trap regeneration due to fuel sulfur, along with supporting data.

b. Loss of PM Control Effectiveness

In addition to inhibiting the oxidation of NO to NO_2, the sulfur dioxide (SO_2) in the exhaust stream is itself oxidized to sulfur trioxide (SO_3) at very high conversion efficiencies by the precious metals in the catalyzed particulate filters. The SO_3 serves as a precursor to the formation of hydrated sulfuric acid ($H_2SO_4+H_2O$), or sulfate PM, as the exhaust leaves the vehicle tailpipe. Virtually all of the SO_3 is converted to sulfate under dilute exhaust conditions in the atmosphere as well in the dilution tunnel used in heavy-duty engine testing. Since virtually all sulfur present in diesel fuel is converted to SO_2, the precursor to SO_3, as part of the combustion process, the total sulfate PM is directly proportional to the amount of sulfur present in diesel fuel. Therefore, even though diesel particulate filters are very effective at trapping the carbon and the SOF portions of the total PM, the overall PM reduction efficiency of catalyzed diesel particulate filters drops off rapidly with increasing sulfur levels due to the production of sulfate PM.

SO_2 oxidation is promoted across a catalyst in a manner very similar to the oxidation of NO, except it is converted at higher rates, with peak conversion rates in excess of 50 percent. The SO_2 oxidation rate for a platinum based oxidation catalyst typical of the type which might be used in conjunction with, or as a washcoat on, a catalyzed diesel particulate filter can vary significantly with exhaust temperature. At the low temperatures typical of some urban driving and the heavy-duty federal test procedure (HD–FTP), the oxidation rate is relatively low, perhaps no higher than ten percent. However at the higher temperatures that might be more typical of non-urban highway driving conditions and the Supplemental Steady State Test (also called the EURO III or 13 mode test), the oxidation rate may increase to 50 percent or more. These high levels of sulfate make across the catalyst are in contrast to the very low SO_2 oxidation rate typical of diesel engines (less than 2 percent). This variation in expected diesel exhaust temperatures means that there will be a corresponding range of sulfate production expected across a catalyzed diesel particulate filter.

The U.S. Department of Energy in cooperation with industry conducted a study entitled Diesel Emission Control Sulfur Effects (DECSE) to provide insight into the relationship between advanced emission control technologies and diesel fuel sulfur levels. Interim report number four of this program gives the total particulate matter emissions from a heavy-duty diesel engine operated with a diesel particulate filter on several different fuel sulfur levels. A straight line fit through this data is presented in Table III.F–1 below showing the expected total direct PM emissions from a heavy-duty diesel engine on the supplemental steady state test cycle.[114]

TABLE III.F–1.—ESTIMATED PM EMISSIONS FROM A HEAVY-DUTY DIESEL ENGINE AT THE INDICATED AVERAGE FUEL SULFUR LEVELS

Avg. Fuel Sulfur [ppm]	Supplemental steady state	
	Tailpipe PM [g/bhp-hr]	Relative to 3 ppm sulfur
3	0.003	
7*	0.006	100%
15*	0.009	200%
30	0.017	470%
150	0.071	2,300%

*The PM emissions at these sulfur levels are based on a straight-line fit to the DECSE data; PM emissions at other sulfur levels are actual DECSE data. (Diesel Emission Control Sulfur Effects (DECSE) Program—Phase II Interim Data Report No. 4, Diesel Particulate Filters-Final Report, January 2000, Table C1.) Although DECSE tested diesel particulate filters at these fuel sulfur levels, they do not conclude that the technology is feasible at all levels, but they do note that testing at 150 ppm is a moot point as the emission levels exceed the engine's baseline emission level.

Table III.F–1 makes it clear that there are significant PM emission reductions possible with the application of catalyzed diesel particulate filters and low-sulfur diesel fuel. At the observed sulfate PM conversion rates, the DECSE program results show that the proposed total PM standard is feasible for diesel particulate filter equipped engines operated on fuel with a sulfur level at or below 15 ppm. The results also show that diesel particulate filter control effectiveness is rapidly degraded at higher diesel fuel sulfur levels due to the high sulfate PM make observed with this technology.

It is clear that PM reduction efficiencies are limited by sulfur in diesel fuel and that, in order to realize the PM emissions benefits sought in this rule, diesel fuel sulfur levels must be as low as possible. As discussed in Section IV, we believe that a 15 ppm sulfur cap for highway diesel fuel is the correct level given consideration to all factors. We request comment on the loss of PM control effectiveness due to fuel sulfur along with supportive data.

c. Increased Maintenance Cost for Diesel Particulate Filters Due to Sulfur

In addition to the direct performance and durability concerns caused by sulfur in diesel fuel, it is also known that sulfur can lead to increased maintenance costs, shortened maintenance intervals, and poorer fuel economy for particulate filters. Diesel particulate filters are highly effective at capturing the inorganic ash produced from metallic additives in engine oil. This ash is accumulated in the filter and is not removed through oxidation, unlike the trapped carbonaceous PM. Periodically the ash must be removed by mechanical cleaning of the filter with compressed air or water. This maintenance step is anticipated to occur on intervals of well over one hundred thousand miles. However, sulfur in diesel fuel increases this ash accumulation rate through the formation of metallic sulfates in the filter, which increases both the size and mass of the trapped ash. By increasing the ash accumulation rate, the sulfur shortens the time interval between the required maintenance of the filter and negatively impacts fuel economy. We request comment on the issue of PM filter maintenance costs and maintenance intervals along with supportive data.

2. Diesel NO_X Catalysts and the Need for Low-Sulfur Fuel

All of the NO_X exhaust emission control technologies discussed previously in Section III are expected to utilize platinum to oxidize NO to NO_2 to improve the NO_X reduction efficiency of the catalysts at low temperatures or as in the case of the NO_X adsorber, as an essential part of the process of NO_X storage. This reliance on NO_2 as an integral part of the reduction process means that the NO_X exhaust emission control technologies, like the PM exhaust emission control technologies, will have problems with sulfur in diesel fuel. In addition NO_X adsorbers have the added constraint that the adsorption function itself is blocked by the presence of sulfur. These limitations due to sulfur in the fuel affect both overall performance of the technologies and, in fact, the very feasibility of the NO_X adsorber technology.

a. Sulfate Particulate Production for NO_X Control Technologies

Two advanced NO_X control technologies that are likely to be able to meet the NO_X emission standard being proposed today are advanced NO_X adsorber catalyst systems and advanced Compact-SCR systems. The NO_X adsorber technology relies on an oxidation function to convert NO to NO_2 over the catalyst bed. For the NO_X adsorber this is a fundamental step prior to the storage of NO_2 in the catalyst bed as a nitrate. Without this oxidation function the catalyst will only trap that small portion of NO_X emissions from a diesel engine which is NO_2. This would reduce the NO_X adsorber effectiveness for NO_X reduction from in excess of 90 percent to something well below 20 percent. The NO_X adsorber relies on platinum to provide this oxidation function due to the need for high NO

[110] Hawkor, P. et al. Experience with a New Particulate Trap Technology in Europe, SAE 970182.

[111] Through tax incentives 50 ppm cap sulfur fuel is widely available in the United Kingdom and 10 ppm sulfur fuel is available in Sweden and in certain European city centers.

[112] Allansson, et al. SAE 2000–01–0480.

[113] Letter from Dr. Barry Cooper, Johnson Matthey, to Don Kopinski, US EPA, Air Docket A–99–06.

[114] Note that direct emissions are those pollutants emitted directly from the engine or from the tailpipe depending on the context in which the term is used, and indirect emissions are those pollutants formed in the atmosphere through the combination of direct emissions and atmospheric constituents.

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oxidation rates under the relatively cool exhaust temperatures typical of diesel engines.

The Compact-SCR technology, like the NO_X adsorber technology, uses an oxidation catalyst to promote the oxidation of NO to NO_2 at the low temperatures typical of much of diesel engine operation. By converting a portion of the NO_X emissions to NO_2 upstream of the ammonia SCR reduction catalyst, the overall NO_X reductions are improved significantly at low temperatures. As discussed previously in section III, platinum group metals, primarily platinum, are known to be good catalysts to promote NO oxidation, even at low temperatures. Therefore, future Compact-SCR systems are expected to rely on a platinum oxidation catalyst in order to provide the required NO_X emission control.

The NO_X adsorber technology may be able to limit its impact on sulfate PM emissions by releasing stored sulfur as SO_2 under rich operating conditions. The Compact-SCR technology, on the other hand, has no means to limit sulfate emissions other than through lower catalytic function or lowering sulfur in diesel fuel. The degree to which the NO_X control aftertreatment technologies increase the production of sulfate PM through oxidation of SO_2 to SO_3 varies somewhat from technology to technology, but it is expected to be similar in magnitude and environmental impact to that for the PM control technologies discussed previously. Thus, we believe that diesel fuel sulfur levels will likely need to be below 15 ppm in order to apply these advanced NO_X control technologies (see discussion in section III.F.1). Without this low-sulfur fuel, the advanced NO_X control technologies are expected to create PM emissions in excess of the PM standard regardless of the engine-out PM levels. We invite comment on sulfate PM production by NO_X control technologies due to fuel sulfur along with supportive data.

b. Sulfur Poisoning (Sulfate Storage) on NO_X Adsorbers

The NO_X adsorber technology relies on the ability of the catalyst to store NO_X as a nitrate on the surface of the catalyst, or adsorber (storage) bed, during lean operation. Because of the similarities in chemical properties of SO_X and NO_X, the SO_2 present in the exhaust is also stored by the catalyst surface as a sulfate. The sulfate compound that is formed is significantly more stable than the nitrate compound and is not released and reduced during the NO_X release and reduction step. Since the NO_X adsorber is essentially 100 percent effective at capturing SO_2 in the adsorber bed, the poisoning of the catalyst occurs rapidly. As a result, sulfate compounds quickly occupy all of the NO_X storage sites on the catalyst thereby rendering the catalyst ineffective for NO_X reduction (poisoning the catalyst).

The stored sulfur compounds can be removed by exposing the catalyst to hot (over 650 °C) and rich (air-fuel ratio below the stoichiometric ratio of 14.5 to 1) conditions for a brief period.[115] [116] Under these conditions, the stored sulfate is released and reduced in the catalyst.[117] Because the exhaust must be taken to a hot and rich condition, there is a fuel consumption impact associated with the desulfation cycle. We have developed a spreadsheet model that estimates the frequency of desulfation cycles from published data and then estimates the fuel economy impact from this event.[118] Table III–F.2 shows the estimated fuel economy impact for desulfation of a NO_X adsorber at different fuel sulfur levels assuming a desired 90 percent NO_X conversion efficiency. The estimates in the table are based on assumed average fuel sulfur levels associated with different sulfur level caps.

TABLE III.F–2.—ESTIMATED FUEL ECONOMY IMPACT FROM DESULFATION OF A 90% EFFICIENT NO_X ADSORBER

Fuel sulfur cap [ppm]	Average fuel sulfur [ppm]	Fuel economy penalty
500	350	27%
50	30	2%
25	15	1%
15	7	<1%
5	2	<<<1%

The table highlights that the fuel economy penalty associated with sulfur in diesel fuel is noticeable even at average sulfur levels as low as 15 ppm and increases rapidly with higher sulfur levels. It also shows that the use of a NO_X adsorber at the proposed 15 ppm sulfur cap would be expected to result in a fuel economy impact of less than 1 percent absent other changes in engine design. However, as discussed in Section G below, we anticipate that other engine modifications could be made to offset this fuel economy impact. For example, a NO_X control device in the exhaust system could allow use of fuel saving engine strategies, such as advanced fuel injection timing, that could be used to offset the increased fuel consumption associated with the NO_X adsorber. The result is that low-sulfur fuel enables the NO_X adsorber, which in turn enables fuel saving engine modifications. Such a system level fuel economy impact, which we estimate to be zero under a 15 ppm cap program, is discussed below in section III.G.

Future improvements in the NO_X adsorber technology are expected and needed if the technology is to provide the environmental benefits we have projected today. Some of these improvements are likely to include improvements in the means and ease of removing stored sulfur from the catalyst bed. However because the stored sulfate species are inherently more stable than the stored nitrate compounds (from stored NO_X emissions), we expect that a separate release and reduction cycle (desulfation cycle) will always be needed in order to remove the stored sulfur. Therefore, we believe that fuel with a sulfur level at or below 15 ppm sulfur will be necessary in order to avoid an unacceptable fuel economy impact. We request comment on sulfur poisoning of NO_X adsorbers by fuel sulfur along with supportive data.

c. Sulfur Impacts on Catalytic Efficiency

The technologies discussed in today's proposal generally rely on some form of catalytic function in order to promote favorable chemical reactions needed in order to accomplish the desired NO_X emission reductions. In each case platinum and/or other precious group metal catalysts are anticipated to be used to accomplish these functions. From our experience with gasoline three-way catalysts and from the extensive body of work in the literature we know that these catalytic functions are inhibited by sulfur. Sulfur deposits on the precious metal sites in the catalyst and causes a decrease in the catalytic function of the device. This causes an increase in the light-off temperature for the catalyst along with a significant reduction in the oxidation and reduction efficiencies of all of the devices.[119] As discussed at length in the Tier 2 rulemaking, sulfur reductions in the fuel are a very effective way to reduce catalyst poisoning of this type in

[115] [Reserved]

[116] Dou, Danan and Bailey, Owen, "Investigation of NO_X Adsorber Catalyst Deactivation," SAE 982594.

[117] Guyon, M. et al., "Impact of Sulfur on NO_X Trap Catalyst Activity—Study of the Regeneration Conditions," SAE 982607.

[118] Memo from Byron Bunker, to docket A–99–06, "Estimating Fuel Economy Impacts of NO_X Adsorber De-Sulfurization."

[119] The Impact of Sulfur in Diesel Fuel on Catalyst Emissions Control Technology—Manufacturers of Emission Controls Association (MECA), March 15, 1999, www.meca.org.

order to maintain high catalyst efficiency and to ensure reliable operation. We invite comment on fuel sulfur impact on catalyst efficiency along with supportive data.

3. What About Sulfur in Engine Lubricating Oils?

Current engine lubricating oils have sulfur contents which can range from 2,500 ppm to as high as 8,000 ppm by weight. Since engine oil is consumed by heavy-duty diesel engines in normal operation, it is important that we account for the contribution of oil derived sulfur in our analysis of the need for low-sulfur diesel fuel. One way to give a straightforward comparison of this effect is to express the sulfur consumed by the engine as an equivalent fuel sulfur level. This approach requires that we assume specific fuel and oil consumption rates for the engine. Using this approach, estimates ranging from two to seven ppm diesel fuel sulfur equivalence have been made for the sulfur contribution from engine oil.[120, 121] If values at the upper end of this range accurately reflect the contribution of sulfur from engine oil to the exhaust this would be a concern as it would represent 50 percent of the total sulfur in the exhaust under a 15 ppm diesel fuel sulfur cap (with an average sulfur level assumed to be approximately seven ppm). However, we believe that this simplified analysis, while valuable in demonstrating the need to investigate this issue further, overstates the likely sulfur contribution from engine oil by a significant amount.

Current heavy-duty diesel engines operate with open crankcase ventilation systems which "consume" oil by carrying oil from the engine crankcase into the environment. This consumed oil is correctly included in the total oil consumption estimates, but should not be included in estimates of oil entering the exhaust system for this analysis, since as currently applied this oil is not introduced into the exhaust. At present we estimate that the majority of lube oil consumed by an engine meeting the 0.1 g/bhp-hr PM standard is lost through crankcase ventilation, rather than through the exhaust. Based on assumed engine oil to PM conversion rates and historic soluble organic fraction breakdowns we have estimated the contribution of sulfur from engine oil to be less than two ppm fuel equivalency. With the proposal today to close the crankcase, coupled with the use of closed crankcase ventilation systems that separate in excess of 90 percent of the oil from the blow-by gases, we believe that this very low contribution of lube oil to sulfur in the exhaust can be maintained. For a further discussion of our estimates of the sulfur contribution from engine oil refer to the draft RIA associated with this proposal.

Although there are good indications to date that oil borne sulfur is not a significant contributor to exhaust sulfur, EPA remains concerned about this issue. We invite comment on the potential for engine lubricating oils to introduce significant amounts of sulfur into the exhaust. Of particular value to EPA is data indicating the expected oil consumption rates of future engines and estimates of future engine oil characteristics specifically with regard to sulfur content. We also invite comment on the potential for new "low-sulfur" engine oils to be developed for these vehicles equipped with sulfur sensitive emission control technologies.

G. Fuel Economy Impact of Advanced Emission Control Technologies

The advanced emission control technologies expected to be applied in order to meet the proposed NO_X and PM standards involve wholly new system components integrated into engine designs and calibrations, and as such may be expected to change the fuel consumption characteristics of the overall engine design. After reviewing the likely technology options available to the engine manufacturers, we believe that the integration of the engine and exhaust emission control systems into a single synergistic emission control system will lead to heavy-duty vehicles which can meet demanding emission control targets without increasing fuel consumption beyond today's levels.

1. Diesel Particulate Filters and Fuel Economy

Diesel particulate filters are anticipated to provide a step-wise decrease in diesel particulate (PM) emissions by trapping and oxidizing the diesel PM. The trapping of the very fine diesel PM is accomplished by forcing the exhaust through a porous filtering media with extremely small openings and long path lengths.[122] This approach results in filtering efficiencies for diesel PM greater than 90 percent but requires additional pumping work to force the exhaust through these small openings. The additional pumping work is anticipated to increase fuel consumption by approximately one percent.[123] However, we believe this fuel economy impact can be regained through optimization of the engine-PM trap-NO_X adsorber system, as discussed below. We request comment and data on the magnitude of the fuel economy impact of diesel particulate filters.

2. NO_X Control Technologies and Fuel Economy

NO_X adsorbers are expected to be the primary NO_X control technology introduced in order to provide the reduction in NO_X emissions envisioned in this proposal. NO_X adsorbers work by storing NO_X emissions under fuel lean operating conditions (normal diesel engine operating conditions) and then by releasing and reducing the stored NO_X emissions over a brief period of fuel rich engine operation. This brief periodic NO_X release and reduction step is directly analogous to the catalytic reduction of NO_X over a gasoline three-way-catalyst. In order for this catalyst function to occur the engine exhaust constituents and conditions must be similar to normal gasoline exhaust constituents. That is, the exhaust must be fuel rich (devoid of excess oxygen) and hot (over 250C). Although it is anticipated that diesel engines can be made to operate in this way, it is assumed that fuel economy while operating under these conditions will be worse than normal. We have estimated that the fuel economy impact of the NO_X release and reduction cycle would, all other things being equal, increase fuel consumption by approximately one percent. Again, we believe this fuel economy impact can be regained through optimization of the engine-PM trap-NO_X adsorber system, as discussed below.

In addition to the NO_X release and regeneration event, another step in NO_X adsorber operation may affect fuel economy. As discussed earlier, NO_X adsorbers are poisoned by sulfur in the fuel even at the low sulfur levels we are proposing. As discussed in the draft RIA, we anticipate that the sulfur poisoning of the NO_X adsorber can be reversed through a periodic "desulfation" event. The desulfation of the NO_X adsorber is accomplished in a similar manner to the NO_X release and regeneration cycle described above. However it is anticipated that the

[120] Whitacre, Shawn. "Catalyst Compatible" Diesel Engine Oils, DECSE Phase II, Presentation at DOE/NREL Workshop "Exploring Low Emission Diesel Engine Oils." January 31, 2000.

[121] This estimate assumes that a heavy-duty diesel engine consumes 1 quart of engine oil in 2,000 miles of operation, consumes fuel at a rate of 1 gallon per 6 miles of operation and that engine oil sulfur levels range from 2,000 to 8,000 ppm.

[122] Typically the filtering media is a porous ceramic monolith or a metallic fiber mesh.

[123] Engine, Fuel, and Emissions Engineering, Incorporated, "Economic Analysis of Diesel Aftertreatment System Changes Made Possible by Reduction of Diesel Fuel Sulfur Content," December 14, 1999, Air Docket A–99–06.

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desulfation event will require extended operation of the diesel engine at rich conditions.[124] This rich operation will, like the NO_X regeneration event, require an increase in the fuel consumption rate and will cause an associated decrease in fuel economy. With a 15 ppm fuel sulfur cap, we are projecting that fuel consumption for desulfation would increase by one percent or less, which we believe can be regained through optimization of the engine-PM trap-NO_X adsorber system as discussed below.

While NO_X adsorbers require non-power producing consumption of diesel fuel in order to function properly and, therefore, have an impact on fuel economy, they are not unique among NO_X control technologies in this way. In fact NO_X adsorbers are likely to have a very favorable NO_X to fuel economy trade-off when compared to other NO_X control technologies like cooled EGR and injection timing retard that have historically been used to control NO_X emissions. EGR requires the delivery of exhaust gas from the exhaust manifold to the intake manifold of the engine and causes a decrease in fuel economy for two reasons. The first of these reasons is that a certain amount of work is required to pump the EGR from the exhaust manifold to the intake manifold; this necessitates the use of intake throttling or some other means to accomplish this pumping. The second of these reasons is that heat in the exhaust, which is normally partially recovered as work across the turbine of the turbocharger, is instead lost to the engine coolant through the cooled EGR heat exchanger. In the end, cooled EGR is only some 50 percent effective at reducing NO_X. Nonetheless, cooled EGR, which we anticipate to be the technology of choice for meeting the proposed 2004 heavy-duty standards, still has a considerable advantage over the previous solutions such as injection timing retard. Injection timing retard is the strategy that has historically been employed to control NO_X emissions. By retarding the introduction of fuel into the engine, and thus delaying the start of combustion, both the peak temperature and pressure of the combustion event are decreased; this lowers NO_X formation rates and, ultimately, NO_X emissions. Unfortunately, this also significantly decreases the thermal efficiency of the engine (decreases fuel economy) while also increasing PM emissions. As an example, retarding injection timing eight degrees can decrease NO_X emissions by 45 percent, but this occurs at a fuel economy penalty of more than seven percent.[125]

Today, most diesel engines rely on injection timing control (retarding injection timing) in order to meet the 4.0 g/bhp-hr NO_X emission standard. For 2002/2004 model year compliance, we expect that engine manufacturers will use a combination of cooled EGR and injection timing control to meet the 2.0 g/bhp-hr NO_X standard. Because of the more favorable fuel economy trade-off for NO_X control with EGR when compared to timing control, we have forecast that less reliance on timing control will be needed in 2002/2004. Therefore, fuel economy will not be changed even at this lower NO_X level.

NO_X adsorbers have a significantly more favorable NO_X to fuel economy trade-off when compared to cooled EGR or timing retard alone, or even when compared to cooled EGR and timing retard together.[126] We expect NO_X adsorbers to be able to accomplish greater than 90 percent reduction in NO_X emissions, while only increasing fuel consumption by a very reasonable two percent or less. Therefore, we expect manufacturers to take full advantage of the NO_X control capabilities of the NO_X adsorber and project that they will decrease reliance on the more expensive (from a fuel economy standpoint) technologies, especially injection timing retard. We would therefore predict, that the fuel economy impact currently associated with NO_X control from timing retard would be decreased by at least three percent. In other words, through the application of advanced NO_X exhaust emission control technologies, which are enabled by the use of low-sulfur diesel fuel, we expect the NO_X trade-off with fuel economy to continue to improve significantly when compared to today's technologies. This will result in both much lower NO_X emissions, and potentially overall improvements in fuel economy. Improvements could easily offset the fuel consumption of the NO_X adsorber itself and, in addition, the one percent fuel economy loss projected to result from the application of PM filters. Consequently, we are projecting no fuel economy penalty to result from this rule. We invite comment and data concerning the relationships between the various types of NO_X control technologies and fuel economy as described here and in the cited references. In particular we ask for comments and data on NO_X adsorber fuel economy and methods of recovering that fuel economy through injection timing changes.

3. Emission Control Systems for 2007 and Net Fuel Economy Impacts

We anticipate that, in order to meet the stringent NO_X and PM emission standards proposed today, the manufacturers would integrate engine-based emission control technologies and post-combustion emission control technologies into a single systems-based approach that would fundamentally shift historic trade-offs between emissions control and fuel economy. As outlined in the preceding two sections, individual components in this system would introduce new constraints and opportunities for improvements in fuel efficient control of emissions. Having considered the many opportunities to fundamentally improve these relationships, we believe that it is unlikely that fuel economy will be lower than today's levels and, in fact, may improve through the application of these new technologies and this new systems approach. Therefore, for our analysis of economic impacts in section V, no penalty or benefit for changes to fuel economy are considered. We request comment on our analysis of the likely fuel economy offsets of the NO_X and PM emission control technologies that would be needed in order to meet today's proposed standards.

H. Future Reassessment of Diesel NO_X Control Technology

We are considering conducting a future reassessment of diesel NO_X control technologies and associated fuel sulfur requirements, and we request comment on the need for such a reassessment. Given the relative state of development of NO_X emission control technology versus PM and NMHC control technologies, we would expect to focus the control technology reassessment solely on NO_X control technologies. We believe that the clear intent of this proposal to provide low-sulfur diesel fuel will allow the development of this technology to progress rapidly, and will result in systems capable of achieving the proposed standards. However, we acknowledge that our proposed NO_X standard represents an ambitious target for this technology, and that the degree of uncertainty surrounding the feasibility of high-efficiency NO_X control technology would be higher if

[124] Dou, D. and Bailey, O., "Investigation of NO_X Adsorber Catalyst Deactivation" SAE982594.

[125] Herzog, P. et al., NO_X Reduction Strategies for DI Diesel Engines, SAE 920470, Society of Automotive Engineers 1992 (from Figure 1).

[126] Zelenka, P. et al., Cooled EGR—A Key Technology for Future Efficient HD Diesels, SAE 980190, Society of Automotive Engineers 1998. Figure 2 from this paper gives a graphical representation of how new technologies (including aftertreatment technologies) can shift the trade-off between NO_X emissions and fuel economy.

fuel sulfur levels higher than the proposed level were adopted. We also recognize that technology evolution may affect the sulfur level at which these technologies are enabled.

Therefore, we are evaluating whether or not the proposed program could benefit from a future reassessment of the control effectiveness of diesel NO_X exhaust emission control technologies and associated fuel sulfur requirements. We would expect to conduct such a reassessment in the 2003 timeframe, though we welcome comment on whether such a reassessment will be needed and on the appropriate timing for it. We also welcome comment on the extent to which a review of NO_X control technology should also include a review of the appropriate diesel fuel sulfur level for enabling the NO_X control technology, including consideration of impacts that a revised fuel requirement would have on PM control technology. Another possible area for consideration during the reassessment could be non-conformance penalties (NCPs) and the role they might play in this program. NCPs would allow engine manufacturers to produce and sell noncomplying engines under limited circumstances in exchange for paying a penalty to the government. We welcome comment on the role NCPs may play.

In conducting the review, we would expect to determine whether or not there was a need to formally consider a change in the final regulations adopted for this program. If such a change were determined to be necessary, we would conduct a formal rulemaking, including conducting public hearings.

I. Encouraging Innovative Technologies

We encourage comments on approaches that could provide increased incentives for the development and introduction of clean advanced engine technologies. Some such approaches have been suggested by stakeholders or have been a part of other EPA rules. One of these would be to develop a program for providing a special designation for engines or vehicles that are significantly below the standards or use specific innovative propulsion technologies. EPA finalized such a designation, the "Blue Sky Series Engine" program, as a part of the 1998 nonroad diesel standards final rule. Incorporating such a designation could be very valuable for use in programs developed by states, municipalities, or corporations to highlight or reward the purchase and use of especially clean or innovative vehicles and engines. We request comment on how we might structure a program like the "Blue Sky Series" program in the context of today's proposal, including what criteria we should use to qualify an engine or vehicles for such a designation.

It has also been suggested that we might adapt the proposed ABT program described in section VII.C. below to provide extra incentives for manufacturers that encourage innovative technologies. For example, manufacturers might get additional credits under the ABT program if they introduce extra clean models or if they meet future standards early. We believe our current ABT program, with the proposed revisions discussed below, should encourage manufacturers to seriously consider any technologies that can economically reach the very low emission levels proposed today. Nevertheless, we request comment on the need for and appropriateness of such additional provisions under the ABT program.

IV. Diesel Fuel Requirements

As discussed in section III above, we believe that advanced exhaust emission control technology exists and is being developed that can reduce emissions of NO_X and PM to very low levels. However, those exhaust emission control technologies will require changes to diesel fuel in order to operate efficiently and reach the new engine emissions standards we are proposing in today's NPRM. This section will present our proposed changes to diesel fuel that are intended to enable heavy-duty engines to meet our proposed new emission standards. We will also describe the extent and applicability of the proposed diesel fuel program, the means through which we expect refiners to meet the new diesel fuel standards, and incentives we are providing refiners for early introduction. The economic and environmental impacts of the proposed diesel fuel program will be covered in subsequent sections in combination with the implications of the proposed engine standards.

A. Why Do We Believe New Diesel Fuel Sulfur Controls Are Necessary?

In section III, we discussed our proposed finding that new standards for heavy-duty engines can be established on the basis of exhaust emission controls which we believe will be fully viable and widely available for the 2007 model year. However, we also discussed our understanding that those exhaust emission control technologies have a significant and irreversible sensitivity to the sulfur content of the fuel. Deep sulfur reductions are necessary to enable both the NO_X and PM emission control technology that we believe vehicles would need to use to achieve the emission standards we are proposing today. Since we believe that new standards for heavy-duty engines are an appropriate next step for reducing ambient pollution, and it is these very exhaust emission control technologies which manufacturers are likely to use in order to reach these low emission levels, we are proposing to reduce the sulfur content of highway diesel fuel.

Engine manufacturers and representatives of States, and environmental and public health organizations have expressed general support for a highway diesel fuel sulfur reduction strategy similar to the gasoline sulfur reduction program. However, some stakeholders, in particular refiners, have expressed concern that the sulfur sensitivity of heavy-duty diesel exhaust emission controls has not been quantified with a sufficient degree of certainty to provide a basis for setting a specific low sulfur standard. Although it is likely that the efficiency of exhaust emission control technology improves with decreasing fuel sulfur levels all the way down to nominally zero levels, we believe that it is possible to set a non-zero sulfur standard that sufficiently enables high-efficiency control technology. The sulfur standard we are proposing and the associated justification is described in more detail in section IV.B below.

Sulfur appears to be the only diesel fuel property that must be changed in order for the prospective exhaust emission control technologies to operate effectively. Changes in other fuel properties, such as cetane, aromatics, density, and high-end distillation, might all provide small emission benefits for engines meeting our proposed standards, but those benefits would be very small in comparison to the sulfur standard. They would also not enable new advances in emission control technology, and so would not likely produce significant step changes in heavy-duty engine emissions. See section VI.B for a more complete discussion of non-sulfur property changes for diesel fuel.

Finally, there is also an expectation on the part of some automobile manufacturers that diesel engines will be used more frequently in light-duty vehicles in the coming decade. However, any light-duty diesel vehicles will be required to meet our final Tier 2 standards, which we believe will require the use of the same high efficiency exhaust emission control technologies envisioned for heavy-duty applications. Although we are not proposing a change to diesel fuel specifically for light-duty diesel

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vehicles, it is our expectation that the availability of a low-sulfur fuel intended primarily to enable heavy-duty engines to meet our proposed new standards would enable automobile manufacturers to produce light-duty diesel vehicles that could meet the Tier 2 standards. We would like comment on whether any other changes to diesel fuel specifically for light-duty diesel vehicles are necessary, and on the appropriateness, benefits, and costs of doing so.

B. What New Sulfur Standard Are We Proposing for Diesel Fuel?

We are proposing to require substantial reductions in diesel fuel sulfur levels nationwide. Our proposal would require that all highway diesel fuel produced or imported by refiners and importers be subject to a maximum sulfur level of 15 ppm by weight. The technological need for low-sulfur diesel fuel and the reasons for our proposed sulfur standard are discussed in section III above. However, we are also seeking comment on whether the sulfur standard should be set as high as 50 ppm or as low as 5 ppm, as well as what the associated costs and benefits would be of a higher or lower level. (See section VI.B. for further discussion of various sulfur standards.)

We believe our proposed diesel fuel sulfur program balances the goal of achieving dramatic reductions in emissions from heavy-duty vehicles with the goal of providing sufficient lead-time for the engine emission control technology to develop and for the refining industry to transition to a lower sulfur diesel fuel. Nevertheless, as noted elsewhere, we are seeking comments on all these issues. We are aware of diesel fuel industry concerns about their ability to consistently deliver fuel meeting this low cap requirement. We are also aware that some engine manufacturers are concerned that even fuel meeting the 15 ppm cap requirement may not adequately enable the exhaust emission control technologies. In determining the appropriate sulfur level and scope for our proposed program, we considered the implications of diesel fuel sulfur on the emission control hardware of both heavy-duty and light-duty vehicles (that is, light-duty diesel vehicles that are required to meet our Tier 2 emission standards). Specifically, we analyzed the degree to which the emission control devices described in section III, above, may tolerate diesel fuel sulfur. We also evaluated the environmental implications of sulfur control beyond the expected NO_X and PM benefits (see section II) and the costs of controlling fuel sulfur content, and we considered the ability of all refiners and importers to meet the proposed diesel fuel sulfur standard at essentially the same time (see section IV.D). We hope to benefit from further discussion of all of these issues during the public comment period.

The following sections describe in more detail the standard we are proposing and the reasons why we are proposing a program that applies year-round and nationwide.

1. Why Is EPA Proposing a 15 ppm Cap and Not a Higher or Lower Level?

There are five key factors which, when taken together, lead us to propose that a diesel fuel sulfur cap of 15 ppm is both necessary to enable the NO_X and PM exhaust emission control technology (and thereby allow the proposed emission standards to be met), and appropriate, taking into consideration the challenges involved in providing low-sulfur fuel. These factors, as discussed in more detail in sections III and IV.D, are the implications that sulfur levels in excess of 15 ppm would have for the efficiency, reliability, and fuel economy impacts of the exhaust emission control systems, and the feasibility and costs of producing low-sulfur diesel fuel.

The efficiency of emission control technologies at reducing harmful pollutants is directly impacted by sulfur in diesel fuel. Initial and long term conversion efficiencies for NO_X, NMHC, CO and diesel PM emissions are significantly reduced by catalyst poisoning and catalyst inhibition due to sulfur. NO_X conversion efficiencies with the NO_X adsorber technology in particular are dramatically reduced in a very short time due to sulfur poisoning of the NO_X storage bed. In addition total PM control efficiency is negatively impacted by the formation of sulfate PM. The formation of sulfate PM is likely to be in excess of the total PM standard proposed today, unless diesel fuel sulfur levels are below 15 ppm.

The reliability of the emission control technologies to continue to function as required under all operating conditions for the life of the vehicle is also directly impacted by sulfur in diesel fuel. As discussed in section III, sulfur in diesel fuel can prevent proper operation and regeneration of both NO_X and PM control technologies leading to permanent loss in emission control effectiveness and even catastrophic failure of the systems. We believe that diesel fuel with sulfur levels less than 15 ppm will be required to provide a level of reliability for these technologies to allow their introduction into the marketplace.

The sulfur content of diesel fuel will also affect the fuel economy of vehicles equipped with NO_X and PM exhaust emission control technologies. As discussed in detail in section III, NO_X adsorbers are expected to consume diesel fuel in order to cleanse themselves of stored sulfates and maintain efficiency. The larger the amount of sulfur in diesel fuel, the greater this impact on fuel economy. As sulfur levels increase above 15 ppm the fuel economy impact transitions from merely noticeable to levels most diesel vehicle operators would consider unacceptable (see discussion in section III). Likewise PM trap regeneration is inhibited by sulfur in diesel fuel. This leads to increased PM loading in the diesel particulate filter, increased exhaust backpressure, and poorer fuel economy. Thus for both NO_X and PM technologies the lower the fuel sulfur level the better the fuel economy of the vehicle.

As a result of these factors, we believe that 15 ppm represents an upper threshold of diesel fuel sulfur levels that would make these technologies viable, and are therefore proposing to cap in-use sulfur levels there. In comments received on the ANPRM, as well as in subsequent meetings and discussions, however, we have often heard different points of view on this issue expressed by the vehicle and engine manufacturers, and by oil refiners.

Some vehicle and engine manufacturers have argued for a maximum cap on the sulfur content of diesel fuel of 5 ppm, believing that this level is necessary. As we discuss in section III, however, we believe that a cap of 15 ppm (likely resulting in an in-use sulfur level 7 to 10 ppm) would be sufficient to ensure the reliability of PM exhaust emission control technology (avoid potential for irreversible failure) and enable it to reach the very high efficiencies needed over the wide range of vehicle operation and conditions that would be needed for the engines to comply with our proposed standards. Although at the current stage of development, high efficiency NO_X technology is extremely sulfur intolerant, work is already underway to develop capability in the technology to tolerate at least some sulfur in the fuel. As discussed in section III, however, it is likely that to maintain the very high operational efficiencies of the emission control equipment that we believe would be needed to meet the proposed emission standards, and to avoid a significant fuel economy penalty, the sulfur level in the fuel would still have to be very low.

We believe that requiring a cap lower than 15 ppm would not be necessary to enable the exhaust emission control technology to meet the very low NO_X and PM emission standards proposed. A cap lower than 15 ppm would provide little additional emission reduction but would increase the cost. Consequently, requiring a sulfur cap lower than that necessary to enable the exhaust emission control technology to meet the emission standards would be inappropriate. Further discussion and analysis of alternative sulfur standards is contained in section VI.

Conversely, many oil refiners have argued for a higher maximum cap (if any) on the content of sulfur in diesel fuel, typically on the order of 50 ppm. They argue that the cost of reducing the sulfur level below a cap of 50 ppm (and average of 30 ppm) becomes prohibitively high. They further argue that diesel engine exhaust emission control technology is still in its infancy and will likely develop rapidly over the next several years to the point where it is much less sulfur sensitive than the technology of today. As discussed in section III, we also believe that the diesel engine exhaust emission control technology will develop rapidly over the coming years, and in particular are projecting that the sensitivity of NO_X adsorber technology to fuel sulfur will improve considerably through the development of techniques to effectively regenerate themselves of stored sulfur compounds. The Manufacturers of Emission Controls Association (MECA) recently sent a letter strongly supporting this position, stating "we strongly believe that NO_X adsorber technology will be commercially available in 2007 to help heavy-duty diesel engines meet the stringent NO_X standards being considered by EPA and that any current engineering challenges involved with this technology will be addressed provided that very low sulfur fuel is available." [127] Based on available information and our projections from that information, we believe that a cap higher than 15 ppm sulfur, and in particular a cap as high as 50 ppm would not enable the exhaust emission control technology needed to achieve the proposed emission standards and furthermore may severely compromise the reliability of the systems and result in unacceptable fuel economy impacts. In addition, as discussed in section IV.D below, although we acknowledge that the cost to desulfurize diesel fuel does increase with more stringent sulfur levels, we believe that these costs would not be prohibitively high, and maintain that the environmental benefits of the program are sufficient to justify the costs of the program at a sulfur cap level of 15 ppm.

Based on our assessment of the efficiency, reliability, and fuel economy impacts of sulfur on diesel engine exhaust emission control technology, and the cost and feasibility factors associated with reducing the sulfur content of diesel fuel, we propose to adopt 15 ppm as the appropriate sulfur cap. However, we have analyzed the impacts on technology enablement, costs, and benefits from controlling fuel sulfur to a 15 ppm average level with a 25 ppm cap, as well as from capping fuel sulfur at 5 ppm and 50 ppm. These levels have been put forward by various stakeholders as either necessary (in the case of a 5 ppm cap) or adequate (in the case of a 50 ppm cap) for enabling high-efficiency diesel exhaust emission controls, and so we believe that assessments of these levels is appropriate. These assessments are discussed in section VI.B. We request comment on the appropriate level of the highway diesel fuel sulfur standard, and on our assessment of alternative standards.

2. Why Propose a Cap and Not an Average?

We are proposing a cap on the sulfur content of diesel fuel in order to protect the vehicle aftertreatment technologies that we expect would be used to meet the proposed standards for heavy-duty engines and vehicles. An average standard by itself would not be sufficient to ensure that sulfur levels higher than those that could be tolerated by the exhaust emission control technology would not be used in vehicles for extended periods of time. Consequently, we do not believe that an average standard can stand by itself and would at minimum have to be coupled with a cap.

3. Should the Proposed 15 ppm Cap Standard Also Have an Average Standard?

Although our current 500 ppm sulfur limit for diesel fuel provides no averaging flexibility, in the years since that limit was set our motor vehicle fuel regulations have frequently incorporated provisions allowing regulated industries to average regulated parameters around a standard, often with a capped upper limit. In fact this approach was taken in the recently promulgated control of gasoline sulfur levels, in which we adopted a 30 ppm average level with an 80 ppm cap.

Despite the ability of averaging provisions in some programs to increase compliance flexibility and in some cases reduce overall costs while still achieving the environmental objectives, we are not proposing such provisions for the diesel fuel sulfur standard we are proposing today. Basing the fuel program around an average sulfur level could risk failure in meeting the whole objective of sulfur control (the enablement of sulfur-sensitive technologies) and thereby the environmental objectives of the program, or else could require the adoption of a cap so low as to make the average level largely irrelevant. The exhaust emission control technologies enabled by diesel sulfur control appear to be far more sensitive to and far less forgiving of variations in fuel sulfur level than advanced Tier 2 gasoline technologies. Enough is known about the exhaust emission control technologies to convince us that the proposed sulfur level will likely represent an enablement threshold level, above which increases in emissions and potentially system failures could be expected. Consumption of diesel fuel with sulfur levels above this threshold could be very problematic.

Some commenters who responded to our diesel fuel ANPRM did express interest in an averaged fuel sulfur standard, but only from the viewpoint that the flexibility provided by averaging is generally desirable, and not with specific solutions to the above-discussed problems created by this approach. Other commenters opposed an averaging requirement due to the test burden associated with demonstrating compliance under such a program. We request specific suggestions on how to structure a viable averaging requirement in conjunction with a 15 ppm cap, and whether it would be desirable to do so. One benefit of having only a cap instead of an average is that it allows for a simplified enforcement scheme. Imposing an average standard in addition to the cap would require additional product sampling, recordkeeping, and reporting requirements to demonstrate compliance with the standard. Thus, depending on how the program is structured, the flexibility of an average standard may not be worth the additional cost and complexity that would result, particularly with a cap set at 15 ppm.

Some have suggested that it may be possible to set an average standard of 10 ppm coupled with a higher cap. They

[127] Letter to Carol Browner, Administrator of EPA from Bruce Bertelsen, Executive Director of Manufacturers of Emission Controls Association, May 3, 2000.

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suggest that a 10 ppm average would achieve essentially the same average in-use sulfur level as the proposed 15 ppm cap, and that as long as the cap is sufficiently protective of the exhaust aftertreatment technology, then the refining and distribution systems may have greater flexibility in complying with the standard, allowing for lower costs and less potential for disruptions of fuel supply. We request comment on whether it would be possible to have a higher cap as long as the average remained essentially unchanged and if so, what cap would be appropriate. If such an approach could enable the technology, we seek comment on the extent to which it would help address the concerns refiners have raised with very low sulfur levels with respect to the potential for fuel shortages and price increases.

If an averaged fuel sulfur standard were to be adopted (at any sulfur level), one added flexibility option that has been suggested to facilitate it is an averaging, banking and trading program. Because we believe that the exhaust emission control devices would require ultra-low sulfur diesel fuel, this flexibility would be focused on the average component of the standard, rather than on the cap component. Refineries would have the option to average across batches, to bank credits for use in the future, and to purchase credits from other refineries. In addition, under this concept the Agency could offer additional "average credits" at a predetermined price to refineries. This could provide more certainty about the cost of complying with the average component of the standard by establishing a ceiling price on these tradable and bankable credits. These credits could be used for a refinery to comply with the average requirement; however, refineries' use of these credits would still be subject to the cap standard. We request comment on the concept of an averaging, banking, and trading program in the context of an average standard, including: (1) whether the additional flexibility of offering additional "average credits" at a predetermined price would benefit refineries; and, (2) what the appropriate predetermined price for EPA-offered "average credits" should be.

4. Why We Believe Our Diesel Fuel Sulfur Program Should Be Year-round and Nationwide

We believe it is necessary for all highway diesel fuel to meet the proposed 15 ppm sulfur limit at all times. To relax this requirement would jeopardize many of the environmental benefits of the proposed program. Although NO_X benefits are only realized in the summer, PM and air toxics benefits are realized year-round. Moreover, the exhaust emission control devices require low-sulfur diesel fuel year-round. The use of highway fuel with a sulfur content greater than our proposed sulfur standard could damage the emission control technology of 2007 and later model year vehicles and engines. Once vehicles are equipped with the new exhaust emission control devices, they can only be fueled with the low-sulfur fuel. This precludes any consideration of a seasonal program. In addition, because diesel vehicles travel across the country transporting goods from region to region and state to state, low-sulfur diesel fuel will have to be available nationwide (see discussion in section VI.C. for possible exceptions. The health effects associated with diesel PM emissions are not area-specific, nor are the adverse effects of high sulfur diesel on engines with exhaust emission control. For these reasons, we do not believe that any regional or seasonal exemptions from the proposed sulfur requirements would be practical.

C. When Would the New Diesel Sulfur Standard Go Into Effect?

Since the need for low-sulfur diesel is dictated by the implementation of new engine standards, the proposed sulfur standard would become effective commensurate with the introduction of the first heavy-duty engines meeting our proposed standards. As described in section III.H, the phase-in of the engine standards is proposed to begin with the 2007 model year. Since light-heavy-duty trucks might be introduced as early as January 2 of the previous calendar year but are often introduced beginning about July 1, we are proposing that all highway diesel fuel sold at retail stations and wholesale purchaser-consumers meet the proposed sulfur standard by June 1, 2006. We believe that this one month lead time will be sufficient to provide confidence that the fuel available for purchase on July 1 will comply with the proposed sulfur cap. We are also proposing that highway diesel fuel at the terminal level be required to meet the proposed sulfur standard as of May 1, 2006, and that highway diesel fuel produced by refiners (and imported) meet the proposed sulfur standard by April 1, 2006. We believe these earlier compliance requirements at terminals and refineries would be necessary to provide an orderly transition to low-sulfur fuel and to avoid the market disruptions that occurred when the sulfur level of diesel fuel was lowered to 500 ppm in 1993 with only a retail compliance date. The three months between April and July should allow sufficient time for fuel to move through the distribution system, for existing tankage to transition down to the lower sulfur level that would be required. It would also ensure that all fuel is complying with the proposed sulfur standard and is available for use in heavy-duty engines when 2007-model year engines are introduced to the market. We request comment on this proposed approach.

We believe that the lead-time issue is particularly important, because not only would failure to meet the standards at the retail level cause emission increases from new technology vehicles, but violations of the standard due to insufficient turnover in the distribution system could potentially permanently disable the emission control systems of new technology vehicles and could cause driveability problems for the operators of such vehicles. We would like to take comment on these dates for the start of our low-sulfur diesel program, and in particular on whether the three-month lead time is more than adequate, adequate, or less than adequate for an orderly transition.

Some parties have suggested that low-sulfur diesel should be required at the same time as low-sulfur gasoline, in 2004. They point out that refinery synergies are optimized when refiners are forced to address both requirements at the same time instead of sequentially. The earlier introduction of low-sulfur diesel would also provide both reductions in sulfur dioxide and sulfate PM emissions for the in-use fleet prior to 2007, and would give engine manufacturers greater flexibility to make use of sulfur-sensitive technologies such as cooled EGR.

We do not believe that it is appropriate to require all on-highway diesel fuel to meet our proposed sulfur standard prior to the introduction of heavy-duty engines meeting our proposed standards. By proposing a 2006 start year for the low-sulfur diesel program, we are giving refiners a long lead-time to begin the planning process for meeting our proposed requirements. They always have the flexibility to make a single set of refinery changes prior to 2004 that will allow them to meet both the low-sulfur gasoline and our proposed low-sulfur diesel requirements by 2004. Although we are not requiring it, we would encourage the introduction of highway diesel fuel that meets the proposed sulfur standard prior to 2006, as discussed in section IV.F.

Finally, some parties have suggested that low-sulfur diesel is necessary by 2004 to ensure that light-duty vehicles can meet our Tier 2 standards using diesel fuel. Although some analysts have predicted a greater proportion of diesel-powered light-duty vehicles in the coming decade, we do not believe that they can justify the introduction of low-sulfur diesel prior to 2006. As discussed in more detail in section VI.A.2, we believe diesel-powered light-duty vehicles will not actually need low-sulfur diesel fuel prior to 2006, given the flexibility offered by the Tier 2 program's bin structure. It would also appear that light-duty vehicles would not produce lower emissions using lower-sulfur diesel fuel than they would using gasoline, since all light-duty must meet the same Tier 2 standards. There would be no emission benefits associated with introducing low-sulfur diesel fuel prior to 2006, for use in light-duty vehicles, and thus it would be difficult to justify the costs. We welcome comments on requiring low-sulfur diesel fuel prior to 2006 for use in light-duty vehicles. We also welcome comments on the appropriateness of a 2006 start date for the diesel fuel sulfur standard.

D. Why We Believe the Proposed Diesel Sulfur Standard Is Technologically Feasible

In addition to evaluating the merits of diesel powered highway vehicles operating on low-sulfur diesel fuel, we also considered the ability of refiners to reduce diesel fuel sulfur in essentially every gallon of highway diesel fuel by mid-2006. Based on this evaluation, we believe it is technically feasible for refiners to meet the proposed standards and that it is possible for them to do so in the proposed time frame. We are summarizing our analysis here and we refer the reader to the Draft RIA for more details. We welcome comments on all aspects of this analysis.

1. What Technology Would Refiners Use?

Conventional diesel desulfurization technologies have been available and in use for many years. Conventional hydrotreating technology involves combining hydrogen with the distillate (material falling into the boiling range of diesel fuel) at moderate pressures and temperatures and flowing the mixture through a fixed bed of catalyst. EPA required refiners and diesel fuel distributors and marketers to provide diesel fuel for highway vehicles which does not exceed 500 ppm by weight in sulfur starting in October 1993. As a result, most U.S. refiners installed diesel desulfurization units to reduce their onroad diesel fuel from the pre-control average of about 3000 ppm, to the current average of about 350 ppm.

Based on our review of the literature and discussions with vendors of catalyst technology and desulfurization technology, the most difficult challenge to reducing sulfur to extremely low levels via conventional hydrotreating is the presence of certain aromatic compounds. These aromatic compounds are referred to as sterically hindered, because the physical arrangement of the atoms of these compounds hinders interaction between the sulfur atom and the catalyst.[128] One method to desulfurize these compounds is to design the shape of catalyst surfaces so that these sterically hindered compounds can more easily approach the catalytic material. Another approach is to saturate one or more of the aromatic rings present, which makes the sulfur atom more accessible to the catalytic surface.

Refiners produce diesel fuel from a variety of distillate blending streams in the refinery. The largest component is straight run distillate, which comes straight from crude oil, hence the name straight run. The second largest component is light cycle oil (LCO) which comes from the fluidized catalytic cracker, or FCC unit. This unit primarily produces gasoline from material having a higher molecular weight than either gasoline or diesel fuel, but also produces a significant amount of distillate. About 62 percent of today's highway diesel fuel contains some LCO. The third largest component is light coker gas oil, which comes from the coker, which also produces lighter molecular weight material from heavier material. Both straight run distillate and light coker gas oil contain relatively low levels of sterically hindered compounds. LCO contains a much higher concentration of sterically hindered compounds. Thus, the difficulty of achieving the 15 ppm sulfur cap being proposed today is primarily a function of the amount of light cycle oil (LCO) that a refiner processes into its highway diesel pool.[129]

We project that all refiners would be technically capable of meeting the proposed sulfur cap with extensions of the same conventional hydrotreating which they are using to meet the current highway diesel fuel standard. This extension would likely mean adding a second stage of conventional hydrotreating. In a two-stage process, hydrogen sulfide is removed from the treated distillate after the first reactor and fresh hydrogen added prior to the second reactor. This stripping of the hydrogen sulfide serves two purposes. First and foremost, it reduces the concentration of hydrogen sulfide throughout the second reactor. This speeds up the desufurization reactions substantially. Second, it reduces the concentration of hydrogen sulfide at the end of the second reactor. This is the point where hydrogen sulfide can react with the treated distillate, forming new sulfur compounds (essentially adding sulfur back into the fuel). This process is termed recombination and low hydrogen sulfide concentrations decrease it dramatically. Finally, reducing the concentration of hydrogen sulfide increases the concentration of hydrogen, again speeding up the desulfurization reactions.

Converting an existing one-stage hydrotreater into a two-stage hydrotreater would involve adding an additional reactor, a hot hydrogen sulfide stripper, modifications to the compressor to increase pressure to the new reactor and possibly a pressure-swing adsorption (PSA) unit to increase hydrogen purity. Essentially all of the units comprising the existing hydrotreater would still be used.

We project that all refiners could utilize recently developed, high activity catalysts, which increase the amount of sulfur which can be removed relative to the catalysts which were available when the current desulfurization units were designed and built. The cost of these advanced catalysts is very modest relative to less active catalysts, but they would significantly reduce the size of the new reactors described above. We also project that refiners and technology vendors could achieve the 15 ppm cap without significant saturation of aromatic compounds. This will be achieved through the selection of catalysts and through the control of operating conditions, particularly temperature.

The above projections are based primarily on information received from a number of refining technology vendors, supported by published literature, as no operating experience at sulfur levels below 10 ppm currently exists with this technology on diesel fuel feedstocks typical of U.S. refiners. All the vendors supplying information to EPA and others studying diesel fuel desulfurization projected that the 15 ppm cap can be met using diesel fuel

[128] Typical compounds which are difficult to desulfurize are 4-methyl, dibenzothiophene and 4,6-dimethyl, dibenzothiophene. The methyl group(s) attached to the aromatic rings make it very difficult for the sulfur atom to physically approach the catalyst, which is essential for the desulfurization process to proceed.

[129] LCOs are not homogeneous and can vary dramatically in chemical composition from refiner to refiner. The discussion here applies to a typical LCO composition.

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hydrotreaters which operate at hydrogen pressures ranging from 600–900 pounds per square inch (psi) and with total reactor volumes of roughly 2–3 times those of current diesel fuel hydrotreaters. A number of oil refiners informed us that they believe that much larger reactors would be required. API believes that both higher pressures and larger reactors will be needed. Either change would increase our projected costs (described in section V.D.1 below).

Based on our review of the literature, we do not believe that these extremely large reactors would be required to meet the proposed sulfur cap. However, 15 ppm sulfur diesel fuel is not yet being produced commercially from feedstocks typical of the U.S. Thus, we request comments on the sufficiency of 600–900 psi operating pressures for diesel fuel hydrotreaters to meet the proposed sulfur cap. We also request comment on the sufficiency of total reactor volumes which are 2–3 times greater than those currently being utilized under the 500 ppm sulfur cap in order to meet a 15 ppm cap.

Other options are available to refiners. Some refiners could choose to add an FCC feed hydrotreater. This improves the yield of high value products from the FCC unit and reduces the sulfur content of both FCC naphtha and LCO. FCC naphtha is the primary source of sulfur in gasoline, for which EPA recently set stringent standards. However, while hydrotreating the FCC feed reduces the sulfur content of the LCO produced by the FCC unit, it can increase the concentration of sterically hindered compounds. Also, FCC feed hydrotreating is much more costly than distillate hydrotreating or ring opening technology. Thus, we are not projecting that any refiners would utilize this technology to meet the proposed diesel fuel sulfur cap.

Refiners could also add a hydrocracker to process their LCO if they have not already done so. This would increase the production of high value gasoline with a very low sulfur content. However, hydrocrackers are very costly to build and operate, so a refiner choosing to do so would likely do so for reasons beyond removing sulfur from diesel fuel.

In addition to these major technological options, most refiners would also have to add other more minor units to support the new desulfurization unit. These units could include hydrogen plants, sulfur recovery plants, amine plants and sour water scrubbing facilities. All of these units are already operating in refineries but may have to be expanded or enlarged.

2. Are These Technologies Commercially Demonstrated?

As mentioned above, conventional diesel desulfurization technologies have been available and in use for many years. U.S. refiners have roughly seven years of experience with this technology in producing highway diesel fuel with less than 500 ppm sulfur. Refiners in California also have the same length of experience with meeting the California 500 ppm cap on sulfur and an additional aromatics standard.[130] In order to meet both sulfur and aromatics standards, refineries in California are producing highway and nonroad diesel fuel with an average sulfur level of 150 ppm.

Some refiners in Europe are producing a very low-sulfur, low aromatics diesel fuel for use in the cities in Sweden (Class I Swedish Diesel) using two-stage hydrotreating. This "Swedish city diesel" is averaging under 10 ppm sulfur and under 10 volume percent aromatics. While clearly demonstrating the feasibility of consistently producing diesel fuel with less than 10 ppm sulfur from selected feedstocks, there are a few differences between the Swedish fuel and typical U.S. diesel fuel. First, the tight aromatics specification applicable to Swedish City diesel fuel usually requires the use of ring-opening or dearomatization catalysts in the second stage of the two-stage hydrotreating unit. This eases the task of desulfurizing any sterically hindered compounds present. Second, Swedish Class I diesel fuel also must meet a tight density specification. This, coupled with the fact that European diesel fuel contains less LCO than U.S. diesel fuel, significantly reduces the amount of sterically hindered compounds present in the feed to the desulfurization unit. Third, it is not clear whether any refiner is producing a large fraction of their distillate production to this specification. Thus, the European experience demonstrates the efficacy of the two-stage process and its ability to produce very low sulfur diesel fuel. However, doing so without saturating most of the aromatics present and with heavier feedstock has only been demonstrated in pilot plants and not commercially.

Europe has adopted a 50 ppm cap sulfur standard for all diesel fuel which takes effect in 2005. Some countries, including England, have implemented tax incentives for refiners to produce this fuel sooner. The great majority of diesel fuel in England already meets the 50 ppm specification. Refiners have reported no troubles with this technology. This diesel fuel is being produced in one-stage hydrotreaters. However, as mentioned above, European diesel fuel contains less LCO than diesel fuel in the U.S., so the use of one-stage conventional hydrotreating to meet very low sulfur levels is applicable, but not sufficient to demonstrate feasibility in the U.S. Germany has also established a tax incentive, but for diesel fuel containing 10 ppm or less sulfur. One European technology vendor indicated that they have already licensed two desulfurization units to German refiners planning to produce diesel fuel to obtain this tax credit.

Overall, conventional diesel desulfurization ring-opening and dearomatization technologies have all been installed and are operating in one or more refineries. Thus, there should not be much concern among refiners whether these technologies will work reliably in general. Refiners' primary concern would be focused on the treatment of any LCO currently being blended into highway diesel fuel. They would be particularly concerned with the ability to desulfurize this material to very low sulfur levels using conventional technology and, absent that, ways to shift this material to other valuable fuel pools or treat it more severely in available hydrotreaters or hydrocrackers. Of course, refiners would also be concerned with the reliability of the technology in complying with a 15 ppm cap day in and day out.

In addition to these more traditional technologies, Energy Biosystems recently announced the availability of their biodesulfurization technology for desulfurizing diesel fuel. Biodesulfurization is a process which uses bacteria which has been genetically enhanced to biologically remove the sulfur atoms from petroleum compounds. This process is still being developed and is expected to begin commercial demonstration in the next couple of years. At the present time, the goal of the developers is to produce diesel fuel with less than 50 ppm sulfur. It is not known whether this technology would be capable of meeting the proposed cap of 15 ppm. This process has the advantage of operating at ambient temperature and pressures, and requires no hydrogen. The economics of the process, however, rely on a market for its by-products, which may limit its widespread application. Because of uncertainties in this technology's ability to achieve the proposed 15 ppm cap, we did not factor it into our cost projections. We request comment on the availability of this technology in the relevant time frame for this proposed rulemaking.

[130] California allows refiners to use an engine test to certify an alternative fuel mixture which meets or exceeds the NOx reducing performance of a 10 volume percent maximum aromatics and a 500 ppm maximum sulfur diesel fuel.

3. Are There Unique Concerns for Small Refiners?

We have heard concerns that small refiners would bear proportionately higher economic burdens if they were required to produce diesel fuel meeting the same sulfur levels as larger refineries. The most significant concern expressed to us has been their more limited ability to obtain the capital necessary to make the refinery modifications necessary to produce low sulfur diesel fuel compared to the larger refiner. To address these and other concerns related to small refiners, we have participated in a review and evaluation process specific to small businesses under the Small Business Regulatory Enforcement Flexibility Act (SBREFA). More information can be found in our response to the Regulatory Flexibility Act (see section XI.B). In short, we are seeking comment on provisions that would assist small refiners in addressing unique challenges, as discussed in section VIII.E.

4. Can Refiners Comply with an April 1, 2006 Start Date?

We believe that our proposal that the program begin on April 1, 2006 would provide more than an adequate amount of time for refiners to plan their investment, complete the design package and complete the construction and startup of the new or modified desulfurization unit and other associated units in their refineries. In response to our proposed Tier 2 gasoline desulfurization rulemaking, the American Petroleum Institute (API) commented that 4 years is needed for refiners to complete this cycle of planning, design, construction and startup. While we believe 4 years to be more than sufficient, we have initiated this rulemaking sufficiently early to provide over 5 years of lead time. We recognize that most refiners will have to make investments in their refineries to desulfurize their gasoline during this time, so the additional time from final rule to implementation is expected to be valuable for refiners. Similarly, by informing refiners now (i.e., before they make their gasoline desulfurization investments) of our proposed highway diesel fuel desulfurization program we hope to allow refiners to coordinate their investments and produce both low-sulfur gasoline and low-sulfur onroad diesel at a lower cost. The additional time between promulgation and implementation is important because of the number of refiners which are expected to have to make these investments. Unlike the gasoline sulfur program which really only affected refineries outside of California, this program would affect the California refiners as well, in addition to a number of refineries which produce onroad diesel fuel but no gasoline.[131] However, the total capital cost of the investments projected to be required to meet the proposed diesel fuel sulfur cap is less than that for the Tier 2 gasoline sulfur standards.

A particular concern has been raised to the Agency regarding the capability of the engineering and construction (E&C) industries to be able to design and build diesel fuel hydrotreaters while at the same time doing the same for gasoline, as well as accomplishing their other objectives. We believe that the E&C industry is capable of supplying the oil refining industry with the equipment necessary to comply with the proposed diesel fuel sulfur cap on time.[132] We believe that this is facilitated by the extended phase-in we allowed regarding compliance with the Tier 2 gasoline sulfur standards. For example, we project that only roughly a third of all gasoline-producing refineries outside of California will be building gasoline desulfurization equipment for start-up in early 2006 and 2007. Thus, most of the construction related to gasoline desulfurization will be completed prior to the proposed implementation of the diesel fuel sulfur cap. Also, low sulfur gasoline and diesel fuel standards scheduled for Europe and Canada become effective in 2005. We believe that this precedes the proposed highway diesel fuel sulfur cap sufficiently to enable the availability of European equipment fabrication capacity to be available to meet the needs of the proposed sulfur cap in the U.S. Thus, we do not foresee any shortage in either E&C industry personnel or equipment fabrication capacity. We request comment on these findings.

We are aware that the National Petroleum Council (NPC) is conducting a Refining Study which also addresses this issue. It appears from a publically available draft final report that the NPC may conclude otherwise. We plan to consider the findings of this study once it becomes final.

Another issue related to the feasibility of the April 1, 2006 start date relates to refiners' ability to hook up their new equipment to their existing diesel fuel hydrotreaters while still providing the nation with diesel fuel during the transition. This issue is relevant since: (1) we expect most refiners to revamp their current equipment, as opposed to building entirely new equipment and (2) all refiners face the same April 1, 2006 deadline. We expect that any new equipment required as part of the revamp would be able to be constructed on-site while the current equipment is operating. Inter-connecting the new and old equipment would occur prior to April 2006 when the current hydrotreater is scheduled to be down for maintenance. Existing equipment which would require modification, such as compressors and heat exchangers, would be modified during this time, as well. Diesel fuel hydrotreaters currently operate roughly two years in between scheduled maintenance. Thus, there should be at least one and possibly two scheduled maintenance periods between the time when refiners could have project designs completed, permits issued, as appropriate, and April 2006. Under this schedule of refinery maintenance, modifying current diesel fuel hydrotreaters to meet the proposed sulfur cap should not impact diesel fuel production. If refiners had to schedule additional down time in order to complete the revamp, then diesel fuel production could be affected. We expect that any such shortfall would be made up by other refiners or the previous build-up of inventory. We request comment on the ability of the industry to continue to supply highway diesel fuel while it is modifying equipment in order to comply with the proposed sulfur cap.

Concerns have also been raised with respect to the refining industry's ability to raise the capital necessary to make the refinery modifications necessary to meet a 15 ppm sulfur cap on diesel fuel, while at the same time expending capital to reduce the sulfur level in gasoline as a result of the recently promulgated Tier 2 standards. This has led to concerns that some refiners may refrain from investing to continue to produce highway diesel fuel, which could cause a shortage when the program is implemented. As discussed in section IV.B. of the draft RIA, we have designed these programs in a

[131] By far most of California gasoline meets a 30 ppm averaging standard, except for a small volume which is exported out of the state. However, since the California refiners already have the desulfurization units in place to desulfurize the majority of their gasoline, they are expected to use those same units to desulfurize the exported gasoline as well.

[132] Rykowski, Richard A., "Implementation of Ultra Low Sulfur Diesel Fuel: Construction Capacity and Aggregate Capital Investment," EPA Memorandum to the Record, Docket A–99–06.

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manner which will serve to maximize refiner flexibility and minimize costs. Furthermore, as discussed in section V.D.1., we believe that despite the capital cost of desulfurizing their highway diesel fuel, other options for marketing the distillate streams from their refineries will be limited. Finally, as discussed in section VI.A., we are also considering various phase-in approaches for implementing the low sulfur diesel standard. A phase-in could help spread out the design, construction, and capital expenditure of refinery modifications necessary to comply with the proposed diesel fuel sulfur standard. We request comment on the necessity and ability of a phase-in to address these concerns.

In summary, we believe that meeting a 15 ppm cap is achievable with the diesel desulfurization technologies available now. We are confident that we are providing more than a sufficient amount of time between when this rule is expected to be finalized and the proposed startup date of the program. This timing should allow for a smooth transition of low-sulfur fuel into the marketplace. We request comments on all of these issues. In particular, we request comment and supporting information on the challenges refiners would face in competing for engineering and construction resources and obtaining capital for diesel fuel sulfur control. We also seek comment with supporting information on the potential for diesel fuel shortages at the beginning of the program that some believe might result from individual refinery decisions to shift all or a portion of their production to other distillate products or export, and on the ability of the market to self correct if a shortage does occur.

5. Can a 15 ppm Cap on Sulfur Be Maintained by the Distribution System?

The proposed cap on sulfur content would apply to on-highway diesel fuel at the refinery gate, and at every point along the distribution system through to the end-user. The current distribution system for petroleum distillates currently carries products with sulfur contents that range from 30 ppm to over 10,000 ppm. The system includes pipelines, tankers, tanks, and delivery trucks. To date, this system has not been required to deliver a product with the purity which would be required under this proposal. Consequently, to ensure the sulfur standard is not exceeded during the fuel's journey to the end-user, the refiner would actually produce diesel fuel sufficiently below the cap to account for its own compliance margin (estimated to be 7 ppm on average), as well as for test variability and potential downstream contamination. Under the current sulfur cap of 500 ppm, refiners typically provide ample margin, producing fuel with roughly 350 ppm sulfur. With a sulfur cap of 15 ppm, the absolute magnitude of the margin refiners could provide would obviously be much smaller. In addition, the impact of contamination in the distribution system would be potentially much more severe. If the proposed 15 ppm cap on the sulfur content of on highway diesel fuel were adopted, other products in the distribution system such as nonroad diesel fuel would have sulfur concentrations over 200 times that of highway diesel fuel instead of the 10-fold factor at present. Additives to diesel fuel added in small amounts downstream which sometimes contain high sulfur concentrations levels may also become much more of a concern (see section IV.D.6.c). If as expected, refiners would produce highway diesel fuel with an average sulfur content of approximately 7 ppm to comply with the proposed sulfur standard, and variability in measuring diesel sulfur content is limited to less than +/−4 ppm, downstream sulfur contamination would need to be limited to less than 3 ppm to maintain compliance with the proposed 15 ppm cap. Petroleum marketers and distributors have cautioned that the distribution system is unfamiliar with limiting sulfur contamination to such a low level.

Current industry practices may need to be modified to control and limit sulfur contamination in the distribution system. Current practices which are critical to minimizing contamination and which may need to be more carefully performed include:

—Properly leveling tank trucks to ensure that they can drain completely of high-sulfur product prior to being filled with the proposed diesel fuel.
—Allowing sufficient time for transport tanks to drain of high-sulfur product prior to being filled with the proposed diesel fuel.
—Purging delivery hoses of higher sulfur product prior to their use to deliver the proposed diesel fuel.

To adequately limit sulfur contamination, we believe that such practices would need to be followed each and every time with adequate care taken to ensure their successful and full completion. Some distributors may find it necessary to conduct an employee education program to emphasize their importance. We request comment on our assessment for each segment in the distribution chain, including tank trucks, tank wagons, rail tankers, barges, and marine tankers.

As discussed in section V.D.3 of today's document, there may be an increase in distribution costs associated with an increase in pipeline interface volumes and the need to sample and test each batch of on highway diesel fuel at the terminal level for its sulfur content. There could also be an increase in the occurrence of noncomplying fuel showing up in the distribution system. As is the case today, this could cause temporary, local market shortages of fuel meeting the proposed sulfur cap. This off-specification fuel would also either have to be downgraded to off-highway, or re-refined, though we have assumed that the frequency of such occurrence would be low enough as to not impact the costs of the program noticeably. The potential sources of sulfur contamination in the distribution system, what controls we believe would be necessary to ensure downstream compliance with the proposed sulfur standard, and the costs associated with such controls are discussed in more detail in the Draft RIA. We request comment on the challenges that each segment of the distribution chain would face in controlling sulfur contamination, on the extent that each segment might reasonably be expected to limit sulfur contamination, and on the associated costs.

6. What Are the Potential Impacts of the Proposed Sulfur Change on Lubricity, Other Fuel Properties, and Specialty Fuels?

a. What Is Lubricity and Why Might It be a Concern?

Diesel fuel lubricity properties are depended on by the engine manufacturers to lubricate and protect moving parts within fuel pumps and injection systems for reliable performance. Unit injector systems and in-line pumps, commonly used in heavy-duty engines, are actuated by cams lubricated with crankcase oil, and have minimal sensitivity to fuel lubricity. However, rotary and distributor type pumps, commonly used in light and medium-duty diesel engines, are completely fuel lubricated, resulting in high sensitivity to fuel lubricity.

Experience has shown that it is very rare for a naturally high-sulfur fuel to have poor lubricity, although, most studies show relatively poor overall correlation between sulfur content and lubricity. Considerable research remains to be performed for a better understanding of the fuel components most responsible for lubricity.

Consequently, we are uncertain about the impact of today's proposal on fuel lubricity. Nevertheless, there is evidence that the typical process used to remove sulfur from diesel fuel (hydrotreating) can impact lubricity depending on the severity of the treatment process and characteristics of the crude. If refiners use hydrotreating to achieve the proposed sulfur limit, there may be reductions in the concentration of those components of diesel fuel which contribute to adequate lubricity. As a result, the lubricity of some batches of fuel may be reduced compared to today's levels, resulting in an increased need for the use of lubricity additives in highway diesel fuel.

Blending small amounts of lubricity-enhancing additives increases the lubricity of poor-lubricity fuels to acceptable levels. At the present time, it is believed that oil companies are treating diesel fuel in this way on a batch to batch basis, when poor lubricity fuel is expected. This practice of treating fuel on an as-needed and voluntary basis has been effective in ensuring good diesel fuel lubricity for the diesel heavy-duty vehicle fleet. Our review of the technical literature[133] indicates that the U.S. military also uses lubricity-enhancing additives in its diesel fuel. The U.S. military has found that the traditional corrosion inhibitor additives that it uses have been highly effective in reducing fuel system component wear. Consequently, the U.S. Army now blends MIL–I–25017E corrosion inhibitor additive to all fuels when poor lubricity is expected, and regularly for Jet A–1, JP–5 and JP–8 fuels. We believe that this practice would continue, with some portion of the fuel refined to the proposed standard being treated with lubricity-enhancing additives. For a more detailed discussion of diesel fuel lubricity and current industry practices, please refer to the Draft RIA for this proposal. We have included a 0.2 cents per gallon cost in our calculations to account for the potential increased use of lubricity additives (see section V.D.2).

b. Voluntary Approach for the Maintenance of Fuel Lubricity

If action on fuel lubricity does prove necessary, we believe a voluntary approach would provide customer protection from engine failures due to low lubricity, while providing the maximum flexibility for industry. In a voluntary approach we would encourage, but not require, fuel producers and distributors to monitor and provide fuel with adequate lubricity to protect diesel engine fuel systems. This approach recognizes the uncertainties of measuring fuel lubricity, and allows flexibility as research produces better information and improved test methods. The voluntary approach discussed here would be a continuation of current industry practices for diesel fuel produced to meet the current Federal and California 500 ppm sulfur diesel fuel specifications, and benefits from the considerable experience gained since 1993. The advantage of this approach is avoidance of an additional regulatory scheme and associated burdens. On the down side, voluntary measures do not guarantee results. We believe the risk in this case is small. Refiners and distributors have an incentive to supply fuel products that will not damage consumer equipment. Even if occasional batches of poor lubricity fuel are distributed, they would likely be "treated" with residual quantities of good lubricity fuel in storage tanks, tanker trucks, retail tanks, and vehicle fuel tanks (even at very low treatment levels lubricity enhancing additives provide significant protection; see the discussion in the Draft RIA for this proposal). Further, we expect that the American Society for Testing and Materials intends to address lubricity in its ASTM D–975 specifications for diesel fuel quality after its concerns about test issues have been resolved.

We are asking for comments on the alternative of specifying minimum fuel lubricity, and suggestions for the appropriate lubricity standard and test method. Under this approach, we would require fuel producers to monitor and provide minimum lubricity. This would be similar to the approach of Canada and our understanding of the usage requirements of the U.S. military. The advantage of this approach is to guarantee the minimum quality of fuel in the market. On the down side, such a new specification would need to be tied specifically to emissions or emission control hardware, and we question whether such a requirement is appropriate considering the uncertainty about the adequacy of the existing test methods. The American Society for Testing and Materials has declined to specify a lubricity standard in its ASTM D–975 specifications for diesel fuel quality until its concerns about test issues have been resolved. Also, this approach would require an enforcement scheme and associated compliance burden. Further, we believe that this approach would probably not be significantly more effective than the voluntary approach. Refiners and distributors have an incentive to supply fuel products that will not damage consumer equipment, and the U.S. commercial market has adequately addressed similar concerns in the past.

The U.S. Department of Defense (DOD) expressed strong reservations about the ability of the proposed voluntary approach to ensure adequate fuel lubricity and requested that EPA establish a uniform requirement to ensure that diesel fuel introduced into commerce has adequate lubricity. Absent such a requirement, DOD related that the military would face a considerable burden to ensure that highway diesel fuel used in military vehicles provides sufficient lubricity. DOD stated that since they rely on the commercial market to supply highway diesel to military users and are currently experiencing lubricity problems in certain parts of the country during the winter months, a reduction in diesel sulfur would increase the risk and scope of lubricity problems. DOD also stated that due to harsher operating conditions, engines used in their vehicles (especially tactical vehicles) are more vulnerable to lubricity problems than the same engines operated in commercial vehicles. In addition, at some U.S. military installations DOD uses highway diesel fuel in their off highway vehicles as well as their highway vehicles. We request comment on the unique challenges that our proposed voluntary approach would place on the military and on the appropriate means to address DOD's concerns.

c. What Are the Possible Impacts of Potential Changes in Fuel Properties Other Than Sulfur on the Materials Used in Engines and Fuel Supply Systems?

With the introduction of low-sulfur diesel fuel in the United States in 1993, some diesel engine fuel pumps with a Nitrile material for O-ring seals began to leak. Fuel pumps using a Viton material for the seals did not experience leakage. The leakage from the Nitrile seals was determined to be due to low aromatics levels in some low-sulfur fuel, not the low sulfur levels. In the process of lowering the sulfur content of some fuel, some of the aromatics had been removed. Normally, the aromatics in the fuel penetrate the Nitrile material and cause it to swell, thereby providing a seal with the throttle shaft. When low-aromatics fuel is used after conventional fuel has been used, the aromatics already in the swelled O-ring will leach out into the low-aromatics fuel.

[133] See the draft RIA for a more detailed discussion.

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Subsequently, the Nitrile O-ring will shrink and pull away, thus causing leaks, or the stress on the O-ring during the leaching process will cause it to crack and leak. Not all low-sulfur fuels caused this problem, because the amount and type of aromatics varied. Although manufacturers have apparently resolved this issue, and we have no evidence that further desulfurization will cause further changes in O-ring shape or other concerns, we request comments on this or other potential impacts of fuel properties on the materials used in engines and fuel supply systems.

d. What Impact Would the 15 ppm Cap Have on Diesel Performance Additives?

Our proposal to limit the sulfur content of performance additives used in diesel fuel to less than 15 ppm (see section VIII) would require that the use of certain high-sulfur diesel fuel additives be discontinued. Our review of EPA's Fuel and Fuel Additives database indicates that alternative additives that perform the same function and which do not contain sulfur are readily available. Our evaluation suggests that discontinuing the use of the limited number of diesel additives with a high sulfur content would not result in significant increased costs or an undue hardship to additive and fuel manufacturers (see the draft RIA). We request comment on the difference in price between high- and low-sulfur performance additives and whether there are differences in their efficiency. As an alternative to the proposed 15 ppm cap on the sulfur content of performance additives, we are requesting comment on whether additives not meeting the 15 ppm sulfur cap should be allowed to be added to diesel fuel downstream in de minimis amounts, as long as the final blend still meets the 15 ppm cap.

e. What Are the Concerns Regarding the Potential Impact on the Availability and Quality of Specialty Fuels?

The Department of Defense (DOD) has expressed concerns regarding the potential impact of today's proposed rule on the availability and quality of military fuels, especially the aviation fuels JP–5 and JP–8. DOD is concerned that today's rule might reduce the number of refineries that produce military fuels by limiting the slate of fuels that refiners can economically produce or the number of refiners that continue to produce military fuels. DOD notes that the special flash point requirement for military JP–5 fuel already limits DOD's supply base and that the proposed rule may make some refiners opt out of manufacturing this speciality fuel, which would reduce supply availability and increase costs. DOD also states that the increased hydroprocessing severity and other refinery process modifications necessary to meet the proposed sulfur standard could impact certain chemical/physical characteristics that are part of their fuel specifications. DOD relates that previous environmentally-driven changes to gasoline and diesel specifications have caused a degradation in the quality of the jet fuel. For example, DOD states that they have noticed a reduction and continued decline in jet fuel stability.

DOD is also concerned that refiners that currently blend more than 10 percent light cycle oil (LCO) into their highway diesel fuel might shift some LCO into off-highway distillate fuels. DOD relates that this would adversely affect the quality of off highway fuels used by the military such as their naval distillate fuel F–76. DOD states that they have experienced quality problems with LCO component streams that were not adequately hydrotreated causing a highly unstable finished product. Storage stability is an important issue for DOD since military naval fuel F–76 is often stored for extended periods (longer than six months) and unstable LCO used to manufacture F–76 could compromise mission readiness. The potential changes that refiners might make in the way they process LCO streams and incorporate such streams into their slate of distillate fuels is discussed in section V.D.1 and in the Draft RIA.

We believe that concerns related to the quality of specialty fuels can continue to be addressed by actions taken by the manufacturers and purchasers of such fuels without the need for intervention by EPA. We also anticipate that demand for such fuels will be sufficient to encourage their continued availability. We request comment on the potential impact of today's proposed rule on the quality and availability of specialty fuels such as those used by the U.S. military, on what actions might be necessary to mitigate such impacts, and on the associated costs. Comment is specifically requested on the need for the military to modify its specifications and/or enhance enforcement of these specifications to achieve their fuel quality goals if the proposed sulfur standards are adopted, and on the costs associated with such changes.

E. Who Would Be Required to Meet This Proposed New Diesel Sulfur Standard?

As discussed earlier, the highway diesel fuel sulfur content standard being proposed today is a per-gallon cap of 15 ppm. We believe that heavy-duty diesel trucks subject to the standards we are proposing today would require the consistent use of diesel fuel with a sulfur cap of 15 ppm to avoid the potentially severe emission, performance, and durability problems that arise from operation on higher-sulfur fuel. On this basis we believe that the proposed sulfur standard should apply to the diesel fuel at the point of sale to the ultimate consumer. In other words, the proposed cap on sulfur content should apply at all points in the diesel fuel production and distribution system, including the retail level.

We understand that there are production and distribution practices, such as blending of additives and winter viscosity improvers such as kerosene or No. 1 diesel fuel, that could cause the sulfur level of diesel fuel to vary as it travels from refinery to end-point consumers. Along with concerns about contamination and test method reproducibility, these issues suggest that we should include some sort of tolerance along with our proposed sulfur cap. However, we are concerned that such tolerances on top of the 15 ppm cap may not be appropriate given the sensitivity of diesel exhaust emission control technology to fuel sulfur above the proposed sulfur cap. In practice, therefore, refiners will likely be required by the downstream distribution system to produce diesel fuel having a sulfur content significantly below the proposed sulfur cap to ensure that downstream practices do not end up producing a retail-level fuel with sulfur levels higher than the proposed maximum. Thus, all parties in the distribution system, including refiners and importers, would be prohibited from selling, storing, transporting, dispensing, introducing, or causing or allowing the introduction of highway diesel fuel whose sulfur content exceeds the proposed sulfur cap. The advantage of such an approach is that, as downstream distribution practices and sulfur measurement accuracy improves, refiners will be able to reduce production costs by producing fuel closer to the proposed sulfur cap. Alternatively, we could enforce the proposed 15 ppm sulfur cap at retail and enforce a lower cap at the refinery level. This cap would likely have to be less than 10 ppm to allow for downstream contamination, additive blending, and test method variability. However, we believe it is more appropriate to leave this tolerance to the market.

F. What Might Be Done To Encourage the Early Introduction of Low-Sulfur Diesel Fuel?

As discussed in section IV.C, we are proposing that the entire highway diesel pool be required to meet a lower standard on sulfur content beginning June 1, 2006.[134] This should provide certainty that low-sulfur diesel fuel will be available for model year (MY) 2007 heavy-duty diesel engines by July 1, 2006. If low-sulfur diesel fuel was available prior to July 1, 2006, engine manufacturers have indicated that fleet trials might be conducted of the sulfur-sensitive exhaust emission control equipment intended for use in heavy-duty vehicles to meet the proposed MY 2007 emissions standards. The information gained from these trials could be used to improve the efficiency and durability of such exhaust emission control equipment. This could lower the cost of the exhaust emission control equipment and help ensure the smooth implementation of the proposed MY 2007, heavy-duty standards. If low-sulfur diesel fuel was available earlier than July 1, 2006, it might also facilitate the early introduction of sulfur-sensitive exhaust emission control equipment in light-duty diesel vehicles. Automobile manufacturers expressed interest in using sulfur-sensitive exhaust emission control equipment in some of their light-duty vehicles beginning in MY 2004, so that they might benefit from in-use experience prior to the anticipated use of such equipment in all MY 2007, light-duty diesel vehicles. In addition, early availability of some low sulfur diesel fuel would have the added advantage of allowing the distribution system a chance to develop experience handling diesel fuel with such a low sulfur level before the standards would take effect.

We believe that some low-sulfur diesel fuel meeting the proposed 15 ppm sulfur cap would be available in advance of when we are proposing that it must be produced by refiners. Most refiners will need to install new equipment to meet the proposed sulfur standard. Since the technical and construction resources needed for such refinery upgrades is limited, a number of refiners are likely to have the new desulfurization equipment installed well in advance of the proposed compliance date. Refiners who produce low-sulfur diesel early would want to market it as a premium fuel rather than losing the added value by selling it as current highway diesel fuel. Some refiners have already begun programs to market low-sulfur diesel as a premium fuel. For example, ARCO Products Company recently announced a fleet program to demonstrate the emissions benefits of its EC—D (emission control) diesel which has a lower sulfur and aromatics content, and a higher cetane rating than current highway diesel fuel.[135] Engine and vehicle manufacturers are assisting in the overall program design and implementation of the program. Emission control equipment manufacturers are supplying exhaust emission control equipment which works more effectively with low-sulfur fuel. ARCO has also begun marketing diesel fuel in California with a maximum sulfur content of 15 ppm. This fuel is being made available, upon request, to operators of urban municipal fleets retrofitted with catalytic exhaust emission controls in connection with the California ARB's proposed urban bus program (see section I.C.6).[136] Mobil Corporation, Ford Motor Company, Navistar, and Volkswagen also have a cooperative program underway to evaluate the emissions benefits of new engine/aftertreatment technologies using a lower-sulfur diesel fuel (also with reduced polynuclear aromatic content). We are interested in encouraging additional programs between refiners and vehicle manufacturers to introduce vehicles equipped with exhaust emission control technologies which benefit from the use of low-sulfur diesel fuel prior to the date when we are proposing that such fuel must be made available.

There are numerous strategies involving voluntary market incentives that could help promote the early introduction of low-sulfur diesel fuel. Under existing voluntary emission credits programs, a system might be created whereby refiners that produce low-sulfur fuel early could generate emission reduction credits that could then be sold through a market mechanism to other entities that could use such credits to meet their emission compliance goals. We welcome comments on whether additional incentives are needed and feasible to encourage the early introduction of low-sulfur diesel fuel for use in vehicles equipped to provide lower emissions with the use of such a fuel. We also request comments on how such incentives might be structured under a phase in of low sulfur highway diesel fuel (see section VI.A).

[134] This is the proposed retail-level compliance date. The proposed compliance date at the refinery level is April 1, 2006.

[135] ARCO Products Company news release dated October 7, 1999, Docket A–99–06 Item II–G–13.

[136] ARCO Products Company news release dated December 15, 1999.

V. Economic Impact

This section discusses the projected economic impact and cost effectiveness of the proposed emission standards and low-sulfur fuel requirement. We welcome comment on the estimated cost for research and development and the necessary lead time to develop these technologies for heavy-duty vehicles. Additionally we invite the reader to review all of the underlying cost assumptions made in the accompanying draft RIA and ask for comment on the validity of these assumptions. Full details of our cost and cost effectiveness analyses can be found in the Draft RIA.

A. Cost for Diesel Vehicles To Meet Proposed Emissions Standards

1. Summary of New System and Operating Costs

The technologies described in section III show a good deal of promise for controlling emissions, but also make clear that much effort remains to develop and optimize these new technologies for maximum emission-control effectiveness with minimum negative impacts on engine performance, durability, and fuel consumption. On the other hand, it has become clear that manufacturers have a great potential to advance beyond the current state of understanding by identifying aspects of the key technologies that contribute most to hardware or operational costs or other drawbacks and pursuing improvements, simplifications, or alternatives to limit those burdens. To reflect this investment in long-term cost savings potential, the cost analysis includes an estimated $385 million in R&D outlays for heavy-duty engine designs and $220 million in R&D for catalysts systems giving a total R&D outlay for improved emission control of more than $600 million. The cost and technical feasibility analyses accordingly reflect substantial improvements on the current state of technology due to these future developments.

Estimated costs are broken into additional hardware costs and life-cycle operating costs. The incremental hardware costs for new engines are comprised of variable costs (for hardware and assembly time) and fixed costs (for R&D, retooling, and certification). Total operating costs include the estimated incremental cost for low-sulfur diesel fuel, any expected

increases in maintenance cost, or fuel consumption costs along with any decreases in operating cost expected due to low-sulfur fuel. Cost estimates based on these projected technology packages represent an expected incremental cost of engines in the 2007 model year. Costs in subsequent years would be reduced by several factors, as described below. Separate projected costs were derived for engines used in three service classes of heavy-duty diesel engines. All costs are presented in 1999 dollars.

The costs of these new technologies for meeting the proposed 2007 model year standards are itemized in the Draft RIA and summarized in Table V.A–1. For light heavy-duty vehicles, the cost of a new 2007 model year engine is estimated to increase by $1,688 and operating costs over a full life-cycle to increase by about $431. For medium heavy-duty vehicles the cost of a new engine is estimated to increase by $2,213, with life-cycle operating costs increasing to $826. Similarly, for heavy heavy-duty engines, the vehicle cost is expected to increase by $2,768, and estimated additional life-cycle operating costs are $3,362. The higher incremental increase in operating costs for the heavy heavy-duty vehicles is due to the larger number of miles driven over their lifetime (714,000 miles on average) and their correspondingly high lifetime fuel usage. Emission reductions are also proportional to VMT and so are significantly higher for heavy heavy-duty vehicles.

We also believe there are factors that would cause cost impacts to decrease over time, making it appropriate to distinguish between near-term and long term costs. Research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts.[137] Our analysis, as described in more detail in the draft RIA, incorporates the effects of this learning curve by projecting that the variable costs of producing the low-emitting engines decreases by 20 percent starting with the third year of production (2009 model year) and by reducing variable costs again by 20 percent starting with the fifth year of production. We invite comment on this methodology to account for the learning curve phenomena and also request comment on whether learning is likely to reduce costs in this industry. Additionally, since fixed costs are assumed to be recovered over a five-year period, these costs are not included in the analysis after the first five model years. Finally, manufacturers are expected to apply ongoing research to make emission controls more effective and to have lower operating cost over time. However, because of the uncertainty involved in forecasting the results of this research, we have conservatively not accounted for it in this analysis. Table V.A–1 lists the projected costs for each category of vehicle in the near- and long-term. For the purposes of this analysis, "near-term" costs are those calculated for the 2007 model year and "long term" costs are those calculated for 2012 and later model years.

We welcome comment on the degree to which this program may influence sales of new heavy-duty vehicles in the early years of the program, and the resulting impact this would have on our projected program benefits and costs. Costlier model year 2007 vehicles may induce some potential purchasers of these vehicles to instead buy 2006 models to save money, or to defer a purchase longer than they otherwise might have. On the other hand, we would anticipate that the very low emissions characteristics of these new vehicles would cause many buyers for whom cleaner diesels would be good for business (for example, urban transit authorities and touring or shuttle services) to retire older higher-emitting vehicles early.

TABLE V.A–1.—PROJECTED INCREMENTAL SYSTEM COST AND LIFE CYCLE OPERATING COST FOR HEAVY-DUTY DIESEL VEHICLES

[Net present values in the year of sale, 1999 dollars]

Vehicle class	Model year	Hardware cost	Life-cycle operating cost*
Light heavy-duty	Near term	$1,688	$431
	Long term	982	413
Medium heavy-duty	Near term	2,213	826
	Long term	1,188	800
Heavy heavy-duty	Near term	2,768	3,362
	Long term	1,572	3,265
Urban Bus	Near term	2,268	3,942
	Long term	1,252	3,874

*Incremental life-cycle operating costs include the incremental costs to refine and distribute low sulfur diesel fuel, the service cost of closed crankcase filtration systems, and the lower maintenance costs realized through the use of low sulfur diesel fuel (see discussion in section V.3).

2. New System Costs for NO_X and PM Emission Control

Several new technologies are projected for complying with the proposed 2007 model year emission standards. We are projecting that NO_X adsorbers and catalyzed diesel particulate filters would be the most likely technologies applied by the industry in order to meet our proposed emissions standards. The fact that manufacturers would have several years before implementation of the proposed new standards ensures that the technologies used to comply with the standards would develop significantly before reaching production. This ongoing development could lead to reduced costs in three ways. First, we expect research will lead to enhanced effectiveness for individual technologies, allowing manufacturers to use simpler packages of emission control technologies than we would predict given the current state of development. Similarly, we anticipate that the continuing effort to improve the emission control technologies will include innovations that allow lower-cost production. Finally, we believe that manufacturers would focus research efforts on any drawbacks, such as fuel economy impacts or maintenance costs, in an effort to minimize or overcome any potential negative effects.

We anticipate that in order to meet the proposed standards, industry would introduce a combination of primary technology upgrades for the 2007 model year. Achieving very low NO_X emissions will require basic research on NO_X emission control technologies and improvements in engine management to take advantage of the exhaust emission control system capabilities. The manufacturers are expected to take a systems approach to the problem optimizing the engine and exhaust emission control system to realize the best overall performance possible. Since most research to date with exhaust emission control technologies has focused on retrofit programs there remains room for significant improvements by taking such a systems approach. The NO_X adsorber technology in particular is expected to benefit from re-optimization of the engine management system to better match the NO_X adsorbers performance characteristics. The majority of the $600 million dollars we have estimated for research is expected to be spent on developing this synergy between the engine and NO_X exhaust emission control systems. PM control technologies are expected to be less sensitive to engine operating conditions as they have already shown good robustness in retrofit applications with low-sulfur diesel fuel.

The NO_X adsorber system that we are anticipating would be applied in 2007 consists of a catalyst which combines traditional gasoline three-way conversion technology with a newly developed NO_X storage function, a reductant metering system and a means to control engine air fuel (A/F) ratio. The NO_X adsorber catalyst itself is a relatively new device, but is benefitting in its development from over 20 years of gasoline three-way catalyst development. In order for it to function properly, a systems approach that includes a reductant metering system and control of engine A/F ratio is also necessary. Many of the new air handling and electronic system technologies developed in order to meet the 2004 heavy-duty engine standards can be applied to accomplish the NO_X adsorber control functions as well. Some additional hardware for exhaust NO_X or O_2 sensing and for fuel metering will likely be required. We have estimated that this additional hardware will increase new engine costs by approximately $350 for a heavy heavy-duty diesel engine. The Draft RIA also calculates an increase in warranty costs for this additional hardware. In total the new NO_X control technologies required in order to meet the proposed 2007 emission standards are estimated to increase light heavy-duty engine costs by $890, medium heavy-duty engine costs by $1,047 and heavy heavy-duty engine costs by $1,410 in the year 2007. In the year 2012 and beyond the incremental costs are expected to decrease to $570 for a light heavy-duty engine, $670 for a medium heavy-duty engine and to $902 for a heavy heavy-duty engine.

Catalyzed diesel particulate filters are experiencing widespread retrofit use in much of Europe as low-sulfur diesel fuel becomes readily available. These technologies are proving to be robust in their non-optimized retrofit applications requiring no modification to engine or vehicle control functions. We therefore anticipate that catalyzed diesel particulate filters can be integrated with new diesel engines with only a minimal amount of engine development. We do not anticipate that additional hardware beyond the diesel particulate filter itself and an exhaust pressure sensor for OBD will be required in order to meet the proposed PM standard. We estimate in 2007 that diesel particulate filter systems will add $633 to the cost of a light heavy-duty vehicle, $796 to the cost of a medium heavy-duty vehicle and $1,028 to the cost of a heavy heavy-duty vehicle. By 2012 these costs are expected to decrease to $389, $491, and $638 respectively. These cost estimates are comparable to estimates made by the Manufacturers of Emission Controls Association for these technologies.[138]

We have proposed to eliminate the exemption that allows turbo-charged heavy-duty diesel engines to vent crankcase gases directly to the environment, so called open crankcase systems, and have projected that manufacturers will rely on engineered closed crankcase ventilation systems which filter oil from the blow-by gases. We have estimated the initial cost of these systems in 2007 to be $37, $42, and $49 for light, medium and heavy heavy-duty diesel engines respectively. Additionally we expect a portion of the oil filtration system to be a service replacement oil filter which will be replaced on a 30,000 mile service interval with a service cost of $10, $12, and $15 for light, medium, and heavy heavy-duty diesel engines respectively. These cost are summarized with the other cost for emission controls in Table V.A–1 and are included in the aggregate cost reported in section V.E.

3. Operating Costs Associated With NO_X and PM Control

The Draft RIA assumes that a variety of new technologies will be introduced to enable heavy-duty vehicles to meet the new emissions standards we are proposing. Primary among these are advanced emission control technologies and low-sulfur diesel fuel. The many benefits of low-sulfur diesel fuel are described in section III, and the incremental cost for low-sulfur fuel is described in section V.D. The new emission control technologies are themselves not expected to introduce additional operating costs in the form of increased fuel consumption. Operating costs are estimated in the Draft RIA over the life of the vehicle and are expressed as a net present value (NPV) in 1999 dollars for comparison purposes.

Total operating cost estimates include both the expected increases in maintenance and fuel costs (both the incremental cost for low-sulfur fuel and any fuel consumption penalty) due to the emission control systems application and the predicted decreases in maintenance cost due to the use of low-sulfur fuel. Today's proposal estimates some increase in operating costs due to the incremental cost of low-sulfur diesel fuel but no net increase in fuel consumption with the application of the new emission control technologies (see discussion in section III.G). The net increase in operating costs are summarized in Table V.A–1. While we are using these incremental operating cost estimates for our cost effectiveness calculations, it is almost certain that the manufacturers will improve existing technologies or introduce new technologies in order to offset at least some of the increased operating costs. We request comment on these operating cost estimates and on ways in which industry may be able to offset these operating costs.

We estimate that the low-sulfur diesel fuel we are proposing to require in order to enable these technologies would have an incremental cost of approximately $0.044/gallon as discussed in section V.D. The proposed low-sulfur diesel fuel may also provide additional benefits by reducing the engine maintenance costs associated with corrosion due to sulfur in the current diesel fuel. These benefits, which are discussed further in section V.C and in the draft RIA, include extended oil

[137] "Learning Curves in Manufacturing," Linda Argote and Dennis Epple, Science, February 23, 1990, Vol. 247, pp. 920–924.

[138] Letter from Bruce Bertelsen, Manufacturers of Emission Controls Association (MECA) to William Charmley, US EPA, December 17, 1998. The letter documents a MECA member survey of expected diesel particulate filter costs. EPA Air Docket A–99–06.

change intervals due to the slower acidification rate of the engine oil with low-sulfur diesel fuel. Service intervals for the EGR system are also expected to increase due to lower-sulfur induced corrosion than will occur with today's higher-sulfur fuel. This lengthening of service intervals provides a significant savings to the end user. As described in more detail in the Draft RIA we anticipate that low-sulfur diesel fuel would provide additional cost savings to the consumer of $153 for light heavy-duty vehicles, $249 for medium heavy-duty vehicles and $610 for heavy heavy-duty vehicles. The operating costs for replacement filters in the closed crankcase filtration systems are estimated to be $48 for light heavy-duty vehicles, $72 for medium heavy-duty vehicles and $268 for heavy heavy-duty vehicles in 2007 and in the long term are expected to decrease to $31 for a light heavy-duty vehicle, $46 for a medium heavy-duty vehicle and $172 for a heavy heavy-duty vehicle. Factoring the cost savings due to low sulfur diesel fuel into the additional cost for low-sulfur diesel fuel and the service cost of the closed crankcase ventilation system yields a net increase in vehicle operating costs of $431 for a light heavy-duty vehicle, $826 for a medium heavy-duty vehicle and $3,362 for a heavy heavy-duty vehicle. These life cycle operating costs are also summarized in Table V.A–1. The net increase in operating cost can also be expressed as an average annual operating cost for each class of heavy-duty vehicle. Expressed as an approximate annual per vehicle cost, the additional operating cost is estimated as $50 for a light heavy-duty vehicle, $100 for a medium heavy-duty vehicle, and $400 for a heavy heavy-duty vehicle.

B. Cost for Gasoline Vehicles to Meet Proposed Emissions Standards

1. Summary of New System Costs

To perform a cost analysis for the proposed standards, we first determined a package of likely technologies that manufacturers could use to meet the proposed standards and then determined the costs of those technologies. In making our estimates we have relied on our own technology assessment which included publicly available information, such as that developed by California, as well as confidential information supplied by individual manufacturers, and the results of our own in-house testing.

In general, we expect that heavy-duty gasoline vehicles would (like Tier 2 light duty vehicles) be able to meet these standards through refinements of current emissions control components and systems rather than through the widespread use of new technology. More specifically, we anticipate a combination of technology upgrades such as the following:

- Improvements to the catalyst system design, structure, and formulation, plus an increase in average catalyst size and loading.
- Air and fuel system modifications including changes such as improved oxygen sensors, and calibration changes including improved precision fuel control and individual cylinder fuel control.
- Exhaust system modifications, possibly including air gapped components, insulation, leak free exhaust systems, and thin wall exhaust pipes.
- Increased use of fully electronic exhaust gas recirculation (EGR).
- Increased use of secondary air injection.
- Use of ignition spark retard on engine start-up to improve upon cold start emission control.
- Use of low permeability materials and minor improvements to designs, such as the use of low-loss connectors, in evaporative emission control systems.

We expect that the technologies needed to meet these proposed heavy-duty gasoline standards would be very similar to those required to meet the Tier 2 standards for vehicles over 8,500 pounds GVWR. Few heavy-duty gasoline vehicles currently rely on technologies such as close coupled catalysts and secondary air injection, but we expect they would do so to in order to meet the proposed 2007 standards.

For each group we developed estimates of both variable costs (for hardware and assembly time) and fixed costs (for R&D, retooling, and certification). Cost estimates based on the current projected costs for our estimated technology packages represent an expected incremental cost of vehicles in the near-term. For the longer term, we have identified factors that would cause cost impacts to decrease over time. First, since fixed costs are assumed to be recovered over a five-year period, these costs disappear from the analysis after the fifth model year of production. Second, the analysis incorporates the expectation that manufacturers and suppliers would apply ongoing research and manufacturing innovation to making emission controls more effective and less costly over time. Research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production and use, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts.[139] These reductions in production costs are typically associated with every doubling of production volume. Our analysis incorporates the effects of this "learning curve" by projecting that a portion of the variable costs of producing the new vehicles decreases by 20 percent starting with the third year of production. We applied the learning curve reduction only once since, with existing technologies, there would be less opportunity for lowering production costs than would be the case with the adoption of new technology. We did not apply the learning curve reduction to precious metal costs, nor did we apply it for the evaporative standards. We invite comment on this methodology to account for the learning curve phenomena and also request comment on whether learning is likely to reduce costs in this industry.

We have prepared our cost estimates for meeting the new heavy-duty gasoline standards using a baseline of current technologies for heavy-duty gasoline vehicles and engines. Finally, we have incorporated what we believe to be a conservatively high level of R&D spending at $2,500,000 per engine where no California counterpart exists. We have included this large R&D effort because calibration and system optimization is likely to be a critical part of the effort to meet the standards. However, we believe that the R&D costs may be generous because the projection probably underestimates the carryover of knowledge from the development required to meet the light-duty Tier 2 and CARB LEV–II standards.

Table V.B–1 provides our estimates of the per vehicle increase in purchase price for heavy-duty gasoline vehicles and engines. The near-term cost estimates in Table V.B–1 are for the first years that vehicles meeting the standards are sold, prior to cost reductions due to lower productions costs and the retirement of fixed costs. The long-term projections take these cost reductions into account. We request comment on the costs shown in Table V.B–1 and the analysis behind them.

[139] See Chapter V of the final Tier 2 Regulatory Impact Analysis, contained in Air Docket A–97–10

TABLE V.B–1.—PROJECTED INCREMENTAL SYSTEM COST AND LIFE CYCLE OPERATING COST FOR HEAVY-DUTY GASOLINE VEHICLES

[Net present values in the year of sale, 1999 dollars]

Vehicle class	Model year	Incremental system cost	Life-cycle operating cost
Heavy-Duty Gasoline	Near term	$182	$0
	Long term	152	0

2. Operating Costs Associated With Meeting the Heavy-Duty Gasoline Standard

Low sulfur gasoline is a fundamental enabling technology which will allows heavy-duty gasoline vehicles to meet the very low emission standards being proposed today. The low sulfur gasoline required under the Tier 2 proposal will enable advanced exhaust emission control for heavy-duty vehicles as well. Today's proposal puts no additional requirements on gasoline sulfur levels and as such should not directly increase gasoline fuel costs. Additionally, the new technologies being employed in order to meet the new standards are not expected to increase fuel consumption for heavy-duty gasoline vehicles. In fact, there may be some small improvement in fuel economy from the application of improved fuel and air control systems on these engines. Therefore, in the absence of changes to gasoline specifications and with no decrease in fuel economy, we do not expect any increase in vehicle operating costs.

C. Benefits of Low-Sulfur Diesel Fuel for the Existing Diesel Fleet

We estimate that the proposed low-sulfur diesel fuel would provide additional benefits to the existing heavy-duty vehicle fleet as soon as the fuel is introduced. We believe these benefits could offer significant cost savings to the vehicle owner without the need for purchasing any new technologies. The Draft RIA has catalogued a variety of benefits from the proposed low-sulfur diesel fuel. These benefits are summarized in Table V.C–1.

TABLE V.C–1.—COMPONENTS POTENTIALLY AFFECTED BY LOWER SULFUR LEVELS IN DIESEL FUEL

Affected components	Effect of lower sulfur	Potential impact on engine system
Piston Rings	Reduce corrosion wear	Extended engine life and less frequent rebuilds.
Cylinder Liners	Reduce corrosion wear	Extended engine life and less frequent rebuilds.
Oil Quality	Reduce deposits and less need for alkaline additives.	Reduce wear on piston ring and cylinder liner and less frequent oil changes.
Exhaust System (tailpipe)	Reduces corrosion wear	Less frequent part replacement.
EGR	Reduces corrosion wear	Less frequent part replacement.

The actual value of these benefits over the life of the vehicle would depend upon the length of time that the vehicle operates on low-sulfur diesel fuel and the degree to which vehicle operators change engine rebuild patterns to take advantage of these benefits. For a vehicle near the end of its life in 2007 the benefits would be quite small. However for vehicles produced in the years immediately preceding the introduction of low-sulfur fuel the savings would be substantial. The Draft RIA estimates that a heavy heavy-duty vehicle introduced into the fleet in 2006 would realize savings of $610 over its life. This savings could alternatively be expressed in terms of fuel costs as approximately 1 cent per gallon as discussed in the draft RIA. These savings would occur without additional new cost to the vehicle owner beyond the incremental cost of the low-sulfur diesel fuel, although these savings would require changes to existing maintenance schedules. Such changes seem likely given the magnitude of the savings and the nature of the regulated industry.

The maintenance benefits we project come primarily from extended oil change intervals. We have no quantitative data on how much longer these intervals might be. Based on discussions with some engine manufacturers, we believe it is reasonable to assume that engine oil change intervals will increase by 10 percent for each class of engine (in both new and existing fleets). We seek comment on this key assumption and on these projected savings and all of the assumptions behind them; details of the analysis behind these savings can be found in the draft RIA contained in the docket for this rule.

D. Cost of Proposed Fuel Change

We estimate that the overall cost associated with lowering the sulfur cap from the current level of 500 ppm to the 15 ppm level proposed today will be approximately 4.4 cents per gallon. As discussed in sections V.A. and V.C., this cost would be offset by a one cent per gallon savings (or more) from the reduction in vehicle maintenance savings that result from the use of the cleaner fuel. The fuel cost is comprised of a number of components associated with refining and distributing the fuel. The majority of the fuel cost is expected to be the refining cost which is estimated to be approximately 4.0 cents per gallon, which includes the cost of producing more volume of diesel fuel because desulfurization decreases the energy density of the fuel. The remaining 0.4 cents per gallon in fuel costs is associated with an anticipated increase in the use of additives to maintain fuel lubricity at a cost of 0.2 cents per gallon, and an increase in distribution costs of 0.2 cents per gallon. The increase in distribution costs comprises 0.1 cents per gallon to distribute the additional volume of diesel fuel needed to compensate for the decrease in fuel energy density, and 0.1 cents per gallon to maintain product integrity in the distribution system. These cost estimates are discussed in more detail below and in the Draft RIA.

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When the 4.4 cent per gallon cost is applied to the expected low sulfur diesel fuel sales volume of approximately 40 billion gallons at the start of the program, it equates to an annual cost of roughly $1.8 billion per year. This fuel cost would be offset by a reduction in maintenance costs of roughly $0.4 billion per year.

1. Refinery Costs

As explained in Section IV, refiners would have to install capital equipment to meet the proposed diesel fuel sulfur standard. Presuming that refiners will want to minimize the cost involved and use conventional technology, refiners are expected to build onto their existing desulfurization unit by adding another hydrotreating reactor and other related equipment.

In our analysis, we estimated the cost of lowering onroad diesel fuel sulfur levels for a national average refinery starting from the current national average sulfur level of about 350 ppm down to 7 ppm. We believe that a refinery's average diesel fuel sulfur level would be roughly 7 ppm under a 15 ppm cap standard. We then calculated a national aggregate cost and cents-per-gallon cost. Based on this analysis we estimate that, on average, individual refiners in the years 2004–05 would be expected to invest about $30 million for capital equipment and spend about $8 million per year for each refinery to cover the operating costs associated with these desulfurization units. Since this average represents a diverse size range of refineries, some refineries would pay more and others less than this average cost. When the average per-refinery cost is aggregated for all the onroad diesel fuel expected to be produced in this country in 2007, we estimate that the total investment for desulfurizing diesel fuel would be about $1.9, $2.0, and $0.2 billion in 2004, 2005, and 2006, respectively, as discussed in section IV.B. Operating costs for these units are expected to be about $1.1 billion per year.

Using our estimated capital and operating costs we calculated the average per-gallon cost of reducing diesel fuel sulfur down to meet the proposed 15 ppm cap standard. Using a capital cost amortization factor based on a seven percent rate of return on investment before taxes, we estimated the average national cost for desulfurizing onroad diesel sulfur to be about 4.0 cents per gallon. This cost is our estimated cost to society of producing onroad diesel to meet a 15 ppm cap standard that we used for estimating cost effectiveness.

There is currently no commercial experience in the U.S. and only a limited amount of information in the public literature on the costs associated with reducing the sulfur level in diesel fuel to very low levels on an ongoing operational basis. Experience in Sweden involves other changes to the fuel as well that would tend to drive up the costs considerably. The EMA recently commissioned a study by Mathpro of the economics of controlling the sulfur content of highway and nonroad diesel fuel to various sulfur levels as low as 2 ppm. Unfortunately, none of the scenarios modeled in the EMA study are consistent with our proposal today. Furthermore, some of the assumptions made in the analysis are inconsistent with our standard assumptions for economic analysis. For example, Mathpro used a higher rate of return on new capital than the rate we use. Nevertheless, some insight can be gained from a broad comparison of Mathpro's and our cost projections. The proposed sulfur cap for highway diesel fuel is very roughly bracketed by two Mathpro sulfur control scenarios: (1) a highway diesel fuel standard of 20 ppm on average with a nonroad diesel fuel standard of 350 ppm on average, and (2) an highway diesel fuel standard of 2 ppm on average with a nonroad diesel fuel standard of 20 ppm on average. Mathpro's projected refining costs for these two scenarios range from 4 to just under 6 cents per gallon (citing their costs for revamping current diesel fuel hydrotreaters with reactors in series, which is equivalent to our technology projections). Considering that Mathpro uses a higher rate of return on capital and that both of their scenarios included controlling nonroad diesel fuel, the two sets of cost projections appear to be roughly consistent. This serves to give us some confidence that our cost estimate for a sulfur cap of 15 ppm on highway diesel fuel is reasonable. This is discussed in further detail in the Draft RIA.

Although API assisted in the study, API has expressed some concern about the accuracy of the EMA cost estimates. API highlighted their concerns on the EMA study in a memo to the Director the Office of Transportation Air Quality, which is included in the docket.[140] While API expressed their belief that the cost outcomes of the EMA study are, in general, reasonable, they expressed serious concerns about the cost of producing diesel with sulfur levels below 20 ppm (roughly equivalent to a 30 ppm cap). API believes that, particularly at extremely low sulfur levels, the measures needed to be taken would result in significantly higher costs than estimated by EMA. We request comment on this assessment.

We acknowledge that some refiners likely face higher desulfurization costs than others. This is generally the case with any fuel quality regulation, since the crude oils processed by, as well as the configurations and product slates of individual refineries vary dramatically. As mentioned in section IV, API believes that those refiners facing higher than average costs may decide to leave the highway diesel fuel market. They argue this is especially a possibility if they are faced with a sulfur standard below a 30 ppm average (or 50 ppm cap), which they believe will require very large investments for high pressure hydrotreating to maintain current highway diesel production volumes. API also believes that many refiners may reduce their production of highway diesel fuel, by switching the feedstocks (i.e., LCO) which are most difficult to desulfurize to other markets, thus avoiding the higher investments associated with high pressure hydrotreating. If some refiners reduce highway diesel fuel production, that could present an opportunity for other refiners, who choose to make the investment, of higher prices for the new 15 ppm sulfur product. Whether the potential for higher prices would be sufficient and be apparent with sufficient leadtime to allow refiners to make an added investment by the time the proposed rule is effective is currently unclear.

For example, the refining industry actually overbuilt desulfurization capacity for the current 500 ppm standard, as evidenced by the significant use in the off-highway market of diesel fuel produced to the current highway diesel sulfur standard of 500 ppm. Some of this overproduction may have been due to limitations in the distribution system to distribute both highway and off-highway grades of diesel fuel. Despite the overall market overproduction, a number of small refiners did decide to switch from the highway diesel fuel market to the off-highway diesel fuel market, presumably for economic reasons.

Another incentive for refiners to invest in highway diesel fuel desulfurization equipment is the potential for a growing light-duty diesel market. Many vehicle manufacturers have announced plans to equip their light-duty vehicles and, particularly, light-duty trucks with diesel engines. Refiners may want to ensure their

[140] Edward H. Murphy, API to Margo Oge, US EPA, October 26,1999.

presence in this growing and potentially profitable market.

Alternative markets for distillate products are limited in the U.S. The domestic off-highway diesel fuel and heating oil markets are much smaller than the highway diesel fuel market. The domestic off-highway diesel fuel and heating oil markets are currently in balance, considering the fact that some highway diesel fuel is currently being sold into these markets. Assuming that the distribution system can be changed to segregate highway and other distillate fuels more economically, some amount of current highway diesel fuel production could switch to these other markets with no loss of highway diesel fuel supply. In addition, although the off-highway diesel fuel market is growing, this growth will occur gradually over the next 6 years and not occur on April 1, 2006. The heating oil market is very seasonal (strong in the winter and weak in the summer), regional (strong in the Northeast) and not growing. Thus, overall, we do not see much opportunity for large domestic producers of highway diesel fuel to be able to shift their production to these other domestic markets.

Export opportunities for diesel fuel are also limited to some degree. Japan and Europe will have stringent sulfur caps in place by 2005 and have cetane requirements well beyond the cetane levels of current U.S. diesel fuel. Asia, while growing in demand for diesel fuel, has also been the focus of new grassroots refinery production and again has high cetane requirements. Thus, the primary areas for export of diesel fuel of average U.S. quality would appear to be Africa and Latin America.

Refiners have also raised the possibility of exporting some of their more difficult to desulfurize diesel feedstocks such as LCO to other distillate markets. While this may be a possibility to some degree as discussed in Section IV and the draft RIA, the opportunities to do so appear to be limited. We have not conducted a detailed analysis of the potential for this exportation. Refiners would have to hydrotreat this material to lower its sulfur content in order to meet the European Union 50 ppm sulfur cap (and increase its cetane) in order for it to be used as a diesel fuel blendstock. Otherwise, its only use without additional treating would be in heating fuel. With Europe and developing countries expected to experience increasing demand for non-diesel, distillate fuel, there may be economic opportunities for exporting such fuel.

We request comments on the possibility that the proposed sulfur cap would cause some refiners to abandon the U.S. highway diesel fuel market or to reduce highway diesel fuel production, as well as on the impact that this would have on diesel fuel supply and price in the U.S. We also request comment on whether refiners would likely desire to shift all their LCO to non-highway diesel fuel markets or just the heavier portion which contains the most sterically hindered compounds. We also request comment on the economic viability of alternative markets for current highway diesel fuel or its more difficult to desulfurize components. We also request comments on the ability of overseas refiners providing highway diesel fuel under the proposed sulfur cap should domestic refiners reduce production. Finally, as discussed in section VI.A., we are also considering various phase-in approaches for implementing the low sulfur diesel standard. A phase-in could help spread out the design, construction, and capital expenditure of refinery modifications necessary to comply with the proposed diesel fuel sulfur standard, and in so doing could further minimize any risk of supply shortages. We request comment on the appropriateness and ability of a phase-in to address these concerns.

2. Cost of Possibly Needed Lubricity Additives

As discussed in section IV, the refinery processes needed to achieve the sulfur standard have some potential to degrade the natural lubricity characteristics of the fuel. Consequently an increase in the use of lubricity additives for diesel fuel may be anticipated over the amounts used today. We contacted various producers of lubricity additives to get their estimates of what costs might be incurred for this increase in the use of lubricity additives. The cost estimates varied from 0.1 to 0.5 cents per gallon. This range is to be expected since the cost will be a strong function of not only the additive type, but also the assumed treatment rate and the volume of fuel that needs to be treated, both of which will be, to some extent, a function of the sulfur cap. As described in more detail in the Draft RIA, we have included in the fuel cost estimate an average cost of 0.2 cents per gallon for lubricity additives over the entire pool of low-sulfur highway diesel fuel. This estimate is comparable to an estimate made by Mathpro in a study sponsored by the EMA. We request comment on our cost estimate. In particular, we request comment on whether there may be unique costs for the military to maintain the lubricity of their distillate fuels. We request that such comments addressing this issue include a detailed discussion of the volumes of fuel effected, current lubricity additive use, and the additional measures that might be needed (and associated costs) to maintain the appropriate level of fuel lubricity.

3. Distribution Costs

Under the proposed 15 ppm sulfur cap, we project that distribution costs would increase by a total of 0.2 cents per gallon as discussed below.

If the proposed sulfur standard is adopted, there would be a greater difference between the sulfur content of highway diesel fuel and other distillate products than presently exists.[141] For example, off-highway diesel fuel currently has a sulfur content that is approximately ten times that of highway diesel. Under the proposed sulfur standard, off-highway diesel fuel would have a sulfur content over two hundred times that of highway diesel fuel. This could potentially make it more difficult to limit the sulfur contamination of highway diesel fuel with other distillate products as the fuel travels through the distribution system. As discussed in section IV, standard industry practices, if followed carefully, should be able to virtually eliminate the potential contamination. To do so, however, is expected to result in slightly increased costs in a few different parts of the distribution system.

We identified three segments in the distribution system (pipeline operators, terminal operators, and tank-truck operators) that might experience increased costs due to increased difficulty in limiting sulfur contamination under the proposed sulfur standard. As discussed in the Draft RIA, we estimate that the total increase in diesel distribution costs associated with adequately limiting sulfur contamination under today's proposal would be no more than 0.1 cents per gallon for the distribution system as a whole. The majority of this increased cost is attributed to the unavoidable mixing of highway diesel with other products that occurs in pipeline shipments. The amount of interface (e.g., mixture of a highway diesel batch and a nonroad diesel batch) that must be downgraded to a lower

[141] Highway diesel fuel currently must have a sulfur content of no more than 500 ppm and typically has an average sulfur content of 350 ppm. Off-highway diesel fuel sulfur content is currently unregulated and is approximately 3,500 ppm on average. The maximum allowed sulfur content of heating oil is 5,000 ppm. The maximum allowed sulfur content of kerosene (and jet fuel) is 3,000 ppm.

price product is expected to grow with a lower sulfur cap for highway diesel, resulting in a slightly increased cost for pipeline shipments. A slight increase in distribution costs is also expected to result at terminals due to the anticipated need for additional quality assurance testing at very low sulfur levels. We believe that, although tank-truck operators may need to more carefully observe current industry practices used to limit product contamination, this will not result in a significant increase in costs.

We invite comment on the amount of sulfur contamination which might be expected from each segment of the distribution system, the measures that might be taken to limit contamination, and the costs associated with these measures. We also request comment on the level of sulfur contamination in the distribution system that might be considered unavoidable without the imposition of an undue burden on diesel distributors and how this bears on the question of what sulfur level the refiner would need to meet at the refinery gate (the compliance margin) to ensure that highway diesel fuel does not exceed the proposed cap on sulfur content. Please refer to section IV.E for discussion of the compliance margin that we anticipate refiners will need to provide.

The energy density of diesel fuel would be decreased as a side effect of reducing sulfur content to the proposed 15 ppm cap. Consequently, to meet the same level of consumer demand an increased volume of diesel fuel would need to move through the distribution system. The cost of distributing this increased volume of diesel fuel was calculated within the model that used to evaluate refining costs (see the Draft RIA). Spread over the total volume of diesel fuel distributed, the additional cost is estimated at 0.1 cents per gallon. We request comment on this cost estimate.

E. Aggregate Costs

Using current data for the size and characteristics of the heavy-duty vehicle fleet and making projections for the future, the diesel per-engine, gasoline per-vehicle, and per-gallon fuel costs described above can be used to estimate the total cost to the nation for the emission standards in any year. Figure V.E–1 portrays the results of these projections.[142] All capital costs have been amortized.

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Figure V.E-1 Total Annualized Costs

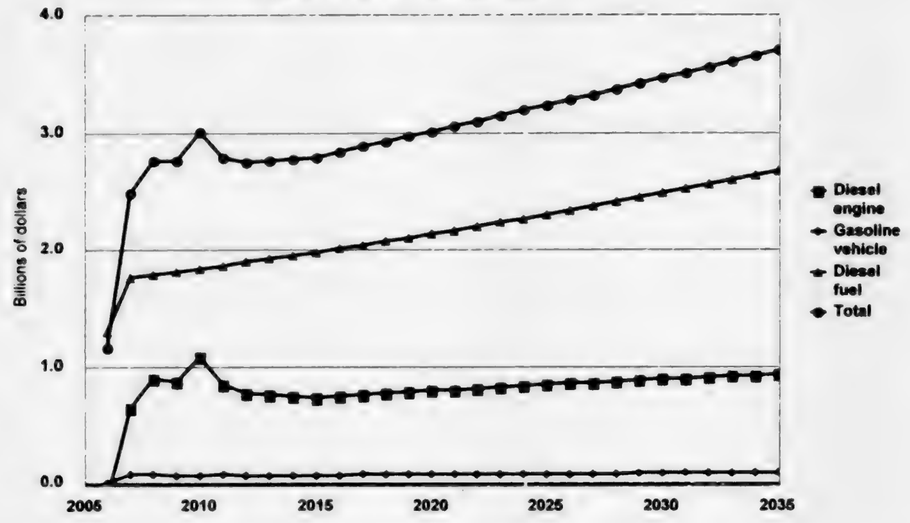

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As can be seen from the figure, the annual costs start out at less than a billion dollars in year 2006 and increase over the phase-in period to about $2.8 billion in 2015. Thereafter, total annualized costs are projected to continue increasing due to the effects of projected growth in engine sales and fuel consumption. The Draft RIA provides further detail regarding these cost projections.

Future consumption of today's proposed low sulfur diesel fuel may be influenced by a potential influx of diesel-powered cars and light trucks into the light-duty fleet. At the present time, virtually all cars and light trucks being sold are gasoline fueled. However, the possibility exists that diesels will become more prevalent in the car and light-duty truck fleet, since automotive companies have announced their desire to increase their sales of diesel cars and light trucks. For the Tier 2 rulemaking, the Agency performed a sensitivity analysis using A.D.Little's "most likely" increased growth scenario of diesel penetration into the light-duty vehicle fleet which culminated in a 9 percent and 24 percent penetration of diesel vehicles in the LDV and LDT markets, respectively, in 2015 (see Tier 2 RIA, Table III.A. 13). Were this scenario to play out, the increased number of diesel-powered cars and light-duty trucks would increase the societal costs (those costs, in total, paid by consumers) for the proposed higher priced diesel fuel because more diesel fuel would be consumed. However, were more diesel vehicles to penetrate the light-duty fleet, less gasoline would be consumed than was estimated in our Tier 2 cost analysis. Also, diesel vehicles tend to get higher fuel economy. In the end, the effect of increased dieselization of the light-duty fleet may have little or no impact on the aggregate costs estimated for today's proposal. While we have not fully analyzed this light-duty diesel penetration scenario, we request comment on it and relevant data which would allow us to perform a sensitivity analysis.

[142] Figure V.E–1 is based on the amortized engine, vehicle and fuel costs as described in the Draft RIA. Actual capital investments, particularly important for fuels, would occur prior to and during the initial years of the program.

F. Cost Effectiveness

One tool that can be used to assess the value of new standards for heavy-duty vehicles and engines is cost effectiveness, in which the costs incurred to reach the standards are compared to the mass of emission reductions. This analysis results in the calculation of a $/ton value, the purpose of which is to show that the reductions from the engine and fuel controls being proposed today are cost effective, in comparison to alternative means of control. This analysis involves a comparison of our program not only to past measures, but also to other potential future measures that could be implemented. Both EPA and states have already adopted numerous control measures, and remaining measures tend to be more expensive than those previously employed. As we and States tend to employ the most cost effective available measures first, more expensive ones must be adopted to achieve further emission reductions.

1. What Is the Cost Effectiveness of This Proposed Program?

We have calculated the cost-effectiveness of our proposed diesel engine/gasoline vehicle/diesel sulfur standards based on two different approaches. The first considers the net present value of all costs incurred and emission reductions generated over the life of a single vehicle meeting our proposed standards. This per-vehicle approach focuses on the cost-effectiveness of the program from the point of view of the vehicles and engines which will be used to meet the new requirements. However, the per-vehicle approach does not capture all of the costs or emission reductions from our proposed diesel engine/gasoline vehicle/diesel sulfur program since it does not account for the use of low sulfur diesel fuel in current diesel engines. Therefore, we have also calculated an 30-year net present value cost-effectiveness using the net present value of costs and emission reductions for all in-use vehicles over a 30-year time frame. The baseline or point of comparison for this evaluation is the previous set of engine, vehicle, and diesel sulfur standards (in other words, the applicable 2004 model year standards).

As described earlier in the discussion of the cost of this program, the cost of complying with the new standards will decline over time as manufacturing costs are reduced and amortized capital investments are recovered. To show the effect of declining cost in the per-vehicle cost-effectiveness analysis, we have developed both near term and long term cost-effectiveness values. More specifically, these correspond to vehicles sold in years one and six of the vehicle and fuel programs. Chapter VI of the RIA contains a full description of this analysis, and you should look in that document for more details of the results summarized here.

The 30-year net present value approach to calculating the cost-effectiveness of our program involves the net present value of all nationwide emission reductions and costs for a 30 year period beginning with the start of the diesel fuel sulfur program and introduction of model year 2007 vehicles and engines in year 2006. This 30-year timeframe captures both the early period of the program when very few vehicles that meet our proposed standards will be in the fleet, and the later period when essentially all vehicles in the fleet will meet our proposed standards. We have calculated the 30-year net present value cost-effectiveness using the net present value of the nationwide emission reductions and costs for each calender year. These emission reductions and costs are given for every calendar year in the RIA, in addition to details of the methodology we used to calculate the 30-year net present value cost-effectiveness.

Our per-vehicle and 30-year net present value cost-effectiveness values are given in Tables V.F–1 and V.F–2. Table V.F–1 summarizes the per-vehicle, net present value lifetime costs, NMHC + NO_X and PM emission reductions, and resulting cost-effectiveness results for our proposed diesel engine/gasoline vehicle/diesel sulfur standards using sales weighted averages of the costs (both near term and long term) and emission reductions of the various vehicle and engine classes affected. Table V.F–2 provides the same information from the program 30-year net present value perspective. It includes the net present value of the 30 year stream of vehicle and fuel costs, NMHC + NO_X and PM emission reductions, and the resulting 30-year net present value cost-effectiveness. Diesel fuel costs applicable to diesel engines have been divided equally between the adsorber and trap, since low sulfur diesel is intended to enable all technologies to meet our proposed standards. In addition, since the trap produces reductions in both PM and hydrocarbons, we have divided the total trap costs equally between compliance with the proposed PM standard and compliance with the proposed NMHC standard.

Tables V.F–1 and V.F–2 also display cost-effectiveness values based on two approaches to account for the reductions in SO_2 emissions associated with the reduction in diesel fuel sulfur. While these reductions are not central to the program and are therefore not displayed with their own cost-effectiveness, they do represent real emission reductions due to our program. The first set of cost-effectiveness numbers in the tables simply ignores these reductions and bases the cost-effectiveness on only the emission reductions from our proposed program. The second set accounts for these ancillary reductions by crediting some of the cost of the program to SO_2. The amount of cost allocated to SO_2 is based on the cost-effectiveness of SO_2 emission reductions that could be obtained from alternative, potential future EPA programs. The SO_2 credit was applied only to the PM calculation, since SO_2 reductions are primarily a means to reduce ambient PM concentrations.

TABLE V.F–1.—PER-ENGINE COST EFFECTIVENESS OF THE PROPOSED STANDARDS FOR 2007 AND LATER MY VEHICLES

Pollutants	Discounted lifetime vehicle & fuel costs	Discounted lifetime emission reductions (tons)	Discounted lifetime cost effectiveness per ton	Discounted lifetime cost effectiveness per ton with SO_2 credit[a]
Near-term costs[b]:				
NO_X+NMHC	$1535	0.8838	$1,736	$1,736
PM	872	0.0672	12,977	6,338
Long-term costs:				
NO_X+NMHC	1121	0.8838	1,268	1,268
PM	652	0.0672	9,704	3,065

[a] $446 credited to SO_2 (at $4800/ton) for PM cost effectiveness.
[b] As described above, per-engine cost effectiveness does not include any costs or benefits from the existing, pre-control, fleet of vehicles that would use the low sulfur diesel fuel proposed in this document.

TABLE V.F–2.—30-YEAR NET PRESENT VALUE[a] COST EFFECTIVENESS OF THE STANDARDS

	30-year n.p.v. engine, vehicle, & fuel costs (in billions)	30-year n.p.v. reduction (tons) (in millions)	30-year n.p.v. cost effectiveness per ton	30-year n.p.v. cost effectiveness per ton with SO_2 credit[b]
NO_X + NMHC	$28.9	18.9	$1,531	$1,531
PM	8.8	0.79	11,248	1,850

[a] This cost effectiveness methodology reflects the total fuel costs incurred in the early years of the program when the fleet is transitioning from pre-control to post-control diesel vehicles. In 2007 <10% of highway diesel fuel is anticipated to be consumed by 2007 MY vehicles. By 2012 this increases to >50% for 2007 and later MY vehicles.
[b] $7.4 billion credited to SO_2 (at $4800/ton).

2. Comparison With Other Means of Reducing Emissions

In comparison with other mobile source control programs, we believe that our program represents a cost effective strategy for generating substantial NO_X, NMHC, and PM reductions. This can be seen by comparing the cost effectiveness of today's program with a number of mobile source standards that EPA has adopted in the past. Table V.F–3 summarizes the cost effectiveness of several past EPA actions for NO_X+NMHC. Table V.F–4 summarizes the cost effectiveness of several past EPA actions for PM.

TABLE V.F–3.—COST EFFECTIVENESS OF PREVIOUS MOBILE SOURCE PROGRAMS FOR NO_X+NMHC

Program	$/ton
Tier 2 vehicle/gasoline sulfur	1,311–2,211
2004 Highway HD diesel	207–405
Nonroad diesel engine	416–660
Tier 1 vehicle	2,010–2,732
NLEV	1,888
Marine SI engines	1,146–1,806
On-board diagnostics	2,263
Marine CI engines	23–172

Note.—costs adjusted to 1998 dollars.

TABLE V.F–4.—COST EFFECTIVENESS OF PREVIOUS MOBILE SOURCE PROGRAMS FOR PM

Program	$/ton
Marine CI engines	511–3,797
1996 urban bus	12,000–19,200
Urban bus retrofit/rebuild	29,600
1994 highway HD diesel	20,450–23,940

Note.—costs adjusted to 1998 dollars.

We can see from these tables that the cost effectiveness of our proposed diesel engine/gasoline vehicle/diesel sulfur standards falls within the range of these other programs for both NO_X+NMHC and PM. Our proposed program overlaps the range of the recently promulgated standards for Tier 2 light-duty vehicles and gasoline sulfur shown in Table V.F–3. Our proposed program also overlaps the cost-effectiveness of past programs for PM. It is true that some previous programs have been more cost efficient than the program we are proposing today. However, it should be expected that the next generation of standards will be more expensive than the last, since the least costly means for reducing emissions is generally pursued first.

In evaluating the cost effectiveness of our proposed diesel engine/gasoline vehicle/diesel sulfur program, we also considered whether our proposal is cost effective in comparison with possible stationary source controls. In the context of the Agency's rulemaking which would have revised the ozone and PM NAAQS,[143] the Agency compiled a list of additional known technologies that could be considered in devising new emission reductions strategies.[144] Through this broad review, over 50 technologies were identified that could reduce NOx, VOC, or PM. The cost effectiveness of these technologies averaged approximately $5,000/ton for VOC, $13,000/ton for NO_X, and $40,000/ton for PM. Although a $10,000/ton limit was actually used in the air quality analysis presented in the NAAQS revisions rule, these values clearly indicate that, not only are future emission control strategies likely to be more expensive (less cost effective) than past strategies, but the cost effectiveness of our proposed program falls well

[143] This rulemaking was remanded by the DC Circuit Court on May 14, 1999. However, the analyses completed in support of that rulemaking are still relevant, since they were designed to investigate the cost effectiveness of a wide variety of potential future emission control strategies.

[144] "Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule," Appendix B, "Summary of control measures in the PM, regional haze, and ozone partial attainment analyses," Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC, July 17, 1997.

below the average of those choices, and is near the lower end of the range of potential future strategies.

In summary, we believe that the weight of the evidence from alternative means of providing substantial NO_X+NMHC and PM emission reductions indicates that our proposed diesel engine/gasoline vehicle/diesel sulfur program is cost effective. We believe this is true from the perspective of other mobile source control programs and from the perspective of other stationary source technologies that might be considered. We request comment on the cost-effectiveness of this program.

G. Does the Value of the Benefits Outweigh the Cost of the Proposed Standards?

In addition to cost-effectiveness, further insight regarding the merits of the standards can be provided by benefit-cost analysis. The purpose of this section is to propose the methods to be used in conducting an analysis of the economic benefits of the final rule for heavy-duty vehicles and diesel fuel, and to discuss the potential for economic benefits associated with the rule. While the quantification of the benefits will not be available until the final rule, it is our belief that, based on the similarity between today's proposed rule and Tier 2/gasoline sulfur rule in terms of the costs per ton of emissions reduced and types of health and welfare benefits expected, the health and welfare benefits would substantially outweigh the costs.

1. What Is the Purpose of This Benefit-Cost Comparison?

Benefit-cost analysis (BCA) is a useful tool for evaluating the economic merits of proposed changes in environmental programs and policies. In its traditional application, BCA estimates the economic "efficiency" of proposed changes in public policy by organizing the various expected consequences and representing those changes in terms of dollars. Expressing the effects of these policy changes in dollar terms provides a common basis for measuring and comparing these various effects. Because improvement in economic efficiency is typically defined to mean maximization of total wealth spread among all members of society, traditional BCA must be supplemented with other analyses in order to gain a full appreciation of the potential merits of new policies and programs. These other analyses may include such things as examinations of legal and institutional constraints and effects; engineering analyses of technology feasibility, performance and cost; or assessment of the air quality need.

In addition to the economic efficiency focus of most BCAs, the technique is also limited in its ability to project future economic consequences of alternative policies in a definitive way. Critical limitations on the availability, validity, or reliability of data; limitations in the scope and capabilities of environmental and economic effect models; and controversies and uncertainties surrounding key underlying scientific and economic literature all contribute to an inability to estimate the economic effects of environmental policy changes in exact and unambiguous terms. Under these circumstances, we consider it most appropriate to view BCA as a tool to inform, but not dictate, regulatory decisions such as the ones reflected in today's proposed rule.

Despite the limitations inherent in BCA of environmental programs, we consider it useful to analyze the potential benefits of today's proposed action both in terms of physical changes in human health and welfare and environmental change, and in terms of the estimated economic value of those physical changes.

2. What Is Our Overall Approach to the Benefit-Cost Analysis?

The basic question we will seek to answer in the BCA is: "What are the net yearly economic benefits to society of the reduction in air pollutant emissions likely to be achieved by the proposed rule for heavy-duty vehicles and diesel fuel?" In designing an analysis to answer this question, we will model the benefits in a future year (2030) that is representative of full-implementation of the program. We will also adopt an analytical structure and sequence similar to that of the benefit analysis for the Tier 2/gasoline sulfur rulemaking and used for the "section 812 studies" [145] to estimate the total benefits and costs of the entire Clean Air Act. Moreover, we will use many of the same models and assumptions actually used in the section 812 studies, and other Regulatory Impact Analyses (RIA's) prepared by the Office of Air and Radiation. By adopting the major design elements, models, and assumptions developed for the section 812 studies and other RIA's, we will largely rely on methods which have already received extensive review by the independent Science Advisory Board (SAB), by the public, and by other federal agencies. In addition to the 2030 analysis, we plan to provide further characterization of the benefits for the interim period between 2007 and 2030.

3. What Are the Significant Limitations of the Benefit-Cost Analysis?

Every BCA examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon monoxide. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified, such as changes in visibility in residential areas. While these general uncertainties in the underlying scientific and economics literatures will be discussed in detail in the RIA for the final action, the key uncertainties are:

- The exclusion of potentially significant benefit categories (*e.g.*, health and ecological benefits of incidentally controlled hazardous air pollutants),
- Errors in measurement and projection for variables such as population growth,
- Variability in the estimated relationships of health and welfare effects to changes in pollutant concentrations.

In addition to these uncertainties and shortcomings which pervade all analyses of criteria air pollutant control programs, a number of limitations apply specifically to a BCA. Though we will use the best data and models available, we will likely be required to adopt a number of simplifying assumptions and to use data sets which, while reasonably close, will not match precisely the conditions and effects expected to result from implementation of the standards. For example, to estimate the effects of the program at full implementation we will need to project vehicle miles traveled and populations in the year 2030. These assumptions may play a significant role in determining the magnitude of the benefits estimate. In addition, the emissions data sets which

[145] The "section 812 studies" refers to (1) US EPA, Report to Congress: The Benefits and Costs of the Clean Air Act, 1970 to 1990, October 1997 (also known as the "section 812 Retrospective); and (2) the first in the ongoing series of prospective studies estimating the total costs and benefits of the Clean Air Act (see EPA report number: EPA–410–R–99–001, November 1999).

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will be used for the analysis may not anticipate the emissions reductions realized by other future actions and by expected near-future control programs. For example, it is possible that the proposed heavy-duty vehicle and diesel fuel sulfur standards will not be the governing vehicle emissions standards in 2030. In the years before 2030, the benefits from the proposed rule for heavy-duty vehicles and diesel fuel will be less than in 2030 because the heavy-duty fleet will not be fully phased in.

The key limitations and uncertainties unique to the BCA of the final rule, therefore, will include:

• Uncertainties in the estimation of future year emissions inventories and air quality,

• Uncertainties associated with the extrapolation of air quality monitoring data to some unmonitored areas required to better capture the effects of the standards on affected populations, and

• Uncertainties associated with the effect of potential future actions to limit emissions.

Despite these uncertainties, we believe the BCA will provide a reasonable indication of the expected economic benefits of the proposed rule for heavy-duty vehicles and diesel fuel in 2030 under one set of assumptions. This is because the analysis will focus on estimating the economic effects of the *changes* in air quality conditions expected to result from today's proposed action, rather than focusing on developing a precise prediction of the *absolute* levels of air quality likely to prevail in 2030. An analysis focusing on the changes in air quality can give useful insights into the likely economic effects of emission reductions of the magnitude expected to result from today's proposed rule.

4. How Will the Benefit-Cost Analysis Change From the Tier 2 Benefit-Cost Analysis?

We will evaluate the economics and scientific literature prior to conducting the benefit-cost analysis for the final rule. Our final benefit-cost methodology will reflect the most up to date set of health and welfare effects and the most current economic valuation methods. In addition, we will use updated emission inventories. We will also be evaluating the air quality models used to predict changes in future air quality for use in the benefits analysis.

5. How Will We Perform the Benefit-Cost Analysis?

The analytical sequence begins with a projection of the mix of technologies likely to be deployed to comply with the new standards, and the costs incurred and emissions reductions achieved by these changes in technology. The proposed rule for heavy-duty vehicles and diesel fuel has various cost and emission related components. These components would begin at various times and in some cases would phase in over time. This means that during the early years of the program there would not be a consistent match between cost and benefits. This is especially true for the vehicle control portions of the program, where the full vehicle cost would be incurred at the time of vehicle purchase, while the cost for low sulfur diesel fuel along with the emission reductions and benefits would occur throughout the lifetime of the vehicle.

To develop a benefit-cost number that is representative of a fleet of heavy-duty vehicles, we need to have a stable set of cost and emission reductions to use. This means using a future year where the fleet is fully turned over and there is a consistent annual cost and annual emission reduction. For the proposed rule for heavy-duty vehicles and diesel fuel, this stability would not occur until well into the future. For this analysis, we selected the year 2030. The resulting analysis will represent a snapshot of benefits and costs in a future year in which the heavy-duty fleet consists almost entirely of heavy-duty vehicles meeting the proposed standards. As such, it depicts the maximum emission reductions (and resultant benefits) and among the lowest costs that would be achieved in any one year by the program on a "per mile" basis. (Note, however, that net benefits would continue to grow over time beyond those resulting from this analysis, because of growth in population and vehicle miles traveled.) Thus, based on the long-term costs for a fully turned over fleet, the resulting benefit-cost ratio will be close to its maximum point (for those benefits which we have been able to value).

To present a BCA, we are designing the cost estimate to reflect conditions in the same year as the benefit valuation. Costs, therefore, will be developed for the year 2030 fleet. For this purpose we will use the long term cost once the capital costs have been recovered and the manufacturing learning curve reductions have been realized, since this will be the case in 2030.

We will also make adjustments in the costs to account for the fact that there is a time difference between when some of the costs are expended and when the benefits are realized. The vehicle costs are expended when the vehicle is sold, while the fuel related costs and the benefits are distributed over the life of the vehicle. We will resolve this difference by using costs distributed over time such that there is a constant cost per ton of emissions reduction and such that the net present value of these distributed costs corresponds to the net present value of the actual costs.

The resulting adjusted costs will be somewhat greater than the expected actual annual cost of the program, reflecting the time value adjustment. Thus, the costs will not represent expected actual annual costs for 2030. Rather, they will represent an approximation of the steady-state cost per ton that would likely prevail in that time period. The benefit cost ratio for the earlier years of the program would be expected to be lower than that based on these costs, since the per-vehicle costs are larger in the early years of the program while the benefits are smaller.

In order to estimate the changes in air quality conditions which would result from these emissions reductions, we will develop two separate, year 2030 emissions inventories to be used as inputs to the air quality models. The first, baseline inventory, will reflect the best available approximation of the county-by-county emissions for NO_X, VOC, and SO_2 expected to prevail in the year 2030 in the absence of the standards. To generate the second, control case inventory, we will first estimate the change in vehicle emissions, by pollutant and by county, expected to be achieved by the 2030 control scenario described above. We will then take the baseline emissions inventory and subtract the estimated reduction for each county-pollutant combination to generate the second, control case emissions inventory. Taken together, the two resulting emissions inventories will reflect two alternative states of the world and the differences between them will represent our best estimate of the reductions in emissions which would result from our control scenario.

With these two emissions inventories in hand, the next step will be to "map" the county-by-county and pollutant-by-pollutant emission estimates to the input grid cells of appropriately selected air quality and deposition models. One such model, called the Urban Airshed Model (UAM), is designed to estimate the tropospheric ozone concentrations resulting from a specific inventory of emissions of ozone precursor pollutants, particularly NO_X and NMHC. Another model, called the Climatological Regional Dispersion Model Source-Receptor Matrix model (S–R Matrix), is designed to estimate the changes in ambient particulate matter and visibility which would result from a specific set of changes in emissions of primary particulate matter and secondary particulate matter precursors, such as SO_2, NO_X, and NMHC. Also, nitrogen loadings to watersheds can be estimated using factors derived from previous modeling from the Regional Acid Deposition Model (RADM). By running both the baseline and control case emissions inventories through models such as these, we will be able to estimate the expected 2030 air quality conditions and the changes in air quality conditions which would result from the emissions reductions expected to be achieved by the proposed rule for heavy-duty vehicles and diesel fuel.

After developing these two sets of year 2030 air quality profiles, we will use the same health and environmental effect models used in the section 812 studies to calculate the differences in human health and environmental outcomes projected to occur with and without the proposed standards. Specifically, we will use the Criteria Air Pollutant Modeling System (CAPMS) to estimate changes in human health outcomes, and the Agricultural Simulation Model (AGSIM) to estimate changes in yields of a selected few agricultural crops. In addition, the impacts of reduced visibility impairment and estimates of the effect of changes in nitrogen deposition to a selection of sensitive estuaries will be estimated using slightly modified versions of the methods used in the section 812 studies. At proposal, we expect that several air quality-related health and environmental benefits, however, will not be able to be calculated for the BCA of today's proposed standards. Changes in human health and environmental effects due to changes in ambient concentrations of carbon monoxide (CO), gaseous sulfur dioxide (SO_2), gaseous nitrogen dioxide (NO_2), and hazardous air pollutants will likely not be included. In addition, some health and environmental benefits from changes in ozone and PM may not be included in our analysis (i.e., commercial forestry benefits). However, if our review of the economics and scientific literature reveals new information that will allow us to quantify these effects, they will be considered for inclusion in the estimate of total benefits for the final rule. Table IV–X lists the set of effects that we expect to be able to quantify for the BCA of the final rule, along with those effects which are known to exist, but that are currently unquantifiable.

To characterize the total economic value of the reductions in adverse effects achieved across the lower 48 states, we plan to use the same set of economic valuation coefficients and models used in the section 812 studies and the Tier 2 benefits analysis, as approved by the SAB. The set of coefficients and their sources are listed in the final Tier 2 RIA. However, any new methods uncovered in our evaluation of the economic and scientific literature may be incorporated into our final analysis. The net monetary benefits of the proposed rule for heavy-duty vehicles and diesel fuel will then be calculated by subtracting the estimated costs of compliance from the estimated monetary benefits of the reductions in adverse health and environmental effects.

The last step of the analysis will be to characterize the uncertainty surrounding our estimate of benefits. Again, we will follow the recommendations of the SAB for the presentation of uncertainty. They recommend that a primary estimate should be presented along with a description of the uncertainty associated with each endpoint.

Therefore, for the final rule for heavy-duty vehicles and diesel fuel, the benefit analysis will adopt an approach similar to the section 812 study and the final Tier 2/gasoline sulfur benefit-cost analysis. Our analysis will first present our estimate for a primary set of benefit endpoints followed by a presentation of "alternative calculations" of key health and welfare endpoints to characterize the uncertainty in this primary set. However, the adoption of a value for the projected reduction in the risk of premature mortality is the subject of continuing discussion within the economic and public policy analysis community within and outside the Administration. In response to the sensitivity on this issue, we will provide estimates reflecting two alternative approaches. The first approach—supported by some in the above community and preferred by EPA—uses a Value of a Statistical Life (VSL) approach developed for the Clean Air Act section 812 benefit-cost studies. This VSL estimate of $5.9 million (1997$) was derived from a set of 26 studies identified by EPA using criteria established in Viscusi (1992), as those most appropriate for environmental policy analysis applications.

TABLE V.G–1.—HUMAN HEALTH AND WELFARE EFFECTS OF POLLUTANTS AFFECTED BY THE PROPOSED HEAVY-DUTY VEHICLE RULE

Pollutant	Quantified and monetized effects	Alternative quantified and/or monetized effects	Unquantified effects
Ozone Health	Minor restricted activity days/acute respiratory symptoms; Hospital admissions—respiratory and cardiovascular; Emergency room visits for asthma.		Premature mortality;[a] Increased airway responsiveness to stimuli; Inflammation in the lung; Chronic respiratory damage; Premature aging of the lungs; Acute inflammation and respiratory cell damage; Increased susceptibility to respiratory infection; Non-asthma respiratory emergency room visits.
Ozone Welfare	Decreased worker productivity; Decreased yields for commercial crops.		Decreased yields for commercial forests; Decreased yields for fruits and vegetables.
PM Health	Premature mortality; Bronchitis—chronic and acute; Hospital admissions—respiratory and cardiovascular; Emergency room visits for asthma; Lower and upper respiratory illness; Shortness of breath; Minor restricted activity days/acute respiratory symptoms; Work loss days.		Infant mortality; Low birth weight; Changes in pulmonary function; Chronic respiratory diseases other than chronic bronchitis; Morphological changes; Altered host defense mechanisms; Cancer; Non-asthma respiratory emergency room visits.

TABLE V.G–1.—HUMAN HEALTH AND WELFARE EFFECTS OF POLLUTANTS AFFECTED BY THE PROPOSED HEAVY-DUTY VEHICLE RULE—Continued

Pollutant	Quantified and monetized effects	Alternative quantified and/or monetized effects	Unquantified effects
PM Welfare	Visibility in California, Southwestern, and Southeastern Class I areas.	Visibility in Northeastern, Northwestern, and Midwestern Class I areas; Household soiling.	
Nitrogen and Sulfate Deposition Welfare.		Costs of nitrogen controls to reduce eutrophication in selected eastern estuaries.	Impacts of acidic sulfate and nitrate deposition on commercial forests; Impacts of acidic deposition to commercial freshwater fishing; Impacts of acidic deposition in terrestrial ecosystems; Impacts of nitrogen deposition on commercial fishing, agriculture, and forests; Impacts of nitrogen deposition on recreation in estuarine ecosystems; Reduced existence values for currently healthy ecosystems.
CO Health			Premature mortality;[a] Behavioral effects; Hospital admissions—respiratory, cardiovascular, and other; Other cardiovascular effects; Developmental effects; Decreased time to onset of angina.
HAPS Health			Cancer (benzene, 1,3-butadiene, formaldehyde, acetaldehyde); Anemia (benzene); Disruption of production of blood components (benzene); Reduction in the number of blood platelets (benzene); Excessive bone marrow formation (benzene); Depression of lymphocyte counts (benzene); Reproductive and developmental effects (1,3-butadiene); Irritation of eyes and mucus membranes (formaldehyde); Respiratory irritation (formaldehyde); Asthma attacks in asthmatics (formaldehyde).
HAPS Welfare			Direct toxic effects to animals; Bioaccumulation in the food chain.

[a] Premature mortality associated with ozone is not separately included in this analysis. It is assumed that the Pope, et al. C–R function for premature mortality captures both PM mortality benefits and any mortality benefits associated with other air pollutants.

An alternative, age-adjusted approach is preferred by some others in the above community both within and outside the Administration. This approach was also developed for the Section 812 studies and addresses concerns with applying the VSL estimate—reflecting a valuation derived mostly from labor market studies involving healthy working-age manual laborers—to PM-related mortality risks that are primarily associated with older populations and those with impaired health status. This alternative approach leads to an estimate of the value of a statistical life year (VSLY), which is derived directly from the VSL estimate. It differs only in incorporating an explicit assumption about the number of life years saved and an implicit assumption that the valuation of each life year is not affected by age.[146] The mean VSLY is $360,000 (1997$); combining this number with a mean life expectancy of 14 years yields an age-adjusted VSL of $3.6 million (1997$).

Both approaches are imperfect, and raise difficult methodological issues which are discussed in depth in the recently published Section 812 Prospective Study, the draft EPA Economic Guidelines, and the peer-review commentaries prepared in support of each of these documents. For example, both methodologies embed assumptions (explicit or implicit) about which there is little or no definitive scientific guidance. In particular, both methods adopt the assumption that the risk versus dollars trade-offs revealed by available labor market studies are applicable to the risk versus dollar trade-offs in an air pollution context.

EPA currently prefers the VSL approach because, essentially, the method reflects the direct application of what EPA considers to be the most reliable estimates for valuation of premature mortality available in the current economic literature. While there are several differences between the labor market studies EPA uses to derive a VSL estimate and the particulate matter air pollution context addressed here, those differences in the affected populations and the nature of the risks imply both upward and downward adjustments. For example, adjusting for age differences may imply the need to adjust the $5.9 million VSL downward as would adjusting for health differences, but the involuntary nature of air pollution-related risks and the lower level of risk-aversion of the manual laborers in the labor market studies may imply the need for upward adjustments. In the absence of a comprehensive and balanced set of adjustment factors, EPA believes it is reasonable to continue to use the $5.9 million value while acknowledging the significant limitations and uncertainties in the available literature. Furthermore, EPA prefers not to draw distinctions in the monetary value assigned to the lives saved even if they differ in age, health status, socioeconomic status, gender or other characteristic of the adult population.

Those who favor the alternative, age-adjusted approach (i.e. the VSLY approach) emphasize that the value of a statistical life is not a single number relevant for all situations. Indeed, the VSL estimate of $5.9 million (1997 dollars) is itself the central tendency of a number of estimates of the VSL for some rather narrowly defined populations. When there are significant differences between the population affected by a particular health risk and the populations used in the labor market studies—as is the case here—they prefer to adjust the VSL estimate to reflect those differences. While acknowledging that the VSLY approach provides an admittedly crude adjustment (for age though not for other possible differences between the populations), they point out that it has the advantage of yielding an estimate that is not presumptively biased. Proponents of adjusting for age differences using the VSLY approach fully concur that enormous uncertainty remains on both sides of this estimate—upwards as well as downwards—and that the populations differ in ways other than age (and therefore life expectancy). But rather than waiting for all relevant questions to be answered, they prefer a process of refining estimates by incorporating new information and evidence as it becomes available.

The presentation of the alternative calculations for certain endpoints will demonstrate how much the overall benefit estimate might vary based on the value EPA gives to a parameter (which has some uncertainty associated with it) underlying the estimates for human health and environmental effect incidence and the economic valuation of those effects. These alternative calculations will represent conditions that are possible to occur, however, EPA has selected the best supported values based on current scientific literature for use in the primary estimate. The alternate calculations will include:

- Presentation of an estimated confidence interval around the Primary estimate of benefits to characterize the standard error in the C–R and valuation studies used in developing benefit estimates for each endpoint;
- Valuing PM-related premature mortality based on a different C–R study;
- Value of avoided premature mortality incidences based on statistical life years;
- Consideration of reversals in chronic bronchitis treated as lowest severity cases;
- Value of visibility changes in all Class I areas;
- Value of visibility changes in Eastern U.S. residential areas;
- Value of visibility changes in Western U.S. residential areas;
- Value of reduced household soiling damage; and
- Avoided costs of reducing nitrogen loadings in east coast estuaries.

For instance, the estimate of the relationship between PM exposure and premature mortality from the study by Dockery, et al. is a plausible alternative to the Pope, et al. study used for the Primary estimate of benefits. The SAB has noted that "the study had better monitoring with less measurement error than did most other studies" (EPA–SAB–COUNCIL–ADV–99–012, 1999). The Dockery study had a more limited geographic scope (and a smaller study population) than the Pope, et al. study and the Pope study appears more likely to mitigate a key source of potential confounding. The Dockery study also covered a broader age category (25 and older compared to 30 and older in the Pope study) and followed the cohort for a longer period (15 years compared to 8 years in the Pope study). For these reasons, the Dockery study is considered to be a plausible alternative estimate of the avoided premature mortality incidences that are expected to be associated with the final heavy-duty rule rule. The alternative estimate for mortality can be substituted for the valuation component in our primary estimate of mortality benefits to observe how the net benefits of the program may be influenced by this assumption. Unfortunately, it is not possible to combine all of the assumptions used in the alternate calculations to arrive at different total benefit estimates because it is highly unlikely that the selected combination of alternative values would all occur simultaneously. Therefore, it will be more appropriate to consider each alternative calculation individually to assess the uncertainty in the estimate.

In addition to the estimate for the primary set of endpoints and alternative calculations of benefits, our RIA for the final rule will also present an appendix with supplemental benefit estimates and sensitivity analyses of other key parameters in the benefit analysis that have greater uncertainty surrounding them due to limitations in the scientific literature. Supplemental estimates will be presented for premature mortality associated with short-term exposures to PM and ozone, asthma attacks, occurrences of moderate or worse asthma symptoms, and the avoided incidences of premature mortality in infants.

Even with our efforts to fully disclose the uncertainty in our estimate, this uncertainty presentation method does not provide a definitive or complete picture of the true range of monetized benefits estimates. This proposed approach, to be implemented in the BCA for the final rule, will not reflect important uncertainties in earlier steps of the analysis, including estimation of compliance technologies and strategies, emissions reductions and costs associated with those technologies and strategies, and air quality and deposition changes achieved by those emissions reductions. Nor does this approach provide a full accounting of all potential benefits associated with the proposed rule for heavy-duty vehicles and diesel fuel, due to data or methodological limitations. Therefore, the uncertainty range will only be representative of those benefits that we will be able to quantify and monetize.

6. What Types of Results Will Be Presented in the Benefit-Cost Analysis?

The BCA for the final rule for heavy-duty vehicles and diesel fuel will reflect a single year "snapshot" of the yearly benefits and costs expected to be realized once the standards have been fully implemented and non-compliant vehicles have all been retired. Near-term costs will be higher than long-run costs as vehicle manufacturers and oil companies invest in new capital equipment and develop and implement new technologies. In addition, near-term benefits will be lower than long-run benefits because it will take a number of years for compliant heavy-duty vehicles to fully displace older, more polluting vehicles. However, we will adjust the cost estimates upward to compensate for some of this discrepancy in the timing of benefits and costs and to ensure that the long-term benefits and costs are calculated on a consistent basis. Because of the adjustment process, the cost estimates should not be interpreted as reflecting the actual costs expected to be incurred in the year 2030. Actual program costs can be found earlier in this preamble.

With respect to the benefits, the BCA for the final rule for heavy-duty vehicles and diesel fuel will follow the

[146] Specifically, the VSLY estimate is calculated by amortizing the $5.9 million mean VSL estimate over the 35 years of life expectancy asssociated with subjects in the labor market studies. The resulting estimate, using a 5 percent discount rate, is $360,000 per life-year saved in 1997 dollars. This annual average value of a life-year is then multiplied times the number of years of remaining life expectancy for the affected population (in the case of PM-related premature mortality, the average number of 5 life-years saved is 14).

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presentation format used in the Tier 2 BCA, presenting several different measures of benefits which will be useful to compare and contrast to the estimated compliance costs. These benefit measures include (a) the tons of emissions reductions achieved, (b) the reductions in incidences of adverse health and environmental effects, and (c) the estimated economic value of those reduced adverse effects. Calculating the cost per ton of pollutant reduced is particularly useful for comparing the cost-effectiveness of the new standards or programs against existing programs or alternative new programs achieving reductions in the same pollutant or combination of pollutants. Considering the absolute numbers of avoided adverse health and environmental effects can also provide valuable insights into the nature of the health and environmental problem being addressed by the proposed rule as well as the magnitude of the total public health and environmental gains potentially achieved. Finally, when considered along with other important economic dimensions—including environmental justice, small business financial effects, and other outcomes related to the distribution of benefits and costs among particular groups—the direct comparison of quantified economic benefits and economic costs can provide useful insights into the potential magnitude of the estimated net economic effect of the rule, keeping in mind the limited set of effects we expect to be able to monetize.

VI. Alternative Program Options

In the course of developing the proposal, we considered a broad range of options, many of which were raised by commenters on the ANPRM. Various options were considered for the best manner to implement a change to diesel fuel, on how to structure a sulfur standard, on fuel changes other than sulfur, and on the geographic scope of the program. This section helps to explain many alternative program options that we considered in designing today's proposal. In this section, we also are seeking comment on voluntary phase-in options for implementing the fuel program (see section VI.A.2), and on issues connected with the use of JP–8 fuel in highway-going military vehicles (see section VI.D).

A. What Other Fuel Implementation Options Have We Considered?

A broad spectrum of approaches for implementing the fuel program were either raised by the Agency in the ANPRM, received as public comments on the ANPRM, or raised by various parties during the development of this proposal. Below, we discuss some of the options we have considered, including alternatives on which we are seeking comment.

1. What Are the Advantages and Disadvantages of a Phase-in Approach to Implementing the Low Sulfur Fuel Program?

EPA is proposing, as discussed in section IV.C., that the entire pool of highway diesel fuel be converted to low sulfur diesel fuel all at once in 2006. In the early years of the program, the use of low sulfur diesel fuel will result in reductions in the amount of direct and secondary particulate matter from the existing fleet of heavy-duty vehicles. Nevertheless, the primary benefit of the fuel change is the emission reductions that would occur over time from the new vehicle fleet as a result of the enablement of advanced aftertreatment exhaust emission control technologies. Consequently, we believe there may be some advantages, particularly in the early years, to allowing some flexibility in the program so that not all of the highway diesel fuel pool must be converted to low sulfur all at once. First, owners of old vehicles could continue to refuel on higher-sulfur (500 ppm) diesel fuel, potentially saving money for consumers. Second, we believe a phase-in approach, if designed properly, has the potential to be beneficial for refiners, by reducing the fuel production costs in the early years of the program. This flexibility could reduce operating costs, if the entire volume of highway fuel does not have to meet the low sulfur standard. If coupled with averaging, banking and trading provisions, some refineries may be able to delay desulfurization investments for several years. Even for refiners planning to desulfurize their entire highway fuel pool to low sulfur levels at the beginning of the program, there may be circumstances where the actual fuel produced is slightly off-spec (i.e., above the low sulfur standard). A phase-in approach could allow refiners to continue selling that fuel to the highway market (as 500 ppm fuel), rather than to other distillate markets. Refiners could also have more flexibility to continue producing highway diesel (as 500 ppm fuel) during unit downtime (e.g., turnarounds and upsets).

While a phase-in approach could provide flexibility for refiners and potentially lower costs for consumers, a number of concerns would need to be addressed before such an approach could be implemented. These include: ensuring sufficient availability of the low sulfur fuel when and where it is needed, minimizing the potential for misfueling, minimizing the risk of spot outages, and minimizing impacts on the fuel distribution and retail industries. These issues are discussed further below. It is not obvious at what level the fuel production and distribution systems can provide two grades of highway diesel fuel while minimizing the potential for localized supply shortages and price spikes, and misfueling problems. For example, we expect that in the first year of the program only about 10 percent of highway diesel fuel would be consumed by 2007 model year vehicles requiring the use of low sulfur fuel. In a perfect world where the distribution system could, without additional cost, make low sulfur diesel fuel widely available (in addition to the current 500 ppm fuel), only about 10 percent of the highway diesel fuel produced by refiners in the first year would then have to be low sulfur. Unfortunately, since this perfect world does not exist, the question remains whether, and to what extent, the system can distribute two grades of highway diesel fuel in a way that takes advantage of any flexibilities offered, and ensures sufficient supply of fuel for the new vehicles that need it.

During the process of developing this proposal (including comments received on the ANPRM), many industry stakeholders (many diesel distributors, marketers, larger refiners, and end-users such as truckers and centrally-fueled fleets) have commented on ways to implement the fuel program. While each stakeholder may have had different assumptions behind their position (including assumptions about the structure of a phase-in, and expectations about the resulting costs and fuel prices), many stakeholders have encouraged EPA to implement any fuel change all at once, rather than incur the added distribution costs and marketplace complication of phasing in a new grade of highway diesel fuel. The following sections discuss some of the challenges in implementing a phase-in approach.

a. Availability of Low Sulfur Diesel Fuel

Because new vehicles would need to be fueled exclusively with low sulfur diesel, for a phase-in approach to be workable, low sulfur diesel fuel would have to be available in all parts of the country. It is not clear what minimum level of availability would be necessary to meet the needs of diesel vehicles. The trucking industry has indicated that a limited number of phased-in fueling locations would not meet the needs of the trucking industry.

We seek comment on what level of availability would be appropriate under a phase-in approach, to ensure that the low sulfur diesel fuel is available, within a reasonable distance, to all consumers in all parts of the country. For example, would sufficient availability be achieved if all major truck stops across the country offered low sulfur fuel, or if some minimum percentage of diesel retailers in different geographic areas offered low sulfur fuel? Are there studies on fuel availability that would serve to inform efforts to assure adequate availability? We request that commenters consider what fraction of truck stops and other retail outlets would need to make low sulfur fuel available within any given area in order to ensure reasonable availability from the public's perspective.

b. Misfueling

Any phase-in approach would introduce an additional grade of highway diesel fuel into the market, by allowing both high and low-sulfur grades to coexist, with a potential for a price differential between the grades. Many industry stakeholders, including diesel marketers, truck stop operators, and engine manufacturers, have commented that misfueling would be significant under a phase-in approach.[147] That is, customers with new vehicles that need low-sulfur fuel might use the higher-sulfur fuel, mistakenly or deliberately, which could increase emissions and damage the emissions control technology on the vehicle. Diesel marketers have also raised the issue that a phase-in system could create incentives for consumers to tamper with the emission control equipment of new vehicles, if they believe that will enable them to use a lower priced fuel. Therefore, we are concerned about the potential for misfueling, as it could reduce the emission benefits of the program. However, if a phase-in approach were to work well and misfueling were not an issue, we would expect to achieve the same environmental benefits as the proposed single fuel approach.

Some degree of misfueling occurs even today with a single grade of highway diesel fuel, due to the availability of tax exempt off-highway diesel fuel. The opportunity for misfueling with off-highway diesel fuel, however, is somewhat limited by the limited number of highway diesel refueling locations that market both grades of diesel fuel. Nevertheless, since off-highway diesel fuel will still be available even under a complete switch of highway diesel fuel to low sulfur, the problem of misfueling is not entirely unique to the phase-in approach. It is, however, true that the greater availability of 500 ppm diesel fuel alongside the low sulfur fuel will make misfueling easier. Thus, the appropriate question to ask when considering a phase-in approach is not "will people misfuel?" but "to what extent?" and "how can the design of the program minimize the potential for misfueling?"

One factor that might encourage misfueling would be the existence of a price differential between low sulfur diesel fuel and 500 ppm fuel. For many diesel vehicles, particularly line-haul tractor trailers, the fuel cost can be as much as 20 percent of annual operating costs, so drivers have a strong incentive to save on fuel costs. On the other hand, there are also several factors that might serve as a deterrent to misfueling. First, the potential risk associated with voiding a manufacturer emission warranty or damaging the engine and exhaust system on an expensive vehicle might cause owners and operators of heavy-duty trucks to be more circumspect in ensuring that their vehicles are fueled properly. Second, misfueled vehicles could experience a loss in performance, such as poor acceleration or even engine stalling (as discussed in section III.F.1.a). Third, under the proposed regulations it would be unlawful for any person to misfuel.

Depending on the potential for misfueling, EPA may need to require that new vehicles be fitted with a unique nozzle interface, with a corresponding size nozzle for the low-sulfur diesel. This would be analogous to the nozzle interface approach used to discourage misfueling in the unleaded gasoline program. However, diesel marketers have indicated that they do not support the use of unique nozzle interfaces for the low sulfur fuel, particularly if it would affect volume delivery. They have expressed the concern that a smaller nozzle size would reduce the volume of fuel delivered, result in slower refuelings, and increase wait times at retail stations. Further, based on our experience with unleaded gasoline,[148] it is likely that people intent on misfueling would quickly find ways around a unique nozzle/nozzle interface. We request comment on ways to structure a unique nozzle/nozzle interface approach that would discourage misfueling while avoiding these problems. We also request comment on any alternative methods that could be used to discourage misfueling.

We invite comment on the potential for misfueling under phase-in approaches, what factors would influence misfueling, and how the potential for misfueling might vary under the different phase-in approaches described in subsection 2 below. We further seek comment on how these phase-in approaches could be designed to minimize the potential for misfueling.

c. Distribution System Impacts

While providing flexibility for refiners and potentially lower costs to consumers, a phase-in approach would rely on the fuel distribution infrastructure being able to accommodate the second grade of highway diesel fuel. The economics of modifying the distribution infrastructure to handle two grades of highway diesel fuel would affect the extent to which refiners can take advantage of the flexibility, and consumers enjoy the cost-savings, of a phase-in. There are a vast array of businesses in the diesel fuel distribution system, encompassing thousands of companies, including pipelines, bulk terminals, bulk plants, petroleum marketers (who carry the fuel from bulk terminals and bulk plants via transport trucks and fuel tank wagons to retail outlets and fleet customers), fuel oil dealers, service stations, truck stops, and centrally-fueled fleets (commercial fleets, federal/state/local government fleets, and farms). Based on available data, the vast majority of these are small businesses according to the Small Business Administration's definitions.[149] These businesses may make investments and change their practices to accommodate two grades of highway diesel fuel. The economics of a phase-in could be viewed as follows: Through intermediate price mark-ups on the product, the system would distribute some of the cost savings experienced by the refiners and consumers to those making capital investments. If the potential cost savings

[147] Comment letters from the Engine Manufacturers Association (Item II–D–35), National Association of Truck Stop Operators (Included in Report of the Small Business Advocacy Review (SBAR) Panel, Appendix B, Page 30), and Petroleum Marketers Association of America (Included in SBAR Panel Report, Appendix B, Page 38).

[148] "An Analysis of the Factors Leading to the Use of Leading to the Use of Leaded Gasoline in Automobiles Requiring Unleaded Gasoline," September 29, 1978, Sobotka & Company, Inc. See also "Motor Vehicle Tampering Survey—1983," July 1984, U.S. EPA, Office of Air and Radiation, Docket A–99–06. See also "Anti-Tampering and Anti-Misfueling Programs to Reduce In-Use Emissions From Motor Vehicles," May 25, 1983 (EPA/AA/83–3). Contained in Docket A–99–06.

[149] For more information, see the Report of the Small Business Advocacy Review Panel, contained in the docket.

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were not sufficient to justify such investments, then those investments would not occur and the entire system would convert to low sulfur diesel. We seek comment on how the economics of a phase-in would actually play out.

If the cost savings of a phase-in are substantial, many bulk terminals and bulk plants may find it economical to add new tank capacity to accommodate a second grade of highway diesel fuel. However, if the cost savings of a phase-in are modest, fewer terminal operators would profit from such investments, since some have commented on the costs, space constraints, and permitting difficulties associated with new tankage.[150] The magnitude of the cost savings also affects the role of diesel marketers in this market. Some marketers have commented that if some terminals offer two grades while others offer only one grade, the costs of transporting fuel would increase since some trucks would have to travel greater distances to alternate terminals or bulk plants.[151] The share of the cost savings that marketers could enjoy from the mark-up on diesel products would have to at least equal the higher transport costs for them to offer to handle two grades of fuel.

Similarly, many service stations, truck stops, and centrally-fueled fleets would be faced with a decision of whether to add additional underground storage tanks to carry the extra grade of diesel fuel. Retailers with more than one diesel tank, such as many truck stops and some fleets, could choose to demanifold existing tanks (involving breaking concrete) in order to dedicate one or more tanks to the new fuel. Those that find it economical to do so will undertake the investment and offer two grades, while those that would not find the investment profitable would forego this option.

Generally we would expect that where businesses could profit from managing two grades they would do so and provide some 500 ppm diesel to the market. Thus, the impact to the distribution system of a phase-in would include costs from new investments, but these could be compensated by higher profits. Where the costs of handling two fuels in the distribution system are larger than the cost savings enjoyed by refineries (and passed down to consumers in lower fuel prices), then only low sulfur diesel would be offered. Some refiners and distributors have expressed the concern, however, that these additional investments would be "stranded" after the phase-in period ends. A key question will be whether each party in the refining/distribution system can accurately anticipate what the others will do, so as to avoid unnecessary investments (e.g., if the system should switch over the low sulfur more quickly than expected). Since the diesel fleet transitions over relatively quickly (greater than 50 percent of VMT is typically driven by new diesel vehicles after just 5 years), there may be limited time to recoup any investment made to handle an additional grade of highway diesel fuel. We request comment overall on the economics of a phase-in approach.

In addition to overall impacts on the distribution system, an additional grade of highway diesel fuel could reduce the flexibility of the distribution system to carry all grades of fuels that it does today. This may particularly be a concern with specialty fuels or segregated shipments of fuel through pipelines that require separate tankage such as those utilized by the Department of Defense (DOD). DOD stated that since its specialty fuels (F–76, JP–5, and JP–8) are not fungible fuels, if today's rule places additional stress on an already capacity-strained pipeline system, it may limit DOD's ability to transport adequate volumes of their specialty fuels to meet operational readiness requirements. Consequently we request comment on this particular impact on the distribution system in regard to accommodating a second grade of highway diesel fuel.

d. Uncertainty in the Transition to Low Sulfur

We believe the proposed single fuel approach provides more certainty to the market for making the large investments needed to introduce low-sulfur fuel. Yet even under a single fuel approach, refiners have indicated that there is uncertainty in refiner decisions to invest or not (or to underinvest) in desulfurization, which could lead to a risk of supply shortfalls and high prices. Refiners may make this choice to exit the highway diesel market, or to reduce production volume of highway diesel fuel, especially if faced with uncertainty about the ability to recover their investments (see further discussion in section V.D.1). A phase-in approach could minimize any potential for such a shortfall in the overall highway diesel fuel supply. Under a phase-in, the level of uncertainty is different, however, in that since the highway diesel pool would be split into two grades, refiners would need to predict in advance the relative demand for each grade.

Under the phase-in flexibility approaches (described in the following section), the presumption is that the fuel production and distribution system will react to both the market demand and the incentive of the various programs to produce and distribute the low sulfur fuel at reasonable prices to all parts of the country. Turning any of these approaches into a reality requires embracing the possibility that the market reacts differently than anticipated. For example, diesel retailers have indicated that it would be extremely difficult to predict how retailers would respond to making low sulfur fuel available, given the many factors that influence retail decisions. Consequently, refiners might have little certainty about continued markets for 500 ppm fuel when making their investment decisions and all of them might choose to convert to low sulfur. Given the lead time needed for additional desulfurization capacity at refineries to come on line, it is important for a smooth transition to low sulfur diesel fuel that predictions of demand be similar to the actual demand. Each of the phase-in approaches described in the following section is intended to be designed to allow the market the flexibility to find a lower cost option than full initial conversion to low sulfur fuel if such a solution exists, and to default to a full low sulfur program if such a solution does not exist. Each approach is, however, subject to different sources of uncertainty. We request comment on the ability of refiners to accurately predict demand for desulfurization capacity under a phase-in approach. Commenters should discuss this issue in the context of the phase-in approaches described below and in the context of the proposed single fuel approach.

e. Cost Considerations Under a Phase-in Approach

Because it avoids the need to produce all of the fuel to the low sulfur standard in the first year, a phase-in approach could provide an opportunity for cost savings to refiners and could significantly lower overall diesel fuel production costs. Consumers of pre-2007 diesel vehicles could also realize a savings if the current 500 ppm fuel were still available and priced lower than the new low sulfur fuel. In a perfect world with a distribution system capable of distributing a second grade of highway diesel fuel at no cost, if low sulfur production could be matched with the demand from new vehicles, the fraction of highway diesel fuel that would have to be low sulfur would increase from approximately 9% in 2007 to approximately 60% in 2012 based on typical fleet turnover rates. Thus, the amount of low sulfur fuel refiners would have to produce in the early years of the program could be reduced significantly, with a corresponding reduction in production costs theoretically as high as $4 billion, using our estimated per gallon fuel costs discussed in section IV. This theoretical distribution system does not exist and there would be a number of important and potentially significant costs incurred in the distribution system that could impact these savings. As discussed above, a wide array of entities in the distribution system, including refiners, bulk terminals, pipelines, bulk plants, petroleum marketers, fuel oil dealers service stations, truck stops, and centrally fuelled fleets would have to make investment decisions in order to distribute a second grade of highway diesel fuel. We seek comment on the potential cost savings associated with a phase-in approach, including the potential costs of managing two grades of highway diesel fuel in the distribution system, how these costs would vary depending on the relative volumes of the two grades of highway diesel fuel, the necessary margin for businesses in the distribution system to find it economic to manage two grades of highway fuel, and how these cost savings and margins could vary depending on the range of ways the distribution system might respond.

[150] Letter from Independent Terminal Operators Association, July 13, 1999 (Item # II–D–80).

[151] Letter from Petroleum Marketers Association of America, November 8, 1999, Docket A–99–06.

2. What Phase-in Options Is EPA Seeking Comment on in Today's Proposal?

In this section, we are requesting comment on three different phase-in approaches for implementing a program for low sulfur highway diesel fuel.

a. Refiner Compliance Flexibility

Despite the concerns described above with a phase-in approach for implementing the diesel fuel sulfur control program, EPA nevertheless believes that a program, if voluntary, can be devised which can address these concerns and take advantage of at least some of the benefits a phase-in approach has to offer. Consequently, as part of our proposed program for implementing low sulfur highway diesel, as described in section IV.C, we also are seeking comment on a voluntary option that would provide compliance flexibilities for refiners, while still achieving the environmental benefits of the program. In this section, we describe this refiner compliance flexibility concept and seek comment on all aspects of its design. We also discuss how this compliance flexibility relates to the options for small refiner flexibility (which we're seeking comment on in section VIII.E).

i. Overview of Compliance Flexibility

We are seeking comment on a voluntary compliance flexibility that would allow refiners to continue producing fuel at the 500 ppm level for a fraction of their total highway diesel fuel volume in the first few years of the program. The fraction of 500 ppm fuel allowed to be produced by refiners would phase-down over a period of several years. Specifically, we request comment on the appropriate fraction of highway diesel fuel allowed to be produced as 500 ppm fuel beginning in 2006. Three possible scenarios are shown in Table VI.A–1 below. The level at which this flexibility begins would significantly affect its design. We are seeking comment on a range of production percentages for the 500 ppm fuel. We are particularly interested in the degree to which percentages of 500 ppm at the higher end of this range could pose challenges for ensuring sufficient availability of the low sulfur fuel and minimizing the potential for misfueling. In addition, we request comment on the extent to which different proportions of 500 ppm fuel will pose different challenges for the distribution system. Several issues and implications of setting the 500 ppm production limits at higher or lower levels are discussed below. We seek comment on our assumptions and the implications of these issues for the design of such a compliance flexibility program. Further, we request comment on the number of years this flexibility should be provided.

TABLE VI.A–1.—TWO POSSIBLE SCENARIOS FOR IMPLEMENTING THE COMPLIANCE FLEXIBILITY

	Percent of highway diesel fuel permitted to be 500 ppm						
	2006	2007	2008	2009	2010	2011	2012
Scenario A	20	20	10	10	0	0	0
Scenario B	50	50	30	15	0	0	0
Scenario C	75	75	60	45	30	15	0

We believe this compliance flexibility would be potentially beneficial for refiners. This flexibility could reduce operating costs, by not requiring the entire volume of highway fuel to meet the low sulfur standard. With averaging, banking and trading provisions as a component of this compliance flexibility (as discussed below), some refineries may be able to delay desulfurization investments for several years. Even for refiners planning to desulfurize their entire highway fuel pool to low sulfur levels at the beginning of the program, there may be circumstances where the actual fuel produced is slightly off-spec (i.e., above the low sulfur standard). This flexibility would allow refiners to continue selling that fuel to the highway market (as 500 ppm fuel), rather than to other distillate markets. Refiners would also have more flexibility to continue producing highway diesel (as 500 ppm fuel) during unit downtime (e.g., turnarounds and upsets).

This approach would need appropriate safeguards to minimize contamination of the low sulfur fuel and misfueling. Thus, low sulfur highway diesel would have to remain a segregated product throughout its distribution (see further discussion of segregation requirements in section VI.A.2.a.v). Further, any retail pumps carrying 500 ppm fuel would have to be prominently labeled to prevent misfueling of 2007 and later model year vehicles. We seek comment on whether other measures to discourage misfueling might also be necessary. For example, the use of a unique refueling nozzle/vehicle nozzle interface could further discourage misfueling, although we question the need to pursue this approach if the 500 ppm fuel were in the market in relatively low volumes and only during the initial years when new vehicles still comprise a relatively small percent of the fleet. Other issues regarding the potential for misfueling are discussed in subsection 1 above.

We also propose an averaging, banking and trading (ABT) program as part of this compliance flexibility. Refiners owning more than one refinery would be allowed to average their

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production volumes across refineries in determining compliance. This could provide flexibility for some refining companies to delay making desulfurization investments at some smaller refineries for several years. Refiners also could generate credits based on the volume of low sulfur fuel produced above the required percentage. For example, if a refinery were required to produce a minimum of 80 percent of its highway diesel pool as low sulfur in the first year, and that refinery actually produced 100 percent of its highway diesel as low sulfur that year, it could generate credits based on the volume of the "extra" 20 percent of low sulfur fuel it produced. Those credits could be sold or traded with another refinery, which could in turn use the credits to produce a greater percentage of 500 ppm sulfur highway diesel fuel. More details on how these ABT provisions could be structured are discussed in section VI.A.2.a.iv below.

We believe a credit trading program may be particularly beneficial for refiners whose volumes of highway diesel are relatively small. It is possible that the credits generated by a refiner producing a large volume of low sulfur diesel could potentially be sufficient to offset a smaller refiner's entire highway diesel production, thereby enabling a smaller refiner to comply solely by the use of credits—and avoid desulfurization investments—for several years.

While we believe that a credit trading program could add meaningful flexibility under this approach, we are concerned about the potential for shortfalls in supply of low sulfur highway diesel in those areas supplied exclusively or primarily by refiners complying by the use of credits (i.e., producing only 500 ppm fuel). This situation could potentially occur, for example, in the Rocky Mountain area, or other areas served primarily by smaller refineries, or areas with relatively isolated fuel distribution systems. This concern becomes more salient as the percentage of 500 ppm fuel allowed to be produced increases. If the flexibility were to begin with 20 percent (of 500 ppm fuel) in the first year, the likelihood of a supply shortfall would be less likely than if the program begins with 50 percent (of 500 ppm fuel). Therefore, we seek comment on the extent to which this situation could occur and ways to structure the credit trading system to prevent low sulfur fuel supply shortfalls in any area, perhaps through regional restrictions in credit trading, or providing incentives for refiners to supply sufficient volumes of low sulfur fuel. We have been, and will continue, working with the Western states (for example, through the Western Governors Association) to discuss the best ways of implementing the program in that area.

Alternatively, we request comment on a regional approach to designing a compliance flexibility (for example, different refiner production levels and/or availability provisions for different areas of the country). We seek comment on whether and how this compliance flexibility could be enhanced by such a regional approach, including information and data that would help us to better understand regional differences in highway diesel fuel supply, demand and distribution.

Refiners have expressed concern that under some phase-in approaches it might be difficult for them to recover their capital investments. We request comment this issue, including how the potential for cost recovery under a phase-in approach compares with that under the single-fuel approach, and what the implications are for the optimal production level of low sulfur diesel under the compliance flexibility approach.

We also invite comment on an alternative in which we simply establish a minimum production percentage for low sulfur fuel in the beginning of the program, and allow the market to take over in determining the appropriate supply and distribution from that point on. One concern with this approach is that it would perpetuate the potential for misfueling for as long as two grades of highway fuel remained in the market. We request comment on how long two grades of highway diesel would likely coexist in the market under this approach. Further, the level of this minimum low sulfur production percentage would have to be carefully designed to assure sufficient availability throughout the country. If you believe this or other alternative approaches would make the program more useful, please share your specific suggestions with us.

ii. What Are the Key Considerations in Designing the Compliance Flexibility?

A key consideration in designing this compliance flexibility is whether or not it should be accompanied by a retailer availability requirement. Under an availability requirement, diesel retailers would have to offer low sulfur fuel, but would have the flexibility to offer the 500 ppm fuel as well. We believe the need for an availability requirement is linked to the refiners' 500 ppm fuel production limits. At a 500 ppm fuel production limit beginning at 20 percent, our concerns for lack of availability and misfueling would likely be low enough not to warrant a retailer availability requirement or additional misfueling controls such as special nozzles. Our presumption is that if at least 80 percent of the highway fuel volume is low sulfur (i.e., a maximum 20 percent is 500 ppm), the low sulfur fuel should be sufficiently available across the country. Alternatively, if refiners were allowed to produce some greater proportion of their highway diesel fuel as 500 ppm fuel in the first few years, there would be a greater likelihood of low sulfur fuel supply shortfalls, lack of availability, and misfueling , and there would be a more compelling need to ensure that some minimum fraction of diesel retailers offered the low sulfur fuel. We request comment on the level of the 500 ppm fuel production limit at which concerns about low sulfur shortfalls, lack of availability, and misfueling would be great enough to warrant imposing a retailer availability requirement. We ask that commenters also consider whether they would prefer a "blended" program (i.e., a program with both a production limit on 500 ppm fuel and some form of a retailer availability requirement) to a program that permits a slightly lower level of 500 ppm fuel, but with no availability requirement.

In considering this issue, note that the percentage of low sulfur diesel fuel produced would not necessarily match the availability level. For example, if 80 percent of the highway fuel pool were low sulfur, this would not necessarily translate into the low sulfur fuel being available at 80 percent of retail stations currently selling diesel fuel. Since large retail stations (e.g., large truck stops) and centrally-fueled fleets represent a disproportionate share of the diesel sales volume, it is possible that the percentage of retail stations offering low sulfur fuel could be much lower than 80 percent of the diesel retail stations. If this were the case, would there still be concerns with lack of availability of the low sulfur fuel (e.g., even with 20 percent of highway fuel as low sulfur)?

We believe there are merits to designing this compliance flexibility in a way that avoids the need for a retailer availability requirement. With no availability requirement, retailers would be free to choose to sell 500 ppm fuel only, low sulfur fuel only, or both. We have heard from refiners and diesel marketers that they believe that retailers, if faced with an availability requirement, would likely decide not to carry both grades of fuel but, rather, would switch over to the low sulfur fuel to avoid the expense of installing new tanks and pumps. If this were true, an availability requirement could have the effect of significantly limiting a refiner's markets for its 500 ppm fuel, thus, limiting the benefits of the compliance flexibility approach. Nevertheless, we seek comment on whether an availability requirement for low sulfur diesel fuel should be a condition for retailers marketing 500 ppm fuel.

We seek comment on whether a retailer availability requirement would diminish the utility of the compliance flexibility approach, and at what point in designing this option (e.g., at what 500 ppm fuel production limit) a retailer availability requirement would become necessary to encourage sufficient availability of low sulfur fuel.

Since this compliance flexibility is voluntary, we anticipate that refiners would only produce and market 500 ppm fuel under the allowed percentages to the extent that the costs of distributing it are offset by savings elsewhere. The distribution system has only a limited ability to accommodate a second grade of highway diesel without incurring significant costs (e.g., installing new tankage). Therefore, while refiners may be able to reduce the costs of diesel fuel production if higher percentages of high sulfur diesel fuel are permitted, they may find it difficult to market 500 ppm fuel in volumes much above even the 20 percent level, due to distribution system costs. We request comment on the degree to which the distribution and retail costs associated with accommodating two grades of highway diesel fuel depend on the relative volumes of those fuels. For example, how would the costs incurred in the distribution system vary as the amount of 500 ppm fuel produced by refiners increases from zero to 50 percent, or even beyond?

iii. How Does This Compliance Flexibility Relate to the Options for Small Refiner Flexibility?

In section VIII.E., we seek comment on three approaches for small refiner flexibility. One of these approaches would allow small refiners to continue selling 500 ppm fuel for an unspecified period of time (although we seek comment on an appropriate duration for this flexibility). If the compliance flexibility approach described here were implemented for the refining industry as a whole, we seek comment on the best ways to meld this flexibility with approaches for minimizing the burden on small refiners. For example, we seek comment on whether it would be appropriate to either relax or remove any 500 ppm production limits for small refiners. In other words, we may consider allowing small refiners to continue selling their full production volume of highway diesel as 500 ppm fuel for some period of time (likely at least as long as the compliance flexibility provided to the refining industry as a whole, if not for some or an unlimited number of years beyond that). We request comment on the appropriate duration of this flexibility for small refiners. Further, we seek comment on whether small refiners should be allowed to generate and sell credits under the compliance flexibility's ABT program, even if small refiners are not required to produce any portion of their highway fuel as low sulfur diesel. The ABT approach could minimize the burden on small refiners by allowing them to make some additional profit to offset their desulfurization investments, thus giving them an incentive to produce low sulfur highway diesel fuel earlier than they otherwise would. We seek comment on other ways this compliance flexibility could be crafted to minimize burden on small refiners and to better meld with the approaches for small refiner flexibility described in section VIII.E.

It should be noted that our approach to allow small refiners to continue selling 500 ppm highway diesel (on which we're seeking public comment in section VIII.E.1.) does not include a retailer availability requirement. During the SBREFA process, small refiners expressed concern that an availability requirement would significantly limit their potential markets for 500 ppm fuel, since they believe that few retail outlets would be willing to offer both grades of highway diesel due to the significant costs of installing new tanks and pumps. Therefore, if this option for small refiner flexibility is promulgated in the final rule, we would reconsider its design in light of any decisions made for compliance flexibilities for the whole refining industry (e.g., the issue of whether an availability requirement would be necessary).

iv. How Would the Averaging, Banking and Trading Program Work?

This section discusses in more detail how we envision an averaging, banking and trading (ABT) program working in conjunction with the compliance flexibility approach. The goal of the ABT provisions is to maximize the flexibility provided by the program without diminishing its environmental benefits. We envision that this ABT program could apply to the program regardless of the actual level of the minimum refiner production requirement for low sulfur highway diesel. We request comment on all aspects of these ABT provisions. If you have ideas on how these provisions could be structured differently to enhance the program, please share your specific suggestions with us.

Averaging

Refiners and importers could be allowed to meet the required minimum percentage of low sulfur fuel production averaged over their entire corporate highway diesel pool. The minimum required percentage of low sulfur fuel production under the compliance flexibility would be determined on an annual average basis, across all refineries owned by that refiner (or all highway diesel fuel imported by the importer in the calendar year). Thus, within a given refining company, the volume of low sulfur fuel produced at one refinery could be below the minimum required percentage, so long as the volume produced at another refinery exceeded the minimum percentage by a sufficient amount such that the minimum required percent of low sulfur volume was met at the corporate level.

Generating Credits

Beginning in 2006, refineries and importers could generate credits based on the volume of low sulfur fuel produced above the required percentage. For example, a refinery produced 10 million gallons of highway diesel fuel in 2006 and was required to produce a minimum of 80 percent of its highway diesel volume (8 million gallons) as low sulfur that year. That refinery actually produced 100 percent of its highway diesel as low sulfur that year. Thus, it could generate credits based on the volume of the "extra" 20 percent of low sulfur fuel it produced above the required minimal percentage " that is, 2 million gallons of credits. Under this program, we do not envision a need to establish a baseline volume of diesel fuel, since credits would be generated based on the volume of low sulfur diesel fuel actually produced above the required percentage.

Credits could be generated in each year that the compliance flexibility provisions are in place. In other words, if the duration of the compliance flexibility were for four years (i.e., refiners were allowed to continue producing some specified percentage of 500 ppm fuel for four years after the start of the low sulfur program), from 2006 through 2009, credits could be generated in each of those years.

We seek comment on whether there could be circumstances where the use of low sulfur highway diesel could be shown to demonstrate environmental benefits significant enough to warrant

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the generation of early credits. To the extent there may be circumstances that warrant early credit generation, we seek comment on whether there should be an appropriate discount factor applied to such credits, to ensure they would be comparable with the environmental benefits achieved by the use of low sulfur fuel in vehicles meeting today's proposed standards. See section IV.F.

As an additional aspect to implementing the compliance flexibility program, we seek comment on whether it would be advantageous for EPA to offer to sell additional ABT credits to refineries at a predetermined price. This would provide more certainty about the cost of supplying low sulfur diesel fuel by establishing a ceiling price on the ABT credits. We request comment on (1) what should be the appropriate predetermined price for these ABT credits; (2) whether there should be a cap on the total number of credits available from EPA to assure availability of low sulfur diesel; and (3) if there is a cap, whether credits should be sold on a first-come, first-serve basis.

Using Credits

Refiners and importers would be able to use credits to demonstrate compliance with the minimum required percentage of low sulfur highway diesel fuel, if they are unable to meet this requirement with actual highway diesel fuel production. Although credits would not officially exist until the end of the calendar year (based on the generating refinery's actual low sulfur fuel production) there is nothing to prevent companies from contracting with each other for credit sales prior to the end of the year, based on anticipated production. The actual credit transfer would not take place until the end of the year. All credit transfer transactions would have to be concluded by the last day of February after the close of the annual compliance period (e.g., February 28, 2007 for the 2006 compliance period).

For example, refiners who wish to purchase credits to comply with the 2006 required percentage of low sulfur fuel could do so based on the generating refinery's projections of low sulfur fuel production. By the end of February the following year, both the purchaser and the seller would need to reconcile the validity of the credits, as well as their compliance with the required percentages of low sulfur fuel produced.

We seek comment on allowing an individual refinery that does not meet the required percentage of low sulfur fuel production in a given year to carry forward a credit deficit for one year. Under this provision, the refinery would have to make up the credit deficit and come into compliance with the required low sulfur production percentage in the next calendar year, or face penalties. This provision would give some relief to refiners faced with an unexpected shutdown or that otherwise were unable to obtain sufficient credits to meet the required percentage of low sulfur fuel production.

We recognize that there is potential for credits to be generated by one party and subsequently purchased and used in good faith by another party, yet later found to have been calculated or created improperly, or otherwise determined to be invalid. Our preference would be to hold the credit seller, as opposed to the credit purchaser, liable for the violation. Generally, we would anticipate enforcing a compliance shortfall (caused by the good faith purchase of invalid credits) against a good faith purchaser only in cases where the seller is unable to recover valid credits to cover the compliance shortfall. Moreover, in settlement of such cases, we would strongly encourage the seller to purchase credits to cover the good faith purchaser's credit shortfall.

We believe that any person could act as a broker in facilitating credit transactions, whether or not such person is a refiner or importer, so long as the title to the credits are transferred directly from the generator to the purchaser. Whether credits are transferred directly from the generator to the purchaser, or through a broker, the purchaser needs to have sufficient information to fully assess the likelihood that credits would be valid. Any party that can generate and hold credits could also resell them, but the credits should not be resold more than twice. Repeated sales of credits could significantly reduce the ability to verify the validity of those credits.

How Long Would Credits Last?

The goal of these ABT provisions is to provide refiners additional flexibility in the early years of the low sulfur fuel program. After the first few years of the program, there would be a significantly greater proportion of aftertreatment-equipped vehicles in the fleet. It would be important to ensure a full transition to the new low sulfur fuel to prevent misfueling of those vehicles and preserve the environmental benefits of the program. Therefore, we do not currently envision allowing credits to be used more than a few years beyond the compliance flexibility period. We seek comment on whether credit lifetime should be limited, and if so on the appropriate length of time credits should be allowed to be used (in other words, the "lifetime" of credits).

v. Compliance, Recordkeeping, and Reporting Requirements

This section describes the types of provisions we believe the regulations would need to include if a compliance flexibility approach were adopted, to ensure that diesel fuel subject to the 500 ppm sulfur standard would not be introduced into model year 2007 and later diesel vehicles.

Refiners and importers of 500 ppm highway diesel fuel would be required to designate all highway diesel fuel produced as meeting the 500 ppm sulfur standard or meeting the proposed 15 ppm standard. Such refiners and importers would be required to maintain records regarding each batch of motor vehicle diesel fuel produced or imported, including the volume of each batch, and would be required to maintain records, and to report regarding credits earned and credit transactions. Reporting would also be required regarding volumes of highway diesel fuel produced or imported.

All parties in the distribution system that chose to carry 500 ppm fuel would be required to segregate that fuel from 15 ppm sulfur fuel, and would be responsible for ensuring that fuel designated as 15 ppm or 500 ppm meets the respective sulfur standards, throughout the distribution system. Such segregation requirements would likely be modeled after those of the reformulated gasoline (RFG) program (e.g., the RFG program's requirements for product transfer documents, refiners' designations of the standards to which each batch of fuel applies, and registration requirements for refiners producing both highway diesel fuels). However, the RFG program's segregation provisions are somewhat different, in that they were designed to segregate RFG from conventional gasoline by geographic area. In the highway diesel program, the segregation provisions would be much more widespread, because both grades of highway fuel could be distributed throughout the country, depending on how refiners choose to take advantage of the compliance flexibility. We seek comment on the need to require refiners producing 500 ppm fuel to conduct some form of downstream quality assurance sampling, similar to the surveys required under the RFG program.

Further, all parties in the distribution system would be subject to prohibitions against selling, transporting, storing, or introducing or causing or allowing the introduction of diesel fuel having a sulfur content greater than: (1) the proposed 15 ppm standard into highway diesel vehicles manufactured in the 2007 model year and beyond; and (2) 500 ppm into any highway vehicle. Under the proposed presumptive liability scheme (as discussed in section VIII.A.8), if a violation is found at any point in the distribution system, all parties in the distribution system for the fuel in violation are responsible unless they can establish a defense. Because of our concerns for contamination and misfueling with having two grades of highway diesel in the market, we seek comment on whether a refiner should lose its flexibility to continue producing 500 ppm fuel if it is found liable for a violation.

All parties handling 500 ppm fuel also would be required to maintain product transfer documents for five years that indicate to which highway diesel fuel standard the fuel is subject. Pump labels would be required at retail outlets and wholesale purchaser-consumer facilities providing notice regarding the different highway fuel types and the vehicles they may/may not be used in. As mentioned above, nozzle requirements might also be considered if the minimum volume requirement for low sulfur diesel is low enough to warrant it.

The rule would prohibit any refiner from producing more 500 ppm highway diesel fuel than allotted, and would prohibit any party from distributing or selling diesel fuel not meeting the proposed 15 ppm standard unless it is properly designated and accompanied by appropriate product transfer documents. The rule would also prohibit any person from introducing or causing or allowing the introduction of highway diesel fuel not meeting the 15 ppm sulfur standard into any model year 2007 or later vehicle.

As with any ABT program, we would need refiners to keep appropriate records, and to file necessary reports, to ensure compliance as well as the integrity of any credit generation, trading, and use. If this program is promulgated in the final rule, we would envision that refiners would likely be required to keep records of key information pertaining to the ABT program. Beginning the first year that credits are generated, any refiner for each of its refineries, and any importer for the highway diesel fuel it imports, would keep information regarding credits generated, separately kept according to the year of generation. We envision that refiners would keep records of the following information, at a minimum, and report such information to EPA on an annual basis, for any year in which credits are generated, transferred, or used:

- The total volume of highway diesel fuel produced
- The total volume of highway diesel fuel produced meeting the 500 ppm sulfur standard
- The total volume of highway diesel fuel produced meeting the low sulfur standard
- The total volume of highway diesel fuel produced (delineating both 500 ppm fuel and low sulfur fuel) after inclusion of any credits
- The number of credits in the refiner's or importer's possession at the beginning of the averaging period
- The number of credits used
- If any credits were obtained from or transferred to other parties, for each other party, its name, its EPA refiner or importer registration number, and the number of credits obtained from or transferred to the other party;
- The number of credits in the refiner's or importer's possession that will carry over into the next averaging period
- Contracts or other commercial documents that establish each transfer of credits from the transferor to the transferee
- The calculations used to determine compliance with the minimum required percentage of low sulfur highway diesel fuel
- The calculations used to determine the number of credits generated

b. Refiner-Ensured Availability

An alternative concept suggested to the Agency to accomplish the objective of ensuring widespread availability of low sulfur diesel fuel while still allowing flexibility for producing less than all of the diesel fuel pool as low sulfur is to have the refiners ensure that it is widely available. The base program would still be a requirement that refiners produce only highway diesel fuel which meets the sulfur standard proposed today. However, refiners could voluntarily choose to participate in a program where they would be allowed to sell a larger fraction of their highway diesel fuel as 500 ppm fuel, in exchange for ensuring that low sulfur diesel fuel is made widely available at the retail level.

This concept may entail a refinery contracting with, or purchasing credits from, retailers, who in exchange for incentives from the refiner, agree to make low sulfur diesel fuel available. This could mean that the retailer decides to switch over entirely to selling low sulfur diesel fuel, or that they offer both low sulfur and high sulfur diesel fuel simultaneously. The retailer would have to make a showing that: (1) the low sulfur diesel was "meaningfully" available; (2) there was an assured supply chain for obtaining low sulfur diesel fuel; and (3) the diesel fuels were segregated and properly labeled at the pumps. "Meaningfully" available might mean having dedicated pumps and tankage for low sulfur diesel with a capacity in the thousands of gallons range, and operating all year long. To be clear, the contract/credits would be for making low sulfur diesel available for sale, not necessarily selling a given volume of low sulfur diesel.

The relief that refiners receive in exchange for providing for low sulfur availability could be calculated on the basis of the retailer's total diesel sales volume. For example, the refiner would be permitted to produce a certain volume of highway diesel fuel at the current 500 ppm cap in proportion to the total diesel sales volume of the retailers that the refiner contracts with (or purchases credits from). A ratio could be applied to the retailer's sales volume to ensure sufficient retail availability.

An example of how this concept might work is as follows: A refinery producing highway diesel fuel contracts with several truck stops and service stations to make low sulfur fuel available at their stations. The refiner would then be permitted to produce 500 ppm grade diesel fuel in an amount up to the combined diesel sales volume (or some multiple thereof) for these retailers. The retailers may receive their low sulfur diesel fuel from this refiner or from other refiners to comply with the contract.

Under this approach, refiners would likely make arrangements with, or purchase credits from, the largest retailers (since they have the largest fuel volumes), in order to minimize transaction costs. Because the largest 5 percent of diesel retail stations represent 60 percent of the sales volume, [152] to achieve any meaningful availability of low sulfur fuel at retail stations, the program may require a considerably larger percentage of the sales volume to be targeted by weighting more heavily credits generated by smaller retail outlets.

We ask for comment on this concept, on its advantages and disadvantages compared to other implementation options, on the percentage of retail outlets that may be sufficient under this concept to achieve satisfactory low

[152] Memorandum to Docket A–99–06 from Jeffrey Herzog, EPA, entitled: "Diesel Throughput Volume by Percentage of Diesel Fuel Retailers," May 5, 2000.

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sulfur diesel fuel availability, on means of ensuring adequate geographic distribution of low sulfur diesel fuel throughout the year, and on the appropriate means of calculating the volumes that refiners should be permitted to produce as high sulfur in exchange for making low sulfur available. We also request comment on how such a program could be implemented and enforced. In particular, we request comment on the type of recordkeeping and reporting EPA should require in ensuring a refiner actually has legitimate credits, contracts or other binding arrangements with retailers to make low sulfur diesel fuel "meaningfully" available. We further request comment on whether and what type of recordkeeping and reporting may be necessary for retailers and distributors, particularly if the program were structured to allow retailers to generate and sell credits.

c. Retailer Availability Requirement

One way of ensuring widespread availability of the low sulfur fuel under a phase-in approach would be to require retailers selling highway diesel to make available the low-sulfur diesel (i.e., a retailer availability requirement). Retailers would be free to sell the current 500 ppm sulfur fuel as well, but at a minimum would have to offer the low sulfur fuel. This approach could either be a stand-alone program design (i.e., with no refiner production requirement for a minimum amount of low sulfur diesel), or could be coupled with a refiner production requirement. Retailers would be responsible for getting low-sulfur diesel from the distribution system. The premise of this approach is that the fuel distribution system would react to the market demands, and supply and distribute the second grade of fuel in all parts of the country.

In order to turn this premise into a reality, the fundamental issues associated with a phase-in approach, as discussed in subsection 1 above, would have to be addressed. Consequently, in the context of an availability requirement, we seek comment on how to resolve the concerns raised in subsection 1. With regard to the structure of such an availability requirement, we seek comment on when it should begin, whether it could be limited to just a fraction of the diesel fuel retail outlets, and what fraction would constitute acceptable availability in the marketplace. We specifically request comment on the merits of limiting an availability requirement to the larger diesel retailers. Under such an approach, the larger diesel retailers would have to carry low sulfur diesel, but could also choose to carry the 500 ppm grade as well. Smaller retailers not subject to the availability requirement would have the flexibility to choose to carry only the low sulfur grade, only the 500 ppm grade, or both. For example, we seek comment on the merits of limiting the requirement to only truck stops selling more than 200,000 gallons of diesel fuel per month, and other retail outlets selling more than 20,000 gallons of diesel per month, as suggested by some Panel members during the Small Business Advocacy Review process. We encourage commenters to consider other appropriate throughput thresholds, for both truck stops and service stations that could limit an availability requirement to the larger retailers, while still ensuring sufficient availability.

While desirable to limit the fraction of retailers subject to an availability requirement, ensuring sufficient availability is complicated by the fact that diesel fuel is sold at a portion of all retail outlets today. [153] If less than 100 percent of diesel retail outlets are required to make the new fuel available, how would we ensure availability in all parts of the country? Commenters should consider the distribution of diesel fuel outlets around the country, and the distances between outlets in addressing this issue. How would the rest of the distribution system respond to supply the low sulfur fuel to the retail outlets needing to make it available? To help protect against fuel shortages either nationally or regionally, would an availability requirement need to be coupled with a production requirement on refiners to ensure supply of a minimum amount of low-sulfur diesel fuel? If so, how should such a production requirement be structured? Conversely, could an availability requirement be coupled with a production requirement in a way that would allow a larger percentage of 500 ppm fuel production in the early years? (See the discussion above in subsection 2.a.ii)

With regard to the impacts on the diesel fuel retail and distribution system, numerous parties in the industry have commented that managing two grades of highway diesel in the distribution system would raise their costs. We seek comment on what actions retailers, centrally fueled fleets, wholesalers, terminals, pipelines, and refiners would take to manage two grades of highway diesel, and in particular on the cost impacts resulting from those actions. We especially seek comment on what cost savings refiners might realize under such an approach, and whether these savings would be greater than the costs incurred by the distribution system to distribute a second grade of highway diesel fuel. In this context, we also seek comment on how refiners would plan their refinery changes given the uncertainty of low sulfur diesel demand from retailers under such a phase-in approach. When would they make their capital investments, and for what volume of fuel would they plan to build desulfurization capacity? How would they predict demand in the time frame when they would need to make their capital investments? How would they adjust to different volumes from predicted demand levels, and what would be the implications?

Commenters should address this approach from the perspective of the issues discussed above in subsection A.1 (including misfueling, distribution system impacts, potential costs, etc). We are also interested in the implications of such an approach on prices in the wholesale and retail markets, and on the ability of retailers and distributors to recover costs under such an approach.

We also invite comment on the merits of applying an averaging, banking and trading program within the context of a retailer availability requirement. Such a credit trading program could entail elements similar to the program described in subsection 2.a.v. for refiners under the compliance flexibility approach, but would be tailored specifically to retailers subject to an availability requirement. Commenters should address how such a credit trading program might be structured, if they believe it should differ significantly from the refiner-based approach discussed above.

Finally, the trucking industry and diesel marketers have also commented that an availability requirement would be administratively intensive for the Agency to implement and enforce, especially in verifying actual fuel availability. Therefore, we ask comment on ways to streamline the enforcement of such a program to avoid unnecessary burden on both industry and the Agency.

2. Why Is a Regulation Necessary to Implement the Fuel Program?

Some commenters on the ANPRM suggested simply leaving it up to the market to introduce low-sulfur highway diesel fuel—that is, establish no regulatory requirements for refiners to produce the fuel and no requirements for retailers to sell the fuel. The commenters' line of reasoning for this suggestion is as follows. The vehicle and engine manufacturers would be forced by emission standards to introduce vehicles meeting stringent emission standards. Since the engines and vehicles would need low-sulfur diesel fuel to meet the emission standards, then the vehicle purchasers would have to refuel only with low-sulfur diesel fuel. The fuel production and distribution system would then respond to the demand and provide the fuel if, when, and where necessary.

Such an approach raises many of the same issues discussed above with respect to phase-in approaches (*e.g.*, fuel availability, misfueling, and uncertainties in the transition to low sulfur). These concerns, however, would be heightened by the fact that no regulatory measures would be in place to mitigate them. We seek comment on whether a market-based approach could adequately ensure availability of the low sulfur fuel for the vehicles that need it.

3. Why Not Just Require Low-Sulfur Diesel Fuel for Light-Duty Vehicles and Light-Duty Trucks?

In the ANPRM, we requested and received considerable comment on focusing the rulemaking effort on providing low-sulfur diesel fuel for light-duty vehicles and trucks only. By providing a clean grade of diesel fuel, exhaust emission control technology would be enabled. This in turn would give light-duty diesel vehicles a much better chance of meeting the final Tier 2 emission standards. The appeal of a light-duty only approach is that the program would be relatively small and could set the stage for future expansion of low-sulfur diesel fuel into the heavy-duty market if the demand developed.

Based on the comments received on the ANPRM and our own analysis, however, there appears to be little justification for such a regulatory approach. First, and most importantly, such an approach would provide no environmental benefit to justify the costs of the program. Under the Tier 2 program, all LDVs and LDTs must meet on average a certain NO_X emission standard. There are a number of emission standards or "bins" that individual vehicles can be certified to, but an overall fleet average emission standard must still be met. Consequently, regardless of whether or not the Tier 2 fleet is comprised of a large number of diesel vehicles, the same overall fleet average NO_X emission rate will be achieved. The only anticipated difference would be in particulate emissions where, even though the emission standards are the same, in-use emissions are assumed to be somewhat lower for gasoline vehicles than for diesel vehicles. In contrast, today's proposed program for setting new emission standards for heavy-duty engines and vehicles in conjunction with lower sulfur highway diesel fuel would achieve significant reductions in NO_X and particulate matter, as discussed further in section II.

Secondly, the comments received on the ANPRM from the fuel production and distribution system indicated that such an approach would be very costly. The Engine Manufacturers Association conducted a study of the cost increase associated with distributing a unique grade of diesel fuel for just light-duty vehicles and trucks. [154] The results of this study indicated that the distribution costs alone (i.e., not including refiner production costs) for such a fuel could be 3 to 4 cents per gallon. Moreover, this study made some simplifying assumptions that served to underestimate actual volume of highway diesel fuel that would have to be produced and the costs. The study assumed a production volume of 5 percent low sulfur diesel, which is not realistic because many retailers might choose to switch over entirely to the low sulfur fuel. Thus, refiners would have to make the investments to produce a considerably larger volume of low sulfur diesel fuel than might be required for new light-duty vehicles and trucks only.

Third, commenters indicated that such an approach may be impractical. In areas where there are few fuel distribution options (e.g., areas not served by pipelines, areas with few diesel retail outlets), the low-sulfur diesel fuel may not be made available or, if it is, it could only be sold at retail prices considerably higher than the refiners' cost to produce the fuel. Consumer demand for light-duty diesel vehicles could be reduced by both unavailability of the low sulfur fuel and uncertainty about it being available at reasonable prices.

Finally, a light-duty only approach would appear to be inappropriate in light of our demonstrated air quality need for additional emission reductions and the opportunity available with recent advancements in diesel engine exhaust emission control technology to obtain these emission reductions from heavy-duty engines. If the technology necessary to meet very low emission standards for light-duty diesel vehicles is feasible with the control of diesel fuel sulfur, and if that same technology is applicable to heavy-duty diesel vehicles, then we have an obligation under the Clean Air Act to consider emission standards for heavy-duty vehicles that would be enabled by that technology as well. Given the air quality need, we would be remiss in our obligations under section 202(a)(3)(A) of the Act which requires us to set the most stringent standards feasible for heavy-duty vehicles, taking into consideration cost and other factors. EPA can revise such standards, however, based on available information regarding the effects of air pollutants from heavy-duty engines on public health or welfare.

4. Why Not Phase-Down the Concentration of Sulfur in Diesel Fuel Over Time as Was Done With Gasoline in the Tier 2 Program?

There are a number of ways a fuel change can be introduced over time. The most recent example is in the Tier 2 rulemaking where the concentration of sulfur in gasoline was phased-down over time. Such an approach is not workable for diesel fuel, however, due to the demands of the exhaust emission control technology. As discussed in section III, the efficiency of both the NO_X and PM exhaust emission control drops off quickly if the vehicle is operated on sulfur levels higher than the standard proposed. Thus, the vehicles would be unable to meet the emission standards, and there would be very little if any emission benefit to be gained until the end of any such phase-down. Furthermore, as discussed in section III, in some applications it is possible that operation on higher sulfur levels may not only cause permanent damage to the PM trap, but also could result in vehicle driveability and safety concerns. Consequently, it is imperative that aftertreatment-equipped vehicles are fueled exclusively with fuel meeting the proposed low sulfur levels, and that the low sulfur fuel remain segregated in the distribution system.

This contrasts with the gasoline sulfur control program, where the impact of sulfur on the exhaust emission control technology was thought to be less severe and emission benefits accrued even at the phased-down sulfur levels. Furthermore, if gasoline vehicles are operated on higher sulfur fuel, no driveability concerns are anticipated; higher sulfur diesel would have detrimental effects on the driveability of diesel engines. Thus, in the gasoline sulfur program there was not a need to require that low sulfur gasoline remain segregated from the remaining gasoline pool while sulfur levels are being phased-down. Here there is a need to

[153] "Summary Data on Diesel Fuel Retailers," Memo to the docket from Jeffrey Herzog, EPA, March 23, 2000 (Docket item # II–B–07).

[154] "Very-Low-Sulfur Diesel Distribution Cost," Baker & O'Brien Inc., for the Engine Manufacturers Association, August 1999.

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segregate low sulfur highway diesel fuel to ensure the new technology vehicles are not damaged by higher sulfur levels.

B. What Other Fuel Standards Have We Considered in Developing This Proposal?

1. What About Setting the 15 ppm Sulfur Level as an Average?

We have considered several potential diesel fuel sulfur alternatives in developing today's proposed rulemaking, including two alternatives centered around a 15 ppm sulfur level: a cap at this level as proposed, and an average at this level with a 25 ppm cap to ensure that sulfur levels would not exceed a 15 ppm average level by too much. The analyses of technology enablement, costs, emission reductions, and cost effectiveness discussed in the preceding sections are based on a 15 ppm cap. In this section we provide the results of these analyses for the 15 ppm average sulfur level case.

a. Emission Control Technology Enablement Under a 15 ppm Average Standard

Having a 15 ppm average standard with a 25 ppm cap would increase uncertainty around the advanced technologies required here and would therefore be less attractive to diesel engine and vehicle manufacturers. As discussed at length in Section III, fuel sulfur adversely impacts the effectiveness of all known and projected exhaust emission control devices. Despite these adverse effects, it may be possible that the design, precious metal loading, and application of exhaust emission control devices could be fundamentally similar under both a 15 ppm cap and a 15 ppm average. However, we would expect that the exhaust emission control devices would not operate at the same level of efficiency as expected under the 15 ppm cap program and there would be some sacrifice in the durability and reliability of these devices due to the higher sulfur level.

PM trap regeneration would be compromised due to sulfur's adverse impacts on the NO to NO_2 conversion necessary for completely passive PM trap regeneration.[155] Because of this effect, concerns have been raised that a 15 average/25 cap program would require that some vehicle applications, particularly lighter applications having lower operating temperatures, incorporate some form of active PM trap regeneration strategy. Such an active regeneration strategy could take the form of a fueling strategy capable of increasing exhaust temperature as opposed to an electrical heater or some other "added" hardware. The active regeneration scheme would likely be incorporated into the design as a backup, or protective measure, and would not function at all times. Instead, the active regeneration would kick in under conditions such as very cold ambient temperature conditions or extended idles where exhaust temperatures might be too low for too long to enable passive regeneration. There are also concerns that fuel economy would be reduced both due to the use of active regeneration and due to the higher, on average, PM trap backpressure. This would likely occur due to the slightly higher soot loading, on average, resulting from less efficient passive trap regeneration. This higher backpressure would probably occur on all applications, not just the lighter applications. Nonetheless, we believe that the fuel economy effect would probably not be greater than one percent.

Under a 15 ppm average standard, we would expect the in-use average sulfur level to be roughly double the in-use average under a 15 ppm cap program. The higher in-use sulfur level would roughly double in-use PM emissions. Since an average limit would be in place and be enforced, and since in-use emissions would be expected to approximate the average, we might consider allowing engine manufacturers to certify their engines on diesel fuel meeting the average sulfur level rather than the cap. If this approach were taken, setting the sulfur standard at a 15 ppm average instead of a 15 ppm cap would not necessitate an increase in the PM standard. However, in-use PM emissions would nearly double due to the increased average fuel sulfur level (when compared to the 15 ppm cap base case).

Regarding the NO_X adsorber, we believe that a 15 average/25 cap program may have the potential to enable NO_X adsorber technology, though with increased uncertainty. However, while the NO_X adsorber would continue to adsorb and subsequently reduce NO_X despite the higher sulfur fuel, the frequency of sulfur regeneration events, referred to as desulfation in section III, would roughly double relative to the rate with a 15 ppm cap. The increased frequency of desulfation would increase fuel consumption probably on the order of one percent and would be realized on all diesel applications equipped with NO_X adsorber technology.[156] Additionally, the increased frequency of desulfation may adversely impact NO_X adsorber durability because the thermal strain placed on the adsorber during any desulfation event would increase in frequency. Also, because of the increased frequency of desulfation events, there would be a corresponding decrease in the likelihood of being able to perform the desulfation during ideal operating conditions. This may cause more thermal strain on the NO_X adsorber and/or less efficient desulfation with a corresponding increase in fuel usage. The result would be a decrease in our level of confidence that the NO_X adsorber would be capable of fulfilling the demands of heavy-duty diesel engines in terms of fuel consumption and durability.

Note that, although the analysis finds that a 15 ppm average/25 ppm cap standard has potential to be adequate for enabling high-efficiency exhaust emissions controls, this finding involves a significantly higher level of uncertainty than the proposed 15 ppm sulfur cap, because it is based on the assumption that exhaust emission control designs could be focused on the average fuel sulfur levels. Manufacturers have commented that the possibility of some in-use fuel at near-cap levels would necessitate designing to accommodate this level, and they contend that this would not allow the high-efficiency technology to be enabled. If so, the technology enablement for this case would likely be similar to that for the 50 ppm cap case.

b. Vehicle and Operating Costs for Diesel Vehicles To Meet the Proposed Emissions Standards With a 15 ppm Average Standard

As pointed out above, we believe it may be possible that the design, precious metal loading, and application of exhaust emission control devices could be fundamentally similar under both a 15 ppm cap and a 15 ppm average. Therefore, we believe that having a 15 ppm average sulfur standard would have no quantifiable impact on the cost of emission control hardware relative to the costs associated with a 15 ppm cap standard. However, as mentioned, we would expect a one percent fuel economy decrease (*i.e.*, a one percent increase in fuel consumption) due to the increased frequency of desulfation of the NO_X adsorber. This reduction in fuel economy would result in consumption of more fuel and, therefore, higher costs. We have estimated the discounted lifetime cost of this one percent fuel economy impact at $108, $207, $755, and $893 for a light, medium, and heavy heavy-duty diesel, and urban buses, respectively. See the draft RIA for details on how this cost was calculated.

[155] Cooper and Thoss, Johnson Matthey, SAE 890404.

[156] See section III and Table III.F–2 for more detail on desulfation and the associated fuel economy impacts.

c. Diesel Fuel Costs Under a 15 ppm Average Standard

Having a 15 ppm average with a 25 ppm cap sulfur standard would be directionally more attractive to the petroleum industry because of the slightly higher sulfur levels. Overall, we would expect this approach to provide more flexibility to refiners and distributors, and directionally help in addressing concerns that have been expressed about the difficulties of distributing diesel fuel with very low sulfur specifications. The cost of meeting a 15 ppm sulfur average at the refinery (with a 25 ppm cap) would be significantly less than meeting the proposed cap of 15 ppm. We project that roughly half of all refiners would be able to meet a 15 ppm average by modifying their existing one-stage hydrotreating unit by adding a hydrogen sulfide scrubbing unit, a PSA unit to increase hydrogen purity and a second reactor. A new, high activity catalyst would also replace today's catalyst. Refiners who would be capable of meeting a 15 ppm average with a one-stage unit would likely be those blending low amounts of light cycle oil (LCO) into their diesel fuel or those having substantial excess hydrotreating capacity in their current unit. The remaining refiners would require essentially the same two-stage hydrotreating unit that would be required to meet the proposed 15 ppm cap. In all cases, hydrogen consumption would be somewhat less than that required to meet the proposed 15 ppm cap standard.

As for fuel distribution, under the proposed 15 ppm cap on diesel sulfur content, we estimate that sulfur contamination in the distribution system can be adequately controlled at modest additional cost through the consistent and careful observation of current industry practices. A 0.2 cent per gallon increase in distribution cost is anticipated due to the need for an increase in pipeline shipment interface volumes, increased quality testing at product terminals, and the need to distribute an increased volume of fuel to meet the same level of consumer demand due to a reduction in energy density. Having a 15 ppm average standard would mean that the increase in pipeline interface volumes would likely be somewhat smaller than under the proposed 15 ppm cap. However, we do not expect that the savings in interface volumes would be proportional to the difference between the standards. This is due to the similarity of the alternative standards with the proposed 15 ppm sulfur cap relative to their comparison with the sulfur level of other products in the distribution system such as nonroad diesel fuel (3,400 ppm average sulfur content). Consequently, we estimate that distribution costs under a 15 ppm average standard would only be marginally lower (approximately 0.003 cents per gallon less) than under the proposed 15 ppm cap.

Overall, we project that the average cost of meeting the 15 ppm average at the refinery would be about 3.0 cents per gallon, about 1.0 cents per gallon less than the corresponding cost for fuel meeting a 15 ppm sulfur cap. Adding the cost of lubricity additives and increase in distribution costs, the final cost for the 15 ppm average/25 ppm cap fuel would be 3.4 cents/gallon, as compared to 4.4 cents per gallon under the proposed 15 ppm cap standard.

d. Emission Reductions Under a 15 ppm Average Standard

As discussed above, we believe that the same basic exhaust emission control technology could be used to reduce exhaust emissions from HDDEs even if we required a 15 ppm average rather than a 15 ppm cap. However, as pointed out above, there would likely be penalties in durability, fuel consumption, and emissions.

At this higher fuel sulfur level, we believe that the particulate trap will still result in large reductions of HC, CO, and carbon soot. We also believe that the 0.2 g/bhp-hr NO_X standard may be achieved using a NO_X adsorber. Nonetheless, the total PM reductions would be lower under a 15 ppm average standard. Sulfur in the fuel impacts the amount of direct sulfate PM in the exhaust gas. We estimate that a 15 ppm average standard would result in almost double the total PM emissions as compared to a 15 ppm cap standard because the 15 ppm cap is assumed to result in a 7 ppm in-use average. Table VI.B–1 presents projected nationwide HDDE PM emissions for the baseline and control case for a 15 ppm average/25 ppm sulfur cap standard along with the corresponding reductions. For comparison, the same information is shown for the proposed 15 ppm cap. Refer to the draft RIA for details of this analysis.

TABLE VI.B–1.—HDDE PM EMISSIONS WITH A 15 PPM AVERAGE/25 PPM SULFUR CAP

[Thousand short tons]

Calendar year	Baseline	15 ppm average	15 ppm cap (for comparison)
		Controlled	Controlled
2007	100	89	88
2010	94	60	59
2015	93	33	30
2020	98	19	15
2030	119	13	8

A higher average sulfur level also results in lower SO_X emission reductions. We assume that the sulfur in the fuel that is not converted to sulfate PM is converted to SO_2. Because we base SO_X emissions on the amount of sulfur flowing through the engine, the increase in fuel consumption also negatively impacts SO_X emissions. Table VI.B–2 presents projected nationwide HDDE SO_X reductions for a 15 ppm average/25 ppm sulfur cap standard and for the proposed 15 ppm cap.

TABLE VI.B–2.—HDDE SO_x EMISSION REDUCTIONS WITH A 15 PPM AVERAGE/25 PPM SULFUR CAP
[Thousand short tons]

Calendar year	15 ppm average	15 ppm cap
2007	86	88
2010	91	93
2015	99	102
2020	107	109
2030	120	123

e. Cost Effectiveness of a 15 ppm Average Standard

The methodology used to determine the cost-effectiveness of a 15 ppm average sulfur standard follows that described in Section V for our proposed 15 ppm cap standard. The alternative standard of 15 ppm on average does have impacts on specific values in the calculations, including lower desulfurization and distribution, lower in-use PM benefits, and lower SO_2 benefits all of which were pointed out above. Engine costs are assumed not to change under either a 15 ppm cap or 15 ppm average standard. We have calculated cost-effectiveness using both the per-vehicle and aggregate approaches, consistent with our cost-effectiveness presentation in Section V for our proposed program. The results are shown in Tables VI.B–3 and VI.B–4 which can be directly compared to Tables V.F–1 and V.F–2, respectively, showing values for the proposed 15 ppm cap standard. Details of the calculations are presented in the draft RIA which can be found in the docket for this rulemaking.

TABLE VI.B–3.—PER-VEHICLE COST-EFFECTIVENESS OF A 15 PPM AVERAGE/25 PPM CAP SULFUR STANDARD

Pollutants	Discounted lifetime vehicle & fuel costs	Discounted lifetime emission reductions (tons)	Discounted lifetime cost effectiveness per ton	Discounted lifetime cost effectiveness per ton with SO_2 credit[a]
Near-term costs:[b]				
NO_x + NMHC	$1,565	0.88	$1,800	$1,800
PM	774	0.064	12,100	5,200
Long-term costs:				
NO_x + NMHC	$1,151	0.88	$1,300	$1,300
PM	554	0.064	8,700	1,800

[a] $440 credited to SO_2 (at $4800/ton) for PM cost effectiveness.
[b] As described above, per-engine cost effectiveness does not include any costs or benefits from the existing, pre-control, fleet of vehicles that would use the low sulfur diesel fuel proposed in this document.

TABLE VI.B–4.— 30-YEAR NET PRESENT VALUE COST-EFFECTIVENESS OF A 15 PPM AVERAGE/25 PPM CAP SULFUR STANDARD

	30-year NPV costs (billion)	30-year NPV reduction (million tons)	30-year NPV cost effectiveness per ton	30-year NPV cost effectiveness per ton with SO_2 credit[a]
NO_x + NMHC	$26.4	18.9	$1,400	$1,400
PM	$8.0	0.75	$10,700	$1,100

[a] $7.2 billion credited to SO_2 (at $4800/ton).

2. What About a 5 ppm Sulfur Level?

Some diesel engine and automobile manufacturers have expressed support for a sulfur cap of 5 ppm (sometimes termed "near-zero") for some or all of the highway diesel fuel pool.[157] They view the technology solutions envisioned in this rulemaking to be infeasible at higher fuel sulfur levels. Although the feasibility analysis results of this proposal lead us to disagree with this conclusion, we have evaluated the impact that a 5 ppm sulfur cap would have on technology enablement, vehicle and fuel costs, and emissions reductions. The results of this analysis are provided below. Analysis details are provided in the Draft RIA. We encourage comment on our assessment, preferably accompanied by data and analysis supporting the commenter's views.

Capping diesel fuel sulfur at 5 ppm would clearly strengthen the viability of new emissions control technologies enabled at 15 ppm, although we are aware of no additional technologies that this lower sulfur level would enable. PM traps would emit somewhat less sulfate PM, but non-sulfate PM emissions and certification test measurement tolerances would effectively limit the extent to which the standard could be lowered from the proposed 0.01 g/bhp-hr level at this time. Given the level of precision implicit in the 0.01 numerical standard, we would not expect a 5 ppm sulfur cap to result in a lower PM standard. Nevertheless, there would be an in-use benefit compared to a 15 ppm cap, because the average fuel sulfur would be lower (perhaps 2–3 ppm compared to about 7 ppm) and so new vehicles would emit less sulfate PM, providing a projected 86,000 ton per year PM benefit in these vehicles in 2020, compared to 83,000 tons per year achieved under a 15 ppm cap. We have assumed that the small margins involved and the extremely high trapping efficiencies of filters that are already readily available would give manufacturers no incentive to take advantage of the lower sulfate emissions to design for higher non-sulfate emissions under the standard.

Lower sulfate PM emissions in the *existing fleet* would provide a 105 tons per year additional PM benefit (in 2007 when this benefit peaks) from adoption of a 5 ppm sulfur cap compared to a 15 ppm cap. However this is quite small compared to the corresponding 7100 ton per year existing fleet PM benefit of reducing fuel sulfur from typical current average levels of around 340 ppm to levels near 15 ppm, which in turn is a small fraction of the total direct PM emissions benefit of the 15 ppm cap, most of which comes from enabling PM traps on new engines (see Figure II.D–2). SO_x and SO_x-derived secondary PM would also be reduced in about the same small proportion.

The robustness of the PM trap regeneration process would also be directionally aided by the near zero sulfur fuel, because less of the catalyst sites that promote regeneration would be blocked by sulfur poisoning. (This phenomenon is described in section III.F.1.a). In fact, designers could further increase regeneration robustness by increasing precious metal loading without fear of inordinate sulfate production because of the lower fuel sulfur level (though at added cost). However, we have not quantified this directional benefit or cost difference because we deem the 15 ppm level adequate for robust regeneration already.

Five ppm sulfur fuel would also benefit NO_x adsorber technology. Adsorber desulfation would be needed about four times less often than that required under a 15 ppm sulfur cap, providing a projected 1 percent improvement in fuel economy. There may also be a small gain in NO_x adsorber durability due to the less frequent thermal cycling built into the desulfation process. However, available evidence suggests that at any fuel sulfur level under 15 ppm, these cycles are not likely to be so numerous or severe over the vehicle life as to seriously constrain durability. NO_x emissions would not be much affected because the basic NO_x storage and removal processes would occur in much the same way, and desulfation events would be programmed to occur frequently enough to maintain NO_x reduction efficiencies high enough to meet the standard with a minimum of fuel consumption.

We have not performed an extensive analysis of the refining cost of meeting a 5 ppm sulfur cap. However, Mathpro, under contract to EMA, did estimate the refining cost of producing diesel fuel with an average sulfur level of 2 ppm, a reasonable average under a 5 ppm cap. Mathpro examined two sets of cases where average on-highway diesel fuel sulfur levels were reduced from 20 ppm to 2 ppm, one with nonroad diesel fuel sulfur at 350 ppm (Cases 1 and MP1) and the other with nonroad diesel fuel sulfur at 20 ppm (Cases 4 and 8). From these cases, Mathpro's estimated cost of reducing highway diesel fuel sulfur from 20 ppm to 2 ppm ranges from 1.7 to 2.1 cents per gallon. Assuming a linear relationship between sulfur and cost per gallon in this range, the cost of reducing average sulfur levels from 7 ppm (that projected under the proposed 15 ppm cap) to 2 ppm would be 0.7–0.8 cents per gallon. Although it is possible that the cost per ppm of sulfur reduced would actually increase as sulfur was reduced, the extent of this increase is difficult to estimate. Thus, the best cost that we can project at this time is 0.7–0.8 cents per gallon, incremental to the cost of the 15 ppm sulfur cap program.

Although we have not attempted to analyze in detail the cost impacts of distributing a fuel with a cap on sulfur content as low as 5 ppm, the American Petroleum Institute recently had a contractor do so.[158] That study estimated that, compared to current costs, distribution costs would increase by 0.9 to 2.1 cents per gallon if a 5 ppm standard were adopted for the entire highway diesel pool.[159] The following reasons were cited for why, as the sulfur specification is decreased, it becomes more difficult to maintain product purity and supply:

—There is increased difficulty and cost associated with correcting off-specification batches in the distribution system.
—Measurement accuracy becomes more limiting.
—The pipeline compliance margin becomes more limiting at refineries.
—Supply outages due to off-specification product will become more common.
—The difference between the sulfur content of highway diesel fuel and that of abutting higher sulfur products in the pipeline system becomes larger.

Even with the estimated increase in distribution costs, the report still concluded that it was probably impractical to attain continuous supply availability of diesel fuel in all areas and outlets within the current distribution system at a 5 ppm cap on fuel sulfur content. If such problems are to be avoided, additional, more costly measures may be necessary. Should a segregated distribution system be needed to control contamination, including dedicated pipelines and tank trucks, the costs would be considerably higher than the 0.9 to 2.1 cents per gallon estimated in the report.

We too are concerned that the measures which form the basis for the 0.9 to 2.1 cents per gallon cost estimate in the API-sponsored study may not ensure widespread compliance. Under a 5 ppm standard, sulfur measurement variability would need to be reduced appreciably from current tolerances, perhaps to a level of 1 ppm or less, and the test equipment purchases and quality control steps needed to attain this could prove costly. Yet the bulk of the impact would come from the major shift likely to be needed in the practices used to avoid contamination in the distribution system. Assuming an extremely demanding maximum sulfur specification of 3 ppm at the refinery gate and a test variability of 1 ppm, only 1 ppm contamination through the distribution system could be tolerated, and this would need to be maintained nationwide and year round in a distribution system that routinely handles products with sulfur levels of up to several thousand ppm. Refiners would also need to take additional measures to meet the 3 ppm refinery gate standard that would likely be set by pipeline operators. Similar to the distribution system, the measures that refiners would need to take to further reduce sulfur content and limit process variability are unclear, and might prove quite costly.

The overall cost of a program with a 5 ppm sulfur cap is comprised of the program's cost in producing and distributing the fuel, offset by the cost of the projected 1 percent fuel economy gain. As the sulfur level reaches this very low level, the types of process changes in the refinery and fuel distribution systems necessary to eliminate contamination and maintain sufficient process flexibility in the system become much more uncertain. Consequently, serious concerns have

[157] See for example letter from Patrick Charbonneau of Navistar to Robert Perciasepe of EPA dated July 21, 1999, EPA, docket A–99–06.

[158] "Costs/Impacts of Distributing Potential Ultra Low Sulfur Diesel, Turner, Mason, & Company Consulting Engineers," February 2000. EPA Docket A–99–06, item II–G–49.

[159] "Costs/Impacts of Distributing Potential Ultra Low Sulfur Diesel, Turner, Mason, & Company Consulting Engineers," February 2000. EPA Docket A–99–06, item II–G–49.

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been raised concerning the ability to achieve a 5 ppm sulfur cap without drastic and costly changes to how diesel fuel is produced and distributed today. Nevertheless, assuming the average of the per gallon production and distribution cost ranges discussed above, this corresponds to a net $47.1 billion 30-year NPV cost, compared to $37.7 billion for the 15 ppm sulfur cap proposal. Considering the NO_X emissions benefits (unchanged from the 15 ppm sulfur cap case) and the PM emissions benefits (slightly improved), the resulting aggregate cost effectiveness is projected to be $1900 per ton of NO_X+NMHC and $4500 per ton of PM (including the SO_2 credit). These compare to $1500 per ton of NO_X+NMHC and $1900 per ton of PM for the 15 ppm sulfur cap proposal.

3. What About a 50 ppm Sulfur Level?

The American Petroleum Institute has proposed that we set a sulfur cap for highway diesel fuel of 50 ppm with a required refinery output average of 30 ppm, along with other proposal elements.[160] API's proposal is based on their assessment of technological need and viability. Key to API's position is the view that, "while EPA may set standards to encourage advanced technology, EPA must not base a sulfur level on a particular technology the Agency predicts might prove viable." However, we believe that we must set standards in the context of real technologies that can be expected to be feasible, rather than as a means of generally encouraging advanced technology. With this in mind, we have analyzed the impact that a 50 ppm sulfur cap would have on technology enablement, vehicle and fuel costs, and emissions reductions. The results of this analysis are provided below. Analysis details are provided in the Draft RIA. We encourage comment on this assessment, preferably accompanied by data and analysis supporting the commenter's views.

As discussed in detail in section III.F, we believe that diesel fuel needs to be desulfurized to the 15 ppm level to enable emission control technologies capable of meeting the proposed standards. Setting a fuel sulfur cap of 50 ppm would require that the PM standard be set at a less stringent level to accommodate the approximate tripling of sulfate PM production in the trap compared to a 15 ppm cap. However, we believe increased fuel sulfur would have an even larger effect on robust trap regeneration than on sulfate production, bringing into question the very viability of PM traps at the higher sulfur levels. As discussed in section III.F.1, field experience in Sweden, where below 10 ppm diesel fuel sulfur is readily available, has been good. Experience has also been good in regions without extended periods of cold ambient conditions (such as the United Kingdom) using 50 ppm cap low sulfur fuel. However, field tests in Finland, where colder winter conditions are sometimes encountered (similar to many parts of the United States), have revealed a failure rate of 10 percent, due to insufficient trap regeneration. We believe that failures of the severity experienced with 50 ppm fuel in Finland would be unacceptable. These problems could become even more pronounced in light-duty applications, which tend to involve cooler exhaust streams, making regeneration more difficult. Field data with such applications is still sparse.

One means of attempting to resolve these problems is through use of an active regeneration mechanism, such as electric heaters or fuel burners. These could potentially introduce additional hardware and fuel consumption costs. They would also raise reliability concerns, based on past experience with such approaches. Active regeneration failures in PM traps would be of more concern than in NO_X exhaust emission control devices because they involve the potential for complete exhaust stream plugging, runaway regeneration at very high temperatures, trap melting, engine stalling, and stranding of motorists in severe weather. As a result, we do not consider dependence on active PM trap regeneration to be a sufficient basis for establishing PM trap feasibility.

NO_X adsorber technology would likely be infeasible with 50 ppm sulfur fuel as well, due to the rapid poisoning of NO_X storage sites. Desulfation would be needed much more frequently and with a much higher resulting fuel consumption. Even if the fuel economy penalty could somehow be justified, we expect that overly frequent desulfation could cause unacceptable adsorber durability or driveability problems (because of the difficulty in timing the desulfation to avoid driving modes in which it might be noticed by the driver). A less stringent NO_X standard could help to mitigate these concerns by allowing the NO_X storage bed to sulfate up to a greater degree before desulfating. However, this might then cause deeper sulfate penetration into the storage bed and thus possible long-term degradation because of the difficulty of removing this deeper sulfate.

Instead, we expect that diesel fuel with an average fuel sulfur level of 30 ppm and a cap of 50 ppm could enable lean NO_X catalyst technology (described in section III.E). These devices can provide modest NO_X reductions and, because of their reliance on precious metal catalyst, also serve the function of a diesel oxidation catalyst, removing some of the gaseous hydrocarbons and the soluble organic fraction of PM. Unfortunately, lean NO_X catalysts also share the oxidation catalyst's tendency to convert fuel sulfur into sulfate PM, and do so even more aggressively because they require higher precious metal loadings to reduce NO_X. They also require a fairly large addition of diesel fuel to accomplish NO_X reduction, typically about 4 percent or more of total fuel consumption. The injected fuel also makes it difficult to achieve an overall hydrocarbon reduction, despite the potential to convert much of the engine-out hydrocarbons over the catalyst. Typically, current lean NO_X catalyst designs actually show a net hydrocarbon increase.

We have assumed that lean NO_X catalysts could be developed over time to deliver 20 percent reductions in NO_X (well beyond their current proven performance over the Federal Test Procedure) with a net PM reduction of 20 percent and no net increase in gaseous hydrocarbons with a 4 percent fuel economy penalty. Although this PM reduction level is below that achieved by current diesel oxidation catalysts, it represents an ambitious target to designers attempting to balance NO_X reduction with sulfate production from the still substantial sulfur in the fuel. We have estimated that lean NO_X catalysts (including their diesel oxidation catalyst function) would add an average long term cost of $603 to a heavy-duty vehicle, inclusive of maintenance savings realized through the use of low sulfur fuel. This is lower than the cost increase for technologies enabled by 15 ppm sulfur fuel.

Based on the 20% expected emission reductions, we believe the appropriate emissions standards at a 30 ppm average / 50 ppm cap diesel sulfur level would be 1.8 g/bhp-hr NO_X and 0.08 g/hp-hr PM. Because the enabled technologies do not allow very large emission reductions and stringent emission standards, it is conceivable that continued progress in engine design may eventually allow these standards to be met through improvements in EGR and combustion optimization, although we cannot outline such a technology path at this time. It is likely that such a path would still involve a substantial fuel economy penalty.

[160] Letter from Red Cavaney of API to EPA Administrator Carol Browner, dated February 7, 2000, EPA docket A–99–06.

The 50 ppm sulfur cap would therefore result in projected NO_X and PM emission reductions in 2020 of 540,000 and 17,000 tons per year, respectively, compared to 2.0 million and 83,000 tons per year for a 15 ppm cap. It should be noted that virtually none of the PM reduction comes from a reduction in the soot component of PM.

The cost of meeting a 50 ppm sulfur cap at the refinery would be substantially less costly than meeting the proposed cap of 15 ppm. In some cases, refiners may be able to meet a 50 ppm cap with only relatively minor capital investment of a few million dollars for a new hydrogen sulfide scrubbing unit and a PSA unit to increase hydrogen purity. New, high activity catalyst would also replace today's catalyst. In other cases, refiners would also have to add a second reactor. Finally, some refiners would require essentially the same two-stage hydrotreating unit that would be required to meet the proposed 15 ppm standard. In all cases, hydrogen consumption would be somewhat less than that required to meet the proposed 15 ppm standard.

Refiners who would be capable of meeting a 50 ppm cap with only minor capital investment would likely be those not blending any LCO into their diesel fuel, or those having substantial excess hydrotreating capacity in their current unit. We estimate that about 15 percent of on-highway diesel fuel production would fall into this category. Refiners blending some LCO into their diesel fuel (e.g., 15 percent or less), or with somewhat greater levels of LCO but also having significant excess current hydrotreating capacity, would likely be capable of meeting a 50 ppm cap with an additional reactor. We estimate that about 35 percent of on-highway diesel fuel production would fall into this category. Finally, about 50 percent of on-highway diesel fuel production would likely require a two-stage hydrotreating unit due to their higher LCO fraction or lack of excess current hydrotreating capacity. Overall, we project that the average cost of meeting the 50 ppm standard at the refinery would be about 2.3 cents per gallon, about 1.7 cents per gallon less than the corresponding cost for fuel meeting a 15 ppm sulfur cap.

It would be slightly less expensive to distribute the 50 ppm sulfur fuel than the15 ppm sulfur fuel. The pipeline interface between highway diesel fuel and higher sulfur products that must be sold with the higher sulfur product to ensure quality of the highway diesel fuel could be reduced. We estimate the cost savings per gallon of diesel fuel to be about 0.01 cents.

The overall cost of a program with a 50 ppm sulfur cap with a 30 ppm average is comprised of the hardware cost of lean NO_X catalyst technology, the cost increase in producing and distributing the fuel, and the cost of the projected 4% fuel economy loss. This corresponds to a net $35.4 billion 30-year NPV cost, compared to $37.7 billion for the 15 ppm sulfur cap proposal. Considering the PM and NO_X emissions benefits, the resulting aggregate cost effectiveness is projected to be $3600 per ton of NO_X+NMHC and $56,700 per ton of PM (including the SO_2 credit). These compare to $1500 per ton of NO_X+NMHC and $1900 per ton of PM for the 15 ppm sulfur cap proposal. The large difference in PM cost effectiveness is primarily due to the fuel economy penalty and the fact that none of the fuel cost could be allocated to hydrocarbon control, because of the lack of a hydrocarbon benefit.

Table VI.B–5 summarizes key emissions and cost impacts of a program adopting the sulfur levels analyzed. Note that, although the analysis finds that a 15 ppm average/25 ppm cap standard has potential to be adequate for enabling high-efficiency exhaust emissions controls, this finding involves a significantly higher level of uncertainty than the proposed 15 ppm sulfur cap, because it is based on the assumption that exhaust emission control designs could be focused on the average fuel sulfur levels. We believe that the possibility of some in-use fuel at near-cap levels would necessitate designing to accommodate this level, and they contend that this would not allow the high-efficiency technology to be enabled. If so, the technology enablement for this case would likely be similar to that for the 50 ppm cap case. The analysis results show that the 50 ppm cap case does not enable high-efficiency exhaust control technology at all.

TABLE VI.B–5.—SUMMARY OF EMISSIONS AND COST IMPACTS AT DIFFERENT FUEL SULFUR LEVELS

Sulfur level	2020 emission reductions (thousand tons/year)		Cost impacts			
	NO_X	PM	Vehicle[c]	Fuel consumption (percent)	Fuel (¢/gal)	Aggregate 30-yr NPV ($ billion)
5 ppm cap	2,020	86	$1,133	–1	[d] 6.0–7.3	[d] 47.1
15 ppm cap	2,020	83	1,133	0	4.4	37.7
25 ppm cap w/15 ppm average[a]	2,020	79	1,133	1	3.4	34.5
50 ppm cap w/30 ppm average[b]	538	17	603	4	2.7	35.4

[a] Note that this sulfur level involves significant increased uncertainty with respect to technology enablement. Manufacturers have commented that the possibility of some in-use fuel at or near the 25 ppm cap level would necessitate designing to accommodate this level, thus precluding high-efficiency technology enablement, and making technology for this case similar to that for the 50 ppm cap case.
[b] This sulfur level is not expected to enable high-efficiency exhaust control technology.
[c] Costs of added hardware combined with lifetime maintenance cost impacts; figures shown for comparison purposes are long-term costs for heavy heavy-duty vehicles.
[d] Fuel cost based on industry analyses of refinery and distribution costs; costs could range much higher depending on fuel segregation measures required.

We welcome comments on all aspects of these analyses for alternative fuel sulfur standards, including the technology enablement assessments, vehicle and fuel costs, emissions reductions, and cost effectiveness.

4. What Other Fuel Properties Were Considered for Highway Diesel Fuel?

In addition to changes in highway diesel fuel sulfur content, we also considered changes to other fuel properties such as cetane number, aromatics, density, or distillation. Each of these fuel properties has the potential to affect the combustion chemistry within the engine, and so aid in reducing emissions of regulated pollutants. Indeed, some manufacturers have made public statements to the effect that an idealized highway diesel fuel is necessary in order to optimize

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the efficiency of the next generation of heavy-duty diesel vehicles.

The focus of the fuel changes we are proposing today is to enable diesel engines to meet much more stringent emission standards. As described earlier in this section, we believe that diesel engines can meet much more stringent emission standards using advanced exhaust emission control systems, but the performance of these systems is dramatically reduced by sulfur. Thus, we have determined that sulfur in diesel fuel would need to be lowered. It does not appear that other fuel properties have the same sort of effect on advanced exhaust emission controls, and as a result we do not believe that changes in fuel properties other than sulfur are necessary in order for heavy-duty engines to reach the low emission levels offered by the advanced exhaust emission controls discussed above. In fact, after conducting a research study on this topic, industry members concluded that, "If in the future, fuel sulfur levels are significantly reduced in order to enable efficient exhaust emission controls, then it should be recognized that the exhaust emission control device becomes the primary driver on tailpipe emissions and that all other fuel properties will have only minor or secondary effects on the tailpipe emissions."[161]

Emission reductions can also be achieved through changes in diesel fuel properties as a direct means for reducing engine-out emissions. In this approach, it is not the exhaust emission control which is being "enabled," but rather the combustion process itself which is being optimized. This approach has the advantage that the effects are fleet-wide and immediate upon introduction of the new fuel, whereas new engine standards do not produce significant emission reductions until the fleet turns over. However, regulated changes in diesel fuel properties may produce emission reductions that disappear over time, if compliance test fuel is changed concurrently with the changes to in-use fuel (to assure that such fuel remains representative of in-use fuels). Manufacturers will redesign their new engines to take advantage of any benefit a cleaner fuel provides, resulting in engines still meeting the same emission standards in-use. Consequently, it would only be those engines sold before the compliance test fuel changes that would be likely to produce emission benefits, and as these engines drop out of the fleet, so also would the benefit of changes to diesel fuel.

[161] Lee, et al., SAE 982649.

Even so, it is useful to consider what emission reductions are achievable through changes to non-sulfur diesel fuel properties. The non-sulfur fuel properties most often touted as good candidates for producing emission reductions from heavy-duty engines are cetane number and aromatics content. According to correlations between these fuel properties and emissions that have been presented in various published documents, the effects are rather small. We have estimated that an increase in cetane number from 44 to 50 would reduce both NO_X and PM emissions by about 1 percent for the in-use fleet in calender year 2004.[162] Likewise a reduction in total aromatics content from 34 volume percent to 20 volume percent would reduce both NO_X and PM emissions by about 3 percent. We expect changes in other fuel properties to produce emission reductions that are no greater than these effects. These reductions are insignificant in comparison to the emission benefits projected to result from today's proposal, and would come at a considerable refining cost. As a result, at this time we do not believe that it is appropriate to require changes to non-sulfur diesel fuel properties as a means for producing reductions in engine-out emissions. There may, however, be performance or engine design optimization benefits associated with non-sulfur changes to diesel fuel that could justify their cost. Therefore we welcome cross-industry collaboration on voluntary diesel fuel improvements beyond the sulfur reduction proposed in this notice, and we continue to solicit information on the impact of non-sulfur fuel changes on exhaust emission control, engine-out emissions, and engine design and performance.

C. Should Any States or Territories Be Excluded From This Rule?

1. What Are the Anticipated Impacts of Using High-Sulfur Fuel in New and Emerging Diesel Engine Technologies if Areas Are Excluded From This Rule?

Section III discusses the technological feasibility of the emission standards being proposed today and the critical need to have sulfur levels reduced to 15 ppm for the technology to achieve these emission standards. The implications to be drawn from section III with regard to exemptions from the sulfur standards for States and Territories is fairly straightforward. If vehicles and engines employing these technologies to achieve the proposed emission standards will be operated in these states or territories, then low-sulfur diesel fuel must be available for their use.

Some have suggested allowing persons in Alaska to remove emission control equipment to enhance the viability of using high-sulfur fuel. In addressing this issue, we note that, under the Clean Air Act, it is prohibited in all 50 states to remove emission control equipment from an engine, unless that equipment is damaged or not properly functioning, and then is replaced with equivalent properly functioning equipment.

2. Alaska

a. Why is Alaska Unique?

There are important nationwide environmental and public health benefits that can be achieved with cleaner diesel engines and fuel, particularly from reduced particulate emissions, nitrogen oxides, and air toxics (as further discussed in section II). Therefore, it is also important to implement this program in Alaska. Any 2007 and later model year diesel vehicles in Alaska would have to be fueled with low sulfur highway diesel, or risk potential damage to the aftertreatment technologies or even the engines themselves. Although the engine standards proposed today do not have different technology and cost implications for Alaska as compared to the rest of the country, the low sulfur fuel program would have different implications (described below). Therefore, in evaluating the best approach for implementing the low sulfur fuel program, it is important to consider the extremely unique factors in Alaska.

Section 211(i)(4) provides that the states of Alaska and Hawaii may seek an exemption from the 500 ppm sulfur standard in the same manner as provided in section 325 of the Clean Air Act. Section 325 provides that upon request of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, EPA may exempt any person or source, or class of persons or sources, in that territory from any requirement of the CAA, with some specific exceptions. The requested exemption could be granted if EPA determines that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of the territory, or other local factors as EPA considers significant.

Unlike the rest of the nation, Alaska is currently exempt from the 500 ppm sulfur standard for highway diesel fuel (as discussed in section c below). Since the beginning of the 500 ppm highway diesel fuel program, we have granted Alaska exemptions from meeting the sulfur standard and dye requirements, because of its unique geographical, meteorological, air quality, and economic factors. These unique factors are described in more detail in the Draft Regulatory Impact Analysis contained in the docket.

Second, in Alaska, unlike in the rest of the country, diesel fuel consumption for highway use represents only five percent of the State's total distillate fuel consumption, because of the relatively small numbers of vehicles in the State. Most of this fuel is produced by refineries located in Alaska, primarily because of the more severe cloud point specification needed for the extremely low temperatures experienced in much of Alaska during the winter. There are four commercial refineries in Alaska. Only one of these refineries currently has any desulfurization capacity, which is relatively small. Consequently, because these refineries would have to reduce sulfur from uncontrolled levels to meet the proposed 15 ppm standard, these refineries could incur substantially higher costs than those in the rest of the nation. Given the very small highway diesel demand, however, it is doubtful that more than one or two Alaska refineries would choose to produce low sulfur highway fuel, and these refiners could even decide to import it from refineries outside of Alaska.

Third, Alaska's highway diesel vehicle fleet is relatively small, particularly outside the Federal Aid Highway System. The State estimates that there are less than 9000 diesel vehicles in the entire State, with less than 600 of these vehicles in all of rural Alaska. The State also indicates that these vehicles are predominantly older than the average elsewhere.[163]

Finally, Alaska's fuel distribution system faces many unique challenges. Unlike the rest of the country, because of its current exemption from the 500 ppm sulfur standard, Alaska does not currently segregate highway diesel fuel from that used for off-road, marine, heating oil, and other distillate uses. Therefore, the distribution system costs for segregating a low sulfur grade of diesel for highway uses will be significant. The existing fuel storage facilities limit the number of fuel types that can be stored. In addition to significant obstacles to expanding tankage in Alaska, the cost of constructing separate storage facilities, and providing separate tanks for transporting low-sulfur diesel fuel (e.g., by barge or truck), could be significant. Most of Alaska's communities rely on barge deliveries, and ice formation on the navigable waters during the winter months restricts fuel delivery to these areas. Construction costs are 30 percent higher in Alaska than in the lower-48 states, due to higher costs for freight deliveries, materials, electrical, mechanical, and labor. There is also a shorter period of time during which construction can occur, because of seasonal extremes in temperature and the amount of daily sunlight.

b. What Flexibilities Are We Proposing for Alaska?

Because of the unique circumstances in Alaska, we are proposing an alternative option for implementing the low sulfur fuel program in Alaska. We are proposing to provide the State an opportunity to develop an alternative low sulfur transition plan for Alaska. We would intend to facilitate the development of this plan by working in close cooperation with the State and key stakeholders. This plan would need to ensure that sufficient supplies of low sulfur diesel fuel are available in Alaska to meet the demand of any new 2007 and later model year diesel vehicles. Given that Alaska's demand for highway diesel fuel is very low and only a small number of new diesel vehicles are introduced each year, it may be possible to develop an alternative implementation plan for Alaska in the early years of the program that provides low sulfur diesel only in sufficient quantities to meet the demand from the small number of new diesel vehicles. This would give Alaska refiners more flexibility during the transition period because they would not have to desulfurize the entire highway diesel volume. Our goal in offering this additional flexibility would be to transition Alaska into the low sulfur fuel program in a manner that minimizes costs, while still ensuring that the new vehicles receive the low sulfur fuel they need. We expect that the transition plan would begin to be implemented at the same time as the national program, but the State would have an opportunity to determine what volumes of low sulfur fuel would need to supplied, and in what timeframes, in different areas of the State.

At a minimum, such a transition plan would need to: (1) Ensure an adequate supply (either through production or imports), (2) ensure sufficient retail availability of low sulfur fuel for new vehicles in Alaska, (3) address the growth of supply and availability over time as more new vehicles enter the fleet, (4) include measures to prevent misfueling, and (5) ensure enforceability. We would anticipate that, to develop a workable transition plan, the State would likely work in close cooperation with refiners and other key stakeholders, including retailers, distributors, truckers, engine manufacturers, environmental groups, and other interested groups. For example, the State would likely rely on input from the trucking industry in determining the expected low sulfur fuel volume needed in Alaska, based on the anticipated number of new vehicles, and how this volume is expected to grow during the first few years of the program. Similarly, the State would likely rely on the Alaska refiners' input regarding plans for supplying (either through production or imports) low sulfur fuel to meet the expected demand. Further, the State would likely rely on input and cooperation from retailers and distributors to determine at which locations the low sulfur fuel should be made available. Retailers offering low sulfur fuel would have to take measures to prevent misfueling, such as pump labeling. All parties in the distribution system would need to ensure the low sulfur fuel remains segregated and take measures to prevent sulfur contamination, in the same manner as described for the national program in section VIII.

If the State anticipates that the primary demand for low sulfur fuel will be along the highway system (*e.g.*, to address truck traffic from the lower 48 states) in the early years of the program, then the initial stages of the transition plan could be focused in these areas. We believe it would be appropriate for the State to consider an extended transition schedule for implementing the low sulfur program in rural Alaska, as part of the state's overall plan, based on when they anticipate the introduction of a significant number of 2007 and later model year vehicles in the remote areas.

Under such an approach, the State would be given the opportunity to develop such a transition plan, as an alternative to the national program, and submit it to EPA. Our goal would be to help facilitate the development of the plan, by working closely with the State and the stakeholder group so they would have an opportunity to address EPA's concerns in their submittal. We envision that the State would develop and submit this plan to EPA within about one year of the final diesel rule. Our goal would be to conduct a rulemaking and publish a final rule

[162] "Exhaust emissions as a function of fuel properties for diesel-powered heavy-duty engines," memorandum from David Korotney to EPA Air Docket A–99–06, September 13, 1999.

[163] See further discussion in the Draft RIA (Chapter VIII).

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promulgating a new regulatory scheme for Alaska, if appropriate. The goal would be to issue a final rule within one year of Alaska's submittal of the plan, so that refiners and other affected parties would have certainty as to their regulatory requirements. We request comment on the timing for the State to submit such an alternative plan, and for EPA to conduct the rulemaking action. If the State chose not to submit an alternative plan, or if the plan did not provide a reasonable alternative for Alaska as described above, then Alaska would be subject to the national program.

We seek comment on all aspects of this approach, and on other approaches that may have merit, to provide additional flexibility in transitioning the low sulfur fuel program for Alaska.

c. How Do We Propose to Address Alaska's Petition Regarding the 500 ppm Standard?

Background

On February 12, 1993, Alaska submitted a petition under section 325 of the Act to exempt highway vehicle diesel fuel in Alaska from paragraphs (1) and (2) of section 211(i) of the Act, except for the minimum cetane index requirement.[164] The petition requested that we temporarily exempt highway vehicle diesel fuel in communities served by the Federal Aid Highway System from meeting the sulfur content specified in section 211(i) of the Act and the dye requirement for non-highway diesel fuel of 40 CFR 80.29, until October 1, 1996. The petition also requested a permanent exemption from those requirements for areas of Alaska not reachable by the Federal Aid Highway System—the remote areas. On March 22, 1994, (59 FR 13610), we granted the petition based on geographical, meteorological, air quality, and economic factors unique to Alaska.

On December 12, 1995, Alaska submitted a petition for a permanent exemption for all areas of the State served by the Federal Aid Highway System, that is, those areas covered only by the temporary exemption. On August 19, 1996, we extended the temporary exemption until October 1, 1998 (61 FR 42812), to give us time to consider comments to that petition that were subsequently submitted by stakeholders. On April 28, 1998 (63 FR 23241) we proposed to grant the petition for permanent exemption. Substantial public comments and substantive new information were submitted in response to the proposal. To give us time to consider those comments and new information, we extended the temporary exemption for another nine months until July 1, 1999 (September 16, 1998, 63 FR 49459). During this time period, we started work on a nationwide rule to consider more stringent diesel fuel requirements, particularly for the sulfur content (i.e., today's proposed rule). To coordinate the decision on Alaska's request for a permanent exemption with this nationwide rule on diesel fuel quality, we extended the temporary exemption until January 1, 2004 (June 25, 1999 64 FR 34126).

Today's Proposed Action

As mentioned above, Alaska has submitted a petition for a permanent exemption from the 500 ppm standard for areas not served by the Federal Aid Highway System. Our goal is to take action on this petition in a way that minimizes costs through Alaska's transition to the low sulfur program. The cost of compliance could be reduced if Alaska refiners were given the flexibility to meet the low sulfur standard in one step, rather than two steps (i.e., once for the current 500 ppm sulfur standard in 2004 when the temporary exemption expires, and again for the proposed 15 ppm standard in 2006). Therefore, we propose to extend the temporary exemption for the areas of Alaska served by the Federal Aid Highway System from January 1, 2004 (the current expiration date) to the proposed effective date for the proposed 15 ppm sulfur standard (i.e., April 1, 2006 at the refinery level; May 1, 2006 at the terminal level; and June 1, 2006 at all downstream locations).

As discussed in section b above, we are proposing to allow Alaska to develop a transition plan for implementing the 15 ppm sulfur program. During this transition period, it is possible that both 15 ppm (for proposed 2007 and later model year vehicles) and higher sulfur (for older vehicles) highway fuels might be available in Alaska. To avoid the two-step sulfur program described above, we seek comment on whether we should consider additional extensions to the temporary exemption of the 500 ppm standard beyond 2006 (e.g., for that portion of the highway pool that is available for the older technology vehicles during Alaska's transition period). We would expect that any additional temporary extensions, if appropriate, would be made in the context of the separate rulemaking taking action on Alaska's transition plan (as described in the previous section).

As in previous actions to grant Alaska sulfur exemptions, we would not base any vehicle or engine recall on emissions exceedences caused by the use of high-sulfur (>500 ppm) fuel in Alaska during the period of the temporary sulfur exemption. In addition, manufacturers may have a reasonable basis for denying emission related warranties where damage or failures are caused by the use of high-sulfur (>500 ppm) fuel in Alaska.

Finally, the costs of complying could be reduced significantly if Alaska were not required to dye the non-highway fuel. Dye contamination of other fuels, particularly jet fuel, is a serious potential problem. This is a serious issue in Alaska since the same transport and storage tanks used for jet fuel are generally also used for other diesel products, including off-highway diesel products which are required to be dyed under the current national program. This issue is discussed further in the Draft RIA (Chapter VIII). Therefore, we also propose to grant Alaska's request for a permanent exemption from the dye requirement of 40 CFR 80.29 and 40 CFR 80.446 for the entire State.

We are interested in comments on all aspects of this proposal.

3. American Samoa, Guam, and the Commonwealth of Northern Mariana Islands

a. Why Are We Considering Excluding American Samoa, Guam, and the Commonwealth of Northern Mariana Islands?

Prior to the effective date of the current highway diesel sulfur standard of 500 ppm, the territories of American Samoa, Guam and the Commonwealth of Northern Mariana Islands (CNMI) petitioned EPA for an exemption under section 325 of the Act from the sulfur requirement under section 211(i) of the Act and associated regulations at 40 CFR 80.29. The petitions were based on geographical, meteorological, air quality, and economic factors unique to those territories. We subsequently granted the petitions.[165] With today's proposal we need to evaluate whether to include or exclude the territories in areas for which the fuel sulfur standard would apply.

b. What are the Relevant Factors?

The key relevant factors unique to these territories, briefly discussed below, are discussed in detail in the Draft RIA. These U.S. Territories are islands with limited transportation networks. Consequently among these three territories there are currently only approximately 1300 registered diesel vehicles. Diesel fuel consumption in these vehicles represents just a tiny fraction of the total diesel fuel volume consumed in these places; the bulk of diesel fuel is burned in marine, nonroad, and stationary applications. Consequently highway diesel vehicles are believed to have a negligible impact on the air quality in these territories, which, with minor exceptions, is very good.

All three of these territories lack internal petroleum supplies and refining capabilities and rely on long distance imports. Given their remote location from the U.S. mainland, petroleum products are imported from east rim nations, particularly Singapore. Although Australia, the Philippines, and certain other Asian countries have or will soon require low-sulfur diesel fuel, this requirement is a 500 ppm sulfur limit, not the proposed 15 ppm sulfur limit. Compliance with low-sulfur requirements for highway fuel would require construction of separate storage and handling facilities for a unique grade of diesel fuel for highway purposes, or importation of low-sulfur diesel fuel for all purposes, either of which would significantly add to the already high cost of diesel fuel in territories which rely heavily on United States support for their economies.

c. What Are the Options and Proposed Provisions for the Territories?

We could include or exclude the territories in the areas for which the proposed diesel fuel sulfur standard would apply. As in the early 1990's when the 500 ppm sulfur standard was implemented, we believe that compliance with the proposed 15 ppm sulfur standard would result in relatively small environmental benefit, but major economic burden. We are also concerned about the impact to vehicle owners and operators of running the new and upcoming engine and emission control technologies using high-sulfur fuel. We believe that for the sulfur exemption to be viable for vehicle owners and operators, they would need access to either low-sulfur fuel or vehicles meeting the pre-2007 HDV emission standards that could be run on high-sulfur fuel without significant engine damage or performance degradation.

We are proposing to exclude American Samoa, Guam and CNMI from the proposed diesel fuel sulfur requirement of 15 ppm because of the high economic cost of compliance and minimal air quality benefits. We are also proposing to exclude, but not prohibit, the territories from the 2007 heavy-duty diesel vehicle and engine emissions standards, and other requirements associated with those emission standards based on the increased costs associated with implementing the vehicle and fuel standards together in these territories. Thus, the territories would continue to have access to 2006 diesel vehicle and engine technologies. This exclusion from standards would not apply to gasoline engines and vehicles because gasoline that complies with our regulations will be available, and so concerns about damage to engines and emissions control systems will not exist. As proposed this exclusion from standards does not apply to light-duty diesel vehicles and trucks because gasoline vehicles meeting the emission standards and capable of fulfilling the same function would be available.

We are proposing to continue requiring all diesel motor vehicles and engines to be certified and labeled to the applicable requirements (either to the 2006 model year standards and associated requirements, or to the standards and associated requirements applicable for the model year of production) and warranted, as otherwise required under the Clean Air Act and EPA regulations. Special recall and warranty considerations due to the use of exempted high-sulfur fuel are proposed to be the same as those proposed for Alaska during its proposed transition period. To protect against this exclusion being used to circumvent the emission requirements applicable to the rest of the United States (i.e., continental United States, Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands) after 2006 by routing pre-2007 technology vehicles and engines through one of these territories, we propose to restrict the importation of vehicles and engines from these territories into the rest of the United States. After the 2006 model year, diesel vehicles and engines certified under this exclusion to meet the 2006 model year emission standards for sale in American Samoa, Guam and CNMI would not be permitted entry into the rest of the United States.

We request comment on these exclusions and particularly on whether it should be extended to light-duty diesel vehicle and truck standards as well.

D. What About the Use of JP–8 Fuel in Diesel-Equipped Military Vehicles?

In 1995, EPA issued a letter to the Deputy Under Secretary of Defense for Environmental Security which concluded that the military specification fuel known as JP–8 did not meet the definition of diesel fuel under EPA's regulations and was, therefore, not subject to the 0.05 percent by weight sulfur standard. EPA also determined that despite the slightly higher sulfur levels, the use of JP–8 in motor vehicles by the military would not be a violation of EPA regulations as a matter of policy. This decision was made after careful consideration of the impact on operational readiness, logistical considerations and cost for the military. EPA also evaluated data presented by the military which compared the emissions of vehicles operated on typical highway diesel and JP–8. These data supported the conclusion that there would not be a significant adverse environmental consequence from the limited use of JP–8 fuel. EPA's evaluation of the emissions impact was, of course, based on the results of tests conducted using vehicles representative of diesel emission control technology and diesel fuel in use at that time.

The technical basis for EPA's decision on this matter may be affected by the prospect of military vehicles equipped with the highly sulfur sensitive technology that is expected to be used on vehicles and engines designed to meet the standards for 2007 and beyond. We request comment from interested parties on how to best deal with this situation, including comment on the extent to which national security exemptions pursued under 40 CFR 85.1708 may affect resolution of the issue.

VII. Requirements for Engine and Vehicle Manufacturers

A. Compliance With Standards and Enforcement

We are not proposing any changes to the enforcement scheme currently applicable to vehicles and engines under Title II of the CAA. Thus, they would continue to apply to the vehicles and engines subject to today's proposed standards. This includes the enforcement provisions relating to the manufacture, importation and in-use compliance of these vehicles and engines (see sections 202–208 of the CAA). Manufacturers are required to obtain a certificate of conformity for their engine designs prior to introducing them into commerce, and are subject to Selective Enforcement Audits during production. Although there are

[164] Copies of information regarding Alaska's petition for exemption and subsequent requests by Alaska and actions by EPA are available in public docket A–96–26.

[165] See 57 FR 32010, July 20, 1992 for American Samoa; 57 FR 32010, July 30, 1992 for Guam; and 59 FR 26129, May 19, 1994 for CNMI.

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currently no regulatory requirements for manufacturers to test in-use engines, they are responsible for the emission performance of their engines in use. If we determine that a substantial number of properly maintained and used engines in any engine family is not complying with the standards in use, then we may require the manufacturer to recall the engines and remedy the noncompliance. Failure by a manufacturer to comply with the certification, warranty, reporting, and other requirements of Title II can result in sanctions including civil penalties and injunctive relief (see sections 202–208 of the CAA). Other enforcement provisions regulating persons in addition to manufacturers would also be applicable to the affected diesel vehicles, including provisions such as the tampering and defeat device prohibitions. It is also important to note that, because the CAA defines manufacturer to include importers, all of these requirements and prohibitions apply equally to importers.

Consideration has been given to in-use issues that may arise from use of the new exhaust emission control technology. While it is believed that the technology is sufficient to ensure that emission control devices and elements of design will be effective throughout the useful life of the vehicle, some concern has been expressed regarding the possibility that instances of driveability or other operational problems could occur in-use. One example brought up, is the possibility that a vehicle could experience severe driveability problems if the PM trap becomes plugged. At this time, however, we are confident that the technologies will be developed to prevent these types of problems from occurring provided the vehicle is operated on the appropriate fuel. Nevertheless, comments are requested on any in-use problems that may arise as a result of inclusion of exhaust emission control technology. Your comments should address the nature of the problem, likelihood of its occurrence and options for ensuring it does not occur.

Another issue related to certification is what (if any) maintenance we should allow for adsorbers and traps. Our existing regulations define these to be critical emission-related components, which means that the amount of maintenance of them that the manufacturer is allowed to conduct during durability testing (or specify in the maintenance instructions that it gives to operators) is limited. We believe that this is appropriate because, as we already noted, we expect that these technologies will be very durable in use and will last the full useful life with little or no scheduled maintenance. However, our existing regulations (40 CFR 86.004–25) would allow a manufacturer to specify something as drastic as replacement of the adsorber catalyst bed or the trap filter after as little as 100,000–150,000 miles if there was a "reasonable likelihood" that the maintenance would get done. We are concerned that some manufacturers may underdesign the adsorbers and traps compared to the level of durability that is achievable. If this occurred, even if most users replaced their adsorber or trap according to the manufacturer's schedule, there would certainly be some users that did not. Therefore, we are proposing to require that these technologies be designed to last for the full useful life of the engine. More specifically, the proposed regulations state that scheduled replacement of the PM filter element or catalyst bed is not allowed during the useful life. Only cleaning and adjustment will be allowed as scheduled maintenance.

It may be appropriate to establish non-conformance penalties (NCPs) for the standards being proposed today. NCPs are monetary penalties that manufacturers can pay instead of complying with an emission standard. In order for us to establish NCPs for a specific standard, we would have to find that: (1) Substantial work will be required to meet the standard for which the NCP is offered; and (2) there is likely to be a "technological laggard" (*i.e.*, a manufacturer that cannot meet the standard because of technological (not economic) difficulties and, without NCPs, might be forced from the marketplace). According to the CAA (section 206(g)), such NCPs "shall remove any competitive disadvantage to manufacturers whose engines or vehicles achieve the required degree of emission reduction." We also must determine compliance costs so that appropriate penalties can be established. We have established NCPs in past rulemakings. However, since the implementation of our averaging, banking and trading program, their use has been rare. We believe manufacturers have taken advantage of the averaging, banking and trading program as a preferred alternative to incurring monetary losses. At this time, we have insufficient information to evaluate these criteria for heavy-duty engines. While we believe that substantial work will be required to meet the 2007 standards, we currently have no information indicating that a technological laggard is likely to exist. Recognizing that it may be premature for manufacturers to comment on these criteria, since implementation of these standards is still more than six years away, we expect to consider NCPs in a future action. We welcome comment on this approach.

Today's proposal includes PM standards for heavy-duty gasoline engines. Because gasoline engines have inherently low PM emissions, it may be appropriate in some cases to waive the requirement to measure PM emissions. Therefore, we are proposing to maintain the flexibility to allow manufacturers to certify gasoline engines without measuring PM emissions, provided they have previous data, analyses, or other information demonstrating that they comply with the standards. The flexibility is the same as that allowed for PM emissions from light-duty gasoline vehicles and for CO emissions from heavy-duty diesel engines.

B. Certification Fuel

It is well established that measured emissions are affected by the properties of the fuel used during the test. For this reason, we have historically specified allowable ranges for test fuel properties such as cetane and sulfur content. These specifications are intended to represent most typical fuels that are commercially available in use. Because today's action is proposing to lower the upper limit for sulfur content in the field, we are also proposing a new range of allowable sulfur content for testing that would be 7 to 15 ppm (by weight). Beginning in the 2007 model year, these specifications would apply to all emission testing conducted for Certification and Selective Enforcement Audits, as well as any other laboratory engine testing for compliance purposes. Because the same in use fuel is used for light-and heavy-duty highway diesel vehicles, we are also proposing to change the sulfur specification for light-duty diesel vehicle testing to the same 7 to 15 ppm range, beginning in the 2007 model year. We request comment on these test fuel specifications. We also request comment regarding whether the range of allowable test fuel properties should include the full range of in-use properties or include the most typical range around the average properties (*e.g.*, 7 to 10 ppm sulfur).

C. Averaging, Banking, and Trading

We are proposing to continue the basic structure of the existing ABT program for heavy-duty diesel engines. (Note that this includes the Otto-cycle engine and vehicle ABT programs that were proposed on October 29, 1999, 64 FR 58472.) This program allows manufacturers to certify that their engine families comply with the applicable standards on average. More specifically, manufacturers are allowed to certify their engine families with various family emission limits (FELs), provided the average of the FELs does not exceed the standard when weighted by the numbers of engines produced in each family for that model year. To do this, they generate certification emission credits by producing engine families that are below the applicable standard. These credits can then be used to offset the production of engines in engine families that are certified to have emissions in excess of the applicable standards. Manufacturers are also allowed to bank these credits for later use or trade them to other manufacturers. We are proposing some restrictions to prevent manufacturers from producing very high-emitting engines and unnecessarily delaying the transition to the new exhaust emission control technology. These restrictions are described below. We are continuing this ABT program because we believe that it would provide the manufacturers significant compliance flexibility. This compliance flexibility would be a significant factor in the manufacturers' ability to certify a full line of engines in 2007 and would help to allow implementation of the new, more stringent standard as soon as permissible under the CAA. This is especially true given the very low levels of the proposed standards. In some ways the ABT program is intended to serve the same purpose as the phase-in for diesel engines. As is described below, we have proposed some restrictions to make this program compatible with the phase-in. Thus your comments on this ABT program should address how it fits with the phase-in, and vice versa.

The existing ABT program includes limits on how high the emissions from credit-using engines can be. These limits are referred to as FEL caps. No engine family may be certified above these caps using credits. These limits provide the manufacturers compliance flexibility while protecting against the introduction of unnecessarily high-emitting engines. In today's action, we are proposing to establish lower caps for those engines that are required to comply with the proposed standards. Specifically, we are proposing that the engines subject to the new standards have NO_X emissions no higher than 0.50 g/bhp-hr, and PM emissions no higher than 0.02 g/bhp-hr. Without this cap, we are concerned that one or more manufacturer(s) could use the ABT program to unnecessarily delay the introduction of exhaust emission control technologies. Allowing this would be contrary to one of the goals of the phase-in program, which is to allow manufacturers to gain experience with these technologies on a limited scale before they are applied to their full production. Similarly, we are proposing FEL caps of 1.0 g/mi NO_X and 0.03 g/mi PM for chassis-certified heavy-duty vehicles. We request comment on the need for and the levels of these FEL caps.

We are proposing separate averaging sets during the phase-in period. In one set, engines would be certified to the 2.4 g/bhp-hr NO_X+NMHC standard (which applies for model years 2004–2006), and would be subject to the restrictions and allowances established for those model years. In the other set, engines would be certified to the proposed 0.20 g/bhp-hr NO_X standard, and would be subject to the restrictions and allowances proposed today. Averaging would not be allowed between these two sets within the same model year. The reason for this is similar to that for the low FEL caps. Allowing averaging between the sets would be contrary to one of the goals of the phase-in program, which is to allow manufacturers to introduce engines with ultra-low emission technologies on a limited scale before they are applied to their full production. We are concerned that manufacturers could delay the introduction of NO_X aftertreatment technology, diminishing the projected benefits of the proposed program during the phase-in. We request comment on the need for this restriction. As a part of this restriction of cross-set averaging, we are also proposing that banked NO_X+NMHC and PM credits generated from 2006 and earlier engines may not be used to comply with the stricter standards that apply to 2007 and later engines (unless such credits are generated from engines that meet all of the stricter standards early). We are also requesting comments on alternatives to these restrictions, such as only allowing banked credits generated from engines below some threshold (*e.g.*, 1.5 g/bhp-hr NO_X+NMHC or 0.05 g/bhp-hr PM) to be used for compliance with the 2007 standards. Under the threshold approach, the credits would be calculated in reference to the threshold rather than the applicable standard. Your alternatives should address our two primary concerns: (1) Ensuring that manufacturers produce engines during the phase-in period that are equipped with the advanced NO_X aftertreatment controls; and (2) ensuring that the program produces equivalent or greater emission reductions during the phase-in period.

We propose to apply these same restrictions to the 2007 chassis-based standards. This would affect the averaging program that was proposed previously for model year 2004 (October 29, 1999, 64 FR 58472). We believe that these restrictions are equally necessary for the chassis-based program, but are also open to alternatives. We are particularly interested in the possibility of using the Tier 2 pull-ahead approach that would allow manufacturers to phase in the new standards on a per-vehicle basis rather than on a total gram basis. Under this approach, for each "2007-technology" vehicle that a manufacturer introduced before 2007, it could produce one "2006-technology" vehicle in 2007 or later. We recognize that this approach would be complicated for heavy-duty vehicles because of the different weight classes, but believe that this problem could be addressed with appropriate weighting factors (*e.g.* setting one 14,000 lb vehicle as equivalent to two 8,500 lb vehicles). While it is less clear that such an approach would work for the engine programs, we would welcome such comments.

The Agency continues to be interested in the potential of early benefits to be gained from retrofitting highway engines. Thus, we are also asking for comment on various concepts by which manufacturers could earn credits potentially to be used in a variety of programs. An example of such credits in the 2007 MY program might include consideration by EPA of the retiring of retrofit credits in deciding whether to make a discretionary determination under section 207(c) of substantial non-conformity. For discussion of related issues, see the final rule for spark-ignition marine engines (61 FR 52088, 52095, October 4, 1996), and the final rule for locomotive engines (63 FR 18978, 18988, April 16, 1998). We ask for comment as to what emission benefits could be achieved by this concept and by what legal authority such credits could be applied. Such systems would bring existing highway engines into compliance with the standards being proposed for new engines, or alternately with some less stringent standards levels that still achieve large emission reductions. We ask comment on how such an emissions reduction calculation should be formulated and how such benefits and resulting credits should be applied. Certification requirements for such retrofit systems could be developed along the lines of those adopted in EPA's urban bus retrofit program (58 FR 21359, April 21, 1993). Credits would be

calculated based on the expected lifetime emissions benefits of the retrofit systems. Because this benefit depends on the remaining life of the retrofitted vehicle, and this could vary considerably, any emission reduction formula would require the certainty to account for this in the calculation, such as by estimating an average remaining life for retrofits in each engine family, or by using a vehicle age-dependent proration factor for each retrofitted system, similar to the approach taken in the locomotive emissions rule (see Appendix K of the Regulatory Support Document for the locomotives final rule. 63 FR 18977, April 16, 1998).

D. Chassis Certification

Heavy-duty vehicles under 14,000 pounds can generally be split into two groupings, complete and incomplete vehicles. Complete vehicles are those that are manufactured with their cargo carrying container attached. These vehicles consist almost entirely of pick-up trucks, vans, and sport utility vehicles. Incomplete vehicles are those chassis that are manufactured by the primary vehicle manufacturer without their cargo carrying container attached. These chassis may or may not have a cab attached. The incomplete chassis are then manufactured into a variety of vehicles such as recreational vehicles, tow trucks, dump trucks, and delivery vehicles.

Recently, we proposed to require all complete Otto-cycle vehicles between 8,500 and 14,000 pounds to be certified to vehicle-based standards rather than engine-based standards beginning in model year 2004 (October 29, 1999, 64 FR 58472). Under this proposal manufacturers would test the vehicles in essentially the same manner light-duty trucks are tested. We continue to believe this approach is reasonable and are thus proposing to continue it with the more stringent standards. We request comment regarding the possible mandatory or voluntary application of this program to complete diesel vehicles under 14,000 pounds.

E. FTP Changes to Accommodate Regeneration of Aftertreatment Devices

It is possible that some of the exhaust emission control devices used to meet the proposed standard will have discrete regeneration events that could effect emission characteristics. For example, NO_X adsorbers and actively regenerated PM traps each incorporate discrete regenerations. The NO_X adsorber stores NO_X under normal conditions until the NO_X storage capacity is nearly full, at which point, the regeneration event is triggered to purge the stored NO_X and reduce it across a catalyst. Actively regenerated PM traps incorporate heating devices to periodically initiate regeneration. In both cases, we would expect that these regeneration events would be controlled by the engine computer, and would thus be generally predictable. Even passively regenerating catalytic PM trap designs can have discrete regeneration events.

Discrete regeneration events can be important because it is possible for exhaust emissions to increase during the regeneration process. The regeneration of a NO_X adsorber for instance, could result in increased particulates, NMHC and NO_X due to the rich exhaust gas required to purge and reduce the NO_X. We expect that in most cases, the regeneration events would be sufficiently frequent to be included in the measured emissions. Our feasibility analysis projects very frequent regeneration of the NO_X adsorbers, and continuously regenerating PM traps. Nevertheless, this issue becomes a regulatory concern because it is also conceivable that these emission storage devices could be designed in such a way that a regeneration event would not necessarily occur over the course of a single heavy-duty FTP cycle, and thus be unmeasured by the current test procedure. Since these regeneration events could produce increased emissions during the regeneration process, it will be important to make sure that regeneration is captured as part of the certification testing. We seek comment on the need to measure regeneration emissions as part of each emission test, and the best method of making such measurements.

In order to verify the emission levels during regeneration, we propose that the transient FTP applicable for certification be repeated until a regeneration occurs. The transient FTP will be repeated until a regeneration event is confirmed. The emissions measured during the cycle in which the regeneration occurs must be below the applicable transient cycle standard. For example, if an actively regenerated heavy-duty PM trap does not regenerate over the cold-soak-hot cycle, the hot portion of the cycle will be repeated until a regeneration is observed. The specific hot cycle with the highest emissions would be used as the representative hot cycle, and its emissions would be weighted with the cold cycle emissions (as is currently required) to determine compliance with the composite emission standard for the cold-soak-hot cycle. We seek comment on the proposed method of capturing regeneration emissions and whether we should allow the manufacturers to use the average hot-start emissions rather than the worst case.

This proposal is based on the assumption that the systems would include a fairly high frequency of regeneration events (*e.g.*, one regeneration event per hour). We seek comment on the need to capture regeneration emissions as part of the certification testing if the regeneration events occur much less frequently. Similarly, we request comment on the need to measure emissions during desulfurization of the NO_X adsorber. Would it be appropriate to allow manufacturers to use a mathematical adjustment of measured emissions to account for increased emissions during infrequent regeneration or desulfurization events? For example, if a system required a desulfurization after every 20 transient cycles, and PM emissions increased by 20 percent during desulfurization, would it be appropriate to adjust measured emissions upward by one percent (20 percent divided by 20 cycles)?

F. On-Board Diagnostics

OBD systems help ensure continued compliance with emission standards during in-use operation, and they help mechanics to properly diagnose and repair malfunctioning vehicles while minimizing the associated time and effort. We implemented OBD requirements on light-duty applications in the 1994 model year (58 FR 9468, February 19, 1993). We recently proposed OBD requirements for 8500 to 14,000 pound heavy-duty gasoline and diesel applications (October 29, 1999, 64 FR 58472). The 8500 to 14,000 pound requirements are scheduled for implementation in the 2004 model year with a phase-in running through the 2006 model year; the 2007 model year would be the first year of 100 percent OBD compliance on 8500 to 14,000 pound applications. We are currently working with industry to develop OBD requirements for the over 14,000 pound heavy-duty gasoline and diesel engines. Those requirements will be proposed in a separate rulemaking and are anticipated to be effective on or before the 2007 model year; consequently, we are not proposing them here.

As discussed in the October 29, 1999, proposed rule, OBD system requirements would allow for potential inclusion of heavy-duty vehicles and engines in inspection/maintenance programs via a simple check of the OBD system. The OBD system must monitor emission control components for any malfunction or deterioration that could cause exceedance of certain emission thresholds. The OBD system also notifies the driver when repairs are needed via a dashboard light, or malfunction indicator light (MIL), when the diagnostic system detects a problem.

An OBD system is important on heavy-duty vehicles and engines for many reasons. In the past, heavy-duty diesel engines have relied primarily on in-cylinder modifications to meet emission standards. For example, emission standards have been met through changes in injection timing, piston design, combustion chamber design, use of four valves per cylinder rather than two valves, and piston ring pack design and location improvements. In contrast, the proposed 2004 and 2007 standards represent a significant technological challenge that would require use of EGR and exhaust emission control devices whose deterioration or malfunction can easily go unnoticed by the driver. The same argument is true for heavy-duty gasoline vehicles and engines; while emission control is managed both with engine design elements and exhaust emission control devices, the latter are the primary emission control features. Because deterioration and malfunction of these devices can go unnoticed by the driver, and because their sole purpose is emissions control, some form of detection is crucial. An OBD system is well suited to detect such deterioration or malfunction.

Today's proposal does not contain any new OBD requirements. The vehicles and engines designed to comply with today's proposed emission standards would be required to comply with the OBD requirements already in place or proposed for implementation in the 2004 model year (*i.e.*, light-duty and heavy-duty through 14,000 pounds). However, because some of the existing OBD requirements are based on multipliers of the applicable emission standards, we request comment regarding the effect of the low levels of the proposed standards on these OBD requirements. We believe that these requirements will be feasible for these engines. If you believe that the OBD requirements will not be feasible, you should include in your comments suggestions for how they should be revised to make them feasible.

We are also requesting comment regarding whether there are new OBD requirements that should be adopted for these exhaust emission control technologies. Comments supporting new requirements should indicate whether they would be intended only to prevent emission problems, or would also be intended to prevent performance problems, such as exhaust emission control plugging.

G. Supplemental Test Procedures

To ensure better control of in-use emissions, we recently proposed (October 29, 1999, 64 FR 58472) [166] to add two supplemental sets of requirements for heavy-duty diesel engines: (1) A supplemental steady-state test and accompanying limits; and (2) NTE Limits. Both types of these proposed supplemental emission requirements are expressed as multiples of the normal duty cycle-weighted emission standards, or FEL if the engine is certified under the ABT program, whichever is applicable. For example, the diesel engine NTE limit for NO_X + NMHC emissions from 2004 engines would be 1.25 times the 2.4 g/bhp-hr emission standard, or 1.25 times the applicable FEL. Although we are not proposing any changes to these requirements, we are requesting comment on the feasibility of technologies needed to meet the standards being proposed in this notice, in the context of applying these multipliers to these new standards.

Like current requirements, these new requirements would apply to certification, production line testing, and vehicles in actual use. All existing provisions regarding standards (*e.g.*, warranty, certification, recall) would be applicable to these new requirements as well. The steady-state test was proposed because it represents a significant portion of in-use operation of heavy-duty diesel engines that is not adequately represented by the FTP. The combination of these supplemental requirements is intended to provide assurance that engine emissions achieve the expected level of in-use emissions control over expected operating regimes in-use. We stated in the previous NPRM that we believed that compliance with these requirements would not require manufacturers to add additional emission control technologies, but would require manufacturers to put forth some effort to better optimize their engines with respect to emissions over a broader range of operating conditions. You should read the previous NPRM for more detail. You should also read the comments that we received in response to this proposal. In those comments, some engine manufacturers raised concerns regarding the feasibility of implementing these requirements in the 2004 model year, in the context of the technologies expected to be seen in the 2004 time frame (principally cooled EGR, advanced fuel injection systems, advanced turbo-charging systems).[167] Many of these comments question the feasibility of meeting the proposed NTE emission limits under the high-load regions of the proposed NTE zone, particularly under conditions of high temperature and/or altitude. These comments are highlighted here because the resolution of these issues for the 2004 diesel engine standards, may also be relevant to today's rulemaking.

We plan to apply these requirements with the proposed 2007 standards in the same manner as they would be applied with the 2004 standards, if adopted. There is some concern that certain exhaust emission control devices, though capable of providing large emission reductions and performing robustly over a wide range of expected operating conditions, may have degraded performance in some conditions included in the NTE or supplemental steady-state testing requirements. We are thus asking for comments and supporting data related to this concern. Your comments should address the following questions:

—What is the relative ability of the emission control technologies being considered in today's action to control emissions over the full range of speeds and loads typically encountered in actual use? Are there areas of the map in which the emission controls are significantly less effective?

—What is the relative need for emission reduction for different areas of the speed-load map?

—How do the emission control technologies being considered in today's action perform at different ambient conditions?

—Are the multipliers proposed previously the most appropriate multipliers for ensuring in-use emissions control on exhaust emission control-equipped engines?

—Are there other cost effective approaches to controlling in-use emissions for engines equipped with exhaust emission controls?

—Are the technological issues raised in the 2004 rulemaking equally applicable to diesel engines featuring

[166] Today's notice proposes to apply the heavy-duty diesel NTE and supplemental steady-state test provisions intended to be finalized as part of the 2004 standards rulemaking. The October 29, 1999 proposal for that rule contained the description of these provisions. We expect that a number of modifications will be made to those provisions in the FRM for that rule based on feedback received during the comment period. While the details of the final provisions are not yet available, we will provide the necessary information in the docket for this rule as soon as it becomes available in order to allow for comment.

[167] See, for example, comments from Engine Manufacturers Association, Detroit Diesel Corporation, Navistar International Transportation Corp., Mack Trucks Inc., in EPA Air Docket No. A–98–32.

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advanced exhaust emission controls and designed to meet the proposed 2007 standards?

H. Misfueling Concerns

As explained in Section III, the emissions standards contained in this proposal will likely make it necessary for manufacturers to employ exhaust emission control devices that require low-sulfur fuel to ensure proper operation. This proposal therefore restricts the sulfur content of highway diesel fuel sold in the U.S. There are, however, some situations in which vehicles requiring low-sulfur fuel may be accidentally or purposely misfueled with higher-sulfur fuel. Vehicles operated within the continental U.S. may cross into Canada and Mexico, countries which have not confirmed that they plan to adopt the same low sulfur requirements we are proposing here. In addition, high-sulfur nonroad fuel may illegally be used by some operators to fuel highway vehicles. Any of these misfueling events could seriously degrade the emission performance of sulfur-sensitive exhaust emission control devices, or perhaps destroy their functionality altogether.

There are, however, some factors that help to mitigate concerns about misfueling. Most operators are very conscious of the need to ensure proper fueling and maintenance of their vehicles. The fear of large repair and downtime costs may often outweigh the temptation to save money through misfueling.

The likelihood of misfueling in Canada and Mexico is lessened by current cross-border shipment practices and prospects for eventual harmonization of standards. Canada has historically placed a priority on harmonization with U.S. vehicle emission standards. They have also placed a priority on harmonization with U.S. fuels standards, as they import a significant amount of fuel from the U.S. and do not want to become a "dumping ground" for fuel that does not comply with U.S. fuel standards. We think it likely therefore that Canada will harmonize with the U.S. revised engine standards and the fuel sulfur levels required to support those standards. This will offer vehicle owners the option of refueling with low-sulfur fuel there. Even if Canada were to lag the U.S. in mandating low-sulfur fuels, these fuels would likely become available along major through routes to serve the needs of U.S. commercial traffic that have the need to purchase it. In addition, there is less potential for U.S. commercial vehicles needing low-sulfur fuel to refuel in Canada because Canadian fuel is currently more costly than U.S. fuel. As a result, most vehicles owners will prefer to purchase fuel in the U.S., prior to entering Canada, whenever possible. This is facilitated by large tractor-trailer trucks that can have long driving ranges—up to 2,000 miles or so—and the fact that most of the Canadian population lives within 100 miles of the United States/Canada border.

In Mexico, the entrance of trucks beyond the border commercial zone has been prohibited since before the conclusion of the North American Free Trade Agreement in 1994. This prohibition applies in the U.S. as well, as entrance of trucks into the U.S. beyond the border commerce zone is also not allowed. Since these prohibitions are contrary to the intent of the Free Trade Agreement, a timetable was established to eliminate them.[168] However, these prohibitions are a point of contention between the U.S. and Mexico and remain in force at this time.

The NAFTA negotiations included creation of a "corridor" where commercial truck travel occurs, and where Mexico is obligated to provide "low-sulfur" fuel. At the time of the NAFTA negotiations, "low-sulfur" fuel was considered 500 ppm, which was the level needed to address the needs of engines meeting the 1994 emission standards. The travel prohibition currently in place may be lifted at some point. At that time, the issue of assuring, for U.S. vehicles, fuel with a sulfur level needed by the technology that results from this regulation may need to be addressed.

Even considering these mitigating factors, we believe it is reasonable to propose two additional measures with very minor costs to manufacturers and consumers. First, we are proposing a requirement that heavy-duty vehicle manufacturers notify each purchaser of a model year 2007 or later diesel-fueled vehicle that the vehicle must be fueled only with the low-sulfur diesel fuel meeting our regulations. We believe this requirement is necessary to alert vehicle owners to the need to seek out low-sulfur fuel when operating in areas such as Canada and Mexico where it may not be widely available. We are also proposing that model year 2007 and later heavy-duty diesel vehicles must be equipped by the manufacturer with labels on the dashboard and near the refueling inlet that say: "Ultra-Low Sulfur Diesel Fuel Only." We request comment on the need for these measures, alternative suggestions for wording, whether or not these requirements should exist for only a limited number of years, and whether any vehicles certified to the new standards without the need for low-sulfur fuel should be exempted. We also request comment on whether additional measures are needed to preclude misfueling, such as requiring that the new technology vehicles be equipped with refueling inlet restrictors that can only accept refueling nozzles from pumps that dispense low-sulfur fuel. We would also need to require that these pumps (or the high-sulfur fuel pumps) be correspondingly equipped with specialized nozzles or other devices to complement the vehicle refueling inlet restrictor.

I. Light-Duty Provisions

We are proposing that the heavy-duty vehicle labeling and purchaser notification requirements discussed in section VII.H be applied to the light-duty diesel vehicles certified to the final Tier 2 standards as well, because these vehicles are expected to require the low-sulfur fuel and so would be equally susceptible to misfueling damage.

J. Correction of NO_X Emissions for Humidity Effects

Engine-out emissions of NO_X are known to be affected significantly by the amount of moisture in the intake air. The water absorbs heat which lowers combustion temperatures, and thus lowers NO_X emissions. Our existing regulations include equations that give correction factors to eliminate this effect. For example, if the equation indicated that NO_X emissions measured on a relatively high humidity day would be about three percent lower than would be expected with standard humidity, they would be multiplied by 1.03 to correct them to standard conditions. However, these equations were developed many years ago, based on data from older technology engines. We are concerned that these equations may not be valid for engines equipped with catalytic emission controls. It is possible that with catalytic systems, the effect may be very different. Perhaps with these newer technologies, the effect will not be significant and correction factors will not be needed. Therefore, we are requesting comment regarding the accuracy of the existing equations for engines equipped with NO_X adsorbers, and the need for such correction factors for the 2007 standards. To the extent possible, your comments should address the broader issue of the need for correction factors for NO_X and other pollutants based on changing ambient conditions. This issue was also discussed in the October 29, 1999 proposal (64 FR 58472). You should read that discussion and the comments that we received in response to that proposal.

[168] See NAFTA, Volume II, Annex I, Reservations for Existing Measures and Liberalization Commitments, Pages I–M–69 and 70, and Pages I–U–19 and 20.

VIII. Requirements for Refiners, Importers, and Fuel Distributors

A. Compliance and Enforcement

1. Overview

The proposed rule would create a national, industry-wide sulfur cap standard for highway diesel fuel of 15 ppm. This standard could be enforced through sampling and testing at all points in the distribution system, combined with inspection of fuel delivery records and other commercial documents. The compliance requirements of this proposed rule would thus be very similar to the current diesel sulfur rule, except that the sulfur standard would be substantially more stringent.[169] Since the 15 ppm cap would be the maximum acceptable sulfur level at the retail level, pipelines might set more stringent refiner specifications to account for test variability and contamination. See section VIII.A.2 for a discussion of the refinery level standard and enforcement testing.

Under the proposed rule, all parties in the distribution system would continue to be subject to the current diesel fuel requirements and prohibitions concerning aromatics and cetane (40 CFR 80.29(a)). Furthermore, until the proposed implementation dates, all of the requirements and prohibitions of the presently effective diesel fuel control rule will remain in effect with the limited modification concerning sulfur test methods as discussed in section VIII.A.4.

Diesel fuel not covered by today's proposed rule includes that used for off-highway mobile source purposes such as aircraft, off-road machinery and equipment, locomotives, boats and marine vessels, and for stationary source purposes such as utilities (electrical power generation), portable generators, air compressors, steam boilers, etc. Also excluded is highway diesel fuel exported for sale outside the United States and its territories, and that specified for research and development subject to certain restrictions. Today's proposal would allow the use of used motor oil in pre-2007 model year and specially certified 2007 and later model year highway engines subject to certain restrictions (see section VIII.A.3.b).

[169] 40 CFR 80.29–80.30.

It should be noted that, while this preamble uses the common vernacular "highway diesel fuel," the terminology used in the proposed regulations refers to "motor vehicle diesel fuel" in order to be consistent with the definitions and authorities under the Clean Air Act (see sections 202(a), 211(c), and 216(2)). The definition of "motor vehicle diesel fuel" clarifies that nonroad engines and nonroad vehicles are not motor vehicles or motor vehicle engines. This is intended to clarify the definition. Diesel fuel that is available for use by both motor vehicles and engines and nonroad vehicles and engines would be treated as motor vehicle diesel fuel and still subject to the low sulfur diesel standard. For example, a diesel fuel pump used by nonroad equipment and motor vehicles must carry diesel fuel meeting the low sulfur diesel fuel requirements for motor vehicles.

2. What Are the Requirements for Refiners and Importers?

a. General Requirements

The sulfur sensitivity of emission controls on model year 2007 and later vehicles requires that the sulfur content of diesel fuel at the retail pump must not exceed 15 ppm (see section III). Thus, the proposed rule would require refiners and importers, and all other parties in the distribution system, to comply with the industry-wide sulfur cap standard of 15 ppm for all highway diesel fuel, unless specifically exempted (see sections VIII.A.6 and 7).

Under the proposed approach, there would be no published enforcement test tolerance. If an enforcement test tolerance were allowed, a more stringent refinery level sulfur standard would be required to ensure the proposed 15 ppm retail level cap is attained. We expect that the diesel fuel refining and distribution industry would establish appropriate upstream commercial specifications to ensure the 15 ppm standard is met downstream. These parties are in the best position to determine what the refinery level commercial specifications need to be, and they are in control of the means to achieve those specifications. Further, they may take advantage of improvements over time in testing precision and contamination prevention measures to adjust their operations to minimize costs. However, we recognize that because of concerns about test variability and contamination in the fuel distribution system, pipelines may set sulfur specifications that would be more stringent than the regulatory standard.[170]

As discussed below, we are not proposing that refiners or importers engage in mandatory sampling and testing of every batch of diesel fuel they produce or import under the proposed industry-wide sulfur cap program. However, if some approach is finalized other than what has been proposed, then every-batch testing by refiners and importers, and associated recordkeeping and reporting requirements, may be necessary.

b. Dyes and Markers

Under the federal tax code requirements and the current EPA diesel fuel rule, diesel fuel intended for highway use can generally be distinguished by its color from fuel intended for off-highway use.[171] The current EPA diesel fuel regulations, at 40 CFR 80.29(b), provides that any diesel fuel that does not show visible evidence of dye solvent red 164 (which has a characteristic red color in fuel) is considered to be available for use as diesel highway fuel and is subject to the requirements and prohibitions associated with diesel highway fuel. However, under the tax code, highway diesel fuel sold for certain tax exempt uses may also be dyed red. Therefore, some red-dyed diesel fuel is legal highway fuel under the EPA diesel fuel rule.

Diesel fuel for off-highway use would continue to be dyed red under today's proposal, except in Alaska (see section VI.C). We do not believe that any additional dye requirement is needed to enhance compliance or enforcement effectiveness of the proposed rule.

3. What Requirements Apply Downstream?

a. General Requirements

Due to the adverse effects of diesel fuel containing more than 15 ppm sulfur on model year 2007 and later vehicles, as discussed in section III, diesel fuel at all levels of the distribution system would be required to meet the 15 ppm standard. The proposed rule would stagger the implementation dates for compliance with the standard, based on a facility's position in the distribution system as a refiner, distributor, or retailer. As with other fuels programs, EPA enforcement personnel would sample and test for compliance with

[170] See section IV.D. regarding the anticipated sulfur level at the refinery gate necessary to accommodate variability in production, variability in the proposed sulfur measurement procedure (discussed in detail in section VII.A.), and contamination in the distribution system.

[171] See section 4082 of the Internal Revenue Code.

this downstream standard at all points in the distribution system. Under the proposed presumptive liability scheme, if a violation is found at any point in the distribution system, all parties in the distribution system for the fuel in violation are responsible unless they can establish a defense. See section VIII.A.8 regarding liability, penalty and defense provisions.

Under the proposed diesel sulfur program, it is imperative that distribution systems segregate highway diesel fuel from high sulfur distillate products such as home heating oil and nonroad diesel fuel. The sulfur content of those products is frequently as high as 3,000 ppm. Our concern extends to potential misfueling at retail outlets and wholesale purchaser-consumer facilities, even if segregation of the different grades of diesel fuel has been maintained in the distribution system.

Misfueling model year 2007 and later diesel vehicles with higher sulfur fuel could severely damage their emission controls and cause driveability problems. In order to discourage accidental misfueling of highway vehicles with higher sulfur distillates such as nonroad diesel fuel we are proposing that these fuel pumps be labeled. The proposed rule would require that retailers and wholesale purchaser-consumers selling or dispensing nonroad diesel fuel or other high sulfur distillates in addition to highway diesel fuel must label any dispensers of this higher sulfur fuel. The label would have to indicate that the fuel is high sulfur and state that the fuel is illegal for use in motor vehicles.

All parties in the distribution system would be subject to prohibitions against selling, transporting, storing, or introducing or causing or allowing the introduction of diesel fuel having a sulfur content exceeding 15 ppm into highway diesel vehicles. Certain product transfer document (PTD) information requirements would apply to all parties in the distribution system. See section VIII.A.5.

b. Use of Used Motor Oil in Diesel-Fueled New Technology Vehicles

We are aware of the practice of disposing of used motor oil by blending it with diesel fuel for use as fuel in diesel vehicles. Such practices range from dumping used motor oil directly into the vehicle fuel tank, to dumping it into the fuel storage tanks, to blending small amounts of motor oil from the vehicle crank case into the fuel system as the vehicle is being operated. To the extent such practices could cause vehicles to exceed their emissions standards, the person blending the oil, or causing or permitting such blending, could be considered to be rendering emission controls inoperative in violation of section 203 of the CAA and potentially liable for a civil penalty.[172]

With today's proposal our concerns with this practice are increased considerably. Today's formulations of motor oil contain very high levels of sulfur. Depending on how the oil is blended, it could increase the sulfur content of the fuel burned in the vehicle by as much as 200 ppm. As discussed elsewhere in this notice, we believe this practice would render inoperative not only the emission control technology on the vehicle, but potentially render the vehicle undriveable as well. Therefore, in today's notice we are proposing to prohibit any person from introducing or causing or allowing the introduction of used motor oil, or diesel fuel containing used motor oil, into the fuel delivery systems of vehicles manufactured in model year 2007 and later. The only exception to this would be where the engine is explicitly certified to the emission standard with oil added, the oil is added in a manner consistent with the certification, and the sulfur level of the oil is representative of commercially available oils. Today's proposal would not change existing requirements regarding the use of used motor oil in pre-2007 model year engines. However, the proposal would prevent the addition of used oil to diesel fuel prior to its introduction into the vehicle fuel tank. We request comment on this proposal, and in particular on whether an additional constraint can or should be placed on the sulfur content of motor oil to preclude the possibility that vehicle exhaust emission control technology would not be adversely impacted should used motor oil be added to a vehicle's fuel tank.

c. Use of Kerosene and Other Additives in Diesel Fuel

We are aware that kerosene is commonly added to diesel fuel to reduce fuel viscosity in cold weather. Other additives are added to diesel fuel for various purposes, including viscosity, lubricity, and pour point. We are not proposing to limit this practice. However under today's proposal, additives used in highway diesel fuel would be required to meet the same 15 ppm standard proposed for highway diesel fuel. To help ensure this, we are proposing that kerosene or other additives meeting the 15 ppm standard, and distributed for use in motor vehicles would be required to be accompanied by PTDs accurately stating that the additive meets the 15 ppm standard. As an alternative for such additives sold in cans or other containers, the required sulfur content identification could be posted on the container itself. This identification would be necessary to allow downstream parties to be able to determine if additives such as kerosene meet the required 15 ppm sulfur limit. Any party who blends high sulfur additives into highway diesel fuel, uses such additives as highway diesel fuel, or who causes highway diesel fuel to exceed the standard due to the addition of kerosene or other additives, would be subject to liability for violating the rule. We are requesting comment on this proposal and any alternative that would inform transferees of diesel fuel additives of the appropriateness of their use in highway diesel fuel.

We are not proposing that refiners or importers of kerosene or other additives which could be used in highway diesel fuel, would have an affirmative duty to produce additives that meet the proposed 15 ppm sulfur standard. This is because we believe that refiners will produce low sulfur kerosene, for example, in the same refinery processes that produce low sulfur diesel fuel, and that the market will drive supply of low sulfur kerosene for those areas and seasons where the product is needed for blending with highway diesel fuel. We request comment on whether there should be an affirmative requirement for refiners or terminals to supply low sulfur kerosene or whether all number one kerosene should be required to meet the 15 ppm sulfur standard.

We also request comment on whether additives not meeting the 15 ppm sulfur cap should be allowed to be added to diesel fuel downstream in de minimis amounts, and if so, how such a program could be structured to ensure that the additives would not cause the 15 ppm sulfur cap to be exceeded. In addition we request comment on whether any regulatory constraint at all need be placed on the sulfur level of diesel additives, and whether instead the liability mechanisms contained in this proposal are sufficient to protect against downstream parties adding additives to diesel fuel that would cause the fuel delivered to consumers to exceed the cap.

4. What Are the Proposed Testing and Sampling Methods and Requirements?

a. Testing Requirements and Test Methods

We do not believe an every-batch testing requirement for refiners and importers is necessary under the proposed rule. This is primarily because refiners will likely voluntarily test every batch of fuel produced to ensure it meets the 15 ppm sulfur standard, and because pipeline operators will require test results before agreeing to ship low sulfur highway diesel fuel. However, we are proposing to designate a test method that would be used as the benchmark for all compliance testing. We are requesting comment on whether every-batch testing should be required in light of the requirement (discussed in section VIII.A.5) for refiners to issue PTDs stating that the product meets the applicable sulfur standard.

We propose to designate ASTM D 2622–98 with the minor modification discussed below as the benchmark test method for quantifying the sulfur content of diesel fuel for compliance determination. We are also proposing that this test method would be the benchmark method to determine compliance under the current sulfur control regulations. This method is an updated version of the designated method under the current highway diesel fuel rule. This test method is currently in wide use by refiners and laboratories both for gasoline and diesel testing. This method does not currently include test repeatability or reproducibility information for diesel fuel having a sulfur content below 60 ppm.[173] Nevertheless, in EPA's review of the test method, we believe that when applied to low sulfur diesel fuel with the proposed modification, the method has acceptable precision at sulfur levels below 15 ppm.

We have had success in improving the precision of the ASTM D 2622–98 procedure in measuring low levels of diesel fuel sulfur through a simple modification of the calibration method. This modification includes two small changes. The first is the substitution of a measurement blank that more closely resembles the boiling point range and density of diesel fuel. The second is a change to the calibration line to ensure that it goes through zero. This modification is detailed in the proposed regulatory text. Using this modification, we have had success in the correlation of test results with industry laboratories on samples with sulfur content in the range of 1 to 20 ppm. We will continue to investigate the proposed modification to the ASTM D 2622–98 procedure. Based on current information, we believe that lab-to-lab reproducibility can be limited to a maximum of +/−4 ppm at sulfur levels in the 1–20 ppm range. We do not anticipate that this modification will add appreciably to the cost of sulfur testing.

We are requesting comments on performance data for diesel fuel analysis using ASTM D 2622 at sulfur levels below 60 ppm, on additional modifications to the procedure which might be needed to limit variability, and on the cost of such modifications. Specifically, comment is requested on whether only end-window type scanning instruments should be used because additional variability is introduced through the use side-window type instruments.[174] If the use of side-window type scanning instruments must be disallowed, comment is requested on the extent such instruments are used and on the cost of changing them to an end-window configuration.

While we are proposing to designate the modified ASTM D 2622–98 procedure as the designated test method, we do not believe that such designation should preclude regulated parties from using alternative methods that afford them sufficient confidence that they are demonstrably in compliance. Therefore, we are proposing that alternative methods may be used for quality assurance purposes provided that the proper correlation is established between the alternative method and the benchmark method.[175] Since EPA enforcement testing would be conducted using the modified ASTM D 2622 procedure, parties would need to have considerable confidence in any alternative methods they may use. We believe that for quality assurance testing, an approach that could provide more flexibility and potentially save costs for industry would be to allow other appropriate ASTM test methods, so long as they are conducted properly and the results correlate to the designated method. Although these test results could be used by the government to demonstrate noncompliance, this should not be a substantial concern since any test result that demonstrates noncompliance should lead to appropriate action on the part of the regulated party, as would a test result from the use of the designated method. We seek comment on this approach.

EPA's proposed designation of the modified ASTM D 2622–98 procedure is based on a review of currently available methods. Should superior methods be developed in the future, EPA will certainly consider an orderly process of redesignation to take advantage of newer technologies.

One commenter to the ANPRM stated that ASTM D 2622 may not be suitable for determining the sulfur content of biodiesel. We request comment on whether ASTM D 2622–98 is appropriate for determining the sulfur content of biodiesel, or mixtures of biodiesel and conventional diesel fuel, and if not, what test methods are appropriate, and any data supporting these conclusions.

We are also proposing a test method for the determination of sulfur in motor oil, since that may be relevant if any engine manufacturers choose to certify engines with the addition of motor oil to the fuel. The test method we are proposing is ASTM D 4927–96, Standard Test Methods for Elemental Analysis of Lubricant and Additive Components—Barium, Calcium, Phosphorus, Sulfur, and Zinc by Wavelength-Dispersive Fluorescence Spectroscopy. This method uses the same apparatus as D 2622–998, but includes specific methodology to compensate for interferences caused by the additives present in motor oil. We request comment on this test method.

b. Sampling Methods

We are proposing the use of sampling methods that were proposed for use in the Tier 2/gasoline sulfur rule.[176] These proposed sampling methods are ASTM D 4057–95 (manual sampling) and D 4177–95 (automatic sampling from pipelines/in-line blending). We are proposing to require the use of these ASTM methods instead of the methods currently provided in 40 CFR part 80, appendix G, for determining compliance under both the newly proposed 15 ppm sulfur standard, and the 500 ppm standard currently in place. That is because the proposed methods have been updated by ASTM, and the

[172] Section 203(a)(3) of the Act, 42 U.S.C. 7522(a)(3)

[173] Repeatability is defined by ASTM as the difference between two test results, obtained by the same operator with the same apparatus under constant operating conditions on identical test material, that would, in the long run, in the normal and correct operation of the test method, be exceeded only in one case in twenty. Reproducibility is defined by ASTM as the difference between two single and independent results obtained by different operators working in different laboratories on identical test materials that would, in the long run, in the normal and correct operation of the test method, be exceeded only in one case in twenty.

[174] Side-window vs end-window refers to the location of the sample cup.

[175] EPA is preparing to propose, in another action, a set of criteria by which alternative methods for measuring fuel parameters may be evaluated and controlled in practice. We are not proposing to prescribe these criteria and statistical quality control methods in this rulemaking, but suggest that their use will enhance the credibility of measurements made with alternative methods and offered in situations where testing is necessary to establish a defense.

[176] 64 FR 26004, at 26098 (May 13, 1999). These methods are also proposed for use under the RFG and CG rules. See 62 FR 37337 (July 11, 1997).

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updates have provided clarification and have eliminated certain requirements that are not necessary for sampling petroleum products such as diesel fuel.

5. What Are the Proposed Recordkeeping Requirements?

We are proposing that refiners and importers provide information on commercial PTDs that identify diesel fuel for highway use and that it complies with the 15 ppm sulfur standard (unless exempted). We believe this additional information on commercial PTDs is necessary because of the importance of avoiding commingling of high sulfur distillate products with highway diesel fuel. It is proposed that all parties in the distribution chain, from the refiner or importer to the retailer or wholesale purchaser-consumer would be required to retain copies of these PTDs for a period of 5 years. This is the same period of time required in other fuels rules, and it coincides with the applicable statute of limitations. We believe that for other reasons, most parties in the distribution system would maintain such records for this length of time even without the requirement.

We are proposing that the current diesel rule's PTD requirement regarding the identification of dyed, tax-exempt highway diesel fuel would be retained. This provision is useful for wholesale purchaser-consumers who need to know that the tax exempt highway use despite the presence of red dye. We are also proposing that product codes may be used to convey the information required to be included in PTD's, for all parties except for transfers to truck carriers, retailers or wholesale purchaser-consumers. This provision is consistent with other fuel programs. However, we are seeking comment on also allowing product codes to be used for transfers to truck carriers, retailers or wholesale purchaser-consumers.

We are proposing that records of any test results performed by any regulated party for quality assurance purposes or otherwise, must be maintained for 5 years, along with supporting documentation such as date of sampling and testing, batch number, tank number, and volume of product. Also, business records regarding actions taken in response to any violations discovered would be required to be maintained.

As noted above, we are also proposing that commercial PTDs for kerosene or other products sold for blending into highway diesel fuel must indicate that the product meets the 15 ppm federal sulfur standard for use in diesel motor vehicles. We believe that such PTDs are already a part of normal business practices and therefore such a requirement would add little if any burden. We invite comment on this proposal.

Given the importance of avoiding highway diesel fuel sulfur contamination under today's proposed rule, we are also concerned that additional measures may be needed to assure off-highway distillates are not commingled with, or used as, highway diesel fuel. Such high sulfur products could easily raise the sulfur level of low sulfur highway diesel fuel, and damage emission controls on new vehicles and cause driveability problems. Therefore, we request comment on whether shipment of distillate products such as nonroad diesel fuel and home heating oil should be required to be accompanied by PTDs stating that the products do not meet highway diesel standards and are illegal for use in highway vehicles.

6. Are There Any Proposed Exemptions Under This Subpart?

We are proposing to exempt from the sulfur requirements diesel fuel used for research, development, and testing purposes. We recognize that there may be legitimate research programs that require the use of diesel fuel with higher sulfur levels than allowed under today's proposed rule. As a result, today's proposal contains provisions for obtaining an exemption from the prohibitions for persons distributing, transporting, storing, selling, or dispensing diesel fuel that exceeds the standards, where such diesel fuel is necessary to conduct a research, development, or testing program.

Under the proposal, parties would be required to submit to EPA an application for exemption that would describe the purpose and scope of the program and the reasons why the use of the higher-sulfur diesel fuel is necessary. Upon presentation of the required information, the exemption would be granted at the discretion of the Administrator, with the condition that EPA could withdraw the exemption ab initio in the event the Agency determines the exemption is not justified. Fuel subject to this exemption would be exempt from the other provisions of this subpart, provided certain requirements are met. These requirements include such conditions as the segregation of the exempt fuel from non-exempt highway diesel fuel, identification of the exempt fuel on product transfer documents, and the replacement, repair, or removal from service of emission systems damaged by the use of the high sulfur fuel.

We believe that the proposal includes the least onerous requirements for industry that also would ensure that higher-sulfur diesel fuel would be used only for legitimate research purposes. We request comment on these proposed provisions.

We are requesting comment on the need to provide an exemption from the sulfur content and other requirements of this proposal for diesel fuel used in racing vehicles. We see no advantage to racing vehicles for having fuel with higher sulfur levels (or lower cetane or higher aromatic levels) than would be required by today's proposal. Conversely, we are concerned about the potential for misfueling that could result from having a racing fuel with higher sulfur in the marketplace that would be intended for use only in racing or competition versions of highway vehicles. Consequently, we are not proposing that diesel fuel used in racing vehicles be exempted from the diesel fuel requirements proposed today. We request comment on this decision and whether an exemption should be allowed for racing diesel fuel.

7. Would California Be Exempt From the Rule?

Although California is currently considering diesel fuel regulations, we do not propose to exempt California from the federal rule at this time.[177] California has received an exemption from certain compliance related provisions under the Federal reformulated gasoline (RFG) program, on the grounds that California has implemented a program in covered areas that meets or exceeds Federal RFG standards and because the California ARB has sufficient resources and authority to enforce the program to ensure equivalent environmental benefits are realized. These exemptions cover such enforcement provisions as recordkeeping, reporting, and test methods. California gasoline is not exempted from the standards for Federal RFG or conventional gasoline. See 40 CFR 80.81. We have also proposed full exemption for California from the proposed gasoline sulfur standards and other provisions of that rule because California has an effective gasoline sulfur program that is different from the proposed federal rule. Although it would be premature to grant similar exemptions to the California low-sulfur diesel program at this time, EPA may revisit the issue of enforcement exemptions when such action is timely, and we invite public comment on this approach. Exemptions for other states and territories are discussed in section VI.C.

[177] On November 10, 1998, The California ARB held a workshop to comply with the Governor's Executive Order W–144–97. At that workshop the ARB discussed the possibility of amending Title 13 of the California Code of Regulations, Section 2281, "Sulfur Content of Diesel Fuel." Under that section, California currently enforces a 500 ppm sulfur standard for highway diesel fuel. The ARB is considering a diesel fuel standard that may be as stringent as, or more stringent than, the standard we are proposing today.

8. What Are the Proposed Liability and Penalty Provisions for Noncompliance?

Today's proposed rule contains provisions for liability and penalties that are similar to the liability and penalty provisions of the other EPA fuels regulations. Under the proposed rule, regulated parties would be liable for committing certain prohibited acts, such as selling or distributing diesel fuel that does not meet the sulfur standards, or causing others to commit prohibited acts. In addition, parties would be liable for a failure to meet certain affirmative requirements, or causing others to fail to meet affirmative requirements. All parties in the diesel fuel distribution system, including refiners, importers, distributors, carriers, retailers, and wholesale purchaser-consumers, would be liable for a failure to fulfill the recordkeeping requirements and the PTD requirements.

a. Presumptive Liability Scheme of Current EPA Fuels Programs

All EPA fuels programs include a presumptive liability scheme for violations of prohibited acts. Under this approach, liability is imposed on two types of parties: (1) The party in the fuel distribution system that controls the facility where the violation was found or had occurred; and (2) those parties, typically upstream in the fuel distribution system from the initially listed party, (such as the refiner, reseller, and any distributor of the fuel), whose prohibited activities could have caused the program non-conformity to exist.[178] This presumptive liability scheme has worked well in enabling us to enforce our fuels programs, since it creates comprehensive liability for substantially all the potentially responsible parties. The presumptions of liability may be rebutted by establishing an affirmative defense.

To clarify the inclusive nature of these presumptive liability schemes, today's proposed rule would explicitly include causing another person to commit a prohibited act and causing the presence of non-conforming diesel fuel (or kerosene or other additives for motor vehicle use) to be in the distribution system as prohibitions. This is consistent with the provisions and implementation of other fuels programs.

Today's proposed rule, therefore, provides that most parties involved in the chain of distribution would be subject to a presumption of liability for actions prohibited, including causing non-conforming diesel fuel to be in the distribution system and causing violations by other parties. Like the other fuels regulations, a refiner also would be subject to a presumption of vicarious liability for violations by any downstream facility that displays the refiner's brand name, based on the refiner's ability to exercise control at these facilities. Carriers, however, would be liable only for violations arising from product under their control or custody, and not for causing non-conforming diesel fuel to be in the distribution system, except where specific evidence of causation exists.

b. Affirmative Defenses for Liable Parties

The proposal includes affirmative defenses for each party that is deemed liable for a violation, and all presumptions of liability are refutable. The proposed defenses are similar to the defenses available to parties for violations of the RFG regulations. We believe that these defense elements set forth reasonably attainable criteria to rebut a presumption of liability. The defenses include a demonstration that: (1) The party did not cause the violation; (2) the party has PTDs indicating that the fuel was in compliance at its facility; and (3) except for retailers and wholesale purchaser-consumers, the party conducted a quality assurance program. For parties other than tank truck carriers, the quality assurance program would be required to include periodic sampling and testing of the diesel fuel. For tank truck carriers, the quality assurance program would not need to include periodic sampling and testing, but in lieu of sampling and testing, the carrier would be required to demonstrate evidence of an oversight program for monitoring compliance, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records concerning diesel fuel quality and delivery.

As in the other fuels regulations, branded refiners would be subject to more stringent standards for establishing a defense because of the control such refiners have over branded downstream parties. Under today's rule, in addition to the other presumptive liability defense elements, branded refiners would be required to show that the violation was caused by an action by another person in violation of law, an action by another person in violation of a contractual agreement with the refiner, or the action of a distributor not subject to a contract with the refiner but engaged by the refiner for the transportation of the diesel fuel.

Based on experience with other fuels programs, we believe that a presumptive liability approach would increase the likelihood of identifying persons who cause violations of the sulfur standards. We normally do not have the information necessary to establish the cause of a violation found at a facility downstream of the refiner or importer. We believe that those persons who actually handle the fuel are in the best position to identify the cause of the violation, and that a refutable presumption of liability would provide an incentive for parties to be forthcoming with information regarding the cause of the violation. In addition to identifying the party that caused the violation, providing evidence to rebut a presumption of liability would serve to establish a defense for the parties who are not responsible. Presumptive liability is familiar to both industry and to EPA, and we believe that this approach would make the most efficient use of EPA's enforcement resources. For these reasons, we are proposing a liability scheme for the diesel fuel sulfur program based on a presumption of liability. We request comment on the proposed liability provisions.

c. Penalties for Violations

Section 211(d)(1) of the CAA provides for penalties for violations of the fuels regulations.[179] Today's rule proposes penalty provisions that would apply this CAA penalty provision to the diesel fuel sulfur rule. The proposal would subject any person who violates any requirement or prohibition of the diesel fuel sulfur rule to a civil penalty of up

[178] An additional type of liability, vicarious liability, is also imposed on branded refiners under these fuels programs.

[179] Section 211(d)(1) reads, in pertinent part: "(d)(1) Civil Penalties.—Any person who violates . . the regulations prescribed under subsection (c) . . of this section . . shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of such violation and the amount of economic benefit or saving resulting from the violation. . . . Any violation with respect to a regulation prescribed under subsection (c). . . of this section which establishes a regulatory standard based upon a multi-day averaging period shall constitute a separate day of violation for each and every day in the averaging period. . . . " Pursuant to the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note), the maximum penalty amount prescribed in section 211(d)(1) of the CAA was increased to $27,500. (See 40 CFR part 19.)

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to $27,500 for every day of each such violation and the amount of economic benefit or savings resulting from the violation. A violation of a sulfur cap standard would constitute a separate day of violation for each day the diesel fuel giving rise to the violation remains in the diesel fuel distribution system. The length of time the diesel fuel in question remains in the distribution system would be deemed to be twenty-five days unless there is evidence that the diesel fuel remained in the diesel fuel distribution system for fewer than or more than twenty-five days. The penalty provisions proposed in today's rule are similar to the penalty provisions for violations of the RFG regulations and the Tier 2 gasoline sulfur rule. EPA requests comment on these provisions.

9. How Would Compliance with the Diesel Sulfur Standards Be Determined?

We have often used a variety of evidence to establish non-compliance with the requirements imposed under our current fuels regulations. Test results of the content of diesel fuel or gasoline have been used to establish violations, both in situations where the sample has been taken from the facility at which the violation occurred, and where the sample has been obtained from other parties' facilities when such test results have had probative value of the fuel's characteristics at points upstream or downstream. The Agency has also commonly used documentary evidence to establish non-compliance or a party's liability for non-compliance. Typical documentary evidence has included PTDs identifying the fuel as inappropriate for the facility it is being delivered to, or identifying parties having connection with the non-complying fuel.

We propose that compliance with the sulfur standards would be determined based on the sulfur level of the diesel fuel, as measured using the regulatory testing method. We further propose that any evidence from any source or location could be used to establish the diesel fuel sulfur level, provided that such evidence is relevant to whether the sulfur level would have been in compliance if the regulatory sampling and testing methodology had been correctly performed.

Compliance with the standard would be determined using the specified sampling and test methodologies. While other information could be used, including test results using different test methods, such other information may only be used if it is relevant to determining whether the sulfur level would meet the standard had compliance been properly measured using the specified test method. The proposal would establish the regulatory test method as the benchmark against which other evidence is measured. EPA intends to use the regulatory test method for enforcement testing purposes.

Today's proposal is consistent with the approach adopted in the Tier 2 gasoline sulfur rule (65 FR 6698, February 10, 2000). EPA intends to undertake rulemaking in the near future to revise the current fuels regulations to include the same language for the use of other evidence as is proposed today. We seek comment on this approach.

The proposed rule would also clarify that any probative evidence obtained from any source or location may be used to establish non-compliance with requirements other than the sulfur standard, such as recordkeeping requirements, as well as to establish which parties have facility control or some other basis for liability for sulfur rule noncompliance. Since proof of these elements is not predicated on establishing sulfur levels, whether or not regulatory test methods are used is not significant. EPA is seeking comment on this approach for monitoring and determining compliance with the applicable requirements.

To ensure the effectiveness and the ability to adequately enforce the sulfur standards, it is reasonable for EPA to consider evidence other than actual test results using the regulatory test method, where such evidence can be related to the test results. As described above, test results using the regulatory test method are often not available. In such circumstances, it is reasonable to consider other evidence of compliance, such as test results using other methods or commercial documents, if such evidence can be shown to be relevant to determining whether the diesel fuel would meet the standard if tested using the regulatory methods. The proposal would only permit the use of other evidence that is relevant to such a determination, and is therefore reasonably limited to allow for effective enforcement, without creating uncertainty about compliance.

B. Lubricity

We strongly encourage, but do not believe it necessary to require, fuel producers and distributors to voluntarily monitor and provide diesel fuel with lubricity characteristics at least as good as those of current fuel. We believe this voluntary action is reasonable and has a high likelihood of success, because the issues surrounding the impact of sulfur reduction on lubricity are well established. Refiners and distributors have an incentive to supply fuel products that will not damage or create problems with consumer equipment. For a further discussion of diesel fuel lubricity, and why we believe a voluntary approach will be effective, please refer to the earlier discussion in section IV.D.6. We request comment on this approach, on whether or not a regulatory requirement is needed, and on whether there are concerns unique to the military.

C. Would States Be Preempted from Adopting Their Own Sulfur Control Programs for Highway Diesel Fuel?

When we adopt federal fuel standards, states are preempted from adopting state-level controls with respect to the same fuel characteristics or components. Section 211(c)(4)(A) of the CAA prohibits states from prescribing or attempting to enforce controls or prohibitions respecting any fuel characteristic or component if EPA has prescribed a control or prohibition applicable to such fuel characteristic or component under section 211(c)(1) of the Act. This preemption applies to all states except California, as explained in section 211(c)(4)(B) of the Act. For states other than California, the Act provides two mechanisms for avoiding preemption. First, section 211(c)(4)(A)(ii) creates an exception to preemption for a state prohibition or control that is identical to a prohibition or control adopted by EPA. Second, a state may seek EPA approval of a SIP revision containing a fuel control measure, as described in section 211(c)(4)(C) of the Act. EPA may approve such a SIP revision, and thereby "waive" preemption, only if it finds the state control or prohibition "is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements."

When we adopted the current diesel fuel sulfur standards pursuant to our authority under section 211(c)(1) of the Act in 1990, States were preempted from also doing so under the provisions of section 211(c)(4)(A). The diesel sulfur standards proposed today merely modify the existing standards and as a result do not initiate any new preemption of State authority. The provisions of this proposal would merely continue the already existing State preemption provisions with respect to highway diesel fuel sulfur.

D. Refinery Air Permitting

Prior to making diesel desulfurization changes, some refineries could be required to obtain a preconstruction permit, under the New Source Review (NSR) program, from the applicable state/local air pollution control agency.[180] We believe that today's proposal provides sufficient lead time for refiners to obtain any necessary NSR permits well in advance of the proposed compliance date. For the recently promulgated gasoline sulfur control program, refiners had expressed concerns that permit delays might impede their ability to meet compliance dates. EPA committed to undertake several actions to minimize the possibility of any delays for refineries obtaining major NSR permits for gasoline desulfurization projects. These actions include providing federal guidance on emission control technologies and the appropriate use of motor vehicle emission reductions (resulting from the use of low sulfur fuel), where available, as emission offsets, as well as forming EPA permit teams to assist states in quickly resolving issues, where needed. These three items are discussed in more detail in the Tier 2 final rule and interested parties should refer to that discussion for additional details regarding permitting considerations in the gasoline sulfur program (see 65 FR 6773, Feb. 10, 2000).

However, given that the proposed diesel sulfur program would provide several more years of lead time than was provided under the gasoline sulfur program, refiners should have ample time to obtain any necessary preconstruction permits. As we learned in finalizing the gasoline sulfur program, state/local permitting agencies are prepared to process refinery permits within the needed time frames, so long as refiners begin discussing potential permit issues with them early in the process and submit their permit applications in a timely manner. EPA believes that this will be the case for diesel fuel. We request comment on the interaction of this proposed rule and the permitting process and whether the permitting approaches discussed in the Tier 2 final rule should be continued, and if necessary updated, to assist refineries in obtaining any necessary permits for refinery diesel desulfurization changes.

[180] Hydrotreating diesel fuel involves the use of process heaters, which have the potential to emit pollutants associated with combustion, such as NO_X, PM, CO and SO2. In addition, reconfiguring refinery processes to add desulfurization equipment could increase fugitive VOC emissions. The emissions increases associated with diesel desulfurization will vary widely from refinery to refinery, depending on many source-specific factors, such as crude oil supply, refinery configuration, type of desulfurization technology, amount of diesel fuel produced, and type of fuel used to fire the process heaters.

E. Provisions for Qualifying Refiners

As explained in the Regulatory Flexibility Analysis discussion in section XI.B of this document, we have considered the impacts of these proposed regulations on small businesses. As part of this process, we convened a Small Business Advocacy Review Panel (Panel) for this proposed rulemaking, as required under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Panel was charged with reporting on the comments of small business representatives regarding the likely implications of possible control programs, and to make findings on a number of issues, including:

- A description and estimate of the number of small entities to which the proposed rule would apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule;
- An identification of other relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and
- A description of any significant alternatives to the proposed rule that accomplish the objectives of the proposal and that may minimize any significant economic impact of the proposed rule on small entities.

The Panel's final report is available in the docket. In summary, the Panel concluded that small refiners would likely be directly affected by the proposed program.

In addition, the Panel concluded that small diesel distributors and retailers also would likely be directly affected by the fuel program's compliance requirements, but that under the approach we are proposing today these requirements would pose minimal burden. Therefore, the Panel did not recommend any regulatory relief for this group of small businesses under the program proposed today.

We understand that the proposed low sulfur standards will require significant economic investment by the refining industry. We also recognize that refineries owned by small businesses could experience more difficulty in complying with the proposed standards on time because, as a group, they have less ability to raise capital necessary for desulfurization investments, face proportionately higher costs due to economies of scale, and may be less successful in competing for limited construction and engineering resources. Some of the small refiners with whom we and the Panel met indicated their belief that, because of the extreme level of economic hardship their businesses would face in meeting the new standards, their businesses might close without additional time to comply or certain flexibility alternatives. The Panel recommended that EPA seek comment on various flexibilities that potentially could alleviate the burden on small refiners.

Upon evaluating the potential impacts of our proposed diesel sulfur requirements on small refiners and careful review of the Panel's recommendations, we are seeking comment on three approaches that could provide flexibility for small refiners. We believe that these approaches could provide meaningful flexibility for small refiners in meeting the proposed standards, although we do have concerns that certain approaches, to varying extents, may compromise the environmental benefits of the program (as discussed below), while still ensuring that the vast majority of the program is implemented as expeditiously as practical in order to achieve the air quality benefits sooner. Therefore, we invite comment on the appropriateness of any or all of these approaches in light of the environmental goals, the relative usefulness in allowing additional time and flexibility for small refiners to comply with the proposed low sulfur targets, and information and ideas on appropriate implementation mechanisms. These approaches are summarized in subsection 1 below.

Elsewhere, in section VI, we seek comment on various alternatives for phasing in the fuel program. Some small refiners have commented that some form of a phase-in approach could potentially mitigate the hardship they would experience under the proposed fuel standards. (See the discussion in section VI for a discussion of the potential impacts of a phase-in approach on entities in the distribution system).

In addition to considering the following flexibility approaches for small refiners, we are interested in exploring appropriate flexibility options for farmer cooperatives. There are currently four refiner co-ops, yet only one meets SBA's definition of a small business. The farmer cooperatives have expressed concern that they have the same difficulty as small refiners in obtaining access to capital for desulfurization investments. Farmers are both the customer and the member owner of their cooperatives. Because cooperatives do not have an investor/stockholder form of ownership, they are

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not able to access equity markets that provide capital to larger refiners. The added costs of financing projects through traditional loans is eventually borne by farmers. The refiner co-ops have also expressed concern that the highway diesel sulfur program could result in higher fuel prices for farmers, and could potentially reduce refining capacity and diesel fuel supply in rural America. To help address these concerns, we are requesting comment on the following flexibility approaches for farmer cooperatives as well. We also seek comment on other appropriate flexibility approaches for farmer cooperatives that may have merit.

1. Allow Small Refiners to Continue Selling 500 ppm Highway Diesel

First, we are seeking comment on an option for small refiner flexibility that would allow small refiners to continue selling their current 500 ppm highway diesel, provided there are adequate safeguards to prevent contamination and misfueling. This option would effectively delay the ultra-low sulfur compliance date for small refiners, and allow them to continue selling their current fuel to the highway diesel market. Under this approach, retailers would not have an availability requirement; rather, retailers would be free to choose to sell only 500 ppm fuel (from small refiners), only ultra-low sulfur fuel, or both.

During the Panel process, small refiners expressed varying views on this flexibility approach. At least one small refiner supported this option, while others expressed the concern that they would not be able to find markets for the 500 ppm fuel once large refiners begin producing exclusively ultra-low sulfur highway diesel (*i.e.*, as soon as the rule were implemented). Those small refiners doubtful of continued 500 ppm markets think it is unlikely that retailers would either continue to sell only 500 ppm diesel instead of ultra-low sulfur, or that retailers would make the investments to market both grades. Their key assumption is that there would be no price differential between the ultra-low sulfur fuel and the 500 ppm fuel and, thus, no incentive for marketers to want the "old" fuel. Small refiners noted that, although ultra-low sulfur fuel would be more costly to produce than the current grade, vertically integrated refiners with control over the marketing of their refinery products would have incentives to price below cost in order to eliminate the potential for niche markets that would be of value to any small refiners seeking to avail themselves of this flexibility option. Small diesel distributors and retailers commented that marketers also don't anticipate a price differential, but acknowledged that a market for small refiner's 500 ppm likely would last as long as there were a price differential. Nevertheless, most small refiners with whom we and the Panel met strongly supported this option, largely because it potentially could benefit at least a few small refiners. At the same time, they believed it should not be the only flexibility option provided for small refiners. We believe that seeking public comment on this option will give all small refiners an opportunity to continue exploring the extent of potential markets for the 500 ppm fuel, and thus, the potential viability of this flexibility option.

We also request comment on an appropriate duration for this option. We seek comment on the need for, and appropriateness of, an unlimited exemption, as well as whether such an exemption should be limited to a specific timeframe (*e.g.*, two years, ten years, etc.). We note that by limiting this flexibility to two years, for example, during which time the new vehicle fleet would still be relatively small, the potential for misfueling would be minimized. We also question how long this flexibility option may remain viable, since many small refiners commented during the Panel process that they do not expect markets for the 500 ppm fuel to remain after larger refiners begin producing exclusively ultra-low sulfur fuel. Nevertheless, we request comment on the need for, and potential impacts of, a longer exemption. A longer duration for this flexibility option would give participating refiners more time to stagger their diesel desulfurization investments. The number of vehicles potentially affected by misfueling or contamination would still be fairly limited under this approach, since small refiners produce only approximately four percent of all the highway diesel fuel produced in the U.S. Moreover, the potential for misfueling would be further limited because most small refiners distribute highway diesel in a fairly local area. (Some small refiners, however, distribute a portion of their diesel fuel outside their local area via pipeline or barge. See further discussion below about the potential need to prohibit pipeline/barge shipments of 500 ppm highway diesel under this option). An unlimited exemption would allow the market to determine the duration of flexibility provided to small refiners. There would be diminishing returns to small refiners from such an option over time, as a growing portion of the vehicle miles traveled would be from vehicles with emission control devices requiring ultra-low sulfur, and so small refiners would eventually switch over to producing low sulfur highway diesel fuel.

To ensure that this flexibility option would not compromise the expected environmental benefits of today's proposal, there would have to be certain safeguards with refiners as well as downstream parties to prevent contamination of the ultra-low sulfur fuel, and to prevent misfueling of new vehicles. We seek comment on how best to prevent misfueling and contamination of the ultra-low sulfur fuel under this approach for small refiner flexibility. Specifically, we request comment on the following measures to prevent misfueling and contamination:

- Small refiners could make an initial demonstration to EPA of how they would ensure the fuel remains segregated through the distribution system to its end use.
- Small refiners could be prohibited from distributing 500 ppm highway diesel via pipeline or barge. As the fuel is piped or barged to locations further from the refinery, it would likely become more difficult to ensure proper segregation and labeling. We have learned through the Panel process that most small refiners distribute highway diesel in a fairly local area; it appears that only a few small refiners distribute highway diesel via pipeline or barge. All small refiners (even those that distribute highway diesel via pipeline or barge) also distribute fuel to the local area, which should provide adequate potential markets for the 500 ppm fuel. This provision may be less necessary in the context of a broader program, such as the approaches discussed in section VI.A.
- There could be some general requirements on any entities carrying the fuel downstream of the refiner, such as a condition to keep the fuel segregated and maintain records (e.g., product transfer documents).
- Retailers who choose to sell the 500 ppm fuel could be required to label pumps, clearly indicating that the fuel is higher sulfur and should not be used in new (*e.g.*, 2007 model year or later) diesel vehicles.

We also seek comment on how to best prevent small refiners from increasing the refinery's production capacity (selling 500 ppm highway diesel under such a program) without also increasing the refinery's desulfurization capacity. Specifically, we request comment on whether it would be appropriate and necessary to limit the volume of 500 ppm highway fuel produced by a refinery owned by a small refiner to the lesser of: (1) 105 percent of the highway volume it produced on average in 1998 and 1999; or (2) the volume of highway diesel fuel produced from crude oil on average in the calendar year. Such limits to a small refiner's 500 ppm production expansion could also serve to limit the potential for fuel shortages of the "new" fuel in local areas where small refiners have or will gain significant market share as a result being allowed to continue producing and selling 500 ppm highway diesel fuel. This issue is discussed further below.

We believe that safeguards such as these would add minimal burden on small refiners or any party choosing to distribute or sell small refiner highway diesel, but would be critical to preventing misfueling and potential damage to new vehicles—and thus critical to preserving the environmental benefits of the program. These types of safeguards are typical of EPA fuel programs where more than one fuel is introduced into commerce.

We also would need to ensure that this type of flexibility would not result in lack of availability of low sulfur highway diesel in markets served primarily by small refiners. We seek comment on whether there is a potential for lack of availability of the low sulfur fuel under this approach and, if so, how to prevent this.

Finally, we seek comment on the appropriate definition of a small refiner under such a program. If such a flexibility option is promulgated under the final rule, EPA would envision considering a refiner as a small refiner if both of the following criteria are met:

- No more than 1500 employees corporate-wide, based on the average number of employees for all pay periods from January 1, 1999 to January 1, 2000.
- A corporate crude capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 1999.

In determining the total number of employees and crude capacity, a refiner would include the employees and crude capacity of any subsidiary companies, any parent company and subsidiaries of the parent company, and any joint venture partners. This definition of small refiner mirrors the one recently promulgated under the Tier 2/gasoline sulfur program, except that the time period used to determine the employee number and crude capacity criteria has been updated to reflect the most recent calendar year. This is consistent with the Small Business Administration's regulations, which specify that, where the number of employees is used as a size standard, the size determination is based on the average number of employees for all pay periods during the preceding 12 months (13 CFR 121.106). However, because the gasoline sulfur standards and the proposed diesel sulfur standards would impact small refiners in relatively the same timeframes, we believe it is reasonable to consider any small refiner approved by EPA as meeting the small refiner definition under the gasoline sulfur program (40 CFR 80.235) as a small refiner under the highway diesel sulfur rule as well. We request comment on this provision.

2. Temporary Waivers Based on Extreme Hardship Circumstances

We are also seeking comment on a case-by-case approach to flexibility that would provide a process for all domestic and foreign refiners, including small refiners, to seek case-by-case approval of applications for temporary waivers to the diesel sulfur standards, based on a demonstration of extreme hardship circumstances. Small refiners have expressed their belief that there may be no "one size fits all" approach to flexibility—given the wide variety of refinery circumstances and configurations. Although this option was first raised in the context of small refiner flexibility during the Panel process, we believe that it could be extended to any qualifying refiner meeting the criteria described below. We recognize that there may be case-by-case flexibilities that are feasible, environmentally neutral, and warranted to meet the unique needs of an individual refiner, but that, if applied across the board, might jeopardize the environmental benefits of the program. This provision would further our overall environmental goals of achieving low sulfur highway diesel fuel as soon as possible. By providing short-term relief to those refiners that need additional time because they face hardship circumstances, we can adopt a program that reduces diesel sulfur beginning in 2006 for the majority of the industry that can comply by then. We envision that this option would be modeled after a similar provision in the recently-promulgated gasoline sulfur program. This case-by-case provision could be in addition to or in place of the small refiner option discussed above.

We understand that the ultra-low sulfur standards for highway diesel fuel will require significant economic investments by the refining industry. We recognize that refineries owned by small businesses could experience more difficulty in complying with the standards on time because, as a group, they have less ability to raise capital necessary for desulfurization investments, face proportionately higher costs due to economies of scale, and may be less successful in competing for limited construction and engineering resources. However, because the refining industry encompasses a wide variety of individual circumstances, it is possible that other refiners also may face particular difficulty in complying with the proposed sulfur standards on time. For example, as discussed above the farmer cooperatives have expressed concern that they would face considerable difficulty in obtaining access to capital for desulfurization investments. Because farmer cooperatives do not have an investor/stockholder form of ownership, they are not able to access equity markets that provide capital to larger refiners; thus, the added costs of financing projects through traditional loans is eventually borne by farmers.This option would allow any refiner to request additional flexibility based on a showing of unusual circumstances that result in extreme hardship and significantly affect the refiner's ability to comply by the applicable date, despite its best efforts. However, we would not intend for this waiver provision to encourage refiners to delay planning and investments they would otherwise make in anticipation of receiving relief from the applicable requirements.

An example of case-by-case flexibility under this approach might be to allow a refiner to continue selling 500 ppm highway diesel fuel for an extended time period, so long as that fuel were properly segregated and labeled at pump stands (see the discussion of possible compliance measures in section E.1. above).

To further preserve the environmental benefits of the program, recognizing the constraints it places on any flexibility, we currently believe that it would be necessary to segregate the fuel pool for any highway diesel fuel sold under an approved hardship waiver. Consequently, any additional compliance flexibilities would carry with them certain safeguards for preventing contamination and misfueling. We welcome comment on these compliance measures and any other alternatives. These provisions would be analogous to those discussed above under section E.1. Further, as part of such a flexibility, we would need to ensure that there was not a significant potential for lack of availability of the low sulfur fuel for those refiners that are the primary supplier of highway diesel fuel in a given area (as discussed in section E.1 above). We seek comment on whether there is a significant potential

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for lack of availability of the low sulfur fuel under this approach and, if so, how to prevent this situation.

During the Panel process, several small refiners that produce both gasoline and highway diesel expressed concern about the difficulty in obtaining financing for the significant capital costs of desulfurizing both these fuels in relatively the same timeframes. Similar concerns have been expressed by farmer cooperatives and other refiners. Small refiners suggested that they might be able to desulfurize highway diesel fuel under the schedule proposed today, if additional flexibility could be provided in meeting the gasoline sulfur standards, which would allow them to stagger their investments. We estimate that approximately nine small refiners (owning 11 refineries) would be subject to both the gasoline and highway diesel sulfur standards. As another example of case-by-case flexibility under the hardship approach, we request comment on whether and to what extent we should consider additional flexibilities in meeting the gasoline sulfur standards, for those refiners that produce both gasoline and highway diesel fuel, and meet the highway diesel fuel standards on time. For example, we invite comment on whether it would be necessary and appropriate to take into consideration compliance with the diesel sulfur rule as part of a small refiner's application demonstrating significant economic hardship under the gasoline sulfur program's small refiner hardship extension provision (40 CFR 80.260). In evaluating applications for any case-by-case consideration of additional flexibility under the gasoline sulfur program, we would fully consider the environmental consequences of such an approach. For example, we would consider such factors as the relative volumes of gasoline and highway diesel fuel produced by the refiner, where these fuels are sold, and the projected emission impacts of vehicles using the refiner's gasoline and diesel fuels. If we were to consider such a case-by-case approach to compliance under the gasoline and diesel sulfur programs, we believe the gasoline sulfur program requirements may have to be changed to allow for the consideration of appropriate criteria related to compliance with the highway diesel sulfur rule. We seek comment on how such an approach could be accommodated under the gasoline sulfur program and the environmental implications of this approach. We also seek comment on the criteria that should be considered in granting gasoline hardship relief based on early diesel compliance.

Small refiners have recommended that the Agency could provide some flexibility by granting the hardship extension on an automatic, rather than case by case basis, if they agree to meet the highway diesel sulfur standards at the same time as the national program. They commented that this approach would provide more certainty for their planning purposes in determining how to comply with the requirements of both programs. The gasoline sulfur program provides that small refiners can apply for and receive an extension of their interim standards, if we determine that the small refiner has made the best efforts possible to achieve compliance with the national standards by January 1, 2008, but has been unsuccessful for unanticipated reasons beyond its control. We would consider granting the hardship extension for a time period not to extend beyond calendar year 2009, based on several factors, including the small refiner's compliance plan and demonstration of progress toward producing gasoline meeting the national sulfur standards by the end of 2009. (See 40 CFR 80.255 and 80.260). We have concerns about making the small refiner gasoline hardship extension "automatic", as this approach could undermine some of the environmental benefits of the Tier 2/gasoline sulfur program, and is not consistent with the purpose of the hardship extension. We would need to consider the environmental impacts of such an extension, by evaluating, for example, the small refiners' relative production of highway diesel fuel as compared to gasoline and the air quality concerns in the locations where both products are sold. We believe it would be more environmentally protective to make this determination on a case-by-case basis. Nevertheless, we seek comment on the approach of granting a small refiner an automatic hardship extension under the gasoline sulfur program if they demonstrate that they will comply on time with the national program for highway diesel fuel. We also seek comment on whether this approach should be applied on a case-by-case, rather than automatic, basis.

As another example of case-by-case flexibility under this approach, we request comment on whether it would be appropriate, as part of a review of a refiner's application for hardship relief under the diesel sulfur program, to consider granting a delay of diesel sulfur standards for those refiners that agree to meet the gasoline sulfur standards under a schedule more accelerated than that required under the gasoline sulfur program. Any consideration of such delays would require full consideration of the environmental implications of such a delay, as well as of other relevant factors.

There are several factors we would consider in evaluating an application for a hardship waiver. These factors could include refinery configuration, severe economic limitations, and other factors that prevent compliance in the lead time provided. Applications for a waiver would need to include information that would allow us to evaluate all appropriate factors. We would consider the total crude capacity of the refinery and its parent corporation, whether the refinery configuration or operation is unique or atypical, how much of a refinery's diesel is produced using an FCC unit, its hydrotreating capacity relative to its total crude capacity, highway diesel production relative to other refinery products, and other relevant factors. A refiner also may face severe economic limitations that result in a demonstrated inability to raise the capital necessary to make desulfurization investments by the compliance date, which could be shown by an unfavorable bond rating, inadequate resources of the refiner and its parent and/or subsidiaries, or other relevant factors. Finally, we would consider where the highway diesel would be sold in evaluating the environmental impacts of granting a waiver. We seek comment on these criteria for evaluating a refiner's hardship application, and on whether there are other criteria that should also be considered.

This hardship provision would be intended to address unusual circumstances, such as unique and atypical refinery operations or a demonstrated inability to raise capital. These kinds of circumstances should be apparent soon after the final rule is promulgated, so refiners seeking additional time under this provision should be able to apply for relief within a relatively short timeframe (e.g., nine months to one year) after promulgation of the final rule. We request comment on an appropriate timeframe for refiners to submit hardship applications to EPA. A refiner seeking a waiver would need to show that unusual circumstances exist that impose extreme hardship and significantly affect its ability to meet the standards on time, and that it has made best efforts to comply with the standards. Applicants for a hardship waiver also would need to submit a plan demonstrating how the standards would be achieved as expeditiously as possible. The plan would need to include a timetable for obtaining the necessary capital, contracting for engineering and construction resources, and obtaining permits. We request comment on the information that should be contained in a hardship application, as well as the demonstrations that refiners should be required to make in such applications. Once all applications are received, we would consider the appropriate process to follow in reviewing and acting on applications, including whether to conduct a notice and comment decision-making process. We would review and act on applications, and, if a waiver were granted, would specify a time period for the waiver.

During the SBREFA Panel process, small refiners commented that they need certainty as to their regulatory requirements, and any flexibilities, well in advance of compliance dates so that they can seek financing. Therefore, we also seek comment on how such a hardship provision could be administered in a manner that provides the most certainty to small refiners as to any potential hardship relief, well in advance of the compliance deadline. Specifically, we request comment on an appropriate timeframe within which the Agency should respond to hardship applications (for example, one year from the date of receipt).

Because of the significant environmental benefits of lowering sulfur in highway diesel fuel, we would administer any hardship provision in a manner that continues to ensure the environmental benefits of the regulation. To limit the potential environmental impact of this hardship provision, we would reserve the discretion to deny applications where we find that granting a waiver would result in an unacceptable environmental impact. While any hardship determination would be made on a case-by-case basis, we would not anticipate granting waivers that apply to more than a minimal amount of the total national pool of highway diesel fuel, or to more than a minimal percentage of the highway diesel supply in an area with significant air quality problems. The level of this minimal amount of fuel would be considered in light of any additional flexibility options provided for refiners and would be established in a way that maintains the environmental goals of the program.

As a condition of any waiver granted, we would likely impose other reasonable requirements, such as anti-backsliding requirements to ensure no deterioration in the sulfur level of highway diesel fuel produced, or limitations on the volume of highway diesel fuel produced under the waiver (e.g., at or near current production levels). This latter measure would prevent refiners from increasing the refinery's production capacity without also increasing the desulfurization capacity. Specifically, we would limit the volume of highway diesel produced by a refinery covered by a hardship waiver to the lesser of: (1) 105 percent of the highway volume it produced on average in 1998 and 1999; or (2) the volume of highway diesel fuel produced from crude oil on average in the calendar year. We request comment on the need for such a hardship provision and how it should be structured.

3. 50 ppm Sulfur Cap for Small Refiners

In section IV.B, we fully discuss the basis for the 15 ppm sulfur standard proposed, based on the needs of diesel engine technology and on the criteria mandated by the Clean Air Act, and we seek comment on this level. In section III.F, we also discuss the level of sensitivity these new emission control technologies have to sulfur in the fuel, and potential consequences of the vehicles using fuel with a sulfur content higher than that proposed.

During the Panel process, small refiners expressed strong concern about their ability to meet a sulfur standard in the 5 to 40 ppm range discussed. Several small refiners have commented that capital, operating, and maintenance costs of meeting a 50 ppm cap are significantly less than the costs of meeting more stringent standards. Because small refiners produce relatively smaller volumes, their capital (and other fixed) costs per barrel produced are significantly higher than their larger competitors. They also cannot take advantage of the significant economies of scale that exist in the refining industry and may be less successful in competing for limited construction and engineering resources. Small refiners have suggested that a 50 ppm may afford them the flexibility to purchase sufficient blendstocks on the market to blend with their production and still comply with a 50 ppm cap. However, at the proposed 15 ppm standard this flexibility may no longer exist. Nevertheless, they are still interested in the Agency considering a cap for small refiners of 50 ppm. Therefore, we request comment on a 50 ppm cap for small refiners, and on any underlying data and analyses that would be relevant to a decision in the final rule on whether to incorporate a 50 ppm cap for small refiners. For this approach to work, to keep from damaging the vehicle exhaust emission control technologies and also maintain their effectiveness (as discussed in section III.F.), small refiner's fuel would somehow have to be blended downstream of the refinery to 15 ppm (i.e., in the distribution system). However, we question whether small refiners' 50 ppm fuel could simply be "blended away" with ultra-low sulfur fuel in the distribution system (i.e., after the fuel leaves the refiner's control). Information submitted by small refiners indicates that most sell highway diesel fuel directly via the refinery rack, for distribution to local truck stops, service stations, and fleet customers. Only a few small refiners distribute highway diesel via pipelines. Therefore, small refiners' highway diesel fuel indeed would go directly into vehicles, and commonly would not be "blended" to a significant extent with other refiners' fuel within the distribution system (*i.e.*, downstream of the refinery). Nevertheless, we believe it is appropriate to seek comment on this approach, and welcome any data and analyses that would influence a final decision about this approach.

IX. Standards and Fuel for Nonroad Diesel Engines

Although today's proposal covers only highway diesel engines and highway diesel fuel, our potential plans for nonroad diesel engines—and especially the sulfur content of nonroad diesel fuel—are clearly related. For example, depending on whether and how nonroad diesel fuel is regulated, factors including the costs, leadtime, environmental impacts, and impacts on competitive relationships in the marketplace associated with today's proposed program could be affected. We would need to address these factors in any future regulatory action on nonroad diesel fuel.

Because of these relationships, various stakeholders interested in today's proposal have asked to also know the potential requirements that could apply to nonroad diesel fuel. This section summarizes the background of this issue and our current thinking about future regulation of nonroad diesel engines and fuel.

After establishing an initial set of emission standards for nonroad diesel engines in 1994, EPA proposed in 1997, and finalized in 1998, a comprehensive program of emission standards for most diesel engines designed for nonroad use.[181] This program established $NMHC+NO_X$ and PM standards that are phasing in over the 1999–2006 time frame, with engines of different

[181] See the final rule, 63 FR 56968, October 23, 1998 for more about the history of these regulations.

horsepower ranges coming into the program in different years. At the same time, we set long-term ("Tier 3") NMHC+NO_X standards—but not PM standards—for medium and high horsepower engines, to begin in 2006. Built into the 1998 final rule was a plan to reassess the Tier 3 NMHC+NO_X standards and to establish PM standards in the 2001 time frame. The 1998 rule also anticipated an EPA reassessment of the Tier 2 NMHC+NO_X standards for the smaller engines (less than 50 horsepower), which are to be phased in beginning in 2004.

EPA did not include nonroad diesel fuel in the diesel fuel sulfur restrictions established in 1993 for highway diesel fuel. We estimate that the average sulfur content for nonroad diesel fuel is currently around 3000 ppm, as compared to the cap for highway diesel fuel of 500 ppm.[182]

We believe that any specific new requirements for nonroad diesel fuel we might propose would need to be carefully considered in the context of a proposal for further nonroad diesel engine emission standards. This is because of the close interrelationship between fuels and engines—the best emission control solutions may not come through either fuel changes or engine improvements alone, but perhaps through an appropriate balance between the two. This is especially significant to the extent that manufacturers would need to address potential challenges related to simultaneously meeting the standards that may be proposed. Thus we need to address issues in both the fuel and engine arenas together.

The many issues connected with any rulemaking for nonroad engines and fuel warrant serious attention, and we believe it would be premature today for us to attempt to propose resolutions to them. We plan to initiate action in the future to formulate thoughtful proposals covering both nonroad diesel fuel and engines.

X. Public Participation

Publication of this document opens a formal comment period on this proposal. You may submit comments during the period indicated under **DATES** above. We encourage everyone who has an interest in the program described in this preamble and the associated rulemaking documents to offer comment on all aspects of the action. Throughout this proposal you will find requests for specific comment on various topics.

[182] Information from recent national fuel surveys by the National Institute for Petroleum and Energy Research (NIPER) and the Alliance of Automobile Manufacturers.

We consider and respond in the final rule to every comment we receive before the end of the comment period. We give equal weight to all comments regardless of whether they are submitted on paper, electronically, or in person at a public hearing. The most useful comments are generally those supported by appropriate and detailed rationales, data, and analyses. We also encourage commenters who disagree with the proposed program to suggest and analyze alternate approaches to meeting the air quality goals of this proposed program.

We have previously received many comments from a range of interested parties on our ANPRM and as part of the our outreach to small entities (see section XI.B). These comments are found in the docket, and information gathered from them is reflected in the proposal.

A. Submitting Written and E-mail Comments

If you would like to submit comments in writing, please send them to the contact listed in **FOR FURTHER INFORMATION CONTACT** above on or before the end of the comment period. You can send your comments by e-mail to the following address: diesel@epa.gov. It is usually best to include your comments in the body of the email message rather than as an attachment.

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments. Such submissions should be clearly labeled as "Confidential Business Information" and be sent to the contact person in **FOR FURTHER INFORMATION CONTACT** (not to the public docket). This will help ensure that proprietary information is not placed in the public docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a nonconfidential version of the document that summarizes the key data or information must be sent to the contact person for inclusion in the public docket.

We will disclose information covered by a claim of confidentiality only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when we receive it, we will make it available to the public without further notice to the commenter.

B. Public Hearings

We will hold public hearings in New York City, NY, Chicago, IL, Atlanta, GA, Los Angeles, CA, and Denver, CO. See **ADDRESSES** near the beginning of this document for the locations of the hearings. If you would like to present testimony at one or more of the public hearings, we ask that you notify the contact person listed above ten days before the date of the hearing at which you plan to testify. We also suggest that you bring about fifty copies of the statement or material to be presented for the EPA panel and audience. In addition, it is helpful if the contact person receives a copy of the testimony or material before the hearing. An overhead projector and a carousel slide projector will be available.

The hearings will be conducted informally, and technical rules of evidence will not apply. We will, however, prepare a written transcript of each hearing. The official record of the hearings will be kept open until the end of the comment period to allow submittal of supplementary information. Each hearing will begin at 10:00 a.m. local time. In general, we expect to organize the hearings in a panel format, with representatives of several different perspectives on each panel. We will reserve the last part of each hearing for any previously unscheduled testimony. There will be a sign-in sheet, and we will hear the testimony of anyone signed in by 6:30 p.m. local time.

XI. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposal is a "significant regulatory action" because the proposed engine standards, diesel fuel sulfur standards, and other proposed regulatory provisions, if implemented, would have an annual effect on the economy in excess of $100 million. Accordingly, a Draft RIA has been prepared and is available in the docket for this rulemaking. This action was submitted to the OMB for review as required by Executive Order 12866. Written comments from OMB on today's action and responses from EPA to OMB comments are in the public docket for this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, to ensure that concerns regarding small entities are adequately considered during the development of new regulations that affect them. In response to the provisions of this statute, EPA has identified industries subject to this proposed rule and has provided information to, and received comment from, small entities and representatives of small entities in these industries. To accompany today's proposal, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared by the Agency to evaluate the economic impacts of today's proposal on small entities.[183] The key elements of the IRFA include:

—The number of affected small entities;
—The projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including the classes of small entities that would be affected and the type of professional skills necessary for preparation of the report or record;
—Other federal rules that may duplicate, overlap, or conflict with the proposed rule; and,
—Any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize significant economic impacts of the proposed rule on small entities.

The Agency convened a Small Business Advocacy Review Panel (the Panel) under section 609(b) of the Regulatory Flexibility Act as added by SBREFA. The purpose of the Panel was to collect the advice and recommendations of representatives of small entities that could be directly affected by today's proposed rule and to report on those comments and the Panel's findings as to issues related to the key elements of the IRFA under section 603 of the Regulatory Flexibility Act. The report of the Panel has been placed in the rulemaking record.[184] The IRFA can be found in the Draft RIA associated with today's proposal.

The contents of both today's proposal and the IRFA reflect the recommendations in the Panel's report. We summarize our outreach to small entities and our responses to the recommendations of the Panel below. The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes additional comments during the rulemaking process on issues related to such impacts.

1. Potentially Affected Small Businesses

Today's proposed program, which would establish new emission standards for heavy-duty engines and new standards for the sulfur content of highway diesel fuel, would directly affect manufacturers of heavy-duty engines and petroleum refiners that produce highway diesel fuel, respectively. In addition, but to a lesser extent, the program would directly affect diesel distributors and marketers.

We have not identified any manufacturers of heavy-duty engines that meet SBA's definition of a small business. However, we have identified several petroleum refiners that produce highway diesel fuel and meet the SBA's definitions for a small business for the industry category. According to the SBA's definition of a small business for a petroleum refining company (Standard Industrial Classification (SIC) 2911), a company must have 1500 or fewer employees to qualify as an SBA small business. Of the approximately 158 refineries in the U.S. today, we estimate that approximately 22 refiners (owning 26 refineries) have 1500 or fewer employees and produce highway diesel fuel. Two of these refineries are currently shutdown, but have indicated that they expect to reopen this year. We estimate that these 22 small refiners comprise 3.7 percent of nationwide crude capacity and produce approximately four percent of highway diesel fuel.

EPA also has identified several thousand businesses in the diesel distribution and marketing industry that meet SBA's definitions of small business. More information about these industries is contained in the IRFA. Under today's proposal, there are some, fairly minimal, regulatory requirements on these parties downstream of the refineries related to segregating the low sulfur highway diesel fuel throughout the distribution system. However, these proposed compliance provisions for downstream parties are fairly consistent with those in place today for other fuel programs, including the current highway diesel fuel program, and are not expected to impose significant new burdens on small entities.

2. Small Business Advocacy Review Panel and the Evaluation of Regulatory Alternatives

The Small Business Advocacy Review Panel was convened by EPA on November 12, 1999. The Panel consisted of representatives of the Small Business Administration (SBA), the Office of Management and Budget (OMB) and EPA. During the development of today's proposal, EPA and the Panel were in contact with representatives from the small businesses that would be subject to the provisions in today's proposal. In addition to verbal comments from industry noted by the Panel at meetings and teleconferences, written comments were received from each of the affected industry segments or their representatives. The Panel report contains a summary of these comments, the Panel's recommendations on options that could mitigate the adverse impacts on small businesses. Today's proposal requests comment on the alternatives and issues suggested by the Panel for implementing the fuel program.

The Panel considered a range of options and regulatory alternatives for providing small businesses with flexibility in complying with new sulfur standards for highway diesel fuel. As part of the process, the Panel requested and received comment on several early ideas for flexibility that were suggested by SERs and Panel members. Taking into consideration the comments received on these ideas, as well as additional business and technical information gathered about potentially affected small entities, we summarize the Panel's recommendations below.

The Panel recommended that EPA seek comment on an option that would provide a process for refiners to seek case-by-case approval of applications for temporary waivers to the diesel sulfur standards, based on a demonstration of extreme hardship circumstances. Small refiners commented to the Panel that there is no "one size fits all" approach to flexibility—given the wide variety of refinery circumstances and

[183] The Initial RFA is contained in Chapter VII of the Draft RIA.

[184] Report of the Small Business Advocacy Review Panel on Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine Standards and Diesel Fuel Sulfur Control Requirements, March 24, 2000.

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configurations. Thus, the Panel believed that it would be appropriate for EPA to consider a case-by-case approach to flexibility. The Panel further recognized that there may be case-by-case flexibilities that are feasible, environmentally neutral, and warranted to meet the unique needs of an individual refiner, but that, if applied across the board, might jeopardize the environmental benefits of the program. The Panel envisioned that this option would be modeled after a similar provision in the recently-promulgated gasoline sulfur program. This option would allow domestic and foreign refiners, including small refiners, to request additional flexibility based on a showing of unusual circumstances that result in extreme hardship and significantly affect the ability to comply by the applicable date, despite their best efforts.

In addition, the Panel recommended that EPA seek comment on two options for small refiner flexibility. First, the Panel recommended that EPA seek comment on a 50 ppm cap for small refiners, as well as any data or underlying analyses that could support such a decision. Second, the Panel recommended that EPA seek comment on an option that would allow small refiners to continue selling their current 500 ppm highway diesel, provided there are adequate safeguards to prevent contamination and misfueling. The Panel further recommended that EPA request comment on an appropriate duration for this option. This option would effectively delay the low sulfur compliance date for small refiners, and allow them to continue selling their current fuel to the highway diesel market. To ensure the environmental benefits of the rule were achieved while implementing this flexibility option, there would have to be certain safeguards with refiners as well as downstream parties to prevent contamination of the ultra-low sulfur fuel, and to prevent misfueling of new vehicles.

The Panel also discussed the merits of phasing in the fuel program, and alternatives that could potentially limit the burden of such a program on small refiners and distributors.

The Panel's recommendations are discussed in detail in the Panel Report, contained in the docket. In addition, EPA's request for comment on these options is contained in section VIII.E of this preamble.

The Initial Regulatory Flexibility Analysis evaluates the financial impacts of the proposed heavy-duty engine standards and fuel controls on small entities. EPA believes that the regulatory alternatives we seek comment on in this proposal could provide substantial relief to qualifying small businesses from the potential adverse economic impacts of complying with today's proposed rule.

C. Paperwork Reduction Act

The information collection requirements (ICR) for this proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Agency may not conduct or sponsor an information collection, and a person is not required to respond to a request for information, unless the information collection request displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The information collection requirements associated with today's proposed rule pertain to the proposed requirements for diesel fuel sulfur content. A draft information collection request document entitled, "Draft Information Collection Request—Recordkeeping Requirements for the Fuel Quality Regulations for Diesel Fuel Sold in 2006 and Later Years' has been prepared and is available from the Air Docket at the location indicated in **ADDRESSES** section or from the person(s) listed in **FOR FURTHER INFORMATION CONTACT** section. We request comments on the costs associated with the regulatory language as proposed and with regard to other specific approaches outlined in this notice that may affect information collection burdens.

The Paperwork Reduction Act stipulates that ICR documents estimate the burden of activities that would be required of regulated parties within a three year time period. Consequently, the draft ICR document that accompanies today's proposed rule provides estimates for the activities that would be required under the first three years of the proposed program. Many of the reporting and recordkeeping requirements for refiners and importers regarding the sulfur content of diesel fuel on which the proposed rule would rely currently exist under EPA's 500 ppm highway diesel fuel and anti-dumping programs.[185] The ICR for the 500 ppm program covered start up costs associated with reporting diesel fuel sulfur content under the 500 ppm program. Consequently, much of the cost of the information collection requirements under the proposed diesel sulfur control program has already been accounted for under the 500 ppm program.

We request comments on the Agency's need for the information proposed to be collected, the accuracy of our estimates of the associated burdens, and any suggested methods for minimizing the burden, including the use of automated techniques for the collection of information. Comments on the draft ICR should be sent to: the Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2136), 401 M Street, SW, Washington, DC 20460, marked "Attention: Director of OP;" and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any such correspondence. OMB is required to make a decision concerning the ICR between 30 and 60 days after publication of a proposed rule. Therefore, comments to OMB on the ICR are most useful if received within 30 days of the publication date of this proposal. Any comments from OMB and from the public on the information collection requirements in today's proposal will be placed in the docket and addressed by EPA in the final rule.

Copies of the ICR documents can be obtained from Sandy Farmer, Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740. Insert the ICR title and/or OMB control number in any correspondence. Copies may also be downloaded from the Internet at http://www.epa.gov/ncepihom/catalog.html.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule, for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative that is not the least costly, most cost effective, or least burdensome alternative if EPA provides an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the proposed rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. As discussed at length in section VI of this proposal, EPA considered and evaluated a wide range of regulatory alternatives before arriving at the program proposed today. EPA believes that the proposed program represents the least costly, most cost effective approach to achieve the air quality goals of the proposed rule. Nevertheless, as is clear in section VI and throughout the preamble, we continue to investigate and seek comment on alternatives that may achieve the proposals objectives but at a lower cost. See the "Administrative Designation and Regulatory Analysis" (section XI.A) for further information regarding these analyses.

2. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. The proposed engine emissions, diesel fuel, and other related requirements for private businesses in this proposal would have national applicability, and thus would not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this proposal. Thus, EPA's conclusions regarding the impacts from the implementation of today's proposed rule discussed in the other sections of this proposal are equally applicable to the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule references technical standards adopted by the Agency through previous rulemakings. No new technical standards are proposed in this proposal. The standards referenced in today's proposed rule involve the measurement of diesel fuel parameters and engine emissions. The measurement standards for diesel fuel parameters referenced in today's proposal are all voluntary consensus standards. The engine emissions measurement standards referenced in today's proposed rule are government-unique standards that were developed by the Agency through previous rulemakings. These standards have served the Agency's emissions control goals well since their implementation and have been well accepted by industry. EPA is not aware of any voluntary consensus standards for the measurement of engine emissions. Therefore, the Agency proposes to use the existing EPA-developed standards found in 40 CFR part 86 for the measurement of engine emissions.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Executive Order 13045: Children's Health Protection

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is subject to the Executive Order because it is an economically significant regulatory

[185] "Regulations of Fuel and Fuel Additives: Fuel Quality Regulations for Highway Diesel Sold in 1993 and Later Calendar Years; Recordkeeping Requirements," OMB Control Number 2060–0308, EPA ICR Number 1718.12 (expires July 31, 2001). Copies of this ICR may be obtained from Sandy Farmer, Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M Street, SW, Washington, DC 20460. Please mark requests, "Attention: Desk Officer for EPA" and include the ICR in any correspondence.

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action as defined by Executive Order 12866 and it concerns in part an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

This rulemaking will achieve significant reductions of various emissions from heavy-duty engines, primarily NO_X, but also PM. These pollutants raise concerns regarding environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children, such as impacts from ozone, PM and certain toxic air pollutants. See section II and the Draft RIA for a further discussion of these issues.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish the NAAQS for these pollutants, and EPA is not revisiting those issues here. EPA believes, however, that the emission reductions from the strategies proposed in this rulemaking will further reduce air toxics and the related adverse impacts on children's health. EPA will also be addressing the issues raised by air toxics from engines and their fuels in a separate rulemaking that EPA will initiate in the near future under section 202(l) of the Act. That rulemaking will address the emissions of hazardous air pollutants from engines and fuels, and the appropriate level of control of HAPs from these sources.

In this proposal, EPA has evaluated several regulatory strategies for reductions in emissions from heavy-duty engines. (See section III of this proposal as well as the Draft RIA.) For the reasons described there, EPA believes that the strategies proposed are preferable under the CAA to other potentially effective and reasonably feasible alternatives considered by the Agency, for purposes of reducing emissions from these sources as a way of helping areas achieve and maintain the NAAQS for ozone and PM. Moreover, EPA believes that it has selected for proposal the most stringent and effective control reasonably feasible at this time, in light of the technology and cost requirements of the Act.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Section 211(d)(4)(A) of the CAA prohibits states from prescribing or attempting to enforce controls or prohibitions respecting any fuel characteristic or component if EPA has prescribed a control or prohibition applicable to such fuel characteristic or component under section 211(c)(1) of the Act. This proposed rule merely modifies existing EPA diesel fuel and heavy-duty vehicle standards and therefore will merely continue an existing preemption of State and local law as discussed in section VIII.C. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of various State and local governments in developing this rule. In particular EPA consulted with the State of Alaska in the design of the program as it applies to them, as discussed in section VI. EPA also talked to representatives from the State of California as well as representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

XII. Statutory Provisions and Legal Authority

Statutory authority for the engine controls proposed in this notice can be found in sections 202, 203, 206, 207, 208, and 301 of the CAA, as amended, 42 U.S.C. 7521, 7522, 7525, 7541, 7542, and 7601.

Statutory authority for the fuel controls proposed in this document comes from section 211(c) and 211(i) of the CAA, which allows EPA to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment which is in general use or has been in general use. Additional support for the procedural and enforcement-related aspects of the fuel's controls in today's proposal, including the proposed recordkeeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects

40 CFR Part 69

Environmental protection. Air pollution control.

40 CFR Part 80

Environmental protection, Diesel fuel, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 17, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, we propose to amend Parts 69, 80 and 86 of chapter I of Title 40 of the Code of Federal Regulations to read as follows:

PART 69—[AMENDED]

1. The authority citation for part 69 is revised to read as follows:

Authority: 42 U.S.C. 7545(c), (g) and (i), and 7625–1.

Subpart E—Alaska

2. Section 69.51 of subpart E is revised to read as follows:

§ 69.51 Title II exemptions and exclusions.

(a) Diesel fuel that is designated for use only in Alaska and is used only in Alaska, is exempt from the sulfur standard of 40 CFR 80.29(a)(1)(i) and the dye provisions of 40 CFR 80.29(a)(1)(iii) and 40 CFR 80.29(b) until the implementation dates set out in 40 CFR 80.440, provided that:

(1) The fuel is segregated from non-exempt diesel fuel from the point of such designation; and

(2) On each occasion that any person transfers custody or title to the fuel, except when it is dispensed at a retail outlet or wholesale purchaser-facility, the transferor must provide to the transferee a product transfer document stating:

This diesel fuel is for use only in Alaska. It is exempt from the federal low sulfur standards applicable to motor vehicle diesel fuel and red dye requirements applicable to non-motor vehicle diesel fuel only if it is used in Alaska.

(b) Beginning on the implementation dates set out in § 80.440, diesel fuel that is designated for use only in Alaska or is used only in Alaska, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under paragraph (c) of this section. Alaska may submit for EPA approval an alternative plan for implementing the sulfur standard in Alaska by [date one year after the effective date of the final rule]. EPA shall approve or disapprove the plan within one year of receiving Alaska's submission.

(c) If such diesel fuel is designated as fuel that does not comply with the standards and requirements for motor vehicle diesel fuel under 40 CFR part 80, subpart I, it is exempt from the dye presumption of 40 CFR 80.446(b)(2) provided that:

(1) The fuel is segregated from all motor vehicle diesel fuel.

(2) On each occasion that any person transfers custody or title to the fuel, except when it is dispensed at a retail outlet or wholesale purchaser-facility, the transferor must provide to the transferee a product transfer document complying with the requirements of 40 CFR 80.462(a) and (d) and stating:

This diesel fuel is for use only in Alaska and is not for use in motor vehicles. It is exempt from the red dye requirement applicable to non-motor vehicle diesel fuel only if it is used in Alaska.

(3) Any pump dispensing the fuel must comply with the labeling requirements in 40 CFR 80.453.

PART 80—[AMENDED]

3. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

4. Section 80.2 is amended by revising paragraphs (x) and (y) and adding paragraphs (bb) and (nn), to read as follows:

§ 80.2 Definitions.

* * * * *

(x) *Diesel fuel* means any fuel sold in any state and suitable for use in diesel motor vehicles, diesel motor vehicle engines or diesel nonroad engines, and which is commonly or commercially known as diesel fuel.

(y) *Motor vehicle diesel fuel* means any diesel fuel, or any distillate product, that is used, intended for use, or made available for use, as a fuel in diesel motor vehicles or diesel motor vehicle engines. Motor vehicles or motor vehicle engines do not include nonroad vehicles or nonroad engines.

* * * * *

(bb) *Sulfur percentage* is the percentage of sulfur in diesel fuel by weight, as determined using the applicable sampling and testing methodologies set forth in § 80.461.

* * * * *

(nn) *Batch of motor vehicle diesel fuel* means a quantity of diesel fuel which is homogeneous with regard to those properties that are specified for motor vehicle diesel fuel under subpart I of this part.

* * * * *

5. Section 80.29 is amended by revising paragraphs (a)(1) introductory text and (b), to read as follows:

§ 80.29 Controls and prohibitions on diesel fuel quality.

(a) *Prohibited activities.* (1) Beginning October 1, 1993 and continuing until the implementation dates for subpart I of this part as specified in § 80.440, except as provided in 40 CFR 69.51, no person, including but not limited to, refiners, importers, distributors, resellers, carriers, retailers or wholesale purchaser-consumers, shall manufacture, introduce into commerce, sell, offer for sale, supply, store, dispense, offer for supply or transport any diesel fuel for use in motor vehicles, unless the diesel fuel:

* * * * *

(b) *Determination of compliance.* (1) Any diesel fuel which does not show visible evidence of being dyed with dye solvent red 164 (which has a characteristic red color in diesel fuel) shall be considered to be available for use in diesel motor vehicles and motor vehicle engines, and shall be subject to the prohibitions of paragraph (a) of this section.

(2) Compliance with the sulfur, cetane, and aromatics standards in paragraph (a) of this section shall be determined based on the level of the applicable component or parameter, using the sampling methodologies specified in § 80.330(b), as applicable, and the appropriate testing methodologies specified in § 80.461(a) or (b) for sulfur, § 80.2(w) for cetane index, and § 80.2(z) for aromatic content. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the level of the applicable component or parameter in the diesel fuel, if the evidence or information is relevant to whether that level would have been in compliance with the standard if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than the compliance methods in this paragraph (b), business records, and commercial documents.

(3) Determination of compliance with the requirements of this section other than the standards described in paragraph (a) of this section, and determination of liability for any violation of this section, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

* * * * *

6. Section 80.30 is amended by revising paragraphs (g)(2)(ii) and (g)(4)(i), and adding paragraph (h), to read as follows:

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§ 80.30 Liability for violations of diesel fuel controls and prohibitions.

* * * * *

(g) *Defenses.* * * *

* * * * *

(2) * * *

(ii) Test results, performed in accordance with the applicable sampling and testing methodologies set forth in §§ 80.2(w), 80.2(z), 80.2(bb), and 80.461, which evidence that the diesel fuel determined to be in violation was in compliance with the diesel fuel standards of § 80.29(a) when it was delivered to the next party in the distribution system;

* * * * *

(4) * * *

(i) Test results, performed in accordance with the applicable sampling and testing methodologies set forth in §§ 80.2(w), 80.2(z), 80.2(bb), and 80.461, which evidence that the diesel fuel determined to be in violation was in compliance with the diesel fuel standards of § 80.29(a) when it was delivered to the next party in the distribution system;

* * * * *

(h) *Detection of violations.* In paragraphs (a) through (f) of this section, the term "is detected at" means that the violation existed at the facility in question, and the existence of the violation at that facility may be established through evidence obtained or created at that facility, at any other location, and by any party.

7. Subpart I is added to read as follows:

Subpart I—Diesel Fuel Sulfur Control

Sec.

General Information

80.440 What are the implementation dates for the diesel fuel sulfur control program?
80.441 What diesel fuel is subject to the provisions of this subpart?
80.442–80.445 [Reserved]

Motor Vehicle Diesel Fuel Standards and Requirements

80.446 What are the standards and dye requirements for motor vehicle diesel fuel?
80.447 What are the standards and identification requirements for additives that are blended into or are offered for sale for use in motor vehicle diesel fuel?
80.448 May used motor oil be dispensed into diesel motor vehicles?
80.449 What diesel fuel designation requirements apply to refiners and importers?
80.450–80.452 [Reserved]
80.453 What labeling requirements apply to retailers and wholesale purchaser-consumers?
80.454–80.460 [Reserved]

Sampling and Testing

80.461 What are the sampling and test methods for sulfur?

Recordkeeping and Reporting Requirements

80.462 What are the product transfer document requirements for motor vehicle diesel fuel?
80.463 What are the product transfer document requirements for additives to be used in motor vehicle diesel fuel?
80.464 What records must be kept?
80.465 [Reserved]

Exemptions

80.466 What are the requirements for obtaining an exemption for motor vehicle diesel fuel used for research, development or testing purposes?
80.467 What are the requirements for an exemption for motor vehicle diesel fuel for use in the Territories?
80.468–80.469 [Reserved]

Violation Provisions

80.470 What acts are prohibited under the diesel fuel sulfur control program?
80.471 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?
80.472 Who is liable for violations of this subpart?
80.473 What defenses apply to persons deemed liable for a violation of a prohibited act?
80.474 What penalties apply under this subpart?

Subpart I—Diesel Fuel Sulfur Control

General Information

§ 80.440 What are the implementation dates for the diesel fuel sulfur control program?

(a) [Reserved]

(b) *Standards applicable to refiners and importers.* Beginning April 1, 2006, standards for motor vehicle diesel fuel under § 80.446 apply to motor vehicle diesel fuel produced by any refinery or imported by any importer.

(c) *Standards applicable downstream of the refinery or importer.* Beginning May 1, 2006, standards for motor vehicle diesel fuel under § 80.446 apply to motor vehicle diesel fuel at any facility in the diesel fuel distribution system downstream of the refinery or importer except at retail outlets and wholesale purchaser-consumer facilities.

(d) *Standards applicable to retailers and wholesale purchaser-consumers.* Beginning June 1, 2006, standards for motor vehicle diesel fuel under § 80.446 and § 80.453 apply to motor vehicle diesel fuel at any facility in the diesel fuel distribution system.

(e) [Reserved]

(f) *Other provisions.* All other provisions of this subpart apply April 1, 2006.

§ 80.441 What diesel fuel is subject to the provisions of this subpart?

(a) *Included fuel.* The provisions of this subpart apply to motor vehicle diesel fuel as defined in § 80.2(y), and to diesel fuel additives and motor oil that are used as fuel in diesel motor vehicles or are blended with diesel fuel for use in diesel motor vehicles at any point downstream of the refinery, as provided in §§ 80.447 and 80.448.

(b) *Excluded fuel.* The provisions of this subpart do not apply to motor vehicle diesel fuel that is designated for export outside the United States, and identified for export by a transfer document as required under § 80.462.

§§ 80.442—80.445 [Reserved]

Motor Vehicle Diesel Fuel Standards and Requirements

§ 80.446 What are the standards and dye requirements for motor vehicle diesel fuel?

(a) *Standards.* All motor vehicle diesel fuel is subject to the following per-gallon standards:

(1) *Sulfur content.* 15 parts per million (ppm);

(2) *Cetane index and aromatic content.* (i) A minimum cetane index of 40; or

(ii) A maximum aromatic content cap of 35 volume percent.

(b) *Dye requirements.* (1) All motor vehicle diesel fuel shall be free of visible presence of dye solvent red 164 (which has a characteristic red color in diesel fuel), except for motor vehicle diesel fuel that is used in a manner that is tax exempt under section 4082 of the Internal Revenue Code (26 U.S.C. 4082).

(2) Any diesel fuel that does not show visible presence of dye solvent red 164 shall be considered to be motor vehicle diesel fuel and subject to all the requirements of this subpart for motor vehicle diesel fuel, except for diesel fuel designated for use only in:

(i) Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands as provided under § 80.467;

(ii) The State of Alaska as provided under 40 CFR 69.51; or

(iii) Jet aircraft, research and development testing, or for export.

§ 80.447 What are the standards and identification requirements for additives that are blended into or are offered for sale for use in motor vehicle diesel fuel?

(a) Any additive that is blended into motor vehicle diesel fuel downstream of the refinery or is offered for sale for use in diesel motor vehicles shall have a sulfur content not exceeding 15 ppm.

(b) Transfer of the diesel fuel additive shall be accompanied by a transfer document under § 80.463, except as provided in paragraph (c) of this section.

(c) For additives sold in containers for use by the ultimate consumer of diesel fuel, each transferor shall include on the additive container, in a legible and conspicuous manner, the following accurate printed statement:

> This diesel fuel additive complies with the federal sulfur content requirements for use in diesel motor vehicles.

§ 80.448 May used motor oil be dispensed into diesel motor vehicles?

No person shall introduce used motor oil, or used motor oil blended with diesel fuel, into model year 2007 or later diesel motor vehicles, unless the following requirements have been met:

(a) The engine manufacturer has received a Certificate of Conformity for the vehicle engine under 40 CFR part 86 that is explicitly based on the addition of motor oil having the greatest sulfur content of any motor oil that is commercially available; and

(b) The oil is added in a manner consistent with the conditions of the certificate.

§ 80.449 What diesel fuel designation requirements apply to refiners and importers?

Any refiner or importer shall accurately and clearly designate all fuel it produces or imports for use in motor vehicles as motor vehicle diesel fuel.

§§ 80.450–80.452 [Reserved]

§ 80.453 What labeling requirements apply to retailers and wholesale purchaser-consumers?

Any retailer or wholesale purchaser-consumer who sells, dispenses, or offers for sale or dispensing, non-road diesel fuel and motor vehicle diesel fuel, must prominently and conspicuously display in the immediate area of each pump stand from such fuel is offered for sale or dispensing, the following legible label, in block letters of no less than 36-point bold type, printed in a color contrasting with the background, and placed in a location that is readily visible to the fuel recipient:

> This is high sulfur diesel fuel which is not to be used in any highway motor vehicle. The use of high sulfur diesel fuel in highway motor vehicles may damage emissions controls, harm engine operations, and void your emissions warranty.

§§ 80.454–80.460 [Reserved]

Sampling and Testing

§ 80.461 What are the sampling and test methods for sulfur?

(a) *Diesel fuel.* For purposes of § 80.446, the sulfur content of diesel fuel is the sulfur content as determined by:

(1) *Sampling method.* The applicable sampling methodology provided in § 80.330(b).

(2) *Test method for sulfur.* The American Society for Testing and Materials (ASTM) standard method D 2622–98, entitled "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry," modified as follows:

(i)(A) The blank stock used as a diluent for all calibration standards and sample dilutions must be prepared by mixing the following compounds at the specified proportions: 15 grams tert-butylbenzene, 15 grams decane, 15 grams dodecane, 15 grams tetradecane, 15 grams hexadecane, 15 grams tetralin, 5 grams octadecane, 5 grams napthalene.

(B) The weight tolerances are +/− 5 percent for each compound. The compounds must have a minimum purity of 99 percent.

(ii) Standards must be prepared by gravimetric dilution of the appropriate pure or certified sulfur compounds in the blank stock.

(iii) A standard series of 5 calibration points at standard levels must be run. An additional blank calibration standard must be included using the blank stock prepared pursuant to the requirements of this section.

(iv) A graph of the calibration points must be prepared. This graph must show the calibration data to be linear with minimal deviation from the least squares line. Any deviation from linearity and/or any standard that does not appear to lie on the least squares line must be investigated.

(v) A new regression line must be calculated using the calibration point from the blank and the single standard that falls closest to the least squares line that was derived using all of the calibration points. This is simply a recalculation using the same data, additional standard analyses are not necessary for this recalculation. For this recalculation, it is preferred that the non-zero standard be in the upper portion of the calibration.

(vi) Analyzing the blank as an unknown, the blank must return a zero within +/− 1 ppm.

(vii) The following guidelines are useful in limiting test variability: For ongoing verification when samples are in the single digit range, it is good practice to include more duplicates and include both blank samples and control fluid samples. For higher level samples, it is good practice to analyze samples in batches of 12. One duplicate and one control fluid sample should be analyzed with each batch of 12 samples. For lower level work, it is good practice to run samples in batches of 6. One duplicate, one control fluid, and one blank should be analyzed with each batch of 6 samples. As a general comment, care must be taken not to pollute the blank with sulfur from higher samples or standards through the process of preparing standards and analyzing the blanks.

(3) *Quality assurance test method.* Any ASTM sulfur test method may be used for quality assurance testing under § 80.473, if the protocols of the ASTM method are followed and the alternative method is correlated to the method provided in paragraph (b) of this section.

(b) *Motor Oil.* For purposes of § 80.448, the sulfur content of unused motor oil for use in diesel fuel is the sulfur content as determined by the use of American Society for Testing and Materials (ASTM) standard method D 6443–99, entitled "Standard Test Method for Determination of Calcium, Chlorine, Copper, Magnesium, Phosphorous, Sulfur, and Zinc, in Unused Lubricating Oils and Additives by Wavelength Dispersive X-ray Fluorescence Spectrometry (Mathematical Correction Procedure)."

(c) *Incorporation by reference.* ASTM Standard Method D 6443–99 is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Bar Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–99–06, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

Recordkeeping and Reporting Requirements

§ 80.462 What are the product transfer document requirements for motor vehicle diesel fuel?

On each occasion that any person transfers custody or title to motor vehicle diesel fuel, except when such fuel is dispensed into motor vehicles at a retail outlet or wholesale purchaser-facility, the transferor must provide to the transferee a product transfer document identifying the fuel as motor vehicle diesel fuel, and which:

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(a) Identifies the name and address of the transferor and transferee, and the date of transfer;

(b) Except as provided in 40 CFR 69.51, includes an accurate statement, as applicable, that:

(1) "This fuel complies with the 15 ppm sulfur standard for motor vehicle diesel fuel.";

(2) "This is high sulfur motor vehicle diesel fuel for use only in Guam, American Samoa, or the Northern Mariana Islands.";

(3) "This diesel fuel is for export use only."; or

(4) "This diesel fuel is for research, development, or testing purposes only."

(c) For motor vehicle diesel fuel that contains visible evidence of the dye solvent red 164, the following accurate statement:

This fuel is motor vehicle diesel fuel for tax-exempt use only, in accordance with Section 4082 of the Internal Revenue Code.

(d) Except for transfers to truck carriers, retailers or wholesale purchaser-consumers, product codes may be used to convey the information required by paragraph (a) of this section if such codes are clearly understood by each transferee.

§ 80.463 What are the product transfer document requirements for additives to be used in motor vehicle diesel fuel?

(a) Except as provided in § 80.447(c), on each occasion that any person transfers custody or title to an additive for use in motor vehicle diesel fuel, to a party in the motor vehicle diesel fuel distribution system downstream of the refiner, the transferor must provide to the transferee a product transfer document which identifies the type of additive, and which:

(1) Identifies the name and address of the transferor and transferee, and the date of transfer; and

(2) Includes the following accurate statement:

This additive complies with the federal 15 ppm sulfur standard for motor vehicle diesel fuel.

(b) Except for transfers of motor vehicle diesel fuel to truck carriers, retailers or wholesale purchaser-consumers, product codes may be used to convey the information required under paragraph (a) of this section, if such codes are clearly understood by each transferee.

§ 80.464 What records must be kept?

(a) *Records that must be kept.* Beginning April 1, 2006, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports motor vehicle diesel fuel subject to the provisions of this subpart must keep the following records:

(1) The product transfer documents required under §§ 80.462 and 80.463.

(2) For any sampling and testing for sulfur content, cetane index or aromatics content of motor vehicle diesel fuel or additives, conducted as part of a quality assurance program or otherwise:

(i) The location, date, time and storage tank or truck identification for each sample collected;

(ii) The name and title of the person who collected the sample and the person who performed the testing; and

(iii) The results of the tests for diesel fuel properties as required under this subpart and the volume of product in the storage tank or container from which the sample was taken.

(3) The actions the party has taken, if any, to stop the sale or distribution of any diesel fuel found not to be in compliance with the standards specified in this subpart, and the actions the party has taken, if any, to identify the cause of any noncompliance and prevent future instances of noncompliance.

(4) Business records establishing compliance with the designation and/or segregation requirements pursuant to the requirements of this subpart.

(b) [Reserved]

(c) *Additive distribution system records.* Beginning April 1, 2006, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports an additive for use in motor vehicle diesel fuel and who is required to transfer or receive a product transfer document for that additive pursuant to § 80.463, must maintain such documents.

(d) *Length of time records must be kept.* The records required under this section must be maintained for five years from the date they were created.

(e) *Make records available to EPA.* The records required to be maintained under this section must be made available to the Administrator or the Administrator's authorized representative upon request.

§ 80.465 [Reserved]

Exemptions

§ 80.466 What are the requirements for obtaining an exemption for motor vehicle diesel fuel used for research, development or testing purposes?

(a) *Written request for R&D exemption.* Any person may receive an exemption from the provisions of this subpart for motor vehicle diesel fuel used for research, development, or testing ("R&D") purposes by submitting the information listed in paragraph (c) of this section to:

(1) Director (6406J), Transportation and Regional Programs Division, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (postal mail); or

(2) Director (6406J), Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 501 3rd Street, NW., Washington, DC 20001 (express mail/courier); and

(3) Director (2242A), Air Enforcement Division, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(b) *Criteria for an R&D exemption.* For an R&D exemption to be granted, the person requesting an exemption must:

(1) Demonstrate a purpose that constitutes an appropriate basis for exemption;

(2) Demonstrate that an exemption is necessary;

(3) Design an R&D program to be reasonable in scope; and

(4) Exercise a degree of control consistent with the purpose of the program and EPA's monitoring requirements.

(c) *Information required to be submitted.* To demonstrate each of the elements in paragraphs (b)(1) through (4) of this section, the person requesting an exemption must include the following information in the written request required under paragraph (a) of this section:

(1) A concise statement of the purpose of the program demonstrating that the program has an appropriate R&D purpose.

(2) An explanation of why the stated purpose of the program cannot be achieved in a practicable manner without performing one or more of the prohibited acts under this subpart.

(3) To demonstrate the reasonableness of the scope of the program:

(i) An estimate of the program's duration in time and, if appropriate, mileage;

(ii) An estimate of the maximum number of vehicles or engines involved in the program;

(iii) The manner in which the information on vehicles and engines used in the program will be recorded and made available to the Administrator upon request; and

(iv) The quantity of diesel fuel which does not comply with the requirements of §§ 80.446 through 80.448.

(4) With regard to control, a demonstration that the program affords EPA a monitoring capability, including:

(i) The site(s) of the program (including facility name, street address, city, county, state, and zip code);

(ii) The manner in which information on vehicles and engines used in the program will be recorded and made available to the Administrator upon request;

(iii) The manner in which information on the diesel fuel used in the program (including quantity, fuel properties, name, address, telephone number and contact person of the supplier, and the date received from the supplier), will be recorded and made available to the Administrator upon request;

(iv) The manner in which the party will ensure that the R&D fuel will be segregated from motor vehicle diesel fuel and fuel pumps will be labeled to ensure proper use of the R&D diesel fuel;

(v) The name, address, telephone number and title of the person(s) in the organization requesting an exemption from whom further information on the application may be obtained; and

(vi) The name, address, telephone number and title of the person(s) in the organization requesting an exemption who is responsible for recording and making available the information specified in this paragraph, and the location where such information will be maintained.

(d) *Additional requirements.* (1) The product transfer documents associated with R&D motor vehicle diesel fuel must comply with requirements of § 80.462(b)(5).

(2) The R&D diesel fuel must be designated by the refiner or supplier, as applicable, as R&D diesel fuel.

(3) The R&D diesel fuel must be kept segregated from non-exempt motor vehicle diesel fuel at all points in the distribution system.

(4) The R&D diesel fuel must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a diesel fuel retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the R&D program that uses the diesel fuel.

(5) At the completion of the program, any emission control systems or elements of design which are damaged or rendered inoperative shall be replaced, or the responsible person will be liable for a violation of the Clean Air Act Section 203(a)(3) unless sufficient evidence is supplied that the emission controls or elements of design were not damaged.

(e) [Reserved]

(f) *Mechanism for granting of an exemption.* A request for an R&D exemption will be deemed approved by the earlier of sixty (60) days from the date on which EPA receives the request for exemption, (provided that EPA has not notified the applicant of potential disapproval by that time), or the date on which the applicant receives a written approval letter from EPA.

(1) The volume of diesel fuel subject to the approval shall not exceed the estimated amount in paragraph (c)(3)(iv) of this section, unless EPA grants a greater amount in writing.

(2) Any exemption granted under this section will expire at the completion of the test program or three years from the date of approval, whichever occurs first, and may only be extended upon re-application consistent will all requirements of this section.

(3) The passage of sixty (60) days will not signify the acceptance by EPA of the validity of the information in the request for an exemption. EPA may elect at any time to review the information contained in the request, and where appropriate may notify the responsible person of disapproval of the exemption.

(4) In granting an exemption the Administrator may include terms and conditions, including replacement of emission control devices or elements of design, that the Administrator determines are necessary for monitoring the exemption and for assuring that the purposes of this subpart are met.

(5) Any violation of a term or condition of the exemption, or of any requirement of this section, will cause the exemption to be void *ab initio.*

(6) If any information required under paragraph (c) of this section should change after approval of the exemption, the responsible person must notify EPA in writing immediately. Failure to do so may result in disapproval of the exemption or may make it void *ab initio*, and may make the party liable for a violation of this subpart.

(g) *Effects of exemption.* Motor vehicle diesel fuel that is subject to an R&D exemption under this section is exempt from other provisions of this subpart provided that the fuel is used in a manner that complies with the purpose of the program under paragraph (c) of this section and the requirements of this section.

(h) *Notification of Completion.* The party shall notify EPA in writing within thirty (30) days of completion of the R&D program.

§ 80.467 What are the requirements for an exemption for motor vehicle diesel fuel for use in the Territories?

The sulfur standards and dye requirement of § 80.446(a)(1) and (b) do not apply to diesel fuel that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in the Territories of Guam, American Samoa or the Commonwealth of the Northern Mariana Islands provided that such diesel fuel is:

(a) Designated by the refiner or importer as high sulfur diesel fuel only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(b) Used only in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(c) Accompanied by documentation that complies with the product transfer document requirements of § 80.462(b)(3); and

(d) Segregated from non-exempt highway and other diesel fuel at all points in the distribution system from the point the diesel fuel is designated as exempt fuel only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, while the exempt fuel is in the United States but outside these Territories.

§§ 80.468–469 [Reserved]

Violation Provisions

§ 80.470 What acts are prohibited under the diesel fuel sulfur program?

No person shall:

(a) *Standard or dye violation.* Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport motor vehicle diesel fuel that does not comply with the applicable standards and dye requirements under § 80.446.

(b) *Additive violation.* Blend or permit the blending into motor vehicle diesel fuel downstream of the refinery, or use, or permit the use, as motor vehicle diesel fuel, of additives which do not comply with the requirements of § 80.447.

(c) *Motor Oil violation.* Introduce into diesel motor vehicles, or permit the introduction into such vehicles of motor oil, or motor oil blended with diesel fuel, which does not comply with the requirements of § 80.448.

(d) *Introduction violation.* Introduce, or permit the introduction of, fuel into diesel motor vehicles which does not comply with the standards of § 80.446.

(e) *Cause another party to violate.* Cause another person to commit an act in violation of paragraphs (a) through (d) of this section.

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(f) *Cause violating fuel or additive to be in the distribution system.* Cause diesel fuel to be in the diesel fuel distribution system which does not comply with the applicable standard or dye requirements of § 80.446, or cause any diesel fuel additive to be in the distribution system which does not comply with the sulfur standard of § 80.447.

§ 80.471 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) *Compliance with sulfur, cetane, and aromatics standards.* Compliance with the standards in §§ 80.446 and 80.448 shall be determined based on the level of the applicable component or parameter, using the sampling methodologies specified in § 80.330(b), as applicable, and the appropriate testing methodologies specified in § 80.461(a) or (b) for sulfur, § 80.2(w) for cetane index, and § 80.2(z) for aromatic content. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the level of the applicable component or parameter in the diesel fuel, or motor oil to be used in diesel fuel, if the evidence or information is relevant to whether that level would have been in compliance with the standard if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than the compliance methods in this paragraph, business records, and commercial documents.

(b) *Compliance with other requirements.* Determination of compliance with the requirements of this subpart other than the standards described in paragraph (a) of this section and in §§ 80.446 and 80.448, and determination of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

§ 80.472 Who is liable for violations of this subpart?

(a) *Persons liable for violations of prohibited acts.*—(1) *Standard, dye, additives, motor oil, and introduction violations.* (i) Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who owned, leased, operated, controlled or supervised a facility where a violation of § 80.470(a) through (d) occurred, is deemed liable for the applicable violation.

(ii) Any person who violates § 80.470(a) through (d) is liable for the violation.

(iii) Any person who causes another person to violate § 80.470(a) through (d) is liable for a violation of § 80.470(e).

(iv) Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who produced, imported, sold, offered for sale, dispensed, supplied, offered to supply, stored, transported, or caused the transportation or storage of, diesel fuel that violates § 80.470(a), is deemed in violation of § 80.470(e).

(2) *Cause violating diesel fuel or additive to be in the distribution system.* Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who owned, leased, operated, controlled or supervised a facility from which motor vehicle diesel fuel or additive was released into the distribution system which does not comply with the applicable standards or dye requirement of § 80.446 or § 80.447, is deemed in violation of § 80.470(f).

(3) *Branded refiner/importer liability.* Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name appeared at a facility where a violation of § 80.470(a) occurred, is deemed in violation of § 80.470(a).

(4) *Carrier causation.* In order for a carrier to be liable under paragraph (a)(1)(iii) or (iv) of this section, EPA must demonstrate, by reasonably specific showing by direct or circumstantial evidence, that the carrier caused the violation.

(5) *Parent corporation.* Any parent corporation is liable for any violations of this subpart that are committed by any subsidiary.

(6) *Joint venture.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or is committed by the joint venture operation.

(b) *Persons liable for failure to meet other provisions of this subpart.* Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who:

(1) Fails to meet a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision; or

(2) Causes another person to fail to meet a provision of this subpart not addressed in paragraph (a) of this section, is liable for causing a violation of that provision.

§ 80.473 What defenses apply to persons deemed liable for a violation of a prohibited act?

(a) *Presumptive liability defenses.* Any person deemed liable for a violation of a prohibition under § 80.472 (a)(1)(i) or (a)(1)(iv), (a)(2) or (a)(3), will not be deemed in violation if the person demonstrates that:

(1) The violation was not caused by the person or the person's employee or agent;

(2) Product transfer documents account for fuel or additive found to be in violation and indicate that the violating product had met the applicable requirements when it was under the party's control; and

(3) The person conducted a quality assurance sampling and testing program, as described in paragraph (d) of this section. A carrier may rely on the quality assurance program carried out by another party, including the party who owns the diesel fuel in question, provided that the quality assurance program is carried out properly. Retailers and wholesale purchaser-consumers are not required to conduct quality assurance programs.

(b) *Branded refiner defenses.* In the case of a violation found at a facility operating under the corporate, trade or brand name of a refiner or importer, or a refiner's or importer's marketing subsidiary, the refiner or importer must show, in addition to the defense elements required under paragraphs (a)(1) and (a)(2) of this section, that the violation was caused by:

(1) An act in violation of law (other than the Clean Air Act or this part 80), or an act of sabotage or vandalism;

(2) The action of any refiner, importer, retailer, distributor, reseller, oxygenate blender, carrier, retailer or wholesale purchaser-consumer in violation of a contractual agreement between the branded refiner or importer and the person designed to prevent such action, and despite periodic sampling and testing by the branded refiner or importer to ensure compliance with such contractual obligation; or

(3) The action of any carrier or other distributor not subject to a contract with the refiner or importer, but engaged for transportation of diesel fuel, despite specifications or inspections of procedures and equipment which are reasonably calculated to prevent such action.

(c) *Causation demonstration.* Under paragraph (a)(1) of this section for any person to show that a violation was not caused by that person, or under paragraph (b) of this section to show that a violation was caused by any of the specified actions, the person must demonstrate by reasonably specific showing, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person and that the person asserting the defense did not contribute to that other person's causation.

(d) *Quality assurance and testing program.* (1) To demonstrate an acceptable quality assurance program under paragraph (a)(2) of this section, a person must present evidence of the following:

(i) A periodic sampling and testing program to ensure the motor vehicle diesel fuel or additive the person sold, dispensed, supplied, stored, or transported, meets the applicable standards; and

(ii) On each occasion when motor vehicle diesel fuel or additive is found not in compliance with the applicable standard:

(A) The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing or transporting the non-complying product; and

(B) The person promptly remedies the violation and the factors that caused the violation (for example, by removing the non-complying product from the distribution system until the applicable standard is achieved and taking steps to prevent future violations of a similar nature from occurring).

(2) For any carrier who transports motor vehicle diesel fuel or additive in a tank truck, the quality assurance program required under this paragraph (d) need not include periodic sampling and testing of the motor vehicle diesel fuel or additive in the tank truck, but in lieu of such tank truck sampling and testing, the carrier shall demonstrate evidence of an oversight program for monitoring compliance with the requirements of this subpart relating to the transport or storage of such product by tank truck, such as appropriate guidance to drivers regarding compliance with the applicable sulfur standard and product transfer document requirements, and the periodic review of records received in the ordinary course of business concerning motor vehicle diesel fuel or additive quality and delivery.

§ 80.474 What penalties apply under this subpart?

(a) Any person liable for a violation under § 80.472 is subject to civil penalties as specified in section 205 of the Clean Air Act for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b)(1) Any person liable under § 80.472(a)(1) for a violation of an applicable standard or requirement under § 80.446, or of causing another party to violate such standard or requirement, is subject to a separate day of violation for each and every day the non-complying motor vehicle diesel fuel remains any place in the distribution system.

(2) Any person liable under § 80.472(a)(2) for causing motor vehicle diesel fuel to be in the distribution system which does not comply with an applicable standard or requirement of § 80.446, is subject to a separate day of violation for each and every day that the non-complying motor vehicle diesel fuel remains any place in the motor vehicle diesel fuel distribution system.

(3) For purposes of this paragraph (b), the length of time the motor vehicle diesel fuel in question remained in the motor vehicle diesel fuel distribution system is deemed to be twenty-five days, unless a person subject to liability or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the non-complying motor vehicle diesel fuel remained in the distribution system for fewer than or more than twenty-five days.

(c) Any person liable under § 80.472(a)(1) for blending into motor vehicle diesel fuel an additive violating the sulfur standard under § 80.447(a)(1), or of causing another party to violate that requirement, is subject to a separate day of violation for each and every day the non-complying motor vehicle diesel fuel remains any place in the system.

(d) Any person liable under § 80.472(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

PART 86—[AMENDED]

8. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

9. Section 86.004–2 of subpart A is amended by adding in alphabetical order a definition of "U.S.-directed production" to read as follows:

§ 86.004–2 Definitions.

* * * * *

U.S.-directed production means the engines or vehicles produced by a manufacturer for which the manufacturer has reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

* * * * *

10. Section 86.004–40 of subpart A is amended by revising the introductory text to read as follows:

§ 86.004–40 Heavy-duty engine rebuilding practices.

The provisions of this section are applicable to heavy-duty engines subject to model year 2004 or later standards and are applicable to the process of engine rebuilding (or rebuilding a portion of an engine or engine system). The process of engine rebuilding generally includes disassembly, replacement of multiple parts due to wear, and reassembly, and also may include the removal of the engine from the vehicle and other acts associated with rebuilding an engine. Any deviation from the provisions contained in this section is a prohibited act under section 203(a)(3) of the Clean Air Act (42 U.S.C. 7522(a)(3)).

* * * * *

11. A new § 86.007–10 is added to subpart A to read as follows:

§ 86.007–10 Emission standards for 2007 and later model year Otto-cycle heavy-duty engines and vehicles.

This § 86.007–10 includes text that specifies requirements that differ from § 86.099–10. Where a paragraph in § 86.099–10 is identical and applicable to § 86.007–10, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.099–10."

(a)(1) Exhaust emissions from new 2007 and later model year Otto-cycle HDEs shall not exceed:

(i)(A) *Oxides of Nitrogen (NO_X).* 0.20 grams per brake horsepower-hour (0.075 grams per megajoule).

(B) A manufacturer may elect to include any or all of its Otto-cycle HDE families in any or all of the NO_X and NO_X plus NMHC emissions ABT programs for HDEs, within the restrictions described in § 86.007–15 or § 86.004–15. If the manufacturer elects to include engine families in any of these programs, the NO_X FEL may not exceed 0.50 grams per brake horsepower-hour (0.19 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, banking, or trading programs.

(ii)(A) *Non-methane Hydrocarbons (NMHC) for engines fueled with either gasoline, natural gas, or liquefied petroleum gas.* 0.14 grams per brake horsepower-hour (0.052 gram per megajoule).

(B) *Non-methane Hydrocarbon Equivalent (NMHCE) for engines fueled with methanol.* 0.14 grams per brake

horsepower-hour (0.052 gram per megajoule).

(iii)(A) *Carbon monoxide.* 14.4 grams per brake horsepower-hour (5.36 grams per megajoule).

(B) *Idle Carbon Monoxide.* For all Otto-cycle HDEs utilizing aftertreatment technology: 0.50 percent of exhaust gas flow at curb idle.

(iv) *Particulate.* 0.01 gram per brake horsepower-hour (0.0037 gram per megajoule).

(v) *Formaldehyde.* 0.016 grams per brake horsepower-hour (0.0060 gram per megajoule)

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P of this part.

(3) [Reserved]

(4) [Reserved]

(b) Evaporative emissions from heavy-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles. For certification vehicles only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from emission test results from certification vehicles if approved in advance by the Administrator.

(1) Hydrocarbons (for vehicles equipped with gasoline-fueled, natural gas-fueled or liquefied petroleum gas-fueled engines). (i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 1.4 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements (gasoline-fueled vehicles only): 1.75 grams per test.

(B) Running loss test (gasoline-fueled vehicles only): 0.05 grams per mile.

(C) Fuel dispensing spitback test (gasoline-fueled vehicles only): 1.0 gram per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 1.9 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements (gasoline-fueled vehicles only): 2.3 grams per test.

(B) Running loss test (gasoline-fueled vehicles only): 0.05 grams per mile.

(2) Total Hydrocarbon Equivalent (for vehicles equipped with methanol-fueled engines). (i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 1.4 grams carbon per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 1.75 grams carbon per test.

(B) Running loss test: 0.05 grams carbon per mile.

(C) Fuel dispensing spitback test: 1.0 gram carbon per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 1.9 grams carbon per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 2.3 grams carbon per test.

(B) Running loss test: 0.05 grams carbon per mile.

(3)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs, the standards set forth in paragraphs (b)(1) and (b)(2) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart M of this part.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs., the standards set forth in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section refer to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.098–23(b)(4)(ii)).

(4) All fuel vapor generated in a gasoline-or methanol-fueled heavy-duty vehicle during in-use operations shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge). The only exception to this requirement shall be for emergencies.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 2007 or later model year Otto-cycle HDE.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart N or P of this part to ascertain that such test engines meet the requirements of this section.

(e)[Reserved]. For guidance see § 86.099–10.

12. A new § 86.007–11 is added to subpart A to read as follows:

§ 86.007–11 Emission standards for 2007 and later model year diesel heavy-duty engines and vehicles.

Section 86.007–11 includes text that specifies requirements that differ from § 86.004–11. Where a paragraph in § 86.004–11 is identical and applicable to § 86.007–11, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.004–11."

(a)(1) Exhaust emissions from new 2007 and later model year diesel HDEs shall not exceed the following:

(i)(A) *Oxides of Nitrogen (NO_X).* 0.20 grams per brake horsepower-hour (0.075 gram per megajoule).

(B) A manufacturer may elect to include any or all of its diesel HDE families in any or all of the NO_X and NO_X plus NMHC emissions ABT programs for HDEs, within the restrictions described in § 86.007–15 or § 86.004–15. If the manufacturer elects to include engine families in any of these programs, the NO_X FELs may not exceed 0.50 grams per brake horsepower-hour (0.19 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, banking, or trading programs.

(ii)(A) *Non-methane Hydrocarbons (NMHC) for engines fueled with either diesel fuel, natural gas, or liquefied petroleum gas.* 0.14 grams per brake horsepower-hour (0.052 gram per megajoule).

(B) *Non-methane Hydrocarbon Equivalent (NMHCE) for engines fueled with methanol.* 0.14 grams per brake horsepower-hour (0.052 gram per megajoule).

(iii) *Carbon monoxide.* (A) 15.5 grams per brake horsepower-hour (5.77 grams per megajoule).

(B) 0.50 percent of exhaust gas flow at curb idle (methanol-, natural gas-, and liquefied petroleum gas-fueled diesel HDEs only).

(iv) *Particulate.* (A) 0.01 gram per brake horsepower-hour (0.0037 gram per megajoule).

(B) A manufacturer may elect to include any or all of its diesel HDE families in any or all of the particulate ABT programs for HDEs, within the restrictions described in § 86.007–15 or superseding applicable sections. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed 0.02 gram per brake horsepower-hour (0.0075 gram per megajoule).

(v) *Formaldehyde.* 0.016 grams per brake horsepower-hour (0.0060 gram per megajoule).

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(2) of appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P of this part, except as noted in § 86.007–23(c)(2).

(3)(i) The weighted average exhaust emissions, as determined under § 86.1360–2004(e)(5) pertaining to the supplemental steady-state test cycle, for each regulated pollutant shall not exceed 1.0 times the applicable emission standards or FELs specified in paragraph (a)(1) of this section.

(ii) Exhaust emissions shall not exceed the Maximum Allowable Emission Limits (for the corresponding speed and load), as determined under § 86.1360–2004(f), when the engine is operated in the steady-state control area defined under § 86.1360–2004(d).

(4)(i) The weighted average emissions, as determined under § 86.1370 pertaining to the not-to-exceed test procedures, for each regulated pollutant shall not exceed 1.25 times the applicable emission standards or FELs specified in paragraph (a)(1) of this section, except as noted in paragraph (a)(4)(ii) of this section.

(ii) Exhaust emissions shall not exceed either the Maximum Allowable Emission Limits (for the corresponding speed and load), as determined under § 86.1360(f) or the exhaust emissions specified in paragraph (a)(4)(i) of this section, whichever is numerically lower, when the engine is operated in the steady-state control area defined under § 86.1360(d).

(b)[Reserved]. For guidance see § 86.004–11.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 2007 or later model year diesel HDE.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), (c), and (d) of this section.

(e)[Reserved]. For guidance see § 86.004–11.

(f) Optional phase-in provisions. For model years 2007, 2008, and 2009, manufacturers may certify some of their engine families to the combined NOx plus NMHC standard applicable to model year 2006 engines under § 86.004–11, in lieu of the separate NO_X, NMHC, and formaldehyde standards specified in this section. These engines must comply with all other requirements applicable to model year 2007 engines.

(1) The following sales limits apply:

(i) For model year 2007, the combined number of engines in the engine families certified to the 2006 combined NO_X plus NMHC standard may not exceed 75 percent of the manufacturer's U.S.-directed production of heavy-duty diesel motor vehicle engines for model year 2007.

(ii) For model year 2008, the combined number of engines in the engine families certified to the 2006 combined NO_X plus NMHC standard may not exceed 50 percent of the manufacturer's U.S.-directed production of heavy-duty diesel motor vehicle engines for model year 2008.

(iii) For model year 2009, the combined number of engines in the engine families certified to the 2006 combined NO_X plus NMHC standard may not exceed 25 percent of the manufacturer's U.S.-directed production of heavy-duty diesel motor vehicle engines for model year 2009.

(2) During the phase-in period, manufacturers may not average together (as part of the ABT program) engine families certified to the NO_X plus NMHC standards applicable to model year 2006 and engine families certified to the separate NO_X and NMHC standards specified in this section.

(g)(1) Diesel heavy-duty engines and vehicles for sale in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands shall be subject to the same standards and requirements as apply to 2006 model year diesel heavy-duty engines and vehicles, but only if the vehicle or engine bears a permanently affixed label stating:

THIS ENGINE (or VEHICLE, as applicable) CONFORMS TO US EPA EMISSION STANDARDS APPLICABLE TO MODEL YEAR 2006. THIS ENGINE (or VEHICLE, as applicable) DOES NOT CONFORM TO US EPA EMISSION REQUIREMENTS IN EFFECT AT TIME OF PRODUCTION AND MAY NOT BE IMPORTED INTO THE UNITED STATES OR ANY TERRITORY OF THE UNITED STATES EXCEPT GUAM, AMERICAN SAMOA, OR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(2) The importation or sale of such a vehicle or engine for use at any location other than Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands shall be considered a violation of section 203(a)(1) of the Clean Air Act. In addition, vehicles or vehicle engines subject to this exemption may not subsequently be imported or sold into any state or territory of the United States other than Guam, American Samoa, or Commonwealth of the Northern Mariana Islands.

13. A new § 86.007–15 is added to Subpart A to read as follows:

§ 86.007–15 NO_X and particulate averaging, trading, and banking for heavy-duty engines.

Section 86.007–15 includes text that specifies requirements that differ from § 86.004–15. Where a paragraph in § 86.004–15 is identical and applicable to § 86.007–15, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.004–15."

(a) through (k) [Reserved]. For guidance see § 86.004–15.

(l) The following provisions apply for model year 2007 and later engines. These provisions apply instead of the provisions of § 86.004–15 (a) through (k) to the extent that they are in conflict.

(1) Credits are calculated as NO_X credits. Banked NO_X plus NMHC credits and PM credits generated in prior model years (before 2007) may not be used in the 2007 and later NO_X and PM averaging programs, unless:

(i) The engines generating the credits meet all of the applicable standards listed in § 86.007-10 (a)(1) or § 86.007–11 (a)(1); or

(ii) The engines using the credits are certified under the § 86.007–11(f).

(2) The FEL must be expressed to the same number of decimal places as the standard (one-hundredth of a gram per brake horsepower-hour).

(3) Credits are rounded to the nearest one-hundredth of a Megagram.

(4) Credits generated for 2007 and later model year engine families are not discounted, and do not expire.

14. A new § 86.007–23 is added to Subpart A to read as follows:

§ 86.007–23 Required data.

Section 86.007–23 includes text that specifies requirements that differ from § 86.095–23, § 86.098–23, or § 86.001–23. Where a paragraph in § 86.095–23, § 86.098–23, or § 86.001–23 is identical and applicable to § 86.007–23, this may

be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.095–23.", "[Reserved]. For guidance see § 86.098–23.", or "[Reserved]. For guidance see § 86.001–23.".

(a) through (b)(1) [Reserved]. For guidance see § 86.098–23.

(b)(2) [Reserved]. For guidance see § 86.001–23.

(b)(3) and (b)(4) [Reserved]. For guidance see § 86.098–23.

(c) *Emission data*—(1) *Certification vehicles.* The manufacturer shall submit emission data (including, methane, methanol, formaldehyde, and hydrocarbon equivalent, as applicable) on such vehicles tested in accordance with applicable test procedures and in such numbers as specified. These data shall include zero-mile data, if generated, and emission data generated for certification as required under § 86.000–26(a)(3). In lieu of providing emission data the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with certain applicable emission standards of this part Standards eligible for such manufacturer requests are those for idle CO emissions, smoke emissions, or particulate emissions from methanol-fueled diesel-cycle certification vehicles, those for particulate emissions from gasoline-fueled or methanol-fueled Otto-cycle certification vehicles, and those for formaldehyde emissions from petroleum-fueled vehicles. Also eligible for such requests are standards for total hydrocarbon emissions from model year 1994 and later certification vehicles. By separate request, including appropriate supporting test data, the manufacturer may request that the Administrator also waive the requirement to measure particulate or formaldehyde emissions when conducting Selective Enforcement Audit testing of Otto-cycle vehicles.

(2) *Certification engines.* The manufacturer shall submit emission data on such engines tested in accordance with applicable emission test procedures of this subpart and in such numbers as specified. These data shall include zero-hour data, if generated, and emission data generated for certification as required under § 86.000–26(c)(4). In lieu of providing emission data on idle CO emissions or particulate emissions from methanol-fueled diesel-cycle certification engines, on particulate emissions from Otto-cycle engines, on CO emissions from petroleum-fueled or methanol-fueled diesel certification engines, or on formaldehyde emissions from petroleum-fueled engines the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the applicable emission standards of this part . In lieu of providing emission data on smoke emissions from methanol-fueled or petroleum-fueled diesel certification engines, the Administrator may, on the request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the applicable emissions standards of this part In lieu of providing emissions data on smoke emissions from petroleum-fueled or methanol-fueled diesel engines, or on formaldehyde emissions from petroleum-fueled engines when conducting Selective Enforcement Audit testing under subpart K of this part, the Administrator may, on separate request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the applicable smoke emissions standards of this part.

(d) through (e)(1) [Reserved]. For guidance see § 86.098–23.

(e)(2) and (e)(3) [Reserved]. For guidance see § 86.001–23.

(f) through (g) [Reserved]. For guidance see § 86.095–23.

(h) through (k) [Reserved]. For guidance see § 86.098–23.

(l) [Reserved]. For guidance see § 86.095–23.

(m) [Reserved]. For guidance see § 86.098–23.

15. A new § 86.007–25 is added to Subpart A to read as follows:

§ 86.007–25 Maintenance.

Section 86.007–25 includes text that specifies requirements that differ from § 86.094–25, § 86.098–25, or § 86.004–25. Where a paragraph in § 86.094–25, § 86.098–25, or § 86.004–25 is identical and applicable to § 86.007–25, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–25.", "[Reserved]. For guidance see § 86.098–25.", or "[Reserved]. For guidance see § 86.004–25."

(a) through (b)(3)(v)(H) [Reserved]. For guidance see § 86.004–25.

(b)(3)(vi)(A) through (b)(3)(vi)(D) [Reserved]. For guidance see § 86.094–25.

(b)(3)(vi)(E) through (b)(3)(vi)(J) [Reserved]. For guidance see § 86.098–25.

(b)(4) introductory text through (b)(4)(iii)(C) [Reserved]. For guidance see § 86.004–25.

(b)(4)(iii)(D) Particulate trap or trap oxidizer systems including related components (adjustment and cleaning only for filter element, replacement of the filter element is not allowed during the useful life).

(b)(4)(iii)(E) [Reserved]. For guidance see § 86.004–25.

(F) Catalytic converter (adjustment and cleaning only for catalyst beds, replacement of the bed is not allowed during the useful life).

(b)(4)(iii)(G) through (b)(6) [Reserved]. For guidance see § 86.004–25.

(b)(7) through (h) [Reserved]. For guidance see § 86.094–25.

16. A new § 86.007–35 is added to Subpart A to read as follows:

§ 86.007–35 Labeling.

Section 86.007–35 includes text that specifies requirements that differ from § 86.095–35. Where a paragraph in § 86.095–35 is identical and applicable to § 86.007–35, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.095–35.".

(a) Introductory text through (a)(1)(iii)(L) [Reserved]. For guidance see § 86.095–35.

(a)(1)(iii)(M) [Reserved]

(a)(1)(iii)(N)(*1*) For vehicles exempted from compliance with certain revised performance warranty procedures, as specified in § 86.096–21(j), a statement indicating the specific performance warranty test(s) of 40 CFR part 85, subpart W, not to be performed.

(*2*) For vehicles exempted from compliance with all revised performance warranty procedures, as specified in § 86.096–21(k), a statement indicating:

(*i*) That none of the performance warranty tests of 40 CFR part 85, subpart W, is to be performed, and

(*ii*) The name of the Administrator-approved alternative test procedure to be performed.

(2) Light-duty truck and heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions.

(i) A legible, permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Vehicle Information;

(B) Full corporate name and trademark of the manufacturer;

(C) Engine displacement (in cubic inches or liters), engine family identification, and evaporative/refueling family;

(a)(2)(iii)(D) through (a)(2)(iii)(E) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii)(F) [Reserved]

(a)(2)(iii)(G) through (a)(2)(iii)(K) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii)(L) [Reserved]

(a)(2)(iii)(M) through (a)(2)(iii)(N) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii)(O)(*1*) For vehicles exempted from compliance with certain revised performance warranty procedures, as specified in § 86.096–21(j), a statement indicating the specific performance warranty test(s) of 40 CFR part 85, subpart W, not to be performed.

(*2*) For vehicles exempted from compliance with all revised performance warranty procedures, as specified in § 86.096–21(k), a statement indicating:

(*i*) That none of the performance warranty tests of 40 CFR part 85, subpart W, is to be performed, and

(*ii*) The name of the Administrator-approved alternative test procedure to be performed.

(a)(3) heading through (b) [Reserved]. For guidance see § 86.095–35.

(c) Model year 2007 and later diesel heavy-duty vehicles, and diesel-fueled Tier 2 vehicles as defined in Subpart S of this Part, must include permanent readily visible labels on the dashboard (or instrument panel) and near the fuel inlet that states "Ultra Low Sulfur Diesel Fuel Only".

(d) through (i) [Reserved]. For guidance see § 86.095–35.

17. A new § 86.007–38 is added to Subpart A to read as follows:

§ 86.007–38 Maintenance Instructions.

Section 86.007–38 includes text that specifies requirements that differ from those specified in § 86.094–38 or § 86.004–38. Where a paragraph in § 86.094–38 or § 86.004–38 is identical and applicable to § 86.007–38, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–38.", or "[Reserved]. For guidance see § 86.004–38."

(a) through (f) [Reserved]. For guidance see § 86.004–38.

(g) [Reserved]. For guidance see § 86.094–38.

(h) [Reserved]. For guidance see § 86.004–38.

(i) For each new diesel-fueled engine subject to the standards prescribed in § 86.007–11, as applicable, the manufacturer shall furnish or cause to be furnished to the ultimate purchaser a statement that "This engine must be operated only with ultra low sulfur diesel fuel (i.e., diesel fuel meeting EPA specifications for highway diesel fuel, including a 15 ppm sulfur cap)."

18. A new § 86.113–07 is added to subpart B to read as follows:

§ 86.113–07 Fuel specifications.

Section 86.113–07 includes text that specifies requirements that differ from § 86.113–94 or § 86.113–04. Where a paragraph in § 86.113–94 or § 86.113–04 is identical and applicable to § 86.113–07, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.113–94 or "[Reserved]. For guidance see § 86.113–04".

(a) [Reserved]. For guidance see § 86.113–04.

(b)(1) [Reserved]. For guidance see § 86.113–94.

(b)(2) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, must be used in exhaust emissions testing. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2-D" grade diesel, must be used:

Item		ASTM test method No.	Type 2–D
(i) Cetane Number		D613	40–50
(ii) Cetane Index		D976	40–50
(iii) Distillation range:			
(A) IBP	°F (°C)	D86	340–400 (171.1–204.4)
(B) 10 pct. point	°F (°C)	D86	400–460 (204.4–237.8)
(C) 50 pct. point	°F (°C)	D86	470–540 (243.3–282.2)
(D) 90 pct. point	°F (°C)	D86	560–630 (293.3–332.2)
(E) EP	°F (°C)	D86	610–690 (321.1–365.6)
(iv) Gravity	°API	D287	32–37
(v) Total sulfur	ppm	D2622	7–15
(vi) Hydrocarbon composition: Aromatics, minimum (Remainder shall be paraffins, naphthenes, and olefins)	pct.	D5186	27

Item		ASTM test method No.	Type 2–D
(vii) Flashpoint, min.	°F (°C)	D93	130 (54.4)
(viii) Viscosity	centistokes	D445	2.0–3.2

(3) Petroleum fuel for diesel vehicles meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel fuel, shall be used:

Item		ASTM test method No.	Type 2–D
(i) Cetane Number		D613	38–58
(ii) Cetane Index		D976	min. 40
(iii) Distillation range: 90 pct. point	°F	D86	540–630
(iv) Gravity	°API	D287	30–39
(v) Total sulfur	ppm	D2622	7–15
(vi) Flashpoint, min.	°F (°C)	D93	130 (54.4)
(vii) Viscosity	centistokes	D445	1.5–4.5

(b)(4) through (g) [Reserved]. For guidance see § 86.113–94.

19. A new § 86.1313–07 of subpart N is added to read as follows:

§ 86.1313–07 Fuel specifications.

Section 86.1313–07 includes text that specifies requirements that differ from § 86.1313–94. Where a paragraph in § 86.1313–94 is identical and applicable to § 86.1313–07, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1313–94.".

(a) through (b)(1) [Reserved]. For guidance see § 86.1313–94.

(b)(2) Petroleum fuel for diesel engines meeting the specifications in Table N07–2, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of petroleum fuel used shall be commercially designated as "Type 2–D" grade diesel fuel except that fuel commercially designated as "Type 1–D" grade diesel fuel may be substituted provided that the manufacturer has submitted evidence to the Administrator demonstrating to the Administrator's satisfaction that this fuel will be the predominant in-use fuel. Such evidence could include such things as copies of signed contracts from customers indicating the intent to purchase and use "Type 1–D" grade diesel fuel as the primary fuel for use in the engines or other evidence acceptable to the Administrator. Table N07–2 follows:

TABLE N07–2

Item		ASTM test method No.	Type 1–D	Type 2–D
(i) Cetane Number		D613	40–54	40–50
(ii) Cetane Index		D976	40–54	40–50
(iii) Distillation range: (A) IBP	°F (°C)	D86	330–390 (165.6–198.9)	340–400 (171.1–204.4)
(B) 10 pct. point	°F (°C)	D86	370–430 187.8–221.1)	400–460 (204.4–237.8)
(C) 50 pct. point	°F °C)	D86	410–480 (210.0–248.9)	470–540 (243.3–282.2)

TABLE N07–2—Continued

Item		ASTM test method No.	Type 1–D	Type 2–D
(D) 90 pct. point	°F (°C)	D86	460–520 (237.8–271–1)	560–630 (293.3–332.2)
(E) EP	°F (°C)	D86	500–560 (260.0–293.3)	610–690 (321.1–365.6)
(iv) Gravity	°API	D287	40–44	32–37
(v) Total sulfur	ppm	D2622	7–15	7–15
(vi) Hydrocarbon composition: Aromatics, minimum (Remainder shall be paraffins, naphthenes, and olefins).	pct	D5186	8	27
(vii) Flashpoint, min	°F (°C)	93	120 (48.9)	130 (54.4)
(viii) Viscosity	centistokes	D445	1.6–2.0	2.0–3.2

(3) Petroleum diesel fuel for diesel engines meeting the specifications in table N07–3, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of petroleum diesel fuel used shall be commercially designated as "Type 2–D" grade diesel fuel except that fuel commercially designated as "Type 1–D" grade diesel fuel may be substituted provided that the manufacturer has submitted evidence to the Administrator demonstrating to the Administrator's satisfaction that this fuel will be the predominant in-use fuel. Such evidence could include such things as copies of signed contracts from customers indicating the intent to purchase and use "Type 1–D" grade diesel fuel as the primary fuel for use in the engines or other evidence acceptable to the Administrator. Table N07–03 follows:

TABLE N07–3

Item		ASTM test method No.	Type 1–D	Type 2–D
(i) Cetane Number		D613	40–56	38–58
(ii) Cetane Index		D976	min. 40	min. 40
(iii) Distillation range: 90 pct. point	°F (°C)	D86	440–530 226.7–276–7)	540–630 (293.3–332.2)
(iv) Gravity	°API	D287	39–45	30–39
(v) Total sulfur	ppm	D2622	7–15	7–15
(vi) Flashpoint, min.	°F (°C)	D93	130 (54.4)	130 (54.4)
(vii) Viscosity	centistokes	D445	1.2–2.2	1.5–4.5

(b)(4) through (g) [Reserved]. For guidance see § 86.1313–94.

20. A new § 86.1337–07 is added to subpart N to read as follows:

§ 86.1337–07 Engine dynamometer test run.

Section 86.1337–07 includes text that specifies requirements that differ from § 86.1337–96. Where a paragraph in § 86.1337–96 is identical and applicable to § 86.1337–07, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1337–96.".

(a) through (c) [Reserved]. For guidance see § 86.1337–96.

(d) For engines equipped with an aftertreatment device that is intermittently regenerated:

(1) Repeat the "hot start cycle" until the regeneration event occurs;

(2) Complete the "hot start cycle" in which the regeneration event occurs;

(3) Measure emission during each of the "hot start cycles"; and

(4) Use the measured emission values for the "hot start cycle" with the highest emissions as the "hot start cycle" emissions for calculations in § 86.1342. (Note: If the highest emission values for each pollutant do not occur in the same "hot start cycle", then use the emissions for the cycle in which the emissions come closest to causing an exceedance of an applicable standard.)

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21. A new § 86.1808–07 is added to subpart S to read as follows:

§ 86.1808–07 Maintenance instructions.

Section 86.1808–07 includes text that specifies requirements that differ from those specified in § 86.1808–01. Where a paragraph in § 86.1808–01 is identical and applicable to § 86.1808–07, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1808–01.".

(a) through (f) [Reserved]. For guidance see § 86.1808–01.

(g) For each new diesel-fueled Tier 2 vehicle, the manufacturer shall furnish or cause to be furnished to the purchaser a statement that "This vehicle must be operated only with ultra low sulfur diesel fuel (i.e., diesel fuel meeting EPA specifications for highway diesel fuel, including a 15 ppm sulfur cap).".

22. Section 86.1810–01 is amended by revising the introductory text to read as follows:

§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.

This section applies to model year 2001 and later light-duty vehicles and light-duty trucks fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels. This section also applies to complete heavy-duty vehicles certified according to the provisions of this subpart. Multi-fueled vehicles (including dual-fueled and flexible-fueled vehicles) shall comply with all requirements established for each consumed fuel (or blend of fuels in the case of flexible fueled vehicles). The standards of this subpart apply to both certification and in-use vehicles unless otherwise indicated. For Tier 2 and interim non-Tier 2 vehicles, this section also applies to hybrid electric vehicles and zero emission vehicles. Unless otherwise specified, requirements and provisions of this subpart applicable to methanol fueled vehicles are also applicable to Tier 2 and interim non-Tier 2 ethanol fueled vehicles.

* * * * *

23. A new § 86.1816–07 is added to subpart S, to read as follows:

§ 86.1816–07 Emission standards for complete heavy-duty vehicles.

Section 86.1816–07 includes text that specifies requirements that differ from those specified in § 86.1816–04.[1] Where a paragraph in § 86.1816–04 is identical and applicable to § 86.1816–07, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1816–04." This section applies to 2007 and later model year complete heavy-duty vehicles (excluding MDPVs) fueled by gasoline, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to hydrocarbons or total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions from 2007 and later model year complete heavy-duty vehicles at and above 8,500 pounds Gross Vehicle Weight Rating but equal to or less than 10,000 Gross Vehicle Weight Rating pounds shall not exceed the following standards at full useful life:

(i) [Reserved]

(ii) *Non-methane hydrocarbons.* 0.195 grams per mile; this requirement may be satisfied by measurement of non-methane hydrocarbons or total hydrocarbons, at the manufacturer's option.

(iii) *Carbon monoxide.* 7.3 grams per mile.

(iv) *Oxides of nitrogen.* 0.20 grams per mile.

(v) *Particulate.* 0.02 grams per mile.

(vi) *Formaldehyde.* 0.016 grams per mile.

(2) Exhaust emissions from 2007 and later model year complete heavy-duty vehicles above 10,000 pounds Gross Vehicle Weight Rating but less than 14,000 pounds Gross Vehicle Weight Rating shall not exceed the following standards at full useful life:

(i) [Reserved]

(ii) *Non-methane hydrocarbons.* 0.23 grams per mile; this requirement may be satisfied by measurement of non-methane hydrocarbons or total hydrocarbons, at the manufacturer's option.

(iii) *Carbon monoxide.* 8.1 grams per mile.

(iv) *Oxides of nitrogen.* 0.40 grams per mile.

(v) *Particulate.* 0.02 grams per mile.

(vi) *Formaldehyde.* 0.021 grams per mile.

(b) [Reserved]

(c) [Reserved]

(d) *Evaporative emissions.* Evaporative hydrocarbon emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled complete heavy-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 1.4 grams per test.

(2) Gasoline and methanol fuel only. For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 1.75 grams per test.

(3) Gasoline and methanol fuel only. Running loss test: 0.05 grams per mile.

(4) Gasoline and methanol fuel only. Fuel dispensing spitback test: 1.0 grams per test.

(e) through (h) [Reserved]. For guidance see § 86.1816–04.

24. A new § 86.1824–07 is added to subpart S, to read as follows:

§ 86.1824–07 Durability demonstration procedures for evaporative emissions.

Section 86.1824–07 includes text that specifies requirements that differ from those specified in § 86.1801–01. Where a paragraph in § 86.1824–01 is identical and applicable to § 86.1824–07, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1824–01.". This section applies to gasoline-, methanol-, natural gas- and liquefied petroleum gas-fueled LDV/Ts, MDPVs, and HDVs.

(a) through (f) [Reserved]. For guidance see § 86.1824–01.

25. Section 86.1829–01 is amended by revising paragraph (b)(1)(iii)(B) and adding paragraph (b)(1)(iii)(F) to read as follows:

[1] Section 86.1816–04 was proposed to be added at 64 FR 58559, October 29, 1999.

§ 86.1829–01 Durability and emission testing requirements; waivers.

* * * * *

(b)* * *(1) * * *

(iii) * * *

(B) In lieu of testing an Otto-cycle light-duty vehicle, light-duty truck, or heavy-duty vehicle for particulate emissions for certification, a manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement must be based on previous emission tests, development tests, or other appropriate information.

* * * * *

(F) In lieu of testing a petroleum-fueled heavy-duty vehicle for formaldehyde emissions for certification, a manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement must be based on previous emission tests, development tests, or other appropriate information.

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S.J. Res. 44/P.L. 106–205
Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)

H.R. 154/P.L. 106–206
To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)

H.R. 371/P.L. 106–207
Hmong Veterans' Naturalization Act of 2000 (May 26, 2000; 114 Stat. 316)

H.R. 834/P.L. 106–208
National Historic Preservation Act Amendments of 2000 (May 26, 2000; 114 Stat. 318)

H.R. 1377/P.L. 106–209
To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the "John J. Buchanan Post Office Building". (May 26, 2000; 114 Stat. 320)

H.R. 1832/P.L. 106–210
Muhammad Ali Boxing Reform Act (May 26, 2000; 114 Stat. 321)

H.R. 3629/P.L. 106–211
To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)

H.R. 3707/P.L. 106–212
American Institute in Taiwan Facilities Enhancement Act (May 26, 2000; 114 Stat. 332)

S. 1836/P.L. 106–213
To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)

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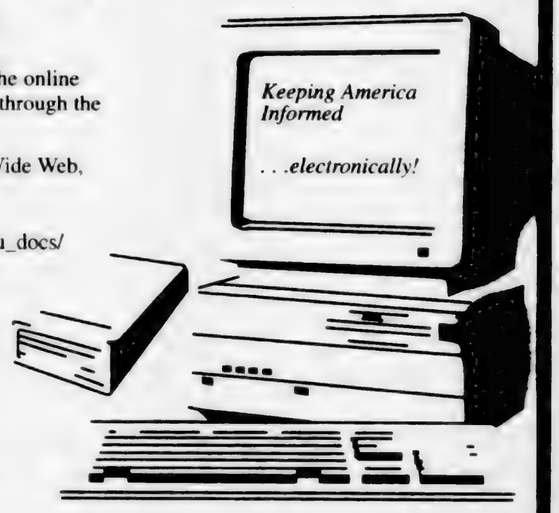

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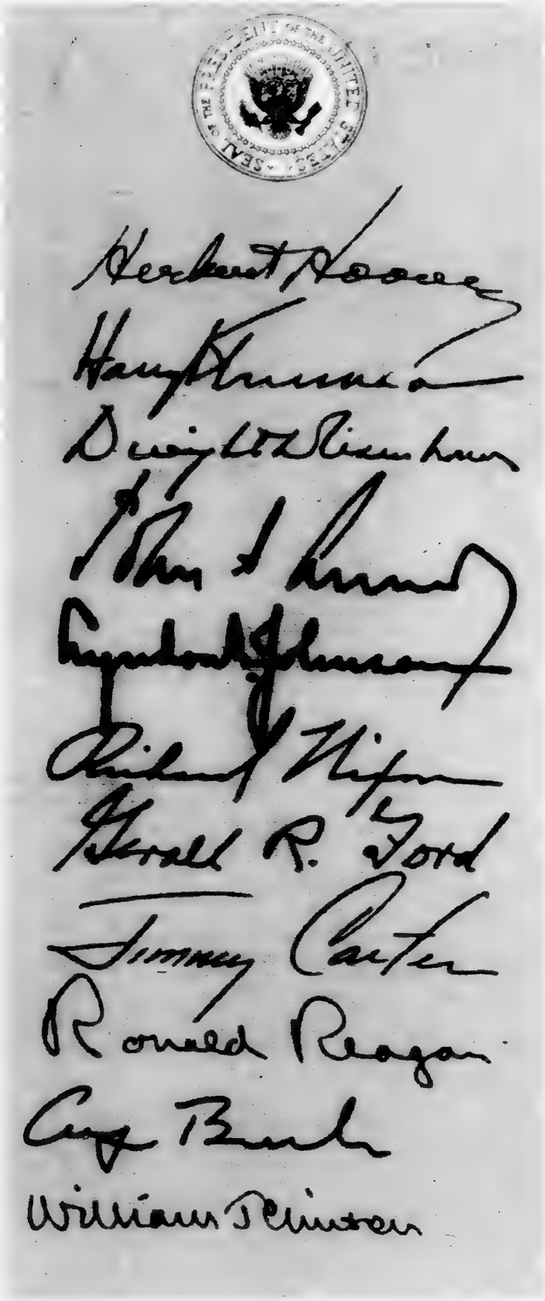

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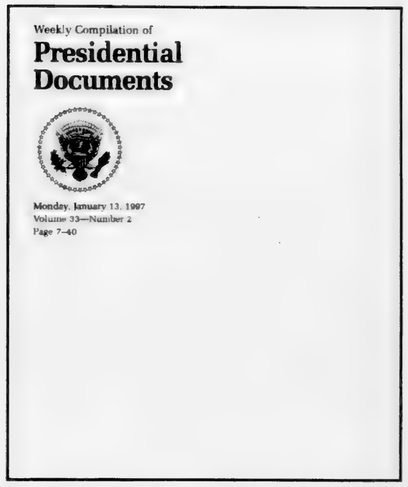

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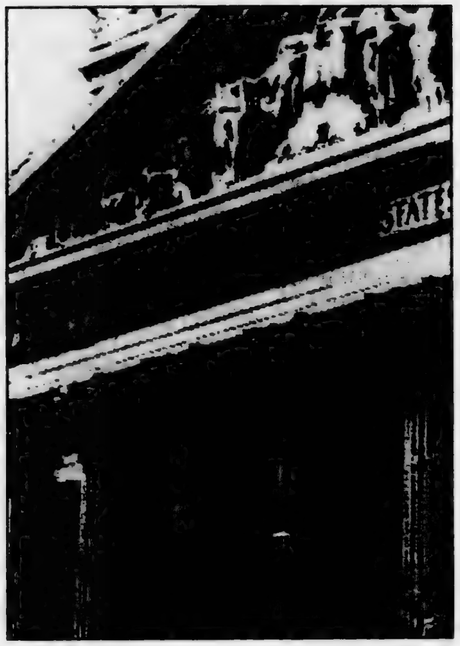

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV00–915–2 FR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Avocado Administrative Committee (Committee) for the 2000–2001 and subsequent fiscal periods from $0.16 per 55-pound bushel container or equivalent to $0.19 per 55-pound bushel container or equivalent of avocados handled. The Committee is responsible for local administration of the marketing order, which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable avocados beginning April 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods from $0.16 per 55-pound bushel container or equivalent to $0.19 per 55-pound bushel container or equivalent of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on March 8, 2000, and unanimously recommended 2000–2001 expenditures of $186,333 and an assessment rate of $0.19 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were $164,335. The assessment rate of $0.19 is $0.03 higher than the rate currently in effect.

The Florida Lime and the Florida Avocado Administrative Committees share certain costs (staff, office space, and equipment) for economy and efficiency (7 CFR parts 911 and 915). Each Committee's share of these costs is based upon the amount of work performed and time devoted to administration. To reflect its increased share of the workload and resources, and Avocado Administrative Committee needs to fund a greater share of the costs. An increased budget for avocados is needed to accomplish this.

The major expenditures recommended by the Committee for the

2000–2001 year include $69,000 for salaries, $35,000 for national enforcement, $20,000 for research, $14,898 for employee benefits, and $13,782 for insurance and bonds. Budgeted expenses for these items in 1999–2000 were $46,000, $27,000, $39,500, $10,040, and $8,955, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida avocados. Commodity shipments for the year are estimated at 900,000 55-pound bushel containers, which should provide $171,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $174,431) will be kept within the maximum permitted by the order (approximately three fiscal periods' expenses, § 915.41(a)(2)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 141 avocado producers in the production area and approximately 49 avocado handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

The average grower price for fresh avocados during the 1998–99 season was $17.90 per 55-pound bushel box or equivalent for all domestic shipments and the total shipments were 890,859 bushels. Approximately 10 percent of all handlers handled 90 percent of the Florida avocado shipments. Many avocado handlers ship other tropical fruit and vegetable products, which are not included in the Committee's data but would contribute further to handler receipts.

Using these prices, about 90 percent of avocado handlers could be considered small businesses under the SBA definition. The majority of Florida avocado producers also may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.16 per 55-pound bushel container or equivalent to $0.19 per 55-pound bushel container or equivalent of avocados. The Committee unanimously recommended 2000–2001 expenditures of $186,333 and an assessment rate of $0.19 per 55-pound bushel container or equivalent. The assessment rate of $0.19 is $0.03 higher than the 1999–2000 rate. The quantity of assessable avocados for the 2000–2001 season is estimated at 900,000 55-pound bushel containers. Thus, the $0.19 rate should provide $171,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2000–2001 fiscal year include $69,000 for salaries, $35,000 for national enforcement, $20,000 for research, $14,898 for employee benefits, and $13,782 for insurance and bonds. Budgeted expenses for these items in 1999–2000 were $46,000, $27,000 $39,500, $10,040, and $8,955, respectively.

The Florida Lime and the Florida Avocado Administrative Committees share certain costs (staff, office space, and equipment) for economy and efficiency (7 CFR parts 911 and 915). Each Committee's share of these costs is based upon the amount of work performed and time devoted to administration. To reflect its increased share of the workload and resources, the Avocado Administrative Committee needs to fund a greater share of the costs. An increased budget for avocados is needed to accomplish this.

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $186,333 which included increases in administrative and office salaries, and national enforcement. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. Alternative expenditure levels were discussed. However, the Committee ultimately determined that the recommended expenditures were appropriate to reflect its increased share of the workload and resource demands. The assessment rate of $0.19 per 55-pound bushel container or equivalent of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 900,000 55-pound bushel containers or equivalents for the 2000–2001 fiscal year. This is approximately $11,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2000–2001 season could be close to $17.90 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue for the 2000–2001 fiscal year as a percentage of total grower revenue could be one percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 8, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the Federal Register on April 17, 2000 (65 FR 20382). Copies of the proposed rule were also mailed or sent via facsimile to all Florida avocado handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending May 17, 2000, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving 2000–2001 crop avocados from growers;(2) the fiscal period began April 1, 2000, and the marketing order requires that the assessment rate apply for each fiscal period to all avocados handled during such fiscal period; (3) the Committee needs sufficient funds to pay its expenses which are incurred on a continuous basis; (4) handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting, and is similar to other assessment rate actions issued in past years; and (5) a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2000, an assessment rate of $0.19 per 55-pound bushel container or equivalent is established for avocados grown in South Florida.

Dated: May 30, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–13980 Filed 6–2–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–307–AD; Amendment 39–11759; AD 2000–11–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that requires one-time inspections to detect cracking of the aft wheel well bulkhead, corrective actions, if necessary, and modification of the aft wheel well bulkhead. For certain airplanes, this AD also requires a one-time visual inspection to detect excess sealant covering the outer flange of the side fitting and lower chord and splice area of the aft wheel well bulkhead, and corrective actions, if necessary. This amendment is prompted by a report indicating that numerous fatigue cracks were found in the aft wheel well bulkhead. The actions specified by this AD are intended to prevent fatigue cracking of the aft wheel well bulkhead, which could result in rapid in-flight decompression of the airplane.

DATES: Effective July 10, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes was published in the **Federal Register** on November 26, 1999 (64 FR 66426). That action proposed to require one-time inspections to detect cracking of the aft wheel well bulkhead, and corrective actions, if necessary. That action also proposed to require modification of the aft wheel well bulkhead. For certain airplanes, that action also proposed to require a one-time visual inspection to detect excess sealant covering the outer flange of the side fitting and lower chord and splice area of the aft wheel well bulkhead, and corrective actions, if necessary.

Explanation of Relevant Service Information

Since the issuance of the notice of proposed rulemaking (NPRM), the FAA has reviewed and approved Boeing Service Bulletin 777–53A0015, Revision 1, dated March 2, 2000. (The original issue of the service bulletin, dated June 17, 1999, is referenced in the NPRM as the appropriate source of service information for accomplishment of the proposed actions.) The procedures described in Revision 1 of the service bulletin are similar to those in the original issue, and Revision 1 adds no new airplanes to the effectivity listing. Therefore, paragraphs (a), (b), and (d) of

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this final rule have been revised to reference Revision 1 as the appropriate source of service information for accomplishment of the actions required by those paragraphs. In addition, a new "NOTE 3" has been added to this final rule to specify that actions accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–53A0015, dated June 17, 1999, are considered acceptable for compliance with this AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Fleet Not Affected

On behalf of one of its members, the Air Transport Association of America (ATA) comments that none of the airplanes operated by that member would be affected by the proposal. The ATA offers no further comment and makes no request.

Request To Revise Compliance Time: Paragraph (a)(2)

One commenter requests that the FAA revise paragraph (a)(2) of the proposed rule to specify that removal of excess sealant from the aft wheel well bulkhead area is not required until accomplishment of the inspections specified in paragraph (b) of the proposed rule. [Paragraph (a)(2) of the proposed rule states that, if any excess sealant is found, it must be removed from the aft wheel well bulkhead area prior to further flight.] The commenter points out that the excess sealant is of concern because it can impede the inspections to detect fatigue cracking that are specified in paragraph (b) of the proposed rule, but the excess sealant on its own poses no threat to the continued safe operation of an airplane.

The FAA does not concur with the commenter's request. The compliance time is the same for the requirements of both paragraphs (a) and (b). Therefore, the FAA expects the requirements of these paragraphs will be accomplished at the same time. No change to the final rule is necessary in this regard.

Request To Remove Airplane from Effectivity

One commenter requests that the FAA revise the applicability of the proposed rule to delete the airplane having line number 1. The commenter states that this airplane is owned by the manufacturer and is operated in accordance with an experimental airworthiness certificate. The commenter asserts that this airplane does not accumulate enough flight cycles to develop significant fatigue cracking of the aft wheel well bulkhead. The commenter also states that, if the airplane is sold, the manufacturer will incorporate a design change equivalent to the requirements of this AD prior to delivery. The commenter claims that inclusion of the subject airplane in the applicability of this AD will "introduce additional unnecessary complications in obtaining certification of this airplane."

The FAA does not concur with the commenter's request. Though the airplane is operated in accordance with an experimental airworthiness certificate, the airplane is still subject to the unsafe condition addressed in this AD. Based on the current utilization of the airplane, the FAA acknowledges that it may be some time before the airplane will be required to be in compliance with this AD. However, eventually, the airplane must be inspected and modified in accordance with this AD, or modified with a design change that will provide an equivalent level of safety. Any design change that the manufacturer develops in lieu of the actions required by this AD must be approved as an alternative method of compliance in accordance with paragraph (e) of this AD. No change to the final rule is necessary in this regard.

Request To Revise Compliance Time: Paragraph (d)

One commenter requests that the compliance time stated for removal of excess sealant specified in paragraph (d) of the proposed rule be revised from "prior to further flight" to "prior to the threshold specified for fatigue inspections in Section 9 of the 777 Maintenance Planning Document [MPD]. . . ." The commenter states that the removal of the excess sealant in the area described in paragraph (d) of the proposed rule is intended to allow the fatigue inspections specified in Section 9 of the MPD to be properly conducted. The commenter states that the paragraph, as worded in the proposed rule, "can be interpreted to mean that the sealant must be removed to facilitate fatigue inspection of these areas at 11,000 flights." Further, the commenter states, "There is no data to suggest that these areas would be subject to significant fatigue cracking earlier than the threshold specified in the MPD (currently 30,000 flights for all Structures items)."

The FAA does not concur with the commenter's request. Excess sealant may impede detection of unexpected damage during general visual inspections performed as part of routine maintenance. Thus, the FAA finds it is necessary to require the sealant to be removed prior to further flight after accomplishment of the modification in accordance with paragraph (b) of this AD. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 109 Boeing Model 777–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD.

For all airplanes, it will take approximately 2 work hours per airplane to accomplish the required general visual and HFEC inspections at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections on U.S. operators is estimated to be $4,200, or $120 per airplane.

For all airplanes, it will take approximately 28 work hours per airplane to accomplish the required modification at an average labor rate of $60 per work hour. Required parts will cost approximately $6,013 per airplane. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be $269,255, or $7,693 per airplane.

For certain airplanes, it will take 3 work hours per airplane to accomplish the inspection to detect excess sealant at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–11 Boeing: Amendment 39–11759. Docket 99–NM–307–AD.

Applicability: Model 777–200 series airplanes having line numbers 1 through 144; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the aft wheel well bulkhead, which could result in rapid in-flight decompression of the airplane, accomplish the following:

General Visual Inspection

(a) For Group 1 airplanes, as identified in Boeing Service Bulletin 777–53A0015, Revision 1, dated March 2, 2000: Prior to the accumulation of 11,000 total flight cycles, or within 4,000 flight cycles after the effective date of this AD, whichever occurs later, perform a one-time general visual inspection to detect excess sealant covering the outer flange of the side fitting and lower chord and splice of the aft wheel well bulkhead, in accordance with Part I of the Accomplishment Instructions of the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Inspections and modifications accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–53A0015, dated June 17, 1999, are considered acceptable for compliance with paragraphs (a), (b), and (d) of this AD.

(1) If no excess sealant is detected, no further action is required by this paragraph.

(2) If any excess sealant is detected, prior to further flight, remove the excess sealant from the aft wheel well bulkhead area in accordance with the service bulletin.

Inspections/Modification

(b) For Groups 1 and 2 airplanes, as identified in Boeing Service Bulletin 777–53A0015, Revision 1, dated March 2, 2000: Prior to the accumulation of 11,000 total flight cycles, or within 4,000 flight cycles after the effective date of this AD, whichever occurs later, perform a one-time general visual inspection to detect cracking of the adjacent structure of the aft wheel well bulkhead and perform a one-time high frequency eddy current (HFEC) inspection to detect cracking of the fastener holes in the web, side fitting, and outer chord of the aft wheel well bulkhead, in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(1) If no cracking is detected during the general visual and HFEC inspections, prior to further flight, modify the aft wheel well bulkhead (including cold working; replacing the fairing support bracket and splice plates with revised fairing support brackets and splice plates; and installing new web doublers and, if necessary, shims), in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(2) If any cracking is detected during the general visual inspection, prior to further flight, accomplish the requirements of paragraph (c) of this AD.

(3) If any cracking is detected during the one-time HFEC inspection, prior to further flight, remove additional fasteners, and perform a second HFEC inspection to detect cracking of the fastener holes, in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(i) If no cracking is detected during the second HFEC inspection, prior to further flight, oversize all the holes to the diameter specified in the service bulletin, and perform a third HFEC inspection to detect cracking of the fastener holes, in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(A) If no cracking is detected during the third HFEC inspection, prior to further flight, replace the fasteners with new fasteners and modify the aft wheel well bulkhead (including cold working; replacing the fairing support bracket and splice plates with revised fairing support brackets and splice plates; and installing new web doublers and, if necessary, shims), in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(B) If any cracking is detected during the third HFEC inspection, prior to further flight, accomplish the requirements of paragraph (c) of this AD.

(ii) If any cracking is detected during the second HFEC inspection, prior to further flight, accomplish the requirements of paragraph (c) of this AD.

Repair

(c) For airplanes on which cracking has been detected during any inspection required by paragraph (b)(2), (b)(3)(i)(B), or (b)(3)(ii) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Airplane Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Removal of Excess Sealant

(d) For Group 1 airplanes, as identified in Boeing Service Bulletin 777–53A0015, Revision 1, dated March 2, 2000, on which excess sealant was detected and removed in accordance with paragraph (a) of this AD: Prior to further flight following the accomplishment of the modification required by paragraph (b) of this AD, remove any excess sealant in the remaining area of the lower lobe of the aft wheel well bulkhead between stringers S–27L and S–27R, in accordance with the service bulletin.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add

comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 777–53A0015, Revision 1, dated March 2, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on July 10, 2000.

Issued in Renton, Washington, on May 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13565 Filed 6–2–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–36–AD; Amendment 39–11763; AD 2000–11–15]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. (Formerly AlliedSignal Inc.) ALF502R and LF507 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires revisions to Chapter 5, Airworthiness Limitations section, of the Honeywell International Inc. ALF502R and LF507 series Engine Manuals to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action requires an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This action is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective July 10, 2000.

ADDRESSES: The rules docket may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Inc. ALF502R and LF507 series turbofan engines was published in the **Federal Register** on August 5, 1999 (64 FR 42619). That action proposed to require revisions to Chapter 5, Airworthiness Limitations section, of the Honeywell International Inc. ALF502R and LF507 engine manual, and, for air carriers, their approved continuous airworthiness maintenance program. Honeywell International Inc. (formerly AlliedSignal Inc.), the manufacturer of ALF502R and LF507 series turbofan engines, has provided the FAA with a detailed proposal that identifies and prioritizes the critical rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. These enhanced inspections will be conducted at piece-part opportunity, as defined in this AD, rather than at specific inspection intervals.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The commenter supports the rule as proposed.

The FAA notes that several different companies have held the type certificate for these engine models. In order to make certain that all manuals are revised to include the enhanced inspection program, not just the manuals that bear the name of the current holder of the type certificate, the FAA has added the names of the former type certificate holders to paragraph (a). After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with this change. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

The FAA estimates that 200 engines installed on airplanes of US registry would be affected by this AD, that it would take approximately 56 work hours per engine to accomplish the required actions. The average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on US operators is estimated to be $672,000.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this regulation (1) IS not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–15 Honeywell International Inc.: Amendment 39–11763. Docket 99–NE–36–AD.

Applicability: Honeywell International Inc. (formerly AlliedSignal, Textron Lycoming and Avco Lycoming) ALF502R and LF507 series turbofan engines, installed on but not limited to British Aerospace BAe 146–100A, BAe 146–200A, BAe 146–300A, AVRO 146–RJ70A, AVRO 146–RJ85A, and AVRO 146–100A series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise Chapter 5, Airworthiness Limitations section, of the Honeywell International Inc. ALF502R and LF507 Engine Manuals, and the appropriate manuals of former type certificate holders of the engine design including: Allied Signal Inc.; Textron Lycoming, Stratford Division; Avco Lycoming, Stratford Division and Avco Lycoming Engine Group, Stratford Division, Connecticut, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"Chapter 5, Airworthiness Limitations Section, Mandatory Inspections:

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part number (P/N)	Inspect per engine manual chapter
For ALF502R series turbofan engines:		
Fan Disc	All	72–31–07 Inspection/Check.
First Turbine Disc	All	72–51–12 Inspection/Check.
Second Turbine Disc	All	72–51–21 Inspection/Check.
Impeller	All	72–34–38 Inspection/Check.
LPT Shaft/3rd Turbine	All	72–52–03 Inspection/Check.
Fourth Turbine Disc	All	72-52–06 Inspection/Check.
For LF507 series turbofan engines:		
Fan Disc	All	72–31–08 Inspection/Check.
First Turbine Disc	All	72–51–11 Inspection/Check.
Second Turbine Disc	All	72–51–20 Inspection/Check.
Impeller	All	72–34–20 Inspection/Check.
LPT Shaft/3rd Turbine	All	72–52–24 Inspection/Check.
Fourth Turbine Disc	All	72–52–03 Inspection/Check.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is completely disassembled when done in accordance with the disassembly instructions in the engine manufacturer's Engine Manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with Chapter 5, Airworthiness Limitations section, of the Honeywell International Inc. ALF502R and LF507 Engine Manuals.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] must maintain records of the mandatory inspections that result from revising the Engine Manual's Chapter 5, Airworthiness Limitations section, and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380 (a) (2) (vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their

continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

(f) This amendment becomes effective on July 10, 2000.

Issued in Burlington, Massachusetts, on May 26, 2000.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–13873 Filed 6–2–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA52

Annual Reporting and Disclosure Requirements; Correction

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: On April 19, 2000, the Pension and Welfare Benefits Administration published in the **Federal Register** (65 FR 21068) amendments to the regulations governing annual reporting and disclosure requirements under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). This document contains a technical correction to those amendments.

DATES: This correction is effective on May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps at (202) 219–8515 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On April 19, 2000, the Pension and Welfare Benefits Administration published in the **Federal Register** (65 FR 21068) amendments to Department of Labor regulations relating to the annual reporting and disclosure requirements under part 1 of Title I of ERISA. In publishing these regulations, the Department amended the summary annual report forms at 29 CFR 2520.104b–10(d)(3) and (4), but inadvertently omitted a change to reflect the fact that under the ERISA Filing Acceptance System (EFAST) annual returns/reports are filed with the Pension and Welfare Benefits Administration rather than the Internal Revenue Service. A technical correction amendment to the final rule is, therefore, necessary.

Correction of Publication

Accordingly, the publication of the final rule on April 19, 2000 (65 FR 21068) which was the subject of FR Doc. 00–9611 is corrected, with respect to the amendments to 29 CFR 2520.104b–10, as follows:

§ 2520.104b–10 [Corrected]

On page 21085, column 3, remove paragraph d. and add in its place a revised paragraph d. to read as follows:

d. Paragraphs (d)(3) and (d)(4) are amended as follows:

1. The second sentence of the introductory text under the heading "SUMMARY ANNUAL REPORT FOR (NAME OF PLAN)" the term "Internal Revenue Service" is removed and the term "Pension and Welfare Benefits Administration" is added in its place;

2. The last sentence under the heading "Your Rights to Additional Information" is removed and the following sentence is added in its place: "Requests to the Department should be addressed to: Public Disclosure Room, Room N5638, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210."

* * * * *

Dated: May 31, 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–14000 Filed 6–2–00; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–149–FOR]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana revised and recodified its procedural rules for adjudicatory proceedings. Indiana intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Amendment

On February 4, 2000, the Indiana Department of Natural Resources, Division of Reclamation (DoR), sent us a copy of revised and recodified procedural rules for adjudicatory proceedings under the Indiana program (Administrative Record No. IND–1685). These procedural rules are codified in the Indiana Administrative Code (IAC) at 312 IAC 3–1 and provide procedures for administrative review proceedings held before the Division of Hearings, Natural Resources Commission. The DoR submitted the revised procedural rules in response to a required program amendment that we codified at 30 CFR 914.16(ff) on October 20, 1994 (59 FR 52906).

We announced receipt of the amendment in the March 7, 2000, **Federal Register** (65 FR 11950). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on April 6, 2000. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

The Indiana rules at 312 IAC 3–1 contain procedures for adjudicatory proceedings held before the Indiana Natural Resources Commission (commission) and its administrative law judges. The rules provide procedures for filing and pursuing an administrative review of a determination by the Indiana Department of Natural Resources (department) under the Indiana program. These rules are also applicable to administrative review of decisions by the department under other State programs and of licensing and disciplinary actions by the Board of Certification of Professional Geologists. We are making findings only on those portions of the recodified rules that pertain to administrative review under the Indiana program. The term "director" in Indiana's rules refers to the "director of the Indiana Department of Natural Resources."

1. Repeal and Recodification

a. 312 IAC 3 Adjudicatory Proceedings

We previously approved procedural rules at 310 IAC 0.6–1 for adjudicatory proceedings under the Indiana program. In 1996, the commission repealed the procedural rules at 310 IAC 0.6–1 and revised and recodified their substantive requirements at 312 IAC 3–1. The department is responsible for implementing the rules under Title 310 of the IAC. The commission is responsible for implementing the rules under Title 312 of the IAC. We find that the commission's recodification of its procedures for conducting adjudicatory proceedings for the Indiana program under its rules at Title 312 is appropriate and does not make Indiana's rules for administrative review proceedings less effective than the Federal regulations at 43 CFR Part 4.

b. 310 IAC 0.7–3–5 Delegations for Programs Administered by the Division of Reclamation

We previously approved Indiana's rule at 310 IAC 0.7–3–5 concerning delegations for programs administered by the DoR. This rule was referenced in the procedural rules at 310 IAC 0.6–1–3 and was specific to the Indiana program. In 1996, the commission repealed this rule. There is no Federal counterpart to Indiana's rule at 310 IAC 0.7–3–5, and we find that the commission's repeal of it does not make Indiana's rules less effective than the Federal regulations.

2. 312 IAC 3–1–1 Administration

Indiana's previously approved provisions at 310 IAC 0.6–1–1 (Definitions), 0.6–1–2 (Applicability of rule), and 0.6–1–3 (Review of actions taken by delegates of natural resources commission) were revised and recodified at 312 IAC 3–1–1. Subsection (a) specifies that 312 IAC 3–1 controls proceedings governed by Indiana Code (IC) 4–21.5 (administrative orders and procedures) for which the commission, or an administrative law judge for the commission, is the ultimate authority. Subsection (b) allows an affected person to apply for administrative review under IC 4–21.5 and 312 IAC 3–1 if he or she is aggrieved by a determination of the director; a delegate of the director; a board, other than the commission when acting as the ultimate authority; a delegate of the board, other than an administrative law judge; or a person delegated authority under 312 IAC 2–2. Indiana's rule at 312 IAC 2–2 governs delegations by the Natural Resources Commission. Subsection (c) defines "division director" as the director of the division of hearings of the commission.

While there is no direct Federal counterpart to 312 IAC 3–1–1, we find that it is not inconsistent with the Federal regulations at 43 CFR Part 4. The Federal regulations at 43 CFR Part 4 provide procedures and practices for administrative review of most decisions made under SMCRA and the Federal Regulations at 30 CFR Parts 700 through 865.

The definitions at 310 IAC 0.6–1–1 for the terms "advisory council"; "Commission"; "Delegate"; "Department"; "Director"; "Hearing commissioner"; and "Objections hearing" were not recodified at 312 IAC 3–1. Because the Federal regulations do not contain similar definitions, we find that the removal of these definitions will not make Indiana's rules less effective than the Federal regulations.

3. 312 IAC 3–1–2 Ultimate Authority for the Department

Indiana's previously approved provisions at 310 IAC 0.6–1–2.5 were revised and recodified at 312 IAC 3–1–2. Subsection (a) designates the commission as the ultimate authority for the department and any department board except as provided in subsection (b). Subsection (b) designates an administrative law judge as the ultimate authority for an administrative review under: (1) an order under Indiana's Surface Coal Mining and Reclamation Act at IC 14–34, except for a proceeding concerning the approval or disapproval of a permit application or permit renewal under IC 14–34–4–13 or for suspension or revocation of a permit under IC 14–34–15–7; (2) an order granting or denying temporary relief under IC 14–34 or an order voiding, terminating, modifying, staying, or continuing an emergency or temporary order under IC 4–21.5–4; and (3) an order designated as a final order in 312 IAC 3–1–9.

While there is no Federal counterpart to 312 IAC 3–1–2, we find that it is not inconsistent with the Federal regulations concerning administrative review at 43 CFR Part 4, and we are approving it.

4. 312 IAC 3–1–3 Initiation of a Proceeding for Administrative Review

Indiana's previously approved provisions at 310 IAC 0.6–1–4 (Petition for administrative review; notice of appointment of administrative law judge) were revised and recodified at 312 IAC 3–1–3. Subsection (a) provides that a proceeding before the commission under IC 4–21.5 is initiated when one of the following is filed with the Division of Hearings: a petition for review under IC 4–21.5–3–7; a complaint under IC 4–21.5–3–8; a request for temporary relief under IC 14–34; a request to issue an emergency or other temporary order under IC 4–21.5–4 or for review of an order issued under IC 4–21.5–4; an answer to an order to show cause under 312 IAC 3–1–5; or a referral by the director of a petition for and challenge to litigation expenses under 312 IAC 3–1–13(g). Subsection (b) requires the division director to appoint an administrative law judge to conduct the proceeding as soon as practicable after the initiation of administrative review under subsection (a).

Although there is no direct counterpart to 312 IAC 3–1–3 in SMCRA or the Federal regulations, we find that its provisions are consistent with the general requirements of the Federal regulations at 43 CFR Part 4.

5. 312 IAC 3–1–4 Answers and Affirmative Defenses

Indiana's previously approved provisions at 310 IAC 0.6–1–5(a) were revised and recodified at 312 IAC 3–1–4. Subsection (a) specifies that except as provided in subsection (b) and in 312 IAC 3–1–5 and 13, the matters contained in a pleading described in 312 IAC 3–1–3(a) are considered automatically denied by any other party. Subsection (b) provides that a party wishing to assert an affirmative defense, counterclaim, or cross-claim must do so, in writing, and have the document filed and served no later than the initial prehearing conference, unless otherwise ordered by the administrative law judge.

Although there is no direct counterpart to 312 IAC 3–1–4 in SMCRA or the Federal regulations, we find that its provisions are consistent

with the general requirements of the Federal regulations at 43 CFR Part 4.

6. 312 IAC 3–1–5 Pleadings for and Disposing of a Show Cause Order Issued Under the Indiana Surface Mining Control and Reclamation Act

Indiana's previously approved provisions at 310 IAC 0.6–1–5(b) through (j) were revised and recodified at 312 IAC 3–1–5. Subsection (a) provides that 312 IAC 3–1–5 governs the suspension or revocation of a permit under IC 14–34–15–7. Subsection (b) requires the director (or a delegate of the director) to issue, to the permittee, an order of permit suspension or revocation under IC 14–34–15–7 if the director determines that a permit issued under IC 13–4.1, IC 14–34, or 310 IAC 12 should be suspended or revoked. The order of permit suspension or revocation must state that: (1) a pattern of violations of IC 13–4.1, IC 14–34, 310 IAC 12, or any permit condition required by IC 13–4.1, IC 14–34, or 310 IAC 12 exists and (2) the violations are either willfully caused by the permittee, or caused by the permittee's unwarranted failure to comply with IC 13–4.1, IC 14–34, 310 IAC 12, or any permit condition required by IC 13–4.1, IC 14–34, or 310 IAC 12. Subsection (b) further provides that, for the purposes of this subsection, the unwarranted failure of the permittee to pay any fee required under IC 13–4.1, IC 14–34, or 310 IAC 12 constitutes a pattern of violations and requires the issuance of an order of permit suspension or revocation. Subsection (c) requires the director to serve an order of permit suspension or revocation by certified mail or personal delivery. Subsection (c) also clarifies that an order of permit suspension or revocation is governed by IC 4–21.5–3–6. Subsection (d) requires a permittee, who wants to contest an order of permit suspension or revocation, to file a petition for review under IC 4–21.5–3–7 within thirty days of his or her receipt of the order of permit suspension or revocation. Subsection (d) also specifies the kind of information that must be included in a petition for review, including whether the permittee wants a hearing on the order of permit suspension or revocation. Subsection (e) provides that if a petition for review is not filed by the permittee under subsection (d), the order of permit suspension or revocation will become an effective and final order of the commission without a proceeding under IC 14–34–15–7(c). Subsection (f) provides that if a petition for review is filed by the permittee under subsection (d) and a hearing on the order is sought by the permittee, the matter will be assigned to an administrative law judge for a proceeding under IC 4–21.5–3. Subsection (f) also sets out the burden of proof standards for the hearing. The director has the burden of going forward with evidence demonstrating that the permit in question should be suspended or revoked. The director satisfies the burden by establishing a prima facie case that a pattern of violations exists or has existed and the violations were willfully caused by the permittee or caused by the unwarranted failure of the permittee to comply with any requirements of IC 13–4.1, IC 14–34, 310 IAC 12, or any permit conditions required under IC 13–4.1, IC 14–34, or 310 IAC 12. If the director demonstrates that the permit should be suspended or revoked, the permittee has the ultimate burden of persuasion to show cause why the permit should not be suspended or revoked. A permittee may not challenge the fact of any violation that is the subject of a final order of the director.

Subsection (g) provides that the administrative law judge will issue a nonfinal order if he or she determines that a pattern of violations exists or has existed. In this nonfinal order, the administrative law judge must consider the factors contained in 310 IAC 12–6–6.5. The administrative law judge must find that sufficient violations occurred to establish a pattern. The nonfinal order must comply with the requirements of IC 4–21.5–3–27(a) through IC 4–21.5–3–27(d) and IC 4–21.5–3–27(g). The administrative law judge may, at any time before the conclusion of the hearing, allow the parties to submit briefs and proposed findings. Subsection (h) requires the administrative law judge to submit the nonfinal order to the commission within ten days following the date that the hearing is closed or within ten days of the receipt of the permittee's petition for review submitted under subsection (d) if no hearing is requested by any party and it is determined that no hearing is necessary. Subsection (i) provides that a party must object to the findings and nonfinal order in writing in order to preserve for judicial review an objection to the nonfinal order of an administrative law judge. In its written objection, a party must identify the bases of the objection. The objection must be filed with the commission within 15 days after the findings and nonfinal order are served on the party. Subsection (j) requires the commission to enter a final order affirming, modifying, or vacating the administrative law judge's order of permit suspension or revocation. The final order of the commission must be entered within 45 days following the issuance of the nonfinal order. The final order of the commission must be issued 60 days following the date that the hearing record is closed by the administrative law judge or 60 days following the administrative law judge's receipt of the permittee's petition for review filed under subsection (d) if no hearing was requested by any party and the administrative law judge determined that no hearing was necessary. Subsection (k) provides that the minimum suspension period is three working days unless the commission finds that imposition of the minimum suspension period would result in manifest injustice and would not further the purposes of IC 13–4.1, IC 14–34, 310 IAC 12, or any permit condition required by IC 13–4.1, IC 14–34, or 310 IAC 12. The commission may impose preconditions that the permittee must satisfy before the suspension is lifted. Subsection (l) requires the commission to serve the parties with a copy of the final order. A party may then apply for judicial review under IC 4–21.5.

The commission did not recodify the provision at 310 IAC 0.6–1–5(g) that: "Under IC 13–4.1–11–6(c), the administrative law judge shall issue the findings and a nonfinal order within sixty (60) days after conclusion of the hearing." We disapproved this provision in a previous final rule on October 20, 1994 (59 FR 52906), and required Indiana to delete the provision from its program (30 CFR 914.16(ff)). As noted in subsection (h), the administrative law judge must now submit a nonfinal order to the commission within ten days after the hearing closes. This will allow the commission sufficient time to issue the final order within the 60-day time period required by IC 14–34–15–7(h).

We find that the provisions at 312 IAC 3–1–5 contain adjudicatory proceedings for the suspension and revocation of permits that are the same as or similar to those contained in the Federal regulations at 30 CFR Part 843 and 43 CFR 4.1190 through 4.1196. We also find that the changes made to the requirements recodified at 312 IAC 3–1–5(h) and (j) satisfy the required amendment at 30 CFR 914.16(ff), and we are removing it.

7. 312 IAC 3–1–6 Amendment of Pleadings

Indiana's previously approved provisions at 310 IAC 0.6–1–6 were revised and recodified at 312 IAC 3–1–6. Subsection (a) provides for the amendment of petitions for administrative review filed under IC 4–21.5–3–7. The various types of petitions that may to be amended are described in 312 IAC 3–1–3(a). A pleading may be amended once as a matter of course before a response is filed, but not later than the initial prehearing conference or 15 days before a hearing, unless otherwise allowed by the administrative law judge. Subsection (b) specifies the circumstances under which amendments in a pleading relate back to the date of the original pleading.

While there is no direct Federal counterpart, we find that 312 IAC 3–1–6 is not inconsistent with the Federal regulations at 43 CFR part 4, and we are approving it.

8. 312 IAC 3–1–7 Filing and Service of Documents

Indiana's previously approved provisions at 310 IAC 0.6–1–7 were revised and recodified at 312 IAC 3–1–7. Subsection (a) requires documents to be filed with the administrative law judge and served on all other parties. Subsection (b) allows the filing of a document with the administrative law judge to be performed by personal delivery, first class mail, certified mail, interoffice mail, fax, or electronic mail. Subsection (c) requires service of a document to be made upon the attorney or other authorized representative when a party is represented by an attorney or another authorized representative. If a party is not represented by others, service must be made upon the individual. Subsection (d) provides that filing or service by properly addressed, prepaid first class or certified mail is complete upon deposit in the United States mail. Filing or service by another method is complete upon receipt. Subsection (e) specifies that 312 IAC 3–1–7 does not modify the time in which a party may file objections under IC 4–21.5–3–29 or a petition for judicial review under IC 4–21.5–5.

We find that 312 IAC 3–1–7 contains procedures for filing and service of documents that are no less effective than the Federal regulations at 43 CFR 4.1107 and 4.1109, and we are approving it.

9. 312 IAC 3–1–8 Administrative Law Judge; Automatic Change

Indiana's previously approved provisions at 310 IAC 0.6–1–8 were revised and recodified at 312 IAC 3–1–8. Subsection (a) provides that an automatic change of an administrative law judge may be obtained under 312 IAC 3–1–8. Subsection (b) provides that a party may file a written motion for change of the administrative law judge without specifically stating the grounds for the request. A party must file the motion within ten days after the appointment of an administrative law judge. Subsection (c) requires the administrative law judge to grant the motion filed under subsection (b) and to notify the division director. The division director must inform the parties of the names of two other individuals from whom a substitute administrative law judge may be selected. A party who is opposed to the party who filed the motion under subsection (b) may, within five days, select one of the individuals named by the division director to serve as the substitute administrative law judge. The division director must select a new administrative law judge if the opposing party does not make a timely selection. Subsection (d) specifies under what circumstances an automatic change of administrative law judges under this section does not apply. This section does not apply where a previous change of administrative law judge has been requested under this section. It does not apply to a proceeding under IC 4–21.5–4 or to temporary relief under IC 13–4.1. It does not apply if an administrative law judge has issued a stay or entered an order for disposition of all or a portion of the proceeding. Finally it does not apply if the commission orders a suspension of the section because of inadequate staffing.

There is no direct counterpart Federal regulation. However, we find that 312 IAC 3–1–8 is not inconsistent with the general rules relating to procedures and practice at 43 CFR part 4, and we are approving it.

10. 312 IAC 3–1–9 Defaults, Dismissals, and Agreed Orders

Indiana's previously approved provisions at 310 IAC 0.6–1–9 (Dismissals) were revised and recodified at 312 IAC 3–1–9. Subsection (a) allows an administrative law judge to enter a final order of dismissal if the party who initiated administrative review requests the proceeding be dismissed. Subsection (b) allows an administrative law judge, on the motion of the administrative law judge or the motion of a party, to enter a proposed order of default or proposed order of dismissal under IC 4–21.5–3–24, if at least one of the following applies: (1) A party fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding; (2) the party responsible for taking action does not take action on a matter for a period of at least 60 days; (3) the person seeking administrative review does not qualify for review under IC 4–21.5–3–7; or (4) a default or dismissal could be entered in a civil action. Subsection (c) allows a party to file a written motion requesting the order not be imposed. The party must file the motion within seven days after service of a proposed order of default or dismissal, or within a longer period allowed by the proposed order. During the time within which a party may file a written motion, the administrative law judge may adjourn the proceedings or conduct them without participation of the party against whom a proposed default order was issued. The administrative law judge must consider the interest of justice and the orderly and prompt conduct of the proceeding before taking either action. Subsection (d) requires the administrative law judge to issue an order of default or dismissal if the party fails to file a written motion under subsection (c). If the party has filed a written motion under subsection (c), the administrative law judge may either enter or refuse to enter an order of default or dismissal. Subsection (e) requires the administrative law judge, after issuing an order of default, but before issuing a final order or disposition, to conduct any action necessary to complete the proceeding without the participation of the party in default and determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings under IC 4–21.5–3–23 to resolve any issue of fact. Subsection (f) requires an administrative law judge to approve an agreed order entered into by the parties if it is clear and concise and lawful. Subsection (g) allows the secretary of the commission to affirm the entry of an agreed order approved by the administrative law judge under subsection (f). Subsection (h) provides that a final order entered under this section is made with prejudice unless otherwise specified in the order. A person may seek judicial review of the order under IC 4–21.5–5.

While there is no direct counterpart Federal regulation, we find that 312 IAC 3–1–9 is not inconsistent with the general rules relating to procedures and practice at 43 CFR Part 4. Therefore, we are approving it.

11. 312 IAC 3–1–10 Applicability of Rules of Trial Procedure and Rules of Evidence

Indiana's previously approved provisions at 310 IAC 0.6–1–10 (Applicability of rules of trial procedure) were revised and recodified at 312 IAC 3–1–10. This rule allows the administrative law judge to apply the Indiana Rules of Trial Procedure or the Indiana Rules of Evidence as long as they are not inconsistent with IC 4–21.5 or 312 IAC 3–1.

We find that there is no Federal counterpart to Indiana's proposed rule. However, we are approving 312 IAC 3–1–10 to the extent that the rule allows an administrative law judge to apply provisions of the Indiana Rules of Trial Procedures and Indiana Rules of Evidence that are not inconsistent with SMCRA and the Federal regulations.

12. 312 IAC 3–1–11 Conduct of Hearing; Separation of Witnesses

Indiana's previously approved provisions at 310 IAC 0.6–1–11 (Conduct of hearing) were revised and recodified at 312 IAC 3–1–11. Subsection (a) requires an administrative law judge to govern the conduct of a hearing and the order of proof. Subsection (b) requires the administrative law judge to provide for a separation of witnesses on a motion by a party before the commencement of testimony.

We find that 312 IAC 3–1–11 is not inconsistent with the Federal regulations at 43 CFR 4.1121 concerning powers of administrative law judges. Therefore, we are approving the recodification and revision of this section.

13. 312 IAC 3–1–12 Nonfinal Order of the Administrative Law Judge; Oral Argument Before the Commission; Participation by Nonparties (Amicus Curiae); Disposition by the Secretary of State if No Objection Filed

At 312 IAC 3–1–12, the commission revised and recodified Indiana's previously approved provisions from 310 IAC 0.6–1–12 (Recommendations of an administrative law judge; objections). Subsection (a) provides that 312 IAC 3–1–12 governs the disposition of objections under IC 4–21.5–3–29. Subsection (b) requires a party, who wishes to contest whether objections provide reasonable particularity, to move, in writing, for a more definite statement. The administrative law judge may rule upon a motion filed under this subsection and any other motion filed subsequent to the entry of the nonfinal order, and enter an appropriate order (including removal of an item from the commission agenda). Subsection (c) requires that parties schedule objections for argument before the commission simultaneously with the presentation by the administrative law judge of findings, conclusions, and a nonfinal order. Unless otherwise ordered by the commission, argument must not exceed 10 minutes for each party and 20 minutes for each side. Subsection (d) allows a nonparty to file a brief with the commission ten days before oral argument is scheduled on objections filed under subsection (c). A copy of the brief must be served upon each party. The brief must not be more than five pages long and cannot include evidentiary matters outside the record. Unless otherwise ordered by the commission, a nonparty may also present oral argument for not more than five minutes in support of the brief. If more than one nonparty files a brief, the administrative law judge must order the consolidation of briefs if reasonably necessary to avoid injustice to a party. A nonparty who has not filed a brief at least ten days before oral argument is first scheduled on objections may participate in the argument upon the stipulation of the parties. Upon the written request of a party, subsection (e) requires the commission to provide the services of a stenographer or court reporter to record the argument. This request must be filed at least 48 hours before an oral argument to consider objections. Subsection (f) allows the secretary of the commission, as the commission's designee under IC 4–21.5–3–28(b), to affirm the findings and nonfinal order if objections are not filed. The secretary has exclusive jurisdiction to affirm, remand, or submit to the commission for final action, any findings and nonfinal order subject to this subsection. No oral argument will be conducted under this subsection unless ordered by the secretary. Subsection (g) allows a party to move to strike all or any part of objections, a brief by a nonparty, or another pleading under 312 IAC 3–1–12. The administrative law judge must act upon a motion filed under this subsection by providing relief which is consistent with IC 4–21.5 and 312 IAC 3–1.

While there are no direct Federal counterparts to most of the provisions in 312 IAC 3–1–12, the Director finds that none of the proposed rules are inconsistent with the Federal regulations at 43 CFR Part 4. Therefore, we are approving them.

14. 312 IAC 3–1–13 Awards of Litigation Expenses for Specified Proceedings

Indiana's previously approved provisions at 310 IAC 0.6–1–13 (Awards of litigation expenses for proceedings under surface coal mine reclamation law, oil and gas code, and entomology and plant pathology code) were revised and recodified at 312 IAC 3–1–13. Subsection (a) provides that 312 IAC 3–1–13 governs an award of costs and expenses reasonably incurred, including attorney fees, under IC 14–22–26–5, IC 14–24–11–5, IC 14–34–15–10, or IC 14–37–13–7. We are considering in this final rule those provisions for award of costs and expenses that pertain to Indiana's surface coal mining program under IC 14–34–15–10. The provisions at subsections (b) and (c) do not pertain to the Indiana program. The provisions at paragraphs (d), (e), (f), and (g) are applicable to administrative review proceedings under IC 14–34–15–10.

Subsection (d) provides that appropriate costs and expenses, including attorney fees, may be awarded under IC 14–34–15–10 in five instances. First, litigation costs and expenses may be awarded to any person from the permittee; but, the person must initiate or participate in an administrative proceeding reviewing enforcement. Also, a finding must be made by the administrative law judge or commission that a violation of IC 14–34, a rule adopted under IC 14–34, or a permit issued under IC 14–34 has occurred or that an imminent hazard existed and the person made a substantial contribution to the full and fair determination of the issues. However, a contribution of a person who did not initiate a proceeding must be separate and distinct from the contribution made by a person initiating the proceeding. Second, litigation costs and expenses may be awarded by the department to a person, other than a permittee or the permittee's authorized representative, who initiates or participates in a proceeding. The person must prevail in whole or in part, achieving at least some degree of success on the merits. A finding must also be made indicating that the person made a substantial contribution to a full and fair determination of the issues. Third, litigation costs and expenses may be awarded by the department to a permittee if the permittee demonstrates that the department issued the following orders in bad faith and for the purpose of harassing or embarrassing the permittee: a cessation order, a notice of violation, or an order to show cause why a permit should not be suspended or revoked. Fourth, litigation costs and expenses may be awarded to a permittee from a person, where the permittee demonstrates that the person initiated a proceeding under IC 14–34–15 or participated in the proceeding in bad faith and for the purpose of harassing or embarrassing the permittee. Finally, litigation costs and expenses may be awarded to the department from a person, where the department demonstrates that the person sought administrative review or participated in a proceeding in bad faith and for the purpose of harassing or embarrassing the department. We find that the provisions of 312 IAC 3–1–12(d) are substantively identical to 43 CFR 4.1294(a)(1) and (b) through (e).

Subsection (e) allows the commission to order a person requesting a hearing to pay the cost of the court reporter if the person requesting the hearing fails, after proper notice, to appear at the hearing. Although there is no Federal counterpart to 312 IAC 3–1–13(e), we find that the provision is reasonable and is not inconsistent with SMCRA and the Federal regulations. Therefore, we are approving it.

Subsection (f) specifies the factors that the commission must consider in determining what is a reasonable amount of attorney fees. The factors include: (1) The nature and difficulty of the proceeding; (2) the time, skill, and effort involved; (3) the fee customarily charged for similar legal services; (4) the costs involved in the proceeding; and (5) the time limitations imposed by the circumstances. For a party whose attorney is a full-time, salaried employee of the party, consideration also must be given to the prorated cost of the salary of the attorney and of the clerical or paralegal employees of the party who assisted the attorney. The employee benefits attributable to the time devoted to representation must also be considered. Although there are no direct Federal counterparts to all the factors listed in 312 IAC 3–1–13(f), we find that the provisions are reasonable and consistent with the Federal regulations at 43 CFR 4.1292(a)(3), and we are approving them.

Subsection (g) requires a party who wishes to seek litigation expenses to petition the director within 30 days after the party receives notice of the final agency action. A party wishing to challenge the petition for an award must deliver a written response to the director within 15 days of service of the petition. If a petition for seeking litigation expenses and a challenge of the petition for award are delivered to the director under this subsection, the director must refer the matter to the division of hearings so that a proceeding may be conducted under IC 4–21.5. The Federal regulation at 43 CFR 4.1291 allows a petition for fees to be filed within 45 days of receipt of the final agency action. While the time limit for filing is shorter under the Indiana rule, we find that the proposed time period is still reasonable and that 312 IAC 3–1–13(g) is no less effective than the Federal regulation. We are, therefore, approving the provisions.

15. 312 IAC 3–1–14 Court Reporter; Transcripts

Indiana's previously approved provisions at 310 IAC 0.6–1–14 were revised and recodified at 312 IAC 3–1–14. Subsection (a) requires the commission to employ and engage the services of a stenographer or court reporter, either on a full-time or a part-time basis, to record evidence taken during a hearing. Subsection (b) allows a party to obtain a transcript of the evidence by submitting a written request to the administrative law judge. Subsection (c) requires the party who requests a transcript under subsection (b) to pay the cost of the transcript. Subsection (d) provides that, upon a written request by a party filed at least 48 hours before a hearing, a court reporter who is not an employee of the commission will be engaged to record a hearing.

We find that 312 IAC 3–1–14 is no less effective than the Federal regulation at 43 CFR 4.23 that contains provisions for hearing transcripts.

16. 312 IAC 3–1–15 Quasi-declaratory Judgments

Indiana's previously approved provisions at 310 IAC 0.6–1–15 (Special status determinations) were revised and recodified at 312 IAC 3–1–15. Subsection (a) allows a person to request the department to interpret a statute or rule administered by the department as applicable to a specific factual circumstance. The request must be in writing and must describe with reasonable particularity all relevant facts. The request must cite with specificity the statutory or rule sections in issue. The request must identify any other person who may be affected by a determination of the request. Finally the request must describe the relief sought. Subsection (b) allows the director or the director's delegate to provide a written response to the request. The written response must be provided within 45 days of the request. The response may include an interpretation based upon the information provided in the request or may specify additional information needed to respond to the request. If the department needs additional information, it has an additional 45 days in which to respond. Subsection (c) provides that if the department does not respond within the periods described in subsection (b), a general denial of the request is deemed to have resulted. Subsection (d) allows the person who is seeking the request under subsection (a) to file a petition for administrative review under IC 4–21.5–3 if he or she is aggrieved by the response of the department under subsection (b) or a general denial under subsection (c). The department's response constitutes a determination of status under IC 4–21.5–3–5(a)(5). Subsection (e) provides that 312 IAC 3–1–15 does not excuse a person from a requirement to exhaust another administrative remedy provided by statute or rule. A person may not use this section to void or modify a final order entered by the department in another proceeding. A request under this section does not extend any time limitation imposed on the availability of another administrative remedy. A final order of the department under this section, which follows a contested proceeding under IC 4–21.5–3, provides the same precedent as a final order following any other contested proceeding under IC 4–21.5–3.

While there are no Federal counterparts to the provisions in 312 IAC 3–1–15, we find that the proposed rule is not inconsistent with SMCRA or the Federal regulations, and we are approving it.

17. 312 IAC 3–1–16 Continuances

Indiana's previously approved provisions at 310 IAC 0.6–1–16 were revised and recodified at 312 IAC 3–1–16. Subsection (a) provides that upon the motion of a party, a hearing may be continued by the administrative law judge and shall be continued upon a showing of good cause. Subsection (b) requires that a motion to continue a hearing because of the absence of evidence must be made by affidavit. The affidavit must show the materiality of the evidence expected to be obtained; that due diligence has been used to obtain the evidence; and where the evidence may be. If the motion is based on the absence of a witness, the party's affidavit must show: the name and residence of the witness, if known; the probability of procuring the testimony in a reasonable time; that absence of the witness was not procured by the party nor by others at the request, knowledge, or consent of the party; what facts the party believes to be true; and that the party is unable to prove the facts by another witness whose testimony can be readily procured. Subsection (c) provides that the hearing shall not be continued if, upon the receipt of a continuance motion under subsection (b), the adverse party stipulates to the truth of the facts which the party seeking the continuance said could not be presented.

There is no direct Federal counterpart to Indiana's proposed rule. However, we find that the provisions of 312 IAC 3–1–16 are not inconsistent with the Federal regulations at 43 CFR 4.1112, concerning motions, or the Federal regulations at 43 CFR 4.1121, concerning powers of administrative law judges. Therefore, we are approving them.

18. 312 IAC 3–1–17 Record of Proceedings; Adjudicative Hearings Generally; Record of the Director for Surface Coal Mining Permits

Indiana's previously approved provisions at 310 IAC 0.6–1–17 were revised and recodified at 312 IAC 3–1–17. Subsection (a) provides that the record required to be kept by an administrative law judge under IC 4–21.5–3–14 commences when a proceeding is initiated under 312 IAC 3–1–3(a) and includes the items described in IC 4–21.5–3–33. Subsection (b) provides that in addition to subsection (a), this subsection applies to a proceeding concerning the approval or disapproval of a permit application, permit revision application, or permit renewal application under IC 14–34–4–13. However, nothing in this subsection precludes the admission of testimony or exhibits that are limited to the explanation or analysis of materials included in the record before the director. Neither does this subsection preclude the manner in which the materials were applied, used, or relied upon in evaluating the application. Upon a timely objection made before or during a hearing, the administrative law judge shall exclude testimony or exhibits that are offered but that identify or otherwise address matters that are not part of the record before the director under IC 14–34–4–13. The record before the director includes: (1) The permit; (2) the permit application as defined at 310 IAC 12–0.5–10; (3) documentation given or referenced, in writing, by the applicant or an interested person for the purposes of evaluating, or documentation used by the department to evaluate, the application; (4) the analyses of the department in considering the application, including the expertise of the department's employees and references used to evaluate the application; (5) documentation received under IC 14–34–4, including the conduct and results of any informal conference or public hearing under IC 14–34–4–6; and (6) correspondence received or generated by the department relative to the application, including letters of notification, proofs of filing newspaper advertisements, and timely written comments from an interested person.

Section 514(c) of SMCRA and the Federal regulations at 30 CFR 775.11(b)(1) require that hearings conducted by State regulatory authorities on permitting decisions must be of record and adjudicatory in nature. Indiana's proposed rule meets these standards. Therefore, we find that 312 IAC 3–1–17 is no less stringent than SMCRA and no less effective than the Federal regulations.

19. 312 IAC 3–1–18 Petitions for Judicial Review

Indiana added a new section to its procedural rules at 312 IAC 3–1–18. We are considering in this final rule only those provisions in 312 IAC 3–1–18 that pertain to the Indiana program under IC 14–34. Subsection (a) requires a person, who wishes judicial review of a final agency action entered under 312 IAC 3–1, to serve copies of a petition for judicial review upon the persons described in IC 4–21.5–5–8. Subsection (b) provides the address for sending a copy of the petition that IC 4–21.5–5–8(a)(1) requires to be served upon the ultimate authority for an administrative review. The address applies whether the commission or an administrative law judge is the ultimate authority. Where the department is a party to a proceeding under this rule, subsection (c) provides the address for sending a copy of the petition that IC 4–21.5–5–8(a)(4) requires to be served upon a party to a proceeding. The provisions at subsection (d) do not pertain to the Indiana program. Subsection (e) clarifies that the commission and its administrative law judge provide the forum for administrative review under this rule and that neither is a party.

Section 526(e) of SMCRA and the Federal regulations at 30 CFR 775.13(b) require that the actions of the State regulatory authority under an approved State program be subject to judicial review by a court of competent jurisdiction in accordance with State law. We find that 312 IAC 3–1–18 is not inconsistent with the requirements of section 526(e) of SMCRA or the Federal regulations at 30 CFR 775.13(b), concerning judicial review of a final agency action.

IV. Summary and Disposition of Comments

Federal Agency Comments

On February 29, 2000, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1687. We did not receive any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

On February 29, 2000, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IND–1687). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP for amendments that may have an effect on historic properties. On February 29, 2000, we requested comments on Indiana's amendment (Administrative Record No. IND–1687), but neither responded to our request.

Public Comments

OSM requested public comments on the proposed amendment. By letter dated April 5, 2000, the Indiana Coal Council, Inc. (ICC) submitted comments in support of the amendment. The ICC commented that the Natural Resources Commission's Division of Hearings has earned a good reputation for impartiality and professionalism in its handling of administrative proceedings. The ICC believes that recodification and transfer of the Division of Hearings' procedural rules for administrative review proceedings from under the Indiana Department of Natural Resources' (IDNR) rules at Title 310 to under the Indiana Natural Resources Commission's rules at Title 312, "has further strengthened and guaranteed the independence of the administrative law judges from the IDNR program staff." The ICC further commented that the recodification does not represent any significant substantive changes in the procedural rules applicable to legal proceedings under the Indiana program and the amendment should be approved.

As discussed above under III. Director's Finding, we are approving Indiana's proposed amendment.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Indiana on February 4, 2000. To implement this decision, we are amending the Federal regulations at 30 CFR Part 914, which codify decisions concerning the Indiana program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Indiana to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 17, 2000.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
February 4, 2000	June 5, 2000	310 IAC 0.6–1–1 through 17 [repealed]; 310 IAC 0.7–3–5 [repealed]; 312 IAC 3–1–1 through 18.

§ 914.16 [Amended]

3. Section 914.16 is amended by removing and reserving paragraph (ff).

[FR Doc. 00–13972 Filed 6–2–00; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

RIN 0790–AG79

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule.

SUMMARY: This interim rule requires inclusion of a clause as required by law, providing for Comptroller General access to records in transactions other than contracts, grants or cooperative agreements for prototype projects that provide for total payments in excess of $5,000,000. This rule is published in the **Federal Register** for public comment because it directly impacts the public by prescribing conduct that must be followed by a party to, or entity that participates in the performance of, any such transaction.

DATES: The interim rule will be effective July 5, 2000. Comments on the interim rule should be submitted in writing to the address specified below on or before August 4, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the interim rule to: Office of the Director, Defense Procurement, Attn: Ms. Teresa Brooks, PDUSD(A&T)/DP(DSPS), 3060 Defense Pentagon, Washington, DC 20301–3060. Telefax (703) 693–9616.

FOR FURTHER INFORMATION CONTACT: Teresa Brooks, (703) 695–4258.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as amended by section 804 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201 and section 241 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as "other transaction" agreements for prototype projects.

Section 801 of the National Defense Authorization Act for Fiscal Year 2000 establishes a requirement that an "other transaction" agreement for a prototype project that provides for payments in a total amount in excess of $5,000,000 include a clause that provides Comptroller General access to records.

To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to "other transactions" for prototype projects. The requirement for Comptroller General access on "other transactions" for prototype projects that provide for payments that exceed $5,000,000 is the first statutory requirement mandating conditions that must be included in an "other transactions" agreement. The content of this rule may also be included in a future DoD issuance.

Regulatory Evaluation

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Pub. L. 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule requires only that the Comptroller General be provided access to records of certain projects. It does not require additional record keeping or other significant expense by project participants.

Pub. L. 96–511, "Paperwork Reduction Act of 1995" (44 U.S.C. et seq.)

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 3

Grant programs.

Accordingly, Title 32, Chapter 1 is amended to add part 3 to read as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

Sec.
3.1 Purpose.
3.2 Applicability.
3.3 Definitions.
3.4 Policy.

Authority: Section 801, Pub. L. 106–65.

§ 3.1 Purpose.

This part implements section 801 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65). It establishes the requirement for the inclusion of a clause in transactions other than contracts, grants or cooperative agreements for prototype projects awarded under authority of 10 U.S.C. 2371 that provides Comptroller General access to records when payments total an amount in excess of $5,000,000.

§ 3.2 Applicability.

This part applies to the Secretary of a Military Department, the Directors of the Defense Agencies, and any other official designated by the Secretary of Defense to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense, under authority of 10 U.S.C. 2371. Such transactions are commonly referred to as "other transaction" agreements and are hereafter referred to as agreements.

§ 3.3 Definitions.

Contracting activity. An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements designated by the director of a defense agency that has been delegated contracting authority through its agency charter.

Head of the contracting activity. The official who has overall responsibility for managing the contracting activity.

§ 3.4 Policy.

(a) Except as provided in paragraph (b) of this section, a clause must be included in solicitations and agreements for prototype projects awarded under authority of 10 U.S.C. 2371, that provide for total government payments in excess of $5,000,000 to allow Comptroller General access to records that directly pertain to such agreements.

(b) The clause referenced in paragraph (a) of this section will not apply with respect to a party or entity, or subordinate element of a party or entity, that has not entered into any other contract, grant, cooperative agreement or "other transaction" agreement that provides for audit access by a government entity in the year prior to the date of the agreement.

(c) The head of the contracting activity (HCA) that is carrying out the agreement may waive the applicability of the Comptroller General access requirement if the HCA determines it would not be in the public interest to apply the requirement to the agreement. The waiver will be effective with respect to the agreement only if the HCA transmits a notification of the waiver to the Committees on Armed Services of the Senate and the House of Representatives, the Comptroller General, and the Director, Defense Procurement before entering into the agreement. The notification must include the rationale for the determination.

(d) The HCA must notify the Director, Defense Procurement of situations where there is evidence that the Comptroller General Access requirement caused companies to refuse to participate or otherwise restricted the Department's access to companies that typically do not do business with the Department.

(e) In no case will the requirement to examine records under the clause referenced in paragraph (a) of this section apply to an agreement where more than three years have passed after final payment is made by the government under such an agreement.

(f) The clause referenced in paragraph (a) of this section must provide for the following:

(1) The Comptroller General of the General of the United States, in the discretion of the Comptroller General, shall have access to and the right to examine records of any party to the agreement or any entity that participates in the performance of this agreement that directly pertain to, and involve transactions relating to, the agreement.

(2) Excepted from the Comptroller General Access requirement is any party to this agreement or any entity that participates in the performance of the agreement, or any subordinate element of such party or entity, that has not entered into any other contract, grant, cooperative agreement, or "other transaction" agreement that provides for audit access by a government entity in the year prior to the date of the agreement.

(3) This clause shall not be construed to require any party or entity, or any subordinate element of such party or entity, that participates in the performance of the agreement, to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.

(4) The Comptroller General shall have access to the records described in this clause until three years after the date the final payment is made by the United States under this agreement.

(5) The recipient of the agreement shall flow down this provision to any entity that participates in the performance of the agreement.

Dated: May 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–13521 Filed 6–2–00; 8:45 am]
BILLING CODE 5001–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 103–1b; FRL–6701–8]

Approval and Promulgation of Implementation Plans; Ohio Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving sulfur dioxide redesignation requests submitted by the State of Ohio on March 20, 2000, for Coshocton, Gallia, and Lorain Counties. This request was first submitted on October 26, 1995. Ohio subsequently provided supplemental material to EPA in a letter dated September 14, 1999. On March 20, 2000, Ohio submitted final requests to redesignate Coshocton, Gallia, and Lorain Counties to attainment of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2).

EPA is also approving the maintenance plans for Coshocton, Gallia, and Lorain Counties. The plans are intended to ensure maintenance of the NAAQS for at least 10 years, and were submitted with the redesignation requests.

In conjunction with these actions, EPA is approving state-adopted emission limits for the following facilities: in Coshocton County: Columbus and Southern Ohio Electric—Conesville Plant; in Gallia County: Ohio Valley Electric Company—Kyger Creek Plant and Ohio Power—Gavin Plant; and in Lorain County: CEI—Avon Lake Plant, Ohio Edison—Edgewater Plant, U.S. Steel—Lorain Plant, and B.F. Goodrich Company—Lorain County Plant.

EPA is also approving other minor revisions in the state's rules for these three Counties.

On November 23, 1999, EPA received one comment on the proposal to redesignate Coshocton, Gallia, and Lorain Counties. American Electric Power (AEP) encouraged EPA to take final action to approve the redesignation.

DATES: This rule is effective on July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Phuong Nguyen at (312) 886–6701.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" is used we mean EPA.

This supplemental information section is organized as follows:

I. General Information
1. What action is EPA taking today?
2. Why is EPA taking this action?
3. What is the background for this action?
II. How Does the Proposed Submittal Compare to the Final Submittal?
III. Public Comments and EPA Response What comments did EPA receive?
IV. Background on Ohio Submittal
1. What information did Ohio submit, and what were its requests?
2. What guidance documents did EPA use in this rulemaking to evaluate Ohio's request?
V. State Implementation Plan (SIP)
1. How do state-adopted emission limits compare to the FIP limits?
2. What are the sources and emission limits that will be affected by EPA's action?
VI. Maintenance Plan
1. How does the maintenance plan apply in Coshocton, Gallia, and Lorain Counties?
2. What are the maintenance plan reduction requirements?
VII. Redesignation Evaluation
1. What five criteria did EPA use to review the redesignation requests?
2. Are these five criteria satisfied for Coshocton, Gallia, and Lorain Counties?
VIII. Final Rulemaking Action
IX. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13045
C. Executive Order 13084
D. Executive Order 13132
E. Regulatory Flexibility
F. Unfunded Mandates
G. Submission To Congress and The Comptroller General
H. National Technology Transfer and Advancement Act
I. Petitions for Judicial Review

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving SO_2 redesignation requests submitted by the State of Ohio for Coshocton, Gallia, and

Lorain Counties. EPA is also approving the maintenance plans for these counties. In addition, EPA is approving state-adopted emission limits for sources in these three counties. EPA plans separate action on rules 3745–18–03, 3745–18–04, 3745–18–15, and 3745–18–71, that Ohio submitted along with rule revisions for these three counties.

2. Why Is EPA Taking This Action?

EPA is taking this action because the redesignation requests meet the five criteria all redesignation requests must meet. The limits in the submittal are approvable because they are at least as stringent as the current set of federally enforceable limits. Coshocton, Gallia, and Lorain Counties have been designated as nonattainment areas for sulfur dioxide but now meet the sulfur dioxide NAAQS. The three counties have plans for keeping their sulfur dioxide levels within the health and welfare-based standards for the next 10 years and beyond. The plans require the three counties to consider impacts of future activities on air quality and to manage those activities.

3. What Is the Background for This Action?

EPA promulgated the applicable Federal Implementation Plan (FIP) in 1976. The FIP required significant emission reductions at specific facilities throughout the state to attain and maintain the NAAQS for SO_2.

On October 5, 1978, Coshocton, Gallia, and Lorain Counties (among others) were designated as nonattainment areas for the primary sulfur dioxide standards. The state adopted its own regulations in 1979, generally imposing limits similar to those promulgated in the FIP. The state submitted these regulations for EPA approval in 1980, including regulations for Coshocton, Gallia, and Lorain Counties.

The state then withdrew its submittal for selected sources. These sources are:

1. Coshocton County
   —Columbus and Southern Ohio Electric—Conesville plant
2. Gallia County
   —Ohio Valley Electric Company—Kyger Creek plant
   —Ohio Power—Gavin plant
3. Lorain County
   —Cleveland Electric Illuminating (CEI)—Avon Lake plant
   —Ohio Edison—Edgewater plant
   —U.S. Steel—Lorain plant
   —B.F. Goodrich Company

EPA approved this SIP regulation on January 27, 1981, for Coshocton, Gallia, and Lorain Counties (46 FR 8481) except for the source limits withdrawn by the state. The federally promulgated FIP regulations, therefore, have remained in effect for the above sources.

On October 26, 1995, Governor George Voinovich requested that EPA redesignate to attainment all remaining SO_2 nonattainment areas within the State of Ohio, including Coshocton, Gallia, and Lorain Counties.

On May 28, 1996, EPA Administrator Browner sent a letter to Governor Voinovich informing him that the redesignation request depended on EPA approval of state-adopted rules, such that the plan for assuring attainment would rely on approved State Rules rather than federally promulgated rules.

On September 14, 1999, Ohio provided supplemental supporting material for redesignation requests for three SO_2 nonattainment areas (Coshocton, Gallia, and Lorain Counties) to EPA.

On October 28, 1999 (64 FR 58018), EPA proposed approval of the redesignation requests for Coshocton, Gallia, and Lorain Counties, the maintenance plans, and the state-adopted emission limits.

The public comment period on this proposed approval ended on November 29, 1999; and only one comment, which was favorable, was received.

II. How Does the Proposed Submittal Compare to the Final Submittal?

For Gallia County emission limits, both the proposed and the final submittals are identical.

For the Coshocton County emission limits, paragraph (B)(4) of the final submittal, applying to two diesels at Columbus Southern Power Company, Conesville, was deleted based on evidence from the company's title V application that these units no longer operate. The final submittal indicates only 3 units (B006, B009, and B010) are in operation, instead of 5 units indicated in the proposed submittal.

For the Lorain County emission limits, paragraph (C) of the final submittal, applying to the General Motors Corporation, Fisher Body Division, was removed because this facility has been shutdown for 15 years. For the Avon Lake Plant, the state had two options in 3745–18–53, (B)(1) and (B)(2) or (B)(3) and (B)(4), for setting the facility's boilers' emission limits. Since the source only implements the strategy inherent in (B)(1) and (2), the limits in (B)(3) and (B)(4) had become irrelevant and were removed from the final state rule.

III. Public Comments and EPA Response

What Comments Did EPA Receive?

On November 23, 1999, EPA received one letter commenting on the proposed rulemaking. This letter, from AEP, encouraged EPA to take final action to approve the request as proposed. EPA received no adverse comments on this proposed rulemaking, and for the reasons provided in the proposal, concludes that the adopted emission limits, maintenance plans, and redesignation request for these counties should be approved.

IV. Background on Ohio Submittal

1. What Information Did Ohio Submit, and What Were Its Requests?

In June 1999, Ohio e-mailed copies of proposed rule revisions for Coshocton, Gallia, and Lorain Counties to EPA. On September 14, 1999, Ohio submitted additional material requested by EPA to support the state's requests to redesignate these Counties to attainment with respect to SO_2. On March 20, 2000, Ohio submitted final rule revisions with its final request for redesignation of these Counties to attainment for SO_2. In addition, the state requested approval for the SO_2 maintenance plans for Coshocton, Gallia, and Lorain Counties.

2. What Guidance Documents Did EPA Use in This Rulemaking To Evaluate Ohio's Requests?

Guidance for review of these requests includes a September 28, 1994, memorandum from the Director, Air Quality Management Division, Office of Air Quality Planning and Standards, EPA, to the Director, Air and Radiation Division, Region 5, entitled, "Response to Request for Guidance on Issues with Ohio Sulfur Dioxide Federal Implementation Plan."

This memorandum sets forth three criteria to be met for the approval of state limits that are equivalent to existing FIP limits without new modeling. Under the first two criteria, there must be no known inadequacy in the original attainment demonstration. Under the third criterion, the state limits must reflect no relaxation of existing emission limits.

All three of these criteria are met by the state-promulgated SIP limits. Therefore, the revised limits, as adopted and submitted on March 20, 2000, are adequate to assure attainment without further modeling.

Another guidance document relevant to this rulemaking is an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary," from the Director of EPA's Office of Air Quality Planning and Standards, which requires eight consecutive quarters of data showing SO_2 NAAQS attainment before an area can be redesignated. A county violates the NAAQS when its SO_2 level exceeds the NAAQS more than once in any year. Coshocton, Gallia, and Lorain Counties have eight consecutive quarters of data showing SO_2 NAAQS attainment. As discussed below, modeling-based evidence also indicates attainment of the SO_2 NAAQS.

Finally, a September 4, 1992 EPA policy memorandum on "Procedures for Processing Requests to Redesignate Areas to Attainment" was also relevant to this rulemaking. This memorandum explains that additional dispersion modeling is not required in support of an SO_2 redesignation request if an adequate modeled attainment demonstration was previously submitted and approved as part of the implemented SIP, and no indication of an existing air quality deficiency exists. These conditions are met here.

V. State Implementation Plan (SIP)

1. How Do State-Adopted Emission Limits Compare to the FIP Limits?

For facilities that are currently subject to FIP limits, the final state-adopted emission limits are equivalent to the FIP limits. A few emission points at these facilities have State limits but no FIP limits; approval of these State limits obviously increase the stringency of the SIP.

In Gallia County, for facilities currently subject to FIP limits, the State rules impose the same limits on the same set of emission points as the FIP. In Lorain County, the state's rules include limits for soaking pit process operations and seamless rotary furnace for USS/KOBE. In Coshocton County, the State's rules include limits for diesels and auxiliary boiler for Columbus Southern Power Company. Because these emission points are not currently subject to federally enforceable limits, these limits enhance the stringency of the State's plan.

The FIP limits at issue will become suspended upon approval of these submitted SIP limits, but would become applicable again if for any reason these SIP limits were rescinded in the future.

2. What Are the Sources and Emission Limits That Will Be Affected by EPA's Action?

The principal sources affected by this rulemaking are sources for which FIP limits are being superseded by limits in approved state rules. The table below lists these sources.

County names	State rules	Source names
Coshocton County	—OAC 3745–18–22 (B)	—Columbus and Southern Ohio Electric—Conesville.
Gallia County	—OAC 3745–18–33 (B)	—Ohio Valley Electric Company—Kyger Creek.
	—OAC 3745–18–33 (D)	—Ohio Power—Gavin.
Lorain County	—OAC 3745–18–53 (B)	—CEI—Avon Lake.
	—OAC 3745–18–53 (D)	—Ohio Edison—Edgewater Plant.
	—OAC 3745–18–53 (E)	—U.S. Steel
	—OAC 3745–18–53 (G)	—B.F. Goodrich.

This rulemaking also approves the removal of obsolete State limits that the State adopted in its final rulemaking.

VI. Maintenance Plan

1. How Does the Maintenance Plan Apply in Coshocton, Gallia, Lorain Counties?

Ohio's attainment plan for sulfur dioxide provides for attainment even with major sources emitting their maximum allowable emissions. Therefore, maintenance is provided by assuring that minor source impacts do not increase significantly. The principal minor sources are distant point sources and diesel vehicles.

2. What Are the Maintenance Plan Reduction Requirements?

Clean Air Act Title IV reductions and the required national conversion to low sulfur diesel fuel are the identified maintenance plan provisions for Coshocton, Gallia, and Lorain Counties.

VII. Redesignation Evaluation

1. What Five Criteria Did EPA Use To Review the Redesignation Requests?

Section 107(d)(3)(E) of the Clean Air Act (Act), as amended in 1990, establishes requirements to be met before an area may be redesignated from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act. An area can be redesignated to attainment if the following five conditions are met:

(A) The area has attained the applicable NAAQS.

(B) The area has a fully approved SIP under section 110(k) of the Act.

(C) The EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.

(D) The EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act.

(E) The state has met all requirements applicable to the area under section 110 and part D of the Act.

2. Are These Five Criteria Satisfied for Coshocton, Gallia, and Lorain Counties?

A. Demonstrated Attainment of the NAAQS

Relevant Agency guidance is provided in both the April 21, 1983, and September 4, 1992 guidance documents cited above. The April 21, 1983 memorandum explains that eight consecutive quarters of data showing SO_2 NAAQS attainment are required for redesignation. The September 4, 1992 guidance explains that the area must have no more than one exceedance per year.

Ohio's September 14, 1999 submittal provides ambient monitoring data showing that Coshocton, Gallia, and Lorain Counties have met the NAAQS for the years 1994–1999.

Dispersion modeling is commonly used to demonstrate attainment of the SO_2 NAAQS. A modeling analysis was done in 1976 to show that, under all allowed operating scenarios, the emission limits in these three counties' SO_2 SIPs would lead to attainment and maintenance of the SO_2 standards. According to the September 4, 1992 memorandum, no further dispersion modeling is needed for the counties' redesignation. Ohio has provided evidence that sources in these counties are complying with these limits.

Based on this evidence, EPA concludes that emissions are sufficiently low to assure attainment throughout these areas currently designated nonattainment.

B. Fully Approved SIP

The SIP for the area at issue must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply.

EPA's guidance for implementing section 110 of the Act is discussed in

the General Preamble to Title I (44 FR 20372, April 14, 1979; and 57 FR 13498, April 16, 1992). The SO_2 SIP for Coshocton, Gallia, and Lorain Counties met the requirements of section 110 of the Act, and EPA approved the SIP on January 27, 1981, except that EPA did not take action for a limited set of sources.

State limits for the remaining set of specific sources in Coshocton, Gallia, and Lorain Counties are being approved in this rulemaking. For convenience, EPA is rulemaking on rules for entire affected Counties, and is approving additional minor revisions in these Counties.

C. Permanent and Enforceable Reductions in Emissions

Coshocton, Gallia, and Lorain Counties attained the SO_2 standards by implementing the SO_2 SIP controls. The reductions in emissions primarily come from converting some fuel-burning sources to lower sulfur content fuels, and to shutting down various types of sources. The use of lower-sulfur "cleaner" fuels is ensured by the facilities' air emission permits and federally enforceable SIP regulations.

D. Fully Approved Maintenance Plan

EPA has concluded that the combination of limitations on maximum allowable emissions from major point sources and implementation of programs that will yield reductions in minor source emissions will assure maintenance of the standards. EPA is approving the maintenance plan in today's action.

E. Part D and Other Section 110 Requirements

With today's approval of limits submitted on March 20, 2000, along with the approval of limits and attainment demonstrations published on January 27, 1981 (46 FR 8481), Ohio has met the relevant requirements.

VIII. Final Rulemaking Action

In summary, EPA is approving state-adopted emission limits for 7 sources in Coshocton, Gallia, and Lorain Counties, as well as approving minor revisions for other sources in these Counties. EPA is also approving the SO_2 maintenance plan for Coshocton, Gallia, and Lorain Counties as adequately ensuring that attainment will be maintained. Finally, EPA is approving redesignation requests from the State of Ohio which were submitted on October 26, 1995, September 14, 1999 and on March 20, 2000.

IX. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovermental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 5, 2000.

Norman Niedergang,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40, Chapter I of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(121) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(121) On March 20, 2000, the Ohio Environmental Protection Agency submitted rules to control sulfur dioxide emissions in Coshocton, Gallia and Lorain Counties.

(i) Incorporation by reference. Rules OAC 3745–18–22; OAC 3745–18–33; and OAC 3745–18–53. Adopted March 1, 2000; effective March 21, 2000.

3. Section 52.1881 is amended by revising paragraphs (a)(4) and (a)(8) and by adding paragraph (a)(14) to read as follows:

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) * * *

(4) Approval-EPA approves the sulfur dioxide emission limits for the following counties: Adams County (except Dayton Power & Light-Stuart), Allen County (except Cairo Chemical), Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Carroll County, Champaign County, Clark County, Clermont County, (except Cincinnati Gas & Electric-Beckjord), Clinton County, Columbiana County, Coshocton County, Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County, Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County (except Painesville Municipal Plant boiler number 5), Lawrence County (except Allied Chemical-South Point), Licking County, Logan County, Lorain County, Lucas County (except Gulf Oil Company,

Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company), Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Morgan County, Montgomery County (except Bergstrom Paper, Miami Paper), Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County (except Portsmouth Gaseous Diffusion Plant), Portage County, Preble County, Putnam County, Richland County, Ross County (except Mead Corporation), Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumbull County, Tuscarawas County, Union County, Van Wert County, Vinton County, Warren County, Washington County (except Shell Chemical), Wayne County, Williams County, Wood County (except Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6), and Wyandot County.

* * * * *

(8) No Action-EPA is neither approving nor disapproving the emission limitations for the following counties/sources pending further review: Adams County (Dayton Power & Light-Stuart), Allen County (Cairo Chemical), Butler County, Clermont County (Cincinnati Gas & Electric-Beckjord), Cuyahoga County, Franklin County, Lake County (Painesville Municipal Plant boiler number 5), Lawrence County (Allied Chemical-South Point), Lucas County (Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company), Mahoning County, Montgomery County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), Stark County, Washington County (Shell Chemical Company), and Wood County (Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6).

* * * * *

(14) On March 20, 2000, the Ohio Environmental Protection Agency submitted maintenance plans for Coshocton, Gallia and Lorain Counties.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Section 107 Attainment Status Designations

2. The table in § 81.336 entitled "Ohio—SO_2" is amended to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Athens County				X
Clermont County				X
Columbiana County				X
Coshocton County				X
Cuyahoga County:				
The Cities of Bay Village, Westlake, North Olmsted, Olmsted Falls, Rock River, Fairview Park, Berea, Middleburg Heights, Strongsville, North Royalton, Broadview Heights, Brecksville and the Townships of Olmsted and Riveredge				X
The remainder of Cuyahoga County	X			
Gallia County				X
Greene County				X
Hamilton County				X
Jefferson County:				
The Cities of Steubenville and Mingo Junction, Townships of Steubenville, Island Creek, Cross Creek, Knox and Wells				X
The remainder of Jefferson County				X
Lake County:				
The Cities of Eastlake, Timberlake, Lakeline, Willoughby (north of U.S. 20) and Mentor (north of U.S. 20, west of S.R. 306)				X
The remainder of Lake County				X
Lorain County				X
Lucas County:				
The area east of Route 23 and west of the eastern boundary of Oregon Township	X			
The remainder of Lucas County				X
Mahoning County				X
Montgomery County				X
Morgan County:				
Center Township				X
The remainder of Morgan County				X
Summit County:				
Area bounded by the following lines—north—Interstate 76, east—Route 93, south—Vanderhoof Road, west—Summit County line	(1)	(1)	(1)	(1)
Area bounded by the following lines— north—Bath Road (48 east to Route 8, Route 8 north to Barlow Road, Barlow Road east to county line, east—Summit/Portage county line, south—Interstate 76 to Route 93, Route 93 south to Route 619, Route 619 east to county line, west—Summit/Medina county line				[2]X
Entire area northwest of the following line: Route 80 east to Route 91, Route 91 north to the county line				[2]X
The remainder of Summit County				[3]X
Trumbull County				[3]X

OHIO—SO_2—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Washington County:				
Waterford Township				X
The remainder of Washington County				X
All other counties in the State of Ohio				X

[1] This area remains undesignated at this time as a result of a court remand in *PPG Industries, Inc.* v. *Costle*, 630 F.2d 462 (6th Cir. 1980).
[2] This area was affected by the Sixth Circuit Court remand but has since been designated.
[3] This area was not affected by the court remand in *PPG Industries, Inc.* v. *Costle* 630 F.2d 462 (6th Cir. 1980).

* * * * *

[FR Doc. 00–13199 Filed 6–2–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

42 CFR Parts 1001, 1003, 1005 and 1006

RIN 0991–AA90

Health Care Programs: Fraud and Abuse; Revised OIG Civil Money Penalties Resulting From Public Law 104–191

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule; correction amendments.

SUMMARY: This document contains several corrections to the final regulations which were published in the **Federal Register** on Wednesday, April 26, 2000 (65 FR 24400). These regulations revised the OIG's civil money penalty (CMP) authorities in conjunction with new or revised provisions set forth in the Health Insurance Portability and Accountability Act of 1996, and codified a number of technical corrections to the regulations governing the OIG's sanction authorities. Inadvertent errors appeared in the text of the regulations concerning the knowledge standard in § 1003.102 (a)(6), and in § 1005.7 with respect to discovery. In addition, an incorrect cross-reference was cited in the definition for the term "preventive care," as set forth in part 1003. As a result, we are making corrections to 42 CFR 1003.101, 1003.102(a) and 1005.7 to assure the technical correctness of these regulations.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION: The HHS Office of Inspector General (OIG) issued final regulations on April 26, 2000 (65 FR 24400) that revised the OIG's CMP authorities, in conjunction with new and revised provisions set forth in the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191. Among other provisions, this final rulemaking codified new CMPs for excluded individuals retaining ownership or control interest in an entity; upcoding and claims for medically unnecessary services; offering inducements to beneficiaries; and false certification of eligibility for home health services. The rule also codified a number of technical corrections to the regulations governing OIG's sanction authorities. In that final rule, several inadvertent errors appeared in the regulations text and are now being corrected.

CMP Knowledge Standard—§ 1003.102(a)(6)

In the preamble discussion regarding revisions to § 1003.102(a)(6), addressing the submission of claims for services that are medically unnecessary, we indicated that this paragraph was being amended to include the "knows or should know" standard found in the statute and in the revision to § 1003.102(a)(1) to ensure that it is not the OIG's intent to subject providers to penalties for legitimate disagreements over the medical necessity of items and services or for honest mistakes or errors (65 FR 24403). As indicated in that discussion, while the knowledge standard in the statute requires that providers assume responsibility for appropriate billing of their services, the OIG intends to impose CMPs only after establishing that a provider knew that a billed item or service was not medically necessary, or that he or she deliberately ignored or recklessly disregarded such information. Accordingly, we indicated that we were revising § 1003.102(a)(6) by adding the words "knows or should know" to have the paragraph read as: "An item or service that a person knows or should know is medically unnecessary, and which is part of a pattern of such claims." (emphasis added). This language was inadvertently omitted from the revised regulations text. In order to be consistent with the preamble discussion, we are correcting the omission that occurred in § 1003.102(a)(6).

Discovery—§ 1005.7

In summarizing the provisions of the final rule, we indicated that we were amending § 1005.7 to provide for motions to compel discovery once a request for production of documents has been received. The preamble stated that any objections to a request for the production of documents will have to be filed with the opposing party within 15 days of receiving the discovery request, and that the party seeking the production of documents may then file a motion to compel discovery within 15 days, unless a lengthier time frame is set by the administrative law judge (ALJ) (65 FR 24412–13). This discretion afforded to the ALJ to grant an extension was inadvertently omitted from the regulations text in § 1005.7(e). We are correcting this omission by redesignating existing paragraph (e)(3) in this section to read as (e)(4) and by adding a new paragraph (e)(3) to address the ALJ's discretion in extending the appropriate time frames

Preventive Care—§ 1003.101

In the definition for "preventive care" appearing in § 1003.101, the definition incorrectly cites § 1003.102(b)(13) as the applicable cross-reference. We are amending this definition to cite the correct cross-reference, which is to the term "remuneration" that is set forth in this same section.

Amendatory Language to § 1003.103(a) Introductory Text and § 1003.105(a)(1)(i)

We are amending the language in the introductory text for § 1003.103(a) and

in paragraph (a)(1)(i) for § 1003.105 to make the references consistent with the those provisions added in earlier final rulemaking published on April 7, 2000 (65 FR 18434), which addressed OIG CMP authority for unbundling hospital outpatient services.

List of Subjects

42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

42 CFR Part 1005

Administrative practice and procedure, Fraud, Penalties.

42 CFR Part 1006

Administrative practice and procedure, Fraud, Investigations, Penalties.

Accordingly, 42 CFR parts 1003 and 1005 are corrected by making the following correcting amendments:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

1. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320–7, 1320a–7a, 1320a–7e,1320b–10, 1395u(j), 1395u(k), 1395cc(g), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.101 is amended by republishing the introductory text, and by revising the introductory paragraph for the definition of the term Preventive care to read as follows:

§ 1003.101 Definitions.

For purposes of this part:

* * * * *

Preventive care, for purposes of the definition of the term Remuneration as set forth in this section and the preventive care exception to section 231(h) of HIPAA, means any service that—

* * * * *

3. Section 1003.102 is amended by republishing the introductory text of paragraph (a) and by revising paragraph (a)(6) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

(a) The OIG may impose a penalty and assessment against any person whom it determines in accordance with this part has knowingly presented, or caused to be presented, a claim which is for—

* * * * *

(6) An item or service that a person knows or should know is medically unnecessary, and which is part of a pattern of such claims.

* * * * *

4. Section 1003.103 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b) through (k) of this section, the OIG may impose a penalty of not more than—

* * * * *

5. Section 1003.105 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 1003.105 Exclusion from participation in Medicare, Medicaid and all Federal health care programs.

(a)(1) * * *

(i) Is subject to a penalty or assessment under § 1003.102(a), (b)(1), (b)(4), (b)(12), (b)(13) or (b)(15); or

* * * * *

PART 1005—APPEALS OF EXCLUSIONS, CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for part 1005 continues to read as follows:

Authority: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

2. Section 1005.7 is amended by redesignating existing paragraph (e)(3) as (e)(4) and by adding a new paragraph (e)(3) to read as follows:

§ 1005.7 Discovery.

* * * * *

(e) * * *

(3) The ALJ may extend any of the time frames set forth in paragraph (e)(1) of this section.

Dated: May 26, 2000.

Michael Carelton,

Deputy Director for Information Resource Management.

[FR Doc. 00–13994 Filed 6–2–00; 8:45 am]

BILLING CODE 4152–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7320]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1-percent-annual-chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima	Unincorporated Areas.	January 20, 2000, January 27, 2000, *The Arizona Daily Star.*	The Honorable Sharon Bronson, Chairperson, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	November 2, 1999	060344
California: Orange	City of Anaheim	January 6, 2000, January 13, 2000, *Anaheim Bulletin.*	The Honorable Tom Daly, Mayor, City of Anaheim, P.O. Box 3222, Anaheim, California 92803.	December 22, 1999	060213
Colorado:					
Arapahoe	Unincorporated Areas.	February 3, 2000, February 10, 2000, *The Villager.*	The Honorable Steve Ward, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0060.	January 6, 2000	080011
Larimer	City of Fort Collins.	January 26, 2000, February 2, 2000, *The Coloradoan.*	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–0580.	December 22, 1999	080102
El Paso	City of Colorado Springs.	January 4, 2000, January 11, 2000, *Gazette Telegraph.*	The Honorable Mary Lou Makepeace, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	December 14, 1999	080060
Jefferson	Unincorporated Areas.	January 19, 2000, January 26, 2000, *Columbine Community Charter.*	The Honorable Michelle Lawrence, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, Colorado 80419.	December 22, 1999	080087
Larimer	Unincorporated Areas.	January 26, 2000, February 2, 2000, *The Coloradoan.*	The Honorable Cheryl Olson, Chairperson, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522–1190.	December 22, 1999	080101
Hawaii: Hawaii	Hawaii	February 2, 2000, February 9, 2000, *West Hawaii Today.*	The Honorable Stephen K. Yamashiro, Mayor, Hawaii County, 25 Aupuni Street, Room 202, Hilo, Hawaii 96720–4252.	January 6, 2000	155166
Missouri:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Butler	Unincorporated Areas.	January 24, 2000, January 31, 2000, *Daily American Republic.*	The Honorable Joe Humphrey, Commissioner, Butler County, Butler County Courthouse, Room 203, Poplar Bluff, Missouri 63901.	January 27, 2000	290044
St. Louis	City of Chesterfield.	January 11, 2000, January 18, 2000, *St. Louis Countian.*	The Honorable Nancy Greenwood, Mayor, City of Chesterfield, 16052 Swingley Ridge Road, Suite 100, Chesterfield, Missouri 63017.	April 17, 2000	290896
Butler	City of Poplar Bluff.	January 24, 2000, January 31, 2000, *Daily American Republic.*	The Honorable Reid Forrester, Mayor, City of Poplar Bluff, City Hall, 101 Oak Street, Poplar Bluff, Missouri 63901.	December 27, 1999	290047
Pemiscot	City of Steele	February 3, 2000, February 10, 2000, *The Steele Enterprise.*	The Honorable Keith Samford, Mayor, City of Steele, 115 South Walnut Street, Steele, Missouri 63877.	December 20, 1999	290279
St. Louis	City of Wildwood	January 11, 2000, January 18, 2000, *St. Louis Countian.*	The Honorable R. W. Marcantano, Mayor, City of Wildwood, 16962 Manchester Road, Wildwood, Missouri 63040.	April 17, 2000	290922
New Mexico:					
Sandoval	Town of Bernalillo	January 24, 2000, January 31, 2000, *Albuquerque Journal.*	The Honorable Charles Aguilar, Mayor, Town of Bernalillo, P.O. Box 638, Bernalillo, New Mexico 87004.	December 14, 1999	350056
Sandoval	City of Rio Rancho.	January 24, 2000, January 31, 2000, *Albquerque Journal.*	The Honorable John Jennings, Mayor, City of Rio Rancho, P.O. Box 15550, Rio Rancho, New Mexico 87174.	December 14, 1999	350146
Sandoval	Unincorporated Areas.	January 24, 2000, January 31, 2000, *Albuquerque Journal.*	Ms. Debbie Hays, County, Manager, Sandoval County, P.O. Box 40, Bernalillo, New Mexico 87004.	December 14, 1999	350055
Texas:					
Dallas	City of Dallas	December 28, 1999, January 4, 2000, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Manilla Street, Dallas, Texas 75201.	December 2, 1999	480171
Dallas	City of Dallas	January 5, 2000, January 12, 2000, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Manilla, Dallas, Texas 75201.	December 15, 1999	480171
Dallas	City of Dallas	January 17, 2000, January 24, 2000, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Manilla, Dallas, Texas 75201.	December 20, 1999	480171
Tarrant	City of Euless	January 24, 2000, January 31, 2000, *Fort Worth Star-Telegram.*	The Honorable Mary Lib Saleh, Mayor, City of Euless, 201 North Ector Drive, Euless, Texas 76039.	December 22, 1999	480593
Tarrant	City of Fort Worth	January 24, 2000, January 31, 2000, *Fort Worth Star-Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	December 22, 1999	480596
Harris	Unincorporated Areas.	December 28, 1999, January 4, 2000, *Houston Chronicle.*	The Honorable Robert Eckels, Harris County Judge, Harris County, 1001 Preston Street, Suite 911, Houston, Texas 77002.	December 15, 1999	480287
Harris	Unincorporated Areas.	December 28, 1999, January 4, 2000, *Houston Chronicle.*	The Honorabale Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	April 3, 2000	480287
Bexar	Town of Hollywood Park.	January 5, 2000, January 12, 2000, *San Antonio Express-News.*	The Honorable Gary Mercer, Mayor, Town of Hollywood Park, Two Mecca Drive, Hollywood Park, Texas 78232.	April 11, 2000	480040
Midland	City of Midland	January 4, 2000, January 11, 2000, *Midland Reporter-Telegram.*	The Honorable Robert Burns, Mayor, City of Midland, P.O. Box 1152, Midland, Texas 79702–1152.	December 7, 1999	480477
Bexar	City of San Antonio.	February 4, 2000, February 11, 2000, *San Antonio Express-News.*	The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78282–3966.	May 11, 2000	480045

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Bexar	City of San Antonio.	January 5, 2000, January 12, 2000, *San Antonio Express-News.*	The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	April 11, 2000	480045
Bexar	City of Shavano Park.	January 5, 2000, January 12, 2000, *San Antonio Express-news.*	The Honorable Tommy Peyton, Mayor, City of Shavano Park, 99 Saddletree Road, San Antonio, Texas 78231.	April 11, 2000	480047

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–13999 Filed 6–2–00; 8:45 am]

BILLING CODE 6718–04–p

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Arkansas	
Perry County and Incorporated Areas (FEMA Docket No. 7302)	
Cypress Creek:	
Approximately 4,200 feet downstream of Highway 9	*294
Approximately 2,000 feet upstream of Johnson Road	*294
Haydou Branch:	
At confluence with Cypress Creek	*294
Approximately 2,200 feet upstream of Adelle Road	*357

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Maps are available for inspection at the County Courthouse, Main Street and Highway 60, Perryville, Arkansas.	
Maps are available for inspection at Town Hall, 104 South Johnson Street, Perry, Arkansas.	
Kansas	
Leavenworth County (Unincorporated Areas) (FEMA Docket No. 7302)	
Tonganoxie Creek:	
Approximately 4,500 feet downstream of Washington Street	*834
Approximately 3,800 feet downstream of Washington Street	*835
Approximately 1,700 feet upstream of 218th Street	*863
Unnamed Tributary #3:	
Approximately 1,925 feet from its confluence with Tonganoxie Creek	*863
Approximately 4,450 feet upstream from its confluence with Tonganoxie Creek	*872
Maps are available for inspection at the Leavenworth County Courthouse, 300 Walnut, Leavenworth, Kansas.	
Tonganoxie (city), Leavenworth County (FEMA Docket No. 7302)	
Tonganoxie Creek:	
Approximately 4,500 feet downstream of Fourth Street	*843
Approximately 3,300 feet downstream of Fourth Street	*843
Approximately 100 feet upstream of 218th Street	*862
Unnamed Tributary #3:	
At its confluence with Tonganoxie Creek	*862
Approximately 1,925 feet upstream of its confluence with Tonganoxie Creek	*863
Maps are available for inspection at City Hall, 321 S. Delaware, Tonganoxie, Kansas.	
Wyoming	
Green river (town), Sweetwater County (FEMA Docket No. 7302)	
Bitter Creek:	
Located at the confluence of Bitter Creek with Green River	*6,075
Located approximately 2,160 feet upstream of the confluence of Bitter Creek with Green River	*6,086
Green River:	
Approximately 3,200 feet downstream of the Teton Boulevard Bridge	*6,068
Located approximately 6,800 feet upstream of the Union Pacific Railroad Bridge	*6,090
Maps are available for inspection at the Community Development Department, 50 E. Second North Street, Green River, Wyoming.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–13998 Filed 6–2–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1001; MM Docket No. 99–214; RM–9546 and RM–9699]

Radio Broadcasting Services; Camp Wood and Rocksprings, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C3 for Channel 256A at Camp Wood, Texas, and modifies the construction permit for Station KAYG to specify operation on Channel 251C3, in response to a petition filed by La Radio Cristiana Network, Inc. *See* 64 FR 31532, June 11, 1999. The coordinates for Channel 251C3 at Camp Wood are 29–42–53 and 100–00–56. Mexican concurrence has been received for the allotment at Camp Wood. In response to a counterproposal filed by Frank Mccoy, we will allot Channel 295C2 at Rocksprings, Texas, at coordinates 30–02–44 and 10–19–00. There is a site restriction 10.8 kilometers west of the community. Mexican concurrence has been requested for the allotment at Rocksprings but notification has not yet been received. Therefore, operation with the facilities specified for Rocksprings herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA–Mexico FM Broadcast Agreement or if specifically objected to by Mexico. With this action, this docketed proceeding is terminated.

DATES: Effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–214, adopted April 19, 2000, and release May 12, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Campwood, Channel 256A and adding Camp Wood, Channel 251C3 and by adding Rocksprings, Channel 295C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13702 Filed 6–2–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1112; MM Docket No. 94–70; RM–8474 and RM–8706]

Radio Broadcasting Services; Moncks Corner, Klawah Island, and Sampit, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This Memorandum Opinion and Order partially grants two petitions for reconsideration of a *Report and Order*, 61 FR 42228 (August 14, 1996), and overturns that *Report and Order*.

The document admits new evidence presented by Sampit Broadcasters ("SB") and L.M. Communications II of South Carolina, Inc. ("LMC") that demonstrates the availability of a transmitter site for LMC and that Sampit, South Carolina is a "community" for allotment purposes. Since both rulemaking proponents were found to be qualified to effectuate their mutually exclusive proposals, the proposals were compared to determine the winner. LMC's proposal to substitute Channel 288C2 for Channel 287C3 at Moncks Corner, South Carolina, reallot Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina, and modify Station WNST(FM)'s license accordingly was preferred over SB's proposal to allot Channel 289A to Sampit, South Carolina. The new coordinates for LMC's transmitter site at Kiawah Island are: 32–38–57 NL and 80–02–11 WL.

DATES: Effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 94–70, adopted May 10, 2000, and released May 19, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [AMENDED]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Moncks Corner, Channel 287C3 and adding Kiawah Island, Channel 288C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13701 Filed 6–2–00; 8:45 am]

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Proposed Rules

Federal Register
Vol. 65, No. 108
Monday, June 5, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV00–928–1 PR]

Papayas Grown in Hawaii; Reopening of Comment Period on Removal of Suspension Regarding Grade, Inspection, and Related Reporting Requirements and Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of the comment period.

SUMMARY: Notice is hereby given that the comment period on the proposed removal of the suspension of grade, inspection, and related reporting requirements for Hawaiian papayas is reopened.

DATES: Comments must be received by June 20, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: A proposed rule was issued on February 14, 2000, and published in the **Federal Register** (65 FR 8313; February 18, 2000). The proposed rule invited comments on removing the suspension of grade, inspection, inspection waiver procedure, and related exempt shipment reporting requirements under the marketing order regulating papayas grown in Hawaii. The proposal specified that papayas shipped to any destination had to be at least Hawaii No. 1, except that the weight requirements specified in this grade shall not apply. These requirements were the same as previously applied except that the 5 percent tolerance for immature papayas was proposed to be removed. The comment period ended April 18, 2000.

One comment signed by eight persons was received. In evaluating that comment, the Department further reviewed the Papaya Administrative Committee's (Committee) recommendation to remove the 5 percent tolerance for immature fruit under Hawaii No. 1. The rationale provided by the Committee for removing that tolerance was to improve the quality of papayas shipped into the fresh market. A further review of the requirements under Hawaii No. 1, however, revealed that the removal of that tolerance could have the effect of permitting more immature fruit in shipments of Hawaii papayas than was permitted before the requirements were suspended in 1994. For instance, under the inspection shipping point plan in Table IIA of the Standards for Hawaii Grown Papaya, the removal of the 5 percent tolerance could permit a lot of papayas to include a maximum of 7 percent immature papayas. This would not be an improvement in quality as contemplated by the Committee.

Before proceeding further on this recommendation, the Department needs more information to clarify the basis of the recommendation to remove the 5 percent tolerance. Reopening the comment period to June 20, 2000, would allow the Committee and other interested persons more time to review the proposed rule and submit information to clarify the matter.

This delay should not substantially add to the time required to complete this rulemaking action. Accordingly, the period in which to file written comments is reopened until June 20, 2000. This notice is issued pursuant to the Agricultural Marketing Agreement Act of 1937.

Authority: 7 U.S.C. 601–674.

Dated: May 30, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–13979 Filed 6–2–00; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–98–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, that would have required a one-time ultrasonic inspection of the maneuvering actuator piston rod of the main landing gear (MLG) to ensure adequate wall thickness of the piston rods; and replacement of any discrepant piston rod with a new piston rod. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule by removing all references to Change No. 01 of the referenced service bulletin. The actions specified by this new proposed AD are intended to prevent failure of the maneuvering actuator piston rod of the MLG, which would impede retraction of the MLG and consequent reduced controllability of the airplane.

DATES: Comments must be received by June 30, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 99–NM–98–AD" in the subject line and need not be submitted in triplicate.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Satish Lall, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6082; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–98–AD."

The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 7, 1999 (64 FR 24545). That NPRM would have required a one-time ultrasonic inspection of the maneuvering actuator piston rod of the main landing gear (MLG) to ensure adequate wall thickness of the piston rods; and replacement of any discrepant piston rod with a new piston rod. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. That condition, if not corrected, could result in failure of the maneuvering actuator piston rod of the MLG, which would impede retraction of the MLG and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA recognized that it inadvertently specified EMBRAER Service Bulletin 145–32–0031, Change No. 01, dated December 8, 1998, as an appropriate source of service information for accomplishing the requirements of the NPRM and for determining the affected airplanes. The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, only classified Change No. 02 of EMBRAER Service Bulletin 145–32–0031, dated February 12, 1999, as mandatory. Change No. 02 of the service bulletin differs from Change No. 01 in that it incorporates additional affected actuator part numbers and serial numbers. Therefore, the FAA has removed all references to Change No. 01 of the subject service bulletin from the proposed AD.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 33 EMBRAER Model EMB–145 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,980, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this

action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 99–NM–98–AD.

Applicability: Model EMB–145 series airplanes, equipped with main landing gear maneuvering actuators, part and serial numbers as listed in EMBRAER Service Bulletin 145–32–0031, Change No. 02, dated February 12, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the maneuvering actuator piston rod of the main landing gear (MLG), which would impede retraction of the MLG and consequent reduced controllability of the airplane; accomplish the following:

Ultrasonic Inspection and Replacement, If Necessary

(a) Within the next 100 landings after the effective date of this AD, perform an ultrasonic inspection of the maneuvering actuator piston rods of the MLG to ensure adequate wall thickness of the piston rods, in accordance with EMBRAER Service Bulletin 145–32–0031, Change No. 02, dated February 12, 1999.

(1) If the thickness of any measurement point in any piston rod is greater than 2.0 mm (.079 inch), no further action is required by this AD.

(2) If the thickness of any measurement point in any piston rod is from 1.5 mm (.059 inch) to 2.0 mm (.079 inch): Within 500 landings after the effective date of this AD, replace the piston rod with a new rod having the correct part number as specified in the service bulletin.

(3) If the thickness of any measurement point in any piston rod is less than 1.5 mm (.059 inch): Within 50 landings after the effective date of this AD, replace the piston rod with a new rod having the correct part number as specified in the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 98–09–01 R1, dated March 15, 1999.

Issued in Renton, Washington on May 17, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14019 Filed 6–2–00; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7322]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1-percent-annual-chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW, Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Benton County and Incorporated Areas.	Osage/Turtle Creek	Just upstream of North 12th Street	None	*1,325
			Approximately 400 feet upstream of North 6th Street.	None	*1,340
		Blossom Way Creek	At its confluence with Osage/Turtle Creek	None	*1,205
			At its intersection with South 26th Street	None	*1,276
		Osage Tributary 1 (Horsebarn Tributary).	At its intersection with Stoney Brook Road.	None	*1,204
			Approximately 700 feet upstream of Horsebarn Road.	None	*1,252
		Superior Tributary to Osage/Turtle Creek.	At its confluence with Osage/Turtle Creek	None	*1,284
			Approximately 1,300 feet upstream of Dixieland Road.	None	*1,314
		Tributary 1 of Blossom Way Creek.	At its confluence with Blossom Way Creek.	None	*1,288
			Approximately 3,300 feet upstream of its confluence Tributary 2 of Blossom Way Creek.	None	*1,325
		Tributary 2 to Blossom Way Creek.	At its confluence with Tributary 1 of Blossom Way Creek.	None	*1,299
			Approximately 4,300 feet upstream of Honeysuckle Road.	None	*1,332
		Tributary 3 to Blossom Way Creek.	At its confluence with Blossom Way Creek.	None	*1,257
			Approximately 1,900 feet upstream from its confluence with Blossom Way Creek.	None	*1,268

Maps are available for inspection at 215 East Central, Suite 8, Room 302, Bentonville, Arkansas.
Send comments to the Honorable Cary Anderson, Benton County Judge, 215 East Central, Suite 9, Bentonville, Arkansas 72712.
Maps are available for inspection at 207 South Second, Rogers, Arkansas.
Send comments to the Honorable Steve Womack, Mayor, City of Rogers, 300 West Poplar, Rogers, Arkansas 72756.
Maps are available for inspection at 214 North Lincoln Street, Lowell, Arkansas.
Send comments to the Honorable Martha Brown, Mayor, City of Lowell, P.O. Box 129, Lowell, Arkansas 72745.
Maps are available for inspection at 315 Southwest A Street, Bentonville, Arkansas.
Send comments to the Honorable Terry Coberly, Mayor, City of Bentonville, 117 West Central, Bentonville, Arkansas 72712.

	Crawford County and Incorporated Areas.	Tributary 1	At its confluence with Little Frog Bayou	None	*413
			Approximately 350 feet upstream of East Cherry Street.	None	*431
		Tributary 2	At its confluence with Tributary 1	None	*418
			Approximately 275 feet upstream of East Cherry Street.	None	*429

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Tributary 4	At its confluence with Little Frog Bayou Tributary.	None	*444
		Tributary A	Approximately 1,200 feet upstream of its confluence with Little Frog Bayou Tributary.	None	*469
			Approximately 650 feet downstream of the Union Pacific Railroad.	None	*411
		Lighthouse Drain	Just upstream of Arkansas Highway 64	None	*434
			At its confluence with Tributary A	None	*414
			Approximately 100 feet upstream of Lighthouse Drive.	None	*439
		Little Frog Bayou Tributary	At its confluence with Little Frog Bayou	*423	*426
			Just upstream of Maple Shade Road	None	*508
Maps are available for inspection at 300 Main Street, Room 4, Van Buren, Arkansas.					
Send comments to the Honorable Jerry Williams, Crawford County Judge, 300 Main Street, Room 4, Van Buren, Arkansas 72956.					
Maps are available for inspection at 804 Fayetteville Avenue, Suite B, Alma, Arkansas 72921.					
Send comments to the Honorable Kevin Beaumont, Mayor, City of Alma, 804 Fayetteville Avenue, Suite A, Alma, Arkansas 72921.					
	Russellville (City) Pope County.	Whig Creek	At its intersection with the Union Pacific Railroad.	*385	*393
			Just upstream of Arkansas Highway 64	None	*416
		Whig Creek Tributary No. 1.	At its confluence with Whig Creek	None	*323
			Approximately 500 feet upstream of Arkansas Highway 75.	None	*326
		Whig Creek Tributary No. 2.	At its confluence with Whig Creek	None	*323
			Approximately 2,500 feet upstream of the Dardanelle and Russellville Railroad.	None	*323
		Prairie Creek	At its confluence with Prairie Creek Tributary No. 2.	None	*374
			Approximately 250 feet upstream of Weir Road.	None	*393
		Prairie Creek Tributary No. 2.	At its confluence with Prairie Creek	*374	*374
			At its intersection with Weir Road (Arkansas Highway 326).	*384	*382
			Approximately 2,000 feet upstream of Weir Road.	None	*394
		School Drain	At its confluence with Prairie Creek	None	*343
			Approximately 2,000 feet upstream of University Drive.	None	*387
Maps are available for inspection at 205 West Second Street, Russellville, Arkansas.					
Send comments to the Honorable Raye Turner, Mayor, City of Russellville, P.O. Box 428, Russellville, Arkansas 72811.					
	Washington County and Incorporated Areas.	Middle Fork White River	Approximately 12,000 feet upstream of mouth.	None	*1,193
			Approximately 3,700 feet upstream of its confluence with Koger Branch.	None	*1,209
		Stokenbury Creek	At its confluence with the White River	None	*1,199
			Just upstream of Stokenbury Road	None	*1,446
		Koger Branch	At its confluence with the Middle Fork White River.	None	*1,202
			Approximately 2,700 feet upstream of South Harris Drive.	None	*1,220
		Faubus Creek	At its confluence with the White River	None	*1,211
			Approximately 4,300 feet upstream of South Center Street.	None	*1,255

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at 130 West First Street, Elkins, Arkansas.					
Send comments to the Honorable Oscar Lisle, Mayor, City of Elkins, P.O. Box 331, Elkins, Arkansas 72727.					
Maps are available for inspection at 4 South College Avenue, Suite 205, Fayetteville, Arkansas.					
Send comments to the Honorable Jerry Hunton, Washington County Judge, 280 North College Avenue, Suite 210, Fayetteville, Arkansas 72701.					
North Dakota	Benson County and Incorporated Areas.	Silver Lake	Entire shoreline of Silver Lake	None	*1,450
		Pelican Lake	South shoreline of Pelican Lake	None	*1,450
		Spring Lake	Spring Lake shoreline	None	*1,450
		Devils Lake	Northwest shoreline of Grahms Island	None	*1,450
			Devils Lake shoreline adjacent to Minnewaukan.	None	*1,451
			Area East of U.S. Route 281, south of intersection with State Route 19.	None	*1,453
			West Side Woods Rutten Causeway	None	*1,454
			West Side of State Route 57 Causeway south of the Narrows State Recreation Area.	None	*1,455
Maps are available for inspection at the County Courthouse/Tax Equalization Office, 311 B Avenue South, Minnewaukan, North Dakota.					
Send comments to the Honorable John Grann, Chairperson, Benson County Board of Commissioners, P.O. Box 123, Minnewaukan, North Dakota 58351.					
Maps are available for inspection at the City Office, 130 Main Street East, Minnewaukan, North Dakota 58351.					
Send comments to the Honorable Mike Every, Mayor, City of Minnewaukan, P.O. Box 56, Minnewaukan, North Dakota 58351.					
Maps are available for inspection at the Floodplain Emergency Management—Bureau of Indian Affairs Realty Office, Highway 57, Fort Totten, North Dakota.					
Send comments to the Honorable Phillip Lonzie, Sr., Tribal Chairperson, P.O. Box 359, Fort Totten, North Dakota 58335.					
	Nelson County (Unincorporated Areas).	Stump Lake	Entire shoreline of Stump Lake	None	*1,450
Maps are available for inspection at Nelson County Sheriff's Office, 210 W. B Avenue, Lakota, North Dakota.					
Send comments to the Honorable Lawrence E. Jahnke, Presiding Judge, 210 W. B Avenue, Lakota, North Dakota 58344.					
	Ramsey County and Incorporated Areas.	Lake Irvine	Entire shoreline of Lake Irvine	None	*1,450
		Lake Alice	Entire shoreline of Lake Alice	None	*1,450
		Chain Lake	Entire shoreline of Chain Lake	None	*1,450
		Mikes Lake	Entire shoreline of Mikes Lake	None	*1,450
		Dry Lake	Entire shoreline of Dry Lake	None	*1,450
		Stone Lake	Entire shoreline of Stone Lake	None	*1,450
		Pelican Lake	North shoreline of Pelican Lake	None	*1,450
		Sixmile Bay	Northernmost point of Sixmile Bay	None	*1,450
			West shore of Sixmile Bay	None	*1,450
			East shore Sixmile Bay tow miles south of State Route 19.	None	*1,451
		Creel Bay	Entire western shore of Creel Bay	None	*1,450
			Bay side of levee, east shoreline of Creel Bay, one mile North of Lakewood Park.	None	*1,452
			Bay side of levee located at southwest side of Devils Lake Municipal airport.	None	*1,455
		Devils Lake	Approximately 7,000 feet west of 8th Avenue South.	None	*1,451
			Approximately 7,000 feet east of 8th Avenue South.	None	*1,452
			West side State Route 57 causeway south of the Narrows State Recreational Area.	None	*1,455
		East Devils Lake	North Shoreline of East Devils Lake	None	*1,450

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at Ramsey County Emergency Management, 425 4th Avenue, Devils Lake, North Dakota.					
Send comments to the Honorable Arne Berg, County Commission Chairman, HE 1, Box 112, Starkweather, North Dakota 58377.					
Maps are available for inspection at the Post Office c/o Bill Bartle, 304 Orvis Avenue, Church's Ferry, North Dakota.					
Send comments to the Honorable Bill Bartle, Mayor, City of Church's Ferry, P.O. Box 156, Church's Ferry, North Dakota 58325.					
Maps are available for inspection at Ramsey County Emergency Management, 425 4th Avenue, Devils Lake, North Dakota.					
Send comments to the Honorable Raymond Kaeding, Chairman, Township of Coulee, HCR 1, Box 27, Penn, North Dakota 58362.					
Maps are available for inspection at Ramsey County Tax Equalization Office, 524 4th Avenue, Devils Lake, North Dakota.					
Send comments to the Honorable Evan Heutis, Chairman, Township of Creel, Route 5, Box 259, Devils Lake, North Dakota 58301–0259.					
Maps are available for inspection at the City Offices, 423 6th Street, Devils Lake, North Dakota.					
Send comments to the Honorable Fred Bolt, Mayor, City of Devils Lake, P.O. Box 1048, Devils Lake, North Dakota 58301.					
	Towner County (Unincorporated Areas).	Mauvais Coulee River	Section 8 of Township 157N and Range 66W (Panel 650A).	None	*1,450
			Section 36 of Township 157N and Range 66W (Panel 800A).	None	*1,450
Maps are available for inspection at Sheriff's Office, 315 2nd Street, Cando, North Dakota.					
Send comments to the Honorable Darwin Daerwald, Chairman, Board of Commissioners, Box 179, Cando, North Dakota 58324.					
Washington	Okanogan County (Unincorporated Areas).	Twisp River	Approximately 2.18 miles above mouth	*1,677	*1,677
			Approximately 2.23 miles above mouth	None	*1,679
			At its intersection with the Poorman Creek Cutoff Road Bridge.	None	*1,830
Maps are available for inspection at Okanogan County Planning and Development, 237 Fourth Avenue, Okanogan, Washington.					
Send comments to the Honorable Ed Thiele, Chairman of the Board of Commissioners, P.O. Box 791, Okanogan, Washington 98840.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–13997 Filed 6–2–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7318]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1-percent-annual-chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW, Washington, DC 20472; (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[Amended]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Alaska	Matanuska-Susitna Borough.	Talkeetna River Overflow	Just west of Talkeetna Spur Highway	None	*341
			At East Bank of Talkeetna River	None	*351
Maps are available for inspection at the Code Compliance Department, 350 East Dahlia Avenue, Palmer, Alaska.					
Send comments to The Honorable Darcie Salmon, Mayor, Matanuska-Susitna Borough, 350 East Dahlia Avenue, Palmer, Alaska 99645.					
Colorado	Durango (City) La Plata County.	Animas River	Approximately 0.67 mile downstream of U.S. Highway 155/160.	None	*6,375
			Approximately 3.56 miles upstream of 32nd Street.	None	*6,551
		Dry Gulch	Approximately 1,500 feet upstream of confluence with Junction Creek.	*6,626	*6,628
			Approximately 5,670 feet upstream of Borrego Drive.	None	*6,873
		Lightner Creek	At confluence with Animas River	None	*6,485
			Approximately 1,800 feet upstream of confluence with Animas River.	None	*6,513
Maps are available for inspection at the Planning Department, 1235 Camino Del Rio, Durango, Colorado.					
Send comments to The Honorable Joe Colgan, Mayor, City of Durango, 949 East 2nd Avenue, Durango, Colorado 81301.					
Texas	Dallas County and Incorporated Areas.	Trinity River	Approximately 2,500 feet downstream of Dowdy Ferry Road.	*394	*394
			At Loop 12	*402	*403
			At confluence of West Fork and Elm Fork Trinity River.	*423	*423
		West Fork Trinity River	At confluence with Elm Fork Trinity River	*423	*423
			Just downstream of Belt Line Road	*439	*440
			Approximately 11,000 feet upstream of State Route 360.	*464	*465
		Elm Fork Trinity River	At confluence with West Fork Trinity River.	*424	*423
			Just downstream of Valley View Lane	*436	*435
			Approximately 13,000 feet upstream of the confluence of Indian Creek.	*454	*454
		Tenmile Creek	Just upstream of abandoned Watermill Road.	*440	*440
			Approximately 300 feet downstream of Interstate Highway 35.	*529	*529
			At Westmoreland Road	*583	*584
			Approximately 300 feet downstream of Cockrell Hill Road.	*599	*599
		Long Branch of Muddy Creek.	Approximately 1,200 feet upstream of Gulf, Colorado, and Santa Fe Railroad.	*520	*520

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,200 feet downstream of Dewitt Road.	*530	*530
		Indian Creek	Approximately 800 feet downstream of Paige Road.	None	*532
			Approximately 2,300 feet upstream of Paige Road.	None	*542
		Cottonwood Creek of Grand Prairie.	At confluence with Mountain Creek/Mountain Creek Lake.	*458	*458
			Approximately 2,000 feet downstream of SE 14th Street (Fish Creek Road).	*458	*459
			Approximately 150 feet downstream of SE 8th Street.	*458	*470
		Bear Creek	Approximately 2,850 feet downstream of County Road.	None	*521

Maps are available for inspection at City Hall, 105 Cockrell Road, Ovilla, Texas.

Send comments to The Honorable Cindy Jones, Mayor, 105 S. Cockrell Road, Ovilla, Texas 75154.

Maps are available for inspection at the County Administration Building, 411 Elm, 4th Floor, Dallas, Texas.

Send comments to The Honorable Lee Jackson, Judge, Dallas County, 411 Elm Street, Dallas, Texas 75202.

Maps are available for inspection at City Hall, Public Works Department, 1945 East Jackson, Carrollton, Texas.

Send comments to The Honorable Milburn Gravely, Mayor, City of Carrollton, 1945 Jackson Road, Carrollton, Texas 75006.

Maps are available for inspection at City Hall, Engineering Department, 255 Parkway Boulevard, Coppell, Texas.

Send comments to The Honorable Jim Wilt, City Manager, City of Coppell, 255 Parkway Boulevard, Coppell, Texas 75019.

Maps are available for inspection at Oak Cliff Municipal Center, Floodplain Management and Erosion Control, 320 East Jefferson, Room 321, Dallas (Oak Cliff), Texas 75201.

Send comments to The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla, Dallas, Texas 75201.

Maps are available for inspection at City Hall, Development Services, 211 East Pleasant run Road, De Soto, Texas.

Send comments to The Honorable Richard Rozier, Mayor, City of DeSoto, 211 East Pleasant Run Road, DeSoto, Texas 75115.

Maps are available for inspection at City Hall, Public Works, 203 East Wheatland Road, Duncanville, Texas.

Send comments to The Honorable Glenn Repp, Mayor, City of Duncanville, 203 East Wheatland Road, Duncanville, Texas 75116.

Maps are available for inspection at City Hall, Engineering Department, 13000 William Dodson Parkway, Farmers Branch, Texas.

Send comments to The Honorable Richard Escalante, City Manager, City of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381.

Maps are available for inspection at the Engineering Department, 206 West Church, Grand Prairie, Texas.

Send comments to The Honorable Tom Hart, City Manager, City of Grand Prairie, 206 West Church Street, Grand Prairie, Texas 75053–0011.

	Denton County and Incorporated Areas.	Denton Creek (Below Grapevine Lake).	At confluence with Elm Fork of Trinity River.	*446	*445
			Approximately 6,400 feet Upstream of confluence with Elm Fork of Trinity River.	*446	*445
			Approximately 26,000 feet Upstream of confluence with Elm Fork of Trinity River.	*455	*455
		Dudley Branch	Approximately 50 feet upstream from confluence with Elm Fork of Trinity River.	*451	*451
			Approximately 425 feet upstream of the Missouri-Kansas-Texas Railroad.	*451	*452
			Approximately 750 feet downstream from Eisenhower Street.	*452	*453
			At Eisenhower Street	*457	*457
		Elm Fork of Trinity River West Split Flow Area.	At confluence with Elm Fork of Trinity River.	*454	*453
			At divergence from Elm Fork of Trinity River.	*459	*457
		Elm Fork of Trinity River (Below Lewisville Lake).	Approximately 1,050 feet downstream from confluence with Timber Creek.	*449	*449
			Approximately 300 feet downstream from Interstate 35.	*451	*450
			At State Route 121	*461	*462
			At Atchison, Topeka and Santa Fe Railway.	*463	*462
		Indian Creek (At Grapevine Lake).	At confluence with Elm Fork of Trinity River.	*453	*452

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 7,000 feet upstream of confluence with Elm Fork of Trinity River.	*453	*452
			Approximately 700 feet upstream of West Hebron Parkway.	*462	*462
		Lake Lewisville Spillway	At confluence with Elm Fork of Trinity River.	*461	*462
			Approximately 2,400 feet upstream of confluence with Elm Fork of Trinity River.	*461	*462
			Approximately 5,500 feet upstream of State Route 12.	*482	*482
		Timber Creek	At confluence with Elm Fork of Trinity River.	*450	*449
			Approximately 900 feet upstream of Pound Grove Road.	*454	*453
			Approximately 2,500 feet upstream of Interstate 35E.	*463	*463

Maps are available for inspection at the Planning Department, 306 North Loop 288, Denton, Texas.

Send comments to the Honorable Jeff Moseley, Denton County Judge, 110 West Hickory, Denton, Texas 76201.

Maps are available for inspection at the Engineering Department, 1197 West Main, 2nd Floor, Lewisville, Texas.

Send comments to the Honorable Claude King, City Manager, City of Lewisville, 1197 West Main @ Civic Center, Lewisville, Texas 75029–9002

Washington	Castle Rock (City) Cowlitz County.	Cowlitz River	Approximately 14,500 feet downstream of State Highway 10.	*39	*43
			Approximately 2,700 feet upstream of State Highway 10.	*49	*49

Maps are available for inspection at City Hall, 141 A Street, SW, Castle Rock, Washington.

Send comments to the Honorable Barbara Larsen, Mayor, City of Castle Rock, P.O. Box 370, Castle Rock, Washington 98611.

	Cowlitz County (unincorporated areas).	Cowlitz River	At confluence with Columbia River	*17	*18
			Approximately 3 miles upstream of the confluence of the Toutle River.	None	*62
		Toutle River	At confluence with Cowlitz River	*56	*58
			Immediately downstream of Burlington Northern Railroad.	*58	*58
		Arkansas Creek		*45	*48
			At confluence with Cowlitz River	*48	*48
		Ostrander Creek	Approximately 0.3 mile downstream of Delameter Road.	*25	*33
			Just downstream of Burlington Northern Railroad At Ostrander Road.	*33	*33
		Coweman River (Lower Reach near Kelso).	Approximately 1.5 miles upstream of confluence with Cowlitz River.	*17	*19
			Approximately 4.3 miles upstream of confluence with Cowlitz River.	*19	*19

Maps are available for inspection at the Planning Department, County Courthouse, 207 4th Avenue N., Kelso, Washington.

Send comments to the Honorable Bill Lehning, Chairman of the Board of Commissioners, 207 4th Avenue North, Kelso, Washington 98626.

	Kelso (City) Cowlitz County.	Cowlitz River	At confluence with Columbia River	*17	*18
			Approximately 4,500 feet upstream of Cowlitz Way.	*21	*27
		Coweman River	At confluence with Cowlitz River	*17	*19
			Approximately 1.6 miles upstream of Kelso Drive.	*18	*19

Maps are available for inspection at the Mayor and Council Office, 105 Allen Street, Kelso, Washington.

Send comments to the Honorable Keith Lawrence, Mayor, City of Kelso, 105 Allen Street, Kelso, Washington 98626.

	Longview (City) Cowlitz County.	Cowlitz River	At State Route 43Z	*17	*19
			Approximately 4,500 feet upstream of Cowlitz Way.	*21	*27

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the Planning and Building Department, 1525 Broadway, Longview, Washington.					
Send comments to the Honorable Ramona Leber, Mayor, City of Longview, P.O. Box 128, Longview, Washington 98632.					
Wyoming	Sheridan (City) Sheridan County.	Big Goose Creek	Approximately 1.66 miles upstream of Works Street.	*3,768	*3,768
			Approximately 4 miles upstream of Works Street.	None	*3,800
		Little Goose Creek	Approximately 1,250 feet downstream of Brundage Lane.	*3,782	*3,782
			Just upstream of County Road 66	None	*3,836
Maps are available for inspection at the City of Sheridan Planning Department, 55 East Grinnell Avenue, Sheridan, Wyoming.					
Send comments to the Honorable Jim Wilson, Mayor, City of Sheridan, 55 East Grinnel Avenue, Sheridan, Wyoming 82801.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–13996 Filed 6–2–00; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–6096]

Marine Shipboard Electrical Cable Standards

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule: notice of public meeting and reopening of comment period.

SUMMARY: The Coast Guard is holding a public meeting and reopening the comment period to allow for additional comments on the notice of proposed rulemaking for Marine Shipboard Electrical Cable Standards. Since publication of the notice, we have received several requests to hold a public meeting.

DATES: The public meeting is scheduled for Wednesday, June 28, 2000, from 9 a.m. to 3 p.m. but will close early if all business is finished. Comments and related material must reach the Docket Management Facility on or before July 7, 2000.

ADDRESSES: The public meeting will be held in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility [USCG–2000–6096], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on the public meeting, call Dolores Mercier, Project Manager, Office of Design and Engineering Standards (G–MSE), Coast Guard, telephone 202–267–0658, fax 202–267–4816, e-mail *dmercier@comdt.uscg.mil*. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, phone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The notice of proposed rulemaking (NPRM), published on February 8, 2000 (65 FR 6111), encouraged interested persons to participate in this rulemaking by submitting written comments by May 8, 2000. The comment period for this rulemaking is reopened and will close July 7, 2000.

If you submit written comments, please include your name and address, and identify the docket number for this rulemaking [USCG–2000–6096] and the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. Please submit all comments and material in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Facility at the address under **ADDRESSES**. If you want acknowledgement of receipt of your comments, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received whether submitted in writing to the docket or presented during the public meeting discussed below.

Public Meeting

We have received several requests for a public meeting and have scheduled one. The scope of the meeting is limited only to matters addressed in the NPRM. Comments concerning adoption of IEEE Standard 45 (1998) will not be included as part of this meeting. A request for comments concerning adoption of IEEE Standard 45 (1998) is scheduled for publication this summer.

We encourage your further participation by attending the meeting or by submitting comments and related material on the NPRM.

Information on Services for Individuals With Disabilities

For information on facilities or services for people with disabilities or to request special assistance at the meeting, contact Dolores Mercier, Office of Design and Engineering Standards (G–MSE), Coast Guard, telephone 202–267–0658, e-mail *dmercier@comdt.uscg.mil*, as soon as possible.

Dated: May 31, 2000.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–14112 Filed 6–1–00; 1:02 pm]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102 and WT Docket No. 00–80; DA 00–1098]

Wireless E911; Call Back Number Issues Associated With Non-Service Initialized Wireless 911 Calls

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, in this document, seeks comment on a request for further consideration of call back number issues associated with non-service initialized wireless 911 calls. The action is needed to establish a strong, inclusive record on these issues that the Commission may use in making well-informed decisions in this critical enhanced 911 proceeding.

DATES: Submit comments on or before June 19, 2000; submit reply comments on or before July 5, 2000.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Reideler or Jay Whalely, 202–418–1310.

SUPPLEMENTARY INFORMATION:

1. On April 28, 2000, the Texas 911 Agencies,[1] the National Emergency Number Association (NENA), the Association of Public-Safety Communications Officials-International, Inc. (APCO) and the National Association of State Nine-One-One Administrators (NASNA) (collectively, the Public Safety Entities) filed a letter with the Federal Communications Commission (Commission) seeking further consideration of call back number issues associated with non-service initialized 911 calls.

2. Phase I Enhanced 911 rules require that a dialable number accompany each 911 call to enable Public Safety Answering Points ("PSAPs") dispatchers to either call back if the call is disconnected or obtain additional information. (47 CFR 20.18((d)). In its E911 First Report and Order (61 FR 40348, August 2, 1996) the Commission recognized that it would not always be possible for carriers to provide reliable call back numbers for all wireless 911 calls. Thus, the Commission exempted covered carriers from providing reliable call back numbers to PSAPs in cases where the wireless telephone is not associated with a dialable telephone number, such as those designed or offered on an originate-only rate plan or those never initialized with an underlying carrier service.

3. The Public Safety Entities note that, increasingly, refurbished wireless telephones are being distributed by many organizations. While not challenging the benefits of these donations, the Public Safety Entities note that these distributed telephones and other 911-only non-serviced initialized telephones, may not provide valid call back emergency information even when used in areas where 911 Phase I services have been implemented. The Public Safety Entities assert that increased sales and use of these wireless telephones create a public safety concern that should be further considered. Accordingly, the Public Safety Entities request that the Commission seek additional comment concerning call back capabilities for non-serviced initialized handsets and address whether further Commission action, such as technical solutions or educational programs, is needed or appropriate.

Procedural Matters

4. Pursuant to § 1.45 of the Commission's Rules, 47 CFR 1.45, interested parties may file comments on the proposed implementation deadline no later than June 19, 2000. Replies shall be filed no later than July 19, 2000. All comments shall reference the docket number of this proceeding. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the docket number of this proceeding. Parties filing electronically should also e-mail a copy of their comments to jwhaley@fcc.gov. Parties who choose to file by paper must file an original and four copies of each filing with the Commission's Secretary (Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554) and a diskette copy to the Commission's copy contractor (International Transcription Service, Inc. (ITS), CY–B400, (202) 857–3800).

5. Pursuant to § 1.1206 of the Commission's Rules, 47 CFR 1.1206, this proceeding is a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–14032 Filed 6–2–00; 8:45 am]

BILLING CODE 6712–01–P

[1] The Texas 911 Agencies are comprised of the Texas Commission of State Emergency Communications (a state agency) and the following local Texas Emergency Communications Districts: Tarrant County 911 District, Bexar Metro 911 Network, Brazos County Emergency Communication District, DENCO Area 911 District, 911 Network of East Texas, Galveston County Emergency Communication District, Greater Harris County 911 Emergency Network, Henderson County 911 Communication District, Howard County 911 Communication District, Kerr Emergency 911 Network, Lubbock County Emergency Communication District, McLennan County Emergency Assistance District, Midland Emergency Communication District, Montgomery County Emergency Communication District, Potter-Randall County Emergency Communication District, and Texas Eastern 911 Network.

Notices

Federal Register
Vol. 65, No. 108
Monday, June 5, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Tennessee

AGENCY: Natural Resources Conservation Service (NRCS) in Tennessee, U.S. Department of Agriculture.

ACTION: Notice of Availability of proposed changes in Section IV of the FOTG of the NRCS in Tennessee for review and comment.

SUMMARY: It is the intention of NRCS in Tennessee to issue conservation practice standards, Closure of Waste Impoundments (Code 360), Grade Stabilization Structure (Code 410), Manure Transfer (Code 634), Nutrient Management (Code 590), Pond (Code 378), Trough or Tank (Code 614), Waste Storage Facility (Code 313), Waste Treatment Lagoon (Code 359), Waste Utilization (Code 633), for inclusion in Section IV of the FIELD OFFICE TECHNICAL GUIDE (FOTG).

DATES: Comments will be received until July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to James W. Ford, State Conservationist, Natural Resources Conservation Service (NRCS), 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee, 37203. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to perform highly erodible land and wetlands provisions of the law shall be made available for Public review and comment. For the next 30 days, the NRCS in Tennessee will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Tennessee regarding disposition of those comments and a final determination of change will be made.

Dated: May 26, 2000.

Donald L. Dotson,

Acting State Conservationist, Natural Resources Conservation Service, Nashville, Tennessee.

[FR Doc. 00–13902 Filed 6–2–00; 8:45 am]

BILLING CODE 3410–16–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: June 13, 2000; 9:00 a.m.

PLACE: RFE/RL, Inc., Room 546, Vinohradska 1, 110 00 Prague 1, Prague, Czech Republic.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: June 1, 2000.

John A. Lindburg,

Legal Counsel.

[FR Doc. 00–14151 Filed 6–1–00; 2:05 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: U.S. Government Trade Event Information Request.

Agency Form Number: ITA–4136P.

OMB Number: 0625–xxxx.

Type of Request: Regular Submission.

Burden: 50 hours.

Number of Respondents: 50.

Avg. Hours Per Response: 1 hour.

Needs and Uses: The International Trade Administration's Advocacy Center marshals federal resources to assist U.S. firms competing for foreign government procurements worldwide. The Advocacy Center is under the umbrella of the Trade Promotion Coordinating Committee (TPCC), which is chaired by the Secretary of Commerce and includes 19 federal agencies involved in export promotion. The mission of the Advocacy Center is to promote U.S. exports and create U.S. jobs and coordinate U. S. Government (USG) advocacy among the TPCC. The purpose of the questionnaire is to collect the necessary information to make an evaluation as to whether a firm qualifies for senior-level USG support, in the form of attendance at an event including witnessing a commercial agreement signing. The event could be a company sponsored activity or a foreign or USG sponsored event to highlight a commercial trade success for more than one firm. Without this information we will be unable to determine if a U.S. firm is eligible for USG support for the firm's role in the event.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Email LEngelme@doc.gov.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington D.C. 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: May 30, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–13973 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 22–2000]

Foreign-Trade Zone 146—Lawrence County, IL; Application for Expansion of Manufacturing Authority—Subzone 146A, North American Lighting, Inc., Facilities, Flora and Salem, IL (Automotive Lighting Products)

A application has been submitted to the Foreign-Trade Zones Board (the Board) by the Bi-State Authority, grantee of FTZ 146, requesting an expansion of the scope of manufacturing authority to include new manufacturing capacity under FTZ procedures and requesting authority to expand the boundary of FTZ Subzone 146A at the North American Lighting, Inc. (NAL), facilities in Flora and Salem, Illinois. It was formally filed on May 30, 2000.

Subzone 146A was approved by the Board in 1988 with authority granted for the manufacture of automotive lighting components and other related auto parts at NAL's manufacturing facilities (355,000 sq.ft./14 acres) in Flora, Illinois *(Site 1)* (Board Order 371, 53 FR 5436, 2–24–88). The subzone was subsequently reorganized and expanded to include NAL's second manufacturing facility (380,000 sq.ft./22 acres) in the Salem Industrial Park, Salem, Illinois *(Site 2)* (Board Order 718, 60 FR 2375, 1–9–95), with the scope of FTZ manufacturing authority increased to 28 million units annually.

The applicant is now requesting authority to expand the subzone boundaries to include an additional 300,000 square feet of manufacturing space within Site 1 and an additional 17-acre parcel and 365,000 square feet manufacturing/warehouse space within Site 2. Under the current expansion plan, the NAL facilities' capacity will be approximately doubled (to 56 million units per year) with the addition of 665,000 square feet of production area. Activity at the facilities (2,200 employees) involves design, injection molding, plating and assembly of motor vehicle headlamps, rear combination lamps, high mount stop lamps, turn signals, dome and trunk lamps, fog lamps, side marker and license plate lamps using domestic and foreign-origin components. Foreign-sourced components and materials (about 19 percent of total purchases) include: various polymers and resins in primary form (HTSUS Ch. 39), articles of rubber and plastic, parts of lighting equipment, wiring harnesses, bulbs, gaskets/seals, fasteners, optical elements of glass, certain electrical apparatus, lamps and lenses, optical fiber and cable/bundles (duty rates: free–12.5%, 1.2¢/kg+7.5%).

FTZ procedures exempt NAL from Customs duty payments on the foreign components used in export production (9% of shipments). On its domestic sales, the company is able to choose the duty rates that apply to finished automotive lighting equipment and parts (duty free, 2.5%) for the foreign components noted above. The auto duty rate (2.5%) applies if the finished products are shipped via zone-to-zone transfer to U.S. motor vehicle assembly plants with subzone status. The request indicates that the savings from FTZ procedures will continue to help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 4, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 21, 2000).

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Dated: May 30, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14031 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 21–2000]

Foreign-Trade Zone 183—Austin, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Central Texas, Inc., grantee of FTZ 183, requesting authority to expand FTZ 183–Site 3 (High Tech Corridor site) in Austin, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 26, 2000.

FTZ 183 was approved on December 23, 1991 (Board Order 550, 57 FR 42, 1/2/92), expanded twice in 1998 (Board Order 964, 63 FR 12837, 3/23/98; Board Order 994, 63 FR 39071, 7/21/98), and expanded in 1999 (Board Order 1035, 64 FR 19978, 4/23/99). The zone currently consists of eight sites in the Austin, Texas, area: *Site 1* (317 acres, 7 parcels)—Austin Enterprise site, within the Austin Enterprise Zone Area along Highway 290 and the Ben White Boulevard-Montopolis Drive area, Austin; *Site 2* (50 acres)—Balcones Research site located in north central Austin at the intersection of Burnett Road and Longhorn Boulevard; *Site 3* (1,336 acres, 11 parcels) High Tech Corridor site located along I–35, 14 miles north of downtown Austin (site straddles Austin-Round Rock City line); *Site 4* (122 acres) Cedar Park site, some 8 miles northwest of the Austin city limits, in Williamson County; *Site 5* (246 acres, 2 parcels) Round Rock "SSC" site located along I–35 between Chandler Road and Westinghouse Road on the northern edge of the City of Round Rock; *Site 6* (246 acres) Georgetown site, located along I–35 and U.S. 81, south of downtown Georgetown; *Site 7* (40 acres) San Marcos site, located within the San Marcos Municipal Airport facility in eastern San Marcos, adjacent to State Highway 21, on the Hays County/Caldwell County line; and, *Site 8* (200 acres) MET Center industrial park located between U.S. Highway 183 South and State Highway 71 East in southeast Austin, some 5 miles northwest of the new Austin Bergstrom International Airport.

The applicant is now requesting authority to expand Site 3 to include two additional parcels (276 acres), located to the west of the existing site. The area consists of the tech.ridge

corporate center and the Wells Branch Industrial Park. This proposed change will increase the FTZ area at Site 3 to 1,612 acres. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 4, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 21, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 1700 Congress, Second Floor, Austin, TX 78701.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Room 4008, Washington DC 20230.

Dated: May 26, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14030 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year ("Sunset") Reviews of Antidumping Duty Orders on Canned Pineapple Fruit From Thailand and Ferrovanadium and Nitrided Vanadium From Russia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick, or James Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1930, or 482–3330, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product
A–549–813	731–TA–706	Thailand	Canned Pineapple Fruit.
A–821–807	731–TA–807	Russia	Ferrovanadium and Nitrided Vanadium.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping duty ("AD") order will be revoked unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping, and (2) material injury to the domestic industry.

The reviews will be conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Sunset Regulations and Sunset Policy Bulletin, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: "http://www.ita.doc.gov/import_admin/records/sunset/".

All submissions in the sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (2000). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see* Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order, 63 FR 24391 (May 4, 1998)).

Information Required from Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (2000)) wishing to participate in the sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the Sunset Regulations at 19 CFR 351.218(d)(1)(ii). In accordance with the Sunset Regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review.

If we receive a notice of intent to participate from a domestic interested party, the Sunset Regulations provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the Sunset Regulations at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Sunset Regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 (2000) for definitions of terms and for other general information concerning antidumping duty order proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14023 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822, A–583–820]

Helical Spring Lock Washers From the People's Republic of China and Taiwan; Final Results of Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Helical Spring Lock Washers From the People's Republic of China and Taiwan.

SUMMARY: On November 2, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on helical spring lock washers ("HSLWs") from the People's Republic of China ("PRC") and Taiwan (64 FR 59160) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate filed on behalf of domestic interested parties and inadequate response (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Carole Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Background

On November 2, 1999, the Department initiated sunset reviews of the antidumping orders on HSLWs from the PRC and Taiwan (64 FR 59160), pursuant to section 751(c) of the Act. On the basis of a notice to participate and adequate substantive response filed on behalf of a domestic interested party in each review, and inadequate response (in these cases, no response) from respondent interested parties, we determined to conduct expedited reviews. The Department has conducted these sunset reviews in accordance with sections 751 and 752 of the Act.

Scope

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and, (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper. HSLWs subject to this review are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope remains dispositive.

There has been one scope ruling with respect to HSLWs from the PRC and Taiwan. On November 21, 1997, the Department ruled that HSLWs imported into the United States in an uncut, coil form are within the scope of the order.[1]

Analysis of Substantive Responses

All issues raised in the case and rebuttal briefs by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 30, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on HSLWs from the PRC and Taiwan would be likely to lead to continuation or

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (Sunset Regulations, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (2000), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

[1] *See Notice of Scope Rulings*, 62 FR 62288 (November 21, 1997)

recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/Exporter	Margin (percent)
PRC:	
Hangzhou Spring Washer Plant ("HSWP")	69.88
HSWP via IFI Morgan Limited	69.88
HSWP via Carway Development Ltd.	69.88
HSWP via Midway Fasteners Ltd.	69.88
HSWP via Linkwell Industry Co., Ltd.	69.88
HSWP via Fastwell Industry Co., Ltd.	69.88
HSWP via Sunfast International Corp.	69.88
HSWP via Winner Standard Parts Co., Ltd.	69.88
All Others	128.63
Taiwan:	
Spring Lake Enterprises	31.93
Ceimiko Industrial	31.93
Par Excellence Industrial	31.93
All Others	31.93

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year ("sunset") reviews and notices are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14022 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Sally Hastings, or Annika O'Hara, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1778, 482–3464, or 482–3798, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (1998).

Scope of Order

The product covered by this order is certain non-frozen apple juice concentrate ("NFAJC"). Certain NFAJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this investigation are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings 2009.70.00.20 and 2106.90.52. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Amended Final Determination

In accordance with section 735(a) of the Act, on April 13, 2000, the Department published its final determination of the antidumping duty investigation of certain NFAJC from the People's Republic of China ("PRC") in which we determined that U.S. sales of NFAJC from the PRC were made at less than normal value (65 FR 19873 (ldquo;*NFAJC Final*")). On April 18, 2000, we received ministerial error allegations, timely filed pursuant to § 351.224(c)(2) of the Department's regulations from Yantai North Andre Juice Co., Ltd. ("North Andre"); Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. ("Haisheng"); Sanmenxia Lakeside Fruit Juice Co., Ltd. ("Lakeside"); Shandong Zhonglu Co., Ltd./Rushan Shangjin-Zhonglu Foodstuff Co., Ltd./Shandong Luling Fruit Juice Co./Rushan Dongjin Foodstuffs ("Zhonglu"); Yantai Oriental Juice Co., Ltd. ("Oriental"); Qingdao Nannan Foods Co., Ltd. ("Nannan"); Xian Asia Qin Fruit Co., Ltd. ("Asia"); Xian Yang Fuan Juice Co., Ltd. ("Fuan"); Changsha Industrial Products & Minerals Import and Export Co., Ltd. ("Changsha Industrial"); and Shangdong Foodstuffs Import and Export Corporation ("Shangdong Foodstuffs") (hereinafter collectively referred to as "the respondents") regarding the Department's final margin calculations. On April 24, 2000, we received comments on the respondents' ministerial error allegations from Coloma Frozen Foods, Inc.; Green Valley Packers; Knouse Foods Cooperative, Inc.; Mason County Fruit Packers Co-op, Inc.; and Tree Top Inc. (hereinafter collectively referred to as "the petitioners").

We have determined in accordance with section 735(e) of the Act that a ministerial error in the calculation of the international freight surrogate value was made in our final margin calculations. For a detailed discussion of the above-cited ministerial error allegations and the Department's analysis, see Memorandum to Richard W. Moreland, dated May 8, 2000. We are amending the final determination of the antidumping duty investigation of NFAJC from the PRC to correct this ministerial error. The revised final weighted-average dumping margins are as follows:

Exporter/manufacturer	Original weighted-average margin percentage	Revised weighted-average margin percentage
North Andre	0.00	0.00
Haisheng	12.90	12.03
Lakeside	28.54	27.57
Zhonglu	9.40	8.98
Oriental	9.96	9.96
Nannan	26.43	25.55
Asia	15.36	14.88
Yang	15.36	14.88
Changsha Industrial	15.36	14.88
Shandong Foodstuffs	15.36	14.88
PRC-wide rate	51.74	51.74

Antidumping Duty Order

On May 30, 2000, in accordance with section 735(d) of the Act, the U.S. International Trade Commission ("ITC") notified the Department that a U.S. industry is "materially injured," within the meaning of section 735(b)(1)(A) of the Act, by reason of less-than-fair-value imports of NFAJC from the PRC.

Therefore, the Department will direct the U.S. Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the export price or constructed export price of the subject merchandise for all entries of NFAJC from the PRC, except for subject merchandise both produced and exported by North Andre, which received a zero final margin. The ITC further found that critical circumstances do not exist with respect to imports of the subject merchandise from the PRC. As a result, antidumping duties will be assessed on all unliquidated entries of NFAJC entered, or withdrawn from warehouse, for consumption on or after November 23, 1999, the date of publication of the Department's preliminary determination in the **Federal Register** (64 FR 65675), and the Department will direct Customs to refund any cash deposits made, or bonds posted, on any subject merchandise which was entered prior to the Department's preliminary determination publication date of November 23, 1999. Finally, we will instruct Customs to liquidate without regard to antidumping duties and to refund all cash deposits, or bonds posted, for entries of subject merchandise both produced and exported by North Andre.

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the weighted-average antidumping duty margins as noted below:

Exporter/manufacturer	Revised Weighted-average margin percentage
North Andre	(1)
Haisheng	12.03
Lakeside	27.57
Zhonglu	8.98
Oriental	9.96
Nannan	25.55
Asia	14.88
Fuan	14.88
Changsha Industrial	14.88
Shandong Foodstuffs	14.88
PRC-wide rate	51.74

[1] Excluded.

This notice constitutes the antidumping duty order with respect to NFAJC from the PRC, pursuant to section 735(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the main Commerce building for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14029 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of silicon metal from Brazil.

SUMMARY: On November 2, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on silicon metal from Brazil (64 FR 59160) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, waivers of response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On November 2, 1999, the Department initiated a sunset review of the antidumping duty order on silicon metal from Brazil (64 FR 59160), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). The Department received a notice of intent to participate on behalf of American Silicon Technologies ("AST"), Elkem Metals Company ("Elkem"), and Globe Metallurgical Inc. ("Globe") (collectively, "domestic interested parties"), within the applicable deadline (November 15, 1999) specified in 19 CFR 351.218(d)(1)(i). Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product.

On November 29, 1999, we received a waiver of response from respondent interested parties Companhia Brasileira Carbureto de Calcio, Camargo Correa Metais, S.A., Ligas de Aluminio S.A., Companhia Ferroligas Minas Gerais—Minasligas, and RIMA Industrial S.A., pursuant to 19 CFR 351.218(d)(2)(i). On December 2, 1999, we received a waiver of response from respondent interested party Eletrosilex Bela Horizonte.

On December 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under § 351.218(d)(3)(i). Domestic interested parties claim that, in 1990, Elkem, Globe, and four other domestic producers filed the petition that resulted in the issuance of the antidumping duty order on silicon metal from Brazil (*see* December 1, 1999, Substantive Response of domestic interested parties at 2). Domestic interested parties also claim that at least one of them has actively participated in each of the administrative reviews conducted by the Department, as well as in a number of related appeals and remand proceedings. *Id.* at 3. Without a substantive response from respondent

interested parties the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct an expedited, 120-day review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(ii) of the Act. Accordingly, on February 29, 2000, the Department determined that the sunset review of silicon metal from Brazil is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than May 30, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The merchandise covered by this review is silicon metal containing at least 96.00 percent but less than 99.99 percent of silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule ("HTS") as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this order. Although the HTS numbers are provided for convenience and customs purposes, the written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 30, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on silicon metal from Brazil would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Companhia Brasileira Carbureto de Calcio ("CBCC")	87.79
Camargo Correa Metais, S.A. ("CCM")	93.20
All Others	91.06

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14026 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews*, 65 FR 11761 (March 6, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–804]

Silicon Metal From Argentina; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of silicon metal from Argentina.

SUMMARY: On November 2, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on silicon metal from Argentina (64 FR 59160) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On November 2, 1999, the Department initiated a sunset review of the antidumping duty order on silicon metal from Argentina (64 FR 59160), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of American Silicon Technologies ("AST"), Elkem Metals Company ("Elkem"), and Globe Metallurgical Inc. ("Globe") (collectively, "domestic interested parties"), within the applicable deadline (November 15, 1999) specified in 19 CFR 351.218(d)(1)(i). Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product.

On December 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under 19 CFR 351.218(d)(3)(i). Domestic interested parties claim that, in 1990, Elkem, Globe, and four other domestic producers filed the petition that resulted in the issuance of the antidumping duty order on silicon metal from Argentina (*see* December 1, 1999, Substantive Response of domestic interested parties at 2). Domestic interested parties also claim that at least one of them has actively participated in each of the administrative reviews conducted by the Department, as well as in a number of related appeals and remand proceedings. *Id.* at 3. Without a substantive response from respondent interested parties, the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct an expedited, 120-day review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Accordingly, on February 29, 2000, the Department determined that the sunset review of silicon metal from Argentina is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than May 30, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The merchandise covered by sunset review is silicon metal containing at least 96.00 percent, but less than 99.99 percent of silicon by weight. Also covered by this review is silicon metal from Argentina containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight (65 FR 5311, February 3, 2000). Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule ("HTS") as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this review. Although the HTS numbers are provided for convenience and customs purposes, the written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 30, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Decision Memo, which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on silicon metal from Argentina would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Electrometalurgica Andina, S.A.I.C. ("Andina")	17.87
All Others	17.87

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are published in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 17, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14027 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews*, 65 FR 11761 (March 6, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of silicon metal from the People's Republic of China.

SUMMARY: On November 2, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on silicon metal from the People's Republic of China ("PRC") (64 FR 59160) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

ADDRESSES: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On November 2, 1999, the Department initiated a sunset review of the antidumping duty order on silicon metal from the PRC (64 FR 59160), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). The Department received a notice of intent to participate on behalf of American Silicon Technologies ("AST"), Elkem Metals Company ("Elkem"), and Globe Metallurgical Inc. ("Globe") (collectively, "domestic interested parties"), within the applicable deadline (November 15, 1999) specified in 19 CFR 351.218(d)(1)(i). Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product.

On December 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under 19 CFR 351.218(d)(3)(i). Domestic interested parties claim that, in 1990, Elkem, Globe, and four other domestic producers filed the petition that resulted in the issuance of the antidumping duty order on silicon metal from the PRC (*see* December 1, 1999, Substantive Response of domestic interested parties at 2). Domestic interested parties also claim that at least one of them has actively participated in each of the administrative reviews conducted by the Department, as well as in the new shipper review rescinded on July 28, 1999. *Id.* at 3. Without a substantive response from respondent interested parties, the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct an expedited, 120-day review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Accordingly, on February 29, 2000, the Department determined that the sunset review of silicon metal from the PRC is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than May 30, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The merchandise covered by this review is silicon metal containing at least 96.00 percent, but less than 99.99 percent of silicon by weight. Also covered by this review is silicon metal containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight (58 FR 27542, May 10, 1993). Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule ("HTS") as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this order. Although the HTS numbers are provided for convenience and customs purposes, the written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 30, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on silicon metal from the PRC would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margin:

Manufacturer/exporters	Margin (percent)
All Chinese producers/exporters	139.49

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14028 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews*, 65 FR 11761 (March 6, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Hungary: Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of recission of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is rescinding the June 1, 1998 through May 31, 1999 antidumping duty administrative review of tapered roller bearings and parts thereof, finished and unfinished, from Hungary.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Elfi Blum at (202) 482–0197, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations are to 19 CFR part 351 (1998).

Scope of the Review

This antidumping review covers tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the Republic of Hungary. The merchandise under review is currently classified under subheadings 8482.20.00, 8482.91.00, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.80 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Recission of 1998–99 Antidumping Duty Administrative Review

On July 29, 1999, in response to a request by Daewoo-MGM Rt., the Department published a Notice of Initiation of Antidumping and Countervailing Administrative Reviews (64 FR 41075). Daewoo-MGM Rt. was the only party which requested a review. On March 20, 2000, Daewoo-MGM Rt. withdrew its request for review. We are therefore rescinding this review in its entirety in accordance with 19 U.S.C. 1675(a)(1) of the Act and § 351.213(d)(1) of our regulations.

The recission of this review does not affect the reclassification of the Republic of Hungary to market economy status for antidumping purposes (*see* Decision Memorandum from Joseph A. Spetrini to Robert S. LaRussa on *Market vs. Non-Market Economy Analysis of the Republic of Hungary*, dated February 23, 2000). This notice is published in accordance with 19 U.S.C. 1677(f) and § 351.213(d)(4) of our regulations.

Dated: May 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14021 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Mobil Oil Exploration and Producing Southeast, Inc.; Consistency Appeal of Objections by the State of North Carolina

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of decision.

On September 2, 1994, the Secretary of Commerce (Secretary) declined to override two objections by the State of North Carolina to the proposed drilling discharges (PDD) and overall Plan of Exploration (POE) by Mobil Oil Exploration & Producing Southeast, Inc. (Mobil) at a site about 38 miles offshore North Carolina. The Secretary made these decisions pursuant to section 307(c)(3) of the Coastal Zone Management Act (CZMA). Mobil challenged the Secretary's decisions in U.S. District Court for the District of Columbia claiming they were made in violation of the Administrative Procedure Act. On March 11, 1996, the court ordered a stay of the litigation and remanded the matter to the Secretary for a determination whether the administrative record should be reopened to receive two recently produced studies, one on the impacts of Mobil's propsoed actions on benthic resources and one on their impacts on socio-economic resources. *Mobil, et al.* v. *Brown, et al.*, 920 F. Supp. 1 (D.D.C. 1996).

The Secretary's decision was held in abeyance pending settlement discussions and the outcome of related litigation.

On December 8, 1999, the Secretary issued a decision declining to reopen the record to admit the two studies at issue in *Mobil* v. *Brown*, for two reasons. First, both this Department and parties to appeals under the CZMA have an interest in the finality of Secretarial decisions and the administrative process. Once the administrative record is closed, a decision should be made, and new materials should not be submitted or considered without a showing of good cause. No good cause was shown in this case. Second, the two studies do not address all of the information gaps identified by the Secretary's 1994 decisions. The Secretary's decision has been submitted to the District Court in response to the court's order in *Mobil* v. *Brown*. Copies of the decision may be obtained from:

Karl Gleaves, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–2967.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: May 26, 2000.

James A. Dorskind,

General Counsel.

[FR Doc. 00–13971 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Request for Comments on Issues Related to Policies and Agenda for the National Intellectual Property Law Enforcement Coordination Council

AGENCIES: U.S. Department of Justice and U.S. Patent and Trademark Office, as Co-Chairs, National Intellectual Property Law Enforcement Coordination Council.

ACTION: Notice of request for public comments.

SUMMARY: The Members of the National Intellectual Property Law Enforcement Coordination Council (the Council) seek public comment on issues associated with the Council's mission. Interested members of the public are invited to present written comments on any of the topics outlined in the Supplementary Information section of this Notice.

DATES: All comments are due by June 20, 2000.

ADDRESSES: Persons wishing to offer written comments should address those comments to Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Box 4, Washington, D.C. 20231, marked to the attention of Elizabeth Shaw. Comments may also be submitted by facsimile transmission to (703) 305–8885, or by electronic mail through the Internet to elizabeth.shaw@uspto.gov. All comments will be maintained for public inspection in Room 902 , Crystal Park II, 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shaw by telephone at (703)

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305–9300, by fax at (703) 305–8885, or by mail marked to her attention and addressed to Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION:

1. Background

On September 29, 1999, President William J. Clinton signed into law the Treasury/Postal Appropriations Bill, Public Law No. 106–58, Section 653, which created the "National Intellectual Property Law Enforcement Coordination Council" (the Council). The Council's mission is "to coordinate domestic and international intellectual property law enforcement among federal and foreign entities." The Council is required to "report annually on its coordination activities" to the President and to the Appropriations and Judiciary Committees of the House and Senate.

The statutorily designated Council Members, listed according to their order of mention in the statute, are: The Assistant Secretary of Commerce and Commissioner of Patents and Trademarks (Co-Chair) (under Public Law No. 106–113, the head of the United States Patent and Trademark Office is the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office) (The Honorable Q. Todd Dickinson); the Assistant Attorney General, Criminal Division (Co-Chair) (The Honorable James K. Robinson); the Under Secretary of State for Economic, Business, and Agricultural Affairs (The Honorable Alan P. Larson); the Deputy United States Trade Representative (Ambassador Richard Fisher); the Commissioner of Customs (The Honorable Raymond W. Kelly); and the Under Secretary of Commerce for International Trade (Acting Under Secretary Robert S. LaRussa). In addition, the statute directs the Council to consult with the Register of Copyrights (The Honorable Marybeth Peters) on law enforcement matters relating to copyrights and related matters and rights.

The full Council and their staffs have met on several occasions to begin shaping the Council's agenda. This Request for Public Comment is intended to give intellectual property rights owners (and other interested parties) an opportunity to recommend steps in furtherance of the Council's mission.

2. Issues for Public Comment

Interested members of the public are invited to present written comments on issues relevant to the policy-related objectives listed below. This forum is not intended to serve as an opportunity for the public to air individual case-related complaints unless they are relevant to broader law enforcement policy issues.

The Council's Agenda

What, if any, domestic policy-level law enforcement issues should the Council address?

What, if any, international policy-level law enforcement issues should the Council address?

Council-Industry Cooperation

In what ways can the Council assist the intellectual property industries in creating domestic and international environments conducive to enforcement of intellectual property rights?

In what ways can the Council enhance the enforcement of intellectual property rights while facilitating legitimate trade?

Are there gaps or impediments in existing law enforcement regimes that, if remedied, would enable rights-holders to better protect their intellectual property rights?

In what ways can the intellectual property industries contribute to or assist the Council in carrying out its mission of coordinating domestic and international intellectual property law enforcement-related activities?

In what ways can the Council assist U.S. Government interaction with its foreign counterparts on intellectual property law enforcement-related activities?

3. Guidelines for Written Comments

Written comments should include the name, affiliation, and title of the individual providing the written comments; and, if applicable, an indication of whether the comments offered represent the views of the respondent's organization or are the respondent's personal views.

Parties offering written comments should also provide their comments in machine-readable (electronic) format. Such submissions may be provided via Internet electronic mail or on a 3.5″ floppy disk formatted for use in either a Macintosh or MS–DOS based computer. Machine-readable (electronic) submissions should be provided as unformatted text (*e.g.*, ASCII or plain text) or as formatted text in one of the following formats: Microsoft Word (Macintosh, DOS, or Windows versions); or WordPerfect (Macintosh, DOS, or Windows versions).

Information that is provided pursuant to this notice will be made part of a public record and may be made available via the Internet. Therefore, parties should not submit information that they do not wish to be publicly disclosed or made electronically accessible. Parties who rely on confidential information to illustrate a point are requested to summarize, or otherwise submit the information in a way that will permit its public disclosure.

Dated: May 31, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

John C. Keeney,

Acting Assistant Attorney General for the Criminal Division, United States Department of Justice.

[FR Doc. 00–13975 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Notice; Meeting

AGENCY: Consumer Product Safety Commission.

TIME AND DATE: Wednesday, June 7, 2000, 2:00 p.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED: Oral Drugs Switched From Prescription to Over-the-Counter (OTC) Status

The staff will brief the Commission on the staff's recommendation to propose that child-resistant packaging requirements for oral prescription drugs continue when such drugs are granted over-the-counter (OTC) status by the Food and Drug Administration.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: May 31, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–14168 Filed 6–1–00; 2:35 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–39]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–39 with attached transmittal and policy justification.

Dated: May 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

24 MAY 2000
In reply refer to:
I-00/005458

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-39, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $48 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 42 million
Other	$ 6 million
TOTAL	$ 48 million

(iii) Description of Articles or Services Offered: Two hundred seventy-nine M109A2/A3 155mm self-propelled howitzers, support equipment, spare and repair parts, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.

(iv) Military Department: Army (UTM)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 24 MAY 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - 155mm Self-propelled Howitzers

The Government of Egypt has requested a possible sale of 279 M109A2/A3 155mm self-propelled howitzers, support equipment, spare and repair parts, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $48 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt will use these howitzers to replace aging Soviet towed artillery and to compliment the modernization of the M1A1/M60A3 divisions. Egypt will have no difficulty absorbing these howitzers into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

No contractor is involved for this purchase. Equipment is considered long supply and is no longer utilized by the U.S. Government. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contract representatives to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–13893 Filed 6–2–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0011]

Proposed Collection; Comment Request Entitled Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0011).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Preaward Survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408). This clearance currently expires September 30, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before August 4, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.*, capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv) has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. The information is used by Federal contracting officers to determine whether a prospective contractor is responsible.

B. Annual Reporting Burden

Respondents: 12,000.

Responses Per Respondent: .5.

Total Responses: 6,000.

Hours Per Response: 24.

Total Burden Hours: 144,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0011, Preaward Survey Forms, in all correspondence.

Dated: May 31, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–13969 Filed 6–2–00; 8:45 am]
BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0002]

Proposed Collection; Comment Request Entitled Solicitation Mailing List Application (SF 129)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0002).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Solicitation Mailing List Application (SF 129). This OMB clearance currently expires on September 30, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before August 4, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Standard Form 129, Solicitation Mailing List Application, is used by all Federal agencies as an application form for prospective contractors to provide information needed to establish and maintain a list of firms interested in selling to the Government. The information is used to establish lists of firms to be solicited when the products or services they provide are needed by the Government.

B. Annual Reporting Burden

Respondents: 200,000.
Responses Per Respondent: 4.
Total Responses: 800,000.
Hours Per Response: .58.
Total Burden Hours: 464,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0002, Solicitation Mailing List Application (SF 129), in all correspondence.

Dated: May 31, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–13970 Filed 6–2–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Perform an Environmental Analysis for the Proposed Beddown of the Global Hawk Remote Operated Aircraft System

The United States Air Force will conduct an environmental analysis to determine the potential environmental impacts of bedding down the unmanned aerial vehicle, Global Hawk, at a main operating base (MOB). This proposal involves locating up to 60 high altitude endurance unmanned aerial vehicles, associated equipment and up to approximately 800 personnel at an Air Force base within the continental United States. The beddown will start with an initial cadre of four to six aircraft the first year, building to the total number with a delivery schedule of two to four aircraft per year. The proposal includes construction of support facilities and use of airspace in the local region. The Federal Aviation Administration has been invited to participate as a cooperating agency in this environmental analysis.

Five Air Force bases are being considered as potential beddown locations: (1) Edwards Air Force Base (AFB), California, (2) Beale AFB, California; (3) Tinker AFB, Oklahoma; (4) Ellsworth AFB, South Dakota; and (5) Wright-Patterson AFB, Ohio. In addition, the Air Force will analyze the no-action alternative, which considers potential environmental impacts should the Air Force decide not to beddown the Global Hawk System.

The Air Force will conduct a series of scoping meetings to solicit public input concerning the proposal. The scoping process will help identify issues to be addressed in the environmental analysis. In addition to the comments received at the scoping meetings, written comments on the scope of the environmental analysis will be accepted by the Air Force at the address below through June 30, 2000. The Air Force will accept appropriate comments at any time during the environmental analysis process.

If during the preparation of the environmental analysis, it is determined that an Environmental Impact Statement (EIS) is warranted, comments received during this scoping period will be considered in the EIS preparation.

Scoping meetings will be held at the following locations:

Wright Patterson AFB, OH: June 19, 6:00 p.m. Fairborn High School, 900 E. Dayton-Yellow Springs Road, Fairborn, OH 45324, Cafeteria

Tinker AFB, OK: June 21, 6:00 p.m., Huey Long Community Center, 4505 SE 15th St., Del City, Oklahoma, Community Hall

Ellsworth AFB, SD: June 23, 6:00 p.m., Ramokota Inn and Conference Center, 2111 N. LaCrosse St., Rapid City, South Dakota, Sylvan Room

Edwards AFB, CA: June 26, 6:00 p.m., Best Western, Antelope Valley Inn, 44055 N. Sierra Hwy, Lancaster, CA 93534, Convention Center, East Wing

Beale AFB, CA: June 27, 6:00 p.m., Sutter Count Library, 750 Forbes Avenue, Yuba City, CA 95991, the Meeting Room.

Please direct any written comments or requests for information to Ms. Sheryl Parker, HQ ACC/CEVP, 129 Andrews St., Suite 102, Langley AFB, VA 23665–2769, (757) 764–9334.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–13950 Filed 6–2–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Army is deleting systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 5, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TALC–PAD–RP, Stop C, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0037–105a SAFM

SYSTEM NAME:

Civilian Employee Pay System *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7333, Defense Civilian Pay System.

[FR Doc. 00–13895 Filed 6–2–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between Small Business Administration (SBA) and DoD that records are being matched by computer. The record subjects are SBA delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are indebted and or delinquent in their repayment of debts owed to the United States Government under programs administered by SBA.

DATES: This proposed action will become effective July 5, 2000, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and SBA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that SBA can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures.

A copy of the computer matching agreement between the SBA and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Deputy Assistant Administrator, Office of the Portfolio Management, 409 Third Street, SW, Suite 8300, Washington, DC 20416.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice were submitted on May 16, 2000, to the House Committee on Government Reform, the Senate Committee on Government Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 30, 2000.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program between the Small Business Administration, and the Department of Defense for Debt Collection.

A. *Participating agencies:* Participants in this computer matching program are the Small Business Administration (SBA) and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The Small Business Administration is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify and locate any matched Federal personnel, employed, serving, or retired, who owe delinquent debts to the Federal Government under certain programs administered by SBA. SBA will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982, as amended, when voluntary payment is not forthcoming. These collection efforts will include requests by SBA of the military service/employing agency in the case of military personnel (either active, reserve, or retired) and current non-postal civilian employees, and to OPM in the case of retired non-postal civilian employees, to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government); 31 U.S.C. 3711 Collection and Compromise; 31 U.S.C. 3716 Administrative Offset; 5 U.S.C. 5514, Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 135, Under Secretary of Defense (Comptroller); Section 101(1) of Executive Order 12731; 4 CFR 101.1–105.5, Federal Claims Collection Standards; 5 CFR 550.1101—550.1108, Collection by Offset from Indebted Government Employees (OPM); 13 CFR, part 140, Debt Collection (SBA).

D. *Records to be matched:* The systems of records described below contain an appropriate routine use provisions which permits disclosure of information between agencies.

SBA will use personal data from the Privacy Act record system identified as SBA 075, entitled, 'Loan Case File', published in the **Federal Register** at 56 FR 8022 on February 26, 1991, but amended in the **Federal Register** at 65 FR 1422 on January 10, 2000 and corrected at 65 FR 459 on January 27, 2000.

DoD will use personal data from the Privacy Act record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** at 64 FR 42101, August 3, 1999.

E. *Description of computer matching program:* SBA, as the source agency, will provide DMDC with an electronic file which contains the names of delinquent debtors in programs SBA administers. Upon receipt of the electronic file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the SBA file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of personnel records of non-postal Federal civilian employees and military members, both active and retired. The 'hits' or matches will be furnished to SBA. SBA is responsible for verifying and determining that the data on the DMDC electronic reply tape file are consistent

with SBA source file and for resolving any discrepancies or inconsistencies on an individual basis. SBA will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The electronic file tape provided by SBA will contain data elements of the debtor's name, SSN, internal account numbers and the total amount owed for each debtor on approximately 25,000 delinquent debtors.

The DMDC computer database file contains approximately 4.8 million records of active duty and retired military members, including the Reserve and Guard, and approximately 3.1 million records of active and retired non-postal Federal civilian employees.

F. *Individual notice and opportunity to contest:* Due process procedures will be provided by SBA to those individuals matched (hits) consisting of SBA'S verification of debt; a minimum of 30-day written notice to the debtor explaining the debtor's rights; opportunity for the debtor to examine and copy SBA documentation relating to the debt; provision for debtor to seek the SBA review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to the SBA for repayment. Only when all of the steps have been taken will SBA disclose information, pursuant to a routine use, to effect an administrative or salary offset. Unless the individual notifies SBA within 30 days from the date of the notice, SBA will infer that the data provided the individual is accurate and correct and will take the next step, as authorized by law, to recoup the delinquent debt.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If the mandatory 30 day period for public comment has expired and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time and will be repeated on an annual basis. By agreement between SBA and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920 Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 00–13896 Filed 6–2–00; 8:45 am]

BILLING CODE 8001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors to the U.S. Naval Academy

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Monday, June 12, 2000 from 8:30 a.m. to 11:45 a.m. The closed Executive Session will be from 10:50 a.m. to 11:45 a.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Room of Alumni Hall at the U.S. Academy, Annapolis, Maryland.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Thomas E. Osborn, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, U.S.C. Due to unavoidable delay in administrative processing, the 15 days advance notice could not be provided.

Dated: May 30, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–14115 Filed 6–2–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on July 5, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The record system being amended is set forth below, as amended, published in its entirety.

Dated: May 30, 2000.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05041–1

SYSTEM NAME:

Inspector General (IG) Records *(March 18, 1997, 62 FR 12806).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Replace '901 M Street, SE' with '1014 N Street, SE, Suite 100'.

* * * * *

N05041–1

SYSTEM NAME:

Inspector General (IG) Records.

SYSTEM LOCATION:

Office of the Naval Inspector General, Building 200, 1014 N Street, SE, Suite 100, Washington DC 20374–5006; Inspector General offices at major commands and activities throughout the Department of the Navy and other naval activities that perform inspector general (IG) functions. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has been the subject of, witness for, or referenced in an Inspector General (IG) investigation, as well as any individual who submits a request for assistance or complaint to an Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters/transcriptions of complaints, allegations and queries; tasking orders from the Department of Defense Inspector General, Secretary of the Navy, Chief of Naval Operations, and Commandant of the Marine Corps; requests for assistance from other Navy/Marine Corps commands and activities; appointing letters; reports of investigations, inquiries, and reviews with supporting attachments, exhibits and photographs; records of interviews and synopses of interviews; witness statements; legal review of case files; congressional inquiries and responses; administrative memoranda; letters and reports of action taken; referrals to other commands; letters to complainants and subjects of investigations; court records and results of nonjudicial punishment; letters and reports of adverse personnel actions; financial and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5014, Office of the Secretary of the Navy; 10 U.S.C. 5020, Naval Inspector General: details; duties; SECNAVINST 5430.57F, Mission and Functions of the Naval Inspector General, January 15, 1993.

PURPOSE(S):

To determine the facts and circumstances surrounding allegations or complaints against Department of the Navy personnel and/or Navy/Marine Corps activities.

To present findings, conclusions and recommendations developed from investigations and other inquiries to the Secretary of the Navy, Chief of Naval Operations, Commandant of the Marine Corps, or other appropriate Commanders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and computerized data base.

RETRIEVABILITY:

By subject's or complainant's name; case name; case number; and other case fields.

SAFEGUARDS:

Access is limited to officials/employees of the command who have a need to know. Files are stored in locked cabinets and rooms. Computer files are protected by software systems which are password protected.

RETENTION AND DISPOSAL:

Permanent. Retired to Washington National Records Center when four years old. Transfer to the National Archives and Records Administration when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Naval Inspector General, 1014 N Street, SE, Suite 100, Washington Navy Yard, Washington, DC 20374–5006 or the local command's IG office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Naval Inspector General, 1014 N Street, SE, Suite 100, Washington Navy Yard, Washington, DC 20374–5006 or the relevant command's IG office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include the full name of the requester and/or case number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Naval Inspector General, 1014 N Street, SE, Suite 100, Washington Navy Yard, Washington, DC 20374–5006 or the relevant command's IG office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include the full name of the requester and/or case number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainants; witnesses; Members of Congress; the media; and other commands or government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2).

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and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 00–13894 Filed 6–2–00; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.033]

Student Financial Assistance Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for filing the "Institutional Application for the Work-Colleges Program."

SUMMARY: The closing date for the institutional application for the Work-Colleges Program (2000–2001 award year) is June 29, 2000. To participate in the Work-Colleges program, an institution must be a public or private nonprofit institution that requires all resident students to participate in a comprehensive work-learning program. (See **SUPPLEMENTARY INFORMATION** for a complete description of the requirements.) The Work-Colleges Program along with the Federal Work-Study Program and the Job Location and Development Program are known collectively as the Federal Work-Study programs. The Work-Colleges Program is authorized by part C of title IV of the Higher Education Act of 1965, as amended (HEA).

DATES: *Closing Date and Methods for Submitting the Institutional Application and Agreement.* To participate in the Work-Colleges Program and to apply for funds for that program for the 2000–2001 award year, an eligible institution must mail or hand deliver its "Institutional Application and Agreement for Participation in the Work-Colleges Program" to the Department on or before June 29, 2000. If you choose you may fax or e-mail your "Institutional Application and Agreement for Participation in the Work-Colleges Program" by 4 p.m. eastern time on June 29, 2000. You must fax the form to Richard Coppage at (202) 260–0522 or (202) 205–1919 or E-mail to the following address: Richard__Coppage@ed.gov.

ADDRESSES: *Applications and Agreements Delivered by Mail.* An institution must address an institutional application and agreement delivered by mail to Mr. Richard Coppage, Work-Colleges Program, Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, Portals Building, Suite 600D, Washington, D.C. 20202. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service: (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an institutional application and agreement is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

The Secretary encourages an institution to use certified or at least first-class mail. Institutions that submit an application and agreement after the closing date of June 29, 2000, are not considered for participation or funding under the Work-Colleges Program for award year 2000–2001.

Applications and Agreements Delivered by Hand. If an institution delivers its institutional application and agreement by hand, it must deliver the institutional application and agreement to Mr. Richard Coppage, Work-Colleges Program, Student Financial Assistance, Portals Building, 1250 Maryland Avenue, SW., Suite 600D Washington, D.C. 20202. The Secretary accepts hand-delivered institutional applications and agreements between 8 a.m. and 4 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. The Secretary will not accept an institutional application and agreement for the 2000–2001 award year that is delivered by hand after 4:00 p.m. on June 29, 2000.

SUPPLEMENTARY INFORMATION: Under the Work-Colleges Program, we allocate funds when available for that program to eligible institutions. We will not allocate funds under the Work-Colleges Program for award year 2000–2001 to any eligible institution unless the institution files its "Institutional Application and Agreement for Participation in the Work-Colleges Program" by the closing date. If an institution submits its application and agreement after the June 29, 2000 closing date, we will use this application and agreement to determine the institution's eligibility to participate in the Work-College Program beginning with the 2001–2002 award year.

To apply for participation and funding under the Work-Colleges Program, an institution must satisfy the definition of "work-college" in section 448(e) of the HEA. The term "work-college" under the HEA means an eligible institution that (1) is a public or private nonprofit institution with a commitment to community service; (2) has operated a comprehensive work-learning program for at least two years; (3) requires the participation of all resident students in a comprehensive work-learning program and the provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and (4) provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

Applicable Regulations

The following regulations apply to the Work-Colleges Program:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Work-Study Programs, 34 CFR part 675.

(4) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(5) New Restrictions on Lobbying, 34 CFR part 82.

(6) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(7) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Coppage Work-Colleges Program, Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Portals Building, Suite 600D, Washington, D.C. 20202. Telephone (202) 708–4694. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape or computer diskette) by contacting the Alternate Format Center at (202) 260–9895 between 8:30 a.m. and 4:30 p.m., Eastern time, Monday through Friday.

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Program Authority: 42 U.S.C. 2756b.

Dated: May 30, 2000.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 00–13947 Filed 6–2–00; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted renewals for an additional three years for the information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under sections 3507(h)(1) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Each entry contains the following information: (1) The collection number and title; (2) a summary of the collection of information, type of request (new, revision, extension, or reinstatement), response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The OMB DOE Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503. (Comments should also be addressed to the Office of Information, Records and Resource Management at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Peter J. Grahn, Jr., Office of Information, Records and Resource Management (SO–31), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Grahn may be contacted by telephone at (301) 903–4653, FAX at (301) 903–6223, or e-mail at Peter.Grahn@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The information collections submitted to OMB for review were:

1. *Current OMB No.:* 1910–0300. *Package Title:* Environment, Safety and Health. *Summary:* A three-year extension is requested, which includes both mandatory and voluntary response obligations. *Purpose:* This information is required by the Department to ensure that Departmental environment, safety and health resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains nine information and/or recordkeeping requirements. *Type of Respondents:* DOE management and operating contractors and offsite contractors. *Estimated Number of Responses:* 5,050. *Estimated Total Burden Hours:* 205,050.

2. *Current OMB No.:* 1910–0500. *Package Title:* Financial Management. *Summary:* A three-year extension is requested for these mandatory response obligations. *Purpose:* This information is required by the Department to ensure that financial management resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains 13 information and/or recordkeeping requirements. *Type of Respondents:* DOE management and operating contractors and offsite contractors. *Estimated Number of Responses:* 12,715. *Estimated Total Burden Hours:* 164,528.

3. *Current OMB No.:* 1910–1400. *Package Title: Compliance Statement:* Energy/Water Conservation Standards for Appliances. *Summary:* A three-year extension is requested for these mandatory response obligations. *Purpose:* This information is required by the Department to ensure that manufacturers test and maintain records concerning the energy or water consumption of covered products, and precludes the distribution of any such products that do not meet standards established by Congress. By regulation (10 CFR 430.62(a)), DOE requires manufacturers of covered products to submit a compliance statement for each new basic model of a product. The package contains 14 information and/or recordkeeping requirements. *Type of Respondents:* Manufacturers of products covered in Part 430 of Title 10 of the Code of Federal Regulations. *Estimated Number of Responses:* 99. *Estimated Total Burden Hours:* 1,584.

4. *Current OMB No.:* 1910–5102. *Package Title:* Reporting and Recordkeeping Requirements for Make-or-Buy Plans. *Summary:* A three-year extension is requested for these mandatory response obligations. *Purpose:* This information is required by the Department to ensure that the Department's management and operations are subcontracting in the most cost-effective and efficient manner. *Type of Respondents:* DOE management and operating contractors and offsite contractors. *Estimated Number of Responses:* 36. *Estimated Total Burden Hours:* 5,350.

5. *Current OMB No.:* 1910–5103. *Package Title:* Reporting and Recordkeeping Requirements for Safety Management System. *Summary:* A three-year extension is requested for these mandatory response obligations. *Purpose:* This information is required by the Department to ensure that the Department's management and operating contractors are performing work safety at DOE facilities. *Type of Respondents:* DOE management and operating contractors and offsite contractors. *Estimated Number of Responses:* 7. *Estimated Total Burden Hours:* 2,450.

Statutory Authority: Sections 3507(h)(1) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, May 30, 2000.

Howard Landon,

Director, Office of Special Projects.

[FR Doc. 00–13966 Filed 6–2–00; 8:45 am]
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DEPARTMENT OF ENERGY

Bonneville Power Administration

Stateline Wind Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: BPA and Walla Walla County, Washington, intend to jointly prepare an EIS on the proposed Stateline Wind Project, located along the Oregon-Washington border in Walla Walla County, Washington, and Umatilla County, Oregon. FPL Energy Vansycle LLC (FPL Energy) proposes to construct and operate the 300 megawatt (MW) wind generation facility; BPA proposes to purchase up to 300 MW of the electrical output from the project and to provide transmission services. The EIS will consider the potential site-specific impacts of the construction and operation of the wind project itself, as well as any related transmission facilities. In addition, the EIS will take a broad programmatic look at the surrounding Potential Wind Power Development Area and the associated cumulative biological impacts.

This action may involve floodplain and wetlands located in Walla Walla County, Washington, and/or Umatilla County, Oregon. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment and a floodplain statement of findings will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act (NEPA).

DATES: BPA has established a 30-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. Written comments are due to the address below no later than July 7, 2000. Comments may also be made at the EIS scoping meetings to be held on June 14, 15, and 22, 2000.

ADDRESSES: BPA invites comments and suggestions on the proposed scope of the Draft EIS. Send comment letters and requests to be placed on the project mailing list to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212. The phone number of the Communications office is 503–230–3478 in Portland; toll-free 1–800–622–4519 outside of Portland. Comments may also be sent to the BPA Internet address: *comment@bpa.gov*.

The EIS scoping meetings will be held at Helix High School, 120 Main Street, Helix, Oregon, on Wednesday, June 14, 2000, from 6:30 p.m. to 9 p.m., at Touchet High School, 90 Champion Street, Touchet, Washington, on Thursday, June 15, 2000, from 6:30 p.m. to 9 p.m.; and at BPA, Room 470, 905 NE 11th Avenue, Portland, Oregon, on June 22, 2000, from 1 p.m. to 3 p.m. At these informal meetings, FPL Energy will provide information, including maps and visual simulations, about the wind project; State and County officials will describe their related processes. Written information will also be available, and BPA staff will answer questions and accept oral and written comments.

FOR FURTHER INFORMATION CONTACT: Katherine S. Pierce B KECP–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–3962, fax number 503–230–5699.

SUPPLEMENTARY INFORMATION:

Background

Restructuring in the electric utility industry has resulted in increased demand for energy produced by new renewable resources. Part of this demand is due to the increased ability consumers have to choose their power provider. Some of these consumers want to encourage the development of renewable energy resources, and want their power provider to give them options for doing this. Some Northwest states (such as Oregon) have passed laws that require utilities to offer their customers a power rate that includes significant new renewable energy resources. In other cases, individual utilities have chosen to dedicate a portion of their wholesale power purchases to new renewable resources and are looking to BPA to supply them. In addition, the Northwest Power Planning Council's Fourth Conservation and Electric Power Plan recommends that Northwest utilities offer green power purchase opportunities as a way to help the region integrate renewable resources into the power system in the future.

Purpose and Need

In the face of regional growth in electrical loads and increasing constraints on the existing energy resource base, BPA needs to acquire resources that will contribute to diversification of the long-term power supply prospects in the region. The purposes of acquiring a diverse resource portfolio include:

- Protecting BPA and its customers against risk;
- Assuring consistency with BPA's responsibility under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) to encourage the development of renewable energy resources;
- Meeting customer demand for energy from renewable energy resources, thereby assuring consistency with BPA's Business Plan EIS (DOE/EIS–0183, June 1995) and Business Plan ROD;
- Assuring consistency with the resource acquisition strategy of BPA's Resource Programs EIS (DOE/EIS-February 1993) and ROD; and
- Meeting the objective in the January 2000 Strategic Plan of BPA's Power Business Line to acquire at least 150 average MW of new renewable resources by the end of fiscal year 2006 in order to meet customer demand for new renewable resources.

Proposed Action

BPA proposes to execute one or more power purchase and transmission services agreements to acquire and transmit up to the full electrical output of FPL Energy's proposed Stateline Wind Project. FPL Energy proposes to construct and operate this 250– to 300–MW wind generation facility, located in southern Walla Walla County, Washington, and in Umatilla County, Oregon, along the Oregon-Washington border. This location is several miles north and west of the existing 24.9–MW Vansycle Ridge wind project, located in Umatilla County, Oregon. The proposed project site consists of ridge tops located in an area of rolling, arid hills bisected by canyons. Land uses within the project site consist of non-irrigated agriculture-winter wheat and cattle grazing. The project will be located entirely on private farmland, and no project facilities will be constructed upon lands owned by the States of Oregon or Washington or by the United States.

The approximately 250 to 450 turbines will be arranged in several "strings," with generally approximately 200 to 300 feet between turbines in each string. FPL Energy is considering using either 660-kilowatt (kW) turbines similar to those used at the existing Vansycle Wind Project, or larger, up to 1,300-kW (1.3 MW) turbines if needed to meet the demand for power. If the 660-kW turbines are used, the turbines will be about 165 feet tall at the turbine hub, and about 245 feet tall including the turbine blades. The diameter of the circle covered by the rotors will be about 154 feet. Each turbine will be mounted on a tubular steel tower installed on a concrete foundation approximately 20 feet in diameter. The pad will be buried up to 15 feet underground. If the 1,300-kW turbines are needed, all these dimensions will be somewhat greater. Agricultural activities generally can take place directly adjacent to the turbine pads.

The turbine towers will be tubular steel structures. The turbines will be linked to each other using underground electrical cables. Power from all turbines in the project will be transmitted by a combination of underground and overhead cables to similar strings and then to a proposed substation to be located in Washington. The fenced substation site will occupy approximately one to two acres. From the substation site, power from the project will be transmitted by new above-ground lines (likely H-frame wood towers) to interconnect with one or more existing transmission lines: about eight to ten miles to a 115-kilovolt (kV) BPA transmission line located north of the Walla Walla River and/or a 230-kV PacifiCorp transmission line located two miles to the west of the project (south of the Walla Walla River). Other facilities required as part of the project are access roads, an operations and maintenance (O&M) building, and a water tank. Most of the access roads will consist of improved, graveled, existing farm roads, with some construction of new graveled roads in areas where usable farm roads do not exist. The O&M building will probably be located near Hatchgrade Road to provide good visibility of the turbines.

FPL Energy proposes to begin construction in late 2000 or early 2001. The Stateline Wind Project is scheduled to begin commercial operation late in 2001, and would operate for at least 25 years.

Process to Date

FPL Energy has filed an application for a Conditional Use Permit from Walla Walla County, Washington, Regional Planning. Oregon Department of Energy has received and approved FPL Energy's request for Expedited Review of FPL Energy's Application for a Site Certificate. In addition, the Oregon Department of Energy and the Oregon Department of Fish and Wildlife have suggested that the EIS address both the Stateline Wind Project (at a site-specific level) and a broader Potential Wind Development Area (at a broad, programmatic level). This Area was the subject of a baseline avian study conducted in the mid-1990's. Some environmental analyses have already been conducted by FPL Energy for the Stateline Wind Project. Surveys for sensitive plant and animal species were conducted in the spring of 1999 and surveys for sensitive animal species and cultural resources were conducted in the spring of 2000. Scoping will help identify what additional studies will be required.

Alternatives Proposed for Consideration

The alternatives include the proposed action (executing a power purchase agreement with FPL Energy for up to 300 MW of electrical energy from the proposed Stateline Wind Project) and the No Action alternative. In addition, at least two transmission alternatives will be examined in the EIS.

Identification of Environmental Issues

For other wind projects, noise, visual impacts, cultural resources, and impacts to sensitive plant and animal species have been identified as potential environmental issues. The scoping process will help identify the range of environmental issues that should be addressed in this EIS. Maps and further information are available from BPA at the address above.

When completed, the Draft EIS will be circulated for review and comment, and BPA will hold public comment meetings for the Draft EIS. BPA will consider and respond to comments received on the Draft EIS in the Final EIS, expected to be published in late 2000 or early 2001. BPA's subsequent decision will be documented in a Record of Decision (ROD).

The EIS will satisfy the requirements of the NEPA and the Washington State Environmental Policy Act (SEPA). The State of Oregon will coordinate its Energy Facility Siting process with the NEPA/SEPA process.

Issued in Portland, Oregon, on May 25, 2000.

Terence G. Esvelt,

Acting Administrator and Chief Executive Officer.

[FR Doc. 00–13965 Filed 6–2–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Coeur d'Alene Tribal Trout Production Facility

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's proposal to fund construction of a supplementation hatchery facility for the Coeur d'Alene Tribe in floodplain and wetlands located in Kootenai and Benewah Counties, Idaho. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATES: Comments are due to the address below no later than June 20, 2000.

ADDRESSES: Submit comments to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon 97212. Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION CONTACT: Eric N. Powers—KECN–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–5823, fax number 503–230–5699.

SUPPLEMENTARY INFORMATION: The project would involve construction of a fish hatchery and two acclimation ponds. The hatchery would be located within the 100-year floodplain of Rock Creek (T47N, R4W, Section 31); the acclimation sites would affect wetlands associated with the tributaries of Benewah Creek (T45N, R3W, Section 17) and Alder Creek (T45N, R3W, Section 33).

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on May 25, 2000.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 00–13968 Filed 6–2–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2187–000]

CMS Distributed Power, L.L.C.; Notice of Issuance of Order

May 30, 2000.

CMS Distributed Power, L.L.C. (CMSDP) submitted for filing a rate schedule under which CMSDP will engage in wholesale electric power and energy transactions as a marketer. CMSDP also requested waiver of various Commission regulations. In particular, CMSDP requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions for liability by CMSDP.

On May 24, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CMSDP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, CMSDP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CMSDP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 23, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims/htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–13915 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2225–000]

Duke Energy St. Lucie, LLC; Notice of Issuance of Order

May 30, 2000.

Duke Energy St. Lucie, LLC (Duke Energy St. Lucie) submitted for filing a rate schedule under which Duke Energy St. Lucie will engage in wholesale electric power and energy transactions as a marketer. Duke Energy St. Lucie also requested waiver of various Commission regulations. In particular, Duke Energy St. Lucie requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Duke Energy St. Lucie.

On May 25, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Energy St. Lucie should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period Duke Energy St. Lucie is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Energy St. Lucie's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 26, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–13916 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1262–003]

Monongahela Power Company, Potomac Edison Company, West Penn Power Company (Allegheny Power); Notice of Filing

May 30, 2000.

Take notice that on May 15, 2000, Monongahela Power Company, Potomac Edison Company and West Penn Power Company, doing business as Allegheny Power tendered for filing revisions to First Revised Sheet Nos. 215 through 223 filed with the Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 9, 2000. Protest will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13914 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2494]

Puget Sound Energy, Inc., White River Project, Washington; Notice

May 30, 2000.

The following Commission staff are assigned to facilitate the preparation of an offer of settlement in these licensing proceedings that may be presented to the Commission.

Office of General Counsel

Keith Brooks (202) 208–1229.

Merrill Hathaway (202) 208–0825.

Office of Energy Projects

Bob Easton (202) 219–2782.

The staff listed above are separated from the advisory staff in these proceedings and will not participate as advisory staff in these proceedings.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13918 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2016]

Tacoma Power; Cowlitz River Project, Washington; Notice

May 30, 2000.

The following Commission staff are assigned to assist in the preparation of an offer of settlement in these licensing proceedings that may be presented to the Commission.

Office of General Counsel

John Clements (202) 208–2070.

Office of Energy Projects

Bob Easton (202) 219–2782.

The staff listed above are separated from the advisory staff in these proceedings and will not participate as advisory staff in these proceedings.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13917 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2405–001, et al.]

Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 26, 2000.

Take notice that the following filings have been made with the Commission:

1. Cinergy Services, Inc.

[Docket No. ER00–2405–001]

Take notice that on May 24, 2000, Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company (CG&E), tendered for filing an amendment to its original filing regarding the Interconnection Agreement Among the City of Lebanon, Ohio, The Cincinnati Gas & Electric Company and Cinergy Services, Inc.

Cinergy states that it has served a copy of its filing upon the City of Lebanon, Ohio and the Public Utilities Commission of Ohio.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator Corporation

[Docket No. ER00–1365–000]

Take notice that on May 23, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Notice of Implementation, sent to Market Participants and posted on the ISO Home Page on May 19, 2000, which specifies that, effective June 1, 2000, the ISO will implement pre-dispatch of Reliability Must-Run (RMR) Units.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Hardee Power Partners Limited

[Docket No. ER00–2569–000]

Take notice that on May 23, 2000, Hardee Power Partners Limited (HPP), tendered for filing a service agreement with El Paso Merchant Energy, L.P. (El Paso) under HPP's market-based sales tariff.

HPP requests that the service agreement be made effective on May 1, 2000.

Copies of the filing have been served on El Paso and the Florida Public Service Commission.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Duquesne Light Company

[Docket No. ER00–2571–000]

Take notice that on May 23, 2000, Duquesne Light Company (Duquesne), tendered for filing, under Duquesne's market-based rate tariff, a long-term service agreement between Duquesne and Orion Power Midwest, L.P. (Orion).

Duquesne reports that service commenced to Orion on April 28, 2000.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc. and Kansas Gas and Electric Company

[Docket No. ER00–2572–000]

Take notice that on May 23, 2000, Western Resources, Inc. (WR), tendered for filing the 9th Revised Exhibit B, the 7th Revised Exhibit C, and the 7th Revised Exhibit D to its Electric Power, Transmission, and Service Contract with Kansas Electric Power Cooperative Inc. (KEPCo). WR, on behalf of its wholly owned subsidiary the Kansas Gas and Electric Company (KGE), also submitted the 11th Revised Exhibit B, and the 7th Revised Exhibit C to KGE's Electric Power, Transmission, and Service Contract with KEPCo.

Copies of the filing were served upon KEPCo and the Kansas Corporation Commission.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–2573–000]

Take notice that on May 23, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed unilateral transmission service agreement with NewEnergy, Inc., the agreement allows NewEnergy to take non-firm point-to-point transmission service from LG&E/KU.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–2574–000]

Take notice that on May 23, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed unilateral transmission service agreement with NewEnergy, Inc., the agreement allows NewEnergy to take firm point-to-point transmission service from LG&E/KU.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER00–2575–000]

Take notice that on May 23, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed unilateral transmission service agreement with Amerada Hess Corporation. The agreement allows Amerada Hess to take firm point-to-point transmission service from LG&E/KU.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Kincaid Generation L.L.C.

[Docket No. ER00–2577–000]

Take notice that on May 23, 2000, Kincaid Generation L.L.C. (KGL), tendered for filing an agreement for the sale of electric energy and capacity by KGL to Commonwealth Edison Company, dated May 9, 2000.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER00–2578–000]

Take notice that on May 23, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing a notice of cancellation for CSW Energy Services, Inc. (CSW ESI), to terminate its membership in PJM, to cancel certain service agreements between PJM and CSW ESI, and to remove it as a signatory to the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area (RAA). PJM also is filing a revised Schedule 17 to the RAA removing CSW ESI from the list of signatories to the RAA.

PJM states that it served a copy of its filing on all of the members of PJM and the signatories to the RAA, including CSW Energy Services Inc., and each of the state electric regulatory commissions within the PJM control area.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER00–2579–000]

Take notice that on May 24, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Wisconsin Electric Power Company (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on April 26, 2000.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Tucson Electric Power Company

[Docket No. ER00–2580–000]

Take notice that on May 24, 2000, Tucson Electric Power Company tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 38 (Plains Electric Generation and Transmission Cooperative, Inc. and Tucson Electric Power Company Economy Energy Interchange Agreement, dated May 7, 1980).

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER00–2581–000]

Take notice that on May 24, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Load Agreement (PLA) between the ISO and NewEnergy California, L.L.C., (NewEnergy). The ISO states that this PLA is designed to set forth the terms and conditions that govern NewEnergy's provision of Ancillary Services. The PLA is part of a trial program for the summer of 2000 designed to increase participation of Load resources in the ISO's markets.

The ISO requests that the PLA be made effective as of June 15, 2000.

The ISO states that this filing has been served on NewEnergy California, L.L.C. and the California Public Utilities Commission

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER00–2582–000]

Take notice that on May 24, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Load Agreement (PLA) between the ISO and New West Energy (New West). The ISO states that this PLA is designed to set forth the terms and conditions that govern New West's provision of Ancillary Services. The PLA is part of a trial program for the summer of 2000 designed to increase participation of Load resources in the ISO's markets.

The ISO requests that the PLA be made effective as of June 15, 2000.

The ISO states that this filing has been served on New West Energy and the California Public Utilities Commission.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER00–2583–000]

Take notice that on May 24, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Load Agreement (PLA) between the ISO and Ancillary Service Coalition (ASC). The ISO states that this PLA is designed to set forth the terms and conditions that govern ASC's provision of Ancillary Services. The PLA is part of a trial program for the summer of 2000 designed to increase participation of Load resources in the ISO's markets.

The ISO requests that the PLA be made effective as of June 15, 2000.

The ISO states that this filing has been served on Ancillary Service Coalition and the California Public Utilities Commission.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company

[Docket No. ER00–2584–000]

Take notice that on May 24, 2000, Jersey Central Power & Light Company (doing business as and referred to as GPU Energy), tendered for filing a Generation Facility Interconnection Agreement between GPU Energy and Middlesex Generating Co., L.L.C.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Orion Power MidWest, L.P.

[Docket No. ER00–2585–000]

Take notice that on May 24, 2000 Orion Power MidWest, L.P. (Orion Power MidWest), tendered for filing with the Federal Energy Regulatory Commission a long-term Energy Agency and Marketing Agreement with Duquesne Light Company for the sale of energy under Orion Power MidWest's market-based rate tariff, FERC Electric Rate Tariff, Volume No. 1.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Northern Indiana Public Service Company

[Docket No. ER00–2586–000]

Take notice that on May 24, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and NewEnergy, Inc., (NewEnergy).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to NewEnergy pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of May 25, 2000.

Copies of this filing have been sent to NewEnergy, Inc., the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Northern Indiana Public Service Company

[Docket No. ER00–2587–000]

Take notice that on May 24, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Public Service Company of Colorado (Public Service).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Public Service pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of May 25, 2000.

Copies of this filing have been sent to Public Service Company of Colorado, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Northern Indiana Public Service Company

[Docket No. ER00–2588–000]

Take notice that on May 24, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Allegheny Energy Supply Company, LLC (Allegheny).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Allegheny pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of May 25, 2000.

Copies of this filing have been sent to Allegheny Energy Supply Company, LLC, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Duke Energy Corporation

[Docket No. ER00–2589–000]

Take notice that on May 24, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with North Carolina Municipal Power Agency Number 1 for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 1, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Orion Power MidWest, L.P.

[Docket No. ER00–2590–000]

Take notice that on May 24, 2000, Orion Power MidWest, L.P. (Orion Power MidWest), tendered for filing with the Federal Energy Regulatory Commission a long-term Power Sales Agreement with Strategic Energy L.L.C., for the sale of energy under Orion Power MidWest's market-based rate tariff, FERC Electric Rate Tariff, Volume No. 1.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. The Montana Power Company

[Docket No. ER00–2591–000]

Take notice that on May 24, 2000, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission an executed Reliability Management System Agreement with PPL Montana, LLC.

A copy of the filing was served upon PPL Montana, LLC.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Milford Power Limited Partnership

[Docket No. ER00–2592–000]

Take notice that on May 23, 2000, Milford Power Limited Partnership tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.205 and 385.207) a petition seeking a waiver of certain regulations of the Commission and an order accepting its Revised FERC Electric Tariff No.1 for filing, to be effective on the date of the Commission's order on such petition.

Revised FERC Electric Tariff No.1 provides for the sale of capacity and energy at agreed prices to any wholesale customer.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–13913 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2866–008]

Metropolitan Water Reclamation District of Greater Chicago; Notice of Availability of Draft Environmental Assessment

May 30, 2000.

In accordance with the National Environmental Police Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 CFR 47897), the Office of Energy Projects has reviewed the application for a new license for the Lockport Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The project is located on the Chicago Sanitary and Ship Canal, in Will County, Illinois.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426. The DEA may also be reviewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Hector M. Perez, Project Coordinator, at (202) 219–2843.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13919 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: May 30, 2000, 65 FR 34465.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: May 31, 2000, 10 a.m.

CHANGE IN THE MEETING: The following Docket No. and Company has been added as Item CAE–35 on the Agenda scheduled for the May 31, 2000 meeting.

Item No.—Docket No. and Company

CAE–35
- ER00–1969–000, New York Independent System Operator, Inc.
- EL00–57–000, Niagara Mohawk Power Corporation v. New York Independent System Operator, Inc.
- EL00–60–000, Orion Power New York GP, Inc. v. New York Independent System Operator, Inc.
- EL00–63–000, New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
- EL00–64–000, Rochester Gas and Electric Corporation v. New York Independent System Operator, Inc.

David P. Boergers,

Secretary.

[FR Doc. 00–14109 Filed 6–1–00; 11:40 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

2005 Resource Pool

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed power allocations.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing administration of DOE, published its 2004 Power Marketing Plan (Marketing Plan) for the Sierra Nevada Customer Service Region (Sierra Nevada Region) in the **Federal Register**. The Marketing Plan specifies terms and conditions under which Western will market power from the Central Valley Project (CVP) and the Washoe Project beginning January 1, 2005. The Marketing Plan sets aside a portion of the Sierra Nevada Region's marketable power resources to establish a 2005 Resource Pool for new power allocations. Western published a Call for 2005 Resource Pool Applications and a Notice of Extension to file applications in the **Federal Register**. This notice sets forth Western's proposed allocations of power from the 2005 Resource Pool.

DATES: Entities interested in commenting on proposed allocations must submit written comments to Western's Sierra Nevada Customer Service Regional Office at the address below. Western must receive written comments by 4 p.m., PDT, on July 5, 2000. Entities are encouraged to hand-deliver or use certified or electronic mail for delivery of comments. Western will accept comments received via regular mail through the United States Postal Service if postmarked at least 3 days before July 5, 2000, and received no later than July 10, 2000. Western will not consider comments that are received after the prescribed date and time. Western will publish a Notice of Final 2005 Resource Pool Allocations in the **Federal Register** after evaluating all comments.

ADDRESSES: Written comments should be sent to Howard Hirahara, Power Marketing Manager, Western Area Power Administration, Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, CA 95630–4710, or by electronic mail to hirahara@wapa.gov.

FOR FURTHER INFORMATION CONTACT: Howard Hirahara, Power Marketing Manager, (916) 353–4421, or by electronic mail at hirahara@wapa.gov.

SUPPLEMENTARY INFORMATION:

Authorities

Pursuant to its authorities under the Department of Energy Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c)); and other acts specifically applicable to the projects involved, Western established the Marketing Plan for sale of power by the Sierra Nevada Region after 2004. On June 25, 1999, Western published the Marketing Plan in the **Federal Register** (64 FR 34417). Pursuant to Western's authorities under the above acts and applying the rules developed in the Marketing Plan, with this notice, Western sets forth and seeks comments on its proposed allocations of power from the 2005 Resource Pool.

Regulatory Procedural Requirements

Western addressed the regulatory procedure requirements in its rulemaking for the Marketing Plan (64 FR 34417). The proposed allocation of power in this notice is an application of the Marketing Plan and is not a separate rulemaking.

Background

On October 19, 1999, Western published the Call for 2005 Resource Pool Applications in the **Federal Register** (64 FR 56343). On December 9, 1999, Western published a Notice of Extension in the **Federal Register** (64 FR 69018). The Call for 2005 Resource Pool Applications required that applications be submitted by December 20, 1999, and the Notice of Extension extended the filing date by 30 days to January 19, 2000.

CVP power facilities are operated by the United States Department of the Interior, Bureau of Reclamation (Reclamation), and include 11 powerplants with a maximum operating capability of about 2,044 megawatts (MW), and an estimated average annual generation of 4.6 million megawatthours (MWh). Western markets and transmits power available from the CVP.

The Washoe Project's Stampede Powerplant is also operated by Reclamation and has a maximum operating capability of 3.65 MW with an estimated annual generation of 10,000 MWh. The Sierra Pacific Power Company owns and operates the only transmission system available for access to the Stampede Powerplant.

Western owns the 94 circuit-mile Malin-Round Mountain 500-kilovolt (kV) transmission line (an integral section of the Pacific Northwest-Pacific Southwest Intertie), 803 circuit miles of 230-kV transmission line, 7 circuit miles of 115-kV transmission line, and 44 circuit miles of 69-kV and below transmission line. Western also has part ownership in the 342-mile California-Oregon Transmission Project. Many of Western's existing customers have no direct access to Western's transmission lines and receive service over transmission lines owned by other utilities.

The Marketing Plan describes how the Sierra Nevada Region will market its power resources beginning January 1, 2005, through December 31, 2024. Western proposes to allocate portions of the 2005 Resource Pool to applicants meeting the eligibility criteria listed in the Marketing Plan. Once the 2005 Resource Pool allocations have been finalized, Western will offer contracts to allottees for a percentage of the Base Resource. If requested, Western will work with customers to develop a customized product to meet their needs, as more fully described in the Marketing Plan. Western will also establish a 2015 Resource Pool for new allocations under a separate public process.

Proposed 2005 Resource Pool Allocations

Under the Marketing Plan, a two-step process was undertaken by Western in determining proposed power allocations. First, Western determined which applicants met the eligibility criteria. Next, Western used the allocation criteria to determine allocation amounts. Western used its discretion to determine which eligible entities received a proposed allocation and the amount of the proposed allocation. Western received 34 applications for 442.861 MW of power from entities who are not currently customers and 24 applications for 610.761 MW of power from existing customers. Western's Base Resource is a variable amount based on actual generation that is surplus to project needs. Therefore, allocations are expressed as a percentage of the marketable resource. Megawatt amounts are given, assuming variable amounts of Base Resource, for illustrative proposes only.

The proposed 2005 Resource Pool allocations are preliminary and may be changed based on comments received. This notice formally requests comments related to the proposed allocations. Western will respond to comments received on the proposed allocations and publish its final 2005 Resource Pool allocations after the end of the public comment period.

Proposed allottees to receive power from the 2005 Resource Pool, allocations expressed as percentages of the Base Resource, and the megawatt amount of each allocation assuming a Base Resource of 500 MW, 1000 MW, and 1500 MW are as follows:

Proposed allottees	Percent	Base resource		
		500 MW (MW)	1000 MW (MW)	1500 MW (MW)
Bay Area Rapid Transit District	0.147	0.735	1.470	2.205
California State Universities (11 campuses)	0.221	1.100	52.210	3.315
California State University, Sacramento	0.092	0.460	0.920	1.380
Cawelo Water District	0.029	0.145	0.290	0.435
Coyote Valley Tribe of Pomo Indians	0.055	0.275	0.550	0.825
East Bay Municipal Utility District	0.054	0.270	0.540	0.810
Fallon, City of	0.221	1.105	2.210	3.315
Healdsburg, City of	0.087	0.435	0.870	1.305
Lassen Municipal Utility District	0.105	0.525	1.050	1.575
Lodi, City of	0.147	0.735	1.470	2.205
Lompoc, City of	0.120	0.600	1.200	1.800
Modesto Irrigation District	0.147	0.735	1.470	2.205
Placer County Water Agency	0.039	0.195	0.390	0.585
Reclamation District No. 108	0.043	0.215	0.430	0.645
Redding Rancheria	0.037	0.185	0.370	0.555
San Francisco, City and County of	0.147	0.735	1.470	2.205
Sonoma County Water Agency	0.028	0.140	0.280	0.420
Southern San Joaquin Municipal Utility District	0.037	0.185	0.370	0.555
Susanville Indian Rancheria	0.103	0.515	1.030	1.545
Table Mountain Rancheria	0.147	0.735	1.470	2.205
Truckee Donner Public Utility District	0.220	1.100	2.200	3.300
Turlock Irrigation District	0.128	0.640	1.280	1.920
University of California, Berkeley	0.221	1.105	2.210	3.315
University of California, San Francisco	0.175	0.875	1.750	2.625
Total	2.750	13.75	27.500	41.250

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Contracting Process

Pursuant to the Marketing Plan, Western will begin the contracting process with allottees after publishing the final allocations in the **Federal Register**. Publication is tentatively scheduled for the summer of 2000. Allottees must execute an electric service contract to purchase the Base Resource no later than December 31, 2000, and the Custom Product, if desired, no later than December 31, 2002, unless otherwise agreed to in writing by Western. Electric service contracts will be effective upon execution by Western, and service will begin on January 1, 2005.

Dated: May 23, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–13967 Filed 6–2–00; 8:45 am]

BILLING CODE 6450–01–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6709–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a committee of the US EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Daylight Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

The Integrated Human Exposure Committee (IHEC) of the US EPA Science Advisory Board (SAB), will meet on July 10–11, 2000 in Meeting Room A&B, at the Radisson Governors Inn, P.O. Box 12168, Research Triangle Park, NC 27709 (located on I–40, Exit 280-Davis Drive. The hotel telephone number 919–549–8631. The meeting will begin 9 a.m. on July 10, and adjourn no later than 5 p.m. on July 11.

Purpose of the Meeting—EPA must be able to estimate the number of people exposed to various pollutants (as well as the magnitude and duration of the exposure in) order to evaluate the risks posed by these pollutants in the environment. To respond to these needs, EPA's Office of Research and Development sponsored three related pilot studies known as National Human Exposure Assessment Survey (NHEXAS). The NHEXAS studies tested protocols for acquiring population distributions of exposure measurements and by developing exposure databases for use in exposure models, exposure assessment, and risk assessment. The IHEC met in September 1998 to assess these studies and recommend future courses of action. The report resulting from this meeting (An SAB Advisory: The National Human Exposure Assessment Survey (NHEXAS) Pilot Studies (EPA–SAB–IHEC–ADV–99–004, February 1999) included a recommendation to develop a strategic plan for completing the analysis of the NHEXAS pilot data. The EPA drafted such a plan, intended to provide broad guidance to EPA decision makers on resources and to those who would undertake analyses. EPA subsequently requested that the IHEC review the draft strategic plan, resulting in the planned July meeting.

Charge to the Subcommittee—The Charge asks the IHEC to respond to the following four questions:

(a) Does the Strategy encompass all the significant needed analysis projects? If not, which should be added or deleted? (*e.g.*, is the list of projects good?)

(b) Even if all the projects are optimal, are they strategically presented and prioritized? Would alternative strategic criteria be useful? (*e.g.*, is the prioritization good?)

(c) Is the Strategy likely to be useful to ORD management for resource allocation (*e.g.*, is it of sufficient quality for managerial use)?

(d) Does the Strategy provide adequate guidance to scientists for developing the most useful analysis tasks?

Availability of Review Materials: The principal review document, Strategic Plan for the Analysis of the National Human Exposure Assessment Survey (NHEXAS) Pilot Study Data, is available on the Internet at the SAB website (http://www.epa.gov/sab), or by request to Ms. Brenda Thompson, phone 919–541–1346, or by email to thompson.brenda@epa.gov

For Further Information Contact: Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Samuel Rondberg, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (301) 812–2560, FAX (410) 286–2689; or via e-mail at samuelr717@aol.com. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Rondberg no later than noon Eastern Daylight Time on June 28, 2000.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 25, 2000.

Donald G. Barnes,

Staff Director,, Science Advisory Board.

[FR Doc. 00–13977 Filed 6–2–00; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 8, 2000, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

May 3, 2000 (Open and Closed)

B. New Business

1. Regulation

Standards of Conduct Plain Language Rewrite [12 CFR Part 612] (Direct Final with Opportunity to Comment).

2. Reports

No Action Requests and Pilot Programs.

Approvals under Delegated Authorities.

Dated: June 1, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–14187 Filed 6–1–00; 3:07 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–900]

Implementation Procedures for the Report and Order and Memorandum Opinion and Order Addressing the 218–219 MHz Services (Formerly Known as Interactive Video and Data Services (IVDS))

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document addresses implementation procedures regarding restructuring options and remedial bidding credits for current and former 218–219 MHz licensees. These service and technical rules were modified to maximize the efficient and effective use of the band.

FOR FURTHER INFORMATION CONTACT: Ben Freeman or Nicole Oden of the Auctions and Industry Analysis Division at (202) 418–0660 or Jamison Prime of the Public Safety and Private Wireless Division at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released April 20, 2000. The complete text of the public notice, including Attachments A, B and C, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

I. Background

1. On September 10, 1999, the Federal Communications Commission ("Commission") issued FCC 99–239 which modified the regulations governing the licensing of the 218–219 MHz Service (formerly known as IVDS) to maximize the efficient and effective use of the band. *See*, Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service (*218–219 MHz Order*) 64 FR 59656 (November 3, 1999). The *218–219 MHz Order*, among other things, modified service and technical rules for the band and extended the license term from five to ten years. The Commission also adopted a restructuring plan for existing licensees that: (i) were current in installment payments as of March 16, 1998; (ii) were less than ninety days delinquent on the last payment due before March 16, 1998; or (iii) had properly filed grace period requests under the former installment payment rules ("Eligible Licensees"). Pursuant to the restructuring plan, Eligible Licensees must make elections on a per license basis, choosing between three options: (a) Reamortization and Resumption of Payments; (b) Amnesty; or (c) Prepayment (Prepayment-Retain or Prepayment-Return). Eligible Licensees that fail to submit a valid election with respect to any license by the Election Date will be assumed to have elected Amnesty for all of their 218–219 MHz licenses.

2. "Ineligible Entities" are those entities that made second down payments and: (i) made some installment payments, but were not current in their installment payments as of March 16, 1998, and did not have a grace period request on file in conformance with the former rules; or (ii) entities that never made any installment payments and did not have a timely filed grace period request on file. Ineligible Entities are not entitled to make elections, but will be granted debt forgiveness for any outstanding balances owed and have previously paid installment payments refunded. The Commission will release a separate Public Notice detailing the procedures by which entities may obtain a refund, with which Ineligible Entities should become familiar.

3. Under the Federal Claims Collection Act and related regulations, only the United States Department of Justice ("DOJ") can compromise a claim in excess of $100,000. Because many of the debts subject to the *218–219 MHz Order* exceed $100,000 and involve FCC licenses subject to common facts and circumstances, the Commission recommended that DOJ approve the compromise of all 218–219 MHz Service debt as a package. On March 1, 2000, DOJ notified the Commission of its decision to approve the debt forgiveness portion of the *218–219 MHz Order.*

II. Procedures for Filing Election Notices

A. Mailing Address and Election Date

4. Election Notices may be filed with the Commission from 8:00 a.m. until 7:00 p.m. starting on the date of this Public Notice and ending at 7:00 p.m. on the Election Date. The Election Date will be the last business day of the first full month after the Order on Reconsideration, regarding the *218–219 MHz Order*, is released by the Commission. NO ELECTIONS OR CHANGES TO ELECTIONS WILL BE ACCEPTED AFTER 7:00 P.M. ON THE

ELECTION DATE. Election Notices should be sent to the Office of the Secretary, Room TW–B204, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C., 20554. In addition, a copy of Election Notices should be sent to Ms. Rachel Kazan, Room 4–A460, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

5. The Commission must *receive* all Election Notices, *no later than* 7 p.m. on the Election Date. *Eligible Licensees are solely responsible for ensuring the accurate and timely delivery of their Election Notices. Submission of Election Notices by FAX or electronic mail will NOT be accepted.*

B. Format of Election Notices

6. Although there is no specific form for Election Notices, they *must* contain the following information: (i) Licensee Name; (ii) Licensee Address; (iii) Licensee Phone Number; (iv) Contact Name; (v) Contact Phone Number; (vi) Contact FAX Number; (vii) Taxpayer Identification Number (TIN); (viii) License Number(s); and (ix) Market Area(s).

7. For each eligible license it has, the Eligible Licensee must make a *specific election for each individual license* designating one of the three election options: (i) Reamortization/Resumption (ii) Amnesty or (iii) Prepayment (Prepayment-Retain or Prepayment-Return). Licensees electing Prepayment must indicate which licenses they want to retain and which licenses, if any, are being returned to the Commission. Any individual filing an Election Notice for a license must be authorized by the Licensee to do so. See Attachment A of the Public Notice for a model Election Notice.

C. Changing Election Notices Prior to the Election Date

8. A previously filed Election Notice may be altered prior to 7:00 p.m. on the Election Date by submitting the following: (i) A statement that the licensee is rescinding its previously filed Election Notice; (ii) a new Election Notice which states its new election; and (iii) a copy of its previously filed Election Notice. These submissions must be simultaneously filed with the Office of the Secretary, Room TW–B204, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition, as with the original Election Notice, a copy of the submissions should be sent to Ms. Rachel Kazan, Room 4–A460, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

No changes or alterations to any elections will be accepted after 7:00 p.m. on the Election Date. Submission of Election Notice changes by FAX or electronic mail will NOT be accepted.

III. Failure To File an Election Notice

9. If an Eligible Licensee fails to file an Election Notice by the specified Election Date, the licensee's license(s) will automatically be placed in the Amnesty category. This will result in the automatic cancellation of the license(s). A list of the licenses that are eligible to participate in the 218–219 MHz restructuring plan, with the corresponding Eligible Licensees is Attachment B of the Public Notice.

A. Changes of Address

10. It is the sole responsibility and obligation of all entities subject to the *218–219 MHz Order*, current and former licensees, to keep the Commission apprised of any changes of address. Entities subject to the *218–219 MHz Order* that either do not have a current and correct address on file, or have not received a letter of eligibility, should contact the Commission immediately.

11. All change of address notices (or other administrative updates, such as a change in phone number or contact person) must be submitted in writing to the Federal Communications Commission, Attn: Darlene Reeder, 1270 Fairfield Road, Gettysburg, PA 17325–7245. Licensees should include their call sign, market number, and note that the letter is in reference to a 218–219 MHz Service license. For changes of address between now and the Election Date, licensees should also fax a copy of their letters to the FCC's Public Safety and Private Wireless Division in Washington, DC, attention Mr. Jamison Prime, at (202) 418–2643. Note: If a change of address relates to a sale of a license, the licensee must first apply for and receive FCC approval to assign its 218–219 MHz Service license(s).

IV. Defective Elections

12. Examples of defective elections are when a Licensee chooses an option for which it is not eligible; attempts to combine Prepayment with another election option; fails to include the required information in its Election Notice including a Taxpayer Identification Number (TIN) and a *specific election for each individual license* with corresponding license number; and/or places a condition upon its election. All of the 218–219 MHz licenses held by the licensee making a defective election will be placed in the Amnesty category, resulting in the automatic cancellation of their licenses.

V. Return of Radio Station Authorizations (Licenses)

13. Due to the changed licensing term for the 218–219 MHz services, from five (5) years to ten (10) years, the Commission will issue modified licenses. Therefore, the implementation of the election options by the Commission does not require Eligible Licensees to return their original licenses.

VI. Resumption of Installment Payments

14. For those licensees electing to retain some, or all, of their licenses and resume payments (Reamortization/Resumption), the first installment payment is due at the end of the third month after the Election Date. Installment payments may be made via wire transfer or through an Auction Installment Payment account (AIP) according to the terms set forth in the Installment Payment Acknowledgement. For specific payment instructions see Attachment C of the Public Notice. In addition, under the Commission's part 1 late payment rules for installment payments, licensees will have the option of utilizing the two ninety-day late payment periods, subject to late payment fees, if they need additional time in order to avoid default. Failure to make timely installment payments in this manner will trigger default and the automatic cancellation of the licenses.

VII. "New Money" Payments for Prepayment Option

15. For Eligible Licensees electing the Prepayment option, the Commission must receive all "new money" payments on or before the end of the third month after the Election Date. Licensees may pay the "new money" payment up to ten (10) days late, subject to a 5% late fee. Payments are to be made via wire transfer. Failure to pay the entire "new money" balance due on the license(s) for which Prepayment-Retain was elected will trigger default and the automatic cancellation of the license(s). For specific payment instructions of "new money," see Attachment C of the Public Notice.

VIII. Refunds and Credits

16. Refunds will be processed via Automated Clearing House Credits (ACH) (*i.e.* electronic funds transfer). In order for the Commission to issue refunds, all entities due a refund must submit the information necessary for an electronic funds transfer. The Commission will endeavor to issue refunds to all parties within approximately 60 days of the Election Date. The Commission will release a separate Public Notice detailing the procedures by which entities may obtain a refund.

A. For Eligible Licensees

17. The availability of a refund, and the application of installment payment credit, depends upon the election(s) made for each license.

i. Amnesty

18. For an Eligible Licensee that elects Amnesty for all of its licenses, the Commission will retain the down payment (less any remedial bidding credit refund) and forgive the original principal balance and all interest payments due thereon. In addition, for Eligible Licensees in this category that have previously made installment payments, the Commission will refund installment payments in their entirety.

ii. Amnesty and Reamortization/Resumption

19. For an Eligible Licensee that holds more than one license and elects Amnesty for one or more of its licenses, and Reamortization/Resumption for its other license(s), all installment payments made on the Amnesty license(s) will be credited towards the outstanding balance due on the license(s) for which Reamortization/Resumption was elected. The installment payment credits will be applied against the accrued and unpaid interest on the retained license(s), with any excess funds being applied to the principal balance on each retained license. The installment payment credits will be prorated based on the net high bids of the retained licenses.

20. For Eligible Licensees electing Reamortization/Resumption, who may also be due a remedial bidding credit, the 25% remedial bidding credit will be applied prior to the reamortization of the principal and installment payments due on the license(s).

iii. Prepayment (Prepayment-Return and Prepayment-Retain)

21. Eligible Licensees electing Prepayment may retain or return as many licenses as they wish. The Commission will forgive all of the interest due on the retained licenses from grant date until the Election Date, however Eligible Licensees must pay off the original principal balance of the license(s) they retain. Eligible Licensees will be given a prepayment credit equal to 85% of the down payment and 100% of the installment payment(s) made on the license(s) they return to the Commission. If the original principal balance of the license(s) the Eligible Licensee wishes to retain is greater than the prepayment credit, the additional amount due is called "New Money," and must be remitted to the Commission on or before the end of the third month after the Election Date. If the prepayment credit is greater than the original principal balances, the excess prepayment credits will be refunded to the licensee to the extent that the funds were generated from installment payments. No excess prepayment credits generated from down payments will be refunded.

B. Ineligible Entities

22. Ineligible Entities will have all previously paid installment payments refunded.

IX. Remedial Bidding Credit for Small Businesses

23. The Commission has eliminated women- and minority-owned business bidding credits, simultaneously granting credits of commensurate size to all small businesses. Any Eligible Licensee or Ineligible Entity that paid its first and second down payment, and met the small business qualifications at the time of auction, may receive a 25% remedial bidding credit. The Commission will process a refund of excess down payment equal to the difference between the down payment amounts based on the gross high bid and the net high bid. However, if the small business entity claimed to be a women- or minority-owned business at the time of auction, it already received a 25% bidding credit and therefore no refund is generated by the small business bidding credit. *A refund of an excess down payment to Ineligible Entities does not alter their eligibility status.* Where a licensee met the qualifications for a small business at the time of auction and paid for their licenses in full, but did not receive a women- or minority-owned business bidding credit, the Commission will process a refund based on the remedial bidding credit. Where licensees paid in full, the refund will be equal to the difference between the gross high bid and the net high bid. The Commission will issue a separate Public Notice with instructions detailing the refund procedures.

24. The refund of excess down payment due to the remedial bidding credit is separate and distinct from the 218–219 MHz restructuring plan. Eligible Licensees should not plan their election options around, or anticipate utilizing, the remedial bidding credit refund to meet any payment obligations to the Commission that may exist after the recalculation of balances or installment payments due on retained licenses. The payment deadline obligations of the licensee may not correspond with the refund of the remedial bidding credit, and the Commission will not credit, or offset, the amount owed after the recalculation based upon the anticipated refund. In addition, the Commission maintains no obligation to remit the remedial bidding credit refund prior to the licensee's payment deadline.

X. Issuance of Modified Radio Station Authorizations (Modified Licenses)

25. The Commission will issue modified licenses that reflect the terms and new expiration date adopted in the *218–219 MHz Order*. These licenses will be generated after the Election Date and, in the case of Eligible Licensees who choose Reamortization/Resumption, after the due date of the first installment payment. Licenses for which Reamortization/Resumption was elected will be conditioned upon full payment under the installment payment plan, pursuant to the Commission's rules.

26. Eligible Licensees choosing Amnesty will not receive modified licenses, as they will no longer hold valid licenses in the 218–219 MHz service. Eligible Licensees that elect Amnesty for some licenses and Reamortization/Resumption for others, will receive modified licenses only for those licenses for which it has elected to resume installment payments. Ineligible Entities will not receive modified licenses, as they do not hold valid licenses in the 218–219 MHz service.

27. Because the Commission will automatically mail these modified licenses, licensees need only contact the Commission regarding the issuance of modified licenses if the address used to mail eligibility status and implementation information (or the licensee's address of record, in the case of licenses acquired through lottery) is incorrect.

XI. Radio Station Authorization (License) Renewals

28. No action with regard to license renewals is necessary at this time. Licensees do not have to file any license renewals with the Commission until the current ten (10) year licensing term, from grant date, has expired.

XII. Issuance of Loan Documents

29. Eligible Licensees electing Reamortization/Resumption are required to execute loan documents in

the form of an Installment Payment Acknowledgement. In general, the acknowledgement contains a restatement of the amount of the debt owed, the payment terms under the *218–219 MHz Order*, and references other Commission rules and regulations related to the payment of installment debt. Licensees may also be required to execute a Uniform Commercial Code financing statement (UCC–1). The requisite loan document(s) must be executed and returned to the Commission (or its agent) within ten business days of receipt. An Eligible Licensee's failure to fully and timely execute and deliver the requisite loan document(s) will result in the automatic cancellation of the license.

30. Eligible Licensees electing Reamortization/Resumption are required to resume payments at the end of the third month after the Election Date, subject to applicable late payment rules, in accordance with the *218–219 MHz Order* without regard to whether the requisite loan document(s) have been issued, executed, or returned.

XIII. Additional Information

A. Web Site

31. Documents related to this notice and its implementation may be found on the Federal Communications Commission web site located at http://www.fcc/gov/wtb/auctions/218rest/218rest.html.

B. FCC Reference Center

32. Documents related to this notice and its implementation may also be examined and copied during normal business hours in the FCC Reference Center, 445 12th Street, SW, Room CY–A257, Washington, DC 20554, telephone (202) 418–0270.

C. ITS

33. In addition, documents may be purchased from the Commission's copy contractor, ITS, Inc., 1231 20th Street, NW., Washington, DC 20036, telephone (202) 857–3800.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–13974 Filed 6–2–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–31–G (Auction No. 31); DA 00–1075]

Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for September 6, 2000; Comment Sought on Modifying the Simultaneous Multiple Round Auction Design To Allow Combinatorial (Package) Bidding

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on proposed procedures for modifying the simultaneous multiple round auction design to allow combinatorial ("package") bidding for Auction No. 31 should the Commission determine that package bidding may be feasible and appropriate for that auction.

DATES: Comments are due on or before June 9, 2000, and reply comments are due on or before June 16, 2000.

ADDRESSES: An original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW–A325, Washington, DC 20054, in accordance with § 1.51(c) of the Commission's rules. *See* 47 CFR 1.51(c). In addition, one copy of each pleading must be delivered to each of the following locations:

(1) The Commission's duplicating contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036;

(2) Office of Media Relations, Public Reference Center, 445 Twelfth Street, SW, Suite CY–A257, Washington, DC 20554;

(3) Rana Shuler, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 445 Twelfth Street, SW, Suite 4–A628, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter D. Strack, Bureau Chief Economist, Wireless Telecommunications Bureau, (202) 418–0600; Evan Kwerel, Senior Economist, Office of Plans and Policy, (202) 418–2030; Craig Bomberger, Auctions Analyst; Howard Davenport, Auctions Attorney; or Joel Rabinovitz, Auctions Attorney, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released May 18, 2000. The complete text of the public notice, including Attachment A, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov*.

I. Introduction

1. In adopting the service rules for the 747–762 and 777–792 MHz bands, the Commission determined that combinatorial bidding procedures could have significant benefits for the auction of the licenses in these bands, but declined to employ this type of auction because the statutory deadline did not allow sufficient time to implement such a design. *See* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules (*700 MHz First Report & Order*) 65 FR 3139 (January 20, 2000). However, in light of (a) the announced delay of the auction until September 6, 2000; and (b) the continued progress in the design and testing of a combinatorial bidding system, as directed by Congress, the Wireless Telecommunications Bureau ("the Bureau") now believes that sufficient time may exist to implement an auction design that allows for bids on combinations, or "packages," of licenses. *See* Auction of Licenses for the 747–762 and 777–792 MHz Bands Postponed Until September 6, 2000 (*Auction Public Notice*) 65 FR 30598 (May 12, 2000). Therefore, if the Commission, in conjunction with other reconsideration issues now before it, determines that modifying the simultaneous multiple round auction design to allow combinatorial ("package") bidding is feasible and appropriate for Auction No. 31, then the Bureau wants to be prepared to have a system and procedures in place to conduct package bidding. In this public notice, we seek comment on such procedures consistent with our authority under Part 1 of the Commission's rules. Depending on the Commission's actions and the comments we receive in response to this notice, we will, by a later public notice, either establish procedures as discussed here and use package bidding for Auction No. 31, or use the procedures that we already announced. *See* Auction of Licenses in the 747–762 and 777–792 MHz Bands, Auction Notice and Filing Requirements for 12 Licenses in the 700 MHz Bands (*Auction No. 31 Procedures Public Notice*) 65 FR 12251 (March 8, 2000).

2. With package bidding, bidders would not be restricted to placing bids on individual licenses, but would also be allowed to place all-or-nothing bids on packages of licenses. This approach would allow bidders to better express the value of any synergies (benefits from combining complementary items) that may exist among licenses, and to avoid *exposure problems*—the risks bidders face in trying to acquire efficient packages of licenses. For example, with package bidding a bidder desiring an aggregation of all six 20 MHz licenses in order to inaugurate a nationwide service could bid on the six licenses as a package and not face the risk of winning only some of the desired licenses and paying more than the bidder values those licenses by themselves (without the other licenses needed to provide nationwide coverage).

3. Allowing package bidding does, however, potentially introduce what is termed the *threshold problem*—the difficulty that multiple bidders desiring only the single licenses (or smaller packages) that constitute a package may have in outbidding a single bidder that is bidding for the entire package, even though the multiple bidders may value the sum of the parts more than the single bidder values the whole. Bidders for parts of a larger package each have an incentive to hold back in the hope that a bidder for another piece of the larger package will increase its bid sufficiently for the bids on the pieces collectively to beat the bid on the larger package. The procedures we propose to implement package bidding are designed to facilitate the emergence of bids that will overcome this problem.

4. In general, package bidding should be an improvement over our usual auction design when (a) there are strong complementarities among licenses for some bidders, and (b) the pattern of those complementarities is different for different bidders. Moreover, if some licenses are complements for some bidders and substitutes for other bidders, it might not be possible to achieve the most efficient assignments pricing each license individually, as under our usual simultaneous multiple round auction design. The comments we previously received suggest this is the case for Auction No. 31, where some potential bidders have expressed the importance of acquiring a nationwide footprint, and others the importance of acquiring all 30 MHz in a region. Therefore, it is appropriate to consider package bidding for this auction.

5. We therefore propose to modify the simultaneous multiple round auction design that we previously adopted for Auction No. 31 to allow for package bidding. Most of our auction rules and procedures would remain the same or be changed only slightly. For example, the Commission rules forbidding collusion among bidders would remain in full force. The procedures regarding upfront payments, initial maximum eligibility, and bid activity would be modified to account for the ability of bidders to bid on both individual licenses and packages and some of the other intricacies of package bidding design. We propose for Auction No. 31 that we would use a two-round stopping rule with no proactive activity rule waivers allowed, instead of the one-round stopping rule with proactive waivers that we previously adopted. We also seek comment on changes to the rules regarding default payments so that the default payment owed after default on a package would be calculated based on the difference between the defaulted bid on the package and the subsequent bid(s) on the package or the licenses that make up the package. *See* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules (*New Rules NPRM*) 64 FR 36686 (July 7, 1999). Finally, we seek comment on some additional auction design issues, including a proposal that we permit bidders to use certain contingent bids known as "or" bids—for example, a bid of "$10 for license A or $20 for license B."

II. Auction Design and Procedures

A. Simultaneous Multiple Round With Package Bidding

6. The simultaneous multiple round with package bidding auction design would be a modification of the simultaneous multiple round auction design that we previously established for Auction No. 31, and would be used instead of the simultaneous multiple round auction design. Bidders would still be able to submit bids on individual licenses, as in our existing simultaneous multiple round auction design, but could also submit all-or-nothing bids on packages of licenses.

Specifically, bidders could place bids on nine packages:

- One *global package*, of all licenses in the auction (*i.e.*, 30 MHz nationwide),
- Two *national packages*, of either all six 10 MHz licenses or all six 20 MHz licenses, and
- Six *regional packages*, of both the 10 MHz license and the 20 MHz license in a region.

We seek comment on this proposal. Furthermore, examples of these packages are illustrated in the following table. The global package consists of all twelve cells in the table. The two national packages are the two rows in the table. For example, the 10 MHz national package consists of all six 10 MHz licenses, as shown by the cells shaded with horizontal lines. The six regional packages are the six columns of the table. For example, the regional package for region two is shown by the cells shaded with vertical lines.

Regions

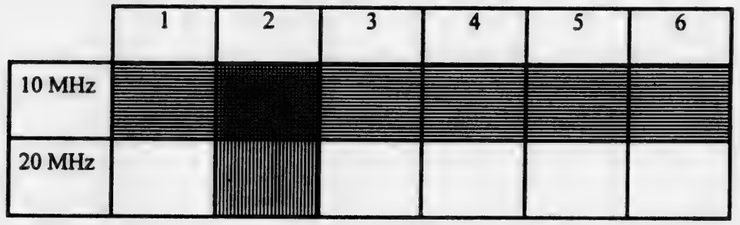

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In addition, we seek comment on whether the Commission should allow all possible packages composed of the twelve individual licenses? Should only certain additional packages be allowed, and if so, which ones?

B. Winning and Retained Bids

7. Some additional definitions are required to discuss package bidding. *Winning bids* in a package bidding auction are the set of bids on individual licenses and packages that maximizes revenue when the auction closes, assigning each license to only one party (a bidder or, in the case of unsold licenses, the FCC). *Provisional winning bids* are the set of bids that maximize revenue in a particular round (they would win if the auction were to close in that round), assigning each license to only one party (a bidder or the FCC).

8. *Retained bids* are bids kept in the system from one round to the next. They are used in calculating bidders' bidding activity for purposes of the activity rule (discussed further in "II.D. Activity Rules and Eligibility"). Retained bids include the provisional winning bids, plus bids that have the potential to become provisional winning bids because of changes in other bids in subsequent rounds. Assuming that bids in the auction may only rise, bids that could never be winning bids are not retained.

Specifically, we propose to "retain":

- A global package bid, if it is the provisional winner;
- A national package bid, if it would be part of the provisional winning set determined by limiting consideration to national packages and individual license bids, but excluding global and regional packages;
- A regional package bid, if it would be part of the provisional winning set, considering regional packages and individual license bids, but excluding global and national packages;
- An individual license bid, if it is the high bid for that license.

In other words, in a given round we would retain a bid (for the next round) if it is greater than the best combination of bids (new bids and bids retained from the previous round) that exactly cover the licenses in that bid.

9. For the purposes of determining retained bids, licenses on which no bids have been submitted would be treated as if the minimum opening bid had been submitted. The Commission will resolve tie bids on the basis of the order in which the Commission receives bids. Bidding credits would be treated the same as in a simultaneous multiple round auction, where the gross high bids on licenses determine the winning bids. Thus, retained bids and winning bids would be determined based on gross bids. We seek comment on this proposal.

C. Upfront Payments and Initial Maximum Eligibility

10. As we have stated, the Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. *See* Amendment of Part 1 of the Commission's Rules (*Part 1 Order, MO&O and NPRM*) 62 FR 13540 (March 21, 1997). Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. *See* Implementation of Section 309(j) of the Communications Act (*Competitive Bidding Second R&O*) 59 FR 22980 (May 4, 1994).

11. We propose no change in the upfront payments from those previously established for the individual licenses. For a package, we propose that we would calculate the bidding units and associated upfront payment by adding together the bidding units and associated upfront payments of the individual licenses that make up the package. We list the bidding units and upfront payments for all licenses in Attachment A. We seek comment on this proposal.

12. We also propose no change in our procedure for determining initial maximum eligibility from the procedure already established for Auction No. 31. Thus, the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses or packages, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. The maximum eligibility will determine the licenses and packages on which a bidder may bid in each round of the auction. Thus, in calculating its upfront payment amount, an applicant must determine its *maximum* desired activity (*see* "II.E. Activity Rules and Eligibility") in any single round, and submit an upfront payment covering that number of bidding units.

13. Bidders might desire sufficient eligibility in order to afford themselves the flexibility to be active simultaneously on various packages and subsets thereof. If a bidder submitted an upfront payment for the total number of bidding units associated with all 12 licenses, the bidder would not, for example, have enough eligibility to be active simultaneously on a global package and other licenses. The bidder might want to do this, for example, if it held a retained bid on some individual licenses and then decided to bid for the global package. If, however, as proposed in "II. E. Activity Rules and Eligibility," we modify the activity rule to account for mutually exclusive bids, bidders would never need to purchase more eligibility than the total bidding units associated with all licenses.

D. Minimum Accepted Bids and Bid Increments

14. We propose that for a bid to be accepted in any round it must be x% greater than the minimum amount to have become a retained bid in the previous round, where the Bureau will specify the value of x. In the case of an individual license bid the minimum accepted bid is analogous to that in a simultaneous multiple round auction. It must be x% greater than the highest bid for that license in previous rounds. We propose to set the minimum increment for a license or package initially at five percent. The Commission retains discretion to vary the minimum bid increments in each round of the auction by announcement prior to each round.

15. To simplify our procedures, we propose to treat minimum opening bids as retained bids after the first round of the auction. Thus, for example, after the first round a bid on an individual license with no initial bids would be required to exceed the minimum opening bid by x percent.

16. We also seek comment on other methods for calculating the minimum accepted bid. One possibility is to determine the bid increment as the maximum of (a) the increment as calculated above and (b) an increment based on the total revenue (the provisional winning bids) in the previous round. The total minimum bid increment would be allocated among individual licenses in proportion to their bidding units. That is, the *per bidding unit increment* would be determined as a percentage of the provisional winning total revenue times the share of total bidding units associated with the licenses contained in the bid.

17. For example, suppose the provisional winning total revenue in the previous round is $1,000 and percentage increment is 5%, so the total increment to be allocated among individual licenses is $50. A 20 MHz EAG license has 28 million bidding units, which is one-ninth of the total bidding units. Thus, under this approach the increment on such a license would be $5.56, or the amount calculated in the previous paragraph, whichever is greater. One potential benefit of this approach is to help overcome the *threshold problem*—the difficulty smaller bidders face coordinating increases in bids on individual licenses or small packages to beat bids for larger packages of licenses—by moving up the prices more quickly for apparently undervalued properties.

18. Another possibility is to determine the minimum accepted bid by allocating the total amount needed to beat the provisional winners. Under this approach, each license is assigned a price so that the sum of the prices adds up to the provisional winning total revenue. Package prices are equal to the sum of the prices of the individual licenses in the package. The minimum acceptable bid would be a fixed percentage greater than the assigned price of the license or package.

19. As has become standard in our auctions, we also propose that we would use "click box" bidding. Specifically, for Auction No. 31 we would allow package bids to increase by one increment in each round, while bids on individual licenses could increase by one to nine increments. This limitation is designed to prevent bids on packages from rising too quickly for bidders on individual licenses to overcome the threshold problem. We seek comment on this proposal. Should we allow package bids to increase by greater than one increment in each round?

E. Activity Rules and Eligibility

20. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end of the auction to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or use an activity rule waiver

21. In the context of package bidding, a bid would be considered "active" if it is either a retained bid from the previous round or is an accepted bid in the current round. Absent overlapping bids and "or" bids, a bidder's "activity" is the sum of the bidding units associated with the licenses on which the bidder is active. To account for the possibility of overlapping bids and "or" bids, which can not simultaneously be part of the winning set, we propose to measure a bidder's activity in a round as the *maximum* number of bidding units associated with bids that could simultaneously be in a provisional winning set. In other words, a bidder's activity in a round is the number of bidding units associated with the set of the bidder's retained bids from the previous round and the bidder's acceptable bids in the current round that maximizes the number bidding units without provisionally assigning the bidder any bids that cannot simultaneously be part of a provisional winning set. We seek comment on this proposal.

22. As we have already established for Auction No. 31 using the simultaneous multiple round auction design, we propose that no bidder's total activity in a given round may exceed its current eligibility. Initial eligibility is determined by upfront payments, as discussed in "II. C. Upfront Payments and Initial Maximum Eligibility." In the context of package bidding for Auction No. 31, we propose that in each round of the auction a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 50 percent of its current eligibility. For a bidder that failed to meet the activity requirement in a given round, we would reduce the bidder's eligibility for the next round to two times its activity in the current round. Thus, a bidder's eligibility in the current round is either twice its activity in the previous round or its eligibility in the previous round, whichever would be less:

Eligibility(t)=Min (Eligibility(t−1), 2*Activity(t−1))

We seek comment on this proposal and on variations. For example, should we instead adopt multiple stages with increasing activity requirements as we established for Auction No. 31 using a simultaneous multiple round auction design? We also seek comment on whether, for greater transparency and computational simplicity, the Bureau should limit the total number of bids made by any bidder, and, if so, what limits should be established.

F. Activity Rule Waivers and Reducing Eligibility

23. We propose to retain the procedures regarding activity rule waivers and reducing eligibility that we previously established for Auction No. 31 with one exception. As described, we propose not to allow bidders to submit proactive waivers.

24. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license or package. Activity rule waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

25. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (a) There are no activity rule waivers available; or (b) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. An automatic waiver invoked in a round in which there are no new acceptable bids will not keep the auction open.

26. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

27. We previously concluded that for Auction No. 31 using a simultaneous multiple round design, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. As described in "H. Stopping Rule", however, we are proposing to use a two-round simultaneous stopping rule for Auction No. 31 should we use package bidding. This means that all licenses remain open until the second consecutive round in which no new acceptable bids are received. After the second consecutive such round, bidding closes simultaneously on all licenses. With this stopping rule the auction could not close by surprise. Thus, we believe that bidders no longer need proactive activity rule waivers in order for the auction to reach an economically efficient outcome. Moreover, there is some concern that allowing proactive waivers when there is a two-round stopping rule might, in some circumstances, introduce opportunities for strategic behavior that may reduce the efficiency of the auction. Accordingly, we now propose not to allow bidders to submit proactive waivers in the context of package

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bidding for Auction No. 31. We seek comment on this proposal.

28. We further propose that each bidder in Auction No. 31 be provided with five activity rule waivers (the same number we previously adopted) that may be used at the bidder's discretion during the course of the auction as set forth. We seek comment on this proposal.

G. Bid Removal and Bid Withdrawal

29. Should we implement package bidding for Auction No. 31, we propose to retain the bid removal procedures that we previously established. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. This is not the same as withdrawing a high bid, which, in our simultaneous multiple round auction system, can occur in rounds subsequent to the round in which the high bid was placed. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Once a round closes, a bidder may no longer remove a bid.

30. We propose to modify the bid withdrawal rules to not allow bidders to withdraw provisional winning bids from previous rounds if we use package bidding for Auction No. 31. Additionally, the previously announced special 30 MHz nationwide bid withdrawal procedure would no longer apply. Thus, bidders will be obligated for all bids they submit. If a bid is declared the winner and the bidder does not pay the amount due, it is liable for a default payment as set forth in the Commission's Rules. With the implementation of package bidding, bidders should not face exposure risks as they might in a simultaneous multiple round auction design. Bid withdrawal was designed to allow bidders to back out of failed aggregations—to avoid winning some licenses that are worth little to them without the others they need to implement their business plan. Therefore, to the extent that bids are allowed on all packages of licenses with significant complementarities, the use of withdrawals to mitigate such risk is no longer necessary. While there is no offsetting benefit, there is still the potential harm from allowing withdrawals. Withdrawals may be used strategically to provide incorrect price signals during the auction and lead other bidders to place inefficient bids. Also, when withdrawals are permitted, one can not ensure that the auction will proceed at an acceptable pace. Moreover, the harm associated with withdrawals is likely to be more severe in auctions with package bidding since a single withdrawal can affect the entire provisional winning set. We seek comment on this proposal.

H. Stopping Rule

31. Under a package bidding design, we propose to modify the stopping rule we previously adopted for Auction No. 31. Instead of a one-round simultaneous stopping rule with the use of proactive waivers, we now propose to employ a two-round simultaneous stopping rule approach. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." A two-round simultaneous stopping rule means that all licenses remain open until two consecutive rounds have occurred in which no new acceptable bids are received. After the second consecutive such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license. We seek comment on this proposal.

32. The Bureau also seeks comment on a modified version of the two-round simultaneous stopping rule for use if we implement package bidding. The modified two-round simultaneous stopping rule would close the auction for all licenses after the second consecutive round in which no bidder submits a new acceptable bid on any license on which it is not the provisional winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisional winning bidder would not keep the auction open under this modified rule.

33. As before, we propose that the Bureau retain the discretion to keep an auction open even if no new acceptable bids are submitted. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver. We also propose that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We seek comment on these proposals.

I. Reserve Price or Minimum Opening Bid

34. We propose no change in the minimum opening bids from those we previously adopted for the individual licenses. For a package, we propose to calculate the minimum opening bid by adding together the minimum opening bids of the individual licenses that make up the package. We list the proposed minimum opening bids for all licenses in Attachment A. We seek comment on this proposal.

35. The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. *See* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures (*Part 1 Third Report and Order*) 63 FR 770 (January 7, 1998).

36. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

37. In light of the Balanced Budget Act, the Bureau decided to establish minimum opening bids for Auction No. 31. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool. *See* Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices (*800 MHz Public Notice*) 62 FR 55251 (October 23, 1997). A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility.

J. Round Structure

38. We propose no changes to the round structure and procedures from those we have already adopted for Auction No. 31. The Commission would use an automated auction system to conduct the package bidding auction format for Auction No. 31. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The package bidding format will consist of sequential bidding rounds, each followed by the release of round results. Multiple bidding rounds may be conducted in a single day. Details regarding the location and format of round results will be included in the same public notice.

39. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

K. Information Relating to Auction Delay, Suspension or Cancellation

40. We propose no change to the procedures regarding auction delay, suspension, or cancellation from those we have already adopted for Auction No. 31. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: Resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

L. Default

41. Under the Commission's Rules, if a bidder defaults, we may auction a new license for the spectrum. The defaulting bidder is also liable for a payment. Applying these rules to this auction, if a bidder defaults on a package bid, we would auction all of the licenses making up the package on which the party has defaulted. We would do this even if, under the combinatorial auction rules, a different set of packages would have won had the defaulting bidder not bid. For example, if the winning set of bids contains a 20 MHz nationwide package and a 10 MHz nationwide package, and the 20 MHz winner then defaults, we would auction only the six licenses making up the nationwide 20 MHz package. The 10 MHz package would be unaffected. We would take this approach even if, had the 20 MHz winner not submitted its winning bid, the winning set of licenses would not have been a nationwide 20 MHz package and a nationwide 10 MHz package but rather the six 30 MHz regional packages. We seek comment on this proposal.

42. To calculate the payment due upon default under package bidding, we seek comment on modifications to the default rules as follows. For defaulted package bids, payments will be calculated on a bid-by-bid basis, rather than on a license-by-license basis. The base payment due will be equal to the difference between the amount bid for the package and the amount of the subsequent winning bid for the same package or the aggregate of the subsequent winning bids for the licenses that make up the package. As is true for individual licenses, if a bidder defaults on two or more packages, the default payment due for each defaulted package will be calculated separately and will not be offset against one another. In other words, if one package is subsequently auctioned for more than the original package bid amount and the other package subsequently is auctioned for less, the excess bid price from the first package can not be used to reduce the amount owed on the second package. The additional payment will remain equal to three percent of the subsequent winning bid(s) or the defaulting bidder's bid, whichever is less. We seek comment on this proposed change to the Commission's rules.

Two examples will illustrate how this rule would work.

Example 1: A bidder wins the 10 MHz nationwide package with a bid of $500 million and defaults. The Commission offers the six licenses that make up the 10 MHz package at a new auction, where they are won with bids of $70 million, $70 million, $80 million, $80 million, $90 million and $90 million. The total amount received in the second auction is $480 million. The defaulting bidder is responsible for a total of $34.4 million consisting of $20 million (the difference between its original bid and the total of the subsequent winning bids) plus $14.4 million (3% of the subsequent winning bids).

Example 2: A bidder wins two regional packages with bids of $250 million each and defaults. The Commission offers the four licenses that make up the two regional packages at a new auction, where they are again won as packages at bids of $200 million and $300 million, respectively. The defaulting bidder is responsible for separate default payments for each package. For the first package, the payment equals a total of $56 million consisting of $50 million (the original $250 million bid less the subsequent winning bid of $200 million) plus $6 million (3% of the subsequent winning bid). For the second package, the subsequent winning bid is higher than the defaulting bidder's original bid and therefore there is no shortfall; the default payment equals only $7.5 million (3% of the original bid). In total, the defaulting bidder owes a payment equal to $63.5 million ($56 million for the first package plus $7.5 million for the second package).

III. Additional Auction Design Considerations

A. "Or" Bids

43. We propose the use of "or" bids that would allow bidders to specify that they wish to win one bid or the other, but not both, if we implement package bidding. Such bids could provide a bidder greater flexibility to aggressively bid on licenses that it considers substitutes. For example, suppose a bidder wants a license for one region and only one region. Without "or" bids a bidder with a retained but non-provisional winning bid on a license might be reluctant to start bidding on another license that it considers a good substitute because it could end up winning both. Allowing "or" bids would overcome this problem.

44. For computational simplicity and transparency, we propose (a) to allow only pairs of bids to be linked by the "or" function or operator and (b) not to allow links between national and regional packages. For example, we would allow bidders to use the "or" function between the 10 MHz nationwide package and the 20 MHz nationwide package, but not between the 10 MHz nationwide package and a 30 MHz region. We would also allow bidders to use the "or" function to link to their retained bids as long as the retained bids are not part of the provisional winning set.

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45. In order to implement "or" bids, we would need to modify the method by which we determine retained bids. Rather than using the method described in "II.B. Definitions: Winning and Retained Bids," we would determine retained bids as follows:

- Retain a global package bid if it is the provisional winner. Do not retain attached "or" bids.
- Retain a national package bid if it would be part of the provisional winning set including national packages and individual license bids, but excluding global and regional packages. Do not retain attached "or" bids.
- Retain a regional package bid if it would be part of the provisional winning set including regional packages and individual license bids, but excluding global and national packages. Do not retain attached "or" bids.
- Retain individual license bids if it would be part of the provisional winning set including individual license bids, but excluding global, national and regional package bids. Do not retain attached "or" bids.

We seek comment on this proposal, including whether the number of "or" bids per bidder be limited.

B. Bid Cancellation

46. Another method that could overcome the reluctance of bidders that have retained but non-provisional winning bids from bidding on other licenses that they consider substitutes is to allow bidders to *cancel* their bids. If we adopted such a procedure, bidders would be permitted to cancel only non-provisional winning retained bids; provisional winning bids could not be cancelled. Allowing non-provisional winning retained bid cancellation could avoid the possible complexity of "or" bids and provide bidders more flexibility to pursue backup strategies—and to explore ways to beat package bids. However, it also could facilitate adverse strategic bidding, similar to that associated with allowing withdrawal of provisional winning bids. Allowing cancellation of retained but non-provisional winning bids could also make it *more* difficult for bidders for single licenses or smaller packages to beat package bids. Moreover, if bidders were permitted to freely cancel non-provisional winning retained bids, the total of retained bids would not necessarily always increase during the auction and we might be unable to ensure an acceptable pace of the auction. We therefore tentatively conclude not to permit bidders to cancel bids. We seek comment, however, on this.

47. If we permitted cancellation of non-provisional winning bids, we would also likely adopt the option of retaining all bids. The possibility that bids may be cancelled means that many, or all, bids are potentially part of a winning set of bids, and thus it may be appropriate to retain all bids. Rather than the auction system canceling non-provisional winning bids automatically, bidders would be required to cancel those bids. If we were to adopt this approach, it would also be necessary to modify the activity rules and the procedures for calculating minimum acceptable bids. The currently proposed activity rule could provide inadequate incentives to move the auction along if the same activity credit were given to all bids regardless of their likelihood of winning. We seek comment on this proposal.

C. Bid Composition Restriction

48. We seek comment on bid composition restrictions. For example, the Milgrom-McAfee bid composition restriction would not allow a bidder that is active in a round on a package, but not on a subset of that package, to bid subsequently for the subset. Such a restriction could help mitigate the *threshold problem*. It would tend to deter bidders that are interested in multiple license but do not have strong synergies from strategically making package bids to create a threshold problem for bidders interested in subsets of the package. Such a rule would, however, somewhat limit bidders' flexibility. We seek comment on this device and similar restrictions.

IV. Conclusion

49. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200(a), 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–13993 Filed 6–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 19, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. John L. Franklin, Sidney, Montana; to acquire voting shares of 1st United Bancorporation, Inc., Sidney, Montana, and thereby indirectly acquire voting shares of 1st Bank, Sidney, Montana.

Board of Governors of the Federal Reserve System, May 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13899 Filed 6–2–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Mahaska Investment Company ESOP, Oskaloosa, Iowa; to acquire an additional 2.29 percent, for a total of 13.87 percent in aggregate, of the voting shares of Mahaska Investment Company, Oskaloosa, Iowa, and thereby indirectly acquire additional voting shares of Mahaska State Bank, Oskaloosa, Iowa; Pella State Bank, Pella, Iowa; Central Valley Bank, Ottumwa, Iowa; and Midwest Federal Savings & Loan of Eastern Iowa, Burlington, Iowa.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. F & M Financial Services, Inc., Preston, Minnesota; to acquire 100 percent of the voting shares of F & M Community Bank, N. A., Chatfield, Minnesota, a de novo bank.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. JTB Bancshares, Inc., Mission Hills, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Whiting Bankshares, Inc., Whiting, Kansas, and thereby indirectly acquire The State Bank of Whiting, Whiting, Kansas.

Board of Governors of the Federal Reserve System, May 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13900 Filed 6–2–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Community Bancshares, Inc., Bargersville, Indiana; to acquire Blue River Federal Savings Bank, Edinburgh, Indiana, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments on this application must be received not later than June 29, 2000.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Admiral Family Banks, Inc., Alsip, Illinois; to engage *de novo* in leasing activities, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, May 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13898 Filed 6–2–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 981 0108]

Service Corporation International; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 19, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Harold Kirtz or Andrea Foster, Federal Trade Commission, Southeast Region, Suite 5M35, Midrise Bldg., 60 Forsyth St., S.W., Atlanta, GA 30303. (404) 656–1357.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34) notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 18, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW,

Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 6000 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement for public comment from Service Corporation International ("SCI") designed to remedy the anticompetitive effects arising from SCI's 1994 acquisition of the LaGrone Funeral Home ("LaGrone") in Roswell, New Mexico. SCI, headquartered in Houston, Texas, is the nation's largest chain of funeral homes and cemeteries. LaGrone, at the time of the acquisition, operated two funeral homes in New Mexico.

At the time of the acquisition, there were only two funeral homes operating in Roswell, New Mexico. SCI owned the Ballard Funeral Home. LaGrone owned the remaining funeral home. The acquisition gave SCI a monopoly in the provision of funeral services in Roswell. Funeral services include transporting the deceased from the place of death to the funeral home, embalming and otherwise preparing the body for burial, providing a casket, holding a viewing or other ceremony, and transporting the body to the cemetery or crematorium. Since the acquisition, no new entry into the provision of funeral services in Roswell has occurred. After the acquisition, prices for funeral services increased in Roswell.

On September 28, 1999, prompted by the Commission's investigation of the LaGrone acquisition, SCI sold the Ballard Funeral Home to Sentry Group Services, Inc. ("Sentry"). Sentry, a privately-held company, owns and operates 37 funeral homes in Oklahoma, Texas, New Mexico, Kansas, and Colorado. Provident Services, Inc. ("Provident"), SCI's financial subsidiary, provided financing for Sentry's acquisition.[1]

To ensure that competition is fully restored in Roswell, the Commission's proposed Consent Order requires that, if SCI acquires the Ballard Funeral Home pursuant to a default on Sentry's loan with Provident, SCI must divest Ballard to a Commission-approved buyer within 90 days. In the event SCI does not accomplish the divestiture within 90 days, the proposed Consent Order provides that the Commission may appoint a trustee to divest Ballard. Moreover, the proposed Consent Order prohibits Provident from sharing information obtained from Sentry with SCI.

The proposed Consent Order also provides that, for a period of ten years, SCI must give prior notice to the Commission of any proposed acquisition of a funeral home serving Chaves County, New Mexico, where Roswell is located.

The proposed Consent Order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. The purpose of this analysis is to invite and facilitate public comment concerning the proposed Consent Order in order to aid the Commission in its determination of whether to make the proposed Consent Order final. It is not intended to constitute an official interpretation of the proposed Consent Order, nor is it intended to modify the terms in any way. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed Consent Order final.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–13963 Filed 6–2–00; 8:45 am]

BILLING CODE 6750–01–U

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, June 19, 2000, from 8:30 a.m. to 5:00 p.m., and Tuesday, June 20, 2000, from 8:30 a.m. to 11:00 a.m., in room 7C13 of the General Accounting Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. Any interested person may attend the meeting as an observer. Council discussions and reviews are open to the public.

For further information contact: Marcia Buchanan, Assistant Director, Government Auditing Standards, AIMD, 202–512–9321.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 00–13897 Filed 6–2–00; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 00119]

Core State Injury Surveillance and Program Development Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Core State Injury Surveillance Program Development and Traumatic Brain Injury Surveillance Program Development, focused in three phases: Phase I-Basic Core Injury Program Development; Phase II-Enhanced Core Injury Program Development; and Phase III-Advanced Core Injury Program Development: Surveillance. This Program addresses the health promotion and disease prevention objectives of "Healthy People 2010." The announcement is related to the focus area of Injury and Violence Prevention. For the conference copy of "Healthy People 2010," visit the Internet site: http://www.health.gov/healthypeople.

The purposes of the cooperative agreements are to develop, implement and evaluate injury core and/or surveillance programs in one of the specified injury-related priority areas.

B. Eligible Applicants

Assistance will be provided only to the official public health departments of States or their bonafide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau and federally recognized Indian tribal governments. States may apply for Phases I or II, Phases II and III, or Phase III only. States should submit a separate application for each Phase applied for. States previously funded under Announcement number 780 "State and Injury Intervention Surveillance Program", Part II, Basic Injury Program Development (Georgia, Kansas, Mississippi, and Oregon), are eligible to apply under Phases II and III; States previously funded under Announcement number 99136, "State-Based Core Injury Program Development" (Arkansas, Vermont and Nevada), are eligible to apply under Phase III.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement) contract, loan, or any other form.

C. Availability of Funds

Approximately $1,900,000 is available in FY 2000 to fund approximately 24 awards.

Phase I: Basic Core Injury Program Development.

Approximately $750,000 is available to fund 4–10 States for Core Injury Program Development. The average award amount will be $75,000.

Phase II: Enhanced Core Injury Program Development.

Approximately $750,000 is available to fund up to 16 States for Core Injury Program Development. The average award amount will be $75,000.

Phase III: Advanced Injury Surveillance Program Development: Surveillance.

Approximately $400,000 is available to fund up to 4 States for Injury Surveillance Program Development. The average award amount will be $100,000.

It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 4 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress, as evidenced by required reports, and on the availability of funds.

Pre-Application Workshop for New and Competing Applicants:

In addition, for interested applicants, a telephone conference call for pre-application technical assistance will be held on Friday, June 9, 2000, from 1 pm to 2 pm, Eastern Standard Time. The conference name is NCIPC Core Injury, the bridge number for the conference call is 1–800–311–3437, and the pass code is 957144. If you have a problem during your conference, you may press *0 at anytime to signal the attendant. If you have questions, about the technical operations of the teleconference equipment please call 404–639–7550.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1(Recipient Activities)and CDC will be responsible for the activities listed under 2(CDC Activities).

1. Recipient Activities

Phase I: Basic Core Injury Program Development

a. Establish an injury focal point and coordinating process within the public health agency;

b. Establish an injury advisory council to address issues relevant to injury prevention and control in the State;

c. Conduct data review and analysis to determine the availability of data about injury problems and the potential for solutions in the State and region in comparison to the nation and develop an annotated report containing this information;

d. Identify and catalog current and potential injury prevention and control resources within the State; and

e. Develop a State injury plan which is based on data and which is prioritized for the prevention and control of injuries and serves as a resource for other State agencies.

Phase II: Enhanced Core Injury Program Development

In addition to the activities indicated for Phase I, above, applicant will also:

a. Analyze existing data to define the magnitude of the injury problem in the State, the populations at risk, and the causes of injury;

b. Use the 11 recommended core data sets to produce and disseminate written reports on injuries within the State and conduct national comparisons (To obtain a copy of Consensus recommendations, see Where to Obtain Additional Information, Section J);

c. Evaluate data to determine whether data sources can be linked and whether there is any benefit for prevention from linking them;

d. Develop or update a State injury plan which is based on data and which is prioritized for the prevention and control of injuries and serve as a resource for other State agencies;

e. Develop, update, or expand an injury advisory council to provide input on issues relevant to injury prevention and control in the State; and

f. Provide coordination for injury activities of the public health agency.

g. Participate in a process for establishing and reviewing some components (e.g., data collection and analysis; coordination and collaboration; and technical support and training) of the 5 minimum components used to define a Core Injury Program and share with other States, "lessons learned" about and through this process.

Phase III Advanced Core Injury Program Development: Surveillance

a. Develop and enhance capacity for accessing data sets included among the 11 core data sets recommended for injury surveillance;

b. Develop or enhance capacity to conduct injury surveillance for conditions included among the 14 core injuries and injury risk factors recommended for surveillance to include but not be limited to Traumatic Brain Injury (TBI) data; and

c. Analyze and interpret TBI and other surveillance data to support statewide TBI and other injury prevention and control activities, make comparisons with other States and produce and disseminate written reports using 3 or more of the recommended core data sets for injury control. (States funded under Announcement numbers 716 and 98022, while funded under these announcements, will be required to focus on a core factor other than TBI).

2. CDC Activities

a. Provide consultation on planning, implementation, evaluation, data analysis, and dissemination of results;

b. Provide coordination between and among the States, by assisting in the transfer of information and methods developed to other programs, and providing up-to-date information;

c. Provide technical assistance for the Behavioral Risk Factor Surveillance System (BRFSS) and other available specific injury surveillance modules when requested;

d. Operate a process of evaluation and improvement in which lessons learned are shared among other States implementing the same type of program; and

e. Coordinate compilation of "lessons learned" through this process and communicate them.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Subject to the limitations described under Eligible Applicants, Section B above, States may

[1] Provident is kept separate and distinct from the operating divisions of SCI. Because there are unique financing needs in the funeral industry, Provident provides loan services for many transactions, including the construction or acquisition of funeral homes by a number of SCI's competitors. Consequently, Provident's loan agreement includes a provision guaranteeing the confidentiality of information provided to Provident by a borrowing funeral home operator.

choose to apply for Phases I or II, Phases II and III, or Phase III. A separate application should be submitted for each Phase (I, II, and III) applied for. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 30 double-spaced pages for each Phase applied for, printed on one side, with one inch margins, no smaller than 12 point Courier Font. Number each page consecutively and provide a complete Table of Contents. The total number of pages should not exceed 100 pages including the appendix. No bound booklets, etc. should be attached.

Competing continuation applicants funded under Program Announcement 780, State and Injury Intervention Surveillance Program, Part II, Basic Injury Program Development, should provide a Progress Report which includes a detailed report on the attainment of objectives and achievements of the program over the preceding three-year period of CDC funding. The applicant should include the accomplishments made with CDC funding covering all areas related to that cooperative agreement. The section should not exceed 5 pages.

F. Submission and Deadline

Letter of Intent (LOI): Prospective applicants are asked to submit, by June 30, 2000, a letter of intent that includes the number and title of the announcement, a descriptive title of the proposed program, the name, address, and telephone number of the Principal Investigator and whether applying for Phase I, Phase II or Phase III funding.

Although a letter of intent is not required, is not binding, and is not used in the review of an application, the information that it contains is used to estimate the potential review workload and avoid conflict of interest in the review. The letter of intent is to be submitted to the Grants Management Specialist listed under the "Where to Obtain Additional Information" section of this announcement.

Application: Submit the original and 2 copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before August 8, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Need for Core Program Development (30 Points)

For Phase I Applicants:

The extent to which the applicant describes the need for Core Program funding and the minimal nature of their injury program.

The extent to which the applicant describes the level of agency resources directed toward injury activities, if applicable, and how this additional funding will contribute to efforts to initiate or improve existing or planned injury surveillance activities.

The extent to which the applicant defines the agency's commitment to coordinating injury prevention and control activities through a focal point.

For Phase II Applicants:

The extent to which the applicant describes an existing injury program which continually maintains capacity to conduct injury activities.

For competing continuation applicants—those currently funded under Program Announcement 780, State and Injury Intervention Surveillance Program, Part II, Basic Injury Program Development, the extent to which past activities are presented completely and demonstrate attainment of objectives.

For Phase III Applicants:

The extent to which the applicant presents information describing the nature of an existing injury surveillance program.

The extent to which the applicant presents data and information documenting the agency's capacity and current resources allocated for injury surveillance.

The extent to which the applicant provides evidence of an effective plan for enhancements to its injury surveillance system, which includes the ability to access or link data on some of the 14 core conditions including traumatic brain injury (TBI) in some of the 11 core data sets recommended for injury surveillance.

2. Goals and Objectives (10 Points)

For All Phases:

The extent to which the applicant includes goals which are relevant to the purpose of the proposal and feasible to accomplish during the project period, and the extent to which these are specific and measurable.

The extent to which the applicant has included objectives which are feasible to accomplish during the budget period, and which address all activities necessary to accomplish the purpose of the proposal.

The extent to which the objectives are specific, time-framed, measurable, and realistic.

3. Methods and Staffing (30 Points)

For All Phases:

The extent to which the applicant provides: (1) A detailed description of how staffing resources (including epidemiological resources) will be allocated and used to accomplish each objective and overall program goals, and which includes designation of a coordinator with responsibility for coordinating an injury prevention and control program; (2) indicates a reasonable and complete schedule for implementing and completing all activities; and (3) a description of the roles of each unit, organization, or agency, and evidence of coordination, supervision, and degree of commitment (*e.g.*, time, in-kind, financial) of staff, organizations, and agencies involved in injury surveillance activities and; (4) provides evidence of access or assignment of epidemiological expertise for performing routine data review and analysis activities and providing technical advice and consultation for other State agencies.

4. Evaluation (20 Points)

For All Phases:

The extent to which the proposed evaluation system is detailed, addresses goals and objectives of the program, and will document program process, effectiveness, and impact. The extent to which the applicant demonstrates potential data sources for evaluation purposes and methods to evaluate the data sources, and documents staff availability, expertise, experience, and capacity to perform the evaluation.

The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions and continuous program improvement is present.

5. Collaboration (10 Points)

For All Phases:

The extent to which relationships between the program and other organizations, agencies, and health department units that will relate to the program or conduct related activities are clear, complete and provide for complementary or supplementary interactions.

The extent to which advisory group membership and roles are clear and appropriate.

The extent to which relationships with local academic institutions are completely described and appropriate.

The extent to which surveillance, if any, of core injury conditions will be developed and coordinated to enable comparability of TBI and other injury data with other States and jurisdictions.

6. Budget and Justification (Not Scored)

For All Phases:

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus 2 copies of:

1. Semi-annual progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

For descriptions of the following Other Requirements, see Attachment I in the application package:

AR–7—Executive Order 12372 Review
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions
AR–13—Prohibition on Use of CDC Funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317k(2) [42 U.S.C. 241(a) and 247b(k)(2)] of the Public Health Service Act, as amended.

J. Where To Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet at: http://www.cdc.gov. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Joanne Wojcik, Grants Management Specialist, Announcement #00119, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone number (770) 488–2717, Email address jcw6@cdc.gov

For program technical assistance, contact: Cecil Threat, Jr., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop K02, Atlanta, GA 30341–3724, Telephone (770) 488–1236, Email address: ctt3@cdc.gov.

To obtain a copy of The Consensus Recommendations for Injury Surveillance in State Health Departments, September 1999, contact STIPDA at 2141 Kingston Ct., Ste. 110–B, Marietta, GA 30067, 770–690–9000. You can also view and print this document from the STIPDA webpage: www.stipda.org (From the STIPDA homepage, click-on the Publications link; scroll down and select the publication indicated above.)

Dated: May 30, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13938 Filed 6–2–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: National Academic Centers of Excellence on Youth Violence, PA# 00043

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: National Academic Centers of Excellence on Youth Violence, PA# 00043.

Times and Dates: 8 a.m.–8:45 a.m. July 10, 2000 (Open); 8:45 a.m.–5:30 p.m. July 10, 2000 (Closed); 8 a.m.–5:30 p.m. July 11, 2000 (Closed).

Place: Crowne Plaza Hotel, Atlanta Airport Virginia Avenue, Atlanta, Georgia 30344. Telephone 404/768–6660.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 00043.

CONTACT PERSON FOR MORE INFORMATION: Enrique Nieves, Jr., M.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Division of Violence Prevention, 2939 Flowers Road, Vanderbilt Building, Room 2012, m/s K60, Atlanta, GA 30341. Telephone 770/488–1281, email exn2@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 30, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13939 Filed 6–2–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Incidence of Needlestick and Sharps Injuries and Medical Safety Device Availability/Use Among Non-Hospital Health Care Workers, RFA–OH–00–004

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Incidence of Needlestick and Sharps Injuries and Medical Safety Device Availability/Use Among Non-Hospital Health Care Workers, RFA–OH–00–004.

Times and Date: 8 a.m.–8:30 a.m., July 25, 2000 (Open); 8:30 a.m.–4:30 p.m., July 25, 2000 (Closed).

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA–OH–00–004

Contact Person for More Information: Price Connor, Ph.D., National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., m/s D30 Atlanta, Georgia 30333. Telephone 404/639–2383, e-mail spc3@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 30, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 00–13940 Filed 6–2–00; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Effects of Mixed Dusts on Pulmonary Inflammation, Airway Reactivity and Susceptibility to Pulmonary Infection, RFA# OH–00–009

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Effects of Mixed Dusts on Pulmonary Inflammation, Airway Reactivity and Susceptibility to Pulmonary Infection, RFA# OH–00–009.

Times and Date: 8 a.m.–8:30 a.m., July 26, 2000 (Open); 8:30 a.m.–5 p.m., July 26, 2000 (Closed).

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314.

Status: Portions of the meeting wili be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA–OH–00–009.

Contact Person for More Information: Michael J. Galvin, Jr., Ph.D., Health Science Administrator, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, 1600 Clifton Road, NE., m/s D30 Atlanta, Georgia 30333. Telephone 404/639–3525, e-mail mtg3@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 30, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 00–13941 Filed 6–2–00; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1283]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for reporting and recordkeeping, general and specific requirements, and the availability of sample electronic products for manufacturers and distributors of electronic products.

DATES: Submit written comments on the collection of information by August 4, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products; 21 CFR Parts 1002, 1010, 1020, 1030, 1040, and 1050; FDA Forms 2579, 2767, 2877, and 3147 (OMB Control No. 0910–0025)—Extension

Under sections 532 through 542 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ii through ss), FDA has the responsibility to protect the public from unnecessary exposure from radiation from electronic products. The regulations issued under these authorities are listed in the Code of Federal Regulations, title 21, chapter I, subchapter J. Specifically, subchapter A regulations, 21 CFR 5.10(a)(3), 5.25(b), 5.35(a)(1), and 5.86 through 5.92, delegate administrative authorities to FDA.

Section 532 of the act directs the Secretary of the Department of Health and Human Services (the Secretary) to establish and carry out an electronic product radiation control program, including the development, issuance, and administration of performance standards to control the emission of electronic product radiation from electronic products. The program is designed to protect the public health and safety from electronic radiation, and the act authorizes the Secretary to procure (by negotiation or otherwise) electronic products for research and testing purposes and to sell or otherwise dispose of such products.

Section 534(g) of the act directs the Secretary to review and evaluate industry testing programs on a continuing basis; and section 535(e) and (f) of the act directs the Secretary to immediately notify manufacturers of, and ensure correction of, radiation defects or noncompliances with performance standards.

Section 537(b) of the act contains the authority to establish and maintain records (including testing records), make reports, and provide information to determine whether the manufacturer has acted in compliance.

Parts 1002 through 1010 (21 CFR parts 1002 through 1010) specify reports to be provided by manufacturers and distributors to FDA and records to be maintained in the event of an investigation of a safety concern or a product recall.

FDA conducts laboratory compliance testing of products covered by regulations for product standards in parts 1020, 1030, 1040, and 1050 (21 CFR parts 1020, 1030, 1040, and 1050). FDA details product-specific performance standards that specify information to be supplied with the product or require specific reports. The information collections are either specifically called for in the act or were developed to aid the agency in performing its obligations under the act. The data reported to FDA and the records maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. This information refers to the identification of, location of, operational characteristics of, quality assurance programs for, and problem identification and correction of electronic products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

FDA uses the following forms to aid respondents in the submission of information for this information collection: (1) Form FDA 2767, "Notice of Availability of Sample Electronic Product," (2) Form FDA 2877, "Declaration for Imported Electronic Products Subject to Radiation Control Standards," and (3) Form FDA 3147, "Application for a Variance From 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device."

The most likely respondents to this information collection will be electronic product and x-ray manufacturers, importers, and assemblers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents;	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1002.3		10	1	10	12	120
1002.10 and 1010.3		540	1.6	850	24	20,400
1002.11		1,000	1.5	1,500	0.5	750
1002.12		150	1	150	5	750
1002.13 (Annual)		900	1	900	26	23,400
1002.13 (Quarterly)		250	2.4	600	0.5	300
1002.20		40	1	40	2	80
1002.50(a) and 1002.51		10	1.5	15	1	15
	FDA 2877	600	32	19,200	0.2	3,840
1010.2		1	1	1	5	5
1010.4(b)		1	1	1	120	120
1010.5 and 1010.13		3	1	3	22	66
	FDA 2767	145	11.03	1,600	0.09	144
1020.20(c)(4)		1	1	1	1	1
1020.30(d), (d)(1), and (d)(2)	FDA 2579	2,345	8.96	21,000	0.30	6,300
1020.30(g)		200	1.33	265	35	9,275

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1020.30(h)(1) through (h)(4) and 1020.32(a)(1) and (g)		200	1.33	265	35	9,275
1020.32(g) and 1020.33(c), (d), (g)(4), (j)(1), and (j)(2)		9	1	9	40	360
1020.40(c)(9)(i) and (c)(9)(ii)		8	1	8	40	320
1030.10(c)(4)		41	1.61	66	20	1,320
1030.10(c)(5)(i) through (c)(5)(iv)		41	1.61	66	20	1,320
1030.10(c)(6)(iii) and (c)(6)(iv)		1	1	1	1	1
1040.10(a)(3)(i)		83	1	83	3	249
1040.10(h)(1)(i) through (h)(1)(vi)		805	1	805	8	6,440
1040.10(h)(2)(i) and (h)(2)(ii)		100	1	100	8	800
1040.11(a)(2)		190	1	190	10	1,900
1040.11(c)	FDA 3147	53	2.2	115	0.5	58
1040.20(d), (e)(1), and (e)(2)		110	1	110	10	1,100
1040.30(c)(1)		1	1	1	1	1
1040.30(c)(2)		7	1	7	1	7
1050.10(f)(1) through (f)(2)(iii)		10	1	10	56	560
Total						89,278

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
1002.30 and 1002.31(a)	1,150	1,655.5	1,903,825	198.7	228,505
1002.40 and 1002.41	2,950	49.2	145,140	2.4	7,080
1020.30(g)(2)	22	1	22	0.5	11
1040.10(a)(3)(ii)	83	1	83	1.0	83
Total					235,679

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates were derived by consultation with FDA and industry personnel and actual data collected from industry over the past 3 years. An evaluation of the type and scope of information requested was also used to derive some time estimates. For example, disclosure information primarily requires time only to update and maintain existing manuals. Initial development of manuals has been performed except for new firms entering the industry. When information is generally provided to users, assemblers, or dealers in the same manual, they have been grouped together in the "Estimated Annual Reporting Burden" table.

The following information collection requirements are not subject to review by OMB because they do not constitute a "collection of information" under the PRA: Sections 1002.31(c); 1003.10(a), (b), and (c); 1003.11(a)(3) and (b); 1003.20(a) through (h); 1003.21(a) through (d); 1003.22(a) and (b); 1003.30(a) and (b); 1003.31(a) and (b); 1004.2(a) through (i); 1004.3(a) through (i); 1004.4(a) through (h); and 1005.21(a) through (c). These requirements "apply to the collection of information during the conduct of general investigations or audits" (5 CFR 1320.4(b)). The following labeling requirements are also not subject to review under the PRA because they are a public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2)): Sections 1020.10(c)(4), 1030.10(c)(6), 1040.10(g), 1040.30(c)(1), and 1050.10(d)(1).

Dated: May 26, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–13892 Filed 6–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0529]

Agency Information Collection Activities; Announcement of OMB Approval; Changes to an Approved NDA or ANDA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Changes to an Approved NDA or ANDA" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 6, 2000 (65 FR 779), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0431. The approval expires on February 28, 2001. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 26, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–13891 Filed 6–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0725]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Interstate Shellfish Dealers Certificate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by July 5, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Interstate Shellfish Dealers Certificate—(OMB Control Number 0910–0021)—Extension

Under 42 U.S.C. 243, FDA is required to cooperate with and aid State and local authorities in the enforcement of their health regulations and is authorized to assist States in the prevention and suppression of communicable diseases. Under this authority, FDA participates with State regulatory agencies, some foreign nations, and the molluscan shellfish industry in the National Shellfish Sanitation Program (NSSP). The NSSP is a voluntary, cooperative program to promote the safety of molluscan shellfish by providing for the classification and patrol of shellfish growing waters and for the inspection and certification of shellfish processors. Each participating State and foreign nation monitors its molluscan shellfish processors and issues certificates for those that meet the State or foreign shellfish control authority's criteria. Each participating State and nation provides a certificate of its certified shellfish processors to FDA on Form FDA 3038, "Interstate Shellfish Dealer's Certificate." FDA uses this information to publish the "Interstate Certified Shellfish Shippers List," a monthly comprehensive listing of all molluscan shellfish processors certified under the cooperative program. If FDA did not collect the information necessary to compile this list, participating States would not be able to identify and keep out shellfish processed by uncertified processors in other States and foreign nations. Consequently, the NSSP would not be able to control the distribution of uncertified and possibly unsafe shellfish in interstate commerce, and its effectiveness would be nullified.

In the **Federal Register** of March 7, 2000 (65 FR 12013), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
FDA 3038	35	58	2,036	.10	204

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the number of certificates received in 1999.

Dated: May 26, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–13890 Filed 6–2–00; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2552–96]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Hospital and Health Care Complex Cost Report and supporting Regulations in 42 CFR 413.20 and 413.24; *Form No.:* HCFA–2552–96 (OMB 0938–0050); *Use:* Form HCFA–2552–96 is the form used by hospitals participating in the Medicare program. This form reports the health care costs used to determine the amount of services rendered to Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Businesses or other for-profit; Not-for-profit institutions; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours:* 4,629,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 25, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13981 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–03–P]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0294]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the Proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New; *Title of Information Collection:* Hospital Condition of Participation; Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data and Supporting Regulations at 42 CFR 482.45; *Form No.:* HCFA–R–0294 (OMB# 0938-NEW); *Use:* Hospitals must document that they have protocols for referral of organ, tissue, and eye donors and that they have contacted the organ procurement organization and (in some cases) the tissue bank and/or eye bank about every death or imminent death so that surveyors can verify that the hospital is in compliance with the Medicare/Medicaid conditions of participation for hospitals; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,100; *Total Annual Responses:* 1,491,700; *Total Annual Hours:* 146,070.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 25, 2000.

John P. Burke III,

Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13982 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1728–94]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Home Health Agency Cost Report and Supporting Regulations in 42 CFR 413.20, 413.24, and 413.106; *Form No.:* HCFA–1728–94 (OMB 0938–0022); *Use:* Form HCFA–1728–94 is the form used by HHAs participating in the Medicare program. This form reports the health care costs used to determine the amount of reimbursable costs for services rendered to Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Businesses or other for-profit; Not-for-profit institutions institutions; *Number of Respondents:* 8,950; *Total Annual Responses:* 8,950; *Total Annual Hours:* 1,599,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 25, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13985 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–3070]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Intermediate Care Facility for the Mentally Retarded or Persons with Related Conditions ICF/MR Survey Report Form (3070G–I) and Supporting Regulations at 42 CFR 431.52, 431.151, 435.1009, 440.150, 440.220, 442.1, 442.10–442.16, 442 .30, 442.40, 442.42, 442.100–442.119, 483.400–483.480, 488.332, 488.400, and 498.3–498.5; *Form No.:* HCFA–3070 (0938–0062); *Use:* The survey forms are needed to ensure provider compliance. In order to participate in the Medicaid program as an ICF/MR, a providers must meet Federal standards. The survey report form is used to record providers' level of compliance with the individual standard and report it to the Federal government; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,763; *Total Annual Responses:* 6,763; *Total Annual Hours:* 21,600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 25, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13986 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0211]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or

other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Model Application Template for State Child Health Plan Under Title XXI of the Social Security Act, State Children's Health Insurance Program, and Model Application Template and Instructions; *Form No.:* HCFA–R–211 (OMB #0938–0707); *Use:* States are required to submit Title XXI plans and amendments for approval by the Secretary pursuant to section 2102 of the Social Security Act in order to receive funds for initiating and expanding health insurance coverage for uninsured children. The model application Template is used to assist States in submitting a State Child Health Plan and amendments to that plan; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 37; *Total Annual Responses:* 37; *Total Annual Hours:* 2,960.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13983 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1514]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program; *Form No.:* HCFA–1514 (OMB #0938–0380); *Use:* Section 1861 of the Social Security Act requires hospitals and critical access hospitals to be certified to participate in the Medicare/Medicaid program. These providers must complete the "Hospital Request for Certification in the Medicare/Medicaid Program" form in order to be certified or recertified; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,300; *Total Annual Responses:* 2,000; *Total Annual Hours:* 500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13984 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1137–N]

Medicare Program; Announcement of a Series of National and Regional Training Sessions To Provide Training to Medicare+Choice Organizations and Others Concerning Data Requirements, and the Timely and Accurate Submission of Physician and Hospital Outpatient Encounter Data To Support a Comprehensive Risk Adjustment Model.

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: This notice announces a series of national and regional training sessions to provide Medicare+Choice organizations, providers, practitioners, and others with appropriate technical training to enable them to submit timely and accurate physician and hospital outpatient encounter data. The national training sessions will address the following topics:

- Data requirements and edits for physician encounter data.
- Data requirements and edits for hospital outpatient encounter data.

Overview of Comprehensive Risk Adjustment models and timeline. Review of workflow associated with encounter data transactions. Communications and connectivity to the Palmetto Data Network and the Encounter Data Front-End Edits system.

- Tracking status and disposition of encounter data submissions.
- Review of training events and customer support services. The regional meetings will deal with the specific requirements for submission of physician encounter data and hospital outpatient encounter data.

NATIONAL TRAINING DATES: The Physician National Training session is scheduled for June 19, 2000 from 9 a.m. until 4 p.m., Eastern Time. The Hospital Outpatient National Training session is scheduled for September 15, 2000 from 9 a.m. until 4 p.m., Eastern Time.

NATIONAL ADDRESSES: The National meetings on June 19, 2000 and September 15, 2000 will be held in the HCFA Auditorium, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

REGIONAL TRAINING DATES AND CITIES: The Physician Regional Training sessions will be held as follows:

Physician Encounter Data Training Schedule 2000

Date and Location

June 29–30, 2000:
BOSTON, MA—Sheraton Boston Hotel, 39 Dalton Street, Boston, MA 02199, (617) 236–2000

July 6–7, 2000:
SAN FRANCISCO, CA—Hotel Nikko, 222 Mason Street, San Francisco, CA 94102, (415) 394–1111

July 11–12, 2000:
CHICAGO, IL—The Drake Hotel, 140 East Walton Place, Chicago, IL 60611, (312) 787–2200

July 17–18, 2000:
ATLANTA, GA—Hyatt Regency, 265 Peachtree Street, NE, Atlanta, GA 30303, (404) 577–1234

The Hospital Outpatient Regional Training sessions will be held as follows:

Hospital Outpatient Encounter Data Training Schedule 2000

Date and Location

September 18–19, 2000:
SAN FRANCISCO, CA—San Francisco Airport, Marriott 1800 Old Bayshore Highway, Burlingame, CA 94010, (650) 692–9100

September 21–22, 2000:
ATLANTA, GA—Wyndham Atlanta, 160 Spring Street, Atlanta, GA 30303, (404) 688–8600

October 16–17, 2000:
CHICAGO, IL—Westin O'Hare, 6100 River Road, Rosemont, IL 60018, (847) 698–6000

October 19–20, 2000:
BOSTON, MA—Boston Park Plaza Hotel, 64 Arlington Street, Boston, MA 02116, (617) 426–2000

FOR FURTHER INFORMATION CONTACT: Encounter Data Representative at (301) 519–6700 or e-mail us with your questions at encounterdata@aspensys.com. Please refer to the HCFA Advisory Committees Information Lines 1(877) 449–5659 toll free or (410) 786–9379 local or via the Internet at hhtp:www.hcfa.gov/fac for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION:

Background

The Balanced Budget Act of 1997 (BBA) (Public Law 105–33) established the Medicare+Choice program. Under the BBA, we must implement a risk adjustment methodology that accounts for variations in per capita costs based on health status and other demographic factors for payment to Medicare+Choice organizations (M+COs). Risk adjustment implementation began January 1, 2000.

The BBA also gives us the authority to collect inpatient hospital data for discharges on or after July 1, 1997, and additional data for services occurring on or after July 1, 1998. Pending OMB approval, M+COs must submit physician and hospital outpatient encounter data on the following schedule:

- October 1, 2000: Submission of physician encounters begins.
- January 1, 2001: Submission of hospital outpatient encounters begin with dates of services retroactive to October 1, 2000.

This notice announces these training sessions to provide an opportunity for M+COs, providers, practitioners, and others to obtain information on the requirements for the collection of physician and hospital outpatient encounter data. These training sessions will also provide additional information on our data collection efforts, systems processes, training approach, and customer service support. Subsequent to these sessions we will implement user groups to facilitate ongoing discussions and training support. We are announcing these training sessions to provide physician and hospital outpatient data requirements and to allow individuals and organizations familiar with issues related to physician and hospital outpatient data collection to raise questions that can be answered in these and subsequent training sessions. The agenda for each session will include presentations by Aspen Systems Corporation, the encounter data training contractor, on related topics and will conclude with a question-and-answer period.

Registration

Registration for these training sessions is required and will be on a first-come, first-served basis, limited to two attendees per organization. A waiting list will be available for additional requests. Registration can be accomplished via the Internet at www.hcfa.gov/events or by completing a paper form available at the aforementioned Internet address. A confirmation notice will be sent to attendees upon finalization of registration.

Attendees will be provided with training materials at the time of the training session. We will accept written questions or requests for training materials either before the session or up to 14 days after the session. These written questions or requests must be sent to: Aspen Systems Corporation, ATTN: Wanda Keyes, Mail Stop 9Y, 2277 Research Boulevard, Rockville, Maryland 20850.

You may also contact Encounter Data Representative: Telephone Number: (301) 519–6700, Fax Number: (301) 519–6360, E-mail: encounterdata@aspensys.com.

(Authority: Sections 1851 through 1859 of the Social Security Act (42 U.S.C. 1395w–21 through 1395w–28))

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 31, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–14091 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Additional HRSA Competitive Grants

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of funds for several HRSA programs. This Notice lists several programs that are announcing competitions for fiscal year (FY) 2000 funds but were not published in the Fall 1999 HRSA Preview.

This Notice includes funding for HRSA discretionary authorities and programs as follows: (1) National Oral Health Policy Center (MCHB); and (2) Partnership for State Oral Health Leadership Cooperative Agreement (MCHB).

These programs were not published in the Fall 1999 HRSA Preview and will only appear in the **Federal Register** and on the HRSA Home Page at: *http://www.hrsa.dhhs.gov/.* The next edition of the HRSA Preview is planned to be published in mid-2000. The purpose of the HRSA Preview is to provide the general public with a single source of

program and application information related to the Agency's competitive grant offerings. The HRSA Preview is designed to replace multiple **Federal Register** notices which traditionally advertised the availability of HRSA's discretionary funds for its various programs.

Dated: May 30, 2000.

Claude Earl Fox,

Administrator.

How To Obtain Further Information

You can download this Notice in Adobe Acrobat format (.pdf) from HRSA's web site at *http://www.hrsa.dhhs.gov/.*

To Obtain an Application Kit

It is recommended that you read the introductory materials, terminology section, and individual program category descriptions to fully assess your eligibility for grants before requesting kits. As a general rule, no more than one kit per category will be mailed to applicants. Upon review of the program descriptions, please determine which category or categories of application kit(s) you wish to receive and call 1–877–477–2123 to register on the specific mailing list. Application kits are generally available 60 days prior to application deadline. If kits are already available, they will be mailed immediately.

Also, you can register on-line to be sent specific grant application materials by following the instructions on the web page or accessing http://www.hrsa.gov/g-order3.htm directly. Your mailing information will be added to our database and material will be sent to you as it becomes available.

Grant Terminology

Application Deadlines

Applications will be considered "on time" if they are either received on or before the established deadline date or postmarked on or before the deadline date given in the program announcement or in the application materials.

Authorizations

The citations of provisions of the laws authorizing the various programs are provided immediately preceding groupings of program categories.

CFDA Number

Applicants must use the CFDA number when requesting application materials. The Catalog of Federal Domestic Assistance (CFDA) is a Governmentwide compendium of Federal programs, projects, services, and activities which provide assistance. Programs listed therein are given a CFDA Number.

Cooperative Agreement

A financial assistance mechanism (grant) used when substantial Federal programmatic involvement with the recipient during performance is anticipated by the Agency.

Eligibility

Authorizing legislation and programmatic regulations specify eligibility for individual grant programs. In general, assistance is provided to nonprofit organizations and institutions, State and local governments and their agencies, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

Estimated Amount of Competition

The funding level listed is provided for planning purposes and is subject to the availability of funds or congressional action.

Funding Priorities and/or Preferences

Special priorities or preferences are those which the individual programs have identified for the funding cycle. Some programs give preference to organizations which have specific capabilities such as telemedicine networking or established relationships with managed care organizations. Preference also may be given to achieve an equitable geographic distribution and other reasons to increase the effectiveness of the programs.

Key Offices

The Grants Management Office serves as the focal point for grants policy, budgetary, and business matters. The program office contact is provided for questions specific to the project activities of the programs and program objectives.

Matching Requirements

Several HRSA programs require a matching amount, or percentage of the total project support, to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, matching requirements may be administratively required by the awarding office. Such requirements are set forth in the application kit.

Project Period/Budget Period

The project period is the total time for which support of a discretionary project has been programmatically approved. The project period consists of one or more budget periods, each generally of one year duration. Continuation of any project from one budget period to the next is subject to satisfactory performance, availability of funds, and program priorities.

Review Criteria

The following are generic review criteria applicable to HRSA programs:

(1) That the estimated cost to the Government of the project is reasonable considering the anticipated results.

(2) That project personnel or prospective fellows are well qualified by training and/or experience for the support sought, and the applicant organization or the organization to provide training to a fellow has adequate facilities and manpower.

(3) That, insofar as practical, the proposed activities (scientific or other), if well executed, are capable of attaining project objectives.

(4) That the project objectives are capable of achieving the specific program objectives defined in the program announcement and the proposed results are measurable.

(5) That the method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.

(6) That, in so far as practical, the proposed activities, when accomplished, are replicable, national in scope and include plans for broad dissemination.

The specific review criteria used to review and rank applications are included in the individual guidance material provided with the application kits. Applicants should pay strict attention to addressing these criteria as they are the basis upon which their applications will be judged.

Technical Assistance

Some programs may have scheduled workshops and conference calls. If you have questions concerning individual programs or the availability of technical assistance, please contact the person listed. Also check your application materials and the HRSA web site at *http://www.hrsa.dhhs.gov/* for the latest technical assistance information.

Frequently Asked Questions

1. HRSA lists many telephone numbers and e-mail addresses. Whom do I phone or e-mail and when?

Phone 1–877–477–2123 (1–877–HRSA–123) to register for application kits. You must know the program's CFDA number and title.

If, before you register, you want to know more about the program, an e-mail/phone contact is listed. This contact can provide information concerning the specific program's purpose, scope and goals, and eligibility criteria. You will usually be encouraged to request the application kit so that you will have clear, comprehensive and accurate information available to you. The application kit lists telephone numbers for a program expert and a grants management specialist who will provide technical assistance concerning your specific program, if you are unable to find the information within the materials provided.

2. The dates listed in the **Federal Register** notice and the dates in the application kit do not agree. How do I know which is correct?

First, register at 1–877–477–2123 (1–877–HRSA–123) for each program that you are interested in as shown in the Notice.

Notice dates for application kit availability and application receipt deadline are based upon the best known information at the time of publication. Occasionally, the grant cycle does not begin as projected and dates must be adjusted. The deadline date stated in your application kit is most likely to be correct. If the application kit has been made available and subsequently the date changes, notification of the change will be mailed to known recipients of the application kit. Therefore, if you are registered at 1–877–477–2123 (1–877–HRSA–123), you will receive the most current information.

3. Are programs announced in the **Federal Register** notice ever canceled?

Infrequently, programs announced may be withdrawn from competition. If this occurs, a cancellation notice will be provided at the HRSA Homepage at *http://www.hrsa.dhhs.gov/.*

If you still have unanswered questions, please contact John Gallicchio or Jeanne Conley of the HRSA Grants Policy Branch at 301–443–6507 *(jgallicchio@hrsa.gov* or *jconley@hrsa.gov).* Maternal and Child Health Bureau (MCHB) Grants Management Office: 301–443–1440.

The MCHB announces the following two grant programs:

1. National Oral Health Policy Center (MCHB)

Authorization: Social Security Act, Title V, 42 U.S.C. 701

Purpose:

The purpose of this Policy Center is to explore critical health policy issues around access to comprehensive oral health services for children and their families. A special emphasis on policy issues as they pertain to underserved, vulnerable populations (*i.e.* Medicaid and SCHIP eligible populations, children with special health care needs, minority populations) and the oral health care delivery system as a component of the overall health care infrastructure is required.

Eligibility: 42 CFR 51a.3.

Funding Priorities and/or Preferences: None.

Review Criteria:

Final criteria are included in the application kit.

Estimated Amount of This Competition: $125,000/year.

Estimated Number of Awards: 1.

Estimated Project Period: Three years, from 9/30/00 through 4/30/03.

Application Available: 6/15/00.

To Obtain This Application Kit: CFDA Number: 93.110AD.

Call for Application Kit: 1–877–477–2123 (1–877–HRSA–123).

Application Deadline: 8/18/00.

Projected Award Date: 9/30/00.

The first budget period is expected to be 7 months; subsequent budget periods will be 12 months.

Contact Person: John P. Rossetti 301 443–6600 e-mail: *jrossetti@hrsa.gov.*

2. Partnership for State Oral Health Leadership Cooperative Agreement (MCHB)

Authorization: Social Security Act, Title V, 42 U.S.C. 701.

Purpose:

The purpose of this program is to fund a cooperative agreement with a professional organization representing the oral public health community at the State level. The agreement will provide a forum for the gathering of information and data and the provision of technical expertise to the dental public health community that increases access to the prevention of oral disease and access to dental services. This will be accomplished by appropriate needs assessment, program planning, assurance and systems development.

Eligibility: 42 CFR 51a.3.

Funding Priorities and/or Preferences:

A funding preference will be given to institutions of higher learning with extensive experience in early discharge research, linkage with the Secretary's Advisory Committee on Infant Mortality, and published research and recognition in the relevant field.

Review Criteria:

Final criteria are included in the application kit.

Estimated Amount of This Competition: $130,000/year.

Estimated Number of Awards: 1.

Estimated Project Period: Five years, from 9/30/00 through 7/31/05.

Application Available: 6/15/00.

To Obtain This Application Kit: CFDA Number: 93.110AD.

Call for Application Kit: 1–877–477–2123 (1–877–HRSA–123).

Application Deadline: 8/18/00.

Projected Award Date: 9/30/00.

The first budget period is expected to be 10 months; subsequent budget periods will be 12 months.

Contact Person: John P. Rossetti 301/443–6600 e-mail: *jrossetti@hrsa.gov.*

[FR Doc. 00–13951 Filed 6–2–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting of Advisory Committee to the Interagency Task Force To Improve Hydroelectric Licensing Processes

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Advisory Committee to the Interagency Task Force To Improve Hydroelectric Licensing Processes will meet on June 8, 2000, at the National Marine Fisheries Service. The purpose of the meeting is to:

- Update Committee members on the current activities of the Interagency Task Force (ITF); and to
- Review and discuss the ITF Working Group's draft product on improving the conservation of the Endangered Species Act Section 7 consultation with the Federal Energy and Regulatory Commission's licensing process.

DATES: The meeting will be held June 8, 2000; 9:00am–3pm.

ADDRESSES: National Marine Fisheries Service, Building SSMC3, 4th Floor Conference Room, 4527, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kimberly St. Bernard, Secretary to the Director, Office of Habitat Conservation (OHC), (301) 713–2325.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior and the Chairman, Federal Energy Regulatory Commission, with the concurrence of ITF members, established the Advisory Committee to provide a forum for non-Federal entities to review and provide comments on the deliberations of the ITF. Interested parties are invited to

attend the meeting and will be given an opportunity to provide comments.

Less than 15 days' notice of this meeting is being given because of recently resolved administrative matters. In light of the difficulty of making changes to travel plans and schedules and the expenses such changes would entail, it is necessary to hold this meeting on June 8, 2000, as originally planned.

You should inform Security on the building lobby level that you are attending a meeting hosted by the OHC, (301) 713–2325. After calling OHC, Security will issue you a visitor's pass and direct you to the 4th Floor Conference Room, 4527.

Dated: May 31, 2000.

Alex Matthiessen,

Special Assistant to the Designated Federal Officer.

[FR Doc. 00–14092 Filed 6–1–00; 11:32 am]

BILLING CODE 4310–10–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Comprehensive Conservation Plan for Pea Island National Wildlife Refuge in Dare Co., NC

ACTION: Notice of Intent to conduct public scoping meetings to obtain suggestions and information on issues to include in the preparation of a Comprehensive Conservation Plan for Pea Island National Wildlife Refuge in Dare County, North Carolina.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service intends to gather information necessary to prepare a Comprehensive Conservation Plan and associated environmental documents pursuant to the National Environmental Policy Act and implementing regulations.

The Service will hold meetings as follows:

Monday, June 26, 2000

1 p.m.–4 p.m.
6 p.m.–9 p.m.
Rodanthe Community Center, Rodanthe, North Carolina 27968, (252) 987–2620

Tuesday, June 27, 2000

1 p.m.–4 p.m.
6 p.m.–9 p.m.
North Carolina State Aquarium, 374 Airport Road, Manteo, North Carolina 27954, (252) 473–3493

DATES: Written comments should be received within 30 days of this publication.

ADDRESSES: Comments and requests for information concerning this refuge may be addressed to: D.A. Brown, M.S., P.W.S., 1106 West Queen Street, P.O. Box 329, Edenton, North Carolina 27932, (252) 482–2364.

Information concerning the refuge may be found at the following website: http://rtncf-rci.ral.r4.fws.gov

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: D_A_Brown@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact D.A. Brown directly at the above address. Finally, you may hand-deliver comments to Mr. Brown at 1106 West Queen Street, Edenton, North Carolina. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: It is the policy of the Fish and Wildlife Service to have all lands within the National Wildlife Refuge System managed in accordance with an approved Comprehensive Conservation Plan. The plan guides management decisions and identifies the goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired conditions of the refuge and how the Service will implement management strategies.

Pea Island National Wildlife Refuge was established by Presidential Executive Order 7864 in April 19938, as a refuge and breeding ground for migratory birds and other wildlife.

Dated: May 30, 2000.

Sam D. Hamilton,

Regional Director.

[FR Doc. 00–13943 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Klamath River Basin Fisheries Task Force; Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force (Task Force) will meet from 9 a.m. to 5 p.m. on Wednesday, June 28, 2000 and from 8 a.m. to 3 p.m. on Thursday, June 29, 2000.

PLACE: The meeting will be held at the Best Western Bayshore Inn, 3500 Broadway, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Elizabeth H. Stevens,

Manager, California/Nevada Operations.

[FR Doc. 00–13944 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–24 1A]

Notice of Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* On February 8, 2000, BLM published a notice in the **Federal Register** (65 FR 8439) requesting comments on this proposed collection. The comment period closed on April 17, 2000. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM Clearance Officer at the telephone number listed below. Questions concerning the scope and administration of the program may be obtained by contacting the Bureau's program leader at the phone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Desk Officer (1004–0025), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether collecting the information is necessary for BLM's proper functioning, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

Title: Mineral Patent Applications (43 CFR 3860) and Adverse Claims, Protests, and Conflicts (43 CFR 3870).

OMB Approval Number: 1004–0025.

Abstract: The BLM is proposing to renew the approval of an information collection for existing rules at 43 CFR 3860 and 3870. These rules provide for the application process to request a mineral patent for mining claims and mill sites under the General Mining Law of 1872, as amended. They also provide for land surveys of the requested mining claims or sites required before entities apply for a mineral patent and explain procedures set by statute for resolving adverse claims against the application by rival owners of mining claims and for protests of the public against irregular applications. The regulations also set forth the final administrative framework for concluding the process.

Bureau Form Numbers: 3860–2 and 3860–5.

Frequency: Once for the mineral survey, and once for the application for patent, or filing a protest or adverse claim.

Description of Respondents: Owners of unpatented mining claims and mill sites located upon the public lands, reserved mineral lands of the United States, National Forests, and National Parks.

Estimated Completion Times:

1 hour (mineral survey application)
80 Hours (mineral patent application)
2 hours (protests), 2 hours (contests), 2 hours (adverse claims)

Note: Completion times for the forms, 3860–2 and 3860–5, 4 hours and 1 hour respectively, are included in the burden estimates above.

Annual Responses:

25 (mineral surveys)
150 (mineral patent applications)
20 (protests)
50 (contests)
10 (adverse claims)

Note: Annual responses for the forms, 3860–2 and 3860–5, 125 and 25, respectively, are included in the annual response totals above.

Annual Burden Hours:

25 (mineral surveys)
12,000 (mineral patent applications)
40 (protests)
100 (contests)
20 (adverse claims)
Total: 12,185 hours

Annual Cost Burden Due to Non-Burden Hour Costs: $6.6 million.

Bureau Clearance Officer: Carole Smith (202) 452–0367.

Bureau Program Leader: Roger A. Haskins (202) 452–0355.

Dated: May 23, 2000.

Carole Smith,

BLM Information Clearance Officer.

[FR Doc. 00–14003 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–PG]

Alaska Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council meeting.

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting on Thursday, June 29, 2000, from 8:30 a.m. until noon. The meeting will be held in the Anchorage Federal Building at 7th and C Street in room 135.

Topics to be discussed at the meeting include standards for BLM resource management in Alaska, off-road vehicle use on public lands, and management of the Gulkana Wild and Scenic River. Public comment concerning items on the agenda will be heard from 11 a.m. until noon. Written comments may be submitted at the meeting or mailed to BLM at the address below.

Following the meeting, the council will travel to Glennallen in preparation for a site visit to the Gulkana River Friday, June 30, 2000.

ADDRESSES: Inquiries or comments should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: May 17, 2000.

Brenda Zenan,

Acting State Director.

[FR Doc. 00–13903 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1220–EB]

Campground Fees for BLM-Administered Campgrounds in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is establishing recreation use fees for campgrounds that did not have existing supplementary rules related to recreation use fees. BLM is also reaffirming existing supplementary rules for BLM-administered campgrounds throughout California. We are taking this action to authorize the collection of fees from those who use the campgrounds. This action has the effect of requiring campground users to pay fees for the use of certain designated campgrounds.

EFFECTIVE DATE: These supplementary rules are effective on June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Tim Smith, BLM California State Office (CA–930), 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886; 916/978–4644.

SUPPLEMENTARY INFORMATION: The authority for these Supplementary Rules is contained in the Code of Federal Regulations, Title 43, § 8365.1–6, Supplementary Rules. Violation of any supplementary rule by a member of the public, except for the provisions of § 8365.1–7, are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Federal Regulations, Title 43, § 8360.0–7 violations of supplementary rules authorized by § 8365.1–7 are punishable in the same manner.

Existing BLM Campgrounds in California

This supplementary rule authorizes the establishment and re-affirmation of recreation fees at all existing fee campgrounds on BLM administered lands in California. The following campgrounds are subject to recreation fees:

Arcata Field Office: Wailaki, Nadelos, Tolkan, Horse Mountain, Honey Dew, and Mattole
Redding Field Office: Junction City, Douglas City, Steel Bridge, and Reading Island
Eagle Lake Field Office: North Eagle Lake
Folsom Field Office: South Yuba, McCabe Flat, Railroad Flat, and Willow Placer
Ridgecrest Field Office: Fossil Falls
Barstow Field Office: Owl Canyon and Afton Canyon
Palm Springs/South Coast Field Office: Corn Springs
El Centro Field Office: Lark Canyon and Cottonwood

Dated: May 24, 2000.

Al Wright,

Acting State Director, California.

[FR Doc. 00–13659 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1430–EU; GP00026]

Notice of Proposed Decision To Amend Land Use Plan

May 25, 2000.

AGENCY: Bureau of Land Management.

ACTION: Notification of the proposed decision to amend the Brothers-La Pine Resource Management Plan.

SUMMARY: The Brothers-La Pine RMP will be amended to make available for direct sale the following public lands in Deschutes County, Oregon, under Section 7 of the *Oregon Public Lands Transfer and Protection Act of 1998*, at not less than the fair market value:

Willamette Meridian

T. 22 S., R. 10 E.,
Tract 38.
Containing 518.18 acres, more or less.

The Brothers-La Pine RMP assigns all lands administered by the Prineville District to one of three Land Tenure Zones. Lands in Zone 1 are identified for retention and may not be transferred from federal ownership. Lands designated as Z–2 are areas with potential for high public resource values that may be exchanged for lands with higher public values. Lands designated as Z–3 are areas that may be suitable for disposal through transfer to another agency, exchange, or public sale. The regulations at 43 CFR 2711.1–1(a) require that no parcel of public land may be offered for sale until it has been specifically identified in an approved land use plan (*i.e.* assigned to Land Tenure Zone 3). The parcel proposed for sale is Land Tenure Zone 2, but would be assigned to Land Tenure Zone 3 by this amendment.

The Oregon Public Land Transfer Act of 1998 states that Tract 38 may be sold at fair market value to Deschutes County, Oregon, provided that the land is determined to be suitable for sale through the lands use planning process. The *Environmental Assessment for Direct Sale of Public Land and Amendment to the Brothers-La Pine Resource Management Plan* and public and interagency reviews are completed.

The RMP amendment would facilitate the completion of a land sale that is a key component in a program developed by Deschutes County to protect groundwater. The need by the county to acquire this parcel was identified during the Regional Public Solving Project, which is a State of Oregon sponsored process to evaluate community problems stemming from unregulated development that occurred prior to the implementation of state land use planning laws.

The Act also provides that the amount paid for the land shall be deposited in a special account for the purpose of purchasing environmentally sensitive land; in so doing, the Act provides for the acquisition of non-federal lands to replace federal lands sold to the county.

The patent would be issued subject to valid and existing rights and a reservation for ditches or canals as required by the Act of August 30, 1890 (43 U.S.C. 945). The patent would also be subject to a restrictive covenant that would prohibit the disposal of aggregate, sand, or gravel from the property.

ADDRESSES: Detailed information concerning the plan amendment and the direct sale of public lands is available for review at the office of the Bureau of Land Management, Prineville District, 3050 NE Third, Prineville, Oregon, 97754.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR part 4 and on Form 1842–1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 45 days from the receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

Dated: May 23, 2000.

Donald L. Smith,

Acting Prineville District Manager.

[FR Doc. 00–13988 Filed 6–22–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; N–66423]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw a 0.57-acre parcel of public land for a period of 20 years to protect a wildland fire station site. This notice closes the land for up to 2 years from surface entry and mining while various studies and analyses are made to make a final decision. The land is located within the incorporated City of Carlin, Nevada and is not subject to mineral leasing.

DATES: Comments and requests for meeting should be received on or before September 5, 2000.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 775–861–6532.

SUPPLEMENTARY INFORMATION: On May 22, 2000, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 33 N., R. 52 E.,
Sec. 27, lots 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 in Block 6, Town of Carlin, as shown on the map filed in the office of the County Recorder of Elko County, Nevada, on March 6, 1919.

The area described contains 0.57 acres in Elko County. The land is located within the incorporated city limits Carlin, Nevada, and is not subject to mineral leasing (43 CFR 3100.0–3(a)(2)(iii)).

The purpose of the proposed withdrawal is to protect a Bureau of Land Management wildland fire station site. Funding has been approved for construction of the fire station.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Other uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

Dated: May 26, 2000.

Jim Stobaugh,

Lands Team Lead.

[FR Doc. 00–13992 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Proposed Information Collection

AGENCY: National Park Service.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Park Service (NPS) is announcing its intention to renew authority for the collection of information under 36 CFR part 51 relating to the submission of offers in response to concession prospectuses issued by NPS. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by July 5, 2000, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related materials, contact Wendelin M. Mann at (202) 565–1219, or electronically to *wendy_mann@nps.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 13200.8(d)). NPS has submitted a request to OMB to renew approval of the collection of information in 36 CFR part 51, Concession contracts, relating to the submission of offers in response to prospectuses issued by NPS. NPS is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1024–0125, and is identified in 36 CFR Section 51.104.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on February 22, 2000 (65 FR 8735). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Submission of Offers requirement in response to concession prospectuses—36 CFR 51.

OMB Control Number: 1024–0125.

Summary: The regulations at 36 CFR part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391 or the Act), which provides new legislative authority, policies and requirements for the solicitation, award and administration of NPS concession contracts. The regulations require the submission of offers by parties interested in applying for a NPS concession contract. Specific requirements regarding the information that must be submitted by offerors in response to a prospectus issued by NPS are contained in sections 403 (4), (5), (7), and (8) of the Act.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Persons or entities seeking a National Park Service concession contract.

Total Annual Responses: 240.

Total Annual Burden Hours: 76,800.

Total Non-hour Cost Burden: $1,120,000.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to OMB control number 1024–0125 in all correspondence.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identify, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as

representatives or officials of organizations or businesses, available for public inspection in their entirety.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to Wendelin M. Mann, Concession Program, National Park Service, 1849 C Street, NW, Room 7313, Washington, DC 20240, or electronically to *wendy_mann@nps.gov*.

Dated: May 23, 2000.

Betsy Chittenden,

Deputy Manager, Washington Administrative Program Center.

[FR Doc. 00–13912 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan/Draft Environmental Impact Statement, Boston Harbor Islands National Recreation Area, Massachusetts

AGENCY: National Park Service.

ACTION: Notice of Availability of Draft General Management Plan/Draft Environmental Impact Statement.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, this notice announces the availability for public review of a Draft General Management Plan/Draft Environmental Impact Statement for Boston Harbor Islands National Recreation Area, Suffolk, Norfolk, and Plymouth Counties, Massachusetts. In accordance with the National Environmental Policy Act 102(2)(C) of 1969, the environmental impact statement was prepared to assess the impacts of implementing the general management plan.

The Draft General Management Plan/ Draft Environmental Impact Statement presents, in a policy level document, four management alternatives, including a preferred alternative and a no-action alternative, then assesses the potential environmental and socioeconomic effects of the actions presented on park resources, visitor experience, and the surrounding area. The alternatives differ in their approaches to management. The preferred alternative calls for a strong emphasis on resource preservation, encouraging most visitors to visit a few islands while allowing preservation of many other islands in their "natural" condition. Other alternatives would emphasize either preserving resources or accommodating visitors throughout the island system. The no-action alternative would continue current management by a variety of local, state, federal, and private entities with no new funding from the National Park Service.

DATES: The formal public review period is to start on or about June 3, 2000, for 60 days. Eight public forums will be held during the month of June. The dates, times, and location of the public forums will be advertised in local media.

SUPPLEMENTARY INFORMATION: Copies of the document will be available for review at the following locations:

- Boston Harbor Islands National Park Area, 408 Atlantic Avenue, Suite 228, Boston, Massachusetts 02110
- Public Libraries in Greater Boston

The full document will also be posted on the internet at www.nps.gov/BOHA/admin.

To request copies of the document, please write or fax the Project Manager, Boston Harbor Islands National Park Area, 408 Atlantic Avenue, Suite 228, Boston MA 02110, fax (617) 223–8671.

Comments on the Draft General Management Plan/Draft Environmental Impact Statement should be submitted to George Price, Project Manager, Boston Harbor Islands National Park Area, 408 Atlantic Avenue, Suite 228, Boston MA 02110. Comments may also be faxed to (617) 223–8671.

Dated: May 24, 2000.

George Price,

Project Manager, Boston Harbor Islands National Park Area.

[FR Doc. 00–13909 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Home of Franklin D. Roosevelt National Historic Site, Dutchess, New York; Notice of Availability of Draft Environmental Assessment and Master Plan Amendment

In accordance with the National Environmental Policy Act of 1969 and Section 106 of the Historic Preservation Act of 1966, the National Park Service (NPS) has prepared a Draft Master Plan Amendment/Environmental Assessment (EA) for the Home of Franklin D. Roosevelt NHS, located in Dutchess County, New York. The purpose of the EA is to describe plans to build a visitor and education/conference center jointly with the National Archives and Records Administration (NARA) to serve the Home of Franklin D. Roosevelt NHS and the Franklin D. Roosevelt Library. Appended to the EA is a Memorandum of Agreement (MOA), in draft, guiding historic preservation in the development of the project. The EA describes the alternatives for the proposed center. The EA will serve to update the 1977 Master Plan and Final Environmental Impact Statement for the Home of Franklin D. Roosevelt NHS with respect to visitor orientation and parking. Further, the EA provides an analysis of the environmental consequences of the alternatives. The alternatives are compared and contrasted in terms of their impacts on the cultural, historic, and natural environment.

Copies of the document are available for review at the following locations:

—Home of Franklin D. Roosevelt NHS, 4097 Albany Post Rd., Hyde Park, NY
—Franklin D. Roosevelt Library, 4079 Albany Post Rd., Hyde Park, NY
—The Hyde Park Public Library

Copies of the EA may be requested from either: Superintendent, Home of Franklin D. Roosevelt NHS, 4097 Albany Post Road, Hyde Park, New York, 12538–1997, (914) 229–9115, or Director, Franklin D. Roosevelt Library, 4079 Albany Post Rd., Hyde Park, New York, 12538–1997, (914) 229–8114.

Written comments will be accepted at either of the above addresses through June 23, 2000. The NPS and NARA will jointly hold a public meeting on June 8, 2000, at 7 p.m. to explain the alternatives. The meeting will be held at the Franklin D. Roosevelt Library, 4079 Albany Post Rd., Hyde Park, New York, and will include opportunities for public comment on the project. After analyzing the comments from the meeting and those submitted in writing during the comment period, the agencies will make a decision on the course of action.

Sarah Olson,

Superintendent.

[FR Doc. 00–13908 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Lower East Side Tenement National Historic Site, New York, New York; Notice of Intent To Prepare an Environmental Assessment and Notice of Public Meetings

In accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–109 section 102(c)), the National Park Service (NPS) is preparing an Environmental Assessment (EA) for the Lower East Side Tenement National Historic Site (NHS), located in the city of Borough of Manhattan, New York, New York. The purpose of the EA is to assess the environmental consequences of alternative management strategies that will be described in the general management plan for Lower East Side Tenement NHS. A number of alternatives will be formulated for cultural resource protection, visitor use and interpretation, facilities development, and operations.

The NPS will hold a public meeting June 14, 2000 that will provide an opportunity for public input into the scoping for the GMP/EA. The meeting will begin at 7:00 PM, at the Lower East Side Tenement Museum, 97 Orchard Street, New York, New York.

The purpose of this meeting is to obtain both written and verbal comments concerning the future direction and development of Lower East Side NHS. Those persons who wish to comment verbally or in writing or who require further information should contact Ruth Abram, President, Lower East Side Tenement Museum. 66 Allen Street, New York, New York 10002, (212) 431–0233 Ext. 212.

The draft GMP/EA is expected to be completed and available for public review in fall 2000. After public and interagency review of the draft document comments will be considered, and a final EA followed by a Record of Decision will be prepared.

Dated: May 15, 2000.

Thomas Dyer,

Chief of Planning, Northeast Region Development Office.

[FR Doc. 00–13911 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Going-to-the-Sun Road Rehabilitation Environmental Impact Statement, Glacier National Park, Montana

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Going-to-the-Sun Road Rehabilitation, Glacier National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an Environmental Impact Statement for the Going-to-the-Sun Road Rehabilitation for Glacier National Park. This Environmental Impact Statement will be approved by the Intermountain Regional Director.

The Going-to-the-Sun Road, a National Historic Landmark, is in need of rehabilitation. Since its opening in 1932 it has had limited repairs and reconstruction resulting in a deteriorating condition resulting in visitor use, maintenance, and safety concerns. Rehabilitation of the road is extremely difficult because of the very narrow width and the limited room available for staging construction and performing repairs. The narrow road corridor, the short construction season, and extreme and unpredictable weather conditions affect both the integrity of the road and the rehabilitation effort. Avalanches, rock falls, and repeated freezing and thawing continually deteriorate the road and jeopardize both the public and construction workers safety.

In the final General Management Plan Environmental Impact Statement for Glacier National Park, the preferred alternative reflects a desired condition for the road to be repaired and for its continued use, but not the method to achieve it. The road will continue to be protected as a national historic landmark. The road's historic character and significance will be preserved, and the needed repairs will be completed before the road fails. The National Park Service will minimize the impacts on natural resources, visitors and the economy, and minimize the rehabilitation costs.

The Going-to-the-Sun Road rehabilitation project/EIS includes a number of technical studies including engineering studies, a socio-economic study and marketing plan, a cultural landscape report, and a transportation/ visitor use plan. A public advisory committee has also been established by authority of the Secretary of the Interior under Section 3 of Public Law 91–383 (16 U.S.C 1a–2(c)) to advise the National Park Service during development of the Rehabilitation Study.

The various technical studies will result in a series of findings and recommendations that will be combined into a range of alternatives to rehabilitate the road. These alternatives will be evaluated through the EIS process. A variety of factors will be considered in developing these alternatives including, but not limited to, socio-economic implications, natural resources, visitor use, and construction costs. These alternatives have not yet been developed. A no action alternative will also be considered as required by the National Environmental Policy Act (NEPA). The effort will result in a selected course of action for the rehabilitation of the Going-to-the-Sun Road.

Major issues include the limited season available for rehabilitation activities on the critical sections of the road, concerns about impacts to the local and regional economy (past studies have considered closing the road for limited periods of time), and potential short-term and long-term impacts to natural resources in Glacier National Park. The current poor condition of the road resulting in potential safety concerns to visitors and the travelling public underscores the purpose and need for the project.

If you wish to provide comments for consideration, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Attn: Going-to-the Sun Road Study Glacier National Park, West Glacier, Montana 59936. You may also comment via email at *glac_public_comments@nps.gov*, attention: GTTSR-Rehabilitation Project. Please include your name and return address in your email message. If you do not receive confirmation from the system that we received your email message, contact us directly at 406/888–7972. Finally, you may hand-deliver comments to Glacier National Park headquarters, West Glacier, Montana. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondents identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

When a scoping document is prepared and public meetings/open houses are scheduled, an announcement will be made in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Glacier National Park, (406) 888–7972.

Dated: May 18, 2000.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. 00–13910 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

George Washington Memorial Parkway: Environmental Assessment of Proposed Wireless Telecommunications Facility at Great Falls Park, VA

ACTION: Notice of availability of an environmental assessment (EA) to erect a wireless telecommunications facility (cellular telephone monopole with support facility) that Bell Atlantic Mobile (BAM) has proposed for location on National Park Service (NPS) property at Great Falls Park, Virginia, which is managed by the George Washington Memorial Parkway.

SUMMARY: Pursuant to the Council on Environmental Quality regulations and National Park Service policy, NPS has completed an EA which analyzes five alternatives and discusses others which were considered but rejected. The five alternatives analyzed include: (1) 125-foot monopole; (2) 150-foot monopole as proposed by BAM; (3) 150-foot monopole with two larger co-locator buildings; (4) Alternative technology; and, (5) No action. The specific location proposed by BAM is the site where an existing 85-foot NPS antenna tower is located along the Ridge Trail approximately one-half mile from the junction of Old Dominion Drive and Georgetown Pike as one enters the park headed north along Old Dominion. NPS is soliciting comments on this EA. These comments will be considered in evaluating it and in making decisions pursuant to the National Environmental Policy Act.

DATES: Comments on the EA are due by Friday, June 23, 2000. Two public hearings on the EA will be held. The first will be at the Great Falls Park Visitor Center on Monday June 5, 2000, 7 p.m.–8:30 p.m. The entrance road into the park is located at the intersection of Old Dominion Drive and Georgetown Pike. The second will be held on Wednesday, June 7, 2000, 7 p.m.–8:30 p.m. in the Brooke Hall meeting room at Rockwood Manor, 11001 MacArthur Boulevard, Potomac, Maryland. Rockwood Manor is located in Rockwood Park, southeast of the intersection of MacArthur and Falls Road in the vicinity of the C&O Canal National Historical Park and Trail, approximately 1.5 miles west of the Clara Barton Parkway.

ADDRESSES: Comments may be sent to Audrey Calhoun, Superintendent, George Washington Memorial Parkway, c/o Turkey Run Park, McLean, VA 22101 or via e-mail to gwmp_superintendent@nps.gov. Copies of the EA have been mailed to agencies, groups, and individuals on the project mailing list. A copy of the EA can also be found at the George Washington Memorial Parkway Headquarters along the northbound lane of the parkway in Turkey Run Park, McLean, Virginia. Turkey Run Park is located north of the CIA exit and south of Interstate 495. Additionally, the document may be viewed on the park's web page at http://www.nps.gov/gwmp/grfa by clicking on the link to the Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Ms. Audrey Calhoun, Superintendent, George Washington Memorial Parkway, c/o Turkey Run Park, McLean, VA 22101; Telephone: (703) 289–2500.

Dated: May 30, 2000.

Audrey F. Calhoun,

Superintendent.

[FR Doc. 00–14002 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Upper Rio Grande Basin Water Operations Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public scoping meetings on development of a draft environmental impact statement (EIS) for upper Rio Grande basin water operations.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation), with and on behalf of other joint-lead agencies [U.S. Army Corps of Engineers (Corps), Department of Defense; and the New Mexico Interstate Stream Commission (Commission), State of New Mexico], is preparing a draft EIS on water operations in the Rio Grande Basin above Fort Quitman, Texas. Preparation of the draft EIS will be integral to the Upper Rio Grande Basin Water Operations Review. It is anticipated that a plan for water operations at existing Reclamation and Corps facilities will be developed.

The public is invited to participate in a series of scoping meetings that will be held throughout the upper Rio Grande basin to receive comments from interested organizations and individuals on the environmental impacts of water operations in the Rio Grande Basin above Fort Quitman, Texas. Reclamation invites other federal agencies, states, Indian tribes, local governments, and the general public to submit written comments and/or suggestions concerning the scope of the issues to be addressed in the draft EIS.

Each scoping meeting will begin at 6:00 p.m. There will be a presentation, an opportunity to discuss issues and ask questions of staff and managers, and an informal open house where various technical teams for the Operations Review and EIS will provide information on resources as well as receive comments. Comments will be taken and recorded in writing at the open house or they may be provided in writing by meeting participants. Written comments may also be mailed to Reclamation, the Corps, or the Commission at the names and addresses provided below. Written comments should be received no later than November 20, 2000, to be most effectively considered.

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the draft EIS, should write to Mr. Chris Gorbach. When the draft EIS is complete, its availability will be announced in the **Federal Register**, in the local news media, and through direct contact with interested parties. Comments will be solicited on the document.

DATES AND LOCATIONS: The schedule of open public scoping meetings is as follows:

- June 28, 2000, 6–9 p.m., Alamosa Elks Lodge, 406 Hunt, Alamosa, Colorado
- June 29, 2000, 6–9 p.m., Kachina Lodge, 413 Paseo del Pueblo Norte, Taos, New Mexico
- July 26, 2000, 6–9 p.m., Northern New Mexico Community College, 921 Paseo de Onate, Espanola, New Mexico
- August 9, 2000, 6–9 p.m., El Meson Lodge, South Highway 84/64, Chama, New Mexico
- August 17, 2000, 6–9 p.m., Indian Pueblo Cultural Center, 2401 12th NW, Albuquerque, New Mexico
- September 20, 2000, 6–9 p.m., Radisson Hotel, 750 N. St. Francis, Santa Fe, New Mexico
- September 27, 2000, 6–9 p.m., El Paso Airport Hilton, 2027 Airway Blvd., El Paso, Texas
- October 17, 2000, 6–9 p.m., New Mexico State University, Corbett Center, Las Cruces, New Mexico
- October 18, 2000, 6–9 p.m., New Mexico Tech., Macy Center, 801 Leroy Place, Socorro, New Mexico

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

The Bureau of Reclamation ensures meeting accessibility to persons with disabilities. If you need sign language interpretation for the hearing impaired or have other special needs, please contact Mr. Chris Gorbach.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Gorbach, Bureau of Reclamation, Albuquerque Area Office, 505 Marquette, N.W., Suite 1313, Albuquerque, New Mexico 87102–2162; telephone (505) 248–5379; faxogram (505) 248–5356; Email: cgorbach@uc.usbr.gov.

Ms. Gail Stockton, U.S. Army Corps of Engineers, Albuquerque District, 4101 Jefferson NE, Albuquerque, New Mexico 87109; telephone (505) 342–3348; Email: gail.r.stockton@usace.army.mil.

Mr. Rolf Schmidt-Petersen or Rhea Graham, New Mexico Interstate Stream Commission, Springer Square Building, 121 Tijeres Avenue NE, Suite 2000, Albuquerque, New Mexico 87102; telephone (505) 841–9480, extension 127; Email: Schmidt_Rolf@seo.state.nm.us or rgraham@ose.state.nm.us.

SUPPLEMENTARY INFORMATION: For supplementary information, please see the **Federal Register** notice of March 7, 2000, 65 FR 12030–12031.

Dated: May 25, 2000.

Larry P. Walkoviak,

Acting Regional Director, Upper Colorado Region.

[FR Doc. 00–14006 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Delta Drinking Water Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Delta Drinking Water Council will meet on June 28, 2000 to discuss several issues including the CALFED Drinking Water Improvement Strategy and projects related to the Strategy. This meeting is open to the public. Interested persons may make oral statements to the Delta Drinking Water Council or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council's Delta Drinking Water Council meeting will be held from 12 noon to 3:30 p.m. on Wednesday, June 28, 2000.

ADDRESSES: This meeting will be held at the Resources Building, 1416 Ninth Street, Room 1142, Sacramento, Calif. 95814.

FOR FURTHER INFORMATION CONTACT: Judy Heath, CALFED Bay-Delta Program, at (916) 653–2994. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California' agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Delta Drinking Water Council to advise the CALFED Program and the CALFED Policy Group through BDAC on necessary adaptations to the Program's Drinking Water Quality Improvement Strategy to achieve CALFED's drinking water objectives.

Minutes of the meeting will be maintained by the Program, 1416 Ninth Street, Suite 1155, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday, within 30 days following the meeting.

Dated: May 30, 2000.

Lester A. Snow,

Regional Director, Mid-Pacific Region.

[FR Doc. 00–13937 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–94–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

June 13, 2000 Board of Directors Sunshine Act Meeting

TIME AND DATE: Tuesday, June 13, 2000, 1:00 pm (Open Portion) 1:30 pm (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting open to the Public from 1:00 pm to 1:30 pm. Closed portion will commence at 1:30 pm (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Appointment—Joan Logue-Kinder.
3. Approval of March 21, 2000 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 pm).

1. Finance Project in Southeast Europe.
2. Insurance Project in Bulgaria.
3. Finance Project in Equatorial Guinea.
4. Finance Project in Turkey.
5. Insurance Project in Brazil.
6. Approval of March 21, 2000 Minutes (Closed Portion).
7. Pending Major Projects.
8. Reports.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: May 31, 2000.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 00–14093 Filed 6–1–00; 10:33 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–706 (Review)]

Canned Pineapple From Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on canned pineapple from Thailand.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on canned pineapple from Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 21, 2000. Comments on the adequacy of responses may be filed with the Commission by August 15, 2000. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On July 18, 1995, the Department of Commerce issued an antidumping duty order on imports of canned pineapple from Thailand (60 FR 36775). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Thailand.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as canned pineapple.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of canned pineapple, excluding pineapple growers.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is July 18, 1995.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 21, 2000. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 15, 2000. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution:

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1994.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in case equivalents [2] and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in case equivalents and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 0–5–056, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

[2] One case equivalent equals 30 pounds of fruit net weight, exclusive of packaging.

consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in case equivalents and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14024 Filed 6–02–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–702 (Review)]

Ferrovanadium and Nitrided Vanadium From Russia

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on ferrovanadium and nitrided vanadium from Russia.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is July 21, 2000. Comments on the adequacy of responses may be filed with the Commission by August 15, 2000. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1995, the Department of Commerce issued an antidumping duty order on imports of ferrovanadium and nitrided vanadium from Russia (60 FR 35550). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Russia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined a single Domestic Like Product as ferrovanadium and nitrided vanadium.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined a single Domestic Industry as producers of ferrovanadium and nitrided vanadium, including toll-producers.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is July 10, 1995.

[1] No response to this request for information is required if a currently valid Office of Managemnet and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–055, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact CarolMcCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 21, 2000. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 15, 2000. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules.

The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document(if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the

United States or other countries since 1994.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/ business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14025 Filed 6–2–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree for Interim Injunctive Relief Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on May 23, 2000, a proposed Partial Consent Decree for Interim Injunctive Relief ("Partial Consent Decree") in *United States* v. *IBP, Inc.*, Civil Action No. 8:00–CV–28, was lodged with the United States District Court for the District of Nebraska.

In this action the United States seeks injunctive relief and civil penalties for IBP's past violations of the Clean Air Act and other environmental laws at its meatpacking plant and associated tannery and wastewater treatment facility in Dakota City, Nebraska. The United States asserts that IBP failed to install required air pollution control equipment as the company updated its complex from 1989 to 1995, and, as a result, illegally emitted an excessive amount of hydrogen sulfide into the air.

Under the Partial Consent Decree, IBP will build three new covered wastewater treatment lagoons by November 30, 2000; decommission its existing, uncovered lagoons that are largely responsible for emissions of approximately one ton each day of hydrogen sulfide; and undertake additional projects to limit the release of hydrogen sulfide into the air. The new lagoons will capture hydrogen sulfide generated by the wastewater and route it for treatment to a scrubber and flare. Any future uses of these lagoons will require approval by the Nebraska Department of Environmental Quality, subject to EPA's oversight.

The Partial Consent Decree further requires IBP to treat over three million gallons of well water used at its plant each day, in order to reduce the high concentration of sulfate in the well water, which breaks down into sulfides and in turn can be converted to hydrogen sulfide in wastewater.

The Partial Consent Decree also incorporates the work required under an Administrative Order on Consent entered into by EPA and IBP on April 27, 2000, which agreement requires IBP to install 7 on-site and 2 off-site air monitoring devices to monitor emissions of hydrogen sulfide from its Dakota City wastewater treatment facility.

The Partial Consent Decree today does not resolve the claims in the United States' lawsuit, but will provide relief to local citizens from IBP's hydrogen sulfide emissions as the case proceeds.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *IBP, Inc.*, Civil Action No. 8:00–CV–28, D.J. Ref. 90–11–3–06517/3.

The Partial Consent Decree may be examined at the Office of the United States Attorney, 487 Federal Building, 100 Centennial Mall North, Lincoln, NE 68508, and at U.S. EPA Region 7, 901 N. 5th St., Kansas City, Kansas 66101. A copy of the Partial Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C., 20044–7611. In requesting a copy, please enclose a check in the amount of $34.50 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy exclusive of exhibits please enclose a check in the amount of $15.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–13905 Filed 6–2–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that a proposed consent decree embodying a settlement in *United States* v. *ITT Industries, Inc., et al.*, No. CV 99–00552 MRP (ANx), was lodged on May 17, 2000, with the United States District Court for the Central District of California, Western Division.

In an amended complaint filed concurrently with the lodging of the consent decree, the United States and the State of California seek injunctive relief for performance of response actions and reimbursement of response costs incurred by the United States Environmental Protection Agency ("EPA") and by the California Department of Toxic Substances Control ("DTSC"), pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, in response to releases of hazardous substances at the Glendale North and South Operable Units ("OUs") of the San Fernando Valley Basin Superfund Site, in Southern California.

Under the proposed consent decree, the settling defendants have agreed to fund and perform future response actions at the Glendale OUs. Future work includes construction, operation and maintenance of a groundwater extraction and treatment system. After four months of operation and maintenance by the settling defendants, the City of Glendale, a party to the consent decree although not a defendant in the complaint, shall assume responsibility for future operation and maintenance of the extraction and treatment system, as well as of certain other facilities.

In addition, the consent decree requires the settling defendants to pay $13,226,949 in EPA past costs, together with $38,053 in Department of Justice costs, to the United States and $83,550 in DTSC past costs to the State of California.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *ITT Industries, Inc., et al.*, DOJ Ref. #90–11–2–442A. Commenters may request a public hearing in the affected area, pursuant to Section 7003(d) of RCRA, 42 U.S.C 6973(d).

The proposed consent decree may be examined at the EPA Region 9 Superfund Records Center, 75 Hawthorne Street, Fourth Floor, San Francisco, California 94105, and at the Office of the United States Attorney for the Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street, Los Angeles, California 90012. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, Box 7611, Ben Franklin Station, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $110.50 (25 cents per page reproduction costs), payable to the Consent Decree Library. A copy of the decree, exclusive of the defendants' signature pages and the attachments, may be obtained for $26.25.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–13907 Filed 6–2–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Consent Decree Under the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.

Notice is hereby given that on May 11, 2000, two proposed Consent Decrees ("Decrees") in the *United States* v. *Natural Gas Processing Company and KCS Resources, Inc. d/b/a/ Mountain Resources, Inc.*, Civ. Action No. CV 00–65–RFC, were lodged with the United States District Court for the District of Montana, Great Falls Division. The United States filed this action pursuant to Section 1423(b) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h–2(b), seeking injunctive relief and civil penalties for the Defendants' violation of various provisions of Part C of the SDWA and of 40 CFR part 144.

The proposed Consent Decree with the Natural Gas Processing Company ("NGP") requires NGP to pay a civil penalty of $54,000, including interest. The proposed Consent Decree with KCS Resources, Inc. d/b/a/ Mountain Resources, Inc. ("KCS") requires KCS to pay a civil penalty of $25,000, including interest, and to perform a Supplemental Environmental Project involving the plugging of one or more abandon Class II Underground Injection Control wells in Montana.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530, and should refer to *United States* v. *Natural Gas Processing Company and KCS Resources Inc. d/b/a Mountain Resources, Inc.*, Civ. Action No. CV 00–65–RFC, and D.J. Ref. #90–5–1–1–4401.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado 80202 and the U.S. EPA Region VIII, 999 18th Street, Denver, Colorado 80202. Copies of the Decrees may be obtained by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, DC

20044–7611. In requesting a copy, please enclose a check in the amount of $4.25 for the Natural Gas Processing Company Decree and $11.25 for the KCS Mountain Resources, Inc. Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 00–13904 Filed 6–2–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act Consistent With Departmental Policy, 28 CFR

50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Robert Odabashian, et al.* was lodged with the United States District Court for the Western District of Tennessee on May 18, 2000 (95–2361 G/Bre). On November 5, 1995, the United States filed a First Amended Complaint pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, against five defendants. The First Amended Complaint alleges that the defendants are liable under Section 107 of CERCLA for costs incurred by the United States Environmental Protection Agency during a cleanup of the Pulvair Corporation Superfund Site in Millington, Tennessee. Subsequently, defendants filed various third-party complaints seeking contribution from various third-party defendants. The proposed Consent Decree settles the liability of Kincaid Enterprises, Inc., one of the defendants named in the November 5, 1995 Complaint. Under the Consent Decree, the Settlor agrees to reimburse the United States in the amount of $400,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044; and refer to *United States* v. *Robert Odabashian, et al.*, DOJ Ref. #90–11–3–1474.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Suite 410, 200 Jefferson Avenue, Memphis, TN 38103, and at the office of the Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–13906 Filed 6–2–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; Health and Human Services Statistical data for refugee asylee adjusting status.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 4, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement of a previously approved collection.

(2) *Title of the Form/Collection:* Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–643. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The primary purpose of the information collected on this form is for use in the Office of Refugee Resettlement Report to Congress (8 U.S.C. 1523). The Service is required to report on the status of refugees at the time of adjustment to lawful permanent resident.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 32,370 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 30, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–13901 Filed 6–2–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) Work Incentive Grants

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; Technical Assistance/Bidders' Conferences.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of May 25, 2000, concerning the availability of grant funds designed to enhance the employability, employment and career advancement of people with disabilities through enhanced service delivery in the new One-Stop delivery system established under the Workforce Investment Act of 1998.

FOR FURTHER INFORMATION CONTACT: B. Jai Johnson, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739. Technical assistance/bidders' conferences will be held regarding the Department's Solicitation for Grant Application (SGA) for Work Incentive Grants at the following times and places:

June 6: 1 p.m. to 5 p.m.—Pierson Auditorium, University of Missouri at Kansas City, 5000 Holmes Avenue, Kansas City, Missouri 64110 (816) 235–1758. Contact for this location is Kelli Ellerbusch.

June 8: 9 a.m. to 1 p.m.—Oakland Federal Building, 1301 Clay St., Oakland, California 94612. Contact for this location is Chris Neilson at (510) 628–0665.

June 15: 9 a.m. to 1 p.m.—U.S. Department of Labor Auditorium, 200 Constitution Ave., N.W. 20210. Contact at this location is Paul Bennett at (202) 693–4937.

Specific information related to the SGA can be obtained from the following homepage: *http://wdsc.org/disability.* For general information on the technical assistance/bidders' conferences, please contact Paul Bennett at (202) 693–4927 or via e-mail at bennett-paul@dol.gov. Please contact Mr. Bennett to identify any special needs required at the technical assistance conference you plan to attend. If you are traveling from out of town, you will need to make hotel reservations on your own.

Signed at Washington, DC, this 25th day of May, 2000.

Laura Cesario,

Grant Officer.

[FR Doc. 00–14005 Filed 6–2–00; 8:45 am]

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LIBRARY OF CONGRESS

The United States Copyright Office

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000522150–0150–01]

RIN 0660–ZA13

Report to Congress Pursuant to Section 104 of the Digital Millennium Copyright Act

AGENCIES: The United States Copyright Office, Library of Congress; and the National Telecommunications and Information Administration, United States Department of Commerce.

ACTION: Request for public comment.

SUMMARY: The United States Copyright Office and the National Telecommunications and Information Administration invite interested parties to submit comments on the effects of the amendments made by title 1 of the Digital Millennium Copyright Act, ("DMCA") and the development of electronic commerce on the operation of sections 109 and 117 of title 17, United States Code, and the relationship between existing and emerging technology and the operation of such sections.

Section 104 of the DMCA directs the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce to submit to the Congress no later than 24 months after the date of enactment a report evaluating the effects of the amendments made by title 1 of the Act and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code, and the relationship between existing and emerging technology and the operation of those sections. This **Federal Register** Notice is intended to solicit comments from interested parties.

DATES: Comments must be received by August 4, 2000. Reply comments must be received by September 5, 2000.

ADDRESSES: The Copyright Office and the National Telecommunications and Information Administration invite the public to submit written comments in electronic form by electronic mail or on diskette. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

Comments submitted by electronic mail should be sent to both 104study@loc.gov and 104study@ntia.doc.gov. E-mail comments should be submitted as file attachments in one of the formats specified under **SUPPLEMENTARY INFORMATION** and should be sent to both the Copyright Office and National Telecommunications and Information Administration addresses.

Comments sent by regular mail may be sent to Jesse M. Feder, Policy Planning Advisor, Office of Policy and International Affairs, U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024; and Jeffrey E.M. Joyner, Senior Counsel, Office of Chief Counsel, National Telecommunications and Information Administration (NTIA), Room 4713, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Paper submissions should include a version on diskette in one of the formats specified under **SUPPLEMENTARY INFORMATION**. Comments should be sent to both the Copyright Office and National Telecommunications and Information Administration addresses.

FOR FURTHER INFORMATION CONTACT: Jesse M. Feder, Office of Policy and International Affairs, U.S. Copyright Office, Library of Congress (202) 707–8350 and Jeffrey E.M. Joyner, National Telecommunications and Information Administration (202) 482–1816.

SUPPLEMENTARY INFORMATION:

File Formats and Required Information

Comments and reply comments may be submitted in electronic form, in one of the following formats:

1. If by electronic mail: Send to "104study@loc.gov" and "104study@ntia.doc.gov" a message containing the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address. The message should also identify the document clearly as either a comment or reply comment. The document itself must be sent as a MIME attachment, and must be in a single file in either: (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word Version 7.0 or earlier; (3) WordPerfect 7 or earlier; (4) Rich Text File (RTF) format; or (5) ASCII text file format.

2. If by regular mail or hand delivery: Send, to the appropriate address listed above, two copies of the comment, each on a 3.5-inch write-protected diskette, labeled with the name of the person making the submission and, if applicable, his or her title and organization.

Either the document itself or a cover letter must also include the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address (if any). The document itself must be in a single file in either (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word Version 7.0 or earlier; (3) WordPerfect Version 7 or earlier; (4) Rich Text File (RTF) format; or (5) ASCII text file format.

3. If by print only: Anyone who is unable to submit a comment in electronic form should submit an original and two paper copies by hand or by mail to the appropriate address listed above. It may not be feasible for the Copyright Office and the National Telecommunications and Information Administration to place these comments on their respective websites.

Background

On October 28, 1998, the Digital Millennium Copyright Act ("DMCA") was enacted into law (Pub. L. No. 105–304, 112 Stat. 2860). Section 104 of the DMCA directs the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce to submit to the Congress no later than 24 months after the date of enactment a report evaluating the effects of the amendments made by title 1 of the Act and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code, and the relationship between existing and emerging technology and the operation of those sections. This **Federal Register** Notice is intended to solicit comments from interested parties on those issues.

The objective of title I of the DMCA was to revise U.S. law to comply with two World Intellectual Property Organization (WIPO) Treaties that were concluded in 1996 and to strengthen protection for copyrighted works in electronic formats. The DMCA establishes prohibitions on the act of circumventing technological measures that effectively control access to a work protected under the U.S. Copyright Act, and the manufacture, importation, offering to the public, providing or otherwise trafficking in any technology, product, service, device, component or part thereof which is primarily designed or produced to circumvent a technological measure that effectively controls access to or unauthorized copying of a work protected by copyright, has only a limited commercially significant purpose or use other than circumvention of such measures, or is marketed for use in circumventing such measures. The DMCA also makes it illegal for a person to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component or part thereof which is primarily designed or produced to circumvent a technological measure that effectively protects a right of a copyright owner in a work protected by copyright, has only a limited commercially significant purpose or use other than circumvention of such measures, or is marketed for use in circumventing such measures. In addition the DMCA prohibits, among other actions, intentional removal or alteration of copyright management information and knowing addition of false copyright management information if these acts are done with intent to induce, enable, facilitate or conceal a copyright infringement. Each prohibition is subject to a number of statutory exceptions.

Section 109 of the Copyright Act, 17 U.S.C. 109, permits the owner of a particular copy or phonorecord lawfully made under title 17 to sell or otherwise dispose of possession of that copy or phonorecord without the authority of the copyright owner, notwithstanding the copyright owner's exclusive right of distribution under 17 U.S.C. 106(3). Commonly referred to as the "first sale doctrine," this provision permits such activities as the sale of used books. The first sale doctrine is subject to limitations that permit a copyright owner to prevent the unauthorized commercial rental of computer programs and sound recordings.

Section 117 of the Copyright Act, 17 U.S.C. 117, permits the owner of a copy of a computer program to make a copy or adaptation of the program for archival purposes or as an essential step in the utilization of the program in conjunction with a machine. In addition, pursuant to an amendment contained in title III of the DMCA, section 117 permits the owner or lessee of a machine to make a temporary copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes of maintenance or repair of that machine.

Specific Questions

The United States Copyright Office and the National Telecommunications and Information Administration of the United States Department of Commerce seek comment on the following specific questions. Parties need not address all questions, but are encouraged to respond to those for which they have particular knowledge or information.

1. Section 109

(a) What effect, if any, has the enactment of prohibitions on circumvention of technological protection measures had on the operation of the first sale doctrine?

(b) What effect, if any, has the enactment of prohibitions on falsification, alteration or removal of copyright management information had on the operation of the first sale doctrine?

(c) What effect, if any, has the development of electronic commerce and associated technology had on the operation of the first sale doctrine?

(d) What is the relationship between existing and emergent technology, on one hand, and the first sale doctrine, on the other?

(e) To what extent, if any, is the first sale doctrine related to, or premised on, particular media or methods of distribution?

(f) To what extent, if any, does the emergence of new technologies alter the technological premises (if any) upon which the first sale doctrine is established?

(g) Should the first sale doctrine be expanded in some way to apply to digital transmissions? Why or why not?

(h) Does the absence of a digital first sale doctrine under present law have any measurable effect (positive or negative) on the marketplace for works in digital form?

1. Section 117

(a) What effect, if any, has the enactment of prohibitions on circumvention of technological protection measures had on the operation of section 117?

(b) What effect, if any, has the enactment of prohibitions on falsification, alteration or removal of copyright management information had on the operation of section 117?

(c) What effect, if any, has the development of electronic commerce and associated technology had on the operation of section 117?

(d) What is the relationship between existing and emergent technology, on one hand, and section 117, on the other?

(e) To what extent, if any, is section 117 related to, or premised on, any particular technology?

(f) To what extent, if any, does the emergence of new technologies alter the technological premises (if any) upon which section 117 is established?

2. General

(a) Are there any additional issues that should be considered? If so, what are they and what are your views on them?

(b) Do you believe that hearings would be useful in preparing the required report to Congress? If so, do you wish to participate in any hearings?

Information collected from responses to this **Federal Register** Notice will be considered when preparing the required report for Congress.

Dated: May 16, 2000.

Marybeth Peters,

Register of Copyrights, United States Copyright Office.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 00–14001 Filed 6–2–00; 8:45 am]

BILLING CODE 1410–30–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability; NUREG–1700, "Standard Review Plan for Evaluating for Nuclear Power Reactor License Termination Plans"

The U.S. Nuclear Regulatory Commission is noticing issuance of NUREG–1700, "Standard Review Plan for Evaluating Nuclear Power Reactor License Termination Plans." The standard review plan (SRP) guides staff reviewers on performing safety reviews of license termination plans (LTPs). Although the SRP is intended to be used by the NRC staff in conducting reviews, it can be used by interested parties responsible for conducting their own licensing review or developing an LTP. The principal purpose of the SRP is to ensure the quality and uniformity of staff reviews and to present a well-defined base from which to evaluate the requirements. It is also the purpose of the SRP to make the information about regulatory matters widely available to improve the understanding of the staff's review process by interested members of the public and the nuclear industry.

For further details with respect to this action, the documents are available for inspection at the NRC's Public Electronic Room at *http://www.nrc.gov.*

Dated at Rockville, Maryland, this 11th day of May 2000.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–13949 Filed 6–2–00; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27179]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 26, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 19, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 19, 2000, the applicant(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alliant Energy Corporation, et al. (70–9323)

Alliant Energy Corporation ("Alliant"), a registered holding company, its wholly owned intermediate nonutility holding company, Alliant Energy Resources, Inc. ("AER"), both located at 222 West Washington Avenue, Madison, Wisconsin 53703; and AER's nonutility subsidiary, Heartland Properties, Inc. ("HPI" and together with Alliant and AER, "Applicants"), 122 West Washington Avenue, 6th Floor, Madison, Wisconsin 53703, have filed an post-effective amendment, under section 9(c)(3) of the Act and rule 54 under the Act, to an application previously filed under the Act.

Under the terms of an order dated April 14, 1998 (HCAR No. 26856) ("1998 Order"), Alliant is currently authorized to hold passive investments, through HPI, in low-income housing projects ("LIHTC Properties").[1] Under the terms of the 1998 Order, HPI indirectly owns a 1% general partnership interest in an investment fund, more particularly described below, that indirectly holds limited partnership interests in seventeen LIHTC Properties ("Fund Properties"), nine of which are located outside the Alliant service territory. In addition to the investments permitted in the 1998 Order, Applicants are authorized by order dated August 13, 1999 (HCAR No. 27060) to invest up to $50 million ("Investment Limitation") from time to time over a five-year period to acquire additional LIHTC Properties in the Alliant Energy service territory.

The investment fund, Heartland Properties Equity Investment Fund I ("Fund"), is a limited partnership that holds limited partnership interests ranging between 88.9% and 99% in several other limited partnerships that own the Fund Properties. HPI's 1% general partnership interest in the Fund is held by its wholly owned subsidiary, Heartland Fund I, Inc. Minnesota Life Insurance Company ("MLIC") is the sole limited partner in the Fund with a 99% limited partnership interest.

HPI has been approached by MLIC about the possibility of selling its limited partnership interest in the Fund to HPI. In order to consummate the transaction, Applicants now propose to modify the existing limitation on investments in LIHTC Properties located outside of the year's service territory, for the specific purpose of acquiring MLIC's limited partnership interest in the Fund. The expected purchase price of approximately $10.7 million, when combined with HPI'S current investment level in LIHTC Properties, will be within the Investment Limitation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13953 Filed 6–2–00; 8:45 am]

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[1] The Commission determined in the 1998 Order that HPI's interests in 84 LIHTC Properties were retainable under section 9(c)(3) of the Act, because the interests were acquired to generate tax credits under section 42 of the Internal Revenue Code and they were being converted into passive investments.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24480]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 26, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May, 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

SSgA International Liquidity Fund [File No. 811–7775]

International Currency Fund [File No. 811–7773]

Summary: Applicants, a master fund and a feeder fund, respectively, in a master-feeder structure seek an order declaring that each applicant has ceased to be an investment company. As of February 18, 2000, all shareholders of each applicant redeemed their shares based on net asset value. No expenses were incurred in connection with the liquidation of either applicant.

Filing Dates: The applications were filed on February 17, 2000 and February 18, 2000, respectively, and amended on May 24, 2000.

Applicants' Address: 3435 Stelzer Road, Columbus, Ohio 43219–3035.

MuniVest Florida Fund [File No. 811–7580]

Summary: Applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On February 7, 2000, applicant transferred its assets to MuniYield Florida Fund based on net asset value. Each holder of applicant's auction market preferred stock ("AMPS") received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $277,489 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on May 12, 2000.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniVest New Jersey Fund, Inc. [File No. 811–7574]

Summary: Applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On February 7, 2000, applicant transferred its assets to MuniYield New Jersey Fund, Inc. based on net asset value. Each holder of applicant's auction market preferred stock ("AMPS") received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $320,916 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on May 15, 2000.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniYield New York Insured Fund II, Inc. [File No. 811–6661]

Summary: Applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 6, 2000, applicant transferred its assets to MuniYield New York Insured Fund, Inc. based on net asset value. Each holder of applicant's auction market preferred stock ("AMPS") received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $419,909 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on May 16, 2000.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniHoldings Michigan Insured Fund, Inc. [File No. 811–9125]

MuniVest Michigan Insured Fund, Inc. [File No. 811–7576]

Summary: Each applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 6, 2000, each applicant transferred its assets to MuniYield Michigan Insured Fund, Inc., based on net asset value. Each holder of each applicant's auction market preferred stock ("AMPS") received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $368,991 were incurred in connection with each reorganization and were paid by the acquiring fund.

Filing Dates: The applicants were filed on May 15, 2000 and May 16, 2000, respectively.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniHoldings New Jersey Insured Fund II, Inc. [File No. 811–8971]

MuniHoldings New Jersey Insured Fund III, Inc. [File No. 811–9127]

Summary: Each applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 6, 2000, each applicant transferred its assets to MuniHoldings New Jersey Insured Fund, Inc. based on net asset value. Each holder of each applicant's auction market preferred stock ("AMPS") received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $332,631 were incurred in connection with each reorganization and were paid by the acquiring fund.

Filing Dates: The applications were filed on May 15, 2000 and May 16, 2000, respectively.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniVest Pennsylvania Insured Fund [File No. 811–7750]

MuniHoldings Pennsylvania Insured Fund [Filed No. 811–9133]

Summary: Each applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On February 7, 2000, each applicant transferred its assets to MuniYield Pennsylvania Fund based on net asset value. Each holder of each applicant's auction market preferred stock ("AMPS") received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $312,357 were incurred in connection with each reorganization and were paid by the acquiring fund.

Filing Dates: The applications were filed on May 12, 2000 and May 15, 2000, respectively.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniHoldings California Insured Fund, Inc. [File No. 811–8213]

MuniHoldings California Insured Fund III, Inc. [File No. 811–8973]

MuniHoldings California Insured Fund IV, Inc. [File No. 811–9113]

Summary: Each applicant a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 6, 2000, each applicant transferred its assets to MuniHoldings California Insured Fund II, Inc. based on net asset value. Each holder of each applicant's auction market preferred stock ("AMPS") received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $447,161 were incurred in connection with each reorganization and were paid by the acquiring fund.

Filing Dates: The applications were filed on May 12, 2000, May 12, 2000 and May 15, 2000, respectively.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniHoldings Florida Insured Fund II [File No. 811–8543]

MuniHoldings Florida Insured Fund III [File No. 811–8815]

MuniHoldings Florida Insured Fund IV [File No. 811–9129]

Summary: Each applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On February 7, 2000, each applicant transferred its assets to MuniHoldings Florida Insured Fund based on net asset value. Each holder of each applicant's auction market preferred stock ("AMPS") received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $467,867 were incurred in connection with each reorganization and were paid by the acquiring fund.

Filing Date: Each application was filed on May 12, 2000.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniHoldings New York Fund, Inc. II [File No. 811–8575]

MuniHoldings New York Insured Fund II, Inc. [File No. 811–8813]

MuniHoldings New York Insured Fund III, Inc. [File No. 811–9131]

Summary: Each applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 6, 2000, each applicant transferred its assets to MuniHoldings New York Insured Fund, Inc. based on net asset value. Each holder of each applicant's auction market preferred stock ("AMPS") received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $408,233 were incurred in connection with each reorganization and were paid by the acquiring fund.

Filing Date: Each application was filed on May 12, 2000.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

Davis Intermediate Investment Grade Bond Fund, Inc. [File No. 811–3007]

Davis Tax-Free High Income Fund, Inc. [File No. 811–3270]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On March 17, 2000, applicants transferred their assets to Evergreen Intermediate Term Bond Fund, a series of Evergreen Fixed Income Trust, and Evergreen Tax-Free High Income Fund, a series of Evergreen Municipal Trust, respectively, based on the net asset value. Expenses of $81,800 and $181,400, respectively, incurred in connection with the reorganizations were paid by Davis Selected Advisers, Inc., investment adviser to applicants, and Evergreen Investment Management Company, investment adviser to each acquiring fund.

Filing Date: Each application was filed on May 16, 2000.

Applicants' Address: 2949 East Elvira Road, Suite 101, Tucson, Arizona 85706.

HT Insight Funds, Inc. d/b/a/ Harris Insight Funds [File No. 811–5366]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2000, applicant transferred its assets to Harris Insight Funds Trust based on net asset value. Total expenses of $228,600 were incurred in connection with the reorganization. Harris Trust and Savings Bank, applicant's investment adviser, paid printing expenses of $41,000. The remaining expenses were paid on a pro rata basis by applicant's five series.

Filing Date: The application was filed on May 1, 2000.

Applicants' Address: 3200 Horizon Drive, King of Prussia, Pennsylvania 19406.

Morgan Stanley Dean Witter Precious Metals and Minerals Trust [File No. 811–5988]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 31, 2000, applicant transferred its assets to Morgan Stanley Dean Witter Natural Resource Development Securities Inc. based on net asset value. Expenses of $118,000 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on April 27, 2000.

Applicant's Address: Two World Trade Center, 70th Floor, New York, New York 10048.

Morgan Stanley Dean Witter Worldwide High income Fund [File No. 811–8717]

Discover Brokerage Index Series [File No. 811–9059]

Morgan Stanley Dean Witter Managers Focus Fund (formerly Morgan Stanley Dean Witter 20 + 20 Select Fund) [File No. 811–9077]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make any public offering or engage in business of any kind.

Filing Dates: Each application was filed on April 27, 2000, and amended on May 22, 2000.

Applicants' Address: Two World Trade Center, 70th Floor, New York, New York 10048.

Warburg, Pincus Emerging Markets II Fund, Inc. [File No. 811–8937]

Warburg, Pincus Post-Venture Capital Fund, Inc. [File No. 811–7327]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On February 11, 2000, Warburg, Pincus Emerging Markets II Fund, Inc. transferred its assets to Warburg, Pincus Emerging Markets Fund, Inc. based on net asset value. On February 25, 2000, Warburg, Pincus Post-Venture Capital Fund, Inc. transferred its assets to Warburg, Pincus Global Post-Venture Capital Fund, Inc. based on net asset value. Expenses of approximately $100,000 incurred in connection with each reorganization were paid by applicant's investment adviser.

Filing Date: Each application was filed on April 18, 2000.

Applicants' Address: 466 Lexington Avenue, New York, New York 10017.

Warburg, Pincus Long-Short Equity Fund, Inc. [File No. 811–8929]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 15, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $5,000 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Date: The application was filed on April 18, 2000.

Applicant's Address: 466 Lexington Avenue, New York, New York 10017.

Income Opportunities Fund 1999, Inc. [File No. 811–8716]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 27, 1999, applicant made a liquidating distribution to its shareholders based on net asset value. As of April 27, 2000, applicant's transfer agent was holding approximately $441,000 in an escrow account for shares that have not been surrendered. Expenses of $37,890 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on February 8, 2000, and amended on April 27, 2000.

Applicant's Address: c/o Merrill Lynch Asset Management, L.P., P.O. Box 9011, Princeton, New Jersey 08536.

Evergreen Diversified Bond Fund (formerly Keystone Diversified Bond Fund (B–2)) [File No. 811–93]

Evergreen Intermediate Term Bond Fund (formerly Keystone Intermediate Term Bond Fund) [File No.811–4952]

Evergreen Tax Free Fund (formerly Keystone Tax Free fund) [File No. 811–2740]

Evergreen Tax Free Income Fund (formerly Keystone Tax Free Income Fund) [File No. 811–4951]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On January 24, 1998, Evergreen Diversified Bond Fund (formerly Keystone Diversified Bond Fund (B–2)) and Evergreen Intermediate Term Bond Fund (formerly Keystone Intermediate Term Bond Fund) transferred their assets to Evergreen Diversified Bond Fund and Evergreen Intermediate Term Bond Fund, respectively, each a newly-created series of Evergreen Fixed Income Trust based on net asset value.

On January 24, 1998, Evergreen Tax Free Fund (formerly Keystone Tax Free Fund) and Evergreen Tax Free Income Fund (formerly Keystone Tax Free Income Fund) transferred their assets to Evergreen Tax Free Fund, a newly-created series of Evergreen Municipal Trust based on net asset value.

All expenses incurred in connection with the reorganizations were paid by First Union National Bank, the parent of applicants' investment adviser.

Filing Date: Each application was filed on April 25, 2000.

Applicants' Address: 200 Berkeley Street, Boston, Massachusetts 02116.

Master Investment Trust, Series I [File No. 811–8086]

Pacific Horizon Funds, Inc. [File No. 811–4293]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By May 21, 1999, Master Investment Trust, Series I had transferred its assets to Nations Master Investment Trust, based on net asset value, and each series of Pacific Horizon Funds, Inc. had transferred its assets to a corresponding series of either Nations Fund, Inc., Nations Institutional Reserves, or Nations Fund Trust, based on net asset value. Total expenses of $8,720,361 incurred in connection with both reorganizations were paid by Banc of America Advisors, Inc., investment adviser to the acquiring funds.

Filing Dates: The applications were filed on March 14, 2000, and amended on May 12, 2000.

Applicants' Address: 400 Bellevue Parkway, Wilmington, Delaware 19103.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13952 Filed 6–2–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 5, 2000.

A closed meeting will be held on Thursday, June 8, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled Thursday, June 8, 2000 will be:

Institution of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: June 1, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–14108 Filed 6–1–00; 11:39 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42832; File No. SR–ODD–00–02]

Self-Regulatory Organizations; OM London Exchange Limited; Order Approving Proposed Amendment to Options Disclosure Document

May 25, 2000.

On May 25, 2000, the OM London Exchange Limited ("OM London") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 ("Act")[1] five definitive copies of OM London's options disclosure document ("ODD"), which OM London has revised to reflect the introduction of OMXcap Index options.[2]

OM London's ODD currently contains general disclosures concerning the characteristics and risks of trading equity and index options on OM London. Prior to May 26, 2000, OM London listed options on Swedish equity securities and on the OMX Index. On May 26, 2000, OM London will also list options on the OMXcap Index, a modified capital-weighted index designed to reflect the development of the Swedish stock market. OM London has revised its ODD to accommodate the introduction of OMXcap Index options. OM London's revised ODD also includes disclosures concerning certain restrictions on the trading of OMX Index options after May 26, 2000.

The Commission has reviewed OM London's revised ODD and finds that it complies with Rule 9b–1 under the Act. OM London's revised ODD provides information regarding OMXcap Index options sufficient to describe the special characteristics of OMXcap Index options.

Rule 9b–1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard for the adequacy of information disclosed and the protection of investors.[3] The Commission has reviewed OM London's revised ODD and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of OM London's revised ODD as of the date of this order.[4]

It is Therefore Ordered, pursuant to Rule 9b–1 under the Act,[5] that OM London's ODD as amended to reflect the listing of OMXcap index options (File NO. SR–ODD–00–02) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13960 Filed 6–2–00; 8:45 am]

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[1] 17 CFR 240.9b–1.

[2] The Commission previously reviewed OM London's ODD and found that its complied with Rule 9b–1 under the Act. *See* Securities Exchange Act Release No. 39080 (September 15, 1997), 62 FR 49553 (September 22, 1997) (order approving File No. SR–ODD–97–1).

[3] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[4] Rule 9b–1 provides that the use of an ODD shall not be permitted unless the option class to which the document relates is the subject of an effective registration statement on Form S–20 under the Securities Act of 1933. On September 12, 1997, the Commission, pursuant to delegated authority, declared effective OM London's revised Form S–20 registration statement. *See* File No. 333–34519.

[5] 17 CFR 240.9b–1.

[6] 17 CFR 200.30–3(a)(39)(i).

[6] 17 CFR 200.30–3(a)(39)(i)

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42833; File No. SR–CBOE–00–11]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Index Portfolio Shares

May 26, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt listing standards to list and trade Index Portfolio Shares ("IPS"), securities issued by an open-end management investment company that seek to provide investment results similar to the price and yield performance of its underlying index. Once these listing standards have been approved, the Exchange intends to trade IPSs of a Fund based on the S&P 100 Index. Below is the text of the proposed rule change. New language is *italicized* and deletions are bracketed.

* * * * *

Chicago Board Options Exchange, Incorporated Rules

Rule 1.1

* * * * *

. . . Interpretations and Policies:

* * * * *

.03 the term "Index Portfolio Shares" or IPSs means securities that (a) are issued by an open-end management investment company based on a portfolio of stocks designed to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (b) are issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified number of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end management investment company which will pay to the redeeming holder stock and/or cash with a value equal to the next determined net asset value.

* * * * *

Rule 30.10 The unit of trading in stocks, [and] the unit of trading in IPRs *and the unit of trading in IPSs* shall be 100 shares or units, except as otherwise established [in either case] by the Exchange. The unit of trading in all other securities traded subject to the rules in this Chapter shall be as determined by the Board of Directors.

* * * * *

Rule 30.33

* * * * *

. . . Interpretations and Policies:

.01 The minimum fractional change for IPRs *and IPSs* shall be 1/64 of $1.00.

* * * * *

Rule 30.36 Rule 24.7 shall apply to the trading of stock index warrants, *IPSs* and IPRs. The term "option" as used therein shall be deemed for the purposes of this Rule to include a stock index warrant, *IPSs* or IPRs, as the case may be.

* * * * *

Rule 30.55

(b) The disclaimers found under Rule 24.14 shall apply to any Reporting Authority with respect to any index or portfolio underlying a series of IPRs, *IPSs*, index warrants or any other index-related security governed by the rules of Chapter XXX. The terms "option" and "option contract" as used in Rule 24.14 shall be deemed for the purpose of this rule to include IPRs, *IPSs*, index warrants or other index-related security governed by the rules of Chapter XXX, as the case may be.

* * * * *

Special Provisions for IPSs

Rule 30.56

Designation of an index or portfolio. The Exchange may list and trade Index Portfolio Shares (as defined in Interpretations and Policies .03 following rule 1.1) based on one or more foreign or domestic stock indexes or securities portfolios. Each issue of Index Portfolio Shares based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which a series of Index Portfolio Shares is based shall be selected by the Exchange or its agent or by such other person as shall have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

* * * * *

Rule 31.5

* * * * *

M. IPSs. Notwithstanding any other provisions in these Rules to the contrary, a series of IPSs representing interests in a particular open-end management investment company (as those terms are defined in Interpretations and Policies .03 following Rule 1.1) may be listed on the Exchange subject to the criteria set forth below:

(a) Public Distribution—For each open-end management investment company, the Exchange will establish a minimum number of IPSs required to be outstanding at the time of commencement of trading on the Exchange.

(b) Voting—Voting rights shall be as set forth in the applicable open-end management investment company prospectus.]

* * * * *

Rule 31.94

* * * * *

H. Policies Regarding IPSs.

Twelve months following the commencement of trading on the Exchange of a series of Index Portfolio Shares, the Exchange will consider the suspension of trading in, or removal from listing of, such series of IPSs, when in its opinion further dealing in such securities appears unwarranted under any of the following circumstances:

(a) there are fewer than 50 beneficial holders of the series of Index Portfolio Shares for 30 or more consecutive trading days; or

(b) the value of the index or portfolio of securities on which the series of Index Portfolio Shares is based is no longer calculated or available; or

(c) such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Upon termination of an open-end management investment company, the Exchange requires that Index Portfolio Shares issued in connection with such entity be removed from Exchange listing.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Interpretation .03 to CBOE Rule 1.1, new CBOE Rule 30.56, new paragraph M to CBOE Rule 31.5, and new paragraph H to CBOE Rule 31.94; and to amend CBOE Rule 30.10, Interpretation .01 to CBOE Rule 30.33, CBOE Rule 30.36, and CBOE Rule 30.55, to permit the listing and trading of IPSs, *i.e.*, securities issued by an open-end management investment company that seeks to provide investment results similar to the price and yield performance of its underlying index. The Exchange believes that IPSs would provide investors with increased flexibility in meeting their investment needs.

a. *Index Portfolio Shares.* IPSs will be issued by an entity registered with the Commission under the Investment Company Act of 1940, as amended, as an open-end management investment company, commonly known as a mutual fund ("Fund"). A Fund may be organized as a series fund providing for the creation of separate series of securities, each with a portfolio consisting of some or all of the component securities of a specified securities index. The Exchange represents that IPSs are essentially the same as Index Fund Shares, securities that have traded on the American Stock Exchange LLC ("Amex") since the Commission approved Amex Rules 1000A *et seq.* in March 1996.[3] The CBOE also states that IPSs are similar to CBOE's Index Portfolio Receipts ("IPRs"), which are securities issued by a unit investment trust rather than a Fund. The Commission approved standards for the listing and trading of IPRs in 1998.[4]

The CBOE intends to list and trade IPSs of a Fund (to be managed by Barclays Global Fund Advisors) that will seek to provide investment results that correspond generally to the price and yield performance of the S&P 100 Index.[5] The CBOE states that this index represents the large capitalization growth sector of the U.S. market and accounts for approximately 38% of the market capitalization of all U.S. equity securities. The CBOE represents that the index consists of 100 stocks that are some of the largest companies in the U.S. equity market and that size, liquidity, and sector representations are the primary determinants in choosing index constituents.

b. *Issuance and Redemption.* Issuances of IPSs by a Fund will be made only in minimum size aggregations or multiples thereof ("Creation Units"). The size of the applicable Creation Unit will be set forth in the Fund's prospectus, and will vary from one series of IPSs to another, but generally will be substantial (*e.g.*, at least 50,000 shares).[6] It is expected that

[3] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[4] *See* Securities Exchange Act Release No. 39581 (January 26, 1998), 63 FR 5579 (February 3, 1998).

[5] At the time, the CBOE has no plans to list series of IPSs for indices other than that described in the present rule filing. Telephone conversation between Kevin An, Attorney, Schiff, Hardin & Waite, and Heather Traeger, Attorney, Division of Market Regulation ("Division"), Commission; Susie Cho, Attorney, Division, Commission, on April 25, 2000.

[6] The Commission notes that if in the future the number of shares per Creation Unit of an S&P 100 series were to be changed, or the value of a Creation Unit were to fall significantly, such a change could require the filing of a proposed rule change by the Exchange pursuant to Section 19(b) of the Act. Telephone conversation between Kevin An, Attorney, Schiff, Hardin & Waite, and Heather Traeger, Attorney, Division, Commission, on April 25, 2000.

a Fund will issue and sell IPSs through a principal underwriter on a continuous basis at the net asset value ("NAV") per share next determined after an order to purchase IPSs in Creation Unit size aggregations is received in proper form.

The Exchange expects that Creation Unit size aggregations of IPSs generally will be issued in exchange for the "in kind" deposit of a specified portfolio of securities, together with a specified amount of cash. The Exchange anticipates that such deposits will be made primarily by institutional investors, arbitrageurs, and market maker members of the Exchange. Similarly, redemption of IPSs generally will be made "in kind," with a portfolio of securities and/or cash exchanged for IPSs that have been tendered for redemption.

c. *Trading of IPSs.* Following issuance, IPSs will be trade on the Exchange like other equity securities, and CBOE equity trading rules generally would apply to the trading of IPSs. IPSs will be registered in book entry form through The Depository Trust Company ("DTC"), which means no stock certificates will be issued. The Exchange represents that the trading prices of IPSs on the Exchange may differ in varying degrees from their daily NAVs and can be affected by market forces such as supply and demand, economic conditions and other factors. Trading in IPSs on the Exchange may be effected until 3:15 p.m. (central time) each business day. The unit of trading of IPSs will be 100 shares or units and the minimum fractional change in IPSs will be $\frac{1}{64}$ of $1.00.

d. *Distributions.* A Fund may make periodic distributions of dividends from net investment income, if any. A Fund also distribute its capital gains, if any, to investors annually.

e. *Criteria for Initial and Continued Listing.* The Exchange believes that the proposed standards for listing and delisting of IPSs allow some flexibility for the Exchange. The Exchange will establish a minimum number of IPSs required to be outstanding at the time of commencement of trading on the Exchange. The Exchange anticipates that a minimum of two Creation Units in any series of IPSs would be required to be outstanding before trading could begin. Each series of IPSs will be subject to the initial and continued listing criteria of new proposed CBOE Rules 31.5M and 31.94H.

CBOE Rule 31.94H provides that twelve months after the commencement of Exchange trading of a series of IPSs, the Exchange will consider suspension of trading in, or removal from listing of, such series under any of the following circumstances:

(a) There are fewer than 50 beneficial holders of the series of IPSs for 30 or more consecutive trading days;

(b) The value of the index or portfolio of securities on which the series of IPSs is based is no longer calculated or available; or

(c) Such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

The Exchange will also require that IPSs be removed from listing upon termination of the Fund that issued such shares.

f. *Disclosure.* With respect to investor disclosure, the Exchange notes that, pursuant to the requirements of the Securities Act of 1933, as amended, all investors in IPSs will receive a prospectus, including investors purchasing in secondary market transactions on the Exchange. This is due to the fact that the Creation Units will be in continuous distribution.

Prior to commencement of trading of a series of IPSs, the Exchange will distribute to Exchange members an Information Circular calling attention to characteristics of the specific series and to applicable Exchange rules. That circular will inform members of their responsibilities with respect to transactions in such IPSs. The circular will inform member organizations of their responsibility to deliver a prospectus to all investors purchasing IPSs. The circular will also note that IPSs are not individually redeemable; they may be redeemed in Creation Units only.

g. *Trading Halts.* Prior to commencement of trading in IPSs, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in IPSs. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in CBOE Rule 24.7 in exercising its discretion to halt or suspend trading. These factors would include: (1) Whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Also, trading in IPSs would be halted (along with the trading of other securities on the Exchange) if the circuit breaker parameters under CBOE Rule 6.3B are reached.

h. *Surveillance.* The Exchange will use the surveillance procedures that it has been using for the trading of other non-option securities traded on the Exchange.[7] These procedures incorporate and rely upon existing CBOE surveillance procedures governing equities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[8] in general, and in particular, with section 6(b)(5),[9] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition. The CBOE believes that the proposed rule change will enhance competition for the listing and trading of IPSs and similar securities that are currently listed and traded on the Amex.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[7] *See* Securities Exchange Act Release No. 39581 (January 26, 1998), 63 FR 5579 (February 3, 1998) (noting that CBOE surveillance procedures for the trading of IPRs, which incorporate and rely upon existing CBOE surveillance procedures governing equities, were adequate under the Act).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–11 and should be submitted by June 26, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds, for the reasons set forth below, that the proposed rule change is consistent with the requirements of section 6 of the Act [10] and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5) of the Act.[11] Specifically, the Commission finds that the proposed standards governing the listing and trading of IPSs, and, in particular, the IPSs Fund on the S&P 100 Index, will provide investors with a convenient and less expensive way of participating in the securities markets. The proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating or to a large extent representing the performance of several portfolios of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[12]

On January 26, 1998, the Commission approved the listing and trading on the CBOE of IPRs, securities issued by a unit investment trust that seek to provide investment results that correspond generally to the price and yield performance of a specified index.[13] The proposed IPSs are similar to IPRs except that IPSs are issued by a Fund instead of a unit investment trust. The Commission believes that the proposal to list and trade IPSs, and specifically the Fund based on the S&P 100 Index, will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade a product representing an interest in a portfolio of securities designed to reflect substantially the applicable underlying index. IPSs will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and, (3) reduce transactions costs for trading a portfolio of securities.

Although IPSs are not leveraged instruments, and therefore do not possess any of the attributes of stock index options, their prices will be derived and based on the value of the securities and the cash held in the Fund. Accordingly, the level of risk involved in the purchase or sale of these IPSs is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for these IPSs is based on a portfolio of securities.

The Commission finds that the CBOE's proposal contains adequate rules and procedures to govern the trading of IPSs. Under CBOE rules, IPSs are subject to the full panoply of rules governing the trading of equity securities on the CBOE, including, among others, rules and procedures governing the priority, parity and precedence of orders, responsibilities of all types of market-makers, trading halts, disclosures to members, margin requirements, and customer suitability requirements. Further, the Commission notes that the CBOE will use surveillance procedures that incorporate and rely upon existing CBOE surveillance procedures governing equities, and the Commission has found in the past that these procedures are adequate under the Act.[14] In addition, the rules we are approving today contain specific listing and delisting criteria for IPSs that will help to ensure that the markets for IPSs will be deep and liquid to allow for the maintenance of fair and orderly markets. The Commission believes that these criteria should serve to ensure that the underlying securities of an IPSs series are well capitalized and actively traded, and that new series of IPSs do not contain features that are likely to impact adversely the U.S. securities markets.

In addition, the Exchange has designated that a minimum of two creation units, approximately 100,000 shares, will be required to be outstanding at start-up of trading. The Commission believes this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading. Furthermore, the Commission finds that registering the IPSs in book-entry form through DTC, managing the distribution of dividends from net investment income, if any, and distributing capital gains, if any, are characteristics of IPSs that are consistent with the Act and should allow for the maintenance of fair and orderly markets and perfect the mechanism of a free and open market pursuant to section 6(b)(5) of the Act.[15]

Furthermore, the Commission believes that the Exchange's proposal to trade IPSs in minimum fractional increments of $^1/_{64}$ of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in IPSs.

The Exchange represents that the Reporting Authority will disseminate for each Fund of IPSs an estimate, updated every 15 seconds, of the value of a share of each Fund. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each Fund.[16]

The Commission also believes that the CBOE has developed adequate policies regarding trading halts in IPSs. Specifically, the Exchange would halt trading in IPSs if the circuit breaker parameters under CBOE Rule 6.3B were reached. In addition, in deciding whether to halt trading or conduct a delayed opening in IPSs, the CBOE could consider factors such as those set forth in CBOE Rule 24.7, including: (1) Whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more the applicable current index group value; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

In addition, the Commission believes that the IPSs proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading IPSs. All investors in IPSs will receive a prospectus prior to or concurrently with the confirmation of a transaction therein, including investors purchasing in secondary market transactions on the Exchange. The prospectus should address the special terms and characteristics of the particular IPSs Fund, including a statement regarding their redeemability and method of creation, and a statement that the trading prices of IPSs on the Exchange may differ in varying degrees from their daily NAVs and can be affected by market forces such as supply and demand, economic conditions, and other factors.[17]

Furthermore, the Commission notes that prior to the commencement of trading of a series of IPSs, the Exchange will distribute to Exchange members an Information Circular calling attention to characteristics of the specific Fund and to applicable Exchange rules, such as trading halt rules. The circular will inform members of their responsibilities with respect to transactions in such IPSs and of their responsibility to deliver a prospectus to all investors purchasing IPSs. The circular will also note that IPSs are not individually redeemable, but must be redeemed in Creation Units only.

The Commission is approving in general the CBOE's proposed listing standards for IPSs, and, specifically, the listing of IPSs of a Fund based on the S&P 100. The Commission specifically notes that, notwithstanding approval of the listing standards for IPSs, other similarly structured products, including IPSs based on other indices, will require review by the Commission prior to being traded on the Exchange. Additional series cannot be listed prior to contacting Division staff. In addition, the CBOE may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change is based on Amex Rule 1000A *et seq.* and is similar to CBOE rules relating to IPRs, both of which the Commission approved in the past.[18] The Commission also observes that the proposed rule change concerns issues that previously have been the subject of a full comment period pursuant to section 19(b) of the Act.[19] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. In view of these factors, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by these new instruments by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act, to approve the proposal today.

V. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–CBOE–00–11) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13954 Filed 6–2–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78(f)(b).

[13] *See supra*, note 4.

[14] *See* Securities Exchange Act Release No. 39581 (January 26, 1998), 63 FR 5579 (February 3, 1998).

[15] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] Telephone conversation between Kevin An, Attorney, Schiff, Hardin & Waite, and Heather Traeger, Attorney, Division, Commission; Susie Cho, Attorney, Division, Commission, on May 22, 2000.

[17] Telephone conversation between Kevin An, Attorney, Schiff, Hardin & Waite, and Heather Traeger, Attorney, Division, Commission; Susie Cho, Attorney, Division, Commission, on May 22, 2000.

[18] *See supra* notes 3 and 4.

[19] 15 U.S.C. 78s(b)

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42835; File No. SR–CBOE–99–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Participation Rights for Firms Crossing Orders.

May 26, 2000.

I. Introduction

On March 18, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rule governing the crossing of equity option orders by floor brokers, to give the member firm from which an order originates ("originating firm") a participation right in trades that are proposed to be crossed in certain circumstances. Notice of the proposed rule change was published for comment in the **FEDERAL REGISTER** on July 16, 1999.[3] The Commission received four comment letters regarding the proposal.[4] On October 4, 1999, April 11, 2000, and May 25, 2000, the CBOE filed Amendment Nos. 1, 2, and 3, respectively, to the proposal.[5] This order approves the proposed rule change, accelerates approval of Amendment Nos. 1, 2, and 3, and solicits comments from interested persons on those amendments.

II. Description of the Proposal

CBOE Rule 6.74 sets forth the procedures by which a floor broker holding a customer order ("original order") may cross it with either: (i) Another customer order or orders from the same originating firm; or (ii) a contra side order provided by the originating firm from its own proprietary account ("facilitation order").[6]

Under CBOE Rules 6.74(a) and (b), a floor broker seeking to cross buy and sell orders for the same options series must first bring the transaction to the trading floor and request a market from the trading crowd. After receiving bids and offers from the crowd, the floor broker must propose a price at which to cross the original order that improves upon the price provided by the crowd. However, before the floor broker can effect the cross, the market makers in the crowd are given the opportunity to take all or part of the transaction at the proposed price.[7]

Under these rules, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to take part of the order, however, the crowd has precedence and the floor broker may cross only that amount remaining after

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41609 (July 8, 1999), 64 FR 38494.

[4] *See* Section II below for a description of the comment letters.

[5] The substantive modifications made by these amendments are incorporated in the description of the proposal in Section II below, and are further discussed in Section IV.

[6] Under the CBOE's rules, facilitation orders may be provided only to cross the orders of public customers. *See* CBOE Rule 6.74(b). This same stipulation is retained under the proposed rule change.

[7] In the case where the floor broker is proposing to cross two customer orders, the crowd may take all or part of either customer order. In the case where the floor broker is seeking to effect a facilitation cross, the crowd may take all or part of the customer order.

the crowd has taken its portion. If the crowd wants to take the entire order, the floor broker will not be able to cross or facilitate any part of the order.

The proposed rule change, adding new paragraph (d) of Rule 6.74, will apply to transactions in equity options,[8] and will pertain to orders of a certain minimum size. The qualifying size of orders eligible for the proposal's new rule will be determined by the appropriate Floor Procedure Committee of the Exchange, but cannot be less than 50 contracts.[9] The proposed rule change will entitle the floor broker, under certain conditions, to cross a specified percentage of the original order on behalf of the originating firm, before market makers in the crowd can participate in the transaction. The percentage of the floor broker's guarantee will depend upon whether the price at which the order is ultimately traded is at the crowd's best bid or offer in response to the broker's initial request or at an improved price.

First, in contrast to the provisions of current rule 6.74, the floor broker will be granted a right to cross even at a price that does not improve upon the best bid or offer provided by the crowd in response to his initial request for a market. The proposed rule change provides that where the trade takes place *at* the market provided by the crowd, all public customer orders in the book and those represented in the trading crowd at the time the market was established [10] must first be satisfied. Once these public customer orders are satisfied, the floor broker will be entitled to cross 20% of the contracts remaining in the original order.

The proposed rule change further provides that if the original order is traded at a price *between* the best bid and offer provided by the crowd in response to the floor broker's initial request for a market—*i.e.*, where the floor broker proposes the cross at a price that improves the crowd's market, and the crowd then wants to take part or all of the order at the improved price—the floor broker will be entitled to priority over the crowd to cross 40% of the contracts.

As under existing procedures codified in paragraphs (a) and (b) of Rule 6.74, the floor broker seeking to execute a cross under proposed paragraph (d) will be required, when initially asking for a market in the option series, to make all persons in the trading crowd, including the Order Book Official, aware of his request.

Proposed paragraph (d)(i) provides, in addition, that once the trading crowd has provided a market, that market will remain in effect until (a) a reasonable amount of time has passed; (b) a significant change has occurred in the price of the underlying security of the option; or (c) the market is improved.[11] In case of a dispute, "significant change" will be determined on a case-by-case basis by two Floor Officials, based upon the extent of recent trading in the option and the underlying security and any other relevant factor.

In the case of a multi-part or spread order, one leg alone of the order will need to meet the eligible size requirement to qualify for the provisions of the proposed rule change.

In the case of a facilitation cross, the facilitating firm will be required to disclose on the order ticket for the public customer order all terms of the order, including any contingency involving, and all related transactions in, either options or underlying or related securities. The floor broker will be required to disclose all securities that are components of the public customer order before requesting bids and offers for the execution of all components of the order.[12]

If the same member organization of the Exchange is both the originating firm and the Designated Primary Market Maker ("DPM") for the class of options in which the transaction takes place,[13] and the floor broker acting on behalf of the firm takes advantage of the crossing right provided by the proposed rule change, the firm will not be entitled to any participated in the trade on the guaranteed percentage ordinarily granted to DPMs pursuant to CBOE Rule 8.80 ("DPM participation rate").[14] In this instance the firm will be limited to its guaranteed participation under Rule 6.74.

If the DPM in the options class is not the same member organization as the originating firm, and the trade takes place at the DPM's principal bid or offer, the DPM will be entitled to participate in a percentage of the contracts remaining after relevant public customer orders have been filled and the originating firm's crossing rights have been exercised. The percentage that the DPM will receive is determined by reference to the established DPM participation rate—subject to limitation. If the floor broker crosses the full 20% of the originating firm's entitlement, the number of contracts guaranteed to the DPM may not exceed 25% of the remaindere of the order after the originating firm has taken its share.[15] If the floor broker does not cross 20%, the DPM may be entitled to more, but in no case will the DPM be guaranteed a percentage that, when combined with the percentage crossed by the floor broker, exceeds 40% of the original order (after relevant public customer orders have been satisfied).[16]

The proposed rule change makes clear, however, that it is not intended to prohibit either a floor broker or DPM from trading more than their percentage entitlements if the other members of the trading crowd do not choose to trade with the remainder of the order.[17]

The proposal further makes clear, in accordance with Rule 8.80, that if the trade takes place at a price other than that of the DPM's principal bid or offer, the DPM would not be entitled to any guaranteed participation.[18]

The proposed rule change also provides that the members of the crowd who establish the market in response to the floor broker's initial request will have priority over all other orders that were not represented in the crowd at the time that market was established, except for orders that improve upon those

[8] The CBOE has also filed a related rule change regarding facilitation crosses in index options. *See* Securities Exchange Act Release No. 41743 (August 13, 1999), 64 FR 45578 (August 20, 1999)(File No. SR–DBOE–99–35).

[9] *See* Amendment No. 2 to the proposed rule change, concerning proposed paragraph 1 of Rule 6.74(d). The original proposal would have restricted the eligible order size to 500 contracts or more.

[10] *See* Amendment No. 3, concerning subsection 6.74(d)(ii).

[11] *See* Amendment No. 2, concerning proposed subsection 6.74(d)(i).

[12] *See* Amendment No. 2, concerning proposed subsection 6.74(d)(iv).

[13] The same provision would apply if the originating firm or the DPM or both are nominees of the same member organization. Telephone conversation between Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, and Gordon Fuller, Special Counsel, and Ira Brandriss, Attorney, Division of Market Regulation ("Division"), the Commission, on May 22, 2000.

[14] *See* CBOE Rule 8.80(c)(7); Securities Exchange Act Release No. 42190 (December 1, 1999), 64 FR 68706 (December 8, 1999) (establishing the DPM guarantee at 30% when the trade occurs at the DPM's principal bid or offer).

[15] Thus, if the original order was for 1,000 contracts, and the originating firm, crossing at the best bid or offer price given by the crowd, took its full share of 200 contacts (20%)—assuming no public customer orders were represented in the book or in the crowd—the DPM would be entitled to 200 contracts (25% of the remaining 800) and the total combined participation guarantees of the originating firm and the DPM would be limited to 400 contracts, or 40% of the original order.

[16] *See* Amendment No. 2, concerning proposed subsection 6.74(d)(v).

[17] *Id.*, concerning proposed subsection 6.74(d)(vii).

[18] *Id.*, concerning proposed subsection 6.74(d)(v). Thus, the DPM participation right is not a concern where the originating firm receives a 40% crossing right, because that right is granted only when the trade occurs between the best bid and offer given by the crowd, which is by definition at a price other than the DPM's principal bid or offer.

quotes. Further, a floor broker holding a customer order and either a facilitation order or a solicited order and who makes a request for a market will be deemed to be representing both the customer order and either the facilitation order or solicited order, so that the customer order and the other order will also have priority over all other orders that were not being represented in the trading crowd at the time the market was established.[19]

III. Summary of Comments

The Commission received four comment letters regarding the proposed rule change. One commenter, the Amex Options Market Maker Association ("OMMA"),[20] opposed the proposal. Three commenters—Morgan Stanley & Co. ("Morgan Stanley"),[21] Goldman, Sachs & Co. ("Goldman Sachs"),[22] and Credit Suisse First Boston Corporation ("CSFB") [23]—supported it.

The OMMA stated that the proposed rule change would harm investors because when floor brokers representing customer orders are guaranteed the right to cross a fixed percentage of those orders, they will no longer attempt to seek the best price possible for those orders. The OMMA further maintained that the auction market would be cut short under the proposed rule change, and that the participation guarantees granted to upstairs firms will remove the incentive for market makers to improve prices.

CSFB and Morgan Stanley stated that the proposal would contribute to more efficient markets and the narrowing of spreads for listed options. The guaranteed participation, they maintained, would provide an incentive for originating firms to find contraparty customers or to commit their own capital at a price between the spread. They also argue that it would correct an inequity under current rules that allows market makers to take 100% of a proposed cross away from an originating firm.

Goldman Sachs adds that, under the proposal, the crossing price would of necessity be fair to the customer, because the originating firm is guaranteed a participation right only for a cross at or better than the quoted market. Moreover, it noted, firms would have an incentive to bring liquidity to the market and market makers would have an incentive to quote tighter markets in order to increase their participation.

The commenters who supported the proposal also maintained that it would enable the CBOE to compete effectively with other exchanges.

The CBOE responded to OMMA's comments in Amendment No. 1 to the proposal. The CBOE stated that, contrary to suggestions made by the OMMA, market makers would always have an opportunity to improve the market under the proposed rule change, and a cross could never be executed outside the best quoted market.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of the Act applicable to a national securities exchange, particularly those of section 6(b)(5) [24] and section 6(b)(8) [25] of the Act, and the rules and regulations thereunder.[26] The Commission believes that the proposal will enable the CBOE to better compete with other options exchanges in attracting the order flow of broker-dealer firms seeking to cross and facilitate customer orders, without adversely impacting the prices those orders receive.

The Commission finds that the CBOE's proposal to grant participation rights, under certain conditions, to member firms that execute crossing transactions on the Exchange is reasonable. Currently, CBOE market makers have priority rights for the full size of a customer order over the firm that brings a crossing transaction to the CBOE floor, as long as the market makers are willing to trade at the proposed price.

While the proposal entitles the originating firm to a specified percentage of a crossing transaction when executed at the trading crowd's best bid or offer, it does not eliminate the crowd's ability to trade with a portion of the order proposed to be crossed, or even so substantially reduce that ability so as to raise serious concern that the proposal would reduce price competition by the crowd. Moreover, the Commission believes that the proposal may contribute to better prices for crossing transactions. Specifically, it provides an incentive for upstairs firms to improve on the prices quoted by the crowd by offering these firms a greater participation in the trade when they better the crowd's price. In addition, as the CBOE represents, market makers will always have an opportunity to improve the market and compete for a greater portion of the trade.

In evaluating the proposed rule change, the Commission considered, among other matters, whether the CBOE's proposal to guarantee that an originating firm could cross up to 40% of an order would reduce the incentive of crowds to compete for orders, and thus impair the price discovery mechanism of the Exchange's market.

In its recent approval of the application of the International Securities Exchange ("ISE") for registration as a national securities exchange, the Commission discussed the same concern with respect to the ISE's proposed "facilitation mechanism," a system designed to effect a type of facilitation guarantee in an electronic context. The Commission wrote:

> It is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. In the future, after the Commission has studied the impact of guarantees, the Commission may need to reassess the level of these guarantees. For the immediate term, the Commission believes that 40% is not clearly inconsistent with the statutory standards of competition and free and open markets.[27]

By the same token, the Commission believes that the CBOE's proposed rule change, which allocates no more than 40% of an order to the firm seeking to effect a cross, is not inconsistent with the statutory standard. The Commission notes, moreover, that for those crossing transactions in which a DPM is entitled to an allocation in addition to the proposed allocation for the originating firm, the CBOE has included a provision

[19] *See* Amendment Nos. 2 and 3, concerning proposed subsection 6.74(d)(vi).

[20] Letter from Daniel Mintz, Chairman, Amex Option Market Makers Association, to the Securities and Exchange Commission, dated May 28, 1999 (resubmitted with technical clarification, August 19, 1999).

[21] Letter from Robin Roger, Principal and Legal Counsel, Morgan Stanley & Co., to Jonathan G. Katz, Secretary, Commission, dated August 9, 1999.

[22] Letter from Mark A. Zurack, Managing Director, Goldman, Sachs & Co., to Jonathan G. Katz, Secretary, Commission, dated August 27, 1999.

[23] Letter from Raymond J. Dorado, Director and Counsel, Legal and Compliance Department, Credit Suisse First Boston Corporation, to Jonathan G. Katz, Secretary, Commission, dated September 30, 1999.

[24] 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designed to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. It also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[25] 15 U.S.C. 78f(b)(8). Section 6(b)(8) requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[26] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

to limit the combined allocations awarded to the originating firm and the DPM an aggregate of no more than 40% of the order.

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 provides additional representations concerning the operation of the proposal and its rationale, and responds to concerns raised by the OMMA. Amendment No. 1 made only a minor change in the text of the proposed rule change for purposes of clarification.[28]

Amendment No. 2, among other things, modifies the proposed rule change by reducing the minimum size of orders to which it will be applicable, from 500 to 50 contracts. The Commission has already approved the facilitation mechanism of the ISE, which guarantees 40% of orders to facilitating firms for order sizes of 50 or more contracts.[29] Thus, the reduction in the size requirement in the CBOE proposal raises no new regulatory issues. Further, it will benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms under the rules of the ISE and the CBOE, and will allow the CBOE to compete without disadvantage for facilitation orders.[30]

Amendment No. 2 further adds the stipulation that the combined guarantees of the firm and the DPM may not exceed 40% of the order, thus limiting allocations to a percentage that the Commission has previously found consistent with the Act.

Amendment No. 2 also clarifies the period that the market established by the crowd in response to the floor broker's initial request will remain in effect.[31] It further established the priority of crowd members who responded to the initial request for a quotation over orders that were not represented in the crowd at the time the market was established (unless those orders improve the price), as well as the priority of any unfilled portion of the crossing order held by the floor broker. These aspects of the amendment constitute appropriate and necessary clarifications of procedures and priority rights under the proposed rule change.

Amendment No. 2 further adds disclosure requirements for facilitation crosses transacted under the proposed rule change, consistent with disclosure requirements for facilitation crosses transacted under current rules. These provisions strengthen the proposed rule change and raise no new regulatory issues.

Amendment Nos. 2 and 3 set forth explicitly that the crossing guarantee applies only after all public customer orders on the limit order book and those represented in the trading crowd at the time the market was established have been satisfied. This aspect of the amendment thus limits the new entitlement granted to floor brokers under the proposed rule change, preserving priority for public customer orders.

Amendment No. 3 additionally adds language to the proposed rule text to clarify that public customer orders on the limit order book will always have priority over members of the trading crowd who established the market; that those members of the crowd will have priority over non-customer orders as well as public customer orders on the floor that were not represented at the time the market was established; and that the crowd will not have priority over any order—customer or non-customer—that improves the market. These changes were made for the purposes of clarity and consistency and thus strengthen the proposed rule change.

Amendment No. 3 also provides that the Floor Procedure Committee will determine the size requirement for orders to be subject to the crossing guarantee on a class by class basis. In the Commission's view, this provision will afford the Exchange greater flexibility in determining when it is appropriate to provide participation rights to firms seeking to cross orders, and thus strengthens the proposed rule change.

Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5)[32] and 19(b)(2)[33] of the Act to accelerate approval of Amendments No. 1, 2, and 3 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3, including whether Amendment Nos. 1, 2, and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–10 and should be submitted by June 26, 2000.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–99–10), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13955 Filed 6–2–00; 8:45 am]

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[28] The change was intended to clarify when the provisions of subparagraphs (a) and (b) of CBOE Rule 6.74 apply, and when new paragraph (d) applies. The language was subsequently modified further to the same end by Amendment No. 2.

[29] See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

[30] Although the ISE mechanism operates only for facilitation crosses, the Commission's grounds for approving the ISE's facilitation cross guarantee apply equally to the CBOE's proposal, which applies to both customer-to-customer and facilitation crosses.

[31] See text accompanying note 9, *supra*.

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42823; File No. SR–ISE–00–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the International Securities Exchange LLC Relating to Authority to Grant Exemptions From ISE Rule 805

May 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2000, the International Securities Exchange LLC ("ISE" or "Exchange")

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend ISE Rule 805 to authorize the Exchange to grant exemptions from certain restrictions on market makers placing orders in other than their assigned options. This exemptive authority would be in place only until the Exchange opens all ten of its options groups for trading, or for one year from the date the Exchange commences operations, whichever should occur first. The text of the proposed rule change is below. Proposed additions are in italics.

Rule 805. Market Maker Orders

(a) and (b) No changes.

(c) Exemptive Authority. Until the earlier of (1) one year from the date on which the Exchange commences operations or (2) the date on which the Exchange opens all options Groups for trading, an Exchange official designated by the Board may grant market makers exemptions from the requirements of subparagraphs (b)(2) and (3) of this rule, subject to the following:

(i) If a market maker has only one membership, and thus is assigned to only one Group, any exemption would end when the assigned Group is open for trading, regardless of the number of options classes that begin trading in the assigned Group;

(ii) If a market maker has multiple memberships, and thus is assigned to trading in more than one Group, the exemption would end when all the market maker's Groups are open for trading, again regardless of the number of options classes that begin trading in the assigned Groups; as the market maker's assigned Groups open for trading, the amount of trading the market maker would be permitted to execute outside of its assigned Groups would be reduced;

(iii) Any exemption would be conditioned on the member performing market maker functions in the classes they trade;

(iv) An exemption could be revoked by the Exchange at any time if the market maker is not acting in accordance with the terms of the exemption; and

(v) No exemption would have a term of more than one month, but would be renewable on a monthly basis until the market maker's group(s) was open for trading.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It is filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Subparagraphs (b)(2) and (3) of ISE Rule 805 contain the following "Volume Limitation": Primary Market Makers ("PMMs") can execute no more than 10 percent of their aggregate volume outside of their assigned options; and Competitive Market Makers ("CMMs") can execute no more than 25 percent of their aggregate volume outside of their assigned options. The Exchange assigns market makers to specific option "Groups" and will "roll out" its trading in stages, beginning with a limited number of Groups, and with a limited number of options in each Group. During the "roll out," the Exchange will open additional Groups for trading, while also commencing trading in additional securities in open Groups. The Exchange anticipates having all options open for trading within one year from the date it commences operations.

Due to this roll out schedule, it is likely that some ISE market makers will be fully connected to the ISE and prepared to begin trading before the Exchange opens their assigned Groups(s) for trading. As currently in effect, ISE Rule 805 would prohibit these market makers from doing any trading, since, by definition, 100 percent of their trading would be in options to which they are not assigned. The Exchange believes that prohibiting these firms from conducting any trading is inappropriate and would unnecessarily restrict liquidity on the Exchange.

To address this concern, the proposed rule change would authorize an Exchange official with delegated authority by the board to grant market makers exemptions from the Volume Limitations during the roll out period. The Exchange's authority to grant exemptions would terminate when all groups are open for trading (even if the Groups are not fully populated with the full complement of options) or one year from the date on which the Exchange commences operations, whichever should occur first. The Exchange will grant these exemptions on a case-by-case basis, tailored to the individual situation of each market maker applying for an exemption. The proposed rule includes the following guidelines in granting exemptions pursuant to this authority:

- If a market maker has only one membership, and thus is assigned to only one Group, any exemption would end when the assigned Group is open for trading, regardless of the number of options classes that begin trading in the assigned Group;
- If a market maker has multiple memberships, and thus is assigned to trading in more than one Group, the exemption would end when all the market maker's Groups are open for trading, again regardless of the number of options classes that begin trading in the assigned Groups; as the market maker's assigned Groups open for trading, the amount of trading the market maker would be permitted to execute outside of its assigned Groups would be reduced;
- Any exemption would be conditioned on the member performing market maker functions in the classes they trade;
- An exemption could be revoked by the Exchange at any time if the market maker is not acting in accordance with the terms of the exemption; and
- No exemption would have a term of more than one month, but would be renewable on a monthly basis until the market maker's group(s) was open for trading.

The Exchange believes that this narrowly-crafted exemptive authority will help provide additional liquidity to the Exchange during the roll out period. It also will encourage market makers to begin trading on the exchange as soon as they are connected and authorized to trade, even if their assigned Group(s) is not yet open to trading.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section

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6(b)(5)[3] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited,and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–00–05, and should be submitted by June 26, 2000.

IV. Commissions's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the ISE's proposed rule change and finds, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act[4] and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act.[6]

Section 6(b)(5) of the Act[7] requires an exchange to promulgate rules designed to prevent fraudulent and manipulative acts and practice, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and national market system, and, in general, to protect investors and the public interest. The Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] because the proposal is designed to enhance liquidity on the Exchange during its start-up phase.

The Commission finds that the proposal is narrowly-tailored, and provides reasonable standards and guidelines to be applied in granting exemptions pursuant to this authority. In particular, the Commission notes that the Exchange's decisions to grant exemptions would be made on a case-by-case basis, and any exemption granted would be limited to a term of no longer than one month. In addition, the guidelines require that a market maker's exemption from the Volume Limitations would end as soon as the Group to which the market maker is assigned is opened for trading, even if only one options class in that Group has been listed at that time. Similarly, the exemption granted to a market maker holding more than one ISE membership would be reduced when one or more of its assigned Groups are opened for trading.

The Commission also believes that the proposal may encourage market makers to begin trading on the Exchange as soon as they are authorized and able to do so, which in turn, may benefit investors by providing liquidity to the market. The Commission notes that the proposed standards require market makers receiving an exemption to perform market making functions in the classes in which they trade, which should also enhance the liquidity of the market. Because of these potential improvements to the market, the Exchange's authority to grant exemptions on a case-by-case basis tailored to the individual situation of each market maker applying for an exemption, and the limited duration of the grant of exemptive authority, the Commission finds that the proposal is both reasonable and consistent with the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Having found that the proposal is both reasonable and consistent with the Act, and that it should result in enhancements to the marketplace during the Exchange's start-up phase, the Commission believes it would be counterproductive to delay the implementation of the proposal. Specifically, the Commission notes that the ISE intends to commence trading on May 26, 2000, in a limited number of options classes. The proposal will permit ISE PMMs and CMMs that are ready to begin trading, but have been assigned to Groups that are not yet open for trading, to participate in ISE's market, thereby increasing liquidity in the market. The Commission finds, therefore, that granting accelerated approval of the proposed rule change is consistent with Section 6(b)(5) of the Act.[9]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–ISE–00–05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13958 Filed 6–2–00; 8:45 am]

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[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78f.

[5] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] *Id.*

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42825; File No. SR–ISE–00–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the International Securities Exchange LLC Relating to the Exposure of Orders on the Exchange

May 25, 2000.

I. Introduction

On February 25, 2000, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the exposure of orders on the Exchange.

The proposed rule change was published for comment in the **Federal Register** on March 6, 2000.[3] The Commission received three comment letters regarding the proposal.[4] On March 30, 2000, the ISE amended the proposed rule change.[5] This order approves the proposed rule change, as amended.

II. Description of the Proposal

The ISE proposes to amend ISE Rule 717 to reduce from two minutes to 30 seconds the amount of time that Electronic Access Members ("EAMs") are required to expose agency orders on the Exchange before executing them as principal or executing them against a solicited order. According to the ISE, its order exposure requirements are intended to assure that agency orders have an opportunity to interact on the Exchange before they are executed. The Exchange proposes to reduce the exposure time because it believes that the objective of the exposure rule can be satisfied by a 30 second exposure period.

III. Summary of Comments

The Commission received three comment letters on the proposal.[6] These commenters opposed ISE's proposal to reduce the order exposure time from two minutes to 30 seconds.[7] Commenters argued that the proposed reduction in response time would make it easier for ISE members to execute as principal orders for less than 50 contracts without meaningful opportunity for price improvement by competitors.[8] The commenters contend that this would undermine the intended purpose of having customers' orders reasonably exposed to other trading interest before being executed by the facilitating ISE member.[9] Two commenters agreed that two minutes is an appropriate time frame for this purpose, but that a 30 second exposure time would make it unlikely that interested market participants would have sufficient time to gauge their risk exposure in other markets and related positions, and reveal on the ISE their true "best" price.[10]

Commenters stated that this proposal encourages internalization because it allows an EAM to execute orders as principal if it utilizes the facilitation mechanism of ISE Rule 716(d) or has been bidding or offering on the ISE for 30 seconds. Commenters noted that an EAM could easily internalize orders by, upon receiving a customer order, holding that order until the EAM has posted a bid or offer at this intended crossing price for 30 seconds, then executing the order as principal, effectively subverting the intent of the exposure period.[11]

In response to commenters' objections to the proposed reduction in the exposure period from two minutes to 30 seconds, the ISE states that it believes 30 seconds is a sufficient time for participants in the ISE market to respond to an order, noting that the Commission has approved exposure times of as few as 15 seconds for certain equity exchanges.[12] With regard to the sufficiency of the proposed 30 second exposure time, the ISE contends that a 30 second order exposure time is especially appropriate in light of the fact that floor-based exchanges have no limitation on how long a crowd must interact with a proposed crossing of orders, nor do floor-based exchanges have safeguards preventing a firm from negotiating with the crowd to execute against any and all of its customer orders, regardless of size.[13] ISE states that, because it is an electronic marketplace, it must define some order exposure time period.[14]

In response to the commenters' claim that members can subvert the 30 second requirement, ISE argues that the only exception to the 30 second exposure rule is the situation in which an EAM had disseminated proprietary trading interest on the ISE for at least 30 seconds prior to the customer order. In this case, according to ISE, the firm has disseminated trading interest, available to all customer orders, at the stated price, thus putting itself at risk to the public. Accordingly, ISE believes that execution of the EAM's own customer orders would not deprive the public of the opportunity to trade at the same prices.[15] Moreover, ISE notes that a broker would not be permitted, under its rules, to simply delay entering an order into the system in order to circumvent the exposure rule.[16]

In response to the commenters' internalization claims, ISE notes that that there is little opportunity for an EAM to be assured of executing against its own customer orders. Once customer orders are entered into the system, those limit orders that do not improve upon the ISE best bid or offer are placed into the ISE's electronic limit order book last in time priority behind any existing customer orders at the same price. Thus, the ISE argues, a given EAM would have no way of knowing whether the resulting increase in the best bid or offer (assuming the order matched the ISE best bid or offer) was due to its' customer's order, as opposed to other customer orders or interest from non-customers.[17] In addition, the ISE maintains that its proposed amendment to ISE Rule 717(d) addresses the only real opportunity for internalization in its system: The narrow case where an EAM has a limit order that improves upon the ISE best bid or offer or a market order that it is willing to execute at an improved price. The ISE argues that the proposed 30 second delay required by its amendment will remove the informational advantage that makes internalization profitable and will provide other market participants an opportunity to compete for such orders.[18]

Discussion

After careful review, the Commission find that the proposed rule change is consistent with the requirements of the Act and the rules and regulations

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42475 (February 29, 2000), 65 FR 11818.

[4] *See* letters to Jonathan G. Katz, Secretary, SEC, from Holly H. Smith, Sutherland, Asbill & Brennan LLP, dated March 24, 2000 ("SA&B Letter"); Peter J. Chepucavage, Fulbright & Jaworski L.L.P., dated March 28, 2000 ("Phlx Letter"); and Charles J. Henry, President and Chief Operating Officer, Chicago Board Options Exchange, dated March 31, 2000 ("CBOE Letter").

[5] *See* letter from Katherine Simmons, Vice President and Associate General Counsel, ISE, to Deborah Flynn, Senior Special Counsel, Division of Market Regulation, SEC, dated March 28, 2000 ("Amendment No. 1"). In Amendment No. 1, the ISE made minor technical changes to ISE Rule 717, replacing section headings "(a)" and "(b)" with "(d)" and "(e)," respectively. Because Amendment No. 1 did not change the substance of the proposal, there was no need to publish it in the **Federal Register**.

[6] *See* note 4, *supra.*

[7] The Commission notes that commenters also raised issues related to ISE's system that were outside of the scope of the current ISE proposal, several of which were addressed in the Commission's order approving ISE's registration as a national securities exchange. *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000). Consequently, this order addresses only comments regarding those issues presented by the current proposal.

[8] *See* SA&B Letter; Phlx Letter; CBOE Letter.

[9] *Id.*

[10] *See* SA&B Letter; Phlx Letter.

[11] *See* SA&B Letter; Phlx Letter; CBOE Letter.

[12] *See* letter to Jonathan G. Katz, Secretary, SEC, from Katherine Simmons, Vice President and Associate General Counsel, ISE, dated May 19, 2000 ("ISE Response Letter").

[13] *See* ISE Response Letter.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

thereunder applicable to a national securities exchange.[19] In particular, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act.[20]

Under Section 6(b)(5) of the Act,[21] a registered national securities exchange must have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that ISE's proposed amendments to ISE Rule 717(d) and (e) reducing the exposure time (*i.e.*, the amount of time EAMs are required to expose agency orders on the Exchange before executing them as principal or against a solicited order) from two minutes to 30 seconds are consistent with Section 6(b)(5) of the Act.[22] The Commission recognizes that, on floor-based exchanges, there are no rules that govern the extent to which a given trading crowd has an opportunity to interact with a proposed crossing of orders. Because the ISE operates a unique electronic options market, it must define an order exposure time period. The Commission finds that a 30 second exposure period is a reasonable time frame for participants in ISE's market to assess market conditions and their own trading interest, and to allow a reasonable opportunity for price improvement from interested participants. The Commission finds that a 30 second exposure period strikes a reasonable balance between maintaining liquidity and efficiency in the ISE market and preventing impediments to a free and open market, while providing the appropriate safeguards for investors and the public.

In determining that a 30-second exposure period is reasonable, the Commission has considered carefully the commenters' concern that market makers might be able to subvert the 30 second exposure period by posting bids or offers for a very short period of time, and arranging to receive agency orders simultaneously when they are executable against the market maker as principal, or against other agency orders held by the market maker.[23] In such a scenario, EAMs allegedly would pre-screen order flow, and hold orders until they can be internalized, denying the order any exposure in the market and the opportunity for price improvement. The Commission is not persuaded by this argument. The ISE allows for only one exception to the 30 second exposure period, in the scenario where an EAM has previously disseminated proprietary trading interest on the ISE for at least 30 seconds prior to receipt of a customer order. Under this limited exception, a firm will have placed itself "at risk" to the public by having disseminated trading interest available to all customer orders at a stated price. ISE Rule 717(d) states that a member must have been bidding or offering on the Exchange for *at least* 30 seconds prior to receiving an agency order that is executable against such bid or offer. The Commission finds that an EAM's execution of its own customer order under this particular scenario would not deprive the public of the opportunity to trade at the same price.

The Commission also has considered carefully the commenters' concerns about the potential for internalization of order flow where there is a 30 second exposure period, and finds that the proposal provides sufficient safeguards against such activity. The ISE's system is designed to ensure that, once customer orders are entered into the system, any limit orders that do not improve upon the ISE best bid or offer automatically are placed into the ISE's electronic limit order book last in time priority behind any existing customer orders at the same price. Therefore, an EAM has no guarantee that it will be able to trade against its agency orders. Because ISE's system automatically provides reasonable safeguards to prevent EAMs from executing against their own customer orders, the Commission finds that a 30 second exposure period does not pose an unreasonable risk of increasing the internalization of order flow. For these reasons, the Commission finds that ISE's proposal is consistent with Section 6(b)(5) of the Act.[24]

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–ISE–00–04), as amended, is approved.

Margaret H. McFarland,

Deputy Secretary.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

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[19] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

[22] *Id.*

[23] *See* SA&B Letter at 8.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42847; File No. SR–NASD–00–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Include UTP Exchanges in the Nasdaq National Market Execution Service

May 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to provide for the inclusion of national securities exchanges trading Nasdaq-listed securities pursuant to grants of unlisted trading privileges ("UTP") in the automatic-execution functionality of the Nasdaq National Market Execution System ("NNMS"). Below is the text of the proposed rule change. Proposed deletions are in brackets and proposed addition are in italics.

4720. SelectNet Serve

(a)–(b) No Change

(c) Prohibition Regarding the Entry of Certain Preferenced Orders to Nasdaq National Market Execution System Market Makers

(i) No member [may] *shall* direct a SelectNet preferenced order to a Nasdaq National Market Execution System ("NNMS") market maker including that market maker's Agency Quote (as defined in NASD Rule 4613), *a Full Participant ECN (as defined in NASD Rule 4701), or a UTP Exchange that participates in the automatic execution functionality of the NNMS*, unless that order is designated as:

A[(i)] an "All-or-None" order ("AON") and is at least one normal unit of trading (*i.e.* 100 shares) in excess of the displayed quote to which the preferenced order is directed; or

B[(ii)] a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal until of trading in excess of the displayed quote to which the preferenced order is directed.

(ii) The prohibition of this paragraph shall not apply to:

(A) preferenced order sent by a UTP Specialist *that does not participate in the automatic execution functionality of the NNMS*, to an NNMS market maker; or

(B) [to] preferenced order sent by an NNMS market maker to a TUP Specialist *that does not participate in the automatic execution functionality of the NNMS*.

(iii) For purposes of this rule a "UTP Specialist" shall mean a broker/dealer registered as a specialist in Nasdaq securities pursuant to the rules of an exchange that is a signatory to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq/NMS/UTP Plan").

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend the NASD rules governing the NNMS, to enable UTP Exchanges to participate in the automatic execution functionality of the NNMS. Nasdaq represents that currently, the Chicago Stock Exchange ("MWSE") is the only exchange that trades Nasdaq-listed securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").

On January 14, 2000, the Commission approved the new NNMS trading platform, which is to be implemented in July 2000.[3] As approved, the NNMS will be an automatic execution system that will serve as the primary trading platform for Nasdaq National Market securities. Under the NNMS rules, participation in the NNMS will be mandatory for Nasdaq market makers, and those market makers will be required to participate in the automatic-execution functionality of the system.

ECNs will have two options for participating in NNMS. Specifically, ECNs can choose to be Order-Entry ECNs or Full-Participant ECNs. Order-Entry ECNs will participate in Nasdaq in substantially the same manner as ECNs do today. That is, market participants will be able to access Order Entry ECN quotes via the SelectNet linkage and to send preferenced SelectNet messages of any size (up to 999,999 shares) to such ECNs. The oversized order requirement for a preferenced SelectNet order would not apply to Order Entry ECNs. Order Entry ECNs that want to access other market maker quotes will need to request order-entry capability in NNMS. That is, they will enter orders into NNMS for automatic execution against quotes of market makers and Full Participant ECNs (*i.e.*, those ECNs that choose to accept automatic execution against their quotes). Order Entry ECNs can also send preferenced SelectNet orders to NNMS Market Makers subject to the over-sized order restriction described below.

Full-Participant ECNs will agree to provide automatic execution against their quotes for orders entered into NNMS, similar to market makers. Like Order Entry ECNs, Full-Participant ECNs will use NNMS to obtain automatic execution of orders they send to NNMS Market Makers or other Full-Participant ECNs. Full-Participant ECNs will use SelectNet to deliver liability orders to Order Entry ECNs.

To avoid dual liability, market makers and Full Participant ECNs are only eligible to receive preferenced/directed orders through SelectNet that are either: (1) an "All-or-None" orders ("AON") and at least one normal unit of trading (*i.e.*, 100 shares) in excess of the displayed quote to which the preferenced order is directed; or a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of the displayed quote to which the preferenced order is directed ("Over-Sized Order Requirement"). It is the NASD's view that orders that meet the Over-Sized Order Requirement are not liability orders under the NASD's and Commission's firm quote rule. Thus, the main purpose of the Oversized-Order Requirement is to limit dual liability for market participants that are required to (*i.e.*, market makers), or chose to (*i.e.*, Full Participant ECNs), take automatic execution against their quotes through the NNMS.[4] The underlying premise of the NNMS rule change is to establish (in most cases) only one point of (or system for) delivery of a liability order against the quote of a market maker, ECN, or UTP Exchange.

As originally proposed and approved, UTP Exchanges will only receive orders through Nasdaq's SelectNet system. This is because UTP Exchanges have traditionally received orders against their quotes through the order-delivery functionality of SelectNet. Because SelectNet is an order-delivery system—as opposed to an automatic-execution system like the NNMS—UTP Exchanges that receive SelectNet orders must manually respond to the order to complete a trade.

Under the approved NNMS rules (and similar to how SOES currently operates), when UTP Exchanges and/or Order Entry ECNs are alone at the best bid/best offer, the NNMS will stop processing orders that are in the NNMS system and will hold those orders in queue for 90 seconds. During this 90 seconds, the system essentially pauses to see if a market maker or Full Participant ECN will join the inside or the UTP Exchange or Order Entry ECN

[3] *See* Securities Exchange Act Release No. 42344 (Jan 14, 2000), 65 FR 3987 (January 25, 2000).

[4] Such dual liability could occur if a market maker or ECN receives an order through SelectNet to which it owes an obligation under the NASD's and Commission's firm quote rule, and immediately thereafter receives an execution through the NNMS against the same quote.

will drop away from the inside, thereby establishing a new inside market.[5] If after 90 seconds a market maker or Full Participant ECN does not join the inside, the NNMS will return the orders that are in queue and the system will shut down. If during the 90 seconds a market maker joins the inside or establishes a new (better priced) inside, the system resumes automatic-execution processing of orders.

After the Commission approved the NNMS, the MWSE and Nasdaq began discussing the possibility of the MWSE participating in the automatic-execution functionality of the NNMS. Both Nasdaq staff and the MWSE recognized that there could be delays in processing orders if the MWSE is alone at the inside and does not respond, within 90 seconds, to orders delivered to its quote.[6] This could occur if the MWSE is experiencing system problems, is slow to process an order, or if there are delays in Nasdaq systems.[7] Commission staff also raised this concern. In light of the above, Nasdaq is proposing a rule change to permit the MWSE to participate in the automatic-execution functionality of the NNMS.

In the NNMS, the quotes of market makers, Full Participants ECNs, and UTP Exchanges are accessed in general price/time priority. We note that this is unlike the exchange environment where markets are required to sweep the floor before accessing the quotes of a competing exchange. We also recognize that the approach in this filing differs from our proposal in SR–NASD–99–53, regarding the Nasdaq Order Display Facility, where the system would execute against the propriety quotes of UTP Exchanges behind the quotes and orders of Nasdaq market makers, ECNs, and agency interest of UTP Exchange specialists. While we believe that the approach in SR–NASD–99–53 is more appropriate given the precedent established in the listed environment regarding order routing, we are proposing a strict price/time approach in this filing as a short-term solution to the potentially significant and crippling problems outlined above.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6)[9] of the Act in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in the regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The rule change will eliminate the potential for order queuing or for this system to stop processing orders, when UTP Exchanges are alone at the inside. Thus, the rule change is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–30 and should be submitted by June 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[5] This pause occurs because UTP Exchange and Order Entry ECN quotes are not reachable through the automatic-execution functionality of the NNMS, but only through the order-delivery portion of the system.

[6] While this is also a concern with ECNs, the concern is substantially smaller because ECNs are required to provide an automated response to SelectNet messages, and, in Nasdaq's experience, they generally respond in 5 second or less to orders presented to their quotes. UTP Exchanges are not under the same explicit obligation.

[7] As an illustration of the potential problem, assume the MWSE is alone at the inside bid of $20 for 1000 shares, Market Maker A enters an order into the automatic-execution functionality of the system, and Market Maker B directs (or preferences) 1,000 shares to the MWSE. No other market maker joins the inside bid of $20; this causes the system to stop processing orders for 90 seconds. Thereafter, the MWSE waits 2 minutes before responding to MMB's directed/preferenced order either by filing or declining the order. (This delay could occur if there are equipment problems at the MWSE, in Nasdaq, or both.) In this instance, the market effectively is held up for 2 minutes and the automatic-execution functionality is shut off (after 90 seconds) because the MWSE did not respond to the direct/preferenced orders within 90 seconds.

[8] The rules clarify that if a UTP Exchange participates in the automatic-execution functionality of the NNMS, orders preferenced to the UTP Exchange's quotes must meet the Oversized Order Requirement. This is to limit the potential for dual liability (described above) for UTP Exchanges. In addition, Nasdaq is proposing non-substantive rule changes to correct drafting errors in the original rule proposal to clarify that orders sent to quotes of Order Entry ECNs are not subject to the Oversized Order Requirement in the rule, while orders sent to Full Participant ECNs are subject to this requirement.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42831; File No. SR–NASD–00–16]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Minimum Listing Requirements for the Inclusion and Maintenance of Open and Closed-End Funds in Nasdaq's Mutual Fund Quotation Service

May 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 4, 2000, the National Association of Securities Dealers, Inc. ("NASD") through its wholly owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq") file with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] On May 16, 2000, the Nasdaq submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 6800 regarding the minimum listing requirements for the inclusion and maintenance of open and closed-end funds in Nasdaq's Mutual Fund Quotation Service ("MFQS") Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6800. MUTUAL FUND QUOTATION SERVICE

(a)–(b) No Change

(c) News Media Lists

(1) (A) An eligible open end fund shall be authorized for inclusion in the News Media List released by the Association if it has at least 1,000 shareholders or $25 million in net assets.

(B) An eligible closed-end funds shall be authorized for inclusion in the News Media List released by the Association if it has at least $*60* [100] million in net assets.

(C) Compliance with subparagraphs (1)(A) and (B) shall be certified by the fund to the Association at the time of initial application for inclusion in the List.

(2) (A) An authorized open-end fund shall remain included in the New Media List if it has either 750 shareholders or $15 million in net assets.

(B) An authorized closed-end fund shall remain included in the News Media List if it has $*30* [60] million in net assets.

(C) Compliance with subparagraphs (2)(A) and (B) shall be certified to the Association upon written request by the Association.

(d) Supplemental List

An eligible open-end or closed-end fund shall be authorized for inclusion in the Supplemental List released to vendors of Nasdaq Level I Service if *it meets one of the criteria set out in subparagraph (1), subparagraph (2), or subparagraph (3) below:*

(1) the fund has net assets of $10 million or more; or

(2) *the fund* has had two full years of operation; *or*

(3) the investment management firm managing the fund has:

(A) at least one other fund listed on the Mutual Fund Quotation Service that has net assets of $10 million or more; and

(B) at least $15 million in total assets of open-end, closed-end, and/or money-market funds under management.

(e) No Change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend NASD Rule 6800 regarding the minimum listing requirements for the inclusion and maintenance of open and closed-end funds in the Service. The MFQS was created to collect daily price and related data for mutual funds and money market funds and to disseminate that information to the news media and market data vendors.[5] Currently, the MFQS disseminates the valuation data for over 11,000 funds. This information dissemination process is facilitated by the use of web browser-based technology, which enables funds included in the Service, or the pricing agents designated by such funds, to transmit directly to Nasdaq a multitude of pricing information, including information about a fund's net asset value, offer price, and closing market price.

Funds must meet minimum eligibility criteria in order to be included in the MFQS.[6] The MFQS has two "lists" in which a fund may be included—the News Media List and the Supplemental List—and each list has its own initial inclusion requirements.[7] The News Media List also has maintenance/combined inclusion requirements. If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in the fund tables of newspapers and is also eligible for dissemination over Nasdaq's Level 1 Service, which is distributed by market data vendors.[8] if a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. The Supplemental List thus provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List. Each fund incurs an annual fee for inclusion in the Service.[9]

Nasdaq maintains that the Service provides valuable pricing information for a large portion of funds for which there is significant investor interest. According to Investment Company Institute ("ICI") data, however, the MFQS is currently only capturing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The NASD filed its proposed rule change on March 31, 2000. On April 4, 2000, the NASD filed Amendment No. 1 that entirely replaced the original rule filing.

[4] *See* Letter from Robert E. Abner, General Counsel and Senior Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (May 16, 2000). Amendment No. 2 corrected a typographical error that appeared in the proposed rule language and clarified that the Mutual Fund Quotation Service includes only 73.8% of the total open-end and closed-end fund population.

[5] *See* Securities Exchange Act Release No. 22264 (July 23, 1985), 50 FR 30899 (July 29, 1985).

[6] *See* NASD Rule 6800.

[7] *See id.*

[8] *See* NASD Rule 7010.

[9] *See* NASD Rule 7090.

pricing information for approximately 73.8% of the total fund population.[10]

In light of the foregoing, Nasdaq proposes to amend the MFQS inclusion criteria for both the Supplemental and News Media List by expanding the universe of funds that are eligible for inclusion in the Service. Nasdaq proposes to lower both the initial and maintenance requirements for closed-end funds to participate in the News Media List. Currently, in order to qualify initially for inclusion in the News Media List, a closed-end fund must have at least $100 million in net assets. To remain in the News Media List, a closed-end fund must maintain at least $60 million in net assets. The proposed rule change would lower the net asset requirement for a closed-end fund to qualify initially for inclusion in the News Media List to at least $60 million in net assets. The net asset requirement for a closed-end fund to remain included in the New Media List would be lowered to at least $30 million.

Nasdaq also proposes to amend the inclusion criteria for the Supplemental List. At the present time, an open-end or closed-end fund qualifies for inclusion in the Supplemental List if the fund either has at least $10 million in net assets or has had two full years of operation. Nasdaq proposes to provide a third alternative means for a fund to be included in the Service. Under this alternative, a fund would qualify for the MFQS if the investment firm that manages the fund has at least one other fund listed on MFQS that has $10 million in assets. In addition, the firm must have at least $15 million from open-end, closed-end, and/or money market funds under management. Nasdaq notes that managed assets from other sources—such as pension funds—would not be included for purposes of determining whether the investment firm meets the requirement that it manage at least $15 million in fund-related assets.

Nasdaq represents that the proposed rule change would provide daily pricing information to the investing public for funds that have a significant investor interest. In addition, Nasdaq estimates that 2,500 of the 2,800 funds that are not currently eligible for inclusion in the MFQS would qualify under the proposed new standards.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[11] and Section 11A[12] of the Act. Section 15A(b)(6)[13] of the Act requires the rules of a registered national securities association to foster cooperation and coordination with persons engaged in processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In Section 11A(a)(1)(C),[14] the Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities.

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(6)[15] and 11A(a)(1)(C)[16] of the Act because it protects investors and the public interest by promoting better processing of fund pricing information. Nasdaq represents that the proposed new listing criteria will provide greater transparency to the markets by providing pricing information for a broader base of funds for which there is significant investor interest. Nasdaq believes that by providing listed status only to *bona fide* investment companies with a sufficient investor base and trading interest, the proposed new listing standards will serve as a means for the marketplace to screen issuers and maintain fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–16 and should be submitted by June 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13957 Filed 6–2–00; 8:45 am]

BILLING CODE 8010–01–M

[10] *See* Amendment No. 2, *supra* note 4.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78k–1.

[13] 15 U.S.C. 78o–3(b)(6).

[14] 15 U.S.C. 78k–1(a)(1)(C).

[15] 15 U.S.C. 78o–3(b)(6).

[16] 15 U.S.C. 78k–1(a)(1)(C).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3331]

Office of Mexican Affairs; Notice of Receipt of Application for a Presidential Permit for a Conveyor Belt To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

Notice is hereby given that the Department of State has received an application from Aggregate Products, Incorporated of Salton Sea Beach, California, for a Presidential Permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, seeking authorization to construct a conveyor belt at a site east of the Calexico/Mexicali II Port of Entry linking California and Baja California. The proposed conveyor belt would carry construction aggregate (size-segregated rock and sand) for use in road-paving projects in California. The conveyor belt would be approximately 1,081 feet long and ten feet wide, supported by between 13 and 15 pylons fixed in place. The conveyor belt would only be able to operate in a northerly direction, from Mexico to the U.S. When not in use, it would be stowed and locked entirely on the U.S. side of the border.

As required by E.O. 11423, the Department of State is circulating this application to concerned agencies for comment.

Interested parties may submit comments regarding this application in writing by July 5, 2000 to Mr. David E. Randolph, Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, WHA/MEX Room 4258, Department of State, Washington, DC 20520. The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of Mexican Affairs during normal business hours.

FOR FURTHER INFORMATION CONTACT: David E. Randolph, Coordinator, U.S.-Mexico Border Affairs at the above address, by telephone at (202) 647–8529 or by fax at (202) 647–5752.

Dated: May 30, 2000.

David E. Randolph,

Coordinator, U.S.-Mexico Border Affairs, Department of State.

[FR Doc. 00–14004 Filed 6–2–00; 8:45 am]

BILLING CODE 4710–29–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Compliance Incentive Program for SRBC Regulations

A. Purpose

The Susquehanna River Basin Commission (SRBC) approved Resolution 2000–03 on April 18, 2000 establishing a "Compliance Incentive Program" to encourage *existing, unapproved* water users to come into compliance with SRBC's water withdrawal and consumptive water use regulations. During the compliance incentive period, SRBC will not assess penalties *provided that applications are submitted by specified deadlines* and the noncompliance has not: (1) Adversely affected the environment; or (2) interfered with other water users. Because penalties are being waived, the need for settlements is likewise avoided (including those involving payments for prior consumptive water use). SRBC's objective is to have *all water users in the basin* compliant with SRBC's water management regulations. Universal compliance serves to enhance SRBC's ability to properly plan for and manage the basin's water resources.

B. SRBC's Existing Regulations Subject to Compliance Incentive Program

- 18 CFR 803.42—Consumptive Use of Water (This Requirement is not applicable to Agriculture)—more than 20,000 gallons per day (gpd) (averaged over 30 consecutive days) from any ground or surface water sources as of January 23, 1971. This regulation does not apply to projects that existed before January 23, 1971, UNLESS they increased their consumptive water use by more than 20,000 gpd after that date. Consumptive use of water is use in such a manner that the water does not return to the river basin; *e.g.* evaporation, incorporation into a product, diversion into another river basin.
- 18 CFR 803.43—Ground-Water Withdrawals—more than 100,000 gpd (averaged over 30 consecutive days) as of July 13, 1978. This regulation does not apply to projects that existed before July 13, 1978, UNLESS they increased their ground-water withdrawals by more than 100,000 gpd after that date.
- 18 CFR 803.44—Surface Water Withdrawals—more than 100,000 gpd (averaged over 30 consecutive days) as of November 11, 1995. This regulation does not apply to projects that existed before November 11, 1995 UNLESS they increased their ground-water withdrawals by more than 100,000 gpd after that date.

C. Eligible Applicants

To be eligible, unapproved water users must submit their water withdrawal and/or consumptive use applications by JUNE 30, 2001 (except for previously notified golf courses that are subject to alternate deadlines). During the eligibility period, the SRBC will not assess penalties. As noted above, because penalties are being waived, the need for settlements is likewise avoided (including those involving payments for prior consumptive water use).

The approved method of compliance for consumptive use will be effective January 1, 2001, regardless of when SRBC acts on the applications. Application fees are *not* waived during this compliance incentive period.

D. Where to Obtain Additional Information

To obtain more information, contact the Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391; Phone: 717–238–0423, fax: 717–238–2436. We also encourage you to visit our website at *http://www.srbc.net* where the text of Resolution 2000–03 and SRBC's regulations and application forms are available. You may also e-mail us at *srbc@srbc.net*.

Dated: May 18, 2000.

Paul O. Swartz,

Executive Director.

[FR Doc. 00–14020 Filed 6–2–00; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33801]

Wisconsin & Southern Railroad Company—Acquisition Exemption—Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway

Wisconsin & Southern Railroad Company (WSOR), a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 6.73 miles of a series of short rail lines in North Milwaukee, WI, known as the Gibson Line or the Gibson Spur, owned by Soo Line Railroad Company d/b/a Canadian Pacific Railway (CPR),[1] which it currently leases and operates from CPR.[2]

The lines to be acquired are as follows: (1) The Horicon Line, from Point A at milepost 93.72, the division of ownership with the State of Wisconsin, to Point B at milepost 93.20 in the vicinity of Glendale Yard; (2) the Canco Line, from Point B at milepost 93.20 extending in a northerly direction to Point C at milepost 95.18, the division of ownership with the Wisconsin Central Limited; (3) the Nut Line, from Point B at milepost 93.20 extending in a southeasterly direction to Point E at milepost 96.76; and (4) the Cement Line, an industry spur extending from switch with the Nut

[1] WSOR states in its notice that it has executed an asset purchase agreement with CPR to acquire the above-described rail lines.

[2] *See Wisconsin & Southern Railroad Co.—Lease and Operation Exemption—Soo Line Railroad Company, d/b/a CP Rail System*, Finance Docket No. 32706 (ICC served July 14, 1995).

Line milepost 95.47 to Point D, at the end of the track, .67 miles east of the Nut Line switch.

Because the projected revenues of the rail line to be operated exceed $5 million, WSOR certified to the Board, on September 21, 1999, that the required notice of its rail line acquisition was posted at the workplace of the employees on the affected lines on that same date. *See* 49 CFR 1150.42(e).

WSOR reported that it intends to consummate the transaction more than 7 days after the filing of this exemption, or no later than June 5, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33801, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, REA, CROSS & AUCHINCLOSS, Suite 570, 1707 L Street, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 30, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–13995 Filed 6–2–00; 8:45 am]

BILLING CODE 4915–00–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4626.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4626, Alternative Minimum Tax-Corporations.

DATES: Written comments should be received on or before August 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: *Alternative Minimum Tax-Corporations.*

OMB Number: 1545–0175.

Form Number: 4626.

Abstract: Form 4626 is used by corporations to calculate their alternative minimum tax under section 55 of the Internal Revenue Code. The IRS uses the information on the form to determine whether the tax has been computed correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 60,000.

Estimated Time Per Respondent: 48 hr., 44 min.

Estimated Total Annual Burden Hours: 2,923,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14011 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2000–28

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2000-28, Coal Exports.

DATES: Written comments should be received on or before August 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Coal Exports.

OMB Number: 1545–1690.

Notice Number: Notice 2000–28.

Abstract: Notice 2000–28 provides guidance relating to the coal excise tax imposed by section 4121 of the Internal Revenue Code. The notice provides rules under the Code for making a nontaxable sale of coal for export or for obtaining a credit or refund when tax has been paid with respect to a nontaxable sale of coal for export.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 24, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14012 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–7A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–7A, Application for Taxpayer Identification Number for Pending U.S. Adoptions.

DATES: Written comments should be received on or before August 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Taxpayer Identification Number for Pending U.S. Adoptions.

OMB Number: 1545–1547.

Form Number: Form W–7A.

Abstract: Form W–7A is used to apply for an Internal Revenue Service taxpayer identification number (an ATIN) for use in pending adoptions. An ATIN is a temporary nine-digit number issued by the Internal Revenue Service for individuals who are in the process of adopting a United States resident child but who cannot get a social security number for that child until the adoption is final.

Current Actions: There are no changes being made to the form at this time.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 40 mins.

Estimated Total Annual Burden Hours: 33,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 24, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14013 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The IRS Advisory Council (IRSAC) will hold a public meeting to present recommendations to the Commissioner of Internal Revenue regarding IRS modernization and redesign issues surrounding the Wage & Investment, Large and Midsize Business, and Small Business/Self-employed operating divisions. Other topics to be discussed include an update on the overall IRS modernization, an

overview of the 2000 filing season, third party authorization, update about customer service programs, and an overview of the transition process.

DATES: The meeting will be held on Wednesday, June 21, 2000, starting at 9:30 a.m.

ADDRESSES: Internal Revenue Service Main Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lorenza Wilds; Office of Public Liaison and Small Business Affairs, CL:PL, room 7559 IR, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, telephone 202–622–5188, not a toll-free number. E-mail address: *public_liaison@.irs.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the IRSAC will be held on Wednesday, June 21, 2000, beginning at 9:30 a.m. in Room 3313, main building, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Last minute changes to the agenda are possible and could prevent effective advance notice. The meeting will be in a room that accommodates approximately 50 people, including IRSAC members and IRS officials. Due to the limited space and security specifications, please call Lorenza Wilds to confirm your attendance. Ms. Wilds can be reached at (202) 622–5188 (not toll-free). Attendees are encouraged to arrive at least 30 minutes prior to the starting time of the meeting, to allow enough time to clear security at the 1111 Constitution Avenue, N.W., entrance.

If you would like for the IRSAC to consider a written statement, please call (202) 622–5081 or write to Merci del Toro, Office of Public Liaison, CL:PL, Internal Revenue Service, 1111 Constitution Avenue, N.W., Room 7559 IR, Washington, D.C. 20224, or E-mail at *public_liaison@irs.gov.

Dated: May 26, 2000.

Susanne M. Sottile,

Designated Federal Official, National Director, Office of Public Liaison and Small Business Affairs.

[FR Doc. 00–14014 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Wednesday June 28, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday June 28, 2000, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555.

The public is invited to make oral comments from 8:30 p.m. to 9:00 p.m. on Wednesday June 28, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201.

The Agenda will include the following: various IRS issues. Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 25, 2000.

M. Cathy Vanhorn,

Director, CAP, Communications and Liaison.

[FR Doc. 00–14008 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, So. Florida District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the South Florida District Citizen Advocacy Panel will be held in Stuart, Florida.

DATES: The meeting will be held Friday, June 23, 2000 and Saturday, June 24, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227 or 954–423–7974.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a Public meeting of the Citizen Advocacy Panel will be held Friday, June 23, 2000, 6 p.m. to 9 p.m. and Saturday, June 24, 2000, 9 a.m. to Noon at the Stuart/Martin County Chamber of Commerce, 1650 South Kanner Highway, Stuart, FL 34994. For more information contact Nancy Ferree at 1–888–912–1227 or 954–423–7974. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912-1227 or 954–423–7974, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd #225, Sunrise, FL, 33351. Due to limited space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973. In accordance with the American's With Disabilities Act, persons with special needs should call Nancy Ferree at 954–423–7973 to inform us of those needs by no later than June 16, 2000. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 25, 2000.

M. Cathy Vanhorn,

Director, CAP, Communications and Liaison.

[FR Doc. 00–14009 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A meeting of the Midwest Citizen Advocacy Panel will be held in Brookfield, WI.

DATES: The meeting will be held Thursday, June 22, 2000, and Friday, June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, June 22, 2000, from 9 a.m. to 4 p.m. and Friday, June 23, 2000, from 9 a.m. to 12 p.m. at Brookfield Public Library, 1900 N. Calhoun Road, Brookfield, WI. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. Written comments can be submitted to the panel by faxing to (414) 297–1623, or by mail to Citizen Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221.

The Agenda will include the following: Reports by the CAP subgroups, presentation of taxpayer issues by individual members, discussion of issues, and CAP office report.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 19, 2000.

M. Cathy VanHorn,

CAP Project Manager.

[FR Doc. 00–14010 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to identify health care patterns of minority veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2000.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–NEW" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Identity Program Survey, VA Form 10–21037(NR).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: The Veteran Identity Program (VIP) survey is intended to remedy shortcomings of existing data and research conducted on minority veterans health care patterns. Previous studies on veterans ethnicity have not been adequately studied due to the sampling methodologies employed, and veteran identity has never been studied due to theoretical shortsightedness. As a result, data on underrepresented veterans groups remains inadequate. Veteran identity is being introduced as a potentially significant predictor of veterans' health care use. The VIP will employ a primary data telephone survey to ensure adequate representation of underrepresented veterans groups. The collected data will be statistically analyzed by VIP researchers to determine how veteran identity and ethnicity predict VA ambulatory care service use by veterans. The results of the analysis will be used to improve minority veterans' access to health care.

Affected Public: Individuals or Households.

Estimated Annual Burden: 960 hours.

Estimated Average Burden Per Respondent: 18 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,200.

Dated: May 18, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–13921 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0110]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0110."

SUPPLEMENTARY INFORMATION:

Title: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan, VA Form 26–6381.

OMB Control Number: 2900–0110.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C., Section 3713(a) provides that when a veteran disposes of his or her interest in the property securing the loan, the VA may, upon request, release the original veteran-borrower from personal liability to the Government only if three requirements are fulfilled. First, the loan must be current. Second, the purchaser must assume all of the veteran's liability to the Government and the mortgage holder on the guaranteed loan. Third, the purchaser must qualify from a credit and income standpoint, to the same extent as if he or she were a veteran

applying for a VA-guaranteed loan in the same amount as the loan being assumed. Veterans who are selling their homes by assumption rather than requiring purchasers to obtain their own financing to pay off the loan must complete this form. The information furnished is essential to determinations for assumption approval, release of liability, and substitution of entitlement.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 14, 2000, at page 2459.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 680 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,082.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0110" in any correspondence.

Dated: May 16, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–13922 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0165]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0165."

SUPPLEMENTARY INFORMATION:

Title: Financial Status Report, VA Form 20–5655.

OMB Control Number: 2900–0165.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: VA Form 20–5655 is mailed with the first and second demand letters to debtors who owe amounts over $50. The information collection on the form enables VA to determine the financial status of the debtor, his ability to pay, and the feasibility of exploring compromise.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 29, 1999 at page 66695.

Affected Public: Individuals or households.

Estimated Annual Burden: 41,800 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 41,800.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0165" in any correspondence.

Dated: May 16, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–13923 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0564]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0564."

SUPPLEMENTARY INFORMATION:

Title: Direct Deposit Enrollment, VA Form 24–0296.

OMB Control Number: 2900–0564.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: VA Form 24–0296 is used to gather the necessary information required to enroll VA Compensation and Pension beneficiaries in the DD/EFT program for recurring benefits payments. The information will be used to process the payment data from VA to the beneficiary's designated financial institution.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 29, 1999 at pages 66696–66697.

Affected Public: Individuals or households.

Estimated Annual Burden: 6,600 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 198,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0564" in any correspondence.

Dated: May 18, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–13924 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0215]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0215."

SUPPLEMENTARY INFORMATION:

Title: Request for Information to Make Direct Payment to Child Reaching Majority, VA Form Letter 21–863.

OMB Control Number: 2900–0215.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 21–863 is used by VA adjudicators to determine the address of a child attaining the age of majority and to determine the child's status for benefits. Title 38, CFR 3.403 provides direct payment to a child, if competent, from the date the child reaches the age of majority. Title 38, CFR 3.667 provides that a child may be paid from a child's 18th birthday based upon school attendance. This form letter solicits information needed to determine eligibility to benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 14, 2000 at pages 2459–2460.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,767 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 22,600.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0215" in any correspondence.

Dated: April 27, 2000.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–13925 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0099]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the coilection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0099."

SUPPLEMENTARY INFORMATION:

Title: Request for Change of Program or Place of Training—Survivors' and Dependents' Educational Assistance, VA Form 22–5495.

OMB Control Number: 2900–0099.

Type of Review: Revision of a currently approved collection.

Abstract: Spouses, surviving spouses, or children of veterans who are eligible for Dependent's Educational Assistance under 38 U.S.C., chapter 35, complete VA Form 22–5495 to change their program of education and/or place of training. VA uses the information to determine if the new program selected by a spouse, surviving spouse, or child, is suitable to their abilities, aptitudes, and interests and to verify that the new place of training is approved for benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 14, 2000 at page 2458.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 11,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0099" in any correspondence.

Dated: May 17, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–13926 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0114]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0114."

SUPPLEMENTARY INFORMATION:

Title: Statement of Marital Relationship, VA Form 21–4170.

OMB Control Number: 2900–0114.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4170 is used to develop the evidence necessary to make a determination as to whether a claimed common law marriage can be recognized by VA. Without this information, VA would have no means of determining the proper marital status of the veteran.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 25, 2000 at page 4017.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0114" in any correspondence.

Dated: April 27, 2000.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–13927 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0198."

SUPPLEMENTARY INFORMATION:

Title: Application for Annual Clothing Allowance, VA Form 21–8678.

OMB Control Number: 2900–0198.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8678 is used by veterans to apply for clothing allowance. Without this information, VA would be unable to determine eligibility for this benefit.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 9, 2000 at pages 12627–12628.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,120 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 6,720.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0198" in any correspondence.

Dated: May 16, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–13928 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities has been renewed for a 2-year period beginning May 23, 2000, through May 23, 2002.

Dated: May 25, 2000.

By direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–13920 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 65, No. 108

Monday, June 5, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2584

RIN 1210–AA79

Rules and Regulations for the Allocation of Fiduciary Responsibility, Federal Retirement Thrift Investment Board

Correction

In rule document 00–13250 beginning on page 34393 in the issue of Tuesday, May 30, 2000, make the following corrections:

1. On page 34393, in the second column, in the **DATES** section, four lines down, "July 29, 2000" should read "June 29, 2000".

2. On page 34395, in the first column, 15 lines down, "March, 2000" should read "May, 2000".

[FR Doc. C0–13250 Filed 6–2–00; 8:45 am]

BILLING CODE 1505–01–DCORRECTIONS

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 129

[Docket No. 29104; Amendment Nos. 91–264, 121–275, 125–33 & 129–28]

RIN 2120–AF81

Repair Assessment for Pressurized Fuselages

Correction

In rule document 00–10220 beginning on page 24108 in the issue of Tuesday, April 25, 2000, make the following corrections:

§91.410 [Corrected]

1. On page 24125, in the third column, in §91.410(l), in the third line, "27,000" should read "60,000".

§129.32 [Corrected]

2. On page 24127, in the first column, in §129.32(l), in the third line, "60,00" should read "60,000".

[FR Doc. C0–10220 Filed 6–2–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Monday,
June 5, 2000

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 154, et al.
Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 161, 250, and 284

[Docket Nos. RM98–10–001, RM98–10–004, RM98–12–001, RM98–12–004; Order No. 637–A]

Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services

Issued May 19, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order addressing the requests for rehearing of Order No. 637 [65 FR 10156, Feb. 25, 2000]. Order No. 637 revised Commission regulations to enhance the competitiveness and efficiency of the interstate pipeline grid. The order revised Commission pricing policies by waiving price ceilings for short-term released capacity for a two year period and, permitting pipelines to file for peak/off-peak and term differentiated rate structures. It also effected changes in regulations relating to scheduling procedures, capacity segmentation, pipeline imbalance processes and penalties, pipeline reporting requirements, and the right of first refusal. The rehearing order largely denies rehearing on these issues, but grants rehearing, in part, to make clarifying adjustments to the regulations regarding penalties, reporting requirements, and the right of first refusal.

DATES: The amendments to the regulations will become effective July 5, 2000.

ADDRESSES: Federal Energy Regulatory Commission 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:
Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294
Robert A. Flanders, Office of Markets, Tariffs, and Rates Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2084

SUPPLEMENTARY INFORMATION:

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Figure 1—Capacity Release Transactions as Percentage of Maximum Rate (Oct. 1996–Feb. 2000)
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Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

Order on Rehearing

In Order No. 637, issued on February 9, 2000, the Federal Energy Regulatory Commission (Commission) issued a final rule that amended Part 284 of the Commission's open access regulations to improve the efficiency of the market and to provide captive customers with the opportunity to reduce their cost of holding long-term pipeline capacity while continuing to protect against the exercise of market power.[1] In addition, the Commission instituted a new effort to monitor the changes taking place in the market so that the Commission can be prepared to continue its reexamination of its current regulatory framework to better meet the challenges posed by the growing competitive market. Specifically, the final rule made the following changes in the Commission's regulatory model:

- The rule grants a waiver for a limited period of the price ceilings for short-term released capacity to enhance the efficiency of the market while continuing regulation of pipeline rates and services to provide protection against the exercise of market power.
- The rule revises the Commission's regulatory approach to pipeline pricing by permitting pipelines to propose peak/off-peak and term differentiated rate structures. Peak/off-peak rates can better accommodate rate regulation to the seasonal demands of the market, while term differentiated rates can be used to better allocate the underlying risk of contracting to both shippers and pipelines.
- The rule improves the competitiveness and efficiency of the interstate pipeline grid by changing regulations relating to scheduling procedures, capacity segmentation, and pipeline penalties.
- The rule narrows the right of first refusal to remove economic biases in the current rule, while still protecting captive customers' ability to resubscribe to long-term capacity.
- The rule improves reporting requirements to provide more transparent pricing information and to permit more effective monitoring for the exercise of market power and undue discrimination.

Fifty-one requests for rehearing and clarification were filed, covering all the major elements of the rule.[2] As discussed below, the Commission largely denies rehearing, but grants rehearing, in part, to make clarifying adjustments to the regulations regarding penalties and reporting requirements. It also grants rehearing to clarify that shippers with a multi-year contract for a service that is not available for 12 consecutive months are eligible to exercise the right of first refusal.

I. Adjustments to Rate Policies

A. Removal of the Rate Ceiling for Capacity Release Transactions

In Order No. 637, the Commission removed the rate ceiling for short-term (less than one year) capacity release transactions for a two-year period ending September 30, 2002. In determining that the removal of the rate ceiling for short-term capacity release transactions was warranted, the Commission examined the interaction of its cost-of-service regulations with the actual way in which gas markets operate today. Based on this analysis of the market, the Commission concluded that the rate ceiling should be removed because cost-of-service rate regulation is not well suited to the short-term capacity market, the rate ceiling interfered with the efficient operation of the market, removal of the rate ceiling for short-term capacity would have little effect on the prices paid for capacity during peak periods, since shippers can avoid ceiling by making bundled sales, and removal of the ceiling would provide short-term shippers with an additional transportation option. The Commission found that protection against the exercise of market power in the short-term capacity release market could be achieved in ways other than direct price regulation, including competition from other sellers of released capacity, improved reporting, monitoring and complaint procedures, and the maintenance of Commission regulation of pipeline capacity. In order to review the effects of this change in regulatory philosophy, the Commission limited the removal of the price ceiling to a two-year period so that the Commission and the industry could obtain more complete information about how the change would actually affect prices.

Requests for rehearing have been filed challenging the Commission's determination to grant a waiver of the price ceiling for short-term capacity release transactions.[3] In addition, several pipelines request rehearing of the determination not to remove rate ceilings on their short-term capacity.[4] As discussed below, the Commission is denying rehearing with respect to the waiver of the price ceiling[5] and is denying the request to apply the waiver to pipeline services. Others requested rehearing or clarification regarding the way in which the regulation would be applied. The Commission will address those requests.

1. Removal of the Price Ceiling

The requests for rehearing contend that the removal of the rate ceiling for short-term capacity release transactions permits unjust and unreasonable rates, because the Commission has not put forward sufficient proof that the market for capacity release transactions is competitive. They maintain that the Commission improperly found that short-term shippers were entitled to less protection against market power than long-term shippers. They argue that the Commission legally is permitted to relax rate regulation for short-term shippers only when the Commission has conducted a market-by-market analysis to show that there are sufficient alternative sources of supply, so the resulting rates can be considered just and reasonable.[6] They maintain the Commission has not conducted the market analysis of competition that it previously required in order to demonstrate a lack of market power and that reporting requirements and complaints are not an adequate basis to police market power abuses. The rehearing requests further maintain that the Commission failed to take into account the ability of pipelines to use their affiliates to purchase capacity, in order to capture the profits from above maximum rate capacity sales.[7]

Those seeking rehearing also argue that the Commission cannot base its determination to release the rate ceiling on the evidence showing that releasing shippers can avoid maximum rate regulation by making bundled gas sales[8] with transportation values that exceed the maximum rate. They maintain that the Commission should not be permitted to justify the removal of the rate ceiling on its own failure to make the capacity release system work and its continued tolerance of the bundled sales market.

Under section 4 of the Natural Gas Act (NGA), the Commission's responsibility is to ensure that rates are just and reasonable. To be sure, that responsibility entails an examination of the potential for the exercise of market power.[9] But rate regulation cannot perfectly emulate the prices produced by a competitive market and rate regulation frequently reflects a balance between the potential for exercise of market power and the need to promote allocative or productive efficiency or achieve other regulatory goals.[10] The Commission's current regulatory framework, for instance, has long permitted some exercise of market power by pipelines through selective discounting below the maximum rate. The justification for permitting this exercise of market power is to enhance efficiency by increasing throughput and to benefit those captive customers with long-term contracts by reducing, in the pipeline's rate case, the amount of the fixed costs that otherwise would be recovered through the rates paid by those captive customers.[11]

In this instance, the Commission has reviewed its regulations in light of the actual workings of the gas market. Based on this analysis, the Commission decided to make an incremental change to its current regulatory framework by creating a two-year waiver of price ceilings only for short-term capacity release transactions in the secondary market, while retaining rate regulation for primary capacity available from the pipeline as well as long-term capacity release transactions. The Commission determined that cost-of-service rate ceilings for short-term capacity release transactions do not approximate competitive prices. It further found that maintenance of the rate ceiling reduces efficiency, inhibits capacity trading and reduces the dissemination of accurate pricing information, limits shippers' capacity options, and inequitably allocates the cost of capacity between long-term and short-term shippers. Rather than continuing a traditional approach to regulation, the Commission has opted for a different regulatory approach which first, seeks to reduce the potential for the exercise of market power and second, employs contemporaneous reporting and monitoring along with case-specific enforcement mechanisms to identify and correct exercises of market power. The Commission will discuss below the various factors that led it to the conclusion that, on balance, removal of the price ceiling for short-term capacity release transactions will result in just and reasonable rates for all shippers and will respond to the rehearing requests in each of these areas.

a. Cost-of-Service Ratemaking. The Commission found in Order No. 637 that cost-of-service ratemaking is not well suited to the short-term capacity release market. The purpose of regulating a pipeline's rates is to try to capture the productive efficiency of a natural monopoly while imposing limits on the monopolist's ability to exercise market power. To achieve this goal, cost-of-service regulation limits a pipeline's rates to an amount sufficient to recover its revenue requirement. Cost-of-service regulation inhibits the exercise of the pipeline's market power because the pipeline's rates are limited, eliminating a monopolist's incentive to

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[1] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, 63 FR 10156 (Feb. 25, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 (Feb. 9, 2000).

[2] The appendix lists those filing for rehearing and clarification.

[3] Rehearing Requests of Amoco, IPAA, Indicated Shippers, NGSA, NWIGU, National Association of Gas Consumers, Process Gas Consumers.

[4] Rehearing requests of CNG, Great Lakes, Kinder-Morgan, Koch, Williams.

[5] On April 20, 2000, Indicated Shippers and Independent Petroleum Association of America requested rehearing of the Commission's decision to deny their request for a stay of the price cap waiver. That request too is denied.

[6] Rehearing Requests by Amoco, IPAA, Indicated Shippers, NGSA, NWIGU, Process Gas Consumers.

[7] Rehearing Requests by Amoco, IPAA, Indicated Shippers, Ohio Oil and Gas Association, Process Gas Consumers.

[8] The rehearing requests refer to the bundled sales market as the gray market.

[9] *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944); *Associated Gas Distributors* v. *FERC*, 824 F.2d 981, 995 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988).

[10] *See Environmental Action* v. *FERC*, 996 F.2d 401 (D.C. Cir. 1993) (recognizing the need to balance efficiency gains from unfettered trading with the need to protect against the exercise of market power). *See also* Permian Basin Area Rate Cases, 390 U.S. 747, 792 (1968) (need to balance interests of investors and the protection of the public interest); *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (ratemaking involves the balancing of investor and consumer interests).

[11] *Associated Gas Distributors* v. *FERC*, 824 F.2d 981, 1010–1012 (D.C. Cir. 1987) (selective discounting permitted to benefit captive customers by contributing to payment of fixed costs), *cert. denied*, 485 U.S. 1006 (1988); *United Distribution Companies* v. *FERC*, 88 F.3d 1105, 1141–42 (D.C. Cir. 1996) (affirming Commission's determination to permit selective discounting and not requiring pipelines to discount); 1 A. Kahn, the Economics of Regulation 131–33 (1970) (price discrimination one solution to problems of natural monopoly and declining costs).

withhold capacity (by not constructing facilities) in order to raise prices through the creation of scarcity. This rationale for limiting rates for pipelines, however, has little applicability to the secondary market where releasing shippers do not control the amount of long-term capacity that will be built.

In addition, the static annual rates produced by cost-of-service ratemaking bear no relationship to competitive rates that would be established in the short-term market, particularly during peak periods. The evidence cited in Order No. 637 showing the implicit value of transportation in the bundled sales market demonstrates the variability of transportation value in the short-term market and the divergence between transportation value and cost-of-service rates. In short, traditional methods of cost-of-service regulation cannot come close to emulating the variability of short-term market prices.

The rehearing requests do not dispute that the cost-of-service ratemaking method is ill-suited to the short-term capacity release market, and they do not challenge the Commission's conclusion that no method of cost-of-service rate regulation could emulate the prices a competitive market would produce. Indeed, they recognize that during peak periods, transportation prices in a competitive market could exceed the cost-of-service maximum rate.[12] Despite the recognized infirmities of cost-of service regulation as applied to the short-term capacity release market, the rehearing requests contend that the Commission has no choice other than to continue to use this method of regulation unless it conducts a market analysis showing that each market performs competitively. As explained below, the Commission has concluded that the removal of cost-of-service regulation for short-term capacity release transactions is warranted without a full market-by-market analysis.

b. Bundled Sales and Transportation. In today's gas market, shippers can effectively bundle gas and transportation to make gas sales in downstream markets. During peak periods, when transportation values exceed maximum ceiling rates, firm shippers can avoid the ceiling rates by making bundled sales at delivery points, rather than releasing the transportation capacity independently. As a consequence, the Commission concluded that the price ceiling does not limit the prices paid by shippers in the short-term capacity release market as much as it limits their transportation options. Due to the price ceiling, many shippers without firm transportation are limited to purchasing gas through a bundled sales transaction or simply taking gas from the pipeline system and incurring overrun and scheduling penalties. The price ceiling in effect denies these shippers the option of obtaining transportation capacity (without gas) during peak periods.

The rehearing requests recognize the existence of the bundled sales market and do not challenge the fact that the value of transportation in bundled sales transactions can exceed the maximum rate derived from cost-of-service regulation. Some suggest that the bundled sales market is not a factor at upstream pooling points in the production area, constraint points, or at interconnects, although they do not explain why bundled sales cannot be made at such points.[13] In fact, comments in this proceeding indicate that production area pricing is governed by the same basis differentials as downstream markets.[14] Those requesting rehearing instead argue that the Commission should not allow its failure to "make the capacity release system work, and continued tolerance of the grey market"[15] justify the removal of the price ceilings in the short-term capacity release market.

The capacity release system was intended to provide an efficient method by which shippers could reallocate transportation capacity to other shippers in a way that is fair, open, and transparent and that would provide good market information about the value of pipeline capacity. But the short-term rate ceiling prevents the capacity release system from fulfilling these goals during peak periods precisely because releasing shippers seek to avoid the rate cap by ignoring the capacity release market and bundling the transportation with downstream sales. Removal of the rate ceiling on short-term capacity release transactions, therefore, will make the capacity release system more, not less, viable. It will also serve to make capacity transactions during peak periods more transparent, providing good information to all shippers about the market value of transportation.

Nor do those seeking rehearing suggest how the Commission could regulate the bundled sales market in ways that would not reduce the efficiency of that market and that would be consistent with Congress's deregulation of gas sales.[16] For the Commission to ignore the bundled sales market, as the rehearing requests suggest, is to take a panglossian perspective, rather than seeing the market as it really exists. The Commission has concluded that its regulation will be far more effective if it recognizes how business is really done and seeks to impose regulatory controls that are consistent with that market, rather than continuing to use regulatory methods that are ineffective and reduce efficiency. Given the ability of shippers to make bundled sales without rate ceilings, removal of the rate ceiling for capacity release transactions will have little adverse effect on the transportation costs consumers will pay. Rather, lifting of the price ceiling adds another capacity option to the market that can increase efficiency and the transparency of transactions, and thereby, result in lower effective transportation rates.

c. Promotion of Greater Efficiency. Even if the bundled sales market were not effective as a substitute for releasing capacity, the Commission found in Order No. 637 that the price ceiling on capacity release transactions inhibits the efficient allocation of capacity and harms short-term shippers. The price ceiling in the long-term market serves to protect customers by reducing the pipeline's ability to exercise market power either by withholding capacity to raise price or by price discriminating and, as a consequence, creates the incentive for pipelines to add capacity when demand increases. The pipelines have an incentive to increase capacity, because adding capacity is the only way the pipeline can increase long-term revenue. In the short-term capacity release market, however, a rate ceiling does not provide comparable protection.

Shippers without firm capacity are always at risk of being unable to obtain capacity, because the services on which they rely, pipeline interruptible or released capacity, may not be available during peak periods, or may be available only in limited quantities. Given the limited amount of capacity available during peak periods, a rate ceiling is of little or no benefit to a short-term shipper; capping the price the shipper can pay provides no protection to a shipper that, as a result of that ceiling, cannot obtain the capacity it needs. The rate ceiling creates an inefficient allocation system which operates to prevent the shipper most valuing the capacity from being able to obtain it. For example, the rate ceiling results in arbitrary allocations of capacity based on queue positions or on a *pro rata* allocation, in which the shipper most needing the capacity may be unable to obtain any capacity or the amount of capacity it needs. Indeed, the removal of the rate ceiling benefits short-term shippers because the shipper placing a high value on the capacity has greater assurance of obtaining the capacity it needs than it does under a price cap where that shipper may be unable to obtain any capacity.[17] The rate ceiling could have the further effect of actually reducing the amount of released capacity available, because price ceilings may make the release of capacity uneconomic for some shippers.

Those requesting rehearing do not contest that the use of price ceilings during peak periods can result in an inefficient allocation of capacity. Instead, Indicated Shippers maintain that the Commission's assertion that removing price ceilings could induce releasing shippers to release additional capacity is completely speculative. But the Commission's conclusion was not speculation; it was based on sound economic theory.[18] A releasing shipper will hold onto its capacity if the amount it receives for the release is less than its opportunity cost, the value to the shipper of the next best use of its capacity. Thus, a releasing shipper, subject to a rate ceiling, will hold onto capacity if the amount it will receive is less than the cost to it of using an alternative fuel or storage, or the cost of reducing its use of gas through conservation. However, if the releasing shipper can obtain the market value for its capacity and that value exceeds the value of its next best alternative, it will choose to release that capacity, thereby adding to the amount of released capacity to the market. The effect of increasing the amount of released capacity available in the market will be to reduce the price for transportation, because, as the supply of transportation increases, but the demand for transportation remains the same, the price of transportation will decrease.

Indicated Shippers also contends that in light of pipelines' ability to file for peak and off-peak rates, the Commission has not explained why additional action is needed to aid long-term shippers in defraying the cost of their reservation charges. In the first place, the purpose of removing the rate ceiling was not simply to permit firm shippers a greater opportunity to defray the cost of their reservation charges (although that was one goal). An equally important purpose was to help foster an efficient trading market in which capacity would be sold to the shipper placing the highest value on obtaining transportation service. Particularly during peak periods when capacity is most constrained, an efficient market is needed so that a market clearing price will provide for the efficient allocation of capacity. While permitting pipelines to file for peak and off-peak rates will enable pipelines to file for rate structures more in line with the value of transportation capacity, the development of peak and off-peak rates that remain within a pipeline's cost-of-service may not come close to duplicating the rates, particular during peak periods, that a competitive market would require to clear efficiently. As the data cited in Order No. 637 with respect to the value of transportation demonstrates, during peak demand periods the value of transportation in an efficient market rises dramatically for short periods to levels that would exceed the rates that pipelines could establish through proposals for cost-of-service peak/off-peak rates.[19] For instance, during some peak winter periods, the value of transportation was 8–13 times greater than the applicable maximum rate for short periods of time, but during other winter periods with differing demand conditions the peak period rates were only 1½ to 2 times the maximum rate. Pipelines would not propose revenue neutral cost-of-service peak rates coming close to the higher levels that occur during peak constraint periods, because they could never be sure how frequently those demand conditions would occur and if they established peak winter rates at that level, their off-peak rates would be so low that in many cases, they would be unable to recover their cost-of-service. Moreover, even if pipelines could propose peak rates high enough to cover market prices during maximum constraint periods, those rates would be far too high for the same time period when demand conditions are not as severe. While cost-of-service peak and off-peak pricing has a legitimate purpose in the world of cost-of-service ratemaking, these rates likely will not approximate the efficient rates that a competitive market needs to clear during peak periods. In order to create such a efficient market, cost-of-service peak and off-peak rates are not sufficient and removal of the rate ceiling for capacity release transactions (with the protections adopted by the Commission) is necessary to permit efficient pricing.

d. Equitable Allocation of Capacity Costs. The Commission found in Order No. 637 that the price ceiling can result in an inequitable distribution of costs between long-term firm capacity holders and short-term shippers. Indicated Shippers maintain that the Commission has no foundation for finding that higher rates during peak periods are needed to reapportion cost responsibility between short-term and long-term shippers. They argue that the Commission failed to take any steps in Order No. 637 to ensure that capacity is not withheld during off-peak periods and, therefore, they maintain market power may be exercised during off-peak periods.

Prior to Order No. 636, and the institution of capacity release, pipelines were the only source of interruptible capacity during off-peak periods. Pipelines could discount selectively, charging maximum rates to customers with more inelastic demand and charging discounted rates to customers with alternatives, such as dual fuel capability. The pipelines' ability to selectively discount benefitted the long-term firm capacity holders, because the greater contribution to cost recovery provided by interruptible service would reduce firm shippers' rates.

The institution of capacity release in Order No. 636, along with flexible receipt and delivery points, placed competitive pressure on the pipelines' interruptible service, because a shipper in the short-term market was given the choice of obtaining capacity from a number of releasers, rather than being limited to pipeline interruptible service. In fact, during the Order No. 636 proceedings, pipelines were concerned that competition from capacity release would so reduce the level and prices for interruptible service that they would be unable to recover the costs allocated to

[12] Rehearing Request of Process Gas Consumers, at 30.

[13] Rehearing Requests of Amoco, IPAA, Indicated Shippers, NGSA.

[14] Comments by Koch, at 41–42 (on a production area pipeline, "the value of transportation services (both firm and interruptible) is driven primarily by the basis differentials that are present across its system").

[15] Rehearing Request of IPAA, at 16. For the same point, see Rehearing Requests by Amoco, Indicated Shippers, NGSA, Process Gas Consumers.

[16] Natural Gas Wellhead Decontrol Act of 1989, Pub. L. No. 101–60, 103 Stat. 157 (1989); Natural Gas Policy Act, § 601(a)(1), 15 U.S.C. 3431 (Commission jurisdiction does not apply to first sales of domestic gas).

[17] Those short-term shippers who currently have a high place on the pipeline's queue may prefer the current system, because they can obtain capacity at a cheap regulated rate and use it to effect a bundled sale at market prices reflecting a higher market value. But this is a selective benefit to certain shippers not a benefit to the market as a whole.

[18] *Associated Gas Distributors* v. *FERC*, 824 F.2d 981, 1008–09 (D.C. Cir. 1987) (agency can rely upon generally accepted economic theory even without factual evidence to support proposition that increased competition will lead to lower prices), *cert. denied*, 485 U.S. 1006 (1988); *Environmental Action* v. *FERC*, 939 F.2d 1057, 1064 (D.C. Cir. 1991) (agency entitled to rely upon predictions about the market it regulates).

[19] Order No. 637, 65 FR at 10196, 10174–79, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,271–74 (figures 6 and 7).

interruptible service.[20] Accordingly, in restructuring proceedings, pipelines reduced the cost responsibility for interruptible service, and increased firm shippers' rates. After the institution of capacity release, firm shippers could reduce their costs of holding pipeline capacity by releasing the capacity they held as well as receiving interruptible revenue credits to the extent the pipeline was able to sell interruptible service above the costs allocated to that service.[21]

With the advent of capacity release, however, the rates for capacity release and pipeline interruptible service have fallen well below maximum tariff rates, particularly during off-peak periods, as would be expected from the addition of numerous firm shippers who are now competing with the pipeline to sell capacity during off-peak periods. This is well documented. Numerous commenters made the point that competition from capacity release transactions has depressed short-term rates, particularly during off-peak periods, and has hurt long-term shippers by requiring them to bear a greater proportion of capacity costs.[22]

Studies support the finding that short-term rates have fallen well below maximum rates. One study, using data from the period 1992–1998, has shown that the average rates for released capacity range from 31% to 76% of maximum rates in 17 pipeline corridors, with only 5 of the corridors exceeding an average rate of 60%.[23] Commission data from capacity release and interruptible transactions also support the conclusion that short-term rates fall well below maximum tariff rates. The following graphs show the average prices of capacity release transactions and discounted pipeline interruptible transportation from October 1996 to February 2000, as a percentage of the applicable maximum tariff rate.[24]

The average capacity release rate for all pipelines in the sample ranges from 30% to 70% of the pipeline's maximum rate, with the lowest average in the off-peak winter months. Off-peak rates during the summer months were below 50% of the maximum rate in all three off-peak periods.

Figure 1 –Capacity Release Transactions as Percentage of Maximum Rate (Oct. 1996-Feb. 2000)

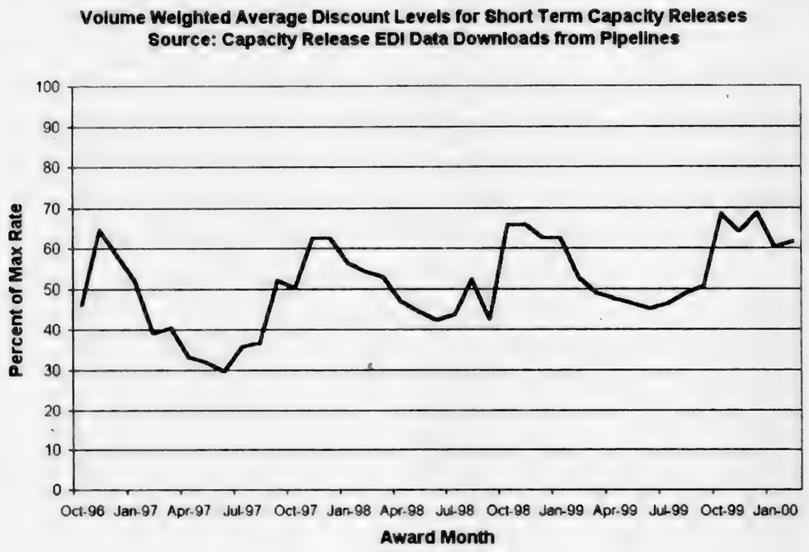

[20] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,562–63 (Aug. 3, 1992).

[21] *Id.*

[22] Associated Gas Distributors v. FERC, 824 F.2d 981, 1008–1009 (D.C. Cir. 1987) (agencies do not need to conduct experiments to verify predictions that competition will lower prices), *cert. denied*, 485 U.S. 1006 (1988). Comments of AGA I, Arkansas PSC, Consolidated Edison, Enron Pipelines, Illinois Commerce Commission, INGAA, NARUC, NASUCA, Nisource, Pennsylvania/Ohio Consumer Advocates, Pennsylvania PUC, Philadelphia Gas Works, Piedmont/UGI, PSC of Wisconsin, PUC of Ohio, and Washington Gas Light.

[23] Henning & Sloan, Analysis of Short-Term Natural Gas Markets, 41–45 (Energy and Environmental Analysis, Inc., November 1998) (the authors conclude that these percentages are somewhat overstated insofar as they reflect maximum rate transactions mandated by state unbundling programs).

[24] The data are derived from capacity release data downloaded from 33 pipeline Internet sites, and the discount reports filed by the pipelines with the Commission.

Figure 2 –Interruptible Transportation Rates as Percentage of Maximum Rate (Oct. 1996-Feb. 2000)

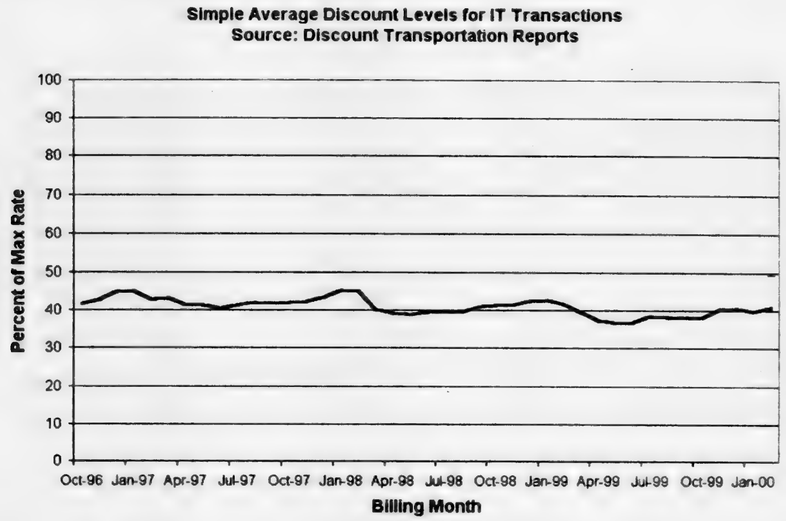

For discounted interruptible transportation, the average rate ranged from the mid-30% to mid-40% of maximum rates.[25] Removal of the rate ceiling, therefore, removes a regulatory bias in the current system and will help to create a more equitable distribution of capacity costs between short and long-term customers, just as selective discounting did before the advent of capacity release. Prior to capacity release, pipeline sales of interruptible transportation reduced the cost responsibility of long-term shippers, because the revenue from interruptible transportation lowered the amount of costs allocated to long-term firm shippers. Shippers with inelastic demand buying short-term interruptible transportation service were more likely to pay maximum rates, because they had fewer capacity alternatives. With the advent of capacity release, however, the prices for released capacity during the off-peak periods are well below maximum rates and the rate ceiling prevents long-term shippers from recovering the value of capacity during peak periods. Similarly, pipeline interruptible transportation recovers less of the cost-of-service than it did before, so long-term shippers are required to shoulder a higher level of cost responsibility than they did prior to the institution of capacity release.

Removal of the rate ceiling on capacity release transactions, therefore, will help restore the previous balance between the cost responsibility of long and short-term shippers, but in a way consistent with prices in a competitive market. Short-term shippers will continue to benefit from lower rates during off-peak periods, but will now face more appropriate market rates during peak periods. By the same token, long-term customers, which can recover only a small portion of their capacity costs through capacity release during off-peak periods, will be able to recover a greater proportion of those costs during peak periods. As a result of removing the rate ceiling, short-term shippers will pay their fair share of capacity costs through the release market to reflect their peak period use and long-term captive customers will benefit by being better able to defray their costs of holding capacity by selling released capacity.

e. Protection Against the Exercise of Market Power. In Order No. 637, the Commission concluded that maximum rate regulation may not be appropriate for regulating the short-term capacity release market, that there are a number of factors which inhibit the ability of releasing shippers to exercise market power, and that the Commission can assure just and reasonable rates through indirect methods. Competition among capacity releasers—enhanced by the Commission's regulations providing for flexible receipt and delivery point rights and capacity segmentation—provides protection against the exercise of market power. This protection is supplemented by public reporting of pricing, along with complaint procedures that permit the Commission to monitor and respond to complaints about the exercise of market power. In addition, the Commission is maintaining regulatory protections against market power abuse, including the retention of the Commission's current posting and bidding requirements for capacity release transactions, the maintenance of

[25] The purpose of these data is to compare the rates for capacity release and interruptible service to the maximum tariff rate. Due to differences in the way in which capacity release and interruptible transportation are reported, one can draw no conclusion about whether the average rates for capacity release are higher or lower than the rates for interruptible service. The average capacity release rates include deals at the maximum tariff rate, but the average discounted interruptible rate does not include maximum rate transactions because prior to Order No. 637, pipelines did not include maximum rate interruptible transactions in their discount reports. In addition, the capacity release transactions are weighted by the volume of the contract demand involved, while the interruptible transactions are simple averages, because interruptible shippers do not have a contract demand. They can ship only as much gas as the pipeline has available.

rate regulation on primary pipeline capacity and on long-term capacity release transactions, and the regulation of pipeline penalty levels to establish an effective ceiling price for release transactions.

The crux of the arguments presented by those seeking rehearing is that regardless of the limits of maximum rate regulation and the inefficiencies created by such rate regulation for the short-term capacity release market, the Commission legally must continue to apply cost-based ceiling rates in the short-term capacity release market unless it conducts a detailed market study showing that there are a sufficient number of competing suppliers of capacity to ensure the market is competitive. They maintain that without such a market-by-market study, removal of rate ceilings is not permissible. The Commission does not view its authority to choose appropriate regulatory methods for implementing the Natural Gas Act to be so limited. The Commission will discuss below its legal authority to remove rate ceilings and the protections against the exercise of market power that will continue to exist.

(1) Legal Justification

The courts have long recognized that the Commission is not "bound to the use of any single formula or combination of formulas in determining rates." [26] "Under the statutory standard of 'just and reasonable,' it is the result reached not the method employed which is controlling." [27] The courts have recognized that the Commission's ratemaking function rates requires a balancing of interests.[28]

They further recognize that the Commission's ratemaking function requires the making of "pragmatic adjustments which may be called for by particular circumstances." [29] The Court, for example, recognized the difficulties the Commission faced in regulating individual producer prices and permitted the Commission to depart from individual producer cost-of-service ratemaking to the use of area and national rates.[30] The Court also has found that the Commission has the authority to depart from cost-of-service ratemaking for some classes of customers and to rely upon methods of indirect regulation to keep rates within just and reasonable levels.[31]

In Order No. 637, the Commission examined the available methods of direct rate regulation as well as the operation of the gas marketplace, and concluded that direct rate regulation of the short-term release market did more harm than good, since shippers can avoid rate regulation in the short-term capacity release market by making bundled sales and because regulation of short-term rates results in market inefficiency, findings the rehearing requests do not significantly challenge. In this context, the Commission determined that its existing methods of rate regulation needed to be changed to better comport with the actual operation of the market.[32] To respond to the changes in the market, the Commission undertook a limited program to improve the efficiency of the short-term capacity release market in which rate regulation was relaxed for a short period only for short-term capacity release transactions. In place of direct rate regulation, the Commission is relying on a combination of other factors to ensure rates remain just and reasonable, including competition among releasing shippers, regulatory changes to enhance competition, posting requirements to increase transparency, monitoring and enforcement, and the continuation of regulation on pipeline capacity. The Commission limited the program to a two-year period, which enables the Commission to gather data on market performance which otherwise would be unavailable.

The setting of just and reasonable rates is intended to establish a reasonable balance between the interests of pipelines and consumers.[33] In this rule, the Commission has retained cost-of-service regulation for pipelines to assure just and reasonable prices for primary pipeline capacity. Since firm shippers can make bundled sales without rate ceilings, the current price ceiling on capacity release transactions in the secondary market has little impact on final consumer prices and, in fact, as explained earlier, lifting the rate ceiling may help to reduce such prices by increasing the efficiency and transparency of the market. With the market and regulatory protections against market power, the lifting of the rate ceiling for short-term capacity release transactions is consistent with the Commission's statutory authority because it will have limited effect on consumer prices and provides protection against unjust and unreasonable prices.

The cases principally cited in the rehearing requests do not preclude the approach adopted by the Commission in Order No. 637.[34] First, these cases concern the lifting of price ceilings for primary capacity from a pipeline or regulated utility, not, as is the case here, with the relaxation of rate regulation only in the secondary market, with rate regulation maintained for primary pipeline capacity. Second, they do not indicate, as the rehearing requests contend, that a competitive market analysis is a prerequisite for relaxing cost-of-service rate regulation in the secondary market.

Farmers Union did not require a detailed market-by-market study before relaxing cost-of-service rate regulation. In *Farmers Union*, the Court found that the Commission had not justified relaxation of cost-based regulation of oil pipeline companies, because the Commission had not shown how its overall regulatory program would ensure that pipeline rates remained within the zone of reasonableness. But *Farmers Union* focused on balancing the financial interests of the oil pipelines and the relevant public interest and did not focus on regulation of the secondary or resale market. Even so, *Farmers Union* recognized that the Commission was not confined to cost-of-service ratemaking (734 F.2d 1486, at 1501), that non-cost factors could play an important role in determining whether rates are just and reasonable (734 F.2d 1486, at 1502), that changing circumstances can justify an agency in taking a new approach to the determination of just and reasonable rates (734 F.2d 1486, at 1503), and that rate regulation can be relaxed if the regulatory scheme itself acts as a monitor to maintain rates in the zone of reasonableness or to act as a check on rates if they are not (734 F.2d 1486, at 1509). The court concluded that "moving from heavy to lighthanded regulation "can be justified by a showing that under current circumstances, the goals and purposes of the statute will be accomplished through substantially less regulatory oversight." [35]

In Order No. 637, the Commission, satisfied the *Farmers Union* criteria. It described in detail the non-cost factors and industry changes that justified the relaxation of cost-of-service regulation for short-term capacity release transactions. It demonstrated how the regulatory scheme, including competition, monitoring, complaint procedures, mitigation measures, such as the capacity auction, and the continuation of regulation for primary pipeline services, would act as a check to ensure that rates remain just and reasonable. For instance, unlike *Farmers Union*, where the Court found the Commission had failed to document how market forces would limit rates to just and reasonable levels,[36] the record shows that competition from multiple firm shippers has successfully reduced rates, particularly during off-peak periods, to well below the maximum regulated rate. The Commission found that, given the interaction of all these factors, the goals and purposes of the NGA would be accomplished through relaxation of cost-of-service rates for the short-term capacity release market and greater reliance on other regulatory initiatives for controlling the potential exercise of market power.

Elizabethtown was the next case in which the court considered relaxation of a cost-of-service ratemaking. In *Elizabethtown*, the court affirmed the Commission's determination to replace cost-of-service ratemaking for pipeline gas sales with market based pricing, rejecting the contention that the Commission is required under the NGA to base rates on historic cost-of-service ratemaking principles. The court recognized that the use of the Commission's section 5 authority, either upon the Commission's own motion or that of a complaint, can assure that negotiated rates remain just and reasonable.[37] As the rehearing requests note, in *Elizabethtown*, the Commission relied on a market study as part of its conclusion that market-based rates were just and reasonable, but the court did not suggest that such a market study was a necessary requirement for permitting market-based rates if other factors would keep rates within a just and reasonable range.

Environmental Action continued the movement toward the use of lighter handed regulation when needed to achieve other statutory goals. In *Environmental Action*, the Court approved a relaxation of cost-of-service rate regulation for an electric power pool in order to promote more effective capacity trading, even though the Commission did not conduct a detailed market analysis of competition. *Environmental Action* admittedly is different than the Commission's action in this proceeding, because while the Commission in *Environmental Action* did not rely upon company-by-company cost-of-service analysis to design rates, it maintained a cost based rate ceiling based on the hypothetical cost of the average company for firm energy, the most valuable and expensive service offered in the power pool. The Court found that the Commission could relax rate regulation because the Commission had struck a reasonable balance between promoting efficiency through capacity trading and relying on competition and price disclosure as a means of protecting against price gouging and the exercise of market power.[38] In *Environmental Action*, the Court further found that the benefits of free and open trading justified a risk of price discrimination against the most captive members of the pricing pool. Similarly, the benefits of more efficient and effective capacity trading in this instance outweigh any limited potential for the exercise of market power during the few periods in which transportation value exceeds maximum rates.

In *Environmental Action*, the Commission did impose a high ceiling rate as further protection against the exercise of market power by the utilities in the pricing pool. But *Environmental Action* involved a lifting of rate ceilings for all transactions, including those made by the utilities. In Order No. 637, in contrast, the Commission has lifted the price ceiling only for short-term capacity release transactions, while retaining cost-based regulation for pipeline services and long-term capacity release transactions. The evidence showing large and sudden increases in transportation values during peak periods demonstrates that the Commission could not design a cost-based short-term rate ceiling that would emulate short-term market prices and that would not interfere with the efficiency of the capacity release market, particularly during peak periods when an efficient market is most needed. In order to come close to replicating market prices during peak periods, any short-term rate ceiling would have to be so high as to provide little protection to any shipper. Rather than using a high and artificial price ceiling as back-up protection, as in *Environmental Action*, the Commission in this rule retained cost-based regulation of pipeline capacity as back-up protection. This approach provides better protection to short-term shippers than an artificial price ceiling without compromising the efficiency of capacity trading as a price ceiling would.

The rehearing requests further contend that the Commission ignored its own precedent in not conducting a detailed market analysis before permitting releasing shippers to charge market based rates.[39] The prior proceedings were in a different posture from this rulemaking because the proceedings cited all included applications by pipelines to remove cost-of-service regulation from their services. Moreover, while the Commission has found that a market power study is one method for permitting market based rates,[40] it did not indicate that it was the exclusive method or that other regulatory steps could not also be justified. In this rulemaking, the Commission examined all relevant market factors and fully explained why continuation of cost-of-service rate ceilings for capacity release

[26] *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944); *Elizabethtown Gas Company* v. *FERC*, 10 F.3d 866, 870 (D.C. Cir. 1993); *Farmers Union Central Exchange* v. *FERC*, 734 F.2d 1486, 1501 (D.C. Cir. 1984).

[27] Hope, 320 U.S. 591, 602.

[28] Permian Basin Area Rate Cases, 390 U.S. 747, 792 (1968) (need to balance interests of investors and the protection of the public interest); *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (ratemaking involves the balancing of investor and consumer interests); *Farmers Union Central Exchange* v. *FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984) (balance of financial interest of regulated company and public interests).

[29] Permian Basin Area Rate Cases, 390 U.S. 747, 777 (1968). *See FPC* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942); Hope, 320 U.S. 591, 602.

[30] Permian Basin Area Rate Cases, 390 U.S. 747 (1968) (permitting area rates); *Mobil Oil Exploration & Producing Southeast, Inc.* v. *United Distribution Companies*, 498 U.S. 211 (1991) (permitting the collapse of prior vintage rates into a single national ceiling rate equal to the highest pre-existing ceiling rate).

[31] *FPC* v. *Texaco*, 417 U.S. 380 (1974) (authority to assure just and reasonable rates through indirect regulation as opposed to direct price regulation); Permian Basin Area Rate Cases, 390 U.S. 747, 787 (1968) (Commission empowered to prescribe different requriements for different classes of persons or matters).

[32] Permian Basin Area Rate Cases, 390 U.S. 747, 785, 790 (1968) (Commission permitted to adopt policies needed to respond to demands of changing circumstances).

[33] Hope, 320 U.S. 591, at 603 (ratemaking involves a balance of investor and consumer interests); *Tejas Power Corporation* v. *FERC*, 908 F.2d 998 (D.C. Cir. 1990) (Commission must protect interest of consumers); *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984) (strike a fair balance between financial interests of the regulated company and public interest).

[34] The cases principally cited in the rehearing requests are *Farmers Union Central Exchange* v. *FERC*, 734 F.2d 1486, 1509–10 (D.C. Cir. 1984), *Elizabeth Gas Company* v. *FERC*, 10 F.3d 866 (D.C. Cir. 1993), *Environmental Action* v. *FERC*, 996 F.2d 401 (D.C. Cir. 1993).

[35] 734 F.2d 1486, at 1510.

[36] 734 F.2d 1486, at 1508.

[37] 10 F.3d 866, 870.

[38] 996 F.2d 401, 410.

[39] The rehearing requests cite, *e.g.*, Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 61 FR 4633 (Feb. 7, 1996), 74 FERC ¶ 61,076 (1996), Koch Gateway Pipeline Company, 85 FERC ¶ 61,013 (1998), *reh'g denied*, 89 FERC ¶ 61,046 (1999); Secondary Market Transactions on Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 41046 (Aug. 7, 1996) FERC Stats. & Regs. Proposed Regulations [1988–1998] ¶ 32,520 (July 31, 1996) (final rule never issued); Proposed Experimental Pilot Program to Relax the Price Cap for Secondary Market Transactions, 76 FERC ¶ 61,120 (1996) (program terminated).

[40] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996).

transactions no longer meets the needs of the market and that a more flexible approach, relying on competition and other regulatory controls, was necessary.

Indicated Shippers maintain that the Commission's relaxation of price ceilings in this case is inconsistent with its policy with respect to electric transmission service where Indicated Shippers maintain the Commission continues to regulate on a cost-of-service basis. In fact, however, the Commission has not limited pricing for short-term electric transmission service to embedded cost-of-service rates. As the Commission has done in this rule, the Commission has recognized that neither historic nor incremental costs are an appropriate ceiling for short-term electric transmission services and has permitted utilities to sell short-term transmission services at the higher of embedded or opportunity cost without a price cap.[41] With respect to reassignments of electric transmission capacity of one year or less, the Commission has similarly found that reassignments can be made at the reassignor's opportunity cost without an embedded cost or incremental price cap.[42] In this rule, the Commission followed essentially the same policy it has applied to electric regulation by removing embedded cost price ceilings for short-term capacity releases, so that releasing shippers can effectively obtain the opportunity costs for capacity. A releasing shipper will be able to sell its capacity for a rate that exceeds the value to the shipper of the next best use of its capacity. A combination of competition and other regulatory controls protect against short-term capacity release rates becoming unjust and unreasonable.

Those requesting rehearing further contest what they term the Commission's determination that shippers in the short-term capacity release market are not entitled to protection. They maintain that short-term shippers may be captive to particular pipelines and that, in any event, all shippers are entitled to protection under the Natural Gas Act.

In Order No. 637, the Commission recognized that its principal responsibility is to protect captive customers holding long-term contracts.[43] Short-term customers, even if connected to only one pipeline, are not captive since given the nature of interruptible and short-term release services they do not have to pay for service when they want to use alternatives and have no guarantee that the pipeline will provide service when they want it. Prior to Order No. 636, the use of 100% load factor interruptible rates and selective discounting, maximized the revenue from short-term shippers and reduced the costs borne by captive firm customers.[44] Lifting of the price ceiling for short-term capacity release transactions restores the balance between short and long-term shippers, but in a way more consonant with competitive pricing. Short-term shippers that currently pay lower prices during off-peak periods as a result of competition created by capacity release will now face appropriate rates for peak period capacity when capacity is most in demand and prices in a competitive market would be higher to properly allocate the capacity. At the same time, this will enable releasing shippers to derive greater revenue for short-term releases during peak periods to help offset the low rates they receive during off-peak periods.

The Commission did not find, as the rehearing requests suggest, that short-term shippers are not entitled to any protection. It found only that just and reasonable regulation of customers in the short-term market needs to be tailored to the realities of that market.[45] Short-term customers, by the very nature of the service for which they are contracting, expressly take the risk that they may have to forgo the use of gas entirely if short-term capacity is not available when they need it. As the country learned very well during the period of price controls on interstate gas, customers receive little benefit from regulated prices if they are unable to acquire the gas or transportation service when they need it. Short-term customers will receive more protection if they can obtain capacity when they need it, even by paying higher prices, than if they are unable to obtain the capacity they need when they are willing to pay the market price for such capacity. Short-term customers desiring greater price security can purchase long-term capacity at a regulated rate from the pipeline. Even if capacity is not immediately available, the pipeline has the incentive to construct new capacity when shippers are willing to pay for the cost of construction, and the Commission is committed to reviewing closely a pipeline's decision to refuse to construct capacity when the customer is willing to pay the costs.

In short, the static cost-of-service rate regulation that the Commission has applied to long-term capacity commitments is not applicable to short-term released capacity. The Commission, therefore, has decided to try a more flexible regulatory approach to the short-term release market that does not rely upon artificial pricing ceilings, but instead relies on competition and other regulatory controls to minimize the ability to exercise market power as well as relying on enforcement proceedings to control the abuse of market power if it should occur. Such a regulatory approach is better geared to the needs of the short-term market than the maintenance of static, regulated prices that bear little relationship to market realities, that distort shipper's options, and that contribute to a less efficient market.

The Commission will discuss below the protections against the exercise of market power that justify the removal of the rate ceiling for short-term capacity release transactions.

(2) Protections Against the Exercise of Market Power

Competition from Releasing Shippers, Monitoring, and Enforcement. The availability of capacity from alternative firm capacity holders, as well as the pipeline, constitutes a strong protection against the exercise of market power by any one holder of firm capacity. Capacity release has become an ever more vibrant part of the gas marketplace since Order No. 636. By permitting releasing shippers to use secondary points and to segment their capacity, capacity buyers have the ability to choose among numerous alternative suppliers of capacity. Indeed, as shown above,[46] competition in the capacity release markets already has been successful in keeping, on average, the rates for released capacity below the maximum rates during both peak and off-peak periods, demonstrating that competition will significantly limit releasing shippers' ability to exercise market power during peak periods even without a price ceiling. Further, the data cited in Order No. 637 from the bundled sales market show that in a market without price ceilings, competition has generally maintained the value of transportation at rates below the current maximum ceiling rate.[47] The data show that the only time rates increase above the cost-based maximum ceiling rate is during peak demand periods, when higher prices are needed to effectively allocate capacity.[48] Thus, the evidence does not provide a basis for the fear of those seeking rehearing that removal of price ceilings will lead to the ability of shippers to sustain price increases above cost-based rates.

The competition among multiple capacity holders and the pipelines to sell capacity has, at the very least, significantly lessened the potential for the exercise of market power by releasing shippers, so that case-by-case review of allegations of market power is appropriate and far less disruptive to the overall workings of the market than application of static cost-based regulation that does not comport with the way in which short-term markets operate. The Commission has revised its reporting and internal monitoring capability as well as its complaint procedures to better enable it and the industry to monitor the marketplace and conduct case-by-case review of allegations of abuses of market power in the release market.

Regulated Pipeline Alternatives. In this rule, the Commission only took an interim step to improve efficiency by removing the rate ceiling for short-term capacity release transactions. It decided not to change the existing regulation of pipelines to provide additional protection against the exercise of market power in the short-term capacity release market. Market power can be exercised in two basic ways, through withholding of capacity and price discrimination. Firm shippers cannot successfully withhold capacity from the market, because any capacity they do not use is available from the pipeline as interruptible service at a cost-based rate. Shippers also can purchase long-term firm capacity from the pipeline at a regulated rate. In addition, the Commission continues to regulate pipeline penalty levels in the short-term market which effectively establishes a rate ceiling for capacity release transactions. A shipper will not pay more for capacity than the penalty it would pay if it simply shipped gas in excess of its contract rights.

In traditional market analysis, one looks at the number and market shares of potential alternative suppliers and other factors such as barriers to entry to determine whether competition between those suppliers is sufficient to prevent explicit or tacit collusion to reduce output in order to raise price.[49] If a large enough number of firms are in competition for buyers' business, buyers, when faced with an effort to raise price by any one firm, will have alternative suppliers who have an incentive to increase their own sales (and hence total output) by charging a lower price. While the Commission has used competitive market analysis to determine whether to permit market-based rates, such an analysis is time consuming, difficult and is not subject to slide rule precision. Disputes frequently arise over issues, such as product and geographic market definition, the existence of barriers to entry, and the number and market positions of alternative suppliers needed to protect against market power. When the Commission previously instituted a pilot program attempting to use market analysis to relax price ceilings in the short-term market, disputes over all these issues arose.[50]

While market analysis looks principally at market structure and barriers to entry in an attempt to discern whether firms will have incentives to reduce output to raise price, the Commission's regulations protect against the exercise of market power by directly limiting the withholding of available transportation capacity through the requirement that pipelines sell all available capacity at a regulated rate. There is only a fixed amount of capacity in the short-term capacity market. Any capacity not sold or used by a firm shipper is, by definition, available from the pipeline as interruptible or short-term firm capacity. In these circumstances, if firm shippers attempt to exercise market power by raising price above the regulated rate, buyers can acquire the capacity from the pipeline at the regulated rate. Because no capacity can be withheld from the market above the regulated maximum rate and buyers can always obtain capacity from the pipeline on a non-discriminatory basis, market power cannot be exercised when rates exceed the cost-of-service price ceiling, and consequently the resulting price is the competitive price needed to equate supply and demand and allocate the available capacity. The requirement that a pipeline sell its capacity at the regulated maximum rate prevents tacit collusion between the pipeline and the shipper to withhold capacity to raise price above the ceiling rate, and effectively limits the releasing shipper's ability to exercise market power at prices above the ceiling rate.

Short-Term Pipeline Capacity. Those requesting rehearing contend that maintenance of rate regulation for pipeline interruptible capacity is insufficient to restrain market power in the capacity release market because pipeline interruptible capacity is not an adequate substitute for firm released capacity given its lower priority.[51] In many cases, releasing shippers impose recall rights on released capacity, so it is, in effect, an interruptible service. Moreover, pipeline interruptible capacity does not need to be identical to released capacity to be a good substitute, sufficient to restrain the exercise of market power.[52] In this case, there is, in effect, only one product, pipeline capacity, and several ways to obtain it, firm released capacity, short-term firm and interruptible capacity from the pipeline. These methods of obtaining capacity directly compete with each other: any firm capacity not released is available as interruptible transportation from the pipeline. Even though interruptible capacity is of lower priority than firm released capacity, the requirement that the pipeline sell all of its interruptible transportation at the maximum rate inhibits a releasing shipper's ability to exercise market power, because the releasing shipper cannot withhold capacity from the market. If the releasing shipper does not

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[41] Florida Power & Light Company, 66 FERC ¶ 61,227, at 61,527 (1994), *on reh'g* 70 FERC ¶ 61,158 (1995). Opportunity costs reflect the cost to the utility of its next best alternative sale.

[42] California Independent System Operator Corporation, 89 FERC ¶ 61,153, at 61,436 (1999).

[43] *United Distribution Companies* v. *FERC*, 88 F.3d 1105, 1123 (D.C. Cir. 1996) (Commission's prime constituency is captive customers vulnerable to the pipeline's market power). *See Maryland People's Counsel* v. *FERC*, 761 F.2d 780, 781 (D.C. Cir. 1985); *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944). *Associated Gas Distributors* v. *FERC*, 824 F.2d 981, 995 (D.C. Cir. 1987), *cert denied*, 485 U.S. 1006 (1988).

[44] *See Associated Gas Distributors* v. *FERC*, 824 F.2d 981, 1011 (D.C. Cir. 1987) (selective discounting benefits captive customers by making a contribution to fixed costs); *Mobil Oil Co.* v. *FERC*, 886 F.2d 1023 (8th Cir. 1989) (100% load factor interruptible rates ensure that interruptible service pays the cost of providing that service); *Elizabethtown Gas. Co.* v. *FERC*, 10 F.3d 866, 871–72 (D.C. Cir. 1993) (affirming use of 100% load factor interruptible rates); *Orange and Rockland Utilities, Inc.* v. *FERC*, 905 F.2d 425, 427–29 (D.C. Cir. 1990) (affirming use of 100% load factor interruptible rates).

[45] Permian Basin Area Rate Cases, 390 U.S. 747, 787 (1968) (Commission empowered to prescribe different requirements for different classes of persons or matters).

[46] See Figure 1, at 20.

[47] Order No. 637, 65 FR at 10174–80, figures 5–7, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,271–74, figures 5–7.

[48] Figure 7, for example, shows that the value of transportation during January 2,000 rose only during the time period when temperatures turned colder. Order No. 637, 65 FR at 10178–79, figure 7, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,273–74, figure 7.

[49] Department of Justice-Federal Trade Commission, Horizontal Merger Guidelines, ¶ 0.1 (small number of firms can approximate the performance of a monopolist, by either explicitly or implicitly coordinating their actions).

[50] Compare Secondary Market Transactions on Interstate Natural Gas Pipelines, 77 FERC ¶ 61,183 (1996) *with* Transwestern Pipeline Company, 78 FERC ¶ 61,200 (1997) (disputes over whether market power can be exercised over single lateral on pipeline).

[51] Rehearing Requests by Amoco, Indicated Shippers, NGSA.

[52] Department of Justice—Federal Trade Commission, Horizontal Merger Guidelines, ¶ 1.11 (inquiry is whether alternative products would inhibit the ability of a monopolist of a single product to sustain a price rise); *U.S.* v. *E.I. Dupont De Nemours & Co.*, 351 U.S. 377 (1956) (product market determined by cross-elasticity of demand between different products).

use its capacity (attempts to withhold capacity), that capacity becomes available as interruptible service which the pipeline must sell at a just and reasonable rate. The pipeline also is required to sell short-term firm service to the extent all of its firm service is not fully subscribed. Since the pipeline is required to sell all of its available capacity at the maximum rate, it cannot collude with the releasing shipper to withhold capacity from the market.

Long-Term Pipeline Capacity. Amoco and Indicated Shippers maintain that the ability to purchase long-term capacity from the pipeline at just and reasonable rates is not a reasonable protection against market power. They maintain that the pipeline may not have long-term capacity available and that short-term prices may only be high on a sporadic basis, not sufficient to induce the pipeline to build additional capacity.

Maintaining cost-of-service regulation on long-term pipeline capacity provides protection against the exercise of market power by releasing shippers in the short-term market in two ways. On pipelines with unsubscribed firm capacity, the availability of capacity from the pipeline provides an alternative, at a regulated rate, to buying short-term capacity from releasing shippers. Even when pipelines are fully subscribed, the pipelines' ability to construct additional capacity will discipline the ability of releasing shippers to sustain rates in the short-term market above the marginal cost of construction. If prices in the short-term capacity release market generate revenues that would be above the cost of constructing new capacity, the pipeline can capture such potential profits only by adding capacity to serve the demand.[53] The pipelines' ability and incentive to undertake such construction reduces the incentive for releasing shippers' to attempt to raise prices above the marginal cost of new construction. In many cases, capacity can be added quickly simply by adding compression to the system.

The rehearing requests suggest that short-term prices may only sporadically exceed the maximum rate so that the rise in price is not sufficient to attract new pipeline investment. But if prices rise only sporadically, the price change is most likely due to an increase in demand relative to supply, creating scarcity rents, rather than the sustained exercise of market power. In any event, the sporadic nature of such increases suggests that, even if market power is present, any harm from removing the rate ceiling would be relatively minor, since it would occur only during those short periods when prices exceed the maximum rate. Any possible harm from short-term higher prices is outweighed by the greater efficiency created by a more effective capacity trading market that would permit those short-term shippers who most urgently need capacity during peak periods to have a better opportunity to obtain capacity. As discussed above, if short-term prices rise frequently enough to make the construction of additional pipeline capacity profitable, the pipeline will have the incentive to build that capacity, which provides short-term shippers with an additional capacity option.

Process Gas Consumers suggest that long-term capacity may not be a viable alternative for industrial firms because, unlike marketers and LDCs; who are in the gas business, industrial firms' principal business is not gas and their ability to purchase long-term transportation contracts is often inhibited by business planning cycles of five years or less. But those are the kinds of choices shippers have to make as the gas market becomes more competitive. If shippers want price security, they need to share the risks of new construction with the pipelines; they cannot require that pipelines fully absorb all those risks. Shippers that are unwilling to undertake that commitment can purchase gas from marketers or can choose to participate in the short-term market, with full recognition of the price fluctuations inherent in that choice. Moreover, the point here is not that any one class of customer would or would not subscribe to new construction. If short-term prices produce revenues high higher than the cost of new construction, the pipeline has the incentive to construct new capacity to capture additional revenue, and shippers who see the profit potential in obtaining that capacity will subscribe, because they can resell that capacity for more than it costs them.

Process Gas Consumers also argue that the Commission has failed to give sufficient credence to its contention that LDCs control access to the points behind their citygates and, therefore, can obviate any benefits of competitive access to that point. It contends that in the past, the Commission proposed to require that LDCs provide open access service before they could benefit from removal of the price ceilings.[54] It further contends that alternative capacity suppliers may not be meaningful alternatives to obtaining capacity from the LDC, because using secondary receipt and delivery points is not the equivalent of using primary points.

In the first place, as shown in Order No. 637, over 80% of all industrial sales are now unbundled and unbundling programs are accelerating.[55] Thus, the need for the Commission to impose its own requirements for open access service has diminished. Second, the ability of an LDC to exercise market power over pipeline capacity is limited because, if it tries to withhold capacity, that capacity becomes available from other releasing shippers or from the pipeline at a regulated rate. If an LDC holding primary firm rights attempts to exercise market power by withholding capacity, that would make the use of its points available to shippers buying capacity from other releasing shippers or from the pipeline.[56] If Process Gas Consumers is arguing that LDCs can exercise market power over their intrastate facilities by refusing to schedule gas for a shipper behind the city-gate, state regulatory agencies have primary responsibility for policing LDC activity over their own facilities. Moreover, any refusal by an LDC to schedule gas on behalf of a shipper would be readily apparent and, if such an abuse relates to interstate transportation, the Commission can remedy such problems through individual case procedures. There is no need to retain the price ceiling for the entire class of LDC shippers based only on speculation about whether some LDCs will refuse to schedule capacity when any such abuses can be addressed in individual cases.

The National Association of Gas Consumers maintains that lifting of the price ceiling could lead to speculative pricing. As explained in Order No. 637, however, high prices during peak periods are a legitimate reaction to supply and demand forces. As long as capacity is not being withheld from the market, high prices during peak periods are the competitive response to market conditions and will result in a more

[53] The pipeline cannot recover any of the potential profit by raising price because its rates are capped.

[54] Process Gas Consumers cites to Secondary Market Transactions on Interstate Natural Gas Pipelines, Proposed Experimental Pilot Program to Relax the Price Cap for Secondary Market Transactions, 76 FERC ¶ 61,120 (1996).

[55] Order No. 637, 65 FR at 10158–60, 101–68 III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,251–52, 31,261.

[56] For example, if one capacity holder has firm primary point capacity of 100 MMBtu and does not use 50 MMBtu of that capacity, other shippers can schedule delivereis to the same point using secondary delivery point rights or interruptible service. This makes it difficult for the shipper holding the primary delivery point rights to withhold capacity.

efficient allocation of capacity to those valuing it the most. Indeed, it is the current price regulated system that can create the more inefficient system and be the most harmful to gas consumers, because regulated rates during peak periods may prevent those shippers who most need capacity to serve their customers from obtaining capacity when they need it most. As shown by the period of rate regulation of wellhead prices, the maintenance of regulated rates that do not fit with market conditions can harm consumers by distorting price signals and thereby inhibiting the efficient allocation of resources. In any event, removal of rate regulation for capacity release transactions will have limited effect on pricing behavior, since there is no rate ceiling for bundled gas transactions and firms can speculate in the gas market. Rather than exacerbating pricing problems during peak periods, the lifting of rate ceilings on capacity release transactions should help to provide shippers with more options for dealing with those problems.

Amoco and Indicated Shippers maintain that the Commission has not provided adequate protection against capacity withholding when the market rate falls below the regulated maximum rate for pipeline capacity. They argue that at rates below the maximum rate, the pipeline is under no obligation to sell all available capacity which could permit capacity withholding.

This complaint is unrelated to the regulatory changes in Order No. 637. The Commission made no regulatory changes with respect to its policy regarding pipeline and release rates that are below the maximum rate. As shown above, the competition between firm shippers and the pipelines already has significantly limited the ability of releasing shippers to withhold capacity and to selectively discount during the off-peak period when rates are below the maximum rate. Moreover, Commission policy since Order No. 636 has been to permit pipelines and releasing shippers to refuse to discount.[57] The Commission has not changed that policy here. The regulatory changes in this rule, therefore, result in no additional harm to short-term shippers when rates are below the maximum rate and promise greater efficiency and options for shippers during peak periods.

Mitigation Measures. Amoco, IPAA, and Indicated Shippers contend the Commission erred when it relaxed price ceilings, because it failed to adopt further measures to mitigate the exercise of market power. Amoco contends the fundamental error in Order No. 637 was the failure to require an auction, as proposed in the NOPR, to ensure capacity is allocated in an unbiased manner to promote competition while mitigating market power. Indicated Shippers contend the Commission erred by not eliminating the exemption from the posting and bidding requirements for pre-arranged deals for greater than one month at or above the maximum lawful rate and by not revising its regulations to restrict releasing shippers' ability to impose recall conditions. AGA and a number of LDCs also request clarification as to whether the exemption for releases at the maximum rate continues to apply.[58]

With respect to Amoco's argument, the Commission, in fact, will continue to require bidding for capacity release transactions, which is, in effect, a form of capacity auction. Since Order No. 636, the Commission has required posting and bidding for capacity release transactions as protection against the potential for undue discrimination and the exercise of market power in the capacity release market.[59] Under Commission regulations, all capacity releases for more than 31 days and all rollovers of releases of 31 days or less are subject to the bidding process. In Order No. 636, the Commission permitted an exemption from the bidding process for short-term releases of less than a month, because of a concern at that time that the pipeline's auction process could be too administratively cumbersome for short-term transactions.[60]

As explained in Order No. 637, electronic commerce is growing, particularly in the gas industry, and may well represent the future, but the comments in this rulemaking, including comments by those seeking rehearing,[61] maintain that the electronic capabilities of some pipelines today still do not permit a mandatory requirement for a daily auction and that a daily auction might well create administrative difficulties of its own. Although the Commission strongly encourages both pipelines and third parties to begin gaining experience with the use of electronic auctions as a means of allocating available capacity, the Commission determined, based on the rulemaking comments, that it was not the time to impose an across-the-board requirement for a mandatory daily auction. Nonetheless, the pre-existing posting and bidding requirements for capacity release will continue to promote fair and equitable capacity allocation and inhibit the exercise of market power, because any transactions of longer than a month are subject to the auction and transactions of less than a month (while initially exempt) will be subject to the auction if they are continued or rolled over.

Indicated Shippers contend the Commission should have eliminated the provision (contained in the current regulations) that exempts from the bidding requirements pre-arranged capacity release transactions at the maximum rate. Indicated Shippers argue that maintaining this exemption prevents non-affiliate replacement shippers from fairly competing in an open capacity market. AGA and a number of LDCs contend in their clarification requests that the exemption from posting and bidding for releases at the maximum rate continues to apply.[62]

Although there is apparently confusion on this point, the Commission did eliminate this exemption in Order No. 637. Section 284.8(h) of the regulations contains an exemption from the posting and bidding requirements for capacity release transactions at the "maximum tariff rate applicable to the release."[63] Since the maximum tariff rate is no longer applicable to short-term capacity release transactions, the exemption does not apply as long as the rate ceilings are waived. Nevertheless, to ensure the regulations are clear, the Commission will add the following to section 284.8 (i) of the regulations: "The provision of paragraph (h)(1) of this section providing an exemption from the posting and bidding requirements for transactions at the applicable maximum tariff rate for pipeline services will not apply as long as the waiver of the rate ceiling is in effect." Section 284.8 (i)

[57] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,629 (Aug. 3, 1992) (pipelines are not required to schedule delivereis to the same point using secondary delivery point rights or interruptible service. This makes it difficult for the shipper holding the primary delivery point rights to withhold capacity, 636–B, 61 FERC ¶ 61,272, at 62,027–28 (pipelines not required to discount transportation rate), *aff'd, United Distribution Companies* v. *FERC*, 88 F.3d 1105, 1141–42 (D.C. Cir. 1996).

[58] Atlanta Gas Light, UGI, Keyspan, and Washington Gas also request clarification of this point.

[59] 18 CFR 284.8.

[60] 18 CFR 284.8(h); Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,553–54 (Aug. 3, 1992).

[61] Comments by Process Gas Consumers.

[62] Atlanta Gas Light, UGI, Keyspan, and Washington Gas also request clarification of this point.

[63] 18 CFR 284.8(h).

already contains a provision specifying that posting and bidding will apply to any rollovers or continuations of capacity release deals of 31 days or less.[64]

Thus, under the Commission regulations, all capacity release transactions of more than 31 days will be subject to the posting and bidding requirements. For transactions of 31 days or less, shippers can enter into prearranged deals that are not subject to the posting and bidding requirements. But all rollovers or continuation of such deals will be subject to posting and bidding.[65]

UGI and Atlanta Gas Light seek rehearing of the decision to eliminate the maximum rate exemption from the posting and bidding requirements, claiming that continuing the exemption is important to their retail unbundling initiatives at the state level.

In Order No. 637, the Commission specifically continued the existing posting and bidding requirements for capacity release transactions to ensure that capacity is equally available to all shippers and to protect against undue discrimination and the exercise of market power.[66] Permitting releases at or above the maximum rate to be exempt from the posting and bidding requirements would defeat the very purpose of requiring posting and bidding by enabling releasing shippers to consummate pre-arranged transactions with certain shippers without giving other shippers an opportunity to compete for the capacity. The original justification for exempting pre-arranged deals at the maximum rate was that, as long as a rate ceiling was in effect, no other shipper could beat the pre-arranged deal and bidding and posting requirements would be superfluous.[67] When the maximum rate ceiling is lifted, posting and bidding becomes necessary to protect against undue discrimination and to ensure that capacity is properly allocated to the shipper placing the greatest value on the capacity.

The imposition of posting and bidding will not prevent LDCs from entering into pre-arranged deals under state unbundling programs, as the clarification and rehearing requests suggest. LDCs can still enter into pre-arranged transactions of less than one year and the pre-arranged shipper is guaranteed to receive the capacity as long as it is willing to match the highest rate bid for that capacity. LDCs also can enter into pre-arranged deals exempt from the posting and bidding requirements by entering into a pre-arranged release for one year or more at the maximum rate.

In individual cases where an LDC considers a further exemption from the posting and bidding requirement essential to further a state retail unbundling program, it may request the Commission to waive the regulation, permitting the LDC to consummate pre-arranged deals at the pipeline's maximum tariff rate without having those transactions subject to competitive posting and bidding. If the LDC seeks such a waiver, it must be prepared to have all of its capacity release transactions and any re-releases of that capacity limited to the applicable maximum rate for pipeline capacity. The LDC should not be able to sell to some shippers without a rate ceiling, protecting other favored shippers from the bidding process. All such waiver applications must either be filed jointly with the appropriate state regulatory authority or must include a verified statement by that authority stating why the request is necessary to promote a legitimate state goal.

Indicated Shippers also contend the Commission should eliminate the right of releasing shippers to impose recall conditions on releases.[68] They maintain that releasing shippers can abuse their recall rights by recalling the capacity from third parties and then reselling it at higher prices, while not recalling capacity from affiliates. The Commission sees no basis for prohibiting releasing shippers from imposing recall rights. Recall rights add capacity to the release market by enabling shippers to release capacity when they do not need it, and then recall the capacity when necessary for their needs. Without the ability to impose recall rights, releasing shippers may be reluctant to release capacity out of concern that weather patterns will change. If replacement shippers are concerned about abuse of the recall process in the scenario envisaged by Indicated Shippers, they can refuse to enter into recallable release transactions unless the releasing shipper guarantees that, if a recall is exercised, it will not be able to resell that capacity. Allegations concerning abuse of recall conditions also can be examined by the Commission through the complaint process.

Potential Affiliate Abuse: Amoco, Process Gas Consumers, NGSA, and Ohio Oil and Gas Association contend that removing the price ceiling for released capacity provides an opportunity for affiliate abuse because it creates an incentive for the pipeline corporate entity to transfer capacity from the pipeline to its affiliate, which is not subject to the price ceiling.

Pipelines cannot simply transfer capacity to an affiliate. Pipelines are required to allocate their capacity on a non-discriminatory basis and must sell the capacity to the shipper bidding the highest net present value for the capacity. Thus, if unaffiliated shippers project that profits can be made by selling short-term capacity above the price ceiling, they can bid against the affiliate to obtain capacity from the pipeline.[69]

Moreover, as the Commission explained in Order No. 637, the removal of the rate ceiling effects little change from the market today because pipeline affiliates are currently able to make bundled gas sales where the transportation component of the transaction is not subject to the rate ceiling. Removal of the rate ceiling, coupled with the reporting requirements, therefore, may make these transactions more transparent, because affiliates will have a greater incentive to release transportation and pipelines must post such transactions. The rate ceiling on pipeline capacity also will continue to protect against the exercise of market power in the event capacity is held by a pipeline affiliate. The pipeline affiliate, like any other firm shipper, will be unable to withhold capacity and exercise market power because, if the affiliate refuses to sell released capacity, buyers can obtain that capacity as interruptible transportation at a just and reasonable rate from the pipeline.

Amoco suggests that a pipeline and an affiliate or partner could conspire to withhold capacity through a number of artifices: nominating gas into the pipeline but not delivering it; purchasing park and loan services at a low rate; moving gas to market area storage or line pack; or having the affiliate use the unreliability of interruptible service as a threat to induce the buyer to purchase released capacity at a higher than competitive price. NGSA similarly contends that a firm shipper can create artificial periods of peak demand by nominating, but not using just enough capacity to drive up demand for capacity while decreasing the availability of interruptible transportation.

All of these techniques would be costly to implement, costs which would limit the incentive to attempt them. The pipeline's sale of parking and loan service at a lower than market rate costs the pipeline the opportunity cost of selling that service to someone else. Nominating gas, but not taking delivery, could result in scheduling or imbalance penalties, and to the extent that capacity is not used, the pipeline would still have the obligation to sell the unused capacity as interruptible or short-term firm service. Moving gas to storage or line pack when it is not truly needed results in costs to the shipper for the gas and transportation and the consequent reduction in storage and line pack flexibility. No protection against market power can be considered absolute; even the market analysis advocated by those seeking rehearing cannot perfectly predict whether market power may be exercised. But the benefits of removing the rate ceiling here outweigh the limited potential for the exercise of market power inherent in these scenarios. Further, the Commission stands ready to investigate complaints about such abusive practices.

In Order No. 637, the Commission recognized that affiliate transactions could be troublesome in one respect: where the affiliate holds large quantities of pipeline capacity and the pipeline determines not to construct new capacity in order to increase scarcity rents for the affiliate.[70] The Commission found that this situation exists today, with affiliates able to make bundled sales to reap scarcity rents, but there seems little indication that profits from scarcity exceed those that can be earned by the pipeline from new construction, since pipeline construction applications have not noticeably declined. Because of the possibility of such affiliate abuse, however, the Commission will be particularly sensitive to complaints that pipelines, on which affiliates hold large blocks of capacity, are refusing to undertake construction projects when demand exists and will be prepared to take remedial measures in cases where such concerns are established.

Process Gas Consumers and NGSA maintain that the Commission's reliance on historic construction information ignores the current trend toward greater concentration in the industry and the concentration of pipeline capacity in the hands of affiliates. As a result, NGSA contends that the Commission should condition the removal of the price ceiling for pipeline affiliates on the pipeline's including a tariff provision requiring it to put in interconnections and to construct capacity when requested by customers willing to pay the costs of construction.

NGSA's concern with interconnections already has been addressed by the Commission. The Commission's policy requires pipelines to provide interconnects to any shipper that constructs, or pays for construction of, the facilities needed for the interconnection, as long as the interconnection does not adversely affect pipeline operations, violate applicable environmental or safety regulations, or violate right-of-way agreements.[71] With respect to refusals to build additional mainline capacity, the Commission can take remedial action when warranted. Among the potential remedies that could be considered would be limiting the rates at which the affiliate can release capacity, limiting the amount of capacity the affiliate can hold, prohibiting the affiliate from holding capacity on its related pipeline, or, as NGSA suggests, conditioning the affiliate's continued right to exceed the price ceiling on the pipeline's agreement to construct capacity for which the shipper is willing to pay.

More Limited Experiment. Recognizing the value of experimental programs, Process Gas Consumers contends that if the Commission chooses to proceed with an experiment in lifting price ceilings, it should narrow the scope of the experiment to select markets where competition appears to be the most robust and to place some form of ceiling on the prices that can be charged.

The Commission sees little value in further limiting the scope of the waiver. First, as discussed above, the Commission has concluded that there are sufficient protections to go forward with the relaxation of the price ceiling for short-term capacity release transactions in all markets. Second, the Commission finds that limiting the program in these ways will eliminate information that is needed to evaluate the effects of price cap removal and is otherwise infeasible. The impact of removing price ceilings will occur principally in markets where, due to weather conditions, demand increases and capacity becomes scarce. Such markets cannot be anticipated in advance, so that a geographic or other limitation may yield little useful information by the end of the two-year period. Limiting the waiver only to those markets that are already presumed to be competitive similarly will provide little information on how markets across the board behave. Such a limitation would be tantamount to conducting an experiment with only a control group, excluding those markets whose performance is most important to monitor. To evaluate the waiver, the Commission needs to be able to examine the effects of removing the price ceiling on all markets, both those which may appear competitive and those with higher concentration ratios.

2. Price Ceiling for Pipeline Capacity

CNG, Great Lakes, Kinder-Morgan, Koch, and Williams contend the Commission erred in not removing rate regulation for pipeline short-term services. They maintain that if the market is workably competitive enough to permit lifting of the price ceiling for capacity release transactions, it also should be sufficiently competitive to lift the price ceiling for pipeline short-term services. Kinder-Morgan and Koch maintain the regulation of pipeline services is not justified as a protection against withholding of capacity by releasing shippers because firm shippers can manipulate the nomination process to withhold capacity.

The Commission in this rule determined to make only incremental changes in its regulatory policies to promote efficiency, establishing an ongoing process to consider whether more fundamental changes should be adopted. Since unbundling, the regulation of pipeline services has been the basic protection against the potential exercise of market power over

[64] 18 CFR 284.8(i) provides that any rollovers or extensions are subject to the posting and bidding requirements.

[65] Under section 284.8(h)(2), a shipper can enter into another short-term (31 days or less) release to the same replacement shipper without posting and bidding if 28 days have passed since the previous release to that shipper.

[66] Order No. 637, 65 FR at 10182, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,279. See Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950 at 30,555 (Aug. 3, 1992) (posting and bidding needed to give all parties an opportunity to obtain capacity by bidding the highest rate).

[67] Release of Firm Capacity on Interstate Natural Gas Pipelines, Order No. 577, 60 FR 16979 (Apr. 4, 1995), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 31,017, at 31,316 (Mar. 29, 1995) ("when the pre-arranged deal is at the maximum rate, no other shipper can make a better bid for that capacity").

[68] A recall condition is a term in the release that enables the releasing shipper to use the capacity in certain circumstances, for example, if the temperature drops to a point where the releasing shipper needs the capacity to serve its own customers.

[69] There may be little incentive for the affiliate to inflate the net present value of its bid, for example, by increasing the contract duration. The unaffiliated shipper would be willing to bid a net present value up to its expectation of the value of the capacity. If the affiliate obtains the capacity by bidding a higher net present value, the corporate entity loses the opportunity to obtain the revenue the unaffiliated shipper would have paid. As long as the expected future value of the capacity does not exceed the amount bid by the unaffiliated shipper, the corporate entity cannot expect to recoup the revenue it would have received from the unaffiliated shipper.

[70] Order No. 637, 54 FR at 10186, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,287.

[71] Panhandle Eastern Pipe Line Company, 91 FERC ¶ 61,037 (2000).

transportation service, and in making incremental changes to its current regulatory system, the Commission chose not to disturb this traditional protection. The Commission, therefore, waived the price ceiling only for capacity release transactions, as urged by a number of commenters, including pipelines, who contended that removal of rate ceilings for capacity release transactions is a first step toward the goal of revising regulatory policy to enhance efficiency.[72]

In addition, pipelines do have avenues for lifting price ceilings for their short-term services. In Order No. 637, the Commission stated that pipelines could lift price ceilings for their capacity if they implement an auction process that protects against the exercise of market power. They also can file for market based rates under the Commission's Alternative Rate Design Policy if they can demonstrate that sufficient competition exists in the short-term market so that the removal of rate regulation for all short-term services will not permit the exercise of market power.

3. Implementation of the Waiver

Several rehearing requests seek rehearing or clarification regarding the way in which the waiver of the rate ceiling for short-term release transactions will be applied.

a. Refund Requirement. IPAA and Indicated Shippers contend that the Commission should impose a refund requirement in the event the Commission or a reviewing court concludes the removal of rate ceilings for short-term released capacity is unlawful. The imposition of a refund requirement would run counter to the purpose of waiving the rate ceiling. One of the reasons for lifting the rate ceiling was to give releasing shippers an incentive to move transactions from the opaque bundled sales market to the transparent capacity release market, so that the Commission can obtain useful data about the effect of lifting the price cap during the two-year waiver period. If releasing shippers know they are subject to a potential refund requirement, they will be less likely to use capacity release as opposed to making bundled sales.[73] Moreover, an across-the-board refund condition is not necessary because, should the Commission determine in an individual case that a releasing shipper has abused its market power, the Commission has the authority under section 16 of the NGA to take appropriate remedial action that can include remedies to prevent unjust enrichment.[74]

b. Compliance with Reporting Requirements. NGSA and Indicated Shippers contend the Commission erred in lifting the price ceiling before pipelines comply with the tariff and reporting requirements established in Order No. 637. They contend that the tariff changes, such as enhancing segmentation, and the reporting requirements are intended to enhance competition and permit better monitoring of the marketplace, and, accordingly, they maintain the waiver of the rate ceiling should be postponed until these enhancements are in place.

The Commission finds no reason to delay removal of the price ceiling to await pipeline compliance with other aspects of Order No. 637, particularly given the efficiency benefits identified in Order No. 637 that open capacity trading will bring. The revised reporting requirements primarily are to obtain more information about pipeline capacity and to make the reporting of pipeline transactions conform with the existing reporting requirements for capacity release transactions. The reporting requirements related to capacity release transactions essentially are the same as they were before, and will provide information about capacity release transactions sufficient to permit the industry and the Commission to monitor these transactions. Although the compliance filings with respect to segmentation are designed to improve the current system, many pipelines already permit segmentation on their systems and the rule contains sufficient other protections against the exercise of market power that implementation of the rate ceiling waiver need not wait for implementation of enhanced segmentation.

c. Tariff Requirement. Process Gas Consumers maintains the Commission's relaxation of the price cap violates section 4 of the NGA under the principles established in *Maislin Industries, U.S., Inc.* v. *Primary Steel, Inc.*,[75] because the rates for capacity release transactions will not be on file prior to the rate being collected. The Commission finds no violation of the requirements of section 4 of the NGA. Unlike Maislin, which involved a statute providing for common carriage, section 4 of the Natural Gas Act envisions that individualized contracts will be used to establish rates for the sale of gas,[76] and such contracts can become effective even before the rates are filed with the Commission.[77]

The Commission is complying with the filing and notice requirements of section 4 by requiring the pipelines to file tariffs setting forth the conditions of capacity release and specifying that the rates for capacity release transactions will be established by contract between the releasing and replacement shippers. The Commission further is satisfying these requirements by requiring the posting of the rates on Internet web sites no later than the first nomination for service under an agreement.[78] Section 4 of the NGA provides that the Commission can establish the "rules and regulations" for how rate schedules will be filed, and that the Commission can waive the advance 30 day filing requirement and, in so doing, specify "the time when they shall take effect and the manner in which they shall be filed and published."[79] Using modern electronic methods to provide fast and effective dissemination of rates to the public using computers satisfies the statutory goal of open posting of rates.

d. Effective Date. Columbia Gas and Enron request clarification that the removal of the price ceiling does not take effect until the Commission has accepted tariff changes to remove pipeline tariff provisions inconsistent with the removal of the price ceiling. The Commission denies the request. Under Order No. 637, the rate ceiling was removed from capacity release transactions on the day the regulation (section 284.8 (i)) became effective, March 26, 2000. To reduce the tariff-filing burden on pipelines, the Commission provided them with a period of up to 180 days to remove potentially inconsistent tariff provisions, but that grace period did not change the effective date of the regulation.

[72] See Comments of AGA and INGAA

[73] As pointed out in Order No. 637, a shipper may be willing to release its capacity where the price it can obtain for the released capacity exceeds the cost of its alternatives, such as using an alternative fuel or LNG. Order No. 637, 65 FR at 10181, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,277. If the releasing shipper is not certain that it will be permitted to retain funds above the maximum rate, it may be less likely to release the capacity or may decide to make a bundled sale instead.

[74] 15 U.S.C. 717o; *Mesa Petroleum Co.* v. *FERC*, 441 F.2d 182, 186–88 (5th Cir. 1971); *Coastal Oil & Gas Corporation* v. *FERC*, 782 F.2d 1249 (5th Cir. 1986).

[75] 497 U.S. 116 (1990).

[76] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1955).

[77] *Columbia Gas Transmission Corp.* v. *FERC*, 895 F.2d 791 (D.C. Cir. 1990), *City of Piqua* v. *FERC*, 610 F.2d 950 (D.C. Cir. 1979) (individual contracts can take effect even prior to filing with the Commission).

[78] As discussed below, the Commission is granting rehearing and revising its transactional reporting regulations to require posting no later than the first nomination for service.

[79] 15 U.S.C. 717c (c)–(d).

B. Peak and Off-Peak Rates

Order No. 637 provides that pipelines may institute value-based peak/off-peak rates for all short-term services as one possible method of promoting allocative efficiency that is consistent with the goal of protecting customers from monopoly power.[80] Short-term services are defined to include short-term firm and interruptible service and multi-year seasonal contracts. Implementation of peak/off-peak rates can promote several important policy goals. Specifically, peak/off-peak rates could remove one of the biases favoring short-term contracts, reduce the need for discounts and reliance on discount adjustments, and increase efficiency in short-term markets by allowing prices to better reflect demand during peak periods. Order No. 637 provides that in implementing peak/off-peak rates, the pipeline must stay within its annual revenue requirement and, thus, any increases in rates at peak must be offset by decreases in off-peak rates.

The discussion of peak/off-peak rates in Order No. 637 was a statement of policy and not a rule that imposed any requirements on pipelines or changed current Commission regulations. As the Commission explained, the current regulations[81] and Commission precedent already recognized that peak/off-peak rates have a role in the ratemaking process.[82]

The policies adopted in Order No. 637 are intended to facilitate the implementation of peak/off-peak rates with a flexible policy that will permit the use of a wide variety of peak/off-peak rate methods. As the Commission explained, there is more than one reasonable way to implement peak/off-peak rates based on value of service concepts, and some methods may work better for certain systems than others. Therefore, the Commission did not adopt any one method of developing peak/off-peak rates, but left the details of the implementation of peak/off-peak rates to individual pipelines.

Order No. 637 permits pipelines to implement peak/off-peak rates through limited section 4 *pro forma* tariff filings subject to several conditions.[83] First, if the pipeline seeks to implement seasonal rates in a limited section 4 filing, it must include in its proposal a revenue sharing mechanism that will provide for at least an equal sharing of any increased revenues with its long-term customers. In addition, Order No. 637 provides that after 12 months experience with peak/off-peak rates, the pipeline must prepare a cost and revenue study and file the study with the Commission within 15 months. Based on the cost and revenue study, the Commission will determine whether any rate adjustments are necessary to the long-term rates, and may order such adjustments prospectively.

AGA, Keyspan, New England, UGI, Amoco, IPAA, Indicated Shippers, Process Gas Consumers, NGSA, NAGC, NASUCA, INGAA, CNG, Coastal Companies, Columbia, Enron, Kinder Morgan, Koch, and The Williams Companies (TWC) seek rehearing or clarification of this portion of Order No. 637. Indicated Shippers argue that the Commission's policy statement fails to comply with the Administrative Procedure Act. Several shipper groups argue that the Commission should require pipelines to implement peak/off-peak rates in a full section 4 proceeding, while the pipelines argue that the limited section 4 procedures established by the Commission are too burdensome. The LDCs ask the Commission to clarify the application of peak/off-peak rates to captive customers.

1. Compliance With the Administrative Procedure Act

Indicated Shippers argue that insofar as Order No. 637 establishes specific mechanisms for the implementation of peak/off-peak rates, it is not a policy statement, but is a substantive rule, and that the Commission erred in promulgating this final rule without complying with the notice and comment requirements of the Administrative Procedure Act (APA).[84] Indicated Shippers state that the Commission's statement that peak/off-peak rates are allowable under the Commission's regulations may qualify as a policy statement or interpretive rule that is exempt from the notice and comment requirements of the APA,[85] but mechanisms applicable to the filings to implement peak/off-peak rates are substantive requirements of general applicability that must be subject to notice and comment.

Indicated Shippers argue that under the APA, a policy statement is "only supposed to indicate an agency's inclination or leaning, [and is] not in any way binding on the agency."[86] Indicated Shippers argue that the *pro forma* tariff filing, the revenue-sharing mechanism, and the cost and revenue study, do not meet the criteria for a policy statement because they are binding on the agency and the pipelines. Further, Indicated Shippers argue that the Commission has created new rights and duties for pipelines choosing to implement peak and off-peak rates. According to Indicated Shippers, Order No. 637 creates new rights because pipelines and long-term shippers will reap the benefits of sharing increased revenues from short-term shippers; it creates new duties because it imposes on the pipeline an obligation to perform a cost and revenue study.

Further, Indicated Shippers state that the *pro forma* tariff filing and the revenue sharing mechanism fundamentally change the allocation of costs between short-term and long-term shippers, effectively increase pipeline rates, and allow pipelines to retain 50 percent of the increased rates even though this increases their allowable rate of return. Indicated Shippers argue that none of these mechanisms were mentioned in the NOPR, and therefore the parties did not have an opportunity to comment on them. Indicated Shippers argue that the Commission must provide another notice and comment period on the mechanisms identified in the Rule, including the *pro forma* tariff filing, the revenue crediting mechanism, and the cost and revenue study.

As explained in Order No. 637, peak/off-peak rates are currently available as a ratemaking methodology under the Commission's regulations and prior decisions. Nothing in Order No. 637 imposes any requirements on the pipelines—the decision to implement peak/off-peak rates is entirely voluntary—or changes Commission regulations. Thus, Order No. 637 does not promulgate substantive rules that establish a "standard course of action which has the force of law."[87] The Commission did not establish a method of developing peak/off-peak rates, but left this and other issues such as the revenue sharing mechanism to be resolved in the individual proceedings. The Commission did give guidance and direction on how peak/off-peak rates could be implemented in the individual

[80] Order No. 637 at 93–106.

[81] The Commission cited 18 CFR 284.7(c)(3)(i).

[82] The Commission cited the Rate Design Policy Statement, 47 FERC ¶ 61,295 at 62,054 (1989).

[83] Order No. 637 provides that the *pro forma* filing would be noticed with comments due in 21 days, rather than the 12 days permitted for tariff filings, and the Commission would act on the proposal within 60 days.

[84] 5 U.S.C. 553(b)(3), (c).

[85] The notice and comment requirements of the APA are not applicable to "interpretive rules, general statements of agency policy, or rules of agency organization, procedure, or practice. * * *" 5 U.S.C. 553(b)(3)(A).

[86] Indicated Shippers cite, *inter alia*, *Hudson* v. *FAA*, 192 F.3d 1031, 1034 (D.C. Cir. 1999).

[87] *Pacific Gas and Electric Co.* v. *FERC*, 506 F.2d 33, 38 (D.C. Cir. 1974).

cases and therefore is properly considered a policy statement.

Indicated Shippers recognize that the discussion of peak/off-peak rates as a voluntary method of promoting allocative efficiency is properly considered a policy statement, but attempt to distinguish the revenue sharing mechanism as a separate matter that creates new rights and duties. However, the revenue sharing mechanism does not create a "right" to additional revenues. As the Commission explained in Order No. 637, the voluntary implementation of peak/off-peak rates, as currently permitted under Commission policy, could lead to increased revenues.[88] The Commission has found here, as a matter of policy, that a revenue sharing mechanism is necessary to provide for an equitable division of those revenues as part of the implementation of peak/off-peak rates in a limited section 4 filing.

The Commission has the discretion to direct the conduct of its proceedings. It is within that discretion for the Commission to conclude that it will use a limited section 4 rather than a full section 4 proceeding to implement peak rates and to require pipelines to submit a cost and revenue study.

In any event, Indicated Shippers and the other petitioners have had an opportunity to submit their views on the use of a *pro forma* tariff filing, the revenue sharing mechanism, and the cost and revenue study. These issues and the petitioners' substantive arguments about the appropriate mechanisms for implementing peak/off-peak rates are fully discussed below. Thus, the parties have been given a full opportunity to comment on the use of peak/off-peak rates and the appropriate method for implementing these rates. Nothing more could be accomplished through an additional notice and comment period.

2. Implementation Procedures

Since the implementation of peak/off-peak rates is likely to result in a revenue increase for the pipeline if all other rates remain the same, traditionally, the Commission would require the pipeline to file a general section 4 rate case to implement peak/off-peak rates. However, as the Commission explained in Order No. 637,[89] the traditional methods are ill-suited to this context because the rate methodology relies on a historical test period to project future throughput for each service, and there is no historical experience with peak/off-peak pricing. The Commission also pointed out that using general rate cases to implement peak/off-peak rates could be time consuming. Moreover, because the seasonal rate will be derived from the annual revenue requirement, there should be no factual issues involved in computing the rate that would require investigation or analysis. Therefore, the Commission concluded that pipelines may implement peak-off peak rates in a limited section 4 proceeding, subject to the conditions that the pipeline implement as part of its filing a revenue sharing mechanism and file a cost and revenue study within 15 months of the implementation of peak/off-peak rates.

a. The Option of a Limited Section 4 Filing. Indicated Shippers, IPAA, and NGSA argue that the Commission has not justified use of a *pro forma* tariff filing to implement peak/off-peak rates, and that peak/off-peak rates must be implemented in a full section 4 proceeding. They argue that the concerns that lead the Commission to require that term-differentiated rates must be implemented in a full section 4 proceeding apply to peak/off-peak rates as well. They assert that in both cases the change in rate method will affect other elements that affect the rates of all shippers, and in each case, the change will have an effect on throughput, demand units, discount levels and pipeline revenues. INGAA, on the other hand, asserts that arguments that rates for short-term services must be established in a full section 4 rate case fail to consider that implementation through a settlement or *pro forma* filing will reduce the level of discount adjustments in future rate cases, and that the possibility of sharing revenues will benefit long-term customers immediately.

A limited section 4 filing with the safeguards imposed by the Commission is an appropriate vehicle for implementing peak/off-peak rates. As the Commission explained in Order No. 637, the peak/off-peak rates will be derived from the pipeline's annual revenue requirement, and there should be no factual issues involved in computing the rates that require investigation or analysis in a full section 4 proceeding. Under the current method, the pipelines' rates have been derived by recovering the annual revenue requirement uniformly throughout the year. With peak/off-peak rates, the rates will be derived from the annual revenue requirement using one of several methods of measuring value at peak and off-peak. This does not require an investigation of all the pipeline's costs and rates in a full section 4 proceeding. Moreover, a meaningful review of rates under the current methodology requires one year of historical experience. The process here permits the pipeline to get that experience and then allows the Commission to review the results with a cost and revenue study, making any necessary prospective adjustments.

Moreover, a meaningful review of rates under the current methodology requires one year of historical experience in order to predict future costs and volumes. The limited section 4 process adopted by the Commission obtains the data from that experience and permits the Commission to review the results with a cost and revenue study, allowing prospective adjustments. The use of a limited section 4 proceeding to implement peak/off-peak rates is similar to a situation where a pipeline initiates new services and the Commission permits implementation of the new services in a limited section 4 proceeding in part because there is no historical experience available.[90]

Indicated Shippers, IPAA, and NGSA also argue that implementation of peak/off-peak rates should be conditioned on a pipeline filing a full section 4 proceeding in the future. Indicated Shippers and NGSA state that because some pipeline rates are already stale, implementation of seasonal rates increases the need or rate review. NGSA states that revenue crediting is not a long-term fix for pipeline rates, and only through a requirement that a pipeline at least periodically submit a rate case can the Commission fulfill its responsibility to ensure cost-based rates that approximate a pipeline's cost-based revenue requirement.

Under section 4 of the NGA, the Commission is required to ensure that rate changes proposed by the pipelines are just and reasonable, and under section 5, if the Commission finds after a hearing that the existing rate is unjust or unreasonable, it must establish the just and reasonable rate for the future. The Commission's authority under these two sections provides adequate means for ensuring that pipeline rates are just and reasonable. A requirement that pipelines file periodic rate cases is not part of the statutory scheme. The Commission imposed a three-year review requirement as part of its purchased gas adjustment (PGA) scheme—in exchange for the benefit of being able to track changes in purchased gas costs which were then rapidly increasing, the pipelines agreed to a reexamination of all their costs and revenues at three year intervals. Seasonal rates are not analogous to the implementation of the PGA. Seasonal rates do not change the pipeline's existing cost of service or revenue requirement; rather they constitute a change in rate design used to recover the pipeline's existing cost of service. Thus, they are more analogous to the Commission's direction to the pipelines in Order No. 636 to implement the SFV rate design, and the court upheld the Commission's decision not to require periodic rate review in that context.[91] The authority provided the Commission under sections 4 and 5 of the NGA is adequate to enable the Commission to fulfill its responsibility to ensure that rates are just and reasonable, and a mandatory periodic rate review is not necessary at this time. Under the procedures established by the Commission, the cost and revenue study will provide a basis for determining whether the rates are stale, and, if so, the Commission would institute a section 5 proceeding to address the issue.

Indicated Shippers also argue that the *pro forma* tariff procedures would shift the burden of proof to ratepayers and eliminate the refund provision. Indicated Shippers state that under the *pro forma* procedures established by the Commission, the pipeline would have the burden of proof only with respect to whether the particular method proposed by the pipeline is just and reasonable, and that if ratepayers want to challenge aspects of the rates filed other than the peak/off-peak method itself, then such issues must be raised in a section 5 proceeding. Indicated Shippers give an example of an argument that the peak/off-peak rates will reduce the pipeline's need to discount and therefore the design units should be increased, and assert that the burden of proof would be on the shipper and not the pipeline under the procedure established by the Commission.

Order No. 637 specifically provides that the pipeline will have the burden of proving that its proposed method of implementing peak/off-peak rates is just and reasonable. As discussed above, the Commission has determined that, if the pipeline meets the conditions set forth in Order No. 637, it may implement peak/off-peak rates through a limited section 4 proceeding. Therefore, the pipeline's burden will be limited to showing that its proposed method is just and reasonable. The specific issues involved in this determination will be established in the individual cases. The pipeline will have the burden of proof regarding any changes it proposes in the limited section 4 proceeding. Because the tariff filing is *pro forma*, any other issues raised under section 5 can be resolved before the tariff sheets go into effect, so there should be no issue of refunds.

Order No. 637 provides that under the *pro forma* filing procedure, the filing would be noticed with comments due in 21 days, rather than the 12 days permitted for tariff filings, and the Commission would take action within 60 days. Several petitioners ask the Commission to modify its time table for processing *pro forma* tariff filings. UGI asserts that given the complexity of the filings, the current schedule is too compressed and asks the Commission to modify the schedule to allow 30 days for comment and 120 days for Commission action. Process Gas Consumers ask the Commission to give parties 45 days to comment and the Commission 90 days to act on the filing in order to provide time for a technical conference in each case. Process Gas Consumers state that the Commission should require a technical conference to give the parties a chance to raise concerns and possibly resolve issues prior to the filing of substantive comments.

The Commission has extended the comment period from the 12 days permitted for a tariff filing to 21 days to provide the parties with an additional time to analyze the pipeline's proposals. This extended period should be adequate to enable the parties to analyze and present their views on the pipeline's proposals. If adjustments are necessary, or if it appears that a technical conference would be beneficial in a particular case, the Commission can address these concerns in the individual proceedings.

b. Revenue Sharing. The implementation of peak/off-peak rates could lead to higher pipeline revenues from short-term services since a pipeline could reduce off-peak period price caps so that they would be close to recent discount history, and correspondingly increase peak period price caps. The Commission indicated in Order No. 637 that the process for implementing peak/off-peak rates must take into account any increased revenues. Therefore, if the pipeline seeks to implement seasonal rates in a limited section 4 filing, it must include in its proposal a revenue sharing mechanism that will provide for at least an equal sharing of any increased revenues with its long-term customers. Order No. 637 indicated the Commission's view that the revenue sharing should be limited to long-term customers and explained that under the current cost-of-service rate methodology, underpricing short-term peak capacity results in long-term customers paying higher rates because a greater share of the pipeline's costs is recovered from long-term customers.

Indicated Shippers argue that the revenue sharing mechanism is unjust and unreasonable and will result in a windfall to the pipelines, and further that it will serve as a disincentive for the pipelines to file section 4 rate cases. Indicated Shippers and NGSA argue that the Commission provided no basis for permitting pipelines to retain up to 50 percent of the excess revenues, and NGSA states that Order No. 637 is internally inconsistent because, on the one hand it justifies seasonal rates by stating that the pipeline's overall recovery will be limited to their cost-based annual revenue requirement, and on the other hand, permits the pipelines to retain up to 50 percent of the excess revenues. Indicated Shippers and NGSA assert there is no need to give pipelines an incentive to file seasonal rates since pipelines have proposed and want seasonal rates. NGSA and NASUCA argue that the Commission has given no justification for departing from the 90/10 split it used in restructuring.

Kinder Morgan, on the other hand, argues that the level of revenue sharing should be fully subject to negotiation and not limited by any predetermined rules such as a minimum level of revenue sharing.

The Commission has not required a 50/50 sharing of excess revenues, but indicated that the pipeline should include in its filing a mechanism that will provide for at least an equal sharing of any increased revenues with its customers. The Commission and the parties can work out the details of the revenue crediting mechanism in individual pipeline proceedings. In particular, the Commission suggested that the pipelines and their customers try to negotiate an equitable sharing mechanism pending the filing of the cost and revenue study required by Order No. 637. As the Commission explained in Order No. 637, the revenue sharing method should be fair to the pipelines and the customers, and pipelines are encouraged to work with their customers to develop a method that has wide support. When the pipeline files its cost and revenue study, the Commission can determine whether any changes to the long-term customers' rates are necessary. In the interim, a

[88] The Commission explained that because the price cap would be higher in the peak, and the pipeline might see little reduction in off-peak revenues because market prices are usually below the maximum rate, this could lead to increased revenues.

[89] Order No. 637 at 104.

[90] See Mojave Pipeline Co., 79 FERC ¶61,347 at 62,482 (1997).

[91] *UDC* v. *FERC*, 88 F.3d 1105, 1176 (D.C. Cir. 1996).

revenue sharing mechanism agreed upon by the parties provides an equitable temporary solution. Indicated Shippers and NGSA also argue that excess revenues should be shared by all customers, not just long-term customers. Indicated Shippers assert that the Commission's concerns for long-term shippers are misplaced because the Commission considered only the risks of long-term service without considering the benefits of long-term service that makes it superior to short-term service. Indicated Shippers state that on many fully-subscribed pipelines, short-term service is the only service available.

Further, Indicated Shippers state that in the past where increased revenues attributable to increased demand units are to be credited to shippers, the Commission has held that revenues should be credited to all shippers.[92] Indicated Shippers quote the Commission's rationale for deciding that IT revenues should be credited to all shippers:

> Since the purpose of interruptible revenue credits was to protect the pipeline's customers from too low an allocation to interruptible service, it follows that the customers who receive the credits should be the customers harmed by the erroneously low allocation. An allocation of too little costs to interruptible services cause both the firm and interruptible maximum rates to be too high.[93]

Indicated Shippers argue that the same reasoning applies in the present case, and that to the extent that pre-existing short-term rates were designed on the basis of fewer demand units than will arise upon the adoption of peak/off-peak rates, both the existing long-term and short-term rates are too high. Accordingly, Indicated Shippers argue, all shippers should be eligible to share in the increased revenues attributable to peak/off-peak rates, and the only customer excluded should be discount shippers whose discounts more than offset the understatement of design units underlying existing rates.[94]

NGSA similarly argues it is appropriate to credit excess revenues to all shippers because, until a pipeline's next rate case, revenue crediting acts as a substitute for adopting new discount adjustments (*i.e.*, lowering maximum rates), which will benefit all shippers, both short-term and long-term. Further, NGSA states that the Commission should not allow any credit to be paid to any pipeline affiliate.

NASUCA, on the other hand, argues that all revenues should be credited back to long-term firm shippers. NASUCA asserts that since the Commission has not departed from SFV, long-term shippers pay all the pipeline's fixed costs, and therefore they should receive the revenue offset.

It is appropriate to limit the revenue sharing to long-term customers. Crediting of excess revenues from peak/off-peak rates is not analogous to crediting of IT revenues during restructuring. In the case of IT revenues, as Indicated Shippers point out, the crediting was intended to protect the pipeline's customers that would be harmed by too low an allocation to interruptible service. Too low an allocation to interruptible service would result in all the customers' rates being too high. That is because the maximum interruptible rate was a load factor derivative of the firm rate, and not a rate separately designed based on the costs allocated to interruptible service. Here, in contrast, a primary purpose of peak/off-peak rates is to lower the share of the pipeline's costs that are paid by long term shippers as a result of short-term shippers obtaining peak service at less than the market rate for that service. In these circumstances, a credit to long-term customers only is appropriate.

Amoco and Dynegy ask the Commission to clarify that pipelines will not share revenues under this requirement with affiliates, negotiated rate customers, or customers receiving a discount. At present, the Commission is not persuaded that affiliates that are long-term customers should be treated any differently from other long-term firm customers for purposes of revenue crediting. However, the parties may address this issue in the individual proceedings. Also, as an initial matter, the Commission believes that it may be appropriate for customers receiving a discount to share in any revenues to the extent that the credit would reduce their rate below the discount level. However, this issue may also be addressed in the individual proceedings. On the other hand, negotiated rate shippers have already negotiated the rate they will pay, and therefore will not share in the revenues.

Koch asks the Commission to clarify that in a situation where the pipeline offers both seasonal and non-seasonal rates, and the revenues generated from the seasonal services are greater than the costs allocated to those services, but the total revenues from both seasonal and non-seasonal services are less than the costs allocated to both the services, the pipeline should not be required to share a portion of the excess revenues from its seasonal services with its long-term shippers. Koch states that in this example the pipeline has not earned its revenue requirement, and if revenue sharing were required, the pipeline would be in a worse position than if it had not offered the seasonal service. Koch asks the Commission to clarify that the revenue sharing mechanism applies only when the revenues collected from all of its transportation services exceed the total revenue requirement.

Order No. 637 stated that the pipeline is not required to share revenues if there are none, and that a pipeline will not be required to share excess revenues if it demonstrates that its total revenues from peak/off-peak rates were less than the costs allocated to the relevant services in its last rate case.[95] The appropriate method for determining the level of revenues to be credited can be decided in the individual proceedings.

c. Cost and Revenue Study. A pipeline that implements peak/off-peak rates through a limited section 4 proceeding after 12 months of experience with peak/off-peak rates, will need to prepare a cost and revenue study and file the study pursuant to the format prescribed in § 154.313 of the Commission's regulations within 15 months of implementing peak/off-peak rates. Based on the results of the study, the Commission will determine whether any rate adjustments are necessary to the long-term rates and, if so, order adjustments prospectively.

Process Gas Consumers agree that the cost and revenue study is a necessary part of the implementation of seasonal rates, but ask the Commission to clarify that interested parties may participate in the review process involving the study, and that the parties must have access to the information used by the pipeline to compile its study, and be privy to data requested by Staff in its review of the study. In addition, Process Gas Consumers request the Commission to clarify that pipelines must eliminate the discount adjustment as part of their individual cost/revenue study.

The Commission clarifies that interested parties may participate in the review process of the cost and revenue study. Procedures can be adopted in the individual cases to provide that these parties have access to the information necessary for their participation. A pipeline is not required to eliminate its discount adjustment at the time it files the cost and revenue study, but the issue of whether a change should be made in the pipeline's discount adjustment may be considered in the individual proceedings.

INGAA, CNG, Coastal Companies, Columbia, Enron, Koch, Kinder Morgan, and TWC argue that the cost revenue study would be overly burdensome to the pipelines and should either be eliminated or strictly limited to costs and revenues associated with peak/off-peak rates. These petitioners assert that the requirement for this study could discourage pipelines from filing for peak/off-peak rates. If the study is retained, the pipelines argue that the Commission should not require a full cost and revenue study, but should limit its scope to a review of the revenues associated with the new services compared to revenues from standard rates, as well as data regarding revenue crediting. They assert that the filing should not be an occasion to examine the pipeline's costs or long-term rates that are unaffected by the peak/off-peak initiative.

The Commission does not intend to discourage pipelines from using peak/off-peak rates, and has structured the implementation process so that pipelines are not required to file a full section 4 proceeding in order to implement peak/off-peak rates. If the pipeline uses the limited section 4 procedure, it will be necessary to assure that the pipeline does not overrecover its cost of service. In order to make this determination, the Commission will look at all the services offered by the pipeline, including the interplay of short-term and long-term services, and therefore a cost and revenue study as provided by section 154.313 of the Commission's regulations is appropriate.

Coastal Companies state that if the Commission continues to require a cost and revenue study, it should not require that it be filed within 15 months if the pipeline files a rate case in that period and seeks in the rate case to implement peak/off-peak rate. The Commission clarifies that the requirement to file a cost and revenue study applies if the pipeline chooses to implement peak/off peak rates through the pro forma filing procedures outlined in Order No. 637, not if the pipeline implements peak/off-peak rates in a general section 4 rate proceeding.

Koch states that requiring the filing of the cost and revenue study after 15 months would not be effective given what the Commission is trying to determine, and that it would be more appropriate for this study to be made after two winters as the Commission required with regard to the capacity release proposal. In addition, Koch states that pipelines should be able to offset over-recoveries received in one year against under-recoveries in another year. The Commission has determined that requiring the study after one year of experience strikes the appropriate balance between the need to obtain useful representative information and acting expeditiously.

3. Peak/Off-Peak Rates for Multi-Year Seasonal Contracts

AGA, Keyspan, NAGC, and New England urge the Commission to rule on rehearing that pipelines cannot implement value-based seasonal rates for multi-year seasonal services purchased by customers without meaningful alternatives. These petitioners assert that the Commission's finding that multi-year seasonal contracts are more like short-term contracts is unsupported with regard to essential multi-year services purchased by captive customers. These petitioners argue, as they do with regard to the applicability of the right of first refusal (ROFR) to these contracts, that the services provided under many of these seasonal contracts, often storage and related transportation, are available from the pipeline only for specific months,[96] and are not offered for a full year. They assert that these long-term contracts for seasonal service are not the product of negotiations in which the LDCs used leverage to avoid purchasing services on an annual basis. Instead, they assert, the pipelines offered the services for limited periods of the year, and the LDCs are dependent on these contracts to meet their peak demands.

These petitioners argue that since one of the benefits of seasonal rates cited by the Commission is that they will reduce costs to captive customers, the Commission should not let them be a vehicle to shift costs to captive customers. These petitioners assert that the rates for their seasonal long-term contracts were established in section 4 proceedings and already recover the full cost of providing the service. Keyspan argues that it would be unlawful to change these rates in a limited section 4 proceeding.

As also discussed below with regard to the ROFR, some multi-year seasonal contracts of captive LDC's have characteristics that are more similar to long-term service than to short-term contracts. These captive customers contract with the pipelines for the peaking service necessary for the LDCs to serve their customers during the winter heating season over a period of years. These services, often storage and related transportation, are offered by the pipeline only on a partial year basis, and the LDCs take the services on the basis that they are offered by the pipeline. In these circumstances, the shippers are different from non-captive shippers taking short-term service at peak periods with no long-term contractual relationship with the pipeline. It was not the Commission's intent that the limited section 4 filings would result in increased costs to long-term captive customers, and the mechanisms for implementing peak rates on the individual pipelines must be consistent with the Commission's goals. Issues concerning the appropriate allocation of costs to long-term peak/off-peak are more appropriately addressed in a general section 4 rate case.

4. Other Matters

a. Resolution by Settlement. INGAA and Kinder Morgan ask the Commission to clarify that peak/off peak and term-differentiated rates may be implemented through settlements, and that nothing in Order No. 637 affects the ability of pipelines and their customers to negotiate peak/off-peak and term differentiated rates that do not interfere with existing settlement provisions. Kinder Morgan asks the Commission to clarify that peak/off-peak and term-differentiated rates may be implemented through settlements that can deviate from the conditions set forth in Order No. 637. The Commission clarifies that its discussion of peak/off-peak rates and term-differentiated rates does not limit the parties' ability to settle rate cases.

b. Future Discounts. Koch asks the Commission to clarify whether offering peak/off-peak rates will affect its ability to seek a discount adjustment in its next rate case. Koch states that it does not appear that peak/off-peak rates would have a positive effect on revenues or reduce the annual level of discounting on its system. If Koch decides not to implement seasonal rates and that choice will reduce its ability to use a discount adjustment in future rates cases, then Koch needs to factor that risk into its decision, since the discount adjustment is critically important to Koch's long-term financial viability. Koch is concerned that the election not to implement seasonal rates will bar it from seeking a discount adjustment in future rate cases.

The Commission clarifies that implementation of peak/off-peak rates is voluntary on the part of the pipeline. A pipeline's decision not to implement peak/off-peak rates will not affect the

[92] Indicated Shippers cite Transcontinental Gas Pipeline Corp., 78 FERC ¶ 61,057 (1997); Transcontinental Gas Pipeline Corp., 79 FERC ¶ 61,325 (1997).

[93] Transcontinental Gas Pipe Line Corp., 78 FERC at 61,209.

[94] Indicated Shippers cite Transcontinental Gas Pipeline Co., 78 FERC at 61,209.

[95] Order No. 637 at 106.

[96] AGA gives several examples of such service, *e.g.*, Transco's Southern Expansion Service which is available only from November through March.

pipeline's ability to seek a discount adjustment in its next rate case.

C. Term Differentiated Rates

Term-differentiated rates, *i.e.*, rates that differentiate among shippers based on the length of their contract, should be available to the pipeline as one of several methods that could be used to price capacity more efficiently. In Order No. 637, the Commission explained that term-differentiated rates would match price more closely with risk-adjusted value, and could result in a rate structure that prices capacity held for a longer term at a lower rate than capacity held for a shorter term.[97] As explained in Order No. 637, term-differentiated rates would more accurately reflect in the price of service the relative levels of risk that pipelines must face when selling service for a shorter period than for a longer period, as well as the higher risks that customers face when they purchase service for a longer period of time.

The Commission in Order No. 637 also explained that like peak/off-peak rates, term-differentiated rates would be cost-based, just and reasonable rates because the Commission will limit the rates in the aggregate to produce the pipeline's annual revenue requirement. The Commission recognized that there are various methods that could be used to develop reasonable term differentiated rates, and some methods might be more appropriate on certain pipelines than on others. Therefore, the Commission did not adopt a generic formula for implementation of term-differentiated rates, but indicated that it would allow the pipelines and the customers to work out the details of the methodologies in specific rate proceedings.

Order No. 637 also provides that a pipeline may propose term-differentiated rates just for long-term services or for both short and long-term services. Because the use of term-differentiated rates for short-term services may enhance the potential for price discrimination, particularly during off-peak periods, by increasing the rate caps that would apply to short-term service acquired in off-peak periods, the Commission made clear that a pipeline proposing term-differentiated rates for short-term services will need to explain fully the basis and justification for the price differentials. Further, because term-differentiated rates have a much greater potential for affecting the rates of all customers than peak/off-peak rates,[98] the Commission required that the general reallocation of revenue responsibility among customer classes must be done through rate changes for all customers simultaneously in the section 4 rate filing in which the pipeline seeks to implement term-differentiated rates. Requests for rehearing or clarification of this portion of Order No. 637 were filed by Amoco, Keyspan, Process Gas Consumers, INGAA, CNG, Coastal Companies, Kinder Morgan and Koch. The requests for rehearing are discussed below.

Process Gas Consumers argue that the Commission violated its own rules and acted arbitrarily and capriciously in granting pipelines permission to file for term-differentiated rates without undertaking further generic review and definition of the proper principles to guide the filings. Process Gas Consumers state that the Commission's regulations preclude pipelines from differentiating among shippers based upon contract term. Process Gas Consumers quote 18 CFR 284.7(b)(1) and 284.9(b) which provide that pipelines offering Part 284 firm and interruptible service must "provide such service without undue discrimination, or preference in the quality of service provided, *the duration of the service*, the categories, prices, or volumes of natural gas to be transported, customer classification, or undue discrimination or preference of any kind." (emphasis added by Process Gas Consumers). Process Gas Consumers argue that term-differentiated rates would differentiate among shippers taking the same service based upon their duration of service, and that this is prohibited by the regulations. Further, Process Gas Consumers argue that under the current regulations the Commission has not permitted such a rate design change[99] and has failed to explain its reasons for departing from the regulations.

The portions of the regulations quoted by Process Gas Consumers do not prohibit charging a different rate for contracts of differing lengths. Instead, they provide that a pipeline cannot engage in undue discrimination in certain areas, including duration of service. Thus, if the capacity is available, and the shipper requests service at the maximum rate, then the pipeline must provide the service without regard to the length of the service requested. Moreover, charging a different rate for long-term service than for short-term service does not constitute undue discrimination because the different characteristics of long-term and short-term service justify rate differentials. As explained in Order No. 637, a shorter term contract is riskier for the pipeline, and a higher rate would compensate the pipeline for this additional risk. A shorter term contract provides greater flexibility and less risk to the shipper, and a higher rate would recognize and require payment for these benefits.

Process Gas Consumers argue that the Commission should reverse its decision and initiate further generic proceedings to provide guidance as to the proper boundaries for term-differentiated rates. Process Gas Consumers argue that the Commission's decision to shift the evolution of term-differentiated rates to individual pipeline cases does not constitute reasoned decisionmaking or a fair procedural setting for this evolution. Process Gas Consumers argue that while the Commission can set policy in individual cases, it may not encourage a departure from its current regulations without guidance or further regulatory action. Industrial argue that the Commission's decision to proceed in this fashion fails to protect consumers from the unjust and unreasonable rates and discriminatory behavior that Order No. 637's encouragement of term-differentiated rates invites.

As explained above, the Commission does not accept the premise of Process Gas Consumers' argument, *i.e.*, that term differentiated rates are unjust, unreasonable, and discriminatory. Moreover, as Process Gas Consumers recognize, the Commission can develop policy in adjudications as well as in rulemakings. As the Commission explained, there are a number of methods that could be used to develop reasonable term-differentiated rates, and some methods might be more appropriate on certain pipelines than on others. In these circumstances, it is preferable to allow the pipelines and the customers to work out the details of the methodologies in specific rate proceedings, rather than to try to discuss and analyze all of the possibilities in a generic proceeding. However, this does not mean that there are no parameters or standards that a proposal must meet, or that individual adjudications will not protect consumers from unjust and unreasonable rates and discriminatory behavior. All methods for developing term-differentiated rates must meet the NGA requirements that rates must be just and reasonable and not unduly discriminatory. These standards can more easily be applied to specific

[97] Order No. 637 at 107.

[98] Term-differentiated rates would raise the maximum tariff rates for some customers, and there should be a decrease in the maximum tariff rates for long-term customers.

[99] Process Gas Consumers cites ANR Pipeline Co., 82 FERC ¶ 61,145 at 61,535 (1998).

pipeline proposals in a section 4 proceeding than to theoretical generic principles.

Further, Process Gas Consumers argue, without guidance in a generic proceeding, the Commission risks substantial harm to the development of dynamic markets that depend on short-term transactions. Process Gas Consumers provides a list of types of proposals that should be prohibited by the Commission, *e.g.*, proposals that would allow pipelines to exercise market power over short-term market participants, proposals for "outrageously high" one-day rates. However, the Commission will assure in the individual section 4 proceedings that the specific proposal will not have adverse market consequences and that the rates proposed are not unreasonable. Process Gas Consumers have provided no reason why shippers cannot be protected and just and reasonable rates developed in individual section 4 proceedings.

INGAA, CNG, Coastal Companies, Kinder Morgan, and Koch argue that the Commission should not require pipelines to file a general section 4 rate case to implement term-differentiated rates. They argue that the procedures established by the Commission for implementing peak/off-peak rates are also appropriate here. They argue that the requirement of a full section 4 proceeding will make term-differentiated rates less attractive to pipelines and the option may go unused.

The Commission has attempted to balance the desire for expeditious implementation of the voluntary rate options with the need to assure that the statutory standards are met. While the Commission has concluded that a limited section 4 proceeding can accommodate both considerations in the implementation of peak/off-peak rates, the Commission has concluded for the reasons set forth in Order No. 637, that term-differentiated rates must be proposed in a section 4 proceeding. This does not necessarily mean that the proceeding must be lengthy and time-consuming or involve a full evidentiary hearing, and the parties may use that forum to develop a mutually agreeable method of implementing term-differentiated rates. Properly designing term-differentiated rates could be very complicated and would affect all the pipeline's rates to ensure that rates stay within the pipeline's revenue requirement. This cannot be done in a limited section 4 proceeding. The Commission does not intend to discourage pipelines from proposing term-differentiated rates, but has determined that a section 4 proceeding is necessary.

Amoco argues that the Commission erred in failing to limit a pipeline's rate flexibility options to either seasonal rates or term-differentiated rates, but not both in the short-term market. Amoco argues that pipelines should not be permitted to superimpose term-differentiated rates on seasonal rates, such that the maximum short-term rate would exceed the expected seasonal market value, else the result would be to effectuate market-based rates without a showing of a lack of market power. Amoco argues that this would eliminate the primary market mitigation mechanism relied on by the Commission in permitting market-based capacity release rates, *i.e.*, that just and reasonable cost-based pipeline rates will serve as a good alternative to unregulated capacity release rates.

Further, Amoco argues that term-differentiated rates are intended to adjust rates on the basis of demonstrable term risk, and this rationale does not apply in the short-term market where implementation of seasonal rates will allow pipelines to structure their rates to capture seasonal value differences within a cost of service framework. Amoco argues that there should be an absolute prohibition against term-differentiated rates for short-term contracts.

As the Commission acknowledged in Order No. 637, the use of term-differentiated rates for short-term services may enhance the potential for price discrimination, particularly during off-peak periods, by increasing the rate caps that would apply to short-term service acquired in off-peak periods. The Commission made clear that these proposals will be carefully scrutinized, and a pipeline proposing term-differentiated rates for short-term services will need to explain fully the basis and justification for the price differentials. If the pipeline chooses to implement both peak rates and term-differentiated rates, the proposal will be implemented in a full section 4 proceeding and the Commission and the parties will be able to address the impacts of the proposal. The Commission will not preclude a pipelines from proposing both rate methodologies.

Amoco also states that the Commission should clarify that term-differentiated rates should be designed only within rate of return "zone of reasonableness" parameters to reflect the differential risk associated with varying contract durations. For example, Amoco states that if a ROE zone of reasonableness ranges from 10% to 14%, a longer term contract of 10 years or longer would have a 10% ROE imputed and a short term contract of one year would have a 14% ROE imputed. Otherwise, Amoco argues, pipelines can use their market power to coerce captive customers into purchasing capacity either at excessive rates or for excessive terms. Amoco's suggestion may be one reasonable method of designing term-differentiated rates which can be considered in the individual proceedings, but the Commission will not limit the parties to this one method. Pipelines and their customers may devise other methods that protect shippers from unreasonable rates or contract terms.

Amoco is also concerned about affiliate abuse which it says is increased in the term-differentiated rate structure. Amoco states that there must be limitations on the imputed contract term available for an affiliate. The Commission will not establish a limit on the contract term available for affiliates, but this is an issue that the parties may address in a section 4 proceeding.

Keyspan asks the Commission to clarify that pipelines that are subject to Commission-approved settlements that prohibit increases to rates for seasonal services for some period are not entitled to increase those seasonal rates until the specified period in the settlement expires, and that pipelines cannot implement term-differentiated rates during rate moratorium period. INGAA asks the Commission to clarify that nothing in Order No. 637 affects the ability of pipelines and their customers to negotiate term-differentiated rates that do not interfere with existing settlements. The Commission cannot rule on specific settlement provisions, but the Commission clarifies that parties continue to be bound by their settlements, and nothing in Order No. 637 changes existing settlements. Further, nothing in this rule limits the parties' ability to negotiate future settlements.

Keyspan also asks the Commission to clarify that any term-differentiated rates proposed by the pipelines must differentiate on the basis of the contract term regardless of the remaining life of the contract, *i.e.*, if a pipeline has different rates for contracts of ten, five, and three years, a customer with three years remaining on a ten-year contract should be charged the ten-year rate for the remaining three years. The Commission clarifies that its intent was to have a long-term rate apply to a long-term contract for the duration of that contract, and not to have that contract charged a shorter-term rate in the later years of the contract.

D. Voluntary Auctions

Recognizing the increasing use of electronic commerce to create efficient markets, the Commission in Order No. 637 encouraged both pipelines and third parties to develop capacity auctions, and provided basic principles for the design of transparent, verifiable, and non-discriminatory auctions. The Commission also indicated that an appropriately designed auction may be a means by which a pipeline could sell all or some of its capacity without a price cap so long as the auction was designed in such a way as to protect against the pipeline's ability to withhold capacity and exercise market power. The Commission set out some general criteria for accomplishing these goals, one of which was a statement that all capacity available at the time of the auction would have to be included in the auction.

Koch requests clarification that a pipeline can engage in limited auctions without a price ceiling by auctioning only capacity between select points in the auctions. Koch claims that such an auction would prevent the exercise of market power because the pipeline would be unable to withhold any capacity between the designated points.

While the Commission would have to examine any such auction proposal in detail before it could determine whether it would adequately protect against the exercise of market power, Koch's proposal for selective auctions does not appear sufficient. Under Koch's proposal, the pipeline could select only capacity between certain points to include in the auction at a particular time, while reserving the right to sell capacity between those points outside the auction process at other times as well as to sell capacity between other points outside of the auction process. In a fair auction process, the pipeline should not be able to choose the auction format only for those markets or at those times where it could benefit, while reserving its right to selectively discount at other times or for other markets.

Process Gas Consumers contends the Commission should not permit market-based rates through auctions, or at least should provide detailed guidance in advance about the showing the seller of capacity must make to justify the lifting of price caps. They further seek clarification concerning the process to be used by a pipeline to propose an auction, particularly about the rights of shippers to participate in that process, clarification that auctions can only take place upon reasonable notice and during normal business hours, and clarification that combined gas and capacity auctions by third parties would be subject to Commission regulation.

Auctions can be methods by which pipelines can sell capacity without a rate ceiling if the auction format adequately protects against the exercise of market power by preventing withholding of available capacity and price discrimination. There may be many different ways of achieving this result, and the Commission cannot specify in advance all the necessary criteria. Given the Commission's and the industry's lack of experience with auctions, it is important to encourage innovation in auction design, rather than having the Commission insist on a design that may not be the most effective or efficient. One of the Commission's principles for a fair auction design is that such an auction must be open to all potential bidders on a non-discriminatory basis, which would include notice of when the auctions will take place. But the Commission will not generically require that all auctions take place during normal business hours, as requested by Process Gas Consumers. Given the intra-day nomination schedule adopted by the Commission, some auction designs may want to include after hour auctions. Questions concerning the timing of auctions must be evaluated in individual applications.

Pipelines contemplating proposing auctions would be well advised to review their plans with their customers as a way of resolving potential problems and creating a more efficient design prior to filing the proposal with the Commission. Shippers, of course will have to the right to fully participate in any auction proceeding initiated by a pipeline filing.

The Commission has authority to regulate the reallocation by shippers of transportation capacity.[100] Depending on how an auction is organized, and whether waiver of Commission regulatory requirements is requested, Commission regulatory oversight may or may not be necessary. Third-parties currently can auction released capacity without regulatory oversight by the Commission as long as the results of those auctions comply with the Commission's capacity release regulations, particularly the requirement for posting and bidding on Internet sites authorized by pipelines. In these cases, the third-party auctions are merely ways for shippers to enter into pre-arranged releases of capacity.[101] As long as those pre-arranged releases comply with Commission requirements, i.e., are transmitted to the pipeline for posting on pipeline Internet sites and bidding (when necessary) is allowed, no further oversight is needed.[102]

Some third parties indicated in their comments that compliance with some of the Commission's existing regulations can impede the development of third-party auctions. For instance, the requirement that certain transactions must be posted on pipeline Internet sites was identified as a barrier to third-party auctions because it would require a double posting of capacity (once in the auction and once on the pipeline's Internet site) and would render the results of the auction less certain. In those cases in which a shipper or third-party finds that a current Commission regulatory requirement impedes the development of an efficient auction, the Commission encourages shippers or third-parties to propose an alternate method for satisfying the goal of the requirement. For example, to satisfy the requirement that prices be disclosed on a pipeline's Internet web site, the pipeline could be required to maintain a link on its web site to the web site of the third-party auctioneer. The Commission cannot proscribe, in the abstract, criteria for such proposals. Third-parties should have the freedom to develop and propose innovative solutions to such problems.

II. Improvements to Competition Across the Pipeline Grid

A. Scheduling Equality

In Order No. 637, the Commission adopted the proposal set forth in the NOPR to amend the Commission's regulations to include a new section 284.12(c)(1)(ii) to require pipelines to provide purchasers of released capacity the same ability to submit a nomination at the first available opportunity after consummation of the deal as shippers purchasing capacity from the pipeline. This will enable shippers to acquire released capacity at any of the nomination or intra-day nomination times, and nominate gas coincident with their acquisition of capacity. By enabling released capacity to compete on a comparable basis with pipeline capacity, the new section of the

[100] *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1151–54 (D.C. Cir. 1996).

[101] Pipelines can, and have, used third-parties to satisfy the posting and bidding obligations for their systems. Third-parties, in this context, refer to parties conducting auctions not under the auspices of the pipeline.

[102] For example, third-party auctions for short-term released capacity (31 days or less) can be conducted without complying with the requirements for posting and bidding on pipeline Internet sites, because short-term releases are exempt from the Commission's posting and bidding requirements.

regulations will foster a more competitive short-term market. Also, in Order No. 637, the Commission explained the basis for its policy that the shipper must have title to the gas being transported, and concluded that no changes in this policy are appropriate at this time. Niagara Mohawk, NGSA, Scana Energy Marketing, Tejas, TWC, and Williston seek clarification or rehearing of this portion of Order No. 637.

Williston seeks rehearing of the Commission's regulation requiring nominations for capacity release transactions to be on an equal footing with shippers purchasing capacity directly from the pipeline. Williston argues that there must be differences in the nomination and scheduling of capacity release and the nomination and scheduling of pipeline capacity because additional time is required to evaluate capacity release transactions due to possible conditions the releasing shipper may impose on the acquiring shipper. Williston states that the time required by the pipeline to evaluate such conditions and the potential operational impact requires that the existing timing difference in the nomination and scheduling process.

Williston does not explain what conditions and operational considerations could need to be evaluated. The replacement shipper will take the service under the same contract, subject to the same conditions as the releasing shipper and, therefore, will have the same operational impact on the system. There should be no change in conditions or impact for the pipeline to evaluate.

In addition, Williston asserts that the provision of such a service will not be cost effective on its system because Williston would be required to expend significant money and manhours on new electronic contracting software. Williston states that it has had 13 capacity releases in the last three years, and this number of releases does not justify the Commission's imposition of this requirement on Williston. Williston argues that the offering of nomination opportunities for capacity release equal to nomination opportunities for shippers purchasing capacity should be on a best efforts or optional basis on pipelines with significant capacity release.

As explained in Order No. 637, the Commission adopted the new regulation requiring equality in scheduling in order to enable released capacity to compete on a comparable basis with pipeline capacity. This furthers the Commission's goal of enhancing competition and improving efficiency across the grid. In order for the requirement to have this effect it must apply to all pipelines and all capacity release transactions.

Scana seeks clarification, or in the alternative, rehearing, that the pipelines must provide replacement shippers with the same no-notice scheduling rights as held by releasing shippers. Scana asserts that some pipelines have placed restrictions in their tariffs on the release of no-notice transportation, such that a shipper may release no-notice transportation, but the replacement shipper receives FT capacity without no-notice scheduling rights. Scana further asserts that other pipelines do not restrict release of no-notice service, but instead impose artificial restrictions on the scheduling flexibility after release. Scana argues that, consistent with the Commission's purpose of achieving scheduling equality between releasing and replacement shippers, the Commission must clarify that Order No. 637's mandate for scheduling equality among releasing and replacement shippers is intended to cover no-notice scheduling rights and contingency ranking.

The Commission has held that the pipeline must permit shippers to release their no-notice service as no-notice service.[103] Further, if the pipeline permits shippers to receive no-notice service at flexible delivery points, it must permit the no-notice shipper to release that capacity with similar flexible delivery points.[104] However, if the pipeline does not permit its no-notice shippers flexible delivery point rights, it is not required to provide flexible delivery points to the replacement shipper. There should be no operational reason why the pipeline should limit the release of no-notice service or place restrictions on the released service that do not apply to the releasing shipper. Since the shipper releasing the no-notice capacity is not able to use it, the pipeline will not be providing any more no-notice service than it contracted to provide.

TWC and Tejas ask the Commission to clarify the relationship between new section 284.12(c)(1)(ii) and the approved GISB Standards, including the GISB Standard timelines for capacity release as set forth in GISB Standard 5.3.2. The Commission clarifies that new section 284.12(c)(1)(ii) supplants GISB Standard 5.3.2, to the extent that they are inconsistent. Thus, the capacity release nomination requirements are contained in the new regulation, and GISB Standard 5.3.2 now applies only to the bidding process. It is not necessary for the Commission to delay implementation of its new nomination requirements until GISB acts to amend section 5.3.2.

Tejas quotes the discussion in Order No. 637 as providing that under new regulation § 284.12(c)(1)(ii), the pipeline must "approve" a contract within an hour. Tejas asks the Commission to clarify whether the Commission means "issuance" or "approval," and whether issuance or approval of the contract means that it has been executed by both parties.

The text of the regulation states that the pipeline must "issue" the contract within an hour and the Commission clarifies that the requirement is to issue the contract, rather than approve the contract. Issuance of the contract does not mean that it has been executed by both parties.

Tejas also observes that GISB Standard 5.3.2 defines short-term releases as those with a duration of less than 5 months, and in Order No. 637, the Commission defines short-term releases as those extending for less than one year. Tejas asks the Commission to clarify which of the two definitions will apply to short-term releases.

The bidding requirements of GISB Standard 5.3.2 apply to capacity releases of more than five months. In Order No. 637, the Commission waived, for a two year period, the rate ceiling for capacity releases of less than one year. Neither of these provisions defines a short-term release for other purposes, and they are not inconsistent.

NGSA states that although the Commission established scheduling equality between capacity release shippers and others holding firm capacity, and recognized the efficacy of master agreements in achieving scheduling equality, it did not require use of a master agreement. NGSA asserts that master agreements are the only means to achieve scheduling equality, and therefore the Commission should require them.

The Commission recognizes that master agreements are a good way to achieve scheduling equality, but as explained in Order No. 637, there are other methods as well. The Commission will not mandate any one method, but will leave this to be resolved by the pipelines and shippers.

Finally, Niagara Mohawk requests that the Commission clarify that it will be receptive to requests for waiver of the shipper must have title policy where the applicant demonstrates that the waiver

[103] Order No. 636–B, 61 FERC ¶ 61,272 at 62,009–10 (1992); Questar Pipeline Co., 62 FERC ¶ 61,192 at 62,298 (1993).

[104] **Editor's Note:** No text in footnote 104.

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will not result in undue discrimination or the inefficient allocation of capacity. Parties may apply for a waiver of the policy and, as in the past, the Commission will consider the waiver based on the specific circumstances of the request.[105]

B. Segmentation and Flexible Point Rights

In Order No. 636, the Commission established two related policies—flexible point rights and segmentation—that were designed to provide firm shippers with the flexibility to use their capacity and to enhance competition between shippers and between shippers and the pipeline.[106] Flexible point rights refer to the rights of firm shippers to change receipt or delivery points so they can receive and deliver gas to any point within the firm capacity rights for which they pay. Segmentation refers to the ability of firm capacity holders to subdivide their capacity into segments and to use the segments for different capacity transactions.

The requirement to permit segmentation originally was not included in the Commission's regulations, but was implemented through pipeline restructuring filings. The Commission found that capacity segmentation was not being implemented uniformly across the pipeline grid. Some pipelines did not permit segmentation at all, others placed restrictions on the ability to segment for release, and others did not permit shippers to segment capacity for their own use.

In Order No. 637, the Commission responded to the inconsistent application of segmentation rights by adopting a regulation requiring pipelines to permit a shipper "to make use of the firm capacity for which it has contracted by segmenting that capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible." [107] Each pipeline is required to make a *pro forma* tariff filing demonstrating how it intends to comply with the regulation, by revising its tariff, explaining why its existing tariff meets the requirements, or explaining why the operational configuration of its system does not permit segmentation.

In Order No. 637, the Commission also concluded that no regulatory changes were needed to be made with respect to the relative scheduling priorities of shippers using secondary points depending on whether they were shipping within or outside their capacity path.[108]

Rehearing and clarification requests were filed with respect to both the segmentation and path priority determinations.

1. Segmentation

Rehearing and clarification requests were received regarding the adoption of the segmentation regulation and the requirements of the regulation. In addition, rehearing and clarification requests were filed concerning the extent to which earlier Commission policies will apply to segmented releases and the manner in which pipelines are to implement the requirement. These are discussed below.

a. Adoption and Requirements of the Regulation. Legal Justification. Koch maintains the Commission's generic segmentation policy violates sections 4 and 5 of the NGA. It contends the requirement violates section 5, because the Commission has not found that an existing tariff provision is unlawful and that the Commission-imposed modification of the tariff is just and reasonable. Koch maintains the Commission's action in requiring a pipeline compliance filing is not justifiable under section 4 of the NGA, because Koch has not voluntarily submitted a proposed tariff change and the Commission cannot under section 4 place the burden on the pipeline of justifying that segmentation is inappropriate.

The Commission's action is an appropriate use of its authority under section 5 of the NGA. In Order No. 637, the Commission made a generic determination that the failure of a pipeline to permit segmentation would be unjust and unreasonable if the pipeline could operationally permit segmentation.[109] Under Order No. 636, the firm transportation capacity held by shippers was to include the same flexibility the pipeline enjoyed when it provided bundled sales service, and the ability to use capacity flexibly, through the use of flexible point rights and segmentation, was part of the flexibility enjoyed by pipelines. Further, as the Commission found in Order No. 637, segmentation increases the number of capacity alternatives and so improves competition, and also is important in facilitating the development of market centers and liquid gas trading points.[110] Based on these findings, the Commission determined that pipelines that operationally can permit segmentation, but do not, would be acting in an unjust and unreasonable manner.

While Order No. 637 announced the Commission's segmentation policy, it did not make a section 5 determination that any particular pipeline's tariff is, in fact, unjust and unreasonable. Any such determination will be made in the individual pipeline compliance proceedings. The Commission had reason to believe, based on the comments and its own analysis of pipeline tariffs, that some pipelines are not permitting shippers to segment capacity, both for the shipper's own use and for capacity release transactions, to the extent operationally feasible on their systems. The Commission, therefore, required pipelines to make *pro forma* filings to establish whether their current tariffs are just and reasonable. The requirement for pipelines to make *pro forma* compliance filings is not, as Koch characterizes it, a requirement that pipelines make a section 4 filing. Rather, the *pro forma* filings require the pipelines to show why their existing tariffs should not be considered unjust and unreasonable. If the Commission finds changes are warranted, it will be acting under section 5 to implement such changes.

Non-Operational Barriers to Segmentation. CNG and Columbia Gas contend the inquiry into segmentation should not be limited to whether segmentation is "operationally feasible," because non-operational problems, such as rate design, administrative complexity, or potential legal barriers can inhibit the ability of a pipeline to offer segmentation. They maintain that such problems can be particularly difficult for reticulated pipelines where shipper paths are not easily defined. CNG contends that such changes can be made only through a full section 4 rate filing that would include the identification of multiple paths, a redesign of services, and an elimination of postage stamp (one rate for the entire system) rate structures.

The Commission will not eliminate the "operationally feasible" requirement from the regulation. The goal in permitting shippers to segment capacity is to enable firm shippers to use the capacity for which they have contracted as flexibly as possible without infringing on the legitimate rights of other shippers. In the case of a reticulated pipeline charging a postage stamp rate, firm shippers are paying for the use of the entire pipeline in their rates. The pipeline, therefore, has the obligation to optimize the system so that firm shippers can make the most effective use of the capacity for which they pay. On reticulated pipelines with postage stamp rate structures, where shippers have no specifically defined paths, the pipeline should permit firm shippers to use all points on the system and to use or release segments of capacity between any two points, while continuing to use other segments of capacity.

The Commission recognizes that permitting segmentation on a reticulated pipeline can result in operational difficulties if replacement shippers flow gas at different points than the existing shippers. But that is not a reason for the pipeline to refuse to provide the ability to segment. Instead, the pipeline needs to optimize its system to provide maximum segmentation rights while devising appropriate mechanisms to ensure operational stability. Displacement pipelines with postage stamp rate structures have been able to permit segmentation with operational rules to protect system integrity.[111]

On reticulated systems with zone rates, segmentation can be limited to the zones for which the shipper pays. If a pipeline currently using a postage stamp rate structure finds that providing segmentation or defining capacity paths would be more feasible with a redesign of its rates, the pipeline can make a section 4 filing to establish rates that it considers more consonant with segmentation.

b. Compliance Filings and Implementation. Overlapping capacity segments. Coastal, INGAA, Kinder Morgan, and Williston request clarification that the Commission will adhere to its current policy of not permitting shippers to use segmentation to release overlapping capacity segments.[112] National Fuel Distribution also seeks clarification that shippers can segment capacity at market centers or other non-physical transaction points on the pipeline's system.

Capacity segmentation refers to the ability of shippers to divide their capacity into individual segments with each segment equal to the contract demand of the original contract. As a general matter, pipelines are not required to permit segmentation in a situation where the nominations by a shipper or a combination of releasing and replacement shippers exceed the contract demand of the underlying contract on any segment. The Commission further clarifies, as National Fuel Distribution requests, that shippers can divide their capacity through segmented releases at any transaction points on the pipeline system, including virtual transaction points, such as paper pooling points, as well as at physical interconnect points, such as market centers.

To help avoid inconsistent application of the Commission's flexible receipt and delivery point policy and the segmentation policy, the following example will provide clarification as to how those policies should operate. In this example, a shipper has a contract for 10,000 Dth per day from receipt point at A to delivery point B.

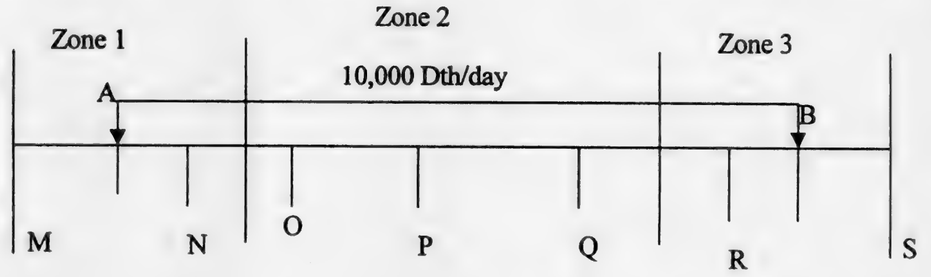

The shipper has the flexibility to segment capacity throughout zones 1–3 (point M through point S), so long as the combined nominations of it and replacement shippers do not exceed the mainline contract demand of 10,000 Dth. The shipper has the right to segment outside of its path because it is paying the full rates for zones 1–3 and, therefore, has the right to use all points within the zones for which it pays. Thus, the shipper could nominate and ship 10,000 Dth from point M to point P, while at the same time nominate and ship another 10,000 Dth from point P to point S. But the shipper could not nominate 10,000 Dth from point M to point Q and nominate 10,000 Dth from point P to point S, because that would result in 20,000 Dth nominated in segment P–Q.

The shipper also could release 10,000 Dth of capacity from point P to point B, while retaining 10,000 Dth of capacity from point A to point P for its own use. The releasing shipper could then nominate and ship 10,000 Dth from point A to point P, while the replacement shipper could nominate and ship 10,000 Dth from point P to point B.

Segmentation would also permit the releasing and replacement shippers to use overlapping segments so long as their combined nominations in a segment do not exceed 10,000 Dth. For instance, the releasing shipper could nominate and ship 5,000 Dth from point A to point Q, while the replacement

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[105] *See, e.g.*, Baltimore Gas and Electric Co., 88 FERC ¶ 61,133, *reh'g denied*, 89 FERC ¶ 61,150 (1999).

[106] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,939, at 30,428, 30,420–21 (Apr. 8, 1992), Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,559 n.151 (Aug. 3, 1992), Order No. 636–B, 61 FERC ¶ 61,272, at 61,997 (1992).

[107] Order No. 637, 65 FR at 10195, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,303–304, 18 CFR 284.7(e).

[108] Order No. 637, 65 FR at 10196, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,304.

[109] *Wisconsin Gas Co. v. FERC*, 770 F.2d 1144, 1166–67 (D.C. Cir. 1985) (Commission can make generalized determinations that particular practices are unjust and unreasonable through rulemaking).

[110] Order No. 637, 65 FR at 10195, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,303–304.

[111] *See* Northwest Pipeline Corporation, 69 FERC ¶ 61,171, at 61,677 (1994), 71 FERC ¶ 61,315, at 61,224 (1995) (providing operational controls for segmented releases that jeopardize system integrity).

[112] Citing Tennessee Gas Pipeline Company, 85 FERC ¶ 61,052 (1998), *reh'g denied*, 86 FERC ¶ 61,290 (1999); Texas Gas Transmission Corporation, 89 FERC ¶ 61,096 (1999).

shipper nominates and ships 5,000 Dth from point O to point B even though the segments overlap in segment O–Q. Both nominations would be accepted because the combined nomination over segment O–Q would not exceed 10,000 Dth. However, if both shippers sought to nominate the full 10,000 Dth in one or more pipeline segments, the pipeline could limit the nominations to 10,000 Dth in those segments. The pipeline should have a default tariff provision detailing how nominations from releasing and replacement shippers will be handled in the event that they exceed the contract demand, and releasing shippers also can include provisions for handling overlapping nominations in their release conditions.[113]

Both the releasing and replacement shippers also would retain the flexibility to use their capacity fully to make backhauls. Thus, the shipper could deliver 10,000 Dth from point A to point B using forward haul capacity and 10,000 Dth from point S to point B using a backhaul, because there is no overlap over the mainline.

This may require a change by some pipelines with respect to their tariffs regarding backhauls. The Commission's policy on the use of forwardhauls and backhauls to the same point in excess of contract demand has been in the process of change. While the Commission found in 1997 that a shipper cannot use the same delivery point for a forwardhaul and backhaul in excess of contract demand,[114] the Commission recently found that a forwardhaul and backhaul to a series of 23 meter stations considered as a single point for nomination purposes did not result in a capacity overlap even though the total amount received by the shipper exceeded contract demand.[115] In order to promote shippers' ability to use their capacity as flexibly as possible, the Commission has determined that prior restrictions on shippers' use of forwardhauls and backhauls to the same point should not be followed. Shippers' segmentation rights should not depend upon metaphysical distinctions between delivery to a single point or to two points adjacent to each other. In both situations, shippers should be permitted to use a forwardhaul and a backhaul to deliver gas as long as the mainline contract demand is not exceeded and they can take delivery of the gas.

Segmentation and primary point rights. Several rehearing requests relate to the relation between segmentation and primary point rights. El Paso and Enron maintain segmentation should be considered separately from primary point rights and should not result in shippers being able to use segmentation to increase primary point rights beyond those covered in their contracts. Kinder Morgan claims that if shippers change their primary point rights in segmenting capacity for their own use, the shippers do not have the right to revert to their original primary points without the consent of the pipeline. Kinder Morgan and INGAA seek clarification that pipelines can resell capacity at primary points vacated by releasing or replacement shippers. In contrast, National Fuel Distribution maintains that shippers should be permitted to segment capacity and retain their primary priority in both segments.

The Commission cannot clarify the role of primary receipt points on a generic basis, but will need to examine the issues raised in the pipelines' compliance filings. In Order No. 637, the Commission explained that in the past it had adopted different policies on the issue of whether pipelines could restrict replacement shippers' ability to choose new primary points depending on whether pipelines had historic tariff provisions that limited primary point rights to the same level as the shipper's mainline contract demand.[116] Although the Commission accepted tariff filings during Order No. 636 that continued historic limitations on the number of primary receipt and delivery points, the Commission questioned whether it continued to be appropriate for pipelines to limit receipt and delivery point quantities to the shipper's contract demand.[117] The Commission concluded that a pipeline's overly restrictive allocation of primary point rights to existing shippers could restrict the ability of shippers to use their capacity flexibly. But the Commission did not impose a blanket prohibition on all limits to a firm shipper's ability to choose primary receipt and delivery points. The Commission recognized that pipelines might need to impose some restrictions on primary point rights, as appropriate to the circumstances of their systems, to prevent hoarding of capacity by some shippers to the detriment of others.[118] Moreover, even when the Commission did permit continuation of tariff provisions that limited primary point rights to contract demand, the Commission adopted a policy (*Texas Eastern/El Paso* policy) which permitted both releasing and replacement shippers in segmented releases to choose separate primary point rights that did not exceed each shipper's contract demand.[119]

Permitting flexibility in the selection of primary points in segmented releases can be important to creating effective competition between pipeline services and released capacity. If replacement shippers were limited to the use of segmented points on a secondary basis, as some of the rehearing requests suggest, the pipeline would still retain the right to sell that receipt point on a primary basis. The ability to sell points on a primary basis would provide the pipeline with a competitive advantage over segmented release transactions. In order to equalize competition between pipeline and released capacity, pipelines need to permit shippers greater flexibility in selecting primary points than they have in the past.

Because the Commission has not reviewed receipt and delivery point restrictions since Order No. 636 and restrictions on segmentation and point rights can limit effective competition, pipelines should not be able to continue to rely upon their historic tariff practices dating back to the days of merchant service, but need to justify restrictions on shippers' ability to use additional primary points in segmented transactions and any deviation from the *Texas Eastern/El Paso* policy.[120] For example, on a fully subscribed pipeline where receipt point capacity exceeds mainline capacity fivefold, the pipeline can seemingly permit shippers to select primary receipt point rights well in excess of their mainline contract

[113] *See* Texas Gas Transmission Corporation, 89 FERC ¶ 61,096, at 61,274 (1999).

[114] Iroquois Gas Transmission System, L.P., 78 FERC ¶ 61,135 (1997) (shipper cannot use same delivery point for forwardhaul and backhaul in excess of contract demand).

[115] Transcontinental Gas Pipe Line Corporation, 91 FERC ¶ 61,031 (2000) (using forwardhaul and backhaul to series of delivery points does not result in an overlap).

[116] Order No. 637, 65 FR at 10194, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,301–302. *Compare* Transwestern Pipeline Company, 62 FERC ¶ 61,090, at 61,659, 63 FERC ¶ 61,138, at 61,911–12 (1993); El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993) (permitting pipelines to continue historic limitations on primary receipt point rights) with Northwest Pipeline Corporation, 63 FERC ¶ 61,124, at 61,806–08 (1993) (not permitting the pipeline to add such restrictions).

[117] El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993); Transwestern Pipeline Company, 62 FERC ¶ 61,090, at 61,659, 63 FERC ¶ 61,138, at 61,911–12 (1993).

[118] *See* El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993) (pipelines could propose methods for limiting the potential for hoarding).

[119] Order No. 637, 65 FR at 10194, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,301–302; Texas Eastern Transmission Corporation, 63 FERC ¶ 61,100, at 61,452 (1993); El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,991. *See also* Transwestern Pipeline Company, 61 FERC ¶ 61,332, at 62,232 (1992).

[120] Order No. 637, 65 FR at 10195–96, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,304.

demand, since the pipeline has no capacity left to sell and, therefore, needs to reserve no receipt point capacity in order to sell unsubscribed capacity.[121]

El Paso contends that providing shippers with the right to select multiple delivery point rights along a path could detrimentally affect the rights of existing shippers. It provides an example in which a lateral off the mainline can support only 100 Dth of capacity and a shipper at the terminus of the lateral (Delivery Point B) already has primary point capacity of 100 Dth on the lateral. El Paso maintains that if another shipper with a primary delivery point (Delivery Point A) can subscribe to an upstream point on the lateral (Delivery Point C) on a primary basis, the downstream shipper on the lateral could lose its primary point priority.

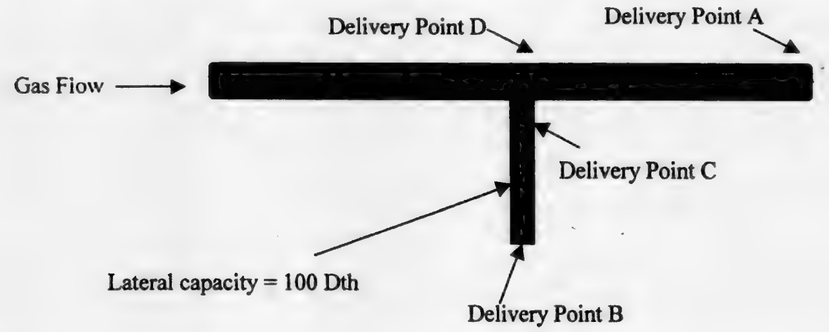

This argument misapprehends Commission policy. The new shipper could not obtain a primary delivery point at Delivery Point C, because no capacity on the lateral is available at that point; the lateral capacity is fully subscribed. In order for shippers to obtain primary points, the mainline capacity to that point must be available. Thus, the shipper with a primary delivery point at Delivery Point A could obtain another primary delivery point at Delivery Point D, because the shipper has sufficient mainline capacity to deliver to that point. As pointed out previously, the selection of this new delivery point would not increase the shipper's mainline contract demand. It would only permit the shipper to choose to deliver to Delivery Point A or Delivery Point D on a primary basis.

The resolution of issues relating to the allocation of primary point rights in segmented transactions will have to be addressed in each pipeline's compliance filing. Pipelines will have to include justifications, based on the operational characteristics of their systems, for restrictions on the extent to which shippers and replacement shippers can change primary points or can revert back to the original points at the end of a release or segmented transaction.

Point discounts. Kinder Morgan and Koch request clarification that in implementing segmentation, the Commission will continue its current policy under which discounts granted with respect to specific points do not apply when the shippers change points. They contend that if a shipper seeks to use different points as part of a segmentation transaction, the shipper will not be entitled to continue its discount.

This issue also needs to be considered in the pipelines' compliance filings. In the restructuring proceedings to implement Order No. 636, the Commission's policy was to permit pipelines to limit a shipper's discount to particular receipt and delivery points. A shipper with a discount contract to particular points would be subject to the pipeline's maximum rate if it, or a replacement shipper, chose to exercise its right to use flexible receipt or delivery points.[122] The justification for this policy was that market conditions may vary on a pipeline, and the pipeline, therefore, should be permitted to structure its discounts to meet the prevailing market conditions.

The Commission still recognizes that pipelines may have underutilized segments of their pipelines for which they may need to offer discounts in order to increase throughput and that such discounts should not necessarily entitle shippers to move gas in more highly utilized portions of the pipeline, where the pipeline can obtain the maximum rate for transportation service. This would occur particularly on pipelines with postage stamp rate systems where the same maximum rate applies throughout the system, even though utilization patterns may differ across the system, as well as for pipelines with large zones where utilization may differ within a zone.[123] What is less clear, however, is whether the Commission's previous policy should continue to be applied for segmented transactions that occur within the path of the shipper's transportation contract. Once the pipeline has decided that a discount is needed to stimulate throughput in a section of the pipeline, that shipper should be permitted to use flexible point rights and segment capacity along that capacity path without incurring additional charges.[124] The Commission recognizes that not all pipelines follow straight-line paths and, therefore, in order for some pipelines to implement segmentation, restrictions on segmentation for discounted contracts may be necessary. These issues should

[121] Even if the pipeline is not fully subscribed, it could protect its ability to sell available mainline capacity by reserving an appropriate percentage of the receipt or delivery point capacity to be associated with the unsubscribed mainline capacity.

[122] El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,990–91 (1993); ANR Pipeline Company, 62 FERC ¶ 61,079, at 61,562–63 (1993).

[123] *See* Questar Pipeline Company, 69 FERC ¶ 61,119 (1994) (applying policy to a postage stamp system).

[124] On a long-line pipeline, for instance, once the pipeline has discounted transportation to a downstream delivery point, it has foreclosed the possibility of selling that same capacity at a higher rate to an upstream delivery point. The discount, therefore, should apply to all transactions within the capacity path.

be addressed in the pipeline's compliance filings.

c. Implementation. El Paso requests clarification that the ability of shippers to segment through the nomination process applies only to shippers segmenting for their own use, not to shippers seeking to make a segmented capacity release transaction. El Paso maintains that allowing capacity release transactions through the nomination process would by-pass the bidding and posting procedures that apply to capacity release transactions. The Commission agrees that shippers subject to the posting and bidding requirements for capacity release transactions cannot avoid those requirements by designating a transaction as a segmented transaction.

El Paso and Kinder Morgan ask clarification concerning the implementation of the requirement that shippers be given the ability to segment capacity for their own use through the nomination process, without having to use the capacity release process to effectuate segmentation. El Paso asks that pipelines be able to implement shipper segmentation in different ways depending on the configuration of their existing computer system. Kinder Morgan asks that it be permitted to continue to use its capacity release mechanism to effectuate shipper segmentation for its own use until it can revise its computer systems to accommodate this process through the nomination process.

The Commission will expect pipelines to permit shippers to schedule segmented transactions for their own use in as efficient manner as possible through the nomination process and to revise their computer systems to permit such nominations as soon as is feasible. Until such computer revisions are made, pipelines should permit segmented transactions in the most efficient method feasible given their current computer configurations.

2. Mainline Priority at Secondary Points Within the Path

In Order No. 637, the Commission did not adopt a specific policy with respect to assigning priority over mainline capacity among shippers using secondary points when they pay the same rate for transportation within a zone.[125] Dynegy, National Energy Marketers, and NGSA contend the Commission should accord a higher priority to shippers seeking to use mainline capacity to reach secondary points within their capacity path than shippers seeking to use mainline capacity outside of their path. Dynegy and National Energy Marketers contend that according a shipper using a secondary point within its path a higher priority would help alleviate confusion with respect to state unbundling programs in which state officials are requiring marketers to hold primary firm capacity, rather than permitting them to use secondary capacity, because of concerns about reliability. Giving greater priority to shippers within their primary path, they assert, will alleviate the concerns about the reliability of secondary point transactions during constraint periods when pipelines limit deliveries. Dynegy maintains that, under the current system, it can often effectuate a delivery, but at a higher cost, by scheduling primary firm capacity and then purchasing an interruptible back-haul service to reach the secondary upstream point.

The Commission's goal in expanding segmentation and flexible point rights is to strengthen competition in the transportation market. As pointed out in Order No. 637, capacity allocation is most efficient when capacity is allocated to the shipper placing the highest value on obtaining the capacity. In order to provide for efficient allocation of capacity, shippers must have rights to capacity and be able to trade capacity so that the party placing the highest value can obtain it.[126]

In the situation presented by the rehearing requests, two shippers paying the same rate for capacity in a zone seek to use a secondary delivery point which is upstream of one shipper and downstream of the other. In the example below, shippers 1 and 2 pay the same rate for 10,000 Dth/d of capacity in the zone, with primary points at A and C respectively, and both shippers seek to deliver gas to point B. The pipeline is sized such that 30,000 Dth/d can be delivered to point A, 20,000 Dth/d to point B, and 10,000 Dth/d to point C.

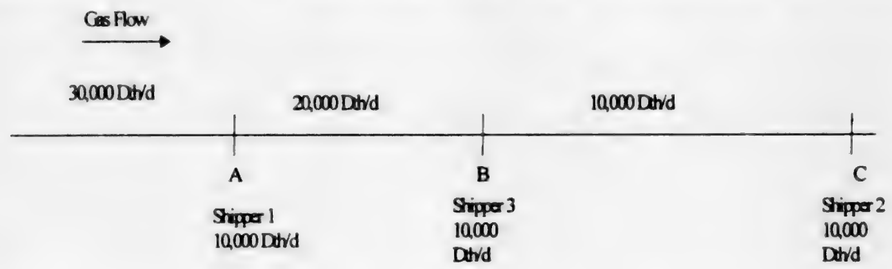

The Commission's prior policy was to allocate mainline capacity using secondary points on a *pro rata* basis among shippers seeking to use those secondary points,[127] although some pipelines had been permitted to implement a within-the-path allocation methodology.[128] The justification for *pro rata* allocation was that two customers paying the same rate should receive the same priority of service to secondary points.

The Commission, however, is concerned that providing all shippers in a zone with equal scheduling rights to secondary points does not provide for the most efficient use of mainline capacity or promote capacity release

[125] Order No. 637, 65 FR at 10196–97, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,304–306.

[126] *See* R. Posner, Economic Analysis of Law, § 3.1, at 28 (2d ed. 1977) (exclusive property rights are necessary to promote trading).

[127] *See* Tennessee Gas Pipeline Company, 71 FERC ¶ 61,399, at 62,577 (1995) (cases cited therein).

[128] *See* Panhandle Eastern Pipe Line Company, 78 FERC ¶ 61,202, at 61,870–71 (1997) (conditionally accepting within the path allocation); Northwest Pipeline Corporation, 67 FERC ¶ 61,095 (1994) (priority given to shippers moving within primary path).

because it creates uncertainty as to how much mainline capacity any shipper seeking to use secondary points will receive. Under *pro rata* allocation, neither shipper 1 nor shipper 2 has guaranteed rights to the mainline capacity for purposes of making deliveries to point B and, therefore, neither can trade those rights In addition, a shipper holding primary point capacity at point B (shipper 3) has a competitive advantage over either shipper 1 or shipper 2 in selling its capacity, since it can guarantee mainline capacity to point B and neither of the other two shippers can make a similar guarantee. As Dynegy and NEM point out, some state unbundling programs require shippers to obtain primary point capacity from the shipper at B in order to ensure that deliveries can be made.

The Commission, therefore, has determined to change its allocation policy to the within-the-path approach in order to improve competition. Under the within-the-path allocation approach, shipper 2 would have a higher priority than shipper 1 to use mainline capacity to reach secondary points within its capacity path. By using within-the-path priority, shipper 2 has a firm right to mainline capacity to delivery point B and, therefore, becomes a more effective competitor to the shipper holding primary point capacity at point B. Shippers needing capacity to point B now have a choice of buying mainline capacity from shipper 2 or shipper 3. Under this policy, shipper 2 would have primary mainline rights to ship to or beyond point B, but would have secondary rights to make deliveries at point B (unless shipper 2 is permitted to select B as an additional primary point as discussed previously).[129]

The Commission recognizes that because the pipeline in the example has a large rate zone that is not divided at constraint points, shipper 1 (the upstream shipper) pays the same rate as shipper 2 and receives less valuable rights under the within-the-path allocation. But it is not possible to allocate mainline capacity downstream of point A to shipper 1, because shipper 2 (with primary point rights at C) could preempt shipper 1's use of any capacity beyond point A by shipping gas to its primary point at C. Thus, the only method of creating tradable capacity rights is to give shipper 2 priority rights to all capacity upstream of its delivery point at C.[130]

The Commission therefore finds that the use of within-the-path priority better promotes efficient allocation of capacity and improves competition as compared with *pro rata* allocation and, accordingly, each pipeline must use the within-the-path allocation method in its compliance filing, unless it can demonstrate that such an approach is operationally infeasible or leads to anticompetitive outcomes on its system. The Commission encourages pipelines to look closely at their zone boundaries and to develop more efficient methods of allocating capacity based on price, so that capacity initially is allocated to the shipper placing the highest value on obtaining that capacity.

C. Imbalance Services, Operational Flow Orders and Penalties

In Order No. 637, the Commission determined that while OFOs and penalties can be important tools to correct and deter shipper behavior that threatens the reliability of the pipeline system, the current system of OFOs and penalties is not the most efficient system of maintaining pipeline reliability in the short-term market. The manner in which pipelines impose OFOs and penalties often restricts shippers' abilities to effectively use their transportation capacity. For example, OFOs can limit the ability of shippers to respond to prices in the market, undermining the fluidity of the commodity market.

The Commission also determined that Commission-authorized penalties provide an opportunity for shippers to engage in a form of penalty arbitrage, both across pipeline systems, and within a single pipeline system. Arbitrage activity imposes higher costs on all shippers on the system, and at peak, also may imperil systemwide reliability and trigger OFOs and emergency penalties. Further, many pipelines have responded to arbitrage on their systems by imposing stricter imbalance tolerances and higher penalties, which, in turn, often operate to limit and distort market forces.

Given the existence of arbitrage on and across pipeline systems, the Commission concluded that shippers are using penalties as a means to indirectly gain flexibility with respect to obtaining gas supplies and transportation capacity. Therefore, because the penalty system encourages shippers to engage in behavior that may be harmful to the system as a way to obtain needed flexibility, the Commission shifted its policy away from one that fosters the use of OFOs and penalties, to a "service-oriented" policy that gives shippers other options to obtain flexibility and relies on penalties only when necessary to protect system integrity. Specifically, Order No. 637 established three general policies designed to help give shippers positive incentives to use the pipeline appropriately to avoid the need for penalties and OFOs.

First, Order No. 637 required pipelines to provide separate imbalance management services, like park and loan service, to give shippers flexibility, directly.[131] The Commission explained that the imbalance management services, together with the provision of greater information about the imbalance status of shippers and the system, will give shippers a greater ability to remain in balance in the first instance, and thereby avoid penalties.

Second, Order No. 637 required pipelines to establish incentives and procedures to minimize the use of OFOs.[132] The Commission required each pipeline to revise its tariff to include a number of pipeline specific standards for the issuance of OFOs.

Third, Order No. 637 required pipelines to include in their tariffs only those penalty structures and levels that are necessary and appropriate to protect the system.[133] The Commission also required pipelines to credit the revenues from penalties and OFOs to shippers to eliminate the pipelines' financial incentive to impose penalties and OFOs.

Finally, Order No. 637 required each pipeline to either propose in its compliance filing *pro forma* changes to its tariff to implement the new requirements, or explain how its existing tariff and operating practices are already consistent with the new requirements.

The rehearing applicants seek rehearing and/or clarification of various aspects of each of the three new provisions. However, the petitioners do

[129] Shipper 2's ability to deliver gas using point B as a delivery point would depend on whether it has capacity on the downstream side of point B to take gas from the system. Providing for such take-away rights at city-gate points would be within the province of the state regulatory authority regulating the LDC at that point. With respect to priority at pipeline interconnects, the Commission, in Order No. 637, stated that such priority would be determined by pipeline confirmation rules, but that a shipper that has obtained firm capacity on both sides of the interconnect generally should have priority over a shipper that is using interruptible transportation on one of the pipelines, regardless of whether the firm shipper is using a secondary or primary point. *See* Order No. 637, 65 FR at 10197, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,306–7.

[130] Under within-the-path allocation, if shipper 1 values the capacity to point B more than shipper 2, it can purchase the capacity from shipper 2. This would ensure that the capacity is allocated efficiently to the highest valued user.

[131] 18 CFR 284.12(c)(2)(iii).

[132] 18 CFR 284.12(c)(2)(iv).

[133] 18 CFR 284.12(c)(2)(v).

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not oppose the core requirement that pipelines provide imbalance management services, but primarily seek rehearing of the new OFO and penalty provisions. Below, the Commission further details each of the new provisions and addresses the rehearing arguments related to each.

1. Imbalance Management

New section 284.12(c)(2)(iii) is an important component of the Commission's new policy focus to use positive incentives to achieve shipper behavior, rather than penalties or OFOs. In that section, the Commission established the policy that pipelines must provide to shippers, to the extent operationally practicable, imbalance management services, such as park and loan service, swing on storage service, or imbalance netting and trading. Pipelines will be permitted to retain the revenues from the new imbalance management services initiated between rate cases. As part of this requirement to provide imbalance management services, the Commission encouraged pipelines to design imbalance management services that would give shippers a built-in incentive to utilize the service, and to develop financial inducements for shippers to remain in balance or avoid behavior that is harmful to the system. In addition, the Commission stated in Order No. 637 that pipelines will not be permitted to implement the new imbalance services until they also implement imbalance netting and trading on their systems.

Rehearing requests were filed concerning the retention by pipelines of the revenue from imbalance management services between rate cases, and the applicability of the imbalance management service requirement to pipelines that do not impose imbalance penalties or OFOs. A number of requests for clarification of the requirement to offer imbalance management services were also filed. These are discussed below.

a. Retention of Imbalance Management Service Revenue Between Rate Cases. NASUCA and Penn./Ohio Advocate jointly, and Amoco argue that the Commission erred by allowing pipelines to retain the revenues from the new imbalance management services between rate cases. They argue that, since pipelines control the timing of rate cases and have no obligation to file a rate case, this policy could provide the pipeline with windfall profits at the expense of long-term shippers who pay 100 percent of the costs of the facilities used to provide those services.

NASUCA and Penn./Ohio Advocate argue that the Commission's general policy of permitting retention of revenues between rate cases should not apply here because the new services are being required as a remedy to existing unreasonable practices and procedures (*i.e.* gaming on pipeline systems), and pipelines should not be able to retain the benefits from such remedies. NASUCA and Penn./Ohio Advocate request that the Commission require pipelines to credit all of the imbalance management service revenues to firm shippers. Alternatively, they propose that the revenues be shared between the pipeline and long-term firm shippers, perhaps providing pipelines with a 10 percent share to encourage the pipelines to provide the services.

Amoco argues that if a pipeline's penalty free imbalance tolerance is set at an unreasonably low level, the retention of the imbalance management services revenues could result in significant windfalls. Amoco requests that pipelines not be permitted to retain imbalance service revenues, but be required to implement either an annual rate recalculation or a tracker mechanism to ensure that the pipeline does not overrecover its costs. Amoco also seeks clarification that pipelines will not be permitted to reduce or eliminate existing imbalance tolerance levels to levels that effectively force utilization of the new services.

As the Commission stated in Order No. 637, "[i]n order to give pipelines an incentive to develop these new imbalance management services, the Commission is not changing its current policy that pipelines may retain the revenues from a new service initiated between rate cases."[134] The Commission has decided not to change that policy in the context of the new imbalance management services being required here.

In requiring that pipelines offer imbalance management services to the extent operationally practicable, the Commission's goal, as stated in Order No. 637, is for pipelines to provide as many different imbalance management services as the pipeline can operationally, and to develop innovative imbalance management services that might not currently exist. It is important for pipelines to have an incentive to develop, create, and offer such new imbalance management services. The pipelines' retention of 100 percent of the revenues between rate cases provides an incentive for pipelines to offer imbalance management services and ensures that the use of imbalance management services will supplant the need for penalties. Allowing pipelines to retain only a *de minimus* share of the revenues will not provide an adequate incentive to develop and provide the services.

In response to Amoco's concern, pipelines will not be permitted to arbitrarily reduce or eliminate imbalance tolerance levels and increase penalty levels in an effort to force shippers to use imbalance management services, since the Commission is requiring pipelines to implement and justify reasonable tolerance and penalty levels. All such proposed changes will be reviewed by the Commission comprehensively along with all of the pipeline's imbalance management services to ensure that the impact of the services and penalties work together to achieve the Commission's policy objectives.

b. Who Must Comply. Michigan Gas Storage argues that the Commission should not require pipelines that do not impose OFOs or collect imbalance penalties to provide imbalance management services or information on shippers' and the systems' imbalance status.[135] Michigan Gas Storage asserts that because the purpose of requiring imbalance management services is to minimize the imposition of OFOs and penalties, there would be no apparent purpose served by requiring pipelines that neither impose OFOs or collect imbalance penalties to provide imbalance management services or imbalance status information.

The Commission agrees with Michigan Gas Storage that if a pipeline's tariff does not include OFO provisions and imbalance penalty provisions, it need not provide imbalance management services or information on imbalance status. The Commission's goal in requiring pipelines to provide imbalance management services and greater information regarding imbalances is to enable shippers to avoid imbalances so that they will not incur penalties or be subject to an OFO. If a pipeline has no authority to issue OFOs or to assess penalties for either imbalances or OFO violations, then a shipper has no need for imbalance management services, and there is no need to require pipelines to offer such services. Pipelines that do not impose OFOs or collect penalties apparently do not have problems with shipper imbalances.

Accordingly, the Commission will amend the first sentence of section 284.12(c)(iii) to state: "A pipeline with imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of its shippers to manage transportation imbalances." Similarly, the Commission will amend the last sentence of section 284.12(c)(v) to provide: "A pipeline with penalty provisions in its tariff must provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of the pipeline's system." However, if a pipeline that does not have such provisions in its tariff at any time decides to include OFO or imbalance penalty provisions in its tariff, then such pipeline must comply with sections 284.12(c)(iii) and (v).

c. Requests for Clarification. (1) Imbalance Netting and Trading. In Order No. 637, the Commission stated the following with respect to imbalance netting and trading:

> However, pipelines will not be permitted to implement the new imbalance services until they also implement imbalance netting and trading on their systems. Pipelines should not expect shippers to purchase new services until the shippers can determine whether imbalance trading will be adequate for their needs. Thus, the implementation of the new imbalance management services must coincide with the implementation of imbalance netting and trading. Since GISB has already approved business practice standards for netting and trading, pipelines should be able to implement imbalance netting and trading at the same time that they implement the new imbalance management services.[136]

Northern Distributor Group (NDG) requests clarification in two respects of the Commission's directive in Order No. 637 that pipelines implement imbalance netting and trading at the same time that they implement the new imbalance management services. First, NDG asserts that it is unclear whether the Commission established the Order No. 637 compliance filing date as the date certain by which pipelines must implement imbalance netting and trading, or whether the pipeline's obligation to implement imbalance netting and trading is dependent on whether the pipeline chooses to implement imbalance management services. NDG requests the Commission to clarify that regardless of whether a pipeline chooses to offer new imbalance management services on its designated compliance date, it must nevertheless offer imbalance netting and trading on that date. Second, NDG seeks clarification that a pipeline's implementation of imbalance netting and trading must be consistent with the GISB-approved netting and trading business practices.

In Order No. 637, the Commission determined that pipelines would be required to offer their shippers imbalance services. The Commission, however, determined that it would be unreasonable to expect shippers to purchase the new services unless the shippers first had an opportunity to evaluate whether imbalance trading would be sufficient for their needs. The Commission, therefore, imposed a moratorium on approving pipeline filings to establish imbalance services unless the pipeline has, or has proposed, an imbalance trading mechanism.

With respect to the pipeline's obligations to make compliance filings under Order No. 637, all pipelines are required to make *pro forma* compliance filings to establish the imbalance services they propose to comply with the Commission's regulation. Those services, however, will not be implemented until the Commission has reviewed the proposal and established an effective date. The Commission will not do so unless the pipeline has a pre-existing imbalance trading mechanism or one that will take effect at the same time as the imbalance services.

The Northern Distributor Group requests clarification as to when pipelines will be required to implement imbalance trading. In Order No. 587–G,[137] the Commission adopted a regulation requiring pipelines to implement imbalance trading, but deferred implementation of this regulation until GISB has developed the necessary standards. Although GISB initially had projected that such standards could be developed by June 30, 1998,[138] it has taken far longer to develop the necessary standards. GISB's Executive Committee has approved business practice standards for imbalance trading and GISB has now established an Expedited Data Development Subcommittee to develop the standards relating to the use of EDI for communication.[139] The Commission fully expects those standards to be approved quickly and, at that point, all pipelines will be obliged to implement those standards expeditiously. At the time when the imbalance trading standards are implemented, pipelines will be required to implement the imbalance services.

For a pipeline that wishes to implement imbalance services and imbalance trading at an earlier date, the pipeline should comply with the business practice standards already passed by GISB's Executive Committee. But the pipelines need only provide for imbalance trading on their Internet web sites. They do not need to establish EDI communication until GISB has approved the relevant technical standards for EDI.

(2) Third-Party Imbalance Management Services. New section 284.12(c)(iii) requiring pipelines to offer imbalance management services to its shippers also requires pipelines to provide their shippers with the opportunity to obtain imbalance management services from third-party providers. In describing section 284.12(c)(iii) in Order No. 637, the Commission stated that "under this policy, pipelines will not be permitted to give undue preference to their own storage or balancing services over such services that are provided by a third party."[140] The Commission then stated, "The Commission is requiring pipelines to include these imbalance management services as part of their tariffs."[141]

Koch is confused by the latter sentence quoted above. Koch states that if the Commission is requiring pipelines to permit third parties, within the scope of the pipeline's existing tariff provisions, to provide imbalance services, then it has no objection to the proposed changes. However, Koch objects if the Commission is requiring Koch to draft tariff provisions to implement services that third parties want to have included in Koch's tariff or to allow third parties the right to seek changes to Koch's tariff, outside the statutory requirements of section 5.

The Commission's intent was to require pipelines to include their own imbalance management services as part of their tariffs, not the third party's imbalance management service. However, the Commission expects the pipelines' tariffs to be crafted so that the pipeline will not unduly discriminate against shippers using other providers, or give undue preference to its own imbalance management services. For

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[134] Order No. 637, 54 FR at 10199, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,310.

[135] In new section 284.12(c)(2)(v), concerning penalties, pipelines are required to provide shippers with information on their imbalance and overrun status.

[136] Order No. 637, 54 FR at 10199, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,311.

[137] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 584–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998).

[138] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR 20072, 20081 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062, at 30, 677 (Apr. 16, 1998).

[139] Http://www.gisb.org/edd.htm (announcing formation of Expedited Data Development Subcommittee).

[140] Order No. 637, 54 FR at 10199, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,310.

[141] *Id.*

example, the pipeline's tariff should not contain unnecessary restrictions that prevent third-party imbalance providers from competing with the pipeline.

Both Koch and Kinder-Morgan request clarification with respect to how imbalance management services by third parties will be provided and whether such third-party providers will be subject to the Commission's NGA jurisdiction. They request the Commission to clarify that the third-party providers will be subject to the same statutory requirements and standards for providing services in interstate commerce that pipelines are subject to, such as open-access requirements or the requirements of Order No. 497. Otherwise, argues Kinder-Morgan, pipelines will be at a significant competitive disadvantage. Kinder-Morgan argues that to the extent third-party services are provided, a number of conditions must apply.[142] In addition, Kinder-Morgan requests the Commission to identify who will be responsible if third-party providers of imbalance services fail to provide the necessary balancing, and that it should not be the pipeline that is the "balancer of last resort."[143]

To the extent that the third-party providers are performing the interstate transportation of natural gas, as defined in the NGA, in their provision of imbalance management services, they will be engaging in a jurisdictional activity. However, a third-party provider may be able to provide imbalance management services that do not involve the interstate transportation of gas. Whether a third-party provider is performing jurisdictional transportation service is dependent on the characteristics of the particular imbalance management service being provided. For example, an imbalance management service provided by a third-party may consist simply of the sale of gas to make up an underdelivery. To the extent that the gas sale is a first sale, it would not be jurisdictional, and for jurisdictional gas sales, the Commission has already granted a blanket certificate to make sales for resale at negotiated rates.[144]

The Commission will not require that the conditions which Kinder-Morgan lists be attached to the provision of third-party imbalance management services. However, in their compliance filings, pipelines may include proposed tariff provisions for coordinating with third-party providers of imbalance services if such requirements are needed for operational purposes. Further, in the event a pipeline faces sufficient competition for imbalance management services from third party providers, the pipeline may be able to justify a request for market-based rates for that service.

(3) Clarification of Specific Phrases and Terms. Under section 284.12(c)(2)(iii), a pipeline must provide imbalance management services "to the extent operationally practicable." Amoco requests the Commission to clarify that phrase. Amoco argues that under such discretionary language, a pipeline could refuse to comply on the basis of an assertion that such services are not operationally practicable. Amoco asserts that either the burden of proof should be placed on the pipeline to support such a claim, or the language should be eliminated.

The Commission agrees with Amoco that the burden of proof is on the pipeline to support a claim of operational impracticability. The pipeline must provide sufficient evidence demonstrating why the provision of imbalance management services is "operationally impracticable."

IMGA states its belief that Order No. 637 intended the term "imbalance" to apply to both physical and scheduling imbalances,[145] and requests the Commission to clarify that the use of the term "imbalance" throughout Order No. 637 encompasses both physical and scheduling imbalances. If the Commission did not intend for the term "imbalances" to refer to both types of imbalances, IMGA requests the Commission to indicate which type of imbalance it meant each time the Commission used the term in the preamble of Order No. 637. The Commission confirms that the term "imbalance" was intended to apply to both physical and scheduling imbalances.

2. Operational Flow Orders

In Order No. 637, the Commission found that the imposition of OFOs "may severely restrict the purchase and transportation alternatives available to a customer during peak periods, precisely when such alternatives are critically needed to enhance the opportunities of a shipper to purchase such services at the lowest competitive prices."[146] Thus, new section 284.12(c)(2)(iv) establishes the principle that a pipeline must take "all reasonable actions to minimize the issuance and adverse impacts of operational flow orders (OFOs) or other measures taken to respond to adverse operational events on its system."

To implement this principle, the Commission required pipelines to revise their tariffs to adopt objective standards and procedures for the use of OFOs. Specifically, the Commission required each pipeline's tariff to: (1) State clear, individualized standards, based on objective operational conditions, for when OFOs begin and end; (2) require the pipeline to post information about the status of operational variables that determine when an OFO will begin and end, (3) state the steps and order of operational remedies that will be followed before an OFO is issued; (4) set forth standards for different levels or degrees of severity of OFOs to correspond to different degrees of system emergencies the pipeline may confront; and (5) establish reporting requirements that provide information after OFOs are issued on the factors that caused the OFO to be issued and then lifted.

On rehearing, only Koch and Kinder-Morgan take issue with OFO requirements imposed by Order No. 637. These arguments are discussed below.

a. Legal Authority and Need for OFO Standards and Procedures. Koch and Kinder-Morgan argue that the OFO provisions (as well as the penalty provisions discussed in the next section) violate section 5 of the NGA because the Commission has not made the requisite finding under section 5 that the existing OFO procedures are unjust, unreasonable, and unduly discriminatory. They assert that the Commission has departed without justification from the existing OFO policy established in Order No. 636 that OFOs are appropriate tools to deter harmful shipper conduct, and therefore, necessary for the pipeline to ensure system integrity in an open-access environment. Specifically, Koch and Kinder-Morgan assert that there is no record evidence supporting the Commission's finding that OFOs inhibit shipper flexibility, interfere with the fluidity of the commodity market, are a source of revenue, or are issued too frequently. Koch also disputes the Commission's decision to require all pipelines to revise their OFO

[142] Kinder-Morgan states that such conditions include, for example, Commission approval of the service prior to commencement, contractual privity between the third-party provider and the pipeline, and the availability of bi-directional flow at the delivery and/or receipt points involved. Request for Rehearing of Kinder-Morgan at 22.

[143] *Id.* at 23.

[144] 18 CFR 284.402 (1999).

[145] IMGA cites the Commission's discussion in Order No. 637 defining penalties as including penalties for physical and scheduling imbalances at 54 FR at 10197, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,317. IMGA Request for Rehearing at 10.

[146] Order No. 637, 54 FR at 10200, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,312.

procedures and standards instead of targeting only pipelines that are in fact issuing unnecessary OFOs. In addition, Keyspan requests clarification that if a pipeline proposes no change in its compliance filing, the Commission will act to make changes only when it is able to make the required section 5 findings.

In requiring pipelines to take actions to minimize the use and adverse impacts of OFOs, and to include objective pipeline-specific standards for the use of OFOs, the goal of the Commission is to enable pipelines to continue to use OFOs to protect pipeline integrity, without unnecessarily limiting or restricting competition in the market. The intent of the Commission is not to ban or restrict the use of OFOs so that pipelines may not impose OFOs when they are necessary to ensure system reliability. Rather, the new OFO policy and tariff requirements are designed to address the manner or way in which OFOs are being designed and imposed. The Commission seeks to ensure that they are being imposed only to the extent necessary to protect system reliability, and thus, that shippers are not needlessly restricted. In other words, the Commission is seeking ways for pipelines to use the proper mix of OFOs and positive financial incentives so that shippers can have as much flexibility as possible without causing operational problems that threaten reliability.

Therefore, the Commission has not departed from its existing policy that OFOs are appropriate tools for ensuring system integrity and reliability, and consequently need not find under section 5 that OFOs, *per se*, are unjust and unreasonable. Rather, the Commission has made a generic determination that the manner in which a pipeline imposes OFOs, or a pipeline's existing procedures or guidelines for its use of OFOs, may be unjust and unreasonable if the pipeline's issuance of an OFO unnecessarily restricts shippers' flexibility or is not well-defined, or if the OFOs are issued too frequently or stay in effect too long for the purpose of maintaining system reliability.

The Commission's findings that some pipelines are issuing OFOs that may be unnecessary for system reliability purposes, and that the manner in which some pipelines impose OFOs may unnecessarily restrict shipper flexibility, are based on adequate evidence. The Commission concluded from the comments to the NOPR,[147] and the Commission staff's own independent analysis of pipeline OFO tariff provisions, as well as the record in the cases cited in Order No. 637,[148] that the design and imposition of OFOs are not always tailored to ensure OFOs are imposed to preserve the integrity of system operations. For instance, the comments, tariff provisions, and cases revealed that OFO tariff provisions are not well defined, permit OFOs to be issued too frequently and to stay in effect too long, and do not give adequate warnings to shippers. All of this evidence provided the Commission with a reasonable basis upon which to require all pipelines to make a *pro forma* tariff filing to rejustify their current OFO provisions as just and reasonable.

Thus, the Commission has not yet made a section 5 determination that any particular pipeline's tariff regarding OFOs is, in fact, unjust and unreasonable. Any such section 5 determination will be made in the individual pipeline compliance filings. Such filings give individual pipelines, like Koch, the opportunity to show why their existing tariffs should not be considered unjust and unreasonable and that their tariffs are already in compliance with Order No. 637. In response to Keyspan, if the Commission finds that changes in a particular pipeline's tariff are warranted, the Commission will act under section 5 to implement such changes. Accordingly, the new OFO regulation does not violate section 5 of the NGA, and the Commission has acted within its authority.

b. The Reasonableness of the OFO Standards and Procedures. Kinder-Morgan and Koch argue that the Commission has not imposed a just and reasonable remedy to the allegedly unlawful existing OFO procedures. They argue that the new OFO procedures take away the pipelines' ability to manage their systems and jeopardize the provision of reliable service to customers. Kinder Morgan asserts that in situations where OFOs are issued, the concern should be whether deliveries to all customers can be maintained, not whether one shipper is unable to reduce its gas prices by a few pennies.

As the Commission stated above, the new OFO policy and requirement to establish OFO standards does not ban the use of OFOs and thereby remove pipelines' ability to control their systems. The Commission agrees that the reliability of service to all customers should be of greater concern than the reduction in one shipper's flexibility, where system reliability is a genuine or legitimate concern.

Kinder Morgan specifically argues the requirement, that pipelines set forth clear pipeline-specific standards based on objective operational conditions for when OFOs will begin and end, unduly constrains pipelines because it assumes both static conditions and perfect foresight. Kinder-Morgan asserts that operating conditions change over time, and the pipeline cannot predict all possible operating conditions that would justify issuance of an OFO. Kinder-Morgan also maintains the OFO tool should not be restricted because OFOs are particularly important to pipelines that have no storage or only limited storage; since they have no ability to absorb imbalances and counteract adverse operating conditions. Similarly, Koch requests clarification that the OFO policy to be implemented will be tailored specifically to meet Koch's operational needs, rather than those of some other pipeline.

Kinder-Morgan misinterprets what the Commission is requiring. The Commission expects pipelines to formulate the pipeline-specific OFO standards based on their reasonable expectation of potential operating conditions. The Commission is not prohibiting a pipeline from issuing an OFO until a particular predesignated operating condition actually occurs. The pipelines may build flexibility into the standards and procedures so that OFOs may be issued based on expectations or in anticipation of particular operating conditions. This flexibility is only limited by the need to draft standards that will give shippers clear notice of the instances when an OFO could be issued. The particular OFO standards applicable to each pipeline can be developed in the individual compliance filing proceedings, where the reasonableness of the standards can be determined in the context of the pipeline's complete imbalance management, penalty and OFO scheme. Further, the Commission clarifies that it is not requiring a set of rigid OFO standards invariant to the particular needs of individual pipelines. The Commission will permit considerable variation in the tariff provisions to enable pipelines to tailor OFO standards to fit the operational parameters of their

[147] *E.g.*, Comments of Shell Energy Services Company, L.L.C. at 17, Florida Cities at 7–8, and American Forest & Paper Association at 43.

[148] *See, e.g.*, NorAm Gas Transmission Company, 79 FERC ¶ 61,126, at 61,546–47 (1997); Southern Natural Gas Company, 80 FERC ¶ 61,233, at 61,890 (1997) Northern Natural Gas Company, 77 FERC ¶ 61,282 (1997); Panhandle Eastern Pipe Line Company, 78 FERC ¶ 61,202 (1997); Northwest Pipeline Company, 71 FERC ¶ 61,315 (1995). The Commission determined the validity of the claims made in these cases by conducting its own analysis of the pipelines' tariffs.

particular systems, such as the lack of storage facilities.

3. Penalties

New section 284.12(c)(2)(v) establishes three key principles. First, it provides that "[a] pipeline may include in its tariff transportation penalties only to the extent necessary to prevent the impairment of reliable service." The Commission recognized in Order No. 637 that unnecessarily high penalties have been imposed in the past, and that the penalties on some pipelines are at the same level during peak and non-peak periods, when the potential for the impairment of reliability may differ. The Commission stated that "[n]on-critical day penalties, or penalties imposed during off-peak periods, may not be the most appropriate and effective to protect system operations."[149] Therefore, the Commission explained that it is requiring pipelines to narrowly design penalties to deter only conduct that is actually harmful to the system. The Commission directed all pipelines in their compliance filings to either explain or justify their current penalty levels and structures under this standard, or revise them to be consistent with this principle.

The second principle established by this regulation is that pipelines must credit to firm shippers all revenues from all penalties, net of costs, including imbalance, overrun, cash-out, and OFO penalties. The Commission determined that the elimination of the pipelines' economic incentive to use and impose penalties was necessary to shift pipelines to the use of non-penalty mechanism to solve and prevent operational problems. The Commission did not prescribe on a generic basis the details of the revenue crediting mechanism, including which shippers will receive the penalty revenue credits, but instead will permit each pipeline to formulate an appropriate method for implementing penalty revenue crediting on its system. However, the Commission did indicate that, ideally, penalty revenues should be credited only to non-offending shippers.

The third principle established by the new regulation is pipelines must provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of its system as a whole.

On rehearing, the petitioners argue that the new penalty policy violates section 5 of the NGA and is unsupported by concerns regarding penalty arbitrage, restrictions on shipper flexibility, and penalties being a source of revenue. The rehearing applicants also argue that the Commission erred by limiting the use of penalties "only to the extent necessary to prevent the impairment of reliable service," and by requiring the crediting of penalty revenues. In addition, several applicants request clarification of the revenue crediting requirement and what constitutes a penalty. Finally, one petitioner requests the Commission to implement a "no-harm, no-foul" policy.

a. Legal Authority and Need for New Penalty Policy. As they argue with respect to OFOs, Kinder-Morgan and Koch argue that the new penalty provision violates section 5 of the NGA because the Commission has not found existing penalties unjust and unreasonable. They assert that the Commission has departed without justification from the existing policy that recognizes that penalties are an appropriate tool to deter shipper misconduct. Kinder-Morgan and Koch argue that the Commission's findings that penalties encourage arbitrage and are a source of revenue are unsupported, and do not justify the Commission's remedy of limiting or eliminating the use of penalties.

The Commission acknowledges that penalties are an appropriate tool to protect system reliability. In Order No. 637, the Commission did not find the use of penalties, *per se*, to be an inappropriate method of protecting system integrity. The Commission did find, however, that (a) penalties, as currently designed and applied, are not always being used to ensure system reliability, and (b) penalties may not be the most appropriate way to preserve system reliability. The Commission found that there could be other ways for pipelines to ensure reliability, that did not involve the use of a negative deterrent.

Specifically, the Commission determined that the use of imbalance management services would be a better way to keep shippers from engaging in behavior that could adversely affect system reliability, especially since penalties provide the opportunity for arbitrage behavior. Thus, the Commission shifted its policy away from penalties and towards imbalance management services. Yet, the Commission nevertheless recognized that penalties could still be a valid mechanism to ensure system integrity, if penalty levels and structures were better designed to meet that purpose. Therefore, the Commission did not "eliminate penalties altogether," as Kinder-Morgan seems to believe, but rather, redefined their role. Thus, the new penalty policy does not violate section 5 of the NGA because the Commission has not abandoned its existing penalty policy recognizing penalties as an important tool to protect system reliability; the Commission has shifted its policy focus to place less reliance on penalties.

The Commission's determinations that changes to the design and application of pipelines' penalty levels and structures are necessary, and the penalty system may not be the best way to ensure system reliability, are adequately supported. The fact that arbitrage is occurring and that penalties provide the opportunity for shippers to engage in arbitrage is well documented by a number of cases in which pipelines sought higher overrun and imbalance penalties and lower tolerances specifically in response to arbitrage activity on their systems.[150] The Commission agrees with Kinder-Morgan that the existence of arbitrage does not justify the elimination of penalties; the Commission is not eliminating penalties. However, the fact that arbitrage is occurring not only across pipeline systems but within pipeline systems demands that pipelines revise the level and structure of their penalty provisions to minimize the opportunity for arbitrage. For example, as the Commission stated in Order No. 637, pipelines may be able to change their imbalance cash-out procedures or methods to eliminate the incentives for shippers to borrow gas from the pipeline because the cash-out price is less than the market price for gas.[151]

The Commission also determined after review of the comments to the NOPR that high penalties and low or no tolerances can operate to restrict shipper flexibility and distort market forces and are not effective in deterring harmful conduct and protecting system reliability.[152] Further, the penalty tariff

[149] Order No. 637, 54 FR at 10201, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,314

[150] *E.g.*, Northern Natural Gas Company, 77 FERC ¶61,282 at 62,236 (1997); Panhandle Eastern Pipe Line Company, 78 FERC ¶61,202 at 61,876–77 (1997), *reh'g denied*, 82 FERC ¶61,163 (1998); and Williams Natural Gas Company, 78 FERC ¶61,342 (1997).

[151] Order No. 637, 54 FR at 10201, III FERC Stats. & Regs. Regulations Preambles ¶31,091 at 31,314–15.

[152] *E.g.*, Comments of Dynegy, Chapter 6 and Appendix B; Comments of Proliance Energy, LLC at 4–5. In Appendix B of Dynegy's comments, Dynegy provided a review of the significant penalty cases in the recent past, and its assessment of current penalty and OFO tariff provisions. In one of the cases cited by Dynegy, Williams Natural Gas Company, 78 FERC ¶61,342 at 62,462 (1997), the parties argued that the high contract overrun penalties being sought would prompt responsible shippers to oversubscribe to transportation capacity solely to provide a safety margin, rather than deter harmful conduct.

provisions proposed by the pipelines in the penalty cases cited above, led the Commission to conclude that penalty provisions needed to be better crafted and defined, and better tailored to address potential harm to system reliability.

Thus, as the Commission similarly explained with respect to the new OFO policy, *supra*, the Commission has not yet made a section 5 determination that any particular pipeline's penalty provisions is, in fact, unjust and unreasonable. Any section 5 determination will be made in the individual pipeline compliance filings, and such determinations will be made on specific findings that the existing penalty provisions are unjust and unreasonable, and the replacement provisions are just and reasonable.

b. Limitation of Penalties Only to the Extent Necessary to Prevent the Impairment Of Reliable Service. Kinder-Morgan and CNGT object to the Commission's limitation on the use of penalties "only to the extent necessary to prevent the impairment of reliable service."[153] CNGT argues that the limitation allowing penalties only to the extent necessary to prevent the impairment of reliable service is overly restrictive because system reliability is only one purpose of penalties. CNGT argues that penalties also serve to enforce contractual rights, obligations, and limitations, and to discourage penalty arbitrage.

Further, Kinder-Morgan and Keyspan raise questions about whether the requirement that penalties must be necessary to prevent the impairment of reliable service prohibits pipelines from issuing penalties during non-critical periods. Kinder-Morgan takes issue with what it believes is the Commission's assumption underlying this provision—that penalties simply are "not required."[154] Kinder-Morgan argues that pipelines may need penalties to maintain system integrity during non-critical periods, as well as during critical periods. Conversely, the Industrials request the Commission to require pipelines to use a "no harm/no foul" mechanism, unless the pipeline is operationally constrained from doing so.

The Commission denies the requests to change the requirement that penalties be justified solely on the basis of system reliability. The pipelines themselves recognize that "the fundamental purpose of penalties and OFOs is to protect the reliability of service to all shippers * * *"[155] It was precisely this purpose that the Commission recognized in Order No. 636, when it permitted pipelines to develop and utilize OFOs and penalties as system management tools. Thus, the requirement that pipelines impose penalties "only to the extent necessary to prevent the impairment of reliable service" simply reflects a formalized requirement that pipelines use penalties exclusively for their intended purpose. The Commission is not permitting pipelines to impose penalties for other purposes, such as the enforcement of contractual obligations, where unrelated to system reliability. The Commission has determined that shippers should be given the flexibility to exceed contractual limitations, unless such action jeopardizes system reliability and integrity. For example, if a shipper overruns its contractual entitlement, and its action does not affect the reliability of the pipeline's service, there is no reason for the pipeline to charge a penalty. Of course, however, the pipeline may charge the shipper for the additional transportation service.

The question whether penalties may be imposed during non-critical periods needs to be determined in the pipelines' compliance filing proceedings and cannot be decided in the abstract. Contrary to Kinder-Morgan's statement, the Commission did not find that penalties are "not required."[156] The Commission reiterates that penalties may be required, especially during critical periods when system reliability is most in jeopardy. With respect to penalties during non-critical periods, the Commission stated, "[u]nder the regulations adopted in this rule, pipelines will only be able to impose penalties to the extent necessary. This requirement may result in *either* no penalties for non-critical days or higher tolerances and lower penalties for non-critical as opposed to critical days."[157] The Commission will examine such issues in the individual compliance filing proceedings, where the Commission can evaluate how the proposed imbalance management services, OFO provisions, and penalty structures all work together, as an overall program of system management.

c. Crediting of Penalty Revenues. Only Koch and CNGT seek rehearing of the Commission's decision to require pipelines to credit penalty and OFO revenues, net of costs, to shippers. Koch argues that crediting the penalty and OFO revenues weakens the deterrent function of penalties, which are designed and have been implemented to deter abusive shipper behavior. Koch maintains that there is nothing inherently wrong with shippers being punished for their inappropriate actions. Koch asserts that requiring the penalty revenue to go back to the shippers, offending or not, is unwarranted because they have not assumed any of the risks that warrants receipt of such compensation. Koch states that penalties are designed to compensate pipelines for the risks they face from a shipper that is outside the parameter of the pipeline's tariff. Koch also claims that the Commission's concern about penalties being profit centers for pipelines is not applicable on all pipelines. Koch states that it has received virtually no penalty revenue since its Order No. 636 tariff became effective.

CNGT seeks rehearing of the requirement to credit penalty revenues if the Commission continues to strictly limit penalties to reliability needs.

The goal of the Commission's new policy on penalties is to encourage pipelines to rely less on penalties and more on non-penalty mechanisms to manage their systems, such as imbalance management services, and to design and impose only necessary and appropriate penalties. Allowing pipelines to retain the revenues from penalties provides pipelines with a financial incentive to impose penalties where they may not be required to ensure system reliability, or to set penalties at inappropriate levels. It also can discourage pipelines from developing the other, non-penalty mechanisms that might give shippers positive incentives to control their imbalances. Therefore, the Commission must require the crediting of penalty and OFO revenue to eliminate the financial incentive that retention of penalty revenue provides the pipeline. Only by removing this incentive will pipelines begin to rely on other management techniques and use penalties less. Thus, the Commission

[153] Request for Rehearing of Kinder-Morgan at 11, quoting Order No. 637, 54 FR at 10201, III FERC Stats. & Regs. Regulations Preambles ¶31,091 at 31,314.

[154] Request for Rehearing of Kinder-Morgan at 8.

[155] Request for Rehearing of Kinder-Morgan at 8.

[156] Kinder-Morgan relies on the following statement by the Commission, but misinterprets it: "First, penalties are not required, but to the extent that a pipeline assesses penalties, they must be limited to only those transportation situations that are necessary and appropriate to protect against system reliability problems." Order No. 637, 54 FR at 10201, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,314. This first clause of the statement was intended to clarify that the Commission was not requiring pipelines to include penalties in their tariffs or to impose penalties on their shippers, and was not an affirmative finding on the merits that penalties are not required.

[157] Order No. 637, 54 FR at 10202, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,317 (emphasis added).

reemphasizes that the crediting of penalty and OFO revenues to firm shippers is necessary to eliminate the pipelines' incentive to utilize penalties.

The Commission recognizes that penalties serve a deterrent function. The deterrent function is a legitimate function where the penalty is narrowly designed to protect the integrity of the system. The crediting of penalty revenues arguably will weaken the deterrent function, as Koch maintains, only to the extent significant revenue is credited back to the offending shippers. While the Commission is not requiring that the revenue be credited exclusively to non-offending shippers, the Commission's objective is that where possible, pipelines should credit the revenue only to non-offending shippers.[158] Further, while Koch is correct that there is nothing inherently wrong with using a punishment such as a penalty as a deterrent, the Commission has determined that a more effective and less restrictive way for pipelines to maintain control of their systems is for pipelines to rely on services and incentives that enable and encourage shippers to behave appropriately without the threat of punishment.

Several pipelines request clarification of the revenue crediting requirement. Coastal requests the Commission to clarify that a pipeline's responsibility to credit penalty revenues is net of any costs incurred (i.e. demand credits to customers whose service was curtailed) or revenues foregone by pipeline as a result of the actions which resulted in penalty being assessed. Similarly, Tejas requests the Commission to clarify that OBA charges may be netted against any penalty revenue. In addition, Paiute requests clarification that under the cost netting exclusion, it will be permitted to retain scheduling penalty revenues that it assesses to its shippers during Northwest Pipeline Corporation's Declared Entitlement Periods because the Northwest penalties assessed Paiute during Declared Entitlement Periods represent a cost to Paiute. Finally, Enron requests clarification that the revenue crediting mechanisms take into account penalty revenues included in developing underlying rates. Enron maintains that until a pipeline's next general rate case, crediting should only be required with respect to net penalty proceeds that exceed any amounts included in developing existing rates (whether through an allocation or though the inclusion of representative penalty levels). Otherwise, states Enron, the double counting of penalty revenues would result.

These issues may depend on the facts of individual cases. Pipelines that seek to net out costs incurred as a result of a shipper's actions that caused the penalty to be assessed must demonstrate that the shipper's conduct in fact caused such costs. Similarly, pipelines seeking to offset penalty revenues included in developing underlying rates should include in their compliance filings a detailed description of how penalty revenues were included in designing their rates. The Commission will consider these matters, along with other factors, to determine the appropriate revenue crediting in each case.

Coastal requests the Commission to allow pipelines to establish a surcharge mechanism in their tariffs to impose surcharges on customers who receive penalty credits to allow the pipelines to recover those credits if additional costs are found attributable to the penalty event after the refund is made. The Commission will not allow pipelines to establish a surcharge mechanism to recoup revenue credits from firm customers to recover additional costs discovered after-the-fact. The Commission expects pipelines to build into their revenue crediting mechanisms a reasonable amount of time in which to accurately determine the true level of costs and revenues before actually crediting the revenues.

Koch asks for clarification in a number of respects on how to implement revenue crediting on its system. The Commission is not requiring any particular revenue crediting mechanism; pipelines may propose whatever implementation mechanism is best for their systems. The Commission will address any questions regarding the implementation of revenue crediting in the individual pipeline compliance proceedings.

d. Other Requests for Clarifications. A number of rehearing applicants request clarification with respect to what constitutes a "penalty."[159] For example, the Industrials seek clarification that Order No. 637 applies to all operational limits that have punitive or disciplinary effects and to any tariff provision that may trigger an additional charge or punitive action to shippers. Tejas seeks clarification whether a tiered cash-out program constitutes a penalty, and Koch questions whether unauthorized gas overrun charges are penalties. Keyspan requests clarification whether pipelines are required to explain all penalties, or just imbalance penalties.

The Commission considers a penalty to be any charge imposed by the pipeline on a shipper that is designed to deter shippers from engaging in certain conduct and reflects more than simply the costs incurred as a result of the conduct. Thus, the term "penalty" was intended to encompass more than just imbalance penalties, and includes, for example, scheduling, OFO, and unauthorized overrun penalties, as well.

While a tiered cash-out program is a penalty mechanism, a cash-out mechanism that only requires the shipper to reimburse for the cost of gas provided by the pipeline is not a penalty. However, some shippers allege that certain pipelines' cash-out mechanisms operate as penalties.[160] Therefore, the Commission expects pipelines to include in their *pro forma* compliance filings their cash-out provisions, in addition to their provisions for imbalance management services, netting and trading, OFOs and penalties. The Commission cannot evaluate the components of a pipeline's system management program, such as the cash-out mechanism, in isolation. The Commission must consider the imbalance services, and netting and trading, OFO, and penalty provisions together to evaluate how they function together in light of the pipeline's characteristics. This evaluation will occur in the individual compliance filing proceedings.

III. Reporting Requirements for Interstate Pipelines

A. Transactional Information

To equalize the reporting requirements for capacity release transactions and pipeline transactions, and to simplify the overall reporting system, Order No. 637 required pipelines to report the same transactional information about both their own firm and interruptible transactions, and their released capacity transactions, and established a single, new reporting requirement for this transactional information. Section 284.13(b)(1) requires the pipeline to post transactional information on its Internet web site contemporaneously with the execution or revision of a contract for firm service. For interruptible transportation, section 284.13(b) requires pipelines to post the information on a daily basis. Further, pipelines are required to keep this firm and interruptible transactional information available on their web sites for 90 days, and to archive this information for a period of three years after the 90-day period expires.[161]

Rehearing requests have been filed concerning the new transactional reporting requirements on two main grounds " confidentiality and burden. With respect to confidentiality, as described more fully below, the rehearing applicants, largely marketers, essentially argue that the information in the new transactional reports is commercially sensitive information, which if disclosed publicly and, particularly, contemporaneously with the transaction, will cause competitive harm to shippers. With respect to burden, the pipeline applicants maintain that the magnitude of the information required to be reported is burdensome to the pipelines. In addition, rehearing applicants seek revision or clarification of certain of the specific transactional data elements.

The reporting of detailed transactional information is necessary to provide shippers with price transparency for informed decisionmaking, and the Commission and shippers with the ability to monitor transactions for undue discrimination and preference. The need for more informed decisionmaking capabilities and the ability to monitor for undue discrimination arises because the Commission is making changes in the way it regulates the natural gas industry, fostering competition where it can and moving toward lighter-handed regulation where it can. Specifically, the Commission is removing the rate cap from short-term capacity releases, and thus will be relying on competitive forces, as well as some regulatory controls, to protect against the exercise of market power. As a result, it becomes increasingly important to provide good transactional information to facilitate competition for pipeline capacity and between pipeline capacity and released capacity, and to monitor the market for potential undue discrimination or preference.

The disclosure of greater information regarding capacity transactions is necessary to achieve these dual goals of fostering competition and market monitoring. To foster competition, it is not sufficient merely to ensure there are multiple competitors, there also needs to be good information to enable buyers to make informed choices among the competitors. As the Commission explained in Order No. 637[162] in discussing the removal of the short-term capacity release rate ceiling:

> Difficulty in obtaining information can reduce competition because buyers may not be aware of potential alternatives and cannot compare prices between those alternatives. The reporting requirements will expand shippers' knowledge of alternative capacity offerings by providing more information about the capacity available from the pipeline as well as those shippers holding capacity that is potentially available for release. The reporting requirements further will provide shippers with more accurate information about the value of capacity over particular pipeline corridors so that shippers can make more informed choices about the prices of capacity they may wish to purchase.

In addition, requiring detailed information about pipeline transactions to be reported, where very little had previously been required, will increase and improve competition by equalizing the information available to the market for capacity release transactions and pipeline transactions. Since pipeline capacity and released capacity now compete head-to-head, shippers must have the same information about both. Further, the reporting of increased information on pipeline transactions is important to enable pipeline service pricing to discipline capacity release pricing, acting as a check on any market power in the secondary market.

Reporting of data associated with capacity transactions is also critical to monitoring the market for undue discrimination or preference. The more detailed transactional information that is made available to market participants and the Commission, the better able both shippers and the Commission will be to identify situations in which market power is being abused, and the information will enable the Commission to tailor specific remedies. Moreover, the reporting of detailed transactional information is necessary not only for the monitoring of the current market for abuses of market power, but also for the Commission to assess the need for further regulatory reforms in the future.

As discussed further below, because of the importance of detailed transactional information for market monitoring and informed decisionmaking, the Commission generally is denying the rehearing requests that object to the new transactional reporting requirements on the basis of confidentiality and burden. However, the Commission is granting rehearing of the requirement that the firm transactional data must be posted contemporaneously with contract execution. The Commission is adjusting the timing of disclosure to require firm and interruptible transactional data to be posted no later than the first nomination for service.

1. Confidentiality

a. Need for Transactional Information. Columbia Gulf argues that the Commission has not justified the need for requiring the disclosure of confidential information. Columbia Gulf asserts that the Commission's finding that disclosure of detailed transactional information is necessary to provide shippers with improved decisionmaking and monitoring abilities is unsupported.[163] Columbia Gulf also questions why the Commission is requiring the detailed transactional information in light of the fact that natural gas commodity costs are already publicly available and widely scrutinized, and the industry itself, through GISB, has already determined the information that needs to be posted.

As the Commission explained above, the reporting of detailed transactional information is necessary because the Commission is modifying its method of regulating the natural gas industry by replacing traditional regulatory controls, such as the price cap on short-term capacity releases, with competition. Thus, greater transactional information is necessary to ensure that competition flourishes, and that market power and undue discrimination remain in check in the new competitive environment. To the extent that Columbia Gulf maintains that improved decisionmaking and market monitoring can occur without requiring greater information, the Commission finds it axiomatic that greater, more complete and detailed information about transactions will greatly improve shippers' ability to make informed decisions, and both the shippers' and the Commission's ability to monitor the market.

Further, while natural gas commodity costs are publicly available, as Columbia Gulf notes, information about transportation transactions, particularly transportation prices, is necessary to effectively evaluate the information about gas prices. Finally, the Commission will not defer to GISB with respect to the information that the industry needs. GISB is not a regulatory body and the market is not self-regulating.

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[158] The Commission stated in Order No. 637 that "[i]deally, penalty revenues should be credited only to non-offending shippers." Order No. 637, 54 FR at 10201, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,315.

[159] Requests for Rehearing of Industrials, Keyspan, Koch, and Tejas.

[160] Request for Rehearing of Industrials at 72.

[161] 18 CFR 284.12(c)(3)(v).

[162] Order No. 637, 65 FR at 10184, III FERC Stats. & Regs. Regulations Preambles ¶ 30,091 at 31,283.

[163] For example, Columbia Gulf disputes the Commission's statement that "[s]hippers need to know the price paid for capacity over a particular path to enable them to decide, for instance, how much to offer for the specific capacity they seek." Order No. 637, 65 FR at 10206, III FERC Stats. & Regs. Regulations Preambles ¶ 30,091, at 31,324. Request for Rehearing of Columbia Gulf at 5. Williston Basin also disputes this point. Request for Rehearing of Williston Basin at 7.

b. Competitive Harm. Several marketers and two pipelines seek rehearing of the Commission's decision to require pipelines to publicly post data about their capacity transactions, such as shipper names, individual contract numbers, and receipt and delivery points.[164] They argue that such data are confidential information, and if publicly disclosed, will create unfair competition and competitive harm.

For example, Columbia Gulf argues that marketing strategies for both pipelines and shippers would be revealed, and bundled sales activity would increase, resulting in decreased price transparency and competition. Dynegy and NEMA argue that by tracking chain of title from individual contract number and receipt and delivery points, shippers will be able to learn immediately of other shippers' supply sources and markets. They argue that the knowledge of other shippers' supply sources and markets and the rates shippers pay for transportation will enable shippers to undercut one another's transactions. Thus, Dynegy and NEMA argue that the disclosure of the transactional information will seriously threaten the continued development of competitive gas markets and pose great risks to gas marketers whose business relies on fashioning creative packages of services at competitive prices.[165]

Williston Basin argues that the posting of the transactional information will enable shippers to know their competitors' supply and markets, and what other shippers are paying, which might prevent Williston Basin from being able to negotiate the best price for the services it offers. In addition, some rehearing applicants, most notably Columbia Gulf and Williston Basin, assert that the Commission in Order No. 637 has failed to balance the benefits of disclosure of confidential information against the harm that would be caused by divulging the commercially sensitive information.

Most of the rehearing applicants objecting to the new transactional reporting requirements on the basis of confidentiality request that the Commission either exclude the commercially sensitive data from that required to be reported, allow pipelines to file the transactional information only with the Commission under protected status, or delay the posting of the information so it is not required to be posted contemporaneously with the execution of the contract.

The Commission remains unpersuaded that the information in the transactional reports is commercially sensitive data that are entitled to confidential treatment. Section 4 of the Natural Gas Act and the NGA's general statutory scheme clearly contemplates full disclosure of contractual terms and prices, as a means of preventing undue discrimination. Section 4(b) of the NGA provides that no natural-gas company may, with respect to any jurisdictional transportation or sale of natural gas, "make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage," or "maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, * * *".[166] The immediately following section, section 4(c),[167] sets forth the means for ensuring that such undue discrimination or preference does not occur:

> Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time * * * and in such form as the Commission may designate, and *shall keep open in convenient form and place for public inspection*, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

Although the NGA gives the Commission some discretion with respect to how to provide for the disclosure of rate schedules and contracts, clearly the public disclosure of rate schedules and related contracts, in some manner, is required.

Under new section 284.13(b) of the regulations, the Commission is requiring pipelines to post the following data: the name and identification number of the shipper receiving service under the contract, the contract number, the rate charged under each contract, the maximum rate, the duration of the contract, the receipt and delivery points and zones or segments covered by the contract, the contract quantity or volumetric quantity, special terms and conditions applicable to a capacity release and special details pertaining to a transportation contract, and whether there is an affiliate relationship between the pipeline and the shipper or between the releasing and replacement shipper. As is evident, the transactional information the Commission is requiring to be reported, and that those requesting rehearing want to remain confidential, is for the most part information that either is an inherent part of, or included in, the very transportation contracts the NGA requires to be disclosed. The affiliate relationship is the only piece of information required that may not necessarily be reflected in the contract. However, those requesting rehearing do not argue that that particular data element is commercially sensitive data.

Therefore, as the Commission held in Order No. 637, the posting of the transactional information is entirely consistent with the NGA's statutory framework intending for contracts to be publicly disclosed. Significantly, no party on rehearing has taken issue with the Commission's view of these statutory requirements.

Further, the full disclosure of all of the key contractual information—shipper name, contract number, contract quantity, rate charged, and receipt and delivery points—is consistent with the Commission's policy direction toward transparency in the market. The Commission has determined that the disclosure of information, rather than its concealment, will best help the market to function more efficiently and competitively, to the ultimate benefit of natural gas consumers.

The rehearing applicants allege that competitive harm will result, generally to individual firms, from the public disclosure of the transactional information. However, the Commission is unconvinced that the disclosure will result in competitive harm substantial enough to outweigh the pro-competitive and market monitoring purposes for which both the NGA and the Commission require the information to be disclosed.[168] The pipelines, those from whom the information would be obtained, do not explain precisely how competition will be harmed. Columbia Gulf tersely states that the marketing strategies of pipelines and shippers would be revealed. Williston Basin essentially argues that it will become more difficult for it to negotiate the best price for its services. The marketers, Dynegy and NEMA, focus on potential competitive disadvantage from the perspective of a service provider, but do not consider the benefits that they may realize as pipeline customers from the availability of transactional information. Thus, while disclosure of the transactional information may cause some commercial disadvantage to individual entities, it will benefit the market as a whole, by improving efficiency and competition. Buyers of services need good information in order to make good choices among competing capacity offerings. Without the provision of such information, competition suffers.

Further, pipelines have been required to post for capacity release transactions virtually all of the information that they must now post regarding their own capacity transactions. However, no competitive harm has been alleged from the disclosure of the capacity release transactional data. Nor do any of the rehearing applicants argue that pipeline transactions require greater confidentiality than capacity release transactions.

The Commission recognizes that previously, during the time when pipelines were still natural gas merchants, the Commission allowed pipelines' negotiated gas sales rates to remain confidential from unregulated competitors.[169] The Commission recognized that in situations where pipelines were competing with other entities that were not required to disclose the same data, the pipelines could be commercially disadvantaged. Thus, to minimize such potential harm, the Commission made an accommodation with respect to the disclosure of the data. However, here, the Commission is requiring the disclosure of the same information for all segments of the industry. Therefore, there is no need in this instance for the Commission to make the same compromise with respect to public disclosure. Nevertheless, some of the competitive disadvantages that the rehearing applicants foresee will be tempered by the Commission's elimination, below, of the requirement that the transactional information must be posted contemporaneously with contract execution.

In sum, the Commission remains unclear precisely how either the pipelines, marketers, or the market as a whole will be substantially harmed by the disclosure of the transactional information. On the other hand, the Commission is convinced that to foster a competitive market, shippers need good information about their capacity alternatives. Accordingly, the Commission will neither eliminate any of the required information from the transactional report, nor confer confidential status on the information to be provided, on the basis of the allegations about potential competitive harm made here.

c. Timing of the Posting of Transactional Information. Section 284.13(b)(1) provides that pipelines must post the firm transactional information "contemporaneously with the execution or revision of a contract for service." Several rehearing requests contend the Commission erred in requiring that the transactional information for firm transactions must be posted contemporaneously with contract execution.[170]

INGAA and Enron maintain that the requirement to post transactional information contemporaneously with contract execution puts pipeline services at a disadvantage compared to prearranged deals for released capacity. They point out that prearranged deals must be posted one hour prior to the first nomination deadline on the day before gas flows, well after the prearranged deals are executed.[171] Therefore, they request the transactional information required in section 284.13(b)(1) to be posted on the same timeline as prearranged deals.

Cibola, Dynegy, and NEMA contend that immediate posting, contemporaneous with contract execution, is not necessary for the purpose of monitoring for undue discrimination, and that the Commission has failed to adequately consider the adverse competitive consequences of contemporaneous reporting of firm capacity transactions. Dynegy and NEMA argue the Commission should require that the posting not occur until at least one week after service under the contract begins. Koch requests that the Commission require the transactional information to be posted within 24 hours of gas flow, consistent with Koch's current posting of discounts on its Internet website.

Conversely, Amoco argues that the Commission should reject any requests to delay the posting of the transactional information. Amoco argues that data must be filed contemporaneously with contract execution to have the desired mitigative and informational effects.

The statutory scheme of the NGA contemplates that pipelines cannot revise their rates schedules and charges until they provide the Commission with 30 days advance notice of the proposed change.[172] Most of the Commission's filing requirements reflect this statutory scheme, and require notice prior to the institution of service, rather than with respect to the execution of the contract. The Commission recognizes that contract execution may occur at a variety of different times in relation to when service takes effect. In some cases, the execution of a contract could occur significantly in advance of the commencement of service under the contract and in other cases it could occur after service commences.

To establish a consistent standard for transactional reporting, the Commission will not use the contract execution date to trigger the reporting of information. The Commission will grant rehearing and change sections 284.13(b)(1) and (2) to require the transactional information for both firm and interruptible service to be posted no later than the first nomination for service under the agreement. This modification also will minimize the potential for harm that some rehearing applicants, such as Dynegy and NEMA, have argued could result from disclosure well in advance of service.

The reporting of interruptible service needs to be somewhat different than that for firm service, because of differences in the form of contracting. Unlike firm service where the shippers' contract reflects the rate paid, shippers obtaining interruptible service frequently execute *pro forma* master contracts for interruptible service either at the maximum rate or without a specified rate. Shippers may not nominate under these master contracts for a period of time and often portions of those contracts, such as rate and other conditions, are modified by subsequent agreements between the pipeline and the shipper on a daily or monthly basis. For instance, a pipeline and shipper may agree to provide interruptible service for a particular month at discounted rate and that agreement may not be continued the next month. Therefore, with respect to interruptible service, the Commission is requiring a daily posting no later than the first nomination under an agreement for interruptible service. Any time a rate or other condition of the interruptible

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[164] Requests for Rehearing of Columbia Gulf, Dynegy, NEMA, Williston Basin, and Cibola.

[165] Request for Rehearing of Dynegy at 20 and Request for Rehearing of NEMA at 9.

[166] 15 U.S.C. 717(c) (1994).

[167] *Id.* (emphasis added).

[168] Part of the standard, as relevant here, for determining whether information is privileged or confidential employed under the Freedom of Information Act (5 U.S.C. 552), as amended by the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C.A. 552 (West Supp. 1997), and followed by the Commission when evaluating requests for confidential treatment, is whether the disclosure of the information is likely "to cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks and Conservation Ass'n* v. *Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). *See* section 388.112 of the Commission's regulations, governing requests for privileged treatment. 18 CFR 388.112.

[169] Natural Gas Pipeline Co. of America, 55 FERC ¶ 61,416 at 62,245–46 (1991); and El Paso Natural Gas Co., 57 FERC ¶ 61,273 at 61,881–82 (1991) (permitting negotiated gas sales rates to remain confidential from unregulated competitors in the context of gas inventory charge settlements).

[170] Requests for Rehearing of Cibola, Dynegy, NEMA, Koch, INGAA and Enron.

[171] GISB Capacity Release Standard 5.3.2 (GISB Version 1.3, July 31, 1998).

[172] 15 U.S.C. 717(c)

agreement changes the pipeline must post the change.

With these changes, the Commission will have achieved comparability between the reporting requirements for pipeline transactions and the reporting requirements for capacity release transactions, as INGAA and Enron request. The Commission is requiring the transactional reports for pipeline firm and interruptible transactions and capacity release transactions to be posted according to the same time frame previously used for capacity release service—no later than the first nomination for service.

Postponing the time for posting of firm contracts may result in somewhat later disclosure of some contractual commitments. But the effects of such a delay on shippers' ability to obtain information about available capacity will be mitigated by other reporting requirements. Under section 284.13 (d), the pipeline is required to post all available firm capacity on its system. Once the pipeline enters into a contract committing firm capacity, the pipeline must amend its posting to reflect the fact that this capacity is no longer available, even if it does not immediately disclose who the purchaser is. On balance, the Commission finds that requiring posting no later than the first nomination under the change is more consistent with its general reporting requirements, creates parity between pipeline and capacity release transactions, and will still provide the Commission and the public with sufficient information about firm pipeline contracts and capacity release transactions.

Finally, the Commission will not impose a later posting deadline for the transactional information, as some rehearing requesters have urged. First, posting no later than the deadline for service nominations is more consistent with the Commission's general regulatory scheme, as discussed above. And second, the transactional information is necessary for timely, informed decisionmaking; therefore, delaying the posting of the transactional report until after service commenced would limit the value of the transactional information for its intended purpose of current decisionmaking.

d. Consistency With Prior Policy. Columbia Gulf asserts that the new transactional reporting requirements reflect an unexplained change in Commission precedent and policy because the Commission previously concluded in Order No. 581[173] that the same information now included in the transactional reports did not need to be included in the discount report and the Index of Customers. Columbia Gulf states that in Order No. 581 the Commission specifically found that it did not need to require pipelines to report the same level of transportation information that is posted for capacity release transactions in order to compare pipeline transactions with capacity release transactions because the benefit from such comparison would be outweighed by the risk of harm to pipelines and LDCs from the release of the commercially sensitive data. Columbia Gulf also states that in Order No. 581, the Commission determined that it could satisfy its obligations under the NGA without requiring the reporting of the additional information.

As Columbia Gulf points out, at the time of Order No. 581, in 1995, the Commission found that virtually the same transactional information (*e.g.* receipt and delivery points) did not need to be reported in the Index of Customers and discount report, because the risk of harm from the release of the information outweighed the benefit that would be obtained from the proposed use of the information. In Order No. 637, the Commission has changed its policy focus and reporting objectives from those that existed at the time of Order No. 581, and as a result, now strikes the balance differently.

One of the primary goals of the Order No. 581 rulemaking was to simplify and streamline the Commission's reporting requirements and to reduce the reporting burden on pipelines. The reporting requirements had not been updated in the ten years after the issuance of Order No. 436 in 1985, and contained numerous outdated and unnecessary provisions. Also, Order No. 581 was issued at a time when pipelines filed rate cases more frequently than they do today. The Commission's focus at the time was directed toward accumulating a large amount of information through rate case filings. Thus, the Commission determined in Order No. 581 that the inclusion of the additional information in the discount report and Index of Customers was unnecessary to further the Commission's existing regulatory policies.

However, the regulatory context of the Commission is now different than it was at the time of Order No. 581, and thus, requires different information to be reported. The Commission's waiver of the rate cap for capacity release transactions now necessitates that additional transactional information must be reported for the new purposes of facilitating informed decisionmaking and effective market monitoring. The additional information is especially necessary because pipelines now file rate cases only sporadically, if at all.

Tellingly, part of the language of Order No. 581–A relied upon and cited by Columbia Gulf, makes clear that the Commission's consideration at that time of whether to supplement the existing reporting requirements with additional information was based on industry conditions at the time: "The Commission found [in Order No. 581] that many items, such as the receipt and delivery points, extended beyond that which the Commission needs to receive from pipelines on a regular basis to regulate the natural gas industry *today*."[174] In short, in the year 2000, the Commission has reconsidered its reporting needs and determined that better information is now needed both to promote a competitive market and to promote effective monitoring of that market.

e. Burden. Columbia Gulf argues that the transactional reporting requirements impose an undue burden on interstate pipelines. Columbia Gulf disagrees with the Commission's statement in the Final Rule that the amount of new information is "not an extensive amount of information compared to what is already provided."[175] It maintains that six new categories of information is a significant burden given that the preexisting Index of Customers required only five categories of information, and the discount report, only four categories. Columbia Gulf further asserts that the inclusion of receipt and delivery points or zones or segments in which capacity is held under contract creates an undue administrative burden on pipelines because many contracts contain multiple receipt and delivery points, which combine to create many transportation paths.

Williams and Williston Basin, also, argue that the posting of transactional information will be burdensome. Williams alleges that contrary to the Commission's finding, for some information such as the affiliate relationship between releasing and

[173] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 Fed. Reg. 53019 (October 11, 1995), III FERC Stats. & Regs. ¶ 31,026 (1995).

[174] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 61 Fed. Reg. 8860 (March 6, 1996), III FERC Stats. & Regs. ¶ 31,032 at 31,551 (1996) (emphasis added).

[175] Order No. 637, 65 FR at 10207, III FERC Stats. & Regs. Regulations Preambles ¶ 30,091, at 31,326.

replacement shippers and special details pertaining to a pipeline transportation contract, it is not just a simple matter of developing a method of displaying the data, because either the data are not routinely maintained, or are maintained manually. Williston Basin maintains that the Commission is wrong that it will not be difficult for pipelines to adapt their already existing capacity release data sets to apply to pipeline transactions. Williston Basin asserts that its capacity release data sets are not readily adaptable, but will involve extensive programming that will be an expensive and onerous task.

The new transactional reporting requirements will impose some additional burden on pipelines. While Columbia Gulf is correct that the Commission is creating new categories of information, the new information is already collected, in one form or another, by the pipeline. All of it is information that the pipeline already has in its possession, and thus, the transactional reporting requirements do not impose an additional burden on the pipelines to collect information.

Although the Commission acknowledges that the task of creating new formats for displaying the information on the pipelines' Internet web sites will be involved for some pipelines, nevertheless, it is a one-time reprogramming burden that, once completed, will enable the required data to be posted automatically. As such, the level of posting burden should not vary with the quantity of data to be posted under each data element. The Commission finds that the benefits achieved from the ongoing disclosure of the transactional information far outweigh the one-time burden of establishing the electronic reporting formats.

In addition, the interruptible transaction reporting burden should not be excessively burdensome because the Commission did not require actual transactional data to be posted daily, such as the quantity actually shipped and the receipt and delivery points actually used. The rate for interruptible service is a volumetric rate, under which a shipper may or may not ship at all. Thus, as explained more fully in the next section below, the Commission in Order No. 637 required that pipelines post only the quantity the shipper is entitled to ship, and not the amount actually flowing each time service is nominated under the interruptible service agreement. Therefore, a transaction for interruptible service on a monthly basis could be initially posted, and assuming it was not changed, could remain posted for the month without needing to be reposted on a daily basis.

f. Miscellaneous Requests for Rehearing and Clarification.

Transactional Reports for Interruptible Services: The report for interruptible transactions established by Order No. 637 requires pipelines to post on a daily basis, among other things, "the quantity of gas the shipper is entitled to transport," and "the receipt and delivery points and zones or segments covered by the contract over which the shipper is entitled to transport gas."[176] Great Lakes requests the Commission to require the new interruptible reporting requirements to provide for the reporting of actual service data, rather than the contractual quantities and points agreed to by the pipeline.

Great Lakes argues that the contractual data Order No. 637 requires will not provide the current pricing information that the Commission has determined shippers need. Great Lakes states that on the discount report, pipelines were only required to report discounts that were actually assessed a shipper for interruptible transportation service, and were not required to report discounts that were agreed to by the pipeline, but never utilized by the shipper. Great Lakes also argues that because interruptible contracts often list all points on the system as primary points available for interruptible service nominations by the shipper, it is not clear what maximum or charged rate to reflect on the pipeline's report. It further states that only those points where interruptible service is available on the system on a given day are actually available to that interruptible shipper.

The Commission's requirements for posting information about interruptible transactions are designed to provide information similar to that provided for firm service. For firm service, the Commission is requiring the posting of the rate the shipper pays, the volumes the shipper is eligible to ship under the contract, and the points included in the contract. The Commission is not requiring that pipelines provide actual quantities shipped or points used on a daily basis for firm transactions.

Interruptible service, by nature, is different than firm service, and the process of arranging interruptible service transactions differs from firm contracting. Interruptible shippers do not sign contracts with specific contract demand limitations, as firm shippers do. Interruptible customers frequently sign *pro forma* or master contracts with the pipelines that do not specify a rate or that permit the interruptible rate to vary and that lists all receipt and delivery points on the system. The pipeline and the shipper may then reach agreement on a monthly or daily basis as to the rate to be paid for the month and the quantity and receipt or delivery points to which that rate applies.[177] For instance, the pipeline and shipper may reach agreement that for a discount rate of $0.50/Dth the shipper can nominate up to 10,000 Dth/day between certain receipt and delivery points.

In order to create parity between the reports for firm and interruptible service, the Commission, therefore, is requiring that, for interruptible service, pipelines post on a daily basis prior to the first nomination under such an agreement, the rate the interruptible shipper is being charged, the quantities the shipper is eligible to ship, or the pipeline is willing to ship, at that rate and the receipt or delivery points between which the rate is applicable. It is the terms of the subsidiary agreement between the pipeline and the shipper, not the master contract that must be posted. Under this approach, the pipeline could post the interruptible agreement on the first of the month and simply leave that posting as long as the rate or other aspects of the agreement have not changed. But once those agreements have changed, the pipeline would have to repost the transaction.

Because the Commission is not requiring the posting of daily throughput for firm service, it has determined not to require daily posting of throughput for interruptible service. The information required under this regulation will be sufficient to enable the Commission and shippers to monitor interruptible transactions. Pipelines will be required to post interruptible transactions whenever a rate or volume commitment changes, and other shippers can use such information to determine whether there has been undue discrimination in the awarding of interruptible service.

The Commission further is revising the interruptible reporting requirements to eliminate confusion over precisely what points or rates are to be reflected on the posting. The regulation now reads "the receipt and delivery points and zones or segments covered by the contract over which the shipper is entitled to transport gas." This language implies that the receipt or delivery points should be those in the master contract, rather than the points in the

[176] 18 CFR 284.13(b)(2)(iv) and (v).

[177] Many pipelines, for example, allocate interruptible capacity based on rate paid and allow interruptible shippers to increase their rate in order to obtain a greater allocation of interruptible service.

subsequent agreement to provide interruptible service. Section 284.13(b)(2)(iv) will be revised to require the posting of the receipt and delivery points over which the shipper is entitled to transport gas at the rate charged to make clear that the pipeline should post the receipt and delivery points in each individual agreement to provide interruptible service, not simply the receipt and delivery points in the master contract. It may be that some interruptible agreements permit shipment using all receipt or delivery points on the pipeline system and that is the information that should be posted. In other cases, however, interruptible transportation at a particular rate may be limited to certain receipt and delivery points in which case the posting should only include the limited points in the agreement.

Scope of the Transactional Reporting Obligation: Cibola requests clarification that the transactional reporting requirements do not apply to existing pipeline capacity transactions that have remaining terms of one year or more.[178] Cibola argues that requiring public disclosure of the price and terms of transactions negotiated at various times in the past will not serve the Commission's price transparency goals. Cibola further argues that requiring the details of existing long-term transactions to be posted will fundamentally alter the business and competitive risks that the parties understood they would face when they initially entered into the transactions.

The Commission agrees with Cibola that requiring the posting of pre-existing pipeline and capacity release transactions in the transactional reports is unnecessary, and was not the Commission's intent in Order No. 637. The transactional reporting requirement, both for pipeline and capacity release transactions, is prospective only as of the September 1, 2000 implementation date. The Commission clarifies that for all new firm contracts that are executed after September 1, 2000, and existing contracts that are revised after that date, and for interruptible transactions taking place after that date, pipelines are required to post a transactional report no later than the first nomination for service under the new or revised contract. This is consistent with the Commission's regulation requiring that transactional reports only be posted for 90 days at which point the information is archived for a three year period and made available upon request.[179]

Historical information on pipeline transactions and capacity release transactions is available through other reporting requirements. The Index of Customers provides information about existing pipeline contracts. As discussed above, historical capacity release transactions have already been posted, and the posted information is required to be made available by the pipeline.

Enron requests that the Commission clarify that the requirement that the pipeline post transactional information for revised contracts does not extend to shipper-initiated primary receipt and delivery point revisions within an effective contract.[180] Enron asserts that requiring a new posting for each point change is redundant with other reports and will clutter the web sites.

In the Commission's view, posting of primary receipt and delivery point changes is necessary so that other shippers can monitor those changes for undue preference or discrimination. Thus, the Commission will not change the requirement that amended contracts be posted.

Enron also argues that pipelines should not be required to post contracts during a pending certificate proceeding, but only for capacity that is in service.[181] Enron argues that the Commission already has established practices for requiring the disclosure of contracts in the certificate process, and that there is no benefit from requiring expansion contracts to be included in the firm transactional reports.

The Commission will not exempt expansion contracts from the transactional reporting requirement. However, since the Commission has revised the requirement that the transactional information be posted contemporaneously with contract execution to requiring posting no later than the first nomination for service, the reporting of expansion contracts should not be problematic.

Modifications to Transactional Reporting Data Elements: Kinder-Morgan requests the Commission to delete the requirement that pipelines report the contract number of each transportation transaction. Kinder-Morgan states that the contact number enables the shipper to gain access to the pipeline's system for the purpose of making nominations, raising the prospect that one party could submit nominations using the contract number of another shipper, and thereby obtain transportation using someone else's capacity. The solution here is not for the Commission to eliminate the contract number, which is necessary for analytic purposes, but for the pipelines to establish computer security measures, such as the use of PINs or some other security features to protect their internal computer systems.

Amoco requests the Commission to make three revisions to the regulatory text of section 284.13(b)(1) and (2). First, Amoco requests section 284.13(b)(1)(iii), referencing the rate charged under each contract, to be revised to state "the rate charged under the contract and whether the rate is a negotiated rate."[182] Amoco maintains that the purpose of its proposed change is to put all parties on notice in future rate cases as to whether the pipeline can seek a discount adjustment regarding the transaction. Section 284.13(b)(1)(viii) requires the posting of, "special terms and conditions applicable to a capacity release and special details pertaining to a pipeline transportation contract." To clarify that negotiated rates must be disclosed, the Commission is revising the regulation to include a requirement that the pipeline disclose whether the contract is a negotiated rate. Negotiated rates also will be identified in the Index of Customers.

The second change Amoco requests is that the phrase "special terms and conditions" in section 284.13(b)(1)(iii) be revised to read "special terms and conditions, including all aspects in which the contract deviates from the pipeline's tariff," so that it will not be up to the reporting entity to decide what constitutes a special term or condition.[183] The Commission agrees that including such a change will identify any transactions that deviate from the pipeline's tariff and will revise sections 284.13(b)(1)(vii) and 284.13(b)(2)(6) to require the disclosure of all aspects in which agreements deviate from the pipeline's tariff.

Amoco's third request is to modify the language, "special details pertaining to a pipeline transportation contract" in section 284.13(b)(1)(viii) and the similar language in section 284.13(b)(2) governing interruptible transactional reporting, by adding the following explanatory language from the preamble of Order No. 637 to the regulatory text to eliminate any confusion: "Under this requirement, a pipeline must report any special conditions attached to a discounted transportation contract, such as requirements for volume

[178] Request for Rehearing of Cibola at 5–7.

[179] 18 CFR 284.13(b) (90 day posting); 18 CFR 284.12(c)(3)(v) (three year archiving requirement); 18 CFR 284.12(b)(v) (Capacity Release Standard 5.3.20 provides that historical data be made available within the Commission's archival periods).

[180] Request for Rehearing of Enron at 8–9.

[181] *Id.* at 9.

[182] Request for Rehearing of Amoco at 62.

[183] *Id.*

commitments to obtain the discount."[184] Also, Koch requests the phrase to be limited to terms and conditions from negotiated rates contracts that are already filed with the Commission, but have not been made available by other means.

The Commission agrees with Amoco that additional clarification is worthwhile and will add the following language to the requirements to post special details pertaining to the contract, "including conditions attached to a discounted transportation contract," to provide additional clarification. However, there may be other special details pertaining to the contract that would need to be posted as well. Thus, the Commission denies Koch's request to limit the special details reported to terms and conditions from negotiated rate contracts. The Commission seeks more than just conditions attached to negotiated rates contracts. For instance, a key purpose of this data element is to obtain discount conditions, and thereby correct a deficiency in the existing discount report.

Requests for Additional Data and Filing Requirements: IPAA requests the Commission to require pipelines to submit and post in addition to the data required under the new reporting requirements, information regarding the capacity actually used in each capacity release transaction. IPAA argues that for prearranged capacity release transactions to be completely transparent, shippers need enough information to determine whether even after a nomination and confirmation is made any gas actually moved. IPAA also requests that the Commission impose a transactional reporting requirement on capacity holders comparable to the pipeline's transactional reporting obligation, that would also include nominations, confirmations, and actual capacity used. IPAA asserts that the Commission must have adequate information to ensure that any available capacity is both offered and used.

The Commission does not find it necessary to report the quantity of gas moved on a daily basis under firm pipeline contracts or capacity release contracts. The Commission did not previously require detailed information about quantities nominated for capacity release transactions and it is not evident why such information is necessary to effectively monitor such transactions for undue discrimination. The information that is most important for monitoring is the rate and contract conditions upon which the shipper acquired the capacity, not whether the shipper decided to use it on a particular day. Shippers may frequently acquire capacity, but, depending on weather and other conditions, determine that they do not need to use some or all of that capacity everyday. Their decision not to use capacity they have acquired does not necessarily indicate anticompetitive activity, Given the limited value of such information, the added burden of requiring the posting is not warranted.

In addition, the Commission sees no basis for imposing a reporting obligation on capacity holders similar to the pipelines' transactional reporting requirement. Such information would largely duplicate the capacity release information that the pipelines are required to submit under the new transactional reporting requirements.

Amoco requests the Commission to require pipelines to make a simultaneous electronic filing with the Commission when they post the data on their Internet web sites. Amoco argues that this is consistent with the filing requirements of section 4(d) of the NGA, and will encourage the filing of accurate data. The Commission finds it unnecessary to require a simultaneous electronic filing with the Commission. As discussed earlier, the NGA gives the Commission discretion in determining the timing and manner for filing and notice, and the Commission has determined that the requirements of section 4 for public dissemination of rates and terms and conditions are better met by the posting of the rates and other transactional data on pipeline Internet web sites than by the filing and maintenance of the information by the Commission. Simultaneous electronic filing with the Commission is not necessary for the Commission to obtain the information it requires to monitor the market, since the Commission can download the files from the Internet postings and the pipeline's are required to maintain records of such information that the Commission may obtain if necessary.[185]

Amoco also requests certain changes to the annual Form 2 reporting. The Commission did not provide notice to the industry that Form 2 could potentially be revised. As a result, modifications to the Form 2 go beyond the scope of this rulemaking proceeding.

As stated in Order No. 637, the Commission is committed to reviewing all of its reporting requirements on an on-going basis and as part of its dialog with the industry. While the Commission cannot now see the need to expand the reporting requirements, as those requesting rehearing suggest, the Commission will be able to evaluate whether such additional information is needed as the Commission staff and the industry work with and review the information received under the current requirements.

B. Information on Market Structure

In Order No. 637 the Commission explained that information on market structure enables the Commission to know who holds or controls capacity on each portion of the pipeline system, so potential sources of capacity can be identified, and shippers and the Commission can monitor for undue discrimination or preference. To give shippers a more useful picture of market structure, Order No. 637 expanded two of the Commission's pre-existing reporting requirements that provided information on market structure—the Index of Customers and the affiliate regulations.

1. Index of Customers

Prior to Order No. 637, section 284.106(c)(3) of the regulations required pipelines to file an Index of Customers with the Commission, on the first business day of each calendar quarter, and to post the Index on their Internet web sites. The Index provides the names of shippers holding firm capacity, the amount of capacity held, the applicable rate schedule, and the contract effective and expiration dates. Order No. 637 added the following new information requirements to the existing Index of Customers: the receipt and delivery points held under the contract and the zones or segments in which the capacity is held; the common transaction point codes; the contract number; a shipper identification number, such as DUNS; an indication whether the contract includes negotiated rates; the names of any agents or asset managers that control capacity in a pipeline rate zone; and any affiliate relationship between the pipeline and the holder of capacity.

Amoco requests the Commission also to require the rate charged and the maximum contract rate to be included in the Index of Customers. Amoco argues that such information is relevant not only for the purposes of the daily transactional report, but also for the purpose of the Index of Customers.

The Commission disagrees, and will not add the maximum contract rate and actual rate charged to the Index of Customers. The purpose of the Index of Customers is to reveal the structure, or make-up, of the market for transportation capacity on a periodic

[184] *Id.*

[185] 18 CFR 284.12(c)(3)(v) (3 year archiving requirement); 18 CFR 250.16(d) (3 year requirement for maintaining discount information).

basis, to enable the Commission to assess the degree of competition on a pipeline or pipeline segments, and to detect potentially anticompetitive market dominance. Essentially, the Index of Customers shows who holds capacity on given pipeline, how much capacity is held by each shipper, where the capacity is held, the total amount of capacity held by a parent entity, and whether and the degree to which a pipeline's capacity is controlled by another entity, such as an asset manager. Price information is not directly relevant to the reason for requiring the index: to determine who and how much capacity shippers hold on the pipeline. Moreover, the rate charged and maximum contract rate are already obtained through the transactional reports.

2. Affiliate Regulations

In Order No. 637, the Commission expanded its affiliate regulations to permit monitoring and self-policing of affiliate transactions. The Commission revised section 161.3(l) of the standards of conduct for interstate pipelines specifically to require pipelines with marketing affiliates or sales operating units to post certain information concerning their affiliates on their Internet web sites, and to update the information within three business days of any change. Under new section 161.3(l)(2), pipelines must post, and update within three business days of any change, a complete list of the names of operating personnel and facilities shared by the interstate pipeline and its marketing affiliate,[186] and comprehensive organizational charts showing several different types of information.

First, the organizational charts must show the organizational structure of the parent corporation and the relative position within the corporate structure of the pipeline and all marketing affiliates.[187]

Second, the organizational charts must show business units, job titles, job descriptions, and chain of command for all positions within the pipeline, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, duties, and an indication whether the employee is involved in transportation or gas sales. In addition, the pipeline must also include the names of supervisory employees who manage non-clerical employees involved in transportation or gas sales.[188]

Third, the organizational charts must indicate, for all employees shared by the pipeline and a marketing affiliate, the business unit or sub-unit within the marketing affiliate organizational structure in which the shared employee is located, the employee's name, the employee's job title, and job description within the marketing affiliate, and the employee's position within the chain of command of the marketing affiliate.[189]

Tejas seeks rehearing of the requirement for pipelines to post and update organizational charts showing the organizational structure of the parent corporation and the relative position within the corporate structure of the pipeline and all marketing affiliates, under section 161.3(l)(2)(ii)(A), and the business units, job titles, job descriptions, and chain of command for all positions within the pipeline, under section 161.3(l)(2)(ii)(B).[190] Tejas argues the Commission has not demonstrated that such information is needed to deter undue discrimination and preference and to help the market monitor affiliate transactions. Tejas maintains that these reporting requirements will simply clutter pipeline web sites with voluminous, irrelevant information, and will create a substantial posting and updating burden, especially for small pipelines such as Tejas.

Posting detailed organizational charts will provide shippers and the Commission with current information regarding whether pipeline personnel are separated from marketing affiliate personnel to the maximum extent practicable. Posting such information allows shippers and the Commission to monitor whether employees with access to transportation and/or non-affiliated shipper information are shared with the pipeline's marketing affiliate(s).

The Commission finds the posting of such information to be important. The requirements adopted here are similar to those adopted with respect to electric marketers and are necessary to permit monitoring of affiliate relationships. The Commission's pre-existing requirement in section 250.16(b)(1), that a pipeline maintain in its tariff a complete list of shared operating personnel and facilities, and update that list on a quarterly basis, has not been completely effective in achieving pipelines' complete disclosure of shared operating employees. Pipelines have not always disclosed the sharing of operating employees with their marketing affiliates.[191] For example, in *Kinder Morgan*, the pipeline admitted that it had not disclosed that it shared operating employees with its marketing affiliates.[192] Posting of organizational information, including job descriptions and the chain of command, will deter undue discrimination because such information permits shippers to know which employees are involved in pipeline transportation functions and have access to their commercially sensitive information. Such transparency will serve to counter the economic incentive to share information between pipelines and their marketing affiliates.[193] Moreover, the posting requirements are not onerous. The posting requirements do not apply to clerical, maintenance, and field employees because these employees would not receive information concerning the processing or administration of requests for transportation service.

Tejas argues that posting organizational charts will "clutter" its web site with voluminous and irrelevant information. However, electric utilities have been subject to similar posting requirements since 1997, and their web sites, for the most part, appear to be well organized and uncluttered. This appears to be an issue of web site design rather than substantive policy.

Williams requests the Commission to eliminate the organizational charts for the pipeline under section 161.3(l)(2)(ii)(B), while INGAA requests the Commission to modify that section to require pipelines to post just the title and function of non-shared employees, rather than detailed job descriptions and the employees' names. Williams and INGAA argue that the fact that the Commission has adopted a similar requirement for electric utilities is inadequate justification for imposing this reporting burden on pipelines because there are distinct and fundamental differences between the two types of utilities. They assert that pipelines do not provide a commodity sales service similar to electric retail service, and that pipeline operations are not intertwined between a wholesale transmission service and a retail commodity service. INGAA argues that the differences between completely unbundled natural gas pipelines and vertically integrated electric utilities suggest that details about non-shared employees are unnecessary in the natural gas pipeline industry, and that, therefore, pipelines ought to be subject to less stringent reporting of non-shared employees and facilities. Williams further argues that unlike the information in paragraphs A and C of section 161.3(l)(2)(ii), the information in paragraph B does not relate to both the pipeline and its marketing affiliate, but is related solely to the pipeline.

Although it is true there is more vertical integration among electric utilities than among natural gas pipelines, it is also true that most pipelines continue to have marketing affiliates that are involved in transportation transactions on the pipelines' system. For this reason, it is important to require information to be reported on all non-clerical employees, whether shared or non-shared, so the Commission can better monitor for affiliate preferences by making its own independent determination which employees are shared and which are not shared. The posting requirements will also allow shippers to identify by name (with respect to supervisors) and job description those who have access to transportation information, enabling them to determine whether pipelines have accurately revealed shared transportation employees.

Accordingly, the posting requirements help shippers and the Commission to monitor and detect anticompetitive abuses.[194] The potential for such anticompetitive abuse continues whenever a pipeline conducts transportation transactions with its marketing affiliate(s). With the elimination of the capacity release price cap, it is especially important for the Commission to be vigilant to dealings between pipelines and their affiliates.

In addition, a number of pipelines argue that the Commission should eliminate the requirement that pipelines update the information required to be posted by section 161.3(l) within three business days of any change.[195] They assert that because growing corporations in today's business world are in constant states of evolution, three days is an inadequate amount of time in which to update the postings of the extensive and ever-changing information that is now required. They argue that the three-day updating requirement could result in daily updating, and thus, become unduly burdensome, and would be a waste of resources. CNGT and Enron add that the comparable requirements for the electric industry do not include this three-day updating requirement. Additionally, Enron urges that the updating of the information within three days of changes is an unreasonable time frame because information on corporate organizational changes is often kept confidential until employees are briefed, and once the changes are public, memoranda documenting and implementing the changes take additional time.

All of the pipelines raising this issue request that the Commission instead require the affiliate information to be updated on the first business day of each quarter. Further, CNGT and INGAA argue that if the three-day updating requirement is retained, it should be limited to the information concerning shared operating employees under section 161.3(l)(2)(ii)(C), while the information on non-shared employees required in section 161.3(l)(2)(ii)(B) should be updated quarterly.

The Commission has decided not to alter the requirement to post changes to the posted affiliate information within three business days of the change. In order to provide accurate information regarding a pipeline's management and organization for purposes of monitoring pipelines' compliance with the standards of conduct, it is essential for such information to be current. For this reason, a quarterly updating of affiliate information is inadequate.

In the Commission's view, the three-day updating requirement is not burdensome or unreasonable. In fact, the requirement to post changes three business days after they occur is less strict than the requirement for electric utilities to post changes "as changes occur."[196] Enron's argument that the three-day posting requirement is burdensome was first considered and rejected in *Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet*[197] with regard to posting the names and addresses of marketing affiliates in existing section 161.3(l) (now section 161.3(l)(1)). In that order, the Commission agreed with Enron that the pace of markets today is brisk. However, the Commission noted that because of the dynamic nature of markets, unduly discriminatory actions must be corrected quickly if the correction is to be meaningful.[198]

Moreover, a pipeline must consider the application of the standards of conduct to a proposed organizational change before it makes such changes. Posting information regarding the transfer three days after such organizational changes have occurred is a ministerial act. However, in response to Enron, the Commission will modify the language of section 161.3(l)(1) and (2) to require that pipelines update the information "within three business days of any change taking effect." This will clarify that the Commission does not intend for pipelines to post changes prior to the effective date of the change.

C. Information on Available Capacity

In Order No. 637, the Commission expanded the requirement in existing section 284.8(b)(3) of the Commission's regulations for pipelines to report information on available capacity. Under that regulation, pipelines were required to post on their Internet web sites information about the amount of operationally available capacity at receipt and delivery points, on the mainline, in storage fields, and whether the capacity is available directly from the pipeline or through capacity release.[199] In new section 284.13(d)(1), the Commission continued to require pipelines to provide this information (via posting on the pipelines' Internet web sites), and added the following information on capacity availability to the information that was already collected: the total design capacity of each point or segment on the system; the amount of capacity scheduled at each point or segment on a daily basis; and information on planned and actual service outages that would reduce the amount of capacity available. The Commission required the information on available and scheduled capacity to be posted daily, and the information on design capacity to be posted one time (and thereafter maintained on the web site), and then updated as necessary.

[186] 18 CFR 161(l)(2)(i).

[187] 18 CFR 161.3(l)(2)(ii)(A).

[188] 18 CFR 161.3(l)(2)(ii)(B).

[189] 18 CFR 161.3(l)(2)(ii)(C).

[190] Request for Rehearing of Tejas at 6–8. Tejas does not seek rehearing of the new posting requirements applicable to employees shared by a pipeline and a marketing affiliate in section 161.3(l)(2)(ii)(C).

[191] Kinder Morgan Interstate Gas Transmission LLC, et al., 90 FERC ¶ 61,310 (March 29, 2000) (*Kinder Morgan*) and *Amoco* v. *Natural Gas Pipeline Company of America*, 82 FERC ¶ 61,038 (1998); *reh'g denied*, 82 FERC ¶ 61,300 (1998); and *reh'g granted, in part*, 83 FERC ¶ 61,197 (1999).

[192] 90 FERC ¶ 61,310 at 62,009. Although *Kinder Morgan* concerned a settlement, the pipeline stipulated to certain facts concerning the pipeline's relations with its marketing affiliates. *See* Settlement Agreement at 6–7.

[193] *Tenneco Gas Company* v. *FERC*, 969 F.2d 1187 at 1205 (1992).

[194] The Standards of Conduct and posting requirements only apply if the pipeline conducts transportation transactions with its marketing affiliate(s), including those in which a marketing affiliate is involved.

[195] *See* Requests for Rehearing of CNGT, Enron, INGAA, Williams, Williston Basin, and Koch.

[196] Allegheny Power Services Corp. *et al.*, 84 FERC ¶ 61,131 at 61,714 (1998).

[197] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, III FERC Stats. & Regs. Regulations Preambles ¶ 31,064 (July 30, 1998), 63 FR 43075 (Aug. 12, 1998).

[198] III FERC Stats. & Regs. Regulations Preambles ¶ 31,064 at 30,715.

[199] 18 CFR 284.8(b)(3); 18 CFR 284.10(b)(1)(iv). Electronic Delivery Mechanism Related Standards 4.3.6; 18 CFR 284.10(b)(1)(v). Capacity Release Related Standards 5.4.13.

Service outages must posted when required.

Enron requests the Commission to eliminate the requirement that pipelines post design capacity for each point or segment.[200] Enron argues that the development and maintenance of meaningful design numbers would require the investment of a large amount of resources, and that shippers would not gain any additional useful information that they do not already receive from the posting of operationally available capacity. Enron explains that because pipelines do not operate under static conditions, the capacity of a point depends not only on the meter capacity of the point, but also on the location of other points on a lateral, the pressures at which the lateral is being operated, and the location and direction of actual gas flows. Enron states that for these reasons, GISB recently considered and declined to add design capacity to the available capacity posting.

The Commission will not eliminate the requirement that pipelines post design capacity for each point or segment. Design capacity information for points and segments will provide shippers with a picture of capacity distribution on the pipeline when operated under design conditions, and will enable shippers to better understand the relationship between design, scheduled, and operationally available capacity. The Commission recognizes that design capacity may not be available at all times due to variable operating conditions. However, the reporting of this information will provide a useful benchmark from which to evaluate operationally available capacity. Further, the Commission clarifies that it will be sufficient for pipelines to post the point and segment capacity used for system design and peak operation studies; such information should be readily available to the pipeline. Pipelines are free, however, to explain in their postings of operationally available capacity under section 284.13(d) why design capacity may not be available.

NGSA requests clarification that all information regarding capacity usage that a pipeline has access to should be made publically available on a real-time basis, whenever feasible. In particular, NGSA requests that where operationally feasible, a pipeline should report on a real-time basis for each point on its system—especially for constraint or other critical points " the design capacity (*i.e.*, total available capacity before subscriptions) for that point, the capacity actually scheduled for that point, and actual physical flows through the point.[201] NGSA argues that only with this information can shippers know how much of unused capacity is actually unused but subscribed capacity that can be taken back by firm capacity holders at either the second or third nomination cycles. At a minimum, asserts NGSA, the Commission should require that pipelines post available design and scheduled capacity not only after the normal or "timely" cycle (11:30 a.m. on the day before flow day), but also after the 6:00 p.m. evening cycle, and where operationally feasible, after the two intra-day cycles. NGSA maintains that reporting available capacity only after the normal cycle is of limited value because available capacity often changes substantially as a result of the evening cycle. Amoco, however, requests that the Commission require the posting of capacity information on an ongoing basis, as the data become available to the pipeline.

The current regulations require the posting of available and scheduled capacity on a daily basis. The Commission finds merit in the argument that shippers need to know the level of available and scheduled capacity before each of the four intraday nomination opportunities in order to respond to nomination opportunities during the gas day. Therefore, the Commission will grant rehearing, and revise section 284.13(d)(1) to require that pipelines post the available and scheduled capacity information when they provide scheduling information to their shippers. This will permit the shippers to use this information to help in planning their nominations for the next nomination opportunity. Since pipelines must compute these capacity figures in the normal course of scheduling service requests for the four daily nomination cycles, there should be little additional burden in posting the data. However, the Commission will not require actual flow data to be reported because the information on available and scheduled quantities would appear sufficient to show the usage of the system. Moreover, actual flow data will not be able to help shippers nominate because it would be reported after the fact, not before nominations.

In response to NGSA and Amoco regarding the reporting of data at constraint points and bottlenecks, the Commission clarifies that under section 284.13(d)(1), pipelines are required to post information on available capacity, total design capacity, and scheduled capacity at all points, which should reasonably provide such information with respect to constraint points and bottlenecks. Pipelines, though, do not need to identify which points are constrained. However, as stated above, the Commission is not requiring the reporting of actual flow data at any point, constrained or otherwise, and denies Amoco's and NGSA"s request for such flow data.

C. Implementation

The Final Rule requires pipelines to implement the new data reporting requirements by September 1, 2000. The Commission recognized in the Final Rule that the industry, through the Gas Industry Standards Board (GISB), is in the process of developing and improving standards for providing currently required information both on pipeline web sites and through downloadable file formats, using Electronic Data Interchange ASCX12 (EDI) formats.[202] The Commission further recognized that GISB will need to develop standards for the new reporting requirements (including pipeline firm and interruptible transportation transactions, design capacity, constraint information, and scheduled capacity) both for the presentation of the information on pipeline web sites, and the provision of the information in Electronic Data Interchange ASCX12 (EDI) or ASCII file formats, but that it may not be possible for GISB to complete the process of standardization in time for the September 1, 2000 implementation date.

Therefore, while the Commission encouraged GISB to work toward completing the standardization process prior to September 1, 2000, the Commission required pipelines to provide the new reporting information in non-standardized formats in the event GISB was unable to develop the datasets in time for the September 1, 2000 implementation. However, the Commission did not require that pipelines develop individual EDI file formats for the information during the period when GISB is developing the standards. Rather, the Commission required that pipelines only post the information on their web sites and provide flat ASCII file downloads for the relevant information. Pipelines, though, must continue to post the capacity release data in the existing EDI formats.

[200] Request for Rehearing of Enron at 10.

[201] Amoco, also, requests that the Commission require pipelines to post data on available capacity, as well as flow data, at constraint points and bottlenecks on the mainline.

[202] *See* Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–I, 63 FR 53565, 53569–75 (Oct. 6, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,067, at 30,737–46 (Sept. 29, 1998).

A number of rehearing requests ask that the Commission defer the September 1, 2000 implementation date until after GISB has completed the process of establishing uniform national standards for collecting and displaying both the existing and new reporting information, so that pipelines may comply with the new reporting requirements and the GISB standards at the same time.[203] They argue that deferring the implementation of the new reporting requirements to coincide with the implementation of the GISB standards will eliminate the duplicative effort that otherwise will be required to make pipeline-specific changes to comply with Order No. 637, and then more changes to comply with the industry-wide GISB standards. They assert that requiring compliance twice will be expensive and wasteful of resources. In addition, Coastal maintains that deferring the implementation date will result in more user-friendly data presentations than will the numerous individual pipeline presentations, in various formats, developed to comply with Order No. 637.

Thus, the rehearing requesters either argue that the Commission should defer the implementation of the Order No. 637 reporting requirements until GISB publishes the uniform standards, or delay implementation until compliance with the GISB standards is possible. Some argue that the Commission should defer the implementation date until four months after the GISB standards are adopted.[204] Still others suggest that implementation should be deferred until either GISB develops the standard formats, or if GISB is unable to do so, the Commission itself develops the uniform standards.[205] In addition, Williston Basin argues that the Commission either must extend the implementation date or not require the reporting requirements to be standardized.[206]

In Order No. 637, the Commission has not required pipelines to develop EDI file formats for the new reporting requirements prior to GISB's issuance of the reporting standards. However, the Commission will not defer the implementation date for the posting of the information on pipeline web sites until after GISB acts. The information in the new reporting requirements needs to be available to the Commission and the market by September 1, 2000, to enable the Commission and market participants to begin to receive information about pipeline services prior to the start of the winter heating season.

The Commission recognizes that standardization of the reporting requirements is important to the industry, and is important to the Commission, as well. However, GISB is a private organization that is not required to act in accordance with the Commission's timetables, and thus, may not act in time to meet the Commission's implementation deadline. The Commission has minimized the potential for duplicative costs by requiring only that the information be posted on Internet web sites and in downloadable files, but not requiring pipelines to provide the data in EDI format until GISB's standardization is complete. Should GISB be unable to complete the standards necessary for posting the information on Internet web sites before September 1, 2000, the potential costs to the pipelines of having to reformat that information should not be great, particularly since they will be able to use whatever standards GISB has developed by that time. In any event, the information being required is of sufficient importance for the industry and for Commission monitoring of the market that the need for the information outweighs the costs of having to make minor changes to pipeline web sites at a later date. The Commission, therefore, will not make the implementation date dependent on GISB's actions. The Commission, however, encourages pipelines to work expeditiously with GISB to finish developing the standards in advance of the time for implementation of the Order No. 637 reporting requirements, which will eliminate any potential for duplicative development costs.

Finally, Great Lakes requests that the Commission confirm that pipelines will be able to recover the substantial costs that will be incurred in complying with the expanded reporting requirements of Order No. 637 in their next section 4 rate case. The costs may be recoverable in a rate case if they meet the Commission's standards for cost recovery. The Commission cannot make a generic ruling on this issue, since it is not aware of the nature of the costs for which recovery may be sought. The issue of the recovery of Order No. 637 compliance costs, like any other expense item, is an issue that may be raised in each pipeline's subsequent rate case, and if so, will be decided there.

IV. Other Pipeline Service Offerings

A. The Right of First Refusal

In Order No. 637, the Commission retained the right of first refusal (ROFR)[207] with the five-year matching cap, but narrowed the scope of the right. The Commission changed its policy so that in the future the right of first refusal will apply only to maximum rate contracts for 12 or more consecutive months of service. Existing discounted contracts were grandfathered so that the ROFR will apply to current discounted contracts, but will not apply when the contracts are reexecuted unless they are at the maximum rate.

The Commission also indicated that the maximum rate that a shipper must meet when exercising its right of first refusal may be, in certain limited circumstances where an incremental rate exists on the system, a rate that is higher than the historic maximum rate. Further, the Commission decided that it would not enhance the right of first refusal by allowing it to be exercised for a geographic portion of the existing contract. The Commission, however, did not change its preexisting policy that the right of first refusal can be exercised by a shipper for a volumetric portion of its capacity. The Commission also clarified that the right of first refusal as provided by the Commission's regulations, is an exercise of the Commission's authority under section 7(b) of the NGA and is not dependent on the contract between the pipeline and the shipper.

A number of parties have requested rehearing of this portion of Order No. 637.[208] As discussed below, the Commission has concluded that generally the ROFR should be limited to maximum rate contracts for 12 or more consecutive months of service, but an exception to this rule is appropriate for certain seasonal contracts. Therefore, the Commission modifies Order No. 637 to provide that the ROFR will apply to multi-year seasonal contracts at the maximum rate for services not offered by the pipeline for a full 12 months. The requests for rehearing on the other ROFR issues are denied for the reasons discussed below. The Commission also

[203] Coastal, CNGT, Enron, INGAA, Kinder-Morgan, Koch, Tejas, Williams, and Williston Basin.

[204] Request for Rehearing of Kinder Morgan at 39 and Request for Rehearing of Williams at 11.

[205] Request for Rehearing of Koch at 59 and Request for Rehearing of CNGT at 26. CNGT asserts that the Commission should establish a standardized format for the new reporting requirements by July 1, 2000, if the Commission expects pipelines to meet a September 1, 2000 deadline.

[206] Request for Rehearing of Williston Basin at 14–16.

[207] 18 CFR 284.221.

[208] Requests for rehearing on these issues were filed by AGA; APGA; Arkansas Gas Consumers; ConEd; Florida Cities; FPL Energy; Great Lakes; INGAA; Keyspan; Koch Gateway; Minnesota; New England Gas Distributors; NASUCA; National Fuel; Process Gas Consumers; Minnegasco; Texas Eastern; UGI Utilities; Washington Gas; The Williams Companies; and WDG.

clarifies Order No. 637 as provided below.

1. Contract Length

In Order No. 637, the Commission changed its policy so that in the future, the right of first refusal will apply only to maximum rate contracts for 12 or more consecutive months of service.[209] The Commission stated that it will be the term of the service, not the term of the contract, that will determine whether the right of first refusal will apply. The Commission reasoned that the purpose of the right of first refusal is to protect long-term captive customers, and that seasonal service is short-term service, even if the contract providing for the service is of a duration of more than a year. AGA, several LDCs[210] and the Minnesota Department of Commerce (Minnesota) seek rehearing on this issue.

These petitioners argue there is no record evidence to support the Commission's conclusion that all shippers taking partial year service have competitive options. They assert the fact that a contract is for less than a full year of service does not in itself imply that the customer has sufficient competitive alternatives. The petitioners maintain that the services provided under many of these contracts, often storage and related transportation, are available from the pipeline only for specific months,[211] and are not offered for a full year. For example, Keyspan states that its long-term contracts for seasonal service are not the product of negotiations in which the Keyspan companies were able to use leverage to avoid purchasing services on an annual basis. Instead, Keyspan asserts, the pipelines offered the services for limited periods of the year, and the Keyspan companies are dependent on these contracts to meet their peak demands.

In addition, Minnegasco complains that the Commission's ruling elevates the form of the contract above the substance and, as a result, there will be only one acceptable model of contracting in order for a captive customer to preserve its right of first refusal.[212] Minnegasco argues that this denies parties the contractual flexibility that is allegedly a benefit of open access.

These petitioners further argue that there is no legal justification for eliminating ROFR protection for multi-year seasonal contracts. Keyspan argues that there is nothing in section 7(b) of the NGA or the court's decision in *United Distribution Companies* v. *FERC (UDC)*[213] that permits the Commission to apply a different standard in considering the abandonment of critically needed seasonal contracts than would be applied to necessary year round contracts. New England asserts that Order No. 637 sets forth no record support for the conclusion that partial year shippers can rely on the market to protect them from the exercise of market power. New England argues that the Commission's decision is also procedurally defective because the NOPR did not contain such a proposal, and therefore interested parties did not have an opportunity to comment on the issue.

These petitioners ask the Commission to modify or clarify its ruling and provide protection for pipeline customers that have multi-year contracts for pipeline service offered for less than 12 months. AGA asks the Commission to clarify that service under rate schedules that only provide partial-year service at maximum rates have ROFR protection. Minnesota also asks the Commission to allow the ROFR to apply to multi-year seasonal contracts for shippers currently paying rates that reflect the full cost of service.[214]

The Commission will grant the clarification requested by the petitioners, and provide that the ROFR will apply to multi-year seasonal contracts at the maximum rate for services not offered by the pipeline for a full 12 months. This is consistent with the purpose of the ROFR to protect long-term captive customers at the expiration of their contracts. If a customer is paying the maximum rate under a multi-year contract for a service that is offered by the pipeline on a seasonal basis only then, as the petitioners have pointed out, it is the pipeline that has determined the duration of the service. The shipper needing the service has no alternative but to accept what the pipeline offers. In addition, the LDC petitioners state that these multi-year winter-only contracts provide firm transportation service, often from storage, at critical times during the heating season. The LDCs generally have no pipeline alternatives to this service and this service is necessary to enable them to meet their service obligations. Thus, the contracts are similar to long-term contracts because the customers contract for this peaking service over a number of years, and the customers do not have significant alternatives to these pipeline contracts. They are not similar to the typical short-term contract where the shipper is not a captive customer, has other service options, and is not subject to the pipeline's market power. In these circumstances the customer relying on the service and paying the maximum rate should have the protection of the ROFR. Long-term maximum rate contracts with increased CDs for seasons of peak demand meet the standards for ROFR protection and therefore are covered by the ROFR.

2. Discounted Contracts

In Order No. 637, the Commission narrowed the scope of the ROFR to apply only to maximum rate contracts. The Commission explained that limiting the ROFR to maximum rate contracts is consistent with the original purpose of the ROFR to protect long-term captive customers from the pipeline's monopoly power. The Commission reasoned that if a customer is truly captive and has no alternatives for service, it is likely that the contract will be at the maximum rate. The Commission stated its intent that with this modification, captive customers will still be able to receive their historical service as long as they pay the maximum rate. However, the Commission also stated that if a customer has sufficient alternatives that it can negotiate a rate below the just and reasonable maximum tariff level, it should not have the protection afforded by the right of first refusal, and the pipeline should be able to negotiate with other interested shippers. The Commission grandfathered existing discounted contracts and provided that the ROFR will apply to these contracts, but will not apply to future contracts that are not at the maximum rate. The

[209] Order No. 637 at 216–18.

[210] *E.g.*, Keyspan Brooklyn Union, National Fuel, New England Gas Distributors, and Minnegasco.

[211] AGA gives several examples of such service, *e.g.*, Transco's Southern Expansion Service which is available only from November through March.

[212] Minnegasco gives several examples: if it has two contracts with a pipeline, one for 12 consecutive months of baseload capacity each year of the multi-year contract and a second agreement with that pipeline for 5 months of winter heating capacity for each heating season of the multi-year contract, it interprets Order No. 637 as stating that the contract for the heating season capacity would not have ROFR protection. If, on the other hand, it had one contract with the pipeline for 12 consecutive months of baseload capacity, but with increased capacity for the 5-month winter period, the contract would have ROFR protection. Also, Minnegasco states, if it had a contract with a different pipeline for the increased heating season capacity, that contract would not have ROFR protection. Minnegasco asserts that these differences are of form, not substance.

[213] 88 F.3d 1105 (D.C. Cir. 1996).

[214] Minnesota states that Northern Natural Company (Northern) supplies 89 percent of Minnesota's imported gas, and that the pipeline is capacity constrained. Minnesota also states that Northern Natural was given Commission approval to implement seasonal rates that are designed to reflect the full cost of service. Docket No. RP98–203. Minnesota states that the Commission's altered ROFR policy treats Minnesota shippers holding cost-based seasonal capacity on Northern differently from Minnesota shippers holding cost-based 12-month service. (Check this).

Commission found that limiting the ROFR to maximum rate contracts strikes the appropriate balance between the need to protect captive customers and the need to better balance the risks between the shipper and the pipeline.

APGA, National Fuel, Minnegasco, WDG, Process Gas Consumers, FPL Energy, Arkansas Gas, and Enron seek rehearing on this issue. These parties argue that limiting the ROFR to maximum rate contracts is contrary to section 7(b) of the NGA and challenge the factual basis for the limitation.

The limitation of the ROFR to maximum rate contracts as provided in Order No. 637 is fully consistent with the statutory requirements and the Commission's regulatory policies. Under section 4 of the NGA, a shipper is entitled to protection from unjust and unreasonable rates, and under section 7(b) of the NGA, a shipper is entitled to protection from the pipeline's exercise of monopoly power through the refusal of service at the end of the contract term. The Commission's rate regulation assures that the rates charged by the pipeline are just and reasonable, and the ROFR protects captive customer from an exercise of the pipeline's market power at contract termination. Contrary to the suggestions of the petitioners, limiting the application of the ROFR to maximum rate contracts does not dilute either of these protections. Captive customers are guaranteed confirmed service at the just and reasonable Commission-approved tariff rate. What is not guaranteed is service below the just and reasonable rate. The limitation is consistent with the Commission's goal of promoting competition while protecting captive customers from pipeline market power, and the Commission's need to balance financial risks between pipelines and shippers.

Several petitioners argue that the Commission's decision is contrary to section 7(b) of the NGA because section 7(b) does not state that only captive or maximum rate customers are entitled to protection, and the Commission in the past has emphasized that the ROFR is intended to protect all existing customers, not just some subcategory of them.[215] Process Gas Consumers assert that in Order No. 636–C, the Commission did not limit the ROFR to captive non-discounted shippers, and that the Court in *UDC* did not limit the ROFR to captive customers and did not indicate that "captive" means solely maximum rate non-discounted shippers.[216] Process Gas Consumers argue that the new limitation is unjustified.

Section 7 (b) is designed to "protect gas customers from pipeline exercise of monopoly power through refusal of service at the end of a contract period."[217] The ROFR, by the terms of the regulation, is available to all shippers willing to pay the maximum rate and is not limited to captive customers. The Commission's regulation protects shippers from the exercise of market power in two ways: by capping the maximum rate the pipeline can charge and by giving shippers a ROFR at contract termination.

The petitioners also argue that the Commission's conclusion that a shipper that has been able to negotiate a discount with the pipeline is not a captive customer is erroneous. They assert that pipelines give discounts to customers, including captive customers, for a variety of reasons unrelated to competition. For example, these petitioners state that a discount may be given in consideration of entering into a settlement of a rate case or a complaint proceeding, for an agreement of the shipper to shift to a less desirable or underutilized receipt point, to sign a longer contract, or to take an additional volume.[218] In these circumstances, they assert, the fact that the shipper pays a discounted rate does not mean that it is not captive or that it has market alternatives for service. Further, Process Gas Consumers point to the Alternative Rates Policy Statement, under which the Commission requires a pipeline to show that its shippers have four or five "good alternatives" as one aspect of demonstrating that it lacks market power,[219] and argue that a discount from one pipeline is not the same as four or five good alternatives. WDG argues that absent a finding, on a customer-specific basis, that each shipper with a discounted contract has meaningful choices at the time of the contract termination, the Commission must continue to provide such shippers with the continued protection of the ROFR.

Further, several of the petitioners argue, because a discount or negotiated rate is determined at the outset of the contract, it has no relationship to the market that the long-term shipper faces at the end of the contract. They argue that the Commission provided no reason for equating market conditions at the outset of the contract with those at the end of the contract, and that conditions could change and affect the shippers' ability to obtain capacity at the end of the contract. The petitioners assert that the Commission must make certain that a captive customer will be afforded the assurance of continued service if the customer is willing to pay the maximum rate for the service in the future, regardless of whether the customer was able to negotiate a discount in the past.

These petitioners assert that the result of the Commission's ruling is that captive customers will be forced to forgo any opportunity for a discount, and will have to pay the maximum rate in order to retain a ROFR even if the market rate on a pipeline is lower than the maximum rate. Therefore, they argue, the Commission is guaranteeing that LDCs with a supplier of last resort obligation, or those that are physically connected to only specific pipelines, will not have an opportunity to obtain a contract at the market rate.

Although the petitioners assert that pipelines give discounts for a variety of reasons, generally, discounts are given to obtain or retain load that the pipeline could not transport at the maximum rate because of competition. The Commission has held that to the extent that a pipeline was required during the test period in a section 4 rate case to give discounts either to attract or retain load, the pipeline is not required to design its rates on the assumption that the discounted volumes would flow at maximum rates.[220] The Commission has explained that discounts given to meet competition benefit all customers by

[215] Process Gas Consumers cite Order No. 636 at 30,448.

[216] Process Gas Consumers cite a portion of the Court's decision where the Court states that "even a captive customer served by a single pipeline can exercise its right of first refusal and retain its long-term firm transportation service against rival bidders." *UDC* at 1140. Process Gas Consumers state that the Court's use of the word "even" implies that the Court was not limiting the ROFR protection to captive customers.

[217] *AGA II*, 912 F.2d at 1518.

[218] The petitioners give other examples of situations where a captive customer may receive a discounted rate. For example, APGA states that a captive customer may be given a discount where the captive customer has a non-captive retail customer; Minnegasco states that a customer may be captive for 95 percent of its load and the pipeline may be willing to negotiate a discount to retain the entire load; WDG states that a pipeline may give a discount to a captive customer in response to a perceived competitive threat from the proposed construction of a new pipeline, and defeat the introduction of the new alternative. If the existing pipeline is successful in keeping the proposed alternative from entering the market, WDG argues, the captive customer whose last contract was at a discounted rate will still be a captive; Arkansas Gas states that captive customers may receive discounts as an incentive for an industrial customer to expand its facilities, as an incentive to take service at facilities with competitive options, or to assist industrial customers during times of financial troubles in order to keep the facility viable.

[219] Process Gas Consumers cite Alternative Rates Policy Statement at 61,235.

[220] *E.g.*, Koch Gateway Pipeline Co., 74 FERC ¶ 61,088 at 61,280 (1996).

allowing a pipeline to maximize its throughput and thus spread fixed cost recovery over more units of service.[221] Thus, the customers that receive discounts under the Commission's discount policy, are generally the customers whose business would have gone to another service provider unless the pipeline granted the discount, *i.e.*, customers with alternatives. If discounts are given for other reasons,[222] for example, if a discount is given for a short-haul, then it may be that the rate for the short-haul is not properly designed. If a rate for a service is too high, the shipper can file a complaint under section 5 of the NGA. The maximum approved rate for any service is a just and reasonable rate, and no customer is harmed by paying a just and reasonable rate.

Moreover, the ROFR's protection has always been related to the customer's payment of the maximum rate as a condition to exercising the ROFR. Pipelines are never required to discount their rates, and no customer is entitled to a discount. In finding that the ROFR afforded the necessary section 7(b) protection, the court in *UDC* stated, "[i]f the existing customer is willing to pay the maximum approved rate, then the right of first refusal mechanism ensures that the pipeline may not abandon the certificated service." [223] The court also observed "[t]he 7(b) abandonment provisions protect customers against loss of service only if the customer is willing to pay the maximum rate approved in a rate proceeding.[224] Since the ROFR was first created and reviewed by the court in *UDC*, what has changed is that pipelines have been granting more discounts to long-term firm shippers in circumstances never intended under the Commission's discount policy. Many of these rate adjustments should have been handled in other ways in section 4 or 5 rate cases.

Pipelines' rates are cost-based and are capped at a maximum just and reasonable level. No shipper is harmed by paying a just and reasonable rate for the service it receives. A shipper may, of course, negotiate with the pipeline for a discounted rate. However, if the shipper has the leverage, either through the availability of alternatives to the pipeline's service or for some other reason, to obtain a discount, it should compete with other shippers for the capacity without a preference.

Thus, the limitation of the ROFR to maximum rate contracts leaves in place the basic protections afforded by the statute—the shipper is guaranteed that it will pay no more than a just and reasonable rate for the service it receives, and if the shipper pays the maximum just and reasonable rate, it is guaranteed that it can retain that service at the end of its contract. The Commission's limitation of the ROFR to maximum rate contracts is consistent with the statute and the purpose of the ROFR.

Order No. 637 also states that because the ROFR will apply only to maximum rate contracts, there will be no ROFR for negotiated rate contracts. FPL Energy argues that the Commission erred in failing to consider the impact of this ruling on pipeline laterals, and that the Commission must make an exception for this type of service. FPL Energy states that it expects to take pipeline service across laterals built by the pipeline to its electric generating plant. FPL Energy states that once such a transportation arrangement is consummated, it will be exposed to the full market power of the pipeline to which it is connected, regardless of whether the Commission considers the rate to be negotiated.

New England does not object to denial of ROFR protection to customers paying a discounted rate, but asks the Commission to clarify that a negotiated rate shipper is denied ROFR protection only if the negotiated rate is less than the tariff maximum rate.

A negotiated rate is not the equivalent of the maximum tariff rate for the service, regardless of whether the negotiated rate is higher or lower than the maximum tariff rate, and therefore the ROFR will not apply to these contracts. The Commission permits negotiated rate contracts as an alternative to service under the Commission-approved generally applicable just and reasonable tariffs, but the regulatory right of first refusal does not apply to these negotiated contracts. Shippers who are able to negotiate a rate different than the maximum tariff rate generally have alternatives to service on the pipeline. However, in any event, if a shipper wants to have the benefits of the ROFR so as to have a preference for continued service on the pipeline over other customers at the expiration of its contract, it should take its service under the maximum just and reasonable tariff rate. If the shipper negotiates its rate, then it must compete equally with other shippers for the capacity at the end of its contract. In the example given by FPL, it is not likely that there would be any other shippers bidding for service over the lateral to its electric generating plant, and the pipeline is required to provide service at the maximum rate. The shipper is therefore protected in these circumstances.

FPL asks the Commission to define several terms including "maximum rate," and "negotiated rate," and specify what type of contracts fall within or without the revised ROFR's protection. "Maximum rate" refers to the maximum tariff rate for a particular service. A "negotiated rate" is a rate agreed to by the pipeline and a customer under the Commission's negotiated rate policy. As explained in Order No. 637 and as modified above, the ROFR will apply to maximum rate contracts for 12 or more consecutive months of service and to multi-year seasonal contracts for services offered by the pipeline only on a seasonal basis.

Enron argues that the Commission erred in grandfathering existing discounted contracts. Enron argues that it is unnecessary to allow these shippers to exercise their ROFR because the Commission has already concluded that these shippers are not the captive customers for which the right was created. Further, Enron argues that continuation of the right, even for just a few years, keeps the pipelines from putting the capacity in the hand of shippers that value it most.[225]

The Commission's determination that the ROFR should not apply to discounted contracts is a change from the Commission's past policy. Grandfathering current contracts executed by the parties with a regulatory right of first refusal is fair, and gives the parties notice of the new limitations on the ROFR prior to re-executing their contracts. It is within the Commission's discretion to apply this policy prospectively to contracts executed after the effective date of Order No. 637, and the Commission concludes that it is a reasonable balance to grandfather existing discounted long-term contracts.

Koch agrees with the determination in Order No. 637 that the ROFR should not apply to discounted contracts, but seeks clarification as to the date that the regulatory right of first refusal will apply to discounted contracts. Koch suggests that the Commission clarify that any discounted contract that was entered into for a year or more after March 1, 2000 would not qualify for the right of first refusal. In response to Koch's request, the Commission clarifies that the ROFR will not apply to any discounted contracts entered into after the effective date of Order No. 637.

[221] *Id.*

[222] *See, e.g.*, Williston Basin Interstate Pipeline Co., 85 FERC ¶ 61,247 (1998); Southern Natural Gas Co., 67 FERC ¶ 61,155 at 61,456 n.8 (1994).

[223] *UDC*, 88 F.3d at 1140.

[224] *Id.* at 1142.

[225] Enron states that pipelines with current long-term discounted contracts cannot sell the long-term capacity they expect to become available, but must stand ready to continue serving the existing shippers until they either exercise their right of first refusal or allow them to lapse. Enron states that while the discount shipper may be required to bid up to the maximum rate at the contract expiration date, it need not presently declare its intention. Enron states that a pipeline in these circumstances is precluded from offering capacity to new shippers who require a current commitment to plan for incremental gas demand, and that these shippers may look elsewhere to fill their capacity needs.

3. ROFR Pricing Policy

In Order No. 637, the Commission explained that, consistent with the holding in the Policy Statement concerning Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Policy Statement),[226] the maximum rate that the existing shipper must meet in order to exercise its right of first refusal may be higher than its current rate in certain very limited circumstances, *i.e.*, where a shipper has a right of first refusal on a pipeline that has vintages of capacity and thus charges different prices for the same service under incremental pricing, the pipeline is full, and a competing shipper bids a rate for the capacity that is above the existing shipper's current maximum rate. In addition, in order to charge a higher rate than the previous maximum rate, the pipeline must have in place an approved mechanism for reallocating costs between the historic and incremental rates so all rates remain within the pipeline's cost of service.[227]

As the Commission explained in Order No. 637, a higher maximum rate is appropriate when the system is fully booked and there is at least one bid above the existing rate, because in those circumstances, there would be insufficient capacity to satisfy all the demands for service on the system. When insufficient capacity exists, a higher matching rate will improve the efficiency and fairness of capacity allocation, within the limits of cost of service ratemaking, by allowing new shippers who place greater value on obtaining capacity than the existing shipper to compete for the limited capacity that is available.

In Order No. 637, the Commission explained that under this pricing policy, an existing captive customer is protected against the exercise of market power by the pipeline because the pipeline cannot insist on the shipper paying a higher rate unless its expansion is fully subscribed and there is another bid for capacity at a rate above the vintage maximum rate charged the existing shipper. These conditions ensure that the pipeline is unable to use its market power over captive customers to withhold capacity from the market to raise price. Price will exceed the current maximum rate charged the existing shipper only when a higher price is needed to allocate scarce capacity.

The Commission's ROFR pricing policy was set forth in the Certificate Policy Statement. Because Order No. 637 made other changes to the ROFR mechanism, the Commission discussed the interaction of these changes with the new ROFR pricing policy. However, nothing in Order No. 637 changes anything in the Certificate Policy Statement. The Commission merely reiterated the change to the ROFR pricing policy in order to clarify how all the changes related to the ROFR work together.

AGA, APGA, ConEd, Florida Cities, Keyspan, National Fuel, New England Distributors, UGI, Process Gas Consumers, and NASUCA seek rehearing or clarification of the Commission's ruling. The petitioners generally argue that the ROFR pricing policy is inconsistent with the NGA and Commission policy and regulations. Several petitioners ask the Commission to clarify how the policy will work in specific factual situations.

a. Consistency with Statute and Regulations. Several of the petitioners argue on rehearing that charging a higher maximum rate than the shipper's previous maximum rate is unlawful under section 4 of the NGA. APGA and Keyspan argue that the increased maximum rate would be unjust and unreasonable since it would require shippers to pay for capacity that was not built to serve them and therefore, the necessary cost causation link is missing. Similarly, UGI argues that the Commission's regulations are designed to match cost recovery with cost incurrence, and that the rate that a shipper pays for retaining capacity must be related to the character and reliability of the service received, and cannot be escalated on an arbitrary basis to the value that some other shipper receives from an unrelated service. UGI asks the Commission to clarify that the maximum recourse rate that a shipper must match is a rate for a like or a comparable incremental service.[228]

NASUCA argues that ROFR customers are not similarly situated to new customers because they impose no new construction demands on the system.

The higher maximum rate paid by a shipper exercising its right of first refusal is not unjust or unreasonable under section 4 of the NGA. The new maximum rate will be established by a mechanism approved by the Commission to assure a just and reasonable result. As explained in the Policy Statement, the Commission will review the proposed mechanisms and determine how well they achieve capacity pricing that permits as efficient an allocation of capacity as is possible under cost-of-service ratemaking, protection against exercise of market power by the pipeline, protection against overrecovery of the pipeline's revenue requirement, and equity of treatment between shippers with expiring contracts and new shippers seeking the same service. The Commission will assure in the individual proceedings that the pipeline has a mechanism to establish just and reasonable higher maximum rate prior to implementation.

Further, it is not the case that existing shippers do not cause the need for expansion. As the court stated in *Southeastern Michigan Gas Co.* v. *FERC*, 133 F.3d 34, 41 (D.C. Cir. 1998), "[b]ecause every shipper is economically marginal the costs of increased demand may equitably be attributed to every user, regardless of when it first contracted with the pipeline." The Commission has concluded that existing shippers should not pay a rate that reflects expansion costs during the term of their contract, not because they did not cause the need for the expansion, but because these shippers sign long-term contracts with the expectation that increases in their rates will be related to the costs and usage of the system for which they subscribe. Raising the rates of these existing shippers during the term of their long-term contracts to include expansion costs reduces rate certainty and increases contractual risk, and the Commission has determined that their contracts should protect them from this risk. However, when the contracts expire and the existing shipper seeks to retain its service, it is just as much a cause of the need to expand as a new shipper seeking service for the first time. Under the Certificate Policy Statement, in order to determine whether an expansion is required, a pipeline seeking a certificate for new construction is directed to ask its current customers whether they are prepared to release their capacity. A

[226] Docket No. PL99–3–000, FERC ¶ 61,227 (1999), *reh'g*, 90 FERC ¶ 61,128 (2000).

[227] The Commission cited several examples given on rehearing of the Certificate Policy Statement of such a mechanism.

[228] UGI argues that there is no justification for a policy that requires an LDC seeking to retain its market area service to match the incremental rate paid by a power generator on a lateral line located 2000 miles upstream of the LDC's city gate.

decision on the part of the existing customers not to release their capacity is a cause of a need to expand the capacity.

The ROFR pricing policy applies where the pipeline charges different rates for the same service under incremental pricing. Therefore, as requested by UGI, the Commission clarifies that the maximum recourse rate that a shipper must match is a rate for a like or a comparable incremental service.

Several petitioners also argue that the ROFR pricing policy will result in rate discrimination. APGA states that there is no basis on which to distinguish between the circumstances of a pipeline with and without incremental rates, and the ROFR should apply to each the same way. APGA argues that the roll-up policy fosters different pricing treatment for pre-existing captive shippers on different pipelines solely as a function of whether the pipeline in question has incremental capacity and this price difference is unlawful under the section 4 NGA proscription against unduly discriminatory pricing and preferential treatment.

It has been the practice under Commission ratemaking policies to set individual pipeline rates based on each pipeline's different costs, and maximum rates have differed on pipelines as a result of these different costs. The result here is the same. APGA's argument suggests that the Commission should establish uniform national rates, but that is not required by the NGA.

New England argues that the policy is discriminatory because shippers taking the same service will have their contracts expire at different times, and shippers whose contracts expire earlier would face a rate increase while others continue to take the same service at the same rate. Similarly, Process Gas Consumers state that this approach is discriminatory because similarly situated shippers may be subjected to very different maximum rates for the same service for no reason other than the timing of their contract expiration dates and the mechanics of the process used to set the new matching rate.

It is not necessarily true that all companies should pay the same prices for the same goods or services regardless of when they contract for the goods or services, or when their contract expires. In an unregulated market, a firm may be able to lock-in a low price for goods or services when demand is weak relative to the available supply, while another firm contracting for the same goods or services at a later time when supply and demand conditions change may pay a higher price. Shippers who enter into long-term contracts are guaranteed the rate provided for by the contract, but there is no guarantee that they will have the same rate for that service after their contract expires. The courts have recognized that different contracts can justify rate differences.[229] However, once the contract expires, there is no basis for distinguishing between customers receiving the same service.

Section 4 of the NGA prohibits a pipeline from affording different treatment to similarly situated shippers on its system. When there are different rates in effect on the system for historical customers and new customers for the same service, this rate difference raises concerns about discrimination under the NGA. There is no valid economic reason why the pipeline should charge these customers a different rate, and the ROFR pricing policy will tend to lessen price disparities on the system by moving toward a system-wide uniform maximum rate.

b. Consistency with Commission Policy. AGA, APGA, Florida Cites, Process Gas Consumers, Keyspan, NASUCA, and New England argue that the ROFR pricing policy as applied to captive customers is inconsistent with the Certificate Policy Statement and other established Commission policy. They assert that one of the main goals of the Certificate Policy Statement is to assure that the pipeline must be prepared to support the project financially without relying on subsidies from existing customers.[230] They argue that requiring captive customers to pay the highest incremental rate on the pipeline is inconsistent with this goal because the captive customers will subsidize expansion projects at the end of their contract terms.

Further, they assert that the Certificate Policy Statement provides that existing customers should not have to bear the risk of cost overruns of pipeline expansion projects, but that these risks should be apportioned by contract between the pipeline and expansion shippers.[231] They assert that the ROFR pricing policy is inconsistent with this goal because existing captive customers will be required in the future to bear the risks associated with new pipeline projects. In addition, they assert, the Certificate Policy Statement provides that existing customers should not have to pay for a project that does not serve them,[232] and that the ROFR pricing policy conflicts with this goal because captive customers would underwrite expansion projects that were not built to serve them. In addition, they argue requiring subsidization by captive customers conflicts with the goal of sending accurate pricing signals to new shippers.

Contrary to the suggestion of these petitioners, the ROFR pricing policy is not inconsistent with the Certificate Policy Statement, but is an integral part of the policy and works to accomplish its goals. As the Commission explained in the Certificate Policy Statement, a requirement that the new project must be financially viable without subsidies does not eliminate the possibility that in some instances, the project costs should be rolled into the rates of the existing customers.[233] Existing shippers should not subsidize any new construction projects during the term of their contracts.[234] However, where the pipeline charges different rates for the same service under incremental pricing and the pipeline is fully booked,[235] requiring the customer to match the highest competing bid up to the maximum rate sends efficient price signals to existing customers whose contracts are expiring as well as to expansion customers.[236]

The ROFR pricing policy leaves the pipeline at risk for any underutilized expansion capacity because the higher rate can only be charged to historical shippers if the facility is fully booked and there is a bid above the old vintage rate. Further, as the Commission stated in the Certificate Policy Statement, in pipeline contracts for newly constructed facilities, the pipeline should not rely on standard Memphis Clauses to deal with the risk of cost overruns, but should reach a contractual agreement with the new shippers concerning who will bear the risks of cost overruns. Therefore, responsibility for cost overruns should be resolved among the pipeline and the expansion shippers before construction, and cost overruns should not be included in general rate increases that could affect the rates of the existing shippers.

AGA, APGA, Process Gas Consumers, and Keyspan are concerned that "gaming" by the pipelines can defeat the goals of the Certificate Policy Statement. They argue that pipelines will be able to manipulate the timing of system expansions and contract expirations so as to subvert the Commission's goals with respect to approval and pricing for new pipeline facilities, and take advantage of the forced subsidies by captive customers. Further, Process Gas Consumers state that the pipeline can manipulate the process by considering only expansions that would raise rates and ignore those that should cause rates to decrease.

The concerns that pipeline's will "game" the system by scheduling expansions to coincide with contract expirations are without foundation. In order to implement a higher rate than the old maximum rate, the pipelines must implement a mechanism that reallocates costs between existing and expansion shippers without changing the pipeline's overall revenue requirement. The pipeline therefore obtains no additional revenue from implementing the higher maximum rate, and there is no incentive to game the system. Further, under the new construction policies, the pipeline must be prepared initially to finance the expansion project without subsidization from existing shippers. The circumstances where a higher maximum rate could be implemented are very limited and it would be quite risky for a pipeline to base a decision to expand its facilities on a prediction that these circumstances might be met. Moreover, the method chosen by the Commission for implementing this new pricing policy gives the Commission the ability to review any rate change mechanisms before they can take effect and gives existing shippers the ability to raise any concerns about gaming.

Process Gas Consumers' concern that the pipeline could manipulate the process by considering only expansions that would raise rates and ignore those that should cause rates to decrease is also without foundation. In the Certificate Policy Statement, the Commission recognized that while incremental pricing will usually avoid subsidies for the new project, the situation may be different in the case of inexpensive expansability that is made possible by earlier costly construction. In that instance, because the existing customers bear the cost of the earlier more costly construction in their rates, incremental pricing could result in a subsidy to the new customers. This issue of rate treatment for cheap expansability must be resolved in each individual proceeding before construction. This will protect the existing shippers where the new shippers benefit from the prior construction.

APGA also argues that the ROFR pricing policy is inconsistent with Order No. 637's stated goal of reducing revenue responsibility of captive customers because this policy could result in huge rate increases to captive customers at the end of their contracts. It is also inconsistent, APGA argues, with the rationale of the ROFR to protect captive customers at the end of the term of their contract. Process Gas Consumers also argue that the new policy violates the spirit of the ROFR derived from the NGA because the ROFR requires that a shipper match the highest rate being offered for that shipper's capacity under that shipper's existing rate schedule, not some number contrived from the rates paid by other shippers resulting from other expansions or other shippers' decisions.

Contrary to AGPA's assertion, the ROFR pricing policy will not result in huge increases to captive customers at the end of their contracts. Rates will increase only in very limited situations, *i.e.*, where the pipeline has vintages of capacity and charges different prices for the same service under incremental pricing; the pipeline is full; a competing shipper bids a rate for the capacity that is above the existing shipper's current maximum rate; and the pipeline has in place an approved mechanism for reallocating costs between the historic and incremental rates. Rates will increase only to the level that another new shipper is willing to pay for the service.

The policy is not inconsistent with the purpose of the ROFR. The purpose of the ROFR is met because the existing customer is still protected against the exercise of market power by the pipeline since the pipeline cannot insist on the shipper paying a higher rate unless its expansion is fully subscribed and there is another bid for capacity at a rate above the vintage maximum rate charged the existing shipper. Any bid that the existing customer must meet to retain its service will be a just and reasonable rate. These conditions ensure that the pipeline is unable to use its market power over captive customers to withhold capacity from the market to raise price. Price will exceed the current maximum rate charged the existing shipper only when a higher price is needed to allocate scarce capacity. While existing pipelines have been filing certificate applications to expand their facilities, the expansion proposals concentrate in certain regions. There is no reason to expect that they would all result in expansions that would justify increasing the maximum rate for historic customers.

In addition, APGA asserts that the ROFR pricing policy is anticompetitive because a customer whose contract expires soon will not be able to compete with another customer whose contract does not expire for a number of years. APGA asserts that the Commission's rationale for the ROFR pricing policy, *i.e.*, that it will promote efficiency and fairness of capacity allocation, is erroneous because captive customers have no alternatives and therefore will be forced to pay the higher rate. Similarly, Keyspan asserts that, contrary to the Commission's suggestion, this policy will not create allocative efficiency, but will require captive customers to pay higher rates when their contracts expire so that incremental customers may pay less.

APGA's concern that shippers with longer term contracts will have a competitive advantage over shippers with shorter term contracts is speculative. Further, awarding capacity to the shipper who values it the most does in fact promote allocative efficiency, and, as explained above, the only time that a shipper will have to bid a higher rate at the contract expiration is when the pipeline is fully booked and there is another bid for the capacity.

In addition, APGA argues that the new ROFR pricing policy is directly inconsistent with the ROFR policy adopted for the electric industry in Order No. 888. APGA states that in Order No. 888–B, the Commission specifically held that the maximum rate that an electric transmission customer had to meet under the ROFR should not reflect any costs for incremental expansions that occurred during the term of the customer's contract that was expiring because "the right of first refusal is predicated on an existing customer continuing to use its transmission rights in the *existing* transmission system." [237] APGA asserts that this same rationale applies to the right of first refusal for captive gas transportation customers since these customers have no choice but to continue to use the existing capacity and thus should pay the rate applicable to that capacity. APGA states that the Commission has failed to justify the implementation of conflicting ROFR policies under its two enabling statutes which embody the same public interest standard.

The Commission's policy is consistent with Order No. 888 and with the portion of Order No. 888–B quoted by AGPA. Order No. 888–B provides that the maximum rate that an existing customer

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[229] *UMDG v. FERC*, 732 F.2d 202, 212 (D.C. CIR. 1984); Norwood v. FERC, 587 F.2d 1306, 1310 (Cir. 19).

[230] APGA cites the Policy Statement, 88 FERC at 61, 746–47.

[231] APGA cites 88 FERC at 61,746.

[232] APGA cites 88 FERC at 61,746.

[233] 88 FERC at 61,746.

[234] Order Clarifying Statement of Policy, 90 FERC ¶ 61,128 (slip op. at 12) (2000).

[235] In addition, as explained above, the pipeline must have an approved mechanism to implement the ROFR pricing policy.

[236] *Id.*

[237] APGA cites Order No. 888–B, 81 FERC ¶ 61,248 at 62,085 (1997).

must pay to exercise its right of first refusal is "the just and reasonable transmission rate on file at the time the customer exercises its right of first refusal"[238] and, further, that depending on the rate design on file for the existing capacity, "a customer exercising its right of first refusal could face an average embedded cost-based rate, an incremental cost-based rate, a flow-based rate, a zonal rate, or any other rate design that the Commission may have approved under section 205 of the FPA."[239] Thus, the electric customer exercising its ROFR is not guaranteed that it can continue service at its old maximum rate, but may be required to meet a bid up to the maximum system rate on file, just as the gas customer is required to do.

New England argues that the policy is unfair because it ignores the fact that the existing shipper has supported the pipeline for many years through a series of long-term contracts for service. Now that these facilities are heavily depreciated, New England asserts that these customers should be permitted to receive service on these facilities that they funded. New England states that the new policy will negate settlements that are in place on certain pipelines. For example, New England states, on both the Tennessee and Algonquin systems, New England LDCs contracted for incremental services and paid incremental rates; by settlement, New England agreed to pay the incremental rate for a given period and gradually roll-in the costs of the facilities over time. Now that the rates are largely rolled-in, New England asserts, it will be denied the benefits of lower rates. New England states that having paid the higher rates for many years, it would be unfair to require these shippers to match a new incremental rate when the contract covering these facilities expires.

As explained below, in order to implement a higher maximum rate, the pipeline must have in place a mechanism that allocates costs between historic and incremental rates. Procedures for approving such a mechanism will allow interested petitioners to participate, and settlements can be taken into account in determining whether a particular method is just and reasonable on a particular pipeline.

4. Implementation Mechanism

In Order No. 637, the Commission gave pipelines the option of proposing an implementation mechanism either in a full section 4 rate case or through the filing of *pro forma* tariff sheets which would provide the Commission and the parties with an opportunity to review the proposal prior to implementation. Several petitioners argue that permitting the mechanism to be implemented in a limited section 4 proceeding does not afford sufficient protections to assure that the rates will be just and reasonable. Process Gas Consumers state that the Commission generally restricts use of a limited section 4 proceeding to instances where pipelines are filing for trackers, true-ups and other minor changes, and that a pipeline seeking to raise its transportation rates is required to file a general section 4 rate case. In contrast, Process Gas Consumers state that this proposal would allow a pipeline to increase the existing shipper's base rate without a balanced opportunity to submit the rate increase to the full scrutiny of section 4 to determine whether the rate is just and reasonable. Process Gas Consumers state that this procedure will not consider the cost savings from intervening pipeline depreciation, cost-cutting, or other efficiencies or additional revenues the pipeline may be receiving from new services or other load-enhancing initiatives. Process Gas Consumers argue that the Commission must require that if a pipeline believes that its expansion benefits other shippers to the extent that they should pay for them, such a case and decision should be made in a full section 4 case to review the merits of roll-in, not through some backdoor easing in of higher maximum rates that will selectively penalize some shippers.

A full section 4 rate proceeding is one of the options a pipeline may use to implement a mechanism, but the Commission will not require it. As the Commission explained in the Order Clarifying Statement of Policy, a full section 4 proceeding can be a cumbersome way to implement this mechanism because it examines cost and revenue items and other issues unrelated to the more limited cost allocation and rate design changes needed to readjust rates at contract expiration. Pipelines, therefore, can also establish the reallocation mechanism by filing *pro forma* tariff sheets which will provide the Commission and the parties sufficient opportunity to review the proposals. Once the review is completed, the pipeline can implement the mechanism through a limited section 4 filing.

5. Grandfathering of Existing Contracts

Several of the petitioners[240] argue that if the Commission does not reverse its ROFR pricing policy, it should allow each historical shipper on an incrementally priced pipeline the opportunity, upon expiration of its contract, to elect an extension term without exposure to roll-up. They argue it is unfair to apply the policy to existing contracts without a grandfather provision because the existing contracts were entered in reliance on a ROFR that required shippers to match the maximum rate for the existing service. They argue that had the new policy been in effect at the time the current contracts were executed, they would have signed a longer-term contract.

As the Commission explained in its Order Clarifying Statement of Policy,[241] it is not appropriate to give existing customers one opportunity to renew their contracts at their existing maximum rate. Where there is insufficient capacity to satisfy all demands for capacity, an efficient system of capacity allocation would award the capacity to the shipper placing the greatest value on obtaining the capacity. A one-time mandatory renewal would conflict with that policy by permitting the existing shipper to continue service at a rate less than the highest bid.

6. Clarification

AGA and several other petitioners[242] present various fact scenarios and ask the Commission to explain how the ROFR will operate in these situations. One question posed by these examples is if there is a maximum incremental rate in effect on a system, but none of the incremental shippers are paying the maximum rate, does the shipper exercising its ROFR have to match a bid above the highest rate actually being paid, or can the shipper retain its capacity by paying the highest rate being paid by an incremental shipper. Other scenarios pose questions concerning what depreciation rate should be used to calculate the incremental rate that must be matched by the existing shipper, whether the rate is affected if the Commission places the pipeline at risk for underrecovery of costs, how the policy will apply on a zoned system,[243] how the pricing policy will operate if a new shipper bids for a portion of the available capacity,[244] and whether a different result should occur if the expansion shipper is an affiliate of the pipeline. In addition, the petitioners ask what incremental rate will be the maximum rate on pipelines with more than one such rate and how will increased revenues paid by pre-existing shippers be credited back to incremental shippers. Keyspan asks the Commission to clarify if a shipper's contract expires in the year 2001, and is subject to the ROFR, and there is a bid in excess of the pre-expansion rate such that the shipper must match that bid, will a shipper whose contract is for the same basic capacity but expires in 2002 have to match what was paid in 2001 if there are no competing bids, or can the shipper utilizing its ROFR in 2002 simply match the pre-existing rate.

National Fuel Gas Distribution asks the Commission to clarify that if a shipper is expected to pay a higher rate, it must only be in the instances where the other shipper is receiving the same service. Distribution states that a shipper may be paying a higher rate on a lateral built specifically for that shipper, but this should not impact a long-haul shipper's cost.

New England states that the proposal will be difficult to implement. New England states that it will not always be a simple matter to determine whether a pipeline is full—the fact that there is a competing bid does not necessarily means that the system is full—if the competing bidder is a new shipper, it may simply mean that the "old" capacity held by the existing shipper is a better deal for the new shipper.

The fact patterns presented by the petitioners are complicated, and the Commission concludes that it will be preferable to address complex factual situations if and when they arise in the individual pipeline proceedings to implement the ROFR pricing policy. Moreover, many of the questions do not have generic application but are specific to the particular factual circumstances on a particular pipeline system. The implementation mechanism chosen by the Commission will permit the Commission and the parties to consider all the relevant facts in the specific context before applying the general pricing policy. Some of the issues raised by the petitioners, however, can be clarified here. Thus, the Commission clarifies that the existing shipper must match the highest bid incremental rate up to the maximum incremental being paid on the system. If there is a factual question as to whether there is sufficient capacity to satisfy demand on a particular pipeline, that issue can be addressed in the individual proceeding.

7. Geographical Segmentation

In Order No. 637, the Commission stated that it would not enhance the right of first refusal by holding that it can be exercised for a geographic portion of the existing contract, as requested by several petitioners. The Commission explained that the purpose of the right of first refusal is to protect the captive customer's historical service, and therefore it should apply only when the existing shipper is seeking to contract for its historical capacity. The Commission further explained that the right of first refusal is a limited right and was never intended to permit shippers to increase or change their service.[245] It is intended to be a means of defense against pipeline market power, not a mechanism to award an existing shipper a preference over a new shipper for a different service.

A shipper that can terminate a geographic portion of its historical service must have alternatives in the market that can substitute for its historical service, and therefore the Commission has concluded as a matter of policy that such a shipper does not require the protection of the ROFR. Further, as the Commission stated in Order No. 637, permitting the exercise of the ROFR for a geographic portion of the historical capacity could leave the capacity unused, and thus burden the pipeline and its other customers with the unused capacity. Therefore, the Commission concluded that maintaining the current policy and not expanding the right of first refusal strikes the appropriate balance between protecting the historic service of the captive customer and not burdening the pipeline and its other customers with unused capacity. AGA, Keyspan, Koch, and New England seek rehearing of the Commission's decision on this issue.

The petitioners argue that while the Commission has characterized its decision as a refusal to enhance the ROFR, current Commission policy permits exercise of the ROFR for a geographic portion of the capacity. They argue that Order No. 636–A provides that the ROFR applies to a "portion" of the pipeline's capacity without restricting the definition of "portion,"[246] and that subsequently, in *Williams Natural Gas Co.*[247] the Commission applied this policy to permit a shipper to exercise its right of first refusal to retain its market area and storage area portion of a service agreement, but not the production area capacity. Keyspan states that Order No. 637 is also inconsistent with the Commission's reasoning in *Tennessee Gas Pipeline Co.*,[248] where the Commission held that because the pipeline's tariff did not require shippers to take transportation in both the production and market area, customers renewing their contracts could choose not to take production area capacity. These petitioners argue that the Commission has failed to provide an adequate basis for its departure from its prior holdings.

The Commission's decision is not a departure from its prior holdings. While, as the parties point out, Order No. 636 provides that the ROFR applies to a "portion" of the pipeline's capacity without defining the word "portion," the Commission's subsequent decisions interpreting the scope of the term "portion" have defined "portion" to include a volumetric portion of the capacity, but have decline to extend the definition to include a geographic potion. Thus, in *Transcontinental Gas Pipeline Co.*[249] the Commission explained that the question of whether the ROFR should apply to a geographic portion of the capacity is a different question from whether it should apply to a volumetric portion of the capacity, and raises different policy concerns. Upon further consideration of these policy issues, the Commission determined in Order No. 637 that extending the ROFR to allow it to be exercised for a geographic portion of the capacity would not be consistent with its original purpose. As the Commission explained in Order No. 637, the ROFR is intended to protect captive customers and their historic capacity against the pipeline's exercise of market power, and is not intended to give existing shippers an advantage over other customers

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[238] 81 FERC at 62,085

[239] 81 FERC at 62,085 n.90.

[240] *E.g.*, ConEd, Florida Cities, New England.

[241] 90 FERC ¶ 61,128 (2000).

[242] ConEd, Keyspan, National Fuel, and New England.

[243] AGA gives an example where a shipper has long-haul capacity on zones 1–5 of a zoned system, and an incremental rate is in effect on zone 5 and asks, if, at the conclusion of the contract, another potential shipper bids on zone five capacity, must the existing shipper match the bid for zone 5 short-haul, plus the maximum system-wide maximum rate for the haul across zones 1–4.

[244] AGA posits a situation where a new potential shipper seeks 10,000 Dth per day of capacity on incremental facilities bearing an incremental rate, and at the same time, 50,000 Dth per day is expiring under contracts containing the regulatory right of first refusal, and asks whether the holders of all 50,000 Dth per day must match the incremental rate offered by the potential shipper.

[245] As the Commission stated in Williams Natural Gas Company, 65 FERC ¶ 61,221 at 62,013 (1993), "the character of the service being provided under the expiring contract cannot be changed through use of the right of first refusal."

[246] AGA cites Order No. 636–A, FERC Stats. & Regs. [Regulations Preambles 1991–1996] ¶ 31,950 at 30,635 (1992).

[247] 81 FERC ¶ 61,350 at 62,627–28 (*Williams I*), *reh'g*, 83 FERC ¶ 61,052 (*Williams II*) (1997).

[248] 76 FERC ¶ 61,022 at 61,128–29 (1999).

[249] 88 FERC ¶ 61,155, *reh'g denied*, 88 FERC ¶ 61,295 (1999). See also Texas Eastern Transmission Corp., 88 FERC ¶ 61,167, *reh'g denied*, 88 FERC ¶ 61,291 (1999).

seeking new or different service from the pipeline. The *Williams* decision is not to the contrary. In *Williams* the Commission addressed a specific factual situation where no-notice service on the pipeline had separate transportation and storage components. In *Williams*, the Commission limited its holding to a situation where service was provided in the production area and the market area under different rates schedules, and the Commission expressly stated that it "does not reach the issue of the existing shippers' ability to bid for different volumes of capacity in different zones under the same rate schedule."[250] Thus, the Commission's decision in that case was not a generic holding, but was based on the specific service characteristics of the pipeline.

Because of the potential impact on pipeline recovery, the Commission will not make a generic finding that shippers may exercise their ROFR for a geographic portion of its capacity. The determination whether this result is justified in a particular case will depend on the specific facts, as was the case in *Williams* and *Tennessee*.

The petitioners challenge the accuracy of the Commission's statement that a shipper that can terminate a geographic portion of its historical service must have alternatives in the marketplace that can substitute for its historical service and therefore is not a captive customer that requires the right of first refusal. They assert that a customer seeking to retain a portion of its service is in all likelihood a captive customer with respect to the portion of the service it seeks to retain, and that if the pipeline can use its monopoly power in the market area to require a shipper to purchase capacity in the production area, the shipper really does not have alternatives. New England states that because the Commission's factual conclusion is inaccurate, the decision to deny ROFR protection to customers seeking to take a geographic portion of their current capacity does not meet the standard set forth by the *UDC* court—it does not adequately protect captive customers from the exercise of pipeline market power.

The petitioners also state that the Commission's concerns about unused capacity do not justify its decision. AGA asserts that these concerns are speculative because projections for increased gas usage over the next decade suggest that capacity turnback by LDCs may not create significant problems for interstate pipelines, and that if unsubscribed capacity does result, there are effective policies for addressing turnback capacity generally and in individual pipeline proceedings. Keyspan states that the Commission does not explain why it is appropriate for captive customers, rather than the pipeline, to bear this burden. In addition, Keyspan states that the court's decision in *Municipal Defense Group* v. *FERC (MDG)*[251] cited by the Commission does not support its decision on geographical segmentation. Keyspan states that in that case the court decided that customers competing for new capacity must do so on an equal basis, while here the customers seeking to use the ROFR are not seeking new capacity; they are seeking capacity to which they have a right under section 7(b) of the NGA. In addition, Keyspan states that the Commission has held that third parties can submit a bid for a portion of a customer's capacity that is subject to the ROFR.[252] Keyspan argues that to the extent that third parties can bid for a geographic portion of a customer's capacity, the existing customer cannot be said to be competing with a third party on a level playing filed as was the case in *MDG*.

These arguments ignore the fact that the ROFR is intended to protect the historic service of captive customers from the pipeline's exercise of market power. It is not intended to give existing shippers an advantage over other shippers in bidding for a different or new service. What the petitioners seek on rehearing is a preference to obtain pipeline service over other shippers where that service is limited and is of high value, and at the same time obtain the ability to change the character of their historic service by eliminating geographic segments that are of less value. The ROFR allows the captive customer to keep its historic capacity, but only when the customer bids for that capacity. If a customer with a ROFR decides that it wants to change its historic service and compete with other shippers, it can always do so, but it cannot retain the ROFR to give it a competitive advantage over other shippers in these circumstances. Moreover, if a third party bids for a portion of their capacity, they may exercise their ROFR to retain the capacity and thus, contrary to Keyspan's argument, the existing customer has an advantage over the third party bidder.

The petitioners also argue that the same rationale that the Commission used in determining that a customer can exercise its ROFR for a volumetric potion of the customer's capacity applies with regard to a geographic portion of the capacity. They assert that the Commission acknowledged that the purpose of allowing the existing capacity holder to exercise its ROFR to retain a volumetric portion of its capacity was to ensure against the inefficient or unnecessary holding of capacity at the expiration of the contract. They assert that the Commission has failed to provide a persuasive rationale for requiring the inefficient retention of capacity on a geographic basis.

However, there are different considerations involved in permitting a shipper to take a geographical portion of its capacity. Allowing shippers to "cherry pick" the most desirable segments of their historic capacity is far more likely to leave the pipeline with stranded capacity than permitting a customer to take a volumetric portion for the entire length of the haul. Further, it gives the shipper with the ROFR a competitive advantage over other shippers, while allowing a shipper to take a volumetric portion of the capacity merely allows the customer to adjust its volume of capacity under contract to meet a changing demand.

The petitioners also argue that Order No. 637 is inconsistent with the Commission's policy of fostering competition. They state that allowing shippers to exercise their right of first refusal for a geographic portion of the capacity will promote market centers and liquid gas trading points, and facilitate the development of a competitive market that the Commission hopes to achieve in this order. Koch argues that it is anticompetitive to allow pipelines to require that shippers in the market area must hold capacity in the production area, and this limits customer's choices and the competitors ability to serve customers on these lines.

Koch acknowledges that it would be inappropriate to allow a customer to carve out a small, discrete portion of its capacity and exercise its right of first refusal on only that portion, but that it is different to allow a customer to exercise its right of first refusal for a pipeline's market area facilities so that it could select the production area facilities of another pipeline. Koch and Keyspan argue that this change would allow customers to benefit from wellhead competition and bring all the benefits of competition to parties that historically have been subject to the market power of the longline pipelines. Keyspan argues that the Commission's failure to afford captive customers the same choices as customers with alternatives is unduly discriminatory and cannot be reconciled with the

[250] *Williams*, 81 FERC ¶ 61,350 at 62,627 n.20.

[251] 170 F.3d 197 (D.C. CIR. 1999).

[252] Keyspan cites Order No. 636, FERC Stats and Regs. (1991–1996) ¶ 30,939 at 30,451–52 (1992).

court's decision in *Maryland Peoples Counsel* v. *FERC*[253] and *Maryland Peoples Counsel* v. *FERC*.[254] Keyspan states that in those decisions, the court held that the Commission could not adequately explain its decision to exclude captive customers from the benefits of certain pipeline programs, and that therefore the programs were unduly discriminatory. Similarly, Keyspan argues, in this case, the Commission has failed to explain its decision to refuse to afford captive customers the ability to exercise their ROFR rights to choose to renew only certain geographic portions of their contracts even though such alternatives are available to customers with competitive options.

Koch states that, contrary to the Commission's assertion, this would not change the type of service that the shipper is receiving. Koch states that the only change would be to the primary receipt points, and that all other aspects would remain the same, including the type of service and contract term. Keyspan also states that on a long-line system, transportation typically can be purchased on an individual zone basis and, as a result, permitting customers to exercise their ROFR on a geographic basis does not permit shippers to change their existing service. Koch states that if the service the customer is purchasing is a production area to market area service, then it is an anti-competitive tying arrangement that the Commission should eliminate independent of its right of first refusal policy.

Koch states that, not only does this policy cause an inefficient allocation of capacity, it also sends garbled price signals regarding the construction of new capacity and the corresponding value of that new capacity. Koch states that this distorted information will lead to overbuilding of capacity by the wrong pipeline, which will eventually lead to stranded costs. If the Commission does not grant rehearing on this point, Koch asks that the Commission direct the pipelines to amend their tariffs to provide that a customer can lose its ROFR only if another customer agrees to pay a rate that has a higher net present value for the original long haul than the customer is willing to pay for the short haul.

Shippers with a ROFR have the same rights to bid on geographic portions of a system, and not on other portions of the system, such as the production area, as any other shipper. Thus, this is not similar to *Maryland Peoples' Counsel* where captive customers were denied a benefit that was provided to non-captive customers. However, when bidding for a geographical portion of its capacity, the existing customer must compete with other shippers on an equal basis, and not have an advantage through the ROFR. If another bidder creates a greater net present value by bidding for a long-haul, then that bidder should receive the capacity. If the customer with the ROFR produces the highest net present value with a bid for less than the full length of haul, then it may be able to get the capacity. This benefits the system as a whole and most customers because it brings more revenue to the system, and the Commission has consistently allowed pipelines to allocate their capacity on that basis.[255]

Texas Eastern seeks clarification, or in the alternative, rehearing of the Commission's discussion in Order No. 637 of the shippers' right to exercise its ROFR for a volumetric portion of its capacity. Texas Eastern asks the Commission to clarify that its customers do not have the right to unilaterally terminate portions of their agreements unless Texas Eastern has provided notice of termination because that is the way Texas Eastern's approved tariff operates. National Fuel raises the same issue with regard to Texas Eastern's tariff and asks the Commission to clarify that where a tariff is inconsistent with the shipper's right to reduce its volumetric capacity, the pipeline should be required to file tariff language consistent with the Commission's clarification.

The Commission will not address any tariff-specific issues in this proceeding. However, the Commission has held that the regulatory right of first refusal permits the capacity holder to elect to retain a volumetric portion of its capacity, regardless of the terms of any tariff. If there are any issues regarding a specific tariff provision, they may be addressed in the individual compliance filings.

8. Five-Year Cap

In Order No. 637, the Commission stated that it would not change the length of the term matching cap at this time. In Order No. 636–C, the Commission had determined a five-year matching cap was appropriate given the evidence in that record of the industry trends in contract length, and none of the petitioners in this proceeding presented evidence to show that a five-year contract is atypical in the current market.

On rehearing, INGAA, Great Lakes, and The Williams Companies argue that the Commission should remove the term matching cap. These petitioners argue that there is evidence showing adverse consequences of the five-year cap,[256] and that the five-year cap continues a fundamental imbalance in the risks assumed by a pipeline and shipper.

INGAA argues it is illogical and unsupportable to retain the term matching cap on the basis that it is the median length of long-term contracts entered into since January 1, 1995. INGAA states that this treats half of all renewal contracts entered into since January 1, 1995 as unreasonable, when in fact the market has determined that contracts having terms longer than five years are necessary or appropriate based on commercial considerations. INGAA argues that the Commission should lift the cap and permit market forces to determine what length of contract an existing shipper must match.

TWC and Great Lakes assert that shippers that have competitive alternatives do hold maximum rate firm contracts with rights of first refusal, and TWC argues that the Commission should conclude that the five-year matching cap will not apply unless the shipper makes a positive showing that it is a captive customer and has no available alternatives. In addition, Great Lakes asserts that removal of the five-year cap does not create any unreasonable disadvantages for the existing shipper because if there are no other bidders, the existing shipper can renew its contact for any period, and if there are bidders, it can renew its contract by matching whatever term another shipper is willing to offer. Finally, Great Lakes argues that the Commission's retention of the five-year cap is inconsistent with its decision on ROFR incremental pricing. Great Lakes argues that since it is appropriate to subject a renewing shipper to market forces with regard to price, it is also appropriate to subject renewing shippers to market forces with regard to contract term.

The Commission adopted the five-year matching cap in Order No. 636–C in response to the Court's remand of the 20-year matching cap in *UDC*. In *UDC*, the court approved of the concept of a term-matching limitation "as a rational

[253] 761 F.2d 768, 770 (D.C. Cir. 1985) (*MPCI*).

[254] 761 F.2d 780, 781 (D.C. Cir. 1985) (*MCPII*).

[255] See Tennessee Gas Pipeline Co., 91 FERC ¶ 61,053 (2000).

[256] INGAA argues that it could result in substantial turnback capacity due to the ROFR's bias toward one-year contracts. Great Lakes argues that the five-year matching cap places an unnecessary stranded capacity risk on the pipeline because it cannot sell, combine with other capacity becoming available, or reduce the need for incremental expansions by utilizing the excising shipper's capacity until the shipper rejects its ROFR.

means of emulating a competitive market for allocating firm transportation capacity,"[257] but found that the Commission had failed to justify a 20-year matching cap. Thus, eliminating the term-matching cap as requested by the parties is not consistent with the Court's opinion in UDC. As the Commission explained in Order No. 637, there is no evidentiary basis at this time for changing the 5-year matching cap. The pipelines are not disadvantaged by the term-matching cap because it merely substitutes for the section 7(b) requirement that the pipeline obtain permission prior to abandoning service.

B. Negotiated Terms and Conditions

In Order No. 637, the Commission determined not to move forward at this time with pre-approved negotiated terms and conditions of service. The Commission explained that pipelines have been able to create open access tariff-based services with enhanced flexibility for scheduling and handling imbalances without having to negotiate terms and conditions of service with individual shippers, and, therefore, it is not clear that pre-approved negotiated terms and conditions of service are necessary. Further, the Commission explained that the negotiation of terms and conditions of service is directly related to the question of whether the Commission needs to revise its regulatory policy to accommodate a dual market structure in which some shippers with sufficient alternatives want to negotiate terms and conditions of service while other shippers remain captive, still subject to the pipeline's market power. Thus, the Commission concluded that the development of a two-track regulatory model requires further study of the interrelation between various aspects of Commission regulatory policy. TWC, Amoco, NGSA, INGAA, and CNG have asked for rehearing or clarification of this portion of Order No. 637.

TWC asserts that it is concerned that the Commission's existing procedures for implementing new rate schedules and non-conforming contracts are too slow and cumbersome to respond to the needs of the marketplace, and argues that the Commission should grant rehearing and permit negotiated rates and terms and conditions of service. However, as explained above, in Order No. 637, the Commission exercised its discretion to defer further consideration of this issue because it raises other policy questions that are not the subject of this proceeding. There is no basis for granting rehearing of this decision, and TWC's request for rehearing is denied.

Amoco and NGSA ask the Commission to further clarify the distinction between negotiated rates and negotiated terms and conditions, and how it will treat capacity turnback issues. INGAA and CNG urge the Commission to move forward with allowing negotiated terms and conditions as soon and feasible, and, in the interim, to be responsive to innovative service offerings that may be filed within the existing regulatory framework.

In Order No. 637, the Commission explained that it is not possible to formulate generic definitions applicable to all potential situations, but generally the Commission considers negotiated terms and conditions to be related to operational conditions of transportation service while negotiated rates would include the price, the term of service, the receipt and delivery points, and the quantity. A negotiated rate would not include conditions or activities related to the transportation of gas on the pipeline, such as scheduling, imbalances, or operational obligations, such as OFOs. The Commission will not further define the terms in this proceeding, but will consider specific issues, including capacity turnback issues, in response to the service offerings filed in individual pipeline proceedings.

V. Miscellaneous Issues

A. Corrections to Regulations

In Order No. 637, the Commission sought to consolidate its reporting requirements for pipelines providing open access service under subpart B (transportation under section 311 of the NGPA) and subpart G (open access transportation under the NGA) in a single section, § 284.13. But the reports concerning bypass of LDC facilities required under subpart B (§ 284.106) were not included in § 284.13, remaining in § 284.106. Prior to Order No. 637, subpart G pipelines were required to file bypass reports, because § 284.223(b) contained a cross-reference requiring subpart G pipelines to comply with each of the reporting requirements in § 284.106, which included the bypass reports. However, in Order No. 637, § 284.223(b) was removed, with the unintended effect of eliminating the existing requirement that subpart G pipelines file bypass reports. To correct this error, the Commission is revising the regulations to include the bypass reports in § 284.13(f), so that the pre-existing requirement for both subpart B and subpart G pipelines to file bypass reports will be maintained.

B. Filing of Pro Forma Tariff Sheets

The Commission's April 12, 2000 order[258] established a schedule for pipelines to file the *pro forma* tariff sheets necessary to comply with the regulations governing scheduling, segmentation, and penalties. Pipelines making *pro forma* tariff filings in response to this order must make these filings as new RP dockets and should file the *pro forma* tariff sheets on paper as well as electronically as provided in section 154.4 of the Commission's regulations.[259] To reduce the burden required to convert the *pro forma* tariff sheets to final sheets, the *pro forma* sheets should be filed as if they are proposed revisions of sheets in the existing tariff volume (with changes identified as provided in Section 154.201 of the Commission's regulations) with the words Pro Forma before the volume name, e.g., Fourth Revised Sheet No. 150, FERC Gas Tariff, Pro Forma Third Revised Volume No. 1. For the electronically filed tariff sheets, Pro Forma should be inserted at the beginning of the name field (VolumeID) in the Tariff Volume Record, i.e., the TF02 record. When the pipeline files the final tariff sheets, it need only remove the phrase *pro forma* for any unchanged sheets.

Pipelines should file the electronic *pro forma* tariff sheets through Internet E-Mail to 637FASTR@ferc.fed.us in the following format: on the subject line, specify the name of the filing entity; in the body of the E-Mail, specify the name, telephone number, and E-Mail address of a contact person; the *pro forma* tariff sheets should be attached to the E-Mail message. The Commission will send a reply to the E-Mail to acknowledge receipt. Questions about E-Mail filing should be directed to Lorena Finger at 202–208–1222, or by E-Mail to lorena.finger@ferc.fed.us, or to Albert Rogers at 202–208–0078 or by E-Mail to albert.rogers@ferc.fed.us.

Pipelines unable to file using Internet E-Mail must file the *pro forma* tariffs on diskette along with the paper filing and must label the diskette as containing *pro forma* tariff sheets.

VI. Effective Date

The amendments to the Commission's regulations adopted in this order will become effective July 5, 2000.

[257] *UDC*, 88 F.3d at 1140.

[258] Regulation of Short-Term Natural Gas Transportation Services 91 FERC ¶ 61,020 (2000).

[259] 18 CFR 154.4.

List of Subjects in 18 CFR Part 284

Continental shelf; Incorporation by reference; Natural gas; Reporting and recordkeeping requirements.

By the Commission. Commissioner Massey concurred with a separate statement attached.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.8, paragraph (i) is revised to read as follows:

§ 284.8 Release of firm transportation service.

* * * * *

(i) *Waiver of maximum rate ceiling.* Until September 30, 2002, the maximum rate ceiling does not apply to capacity release transactions of less than one year. The provision of paragraph (h)(1) of this section providing an exemption from the posting and bidding requirements for transactions at the applicable maximum tariff rate for pipeline services will not apply as long as the waiver of the rate ceiling is in effect. With respect to releases of 31 days or less under paragraph (h) of this section, the requirements of paragraph (h)(2) of this section will apply to all such releases regardless of the rate charged.

3. In § 284.12, the first sentence of paragraph (c)(2)(iii) and paragraph (c)(2)(v) are revised to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

* * * * *

(c) * * *

(2) * * *

(iii) *Imbalance management.* A pipeline with imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of its shippers to manage transportation imbalances.

* * *

* * * * *

(v) *Penalties.* A pipeline may include in its tariff transportation penalties only to the extent necessary to prevent the impairment of reliable service. Pipelines may not retain net penalty revenues, but must credit them to shippers in a manner to be prescribed in the pipeline's tariff. A pipeline with penalty provisions in its tariff must provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of the pipeline's system.

* * * * *

4. In § 284.13, paragraphs (b)(1) introductory text, (b)(1)(viii), (b)(2) introductory text, b(2)(iv), (b)(2)(vi), and paragraph (d)(1) are revised, and paragraph (f) is added, to read as follows:

§ 284.13 Reporting requirements for interstate pipelines.

* * * * *

(b) * * *

(1) For pipeline firm service and for release transactions under § 284.8, the pipeline must post with respect to each contract, or revision of a contract for service, the following information no later than the first nomination under a transaction:

* * * * *

(viii) Special terms and conditions applicable to a capacity release transaction, including all aspects in which the contract deviates from the pipeline's tariff, and special details pertaining to a pipeline transportation contract, including whether the contract is a negotiated rate contract, conditions applicable to a discounted transportation contract, and all aspects in which the contract deviates from the pipeline's tariff.

* * * * *

(2) For pipeline interruptible service, the pipeline must post on a daily basis no later than the first nomination for service under an interruptible agreement, the following information:

* * * * *

(iv) The receipt and delivery points covered between which the shipper is entitled to transport gas at the rate charged, including the industry common code for each point, zone, or segment;

* * * * *

(vi) Special details pertaining to the agreement, including conditions applicable to a discounted transportation contract and all aspects in which the agreement deviates from the pipeline's tariff.

* * * * *

(d) * * *

(1) An interstate pipeline must provide on its Internet web site and in downloadable file formats, in conformity with § 284.12 of this part, equal and timely access to information relevant to the availability of all transportation services whenever capacity is scheduled, including, but not limited to, the availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields, whether the capacity is available directly from the pipeline or through capacity release, the total design capacity of each point or segment on the system, the amount scheduled at each point or segment whenever capacity is scheduled, and all planned and actual service outages or reductions in service capacity.

* * * * *

(f) Notice of bypass. An interstate pipeline that provides transportation (except storage) to a customer that is located in the service area of a local distribution company and will not be delivering the customer's gas to that local distribution company, must file with the Commission, within thirty days after commencing such transportation, a statement that the interstate pipeline has notified the local distribution company and the local distribution company's appropriate regulatory agency in writing of the proposed transportation prior to commencement.

§ 284.106 [Removed and reserved]

5. Section 284.106 is removed and reserved.

6. In § 284.221, paragraph (d)(2)(ii) is revised to read as follows:

§ 284.221 General rule; transportation by interstate pipelines on behalf of others.

* * * * *

(d) * * *

(2) * * *

(ii) Gives notice that it wants to continue its transportation arrangement and will match the longest term and highest rate for its firm service, up to the applicable maximum rate under § 284.10, offered to the pipeline during the period established in the pipeline's tariff for receiving such offers by any other person desiring firm capacity, and executes a contract matching the terms of any such offer. To be eligible to exercise this right of first refusal, the firm shipper's contract must be for service for twelve consecutive months or more at the applicable maximum rate for that service, except that a contract for more than one year, for a service which is not available for 12 consecutive months, would be subject to the right of first refusal.

* * * * *

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Rehearing Requests Filed in Docket Nos. RM98–10–000 and RM98–12–000

REHEARING REQUEST AND ABBREVIATION

American Gas Association—AGA
American Public Gas Association—APGA
Amoco Energy Trading Corporation and Amoco Production Company—Amoco
Arkansas Gas Consumers—Arkansas Gas Consumers
Atlanta Gas Light Company—Atlanta or AGLC
Cibola Energy Services Corporation—Cibola
CNG Transmission Corporation—CNG
Coastal Companies—Coastal
Columbia Gas Transmission Corporation—Columbia Gas
Columbia Gulf Transmission Co.—Columbia Gulf
Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities Inc.—ConEd or Con Edison
Dynegy Inc.—Dynegy
El Paso Energy Corporation Interstate Pipelines—El Paso
Enron Interstate Pipelines—Enron
Florida Cities—Florida Cities
FPL Energy, Inc.—FPL Energy
Great Lakes Gas Transmission Limited Partnership— Great Lakes
Illinois Municipal Gas Agency—IMGA or Illinois Municipal Gas Agency
Independent Oil and Gas Association of West Virginia—IOGA of WV
Independent Petroleum Association of America—IPAA
Indicated Shippers—Indicated Shippers
Interstate Natural Gas Association of America—INGAA
Keyspan Gas East Corporation and the Brooklyn Union Gas Company—Keyspan
Kinder Morgan Pipelines—Kinder Morgan
Koch Gateway Pipeline Company—Koch
Michigan Gas Storage Company—MGS or Michigan Gas Storage
Minnesota Department of Commerce—MDOC or Minnesota
National Association of State Utility Consumer Advocates, Ohio Office of the Consumers Counsel, Pennsylvania Office of Consumer Advocate—NASUCA
National Energy Marketers Association—NEM
National Association of Gas Consumers—NAGC
National Fuel Gas Distribution Corporation—National Fuel Distribution
Natural Gas Supply Association—NGSA
New England Gas Distributors—New England
Niagara Mohawk Energy, Inc.—NM Energy
Northwest Industrial Gas Users—NWIGU
Ohio Oil & Gas Association—OOGA
Paiute Pipeline Company—Paiute
Process Gas Consumers Group (American Iron and Steel Institute, Georgia Industrial Group, American Forest and Paper Association ALCOA, Inc. and United States Gypsum Company)—Process Gas Consumers or Industrials
Reliant Energy Gas Transmission Company and Mississippi River Transmission Corporation—Reliant
Reliant Energy Minnegasco—Minnegasco
Scana Energy Marketing, Inc.—Scana
Tejas Offshore Pipelines, LLC—Tejas
Texas Eastern Transmission Corporation—Texas Eastern
UGI Utilities, Inc.—UGI
Washington Gas Light Company—Washington Gas
Williams Companies, Inc.—Williams
Williston Basin Interstate Pipeline Company—Williston
Wisconsin Distribution Group—WDG

MASSEY, Commissioner, *concurring:*

One aspect of today's order that I would regard as a retreat from Order No. 637 is the change in the time at which pipelines must file transactional reports. Today's order would alter the timing of the contemporaneous posting of transactional information, from contract execution to first nomination prior to gas flow. Ostensibly, this is being done to achieve comparability between the reporting requirements for pipeline transactions and those for capacity release transactions, which was one of the stated objectives of Order No. 637. With this change, however, one can still regard the pipeline transactional filing requirements as contemporaneous if one is referring to the first nomination prior to gas flow. Nevertheless, I would have preferred not to make this change.

On balance, however, this is a solid, well-reasoned order that retains the character of the original order in most respects.

William L. Massey,
Commissioner.

[FR Doc. 00–13216 Filed 6–2–00; 8:45 am]
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Federal Register

Monday,
June 5, 2000

Part III

Department of Education

National Institute on Disability and Rehabilitative Services; Office of Special Education and Rehabilitative Services; Notices

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 2000–2001 for new awards for the Alternative Financing Program, and the Alternative Financing Technical Assistance Program, both authorized under Title III of the Assistive Technology Act of 1998.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces final funding priorities for awards under the Alternative Financing Program (AFP) and one award under the Alternative Financing Technical Assistance Program (AFTAP) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 2000–2001. The Assistant Secretary takes this action in order to award grants or cooperative agreements to States to establish or maintain alternative financing projects to increase access to assistive technology (AT) for individuals with disabilities. Currently, major service programs such as Medicaid, Medicare, special education, and vocational rehabilitation cannot meet the growing demand for AT. Most individuals with disabilities do not have the private financial resources to purchase the AT they need. Loan programs offer individuals with disabilities attractive options that significantly enhance their access to AT.

DATES: These priorities take effect on August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna_Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Waiver of Rulemaking

Pursuant to section 437(d)(1) of the General Education Provisions Act, the Assistant Secretary has determined that these priorities are exempt from the Administrative Procedure Act (5 U.S.C. 553). Section 437(d)(1) exempts from rulemaking the first grant competition under a new or substantially revised program authority. This is NIDRR's first grant competition under the ATAct, which replaced the Technology-Related Assistance for Individuals with Disabilities Act of 1988, as amended (Tech Act), and was signed into law on November 13, 1998.

SUPPLEMENTARY INFORMATION: This notice contains two final priorities authorized under the ATAct. The priorities are: (1) Alternative Financing Program (AFP); and (2) Alternative Financing Technical Assistance Program (AFTAP).

These final priorities support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The authority for the Secretary to fund a financing program and technical assistance (TA) program is contained in Title III of the ATAct.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priorities.

Alternative Financing Program

Background

For the first time, NIDRR is funding the Alternative Financing Program, authorized under Title III of the ATAct. The AFP will assist States to establish or maintain alternative financing projects to increase access to AT for individuals with disabilities.

The ATAct reaffirms the Federal role of promoting access to AT devices and services for individuals with disabilities and continues the AT State Grant Program, authorized under Title I of the ATAct of 1998. In 1988 Congress passed the Tech Act to assist States to identify and respond to the AT needs of individuals with disabilities. Reauthorized in 1994, the Tech Act provided Federal funds as a catalyst for permanent systemic change and as leverage within States to make AT devices and services more readily available to individuals with disabilities. All of the 56 State grantees (50 States, District of Columbia, Puerto Rico, American Samoa, Virgin Islands, Northern Marianna, Guam) have demonstrated success in increasing availability of, funding for, access to and provision of, AT devices and services. On a State level, AT State Grant Program grantees have improved delivery of AT to individuals with disabilities.

Most often, these efforts involve increased and measurable responsiveness on the part of public purchasing systems to provide AT devices and services for individuals with disabilities. Public systems include, but are not limited to, Medicaid, Medicare, special education and vocational rehabilitation. These public systems have, to varying degrees, acknowledged and met the AT needs of individuals with disabilities who qualify for the particular program.

The Rehabilitation Act of 1973, as amended, includes several provisions requiring inclusion of AT devices and services among the range of available services offered by the vocational rehabilitation system. The Individuals with Disabilities Education Act (IDEA) has included AT devices and services since 1990. IDEA requires school districts to take AT into account in their evaluations and planning for students with disabilities. For eligible recipients, Medicaid offers a viable though often unpredictable funding source. Some States have investigated ways to increase the responsiveness of private insurance companies to the AT needs of privately insured individuals with disabilities. For individuals who qualify, the aforementioned public and private agencies should, and typically would be, approached to fund AT devices and services.

In 1998, NIDRR sponsored five regional hearings on issues affecting appropriate and timely access to AT devices and services. (Blueprint for the Millennium: An Analysis of Regional Hearings, 1998) In each of the hearings, financing of AT was cited as a persistent barrier as was a general lack of knowledge about public and private financing options. Testimony from consumers, families, service providers, and developers referenced a need for financial incentives for both individuals and businesses to improve AT use. The hearings also identified the need for new funding strategies and models to expand funds for AT purchases. Public testimony also indicated that AT users want maximum autonomy in identifying their technology needs and the devices and services that will best meet these needs.

Moreover, testimony emphasized that separately, or in combination, the major service programs do not have sufficient resources to meet the growing demand for AT and that there also is a lack of private financial resources for the purchase of AT. As the number of individuals with disabilities increases and the elderly population expands, and as consumers and their families become increasingly aware of the role and benefits of AT, the demand for AT will increase; the result will continue to be a tremendous strain on public and private third party funding sources. A significant recommendation of the hearings was that the AT State Grant Program grantees continue to work with other entities such as consumer organizations, community-based groups, and private lending institutions to establish alternative financing projects for the purchase of AT devices and services. Alternative financing projects offer individuals with disabilities attractive options and can serve as financing alternatives for individuals with disabilities who do not qualify for public financing programs. Loan programs enhance access to AT devices and services in a way that underscores independence and inclusion.

Currently, a total of 32 AT State Grant Program grantees operate alternative financing projects under Title I. The success of these Title I alternative financing projects has stimulated interest in creating opportunities for additional States to establish alternative financing projects and for States that have an existing projects to expand available resources. Currently, individuals who apply for loans under the Title I AT State Grant Program alternative financing projects obtain loans that range from $250 to $50,000. The estimated average loan is between $5,000 and $7,500. (Wallace, J., Assistive Technology Loan Financing: A Funding Alternative of Increasing Importance. *Tech Express, 1998*). The Title I AT State Grant Program alternative financing projects include various types of activities, such as revolving, guaranteed, interest buy-down, traditional or combination program models. States typically enter into an agreement with a private lending institution such as a bank or credit union and involve consumers in the selection and approval procedures.

In establishing the AFP, the Assistant Secretary recognizes that significant challenges and barriers continue to face individuals with disabilities and their families. A pervasive barrier is the absence of funding and information about funding opportunities for AT devices and services. The AFP will enable individuals with disabilities to access a funding alternative to public assistance programs. NIDRR has $3.9 million available for awards under this program in fiscal year 2000 and the President has requested $15 million for fiscal year 2001.

Description of the Alternative Financing Program

The AFP creates a new Federal program to pay a share of the cost of establishment or expansion, and administration of, an alternative AT financing program. The program features one or more alternative financing mechanisms to allow individuals with disabilities and their family members, guardians, advocates, and others to purchase AT devices and services.

Priorities

Under 34 CFR 75.105(c)(3) and Title III of the ATAct, the Assistant Secretary gives an absolute preference to applications that meet the following priorities. The Assistant Secretary will fund under this competition only applications that meet one of the following priorities.

Priority 1: Alternative Financing Program

The Assistant Secretary establishes the AFP in order to provide assistance to States so that individuals with disabilities of all ages and their family members, guardians, advocates, and authorized representatives will have increased access to funding for AT devices and services through alternative financing mechanisms (loans). Consistent with statutory requirements:

(a) The State must enter into a contract with a community-based organization (including a group of such organizations), such as Centers for Independent Living, that has individuals with disabilities involved in organizational decision making at all organizational levels, to administer the alternative-financing program. The contract shall: (1) Include a provision requiring that the program funds, including the Federal and non-Federal shares of the cost of the program, be administered in a manner consistent with the provisions of this title; (2) include provisions for oversight and evaluation to protect Federal financial interests; and (3) require the community-based organization to enter into a contract with a commercial lending institution or State financing agency.

(b) The State that receives a grant and any community-based organization that enters into a contract with the State, must annually submit, 12 months after receipt of the fiscal year 2000 award, each of the following policies, procedures, data, and information: (1) A procedure to review and process in a timely manner requests for financial assistance for immediate and potential technology needs, including consideration of methods to reduce paperwork and duplication of effort, particularly relating to need, eligibility, and determination of the specific AT device or service to be financed through the project; (2) A policy and procedure to assure that access to the AFP shall be given to consumers regardless of type of disability, age, income level, location of residence in the State, or type of AT device or AT service for which financing is requested through the program; and (3) A procedure to assure consumer-controlled oversight of the program.

(c) The State must provide the following information: (1) The ratio of funds provided by the State for the AFP to funds provided by the Federal Government; (2) the type of alternative financing mechanism used and the community-based organization with which the State entered into a contract; (3) the following information concerning each disabled individual served by the project: The amount of assistance, type of AT device or AT service financed through the project, type of disability, age, gender, race, ethnicity, socioeconomic status, primary language, geographic location within the State, employment status, whether the consumer is part of an underrepresented population or rural population, and whether the consumer tried to secure financial support from other sources and, if so, a description of those sources.

(d) The State must provide one or a combination of the following: (1) A low-interest loan fund; (2) an interest buy-down program,) a revolving loan fund; (4) a loan guarantee or insurance program, (5) a program operated by a partnership among private entities for the purchase, lease, or other acquisition of AT devices or AT services; or (6) another mechanism that meets the requirements of this program and is described in an application, peer reviewed and approved by the Assistant Secretary.

(e)(1) The State must provide matching funds so that the Federal share of the cost of the AFP is not more than 50 percent. Because section 302 (a)(3)(A) of the ATAct requires each State to receive a minimum award of $500 000, the State match must be at least $500,000; and (2) The State must provide the non-Federal share of the cost of the AFP in cash, from State, local, or private sources;

(f) The State must provide an assurance that the State will continue the AFP after Federal funding has terminated on a permanent basis or for as long as the mechanisms exist to support such a program;

(g) The State must provide an assurance that, and information describing the manner in which, the program will expand and emphasize consumer choice and control;

(h) The State must provide an assurance that the State will supplement and not supplant other Federal, State, and local public funds expended to provide any currently operating AFP in the State;

(i) The State must provide an assurance that the State will place all funds that support the AFP, including funds repaid during the life of the program, in a permanent separate account, apart from any other fund;

(j) The State must provide an assurance that the State's community-based organization will invest funds in low-risk securities in which a regulated insurance company may invest under the law of the State if the organization administering funds invests funds within this account;

(k) The State must provide an assurance that the State's community-based organization will administer the funds with the same judgement and care that a person of prudence, discretion, and intelligence would exercise in the management of the financial affairs of such person;

(l) The State must provide an assurance that funds comprised of the principal and interest from the State account for this activity will be available to support the AFP;

(m) The State must provide an assurance that any interest or investment income that accrues on or derives from such funds after such funds have been placed under the control of the organization administering the AFP, but before such funds are distributed for purposes of supporting the program, will be the property of the organization administering the program; and

(n) The State must provide an assurance that the State will limit the indirect costs of the total amount available for the AFP to 10 percent, including both the Federal and State funds.

In addition to the statutory requirements, each project must:

(a) Provide in accessible formats materials that can be used by potential loan applicants and lending institutions to obtain, share and disseminate information on loan availability, eligibility requirements and procedures and general loan related updates; and

(b) Coordinate and share information, resources and with the State ATAct projects.

(c) Conduct and submit to NIDRR and the AFTAP an annual evaluation of its activities using the data collection instrument to be developed the AFTAP described in Priority 2.

Priority 2: Alternative Financing Technical Assistance Program

The Assistant Secretary establishes AFTAP in order to assist States in meeting the objectives of the AFP. Consistent with the statutory requirements, the AFTAP project must:

(a) Provide assistance to States preparing applications for the AFP;

(b) Assist States to develop and implement the AFP; and

(c) Provide any other information and TA the Assistant Secretary determines to be appropriate to assist States to achieve the objectives of AFP.

In addition to the statutory requirements, the AFPTA project must:

(a) Develop and implement a self-assessment instrument to determine the effectiveness of the AFPTA;

(b) Provide in accessible formats materials that contains useful and replicable information on loan projects and can be used by States under the AFP and States planning to apply under the AFP to improve the efficiency and effectiveness of their loan projects working closely with the National Internet Project located at the Georgia Institute on Technology;

(c) Develop a uniform data collection instrument for use by the AFP that includes, at a minimum, data on features of loan programs and unique characteristics and outcomes in order to comply with annual reporting requirements; and

(d) Share information and collaborate with the TA programs funded under Section 104 of the AT Act.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number 84.224C, Assistive Technology Act Alternative Loan Financing, Title III)

Program Authority: 29 U.S.C. 3051–3058

Dated: May 31, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–13945 Filed 6–2–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.224C]

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards in Fiscal Years 2000–2001 for the Alternative Financing Program (AFP), and the Alternative Financing Technical Assistance Program (AFTAP), Both Authorized Under Title III of the Assistive Technology Act (ATAct)

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86 and the Notice of Final Priority published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: These competitions focus on projects designed to meet the absolute priorities in the notice of final priority for these programs, published elsewhere in this issue of the **Federal Register**. Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the absolute priorities.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the funding priorities for the AFP and the AFTAP and to receive technical assistance through individual consultation and information about the funding priorities. For further information or to make arrangements to attend contact Carol Cohen, Switzer Building, room 3420, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone (202) 205–5666. If you use a Telecommunication Device for the Deaf (TDD), you may call (202) 205–4475.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.* other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this Notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

APPLICATION NOTICE FOR FISCAL YEAR 2000, ALTERNATIVE FINANCING PROGRAM AND ALTERNATIVE FINANCING TECHNICAL ASSISTANCE PROGRAM, CFDA NO. 84.224C

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Award amount (per year) [1] [2]	Project period (months)
84.224C–1, Alternative Financing Program.	July 28, 2000	7	Outlying areas, maximum: $105,000; State Minimum: $500,000; Average: $540,000; Range: $500,000 to $3,800,000 [1].	12
84.224C–2, Alternative Financing Technical Assistance Program.	July 28, 2000	1	Year 1—200,000; Year 2—300,000	24

[1] Note: The total amount available in FY 2000 for the AFP is $3,800,000. The Secretary is required to award a minimum of $500,000 to States and to distribute any remaining funds among those States based on population and density. After award of $500,000 to seven States, the Secretary would have an additional $250,000 (approximately) to distribute among the seven States. If only four applications are approved for funding, the Secretary would distribute all available funds ($3.8 million) to those four applicants. Therefore, applicants are encouraged to apply for (with full matching requirements) a grant award of up to $3.8 million, which is the amount available if only one State applies and receives an award. The Secretary requires that the amount above the minimum of $500,000 shall be separable and clearly identified in the application, budget, and matching materials.

[2] The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount for fiscal year 2000 (See 34 CFR 75.104(b)).

Program Title: Alternative Financing Program.

CFDA Number: 84.224C–1.

Purpose of Program: The purpose of the AFP is to award grants to States to pay for the Federal share of the cost of the establishment and administration of, or the expansion and administration of, an AFP featuring one or more alternative financing mechanisms to allow individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase AT devices and AT services.

Eligible Applicants: Parties eligible to apply for the AFP are States and outlying areas that receive or have received grants under the AT State Grant Program (section 101 of the ATAct).

Matching Requirement: The Federal share of the cost of the Alternative Financing Program must not be more than 50 percent. Therefore, because the minimum Federal share is $500,000 for States, States are required to match at least $500,000. The match must be provided with cash, from State, local, or private sources. *The State must match at the exact level requested, $500,000 or greater.* The Federal share for an outlying area would be $105,000; requiring a $105,000 match.

Program Title: Alternative Financing Technical Assistance Program.

CFDA Number: 84.224C–2.

Purpose of Program: The purpose of the AFTAP is to award a grant to a public or private agency or organization to provide information and TA to States participating in AFP.

Eligible Applicants: Parties eligible to apply for grants under the AFTAP are public or private agencies and organizations, including institutions of higher education with sufficient documented experience, expertise and capacity to assist States in the development and implementation of the AFPs carried out the ATAct. A State receiving a grant under the ATP would not be eligible for a grant under the AFTAP.

Matching: No match is required.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for priorities under both the Alternative Financing Program and the Alternative Financing Technology Assistance Program. (See 34 CFR 75.210). The maximum score for all the criteria is 100 points.

(a) *Significance* (10 points total). (1) The Secretary considers the significance of the proposed project; and

(2) In determining the significance of the proposed project, the Secretary considers the extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(b) *Quality of the project design* (25 points total). (1) The Secretary considers the quality of the design of the proposed project; and (2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (8 points).

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (8 points).

(iii) The extent to which the proposed project represents an exceptional approach to the priority or priorities

established for the competition (6 points).

(iv) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources (3 points).

(c) *Quality of project services* (15 points total). (1) The Secretary considers the quality of the services to be provided by the proposed project;

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible proposed project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (5 points); and

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services (5 points).

(ii) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources (5 points).

(d) *Quality of project personnel* (15 points total). (1) The Secretary considers the quality of the personnel who will carry out the proposed project;

(2) In determining the quality of proposed project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (5 points); and

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator (5 points).

(ii) The qualifications, including relevant training and experience, of key project personnel (5 points).

(e) *Adequacy of resources* (15 points total). (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization (8 points).

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (7 points).

(f) *Quality of the management plan* (10 points total). (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timeliness, and milestones for accomplishing project tasks (5 points).

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (5 points).

(g) *Quality of the project evaluation* (10 points total). (1) The Secretary considers the quality of the evaluation to be conducted by the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project (5 points).

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (5 points).

Instructions for Application Narrative: The Assistant Secretary strongly recommends the following:

(a) A one-page abstract;

(b) An application narrative (*i.e.*, Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 75 pages double-spaced (no more than 3 lines per vertical inch) 8.5 x 11" pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(c) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.224C–1 or C–2 and the title), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.224C–1 or C–2 and the title), Room #3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes:

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that the Department has received its application must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 11/12/99)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters, and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

Note: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.

Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016).

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a Photostat copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue SW., room 3317 Switzer Building, Washington, DC 20202, or call (202) 205–8207. Individuals who use a Telecommunications Device for the Deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW, room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a Telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna_Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:
http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html
To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.224C, Assistive Technology Act Alternative Loan Financing Program)
Program Authority: 29 U.S.C. 3051–3058.

Dated: May 25, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes. You may submit applications to any program for which they are responsive to the program requirements.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. In this case it is limited to 10%.

6. Can Profitmaking Businesses Apply for Grants?

Only States may apply for the AFP and there are specific eligibility requirements for the TA project however, profitmaking entities are eligible to apply for the AFTAP.

7. Can Individuals Apply for Grants?

No. Parties eligible to apply for the AFP are States and outlying areas that receive or have received grants under the AT State Grant Program (section 101 of the ATAct).

8. How Soon After Submitting my Application Can I Find Out if It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30 of the current fiscal year.

9. Can I Contact NIDRR To Find Out if My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot

be released except through this formal notification.

10. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

11. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions if such competitions are held. This would depend on subsequent appropriations.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

Alternative Financing Program and the Alternative Financing Technical Assistance Program (CFDA No. 84.224C).

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education
Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name:
Address:
City / State / County / ZIP Code + 4
Organizational Unit

2. Applicant's D-U-N-S Number
3. Applicant's T-I-N
4. Catalog of Federal Domestic Assistance #: 8 4 → Title:
5. Project Director:
Address:
City / State / ZIP Code + 4
Tel. #: ( ) Fax #: ( )
E-Mail Address:
6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)
7. Type of Applicant *(Enter appropriate letter in the box.)*
A State H Independent School District
B County I Public College or University
C Municipal J Private, Non-Profit College or University
D Township K Indian Tribe
E Interstate L Individual
F Intermunicipal M Private, Profit-Making Organization
G Special District N Other *(Specify)*:
8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:
—PreApplication ☐ Construction ☐ Non-Construction
—Application ☐ Construction ☐ Non-Construction
10. Is application subject to review by Executive Order 12372 process?
☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/___
☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.
11. Proposed Project Dates: Start Date: ___/___/___ End Date: ___/___/___
12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
a. If "Yes," Exemption(s) #: *OR* b. Assurance of Compliance #:
c. IRB approval date: ___ ☐ Full IRB or ☐ Expedited Review
13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.
a. Typed Name of Authorized Representative
b. Title
c. Tel. #: ( ) Fax #: ( )
d. E-Mail Address:
e. **Signature of Authorized Representative** Date: ___/___/___

REV. 11/12/99 ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No" If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a , **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gow humansub.htm.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Name of Institution/Organization

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

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OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ _____
(Signature) (Date)

_____
(Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	**3. Report Type:** ☐ a. initial filing ☐ b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:		**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:
6. Federal Department/Agency:		**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:		**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):		**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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Part IV

Department of Education

34 CFR Part 361
The State Vocational Rehabilitation Services Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 361

RIN 1820–AB14

The State Vocational Rehabilitation Services Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing The State Vocational Rehabilitation Services Program (VR program). These amendments are needed to implement changes in the Rehabilitation Act of 1973, as amended (Act). These changes establish evaluation standards and performance indicators for the VR program.

DATES: These regulations are effective July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Beverlee Stafford, Policy, Planning and Evaluation Service, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., room 3014 Mary E. Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8831.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Format Center, at (202) 205–8113.

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SUPPLEMENTARY INFORMATION: The VR program is authorized by Title I of the Act (29 U.S.C. 701–751). This program provides support to assist States in operating a comprehensive, coordinated, effective, efficient, and accountable program to assess, plan, develop, and provide vocational rehabilitation (VR) services to individuals with disabilities to enable them to prepare for and engage in gainful employment, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. Section 106 of the Act requires that the Secretary establish and publish evaluation standards and performance indicators for the program. These final regulations implement that requirement.

Pursuant to section 106(a)(3) of the Act and Executive Order 12866, which encourages Federal agencies to facilitate meaningful participation in the regulatory development process, the Secretary, through the Rehabilitation Services Administration (RSA) of the U.S. Department of Education (Department)—(1) consulted with the rehabilitation community during the development of the evaluation standards and performance indicators; (2) published a "notice of intent to regulate" to solicit comments on the development of the proposed evaluation standards and performance indicators; (3) held a public meeting to discuss several issues related to the development of proposed evaluation standards and performance indicators; (4) discussed the development of the proposed indicators on numerous occasions with various members of the rehabilitation community; and (5) published for review and comment a notice of proposed rulemaking (NPRM) for this program in the **Federal Register**, 63 FR 55292 (October 14, 1998). In response to the NPRM, we received 62 comments, each of which we reviewed and considered in the development of the final regulations. These final regulations reflect the input received through these efforts.

These final regulations amend 34 CFR part 361, which contains the VR program regulations, by adding a Subpart E entitled "Evaluation Standards and Performance Indicators." These final regulations implement certain requirements of the Rehabilitation Act Amendments of 1992 (1992 Amendments), Pub. L. 102–569 (October 29, 1992), and the Rehabilitation Act Amendments of 1998 (1998 Amendments), which are in Title IV of the Workforce Investment Act of 1998 (WIA), Pub. L. 105–220 (August 7, 1998). The 1992 Amendments added section 106 to part A of Title I of the Act, which requires the Secretary to establish and publish evaluation standards and performance indicators. The 1998 Amendments modified section 106 of the Act to require that, to the maximum extent practicable, the VR standards and indicators be consistent with the core indicators of performance (Core Indicators) established under section 136(b) of WIA.

Section 106 of the Act also includes, among other things, the following requirements: (1) The Secretary establishes and publishes in the **Federal Register** evaluation standards and performance indicators for the VR program. (2) The evaluation standards and performance indicators must include outcome and related measures of program performance that facilitate the accomplishment of the purpose and policy of the VR program. (3) The Secretary develops the evaluation standards and performance indicators with input from State VR agencies (or the designated State unit), related professional and consumer organizations, recipients of VR services, and other interested parties. (4) Each designated State unit (DSU) must report to the Secretary after the end of each fiscal year the extent to which it is in compliance with the evaluation standards and performance indicators. (5) The Secretary provides technical assistance to any DSU that performs below the established evaluation standards and develops jointly with the DSU a program improvement plan outlining the specific actions to be taken by the DSU to improve program performance. (6) If a DSU that performs below the established evaluation standards fails to enter into a program improvement plan, or is not complying substantially with the terms and conditions of such a program improvement plan, the Secretary reduces or makes no further payments under the VR program to the DSU until the DSU has entered into an approved program improvement plan or is complying substantially with the terms and conditions of such a program improvement plan. (7) The Secretary provides an annual report to Congress containing an analysis of program performance, including relative State performance, based on the evaluation standards and performance indicators.

The NPRM contained two evaluation standards, each of which had at least two or more implementing performance indicators by which to measure DSU performance. The NPRM also contained specific proposed performance levels for each indicator that identified the minimum level of performance that a DSU would need to achieve to pass a given indicator. Under the NPRM, a DSU would have had to pass a minimum of five of the seven proposed performance indicators, including at least two of the three proposed primary indicators, for Evaluation Standard 1 and both proposed performance indicators for Evaluation Standard 2.

These final regulations contain a limited number of significant changes to what we proposed in the NPRM. These changes are based on both public comment and interdepartmental review. A detailed description of these changes is contained in the "Analysis of Comments and Changes" section. In addition, we reviewed and revised the final regulations in accordance with the Department's "Principles for Regulating," which were developed as part of the Administration's regulatory reinvention initiative under the "National Performance Review II." The principles are designed to ensure that we regulate in the most flexible, most equitable, and least burdensome way possible.

Analysis of Comments and Changes

In response to our invitation in the NPRM, we received 62 comments on the proposed regulations. Our analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject under appropriate sections of the regulations. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make. Please note also that, in the NPRM, we requested comments on several issues regarding performance standards and indicators that are currently under consideration for regulatory development, including draft proposed Evaluation Standard 3 (Consumer Satisfaction), draft proposed Evaluation Standard 4 (Retention of Employment and Earnings), and draft proposed Evaluation Standard 5 (Adequate Use of Resources). We received many comments on these draft proposed evaluation standards and will give each comment serious consideration during the development of additional standards and indicators. We thank all individuals and organizations for their input.

Section 361.81 Applicable Definitions

Definition of "Full-time Employment"

Comments: Five commenters stated that requiring a minimum of 35 hours per week for a position to be considered "full time" is not realistic and recommended that the number of hours be lowered to 30 or 32 hours as a more accurate reflection of existing workplace conditions. Other commenters objected to any minimum for the number of hours worked per week required to constitute "full-time employment" and stated that the determination of whether the work is "full time" should be consistent with the implementation of the individual's Individualized Plan for Employment (IPE).

Discussion: The proposed definition of "full-time employment" applied only to proposed Performance Indicator 1.7, which would have measured the percentage of individuals in "full-time," competitive employment who would have been eligible to enroll in a medical insurance program. Because we have deleted proposed Performance Indicator 1.7 (for reasons discussed later in this preamble), a definition of the term "full-time employment" is no longer necessary.

Changes: We have deleted the proposed definition.

Definition of "Individuals From a Minority Background"

Comments: None.

Discussion: We have adopted the designations mandated by the Office of Management and Budget (OMB) for reporting and recording race and ethnicity, as mandated in the "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity" (Revisions), 62 FR 58, 781–85, and 790 (October 30, 1997). These designations are mandatory for all new and revised recordkeeping or reporting requirements that include racial or ethnic information after the publication date of the "Revisions."

Changes: Because OMB designates "individuals from a minority background" differently from the definition included in the NPRM, we have changed the proposed regulatory definition to conform to OMB's designation.

Definition of "Non-minority Individual"

Comments: Eight commenters disagreed with the proposed definition of "non-minority individual" and recommended that the term be defined as those individuals whose ethnicity or race is reported as White who are non-Hispanic.

Discussion: As we previously discussed, we have adopted the race and ethnicity designations mandated by OMB for recording and reporting race and ethnicity. The NPRM proposed to identify as "non-minority individuals" those individuals who designate themselves as both non-Hispanic and White using the OMB-mandated designations.

The "Revisions" mentioned previously— (a) require the data collector to request that the individual identify himself or herself; and (b) explicitly allow the individual to identify as many race or ethnicity designations as the individual believes apply. The data collector is to accept the individual's designation or designations and may not make any independent judgment regarding the individual's choice.

Changes: We have revised the definition of "non-minority individuals" to be consistent with OMB's definition.

Definition of "Service Rate"

Comments: Two commenters requested clarification of this term. These commenters stated that it was not clear whether the computation would be based on the rate services are accessed or the rate employment outcomes are achieved.

Discussion: The term "service rate" reflects the rate at which services were received by individuals who exited the VR program and is not based on the rate at which the individuals achieve employment. (The response to comments regarding Performance Indicator 2.1 includes an expanded discussion of this issue.)

The numerator for the service rate calculation is the number of individuals whose records are closed after they have *received* services under an IPE, whether or not they achieved an employment outcome. The denominator of the ratio is the number of all individuals whose records are closed after they had *applied* for services, whether or not they had an IPE. The denominator includes those individuals who— (1) applied for VR services but were not accepted into the program for any reason (including failure to cooperate, moved, *etc.*); (2) had been accepted for VR services but did not receive services for any reason (including those individuals who withdrew from the program while on a waiting list where the DSU is under an order of selection for services); (3) received services under an IPE but did not achieve an employment outcome; and (4) received services under an IPE and achieved an employment outcome. RSA will calculate the service rate for both minority and non-minority VR consumers.

Changes: None.

Section 361.82 Evaluation Standards

Comments: Two commenters expressed concern that the evaluation standards and performance indicators do not assess whether the employment outcome is consistent with the individual's informed vocational choice.

Discussion: While these final regulations do not contain a performance indicator for measuring informed choice, we want to emphasize our commitment to ensuring that each individual applicant and eligible individual is able to exercise informed choice throughout the VR process. We also want to emphasize that we expect to develop an indicator to measure the extent to which informed choice is part of the provision of services. As discussed in the preamble to the NPRM, we have proposed development of an evaluation standard for consumer

satisfaction (draft proposed Evaluation Standard 3 (Consumer Satisfaction)) that, in part, would measure the level of informed choice given to consumers during the VR process. We are in the process of reviewing the comments received on draft proposed Evaluation Standard 3. However, until an evaluation standard for measuring informed choice is formally proposed through the regulatory process, the requirement for informed choice will continue to be enforced through the monitoring and review process mandated in section 107 of the Act.

Changes: None.

Section 361.84(c) Performance Indicators

Section 361.84(c)(1)(i) Performance Indicator 1.1

Comments: One commenter suggested that Performance Indicator 1.1 be changed to measure the number of people who "enter employment" to make this indicator consistent with Core Indicator I under section 136(b) of WIA. The commenter notes that Core Indicator I measures the extent to which individuals "enter unsubsidized employment," while Performance Indicator 1.1 will measure the extent to which individuals "exiting the VR program * * * achieved an employment outcome." The commenter questioned the need for the differences between the two measures and also questioned whether Performance Indicator 1.1—under which individuals with disabilities must maintain employment for at least 90 days to be considered to have "achieved an employment outcome"—establishes a more restrictive standard for the VR program than that which applies to programs under Title I of WIA.

Discussion: As the commenter correctly points out, the Act requires that the standards and indicators for the VR program be consistent, to the maximum extent practicable, with the four Core Indicators established under section 136(b) of WIA. To that end, Performance Indicator 1.1 is consistent with the general objective of the WIA Core Indicators, which is to examine the success in achieving employment outcomes for individuals receiving services, but also accounts for the range of employment outcomes available under the VR program. "Employment outcomes" under the VR program include the full scope of employment options available to persons receiving VR services (*e.g.*, competitive employment, employment in non-integrated settings, homemaker, and unpaid family worker), whether those "employment outcomes" are "subsidized" or "unsubsidized." Thus, in assessing success in achieving employment outcomes under the VR program, it is necessary to consider the full range of outcomes contemplated by the Act.

Performance Indicator 1.1 also reflects other requirements that are specific to the VR program. In addition to making VR services available to individuals with disabilities entering the job market, the VR program authorizes VR services for eligible individuals who need those services to retain their current job. Thus, measuring only the number of individuals "entering" employment under the VR program, as done under WIA Core Indicator I, would not account for those individuals who receive VR services to maintain or continue their employment.

More generally, determining whether a VR program participant has successfully achieved an employment outcome depends on many factors in addition to the individual's ability to start or enter a job. For example, under the VR program regulations, the individual's employment must be consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, and the individual must be performing well on the job. Success in meeting these requirements cannot be accurately measured at the time the individual enters employment. Therefore, the determination of whether a VR program participant has successfully achieved an employment outcome is best made at a later point. The 90-day retention period from the time the individual begins working or no longer receives VR services is designed to ensure that the particular job is appropriate to the individual and has at least some measure of stability. We believe that using this and the other requirements for achieving an employment outcome under 34 CFR 361.56 to measure whether an individual's participation in the VR program was successful is much more accurate than focusing solely on the ability of an individual to enter employment. Thus, the differences between proposed Performance Indicator 1 1 and WIA Core Indicator I are necessary, and further alignment of the two measures would not result in an accurate measure of the extent to which States are successful in assisting people with disabilities achieve employment outcomes under the VR program.

Nevertheless, we recognize that the WIA Core indicators represent important measures for all programs, including the VR program, that are part of the One-Stop service delivery system established under Title I of WIA. Section 136(b)(2)(A)(i)(II) and (III) of WIA (WIA Core Indicators II and III) measure retention of unsubsidized employment 6 months after entry into employment and earnings 6 months after entry into employment, respectively. Consequently, we developed Draft Proposed Evaluation Standard 4 and its attendant draft performance indicators and presented those draft measures for public comment in the preamble to the proposed regulations, in an effort to ensure that future measures for the VR program reflect Core Indicators II and III. Since the proposed regulations were published, however, we have been working with the Department of Labor to further modify that draft Standard and its Indicators to better align those measures with each of the first *three* Core Indicators under Title I of WIA (the fourth WIA core indicator—attainment of a recognized credential—is not reflected in our drafts since the success of the VR program is judged solely on the basis of achievement of employment outcomes, particularly high-quality outcomes).

The new draft Standard, which we would implement through a separate rulemaking effort (*i.e.*, an NPRM seeking public comment and final regulations) would measure the extent to which participants in the VR program: (1) achieve an employment outcome with wages after receiving VR services (analogous to WIA Core Indicator I—entry into unsubsidized employment), (2) retain their employment 6 months after exiting the VR program with a job (WIA Core Indicator II), and (3) increase their earnings from the time they enter the VR program to the point 6 months after they exit the program with a job (WIA Core Indicator III). We are also working closely with the Department of Labor to adopt a common data base, specifically, the Unemployment Insurance (UI) Wage Data system maintained by State Employment Security Agencies, for purposes of measuring performance under the new draft Standard.

Consequently, this new measure under the VR program would be very closely aligned with the performance measures under WIA on key performance items that are common to all employment programs, *i.e.*, helping unemployed persons become employed, working to ensure that participants are able to retain their jobs, and assisting persons to obtain or maintain employment in which their earnings increase over time. We expect to publish this new Standard and supporting indicators for public comment once we have completed our assessment of the extent to which State VR units can obtain and use UI wage record information in support of the draft Standard and have determined the types of assistance State VR units might need to complete those tasks. We are giving a high priority to these efforts in order to better streamline the systems for measuring performance across partner programs of the One-Stop delivery system.

Available data collection methods and instruments enable us to implement only Standards 1 and 2 of the final regulations at this time. However, once we have confirmed that State VR agencies are able to report on the draft standard, we will determine what combination of evaluation standards and performance indicators (*e.g.*, adding the draft Standard and indicators to the performance measures in these final regulations, using the draft Standard as a substitute for one or more of the final regulatory measures, or implementing some other combination of measures) should be implemented in the future. Therefore, the future performance system for the program will include that combination of measures that best accounts for the uniqueness of the VR program and the need for a universal system for measuring performance of the State One-Stop system.

Changes: None.

Section 361.84(c)(1)(ii) Performance Indicator 1.2

Comments: Twelve commenters recommended that Performance Indicator 1.2 should measure only the percentage of individuals who obtain employment after the individual is determined eligible and an IPE has been established. These commenters further recommended that Performance Indicator 1.2 should not measure the percentage of individuals whose cases were closed (either as ineligible or after an eligibility determination was made) before any services were received.

Discussion: We agree with the comments and want to clarify that those individuals whose cases were closed (either as ineligible or after an eligibility determination) before any services were received will not be included in the percentage of individuals measured by Performance Indicator 1.2. As recommended by the commenters, Performance Indicator 1.2 will measure only the percentage of individuals who exit the VR program after they have been determined eligible and an IPE has been implemented.

Changes: None.

Section 361.84(c)(1)(iii) Performance Indicator 1.3

Comments: Five commenters recommended that those individuals who achieve an employment outcome of "self-employment" be eliminated from consideration under Performance Indicator 1.3 until a means to measure the true wages of self-employed individuals is developed. These commenters believe that the concept of "wages" is not applicable to self-employed individuals because wages apply to what one person must pay another and not what someone may be willing to earn if they are self-employed.

Discussion: Performance Indicator 1.3 is not dependent on measuring "wages" per se. The measure is of an individual's "earnings" and whether those "earnings" are equivalent to at least the minimum wage. Although self-employed individuals may not earn "wages" per se, they do have "earnings," and their "earnings" can be calculated on an hourly basis.

In addition, "self-employment" is specifically included within the definition of "employment outcome" in section 7(11) of the Act. Congress has recognized the importance of including all possible employment outcomes for individuals with disabilities. The VR program regulations and these indicators should be consistent with the Act and congressional intent. Therefore, we believe that self-employment outcomes for individuals with earnings comparable to at least the minimum wage should be included in the percentage of individuals who exit the VR program with earnings comparable to at least the minimum wage.

Changes: None.

Section 361.84(c)(1)(v) Performance Indicator 1.5

Comments: Some commenters were concerned about comparing the earnings of VR consumers exiting the VR program to the State's average hourly earnings. Their concern was based on their belief that most VR consumers achieve employment outcomes that are at the level of workers newly entering the work force while the State's average hourly wage is computed for all workers in the State, including workers with years of employment. These commenters believed that a more appropriate comparison would be to the average entry level worker in the State's work force.

Discussion: The assumption that most VR consumers achieve only employment comparable to that of new workers is inconsistent with the available data. The "Third Interim Report" of the "Longitudinal Study of the Vocational Rehabilitation Service Program," published in August 1998 ("Third Interim Report"), reported that over 96 percent of VR consumers who achieved employment outcomes had prior work experience. Specifically, the report stated the following: 36.9 percent of VR consumers were working at the time they applied for VR services; 37.8 percent of VR consumers had worked in the 2 years prior to applying for VR services; and 21.7 percent of VR consumers had worked previously, but not in the 2 years prior to applying for VR services. Additionally, the performance indicator includes only those individuals earning at least the minimum wage (necessarily excluding those individuals who earn less than the minimum wage at placement and whose inclusion would lower the ratio), and the minimum performance level is set at a ratio of less than .6 (an earnings level for VR consumers of less than 60 percent of the "State Average Annual Pay"). We believe the performance level for Performance Indicator 1.5 is consistent with the Act's emphasis on high-quality employment outcomes. Therefore, we do not believe a change is needed in this performance indicator.

Changes: None.

Section 361.84(c)(1)(vii) Performance Indicator 1.7

Comments: Fourteen commenters expressed concern that proposed Performance Indicator 1.7 was not a fair measure of DSU performance because the provision of medical insurance by the employer is outside the DSU's control. In addition, they felt that this proposed measure does not account for variability among States with regard to the availability of insurance programs and the changing nature of the labor market where employment-related benefits are less available. Three commenters were concerned that this proposed indicator would negatively impact VR consumers obtaining jobs with small employers who are less likely to provide medical insurance as a benefit option.

Discussion: Performance Indicator 1.7 would have addressed what research indicates is a major impediment to individuals with disabilities entering the workforce—the unavailability of adequate health insurance. The growing number of employers that do not provide health insurance worsens this problem. If this trend continues, DSUs will have reduced opportunities to place individuals with disabilities into jobs that provide health insurance. This would cause their performance on Indicator 1.7 to erode.

However, many individuals are covered by Medicaid, Medicare, and private insurance provided by their spouses, families, or other means. Also, all employees are covered by workers' compensation for injuries and illnesses that occur while on the job. In addition, the "Ticket-to-Work and Work Incentives Improvement Act of 1999," Pub. L. 106–170 (December 17, 1999), allows Medicaid recipients to keep their coverage even if they find employment. Because approximately one quarter of all individuals served by the VR program receive Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI), we expect that a growing number of individuals served by the DSUs will be eligible to retain Medicaid after they find employment. This will reduce the need for employer-provided health insurance for individuals served by DSUs.

Despite this limited availability of health insurance for some individuals served by DSUs, the problem persists. Of the nearly 34.67 million poor people in the U.S., only approximately 14 million are covered by Medicaid. Of the remaining 20.67 million poor, only approximately 9.47 million have health insurance. The remaining 11.2 million poor do not have health insurance and will not be helped by the new law.

In proposing this indicator, we assumed that health insurance was evenly distributed across the income spectrum and was reasonably available at all levels of income. However, further examination of the data provided in the "Third Interim Report" indicates the difficulty in finding jobs that offer health insurance at the wages earned by the majority of individuals with disabilities who are served by VR agencies.

For example, nearly 31.5 percent of individuals who are placed in competitive employment by a VR agency make $5 or less per hour. However, only 13 percent of jobs that pay $5 or less per hour offer health insurance.

In addition, nearly 31 percent of individuals who are placed in competitive employment by a VR agency make more than $5 but less than $7 per hour. However, only 35 percent of jobs that pay more than $5 but less than $7 per hour offer health insurance.

For slightly higher paying jobs, the percentage that offer health insurance increases significantly, although the percentage is still barely more than 50 percent. For example, 52.1 percent of jobs that pay more than $7 but less than $9 per hour offer health insurance. However, only 16.6 percent of individuals who are placed in competitive employment by a VR agency make more than $7 but less than $9 per hour.

The increase in jobs that offer health insurance is not as dramatic as wages increase. Only 54.9 percent of jobs that pay more than $9 but less than $11 per hour offer health insurance. However, only 8.8 percent of individuals who are placed in competitive employment by a VR agency make more than $9 but less than $11 per hour.

Finally, at the highest wage level for which we have data, 65 percent of jobs that pay more than $11 per hour offer health insurance. However, only 12.1 percent of individuals who are placed in competitive employment make more than $11 per hour.

The data show that nearly 62.5 percent of individuals who achieve competitive employment earn $7 or less per hour and that only a small percentage of jobs at these low wage levels offer health insurance. Therefore, we believe that the burden associated with satisfying this proposed indicator does not justify the extra resources, time, and effort DSUs would have to devote to finding those few jobs that offer health insurance for the majority of individuals served by DSUs.

In addition, even if we did believe finding the few jobs with health insurance was worth the extra burden, we believe that this proposed indicator would not have encouraged DSUs to assist individuals with disabilities to acquire health insurance from other sources, even though those other sources may be more appropriate for many individuals with disabilities. This proposed indicator also would have served as a disincentive to recruiting and accepting individuals with little or no education or work experience. Instead, this proposed indicator would have provided an incentive for recruiting and accepting those individuals with disabilities who already are well-educated, have extensive job experience, or are more likely to be candidates for community college or university training. We do not believe this would be a desirable result.

The data from the "Third Interim Report" also indicate that part-time workers, who are a significant percentage of individuals with disabilities who are employed, are less likely to find jobs that offer health insurance. Finally, the data indicate that firms with fewer than 25 employees are least likely to offer health insurance. These data show the difficulty in finding jobs that offer health insurance for individuals with disabilities, who are more likely to end up in low-paying, part-time jobs with smaller employers.

We believe DSUs should make every reasonable effort to find those employers who will provide health insurance to their employees who are not covered by Medicaid or some other health insurance. However, we recognize the difficulty in finding those employers. For this reason we believe this proposed indicator is not appropriate at this time.

Changes: We have deleted proposed Performance Indicator 1.7.

Section 361.84(c)(2)(i) Performance Indicator 2.1

Comments: One commenter suggested that Performance Indicator 2.1 does not include enough variables to adequately assess DSU services to individuals from minority backgrounds. This commenter suggested that comparing minority versus non-minority numbers by type of closure would be more statistically significant. Another commenter suggested that a better measurement than service rate would be to compare the employment outcome rate of individuals from minority backgrounds to the employment outcome rate of non-minority individuals. Still another commenter suggested that this indicator should compare the employment outcome rate, the average hourly wages, and availability of medical insurance benefits of individuals from minority backgrounds to those of non-minority individuals. One commenter questioned the need for this indicator if it can be satisfied through an examination of the DSU's policies and procedures.

Discussion: At this time, we do not have any data on which to compare the employment outcome rates, the average hourly wages, types of closures, or availability of medical insurance benefits of individuals from minority backgrounds to those of non-minority individuals. We believe that the comparison of service rates between individuals from minority backgrounds and individuals from non-minority backgrounds as the performance indicator for this evaluation standard is the appropriate starting point to determine whether individuals with disabilities from minority backgrounds have equal access to VR services. As we continue to collect additional data, we may determine in the future that comparing minorities and non-minorities by the type of closure, rate of employment outcomes, average hourly wages, or availability of medical insurance benefits is also necessary. Until we collect that additional data, we will not be able to develop an indicator to measure these factors.

We believe that requiring a DSU to describe the policies it has adopted and the steps it has taken to ensure that individuals with disabilities from minority backgrounds have equal access to VR services is the best performance indicator for this evaluation standard. The two-step approach in § 361.86(b)(2)(i) and (ii) for measuring compliance with Performance Indicator 2.1 ensures that DSUs will make appropriate efforts to ensure equal access to services for minority individuals.

Changes: None.

Section 361.84(c)(2)(ii) Performance Indicator 2.2

Comments: Nine commenters suggested that proposed Performance Indicator 2.2 should be eliminated because it is invalid to compare individuals with significant disabilities who self-report to the Census a disability that prevents them from working to individuals with significant disabilities who are eligible to receive VR services. Four commenters recommended deleting this proposed indicator if the 2000 Census does not include the data necessary to measure how to comply with it. Three commenters suggested that comparing the percentage of DSU consumers who are from minority backgrounds to the percentage of minority individuals in the general population is a more valid and reliable indicator. One commenter suggested that data on SSDI beneficiaries and SSI recipients may be used as an alternative to Census data.

Discussion: In addition to the comments opposed to this proposed indicator, the Bureau of the Census has decided not to continue to collect the data necessary to perform the proposed comparison. We will give serious consideration to the comments on the proposed indicator in the development of a new indicator.

Changes: We have deleted proposed Performance Indicator 2.2.

Section 361.86 Performance Levels

Comments: Three commenters stated that establishing different performance levels for agencies that serve only blind or visually impaired individuals implied incorrectly that those individuals were more significantly disabled than individuals served by general or combined DSUs. Two commenters were concerned that the lower performance levels for agencies serving only blind or visually impaired individuals were in conflict with the Act's commitment to competitive employment outcomes above the minimum wage. These two commenters recommended raising the level of performance for these agencies over a reasonable period of time so that they are eventually at the same performance level as general and combined DSUs.

One commenter suggested that we create a separate performance level for combined DSUs because many States are considering creating a separate agency serving blind and visually impaired individuals. The commenter also suggested that the transition for those combined DSUs will be easier if different performance levels are in effect when the transition occurs.

Discussion: We believe that agencies serving only individuals who are blind or visually impaired should continue to have different levels of performance from combined DSUs (those agencies that serve individuals who are blind or visually impaired and individuals with other disabilities) and general DSUs (those agencies that do not serve individuals who are blind or visually impaired). Individuals served by agencies for the blind are, in many (if not most) cases, totally blind. Total blindness is a significant disability that often places more limitations on an individual than other types of disabilities. As a result, the services provided by agencies that serve individuals who are blind or visually impaired are generally more comprehensive and take longer to provide than the services provided to many individuals who receive VR services from a general or combined DSU. In addition, because of the significance of their disability, a much smaller number of individuals who are blind or visually impaired achieve a competitive employment outcome. The greater significance of their disability also results in generally lower wage levels for the majority of individuals served by agencies that serve individuals who are blind or visually impaired. These factors and the challenges faced by individuals who are blind or have visual impairments require that we establish different performance levels for agencies serving these individuals.

The performance levels established in these final regulations are only the first step in ensuring improved DSU performance. The Act requires that the standards and indicators be reviewed every 3 years. Section 361.86(a)(2) of these final regulations allows us to establish new performance levels through the regulatory process, which includes the opportunity for public comment. We intend to adjust performance levels in the future to ensure that all agencies—general DSUs, combined DSUs, *and* agencies serving individuals who are blind and visually impaired—provide the highest quality of services to eligible individuals.

Changes: None.

Comments: Five commenters recommended that the availability of resources and whether a DSU is operating under an order of selection for services under section 101(a)(5) of the Act be included as factors in determining minimally acceptable levels of performance.

Discussion: We agree that the availability of resources belongs in the performance equation. However, we do not agree that the availability of resources should be included in measuring whether a DSU has achieved a minimally acceptable level of performance. Given that DSUs with the same amount of resources may perform quite differently, the proper criterion for measuring performance under an outcome-based standards and indicators system is whether a DSU is successfully assisting individuals with disabilities to achieve employment outcomes. If a DSU fails to meet the indicator for achieving a minimally acceptable level of performance (*e.g.*, achieving employment outcomes), the Act and the regulations require that the Secretary and DSU jointly develop a program improvement plan that outlines the specific actions the DSU will take to improve program performance. In developing the program improvement plan, we will consider, pursuant to the Act and these final regulations, all available and relevant data and information related to the DSU's performance. Because the availability of resources greatly affects what actions may be taken to improve performance, we believe that the time to properly consider the availability of resources will be during the development of the program improvement plan.

In reviewing data concerning the past performance of all DSUs, we found that the performance of DSUs operating under an order of selection did not, overall, vary significantly from the performance of DSUs not operating under an order of selection. Thus, whether or not a DSU is operating under an order of selection should not be a factor in determining a minimally acceptable level of performance. However, the yearly analysis of program performance based on the standards and indicators (to be included in the Annual Report to Congress) will indicate whether a DSU is operating under an order of selection.

Changes: None.

Comments: Two commenters were concerned that meeting the performance level for Performance Indicator 2.1 may

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result in quotas because the level is set too high.

Discussion: We disagree that Performance Indicator 2.1 requires a DSU to impose quotas. If the service rate for minority individuals is less than 80 percent of the service rate for non-minority individuals or if fewer than 100 individuals from a minority population have exited the VR program during the reporting period, the DSU only needs to describe the policies it has adopted or will adopt and the steps it has taken or will take to ensure that individuals with disabilities from minority backgrounds have equal access to VR services. In these instances, RSA will examine a DSU's existing or proposed policies and the steps it has taken or proposes to take to determine their effectiveness in achieving equal *access* for minority individuals with disabilities.

A greater than 20 percent racial disparity in service rates will trigger a review of a DSU's seemingly neutral practices to determine whether they are having the effect of racial discrimination. This approach is well-established within the Department and in desegregation case law. Its use in the education context dates to the early 1970's when the Department of Health, Education, and Welfare, the predecessor to the Department of Education, was actively involved in the desegregation of public school districts pursuant to the Supreme Court's decision in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 91 S.Ct. 1267 (1971). In that case, the Court held that a "substantial disproportion" in the racial composition of schools warranted an examination of the school district's policies and practices to determine if remedial action was necessary. In adopting this measure of performance, and in response to the commenters' concern that the measure may require quotas, we are guided by the Federal case-law established pursuant to *Swann*. Courts have held that the law does not require a racial balance reflecting the composition of the community. However, courts have ruled that limited use of mathematical ratios may serve as a starting point in identifying whether a racial imbalance is the result of racial discrimination that requires remedial action.

Changes: None.

Section 361.88 Reporting Requirements

Comments: None.

Discussion: Our decision to delete proposed Performance Indicators 1.7 and 2.2 (discussed previously) eliminates a DSU's need to report data measuring its performance on those indicators.

Changes: We have deleted the requirements to report the number of individuals exiting the VR program in full-time, competitive employment (proposed § 361.88(a)(7)); health insurance data (proposed § 361.88(a)(8)); and the number of individuals from minority backgrounds with significant disabilities who exit the program after receiving VR services under an IPE (proposed § 361.88(a)(13)).

Therefore, we have correspondingly renumbered the remaining reporting requirements (numbered (9), (10), (11) and (12) in the NPRM) as §§ 361.88(a)(7) through (10), respectively.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands our capacities for helping to exchange ideas and obtain information needed to achieve the goals.

These final regulations address the National Education Goal that every adult American will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The regulations further the objectives of this Goal by implementing a program that affords individuals with disabilities opportunities for job training, job placement, placement in competitive employment, and career advancement.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. This preamble identifies and explains any burdens that may be specifically associated with information collection requirements.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the final regulations justify the costs.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM under the following headings: Executive Order 12866 (1. Potential Costs and Benefits) and Paperwork Reduction Act of 1995. (63 FR 55292 and 55301) We include additional discussion of potential costs and benefits in the section of this preamble titled Analysis of Comments and Changes.

We believe the changes in these final regulations will improve the VR program and will yield substantial benefits in terms of improved accountability and performance. We also believe the final regulations will improve accountability by focusing on the most critical areas of DSU performance. Therefore, we have determined that the potential benefits of these changes justify the potential costs.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.acess.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number: 84.126 The State Vocational Rehabilitation Services Program)

List of Subjects in 34 CFR Part 361

Reporting and recordkeeping requirements, State-administered grant program—education, Vocational rehabilitation.

Dated: March 6, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends Title 34, Chapter III, part 361, of the Code of Federal Regulations as follows:

1. The authority citation for Part 361 continues to read as follows:

Authority: 29 U.S.C. 711(c), unless otherwise noted.

2. Subpart E, consisting of §§ 361.80 through 361.89, is added to read as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart E—Evaluation Standards and Performance Indicators

Sec.

361.80 Purpose.
361.81 Applicable definitions.
361.82 Evaluation standards.
361.84 Performance indicators.
361.86 Performance levels.
361.88 Reporting requirements.
361.89 Enforcement procedures.

Subpart E—Evaluation Standards and Performance Indicators

§ 361.80 Purpose.

The purpose of this subpart is to establish evaluation standards and performance indicators for the Program.

(Authority: 29 U.S.C. 726(a))

§ 361.81 Applicable definitions.

In addition to those definitions in § 361.5(b), the following definitions apply to this subpart:

Average hourly earnings means the average per hour earnings in the week prior to exiting the vocational rehabilitation (VR) program of an eligible individual who has achieved a competitive employment outcome.

Business Enterprise Program (BEP) means an employment outcome in which an individual with a significant disability operates a vending facility or other small business under the management and supervision of a designated State unit (DSU). This term includes home industry, farming, and other enterprises.

Exit the VR program means that a DSU has closed the individual's record of VR services in one of the following categories:

(1) Ineligible for VR services.

(2) Received services under an individualized plan for employment (IPE) and achieved an employment outcome.

(3) Received services under an IPE but did not achieve an employment outcome.

(4) Eligible for VR services but did not receive services under an IPE.

General or combined DSU means a DSU that does not serve exclusively individuals with visual impairments or blindness.

Individuals from a minority background means individuals who report their race and ethnicity in any of the following categories: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino.

Minimum wage means the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C. 206(a)(1), (*i.e.*, the Federal minimum wage) or applicable State minimum wage law.

Non-minority individuals means individuals who report themselves exclusively as White, non-Hispanic.

Performance period is the reporting period during which a DSU's performance is measured. For Evaluation Standards 1 and 2, performance data must be aggregated and reported for each fiscal year beginning with fiscal year 1999. However, DSUs that exclusively serve individuals with visual impairments or blindness must report each year the aggregated data for the 2 previous years for Performance Indicators 1.1 through 1.6; the second year must coincide with the performance period for general or combined DSUs.

Primary indicators means Performance Indicators 1.3, 1.4, and 1.5, which are specifically designed to measure—

(1) The achievement of competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher, particularly by individuals with significant disabilities; and

(2) The ratio between the average hourly earnings of individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher and the State's average hourly earnings for all employed individuals.

RSA–911 means the Case Service Report that is submitted annually by a DSU as approved by the Office of Management and Budget (OMB).

Self-employment means an employment outcome in which the individual works for profit or fee in his or her own business, farm, shop, or office, including sharecroppers.

Service rate means the result obtained by dividing the number of individuals who exit the VR program after receiving one or more services under an IPE during any reporting period by the total number of individuals who exit the VR program (as defined in this section) during that reporting period.

State's average hourly earnings means the average hourly earnings of all persons in the State in which the DSU is located.

(Authority: 29 U.S.C. 726(a))

§ 361.82 Evaluation standards.

(a) The Secretary establishes two evaluation standards to evaluate the performance of each DSU that receives funds under this part. The evaluation standards assist the Secretary and each DSU to evaluate a DSU's performance in serving individuals with disabilities under the VR program.

(b) A DSU must achieve successful performance on both evaluation standards during each performance period.

(c) The evaluation standards for the VR program are—

(1) *Evaluation Standard 1—Employment outcomes.* A DSU must assist any eligible individual, including an individual with a significant disability, to obtain, maintain, or regain high-quality employment.

(2) *Evaluation Standard 2—Equal access to services.* A DSU must ensure that individuals from minority backgrounds have equal access to VR services.

(Approved by the Office of Management and Budget under control number 1820–0508.)

(Authority: 29 U.S.C. 726(a))

§ 361.84 Performance indicators.

(a) The performance indicators establish what constitutes minimum compliance with the evaluation standards.

(b) The performance indicators require a DSU to provide information on a variety of factors to enable the Secretary to measure compliance with the evaluation standards.

(c) The performance indicators are as follows:

(1) *Employment outcomes.*

(i) *Performance Indicator 1.1.* The number of individuals exiting the VR program who achieved an employment outcome during the current performance period compared to the number of individuals who exit the VR program after achieving an employment outcome during the previous performance period.

(ii) *Performance Indicator 1.2.* Of all individuals who exit the VR program after receiving services, the percentage who are determined to have achieved an employment outcome.

(iii) *Performance Indicator 1.3.* Of all individuals determined to have achieved an employment outcome, the percentage who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage.

(iv) *Performance Indicator 1.4.* Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the percentage who are individuals with significant disabilities.

(v) *Performance Indicator 1.5.* The average hourly earnings of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings levels equivalent to at least the minimum wage as a ratio to the State's average hourly earnings for all individuals in the State who are employed (as derived from the Bureau of Labor Statistics report "State Average Annual Pay" for the most recent available year).

(vi) *Performance Indicator 1.6.* Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the difference between the percentage who report their own income as the largest single source of economic support at the time they exit the VR program and the percentage who report their own income as the largest single source of support at the time they apply for VR services.

(2) *Equal access to services.*

(i) *Performance Indicator 2.1.* The service rate for all individuals with disabilities from minority backgrounds as a ratio to the service rate for all non-minority individuals with disabilities.

(Approved by the Office of Management and Budget under control number 1820–0508.)

(Authority: 29 U.S.C. 726(a))

§ 361.86 Performance levels.

(a) *General.*

(1) Paragraph (b) of this section establishes performance levels for—

(i) General or combined DSUs; and

(ii) DSUs serving exclusively individuals who are visually impaired or blind.

(2) The Secretary may establish, by regulations, new performance levels.

(b) *Performance levels for each performance indicator.*

(1)(i) The performance levels for Performance Indicators 1.1 through 1.6 are—

Performance indicator	Performance level by type of DSU	
	General/combined	Blind
1.1	Equal or exceed previous performance period	Same.
1.2	55.8%	68.9%
1.3	72.6%	35.4%
1.4	62.4%	89.0%
1.5	.52 (Ratio)	.59
1.6	53.0 (Math. Difference)	30.4

(ii) To achieve successful performance on Evaluation Standard 1 (Employment outcomes), a DSU must meet or exceed the performance levels established for four of the six performance indicators in the evaluation standard, including meeting or exceeding the performance levels for two of the three primary indicators (Performance Indicators 1.3, 1.4, and 1.5).

(2)(i) The performance level for Performance Indicator 2.1 is—

Performance indicator	Performance levels
2.1	.80 (Ratio)

(ii) To achieve successful performance on Evaluation Standard 2 (Equal access), DSUs must meet or exceed the performance level established for Performance Indicator 2.1 or meet the performance requirement in paragraph (2)(iii) of this section.

(iii) If a DSU's performance does not meet or exceed the performance level required for Performance Indicator 2.1, or if fewer than 100 individuals from a minority population have exited the VR program during the reporting period, the DSU must describe the policies it has adopted or will adopt and the steps it has taken or will take to ensure that individuals with disabilities from minority backgrounds have equal access to VR services.

(Authority: 29 U.S.C. 726(a))

§ 361.88 Reporting requirements.

(a) The Secretary requires that each DSU report within 60 days after the end of each fiscal year the extent to which the State is in compliance with the evaluation standards and performance indicators and include in this report the following RSA–911 data:

(1) The number of individuals who exited the VR program in each closure category as specified in the definition of "Exit the VR program" under § 361.81.

(2) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(3) The number of individuals with significant disabilities who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(4) The weekly earnings and hours worked of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(5) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at the time they applied for VR services was "personal income."

(6) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at closure was "personal income."

(7) The number of individuals exiting the VR program who are individuals from a minority background.

(8) The number of non-minority individuals exiting the VR program.

(9) The number of individuals from a minority background exiting the VR program after receiving services under an IPE.

(10) The number of non-minority individuals exiting the VR program after receiving services under an IPE.

(b) In lieu of the report required in paragraph (a) of this section, a DSU may submit its RSA–911 data on tape, diskette, or any alternative electronic format that is compatible with RSA's capability to process such an alternative, as long as the tape, diskette, or alternative electronic format includes the data that—

(1) Are required by paragraph (a)(1) through (10) of this section; and

(2) Meet the requirements of paragraph (c) of this section.

(c) Data reported by a DSU must be valid, accurate, and in a consistent format. If a DSU fails to submit data that are valid, accurate, and in a consistent format within the 60-day period, the DSU must develop a program improvement plan pursuant to § 361.89(a).

(Approved by the Office of Management and Budget under control number 1820–0508.)

(Authority: 29 U.S.C. 726(b))

§ 361.89 Enforcement procedures.

(a) If a DSU fails to meet the established performance levels on both evaluation standards as required by § 361.82(b), the Secretary and the DSU must jointly develop a program improvement plan that outlines the specific actions to be taken by the DSU to improve program performance.

(b) In developing the program improvement plan, the Secretary considers all available data and information related to the DSU's performance.

(c) When a program improvement plan is in effect, review of the plan is conducted on a biannual basis. If necessary, the Secretary may request that a DSU make further revisions to the plan to improve performance. If the Secretary establishes new performance levels under § 361.86(a)(2), the Secretary and the DSU must jointly modify the program improvement plan based on the new performance levels. The Secretary continues reviews and requests revisions until the DSU sustains satisfactory performance based on the current performance levels over a period of more than 1 year.

(d) If the Secretary determines that a DSU with less than satisfactory performance has failed to enter into a program improvement plan or comply substantially with the terms and conditions of the program improvement plan, the Secretary, consistent with the procedures specified in § 361.11, reduces or makes no further payments to the DSU under this program until the DSU has met one of these two requirements or raised its subsequent performance to meet the current overall minimum satisfactory level on the compliance indicators.

(Approved by the Office of Management and Budget under control number 1820–0508.)

(Authority: 29 U.S.C. 726(b) and (c))

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Part V

Department of Commerce

Economic Development Administration

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals; Notice

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DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 000515144–0144–01]

RIN: 0610–ZA15

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Request for Grant Proposals (RFP) upon availability of funds.

SUMMARY: As part of its mission to assist economically distressed areas, EDA promotes dissemination of quality, accessible, and timely information to economic development practitioners nationally. EDA is soliciting proposals for information dissemination projects as described herein. EDA issues this Notice to describe the conditions under which eligible applications for these projects will be accepted and selected for funding. Projects will be funded if acceptable proposals are received.

DATES: Prospective applicants are advised that EDA will conduct a pre-proposal conference on June 16, 2000, at 10 a.m. EDT in the Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, N.W., Washington, D.C. 20230, Room 1412, at which time questions on these projects can be answered. Potential applicants are encouraged to provide written questions by June 14, 2000 (See **ADDRESSES** section below). Prospective applicants unable to attend this pre-proposal conference may participate by telephone conference. Teleconference information may be obtained by calling (202) 482–4085 between 8:30–4:30 EDT on June 15, 2000.

Proposals for funding under this program will be accepted through July 6, 2000, at one of the addresses provided below. Proposals received after 5 p.m. EDT, on July 6, 2000, will not be considered for funding.

By July 20, 2000, EDA will notify proposers whether or not they will be given further funding consideration. Each successful proponent will be invited to submit an Application for Federal Assistance, OMB Control Number 0610–0094. The completed application must be submitted to EDA by August 1, 2000. Projects will be funded no later than September 30, 2000.

ADDRESSES: 1. Proposals may be mailed to: John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, D.C. 20230, or

2. Proposals may be hand-delivered to: John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 1874, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, D.C. 20230, or

3. Proposals may be submitted via e-mail to *rntapubs@doc.gov*.

FOR FURTHER INFORMATION CONTACT: John J. McNamee (202) 482–4085; email: jmcnamee@doc.gov.

SUPPLEMENTARY INFORMATION:

I. Areas of Special Interest

A. Background

As part of its ongoing mission to assist economically distressed areas, EDA supports projects that disseminate information to economic development practitioners serving distressed communities nationally (see paragraph IV.C. for EDA's definition of distress).

Historically, these projects have consisted mainly of newsletters targeted to a national audience. At this time, EDA is soliciting proposals in order to:

- Continue serving the economic development information needs of distressed rural and urban areas;
- Take greater advantage of new technologies for information dissemination (including Internet, videoconferencing, e-mail, *etc.*); and
- Identify and provide information in new or emerging areas of economic development needed by practitioners serving distressed areas.

EDA anticipates funding a variety of information dissemination projects. These may include one-time projects of a year or less duration and/or multi-year projects. These projects may use printed or electronic media or a combination of both to disseminate economic development information. Current EDA information dissemination grantees are encouraged to submit proposals and will be evaluated based on the same criteria as all other proposals. Organizations or individuals may submit more than one proposal for consideration under this RFP.

B. Scope of Work

The successful applicants will:

(1) Undertake information dissemination activities targeted at a national audience of economic development practitioners working in America's distressed communities.

(2) Do one or more of the following:

- Identify and cultivate understanding of the causes of excessive unemployment, underemployment, low income, outmigration and/or other forms of economic distress in areas and regions of the Nation;
- Support the development and greater understanding of new economic development tools and national, State, and local programs designed to relieve economic distress;
- Promote knowledge and understanding of effective programs, projects and techniques that alleviate economic distress.

(3) Influence economic development outcomes by improving the quality, accessibility, and timeliness of critical information available to economic development practitioners.

C. Additional Requirements

(1) Proposed projects should not be primarily for the benefit of the grantee, narrowly focused organizations, or localized geographic areas.

(2) Grantees shall attend and participate in three EDA conferences each year. Locations and dates of the conferences attended are at EDA's discretion.

D. Cost

A total of $550,000 is available for all projects funded under this RFP. EDA anticipates funding multiple projects. Ordinarily, the applicant is expected to provide a 50% non-federal share of project costs. However, EDA may reduce or waive the required 50% matching share of the total project costs, provided the applicant can demonstrate: (1) the project is not feasible without, and the project merits such a reduction or waiver, or (2) the project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate if it must provide all or part of a 50% non-federal share, or (3) the project is for the benefit of local, state, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient, or (4) the requirements of 13 CFR 301.4(b) (table) are satisfied (See 13 CFR 307.11; 64 FR 69878).

E. Timing

Awards made under this RFP are for up to one year. However, some of these awards may be eligible for multi-year funding, i.e., renewable for two additional years after the initial award is made, at the same or lower annual project cost, subject to funding availability, satisfactory performance under the initial or subsequent award, and at the sole discretion of EDA. The intent of this renewal option is to provide grantees somewhat more predictable funding necessary to develop, implement, and improve their information dissemination projects. EDA, at its sole discretion, will make the final determination of whether an award may be renewable for two additional years, based on the above-described criteria, at the time of project approval.

II. How To Apply

A. Eligible Applicants

See EDA's interim final rule and final rule at 13 CFR 300.2 (64 FR 5347, 5352; 64 CFR 69868). Eligible applicants are as follows: institutions of higher education, consortiums of institutions of higher education; public or private nonprofit organizations or associations acting in cooperation with officials of a political subdivision of a state, for-profit organizations, and private individuals; areas meeting requirements under 13 CFR 301.2; Economic Development Districts; Indian tribes; consortiums of Indian Tribes; states, cities or other political subdivisions of a state; consortiums of political subdivisions of states.

B. Proposal Submission Procedures

Each proposal submitted must include:

(1) A description of how the researcher(s) intend(s) to carry out the scope of work (not to exceed 10 pages in length). This description must address the following issues:

- Identify and describe the target audience, and the reason(s) why the proposed information dissemination activity is necessary;
- Describe how the organization plans to achieve the proposed target audience penetration;
- Describe the types of information that will be disseminated;
- Justify why the proposed activity should be federally funded;
- Describe the economic development outcomes or activities that will be influenced by the information dissemination efforts;
- For activities proposed for multi-year funding (up to three years maximum), justify the need for such funding.

(2) A proposed budget and accompanying explanation;

(3) Resumes/qualifications of key staff (not to exceed two pages per individual, with an additional 2 pages allowed for a single summary description of all organizations/consultants named in the proposal), and

(4) A proposed time line for implementation of the project.

E-mailed proposals should be in WordPerfect for Windows or .pdf (Adobe) format. EDA will not accept proposals submitted by FAX. Proposals received after 5 p.m. EDT on July 6, 2000, at the street or email addresses provided in the **ADDRESSES** section above, will not be considered.

III. Selection Process and Evaluation Criteria

All proposals must meet EDA's statutory and regulatory requirements. Proposals will receive initial review by EDA to assure that they meet all requirements of this RFP and 13 CFR Chapter III (64 FR 5347, 5357; 64 FR 69868, 69874), including eligibility and relevance to the specified project as described herein. EDA's general selection process and criteria are set out in 13 CFR 304.1, 304.2 (64 FR 5347,5357; 64 FR 69868, 69874–69875) and current 13 CFR 307.10 (§ 307.8 in the interim rule), (64 FR 5347, 5429; 64 FR 69868, 69878). Proposals that do not substantially address all items required or that exceed the page limitations of Part II.B. of this RFP, will be ruled nonresponsive and not considered for funding. Proposals that meet these requirements will be evaluated by a review panel comprised of at least three members. EDA will carry out its selection process using the following criteria:

(1) The quality of a proposal's response to the Scope of Work and Additional Requirements described in Parts I.B. and I.C. above;

(2) The ability of the prospective applicant to successfully carry out the proposed activities; and

(3) Cost to the Federal government.

If a proposal is selected, EDA will provide the proponent with an Application for Federal Assistance (OMB Control Number 0610–0094). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction act unless that collection of information displays a currently valid OMB Control Number.

IV. Additional Information

A. Authority

The Public Works and Economic Development Act of 1965, as amended (P. L. 89–136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendments by the Economic Development Administration Reform Act of 1998 (Pub.L. 105–393) (PWEDA) authorizes EDA to make grants for training, research, and technical assistance, including grants for program evaluation and project impact analyses, that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment (42 U.S.C. 3147, 207). Public Law 106–113 makes funds available for this program.

B. Catalog of Federal Domestic Assistance

11.303 Economic Development Technical Assistance

C. Program Description

For a description of this program see PWEDA and 13 CFR Chapter III, § 307 (64 FR 5347; 64 FR 69867).

EDA assistance is focused on areas experiencing significant economic distress, defined principally as per capita income of 80 percent or less of the national average; or an unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average; or a special need, as determined by EDA.

D. Website

See 64 FR 3763–3769 for additional information and requirements (available on the Internet at http://www.doc.gov/eda/html/notice.htm, under the heading "Research, Evaluation, and National Technical Assistance: Request for Grant Proposals." This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: May 30, 2000.

David L. McIlwain,

Acting Assistant Secretary for Economic Development.

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S.J. Res. 44/P.L. 106–205

Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)

H.R. 154/P.L. 106–206

To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)

H.R. 371/P.L. 106–207

Hmong Veterans' Naturalization Act of 2000 (May 26, 2000; 114 Stat. 316)

H.R. 834/P.L. 106–208

National Historic Preservation Act Amendments of 2000 (May 26, 2000; 114 Stat. 318)

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To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the "John J. Buchanan Post Office Building". (May 26, 2000; 114 Stat. 320)

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To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)

H.R. 3707/P.L. 106–212

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S. 1836/P.L. 106–213

To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)

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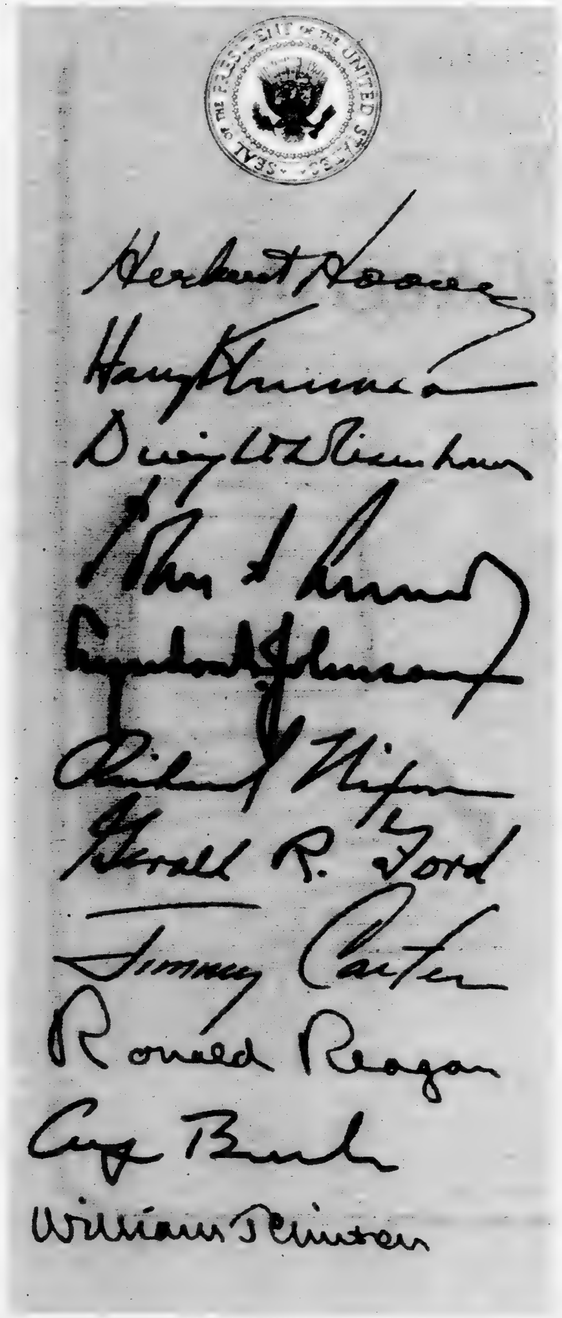

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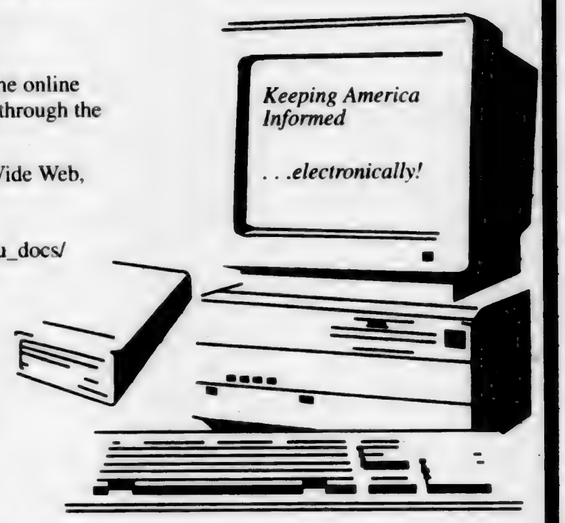

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[Docket No. CN–99–003]

RIN 0581–AB57

Revision of User Fees for 2000 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) will maintain user fees for cotton producers for 2000 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 1999. This is in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1999 user fee for this classification service was $1.35 per bale. This final rule would maintain the fee for the 2000 crop at $1.35 per bale. The fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, Cotton Program, 202–720-2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on March 8, 2000 (65 FR 12140). A 30-day comment period was provided for interested persons to respond to the proposed rule. No comments were received, and no changes have been made in the provisions of the final rule.

This final rule has been determined to be not significant for purposes of Executive Order 12866, and it has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Continuing the user fee at the 1999 crop level will not significantly affect small businesses as defined under the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services (the 1999 user fee for classification services was $1.35 per bale; the fee for the 2000 crop will be maintained at $1.35 per bale; the 2000 crop is estimated at 17,945,000 bales);

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 1999 crop, 16,409,650 bales were produced, and virtually all of them were submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 1998 crop of 65.3 cents per pound, 500 pound bales of cotton are worth an average of $326.50 each. The user fee for classification services, $1.35 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The changes will be made effective July 1, 2000, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.35 per bale during the 1999 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision.

This final rule establishes the user fee charged to producers for HVI classification at $1.35 per bale during the 2000 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1999. Therefore, the 2000 producer's user fee for classification service is based on the 1999 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1999 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.14 per bale. An increase of one and thirty-nine hundredths percent, or three cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.14, would result in a 2000 base fee of $2.17 per bale. The formula in the Act provides for the use of the percentage

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change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2000 crop is estimated at 17,945,000 bales. The 2000 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 33 cents per bale reduction and was subtracted from the 2000 base fee of $2.17 per bale, resulting in a fee of $1.84 per bale.

With a fee of $1.84 per bale, the projected operating reserve would be 49.77 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.84 must be reduced by 49 cents per bale, to $1.35 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This will establish the 2000 season fee at $1.35 per bale.

Accordingly, § 28.909, paragraph (b) will reflect the continuation of the HVI classification fee at $1.35 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents requesting classification data provided on computer punched cards will continue to be charged the fee of 10 cents per card in § 28.910(a) to reflect the costs of providing this service. Requests for punch card classification data represented less than 1.0 percent of the total bales classed from the 1999 crop, down from 2.6 percent in 1997. Growers or their designated agents receiving classification data by methods other than computer punched cards would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at five cents per bale, and it would be applicable even if the same method was requested. However, if computer punched cards were requested, a fee of ten cents per card would be charged. The fee in § 28.910(b) for an owner receiving classification data from the central database would remain at five cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 will be maintained at $1.35 per bale.

The fee for returning samples after classification in § 28.911 will remain at 40 cents per sample.

Pursuant to 5 U.S.C. 553, it is determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) the cotton crop year begins July 1, 2000, (2) a uniform fee for the entire crop is mandated by the Cotton Statistics and Estimates Act, and (3) a 30 day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

1. The authority citation for 7 CFR part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.35 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.35 per bale.

* * * * *

Dated: May 31, 2000.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 00–14114 Filed 6–1–00; 4:36 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[DA–00–07]

Fluid Milk Promotion Order; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Fluid Milk Promotion Order to allow a fluid milk processor to be represented by up to 3 members on the 20-member Board and allow a Board member whose fluid milk processor company affiliation has changed to serve for a period of up to 6 months or until a successor is appointed, whichever is sooner. The amendments, requested by the National Fluid Milk Processor Promotion Board (Board), which administers the Order, are necessary to ensure Board continuity and full representation and should allow the Board to operate in an efficient and effective manner.

EFFECTIVE DATE: June 7, 2000.

FOR FURTHER INFORMATION CONTACT: David R. Jamison, Chief, USDA/AMS/Dairy Programs, Promotion and Research Branch, 1400 Independence Avenue, SW, Stop 0233, Room 2958 South Building, Washington, DC 20250–0233, (202) 720–6909, David.Jamison2@usda.gov.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration as those processors employing not more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. There are approximately 275 fluid milk processors subject to the provisions of the Fluid Milk Promotion Order. Most of these processors are considered small entities.

The Fluid Milk Promotion Order (7 CFR Part 1160) is authorized under the Fluid Milk Promotion Act of 1990 (Act) (7 U.S.C. 6401 *et seq.*). The amendments, proposed by the National Fluid Milk Processor Promotion Board, modifies the membership provisions of the Order.

The amendments will allow up to three representatives of a fluid milk processor to serve on the 20-person Board. Currently, the Order states that a fluid milk processor shall be represented on the Board by no more than two members. This action takes into account changes in the industry which have resulted in the formation of larger regional and national companies. This amendment should help reduce Board vacancies and foster continuity in Board activities and membership.

The amendments also will allow a Board member whose fluid milk processor company affiliation changes to serve on the Board for a period of up to six months or until a successor is appointed, whichever is sooner, provided that the eligibility requirements of the Order are still met. Under current Order provisions, a Board member whose company affiliation changes may continue to serve on the Board for a period of up to 60 days or until a successor is appointed, whichever is sooner, provided that such member continues to meet the Order's eligibility standards. The amendment will more accurately reflect the time needed to fill a Board vacancy.

The amendments will allow the Board to operate in an effective and efficient manner. The amendments to the Order will not add any burden to regulated parties because they relate to provisions concerning Board membership. Additionally, the changes will not impose additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this rule.

Accordingly, pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

Prior document in this proceeding:

Proposed Rule: Issued March 14, 2000, published March 17, 2000 (65 FR 14484).

Executive Order 12866 and the Paperwork Reduction Act

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Fluid Milk Promotion Act of 1990, as amended, authorizes the Fluid Milk Promotion Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to a Fluid Milk Promotion Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and request a modification of the Order or to be exempted from the Order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Fluid Milk Promotion Order have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board members' nominee information sheets that were assigned OMB No. 0505–0001.

Statement of Consideration

This final rule amends certain provisions of the Fluid Milk Promotion Order. The amendments will modify the membership provisions of the Order. One proposal will allow up to three representatives of a fluid milk processor to serve on the 20-member Board. Currently, the Order states that a fluid milk processor shall be represented by no more than two representatives on the Board. This amendment takes into account changes in the industry which have resulted in the formation of larger regional and national companies. Additionally, the amendment would provide the Secretary greater flexibility in those situations that warrant additional representation for a fluid milk processor.

The amendments also will allow a Board member who changes fluid milk processor company affiliation to serve on the Board for a period of up to six months or until a successor is appointed, whichever is sooner, provided that the eligibility requirements of the Order are still met. Under current Order provisions, a Board member whose company affiliation changes may continue to serve on the Board for a period of up to 60 days or until a successor is appointed, whichever is sooner, provided that such member continues to meet the Order's eligibility standards. The amendment would more accurately reflect the time needed to fill a Board vacancy.

The Board states that the amendments would ensure Board continuity and full representation and allow it to operate effectively and efficiently.

A notice of proposed rulemaking was published in the **Federal Register** on March 17, 2000 (65 FR 14484), concerning the proposed suspension. Interested persons were afforded an opportunity to file written data, views and arguments thereon. One comment supporting and one opposing the proposed amendments were received.

The Board reiterated its support for the amendments. The opposing comment stated the proposed changes would provide larger processors more power and suggested reducing the number of Board members.

The Order should be amended to allow a fluid milk processor to be represented by up to 3 members on the 20-member Board. The Order provisions provide for a 20-member Board with 15 members representing geographic regions and five at-large members which include at least three fluid milk processors and at least one member from the general public. Further, to the extent practicable, members representing geographic regions should represent processing operations of differing sizes.

This amendment provides needed flexibility in the appointment process. The Secretary appoints Board members on the basis of the Order's provisions. Through the appointment process, the Secretary maintains control over the Board's composition, including the number of multi-member processors. As stated by the proponent of the proposals, the fluid milk processing industry has experienced and continues to undergo changes in processing operations which result in larger regional and national companies operating in various geographical regions. Accordingly, this amendment will ensure Board continuity and full representation while maintaining the Board at its current membership level.

The Order also should be amended to permit a Board member who changes fluid milk processor company affiliation

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to serve on the Board for a period of up to six months or until a successor is appointed, whichever is sooner, provided that the eligibility requirements of the Order are still met. The amendment will more accurately reflect the time needed to fill a Board vacancy.

The amendments will ensure Board continuity and full representation and allow the Board to operate in an effective and efficient manner and should be made effective as soon as possible. Therefore, good cause exists for making this rule effective less than 30 days from the date of publication in the **Federal Register**. The proposed amendments to the order are made final in this action.

List of Subjects in 7 CFR Part 1160

Fluid milk products, Milk, Promotion.

For the reasons set forth in the preamble, 7 CFR part 1160 is amended as follows:

PART 1160—FLUID MILK PROMOTION PROGRAM

1. The authority citation for 7 CFR Part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417.

2. In § 1160.200, paragraph (a) is revised to read as follows:

§ 1160.200 Establishment and membership.

(a) There is hereby established a National Fluid Milk Processor Board of 20 members, 15 of whom shall represent geographic regions and five of whom shall be at-large members of the Board. To the extent practicable, members representing geographic regions shall represent fluid milk processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than three members. The at-large members shall include at least three fluid milk processors and at least one member from the general public. Except for the member or members from the general public, nominees appointed to the Board must be active owners or employees of a fluid milk processor. The failure of such a member to own or work for a fluid milk processor or its successor fluid milk processor shall disqualify that member for membership on the Board except that such member shall continue to serve on the Board for a period of up to six months following the disqualification or until appointment of a successor Board member to such position, whichever is sooner, provided that such person continues to meet the criteria for serving on the Board as a processor representative.

* * * * *

Dated: May 31, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–14186 Filed 6–5–00; 8:45 am]

BILLING CODE 3410–02–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Update of FOIA Fee Schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board is publishing its annual update to the Freedom of Information Act (FOIA) Fee Schedule pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations.

EFFECTIVE DATE: June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, (202) 694–7060.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). On March 15, 1991, the Board published for comment in the **Federal Register** its proposed FOIA Fee Schedule. 56 FR 11114. No comments were received in response to that notice and the Board issued a final Fee Schedule on May 6, 1991.

Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. Previous Fee Schedule updates were published in the **Federal Register** and went into effect, most recently, on June 1, 1999, 99 FR 14685.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests.

Defense Nuclear Facilities Safety Board Schedule of Fees for FOIA Services

(Implementing 10 CFR 1703.107(b)(6))

Search or Review Charge—$54 per hour
Copy Charge (paper)—$.04 per page, if done in-house, or generally available commercial rate (approximately $.10 per page)
Copy Charge (3.5′ diskette)—$5.00 per diskette
Copy Charge (audio cassette)—$3.00 per cassette
Duplication of Video
$25.00 for each individual videotape; $16.00 for each additional individual videotape
Copy Charge for large documents (*e.g.*, maps, diagrams)—Actual commercial rates.

Dated: May 31, 2000.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 00–14043 Filed 6–5–00; 8:45 am]

BILLING CODE 3670–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Help Supply Services

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is establishing a size standard of $10 million in average annual receipts for Help Supply Services—Standard Industrial Classification (SIC) 7363. The current size standard for this industry is $5.0 million. This revision is made to better define the size of business in this industry that SBA believes should be eligible for Federal small business assistance programs. SBA is also clarifying language about affiliation when a Professional Employer Organization (PEO) is co-employer of a firm's employees.

DATES: This rule is effective on July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia B. Holden, Office of Size Standards, (202) 205–6618 or (202) 205–6385.

SUPPLEMENTARY INFORMATION: SBA proposed a revision to the size standard for the Help Supply Services industry (SIC 7363) from $5.0 million to $10.0 million average annual receipts (64 FR 55873, dated October 15, 1999). The proposal was made following comments from the public expressing concern that the size standard has not kept pace with the rapid growth in the industry due in part to the trends of outsourcing and downsizing. The industry has changed in two ways—help supply firms are larger and they are providing a wider range of personnel to businesses. We also had a request to allow help supply firms to exclude funds collected for and remitted to unaffiliated third parties from gross receipts, as is currently done for travel agents and real estate agents, since 60 percent to 85 percent of revenues on many Federal contracts are "passed-through" to a firm's employees or associates.

The current size standard for this industry, $5.0 million, is based on gross billings including funds paid to employees (sometimes referred to as "associates"). Based on a review of industry data, SBA proposed increasing the size standard for the Help Supply Services industry to $10 million in average annual receipts. SBA did not propose a change to the way average annual receipts are calculated for firms in the Help Supply Services industry. Under SBA's size regulations (13 CFR 121.104), the size of a firm for a receipts-based size standard is based on information reported on a firm's Federal tax returns. Generally, receipts reported to the Internal Revenue Service (IRS) include a firm's gross receipts or sales from provision of goods or services. Only when firms in an industry generally display certain characteristics will we exclude certain pass-though revenues from the calculation of gross receipts. As explained in the proposed rule, SBA evaluated this issue and concluded that gross receipts is appropriate in calculating the size of a firm in this industry.

The final rule adopts the proposed size standard of $10 million based on our analysis of the industry as presented in the proposed rule. The comments received on the proposed rule did not provide us with sufficient reasons to alter our assessment of the industry data or the position that the size standard should be based on gross receipts. The comments to the proposed rule and our position are discussed below.

Discussion of Comments

We received six timely comments on the proposed size standard—four from individual firms, one from an association and one from an SBA attorney. The association representing over 1,400 firms supported adopting the proposed rule. Of the four firms who commented, two were opposed, one was for and one was for a size standard increase, but higher than the one proposed. The comments raised four major issues. Each of these issues is discussed below along with our response.

Small Firms May Be Harmed by the Increase in the Size Standard

Two comments raised the issue of small firms being at a disadvantage if they would have to compete with firms in the $5.0 million to $10.0 million range. They contend that companies with $5 million to $10 million in receipts have established themselves in the industry. If these businesses were defined as small, they would take away work from the presently defined small businesses. This issue is raised often when we proposes to increase the size standard, and it is a valid concern. However, we believe our analysis of the industry clearly supports that firms of up to $10 million in receipts are small businesses within this industry. The average firm in the industry generates almost $3 million in receipts and firms of $10 million or less in receipts account for only a little more than a third of total industry receipts. Given these and the characteristics discussed in the proposed rule, we believe we have identified the firms reasonably considered small in this industry.

Related to this issue, we are looking into ways to protect the smaller firms while having a size standard that includes firms of sufficient size to handle the typical Federal procurement. One pilot program currently being tested is the Very Small Business Set-Aside Program. This program reserves procurements of $50,000 or less for very small businesses—defined as a business with not more than 15 employees *and* not more than $1.0 million revenues. The pilot program is being conducted within the geographical area of ten SBA district offices. (For more information on this program, please call the SBA's Office of Government Contracting at (202) 205–6460, or visit our web site at http://www.sba.gov/GC/vsbqa.html.)

Size Standards Methodology and Data

One comment disagreed with our use and analysis of the 1992 Census data to evaluate the size standard for this industry. The comment recommended a size standard to $20.0 million based on more recent data on the industry. In particular, the comment presented data (without citing its sources) showing average firm size and the four-firm concentration ratio to be much higher than our calculations shown in the proposed rule. We used the latest available Census Bureau data on this industry. We recognize that the industry has grown since the last data were collected, but until more complete data are available, we must continue to rely on the 1992 Census data as the most complete and representative data available on the Help Supply Services industry for establishing size standards. We expect to get newer data later this year based on the 1997 Economic Census. If these data show the $10 million to be an inappropriate size standard, we will consider publishing another proposal based on an analysis of that new data.

Calculation of Average Annual Receipts

SBA received one comment stating that firms in this industry do indeed work on commissions, but it is called a "rate" and that revenues are artificially inflated if labor costs are not excluded from the calculation. The comment asserts that the labor rate is a pass-through and only the mark-up rate is the firm's revenues. They disagreed with the analysis done by SBA on the factors such as agent-like relationship in arriving at the position not to exclude labor costs for this industry. Further, the comment argued that staffing for this industry is like inventory in other industries.

We disagree. The proposed rule stated five characteristics that we consider in assessing whether or not to exclude certain types of "pass-through" revenues. The argument that we should view the personnel supplied by help supply services firms to their client firms as inventory did not convince us that an agent-like relationship exists. Help supply services firms are providing their own resources (or "inventory") under their control to another firm. On the other hand, the role of an agent is to represent the agent's principal. Often an agent negotiates a transaction bringing parties together, but always acts on behalf of the principal as required by their fiduciary relationship. The comment did not identify which party would be the principal, but it would not be the employees/associates (also described by the comment as "inventory") and it would not be the firm using the employees. Rather, help supply services firms act on their own behalf and in their own interest when negotiating to obtain personnel or to supply staffing to a firm. For an agency to exist, there must be a principal-agent relationship and that is not evident in this industry.

We also do not agree with the position that the labor costs of help supply services firms are the same as funds held in trust for another. While there is a close connection between the wages and benefits of personnel supplied by a help supply services firm and the firm using the personnel, it is the help supply services firm that is responsible for paying the employees' wages and benefits. The revenues paid to the help supply services firm by the firm using the employees legally belong to the help supply services firm even though the help supply services firm has a legal obligation to pay its employees. This is

a much different arrangement than holding funds in trust for an unaffiliated third party. Such trust funds are legally owned by the unaffiliated third party, but collected and distributed by the holder on the owner's behalf. An association representing over 1,400 firms in the help supply services industry also rejected the notion that help supply services firms should be viewed as agents. It also stated that the wages and benefits of the help supply services employees are not earmarked for the purpose of paying employees.

Finally, we recognize that the help supply service firms often apply a rate to labor costs in arriving at a price for supplying personnel to a client. The comment estimated an average rate for the industry. However, there does not appear to be a standard rate provided by the industry, which is one necessary characteristic for allowing an exclusion of certain pass-through revenues. Rather, the comment itself acknowledged that rates vary by firm. An average rate charged by firms in the industry is not the same concept as a common or standard rate applied by firms throughout the industry. Also, we note that many industries operate on a cost plus mark-up basis, but are not agents and their costs are not recognized as "pass-through" funds.

Impact of the Proposal on Prior Findings of Affiliation

One comment raised the issue of prior findings of affiliation between a franchisor and franchisee in the staffing industry where the franchisor controlled the "associates" of the franchisee. His question was how would the proposal to exempt "Professional Employee Organizations" (PEOs) from the presumption of affiliation with the firms to whom they supply personnel affect these earlier decisions. Changing the size standard will not affect prior or subsequent findings of affiliation. The clarification regarding PEOs is narrowly written so as not to impact findings of affiliation based on control or other grounds. It addresses the issue of affiliation between the firm using the employees and the PEO supplying the employees under a co-employment arrangement. It does not address the issue of where or how the PEO obtains the employees it subsequently provides to the firm. In many cases, they were formerly the sole employees of the firm using their services before the firm contracted out the professional administration of its employees. If the PEO obtains its employees from a franchisor, affiliation could still be found between the franchisor and the franchisee where a franchise agreement gives control of the franchisee's "associates" to the franchisor. In such cases, the receipts or employment of both the franchisor and the franchisee must be included in the calculation. This is a separate issue from what the clarification addresses, namely, how the firm (using the employees) calculates its size.

Affiliation and Professional Employer Organizations

SBA is also clarifying the language in 13 CFR 121.103(b)(4). Section (b) discusses exclusions from affiliation rules while paragraph (4) specifically excludes business concerns that lease employees. We are inserting "Professional Employee Organizations (PEOs)" in this section along with leasing companies. Their relationship with the firms to whom they provide employees and staffing services are similar, yet questions arise from time-to-time because PEOs were not specifically mentioned in the exclusion. SBA will not find a firm affiliated with a leasing company or PEO merely because it uses the services of a leasing company or PEO. However, SBA might find affiliation based on other conditions. Nothing in the clarification of the exclusions to the affiliation rule is intended to change the way a firm must count its employees when determining size. All employees must be counted; whether permanent, part-time, temporary, leased or covered by a contract with a PEO. How a firm obtains its staffing is a business decision, and size standards are not intended to influence its decision in that regard.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

SBA has determined that this rule will not be a significant rule within the meaning of Executive Order 12866 since it will not have an impact of $100 million or more. The total amount of Federal procurement and SBA guaranteed loans combined is less than $160 million to this industry annually, and a change to the size standard is unlikely to significantly affect these programs.

For purposes of the Regulatory Flexibility Act, this rule would not have a substantial impact on a significant number of small entities. Although potentially 576 additional firms could gain small business status as a result of this rule, only a very small percentage of firms in the industry compete for Federal procurements or obtain guaranteed loans through SBA's financial assistance programs.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, SBA has determined that this rule would not impose new reporting or record-keeping requirements other than those already required of SBA.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs-business, Loan programs-business, Small businesses.

For reasons stated in the preamble, SBA is amending part 121 of 13 CFR as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of Part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Revise § 121.103(b)(4), to read as follows:

§ 121.103 What is affiliation?

* * * * *

§ 121.201 Table [Amended]

(b) * * *

(4) Business concerns which lease employees from concerns primarily engaged in leasing employees to other businesses or which enter into a co-employer arrangement with a Professional Employer Organization (PEO) are not affiliated with the leasing company or PEO solely on the basis of a leasing agreement.

* * * * *

3. In § 121.201, in the table "SIZE STANDARDS BY SIC INDUSTRY," under the heading DIVISION I—SERVICES, add a new entry for SEC Code 7363 in numerical order to read as follows:

SIZE STANDARDS BY SIC INDUSTRY

SIC code and description	Size standards in number of employees or millions of dollars
. . . . .	
DIVISION I—SERVICES	$5.0
. . . . .	
EXCEPT:	
. . . . .	
7363 Help Supply Services	10.0
. . . . .	

Dated: May 30, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–14015 Filed 6–5–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM170; Special Conditions No. 25–162–SC]

Special Conditions: Raytheon Aircraft Company Model 4000; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Raytheon Aircraft Company Model 4000 airplane. This airplane will utilize new avionics/electronics and electrical systems that will perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

EFFECTIVE DATE: July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1996, Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085, submitted an application for a new type certificate for the Raytheon Model 4000. The significant aircraft design features include an 84 inch diameter graphite composite fuselage, new metal wing and a graphite composite skin on aluminum substructure empennage. The Model 4000 is 69 feet, 2 inches in length and 61 feet, 9 inches in width. It has a Primus Epic flightdeck, and two aft mounted PW308A engines. There are 12 forward-facing seats and a forward observer seat. The significant systems features include a new state of the art integrated avionics/electronics and electrical systems suite. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR § 21.17, Raytheon Aircraft Company must show that the Model 4000 meets the applicable provisions of part 25, as amended by Amendment 25–1 through Amendment 25–87 thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon Aircraft Company Model 4000 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 4000 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Raytheon Aircraft Company Model 4000 airplanes will utilize new avionics/electronics and electrical systems that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The significant systems features include a new state of the art integrated avionics/electronics and electrical systems suite. The avionics/electronics and electrical systems installed in this aircraft have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Aircraft Company Model 4000. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, and the use of composite material in the airplane structure, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, or 2 below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe for both of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Discussion of Comments

Notice of proposed special conditions No. 25–00–01–SC for the Raytheon Aircraft Model 4000 airplanes was published in the **Federal Register** on March 14, 2000 (65 FR 13703). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model 4000 airplane. Should Raytheon Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Raytheon Aircraft Company Model 4000 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Raytheon Aircraft Company Model 4000 airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of this special condition, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14156 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–16–AD; Amendment 39–11758; AD 2000–11–10]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) applicable to certain Rolls-Royce plc (R–R) RB211 series turbofan engines. That AD currently requires the removal from service of intermediate pressure (IP) compressor stage 6–7 rotor shafts that exceed reduced cyclic life limits. This amendment requires further reduction of cyclic life limits and introduction of new reduced cyclic bands for rework. This action is prompted by additional stress analysis conducted following failure of an IP compressor stage 6 disk. The actions specified by this AD are intended to prevent an uncontained engine failure due to rupture of an IP compressor stage 6–7 rotor shaft.

DATES: Effective August 7, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 7, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, Technical Publications Department, P.O. Box 31, Derby, DE24 8BJ, UK, telephone 011–44–1332–242424. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–18–03, Amendment 39–9016 (59 FR 46536), applicable to R–R RB211–22B and –524 series turbofan engines, was published in the **Federal Register** on August 31, 1999 (64 FR 47447). That action proposed to require the removal from service of IP compressor stage 6–7 rotor shafts that exceed reduced cyclic life limits.

Conclusion

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 1,300 engines of the affected design in the worldwide fleet. The manufacturer has advised the FAA that there are 228 engines installed on aircraft of U.S. registry that will be affected by this AD. It will take approximately 24 work hours or $1,440 per engine to accomplish the proposed rework actions, if rework of the rotor shafts is selected. Otherwise, to maintain the record of the cyclic life of IP compressor stage 6–7 rotor shafts has minimum economic impact on U.S operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be less than $330,000.

Regulatory Impact

This final rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9016 (59 FR 46536, September 9, 1994) and by adding a new airworthiness directive to read as follows:

2000–11–10 Rolls-Royce plc: Amendment 39–11758. Docket No. 94–ANE–16–AD. Supersedes AD 94–18–03, Amendment 39–9016.

Applicability

Rolls-Royce plc (R–R) Model RB211–22B and –524 series turbofan engines, not incorporating new intermediate pressure (IP) compressor stage 6–7 rotor shafts assemblies with redesigned stage 6 disks in accordance with R–R Service Bulletin (SB) No. RB.211–72–9993, dated August 26, 1994. These engines are installed on but not limited to Boeing 747 series and 767 series, and Lockheed L–1011 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless previously accomplished.

To prevent an uncontained engine failure due to rupture of an IP compressor stage 6–7 rotor shaft, accomplish the following:

Corrective Action

(a) For IP compressor stage 6–7 rotor shafts that have not been reworked in accordance with SB RB.211–72–9594, Revision 8, dated January 14, 1999, Revision 7, dated September 16, 1994, Revision 6, dated August 12, 1994, or Revision 5, dated February 12, 1993, remove the rotor shafts prior to exceeding the life limits established in Table 1 of this AD under sub-title "Pre SB72–9594" and replace with serviceable parts.

TABLE 1

Engine mark and mod standard	Pre SB72–9594			Rework bands			Post SB72–9594			Post SB72–9618		
	Life limits through 12/31/00	Life limits after 12/31/00	Life limits after 12/31/01	Rework bands through 12/31/00	Rework bands after 12/31/00	Rework bands after 12/31/01	Life limits through 12/31/00	Life limits after 12/31/00	Life limits after 12/31/01	Life limits through 12/31/00	Life limits after 12/31/00	Life limits after 12/31/01
RB.211–22B–02 Pre SB72–5787 and Pre SB72–8700	11000	10000	9000	8000–11000	7500–10000	7500–9000	18000	17600	16600	N/A	N/A	N/A
RB.211–22B–02 Pre SB72–5787 and Post SB72–8700	11000	10000	10000	8000–11000	7500–10000	7500–10000	17310	16960	15960	N/A	N/A	N/A
RB.211–22B–02 Post SB72–5787 and Pre SB72–8700	11000	11000	11000	8000–11000	8000–11000	8000–11000	18000	18000	18000	N/A	N/A	N/A
RB.211–22B–02 Post SB72–5787 and Post SB72–8700	11000	11000	11000	8000–11000	8000–11000	8000–11000	17310	17310	17310	N/A	N/A	N/A
RB.211–524B–02 RB.211–524B3–02 RB.211–524B4–02 Pre SB72–5787	7500	7250	6250	6000–7500	4750–7250	4750–6250	13500	13500	12750	17500	17500	17500
RB.211–524B–02 RB.211–524B3–02 RB.211–524B4–02 Post SB72–5787	8500	8200	7200	6500–8500	5700–8200	5700–7200	15000	14700	13700	19000	19000	18000

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TABLE 1—Continued

Engine mark and mod standard	Pre SB72–9594			Rework bands			Post SB72–9594			Post SB72–9618		
	Life limits through 12/31/00	Life limits after 12/31/00	Life limits after 12/31/01	Rework bands through 12/31/00	Rework bands after 12/31/00	Rework bands after 12/31/01	Life limits through 12/31/00	Life limits after 12/31/00	Life limits after 12/31/01	Life limits through 12/31/00	Life limits after 12/31/00	Life limits after 12/31/01
RB.211–524B–B–02 RB.211–524B4–D–02 Pre SB72–5787	7500	7500	7400	6000–7500	6000–7500	5500–7400	13500	13500	13500	17500	17500	17500
RB.211–524B–B–02 RB.211–524B4–D–02 Post SB72–5787	8500	8200	7200	6500–8500	5700–8200	5700–7200	15000	14700	13700	19000	19000	18000
RB211–524B2 RB211–524C2 RB211–524D4 RB211–524D4X Pre SB72–5787	7500	7500	7300	6000–7500	6000–7500	5800–7300	13500	13500	13500	17500	17500	17500
RB.211–524B2 RB.211–524C2 RB.211–524D4 RB.211–524D4X Post SB72–5787	8500	8250	7250	6500–8500	5800–8250	5800–7250	15000	14500	13500	19000	18750	17750
RB.211–524B2–B RB.211–524C2–B Pre SB72–5787	7500	7500	7300	6000–7500	6000–7500	5800–7300	13500	13500	13500	17500	17500	17500
RB.211–524B2–B RB.211–524C2–B Post SB72–5787	8500	8200	7250	6500–8500	5800–8200	5800–7250	15000	14500	13500	19000	18650	17650
RB.211–524D4–B RB.211–524D4X–B Post SB72–5787	8500	8500	7750	6500–8500	6500–8500	5750–7750	15000	15000	15000	19000	19000	19000
RB.211–524G RB.211–524G–T RB.211–524H RB.211–524H–T Post SB72–5787	8500	8150	7150	6500–8500	5750–8150	5750–7150	13950	13950	13950	N/A	N/A	N/A

(b) Remove from service IP stage 6–7 rotor shafts that have been reworked in accordance with R–R SB RB.211–72–9594, Revision 8, dated January 14, 1999, Revision 7, dated September 16, 1994, Revision 6, dated August 12, 1994, or Revision 5, dated February 12, 1993, prior to exceeding the new, reduced cyclic life listed in Table 1 of this AD under the sub-title "Post SB72–9594" and replace with serviceable parts.

(c) Remove from service IP compressor stage 6–7 rotor shafts that have been reworked in accordance with R–R SB RB.211–72–9618, dated August 7, 1992, prior to exceeding the new, reduced cyclic life limits listed in Table 1 of this AD under the sub-title "Post SB72–9618" and replace with serviceable parts.

(d) IP compressor stage 6–7 rotor shaft rework in accordance with R–R SB RB.211–72–9594 can only be accomplished when the cyclic life of the part falls within the rework bands established in Table 1 of this AD. To accomplish rework of IP compressor stage 6–7 rotor shafts prior to reaching the lower limit of the rework bands specified in Table 1 of this AD, the part must be artificially aged to the cyclic life which defines the lower limit of the applicable rework bands in Table 1 of this AD.

Note 2: For example, if the lower limit of the rework band is 8,000 cycles, and the part is reworked at 7,000 cycles, the part must be artificially aged by adding 1,000 cycles to the cycles since new recorded on the part; i.e., on return to service the cycles since new on this part would be 8,000 cycles.

Alternative Method of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Ferry Flights

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Incorporation By Reference

(g) The actions of this AD shall be done in accordance with the following R–R Service Bulletins:

Document No.	Pages	Revision	Date
RB.211–72–9993	1–6	Original	August 26, 1994.
Supplement	1 of 1	Original	August 26, 1994.
Modification Acceptance Total pages: 8		Original	August 26, 1994.
RB.211–72–9594	1–4	8	January 14, 1999.
	4A	8	January 14, 1999.
	5–6	8	January 14, 1999.
	6A	2	May 8, 1992.
	7	6	August 12, 1994.
	8–8A	8	January 14, 1999.
	9	2	May 8, 1992.
	10–11	6	August 12, 1994.

Document No.	Pages	Revision	Date
	12–12A	8	January 14, 1999.
	13–15	7	September 16, 1994.
	16–18	Original	February 5, 1992.
	19–20	4	November 13, 1992.
	21–26	6	August 12, 1994.
	27	7	September 16, 1994.
Appendix	1–4	5	February 12, 1993.
	5	Original	February 5, 1992.
Supplement	1–2	1	August 12, 1994.
Total pages: 38			
RB.211–72–9618	1–6	2	January 14, 1999.
Total pages: 6			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, UK, telephone 011–44–1332–242424. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 7, 2000.

Issued in Burlington, Massachusetts, on May 23, 2000.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–13566 Filed 6–5–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–358–AD; Amendment 39–11761; AD 2000–11–13]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, that requires a one-time review of the maintenance records to determine if tripping of the fuel boost pump circuit breakers has been recorded, repetitive inspections to detect fuel leakage from the fuel boost pump wiring conduits, and corrective actions, if necessary. This amendment also requires replacement of the three single wires inside the metal conduit of the fuel boost pumps with new wires protected by a polyamide sleeve, which terminates the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the fuel boost pump wiring from chafing, which could result in electrical arcing and a possible fuel tank ignition source.

DATES: Effective July 11, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 11, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes was published in the **Federal Register** on February 8, 2000 (65 FR 6046). That action proposed to require a one-time review of the maintenance records to determine if tripping of the fuel boost pump circuit breakers has been recorded, repetitive inspections to detect fuel leakage from the fuel boost pump wiring conduits, and corrective actions, if necessary. That action also proposed to require replacement of the three single wires inside the metal conduit sleeve of the fuel boost pumps with new wires protected by a polyamide sleeve, which would terminate the repetitive inspections.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Type Certificate Holder

One commenter requests that the Discussion and Explanation of Relevant Service Information sections be revised to refer to Fokker Services B.V. as the current type certificate holder, rather than the now defunct airplane manufacturer. The commenter advises that Fokker Services B.V. is conducting the Fuel System Safety Program mentioned in the Discussion section, and is also the issuer of the relevant service information. The FAA acknowledges the accuracy of this information; however, since these sections are not repeated in the final rule, no change is made to the AD.

Statement of Unsafe Condition

The same commenter requests that the statement of unsafe condition be corrected in several areas of the proposed AD. The commenter notes that electrical arcing has only been observed between the metal conduit and the fuel boost pump wiring, and states that the description of the unsafe condition should be revised to remove the statement that such arcing "could result in a possible fuel tank ignition source." The commenter states that since no arc-through of the metal conduit has been observed, and the conduit is submerged in fuel during all phases of flight, it is very unlikely that the arcing could serve as an ignition source for the fuel vapors inside the fuel tank. The commenter

requests that the Summary, Discussion, and Compliance sections of the AD be revised to eliminate such a statement, and suggests that the actions required by the proposed AD are instead intended to prevent repetitive electrical arcing between damaged fuel boost pump wiring and the metal conduit, ignition of fuel vapors within the metal conduit, and/or chafing of the fuel boost pump wiring.

The FAA does not concur. Although the commenter states that it is very unlikely that the arcing could lead to an ignition source for the fuel vapors inside the fuel tank, insufficient data were provided to the FAA to demonstrate that such arcing could not create an ignition source in the fuel tank. Additionally, although other conditions will be prevented by accomplishment of the actions required by this AD, the possible ignition of fuel vapors is the unsafe condition being addressed by this AD. No change is made to the final rule.

Reference to Metal Conduit

The same commenter requests that the phrase "replacement of the three single wires inside the metal conduit sleeve" in the Summary section of the proposed AD be revised to delete the word "sleeve" to describe the replacement more accurately. The FAA concurs. The use of the word "sleeve" in this context was an inadvertent error in terminology, although the replacement is described accurately in the text of the AD. The Summary section of the final rule has been revised accordingly.

Description of Service Information

The same commenter requests that the Explanation of Relevant Service Information section be revised in several areas pertaining to the description of the procedures contained in Part 2, Paragraph D., of the Accomplishment Instructions of Fokker Service Bulletin SBF28/28–046, dated September 1, 1999. The commenter's suggestions include expanding the description of the corrective actions to list all such actions, and clarifying that certain actions are to be accomplished subsequent to and depending on the results of the resistance check. The FAA acknowledges that more detailed descriptions of all corrective actions could have been included, but has determined that the description provided in the proposed AD was sufficient to give adequate notice to operators concerning required actions. Since this information is not retained in the final rule, no change is made to the AD in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 22 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required review of the maintenance records, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the review on U.S. operators is estimated to be $1,320, or $60 per airplane.

It will take approximately 3 work hours per airplane to accomplish the required repetitive inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $3,960, or $180 per airplane, per inspection cycle.

It will take approximately 33 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,355 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $73,370, or $3,335 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–13 Fokker Services B.V.: Amendment 39–11761. Docket 99–NM–358—AD.

Applicability: Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes having serial numbers 11003 through 11241 inclusive and 11991 through 11994 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the fuel boost pump wiring from chafing, which could result in electrical arcing and a possible fuel tank ignition source, accomplish the following:

Inspections and Corrective Actions

(a) Within 30 days after the effective date of this AD, perform a one-time inspection of the maintenance records of the airplane to determine if tripping of the fuel boost pump circuit breakers has been reported within the last 30 days, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF28/28–046, dated September 1, 1999.

(b) If resettable or unresettable tripping of the circuit breaker of the fuel boost pump is reported during the inspection required by paragraph (a) of this AD, or if such tripping is reported at any time subsequent to that inspection: Within 10 days after the date of the inspection or any occurrence, accomplish the applicable repair (including a resistance check and inspections of the wire and conduit for discrepancies), in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28/28–046, dated September 1, 1999. If any discrepancy is detected during any inspection performed during the repair, prior to further flight, repair in accordance with the service bulletin.

(c) In the event of any resettable or unresettable tripping of the circuit breakers of the fuel boost pump as indicated in paragraph (b) of this AD, the airplane may be operated for a period not to exceed 10 days after the occurrence, provided the circuit breaker of the fuel boost pump and fuel boost pump switch have been properly deactivated and placarded for flightcrew awareness, in accordance with the FAA-approved Master Minimum Equipment List (MMEL).

(d) Within 30 days after the effective date of this AD, perform a general visual inspection to detect signs of fuel leakage from the wiring conduits of the fuel boost pumps, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F28/28–046, dated September 1, 1999. If any fuel leakage is detected during the inspection, prior to further flight, isolate the fuel leak, and repair in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 90 days.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Replacement of Wires

(e) Replace the existing three single wires (including inspections) inside the metal conduits of the fuel boost pumps with three twisted wires protected by a polyamide braided wire sleeve, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin F28/28–046, dated September 1, 1999, at the time specified in paragraph (e)(1) or (e)(2) of this AD, as applicable. If any discrepancy is detected during any inspection required by this paragraph, prior to further flight, repair in accordance with the service bulletin. Accomplishment of the actions required by this paragraph constitutes terminating action for the actions required by this AD.

(1) For airplanes that have accumulated less than 40,000 total flight hours as of the effective date of this AD: Within 2 years after the effective date of this AD.

(2) For airplanes that have accumulated 40,000 or more total flight hours as of the effective date of this AD: Within 1 year after the effective date of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions shall be done in accordance with Fokker Service Bulletin SBF28/28–046, dated September 1, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive BLA 1999–114, dated September 13, 1999.

(i) This amendment becomes effective on July 11, 2000.

Issued in Renton, Washington, on May 25, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13694 Filed 6–5–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–62–AD; Amendment 39–11766; AD 2000–11–18]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365C, C1, C2, N, and N1; AS–365N2 and N3; and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that applies to Eurocopter France Model SA–365C, C1, C2, N, and N1; AS–365N2, and SA–366G1 helicopters. That AD currently requires inspecting the tightening torque of the main rotor hub blade attach beam spherical thrust bearing bolts (bolts) and either applying a specified torque or, if necessary, inspecting for a crack in the metal components. That AD also requires replacing the spherical thrust bearing (bearing) with an airworthy bearing if a crack is found. This amendment requires the same actions as the existing AD, but adds the Eurocopter France Model AS–365N3 helicopter to the applicability. This amendment is prompted by reports of cracks in the metal components of the bearing attachment joint and the need to add the Eurocopter France Model AS–365N3 helicopter to the applicability. The actions specified by this AD are intended to prevent loosening of bearing bolts in flight, which may cause cracks in the metal components, failure of the bearing, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–21–24, Amendment 39–11369 (64 FR 55621, October 14, 1999), which applies to Eurocopter France Model SA–365C, C1, C2, N, and N1; AS–365N2, and SA–366G1 helicopters, was published in the **Federal Register** on February 29, 2000 (65 FR 10727). That action proposed to require requires the same actions as the existing AD, but adds the Eurocopter

France Model AS–365N3 helicopter to the applicability.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 101 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter and approximately 3,000 inspections per helicopter over the life of the fleet to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,123,000, assuming 11 ship sets of bearings are replaced on the fleet.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11369 (64 FR 55621, October 14, 1999), and by adding a new airworthiness directive (AD), Amendment 39–11766, to read as follows:

2000–11–18 Eurocopter France: Amendment 39–11766. Docket No. 99-SW–62—AD. Supersedes AD 99–21–24, Amendment 39–11369, Docket No. 98–SW–75–AD.

Applicability: Eurocopter France Model SA–365C, C1, C2, N, and N1; AS–365N2 and N3; and SA–366G1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 550 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 550 hours TIS.

To prevent loosening of the main rotor hub blade attach beam spherical thrust bearing bolts (bolts), cracks in the metal components, failure of a spherical thrust bearing (bearing), and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the tightening torque of the bolts as indicated by "A" in Figure 1.

(1) If tightening torque is equal to or less than 12 m.daN (88.4 lb-ft), remove the bearing and conduct a dye penetrant inspection for cracks on the two contact surfaces identified as "H" in Figure 1.

(i) If a crack is detected, replace the bearing with an airworthy bearing.

(ii) If no crack is detected, reinstall the bearing.

Note 2: Eurocopter France Service Bulletins 05.22, 05.24, and 05.00.39, all dated July 17, 1998, pertain to the subject of this AD.

(2) If the tightening torque is greater than 12 m.daN (88.4 lb-ft), then tighten the torque to 19–22 m.daN (140–162.2 lb-ft).

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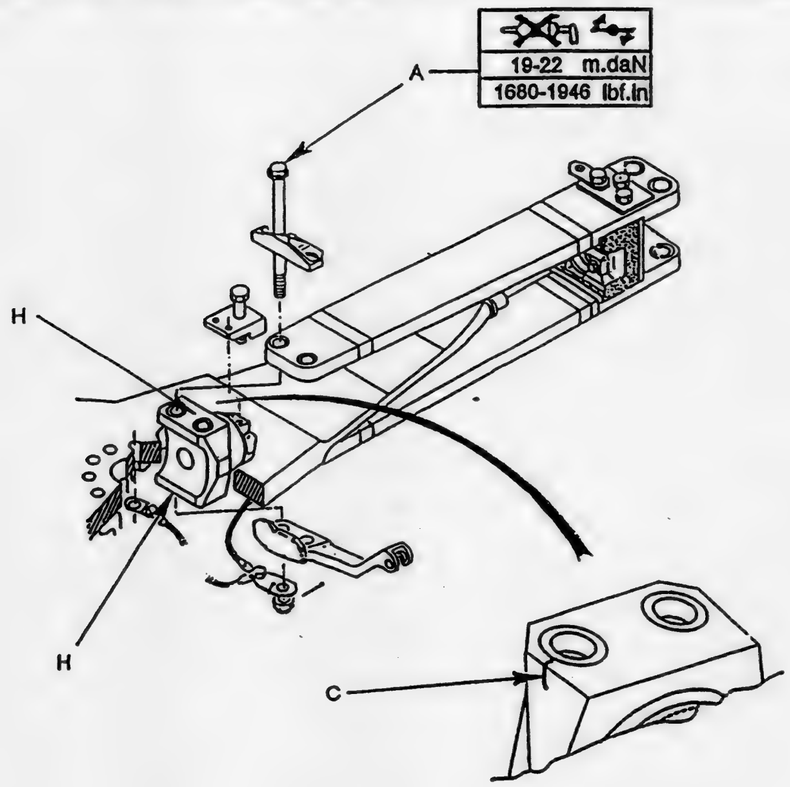

Figure 1

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(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on July 11, 2000.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD's 98–383–044(A) for the Model SA–365C, 98–382–024–(A) for the Model SA–366, and 98–384–047(A) for the Model AS–365N helicopters. These AD's are all dated September 23, 1998.

Issued in Fort Worth, Texas, on May 26, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–14194 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–26]

RIN 2120–AA66

Modification and Revocation of VOR and Colored Federal Airways and Jet Routes; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes one jet route (J–814R), and modifies five jet routes (J–111, J–115, J–127, J–501 and J–511), three Very High Frequency Omnidirectional Range (VOR) Federal airways (V–319, V–453 and V–456), and one colored Federal airway (G–8), and located in Alaska. The FAA is taking this action for the following reasons: to realign the North Pacific (NOPAC) Air Traffic Service (ATS) route structure; to reflect the Adak Nondirectional Radio Beacon (NDB), AK, decommissioning from the National Airspace System (NAS); and to resolve an aeronautical charting discrepancy. This action will improve the management of air traffic operations in Alaska and enhance safety.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph C. White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 1999, the FAA proposed to amend 14 CFR part 71 (part 71) to revoke one jet route, and to modify five jet routes, three VOR Federal airways, and one colored Federal airway in Alaska (64 FR 18392). This action was considered necessary due to overlapping jet routes, decommissioning of the Adak NDB, and the existence of obsolete fixes still shown on jet routes. Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This action amends part 71 by revoking one jet route (J–814R), and modifying five jet routes (J–111, J–115, J–127, J–501, and J–511), three VOR Federal airways (V–319, V–453, and V–456), and one colored Federal airway (G–8), in Alaska. The FAA is taking this action for the following reasons.

Segments of J–111 from Anchorage to Middleton Island to the noncompulsory reporting point SNOUT overlap existing J–804R segments and are not used. This action revises the legal description of J–111 to reflect this change.

Jet Route J–115 and Colored Federal Airway G–8 use Adak NDB which will be decommissioned. The new NDB on Adak Island will be named Mount Moffett NDB. This action changes the legal descriptions of J–115 and G–8 to show the new NDB.

Jet Routes J–127, J–501, J–511, and J–814R terminate at AUGIN, MIXER, ENCOR, and PANTT fixes which were once part of the NOPAC ATS route structure and these fixes are no longer required for air traffic control (ATC) purposes. As a result, the FAA is revising J–127, J–501, and J–511 to reflect this change in route structure and revoking J–814R as this route is no longer needed for ATC purposes.

Alaskan Federal Airways V–319 and V–453 are being amended by adding and converting non-part 95 segments to VOR Federal airway segments. Non-part 95 segments are routes that are nonregulatory, uncharted, and are not subject to the requirements of part 95, instrument flight rules (IFR) altitudes. The conversion of these non-part 95 segments to VOR Federal airway segments will add to the IFR airway and route infrastructure in Alaska. The new VOR Federal airway segments, unlike the non-part 95 segments, will enable the FAA to provide charted flight procedural information to the pilots pertaining to navigational guidance, minimum en route altitudes and minimum obstruction clearance altitudes information, thereby enhancing safety.

Alaskan Federal Airway V–456 is amended to correct a discrepancy on how the airway is depicted on the IFR En route L–3/L–4 Low Altitude—Alaska Chart and the Kodiak Aeronautical Sectional Chart. The outbound radial from King Salmon is 032° on the sectional chart and 033° on the en route chart. The current legal description for V–456 includes an intersection (King Salmon 053° and Kenai 239°) which will be removed to correct the discrepancy. The course from King Salmon to Kenai (032.71°) will resolve to 033° once the intersection is removed. This action will make the route segment a straight line and will not affect the fixes STREW, BITOP, or COPPS on V–456.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes, green Federal airways, and Alaskan VOR Federal airways are published in paragraph 2004, paragraph 6009(a), and paragraph 6010(b), respectively, of FAA Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The jet routes, green Federal airway, and Alaskan VOR Federal airways listed in this document will be published subsequently in or removed from the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–111 [Revised]

From Nome, AK, via Unalakleet, AK; McGrath, AK; Anchorage, AK.

* * * * *

J–115 [Revised]

From Shemya, AK, NDB; Mount Moffett, AK, NDB; Dutch Harbor, AK, NDB; Cold Bay, AK; King Salmon, AK; INT King Salmon 053° and Kenai, AK, 239° radials; Kenai; Anchorage, AK; Fairbanks, AK; Chandalar, AK, NDB; to Deadhorse, AK.

* * * * *

J–127 [Revised]

From King Salmon, AK; to INT King Salmon 042° and Anchorage, AK, 246° radials.

* * * * *

J–501 [Revised]

From San Marcus, CA, via Big Sur, CA; Point Reyes, CA, via Rogue Valley, OR; Hoquiam, WA; INT Hoquiam 354° and Tatoosh, WA, 162° radials; Tatoosh; Cape Scott, BC, Canada, NDB; Sandspit, BC, Canada; Biorka Island, AK; Yakutat, AK; Johnstone Point, AK; Anchorage, AK; Sparrevohn, AK; Bethel, AK; excluding the airspace within Canada.

* * * * *

J–511 [Revised]

From Dillingham, AK; Anchorage, AK; Big Lake, AK; Gulkana, AK; to Burwash Landing, YT, Canada, NDB, excluding the portion which lies over Canadian territory.

* * * * *

J–814R [Revoked]

* * * * *

Paragraph 6009(a) Green Federal Airways

* * * * *

G–8 [Revised]

From Shemya, AK, NDB; 20 AGL, Mount Moffet, NDB, AK; 20 AGL, Dutch Harbor, AK, NDB; 20 AGL, INT Dutch Harbor NDB 041° and Elfee, AK, NDB 253° bearings; 20 AGL, Elfee NDB; 20 AGL Saldo, AK, NDB; INT Saldo NDB 054° and Kachemak, AK, NDB 269° bearings; to Kachemak NDB. From Campbell Lake, AK, NDB; Glenallen, AK, NDB; INT Glenallen NDB 052° and Nabesna, AK, NDB 252° bearings; Nabesna NDB.

* * * * *

Paragraph 6010(b) Alaskan VOR Federal Airways

* * * * *

V–319 [Revised]

From Yakutat, AK, via Johnstone Point, AK; INT Johnstone Point 286° and Anchorage, AK, 117° radials; Anchorage; Sparrevohn, AK; Bethel, AK; Hooper Bay, AK; Nanwak, AK, NDB; to Kipnuk, AK.

* * * * *

V–453 [Revised]

From King Salmon, AK; Dillingham, AK; INT Dillingham 308° and Bethel, AK, 143° radials; Bethel; to Unalakleet, AK.

* * * * *

V–456 [Revised]

From Cold Bay, AK; King Salmon, AK; Kenai, AK; Anchorage, AK; Big Lake, AK; Gulkana, AK; to Northway, AK.

* * * * *

Issued in Washington, DC, on May 30, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–14044 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 98F–0196]

Food Additives Permitted in Feed and Drinking Water of Animals; Selenium Yeast

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for food additives permitted in feed to provide for the safe use of selenium yeast as a source of selenium in animal feeds intended for chickens. This action is in response to a food additive petition filed by Alltech Biotechnology Center.

DATES: This rule is effective June 6, 2000. Submit written objections and requests for a hearing by July 6, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nelson Chou, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0161.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of May 12, 1998 (63 FR 26193), FDA announced that a food additive petition (animal use) (FAP 2238) had been filed by Alltech Biotechnology Center, 3031 Catnip Hill Pike, Nicholasville, KY 40356. The petition proposed to amend the food additive regulations in § 573.920 *Selenium* (21 CFR 573.920) to provide for the safe use of selenium yeast as a source of selenium in animal feeds intended for use in poultry. The notice of filing provided for a 60-day comment period on the petitioner's environmental assessment. No comments have been received.

II. Conclusion

FDA concludes that the data establish the safety and utility of selenium yeast, for use in feeds for chickens, and the food additive regulations should be amended as set forth below.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person listed above. As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by July 6, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 573.920 is amended by revising paragraph (b) and by adding paragraph (h) to read as follows:

§ 573.920 Selenium.

* * * * *

(b) The food additive selenium is a nutrient administered in animal feed as sodium selenite or sodium selenate or in a controlled-release sodium selenite bolus, as provided in paragraphs (f) and (g) of this section, or as selenium yeast, as provided in paragraph (h) of this section.

* * * * *

(h) The additive selenium yeast is added to complete feed for chickens at a level not to exceed 0.3 part per million. Usage of this additive must conform to the requirements of paragraphs (e) and (f) of this section.

Dated: May 26, 2000.

Andrew A. Beaulieu,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 00–14214 Filed 6–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Corrections

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Correcting amendments.

SUMMARY: This document makes technical corrections to regulations that were published in various **Federal Register** documents and are codified in the Code of Federal Regulations under Title 30—Minerals Resources, Parts 200–269. The changes are necessary to correct a citation and a reference to a section of a document incorporated by reference.

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, Engineering and Operations Division, (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

These correcting amendments affect all offshore operators and lessees. The following describes the two minor corrections we are making.

On May 29, 1998 (63 FR 29478), MMS published a final rule commonly known as the "redesignation" rule, which assigned new section numbers to each section in 30 CFR part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf). The purpose was to allow MMS to logically format the subparts in the future without further renumbering. In the process of redesignating the regulations, we missed correcting a citation in 30 CFR 250.613(a). That section references the citation "§ 250.91", which should have been changed to "§ 250.601" and is now being corrected.

In § 250.198(e), our regulations incorporate various documents by reference and these documents are then referenced in other sections of the regulations. One of these documents is API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore. This document is referenced in § 250.804(a)(4) as "API RP 14H, Section 4, Table 2". However, there are no tables in Section 4 of API RP 14H and the reference should have been to "Section 6" rather than "Section 4". We are correcting § 250.804(a)(4) to simply reference document "API RP 14H" without designating a specific section of the document.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading, and are in need of clarification.

List of Subject in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Accordingly, 30 CFR Part 250 is corrected by making the following correcting amendments:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

§ 250.613 [Corrected]

2. In § 250.613, paragraph (a), in the first sentence, the citation "§ 250.91" is revised to read "§ 250.601".

§ 250.804 [Corrected]

3. In § 250.804, paragraph (a)(4), in the second sentence, the reference to "API RP 14H, Section 4, Table 2." is revised to read "API RP 14H."

Dated: May 24, 2000.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 00–13867 Filed 6–5–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

CGD11–00–003

RIN 2115–AE47

Drawbridge Operating Regulations; China Basin, Mission Creek, San Francisco, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Commander, Eleventh Coast Guard District is temporarily changing the regulation governing the Third Street Drawbridge, Mile 0.0, across Mission Creek, China Basin, San Francisco, CA. The drawbridge need not open for vessel traffic and may remain in the closed-to-navigation position from 8:30 a.m. to 10:30 a.m. on July 9, 2000. This temporary rule is issued to allow the public to cross the bridge to participate in the scheduled Second Annual Chronicle Marathon, a community event.

DATES: This temporary rule is effective from 8:30 a.m. to 10:30 a.m. on July 9, 2000.

ADDRESSES: The public docket and all documents referred to in this notice will be available for inspection and copying at offices of the Commander (oan–2), Building 50–6, Eleventh Coast Guard District, Coast Guard Island, Alameda, CA 94501–5100 50–6, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, Building 50–6 Coast Guard Island, Alameda, CA 94501–5100, telephone 510–437–3516.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM due to the short time frame available between the submission of the request by the Department of Public Works of the City of San Francisco and the date of the event. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On May 10, 2000, the Department of Public Works of the City of San Francisco requested a temporary change to the operation of the Third Street Bridge across Mission Creek, China Basin at Mile (0.0) in San Francisco, California. The Third Street Drawbridge navigation span provides vertical clearance of 8 feet above MLLW in the closed-to-navigation position. Navigation on the waterway consists of both commercial and recreational watercraft. Presently, the draw is required to open on signal if at least one hour advance notice is given. The City requested the drawbridge be permitted to remain closed to navigation from 8:30 a.m. to 10:30 a.m. on July 9, 2000. During this time the bridge will be crossed by participants in the scheduled Second Annual Chronicle Marathon. This temporary drawbridge operation amendment has been coordinated with the waterway users. No objections to the proposed rule were raised.

Regulatory Evaluation

This temporary rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not a "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because waterway traffic is not likely to be delayed more than two hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and government jurisdictions with populations of less than 50,000.

This rule will be in effect for only 2 hours early in the day and the Coast Guard expects the impact of this action to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, Building 50–6, Coast Guard Island, Alameda, CA 94501–5100, telephone 510–437–3516.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under the principles and criteria contained in Executive Order 13132, and have determined that this rule does not have implications of federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environmental

The Coast Guard considered the environmental impact of this temporary rule and concluded that under Chapter 2.B.2 and Figure 2–1, 32(e) of Commandant Instruction M16475.1C, this temporary rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.225 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 8:30 a.m. to 10:30 a.m., July 9, 2000, § 117.149 is suspended and a new § 117.T148 is temporarily added to read as follows:

§ 117.T148 China Basin, Mission Creek.

The draw of the Third Street Drawbridge, China Basin mile (0.0), at San Francisco, California need not open from 8:30 a.m. to 10:30 a.m. on July 9, 2000. During this time it may remain closed to navigation.

Dated: May 25, 2000.

T.H. Collins,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 00–14042 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–053]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1084.6, Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: Commander, Seventh Coast Guard District is temporarily changing the regulations governing the West 79th Street Causeway Bridge, mile 1084.6 across the Atlantic Intracoastal Waterway at Palm Beach, Florida. This temporary rule establishes scheduled openings every 30 minutes, Monday through Saturday, from 7 a.m. to 6 p.m., starting Thursday, May 25, 2000, through February 28, 2001. The drawbridge will open on demand during all other periods including holidays and Sundays. This action is necessary to facilitate rehabilitation of the drawbridge.

DATES: This rule is effective from May 25, 2000, to February 28, 2001. Comments must be received by September 29, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–00–053] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S. E. 1st Avenue, Room 406, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM is impracticable because we received notice of this rehabilitation very recently, not leaving time for a NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We received notice of this rehabilitation very recently, not leaving time for a delayed effective date.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–00–053], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary rule in view of them.

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address under **ADDRESSES**, explaining why one would be beneficial. If the Coast Guard determines that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Discussion of the Rule

The West 79th Street Causeway Drawbridge, mile 1084.6, across the Atlantic Intracoastal Waterway, has a vertical clearance of 19.5 feet at mean high water and a horizontal clearance of 90 feet between fenders. The existing operating regulations in 33 CFR 117.5 require the bridge to open promptly and fully for the passage of vessels when a request to open is given.

The Florida Department of Transportation requested from the Coast Guard on May 9, 2000, that the West 79th Street Causeway Drawbridge operations be temporarily changed to allow for rehabilitation of the drawbridge. This temporary rule change to the drawbridge operating regulations will allow the drawbridge owner or operator to open every thirty minutes, Monday through Saturday, from 7 a.m. to 6 p.m., starting Thursday, May 25, 2000 through February 28, 2001.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be minimal because the bridge will still open at 30 minute intervals and on demand during evenings, Sundays, and holidays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: owners or operators of vessels intending to transit the Intracoastal waterway at mile 1084.6. Although this temporary rule will be in effect for nine months, vessel traffic can still pass through the drawbridge every 30 minutes during weekdays and Saturday, and on demand at all other times.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or government jurisdiction and you have questions concerning is provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary regulations: For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From May 25, 2000 through February 28, 2001, in § 117.261, a new paragraph (rr) is temporarily added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(rr) *West 79th Street Causeway Drawbridge, mile 1084.6, Miami, Florida.* The draw need open only on the hour and half-hour, Monday through Saturday, from 7 a.m. to 6 p.m., beginning May 25, 2000 through February 28, 2001. The draw will open on demand during all other periods including holidays and Sundays.

Dated: May 23, 2000.

T.W. Allen,

Rear Admiral, Commander, Seventh Coast Guard District.

[FR Doc. 00–14152 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–009]

RIN 2115–AA97

Safety Zone: OPSAIL 2000 Fireworks Displays and Search and Rescue Demonstrations, Port of New York/New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing four temporary safety zones for fireworks displays located on New York Harbor, the East River, and Hudson River, and one temporary safety zone for Search and Rescue demonstrations on the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the events. It will restrict traffic in portions of New York Harbor, the East and Hudson River.

DATES: This rule is effective from 6:30 p.m. on July 4, 2000 until 6 p.m. on July 8, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–009) and are available for inspection or copying at Waterways Oversight Branch (CGD01–00–009), Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York, 10305 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 17, 2000, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: OPSAIL 2000 Fireworks Displays and Search and Rescue Demonstrations, Port of New

York/New Jersey in the **Federal Register** (65 FR 31293). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing four temporary safety zones for fireworks displays, and one temporary safety zone for Search and Rescue demonstrations being held in conjunction with OPSAIL 2000.

Macy's/OPSAIL 2000 Fireworks

The Coast Guard is establishing four temporary safety zones for the Macy's/OPSAIL 2000 fireworks display in New York Harbor, the East River, and Hudson River, on July 4, 2000. The first safety zone includes all waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42′15.5″N 074°01′07″ W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41′34.5″N 074°01′11″ W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41′25.3″N 074°00′42.5″W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn through the southern point of Roosevelt Island from East 47th Street, Manhattan to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

Vessels equal to or greater than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in an area inside the safety zone at least 200 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between the Williamsburg Bridge and a line drawn through the East River Main Channel Lighted Buoy 18 (LLNR 27335), to a point on the Brooklyn shore at North 9th Street. All vessels must be in this location by 6:30 p.m. (e.s.t.) on July 4, 2000.

Once in position within the zone, all vessels must remain in position until released by the Captain of the Port, New York. On-scene-patrol personnel will monitor the number of designated vessels taking position in the viewing area of the zone. If it becomes apparent that any additional spectator vessels in the viewing area will create a safety hazard, the patrol commander may prevent additional vessels from entering it. After the event has concluded and the fireworks barges have safely relocated outside of the main channel, vessels will be allowed to depart the viewing area as directed by the patrol commander.

We created the viewing area within this safety zone in order to reduce significant safety hazards in this area of the East River, due in great part, to the extremely strong currents. Based on experience from similar events in this area of the East River, we are concerned that smaller spectator craft located in between the two fireworks barge sites could drift into the fallout zone of either barge site. Additionally, experience from previous events has also shown that having large and small craft located in a confined area presents safety hazards for both sized vessels due to vessel wake, anchor swing radii, and restricted visibility of larger vessels in a confined area.

One safety zone is required for this large section of the East River because the Coast Guard has a limited amount of assets available to patrol this event of national significance. If we made this zone into two zones, we could not adequately enforce the boundaries of both zones, and the safety of the port and the mariners would be unacceptably compromised because of the two nearby fireworks barge locations in a confined waterway with significant currents.

The Staten Island Ferries may continue services to their ferry slip at Whitehall Street, The Battery, Manhattan, New York. Continuing ferry services in the southwestern portion of the safety zone will not create a hazard nor be threatened by the fireworks display because Vessel Traffic Services New York will monitor and control the transits of these ferries. Failure to allow these continued ferry services will have a negative impact on residents of Staten Island, New York, and those persons traveling to and from Manhattan at the end of the holiday weekend.

The second safety zone includes all waters of the Hudson River north of a line drawn from the southwest corner of Pier 94, Manhattan, to 40°46′31.3″N, 074°00′37.9″W (NAD 1983) onshore in Weehawken, NJ, and south of a line drawn from the northeast corner of Pier D, Weehawken, NJ, to the northwest corner of the northern pier of the West 30th Street Heliport in Manhattan.

The third safety zone includes all waters of Upper New York Bay, east of Liberty Island, bound by the following points: 40°41′33.2″N 074°02′24.4″W; 40°41′11.3″N 074°02′44.4″W; 40°41′02.1″N 074°02′25.1″W; 40°41′09.1″N 074°02′10.2″W; 40°41′25.6″N 074°02′09.6″W (NAD 1983); thence to the point of beginning.

The fourth safety zone includes all waters of Anchorage Channel, Upper New York Bay, bound by the following points: 40°38′12.4″N 074°03′05.6″W; 40°38′01.5″N 074°03′00.7″W; 40°37′21.0″N 074°02′50.0″W; 40°37′15.6″N 074°03′16.6″W; 40°38′08.3″N 074°03′37.4″W (NAD 1983); thence to the point of beginning.

The safety zones will be enforced from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on July 4, 2000. If the event is cancelled due to inclement weather, then this section will be enforced from 6:30 p.m. (e.s.t) until 11:30 p.m. (e.s.t.) on July 5, 2000. The safety zones prevent vessels from transiting these portions of Upper New York Bay, the East River and the Hudson River, and is needed to protect boaters from the hazards associated with fireworks launched from 13 separate barges in the area. No vessel may enter the safety zones without permission of the Captain of the Port, New York.

These safety zones cover the minimum area needed and impose the minimum restrictions necessary to ensure the protection of all vessels and the fireworks handlers aboard the barges.

Public notifications will be made prior to the event via Local Notice to Mariners, marine information broadcasts, facsimile, OPSAIL Inc.'s website, and Macy's waterways telephone "hotline" at 212–494–5247.

BILLING CODE 4910–15–U

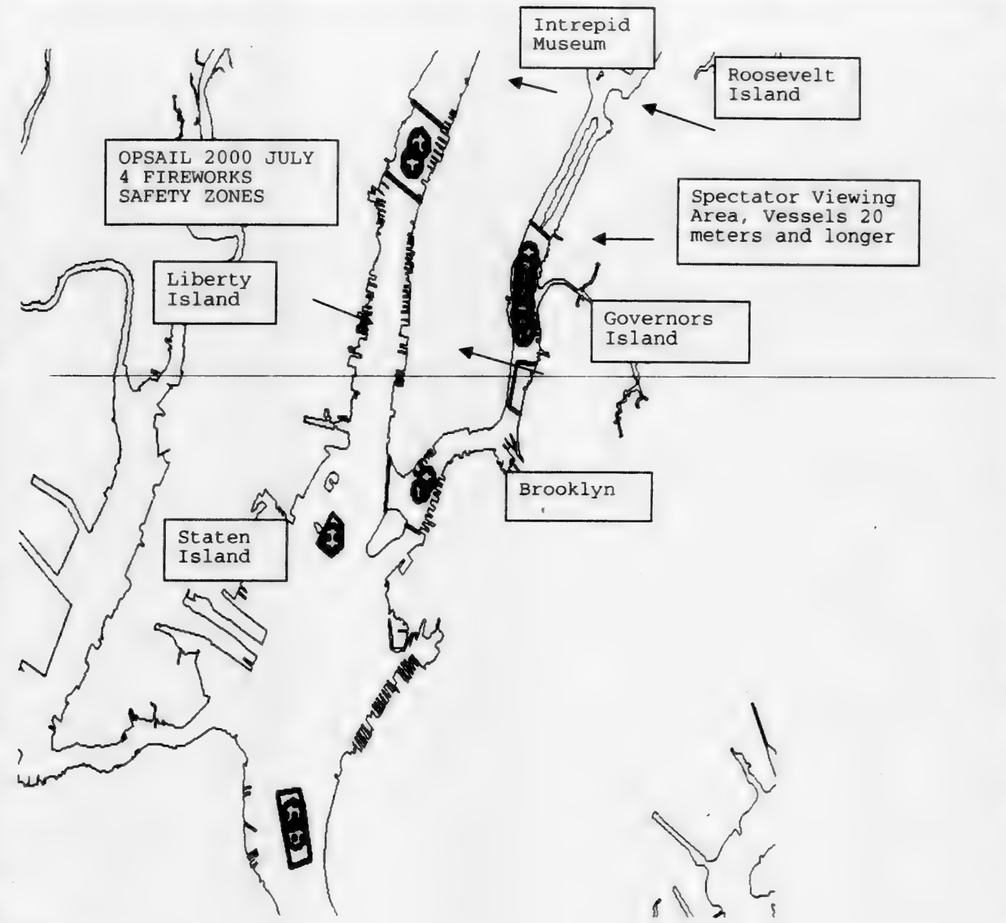

BILLING CODE 4910–15–C

Search and Rescue Demonstrations

The Coast Guard is also establishing a temporary safety zone for the OPSAIL Search and Rescue demonstrations held on and over the Hudson River between Piers 83 and 90. This safety zone includes all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46′10″N, 074°00′13″W (NAD 1983), south to approximate position 40°45′54″N, 074°00′25″W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall. This safety zone will be enforced from 12 p.m. (e.s.t.) until 6 p.m. (e.s.t.), Thursday, July 6, through Saturday, July 8, 2000. It is needed to protect boaters and demonstration participants from the hazards associated with United States Military personnel demonstrating the capabilities of aircraft and watercraft in a confined area of the Hudson River. This safety zone prevents vessels from transiting only a portion of the Hudson River. Marine traffic will still be able to transit through the western 600 yards of the 950-yard wide Hudson River during the Search and Rescue demonstrations. Vessels moored at piers within the safety zone; however, will not be allowed to transit from their moorings without permission from the Captain of the Port, New York, during the effective periods of the safety zone. The Captain of the Port does not anticipate any negative impact on recreational or commercial vessel traffic due to this safety zone.

Public notifications will be made prior to the Search and Rescue Demonstrations via Local Notice to Mariners, marine information broadcasts, facsimile, and OPSAIL Inc.'s website.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of New York Harbor, the Hudson River, and East River, the effect of this regulation will not be significant for the following reasons: the limited duration that the regulated areas will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, facsimile, marine information broadcasts, the sponsor's website and phone hotline, New York Harbor Operations Committee meetings, public meetings for maritime groups, and New York area newspapers, so mariners can adjust their plans accordingly. At no time will commercial shipping access to Port Newark/Port Elizabeth facilities be prohibited. Access to those areas may be accomplished using Raritan Bay, Arthur Kill, Kill Van Kull, and Newark Bay as an alternate route. This will allow the majority of the maritime industrial activity in the Port of New York/New Jersey to continue, relatively unaffected. Similar regulated areas were established for the 1986 and 1992 OPSAIL events, the annual Macy's July 4th fireworks display, and the annual Fleet Week Sea and Air demonstrations. Based upon the Coast Guard's experiences learned from these previous events of a similar magnitude, these regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

The sizes of the fireworks safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 10–12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in these areas.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in portions of Lower and Upper New York Bay, the Hudson River, and East River during various times from July 4–8, 2000. These regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: although these regulations will apply to a substantial portion of the Port of New York/New Jersey, designated areas for viewing the Fourth of July Fireworks are being established to allow for maximum use of the waterways by commercial tour boats that usually operate in the affected areas. Maritime traffic will also be able to transit around the areas where the Search and Rescue demonstrations are being held. Before the effective period, the Coast Guard will make notifications to the public via mailings, facsimiles, the Local Notice to Mariners and use of the sponsors Internet site. The Coast Guard is also holding public meetings with maritime groups to explain the schedule of events and approved spectator craft viewing areas. In addition, the sponsoring organization, OPSAIL Inc., is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. We provided explanations of the effect of these regulations on the Port of New York/New Jersey to approximately 18 small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agricultural Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes five safety zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–009 to read as follows:

§ 165.T01–009 Safety Zones: OPSAIL 2000 Fireworks Displays, and Search and Rescue Demonstrations, Port of New York/New Jersey.

(a) *Safety Zones Locations and Enforcement Periods.*

(1) *East River Fireworks Safety Zone.* All waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42′15.5″N 074°01′07″W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41′34.5″N 074°01′11″W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41′25.3″N 074°00′42.5″W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn through the southern point of Roosevelt Island from East 47th street, Manhattan to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

(2) *Hudson River Fireworks Safety Zone.* All waters of the Hudson River north of a line drawn from the southwest corner of Pier 94, Manhattan, to 40°46′31.3″N, 074°00′37.9″W (NAD 1983) onshore in Weehawken, NJ, and south of a line drawn from the northeast corner of Pier D, Weehawken, NJ, to the northwest corner of the northern pier of the West 30th Street Heliport in Manhattan.

(3) *Liberty Island Fireworks Safety Zone.* All waters of Upper New York Bay, east of Liberty Island, bound by the following points: 40°41′33.2″N 074°02′24.4″W; 40°41′11.3″N 074°02′44.4″W; 40°41′02.1″N 074°02′25.1″W; 40°41′09.1″N 074°02′10.2″W; 40°41′25.6″N 074°02′09.6″W (NAD 1983); thence to the point of beginning.

(4) *Anchorage Channel Fireworks Safety Zone.* All waters of Anchorage Channel, Upper New York Bay, bound by the following points: 40°38′12.4″N 074°03′05.6″W; 40°38′01.5″N 074°03′00.7″W; 40°37′21.0″N 074°02′50.0″W; 40°37′15.6″N 074°03′16.6″W; 40°38′08.3″N 074°03′37.4″W (NAD 1983); thence to the point of beginning.

(5) *Search and Rescue Demonstrations Safety Zone.* All waters of Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46′10″N, 074°00′13″W (NAD 1983), south to approximate position 40°45′54″N, 074°00′25″W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall.

(6) *Enforcement period.* Paragraphs (a)(1) through (a)(4) will be enforced from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on Tuesday, July 4, 2000. If the event is cancelled due to inclement weather, then paragraphs (a)(1) through (a)(4) will be enforced from 6:30 p.m. (e.s.t.) to 11:30 p.m. (e.s.t.) on Wednesday, July 5, 2000.

(7) *Enforcement period.* Paragraph (a)(5) will be enforced daily from 12 p.m. (e.s.t.) until 6 p.m. (e.s.t.) from Thursday, July 6, through Saturday, July 8, 2000.

(b) *Effective period.* This section is effective from 6:30 p.m. (e.s.t.) on July 4, 2000, until 6 p.m. (e.s.t.) on July 8, 2000.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port, New York.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessels may remain in the safety zone described in paragraph (a)(1) for the purpose of viewing the event in accordance with the following pre-established viewing area: Vessels equal to or greater than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in an area at least 200 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between the Williamsburg Bridge and a line drawn through the East River Main Channel Lighted Buoy 18 (LLNR 27335), to a point on the Brooklyn shore at North 9th Street. All vessels must be positioned in this viewing area within the safety zone by 6:30 p.m. (e.s.t.) on July 4, 2000.

Dated: June 1, 2000.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–14111 Filed 6–1–00; 4:28 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

COAST GUARD

33 CFR Part 165

[CGD01–98–151]

RIN 2115–AE84

Regulated Navigation Area: Navigable Waters Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the regulations at 33 CFR 165.100 that establish a Regulated Navigation Area (RNA) within the navigable waters of the First Coast Guard District. This Final Rule makes permanent the existing temporary authority of a Captain of the Port (COTP) to issue exemptions from the positive control of barges provisions of the RNA. These exemptions are authorized in limited circumstances in which an applicant employs equivalent levels of safety in the operation of vessels towing tank barges. This Final Rule removes the expiration date set in the Interim Rule for the exemption authority. The exemption authority is consistent with requirements of the relevant provisions of the Coast Guard Authorization Act of 1998, and with the purposes of environmental protection regulations to reduce the risk of oil spills in the marine environment, while accounting for the impact of the RNA on small entities.

DATES: This Final Rule is effective 1 July 2000.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Commander (m), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02210–3350.

FOR FURTHER INFORMATION CONTACT: Lieutenant Rich Klein, c/o Commander (m), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02210–3350; telephone 617–223–8243.

SUPPLEMENTARY INFORMATION:

Regulatory History

After the oil spill that resulted from the grounding of the Tank Barge NORTH CAPE off the coast of Rhode Island in 1996, a group comprised of operators of towing vessels and tank barges, environmental organizations, State agencies, and Coast Guard officials, formed the Regional Risk Assessment Team (RRAT). The purpose of the RRAT was to review operating procedures for tugs and barges in the Northeast. The RRAT issued a report that included recommended actions to minimize risks peculiar to the transportation of petroleum in the waters of the First Coast Guard District.

On October 13, 1998, the Coast Guard published in the **Federal Register** (63 FR 54639) a Notice of Proposed Rulemaking (NPRM) entitled "Regulated Navigation Area: Navigable Waters within the First Coast Guard District." That NPRM addressed many of the issues that the RRAT also addressed.

On November 13, 1998, Congress enacted the Coast Guard Authorization Act of 1998 (Act). Section 311 of the Act required the Coast Guard, under authority delegated by the Secretary of Transportation, to promulgate regulations for the safety of towing vessels and tank barges in waters of the Northeast not later than December 31, 1998. Section 311(b)(1)(B) of the Act required the Coast Guard to fully consider each recommendation from the RRAT report. On December 30, 1998, the Coast Guard published in the **Federal Register** (63 FR 71764) a Final Rule establishing the RNA for the waters of the Northeast.

After publication of the Final Rule, several companies in the towing and tank barge industry affected by the RNA notified the Coast Guard that they were concerned about the economic impact of the RNA's positive barge control provisions. Acting on these concerns, the Coast Guard published an Interim Rule in the **Federal Register** (64 FR 12746) on March 15, 1999, that temporarily authorized COTPs to exempt vessels from the positive barge control provisions based upon equivalent levels of safety. The Interim Rule also sought out comments on the economic impact of the positive barge control provisions on small entities. We conducted a public meeting on April 16, 1999 in New Haven, CT. The meeting was attended by 13 individuals, and there were 8 speakers.

Background and Purpose

Prior to publication of the Interim Rule, 33 CFR 165.100(d)(1)(i) required that single-hull tank barges carrying petroleum and operating in the navigable waters of the First Coast Guard District either be towed by a tug equipped with twin-screws and two engines, or be escorted by a second tug. Double-hull tank barges and certain small barges in confined waters were exempt from this requirement. The positive control provision in the RNA addressed the hazards associated with operating single-hull tank barges with single-screw tugs in the First Coast Guard District waters. However, it provided little flexibility to address special circumstances. This Final Rule provides COTPs with the authority to address special circumstances. This exemption authority is consistent with RRAT report that had recommended that the Coast Guard establish a regulatory provision authorizing exemptions in limited circumstances.

Under the final regulations, the COTP may consider exempting operators from the positive barge control provision upon the operator's demonstration of equivalent measures of safety. The exemptions, if granted, would result in the continued use of a single-screw and/or single-engine tug to tow a single-hull tank barge without an escort tug on the navigable waters of the First Coast Guard District. In determining whether to grant an exemption of the positive control provisions, the COTP will consider a variety of factors including, but not limited to, the availability of timely on-call tug assistance, the time of transit, the route, the weather, environmental factors, the amount and grade of cargo, the existence and sufficiency of anchoring and retrieval equipment on a manned barge, transits in protected waters, and the construction of the tank barge, as well as the operators' overall safety record.

Requests for exemptions must be submitted in writing to each COTP in whose zone the barge intends to operate. Operators whose vessels transit multiple COTP zones must apply for the exemption from each COTP. COTPs will consult with each other in such cases. The Final Rule is responsive to the needs of small businesses, and gives the COTP the flexibility to weigh risk while continuing to safeguard the environment.

This rule makes permanent the exemption process of the Interim Rule, which is set to expire on June 30, 2000. Because of the need to keep that exemption process authority, under U.S.C. 553(d)(1), this rule is effective in less than 30 days. Additionally, to remain responsive to industry needs while continuing to protect the environment and for the other reasons stated in the preamble of this rule, the Coast Guard finds good cause under 553 U.S.C. (d)(3) for making this rule effective in less than 30 days.

Discussion of Comments and Changes

The Coast Guard received 84 written comments on the Interim Rule, contained in 9 individual letters to the docket; we received another 22 comments at the public meeting.

General Comments

Several comments generally questioned the effectiveness of the RNA on improving safety. Five comments stated that single-screw tugs have decided safety advantages over twin-screw tugs, especially in narrow channels, shallow drafts, and tight bends where the danger to safe navigation is increased. A related comment suggested that, rather than try to eliminate a whole class of vessels, the Coast Guard eliminate or minimize risk as much as possible.

The overall purpose of the RNA is to improve safety and reduce the risk of an oil spill in First Coast Guard District waters. We believe that these regulations are effective safety measures, because they require operational planning, increase underway safety communications, and improve emergency response preparation. While single-screw tugs may have advantages, they do not have a redundant control system to serve as backup in the event the primary system fails to avoid a collision or grounding. We have not eliminated single-screw tug operation.

The RNA does not preclude the use of single-screw tugs, but it does generally require that tank barges under tow by these tugs employ an escort. Single-screw, or single-engine tugs may continue to tow double-hull barges, or seek an exemption for towing a tank barge with a capacity of less than 25,000 barrels in an area of limited depth or width. The Final Rule adds another exemption authority to address unique situations in which an equivalent level of safety is provided by the operator. By applying the RNA's measures together with those safety measures included in the two national rulemakings for Fire Protection [64 FR 56257] and Emergency Control Measures [65 FR 31806], the Coast Guard will lower the risk of pollution due to spills from tank barges.

Two comments suggested that the Coast Guard create a matrix to assess risk and screen vessels for safety. Consideration for continued service should be based on safety factors that will prevent oil pollution. Some companies already employ numerous operational and equipment precautions to ensure safety; these are things that should be determining factors in assessing risk. A related comment suggested that the RNA include a "grandfather" clause permitting those small entities that have been hauling petroleum with single-screw tugs prior to January 29, 1999, to continue this method of transporting.

We agree that a matrix may be a useful tool for COTPs to gauge risk factors when considering requests for exemption in some cases. A COTP is not limited in the way he or she evaluates an application. However, we note that the use of a single matrix in each of the five different COTP zones would be difficult in light of risks that may be unique to a particular COTP zone. Companies that employ preventive measures would be advised to identify those measures in any application for exemption under this Final Rule. The COTP will evaluate those measures in the equivalency determination. The result may have the same effect as "grandfathering" in some cases.

Three comments focused on the importance of the tug operator, and suggested enhanced qualification and skill standards consistent with the 1995 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

The Coast Guard encourages operators, on their own initiative, to increase training and improve their professional skills to further good marine practices. This rule does not preclude any owner of a tank barge from adherence to higher watchkeeping standards. However, Coast Guard District Commanders, including the First District Commander, do not generally have independent authority to establish STCW requirements.

Several comments urged that the Coast Guard establish procedures for transforming the temporary exemption into a permanent program, and that such a program would comply with the meaning and intent of the RRAT, which recommended waivers in certain instances.

We agree. This Final Rule makes a permanent exemption authority consistent with the recommendations of the RRAT report. The purpose of the Interim Rule was to solicit comments on the measures of positive control in the RNA, particularly those from small businesses. Following the period for public comment, and having held a public meeting, the Coast Guard re-evaluated the risks posed by the continued use of a single-screw tug while operating on the temporary exemption. Since we inserted the authority into the RNA, COTPs have evaluated 38 applications under the temporary exemption authority and granted 32 exemptions. Although no oil spills have been associated with vessels operating under the exemption, we acknowledge that the data is limited to a relatively brief one-year period of time.

One comment suggested that the Coast Guard establish a committee to study, in detail, how many small entities are involved and the type and extent of economic dislocation caused by the regulation. The Office of Advocacy of the Small Business Administration (SBA) has maintained that the use of general statistics is not an effective way to determine the impact of a regulation on any particular small business and that "Smali Entity" does not adequately segment the small towing firms affected.

The Coast Guard relied upon the SBA definition of small entity when promulgating this Final Rule. The SBA regulations require the use of their small entity definition in the various industries unless the agency has promulgated specific definitions. The Coast Guard obtained sufficient information when we re-opened the docket with the Interim Rule and conducted additional analysis of the impact on small businesses. The Coast Guard notified over 180 owners of tugs and tank barges in the Northeast, to inform them of the rulemaking and solicit the request for comments from small entities to describe the impact of the positive barge control provisions.

Several comments addressed the cost and safety of towing gear for anchoring and emergencies. They stated that the practice of picking up loose barges with emergency towing gear would place personnel and equipment in peril. Another comment stated that an engine-room fire aboard any tug, single or twin-screw, would render that tug helpless as all engine compressors, steering, and electric wiring are in one engine room.

Anchoring systems and firefighting were not the purpose of this rule. These issues were, however, addressed by the national rulemakings, Emergency Control Measures for Tank Barges, and Fire Protection previously noted.

Comments on Particular Features of Preamble

Comments on Applicability of Rule

One comment recommended that § 165.100(d)(1)(i) be amended to apply to only single-hull tank barges with a capacity of more than 7,500 barrels of oil. The comment recommended a new exemption provision be established to allow COTPs to grant exemptions to single-hull tank barges of this capacity.

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We agree that COTPs should have authority to issue exemptions, and have amended the regulations to reflect this change. As such, COTPs may allow a tank barge owner to continue using a single-screw, single-engine tug to tow the barge, provided they employ alternative measures for the positive control of the barge. Rather than limit the exemption criteria solely to barge capacity, however, this rule requires COTPs to consider a host of factors including the barge capacity.

Two comments stated that to achieve its stated goal of reducing the risk of oil spills, the rulemaking's escort tug requirements should apply to tank ships as well as tank barges, or to neither. The rule does not address the considerably greater risks posed by tank ships but poses increased requirements only on tank barges that carry far less oil.

It is true that the RNA does not address tank ships, and neither the RRAT nor the Act addressed that class of vessels. But we disagree that the escort tug should apply to neither tank ships nor tank barges as a result. Towing vessels provide the propulsion for tank barges but are largely unregulated. Tank ships are essentially a towing vessel and tank barge combined as an integral unit and are heavily regulated to reduce the risk of oil spills. In several respects, the RNA, combined with the two national rulemakings previously noted, attempts to raise the level of safety on tugs and tank barges to that of tank ship operations.

Four comments stated their appreciation for the expanded exemption provisions of § 165.100(d)(1)(iii) in the Interim Rule; however it claims that the exemption does not go far enough. Since the RNA is based on a single-hull versus double-hull distinction, it should follow the same timeline established by Congress in OPA 90 for the phase-out of single-hull tank vessels.

Neither the RNA in general, nor the positive barge control provisions specifically, have any impact on the statutory phase-out period for single-hull tank vessels. The RNA, simply, imposes operational requirements on single-hull tank vessels until they are phased-out in accordance with law. By amending the positive control measures, this rule increases the opportunities for single-screw tugs to continue towing single-hull tank barges.

Comments on Background and Purpose

Six comments state that this rulemaking imposes new regulations on the entire single-hull segment of the tank barge industry in the Northeast without properly documenting oil spills resulting from single-screw propulsion failures. The incident that prompted the legislation underlying this rulemaking had nothing to do with the number of screws on the tug.

As the comment notes, legislation underlies the rulemaking. The RNA establishes four operational measures for the safety of towing vessels and tank barges. These measures are preventive in nature and are designed to increase safety in an emergency. Clearly, it was the intent of the Congress, the RRAT, and the Coast Guard to establish measures to improve the safety during tank barge transits. While the NPRM does identify 12 examples where a redundant propulsion system prevented a grounding or collision, neither the Coast Guard, nor the RRAT sought to make a comparison between tugs with redundant systems and those without. Instead, the intent was to increase the safety of tank barge transits by requiring a redundancy, or ensuring that those tugs without redundant systems had tug escorts.

Comments on Regulatory Analysis

One comment stated that the Summary of Costs assigns arbitrary hourly cost figures for charter tugs, and does not address the fact that in some cases these vessels may not even be available. The comment states that the cost of $300 per hour is arbitrary when you consider different ports. Worse than the cost per hour is the issue of availability which is uncertain in some areas where no hourly figure can accurately estimate the rule's impact.

We note these comments and have revised our analysis in response to the comments received during the comment period. The data published in the Summary of Costs were gathered from sources such as the Army Corps of Engineers (ACOE) Navigation Data Center, the Coast Guard's Marine Safety Information System, and included telephone surveys with a number of towing vessel and tank barge owners. The Coast Guard analyzed these data, which it published for public consideration. We have revisited our data sources and revised upward the number of impacted transits. The cost of $300 per hour was used after calling industry sources; we consider that figure to be a reasonable approximation. We note that no comments suggested a more appropriate estimate.

One comment stated that the Summary of Costs provided no allowance for added down-time for tugs and barges while awaiting voyage plan approval, or while waiting for assist tugs to arrive. Additional costs are incurred as the result of the crew training for anchoring and pickup gear.

We note these comments. The Voyage Plan is only required to be complete before departure, and does not require approval. The cost of crew training for anchoring and retrieval gear is the subject of a separate rulemaking published by Coast Guard Headquarters. However, we have added the cost of training when the escort tug is not familiar with the barge operations.

Two comments stated that the Summary of Costs does not address the issue of lost opportunity costs to impacted companies and the communities they serve. When a barge cannot be used because both single-screw tugs are away with a tank barge, revenue is lost or delayed.

We note these comments. In the short run, while impacted companies are realigning their assets in order to be in compliance with the RNA, there may be some lost profit opportunities for barges. We have taken this into account in our revised Summary of Costs. We note that with the exemptions this may not be a factor at all. We also note that since the interim regulations have been in effect, the Coast Guard has not received a single complaint of a petroleum shortage that was created as a result of these regulations.

Four comments stated that the analysis does not properly address the substantial costs of purchasing additional tugs to comply with the positive control measures. Costs for additional tugs are prohibitively expensive for small businesses and could cause the business to close its doors.

We disagree that the Coast Guard is requiring small businesses to purchase additional tugs. Instead, small businesses have other options available in § 165.100(d)(1)(i) for continued service. The COTP may grant exemptions to those small businesses that employ alternative safety measures for their current vessels.

Four comments state that compelling the use of twin-screw tugs has forced an unfair economic hardship on small businesses, and has seriously depressed the value of single-screw tugs. The analysis does not quantify or address the rulemaking's effect on single-screw tugs, whose value has fallen by about a third since this rulemaking was proposed. Additionally, two comments stated that their small company made a large investment in a single-skin barge before they became aware of the rulemaking. The new regulation has drastically changed their financial equation that served as the basis to purchase this barge.

We agree that the rulemaking may have placed an economic burden on certain small businesses. After publication of the Final Rule on December 30, 1998, the Coast Guard heard from several small tug and tank barge companies claiming that they had been unaware of the rulemaking, and had failed to submit comments to the docket voicing their opinion. As a result, the Coast Guard reopened the docket to learn more about the affects of the positive control measures on their small businesses. In response to the comments received, the First District Commander has amended the regulations to permit companies that own single-screw tugs to continue in the tank barge service, provided alternative safety measures are approved by the COTP. The new exemption may reduce the unexpected costs for those companies that receive exemptions, and will thereby offer them relief for continued service.

Four comments stated that the analysis appears faulty and does not explain how the Regulatory Assessment led the Coast Guard to enact extra burdens on the operators of single-screw tugs. The analysis shows a tug escort rule effectiveness of $67,561.55 per barrel of oil not spilled which seems way too high. The $32,103 cost-effectiveness figure published in the **Federal Register** was high. It looks like the Coast Guard may require the transportation industry to spend over $12 million without preventing any oil from spilling.

We disagree that the RNA will not prevent oil spills from tank barges. However, we have revised the regulatory assessment; a copy is available in the docket.

One comment asked whether the Coast Guard wasn't already doing enough with regulations to prevent another NORTH CAPE scenario. Other rulemakings, such as Fire Suppression and the Emergency Control Measures for Tank Barges, will all reduce the likelihood of oil spilling from barges. Benefit figures for the RNA may be lower because another rule would have prevented many accidents from happening. Under that rule as proposed, a single-hull barge being towed will be fitted with an anchoring system required by a separate rulemaking. The analysis does not properly address how the rulemaking for Emergency Control Measures for Tank Barges and other OPA 90 rulemakings will prevent groundings.

We note these comments. The analysis did take into account the potential benefits of these other rulemakings. Please see the "Benefits" section of the Regulatory Assessment available in the docket.

One comment asked whether this rulemaking imposed operational conditions, which are, instead, actually equipment regulations that require a second engine and a second screw for the tugs.

The RNA does not contain an option for installing a second engine and second screw. Any such actions would be taken independent of the RNA, even though the result may be that the affected tug would be subject to fewer RNA requirements.

One comment stated that the rulemaking should be declared null and void because the rule makes no mention of hazardous areas or hazardous conditions.

We disagree that the RNA was not based on hazardous conditions. The premise of this rulemaking was the inherent risks associated with the waterborne transportation of petroleum products in the Northeast, which is subject to high-risk transit areas. As a heavily industrialized and oil-dependent region of the country, the Northeast is subject to a high volume of tank barge traffic, particularly during the winter months, due to the demand for home heating oil. These operating conditions include dangerous and often violent winter storms that are unique to the region, and therefore create substantial hazards for the vessel's crew and the environment. As described in the rulemaking's Background and Purpose of the NPRM, the First Coast Guard District has experienced 289 marine casualties involving tank barges from 1992 through 1996. Given this high number of tank barge-related casualties and the potential for another major pollution incident, the Coast Guard promulgated this RNA as required by law, citing these hazardous conditions.

One comment stated that the Coast Guard should explain why it wants to place tug escort rules in 33 CFR part 165 when there are regulations on tug escorts found in 33 CFR part 168. While the Coast Guard did not require tug escorts in the waters of the First District during the 1994 rulemaking, the commentor asks what has changed between 1994 and 1999? Accident histories do not justify the change of position.

We disagree, and note that these regulations are the result of the NORTH CAPE spill in January 1996. We also find that Part 165 is the appropriate subpart for these regional regulations. This subpart permits the District Commander to control vessel traffic operating conditions within his area of responsibility. As it establishes a RNA, this rulemaking is limited to those waters under the authority of the First District Commander. Accident histories have long been a source of legislated governance of the marine-transportation industry; the most noteworthy of which is the Oil Pollution Act of 1990 which was the result in large part from the grounding of the EXXON VALDEZ.

One comment stated that their company lost revenue because the rule went into effect at the end of the industry's season. There are customers that will not hire tug companies even if they hold exemptions. This rulemaking creates an unjust situation for small entities that are trying to comply with the law. Additionally, one comment stated that this rule will have a significant economic impact on their business. To purchase a new twin-screw, twin-engine tug will cost $25,000 per month in a mortgage payment. The requirements will not affect large businesses, but may put smaller businesses out of business.

We have amended the rulemaking to ease the economic burden on small entities. By allowing the COTP to grant exemptions for single-screw tugs to continue in towing tank barges, the First District Commander is responsive to the concerns of small entities. This amendment offers relief to those small entities that might experience economic hardship by offering them the option of applying for an exemption for continued service from the COTP.

One comment stated that all federal agencies are required to identify alternative regulatory approaches for small business, small governmental jurisdictions and non-profit organizations.

We agree that the Coast Guard is responsible for considering the economic impact on small entities. As such, the Coast Guard believes that this amended rulemaking satisfies the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) by offering alternatives to small businesses in § 165.100(d)(1)(iii) that will allow them to continue to tow tank barges in the Northeast and accordingly does not place a substantial impact on a significant number of small businesses.

Regulatory Assessment

This rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget (OMB) under that Order. It is not significant under the regulatory policies and procedures of the Department of

Transportation (DOT) (44 FR 11040; February 26, 1979).

A Regulatory Assessment under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the Assessment follows:

Summary of Benefits

The principal benefits of this rule are protection against oil spillage, human casualties, and property damage that may result from navigation-related incidents of tank barges and towing vessels while underway in the navigable waters of the First Coast Guard District. Quantifiable benefits accrue from averted pollution measured in barrels of oil not spilled, averted injuries and deaths, and averted damage to vessels and property measured in dollars.

Using information from the Coast Guard Marine Safety Management System from January 1, 1992, to December 31, 1996, we reviewed 96 tank barge casualty cases. These casualties involved vessels that were underway within the boundaries of the First Coast Guard District and which would have been affected by this rule if it had been in effect. This period represents some post OPA–90 experience, is long enough to survey a significant number of casualties, and short enough to avoid old problems which are now solved. These 96 cases provided the pool from which the benefits are estimated. During this base period, there was no reported oil spilled from double-hull barges.

For all four measures, we reviewed each casualty case report to assess whether the casualty could have been prevented or diminished in severity by this rule. A team of Coast Guard analysts assigned an effectiveness degree to which each measure would have positively affected each casualty case. We tabulated data on deaths and injuries, oil spillage, and dollar totals reported for damage to the tank barges, towing vessels, piers, or other structures, and estimated benefits for each measure adjusted to the accurate degree of effectiveness.

Over the period of analysis, the present value of total damages and deaths avoided by the rule would be $2,192,473 (1998 dollars). Total pollution avoided by the rule would be 1,368.65 barrels. These figures are different from those obtained in earlier Regulatory Assessments due to updating and improvement of the data and methodology.

Summary of Costs

Businesses that use tank barge and towing vessels within the geographic boundaries of the First District, as well as the tank barge and towing vessel industries themselves, will bear the majority of the costs of this rule.

The cost of this rule is the sum of costs from the requirements for positive control for barges, enhanced communications, voyage planning, and restricted navigation areas. These anticipated costs recognize that many of the towing vessels and tank barges operating within the geographic boundaries of the First District are already in compliance with these requirements.

(1) Positive Control for Tank Barges: Data from the First District and U.S. Army Corps of Engineers indicated that there are 21,640 transits occurring within the District each year. Of these transits, we estimate 1.95%, or 421, involve a single-hull, petroleum-laden tank barge being towed by a tug without twin engines or twin screws, and thus, this rule would require an escort or assist tug. The cost of an escort or assist tug is $300 an hour. It is assumed this escort or assist tug would, on average, spend 20 hours in round trip service on each transit. The cost of the tug for a single transit would therefore be $6,000. Over the period of analysis, the present value total cost of the escort or assist tug escorts would be $21,608,076 (1998 dollars).

Another cost of the tug-escort requirement is the cost to familiarize the crew of the escort tug if they are not familiar with the anchor and breakaway gear of the barge they will escort. We estimate this training would be necessary for 60% of the transits and the training would take an average of one hour. Over the period of analysis, the present value total cost of training would be $215,911.

This requirement also may cause some businesses to incur other costs. First, the resale prices of the existing single-screw tugs in the First Coast Guard District may be slightly lower for at least some period due to this rulemaking. We estimate the present value total cost from lost resale value would be $150,000. Second, in the short run, while impacted companies are realigning their assets in order to be in compliance with the tug-escort requirement, there may be some lost profit opportunities for barges. We estimate the present value total cost in terms of lost profit would be $50,000. With permanent waivers, we expect the impact of lost profit or lost resale value may be reduced.

The present value total cost of the positive-control requirement would be $22,023,987 ($21,608,076 + $215,911 + $150,000 + $50,000 = $22,023,987).

(2) Enhanced Communications: This rule would require the person(s) on watch on a towing vessel to make approximately eight securité calls during the average transit in the First District. The cost of this requirement to the operator would be the time added to the crews' watch duties per transit and/or the diminished productivity per transit as a result of this requirement.

Each securité call would take about 0.00833 hours (or 0.5 minutes) per transit. This time represents the number of hours (or minutes) that a crewmember would give up doing other activities during a transit. We assume that the master makes half of the securité calls and the mate makes the other half. Based on a rate of $350 per 12-hour day, we estimate the average hourly wage for a master of a towing vessel would be $29.17. Based on a rate of $250 per 12-hour day, we estimate the average hourly rate for a mate would be $20.83. As each person makes 4 calls per transit, the total labor time and total labor cost per transit would be 0.0666 hours/transit and $1.67/transit, respectively (8 calls/transit × 0.00833 hours/call = 0.0666 hours/transit and [($29.17/hour × 0.033 hours/transit) + ($20.83/hour × 0.033 hours/transit) = $1.67/transit]).

With 11,902 transits of petroleum-laden tank barges (55% of 21,640 total transits) within the First Coast Guard District each year, the total annual time burden of this requirement would be 792.67 hours, and the potential opportunity cost would be $19,837 per year ($1.6667/transit × 11,902 transits/year = $19,837/year). Over the period of analysis, the present value total cost of this requirement would be $187,393 in 1998 dollars.

Given the existing practices that occur during typical watch duties, we expect the time necessary to make each call would not increase the time spent performing watch duties nor decrease productivity of either crewmember on watch. Without an increase in labor time devoted to watch duties or decrease in productivity, the financial cost of the enhanced-communications requirement would be $0.

(3) Voyage Planning: Currently we estimate 21,640 transits of tank barges in the First Coast Guard District each year. The Coast Guard estimates that 90% (or 19,476) of these transits already are in compliance with this proposed requirement. Thus, 10% or 2,164 transits currently lack a voyage plan. Further data from the First Coast Guard District indicates that 55% of the annual transits involve petroleum-laden tank barges. Therefore, we estimate that 55% or 1,190 of the 2,164 petroleum-laden tank barge transits currently lack a voyage plan.

For each transit, as a representative of the owner or operator, the master of the towing vessel spends approximately 0.5 hours (or 30 minutes) preparing a voyage plan. The average wage rate for a towing vessel master is estimated to be $29.17 per hour. The annual cost of voyage planning would be $17,357 ($29.17/hour × 0.5 hours/transit × 1,190 transits/year = $17,357/year). Over the period of analysis, the present value total cost of the voyage-planning requirement would be $163,965 (in 1998 dollars).

(4) Restricted Navigation Areas: This proposed requirement would establish two restricted navigation areas that would bar the traffic of towing vessels with petroleum-laden tank barges. These two areas are Fishers Island Sound and the eastern portion of Cape Cod Bay. Historically and currently there has been no traffic of towing vessels with petroleum-laden tank barges operating within either of these two areas. Thus, the cost of the restricted navigation requirement would be $0.

Summary

The present value total cost of this rule would be $22,187,952 ($22,023,987 for positive control of barges + $0 for enhanced communications + $163,965 for voyage planning + $0 for restricted navigation areas = $22,187,952). In terms of cost-effectiveness, this rule would prevent 1,368.65 barrels of pollution at a cost of $16,212 per barrel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The rule would require the following:

(1) positive control measures for tank barges, which require an escort or assist tug during all transits involving towing vessels not equipped with twin-screw/twin-engine propulsion, and that are engaged in towing petroleum-laden single-hull tank barges in the First Coast Guard District;

(2) operators of vessels towing petroleum-laden tank barges initiate and broadcast securite calls on radio identifying their position at specified locations during a transit in the First District;

(3) a voyage plan be prepared prior to a petroleum-laden tank barge voyage within the First District; and

(4) two restricted navigation areas within the First District that would bar traffic of towing vessels with petroleum-laden tank barges.

The maximum estimated cost of this regulation would be $22,187,952 with the majority of the cost (or 99%) being the cost of the positive-control requirement. The voyage-planning requirement would have an estimated cost of $163,965, while the enhanced-communications and restricted-navigation-areas requirements would be expected to have zero financial cost.

We estimate there are currently 11,902 petroleum-laden tank barge transits within the First District per year. We estimate that approximately 95% of the towing vessels that tow petroleum-laden tank barges in the First District are twin-screw, which do not require positive control measures. Also exempted from the positive-control requirement would be all double-hull tank barges that currently make up 29% of the tank barge fleet. Consequently, we estimate that 421 transits would be impacted by the positive-control requirement.

The Small Business Administration, in 13 CFR 121, defines small businesses by either the number of employees or by the amount of a company's receipts in dollars. For examples, a business in the towing-&-tugboat-services industry that has annual revenue no greater than $5 million is a small entity. However, a business in the water-transportation-of-freight industry that has no more than 500 employees would be a small entity. The Coast Guard does not collect revenue nor number-of-employee information from the businesses it regulates; however, information can be obtained from sources such as Dun & Bradstreet or the U.S. Census. According to *Dun & Bradstreet Marketplace 1999*, the percentage of companies nationally with annual revenue equal to or less than $5 million in the towing-&-tugboat-services industry (SIC Code 4492) is about 86%. Regionally, for companies that are located in one of the states within the boundaries of the First District which are in SIC Code 4492, approximately 90% would be considered a small entity. For water transportation of freight, n.e.c. (SIC Code 4449), the percentage of companies nationally with a maximum of 500 employees is approximately 95%, while for companies located in one of the states within the boundaries of the First Coast Guard District that percentage is approximately 95% as well.

The Coast Guard's Marine Safety Management System (MSMS) database identifies 34 different companies that own tank barges certificated under subchapter O or D within the boundaries of the First District. The MSMS database also identifies 124 different companies located in one of the states within the boundaries of the First District that own towing vessels. These towing vessels are not owned strictly by companies that are engaged in towing & tugboat services or water transportation of freight. Other owners of towing vessels include construction companies and governments.

It is the businesses who hire the towing vessels and tank barges for transporting their goods that directly incur the costs of this rulemaking by having to pay for the escorts or assist tugs. However, some towing vessels and barge owners, the majority of which are small entities, may be affected by the positive-control requirement if they can no longer provide tug service at a competitive price due to the requirement that they employ an escort or assist tug.

On March 15, 1999, an Interim Rule allowed the local COTP to authorize temporary exemptions to the positive-control requirement established in the December 30, 1998, Final Rule. Since inserting this authority into the rule, thirty-two temporary exemptions have been granted with no pollution incidents. These exemptions expire June 30, 2000. Comments from industry have requested that the Coast Guard establish procedures that would transform the temporary exemption into a permanent exemption. In an effort to reduce the impact of the positive-control requirement, this Final Rule allows the COTP to authorize exemptions to the positive-control requirement, and removes the temporary nature of the exemptions that were granted in the Interim Rule. Accordingly, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. Commander (m), First Coast Guard District, provided explanatory

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information to a number of individuals by telephone.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

The Final Rule calls for no collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

Impact on Federalism

This rule would revise the rules at 33 CFR 165.100(d)(1)(iii) that address navigational safety, and voyage planning for towing vessels. We have analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. It is well settled that States are preempted from establishing any requirements for tank vessels and the vessels that tow them in the categories of design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning. See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke* _____ U.S. _____, 2000 U.S. LEXIS 1895 (March 6, 2000). Thus, this entire rule falls within preempted categories. Because States may not promulgate rules the categories set out, preemption is not an issue under that Order.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This Final Rule would not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraphs 34(g) and (i) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Determination of Categorical Exclusion" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 [AMENDED]

1. The citation of authority for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231, 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Revise § 165.100(d)(1)(iii) to read as follows:

§ 165.100 Regulated Navigation Area: Navigable Waters within the First Coast Guard District

* * * * *

(d) * * *

(1) * * *

(iii) The cognizant Captain of the Port (COTP), upon written application, may authorize an exemption from the requirements of paragraph (d)(1)(i) of this section for—

(A) Any tank barge with a capacity of less than 25,000 barrels, operating in an area with limited depth or width such as a creek or small river; or

(B) Any tank barge operating on any waters within the COTP Zone, if the operator demonstrates to the satisfaction of the COTP that the barge employs an equivalent level of safety to that provided by the positive control provisions of this section. Each request for an exemption under this paragraph must be submitted in writing to the cognizant COTP no later than 7 days before the intended transit.

* * * * *

Dated: May 26, 2000.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–14110 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–00–018]

RIN 2115–AA97

Safety Zone; Ocean View Beach Park, Chesapeake Bay, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Shore Thing Independence Day Celebration fireworks display to be held at the Ocean View Beach Park, Chesapeake Bay, Virginia. This action will restrict vessel traffic on the Chesapeake Bay within a 500-foot radius of the fireworks display, which will be fired from shore. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

DATES: This rule is effective from 9 p.m. until 10 p.m. on July 1, 2000.

ADDRESSES: You may mail comments and related material to USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, VA, or deliver them to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. USCG Marine Safety Office Hampton Roads maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Roddy Corr, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3290.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number for the rulemaking (CGD05–00–018), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. We were not notified of this event in sufficient time to publish an NPRM, allow for comments, and publish a final rule in sufficient time to allow notice to the public for the fireworks display. In previous years, this event and similar ones have been held without incident and without comment from the public regarding the Coast Guard's establishment of limited safety zones around the fireworks display.

Background and Purpose

The Coast Guard is establishing a temporary safety zone for the Shore Thing Independence Day Celebration fireworks display to be held at Ocean View Beach Park, Chesapeake Bay, Virginia. The safety zone will restrict vessel traffic within a 500-foot radius of the fireworks display, which will be fired from land, in approximate position 36° 57.30′ N, 076° 15.00′ W. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

The safety zone is effective from 9 p.m. until 10 p.m. on the July 1, 2000. Additional public notifications will be made prior to the event via marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This temporary final rule only affects a limited area for one hour, alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the restricted area. The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Chesapeake Bay, Virginia within 500 feet of a shoreside fireworks display at Ocean View Beach Park located in approximate position 36° 57.30′ N, 076° 15.00′ W.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This temporary final rule only affects a limited area for one hour, alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the restricted area.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This regulation will have no impact on the environment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T05–018 to read as follows:

§ 165.T05–018 Safety Zone; Ocean View Beach Park, Chesapeake Bay, Virginia.

(a) *Location.* The following area is a safety zone: All waters of the Chesapeake Bay, within a 500-foot radius of a shoreside fireworks display in approximate position 36° 57.30′ N, 076° 15.00′ W.

(b) *Captain of the Port.* Captain of the Port means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer

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who has been authorized to act on his behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in section 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through this safety zone must first request authorization from the Captain of the Port. The Coast Guard representative enforcing the safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (757) 484–8192.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by marine information broadcast on VHF marine band radio, channel 22 (157.1 MHz).

(d) *Effective Date.* This section is in effect from 9 p.m. until 10 p.m. on July 1, 2000.

Dated: May 26, 2000.

J. E. Schrinner,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 00–14153 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–15–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

RIN 3095–AA06

Public Use of NARA Facilities; Correction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule; correction.

SUMMARY: NARA published in the **Federal Register** of June 1, 2000 a final rule revising its regulations for use of its facilities. Inadvertently, we omitted a qualification that NARA employees may use the NARA shuttle between the National Archives Building and the College Park facility for official purposes only. This document provides the correct text.

DATES: Effective on July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn Morton at (301) 713–7360, extension 253.

SUPPLEMENTARY INFORMATION: NARA published a final rule document in the **Federal Register** of June 1, 2000, (65 FR 34977) revising 36 CFR part 1280, Public Use of NARA Facilities. Section 1280.14 provides the conditions under which NARA employees, other Government employees, and the public may use the NARA shuttle. NARA has had a long-standing policy that NARA employees may use the shuttle only for official purposes, but this limitation was omitted from the final rule. This correction provides that text.

In the document FR 00–13810 published on June 1, 2000, (65 FR 34977) make the following correction:

§ 1280.14 [Corrected]

1. On page 34979, in the second column, in § 1280.14, correct the fifth line of that section to read "intended for NARA employees' use for official purposes. Other".

Dated: June 1, 2000.

Nancy Y. Allard,

Federal Register Liaison Officer.

[FR Doc. 00–14117 Filed 6–5–00; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 153–4100a; FRL–6702–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Nitrogen Oxides Allowance Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revision consists of amendments to Pennsylvania's Nitrogen Oxides (NO_X) Allowance Requirements. The revisions implement the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) in the Commonwealth of Pennsylvania. In accordance with the MOU, the revisions implement the Pennsylvania portion of a regional NO_X cap and trade program that significantly reduces NO_X emissions generated within the Ozone Transport Region (OTR). EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 7, 2000 without further notice, unless EPA receives adverse written comment by July 6, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, PA 17105.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, or by e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1997, the Pennsylvania Department of Environmental Protection (DEP) submitted a revision to its SIP. The revision consists of amendments to Title 25 of the Pennsylvania Code including Chapter 121—Definitions and Chapter 123—NO_X Allowance Requirements. On December 27, 1999, DEP submitted a subsequent revision to its SIP amending Chapter 121—Definitions and Chapter 123—NO_X Allowance Requirements. This regulation is part of a regional NO_X reduction program based upon an MOU drawn between the member states of the OTC. The OTC adopted a MOU on September 27, 1994, committing the signatory states to the development and implemenation of a two phase region-wide reduction in NO_X emissions by 1999 and 2003, respectively. As reasonably available control technology (RACT) to reduce NO_X emissions was required to be implemented by May of 1995, the MOU refers to the reduction in NO_X emissions to be achieved by 1999 as Phase II; and the reduction in NO_X emissions to be achieved by 2003 as Phase III. The OTC member states include Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, the northern counties of Virginia, and the District of Columbia. All of the OTC members, with the exception of the Commonwealth of Virginia, signed the September 27, 1994 MOU. The OTC MOU requires a reduction in ozone season NO_X emissions from utility and large industrial combustion facilities within the OTR in order to further the effort to achieve the health-based National Ambient Air Quality Standard (NAAQS) for ozone. In the MOU, the OTC states agreed to propose regulations for the control of NO_X emissions in accordance with the following guidelines:

1. The level of NO_X required would be established from a 1990 baseline emissions level.

2. The reduction would vary by location, or zone, and would be implemented in two phases utilizing a region wide trading program.

3. The reduction would be determined based on the less stringent of each of the following:

a. By May 1, 1999, the affected facilities in the inner zone shall reduce their rate of NO_X emissions by 65% from baseline, or emit NO_X at a rate no greater than 0.20 pounds per million Btu. (This is a Phase II requirement.)

b. By May 1, 1999, the affected facilities in the outer zone shall reduce their rate of NO_X emissions by 55% from baseline, or shall emit NO_X at a rate no greater than 0.20 pounds per million Btu. (This is a Phase II requirement.)

c. By May 1, 2003, the affected facilities in the inner and outer zones shall reduce their rate of NO_X emissions by 75% from baseline, or shall emit NO_X at a rate no greater than 0.15 pounds per million Btu. (This is a Phase III requirement.)

d. By May 1, 2003, the affected facilities in the Northern zone shall reduce their rate of NO_X emissions by 55% from baseline, or shall emit NO_X at a rate no greater than 0.20 pounds per million Btu. (This is a Phase III requirement.)

A Task Force of representatives from the OTC states, organized through the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA), was charged with the task of developing a Model Rule that would implement the program defined by the OTC MOU. During 1995 and 1996, the NESCAUM/ MARAMA NO_X Budget Task Force worked with EPA and developed a model rule as a template for OTC states to adopt their own rules to implement the OTC MOU. The model was issued May 1, 1996. The model rule was developed by and for the OTC states to implement the Phase II reductions called for in the MOU to be achieved by May 1, 1999. The model rule does not include the implementation of Phase III.

Summary of SIP Revision

Pennsylvania's Chapter 121—Definitions and Chapter 123—Nitrogen Oxides Allowance Requirements are based upon and are consistent with the "NESCAUM/MARAMA NO_X Budget Rule" issued in May 1, 1996. The model rule was developed by the states in the OTR using the EPA's economic incentive rules (67 FR 16690) which were published on April 7, 1994, as the general regulatory framework.

On December 19, 1997, the Pennsylvania DEP submitted a revision to its SIP. The revision consists of amendments to Title 25 of the Pennsylvania Code including Chapter 121—Definitions and Chapter 123—NO_X Allowance Requirements. Chapter 121—Definitions includes the terms used in Chapter 123—NO_X Allowances Requirements. Chapter 123—NO_X Allowances Requirements consists of twenty sections: (1) Purpose; (2) Source NO_X allowance requirements and NO_X allowance control period; (3) General NO_X allowance provisions; (4) Source authorized account representative requirements; (5) Allowance Tracking System (NATS) provisions; (6) NO_X allowance transfer protocol; (7) NO_X allowance transfer procedures; (8) Source emissions monitoring requirements; (9) Source emissions reporting requirements; (10) Source compliance requirements; (11) Failure to meet source compliance requirements; (12) Source operating permit provision requirements; (13) source record keeping requirements; (14) General NO_X allocation provisions; (15) Initial NO_X allowance NO_X allocations; (16) Source opt-in provisions; (17) New NO_X affected source provisions; (18) Emission reduction credit provisions; (19) Bonus NO_X allowance awards; (20) Audit. Appendix A to Chapter 123 is where the budgeted sources and their NO_X allowance allocations are identified. On December 27, 1999, DEP submitted amendments to its December 19, 1997 SIP revision request. The amendments revise Chapter 121—Definitions and Chapter 123—NO_X Allowance Requirements. In Chapter 121—Definitions, the term "NO_X affected source" was modified to clarify that only individual emission units of 15 MWe or greater are included in the definition. In addition, the definition of "NO_X affected source" was further clarified to exclude emergency electrical generating units used to power safety equipment at nuclear power plants. In Chapter 123—NO_X Allowance Requirements, Section 123.115—Initial NO_X Allowance NO_X Allocations was modified to remove the Washington Power Company allocation. Appendix A to Chapter 123 was renamed to Appendix E, and was modified in four ways. First, the NO_X affected sources identified through the process described in Section 123.117—New NO_X Affected Source Provisions were added to Appendix E. Second, the accounting error that resulted in over-allocating the 1999 budget was corrected with a pro rata reduction in all NO_X affected sources emissions. Third, several sources mistakenly included in the previous Appendix A were deleted. Finally, the last column of the previous Appendix A was deleted and the "Baseline NO_X lb/MMBtu" column was renamed to add the term "Bonus Allowances".

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve Pennsylvania's NO_X Allowance Requirements if adverse comments are filed. This rule will be effective on August 7, 2000 without further notice unless EPA receives adverse comment by July 6, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Final Action

EPA is approving revisions to the Pennsylvania SIP consisting of Chapter 121—Definitions and Chapter 123—NO_X Allowance Requirements, submitted on December 19, 1997 and amended on December 27, 1999. These revisions implement Pennsylvania's portion of Phase II of the OTC's MOU to reduce nitrogen oxides.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates

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Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the taking implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Taking" issued under the executive order. This rule does noYt impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Pennsylvania's NO_X Allowance Requirements may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 24, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(145) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(145) Revisions to the Pennsylvania State Implementation Plan adopting the Nitrogen Oxides Allowance Requirements submitted on December 19, 1997 and December 27, 1999 by the Secretary of the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of December 19, 1997 from the Secretary of the Pennsylvania Department of the Environmental Protection transmitting the Nitrogen Oxides Allowance Requirements.

(B) Letter of December 27, 1999 from the Secretary of the Pennsylvania Department of the Environmental Protection transmitting the Nitrogen Oxides Allowance Requirements.

(C) Revisions to 25 PA Code, Chapters 121 and 123 pertaining to Nitrogen Oxides Allowance Requirements, effective November 1, 1997.

(*1*) Revisions to section 121.1—definitions of: account, account number, acquiring account, compliance account, electric generating facility, fossil fuel, fossil fuel fired, general account, heat input, indirect heat exchange combustion unit, maximum heat input capacity, NATS–NO_X allowance tracking system, NETS–NO_X emissions tracking system, NO_X allocation, NO_X allowance, NO_X allowance CEMS–NO_X allowance continuous emission monitoring system, NO_X allowance control period, NO_X allowance curtailment, NO_X allowance deduction, NO_X allowance transfer, NO_X allowance transfer deadline, NO_X budget, NO_X budget administrator, OTC MOU-ozone transport commission memorandum of understanding, replacement source.

(*2*) Addition of sections 123.101 through 123.120, except for section 123.115.

(D) Revisions to 25 PA Code, Chapters 121 and 123 pertaining to Nitrogen Oxides Allowance Requirements, effective March 11, 2000.

(*1*) Revisions to section 121.1—definition of NO_X affected source.

(*2*) Addition of section 123.115 and Appendix E.

(ii) Additional material.

(A) Nitrogen Oxide (NO_X) Memorandum of Understanding Implementation Plan of December 9, 1997.

(B) Letter of March 31, 2000 from the Director of the Pennsylvania Department of the Environmental Protection amending the Chapter 123 NO_X Allowance Program.

[FR Doc. 00–13769 Filed 6–5–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[GEN Docket No. 90–314, ET Docket No. 92–100, PP Docket No. 93–253; FCC 00–159]

Narrowband Personal Communications Services; Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts a number of modifications to the Commission's existing narrowband Personal Communications Services (PCS) rules. These include the use of Major Trading Areas for future licensing, the establishment of a "substantial service" alternative to the current construction benchmarks, and modifications to certain provisions of the narrowband PCS competitive bidding rules. The Commission also eliminates the narrowband PCS spectrum aggregation limit and adopts partitioning and disaggregation rules. The Commission believes that the rule modifications it adopts will improve the efficiency of spectrum use, reduce the regulatory burden on spectrum users, encourage competition, and promote service to the largest feasible number of users.

DATES: Effective August 7, 2000, except for § 24.104, which contains information collection requirement that has not been approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for this section. Public and agency comments on the information collection are due on or before July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Second Report and Order (*Second R&O*) in the Commission's narrowband PCS proceeding adopted May 5, 2000, and released May 18, 2000. The complete text of this *Second R&O* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov/wtb/auctions.

Synopsis of the Second Report and Order

1. The Commission adopts a Second Report and Order (*Second R&O*) in its narrowband PCS proceeding, amending certain rules governing this service. The Commission provided for the operation of narrowband PCS in the 900 MHz band, adopting a spectrum allocation and channelization plan, licensing rules, and technical standards for the service, in 1993. *See* Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, First Report and Order, 58 FR 42681 (August 11, 1993). *See also* Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, Memorandum Opinion and Order, 59 FR 14115 (March 25 1994). In Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Second Report and Order, 59 FR 22980 (May 4, 1994), the Commission determined that, pursuant to section 309(j) of the Communications Act of 1934, as amended, PCS is subject to competitive bidding in the case of mutually exclusive applications, and the Commission adopted general competitive bidding rules for auctionable services. In Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Third Report and Order, 59 FR 26741 (May 24, 1994), the Commission established competitive bidding rules specifically for narrowband PCS. Currently, of the three megahertz of 900 MHz spectrum allocated for narrowband PCS, two one-megahertz blocks have been divided into specific channels for licensing. The remaining one megahertz of narrowband PCS spectrum has been reserved to accommodate future development of narrowband PCS. Thus far, nationwide and regional licenses have been awarded through two auctions, which were held in 1994.

2. This *Second R&O* resolves issues raised in Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Report and Order and Further Notice of Proposed Rulemaking (*Narrowband PCS R&O/Further Notice*), 62 FR 27507 (May 20, 1997). In response to the *Narrowband PCS R&O/Further Notice*, the Commission received 15 comments and 16 reply comments.

3. *Service Area Reallocation.* In this *Second R&O*, the Commission amends its current allocation of narrowband PCS spectrum to eliminate Basic Trading Areas (BTAs) and license the remaining spectrum, including the response channels, based on Major Trading Areas (MTAs). The Commission finds that MTAs are the most appropriate geographic area for licensing the remaining narrowband PCS spectrum because they will serve the needs of a wide range of entities, including both large and small service providers. The Commission does not believe that using MTAs will compromise the goal of ensuring entry for small businesses or undermine the confidence of either incumbent and potential licensees or the investment community.

4. Finally, the Commission notes that the use of MTAs will avoid any potential problems that might arise from inconsistencies between the boundaries of Major Economic Areas (MEAs) and existing regional licenses based on MTAs. Moreover, Rand McNally & Company, which owns the copyright to MTAs, has granted a blanket license to parties with an interest in this proceeding to use MTAs, and there is therefore no impediment to their use for narrowband PCS.

5. *Spectrum Aggregation Limit.* In this *Second R&O*, the Commission eliminates the narrowband PCS spectrum aggregation limit. Adopted in 1993, this rule provided that a single licensee was permitted to hold licenses for no more than three channels, either paired or unpaired, in any geographic area. The limit was adopted to ensure that narrowband PCS services would be offered on a competitive basis.

6. The Commission recently has concluded that the paging/messaging industry is highly competitive. Moreover, narrowband PCS licensees increasingly compete with other sectors of the wireless industry, including broadband PCS and Specialized Mobile Radio (SMR) that offer the same or similar services. Thus, the Commission finds that the aggregation limit is not needed to prevent an undue concentration of licenses, either through the auctioning of additional narrowband PCS spectrum or post-auction mergers. Moreover, in order to compete with other providers of paging and messaging services, narrowband PCS licensees may need to consolidate and should not be prevented from doing so by the narrowband PCS spectrum aggregation limit.

7. Further, the Commission does not believe that large companies will attempt to acquire licenses merely to foreclose entry by smaller entities, because it is clear that such a strategy would not be successful in limiting competition. Acquiring spectrum for

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purposes of withholding its use would be very expensive. In addition, such efforts would be difficult, given the large number of licensees already competing in this market and the fact that narrowband PCS licensees face competition from other wireless sectors. Although the Commission has found that a Commercial Mobile Radio Services (CMRS) spectrum cap is necessary to ensure that the mobile voice market is competitive, the risk of excessive concentration through mergers is far lower in the paging/messaging context. Paging carriers face growing competition from short messaging services and other digital service features offered by an increasing number of mobile voice carriers. In addition, the recent auction of spectrum in the 929 and 931 MHz bands should facilitate further entry or capacity expansion. The Commission notes that it retains the ability to evaluate individual transfer and assignment applications on a case-by-case basis through its review of such applications.

8. *Eligibility for Response Channels.* In order to provide an opportunity for incumbent paging licensees to upgrade their operations, the Commission set aside 100 kilohertz (eight unpaired frequencies) of the three megahertz allocated for narrowband PCS as paging response channels, *i.e.*, channels to be used in paired communications with existing one-way paging frequencies to provide mobile-to-base station communications. The Commission's intent in establishing these channels was to provide a means for one-way (single frequency) paging licensees to obtain a second frequency for the purpose of delivering signals back from their customers' mobile devices.

9. In this *Second R&O*, the Commission lifts all eligibility restrictions on applying for paging response channels, finding that such restrictions unnecessarily exclude potential users of the response channels that are not paging licensees, *e.g.*, narrowband PCS licensees. Thus, eligibility for acquiring narrowband PCS response channels will no longer be limited to existing paging licensees, *i.e.*, those licensed to operate conventional one-way paging base stations under part 22 or part 90 of the Commission's rules as of the application filing deadline for the paging response channels. The Commission finds that lifting the eligibility restrictions will encourage entry of new narrowband PCS providers by providing greater flexibility to new licensees to use these channels in conjunction with other spectrum to provide new services. In keeping with its decision to abolish the limit on aggregation of narrowband PCS spectrum, as well as its decision to eliminate eligibility restrictions for paging response channels, the Commission also concludes that there should be no limit on the number of response channels a licensee may hold.

10. The Commission will retain the current rule restricting use of the response channels to mobile-to-base transmissions. Several commenters argue that allowing these channels to be used for other purposes would cause harmful interference with current narrowband PCS licensees. The Commission agrees with these commenters and will retain the current rule restricting use of the response channels to mobile-to-base transmissions.

11. *Construction and Coverage Requirements for Narrowband PCS Licensees.* The Commission will maintain its current coverage requirements for narrowband PCS and adopts a substantial service requirement as an alternative. The Commission finds that coverage requirements, including a substantial service standard, encourage the provision of service to areas that would not necessarily receive service expeditiously solely through the operation of market forces. The Commission recognizes that narrowband PCS is a developing service and that there has been a delay in equipment availability. It therefore believes that it would not be appropriate at this time to establish three- and five-year benchmarks for this service, as it has done for the paging services, in lieu of the current benchmarks. The Commission also believes, however, that its five- and ten-year construction benchmarks provide sufficient time for narrowband PCS licensees to construct their systems and that there is no need to alter the current benchmarks. Any problems that individual licensees may have because of difficulties with financing or equipment availability may be addressed by evaluating requests for waiver on a case-by-case basis.

12. The Commission further finds that a substantial service option may be very useful in allowing licensees to use spectrum flexibly to provide new and innovative services uninhibited by a requirement that they meet a specific coverage benchmark or lose their license. In addition, rural areas may be more difficult to serve than urban areas. Permitting licensees to make a substantial service showing may encourage them to build out in rural areas because it would give them the option of satisfying the Commission's construction requirements by serving rural areas without necessarily having to meet either population or composite area benchmarks. The Commission finds that these advantages outweigh any concerns commenters have regarding potential speculation or anticompetitive conduct.

13. In the past the Commission has offered guidance to licensees in other services with regard to factors that it would consider in evaluating whether the substantial service requirement has been met. The Commission will apply these same factors to evaluations of substantial service showings made by narrowband PCS licensees. Thus, the Commission may consider such factors as whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers, and whether the licensee's operations serve niche markets. A licensee may also demonstrate that it is providing service to unserved or underserved areas without covering a specific composite area or percentage of the population. Because the substantial service requirement can be met in a variety of ways, the Wireless Telecommunications Bureau (Bureau) will review licensees' showings on a case-by-case basis.

14. Just as it believes that the addition of a substantial service alternative to its rules will be helpful to entities seeking to provide innovative services, the Commission also recognizes that there may be instances in which a flexible approach to its narrowband PCS operational or technical rules would be helpful to such entities and would promote the development of new services. Although the Commission has crafted these rules to generally provide for a wide range of technologies and business plans, there may be instances where particular circumstances render the rules unreasonable or overly burdensome, to the extent the public interest would be harmed by their strict application. The Commission therefore will give expedited treatment to requests for waivers of these operational and technical rules, and, to the extent it finds that such waivers will not harm other licensees and will be in the public interest, it will consider them favorably.

15. *Construction and Coverage Requirements for Nationwide Paging Licensees.* In Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration and Third Report and Order (*Paging MO&O/Third Report and Order*), 64 FR 33762 (June 24, 1999), the Commission considered the issue of coverage requirements for nationwide geographic area paging licensees and deferred any decision on the issue until it resolved similar matters in the instant narrowband PCS rulemaking proceeding. In this *Second R&O*, the Commission declines to adopt coverage requirements for nationwide paging licensees that would be in addition to the build-out requirements they have already met.

16. Nationwide paging licensees have already met pre-existing build-out rules, which were imposed in connection with nationwide exclusivity rules prior to the advent of geographic area licensing. Having carefully examined its databases reflecting the extent of construction by nationwide paging licensees, the Commission finds that all of these licensees are already providing sufficient coverage to meet the five-year benchmark applicable to nationwide narrowband PCS licensees, and some of them have met the ten-year benchmark. Thus, while the Commission expects nationwide paging licensees to build out their systems to the same extent as nationwide narrowband PCS licensees, it concludes that the build-out requirements set forth in its previous rules were adequate to promote coverage by nationwide paging licensees that is equivalent to that of nationwide narrowband PCS licensees, which have recently reached their five-year benchmark. In addition, while the Commission anticipates that nationwide paging licensees' build-out in rural areas should increase in the future given that licensees appear to have already constructed in most urban areas, it has no evidence that nationwide paging licensees' build-out in rural areas is deficient. The Commission therefore concludes that it is unnecessary to impose a new layer of regulations on nationwide paging licensees by adopting additional coverage requirements for them. However, if the Commission is presented with evidence that there is a need to impose a requirement equivalent to the ten-year nationwide narrowband PCS benchmark, it will consider revisiting this issue in the future.

17. *Applicability of the Part 1 General Competitive Bidding Rules.* Following the release of the *Narrowband PCS R&O/Further Notice* in April 1997, the Commission adopted an order establishing uniform competitive bidding provisions for all auctionable services. See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rule Making (*Part 1 Third Report and Order*), 63 FR 770 (January 7, 1998). Thus, the general competitive bidding rules found in subpart Q of part 1 of the Commission's rules, including provisions adopted in the *Part 1 Third Report and Order*, will serve as the general competitive bidding rules for all future auctions, regardless of whether service-specific rules have previously been adopted. Subpart Q of part 1 of the Commission's rules will apply to narrowband PCS, unless the Commission determines that, with regard to particular matters, the adoption of service-specific rules is warranted. The Balanced Budget Act of 1997 provides that, before the issuance of bidding rules, the Commission must provide adequate time for parties to comment on proposed auction procedures. In response to this statutory requirement, the Commission has directed the Bureau, under its existing delegated authority, to seek comment prior to the commencement of each auction on a variety of auction-specific operational issues. *See Part 1 Third Report and Order* (citing Balanced Budget Act of 1997, section 3002(a)(1)(B)(iv)). Under part 1 and consistent with this approach, matters such as auction design, license grouping, activity rules, minimum opening bids, and reserve prices will be determined by the Bureau pursuant to its delegated authority.

18. The Commission declines to adopt the suggestion that it require applicants to identify each frequency in each market on which they wish to bid and submit upfront payments for each individual license. The Commission believes that its current rules, which require an upfront payment to cover only those licenses on which an applicant intends to bid in any one round, are appropriate because they allow bidders the flexibility to pursue backup strategies during the course of an auction in the event they are unable to obtain their first choice of licenses. Such flexibility is crucial to an efficient auction and optimal license assignment. The Commission also declines to modify its anti-collusion rule to provide a safe harbor for carriers engaged in negotiations regarding mergers or intercarrier agreements. It has declined to create such a safe harbor in the past, and it has not been presented with an adequate justification for departing from that decision with respect to narrowband PCS. Finally, certain commenters urge the Commission to provide auction participants with the identity of all competing bidders. It has generally been the Commission's practice to disclose the identity of all bidders in Commission auctions. If, however, in the case of particular auctions a limit on such information appears warranted, the Bureau will, consistent with the Balanced Budget Act of 1997 and current practice, seek comment on the issue in a public notice prior to the auction.

19. *Treatment of Designated Entities.* The term "designated entity" refers to small businesses, rural telephone companies, and businesses own by minorities and/or women. In this *Second R&O*, the Commission declines to offer race- and gender-based designated entity provisions for narrowband PCS at this time. Commenters in this proceeding have submitted no evidence or data on the issue of race- or gender-based auction provisions, and the Commission concludes that it does not have a sufficient record to support such special provisions at this time under current standards of judicial review. *See Adarand Constructors, Inc.* v. *Peña*, 515 U.S. 200 (1995) (requiring a strict scrutiny standard of review for Congressionally mandated race-conscious measures) and *United States* v. *Virginia*, 518 U.S. 515 (1996) (applying an intermediate scrutiny standard of review to a state program containing gender classification).

20. The Commission remains committed to meeting the statutory objectives of promoting economic opportunity and competition, avoiding excessive concentration of licenses, and ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. It believes the bidding credits it adopts for small businesses will assist in meeting these objectives because many minority- and women-owned entities are small businesses and will therefore qualify for these special provisions. The Commission also believes that its standardization of the rules regarding definitions of eligible entities, unjust enrichment, and bidding credits in the *Part 1 Third Report and Order* will assist small and minority- and women-owned businesses because the resulting predictability will facilitate effective business planning and capital accumulation. The Commission's Office of Communications Business Opportunities has initiated several studies to gather information regarding barriers to entry faced by minority- and women-owned firms that wish to participate, or have participated, in Commission auctions. Further, the Commission has recently commenced several new studies to explore additional entry barriers and to seek further evidence of racial and gender

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discrimination against potential licensees. In addition, it will continue to track the rate of participation in its auctions by minority- and women-owned firms and evaluate this information with other data gathered to determine whether provisions to promote participation by minorities and women can satisfy judicial scrutiny. If a sufficient record can be adduced, the Commission may consider race- and gender-based auction provisions in the future.

21. The Commission declines to adopt financial preferences designed specifically for rural telephone companies. The Commission is not persuaded by the argument that it should provide special bidding credits for rural telephone companies in order to meet its obligation to ensure that rural telephone companies have the opportunity to participate in spectrum-based services. The Commission has no evidence that large rural telephone companies encounter barriers to capital formation comparable to those faced by other designated entities. Moreover, the vast majority of rural telephone companies that have participated in the Commission's auctions to date have identified themselves as small businesses and have qualified for bidding credits on that basis. Thus, the Commission finds t[illegible] small business bidding credits are sui[illegible]nt to ensure that rural telephone companies have opportunities to participate in spectrum-based services.

22. For purposes of narrowband PCS, the Commission will define a small business as an entity with average annual gross revenues not to exceed $40 million for the preceding three years and a very small business as an entity with average annual gross revenues not to exceed $15 million for the preceding three years. The Commission declines to adopt different definitions and thresholds for different channel blocks.

23. In the *Part 1 Third Report and Order*, the Commission established a standard schedule of bidding credits for small businesses. While these bidding credits are higher than some previously adopted for specific services, the Commission concluded in the *Part 1 Third Report and Order* that, based on its auction experience and the fact that it had decided to suspend the use of installment payments, the schedule adopted would provide adequate opportunities for small businesses to participate in spectrum auctions. The Commission believes that the levels of bidding credits in this schedule, which are higher than those proposed in the *Narrowband PCS R&O/Further Notice*, are sufficient to promote the participation of small businesses in the provision of narrowband PCS. The Commission therefore sees no reason to deviate from them here, and declines to adopt higher levels as recommended by certain commenters. Thus, as provided in § 1.2110(e)(2) of the Commission's rules, small and very small businesses will be eligible for bidding credits as follows: Small businesses, *i.e.*, those entities with average annual gross revenues for the preceding three years not exceeding $40 million, will receive a 15 percent bidding credit. Very small businesses, *i.e.*, those entities with average annual gross revenues for the preceding three years not exceeding $15 million, will receive a 25 percent bidding credit. These bidding credits will be available on all channels for which licenses are auctioned. Thus, bidding credits will not be restricted to certain channels.

24. The Commission will attribute the gross revenues of the applicant, the applicant's controlling interests, and its affiliates in making determinations regarding small business status. This approach is consistent with the standard proposed in Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, Memorandum Opinion and Order and Notice of Proposed Rule Making, 62 FR 13540 (March 21, 1997), wherein the Commission proposed a "controlling interest" standard as the general attribution rule for all future auctions. Under this standard, eligibility for small business provisions will be determined by attributing the gross revenues of the applicant, its controlling interests, which are defined to include those that exercise either *de jure* or *de facto* control, and its affiliates. Typically, *de jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation or, in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis, and includes the criteria set forth in a Notice of Hearing Designation Order (*Ellis Thompson Corp.*), 60 FR 1776 (January 5, 1995).

25. The "controlling interest" definition also provides specific guidance on calculation of various types of ownership interests. For purposes of calculating equity held in an applicant, the definition provides for full dilution of certain stock interests, warrants, and convertible debentures. In addition, the definition provides for attribution of partnership and other ownership interests, including stock interests held in trust, non-voting stock, and indirect ownership through intervening corporations. When an applicant cannot identify controlling interests under the definition, the revenues of all interest holders in the applicant and their affiliates will be counted. For example, if a company is owned by four entities, each of which has 25 percent voting equity and no shareholders' agreement or voting trust gives any one of them control of the company, the revenues of all four entities and their affiliates must be counted. Treating such a corporation in this way is similar to the Commission's treatment of a general partnership—all general partners are considered to have a controlling interest. This rule looks to substance over form in assessing eligibility for small business status.

26. The Commission's intent is to provide flexibility that will enable legitimate small businesses to attract passive financing in a highly competitive and evolving telecommunications marketplace. At the same time, the Commission believes that this controlling interest threshold will function effectively to ensure that only those entities truly meriting small business status are eligible for small business provisions. In particular, the Commission believes that the *de jure* and *de facto* concepts of control used to determine controlling interests in an applicant and the application of its affiliation rules will effectively prevent larger firms from illegitimately seeking status as a small business. The Commission also finds that the controlling interest standard it adopts, along with the definition of "affiliate" set forth in part 1 of its rules (*see* 47 CFR 1.2110(b)(4)), adequately addresses commenters' concerns regarding new business structures and widely held companies.

27. The Commission continues to believe that the obstacles faced by small businesses, including women- and minority-owned small businesses, in raising capital are not necessarily confined to small business principals and affiliates with limited personal net worth. Moreover, personal net worth limits are difficult to apply and enforce. The Commission therefore eliminates the $40 million individual net worth limitation in its narrowband PCS rules.

28. With respect to payment matters, the Commission declines to adopt installment payment plans for small businesses participating in narrowband PCS auctions in the future. The Commission's experience has demonstrated that installment payments may not be necessary to ensure a meaningful opportunity for small businesses to participate successfully in its auction program. The Commission continues to believe that bidding credits, coupled with its partitioning and disaggregation policies, are sufficient to overcome barriers faced by small businesses seeking to participate in the narrowband PCS marketplace. As a result of the Commission's decision to suspend installment payments, and its adoption of rules governing late payments and defaults in part 1, subpart Q, issues related to installment payments regarding interest, late payment fees, and payment schedules raised in the *Narrowband PCS R&O/Further Notice* are now moot. Current licensees paying for their licenses in installments are subject to the late payment and default provisions in part 1.

29. The Commission believes that when a small business entity applies to transfer or partition its license or disaggregate spectrum, unjust enrichment rules are necessary in order to ensure that non-small business entities cannot take indirect advantage of the Commission's small business incentives. However, the Commission does not need to establish a separate unjust enrichment requirement for narrowband PCS because it has adopted a uniform requirement in part 1, subpart Q, of its rules for all services. Accordingly, the unjust enrichment provisions set forth at 47 CFR 1.2111 will apply to narrowband PCS. These provisions address assignments and transfers between entities qualifying for different tiers of bidding credits. Because the Commission will now offer bidding credits only to small businesses, its unjust enrichment rules will apply to any case where a licensee that qualified for a bidding credit seeks to transfer or partition to an entity that is not a small business. In addition, the Commission's revised attribution rules will apply in determining small business status. Finally, the Commission declines to adopt a holding period or transfer restrictions for narrowband PCS licenses that would be in addition to its unjust enrichment rules.

30. *Partitioning and Disaggregation.* The Commission will permit all narrowband PCS licensees, including incumbents, to partition their geographic license area at any time to any entity eligible for a narrowband PCS license. Small businesses and others may face certain barriers to entry into the provision of spectrum-based services, which may be addressed by allowing qualifying entities to acquire a partitioned license. The Commission also believes that the partitioning policy it adopts will allow licensees to use spectrum more efficiently, speed service to underserved areas, and stimulate competition.

31. Partitioning will be permitted based on any geographic area defined by the parties to a partitioning arrangement. Partitionees will hold their licenses for the remainder of the partitioner's ten-year license term. This term is appropriate because a licensee, through partitioning, should not be able to confer greater rights than it was awarded under the terms of its license grant.

32. Parties to a partitioning arrangement will have two options for meeting the applicable narrowband PCS construction requirements. Under the first option, the partitionee may certify that it will satisfy the same construction requirements as the original licensee, with the partitionee meeting the requirements in its partitioned area and the partitioner responsible for satisfying the requirements in the area it has retained. Under the second option, the original licensee may certify that it has already met or will meet its five-year construction requirement and that it will meet the 10-year requirement for the entire market involved. All parties should understand that, under the first option, both the partitioner and partitionee are individually responsible for meeting the coverage requirements for their respective areas. Failure by either party to meet its coverage requirements will result in the automatic cancellation of its license without further Commission action. Under the second option, only the partitioner's license will be cancelled if it fails to meet the coverage requirements for the entire geographic area. The partitionee will not be subject to coverage requirements except for those necessary to obtain license renewal.

33. Partitioning applicants will be required to submit, as separate attachments to the partial assignment application, a description of the partitioned service area and a calculation of the population of the partitioned service area. The partitioned service area must be defined using counties, FCC-defined service areas (*e.g.*, Economic Areas), or the boundaries of the area described in terms of latitude and longitude. When partitioning counties or FCC-defined service areas, the applicant need only supply the county and state, or market number. When describing the boundary of an area, however, the applicant must supply sets of coordinates (latitude and longitude referenced to the North American Datum of 1983—NAD83) along the boundary sufficient to describe the area. An applicant may use as few as three sets of coordinates, up to a maximum of 120 sets of coordinates in order to describe an area. Applicants are free to aggregate several areas described by coordinates in order to accurately describe the boundary of the partitioned area.

34. The Commission will also permit all narrowband PCS licensees, including nationwide licensees to disaggregate portions of their spectrum in the same general manner as it has for licensees in other CMRS services where it has adopted disaggregation. The Commission concludes that marketplace forces should determine whether it is technically feasible to disaggregate narrowband spectrum. Allowing narrowband PCS spectrum disaggregation could potentially expedite the introduction of service to underserved areas and provide increased flexibility to licensees. The Commission also believes that disaggregation combined with bidding credits and geographic partitioning will facilitate the acquisition of narrowband PCS spectrum by small businesses.

35. The Commission finds that it is unnecessary to require a party that wishes to disaggregate to retain a minimum amount of spectrum. Thus, the Commission will allow disaggregating parties to negotiate channelization plans among themselves as a part of their disaggregation agreements. Parties will be permitted to disaggregate spectrum in any increments as long as such disaggregation is otherwise consistent with the Commission's rules. Disaggregatees will be authorized to hold licenses for the remainder of the disaggregator's original ten-year term. As the Commission concluded with respect to partitioners, the disaggregator should not be entitled to confer greater rights than it was awarded under the initial license grant.

36. With respect to meeting construction requirements, disaggregating parties will be permitted to choose between two options: Under the first option, the parties may agree that either the disaggregator or the disaggregatee will be responsible for meeting the coverage requirements for the geographic service area. Under the second option, the disaggregator and disaggregatee may certify that they will share the responsibility for meeting the coverage requirements for the entire geographic area. Under the first option, if the certifying party fails to meet the coverage requirements for the entire geographic area, that party's license will be subject to cancellation, but the non-certifying party's license will not be affected. However, if the parties to a disaggregation agreement select the second option and jointly fail to satisfy

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the coverage requirements for the entire geographic area, both parties' licenses will be subject to cancellation. Parties seeking Commission approval of a disaggregation agreement will be required to include a certification as to which party or parties will be responsible for meeting the construction requirements.

37. Combined partitioning and disaggregation will be permitted. This will allow narrowband PCS licensees the flexibility to design the types of agreements they desire, and will advance the goals of providing competitive service offerings and encouraging new market entrants. In the event that there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules will prevail. When a combination of partitioning and disaggregation is proposed, the Commission will use both the population of the partitioned area and the amount of spectrum disaggregated to calculate unjust enrichment payments.

38. The Commission has adopted a general rule that determines the amount of unjust enrichment payments assessed for all current and future licensees that engage in partitioning and disaggregation. Specifically, the rules adopted in the *Part 1 Third Report and Order* indicate that if a licensee seeks to partition any portion of its geographic area, the amount of the unjust enrichment payment will be calculated based on the ratio of the population in the partitioned area to the overall population of the license area. In the event of disaggregation, the amount of the unjust enrichment payment will be based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the disaggregating licensee. *See* 47 CFR 1.2111(e). The unjust enrichment provisions adopted in the *Part 1 Third Report and Order* will apply to any narrowband PCS licensee that receives a bidding credit and later elects to partition or disaggregate its license. When combined partitioning and disaggregation is proposed, the Commission will use a combination of both population of the partitioned area and amount of spectrum disaggregated to make these pro rata calculations.

39. Installment payments have been suspended as a means of financing small businesses and other designated entities seeking to secure spectrum licenses. Nonetheless, there are a small number of current narrowband licensees that qualified as small businesses for installment payment plans. If such a licensee sought to partition or disaggregate its license to another small business, the partitionee or disaggregatee would be permitted to pay its portion of the remaining obligation on the license in installments. If, however, such a licensee sought to partition or disaggregate its license to a non-small business, the Commission's part 1 unjust enrichment rules would apply.

40. Because the Commission has suspended its installment payment program, the issue of default obligations for parties entering into partitioning and disaggregation agreements is moot with respect to future licensees. With respect to current small business licensees that may partition or disaggregate to other small businesses, the Commission concludes that a default on one party's payment obligation should not affect the other party's license.

41. *Ownership Disclosure Requirements.* The Commission believes that requiring detailed ownership information is necessary to ensure that all applicants claiming small business status qualify for such status. Disclosure of ownership information also aids bidders by providing them with information about their auction competitors and alerting them to entities subject to the Commission's anti-collusion rules. The Commission has adopted uniform ownership disclosure requirements in part 1, subpart Q, of its rules for all services. *See* 47 CFR 1.2112. These rules require all auction applicants to disclose the real party or parties in interest by including as an exhibit to their short-form applications detailed ownership information. Moreover, they require that applicants list controlling interests as well as all parties holding a 10 percent or greater interest in the applicant and any affiliates of these interest holders. These rules, combined with the controlling interest standard the Commission adopts in this *Second R&O* and its definition of "affiliate," will help to ensure that only qualifying applicants obtain the benefits of the Commission's small business provisions, without being unduly burdensome.

42. *Construction Prior to Grant of Licenses for Narrowband and Broadband PCS.* The Commission will apply its part 1 rules, which permit applicants for all licenses awarded by competitive bidding to begin construction of facilities prior to the grant of their applications. *Sees* 47 CFR 1.2113. The Commission believes that allowing pre-grant construction furthers the statutory objective of rapidly deploying new technologies, products, and services for the benefit of the public. Pre-grant construction will be subject to any narrowband PCS service restrictions, including but not limited to antenna restrictions, environmental requirements, and international coordination. Any applicant engaging in pre-grant construction does so entirely at its own risk, and the Commission will not take such activity into account in ruling on any petition to deny.

Procedural Matters

A. Regulatory Flexibility Analysis

43. A Final Regulatory Flexibility Analysis, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604, is incorporated in this document.

B. Paperwork Reduction Act Analysis

44. This *Second R&O* contains a modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collection contained in this *Second R&O*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due on or before July 6, 2000. Written comments must be submitted by OMB on the modified information collection on or before August 7, 2000. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0625.

Title: Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS.

Form Number: N/A.

Type of Review: Revision of existing collection.

Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Number of Respondents: 1,500.

Estimate Time Per Response: 3.5 hrs. (avg.).

Frequency of Response: On occasion.

Total Annual Burden: 5,250 hours.

Total Annual Costs: $1,050,000.

Needs and Uses: The amendments to the Commission's narrowband Personal Communications Services rules adopted in this proceeding will improve the efficiency of spectrum use, reduce the regulatory burden on spectrum users, encourage competition, and promote service to the largest feasible number of users.

45. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov.*

E. Ordering Clauses

46. Authority for issuance of this *Second R&O* is contained in sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

47. Accordingly, it is ordered that part 24 of the Commission's rules is amended as specified, effective August 7, 2000, except § 24.104, which shall be effective upon OMB approval.

48. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Second R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Final Regulatory Flexibility Analysis

49. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Narrowband PCS R&O/Further Notice* in this proceeding. The Commission sought written public comment on the proposals in the *Narrowband PCS R&O/Further Notice*, including comment on the IRFA. No commenter raised an issue concerning the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Second R&O* conforms to the RFA.

i. Need for and Purpose of this Action

50. This *Second R&O* amends the Commission's rules for narrowband PCS. The amendments adopted promote efficient licensing of narrowband PCS and enhance the service's competitive potential in the Commercial Mobile Radio Service marketplace. The *Second R&O* also makes the competitive bidding rules for narrowband PCS, which previously provided preferences for minority- and women-owned businesses, race- and gender-neutral. The Commission deems the latter changes necessary in light of the Supreme Court's decisions in *Adarand Constructors, Inc.* v. *Peña*, 515 U.S. 200 (1995) (requiring a strict scrutiny standard of review for Congressionally mandated race-conscious measures) and *United States* v. *Virginia*, 518 U.S. 515 (1996) (applying an intermediate scrutiny standard of review to a state program containing gender classification). By applying the Commission's standardized part 1 competitive bidding rules to narrowband PCS and eliminating most of the service-specific competitive bidding rules previously applied, the *Second R&O* also simplifies and reduces the regulatory burden on applicants and licensees.

ii. Summary of Issues Raised by the Public in Response to the IRFA

51. No party filed comments responding to the IRFA. The Commission has, however, taken small business concerns into account in the *Second R&O*, as discussed in Sections v and vi of this FRFA.

iii. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

52. The rules adopted in the *Second R&O* will affect small businesses that hold or seek to acquire narrowband PCS licenses. These entities include small businesses that obtain nationwide, regional or MTA geographic area licenses through auction, assignment, or transfer and small businesses that acquire partitioned and/or disaggregated MTA, regional, or nationwide geographic area licenses.

53. To date, two auctions of narrowband PCS licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of $40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopts a two-tiered definition of small businesses in the *Second R&O*. A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. In December 1998, the Small Business Administration approved this two-tiered definition, which had been proposed in the *Narrowband PCS R&O/Further Notice*. Letter of December 2, 1998, to Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator Small Business Administration.

54. Without this definition, the Commission would utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons. *See* 13 CFR 121.201, Standard Industrial Classification Code 4812. Nearly all radiotelephone companies have fewer than 1,000 employees. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

55. In the future, the Commission will auction 459 licenses to serve MTAs and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, 4 of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's rules. The Commission assumes, for purposes of the evaluations and conclusions in this FRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

iv. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

56. The rules adopted in the *Second R&O* impose reporting and recordkeeping requirements on small businesses, as well as others, seeking to obtain or transfer licenses through partitioning and disaggregation. The information requirements will be used

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to determine whether the proposed partitionee or disaggregatee is an entity qualified to obtain a partitioned license or disaggregated spectrum. The information will be a one-time filing by an applicant requesting such a license. The information can be submitted on FCC Form 603 for part 24 narrowband PCS services. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that 75 percent of the respondents, which may include small businesses, will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents, which may include small businesses, are estimated to employ in-house staff to provide the information. Applicants filing electronically, including small businesses will not incur any per minute on-line charge. The Commission estimates that applicants contracting out the information would use an attorney or engineer (average of $200 per hour) to prepare the information.

57. Narrowband PCS applicants and licensees, including small businesses, will be subject to the reporting and recordkeeping requirements already contained in the Commission's part 1 competitive bidding rules, which apply to all auctionable services. These part 1 rules include the unjust enrichment rule set forth at 47 CFR 1.2111, which includes a reporting requirement for applicants seeking approval of a transfer of control or assignment of license within three years of receiving a new license through competitive bidding. The part 1 rules also include the uniform ownership disclosure requirements of 47 CFR 1.2112, which require all auction applicants to disclose the real party or parties in interest by including as an exhibit to their short-form applications detailed ownership information. The Commission finds that these rules, combined with its controlling interest standard and definition of "affiliate," will help to ensure that only qualifying applicants obtain the benefits of its small business provisions, without being unduly burdensome. In addition, narrowband PCS licensees that qualify as designated entities will be required to maintain at their facilities or by a designated agent, for the term of the license, information relevant to their eligibility for designated entity status. This requirement will further help to ensure that only qualifying applicants obtain the benefits of the Commission's small business provisions.

v. Steps Taken To Minimize Burdens on Small Entities

58. The rules adopted in the *Second R&O* are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services. The rules are also consistent with the Communications Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services. *See generally* 47 U.S.C. 257, 309(j).

59. *Service Areas.* The Commission finds that MTAs, rather than nationwide and regional geographic areas, are the most appropriate geographic area for licensing the remaining narrowband PCS spectrum because they will serve the needs of a wide range of entities, including both large and small service providers. Certain commenters argued that any additional nationwide or regional licenses would be too costly for small businesses to acquire and build out. MTAs, however, are not too large to preclude the entry of small businesses, and those interested in service areas larger than MTAs will be able to create such areas by aggregating licenses.

60. *Bidding Credits.* To ensure meaningful participation of small business entities in the auctions, the Commission adopts a two-tiered definition of small businesses in the *Second R&O*. A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. Small businesses are eligible for a 15 percent bidding credit. Very small businesses are eligible for a 25 percent bidding credit. In contrast to the Commission's previous rules, bidding credits will now be applicable to narrowband PCS licenses on all channels.

61. *Partitioning and Disaggregation.* The *Second R&O* adopts rules permitting narrowband PCS licensees to partition portions of their geographic areas, or disaggregate portions of the spectrum for which they hold a license, to other entities qualified to be licensees. Such partitioning and disaggregation will facilitate market entry by parties that may lack the financial resources to participate in auctions, including small businesses. Partitioning and disaggregation are expected to enable small businesses to obtain licenses for areas smaller than nationwide, regional or MTA areas, or smaller amounts of spectrum, at costs they will be able to afford. The Commission's decision to allow parties to partitioning or disaggregation agreements to choose between two options to meet their coverage requirements will provide small businesses with more flexibility in managing their resources.

62. *Substantial Service Option.* The *Second R&O* allows narrowband PCS licensees to demonstrate "substantial service" as an alternative to meeting the coverage requirements set forth in the existing rules. The Commission finds that a substantial service option may be very useful in allowing licensees, including small businesses, to use spectrum flexibly to provide new and innovative services uninhibited by a requirement that they meet a specific coverage benchmark or lose their license.

63. *Application of Part 1 Standardized Rules.* The Commission believes that its application of the part 1 standardized rules regarding eligible entities, unjust enrichment, and bidding credits will assist small businesses because the resulting predictability will facilitate the business planning and capital fundraising process.

vi. Significant Alternatives Considered

64. The Commission considered and rejected the following alternative proposals concerning service areas, spectrum aggregation, response channels, coverage requirements, nationwide paging licensees, competitive bidding rules, installment payments, and disaggregation.

65. *Service Areas.* The Commission declined to adopt Metrocall's, Celpage's and Benbow's recommendation that it use a combination of regional and MTA service areas for future licensing of narrowband PCS. Similarly, the Commission declined to adopt Arch's proposal that it allocate one of the two remaining 50 kHz paired channels as a nationwide license. Taking into consideration other commenters' argument that it would be too costly for small businesses to acquire and build out nationwide and regional licenses, the Commission decided to use MTAs for future licensing. The Commission also declined to adopt several commenters' recommendation that it use BTA-based licenses to license narrowband PCS spectrum. The Commission concluded that using MTAs rather than BTAs would not compromise the goal of ensuring entry for small businesses.

66. *Spectrum Aggregation.* In the *Second R&O*, the Commission considered the argument that it should maintain the narrowband PCS spectrum aggregation limit, which was originally adopted to ensure that narrowband PCS services would be offered on a competitive basis. The Commission decided to eliminate the narrowband PCS aggregation limit, finding that the aggregation limit is not needed to prevent an undue concentration of licenses and that it may be harmful if it disadvantages narrowband PCS licensees in competing against other services.

67. *Response Channels.* In the *Second R&O*, the Commission considered and rejected its tentative conclusion that the response channels should not be restricted to mobile-to-base transmissions, provided that licensees comply with the relevant rules regarding maximum transmitter power and interference. The Commission agreed with commenters Arch, Benbow, and PCIA that allowing these channels to be used for other purposes would cause harmful interference with current narrowband PCS licensees and determined that it would retain the current rule restricting use of the response channels to mobile-to-base transmissions.

68. *Construction and Coverage Requirements.* The Commission declined to adopt recommendations by certain commenters that it modify its current construction benchmarks. It declined, for example, to adopt Arch's and Benbow's suggestion that it eliminate the five-year construction requirement and allow both existing and new narrowband PCS licensees to meet a 37.5 percent population benchmark by the tenth year of their license terms. The Commission found that its five- and ten-year construction benchmarks provide sufficient time for narrowband PCS licensees to construct their systems. The nationwide narrowband PCS licensees that have reached their five-year buildout benchmarks have all represented that they met the requirement, and none requested a waiver. The Commission found that there is no need to alter the current benchmarks, and that it is best to address any problems that individual licensees may have because of difficulties with financing or equipment availability by evaluating requests for waiver on a case-by-case basis.

69. Several commenters opposed the adoption of a "substantial service" requirement on the grounds that replacing the existing coverage requirements with a substantial service test would encourage speculation, fraud, and anticompetitive behavior. In considering and rejecting this argument, the Commission concluded that coverage requirements, including a substantial service standard, encourage the provision of service to areas that would not necessarily receive service expeditiously solely through the operation of market forces. The Commission found that the substantial service option may be very useful in allowing licensees to use spectrum flexibly to provide new and innovative services uninhibited by a requirement that they meet a specific coverage benchmark or lose their license. The Commission also concluded that permitting licensees to make a substantial service showing may encourage them to build out in rural areas. The Commission also declined to adopt Ameritech's recommendation that substantial service be defined as "service that is sound, favorable, and reasonably capable of meeting an appropriate portion of the public demand for one or more of the communications services of which the system is capable under the Commission's rules." In the past the Commission has offered guidance to licensees in other services with regard to factors that it would consider in evaluating whether the substantial service requirement has been met, and it will maintain this practice with respect to narrowband PCS.

70. *Nationwide Paging Licenses.* In the *Paging MO&O/Third Report and Order*, the Commission considered the issue of coverage requirements for nationwide geographic area paging licensees and deferred any decision on the issue until it resolved similar matters in the instant narrowband PCS rulemaking proceeding. In the *Second R&O*, the Commission found that all nationwide paging licensees are already providing sufficient coverage to meet the five-year benchmark applicable to nationwide narrowband PCS licenseees, and some of them have met the ten-year benchmark. Thus, the Commission concluded that the build-out requirements imposed on nationwide paging licensees under its previous rules were adequate to promote coverage equivalent to that of nationwide narrowband PCS licensees, and therefore it is not necessary to adopt coverage requirements for nationwide paging licensees that would be in addition to the build-out requirements they have already met.

71. *Competitive Bidding Rules.* The Commission declined to adopt certain commenters' recommendation that it require applicants to identify each frequency in each market on which they wish to bid and submit upfront payments for each individual license. The Commission found that its current rules, which require an upfront payment to cover only those licenses on which an applicant intends to bid in any one round, are appropriate because they allow bidders the flexibility to pursue backup strategies during the course of an auction in the event they are unable to obtain their first choice of licenses. The Commission also declined to modify its anti-collusion rule to provide a safe harbor for carriers engaged in negotiations regarding mergers or intercarrier agreements, as requested by PCIA. The Commission has declined to create such a safe harbor in the past, and it has not been presented with an adequate justification for departing from that decision here. Finally, several commenters requested that the Commission provide auction participants with the identity of all competing bidders. It has generally been the Commission's practice to disclose the identity of all bidders in Commission auctions. If, in the case of particular auctions, a limit on such information appears warranted, the Wireless Telecommunications Bureau will, consistent with the Balanced Budget Act of 1997 and current practice, seek comment on the issue in a public notice prior to the auction.

72. *Installment Payments.* The Commission declined to adopt installment payment plans for small businesses participating in narrowband PCS auctions. This action is consistent with the Commission's policy set forth in the *Part 1 Third Report and Order*, where the Commission noted that its experience has demonstrated that installment payments may not be necessary to ensure a meaningful opportunity for small businesses to participate successfully in its auction program.

73. *Bidding Credits.* The Commission decided to adopt a 15 percent bidding credit for small businesses and a 25 percent bidding credit for very small businesses. A small business is an entity with average annual gross revenues not to exceed $40 million for the preceding three years, and a very small business is an entity with average annual gross revenues not to exceed $15 million for the preceding three years. The Commission declined to adopt higher bidding credits, as Merlin and RTG recommend. The bidding credits adopted are those provided for in the Commission's part 1 standardized competitive bidding rules. The Commission believes that these levels of

bidding credits, which are higher than those proposed in the *Narrowband PCS R&O/Further Notice*, are sufficient to promote the participation of small businesses in the provision of narrowband PCS, and that there is no reason to deviate from the standard schedule of bidding credits here.

74. *Bidding Credits for Rural Telephone Companies.* The Commission declined to adopt RTG's and NTCA's recommendation that it provide special bidding credits for rural telephone companies in order to meet its obligation to ensure that rural telephone companies have the opportunity to participate in spectrum-based services. The Commission has no evidence that large rural telephone companies encounter barriers to capital formation comparable to those faced by other designated entities. In addition, the vast majority of rural telephone companies that have participated in the Commission's auctions to date have identified themselves as small businesses and have qualified for bidding credits on that basis. Thus, the Commission believes that small business bidding credits are sufficient to ensure that rural telephone companies have the ability to participate in spectrum-based services, and it does not believe that rural telephone companies will be unable to compete in narrowband PCS auctions or the messaging marketplace without special financial preferences.

75. *Attribution.* The Commission declined to adopt Merlin's recommendations regarding amending its rules to adapt to various business structures. Merlin suggests, for example, that, for purposes of defining whether a company is widely held, whatever its form of business organization, the Commission should formulate its rules to state that a widely held company is one in which no single equity holder has 15 percent or more of the equity of the applicant. The Commission found that the controlling interest standard adopted in the *Second R&O*, along with the definition of "affiliate" set forth in part 1 of the Commission's rules, adequately addresses Merlin's concerns.

76. *Disaggregation.* Some commenters stated that disaggregation is not technically feasible and therefore it is unnecessary for the Commission to address the issue at this time. In considering and rejecting such arguments, the Commission concluded that marketplace forces should determine whether it is technically feasible to disaggregate narrowband spectrum. The Commission also concluded that allowing narrowband PCS spectrum disaggregation could potentially expedite the introduction of service to underserved areas and provide increased flexibility to licensees. Finally, the Commission found that disaggregation combined with bidding credits and geographic partitioning will facilitate the acquisition of narrowband PCS spectrum by small businesses.

77. *Report to Congress.* The Commission will send a copy of the *Second R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second R&O*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 24

Communications common carriers, Personal communications services, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 24 as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

§ 24.101 [Removed and Reserved]

2. Remove and reserve § 24.101.

3. Section 24.102 is amended by removing paragraph (d) and by revising the introductory text to read as follows:

§ 24.102 Service areas.

Narrowband PCS service areas are nationwide, regional, and Major Trading Areas (MTAs), as defined in this section. MTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39 (MTA Map). Rand McNally organizes the 50 States and the District of Columbia into 47 MTAs. The MTA Map is available for public inspection in the FCC's Library, Room TW–B505, 445 12th Street SW, Washington, D.C.

* * * * *

4. Section 24.103 is amended by removing the Note and by revising paragraph (a), (b), (c), (d), introductory text of paragraph (e), and (f) to read as follows:

§ 24.103 Construction requirements.

(a) Nationwide narrowband PCS licensees shall construct base stations that provide coverage to a composite area of 750,000 square kilometers or serve 37.5 percent of the U.S. population within five years of initial license grant date; and, shall construct base stations that provide coverage to a composite area of 1,500,000 square kilometers or serve 75 percent of the U.S. population within ten years of initial license grant date. Licensees may, in the alternative, provide substantial service to the licensed area as provided in paragraph (d) of this section.

(b) Regional narrowband PCS licensees shall construct base stations that provide coverage to a composite area of 150,000 square kilometers or serve 37.5 percent of the population of the service area within five years of initial license grant date; and, shall construct base stations that provide coverage to a composite area of 300,000 square kilometers or serve 75 percent of the service area population within ten years of initial license grant date. Licensees may, in the alternative, provide substantial service to the licensed area as provided in paragraph (d) of this section.

(c) MTA narrowband PCS licensees shall construct base stations that provide coverage to a composite area of 75,000 square kilometers or 25 percent of the geographic area, or serve 37.5 percent of the population of the service area within five years of initial license grant date; and, shall construct base stations that provide coverage to a composite area of 150,000 square kilometers or 50 percent of the geographic area, or serve 75 percent of the population of the service area within ten years of initial license grant date. Licensees may, in the alternative, provide substantial service to the licensed area as provided in paragraph (d) of this section.

(d) As an alternative to the requirements of paragraphs (a), (b), and (c) of this section, narrowband PCS licensees may demonstrate that, no later than ten years after the initial grant of their license, they provide substantial service to their licensed area. Licensees choosing this option must notify the FCC by filing FCC Form 601, no later than 15 days after the end of the five year period following the initial grant of their license, that they plan to satisfy the alternative requirement to provide substantial service. "Substantial service" is defined as service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal.

(e) In demonstrating compliance with the construction requirements set forth in this section, licensees must base their calculations on signal field strengths that ensure reliable service for the technology utilized. Licensees may determine the population of geographic areas included within their service contours using either the 1990 census or the 2000 census, but not both.

* * * * *

(f) Upon meeting the five and ten year benchmarks in paragraphs (a), (b), and (c) of this section, or upon meeting the substantial service alternative in paragraph (d), licensees shall notify the Commission by filing FCC Form 601 and including a map and other supporting documentation that demonstrate the required geographic area coverage, population coverage, or substantial service to the licensed area. The notification must be filed with the Commission within 15 days of the expiration of the relevant period.

* * * * *

5. Section 24.104 is added to read as follows:

§ 24.104 Partitioning and disaggregation.

Nationwide, regional, and MTA licensees may apply to partition their authorized geographic service area or disaggregate their authorized spectrum at any time following grant of their geographic area authorizations.

(a) *Application required.* Parties seeking approval for partitioning and/or disaggregation shall apply for partial assignment of a license pursuant to § 1.948 of this chapter.

(b) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and describe the partitioned service area on a schedule to the application. The partitioned service area shall be defined by up to 120 sets of geographic coordinates at points at every 3 degrees azimuth from a point within the partitioned service area along the partitioned service area boundary unless either an FCC-recognized service area is used (*e.g.*, MEA or EA) or county lines are followed. The geographical coordinates must be specified in degrees, minutes, and seconds to the nearest second latitude and longitude, and must be based upon the 1983 North American Datum (NAD83). In the case where FCC-recognized service areas or county lines are used, applicants need only list the specific area(s) through use of FCC designations or county names that constitute the partitioned area.

(c) *Disaggregation.* Spectrum may be disaggregated in any amount.

(d) *Combined partitioning and disaggregation.* Licensees may apply for partial assignment of authorizations that propose combinations of partitioning and disaggregation.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 1.955 of this chapter.

(f) *Coverage requirements for partitioning.* (1) Parties to a partitioning agreement must satisfy at least one of the following requirements:

(i) The partitionee must satisfy the applicable coverage requirements set forth in § 24.103 for the partitioned license area; or

(ii) The original licensee must meet the coverage requirements set forth in § 24.103 for the entire geographic area. In this case, the partitionee must meet only the requirements for renewal of its authorization for the partitioned license area.

(2) Parties seeking authority to partition must submit with their partial assignment application a certification signed by both parties stating which of the options they select.

(3) Partitionees must submit supporting documents showing compliance with their coverage requirements as set forth in § 24.103.

(4) Failure by any partitionee to meet its coverage requirements will result in automatic cancellation of the partitioned authorization without further Commission action.

(g) *Coverage requirements for disaggregation.* (1) Parties to a disaggregation agreement must satisfy at least one of the following requirements:

(i) Either the disaggregator or disaggregatee must satisfy the coverage requirements set forth in § 24.103 for the entire license area; or

(ii) Parties must agree to share responsibility for meeting the coverage requirements set forth in § 24.103 for the entire license area.

(2) Parties seeking authority to disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the requirements they select.

(3) Disaggregatees must submit supporting documents showing compliance with their coverage requirements as set forth in § 24.103.

(4) Parties that accept responsibility for meeting the coverage requirements and later fail to do so will be subject to automatic license cancellation without further Commission action.

6. Section 24.129 is amended by revising the introductory text and paragraph (c), removing paragraph (d) and removing the "*" whenever it appears to read as follows:

§ 24.129 Frequencies.

The following frequencies are available for narrowband PCS.

* * * * *

(c) Nine frequencies are available for assignment on an MTA basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 18: 940.35–940.40 and 901.35–901.40 MHz; and,
Channel 19: 940.40–940.45 and 901.40–901.45 MHz.

(2) Five 50 kHz channels paired with 12.5 kHz channels:

Channel 20: 930.75–930.80 and 901.8375–901.8500 MHz;
Channel 21: 930.80–930.85 and 901.8500–901.8625 MHz;
Channel 22: 930.85–930.90 and 901.8625–901.8750 MHz;
Channel 25: 930.90–930.95 and 901.8750–901.8875 MHz; and,
Channel 26: 930.95–931.00 and 901.8875–901.9000 MHz.

(3) Two 50 kHz unpaired channels:

Channel 23: 940.90–940.95 MHz; and
Channel 24: 940.95–941.00 MHz.

* * * * *

7. Section 24.130 is revised to read as follows:

§ 24.130 Paging response channels.

The following eight 12.5 kHz unpaired channels are available for assignment on an MTA basis and shall be used only to provide mobile-to-base station communications:

A: 901.9000–901.9125 MHz;
B: 901.9125–901.9250 MHz;
C: 901.9250–901.9375 MHz;
D: 901.9375–901.9500 MHz;
E: 901.9500–901.9625 MHz;
F: 901.9625–901.9750 MHz;
G: 901.9750–901.9875 MHz; and
H: 901.9875–902.0000 MHz.

8. Section 24.132 is amended by revising paragraph (e) to read as follows:

§ 24.132 Power and antenna height limits.

* * * * *

(e) MTA and regional base stations located less than 80 kilometers (50 miles) from the licensed service area border must limit their effective radiated power in accordance with the following formula:

$PW = 0.0175 \times dkm^{**} 6.6666 \times hm^{**} -3.1997$

PW is effective radiated power in watts
dkm is distance in kilometers
hm is antenna HAAT in meters; see § 24.53 for HAAT calculation method

* * * * *

§§ 24.302 through 24.309 [Removed and Reserved]

9. Remove and reserve §§ 24.302 through 24.309.

§ 24.320 [Removed and Reserved]

10. Section 24.320 is removed and reserved.

11. Section 24.321 is added to read as follows:

§ 24.321 Designated entities.

(a) *Eligibility for small business provisions.* (1) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $40 million for the preceding three years.

(2) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $15 million for the preceding three years.

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraphs (a)(1) and (a)(2) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered on a cumulative basis and aggregated. An applicant seeking status as a small business or very small business under this section must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and affiliates for each of the previous three years.

(4) Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(b)(4)(iii) of this chapter will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

(5) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(6) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individually satisfies the definition in paragraph (a)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(7) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, establishing, as applicable, *de facto* or *de jure* control of the entity. Such information must be maintained at the licensee's facilities or by its designated agent for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(b) *Controlling interest.* (1) For purposes of this section, a controlling interest includes individuals or entities with either *de jure* or *de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) The following rules apply for the calculation of certain interests.

(i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options, and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified in this paragraph (b).

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be attributed to the grantor or beneficiary, as appropriate.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have a controlling interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have a controlling interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(c) *Bidding credits.* (1) After August 7, 2000, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter.

(2)(i) Businesses owned by members of minority groups and women, including small businesses owned by members of minority groups and women, that are winning bidders on nationwide licenses on Channel 5, Channel 8, and Channel 11 prior to [effective date of rules] will be eligible for a twenty-five (25) percent bidding credit.

(ii) Businesses owned by members of minority groups and women, including small businesses owned by members of minority groups and women, that are winning bidders on regional licenses on Channel 13 and Channel 17 prior to August 7, 2000 will be eligible for a forty (40) percent bidding credit.

(d) Installment payments. Small businesses, including small businesses owned by members of minority groups and women, that are winning bidders on any regional license prior to August 7, 2000 will be eligible to pay the full amount of their winning bids in installments over the term of the license pursuant to the terms set forth in § 1.2110(f) of this chapter.

12. Section 24.404 is amended by revising paragraph (a)(1) to read as follows:

§ 24.404 Eligibility.

(a) * * *

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under the laws, including § 24.12;

* * * * *

§ 24.430 [Amended]

13. Section 24.430 is amended by removing paragraph (a)(4), redesignating paragraph (a)(5) as paragraph (a)(4) and adding the word "and" at the end of paragraph (a)(3)."

[FR Doc. 00–13961 Filed 6–2–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

I.D. 052500B

Atlantic Highly Migratory Species (HMS) Fisheries; Large Coastal Shark, Small Coastal Shark, and Pelagic Shark Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Quota adjustment and fishing season notification.

SUMMARY: NMFS announces that the landings of large coastal sharks (LCS) in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea totaled 742.7 metric tons (mt) dressed weight (dw) during the first semiannual 2000 season. Because this constitutes an overharvest of 100 mt dw, the second semiannual 2000 LCS quota is reduced accordingly. NMFS also notifies eligible participants of the opening and closing of fishing seasons for Atlantic LCS, small coastal sharks (SCS), and pelagic sharks.

DATES: The fishery opening for LCS is effective July 1, 2000; the LCS closure is effective from 11:30 p.m. local time August 7, 2000, through December 31, 2000. The fishery opening for SCS and pelagic sharks are July 1, 2000; no closure dates for these fisheries are included in this document.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen, Karyl Brewster-Geisz or Steve Meyers, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

On June 30, 1999, NMFS received a Court Order from Judge Steven D. Merryday relative to the May 1997 lawsuit challenging commercial harvest quotas for Atlantic sharks. Specifically, the order states: ". . . the Court hereby preliminarily, and until further order of the Court, expressly ENJOINS the defendant and his designees from enforcing the 1999 regulations, 64 FR 29090 (May, 28, 1999) with respect to Atlantic shark commercial catch quotas and fish-counting methods (including the counting of dead discards and state commercial landings after federal closures) that are different from the quotas and fish counting methods prescribed by the 1997 Atlantic shark regulations, 62 FR 16648 (April 7, 1997)."

As such, the annual 2000 LCS quota continues at the 1997 level of 1,285 mt dw for all species of LCS, (Table 1 of appendix A to part 635), with no minimum size on ridgeback LCS. The SCS and pelagic shark quotas also revert to their annual 1997 levels, of 1,760 and 580 mt dw, respectively. The 1997 prohibited species list includes only five prohibited species: white, basking, whale, sand tiger and bigeye sand tiger. The limited access provisions for commercial harvests still apply, including trip limits for directed and incidental shark permit holders.

A motion to clarify the terms of the court injunction is pending before the court. If granted, the 1999 prohibited species list would be in effect for the Atlantic commercial shark fishery. NMFS will announce the court's decision with specific details in the **Federal Register** once the court rules on the motion.

Under the terms of the Court injunction, the Assistant Administrator for Fisheries, NOAA (AA), is authorized to adjust the semiannual quota to reflect actual catches during the preceding semiannual period. Harvest data submitted to NMFS indicate that the landings of LCS from January through March 31, 2000, totaled 742.7 mt dw, which is 100.7 mt dw more than the available semiannual quota of 642.5 mt dw. Therefore, the adjusted quota for LCS for the second 2000 semiannual period is decreased from 642.5 mt dw to 542 mt dw. The adjusted quota of 542 mt dw is available for the period July 1 through December 31, 2000.

The second semiannual fishing season of the 2000 fishing year for the commercial fishery for LCS in the Western North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open July 1, 2000. Catch rate data from the second semiannual fishing seasons from 1997, 1998, and 1999 for LCS species indicate that the available LCS quota of 542.5 mt dw will be attained within 38 days. Accordingly, the AA has determined, based on these projected catch rates and the adjusted quota, that the quota for the 2000 second semiannual season for LCS in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained as of August 7, 2000. The LCS fishery will close August 7, 2000, at 11:30 p.m. local time.

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under § 635.4. The sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under § 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

The second semiannual quota for SCS is 880 mt dw. The second semiannual

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quota for pelagic sharks is 290 mt dw. When quotas are projected to be reached for these fisheries, the AA will file notification of closure at the Office of the Federal Register at least 14 days before the effective date.

Those vessels that have not been issued a limited access permit under § 635.4 may not sell sharks and are subject to the recreational retention limits and size limits specified at §§ 635.20(e) and 635.22(c). The recreational fishery is not affected by any closure in the commercial fishery.

Classification

This action is taken under 50 CFR part 635 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14036 Filed 5–31–00; 4:33 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 109
Tuesday, June 6, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[Docket No. LS–98–09]

RIN 0581–AB69

Regulations Governing the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to develop a voluntary, user-fee funded program under the authority of the Agricultural Marketing Act of 1946 to inspect and certify equipment and utensils used to process livestock and poultry products. Livestock and poultry processing equipment and utensils inspected and certified by AMS to voluntary consensus standards for sanitary design will provide a third party assurance that they meet minimum requirements for cleanability, suitability of materials used in construction, durability and inspectability. Development of this program is required under the provisions of the 1999 Agricultural Appropriations Bill.

DATES: Comments must be received by August 7, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this program. Send two copies of comments to Barry L. Carpenter, Deputy Administrator, Livestock and Seed Program, Docket No. LS–99–12, Room 2092 South Agriculture Building, 1400 Independence Ave., SW, Washington, DC 20250–0249.

All comments received in response to this notice will be considered part of the public record and will be available for viewing in Room 2092 South Agriculture Building, 1400 Independence Ave., SW, Washington, DC 20250–0249 between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barry Carpenter, Deputy Administrator, Livestock and Seed Program, by telephone at (202) 720–5705 or by Fax at (202) 720–3499.

SUPPLEMENTARY INFORMATION:

Background

The 1999 Agricultural Appropriations Bill, (Pub. L. 105–277, sec. 747), requires AMS to develop a voluntary, user-fee funded program to inspect and certify equipment and utensils used to process livestock and poultry products. From 1975 to 1997, a similar function was carried out by USDA on a mandatory prior approval basis by USDA's Food Safety and Inspection Service (FSIS) as a prerequisite for equipment use in federally inspected meat and poultry packing and processing establishments. The FSIS Equipment Branch formally evaluated equipment and utensils proposed by manufacturers or suppliers before they could be used in official establishments to assure they could be maintained in a sanitary condition. The program focused on identifying and correcting problems during the initial development of equipment and utensils, instead of resolving problems after equipment and utensils were put into widespread use.

FSIS's acceptance of new, modified, or reconditioned equipment and utensils for use in federally inspected meat and poultry establishments was a two-step process. First, FSIS Equipment Branch personnel evaluated the design and construction of equipment by reviewing assembly-type drawings and corresponding parts and material lists submitted to the Branch by the equipment manufacturer. Then, if necessary, FSIS inspectors reviewed the in-establishment operation of the equipment and reported their findings to the Equipment Branch. Commercially available equipment was accepted and listed in an FSIS reference guide, "Accepted Meat and Poultry Equipment." Once equipment was listed in this reference as acceptable, no further approval was needed on an establishment basis.

FSIS continues to ensure that equipment and utensils used in federally inspected facilities are of such material and construction as will facilitate their thorough cleaning and operational cleanliness, and not adulterate edible product. Also, FSIS still requires that equipment and utensils used in federally inspected establishments are constructed, maintained, and used in a manner that does not interfere with inspection. However, in an effort to remove "command and control" regulations that were contrary to FSIS' commitment to the Hazard Analysis and Critical Control Point approach to Federal meat inspection, and to provide federally inspected establishments with the flexibility to use equipment and utensils designed in the manner they deem to best maintain a sanitary environment for food production without having to seek prior approval, FSIS discontinued the mandatory prior approval program for equipment and utensils on September 24, 1997 (62 FR 45016).

At the time FSIS announced that it was discontinuing its prior approval program, equipment and utensil manufacturers and processors of livestock and poultry products expressed their desire to either continue the FSIS program or develop a new program through AMS on a voluntary, user-fee funded basis to inspect and certify equipment and utensils used to process livestock and poultry products to a sanitary standard. Subsequently, passage of the 1999 Omnibus Appropriations Bill required development of such a program under the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621–1627).

Accordingly, on July 16, 1999, AMS published in the **Federal Register** (64 FR 38315) an advance notice of proposed rulemaking (ANPRM) and notice of public meeting to assist the Agency in the development of a complete inspection and certification program for equipment and utensils used to process livestock and poultry products.

Through the ANPRM and the public meeting, AMS sought information which would enable the Agency to develop an efficient and cost-effective program for inspecting and certifying equipment and utensils used to process livestock and poultry products. Specifically, AMS requested comments concerning: initiatives underway in the industry to develop a voluntary, consensus sanitary standard for the design and manufacture of equipment

and utensils used to process livestock and poultry products; the validity and usability of standards presented to AMS for consideration for adoption; criteria to be used by AMS to select a sanitary standard; and any other information which would aid AMS in administering the program.

The ANPRM solicited comments on the issue for a 60-day period ending September 14, 1999. The public meeting was held on August 10, 1999, in Room 107–A at the USDA Jamie L. Whitten Building, 12th and Jefferson Drive, SW, Washington, DC.

To assist interested parties in obtaining information on the proposed program and in reviewing comments as AMS received them, the Agency launched a website at www.ams.usda.gov/lsg/equip.htm/. Contained on this website were electronic versions of the AMS press releases related to the development of the program, the ANPRM, complete transcripts of the August 10, 1999, public meeting, and all comments received.

The public meeting was attended by 42 representatives of the meat and poultry packing and processing industry, equipment and utensil manufacturing industry, trade and professional associations, standards developers, and other interested parties. Twelve individuals provided prepared remarks at the meeting.

AMS received 51 comments during the comment period. One commenter submitted two comments requesting an extension of the comment period on the ANPRM until December 31, 1999. The agency believes that the 60-day comment period on the ANPRM and the public meeting that was held on August 10, 1999, gave interested persons sufficient opportunity to comment on the ANPRM. Furthermore, interested persons would have an opportunity to submit comments on AMS' proposed equipment and utensil certification program during the 60-day comment period for this proposed rule.

Nine commenters supported the development of the program. These commenters wanted a Government certification program for equipment and utensil design as an assurance of quality for buyers. While no commenters specifically stated opposition to the development of a equipment and utensil certification program, several commenters did provide differing recommendations on specific characteristics of such a program.

Several commenters recommended criteria that AMS should use in selecting standards to use as the basis of its certification program for equipment and utensils used to process livestock and poultry products. These criteria were (1) compatibility with current regulations, (2) compatibility with current industry practices, (3) ability to be understood and used by all interested parties, and (4) ability to be revised in a timely manner as regulatory requirements and industry practices change. AMS agrees that these criteria are important for evaluating proposed standards for equipment and utensil certification and has considered them in the development of this proposal.

Several commenters recommended that government employees administer the proposed equipment and utensil inspection and certification program. AMS agrees. AMS is proposing that Agency employees would perform the inspection and certification of equipment and utensils.

Three commenters recommended AMS offer an accreditation service for third parties to administer inspections and certifications of equipment and utensils on behalf of the Agency. In complying with the 1999 Agricultural Appropriations Bill which requires the Secretary of Agriculture to develop a program to inspect and certify agricultural processing equipment, and impose a fee for the inspection and certification, in a manner that is similar to the inspection and certification of agricultural products under the AMA, AMS would administer the certification program by using government employees.

One commenter provided criteria they believed should be a part of the administration of any certification program involving food safety. It is important to note that the purpose of this program is to provide a third-party inspection and certification program that equipment and utensils used to process livestock and poultry products meet the requirements of an identified sanitary standard. It is not to ensure food safety per se. Rather, the proposed program is designed to inspect and certify that equipment and utensils are capable of producing food products in a sanitary manner. The hygienic standards are developed with food safety as a primary focus. Hygienically designed equipment and utensils are capable of producing safe food. However, equipment and utensils meeting any sanitary standard, if not properly cleaned, maintained or used can result in the production of unsafe products. Equipment and utensil sanitation is only one aspect of food safety. FSIS is responsible for ensuring all Federally inspected meat and poultry establishments produce safe and wholesome products, regardless of whether the equipment and utensils used to process the products was certified by AMS under this proposed program.

Several commenters recommended that the proposed rule also address preventing conflicts of interest, employing staff with adequate qualifications and training, re-evaluation of equipment and utensils, appeals processes, providing a process for investigating reports of non-compliance, and control of certification marks. Most of these concerns are addressed in this proposed rule. The remaining concerns regarding employee conduct and ethics are dealt with in existing AMS and USDA instructions, policy and regulations.

Several commenters stated that any proposed program should be cost-effective. AMS agrees. The 1999 Agricultural Appropriations Bill directs the Secretary of Agriculture to develop this inspection and certification program, and impose a fee for the inspection and certification, in a manner that similar to the inspection and certification of agricultural products under the Agricultural Marketing Act of 1946, as amended (AMA). Under the AMA, AMS is required to collect reasonable fees for providing official services under 7 CFR part 54, including services provided under this proposed equipment and utensil certification program, to cover as nearly as practicable AMS costs for performing the service including related administrative and supervisory costs. Since the procedures used to inspect and certify equipment and utensils used to process livestock and poultry products are similar to those used to inspect and certify dairy processing equipment, AMS has decided to charge the same hourly fees for inspecting and certifying equipment and utensils used to process livestock and poultry products. Inspection and certification services are based on the hourly rate for applicants who request services on an hourly basis and appear at 7 CFR part 58 as published in the **Federal Register** at 62 FR 66258 on December 18, 1997. The current base hourly rate for such service is $56 per hour for service performed between 6:00 a.m. and 6:00 p.m. and $61.60 for service performed between 6:00 p.m. and 6:00 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the equipment review specialist in connection with the performance of the service. A minimum charge of one-half hour would be made for the service pursuant to each request

or certificate issued. If an applicant requests that certification service be performed on a holiday, Saturday, or Sunday or in excess of each 8-hour shift Monday through Friday, the applicant would be charged such service at a rate of 1 ½ times the rate which would be applicable for such service if performed during normal working hours.

Each applicant should determine if there is a economic advantage of using the service that outweighs the user-fees associated with receiving certification.

One commenter recommended that equipment that had prior approval from FSIS and was listed in the discontinued FSIS Directive 11220.1, "Acceptable Meat and Poultry Equipment," be automatically certified as meeting the requirements of the proposed AMS program. AMS does not agree. The equipment and utensil certification program proposed herein would be based on a new set of sanitary standards, the requirements of which differ from the standards used in the former prior approval program administered by FSIS. To have equipment and utensils certified by AMS, manufacturers would have to resubmit their design of equipment and utensils previously approved by FSIS to AMS for evaluation.

One commenter requested that AMS work with FSIS to educate local FSIS inspectors about the proposed program when it begins. This suggestion has merit. AMS worked with FSIS during preparation of the advance notice of proposed rulemaking, the public meeting, and in the development of this proposed rule. AMS would continue to work with FSIS as this program develops to ensure FSIS is aware of components of the program as it develops.

Several commenters recommended that the proposed program adopt a standard or group of standards which are in harmony with other international standards and thus would aid equipment and utensil manufacturers in marketing their products internationally. Although the international marketing of equipment and utensils could be an allied benefit of this program, the primary purpose of this proposed program is to provide a third-party certification that equipment and utensils meet specified standards. International harmonization was one factor considered by AMS in selecting standards to inspect and certify equipment and utensils. However, AMS recognizes that international standards and foreign buyer requirements can change over time.

Two voluntary consensus standards bodies transmitted draft standards to AMS for consideration as examples of the types of standards AMS would inspect and certify to. These voluntary consensus standards bodies were the Technical Committee for Underwriters Laboratories 2128—the Standard for Meat and Poultry Plant Equipment (Underwriters Laboratories, North Brook, Illinois) and the NSF/3–A Joint Committee on Food Processing Equipment (a group jointly administered by NSF International (formerly the National Sanitation Foundation), Ann Arbor, Michigan, and the 3–A Sanitary Standards Committees, a standards development group supported by the International Association of Food Industry Suppliers, McLean, Virginia).

One group representing a consortium of equipment manufacturing associations submitted a draft standard to AMS for consideration as a basis for a standard AMS would develop and use as a government-unique standard. Additionally, several commenters stated AMS should apply the guidelines used by FSIS in its former Equipment Acceptance Program as a government-unique standard.

When considering the comments pertaining to the selection of standards for AMS to inspect and certify to, careful attention was paid to Circular A–119 of the Office of Management and Budget; Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (63 FR 8546). Circular A–119 directs Federal agencies to use voluntary consensus standards in regulatory activities in lieu of government-unique standards except where inconsistent with law or otherwise impractical.

Voluntary consensus standards bodies are defined by Circular A–119 as domestic or international organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. A voluntary consensus standards body is further defined by the following attributes: (1) Openness, (2) balance of interest, (3) due process, (4) an appeals process, and (5) consensus.

Other types of standards, which are distinct from voluntary consensus standards, include: (1) Industry standards which are developed by the private sector but not in the full consensus process, (2) government unique standards which are developed by the government for its own uses, and (3) standards mandated by law.

After reviewing the comments received, AMS believes that two standards presented by voluntary consensus standards bodies are consistent with Circular A–119. Standards presented or supported by other commenters, including the FSIS guidelines and the request that AMS develop its own standard were not further pursued. Further, after considering the comments received, AMS concluded that there is more support for standards developed by the NSF/3–A Joint Committee on Food Processing Equipment than those developed by the Technical Committee for Underwriters Laboratories 2128—the Standard for Meat and Poultry Plant Equipment. Also, commenters stated that the NSF/3–A Joint Committee on Food Processing Equipment maintained better participation and consensus, and developed standards that contain more fully developed criteria necessary for AMS to use in providing an inspection and certification program. AMS also has extensive experience in working with the voluntary consensus standards for equipment used to process dairy products that are developed by the 3–A Sanitary Standards Committees through the AMS Dairy Equipment Acceptance Program.

Therefore, AMS is proposing to inspect and certify equipment and utensils to standards developed by the NSF/3–A Joint Committee on Food Processing Equipment. This group submitted a proposed generic standard titled NSF/3–A 14159–1, "Hygiene Requirements for the Design of Meat and Poultry Processing Equipment."

AMS believes the selection of standards developed by the NSF/3–A Joint Committee on Food Processing Equipment best meet the stated objectives commenters submitted to the Agency for it to use to select a standard. AMS believes the broad-based representation on the NSF/3–A Joint Committee on Food Processing Equipment will ensure the development of standards that are compatible with applicable FSIS regulations that apply to federally inspected meat and poultry packing and processing establishments, current industry practices, transparent and objective requirements, and be able to be revised over time.

The standards developed by the NSF/3–A Joint Committee on Food Processing Equipment, which AMS proposes to adopt as the basis for the certification program, would establish minimum hygienic design requirements. The requirements are to be applied by designers and manufacturers of equipment and utensils. The standards will incorporate the following features.

—A scope that clearly defines the intended limits and application of the standards;

—Normative references to other national or international standards that are germane to the scope of the standards;
—Definitions to define the terms used within the standards;
—A listing of potential hazards that may arise;
—Hygiene requirements including strategies used by the manufacturer to identify hygiene measures, risk assessment, materials of construction, design and fabrication requirements for product contact and non-product contact surfaces; and
—Information to the users.

One commenter stated that any sanitary standard adopted by AMS should allow all of the options for establishing that equipment, utensils and their components have a satisfactory regulatory status for materials of construction under the laws and regulations administered by the Food and Drug Administration (FDA). The objective of this program is to offer a voluntary, user-fee funded service to provide a third-party assurance that equipment and utensils meet the requirements of a voluntary consensus standard. Because the objective requirements of the standard itself are developed and maintained by the NSF/3–A Joint Committee on Food Processing Equipment, the commenter's concerns pertaining to FDA compliance of food-contact materials are more appropriately directed to the NSF/3–A Joint Committee.

The Proposed Regulation

The equipment and utensil inspection and certification proposed herein would be conducted by AMS on a voluntary, fee-for-service basis. Manufacturers of new, modified, or reconditioned equipment and utensils designed to process livestock and poultry products who want to have the equipment and utensils they manufacture officially inspected and accepted by AMS as meeting the NSF/3–A standards which outline minimum requirements for cleanability, suitability of materials used in construction, inspectability and durability would apply to AMS. Copies of the NSF/3–A standards may be obtained by contacting the NSF/3–A Joint Committee on Food Processing Equipment at: 3475 Plymouth Road, Ann Arbor, Michigan 48105, Phone (734) 769–9060 or Fax (734) 769–9064. AMS will also have copies of the NSF/3–A standards available for inspection at: USDA, AMS Dairy Programs, 1400 Independence Ave, SW, Washington, DC 20250, Phone (202) 720–3171 or Fax (202) 720–2643.

To have equipment and utensils accepted under this program, equipment and utensil manufacturers would submit an application to AMS requesting evaluation of equipment and utensils. Manufacturers would apply by submitting an application and be required to indicate whether the evaluation is to be performed on a prototype, manufactured equipment and utensils, or drawing and materials list. AMS does not require the drawings, blueprints and a material list, however such blueprints and lists are encouraged as they may facilitate evaluation of equipment complex in design against the standard. It may be necessary for AMS to conduct an on-site review of the actual equipment at the point of fabrication or installed and operating in an establishment to fully evaluate the design and construction and execute final acceptance.

The cost for evaluation of equipment or utensils would depend on the complexity of design, location of the equipment or utensil to be evaluated on-site, and whether the manufacturer has provided resource materials that would facilitate inspection of the equipment or utensils by AMS to determine acceptance. Collectively, AMS estimates the average total costs to process and in-plant review a piece of equipment or a utensil to be $1,120 plus added travel costs for the required on-site review. Assuming all equipment and utensil manufacturers would use an AMS equipment and utensil certification program to the extent they used the FSIS program, it is estimated that the total cost to the industry under an AMS program would be about $2,800,000 plus travel costs for on-site reviews annually.

Manufacturers whose equipment and utensils receive AMS acceptance may, upon request, be issued an official certificate as proof that the equipment or utensil meets NSF/3–A standards and is therefore accepted. Upon written application, manufacturers of accepted equipment and utensils may receive permission to display the official mark of acceptance on equipment and utensils or in promotional literature as illustrated in the regulatory text (Figure 1).

Manufacturers whose equipment or utensil does not meet the design and fabrication requirements of the NSF/3–A standards and does not receive acceptance by AMS may appeal AMS' determination. The manufacturers would make a request for appeal service with the Chief, Dairy Grading Branch by completing and submitting a request for service to have equipment or utensils reevaluated. The appeal process is set forth in § 54.1020 through 54.1027 of the proposed regulations.

Any manufacturer whose equipment or utensil has been accepted shall resubmit the design and fabrication details of the accepted equipment or utensils whenever a change of design or fabrication has occurred. Acceptance of equipment or utensils that have not changed remains in effect for a period of four years. If no changes in equipment or utensil design or fabrication have occurred over the four year period since the last acceptance was made, manufacturers must submit a certificate of conformance signed by the chief engineering officer and chief executive officer of the company stating that no design changes have been made to receive acceptance renewal.

As was stated in the May 10, 1999, AMS News Release, this proposed equipment and utensil certification program will be operated by the AMS Dairy Programs. This decision was made because the AMS Dairy Programs has extensive technical expertise and many years of experience in working with domestic and international standards organizations and equipment manufacturers for the acceptance of dairy processing equipment.

Executive Order 12866 and the Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses would not be disproportionally burdened. Accordingly, we have prepared an initial regulatory flexibility analysis.

Development of this proposed program was authorized by the 1999 Agricultural Appropriations Bill (Pub. L. 105–277, sec. 747) and under the authority of the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621–1627).

AMS is proposing to conduct a voluntary, user-fee funded inspection and certification program for equipment and utensils that are used to process livestock and poultry products that is similar to the inspection and certification of agricultural products under the AMA. Under this proposed program, manufacturers of new, modified, or reconditioned equipment and utensils designed to process livestock and poultry products who want to have the equipment and utensils they manufacture officially inspected and accepted by AMS as meeting the NSF/3–A standards which outline minimum requirements for cleanability, suitability of materials used in construction, inspectability and durability would apply to AMS.

Alternatively, AMS could establish through rulemaking a process to approve private parties who could then perform inspection and acceptance on behalf of AMS. However it was determined that in complying with the authorizing legislation for this program which requires the Secretary to develop a program to inspect and certify agricultural processing equipment, and impose a fee for the inspection and certification, in a manner similar to the inspection and certification of agricultural products under the Agricultural Marketing Act of 1946, AMS would administer this proposed program by using government employees.

Additionally, AMS considered proposing alternative standards as the basis of its inspection and certification program. However, AMS believes that the standards proposed herein represent the best alternative taking into account the program's requirements.

Under this proposed equipment and utensil acceptance program, equipment and utensil manufacturers seeking AMS acceptance and certification would apply to AMS for an evaluation of their equipment and utensils. Although AMS does not require the drawings, blueprints and a material list upon application, AMS encourages applicants to submit such blueprints and lists to facilitate evaluation of complex equipment and utensils. Additionally, some equipment and utensils will require AMS to conduct an on-site review at the point of fabrication or installed and operating in an establishment to fully evaluate the design and construction and execute final acceptance.

To maintain acceptance and certification, these regulations would require any manufacturer whose equipment or utensil has been accepted to resubmit the design and fabrication details of the accepted equipment or utensils whenever a change of design or fabrication occurs. Barring changes in equipment or utensil design and fabrication, acceptance is granted for a four year period. When equipment or utensil acceptance nears expiration at the end of the four year period, manufacturers may send a letter stating that no design changes have been made to receive an additional four year acceptance renewal.

This action will benefit manufacturers of equipment and utensils used for processing meat and poultry products and the purchasers of such equipment and utensils by providing AMS certification that the equipment and utensils meet the minimum requirements of voluntary consensus standards for sanitary design. Acceptance by AMS will provide manufacturers and buyers assurance that equipment and utensils can be cleaned, are constructed of suitable materials, are durable, and can be inspected.

This proposed equipment and utensil inspection and certification program affects manufacturers or other vendors of equipment and utensils. The equipment and utensil manufacturers range in size from small to large concerns. According to the Standard Industrial Classification (SIC) (13 CFR 121.201) which are used by the Small Business Administration to identify small businesses, a small business equipment and utensil manufacturer is defined a firm with less than 500 employees (SIC Division D. Major Group 20). According to the most complete data available to AMS, it is estimated that there are about 2000 equipment and utensil manufacturers, about 90 percent of these can be classified as small entities.

Previously, FSIS maintained a mandatory prior approval program for equipment and utensil inspection as a prerequisite for use in Federally inspected meat and poultry packing and processing establishments that affected these same entities. Under FSIS' former mandatory prior approval program for equipment, an estimated 2,500 applications for equipment approval were received each year. Evaluation and certification of equipment and utensils is based on the complexity and sophistication of the design and fabrication of the equipment or utensil being evaluated.

The paperwork burden that may be imposed on equipment and utensil manufacturers by this proposed action is further discussed in the section entitled Paperwork Reduction Act that follows.

In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule. Further, as discussed below, this program will be operated by the AMS Dairy Programs using its relevant fee structure.

The 1999 Agricultural Appropriations Bill directed the Secretary of Agriculture to develop this inspection and certification program for equipment used to process livestock and poultry products in a manner similar to other inspection and certification programs administered by AMS under the authority of the Agricultural Marketing Act of 1946. Under the Agricultural Marketing Act of 1946, AMS is required to collect reasonable fees for providing official services provided under this proposed equipment and utensil certification program, to cover as nearly as practicable AMS costs for performing the service including related administrative and supervisory costs. Since the procedures used to inspect and certify equipment and utensils used to process livestock and poultry products are similar to those used to inspect and certify dairy processing equipment, AMS has decided to charge the same hourly fees for inspecting and certifying equipment used to process livestock and poultry products. Inspection and certification services are based on the hourly rate for applicants who request services on an hourly basis and appear at 7 CFR part 58 as published in the **Federal Register** at 62 FR 66258 on December 18, 1997. The current base hourly rate for such service is $56 per hour for service performed between 6:00 a.m. and 6:00 p.m. and $61.60 for service performed between 6:00 p.m. and 6:00 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the equipment review specialist in connection with the performance of the service. A minimum charge of one-half hour will be made for the service pursuant to each request or certificate issued. If an applicant requests that certification service be performed on a holiday, Saturday, or Sunday or in excess of each 8-hour shift Monday through Friday, the applicant would be charged such service at a rate of 1½ times the rate which would be applicable for such service if performed during normal working hours.

AMS estimates that the time required to review and accept an initial submission for simple designs would be 1 hour. For complex designs, AMS estimates that the time required to review and accept an initial submission would be 8 hours. Based on the proposed AMS base hourly fee for service of $56 per hour, an initial submission of assembly type drawings and corresponding parts and material lists should range from $56 to $448. However, the final cost for equipment or utensil inspection and certification

would be contingent on a final on-site review of the equipment or utensil at the point of fabrication or under conditions of actual use. The cost of this on-site review would include associated travel and per diem costs in addition to the hourly fee for service. AMS estimates the average time to perform a on-site review for a piece of equipment or utensil to be 12 hours.

The cost for evaluation of equipment or utensils would depend on the complexity of design, location of the equipment or utensil to be evaluated on-site, and whether the manufacturer has provided resource materials that would facilitate inspection of the equipment or utensil by AMS to determine acceptance. AMS estimates the average total costs to process and in-plant review a piece of equipment or utensil to be $1,120 plus added travel costs for the required on-site review. Assuming all equipment and utensil manufacturers would use an AMS equipment and utensil certification program to the extent they used the FSIS program, it is estimated that the total cost to the industry under an AMS program would be about $2,800,000 plus travel costs for on-site reviews annually. Since approximately 90 percent of equipment and utensil manufacturers are small businesses, the estimated share of the total annual industry burden directly affecting small businesses would be $2,520,000.

In assessing alternatives to the scheme provided for in these proposed regulations, we believe that the provisions contained herein would best accomplish its purpose and at the same time minimize any burden that might be placed upon affected parties. Nonetheless, we invite comments concerning the potential effects of this proposed regulation on affected parties, including more information on the benefits or burden that small entities may incur as a result of implementation of this proposal.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform and is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. Further, section 747 of the 1999 Agricultural Appropriations Bill states that the provision does not affect the authority of the Secretary to carry out the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*): the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*); or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Paperwork Reduction Act Requirements

This proposed rule contains paperwork submission requirements that are subject to public comment and to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35). In accordance with 5 CFR part 1320, we included the description of the reporting requirements and an estimate of the annual burden on manufacturers of equipment and utensils used to process livestock and poultry products. As identified in § 54.1004 of these proposed regulations, the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products service would be administered by the Dairy Programs of AMS. During the administration of the service, Dairy Programs will expand the use of existing Dairy Programs forms currently approved by OMB under 7 CFR part 58, subpart A, Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products. The Agency published a **Federal Register** Notice 65 FR 2370, dated January 14, 2000, that expanded the use of these forms and allowed for a 60-day comment period. The following is provided in this proposed action to allow for an additional opportunity for public comment on the specified burden that would be placed on those entities affected by this rule.

OMB Number: 0581–0126.

Expiration Date of Approval: July 31, 2001.

Abstract: The dairy grading program is a voluntary, user-fee funded program. In order for a voluntary inspection program to perform satisfactorily with a minimum of confusion, there must be written requirements and rules for both Government and industry. The information collections are essential to carry out and administer the inspection and grading program. The information requested is used to identify the product offered for grading, to identify a request from an equipment manufacturer of equipment used in the dairy, meat or poultry industries for evaluation for sanitary design and construction, to identify and contact the party responsible for payment of the inspection, grading or equipment evaluation fee and expense, to identify applicants who wish to be authorized for the display of official identification on product packaging materials, equipment, utensils, or on descriptive or promotional materials.

The equipment and utensil inspection and certification proposed herein would use the forms described above in a program that would be conducted by AMS on a voluntary, fee-for-service basis. Manufacturers of new, modified, or reconditioned equipment and utensils designed to process livestock and poultry products who want to have the equipment or utensils they manufacture officially inspected and accepted by AMS as meeting the NSF/3–A standards which outline minimum requirements for cleanability, suitability of materials used in construction, inspectability and durability would apply to AMS.

For the purposes of this burden estimate, AMS estimates that the hourly wage for those submitting information would be $20 per hour. To have equipment and utensils accepted under this program, equipment and utensil manufacturers would submit an application to AMS requesting evaluation of equipment or utensils (Form DA–162). AMS estimates that of the 2000 livestock and poultry equipment and utensil manufacturers, AMS will receive approximately 2500 applications per year or, on average, 1.25 applications from each manufacturer. Form DA–162 requires 0.038 hours to complete. The total annual burden on the industry for this proposed collection of information would be 95 hours or $1,900 annually. Since AMS does not require the drawings, blueprints and a material list to be submitted, they have not been included in this burden estimate.

Manufacturers whose equipment or utensil receives AMS acceptance may, upon request, be issued an official certificate as proof that the equipment or utensil meets NSF/3–A standards and is therefore accepted. Since completion of this certificate is performed by AMS, it has also not been included in this burden estimate. Upon written application (Form DA–155 and Form DA–156), manufacturers of accepted equipment or utensils may receive permission to display the official mark of acceptance on equipment and utensils, or in promotional literature as illustrated in the regulatory text (Figure 1). Form DA–155 is a one-time application from each manufacturer, and therefore has been estimated to only be sent by a respondent once in every four-year cycle of equipment and utensil approval. The estimate of the total annual burden of this collection of information is 10.5 hours or $210 annually. Form DA–156 is submitted by a manufacturer each time there is a request to use the symbol on a piece of equipment or utensil, or in promotional literature. AMS estimates that it would receive one request each year to use the symbol on equipment or utensils, or in promotional material for each piece of equipment or utensil accepted. Therefore, AMS estimates that the total annual burden for this collection of information would be 42.5 hours or $850 annually.

Manufacturers whose equipment or utensil does not meet the design and fabrication requirements of the NSF/3–A standards and does not receive acceptance by AMS may appeal AMS' determination. The manufacturers would make a request for appeal service with the Chief, Dairy Grading Branch by completing and submitting a request for service (Form DA–162) to have equipment or utensils reevaluated. The appeal process is set forth in sections § 54.1020 through § 54.1027 of the proposed regulations. As the AMS Dairy Program has never received an appeal for service under its current equipment acceptance program, AMS has estimated that 1% of applicants will appeal service in this estimate of the burden of the collection of information. Accordingly, with 2500 applications per year and Form DA–162 requiring 0.038 hours to complete and an estimate of only 1 percent of applicants requiring an appeal, the total annual burden on the industry for this proposed collection of information would be 0.95 hours or $19 annually.

Any manufacturer whose equipment or utensil has been certified shall resubmit the design and fabrication details of the certified equipment or utensil whenever a change of design or fabrication has occurred. Certification of equipment or utensils that have not changed remains in effect for a period of four years. If no changes in equipment or utensil design or fabrication have occurred over the four year period since the last certification was made, manufacturers must submit a certificate of conformance signed by the chief engineering officer and chief executive officer of the company stating that no design changes have been made to receive certification renewal. AMS estimates that it would receive one such request every four years for each piece of equipment or utensil accepted. AMS estimates that the total annual burden for this collection of information would be 52 hours or $1,040 annually.

Collectively, AMS estimates that the total annual burden for the collection of information would be 200.95 hours or $4019 annually.

1. Equipment Review Request—Form DA–162.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.038 hours per response.

Respondents: Manufacturers of equipment and utensils used to process livestock and poultry products.

Estimated Number of Respondents: 2000.

Estimated Number of Responses per Respondent: 1.25.

Estimated Total Annual Burden on Respondents: 95 hours.

Total Cost: $1,900.

2. Application to use official ID—Form DA–155.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.021 hours per response.

Estimated number of respondents: 2000.

Estimated Number of Responses per Respondent: 0.250.

Estimated Total Annual Burden on Respondents: 10.5 hours.

Total Cost: $210.

3. Request to Display Official ID—Form DA–156.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.017 hours per response.

Estimated number of respondents: 2000.

Estimated Number of Responses per Respondent: 1.25.

Estimated Total Annual Burden on Respondents: 42.5 hours.

Total Cost: $850.

4. Appeal—Equipment Review Request—Form DA–162.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.038 hours per response.

Respondents: Manufacturers of equipment and utensils used to process livestock and poultry products.

Estimated Number of Respondents: 2000.

Estimated Number of Responses per Respondent: 0.0125.

Estimated Total Annual Burden on Respondents: 0.95 hours.

Total Cost: $19.

5. Letter requesting renewal of acceptance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours per response.

Estimated number of respondents: 2000.

Estimated Number of Responses per Respondent: 0.313.

Estimated Total Annual Burden on Respondents: 52 hours.

Total Cost: $1,040.

Estimated Total Annual Burden on Respondents: 200.95 hours total or 0.1 hours per respondent.

Estimated Total Annual Costs: $4,019 or $2 per respondent.

AMS is soliciting comments from all interested parties concerning the information collection requirements contained in this proposed rule. Comments are specifically invited on the following: (1) The accuracy of the agency's burden estimate of the proposed collection of information including the validity of the methodology and assumptions used; (2) ways to minimize the burden of the collection of information on those who would respond, including through the use of appropriate electronic collection methods; (3) whether the proposed collection of information is sufficient or necessary for the proper performance of the functions of the agency to perform this program; and (4) ways to enhance the quality, utility, and clarity of the information to be collected.

Send two copies of comments concerning the collection requirements of this proposed rule to Barry L. Carpenter, Deputy Administrator, Livestock and Seed Program, Docket No. LS–99–12, Room 2092 South Agriculture Building, 1400 Independence Ave., SW, Washington, DC 20250–0249.

All comments received in response to this notice will be considered part of the public record and will be available for viewing in Room 2092 South Agriculture Building, 1400 Independence Ave., SW, Washington, DC 20250–0249 between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

For the reasons set forth in the preamble 7 CFR part 54 is proposed to be amended as follows:

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for part 54 is revised to read as follows:

Authority: 7 U.S.C. 1621–1627; Pub. L. 105–277, sec. 747)

2. In part 54 a new subpart C consisting of §§ 54.1001 through 54.1034 is added to read as follows:

Subpart C—Regulations Governing the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products

Sec.

54.1001 Meaning of words.
54.1002 Terms defined.
54.1003 Designation of official certificates, memoranda, marks, and other identifications for purposes of the Agricultural Marketing Act of 1946.
54.1004 Administration and implementation.
54.1005 Basis of service.
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54.1020 Appeal service; marking products or appeal; requirements for appeal; certain determinations not appealable.
54.1021 Request for appeal service.
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Subpart C—Regulations Governing the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products

§ 54.1001 Meaning of words.

For the purposes of the regulations in this subpart, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand.

§ 54.1002 Terms defined.

Act. The Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627).

Administrator. The Administrator of the Agricultural Marketing Service (AMS), United States Department of Agriculture, or the representative to whom authority has been delegated to act in the stead of the Administrator.

Agricultural Marketing Service (AMS). The Agricultural Marketing Service of the United States Department of Agriculture.

Applicant. Any person who applies for service under the regulations in this subpart.

Branch. The Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service.

Chief. The Chief of the Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service, or the representative to whom authority has been delegated to act in the stead of the Chief.

Compliance. Conformity of a processing system, piece of processing equipment, or a utensil to identified specifications or standards.

Department. The United States Department of Agriculture.

Deputy Administrator. The Deputy Administrator of the Dairy Programs of the Agricultural Marketing Service or any officer or employee of the Dairy Programs to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in the stead of the Deputy Administrator.

Design Review Specialist. An employee of the Branch to determine and certify or otherwise evaluate the compliance of equipment or utensils under the regulations.

Design Evaluation and Certification Service. The service established and conducted under the regulations for the evaluation and certification or other identification of the compliance of equipment or utensils used for the slaughter, processing or packaging of livestock and poultry products (Referred to hereinafter as "equipment" or "utensils") with sanitary specifications or standards.

Fabricator. Commercial entity engaged in the manufacture or assembly of equipment or utensils.

Financially interested person. Any person having a financial interest in the equipment or utensils involved, including but not limited to the designer, fabricator, or user of the equipment or utensils.

Legal Holiday. Those days designated as legal public holidays in Title 5, United States Code, section 6103(a).

Person. Any individual, partnership, corporation, or other legal entity, or Government agency.

Processing. Cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing in a container.

Program. The Dairy Programs of the Agricultural Marketing Service.

Standards. The most recent version of standards for equipment and utensils formulated by the NSF/3–A Joint Committee on Food Processing Equipment (Referred to hereinafter as "NSF/3–A").

The regulations. The regulations in this Subpart.

§ 54.1003 Designation of official certificates, memoranda, marks, and other identifications, for purposes of the Agricultural Marketing Act of 1946.

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended provides criminal penalties for various specified offenses relating to official certificates, memoranda, and marks or other identifications, issued or authorized under section 203 of said Act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this subpart, the terms listed in paragraphs (a) through (c) of this section shall have the respective meanings specified:

(a) *Official certificate* means any form of certification, either written or printed, used under the regulations to certify with respect to the evaluation, review, condition, or acceptance of equipment or utensils (including the compliance of equipment or utensils with applicable standards).

(b) *Official memorandum* means any initial record of findings made by an authorized employee of the Dairy Grading Branch in the process of determining compliance, evaluating, or reviewing equipment or utensils pursuant to the regulations, any processing or in plant-operation report made by an authorized Dairy Grading Branch employee in connection with determining compliance, evaluating, or reviewing equipment or utensils under the regulations, and any report made by an authorized employee of the Dairy Grading Branch of any other services performed pursuant to the regulations.

(c) *Official mark* or *other official identification* means any form of mark or other identification, including those prescribed in § 54.1018; used under the regulations in marking any equipment or utensils or displayed as an indication that the equipment or utensils has been evaluated by AMS (including the compliance of the equipment or utensils with applicable standards).

§ 54.1004 Administration and implementation.

The Administrator designates the administration and implementation of the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products service to the Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service. The Chief is charged with the administration, under the general supervision and direction of the Deputy Administrator, of the regulations and the Act insofar as they relate to equipment or utensils used to process livestock and poultry products.

§ 54.1005 Basis of service.

(a) Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products service shall be performed in accordance with the provisions of this subpart, the instructions, guidelines and procedures issued or approved by the Chief and the applicable standards developed by the NSF/3–A.

(b) Copies of standards developed by NSF/3–A that AMS will inspect and certify to are available, for a nominal fee, from NSF International, 3475 Plymouth Road, Ann Arbor, MI 48105; www.nsf.org; Phone (800) 673–6275; Fax (734) 769–9064. Copies of all other instructions, guidelines and procedures can be obtained from, and copies of standards developed by NSF/3–A may be inspected at, the U.S. Department of Agriculture, Agricultural Marketing Service, Dairy Programs, Dairy Grading Branch; Room 2750–S; 1400 Independence Ave., SW., Washington, DC 20250–6456.

(c) All services provided in accordance with the regulations shall be rendered without discrimination on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.

§ 54.1006 Kind of service.

Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products service under the regulations shall consist of the evaluation, certification and/or identification, upon request by the applicant, of the adherence of the design and fabrication of equipment and utensils to sanitary principles and criteria under applicable standards identified in this subpart. Determination as to equipment or utensils compliance with standards for materials of fabrication or method of fabrication may be based upon information received from the fabricator.

§ 54.1007 Availability of service.

Service under these regulations may be made available to the designers, fabricators, users, or other interested person or party, of the equipment or utensils. Subject to the provisions of this subpart, services shall be performed only when a qualified design review specialist is available, and when the location of the equipment or utensils, evaluation facilities and conditions, as determined by the Chief, are suitable for conducting such service.

§ 54.1008 How to obtain service.

(a) *Application.* Any person may apply to the Chief for service under the regulations with respect to equipment or utensils in which the applicant is financially interested. The application shall be made on a form approved by the Chief. In any case in which the service is intended to be furnished at an establishment not operated by the applicant, the applicant shall be responsible for obtaining approval for accessibility of the equipment or utensil from the operator of such establishment and such approval shall constitute an authorization for any employees of the Department to enter the establishment for the purpose of performing their functions under the regulations. The application shall state:

(1) The name and address of the establishment at which service is desired;

(2) The name and post office address of the applicant;

(3) Identification of the party that will be responsible for payment of all services rendered in response to the request;

(4) The type of equipment or utensil presented for evaluation;

(5) The date(s) on which service is requested to be performed; and

(6) The signature of the applicant (or the signature and title of the applicant's representative) and date of the request.

(b) *Notice of eligibility for service.* The applicant for service will be notified whether the applicant's application is approved.

§ 54.1009 Order of furnishing service.

Service under the regulations shall be furnished to applicants, insofar as practicable and subject to the availability of qualified design review specialist, in the order in which requests therefor are received, insofar as consistent with good management, efficiency and economy. Precedence will be given, when necessary, to requests made by any government agency and to requests for appeal service under § 54.1021.

§ 54.1010 When request for service deemed made.

A request for service under the regulations shall be deemed to be made when received by the Branch. Records showing the date and time of the request shall be maintained.

§ 54.1011 Withdrawal of application or request for service.

An application or a request for service under the regulations may be withdrawn by the applicant at any time before the application is approved or prior to performance of service. The applicant shall be responsible for payment, in accordance with §§ 54.1028 and 54.1029, of any expenses already incurred by the Agricultural Marketing Service in connection therewith.

§ 54.1012 Authority of agent.

Proof of the authority of any person making an application or a request for service under the regulations on behalf of any other person may be required at the discretion of the Deputy Administrator or Chief or other employee receiving the application or request under § 54.1008.

§ 54.1013 When an application may be rejected.

(a) An application or a request for service may be denied by the design review specialist, with the concurrence of the Deputy Administrator or Chief:

(1) For administrative reasons such as the non-availability of personnel to perform the service;

(2) In case the application or request relates to equipment or utensils which are not eligible for service under § 54.1006;

(3) The applicant fails to meet either the application requirements prescribed in this subpart or the conditions for receiving such service;

(4) The equipment or utensil is owned by, or located on the premises of, a person currently denied the benefits of the Act;

(5) The applicant has substantial financial ties to a person who is currently denied the benefits of the Act, or who has been adjudged, in an administrative or judicial proceeding, responsible in any way for a current

denial of benefits of the Act to any other person.

(6) The applicant is currently denied services under the Act.

(7) Any fees billed to the applicant are not paid within 30 days; or

(8) The applicant has failed to comply with the Act or this subpart or with the instructions, guidelines or procedures issued hereunder.

(b) The Chief shall provide notice to an applicant whose application is rejected, and shall explain the reason(s) for the rejection. If such notification is made verbally, written confirmation may be provided.

§ 54.1014 Accessibility of equipment and utensils; access to establishments.

(a) The applicant shall cause equipment and utensils to be made easily accessible for examination and to be so placed, with adequate illumination to facilitate evaluation for compliance. The applicant shall furnish or make available any necessary tools; such as boroscope, profilometer, disassembly tools, ladders, radius gauges, and the like; necessary to complete the evaluation.

(b) Supervisors of USDA design review specialists responsible for maintaining uniformity and accuracy of service under the regulations shall have access to all parts of establishments covered by approved applications for service under the regulations, for the purpose of examining all equipment or utensils in the establishments which have been or are to be evaluated for compliance with standards or which bear any marks of compliance.

§ 54.1015 Official reports, forms, and certificates.

(a) *Report.* The design review specialist shall prepare, sign, and issue a narrative report covering the observations, comments and recommendations based on the evaluation for conformance with standards of equipment and utensils as provided for in § 54.1005 and indicate the fees and other charges incurred for the services rendered.

(b) *Forms.* Form DA–161 is the official certificate for equipment or utensils evaluated and is accepted under the regulations. Issuance of this certificate is optional at the request of the applicant.

(c) *Distribution.* The original report and official certificate (if requested) shall be delivered or mailed to the applicant or other persons designated by the applicant. Other copies shall be forwarded as required by agency, program, and branch instructions. Additional copies will be furnished to any person financially interested in the equipment or utensil involved with the concurrence of the applicant and upon payment of fees, as provided in §§ 54.1028 and 54.1029.

§ 54.1016 Advance information concerning service rendered.

Upon request of any applicant, all or any part of the contents of any report issued to the applicant under the regulations, or other notification concerning the determination of compliance of equipment or utensils for such applicant may be transmitted by facsimile transmission to the applicant, or to any person designated by the applicant at the applicant's expense.

§ 54.1017 Authority to use official identification.

The Chief may authorize an applicant or any persons designated by the applicant to use the official identification symbol to mark equipment or utensils, or for display in descriptive or promotional materials providing the equipment or utensils is evaluated pursuant to this subpart and found to be in compliance.

§ 54.1018 Form of official identification and approval for use.

(a) The official identification symbol approved for use on equipment, utensils, or descriptive or promotional materials shall appear in the form and design shown in Figure 1.

(b) The official identification symbol on equipment or utensils shall be displayed by etching or the placement of a non-removable sticker located in close proximity to the equipment identification plate.

(c) The official identification symbol shall be sufficiently large to be identifiable and legible.

(d) The official identification symbol shall not be used in descriptive and promotional materials without prior approval by the Chief. The official identification symbol, if used, on the descriptive or promotional materials shall be printed as part of the text or format.

(e) An applicant shall submit to the Chief of the Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 96456, Washington, DC 20090–6456, an application, if one is not on file, requesting approval to use the official identification symbol on officially accepted equipment and in descriptive or promotional materials.

BILLING CODE 3410–02–P

Figure 1. Official identification symbol.

BILLING CODE 3410–02–C

§ 54.1019 Renewal of acceptance certification.

Any equipment and utensil which has been issued a report or certification stating acceptance of compliance, or approval to display official identification shall resubmit the design and fabrication details of the equipment or utensil whenever a change of design or fabrication has occurred but in no case longer than four years after the date of the most recent report stating acceptance of compliance. If no design or fabrication changes have been made, the applicant may submit a certificate of conformance signed by the chief engineering officer and the chief executive officer of the company stating that no design changes have been made to the specified equipment or utensil.

§ 54.1020 Appeal service; marking equipment or utensils on appeal; requirements for appeal; certain determinations not appealable.

(a) Appeal service is a re-evaluation of the compliance of a piece of equipment, portion of a piece of equipment, or utensil to design or fabrication criteria according to the standards prescribed by this subpart.

(b) Only the original applicant or their representative may request appeal service requesting a reevaluation on the original determination of the design and fabrication of the equipment or utensil for compliance with the standards specified in this subpart.

(c) Appeal service will not be furnished for:

(1) A piece of equipment, portion of a piece of equipment, or utensil which has been altered or has undergone a material change since the original service.

(2) For the purpose of obtaining an up-to-date report or certificate which does not involve a question as to the correctness of the original service for the piece of equipment, portion of a piece of equipment, or utensil.

§ 54.1021 Request for appeal service.

(a) Except as otherwise provided in § 54.1020, an applicant or other persons who have a financial interest in a piece of equipment, portion of a piece of equipment, or utensil under the regulations may request appeal service when the applicant or other persons who have a financial interest in a piece of equipment, portion of a piece of equipment, or utensil disagree with the determination as to compliance with the standard of the piece of equipment, portion of a piece of equipment, or utensil as documented in the applicable report.

(b) A request for appeal service shall be filed with the Chief, directly or through the design review specialist who performed the original service. The request shall state the reasons for the disagreement with the original determination and may be accompanied by a copy of any previous certificate or report, or any other information which the applicant may have received regarding the piece of equipment, portion of a piece of equipment, or utensil at the time of the original service. Such request may be made orally (including by telephone) or in writing (including by facsimile transmission). If made orally, the Dairy Grading Branch employee receiving the request may require that it be confirmed in writing.

§ 54.1022 When request for appeal service may be withdrawn.

A request for appeal service may be withdrawn by the applicant at any time before the appeal service has been performed, upon payment of any expenses already incurred under the regulations by the Branch in connection therewith.

§ 54.1023 Denial or withdrawal of appeal service.

A request for appeal service may be rejected or such service may be otherwise denied to or withdrawn from any person in accordance with the procedure set forth in § 54.1013(a), if it appears that the person or product involved is not eligible for appeal service under § 54.1020, or that the identity of the piece of equipment, portion of a piece of equipment, or utensil has been lost; or for any of the causes set forth in § 54.1013(a).

§ 54.1024 Who shall perform appeal service.

Appeal service for equipment or utensils shall be performed by the Chief or a design review specialist designated by the Chief. No design review specialist may perform appeal service for any piece of equipment, portion of a piece of equipment or utensil for which the original design review specialist performed the initial evaluation service.

§ 54.1025 Appeal reports.

After appeal service has been performed for any piece of equipment, portion of a piece of equipment or utensils, an official report shall be prepared, signed, and issued referring specifically to the original report and stating the determination of the re-evaluation of compliance of the piece of equipment, portion of a piece of equipment or utensil.

§ 54.1026 Superseded reports.

The appeal report shall supersede the original report which, thereupon, shall become null and void for that portion of the report pertaining to the appeal service and shall not thereafter be deemed to show the compliance of the equipment or utensils described therein. However, the fees charged for the original service shall not be remitted to the applicant who filed the appeal.

§ 54.1027 Application of other regulations to appeal service.

The regulations in § 54.1001 through 54.1019 and § 54.1028 through 54.1034 shall apply to appeal service except insofar as they are inapplicable.

§ 54.1028 Fees and other charges for service.

Fees and other charges equal as nearly as may be to the cost of the services rendered shall be assessed and collected from applicants in accordance with the provisions for Fees and Charges set forth in 7 CFR Part 58, Subpart A,—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products, § 58.38, § 58.39, § 58.41, § 58.42, and § 58.43, as appropriate.

§ 54.1029 Payment of fees and other charges.

Fees and other charges for service shall be paid upon receipt of billing for fees and other charges for service. The applicant shall remit by check, draft, or money order, made payable to the Agricultural Marketing Service, USDA, payment for the service in accordance with directions on the billing, and such fees and charges shall be paid in advance if required by the official design review specialist or other authorized official.

§ 54.1030 Identification.

All official design review specialists and supervisors shall have their Agricultural Marketing Service identification cards in their possession at all times while they are performing any function under the regulations and shall identify themselves by such cards upon request.

§ 54.1031 Errors in service.

When a design review specialist, supervisor, or other responsible employee of the Branch has evidence of inaccurate evaluation, or of incorrect certification or other incorrect determination or identification as to the compliance of a piece of equipment or utensil, such person shall report the matter to the Chief. The Chief will investigate the matter and, if deemed advisable, will report any material errors to the owner or the owner's agent. The Chief shall take appropriate action to correct errors found in the determination of compliance of equipment or utensils, and the Chief shall take adequate measures to prevent the recurrence of such errors.

§ 54.1032 Denial or withdrawal of service.

(a) *For misconduct—(1) Bases for denial or withdrawal.* An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person who, or whose employee or agent in the scope of the person's employment or agency:

(i) Has wilfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service under the regulations;

(ii) Has given or attempted to give, as a loan or for any other purpose, any money, favor, or other thing of value, to any employee of the Department authorized to perform any function under the regulations;

(iii) Has interfered with or obstructed, or attempted to interfere with or to obstruct, any employee of the Department in the performance of duties under the regulations by intimidation, threats, assaults, abuse, or any other improper means;

(iv) Has knowingly falsely made, issued, altered, forged, or counterfeited any official certificate, memorandum, mark, or other identification;

(v) Has knowingly uttered, published, or used as true any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark or identification;

(vi) Has knowingly obtained or retained possession of any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark or identification, or of any equipment or utensil bearing any such

falsely made, issued, altered, forged, or counterfeited mark or identification;

(vii) Has applied the designation "USDA Accepted Equipment", "AMS Accepted Equipment", "USDA Approved Equipment", "AMS Approved Equipment", "Approved By USDA", "Approved By AMS", "Accepted By USDA", "Accepted By AMS", "USDA Approved", "USDA Accepted", "AMS Approved", "AMS Accepted", or any other variation of wording which states or implies official sanction by the United States Department of Agriculture by stamp, or brand directly on any equipment or utensil, or used as part of any promotional materials which has not been inspected and deemed in compliance with this subpart; or,

(viii) Has in any manner not specified in this paragraph violated subsection 203(h) of the AMA: *Provided*, That paragraph (a)(1)(vi) of this section shall not be deemed to be violated if the person in possession of any item mentioned therein notifies the Deputy Administrator or Chief without such delay that such person has possession of such item and, in the case of an official identification, surrenders it to the Chief, and, in the case of any other item, surrenders it to the Deputy Administrator or Chief or destroys it or brings it into compliance with the regulations by obliterating or removing the violative features under supervision of the Deputy Administrator or Chief: *And provided further*, That paragraphs (a)(1) (ii) through (vii) of this section shall not be deemed to be violated by any act committed by any person prior to the making of an application of service under the regulations by the principal person. An application or a request for service may be rejected or the benefits of the service may be otherwise denied to, or withdrawn from, any person who operates an establishment for which such person has made application for service if, with the knowledge of such operator, any other person conducting any operations in such establishment has committed any of the offenses specified in paragraphs (a)(1) (i) through (vii) of this section after such application was made. Moreover, an application or a request for service made in the name of a person otherwise eligible for service under the regulations may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, such a person.

(A) In case the service is or would be performed at an establishment operated:

(*1*) By a corporation, partnership, or other person from whom the benefits of the service are currently being withheld under this paragraph, or

(*2*) By a corporation, partnership, or other person having an officer, director, partner, or substantial investor from whom the benefits of the service are currently being withheld and who has any authority with respect to the establishment where service is or would be performed; or

(B) In case the service is or would be performed with respect to any product in which any corporation, partnership, or other person within paragraph (a)(1)(viii)(A)(1) of this section has a contract or other financial interest.

(2) *Procedure.* All cases arising under this paragraph shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in 7 CFR §§ 1.130 through 1.151 and the Supplemental Rules of Practice in part 50, 7 CFR § 50.1 *et seq.*

(b) *Filing of records.* The final orders in formal proceedings under paragraph (a) of this section to deny or withdraw the service under the regulations (except orders required for good cause to be held confidential and not cited as precedents) and other records in such proceedings (except those required for good cause to be held confidential) shall be filed with the Hearing Clerk and shall be available for inspection by persons having a proper interest therein.

§ 54.1033 Confidential treatment.

Every design review specialist providing service under these regulations shall keep confidential all information secured and not disclose such information to any person except an authorized representative of the Department.

§ 54.1034 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The following control number has been assigned to the information collection requirements in 7 CFR Part 54, Subpart C, by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

7 CFR section where requirements are described	Current OMB control No.
54.1008(a)	0581–0126
54.1017	0581–0126
54.1018(e)	0581–0126
54.1019	0581–0126
54.1020	0581–0126
54.1021	0581–0126

Dated: June 1, 2000.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 00–14113 Filed 6–5–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–03–AD]

Airworthiness Directives; MD Helicopters, Inc. Model MD–900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) Model MD–900 helicopters. The AD would require modifying the non-rotating swashplate assembly and re-identifying it and the swashplate assembly with a new part number (P/N). The AD would also require creating a component history card or equivalent record to track the life of the newly identified non-rotating swashplate assembly and establishing a life limit of 1800 hours time-in-service (TIS). In addition, the AD would require inspecting and modifying, if necessary, the longitudinal drive link assembly. This proposal is prompted by reports of damage to the longitudinal drive link assembly caused by the sharp inner edge of the bushing in the non-rotating swashplate assembly. The actions specified by the proposed AD are intended to prevent damage to the longitudinal drive link, loss of control of the main rotor system, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 7, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–03–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Greg DiLibero, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5231, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–03–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–03–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD for MDHI Model MD–900 helicopters, serial numbers 0008 through 0068. The AD would require modifying the non-rotating swashplate and re-identifying it and the swashplate assembly with a new P/N. The AD would also require creating or modifying the existing component history card or equivalent record to track the life of the newly identified non-rotating swashplate assembly and establishing a life limit of 1800 hours TIS. In addition, the AD would require inspecting and modifying, if necessary, the longitudinal drive link assembly. This proposal is prompted by reports of damage to the longitudinal drive link assembly. The damage is caused by the small clearance between the non-rotating swashplate bushing and the longitudinal drive link combined with the sharp outer edges of the non-rotating swashplate bushing. This condition, if not corrected, could result in damage to the longitudinal drive link, loss of control of the main rotor system, and subsequent loss of control of the helicopter.

The FAA has reviewed MDHI Service Bulletin SB900–071, dated January 10, 2000 (SB), which describes procedures for reworking of the bushing in the non-rotating swashplate assembly, re-identifying the swashplate and the non-rotating swashplate assemblies, and inspecting and repairing the longitudinal drive link assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHI Model MD–900 helicopters of the same type design, the proposed AD would require the following:

- Within the next 100 hours TIS or 3 months, whichever occurs first,
- Modify the non-rotating swashplate assembly, P/N 900C2010192–111 and reidentify as P/N 900C2010192–113 after modification;
- Re-identify swashplate assembly, P/N 900C1010004–125, as P/N 900C1010004–127;
- Create or modify the existing component history card or equivalent record to track the life of the newly identified non-rotating swashplate assembly, P/N 900C2010192–113, including the hours TIS accumulated when it was identified as P/N 900C2010192–111;
- Visually and dye-penetrant inspect and modify, if necessary, the longitudinal drive link assembly, P/N 900C2010212–101.
- Establish a life limit of 1800 hours TIS for the non-rotating swashplate assembly, P/N 900C2010192–113.

The actions would be required to be accomplished in accordance with the SB described previously.

The FAA estimates that 28 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1164 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $35,952.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

MD Helicopters Inc.: Docket No. 2000–SW–03–AD

Applicability: Model MD–900 helicopters, serial numbers 0008 through 0068, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the longitudinal drive link, loss of control of the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) or 3 months, whichever occurs first:

(1) Modify the non-rotating swashplate assembly, part number (P/N) 900C2010192–111, in accordance with the Accomplishment Instructions, paragraphs 2.A.(1). and 2.A.(2)., of MD Helicopters (MDHI) Service Bulletin SB900–071, dated January 10, 2000 (SB).

(2) Re-identify swashplate assembly, P/N 900C1010004–125, as P/N 900C1010004–127, and non-rotating swashplate assembly, P/N 900C2010192–111, as P/N 900C2010192–113 using contrasting color permanent ink. When the ink is dry, apply varnish over the P/N.

(3) Create or modify the existing component history card or equivalent record to track the life of the non-rotating swashplate assembly, P/N 900C2010192–113. Include the hours TIS accumulated when P/N 900C2010192–113 was identified as P/N 900C2010192–111.

(4) Visually and dye-penetrant inspect the longitudinal drive link assembly, P/N 900C2010212–101, for gouging and cracking in accordance with the Accomplishment Instructions, paragraph 2.B.(1). and 2.B.(2). of the SB except that returning scrap parts to MDHI is not required by this AD.

(i) If a crack is found, before further flight, replace the longitudinal drive link assembly, P/N 900C2010212–101, with an airworthy longitudinal drive link assembly.

(ii) If gouging is found, modify the longitudinal drive link assembly, P/N 900C2010212–101, in accordance with the Accomplishment Instructions, paragraph 2.B.(3). of the SB.

(b) This AD revises the Airworthiness Limitations Section of the applicable maintenance manual by establishing a retirement life of 1800 hours TIS for the non-rotating swashplate assembly, P/N 900C2010192–113.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on May 25, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–14195 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Correction to the Florida Keys National Marine Sanctuary Regulations

AGENCY: National Marine Sanctuaries Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; correction

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is adding language to a Proposed Rule concerning the Florida Keys National Marine Sanctuary (Docket No. 0005100129–0120–01) that was published in the Federal Register on May 18, 2000 (Volume 65, Number 97, Pages 31633–31680), to provide additional information in response to the requirements of the Paperwork Reduction Act.

DATES: Comments on this correction may be submitted with comments on the proposed rule which will be considered if received by July 31, 2000.

ADDRESSES: Written comments must be submitted to Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, Florida, 33050. Comments may also be sent by facsimile to: (305) 743–2357. Comments will not be considered if submitted by e-mail or internet.

FOR FURTHER INFORMATION CONTACT: Billy Causey, Sanctuary Superintendent, at (305) 743–2437.

SUPPLEMENTARY INFORMATION: The following new paragraph is to be added to the second paragraph in the classification section for the Paperwork Reduction Act, on page 31670:

"Collection-of-information requirements for certification of preexisting leases, licenses, permits, approvals, or other authorizations in National Marine Sanctuaries, have been approved under OMB #0648–0141. The proposed rule would apply the certification requirement of Section 922.168 to holders of preexisting leases, licenses, permits, approvals, or other authorizations, in the boundary expansion area of the Tortugas Ecological Reserve. The estimated response time for this requirement is 30 minutes."

In addition, the following language is to be added to the end of the classification section for the Paperwork Reduction Act, also at page 31670:

"Send comments on these or any other aspects of the collection of information to Billy Causey, Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, Florida, 33050; and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C., 20503 (Attention: NOAA Desk Officer)."

Authority: DSEIS/SMP is developed pursuant to section 304(a)(2) of the NMSA, 16 U.S.C. Sec. 1434(a)(2), consistent with, and in fulfillment of, the requirements of the National Environmental Policy Act of 1969.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 1, 2000.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 00–14116 Filed 6–1–00; 2:40 pm]

BILLING CODE 3510–08–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 898]

RIN 1512–AA07

Proposal to Revise the Boundary of the Walla Walla Valley Viticultural Area and the Eastern Boundary of the Columbia Valley Viticultural Area (99R–141P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to extend the boundary of the Walla Walla Valley viticultural area. This proposal is the result of petitions filed by growers and winemakers located within the existing area and in

the new area under consideration. ATF is also proposing redrawing a 3-mile section of the boundary of the Columbia Valley viticultural area so that it coincides with the boundary of the Walla Walla Valley viticultural area.

ATF believes that establishing viticultural areas and authorizing use of viticultural area names as appellations of origin allow wineries to designate the specific areas where the grapes used to make the wine were grown and enable consumers to better identify the wines they purchase.

DATES: Written comments must be received by August 7, 2000.

ADDRESSES: Address written comments to the Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. See the Public Participation section of this notice for additional ways to send comments. See the Disclosure section of this notice for the location of our Reading Room.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, telephone (202) 927–8202, e-mail *mdruhf@atfhq.atf.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9. Section 4.25a(e)(2) outlines the procedure for establishing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Original Designation of the Walla Walla Valley and Columbia Valley Viticultural Areas

The Walla Walla Valley viticultural area was established by Treasury Decision (T.D.) ATF–165 on February 6, 1984 (49 FR 4374). The original petition, filed by the Walla Walla Valley Wine Growers Association, had requested designation of an area of approximately 300,000 acres. At the time of the original petition, ATF had been concerned that the total area to be designated was very large in proportion to the area used for viticulture. ATF and the petitioner agreed to reduce the size of the proposed area to encompass only the locations where grapes were being commercially grown. As approved, the Walla Walla Viticultural Area consisted of approximately 260,000 acres, and had two wine producers and 60 acres of grapes. The area was within the counties of Walla Walla in Washington State and Umatilla in Oregon.

Later, when the Columbia Valley viticultural area was designated (T.D. ATF–190, November 13, 1984, [49 FR 44895–44899]), the Walla Walla Valley viticultural area was thought to be entirely within the Columbia Valley viticultural area. In preparation for the current rulemaking, we reviewed the maps in question and discovered that there is an area approximately 3 miles long where the eastern boundary of the Walla Walla Valley viticultural area extends beyond the eastern boundary of the Columbia Valley viticultural area. See our further discussion under "ATF proposal for extension of the Columbia Valley viticultural area."

Petitions for Extension of the Boundaries of Walla Walla Valley

ATF received a petition from Mr. Gaynor S. Derby of Spring Valley Vineyards, requesting that the northern boundary of the existing Walla Walla Valley viticultural area be extended to add approximately 3500 acres to the northeastern part of the approved area. Later, we received a petition from the Walla Walla Valley Winegrowers, a group representing 20 wineries and vineyards located within the existing area or within the area they propose to add. Mr. Norm McKibben of Pepper Bridge Winery submitted the petition on behalf of the group. The Walla Walla Valley Winegrowers propose to expand the Walla Walla Valley viticultural area to include all the area requested in the original petition and additional land to the north. The petitioners refer to the evidence submitted with the original petition to show geographic distinctiveness and name recognition and provide supplemental information.

If the Walla Walla Valley viticultural area were extended as the Walla Walla Winegrowers request, the area would have a total of approximately 340,000 acres, 800 acres of grapes, 23 growers and 21 wine producers. Mr. Derby, who petitioned for a smaller extension of the existing area, agreed to support the larger extension proposed by the Walla Walla Valley Winegrowers. In preparing this notice, we used material from both new petitions and from the original petition.

The Walla Walla Valley Winegrowers propose to restore the area removed from the original petition and extend the boundary from ½ mile to 4 miles further north. The area removed from the original petition had no commercial vineyards at the time of the original petition. There is now one commercial vineyard in that area, and there are two commercial vineyards in larger area the Walla Walla Valley Winegrowers propose to add.

In addition to the changes to the northern boundary noted above, the Walla Walla Valley Winegrowers proposed redrawing the southern boundary using features on the current revisions of the U.S.G.S. maps of the area. The measurements on these maps have been converted from feet to meters since the original application and designation of the area. As a result, the petitioner has chosen metric contour lines that do not exactly correspond to those in the original boundary, which represented feet. In particular, the southwest boundary of the area, originally marked by the 1000 foot contour line, would be changed to the 450 meter contour line, which corresponds to 1476 feet. This portion of the boundary would be moved outward (approximately 25 feet in most areas), enlarging the area very slightly. The land added by this proposed change is also drained by rivers that flow into the Walla Walla River, specifically Pine Creek, Dry Creek (Oregon) and several unnamed streams.

In order to identify the southeast boundary, formerly marked by the 2000 foot contour line, the Walla Walla Valley Winegrowers suggested using the 600 meter (1967 foot) contour line. This would have resulted in a slight reduction in the viticultural area's size in that portion of the boundary. However, the 2000 foot contour line in that area is also the boundary of the Columbia Valley viticultural area. ATF is proposing that the common boundary be kept at 2000 feet, indicated by a line to be drawn between the 600 and 650 meter contour lines on the new maps.

ATF Proposal for Extension of the Columbia Valley Viticultural Area

ATF is also proposing a minor adjustment to the boundary of the Columbia Valley viticultural area. In the original designation of the Columbia Valley viticultural area, ATF stated that the Walla Walla Valley viticultural area was entirely within the Columbia Valley viticultural area. As noted above, our recent review of the maps disclosed that there is a small area near Dixie, Washington, where the Walla Walla Valley viticultural area lies outside the boundaries of the Columbia Valley viticultural area. This occurs in a place where the official boundary of the Columbia Valley moves from the 2000 foot contour line to a state highway. Since both of these map features were used to approximate a natural boundary, ATF believes the Columbia Valley viticultural area's boundary may be amended without affecting the integrity of the area. We propose to amend the Columbia Valley viticultural area's boundary so it follows the 2000 foot contour line for an additional 3 miles north, and then shifts to the state highway as before. This proposed change extends the common boundary between the two viticultural areas and will eliminate any resulting confusion.

Evidence of Name

Based on historical materials supplied by petitioners in their original petition, there is substantial evidence indicating that the proposed extension to the Walla Walla Valley viticultural area was locally and/or nationally known as Walla Walla Valley:

(a) The original petition stated the area proposed for designation as the Walla Walla Valley "has been known as such since the time of settlement in the 1850's, even prior to the creation of the states of Oregon and Washington."

(b) The Walla Walla Winegrowers noted the U.S.G.S. map of Walla Walla uses the name "Walla Walla Valley" to label an area that corresponds to the current viticultural area and places the name in a second location to the north of the existing boundary, in the area the petitioners seek to add.

(c) Mr. Derby quoted Professor W. D. Lyman's *History of Walla Walla County*, published in 1901. Professor Lyman described the Walla Walla Valley as "a large belt of agricultural land lying south of the Snake River and west of the Blue Mountains, extending across the Oregon Line on the south"—a description which fits the expanded area proposed for designation.

Evidence of Boundaries

The boundary of the original Walla Walla Valley viticultural area was limited to existing grape-growing areas for administrative reasons. In response to the new petitions, we are reconsidering the evidence submitted in support of the original boundaries. In the original petition and the new petitions, the proposed Walla Walla Valley viticultural area would be delineated by boundaries corresponding to the following natural features:

On the southeast, by the point where the north and south branches of the Walla Walla River emerge from the mountainous Umatilla National Forest and join to form the Walla Walla River,

On the north, by the drainage divide between the Walla Walla River and the Touchet River, and

On the west, where the Walla Walla River empties into the Columbia River.

Distinguishing Features

According to the original petitioners and the petitioners in the current rulemaking, the entire Walla Walla Valley shares characteristics of topography, soil composition and climate that set it apart from the surrounding area. The evidence of the original petition was presented as applying to the entire valley, and not just to the area that ATF proposed for designation as the Walla Walla Valley viticultural area. Therefore, we will summarize the material that was originally published for comment in ATF Notice No. 471 on June 27, 1983 [48 FR 29541–29543], with the understanding that it applies equally to the proposed extension of the Walla Walla Valley viticultural area. We will supplement this information with material supplied by the two petitions for extension.

In his petition to extend the Walla Walla Valley viticultural area, Mr. Gaynor S. Derby quoted from an article titled "Washington Wine and Dining" published in the November 15, 1998, issue of *Wine Spectator:*

Washington state straddles one of the world's great geological divides: the Cascade Range. To the west of its summits, the maritime influence of the Pacific is supreme, and copious rains produce lush evergreen forests. . . . To the east, the damp sea breezes are blocked, the air warms and vineyards flourish with water provided by the Columbia River. The result is a growing and dynamic wine region. . . .

Topography

The original petition quoted the State of Washington's *Geology and Groundwater Resources of the Walla Walla River Basin, Washington-Oregon*, published in 1965, to describe the topography of the area:

"In the Walla Walla River Basin, the main topographic unit is the valley plain, commonly called the Walla Walla Valley, which de[s]cends from about 1,500′ at the foot of the mountain slopes to about 500′ where the river cuts through the bedrock ridge near Divide. It lies astride the Oregon/Washington border."

The area proposed for addition to the Walla Walla Valley viticultural area ranges from 250 to 600 meters (820 to 1,968 feet) in elevation, like the approved portion of the area. It is drained by creeks that generally flow south and east into the Walla Walla River. North of the new proposed boundary, the streams and creeks generally drain into the Touchet River, further to the north.

Soil

The original petition stated that the soils of the valley "are classified by the Soil Conservation Service as Soils of Bottom Lands and Low Terraces, Soils of Loessal Uplands, Soils of Loessal and Basaltic Uplands and Soils of Loessal and Lake-Laid Terraces, basically all loess derived soils." Most of these soils are classed as I or II irrigated capability units by the Soil Conservation Service. By contrast, the soils west of the Touchet River and along the Snake and Columbia Rivers are classified as Class IV and VI. Soils to the east in the Blue Mountains are considered not suitable for cultivation. We note the areas chosen for soil contrast are outside the proposed expansion to the area.

Climate

As noted in the original petition, the climate of the Walla Walla Valley is distinctive because it has a growing season between 190 and 220 days, the longest within the surrounding six counties. The original petition contrasted places within the Walla Valley with places outside of the valley. The places chosen for contrast included Dayton, Prescott, and Eltopia,

Washington, all to the north of the proposed northern extension to the viticultural area.

The Walla Walla Valley receives an average of 12.5 inches of precipitation a year, light in the summer, increasing and peaking in the winter. The Columbia Basin to the west and north receives less than 10 inches of precipitation in a year, and the Blue Mountains to the east and southeast receive 25–45 inches. Again, the places chosen for contrast are outside the proposed extension of the viticultural area.

Proposed Boundaries

The proposed revision to the boundary of the Columbia Valley viticultural area is described in § 9.74. The proposed revision to the boundary of the Walla Walla viticultural area is described in § 9.91.

U.S.G.S. Maps

The Walla Walla Winegrowers provided appropriate U.S.G.S. maps with their proposed boundaries prominently marked.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments on the proposed regulations from all interested persons. We specifically request comments on the clarity of the proposed rule and how it may be made easier to understand.

Please include the following in all comments:

ATTN: Notice No. 898

Your name,

Your company or association name, if it is pertinent to your comment,

Your reason for interest in the project (are you a consumer, dealer, producer?),

Your signature on paper comments sent by mail or facsimile transmission (FAX).

Address written comments to the Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221.

Fax comments to (202) 927–8525. Be sure fax comments are legible, on 8½" x 11" paper, and they are 3 pages or less.

E-mail comments to nprm@atfhq.atf.treas.gov. E-mail comments must contain no attachments, special characters or encryption.

Comments, including the name of the commenter, will be disclosed to the public. Do not include any material in your comment if you consider it to be confidential or inappropriate for disclosure to the public.

ATF will treat all comments as original written comments. We do not acknowledge receipt of comments. We will carefully consider all comments received on or before the closing date. We will also consider comments received after that date if it is practical to do so, but we cannot guarantee consideration of comments received after the comment period closes.

During the comment period, you may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Disclosure

You may view and copy written comments on this project from 10 a.m. to 12 noon in the ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC. Call the Librarian at (202) 927–2890 for an appointment at other times. Contact the Disclosure Division at (202) 927–8480 or visit *http://www.atf.treas.gov/about/foia/index.htm* to learn how to request photocopies of comments.

Drafting Information: Marjorie D. Ruhf of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms drafted this document.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Issuance

We propose to amend Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 9.74 is amended by revising paragraphs (c)(43) and (c)(44) to read as follows:

§ 9.74 Columbia Valley.

* * *

(c) *Boundaries.* * * *

(43) Then southwest following Washington Highway 126 and U.S. Highway 12 through Marengo, Dayton, and Waitsburg to a point where an unnamed light-duty road leaves Highway 12 in an easterly direction in Minnick Station, Washington;

(44) Then east following the unnamed light-duty road for approximately 250 feet until it reaches the 2000' contour line;

* * * * *

Par. 3. Section 9.91 is revised to read as follows:

§ 9.91 Walla Walla Valley.

(a) *Name.* The name of the viticultural area described in this section is "Walla Walla Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Walla Walla Valley viticultural area are two U.S.G.S. maps, in the scale 1:100,000. They are entitled:

(1) "Walla Walla," Washington—Oregon, 1980

(2) "Pendleton," Oregon—Washington, 1983

(c) *Boundaries.* The Walla Walla Valley viticultural area is located within Walla Walla County in Washington State and Umatilla County in Oregon. It is entirely within the Columbia Valley viticultural area. The boundaries are as follows:

(1) The beginning point is on the Walla Walla quadrangle map, in T8N/37E, at the point where the 2,000 foot contour line intersects with an unnamed light duty road approximately 250 feet east of U.S. Highway 12 in Minnick, Washington (on maps measured in metric units, this elevation is between the 600 and 650 meter contour lines),

(2) Then the boundary goes northwest in a straight line for 7 kilometers (km), until it intersects with a power line that runs between T8N and T9N,

(3) Then the boundary follows the power line west for 8 km, where it diverges from the power line and goes west-southwest in a straight line for approximately 33 km to the intersection of 2 unnamed light duty roads in the area marked Ninemile Canyon in the southwest corner of T8N/R33E,

(4) Then the boundary goes south-southwest in a straight line approximately 8 km, until it reaches U.S. Highway 12, about 2.5 km east of Reese, Washington,

(5) Then the boundary goes south in a straight line for approximately 8 km, crossing the Washington—Oregon state line and moving onto the Pendleton U.S.G.S. map, where it meets the 450 m contour line in T6N/R32E, near an unnamed peak with an elevation of 461 m,

(6) Then the boundary follows the 450 m contour line in a generally southeasterly direction until it intersects Dry Creek in T4N/R35E,

(7) Then the boundary goes southeast along Dry Creek (Oregon) until it reaches the 2000 foot contour line,

(8) Then the boundary follows the 2000 foot contour line in a generally northeasterly direction, crossing the Oregon—Washington state line and returning to the Walla Walla U.S.G.S map, until it reaches the point of beginning.

Approved: May 22, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–14162 Filed 6–5–00; 8:45 am]

BILLING CODE 4810–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA153–4100b; FRL–6702–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Nitrogen Oxides Allowance Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania on December 19, 1997 and December 27, 1999. These revisions implement Pennsylvania's portion of the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) including a regional nitrogen oxides (NO_X) cap and trade program that will significantly reduce NO_X emissions generated within the Ozone Transport Region (OTR). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 6, 2000.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, PA 17105.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, or by e-mail at fernandez.cristina@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the Region III address provided above.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 24, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–13770 Filed 6–5–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[GEN Docket No. 90–314, ET Docket No. 92–100, PP Docket No. 93–253; FCC 00–159]

Narrowband Personal Communications Services; Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: In this document the Commission seeks comment on whether it should license the one megahertz of narrowband Personal Communications Services (PCS) spectrum that has been held in reserve. The Commission seeks comment on how to channelize this one megahertz and on whether the unlicensed narrowband PCS spectrum that has already been channelized should be rechannelized to create licenses authorizing the use of larger blocks of spectrum.

DATES: Comments are due on or before July 5, 2000, and reply comments are due on or before July 20, 2000.

ADDRESSES: All comments and reply comments must be sent to Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Second Further Notice of Proposed Rule Making (*Second FNPRM*) adopted on May 5, 2000, and released on May 18, 2000. The complete text of this *Second FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov/wtb/auctions.

Synopsis of the Second Further Notice of Proposed Rule Making

1. The Commission tentatively concludes that it is in the public interest to proceed with licensing the one megahertz of narrowband PCS spectrum that has been held in reserve. Although a number of commenters argue that it is premature to auction this spectrum, considerable time has elapsed since these comments were filed. Moreover, the demand for spectrum has increased dramatically as a result of explosive growth in wireless communications and there is very little unencumbered spectrum available for new services. Thus, the Commission believes that the narrowband PCS reserve spectrum, which is unencumbered, should be made available to those interested in bringing new and innovative services to the public. To facilitate the introduction of new and innovative services, the Commission also tentatively concludes

that the reserve spectrum should be auctioned along with all of the other remaining unlicensed narrowband PCS spectrum. If the Commission ultimately decides that it is not in the public interest to auction the reserve spectrum at the same time as other remaining unlicensed spectrum, it nonetheless believes that it should proceed now with channelizing the reserve spectrum so that it is prepared to license this spectrum without delay when the market is ready to use it. The Commission seeks comment on these tentative conclusions.

2. The Commission seeks comment on how the reserve spectrum should be channelized. The current record does not provide an adequate basis for determining the best channelization plan for this spectrum. In Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Report and Order, 62 FR 27507 (May 20, 1997), and Further Notice of Proposed Rulemaking, 62 FR 27563 (May 20, 1997), the Commission sought comment on establishing two 300 kHz licenses and one 400 kHz license, and the Commission believes that it may make sense to create channel blocks that are larger than those currently in existence. Larger blocks may be useful to those seeking to provide innovative services.

3. In light of its tentative conclusion that the reserve spectrum should be auctioned simultaneously with all other remaining unlicensed narrowband PCS spectrum, the Commission also seeks comment on whether the unlicensed spectrum that has already been channelized should be rechannelized to create licenses authorizing the use of larger blocks of spectrum. The Commission asks commenters to address whether such rechannelization would facilitate the development of innovative services or otherwise assist narrowband PCS licensees in competing against other wireless sectors.

Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

4. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

B. Regulatory Flexibility Act Analysis

5. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this Second FNPRM.

C. Paperwork Reduction Act Analysis

6. This Second FNPRM contains neither a new nor a modified information collection.

D. Comment Dates

7. Pursuant to applicable procedures set forth in 47 CFR 1.415, 1.419, interested parties may file comments on or before July 5, 2000, and reply comments on or before July 20, 2000. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). Parties who choose to file by paper must file an original and four copies of each filing. If interested parties want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All comments and reply comments must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, D.C. 20554. One copy should also be sent to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036. In addition, a courtesy copy should be delivered to Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

8. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including GEN Docket No. 90–314, ET Docket No. 92–100, PP Docket No. 93–253), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036.

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and a reference to GEN Docket No. 90–314, ET Docket No. 92–100, and PP Docket No. 93–253. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at http://www.fcc.gov/efile/email.html.

10. Documents filed in this proceeding will be available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th Street, SW, Washington, DC 20554, and will be placed on the Commission's Internet site.

E. Ordering Clauses

11. Authority for issuance of this *Second FNPRM* is contained in sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

12. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Second FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Second FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second FNPRM*. The Commission will send a copy of the *Second FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

A. Need for and Objectives of this Action

14. This *Second FNPRM* is being initiated to secure comment on the Commission's tentative conclusion that the one megahertz of narrowband PCS reserve spectrum should be licensed. The Commission believes that this spectrum, which is unencumbered, should be made available to those interested in bringing new and innovative services to the public, and that the Commission should work to avoid any shortage of spectrum that might limit service options. The *Second FNPRM* also seeks comment on how the reserve spectrum should be channelized. The Commission believes that creating channel blocks that are larger than those currently in existence may be useful to those seeking to provide innovative services. Finally, the *Second FNPRM* seeks comment on whether rechannelizing the unlicensed spectrum that has already been channelized, to create licenses authorizing the use of larger blocks of spectrum, would facilitate the development of innovative services or otherwise assist narrowband PCS licensees in competing against other wireless sectors.

B. Legal Basis

15. This action is authorized under sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

16. The Final Regulatory Flexibility Analysis (FRFA) for the *Second R&O* adopted simultaneously with the *Second FNPRM* describes in detail the small entities that the Commission expects will be affected by the rules adopted in the *Second R&O* (published elsewhere in this issue of the **Federal Register**). These same entities would be affected by the rules proposed in the *Second FNPRM*. The number and description of such entities contained in Section iii of the FRFA are hereby incorporated in this IRFA.

D. Reporting, Recordkeeping, and Other Compliance Requirements

17. The Commission does not anticipate any additional reporting, recordkeeping, or other compliance requirements as a result of this *Second FNPRM*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives:

(a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities;

(c) The use of performance, rather than design, standards; and

(d) An exemption from coverage of the rule, or any part thereof, for small entities.

19. In the *Second FNPRM* the Commission seeks comment on whether the narrowband PCS reserve spectrum should be licensed. The Commission believes that licensing this spectrum would make it easier for innovators to acquire spectrum and develop services, and that this goal is consistent with promoting opportunities for small businesses. The Commission also seeks comment on whether rechannelizing the unlicensed spectrum that has already been channelized would assist narrowband PCS licensees in competing against other services.

F. Federal Rules That Overlap, Duplicate, or Conflict With These Rules

20. None.

List of Subjects in 47 CFR Part 24

Communications common carriers, Personal communications services, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–13962 Filed 6–2–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000502120–0120–01; I.D. 041000E]

RIN 0648–AN39

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 12

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 12 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule would limit the harvest and possession of red porgy in or from the exclusive economic zone (EEZ) off the southern Atlantic states to specified incidental catch amounts, add to the parameters that may be established or modified via the FMP's framework procedure for regulatory adjustments, and modify the snapper-grouper limited access system to allow transfers of a trip-limited permit among vessels owned by the same person regardless of vessel size. The intended effect is to protect the red porgy resource, which is currently overfished; to facilitate timely implementation of measures for the protection of snapper-grouper essential fish habitat (EFH) and essential fish habitat areas of particular concern (EFH HAPCs); and to remove an unnecessary restriction on the transfer of snapper-grouper trip-limited permits.

DATES: Written comments on this proposed rule must be received no later than 5 p.m., eastern standard time, on July 6, 2000.

ADDRESSES: Copies of Amendment 12 may be obtained from the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; phone: 843–571–4366; fax: 843–769–4520. Amendment 12 includes a Supplemental Environmental Impact Statement (SEIS), an Initial Regulatory Flexibility Analysis (IRFA), a Regulatory Impact Review (RIR), and a Social Impact Assessment/Fishery Impact Statement.

Written comments on this proposed rule should be sent to the Southeast

Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via facsimile (fax) to 727–570–5583. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Eldridge, 727–570–5305, fax 727–570–5583, e-mail *Peter.Eldridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Red Porgy

The red porgy resource is overfished. In an emergency interim rule published September 3, 1999 (64 FR 48324), NMFS prohibited the harvest and possession of red porgy in or from the EEZ off the southern Atlantic states. NMFS extended the prohibition on harvest and possession of red porgy through August 28, 2000 (65 FR 10039; February 25, 2000). The detailed analysis that led to the conclusion that the red porgy resource is overfished was summarized in the emergency interim rule (64 FR 48324) and is not repeated here. If the measures in Amendment 12 are approved, the Council and NMFS intend that they would be implemented by final rule and effective August 29, 2000.

Amendment 12 proposes to limit the harvest and possession of red porgy to incidental catches. Specifically, a recreational fisherman would be restricted to one red porgy per day or per trip, whichever is more restrictive. A commercial fisherman would be limited to 50 lb (22.7 kg) per trip during the months of May through December and to one red porgy per day or per trip, whichever is more restrictive, during January through April. The current prohibition on sale of red porgy during March and April would be extended to the months of January through April.

The Council has concluded that these measures would reduce catches of red porgy sufficiently to allow rebuilding of the stock. The Council recognized the severely overfished status of red porgy, as indicated in the most recent stock assessment, based on data through 1996 that was presented at the March 1999 Council meeting. More recent scientific data presented at the November/December 1999 Council meeting indicate a slight increase in the stock size. The majority of public input to date advocates restrictive management measures but not a total prohibition on harvest. The Council considered the public input and the status of the red porgy resource and concluded that fishing mortality must be reduced significantly to allow red porgy to rebuild. The goal of the rebuilding program would be an increase in the stock biomass to a level that would support harvests at maximum sustainable yield (MSY). Further, the Council believes that total prohibition of harvest would be wasteful. Red porgy would continue to be caught as part of the multi-species, mid-depth snapper-grouper fishery and a significant portion of them would not survive catch and release. Thus, the Council proposes to allow retention of limited amounts of red porgy as incidental catch rather than the total prohibition that is currently in effect under the emergency interim rule. In developing the proposed measures, the Council attempted to limit fishing mortality to the level that would result from regulatory discards under a total prohibition of harvest.

The Council also concluded that the existing 14–inch (35.6–cm), total length, minimum size limit will protect red porgy up to ages 4 to 4.5. All female red porgy are mature at age 3, and 19 percent are mature at age 1. The 14–inch (35.6–cm) minimum size limit should allow 100 percent of the females to reproduce at ages 3 and 4, which should result in significant increases in recruitment. In addition, limiting retention of commercially caught red porgy to one fish per day or per trip during January through April will protect red porgy during their spawning period. In combination, these two measures are expected to contribute significantly to the rebuilding of the red porgy resource.

The expected rebuilding time frame for red porgy would be 18 years. Red porgy cannot be rebuilt within 10 years due to the extremely low stock size, as data through 1996 indicate, and to the fact that species, such as red porgy, which switch sex with age appear to be more susceptible to overfishing. NMFS recommended that the Council specify the rebuilding timeframe as 10 years plus 1 generation time which equates to 18 years.

Framework Procedure

In accordance with the FMP, certain factors related to the management of snapper-grouper may be established or modified via a framework procedure that enables more timely implementation than is possible via an FMP amendment. In conjunction with NMFS' approval of the Council's Comprehensive Amendment Addressing Essential Fish Habitat (EFH) in the Fishery Management Plans of the South Atlantic Region (Comprehensive EFH Amendment), NMFS published a proposed rule to implement the Comprehensive EFH Amendment's approved measures that would add parameters regarding EFH and EFH HAPCs to those for which the framework procedure was applicable (64 FR 37082, July 9, 1999). Amendment 12 proposes to clarify that actions that may be taken under the framework procedure regarding EFH and EFH HAPCs include restrictions on gear and fishing activities.

Transfer of Snapper-Grouper Permits

Under the regulations to implement FMP Amendment 8, some vessels have trip-limited commercial permits for snapper-grouper, i.e., permits that allow no more than 225 lb (102.1 kg) of snapper-grouper per trip. An owner of a vessel with such a permit may transfer the permit to another vessel owned by the same entity only if the replacement vessel is equal to or less than the length and gross tonnage of the replaced vessel. While it may be argued that replacement of a smaller vessel with a larger one may increase the harvesting capacity of a vessel with a trip-limited permit, contrary to the original intent of Amendment 8's limited access program, such increase is constrained by the 225–lb (102.1–kg) limit. The Council concluded that retaining the size/gross tonnage transfer restriction creates administrative difficulties for vessel owners and for NMFS and has limited benefits. Accordingly, Amendment 12 proposes to remove the size/gross tonnage transfer restriction.

Additional Measures in Amendment 12

In addition to the measures described here for the management of red porgy, Amendment 12 proposes to establish the following for red porgy: MSY; optimum yield (OY); maximum fishing mortality threshold (MFMT), the fishing mortality rate which, if exceeded, constitutes overfishing; minimum stock size threshold (MSST), the stock size below which red porgy are overfished; and a rebuilding schedule, the period during which the overfished red porgy resource should be rebuilt to a level that will support MSY. The specific proposals are as follows:

MSY—1,987 metric tons (mt).

OY—The amount of harvest that can be taken by fishermen of the U.S. while maintaining the spawning potential ratio (SPR) at or above 45 percent of the static SPR. (Note: This does not represent an SPR proxy for OY but an equilibrium yield associated with a fishing mortality rate [F_{OY}].)

MFMT—0.43, which is the mortality rate corresponding to 35 percent of the static SPR.

MSST—3,328 mt.

Rebuilding time frame—18 years, with 1999 as year 1.

The Council is concerned that it may be setting MSY, OY, and MSST too high, given that the proposed MSY of 1,987 mt has never been harvested. The Council will review these estimates when the stock assessment is updated in 2 years. If changes are necessary, appropriate levels will be proposed through the framework procedure or via an FMP amendment, as appropriate.

Availability of Amendment 12

Additional background and rationale for the measures discussed above are contained in Amendment 12. The availability of Amendment 12 was announced in the **Federal Register** on April 19, 2000, (65 FR 20939). Written comments on Amendment 12 must be received by June 19, 2000. All comments received on Amendment 12 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Classification

At this time, NMFS has not determined that Amendment 12 is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 12.

This proposed rule has been determined to be significant for purposes of E.O. 12866.

The Council prepared a final supplemental environmental impact statement for the FMP; a notice of availability was published on May 12, 2000, (65 FR 30587).

The Council prepared an IRFA, based on the RIR, and concluded that this proposed rule, if adopted, would have a significant economic impact on a substantial number of small business entities. NMFS concurs with the finding. A summary of the IRFA with other information supplied by NMFS follows.

This proposed rule is being considered because the red porgy stock is severely overfished, and the Magnuson-Stevens Act requires the Council to take action to resolve the overfished status of the stock. The Magnuson-Stevens Act provides the legal basis for all the actions proposed by the Council. The actions having an economic impact on small entities would restrict commercial landings of red porgy to a maximum of 50 lb (22.7 kg) per trip, close the commercial red porgy fishery from January through April, reduce the recreational bag limit from 5 to 1 red porgy per angler per day or per trip (whichever is more restrictive), and allow the owner of a vessel having a 225–lb (102–kg) trip-limited permit for snapper-grouper to transfer the permit to a larger vessel under the same ownership.

Other measures would define MSY and OY for red porgy and would change some framework provisions in the FMP, including providing the Council with more latitude under the framework to suggest additional regulatory actions designed to protect EFH and HAPCs. These other measures would not have any immediate economic impacts, but future actions to implement management measures associated with the new framework measures or to achieve MSY or OY may have economic impacts and would be analyzed at the time that they are implemented.

There are about 1,200 fishing craft (boats and vessels combined) that are operated by entities that hold permits for commercial snapper grouper fishing, and all such entities are considered to represent small business entities. The Council and NMFS are aware that some small entities may control more than one harvesting unit, so the number of small entities impacted is likely to be slightly lower than the number of craft involved in the legal harvest of snapper grouper species. About 330 of the fishing craft have a history of red porgy landings, and, of these, about 270 are determined to be directly impacted by the proposed actions. The average (vessels and boats combined) length is 37.2 ft (11.4 m), and investment in these craft is estimated at $53,000 for those using bottom hook-and-line gear and at $237,000 for those using bottom longline gear. The fishing craft generate annual average gross revenues of about $42,000 and have net operating revenues (gross revenues minus trip costs) of about $29,000 per year. Most of the revenue is generated from species other than red porgy.

In addition to the effects on enterprises that are engaged in the commercial harvest of snapper grouper species, the proposal for a 1–fish recreational bag limit will affect the operations of some headboat operations that are also defined as small business entities. NMFS estimates that about one third of the headboat fleet or about 33 vessels in South Atlantic waters have enough red porgy landings to be potentially affected by the bag limit action, but there is no definitive information available from which to quantify this impact. The headboats have an average length of 63 ft (19 m), a total capital investment of $220,000 and generate annual average gross revenue of about $123,000.

No additional reporting, record keeping, or other compliance costs related to the proposals were identified, and no duplicative, overlapping, or conflicting Federal rules were identified.

The Council defined the red porgy actions, including the commercial trip limit, the commercial closed season, and the recreational bag limit, as a single action and considered three alternatives to the action. One alternative was the status quo. Although the status quo would have no short-term negative economic impacts on small entities, it was rejected because the Magnuson-Stevens Act specifically requires the Council to take actions to rebuild this severely overfished fishery. Another rejected alternative would prohibit all commercial and recreational fishing for red porgy. The Council rejected this alternative because of the increased short-term negative impacts of a total and indefinite prohibition on all fishing for red porgy. The Council also noted that, while the rejected alternative would rebuild the red porgy stocks at a higher rate than under the proposed alternative, the proposed alternative would still result in stock rebuilding. The Council expressed an intent to review the status of the red porgy stock every 2 years and to take additional actions in the future, if necessary. The other rejected alternative was to adopt the commercial trip limit of 50 lb (22.7 kg), but not to have a commercial closure or a reduction in the recreational bag limit. The Council rejected this alternative because the biological analyses indicated that a more restrictive approach, such as the proposed alternative, was necessary to meet the specific goal of rebuilding the red porgy stock within an 18-year period. The status quo was considered as an alternative to the action to allow the owner of a vessel with a trip-limited permit for snapper-grouper to transfer the permit to a larger vessel under the same ownership. The status quo was rejected because it was not the Council's original intent to have the transfer restriction apply to a vessel owner who desires to transfer the permit to another vessel owned by the same small entity.

Copies of the IRFA are available (see **ADDRESSES**).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this interim rule. Such comments should be directed to NMFS Southeast Regional Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 31, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.18, paragraph (e)(2) is revised to read as follows:

§ 622.18 South Atlantic snapper-grouper limited access.

* * * * *

(e) * * *

(2) *Trip-limited permits.* An owner of a vessel with a trip-limited permit may request that the RA transfer the permit to another vessel owned by the same entity.

* * * * *

3. In § 622.36, paragraph (b)(5) is revised to read as follows:

§ 622.36 Seasonal harvest limitations.

* * * * *

(b) * * *

(5) *Red porgy.* During January, February, March, and April, each year, the possession of red porgy in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such red porgy were harvested, is limited to one per person per day or one per person per trip, whichever is more restrictive. Such red porgy are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

4. In § 622.39, paragraphs (d)(1)(vi) and (d)(2) are revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(d) * * *

(1) * * *

(vi) Red porgy—1.

* * * * *

(2) *Possession limits.* (i) Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

(A) A person aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess no more than two daily bag limits of species other than red porgy.

(B) A person aboard a headboat on a trip that spans more than 48 hours and who can document that fishing was conducted on at least 3 days may possess no more than three daily bag limits of species other than red porgy.

(ii) A person aboard a vessel may not possess red porgy in or from the EEZ in excess of one per day or one per trip, whichever is more restrictive.

* * * * *

5. In § 622.44, paragraph (c)(4) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(c) * * *

(4) *Red porgy.* (i) From May 1 through December 31, 50 lb (22.7 kg).

(ii) From January 1 through April 30, the seasonal harvest limit specified in § 622.36(b)(5) applies.

* * * * *

6. In § 622.45, paragraph (d)(5) is revised and paragraph (d)(7) is added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) * * *

(5) During January, February, March, and April, no person may sell or purchase a red porgy harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during January through April does not apply to red porgy that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the red porgy;

(iii) The port and date of offloading from the vessel harvesting the red porgy; and

(iv) A statement signed by the dealer attesting that the red porgy was harvested from an area other than the South Atlantic.

* * * * *

(7) During March and April, no person may sell or purchase a gag or black grouper harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during March and April does not apply to gag or black grouper that were harvested, landed ashore, and sold prior to March 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of gag or black grouper harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the gag or black grouper;

(iii) The port and date of offloading from the vessel harvesting the gag or black grouper; and

(iv) A statement signed by the dealer attesting that the gag or black grouper was harvested from an area other than the South Atlantic.

* * * * *

7. In § 622.48, paragraph (f) is revised to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(f) *South Atlantic snapper-grouper and wreckfish.* For species or species groups: Biomass levels, age-structured analyses, target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, definitions of essential fish habitat, essential fish habitat, essential fish habitat HAPCs or Coral HAPCs, and restrictions on gear and fishing activities applicable in essential fish habitat and essential fish habitat HAPCs.

* * * * *

[FR Doc. 00–14197 Filed 6–5–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 120999B]

Atlantic Highly Migratory Species Fisheries; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Change in public hearing date.

SUMMARY: NMFS published a public hearing announcement and request for comments on May 24, 2000, to receive comments from fishery participants and other members of the public regarding proposed regulations to establish North Atlantic swordfish quotas for the 2000–2002 fishing years and to change trade restrictions for Atlantic bluefin tuna and swordfish. NMFS herewith announces a change in the date of the public hearing to be held in Pompano Beach, FL from June 8, 2000, to July 11, 2000.

To accommodate people unable to attend a hearing or wishing to provide written comments, NMFS also solicits written comments on the proposed rule.

DATES: The new hearing is scheduled as follows:

1. Tuesday, July 11, 2000, 7 to 9:30 p.m., Pompano Beach, FL.

Written comments on the proposed rule or the draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m., eastern standard time, on July 18, 2000.

ADDRESSES: The location for this hearing is as follows:

1. Pompano Beach Civic Center, 1801 NE 6th Street, Pompano Beach, FL 33060.

Written comments on the proposed rule or EA/RIR/IRFA should be sent to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or Internet. For copies of the proposed rules or EA/RIR/IRFA contact Rachel Husted at 301–713–2347, or write to Rebecca Lent.

FOR FURTHER INFORMATION CONTACT: Rachel Husted at 301–713–2347, fax 301–713–1917, e-mail rachel.husted@noaa.gov.

SUPPLEMENTARY INFORMATION: The proposed regulations that are the subject of the hearings are necessary to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act for the conservation and management of highly migratory species.

A complete description of the measures, the purpose and need for the proposed actions, and information on other hearing locations is contained in the proposed rules, published Wednesday May 24, 2000 (65 FR 33517 and 65 FR 33519), and is not repeated here.

Persons submitting written comments on the proposed rule or the EA/RIR/IRFA should include their name, address and, if possible, phone number; the title of the document on which comments are being submitted; and specific factors or comments along with supporting reasons that NMFS should consider in reaching a decision.

Special Accommodations

The hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel Husted (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing or meeting.

Authority: 16 U.S.C. 971 *et seq.*, and 16 U.S.C. 1801 *et seq.*

Dated: May 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14037 Filed 5–31–00; 4:33 pm]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 65, No. 109
Tuesday, June 6, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Forms FNS–806–A, Claim for Reimbursement (National School Lunch and School Breakfast Programs), and FNS–806–B, Claim for Reimbursement (Special Milk Program for Children)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public to comment on the Food and Nutrition Service (FNS) use of Forms FNS–806–A and FNS–806–B, Claims for Reimbursement. The Forms are used to collect data to determine the amount of reimbursement school food authorities participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), and Special Milk Programs for Children (SMP) are eligible to receive.

DATES: Written comments must be submitted on or before August 7, 2000.

ADDRESSES: Send comments or requests for copies of this information collection to Terry A. Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1008, Alexandria, Virginia 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Terry Hallberg, (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Titles: Forms FNS–806–A, Claim for Reimbursement, (National School Lunch, and School Breakfast Programs), and FNS–806–B, Claim for Reimbursement (Special Milk Program).

OMB Number: 0584–0284.

Expiration Date: May 31, 2000.

Type of Request: Extension of a currently approved collection.

Abstract: The NSLP, SBP and SMP claims for reimbursement forms, FNS–806–A and FNS–806–B, are used to collect meal and cost data from school food authorities whose participation in these programs are administered directly by FNS Regional Offices (Regional Office Administered Programs, or ROAP). In order to determine the amount of reimbursement school food authorities are entitled to receive for meals and milk served, they must complete these forms. The completed forms are submitted to FNS' Regional Offices where they are entered into a computerized payment system. The payment system computes earned reimbursement.

Earned reimbursement in the NSLP, SBP and SMP is based on performance which is measured as an assigned rate per meal or half pint of milk served, with cost comparisons for free milk and severe need breakfasts. To fulfill the earned reimbursement requirements set forth in NSLP, SBP and SMP regulations issued by the Secretary of Agriculture (7 CFR 210.8, 220.11, 215.10), the meal and cost data must be collected on forms FNS–806–A and FNS–806–B. These forms are an intrinsic part of the accounting system being used currently by the subject programs to ensure proper reimbursement as well as to facilitate adequate recordkeeping.

The claims for reimbursement for the NSLP and SBP are on the FNS–806–A and the claims for reimbursement for SMP are on the FNS–806–B.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: The respondents are school food authorities and facilities participating in the NSLP, SBP, and SMP under the auspices of the FNS ROAP.

Estimated Number of Respondents Form 806–A: 340.

Estimated Number of Respondents Form 806–B: 180.

Estimated Number of Responses per Respondent Form 806–A: 10.

Estimated Number of Responses per Respondent Form 806–B: 10.

Estimated Total Annual Burden on Respondents Form 806–A: 3400.

Estimated Total Annual Burden on Respondents Form 806–B: 1800.

Estimated Total Number of Respondents: 520.

Estimated Number of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 5200.

Dated: May 30, 2000.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 00–14095 Filed 6–5–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after June 1, 2000. The list of newspapers will remain in effect until December 1, 2000, when another notice will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Barbara Schuster, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, Phone (801) 625–5301.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR 215 and 36 CFR 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho: *The Idaho Statesman*, Boise, Idaho

For decisions made by the Regional Forester affecting National Forests in Nevada: *The Reno Gazette-Journal*, Reno Nevada

For decisions made by the Regional Forester affecting National Forests in Wyoming: *Casper Star-Tribune*, Casper, Wyoming

For decisions made by the Regional Forester affecting National Forests in Utah: *Salt Lake Tribune*, Salt Lake City, Utah

If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in: *Salt Lake Tribune*, Salt Lake City, Utah

Ashley National Forest

Ashley Forest Supervisors decisions: *Vernal Express*, Vernal, Utah

Vernal District Ranger decisions: *Vernal Express*, Vernal, Utah

Flaming Gorge District Ranger for decisions affecting Wyoming: *Casper Star Tribune*, Casper, Wyoming

Flaming Gorge District Ranger for decisions affecting Utah: *Vernal Express*, Vernal, Utah

Roosevelt and Duchesne District Ranger decisions: *Uintah Basin Standard*, Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions: *The Idaho Statesman*, Boise, Idaho

Mountain Home District Ranger decisions: *The Idaho Statesman*, Boise, Idaho

Idaho City District Ranger decisions: *The Idaho Statesman*, Boise, Idaho

Cascade District Ranger decisions: *The Long Valley Advocate*, Cascade, Idaho

Lowman District Ranger decisions: *The Idaho World*, Garden Valley, Idaho

Emmett District Ranger decisions: *The Messenger-Index*, Emmett, Idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions: *Casper Star-Tribune*, Casper, Wyoming

Jackson District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming

Buffalo District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming

Big Piney District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming

Pinedale District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming

Greys River District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming

Kemmerer District Ranger decisions: *Casper Star-Tribune*, Casper, Wyoming

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion: *Idaho State Journal*, Pocatello, Idaho

Soda Springs District Ranger decisions: *Idaho State Journal*, Pocatello, Idaho

Montpelier District Ranger decisions: *Idaho State Journal*, Pocatello, Idaho

Westside District Ranger decisions: *Idaho State Journal*, Pocatello, Idaho

Caribou-Targhee Forest Supervisor decisions for the Targhee Portion: *The Post Register*, Idaho Falls, Idaho

Dubois District Ranger decisions: *The Post Register*, Idaho Falls, Idaho

Island Park District Ranger decisions: *The Post Register*, Idaho Falls, Idaho

Ashton District Ranger decisions: *The Post Register*, Idaho Falls, Idaho

Palisades District Ranger decisions: *The Post Register*, Idaho Falls, Idaho

Teton Basin District Ranger decisions: *The Post Register*, Idaho Falls, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions: *The Daily Spectrum*, St. George, Utah

Pine Valley District Ranger decisions: *The Daily Spectrum*, St. George, Utah

Cedar City District Ranger decisions: *The Daily Spectrum*, St. George, Utah

Powell District Ranger decisions: *The Daily Spectrum*, St. George, Utah

Escalante District Ranger decisions: *The Daily Spectrum*, St. George, Utah

Teasdale District Ranger decisions: *The Daily Spectrum*, St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions: *Richfield Reaper*, Richfield, Utah

Loa District Ranger decisions: *Richfield Reaper*, Richfield, Utah

Richfield District Ranger decisions: *Richfield Reaper*, Richfield, Utah

Beaver District Ranger decisions: *Richfield Reaper*, Beaver, Utah

Fillmore District Ranger decisions: *Richfield Reaper*, Fillmore, Utah

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press*, Elko, Nevada

Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal*, Reno, Nevada

Sierra Ecosystem Coordination Center (SECO):

Carson District Ranger decisions: *Reno Gazette-Journal*, Reno, Nevada

Bridgeport District Ranger decisions: *The Review-Herald*, Mammoth Lakes, California

Spring Mountains National Recreation Area Ecosystem (SMNRAE):

Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal*, Las Vegas, Nevada

Central Nevada Ecosystem (CNECO):

Austin District Ranger decisions: *Reno Gazette-Journal*, Reno, Nevada

Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News*, Tonopah, Nevada

Ely District Ranger decisions: *Ely Daily Times*, Ely, Nevada

Northeast Nevada Ecosystem (NNECO):

Mountain City District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada

Ruby Mountains District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada

Jarbidge District Ranger decisions: *Elko Daily Free Press*, Elko, Nevada

Santa Rosa District Ranger decisions: *Humboldt Sun*, Winnemucca, Nevada

Manti-LaSal National Forest

Manti-LaSal Forest Supervisor decisions: *Sun Advocate*, Price, Utah
Sanpete District Ranger decisions: *The Pyramid*, Mt. Pleasant, Utah
Ferron District Ranger decisions: *Emery County Progress*, Castle Dale, Utah
Price District Ranger decisions: *Sun Advocate*, Price, Utah
Moab District Ranger decisions: *The Times Independent*, Moab, Utah
Monticello District Ranger decisions: *The San Juan Record*, Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman*, Boise, Idaho
Weiser District Ranger decisions: *Signal American*, Weiser, Idaho
Council District Ranger decisions: *Council Record*, Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions: *Star News*, McCall, Idaho

Salmon-Challis National Forests

Salmon-Challis Forest Supervisor decisions for the Salmon portion: *The Recorder-Herald*, Salmon, Idaho
Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Challis Messenger*, Challis, Idaho
North Fork District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho
Leadore District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho
Salmon/Cobalt District Ranger decisions: *The Recorder-Herald*, Salmon, Idaho
Middle Fork District Ranger decisions: *The Challis Messenger*, Challis, Idaho
Challis District Ranger decisions: *The Challis Messenger*, Challis, Idaho
Yankee Fork District Ranger decisions: *The Challis Messenger*, Challis, Idaho
Lost River District Ranger decisions: *The Challis Messenger*, Challis, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times News*, Twin Falls, Idaho
Burley District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit.
South Idaho Press, Burley Idaho, for decisions issued on the Idaho portions of the Burley District
Twin Falls District Ranger decisions: *The Times News*, Twin Falls, Idaho
Ketchum District Ranger decisions: *Idaho Mountain Express*, Ketchum, Idaho
Sawtooth National Recreation Area: *Challis Messenger*, Challis, Idaho
Fairfield District Ranger Decisions: *The Times News*, Twin Falls, Idaho

Uinta National Forest

Uinta Forest Supervisor decisions: *The Daily Herald*, Provo, Utah
Pleasant Grove District Ranger decisions: *The Daily Herald*, Provo, Utah
Heber District Ranger decisions: *The Daily Herald*, Provo, Utah, and
Spanish Fork District Ranger decisions: *The Daily Herald*, Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions: *Salt Lake Tribune*, Salt Lake City, Utah
Salt Lake District Ranger decisions: *Salt Lake Tribune*, Salt Lake City, Utah
Kamas District Ranger decisions: *Salt Lake Tribune*, Salt Lake City, Utah
Evanston District Ranger decisions: *Uintah County Herald*, Evanston, Wyoming
Mountain View District Ranger decisions: *Uintah County Herald*, Evanston, Wyoming
Ogden District Ranger decisions: *Ogden Standard Examiner*, Ogden, Utah
Logan District Ranger decisions: *Logan Herald Journal*, Logan, Utah

Dated: May 31, 2000.

Jack A. Blackwell,

Regional Forester.

[FR Doc. 00–14096 Filed 6–5–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Douglas Project Area Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide a supply of timber for the Tongass National Forest timber sale program, to identify recreation opportunities and to develop a road management plan for the forest roads connected to the City of Kake. The Record of Decision will disclose where, if any, the Forest Service has decided to provide timber harvest units, associated timber harvesting facilities, identify dispersed recreation opportunities and propose any changes to the existing forest road system. The proposed action is to harvest timber on an estimated 1,600 acres and to provide multiple timber sale opportunities for a total of approximately 35 million board feet (mmbf) of timber. Timber harvest will be accomplished using a variety of silvicultural prescriptions and harvest methods to meet the standards and guidelines of the Tongass Forest Plan. This project would include the construction of up to 30 miles of road and may include one new log transfer facility (LTF) within the project area. This project may also include an analysis and decision for a nonsignificant amendment to the Forest Plan to revise the location of small Old Growth Reserve(s) within the project area. Recreational opportunities for enhancement may include dispersed sites for camping, and improved access for hunting and subsistence users. A road management plan will be developed to safely accommodate public traffic. A range of alternatives responsive to significant issues will be developed and will include a no-action alternative. The Douglas project area is approximately 95,500 acres in size and is located in Value Comparison Units 430, 431, 432, 433 and a portion of 429 on Kupreanof Island, Alaska, on the Petersburg Ranger District of the Tongass National Forest. The project area is within an Inventoried Roadless Area (South Kupreanof #214 as identified by the Tongass Land and Resource Management Plan).

DATES: Comments concerning the scope of this project should be received by July 7, 2000 (30 days from expected publication).

ADDRESSES: Please send written comments to the Petersburg Ranger District, Tongass National Forest; Attn: Dan McMahon; Douglas Project Area EIS; PO Box 1328; Petersburg, AK 99833. The FAX number is (907) 772–5995.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to Patricia Grantham, District Ranger, Petersburg Ranger District, Tongass National Forest, PO Box 1328, Petersburg, AK 99833; telephone (907) 772–3871 or Dan McMahon, Interdisciplinary Team Leader, Petersburg Ranger District, PO Box 1328, Petersburg, AK 99833; telephone (907) 772–3871.

SUPPLEMENTARY INFORMATION: Public participation has been an integral component of the study process and will be especially important at several points during the analysis. During the last year, the Forest Service has been seeking information, comments, and assistance from Federal, State, and local agencies Federally-recognized Indian tribes, and individuals and organizations that may be interested in, or affected by, the proposed activities. Written scoping comments have been solicited through an informal scoping package that was sent to the project mailing list and available at open houses in Petersburg and Kake, Alaska. The scoping process includes: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues or those which have been covered by a previous environmental review. For the Forest Service to best use the scoping input, comments should be received by July 7, 2000 (30 days from expected publication).

Based on results of scoping and the resource capabilities within the project area, alternatives including a "no action" alternative will be developed for the Draft Environmental Impact Statement. The Draft Environmental Impact Statement is projected to be filed with the Environmental Protection Agency (EPA) in the summer of 2000. Subsistence hearings as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), will occur, if necessary, during the comment period on the Draft Environmental Impact Statement. The Final Environmental Impact Statement and Record of Decision are anticipated to be published in March, 2001.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the Draft Environmental Impact Statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft Environmental Impact Statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits required for implementation include the following:

1. U.S. Army Corps of Engineers.
—Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
—Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;

2. Environmental Protection Agency
—National Pollutant Discharge Elimination System (402) Permit;
—Review Spill Prevention Control and Countermeasure Plan;

3. State of Alaska, Department of Natural Resources
—Tideland Permit and Lease or Easement;

4. State of Alaska, Department of Environmental Conservation
—Solid Waste Disposal Permit;
—Certification of Compliance with Alaska Water Quality Standards (401 Certification)

Responsible Official: Carol Jorgensen, Assistant Forest Supervisor, Tongass National Forest, PO Box 309, Petersburg, Alaska 99833, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: May 22, 2000.

Carol J. Jorgensen,

Assistant Forest Supervisor.

[FR Doc. 00–14065 Filed 6–5–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Black Bayou Culverts Hydrologic Restoration Project (CS–29), Calcasieu Parish, LA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulation (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Black Bayou Culverts Hydrologic Restoration Project (CS–29), Calcasieu Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Governmental Street, Alexandria, Louisiana, 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project consists of the installation of a set of culverts under Highway 384 at its intersection of Black Bayou. The culverts would re-establish a hydrologic connection in Black Bayou at Highway 384 to help give relieve to high water conditions within the fresh water marsh basin.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Bruce Lehto, Assistant State Conservationist/Water Resources, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7756.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO.10.904, Watershed Protection and Flood Prevention, and is subject to the provision of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: May 24, 2000.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 00–14066 Filed 6–5–00; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part.

SUMMARY: In response to requests from one manufacturer/exporter and one U.S. producer of the subject merchandise, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above ("DRAMs") from the Republic of Korea ("Korea"). The review covers two manufacturers/exporters and four resellers of subject merchandise to the United States during the period of review ("POR"), May 1, 1998 through April 30, 1999. Based upon our analysis, the Department has preliminarily determined that dumping margins exist for both manufacturers/exporters and the four resellers during the POR. If these preliminary results are adopted in our final results of administrative review, we will instruct the United States Customs Service ("Customs") to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or John Conniff, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5346 or (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references to the regulations of the Department are to 19 CFR part 351 (1999).

Background

On May 10, 1993, the Department published in the **Federal Register** (58 FR 27250) the antidumping duty order on DRAMs from Korea. On May 28, 1999, the petitioner, Micron Technology Inc., ("Micron") requested an administrative review of Hyundai Electronics Industries Co., Ltd. ("Hyundai") and LG Semicon Co., Ltd. ("LG"), Korean manufacturers of DRAMs, and four Korean resellers of DRAMs, the G5 Corporation ("G5"), Kim's Marketing, Jewon Trading ("Jewon"), and Wooyang Industry Co., Ltd. ("Wooyang"), for the period May 1, 1998 through April 30, 1999. Additionally, the petitioner requested a cost investigation of LG and Hyundai pursuant to section 773(b) of the Act. On May 28, 1999, LG requested that the Department conduct a review of its exports of the subject merchandise to the United States. On May 28, 1999, LG also submitted a timely request that the order be revoked with respect to LG. LG based its revocation request on its appeal of the Department's inclusion of unreported sales in the fourth review which, LG claimed, if successful, would result in a *de minimis* margin in the fourth review for LG; and the final results of the fifth review, which had not been issued at the time of LG's revocation request. On June 30, 1999 (64 FR 35124), the Department initiated an administrative review of Hyundai, LG, G5, Kim's Marketing, Jewon, and Wooyang, including cost investigations of Hyundai and LG, covering the POR. On November 17, 1999, Micron submitted a request for postponement of the preliminary results. On December 20, 1999, the Department published in the **Federal Register** (64 FR 7111) a notice extending the time for the preliminary results from January 30, 2000, until May 30, 2000. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by the review are shipments of DRAMs from Korea. Included in the scope are assembled and unassembled DRAMs. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules ("SIPs"), single in-line memory modules ("SIMMs"), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter ("VGA") boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors ("VRAMS"), as well as any future packaging and assembling of DRAMs; and, removable memory modules placed on motherboards, with or without a central processing unit ("CPU"), unless the importer of motherboards certifies with the Customs Service that neither it nor a party related to it or under contract to it will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMS and modules subject to this review are currently classifiable under subheadings 8471.50.0085, 8471.91.8085, 8542.11.0024, 8542.11.8026, 8542.13.8034, 8471.50.4000, 8473.30.1000, 8542.11.0026, 8542.11.8034, 8471.50.8095, 8473.30.4000, 8542.11.0034, 8542.13.8005, 8471.91.0090, 8473.30.8000, 8542.11.8001, 8542.13.8024, 8471.91.4000, 8542.11.0001, 8542.11.8024 and 8542.13.8026 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

Intent Not To Revoke

LG submitted a request that the order be partially revoked with respect to itself pursuant to 19 CFR 351.222(e)(1). Under the Department's regulations, the Department may revoke an order, in part, if the Secretary concludes that, among other things: (1) "[o]ne or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years"; (2) "[i]t is not likely that those persons will in the future sell the merchandise at less than normal value"; and (3) "the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the merchandise at less than normal value." *See* 19 CFR 351.222(b)(2). In this case, LG does not meet the first criterion for revocation. In the two previous segments of this proceeding, the Department found that LG sold subject merchandise at less than normal value. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea*, 63 FR 50867 (September 23, 1998) ("*Final Results 1998*") and *Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from the Republic of Korea*, 64 FR 69694 (December 14, 1999) ("*Final Results 1999*"). Since LG has not met the first criterion for revocation, *i.e.*, zero or *de minimis* margins for three consecutive reviews, the Department need not reach a conclusion with respect to the second and third criteria. Therefore, on this basis, we have preliminarily determined not to revoke the Korean DRAM antidumping duty order with regard to LG.

Verification

As provided in section 782(i) of the Act, we verified information provided by LG and Hyundai. We used standard verification procedures, including on-site inspection of the respondents' facilities, examination of relevant sales, financial, and/or cost records, and selection of original documentation containing relevant information. G5, Jewon, Kim's Marketing and Wooyang were not verified because the companies did not respond to the Department's questionnaires.

Facts Available ("FA")

1. Application of FA

Section 776(a)(2) of the Act provides that if any interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in making its determination.

On July 8, 1999, the Department sent Hyundai, LG, G5, Jewon, Kim's Marketing and Wooyang questionnaires requesting that they provide information regarding any sales that they made to the United States during the POR. We did not receive any replies from G5, Jewon, Kim's Marketing or Wooyang.

On March 3, 2000, the Department sent letters informing G5, Jewon, Kim's Marketing and Wooyang that not responding to the Department's questionnaires could result in a determination based on FA. We did not receive any replies from the four companies.

Because G5, Jewon, Kim's Marketing and Wooyang have failed to respond to our questionnaires, pursuant to section 776(a) of the Act, we have applied FA to calculate their dumping margins.

2. Selection of Adverse FA

Section 776(b) of the Act provides that, in selecting from the facts available, adverse inferences may be used against a party that failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994).

Section 776(b) states further that an adverse inference may include reliance on information derived from the petition, the final determination, the final results of prior reviews, or any other information placed on the record. *See also Id.* at 868. In addition, the SAA establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870. In employing adverse inferences, the SAA instructs the Department to consider "the extent to which a party may benefit from its own lack of cooperation." *Id.*

Because G5, Jewon, Kim's Marketing and Wooyang did not cooperate by complying with our request for information, and in order to ensure that they do not benefit from their lack of cooperation, we are employing an adverse inference in selecting from among the facts otherwise available. The Department's practice when selecting an adverse FA rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse so "as to effectuate the purpose of the FA rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value*, 63 FR 8909, 8932 (February 23, 1998).

In order to ensure that the rate is sufficiently adverse so as to induce future cooperation from G5, Jewon, Kim's Marketing and Wooyang, we have assigned these companies, as adverse FA, the highest calculated margin from any segment of this proceeding, 10.44 percent, which is the rate calculated for Hyundai in the fifth administrative review. *See Final Results 1999*.

Information from prior segments of the proceeding, such as involved here, constitutes "secondary information" under section 776(c) of the Act. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for FA by reviewing independent sources reasonably at its disposal. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished,*

from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) ("*TRBs*"), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse FA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

As to the relevance of the margin used for adverse FA, the Department stated in *TRBs* that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin." *Id.*; *see also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (February 22, 1996), where we disregarded the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin.

As stated above, the highest rate determined in any prior segment of the proceeding is 10.44 percent, a calculated rate from *Final Results 1999*.

In the absence of information on the administrative record that application of the 10.44 percent rate to G5, Jewon, Kim's Marketing and Wooyang would be inappropriate as an adverse FA rate in the instant review, that the margin is not relevant, or that leads us to re-examine this rate as adverse facts available in the instant review, we have applied, as FA, the 10.44 percent margin from a prior administrative review of this order, and have satisfied the corroboration requirements under section 776(c) of the Act.

Third Country Transshipments

In the fourth and fifth administrative reviews of this proceeding, we determined that LG had knowledge, or should have had knowledge, that a substantial amount of its sales to third country customers were destined for the United States. *See Final Results 1998* and *Final Results 1999*. Furthermore, during the current review, the petitioner made several allegations that Hyundai's and LG's affiliates in other countries, such as Hong Kong, made sales during the POR to companies that shipped the merchandise to the United States. Consequently, we requested information from Hyundai and LG about their third country sales during the POR and, for the first time, conducted verifications of Hyundai's and LG's Hong Kong affiliates.

LG did not report the requested third country sales through an affiliated party. However, LG subsequently provided clarifying information about these sales. As a result of this clarification, we have made no adjustment for these sales. For further discussion, *See Memorandum on LG's Third Country Sales* dated May 30, 2000.

We also have made no adjustments in this review for Hyundai's or LG's reported third country sales because we did not find evidence that Hyundai or LG had knowledge, or should have had knowledge, that any of their sales to third country customers were destined for the United States. In the future, we intend to continue to closely monitor any transshipments of Korean DRAMs to the United States from all countries, and will particularly scrutinize transshipments of Korean DRAMs through Hong Kong.

Fair Value Comparisons

To determine whether sales of DRAMs from Korea to the United States were made at less than fair value ("LTFV"), we compared the constructed export price ("CEP") to the normal value ("NV"), as described in the CEP and NV sections of this notice, below. In accordance with section 771(16) of the Act, we considered all products as described in the "Scope of Review" section of this notice, above, that were sold in the home market in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of the identical or the most similar merchandise in the home market that were suitable for comparison, we compared U.S. sales to sales of the next most similar foreign like product, based on the characteristics listed in Section B and C of our antidumping questionnaire.

CEP

For Hyundai and LG, in calculating United States price, the Department used CEP, as defined in section 772(b) of the Act, because the merchandise was first sold to an unaffiliated U.S. purchaser after importation. We calculated CEP based on delivered prices to unaffiliated customers in the United States.

We made deductions from the starting price, where appropriate, for discounts, rebates, billing adjustments, foreign and U.S. brokerage and handling, foreign inland insurance, export insurance, air freight, air insurance, U.S. warehousing expense, U.S. duties and direct and indirect selling expenses to the extent that they are associated with economic activity in the United States in accordance with sections 772(c)(2) and 772(d)(1) of the Act. These deductions included credit expenses and commissions, as applicable, and inventory carrying costs incurred by the respondents' U.S. subsidiaries. We added duty drawback received on imported materials, where applicable, pursuant to section 772(c)(1)(B) of the Act.

For both respondents, for DRAMs that were further manufactured into memory modules after importation, we deducted all costs of further manufacturing in the United States, pursuant to section 772(d)(2) of the Act. These costs consisted of the costs of the materials, fabrication, and general expenses associated with further manufacturing in the United States. Pursuant to section 772(d)(3) of the Act, we also reduced the CEP by the amount of profit allocated to the expenses deducted under section 772(d)(1) and (2).

We corrected for certain clerical errors found during verification, including corrections that Hyundai and LG identified in their responses in the course of preparing for verification.

Level of Trade ("LOT")

In accordance with section 773(a)(1)(B) of the Act, to the extent practical, we determined NV based on sales in the comparison market at the same LOT as the CEP sales. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than the CEP sales, we examined stages in the marketing process and selling activities along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We reviewed the questionnaire responses of Hyundai and LG to establish whether there were sales at different LOTs based on the distribution system, selling activities, and services offered to each customer or customer category. For both respondents, we identified one LOT in the home market with direct sales by the parent corporation to the domestic customer. These direct sales were made by both respondents to original equipment manufacturers ("OEMs") and to distributors. In addition, all sales, whether made to OEM customers or to distributors, included the same selling functions. For the U.S. market, all sales for both respondents were reported as CEP sales. The LOT of the U.S. sales is determined for the sale to the affiliated importer rather than the resale to the unaffiliated customer. We examined the selling functions performed by the Korean companies for U.S. CEP sales (as adjusted) and preliminarily determine that they are at a different LOT from the Korean companies' home market sales because the companies' CEP transactions were at a less advanced stage of marketing. For instance, at the CEP level, the Korean companies did not engage in any general promotion activities, marketing functions, or price negotiations for U.S. sales. Because we compared CEP sales to home market sales at a more advanced LOT, we examined whether a LOT adjustment may be appropriate. In this case, both respondents only sold at one LOT in the home market. Therefore, there is no basis upon which either respondent can demonstrate a pattern of consistent price differences between levels of trade. Further, we do not have information which would allow us to examine pricing patterns based on the respondents' sales of other products and there is no other record information on which such an analysis could be based. Because the data available do not provide an appropriate basis for making a LOT adjustment and the LOT in the home market is at a more advanced stage of distribution than the LOT of the CEP sales, a CEP offset is appropriate. Both respondents claimed a CEP offset. We applied the CEP offset to adjusted home market prices or CV, as appropriate. The CEP offset consisted of an amount equal to the lesser of the weighted-average U.S. indirect selling expenses and U.S. commissions or home market indirect selling expenses. *See* the Memorandum on LOT for LG, dated May 30, 2000, and Memorandum on LOT for Hyundai, dated May 30, 2000.

NV

Home Market Viability

In order to determine whether there were sufficient sales of DRAMs in the home market to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the aggregate volume of home market sales of the foreign like products for both Hyundai and LG was greater than five percent of the respective aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for all respondents.

Cost of Production ("COP")

We disregarded Hyundai's and LG's sales found to have been made below the COP in *Final Results 1998*, the most recent segment of this proceeding for which final results were available at the time of the initiation of this review. Accordingly, the Department, pursuant to section 773(b) of the Act, initiated COP investigations of both respondents for purposes of this administrative review.

We calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, SG&A expenses, and the cost of all expenses incidental to placing the foreign like product in condition, packed, ready for shipment, in accordance with section 773(b)(3) of the Act. We compared weighted-average quarterly COP figures for each respondent, adjusted where appropriate (see below), to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act. In accordance with section 773(b)(2)(D) of the Act, we conducted the recovery of cost test using annual cost data.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of home market sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) and (C) of the Act. To determine whether prices provided for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per-unit cost of production at the time of the sale were also below the weighted-average per-unit cost of production for the POR, in accordance with section 773(b)(2)(D) of the Act. If they were, we disregarded the below-cost sales in determining NV.

We found that for both respondents, more than 20 percent of their home market sales for certain products were made at prices that were less than the COP. Furthermore, the prices did not permit the recovery of costs within a reasonable period of time. We, therefore, disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1). For those sales for which there were no comparable home market sales in the ordinary course of trade, we compared CEP to CV pursuant to section 773(a)(4) of the Act.

Adjustments to COP

Research & Development ("R&D")

Consistent with our past practice in this case, the R&D element of COP was based on R&D expenses related to all semiconductor products, not product-specific expenditures. *See, e.g., Final Results 1999*, 64 FR at 69701–69702.

In addition, Hyundai and LG, in 1998, completely deferred certain R&D costs and amortized other R&D costs over five years using the straight-line method. This is the same methodology for recognizing R&D costs that Hyundai and

LG began to use in 1997, after previously expensing all R&D costs as incurred (except for Hyundai, which began to defer certain R&D costs in 1996). Both Hyundai and LG based the R&D expenses that they reported to the Department for this POR on the amount of R&D costs that they expensed in 1998.

Section 773(f)(1)(A) of the Act directs the Department to rely on "the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with production and sale of the merchandise." Section 773(f)(1)(A) of the Act also states that the Department will consider whether "such allocations have been historically used by the exporter or the producer." Hyundai's and LG's methodology for recognizing R&D costs is in accordance with Korean GAAP. However, the legacy of Hyundai's and LG's inconsistency in R&D accounting practices continues to distort the cost calculation for antidumping purposes, in a similar manner to the distortions that we noted in 1997 in the fifth administrative review. *See Final Results 1999*, 64 FR at 69696–69700.

Hyundai and LG have repeatedly changed their accounting method for R&D expenses throughout the course of these proceedings (*i.e.*, from capitalizing and amortizing, to expensing in the year incurred, and now back to capitalizing and amortizing). When Hyundai and LG do not consistently expense or amortize R&D costs, they will recognize, in relation to amounts that would be recognized if either method was constantly applied, aberrationally high amounts of R&D expense in some years, and aberrationally low amounts of R&D expense in other years, that do not reasonably reflect the costs of producing the subject merchandise. In 1998, as in 1997, Hyundai and LG, as a consequence of their change in accounting methods for R&D costs in 1997, in only their second consecutive year of amortizing R&D costs, recognized, and reported to the Department, an aberrationally low amount of R&D expenses.

Also in 1998, as in 1997, Hyundai and LG completely deferred R&D costs for certain long-term projects until they realize revenues from these projects, or until they foresee no possibility of realizing revenue from these projects. This practice exacerbates the low level of R&D expenses that the respondents recognize in relation to the amount of expenses actually incurred. As we found in *Final Results 1999*, 64 FR at 69699, we find that, for dumping purposes, this methodology does not reasonably reflect the cost of producing the subject merchandise.

The Court of International Trade, in *Micron Technology* v. *United States*, Slip Op. 99–51 (June 16, 1999), at 6, specifically stated that "the object of the cost of production exercise is . . . to capture . . . those expenses that reasonably and accurately reflect a respondent's actual production costs for period of review." However, as a result of their recent change to amortizing and deferring R&D expenses, Hyundai and LG are not capturing those expenses that reasonably and accurately reflect their actual R&D costs for this POR. Rather, because of their change in R&D accounting methodologies, their latest method of capitalization of R&D produces a distorted and meaningless (for the cost of production exercise) result that does not reasonably reflect the actual cost of producing the subject merchandise.

We have therefore determined that it is appropriate to recognize for antidumping purposes all of Hyundai's and LG's 1998 current R&D costs incurred in order to reasonably and accurately reflect their actual R&D costs for a given year. The Department also continues to believe that, in general, recognizing the current year's R&D costs incurred is a reasonable method to recognize R&D expenses. This methodology is consistent with both Korean and U.S. GAAP, and is the same methodology that Hyundai and LG had followed prior to 1997.

Foreign Translation Gains & Losses

In 1998, both Hyundai and LG changed how they recognized their long-term foreign currency translation gains and losses. In 1998, Hyundai and LG recognized all of their long-term translation gains and losses, while in 1997, the previous year, they had capitalized such gains and losses and amortized the amounts over the lives of the corresponding liabilities. In addition, in 1998, these two companies offset the vast majority of their respective consolidated deferred translation losses (part of which were due to be expensed in 1998) with the revaluation increment from the revaluation of their physical assets. The revaluation increment is an equity type adjustment on the statement of retained earnings. As a result, the deferred translation losses are never reflected on the companies' income statement. While these accounting changes are in accordance with Korean GAAP, the Department considers the new accounting treatment of these gains and losses to be distortive.

Hyundai's and LG's changed treatment of their long-term translation gains and losses results in the diminution of the impact of their translation losses, and the exaggeration of the impact of their translation gains. In 1997, Hyundai and LG incurred significant long-term translation losses when the Korean Won dropped precipitously. By offsetting much of these translation losses in 1998 with the revaluation increment, Hyundai and LG avoided recognizing almost all of the deferred losses from 1997, while still recognizing gains (including deferred gains from 1997) in 1998 on those same liabilities that experienced the 1997 losses. In addition, by switching from amortizing over the life of the liabilities in 1997, to expensing as incurred in 1998, when Hyundai and LG experienced net long-term translation gains, Hyundai and LG heightened the impact of those 1998 gains by recognizing all of the gains immediately.

In order to neutralize the effect of the changed treatment of the long-term translation gains and losses, we consider it appropriate to amortize all long-term translation gains and losses over the life of the loans. This treatment is consistent with Hyundai's and LG's accounting treatment in 1997, and is the same method the Department followed in the fourth administrative review covering 1996, when both Hyundai and LG did not recognize in their income statements any of their long-term translation gains and losses. *See Final Results 1998*, 63 FR at 50872.

Hyundai, for the first time in 1997, and again in 1998, capitalized in its construction in progress ("CIP") account a part of its long-term translation gains and losses. LG also capitalized in its CIP account a part of its long-term translation gains and losses in 1997 and 1998. The Department considers this distortive, since the gains and losses generated by the same debt are amortized over different periods (the life of the corresponding financial liabilities and, for the part capitalized to CIP, the life of physical assets). We therefore included the capitalized translation gains and losses in the amount of translation gains and losses that we amortized over the life of the loans.

Depreciation

Hyundai and LG, in another accounting change in 1998, increased the useful lives over which they depreciate certain assets. Our practice, pursuant to section 773(f)(1)(A) of the Act and the SAA at 834, is to use those

respondents have historically used. As this is the sixth review of this order, we do not consider it appropriate for the respondents to dramatically change the useful lives of their assets for antidumping purposes. We find that the useful lives that both Hyundai and LG adopted for certain assets in 1998 greatly exceed the useful lives that they have employed for these assets in the past. This is the second time since 1996 that the respondents have extended the useful lives of their assets. While the Department accepted the respondents' 1996 minor useful life adjustment (*see Final Results 1998*, 63 FR at 50870–50871), the useful lives that Hyundai and LG adopted in 1998 are in some instances greater than fifty percent longer than the previous useful lives. Moreover, we do not believe that the useful lives Hyundai and LG previously employed were unreasonable, especially considering that these two companies themselves argued that the previous useful lives were reasonable in *Final Results 1998*. We therefore adjusted Hyundai's and LG's reported depreciation expense using the pre-1998 useful lives.

Company-Specific Adjustments

Hyundai

1. We adjusted Hyundai's reported interest expense rate by recalculating the long-term translation gains and losses, as explained above, and excluding offsets of long-term interest income related to certain restricted long-term deposits, consistent with *Final Results 1999*, 64 FR at 69707.

2. We adjusted Hyundai's reported general and administrative ("G&A") expense rate by excluding the foreign currency transaction gains and losses that we accounted for in the interest expense calculation, and all unspecified foreign currency transaction gains and losses; and including foreign currency gains and losses related to account payables.

3. We excluded certain non-operating expenses from Hyundai's R&D expenses.

4. In addition to the adjustments for depreciation noted above, we adjusted Hyundai's depreciation expenses to reflect the net effect of increasing depreciation, consistent with *Final Results 1998*, for special depreciation that would have been taken had the respondent continued to take special depreciation on certain equipment for the period of the first half of 1998, and decreasing depreciation expenses to reflect the amount of special depreciation which the Department expensed in *Final Results 1998*, but which Hyundai expensed in its own books and records, and reported in its response, for the current POR.

See Memorandum on Hyundai Electronics Industries Co., Ltd.: Calculations for the Preliminary Results, dated May 30, 2000.

LG

1. We adjusted LG's reported interest expense rate by recalculating the long-term translation gains and losses, as explained above.

2. We adjusted LG's reported G&A expense rate by excluding the foreign currency transaction gains and losses that we accounted for in the interest expense calculation, foreign currency transaction gains and losses related to account receivables, and unspecified foreign currency transaction gains and losses; and including foreign currency gains and losses related to account payables.

See Memorandum on LG Semicon Co., Ltd.: Calculations for the Preliminary Results, dated May 30, 2000.

CV

In accordance with section 773(e) of the Act, we calculated CV based on the respondents' cost of materials and fabrication employed in producing the subject merchandise, SG&A expenses, the profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the cost of materials, fabrication, and G&A expenses as reported in the CV portion of the questionnaire response, adjusted as discussed in the COP section above. We used the U.S. packing costs as reported in the U.S. sales portion of the respondents' questionnaire responses. For selling expenses, we used the average of the selling expenses reported for home market sales that survived the cost test, weighted by the total quantity of those sales. For actual profit, we first calculated, based on the home market sales that survived the cost test, the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

Price Comparisons

For price-to-price comparisons, we based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and to the extent practicable, at the same LOT, in accordance with section 773(a)(1)(B)(i) of the Act. We compared the U.S. prices of individual transactions to the monthly weighted-average price of sales of the foreign like product. In the case of LG, we calculated NV based on delivered prices to unaffiliated customers and, where appropriate, to affiliated customers in the home market.

With respect to LG, we tested those sales that LG made in the home market to affiliated customers to determine whether they were made at arm's length and could be used in our analysis. *See* 19 CFR 351.102(b). To test whether these sales were made at arm's length prices, we compared, on a model-specific basis, prices of sales to affiliated and unaffiliated customers, net of discounts, all movement charges, direct selling expenses, and packing. For tested models of the subject merchandise, prices to an affiliated party were on average 99.5 percent or more of the price to unaffiliated parties and we therefore determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and Preamble to the Department's regulations, 62 FR at 27355.

With respect to both CV and home market prices, we made adjustments, where appropriate, for inland freight, inland insurance, and discounts. We also reduced CV and home market prices by packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i) of the Act. In addition, we increased CV and home market prices for U.S. packing costs, in accordance with section 773(a)(6)(A) of the Act. We made further adjustments to home market prices, when applicable, to account for differences in physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Finally, pursuant to section 773(a)(6)(C)(iii) of the Act, we made an adjustment for differences in circumstances of sale by deducting home market direct selling expenses (credit expenses and bank charges) and adding any direct selling expenses associated with U.S. sales not deducted under the provisions of section 772(d)(1) of the Act.

For home market sales by Hyundai and LG that were invoiced in U.S. dollars, and paid for in won, we calculated a won-denominated price, used a won borrowing rate, and based the expenses reported for these sales on the won-denominated price.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for May 1, 1998 through April 30, 1999:

Manufacturer/exporter	Percent margin
The G5 Corporation	10.44
Hyundai Electronic Industries Co., Ltd	5.32
Jewon Microelectronics	10.44
Kim's Marketing	10.44
LG Semicon Co., Ltd	3.08
Wooyang Industry Co., Ltd	10.44

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) a statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. We have calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the entered value of sales used to calculate those duties. These rates will be assessed uniformly on all entries of each particular importer made during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of DRAMs from Korea entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent *ad valorem* and, therefore, *de minimis*, no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original LTFV investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the LTFV investigation, the cash deposit rate will be 4.55 percent, the "all-others" rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14204 Filed 6–5–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice from Brazil; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the petitioners and one producer/exporter of the subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. This review covers one manufacturer/exporter of the subject merchandise to the United States, Citrovita Agro Industrial Ltda. The period of review is May 1, 1998, through April 30, 1999.

We have preliminarily determined that sales have been made below the normal value by the company subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1776 or (202) 482–0656, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations are to the Department's regulations at 19 CFR part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On May 19, 1999, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil (64 FR 27235).

In accordance with 19 CFR 351.213(b)(1), on May 27, 1999, the petitioners, Florida Citrus Mutual, Caulkins Indiantown Citrus Co., Citrus Belle, Citrus World, Inc., Orange-Co of Florida, Inc., Peace River Citrus Products, Inc., and Southern Gardens Citrus Processors Corp., requested an administrative review of the antidumping order covering the period May 1, 1998, through April 30, 1999, for two producers and exporters of FCOJ: CTM Citrus S.A. (CTM) and Sucorrico S.A. (Sucorrico). In addition, on May 28, 1999, and June 1, 1999, respectively, two producers and exporters of FCOJ, Branco Peres Citrus S.A. (Branco Peres) and Citrovita Agro Industrial Ltda. (Citrovita), also requested an administrative review. On June 15, 1999, the Department issued questionnaires to Branco Peres, Citrovita, CTM, and Sucorrico.

On June 21, 1999, the Department initiated an administrative review for Citrovita (64 FR 35124 (June 30, 1999)); the initiation notice mistakenly omitted Branco Peres, CTM, and Sucorrico. However, on June 30, 1999, Branco Peres withdrew its request for an administrative review. In addition, in August 1999, CTM and Sucorrico informed the Department that they had no shipments of subject merchandise into the United States during the period of review (POR). We have confirmed CTM's and Sucorrico's assertions using information from the Customs Service. *See* the memorandum to the file from Jerry Surowiec on this topic, dated May 30, 2000.

In September 1999, we received a response to the Department's questionnaire from Citrovita. In October and November 1999, we issued supplemental questionnaires to Citrovita. We received responses to these questionnaires in November and December 1999.

In December 1999, we conducted verification of Citrovita's U.S. sales responses at its offices in Delaware.

In January 2000, we requested additional information related to Citrovita's cost of production (COP), as well as the COP of an affiliated producer of FCOJ. We received a response to this questionnaire in February 2000.

Also in February 2000, we conducted verification of Citrovita's home market sales and cost responses, as well as the sales and cost responses of the affiliated FCOJ producer.

Scope of the Review

The merchandise covered by this review is frozen concentrated orange juice from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the *Harmonized Tariff Schedule* of the United States (HTSUS). The HTSUS item number is provided for convenience and for customs purposes. The Department's written description of the scope of this proceeding remains dispositive.

Period of Review

The POR is May 1, 1998, through April 30, 1999.

Affiliated Producers

During the POR, a sister company to Citrovita's parent company purchased another Brazilian producer of FCOJ and that producer's affiliated trading company (*i.e.*, Cambuhy MC Industrial Ltda. (Cambuhy) and Cambuhy Citrus Comercial e Exportadora S.A. (Cambuhy Exportadora), respectively). Because Citrovita became affiliated with these companies during the POR (i.e., beginning in September 1998), we analyzed whether it would be appropriate to treat Citrovita and these affiliated parties as a single entity using the criteria outlined in 19 CFR 351.401(f). Our analysis showed that the parties have production facilities for similar or identical products which would not require substantial retooling in order to restructure manufacturing priorities. Moreover, the preponderance of evidence on the record indicates a significant potential for the manipulation of prices or production between Citrovita and its affiliates because of the degree of common ownership, the positions held by the owners of the parent company on the affiliates' boards of directors, and the extent to which operations were intertwined during the POR. Accordingly, we have collapsed Citrovita, Cambuhy, and Cambuhy Exportadora for purposes of the preliminary results, in accordance with 19 CFR 351.401(f). However, because there is no evidence that the companies were affiliated prior to September 1998, we have used only the sales and cost data reported for Cambuhy and Cambuhy Exportadora from September 1998 through the end of the POR. For further discussion, see the memorandum to Richard W. Moreland, Deputy Assistant Secretary, AD/CVD Enforcement, Group I, entitled "Treatment of Data Reported by Affiliated Parties in the Antidumping Duty Administrative Review on Frozen Concentrated Orange Juice from Brazil," dated May 30, 2000 (the Affiliated Party issues memo).

Comparison Methodology

To determine whether sales of FCOJ from Brazil to the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for Citrovita, as specified in the "Constructed Export Price" and "Normal Value" sections of this notice.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Review" section of this notice that were in the ordinary course of trade. For those U.S. sales of FCOJ for which there were no comparable foreign market sales in the ordinary course of trade, we compared CEP to constructed value (CV), in accordance with section 773(a)(4) of the Act.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether any difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

We note that the U.S. Court of International Trade (CIT) has held that the Department's practice of determining levels of trade for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221, 1241–42 (CIT 1998) (*Borden*). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgement in *Borden* on the level of trade issue. *See Borden Inc.* v. *United*

States, Court No. 96–08–01970, Slip Op. 99–50 (CIT June 4, 1999). The government has filed an appeal of *Borden* which is pending before the U.S. Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a level of trade analysis, as articulated by the Department's regulations at section 351.412.

Citrovita claimed that it made home market sales at only one level of trade (*i.e.*, sales to end users). Because Citrovita performed the same selling activities for sales to all customers in the home market, we determined that no level of trade adjustment is possible for Citrovita.

In order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. We found that Citrovita performed most of the selling functions and services related to U.S. sales at its sales office in the United States. These selling functions are associated with those expenses which we deduct from the CEP starting price, as specified in section 772(d) of the Act. We found that Citrovita performed the same selling functions for home market sales in Brazil. Therefore, we find that Citrovita's sales in the home market were at a more advanced stage of marketing and distribution (*i.e.*, more remote from the factory) than the constructed U.S. level of trade, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. However, because we find that Citrovita sells at only one level of trade in the foreign market, the difference in the level of trade cannot be quantified. Further, we do not have information which would allow us to examine pricing patterns based on the respondent's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not form an appropriate basis for making a level of trade adjustment, but the level of trade in the home market is at a more advanced stage of distribution than the level of trade of the CEP, we have granted a CEP offset to Citrovita. For further discussion, see the concurrence memorandum issued for the preliminary results of this review, dated May 30, 2000 (the concurrence memo).

Constructed Export Price

We based the U.S. price on CEP because sales to the unaffiliated purchaser took place after importation into the United States, in accordance with section 772(b) of the Act. We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. port fees, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses, and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Citrovita and its affiliate on their sales of the subject merchandise in the United States and of the foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of Citrovita's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with 19 CFR 351.404(b). Based on this comparison, we determined that Citrovita had a viable home market during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Citrovita had made home market sales at prices below their COPs in this review because the Department disregarded sales that failed the cost test for Citrovita in the most recently completed administrative review. *See Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 43650, 43652 (Aug. 11, 1999) (*FCOJ from Brazil*). As a result, the Department initiated an investigation to determine whether Citrovita made home market sales during the POR at prices below their COP.

We calculated the COP based on the sum of Citrovita's and the affiliated producers' costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and financing expenses, in accordance with section 773(b)(3) of the Act.

We used the reported COP amounts to compute a weighted-average COP during the POR, except in the following instances in which the costs were not appropriately quantified or valued:

1. We treated fresh orange juice as a co-product, rather than a by-product as reported, because this product was not an unintentional consequence of production. For further discussion, see the concurrence memo;
2. We recalculated the claimed by-product credit to (1) correct certain errors discovered during verification; and (2) state all sales of by-products to affiliated parties on an arm's-length basis. For further discussion, see the concurrence memo;
3. We valued the cost of fruit provided by an affiliated party using the affiliate's cost of production, in accordance with sections 773(f)(2) and (3) of the Act. For further discussion, see the concurrence memo and the Affiliated Party issues memo;
4. We treated Cambuhy Exportadora as the producer of certain FCOJ manufactured during the POR. We based the value of the fruit used in the production of this FCOJ on facts available, because Citrovita did not report this information. As facts available, we used the cost of production noted in item 3, above. For further discussion, see the Affiliated Party issues memo;
5. We made no addition to the COP for ICMS and IPI taxes because we found at verification that the respondent completely recovered these taxes during the POR;
6. We included the freight costs on certain shipments of oranges which had been excluded from the reported costs;
7. We revised the calculation of G&A expenses to include certain of Citrovita's non-operating expenses; and
8. We amortized certain foreign exchange losses incurred by Cambuhy on long-term U.S. dollar-denominated debt over the remaining life of the loans. For further discussion, see the Affiliated Party issues memo.

We compared the COP to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, selling expenses, and packing costs.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of Citrovita's sales of a given product were made at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities."

Where 20 percent or more of Citrovita's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time, as defined in section 773(b)(2)(B) and (C) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales in determining NV.

We found that more than 20 percent of Citrovita's home market sales within an extended period of time were made at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We, therefore, disregarded the below-cost sales and, where available, used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of FCOJ for which there were no comparable home market sales in the ordinary course of trade (i.e., sales within the contemporaneous window which were made at prices above the COP), we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A (including financing expenses), profit, and U.S. packing costs, adjusted as noted above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A (including financing expenses), and profit on the amounts incurred and realized by Citrovita in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses (offset by interest revenue). We recalculated home market credit expenses on the basis of home market price net of Brazilian taxes, in accordance with our practice. *See, e.g., Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 59407, 59410 (Nov. 22, 1996); and FCOJ from Brazil, 64 FR at 43653.

We disallowed a claim made for foreign exchange losses on one home market sale because this sale was denominated in, and paid for, in Brazilian reais. Consequently, because this transaction did not involve the conversion of currency, there was no foreign exchange loss associated with the sale. For further discussion, see the concurrence memo.

We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by home market indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act. Section 773A(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. The Department considers a "fluctuation" to exist when the daily exchange rate differs from the benchmark rate by 2.25 percent or more. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we generally substitute the benchmark rate for the daily rate, in accordance with established practice. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions*, 61 FR 9434 (Mar. 8, 1996).)

Our preliminary analysis of dollar-real exchange rates shows that the real declined rapidly in early 1999, losing over 40 percent of its value in January 1999, when the Brazilian government ended its exchange rate restrictions. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-real exchange rate during recent years, and it did not rebound significantly in a short time. As such, we preliminarily determine that the decline in the real during January 1999 was of such magnitude that the dollar-real exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.*, as having experienced only a momentary drop in value relative to the normal benchmark. We preliminarily find that there was a large, precipitous drop in the value of the real in relation to the U.S. dollar in January 1999.

We recognize that, following a large and precipitous decline in the value of a currency, a period may exist wherein it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop in January 1999. Thus, we devised a methodology for identifying the point following a precipitous drop at which it is reasonable to presume that rates were merely fluctuating. Beginning on January 13, 1999, we used only daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely "fluctuating." (Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time.) Accordingly, from the first of these five days, we resumed classifying daily rates as "fluctuating" or "normal" in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 65 FR 5554, 5563–64 (Feb. 4, 2000); and Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded*

Carbon Steel Pipes and Tubes from Thailand, 64 FR 56759, 56763 (Oct. 21, 1999).

Applying this methodology in the instant case, we used daily rates from January 13, 1999, through March 4, 1999. We then resumed the use of a benchmark, starting with a benchmark based on the average of the 20 reported daily rates on March 5, 1999. We resumed the use of the normal 40-day benchmark starting on April 3, 1999, through the close of the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period May 1, 1998, through April 30, 1999:

Manufacturer/Exporter	Percent margin
Citrovita Agro Industrial Ltda/Cambuhy MC Industrial Ltda/Cambuhy Citrus Comercial e Exportadora	26.27

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held seven days after the date rebuttal briefs are filed. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs, within 120 days of the publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales, as appropriate. These rates will be assessed uniformly on all entries of particular importers made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of FCOJ from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: 1) the cash deposit rates for Citrovita, Cambuhy, and Cambuhy Exportadora will be the rate established in the final results of this review; except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106, the cash deposit will be zero; 2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 1.96 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(i)(1) and 777(i)(1) of the Act.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14205 Filed 6–5–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–824]

Polyvinyl Alcohol From Taiwan: Preliminary Results of Third Antidumping Duty Administrative Review and Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of third antidumping duty administrative review and intent not to revoke order in part.

SUMMARY: In response to a request by Chang Chun Petrochemical Co., Ltd., a producer and exporter of polyvinyl alcohol from Taiwan, the Department of Commerce is conducting an administrative review of the antidumping duty order on polyvinyl alcohol from Taiwan. The period of review is May 1, 1998, through April 30, 1999.

We preliminarily find that sales of subject merchandise have not been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service not to assess antidumping duties on entries for which the importer-specific rate is less than *de minimis* (*i.e.*, less than 0.50 percent). Furthermore, we preliminarily intend not to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Chang Chun Petrochemical Co., Ltd. because its sales were not made in commercial quantities (*see* 19 CFR 351.222(e)); *see Intent Not to Revoke* section of this notice. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood, at (202) 482–3836, or Brian Smith, at (202) 482–1766, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act"), as amended, by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department of Commerce's ("the Department's") final regulations at 19 CFR part 351 (1999).

Case History

On May 14, 1996, the Department published in the **Federal Register** an antidumping duty order on polyvinyl alcohol ("PVA") from Taiwan. *See* 61 FR 24286. On May 19, 1999, the Department published a notice providing an opportunity to request an administrative review of this order for the period May 1, 1997, through April 30, 1998 (64 FR 27235). On May 27, 1999, we received a timely request for an administrative review from Chang Chun Petrochemical Co. ("Chang Chun"). In addition, Chang Chun requested that the Department revoke the antidumping duty order with respect to it. On June 30, 1999, we published a notice of initiation of this review for Chang Chun (64 FR 35124).

On July 8, 1999, we issued an antidumping questionnaire to Chang Chun. Because, the Department disregarded sales that failed the cost test in the last completed review for Chang Chun (*see Notice of Final Results of Second Antidumping Duty Administrative Review: Polyvinyl Alcohol from Taiwan*, 64 FR 32024 (June 15, 1999)), the Department had reasonable grounds to believe or suspect that Chang Chun's sales of the foreign like product may have been made at prices below the cost of production ("COP") as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated an investigation to determine whether Chang Chun made home market sales during the period of review ("POR") at prices below its COP, and required Chang Chun to respond to the COP section of the questionnaire issued in July 1999.

The Department received Chang Chun's response in August 1999. We issued supplemental questionnaires to Chang Chun in September and November 1999. Responses to these questionnaires were received in October and November 1999, respectively.

On November 15, 1999, the Department requested submissions of factual information regarding revocation of the antidumping order in part. Such submissions and rebuttal comments were received from the petitioner, Air Products and Chemicals, Inc., and Chang Chun in December 1999. On January 14, 2000, the Department issued to Chang Chun a supplemental questionnaire on the information it submitted pertaining to revocation. Chang Chun submitted its supplemental revocation response on February 4, 2000.

On January 21, 2000, the Department published a notice postponing the preliminary results of this review until May 30, 2000 (65 FR 3418). On February 9, 2000, the Department requested confirmation from the Customs Service that it had not made any adverse findings with respect to the classification of PVA exported to the United States from Taiwan by Chang Chun. On February 16, 2000, the U.S. Customs Service confirmed that although it had conducted an investigation on Chang Chun's shipments, it found no violations (*see* memorandum to the file, dated March 14, 2000). Pursuant to section 782(i)(2) of the Act, the Department verified Chang Chun's response from February 21 through March 3, 2000. On April 27, 2000, the Department issued its verification report.

Scope of Review

The product covered by this review is PVA. PVA is a dry, white to cream-colored, water-soluble synthetic polymer. This product consists of polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Review

The POR is May 1, 1998, through April 30, 1999.

Verification

As provided in section 782(i)(2) of the Act, we verified information provided by Chang Chun. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports placed in the case file (*see* the Department's April 27, 2000, verification report (hereafter "verification report") for further discussion).

Fair Value Comparisons

To determine whether sales of the subject merchandise to the United States were made at prices below normal value, we compared the export price to normal value as described below. In accordance with section 777A(d)(2) of the Act, we compared the export price of individual transactions to the monthly weighted-average price of sales of the foreign like product made in the ordinary course of trade (*see* section 773(a)(1)(B)(i) of the Act). Where there were no sales of the foreign like product made in the ordinary course of trade, we compared the export price of those transactions to the constructed value of that merchandise (*see* section 773(a)(4) of the Act).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Chang Chun covered by the description in the "Scope of the Review" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise made in the home market in the ordinary course of trade, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Chang Chun in the following order: viscosity, hydrolysis, particle size, tackifier, defoamer, ash, color, volatiles, and visual impurities. For those U.S. sales of PVA for which there were no comparable foreign market sales in the ordinary course of trade (*i.e.*, sales

within the contemporaneous window which were made at prices above the COP), we compared U.S. sales to the constructed value, in accordance with section 773(a)(4) of the Act.

Export Price

In accordance with sections 772(a) and (c) of the Act, we calculated an export price for all of Chang Chun's sales since the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation, and because constructed export price ("CEP") methodology was not otherwise warranted based on the facts of record. We calculated export price based on the packed, CIF price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions from the starting price for domestic inland freight, foreign brokerage and handling, international freight, and marine insurance in accordance with section 772(c)(2)(A) of the Act. We made the following adjustments to Chang Chun's U.S. expense data based on our verification findings: (1) we corrected the reported amounts for packing expenses; and (2) we corrected invoice-specific information with respect to marine insurance and bank charges (*see* pages 16–21 and 29 of the verification report for further discussion).

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared Chang Chun's volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with 19 CFR 351.404(b). For Chang Chun, we determined that the quantity of foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States because Chang Chun had sales in its home market which were greater than five percent of its sales in the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on sales in Taiwan.

Based on our verification findings, we made the following adjustments to Chang Chun's reported home market expense data: (1) we corrected the reported amounts for credit expenses and packing expenses; and (2) we corrected invoice-specific information with respect to the quantity for one sales transaction (*see* pages 4, 15–16 and 30 of the verification report and May 30, 2000, preliminary results calculation memorandum for further discussion).

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determined normal value based on sales in the comparison market at the same level of trade ("LOT") as the export price transaction. The normal value LOT is that of the starting-price sales in the comparison market or, when normal value is based on constructed value, that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For export price, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether normal value sales are at a different LOT than export price, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

As in previous reviews, Chang Chun reported one channel of distribution for its U.S. and home market sales. Based on our analysis of the selling functions, we found that the selling activities performed in both the home market and the United States (*e.g.*, freight and delivery arrangements) were similar. Therefore, we determined that sales in both markets are at the same LOT and consequently no LOT adjustment is warranted. (*See Final Results of Antidumping Duty Administrative Review: PVA From Taiwan*, 63 FR 32810, 32812 (June 16, 1998)).

Cost of Production ("COP")

As we stated in the *Case History* section, because we disregarded sales below the COP for Chang Chun in the last completed segment of the proceeding (*i.e.*, the second administrative review), we had reasonable grounds to believe or suspect that Chang Chun's sales of the foreign product under consideration for the determination of normal value in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Chang Chun in the home market.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by grade, based on the sum of the cost of materials and fabrication, SG&A expenses, and packing costs. We relied on the submitted COPs, correcting the reported amounts for general and administrative expenses and factory overhead based on our verification findings (*see* pages 29–30 of the verification report for further discussion). In addition, we adjusted the joint production costs between PVA and acetic acid using the relative sales value of each product calculated on the basis of a two-year period prior to the period of the less-than-fair-value ("LTFV") investigation (*see* May 30, 2000, preliminary results calculation memorandum and *Final Results of Second Antidumping Duty Administrative Review: PVA From Taiwan;* 64 FR 32024, 32025 (June 15, 1999)).

Chang Chun purchased a major input (*i.e.*, vinyl acetate monomer ("VAM")) used in the production of PVA from an affiliated party. Pursuant to 19 CFR 351.407(b), we applied the major input rule to determine the value of the VAM. Under the major input rule, we normally will determine the value of a major input purchased from an affiliated person based on the higher of: (1) the price paid by the exporter or producer to the affiliated person for the major input; (2) the amount usually reflected in sales of the major input in the market under consideration; or (3) the cost to the affiliated person of producing the major input. In this case, we used the transfer price of VAM from Chang Chun's affiliate, which was higher than the market price or the affiliate's COP.

B. Test of Home Market Prices

We compared the weighted-average COP, adjusted where appropriate, to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a grade-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and because the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Based on this test, we excluded from our analysis certain comparison-market sales of PVA products that were made at below-COP prices within the POR. For those U.S. sales of PVA for which there were no comparable home market sales in the ordinary course of trade, we compared export price to constructed value in accordance with section 773(a)(4) of the Act.

D. Calculation of Constructed Value

In accordance with section 773(e) of the Act, we calculated constructed value based on the sum of Chang Chun's cost of materials, fabrication, SG&A (including interest expenses), U.S. packing costs, and profit.

In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Chang Chun in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Taiwan. We used the weighted-average home market selling expenses for this purpose.

Price-to-Price Comparisons

We calculated normal value based on packed, FOB or delivered prices to unaffiliated purchasers in Taiwan. We made adjustments to the starting price for returns, where appropriate. We also made deductions, where appropriate, for inland freight—which included inland insurance—pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances-of-sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments by deducting home market direct selling expenses (*i.e.*, credit expenses) and adding U.S. direct selling expenses (*i.e.*, credit expenses and bank charges). Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6) of the Act.

Price to Constructed Value Comparisons

Where we compared export price to constructed value, we made COS adjustments by deducting from constructed value the weighted-average home market direct selling expenses and adding the U.S. direct selling expenses, in accordance with section 773(a)(8) of the Act and section 19 CFR 351.401(c).

Intent Not To Revoke

On May 27, 1999, Chang Chun requested that, pursuant to 19 CFR 351.222(b), the Department revoke the antidumping duty order on PVA from Taiwan, with respect to merchandise that it produces and exports, at the conclusion of this administrative review. Chang Chun submitted along with its revocation request a certification stating that: (1) the company sold subject merchandise at not less than normal value during the POR, and that in the future it would not sell such merchandise at less than normal value (*see* 19 CFR 351.222(e)(1)(i)); (2) the company has sold the subject merchandise to the United States in commercial quantities during each of the past three years (*see* 19 CFR 351.222(e)(1)(ii)); and (3) the company agrees to immediate reinstatement of the order, if the Department concludes that the company, subsequent to revocation, has sold the subject merchandise at less than normal value (*see* 19 CFR 351.222(b)(1)(iii)).

On November 9, 1999, the petitioner opposed the request for revocation, arguing that the antidumping order is necessary to offset dumping and that Chang Chun will sell subject merchandise at less than normal value if the order is revoked. At the request of the Department, both the petitioner and Chang Chun submitted comments on Chang Chun's request for revocation (*see* December 7, and December 14, 1999, revocation submissions submitted by the parties).

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation in part must submit the following: (1) a certification that the company has sold the subject merchandise at not less than normal value in the current review period and that the company will not sell at less than normal value in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, has sold subject merchandise at less than normal value. (*See* 19 CFR 351.222(e)(1)). Upon receipt of such a request, the Department may revoke an order, in whole or in part, if it concludes that all three criteria mentioned above have been met. *See* 19 CFR 351.222(b)(2). *See Final Results of the Antidumping Duty Administrative Review: Silicon Metal From Brazil*, 65 FR 7497, 7498, (February 15, 2000) (hereafter "*Silicon Metal From Brazil*").

Chang Chun submitted the required certifications and agreement. However, after applying the three criteria outlined in section 351.222(b) of the Department's regulations, and after considering the comments of the parties and all of the evidence in the record, we have preliminarily determined that one of the Department's requirements for revocation has not been met. Specifically, although we preliminarily find that Chang Chun has demonstrated three consecutive years of sales at not less than normal value, we also preliminarily find that, based on Chang Chun's U.S. shipment data, its sales to the United States have not been made in commercial quantities during each of the three review periods at issue, in accordance with 19 CFR 351.222(d) and 351.222(e)(1)(ii).

In particular, data on the record indicate that Chang Chun's sales of PVA to the U.S. market during the second POR (*i.e.*, U.S. sales examined during the second administrative review of this proceeding) do not serve as an adequate basis for finding commercial quantities when compared to the total U.S. sales

volume during the POI.[1] (*See* May 22, 2000, memorandum to the file regarding corrections to the verification report, including commercial quantities data noted therein.)

Therefore, we have determined that the requirements for revocation have not been met because Chang Chun has not made sales to the United States in commercial quantities during the second segment of this proceeding.[2] Based on our examination of these facts at verification and our review of Chang Chun's sales practices, we find that, consistent with Department practice, we do not have a sufficient basis to conclude that the *de minimis* dumping margin calculated for Chang Chun for the second administrative review is reflective of the company's normal commercial experience. *See, e.g., Silicon Metal from Brazil*, 65 FR at 7498 (finding that because sales and volume figures were so small the Department could not conclude that the reviews reflected what the company's normal commercial experience would be absent the discipline of an antidumping duty order). Because Chang Chun has not met the commercial quantities requirement, we have not examined the issue of the likelihood of future dumping (*see Silicon Metal from Brazil*, 65 FR at 7505).

Chang Chun attempts to explain that the significant decrease in its sales volume during the second administrative review period was due to the alleged effect of the antidumping duty cash deposit rate required on its U.S. shipments of PVA as a result of the LTFV investigation prior to the publication of the final results of the first administrative review of the order on PVA from Taiwan (63 FR 32810, June 16, 1998). Chang Chun states that the LTFV cash deposit rate was the major factor affecting its substantial reduction in U.S. sales during the second POR (*i.e.*, 5/1/97—4/30/98). (*See* verification report at page 29 and 30.) Whether this is the case or not does not detract from the record evidence which unequivocally demonstrates that the volume of such sales was far below the volume of Chang Chun's sales prior to the imposition of the discipline of the antidumping duty order. Moreover, it is the volume of these sales (not Chang Chun's alleged reasons for their size in this case) that is the focus of the Department's analysis with respect to whether they can be considered to be in commercial quantities.

Based on the foregoing analysis, we have preliminarily determined that Chang Chun has not met one of the threshold requirements for revocation (*i.e.*, sales in commercial quantities during the three consecutive PORs). We therefore preliminarily intend not to revoke the order, with respect to PVA produced and also exported by Chang Chun, if these preliminary findings are affirmed in our final results.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period May 1, 1998 through April 30, 1999:

Manufacturer/exporter	Margin (percent)
Chang Chun Petrochemical Co., Ltd	0.00

Pursuant to 19 CFR 351.224(b), the Secretary will disclose to the parties to the proceeding the calculations performed in connection with this review, within five days after the date of publication of the preliminary results of this review. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter.

Issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. The request should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Cash Deposit and Assessment Requirements

The final results of this review shall be the basis for the assessment of the antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

If these preliminary results are adopted in the final results, we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review for which any importer-specific assessment rates calculated in the final results of this review are above *de minimis* (*i.e.*, at or above 0.5 percent), in accordance with 19 CFR 351.106(c)(2). For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total entered value of the sales examined.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this antidumping duty review for all shipments of PVA from Taiwan, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a) of the Act: (1) no cash deposit will be required for PVA from Taiwan that is produced by Chang Chun (unless the margin established for the company in the final results of this review is above *de minimis*); (2) for exporters not covered in this review, but covered in the LTFV investigation or prior reviews, the cash deposit rate will continue to be the company-specific rate from the LTFV investigation or the prior review; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 19.21 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14206 Filed 6–5–00; 8:45 am]

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[1] Chang Chun's history of subject merchandise PVA sales is as follows: Chang Chun's 1st POR sales of subject PVA were 7.19% of its POI sales of subject PVA. Chang Chun's 2nd POR sales of subject PVA were 4.59% of its POI sales of subject PVA. Chang Chun's 3rd POR sales of subject PVA were 20.98% of its POI sales of subject PVA.

[2] As we noted in *Pure Magnesium from Canada: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part*, 64 FR 12977, 12979 (March 16, 1999) (*Pure Magnesium from Canada*), commercial quantities is a threshold requirement that must be met by parties seeking revocation. We also note that while the regulation requiring sales in commercial quantities may have developed from the unreviewed intervening year regulation, its application in all revocation cases based on the absence of dumping is reasonable and mandated by the regulations. The application of this requirement to all such cases is reflected not only in the provision for unreviewed intervening years (*see* 19 CFR 351.222 (d)(1)), but also in the new general requirement that parties seeking revocation certify to sales in commercial quantities in each of the years on which revocation is to be based. *See* 19 CFR 351.222(e)(1)(ii). This requirement ensures that the Department's revocation determination is based upon a sufficient breadth of information regarding a company's normal commercial practice. *See Pure Magnesium from Canada*, at 64 FR 12979.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (Department's) regulations are to 19 CFR Part 351 (1998).

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel cookware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 7323.94.00. Kitchenware currently classifiable under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Amendment to Final Results

In accordance with section 751(a) of the Act, on May 4, 2000, we issued our final results of the 1997–1998 administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico in which we determined that sales of porcelain-on-steel cookware from Mexico were made at less than normal value (65 FR 30068, May 10, 2000). On May 9, 2000, we received an allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from the petitioner, Columbian Home Products, LLC, that the Department made a ministerial error in its final results. We did not receive ministerial error allegations from Cinsa, S.A. de C.V. (Cinsa) or Esmaltaciones de Norte America, S.A. de C.V. (ENASA).

After analyzing petitioner's submission, we have determined, in accordance with 19 CFR 351.224, that a ministerial error was made in our final margin calculations for Cinsa. Specifically, certain indirect selling expenses incurred in Mexico by Cinsa in connection with sales to the unaffiliated customer in the United States, which were formerly classified as export prices sales, were not: (1) Deducted from the constructed export price (CEP) calculation; (2) included in the pool of U.S. indirect selling expenses used to calculate the CEP offset; and (3) included in the calculation of CEP profit due to a programming error. We have now corrected the programming error. For a detailed discussion of the ministerial error allegation and the Department's analysis, see the Memorandum to Louis Apple from the Team, dated May 30, 2000.

Therefore, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the final results of the 1997–1998 antidumping duty administrative review on porcelain-on-steel cookware from Mexico.

The revised weighted-average dumping margins are as follows:

Manufacturer/exporter	Original final margin percentage	Revised final margin percentage
Cinsa	8.96	9.31
ENASA	27.37	27.37

This amended final results of administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 351.210(c).

Dated: May 20, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14203 Filed 6–5–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone, (202) 482–4929 or (202) 482–4136, respectively.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052500A]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of affirmative finding.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, issued an affirmative finding for the Republic of Ecuador under the Marine Mammal Protection Act (MMPA) on May 31, 2000. This affirmative finding allows the continued importation into the United States of yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) after March 3, 1999, by Ecuadorian-flag purse seine vessels or vessels operating under Ecuadorian jurisdiction greater

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than 400 short tons (362.8 mt) carrying capacity. The affirmative finding was based on documentary evidence submitted by the Republic of Ecuador and obtained from the Inter-American Tropical Tuna Commission (IATTC). This finding remains in effect through March 31, 2001.

DATES: Effective May 31, 2000 through March 31, 2001.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802–4213, Phone 562–980–4000, Fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq*, as amended by the International Dolphin Conservation Program Act (IDCPA) (Pub. L. 105–42), allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator for Fisheries, NOAA, will determine whether to make an affirmative finding based upon documentary evidence provided by the Republic of the harvesting nation, by the International Dolphin Conservation Program (IDCP), the IATTC, and/or the Department of State. A finding will remain valid for 1 year (April 1 through March 31) or for such other period as the Assistant Administrator for Fisheries may determine. The harvesting nation must submit an application directly to the Assistant Administrator for Fisheries for the first affirmative finding. Every 5 years, the Republic of the harvesting nation, must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator for Fisheries. The Assistant Administrator may require the submission of additional supporting documentation or verification of statements made in connection with requests to allow importations. An affirmative finding applies to tuna and tuna products that were harvested in the ETP by purse seine vessels of the nation, and applies to any tuna harvested in the ETP purse seine fishery after March 3, 1999, the effective date of the IDCPA.

The affirmative finding process requires that the harvesting nation meet several conditions related to compliance with the IDCP. To issue an annual affirmative finding NMFS must receive the following information:

1. A statement requesting an affirmative finding;
2. Evidence of membership in the IATTC;
3. Evidence that a nation is meeting its obligations to the IATTC, including financial obligations;
4. Evidence that a nation is complying with the IDCP. For example, national laws and regulations implementing the Agreement on the IDCP and information that the nation is enforcing those laws and regulations;
5. Evidence of a tuna tracking and verification program comparable to the U.S. tracking and verification regulations at 50 CFR 216.94;
6. Evidence that the national fleet dolphin mortality limits (DMLs) were not exceeded in the previous calendar;
7. Evidence that the national fleet per-stock per-year mortality limits, if they are allocated to countries, were not exceeded in the previous calendar year;
8. Authorization for the IATTC to release to the Assistant Administrator for Fisheries, complete, accurate and timely information necessary to verify and inspect Tuna Tracking Forms; and
9. Authorization for the IATTC to release to the Assistant Administrator for Fisheries information whether a nation is meeting its obligations of membership to the IATTC and whether a nation is meeting its obligations under the IDCP including managing (not exceeding) its national fleet DMLs or its national fleet per-stock per-year mortality limits. A nation may opt to provide this information directly to NMFS on an annual basis or to authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator for Fisheries determines that the requirements of 50 CFR 216.24(f)(9) are no longer being met or that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP. Every 5 years, the Republic of the harvesting nation, must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator for Fisheries.

The Assistant Administrator for Fisheries reviewed the application and documentary evidence submitted by the Republic of Ecuador and determined that the requirements under the MMPA to receive an affirmative finding have been met for the purposes of issuing an affirmative finding for the period April 1—March 31, 2001. On May 31, 2000, after consultation with the Department of State, NMFS issued an affirmative finding allowing yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Ecuadorian-flag purse seine vessels or vessels under Ecuadorian jurisdiction greater than 400 short tons (362.8 metric tons) carrying capacity after March 3, 1999, to be imported into the United States. In subsequent years 2001 through 2004, the Assistant Administrator will determine on an annual basis whether the Republic of Ecuador is meeting the requirements under section 101 (a)(2)(B) and (C) of the MMPA. NMFS will use documentary evidence provided by the IATTC and the Department of State or the harvesting nation, on an annual basis to determine whether the finding should be renewed. If necessary, documentary evidence may also be requested from the Republic of Ecuador to determine whether the affirmative finding criteria are being met. A new application is due by the Republic of Ecuador if the affirmative finding lapses or is revoked. If the affirmative finding for the Republic of Ecuador is renewed after NMFS's annual review in the years 2001 to 2004, the Republic of Ecuador must submit a new application in early 2005 for an affirmative finding to be effective for the period April 1, 2005, through March 31, 2006, and subsequent years.

Dated: May 31, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14199 Filed 6–5–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053000F]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Squid, Mackerel, and Butterfish Committee, Dolphin/Wahoo Committee, Comprehensive Management Committee, Habitat Committee, Executive Committee, and Law Enforcement Committee will hold a public meeting.

DATES: The meetings will be held on Tuesday, June 20, 2000 to Thursday, June 22, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Danford's Inn, 25 E. Broadway, Port Jefferson, NY; telephone: 1–800–332–6367.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, June 20th, the Squid, Mackerel and Butterfish Committee will meet from 1:00–5:00 p.m. On Wednesday, June 21st, the Dolphin/Wahoo Committee will meet from 8:00–9:00 a.m. The Comprehensive Management Committee will meet from 9:00–12:00 p.m. The Habitat Committee will meet from 1:00 p.m. until 4:00 p.m. The Executive Committee will meet from 3:00 p.m. until 5:00 p.m. On Thursday, June 22nd, the Law Enforcement Committee will meet from 8:00 a.m. until 9:00 a.m. Council will convene at 9:00 a.m. and will be in session until 1:00 p.m.

Agenda items for this meeting are: Discuss actions necessary to remedy disapproved portion of Amendment 8 (gear impacts on Essential Fish Habitat) to the Squid, Mackerel, and Butterfish Fishery Management Plan (FMP). Consider additional areas to be identified as Essential Fish Habitat for *Illex*. Consider revising quota setting procedure for *Illex* (allow in-season quota adjustment). Consider extending moratorium on entry to *Illex* fishery. Consider measures to protect *Loligo* egg masses (possible season/area closures). Consider controlled access plan for Atlantic mackerel fishery. Review and comment on South Atlantic Fishery Management Council Dolphin/Wahoo FMP. Develop recommendation(s) regarding Dolphin/Wahoo for presentation to and action by MAFMC. Discuss and prioritize cooperative research items associated with MAFMC's research set aside initiative. Discuss and provide comments on "NMFS Budget Review Project. Discuss and identify Council's habitat research priorities. Discuss and clarify role of committee regarding meeting Council's habitat responsibilities. Review MAFMC's first half budget status/performance. Discuss audit report findings for FY95, FY96, FY97, and FY98. Discuss recent Executive Order regarding establishment of marine reserves. Comment on enforceability of Dolphin/Wahoo proposed management measures. Finalize and approve Fishery Award Program and related forms. Approve operational guidelines for the Law Enforcement Committee. The Council will also approve minutes from its May, 2000 meeting, review and comment on May meeting actions, and receive organizational reports from the NMFS Regional Administrator, NMFS Science Center Director, NOAA Office of General Counsel, U.S. Fish and Wildlife, Federal Enforcement units and the Atlantic States Marine Fisheries Commission. It will also receive Committee reports from the following committees: New England Council, South Atlantic Council, Demersal, Squid, Mackerel, and Butterfish, Dolphin/Wahoo, Comprehensive Management, Habitat, Executive and Law Enforcement.

Although non-emergency issues not contained in this agenda may come before the MAFMC for discussion, these issues may not be the subject of formal Council action during this meeting. MAFMC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the MAFMC's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 31, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14200 Filed 6–5–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.052400A]

Marine Mammals; File No. 555–1565

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that James T. Harvey (Principal Investigator), Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039, has applied in due form for a permit to take Pacific harbor seals (*Phoca vitulina richardsi*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before July 6, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (562/980–4001); and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115 (206/526–6150).

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant seeks authorization to capture, handle and tag 1,600 Pacific harbor seals per year of all age and sex classes near haul-out sites throughout California, Oregon and Washington. Captured seals would be subject to all or some of the following activities: blood and tissue sampling, flipper tagging, PIT tagging, branding, lavaging, and video camera attachment. Acoustic playback experiments and scat collection would also take place around the haul-out sites. In addition, the applicant seeks authorization to surgically implant radio tags in 15 captive, rehabilitated Pacific harbor seals and to conduct feeding studies on 12 captive, rehabilitated Pacific harbor seals.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits

and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 31, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–14198 Filed 6–5–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050500F]

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Proposed Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposal for issuance of permit; request for comments.

SUMMARY: NMFS proposes to issue a permit for a period of three years, to authorize the incidental, but not intentional, taking of four stocks of threatened or endangered marine mammals by the California/Oregon drift gillnet fishery. The four stocks are: (1) Fin whale, California/Oregon/Washington stock; (2) Humpback whale, California/Oregon/Washington-Mexico stock; (3) Steller sea lion, eastern stock; and (4) Sperm whale, California/Oregon/Washington stock. This authorization is based on a determination that this incidental take will have a negligible impact on the affected marine mammal stocks.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**), no later than 5 p.m. Pacific Standard Time, by July 21, 2000. Comments will not be accepted if submitted via e-mail or Internet.

ADDRESSES: Comments on this proposed permit and requests for reference materials should be sent to Tim Price, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Comments may also be sent via facsimile (fax) to 562–980–4027.

FOR FURTHER INFORMATION CONTACT: Tim Price, NMFS, Southwest Region, Protected Resources Division, (562) 980–4029.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA) requires the authorization of the incidental taking of individuals from marine mammal stocks listed as threatened or endangered under the ESA in the course of commercial fishing operations if NMFS determines that: (1) incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

On August 31, 1995 (60 FR 45399), NMFS issued permits for fisheries meeting the conditions under section 101(a)(5)(E) of the MMPA. At that time, NMFS did not issue a permit to the California/Oregon drift gillnet fishery for the California/Oregon/Washington-Mexico humpback whale stock or the California/Oregon/Washington sperm whale stock because NMFS was unable to determine that the estimated mortality and serious injury incidental to commercial fishing operations was negligible. In addition, in 1995, NMFS did not consider issuing a permit for the incidental mortality and serious injury of the California/Oregon/Washington fin whale stock because there had been no reported incidental takes at that time, and NMFS had no reason to anticipate any such takes. However, NMFS did determine that the mortality and serious injury incidental to commercial fishing operations was negligible for the eastern Steller sea lion stock and issued a permit for that stock. On December 30, 1998 (63 FR 71894), NMFS extended the permit until June 30, 1999. At that time, NMFS announced that it was reviewing the criteria for issuance of permits and evaluating whether the criteria were adequate or if changes should be made. No comments were received. On May 27, 1999 (64 FR 28800), NMFS proposed the issuance of permits for those fisheries that have negligible impacts on marine mammal stocks listed as threatened or endangered under the ESA for a period of 3 years. In addition, that document provided further guidance about the process for determining negligible impact. A permit for the mortality and serious injury of the Steller sea lion incidental to the California/Oregon drift gillnet fishing operations was also proposed. Based on new information, NMFS did not finalize the proposed permits.

Since 1995, NMFS has gathered additional data on the status of listed marine mammals. Based on the more recent survey data and analyses, the Stock Assessment Reports contain revised estimates of potential biological removal (PBR) levels. PBR is defined in the MMPA as "the maximum number of animals, not including natural mortalities, that may be removed from a stock while allowing that stock to reach or maintain its optimum sustainable population" (16 U.S.C. 1362(20)). Also, since 1995, NMFS has developed and implemented the Pacific Offshore Cetacean Take Reduction Plan (the Plan) (62 FR 51805) for the California/Oregon drift gillnet fishery. The initial goal of a take reduction plan is to reduce marine mammal bycatch in the fishery to levels below PBR for all stocks. Since the implementation of the Plan, overall cetacean mortality in this fishery has been reduced by 70 percent. For these reasons, NMFS is re-evaluating whether issuance of a permit under section 101(a)(5)(E) of the MMPA for the California/Oregon drift gillnet fishery is appropriate.

Process and Criteria for Issuing Permits

Section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA) requires the authorization of the incidental taking of individuals from marine mammal stocks listed as threatened or endangered under the ESA in the course of commercial fishing operations if NMFS determines, among other criteria, that incidental mortality and serious injury will have a negligible impact on the affected species or stock. "Negligible impact" as defined in 50 CFR 216.103 and as applies here is, "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

In 1990, the Marine Mammal Commission (MMC) submitted scientific guidelines to NMFS to govern the incidental taking of marine mammals in the course of commercial fishing operations. In those guidelines, the MMC recommended NMFS determine negligible impact if the mortality and serious injury incidental to commercial fishing operations would cause no more than a 10 percent increase in the time to recovery. NMFS incorporated the MMC's recommendation of negligible impact criteria into the 1992 legislative proposal. Participants at NMFS' 1994 PBR workshop agreed, and determined that authorized levels of human-related mortality should increase recovery time of endangered stocks by no more than 10 percent. Therefore, a default recovery factor of 0.1 was chosen to use in the PBR equation for endangered stocks of marine mammals (Barlow *et al.*, 1995).

On August 31, 1995 (60 FR 45399), NMFS issued permits for fisheries meeting the conditions under section 101(a)(5)(E) of the MMPA. As an interim measure, NMFS considered a total annual serious injury and mortality of not more than 10 percent of a stock's PBR level to be negligible. In 1999, NMFS published a notice of proposal to issue permits under section 101(a)(5)(E) of the MMPA. In the 1999 proposal, NMFS again applied a serious injury and mortality of not more than 10 percent of a stock's PBR level as the starting point for negligible impact determinations. However, NMFS recognized that a strict application of 10 percent of PBR was not appropriate in some cases and that such a criterion would not be the only factor in evaluating whether a particular level of take would be considered negligible.

Because population abundance and fishery-related mortality information have varying degrees of uncertainty, NMFS considers factors such as population trends and reliability of abundance and mortality estimates in calculating PBR. When calculating a PBR for species listed as endangered under the ESA, NMFS uses a value of 0.1 for the recovery factor based on the rationale that this would not cause more than a 10 percent increase in the time to recovery (Barlow *et al.*, 1995). Using a PBR containing a recovery factor of 0.1 would allow a large portion of the stock's annual net production to be used for recovery rather than being authorized for removal due to incidental mortality. Therefore, when incidental mortality and serious injury was below the stock's PBR, such mortality and serious injury would have no more than a negligible impact on the stock.

In 1995, NMFS limited a determination of negligible impact only to those cases in which mortality and serious injury incidental to commercial fishing operations did not exceed 10 percent of any stock's PBR. When that criterion was applied to the cases in which the PBR equation contained a recovery factor of 0.1, the result was a situation where authorized mortality would cause only a small portion (10 percent) of the mortality that would cause a negligible impact according to the MMC's recommendation. Therefore, the standard was too restrictive for those fisheries that take endangered marine mammals with a recovery factor of 0.1 in the PBR calculation. Consequently, in making a negligible impact determination, NMFS has decided to use case-specific analyses in those cases where incidental mortality and serious injury exceeded 10 percent of an endangered stock's PBR in determining whether the estimated level of mortality or serious injury would delay recovery by more than 10 percent. In the case of the 4 stocks of marine mammals addressed by this permit, NMFS evaluated whether the estimated level of mortality and serious injury would likely increase the recovery time by more than 10 percent. Takes below this level will be considered negligible.

Summary of Findings

NMFS has evaluated the best available information for stocks listed as threatened or endangered under the ESA and has determined on a stock-by-stock basis, whether the mortality and serious injury (using 3-year averages 1997, 1998, 1999) incidental to the California/Oregon drift gillnet fishery that interacts with such stocks is having a negligible impact on such stocks (NMFS, 2000). Based on this assessment, NMFS concludes that the estimated mortality and serious injury caused by the California/Oregon drift gillnet fishery would cause no more than a 10–percent increase in the time to recovery for each of the four stocks of marine mammals addressed by this permit and is, therefore, negligible.

These stocks were then reviewed to confirm that: (1) a recovery plan has been developed or is being developed, and (2) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered, and a take reduction plan has been, or is being, developed.

For the following stocks with documented evidence of fishery-related interactions, NMFS has determined that the mortality and serious injury incidental to the California/Oregon drift gillnet fishery will have a negligible impact and proposes to issue a permit for incidental takes of:

(1) Fin whale, California/Oregon/Washington stock;

(2) Humpback whale, California/Oregon/Washington-Mexico stock;

(3) Steller sea lion, eastern stock; and

(4) Sperm whale, California/Oregon/Washington stock.

A stock-by-stock summary of the negligible impact determination follows.

Fin whale, California/Oregon/Washington stock: The PBR for this stock is 2.1 whales per year. After the 1997 implementation of the Plan, overall cetacean entanglement rates in the California/Oregon drift gillnet fishery dropped considerably. Using a 3-year (1997–1999) average, the annual mean mortality and serious injury rate from the California/Oregon drift gillnet fishery is estimated to be as low as 1.7 or as high as 2.3, depending on the methodology used. However, during the past 10 years, only one fin whale has been observed taken in this fishery, indicating a remote likelihood of a fin whale take in the California/Oregon drift gillnet fishery. When the mortality and serious injury rate is calculated from a more broad-based set of data than the 3-year period under the Plan, estimated mortality is low enough that it could be considered a negligible impact.

Humpback whale, California/Oregon/Washington-Mexico stock: The PBR level for this stock is 1.7 whales per year. Using a 3-year average (1997–1999), the mean annual mortality and serious injury rate from the California/Oregon drift gillnet fishery is estimated to be 0.0 humpback whales. One observed humpback whale entanglement in 1999 was released alive without any trailing gear and was not considered a serious injury or mortality. Since the beginning of the observer program in 1990, there have been no reported mortalities or serious injuries of humpback whales.

Steller sea lion, eastern stock: The PBR level for this stock is 1,368 animals per year. Fishery observers monitored the California/Oregon drift gillnet fishery between 1990 and 1999. In both 1992 and 1994, one Steller sea lion mortality was observed incidental to this fishery. Using a 3-year average (1997–1999), the mean annual mortality and serious injury rate from the California/Oregon drift gillnet fishery is estimated to be 0.0 animals for the California/Oregon drift gillnet fishery.

Sperm whale, California/Oregon/Washington stock: The PBR level for this stock is 2.0 whales per year. Using a 3-year average (1997–1999), the mean

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annual mortality and serious injury rate from the California/Oregon drift gillnet fishery is estimated to be 1.7 sperm whales. In 1998, one sperm whale was observed killed in a net that was not in compliance with the Plan. The Pacific Offshore Cetacean Take Reduction Team (The Team) and the Pacific Scientific Review Group both recommended no further strategies to reduce sperm whale entanglement be taken until the effectiveness of pingers is better understood. At the recommendation of The Team, NMFS conducted workshops to educate vessel operators on the need to use the full complement of pingers required by the Plan. NMFS enforcement also trained the U.S. Coast Guard about the requirements of the Plan and requested their assistance with at-sea enforcement.

NMFS prepared an Environmental Assessment (EA) on the final rule to implement the Plan (62 FR 51805). This action falls within the scope of that EA and the environmental consequences described in that action, and there have been no changes to the fishery subsequent to issuing the EA. Therefore, this action qualifies for a categorical exclusion under section 5.05b of NOAA Administrative Order 216–6 because a prior NEPA analysis for the same action demonstrated that the action will not have significant impacts on the quality of the human environment.

Issuance of Permits

Based on requirements of section 101(a)(5)(E) of the MMPA, NMFS proposes to issue a permit to allow the incidental, but not intentional, taking of four stocks of endangered or threatened marine mammals to the California/Oregon drift gillnet fishery: (1) Fin whale, California/Oregon/Washington stock; (2) Humpback whale, California/Oregon/Washington-Mexico stock; (3) Steller sea lion, eastern stock; and (4) Sperm whale, California/Oregon/Washington stock. These permits may be suspended or revoked if the level of take is likely to result in an impact that is more than negligible.

References

Barlow, J., S. Swartz, T. Eagle, and P. Wade. 1995. U.S. Marine mammal stock assessments: guidelines for preparation, background, and a summary of the 1995 assessments. U.S. Department of Commerce, NOAA Technical Memorandum NMFS–SWFSC–219. 162 p.

National Marine Fisheries Service. 2000. Assessment for issuing a permit under section 101(a)(5)(E) of the Marine Mammal Protection Act to the California/Oregon Drift Gillnet Fishery. Southwest Region, Protected Resources Division.

Wade, P.R. 1998. Calculating limits to the allowable human-caused mortality of cetaceans and pinnipeds. (Mar. Mamm. Sci., 1491): 1–37.

Dated: May 31, 2000.

Donald R. Knowles,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–14201 Filed 6–5–00; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the revision of its Financial Status Report form (Standard Form 269A) for National and Community Services Act programs. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by August 7, 2000.

ADDRESSES: Send comments to the Corporation for National and Community Service, Attn: Bruce Cline, Director, Grants Management Office, 1201 New York Avenue, N.W., Suite 8711, Washington, D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Bruce Cline, (202) 606–5000, ext. 440.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

The National and Community Service Act of 1990, as amended, specifically sections 12571 and 12594, require matching contributions of varying proportion for both program (12571) and member support (12594) costs. Accordingly, our grantees must provide the Corporation information on match according to budget sections (Section A is member support and Sections B–G are other program support costs.) Without these breakdowns, the Corporation cannot accurately calculate match or determine whether the legislated levels are being met.

Current Action

The Corporation seeks OMB approval to request the required reporting information by allowing grantees to utilize the Remarks block, Section 12, of the Standard Form 269A, in the following format:

In Remarks, Section 12, please provide the following:

- For Recipient share of outlays (section 10—Transactions "Previously Reported," "This period," and "Cumulative"), please list separately:

(1) Outlays from Budget Section B–G, and

(2) Outlays from Budget Section A for Transactions columns "Previously Reported," "This Period," and "Cumulative."

- For Federal Share of outlays (section 10—Transactions "Previously Reported," "This Period," and "Cumulative"), please list separately:

(1) Outlays from Budget Section B–G; and

(2) Outlays from Budget Section A.

- Totals in each column should equal totals from section 10, row a. "Total Outlays."

Suggested format:

	Previously reported	This period	Cumulative
b. Recipient Share of Outlays:			
1. Outlays from Section B–G	$0	$0	$0
2. Outlays from Section A	0	0	0
c. Federal Share of Outlays:			
1. Outlays from Section B–G	0	0	0
2. Outlays from Section A	0	0	0
Totals	0	0	0

This information will not require any modification to the SF 269A. The Corporation will request the information from its grantees by an instruction letter in the beginning, and most grantees will continue to provide the information electronically from that point forward.

Type of Review: Request for additional information.

Agency: Corporation for National and Community Service.

Title: Standard Form 269A, Financial Status Report.

OMB Number: 0348–0038.

Agency Number: None.

Affected Public: Organizations with an approved grant.

Total Respondents: 350.

Frequency: 2 responses per grantee.

Average Time Per Response: 60 minutes.

Estimated Total Burden Hours: 700 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 1, 2000.

Bruce H. Cline,

Director of Grants Management.

[FR Doc. 00–14102 Filed 6–5–00; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requested.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 7, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 30, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Moving Standards to the Classroom: A Study of Standards-based Mathematics Instruction in Six States.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,056.

Burden Hours: 9,300.

Abstract: Goals 2000 strives to help states develop high standards and then apply them toward improving instruction and student achievement. Based on information gathered from six diverse states, Moving Standards will evaluate the effectiveness of standards-based reform, focusing on the quality of supported activities and the effects of those activities on instructional practice and student achievement.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–13930 Filed 6–5–00; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 7, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 31, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Notice of Proposed Rulemaking (NPRM) to Amend 34 CFR Part 361.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 82, Burden Hours: 1,002,050.

Abstract: The Secretary proposes to amend the regulations governing the State Vocational Rehabilitation Services Program. These amendments are necessary to implement changes to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1998, enacted on August 7, 1988, and as further amended in 1998 by technical amendments in the Reading Excellence Act and the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1998, collectively referred to as the 1998 Amendments.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–14087 Filed 6–5–00; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 30, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: Reinstatement.

Title: Class-Size Reduction Program: 2000–2001 Implementation Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 800.

Burden Hours: 800.

Abstract: This study is being conducted to inform the Department's performance indicators for the Government Performance and Results Act report as well as to inform the budget deliberations in Congress for the Class-Size Reduction program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jackie Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–13929 Filed 6–5–00; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 31, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Report of Children with Disabilities Receiving Special Education under Part B of the Individuals with Disabilities Education Act.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 58; Burden Hours: 30,682.

Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under IDEA–B that receive special education and related services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila_Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–14088 Filed 6–5–00; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB Review, Comment Request.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5)

Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 31, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Part B, Individuals with Disabilities Education Act Implementation of FAPE Requirements 2000–01 School Year.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 58; Burden Hours: 272,890.

Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under IDEA–B that receive special education and related services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–14089 Filed 6–5–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2770–006 (Consolidated with Docket Nos. EC98–40–000 and ER98–2786–000)]

American Electric Power Service Corporation Central and South West Services, Inc.; Notice of Filing

May 24, 2000.

Take notice that on May 22, 2000, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System, and Central and South West Services, Inc., on behalf of the operating companies of Central and South West Corporation, submitted a compliance filing containing substitute versions of the System Integration Agreement, the System Transmission Integration Agreement, and the Transmission Reassignment Tariff accepted for filing by the Commission in Docket No. ER98–2770–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14125 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–78–000]

Baconton Power LLC; Notice of Filing

May 25, 2000.

Take notice that on May 17, 2000, Baconton Power LLC tendered for filing a request for waiver of the Commission's open access transmission tariff and OASIS requirements to the extent required in connection with Baconton Power LLC's ownership of interconnection facilities (generation step-up transformers and an undivided common interest in certain common bus facilities) located at the plan site where Baconton's four 50 MW summer nominal capacity generators are being constructed.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14130 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2563–000]

Cabrillo Power II LLC; Notice of Filing

May 25, 2000.

Take notice that on May 19, 2000, Cabrillo Power II LLC (Cabrillo II), tendered for filing a corrected tariff sheet to its annual update filing (filed with the Commission on January 21, 2000) governing Reliability Must Run (RMR) services provided by its power plants to the California Independent System Operator Corporation (ISO). Cabrillo II's filing includes corrections to certain typographical errors on the Schedule appended to the RMR Agreement related to Prepaid Start-ups under the RMR Service Agreement.

Cabrillo II has requested an effective date of January 1, 2000.

Copies of this filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 9, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14142 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1971–007]

California Independent System Operator Corporation; Notice of Filing

May 24, 2000.

Take notice that on May 19, 2000, the California Independent System Operator Corporation (ISO) tendered for filing a Notice of Implementation, dated May 17, 2000, which specifies that, effective June 1, 2000, the ISO will implement electronic dispatch of resources through its Automated Dispatching System and will require that Scheduling Coordinators participating in the ISO's Real-Time Energy market be capable of receiving electronic dispatch instructions beginning on that date.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 9, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14124 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2564–000]

Commonwealth Edison Company; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, Commonwealth Edison Company (ComEd) tendered for filing a Short-Term Firm Transmission Service Agreement (Agreement) establishing Northern Indiana Public Service Company (NIPS), as a short-term firm customer under the terms of ComEd's OATT.

ComEd requests an effective date of June 22, 1999 to coincide with the first day of service to NIPS under this type of Service Agreement.

Copies of this filing were served on NIPS.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14143 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2558–000]

Duke Energy Corporation; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Public Service Company of Colorado for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 12, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14137 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2559–000]

Duke Energy Corporation; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Public Service Company of Colorado for Non-Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 12, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14138 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–95–000]

Dynegy Inc., Illinova Corporation, Dynegy Holdings Inc., and Dynegy Midwest Generation, Inc.; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, Dynegy Inc. (Dynegy), Illinova Corporation (Illinova), Dynegy Holdings Inc. (DHI), and Dynegy Midwest Generation, Inc. (DMGI) (together, Applicants) tendered for filing an application under section 203 of the Federal Power Act requesting that the Commission approve a series of transactions (Proposed Transfer) designed to transfer the equity ownership of DMGI from Illinova to a to-be-formed, wholly-owned subsidiary of DHI. The Proposed Transfer is intended to effectuate a corporate reorganization.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14131 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–245–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

May 31, 2000.

Take notice that on May 25, 2000, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective May 1, 2000:

Seventh Revised Sheet No. 176

East Tennessee asserts that this filing is in compliance with the Commission's May 12, 2000 Letter Order in the above-referenced docket, which required East Tennessee to file revised tariff language to update certain EDI data sets incorporated by reference to GISB Version 1.3.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14077 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES00–36–001]

Electric Energy, Inc.; Notice of Filing

May 24, 2000.

Take notice that on May 18, 2000, Electric Energy, Inc. (EEInc.) filed an amendment to its application seeking authorization to issue from time to time during the period from June 1, 2000 through May 31, 2002 (a) up to $120 million of new long-term debt with a maturity of up to 15 years, and (b) new short-term debt with the aggregate amount outstanding at any time not to exceed $70 million. EEInc. requests that such authorization be granted instead for a period from June 15, 2000, through June 14, 2002. In addition, EEInc. modified its application to reflect the possibility that the final terms of issuance may be somewhat different from those described in the application. EEInc. requests that a revised page 5 be substituted for that previously submitted with the original application to this proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14123 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–272–001]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 31, 2000.

Take notice that on May 25, 2000, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective May 1, 2000:

Substitute Second Revised Sheet No. 293
Substitute Second Revised Sheet No. 294

On May 5, 2000, GBGP filed tariff sheets in Docket No. RP00–272–000 (May 5th filing) to revise its Form of Interactive Internet Website Agreement because of a change of vendors for its interactive Internet website computer applications. GBGP used language similar to the language filed by Mississippi Canyon Gas Pipeline, LLC (MCGP) and Nautilus Pipeline Company, L.L.C (Nautilus) in Docket Nos. RP00–271–000 and RP00–270–000, respectively. A shipper objected to certain revised language in both of those proceedings. MCGP and Nautilus are filing contemporaneously herewith, to replace the objectionable language with language currently in effect. Although no party objected to GBBP's proposed language, GBGP is willing to restore the currently effective tariff language in order to remain consistent with the Nautilus and MCGP tariffs and alleviate any similar concerns. In addition, GBGP is correcting an incorrect reference to Interactive Internet Website that was included in the original filing. GBGP requests waiver of the 30-day notice requirement in section 154.207 so that the tariff sheets contained herein can become effective on the same date as the tariff sheets filed in the original May 5th filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14080 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2553–000]

Kansas City Power & Light Company; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, Kansas City Power & Light Company (KCPL), tendered for filing Service Agreements dated May 1, 2000, between KCPL and Corel Energy. This Agreement provides for the rates and charges for Non-Firm and Short-term Firm Transmission Service.

KCPL proposes an effective date of May 3, 2000 and requests a waiver of the Commission's notice requirement to allow the requested effective date.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14132 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2554–000]

Kansas City Power & Light Company; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, Kansas City Power & Light Company (KCPL), tendered for filing Service Agreements dated May 1, 2000, between KCPL and New Energy, Inc.

KCPL proposes an effective date of May 3, 2000 and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Non-Firm and Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This

filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14133 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2555–000]

Kansas City Power & Light Company; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, Kansas City Power & Light Company (KCPL), tendered for filing Service Agreements dated May 2, 2000, between KCPL and British Columbia Power Exchange Corporation (Powerex).

KCPL proposes an effective date of May 3, 2000 and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreements provide for the rates and charges for Non-Firm and Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14134 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2556–000]

Kansas City Power & Light Company; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, Kansas City Power & Light Company (KCPL), tendered for filing Service Agreements dated May 9, 2000, between KCPL and Conectiv Energy Supply, Inc. (Powerex).

KCPL proposes an effective date of May 10, 2000, and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreements provide for the rates and charges for Non-Firm and Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14135 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2557–000]

Kansas City Power & Light Company; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated May 9, 2000, between KCPL and Morgan Stanley Capital Group, Inc.

KCPL proposes an effective date of May 12, 2000 and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14136 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2560–000]

Louisville Gas and Electric Company/Kentucky Utilities Company; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing unexecuted unilateral Service Sales Agreement between Companies and Trans/Alta Energy Marketing (US) Inc., under the Companies' Rate Schedule MBSS.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14139 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2561–000]

Louisville Gas and Electric Company/Kentucky Utilities Company; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed unilateral transmission service agreement with Amerada Hess Corporation. The agreement allows Amerada Hess to take non-firm point-to-point transmission service from LG&E/KU.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 88 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14140 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Docket No. ER00–2470–000]

Mid-Continent Area Power Pool; Notice of Filing

June 1, 2000.

Take notice that on May 8, 2000, Mid-Continent Area Power Pool, tendered for filing notice of withdrawal of its proposed regional transmission tariff filed with the Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14120 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–94–000]

Midwest Generation, LLC; Notice of Filing

May 24, 2000.

Take notice that on May 19, 2000, Midwest Generation, LLC tendered for filing an application under section 203 of the Federal Power Act for approval of the transfer of transformers and interconnection facilities associated with a 1,538 MW coal-fired electric generating plant and two units of a 1,358 MW coal-fired electric generating plant being financed pursuant to a sale/leaseback arrangement.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 19, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14126 Filed 6–5–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–271–001]

Mississippi Canyon Gas Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 31, 2000.

Take notice that on May 25, 2000, Mississippi Canyon Gas Pipeline, LLC (MCGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective June 1, 2000:

Substitute First Revised Sheet No. 309
Substitute First Revised Sheet No. 310

On May 25, 2000, MCGP filed tariff sheets in Docket No. RP00–271–000 (May 5th filing) to revise its Form of Interactive Internet Website Agreement because of a change of vendors for its interactive Internet website computer applications. On May 19, 2000, a shipper filed a motion to intervene out-of-time and protest objecting to certain language revisions included in that filing. MCGP is making the instant filing to alleviate the shipper's concerns by removing and replacing the tariff references the shipper objected to with the existing tariff language at the time of the May 5th filing. In addition, MCGP is correcting an incorrect reference to Interactive Internet Website that was included in the May 5th filing. MCGP requests waiver of the 30-day notice requirement in section 154.207 so that the tariff sheets contained herein can become effective on the same date as the tariff sheets filed in the original May 5th filing.

Any person desiring to protest such filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–14079 Filed 6–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–270–001]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 31, 2000.

Take notice that on May 25, 2000, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective June 1, 2000:

Substitute Second Revised Sheet No. 322
Substitute Second Revised Sheet No. 323
Substitute Second Revised Sheet No. 324

On May 25, 2000, Nautilus filed tariff sheets in Docket No. RP00–271–000 (May 5th filing) to revise its Form of Interactive Internet Website Agreement because of a change of vendors for its interactive Internet website computer applications. On May 22, 2000, a shipper filed a motion to intervene out-of-time and protest objecting to certain language revisions included in that filing. Nautilus is making the instant filing to alleviate the shipper's concerns by removing and replacing the tariff references the shipper objected to with the existing tariff language at the time of the May 5th filing. In addition, Nautilus is correcting an incorrect reference to Interactive Internet Website that was included in the May 5th filing.

Nautilus requests waiver of the 30-day notice requirement in section 154.207 so that the tariff sheets contained herein can become effective on the same date as the tariff sheets filed in the original May 5th filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–14078 Filed 6–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2566–000]

New England Power Company, Massachusetts Electric Company, and The Narragansett Electric Company; Notice of Filing

May 25, 2000.

Take notice that on May 19, 2000, New England Power Company (NEP), Massachusetts Electric Company (MECO) and The Narragansett Electric Company (Narragansett) tendered for filing: (i) an amended and restated open access transmission tariff—New England Power Company, FERC Electric Tariff, Original Volume No. 9 (Tariff No. 9); (ii) amendments to NEP's Tariff No. 9 Network Integration Transmission Service Agreements with MECO, Narragansett and the Massachusetts Bay Transportation Authority; (iii) notices of succession for certain rate schedules under which the operating companies of Eastern Utilities Associates formerly provided service; and (iv) notices of cancellation for certain rate schedules.

These filings were made in connection with the consummation of the merger of National Grid USA (formerly known as New England Electric System) with Eastern Utilities Associates, and the subsequent consummation of the mergers and consolidations of the respective operating companies of the two systems.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 9, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–14078 Filed 6–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2624–000]

New York Independent System Operator, Inc.; Notice of Filing

June 1, 2000.

Take notice that on May 26, 2000, New York Independent System Operator, Inc., (NYISO), tendered for filing a request for an extension of Temporary Extraordinary Procedures for Correcting Market Design Flaws and Addressing Transitional Abnormalities.

The NYISO requests an effective date of May 17, 2000 and waiver of the Commission's notice requirements.

A copy of this filing was served upon all persons on the Commission's official service list in Docket No. ER00–1533–000, on those parties who have executed service agreements under the NYISO Open Access Transmission Tariff or under the New York Independent System Operator Market Administration and Control Area Services Tariff and on the electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–14145 Filed 6–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–25–007]

Northern States Power Company Minnesota and Wisconsin; Notice of Filing

May 24, 2000.

Take notice that on May 22, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP) submitted a corrected transmission refund report. The original refund report was filed February 21, 2000, and was required by the Commission's December 20, 1999 letter order approving the Offer of Settlement filed on March 23, 1999, in the above captioned docket. See 89 FERC ¶ 61,200 (1999). The original refund report was accepted for filing by letter order dated April 10, 2000 in the above captioned docket.

NSP states that a copy of the Corrected Refund Report has been served on all parties on the official Commission service list for this proceeding, on all affected transmission service customers, and on affected state commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 23, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/on/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–14122 Filed 6–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–90–000]

P&L Coal Holdings Corporation, Edison Mission Energy, Citizens Power LLC; Notice of Filing

May 24, 2000.

Take notice that on May 22, 2000, P&L Coal Holdings Corporation (P&L), Edison Mission Energy (Mission), and Citizens Power LLC (collectively, Applicants) filed a supplement to their Application for Order Authorizing Sale of Equity Interests filed on May 12, 2000 in this docket. The supplement consists of the Purchase and Sale Agreement by and among Mission, P&L and Gold Fields Mining Corporation, to meet the Exhibit H requirements of Part 33 of the filing requirements. Applicants request privileged treatment for the Purchase and Sale Agreement, pursuant to 18 CFR 388.112 of the Commission's Regulations.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–14127 Filed 6–5–00; 8:45 am]
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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–936–001 and ER00–937–001]

Southern Energy Delta, L.L.C. and Southern Energy Potrero, L.L.C.; Notice of Convening Session

June 1, 2000.

On May 22, 2000, the Commission issued an Order on Rehearing in *Southern Energy Delta, L.L.C. and Southern Energy Potrero, L.L.C.*, 91 FERC ¶ 61,117 (2000). In that order, the Commission granted rehearing, in part, and set the remainder of the dispute for an alternative dispute resolution proceeding. The Commission directed the Director of the Commission's Dispute Resolution Service to convene the parties for the purpose of an alternative dispute resolution proceeding. Accordingly, a convening session will be held to address what processes can be taken to reach a consensual agreement, including whether to use an alternative dispute resolution process and/or an appropriate third party neutral.

The convening session will be held on June 8, 2000, at the Federal Energy Regulatory Commission located at 888 First Street, N.E., Washington, D.C. The conference will begin at 10:00 a.m. in Hearing Room 7. Moreover, at the request of the parties, the remainder of June 8 as well as June 9 will be available to allow the parties to proceed with settlement discussion if such action is appropriate.

All interested parties are invited to attend the convening session. If a party has any questions with respect to the convening session, please contact Richard Miles, the Director of the Dispute Resolution Service or Amy Blauman. His telephone number is 1–877 FERC ADR (337–2237) or 202–208–0702 and his e-mail address is *richard.miles@ferc.fed.us*. Amy's phone number is 202–208–2143 and her E-mail address is *amy.blauman@ferc.fed.us*.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14121 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2565–000]

Southwestern Public Service Company; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, New Century Services, Inc. (NCS), on behalf of Southwestern Public Service Company (SPS), tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement between Golden Spread Electric Cooperative, Inc. (Golden Spread) and SPS under the open-access transmission tariff filed by NCS, on behalf of the Utility Operating Company Subsidiaries of New Century Energies, Inc.

NCS requests waiver of the Commission's 60-day notice requirements so that the enclosed agreement can become effective on April 20, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14144 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11685–001]

The Stockport Mill County Inn; Notice Rescinding Prior Notice (May 23, 2000); Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

May 31, 2000.

On May 23, 2000, a notice of application ready for environmental analysis and soliciting comments, recommendations, terms and conditions, and prescriptions was issued for the Stockport Mill Country Inn Water Power Project No. 11685. On April 11, 2000, a notice of application ready for environmental analysis and soliciting comments, recommendations, terms and conditions, and prescriptions was also issued for the Stockport Mill Country Inn Water Power Project. Since two identical notices were issued for the same project and applicant, the notice issued on May 23, 2000 (65 FR 34462, published May 30, 2000), is rescinded.

The deadline for filing comments, recommendations, terms and conditions, and prescriptions is June 12, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14081 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–67–000]

Strategic Power Management, Inc., Complianant, v. New York Independent System Operator, Respondent; Notice of Filing

May 31, 2000.

Take notice that on May 10, 2000, Strategic Power Management, Inc. (SPM) filed a supplement to its Complaint filed on April 20, 2000 pursuant to Section 206 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 385.206 and Section 206 of the Federal Power Act.

Any person desiring to be heard or to protect this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before June 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the supplement to the compliant shall also be due on or before June 12, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–14119 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2562–000]

Tampa Electric Company; Notice of Filing

May 25, 2000.

Take notice that on May 22, 2000, Tampa Electric Company (Tampa Electric) tendered for filing service agreements with Cargill-Alliant, LLC (Cargill-Alliant) for firm and non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of May 19, 2000, for the tendered service agreements, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Cargill-Alliant and the Florida Public Service Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14141 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2077–016]

USGen New England, Inc.; Notice Extending Deadline for Filing Comments, Final Terms and Conditions, Recommendations and Prescriptions, and Requesting Reply Comments

May 31, 2000.

On May 30, 2000, the Appalachian Mountain Club, Connecticut River Joint Commission, Connecticut River Watershed Council, Conservation Law Foundation, New Hampshire Rivers Council, Trout Unlimited Vermont Chapter, and Trout Unlimited New Hampshire Chapter (collectively, "NGO's"),[1] and USGen New England requested a second extension to October 1, 2000, for filing comments, final terms and conditions, and recommendations and prescriptions for the Fifteen Mile Falls Project, located on the Connecticut River, in New Hampshire and Vermont. The Vermont Agency of Natural Resources supported the deadline extension in a May 24, 2000 filing.

Although the Commission is concerned with the progress of proceedings under the Alternative Licensing Process (ALP), a goal of the ALP is to resolve issues in a collaborative manner so that the Commission may accelerate the review of the license application. In this instance, we recognize the close connection between the management plans and other aspects of the license application, and the benefit to the stakeholders of resolving as many issues as possible before they submit their prescriptions, final terms and conditions, recommendations and comments. Additionally, we have received assurances from the stakeholders that they will diligently pursue resolution of the issues, including the issuance of a project water quality certificate. We will therefore, pursuant to Rule 2008 of the Commission's Rules of Practice and Procedure,[2] extend the deadline to October 1, 2000, for the collaborative team stakeholders to file all prescriptions, final terms and conditions, recommendations and comments.

The applicant contact is Mr. Cleve Kapala, USGen New England, Inc., 46 Centerra Parkway, Lebanon, NH 03766. The FERC contact is William Guey-Lee, E-mail address: william.gueylee@ferc.fed.us, or telephone (202) 219–2808.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426. The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, the intervenor must also serve a copy of the document on that resource agency.

All filings must: (1) Bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," "PRESCRIPTIONS," or "REPLY COMMENTS;" (2) set forth in the heading the name of the applicant and the project number of the application and APEA to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Environmental and Engineering Review, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission

[1] The NGOs are also signatories to the Settlement Agreement for the project.

[2] 18 CFR 385.2008.

in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–14082 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC00–27–001 and EC00–28–001]

UtiliCorp United Inc., *et al.*; Notice of Filing

May 25, 2000.

Take notice that on May 19, 2000, UtiliCorp United Inc., *et al.* filed their response to the Federal Energy Regulatory Commission's (Commission) letter order dated April 17, 2000 in the above-referenced dockets.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 8, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14129 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–96–000, et al.]

P&L Coal Holdings Corporation, et al.; Electric Rate and Corporate Regulation Filings

May 30, 2000.

Take notice that the following filings have been made with the Commission:

1. P&L Coal Holdings Corporation; Citizens Power LLC; Citizens Power Holdings One, LLC; FC Energy Finance I, Inc.

[Docket No. EC00–96–000]

Take notice that on May 23, 2000, P&L Coal Holdings Corporation, Citizens Power LLC, Citizens Power Holdings One, LLC, and FC Energy Finance I, Inc. filed an application for an order authorizing the proposed sale of equity interests in Hartford Power Sales, L.L.C., CL Power Sales One, L.L.C., CL Power Sales Two, L.L.C., CL Power Sales Six, L.L.C., CL Power Sales Seven, L.L.C., CL Power Sales Eight, L.L.C., CL Power Sales Nine, L.L.C., and CL Power Sales Ten, L.L.C. to FC Energy Finance I, Inc. or a subsidiary thereof.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Merchant Energy Group of the Americas, Inc.

[Docket No. ER00–2210–001]

Take notice that on May 24, 2000, Merchant Energy Group of the Americas, Inc. (MEGA) tendered for filing a substitute amended FERC Electric Rate Schedule No. 1 to revise the rate schedule filing made by MEGA on April 14, 2000, in Docket No. ER00–2210–000. The substitute amended rate schedule retains the prohibition on sales to affiliate public utilities with a franchised service territory and makes other minor word changes.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Virginia Electric and Power Company

[Docket No. ER00–2595–000]

Take notice that on May 25, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Public Service Company of Colorado;

2. Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Public Service Company of Colorado.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. Virginia Power requests an effective date of May 25, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon Public Service Company of Colorado, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Indianapolis Power & Light Company

[Docket No. ER00–2594–000]

Take notice that on May 25, 2000, Indianapolis Power & Light Company (IPL), tendered for filing various service agreements under IPL's Open Access Transmission Tariff placing itself and others as customers under the Tariff, and an index of customers.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company

[Docket No. ER00–2593–000]

Take notice that on May 25, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with British Columbia Power Exchange Corporation.

Wisconsin Electric respectfully requests an effective date of May 22, 2000 to allow for economic transactions.

Copies of the filing have been served on British Columbia Power Exchange Corporation, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Black Hills Corporation

[Docket No. ER00–2576–000]

Take notice that on May 23, 2000, Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills), tendered for filing an executed Network Integration Transmission Service Agreement with the State of South Dakota.

Copies of the filing were provided to the regulatory commission of each of the states of South Dakota, Wyoming and Montana.

Black Hills has requested that further notice requirement be waived and the tariff and executed service agreements be allowed to become effective June 1, 2000.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Duquesne Light Company

[Docket No. ER00–2342–001]

Take notice that on May 26, 2000, Duquesne Light Company (Duquesne) tendered for filing an amendment to its Open Access Transmission Tariff, filed with the Commission on April 28, 2000 in Docket No. ER00–2342–000.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Energy Corporation Operating Companies

[Docket No. ER00–1319–002]

On March 28, 2000, the Commission issued an "Order Accepting for Filing and Suspending Proposed Rates, Requiring Compliance Filing, Accepting Revisions to Open Access Tariff and Establishing Hearing Procedures" in the above-docketed proceeding (March 28 Order). Requests for Rehearing were due to be filed on or before April 27, 2000. On April 28, 2000, Wisconsin Energy Corporation Operating Companies (Wisconsin Energy) filed a Request for Rehearing.[1]

Section 313(a) of the Federal Power Act[2] requires an aggrieved party to file a request for rehearing within thirty days after the issuance of the Commission's order. Because the 30-day deadline for requesting rehearing is statutorily based, it cannot be extended and Wisconsin Energy's request for rehearing must be rejected as untimely.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14118 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–P

[1] Wisconsin Energy also asked for reconsideration of the March 28 Order. This notice does not address the request for reconsideration.

[2] 16 U.S. C. § 8251.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

May 31, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2503–054.

c. *Date Filed:* December 13, 1999.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Keowee-Toxaway Hydroelectic Project.

f. *Location:* On Lake Keowee in the South Oak Pointe Subdivision in Seneca Township, Oconee County, South Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006. (704) 382–5778.

i. *FERC Contact:* Any questions on this notice should be addressed to CarLisa Linton at (202) 219–2802, or e-mail address: carlisa.lintonpeters@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* June 28, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the Project Number (P–2503–054) on any comments or motions filed.

k. *Description of Proposal:* Duke Power Company, a division of Duke Energy Corporation, the Licensee for Project No. 2503, proposes to lease to Crescent Resources, Inc. (Crescent) for the South Oak Pointe Subdivision 1 parcel containing 1.044 acres of project land for the construction of: (a) 3 cluster docks with (b) 12 boat slips each (providing a total of 36 boat slips). The boat slips would provide access to the reservoir for off-water residents of the South Pointe Oak Subdivision. In addition, 800 cubic yards of dredging is proposed.

l. *Locations for the Application:* A copy of the application, filed December 13, 1999, is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may reviewed on the internet at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance.) A copy is also available for inspection and reproduction at the address listed in item "h" above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14076 Filed 6–5–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6709–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; EPA Indoor Environmental Quality Questionnaire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval:

Title: EPA Indoor Environmental Quality Questionnaire, OMB Control Number 2060–0244, expiration date 5/31/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by e-mail at Farmer.Sandy@epa.gov or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1619.03.

SUPPLEMENTARY INFORMATION:

Title: EPA Indoor Environmental Quality Questionnaire, OMB Control Number 2060–0244 EPA ICR Number 1619.03, expiration date 5/31/00. This is a request for extension of a currently approved collection.

Abstract: The Indoor Environmental Quality Questionnaire is a component of the EPA indoor air quality (IAQ) research program, used in the Building Assessment Survey and Evaluation (BASE) and related intervention studies. In this program, EPA is studying up to 200 large commercial and public buildings. The purpose of this program is to develop a national baseline assessment of the indoor air in such buildings and to test the effectiveness of current EPA guidance for improving IAQ. The activities EPA will conduct under this program include an Indoor Environmental Quality Questionnaire, building inspections, interviews with building maintenance workers, environmental measurements (*e.g.*, ventilation rates, concentrations of indoor air pollutants), and other quantitative and qualitative assessments. By conducting this research, EPA will begin to be able to assess the key building parameters that affect IAQ, the incidence of certain IAQ-related health and comfort problems, and effectiveness of strategies to improve IAQ and avoid IAQ problems. The Indoor Environmental Quality Questionnaire is a voluntary and anonymous questionnaire asking for information pertaining to work station characteristics, working conditions, exposure to pollutants, health and well-being, and stress. Data from the Indoor Environmental Quality Questionnaire will be used to compare the measured building parameters and health effects.

Under the existing ICR authority, EPA has used this Questionnaire in 113 buildings to date.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 12, 1999 (64 FR 7188); 1 comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Occupants of commercial and public facilities in wide variety of fields and SIC codes.

Estimated Number of Respondents: 500.

Frequency of Response: One-time response for 60% of respondents; 40% of respondents will complete questionnaire twice with a one-year interval between responses.

Estimated Total Annual Hour Burden: 127.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1619.03 and OMB Control No. 2060–0244 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division, Mail Code 2822, 1200 Pennsylvania Avenue, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 30, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–14180 Filed 6–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6710–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; New Source Performance Standards (NSPS), Surface Coating of Plastic Parts for Business Machines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: New Source Performance Standards (NSPS), Subpart TTT, Surface Coating of Plastic Parts for Business Machines; OMB Control Number 2060–0162; expiration date August 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 6, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No.1093.06. For technical questions about the ICR contact Anthony Raia at 202-564–6045.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standards (NSPS), Subpart TTT, Surface Coating of Plastic Parts for Business Machines. OMB Control Number 2060–0162, EPA ICR Number 1093.06, expiration date 8/31/2000. This is a request for extension of a currently approved collection.

Abstract: Industrial surface coating operations emit volatile organic compounds (VOCs) in quantities that the Administrator believes cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Consequently, New Source Performance Standards for the surface coating of plastic parts for business machines were promulgated. VOC emissions from these facilities are the result of operation of the spray booths that apply prime coats, color coats, texture coats or touch-up coats. The standards ensure that owners or operators of these facilities use coatings that contain a low proportion of VOCs, and coating application equipment that provides a high transfer efficiency. In addition, or as an alternative, sources may use control equipment to meet the emission limits. In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 21, 2000 (61 FR 45959); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 30 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Industrial surface coating companies that process plastic parts used in the manufacture of business machines.

Estimated Number of Respondents: 41.

Frequency of Response: Initial, Quarterly, Semi-Annually.

Estimated Total Annual Hour Burden: 3,639 hours.

Estimated Total Annualized Capital, O&M Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1093.06 and OMB Control No. 2060–0162 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 22, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–14181 Filed 6–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6710–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, EPA's WasteWise Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping Requirements Under EPA's WasteWise Program; OMB Control No. 2050–0139; expiring July 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at *Farmer.Sandy@epamail.epa.gov* or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1698.04. For technical questions about the ICR contact Barbara A. Nichols on 703–308–8659.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recordkeeping Requirements Under EPA's WasteWise Program, OMB Control No. 2050–0139; EPA ICR No. 1698.04, expiration date July 31, 2000. This is a request for extension of a currently approved collection.

Abstract: EPA's voluntary WasteWise program encourages businesses and other organizations to reduce solid waste through waste prevention, recycling, and the purchase or manufacture of recycled-content products. WasteWise participants include Partners, which commit to implementing waste reduction activities of choice, and Endorsers, which choose to promote the WasteWise program and waste reduction to their members. Endorsers, which are typically trade associations or other membership-based organizations, are asked to submit only a one-page form, the Endorser Registration Form. This form identifies the organization, principal contact, and the activities to which the Endorser commits. Partners are asked to fill out

three forms as follows. The Partner Registration Form identifies the organization and the facilities that will participate in WasteWise. Each Partner develops its own waste reduction goals and submits a one-page Goals Identification Form to EPA every three years. Partners also report annually on the progress made toward achieving these goals in the Annual Reporting Form.

The EPA WasteWise program uses the voluntarily submitted information to: (1) Identify and recognize outstanding waste reduction achievements by individual organizations, (2) compile aggregate results that indicate overall accomplishments of WasteWise Partners, (3) identify cost-effective waste reduction strategies to share with other organizations, and (4) identify topics on which to develop assistance and information efforts.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on March 2, 2000 (65 *FR* 11304). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 37 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: WasteWise Program Volunteers.

Estimated Number of Respondents: 1270.

Frequency of Response: On Occasion, annually.

Estimated Total Annual Hour Burden: 64,260.

Estimated Total Annualized Capital, O&M Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1698.04 and OMB Control No. 2050–0139 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 30, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–14182 Filed 6–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6709–9]

Agency Information Collection Activities; Submission for OMB Review; Comment Request, Data Generation for Pesticide Re-registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR), has been forwarded to the Office of Management and Budget (OMB) for review and approval: Data Generation for Pesticide Re-registration, OMB No. 2070–0107, expiration date May 30, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 6, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1504.04. For technical questions about the ICR contact Angela Hofmann at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

Title: Data Generation for Pesticide Reregistration OMB Control No. 2070–0107, EPA ICR No. 1504.04, expiration date May 30, 2000.

Abstract: Pursuant to section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA must assess health and safety data for all pesticide active ingredients originally registered before November 1, 1984, to determine whether such pesticides' use poses unreasonable risks to human health or the environment. In addition, the Federal Food Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requires the Agency to reassess all existing tolerances (maximum limits for pesticide residues in food or feed) to ensure that they meet the safety standard in FPQA.

Currently, EPA is implementing Phase 5 of the Reregistration Program. In this final stage, the Agency is actively reviewing the studies submitted for each pesticide and determining whether or not the pesticide is eligible for reregistration—that is, whether the data base is substantially complete, and the pesticide does not cause unreasonable adverse effects to people or the environment when used in accordance with approved labeling. EPA is also reassessing tolerances for any related food uses, and considering whether the pesticide meets the new safety standard in FQPA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 16, 1999 (64 FR 32225; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3,024 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes

of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Pesticide registrants seeking re-registration.

Estimated number of potential Responses: 30.

Frequency of response: Once, after the Record of Decision is issued.

Estimated total annual Respondent burden: 90,725 hours.

Estimated total annual Capital, O&M costs: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1504.04 and OMB Control No. 2070–0107 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 22, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–14184 Filed 6–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00662; FRL–6590–9]

EPA-USDA Committee To Advise on Reassessment and Transition; Notice of Establishment and Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of establishment and public meeting.

SUMMARY: The EPA-USDA Committee to Advise on Reassessment and Transition (CARAT) is being established in accordance with the Federal Advisory Committee Act as a subcommittee under the auspices of the EPA National Advisory Council for Environmental Policy and Technology (NACEPT). The purpose of CARAT is to provide advice and counsel to the Administrator of EPA and the Secretary of Agriculture regarding strategic approaches for pest management planning and tolerance reassessment for pesticides as required by the Food Quality Protection Act of 1996 (FQPA). CARAT is preceded by the Tolerance Reassessment Advisory Committee and will be guided by the principles set forth by the Vice President for EPA and the U.S. Department of Agriculture (USDA) to work together to ensure smooth implementation of FQPA through use of sound science, consultation with stakeholders, increased transparency, and reasonable transition for agriculture.

DATES: The first meeting of CARAT will be held on Friday, June 23, 2000, from 9 a.m. to 5 p.m. A background information session, with limited public seating, is being offered to the CARAT members on Thursday, June 22, 2000, from 9 a.m. to 5 p.m.

ADDRESSES: The first meeting of CARAT will be held on June 23, 2000, at the National Rural Electric Cooperative Association (NRECA) Conference Center, 4301 Wilson Boulevard, Arlington, VA 22203; telephone number: 703–907–5500. The NRECA Conference Center is located adjacent to the Ballston Metro Stop. The background information session, with limited public seating, will be held on June 22, 2000, for CARAT members at 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 1126 (Fishbowl), Arlington, VA 22202; telephone number: 703–305–7090.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach or Terria Northern (7501C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7090 or 703–305–7093; fax number: 703–308–4776; e-mail address: Fehrenbach.Margie@epa.gov or Northern.Terria@epa.gov.

I. Does This Action Apply to Me?

This action is directed to the public in general; however, it may be of interest to persons who are concerned about implementation of the Food Quality Protection Act (Public Law 104–170). Passed in 1996, this new law strengthens the nation's system for regulating pesticides on food. CARAT was preceded by the Tolerance Reassessment Advisory Committee which was established in 1998 in response to Vice President Gore's request for EPA and USDA to work together to ensure smooth implementation of FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about CARAT, go directly to the Home Page for EPA's Office of Pesticide Programs at http://www.epa.gov/pesticides/carat.

List of Subjects

Environmental protection, Agriculture, Chemicals, Foods, Pesticides and Pests.

Dated: May 30, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–13942 Filed 6–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6710–7]

Benchmark Dose Software

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the U.S. Environmental Protection Agency (EPA) Benchmark Dose Software (BMDS Version 1.2). BMDS was developed by EPA's National Center for Environmental Assessment (NCEA) as a tool to facilitate the application of benchmark dose methods to the assessment of hazardous pollutants. The software and supporting documentation are available to Agency

personnel and to the general public, and can be downloaded from the NCEA internet web site or requested directly from NCEA (see addresses below).

ADDRESSES: To obtain a copy of the Benchmark Dose Software Version 1.2, direct your internet browser to http://epa.gov/ncea/bmds.htm. You will be instructed on how to download a self-extracting compressed file containing the BMDS program. Windows 95/98/NT and at least sixteen megabytes of RAM are required to run this version of the BMDS.

Accessing a copy of the BMDS program via the internet is highly recommended as the BMDS web site will be the official and most current source of updates and notifications. However, those for whom internet access is impractical may obtain a copy of the program via E-mail or CD–ROM by contacting Ms. Diane H. Ray, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–3637; facsimile: 919–541–1818; E-mail: *ray.diane@epa.gov*.

All comments on the BMDS software, help system and the model source code files are welcome. Please email comments, recommendations, suggested revisions, or corrections to *bmds.ncea@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey S. Gift, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4828; facsimile: 919–541–1818; E-mail: *bmds.ncea@epa.gov*.

SUPPLEMENTARY INFORMATION: Use of benchmark dose methods involves fitting mathematical models to dose-response data, obtained primarily from toxicology studies, and using the results to determine the dose of a toxicant that is associated with a predetermined benchmark response, such as a 10% increase in the incidence of a particular lesion or a 10% decrease in body weight gain. BMDS estimates the lower-bound confidence limit on the benchmark dose (BMDL), which can serve as a point of departure for a non-cancer or cancer chemical risk assessment. BMDS facilitates these operations by providing simple data-management tools, a comprehensive help manual and online help system, and an easy-to-use interface to run multiple models on the same dose-response data set. At this time, BMDS (Version 1.2) offers sixteen (16) different models that are appropriate for the analysis of dichotomous (quantal) data (Gamma, Logistic, Log-Logistic, Multistage, Probit, Log-Probit, Quantal-Linear, Quantal-Quadratic, Weibull), continuous data (Linear, Polynomial, Power, Hill) and nested developmental toxicology data (NLogistic, NCTR, Rai & Van Ryzin). Results from all models include a reiteration of the model formula and model run options chosen by the user, goodness-of-fit information, the benchmark dose, and the estimate of the lower-bound confidence limit on the benchmark dose (BMDL). Model results are presented in textual and graphical output files which can be printed or saved and incorporated into other documents.

The software announced here is the result of several years of research and development, expert review and quality assurance testing conducted by NCEA, with support from EPA's National Health and Environmental Effects Research Laboratory and NCEA contractors. Extensive peer review input was also received from expert scientists, particularly toxicologists and statisticians, from both inside and outside the Agency. Following a public review of BMDS Beta Version 1.1b, which ended on March 31, 1999 (63 FR 71465, Dec. 28, 1998), NCEA revised the software based on its experience with the program and in response to public comments received. Finally, an extensive and independent quality assurance assessment of all facets of the BMDS system was conducted, and appropriate modifications were made to create BMDS Version 1.2.

EPA/NCEA will continue to improve the BMDS system in response to the needs of Agency and other risk assessors. One example of such a project is the ongoing development of the EPA Hybrid model, a statistical approach to treating continuous data as dichotomous endpoints. A beta version of the Agency's Hybrid model is included in BMDS Version 1.2. Another example is the ongoing development of a model specifically designed for assessing cancer incidence data, which is being developed to support the proposed EPA cancer guidelines currently in development. As these and other modifications or additions are completed, they will be made available to users of the software via the NCEA BMDS web site.

Currently, the BMDS web site contains the complete BMDS program along with its extensive online help system, a separately downloadable help manual, and background information concerning the development of the software. The executable and source code files for the individual models used by BMDS can also be downloaded from the web site.

Dated: May 25, 2000.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 00–14177 Filed 6–5–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6711–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) Technical Subcommittee for Fine Particle Monitoring will meet on Wednesday, June 21, 2000 from 11 am to 2 pm Eastern Daylight Time. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available (phone lines will be very limited). Additional instructions about how to participate in the meeting can be obtained by calling Ms. Diana Pozun prior to the meeting at (202) 564–4544, or via e-mail at <pozun.diana@epa.gov>. *Important Notice:* Documents that are the subject of CASAC reviews are normally available from the originating EPA office and are not available from the CASAC Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose of the Meeting—This technical subcommittee of CASAC was established in 1996 to provide advice and comment to EPA (through CASAC) on appropriate methods and network strategies for monitoring fine particles in the context of implementing the revised national ambient air quality standards (NAAQS) for particulate matter. The Subcommittee provided such advice on the Federal Reference Method (FRM) and mass-based fine particle network in July 1996, and has recently examined EPA's plans and guidance for several components of the fine particle monitoring network and how these components are linked to research priorities for particulate matter (see 65 FR 16916, March 30, 2000 for more details).

In May 2000, Staff from EPA's Office of Research and Development (ORD) requested that CASAC, through its Technical Subcommittee on Fine Particle Monitoring, conduct a peer review of the report prepared in response to Section 6102(e) of the Transportation Equity Act for the 21st Century, which states: *"The Administrator shall conduct a field study of the ability of the PM2.5 Federal Reference Method to differentiate those particles that are larger than 2.5 micrograms [sic] in diameter. This study shall be completed and provided to the Committee on Commerce of the House of Representatives and the Committee on Environment and Public Works of the United States Senate no later than two years from the date of enactment of this Act."*

Charge to the Subcommittee: ORD has had the draft report reviewed by two external expert reviewers, incorporating their comments prior to submitting the report to the CASAC Subcommittee for a full independent peer review. The Agency has asked that the Subcommittee respond to the following questions: (a) Has the proper methodology been used to address the requirement in the Transportation Equity Act? (b) Was the methodology applied correctly? and (c) Is the Report's interpretation correct? The Subcommittee may also address other issues.

Availability of Review Materials: Single copies of the review document are available from Mr. Frank McElroy, Office of Research and Development (MD–46), U.S. EPA, Research Triangle Park, NC 27711. Mr. McElroy can also be reached by telephone at (919) 541–2622, fax at (919) 541–1153, or e-mail: <mcelroy.frank@epa.gov>. Please ask for: *"Response to Section 6102(e) of the Transportation Equity Act for the 21st Century"* dated May 2000, EPA 600/R-00/033, prepared by USEPA's National Exposure Research Laboratory (NERL), RTP, NC.

For Further Information: Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4546; fax at (202) 501–0582; or via e-mail at <flaak.robert@epa.gov>. A copy of the draft agenda is available from Ms. Diana Pozun at (202) 564–4544 or by FAX at (202) 501–0582 or via e-mail at <pozun.diana@epa.gov>.

Members of the public who wish to make a brief oral presentation to the Subcommittee (in Room 6013 only) must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Daylight Savings Time, Wednesday, June 14, 2000 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization; 15 minutes total. The request should identify the name of the individual making the presentation, and the organization (if any) they will represent.

Please note: If we receive more requests than we can accommodate, time of receipt in the CASAC office will determine priority, with the first three requests granted time. All others will have to provide written comments. Written comments of any length may be submitted to Mr. Flaak at any time until the date of the meeting. Please provide at least 25 copies. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 31, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–14178 Filed 6–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6709–7]

Guam; Final Program Determination of Adequacy of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination of adequacy of Guam's municipal solid waste landfill permit program.

SUMMARY: On August 24, 1998 Guam applied for a determination of adequacy of its municipal solid waste landfill permit program under section 4005 of the Resource Conservation and Recovery Act (RCRA). This section requires States to develop and implement permit programs that ensure that Municipal Solid Waste Landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste are obligated to comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determination. Guam is identified as a "State" in 40 CFR 258.2.

Guam applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Guam's application and proposed a determination that Guam's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. Further background on the tentative determination of adequacy appears at 64 FR 54013, Oct. 5, 1999. Along with the tentative determination, EPA announced the availability of the application for public comment. EPA offered to hold a public hearing if a sufficient number of people requested such a hearing. There were no requests for a public hearing, so a hearing was not held. EPA did not receive any comments on Guam's application. Therefore, EPA is today issuing a final determination that the State's program is adequate.

The full Guam application is on file and may be reviewed at the regional EPA office in San Francisco, California or alternatively at the offices of the Guam Environmental Protection Agency, Calibration Laboratory Building, 15–6101 Mariner Avenue, Tiyan, Barrigada, Guam.

Today's action takes effect without further notice in 60 days unless the Agency receives relevant adverse comment or notice that someone intends to submit a relevant adverse comment within 30 days. Should the Agency receive such comments or notice, it will publish a timely notice informing the public that this rule has not taken effect.

FINAL ACTION: Guam is granted full program determination of adequacy for all areas of its municipal solid waste landfill permit program. By this action, EPA is granting Guam full program determination of adequacy for all parts of its municipal solid waste landfill permit program.

EFFECTIVE DATE: The determination of adequacy for Guam shall be June 6, 2000.

FOR FURTHER INFORMATION CONTACT: Ms Heidi Hall, WST–7, U.S. EPA 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1284.

SUPPLEMENTARY INFORMATION:

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state or local governments in the aggregate, or to the private sector, or $100 million or more. The EPA has determined that the approval action being promulgated does not include a federal mandate that may result in estimated costs of $100 million or more to either state or local governments in the aggregate, or to the private sector. This federal action approves preexisting requirements under state law, and imposes no new requirements. Accordingly, no additional costs to State or local governments, or to the private sector, result from this action.

D. Executive Order 12875

Executive Order 12875 is intended to develop an effective process to permit elected officials and other representatives of state or local governments to provide meaningful input in the development of regulatory proposals containing significant unfunded mandates. Since this final federal action approves preexisting requirements of state law, no new unfunded mandates result from this action. See also the discussion under C, above, Unfunded Mandates Act.

E. Executive Order 13045

Executive Order 13045, effective April 21, 1997, concerns protection of children from environmental health and safety risks, and applies to regulatory action that is "economically significant" in that such action may result in an annual effect on the economy of $100 million or more. The EPA has determined that the approval action being promulgated will not have a significant effect on the economy. This federal action approves preexisting requirements under state law, and imposes no new requirements. Accordingly, Executive Order 13045 does not apply to this action.

F. Congressional Review Act

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this action in today's **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6946.

Dated: May 23, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–14179 Filed 6–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30493; FRL–6498–6]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30493, must be received on or before July 6, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30493 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 910W49, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202; telephone number: 703–308–8733; e-mail: hollis.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production.
	112	Animal production.
	311	Food manufacturing.
	32532	Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30493. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30493 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30493. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. File Symbol: 72898–E. Applicant: BioTEPP, Inc., 177, 71e Street East, Charlesbourg, QC, Canada G11 1H4. Product Name: Virosoft ^{CP4}. Microbial pesticide. Active ingredient: *Cydia pomonella* Granulosis Virus at 0.16%. Proposed classification/Use: For control of the codling moth on apple trees.

2. File Symbol: 72898–R. Applicant: BioTEPP, Inc., 177, 71e Street East, Charlesbourg, QC, Canada G11 1H4. Product Name: Virosoft ^{BA4}. Microbial pesticide. Active ingredient: *Mamestra configurata* Nuclearpolyhedrosis Virus at 0.16%. Proposed classification/Use: For control of the bertha armyworm on canola.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 23, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–14185 Filed 6–5–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6709–6]

Policy or Regulatory Flexibility as Incentive for Improved Environmental Performance at Laboratories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for information under Project XL and Labs21—Flexibility needs under environmental policies or regulations that affect laboratories.

SUMMARY: EPA solicits information from laboratories on cases where flexibility under environmental policies or regulations could result in improved environmental performance. The Agency will use this information in an assessment of whether to provide flexibility through Project XL to laboratories who participate in the emerging Labs21 program. EPA also seeks candidate laboratories to participate in a pilot project connected with this effort.

DATES: The period for the solicitation is open-ended, although responders are requested to reply by July 6, 2000.

ADDRESSES: Responders to Section IV of this **Federal Register** Notice should

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address correspondence to: Nina Bonnelycke, Mail Code 1802, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460. Responders may also send information via email to *bonnelycke.nina@epa.gov*.

FOR FURTHER INFORMATION CONTACT: For specific information on regulatory relief for laboratories under Project XL or for general information on Project XL, please contact Nina Bonnelycke at the above addresses or at 202–260–3344. For more information on EPA's Labs21 program, please contact Phil Wirdzek at Mail Code 3204, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460, phone: 202–564–2094, email: *wirdzek.phil@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Through its Office of Administration and Resources Management, EPA is planning to establish a voluntary initiative to improve laboratory environmental performance through energy- and water-efficiency. This initiative, named Laboratories for the 21st century or Labs21, evolved from the Agency's recent efforts to improve the environmental performance of its own laboratories. As part of developing the Labs21 program, the Agency is exploring what incentives, if any, might prompt laboratories to participate in the new program. Preliminary contacts with industry representatives indicate that regulatory relief from environmental regulations might be one such incentive. Other examples include awards and recognition or data sharing on environmental management practices. Since Project XL is an existing EPA program for providing relief from environmental regulations or programmatic requirements, the Agency is exploring using XL as a way to offer this type of flexibility to Labs21 participants.

II. Labs21 and Project XL

A. Labs21 Overview

EPA recently implemented changes at its Ann Arbor, Michigan, laboratory that will accomplish the following: Reduce annual electricity demand by 68 percent, reduce annual water consumption by 80 percent, produce energy and water savings that will reduce the laboratory's annual utility bill by 74 percent, and recoup the cost of the associated equipment upgrades within 8 years.

The Agency is currently implementing comparable modifications at many of its other laboratories and is expecting similar results. Based on its experience with its own facilities, EPA is exploring whether to develop a national voluntary initiative, referred to as Labs21, to encourage similar improvements at laboratories throughout the U.S.

As part of developing Labs21, EPA held an initial planning meeting on September 9, 1999, to discuss the emerging program with interested parties. (Conference information is available at *http://www.epa.gov/labs21century*.) At this meeting, EPA presented its first-year objectives for Labs21, which are to: Establish procedures laboratory owners and operators can use to evaluate the energy- and water-efficiency of their laboratories, define the participation requirements for a Labs21 laboratory, provide opportunities to exchange information on laboratory energy- and water-efficiency (e.g., conferences, newsletters, or websites), identify, promote, and replicate demonstration projects to facilitate market acceptance of advanced energy-and water-efficient technologies, and establish award criteria for recognizing Labs21 participants.

EPA is continuing to work with a group of laboratories, including the National Renewable Energy Laboratory and the Lawrence Berkeley National Laboratory to flesh out the program further. Interested parties should contact EPA as indicated above.

B. Project XL Overview

One possible means of adding a flexibility component to Labs21 might be Project XL. Project XL is an existing EPA program specifically designed to offer flexibility on an experimental basis, and it has both a continuing mission and experience in granting flexibility from environmental regulations, including regulations that affect laboratories.

EPA launched Project XL —"eXcellence and Leadership"—on March 16, 1995, as a central part of its effort to reinvent environmental protection. (See 60 FR 27282; May 23, 1995.) Project XL gives individual private and public regulated entities the opportunity to develop their own pilot projects wherein the Agency provides targeted flexibility in exchange for improved environmental performance. EPA intends to use Project XL and other related efforts to test innovative strategies for reducing the regulatory burden and promoting economic growth while achieving better environmental and public health protection. Through this testing, EPA can investigate approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practices, as long as those interpretations meet the general mandate of the statutes the Agency is charged with implementing.

To participate in XL, interested parties must develop a proposal that satisfies a number of criteria, including criteria for superior environmental performance, transferability, and stakeholder involvement. In the evaluation of environmental performance under XL, EPA seeks superior performance both in areas under existing EPA jurisdiction such as waste handling, air emissions, or effluent treatment, as well as through environmental innovations in fields as diverse as data monitoring and reporting or product stewardship.

As of December 1999, 31 projects have met the XL criteria and are in various stages of development and implementation. Sixteen (16) new proposals are in review. For more information about the XL program, XL criteria, or about specific XL projects underway, please refer to *http://www.epa.gov/projectxl* or contact EPA as indicated above under For Further Information Contact.

C. Existing XL Project Investigates Regulatory Flexibility for Laboratories

The XL program has an existing project, the New England Universities Laboratories XL Project (NE Labs), to replace certain federal and state hazardous waste regulations with an Environmental Management Plan tailored to university labs. (This project is described in more detail on the XL website at *http://www.epa.gov/projectxl/nelabs/index.htm*.)

The conflict for universities that this project works to address is that while hazardous waste regulations are typically directed toward large-scale industrial processes, academic and teaching laboratories typically use only small amounts of hazardous chemicals. This XL project focuses on two specific environmental management problems caused by application of the waste management regulations to university settings: premature hazardous waste determination and inefficient collection of wastes from satellite locations. Premature hazardous waste determination occurs when university workers, in an attempt to adhere to hazardous waste regulations, discard used materials as "hazardous wastes" without knowledge of the university's options for recycling and reuse. The result is that the university must dispose of an unnecessarily large volume of reusable materials each year, meaning that the regulations in effect curb the effectiveness of the university's recycling program. In a similar vein, the 3-day satellite accumulation requirements under hazardous waste management regulations force university environmental managers to pick up and transport wastes on a frequent but unpredictable basis. The XL project gives participating universities the latitude to explore how to replace the broad-brush hazardous waste regulations that cause these inefficiencies with a more targeted, effective environmental management system.

It is this type of tradeoff between regulatory relief and improved environmental performance that the Agency hopes to capture in the Labs21 program, and EPA's expectation is that the experience the XL program has gained through running the NE Labs XL project and other similar projects can assist EPA in structuring a flexibility component for Labs21.

III. Definition of "Laboratory"

For purposes of this **Federal Register** notice, the term "laboratory" includes research, academic or industrial laboratories. This definition extends to facilities that generate product in commercial quantities in addition to facilities whose principal output is research, analysis, or products manufactured for R&D or other investigatory purposes.

IV. Information Sought By EPA

A. Types of Flexibility Needed By Laboratories

In today's notice, EPA is asking laboratories to identify specific examples of environmental regulations or policies under which the benefit to the environment appears to be small compared to the implementation burden faced by the affected lab. The previous section describes a case where university laboratories felt they could obtain superior environmental performance by implementing their own environmental control plan instead of continuing compliance with existing hazardous waste regulations. Other examples may exist, for instance, there may be air emission or water treatment standards that, for whatever reason, fail to achieve their environmental objectives when applied to laboratory settings. The Agency will use feedback received through this Notice to guide its assessment of whether to offer a flexibility component in the new Labs21 program.

In addition, the Agency today is asking laboratories to identify any regulations or policies issued by other federal agencies where the benefit to the environment appears to be small compared to the implementation burden faced by the affected lab. Examples of federal agencies with jurisdiction over laboratories' environmental performance include the Food and Drug Administration or the Department of Transportation. The feedback EPA receives will help the Agency assess the need to coordinate with other federal agencies regarding flexibility for laboratories.

B. Laboratories Interested in Participating in a Pilot Project

Through today's notice, EPA requests contact with laboratories that want to participate in an XL project to grant flexibility as part of the Labs21 program. These candidates, referred to as "sponsors" under XL, should be interested in obtaining regulatory or programmatic flexibility for their lab, should have some specific ideas concerning requirements that EPA should consider waiving, or should have broad knowledge of the regulatory obstacles to environmental performance that laboratories face.

Through participating, sponsors will not only have a chance to secure regulatory or programmatic relief for their facilities, but will also have an opportunity to shape the dialogue between laboratories and EPA on how to maximize environmental performance at labs.

Dated: May 22, 2000.

Jay Benforado,

Acting Associate Administrator, Office of Policy and Reinvention.

[FR Doc. 00–14183 Filed 6–5–00; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

RIN 3046–AA58

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for an extension of the existing collection requirements under 29 CFR 1625.22, Waivers of rights and claims under the ADEA. The Commission has requested an extension of an existing collection as listed below.

DATES: Written comments on this notice must be submitted on or before July 6, 2000.

ADDRESSES: The Request for Clearance (SF 83–I), supporting statement, and other documents submitted to OMB for review may be obtained from: Sherman McDaniel, Jr., EEOC Clearance Officer, 1801 L St., NW., Washington, DC 20507. Send comments regarding any aspect of the information collection to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507, and to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer for the U.S. Equal Employment Opportunity Commission, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Comments may be electronically mailed to DWERFEL@OMB.EOP.GOV.

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Assistant Legal Counsel, Office of Legal Counsel, at (202) 663–4647 or TTY (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces the ADEA of 1967, as amended, 29 U.S.C. 621 *et seq.*, which prohibits discrimination against employees and applicants for employment who are age 40 or older. Congress amended the ADEA by enacting the Older Workers Benefit Protection Act of 1990 (OWBPA), Public Law 101–433, 104 Stat. 983 (1990), to clarify the prohibitions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f), 29 U.S.C. 626(f). The provisions of Title II of OWBPA do require employers to provide certain information to employees (but not to EEOC) in writing. The regulation at 29 CFR 1625.22 reiterates those requirements.

The EEOC seeks extension without change of the information collection requirements contained in this recordkeeping regulation. On March 24, 2000, the Commission published a 60–Day Notice informing the public of its intent to request an extension of the

informational requirements from the Office of Management and Budget. 65 FR 15907. No comments were received.

Collection Title: Informational requirements under Title II of the Older Workers Benefit Protection Act of 1990 (OWBPA), 29 CFR Part 1625.

Form Number: None.

Frequency of Report: None required.

OMB Control No.: 3046–0042.

Type of Respondent: Business, state or local governments, not for profit institutions.

Description of the Affected Public: Any employer with 20 or more employees that seeks waiver agreements in connection with exit incentive or other employment termination programs.

Responses: 13,713.

Reporting Hours: 41,139.

Number of Forms: None.

Abstract: This requirement does not involve record keeping. It consists of providing adequate information in waiver agreements offered to a group or class of persons in connection with a Program, to satisfy the requirements of the OWBPA.

Burden Statement: There is no reporting requirement nor additional record keeping associated with this rule. The only paperwork burden involved is the inclusion of the relevant data in waiver agreements. The rule applies only to those employers who have 20 or more employees and who offer waivers to a group or class of employees in connection with a Program.

Dated: May 31, 2000.

For the Commission.

Ida L. Castro,

Chairwoman.

[FR Doc. 00–14104 Filed 6–5–00; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

RIN 3046–AA45

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for an extension of the existing collection requirements under 29 CFR 1602, Recordkeeping and Reporting Requirements under Title VII and the ADA. The Commission has requested an extension of an existing collection as listed below.

DATES: Written comments on this final notice must be submitted on or before July 6, 2000.

ADDRESSES: The Request for Clearance (SF 83–I), supporting statement, and other documents submitted to OMB for review may be obtained from: Sherman McDaniel, Jr., EEOC Clearance Officer, 1801 L Street, NW, Washington, DC 20507. Send comments regarding any aspect of the information collection to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW, Washington, DC 20507 and to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer for the U.S. Equal Employment Opportunity Commission, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to DWERFEL@OMB.EOP.GOV.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel, or Stephanie D. Garner, Senior Attorney, at (202) 663–4670 or TDD (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: A notice that EEOC would be submitting this request was published in the **Federal Register** on March 21, 2000, allowing for a 60-day public comment period. No commentators responded.

Type of Review: Extension—No change.

Collection Title: Recordkeeping and Reporting under Title VII and the ADA.

Form No.: None.

Frequency of Report: Other.

Type of Respondent: Employers with 15 or more employees.

Description of Affected Public: Employers with 15 or more employees are subject to Title VII and the ADA.

Responses: 627,000.

Reporting Hours: None.

Federal Cost: None.

Number of Forms: None.

Abstract: Section 709 of Title VII, 42 U.S.C. 2000e and section 107(a) of the ADA, 42 U.S.C. 12117 require the Commission to establish regulations pursuant to which employers subject to those Acts shall make and preserve certain records to assist the EEOC in assuring compliance with the Acts' nondiscrimination requirements in employment.

This is a recordkeeping requirement. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII, by incorporation, section 107(a) of the ADA.

Burden Statement: The EEOC estimates that there will be no increased burden on employers. All employers subject to Title VII are also subject to the ADA, and the same EEOC records retention requirements are applicable to both. As all employers with 15 or more employees are already required by the EEOC's Title VII regulations on recordkeeping to maintain the same records, and the extension does not require reports or the creation or maintenance of new documents, there is no increased burden.

Dated: May 1, 2000.

For the Commission.

Ida L. Castro,

Chairwoman.

[FR Doc. 00–14105 Filed 6–5–00; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 00–1219]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 2, 2000, the Commission released a public notice announcing the June 20 and 21, 2000, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, SW, Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: June 2, 2000.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, June 20, 2000, from 8:30 a.m. until 5:00 p.m., and on Wednesday, June 21, from 8:30 a.m. until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW, Room TW-C305, Washington, DC.

This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda—Tuesday, June 20, 2000

1. Approval of May 23–24, 2000 meeting minutes.
2. North American Numbering Plan Administration (NANPA) Report. Status of reporting form, and data entry mechanisms (Numbering Resource Optimization *Report and Order* (*NRO R&O*), CC Docket 99–200, paragraphs 52 and 53); NANP exhaust (without pooling) projections.
3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.
4. Numbering Resource Optimization (NRO) Working Group Report. NARUC review of Uniform Definitions (*NRO R&O* paragraphs 14 and 36); status of UNP impact (paragraph 231), and status of fees for reserved numbers (paragraph 25).
5. Industry Numbering Committee (INC) Report. Status of Thousand Block Pooling Administrator guidelines.
6. Ad Hoc Voluntary UNP Study Group Report. Status of Business Rule Model.
7. Local Number Portability Administration (LNPA) Working Group Report. Wireless Number Portability Subcommittee report, and updates on Wireless Wireline Integration; Problem Identification Management (PIM); NPAC/SMS release status, and Slow Horse.
8. Number Pooling Issue Management Group (IMG) Report. Update on development of thousands-block pooling administration technical requirements (*NRO R&O* paragraph 155).
9. Limited Liability Corporations (LLCs) and Number Portability Administration Centers (NPAC) activity update
10. North American Billing and Collection update. Wednesday, June 24, 2000
11. Steering Group Report.
12. Presentation by U S West on new NANP Expansion recommendation.
13. Cost Recovery Working Group Report. Confirm appointment of co-chair.
14. NANC Discussion Group on charging for telephone numbers. Status of pricing comments and replies (*NRO R&O* paragraph 251).
15. Discussion of proposed assignment to a NANC Issue Management Group to examine numbering resource demand from new services (*e.g.*, unified messaging services).
16. Public participation (5 minutes each, if any).
17. Other Business.
18. Action Items and Decisions Reached.

Federal Communications Commission.

Diane Griffin Harmon,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 00–14282 Filed 6–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

June 1, 2000.

Open Commission Meeting, Thursday, June 8, 2000

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 8, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW, Washington, DC.

Item No., Bureau, and Subject

1—Office of General Counsel—Title: Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes. Summary: The Commission will consider a Statement of Policy reaffirming the Commission's commitment to the principles of Indian sovereignty and the federal trust responsibility.

2—Common Carrier—Title: Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas (CC Docket No. 96–45); and Western Wireless Corporation, Crow Reservation in Montana; Smith Bagley, Inc.; Cheyenne River Sioux Tribe Telephone Authority; Western Wireless Corporation, Wyoming; Cellco Partnership d/b/a Bell Atlantic Mobile, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service. Summary: The Commission will consider a 12th Report and Order and Memorandum Opinion and Order that addresses access to telephone service within American Indian and Alaska Native tribal communities and the Commission's jurisdiction under Section 214 of the Communications Act of 1934.

3—Wireless Telecommunications—Title: Extending Wireless Telecommunications Services to Tribal Lands (WT Docket No. 99–266). Summary: The Commission will consider a Report and Order and Further Notice of Proposed Rule Making aimed at expanding wireless services on tribal lands.

4—International—Title: Review of Commission Consideration of Applications under the Cable Landing License Act. Summary: The Commission will consider a Notice of Proposed Rule Making concerning proposals to streamline the Commission's process for licensing submarine cables.

5—Office of Engineering and Technology—Title: Amendment of Parts 2 and 95 of the Commission's Rules to Create a Wireless Medical Telemetry Service (ET Docket No. 99–255 and PR Docket No. 92–235). Summary: The Commission will consider a Report and Order to allocate spectrum on a primary basis for medical telemetry equipment, and to establish rules for a new wireless medical telemetry service.

Additional information concerning this meeting may be obtained from Maureen Peratino or Davis Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternate media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is http://www.itsdocs.com/.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone,

a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20179, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magaline Roman Salas,

Secretary.

[FR Doc. 00–14283 Filed 6–2–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, June 6, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory, corporate, and resolution activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 3, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–14365 Filed 6–2–00; 3:51 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before August 7, 2000.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report

Report title: The Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates.

Agency form number: FR Y–8.

OMB control number: 7100–0126.

Frequency: Quarterly.

Reporters: Bank holding companies, financial holding companies, foreign banking organizations.

Annual reporting hours: 169,661 hours.

Estimated average hours per response: 7.2 hours.

Number of respondents: 5,891.

Small businesses are not affected.

General description of report: This information collection is authorized by section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844 (c)) and section 225.5 (b) of Regulation Y (12 CFR 225.5 (b)) and is given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (8)).

Abstract: The current FR Y–8 collects information on the movement of funds between a domestic bank holding company and its subsidiaries in order to identify broad categories of intercompany transactions and balances that may affect the financial condition of the subsidiary bank. The report also collects information on income recognized by subsidiary banks from other bank holding company members as well as information on credit extended by subsidiary banks to other bank holding company members. Domestic top-tier bank holding companies with assets of $300 million or more are required to file the FR Y–8 on a semiannual basis (June and December). Also, interim reporting is currently required within ten calendar days of certain large asset transfers.

Current actions: On May 19, 2000, a **Federal Register** notice (65 FR 31912) was issued for public comment to completely revise the FR Y–8. The Federal Reserve proposed to delete the current information on the FR Y–8 and collect fourteen items of information on Section 23A covered transactions. The Federal Reserve is now amending this **Federal Register** notice, with regard to the FR Y–8 respondent panel, to include foreign banking organizations that directly own U.S. subsidiary banks. The comment period on the May 19, 2000, notice is extended to August 7, 2000. The Federal Reserve proposes, at the same time, to discontinue the Report of Intercompany Transactions for Foreign Banking Organizations and Their U.S. Bank Subsidiaries (FR Y–8f; OMB. 7100–0127). The majority of the FR Y–8f respondents (foreign banking organizations that own U.S. bank subsidiaries through a domestic bank holding company) are included in the FR Y–8 panel proposed in the May 19 **Federal Register** notice; this amendment includes the remaining 22 foreign banking organizations (that directly own U.S. banks) in the respondent panel.

Discontinuance of the Following Report Under OMB Delegated Authority

Report title: Report of Intercompany Transactions for Foreign Banking Organizations and their U.S. Bank Subsidiaries.

Agency form number: FR Y–8f.

OMB control number: 7100–0127.

Frequency: Semi-annually, and interim reporting required for certain large asset transfers.

Reporters: Bank holding companies as defined by Section 2(a) of the Bank Holding Company Act with at least $300 million in total consolidated assets that are organized under the laws of a foreign country and principally engaged in banking outside the United States.

Annual reporting hours: 360.

Estimated average hours per response: 3.

Number of respondents: 58.

semiannual respondents; 4 interim respondents Small businesses are not affected.

General description of report: This information collection is authorized by section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844 (c)) and section 225.5 (b) of Regulation Y (12 CFR 225.5 (b)) and is given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552 (b)(8)).

Abstract: This report provides the Federal Reserve System with information on intercompany transactions between foreign banking organizations and their U.S. bank subsidiaries. It enables the Federal Reserve to monitor and supervise intercompany flows of funds to ensure that U.S. subsidiary banks are not engaging in any unsafe and unsound practices with their foreign owners. This report supplements the Board's global framework for the supervision of the U.S. operations of foreign banks. In addition, it aids in determining whether a foreign banking organization serves as a source of strength to its U.S. subsidiary.

Current Actions: On May 19, 2000, a **Federal Register** notice (65 FR 31912) was issued for public comment to completely revise The Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates (FR Y–8), which is filed by domestic top-tier bank holding companies. The Federal Reserve now proposes to have foreign banking organizations that directly own U.S. subsidiary banks also file the revised FR Y–8. The comment period on the May 19, 2000, notice is extended to August 7, 2000. If this change to the reporting panel is adopted, the Federal Reserve will, at the same time, discontinue the FR Y–8f.

Board of Governors of the Federal Reserve System, May 31, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14069 Filed 6–5–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. BancFirst Corporation, Oklahoma City, Oklahoma; to merge with First Southwest Corporation, Frederick, Oklahoma, and thereby indirectly acquire First Southwest Bank, Frederick, Oklahoma.

Board of Governors of the Federal Reserve System, May 31, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14070 Filed 6–5–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 002 3082]

Zim Textile Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached

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Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 26, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carol Jennings or Elaine Kolish, FTC/S–4631, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326–3010 or 326–3042.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 26, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondent Zim Textile Corporation.

The proposed consent orders has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the manufacture, sale, and distribution of household textile products. The Commission's complaint charges that respondent violated the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, by offering for sale and selling household textile products without disclosing on a tag or label affixed to each such product the fiber content, the manufacturer or dealer identity, and the country of origin.

Part I of the proposed consent order prohibits future violations of the Textile Fiber Products Identification Act and Commission rules and regulations, found at 16 CFR part 303, implementing the requirements of the statute.

Part II of the proposed order requires the respondent, for three years after the date of issuance of the order, to maintain records demonstrating compliance with the order.

Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–14146 Filed 6–5–00; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Appointments to the Medicare Payment Advisory Commission

AGENCY: General Accounting Office (GAO).

ACTION: Notice of appointments.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. This notice announces six appointments to fill the vacancies occurring this year.

DATES: Appointments are effective May 1, 2000 through April 30, 2003.

ADDRESSES:

GAO: 441 G Street, NW, Washington, DC 20548

MedPAC: 1730 K Street, NW, Suite 800, Washington, DC 20006

FOR FURTHER INFORMATION CONTACT:

GAO: Molly Ryan, 202/512–3592

MedPAC: Murray N. Ross, Ph.D., 202/653–7220

SUPPLEMENTARY INFORMATION: To fill this year's vacancies I am announcing the following MedPAC appointments:

Autry O.V. "Pete" DeBusk; Glenn M. Hackbarth; Alan R. Nelson; Robert D. Reischauer; David A. Smith; and Ray E. Stowers

(Sec. 4022, Pub. L. 105–33, 111 Stat. 251, 350)

David M. Walker,

Comptroller General of the United States.

[FR Doc. 00–14068 Filed 6–5–00; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: Tuesday, June 20, 2000, 9 a.m.–Noon EDT; Wednesday, June 21, 2000, 9:15 a.m.–5:00 p.m. EDT.

Place: Hubert H. Humphrey Building, Conference Room 705A, 200 Independence Avenue S.W., Washington, DC.

Status: Open.

Purpose: On the first day of this two day meeting, the full Committee will discuss the draft Report on Uniform Data Standards for Patient Medical Record Information as prepared by the Subcommittee on Standards and Security. They will then hear a presentation on a National Research Council report entitled: Networking Health: Prescriptions for the Internet. On the second day the Committee will hear updates on a variety of topics from staff of the Department of Health and Human Services and a presentation on digital signatures. The afternoon's agenda will consist of Subcommittee working sessions and followed by status reports from the Subcommittees to the full Committee.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Persons without a government identification card may need to have the guard call for an escort to the meeting.

Contact Person for more Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: http://www.ncvhs.hhs.gov/, where further information will be posted when available.

Dated: May 26, 2000.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–14083 Filed 6–5–00; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00145]

Comprehensive Cancer Control; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a sole source cooperative agreement program for the enhancement and implementation of a comprehensive cancer control initiative.

Comprehensive cancer control is an integrated and coordinated approach to reduce the incidence, morbidity, and mortality of cancer through prevention, early detection, treatment, rehabilitation, and palliation. This initiative addresses priority minority populations at the community level including medically underserved men and women.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area on cancer and the oral cancer objectives in Chapter 21, the oral health focus area. For the conference copy of "Healthy People 2010," visit the Internet site <http://www.health.gov/healthypeople.

The purpose of the initiative is to assist with the following:

- Enhanced coordination among those involved in all aspects of comprehensive cancer control, from prevention to palliation.
- Implementation of priorities that support the State's comprehensive cancer control plan.
- Increased cooperation and collaboration among risk-factor and cancer-specific programs and activities (including surveillance systems) without compromising the integrity of individual categorical programs.
- Enhanced and strengthened coalitions and partnerships that support the overall goals and objectives of the comprehensive cancer control plan.
- A coordinated approach to the dissemination of cancer-related information; and education programs that are consumer-oriented and embody a comprehensive approach to cancer control.
- Capacity-building and institutionalization of organizational changes promoting comprehensive and integrated cancer control.
- The development or revision of a comprehensive cancer control plan that is being used to support the implementation of cancer prevention and control priorities.
- Evaluation methods to track progress related to the planning and implementation of cancer control plan goals and objectives.

B. Eligible Applicants

Assistance will be provided only to the University of Miami for its comprehensive South Florida Minority Cancer Initiative. No other applications are solicited. The sole source justification is based on congressional language in the Conference Report (H.R. Rep. 106–479, at 601 (1999) to the Consolidated Appropriations Act, 2000 (Public Law 106-113), which earmarked funding for the University of Miami, Miami, Florida.

Note: Public Law 104–65 states that an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $800,000 is available in FY 2000 to fund the program described below. It is expected that the awards will begin September 30, 2000, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Cooperative agreement funds may *not* be expended to provide inpatient hospital or treatment services. Treatment is defined as any service recommended by a clinician, including medical and surgical intervention provided in the management of a diagnosed condition.

These funds are intended for comprehensive cancer control and should not be used to directly support other existing programs such as breast and cervical cancer programs, cancer registry programs, laboratory or clinical services, or tobacco control programs. Indirectly, these funds may be used to assist with the integration and coordination of activities related to these existing programs. Thus, these funds should be used to assist with the coordination of these and other categorical programs into comprehensive cancer control activities. Funds awarded under this program announcement may not be used to supplant existing program efforts.

D. Program Requirements

Comprehensive cancer control activities should adhere to current accepted public health recommendations by the U.S. Preventive Services Task Force, or current Division of Cancer Prevention and Control (DCPC) guidance.

In conducting activities to achieve the purpose of the program, the recipient shall be responsible for the following activities under 1. (Recipient Activities), and CDC will be responsible for activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Identify and hire necessary key staff to implement the comprehensive cancer control plan.

b. Maintain or enhance a broad-based comprehensive cancer control coalition that includes representation from throughout the state. This coalition should include key private, professional, voluntary, and nonprofit organizations, policymakers, consumers

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(including cancer survivors), payers, media, State and federal agencies, research and academic institutions, schools, *etc.* Particular emphasis should be placed on ensuring participation from organizations representing minority and medically underserved populations.

c. Establish and implement priorities that support the State's comprehensive cancer control plan, which provides a framework for planning and action to reduce the burden of cancer in the State. Implementation should be guided by goals and objectives documented in an implementation plan to be developed or included as part of this application.

d. Promote collaboration and coordination among existing state-based surveillance systems for use in monitoring changes in cancer disease burden and programmatic impact of the comprehensive cancer control efforts especially in minority and medically underserved populations. Data should be used for program modifications and improvements, evaluation, and updating the comprehensive cancer control plan, as appropriate.

e. Evaluate progress and impact of the program based on a systematic evaluation plan. In addition to evaluating progress in meeting goals, process and impact objectives of the implementation plan, the program should develop performance indicators to use as benchmarks for improvement and to determine the success of the overall comprehensive cancer control effort.

f. Promote the development and dissemination of information and education programs that will contribute to comprehensive cancer control; and as appropriate, participate in national cancer prevention, early detection, and control campaigns. Program should use existing education resources as well as develop materials and activities that address specific needs of the minority and medically underserved populations, as necessary and appropriate. School health education and policies should be considered as part of these strategies. In addition to addressing educational needs of the targeted populations, programs should also consider activities that attempt to make individual, policy, organizational or environmental interventions and changes that can encourage primary prevention at all levels, e.g., organizational changes that can reinforce and support individual behavior changes.

g. Participate in CDC-sponsored trainings, meetings, site visits, and conferences.

2. CDC Activities

a. Convene meetings for information-sharing or training. As appropriate, these meetings will be conducted with other CDC comprehensive cancer control cooperative agreement recipients.

b. Facilitate the exchange of information and collaboration between the recipient and other local, state, regional or national comprehensive cancer control efforts.

c. Disseminate to recipient relevant state-of-the-art research findings and public health recommendations related to comprehensive cancer control.

d. Provide ongoing guidance, consultation, and technical assistance in conducting Recipient Activities.

e. Conduct site visits to assess program progress, and mutually resolve problems, as needed, and coordinate reverse site visits to CDC in Atlanta, Georgia.

F. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 (twenty) double-spaced pages, printed on one side, with one-inch margins, and unreduced 12 point font.

1. Statement of Need

Identify opportunities for enhancement/improvement and existing gaps in the support of comprehensive cancer control and prevention activities. Describe the extent to which the proposed program will fill existing gaps and provide a brief description of each programmatic plan or research activity.

2. Objectives

Establish and submit short- and long-term objectives relative to the described need in Section 1 above. Objectives must be specific, measurable, attainable, time phased, and realistic.

3. Operational Plan

Submit an operational plan including a timeline that addresses the means for achieving each of the objectives established in Section 2 (objectives) above. Provide a concise description of each component or major activity and how it will be implemented. The plan must identify and establish a time line for the completion of each component or major activity.

4. Evaluation Plan

Submit a plan for monitoring progress toward achieving each of the objectives stated in Section 2 (objectives) above.

5. Program Management

Describe the organizational capacity to conduct and manage cancer prevention and control projects and the project need, functions, and qualification for each program or research personnel requested.

6. Budget

Submit a detailed budget and narrative justification that is consistent with the purpose of the program and the proposed activities.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189).

On or before August 1, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications will be considered as meeting the deadline if they are either:

a. Received on or before the stated deadline date; or

b. Sent on or before the deadline date. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in a. or b. above are considered late applications and will be returned to the applicant.

G. Evaluation Criteria

The application will be evaluated according to the following criteria by an independent review group appointed by CDC.

1. Need statement. The extent to which the applicant identifies specific opportunities and existing gaps related to the purpose of the program. (10 points)

2. Objectives. The degree to which short- and long-term objectives are specific, measurable, attainable, time phased, and realistic. (20 points)

3. Operational Plans. The adequacy of the applicant's plan to carry out the proposed activities, including the extent to which the applicant plans to work collaboratively with other organizations and individuals who may have an impact on cancer prevention and control objectives particularly among minority and medically underserved populations; and the extent to which the proposal timeline appears feasible. (25 points)

4. Evaluation Plan. The extent to which the evaluation plan appears capable of monitoring progress toward meeting project objectives. (25 points)

5. Program Management. The extent to which applicant demonstrates the ability to conduct and manage cancer prevention and control projects and that proposed staff appear to be qualified and possess capacity to perform the project. (20 points)

6. Budget. The extent to which each line-item budget and narrative justification are reasonable and consistent with the purpose and objectives of the program. (Not scored)

7. Human Subjects. Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? (Not scored)

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes—

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and research for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of the following:

1. Annual written progress report must be submitted 30 days after the end of each budget period.

2. Financial status report (FSR) must be submitted 90 days after the end of each budget period.

3. Final financial and performance reports, must be submitted 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR–1 Human Subjects Requirement

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–20 Conference Support

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2) of the Public Health Service Act [42 U.S.C. 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance Number for this program is 93.283.

J. Where To Obtain Additional Information

For this announcement and other CDC program announcements see the CDC home page on the Internet: http://www.cdc.gov.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00145, Centers for Disease Control and Prevention (CDC), Room 3627, 2920 Brandywine Road, Atlanta, GA 30341, Telephone (770) 488–2757, E-mail address ccollins@cdc.gov.

For program technical assistance, contact: Corinne Graffunder, Chief, Section A, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop K–57, Atlanta, GA 30341–3724, Telephone (770) 488–4880, fax (770) 488–3230. E-mail address: cgraffunder@cdc.gov.

Dated: May 31, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14097 Filed 6–5–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00081]

Cooperative Agreements for National Organizations To Enable Postsecondary Institutions To Prevent HIV Infection and Other Important Health Problems Among Youth Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (Center for Disease Control) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to enable postsecondary institutions to prevent HIV infection and other important health problems among youth. Centers for Disease Control is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of HIV and Sexually Transmitted Diseases. For the conference copy of "Healthy People 2010", visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of the program is to strengthen the capacity of postsecondary institutions to increase the proportion of college and university students who receive information from their institutions on each of six priority health-risk behaviors (1) sexual behaviors that result in HIV infection, other STDs, and unintended pregnancy; (2) alcohol and other drug use; (3) tobacco use; (4) dietary patterns that result in disease; (5) intentional and unintentional injury; and (6) inadequate physical activity. Applicants may apply for one of the two following priority areas, which are of equal importance:

Priority 1: Institution-wide health promotion programs. To implement strategies for policymakers and practitioners (such as professors, educators, wellness coordinators, health care providers) in colleges and universities to institutionalize comprehensive HIV/AIDS prevention methods into health promotion and disease prevention programs for youth and young adults both on campus and in the community, especially for groups disproportionately affected by HIV/AIDS, including communities of color and youth in high risk situations in large urban areas.

Priority 2: Preservice education. To implement and evaluate strategies for

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university, college and other systems which will result in prevention methods for HIV and other serious health problems of youth being included in professional development courses for individuals entering the health, education or service professions and working with groups disproportionately affected by HIV/AIDS, including communities of color in large urban areas.

As additional funds become available, Centers for Disease Control expects to support through competitive supplemental awards other priorities addressing additional health-related areas.

B. Eligible Applicants

Limited Competition

Funding will be provided only to national non-profit organizations, to include national minority organizations, that have postsecondary institutions or programs as their major focus, and that have the capacity to develop an ongoing program of activities to prevent HIV infection and other serious health problems among youth and young adults, especially those in high-risk situations.

Eligible national organizations must have affiliate offices or local, state, or regional membership constituencies in a minimum of 10 states and territories. Affiliate offices and local, state, or regional membership constituencies may not apply in lieu of, or on behalf of, their national office. Colleges and universities and for-profit organizations are not eligible to apply. To be considered a national minority organization, eligible applicants must meet the following criteria:

At least 51 percent of the persons on the governing board must be members of racial or ethnic minority populations.

The organization must possess a documented history of serving racial or ethnic minority populations through its offices, affiliates, or participating organizations at the national level for at least 12 months before the submission of the application to Centers for Disease Control. Non-governmental organizations funded for similar activities under Centers for Disease Control's Program Announcement 99023, "Cooperative Agreements for National Programs to Prevent HIV Infection and Other Important Health Problems among Youth and Strengthen Coordinated School Health Programs" are not eligible for funding under this program announcement.

Competition is limited under this program announcement because of the need for directed and concentrated focus in the effective dissemination of information and implementation and evaluation of programs. The coordination and implementation of a national strategy for postsecondary institutions requires organizations that have the capacity and experience to influence the professional actions of their constituencies; have the capacity to provide professional development for implementation of effective programs; and can build the capacity of postsecondary institutions.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $2.2 million will be available in FY 2000 to fund approximately 8 awards under the two priority areas including at least one national minority organization. It is expected that awards will range from $200,000 to $300,000. It is expected that the awards will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds must be used for categorical activities to prevent behaviors that place young people at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems, especially targeting groups disproportionately affected, including communities of color and youth in high-risk situations particularly in urban settings. (A list of young people considered to be in high-risk situations is included as Attachment I of this program announcement.) Funds may be used to integrate such categorical activities into broader coordinated health programs to improve the health of young people (e.g., college health programs, adolescent health programs, or coordinated school health programs).

Activities funded under this announcement are intended to build the capacity of national non-governmental organizations to promote HIV, STD, and unintended pregnancy prevention among youth and young adults and should not include any formal or informal research. In addition, funds under this announcement are not to be used for clinical services or supplies.

Applicants may apply for funding under only one of the two priority areas and must clearly identify the specific priority area for which funding is requested. As additional funds become available, Center for Disease Control expects to support, through competitive supplemental awards, expanded efforts in other health-related areas.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under 1 (Recipient Activities) and Center for Disease Control will be responsible for conducting activities under 2 (Center for Disease Control Activities).

1. Recipient Activities

a. Establish and maintain a staff position within the agency that has full-time responsibility and organizational authority for HIV prevention and other health-related activities funded under this announcement. The selected individual in this position should have specific training and experience needed for leadership and coordination of health promotion activities; knowledge and experience working in higher education; and good written and oral skills to enable them to serve as a liaison with partners in health, education, and the community.

b. Collaborate with the organization's constituents in addition to state and local education, health, and social service agencies, non-governmental organizations (especially those also funded under this program announcement), and Center for Disease Control to implement a national strategy to achieve the purposes of this program in postsecondary institutions.

c. Implement specific, measurable, and feasible goals and objectives. Evaluate the effectiveness of the program in achieving goals and objectives by providing indicators of success.

d. Participate in the Division of Adolescent and School Health (DASH) annual conference each budget year of the project for the purpose of improving health education to prevent HIV infection and reduce other important health risks that face youth and young adults.

e. Disseminate project-related information and findings through a variety of methods.

f. Implement an operational plan for the funded priority area that may include, but is not limited to, one or more of the following activities: Possible activities for Priority Area 1: (Institution-wide health promotion programs).

(1) Form state coalitions of decision-makers to implement health promotion programs for young people in the community, including postsecondary students, focusing on HIV prevention among youth in high-risk situations and within communities of color especially in urban settings. Assist coalitions to develop focused goals, select feasible strategies, obtain critical resources, implement effective collaborative methods, and evaluate program outcomes. The coalition should be state-wide, involve other campuses, and include stakeholders from universities and their governing boards, state or local government agencies, state or local health departments, local school districts, businesses, voluntary and religious organizations, social services organizations, special population groups, community-based organizations, other organizations that serve youth, and legislators.

(2) Integrate comprehensive HIV prevention methods throughout the campus learning environment. Adopt effective, model prevention techniques into the credit curriculum; non-credit courses, programs and services; co-curricular programs; and other education reform initiatives. Foster educational experiences for postsecondary students that actively involve them in community efforts (e.g., through service learning) to prevent HIV and other serious health problems among youth.

(3) Implement campus-wide policies regarding HIV/AIDS and other serious health problems. Include language that supports a healthy campus/community in the institution's mission, vision, and/or values statement(s). Implement policies to broaden the definition of scholarship in universities and colleges to include professional services, especially those that improve the health of children and youth, as criteria for tenure and promotion. Provide assistance to implement such policies and evaluate their effectiveness.

(4) Identify and target youth and young adults engaging in high-risk behaviors with health messages, education, resources, and services, providing particular attention to students living in communities of color especially in urban settings. Evaluate the effects of the intervention.

Possible activities for Priority Area 2: (Preservice education)

(1) Convene policymakers in state systems of higher education, and state and local education agencies to develop or modify policies dealing with university/college professional development courses so prevention of HIV and other serious health problems among youth is institutionalized in preservice training. Assist a designated work group in planning, implementing, and evaluating these changes.

(2) Train university/college instructors and professors to use effective teaching resources for HIV prevention and other serious health problems in professional development courses for educators in general, health educators, counselors, social workers, nurses, physicians and others who will work with youth. Provide technical assistance for these individuals as well as follow up evaluation of their work.

(3) Convene a cross-disciplinary consortium of accrediting bodies or professional associations whose constituencies are teachers, nurses, physicians, public health educators, counselors, social workers, and other practitioners who regularly work with youth. Devise, implement and evaluate a plan to prepare professionals to address HIV prevention/health education for youth.

(4) Form a coalition comprised of members of a pertinent discipline(s) to develop and adopt HIV and health education standards to be included in relevant credentialing guidelines for certification and licensing for youth-serving professionals.

2. Center for Disease Control Activities

a. Provide and periodically update information related to the purposes or activities of this program announcement.

b. Coordinate with national, state, and local education, health and social service agencies, as well as other relevant organizations, in planning and conducting national strategies designed to strengthen programs for preventing HIV infection, other STDs, unintended pregnancy, and other important health risks and health problems among young people.

c. Provide programmatic consultation and guidance related to program planning, implementation, and evaluation; assessment of program objectives; use of indicators; and dissemination of successful strategies, experiences, and evaluation reports.

d. Plan and conduct meetings of national, state, and local education agencies and other appropriate organizations and individuals to address issues and program activities related to improving coordinated school health programs and strengthening the capacity of postsecondary institutions and agencies that serve young people to prevent HIV infection, other STDs, unintended pregnancies and other important health problems among young people.

e. Assist in the evaluation of program activities.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow these in laying out your program plan.

The narrative should be no more than 42 double-spaced pages printed on one side, with one-inch margins, and unreduced font. Pages must be numbered clearly, and a complete table of contents of the application and its appendixes must be included. Begin each separate section on a new page.

Provide a concise, one page Executive Summary that clearly states the priority area being addressed and describes your organization's eligibility, including: (a) its status as a national organization, (b) number and membership of affiliate offices, and (c) experience and capacity of the organization to work with postsecondary institutions and other relevant agencies. The summary should also include the major proposed goals, objectives, and activities for implementation of the project.

Divide the body of the application into the following sections:

1. Background and Need (not more than 4 pages): Identify the priority area for which support is being requested and describe:

a. The needs associated with the priority area.

b. Your organization's background and experience in addressing the needs related to the priority area.

c. The need for the specific activities proposed in your plan.

2. Capacity (not more than 8 pages):

a. Describe your organization's constituents and affiliates as follows:

—Type of constituency.

—Number of constituents and affiliates.

—Location of constituents and affiliates.

—How the constituency can influence and work with the population identified in the priority area.

b. Describe your organization's experience in supporting the priority area for which you are applying, including such factors as:

—Current and previous experience related to the proposed program activities.

—Current and previous coordination with other national organizations and

health, education, and social service agencies.

—Activities related to building alliances, networks, or coalitions.

c. Describe your organization's structure and how it supports health promotion and education activities. Attach a copy of your organizational chart.

3. Operational Plan (not more than 15 pages):

a. Goals. List goals that specifically relate to program requirements that indicate where the program will be at the end of the projected 5 year project period.

b. Objectives. List objectives that are specific, measurable, and feasible to be accomplished during the first 12-month budget period. The objectives should relate directly to the project goals and recipient activities.

c. Describe in narrative form and display on a timetable, specific activities that are related to each first-year objective. Indicate when each activity will occur as well as when preparations for activities will occur. Indicate who will be responsible for each activity.

d. List major milestones that will be accomplished during years two through five.

4. Project Management and Staffing Plan (not more than 8 pages):

a. Describe the proposed staffing for the project and provide job descriptions for existing and proposed positions.

b. Attach curriculum vitae (limited to 2 pages per person) for each professional staff member named in the proposal.

c. Submit job descriptions illustrating the level of organizational responsibility for professional staff who will be assigned to the project.

d. If a state(s) has been identified where the proposed activities will occur, provide the name of this state(s) and the name(s) of the contact person who will coordinate the activity.

5. Sharing experiences (not more than 1 page):

Describe how project materials and accomplishments will be shared with others. Identify appropriate audiences for this information.

6. Collaboration (not more than 2 pages): Describe the purposes of proposed collaboration and the agencies and organizations with which collaboration will be conducted. If other organizations will participate in proposed activities, provide the name(s) of the organization(s), and state who in your organization will coordinate the activity. For each organization listed, provide a letter from them that acknowledges their specific role and describes their capacity to fulfill it. Do not include letters of support from organizations that will not have specific roles in the project.

7. Evaluation (not more than 4 pages): Describe a plan to evaluate the project's effectiveness in meeting its objectives and goals. For each of the types of evaluation listed below, specify the evaluation question(s) to be answered, data to be obtained, the type of analyses that will be performed, to whom it will be reported, and how data will be used to improve the program. The plan should indicate the major steps in the evaluation, who will be responsible for each one, and when each will be accomplished.

a. Process evaluation. Describe how you will evaluate the project's progress in meeting objectives and conducting activities during the budget period.

b. Outcome evaluation. Describe how you will assess the project's effectiveness in attaining goals at the completion of each project year and at the end of the 5 year project period. Specific, measurable indicators of project success should be developed.

8. Budget and Accompanying Justification: Provide a detailed budget narrative and line-item justification of all operating expenses. The budget should be consistent with the stated objectives and planned activities of the project. Budget requests should include the cost for two people for a 2 day trip to Atlanta, Georgia for a planning meeting and a 4 day trip to Atlanta, Georgia for the Division of Adolescent and School Health annual conference.

F. Submission and Deadline

Letter of Intent

The application must be preceded by an original and two copies of a letter of intent to apply. The letter of intent must be submitted on or before June 8, 2000, to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Your letter of intent should include the name, address, telephone and facsimile numbers of the organization's primary contact for writing and submitting the application. The letter of intent should be limited to a simple statement of your organization's intention to apply and may not exceed one page. The letter of intent will be used to anticipate the number of applications.

Application

Submit the original and two copies of PHS Form 5161–1 (OMB Number 0937–0189). Forms are available in the application kit. On or before June 30, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late Applications: Applications which do not meet the criteria in (1) or (2) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria (100 points)

Each application will be evaluated individually according to the following criteria by an independent review group appointed by the Centers for Disease Control and Prevention.

1. Background and Need (10 points)

The extent to which the applicant justifies need for the program under the priority area. the organization's experience in addressing the priority area, and the need for proposed activities.

2. Capacity (30 points)

The extent to which the applicant demonstrates the capacity and ability of the organization and its constituency to address the identified needs and develop, implement, and evaluate program activities.

3. Operational Plan (25 points)

The extent to which the applicant:

a. Identifies goals that are specific and feasible for the projected 5 year project period and are consistent with program requirements.

b. Identifies objectives for the first year budget period that are specific, measurable, and feasible and are related directly to project goals.

c. Proposes activities that are likely to achieve each objective for the first budget period.

d. Proposes activities that focus on youth in high-risk situations and communities of color especially those in urban settings.

e. Provides a reasonable time line for conducting activities.

f. Outlines major milestones that will be accomplished during years two through five of the project.

4. Project Management and Staffing (15 points)

The extent to which the applicant identifies staff that have the responsibility, capability, and authority to carry out each activity, as evidenced by job descriptions, curriculum vitae, and organizational charts.

5. Sharing Experiences and Resources (5 points)

The extent to which the applicant describes plans to share effective materials and activities with appropriate audiences.

6. Collaboration (5 points)

The extent to which the applicant describes plans to collaborate with agencies such as state and local health and education departments, postsecondary institutions, and other national organizations and provides letters of specific intentions from collaborating agencies.

7. Evaluation (10 points)

The quality of the plans for both process and outcome evaluations, to include specification of indicators of program success, methods of obtaining data, ways of reporting results, use of results for programmatic decisions, and timing and staff responsibility.

8. Budget (Not Scored)

The extent to which the applicant provides a detailed and clear budget narrative consistent with the stated objectives, planned activities, and goals of the project.

H. Other Requirements

1. Technical Reporting Requirements

Provide Center for Disease Control with original plus two copies of:

a. Annual progress reports, no more than 90 days after the end of each budget period;

b. Financial status reports, no more than 90 days after the end of the budget period; and

c. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in section J, "Where to Obtain Additional Information".

2. Research Activities Restricted

Activities funded under this program announcement are intended to build the capacity of postsecondary institutions to promote HIV, other STDs, and unintended pregnancy prevention and to prevent other serious health problems among youth and young adults as described in the two priority areas. Research activities will not be supported under this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment III in the application kit.

AR–5—HIV Program Review Panel Requirements
AR–7—Executive Order 12372 Review
AR–8—Public Health System Reporting Requirements
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions
AR–15—Proof of Non-profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2) and 1706 [42 U.S.C. 241(a), 247b(k)(2) and 300u–5] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.938.

J. Where to Obtain Additional Information

This and other Center for Disease Control announcements can be found on the Center for Disease Control home page <www.cdc.gov>. Click on Funding then click on Grants and Cooperative Agreements. To receive additional written information and to request an application kit, call (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement of interest.

If you have questions after reviewing the contents of all documents, business management assistance may be obtained from: Van A. King, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00081, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146; Telephone Number (770) 488–2751; Email address vbk5@cdc.gov.

For program technical assistance, contact: Mary Vernon-Smiley, Chief, Special Populations Program Section, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, MS K–31, Atlanta, Georgia 30341–4146; Telephone Number (770) 488–325–8004; Email address mev0@cdc.gov.

Dated: May 31, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14098 Filed 6–5–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 12, 2000, 8 a.m. to 5 p.m.

Location: Gaithersburg Holiday Inn, Walker and Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail: reedyk@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Committee will discuss biologics license application (BLA) 99–1234, Remicade™ (infliximab, Centocor) for the treatment of rheumatoid arthritis, prevention of radiographic progression and prevention of physical disability. The Committee will also discuss general issues regarding claims based on radiographic data in patients with rheumatoid arthritis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 6, 2000. Oral presentations from the public will be scheduled between approximately 11

a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 6, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 31, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–14213 Filed 6–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0965]

"Guidance for Industry: Recognition and Use of a Standard for the Uniform Labeling of Blood and Blood Components;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance for Industry: Recognition and Use of a Standard for the Uniform Labeling of Blood and Blood Components." The guidance document describes a system for the uniform labeling of blood and blood components for transfusion, Source Plasma, and other components for use in further manufacturing. The guidance will assist manufacturers in complying with the labeling requirements under FDA's regulations.

DATES: Submit written comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Guidance for Industry: Recognition and Use of a Standard for the Uniform Labeling of Blood and Blood Components" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: For information about this notice: Sharon A. Caravianis, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

For technical information: Kenneth A. Zemann, Center for Biologics Evaluation and Research (HFM–375), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3543, or FAX 301–827–3534.

SUPPLEMENTARY INFORMATION:

I. Background

The International Council for Commonality in Blood Banking Automation (ICCBBA) prepared and submitted to FDA a draft document entitled "United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using *ISBT 128*," Version 1.2.0 (draft Standard). The ICCBBA requested that ISBT 128 replace the current "ABC Codabar" system as an approved machine readable barcode for labeling blood and blood components. On November 21, 1998, FDA made the draft Standard available on its website for public comment. In the **Federal Register** of November 27, 1998 (63 FR 65600), FDA announced the availability of the draft Standard and requested public comment on both the use of ISBT 128 and timeframes for implementation. The ICCBBA revised the draft Standard in response to public comment and submitted to FDA the revised document entitled "United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using *ISBT 128*," Version 1.2.0, dated November 1999 (the Version 1.2.0 Standard).

FDA has reviewed the draft Standard, the comments received, and the Version 1.2.0 Standard. FDA believes that conformance to the Version 1.2.0 Standard, prepared and revised by ICCBBA, will help facilitate the use of a uniform container label for blood and blood components. FDA is announcing the availability of a guidance entitled "Guidance for Industry: Recognition and Use of a Standard for the Uniform Labeling of Blood and Blood Components" that recognizes as acceptable the Version 1.2.0 Standard prepared by ICCBBA, and the implementation of the ISBT 128 uniform labeling system, except where inconsistent with FDA's regulations under 21 CFR 606.121. Although FDA finds use of the Version 1.2.0 Standard acceptable, FDA has identified inconsistencies between the Version 1.2.0 Standard and Federal regulations. FDA intends to revise the regulations to remove these inconsistencies. The guidance provides recommendations to follow where discrepancies exist between the Version 1.2.0 Standard and the current regulations, pending completion of rulemaking to remove these discrepancies.

This guidance document represents the agency's current thinking with regard to use of the Version 1.2.0 Standard for use in labeling blood, blood components for transfusion, Source Plasma, and other components for further manufacturing use. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this guidance document at any time. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

The labeling regulations on which the guidance is based are reported under the Office of Management and Budget (OMB) control number 0910–0116. FDA tentatively concludes that this guidance contains no new collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance document and the Version 1.2.0 Standard at http://www.fda.gov/cber/guidelines.htm.

Dated: May 25, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–14211 Filed 6–2–00; 11:16 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1277]

Draft Guidance for Industry: Fumonisin Levels in Human Foods and Animal Feeds; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry: Fumonisin Levels in Human Foods and Animal Feeds." The purpose of this draft guidance is to identify for the industry recommended maximum fumonisin levels that FDA considers adequate to protect human and animal health and that are achievable in human foods and animal feeds with the use of good agricultural and good manufacturing practices. FDA considers this guidance to be a prudent public health measure during the development of a better understanding of the human health risk associated with fumonisins and the development of a long-term risk management policy and program by the agency for the control of fumonisins in human foods and animal feeds.

DATES: Submit written comments by August 7, 2000.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled "Draft Guidance for Industry: Fumonisin Levels in Human Foods and Animal Feeds" to Henry Kim, Center for Food Safety and Applied Nutrition (CFSAN) (address below), or Randall A. Lovell, Center for Veterinary Medicine (CVM) (address below). Send one self-addressed adhesive label to assist that office in processing your request. The draft guidance, CFSAN's "Background Paper in Support of Fumonisin Levels in Corn and Corn Products Intended for Human Consumption," and CVM's "Background Paper in Support of Fumonisin Levels in Animal Feed," may also be accessed at the CFSAN or CVM home page on the Internet at http://www.cfsan.fda.gov and http://www.fda.gov/cvm, respectively.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments and requests for copies should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Henry Kim, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–0631, FAX 202–205–4422, or

Randall A. Lovell, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0176, FAX 301–827–1484.

SUPPLEMENTARY INFORMATION: FDA has developed a draft guidance document regarding the maximum recommended levels of fumonisins in corn used for production of human foods and animal feeds. Fumonisins are naturally occurring toxins produced by the molds *Fusarium moniliforme* (*F. verticillioides*), *F. proliferatum*, and other *Fusarium* species that are common contaminants of corn. Fumonisins have been linked to a variety of significant adverse health effects in livestock and experimental animals. Although human epidemiological studies are inconclusive at this time, based on a wide variety of significant adverse animal health effects, FDA believes that an association between fumonisins and human disease is possible.

The purpose of the draft guidance is to identify for the industry recommended maximum fumonisin levels that FDA considers adequate to protect human and animal health and that are achievable in human foods and animal feeds with the use of good agricultural and good manufacturing practices. FDA considers this guidance to be a prudent public health measure during the development of a better understanding of the human health risk associated with fumonisins and the development of a long-term risk management policy and program by the agency for the control of fumonisins in human foods and animal feeds. Based on information obtained from future national and international workshops on the risk from exposure to fumonisins, FDA will consider whether to establish tolerances, regulatory limits, or action levels, as appropriate, for fumonisins in human foods and animal feeds, respectively, under 21 CFR Part 109—Unavoidable Contaminants in Food for Human Consumption and Food-Packaging Material and under 21 CFR Part 509—Unavoidable Contaminants in Animal Food and Food-Packaging Material.

The agency has adopted good guidance practices (GGP's) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). The draft guidance document entitled "Guidance for Industry: Fumonisin Levels in Human Foods and Animal Feeds" is being issued as a level 1 draft guidance consistent with GGP's. This draft guidance represents the agency's current thinking on the control of fumonisins in human foods and animal feeds as a prudent public health measure. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

Interested persons may submit written comments to the Dockets Management Branch (address above) on the draft guidance by August 7, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance, CFSAN's "Background Paper in Support of Fumonisin Levels in Corn and Corn Products Intended for Human Consumption," CVM's "Background Paper in Support of Fumonisin Levels in Animal Feed," and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 26, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–14106 Filed 6–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2540–96]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility Cost Report and Supporting Regulations in 42 CFR 413.20 and 413.24; *Form No.:* HCFA–2540 (OMB 0938–0463); *Use:* Form HCFA–2540–96 is the form used by skilled nursing facilities participating in the Medicare program. This form reports the health care costs used to determine the amount of reimbursable costs for services rendered to Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Businesses or other for-profit; Not-for-profit institutions; *Number of Respondents:* 15,700; *Total Annual Responses:* 15,706; *Total Annual Hours:* 2,943,200.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 25, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13987 Filed 6–5–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0280]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection; *Type of Information Collection:* Medigap Compare; *HCFA Form Number:* HCFA–R–0280 (OMB approval #:0938–0767); *Use:* HCFA collects plan-specific Medigap data, including but not limited to premiums charged and additional benefits offered, from each insurer offering Medigap plans. The data collection occurs electronically. The data are provided on www.medicare.gov to assist beneficiaries in obtaining accurate information on all their health care coverage options; *Frequency:* Annually, and semi-annually if needed; *Affected Public:* Business or other for-profit, Federal Government, State, Local, or Tribal Government, Not-for-profit institutions; *Number of Respondents:* 300; *Total annual Responses:* 450; *Total Annual Burden Hours:* 75.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–14067 Filed 6–5–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10006]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, part 1320. This is necessary to ensure compliance with section 204 of the Ticket to Work and Work Incentives Act of 1999. We cannot reasonably comply with the normal clearance procedures because the law becomes effective on October 2, 2000, at which time we must award grants. Prior to that time, we must publish a notice in the **Federal Register** soliciting applications and have sufficient time to review all applications adequately. Delay of this approval will also result in public harm, as the awarding of grants will be delayed, thus delaying the ability to prevent physically and mentally impaired workers from becoming disabled because of not being eligible for Medicaid.

HCFA is requesting OMB review and approval of this collection by June 13, 2000, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by June 12, 2000. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection; *Title of Information Collection:* TWWIIA Demonstration to Maintain Independence and Employment; *HCFA Form Number:* HCFA–10006 (OMB approval #: 0938–NEW); *Use:* Section 204 of the Ticket to Work and Work Incentives Act provides for the establishment of grants for states that develop and implement demonstration programs designed to support working people with physical or mental impairments that without medical assistance will result in disability. State agencies will be applying for these grants; *Frequency:* Annually; *Affected Public:* State, local or tribal government; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Burden Hours:* 5,600.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by June 12, 2000.

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262 Attn: Julie Brown HCFA–10006 and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 Attn.: Allison Herron Eydt, HCFA Desk Officer.

Dated: May 31, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–14263 Filed 6–5–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1138–N]

Medicare Program; Town Hall Meeting To Discuss the Documentation Guidelines for Evaluation and Management Services—June 22, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a town hall meeting to discuss the current status of our work on revising the documentation guidelines for evaluation and management (E/M) services. The documentation guidelines provide the health care community with information regarding the proper use of E/M Current Procedural Terminology (CPT) codes. This meeting will present the results of our efforts to simplify the guidelines, reduce the burden on physicians, and foster consistent and fair medical review.

Since receiving recommendations for revising the existing guidelines from the American Medical Association (AMA) CPT Editorial Panel in June 1999, we have performed a technical assessment of those recommendations, reviewed other proposals for revising the guidelines, and started to plan a study of proposed revisions to the documentation guidelines. The purpose of this meeting is to inform the public about the current status of these activities and to reaffirm our commitment to work with physicians to improve the service they receive from the Medicare program. The meeting is open to the public, but attendance is limited to the space available.

DATES: *The Meeting:* June 22, 2000 from 9 a.m. until 1 p.m., E.D.T.

Registration: Persons wishing to attend the meeting must register by June 21, 2000.

Special Accommodations: Persons attending the meeting who are hearing impaired and require sign language interpretation, or have a condition that requires other special assistance or accommodations, should notify Ms. Martha Dixon by June 14, 2000.

ADDRESSES: The meeting will be held in the auditorium of the Health Care Financing Administration, 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Dr. Bernice Harper, (202) 690–7899, for general questions about the meeting. Ms. Martha Dixon, (202) 358–1420, for questions regarding registration or special accommodations.

SUPPLEMENTARY INFORMATION:

Intent of the Meeting

The intent of this meeting is to provide an update to the public on documentation guidelines for evaluation and management services Current Procedural Terminology (CPT) codes. Although there will be a question and answer period, there will be no time scheduled for public presentations by the attendees.

Agenda Topics

The following topics will be addressed by members of our staff at the meeting:

- The history and current status of the documentation guidelines.
- Our technical assessment of the June 1999 proposed AMA recommendations.
- Other proposals for revising the guidelines.
- The proposed study.
- The role of organized medicine and practicing physicians in commenting on the guidelines and the study.
- A proposed time line for eventual implementation of new documentation guidelines.
- New efforts to improve responsiveness and service to physicians.

Registration

If you wish to attend the meeting, you must register in advance by sending a fax to the attention of Ms. Martha Dixon, Office of Professional Relations, at (202) 401–7438 by the date listed in the **DATES** section of this notice. Your fax must include your name, organization, address, telephone number, and fax number. Our receipt of your fax will constitute confirmation of your registration. If space at the meeting is no longer available when your fax is received, you will be notified by phone that you are on an attendance waiting list. If space should subsequently become available, individuals on the waiting list will be notified in turn. Written materials will be provided at the time of the meeting.

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 1, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–14163 Filed 6–5–00; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice To Delete Three Systems of Records.

SUMMARY: The Health Care Financing Administration is deleting three systems of records from its inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: The deletions will be effective on June 6, 2000.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–3673. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.-3 p.m., eastern time zone.

SUPPLEMENTARY INFORMATION: The "Medicare Enrollment Records Statistics (MERS)," System No. 09–70–0006, was established to study the characteristics of persons enrolled in the Medicare program and establish the basis for Medicare services utilization rates. The "Health Insurance Enrollment Statistics (HIES), General Enrollment Period," System No. 09–70–0007 was established to contact persons eligible for Part B benefits who had refused or withdrawn coverage of these benefits, for purposes of re-enrollment for Part B coverage and to evaluate results of such contacts. The "Medicare Beneficiary Correspondence Files (MBC)," System No. 09–70–0509 was established to maintain and track correspondence in a HCFA component that no longer exist. All of these systems are being deleted from HCFA's inventory because they are no longer used. Retention and destruction of the data contained in these systems has been in accordance with the retention and disposal schedules listed in the system notice.

Deletions

No. 09–70–0006 "Medicare Enrollment Records Statistics (MERS)," HHS/HCFA/BDMS;

No. 09–70–0007 "Health Insurance Enrollment Statistics (HIES), General Enrollment Period," HHS/HCFA/BDMS.

No. 09–70–0509 "Medicare Beneficiary Correspondence Files (MBC)," HHS/HCFA/BPO;

Dated: May 26, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–14071 Filed 6–5–00; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: Drug Pricing Program Reporting Requirements (OMB No. 0915–0176)

Extension—Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula.

Covered entities which choose to participate in the section 340B drug discount program must comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate.

Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity.

Because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA Office of Pharmacy Affairs (OPA) has developed a dispute resolution process for manufacturers and covered entities as well as manufacturer guidelines for audits of covered entities.

Audit guidelines: A manufacturer will be permitted to conduct an audit only when there is reasonable cause to believe a violation of section 340B(a)(5)(A) or (B) has occurred. The manufacturer must notify the covered entity in writing when it believes the covered entity has violated these provisions of section 340B. If the problem cannot be resolved, the manufacturer must then submit an audit work plan describing the audit and evidence in support of the reasonable cause standard to the HRSA OPA for review. The office will review the documentation to determine if reasonable cause exists. Once the audit is completed, the manufacturer will submit copies of the audit report to the HRSA OPA for review and resolution of the findings, as appropriate. The manufacturer will also submit an informational copy of the audit report to the HHS Office of Inspector General.

Dispute resolution guidelines: Because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA OPA has developed a dispute resolution process which can be used if an entity or manufacturer is believed to be in violation of section 340B. Prior to filing a request for resolution of a dispute with the HRSA OPA, the parties must attempt, in good faith, to resolve the dispute. All parties involved in the dispute must maintain written documentation as evidence of a good faith attempt to resolve the dispute. If the dispute is not resolved and dispute resolution is desired, a party must submit a written request for a review of the dispute to the HRSA OPA. A committee appointed to review the documentation will send a letter to the party alleged to have committed a violation. The party will be asked to provide a response to or a rebuttal of the allegations.

To date, there have been no requests for audits, and no disputes have reached the level where a committee review was needed. As a result, the estimates of annualized hour burden for audits and disputes have been reduced to the level shown in the table below.

Reporting requirement	Number of respondents	Responses per respondent	Total responses	Hours/ response	Total burden hours
Audits:					
Audit Notification of Entity [1]	2	1	2	4	8
Audit Workplan [1]	1	1	1	8	8
Audit Report [1]	1	1	1	1	1
Entity Response	0	0	0	16	0
Dispute Resolution:					
Mediation Request	5	1	5	8	40
Rebuttal	2	1	2	16	32
Total	9	1.2	11	8.1	89

[1] Prepared by the manufacturer

Recordkeeping requirement	Number of recordkeepers	Hours of recordkeeping	Total burden
Dispute records	10	.5	5

The total burden is 94 hours.

Send comments to Susan G. Queen, HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 1, 2000.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 00–14215 Filed 6–5–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Public Law (Pub. L.) 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

FOR FURTHER INFORMATION CONTACT: Ms. Shelia Tibbs, Principal Staff Liaison, Policy Analysis Branch, Division of Vaccine Injury Compensation, at (301) 443–4036.

DATES: Nominations are to be submitted by July 6, 2000.

ADDRESSES: All nominations are to be submitted to the Director, Division of Vaccine Injury Compensation, Bureau of Health Professions, HRSA, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACCV, viz., the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463) and section 2119 of the Act, 42 U.S.C. 300aa–19, as added by Public Law 99–

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660 and amended, HRSA is requesting nominations for three voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP; on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table; advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b); advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommends to the Director, National Vaccine Program Office, research related to vaccine injuries which should be conducted to carry out the VICP.

The ACCV consists of nine voting members appointed by the Secretary as follows: three health professionals, of whom at least two are pediatricians, who are not employees of the United States, who have expertise in the health care of children, the epidemiology, etiology and prevention of childhood diseases, and the adverse reactions associated with vaccines; three members from the general public, of whom at least two are legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the ACCV representing: (1) a health professional with special experience in childhood diseases; (2) an attorney whose specialty includes representation of a vaccine manufacturer and (3) a member from the general public.

Nominees will be invited to serve 3-year terms beginning January 1, 2001, and ending December 31, 2003.

Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV and appears to have no conflict of interest that would preclude the ACCV membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflicts of interest. A curriculum vitae or resume should be submitted with the nomination.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and therefore extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

Dated: May 30, 2000.

Claude Earl Fox,

Administrator, HRSA.

[FR Doc. 00–14041 Filed 6–5–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines (ACCV); Notice of Meeting; Cancellation

Federal Register Document 00–11251, in the issue dated Friday, May 5, 2000, on the following pages 26219–26220, the Advisory Commission on Childhood Vaccines meeting scheduled for June 7, 2000, has been cancelled due to lack of quorum.

Dated: May 31, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–14107 Filed 6–5–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Tewaukon National Wildlife Refuge Complex, Cayuga, ND.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Tewaukon National Wildlife Refuge Complex Draft Comprehensive Conservation Plan and Environmental Assessment. This Plan describes how the FWS intends to manage the Tewaukon NWR and Wetland Management District for the next 10–15 years.

DATES: Submit written comments by July 6, 2000. All comments need to be addressed to Allison Banks, Refuge Planner, Land Acquisition and Refuge Planning, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, Colorado 80225.

ADDRESSES: A copy of the Plan may be obtained by writing to U.S. Fish and Wildlife Service, 9754 143½ Avenue SE, Cayuga, ND 58013–9764; or download from http://www.r6.fws.gov/larp/.

FOR FURTHER INFORMATION CONTACT: Allison Banks, U.S. fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225, 303/236–8145 extension 626; fax 303/236–4792.

SUPPLEMENTARY INFORMATION: Tewaukon NWR Complex is located in southeast North Dakota. Implementation of the Plan will focus on adaptive resource management of glaciated prairie wetlands, tall and mixed grass prairie grasslands, riparian woodlands, and opportunities for compatible wildlife-dependent recreation. Habitat monitoring and evaluation will be emphasized as the Plan is implemented. Opportunities for compatible wildlife-dependent recreation will continue to be provided.

Dated: May 31, 2000.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 00–14100 Filed 6–5–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the Southern Torrent Salamander in California as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list the southern torrent salamander (*Rhyacotriton variegatus*) in northern California and southern Oregon under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing the southern torrent salamander is not warranted at this time. The finding is based on the following information: The species still occurs throughout its entire historical range; the species persists in its habitats after habitat alterations have occurred, including logging; the lack of information on short-and long-term population trends for the species across its range; the adverse impacts to the species from logging, construction of logging roads, and logging related activities do not threaten the survival of the species; the lack of substantial information indicating that overutilization for commercial, recreational, scientific, or educational purposes adversely impacts the species; the lack of evidence showing conclusively that predation is a threat to the species' survival; current regulatory practices do not constitute a threat to the survival of the species; and the lack of information that the species is threatened by low gene flow and low genetic diversity across its range.

DATES: The finding for this document was made on May 31, 2000. Comments and information may be submitted until further notice.

ADDRESSES: Data, information, comments, and material concerning the petition finding may be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825–1864. The 12-month petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Chrisney or Ms. Jan Knight at the above address or telephone (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from an immediate proposal by other pending proposals of higher priority. Such 12-month findings are to be published promptly in the **Federal Register**.

On May 31, 1994, we received a petition from Stephan Volker, dated May 24, 1994, to list the southern torrent salamander (*Rhyacotriton variegatus*) as threatened. Mr. Volker is an attorney representing the Environmental Protection Information Center, North Coast Environmental Center, Oregon Natural Resources Council, California Wilderness Coalition, Friends of the River, South Fork Mountain Defense Committee, Mendocino Environmental Center, Sierra Club, California Sportfishing Alliance, Willits Environmental Center, and Ancient Forest Defense Fund. The petition stated that timber harvesting fragmented the salamander's habitat on Federal and private lands, decimated its population, and sharply inhibited its dispersal capability. In a letter to Mr. Volker, dated June 10, 1994, we explained that, under the provisions of the Act, we must decide if the petition presents substantial scientific or commercial information that the requested action is warranted and, to the maximum extent practicable, make this finding within 90 days after receiving the petition and promptly publish it in the **Federal Register**. On November 15, 1994 (59 FR 58982), we designated the species as a category 2 candidate species. Although we no longer use this designation, a category 2 candidate was considered a species for which Federal listing may be appropriate, but persuasive data on biological vulnerability and threats were not available to support a proposed listing. Although no mandatory protection was conferred with this status, the notice of this status supported the need to conduct research to determine the threats and vulnerability of the species. On June 29, 1995, we determined that Mr. Volker's petition presented substantial information that the requested action may be warranted, and we published an announcement of our administrative finding (60 FR 33785). At that time, we initiated a status review of the southern torrent salamander.

Due to a limited budget, listing actions required by court orders, and other higher listing priorities, we were unable to make a listing determination on this species in a timely manner. On April 10, 1995, a moratorium on listing actions (Public Law 104–6) took effect with the stipulation that no funds could be used to make final listing or critical habitat determinations. When the moratorium was lifted on April 26, 1996, a three-tier approach was established to rank the backlog of listing actions for fiscal year 1996 (May 16, 1996; 61 FR 24722). The 12-month status review for the southern torrent salamander was designated a Tier 3 activity, the lowest listing priority. On December 5, 1996, new listing guidance was published for fiscal year 1997 (61 FR 64475) that used a four-tier approach. The 12-month status review for the southern torrent salamander remained a Tier 3 activity. However, due to a continuing backlog of listing actions, we focused our resources on Tier 1 and Tier 2 actions until April 1, 1997. By April 1, 1997, we began to address Tier 3 actions, but a serious backlog of listing actions still existed. On May 8, 1998, we published the Listing Priority Guidance for FY 1998 and 1999 (63 FR 25502), and the 12-month status review for the southern torrent salamander was raised to Tier 2. Although we published 2 emergency listings, 47 final listings, 10 withdrawals, 48 proposed listings, and 18 petition findings, the southern torrent salamander was among 22 species with pending 12-month findings. On October 22, 1999, we published the Final Listing Priority Guidance for Fiscal Year 2000 (64 FR 57114). The tier approach was eliminated as a guide for handling our remaining backlog and future work in the listing program in favor of a priority system that identified higher priorities for certain listing actions. Processing administrative findings on petitions, such as the one for the southern torrent salamander, was designated a fourth priority.

Species Information

Southern torrent salamanders have very specific habitat requirements of cold, shallow, flowing headwaters in humid coniferous forests up to an elevation of 1,469 meters (m) (4,820 feet (ft)) (Nussbaum and Tait 1977;

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Nussbaum *et al.* 1983; Diller and Wallace 1996; Welsh and Lind 1996). They are most frequently found in seeps, springs, and intermittent streams (Welsh 1993; Vesely 1996; Olson, *in litt.* 1999) or shallow water seeping through moss-covered gravel (Nussbaum *et al.* 1983) and appear to avoid open deep water channels (Stebbins 1985; Welsh 1993). The aquatic larvae usually occur in loose gravel in streambeds, and semiaquatic adults can be found next to larvae in streams, or under rocks or debris in saturated streamside habitats (Nussbaum and Tait 1977; Nussbaum et al. 1983).

The southern torrent salamander is very sensitive to desiccation (losing moisture through the skin) (Ray 1958) and cannot move far from moist areas. Movements of the southern torrent salamander have been estimated from 1 to 2.2 m (3 to 6 ft) per year (Welsh and Lind 1992) up to 50 m (160 ft) per year from permanent water (Good and Wake 1992). These larger movements, however, are thought to be rare (Good and Wake 1992). Southern torrent salamanders have also been found short distances from water after heavy rains (Nussbaum et al. 1983). Riparian areas are thought to be important to the species for foraging (Corn and Bury 1989) and courtship and reproduction (Nussbaum *et al.* 1983). If terrestrial visits are important for feeding, reproduction, and dispersal, then shade and high surface water availability are needed to allow for movement within these riparian areas.

Southern torrent salamanders can grow to approximately 9.5 centimeters (3.75 inches) in length (Good and Wake 1992). They have a low tolerance for high temperatures and are typically found in areas with temperatures between 5.8 and 12.0 degrees centigrade (°C) (10 to 22 degrees Fahrenheit (°F)) (Brattstrom 1963; Nussbaum et al. 1983). Lethal temperatures occur above 17.2 °C (63 °F) (Welsh and Lind 1996).

Southern torrent salamanders have a lengthy larval period of 3 to 3.5 years (Nussbaum and Tait 1977) and require an additional 1 to 1.5 years after metamorphosis to become sexually mature (Nussbaum and Tait 1977). Southern torrent salamanders are probably communal nesters, as other torrent salamanders may be (Nussbaum 1969), producing an average of 8.4 to 10.0 eggs each year (Nussbaum et al. 1983). The southern torrent salamander's food is primarily aquatic and semiaquatic invertebrates (Bury and Martin 1967).

The spaces between cobble or pebble-size stones found in streams appear to provide refuge for salamanders from predators, such as fish and Pacific giant salamanders (*Dicamptodon ensatus*). Southern torrent salamanders are not frequently found in streams where large Pacific giant salamanders or fish are found. If southern torrent salamanders do occur in these streams, they are usually found in the margins where they can find cover, away from the deep pools and glides (Welsh 1993; Welsh and Olivier 1992; Welsh, pers. comm. 1995; Olson, pers. comm. 1995). Another potential predator of salamanders may include garter snakes (Nussbaum *et al.* 1983.)

Southern torrent salamanders have a patchy distribution across their range (Welsh and Lind 1992). Suitable habitat is naturally limited by the geology and topography of an area. While the southern torrent salamander may be locally abundant in certain areas, salamander populations are not found in all apparently suitable habitats. During surveys of apparently suitable habitats, researchers detect southern torrent salamanders only 20 to 80 percent of the time. This low level of detection may be due to the fact that random sampling techniques of suitable habitats may not provide an accurate picture of the southern torrent salamander occurrence due to the inherent patchiness of their distribution. Populations of the species may be disjunct due to geographical variations, microhabitat variability, or historical land management practices. Density estimates range widely from 0.04 individuals up to 41 individuals per square meter (11 square feet) (Nussbaum and Tait 1977; Corn and Bury 1989).

The range of the southern torrent salamander occurs within the coastal conifer forest belt of northern California and southern Oregon, specifically from southern Mendocino County, California, through the Coast Ranges, to the Little Nestucca River and the Grande Ronde Valley in Polk, Tillamook, and Yamhill Counties, Oregon (Good and Wake 1992). An isolated population exists on the west slope of the Cascade Mountains near Steamboat in Douglas County, Oregon, approximately 112 kilometers (70 miles) inland (Good and Wake 1992; B. Bury, National Biological Survey, pers. comm. 1995). Several new populations of southern torrent salamanders have been detected north of the Steamboat population on the south side of the Willamette River. These populations represent an extension of the known range (R.S. Wagner, United States Geological Service, Biological Research Division, pers. comm. 1998). Another disjunct population is thought to occur in south central Siskiyou County, California, based on specimens in the Chico State University Museum that date back to the 1950s (H. Welsh, Forest Service, pers. comm. 1994). Good and Wake (1992) described this species as one of the most common members of the salamander fauna through much of its range.

According to the petitioner, 98 percent of the historical records of the southern torrent salamander in the Museum of Vertebrate Zoology (MVZ), University of California, Berkeley, represent only 42 populations detected in protected rights-of-way, county highways, or in State and national parklands that include less than 5 percent of the total range of the species. The MVZ records were collected from 1935 to 1989, with the majority (70 percent) collected after 1970. Our review of these records revealed approximately 151 sites where southern torrent salamanders were detected. The most recent location data obtained for this review, from a variety of formal and informal surveys conducted from 1987 to 1998, indicated approximately 781 sites containing southern torrent salamanders across its historical range from north-central Oregon to northern California. We expect some overlap in the sites documented in these two groups of data, but the level of overlap has not been analyzed. In addition, we have not attempted to define populations from this location information. Surveys for southern torrent salamanders across their range were conducted by Good and Wake (1992) and Wagner (*in litt.* 1998) and, in California, by Welsh (Welsh 1990; Welsh and Lind 1992; Welsh, *in litt.* 1998). According to Wake (University of California, pers. comm. 1995), southern torrent salamanders are found throughout their historical range.

Threats Analysis

Habitat

The petition to list the southern torrent salamander cited habitat fragmentation, population declines, and inhibited dispersal capability throughout the species' range as significant threats to the species. The petitioner suggested that large-scale timber harvesting is eliminating many subpopulations through destruction of required habitats. The petitioner further suggested that this species may require conditions and attributes unique to headwater streams in mature and old-growth forests and the species has minimal ability to withstand and recover from radical habitat alterations.

Evidence indicates that timber harvesting and road building negatively affect habitat requirements of the

southern torrent salamander (permanent water, rocky substrates, and low water temperatures). The direct effects of these activities include disturbance of substrate and killing of individual salamanders. Indirect effects include sedimentation of substrate used by the salamanders, increase in water temperatures to lethal levels, potential loss of permanent water flow, and potential increase in predator populations. Suitable habitat conditions and attributes for the southern torrent salamander appear to be more readily available in unlogged mature and old-growth forests than in logged areas (Welsh 1990; Diller 1996). In logged areas, the abundance of salamanders is lower or they are not detected at all, which indicates that logging may depress or locally extirpate these populations (Corn and Bury 1989; Welsh and Lind 1992). However, while some research has revealed negative impacts of logging and road construction on southern torrent salamander populations, other research and survey information indicates southern torrent salamanders still persist in some habitats that were logged 14 to 60 years ago (Nussbaum and Tait 1977; Corn and Bury 1989; Welsh and Lind 1992; Olson, *in litt.* 1994; Chinnici, *in litt.* 1995; Diller, *in litt.* 1995; Pious, *in litt.* 1995; Wright, *in litt.* 1995; J. Ambrose, Georgia-Pacific Corporation, pers. comm. 1995; J. Applegarth, Bureau of Land Management (BLM), pers. comm. 1995; S. Hopkins, BLM, pers. comm. 1995; K. Wright, BLM, pers. comm. 1995). Whether the species is recolonizing these areas or whether its long lifespan enables it to persist in marginal habitats until conditions improve is unknown. Factors that may mitigate lethal water temperatures in logged areas include the retention of deciduous vegetation and unmerchantable trees, cool water from underground springs, cool microclimates on north-or east-facing slopes, and coastal fog. Sedimentation of the substrate may be mitigated by the flushing of these sediments in higher gradient streams. Some research has reported a positive relationship between stream gradient and the presence of southern torrent salamanders in logged habitats (Welsh 1993; Welsh and Ollivier 1992; Diller 1996). The southern torrent salamander may also be capable of burrowing vertically in the substrate to find moist, cool conditions.

We agree that widespread logging of headwater habitats has negative impacts on southern torrent salamander populations through the destruction of suitable habitats. However, under certain circumstances, populations appear to be persisting in altered habitats. We also believe that State and Federal agencies provide varying degrees of protective measures for maintaining aquatic and riparian habitats on forested lands (California Department of Forestry (CDF) 1992; USDA *et al.* 1993; Oregon Department of Forestry (ODF) 1994; USDA and USDI 1994a). The threat to this species from habitat destruction is directly related to protection provided by State, Federal, and private regulatory measures for timber harvest activities.

Federal Regulations for Timber Harvest

The trend of large-scale logging of mature and old-growth forests on public lands within the range of the southern torrent salamander has diminished since the Federal listing of the northern spotted owl (*Strix occidentalis caurina*) in 1990 (55 FR 26192). This trend toward lower timber production and less regeneration logging is reflected in the standards and guidelines for land management in the Record of Decision for the Northwest Forest Plan (USDA and USDI 1994a) and in Endangered Species Act consultations by us on timber sales and National Forest Land Management Plans (A. Brickey, Service, pers. comm. 2000; N. Lee, Service, pers. comm. 2000). Although clearcutting could mean an increase in timber production on private lands, clearcutting vast areas within a drainage is generally no longer a common or commonly accepted practice. Forest ecosystems are typically able to recover from small-scale disturbances, and the effects of timber harvest diminish as forests regenerate.

Public Land Regulations

We estimate that approximately 41 percent of the total range of the southern torrent salamander occurs on federally managed public forest lands in both Oregon and California (summarized from Davis *et al.* 1998; Kagan *et al.* 1999). A Forest Conference was convened by President Clinton in 1993 to resolve forest resource issues in the Pacific Northwest. As a result, a group of interdisciplinary, interagency experts, known as the Forest Ecosystem Management Assessment Team (FEMAT), came together to develop a comprehensive management plan for more than 137,128 hectares (ha) (24 million acres (ac)) of public forest lands. The outcomes were the FEMAT Report (USDA *et al.* 1993), a Supplemental Environmental Impact Statement (SEIS) (USDA and USDI 1994b), and, ultimately, a Record of Decision (ROD) (USDA and USDI 1994a) that amended the planning documents of 19 national forests and 7 BLM Districts to implement an alternative that became known as the Northwest Forest Plan (Forest Plan). The FEMAT reports a total of 37 percent of the southern torrent salamander's range on Federal lands and 63 percent on State and private lands, an estimate very similar to that developed during this review (41 percent and 59 percent respectively).

One of the reasons identified in the petition to list the southern torrent salamander is a lack of protection for headwater habitats where this species is known to occur. The petitioner claims that 90 percent of the range of the southern torrent salamander is on lands that are harvestable or have been harvested. Referencing the FEMAT report, the petition states that "37 percent of the range of this salamander occurs on Federal lands, while 27 percent is on lands in the matrix (harvestable areas)." The petitioner's subsequent conclusion appears to be that the 27 percent of the total range of the species that occurs on public lands, plus the 63 percent of the species' range occurring on private lands (90 percent of the species' complete range) is open to harvest or has been harvested. We do not agree with this interpretation of the FEMAT report. Appendix Table IV–C–9 in the FEMAT report indicates that the percentage of land designated as matrix under the Forest Plan represents 25 percent of the 37 percent of the range that occurs on public lands (USDA *et al.* 1993). This amount is equal to less than 10 percent of the entire range of the species. The remaining 75 percent of the species' range on public lands occurs almost entirely in withdrawn areas or reserves (approximately 68 percent) and Adaptive Management Areas (approximately 6 percent) (USDA *et al.* 1993).

Furthermore, as described in the FEMAT report, the SEIS, and the ROD, all aquatic/riparian habitats on public lands covered by the Forest Plan are to be protected in riparian reserves. This means that any land allocations designated in the FEMAT report, including matrix lands, that include aquatic or riparian habitat are contained in riparian reserves that are designed to protect riparian and aquatic components from actions that will negatively impact them (M. Raphael, Forest Service, pers. comm. 1995). Therefore, the 27 percent figure quoted in the petition as salamander habitat that is at risk within matrix lands fails to take into account the riparian reserves protecting watercourses in the matrix (K. Denton, Forest Service, pers. comm. 1995). Riparian reserves apply to all streams,

lakes, ponds, and wetlands on Forest Service and BLM lands within the range of the northern spotted owl (USDA and USDI 1994b). The primary purpose of riparian reserves is to protect and maintain riparian resources and to attain the objectives of the Aquatic Conservation Strategy, which is part of the Forest Plan. This strategy is specifically designed to protect headwater tributaries (including intermittent streams, seeps and springs) and riparian areas (USDA *et al.* 1993; USDA and USDI 1994a).

The FEMAT report provides the most current risk analysis of the southern torrent salamander on public lands and states that implementation of the Forest Plan, as approved, would result in a very high likelihood that the majority (74 percent) of southern torrent salamander habitats on public lands would be well distributed and that the species population could stabilize, although with some limitation on interactions among populations. This analysis was based on the anticipated level of riparian protection in riparian reserves. The final ROD later doubled the riparian reserve widths for intermittent streams and wetlands of less than 1 ha (2.4 ac) from 15 to 30 m (50 to 100 ft) or one site-potential tree (the average height of a tree growing at that site). This change would protect more southern torrent salamander habitat than evaluated in the FEMAT report.

The Forest Plan has been in effect since April 1994. As of 1995, riparian reserves were generally being planned according to the intent of the Forest Plan (M. Boroja, Service, pers. comm. 1995; A. Brickey, pers. comm. 1995; P. Henson, Service, pers. comm. 1995; S. Livingston, Service, pers. comm. 1995). The land management agencies recognized that the procedure to adjust or decrease the widths of riparian reserves recommended in the Forest Plan was time-consuming, and, therefore, they did not generally pursue efforts to alter the widths. Additionally, it appeared that many riparian reserves were increased due to unstable geology. An interagency monitoring program in 1996 and 1997 evaluated whether the intent of the ROD and its guidelines was being met. Reports from both years concluded that the Forest Service and BLM were consistently meeting the intent of the ROD in developing riparian reserves.

The petitioner suggested that no-entry buffers of 33 m (100 ft) or the height of one site-potential tree should be established around small streams and headwaters in old-growth and mature conifer forests. In the Pacific northwest, timber harvest adjacent to old-growth forests is estimated to affect the microclimate up to two tree lengths into the remaining forest stands (Franklin and Forman 1987 *in* Lehmkulh and Ruggiero 1991; Harris 1984). Other estimates include microclimate effects from 30 to 240 m (approximately 100 to 800 ft) into interior forest, depending on the site and specific microclimate parameters (Chen *et al.* 1995 *in* Vesely 1996). There is general agreement that a protected buffer zone for streams, seeps, springs, and adjacent riparian habitat is necessary to maintain microclimates and prevent sedimentation in these watercourses. Based on the evidence that southern torrent salamanders appear to stay in very close proximity to watercourses, we believe the riparian reserve system of the currently adopted and court-tested Forest Plan provides adequate protective measures to maintain the quality of most of the riparian and aquatic habitats for the southern torrent salamander on public lands across the range of the species.

California Private Land Regulations

Approximately 26 percent of the southern torrent salamander's entire range occurs on private lands in California and 2 percent on California State lands. This species is designated as a species of special concern in California. Special concern status confers no legal protection for the species, but recognizes that the species should be closely monitored. In response to a 1994 petition to list the southern torrent salamander as threatened under State law, the California Fish and Game Commission (CFGC), in conjunction with California Department of Fish and Game (CDFG), determined on January 8, 1996, that listing the species as threatened was not warranted (CFGC, *in litt.* 1996). This decision was based on the presence of southern torrent salamanders in degraded habitat, improved logging practices, and inadequate information on the significance and causes of any population declines. However, these agencies improved protective measures for this species through changes in policies and regulations.

During the candidacy period (the period between the time a petition is accepted by the State and a final determination is required) from November 1994 to December 1995, training was provided to 64 biologists, 231 private foresters, and 60 CDF inspectors on how to recognize southern torrent salamander habitat and conduct surveys. The CDFG reported the following objectives for the 1-year candidacy period: (1) document as many existing localities as possible on private land and at historic sites; (2) determine status of populations and habitat (and metapopulation structure); (3) examine population trends through the comparisons of managed and unmanaged lands; and (4) determine the adequacy of current forest practice rules to protect the species and its habitat (CDFG, *in litt.* 1995). A sampling protocol was developed to collect data to meet these objectives (CDFG *in litt.* 1995). However, to date, we are unaware of any results from objectives 2, 3, or 4 of the candidacy period.

Most of the suitable habitat for the southern torrent salamander occurs in what the CDF designates as Class II streams, which include perennial streams that are non-fish bearing but contain other aquatic life (CDF 1992). Protections for Class II streams include 15 to 30 m (50 to 100 ft) Watercourse and Lake Protection Zones (WLPZ) that retain at least 50 percent canopy closure, 25 percent overstory conifers, and 75 percent surface cover. No heavy equipment is allowed within the WLPZ, and roads, landings, and timber falling are limited to protect the beneficial uses of the watercourse. Any changes in the widths of the WLPZ or proposed activities within the WLPZ must first be carefully analyzed and reviewed to ensure protection of the beneficial uses of the stream. Some persons have speculated that Class II protection may be adequate to protect the southern torrent salamander and its habitat in the coastal forests but may not provide adequate protection in the more arid southern and eastern portions of the range (J. Brode, CDFG, pers. comm. 1994, Steele, CDFG, pers. comm. 1995).

We are aware that stream classification is highly subjective in the timber planning process. Habitat for southern torrent salamanders may also occur along streams that have been classified as Class III (streams, including seeps and springs, with no aquatic life but capable of sediment transport). In these areas, obvious aquatic life may not be apparent, the streams may appear dry, and they may not contain obvious channels or pools. Although these appear to be Class III streams, they may often provide suitable habitat for, and contain, the southern torrent salamander. The water level may be just above the surface or subsurface, and salamanders may not be detectable at all times of year. Incorrect classification of streams could potentially result in application of Class III stream protection measures being applied to habitats that are likely to contain southern torrent salamanders. Current protection for Class III streams is not adequate to protect southern torrent salamander habitat (CFGC 1994).

The training of biologists and foresters resulted in some increased awareness of the significance of headwater streams, seeps, and springs as valuable aquatic habitats requiring Class II protection. Based on over a decade of field experience in habitat identification and stream classification in California, K. Moore (CDFG, pers. comm. 2000) estimates that perhaps 50 percent of suitable seep, spring, and stream habitat has been recognized and given some level of protection from logging activities. However, some seeps and springs that have not been identified as salamander habitat and retain no comprehensive protection under the State rules are still logged and burned (K. Moore, pers. comm.1999).

We support a review of the Forest Practice Rules by CDFG and believe that Class II protection has the potential to provide some protection for the southern torrent salamander provided habitat is correctly identified. However, we are concerned about the effectiveness of timber harvest planning on private lands because of (1) the high ratio of Emergency and Exemption Notices to regular Timber Harvest Plans (THP) in California, (2) cumulative impacts not being addressed in THPs, and (3) a lack of THP enforcement (State of California 1994).

Oregon Private Land Regulations

Private lands in Oregon constitute approximately 31 percent of the southern torrent salamander's entire range. One percent of the salamander's range occurs on Oregon State lands. The salamander is designated as a sensitive species, subcategory vulnerable, by the State of Oregon. State sensitive classification refers to naturally reproducing native species that are likely to become threatened or endangered throughout all or any significant portion of their range in Oregon (Oregon Department of Fish and Wildlife (ODFW) 1993). The vulnerable category implies that listing the species is not imminent provided that continued or expanded use of protective measures and monitoring occurs (ODFW 1993). However, the southern torrent salamander is protected from being killed, harmed, or collected under the Oregon Administrative Rule section 635–44–130 (Nongame Wildlife Protected) (ODFW 1991). A State scientific collecting permit is required to take this species from the field for educational or research purposes (ODFW 1991).

Oregon Department of Forestry (ODF) rules establish Riparian Management Areas (RMAs) adjacent to all Type D streams (non-fish-bearing streams with domestic water use) and Type N streams (all other streams except those fish-bearing streams with domestic water use), except for small Type N streams. The goal of these buffers is to protect water quality, hydrological function, and fish and wildlife habitat by requiring vegetation retention and special management practices. The RMAs range from 6 to 21 m (20 to 70 ft) and have retention standards for understory, overstory, snags, and logs. Further restrictions occur on road construction, yarding, stream crossings, and stream improvement. The RMAs offer some protection from direct impacts, but the protections may be too small to compensate for the effects on microclimates from logging. The areas most at risk are the small Type N streams where no RMAs are required and restrictions of logging activities are very flexible and left up to the operator's discretion in most cases. The few specific management recommendations for small Type N streams do not apply to the Coast Range and South Coast geographic regions, where the majority of the southern torrent salamander range occurs.

RMAs are not required for seeps and springs within the range of the southern torrent salamander in Oregon. The Oregon Forest Practice Rules state that operators shall protect hydrological functions of seeps, springs, and wetlands by minimizing disturbance to soils during forest operations (ODF 1994). The ODF interprets this rule to mean that no machinery is allowed in seeps, springs, or wetlands, and citations have been issued for this violation (J. Runion, ODF, pers. comm. 1995). Furthermore, the Oregon Forest Practice Rules recognize that amphibians may occur in small Type N streams and encourage operators to retain green trees and snags in blocks of intact vegetation of undetermined size (ODF 1994). The headwater habitats on private land in Oregon are probably not completely protected from the effects of logging, and some biologists in Oregon have expressed concerns about this lack of protection (J. Boechler, ODFW, pers. comm. 1995; R. Krahmer, ODF, pers. comm. 1995; C. Puchy, ODFW, pers. comm. 1995; K. Wright, pers. comm. 1995).

We believe that existing regulatory measures provide varying degrees of protection for southern torrent salamander habitat on public and private lands. The regulatory protection of aquatic and riparian habitat appears to be generally better on public lands than private lands and better for streams than for seeps and springs. If we assume that southern torrent salamander habitat on all Federal lands (41 percent of the total range) has moderate to good protection, that approximately 50 percent of private land in California (13 percent of the total range) and 50 percent of private land in Oregon (16 percent of the total range) and all State lands (3 percent of the total range) have low to moderate protection, then 73 percent of the total range of the species is estimated to have some level of regulatory protection.

Although logging began in Pacific Northwest forests almost 200 years ago, State and Federal land management regulations that protect aquatic and riparian habitats have only been instituted in the last 20 to 30 years. Consequently for approximately 170 years, timber harvest in aquatic and riparian habitats was virtually unregulated. Therefore, some populations of southern torrent salamanders have persisted or recolonized in areas that had no protective buffers when they were harvested. Whether these individuals recolonized the area after regrowth of the surrounding vegetation or survived the habitat alteration is unclear. While the presence of individuals does not necessarily indicate viable populations, what is known is that both larvae and adults are being detected across the range of the species.

Based on the species' persistence, the fact that some level of regulatory protection occurs on an estimated three-quarters of the species' range, and the current trend in timberland management is away from clearcutting in riparian areas and toward increasing awareness of the significance of headwater habitats, we believe that current regulatory practices, while not ideal, provide sufficient protection to insure that the existence of the species is not threatened at this time. While recent improvements in protections of southern torrent salamander habitats have been implemented on Federal lands, habitats on private lands are still vulnerable until specific changes in policy and procedures change the way these habitats are protected. However, future trends toward protecting aquatic habitats for listed salmonids, including headwater habitats, should also benefit the southern torrent salamander. Based on our assumptions stated above concerning estimated regulatory protections, and the fact that the species appears to be distributed across its range and is persisting in altered habitats, we also conclude that habitat destruction or modification is not severe enough to

threaten the existence of the species at this time or in the foreseeable future.

Genetics

The genus *Rhyacotriton* has always been perceived as genetically isolated from other genera of salamanders (Good and Wake 1992). Research by Good and others in 1987 (Good *et al.* 1987 in Good and Wake 1992) showed "extreme and unexpectedly high levels of genetic differentiation" for *Rhyacotriton olympicus*, which at that time was considered a single species over the Pacific Northwest. Good *et al.* (1987 in Good and Wake 1992) divided *Rhyacotriton* into four genetically different populations. Good and Wake (1992) concluded that four separate species should be recognized within the genus *Rhyacotriton*, one of which is *Rhyacotriton variegatus*, the southern torrent salamander.

The genetic diversity within the southern torrent salamander is evidence of very low gene flow between populations. Good and Wake (1992) suggest that gene flow between populations of southern torrent salamanders at the extreme ends of the species' range is not likely to occur, but that gene flow among adjacent populations of southern torrent salamanders is what holds the species together as a cohesive unit. In reference to southern torrent salamander populations, Wake (*in litt.* 1994) stated "the genetic differentiation is strongly structured geographically, so that there is a pattern of isolation by distance. What this means is that genetic distance between populations builds directly as a function of geographic distance." In other words, as the geographical distance between populations increases, populations become more genetically different and isolated. This finding strongly implies that animals within each population seldom left their respective populations or moved between populations over a period of thousands of years (Wake, *in litt.* 1994). Therefore, southern torrent salamanders show a great deal of genetic differentiation between individual animals from different populations, but show very little differentiation between individuals within the same population.

Dr. Susan Haig and Steve Wagner of United States Geological Service in Corvallis, Oregon, have been conducting genetic studies on mitochondrial DNA sequences of the southern torrent salamander to investigate the extent of population divergence and the relationships among populations. The results of these studies will be evaluated after they have been peer-reviewed and published.

Because of the naturally low gene flow between southern torrent salamander populations and the great amount of genetic diversity between individuals within the species, the loss of subpopulations could mean a significant loss of genetic diversity. Low genetic diversity within a population or subpopulation is thought to decrease that group's ability to withstand catastrophic natural events or manmade impacts. We believe that the most vulnerable populations of southern torrent salamanders are those found on the southern and eastern edges of the range. These populations are suspected to be the most distinct genetically (Wake, *in litt.* 1994) and the most susceptible to the negative impacts of timber harvest. Although we recognize the implications of low genetic diversity for the southern torrent salamander, until adequate genetic studies are completed, information is lacking to make a determination that low genetic diversity and gene flow threaten the continued existence of the species. We will reevaluate this issue after results of ongoing genetic studies are available. However, we recommend that populations at the edge of the range be given high priority for determining population status and trends.

Conclusion

We recognize that the southern torrent salamander has very specific habitat requirements, a naturally patchy distribution across its range, and low gene flow between populations. The southern torrent salamander is not considered to be dependent solely on old-growth forests, but the preferred microclimate conditions are more readily available in mature and old-growth forests. We acknowledge that logging of headwater habitats in old-growth forests has depressed or extirpated some populations of this species. However, we believe that the trend of habitat loss for the southern torrent salamander is lessening across much of the range with a reduction in clearcutting and with some increased awareness and some protections of headwater habitats. The southern torrent salamander is present throughout its historical range, including populations in altered habitats, despite little or no stream protection at the time they were logged. Relevant ongoing research is being conducted on headwater habitats and the southern torrent salamander, but a current lack of general baseline information exists on population status and trends, and genetic diversity of the species.

On the basis of the best available scientific and commercial information, we find that the southern torrent salamander is not likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Therefore, listing the species as threatened is not warranted at the present time. The southern torrent salamander will remain as a species of concern for which evidence of vulnerability exists, but for which substantial data are lacking to support a proposal to list as threatened or endangered. We will continue to seek information on the status of the southern torrent salamander, and, if information becomes available indicating that listing as endangered or threatened is appropriate, we would propose to list the salamander. Furthermore, we retain the option of recognizing a subspecies or a population segment for listing should information become available indicating that such an action is appropriate and warranted.

References Cited

A complete list of all references cited herein is available on request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary author of this notice is Ann Chrisney, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authority: The authority for this section is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 31, 2000.

Jamie Rapaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–14084 Filed 6–5–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 26, 2000. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by June 21, 2000.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Jefferson County

Belview Heights Historic District, Roughly along 41st, 42nd, 43rd, 44th and 45th Sts., and M and Martin Aves., Birmingham, 00000713

Lakewood Historic District, Roughly bounded by Lee Ave., 82nd St., Spring St., and 80th St., Birmingham, 00000710

Lawrence County

Ice House, 844 Seminary St., Moulton, 00000712

Tallapoosa County

Alexander City Commercial Historic District, Portions of Broad, Main, Green, Alabama, Jefferson Sts. and Courthouse Sq. Alexander City, 00000711

GEORGIA

Chatham County

Vernonburg Historic District, Dancy Ave., Rockwell Ave. and S. Rockwell Ave., Vernonburg, 00000714

INDIANA

Elkhart County

Beardsley, Dr. Havilah, House, 102 W. Beardsley Ave., Elkhart, 00000716

St. Joseph County

Wenger, Martin, Farmhouse, 701 E. Pennsylvania, South Bend, 00000715

LOUISIANA

Rapides Parish

Mt. Olivet Episcopal Church and Cemetery, 335 Main St., Pineville, 00000718

St. Tammany Parish

Tchefuncte Site, Address Restricted, Mandeville, 00000717

PENNSYLVANIA

Montgomery County

Hunsberger, Isaac, House, 545 W. Ridge Pike, Limerick Twp., 00000719

RHODE ISLAND

Newport County

Sakonnet River Bridge, RI 24, Portsmouth, 00000720

SOUTH DAKOTA

Brookings County

Volga Auditorium (Federal Relief Construction in South Dakota MPS), 212 Kasan Ave., Volga, 00000723

Codington County

Watertown Stadium (Federal Relief Construction in South Dakota MPS), 1600 W Kemp Ave., Watertown, 00000721

Jerauld County

Alpena Bathhouse and Swimming Pool (Federal Relief Construction in South Dakota MPS), Jct. of Fifth and Main, Alpena, 00000727

Meade County

Municipal Building—City Hall (Federal Relief Construction in South Dakota MPS), 206 Main St., Faith, 00000722

TENNESSEE

Giles County

Campbell Chapel African Methodist Episcopal Church (Rural African-American Churches in Tennessee MPS), Pulaski, Pulaski, 00000725

Grainger County

Henderson Chapel African Methodist Episcopal Zion Church (Rural African-American Churches in Tennessee MPS), Church St., Rutledge, 00000730

Lincoln County

Mount Zion Missionary Baptist Church (Rural African-American Churches in Tennessee MPS), 305 W. Maple St., Fayetteville, 00000731

Loudon County

Hackney Chapel AME Zion Church (Rural African-American Churches in Tennessee MPS), Address Restricted, Lenoir City, 00000729

McMinn County

Beth Salem Presbyterian Church (Rural African-American Churches in Tennessee MPS), TN 30 at Watson Rd., Athens, 00000728

UTAH

Washington County

Jepson, James, Jr., House, 15 East Jepson, Virgin, 00000732

WISCONSIN

Columbia County

Lodi Street-Prairie Street Historic District, Roughly Prairie St. from Second St. to Mill St., Lodi, 00000735

Kenosha County

Library Park, 711 59th Place, Kenosha, 00000733

Wood County

West Park Street Historic District, 300–417 West Park St., Marshfield, 00000734

A request for removal for procedural error has been made for the following resource:

IOWA

Jefferson County

Commercial Block (Louden Machinery Company, Fairfield Iowa MPS), 106,108,110 N, Main St. Fairfield, 99000120

[FR Doc. 00–14210 Filed 6–5–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Flaming Gorge Dam, Colorado River Storage Project, Utah

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement and announcement of public scoping meetings.

SUMMARY: The Bureau of Reclamation (Reclamation), the federal agency with administrative and regulatory authority over Flaming Gorge Dam, intends to prepare a draft environmental impact statement (EIS) pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 United States Code (U.S.C.) 4332. The EIS will describe the effects of operating Flaming Gorge Dam to achieve the flows recommended by the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program), and comply with section 7 of the Endangered Species Act. The purpose of the proposed action is to protect and assist in the recovery of the populations and designated critical habitat of the four endangered fishes [razorback sucker (*Xyrauchen texanus*), Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail (*Gila elegans*)] that are found in the Green and Colorado River Basins, so that along with other activities in the Recovery Implementation Program Recovery Action Plan (Recovery Action Plan), the fish no longer require protection under the Endangered Species Act, while continuing the other authorized purposes of the Flaming Gorge Unit of the Colorado River Storage Project.

DATES AND ADDRESSES: Public scoping meetings will be held in mid-July in Salt Lake City, Vernal, and Fort Duchesne, Utah; Grand Junction, Colorado; and Rock Springs, Wyoming, to solicit public input regarding relevant environmental issues that should be addressed in the EIS. The schedule of scoping meetings is as follows:

- July 11, 2000, 6–9 p.m., Wyndham Hotel, 215 West South Temple, Salt Lake City, Utah.
- July 12, 2000, 6–9 p.m., Rock Springs Holiday Inn, 1675 Sunset Drive (I–80 Exit 102), Rock Springs, Wyoming.
- July 13, 2000, 6–9 p.m., Adam's Mark Hotel, 743 Horizon Drive (I–70 Exit 31), Grand Junction, Colorado.
- July 18, 2000, 6–9 p.m., Western Park Convention Center, 300 East 200 South, Vernal, Utah.

• July 19, 2000, 6–9 p.m., Ute Tribal Headquarters, 988 South, 7500 East, Fort Duchesne, Utah.

Each scoping meeting will begin with a one-hour open house where the public can view exhibits, informally discuss issues, and ask questions of staff and managers. The open house will be followed by a more formal scoping hearing in which each participant will be given time to make official comments. The comments will be formally recorded. Speakers are encouraged to provide written versions of their oral comments, and any other additional written materials, for the record. Comments should focus on the issues relevant to the proposed action.

Comments may also be sent directly to Mr. Kerry Schwartz at the Bureau of Reclamation's Provo Area Office in Provo, Utah. Written comments should be received no later than September 5, 2000, to be most effectively considered.

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the draft EIS, should write to Mr. Kerry Schwartz. When the EIS is complete, its availability will be announced in the **Federal Register**, in the local news media, and through direct contact with interested parties. Comments will be solicited on the document.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

The Bureau of Reclamation ensures meeting accessibility to persons with disabilities. If you need special assistance, please contact Kate O'Hare of the Bureau of Reclamation's Provo Area Office at (801) 379–1276.

FOR FURTHER INFORMATION CONTACT: Mr. Kerry Schwartz, Environmental Protection Specialist, Bureau of Reclamation, Provo Area Office, 302 East 1860 South, Provo, Utah 84606–7317; telephone (801) 379–1167; faxogram (801) 379–1159; email: Kschwartz@uc.usbr.gov. Information about the proposed action and the EIS process can also be found on Reclamation's web site at http://www.usbr.gov.

SUPPLEMENTARY INFORMATION:

Background

Flaming Gorge Dam, located on the Green River in northeastern Utah, is an authorized storage unit of the Colorado River Storage Project. The dam was authorized for construction by the Colorado River Storage Project Act of 1956 (Public Law 84–485). The underlying project purposes are defined by section 1 of the Act (43 U.S.C. 620) which authorized the Secretary of the Interior to "construct, operate, and maintain" Flaming Gorge Dam:

> . . . for the purposes, among others, of regulating the flow of the Colorado River, storing water for beneficial consumptive use, making it possible for the States of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, providing for the reclamation of arid and semiarid land, for the control of floods, and for the generation of hydroelectric power, as an incident of the foregoing purposes. . . .

In 1968, Congress enacted the Colorado River Basin Project Act (43 U.S.C. 1501 *et seq.*). This Act provided for a program for further comprehensive development of Colorado River Basin water resources. Section 1501(a) states:

> This program is declared to be for the purposes, among others, of regulating the flow of the Colorado River; controlling floods; improving navigation; providing for the storage and delivery of the waters of the Colorado River for reclamation of lands, including supplemental water supplies, and for municipal, industrial, and other beneficial purposes; improving water quality; providing for basic public outdoor recreation facilities; improving conditions for fish and wildlife, and the generation and sale of electrical power as an incident of the foregoing purposes.

In addition, the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs (including Flaming Gorge Dam) were mandated by section 1552 of the Colorado River Basin Project Act. Article I.(2) of the criteria requires that the Annual Operating Plan for Colorado River reservoirs

> ". . . shall reflect appropriate consideration of the uses of the reservoirs for all purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors."

Construction of Flaming Gorge Dam was completed in 1964 and full operation of the dam and reservoir began in 1967. The powerplant began commercial operation in 1963. The Bureau of Reclamation operates the powerplant located at the base of the dam and the Western Area Power Administration (Western) markets the power.

Reservoir releases through the powerplant currently range from 800 to 4,700 cubic feet per second (cfs). Reclamation established interim operating criteria for Flaming Gorge Dam in September 1974. Under those interim criteria, Reclamation agreed to provide a minimum flow of 400 cfs at all times. Continuous flows of 800 cfs were to be provided for the foreseeable future and under normal conditions. Continuous flows exceeding 800 cfs were to be provided when compatible with other Colorado River Storage Project reservoir operations. The 800 cfs and higher continuous flows were intended to enhance fishing, fish spawning, and boating. Maximum releases (approximately 4,700 cfs) are constrained by generator output and reservoir elevation. In addition, the dam has the capacity to release up to 4,000 cfs through two river outlet tubes that bypass the powerplant, and an additional 28,800 cfs can be released through the spillway. In 1979, Reclamation began releasing water through a multi-level outlet structure to provide warmer water for the downstream fishery.

On February 27, 1980, the Fish and Wildlife Service (Service) requested consultation under section 7 of the Endangered Species Act regarding projects under construction, and for the continued operation of all existing Reclamation projects in the Upper Colorado River Basin (including the Colorado River Storage Project). Formal consultation on operation of Flaming Gorge Dam was initiated on March 27, 1980. Reclamation is the lead agency for the consultation, with Western becoming a party to the consultation in 1991.

Coincident with its request for consultation on the operation of Reclamation projects in the Upper Colorado River Basin, the Service issued a Final Biological Opinion for the Strawberry Aqueduct and Collection System, a major feature of the Central Utah Project, on February 27, 1980. The biological opinion determined that Strawberry Aqueduct Collection System flow depletions from the Duchesne and Green Rivers would likely jeopardize the continued existence of the endangered Colorado pikeminnow and humpback chub. The biological opinion included a reasonable and prudent alternative (RPA) to avoid continued jeopardy to the endangered fish. The RPA was that Flaming Gorge Dam and Reservoir would compensate for those depletions and would be operated for the benefit of the endangered fish in conjunction with its other authorized purposes.

The Service rendered other biological opinions for the Upalco, Jensen, and Uinta Units of the Central Utah Project during the late 1970s and early 1980s that all relied on the operation of Flaming Gorge Dam to provide flows for endangered fishes. Recent biological opinions for the Duchesne River Basin, Narrows Project, Price-San Rafael Salinity Control Project, and other water development related projects in the Colorado River Basin also rely on the operation of Flaming Gorge Dam to provide flows for endangered fishes.

However, because information related to the habitat requirements for the endangered fishes was unavailable, issuance of a final biological opinion by the Service for the operation of Flaming Gorge Dam was delayed until data collection and studies could be completed and used to recommend specific flows in the Green River downstream from the dam. Dam operations were initially evaluated for potential effects on endangered fishes from 1979 to 1984. Releases from the dam were modified from 1985 to 1991 to benefit endangered fishes and allow summer flow regimes in the Green River that could be tested and evaluated.

In 1987, the Recovery Program was initiated. The goals of the Recovery Program are to protect and recover the endangered fish species of the Upper Colorado River Basin so that they no longer need protection by the Endangered Species Act. The states of Colorado, Wyoming and Utah; Reclamation, Western, and the Service; and environmental, water, and power user organizations are all participants in the Recovery Program. Under the Recovery Program, there are five key elements needed to recover the endangered fish species: (1) Habitat management; (2) habitat development/maintenance; (3) native fish stocking; (4) non-native species and sport fish management; and (5) research, data management, and monitoring. The operation of Flaming Gorge Dam is essential to successful implementation of two of these five elements: habitat management and habitat development/maintenance. Operation of the dam is one of many management actions described in the Recovery Action Plan. Implementation of all Recovery Action Plan activities are expected to recover the endangered fish.

Using biological tests and evaluations conducted from 1979 to 1991, the Service issued a biological opinion on the operation of Flaming Gorge Dam on November 25, 1992. That opinion stated that the current (1992) operation of Flaming Gorge Dam was likely to jeopardize the continued existence of the endangered fish in the Green River. The opinion also described elements of an RPA that, in the opinion of the Service, would offset jeopardy to the endangered fishes. The RPA required: (1) Refinement of the operation of Flaming Gorge Dam so that flow and temperature regimes of the Green River more closely resembled historic conditions; (2) conducting a five-year research program including implementation of winter and spring research flows, beginning in 1992, to allow for potential refinement of flows for these seasons. The research program was to be based on the Five-Year Flaming Gorge Flow Recommendations Investigations which was approved by the Recovery Program. The research program was to provide for annual meetings to refine seasonal flows based on research findings and water year forecasts. Except for specific research flows during the five-year research program, year-round flows in the Green River were to resemble a natural hydrograph described under element 1 of the RPA; (3) determination of the feasibility and effects of releasing warmer water during the late spring/summer period and investigation of the feasibility of retrofitting river bypass tubes to include power generation, thereby facilitating higher spring releases; (4) legal protection of Green River flows from Flaming Gorge Dam to Lake Powell; and (5) initiation of discussions with the Service after conclusion of the five-year research program to examine further refinement of flows for the endangered Colorado River fish.

The five-year research program concluded in 1996. The Recovery Program funded a synthesis report of the research and development of the flow recommendations. The synthesis report and flow recommendations provide the basis for Reclamation's proposed action and for additional Section 7 consultation among Reclamation, Western, and the Service. Other threatened and endangered species that may be affected by implementation of the flow recommendations will be included in the discussions with the Service.

Purpose and Need for Action

The purpose of the proposed action is to protect and assist in the recovery of the populations and designated critical habitat of the four endangered fishes, while maintaining the other authorized purposes of the Flaming Gorge Unit of the Colorado River Storage Project. The proposed action is needed because:

1. The populations and critical habitat of endangered fishes have been adversely affected or modified by, among other things, operation of Flaming Gorge Dam.

2. Reclamation is required to avoid jeopardizing the continued existence of listed species, or destruction or adverse modifications to designated critical habitat, due to operation of Flaming Gorge Dam, to the extent possible, in conjunction with other purposes of the Flaming Gorge Unit (dam and reservoir).

3. All federal agencies are required to utilize their authorities in furtherance of the purposes of the Endangered Species Act by carrying out programs for the conservation of listed threatened and endangered species.

4. Operation of Flaming Gorge Dam is a key element of the Recovery Program's objectives of recovering the fish by offsetting the adverse effects of flow depletions from the Green River, and allowing water development in the Upper Colorado River Basin.

5. Flaming Gorge Dam is the primary water storage and delivery facility on the Green River upstream from the confluence with the Colorado River capable of providing sufficient flow management to allow opportunities to conserve endangered fish populations and protect critical habitat.

6. Operation of Flaming Gorge Dam serves as a reasonable and prudent alternative, as defined by the Endangered Species Act, to offset jeopardy to endangered fish and their critical habitat for numerous other existing or proposed water development projects in the Upper Colorado River Basin.

Proposed Action

Reclamation proposes to take action to protect and assist in the recovery of the four endangered fishes and designated critical habitat by modifying operations of Flaming Gorge Dam, to the extent possible, to achieve the recommended flows in the Green River, while continuing the other authorized purposes of the Colorado River Storage Project. Reclamation would implement the proposed action by modifying the operations decision process for Flaming Gorge Dam to provide water releases of sufficient magnitude and with the

proper timing and duration considered necessary to assist in the recovery of endangered fish and their designated critical habitat, while maintaining the other authorized purposes of the Flaming Gorge Unit of the Colorado River Storage Project.

The following table summarizes the final flow recommendation for the Green River described in the April 2000 *Flow Recommendations for Endangered Fishes in the Green River Downstream of Flaming Gorge Dam* report prepared by the Recovery Program. The flow recommendations are specific to three defined reaches of the Green River (from Flaming Gorge Dam to the Colorado River confluence), the period of the year (spring and summer through winter), and five annual hydrologic conditions (wet to dry), with base flows higher in wet years than in drier years.

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RECOMMENDED MAGNITUDES OF SPRING PEAK AND SUMMER-TO-WINTER BASE FLOWS FOR ENDANGERED FISHES IN THE GREEN RIVER DOWNSTREAM FROM FLAMING GORGE DAM[A]

Reach 1 Flaming Gorge Dam to Yampa River	Spring Peak Flow	≥244 m^3/s (≥8,600 cfs)	≥130 m^3/s (≥4,600 cfs)	≥130 m^3/s (≥4,600 cfs)	≥130 m^3/s (≥4,600 cfs)	≥130 m^3/s (≥4,600 cfs)
	Summer-Winter Base Flow	50-76 m^3/s (1,800-2,700 cfs)	42-72 m^3/s (1,500-2,600 cfs)	23-62 m^3/s (800-2,200 cfs)	23-37 m^3/s (800-1,300 cfs)	23-28 m^3/s (800-1,000 cfs)
Reach 2 Yampa River to White River	Spring Peak Flow	≥748 m^3/s (≥26,400 cfs)	≥575 m^3/s (20,300 cfs)	≥527 m^3/s[D] (18,600 cfs) ≥235 m^3/s[E] (8,300 cfs)	≥235 m^3/s (8,300 cfs)	≥235 m^3/s (8,300 cfs)
	Summer-Winter Base Flow	79-85 m^3/s (2,800-3,000 cfs)	69-79 m^3/s (2,400-2,800 cfs)	43-67 m^3/s (1,500-2,400 cfs)	31-43 m^3/s (1,100-1,500 cfs)	26-31 m^3/s (900-1,100 cfs)
Reach 3 White River to Colorado River	Spring Peak Flow	≥1,104 m^3/s (≥39,000 cfs)	≥680 m^3/s (≥24,000 cfs)	≥623 m^3/s[F] (22,000 cfs) ≥235 m^3/s[E] (8,300 cfs)	≥235 m^3/s (8,300 cfs)	≥235 m^3/s (8,300 cfs)
	Summer-Winter Base Flow	92-133 m^3/s (3,200-4,700 cfs)	76-133 m^3/s (2,700-4,700 cfs)	52-119 m^3/s (1,800-4,200 cfs)	42-95 m^3/s (1,500-3,400 cfs)	32-72 m^3/s (1,300-2,600 cfs)

[A] *Flow Recommendations for Endangered Fishes in the Green River Downstream of Flaming Gorge Dam*, April 2000, Final Report. Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin. See report for complete recommendations on magnitude, timing, and duration of flows and water temperatures.

[B] See *Flow Recommendations for Endangered Fishes in the Green River Downstream of Flaming Gorge Dam* for description of hydrologic conditions.

[C] Recommended flows as measured at the United States Geological Survey gage located near Greendale, Utah, for Reach 1; Jensen, Utah, for Reach 2, and Green River, Utah, for Reach 3.

[D] Recommended flow ≥527 m^3/s in one of two average years.

[E] Recommended flow ≥235 m^3/s in all average years.

[F] Recommended flow ≥623 m^3/s in one of two average years.

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Scope of Analysis

The purpose of this EIS is not to identify and evaluate alternatives that maximize all natural resources upstream and downstream from Flaming Gorge Dam. The purpose of this EIS is to evaluate the impacts of implementing the recommended flows to protect and assist in the recovery of the populations and designated critical habitat of the four endangered fishes living in the Green River downstream from Flaming Gorge Dam.

The proposed scope of the analysis for this EIS will focus on responding to the following analysis question:

If Reclamation operates Flaming Gorge Dam to achieve the flow recommendations needed to protect and assist in the recovery of the endangered fishes and their critical habitat in the Green River, then the effect(s) on other relevant resources/issues, both downstream and upstream from the dam, would be . . .

Scoping conducted for the EIS will be used to identify issues associated with the proposed action and its purpose and need. Scoping will also be used to identify other significant resources that may be affected, identify the interested parties or parties affected by the proposed action, and assist Reclamation in developing reasonable alternatives that are consistent with the intent of the flow recommendations. The geographic scope of the EIS (how far upstream/downstream from the dam can impacts be meaningfully evaluated) has not yet been determined. Reclamation invites comments suggesting a reasonable geographic scope of analysis for the EIS.

As a result of previous discussions with interested parties and earlier scoping activities, Reclamation has identified the following resources or issues as potentially relevant and ones that should be addressed in the EIS: threatened and endangered species, wetland and riparian resources, aquatic resources, water quality, water supply, recreation activities and facilities, cultural resources, power generation, damage to human improvements, operation and maintenance of the dam, sediment transport, vectors such as mosquitoes, social and economic effects, and Indian trust assets. Other relevant issues may be identified as a result of the scoping process associated with completion of this EIS.

Dated: May 31, 2000.

Charles A. Calhoun,

Regional Director, Upper Colorado Region.

[FR Doc. 00–14207 Filed 6–5–00; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1275]

Announcement of the Availability of the National Institute of Justice Solicitation for Communications Interoperability and Information Sharing Technologies (AGILE R&D)

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Communications Interoperability and Information Sharing Technologies (AGILE R&D)."

DATES: Proposals must be received by close of business June 27, 2000.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

NIJ's Advanced Generation of Interoperability for Law Enforcement (AGILE) is a comprehensive program that addresses the need for improved public safety communications and information sharing. The AGILE program has three main components: (1) The research, development, test, and evaluation of interoperable communications and information sharing technologies; (2) the identification, development, and adoption of open architecture standards for interoperability; and (3) interoperability education and outreach.

This solicitation seeks proposals that offer the development of communications interoperability and information sharing technologies that address specific gaps in today's regional communications needs of public safety agencies.

This solicitation is NOT intended for the procurement or deployment of commercial off-the-shelf (COTS) applications. Any such proposal received by NIJ will not be considered for award.

NIJ anticipates supporting one or two cooperative agreements totaling $450,000 in FY 2000 under this NIJ solicitation. Additional incremental funding may be available in FY 2001.

This solicitation is funded through the Crime Identification Act (CITA) appropriation. Additional information about CITA programs can be found on the Internet at http://www.ojp.usdoj.gov/cita.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Communications Interoperability and Information Sharing Technologies (AGILE R&D)" (refer to document no. SL000423). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at *http://www.ncjrs.org/fedgrant.htm#nij.*

Dated: May 30, 2000.

Julie E. Samuels,

Acting Director, National Institute of Justice.

[FR Doc. 00–14094 Filed 6–5–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 25, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration.

Title: Petition for Adjustment Assistance/Solicitud De Asistencia Para Ajuste.

OMB Number: 1205–0192.

Affected Public: Individuals or households; business or other for-profit.
Frequency: On occasion.
Number of Respondents: 1,400.
Total Annual Responses: 1,400.
Estimated Time Per Respondent: 15 Minutes.
Total Burden: 350 Hours.
Total Annualized capital/startup costs: $0.
Total annual costs (operating/maintaining systems or purchasing services): $0.
Description: The petitions are used by American workers applying to the U.S. Department of Labor for eligibility to receive worker Trade Adjustment Assistance in accordance with provisions of the Trade Act of 1974, as amended. The petition initiates action of part of the Department of Labor to determine if the workers are eligible.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 00–14147 Filed 6–5–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 30, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs; Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).
Title: Reporting of Fatality and Multiple Hospitalization Incidents.
Type of Review: Extension of a currently approved collection.
OMB Number: 1218–0007.
Frequency: On occasion.
Affected Public: Business or other for-profit; not-for-profit institutions; farms; State, Local or Tribal Government.
Number of Respondents: 3,064.
Total Annual Responses: 3,064.
Estimated Time Per Response: 15 minutes.
Total Annualized Capital/Startup costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Total Burden Hours: 766.
Description: 29 CFR 1904.8 requires all workplace fatalities and incidents involving the in-patient hospitalization of three or more employees to be reported to OSHA within 8 hours of the incident. The information collected is used to schedule fatality/catastrophe investigations and inspections. OSHA's Field Inspection Reference Manual contains the prioritization scheme for the scheduling of Agency inspections. In this scheme, fatality/catastrophe inspections are second in priority only to inspections of reports of imminent danger.

Agency: Occupational Safety and Health Administration (OSHA).
Title: Cotton Dust (29 CFR 1910.1043).
Type of Review: Extension of a currently approved collection.
OMB Number: 1218–0061.
Frequency: On occasion.
Affected Public: Business or other for-profit; Federal government; State, Local or Tribal Government.
Number of Respondents: 457.
Total Annual Responses: 280,655.
Estimated Time Per Respondent: Time for response ranges from approximately 5 minutes to provide information to the examining physician to 2 hours to conduct exposure monitoring.
Total Burden Hours: 75,695 hours.
Total Annualized Capital/Startup: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $6,059,756.
Description: The information collection requirements specified in the Cotton Dust Standard provide protection for employees from the adverse health effects associated with exposure to cotton dust. In this regard, the Cotton Dust Standard requires employers to monitor employee's exposure to cotton dust, monitor employee health, and provide employees with information about their exposures and the health effects of exposure to cotton dust.

Agency: Occupational Safety and Health Administration (OSHA).
Title: Acrylonitrile (29 CFR 1910.1045).
Type of Review: Extension of a currently approved collection.
OMB Number: 1218–0126.
Frequency: On occasion.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 23.
Estimated Time Per Respondent: Varies from 5 minutes to provide information to the examining physician to 2 hours for employers to provide the Occupational Safety and Health Administration's (OSHA) area offices with information about Acrylonitrile (AN) emergencies.
Total Annual Responses: 18,960.
Total Burden Hours: 4,182 hours.
Total Annualized Capital/Startup: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $197,314.
Description: The information-collection requirements specified in the AN Standard protect employees from the adverse health effects that may result from their exposure to AN. The major information-collection requirements of the AN Standard include notifying employees of their AN exposures, implementing a written compliance program, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-examination results, maintaining employees' exposure-monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and designated representatives.

Agency: Employment and Training Administration (ETA).
Title: Petition for Adjustment Assistance/Solicitude DE Assistancia Para Ajuste.
Type of Review: Extension of a currently approved collection.
OMB Number: 1205–0192.
Form Number: ETA 8560 (English) and ETA 9559 (Spanish).
Affected Public: Individuals or households; business or other for-profit.
Frequency: On occasion.
Number of Respondents: 1,400.
Estimated Time Per respondent: 15 Minutes.
Total Burden: 350 Hours.
Total Annualized Capital/Startup costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: The petitions are used by American workers applying to the U.S. Department of Labor for eligibility to receive worker Trade Adjustment Assistance in accordance with provisions of the Trade Act of 1974, as amended. The petition initiates an action by the Department of Labor to determine if the workers are eligible.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 00–14148 Filed 6–5–00; 8:45 am]
BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 31, 2000.

The Department of Labor (DOL) has submitted the following public information requests (ICRs) to the office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz (202–219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Pension and Welfare Benefits Administration.
Title: Prohibited Transaction Exemption 97–41 Collective Investment Fund Conversion Transactions.
Type of Review: Extension of a currently approved collection.
OMB Number: 1210–0104.
Affected Public: Business or other for-profit; not-for-profit institutions; individuals or households.
Frequency of Response: On occasion.
Respondents: 75.
Responses: 75.
Total Estimated Burden Hours: 2,265.
Total Annualized Capital/Startup Costs: $0.
Total Annual Cost (Operating and Maintenance): $162,000.
Description: Section 408(a) of the ERISA gives the Secretary of Labor the right to grant a conditional or unconditional exemption of any fiduciary or class of fiduciaries or transactions, from all or part of the restrictions imposed by section 406 of ERISA. Prohibited Transaction Class Exemption 97–41 permits an employee benefit plan to purchase shares of one or more open-end management investment companies (Mutual Fund) registered under the Investment Advisers Act of 1940 and which also serves as a fiduciary of the plan, in exchange for plan assets transferred in-kind to the Mutual Fund from a collective investment fund (CIF) maintained by the bank or plan adviser, where the bank or plan adviser is both the adviser to the Mutual Fund and a fiduciary of the plan. The transfer must be in connection with a complete withdrawal of a plan's assets from the CIF. By requiring that the bank give to an independent fiduciary notice of the in-kind transfer, full written disclosure of the information concerning the Mutual Fund company, and any ongoing disclosures, this ICR insures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions is taking place.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 00–14149 Filed 6–5–00; 8:45 am]
BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–063]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Propulsion Systems Subcommittee; Meeting.

AGENCY: National Aeronautics and Space Administration.
ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aero-Space Technology Advisory Committee, Propulsion Systems Subcommittee meeting.

DATES: Tuesday, June 27, 2000, 8 a.m. to 5 p.m. and Wednesday, June 28, 2000, 8 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, John H. Glenn Research Center at Lewis Field, Building 86, Room 100, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Carol J. Russo, National Aeronautics and Space Administration, John H. Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–2965.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview
—Propulsion Systems Base R&T Program Review
—GPRA Milestones Review

It is imperative that the meeting be held on these dates to accommodate the

scheduling priorities of the key participants.

Dated: May 30, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–14038 Filed 6–5–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–064]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Sun-Earth Connection Advisory Subcommittee.

DATES: Tuesday, June, 13, 2000, 8:30 a.m. to 5 p.m.; Wednesday, June, 14, 2000, 8:30 a.m. to 5 p.m.; and Thursday, 15, 2000, 8:30 a.m. to noon.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW, Conference Room 7H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: George L. Withbroe, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Wide Field three Camera for Hubble Space Telescope
—Space Data Archiving
—Scientists of the future in Sun-Earth Connection
—Solar Probe Developments
—The Image Mission

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 30, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–14039 Filed 6–5–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–065]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronmical Search for Origins and Planetary Systems (ORIGINS); Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, ORIGINS Subcommittee.

DATES: Tuesday, June 13, 2000, 8:30 a.m. to 5 p.m.; Wednesday, June 14, 2000, 8:30 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW, Program Review Center (PRC) 9H40 Washington, DC, 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Anne L. Kinney, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0362.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Next Generation Space Telescope
—Discussion on Wide Field Camera 3
—Stratospheric Observatory for Infrared Astronomy Archive Nexus

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 30, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–14040 Filed 6–5–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 65 FR 5916, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–306–1125 X 2017.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title: National Science Foundation Grant Proposal Guide.

OMB Control Number: 3145–0058.

Summary of Collection: The mission of the National Science Foundation is to serve as a catalyst for progress through investment in science, mathematics and engineering. The agency is guided by its longstanding commitment to the highest standards of excellence in the support of discovery and learning. NSF pledges to provide the leadership and stewardship necessary to sustain and strengthen the Nation's science, mathematics, and engineering capabilities and to promote the use of those capabilities in service to society. NSF's continuing mission is set out in the preamble to the National Science Foundation Act of 1950 (Pub. L. 507):

To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense; and for other purposes.

The information collected is used to help the Foundation fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 30,000 proposals annually for new or renewal support for research in math/science/engineering education projects and makes approximately 10,000 new awards. The Foundation exercises its authority primarily by making merit-based grants and cooperative agreements and providing other forms of assistance to individual researchers and groups, in partnership with over 2800 colleges, universities and other institutions—public and private, state, local and federal—throughout the US. The awards are based mainly on evaluations of proposal merit submitted to the Foundation (see OMB Clearance No. 3145–0060).

The Foundation has a continuing commitment to monitor the operations of its review and award processes to identify and address excessive reporting burdens. The Foundation also is committed to monitor and identify any real or apparent inequities based on gender, race, ethnicity, or handicap of the proposed principal investigator(s)/project director(s) or co-principal investigator(s)/co-project director(s). The collection of this information is a part of the regular submission of proposal to the Foundation. This information also is protected by the Privacy Act.

Description of Respondents: Nonprofit institutions; state, local or tribal governments; and business or other for-profit.

Number of Respondents: 30,000.

Frequency of Responses: Annually.

Total Burden Hours: The Foundation estimates that an average of 120 hours of expended for each proposal submitted. If an estimated 30,000 proposals are expected during the course of one year, these figures compute to an estimated 3,600,000 public burden hours annually.

Dated: May 31, 2000.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 00–14090 Filed 6–5–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Notice

AGENDA

TIME AND DATE: 9:30 a.m., Tuesday, June 13, 2000.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, S.W., Washington, DC 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

7266 Safety Recommendations: To the Federal Aviation Administration (FAA) to prevent Runway
7128A Hazardous Materials Accident Briefs: Whitehall, Michigan and Louisville, Kentucky.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, June 9, 2000.

FOR MORE INFORMATION CONTACT: Rhonda Underwood (202) 314–6065.

Dated: June 2, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–14347 Filed 6–2–00; 3:17 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 398, "Personal Qualification Statement—Licensee".

2. *Current OMB approval number:* 3150–0090.

3. *How often the collection is required:* On occasion and every six years (at renewal).

4. *Who is required or asked to report:* Individuals requiring a license to operate the controls at a nuclear facility.

5. *The number of annual respondents:* 1,610 annually.

6. *The number of hours needed annually to complete the requirement or request:* 1,950, approximately 1 hour per response.

7. *Abstract:* NRC Form 398 requests detailed information that should be submitted by a licensing applicant and facility licensee when applying for a new or renewal license to operate the controls at a nuclear facility. This information, once collected, would be used for licensing actions and for generating reports on the Operator Licensing Program.

Submit, by August 7, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW., (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 31st day of May 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–14191 Filed 6–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 790, "Classification Record".
2. *Current OMB approval number:* NRC Form 790.
3. *How often the collection is required:* On occasion.
4. *Who will be required or asked to report:* NRC employees, NRC contractors, NRC licensees, and its only certificate holder who classify and declassify NRC information.
5. *The estimated number of annual respondents:* 324.
6. *An estimate of the total number of hours needed annually to complete the requirement or request:* 27.
7. *Abstract:* Completion of the NRC Form 790 is a mandatory requirement for licensees, contractors, and only certificate holders who classify and declassify NRC information in accordance with Executive Order 12958, "Classified National Security Information," the Atomic Energy Act, and implementing directives.

Submit, by August 7, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW., (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 31st day of May 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–14192 Filed 6–5–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–24 and DPR–27, issued to Wisconsin Electric Power Company (the licensee) for operation of the Point Beach Nuclear Plant, Units 1 and 2, located in Manitowoc County, Wisconsin.

The proposed amendments would eliminate one of the license conditions and associated implementation dates from Appendix C to the licenses. The license condition currently requires the licensee to submit a license amendment application and supporting radiological dose analyses demonstrating compliance with General Design Criterion (GDC) 19 dose limits without reliance on potassium iodide (KI). By letter dated April 7, 2000, the NRC staff concurred with the licensee that the use of KI to reduce operator dose during a radiological emergency was not precluded in the licensing basis for Point Beach, Units 1 and 2.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create a significant increase in the probability or consequences of an accident previously evaluated.

The license condition that is proposed for deletion is an administrative condition related to analyses to demonstrate conformance to 10 CFR 50, GDC 19 dose limits, and the requirements for design and operation of the control room ventilation system as assumed in the analyses. The license condition proposed for deletion is not related to any factor or event that is an initiator of any accident and thus, deletion will not affect the probability of any accident previously evaluated.

The dose analyses and the resultant required changes to the control room ventilation system were based in part on making changes to the licensing basis for the control room ventilation system and analyses. These changes were not solely to demonstrate compliance with GDC 19. The existing analysis of record for control room dose demonstrates that regulatory limits are met with the present design and assumptions. Therefore, deletion of the license condition does not result in a significant increase in the consequences of an accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The license condition imposed administrative requirements for analyses of radiological consequences of presently analyzed events. Deletion of the license condition will not result in a change in the operation of any system as presently assumed. Therefore, no new accident initiators can result. Thus, the deletion of the license condition cannot result in a new or different kind of accident from any accident previously evaluated.P≤3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not create a significant reduction in a margin of safety.

Deletion of the existing license condition will not result in a change in the way the plant is presently designed and operated. Operation will continue in accordance with

presently approved analyses. Therefore, existing approved margins of safety are maintained. Operation in accordance with the proposed amendment does not create a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 6, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

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Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated May 19, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 1st day of June 2000.

For the Nuclear Regulatory Commission.

Beth A. Wetzel,

Senior Project Manager, Project Directorate III–1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–14189 Filed 6–5–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on 10 CFR Part 70, Integrated Safety Analysis Guidance Document, Standard Review Plan Chapter 11 and Streamlining Licensing Reviews

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland. The meeting will provide an opportunity for discussion of: (1) The Draft Integrated Safety Analysis guidance document prepared by the industry; and (2) Chapter 11, Management Measures, in the Standard Review Plan (SRP) for fuel cycle facilities (NUREG–1520) that was made available during April 2000.

The revised SRP can be reviewed on the internet at the following website: http://techconf.llnl.gov/cgi-bin/downloader/Part_70_lib/073–0098.htm. At the end of the SRP discussion, a program developed by the Fuel Cycle staff to streamline licensing reviews and actions will be discussed.

Purpose

This meeting will provide an opportunity to discuss: (1) The Draft Integrated Safety Analysis guidance document prepared by the industry; and (2) Chapter 11, Management Measures, in the Standard Review Plan (SRP) for fuel cycle facilities (NUREG–1520) that was made available during April 2000. At the end of the SRP discussion, a program developed by the Fuel Cycle staff to streamline licensing reviews and actions will be presented.

DATES: The meeting is scheduled for Thursday, June 8, 2000, from 9:30–4 and Friday, June 9, 2000, from 9–4. The discussion of the Draft Integrated Safety Analysis guidance document is scheduled for June 8 from 9:30–11:30 followed by the SRP Chapter 11 discussion from 1–4, and continuing on the morning of June 9, 2000, if needed. This meeting is open to the public.

ADDRESSES: The meeting will be held in the Atomic Safety Licensing Board Hearing Room at Two White Flint North, Room T–3–B–45, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red line.

FOR FURTHER INFORMATION CONTACT: Andrew Persinko, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7190, e-mail *axp1@nrc.gov*.

Dated at Rockville, Maryland this 1st day of June 2000.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 00–14190 Filed 6–5–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel Meeting: July 10, 2000—Idaho Falls, Idaho: Discussions of Technical Issues Related to Managing and Transporting Spent Nuclear Fuel and High-Level Radioactive Waste; Presentations on Human Factors Involved in Transporting the Waste and Manufacturing Waste Casks; Update on Transportation Modal Study

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Monday, July 10, 2000, the Nuclear Waste Technical Review Board's (Board) Panel on the Waste Management System will meet in Idaho Falls, Idaho, to discuss technical issues related to managing spent nuclear fuel and high-level radioactive waste, including human factors involved in transporting such waste. The Board is charged by Congress with reviewing the technical and scientific aspects of the Department of Energy's (DOE) civilian radioactive waste management program, including disposing of, packaging, and transporting the waste.

The panel meeting will be held at the Shilo Inn, 780 Lindsay Blvd., Idaho Falls, Idaho 83402–1822. The telephone number is (208) 523–0088; the fax number is (208) 522–7420. The meeting will start at 8 a.m. and will be open to the public.

An overview on transportation protocols by the DOE's Office of Civilian Radioactive Waste Management will begin the meeting. This discussion will be followed by updates on a transportation modal study by a representative of the Nuclear Regulatory Commission and on naval spent fuel disposal and transportation by a representative of the Naval Nuclear Propulsion Program. A representative of the Association of American Railroads (AAR) and a manufacturer of nuclear waste casks will then discuss human factors related to railroad operations and cask manufacturing. Next will be a presentation on performance specifications for transportation of spent fuel by another representative of the AAR. In midafternoon, the Panel will hear from state, local, and Tribal representatives on their views of technical issues related to transporting and managing spent nuclear fuel and high-level radioactive waste.

Time will be set aside at the end of the day for public comments. Those wanting to speak are encouraged to sign the "Public Comment Register" at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. As time permits, the questions will be answered by one or more Board members during the meeting.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff, beginning on August 7, 2000.

A block of rooms has been reserved at the Shilo Inn. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. For more information, contact the NWTRB, Karyn Severson, External Affairs, 2300 Clarendon Boulevard, Suite 1300, Arlington, Virginia 22201–3367; (tel) 703–235–4473, (fax) 703–235–4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

Dated: May 31, 2000.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 00–14103 Filed 6–5–00; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–194]

WTO Consultations Regarding Measures Treating Export Restraints as Subsidies

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on May 19, 2000, Canada requested consultations with the United States under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), regarding U.S. measures that treat a restraint on exports of a product as a subsidy to other products made using or incorporating the restricted product if the domestic price of the restricted product is affected by the restraint. The measures identified by Canada in its consultation request are those provisions of the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA) (H.R. 5110, H.R. Doc. 316, Vol. I, 103d Cong., 2d Sess., 656, in particular at 925–926 (1994)) and the Explanation of the Final Rules (the Explanation), U.S. Department of Commerce, Countervailing Duties, Final Rule (63 **Federal Register** 65,348, 65,349–51 (November 25, 1998)) interpreting section 771(5) of the Tariff Act of 1930 (19 U.S.C. 1677(5)), as amended by the URAA. Canada alleges that the SAA and the Explanation are inconsistent with Article 1.1, 10 (as well as Articles 11, 17 and 19, as they relate to the requirements of Article 10), and 32.1 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Canada also alleges that by maintaining these measures, the United States violates Article 32.5 of the SCM Agreement and Article XVI:4 of the WTO Agreement. Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding ("DSU"), consultations are to take place within a period of 30 days from the date of receipt of the request, or within a period otherwise mutually agreed between the United States and Canada. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before June 12 to be assured of timely consideration by USTR.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, the Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Attn: Export Restraint Dispute, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C., (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding . If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Canada

In its consultation request, Canada alleges that the SAA and the Explanation are measures that treat an export restraint as a subsidy. Because Canada appears to allege that an export restraint cannot be considered to be a subsidy within the meaning of Article 1.1 of the SCM Agreement, Canada claims that the SAA and the Explanation are inconsistent with Articles 1.1, 10, 11, 17, 19 and 32.1 of the SCM Agreement. Canada also appears to allege that due to the existence of the SAA and the Explanation, the United States has failed to ensure that its laws, regulations and administrative procedures are in conformity with its WTO obligations as required by Article 32.5 of the SCM Agreement and Article XVI:4 of the WTO Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street,

N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–194, Export Restraint Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–14209 Filed 6–5–00; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–184]

WTO Dispute Settlement Proceeding Regarding United States—Antidumping Measures on Certain Hot-Rolled Steel Products From Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO"), requested by the Government of Japan. The Government of Japan has asked the panel to review the determinations of the U.S. Department of Commerce ("DOC") and the U.S. International Trade Commission ("ITC") that led to the issuance of an antidumping duty order covering imports of certain hot-rolled steel products from Japan (64 FR 34778, June 29, 1999). Specifically, DOC published a preliminary determination of critical circumstances on November 30, 1998 (63 FR 65750), and preliminary and final determinations of sales at less than fair value on February 19, 1999 (64 FR 8291) and May 6, 1999 (64 FR 24329), respectively. The ITC published preliminary and final determinations of injury on November 25, 1998 (63 FR 65221) and June 23, 1999 (64 FR 33514), respectively.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by July 3, 2000, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Hot-Rolled Steel Products from Japan, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: L. Daniel Mullaney, Assistant General Counsel, at (202) 395–3581.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that the Government of Japan submitted a request for the establishment of a WTO dispute settlement panel to examine the imposition of antidumping duties on certain hot-rolled steel products from Japan. At its meeting on March 20, 2000, the WTO Dispute Settlement Body ("DSB") established the panel, and the panel was composed on May 19, 2000. Pursuant to Article 8.7 of the WTO Dispute Settlement Understanding, the WTO Director-General appointed the following persons to serve as panelists in this dispute: Mr. Harsha V. Singh, Chairman; Mr. Yanyong Phuangrach, Member; and Ms. Lidia di Vico, Member. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, is expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

Major Issues Raised and Legal Basis of the Complaint

In its request for the establishment of a panel, the Government of Japan challenges the issuance of an antidumping duty order concerning certain hot-rolled carbon steel products from Japan (64 FR 34778 (June 29, 1999)), and the underlying determinations of DOC and the ITC. The Government of Japan alleges that these determinations, as well as the applicable law, regulations, policies and procedures, were not in accordance with several provisions of the Marrakesh Agreement, the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the Agreement on Implementation of Article VI of GATT 1994 ("Antidumping Agreement").

Specific allegations with respect to DOC's dumping margin calculations and critical circumstances findings include:

1. DOC's exclusion of certain home market sales to affiliated companies from the calculation of normal value, based on their price levels, was inconsistent with Articles 2.2.1 and 2.4 of the Antidumping Agreement;
2. DOC's application of facts available to Kawasaki Steel Corporation was inconsistent with the standards of Articles 2.3 and 6.8 and Annex II of the Antidumping Agreement; and the application of facts available to Nippon Steel Corporation and NKK Corporation was inconsistent with the standards of Article 2.4 and 6, in particular 6.1, 6.2, 6.6, 6.7, 6.8, 6.13, and Annexes I and II of the Antidumping Agreement;
3. DOC's calculation of the "all others" rate of dumping applicable to companies not investigated, which was based on the average of the rates of the investigated companies, was inconsistent with Article 9.4 of the Antidumping Agreement; and the law on which this calculation was based—section 735(c)(5)(A) of the Tariff Act of 1930, as amended—is itself inconsistent with this article;
4. DOC's calculation of dumping margins, due to the above alleged inconsistencies, is excessive and thus inconsistent with Article 9.3 of the Antidumping Agreement;
5. DOC's findings of critical circumstances, potentially subjecting to antidumping duties imports made up to 90 days prior to the preliminary determination of dumping, were inconsistent with Articles 10.1, 10.2, 10.4, 10.6, and 10.7 of the Antidumping Agreement; and the law under which DOC made these findings—sections 733(e) and 735(a)(3) of the Tariff Act of 1930, as amended, is itself inconsistent with these articles.

Specific allegations with respect to the injury determination by ITC include:

6. ITC's examination of the causal relationship between dumped imports and injury to the domestic industry, which the Government of Japan claims was not objective and not based on an examination of all of the evidence, was inconsistent with Articles 3.1, 3.4, and 3.5 of the Antidumping Agreement;
7. ITC's application of the "captive production" provision of U.S. law, which, under certain circumstances, causes the ITC to focus primarily on the merchant market for the subject merchandise, was inconsistent with Articles 3.1, 3.2, 3.4, 3.5, 3.6, and 4.1 of the Antidumping Agreement, because the ITC, due to its application of this provision, did not properly evaluate all relevant economic factors and indices bearing on the state of the U.S. industry, assess injury and causation in relation to the domestic production of the like product, or undertake an objective examination of all relevant evidence; further, the Government of Japan alleges that the captive production provision itself, section 771(7)(c)(iv) of the Tariff Act of 1930, as amended, is inconsistent with these articles of the Antidumping Agreement.

Other allegations include:

8. The United States' allegedly biased approach to the investigation, including with respect to the critical circumstances determination, the application of "facts available," and the determination of injury, was inconsistent with Article X:3 of GATT 1994;
9. The above laws, regulations, and rulings are not in conformity with obligations under the WTO agreements, and so are inconsistent with Article XVI:4 of the Marrakesh Agreement and Article 18.4 of the Antidumping Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice. Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding, the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–184, "Hot-Rolled Steel Products—Japan") may be made by calling Brenda Webb, (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–14208 Filed 6–5–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

[Docket No. FRA-2000–6924]

Applicant: CSX Transportation, Incorporated, Mr. E.G. Peterson, Assistant Chief Engineer, Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–350), Jacksonville, Florida 32256.

CSX Transportation Incorporated seeks approval of the proposed discontinuance and removal of the manual block system (DCS Operating Rules), on the single secondary track, between Swamp, milepost 0.0 and Wharf, milepost 12.0, near Fall River, Massachusetts, Fall River Subdivision, Albany Service Lane, and redesignation of the secondary track to an industrial track.

The reason given for the proposed changes is that density of traffic no longer warrants this type of train operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14055 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Emergency Medical Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of decision.

SUMMARY: This notice is issued pursuant to the Aviation Medical Assistance Act of 1998, which requires the Federal Aviation Administration to determine whether or not to require automatic external defibrillators at airports. To carry out this mandate, the agency reviewed data on the medical capability at the airports most used by passengers to respond to cardiac events. Based

upon this review, the Administrator of the Federal Aviation Administration has determined that it is unnecessary to propose a regulation to require automatic external defibrillators at airports.

FOR FURTHER INFORMATION CONTACT: Robert E. David, AAS–300, Airport Safety and Operations Division, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–3085.

SUPPLEMENTARY INFORMATION: On April 24, 1998, the Aviation Medical Assistance Act of 1998 (the Act), Pub. L. 105–170, 49 U.S.C. 44701 was enacted. The Act requires the Administrator of the Federal Aviation Administration to make decisions on whether or not automatic external defibrillators (AED's) should be required:

- On passenger aircraft operated by the air carriers and/or
- At airports.

The act specifies that the decisions shall be made in one of the following three forms:

- A notice of proposed rulemaking requiring AED's, or
- A recommendation to Congress requiring AED's, or
- A notice in the **Federal Register** that AED's should not be required.

Background

The following information has been reported recently in various medical journals and the press:

- Cardiac arrest (the stopping of effective pumping of blood by the heart) reportedly strikes over 350,000 Americans every year, typically those 41 to 65 years old.
- The most common form of treatable cardiac arrest (a substantial portion of all cardiac events) is caused by an abnormal heart rhythm called "ventricular fibrillation" (where the heart is still beating, although ineffectively pumping blood.) Ventricular fibrillation is treatable with defibrillation, electric shocks that stimulate the heart to resume beating normally.
- Survival of individuals undergoing ventricular fibrillation can be as high as 90 percent in some circumstances, if defibrillation is provided during the first minute following collapse and subsequent cardiac care is rapidly provided.
- For every minute that defibrillation is delayed, survival is reported to fall about 10 percent, dropping below 50 percent after 6 minutes.
- By providing early electrical correction of ineffective heart pumping, therapeutic defibrillation is more effective than CPR in sustaining life and function in certain situations.

A defibrillator, when place on the chest of a person suffering from ventricular fibrillation, can shock that person's heart back into proper rhythm. Originally defibrillators were bulky and complex units that were designed to be used by specially trained medical personnel, such as doctors or paramedics. These manual-style defibrillators were used as part of an Advanced Life Support (ALS) system.

Defibrillator technology has progressed with the introduction AED's. AED's are lightweight, compact, virtually maintenance-free, simple to use, and can deliver repeated, high-amperage shocks that stun the heart cells long enough to give the heart an opportunity to restore its normal rhythm if possible. Because these battery-powered systems voice-prompt step-by-step guidance, non-medical personnel may use them fairly confidently to assist in certain, especially treatable cardiac emergencies. In fact, both the American Red Cross and the American Heart Association include instruction on these devices in their basic cardiopulmonary resuscitation (CPR) classes. AED's currently cost approximately $3,500 per unit, AEDs have been placed in many public and private buildings and AEDs have been issued to non-medical personnel such as police and firefighters.

The type of AED most commonly used can monitor a person's cardiac function and administer a shock if indicated. The machine determines whether, and when, an individual needs an electric shock. If defibrillation is needed and is successfully performed, further medical interventions may be necessary to stabilize a stricken passenger. Both AED's and manual-style defibrillators produce the same medical results when used on a person experiencing ventricular fibrillation.

Airports Considered

Under Title 14 of the Code of Federal Regulations (CFR) part 139, operators of airports having scheduled air carrier service with aircraft having more than 30 seats are required to have an airport operating certificate issued by the FAA. While not all airports are certificated, the airports most frequently used by passengers are certificated. Part 139 covers all aspects of airport safety for the prevention and mitigation of aircraft accidents; it does not cover passenger medical matters in the airport passenger terminal building or in the aircraft on the ground at the airport. (In general passenger medical care, as opposed to safety, especially on the ground, is within state, not federal, jurisdiction). The drafters of the Act recognized the differences in the environment presented by an aircraft and an airport for an individual experiencing a medical event. In an aircraft, individuals experiencing medical events are isolated by flight from the usual emergency care and must rely on the medical resources in the aircraft. In an airport, individuals experiencing medical events have available to them the usual emergency medical care plus potentially can rely on the full spectrum of modern medicine.

The drafters of the Act provided that the decision regarding requiring AEDs for airports and air carriers could be in different forms. As a result the FAA decided to undertake separate, but parallel and coordinated, efforts in gathering and analyzing information for airports and air carrier aircraft. The decision published here applies only to airports. A decision regarding AEDs on air carrier aircraft will be issued separately.

The report from the Committee on Transportation and Infrastructure that accompanied the Act stated that the FAA should consider the size of the airports in determining if AEDs should be required. The Committee also expressed their expectation that the FAA would take a judicious approach in drawing the line with respect to airports. In view of the Committee report language, FAA decided to focus its effort on airports with an average of 275 or more daily enplanements (100,000 annual enplanements.) In simple terms, an enplanement is counted for each passenger who begins a trip or changes planes at an airport. There are 215 airports that have scheduled air carrier service with an average of 275 or more daily enplanements.

There is quite a variance in the number of enplaned passengers between individual airports. For example, 83 airports have 1 million or more annual enplanements and account for 92 percent of all enplanements. At the top end of this group there are Atlanta's Hartsfield and Chicago's O'Hare that each have more than 30 million annual enplanements. At the other end of the spectrum are airports like Syracuse-Hancock International and Albany International, that each just exceed 1 million annual enplanements.

Similarly, there are 72 airports certificated under part 139 that have more than 250,00 but less than 1 million annual enplanements. These airports account for 5.4 percent of the total annual enplanements.

There are another 60 airports certificated under Part 139 that have more than 100,000 but less than 250,000 annual enplanements. These airports account for 1.5 percent of the total annual enplanements.

The preceding 215 airports (83 + 72 + 60) account for 98.9 percent of total annual enplanements. The remaining airports certificated under Part 139 have less than 100,000 annual enplanements and are part of the airports that comprise the remaining 1.1 percent of annual enplanements.

Airports having this type of scheduled air carrier service are usually owned and operated by units of state or local government. Some of these airports have medical doctors located on the premises; others have units staffed with paramedics located on the airport; while others have the primary emergency medical response in the community respond to medical situations at the airport.

Under Part 139 airports serving scheduled air carrier aircraft with more than 30 seats are required to provide for basic emergency medical care during the operations of these aircraft. This medical care is part of the Aircraft Rescue and Firefighting response to airfield incidents; however, emergency personnel used to meet this requirement frequently respond to medical emergencies throughout the entire airport although this is not required by part 139.

Data Gathering

In order to determine whether or not AED's should be required at airports, the FAA assessed the current capability of airports having scheduled service with air carrier aircraft having more than 30 seats to respond to medical events that an AED could possibly be used. The information sought by the FAA on an airport's capability consisted of answers to the following four questions:

1. Are AED's located on the airport?
2. Are manual-style defibrillators located on the airport?
3. If the answers to both questions 1 and 2 are "No," is there an off-airport response available to cardiac events that occur on the airport?
4. If the answer to question 3 is yes, can the off-airport medical response reach the airport in 6 minutes or less?

(Question 4 is based upon the generally accepted medical guideline that it is necessary to start defibrillation within 6 minutes of the cardiac event; see Background above.)

Analysis of Data

Data were reviewed for 130 airports having 100,000 or more annual enplanements. Information was also collected on defibrillators in general.

A review of the data for the 83 the airports with more than 1 million annual enplanements revealed that all but four had AED's. Of these four, three had manual-style defibrillators. The remaining airport had an off-airport response within 6 minutes. These 83 airports that enplane 92 percent of the total annual enplanements appear to have the medical capability to address cardiac events in which AED's may be of assistance.

Data was collected for 27 of the 72 airports that have 250,000 or more but less than 1 million enplanements. This represents a 37 percent sample. Of the 27 airports, 17 (63 percent) had AED's. None of the remaining 10 airports had a manual-style defibrillator, but six of them had an off-airport response of less than 6 minutes. The remaining four also had an off-airport response but it exceeded 6 minutes. Including the six airports with an off-airport response of less than 6 minutes with the 17 airports that have AED's reveals that 85 percent of the airports in the sample of 27 airports appear to have the medical capability to address cardiac events in which AED's may be of assistance.

Data was collected for 20 of the 60 airports that have 100,000 or more but less than 250,000 enplanements. This represents a 33 percent sample. Of the 20 airports, nine (45 percent) had AED's. None of the remaining 11 airports had a manual-style defibrillator, but five of them had an off-airport response of less than 6 minutes. The remaining six also had an off-airport response but it exceeded 6 minutes. Including the five airports with an off-airport response of less than 6 minutes with the nine airports that have AED's reveals that 70 percent of the airports in the sample of 20 airports appear to have the medical capability to address medical events including those in which AEDs may be of assistance.

For the latter two data groups it would be statistically unreliable to extrapolate the results from the samples of 27 and 20 airports to remaining airports in the group, since neither sample would qualify as a random sample. However, both samples serve to confirm reports that AED's are becoming commonplace. For example, some airports that initially responded that they did not have AED's were contacted to obtain clarification about the availability of off-airport emergency response. In the ensuring months between the first response and the subsequent contact, three of these airports had acquired AED's.

In summary, data gathered on 130 airports indicates that 108 (83 percent) had defibrillators. Including the 11 airports that have an off-airport response rate of less than 6 minutes shows that 119 airports, or 91.5 percent, appear to have the medical capability to address medical events including those in which AEDs may be of assistance.

Decision

The majority of units of state and local government that operate certificate airports, having scheduled air carrier service with 100,000 or more annual enplanements, have already taken the necessary steps to provide for the medical capability to address cardiac events at their individual facilities. In addition, all available information indicates that local acquisition and availability of AED's in public places is increasing.

Finally, it is unclear as to whether the FAA has the authority to require AEDs in an airport. The regulation and the provision of medical care with a state are traditionally state functions that the states have vigorously monitored and controlled. Indeed, the airport serving the vast majority of passengers today have medical care available (including AEDs) without Federal regulation.

In view of the foregoing, the FAA has determined that no regulation will be proposed to require AEDs at airports.

Woodie Woodward,

Acting Associate Administrator for Airports.

[FR Doc. 00–14086 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on March 31, 2000. This publication ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400),

Federal Aviation Administration, 400 7th Street, SW., Suite PL 200–A, Washington, DC 20590; telephone (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number. The indexes are published on a quarterly basis (*i.e.*, January, April, July, and October).

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of other civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The previous quarterly publications of these indexes have appeared in the **Federal Register** as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90	55 FR 45984; 10/31/90.
10/1/90–12/31/90	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.
4/1/92–6/30/92	57 FR 32825; 7/23/92.
7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
4/1/93–6/30/93	58 FR 42120; 8/6/93.
7/1/93–9/30/93	58 FR 58218; 10/29/93.
10/1/93–12/31/93	59 FR 5466; 2/4/94.
1/1/94–3/31/94	59 FR 22198; 4/29/94.
4/1/94–6/30/94	59 FR 39618; 8/3/94.
7/1/94–12/31/94	60 FR 4454; 1/23/95.
1/1/95–3/31/95	60 FR 19318; 4/17/95.
4/1/95–6/30/95	60 FR 36854; 7/18/95.
7/1/95–9/30/95	60 FR 53228; 10/12/95.
10/1/95–12/31/95	61 FR 1972; 1/24/96.
1/1/96–3/31/96	61 FR 16955; 4/18/96.
4/1/96–6/30/96	61 FR 37526; 7/18/96.
7/1/96–9/30/96	61 FR 54833; 10/22/96.
10/1/96–12/31/96	62 FR 2434; 1/16/97.
1/1/97–3/31/97	62 FR 24533; 5/2/97.
4/1/97–6/30/97	62 FR 38339; 7/17/97.
7/1/97–9/30/97	62 FR 53856; 10/16/97.
10/1/97–12/31/97	63 FR 3373; 1/22/98.
1/1/98–3/31/98	63 FR 19559; 4/20/98.
4/1/98–6/30/98	63 FR 37914; 7/14/98.
7/1/98–9/30/98	63 FR 57729; 10/28/98.
10/1/98–12/31/98	64 FR 1855; 1/12/99.
1/1/99–3/31/99	64 FR 24690; 5/7/99.
4/1/99–6/30/99	64 FR 43236; 8/9/99.
7/1/99–9/30/99	64 FR 58879; 11/1/99.
10/1/99–12/31/99	65 FR 1654; 1/11/00.

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. Also, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callaghan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld).

A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of this notice. Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet also appears at the end of this notice.

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91.29 (91.7 as of 8/18/90)	91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited; 94–4 Northwest Aircraft Rental.
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121.577	98–11 TWA.
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145.53	90–11 Thunderbird Accessories.
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Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

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3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN-FAA).
- LEXIS [Transportation (TRANS) Library, FAA file.].
- Compuserve.
- FedWorld.

Docket

The FAA Hearing Docket is located at FAA Headquarters, 800 Independence Avenue, SW., Room 926A, Washington, DC 20591 (tel. no. 202–267–3641.) The clerk of the FAA Hearing Docket is Ms. Stephanie McClain. All documents that are required to be filed in civil penalty proceedings must be filed with the FAA Hearing Docket Clerk at the FAA Hearing Docket. (See 14 CFR 13.210.) Materials contained in the dockets of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Hearing Docket.

In addition, materials filed in the FAA Hearing Docket in non-security cases in which the complaints were filed on or after December 1, 1997, are available for inspection at the Department of Transportation Docket, located at 400 7th Street, SW., Room PL–401, Washington, DC 20590 (tel. no. 202–366–9329). While the originals will be retained in the FAA Hearing Docket, the DOT Docket will scan copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address: http://dms.dot.gov.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 926A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Regional Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; (405) 954–3296.

Office of the Regional Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Regional Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Regional Counsel for the Eastern Region (AEA–7), 1 Aviation Plaza, 159–30 Rockaway Blvd., Springfield Gardens, NY 11434; (718) 553–3285.

Office of the Regional Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (847) 294–7085.

Office of the Regional Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803; (781) 238–7040.

Office of the Regional Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055; (425) 227–2007.

Office of the Regional Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200..

Office of the Regional Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137; (817) 222–5064.

Office of the Regional Counsel for the Technical Center (ACT–7), William J. Hughes Technical Center, Atlanta City International Airport, Atlantic City, NJ 08405; (609) 485–7088.

Office of the Regional Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (310) 725–7100.

Issued in Washington, DC on May 24th, 2000.

James S. Dillman,

Assistant Chief Counsel for Litigaiton.

[FR Doc. 00–14048 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–20]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 27, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 1, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 30010.

Petitioner: Avcon Industries, Inc.

Section of the FAR Affected: 14 CFR 25.857(e)(4).

Description of Relief Sought: To certify Learjet Model 20 and 30 series airplanes, to be modified for the carriage of cargo as Class E compartments (an STC project), without meeting the requirements to exclude hazardous quantities of smoke, flames or noxious gases from the flightcrew compartment.

Docket No.: 30022.

Petitioner: Midway Airlines.

Section of the FAR Affected: 14 CFR 25.858 and 121.314(c).

Description of Relief Sought: To allow operation, until June 30, 2001, of two Fokker Model F28–0100 airplanes beyond the cargo compartment modification deadline of March 19, 2001.

Docket No.: 30023.

Petitioner: Lufthansa Technik.

Section of the FAR Affected: 14 CFR 25.562, 25.785(b), 25.785(h)(2), 25.785(j), 25.183(e), and 25.853(d).

Description of Relief Sought: To permit an executive interior to be installed for "private, not-for-hire" use on a Boeing Model 777–200 airplane.

Docket No.: 30052.

Petitioner: Airbus Industrie.

Section of the FAR Affected: 14 CFR 21.183(f), 25.2(b), 25.807(f)(4), and 121.310(m).

Description of Relief Sought: To permit a distance between exit door pairs 2 and 3 in excess of 60 feet for the A340–600 airplane.

[FR Doc. 00–14157 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–21]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 27, 2000.

ADDRESSES: Send comments on any application in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 1, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29974.

Petitioner: Mr. Joseph E. Fisher.

Section of the FAR Affected: 14 CFR 121.574 and 135.91.

Description of Relief Sought: To permit the operator of an aircraft on which Mr. Fisher is traveling to allow Mr. Fisher to furnish, carry, and operate onboard its aircraft certain oxygen storage, generating, and dispensing equipment for Mr. Fisher's medical use while being carried as a passenger.

Docket No.: 30023.

Petitioner: Lufthansa Technik.

Section of the FAR Affected: 14 CFR 25.562, 25.785(b), 25.785(h)(2), 25.785(j), 25.813(e), and 25.853(d).

Description of Relief Sought: To allow an executive interior to be installed for "private, not-for-hire" use on a Boeing Model 777–200 airplane.

Dispositions of Petitions

Docket No.: 29459.

Petitioner: Laurel Oaks Career Development Campus.

Section of the FAR Affected: 14 CFR 65.17(a), 65.19(b), and 65.75(a) and (b).

Description of Relief Sought/ Disposition: To permit Laurel Oaks CDC to (1) administer the FAA oral and practical mechanic tests to students at times and places identified in Laurel Oaks CDC's FAA-approved AMT Policies, Procedures, and Curriculum handbook; (2) Conduct oral and practical mechanic tests as an integral part of the education process rather than upon students' successful completion of the mechanic written tests; (3) Approve students for retesting within 30 days after failure without requiring a signed statement certifying that additional instruction has been given in the failed area; and (4) Administer the FAA AMG written knowledge test to students immediately following successful completion of the general curriculum, before meeting the experience requirements of § 65.77. *Partial Grant, 03/10/2000, Exemption No. 7154.*

Docket No.: 29505.

Petitioner: Rough & Ready Guide Service, Inc. dba Nordic Flying Service.

Section of the FAR Affected: 14 CFR 43.3(a) and (g), and paragraph (c) of appendix A to part 43.

Description of Relief Sought/ Disposition: To permit pilots employed by NFS to perform the preventative maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operated under 14 CFR part 135 without those pilots holding a mechanic certificate. *Denial, 02/25/2000, Exemption No. 7129.*

Docket No.: 29943.

Petitioner: Duncan Aviation, Inc.

Section of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Duncan Aviation to place copies of its Inspection Procedures Manual (IPM) in strategic locations in its repair stations rather than giving a copy of its IPM to each of its supervisory and inspection personnel. *Grant, 03/21/2000, Exemption No. 7159.*

Docket No.: 27122.

Petitioner: Air Tractor, Inc.

Section of the FAR Affected: 14 CFR 61.31(a)(1).

Description of Relief Sought/ Disposition: To permit Air Tractor and pilots of Air Tractor AT–802 and AT–802A airplanes to operate those airplanes without holding a type rating, although the maximum gross weight of the airplanes exceeds 12,500 pounds. *Grant, 03/21/2000, Exemption No. 5651F.*

Docket No.: 23290.

Petitioner: Air Transport Association of America.

Section of the FAR Affected: 14 CFR 121.311(f) and 121.391(d).

Description of Relief Sought/ Disposition: To permit ATA member airlines and other similarly situated certificate holders operating under part 121 to continue to locate required flight attendants at the mid-cabin flight attendant station during takeoff and landing on Boeing 767 airplanes. *Grant, 03/29/2000, Exemption No. 4298H.*

Docket No.: 29732.

Petitioner: IHC Health Services, Inc. dba IHC Life Flight.

Section of the FAR Affected: 14 CFR 133.45(e)(1).

Description of Relief Sought/ Disposition: To permit IHC to conduct Class D rotorcraft-load combination

rescue operations with an A109K–2 helicopter certificated in the normal category under 4 CFR part 27, subject to certain conditions and limitations. *Grant, 02/07/2000, Exemption No. 7118.*

Docket No.: 29949.

Petitioner: Air Transport International, L.L.C.

Section of the FAR Affected: 14 CFR 121.310(d)(4).

Description of Relief Sought/ Disposition: To permit ATI to operate its DC–8 airplanes in passenger-carrying operations without a cockpit control device for each emergency light, subject to certain conditions and limitations. *Grant, 03/29/2000, Exemption No. 7156.*

Docket No.: 28945.

Petitioner: Air Transport International, L.L.C.

Section of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1), 121.441(b)(1), and appendix F to part 121.

Description of Relief Sought/ Disposition: To permit ATI to continue to combine recurrent flight and ground training and proficiency checks for ATI's flight crewmembers into a single annual training and proficiency evaluation program. *Grant, 02/11/2000, Exemption No. 6728A.*

Docket No.: 29916.

Petitioner: Rhodes Aviation, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit RAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 03/17/2000, Exemption No. 7151.*

Docket No.: 29901.

Petitioner: Segrave Aviation, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Segrave Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 03/17/2000, Exemption No. 7150.*

Docket No.: 29847.

Petitioner: Midwest Aviation Services, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit MASI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 03/17/2000, Exemption No. 7149.*

Docket No.: 29917.

Petitioner: Helicopters, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit HCI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 03/14/2000, Exemption No. 7148.*

Docket No.: 28159.

Petitioner: Grand Canyon Airlines, Inc.

Section of the FAR Affected: 14 CFR 121.345(c)(2) and 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit GCA to continue to operate certain aircraft under part 121 or part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 03/30/2000, Exemption No. 6101B.*

Docket No.: 25336.

Petitioner: United Airlines, Inc.

Section of the FAR Affected: 14 CFR 121.697(a)(3), (b), (c), and (d), and 121.709(b)(3).

Description of Relief Sought/ Disposition: To permit United to continue to use computerized signatures to satisfy the airworthiness release signature requirements of part 121 in lieu of physical signatures. *Grant, 03/31/2000, Exemption No. 5121F.*

Docket No.: 19634.

Petitioner: Boeing Commercial Airplanes Group.

Section of the FAR Affected: 14 CFR 121.310(d)(4).

Description of Relief Sought/ Disposition: To permit operators of McDonnell Douglas DC–8 aircraft to continue to operate those aircraft in passenger-carrying operations without a cockpit control device for each emergency light. *Denial, 04/03/2000, Exemption No. 3055K.*

[FR Doc. 00–14158 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Kalamazoo/ Battle Creek International Airport, Kalamazoo, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Kalamazoo/Battle Creek International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 6, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kenneth Potts, Airport Director of the Kalamazoo/Battle Creek International Airport at the following address: Kalamazoo/Battle Creek International Airport, 5235 Portage Road, Kalamazoo, Michigan 49002.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kalamazoo/ Battle Creek International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gary J. Migut, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7278). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Kalamazoo/Battle Creek International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 11, 2000, the FAA determined that the application to use the revenue from a PFC submitted by Kalamazoo/Battle Creek International Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 29, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–02–U–OO–AZO.

Level of the PFC: $3.00.

Actual charge effective date: April 1, 1997.

Estimated charge expiration date: December 1, 2001.

Total approved net PFC revenue: $3,276,183.00.

Brief description of proposed projects: Rehabilitate Taxiway B (South), Glycol

Capture System, Rehabilitate Taxiway D, Construct Perimeter Road, Rehabilitate Taxiway A, Rehabilitate Taxiway E.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: non-scheduled Part 135 Air Taxis/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Kalamazoo/Battle Creek International Airport.

Issued in Des Plaines, Illinois, on May 23, 2000.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 00–14159 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with a provision of the Federal hours of service laws (108 Stat. 888, Pub. L. 103–272, 49 U.S.C. 21106). The Federal hours of service laws currently make it unlawful for a railroad to construct or reconstruct sleeping quarters for certain employees if the sleeping quarters are in an area or in the immediate vicinity of an area as determined under regulations prescribed by the Secretary of Transportation in which railroad switching or humping operations are performed. See 49 U.S.C. 21101 and 21106. Title 49 CFR part 228, subpart C, defines FRA's distance requirements for construction, reconstruction, and/or acquisition of sleeping quarters.

Burlington Northern Santa Fe Railway Company (BNSF)

[Waiver Petition Docket No. FRA–1999–5107]

BNSF petitions for approval to utilize a facility to be constructed, owned, and operated by a third party which will be located within one-half mile of railroad switching operations at Thayer, Missouri. See 49 CFR 228.103. BNSF states that the planned structure will be a commercial lodging facility that is open to the general public. BNSF proposes to enter into a lodging contract with the new facility owner to guarantee room availability for its train and engine crews operating in and out of Thayer. Crews are presently housed at a motel in White Plains, Missouri, approximately 27 miles from Thayer. The petitioner indicates that granting the exemption will not adversely affect safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 1999–5107) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, D.C. on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14049 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49, Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Durbin & Greenbrier Valley Railroad, Inc.

[Waiver Petition Docket Number FRA–2000–7001]

Durbin & Greenbrier Valley Railroad, Inc. (DGVR) seeks a permanent waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR 223.9, which requires certified glazing, for one locomotive (self propelled railway motor cars) utilized in excursion service on DGVR in Durbin, West Virginia. DGVR indicates that they would provide front and rear facing windows with FRA Type I glazing, but would like to equip the side facing windows with safety glazing. They state that the motor cars are not air conditioned, and the passenger compartment side windows can be opened.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2000–7001) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14058 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49, Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with provisions of the Hours of Service Law (108 Stat. 888, Pub. L. 103–272, 49 U.S.C. 21102(b)). The Hours of Service Law currently makes it unlawful for a railroad to require specified employees to remain on duty in excess of 12 hours. However, the Hours of Service Law contains a provision permitting a railroad, which employs not more than 15 employees subject to the statute, to seek an exemption from the 12 hour limitation.

Kankakee, Beaverville and Southern Railroad (KBS)

[Waiver Petition Docket No. FRA–2000–7254]

KBS seeks a continuance of a previous exemption which permitted KBS train crew employees to remain on duty not more than 16 hours in any 24-hour period during unusual circumstances. KBS stated that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if continued, would help its operation if other unusual operating conditions are encountered. KBS provides service on 144 miles of trackage between Iroquois and Kankakee, Illinois; Iroquois and Danville, Illinois; and Iroquois and Lafayette, Indiana.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees that are subject to the statute and has demonstrated good cause for granting this exemption.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2000–7254) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14062 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49, Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Ouachita Railroad (Waiver Petition Docket Number FRA–2000–7253)

The Ouachita Railroad seeks to add two locomotives to a permanent waiver of compliance, docket RSGM–92–13, with the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The Ouachita Railroad seeks this waiver for locomotives OUCH 1151 and OUCH 1159. The original waiver (RSGM–92–13) was approved October 29, 1992, and is in effect for three locomotives.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2000–7253) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC, on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14061 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Peninsula Terminal Company; (Waiver Petition Docket Number FRA–2000–7269)

The Peninsula Terminal Company seeks a permanent waiver of compliance from the requirements of the Safety Glazing Standards, 49 CFR Part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service, for one locomotive. The railroad indicates that the locomotive, number LPN 130, is an Electro Motive Division SW–15 switch engine equipped with laminated glazing in all windows. The locomotive is utilized in the Portland, Oregon, area

providing switching service between North Force Avenue on the east to Suttle Road on the west, a distance of 1 mile, and ¼ mile south to an interchange point with the Burlington Northern Santa Fe and Union Pacific Railroads.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–7269) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14064 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Relco Locomotives, Inc.; (Waiver Petition Docket Number FRA–2000–7256)

Relco Locomotives, Inc., submitted a request on behalf of Aimcor, Inc., seeking a permanent waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR 223.9, which requires certified glazing, for two locomotives utilized in switching service in Port Arthur, Texas. The locomotives are identified as RE 1267 and RE 1270. Relco indicates that both locomotives are used for switching within Aimcor's facility located at the north end of Houston Avenue in Port Arthur. The locomotives also operate over a Union Pacific Railroad (UP) industrial track within the port facility. The industrial track is used by Aimcor, Rail Serve, and UP for movements between different areas of the port.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–7256) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14063 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

[Docket No. FRA–2000–7037]

Applicant: Burlington Northern and Santa Fe Railway, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106.

Burlington Northern and Santa Fe Railway seeks approval of the proposed modification of the traffic control system, on the single main track, between Clontarf, Minnesota, milepost 138.5 and Tintah, Minnesota, milepost 192.7, on Dakota Division, Morris Subdivision, consisting of the following:

1. Conversion of the power-operated switch to hand operation, and discontinuance and removal of associated controlled signals 53LA, 53LB, and 53R, at West Clontarf, near milepost 138.5;

2. Conversion of the power-operated switch to hand operation, equipped with an electric lock, and discontinuance and removal of associated controlled signals 39RA, 39RB, and 39L, at East End Herman, near milepost 176.2; and

3. Conversion of the power-operated switch to hand operation, and discontinuance and removal of associated controlled signals 31RA, 31RB, and 31L, at East End Tintah, near milepost 192.7.

The reasons given for the proposed changes are that the siding switches at East Clontarf and West Tintah, were removed in the late 70's; the West End of Herman was converted to hand operation, equipped with an electric lock, when the siding was converted to a Unit Grain Facility, and the switch relocated; and the proposed changes are in conjunction with a pole line elimination project.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14059 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–2000–7038

Applicant: Burlington Northern and Santa Fe Railway, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106.

Burlington Northern and Santa Fe Railway seeks approval of the proposed modification of the traffic control system, on the single main track, at the West End of Richland, Missouri, milepost 159.6, on Springfield Division, Cuba Subdivision, consisting of the conversion of the power-operated switch to hand operation, equipped with and electric lock, and discontinuance and removal of associated controlled signals 42L, 42RA, and 42RB.

The reason given for the proposed changes is that in conjunction with a pole line elimination project, changing the track designation from a siding to storage track, and the East End of Richland being changed to electric lock.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14060 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2000–6890

Applicant: Colorado Department of Transportation, Mr. Randy Grauberger, Information Management Branch Manager, 4201 east Arkansas Avenue, Denver, Colorado 80222

Colorado Department of Transportation seeks approval of the proposed discontinuance of the automatic block signal system, on the single main track, on the Towner Rail Line, between NA Junction, milepost 869.4 and Towner, milepost 747.5, on the former Union Pacific Railroad's Kansas Division, Hoisington Subdivision, a distance of approximately 122 miles, in southeastern Colorado. The proposal stipulates that signals 8677, 8694, and 8695 will remain in service, while all other discontinued signals will be turned and bagged.

The reasons given for the proposed changes are that the lease or operation of the Towner Line, by a short line railroad operator, will normally result in the scheduling of only one train on the line at any given time during the initial years of operation, and that a Track Warrant Control method of operation will provide operational safety in the event that it becomes necessary to operate more than one train at a time on the line.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001.

Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14053 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2000–6923

Applicant: CSX Transportation, Incorporated, Mr. E.G. Peterson, Assistant Chief Engineer, Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–350), Jacksonville, Florida 32256.

CSX Transportation Incorporated seeks approval of the proposed discontinuance and removal of the manual block system (DCS Operating Rules), on the single secondary track, between Weir, milepost 13.3 and Dock, milepost 28.2, near New Bedford, Massachusetts, New Bedford Subdivision, Albany Service Lane, and redesignation of the secondary track to an industrial track.

The reason given for the proposed changes is that density of traffic no longer warrants this type of train operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14054 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7444]

National Boating Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council (NBSAC). NBSAC advises the Coast Guard on matters related to recreational boating safety.

DATES: Application forms should reach us on or before September 15, 2000.

ADDRESSES: You may request an application form by writing to Commandant (G-OPB–1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–0950; or by faxing 202–267–4285. Send your application in written form to the above street address. This notice and the application form are available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. A. J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Coast Guard regarding regulations and other major boating safety matters. NBSAC members are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and national recreational boating organizations and the general public. Members are appointed by the Secretary of Transportation.

NBSAC normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

We will consider applications for the following six positions that expire or become vacant in December 2000: one representative of State officials responsible for State boating safety programs; two representatives of recreational boat and associated equipment manufacturers; and three representatives of national recreational boating organizations. Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. Each member serves for a term of 3 years unless filling an unexpired term. Some members may serve consecutive terms.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: May 31, 2000.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 00–14155 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

[Docket No. FRA–2000–6925]

Applicant: CSX Transportation, Incorporated, Mr. E.G. Peterson, Assistant Chief Engineer, Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–350), Jacksonville, Florida 32256.

CSX Transportation Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, at Wapakoneta, Ohio, milepost 118.0, on the Dayton Subdivision, Louisville Service Lane, consisting of the discontinuance and removal of absolute controlled signals 55R and 55L.

The reason given for the proposed changes is that under current operating conditions the need for these hold-out signals no longer exists, and their removal will increase operating efficiency.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14056 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

[Docket No. FRA–2000–6926]

Applicant: CSX Transportation, Incorporated, Mr. E.G. Peterson, Assistant Chief Engineer, Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–350), Jacksonville, Florida 32256.

CSX Transportation Incorporated seeks approval of the proposed modification of the signal system, on Tracks A and B, milepost 134.2, on the Landover Line, Baltimore Service Lane, near Anacostia, District of Columbia, consisting of the discontinuance and removal of the No. 7D and No. 9D power-operated derails.

The reason given for the proposed changes is that the need for the derails does not exist under the current operating conditions, and their removal will increase efficiency.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14057 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2000–6888

Applicant: Missouri and Northern Arkansas Railroad, Company, Incorporated, Mr. David L. Smoot, Vice President and Regional General Manager, 514 North Orner, P.O. Box 776, Carthage, Missouri 64836.

Missouri and Northern Arkansas Railroad Company, Incorporated (MNA) seeks approval of the proposed discontinuance and removal of the automatic interlocking and associated signals, at Carthage, Missouri, milepost 526.85, where the single main track of the MNA Aurora Subdivision, cross at grade, the single main track of the MNA Carthage Industrial Track, including installation of a swing gate and stop signs normally lined and locked against the industrial track.

The reasons given for the proposed changes are that the MNA now has control of both rail lines; all through train movements are north and southbound on the Aurora Subdivision; the east and west interlocking approaches are now part of the Carthage Industrial Track, and used to access industry switching locations and rail car storage tracks; and all trains operating through the interlocking limits are MNA trains.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14050 Filed 6–5–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket No. FRA–2000–6889]

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000

Union Pacific Railroad Company seeks approval of the proposed modification of the traffic control system, on two main and running tracks, between milepost 3.6 and milepost 4.0, in Omaha, Nebraska, consisting of the the following:

1. Removal of the power-operated crossover at milepost 3.6, between Main Tracks No. 1 and No. 2;

2. Conversion of the power-operated crossover at milepost 3.9, between Main Track No. 1 and the North Running Track, to hand operation, equipped with an electric switch lock for the main track;

3. Removal of the power-operated derail on the North Running Track near milepost 3.9; and

4. Discontinuance and removal of eastbound controlled signals No's 112, 124, 126, 132, and 142, and westbound controlled signals No's 130, 136, 144, and 146.

The reason given for the proposed changes is that due to changes in operation the power crossovers are no longer used, and their associated signals are no longer needed; the proposed changes will increase efficiency and improve train handling by increasing block lengths.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at http://dms.dot.gov.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 25, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–14051 Filed 6–1–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Frontier Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 21 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 64 FR 35875, July 1, 1999.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: May 31, 2000.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 00–14188 Filed 6–5–00; 8:45 am]

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Federal Register

Tuesday,
June 6, 2000

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 187

Fees for FAA Services for Certain Flights; Interim Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. FAA–00–7018; Amendment No. 187–11]

RIN 2120–AG17

Fees for FAA Services for Certain Flights

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule with request for comments; notice of public meeting.

SUMMARY: This document establishes fees for FAA air traffic and related services for certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States. This action will allow the FAA to recover through fees the costs it incurs in providing these services. The FAA is requesting comments concerning the fee schedule and the fee collection process. In addition, the FAA is announcing a public meeting on the Interim Final Rule to provide an additional opportunity for the public to comment.

DATES: Effective date August 1, 2000. Comments must be received on or before October 4, 2000. The public meeting will be held on June 29, 2000.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–00–7018, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/* at any time. Commenters who wish to file comments electronically should follow the instructions on the DMS web site.

The public meeting will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024; Registration: 8:30 a.m.; Meeting: 9 a.m.–4 p.m.

FOR FURTHER INFORMATION CONTACT: Randall Fiertz, Office of Performance Management, (APF–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7140; fax (202) 493–4191.

Requests to present a statement at the public meeting on the Fees for FAA Services for Certain Flights Interim Final Rule and questions regarding the logistics of the meeting should be directed to Judy Courbois, Office of Rulemaking (ARM–102), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9783; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the rules in this document also are invited. The FAA specifically seeks comments on the fee schedule, formulas used to determine the cost per unit, the associated collection process, and the scope of services for which costs will be recovered. Comments must identify the regulatory docket or amendment number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date. All comments received on or before the closing date will be considered by the Administrator before taking final action on this rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–00–7018." The postcard will be date stamped and mailed to the commenter. The 120-day comment period is intended to allow the international commenters sufficient time to submit comments.

In order to give the public an additional opportunity to comment on the Interim Final Rule, the FAA is planning a public meeting. Because of this additional opportunity to comment on the Interim Final Rule, the FAA does not intend to extend the closing date for comments.

Requests from persons who wish to present oral statements at the public meeting on Fees for FAA Services for Certain Flights Interim Final Rule should be received by the FAA no later than June 22, 2000. Such requests should be submitted to Judy Courbois, as listed in the section titled **FOR FURTHER INFORMATION CONTACT**. Requests received after June 22, 2000, will be scheduled if time is available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare and make available at the meeting an agenda listing the scheduled speakers. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Any person desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Public Meeting Procedures

The public meeting will be held on June 29, 2000, at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024; Registration: 8:30 a.m.; Meeting: 9 a.m.–4 p.m.

The following procedures are established to facilitate the public meeting on the Interim Final Rule:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:30 a.m. and 9 a.m.) subject to availability of space in the meeting room.

2. The public meeting may adjourn early if scheduled speakers complete their statements in less time than is scheduled for the meeting.

3. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group.

4. Representatives of the FAA will conduct the public meeting. A panel of FAA personnel involved in this issue will be present.

5. Participants should address their comments to the panel. No participant will be subject to cross-examination by any other participant.

6. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested no later than 1 week before the meeting.

7. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket (Docket No. FAA–00–7018). Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

8. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the Interim Final Rule may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

9. Statements made by members of the public meeting panel are intended to facilitate discussion of the issues or to clarify issues. Because the meeting concerning the Fees for FAA Services for Certain Flights Interim Final Rule is being held during the comment period, final decisions concerning issues that the public may raise cannot be made at the meeting. The FAA may, however, ask questions to clarify statements made by the public and to ensure a complete and accurate record. Comments made at this public meeting will be considered by the FAA.

10. The meeting is designed to solicit public views on the Interim Final Rule. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Availability of the Interim Final Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this Interim Final Rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at *http://www.faa.gov/avr/arm/sbrefa.htm* and may send electronic inquiries to the following Internet address: *9–AWA–SBREFA@faa.gov.*

Background

Authority To Establish Fees

The Federal Aviation Reauthorization Act of 1996 (the Act) directs the FAA to establish by Interim Final Rule a fee schedule and collection process for air traffic control (ATC) and related services provided to aircraft, other than military and civilian aircraft of the U.S. Government or of a foreign government, that neither take off from, nor land in, the United States (49 U.S.C. 45301, as amended by Pub. L. 104–264).

Also, the Act directs the FAA to ensure that the fees allowed by the Act are directly related to the FAA's costs of providing the service rendered. The Act further states that services for which costs may be recovered include the costs of ATC, navigation, weather services, training and emergency services that are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off from, nor land in, the United States.

History

On March 20, 1997, the FAA published an Interim Final Rule, Fees for Air Traffic Services for Certain Flights through U.S.-Controlled Airspace (62 FR 13496), which established fees for FAA air traffic and related services provided to certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States. The FAA invited public comment on this Interim Final Rule. The effective date of the rule was May 19, 1997, and the comment period closed on July 18, 1997. In addition, the FAA held a public meeting on May 1, 1997. The FAA also published two additional Interim Final Rules that amended the original Interim Final Rule on May 2, 1997 (62 FR 24285) and October 2, 1997 (62 FR 51735).

This rulemaking was subsequently challenged. The Airline Transportation Association of Canada and six airlines petitioned the United States Court of Appeals for the District of Columbia (court) to review the rule.

On January 30, 1998, the court issued its opinion on the seven petitions consolidated in the case of *Asiana Airlines et al.*, v. *the FAA*, 328 U.S. App. D.C. 237, 134 F. 3d 393, 1998 U.S. App. LEXIS 1286 (1998). The court rejected the petitioners' claims that the FAA acted improperly in employing an expedited procedure before the effective date of the Interim Final Rule, and that the FAA violated the anti-discrimination provisions of various international aviation agreements. However, the court concluded that the FAA's methodology of determining cost violated statutory requirements.

Therefore, the court vacated the Interim Final Rule in its entirety and remanded the Interim Final Rule to the FAA for further proceedings consistent with the opinion.

Since the date the court vacated the Interim Final Rule issued in 1997 the FAA has met with various user and aviation interest groups to listen to their concerns about fees under the Act. The last such meeting was on May 24, 2000, and included the Department of Transportation General Counsel and members of her staff. A summary of each these meetings can be found in the docket of this rulemaking.

The New Interim Final Rule

When Congress passed the Act it explicitly required the FAA to collect the relevant fees initially by establishing an Interim Final Rule. The D.C. Circuit referenced this fact in 1998, but nevertheless struck the FAA's earlier rule because it did not comport with another Congressional requirement, that is, that the fee be based on costs incurred and not value to the user paying the fee. Although nearly 4 years have passed since the passage of the Act, the Act continues to require that the fees be promulgated by Interim Final Rule (see in the docket the FAA Information Paper to ICAO, September 1998, entitled "Fees for Air Traffic Services for Certain Flights through U.S.-Controlled Airspace").

The Congressional purpose of requiring the fees by Interim Final Rule has not been changed by the passage of time. Congress has not changed the statutory requirements (despite multiple opportunities to do so) and has continued to appropriate funds each year based on the collection of these fees. (See May 25, 2000, letter in the

docket from Congressman Duncan, Chairman, Aviation Subcommittee.)

The FAA has at all times acted as quickly as possible in establishing the fees but, as noted by the court in 1998, the FAA has been constrained by the lack of accurate cost information on which to base the fees. The development of an accurate cost information system, which is the predicate for the imposition of reasonable fees, has been a time consuming but necessary process. Only recently has the FAA's new Cost Accounting System provided this information and only now can the FAA proceed with rulemaking as directed by 49 U.S.C. 45301. The FAA has therefore determined that the Act continues to require that the fees the FAA is now imposing be established initially as an Interim Final Rule.

Therefore, effective 60 days after the publication of this Interim Final Rule, the FAA will again assess a fee for air traffic and related services provided to users of aircraft that transit U.S.-controlled airspace (airspace owned or delegated to the United States) but do not take off from or land in the United States. The rule does not apply to military and civil aircraft operated by the U.S. Government or by a foreign government or to certain Canada-to-Canada flights.

For the purpose of this rulemaking, U.S.-controlled airspace includes all U.S. airspace either directly owned by the United States or allocated to the United Sates by the International Civil Aviation Organization or by other countries. This can further be defined in general as enroute and oceanic airspace. Enroute airspace is generally defined, for the purpose of this rulemaking, as airspace where primarily radar-based air traffic services are provided. Oceanic airspace is generally defined, for the purpose of this rulemaking, as airspace where primarily procedural air traffic services are provided. A description of the U.S.-controlled airspace by latitude and longitude has been placed in the public docket of this rulemaking.

Canada-to-Canada operations are defined (hereafter "Canada-to-Canada") as flights conducted by any aircraft of any nationality that take off from and land in Canada without an intermediate stop outside of Canada that operate in U.S.-controlled airspace. Users are defined as operators of aircraft flights that neither depart from nor land in the United States.

Flights that transit U.S.-controlled airspace but do not land in or depart from the United States (overflights) currently contribute nothing financially to the provision of air traffic services (ATS). This is despite the fact that these flights use ATS and other services that impose costs on the U.S. ATC system. Congress has determined in the 1996 Act that these users should bear a portion of the cost of those services.

The air transportation environment has changed over the past decades with the advent of increasing numbers of long-range aircraft. The use of these aircraft and the routes they are able to fly have greatly increased the efficiency of air transportation. Although these overflight operations do not generally enter areas of high density air traffic, they do use FAA ATS.

Operators of overflight aircraft benefit from the FAA's provision of ATS in several ways. First, and most importantly, FAA's ATS enhance safety through ATC, navigation, and communications services. Second, flight through U.S.-controlled airspace provides optimized routing for long-distance aircraft, which is of great value to the users of these aircraft. The level of ATS and other services that is actually provided to operators of overflights depends, in part, on the portions of U.S.-controlled airspace such flights transit. These services can include communications, navigation, radar surveillance, emergency services, and flight information services. For aircraft transiting U.S. enroute airspace, Air Route Traffic Control Centers (ARTCCs) provide separation by means of radar surveillance (if they are operating under instrument flight rules or in airspace above 18,000 feet). Also, these flights generally use navigational aids and radio communication with ARTCCs. These services are also provided in certain oceanic areas near islands such as Bermuda and The Bahamas.

For aircraft transiting oceanic airspace, where radar surveillance and navigational aids are not available, navigation is generally conducted by on-board systems. Aircraft separation, however, is provided under procedural control, under which flights report their position to an air traffic controller each time they fly over a specified reporting point.

The FAA estimates that approximately 235,000 non-public (*i.e.* aircraft that are not exempt) flights transit U.S.-controlled airspace without landing or taking off annually (see the report entitled "Overflight Fee Development Report," which has been placed in the docket).

The cost to the FAA associated with overflights covered under this rule is projected to be approximately $50.4 million, including the cost of developing and collecting the fees. This amount represents the sum of the separate costs for providing ATC and related services to overflights flying through enroute and oceanic airspace as well as all development costs and all projected collection costs associated with the fees.

Charging overflights for ATS and related services is accepted in the international arena. The International Civil Aviation Organization (ICAO) states that "where air navigation services are provided for international use, the providers may require the users to pay their share of the costs * * *." (Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services, Paragraph 32 (Doc. 9082/5)). Further, paragraph 42 of Doc. 9082/5 notes that "providers * * * may require all users to pay their share of the costs of providing them regardless of whether or not utilization takes place over the territory of the provider state." (Document 9082/5 has been placed in the docket.)

Canada-to-Canada Operations

Currently, many Canadian flights transit U.S.-controlled airspace because of air traffic coordination between the United States and Canada. Routing through U.S.-controlled airspace by U.S. or Canadian ATC occurs because it is either the shortest route or it offers the most favorable flight conditions. This frequent and variable routing is done without regard to the border between Canada and the United States.

The FAA has a long-standing ATC relationship with the Canadian ATC authority, currently known as NAV CANADA, beginning with an exchange of notes between the United States and Canadian governments in 1963. The FAA has determined that assessing fees on Canada-to-Canada flights would be inconsistent with: (1) 49 U.S.C. 106(l), 40103, and 40105; (2) the FAA's international agreements with Canada; and (3) the safety of all trans-border U.S.-Canadian flights. This determination gives maximum effect to all applicable statutes and agreements. The FAA's costs associated with Canada-to-Canada flights have been excluded from the cost base that overflight fees recoup. Accordingly, the total cost of overflights is $50.4 million, but expected billing is approximately $39.6 million (the difference being attributed to the FAA's agreements with NAV CANADA). These costs do not consider operational benefits under the agreements with Canada.

The Overflight Fee

As noted above, the Act directs the FAA to establish a fee schedule and collection process for ATC and related services provided to aircraft other than military and civil aircraft operated by the U.S. government or by a foreign government that neither take off from, nor land in, the United States. The Act further directs the FAA to issue the initial fee schedule and associated collection process as an Interim Final Rule, to ask for public comment, and to issue a subsequent final rule.

The Act requires that fees be directly related to the FAA's cost of providing the services rendered. Furthermore, the Conference Report for the Act states "* * * assuming similar costs of serving different carrier and aircraft types, the fee may not vary based on factors such as aircraft seating capacity or revenue derived from passenger fares" (Congressional Record, September 26, 1996, H11316.). Consistent with statutory direction, the sense of Congress, as documented in the Conference Report, and FAA's aviation safety mission, the FAA has developed a uniform and fair fee for all users based on the FAA's Cost Accounting System (CAS).

Two documents have been placed in the docket of this rulemaking that detail how the fees in this rule were determined and calculated. The first document, "Cost Methodology Used to Develop Cost of Enroute and Oceanic ATC Services" was prepared by the public accounting firm of Arthur Andersen. This document details how the FAA's new CAS, also required by the Act, determines the FAA's cost of the two air traffic services, enroute and oceanic. The second document, "Overflight Fee Development Report," was prepared by the FAA. This document details how, based on the CAS, the FAA determined the cost of services provided to overflights based on the cost of enroute and oceanic services. The document also details how the fees were calculated in this rulemaking. Essentially, the overflight fee is computed based on distance flown through U.S.-controlled airspace. Separate computations are made for services provided in enroute airspace and in oceanic airspace to reflect the different costs of providing services in each of these environments.

The FAA will charge users $37.43 per 100 nautical miles (or portion thereof) flown in enroute airspace and $20.16 per 100 nautical miles (or portion thereof) flown in oceanic airspace.

Based on the second document, the fee for users (*i.e.*, operators of an aircraft overflight) is calculated as follows:

$R_{ij} = (DO_{ij} \times CO) + (DE_{ij} \times CE)$

Where:

R_{ij} = the fee charged to aircraft flying between city i and city j,

DO_{ij}= distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

CO = $20.16 per 100 nautical miles flown in oceanic airspace,

DE_{ij} = distance traveled in U.S.-controlled enroute airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

CE = $37.43 per 100 nautical miles flown in enroute airspace.

This formula assumes that actual entry and exit data are available for individual flights in U.S.-controlled airspace. If not, best available flight data will be used.

The fees are designed to charge only the directly related costs of FAA services to overflight users in a logical and fair manner.

Also, the FAA has determined that no fee will be assessed unless the cumulative charges exceed $250 per calendar month, based on Greenwich Mean Time (GMT), by any particular user. The fees in this Interim Final Rule, including the $250 exclusion, will be reviewed when the Final Rule is issued and at least once every 2 years, and adjusted to reflect changes in costs.

The following table illustrates the fee schedule.

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		Enroute			Oceanic			Total	
		Rate 1/	Miles 2/	Charge	Rate 1/	Miles 2/	Charge	Miles 2/	Charge
Origination	Destination								
Canada YVR International Airport, Vancouver	Mexico SJD San Jose Del Cabo	$37.43	1,084	$405.74	$20.16	---	---	1,084	$405.74
Asia NRT Narita Airport, Tokyo, Japan	Canada YYC Calgary, Alberta	$37.43	1,938	$725.39	$20.16	470	$94.75	2,408	$820.14
Europe AMS Amsterdam, Netherlands	Caribbean MBJ Montego Bay, Jamaica	$37.43	---	---	$20.16	2,118	$426.99	2,118	$426.99
Europe LHR Heathrow Airport London, Eng.	Mexico Mexico City	$37.43	1,515	$567.06	$20.16	256	$51.61	1,771	$618.67
Asia SEL Seoul, South Korea	Pacific Sydney, Australia	$37.43	---	---	$20.16	1,111	$223.98	1,111	$223.98

1/ Rates are expressed per 100 nautical miles.
2/ Miles are nautical miles.

Note: This diagram is for illustrative purposes only.

BILLING CODE 4910-13-C

Fee Collection Process and Enforcement

The FAA has established and maintains data from several sources, including but not limited to, flight plans and radar/radio data that identifies the point of entry and exit, aircraft registration number, and the type of aircraft for all aircraft entering U.S.-controlled airspace. Information will be extracted from the database and used, along with the fee formula, to compute each fee. The fee will include a charge to cover the cost of developing the fee as well as the cost of billing and collection.

The FAA will bill users pursuant to 49 CFR part 89 by sending a monthly invoice. Affected commercial users are requested to designate and submit to the FAA the name and address of a U.S. agent for billing. Users not providing a billing address will be billed at the address of record of the aircraft owner as maintained in the country where the aircraft is registered.

As provided in § 187.15(d), monthly remittance of fees of $1,000 or more are to be paid by electronic funds transfer. Monthly remittances below $1,000 may be paid by electronic funds transfer, check, money order, credit card, or draft. All payments must be in U.S. currency.

Invoices that become delinquent will be collected according to 49 CFR part 89. The FAA intends to pursue vigorously all delinquent balances to the extent provided by law.

If any adjustments are necessary in the fees billed or collected the FAA will follow the procedures in 49 CFR part 89 to settle debts of users. This includes issuing credits and refunds to users as appropriate and authorized by law.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the information collection requirements associated with this interim final rule were submitted to the Office of Management and Budget (OMB) for review and approval. There are no new requirements for the information collection associated with this amendment. An estimated 300 to 600 aircraft operators are requested to provide the FAA the name, the address, and phone number of any operator obtaining overflight services. It is estimated to take between 5 minutes and several days to complete the one-page form, depending on how long it takes a carrier to notify its billing department, and for that department to set up an account from which to pay these funds, for a total of 50 hours. This would be a one-time collection unless the carrier needs to change any of the information provided to the FAA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number associated with this collection is Number 2120–0618.

Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, OMB directs agencies to assess the effect of regulatory changes on small entities and changes on international trade. In conducting these analyses, the FAA has determined that this Interim Final Rule is "a significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is subject to review by OMB. The Interim Final Rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This Interim Final Rule should not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. All of these analyses have been prepared as a regulatory evaluation and are summarized below. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation. A copy of the complete regulatory evaluation has also been placed into the docket.

Benefits

In addition to authority to establish fees, the Act directs the FAA to ensure that the fees are directly related to the FAA's costs of providing the service rendered. The Act states that services for which costs may be recovered include ATC, navigation, weather services, training, and emergency services. The fees collected will reimburse the FAA for the actual cost of services in the manner authorized by Congress. Thus, the beneficiaries of this service, rather than the taxpayer, would largely pay for the service provided by the FAA. Moreover, the fees being established by the FAA cover only the costs of providing these services.

Charging a user fee is expected to result in better allocation of scarce societal and FAA resources. A fee will establish a mechanism through which those who use a service cover the majority of the costs for resources necessary to fund the service that is provided. This will result in a more efficient allocation of resources, and the efficient allocation of resources will benefit society at large, because more resources will become available for other services demanded by the public.

The user fee is expected to generate approximately $39.6 million in billings during the first 12 months of this rule, including the cost of collections. The FAA believes the established fees are equitable and justified.

Cost of Collection of User Fees to the FAA

The FAA estimates a one-time development cost of approximately $1.6 million. The FAA will amortize these development costs over a 2-year period in equal annual amounts of approximately $800,000. A small portion of the original development costs are included in the current development costs because some items such as system design or hardware will be used for fee collection under the current rule. In addition to the development costs, the FAA estimates an annual operating cost of approximately $1 million.

The costs of collection of the fee are relatively small compared to the billings. The cost of collection will be reviewed at least once every 2 years at the same time when fee charges are reviewed and adjusted to reflect the current costs of performing the services covered. The first review will be scheduled for no later than 2 years after the date of publication of the Final Rule. Fees will be adjusted to reflect historical great circle distance entry and exit mileage within U.S.-controlled airspace.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to

fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental entities.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The overflight fee will primarily affect foreign users. Since the RFA applies to domestic entities and does not apply to foreign entities, no consideration of the Interim Final Rule's impact on foreign users is required. In addition, because no fee will be assessed to a user unless they accumulate charges that exceed $250 per month, small domestic and infrequent operators should not be impacted by the rule. Accordingly, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact

The overflight provisions will primarily affect foreign commercial operators. Most commercial aircraft are designed to operate more efficiently at altitudes in excess of 18,000 feet. All operations at altitudes at or above 18,000 feet controlled by the United States must be under ATC. The FAA believes that it is unlikely that foreign commercial users will alter behavior to avoid using ATS and other services. In addition, to some extent, commercial users are able to pass the overflight fee on to their passengers or cargo customers.

The Interim Final Rule may have a favorable competitive impact on U.S. commercial operators. Currently U.S. commercial operators are at a comparative disadvantage with their foreign counterparts when users (U.S. and foreign) must pay user fees to transit other countries' airspace while foreign users do not have to pay a fee to transit U.S.-controlled airspace. The Interim Final Rule could enhance the competitiveness of domestic commercial operators in international markets.

Executive Order 13132, Federalism

The FAA has analyzed this interim final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this interim final rule does not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any 1 year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates or private sector mandate that exceeds $100 million in any 1 year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the Interim Final Rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, and FAA Order 1053.1. It has been determined that the Interim Final Rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 187

Administrative practice and procedure and Air transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 187 of Title 14, Code of Federal Regulations as follows:

PART 187—FEES

1. The authority citation for part 187 continues to read as follows:

Authority: 31 U.S.C. 9701, 49 U.S.C. 106(g), 49 U.S.C. 106(l)(6), 40104–40105, 40109, 40113–40114, 44702.

2. In § 187.1, add the following sentences to the end of the section:

§ 187.1 Scope.

* * * Appendix A to this part prescribes the methodology for computation of fees for certification services performed outside the United States. Appendix B to this part prescribes the fees for certain aircraft flights that transit U.S.-controlled airspace.

3. In § 187.15, add paragraph (d) to read as follows:

§ 187.15 Payment of fees.

* * * * *

(d) The fees described in appendix B of this part are payable to the Federal Aviation Administration in U.S. currency. Remittance of fees of $1,000 or more are to be paid by electronic funds transfer. Remittances below $1,000 may be paid by electronic funds transfer, check, money order, credit card, or draft.

4. In Part 187, add appendix B to read as follows:

Appendix B to Part 187—Fees for FAA Services for Certain Flights

(a) *Applicability.* Except as provided in paragraphs (b) and (c) of this appendix, this appendix applies to any person who conducts a flight through U.S.-controlled airspace that does not include a landing or takeoff in the United States. U.S.-controlled airspace is defined as all U.S. airspace either directly owned by the United States or allocated to the United States by the International Civil Aviation Organization or by other countries. This is further defined, for this section only, as enroute and oceanic airspace. Enroute airspace is defined, for this section only, as airspace where primarily radar-based air traffic services are provided. Oceanic airspace is defined, for this section only, as airspace where primarily procedural air traffic services are provided.

(b) *Governmental flights.* This appendix does not apply to any military or civil flight operated by the United States Government or by any foreign government.

(c) *Canada-to-Canada flights.* This appendix will not apply to any operator of a flight that takes off and lands in Canada, without an intermediate stop outside Canada, that operates in U.S.-controlled airspace.

(d) *Services.* Persons covered by paragraph (a) of this appendix must pay a fee for the use of certain services, including but not limited to the following:

(1) Air traffic management.

(2) Communications.

(3) Navigation.

(4) Radar surveillance, including separation services.

(5) Flight information services.

(6) Procedural control.

(7) Emergency services and training.

(e) *Methodology for the computation of fees.*

(1) For the use of any of the services listed in paragraph (d) of this appendix, the fee is computed based on the distance flown in either enroute or oceanic airspace (U.S.-controlled airspace.) Distance flown is based on the great circle distance (GCD) for the actual point of entry and the actual point of exit of U.S.-controlled airspace. Fees are assessed using the methodology presented in paragraph (e)(2) of this appendix. Where actual entry and exit points are not available, the best available flight data will be used to calculate the fee.

(2) A User (operator of an overflight) is assessed a fee for each 100 nautical miles (or portion thereof) flown in U.S.-controlled airspace. Separate calculations are made for transiting enroute and oceanic airspace. The total fee charged for an overflight between any two cities is equal to the sum of these two charges. This relationship is summarized as:

$R_{ij} = \$20.16*DO_{ij} + \$37.43*DE_{ij}$,

Where:

R_{ij} = the fee charged to aircraft flying between city i and city j,

DO_{ij}= distance traveled in U.S.-controlled oceanic airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j,

DE_{ij} = distance traveled in U.S.-controlled enroute airspace expressed in hundreds of nautical miles for aircraft flying between city i and city j.

(f) *Billing and payment procedures.*

(1) *Billing.* The FAA will send an invoice to each user that is covered by this appendix when fees are owed to the FAA. No invoice will be sent unless the monthly (based on Greenwich Mean Time) fees for service equal or exceed $250. Users will be billed at the address of record in the country where the aircraft is registered, unless a billing address is otherwise provided.

(2) *Payment.* Payment must be made by one of the methods described in § 187.15(d).

(g) *Review of fees.* The fees prescribed in this appendix will be reviewed at least once every 2 years and adjusted to reflect the current costs of performing the services covered by this appendix.

Issued in Washington, DC, on May 30, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–14045 Filed 6–2–00; 8:45 am]

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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 et al.
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–18; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 97–18. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–18 and specific FAR case numbers. Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Rescission of Office of Federal Procurement Policy Letters	2000–605	Olson
II	FAR Drafting Principles	1999–610	De Stefano
III	Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services	1998–015 (98–015)	Linfield
IV	General Records Schedules	1999–615	Nelson
V	Federal Supply Schedules Small Business Opportunities	1998–609 (98–609)	Nelson
VI	Trade Agreements Thresholds	2000–004	Linfield
VII	Restrictions on Acquisitions from Yugoslavia and Afghanistan	1999–008	Linfield
VIII	Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (Interim)	2000–301	Nelson
IX	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–18 amends the FAR as specified below:

Item I—Rescission of Office of Federal Procurement Policy Letters (FAR Case 2000–605)

This final rule reflects editorial amendments removing unnecessary cross-references to policy letters that were rescinded by the Office of Federal Procurement Policy (OFPP) (65 FR 16968, March 30, 2000).

Item II—FAR Drafting Principles (FAR Case 1999–610)

This final rule adds Federal Acquisition Regulation drafting principles to enhance a common understanding of the regulation among all members of the acquisition team and other users. This rule affects all contracting officers who use the FAR. The final rule adds drafting conventions in FAR 1.108 and amends 1.105–2, 52.101, 52.104, 52.105, and 52.200 to reflect current FAR drafting conventions.

Item III—Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services (FAR Case 1998–015 (98–015))

This final rule implements Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, dated September 14, 1998. This rule is significant for all contracting officers who buy supplies, including supplies that are furnished under a service contract. The rule rewrites text currently in the FAR based on earlier Executive orders, but reorganizes and relocates some of the text to conform to plain language guidelines for Government writing. The rewrite and reorganization should make the text easier to use and understand. The revisions also emphasize Executive branch policies for the acquisition of products containing recovered material and other environmentally preferable products and services. The rule—

- Revises FAR Subpart 7.1 to ensure that requirements for printing and writing paper meet minimum content requirements specified in the E.O.;
- Revises Subpart 11.3 to add definitions and special requirements to implement E.O. requirements and Environmental Protection Agency (EPA) regulations governing acquisitions of printing and writing paper, and to clarify that contracting officers may include in solicitations additional information requirements when needed to determine if the offeror's product meets requirements for recycled content or related standards;
- Clarifies in Part 13 how the procurement requirements of the Resource Conservation and Recovery Act, 42 U.S.C. 6962, apply to micro-purchases and acquisitions that do not exceed $100,000; and
- Reorganizes and revises Subparts 23.4 and 23.7 and associated clauses.

Item IV—General Records Schedules (FAR Case 1999–615)

This final rule implements National Archives and Records Administration General Records Schedule 3, Procurement, Supply, and Grants Records (NARA Schedule 3), dated December 15, 1998. This rule affects all contracting officers. The rule—

- Rewrites and reorganizes the text already in the FAR to make it easier to understand.
- Simplifies the retention table by grouping several categories of records that were previously treated as separate records under more generic record categories (e.g., the contract file or the contract administration records).
- Deletes separate retention policy on signed original justifications and approvals, determinations and findings, and rejected engineering change proposals. Those records are retained with the contract files shown in blocks 2 through 7 of the new retention table.
- Deletes the separate retention period for contract status, expediting, and production surveillance records. Those records are retained with the contract administration records shown in block 7 of the new retention table.

Item V—Federal Supply Schedules Small Business Opportunities (FAR Case 1998–609) (98–609))

This final rule amends the Federal Acquisition Regulation to ensure that small businesses holding contracts under the Federal Supply Schedules are afforded the maximum practicable opportunity to compete for and receive FSS purchases. This rule affects all ordering offices which place orders under Federal Supply Schedule contracts. The rule—

- Encourages ordering offices to consider the availability of small business concerns under the schedule and encourages ordering offices to consider small businesses when conducting evaluations before placing an order.
- Amends FAR Subpart 38.1 to reaffirm that the General Services Administration and agencies delegated the authority to establish a Federal Supply Schedule must comply with all statutory and regulatory requirements before issuance of a solicitation.
- Revises the FSS guidance in accordance with the plain language guidelines in a White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

Item VI—Trade Agreements Thresholds (FAR Case 2000–004)

This final rule amends FAR Subparts 25.2, 25.4, 25.6, and 25.11, and the clauses at 52.225–11 and 52.225–12 to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement (NAFTA), as published by the U.S. Trade Representative in the **Federal Register** at 65 FR 17332, March 31, 2000. Contracting Officers must review the new thresholds when acquiring supplies, services, or construction, in order to select the appropriate contract clauses to implement the Buy American Act, Balance of Payments Program, trade agreements, and sanctions of European Union country end products and services.

Item VII—Restrictions on Acquisitions from Yugoslavia and Afghanistan (FAR Case 1999–008)

This final rule amends FAR Subpart 25.7, section 25.1103, and the associated clauses at 52.212–5, 52.213–4, and 52.225–13, to implement Executive Orders 13121 and 13129. These Executive orders, as modified by Office of Foreign Assets Control (OFAC) General Licenses Numbers 2 and 4, prohibit the importation into the United States of any goods or services from Serbia (excluding the territory of Kosovo) or the territory of Afghanistan controlled by the Taliban. As a matter of policy, the Government does not generally acquire, even for overseas use, supplies or services that cannot be imported lawfully into the United States.

This rule primarily affects contracting officers making purchases overseas, for overseas use, because the Treasury Department already prohibits import of these restricted goods and services into the United States. The rule is particularly beneficial to contracting officers facing unusual circumstances overseas (such as location within a restricted territory), explicitly providing an exception for such circumstances.

Item VIII—Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (FAR Case 2000–301)

This interim rule amends FAR Part 30, Cost Accounting Standards Administration, and the provision at FAR 52.230–1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) and the Cost Accounting Standards (CAS) Board's interim rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises policies affecting which contractors and subcontractors must comply with Cost Accounting Standards. The rule—

- Amends the provision at FAR 52.230–1, Cost Accounting Standards Notices and Certification, to remove the requirement that a contractor or subcontractor must have received at least one CAS-covered contract exceeding $1 million ("trigger contract") to be subject to full CAS coverage, since the CAS Board removed this "trigger contract" amount from its corresponding solicitation provision, Cost Accounting Standards Notices and Certification, at 48 CFR 9903.201–3. The CAS Board established a new "trigger contract" dollar amount of $7.5 million in the CAS applicability section of its regulations (48 CFR 9903.201–1) rather than in its solicitation provision. Since FAR 30.201–1 already references this section, no FAR changes were required to address the new "trigger contract" dollar amount;
- Increases the dollar threshold for full CAS coverage from $25 million to $50 million; and
- Adds procedures and conditions for agency waiver of the applicability of CAS.

Item IX—Technical Amendments

These amendments update references and make editorial changes at sections 3.303, 5.204, 47.504, 49.601–1, and 49.601–2.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–18 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97–18 are effective June 6, 2000 except for Item VII which is effective July 6, 2000 and items II, III, IV, and V which are effective August 7, 2000. Each rule is applicable to solicitations issued on or after the rule's effective date.

Dated: May 26, 2000.

R.D. Kerrins, Jr., Col, USA,

Acting Director, Defense Procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: May 25, 2000.

Anne Guenther,

Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 00–13816 Filed 6–1–00; 3:58 pm]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 9, 15, 22, 35, 37, and 42

[FAC 97–18; FAR Case 2000–605; Item I]

RIN 9000–AI80

Federal Acquisition Regulation; Rescission of Office of Federal Procurement Policy Letters

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to make editorial amendments that remove unnecessary cross-references to policy letters that were rescinded by the Office of Federal Procurement Policy (OFPP).

DATES: Effective Date: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–0692. Please cite FAC 97–18, FAR case 2000–605.

SUPPLEMENTARY INFORMATION:

A. Background

OFPP published a notice in the **Federal Register** at 65 FR 16968, March 30, 2000, that rescinded 22 OFPP policy letters. The rescission of these 22 policy letters reflected OFPP's conclusion that the Federal Acquisition Regulation (FAR) contains the current policies. Any policies embodied in OFPP policy letters rescinded by the notice that are not reflected in the FAR either have been superseded by subsequent statutory changes or are otherwise no longer necessary. The OFPP **Federal Register** notice rescinded OFPP Policy Letters 77–2, 78–2, 78–3, 78–4, 79–1, 79–2, 80–3, 80–6, 80–8, 81–1, 81–2, 82–1, 83–1, 83–2, 83–3, 84–1, 85–1, 89–1, 91–2, 91–4, 92–5, and 95–1. Although the notice required no substantive FAR change, cross-references in the FAR to those rescinded policy letters are no longer necessary or appropriate. This final rule makes editorial amendments to the FAR to remove those cross-references.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Council will consider comments from small entities concerning the affected FAR subparts 1, 9, 15, 22, 35, 37, and 42 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–18, FAR case 2000–605), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 9, 15, 22, 35, 37, and 42

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 9, 15, 22, 35, 37, and 42 as set forth below:

1. The authority citation for 48 CFR parts 1, 9, 15, 22, 35, 37, and 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In section 1.103, revise paragraph (a) to read as follows:

1.103 Authority.

(a) The development of the FAR System is in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974 (Pub. L. 93–400), as amended by Pub. L. 96–83.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

3. In section 9.500, revise paragraph (c) to read as follows:

9.500 Scope of subpart.

* * * * *

(c) Implements section 8141 of the 1989 Department of Defense Appropriation Act, Pub. L. 100–463, 102 Stat. 2270–47 (1988).

PART 15—CONTRACTING BY NEGOTIATION

15.304 [Amended]

4. In section 15.304, amend paragraph (c)(3)(iv) by removing "(OFPP Policy Letter 92–5)".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1101 [Amended]

5. Amend section 22.1101 by removing the second, third, and fourth sentences.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

35.000 [Amended]

6. Amend section 35.000 by removing paragraph (c).

PART 37—SERVICE CONTRACTING

7. Amend section 37.503 by revising paragraph (c) to read as follows:

37.503 Agency-head responsibilities.

* * * * *

(c) Specific procedures are in place before contracting for services to ensure compliance with OFPP Policy Letter 92–1, Inherently Governmental Functions; and

* * * * *

37.600 [Amended]

8. Amend section 37.600 by removing the last sentence.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.002 [Amended]

9. Amend section 42.002 in paragraph (a) by removing the parenthetical at the end of the sentence.

42.1500 [Amended]

10. Amend section 42.1500 by removing the second sentence.

[FR Doc. 00–13817 Filed 6–1–00; 3:58 pm]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1 and 52

[FAC 97–18; FAR Case 1999–610; Item II]

RIN 9000–AI66

Federal Acquisition Regulation; FAR Drafting Principles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add FAR drafting principles to enhance a common understanding of the regulation among all members of the acquisition team and other users.

DATES: *Effective Date:* August 7, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–18, FAR case 1999–610.

SUPPLEMENTARY INFORMATION:

A. Background

The final rule amends FAR Parts 1 and 52 to enhance a common understanding of how the FAR is drafted. The final rule adds FAR 1.108 and amends 1.105–2, 52.101, 52.104, 52.105, and 52.200 to reflect current FAR drafting conventions.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on January 26, 2000 (65 FR 4346). Three respondents provided public comments. The Councils considered all the comments in the development of the final rule. The final rule revises the proposed rule as follows:

- FAR 1.108(d)(2) to clarify that contracting officers must not award or modify contracts to include the FAR change until the effective date of the FAR change.
- FAR 1.108(e) to include Executive orders, Office of Management and Budget policy letters, and Code of Federal Regulations citations.
- **Editorial changes throughout for clarity.**

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only addresses drafting principles and does not impose any additional requirements on Government offerors or contractors. We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** on January 26, 2000 (65 FR 4346).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1 and 52

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1 and 52 as set forth below:

1. The authority citation for 48 CFR parts 1 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.105–2 by revising paragraphs (a) and (b)(2) to read as follows:

1.105–2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) * * *

(2) Subdivisions below the section or subsection level consist of parenthetical alpha numerics using the following sequence: (a)(1)(i)(A)(*1*)(*i*).

* * * * *

3. Add section 1.108 to read as follows:

1.108 FAR conventions.

The following conventions provide guidance for interpreting the FAR:

(a) *Words and terms.* Definitions in Part 2 apply to the entire regulation unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.

(b) *Delegation of authority.* Each authority is delegable unless specifically stated otherwise (see 1.102–4(b)).

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

(d) *Application of FAR changes to solicitations and contracts.* Unless otherwise specified—

(1) FAR changes apply to solicitations issued on or after the effective date of the change;

(2) Contracting officers may, at their discretion, include the FAR changes in solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date; and

(3) Contracting officers may, at their discretion, include the changes in any existing contract with appropriate consideration.

(e) *Citations.* When the FAR cites a statute, Executive order, Office of Management and Budget circular, Office of Federal Procurement Policy policy letter, or relevant portion of the Code of Federal Regulations, the citation includes all applicable amendments, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the contracting officer is responsible for the action, unless another party is expressly cited.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.101 in paragraph (a) by revising the definition "Substantially as follows"; and by revising paragraph (d) to read as follows:

52.101 Using Part 52.

(a) * * *

Substantially as follows or *substantially the same as,* when used in the prescription of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition. Any variation must include the salient features of the FAR provision or clause, and must be consistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

* * * * *

(d) *Introductory text.* Within Subpart 52.2, the introductory text of each provision or clause includes a cross-reference to the location in the FAR subject text that prescribes its use.

* * * * *

5. Amend section 52.104 by revising paragraph (a) to read as follows:

52.104 Procedures for modifying and completing provisions and clauses.

(a) The contracting officer must not modify provisions and clauses unless the FAR authorizes their modification. For example—

(1) "The contracting officer may use a period shorter than 60 days (but not less than 30 days) in paragraph (x) of the clause"; or

(2) "The contracting officer may substitute the words 'task order' for the word 'Schedule' wherever that word appears in the clause."

* * * * *

6. Amend section 52.105 by revising paragraph (a) to read as follows:

52.105 Procedures for using alternates.

(a) The FAR accommodates a major variation in a provision or clause by use of an alternate. The FAR prescribes alternates to a given provision or clause in the FAR subject text where the provision or clause is prescribed. The alternates to each provision or clause are titled "Alternate I," "Alternate II," "Alternate III," etc.

* * * * *

7. Revise section 52.200 to read as follows:

52.200 Scope of subpart.

This subpart sets forth the text of all FAR provisions and clauses (see 52.101(b)(1)) and gives a cross-reference to the location in the FAR that prescribes the provision or clause.

[FR Doc. 00–13818 Filed 6–1–00; 3:59 pm]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 7, 11, 13, 23, and 52

[FAC 97–18; FAR Case 1998–015 (98–015); Item III]

RIN 9000–AI49

Federal Acquisition Regulation; Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, dated September 14, 1998.

DATES: *Effective Date:* August 7, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–18, FAR case 1998–015.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 51656, September 23, 1999. Seven respondents provided public comments. We considered all comments in finalizing the rule.

This rule amends the FAR to implement E.O. 13101. The rule amends guidance in FAR Subpart 7.1, 11.002(d), Subpart 23.4, Subpart 23.7, and the FAR clauses at 52.223–9 and 52.223–10 to conform with E.O. 13101 and the Resource Conservation and Recovery Act. The rule—

- Revises FAR Subpart 7.1 to ensure that requirements for printing and writing paper meet minimum content requirements specified in the E.O.;
- Revises Subpart 11.3 to add definitions and special requirements to implement E.O. requirements and Environmental Protection Agency (EPA) regulations governing acquisitions of printing and writing paper, and to clarify that contracting officers may include in solicitations additional information requirements when needed to determine if the offeror's product meets requirements for recycled content or related standards;
- Clarifies in Part 13 how the procurement requirements of the Resource Conservation and Recovery Act, 42 U.S.C. 6962, apply to micro-purchases and acquisitions that do not exceed $100,000; and
- Reorganizes and revises Subparts 23.4 and 23.7 and associated clauses.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this final rule. Interested parties may obtain a copy of the a Final Regulatory Flexibility Analysis (FRFA) from the FAR Secretariat.

The Councils' prepared FRFA is summarized as follows:

The objective of the rule is to improve the Government's use of recycled products and environmentally preferable products and services. E.O. 13101 requires revision of the Federal Acquisition Regulation to prescribe policies for the acquisition and use of environmentally preferable products and services through procurement preference programs favoring the purchase of these products and services. The rule primarily affects the internal operating procedures of Government agencies. The provisions affecting small entities are the requirements at FAR 23.705, 52.223–9, and 52.223–10. These provisions of the rule will apply to all Government contractors, both large and small businesses.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements that have been approved by the Office of Management and Budget (OMB) under OMB Control Number 9000–0134. The final rule reduces the annual reporting burden for OMB Control Number 9000–0134 estimated at 32,175 hours. This estimate was based on 64,350 respondents and a preparation time estimated at .5 hour per response. In the proposed rule, we estimated that removal of the certification requirement would affect more than one-half of the respondents and reduce preparation time for those respondents by one-third. No comments were received on this estimate.

As a result, we estimate the revised annual reporting burden to be as follows:

Respondents: 64,350;
Responses per respondent: 1;
Total annual responses: 64,350;
Preparation hours per response: 25 minutes;
Total response burden hours: 26,800.

List of Subjects in 48 CFR Parts 2, 4, 7, 11, 13, 23, and 52

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 7, 11, 13, 23, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 7, 11, 13, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions "Energy-efficient product", "Environmentally preferable", "Pollution prevention", "Recovered material", "Virgin material", and "Waste reduction" to read as follows:

2.101 Definitions.

* * * * *

Energy-efficient product means a product in the upper 25 percent of efficiency for all similar products or, if there are applicable Federal appliance or equipment efficiency standards, a product that is at least 10 percent more efficient than the minimum Federal standard.

Environmentally preferable means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

* * * * *

Pollution prevention means any practice that—

(a)(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants;

(b) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or

(c) Protects natural resources by conservation.

* * * * *

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. For use in Subpart 11.3 for paper and paper products, see the definition at 11.301.

* * * * *

Virgin material means—

(a) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(b) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

Waste reduction means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

PART 4—ADMINISTRATIVE MATTERS

4.301 [Removed]

4.302–4.304 [Redesignated as 4.301–4.303].

3. Amend Subpart 4.3 by removing section 4.301 and redesignating sections 4.302 through 4.304 as sections 4.301 through 4.303, respectively; and by revising the newly designated sections to read as follows:

Subpart 4.3—Paper Documents

* * * * *

4.301 Definition.

Printed or copied double-sided, as used in this subpart, means printing or reproducing a document so that information is on both sides of a sheet of paper.

4.302 Policy.

When electronic commerce methods (see 4.502) are not being used, a contractor should submit paper documents to the Government relating to an acquisition printed or copied double-sided on recycled paper whenever practicable. If the contractor cannot print or copy double-sided, it should print or copy single-sided on recycled paper.

4.303 Contract clause.

Insert the clause at 52.204–4, Printed or Copied Double-Sided on Recycled Paper, in solicitations and contracts that exceed the simplified acquisition threshold.

PART 7—ACQUISITION PLANNING

4. Amend section 7.103 by revising paragraph (n) to read as follows:

7.103 Agency-head responsibilities.

(n) Ensuring that agency planners—

(1) Specify needs for printing and writing paper consistent with the minimum content standards specified in section 505 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition (see 11.303); and

(2) Comply with the policy in 11.002(d) regarding procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services.

PART 11—DESCRIBING AGENCY NEEDS

11.001 [Amended]

5. Amend section 11.001 by removing the definitions "Recovered material" and "Virgin material."

6. Amend section 11.002 by revising paragraph (d) to read as follows:

11.002 Policy.

(d) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), Executive Order 12902 of March 8, 1994, Energy Efficiency and Water Conservation at Federal Facilities, and Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, establish requirements for the procurement of products containing recovered

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materials, and environmentally preferable and energy-efficient products and services. Executive agencies must consider use of recovered materials, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives (see 23.703(b)) when—

(1) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions), and standards;

(2) Describing Government requirements for supplies and services; and

(3) Developing source selection factors.

7. Subpart 11.3, consisting of sections 11.301 and 11.302, is revised, and sections 11.303 and 11.304 are added to read as follows:

Subpart 11.3—Acceptable Material

11.301 Definitions.

As used in this subpart—

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

Recovered material for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

(1) Postconsumer fiber.

(2) Manufacturing wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

11.302 Policy.

(a) Agencies must not require virgin material or supplies composed of or manufactured using virgin material unless compelled by law or regulation or unless virgin material is vital for safety or meeting performance requirements of the contract.

(b)(1) When acquiring other than commercial items, agencies must require offerors to identify used, reconditioned, or remanufactured supplies; or unused former Government surplus property proposed for use under the contract. These supplies or property may not be used in contract performance unless authorized by the contracting officer.

(2) When acquiring commercial items, the contracting officer must consider the customary practices in the industry for the item being acquired. The contracting officer may require offerors to provide information on used, reconditioned, or remanufactured supplies, or unused former Government surplus property proposed for use under the contract. The request for the information must be included in the solicitation, and to the maximum extent practicable must be limited to information or standards consistent with normal commercial practices.

(c) When the contracting officer needs additional information to determine whether supplies meet minimum recovered material standards stated in the solicitation, the contracting officer may require offerors to submit additional information on the recycled content or related standards. The request for the information must be included in the solicitation. When acquiring commercial items, limit the information to the maximum extent practicable to that available under normal commercial practices.

11.303 Special requirements for printing and writing paper.

(a) Section 505 of Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, establishes minimum recovered material content standards for agency purchases of printing and writing paper. Section 505 requires that 100 percent of an agency's purchases of printing and writing paper must meet or exceed one of the minimum content standards specified in paragraph (b) of this section.

(b) For high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard must be no less than 30 percent postconsumer materials. If paper containing 30 percent postconsumer material is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency must purchase paper containing no less than 20 percent postconsumer material.

11.304 Contract clause.

Insert the clause at 52.211–5, Material Requirements, in solicitations and contracts for supplies that are not commercial items.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

8. Amend section 13.005 by revising paragraph (a)(5) to read as follows:

13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

* * * * *

(a) * * *

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act). (The requirement to provide an estimate of recovered material utilized in contract performance does not apply unless the contract value exceeds $100,000.)

* * * * *

9. Amend section 13.006 by revising paragraph (g) to read as follows:

13.006 Inapplicable provisions and clauses.

* * * * *

(g) 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

10. Amend section 13.201 by adding paragraph (f) to read as follows:

13.201 General.

* * * * *

(f) The procurement requirements in the Resource Conservation and Recovery Act (42 U.S.C. 6962) and Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, apply to purchases at or below the micro-purchase threshold (see Subpart 23.4).

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

11. Revise section 23.400 to read as follows:

23.400 Scope of subpart.

This subpart prescribes policies and procedures for acquiring Environmental Protection Agency (EPA)—designated products through affirmative procurement programs required by the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6962) and Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition.

23.401 and 23.402 [Redesignate as 23.402 and 23.401]

12. Redesignate sections 23.401 and 23.402 as 23.402 and 23.401, respectively.

13. Revise the newly designated sections 23.401 and 23.402 to read as follows:

23.401 Definition.

EPA-designated product, as used in this subpart, means a product—

(1) That is or can be made with recovered material;

(2) That is listed by EPA in a procurement guideline (40 CFR part 247); and

(3) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN).

23.402 Authorities.

(a) The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962, requires agencies responsible for drafting or reviewing specifications used in agency acquisitions to—

(1) Eliminate from those specifications any requirement excluding the use of recovered materials or requiring products to be manufactured from virgin materials; and

(2) Require, for EPA-designated products, using recovered materials to the maximum extent practicable without jeopardizing the intended end use of the item.

(b) RCRA also requires—

(1) EPA to prepare guidelines on the availability, sources, and potential uses of recovered materials and associated products, including solid waste management services; and

(2) Agencies to develop and implement affirmative procurement programs for EPA-designated products within 1 year after EPA's designation.

(c) Executive Order 13101 requires that the agency head—

(1) Work to increase and expand markets for recovered materials through greater Government preference and demand for such products consistent with the demands of efficiency and cost-effectiveness; and

(2) Develop and implement affirmative procurement programs in accordance with direction in RCRA and the Executive order.

14. Revise section 23.403 to read as follows:

23.403 Policy.

Government policy on the use of recovered materials considers cost, availability of competition, and performance. The objective is to acquire competitively, in a cost-effective manner, products that meet reasonable performance requirements and that are composed of the highest percentage of recovered materials practicable.

23.404–23.405 [Redesignated as 23.405 and 23.406]

15. Redesignate sections 23.404 and 23.405 as 23.405 and 23.406, respectively; add a new section 23.404; and revise the redesignated sections to read as follows:

23.404 Agency affirmative procurement programs.

(a) For EPA-designated products, an agency must establish an affirmative procurement program, if the agency's purchases meet the threshold in 23.405(a). Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs. Agency affirmative procurement programs must include—

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts; and

(4) Annual review and monitoring of the effectiveness of the program.

(b) Agency affirmative procurement programs must require that 100 percent of purchases of EPA-designated products contain recovered material, unless the item cannot be acquired—

(1) Competitively within a reasonable time frame;

(2) Meeting appropriate performance standards; or

(3) At a reasonable price.

(c) Agency affirmative procurement programs must provide guidance for purchases of EPA-designated products at or below the micro-purchase threshold.

23.405 Procedures.

(a) These procedures apply to all agency acquisitions of EPA-designated products, including micro-purchases, if—

(1) The price of the product exceeds $10,000; or

(2) The aggregate amount paid for products, or for functionally equivalent products, in the preceding fiscal year was $10,000 or more. RCRA requires that an agency include micro-purchases in determining if the aggregate amount paid was $10,000 or more. However, it is not recommended that an agency track micro-purchases unless it intends to claim an exemption from the requirement to establish an affirmative procurement program in the following fiscal year.

(b) Contracting officers should refer to EPA's list of EPA-designated products (available via the Internet at *http://www.epa.gov/cpg/*) and to their agencies' affirmative procurement programs when purchasing supplies that contain recovered material or services that could include supplies that contain recovered material.

(c) The contracting officer must place in the contract file a written justification if an acquisition of EPA-designated products above the micro-purchase threshold does not contain recovered material. If the agency has designated an Environmental Executive, the contracting officer must give a copy of the written justification to that official. The contracting officer must base the justification on the inability to acquire the product—

(1) Competitively within a reasonable period of time;

(2) At reasonable prices; or

(3) To reasonable performance standards in the specifications, provided a written determination by technical or requirements personnel of the performance standard's reasonableness is included with the justification. The technical and requirements personnel must base their determination on National Institute of Standards and Technology guidelines, if available.

(d) Agencies must establish procedures for consolidating and reporting contractor estimates required by the clause at 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

23.406 Solicitation provision and contract clause.

(a) Insert the provision at 52.223–4, Recovered Material Certification, in

solicitations that are for, or specify the use of, recovered materials.

(b) Insert the clause at 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products, in solicitations and contracts exceeding $100,000 that include the provision at 52.223–4. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

16. Redesignate section 23.701 as 23.700 and revise the section heading; and add a new 23.701 to read as follows:

23.700 Scope.

* * * * *

23.701 Definition.

Biobased product, as used in this subpart, means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

17. Amend section 23.702 by removing paragraph (d); redesignate paragraphs (e) and (f) as (d) and (e) and revise; and add a new paragraph (f) to read as follows:

23.702 Authorities.

* * * * *

(d) Executive Order 12856, of August 3, 1993, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements.

(e) Executive Order 12902, of March 8, 1994, Energy Efficiency and Water Conservation at Federal Facilities.

(f) Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition.

23.703 [Removed]

23.704–23.706 [Redesignated as 23.703–23.705]

18. Remove section 23.703 and redesignate sections 23.704 through 23.706 as 23.703 through 23.705, respectively.

19. Revise the newly designated sections 23.703 through 23.705 to read as follows:

23.703 Policy.

Agencies must—

(a) Implement cost-effective contracting preference programs favoring the acquisition of environmentally preferable and energy-efficient products and services; and

(b) Employ acquisition strategies that affirmatively implement the following environmental objectives:

(1) Maximize the utilization of environmentally preferable products and services (based on EPA-issued guidance).

(2) Maximize the utilization of energy-efficient products.

(3) Eliminate or reduce the generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal).

(4) Promote the use of nonhazardous and recovered materials.

(5) Realize life-cycle cost savings.

(6) Promote cost-effective waste reduction when creating plans, drawings, specifications, standards, and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements.

(7) Consider the use of biobased products.

23.704 Application to Government-owned or -leased facilities.

Executive Order 13101, Section 701, requires that contracts for contractor operation of a Government-owned or -leased facility and contracts for support services at a Government-owned or -operated facility include provisions that obligate the contractor to comply with the requirements of the order. Compliance includes developing programs to promote and implement cost-effective waste reduction and affirmative procurement programs required by 42 U.S.C. 6962 for all products designated in EPA's Comprehensive Procurement Guideline (40 CFR part 247).

23.705 Contract clause.

Insert the clause at 52.223–10, Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or -leased facilities and all solicitations and contracts for support services at Government-owned or -operated facilities.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

20. Revise the section heading and text of 52.204–4 to read as follows:

52.204–4 Printed or Copied Double-Sided on Recycled Paper.

As prescribed in 4.303, insert the following clause:

Printed or Copied Double-Sided on Recycled Paper (August 2000)

(a) *Definitions.* As used in this clause—

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

Printed or copied double-sided means printing or reproducing a document so that information is on both sides of a sheet of paper.

Recovered material, for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(End of clause)

21. Amend section 52.211–5 by revising the introductory text, the date of the clause, the definitions "Recovered material" and "Virgin material", and paragraphs (b) and (e) to read as follows:

52.211–5 Material Requirements.

As prescribed in 11.304, insert the following clause:

MATERIAL REQUIREMENTS (August 2000)

(a) * * *

* * * * *

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

* * * * *

Virgin material means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.

* * * * *

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

(End of clause)

22. Amend section 52.212–5 by revising the date of the clause; by redesignating paragraphs (b)(16) through (b)(26) as (b)(17) through (b)(27), respectively; and by adding a new paragraph (b)(16) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (August 2000)

* * * * *

(b) * * *

__ (16)(i) 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).

__ (ii) Alternate I of 52.223–9 (42 U.S.C. 6962(i)(2)(C)).

* * * * *

52.223–4 [Amended]

23. Amend the introductory text of section 52.223–4 by revising the citation "23.405(a)" to read "23.406(a)".

24. Revise the section heading and text of 52.223–9 to read as follows:

52.223–9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

As prescribed in 23.406(b), insert the following clause:

Estimate of Percentage of Recovered Material Content for EPA-Designated Products (August 2000)

(a) *Definitions.* As used in this clause—

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material used in contract performance, including, if applicable, the percentage of postconsumer material content; and

(2) Submit this estimate to _____ [*Contracting Officer complete in accordance with agency procedures*].

(End of clause)

Alternate I (August 2000). As prescribed in 23.406(b), redesignate paragraph (b) of the basic clause as paragraph (c) and add the following paragraph (b) to the basic clause:

(b) The Contractor shall execute the following certification required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(i)(2)(C)):

Certification

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated products met the applicable contract specifications.

_____

(*Signature of the Officer or Employee*)

_____

(*Typed Name of the Officer or Employee*)

_____

(*Title*)

_____

(*Name of Company, Firm, or Organization*)

_____

(*Date*)

_____

(End of certification)

25. Revise section 52.223–10 to read as follows:

52.223–10 Waste Reduction Program.

As prescribed in 23.705, insert the following clause:

Waste Reduction Program (August 2000)

(a) *Definitions.* As used in this clause—

Recycling means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

Waste prevention means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

Waste reduction means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*) and implementing regulations (40 CFR part 247).

(End of clause)

[FR Doc. 00–13819 Filed 6–1–00; 3:59 pm]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 97–18; FAR Case 1999–615; Item IV]

RIN 9000–AI77

Federal Acquisition Regulation; General Records Schedules

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the revised National Archives and Records Administration General Records Schedule 3, Procurement, Supply, and Grants Records (NARA Schedule 3), dated December 15, 1998.

DATES: *Effective Date:* August 7, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS

Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda K. Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–18, FAR case 1999–615.

SUPPLEMENTARY INFORMATION:

A. Background

The intent of the update was to align the FAR text with the revised NARA Schedule 3.

The rule—

- Amends FAR 4.705–2 and revises 4.805 to align the text with the new NARA Schedule 3;
- Revises and rearranges the table at FAR 4.805(b) to group similar types of contract instruments together (*e.g.*, construction contracts and related case files, and unsuccessful offers and proposals); and
- Reorganizes and revises the FAR text for ease of use. The rule is written using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1999.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–18, FAR case 1999–615), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

PART 4—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR part 4 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 4.705–2 by revising the section heading and paragraph (a) to read as follows:

4.705–2 Construction contracts pay administration records.

(a) Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain 3 years after completion of contract, unless contract performance is the subject of enforcement action.

* * * * *

3. Revise section 4.800 to read as follows:

4.800 Scope of subpart.

This subpart prescribes requirements for establishing, maintaining, and disposing of contract files.

4. Revise section 4.805 to read as follows:

4.805 Storage, handling, and disposal of contract files.

(a) Agencies must prescribe procedures for the handling, storing, and disposing of contract files. These procedures must take into account documents held in all types of media, including microfilm and various electronic media. Agencies may change the original medium to facilitate storage as long as the requirements of Part 4, law, and other regulations are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written and graphic images completely, accurately, and clearly. Data transfer, storage, and retrieval procedures must protect the original data from alteration. Unless law or other regulations require signed originals to be kept, they may be destroyed after the responsible agency official verifies that record copies on alternate media and copies reproduced from the record copy are accurate, complete, and clear representations of the originals. Agency procedures for contract file disposal must include provisions that the documents specified in paragraph (b) of this section may not be destroyed before the times indicated, and may be retained longer if the responsible agency official determines that the files have future value to the Government. When original documents have been converted to alternate media for storage, the requirements in paragraph (b) of this section also apply to the record copies in the alternate media.

(b) If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents described in the following table are part of a subject or case file that documents activities that are not described in the table, they should be treated in the same manner as the files of which they are a part. The retention periods for acquisitions at or below the simplified acquisition threshold also apply to acquisitions conducted prior to July 3, 1995, that used small purchase procedures. The retention periods for acquisitions above the simplified acquisition threshold also apply to acquisitions conducted prior to July 3, 1995, that used other than small purchase procedures.

Document	Retention period
(1) Records pertaining to Contract Disputes Act actions.	6 years and 3 months after final action or decision for files created prior to October 1, 1979. 1 year after final action or decision for files created on or after October 1, 1979.
(2) Contracts (and related records or documents, including successful proposals) exceeding the simplified acquisition threshold for other than construction.	6 years and 3 months after final payment.
(3) Contracts (and related records or documents, including successful proposals) at or below the simplified acquisition threshold for other than construction.	3 years after final payment.
(4) Construction contracts:	
(i) Above $2,000	6 years and 3 months after final payment.
(ii) $2,000 or less	3 years after final payment.
(iii) Related records or documents, including successful proposals, except for contractor's payrolls (see (b)(4)(iv)).	Same as contract file.
(iv) Contractor's payrolls submitted in accordance with Department of Labor regulations, with related certifications, anti-kickback affidavits, and other related papers.	3 years after contract completion unless contract performance is the subject of an enforcement action on that date.
(5) Solicited and unsolicited unsuccessful offers, quotations, bids, and proposals:	
(i) Relating to contracts above the simplified acquisition threshold.	If filed separately from contract file, until contract is completed. Otherwise, the same as related contract file.
(ii) Relating to contracts at or below the simplified acquisition threshold.	1 year after date of award or until final payment, whichever is later.
(6) Files for canceled solicitations.	5 years after cancellation.
(7) Other copies of procurement file records used by component elements of a contracting office for administrative purposes.	Upon termination or completion.
(8) Documents pertaining generally to the contractor as described at 4.801(c)(3).	Until superseded or obsolete.
(9) Data submitted to the Federal Procurement Data System (FPDS). Electronic data file maintained by fiscal year, containing unclassified records of all procurements other than simplified acquisitions, and information required under 4.601.	5 years after submittal to FPDS.
(10) Investigations, cases pending or in litigation (including protests), or similar matters.	Until final clearance or settlement, or, if related to a document identified in (b)(1)–(9), for the retention period specified for the related document, whichever is later.

[FR Doc. 00–13820 Filed 6–1–00; 4:00 pm]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 38

[FAC 97–18; FAR Case 1998–609 (98–609); Item V]

RIN 9000–AI48

Federal Acquisition Regulation; Federal Supply Schedules Small Business Opportunities

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to enhance the participation of small business concerns under the Federal Supply Schedules (FSS) program.

DATES: *Effective Date:* August 7, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–18, FAR case 1998–609.

SUPPLEMENTARY INFORMATION:

A. Background

The rule—

- Amends FAR subpart 8.4 to encourage ordering offices to consider the availability of small business concerns under the schedule and encourages ordering offices to consider small businesses when conducting evaluations before placing an order;
- Amends FAR Part 38 to reaffirm that the General Services Administration and agencies delegated the authority to establish a Federal Supply Schedule must comply with all statutory and regulatory requirements before a solicitation is issued; and
- Revises the FSS guidance in accordance with the plain language guidelines in a White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on September 14, 1999 (64 FR 49948). Thirty-two respondents submitted public comments. We considered all comments and converted the proposed rule to a final rule with minor changes.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with 5 U.S.C. 604. Because this rule may impact small businesses, we are providing the FRFA in its entirety as follows:

This Final Regulatory Flexibility Analysis has been prepared consistent with the criteria stated in 5 U.S.C. 604.

1. *Statement of need for, and objectives of, the rule.*

The purpose of this rule is to promote the growth of Federal procurement sales opportunities for small business concerns under the Federal Supply Schedules. The rule amends FAR Subparts 8.4 and 38.1 to encourage ordering offices to consider small business concerns, if available, when conducting evaluations before placing an order. The rule also recognizes the recent change made by the Small Business Administration requiring inclusion of Federal Supply Schedule orders in agencies' small business goals. Effective fiscal year 1999, agencies must include the dollar value of orders expected to be placed against the General Services Administration's (GSA) Federal Supply Service (FSS) Schedules and report accomplishments against those goals.

2. *Summary of significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.*

We received one public comment that specifically addressed the Initial Regulatory Flexibility Analysis. The public comment expressed concerns that the data presented

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did not adequately detail the impact the rule will have on small business concerns. Specifically, the respondent stated that although well represented in the Federal Supply Schedule program, small Federal Supply Schedule contractors cannot adequately compete with large Federal Supply Schedule contractors. In response, it is important to note that while sales under the program have increased to large businesses, sales to small businesses have increased as well. The Federal Supply Schedule program recognizes that in certain instances small business may not have the capability to meet some requirements of Federal agencies. However, the program permits schedule contractors to team with other schedule contractors to provide a solution to meet agency needs. A team can be any combination of large and small businesses. Therefore, small businesses can compete against large businesses by forming teams that can provide supplies and services tailored to address agency needs. The Federal Supply Schedules program is one of the most successful Government procurement programs; a program where small businesses can experience continuous growth.

We did not change the rule as a result of the comment. The rule encourages ordering offices to consider the availability of small business concerns under the schedule when conducting evaluations before placing an order. The preference for awarding an order to a small business "when two or more items at the same delivered price" will continue to apply. This final rule is intended to be beneficial by expanding small business consideration under Federal Supply Schedule orders.

3. *Description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available.*

This rule will apply to all small business concerns under the Federal Supply Schedules program. Although the rule pertains to internal Government procedures, it is intended to increase the number of orders for supplies and services placed by the Government with small business concerns. Based on "Small Business 'Vital Statistics'" found on SBA's homepage (*www.sba.gov/aboutsba/*), SBA estimated that there are approximately 23 million small businesses in the United States that provide 47 percent of all sales in the country. Clearly, not all of the businesses that are considered small seek to participate in the Federal Supply Schedules program. However, according to fiscal year 1999 statistical data maintained by GSA's Federal Supply Service, small business concerns hold 5,705 national scope schedule contracts out of a total population of 7,431 national scope schedule contracts. Thus, approximately 77 percent of the schedule contractors are small business concerns. In fiscal year 1999, small business schedule contractors received approximately $3.2 billion or 31 percent of total schedule sales. This exceeds the current Governmentwide small business goal. During fiscal year 1998, 4,900 small businesses held contracts out of a total of 7,000 national scope schedule contracts. Small business sales in 1998 were $2.5 billion or 33 percent of total schedule sales. Between fiscal year 1998 and fiscal year 1999, the number of small businesses holding FSS contracts increased 6 percent and small business sales increased 28 percent. The increased sales to small businesses total almost ¾ of a billion dollars. SBA reports that in 1998 the small business share of all Federal prime contract dollars dropped to 20.6 percent. Clearly, small businesses are receiving a greater market share under the schedules.

The General Services Administration (GSA) has radically restructured the schedules program over the past 4 years. GSA has streamlined both contracting and ordering processes for industry and for Government users of the program. The changes made to the program over the last 4 years provide small business vendors easy access to the Federal community and provide users with streamlined procedures. The procedures give small business contractors the opportunity to fairly compete within the broader universe of schedule contractors. These changes ensure that ordering activities have the broad discretion, and effective and flexible business solutions, to meet agency requirements. The rule also supports continued increases in small business sales.

4. *Description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

There are no projected reporting, recordkeeping, or other compliance requirements.

5. *Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*

We considered various alternative approaches, as well as the adverse and beneficial impacts upon large businesses, small business, and the Government. One alternative that we considered was to apply small business set-asides to the FSS ordering process, including mandatory application of the rule of two for orders at certain dollar thresholds. Another alternative we considered was to allow agencies, at their discretion, to limit consideration of schedule orders to small business concerns. A third alternative we considered was to set-aside a significant number of Federal Supply Schedules for small businesses by applying the rule of two. However, contracting officers under the FSS program already issue solicitations that comply with the requirements of FAR Parts 5, 6, and 19. Determinations regarding small business set-asides are made during acquisition planning and solicitation preparation. All schedule solicitations must be reviewed by the Small Business Administration Procurement Center Representative (PCR) before issuance. For the reasons provided, we considered these alternatives inappropriate for adoption.

We determined that the alternatives offered by respondents to the proposed rule would be detrimental to the effectiveness and flexibility of the schedules program. We are converting the proposed rule to a final rule because it enhances the participation of small business in the Federal Supply Schedules program and provides a mechanism to increase the sales to small business under the FSS program.

The rule encourages ordering offices to consider the availability of small business concerns under the schedule and when conducting evaluations before placing an order. We expect sales to small businesses under the Federal Supply Schedules to increase because agencies are encouraged to include small business when conducting evaluations for an order and because agencies may credit small business schedule orders towards agency small business goals. The rule also ensures that all sectors of the economy may participate in the Federal Supply Schedules program. After we publish the final rule, we will track sales to verify if this rule has a positive impact on small business.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR parts 8 and 38

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 38 as set forth below:

1. The authority citation for 48 CFR parts 8 and 38 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Revise section 8.402 to read as follows:

8.402 Applicability.

Procedures in this subpart apply to orders placed against Federal Supply Schedules. Occasionally, GSA may establish special ordering procedures. The affected Federal Supply Schedules will outline these procedures.

3. In section 8.404—

a. Revise paragraph (a);

b. Remove from paragraph (b)(1) "Ordering Offices can place" and add "Place" in its place;

c. Revise the introductory text of paragraph (b)(2);

d. Revise paragraph (b)(2)(i);

e. Remove from the last sentence of the introductory text of paragraph (b)(3) ", ordering offices shall";

f. Revise paragraph (b)(3)(i);

g. Revise the first sentence in paragraph (b)(3)(iii); and

h. Revise paragraphs (b)(4), (b)(5), and (b)(6) to read as follows:

8.404 Using schedules.

(a) *General.* Parts 13 and 19 do not apply to orders placed against Federal Supply Schedules, except for the provision at 13.303–2(c)(3). Orders placed against a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued using full and open competition (see 6.102(d)(3)). Therefore, ordering offices need not seek further competition, synopsize the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

(b) * * *

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, consider reasonably available information about the supply or service offered under MAS contracts by using the "GSA Advantage!" on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see 8.404(b)(6)). Select the delivery and other options available under the schedule that meet the agency's needs. When selecting the supply or service representing the best value, the ordering office may consider—

(i) Special features of the supply or service required for effective program performance;

* * * * *

(3) * * *

(i) Review additional schedule contractors' catalogs or pricelists, or use the "GSA Advantage!" on-line shopping service;

* * * * *

(iii) After seeking price reductions, place the order with the schedule contractor that provides the best value and results in the lowest overall cost alternative (see 8.404(a)). * * *

(4) *Blanket purchase agreements (BPAs).* Agencies may establish BPAs (see 13.303–2(c)(3)) when following the ordering procedures in this subpart. All schedule contracts contain BPA provisions. Ordering offices may use BPAs to establish accounts with contractors to fill recurring requirements. BPAs should address ordering frequency, invoicing, discounts, and delivery locations and times.

(5) *Price reductions.* In addition to the circumstances in paragraph (b)(3) of this section, there may be other reasons to request a price reduction. For example, seek a price reduction when the supply or service is available elsewhere at a lower price or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of the individual order, offer the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order.

(6) *Small business.* When conducting evaluations and before placing an order, consider including, if available, one or more small, women-owned small, and/or small disadvantaged business schedule contractor(s). Orders placed against the schedules may be credited toward the ordering agency's small business goals. For orders exceeding the micro-purchase threshold, ordering offices should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

* * * * *

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

4. Revise section 38.101 to read as follows:

38.101 General.

(a) The Federal Supply Schedule program, pursuant to 41 U.S.C. 259(b)(3)(A), provides Federal agencies with a simplified process of acquiring commonly used supplies and services in varying quantities while obtaining volume discounts. Indefinite-delivery contracts (including requirements contracts) are awarded using competitive procedures to commercial firms. The firms provide supplies and services at stated prices for given periods of time, for delivery within a stated geographic area such as the 48 contiguous states, the District of Columbia, Alaska, Hawaii, and overseas. The schedule contracting office issues Federal Supply Schedules that contain information needed for placing orders.

(b) Each schedule identifies agencies that are required to use the contracts as primary sources of supply.

(c) Federal agencies not identified in the schedules as mandatory users may issue orders under the schedules. Contractors are encouraged to accept the orders.

(d) Although GSA awards most Federal Supply Schedule contracts, it may authorize other agencies to award schedule contracts and publish schedules. For example, the Department of Veterans Affairs awards schedule contracts for certain medical and nonperishable subsistence items.

(e) When establishing Federal Supply Schedules, GSA, or an agency delegated that authority, is responsible for complying with all applicable statutory and regulatory requirements (*e.g.*, Parts 5, 6, and 19). The requirements of Parts 5, 6, and 19 apply at the acquisition planning stage prior to issuing the schedule solicitation and do not apply to orders and BPAs placed under resulting schedule contracts (see 8.404).

[FR Doc. 00–13821 Filed 6–1–00; 4:00 pm]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 97–18; FAR Case 2000–004; Item VI]

RIN 9000–AI78

Federal Acquisition Regulation; Trade Agreements Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement

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(NAFTA), as published by the U.S. Trade Representative in the **Federal Register** at 65 FR 17332, March 31, 2000.

DATES: *Effective Date:* June 6, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after June 6, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–18, FAR case 2000–004.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subparts 25.2, 25.4, 25.6, and 25.11 to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement (NAFTA), as published by the U.S. Trade Representative in the **Federal Register** at 65 FR 17332, March 31, 2000.

The rule also amends the clauses at FAR 52.225–11, Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements, and 52.225–12, Notice of Buy American Act—Balance of Payments Program Requirements—Construction Materials under Trade Agreements. This rule revises Alternate I to FAR 52.225–11, because the threshold for NAFTA construction is now higher than the threshold for TAA construction, and adds the corresponding alternate to 52.225–12.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR subparts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–18, FAR case 2000–004), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. However, the Councils' amendments to the FAR do not change information collection requirements previously approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The approved OMB clearances for the affected clauses are 9000–0022, 9000–0023, 9000–0024, 9000–0025, 9000–0130, and 9000–0141.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. In section 25.202, revise paragraph (c) to read as follows:

25.202 Exceptions.

* * * * *

(c) *Acquisitions under trade agreements.* For construction contracts with an estimated acquisition value of $6,806,000 or more, see 25.403. If the acquisition value is $7,068,419 or more, also see 25.405.

3. In section 25.403, revise paragraph (b)(1) to read as follows:

25.403 Trade Agreements Act.

* * * * *

(b) *Thresholds.* (1) Except as provided in 25.401, the Trade Agreements Act applies to an acquisition for supplies or services if the estimated value of the acquisition is $177,000 or more; the Trade Agreements Act applies to an acquisition for construction if the estimated value of the acquisition is $6,806,000 or more. These dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years (see Executive Order 12260).

* * * * *

25.405 [Amended]

4. Amend section 25.405 as follows:

a. In paragraph (a) remove "$53,150" and add "$54,372" in its place;

b. In paragraph (b) remove "$6,909,500" and add "$7,068,419" in its place; and

c. In paragraph (c) remove "$53,150" and "$6,909,500" and add in their places "$54,372" and "$7,068,419", respectively.

25.601 [Amended]

5. Amend paragraph (a) of section 25.601 as follows:

a. In paragraph (a)(1) remove "$186,000" and add "$177,000" in its place;

b. In paragraph (a)(2) remove "$7,143,000" and add "$6,806,000" in its place; and

c. In paragraph (a)(3)(ii) remove "$186,000" and add "$177,000" in its place.

25.1101 [Amended]

6. Amend section 25.1101 as follows:

a. In paragraph (b)(1)(i) remove "$186,000" and add "$177,000" in its place;

b. In paragraphs (b)(1)(iii) and (b)(2)(iii) remove "$53,150" and add in their places "$54,372"; and

c. In paragraphs (c)(1) and (d) remove "$186,000" and add in their places "$177,000".

7. Amend section 25.1102 as follows:

a. In paragraphs (a) and (c) remove "$6,909,500" and add in their places "$6,806,000";

b. Revise paragraph (c)(3); and

c. Add paragraph (d)(3) to read as follows:

25.1102 Acquisition of construction.

* * * * *

(c) * * *

(3) For acquisitions valued at $6,806,000 or more, but less than $7,068,419, use the clause with its Alternate I.

* * * * *

(d) * * *

(3) For acquisitions valued at $6,806,000 or more, but less than $7,068,419, use the clause with its Alternate II.

25.1103 [Amended]

8. Amend section 25.1103 in paragraphs (c)(1)(i) and (c)(1)(ii)(B) by removing "$186,000" and adding "$177,000" in their places.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. In section 52.225–11, in the introductory paragraph remove "25.1102(c)(1)" and add "25.1102(c)" in its place; and revise Alternate I to read as follows:

52.225–11 Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements.

* * * * *

Alternate I (June 2000). As prescribed in 25.1102(c)(3), delete the definitions of "North American Free Trade Agreement country" and "North American Free Trade Agreement country construction material" from the definitions in paragraph (a) of the basic clause and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act applies to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

10. In section 52.225–12, add Alternate II to read as follows:

52.225–12 Notice of Buy American Act/Balance of Payments Program Requirement—Construction Materials under Trade Agreements.

* * * * *

Alternate II (June 2000). As prescribed in 25.1102(d)(3), substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic provision:

(a) *Definitions.* "Construction material," "designated country construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225–11).

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225–11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

[FR Doc. 00–13822 Filed 6–1–00; 4:01 pm]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 97–18; FAR Case 1999–008; Item VII]

RIN 9000–AI54

Federal Acquisition Regulation; Restrictions on Acquisitions from Yugoslavia and Afghanistan

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement two Executive orders, as modified by Office of Foreign Assets Control (OFAC) General Licenses Numbers 2 and 4. These Executive orders prohibit the importation into the United States of any goods or services from Serbia (excluding the territory of Kosovo) or the territory of Afghanistan controlled by the Taliban.

DATES: *Effective Date:* July 6, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after July 6, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAC 97–18, FAR case 1999–008.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 25.7, section 25.1103, and the clauses at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, FAR 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), and FAR 52.225–13, Restrictions on Foreign Purchases, to implement Executive Order 13121 of April 30, 1999, Blocking Property and Prohibiting Transactions With the Taliban; and Executive Order 13129 of July 4, 1999, Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo. These Executive orders, as modified by OFAC General Licenses Numbers 2 and 4, prohibit the importation into the United States of any goods or services from Serbia (excluding the territory of Kosovo) or the territory of Afghanistan controlled by the Taliban. As a matter of policy, the Government does not generally acquire, even for overseas use, supplies or services that cannot be imported lawfully into the United States.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on December 1, 1999 (64 FR 67446). Four respondents submitted comments. The Councils considered all comments in the formulation of this final rule. This final rule differs from the proposed rule as follows:

- Limits the restriction to Serbia (excluding the territory of Kosovo), rather than Serbia and Montenegro, based on OFAC General Licenses Numbers 2 and 4. General License No. 2 was issued by OFAC on May 5, 1999, and relates to trade transactions with Montenegro. General License No. 4 was issued by OFAC on August 17, 1999, and relates to trade transactions involving the territory of Kosovo.
- Adds an exception at FAR 25.701(a)(2) permitting the contracting officer, in unusual circumstances, to acquire for use outside the United States supplies and services restricted in 25.701(a)(1).

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the

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meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only applies to acquisition of items from Serbia or Afghanistan.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. Amend section 25.701 by revising paragraph (a) to read as follows:

25.701 Restrictions.

(a)(1) The Government generally does not acquire supplies or services that cannot be imported lawfully into the United States. Therefore, except as provided in paragraph (a)(2) of this section, even for overseas use, agencies and their contractors and subcontractors must not acquire any supplies or services originating from sources within, or that were located in or transported from or through

(i) Cuba (31 CFR part 515);
(ii) Iran (31 CFR part 560);
(iii) Iraq (31 CFR part 575);
(iv) Libya (31 CFR part 550);
(v) North Korea (31 CFR part 500);
(vi) Sudan (31 CFR part 538);
(vii) Territory of Afghanistan controlled by the Taliban (Executive Order 13129 of July 4, 1999, Blocking Property and Prohibiting Transactions With the Taliban); or
(viii) Serbia, excluding the territory of Kosovo (Executive Order 13121 of April 30, 1999, Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo).

(2)(i) Unless agency procedures require a higher level of approval, the contracting officer may, in unusual circumstances, acquire for use outside the United States supplies and services restricted in paragraph (a)(1) of this section. Examples of unusual circumstances are an emergency or when the supplies or services are not otherwise available and a substitute is not acceptable.

(ii) The contracting officer must provide documentation in the contract file whenever this exception is used.

* * * * *

3. Revise section 25.702 to read as follows:

25.702 Source of further information.

Refer questions concerning the restrictions in 25.701 to the Department of the Treasury, Office of Foreign Assets Control, Washington, D.C. 20220 (Telephone (202) 622–2520).

4. Amend section 25.1103 by revising paragraph (a) to read as follows:

25.1103 Other provisions and clauses.

(a) *Restrictions on certain foreign purchases.* Insert the clause at 52.225–13, Restrictions on Certain Foreign Purchases, in solicitations and contracts with a value exceeding $2,500, unless an exception applies (see 25.701(a)(2)).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.212–5 by—

a. Revising the date of the clause and paragraph (a);

b. In the first sentence of the introductory text of paragraphs (b), (c), and (d), by removing "agrees to" and adding "shall" in their place; and

c. Removing paragraph (b)(21) and redesignating paragraphs (b)(19) and (b)(20) as (b)(20) and (b)(21), respectively; and adding a new paragraph (b)(19) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (July 2000)

(a) The Contractor shall comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

(1) 52.222–3, Convict Labor (E.O. 11755).
(2) 52.233–3, Protest after Award (31 U.S.C. 3553).
(b) * * *
__ : (19) 52.225–13, Restriction on Certain Foreign Purchases (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).

* * * * *

6. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(1)(ii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (July 2000)

(a) * * *
(1) * * *

* * * * *

(ii) 52.225–13, Restrictions on Certain Foreign Purchases (July 2000) (E.O.'s 12722, 12724, 13059, 13067, 13121, and 13129).

* * * * *

7. Amend section 52.225–13 by revising the date of the clause and the last sentence of paragraph (a) to read as follows:

52.225–13 Restrictions on Certain Foreign Purchases.

* * * * *

Restrictions on Certain Foreign Purchases (July 2000)

(a) * * * Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

* * * * *

[FR Doc. 00–13823 Filed 6–1–00; 4:01 pm]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 97–18; FAR Case 2000–301; Item VIII]

RIN 9000–AI79

Federal Acquisition Regulation; Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 and the Cost Accounting Standards (CAS) Board's interim rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises CAS applicability requirements, dollar thresholds, and waiver requirements.

DATES: Effective Date: June 6, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after June 6, 2000.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before August 7, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC, 20405.

Submit electronic comments via the Internet to: farcase.2000–301@gsa.gov

Please submit comments only and cite FAC 97–18, FAR case 2000–301 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–18, FAR case 2000–301.

SUPPLEMENTARY INFORMATION:

A. Background

Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65)—

- Revised, at 41 U.S.C. 422(f)(2)(B), the categories of contracts and subcontracts that are exempt from all CAS requirements;
- Required the Administrator for Federal Procurement Policy to revise the rules and procedures issued under 41 U.S.C. 422(f) to increase the dollar threshold for full CAS coverage from $25 million to $50 million; and
- Revised 41 U.S.C. 422(f) to permit the head of an executive agency to waive the applicability of CAS under certain conditions.

In response to Pub. L. 106–65, the CAS Board in the Office of Federal Procurement Policy published an interim rule in the **Federal Register** on February 7, 2000 (65 FR 5990). The CAS Board rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage, amended the regulations at 48 CFR part 9903 to implement Section 802.

This interim FAR rule—

- Amends the provision at FAR 52.230–1, Cost Accounting Standards Notices and Certification, to remove the requirement that a contractor or subcontractor must have received at least one CAS-covered contract exceeding $1 million ("trigger contract") to be subject to "full CAS coverage," since the CAS Board removed this "trigger contract" amount from its corresponding solicitation provision, Cost Accounting Standards Notices and Certification, at 48 CFR 9903.201–3. The CAS Board added a new "trigger contract" dollar amount of $7.5 million at paragraph (b)(7) of 48 CFR 9903.201–1, CAS applicability, which is already referenced at FAR 30.201–1;
- Revises FAR 30.201–4(b), Disclosure and consistency of cost accounting practices, and amends the provision at FAR 52.230–1 to reflect changes made by the CAS Board to increase the dollar threshold for full CAS coverage from $25 million to $50 million; and
- Revises the CAS waiver procedures and conditions at FAR 30.201–5, as required by Section 802 of Pub. L. 106–65.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts with small businesses are exempt from all CAS requirements in accordance with 48 CFR 9903.201–1(b)(3). Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–18, FAR case 2000–301), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) and the Cost Accounting Standards (CAS) Board's interim rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. Section 802 became effective 180 days after the date of enactment of Public Law 106–65 (October 5, 1999). The CAS Board's interim rule that implements Section 802 became effective on April 2, 2000. It is necessary that the Councils publish an interim FAR rule to amend FAR Parts 30 and 52 to implement Section 802 and the CAS Board's interim rule. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 30 and 52 as set forth below:

1. The authority citation for 48 CFR parts 30 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

2. Amend section 30.201–4 by revising paragraph (b)(1) to read as follows:

30.201–4 Contract clauses.

* * * * *

(b) *Disclosure and consistency of cost accounting practices.* (1) Insert the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000, but less than $50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR 9903.201–2 (FAR

Appendix)), unless the clause prescribed in paragraph (c) of this subsection is used.

* * * * *

3. Revise section 30.201–5 to read as follows:

30.201–5 Waiver.

(a) The head of the agency—

(1) May waive the applicability of CAS for a particular contract or subcontract under the conditions listed in paragraph (b) of this subsection; and

(2) Must not delegate this waiver authority to any official in the agency below the senior contract policymaking level.

(b) The head of the agency may grant a waiver when one of the following conditions exists:

(1) The contract or subcontract value is less than $15,000,000, and the head of the agency determines, in writing, that the segment of the contractor or subcontractor that will perform the contract or subcontract—

(i) Is primarily engaged in the sale of commercial items; and

(ii) Has no contracts or subcontracts that are subject to CAS.

(2) The head of the agency determines that exceptional circumstances exist whereby a waiver of CAS is necessary to meet the needs of the agency. Exceptional circumstances exist only when the benefits to be derived from waiving the CAS outweigh the risk associated with the waiver. The determination that exceptional circumstances exist must—

(i) Be set forth in writing; and

(ii) Include a statement of the specific circumstances that justify granting the waiver.

(c) When one of the conditions in paragraph (b) of this subsection exists, the request for waiver should include the following:

(1) The amount of the proposed award.

(2) A description of the contract or subcontract type (*e.g.*, firm-fixed-price, cost-reimbursement).

(3) Whether the segment(s) that will perform the contract or subcontract has CAS-covered contracts or subcontracts.

(4) A description of the item(s) being procured.

(5) When the contractor or subcontractor will not accept the contract or subcontract if CAS applies, a statement to that effect.

(6) Whether cost or pricing data will be obtained, and if so, a discussion of how the data will be used in negotiating the contract or subcontract price.

(7) The benefits to the Government of waiving CAS.

(8) The potential risk to the Government of waiving CAS.

(9) The date by which the waiver is needed.

(10) Any other information that may be useful in evaluating the request.

(d) When neither of the conditions in paragraph (b) of this subsection exists, the waiver request must be prepared in accordance with 48 CFR 9903.201–5(e) (FAR Appendix) and submitted to the CAS Board.

(e) Each agency must report any waivers granted under paragraph (a) of this subsection to the CAS Board, on a fiscal year basis, not later than 90 days after the close of the Government's fiscal year.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.230–1 by—

a. Revising the date of the provision;

b. In the first sentence of paragraph (c)(3) by removing the phrase "more than $25 million (of which at least one award exceeded $1 million)" and adding "$50 million or more" in its place;

c. In paragraph (c)(4)—

(i) In the "Caution" paragraph, by removing "$25 million" and adding "$50 million" in its place;

(ii) At "II. Cost Accounting Standards—Eligibility for Modified Contract Coverage," in the second paragraph, by revising the first sentence; and

(iii) In the "Caution" paragraph following paragraph II by removing "$25 million" each time it is used (twice) and adding "$50 million" in their places. The revised text reads as follows:

52.230–1 Cost Accounting Standards Notices and Certification.

* * * * *

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (JUNE 2000)

* * * * *

(c) * * *

(4) * * *

II. Cost Accounting Standards—Eligibility for Modified Contract Coverage

* * * * *

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $50 million in awards of CAS-covered prime contracts and subcontracts.

* * * * *

[FR Doc. 00–13824 Filed 6–1–00; 4:02 pm]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 5, 47, and 49

[FAC 97–18; Item IX]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR parts 3, 5, 47, and 49

Government procurement.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 3, 47, and 49 as set forth below:

1. The authority citation for 48 CFR parts 3, 47, and 49 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.303 [Amended]

2. Amend section 3.303 in the first sentence of paragraph (a) by removing "41 U.S.C. 253(B)(e) and 10 U.S.C. 2305(b)(5)" and adding "41 U.S.C. 253b(i) and 10 U.S.C. 2305(b)(9)" in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Revise the last sentence of section 5.204 to read as follows:

5.204 Presolicitation notices.

* * * Synopsizing of a proposed contract action is required prior to issuance of any resulting solicitation (see 5.201 and 5.203).

PART 47—TRANSPORTATION

47.504 [Amended]

4. In section 47.504, amend the first sentence of paragraph (e) by removing "(see 12.504(a)(13))" and adding "(see 12.504(a)(11))" in its place.

PART 49—TERMINATION OF CONTRACTS

5. Remove "19..." and add "20__" in the following places:

a. Section 49.601–1 in paragraphs (a) and (b); and

b. Section 49.601–2 in paragraph (a) of the Notice of Termination to Prime Contractors; in paragraph (i) in the Acknowledgment of Notice; and in paragraph (a) of the Alternate notice.

[FR Doc. 00–13825 Filed 6–1–00; 4:02 pm]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–18 which amend the FAR. The rules marked with an asterisk (*) indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–18 which precedes this document. These documents are also available via the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97–18

Item	Subject	FAR case	Analyst
I	Rescission of Office of Federal Procurement Policy Letters	2000–605	Olson.
II	FAR Drafting Principles	1999–610	De Stefano.
III	Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services *.	1998–015 (98–015)	Linfield.
IV	General Records Schedules	1999–615	Nelson.
V	Federal Supply Schedules Small Business Opportunities *	1998–609 (98–609)	Nelson.
VI	Trade Agreements Thresholds	2000–004	Linfield.
VII	Restrictions on Acquisitions from Yugoslavia and Afghanistan	1999–008	Linfield.
VIII	Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (Interim)	2000–301	Nelson.

Item I—Rescission of Office of Federal Procurement Policy Letters (FAR Case 2000–605)

This final rule reflects editorial amendments removing unnecessary cross-references to policy letters that were rescinded by the Office of Federal Procurement Policy (OFPP) (65 FR 16968, March 30, 2000).

Item II—FAR Drafting Principles (FAR Case 1999–610)

This final rule adds Federal Acquisition Regulation drafting principles to enhance a common understanding of the regulation among all members of the acquisition team and other users. This rule affects all contracting officers who use the FAR. The final rule adds drafting conventions in FAR 1.108 and amends 1.105–2, 52.101, 52.104, 52.105, and 52.200 to reflect current FAR drafting conventions.

Item III—Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services (FAR Case 1998–015 (98–015))

This final rule implements Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, dated September 14, 1998. This rule is significant for all contracting officers who buy supplies, including supplies that are furnished under a service contract. The rule rewrites text currently in the FAR based on earlier Executive orders, but reorganizes and relocates some of the text to conform to plain language guidelines for Government writing. The rewrite and reorganization should make the text easier to use and understand. The revisions also emphasize Executive branch policies for the acquisition of products containing recovered material and other environmentally preferable products and services. The rule—

- Revises FAR Subpart 7.1 to ensure that requirements for printing and writing paper meet minimum content requirements specified in the E.O.;
- Revises Subpart 11.3 to add definitions and special requirements to implement E.O. requirements and Environmental Protection Agency (EPA) regulations governing acquisitions of printing and writing paper, and to clarify that contracting officers may include in solicitations additional information requirements when needed to determine if the offeror's product meets requirements for recycled content or related standards;
- Clarifies in Part 13 how the procurement requirements of the Resource Conservation and Recovery Act, 42 U.S.C. 6962, apply to micro-purchases and acquisitions that do not exceed $100,000; and
- Reorganizes and revises Subparts 23.4 and 23.7 and associated clauses.

Item IV—General Records Schedules (FAR Case 1999–615)

This final rule implements National Archives and Records Administration General Records Schedule 3, Procurement, Supply, and Grants Records (NARA Schedule 3), dated December 15, 1998. This rule affects all contracting officers. The rule—

- Rewrites and reorganizes the text already in the FAR to make it easier to understand.
- Simplifies the retention table by grouping several categories of records that were previously treated as separate records under more generic record categories (*e.g.*, the contract file or the contract administration records).
- Deletes separate retention policy on signed original justifications and approvals, determinations and findings, and rejected engineering change proposals. Those records are retained with the contract files shown in blocks 2 through 7 of the new retention table.
- Deletes the separate retention period for contract status, expediting, and production surveillance records. Those records are retained with the contract administration records shown in block 7 of the new retention table.

Item V—Federal Supply Schedules Small Business Opportunities (FAR Case 1998–609) (98–609))

This final rule amends the Federal Acquisition Regulation to ensure that small businesses holding contracts under the Federal Supply Schedules are afforded the maximum practicable opportunity to compete for and receive FSS purchases. This rule affects all ordering offices which place orders under Federal Supply Schedule contracts. The rule—

- Encourages ordering offices to consider the availability of small business concerns under the schedule and encourages ordering offices to consider small businesses when conducting evaluations before placing an order.
- Amends FAR Subpart 38.1 to reaffirm that the General Services Administration and agencies delegated the authority to establish a Federal Supply Schedule must comply with all statutory and regulatory requirements before issuance of a solicitation.
- Revises the FSS guidance in accordance with the plain language guidelines in a White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

Item VI—Trade Agreements Thresholds (FAR Case 2000–004)

This final rule amends FAR Subparts 25.2, 25.4, 25.6, and 25.11, and the clauses at 52.225–11 and 52.225–12 to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement (NAFTA), as published by the U.S. Trade Representative in the **Federal Register** at 65 FR 17332, March 31, 2000. Contracting Officers must review the new thresholds when acquiring supplies, services, or construction, in order to select the appropriate contract clauses to implement the Buy American Act, Balance of Payments Program, trade agreements, and sanctions of European Union country end products and services.

Item VII—Restrictions on Acquisitions from Yugoslavia and Afghanistan (FAR Case 1999–008)

This final rule amends FAR Subpart 25.7, section 25.1103, and the associated clauses at 52.212–5, 52.213–4, and 52.225–13, to implement Executive Orders 13121 and 13129. These Executive orders, as modified by Office of Foreign Assets Control (OFAC) General Licenses Numbers 2 and 4, prohibit the importation into the United States of any goods or services from Serbia (excluding the territory of Kosovo) or the territory of Afghanistan controlled by the Taliban. As a matter of policy, the Government does not generally acquire, even for overseas use, supplies or services that cannot be imported lawfully into the United States.

This rule primarily affects contracting officers making purchases overseas, for overseas use, because the Treasury Department already prohibits import of these restricted goods and services into the United States. The rule is particularly beneficial to contracting officers facing unusual circumstances overseas (such as location within a restricted territory), explicitly providing an exception for such circumstances.

Item VIII—Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage (FAR Case 2000–301)

This interim rule amends FAR Part 30, Cost Accounting Standards Administration, and the provision at FAR 52.230–1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) and the Cost Accounting Standards (CAS) Board's interim rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises policies affecting which contractors and subcontractors must comply with Cost Accounting Standards. The rule—

- Amends the provision at FAR 52.230–1, Cost Accounting Standards Notices and Certification, to remove the requirement that a contractor or subcontractor must have received at least one CAS-covered contract exceeding $1 million ("trigger contract") to be subject to full CAS coverage, since the CAS Board removed this "trigger contract" amount from its corresponding solicitation provision, Cost Accounting Standards Notices and Certification, at 48 CFR 9903.201–3. The CAS Board established a new "trigger contract" dollar amount of $7.5 million in the CAS applicability section of its regulations (48 CFR 9903.201–1) rather than in its solicitation provision. Since FAR 30.201–1 already references this section, no FAR changes were required to address the new "trigger contract" dollar amount;
- Increases the dollar threshold for full CAS coverage from $25 million to $50 million; and
- Adds procedures and conditions for agency waiver of the applicability of CAS.

Dated: May 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–13826 Filed 6–1–00; 4:02 pm]

BILLING CODE 6820–EP–P

Federal Register

Tuesday,
June 6, 2000

Part IV

Department of Defense

48 CFR Parts 225 and 230

Defense Federal Acquisition Regulation Supplement; NAFTA Procurement Threshold and Defense Federal Acquisition Regulation Supplement; Waiver of Cost Accounting Standards; Final Rules

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2000–D011]

Defense Federal Acquisition Regulation Supplement; NAFTA Procurement Threshold

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). The rule implements the determination of the U.S. Trade Representative to increase the dollar threshold for application of the North American Free Trade Agreement (NAFTA) to procurement of goods from Mexico, from $53,150 to $54,372.

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 2000–D011.

SUPPLEMENTARY INFORMATION:

A. Background

On March 31, 2000 (65 FR 17332), the U.S. Trade Representative published a determination that increased the dollar threshold for application of NAFTA to procurement of goods from Mexico, from $53,150 to $54,372. This final rule amends the prescription for use of the clause at DFARS 252.225–7036, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program, to reflect the new dollar threshold.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D011.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 225 is amended as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.1101 [Amended]

2. Section 225.1101 is amended in paragraphs (13)(i)(A) and (B) by removing "$53,150" and adding in its place "$54,372".

[FR Doc. 00–13827 Filed 6–5–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 230

[DFARS Case 2000–D012]

Defense Federal Acquisition Regulation Supplement; Waiver of Cost Accounting Standards

AGENCY: Department of Defense (DoD).
ACTION: Final rule

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add text pertaining to agency waiver of Cost Accounting Standards (CAS) requirements. This rule supplements a Federal Acquisition Regulation (FAR) rule on this subject that appears elsewhere in this issue of the **Federal Register.**

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; telefax (703) 602–0350. Please cite DFARS Case 2000–D012.

SUPPLEMENTARY INFORMATION:

A. Background

Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) amended 41 U.S.C. 422(f) to permit the head of an executive agency to waive the applicability of CAS under certain conditions. To implement Section 802, the CAS Board published an interim rule at 65 FR 5990 on February 7, 2000. The CAS Board's rule, Applicability, Thresholds, and Waiver of Cost Accounting Standards Coverage, amended the regulations at 48 CFR 9903, including § 9903.201–5, Waiver.

An interim rule amending the FAR Under Case Number 2000–301, Applicability, Thresholds, and Waiver of Cost Accounting Standards Coverage, appears elsewhere in this issue of the **Federal Register** to implement Section 802 and the CAS Board's interim rule. This DFARS rule supplements the FAR rule by—

1. Providing DoD procedures for processing CAS waivers;

2. Clarifying which DoD components may grant CAS waivers at what level of authority; and

3. Providing DoD procedures for submission of annual CAS waiver reports to the CAS Board.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D012.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 230

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 230 is amended as follows:

1. The authority citation for 48 CFR part 230 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 230—COST ACCOUNTING STANDARDS ADMINISTRATION

2. Subpart 230.2 is added to read as follows:

Subpart 230.2—CAS Program Requirements

Sec.
230.201–5 Waiver.
230.201–5 Waiver.

(a)(1)(A) The military departments—

(1) May grant CAS waivers that meet the conditions in FAR 30.201–5(b); and

(2) Unless otherwise authorized by the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), must submit each CAS waiver request to the Director of Defense Procurement for review at least 14 days before granting the waiver.

(B) DoD contracting activities that are not within a military department must submit CAS waiver requests that meet the conditions in FAR 30.201–5(b) to the Director of Defense Procurement for approval at least 30 days before the anticipated contract award date.

(2) The military departments must not delegate CAS waiver authority below the individual responsible for issuing contracting policy for the department.

(e)(i) by November 15th of each year, the military departments must provide a report of all waivers granted under FAR 30.201–5(a) during the previous fiscal year to the Director of Defense Procurement.

(ii) The Director of Defense Procurement will submit a consolidated DoD report to the CAS Board.

[FR Doc. 00–13828 Filed 6–5–00; 8:45 am]
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Federal Register

Tuesday,
June 6, 2000

Part V

Department of Education

List of Correspondence—Office of Special Education and Rehabilitative Services; Notice

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DEPARTMENT OF EDUCATION

List of Correspondence—Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: List of correspondence from January 3, 2000 through March 31, 2000.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Rhonda Weiss. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5465 or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday, except Federal holidays.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued between January 3, 2000 through March 31, 2000.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A: General Provisions

Section 602—Definitions

Topic Addressed: Child With a Disability

- Letter dated March 24, 2000 to individual, (personally identifiable information redacted), regarding school districts' obligations to appropriately evaluate children with attention deficit disorder (ADD) under Part B of IDEA, and clarifying applicable requirements under Part B of IDEA for children who have a prior medical diagnosis of ADD and the relationship of relevant State requirements to applicable Part B requirements.
- Letter dated March 24, 2000 to Education Consultant and Advocate Michele Williams, regarding identification, evaluation, eligibility, and the provision of appropriate services and interventions in the least restrictive setting for children with Asperger's Syndrome determined eligible for services under Part B of IDEA.

Part B: Assistance for Education of all Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: Use of Funds

- Letter dated February 7, 2000 to California State Department of Education Special Education Director Dr. Alice Parker, regarding a finding in a Federal Fiscal Year (FFY) 1996 audit report questioning the use of Part B of IDEA funds to pay parents' or guardians' attorneys' fees in lawsuits against the State and clarifying that the IDEA March 12, 1999 final regulations explicitly prohibit using Part B of IDEA funds to pay attorneys' fees.
- Letter dated March 8, 2000 to U.S. Senator Bob Graham, explaining that the Department does not provide Federal funds directly to parents, private schools, or a local educational agency (LEA) to pay the cost of special education programs for children with disabilities, but that State, local, or private sources of support may be available for this purpose.

Topic Addressed: Eligible Entities

- Letter dated March 15, 2000 to the Office of U.S. Senator Don Nickles, regarding eligibility of State-supported schools for Federal education program funds, clarifying that a State-supported school cannot be made eligible for these funds in the absence of authorizing legislation, and that under many Federal programs, including Part B of IDEA, State-supported schools can be eligible for funds if they qualify as local school districts.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

- Letter dated March 29, 2000 to Michigan Protection and Advocacy Attorney Stewart R. Hakola, regarding Michigan's School-of-Choice legislation, and clarifying that (1) States may establish mechanisms to ensure that students with disabilities attending public school choice programs retain the right to a free appropriate public education (FAPE), and (2) the Department's view that a provision in the Michigan law requiring a written agreement between the resident district and the non-resident district regarding the provision of FAPE for any student with a disability who is enrolled in a non-resident school or program does not violate Part B of IDEA or Section 504 of the Rehabilitation Act of 1973.
- Letter dated March 20, 2000 to Illinois State Board of Education Special Education Director Dr. Gordon M. Riffel, clarifying that there is no provision in Part B of IDEA that would permit a school district to make the award of compensatory services to a student with a disability contingent on the student's delaying graduation from high school, when a determination has been made as a result of a complaint resolution that compensatory services are necessary to remedy the denial of FAPE to that student.

Topic Addressed: Children With Disabilities Placed in Private Schools by Their Parents

- Letter dated January 21, 2000 to U.S. Congressman David L. Hobson, regarding a parent's request for speech services for their child with a disability who is parentally-placed at a private school, and clarifying that the March 12, 1999 final regulations regarding the participation of parentally-placed private school children with disabilities accurately reflect the applicable statutory provision in the IDEA Amendments of 1997 and the Department's longstanding interpretations of the relevant statutory and regulatory requirements regarding the participation of these children in programs assisted or carried out under Part B of IDEA.

Topic Addressed: State Educational Agency General Supervisory Responsibility

- Letter dated February 9, 2000 to Massachusetts Department of Education Program and Quality Assurance Administrator John Stager, regarding the State's obligation to recover the Part B of IDEA funds received by the Boston Renaissance Charter School because the charter school counted children with disabilities but did not produce required documentation that those children had received appropriate special education and related services.

- Letter dated February 10, 2000 to Lawrence M. Siegel, Esq., explaining the Department's view that a State complaint unit's decision—which found that a complaint did not allege a violation of Part B of IDEA—was valid, since the issue raised in the particular complaint concerned the district's alleged failure to provide services for a student with a disability in the succeeding school year.
- Letter dated February 10, 2000 to Maryland State Department of Education Special Education Assistant Superintendent Carol Ann Baglin, regarding the State's authority to require a corrective action in resolving a complaint against a school district which prohibits that district from allowing parents to voluntarily waive their right to receive a copy of procedural safeguards available to parents under Part B of IDEA, since the statute specifies the times when the procedural safeguards notice must be provided and does not authorize any exceptions.
- Letter dated February 28, 2000 to Alaska Department of Education and Early Development Commissioner Richard S. Cross, informing Alaska that, despite the unique circumstances set out in its inquiry, there is no authority in IDEA for the Department to grant a State a waiver of the requirement that it revise its State statutes to comply with the requirements of the IDEA Amendments of 1997 in order for the State to receive its Part B of IDEA grant awards for FFY 2000.
- Letter dated March 27, 2000 to Virginia Department of Education Acting Superintendent Dr. Jo Lynne DeMary, informing the Virginia Department of Education that (1) its failure to comply with the regulation at 34 CFR 300.514(c)—which addresses what constitutes a child's "stay-put" or "pendency" placement if the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate—could result in enforcement action against the State, and (2) compliance with this regulation, which is a valid and appropriate exercise of the Department's regulatory authority, is required of all States receiving IDEA funds.

Topic Addressed: Coordinated Services

- Memorandum to Chief State School Officers dated January 24, 2000, regarding distribution of Office of Special Education Programs (OSEP) Memorandum 00–7 dated January 13, 2000 to State Directors of Special Education, which explains five provisions in the IDEA Amendments of 1997 that enhance coordinated services and are designed to improve results for students with disabilities.

Topic Addressed: Participation in State and District-Wide Assessment Programs

- Letter dated February 4, 2000 to individual, (personally identifiable information redacted), regarding the importance of ensuring that students with disabilities are fully included in the benefits of State and district-wide assessment programs and that States that report data about the performance of nondisabled children on assessments at the district or State level must also do so for disabled children.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Charter Schools

- Letter dated March 31, 2000 to New York State Education Department Deputy Commissioner Lawrence Gloeckler, clarifying that an LEA is not required to distribute Part B of IDEA flow-through funds to charter schools that are not established as LEAs or as public schools of the LEA.

Section 615—Procedural Safeguards

Topic Addressed: Student Discipline

- Letter dated February 4, 2000 to individual, (personally identifiable information redacted), regarding options available to school authorities in appropriately educating a disabled student whose continued presence in a classroom may pose a threat to school safety.
- Letter dated February 4, 2000 to U.S. Congressman Ronnie Shows, regarding a perceived disparity in procedures for disciplining disabled and nondisabled students, and providing an explanation of the requirements of the IDEA Amendments of 1997 that govern disciplining disabled students.
- Letter dated February 16, 2000 to individual, (personally identifiable information redacted), regarding options available to school authorities in disciplining students with disabilities.
- Letter dated March 15, 2000 to individual, (personally identifiable information redacted), regarding options available to parents in resolving disagreements with a school district over the requirements of Part B of IDEA even if criminal charges are pending against a student, and explaining that (1) Part B of IDEA does not prohibit a State or local school district from reporting a crime committed by a student with a disability to appropriate State law enforcement or judicial authorities, and (2) a hearing officer is not considered an employee of a local school district merely because the hearing officer is paid to conduct the hearing.
- Letter dated March 15, 2000 to Louisiana State Superintendent Cecil Picard, clarifying that (1) the statutory provision requiring a school district to ask a hearing officer, in lieu of permitting school officials unilaterally, to order the removal of a child who is potentially dangerous to an appropriate interim alternative educational setting for up to 45 days strikes an appropriate balance between the need to provide school officials increased flexibility in dealing with school safety while maintaining due process and procedural protections for children with disabilities and their parents, and (2) regardless of available Federal special education funding, States have flexibility in accessing existing State and Federal programs to fund special education services.

Part C: Infants and Toddlers With Disabilities

Sections 631–641

Topic Addressed: Natural Environments

- Letters dated March 21, 2000 to U.S. Senator Dianne Feinstein, responding to separate inquiries from constituents, regarding the history and changes to the natural environments requirements of Part C of IDEA since the law was originally enacted, and clarifying that the need for parent networking and parent training could be addressed through the provision of appropriate services in the child's individualized family services plan (IFSP).
- Letter dated March 21, 2000 to U.S. Congressman Mike Thompson, regarding the history of and changes to the natural environments provisions of Part C of IDEA and the requirement that decisions about the provision of required early intervention services in natural environments must be individually determined by the child's IFSP team, and clarifying that determinations regarding services, including services for parents and the location of services to a child, are made by the child's IFSP team.
- Letter dated March 21, 2000 to U.S. Congresswoman Lynn Woolsey, regarding the natural environments provision of Part C of IDEA, and clarifying, in general, that providing services to an infant or toddler with a disability in a setting such as a center-based program that is limited exclusively to infants and toddlers with disabilities would not constitute a

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natural environment, but that early intervention services may be provided in a center-based program serving only children with disabilities, if the IFSP team justifies in the IFSP that this location is necessary to meet the individual needs of a child for a particular service.

Section 640—Payor of Last Resort

Topic Addressed: Use of Family's Public and Private Insurance for Early Intervention Services

• Letter dated March 22, 2000 to Illinois Department of Human Services Director of Community Health and Prevention James R. Nelson, explaining that (1) with respect to the use of a family's private insurance for services under Part C of IDEA, pending further regulatory action, the Department will accept a State's reasonable interpretation of Part C of IDEA, including OSEP's prior policy letters and the position set out in the Department's Notice of Proposed Rulemaking on this issue; (2) with respect to the use of public insurance, Part C of IDEA funds are the payor of last resort; and (3) if a family does not permit access to its Medicaid payments, Part C of IDEA requires that a State ensure that the inability of a family to pay for required services does not result in the denial of services under Part C of IDEA to the child or to the child's family.

Part D: National Activities To Improve Education of Children With Disabilities

Subpart 1—State Program Improvement Grants for Children With Disabilities

Section 653—Applications

Topic Addressed: Information About State Program Improvement Grants

• Letter dated March 24, 2000 to individual, (personally identifiable information redacted), clarifying that (1) State Program Improvement Grants, authorized by Part D of IDEA, are discretionary grants that are not intended to provide direct services to children with disabilities, and (2) Part D of IDEA does not require a State to establish its own regulations to administer this grant program.

Miscellaneous

Topic Addressed: Inapplicability of the Least Restrictive Environment and Discipline Requirements of Part B of IDEA to College Students

• Letter dated February 10, 2000 to individual, (personally identifiable information redacted), clarifying that the least restrictive environment (LRE) and discipline provisions of Part B of IDEA do not apply to college students since the Part B of IDEA regulations provide that a disabled student's graduation from high school with a regular high school diploma ends the student's entitlement to FAPE, and noting that some of the issues regarding the provision of postsecondary services to students with disabilities may be within the jurisdiction of the Department's Office for Civil Rights.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: May 31, 2000.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–14074 Filed 6–5–00; 8:45 am]

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Federal Register

Tuesday,
June 6, 2000

Part VI

Department of Housing and Urban Development

24 CFR Part 902
Public Housing Assessment System (PHAS): Technical Correction; Final Rule
Public Housing Assessment System (PHAS); Transition Assistance for Certain PHAs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 902

[Docket No. FR–4497–C–06]

RIN 2577–AC08

Public Housing Assessment System (PHAS): Technical Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Technical correction.

SUMMARY: On January 11, 2000, HUD published a final rule that made certain amendments to the Public Housing Assessment System regulations, issued as final regulations by HUD on September 1, 1998. This document makes certain technical and editorial corrections to the January 11, 2000, final rule. Elsewhere in this edition of the **Federal Register**, HUD is publishing a notice concerning additional PHAS transition assistance for certain PHAs.

DATES: Effective Date: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center (REAC), Attention: Wanda Funk, U. S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Technical Assistance Center at (888) 245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 2000 (65 FR 1712), HUD issued a final rule that made certain amendments to the Public Housing Assessment System (PHAS) regulations. The PHAS was implemented by final regulations published on September 1, 1998. The amendments published to the PHAS regulations on January 11, 2000, followed a proposed rule published on June 22, 1999, and the amendments were prompted by both statutory and administrative changes to the PHAS. The Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, approved October 21, 1998) (referred to as the "Public Housing Reform Act") made certain amendments to section 6(j) of the U.S. Housing Act of 1937, which necessitated changes to the PHAS regulations. Additionally, HUD determined that certain changes were needed to the regulations as a result of the transition period to the new PHAS that HUD provided following issuance of the September 1, 1998, final rule. The September 1, 1998 final rule did not provide for immediate implementation of PHAS, but rather provided for a year's transition period in which HUD tested its PHAS systems, provided advisory scores, and continued discussions and meetings with public housing agencies (PHAs) and residents, and their respective representatives about the PHAS. As a result of this transition period, extended by HUD at the request of PHAs, and discussions and meetings which continued well into the fall and winter of 1999, HUD determined certain changes were needed. The changes, both statutory and regulatory were discussed in the preambles to the June 22, 1999, proposed rule, and the January 11, 2000, final rule.

II. Technical Corrections

This document corrects certain errors that appeared in the January 11, 2000 final rule. Three primary corrections are made by this document:

- First, in § 902.43, HUD reinstates "vacant unit turnaround time" as a Management Operations sub-indicator.

In the preamble to the January 11, 2000, final rule, HUD advised that it was persuaded by public comment on the proposed rule and discussions with PHAs that assessing vacancy rate under the Management Operations Indicator was duplicative of assessing "occupancy loss" and "tenant receivable outstanding" under the Financial Condition Indicator. HUD therefore agreed that the vacancy rate sub-indicator under the Management Operations Indicator would be removed. (See discussion at 65 FR 1716). In removing "vacancy rate" from § 902.43, HUD inadvertently also removed "vacant unit turnaround time." These two components were combined together as one sub-indicator under PHAS (just as they had been under the predecessor system—the Public Housing Management Assessment Program (PHMAP)). Vacant unit turnaround time is a statutorily required indicator and is not covered by any other sub-indicator in either the Financial Condition Indicator or the Management Operations Indicator, and the removal of this sub-indicator was not part of the discussions between HUD and the PHAs, nor was vacant unit turnaround time raised by public commenters on the June 22, 1999, proposed rule as an assessment component found under more than one PHAS Indicator (again, as was the case with vacancy rate).

HUD is therefore reinstating this sub-indicator through this correction document. In revised § 902.43, HUD makes the vacant unit turnaround time the first sub-indicator, and the remaining sub-indicators are redesignated accordingly. For the convenience of the reader, the entire section is republished, as corrected.

- Second, the Board of Review process provided in § 902.69 is applicable to appeal of PHAS scores, and not just to appeal of troubled designation or petition for removal of troubled designation. This was made clear in the preamble discussion at page 1728, third column, continuing on page 1729, first column. In this discussion, in response to a comment from the public that the appeal process did not allow for reviewing of the scoring process itself, and the process was too abbreviated, HUD responded by referring to the process in § 902.69, and noted that this appeal process provides for referral to the Board of Review.

HUD, therefore, revises the language in § 902.69 to clarify that this process is applicable to appeal of PHAS scores, consistent with the discussion in the preamble.

- Third, with the extension of advisory scores to PHAs with fiscal years ending March 31, 2000, HUD has corrected this section to reflect implementation of PHAS begins with PHAs with fiscal years ending on and after June 30, 2000, and to allow for flexibility if further changes are considered necessary that will not require another correction or amendment to the rule.

Other corrections made by this document are as follows:

- In § 902.20, HUD removes in paragraph (b)(2) the reference to the assessment of vacant units under the Management Operations Indicator. (See 65 FR 1741, first column.) In the January 11, 2000, final rule, HUD determined that unit vacancy only would be assessed by the occupancy loss sub-indicator under the Financial Condition Indicator. Therefore this reference is incorrect.
- In § 902.20, the regulatory reference in paragraph (c) should be § 902.43(a), not § 902.43(a)(5). (See 65 FR 1741, first column.) HUD corrects this cross-reference.
- In § 902.25, HUD replaces the word "latest" in paragraph (b)(2)(ii) which appears before the term "census data" with the word "most recent." (See 65 FR 1743, first column.) HUD believes that the phrase "most recent" is a more clear description of the type of census data needed.
- In § 902.25, HUD clarifies in paragraph (c)(3) that adjustments for modernization work-in-progress are not limited to units but encompass modernization work-in-progress being undertaken in other areas in a PHA's development, which areas are subject to physical inspection by HUD. (See 65 FR 1744, first column.)
- In § 902.35, HUD corrects the definition of "Tenant Receivable Outstanding" to further clarify its meaning.
- In § 902.43, the use of the term "unobligated" in the first sentence of paragraph (a)(1) is incorrect. (See 65 FR 1745, third column.) The correct term should be "unexpended." HUD makes this correction.
- In § 902.43, the regulatory reference in paragraph (b)(1) should be to § 902.60(d), not 902.69(d). (See 65 FR 1746, middle column.) HUD corrects this cross-reference.
- In § 902.45, HUD clarifies that a PHA that receives less than 60 percent of the maximum calculation for the Capital Fund subindicator under PHAS Indicator #3 (Management Operations) is troubled with respect to program assistance under the Capital Fund. (See 65 FR 1746, end of middle column, top of third column.) This is clearly stated in § 902.67(c)(2)(ii), but should also be stated in § 902.45.
- In § 902.60, paragraph (e)(2) is amended to clarify that a PHA's failure to submit a certification required under the PHAS regulations or to submit year-end financial information will result in a score of zero only for the PHAS Indicator for which the certification or financial information is required and not received. Without this correction, the rule indicates that the PHA would receive a score of zero for all of the PHAS Indicators which require certifications, even if certifications are received for some of them. (See 65 FR 1748, first column.)

This section is also amended to clarify that HUD may not extend the reporting deadline for audited financial statements. OMB Circular A–133 provides that an audited financial statement must be submitted within nine months after an entity's fiscal year-end. This deadline may not be extended by HUD, and the revised language clarifies this.

- In § 902.67, the regulatory reference in paragraph (c)(2)(ii) should be to § 902.43(a), not § 902.43(a)(2). (See 65 FR 1749, first column.) HUD corrects this cross-reference.
- In § 902.69, HUD replaces the term "final PHAS score" in the first sentence of paragraph (c)(1)) with the term "overall PHAS score." (See 65 FR 1750, middle column.) As stated in § 902.63(c), a PHA's overall PHAS score becomes its final PHAS score after any adjustments are made in accordance with the regulatory provisions and following the appeals process provided in § 902.69.
- In § 902.77, the regulatory reference in the second sentence of paragraph (a)(1) should be § 902.79, not § 902.69. (See 65 FR 1753, first column.) HUD corrects this cross-reference.

In § 902.79, the reference in paragraph (b)(1)(iv) to "paragraph (a) of this section" is incorrect. (See 65 FR 1753, third column.) The reference should be to "paragraph (b)(4) of this section." HUD corrects this reference.

III. Responses to Post-Final Rule Questions

In addition to the regulatory changes described above, other issues or concerns were raised to HUD after publication of the January 11, 2000, final rule, as follows.

HUD was asked to correct the January 11, 2000, final rule to include a definite period of time in which HUD must respond to a request for an appeal. HUD points out that § 902.69(e) provides that HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period for an additional 30 days if further inquiry is necessary. No correction is needed since the rule does address this issue.

HUD was asked how a PHA designated as troubled under PHMAP and in receivership can obtain an acceptable PHMAP rating to get out of receivership since there are no more PHMAP ratings. As noted in the preamble to the first PHAS rule issued in 1998, and discussed in other PHAS notices and the 1999 rule, PHAS Indicator #3 (Management Operations) covers the majority of areas covered by PHMAP. As noted in the PHAS Transition Notice, published on October 21, 1999 (64 FR 56676), PHAs with fiscal years ending September 30, 1999, or December 31, 1999, will receive an assessment score solely on the basis of HUD's assessment of the PHA's management operations in accordance with 24 CFR part 902, subpart D of the PHAS regulations (PHAS Indicator #3, Management Operations). (See 64 FR 56677, middle column). As the October 21, 1999, notice provided, PHAs with fiscal years ending on or after March 31, 2000, will receive a PHAS score; and therefore, either an assessment score under PHAS Indicator #3, for PHAs with fiscal years ending September 30, 1999, or December 31, 1999, or a PHAS score for PHAs with fiscal years ending on or after March 31, 2000, take the place of the PHMAP score. (As noted earlier, and as discussed further below, PHAS advisory scores are extended to PHAs with fiscal years ending on March 31, 2000, and the October 21, 1999, and December 16, 1999, PHAS Transition Assistance Notices are revised by this document.) HUD also was asked about a statement in the preamble concerning HUD's discussions with GAO concerning the GAO report on its analysis of the PHAS. (See 65 FR 1713, first column.) HUD acknowledges that this preamble language requires clarification. At the time the Conference Report to the FY 2000 HUD Appropriations Act was issued (October 13, 1999), GAO's planned review of the physical inspection process focused only on HUD's multifamily housing, not public housing. Although, GAO subsequently expanded the scope of its review to include public housing, GAO acknowledged that its analysis of implementation of PHAS in public housing and compilation of a report would take several months. Postponing implementation of PHAS until the GAO report was completed would have caused a significant delay. HUD advised both GAO and Congressional staff before publication of the January 11, 2000, final rule that HUD would proceed with its PHAS implementation plans. When the GAO report is complete, HUD will examine the GAO findings and make any changes to the PHAS physical inspection process that will refine and improve this system.

IV. Related Document—Notice on Additional Transition Assistance

HUD also was asked to provide further transition assistance to certain PHAs. Please see HUD's notice published elsewhere in this edition of the **Federal Register** that addresses PHAS transition assistance for certain PHAs.

List of Subjects in 24 CFR Part 902

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 902 is corrected by making the following correcting amendments:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

1. The authority citation for 24 CFR part 902 continues to read as follows:

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d).

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2. Revise § 902.5 to read as follows.

§ 902.5 Applicability.

(a) *PHAs, RMCs, AMEs.* (1) *Scoring of RMCs and AMEs.* This part applies to PHAs, Resident Management Corporations (RMCs) and Alternate Management Entities (AMEs), as described in this section. As described in this section, this part is also applicable to RMCs that receive direct funding from HUD in accordance with section 20 of the 1937 Act (DF–RMCs).

(i) RMCs and DF–RMCs will be assessed and issued their own numeric scores under the PHAS based on the public housing developments or portions of public housing developments that they manage and the responsibilities they assume which can be scored under PHAS. References in this part to PHAs include RMCs and this part is applicable to RMCs unless stated otherwise. References in this part to RMCs include DF–RMCs and this part is applicable to DF–RMCs unless otherwise stated.

(ii) AMEs are not issued PHAS scores. The performance of the AME contributes to the PHAS score of the PHA or PHAs for which they assumed management responsibilities.

(2) *PHA ultimate responsible entity under ACC, except where DF–RMC assumes management operations.* (i) Because the PHA and not the RMC/AME is ultimately responsible to HUD under the ACC, the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (including a court ordered receivership agreement, if applicable).

(ii) A PHA's PHAS score will not be based on developments managed by a DF–RMC.

(b) *Implementation of PHAS.* The regulations in this part are applicable to PHAs with fiscal years ending on and after June 30, 2000, unless HUD, through **Federal Register**, notice revises the implementation date to later date.

(1) *For PHAs that are not issued PHAS scores.* Under certain circumstances, PHAs may not be issued PHAS scores. For these PHAs, in lieu of a PHAS score, HUD will issue the following:

(i) *PHAS Advisory Score.* A PHA will be issued a PHAS advisory score for all PHAS indicators—Indicators #1 (Physical), #2 (Financial), #3 (Management Operations), and #4 (Resident Service and Satisfaction). The PHA must comply with the requirements of this part so that HUD may issue the advisory score. Physical inspections required to be conducted by PHAs under the Management Operations Indicator will be conducted using HUD uniform physical inspection protocol, unless HUD provides, through **Federal Register** notice, that PHAs may use HUD's Housing Quality Standards.

(ii) *Management Assessment Score.* A PHA will receive an assessment score on the basis of HUD's assessment of the PHA's management operations in accordance with subpart D of this part.

3. In § 902.20, revise paragraphs (b)(2) introductory text and (c) to read as follows:

§ 902.20 Physical condition assessment.

* * * * *

(b) * * *

(2) Only occupied units will be inspected as dwelling units (except units approved by HUD for non-dwelling purposes, e.g., daycare or meetings, which are inspected as common areas). Vacant units that are not under lease at the time of the physical inspection will not be inspected, but vacant units are assessed under the Financial Condition Indicator #2 (§ 902.35(b)(4)). The categories of vacant units not under lease that are exempted from physical inspection are as follows:

* * * * *

(c) *PHA physical inspection requirement.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(f)(3) of the Act (42 U.S.C. 1437d(f)(3)), and § 902.43(a).

* * * * *

4. In § 902.25, revise paragraphs (b)(2)(ii), (c)(3) introductory text, and (c)(3)(i) to read as follows:

§ 902.25 Physical condition scoring and thresholds.

* * * * *

(b) * * *

(2) * * *

(ii) Neighborhood environment applies to properties located where the immediate surrounding neighborhood (that is a majority of the population that resides in the census tracts or census block groups on all sides of the development) has at least 51 percent of families with incomes below the poverty rate as documented by the most recent census data.

* * * * *

(c) * * *

(3) *Adjustments for modernization work in progress.* HUD may determine that an occupied dwelling unit or other areas of a PHA development, subject to physical inspection under this subpart, which are undergoing modernization work in progress require an adjustment to the physical condition score.

(i) An occupied dwelling unit or other areas of a PHA development undergoing modernization are subject to physical inspection; the unit and other areas of the PHA development are not exempt from physical inspection. All elements of the unit or of the other areas of the PHA development that are subject to inspection and are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to HUD's physical inspection protocol without adjustment. For those elements of the unit or of the development that are undergoing modernization, deficiencies will be noted in accordance with HUD's physical inspection protocol, but the PHA may request adjustment of the physical condition score as a result of modernization work in progress.

* * * * *

5. In § 902.35, revise paragraph (b)(3) to read as follows:

§ 902.35 Financial condition scoring and thresholds.

* * * * *

(b) * * *

(3) *Tenant Receivable Outstanding* is the average number of days tenant receivables are outstanding and it is calculated by dividing tenant accounts receivable by Daily Tenant Revenue (rental revenue/365).

* * * * *

6. Revise § 902.43 to read as follows:

§ 902.43 Management operations performance standards.

(a) *Management operations sub-indicators.* The following sub-indicators listed in this section will be used to assess a PHA's management operations. The components and grades for each sub-indicator are the same as those provided in Appendix 1 to the PHAS Notice on the Management Operations Scoring Process, except as may be otherwise noted in this subpart.

(1) *Management sub-indicator #1—Vacant Unit Turnaround Time.* This sub-indicator measures the PHA's efforts to reduce unit turnaround time and assesses the adequacy of the PHA's system to track unit down time, make ready time and lease up time.

(2) *Management sub-indicator #2—Capital Fund.* This management sub-indicator examines the amount and percentage of funds provided to the PHA from the Capital Fund under section 9(d) of the Act, which remain unexpended by the PHA after three years, the timeliness of fund obligation,

the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. For funding under the HOPE VI Program, only components #3, #4, and #5 of this sub-indicator are applicable. This management sub-indicator is automatically excluded if the PHA does not have section 9(d) capital funding.

(3) *Management sub-indicator #3—Work Orders.* This management sub-indicator examines the time it takes to complete or abate emergency work orders, the average number of days nonemergency work orders were active, and any progress a PHA has made during the preceding three years to reduce the period of time nonemergency maintenance work orders were active. Implicit in this management sub-indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.

(4) *Management sub-indicator #4—PHA Annual Inspection of Units and Systems.* This management sub-indicator examines the percentage of units and systems that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term Capital Fund needs. This management sub-indicator requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart B of this part. All occupied units are required to be inspected.

(5) *Management sub-indicator #5—Security.* (i) This management sub-indicator evaluates the PHA's performance in tracking crime related problems in their developments; reporting incidence of crime to local law enforcement agencies; the adoption and implementation, consistent with section 6(j)(1)(I) (42 U.S.C. 1437d(j)(1)(I)), of applicant screening and resident eviction policies and procedures, and other anticrime strategies; coordination with local government officials and residents in the development on implementation of such strategies; and as applicable, PHA performance under any HUD drug prevention/crime reduction grants.

(ii) Paragraph (a) of this section provides that the components and grades for each sub-indicator are the same as those for the corresponding indicator provided in Appendix 1 to the PHAS Notice on the Management Operations Scoring Process, except as may be otherwise noted. For Component #1, Tracking and Reporting Crime Related Problems, the following will be used to describe a Grade of A: The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it:

(A) Tracks crime and crime-related problems in at least 90 percent of its developments;

(B) Has a cooperative system for tracking and reporting incidents of crime to local police authorities to improve law enforcement and crime prevention; and

(C) Coordinates with local government officials and its residents on the implementation of anticrime strategies.

(6) *Management sub-indicator #6—Economic Self-Sufficiency.* The economic self-sufficiency sub-indicator measures the PHA's efforts to coordinate, promote or provide effective programs and activities to promote the economic self-sufficiency of residents. For this sub-indicator, PHAs will be assessed for all the programs that the PHA has HUD funding to implement. Also, PHAs will receive credit for implementation of programs through partnerships with non-PHA providers, even if the programs are not funded by HUD or the PHA.

(b) *Reporting on performance under the Management Operations Indicator.* (1) A PHA is required to submit electronically a certification of its performance under each of the management operations sub-indicators in accordance with § 902.60(d).

(2) If circumstances preclude a PHA from reporting electronically, HUD will consider granting short-term approval to allow a PHA to submit its management operations certification manually. A PHA that seeks approval to submit its certification manually must ensure that REAC receives a request for manual submission in writing two months prior to the submission due date of its Management Operations certification. The written request must include the reasons why the PHA cannot submit its certification electronically. REAC will respond to such a request and will manually forward its determination in writing to the PHA.

7. In § 902.45, paragraph (b) is revised to read as follows:

§ 902.45 Management operations scoring and thresholds.

* * * * *

(b) *Thresholds.* (1) In order to receive a passing score under the Management Operations Indicator, the PHA must achieve a score of at least 18 points or 60 percent of the available points under this PHAS Indicator #3. If the PHA fails to receive a passing score on the Management Operations Indicator, the PHA shall be categorized as a substandard management agency.

(2) A PHA that receives less than 60 percent of the maximum calculation for the Capital Fund subindicator under Management Operations Indicator, shall be subject to the sanctions provided in section 6(j)(4) of the Act (see § 902.67(c)(2)(ii).)

8. In § 902.60, paragraph (e)(2) is revised to read as follows:

§ 902.60 Data collection.

* * * * *

(e) * * *

(2) If any certification or year-end financial information, with the exception of the PHA's audited financial statement, is not received within three months after the due date, the PHA will receive a presumptive rating of failure for each PHAS Indicator for which the certification or year-end financial information is not received. The PHA's audited financial statement must be received no later than 9 months after the PHA's fiscal year-end, in accordance with OMB Circular A–133 (see § 902.33(c)). If the audited financial statement is not received by that date, the PHA will receive a presumptive rating of failure for the PHAS Financial Indicator. If the PHA receives a presumptive rating failure for any PHAS Indicator due to failure to submit a certification or year-end financial information by the due date, including any extension of the due date, as provided in this paragraph (except for the audited financial statement for which the due date is established by OMB Circular A–133), the PHA shall be designated as troubled or identified as troubled with respect to the program for assistance from the Capital Fund under section 9(d) of the Act.

9. In § 902.67, revise paragraph (c)(2)(ii) to read as follows:

§ 902.67 Score and designation status.

* * * * *

(c) * * *

(2) * * *

(ii) In accordance with section 6(j)(2) of the Act, a PHA that receives less than 60 percent of the maximum calculation for the Capital Fund sub-indicator under PHAS Indicator #3 (Management Operations, subpart D of this part; see § 902.43(a)) will be subject to the sanctions, provided in section 6(j)(4), as appropriate.

* * * * *

10. Revise § 902.69 to read as follows:

§ 902.69 PHA right of petition and appeal.

(a) *Appeal of troubled designation and petition for removal troubled designation.* A PHA may:

(1) Appeal its troubled designation (including designation as troubled with

respect to its performance under the Capital Fund subindicator as provided in § 902.67(c)(2)); and

(2) Petition for removal of troubled designation.

(b) *Appeal of PHAS score.* If a PHA believes that an objectively verifiable and material error (or errors) exists in any of the scores for its PHAS Indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (*i.e.*, as troubled, standard, or high performer), the PHA may appeal its PHAS score in accordance with the procedures of paragraphs (c), (d) and (e) of this section. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (i.e., from troubled performer to standard performer, or from standard performer to high performer).

(c) *Appeal and petition procedures.* (1) To appeal troubled designation or a PHAS score, a PHA must submit a request in writing to the Director of the Real Estate Assessment Center that must be received by REAC no later than 30 days following the issuance of the overall PHAS score to the PHA. To petition removal of troubled designation, a PHA also must submit its request in writing to the Director of the Real Estate Assessment Center. The written request must be received by REAC no later than 30 days after HUD's decision to refuse to remove the PHA's troubled designation.

(2) An appeal of troubled designation or petition for removal of troubled designation must include the PHA's supporting documentation and reasons for the appeal. An appeal of a PHAS score must be accompanied by the PHA's reasonable evidence that an objectively verifiable and material error occurred. An appeal submitted to REAC without appropriate documentation will not be considered and will be returned to the PHA.

(d) *Consideration of appeal.* (1) *Consideration of appeal of PHAS score.* Upon receipt of an appeal of a PHAS score from a PHA, REAC will review the PHA's file and the evidence submitted by the PHA to support that an error occurred. If REAC determines that an objectively verifiable and material error has been documented by the PHA, REAC will convene a Board of Review, in accordance with the procedures of paragraphs (d) and (e) of this section, to evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. For appeal of PHAS scores, the Board of Review may determine that REAC should undertake a new inspection of the property, and/or a reexamination of the financial information, management information, or resident information (the components of the PHAS score), depending upon which PHAS Indicator the PHA believes was scored erroneously and the type of evidence submitted by the PHA to support its position that an error occurred.

(2) *Consideration of appeal of troubled designation or refusal to remove troubled designation.* Upon receipt of an appeal of a troubled designation from a PHA, REAC will convene a Board of Review (the Board) to evaluate the appeal and its merits for the purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, from the Office of Public and Indian Housing, and from such other office or representative as the Secretary may designate (excluding, however, representation from the Troubled Agency Recovery Center). For purposes of reassessment, REAC will schedule a reinspection and/or acquire audit services, as determined by the Board, and a new score will be issued, if appropriate. Decisions by the Board will be reported to the PHA by the Assistant Secretary for Public and Indian Housing.

(e) *Final appeal decisions.* HUD will make final decisions of appeals, made under this section, within 30 days of receipt of an appeal, and may extend this period for an additional 30 days if further inquiry is necessary. Failure by a PHA to submit supporting documentation with its request for appeal, or within any additional period granted by HUD is grounds for denial of an appeal. Final appeal decisions will be reported to the PHA by the Assistant Secretary for Public and Indian Housing.

11. In § 902.77, revise paragraph (a)(1) to read as follows:

§ 902.77 Referral to the Departmental Enforcement Center (DEC).

(a) *Referral of Troubled PHA to the DEC for failing to execute or meet MOA requirements.* (1) Failure of a troubled PHA to execute or meet the requirements of a MOA in accordance with § 902.75 constitutes a substantial default under § 902.79 and may result in referral of the PHA to the DEC. The TARC will recommend to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. In accordance with § § 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. A PHA shall be referred to the DEC if the PHA fails to cure the default within the a period not to exceed 30 days unless the Assistant Secretary for Public and Indian Housing determines that a longer period is appropriate.

* * * * *

12. In § 902.79, revise paragraph (b)(1)(iv) to read as follows:

§ 902.79 Substantial default.

* * * * *

(b) * * *

(1) * * *

(iv) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (b)(4) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

* * * * *

Dated: May 26, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Donald J. LaVoy,

Director, Real Estate Assessment Center.

[FR Doc. 00–14160 Filed 6–5–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4497–N–07]

RIN 2577–AC08

Public Housing Assessment System (PHAS) Notice of PHAS Transition Assistance for Certain PHAs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This document notifies public housing agencies (PHAs) with fiscal years ending March 31, 2000, and June 30, 2000, that they may conduct physical inspections of their units in accordance with HUD's Housing Quality Standards. Additionally, this notice advises that HUD extends advisory scores to PHAs with fiscal years ending March 31, 2000. Therefore, PHAS scores will be issued for PHAs with fiscal years ending on and after June 30, 2000.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center (REAC), Attention: Wanda Funk, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Technical Assistance Center at (888)–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 2000 (65 FR 1712), HUD issued a final rule that made certain amendments to the Public Housing Assessment System (PHAS) regulations. The PHAS was implemented by final regulations published on September 1, 1998. The amendments published to the PHAS regulations on January 11, 2000, followed a proposed rule published on June 22, 1999, and were prompted by both statutory and administrative changes to the PHAS.

II. Additional Transition Assistance to Certain PHAs

Following publication of the January 11, 2000, final rule, HUD was asked to provide further transition assistance to PHAs with fiscal years ending March 31, 2000, and June 30, 2000, by allowing these PHAs to inspect occupied units in accordance with HUD's Housing Quality Standards (HQS). Under sub-indicator #3 of PHAS Indicator #3, Management Operations, PHAs are assessed on the percentage of units and systems that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term Capital Fund needs. PHAs must inspect these units in accordance with HUD's Uniform Physical Condition Standards. In a notice published December 16, 1999 (64 FR 70274), HUD advised that PHAs with fiscal years ending September 30, 1999, and December 31, 1999, could inspect their units in accordance with HQS because HUD only recently released its physical inspection and training guidebook. HUD will extend the transition assistance provided in its December 16, 1999, notice to PHAs with fiscal years ending March 31, 2000, and June 30, 2000.

Additionally, HUD was requested to allow PHAs with fiscal years ending March 31, 2000, to receive PHAS advisory scores, given the date on which the PHAS Amendments final rule was issued—January 11, 2000. HUD agrees to issue PHAS advisory scores to PHAs with fiscal years ending March 31, 2000. PHAS scores will be issued to PHAs with fiscal years ending on or after June 30, 2000. As the October 21, 1999, PHAS Transition Notice clarified, however, HUD is required by statute to assess PHAs performance. PHAs with fiscal years ending March 31, 2000, will receive an assessment score solely on the basis of HUD's assessment of the PHA's management operations in accordance with 24 CFR part 902, subpart D of the PHAS regulations (PHAS Indicator #3, Management Operations), as amended by the January 11, 2000, final rule, and corrected by the correction document published elsewhere in this edition of the **Federal Register**.

III. PHAS Technical Correction

Elsewhere in this edition of the **Federal Register**, HUD is publishing a technical correction to the January 11, 2000 PHAS final rule.

Dated: March 30, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Donald J. LaVoy,

Director, Real Estate Assessment Center.

[FR Doc. 00–14161 Filed 6–5–00; 8:45 am]

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Federal Register

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Part VII

The President

Proclamation 7316—Gay and Lesbian Pride Month, 2000

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Federal Register
Vol. 65, No. 109
Tuesday, June 6, 2000

Presidential Documents

Title 3—

The President

Proclamation 7316 of June 2, 2000

Gay and Lesbian Pride Month, 2000

By the President of the United States of America

A Proclamation

Gay and lesbian Americans have made important and lasting contributions to our Nation in every field of endeavor. Too often, however, gays and lesbians face prejudice and discrimination; too many have had to hide or deny their sexual orientation in order to keep their jobs or to live safely in their communities.

In recent years, we have made some progress righting these wrongs. Since the Stonewall uprising in New York City more than 30 years ago, the gay and lesbian rights movement has united gays and lesbians, their families and friends, and all those committed to justice and equality in a crusade to outlaw discriminatory laws and practices and to protect gays and lesbians from prejudice and persecution.

I am proud of the part that my Administration has played to achieve these goals. Today, more openly gay and lesbian individuals serve in senior posts throughout the Federal Government than during any other Administration. To build on our progress, in 1998 I issued an Executive Order to prohibit discrimination in the Federal civilian workforce based on sexual orientation, and my Administration continues to fight for the Employment Non-Discrimination Act, which would outlaw discrimination in the workplace based on sexual orientation.

Yet many challenges still lie before us. As we have learned from recent tragedies, prejudice against gays and lesbians can still erupt into acts of hatred and violence. I continue to call upon the Congress to pass meaningful hate crimes legislation to strengthen the Department of Justice's ability to prosecute hate crimes committed due to the victim's sexual orientation.

With each passing year the American people become more receptive to diversity and more open to those who are different from themselves. Our Nation is at last realizing that gays and lesbians must no longer be "strangers among friends," as the civil rights pioneer David Mixner once noted. Rather, we must finally recognize these Americans for what they are: our colleagues and neighbors, daughters and sons, sisters and brothers, friends and partners.

This June, recognizing the joys and sorrows that the gay and lesbian movement has witnessed and the work that remains to be done, we observe Gay and Lesbian Pride Month and celebrate the progress we have made in creating a society more inclusive and accepting of gays and lesbians. I hope that in this new millennium we will continue to break down the walls of fear and prejudice and work to build a bridge to understanding and tolerance, until gays and lesbians are afforded the same rights and responsibilities as all Americans.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2000 as Gay and Lesbian Pride Month. I encourage all Americans to observe this month with appropriate programs, ceremonies, and activities that celebrate our diversity and recognize the gay and lesbian Americans whose many and varied contributions have enriched our national life.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–14440
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S.J. Res. 44/P.L. 106–205
Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)
H.R. 154/P.L. 106–206
To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)
H.R. 371/P.L. 106–207
Hmong Veterans' Naturalization Act of 2000 (May 26, 2000; 114 Stat. 316)
H.R. 834/P.L. 106–208
National Historic Preservation Act Amendments of 2000 (May 26, 2000; 114 Stat. 318)
H.R. 1377/P.L. 106–209
To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the "John J. Buchanan Post Office Building". (May 26, 2000; 114 Stat. 320)
H.R. 1832/P.L. 106–210
Muhammad Ali Boxing Reform Act (May 26, 2000; 114 Stat. 321)
H.R. 3629/P.L. 106–211
To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)
H.R. 3707/P.L. 106–212
American Institute in Taiwan Facilities Enhancement Act (May 26, 2000; 114 Stat. 332)
S. 1836/P.L. 106–213
To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)
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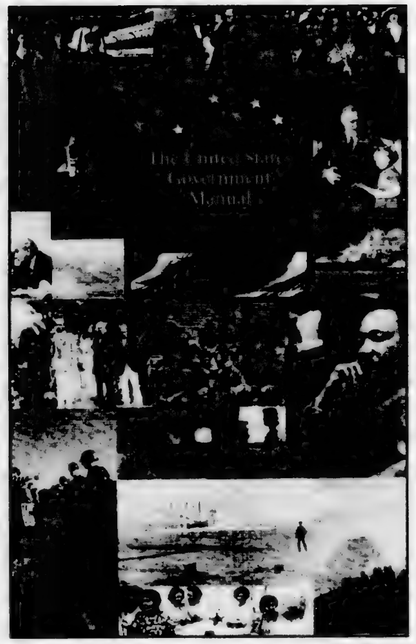

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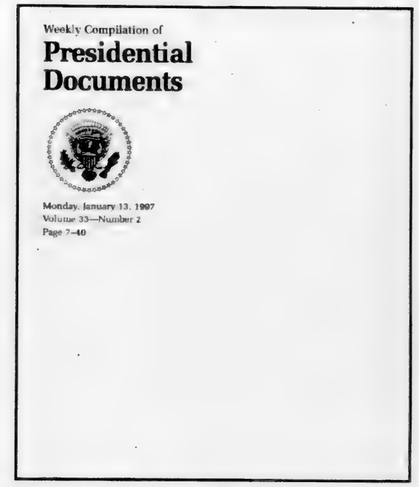

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Rules and Regulations

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Wednesday, June 7, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Part 108

[Notice 2000–12]

Filing Copies of Campaign Finance Reports and Statements With State Officers

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On March 22, 2000 at 65 FR 15221, the Commission published the text of revised regulations governing filing of campaign finance reports with State officers and the duties of State officers concerning the reports. The Commission announces that these rules are effective as of June 7, 2000.

EFFECTIVE DATE: The amendment to 11 CFR 108.1, 108.2, 108.3, 108.4, and 108.6 as publiched at 65 FR 15221 (March 22, 2000), are effective as of June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is announcing the effective date of revised regulations at 11 CFR Part 108, governing filing copies of campaign finance reports and statements with State officers. These rules implement a 1995 amendment to the Federal Election Campaign Act at 2 U.S.C. 439(c) that exempts States meeting certain criteria from receipt and maintenance requirements for reports filed in connection with federal elections.

The statutory amendment specifically covers reports and statements filed with the Commission, *i.e.*, all except those filed by Senate candidates, their authorized committees, and committees that support or oppose them, which are filed with the Secretary of the Senate. The new rules also exempt from State receipt and maintenance requirements reports filed with the Secretary of the Senate that can be accessed electronically from the Commission's Web site, www.fec.gov.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. These rules were transmitted to Congress on March 17, 2000. Thirty legislative days expired in the Senate on May 16, 2000, and the House of Representatives on May 23, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–14241 Filed 6–6–00; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–311–AD; Amendment 39–11744; AD 2000–10–20]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that requires repetitive inspections to detect cracking of the fuselage skin in the areas of the left- and right-hand stringerless sidewall window belts, and repair, if necessary. This amendment is prompted by reports of fatigue cracks found in the fuselage skin where the skin thickness steps from 0.40 to 0.23 inch. The actions specified by this AD are intended to detect and correct cracking of the fuselage skin, which could result in reduced structural integrity of the airplane.

DATES: Effective July 12, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes was published in the **Federal Register** on February 16, 2000 (65 FR 7801). That action proposed to require require repetitive inspections to detect cracking of the fuselage skin in the areas of the left- and right-hand stringerless sidewall window belts, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 235 airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be

affected by this AD, that it will take approximately 48 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $336,960, or $2,880 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–10–20 Lockheed: Amendment 39–11744. Docket 98–NM–311–AD.

Applicability: All Model L–1011–385 series airplanes, as listed in Lockheed Service Bulletin 093–53–279, dated May 6, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the fuselage skin, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Perform an ultrasonic inspection on the fuselage skin in the area of the stringerless sidewall window belts, at the radii on both the forward and aft sides of the machined cutout where the fuselage skin steps from 0.40 to 0.23 inch, to detect cracking in the base of the radii. Accomplish the inspection in accordance with Lockheed Service Bulletin 093–53–279, dated May 6, 1998, at each of the 6 specific inspection zones identified in the service bulletin at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 20,000 total flight cycles; or

(2) Within 600 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

(b) For readings of less than 20 percent obtained at all 6 inspection zones during the ultrasonic inspection required by paragraph (a) of this AD: Repeat the ultrasonic inspection thereafter at intervals not to exceed 1,500 flight cycles.

(c) Except as provided by paragraph (e) of this AD: For any reading of 20 percent or greater and less than or equal to 50 percent obtained at any inspection zone during the ultrasonic inspection required by paragraph (a) of this AD, prior to further flight, perform a low frequency eddy current (LFEC) inspection to measure the depth of the cracking, in accordance with Lockheed Service Bulletin 093–53–279, dated May 6, 1998.

(1) If the results of the LFEC inspection are outside the reject zone, as defined in the service bulletin: Within 1,500 flight cycles, repeat both the ultrasonic and LFEC inspections specified by paragraphs (a) and (c), respectively, of this AD.

(i) If the results of the LFEC inspection specified by paragraph (c)(1) of this AD are outside the reject zone: Within 1,800 flight cycles after the initial crack finding, as detected during the ultrasonic inspection specified in paragraph (a) of this AD, repair any affected inspection zone in accordance with Part II of the Accomplishment Instructions of the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of this AD for the repaired inspection zone only.

(ii) If the results of the LFEC inspection specified by paragraph (c)(1) of this AD are within the reject zone: Prior to further flight, repair any affected inspection zone in accordance with Part II of the Accomplishment Instructions of the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of this AD for the repaired inspection zone only.

(2) If the results of the LFEC inspection are within the reject zone, as defined in the service bulletin: Prior to further flight, repair any affected inspection zone in accordance with Part II of the Accomplishment Instructions of the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of this AD for the repaired inspection zone only.

(d) Except as provided by paragraph (e) of this AD: For any reading of 50 percent or greater obtained at any inspection zone during the ultrasonic inspection required by paragraph (a) of this AD, prior to further flight, perform a LFEC inspection to measure the depth of the cracking, in accordance with Lockheed Service Bulletin 093–53–279, dated May 6, 1998.

(1) If the results of the LFEC inspection are outside the reject zone, as defined in the service bulletin: Within 300 flight cycles, repeat both the ultrasonic and LFEC inspections specified in paragraphs (a) and (c), respectively, of this AD.

(i) If the results of the LFEC inspection specified by paragraph (d)(1) of this AD are outside the reject zone: Within 600 flight cycles after the initial crack finding, as detected during the ultrasonic inspection specified in paragraph (a) of this AD, repair any affected inspection zone in accordance with Part II of the Accomplishment Instructions of the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of this AD for the repaired inspection zone only.

(ii) If the results of the LFEC inspection specified by paragraph (d)(1) of this AD are within the reject zone: Prior to further flight, repair any affected inspection zone in accordance with Part II of the Accomplishment Instructions of the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of this AD for the repaired inspection zone only.

(2) If the results from the LFEC inspection are within the reject zone, as defined in the service bulletin: Prior to further flight, repair any affected inspection zone in accordance with Part II of the Accomplishment Instructions of the service bulletin. Such repair constitutes terminating action for the repetitive inspection requirements of this AD for the repaired inspection zone only.

(e) For any inspection results that require repair in two adjacent zones: Prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraph (e) of this AD, the actions shall be done in accordance with Lockheed Service Bulletin 093–53–279, dated May 6, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on July 12, 2000.

Issued in Renton, Washington, on May 17, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14018 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–56–AD; Amendment 39–11764; AD 2000–11–16]

RIN 2120–AA64

Airworthiness Directives; Ayres Corporation S2R Series and Model 600 S2D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 97–17–03, which currently requires you to accomplish the following on Ayres Corporation (Ayres) S2R Series and Model 600 S2D airplanes: inspect the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking; replace any lower spar cap where fatigue cracking is found; and report any fatigue cracking. This AD retains the inspection and replacement (if necessary) requirements of the lower spar caps that are currently required in AD 97–17–03. This AD also makes these inspections repetitive, adds additional airplanes to the Applicability of the AD, changes the initial compliance time for all airplanes, and arranges the affected airplanes into groups (six) based on usage and configurations. The existing AD was the result of an accident of an Ayres S2R series airplane where the wing separated from the airplane in flight. The actions specified by this AD are intended to detect and correct fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

DATES: This AD becomes effective on July 25, 2000.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulations as of July 25, 2000.

ADDRESSES: You may get the service information referenced in this AD from the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706–3090. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–56–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Satish Lall, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 7036082; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

Has FAA taken any action to this point? An accident on an Ayres S2R series airplane where the wing separated from the airplane in flight caused FAA to issue AD 9717–03, Amendment 39–10195 (62 FR 43296, August 18, 1997). AD 97–17–03 currently requires you to accomplish the following:

- Inspect the 1/4-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking;
- Replace any lower spar cap where fatigue cracking is found; and
- Report any fatigue cracking to FAA.

Investigation of all resources available to FAA at the time of the accident showed nine occurrences of fatigue cracking in the lower spar caps of Ayres S2R airplanes, specifically emanating from the ¼-inch and 5/16-inch bolt holes. Investigation of the above-referenced accident revealed that the cause can be attributed to fatigue cracks emanating from the ½-inch and 5/16-inch bolt holes in the lower spar caps. Because the Ayres Model 600 S2D airplanes have a similar type design to that of the S2R series airplanes, they were included in the Applicability of AD 97–17–03.

Data indicates that the fatigue cracks on these Ayres S2R series airplanes become detectable at different times based upon the type of engines and design of the airplane. With this in mind, FAA categorized these airplanes into three groups for the Applicability of AD 97–17–03.

Since issuing AD 97–17–03, we received data specifying 29 additional occurrences of fatigue cracks found in the lower spar caps of Ayres S2R and Model 600 S2D airplanes. The data from these occurrences indicate the following:

- Several of these occurrences involved airplanes that had not accumulated enough hours to require the initial inspection of AD 97–17–03;
- Detectable cracks could still develop after the initial inspection on the affected airplanes; and
- Ayres has manufactured additional airplanes that have a similar type design to that of the airplanes affected by AD 97–17–03. The existing AD should also cover these airplanes.

To address the above areas, FAA issued a notice of proposed rulemaking (NPRM) to supersede AD 97–17–03. This NPRM was published in the **Federal Register** on January 13, 1999 (64 FR 2157). The NPRM proposed to supersede AD 97–17–03 with a new AD that would:

- Retain the inspection and replacement (if necessary) requirements of the lower spar caps that are currently required in AD 97–17–03;
- Make these inspections repetitive;
- Add additional airplanes to the Applicability of the AD;
- Change the initial compliance time for all airplanes; and
- Arrange the affected airplanes into four groups instead of three based on usage and configurations.

Was the public invited to comment on the NPRM? The FAA invited interested persons to participate in the making of the amendment. Based on the comments to this NPRM, we changed the NPRM and reopened the comment period through a supplemental NPRM. The supplemental NPRM specifically proposed to organize the affected airplanes into six groups based on usage and configurations, adjust the repetitive inspection intervals, provide alternatives for inspection methods, and include modification alternatives to replacing the spar cap.

The FAA again invited interested persons to participate in the making of this amendment. No comments were received.

The FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except minor editorial corrections.

How do the minor editorial corrections affect the AD? We have determined that the minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD will affect 1,000 airplanes in the U.S. registry.

What is the cost impact of the initial inspection on owners/operators of the affected airplanes? We estimate 3 workhours per airplane to accomplish the initial inspection, at an average labor rate of $60 an hour. Parts to accomplish the initial inspection cost approximately $417 per airplane. Based on these figures, we estimate the cost impact of the initial inspection of this AD on U.S. operators at $597,000, or $597 per airplane.

What about the cost of repetitive inspections and possible repairs and replacements? The figures above only take into account the cost of the initial inspection and do not take into account the cost of repetitive inspections. We have no way of determining how many repetitive inspections each owner/operator of the affected airplanes would incur. These figures are based upon the presumption that no affected airplane operator has accomplished the inspection, and do not take into account the cost for replacement if a crack is found. We have no way of determining the number of wing spar caps that may need to be replaced based upon the results of the inspections.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA determines that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this action:

(1) is not a "significant regulatory action" under Executive Order 12866;

(2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 is amended by removing Airworthiness Directive (AD) 97–17–03, Amendment 39–10105 (62 FR 43926, August 18, 1997), and by adding a new AD to read as follows:

2000–11–16 Ayres Corporation: Docket No. 98–CE–56–AD, Amendment 39–11764; Supersedes AD 97–17–03, Amendment 39–10105.

(a) *What airplanes are affected by this AD?* Airplanes with the following model and serial number (S/N) designations with or without a –DC or –X suffix, certificated in any category:

GROUP 1 AIRPLANES

Model	Serial numbers
S–2R	5000R through 5099R, except 5010R 5031R, 3038R, 5047R, and 5085R.
S2R–R1820	R1820–001 through R1820–035.
S2R–T34	6000R through 6049R, T34–001 through T34–143, T34–145, T34–147 through T34–167, T34–171, T34–180, and T34–181*.
S2R–T15	T15–001 through T15–033**.
S2R–G1	G1–101 through G1–106.

*The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

**The serial numbers of the Model S2R–T15 airplanes could incorporate T15–xxx and T27–xxx. This AD applies to both of these serial number designations as they are both Model S2R–T15 airplanes.

GROUP 2 AIRPLANES

Model	Serial numbers
S2R–R1820	R1820–036.
S2R–T65	T65–001 through T65–017.
S2RHG–T65.	T65–002 through T65–017.
S2R–T34	T34–144, T34–146, T34–168, T34–169, T34–172 through T34–179, and T34–189 through T34–232. And T34–234.*
S2R–T45 ...	T45–001 through T45–014.
S2R–G6	G6–101 through G6–147.
S2R–G10 ...	G10–101 through G10–136, G10–138, G10–140, and G10–141.
S2R–G5	G5–101 through G5–105.

*The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

GROUP 3 AIRPLANES*

Model	Serial numbers
600 S2D	All serial numbers beginning with 600–1311D.
S–2R	1380R and 1416R through 4999R.
S2R–R1340	R1340–001 through R1340–035.
S2R–R3S ...	R3S–001 through R3S–011.
S2R–T11	T11–001 through T11–005.

*Any Group 3 airplane that has been modified with a hopper of a capacity over 410 gallons, a piston engine greater than 600 horsepower, or any gas turbine engine, makes the airplane a Group 1 airplane for the purposes of this AD. The owner/operator must inspect the airplane at the Group 1 compliance time specified in this AD.

GROUP 4 AIRPLANES

Model	Serial numbers
S2R–T34	T34–225, T34–236, T34–237, and T34–238.*
S2R–G1	G1–107, G1–108, and G1–109.
S2R–G10 ...	G10–137, G10–139, and G10–142.

The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

GROUP 5 AIRPLANES

Model	Serial numbers
S2R–T34	T34–239 through T34–266.*
S2RHG–T34.	T34HG–102.
S2R–T15	T15–034 through T15–040.**
S2R–T45	T45–015.
S2R–G1	G1–110 Through G1–114.
S2R–G6	G6–148 through G6–151.
S2R–G10 ...	G10–143 through G10–160.

*The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to both of these serial designations as they are both Model S2R–T34 airplanes.

**The serial numbers of the Model S2R–T15 airplanes could incorporate T15–xxx and T27–xxx. This AD applies to both of these serial designations as they are both Model S2R–T15 airplanes.

GROUP 6 AIRPLANES

Model	Serial numbers
S2R	501R, 5031R, 5038R, 5047R, and 5085R.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct fatigue cracking of the lower spar caps. This could result in the wing separating from the airplane with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

(1) Repetitively inspect, using magnetic particle, ultrasonic, or eddy current procedures, the ¼-inch and 5/16-inch bolt hole areas on each lower spar cap for fatigue cracking. Reference paragraph (e)(3) and (e)(4) of this AD (including all subparagraphs) to obtain the initial and repetitive inspection compliance times.

(i) The cracks may emanate from the bolt hole on the face of the spar cap or they may occur in the shaft of the hole.

(ii) You must inspect both of these areas.

(2) If any cracking is found during any inspection required by this AD, you must accomplish the following:

(i) Use the cold work process to ream out small cracks as defined in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; or replace the affected spar cap in accordance with the maintenance manual; or ream the ¼-inch bolt holes to 5/16 inches diameter as defined in Part I of Ayres Custom Kit No. CK–AG–29, dated December 23, 1997; and

(ii) Submit a report of inspection findings to the Manager, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; facsimile: (770) 703–6097. You must include the airplane serial number and engine model number; the total number of flight hours on the lower spar cap that is cracked; time on the spar cap since last inspection, if applicable; and the type of inspection used for the last inspection. Indicate if cold working has been accomplished or modifications incorporated such as installation of big butterfly plates. Include the time on the spar cap when the cold working or modifications were accomplished. Indicate which bolt hole is cracked and the length of the crack. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) *What is the compliance time of this AD?* The compliance times for each of the actions of this AD are as follows:

(1) Any required repair or replacement: Prior to further flight after the inspection where the crack(s) was/were found.

(2) Reporting requirement:

(i) Submit the report within 10 days after finding any crack(s) during any inspection required by this AD.

(ii) For airplanes where cracking was found during any inspection accomplished in accordance with AD 97–17–03, which is superseded by this AD; or by AD 97–13–11, which was superseded by AD 97–17–03, submit the report within 10 days after the effective date of this AD, unless already accomplished.

(3) Initial Inspection: The following is for the initial inspections required by this AD. The affected airplanes are categorized into six different groups.

(i) Group 1 Airplanes: Required upon the accumulation of 2,000 hours time-in-service (TIS) on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 97–1703 or AD 97–13–11).

(ii) Group 2 Airplanes: Required upon the accumulation of 2,200 hours TIS on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occur later, unless already accomplished (compliance with AD 97–17–03 or AD 97–13–11).

(iii) Group 3 Airplanes: Required upon the accumulation of 6,400 hours TIS on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 97–17–03 or AD 97–13–11).

(iv) Group 4 Airplanes: Required upon the accumulation of 2,500 hours TIS on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 97–17–03 or AD 97–13–11).

(v) Group 5 Airplanes: Required upon the accumulation of 6,200 hours TIS on each lower spar cap or within 50 flight hours after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 97–17–03 or AD 97–13–11).

(vi) Group 6 Airplanes: As presented below.

(A) For S/N 5010R: Required upon the accumulation of 5,530 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later.

(B) For S/N 5038R: Required upon the accumulation of 5,900 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later.

(C) For S/N's 5031R and 5047R: Required upon the accumulation of 6,400 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later.

(D) For S/N 5085R: Required upon the accumulation of 6,290 hours TIS on each lower spar cap or within the next 50 hours TIS after the effective date of this AD, whichever occurs later.

(4) Repetitive Inspections: The following chart gives the required repetitive inspection intervals based on the work performed and the method of inspection utilized. Each time is hours TIS intervals after the last inspection:

Work previously performed	Magnetic particle	Ultrasonic	Eddy current
(i) No cracks found previously on wing spar and no optional cold work or bolt hole reaming accomplished.	500 hours TIS	550 hours	700 hours TIS*
(ii) One of the following where the airplane does not have butterfly plates, part number (P/N) 20211–09 and P/N 20211–11, installed per CK–AG–29, Part II ***.	500 hours TIS	550 hours TIS	700 hours TIS
(A) Small cracks repaired through cold work (or done as an option if never cracked) accomplished per SB–AG–39; or			

VOL
65
ISS
110
JE
7
2000
UMI

Work previously performed	Magnetic particle	Ultrasonic	Eddy current
(B) Small cracks repaired through 1/4-inch bolt hole reamed to 5/16 inches diameter (or done as an option if never cracked) per CK–AG–29, Part I; or (C) Small cracks repaired through previous Alternative Methods of Compliance**			
(iii) One of the following where the airplane has butterfly plates, part number (P/N) 20211–09 and P/N 20211–11, installed per CK–AG–29, Part II***. (A) Small cracks repaired through cold work (or done as an option if no cracks found) accomplished per SB–AG–39; or (B) Small cracks repaired through 1/4-inch bolt hole reamed to 5/16 inches diameter (or done as an option if no cracks found) per CK–AG–29, Part I; or (C) Small cracks repaired through previous Alternative Methods of Compliance.**	900 hours TIS	950 hours TIS	1,250 hours TIS.
(iv) Cracked wing spar found during previous inspection wing spar replacement.	Time for initial and repetitive inspection intervals start over when wing spar is replaced.	Time for initial and repetitive inspection intervals start over when wing spar is replaced.	Time for initial and repetitive inspection intervals start over when wing spar is replaced.

* Aircraft S/N's T45–007DC and T45–10DC had modified splice block assemblies installed at Ayres (Ayres/Kaplan Assembly No. 88–251) and must still follow the repetitive inspection intervals listed here.

** If a crack is found, the reaming associated with the cold work process may remove a crack if it is small enough. Some aircraft owners/operators were issued alternative methods of compliance with AD 97–17–03 to ream the 1/4-inch bolt hole to 5/16 inches diameter to remove small cracks. Ayres CK–AG–29, Part I, also provides procedures to ream the 1/4-inch bolt hole to 5/16 inches diameter. If you use either of these two methods to remove cracks and the airplane is reinspected immediately with no cracks found, you may continue to follow the repetitive inspection intervals listed above.

*** Group 4 and Group 5 airplanes had the butterfly plates installed at the factory and may follow this repetitive inspection interval.

(f) *What procedures must I use to accomplish the actions required in this AD?* (1) Inspections:

(i) For the magnetic particle inspection, utilize the procedures contained in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996. Use only sections titled "Inspection Accomplishment Instructions" and "Lower Splice Fitting Removal and Installation Instructions." You must follow American Society for Testing Materials (ASTM) E1444–94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046.

Caution: You must firmly support the wings during the inspection to prevent movement of the spar caps when the splice blocks are removed. This will allow easier realignment of the splice block holes and the holes in the spar cap for bolt insertion.

(ii) The FAA must approve ultrasonic or eddy current inspection procedures. To obtain FAA approval, you must send your proposed procedure to the Manager, Atlanta Aircraft Certification (ACO), One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. You are not required to remove the splice block for either the ultrasonic or eddy current inspections, unless corrosion is visible.

(iii) All inspections required by this AD must be accomplished by a Level 2 or Level 3 inspector certified for that inspection method using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410.

(2) Repair: Utilize the procedures contained in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; or in Part I of Ayres Custom Kit No. CK–AG–29, dated December 23, 1997 if necessary to remove small cracks. You must then immediately re-inspect and continue to accomplish the repetitive inspections.

(3) Replacement: Utilize the procedures contained in the maintenance manual.

(g) *Can I comply with this AD in any other way?* (1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Atlanta Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(3) Alternative methods of compliance approved in accordance with AD 97–17–03, which is superseded by this AD; or in accordance with AD 97–13–11, which was superseded by AD 97–17–03, are approved as alternative methods of compliance with this AD, unless otherwise noted in this AD.

(h) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 303496; telephone: (770) 703–6082; facsimile: (770) 703–6097.

(i) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD, provided that:

(1) The hopper is empty.

(2) Vne is reduced to 126 miles per hour (109 knots) indicated airspeed (IAS).

(3) Flight into known turbulence is prohibited.

(j) *Are any service bulletins incorporated into this AD by reference?* You must accomplish the actions required by this AD in accordance with Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996, and Ayres Custom Kit No. CK–AG–29, dated December 23, 1997. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706–3090. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(k) *Does this AD affect any other AD actions?* This amendment supersedes AD 97–17–03, Amendment 39–10105.

(l) *When does this amendment become effective?* This amendment becomes effective on July 25, 2000.

Issued in Kansas City, Missouri, on May 26, 2000.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14016 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–45–AD; Amendment 39–11765; AD 2000–11–17]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that applies to Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 helicopters and that currently requires initial and repetitive inspections of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar) for cracks or delaminations. This amendment requires the same actions required by the existing AD and corrects an incorrectly stated part number (P/N) in the existing AD. This amendment is prompted by a report of delamination of a Kevlar tie-bar. The actions specified by this AD are intended to detect cracks that could lead to delamination of the Kevlar tie-bar, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Effective July 12, 2000. The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of June 11, 1998 (63 FR 25158, May 7, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005; telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111; telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–10–04, Amendment 39–10515 (63 FR 25158, May 7, 1998), which applies to Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 helicopters, was published in the **Federal Register** on March 9, 2000 (65 FR 12489). That action proposed to require the same actions required by the existing AD and correct an incorrectly stated P/N in the existing AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 47 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,000 per blade. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $152,280 to replace one blade and perform one inspection on each helicopter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10515 (63 FR 25158), and by adding a new airworthiness directive (AD), Amendment 39–11765, to read as follows:

AD 2000–11–17 Eurocopter France: Amendment 39–11765. Docket No. 99–SW–45–AD. Supersedes AD 98–10–04, Amendment 39–10515, Docket No. 97–SW–49–AD.

Applicability: Model SA–365N1, AS–365N2, and SA–366G1 helicopters, with tail rotor blade (blade), Part Number 365A12–010–all dash numbers, 365A12–0020–00, 365A33–2131–all dash numbers, or 365A12–0020–02, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks that could lead to delamination of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar), loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 250 hours TIS, inspect each Kevlar tie-bar for a crack or delamination in accordance with paragraph B, Operational Procedure, of Eurocopter France Service Bulletin 05.00.34, Revision 3, dated November 14, 1996.

(b) If any delamination or cracking is found during any of the inspections required by paragraph (a) of this AD, remove the blade and replace it with an airworthy blade before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspection shall be done in accordance with paragraph B, Operational Procedure, of Eurocopter France Service Bulletin 05.00.34, Revision 3, dated November 14, 1996. The incorporation by reference of that document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of June 11, 1998 (63 FR 25158, May 7, 1998). Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005; telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 12, 2000.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 92–185–33(B)R4, dated December 4, 1996.

Issued in Fort Worth, Texas, on May 26, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–14193 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–1]

RIN 2120–AA66

Modification of the San Francisco Class B Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the San Francisco, CA, Class B airspace area. Specifically, this action raises the airspace ceiling from 8,000 to 10,000 feet mean sea level (MSL); lowers the airspace floor in a few areas; combines and reconfigures several existing areas; and creates some new areas. The FAA is taking this action to enhance safety, to reduce the potential for midair collision, and to improve the management of air traffic operations into, out of, and through the San Francisco Class B airspace area, while accommodating the concerns of airspace users.

EFFECTIVE DATE: 0901 UTC, September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph C. White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the **Federal Register's** electronic bulletin board service (telephone: (202) 512–1661) using a modem and suitable communications software.

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register's** web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of this final rule. Persons interested in being placed on a mailing list for future NPRM's or final rules should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule in the **Federal Register** (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule in the **Federal Register** (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 nautical miles (NM) of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders operating outside of the Class B airspace area, but within 30 NM of the primary airport.

On October 14, 1988, the FAA published the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule in the **Federal Register** (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule in the **Federal Register** (56 FR 65638). This rule discontinued the use of the term "Terminal Control Area" and replaced it with the designation "Class B airspace area." This change in terminology is reflected in this final rule.

Background

The Class B airspace area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic operations by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of these airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) the increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of these airspace areas normally contain three concentric circles centered on the primary airport extending to 10, 20, and 30 NM, respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Public Input

On March 1, 1999, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (Airspace Docket No. 97–AWA–1; 64 FR 9940) proposing to modify the San Francisco, CA, Class B airspace area. The comment period for this NPRM closed on April 30, 1999.

The FAA received 145 written comments in response to the proposal. All comments received were considered before making a determination on this final rule. An analysis of the comments received and the FAA's response is summarized below.

Discussion of Comments

The FAA received some letters that fully endorsed and supported the entire airspace modification proposal based on the positive benefits expected from aviation safety improvements. On the other hand, an equal number of letters expressed complete opposition to the proposal, viewing it as either unnecessary or overly restrictive. The remaining majority of comments (over 100) focused on one or more specific airspace design issues. The following discussion provides an overview of the key airspace issues of concern, and related FAA decisions reflected in this final rule.

Several commenters noted that the NPRM document was difficult for them to decipher due to the use of true north, rather than magnetic north. The FAA understands how it is possible that this may have confused some readers. However, due to magnetic variation changes over time, it is FAA policy to use reference to true north in airspace rulemaking documents.

The proposed expansion of the Area A southern boundary from 5NM to 6NM from the San Francisco (SFO) VHF Omni-directional Range/Distance Measuring Equipment (VOR/DME) was strongly opposed by nearly all general aviation pilots and by some airport officials. The most common reason cited for opposition was that the proposed modification would adversely affect the Bay Meadows noise abatement departure procedure from San Carlos Airport which supports a busy VFR route used primarily for general aviation flights to Half Moon Bay. One commenter stated that the 5NM boundary line sufficiently protects low altitude arrivals from the northwest entering downwind for Runways 28L and 28R at San Francisco. Another observation was expressed that during operations in the East configuration, departures were not assigned headings any further right than 120 degrees due to steep terrain south of the airport. The predominant viewpoint expressed by those who commented on Area A was that the existing airspace should not be modified.

Based on the information received during the NPRM comment process, and after further airspace analysis, the FAA agrees that the existing Area A southern boundary line should not be modified at this time. The final rule has been revised accordingly.

Several commenters suggested that the floor of the airspace near Mt. Tamalpais should be higher that proposed 4,000 feet MSL. Many expressed concern that the proposed floor would adversely affect hang gliders, paragliders, and other soaring activity, and that the proposed change might increase the potential for conflicts between powered and non-powered aircraft. One commenter believed that the proposed expansions of Area H and Area I were not warranted because only one instrument departure procedure from San Francisco would be encompassed in the proposed airspace areas. Some commenters suggested that a 6,000 feet MSL floor at Mt. Tamalpais would allow recreational soaring to continue in a safe manner at that location.

The FAA agrees that the Mt. Tamalpais area users would be constrained if the proposed expansion of Class B airspace were implemented. Therefore, the FAA has determined, based on a clearer understanding of user needs and additional analysis of the airspace, that the MOLEN departure procedure can be adequately and safely protected in Class B airspace without disrupting activities at Mt. Tamalpais. This final rule establishes a smaller airspace area with a floor of 4,000 feet MSL located southwest of Mt. Tamalpais to provide protection for the MOLEN departures from San Francisco.

Several comments from glider pilots, and the organizations representing them, recommended that the proposed new Class B airspace area between 25NM and 30NM from SFO VOR/DME should be limited to the airspace located south and west of the SFO VOR/DME 082° radial. The reason cited for this recommendation was that northwest winds over Mt. Diablo often extend the viable soaring area to about 10 miles south of the peak. Because very few sailplanes have VOR receivers, the commenters suggested a revision to the proposed airspace boundary line that would allow pilots to use visual reference to Interstate 580 as a guideline for remaining outside Class B airspace.

The FAA appreciates receiving the recommendation of a prominent landmark to enhance safety and reduce deviations. The rationale offered by the commenters is reasonable, and their suggested revision to the airspace boundary line is adopted in this final rule.

Several comments were received regarding the FAA proposal to implement Class B airspace in the Sunol gap area, also known as the "keyhole", from 15NM to 25NM east of San Francisco. The primary concerns expressed were related to the fact that the area if heavily used as a VFR route to and from the San Francisco area communities. Since the airspace is also frequently subject to marine layer stratus cloud formations during spring and summer, concerns were expressed that VFR traffic might become overly compressed in the area between the proposed airspace floor and the mountainous terrain, thereby increasing collision risks. Some commenters suggested that the floor of the airspace should be 4,000 feet MSL to the east between 15NM and 20NM from the SFO VOR/DME to allow additional altitude for safety.

The FAA agrees with the recommendation and has adopted a floor at 4,000 feet MSL in this final rule in order to reduce the potential for overcrowded airspace along this popular route. This airspace has been combined with adjacent 4,000' MSL feet floor areas both north and south of it, forming a large Area D. The new airspace will provide adequate Class B coverage for Runway 10 departures, and for Runway 28L/R arrivals during arrival rush periods when aircraft are vectored to final.

In the eastern section of the "keyhole" area, between 20NM and 25NM from SFO VOR/DME, several commenters suggested that the airspace floor should be designated at 6,000 feet MSL to accommodate hang glider activity near Mission Ridge, Mt. Alison, and Monument Peak. Many believed that the proposed 5,000 MSL floor would place

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too many general aviation flights in unsafe close proximity to numerous Part 103 operators.

The FAA agrees that a higher floor at 6,000 feet MSL in this area will better serve the needs of both the general aviation community and the Part 103 operators while simultaneously providing necessary Class B protection for SFO traffic flows. The area has now been combined with adjacent 6,000′ MSL floor areas to the north and south, forming a large Area E.

Several commenters suggested that the San Francisco Class B airspace modification should be designed to accommodate full protection for Simultaneous Offset Instrument Approach (SOIA) procedures. Concern was expressed that SOIA operations are anticipated to begin at San Francisco International Airport in the near future, and there would be insufficient time to complete another Class B rulemaking action to include the new procedures in a timely manner. Runway 28L SOIA operations would require that aircraft be established on final no closer than 20 miles from the airport, with glideslope intercept at an altitude lower than the current Class B airspace coverage. It was suggested that the area from the SFO VOR/DME 107° radial clockwise to the SFO VOR/DME 167° radial between 20NM and 25NM be lowered to 5,000 feet MSL for protection of anticipated Runway 28L SOIA arrivals.

The FAA acknowledges and appreciates the foresight demonstrated in the suggestion offered by these commenters. However, in formulating final rule decisions on regulatory airspace, the FAA cannot legally impose additional restrictions on access to airspace that would be more stringent than those originally proposed in the NPRM.

The proposed lowering of the airspace floor in the area surrounding Half Moon Bay down to a level of 4,000 feet MSL concerned some users who reported that they accomplish aerobatic training and practice offshore along the Pacific coast. With the existing class B airspace floor at 6,000 feet MSL over much of the area, airspace from 5,900 feet MSL down to 1,500 feet MSL is currently used for teaching, maneuvers requiring extra vertical space. The commenters on this issue suggested a few alternative airspace boundary reconfigurations to allow retention of some airspace available for aerobatic maneuvers.

The FAA has carefully reviewed available airspace options near Half Moon Bay and finds its necessary to establish a 4,000 feet MSL floor in the reconfigured Area D. The airspace is required in order to provide adequate Class B protection for numerous IFR turboprop air taxis carrying passenger to SFO. These aircraft are regularly vectored through airspace over Half Moon Bay at 4,000 feet MSL for radar sequencing into the flow of jets landing at San Francisco. ATC operational requirements dictate the need for these aircraft to be descended to 4,000 feet MSL near Half Moon Bay for effective sequencing into the SFO arrival flow. However, in order to accommodate retention of aerobatic practice in this area, the proposed Area D has been slightly modified in this final rule and a new Area K with a 5,000 feet MSL floor has been designated offshore near the Half Moon Bay airport. It should also be noted that ten miles of shoreline airspace will remain available only a few miles south of the current aerobatic practice area in the vicinity of San Gregorio.

The Aircraft Owners and Pilots Association (AOPA), and some individual pilots, expressed opposition to the various low altitude Class B airspace floor levels proposed over the Pacific Ocean because they were perceived to be barriers that would severely limit access to Victor Airway 27 (V27) for users wishing to transition northbound or southbound along the airway.

The FAA acknowledges that V27 penetrates the new SFO Class B Areas D, E, G, H, J, and K as designated in this final rule. While this could initially appear to limit access for general aviation, V27 actually remains an excellent route for VFR flights. Bay Approach personnel predict that flights requesting VFR transition along V27 at appropriate VFR altitudes will rarely, if ever, be denied access. It is also expected that international traffic transitioning to and from the oceanic environment will no longer need to level off at unnecessary interim altitudes to avoid uncontrolled traffic on V27. Additional safety benefits for VFR aircraft will include more efficient avoidance of heavy jet wake turbulence while under positive air traffic control and separation from other air traffic. These factors are highly consistent with FAA's Class B airspace design criteria that specify the airspace should afford a level of protection appropriate for the large numbers of aircraft and passengers served in the airspace.

Although fewer than 8 percent of all commenters expressed opposition to the proposed airspace ceiling at 10,000 feet MSL, the FAA has nonetheless carefully reconsidered airspace operational requirements with due regard to all comments received on this issue. A variety of reasons were cited by commenters for opposing the higher ceiling. A few commenters felt the higher ceiling could not be justified without more comprehensive traffic count data covering all operations between 8,000 and 10,000 feet MSL, or without presentation of statistical data concerning near-midair collision reports. Some recommended that the current ceiling should remain unchanged to allow VFR traffic unrestricted transition access at 8,500 and 9,500 feet MSL without causing unnecessary frequency congestion or excessive workload requiring more air traffic controllers. One commenter expressed concern that the higher ceiling might preclude overflights by some aircraft not equipped with oxygen. Another said that the proposed ceiling would be overly restrictive, and that a ceiling at 9,000 feet MSL would be adequate.

While reports of near midair collisions have not been filed in the San Francisco area that would explicitly suggest raising the Class B airspace ceiling, such reports would be neither desirable nor necessary to justify the FAA's decision. The Class B airspace program is designed to ensure proactively that specific safety levels within congested terminal airspace are maintained by designating areas wherein all aircraft are subject to standardized operating rules and equipment requirements. The FAA evaluated San Francisco International Airport operations using criteria specified in FAA Order 7400.2D, Procedures for Handling Airspace Matters, and with particular attention to the unique characteristics of air traffic flow in the San Francisco terminal area. The analysis showed that the existing airspace ceiling does not provide adequate regulatory airspace protection consistent with the expectations of the majority of airline passengers and airspace users. The Class B airspace program was developed to ensure that specific protection is afforded within the airspace surrounding high-density commercial airports. Class B airspace operating rules are deemed to provide the level of protection appropriate for the large numbers of aircraft and passengers served by this type of airport. The FAA's thorough analysis of actual airspace utilization within the San Francisco terminal area included usage of available modeling and simulation resources at the Airspace Planning and Analysis Division, ATA–200, Air Traffic Airspace Lab in Herndon, VA. The results of that analysis, along with review of the original facility staff study concerning this airspace, revealed that all airspace between 8,000 and 10,000 feet MSL is used on a regular basis by air traffic controllers for the purpose of handling instrument operations to and from SFO airport. San Francisco International Airport handled 432,046 total airport operations during 1998 and 19,079,664 passengers enplaned during the same time period. These figures continue a trend of significant growth. Current FAA aviation forecasts for the 1999 to 2010 time period project that the FAA Western-Pacific Region will lead all other FAA regions with a rate of growth of aircraft operations increasing 21.6 percent over the forecast period. Accordingly, this final rule raises the San Francisco Class B airspace ceiling to 10,000 feet MSL.

The Rule

This amendment to 14 CFR part 71 modified the San Francisco Class B airspace area. Specifically, this action raises the airspace ceiling from 8,000 to 10,000 feet MSL; lowers the airspace floor in some areas; combines and reconfigures several existing areas; and creates three new areas. Areas A, B, and C remain unchanged from the existing airspace configuration, except for the new ceiling at 10,000 feet MSL. Area D, with its floor at 4,000 feet MSL, has been combined with other areas including the previous Area H, part of previous Areas E and J, and a new area east of the primary airport. The reconfigured Area E retains its floor at 6,000 feet MSL, and now includes the previous Area I, a small corner from the previous Area J, and a new area east of the primary airport. The only change to the existing Area F is the new ceiling at 10,000 feet MSL. Area G has been slightly modified into a simpler arc configuration. Area K has been renamed Area I. A new Area H, with a floor of 4,000 feet MSL, has been designated over the ocean to the west of Area G. A new Area J, with a floor of 8,000 feet MSL, has been designated 25NM to 30NM from the SFO VOR/DME, forming a new southern and eastern airspace boundary. Lastly, a new Area K, with a floor of 5,000 feet MSL, has been designated over the ocean to the southeast of Area G.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in Paragraph 3000 of FAA Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule: (1) Will generate benefits that justify its minimal costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

The FAA is modifying the San Francisco Class B airspace area by raising the ceiling from 8,000 feet mean sea level (MSL) to 10,000 feet MSL, by combining and reconfiguring the lateral boundaries of several existing areas, by establishing three new areas, and by lowering base altitudes. This action will increase the overall size of the Class B airspace area thereby increasing air traffic control's (ATC) ability to manage and control air traffic complexity in the San Francisco area. The FAA contends that this final rule will improve operational efficiency and enhance aviation safety in the Class B airspace area. The final modifications will also include clearer boundaries defining the Class B airspace areas.

The final rule will impose minimal costs on the FAA or airspace users. Notices will be sent to all pilots within a 100-mile radius of the San Francisco International Airport (SFO) at a total cost of $200.00 for postage. Printing of aeronautical charts which reflect the changes to the Class B airspace area will be accomplished during a scheduled chart printing, and will result in no additional costs for plate modification and updating of charts. No staffing changes will be required to maintain the modified Class B airspace area.

The FAA contends that the final rule will not impose any additional costs on general aviation aircraft operators. Since the San Francisco Class B airspace area will reside within the existing Mode C Veil, no additional avionics equipment will be required for any aircraft operating in the vicinity of the Class B airspace area. Even with the establishment of new areas and the expansion of existing areas, VFR aircraft operators should not have difficulty circumnavigating the Class B airspace area. Additionally, aircraft operators have the options of circumnavigating outside the San Francisco VOR/DME 15 NM arc and operate under the higher floor of 6,000 feet MSL. For those aircraft operators who choose not to circumnavigate or fly below the Class B airspace, standard procedures may be used to enter the San Francisco Class B airspace area.

The FAA has determined that this final rule will be cost-beneficial. The final rule will generate benefits in the form of improved flow of air traffic operations into and out of SFO; clearer airspace boundaries; improved ATC containment of transport aircraft (containment refers to aircraft operating in controlled airspace and receiving ATC separation from other aircraft); and reduced potential for midair collisions in the terminal area.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small

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entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an FRA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the final rule will have only a minimal impact on small entities. This determination is based on the premise that potentially impacted aircraft operators regularly fly into airports where radar approach control services have been established such as the SFO Class B airspace area. These operators already have the required equipment, and, therefore, there will be no additional cost to these entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The final rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Federalism Implications

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under E.O. 12612.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

AWP CA B San Francisco, CA

San Francisco International (SFO) Airport
(Primary Airport)
(lat. 37°37′09″N., long. 122°22′30″W.)
San Francisco (SFO) VOR/DME
(lat. 37°37′10″N., long. 122°22′26″W.)
Oakland (OAK) VORTAC
(lat. 37°43′33″N., long. 122°13′25″W.)
Sausalito (SAU) VORTAC
(lat. 37°51′19″N., long. 122°31′22″W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the San Francisco (SFO) VOR/DME extending clockwise from the SFO VOR/DME 247° radial to the SFO VOR/DME 127° radial, and within a 5-mile radius of the SFO VOR/DME between the SFO VOR/DME 127° radial clockwise to SFO VOR/DME 247° radial, excluding that airspace within a 3-mile radius of the Oakland VORTAC and excluding that airspace west of the Pacific coast shoreline.

Area B. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL bounded on the northwest by a 5-mile radius arc of the SFO VOR/DME, on the southeast by a 10-mile radius arc of the SFO VOR/DME, on the northeast by the SFO VOR/DME 107° radial, and on the southwest by the SFO VOR 137° radial excluding that airspace within Area A.

Area C. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded on the northwest by a 10-mile radius arc of the SFO VOR/DME, on the southeast by a 15-mile radius arc of the SFO VOR/DME, on the northeast by the SFO VOR/DME 107° radial and on the southwest by the SFO VOR/DME 137° radial.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL, bounded by a line beginning at the 5-mile DME point on the SFO VOR/DME 137° radial thence southeast along the SFO VOR/DME 137° radial to and counterclockwise along the 15-mile DME arc of the SFO VOR/DME to and northwest along the Oakland VORTAC 305° radial to and northeast along the Sausalito VORTAC 052° radial to and clockwise along the 20-mile DME arc of the SFO VOR/DME to and northwest along the SFO VOR/DME 167° radial to and clockwise along the 15-mile DME arc of the SFO VOR/DME to and northeast along the SFO VOR/DME 247° radial to and counterclockwise along the 5-mile DME arc of the SFO VOR/DME to the point of beginning, excluding that airspace within Area K.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the 15-mile DME point on the SFO VOR/DME 277° radial thence counterclockwise along the 15-mile DME arc of the SFO VOR/DME to and southeast along the SFO VOR/DME 167° radical to and counterclockwise along the 20-mile DME arc of the SFO VOR/DME to and northeast along the Sausalito VORTAC 052° radial, to and clockwise along the 25-mile DME arc of the SFO VOR/DME to and northeast along the SFO VOR/DME 227° radial to and clockwise along the 20-mile DME arc to and northeast along the SFO VOR/DME 277° radial to the point of beginning.

Area F. That airspace extending upward from 2,100 feet MSL bounded by a line beginning at the 10-mile DME point on the SFO VOR/DME 247° radial thence clockwise along the 10-mile DME arc to and west along the SFO VOR/DME 107° radial to and counterclockwise along the 7-mile DME arc of the SFO VOR/DME to and clockwise along the 3-mile DME arc of the Oakland VORTAC to and counterclockwise along the 7-mile DME arc of the SFO VOR/DME to and southwest along the SFO VOR/DME 247° radial to the point of beginning.

Area G. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL between the 10- and 15-mile radii of the SFO VOR/DME from the SFO VOR/DME 247° radial clockwise to the SFO VOR/DME 107° radial.

Area H. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL between the 15- and 20-mile radii of the SFO VOR/DME from the SFO VOR/DME 277° radial clockwise to the SFO VOR/DME 317° radial.

Area I. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL bounded on the west by a 7-mile radius arc of the SFO VOR/DME and on the east by the Pacific coast shoreline.

Area J. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 25- and 30-mile radii of the SFO VOR/DME from the SFO VOR/DME 082° radial clockwise to the SFO VOR/DME 227° radial.

Area K. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL between the 10- and 15-mile radii of the SFO VOR/DME from the SFO VOR/DME 217° radial clockwise to the SFO VOR/DME 247° radial.

* * * * *

Issued in Washington, DC, on May 30, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix—San Francisco Class B Airspace Area.

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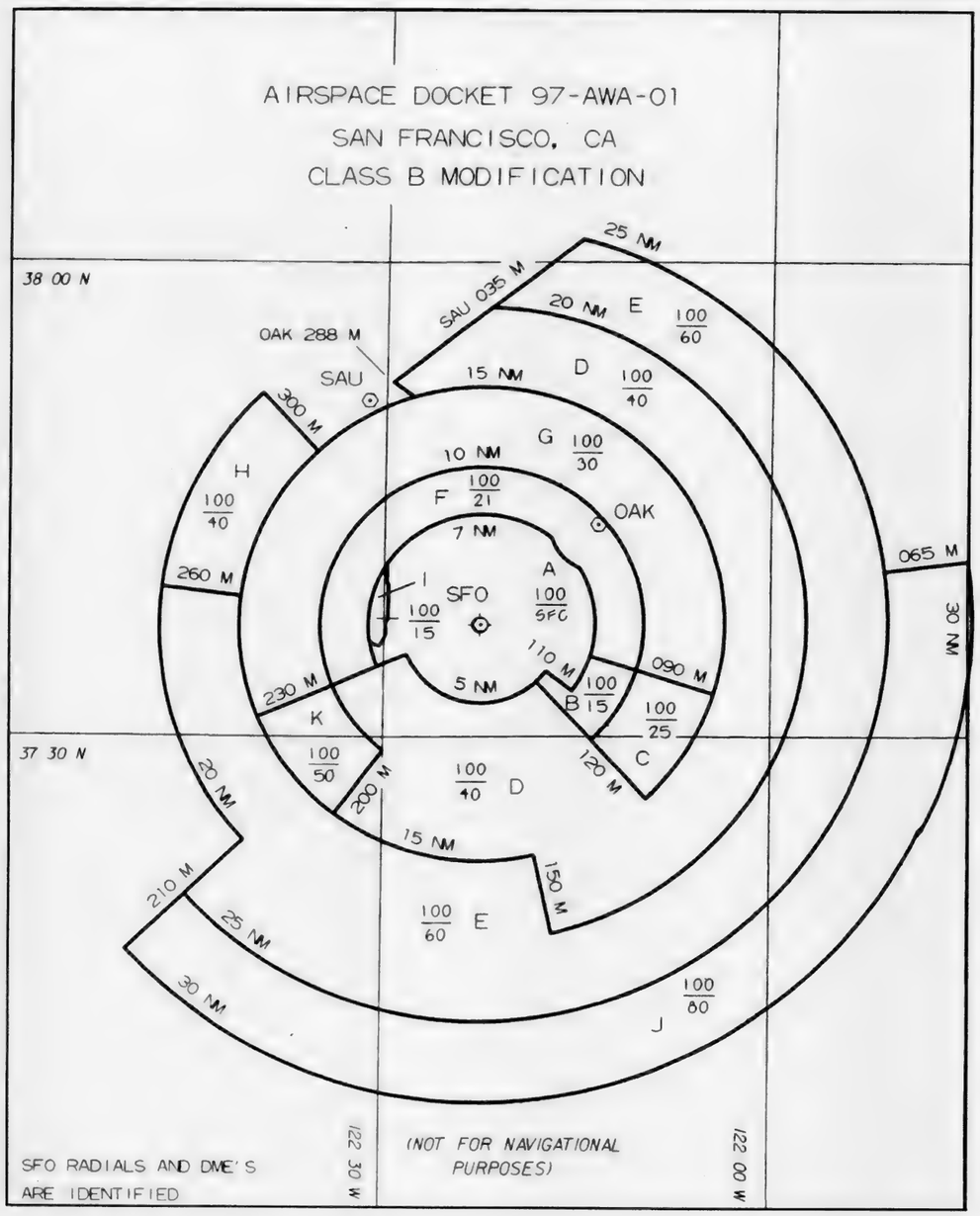

[FR Doc. 00–14046 Filed 6–6–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL52–200014; FRL–6708–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Alabama; Correction

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule; correction.

SUMMARY: The United States Environmental Protection Agency (EPA) published in the **Federal Register** on April 10, 2000, a document approving the section 111(d) Plan submitted by the Alabama Department of Environmental Management for the State of Alabama on April 20, 1999. This plan enables the State of Alabama to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units. In the April 10, 2000, rule, EPA inadvertently referenced an incorrect citation to Alabama's state implementation plan in the Code of Federal Regulations. EPA is correcting the citation with this document.

EFFECTIVE DATE: This correction is effective on June 9, 2000.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562–9038, Bingham.Kimberly@epa.gov or Scott Davis at (404) 562–9127, Davis.ScottR@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," or "our" are used we mean EPA. Our April 10, 2000, (65 FR 18909–18911) rulemaking indicated that we approved the section 111d plan for the State of Alabama. This plan enables the State of Alabama to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units. In that document we inadvertently codified the revisions into 40 CFR 62.100. Our April 10, 2000, document indicated that we were removing 40 CFR 62.104 and renaming the section. In that document we should not have removed 40 CFR 62.104, but instead added a new section 40 CFR 62.105.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of June 9, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to the identification of plan for Missouri is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: May 19, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For the reasons stated in the preamble, in FR Doc. 00–8142 published at 65 FR 18909 make the following corrections:

PART 62—[CORRECTED]

1. On page 18911, in the third column, in amendatory instruction 3, correct "62.104" to read "62.105."

2. On page 18911, in the third column, under the title Air Emissions From Hospital/Medical/Infectious Waste Incinerators, correctly designate § 62.104 as § 62.105.

[FR Doc. 00–13846 Filed 6–6–00; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Jefferson (FEMA Docket No. 7293).	Unincorporated Areas.	May 12, 1999, May 19, 1999, *Birmingham News.*	Mr. Gary White, President of the Jefferson County Board of Commissioners, Courthouse, Room A–360, Birmingham, Alabama 35263.	August 17, 1999 ..	010217 E
Connecticut: Fairfield (FEMA Docket No. 7293).	Town of Wilton	June 17, 1999, June 24, 1999, *Wilton Bulletin.*	Mr. Robert H. Russell, First Selectman of the Town of Wilton, Wilton Town Hall, 238 Danbury Road, Wilton, Connecticut 06897.	September 22, 1999.	090020 C
Florida: Orange (FEMA Docket No. 7293).	City of Ocoee	June 24, 1999, July 1, 1999, *The Orlando Sentinel.*	The Honorable S. Scott Vandergrift, Mayor of the City of Ocoee, City Hall, 150 North Lakeshore Drive, Ocoee, Florida 34761–2258.	June 17, 1999	120185 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Kentucky: Fayette (FEMA Docket No. 7293).	Lexington-Fayette Urban County Government.	June 23, 1999, June 30, 1999, *Lexington Herald.*	The Honorable Pam Miller, Mayor of the Lexington-Fayette Urban County Government, 200 East Main Street, 12th Floor, Lexington-Fayette Government Building, Lexington, Kentucky 40507.	June 16, 1999	210067 C
Illinois: Will (FEMA Docket No. 7293).	City of Crest Hill ...	March 25, 1999, April 1, 1999, *The Herald-News.*	The Honorable Donald R. Randich, Mayor of the City of Crest Hill, 1610 Plainfield Road, Crest Hill, Illinois 60435.	June 30, 1999	170699 D
Kane (FEMA Docket No. 7293).	Village of Hampshire.	April 28, 1999, May 5, 1999, *Hampshire Register-News.*	Mr. William Schmidt, Hampshire Village President, P.O. Box 457, 234 South State Street, Hampshire, Illinois 60140.	July 27, 1999	170327 C
Minnesota: Anoka (FEMA Docket No. 7293).	City of Coon Rapids.	April 9, 1999, April 16, 1999, *Coon Rapids Herald.*	The Honorable Lonni McCauley, Mayor of the City of Coon Rapids, 11155 Robinson Drive, Coon Rapids, Minnesota 55433.	July 15, 1999	270011 A
North Carolina: Guilford (FEMA Docket No. 7293).	City of Greensboro	May 25, 1999, June 1, 1999, *News and Record.*	The Honorable Carolyn S. Allen, Mayor of the City of Greensboro, One Governmental Plaza, P.O. Box 3136 Greensboro, North Carolina 27402.	May 17, 1999	375351 C
Ohio: Lake (FEMA Docket No. 7293).	Village of Madison	March 30, 1999, April 6, 1999, *The News-Herald.*	The Honorable David G. Reed, Jr., Mayor of the Village of Madison, 126 West Main Street, Madison, Ohio 44057–0007.	March 23, 1999	390316 B
Pennsylvania: Lancaster (FEMA Docket No. 7293).	Township of East Donegal.	April 28, 1999, May 5, 1999, *Lancaster Newspaper.*	Mr. Allen D. Esbenshade, President, Board of Supervisors, Township Municipal Office, 190 Rock Point Road, Marietta, Pennsylvania 17547.	April 16, 1999	421768 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 16, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–14297 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1-percent-annual-chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the table below and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director for Mitigation has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or

pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima (FEMA Docket No. 7308).					
Oklahoma:	City of Tucson	September 30, 1999, October 7, 1999, *The Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	September 10, 1999.	040076
Tulsa (FEMA Docket No. 7308).	City of Tulsa	September 30, 1999, October 7, 1999, *Tulsa World.*	The Honorable M. Susan Savage, Mayor, City of Tulsa, 200 Civic Center, Tulsa, Oklahoma 74103.	September 8, 1999.	405387
Tulsa (FEMA Docket No. 7308).	City of Broken Arrow.	September 28, 1999, October 5, 1999, *Broken Arrow Ledger.*	The Honorable James Reynolds, Mayor, City of Broken Arrow, P.O. Box 610, Broken Arrow, Oklahoma 74013.	September 8, 1999.	400236

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–14296 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7324]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1-percent-annual-chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Orange	City of Anaheim	January 20, 2000, January 27, 2000, *Anaheim Bulletin.*	The Honorable Tom Daly, Mayor, City of Anaheim, P.O. Box 3222, Anaheim, California 92803.	January 13, 2000	060213
Orange	City of Irvine	January 31, 2000, February 7, 2000, *Orange County Register.*	The Honorable Christina Shea, Mayor, City of Irvine, P.O. Box 19575, Irvine, California 92623–9575.	December 29, 1999.	060222
Orange	City of Irvine	February 24, 2000, March 2, 2000, *The Irvine World News.*	The Honorable Christina Shea, Mayor, City of Irvine, P.O. Box 195575, Irvine, California 92623–9575.	January 27, 2000	060222
Orange	City of Tustin	January 31, 2000, February 7, 2000, *Orange County Register.*	Mr. Thomas Saltarelli, Mayor, City of Tustin, 300 Centennial Way, Tustin, California 92780.	December 29, 1999.	060235
Los Angeles	City of Santa Clarita.	February 17, 2000, February 24, 2000, *The Signal.*	The Honorable Joanne Darcy, Mayor, City of Santa Clarita, 23920 Valencia Boulevard, Suite 300, Santa Clarita, California 91355.	January 18, 2000	060729
Colorado:					
Arapahoe	Unincorporated Areas.	February 10, 2000, February 17, 2000, *The Villager.*	The Honorable Steve Ward, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0060.	May 17, 2000	080011
Boulder	City of Louisville	February 23, 2000, March 1, 2000, *Louisville Times.*	The Honorable Tom Davidson, Mayor, City of Louisville, 749 Main Street, Louisville, Colorado 80027.	January 19, 2000	085076
Idaho:					
Blaine	City of Bellevue	February 9, 2000, February 16, 2000, *Wood River Journal.*	The Honorable Steve Fairbrother, Mayor, City of Bellevue, P.O. Box 449, Bellevue, Idaho 83313.	January 4, 2000	160021
Blaine	Unincorporated Areas.	February 9, 2000, February 16, 2000, *Wood River Journal.*	The Honorable Mary Ann Mix, Chairperson, Blaine County Board of Commissioners, 206 First Avenue South, Suite 300, Hailey, Idaho 83333 March 1, 2000.	January 4, 2000	165167
Kansas: Miami	City of Paola	February 23, 2000, March 1, 2000, *Miami County Republic.*	The Honorable Floyd J. Grimes, Mayor, City of Paola, 19 East Teoria Paola, Kansas 66071.	May 30, 2000	200224
Nebraska: Colfax	Village of Howells	February 23, 2000, March 1, 2000, *Howells Journal.*	The Honorable Larry Jakubowski, Chairperson, Village of Howells, Board of Commissioners, 128 North Third Street, Howells, Nebraska 68641–0351.	May 30, 2000	310380

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Nevada: Clark	Unincorporated Areas.	February 17, 2000, February 24, 2000, *Las Vegas Review-Journal.*	The Honorable Bruce Woodbury, Chairperson, Clark County Board of Commissioners, P.O. Box 551601, Las Vegas, Nevada 89155.	January 7, 2000	320003
New Mexico: Bernalillo	Unincorporated Areas.	February 25, 2000, March 3, 2000, *Albuquerque Journal.*	The Honorable Tom Rutherford, Chairperson, Board of County Commissioners, Bernalillo County, 2400 Broadway Southeast, Albuquerque, New Mexico 87102.	January 19, 2000	350001
Oklahoma: Stephens	City of Duncan	February 7, 2000, February 14, 2000, *The Duncan Banner.*	The Honorable Dennis Johnson, Mayor, City of Duncan, P.O. Box 969, Duncan, Oklahoma 73534.	December 29, 1999.	400202
Tulsa	City of Tulsa	February 24, 2000, March 2, 2000, Tulsa World.	The Honorable M. Susan Savage, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, Oklahoma 74103.	May 31, 2000	405381
Texas: Tarrant	City of Bedford	February 23, 2000, March 1, 2000, *Fort Worth Star-Telegram.*	The Honorable Rick Hurt, Mayor, City of Bedford, 2000 Forest Ridge Drive, Bedford, Texas 76021.	January 24, 2000	480585
Bexar	Unincorporated Areas.	February 15, 2000, February 22, 2000, *San Antonio Express-News.*	The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, Suite 101, San Antonio, Texas 78205–3036.	January 7, 2000	480035
Dallas	City of Carrollton	February 11, 2000, February 18, 2000, *Metrocrest News.*	The Honorable Milburn Gravely, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	January 7, 2000	480167
Dallas	City of Dallas	February 7, 2000, February 14, 2000, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla, Dallas, Texas 75201.	May 15, 2000	480171
Tarrant	City of Euless	February 23, 2000, March 1, 2000, *Fort Worth Star-Telegram.*	The Honorable Mary Lib Saleh, Mayor, City of Euless, 201 North Ector Drive, Euless, Texas 76039.	January 24, 2000	480593
Tarrant	City of Fort Worth	February 29, 2000, March 7, 2000, *Fort Worth Star-Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	January 24, 2000	480596
Tarrant	City of North Richland Hills.	February 8, 2000, February 15, 2000, *Fort Worth Star-Telegram.*	The Honorable Charles Scoma, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	January 11, 2000	480607
Tarrant	City of Saginaw	February 29, 2000, March 7, 2000, *Fort Worth Star-Telegram.*	The Honorable Monte Nichols, Mayor, City of Saginaw, P.O. Box 79070, Saginaw, Texas 76179.	January 24, 2000	480610
Bexar	City of San Antonio.	February 25, 2000, March 3, 2000, *San Antonio Express-News.*	The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	January 24, 2000	480045

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–14295 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD).
IOWA	
Harrison County (Unincorporated Areas) (FEMA Docket No. 7302)	
Missouri River:	
Approximately 20,000 feet downstream of Highway 30	*1,005
Approximately 10,000 feet upstream of 120th Street	*1,032
Maps are available for inspection at the Harrison County, Emergency Management Agency, 116 North 2nd Avenue, Logan, Iowa.	
Polk County (Unincorporated Areas) (FEMA Docket No. 7306)	
Beaver Creek:	
At mouth (approximately 3,950 feet downstream from Northwest Beaver Drive)	*805
Approximately 950 feet downstream from Northwest Beaver Drive	*806
Approximately 5,650 feet upstream of Northwest Beaver Drive	*810
Maps are available for inspection at the Planning Division, 5895 NE 14th Street, Des Moines, Iowa.	
KANSAS	
Holton (City), Jackson County (FEMA Docket No. 7306)	
Banner Creek:	
At Union Pacific Railroad	*1,017
At "P" Road	*1,035
Maps are available for inspection at City Hall, 430 Pennsylvania Avenue, Holton, Kansas.	
Jackson County (Unincorporated Areas) (FEMA Docket No. 7306)	
Banner Creek:	
At its confluence with Elk Creek	*1,002
At "M" Road	*1,092
Maps are available for inspection at the Planning and Zoning Office, 500 Illinois Avenue, Holton, Kansas.	
Reno County and Incorporated Areas (FEMA Docket No. 7306)	
Arkansas River:	
Just downstream of State Route 50	*1,517
Just downstream of Union Pacific Railroad	*1,523
Unnamed Tributary to Sand Creek:	
Just upstream of U.S. Highway 50	*1,519
Just downstream of Main Street	*1,531
Maps are available for inspection at the Public Works Department, 206 W. 1st Avenue, Hutchinson, Kansas.	
Maps are available for inspection at City Hall, 2 South Main, South Hutchinson, Kansas.	
Maps are available for inspection at the Planning Department, 125 E. Avenue B, Hutchinson, Kansas.	
NEVADA	
Mineral County (Unincorporated Areas) (FEMA Docket No. 7302)	
Corey Creek:	
Approximately 50 feet downstream of U.S. Highway 95	*4,253
Approximately 3.6 miles upstream of 1st Street in Hawthorne	*5,028
Corey Creek Overflow:	
Approximately 500 feet upstream of State Highway 359	*4,858
Approximately 1,500 feet upstream of State Highway 359	*4,906

Source of flooding and location	# Depth in feet above ground *Elevation in feet (NGVD)
Maps are available for inspection at the Mineral County Courthouse, Clerk and Treasurer's Office, Corner of 1st and A Street, Hawthorne, Nevada.	
OKLAHOMA	
Roger Mills County and Incorporated Areas (FEMA Docket No. 7306)	
White Shield Creek Tributary "B":	
At its confluence with White Shield Creek	*1,737
Approximately 150 feet upstream of Steele Street	*1,778
White Shield Creek:	
At State Route 34	*1,702
Approximately 50 feet upstream from Steele Street	*1,754
Memorial Park Tributary:	
At its confluence with Sergeant Major Creek	*1,938
Approximately 884 feet upstream from U.S. Highway 283 (Main Street)	*1,977
Dry Creek:	
At its confluence with Sergeant Major Creek	*1,941
Approximately 8,400 feet upstream of confluence with Sergeant Major Creek	*1,985
Sergeant Major Creek:	
At its confluence with Washita River	*1,923
Approximately 8,600 feet upstream from confluence with Dry Creek	*1,974
Washita River:	
At State Route 34	*1,703
Approximately 16,800 feet upstream from its confluence with Sergeant Major Creek	*1,949
Maps are available for inspection at the County Courthouse, Limales and Broadway Avenue, Cheyenne, Oklahoma.	
Maps are available for inspection at City Hall, 714 Main Street, Hammon, Oklahoma.	
Maps are available for inspection at City Hall, 317 N. Broadway, Cheyenne, Oklahoma.	
OREGON	
Clackamas County (Unincorporated Areas) (FEMA Docket No. 7302)	
Tickle Creek:	
Approximately 2,600 feet downstream of Southeast 362nd Avenue	*672
Approximately 2,350 feet upstream of Southeast 395th Avenue	*1,011
Maps are available for inspection at the Clackamas County Department of Transportation and Development, 902 Abernathy Road, Oregon City, Oregon.	
Sandy (City), Clackamas County (FEMA Docket No. 7302)	
Tickle Creek:	
Approximately 1,980 feet downstream of 362nd Avenue	*684
Approximately 1,620 feet upstream of Highway 211	*946
Maps are available for inspection at the Planning and Development Department, 39250 Pioneer Boulevard, Sandy, Oregon.	
TEXAS	
Kerr County and Incorporated Areas (FEMA Docket No. 7278)	
Stream TC–1:	
Approximately 2,300 feet downstream of Interstate Highway 10	*1,662
Just upstream of Interstate Highway 10	*1,718
Stream QC–2:	
Just downstream of State Highway 16	*1,706
Just upstream of Interstate Highway 10	*1,761
Stream QC–1:	
Just upstream of Leslie Road	*1,688
Approximately 200 feet upstream of Interstate Highway 10	*1,801
Quinlan Creek:	
Just upstream of State Highway 27	*1,606
Approximately 900 feet upstream of Interstate Highway 10	*1,719
Town Creek:	
Just upstream of State Highway 27	*1,624
Approximately 200 feet downstream of Schreiner Road	*1,630
Approximately 900 feet upstream of Interstate Highway 10	*1,689
Elm Creek:	
Approximately 600 feet upstream of Goat Creek Road	*1,649
Approximately 800 feet upstream of Laurel Wood Drive	*1,764
Camp Meeting Creek:	
Approximately 500 feet downstream of Preston Trail	*1,592
Approximately 2,100 feet upstream of Southway Drive	*1,699
Maps are available for inspection at the Upper Guadalupe River Authority, 125 Lehmann Drive, Kerrville, Texas.	
Maps are available for inspection at the City of Kerrville, 800 Junction Highway, Kerrville, Texas.	
WASHINGTON	
Clark County (Unincorporated Areas) (FEMA Docket No. 7250)	
East Fork Lewis River:	
Approximately 17,000 feet downstream of Daybreak Road	*32
Approximately 400 feet downstream of Daybreak Road	*75
Maps are available for inspection at the Clark County Department of Community Development, Development Services Division, Office of Engineering Review, 1408 Franklin Street, Vancouver, Washington.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–14293 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 000202022–0156–02; I.D. 012100F]

RIN 0648–AN58

Endangered and Threatened Species: Threatened Status for One Steelhead Evolutionarily Significant Unit (ESU) in California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Following completion of a comprehensive status review of west coast steelhead (*Oncorhynchus mykiss*, or *O. mykiss*) populations throughout Washington, Oregon, Idaho, and California, NMFS published a proposed rule to list 10 ESUs as threatened or endangered under the Endangered Species Act (ESA) on August 9, 1996. One of these steelhead ESUs, the Northern California ESU, was proposed for listing as a threatened species. Because of scientific disagreements, NMFS deferred its final listing determination for five of these steelhead ESUs, including the Northern California ESU, on August 18, 1997. After soliciting and reviewing additional information to resolve these disagreements, NMFS published a final determination in March 1998 that the Northern California ESU did not warrant listing under the ESA because available scientific information and conservation measures indicated the ESU was at a lower risk of extinction than at the time of the proposed rule. Because the State of California did not implement conservation measures that NMFS considered critically important in its decision to not list the Northern California steelhead ESU, NMFS completed an updated status review for the ESU and reassessed the State and Federal conservation measures that were in place to protect the ESU. Based on this reconsideration, NMFS proposed to list the Northern California steelhead ESU as a threatened species under the ESA on February 11, 2000.

After considering public comments on the proposed determination, NMFS now issues a final rule to list the Northern California ESU of steelhead as a threatened species. Within the Northern California ESU, only naturally spawned populations of steelhead (and their progeny) residing below naturally occurring and man-made impassable barriers (e.g., impassable waterfalls and dams) are listed. NMFS has examined the relationship between hatchery and natural populations of steelhead in this ESU and concludes hatchery populations are not essential for recovery; therefore, no hatchery populations are listed. At this time, NMFS is listing only the anadromous life forms of *O. mykiss* in this ESU. NMFS intends to designate critical habitat and promulgate protective regulations under section 4(d) of the ESA for this ESU in separate rulemakings.

DATES: Effective August 7, 2000.

ADDRESSES: Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 401 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, 562–980-4021, or Chris Mobley, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Previous Federal ESA Actions Related to West Coast Steelhead

The history of petitions NMFS has received regarding west coast steelhead is summarized in a final rule and notice of determination for five steelhead ESUs (Lower Columbia River; Central Valley, California; Oregon Coast; Klamath Mountains Province; and northern California ESUs) that was published on March 19, 1998 (63 FR 13347). The most comprehensive petition was submitted by Oregon Natural Resources Council and 15 co-petitioners on February 16, 1994. In response to this petition, NMFS assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological Technical Committees (PSBTCs) and interested parties in Washington, Oregon, Idaho, and California, and convened a Biological Review Team (BRT), composed of staff from NMFS' Northwest and Southwest Fisheries Science Centers and Southwest Regional Office, as well as a representative of the U.S. Geological Survey Biological Resources Division (formerly the National Biological Service) to conduct a coast-wide status review for west coast steelhead (Busby *et al.*, 1996).

Based on the results of the BRT's status review, an analysis of Federal, State and local conservation measures, and other information which NMFS determined constituted the best scientific and commercial data available, NMFS published a proposed listing determination (61 FR 41541, August 9, 1996) that identified 15 ESUs of steelhead in the states of Washington, Oregon, Idaho, and California. Ten of these ESUs, including the northern California ESU, were proposed for listing as threatened or endangered species, four were found not warranted for listing, and one was identified as a candidate for listing.

On August 18, 1997, NMFS published a final rule listing five ESUs as threatened and endangered under the ESA (62 FR 43937). In a separate notice published on the same day, NMFS determined substantial scientific disagreement remained for five proposed ESUs, including the northern California steelhead ESU (62 FR 43974, August 18, 1997). In accordance with section 4(b)(6)(B)(i) of the ESA, NMFS deferred its decision on these five steelhead ESUs for 6 months for the purpose of soliciting additional data. During this 6-month period of deferral, NMFS received new scientific information regarding the status of these proposed steelhead ESUs. This new information was evaluated by NMFS' BRT which prepared both an updated status review for these five ESUs (Memorandum to William Stelle and William Hogarth from M. Schiewe, December 18, 1997, Status of Deferred and Candidate ESUs of West Coast Steelhead (NMFS, 1997a)), and a review of the associated hatchery populations (Memorandum to William Stelle and William Hogarth from Michael Schiewe, January 13, 1998, Status Review Update for Deferred ESUs of West Coast Steelhead: Hatchery Populations (NMFS, 1998a)).

Based on a review of the updated scientific information for these ESUs, as well as a review and evaluation of Federal, state, and local conservation measures reducing the threats to these ESUs, NMFS issued a final rule (63 FR 13347, March 19, 1998) listing two ESUs as threatened (Lower Columbia River and Central Valley California), and a notice of determination that three ESUs (Oregon Coast, Klamath Mountains Province, and Northern California) did not warrant listing. NMFS' determination that these three ESUs did not warrant listing was based on the best available scientific and commercial data which indicated these ESUs were at a lower risk of extinction than at the time of the proposed listing determination. Even though the risks confronting these ESUs had been reduced to a point at which listing was not warranted, NMFS still expressed concerns about the status of these three ESUs in the notice of determination, and, therefore, identified them as candidate species which the agency would continue to monitor.

NMFS's March 19, 1998 (63 FR 13347), decision not to list the Northern California steelhead ESU was based largely on a determination that sufficient Federal and state conservation measures were in place to reduce threats to the ESU such that the proposed threatened listing was unnecessary. The Federal and state conservation measures upon which NMFS based this determination included: (1) implementation of a March 11, 1998, Memorandum of Agreement (MOA) between NMFS and the State of California (NMFS/California MOA, 1998), with particular importance given to implementation of those provisions in the MOA which were intended to improve non-Federal forest land protections in the ESU (81 percent of land ownership is non-Federal land); (2) implementation of more restrictive in-river harvest regulations by California which were intended to reduce mortality and increase the viability of naturally reproducing steelhead populations; and (3) improved protections to habitat and naturally reproducing steelhead from expanded habitat protection and restoration efforts, improvements in the management of hatchery steelhead stocks, and expanded population monitoring.

At the time of its decision not to list the Northern California ESU, NMFS considered the protection and restoration of freshwater spawning, rearing, and migratory habitat on non-Federal lands to be essential for the long-term survival and recovery of this ESU because non-Federal lands represented such a large portion of the available habitat (63 FR 13347, March 19, 1998). Because of NMFS' concerns regarding the preponderance of private timber lands and timber harvest in the northern California ESU, the NMFS/California MOA contained several provisions calling for the review and revision of California's forest practice rules (FPRs), and a review of their implementation and enforcement by January 1, 2000. NMFS considered full implementation of these critical provisions within the specified time frame to be essential for achieving properly functioning habitat conditions for steelhead in this ESU.

In accordance with the NMFS/California MOA, a scientific review panel was established by the State to review the California FPRs, including their implementation and enforcement. The scientific review panel completed its review and provided the State's Board of Forestry (BOF) with its findings and recommendations in June 1999. In its findings, the review panel concluded that California's FPRs, including their implementation through the existing timber harvest plan process, do not ensure protection of anadromous salmonid habitat and populations. To address these shortcomings, and as specified in the NMFS/California MOA, the California Resources Agency and CalEPA jointly presented the BOF with a proposed rule change package in July 1999. Following several months of public review, the Board of Forestry took no action on the package in October 1999, thereby precluding any possibility of implementing improvements in California's FPRs by January 1, 2000, as the State committed to do in the NMFS/California MOA.

Although NMFS' March 19, 1998, decision not to list the northern California ESU concluded that improvements in steelhead harvest and hatchery management would provide immediate conservation benefits to this ESU, an essential component of the decision was based on NMFS' expectation that changes in the State's FPRs would be implemented by January 1, 2000. Because these critical conservation measures were not being implemented by the State of California, and therefore, were not reducing threats to this ESU that were anticipated at the time of its March 19, 1998, decision not to list the ESU, NMFS determined that a formal reconsideration of the status of this ESU was warranted (December 3, 1999, Memorandum from Rodney R. McInnis and William Stelle, Jr. to Penelope D. Dalton (NMFS, 1999)).

As part of this reconsideration, the Southwest Fisheries Science Center (SWFSC) completed an updated status review for the Northern California steelhead ESU in January, 2000 which concluded that its biological status had changed little since NMFS' steelhead BRT determined in December 1997 that the ESU was likely to become endangered in the foreseeable future. NMFS also conducted a re-evaluation of Federal and state conservation measures that were in place to protect this ESU, including the implementation and success of measures such as the NMFS/California MOA that were considered important factors in the original decision not to list the ESU. Based on the updated status review and re-assessment of conservation measures, NMFS concluded that the Northern California steelhead ESU was likely to become endangered in the foreseeable future, and therefore, proposed to list the ESU as a threatened species under the ESA on February 11, 2000 (65 FR 6960).

Steelhead Life History and Background

Biological information for west coast steelhead (*Oncorhynchus mykiss*) and the northern California ESU in particular can be found in steelhead status assessments conducted by NMFS (Busby *et al.*, 1996; NMFS, 1997a; NMFS, 2000) and in previous **Federal Register** documents (61 FR 41541, August 9, 1996; 63 FR 13347, March 19, 1998; 65 FR 6960, February 11, 2000). A summary of steelhead life history follows.

O. mykiss exhibits one of the most complex suites of life history traits of any salmonid species. Individuals may exhibit anadromy (meaning they migrate as juveniles from fresh water to the ocean, and then return to spawn in fresh water) or freshwater residency (meaning they reside their entire life in fresh water). Resident forms are usually referred to as "rainbow" or "redband" trout, while anadromous life forms are termed "steelhead." Few detailed studies have been conducted regarding the relationship between resident and anadromous *O. mykiss* and as a result, the relationship between these two life forms is poorly understood. The scientific name for the biological species that includes both steelhead and rainbow trout has been changed from *Salmo gairdneri* to *O. mykiss*. This change reflects the premise that all trouts from western North America share a common lineage with Pacific salmon.

Steelhead typically migrate to marine waters after spending 2 years in fresh water. They then reside in marine waters for typically 2 or 3 years prior to returning to their natal stream to spawn as 4- or 5-year-olds. Unlike other Pacific salmon, steelhead are iteroparous, meaning they are capable of spawning more than once before they die. However, it is rare for steelhead to spawn more than twice before dying; most that do so are females. Steelhead adults typically spawn between December and June (Bell, 1990; Busby *et al.*, 1996). Depending on water temperature, steelhead eggs may incubate in "redds" (nesting gravels) for 1.5 to 4 months before hatching as "alevins" (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, young juveniles or "fry" emerge from the gravel and begin actively feeding. Juveniles rear in fresh water from 1 to 4 years, then migrate to the ocean as "smolts."

Biologically, steelhead can be divided into two reproductive ecotypes, based on their state of sexual maturity at the time of river entry and the duration of their spawning migration. These two ecotypes are termed "stream maturing" and "ocean maturing." Stream maturing steelhead enter fresh water in a sexually immature condition and require several months to mature and spawn. Ocean maturing steelhead enter fresh water with well developed gonads and spawn shortly after river entry. These two reproductive ecotypes are more commonly referred to by their season of freshwater entry (i.e., summer [stream maturing] and winter steelhead [ocean maturing]). The Northern California ESU contains populations of both winter and summer steelhead.

Two major genetic groups or "subspecies" of steelhead occur on the west coast of the United States: a coastal group and an inland group, separated in the Fraser and Columbia River Basins approximately by the Cascade crest (Huzyk & Tsuyuki, 1974; Allendorf, 1975; Utter & Allendorf, 1977; Okazaki, 1984; Parkinson, 1984; Schreck *et al.*, 1986; Reisenbichler *et al.*, 1992). Behnke (1992) proposed classifying the coastal subspecies as *O. m. irideus* and the inland subspecies as *O. m. gairdneri*. These genetic groupings apply to both anadromous and nonanadromous forms of *O. mykiss*. Both coastal and inland steelhead occur in Washington and Oregon. California is thought to have only coastal steelhead while Idaho has only inland steelhead. The northern California steelhead ESU is part of the coastal grouping.

Historically, steelhead were distributed throughout the North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula. Presently, the species distribution extends from the Kamchatka Peninsula, east and south along the Pacific coast of North America, to at least Malibu Creek in southern California. There are infrequent anecdotal reports of steelhead occurring as far south as the Santa Margarita River in San Diego County (McEwan & Jackson, 1996). In 1999, juvenile *O. mykiss* suspected of being the progeny of steelhead were reported from San Mateo Creek which is in northernmost San Diego County, just north of the Santa Margarita River. Historically, steelhead likely inhabited most coastal streams in Washington, Oregon, and California as well as many inland streams in these states and Idaho. However, during this century, over 23 indigenous, naturally reproducing stocks of steelhead are believed to have been extirpated, and many more are thought to be in decline in numerous coastal and inland streams in Washington, Oregon, Idaho, and California. Forty-three stocks have been identified by Nehlsen *et al.* (1991) as being at moderate or high risk of extinction.

Summary of Comments Received in Response to the Proposed Rule

Following NMFS proposal to list 10 steelhead ESUs in 1996, including the Northern California ESU (61 FR 41541), a total of 16 public hearings were held in California, Oregon, Idaho, and Washington to solicit comments on the proposed rule. During the 90-day public comment period, NMFS received nearly 1,000 written comments on the proposed rule from Federal, state, and local government agencies, Indian tribes, non-governmental organizations, the scientific community, and other individuals. A number of comments addressed specific technical issues pertaining to a particular geographic region or *O. mykiss* population. These technical comments were considered by NMFS' steelhead BRT in its re-evaluation of ESU definitions and status, including the Northern California steelhead ESU, and were discussed in the updated status review report (NMFS, 1997a).

During the 60-day public comment period that followed publication of the proposal to list this ESU (65 FR 6960), NMFS received numerous written comments and also held one public hearing in Eureka, California to solicit comments on the proposal. A total of 20 individuals presented testimony at this public hearing, with the majority expressing their opposition to the proposed listing. During the 60-day public comment period that followed publication of the proposed rule, NMFS received 44 written comments from Federal, state, and local government agencies, Indian tribes, non-governmental organizations, and other individuals. In contrast to the public hearing, the majority of written comments were supportive of the proposal. A number of comments addressed issues pertaining to the designation of critical habitat which was not proposed at the time of the listing proposal. Several commenters requested NMFS promulgate an ESA 4(d) rule that would allow continued catch and release angling opportunities in coastal streams occurring within the Northern California steelhead ESU. At least one commenter resubmitted comments that had originally been submitted to NMFS when this ESU was first proposed for listing in 1996.

A summary of comments received in response to the proposed rule follows.

Issue 1: Sufficiency and Accuracy of Scientific Information and Analysis

Comment 1: Some commenters questioned the sufficiency and accuracy of data NMFS employed in the listing proposal.

Response: Section 4(b)(1)(A) of the ESA requires that NMFS make its listing determinations solely on the basis of the best available scientific and commercial data, after reviewing the status of the species and taking into account any efforts being made to protect such species. NMFS believes that information contained in the agency's original status review (Busby *et al.*, 1996), together with more recent information (NMFS, 1997a; NMFS, 1998a; NMFS, 2000), represents the best scientific and commercial information presently available for the Northern California steelhead ESU addressed in this final rule. NMFS has made every effort to conduct an exhaustive review of all available information and has solicited information and opinion from all interested parties.

Comment 2: Some comments suggested that the ESA does not provide for the creation of ESUs and that ESUs do not correspond to species, subspecies, or distinct population segments (DPSs) that are specifically identified in the ESA. Further, NMFS' use of genetic information (allozyme- or DNA-derived information) to determine ESU boundaries was criticized. It was argued that allozyme-based electrophoretic data cannot be used to imply either evolutionary significance or local adaptation. Some commenters felt that information was lacking concerning a number of "key" criteria for defining the Northern California steelhead ESU, such as phenotypic differences, evolutionary significance, or ecological significance of various summer and winter steelhead populations. Commenters contended that NMFS did not find any life history, habitat, or phenotypic characteristics that were unique to any of the steelhead populations discussed.

Response: General issues relating to ESUs, Distinct Population Segments (DPSs), and the ESA have been discussed extensively in past **Federal Register** documents. Regarding application of its ESU policy, NMFS relies on its policy describing how it will apply the ESA definition of "species" to anadromous salmonid species published in 1991 (56 FR 58612, November 20, 1991). More recently, NMFS and the U.S. Fish and Wildlife Service published a joint policy, that is consistent with NMFS' policy, regarding the definition of "distinct population segments" (61 FR 4722, February 7, 1996). The earlier policy is more detailed and applies specifically to Pacific salmonids, and therefore, was used for this determination. This policy indicates that one or more naturally reproducing salmonid populations will be considered to be distinct and, hence, a species under the ESA, if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species; and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, does not have to be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on applying this policy is contained in a NOAA Technical Memorandum entitled "Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon" (Waples, 1991) and in a more recent scientific paper by Waples (1995).

NMFS identified all west coast steelhead ESUs including the Northern California ESU in the original steelhead status review, using the best available scientific and commercial information. As discussed in the original status review, genetic data were used primarily to evaluate the criterion

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regarding reproductive isolation, not evolutionary significance. In some cases, there was a considerable degree of confidence in the ESU determinations. The west coast steelhead status review describes a variety of characteristics that support the ESU delineations for this species, including ecological and life history parameters.

Comment 3: Some commenters suggested that listing of the Klamath Mountains Province (KMP) steelhead ESU was also warranted based on the rationale NMFS provided for its decision to propose listing the Northern California steelhead ESU.

Response: NMFS' decision not to reconsider the KMP steelhead ESU for listing is based on the determination that there are sufficient Federal and state conservation measures in place to reduce the threats to the ESU such that listing is not warranted. The Federal and state conservation measures which NMFS bases this determination on include: (1) the large portion of Federal land ownership in the ESU (64 percent for the entire ESU and 80 percent in the California portion of the ESU) coupled with successful implementation of the Northwest Forest Plan on Federal lands which reduced habitat risks; (2) substantial changes to the management of recreational fisheries and artificial propagation programs by the states of Oregon and California which are reducing impacts to steelhead; and (3) general improvements to habitat conditions throughout the ESU resulting from state-wide conservation strategies and monitoring efforts in both Oregon and California. In California, these efforts include implementation of the California Department of Fish and Game's (DFG) strategic management plan for KMP steelhead ESU, the State's Watershed Protection Program which includes an ongoing habitat restoration program, and the NMFS/California MOA which assures implementation of steelhead angling regulation changes, changes in the management of hatchery steelhead programs, habitat protections on non-Federal land, and expanded steelhead monitoring. In Oregon, these efforts include the implementation of conservation measures contained in the Oregon Plan for Salmon and Watersheds.

Issue 2: Status Assessment for the Northern California Steelhead ESU

Comment 4: Some commenters suggested that risk assessments were made in an arbitrary manner and that NMFS did not rely on the best available science. Several commenters questioned NMFS' methodology for determining whether the Northern California steelhead ESU warranted listing. In some cases, such commenters also expressed opinions regarding whether listing was warranted.

Response: Throughout the status review for west coast steelhead and all subsequent updates, NMFS has solicited and evaluated the best available scientific and commercial data for the species. NMFS believes that these reviews, coupled with considerable input from the public, co-managers, peer reviewers, and other species experts, clearly demonstrate that its listing determinations are not arbitrary, but instead are based on an open and rigorous scientific assessment.

NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU. These factors were considered by NMFS in the original 1996 status review and all subsequent updated reviews (NMFS, 1997a; NMFS, 2000) and served as the basis for agency determinations regarding the biological status of the Northern California steelhead ESU.

Issue 3: Factors Contributing to the Decline of Northern California Steelhead ESU

Comment 5: Some commenters identified factors for decline that were either not identified in the original or updated status reviews or which they believed were not given sufficient weight in the risk analysis. Other commenters contended that recent declines in Northern California steelhead abundance were related to natural factors such as predation and changes in ocean productivity. Furthermore, these commenters contend that NMFS did not show how the present declines were significantly different from natural variability in abundance, nor that abundances were below the current carrying capacity of the marine environment and freshwater habitat.

Response: The status review did not attempt to exhaustively identify factors for decline, except insofar as they contributed directly to the risk analysis. Nevertheless, NMFS agrees that a multitude of factors, past and present, have contributed to the decline of west coast steelhead. Many of the identified risk factors were specifically cited in NMFS' original west coast steelhead status review (Busby *et al.*, 1996) and subsequent listing notices (61 FR 41541; 63 FR 13347; 65 FR 6960). In addition, NMFS has prepared a report that summarizes the factors leading to the decline of steelhead on the west coast entitled: "Factors for Decline: A supplement to the notice of determination for west coast steelhead" (NMFS, 1996). This report concludes that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary causes for the decline of steelhead on the west coast. NMFS recognizes that natural environmental fluctuations have likely played a role in the species' recent declines as well. However, NMFS believes other human-induced impacts (e.g., harvest in certain fisheries, artificial propagation, and widespread habitat modification) have played an equally significant role in the decline of steelhead.

NMFS' 1996 status review briefly addressed the impact of adverse marine conditions and climate change, but concluded that there is considerable uncertainty regarding the role of these factors in steelhead abundance. At this time, we do not know whether these climate conditions represent a long-term shift in conditions that will continue into the future or short-term environmental fluctuations that can be expected to reverse soon (NMFS, 1996). A recent review by Hare *et al.* (1999) suggests that these conditions could be part of an alternating 20- to 30-year regime pattern. These authors concluded that although at-risk salmon stocks may benefit from a reversal in the current climate/ocean regime, fisheries management should continue to focus on reducing impacts from harvest and artificial propagation and improving freshwater and estuarine habitats.

NMFS believes there is ample evidence to suggest that the elimination and degradation of freshwater habitats have contributed to the decline of this steelhead ESU (NMFS, 1996). Many of the identified risks and conclusions apply specifically to Northern California steelhead populations. Examples of habitat alterations affecting steelhead include: water withdrawal, conveyance, storage, and flood control (resulting in insufficient flows, stranding, juvenile entrainment, and increased stream temperatures); and logging and agriculture (resulting in loss of large woody debris, sedimentation, loss of riparian vegetation, and habitat simplification) (NMFS, 1996; Spence *et al.*, 1996; Busby *et al.*, 1996). These human-induced impacts in freshwater ecosystems have likely reduced the species' resiliency to natural factors for decline such as drought and poor ocean conditions. A critical next step in restoring listed steelhead will be identifying and ameliorating specific factors for decline at both the ESU and population level.

With respect to predation impacts on steelhead, NMFS has recently published reports describing the impacts of California sea lions and Pacific harbor seals upon salmonids and on the coastal ecosystems of Washington, Oregon, and California (NMFS, 1997 and 1999b). These reports conclude that in certain cases where pinniped populations co-occur with depressed salmonid populations, salmonid populations may experience severe impacts due to predation. An example of such a situation is at the Ballard Locks, Washington, where sea lions are known to consume significant numbers of adult winter steelhead. These reports further conclude that data regarding pinniped predation are quite limited and that substantial additional research is needed to fully address this issue. Existing information on the seriously depressed status of many salmonid stocks may be sufficient to warrant actions to remove pinnipeds in areas of co-occurrence where pinnipeds prey on depressed salmonid populations (NMFS, 1997 and 1999b).

Issue 4: Consideration of Existing Conservation Measures

Comment 6: Some commenters expressed concerns about NMFS' reliance and characterization of the efficacy of the Northwest Forest Plan (NFP), citing significant differences in management practices between various Federal land management agencies. Numerous commenters noted that an array of state and Federal conservation measures were underway for this and other species (particularly in northern California) and asked that NMFS give them more consideration in its listing determination.

Response: In the listing proposal, NMFS noted that the NFP requires specific management actions on Federal lands, including actions in key watersheds in southern Oregon and northern California that comply with special standards and guidelines designed to preserve their refugia functions for at-risk salmonids (i.e., watershed analysis must be completed prior to timber harvests and other management actions, road miles should be reduced, no new roads can be built in roadless areas, and restoration activities are prioritized). In addition, the most significant element of the NFP for anadromous fish is its Aquatic Conservation Strategy (ACS), a regional-scale aquatic ecosystem conservation strategy that includes: (1) special land allocations (such as key watersheds, riparian reserves, and late-successional reserves) to provide aquatic habitat refugia; (2) special requirements for project planning and design in the form of standards and guidelines; and (3) new watershed analysis, watershed restoration, and monitoring processes. These ACS components collectively ensure that Federal land management actions achieve a set of nine ACS objectives that strive to maintain and restore ecosystem health at watershed and landscape scales, to protect habitat for fish and other riparian-dependent species and to restore currently degraded habitats. NMFS will continue to support the NFP strategy and address Federal land management issues via ESA section 7 consultations.

Additional consideration was given to various conservation efforts in California that have been implemented or are expected to be initiated. See "Efforts Being Made to Protect West Coast steelhead" later in this document.

Comment 7: Several commenters expressed their belief that current California Forest Practice Rules (FPR's) were adequate to protect the Northern California steelhead ESU. Several comments expressed concern that NMFS did not adequately review and consider the interim FPR changes adopted by the California Board of Forestry (BOF) for anadromous salmonids in March 2000.

Response: NMFS disagrees with the assertion that the state's FPRs as currently implemented are adequate to protect anadromous salmonids in California. NMFS has reviewed the State FPRs, including those interim changes recently adopted by the Board of Foresty and concludes that they do not adequately protect anadromous salmonids, including steelhead, or provide for properly functioning habitat conditions. In fact, the deleterious impacts of timber harvest and other activities have resulted in recent listings by the Environmental Protection Agency of many north coast California streams as sediment and/or temperature impaired under Section 303(d) of the Clean Water Act.

NMFS' March 19, 1998 (63 FR 13347), decision not to list the Northern California steelhead ESU was based largely on a determination that sufficient Federal and state conservation measures were in place to reduce threats to the ESU such that the proposed threatened listing was unnecessary. The Federal and state conservation measures upon which NMFS based this determination included the implementation of a March 11, 1998, Memorandum of Agreement (MOA) between NMFS and the State of California (NMFS/California MOA, 1998), with particular importance given to implementation of those provisions in the MOA which were intended to improve non-Federal forest land protections in the ESU. At the time of NMFS' decision not to list the Northern California ESU in 1998, NMFS considered the protection and restoration of freshwater spawning, rearing, and migratory habitat on non-Federal lands to be essential for the long-term survival and recovery of this ESU because non-Federal lands represented such a large portion (81 percent) of the available habitat (63 FR 13347, March 19, 1998; 65 FR 6960, February 11, 2000). Because of NMFS' concerns regarding the preponderance of private timber lands and timber harvest in the northern California ESU, the NMFS/California MOA contained several provisions calling for the review and revision of California's FPRs, and a review of their implementation and enforcement by January 1, 2000. NMFS considered full implementation of these critical provisions within the specified time frame to be essential for achieving properly functioning habitat conditions for steelhead in this ESU. In accordance with the NMFS/California MOA, a scientific review panel was established by the state to review the California FPRs, including their implementation and enforcement. The scientific review panel completed its review and provided the state's Board of Forestry with its findings and recommendations in June 1999. In its findings, the review panel concluded that California's FPRs, including their implementation through the existing timber harvest plan process, do not ensure protection of anadromous salmonid habitat and populations. To address these shortcomings, and as specified in the NMFS/California MOA, the California Resources Agency and CalEPA jointly presented the Board of Forestry with a proposed rule change package in July 1999. Following several months of public review, the Board of Forestry took no action on the package in October 1999, thereby precluding any possibility of implementing improvements in California's FPRs by January 1, 2000, as the State committed to do in the NMFS/California MOA.

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The California State Legislature, purusant to Senate Bill 621, gave special authority to BOF to adopt new rules twice during the year 2000 for the specific purpose of revising the State's FPRs to meet ESA requirements for salmonids. Following its decision to take no action in October 1999, BOF continued working on revisions to the state's FPRs through March 2000. During this period, NMFS and other groups strongly urged BOF to adopt the entire FPR package as a necessary first step for protecting anadromous salmonid habitat. On March 14, 2000, (the deadline for the Board of Forestry to exercise its authority under SB 621), the Board only adopted a subset of rule changes from the package. These rule changes only apply to those harvest plans approved between July 1, 2000, and December 31, 2000. NMFS has reviewed these recently adopted rule changes and has determined that they are inadequate to protect anadromous salmonids or provide for properly functioning habitat conditions. This position is supported by the scientific review panel report of June 1999. For a more detailed discussion on the adequacy of California's FPRs, including the recently proposed interim FPRs changes, see "Inadequacy of Existing Regulatory Mechanisms, Land Management" later in this document.

Comment 8: Several commenters argued that NMFS had not considered existing conservation programs designed to enhance steelhead stocks within the northern California ESU.

Response: NMFS has reviewed existing conservation efforts relevant to the Northern California steelhead ESU and concludes that existing conservation efforts in these areas are not sufficient to preclude listing of the ESU at this time. Several of the plans addressed in comments show promise for ameliorating the risks facing steelhead. However, in most cases, measures described in comments have not been implemented or are in their early stages of implementation and have not yet demonstrated success. Some of these measures are also geographically limited to individual river basins or political subdivisions, thereby improving conditions for only a small portion of the entire ESU.

While existing conservation plans are unable to preclude the need for listing at this time, they are nevertheless valuable for improving watershed health and restoring fishery resources. In those cases where well-developed, reliable conservation plans exist, NMFS may choose to incorporate them into the recovery planning process. In the case of threatened species, NMFS also has flexibility under ESA section 4(d) to tailor section 9 take regulations based on the contents of available conservation measures. NMFS fully intends to recognize local conservation efforts to the fullest extent possible.

Issue 5: Steelhead Biology and Ecology

Comment 9: Some commenters believe that resident rainbow trout should be included in the Northern California steelhead ESU if it is listed. Several commenters also stated that NMFS should address how the presence of rainbow trout populations may ameliorate risks facing anadromous populations within listed ESUs.

Response: In its August 9, 1996, listing proposal, NMFS stated that based on available genetic information, it was the consensus of NMFS scientists, as well as regional fishery biologists, that resident fish should generally be considered part of the steelhead ESUs, but also concluded that available data were inconclusive regarding the relationship of resident rainbow trout and steelhead. NMFS requested additional data in the proposed rule to clarify this relationship and determine if resident rainbow trout should be included in listed steelhead ESUs.

In response to this request for additional information, many groups and individuals expressed opinions regarding this issue. In most cases these opinions were not supported by new information that resolves existing uncertainty. Two state fishery management agencies (CDFG and WDFW) and one peer reviewer provided comments and information supporting the inclusion of resident rainbow trout in listed steelhead ESUs. In general, these parties also felt that rainbow trout may serve as an important reservoir of genetic material for at-risk steelhead stocks.

While conclusive evidence does not yet exist regarding the relationship of resident and anadromous *O. mykiss*, NMFS believes available evidence suggests that resident rainbow trout should be included in listed steelhead ESUs in certain cases. Such cases include: (1) where resident *O. mykiss* have the opportunity to interbreed with anadromous fish below natural or man-made barriers; or (2) where resident fish of native lineage once had the ability to interbreed with anadromous fish but no longer do because they are currently above human-made barriers, and they are considered essential for recovery of the ESU. Resident fish above long-standing natural barriers, and those that are derived from the introduction of non-native rainbow trout, would not be considered part of any ESU.

NMFS believes resident fish can help buffer extinction risks to an anadromous population by mitigating depensatory effects in spawning populations, by providing offspring that migrate to the ocean and enter the breeding population of steelhead, and by providing a "reserve" gene pool in freshwater that may persist through times of unfavorable conditions for anadromous fish. In spite of these potential benefits, presence of resident populations is not a substitute for conservation of anadromous populations. A particular concern is isolation of resident populations by human-caused barriers to migration. This interrupts normal population dynamics and population genetic processes and can lead to loss of a genetically based trait (anadromy). As discussed in NMFS' "species identification" paper (Waples, 1991), the potential loss of anadromy in distinct population segments may in and of itself warrant listing the species as a whole.

FWS and NMFS adopted a joint policy to clarify their interpretation of the phrase "distinct population segment (DPS) of any species of vertebrate fish or wildlife" for the purposes of listing, delisting, and reclassifying species under the ESA (61 FR 4722). DPSs are "species" pursuant to section 3(15) of the ESA. Previously, NMFS had developed a policy for stocks of Pacific salmon where an ESU of a biological species is considered "distinct" (and hence a species) if (1) it is substantially reproductively isolated from other conspecific population units, and (2) it represents an important component in the evolutionary legacy of the species (November 20, 1991, 56 FR 58612). NMFS believes available data suggest that resident rainbow trout are in many cases part of steelhead ESUs. However, the FWS, which has ESA authority for resident fish, maintains that behavioral forms can be regarded as separate DPSs and that absent evidence suggesting resident rainbow trout need ESA protection, the FWS concludes that only the anadromous forms of each ESU should be listed under the ESA (DOI, 1997; FWS, 1997).

Comment 10: Commenters and some peer reviewers questioned NMFS' inclusion of both summer- and winter-run steelhead in the same ESU. These commenters suggested that summer- and winter-run steelhead be segregated into individual ESUs based on life history differences.

Response: While NMFS considers both life history forms (summer- and winter-run steelhead) to be important components of diversity within the species, new genetic data reinforce previous conclusions that, within a geographic area, summer- and winter-run steelhead typically are more genetically similar to one another than either is to populations with similar run timing in different geographic areas. This indicates that an ESU that included summer-run populations from different geographic areas but excluded winter-run populations (or vice-versa) would be an inappropriate unit. The only biologically meaningful way to have summer- and winter-run steelhead populations in separate ESUs would be to have a very large number of ESUs, most consisting of just one or a very few populations. This would be inconsistent with the approach NMFS has taken in defining ESUs in other anadromous Pacific salmonids. Taking these factors into consideration, NMFS concludes that summer- and winter-run steelhead should be considered part of the same ESU in geographic areas where they co-occur.

Issue 6: Consideration of ESA Section 4(d) Regulation for Recreational Angling

Comment 11: Numerous commenters requested that if NMFS lists the Northern California steelhead ESU as a threatened species the agency promulgate an ESA 4(d) rule that provides for recreational angling opportunities similar to what is contained in the ESA 4(d) rule NMFS recently proposed for other threatened steelhead ESUs in California (64 FR 73479; December 30, 1999).

Response: The steelhead ESA 4(d) rule that NMFS proposed on December 30, 1999, contains a limitation on the application of the section 9 take prohibitions that would allow recreational angling for steelhead listed as threatened to continue under certain conditions, provided that the State of California prepares a Fishery Management and Evaluation Plan (FMEP) meeting certain criteria and that NMFS approves it. Because the pending steelhead 4(d) rule will be finalized by June 19, 2000, NMFS expects to begin working soon with the State of California and DFG in preparing one or more FMEPs so that recreational angling can continue where it is consistent with the conservation of steelhead listed as threatened. It is NMFS' intent to promulgate an ESA 4(d) rule for the Northern California steelhead ESU which is consistent with the 4(d) rule that will be published on June 19, 2000 so that recreational angling which meets appropriate conservation criteria can continue.

Northern California Steelhead ESU Determination

The Northern California steelhead ESU has been described in previous **Federal Register** documents (61 FR 41541, August 9, 1996; 62 FR 43937, August 18, 1997; 63 FR 13347, March 19, 1998; 65 FR 6960, February 11, 2000) based on analyses conducted by NMFS and summarized in the following documents: "Status Review for West Coast Steelhead from Washington, Idaho, Oregon, and California" (Busby *et al.*, 1996); and "Status Review Update for West Coast Steelhead from Washington, Idaho, Oregon, and California" (NMFS, 1997a). The relationship between hatchery steelhead populations and naturally spawned steelhead within this ESU was also assessed in: "Status Review Update for Deferred ESUs of West Coast Steelhead: Hatchery Populations" (NMFS, 1998a). Copies of these NMFS documents are available upon request (see **ADDRESSES**). NMFS received no new scientific or commercial information as a result of the February 11, 2000, proposal to list this ESU, which indicates that a change in the Northern California ESU is warranted.

The ESU occupies river basins from Redwood Creek in Humboldt County, CA, to the Gualala River, inclusive, in Mendocino County, CA. Dominant vegetation along the coast is the redwood forest, whereas some interior basins, much drier than surrounding areas, are characterized by many endemic species. This area includes the extreme southern end of the contiguous portion of the Coast Range Ecoregion (Omernick, 1987). Elevated stream temperatures are a factor in some of the larger river basins (greater than 20°C), but not to the extent that they are in river basins further south. Precipitation is generally higher in this geographic area than in regions to the south, averaging 100–200 cm of rainfall annually (Donley *et al.*, 1979). With the exception of such major river basins as the Eel, most rivers in this region have peak flows of short duration. Strong and consistent coastal upwelling begins at about Cape Blanco and continues south into central California, resulting in a relatively productive nearshore marine environment.

The northern California ESU includes both winter and summer steelhead, including what is presently considered to be the southernmost population of summer steelhead, in the Middle Fork Eel River. Half-pounder juveniles also occur in this geographic area, specifically in the Mad and Eel Rivers. Snyder (1925) first described the half-pounder from the Eel River; however, Cramer *et al.* (1995) suggested that adults with the half-pounder juvenile life history may not spawn south of the Klamath River Basin. As with the Rogue and Klamath Rivers which are located in the Klamath Mountains Province ESU, some of the larger rivers in this ESU have migrating steelhead year-round, and seasonal runs have been named. River entry ranges from August through June and spawning from December through April, with peak spawning in January in the larger basins and late February and March in the smaller coastal basins.

Based on the review of steelhead hatchery programs in this ESU (NMFS, 1998a), NMFS' steelhead BRT concluded that the following steelhead hatchery stocks are part of this ESU because they were established from indigenous natural populations and there is limited impact from the inclusion of out-of-basin fish in the broodstock: Van Arsdale Fisheries Station stock (Eel River), the Yager Creek stock (Eel River tributary), Ten Mile River stock, and North Fork Gualala River stock. The BRT concluded that the Mad River hatchery summer steelhead stock is not part of the ESU based on its origin from out-of-basin steelhead populations combined with the mixing of Eel River summer steelhead in the broodstock. Rearing of this stock was terminated at the Mad River hatchery in 1996. The majority of the BRT concluded that the Mad River hatchery winter steelhead stock is not part of this ESU although a minority of the BRT was uncertain regarding its relationship to the naturally spawning population. This stock was founded from South Fork Eel River steelhead (within the ESU, but out of the Mad River basin) and some local Mad River steelhead.

Status of Northern California Steelhead ESU

Section 3 of the ESA defines the term "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range." The term "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. In its previous status reviews for west coast salmon and steelhead, NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to

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historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

Based on these factors and the best available scientific information, NMFS' BRT first reviewed the status of the northern California ESU in its original coast-wide status review for steelhead (Busby *et al.*, 1996). The BRT concluded that the northern California steelhead ESU was likely to become endangered in the foreseeable future. Population abundance was determined to be very low relative to historical estimates (1930's dam counts), and recent trends were downward in most stocks for which data were. The BRT expressed particular concern regarding sedimentation resulting in part from poor land management practices and channel restructuring due to floods. The abundance of the pikeminnow as a predator in the Eel River was also identified as a significant concern. For the Mad River, in particular, the BRT was concerned about the influence of hatchery stocks both in terms of genetic introgression and the potential for ecological interactions between introduced stocks and native stocks.

The status of the northern California ESU was reassessed by NMFS' BRT in an updated status review following the 6-month period of deferral because of scientific disagreements (NMFS, 1997a). Based on this updated status review, NMFS' BRT once again concluded that northern California steelhead ESU was likely to become endangered in the foreseeable future. The BRT reported that there *was very limited abundance data available for this ESU, particularly for winter-run steelhead.* The most complete data set available in this ESU is a time series of winter steelhead dam counts on the Eel River at Cape Horn Dam. The updated abundance data (through 1997) showed moderately declining long-term and short-term trends in abundance, and the vast majority of these fish were believed to be of hatchery origin. These data show a strong decline in abundance prior to 1970, but no significant trend thereafter. Additional winter steelhead data are available for Sweasy Dam on the Mad River which show a significant decline, but that data set ends in 1963. For the seven populations where recent trend data were available, the only runs showing recent increases in abundance in the ESU were the relatively small populations of summer steelhead in the Mad River which has had high hatchery production, and winter steelhead in Prairie Creek where the increase may be due to increased monitoring or mitigation efforts.

As in its original assessment, the BRT continued to be concerned about the risks associated with interactions between naturally spawning populations and hatchery steelhead in this ESU. Of particular concern to the BRT was the potentially deleterious impact to wild steelhead from past hatchery practices at the Mad River hatchery, primarily from transfers of non-indigenous Mad River hatchery fish to other streams in the ESU and the production of non-indigenous summer steelhead. These potentially deleterious hatchery practices for summer steelhead ended in 1996.

Habitat degradation and other factors were also of concern to the BRT in its reassessment of the long-term risks to this ESU. Specific factors which the BRT identified included dams on the upper Eel and Mad Rivers, the likely existence of minor blockages throughout the ESU, continuing impacts of catastrophic flooding on the 1960s, and reductions in riparian and instream habitat and increased sedimentation from timber harvest activities. The BRT also cited poaching of summer steelhead and predation by pikeminnow in the Eel River as factors for concern. NMFS' supplemental review of factors affecting west coast steelhead also identified water diversion and extraction, agriculture, and mining as factors affecting habitat conditions for steelhead in this ESU (NMFS, 1996).

In conjunction with NMFS' reconsideration of the Northern California steelhead ESU, the BRT provided a status review update for this ESU [January 2000 Memorandum from Pete Adams, Southwest Fisheries Science Center [SWFSC] to Rodney R. McInnis, Regional Administrator, SWR (NMFS, 2000)]. Based on a review of updated abundance and trend information that was available for this ESU, the SWFSC concluded that the current status of the ESU has not changed significantly since it was last evaluated by NMFS' BRT in December 1997 (NMFS, 1997a). The Eel River winter and summer steelhead populations, which represent the best available data set for this ESU, are still severely reduced from pre–1960's levels. Updated abundance and trend data show small increases for winter and summer steelhead in the Eel River, but current abundance is still well below estimates in the 1980s, and even further reduced from levels in the 1960s. Redwood Creek summer steelhead abundance remains very low. There are no new data suggesting substantial increases or decreases in populations since the last updated status review was completed. NMFS received no new scientific or commercial data or information as a result of the February 11, 2000, listing proposal which changes the conclusions reached by the SWFSC.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

NMFS has prepared a report that summarizes the factors leading to the decline of steelhead on the west coast entitled: "Factors for Decline: A supplement to the notice of determination for west coast steelhead" (NMFS, 1996). This report, available upon request (see **ADDRESSES**), concludes that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary causes for the decline of steelhead on the west coast. NMFS (1996) identified several factors that were considered to have contributed to its decline of the northern California steelhead ESU including: impacts from historic flooding (principally in 1955 and 1964), predation, water diversions and extraction, minor habitat blockages, poaching, timber harvest, agriculture, and mining. NMFS' steelhead BRT also identified the potentially adverse impacts of the release of non-indigenous, hatchery-produced steelhead in this ESU as an important factor, and expressed concerns regarding the lack of reliable abundance and trend data for assessing the status of steelhead in this ESU (NMFS, 1997a).

Finally, NMFS was also concerned about the impacts of recreational angling because of the depressed status of steelhead populations and the uncertainty regarding the status of this ESU (March 11, 1998, Memorandum from William Hogarth to Rolland Schmitten (NMFS, 1998e)). The following discussion briefly summarizes findings regarding factors for decline across the range of west coast steelhead, including the northern California ESU.

The Present or Threatened Destruction, Modification or Curtailment of Steelhead Habitat or Range

Steelhead on the west coast of the United States have experienced declines in abundance in the past several decades as a result of natural and human factors. Forestry, agriculture, mining, and urbanization have degraded, simplified, and fragmented habitat. Water diversions for agriculture, flood control, domestic, and hydropower purposes have greatly reduced or eliminated historically accessible habitat. Among other factors, NMFS (1996) specifically identified timber harvest, agriculture, mining, habitat blockages, and water diversions as important factors for the decline of steelhead in the northern California ESU. NMFS (1998a) discussed these factors in more detail. Studies estimate that during the last 200 years, the lower 48 states have lost approximately 53 percent of all wetlands and the majority of the rest are severely degraded (Dahl, 1990; Tiner, 1991). Washington and Oregon's wetlands are estimated to have diminished by one-third, while California has experienced a 91 percent loss of its wetland habitat (Dahl, 1990; Jensen *et al.*, 1990; Barbour *et al.*, 1991; Reynolds *et al.*, 1993). Loss of habitat complexity has also contributed to the decline of steelhead. For example, in national forests in Washington, there has been a 58 percent reduction in large, deep pools due to sedimentation and loss of pool-forming structures such as boulders and large woody debris (FEMAT, 1993). Similarly, in Oregon, the abundance of large, deep pools on private coastal lands has decreased by as much as 80 percent (FEMAT, 1993). Sedimentation from land use activities is recognized as a primary cause of habitat degradation in the range of west coast steelhead.

Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Steelhead are not generally targeted in commercial fisheries. High seas driftnet fisheries in the past may have contributed slightly to a decline of this species in local areas, but could not be solely responsible for the large declines in abundance observed along most of the Pacific coast over the past several decades (NMFS, 1996).

Steelhead support an important recreational fishery throughout most of their range. During periods of decreased habitat availability (e.g., drought conditions or summer low flows when fish are concentrated), the impacts of recreational fishing on native anadromous stocks may be heightened.

Although harvest of steelhead in the Northern California ESU was not originally identified as a major factor for decline (NMFS, 1996), NMFS is concerned about the impacts of recreational angling given currently depressed steelhead population levels and the lack of reliable abundance and trend data for accurately assessing the status of individual populations and the ESU as a whole. Because of NMFS' concerns about recreational angling impacts to naturally reproduced steelhead populations in coastal watersheds in California north of the Russian River, the California Department of Fish and Game (DFG) proposed and the California Fish and Game Commission adopted new steelhead angling regulations in 1998 for all watersheds in the northern California ESU. These new regulations prohibit retention of naturally spawned adult steelhead; eliminate fishing for juvenile steelhead in tributary streams; minimize impacts on juvenile steelhead in mainstem rearing and migratory areas through a combination of gear restrictions and delayed seasonal openings; prohibit retention of summer steelhead during their upstream migration and prohibit fishing in their summer holding areas; and provide for directed harvest and retention of hatchery-produced steelhead which are fully marked state-wide. NMFS (1998b,c,d) analyzed these new regulations and concluded that they would substantially reduce fishing effort and reduce mortality to that associated with catch-and-release of naturally produced steelhead in the northern California ESU. These regulations remain in effect and are enforced by DFG.

Disease or Predation

Infectious disease is one of many factors that can influence adult and juvenile steelhead survival. Steelhead are exposed to numerous bacterial, protozoan, viral, and parasitic organisms in spawning and rearing areas, hatcheries, migratory routes, and the marine environment (NMFS, 1996). Specific diseases such as bacterial kidney disease (BKD), ceratomyxosis, columnaris, furunculosis, infectious hematopoietic necrosis virus, redmouth and black spot disease, erythrocytic inclusion body syndrome, and whirling disease, among others, are present and are known to affect steelhead and salmon (Rucker *et al.*, 1953; Wood, 1979; Leek, 1987; Foott *et al.*, 1994; Gould and Wedemeyer, undated). Very little current or historical information exists to quantify changes in infection levels and mortality rates attributable to these diseases for steelhead (NMFS, 1996). However, studies have shown that naturally spawned fish tend to be less susceptible to pathogens than hatchery-reared fish (Buchanon *et al.*, 1983; Sanders *et al.*, 1992).

Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous river systems, thereby increasing the level of predation experienced by salmonids. In the Northern California steelhead ESU, predation from Sacramento pikeminnow that were released into the Eel River is a major problem. Predation from pikeminnow is discussed in more detail in NMFS (1996). The DFG is currently engaged in a program to control pikeminnow predation in the Eel River.

Predation by marine mammals is also of concern in some areas experiencing dwindling steelhead run sizes. NMFS (1997b) reviewed the available literature concerning the impacts of California sea lion and Pacific harbor seal predation on west coast anadromous salmonids, and concluded that there was insufficient data in all but one instance (i.e., Ballard Locks in Puget Sound) to conclude that pinnipeds were having a significant impact on wild salmon or steelhead populations. For this reason, and because of the high likelihood that impacts might be occurring, the study concluded that substantial additional research was needed to address this issue further. Based on this research recommendation, NMFS has initiated several field studies in coastal watersheds on the west coast designed to assess the magnitude of pinniped predation on individual salmon or steelhead populations. In California, these studies are being conducted in the lower Klamath River, Scott Creek, and the San Lorenzo River.

Inadequacy of Existing Regulatory Mechanisms

1. Federal Land and Water Management

The Northwest Forest Plan (NFP) is a Federal land management policy with important benefits for west coast steelhead. While the NFP covers a very

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large area, the overall effectiveness of the NFP in conserving steelhead is limited by the extent of Federal lands and the fact that Federal land ownership is not uniformly distributed in watersheds that comprise individual ESUs. The extent and distribution of Federal lands limits the ability of the NFP to achieve its aquatic habitat restoration objectives at watershed and river basin scales, and highlights the importance of complementary salmon habitat conservation measures on non-federal lands within the subject ESUs.

Federal land ownership and management in the Northern California steelhead ESU is very limited; representing only about 19 percent of the total land area. Federal lands (i.e., Redwood National Park, portions of the Six Rivers and Mendocino National Forests, and the Kings Range National Conservation Area) that do occur in this ESU are also highly fragmented, unlike some other steelhead ESUs (e.g., Klamath Mountains Province and Snake River Basin). Although Federal lands are limited in extent and fragmented in this ESU, NMFS believes that implementation of the NFP on the Six Rivers and Mendocino National Forests lands (upper reaches of Eel and Mad Rivers) and implementation of other habitat protections in Redwood National Park (lower reach of Redwood Creek) will provide some limited benefits to steelhead. Nevertheless, long-term habitat protection and the key to achieving properly functioning habitat conditions in this ESU continues to be improvement in non-Federal land management, particularly those lands used for timber harvest.

Because threatened coho salmon populations occur on Federal lands located within the Northern California steelhead ESU, NMFS routinely engages the U.S. Forest Service (USFS), Bureau of Land Management (BLM), and Redwood Creek National Park in section 7 consultations to ensure that ongoing or proposed activities do not jeopardize coho salmon or adversely modify its critical habitat. Through this section 7 consultation process, NMFS ensures that the NFP and other protective measures are fully implemented on Federal lands that occur in this ESU. The NFP and measures implemented as a result of the section 7 consultations for coho salmon also benefit steelhead.

The Pacific Gas and Electric Company's (PG&E) Potter Valley hydroelectric project is a major diverter of water from the mainstem Eel River, which is located in the northern California ESU. This water is diverted into the Russian River basin to generate hydroelectric power and provide water for agriculture and urban uses. Pursuant to a Federal Energy Regulatory Commission (FERC) licensing requirement, PG&E implemented a 10-year monitoring program in the Eel River for the purpose of developing recommendations for a flow release schedule and other project facilities and/or operations necessary to protect and maintain fishery resources, including steelhead. This study was completed in 1996, as was construction of a $14 million dollar fish screen facility at the Van Arsdale Dam diversion on the Eel River. Based on the results of the monitoring study, PG&E has developed a preferred alternative for project operations that, along with several other alternatives, are the subject of National Environmental Policy Act (NEPA) review for ongoing FERC license amendment proceedings. NMFS is currently consulting with FERC pursuant to section 7 of the ESA on PG&E's proposed license amendment.

On March 1, 1999, the Pacific Lumber Company (PALCO), the State of California, the Department of the Interior, and the Department of Commerce entered into a complex land purchase, land exchange and Habitat Conservation Plan (HCP) transaction covering the Headwaters Forest, Elk Head Springs Forest and the remainder of Pacific Lumber Company's land holdings in Humboldt County California. The Federal and State governments acquired approximately 10,000 acres of conifer and hardwood forest, over 3,000 acres of which is ancient redwoods, with some trees over 1,000 years old. This land is now subject to Federal and state control under conservation easements. The PALCO HCP addresses non-Federal timber lands in several drainages that occur in the northern portion of Northern California steelhead ESU. These include portions of several tributaries to Humboldt Bay (Elk River, Jacoby Creek, Freshwater Creek, and Salmon Creek), and portions of the Van Duzen River (including Yager Creek), Eel River, Bear River, Salt River, and Mattole River watersheds. The HCP covers 211,000 acres, has a term of 50 years and covers the following federally listed and candidate anadromous salmonid ESUs: (1) Southern Oregon/ Northern California coho salmon (threatened), (2) Northern California steelhead (candidate), and (3) California Coastal Chinook salmon (threatened). The HCP also covers numerous terrestrial species listed under the ESA and California Endangered Species Act.

The HCP's Operating Conservation Program (Program) contains the conservation and management measures and prescriptions necessary to minimize, mitigate and monitor the impacts of take of the covered species resulting from timber operations. The Program incorporates specific conservation plans for all terrestrial and aquatic species covered under the HCP along with measures to conserve habitat diversity and structural components. Monitoring for implementation, effectiveness and trends is a critical component of the Program. The monitoring component includes an independent third party HCP monitor to determine if the provisions of the aquatics plan are effective and whether the aquatic habitat is responding as expected. There is also a provision for adaptive management if the results are not as predicted. An Aquatics Conservation Plan (ACP) is an integral part of the overall Program. The goal of the ACP is to maintain or achieve over time properly functioning aquatic habitat conditions, which are essential to the long-term survival of salmonids. The reduction in land management impacts and habitat improvement that will be realized through implementation of the ACP will also benefit other species.

NMFS believes that the conservation measures contained in the HCP will protect and provide for long-term conservation of steelhead populations occurring on PALCO lands in the northern California ESU.

2. State Land Management

Timber Harvest. The California Department of Forestry and Fire Protection (CDF) enforces California's FPRs on non-Federal (private and State managed forests) lands. These rules are promulgated through the State Board of Forestry (BOF). Timber harvest activities have been documented to result in adverse effects on streams and stream side zones including the loss of large woody debris, increased sedimentation, loss of riparian vegetation, and the loss of habitat complexity and connectivity (NMFS, 1996).

The vast majority of freshwater habitat in the northern California steelhead ESU (approximately 81 percent of total land) is on non-Federal lands, with the majority being privately owned. For the major river basins in this ESU (i.e., Redwood Creek, Mad River, Eel River, Mattole River, Ten Mile River, Noyo River, Big River, Albion River, Navarro River, Garcia River, and Gualala River), private forest lands average about 75 percent of the total acreage, with a range of 42 percent (Eel River) to 94 (Gualala River) percent.

NMFS reviewed the California FPRs in conjunction with its determination to not list the Northern California steelhead ESU in 1998 (63 FR 13347). That review concluded that although the FPRs mandate protection of sensitive resources such as anadromous salmonids, the FPRs and their implementation and enforcement do not accomplish this objective. Specific problems with the FPRs include: (1) protective provisions that are not supported by scientific literature; (2) provisions that are scientifically inadequate to protect salmonids including steelhead; (3) inadequate and ineffective cumulative effects analyses; (4) dependence upon registered professional foresters (RPFs) that may not possess the necessary level of multi-disciplinary technical expertise to develop THPs protective of salmonids; (5) dependence by CDF on other State agencies to review and comment on THPs; (6) failure of CDF to incorporate recommendations from other agencies; and (7) inadequate enforcement due to staffing limitations. NMFS further concluded that until a comprehensive scientific peer review process was implemented and appropriate changes to the FPRs and the THP approval process were made, properly functioning habitat conditions would not exist on non-Federal lands in the northern California steelhead ESU.

The NMFS/California MOA which was entered into in March 1998 to ensure the conservation of steelhead populations in northern California (i.e., Northern California and KMP steelhead ESUs) contained specific provisions to address NMFS' concerns over the California FPRs. In the NMFS/California MOA, the State committed to: (1) conduct a scientific review of the State's FPRs, including their implementation and enforcement; (2) make appropriate changes in implementation and enforcement of the FPRs based on this review; and (3) make recommendations to the BOF for changes in the FPRs if they were found to be necessary for the conservation of northern California coastal anadromous salmonids. Full implementation of these provisions in the NMFS/California MOA, including implementation of changes in the FPRs by January 1, 2000, was a critical factor in NMFS's decision previously to not list this ESU.

In accordance with these provisions, a subcommittee of the State's scientific review panel for its Watershed Protection Program was appointed to undertake an independent review of the FPRs. The subcommittee's review and recommendations were completed and presented to the BOF in June 1999. The scientific review panel concluded that California's FPRs, including their implementation through the timber harvest plan process, do not ensure protection of anadromous salmonid populations. Based in part on the scientific review panel report and findings in July 1999, the California Resources Agency and CalEPA jointly presented the BOF with a proposed rule change package designed to address shortcomings in the State's existing FPRs. The BOF circulated the proposed rule package for public review, held several meetings and two public hearings on the proposals from July until October 1999, but failed to take action to adopt any of the proposed FPR changes, thereby precluding any possibility of implementing improvements in California's FPRs by January 1, 2000, as the State committed to do in the NMFS/California MOA.

The California State Legislature, under Senate Bill 621, gave special authority to the BOF to adopt new rules twice during the year 2000 for the specific purpose of revising the State's FPRs to meet ESA requirements for salmon. Public review and revisions of the BOF's FPR package continued from January 2000 to March 2000, during which time NMFS, California Legislature, the California Department of Forestry, the California Department of Fish and Game, the North Coast Water Quality Control Board, environmental groups and others strongly urged the Board to adopt the package in its' entirety as a necessary first step in protecting anadromous salmonid habitat. On March 14, 2000, the deadline for the BOF to exercise its authority under SB 621, the BOF adopted a subset of rule changes from the package which will only apply for those timber harvest plans approved between July 1 and December 31, 2000. During this period, the BOF has committed to work with interested parties in the development of a watershed analysis approach to timber harvest planning.

The interim FPRs changes adopted by the BOF, which sunset December 31, 2000: (1) define watersheds with threatened and impaired values, acknowledging they exist and need special prescriptions; (2) direct analysis on cumulative watershed effects to ensure beneficial uses of water are maintained if in good condition, protected where threatened, and restored where impaired, and that riparian zones be fully protected from site specific and cumulative impacts; (3) require protection and maintenance of stream flow during low water periods, large woody debris recruitment and shade canopy for temperature control; (4) require no measurable increase in sediment load, no decrease in channel or bank stability and no measurable blockage of aquatic migratory route; (5) define the watercourse transition line as 2 times the bankfull depth for confined channels and the outer edge of the active channel boundary for unconfined channels; (6) identify a 150 foot minimum water and lake protection zone for all fish-bearing streams, with 85 percent overstory shade canopy retained post-harvest for the first 75 feet (22.9 meters (m)), and 65 percent shade retained for the outer 75 feet (22.9 m); (7) require a no-cut buffer in channel zones out to the transition line and large woody debris standards including no salvage logging within the water and lake protection zone without an approved plan; (8) request the registered professional forester identify all active erosion sites and provide remediation; (9) prohibit construction of roads, landings and skid trails during the winter months on slopes over 40 percent; (10) provide specific road construction provisions on slopes over 50 percent; and (11) require that all crossings over fish-bearing streams meet 100-year flood standard and allow for passage of all life stages of fish.

NMFS believes the interim rule changes adopted by the Board of Forestry constitute a good first step in addressing many concerns raised during the FPR review process; however, they are currently inadequate to protect anadromous salmonids, including steelhead, and their habitat. Specifically, the interim rule changes are inadequate because they to not address: (1) site-specific variation and long-term riparian functions; (2) non-fishbearing perennial streams and ephemeral streams that carry water during the winter months; (3) rate of timber harvest in a watershed; (4) all other winter operations and wet weather road and skid trail planning; (5) road planning, construction, maintenance and decommissioning; (6) loss of riparian function and chronic sediment inputs from streamside roads; (7) unstable areas except for inner gorges; (8) timber harvest plan preparation, review, implementation, enforcement and technical validity; (9) harvest plan exemptions and (10) watershed analysis, cumulative effects, adaptive management and monitoring. The adopted rules lack these, and other, critical elements recommended by the scientific review panel as necessary to avoid, minimize and/or mitigate adverse cumulative watershed impacts on salmonid populations.

Multi-County Planning Efforts. As a result of the listing of coho salmon in coastal watersheds in northern

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California, the counties of Del Norte, Siskiyou, Trinity, Humboldt and Mendocino developed and have implemented a multi-county, regional approach to assessing and improving county-controlled activities in a way that would enhance the quality and increase the quantity of salmonid habitat that is potentially affected by those county activities. NMFS and the State of California have contributed funding to this multi-county planning effort.

This county-level conservation planning approach involves a thorough review of general plans, ordinances, procedures, practices and policies developed and implemented at the county level. Through the assessment and evaluation of these county-controlled mechanisms, a process is being developed that will enable the counties to exert control at the local level over human activities that can adversely affect anadromous salmonid populations and habitat. This multi-county planning effort was memorialized in a Memorandum of Agreement (Multi-County MOA) which was signed by all five counties in late 1997. Under the terms of the Multi-County MOA, the counties agreed to embark on a cooperative planning and restoration effort; assess the adequacy of existing general plans, county policies and practices, zoning and other land use ordinances; review county management procedures that affect anadromous salmonid habitat in each county; recommend changes to specific county ordinances and/or practices as necessary; develop a watershed-based education and technical assistance/training program for local agencies and decision-makers that will foster better understanding of the linkages between land use and county maintenance practices and salmonid habitat; and seek to establish some form of regulatory recognition at the state and/or federal level. As an example, within the range of the northern California steelhead ESU, the northern five counties (Del Norte, Humboldt, Trinity, Siskiyou, and Mendocino Counties) Conservation Planning Group has organized a program to survey approximately 4700 miles of county roads to identify existing and potential barriers to the passage of listed salmonids in northern California streams. These barriers, which include undersized or failed culverts and other types of road crossings over streams, presently block significant amounts of stream habitat that could otherwise support spawning, rearing and migration of listed salmon and steelhead. To date, all coastal streams in Del Norte, Humboldt and Mendocino Counties have been inventoried, and habitat assessment and treatment prioritization reports are being drafted (Pers. Comm. Mark Lancaster, Trinity County Planning Dept. with Miles Croom, NMFS, April 24, 2000). In the coastal streams within Del Norte, Humboldt and Mendocino Counties, some 81 barriers have been identified. When removed, an additional 77 miles of suitable salmonid habitat will become available to listed species. The passage barrier inventory is part of a comprehensive aquatic habitat conservation program being developed by the multi-county group to improve county-level policies and procedures in an effort to reduce sedimentation and erosion, protect water quality, establish priorities for repairing problem sites, and institutionalize the utilization of improved practices at the county level with the goal of conserving aquatic habitat for the survival and recovery of listed salmonids.

This multi-county assessment is being used to document the effectiveness of existing regulations. Where the assessment identifies areas for improvement, the planning effort will develop alternative policies, ordinances and practices that are suitable for maintaining or enhancing anadromous salmonid habitat. The assessment will address the need to focus public works projects on sites that improve fisheries habitat. A watershed-based approach will be used, even where watersheds cross county boundaries, to ensure that enhancement efforts are complementary to natural ecosystem processes.

The outcome of this county-level effort is expected to be a comprehensive and coordinated analysis of local land use regulations. Where it is found that development standards such as subdivision restrictions, zoning, and capital improvement programs may not adequately maintain or restore salmonid habitat, model ordinances will be developed for consideration by each of the participating counties. Conversely, innovative approaches for land use (such as density modifications and standards that preserve habitat functions) or other county activities that have been developed in some counties will be presented as options for the other counties. This collaborative, regionally-based planning effort is based on existing environmental, economic, social and administrative concerns and opportunities. At the same time, the planning effort is designed to be complementary with state and national salmonid recovery efforts. The planning process encourages public participation through direct contact with interested public agencies, landowners, community organizations, environmental groups, industry representatives and others. The public process is being implemented through public hearings, meetings, scoping sessions, forums and other avenues.

Agricultural Activities. Agricultural activity has had multiple and often severe impacts on salmonid habitat. These include depletion of needed flows due to irrigation withdrawals, blocking of fish passage by diversion or other structures, destruction of riparian vegetation and bank stability by grazing or cultivation practices, and channelization resulting in loss of side channel and wetland-related habitat (NMFS, 1996).

Impacts from agricultural and grazing practices have not historically been closely regulated in California. This is an important concern to NMFS because a significant portion of the acreage in the northern California ESU is comprised of farmland. For example, farmland constitutes approximately 25–30 percent of the total acreage of Humboldt and Mendocino counties which in turn constitute much of the northern California ESU. Private lands, and public lands not administered by the Federal government, are now being addressed by the California Rangeland Water Quality Management Program (CRWQMP) which was adopted by the State Water Resources Control Board and CDF in 1995. The CRWQMP is a water quality improvement program based on the voluntary participation of landowners for compliance with state and Federal non-point source pollution reduction requirements. The CRWQMP was initiated as a cooperative effort among the livestock industry, conservation organizations and state and Federal agencies to address the impacts of grazing and land use practices on water quality in streams that flow through private property. Through this Program, private landowners will be able to maintain rangeland productivity and enhance landowners' abilities to manage these lands in a manner that protects water quality standards necessary for the survival and recovery of listed salmonids.

Between 1995–1998, rangeland plans were developed under the CRWQMP for more than 250,000 acres on the north coast ranging from San Francisco to the Oregon border. The State plans to review the implementation status of these plans at intervals of 3, 5 and 10 years, provided resources are available. NMFS is encouraged by these ongoing efforts. Plans that are consistent with this guidance are likely to meet state water quality standards, but the program is voluntary and it is uncertain to what extent their implementation will contribute to improved habitat conditions and riparian function.

The USDA Natural Resources Conservation Service (NRCS), NMFS, FWS, the U.S. Environmental Protection Agency (EPA), the California Association of Resource Conservation Districts (CARCD), and the State of California (State) have recently developed a joint approach that is expected to encourage the voluntary use of improved conservation management practices for agriculture on private land. Recognizing that recovery of listed and other at-risk salmonid populations depends on the willing participation of private landowners, these agencies have the goal of providing an incentive to landowners to enhance the quality and quantity of habitat needed by species of concern. To accomplish this goal, the agencies have agreed to support cooperative approaches and consensus-building activities, foster communication among agencies and private landowners, share resources and information, and establish strong, effective working relationships that instill trust and promote sound stewardship.

This agreement is the subject of a draft Memorandum of Understanding (MOU) among the partner agencies. Through the procedures described in the MOU, landowners will have the knowledge that practices contained in the NRCS Field Office Technical Guides (FOTG) have undergone ESA section 7 scrutiny by NMFS and FWS. For those practices that NMFS and FWS determine are not likely to adversely affect listed species or critical habitat, the landowner should have confidence that those practices, if implemented in accordance with the FOTG standards and specifications, will not result in any additional permitting requirement or penalties under the ESA. The objective of this MOU is to encourage the adoption of protective land use practices on private lands, to provide some regulatory assurance for landowners, to improve habitat conditions for sensitive species, to continue sustainable economic production on private lands, to facilitate better coordination among the partner agencies and to foster better awareness and support for conservation programs throughout the State. The draft MOU is under review by the State and upon completion is expected to be formally signed by all parties.

3. Dredge, Fill, and In-water Construction Programs

Corps of Engineers Section 404 Program. The Army Corps of Engineers (COE) regulates removal/fill activities under section 404 of the Clean Water Act (CWA), which requires that the COE not permit a discharge that would "cause or contribute to significant degradation of the waters of the United States." One of the factors that must be considered in this determination is cumulative effects. However, the COE guidelines do not specify a methodology for assessing cumulative effects or how much weight to assign them in decision-making. Furthermore, the COE does not have in place any process to address the additive effects of the continued development of waterfront, riverine, coastal, and wetland properties.

The U.S. Army Corps of Engineers, State, and local governments have developed and implemented procedures reviewing, approving and monitoring gravel mining activities in Del Norte and Humboldt counties which are authorized under a Letter of Permission (LOP) process. This process regulates gravel mining in a substantial portion of the Northern California steelhead ESU (including the Mad, Eel and Van Duzen Rivers) where listed coho salmon and chinook salmon populations also occur. These procedures are designed to provide substantially improved protection for anadromous salmonids and their habitats, including steelhead. Important elements of the process include: a prohibition on gravel mining in the active channel and on trenching except in limited instances, a restriction on gravel operations to the dry season, monitoring of channel cross sections to detect changes in channel morphology and habitat conditions, fisheries monitoring, and gravel mining on a sustained yield basis. An additional element of the process in Humboldt County, which is located in the Northern California ESU, is the participation of an independent scientific review committee which makes annual recommendations on gravel quantities and site design features in order to minimize adverse impacts. Additionally, any channel crossings must be designed to allow for fish passage. NMFS participated in the development of these procedures and has concluded, through section 7 consultation with the COE, that these procedures will not jeopardize the continued existence of coho salmon or steelhead. NMFS recently reinitiated formal consultation with the COE on the LOP process to address the final critical habitat designation for coho salmon and the recent listing of California Coastal chinook salmon as threatened.

State Streambed Alteration Agreements. Section 1603 of the Fish and Game Code in California requires that any person who proposes a project that will substantially divert or obstruct the natural flow or substantially change the bed, channel or river bank of any river, stream or lake, or use materials from a streambed, notify the DFG before beginning any work. The authorization for these activities under section 1603 is called a Lake or Streambed Alteration Agreement. Beginning May 1, 1999, the 1603 process was significantly modified to require a higher level of review by DFG that is in compliance with the California Environmental Quality Act (CEQA). Any proposed project that DFG determines may substantially adversely affect existing fish and wildlife resources will need to comply with the CEQA standard of mitigating project impacts to the level of insignificance. The new standard for project review has resulted in increasing the time needed for project approval from two weeks to 60–120 days.

Although the State has substantially improved the level of project review under the 1603 process to comply with the new CEQA standard, the State has not submitted the program to NMFS for review to determine whether it adequately protects anadromous salmonids. The State currently issues 1603 streambed alteration agreements to project applicants with the disclosure that the applicant may need to obtain incidental take authorization from NMFS. In most cases, however, where a project proposes a stream or watercourse modification and listed species are present, a Clean Water Act, section 404 permit from the Army Corps of Engineers is required. Within the geographic area encompassing the northern California steelhead ESU, the presence of listed coho and chinook salmon populations requires the Corps to consult with NMFS under section 7 of the ESA prior to the issuance of 404 permits.

4. Water Quality Programs

Under Clean Water Act section 303(d), states, territories and authorized Tribes are required to establish lists of impaired water bodies, set priorities for addressing the pollutant source, and write pollutant control plans to achieve and maintain water quality standards. These plans, Total Maximum Daily Loads (TMDLs), provide an effective mechanism for determining the causes of water body impairment, quantifying the various pollutant sources, and setting targets for reducing pollutant discharges. Generally, states are responsible for developing TMDLs and related implementation plans, which are

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subject to EPA review and approval. If the EPA disapproves a TMDL or if a state fails to establish one, the EPA is required to step in and establish the TMDL. The TMDL is then implemented through existing regulatory and non-regulatory programs to control, reduce or eliminate pollution from both point and non-point sources.

The TMDL process provides a flexible assessment and planning framework for identifying load reductions or other actions needed to attain water quality standards such as protection of aquatic life, provision of safe drinking water, etc. The TMDL should address all significant stressors (*e.g.*, chemicals, temperatures, sediment loads) that cause or threaten to cause deleterious effects to water quality. The TMDL assessment is the sum of the individual waste load allocations from point sources, load allocations from non-point sources, allocation from natural sources, and an appropriate margin of safety to account for uncertainty. The TMDL may address single or multiple pollutants but must clearly identify the links between the water quality impairment (or threat) of concern, the causes of the threat or concern and the load reductions or conservation actions needed to remedy or prevent the impairment.

As TMDL assessments and implementation plans are developed and approved, the State of California, through the State Water Resources Control Board and the nine Regional Water Quality Control Boards, will adopt and implement the TMDLs. The TMDL contains a problem statement, numeric targets, source analysis, allocations of loads or controls and a monitoring plan. The implementation component includes descriptions of land management practices, remediation activities and restoration projects necessary to attain the goals established in the TMDL assessment. It is through the implementation plan that necessary controls and restoration actions are assigned to specific parties and attainment schedules are promulgated.

In coastal watersheds of northern California, 38 water body segments have been identified as impaired and have been scheduled for development of TMDLs. The schedule for development of TMDLs in northern California extends to the year 2011 (Russian River and Lake Pillsbury). However, the schedule in this area is driven in part by a consent decree (*Pacific Coast Federation of Fishermen's Associations, et al.* v. *Marcus*, No. 95–4474 MHP, March 11, 1997). Under this consent decree, EPA agreed to oversee the development of TMDLs on eighteen rivers on the north coast of California. Twelve of these river basins are located within the northern California steelhead ESU. The consent decree establishes a schedule for developing TMDL criteria for listed rivers. Under this schedule, seven river basins in the northern California ESU would have TMDLs developed within the next two years, with the remaining rivers having TMDLs developed by 2002. This legally-binding schedule is expected to result in significant progress on improving the beneficial uses of these watersheds, where the beneficial use has been identified as habitat for salmonids.

On May 28, 1998, the North Coast Regional Water Quality Control Board approved a TMDL for the Garcia River. The TMDL contains the following elements: (1) findings that the Garcia River is impaired due to sediment and temperature impacts resulting from land use practices, primarily timber operations and related activities, (2) adoption of the Water Quality Attainment Strategy as part of the Water Quality Control Plan for the North Coast Region (Basin Plan) that would eliminate 90 percent of total controllable road-related sediment sources within 20 years and 50 percent of controllable upslope sediment sources within 40 years, (3) numeric targets including specified numerical values for percent fine sediments, frequency of pools in stream habitat profiles, and improving trends in large woody debris, (4) an implementation plan which specifies that either default prescriptions be observed or a site-specific plan be implemented that provides assurances that source reduction targets will be met, (5) assurances that sediment reduction or control goals are capable of being met and that the concept of site-specific planning and implementation by landowners provides a flexible framework, (6) a monitoring plan to verify that conservation practices are implemented and to measure effectiveness.

The TMDL process provides a flexible, adaptive management approach that relies on substantial public input and participation to set targets, identify protection measures and implement and monitor corrective practices. The completion of the Garcia River TMDL, and the initiation of TMDLs for the other listed rivers, represents a significant step forward in improving watershed health for steelhead and other salmonids on the north coast of California. In the long-term, the development and implementation of these TMDLs should be beneficial for steelhead; however, their development and implementation will be difficult and it will take many years to assess their efficacy in protecting steelhead habitat. Furthermore, it is essential that the EPA consults with NMFS on the formulation of TMDLs in waters that contain listed salmonids. Such consultations will help ensure TMDLs adequately address the needs of these species.

5. State Hatchery and Harvest Management

Hatchery Management. In an attempt to mitigate the loss of habitat and enhance fishing opportunities, extensive hatchery programs have been implemented throughout the range of steelhead on the west coast. While some of these programs have succeeded in providing fishing opportunities, the impacts of these programs on native, naturally-reproducing stocks are not well understood. Competition, genetic introgression and disease transmission resulting from hatchery introductions may significantly reduce the production and survival of native, naturally-reproducing steelhead (NMFS, 1996). Collection of native steelhead for hatchery broodstock purposes often harms small or dwindling natural populations. Artificial propagation can play an important role in steelhead recovery through carefully controlled supplementation programs.

In the past, non-native steelhead stocks have been introduced as broodstock in hatcheries and widely transplanted in many coastal rivers and streams in California (Bryant, 1994; Busby *et al.*, 1996; NMFS, 1997a). Because of problems associated with this practice, DFG has developed and implemented a Salmon and Steelhead Stock Management Policy. This policy recognizes that mixing of non-native stocks with native stocks is detrimental, and seeks to maintain the genetic integrity of all identifiable stocks of salmon and steelhead in California, as well as to minimize interactions between hatchery and natural populations.

NMFS's BRT identified the potentially adverse impacts of interactions between hatchery (Mad River hatchery) and wild steelhead as an important concern with regard to the northern California ESU (NMFS, 1997a). As part of its strategic management plan for this ESU, DFG has implemented several changes in its hatchery practices. In addition, DFG has implemented several additional measures pursuant to the 1998 NMFS/California MOA. These hatchery management measures include:(1) marking of all hatchery steelhead released from the Mad River hatchery and all cooperative rearing facilities in the Northern California ESU; (2) continuation of long-standing hatchery management practices aimed at minimizing hatchery and wild steelhead interactions including prohibitions on stocking of resident trout in anadromous waters; (3) releasing hatchery steelhead only at times, sizes and places that minimize impacts on naturally produced fish; (4) only releasing hatchery fish that are determined to be healthy; (5) initiation of monitoring efforts intended to measure hatchery fish stray rates; and (6) a joint NMFS/DFG review of the Mad River hatchery including its stocking history, analysis of current broodstock, and its consistency with the strategic management plan for the northern California ESU.

Fisheries Management. In conjunction with the improved hatchery management practices, in-river sport fisheries in the northern California ESU now focus on harvest of marked, hatchery-produced steelhead, and sport fishing regulations have been modified to protect wild adult and juvenile steelhead.

Other Natural or Human-Made Factors Affecting Continued Existence of Steelhead

Natural climatic conditions have exacerbated the problems associated with degraded and altered riverine and estuarine habitats. Persistent drought conditions have reduced already limited spawning, rearing and migration habitat. Climatic conditions appear to have resulted in decreased ocean productivity which, during more productive periods, may help offset degraded freshwater habitat conditions (NMFS, 1996).

Efforts Being Made to Protect West Coast Steelhead

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made to protect the species. Therefore, in making its listing determinations, NMFS first assesses the status of the species and identifies factors that have lead to the decline of the species. NMFS then assesses conservation measures to determine if they ameliorate risks to the species.

In judging the efficacy of existing conservation efforts, NMFS considers the following: (1) the substantive, protective, and conservation elements of such efforts; (2) the degree of certainty such efforts will be reliably implemented; and (3) the presence of monitoring provisions that determine effectiveness and that permit adaptive management. In some cases, conservation efforts may be relatively new and may not have had time to demonstrate their biological benefit. In such cases, provisions for adequate monitoring and funding of conservation efforts are essential to ensure intended conservation benefits are realized.

As part of its west coast steelhead status review, NMFS reviewed an array of protective efforts for steelhead and other salmonids, ranging in scope from regional strategies to local watershed initiatives. NMFS summarized some of the major efforts in a document entitled "Steelhead Conservation Efforts: A Supplement to the Notice of Determination for West Coast Steelhead under the Endangered Species Act" (NMFS, 1996c). NMFS also reviewed conservation measures being implemented by the State of California for steelhead at the time of its final listing determination for the northern California, Klamath Mountains Province, and Central Valley steelhead ESUs (63 FR 13347, March 19, 1998). The following sections update the current status of the State of California's conservation efforts for steelhead with particular emphasis on the northern California steelhead ESU.

The state of California's conservation efforts that address steelhead in the northern California ESU include: (1) development of the State's Watershed Protection Program, which includes funding and implementation of an expanded watershed planning and habitat restoration program; (2) implementation of the DFG's strategic management plan for the northern California ESU and (3) implementation of the 1998 NMFS/California MOA which addresses management of coastal steelhead in northern California. The status of these conservation efforts is discussed in more detail below.

California Watershed Protection Program and Implementation of SB 271

In July 1997, California's Governor created the State's Watershed Restoration and Protection Council (WPRC) for the purpose of: (1) overseeing all state activities aimed at watershed protection and enhancement, including the conservation and restoration of anadromous salmonids in California; and (2) directing the development of a California Watershed Protection Program that would provide for the conservation of anadromous salmonids in the state of California. A working group of the WPRC issued a detailed report in December, 1998 entitled "Protecting California's Anadromous Fisheries." The Executive Order that established this program expired in January, 1999; however, continued coordination of the program is occurring under the auspices of the California Biodiversity Council (CBC). NMFS is encouraged that the State initiated a comprehensive, watershed-based approach to salmon management and restoration; however, the California Watershed Protection Program is still under development and has not been implemented as originally envisioned.

To support the Governor's WPRC and its efforts to develop a Watershed Protection Program, DFG implemented a $3 million Watershed Initiative in 1997–98 for coastal watershed projects north of San Francisco, through its Fishery Restoration Grants Program. These projects focused on watershed and riparian habitat restoration, instream habitat restoration; watershed evaluation, assessment, and planning; and restoration project maintenance and monitoring. Beginning in 1998–1999, DFG funded additional staff positions to assist in watershed planning efforts and grant proposal development.

A key element of the State's Watershed Protection Program that is also specified in the 1998 NMFS/California MOA is DFG's implementation of an expanded habitat restoration program for coastal salmonids, including steelhead. In 1997, the California legislature enacted Senate Bill 271 which provided DFG with $43 million over six years for habitat restoration and watershed planning to benefit anadromous salmonids in coastal watersheds, including the geographic area which encompasses the northern California steelhead ESU. The program was initiated in 1997–98 and has expanded since that time. Based on the SB 271 legislation, funding is expected to continue through at least 2002. Substantial funding from this program has been committed to habitat restoration, enhancement, and watershed planning efforts within the northern California steelhead ESU since 1997–98. Throughout Humboldt and Mendocino counties, which constitute much of the geographic area comprising the northern California steelhead ESU, DFG has funded over 200 projects costing in excess of $7.5 million during the past three years (1997–98 through 1999–2000). NMFS participates as an ex-officio member of the Advisory Committee that reviews the distribution of SB 271 grant funding to ensure that available funds are spent on projects that will contribute to the conservation of listed salmonids as well as north coast steelhead. In addition to the

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expanded habitat restoration program funded by SB 271, DFG has added additional staff positions to assist in administering the program, provide technical support in the development of watershed plans and habitat restoration projects and implement a new steelhead monitoring and adaptive management program throughout coastal northern California.

Northern California Steelhead ESU Strategic Plan

In February 1998, DFG completed its strategic management plan for steelhead stocks in the northern California ESU (DFG 1998). In March 1998, the State and DFG formally committed to implement this plan as part of the NMFS/California MOA. The plan describes existing and new management measures for recreational steelhead angling, steelhead hatchery programs, and steelhead monitoring, assessment and adaptive management efforts in this ESU. In addition, the plan describes DFG's ongoing efforts to protect and enhance steelhead habitat within this ESU. These management measures were intended to provide immediate protection for steelhead populations in this ESU, while longer-term measures were implemented to protect anadromous fish habitat on non-federal lands through the Watershed Protection Program and the SB 271 habitat restoration program. The main elements of the northern California steelhead strategic management plan are briefly discussed here.

1. Harvest Measures

The strategic management plan includes several harvest management actions which are intended to reduce impacts on adult and juvenile steelhead in the Northern California ESU. These include: (1) no retention of unmarked (i.e., naturally produced) adult and juvenile steelhead in all rivers and streams; (2) fishing closures in steelhead rearing tributaries to protect juveniles; (3) expanded closures in mainstem rivers through May to protect outmigrating juvenile steelhead; and (4) various gear and bait restrictions designed to reduce mortality associated with incidental hooking of steelhead.

In February and March 1998, the California Fish and Game Commission (Commission) adopted emergency changes to the State's inland fishing regulations which were intended to implement the harvest regulation changes contained in the northern California steelhead strategic management plan. In conjunction with the final listing determination for this ESU in March 1998 (63 FR 13347), NMFS reviewed these regulatory changes and concluded that they would substantially reduce impacts to adult and juvenile steelhead and also assist in the conservation of the ESU (NMFS, 1998). These emergency regulations were formally enacted by the Commission in June 1998 following public review and comment, and they currently remain in place. NMFS believes that these angling regulations continue to provide the reduction in impacts and conservation benefits that were expected at the time the decision was made not to list this ESU in March 1998.

2. Hatchery Measures

The strategic plan for the northern California ESU contains a wide range of existing and new hatchery management measures that are intended to reduce the impacts of hatchery steelhead programs on wild steelhead populations in this ESU. Measures incorporated into the plan include: (1) release strategies that require a minimum 6" size and release at the hatchery rather than off-site; (2) marking of all hatchery-produced fish that are released and the implementation of spawner surveys to assess the extent to which hatchery fish stray into natural spawning areas; (3) a commitment to reduce hatchery releases or implement other changes in hatchery practices if significant straying of hatchery fish is found to occur; (4) a cap on hatchery production to current levels, regular health checks during each rearing cycle and the destruction of diseased fish that cannot be effectively treated; (5) a review of the existing operating procedures for all cooperative rearing facilities permitted by the State; and (6) adoption of a requirement that all cooperative facilities develop and submit five-year management plans to the State for approval. NMFS previously reviewed these existing and new hatchery management measures and concluded that they would substantially reduce potential impacts to wild steelhead (NMFS, 1998d). Because of NMFS concerns regarding the operations of the the Mad River Hatchery which is located in this ESU, DFG also committed in the 1998 NMFS/California MOA to: (1) undertake a comprehensive review of the hatchery program, including its stocking history and genetic analysis of current broodstock; and (2) develop a plan to eliminate any adverse impacts of hatchery operations on northern California steelhead if necessary.

The DFG implemented a statewide mass-marking program for its hatchery steelhead programs beginning in 1997 which includes the hatchery steelhead programs in the northern California steelhead ESU. DFG is also requiring all cooperative rearing programs that produce steelhead in this ESU to mark all released fish. This marking program has continued since its implementation in 1997 and DFG is committed to continuing this program into the future. The DFG and the NMFS have also initiated a comprehensive review of DFG's hatchery programs in this ESU (Mad River Hatchery and cooperative rearing programs), with the objective of ensuring that these programs are compatible with the conservation of naturally produced steelhead. This review is expected to be completed in 2000. Comprehensive monitoring of stray rates for hatchery produced fish has not been implemented in this ESU, but DFG expects to begin a north coast steelhead monitoring program in 2000.

3. Steelhead Monitoring and Adaptive Management

The strategic management plan for the northern California ESU identifies ongoing and expanded monitoring programs to assess steelhead abundance. A commitment to implement these programs is contained in the 1998 NMFS/California MOA. A key element of this monitoring program was a commitment to establish a joint scientific and technical team including representatives from DFG and NMFS to design appropriate detailed monitoring programs for steelhead in this ESU. NMFS considered these monitoring efforts critically important given the uncertain status of steelhead populations in these ESUs, and indicated that adequate State funding was critical to implementing the program (63 FR 13347, March 19, 1998). As part of the NMFS/California MOA, both DFG and NMFS committed to seek adequate funding for this program. The DFG has taken significant steps to implement this expanded steelhead monitoring program in the northern California steelhead ESU, but the full program has not been yet fully developed or implemented. The DFG has committed significant fiscal resources to hire and redirect existing staff resources to create a north coast steelhead monitoring team and program that will address the northern California steelhead ESU as well as areas further north in California, and has established a scientific and technical team to guide development of this effort. A set of comprehensive monitoring proposals have been developed which are under review by the scientific and technical team. NMFS expects the finalized monitoring program for this ESU to be implemented in early 2000.

NMFS/California Memorandum of Agreement

NMFS evaluated a wide range of conservation efforts that California had adopted or was in the process of developing in conjunction with NMFS' decision not to list the northern California steelhead ESU (63 FR 13347, March 19, 1998). NMFS concluded that DFG's harvest and hatchery programs for this ESU would increase adult escapement, increase juvenile survival, and reduce adverse impacts of hatchery populations on wild fish. In the near-term, NMFS expected these measures would contribute to improved survival and population stability for steelhead. In addition, DFG's monitoring and adaptive management programs were expected to provide State and Federal managers with the ability to assess the status of steelhead populations and their response to harvest and hatchery management changes. However, NMFS was also concerned that California's habitat protection efforts, (e.g., development of a Watershed Protection Program and implementation of the expanded habitat restoration program established by SB 271), were not adequate to secure properly functioning habitat conditions for this ESU over the long-term. To address these concerns, NMFS entered into a MOA with the State (NMFS/California MOA, 1998).

Under the terms of the NMFS/California MOA, the State committed to a broad range of measures including: (1) compliance with existing State regulations, with particular emphasis on the management measures contained in the strategic management plans for north coast steelhead; (2) implementation of harvest and hatchery management measures contained in the strategic management plan for northern California steelhead; (3) implementation of a monitoring evaluation and adaptive management program for steelhead, including those elements contained in the strategic management plan for northern California steelhead; (4) continued implementation of a California Watershed Protection Program, including the SB 271 watershed planning and habitat restoration program in coastal watersheds, and the joint review and revision of the State's forest practice rules (FPRs) in conjunction with a scientific review panel to ensure that the revised FPRs were adequate to conserve anadromous salmonids, including steelhead. As previously discussed, because of the preponderance of private timber lands and timber harvest activity in the northern California ESU, NMFS considered this to be a critically important provision in the MOA.

Many of the provisions in the NMFS/California MOA relating to the northern California steelhead ESU have been or are being implemented by the State; however, critically important provisions related to revision of the FPRs have not been implemented. The current status of the State's effort to implement the MOA, with particular regard to the Northern California steelhead ESU, is discussed here.

1. Compliance with existing State regulations

In accordance with section 4 of the NMFS/California MOA, the DFG made recommendations to the Fish and Game Commission to implement detailed angling regulation changes contained in the strategic management plan for northern California steelhead. The Commission adopted these recommendations on an emergency basis in February 1998 and permanent regulations became effective in August 1998. Within this ESU, these regulations specifically prohibit retention of naturally spawned adult steelhead, prohibit fishing for naturally produced juvenile steelhead in tributary streams, minimize the angling impacts on juvenile steelhead in mainstem rearing areas through gear/bait restrictions, prohibit retention of summer steelhead and prohibit fishing in their summer holding areas and provide for the retention of marked, hatchery-produced steelhead.

2. Harvest and Hatchery Management

In accordance with section 6 of the NMFS/California MOA, two provisions have been implemented. First, the DFG recommended and the Fish and Game Commission adopted permanent regulations that provide only for the retention of non-listed, hatchery-produced steelhead. Second, the DFG has implemented a state wide mass marking program for hatchery produced steelhead. This program was initiated with brood year 1997 steelhead released in winter 1998, and the marking program has continued annually since that time. This program has resulted in complete marking of all steelhead produced at the Mad River Hatchery, which is located in this ESU. In addition, DFG is requiring that all cooperative rearing programs that produce steelhead mark them prior to release.

Three additional provisions contained in section 6 of the NMFS/California MOA have not yet been implemented, but are either in progress or will be initiated shortly. To date, DFG has not implemented a process for establishing recovery and strategic goals for north coast steelhead, including this ESU, nor has it initiated a monitoring program to measure stray rates of hatchery produced steelhead. However, the DFG has established a North Coast Steelhead Monitoring Program to develop and implement a monitoring program, which will include the northern California steelhead ESU, and a joint scientific and technical team to provide guidance to the program. DFG has developed a preliminary monitoring program and is consulting the joint scientific and technical team to refine the program and explore options for establishing recovery and strategic goals within this ESU. NMFS anticipates that this program will commence in 2000. Although the monitoring program specified in the NMFS/California MOA has not been fully implemented, DFG has continued to carry out several monitoring and research programs on the north coast, primarily in the Klamath Mountains Province ESU, which have provided data useful for the management of steelhead. Finally, NMFS and DFG have recently undertaken a state-wide review of the State's hatchery programs, including the Mad River Hatchery which is located in this ESU, as well as the State's cooperative rearing program which has a small number of projects within this ESU. This review is expected to be completed by June 2000.

3. Monitoring Evaluation and Adaptive Management

In accordance with section 7 of the NMFS/California MOA, the DFG has implemented, at least in part, two key provisions. First, the DFG has established a joint scientific and technical team to assist it with the development of a comprehensive monitoring program for steelhead on the north coast, including the northern California ESU. The NMFS/California MOA called for this program to be developed by June 1998; however, as discussed in the preceding section, DFG has not yet completed development of the study plan or initiated a comprehensive monitoring program. Second, the DFG has secured the necessary funding to establish a north coast steelhead monitoring program, including the dedication of professional staff and the acquisition of necessary equipment and facilities. A preliminary monitoring program plan has been developed by the monitoring program staff, and this plan is currently under review by the joint scientific and technical team.

4. California's Watershed Protection Program

Section 9 of the NMFS/California MOA commits the State to continue

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development of its Watershed Protection Program, with a specific element addressing salmonid conservation, and to coordinate with NMFS in establishing a scientific review panel that would advise the State in its development of this program. In addition, Section 9 commits the State to direct personnel and fiscal resources to implement an expanded habitat restoration program in coastal watersheds using SB 271 funds. Details of the State's Watershed Protection Program and DFG's efforts to implement expanded watershed planning and habitat restoration in coastal watersheds were described previously (see Efforts Being Made to Protect West Coast Steelhead).

Section 9 of the NMFS/California MOA contains several measures relating to the review and revision of the State's FPRs because of NMFS's concerns regarding the effects of State-regulated timber harvest freshwater habitat conditions for anadromous salmonids, including steelhead in the Northern California ESU. Specifically, the NMFS/California MOA calls for: (1) a joint review of the FPRs by NMFS and the State, including their implementation and enforcement, (2) the State to make appropriate changes in implementation and enforcement, if necessary, (3) the State, in consultation with NMFS, to make recommendations to the BOF for changes in the FPRs necessary to conserve anadromous salmonids, and (4) the BOF to complete action on the recommended changes in the FPRs by January 2000. Full implementation of these NMFS/California MOA provisions, including implementation of changes in the FPRs by January 1, 2000, was a critical factor in NMFS's decision to not list the northern California steelhead ESU. For details of the State's current FPRs, including the recently adopted interim FPR changes, see Inadequacy of Existing Regulatory Mechanisms.

Listing Determination

Section 3 of the ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

In December 1997, the NMFS' steelhead BRT concluded that the Northern California steelhead ESU was likely to become endangered in the foreseeable future based on a review of the best available biological information (NMFS, 1997). Based on a review of updated abundance and trend information that was available for this ESU, NMFS's SWFSC (NMFS, 2000) concluded that the current biological status of the ESU has changed little since it was last evaluated in 1997. Updated abundance and trend data show small increases for winter and summer steelhead in the Eel River, but current abundance is well below estimates in the 1980s and even further reduced from levels in the 1960s. Redwood Creek summer steelhead abundance remains very low. There are no new data suggesting substantial increases or decreases in populations since the last updated status review was completed. The Eel River winter and summer steelhead populations, which represent the best available data set for this ESU, are still severely reduced from pre–1960s levels.

As discussed elsewhere in this final rule, California has implemented several of the conservation measures that NMFS relied upon in making its decision not to list the northern California ESU. Specifically, the State has enacted substantial changes to the State's in-river angling regulations in 1998 to protect coastal steelhead populations including steelhead in this ESU. These regulations, with slight modification, remain in effect, and NMFS believes they continue to provide the substantial protection and conservation benefits that were expected to occur at the time of the decision not to list this ESU. The State has also implemented, or begun to implement, several other conservation measures for this ESU, including extensive watershed planning and/or habitat restoration through the SB 271 program, marking of hatchery produced steelhead and other improvements in hatchery practices, and steelhead monitoring. Although implementation of some of these measures has been delayed, as is the case for the steelhead monitoring program, NMFS continues to believe that these efforts will collectively benefit steelhead in this ESU and eventually contribute to an improved understanding of its status.

Although these conservation efforts are expected to benefit steelhead in this ESU, NMFS continues to believe that improved habitat protection and restoration of properly functioning freshwater habitat conditions for spawning, rearing, and migration are essential to the long-term survival and recovery of this ESU. Because Federal land ownership is both fragmented and limited in this ESU (approximately 19 percent of ESU), the key to achieving habitat protection and properly functioning habitat conditions in this ESU is the improvement of land management activities on non-Federal lands (approximately 81 percent of ESU). To ensure improved protection of habitat on non-Federal lands in this ESU, the NMFS/California MOA contained several provisions for the review and modification of the State's FPRs. Full implementation of these provisions, including implementation of changes in the FPRs by January 1, 2000, was a critical factor in NMFS's previous decision not to list this ESU. Because the State has not implemented changes in the FPRs necessary to protect steelhead in this ESU, NMFS believes that critically important conservation measures are not being implemented to reduce the threats to this ESU from timber harvest activities on non-Federal lands. Consequently, NMFS concludes that existing State and Federal conservation measures collectively fail to provide for the attainment of properly functioning habitat conditions necessary to provide for the long-term protection and conservation of this ESU.

Based on a review of the best available information, therefore, NMFS concludes that the Northern California steelhead ESU warrants listing as a threatened species at this time. In arriving at this determination, NMFS carefully considered the December 1997 scientific conclusions of the BRT regarding this ESU, the results of an updated status review for the ESU (NMFS, 2000), the status of State and Federal conservation efforts directed at protecting steelhead in this ESU, including implementation of provisions contained in the NMFS/California MOA.

NMFS previously examined the relationship between hatchery and natural populations of steelhead in this ESU, and also assessed whether any hatchery populations are essential for their recovery. At this time, NMFS does not believe any specific hatchery populations in this ESU are essential for recovery and therefore none are listed. Accordingly, only naturally reproduced populations of steelhead and their progeny in this ESU are listed as a result of this determination.

However, the determination that a hatchery stock is not essential for recovery at this time does not preclude it from playing a role in recovery in the future if such a conservation measure is warranted. Any hatchery population that is part of the ESU is potentially

available for use in recovery if circumstances warrant it. In this context, an essential hatchery population is one that is vital to incorporate into recovery efforts. If in the future any hatchery population in this ESU is determined to be essential for recovery and is integrated into recovery efforts, NMFS will consider taking the administrative action of listing that hatchery population.

NMFS' "Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act" (58 FR 17573, April 5, 1993) provides guidance on the treatment of hatchery stocks in the event of a listing. Under this policy, "progeny of fish from the listed species that are propagated artificially are considered part of the listed species and are protected under the ESA."

For unlisted hatchery populations that are part of the Northern California ESU, NMFS believes it may be desirable to incorporate naturally spawned, listed fish into the broodstock to ensure that its genetic and life history characteristics do not diverge significantly from natural populations. Therefore, NMFS may allow the collection of broodstock for this use if it is consistent with an acceptable conservation plan (e.g., Hatchery and Genetic Management Plan) for the ESU. If listed fish are used as broodstock consistent with an acceptable conservation plan, NMFS may determine that it is not necessary to consider the progeny of intentional hatchery x listed crosses as listed fish (except in those cases where the hatchery population is listed as well). NMFS believes this is consistent with NMFS' interim policy and with the policy and purposes of the ESA.

At this time, NMFS is only listing the anadromous life forms of *O. mykiss*.

Prohibitions and Protective Measures

Section 4(d) of the ESA requires NMFS to issue protective regulations it finds necessary and advisable to provide for the conservation of threatened species. Section 9 of the ESA prohibits violations of protective regulations for threatened species promulgated under ESA section 4(d). The ESA 4(d) protective regulations may prohibit, with respect to the threatened species, some or all of the acts which section 9 of the ESA prohibits with respect to endangered species. These ESA section 9 prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. NMFS intends to develop and promulgate an ESA 4(d) protective regulation for the northern California steelhead ESU in a separate rulemaking. The process for completing the ESA 4(d) rule will provide the opportunity for public comment on the proposed protective regulations.

In the case of threatened species, NMFS has flexibility under ESA section 4(d) to tailor the protective regulations to provide for the conservation of the species. Even though existing conservation efforts and plans are not sufficient to preclude the need for listing at this time, they are nevertheless valuable for improving watershed health and restoring fishery resources. In those cases where well-developed, reliable conservation plans exist, NMFS may choose to incorporate them into the recovery planning process, starting with the protective regulations. For example, the interim ESA 4(d) rule for the Southern Oregon/Northern California coho (62 FR 24588, May 7, 1997) does not prohibit habitat restoration activities conducted in accordance with approved plans or fisheries under an approved state management plan. NMFS recently proposed ESA 4(d) regulations for 14 ESUs of steelhead and salmon (64 FR 73479). Any future ESA 4(d) protective regulation for the Northern California steelhead ESU is likely to be comparable to the 4(d) regulations proposed for steelhead, and therefore, contain limitations on the section 9 take prohibitions for activities such as recreational angling, artificial propagation, habitat restoration, scientific research and other activities when they are conducted in accordance with approved conservation plans.

Sections 7(a)(2) and 7(a)(4) of the ESA require Federal agencies to consult with NMFS to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or adversely modify critical habitat or proposed critical habitat. Examples of Federal actions likely to affect steelhead in the Northern California ESU include authorized land management activities of the USFS and BLM, operation of hydroelectric and storage projects permitted by FERC, and activities permitted by the Corps of Engineers. Such activities may include timber sales and harvest, permitting livestock grazing, hydroelectric power generation, and flood control. Other Federal actions, including the Corps section 404 permitting activities under the CWA and section 10 permitting under the Rivers and Harbors Act, and FERC licenses for non-Federal development and operation of hydropower may also require consultation.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's "take" prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for listed chinook salmon and steelhead for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches and collection of adult fish for artificial propagation programs.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities which may incidentally take listed species so long as the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or academic research not receiving Federal authorization or funding, logging, road building, grazing, and diverting water into private lands.

Take Guidance

NMFS and the FWS published in the **Federal Register** on July 1, 1994 (59 FR 34272), a policy that NMFS shall identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. NMFS believes that the following actions are not likely to be prohibited in an ESA 4(d) rule and therefore will not result in a violation of section 9:

1. Possession of steelhead from any steelhead ESU listed as threatened which are acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA.

2. Federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which section 7 consultation has been completed, and when activities are conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanying a biological opinion.

Activities that NMFS believes could potentially harm steelhead in the northern California ESU and, therefore, may be prohibited in a 4(d) rule applying section 9 take prohibitions, include, but are not limited to:

1. Land-use activities that adversely affect steelhead habitat in the proposed ESU (e.g., logging, grazing, farming, urban development, road construction in riparian areas and areas susceptible to mass wasting and surface erosion).
2. Destruction/alteration of the steelhead habitat in the proposed ESU, such as removal of large woody debris and "sinker logs" or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow.
3. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting steelhead in the proposed ESU.
4. Violation of discharge permits.
5. Pesticide applications.
6. Interstate and foreign commerce of steelhead from the listed ESU and import/export of steelhead from any ESU without a threatened or endangered species permit.
7. Collecting or handling of steelhead from the listed ESUs. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species.
8. Introduction of non-native species likely to prey on steelhead in the listed ESU or displace them from their habitat.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of steelhead in the northern California ESU under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of the section 9 take prohibitions, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. Pursuant to 4(b)(6)(C)(ii), if critical habitat is not then determinable, however, NMFS may extend the designation for up to one year after the date of the final rule listing the species. While NMFS has completed its initial analysis of the biological status of steelhead in the Northern California ESU, it has not performed the full analysis necessary for designating critical habitat at this time. Since critical habitat is not now determinable for the Northern California ESU, NMFS intends to develop a critical habitat proposal for designation within the next year.

References

A complete list of all cited references is available upon request (see **ADDRESSES**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). See NOAA Administrative Order 216–6.

Executive Order 12866 and Regulatory Flexibility Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866.

Executive Order 13132—Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with State and local government agencies in the course of assessing the status of the Northern California steelhead ESU, and considered, among other things, state and local conservation measures. State and local governments have expressed support both for the conservation of the Northern California steelhead ESU and for activities that affect this ESU. The history and content of this dialogue, as well as the basis for this action, is described in the proposed rule, and in other Federal Register Documents preceding this action. (See 61 FR 41541, August 9, 1996; 62 FR 43974, August 18, 1997, and 63 FR 13347, March 19, 1998). NMFS staff have had numerous discussions with various governmental agency representatives regarding the status of this ESU, and have sought working relationships with agencies and others in order to promote salmonid restoration efforts. In addition, NMFS' staff have given presentations to interagency forums and other interested groups considering conservation measures. NMFS has engaged in informal and formal contacts with affected state, local or regional entities, giving careful consideration to all written or oral comments received. As one part of that process, NMFS held public hearings on the proposed action. NMFS also consulted with appropriate elected officials in the establishment of a final rule.

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d) or proposing to designate critical habitat. Prior to finalizing ESA 4(d) regulations for this ESU, or proposing to designate critical habitat, NMFS will comply with all relevant NEPA and RFA requirements.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: May 31, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, Section 223.102 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.102, paragraph (a)(22) is added to read as follows:

§ 223.102 Enumeration of threatened species.

* * * * *

(a) * * *

(22) *Northern California steelhead (Oncorhynchus mykiss).* Includes all naturally spawned populations of steelhead (and their progeny) in coastal river basins ranging from Redwood Creek in Humboldt County, California to the Gualala River, inclusive, in Mendocino County, California.

[FR Doc. 00–14196 Filed 6–6–00; 8:45 am]

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Proposed Rules

Federal Register

Vol. 65, No. 110

Wednesday, June 7, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–308–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Powered by Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes powered by Pratt & Whitney engines. This proposal would require modification of the nacelle strut and wing structure. This proposal is prompted by reports indicating that the actual operational loads applied to the nacelle are higher than the analytical loads that were used during the initial design. Such an increase in loading can lead to fatigue cracking in primary strut structure prior to an airplane reaching its design service objective. The actions specified by the proposed AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut.

DATES: Comments must be received by July 24, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–308–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–308–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–308–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the airplane manufacturer has accomplished a structural reassessment of the damage tolerance capabilities of the Boeing Model 757 series airplane powered by Pratt & Whitney engines. This reassessment indicates that the actual operational loads applied to the nacelle strut and wing structure are higher than the analytical loads that were used during the initial design. Subsequent analysis and service history, which includes numerous reports of fatigue cracking on certain strut and wing structure, indicate that fatigue cracking can occur on the primary strut structure before an airplane reaches its design service objective of 20 years or 50,000 flight cycles. Analysis also indicates that such cracking, if it were to occur, would grow at a much greater rate than originally expected. Fatigue cracking in primary strut structure would result in reduced structural integrity of the strut.

Explanation of Relevant Service Information

Boeing recently has developed a modification of the strut-to-wing attachment structure installed on Model 757 series airplanes powered by Pratt & Whitney engines. This modification significantly improves the load-carrying capability and durability of the strut-to-wing attachments. Such improvement also will substantially reduce the possibility of fatigue cracking and corrosion developing in the attachment assembly.

The FAA has reviewed and approved Boeing Service Bulletin 757–54–0034, dated May 14, 1998, which describes procedures for modification of the nacelle strut and wing structure. The modification consists of replacing many of the significant load-bearing components of the strut (*e.g.*, the side link fittings assemblies, the midspar fittings, the side load fittings, certain fuse bolt assemblies, *etc.*) with improved components.

The service bulletin contains a formula for calculating an optional compliance threshold for the specified modification. This formula is intended to be used as an alternative to the 20-year calendar threshold specified in the service bulletin.

In addition, Table I of the service bulletin also identifies two related service bulletin modifications that must be accomplished before or at the same time as the modification in Boeing Service Bulletin 757–54–0034:

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• *Boeing Service Bulletin 757–54–0027:* The FAA has reviewed and approved Boeing Service Bulletin 757–54–0027, Revision 1, dated October 27, 1994, which describes procedures for visual and eddy current inspections of the fuse pins of the diagonal brace and upper link, and installation of new 15–5PH fuse pins and new shoulder bolts for the diagonal brace and upper link.

• *Boeing Service Bulletin 757–54–0036:* The FAA has reviewed and approved Boeing Service Bulletin 757–54–0036, dated May 14, 1998, which describes procedures for replacement of the upper link with a new, improved part that will increase the strength and durability of the upper link installation. That service bulletin also describes procedures for modification of a wire support bracket attached to the upper link.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although Boeing Service Bulletin 757–54–0034 specifies that the manufacturer may be contacted for disposition of certain damage conditions that may detected during accomplishment of the modification, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 317 airplanes of the affected design in the worldwide fleet. The FAA estimates that 278 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 800 work hours per airplane to accomplish the proposed modification of the nacelle strut and wing structure described in Boeing Service Bulletin 757–54–0034, dated May 14, 1998, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $13,344,000, or $48,000 per airplane.

It would take approximately 26 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 757–54–0027, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $433,680, or $1,560 per airplane.

It would take approximately 90 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 757–54–0036, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $1,501,200, or $5,400 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–308–AD.

Applicability: Model 757 series airplanes powered by Pratt & Whitney engines, line numbers 1 through 735 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

Modifications

(a) Modify the nacelle strut and wing structure on both the left and right sides of the airplane, in accordance with Boeing Service Bulletin 757–54–0034, dated May 14, 1998, at the later of the times specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Prior to the accumulation of 37,500 total flight cycles, or within 20 years since the date of manufacture, whichever occurs first. Use of the optional threshold formula described in paragraph I.D. of the service bulletin is an acceptable alternative to the 20-year threshold.

(2) Within 3,000 flight cycles after the effective date of this AD.

(b) Prior to or concurrently with the accomplishment of the modification of the nacelle strut and wing structure required by paragraph (a) of this AD; as specified in paragraph I.D., Table I, "Strut Improvement Bulletins," on page 5 of Boeing Service Bulletin 757–54–0034, dated May 14, 1998; accomplish the actions specified in Boeing Service Bulletin 757–54–0027, Revision 1, dated October 27, 1994, and Boeing Service Bulletin 757–54–0036, dated May 14, 1998, as applicable, in accordance with those service bulletins.

(c) If any damage to airplane structure is found during the accomplishment of the modification required by paragraph (a) of this AD; and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14315 Filed 6–6–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 724, 773, 774, 778, 842, 843, and 846

RIN 1029–AB94

Application and Permit Information Requirements; Permit Eligibility; Definition of Ownership and Control; the Applicant/Violator System; Alternative Enforcement Actions

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: On December 21, 1998 (63 FR 70580), we, the Office of Surface Mining (OSM), proposed a rule to amend our permanent program regulations for surface coal mining operations under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, *et seq.*, as amended (SMCRA or the Act). We are reopening the comment period for the proposed rule in light of a judicial decision in a case decided after the close of the comment period. The comment period was originally scheduled to close on February 19, 1999, but was subsequently extended to March 25, 1999 (64 FR 8763; Feb. 23, 1999), then to April 15, 1999 (64 FR 15322; March 31, 1999), and ultimately to May 10, 1999 (64 FR 23811; May 4, 1999). Shortly thereafter, on May 28, 1999, the U.S. Court of Appeals for the District of Columbia Circuit handed down a decision in *National Mining Ass'n* v. *U.S. Dept. of the Interior*, 177 F.3d 1 (D.C. Cir. 1999) (*NMA* v. *DOI II*). Because we incorporated certain provisions and concepts into our December 21, 1998 proposed rule, which were later invalidated by the court, we feel it advisable to obtain input from the public on the effects of the appeals court's decision on our proposed rule. By this notice, we are reopening and extending the comment period for an additional 30 days to seek comments on the effects of the court decision on our proposed rule so that we can ensure that our final rule is consistent with the *NMA* v. *DOI II* decision.

DATES: We will accept written comments until 5 p.m., Eastern time on July 7, 2000. We will consider only those comments received within the allowed time period.

ADDRESSES: You may mail or hand-deliver comments to the Office of Surface Mining, Administrative Record Room 101, 1951 Constitution Avenue, NW., Washington, DC, 20240. You may also submit comments to OSM via the Internet at: osmrules@osmre.gov. Comments sent via the Internet should be in an ASCII, Word, or WordPerfect file, and you should avoid using special characters and any form of encryption. Please also include "Attn: RIN 1029–AB94" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 208–2847.

FOR FURTHER INFORMATION CONTACT: Stephen J. McEntegart, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, DC, 20240. Telephone: (202) 208–2968; e-mail: smceteg@osmre.gov.

SUPPLEMENTARY INFORMATION

I. Public Comment Procedures

Written comments submitted by mail, electronically, or in person, should be specific, confined to issues pertinent to this reopening, and explain the bases for the comments. Please submit three copies of your comments if possible. We must stress that we will consider only comments which are germane to the effects of the *NMA* v. *DOI II* decision on our December 21, 1998 proposed rule: conversely, we will not consider comments which do not pertain to the effects of the court decision and which could have been submitted during the previous comment periods. All of the comments we received thus far are part of the rulemaking record, and we will consider both those comments and comments received under the new comment period associated with this notice before issuing a final rule. Therefore, commenters should not resubmit earlier comments.

We are specifying a 30 day deadline for comments, which we believe is appropriate because of the limited nature of this reopening; the fact that the pertinent appeals court's rulings are, for the most part, subject to straightforward interpretation; the fact that we previously extended and reopened the comment period serial times for the initial proposed rule; and our desire to expedite promulgation of a final rule. In view of the above considerations, we will not extend the comment period beyond 30 days.

II. Summary of *NMa* v. *DOI II* as it Affects our December 21, 1998 Proposed Rule

In June 1997, NMA filed suit in the U.S. District Court for the District of Columbia, challenging the validity of our April 21, 1997, interim final rule (IFR) (62 FR 19450) on broad grounds. On June 15, 1998, the district court issued a decision upholding the IFR in its entirety. *National Mining Ass'n* v. *Babbitt*, No. 97–1418 (AER) (D.D.C. June 15, 1998).

On May 28, 1999, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in NMA's appeal of the district court's ruling. *National Mining Ass'n.* v. *U.S. Dep't of the interior*, 177 F.3d 1 (D.C. Cir. 1999) (*NMA* v. *DOI II*). The court upheld several provisions of the IFR, but invalidated others. Three of the court's holding invalidating provisions of the IFR are pertinent to this reopening because we incorporated the invalidated provisions and/or underlying concepts into the proposed rule. Since our final rule must be consistent with *NMA* v. *DOI II*, we invite your comments on

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how these three holdings affect our proposed rule. These three holdings are described below.

First, the court held that "[f]or violations of an operation that the applicant 'has controlled' but no longer does, * * * the Congress authorized permit-blocking only if there is 'a demonstrated pattern of willful violations'" under section 510(c) of SMCRA. *Id.* at 5. In other words, if an applicant severs its ownership or control relationship to an operation with a current violation, OSM, in general, may not consider that violation in making a permit eligibility decision under section 510(c) of the Act. Stated differently, in addition to the violation being current and ongoing, the applicant must also own or control the operation with a violation at the time of application; if the ownership or control relationship has been terminated, OSM may not deny a permit (absent a pattern of willful violations), even if the violation remains current and ongoing. *NMA* v. *DOI II*, 177 F.3d at 5. OSM may consider such past ownership or control of operations with violations only in determining whether there has been a "demonstrated pattern of willful violations" warranting permanent permit ineligibility under section510(c).

This holding affects 773.15(b)(3) and 773.16(a) of our proposed rule; therefore, we invite your comments on the effect of the court's ruling on these provisions.

Second, the court found that the IFR's provision requiring permit denials based on *indirect* ownership or control of operations with violations is impermissibly retroactive because our 1988 ownership and control rule imposed a "'new disability,' permit ineligibility, based on 'transactions or considerations already past. . . .'" *Id.* at 8. As such, the court held that the IFR is retroactive "insofar as it block [*sic*] permits based on transactions (violations and control) antedating November 2, 1988, the [1988] Ownership and Control Rule's effective date." *Id.*

However, the court explained that the IFR is not retroactive to the extent it allows permit denials when an applicant acquires control of an operation with an ongoing, pre-rule violation on or after the effective date of the 1988 ownership and control rule. *Id.* at n.12. This is so because one of the relevant transactions—assumption of control—will have occurred on or after November 2, 1988; as such, as of November 2, 1988, the applicant would be on notice that this type of transaction, which post-dates the effective date of the 1988 rule, could affect his or her eligibility to receive a permit.

This holding affects sections 773.15(b)(3) and 773.16(a) of our proposed rule; therefore, we invite your comments on the effect of the court's ruling on these provisions.

Finally, with regard to the IFR's suspension and rescission provisions relative to improvidently issued permits, the court agreed with OSM that section 201(c) of SMCRA, 30 U.S.C. 1211(c), expressly authorizes OSM to suspend or rescind improvidently issued permits. In addition to that express authority, the court also found that OSM retained "implied" authority to suspend or rescind improvidently issued permits "because of its express authority to deny permits in the first instance." *Id.* at 9. However, the court decided that OSM may only order cessation of State-permitted operations pursuant to the procedures established under section 521 of SMCRA, 30 U.S.C. 1271. Specifically, OSM may order immediate cessation of State-permitted operations if those operations pose an "imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm . . ." SMCRA § 521(a)(2), 30 U.S.C. 1271(a)(2). Absent these circumstances, and after OSM complies with the ten-day notice procedure contained in 30 CFR 843.21(c), OSM may order cessation of a State-permitted operation only if it: (1) Provides a notice of violation to the permittee or his agent; (2) establishes an abatement period; (3) provides opportunity for a public hearing and (4) makes a written finding that abatement of the violation has not occurred within the abatement period. *Id.* at 9–10; SMCRA § 521(a)(3), 30 U.S.C. 1271(a)(3). This holding affects section 843.21(d) of our proposed rule; therefore, we invite your comments on the effect of the court's ruling on these provisions.

The court's holdings in the rest of the *NMA* v. *DOI II* litigation do not affect our proposed rule because either; (1) OSM prevailed on the particular issued; or (2) the issue has become moot in that our proposal does not contain a similar provision. The court decision is available from two commercial legal research services (Lexis and Westlaw), as well as from the United States Court of Appeals for the District of Columbia Circuit's website (Internet address: http://www.cadc.uscourt.gov). For your convenience, we are posting a copy of the court's decision on our website at: http//www.osmre.gov. We will also be happy to mail or fax you a hard copy of the decision at your request; please address requests to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 1, 2000.

Kathrine L. Henry,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 00–14355 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO–032–FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Colorado proposes revisions to rules concerning definitions; permit application requirements; comment period for revisions; requirements for permit approval or denial; and performance standards for sedimentation ponds, discharge structures, impoundments, stream buffer zones, coal exploration, and coal processing plants and support facilities not located at or near the mine site or not within the permit area for the mine. Colorado intends to revise its program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiency.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t., July 7, 2000. If requested, we will hold a public hearing on the amendment on July 3, 2000. We will accept requests to speak until 4 p.m., m.d.t., on June 22, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to James F. Fulton at the address listed below.

You may review copies of the Colorado program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202.

Michael B. Long, Director, Division of Minerals and Geology, Department of Natural Resources, 1313 Sherman St., Room 215, Denver, CO 80203, Telephone: (303) 866–8106.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 844–1400, extension 1424. Internet: JFULTON@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program.
II. Description of the Proposed Amendment.
III. Public Comment Procedures.
IV. Procedural Determinations.

I. Background on the Colorado Program.

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. You can find background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program in the December 15, 1980, **Federal Register** (45 FR 82173). You can also find later actions concerning Colorado's program and program amendments at 30 CFR 906.11, 906.15, 906.16, and 906.30.

II. Description of the Proposed Amendment

By letter dated May 12, 2000, Colorado sent us a proposed amendment to its program (administrative record No. CO–691) under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado sent the amendment in response to May 7, 1986, and June 19, 1997, letters (administrative record Nos. CO–282 and CO–686) that we sent to Colorado in accordance with 30 CFR 732.17(c); required program amendment codified at 30 CFR 906.16(d) and (e); and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Colorado proposes to:

(1) Add, at Rule 1.04(31a), a definition of "cumulative impact area" that means the area which includes, at a minimum, the entire projected lives through bond release of: the proposed operation; all existing operation; any operation for which a permit application has been submitted; all other operations required to meet diligent development requirements for leased federal coal, for which there is actual mine development information available;

(2) Revise, at Rule 1.04(71), the definition of land use, to clarify that all of the land uses described may include land used for support facilities which are adjacent to, or are in integral part of the land use;

(3) Delete, at Rule 1.04(115a), the definition of "sediment treatment facilities and replace it with, at Rule 1.04(81a), a definition of 'other treatment facilities' that means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as, but not limited to, clarifiers or precipitators, that have a point source discharge and are utilized: (i) to prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or (ii) to comply with all applicable State and Federal water-qualify laws and regulations;"

(4) Add, at Rule 1.04(86a), a definition of "permit impoundment" that means a impoundment which is approved, and if required, by other State and Federal agencies for retention as part of the post-mining land use;

(5) Add, at Rule 1.04(93a), a definition of "point of compliance" that means any geographic location at which compliance with applicable ground water quality standards established by the Water Quality Control Commission must be attained and where this compliance will be demonstrated by compliance monitoring of the groundwater or by other valid means;

(6) Revise, at Rule 1.04(115), the definition of "sedimentation pond" to clarify that it is an impoundment used as a primary sediment control structure to remove solids from water to meet water-quality standards or effluent limitations before the water leaves the permit area;

(7) Add, at Rule 1.04(137a), a definition of "temporary impoundment" that means an impoundment used during surface coal mining and reclamation operations, but not approved to remain as part of the approved post-mining land use;

(8) Revise Rule 2.05.2(1) through (6), concerning water quality standards and effluent limitations, to add references to other treatment facilities;

(9) Revise Rule 2.05.3(4)(a), concerning permit application requirements, to require information concerning other treatment facilities;

(10) Revise Rule 2.05.3(4)(a)(iii), concerning permit application requirements, to (1) refer to an impoundment with a capacity of more than 100 acre-feet rather than a reservoir with a capacity of more than 1000 acre-feet, and (2) incorporate by reference the applicable requirements of the State Engineer codified at C.R.S. 37–87–105;

(11) Revise Rule 2.05.3(4)(a)(iv), concerning permit application requirements, to incorporate by reference (for sedimentation ponds or impoundments that meet or exceed the criteria of the Mine Safety and Health Administration (MSHA)), the MSHA requirements codified at 30 CFR 77.216(a), 77–216–1 and 77.216–2;

(12) Add, at Rules 2.05.3(4)(a)(v), (vi) and (vii), concerning permit application requirements, to require (1) submission of any plans that must be submitted to and approved by with the State Engineer or MSHA, (2) that all impoundments meeting the Class B or Class C criteria for dams in the Soil Conservation Service Technical Release No. 60 (TR60) comply with the requirements for impoundments that meet or exceed the size or other criteria of 30 CFR 77.216(a) (and to incorporate by reference TR60), and (3) require a stability analysis for each impoundment that either meets the Class B or Class C criteria for dams in TR60 or meets the size or other criteria of 30 CFR 77.216(a);

(13) Make editorial revisions at Rule 2.05.3(4)(b), concerning design requirements for sedimentation ponds;

(14) Revise Rule 2.05.3(8)(a)(iii), concerning permit application requirements for plans for coal mine waste and non-coal processing waste, to refer to impoundments with a capacity of 100 acre-feet rather than reservoirs with a capacity of more than 1000 acre-feet;

(15) Add Rules 2.05.3(8)(a)(v) and (vi), concerning plans for coal mine waste and non-coal processing waste, to require (1) that all impoundments meeting the Class B or Class C criteria for dams in the Soil Conservation Service TR60 comply with the requirements for impoundments that meet or exceed the size or other criteria of 30 CFR 77.216(a), and (2) require a stability analysis for each impoundment that either meets the Class B or Class C criteria for dams in TR60 or meets the size or other criteria of 30 CFR 77.216(a);

(16) Revise Rule 2.05.6(3)(b)(iv) and (iv)(A), concerning the plan for surface and ground water monitoring, to require (1) identification of points of compliance and (2) monitoring of manganese;

(17) Make editorial revisions at Rule 2.06.8(5)(b)(ii)(B), concerning underground mining activities;

(18) Revise Rule 2.07.3(3)(b) to refer to the National Resource Conservation

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Service rather than the Soil Conservation Service;

(19) Revise Rule 2.07.3(3)(c) to clarify that written comments regarding technical revisions may be submitted within 10 days of the initial newspaper publication;

(20) Revise Rule 2.07.6(2)(c), concerning the assessment (for permit approval or denial) of probable cumulative impacts of all anticipated mining on the hydrologic balance, to add references to cumulative impact area and material damages;

(21) Revise Rule 4.05.6, concerning sedimentation ponds, to (1) apply the requirements to other treatment facilities and (2) simplify by reorganizing the section and removing certain requirements that are applicable to impoundments in general and are not specific to sedimentation ponds or other treatment facilities (these requirements are set forth at Rule 4.05.9 which is applicable to impoundments in general);

(22) Revise Rule 5.05.7, concerning discharge structures, to add a reference to other treatment facilities;

(23) Revise Rule 4.05.9, concerning impoundments, to (1) clarify and simplify by reorganizing and removing redundant requirements and (2) add, at Rules 4.05.9(2)(d), (e)(i), and (ii), (6), (8)(a), (10), and (21) requirements, concerning spillways, embankments, freeboard, and inspections, for impoundments meeting the Class B or Class C criteria for dams in the Soil Conservation Service TR60;

(24) Revise Rule 4.05.9, concerning impoundments, to add a new Rule 4.05.9(18) that (1) waives the requirement for quarterly inspections by a registered engineer, but requires annual inspections by a qualified person, for impoundments which are (a) not the primary sediment control for area, (b) located in reclaimed terrain to enhance the postmining land use, and (c) either completely incised or do not exceed 2 acre-feet in capacity and do not have embankments larger than five feet in height; and (2) requires that (a) the above waiver be approved and (b) such a waiver cannot be approved unless a written safety demonstration is submitted by a professional engineer which shows that the impoundments will not present any threat to human health and safety, or significant threat to the environment (all other impoundments-related rules are applicable and Colorado is required to field verify the safety demonstration and may rescind the waiver, for good cause if conditions change over time);

(25) Revise Rule 4.05.13(1), concerning ground water monitoring, to add requirements concerning monitoring points of compliance;

(26) Revise Rule 4.05.18, concerning stream buffer zones, to (1) require that no land within 100 feet, or greater distance if required, of a perennial stream, an intermittent stream, or an ephemeral stream with a drainage area greater than one square mile, by surface and underground coal mining operations, unless authorized, and (2) require, upon a waiver of buffer zone, Colorado to find that (a) surface coal mining operations will not cause or contribute to the violation of applicable water quality standards, (b) during and after mining, the water quantity and quality, and other environmental resources of the stream shall not be adversely affected, and, (c) if there will be a temporary or permanent stream channel diversion, the diversion will comply with Rules 4.05.3 and 4.05.4;

(27) Revise Rule 4.21.4(10), concerning performance standards for coal exploration, to add the requirements that coal exploration (1) include sediment control measures such as those listed in 4.05.5 or sedimentation ponds which comply with 4.05.6 and 4.05.9, and (2) if the operation has the potential to negatively impact the quality of groundwater for which quality standards have been established by the Water Quality Control Commission, be conducted so as to ensure compliance with applicable ground water standards at points of compliance which shall be established according to the provisions of 4.05.13(1); and

(28) Revise Rule 4.28.3, concerning coal processing plants and support facilities not located at or near the mine site or not within the permit area for the mine, by adding paragraph (16) that requires establishment of points of compliance, if the operation has the potential to negatively impact the quality of groundwater for which quality standards have been established by the Water Quality Control Commission.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), OSM requests your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Colorado program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Denver Field Division.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. CO–032–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at (303) 844-1400, extension 1424.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t., on June 22, 2000. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 2000.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 00–14356 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS NO NM–039–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions pertaining to a previously proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions to New Mexico's proposed rules pertain to the definitions of "material damage" and "occupied residential dwelling and associated structures" and subsidence control during underground mining. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.d.t. June 22, 2000.

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ADDRESSES: You should mail or hand deliver written comments to Willis L. Gainer at the address listed below.

You may review copies of the New Mexico program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Albuquerque Field Office.

Willis L. Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102.

Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated November 13, 1998, New Mexico submitted a proposed amendment (administrative record No. NM–804) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to the required program amendments at 30 CFR 931.16(o), (w), (x), (y) and (aa), and at its own initiative.

OSM announced receipt of the proposed amendment in the December 3, 1998 **Federal Register** (63 FR 66772), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–808). Because no one requested a public hearing or meeting, none were held. The public comment periods ended on January 4, 1999.

During our review of the November 13, 1998 amendment, OSM identified concerns and notified New Mexico of the concerns by letter dated January 7, 1999 (administrative record No. NM–815). New Mexico responded in a letter dated December 1, 1999, by submitting a revised amendment (administrative record No. NM–816).

We announced receipt of the proposed amendment in the December 22, 1999, **Federal Register** (63 FR 71698), and invited public comment on its adequacy (administrative record No. NM–818). The public comment period ended on January 21, 2000.

During our review of the December 1, 1999, revisions, OSM identified concerns and notified New Mexico of the concerns by letter dated March 28, 2000 (administrative record no. NM–827). New Mexico responded in a letter dated April 26, 2000, by submitting a revised amendment (administrative record No. NM–829).

New Mexico proposes further revisions to 19 NMAC 8.2 107.M(1) and 0(2), definitions of "material damage" and "occupied residential dwelling and associated structures"; 19 NMAC 8.2 2071, subsidence control; and 19 NMAC 8.2 918.D, detailed plans of underground mine workings.

Specifically, New Mexico prposes to revise;

(1) The definitions of "material damage" and "occupied residential dwelling and associated structures" at 19 NMAC 8.2 107.M(1) and O(2) to be applicable to the rules at 19 NMAC 8.2 2067;

(2) Subsidence control at 19 NMAC 8.2 2071.A, by providing that the Director of the New Mexico program may (a) allow underground mining activities beneath or adjacent to beneath or adjacent to any perennial stream or impoundment having a storage volume of 20 acre-feet or more, if the Director, on the basis of detailed subsurface information, determines that subsidence will not cause material damage, or a reduction in a reasonably forseeable use, to streams, water bodies and associated structures, and (b) if material damage occurs, suspend underground mining until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities;

(3) Subsidence control at 19 NMAC 8.2 2071.B, to (1) require that underground mining activities beneath any aquifer, perennial stream or water body that serves as a significant source of water supply to a public water system must be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata, and (2) to provide that the Director of the New Mexico program will prohibit mining in the vicinity of the aquifer or may limit the percentage of coal extraction to protect the aquifer and other water supplies unless a finding can be made, base on detailed documentation, that subsidence will not cause material damage to, or reduce the reasonable foreseeable use of, these features;

(4) Subsidence control at 19 NMAC 8.2 2071.C, to prohibit underground mining activities from being conducted beneath or in close proximity to any public buildings, including but not limited to churches, schools, hospitals, courthouses and government offices, unless the Director of the New Mexico program, on the basis of detailed subsurface information, determines that subsidence from those activities will not cause material damage, or reduce a reasonably foreseeable use, to these structures and specifically authorizes the mining activities;

(5) Subsidence control at 19 NMAC 8.2 2071.D, to correct a typographical error by replacing the term "permanent" with "perennial"; and

(6) Requirements for detailed plans of underground mine workings at 19 NMAC 8.2 918.D, by adding a paragraph that (1) requires that an permittee shall submit, consistent with a schedule approved by the Director of the New Mexico program, a detailed plan of actual underground workings that includes maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the regulatory authority, and (2) provides, upon request of the operator, that the information submitted with the detailed plan may be held as confidential, in accordance with the requirements of 19 NMAC 8.2 1104.

In addition, New Mexico explained that the State contains few bodies of water 20-acre feet or more that are not man-made impoundments and that there are no naturally occurring bodies of water 20-acre feet or more in the coal fields in New Mexico. Therefore, New Mexico's proposed revisions at 19 NMAC 8.2 2071 refer to "impoundments" rather than "naturally occurring bodies of water 20-acre feet or more."

III. Public Comment Procedures

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. NM–039–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248–5096.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102 (2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 2000.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 00–14357 Filed 6–6–00; 8:45 am]

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DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS NO NM–040–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions pertaining to a previously proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions to New Mexico's proposed rules pertain to the Coal Mine Reclamation Program Vegetation Standards (including success standards, sampling techniques, and normal husbandry practices), time frames within the liability period for demonstrating success of revegetation, and annual report requirements. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATE: Written comments must be received by 4:00 p.m., m.d.t., July 7, 2000. If requested, we will hold a public hearing on the amendment on July 3, 2000. We will accept requests to speak until 4:00 p.m., m.d.t., on June 22, 2000.

ADDRESSES: You should mail or hand deliver written comments to Willis L. Gainer at the address listed below.

You may review copies of the New Mexico program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Albuquerque Field Office.

Willis L. Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102.

Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated December 1, 1999 (administrative record No. NM–816), New Mexico submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to the required program amendments at 30 CFR 931.16(o), (w), (x), (y) and (aa), and at its own initiative.

OSM announced receipt of the proposed amendment in the December 22, 1999 **Federal Register** (64 FR 71700), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–819). Because no one requested a public hearing or meeting, none were held. The public comment periods ended on January 21, 2000.

During our review of the December 1, 1999, amendment, OSM identified concerns and notified New Mexico of the concerns by letter dated February 17, 2000 (administration record no. NM–825). New Mexico responded in two letters dated April 26, 2000, by submitting (1) revisions to the December 1, 1999, amendment (administrative record No. NM–830) and (2) additional rule revisions never before submitted (administrative record No. NM–828).

New Mexico proposes further revisions to (1) sections I.D., II.B.1, and IV of New Mexico's proposed Coal Mine Reclamation Program Vegetation Standards; (2) requirements for demonstrating success of ground cover and productivity of revegetation at 19 NMAC 8.2 2065.B(1); and (3) the definitions of "augmented seeding" and "interseeding" at 19 NMAC 8.2 107.A(20) and 107.I(8).

New Mexico proposes new revisions to (1) the requirements for annual reports at 19 NMAC 8.2 507.A(1); and (2) the requirements for demonstrating (a) that the land has the capability of supporting livestock grazing at 19 NMAC 8.2 2064; (b) the success of ground cover and productivity at 19 NMAC 8.2 1065.B(2) and (3); and (c) the success of crop production at 19 NMAC 2065.B(5)(iii).

Specifically, New Mexico proposes to revise:

(1) Section I.D, Establishment and Monitoring of Revegetation Success Standards, of New Mexico's proposed Coal Mine Reclamation Program Vegetation Standards to clarify that the success of revegetation on reclaimed lands will be measured against the general revegetation requirements at 19 NMAC 8.2 2060 in addition to standards derived from an unmined reference area or technical standards;

(2) Section II.B.1, Sampling Techniques, of New Mexico's proposed Coal Mine Reclamation Program Vegetation Standards to require an operator to implement techniques to improve the reliability of the ocular estimation method;

(3) Section IV, Normal Husbandry Practices, of New Mexico's proposed Coal Mine Reclamation Program Vegetation Standards to (a) specify the land uses, time frames, and size limitations, if any, applicable to each approved normal husbandry practice, and (b) to clarify that in order for repair of erosional features to be considered a normal husbandry practice, the erosional features must be characteristic of unmined lands in the regions and the damage must not be caused by a lack of planning, design, or implementation of the mining and reclamation plan.

(4) 19 NMAC 8.2 2065.B(1) to provide that ground cover and productivity may be equal to the technical standards developed in accordance with New Mexico's proposed Coal Mine Reclamation Program Vegetation Standards, as an alternative to an approved reference area;

(5)(a) 19 NMAC 8.2 107.A(20), the definition of "augmented seeding" to mean "seeding in excess of the normal husbandry practices approved in the Director's Coal Mine Reclamation Program Vegetation Standards, or reseeding with fertilization or irrigation, or reseeding in response to unsuccessful revegetation in terms of adequate germination or establishment or permanence," and (b) 107.I(8), by adding the definition "interseeding" to mean "a secondary seeding practice into established vegetation cover in order to take advantage of climatic conditions that favor species requiring special conditions for germination and establishment, or to improve or alter the composition between forage species and shrubs, or between warm and cool season grasses;"

(6) 19 NMAC 8.2 507.A(1), to require in an annual report, a current topographic or orthophotographic map with five foot contour intervals of the same scale as the mining and reclamation sequence maps found in the approved permit with five foot contour intervals, on a single sheet, or series of sheets, each sheet of the map being no larger than four feet by four feet, with the scale and all lines and symbols clearly described in the legend;

(7) 19 NMAC 8.2 2064 to require that an operator demonstrate, for at least two of the last four years rather than the last two years, that the reclaimed land has the capability of supporting livestock grazing at rates approximately equal to that for similar non-mined lands when the approved postmining land use is range or pasture land;

(8) 19 NMAC 8.2 2065.B(2), concerning the liability period in areas of more than 26.0 inches average annual precipitation, to require that ground cover and productivity shall equal or exceed the approved standard for two of the last four years, rather than the last two years, of the responsibility period;

(9) 19 NMAC 8.2 2065.B(3), concerning the liability periods in areas of less than or equal to 26.0 inches average annual precipitation, to require that ground cover and productivity shall equal the approved standard for at least two of the last four years, starting no sooner than year eight, rather than the last two years, of the responsibility period; and

(10) 19 NMAC 8.2 2065.B(5)(iii), concerning the demonstration of success of areas to be used for cropland, to require that crop production from the mined area shall be equal to or greater than that of the approved standard for two of the last four growing seasons, rather than the last two consecutive growing seasons, of the five or ten year liability period, starting no sooner than year eight of the ten year liability period.

III. Public Comment Procedures

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. NM–040–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248–5096.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law.

Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on June 22, 2000. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implication. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse

effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 2000.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 00–14358 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 00–7145]

[RIN No. 2127–AH61]

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This document grants a request to extend the comment period on an agency proposal to amend the upper interior impact requirements of its standard on occupant protection in interior impact by modifying the minimum distance between certain target points on vertical surfaces inside a vehicle and by adding target points for pillar-like structures that do not meet the definition of "pillar," i.e., certain door frames and vertical seat belt mounting structures.

DATES: Extended comment closing date: Comments on the April 5, 2000 proposal, 65 FR 17842, Docket No. 00–7145, must be received by the agency on or before close of business on July 5, 2000.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Alternatively, you may submit your comments electronically by e-mail at http://dms.dot.gov.

You may call the Docket at 202–366–9324, and visit it from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Dr. William Fan, Office of Crashworthiness Standards, at (202) 366–4922, facsimile (202) 366–4329, electronic mail "bfan@nhtsa.dot.gov". For legal issues, you may call Otto Matheke, Office of the Chief Counsel, at 202–366–5263.

SUPPLEMENTARY INFORMATION: On April 5, 2000, NHTSA published a notice of proposed rulemaking proposing to amend the upper interior impact requirements of Standard No. 201, Occupant Protection in Interior Impact, in several respects. One proposal addressed the minimum distance between certain target points on vertical surfaces inside a vehicle. Compliance with the upper interior impact requirements is determined, in part, by measuring the forces experienced by a test device known as the Free Motion Headform (FMH) when it impacts certain target points in the vehicle interior. To ensure that the damage caused by the testing of one target point does not overlap the testing of nearby target points, the standard specifies that tested targets be at least a certain distance apart; currently 150 mm (6 inches). We proposed expanding this minimum distance to 200 mm (8 inches) for tests performed on certain vertical surfaces in order to alleviate concerns that the current distance is not large enough to prevent the FMH impact area for one target point from overlapping the FMH impact areas for nearby target points in the same vehicle. We also proposed adding target points for pillar-like structures that do not meet the definition of "pillar," i.e., certain door frames and vertical seat belt mounting structures and are therefore not currently subject to Standard No. 201. We tentatively concluded that these structures are the equivalent of "pillars" now covered by the Standard.

The NPRM specified a comment closing date of June 5, 2000 (60 days after date of publication). However, on May 16, 2000, we received a request for an extension of the comment closing date from Advocates for Highway and Auto Safety (Advocates). Advocates stated that it wished to provide comments on our proposal, but was unable to do so in a timely fashion due to the organization's limited resources and a competing need to comment on a number of other pending regulatory proposals affecting highway and highway safety. Therefore, Advocates requested an additional 60 days for submission of its comments.

Particularly because Advocates is a prominent public interest organization dedicated to the consideration of issues related to highway and vehicle safety, the agency is interested in its comments. Thus, in order to provide the Advocates and other interested parties ample time and opportunity to express their views on the proposed amendments to Standard No. 201, NHTSA believes that there is good cause for the extension of the comment period. However, the agency does not believe that an extension of 60 days is warranted or would be in the public interest. NHTSA has determined that it is appropriate to extend the comment period for 30 days and that such extension is consistent with the public interest. Accordingly, the Advocates request to extend the comment period for an additional 60 days is denied, but the comment period is extended for a period of 30 days to July 5, 2000.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority is at 49 CR 1.50.

Issued on June 2, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–14277 Filed 6–2–00; 12:34 pm]

BILLING CODE 4910–59–P

VOL 65 ISS 110 JE 7 2000 UMI

Notices

Federal Register
Vol. 65, No. 110
Wednesday, June 7, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Woodsy Owl Official Licensee Royalty Statement

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to reinstate an information collection. The information will enable the Forest Service to collect royalty fees for the commercial use of the Woodsy Owl symbol and to assess the effectiveness of licensing the Woodsy Owl symbol for commercial use. Information will be collected from individuals and from for-profit businesses and non-profit organizations.

DATES: Comments must be received in writing on or before August 7, 2000.

ADDRESSES: All comments should be addressed to the Office of Education Conservation, National Symbols Coordinator, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

Comments also may be submitted via facsimile to (202) 690–5658 or by email to: Education_Conservation/wo@fs.fed.us.

The public may inspect comments received at the Office of Education Conservation, Room 1SE, Forest Service, USDA, 201 14th Street SW., Washington, D.C. Visitors are urged to call ahead to (202) 205–5681 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Roberta Hilbruner, Conservation Education, at (202) 205–5681.

SUPPLEMENTARY INFORMATION:

Background

The Woodsy Owl-Smoky Bear Act of 1974 established the Woodsy Owl symbol and slogan, authorized the Forest Service to manage the use of the slogan and symbol, authorized the licensing of the symbol for commercial use, and provided for continued protection of the symbol by stating that Woodsy Owl may only be used by permission of the Forest Service. Part 272 of Title 36 of the Code of Federal Regulations authorizes the Chief of the Forest Service to approve commercial use of the Woodsy Owl symbol and to collect of royalty fees for such use. Woodsy Owl may be replicated as a plush toy and the Woodsy Owl symbol or logo may be replicated on items such as tee shirts, mugs, pins, figurines, ornaments, storybooks, stickers, and toys.

The message to the public inherent with the Woodsy Owl symbol is about caring for the environment (Thus the slogans "Give a Hoot, Don't Pollute" and "Lend a Hand, Care for the Land"). The goal of Woodsy Owl is to inspire children to observe the natural world around them, teach children ecological principles, and motivate children to join in specific actions to help care for the environment.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: Woodsy Owl Official Licensee Royalty Statement.

OMB Number: 0596–0087.

Expiration Date of Approval: October 31, 1999.

Type of Request: Reinstatement of an information collection previously approved by the Office of Management and Budget.

Abstract: The Forest Service National Symbols Coordinator will evaluate the data to determine if an individual, corporation, or organization, requesting a license to use the Woodsy Owl symbol commercially, should be granted a license or, if currently licensed, to determine the royalty fee the licensed entity must pay to the agency based on a percentage of the licensee's total sales and whether the licensed entity has met its stated objectives.

An individual or corporation may apply for a Woodsy Owl license by contacting Forest Service personnel by telephone, fax, e-mail, or by writing to the address listed in the address section of this notice. In the course of communicating with the potential applicant, the agency will learn how long the individual, corporation, or organization has been in business; the products the individual, corporation or organization sells or plans to sell; the geographical location from which the products will be sold; the projected sales volume; and how the individual, corporation, or organization plans to market the products.

If Forest Service personnel determine that granting a license to the individual, corporation, or organization for the purpose of using the Woodsy Owl symbol for commercial use would be in the best interest of the agency and would promote the Woodsy Owl messages, a license contract would be mailed to the individual, corporation or organization. The contract would have to be completed and returned to the Forest Service. Once the contract has been by signed by an authorized Forest Service employee and by the individual or the corporate or organizational representative, the newly licensed entity will have to submit to the Forest Service the agreed upon advanced guaranteed royalty payment. The individual, corporation, or organization also will submit a quarterly report to the agency, using the Woodsy Owl Licensee Royalty Statement Form, along with any royalty fees garnered from sales that have exceeded the advanced guaranteed royalty payment.

When making the quarterly reports, individuals, corporations, or organizations will be asked to provide information that includes the following: a list of each item that will be sold with the Woodsy Owl symbol; the projected sales of each item; the price at which each item will be sold; the total sales amount subject to the agency royalty fee; the royalty fee due based on sales quantity and price; a description and itemization of any deductions, such as fees waived or previously paid as part of the advance royalty payment which is their sales quantity guarantee; the new total royalty fee the business or organization must pay after deductions; the running total amount of royalties accrued in that fiscal year; and the typed name and signature of the business or organizational employee certifying the truth of the report.

Data gathered in this information collection are not available from other sources.

Estimate of Annual Burden: 30 minutes.

Type of Respondents: For-profit businesses and non-profit organizations currently holding a Woodsy Owl license or applying for such license.

Estimated Annual Number of Respondents: 10.

Estimated Annual Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 20 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 1, 2000.

Robin L. Thompson,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 00–14218 Filed 6–6–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Upper Deckers Creek Watershed, Preston and Monongalia Counties, West Virginia

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice than an environmental impact statement is not being prepared for the Upper Deckers Creek Watershed Project, Preston and Monongalia Counties, West Virginia.

FOR FURTHER INFORMATION CONTACT: William J. Hartman, State Conservationist, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone 304–284–7545.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, William J. Hartman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is water quality improvement through acid mine drainage remediation. Planned actions include mine spoil regrading, highwall elimination, revegetation, limestone channels, passive treatment systems, grouting, and addition of limestone fines to streams.

The Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting William J. Hartman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

William J. Hartman,

State Conservationist.

[FR Doc. 00–14266 Filed 6–6–00; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2001 Residential Finance Survey.

Form Number(s): D–2900, D–2900(L), D–2901, D–2901(L), D-2901(FE)(L), D–2902, D–2902(L), D–2904, D–2905(L).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 77,500 hours.

Number of Respondents: 330,000.

Avg Hours Per Response: 14 minutes.

Needs and Uses: The Residential Finance Survey (RFS) provides data about the financing of nonfarm, privately-owned residential properties in the United States. RFS data, in conjunction with statistics from other sources, are used in assessing public policies affecting real estate, mortgage banking, economic policy, social welfare, and related areas of concern, and in developing and evaluating proposals about them. The data are particularly useful to economists and financial analysts who guide and counsel home and apartment builders, financial institutions and institutional investors, producers of building materials, real estate companies, community planners, and government planners at the Federal, state, and local levels.

The RFS has been conducted as part of the decennial census since 1950. A continuation of the RFS is necessary because the dramatic changes in the real estate finance market which have taken place in the 1990's give no indication of abating in the next decade. The changes in the next 5 to 10 years may be even more dramatic than those of the past decade. It is essential for policy planning and formulation within the government and for accurate market analysis in the private sector that timely, accurate, and comprehensive benchmark data be available on the financing of residential properties.

Affected Public: Individuals or households, Businesses or other for-profit organizations, Federal Government.

Frequency: One-time only.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Section 141.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 1, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–14221 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Manufacturers' Shipments, Inventories, and Orders Survey.

Form Number(s): M–3(SD), M3–SD(I), M3–1–L1.

Agency Approval Number: 0607–0008.

Type of Request: Revision of a currently approved collection.

Burden: 24,000 hours.

Number of Respondents: 6,000 monthly.

Avg. Hours Per Response: 20 minutes.

Needs and Uses: The Census Bureau conducts the M3 survey, one of the principal Federal economic indicators, to collect monthly manufacturing data from a sample of firms in the manufacturing sector of the economy. Data requested are shipments, new orders, unfilled orders, total inventory, materials and supplies, work-in-process and finished goods. The data are used to analyze short- and long-term trends in the manufacturing sector and as related to other sectors of the economy. The shipments and inventory data are essential inputs into the gross domestic product accounts, while the orders data are direct inputs into the leading economic indicator series. The survey also provides valuable and timely data for economic planning and analysis to business firms, trade associations, research and consulting agencies, and academia on the domestic manufacturing sector.

In this request, the total annual burden hours are revised upward to reflect an increase in the survey panel. The conversion of the survey from the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS) will result in new and reconfigured industry categories, which will require a larger survey panel to ensure sufficient coverage in all industries.

Affected Public: Businesses, large and small, or other for profit organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Sections 131 and 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 1, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–14222 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and rescission in part.

SUMMARY: In response to a request from the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain circular welded steel pipes and tubes from Taiwan. The review covers one manufacturer/exporter of the subject merchandise to the United States, and the period May 1, 1998 through April 30, 1999. We find that Yieh Hsing Enterprise Co. Ltd., (Yieh Hsing) made sales of subject merchandise below normal value; if these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and the normal value. Regarding six other companies, we rescind the review.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) A statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5222 or (202) 482–0649, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1999, the petitioners, Allied Tube & Conduit Corp., Wheatland Tube Company, and the Sawhill Tubular Division of Armco Inc., requested reviews of seven Taiwanese companies: An Mau Steel Co. (now renamed Sheng Yu Steel Co. Ltd., and hereafter referred to as Sheng Yu), Far East Machinery Co., Ltd. (FEMCO), Kao Hsing Chang Iron & Steel Corporation (KHC), Tai Feng Industries Ltd. (TFI), Yieh Hsing, Yu Din Steel Co. Ltd. (Yu Din), and Yieh Loong Co., Ltd. (Yieh Loong).

We initiated the reviews on June 30, 1999 (64 FR 35124). In response to our requests for information, FEMCO, ShengYu, and Yieh Loong reported that they made no U.S. sales or shipments of subject merchandise during the period of review (POR). On inquiry by the Department, Customs did not report any shipments by these companies during the POR. On September 2, 1999, petitioners withdrew their request as to Yu Din, KHC and Yieh Loong. Concerning TFI, that company ceased operations in November 1983. *See* Circular Welded Carbon Steel Pipes and Tubes from Taiwan; Final Results of Administrative Review of Antidumping Duty Order, 51 FR 43946 (December 5, 1986). For these reasons we rescind the review with respect to FEMCO, KHC, Sheng Yu, TFI, Yieh Loong and Yu Din, in accordance with 19 CFR 351.213(d).

In the most recently completed review of Yieh Hsing, the Department disregarded below-cost home market sales which failed the cost test. *See Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review*, 64 FR 69488 (December 13, 1999). Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, the Department has a reasonable basis to believe or suspect that Yieh Hsing made sales in the home market below the cost of production in the current review period. Accordingly, in accordance with section 773(b) of the Act, on January 24, 2000, the Department initiated an investigation of sales below cost.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On January 28, 2000, the Department extended the time limit for the preliminary results to May 30, 2000. *See Extension of Time Limits for Antidumping Duty Administrative Review*, 65 FR 6359 (February 9, 2000).

Period of Review

The review covers the period May 1, 1998 through April 30, 1999. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch and 0.375 inch or more but not over 4½ inches in outside diameter. These products are commonly referred to in the industry as "standard pipe" and are produced to various American Society for Testing Materials specifications, most notably A–53, A–120, or A–135. Standard pipe is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Fair Value Comparisons

To determine whether sales of subject merchandise in the United States were made at less than fair value, we compared export price (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

The Department treated Yieh Hsing's sales to the United States as EP sales, as defined in section 772(a) of the Act, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and the constructed export price methodology was not warranted by the facts of the record. We based EP on the delivered, packed prices to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, foreign brokerage charges, and ocean freight in accordance with section 772(c) of the Act.

Normal Value

In order to determine whether there were sufficient sales of certain circular welded carbon steel pipes and tubes in the home market (HM) to serve as a viable basis for calculating NV, we compared the volume of home market sales of foreign like product to the volume of subject merchandise sold in the United States, in accordance with section 773(a)(1)(C) of the Act. Yieh Hsing's aggregate volume of HM sales of the foreign like product were greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on HM sales. In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also made deductions from NV for HM inland freight, early payment discounts, and other discounts. We made an adjustment to NV for differences in credit expenses, pursuant to section 773(a)(6)(C) of the Act. We made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act.

Sales Below Cost Investigation

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. We found that, for certain models, 20 percent or more of the home market sales were sold at below-cost prices. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made (1) In substantial quantities within an extended period of time and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted-average per unit COP for the POR). We used the remaining above-cost sales as the basis of determining NV if such sales existed, in accordance with section 773(b)(1).

Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated constructed value (CV) based on the sum of the respondent's cost of materials, fabrication, and general expenses. In accordance with section 773(e)(2)(A) of the Act, we based selling, general, and administrative (S&A) expenses and profit on the amounts incurred and realized by Yieh Hsing in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. For selling expenses, we used the weighted-average HM selling expenses. Pursuant to section 773(e)(3) of the Act, we included U.S. packing in CV.

Product Comparisons

Where there were no contemporaneous sales of identical or similar foreign like product in the comparison market to compare to U.S.

sales, we compared U.S. sales to most similar home market merchandise or to CV.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT). *See, e.g.*, Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value, 62 FR 61731, 61732–33 (November 19, 1998). Yieh Hsing provided information with respect to its selling activities in both markets. Yieh Hsing offers each of its three categories of home market customers the same degree of sales support, including general technical advice and sale-specific warranty service. We therefore determine that Yieh Hsing sells to one level of trade in the home market. For its U.S. customers, Yieh Hsing provided freight and delivery arrangements, but no other services; otherwise, the levels of customer assistance and sales support which Yieh Hsing provided its home market and U.S. customers were not significantly different. For these reasons we determine that Yieh Hsing's sales in the two markets were at the same LOT, and no LOT adjustment is warranted.

Sales Comparisons

To determine whether sales of certain circular welded carbon steel pipes and tubes in the United States were made at less than NV, we compared EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777(A)(d)(d) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Where there were no above-cost sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to most similar home market merchandise, based on the information provided by Yieh Hsing in response to our antidumping questionnaire.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period May 1, 1998 through April 31, 1999:

Manufactuer/ Exporter	Period	Margin (percent)
Yieh Hsing	5/1/98–4/30/99	1.63

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–009 of the main Department of Commerce building. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b), we have calculated an importer/customer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the quantity of those same sales. This Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of certain circular welded carbon steel pipes and tubes from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for Yieh Hsing will be the rate established in the final results of this administrative review, except that no cash deposit will be required if the rate is *de minimis*, i.e., less than 0.50 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 9.7%, the "all others" rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.401(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14351 Filed 6–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–836]

Polyvinyl Alcohol from Japan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by Kuraray Co., Ltd., a producer and exporter of polyvinyl alcohol from Japan, the Department of Commerce is conducting an administrative review of the antidumping duty order on polyvinyl alcohol from Japan. The period of review is May 1, 1998, through April 30, 1999.

We preliminarily find that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara Wojcik-Betancourt, at (202) 482–0629, or Brian Smith, at (202) 482–1766, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department of Commerce's ("the Department") final regulations at 19 C.F.R. Part 351 (April 1999).

Case History

On May 14, 1996, the Department of Commerce ("the Department") published in the **Federal Register** an antidumping duty order on polyvinyl alcohol ("PVA") from Japan (61 FR 24286). On May 19, 1999, the Department published a notice providing an opportunity to request an administrative review of this order for the period May 1, 1998, through April 30, 1999 (64 FR 27235). On May 28, 1999, we received a request for an administrative review from Kuraray Co., Ltd. ("Kuraray"). On June 30, 1999, we published a notice of initiation of this review for Kuraray (64 FR 35124).

On July 9, 1999, we issued an antidumping questionnaire to Kuraray. The Department received a response from the company in September 1999.

On October 4, 1999, the petitioner submitted a timely allegation, pursuant to section 773(b) of the Act, that Kuraray had made sales in the home market at less than the cost of production ("COP"). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Kuraray had sold PVA in the home market at prices at less than the COP. Accordingly, we initiated a COP investigation with respect to Kuraray, pursuant to section 773(b) of the Act (*see* Memorandum from Team to Louis Apple, Office Director, dated November 10, 1999).

We issued supplemental questionnaires to Kuraray in November 1999 and January 2000. Responses to these questionnaires were received in December 1999 and February 2000, respectively.

On January 21, 2000, the Department published a notice postponing the preliminary results of this review until May 30, 2000 (65 FR 3418). The Department conducted verification of the company's response from February 21 through March 17, 2000, pursuant to section 782(i)(2) of the Act. In April 2000, the Department issued its verification report.

Scope of Review

The product covered by this review is PVA. PVA is a dry, white to cream-colored, water-soluble synthetic polymer. This product consists of polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Review

The period of review ("POR") is May 1, 1998, through April 30, 1999.

Verification

As provided in section 782(i)(2) of the Act, we verified information provided by Kuraray. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports placed in the case file.

Fair Value Comparisons

To determine whether the respondent's sales of the subject merchandise to the United States were made at below normal value, we compared, where appropriate, the export price and constructed export price ("CEP") to the normal value, as described below. In accordance with section 777A(d)(2) of the Act, we compared, where appropriate, the export prices and CEPs of individual transactions to the monthly weighted-average price of sales of the foreign like product made in the ordinary course of trade (*see* section 773(a)(1)(B)(i) of the Act).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Kuraray covered by the description in the "Scope of the Review" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise made in the home market in the ordinary course of trade, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order: viscosity, hydrolysis, particle size, tackifier, defoamer, ash, color, volatiles, and visual impurities.

Export Price and Constructed Export Price

During the POR, Kuraray sold subject merchandise to the U.S. market (1) directly through its wholly-owned U.S. affiliate (Kuraray America Inc.) (hereafter referred to as Kuraray America); (2) through Kuraray America via its wholly-owned home market affiliate (Kuraray Trading Co., Ltd.) (hereafter referred to as Kuraray Trading); or (3) directly through unaffiliated Japanese trading companies.

With respect to one Japanese trading company through which Kuraray sells the subject merchandise, the petitioner requested that the Department examine whether Kuraray and that company are affiliates. Based on the verified data on the record, we preliminarily find that Kuraray and that Japanese trading company are not affiliates under the criteria outlined in section 771(33) of the Act and 19 C.F.R. 351.102(b) (*see* Memorandum Regarding Affiliation from Team to Louis Apple, Office Director, dated May 30, 2000). We are also treating the sales made by Kuraray to the Japanese trading company during the POR as export price transactions, in accordance with section 772(a) of the Act.

However, we carefully examined the totality of circumstances surrounding the U.S. sales process for those U.S. sales which Kuraray made through its

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U.S. affiliate. Based on the evidence on the record, we found that Kuraray either sells the subject merchandise directly to its U.S. affiliate, or through Kuraray Trading, which in turn sells the subject merchandise to the U.S. affiliate. For U.S. sales made only through its U.S. affiliate, the U.S. customer contacts Kuraray's U.S. affiliate, who then places the order with Kuraray. Kuraray arranges for delivery of the goods from Japan to the unaffiliated U.S. customer and issues its invoice to its U.S. affiliate for payment of the goods. Even though Kuraray's U.S. affiliate does not have a warehouse, it takes title to the goods once it pays Kuraray for the goods. The U.S. affiliate then issues its sales invoice to the unaffiliated U.S. customer and collects payment for the goods (*see* verification exhibits K–49 and K–50, and exhibits KA–15 through KA–17 of the April 19, 2000, Verification Report).

For U.S. sales made through Kuraray Trading and the U.S. affiliate, the U.S. affiliate still transmits the U.S. customer's order to Kuraray. However, Kuraray sells the goods to Kuraray Trading in Japan. Kuraray Trading then issues the U.S. affiliate its sales invoice. Kuraray Trading arranges for delivery of the goods from Japan to the unaffiliated U.S. customer, and the U.S. affiliate takes title to the goods once it pays Kuraray Trading for the goods. The U.S. affiliate also issues its sales invoice to the unaffiliated U.S. customer and collects payment for the goods (*see* verification exhibits KT–8 through KT–10, and KA–10 through KA–12 of the April 19, 2000, Verification Report).

Given the facts on the record, the Department preliminarily determines that, because the U.S. affiliate purchased the merchandise from Kuraray and/or Kuraray Trading and sold the merchandise to the unaffiliated purchaser, these sales were made in the United States and, thus, should be treated as CEP transactions (*see Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, Final Results of Administrative Review*, 65 FR 13359 (March 13, 2000) and accompanying Decision Memorandum at Comment 12; and *Porcelain-on-Steel Cookware from Mexico, Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Decision Memorandum at Comment 2) *(Porcelain-on-Steel Cookware from Mexico)*.

For Kuraray's U.S. sales not made through its U.S. affiliate (*i.e.*, made through an unaffiliated trading company in Japan), we calculated export price based on the reported packed FOB price between Kuraray and the unaffiliated trading company in Japan because Kuraray had knowledge that the sale was destined for the U.S. market (*see* verification exhibit K–58 of the April 19, 2000, Verification Report). We made deductions, as appropriate, from the starting price for foreign inland freight from the plant to the port of exportation, foreign warehousing expenses, foreign inland insurance, and foreign brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

For Kuraray's U.S. sales made through its U.S. affiliate, we based CEP on packed CIF or delivered prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight from the plant to the port of exportation, foreign inland insurance, foreign brokerage and handling expenses, international freight, palletization charges, foreign warehousing expenses, U.S. brokerage and handling expenses, U.S. Customs duties (which include harbor maintenance and merchandise processing fees), and U.S. inland freight expenses (freight from port to the customer), in accordance with section 772(c)(2)(A) of the Act.

We made the following adjustments to Kuraray's U.S. expense data based on our verification findings: (1) we corrected the reported amounts for foreign warehousing expenses, credit expenses, U.S. indirect selling expenses, U.S. indirect selling expenses incurred in the home market, and packing expenses; and (2) we corrected invoice-specific information with respect to gross unit price, entered value, foreign brokerage and handling expenses, international freight, and U.S. Customs duties (*see* pages 14–21 and 29–33 of the April 19, 2000, Verification Report for further discussion).

In accordance with section 772(d)(1) of the Act, we deducted from CEP direct and indirect selling expenses that were associated with Kuraray's economic activities occurring in the United States and associated with the sale to the U.S. customer. We also deducted from CEP an amount for profit, in accordance with section 772(d)(3) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with 19 C.F.R. 351.404(b). We determined that the quantity of foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States because Kuraray made sales in its home market which were greater than five percent of its sales in the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on home market sales in Japan.

Based on our verification findings, we made the following adjustments to Kuraray's home market expense data: (1) we denied an adjustment for the rebate claimed by Kuraray Trading because the company was unable to demonstrate that the claimed amounts were actually paid to, or deducted from, the amounts owed by certain customers; (2) we corrected the reported amounts for one type of rebate offered by Kuraray, inland freight expenses from the plant to the warehouse, warehousing expenses, indirect selling expenses incurred by Kuraray Trading, and packing expenses; and (3) we corrected invoice-specific information with respect to payment dates (*see* pages 22–33 of the April 19, 2000, Verification Report for further discussion).

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determined normal value based on sales in the comparison market at the same level of trade ("LOT") as the export price or CEP transaction. The normal value LOT is that of the starting-price sales in the comparison market from which we derive selling, general and administrative ("SG&A") expenses and profit. For export price, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed export sale from the exporter to the affiliated importer.

To determine whether normal value sales are at a different LOT than export price or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the normal value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We note that the U.S. Court of International Trade ("CIT") has held that the Department's practice of determining LOT for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221, 1241–42 (CIT 1998) (*Borden*). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgement in *Borden* on the LOT issue. *See Borden, Inc.* v. *United States*, Court No. 96–08–01970, Slip Op. 99–50 (CIT June 4, 1999). The government has filed an appeal of *Borden* which is pending before the U.S. Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a LOT analysis, as articulated by the Department's regulations at section 351.412.

In this case, Kuraray reported two customer categories (*i.e.*, distributors and end users) and three channels of distribution (sales through unaffiliated distributors to end users, direct sales to end users, and sales through its affiliate to end users) for its home market sales. In its response, Kuraray claims that its sales to unaffiliated home market customers (*i.e.*, end users and distributors) are at the same LOT as its sales made through affiliated customers because Kuraray provides the same selling services to its unaffiliated and affiliated customers. Specifically, Kuraray identified the following selling services to both types of customer: (1) salespeople visits; (2) inventory maintenance; (3) after-sale service and technical advice; (4) advertising; (5) freight and delivery; and (6) handling of rejected merchandise. Based on our review of the record evidence, we agree with the respondent's claim that all home market sales are at the same LOT (*see* exhibit A.3.k. of the December 1, 1999, submission).

Kuraray had both export price and CEP sales in the U.S. market. Kuraray reported that its export price sales were made through one channel of distribution (*i.e.*, sales through unaffiliated Japanese trading companies to U.S. end users). Kuraray also reported that its CEP sales were also made through two channels of distribution (*i.e.*, sales through its U.S. affiliate *via* its home market affiliate and sales through its U.S. affiliate only), which we have treated as one LOT because there is no apparent difference in the selling functions performed by Kuraray. In analyzing Kuraray's selling activities for its export price sales, we found that the export price sales involved basically the same selling functions associated with the home market LOT described above (*i.e.*, inventory maintenance, freight and delivery, and handling of rejected merchandise). Therefore, based upon this information, we preliminarily determine that the LOT for all export price sales is the same as that in the home market.

For sales which we re-categorized as CEP sales, after making the appropriate deductions under section 772(d) of the Act, we found that there are no remaining expenses associated with selling activities performed by Kuraray that are reflected in the CEP price. In contrast, the normal value prices include selling expenses attributable to selling activities performed by Kuraray for the home market, such as sales support and freight and delivery functions (*see* exhibit A.3.k. of the December 1, 1999, submission). Accordingly, we have concluded that CEP is at a different LOT from the normal value LOT.

We then examined whether a LOT adjustment or CEP offset may be appropriate. In this case, Kuraray only sold at one LOT in the home market; therefore, there is no information available to determine a pattern of consistent price differences between the sales on which normal value is based and the comparison market sales at the LOT of the export transaction, in accordance with the Department's normal methodology as described above (*see Porcelain-on-Steel Cookware from Mexico* and accompanying Decision Memorandum at Comment 6). Further, we do not have information which would allow us to examine pricing patterns based on respondent's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the home market is at a more advanced stage of distribution than the LOT of the CEP, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

Cost of Production Analysis ("COP")

Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales made by Kuraray in the home market.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by grade, based on the sum of the cost of materials and fabrication, G&A expenses, and packing costs. We relied on the submitted COPs except that we have adjusted Kuraray's reported per-unit costs to account for the overstatement of acetic acid amounts. We also revised Kuraray's G&A and interest expenses based on our verification findings (*see* Preliminary Results Calculation Memorandum from team to the File, dated May 30, 2000).

B. Test of Home Market Prices

We compared the adjusted weighted-average COP to the comparison-market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a grade-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, discounts, rebates and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and because the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Based on this test, we excluded from our analysis certain comparison-market sales of PVA products that were made at below-COP prices within the POR and the contemporaneous months of the POR (see Preliminary Results Calculation Memorandum from team to the File, dated May 30, 2000).

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Price-to-Price Comparisons

We calculated normal value based on both packed, FOB or delivered prices Kuraray charged to its unaffiliated purchasers in Japan and packed, FOB or delivered prices Kuraray Trading charged to its unaffiliated purchasers in Japan. We made adjustments to the starting price for discounts and rebates, where appropriate. We also made deductions, where appropriate, for inland freight (*i.e.*, plant to warehouse and warehouse to customer), inland insurance and warehousing expenses, pursuant to section 773(a)(6)(B) of the Act.

For all comparisons, we made a circumstance-of-sale adjustment, where appropriate, for differences in credit expenses, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 C.F.R. 351.410(c).

For comparisons to CEP sales, we also deducted from normal value the lesser of comparison-market indirect selling expenses and indirect selling expenses deducted from CEP (the CEP offset), pursuant to section 773(a)(7)(B) of the Act and 19 C.F.R. 351.412(f).

For comparisons to both export price and CEP sales, we made adjustments to normal value for differences in packing expenses, in accordance with section 773(a)(6) of the Act. We also made adjustments to normal value, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 C.F.R. 351.411.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period May 1, 1998, through April 30, 1999:

Margin Manufacturer/exporter	(percent)
Kuraray Co., Ltd.	2.07

Pursuant to 19 C.F.R. 351.224(b), the Department will conduct disclosure within five days after the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter.

Issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. The request should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Cash Deposit and Assessment Requirements

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. For Kuraray, for duty assessment purposes, we intend to calculate importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total entered value of subject merchandise of the same sales for each importer. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent).

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty review for all shipments of PVA from Japan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) the cash deposit rate for Kuraray will be rate established in the final results; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be 77.49 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14352 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Purdue University; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–009. Applicant: Purdue University, West Lafayette, IN 47907–1392. Instrument: Electron Microscope, Model CM300. Manufacturer: Philips, The Netherlands. Intended Use: See notice at 65 FR 25708. Order Date: February 23, 1999.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–14353 Filed 6–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 000515143–0143–01]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This Notice announces availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives and scientists (also referred to as "interns") from the New Independent States (NIS). The Department of Commerce, International Trade Administration (ITA) established the SABIT program in September 1990 to assist the former Soviet Union's transition to a market economy. Since that time, SABIT has been matching business executives and scientists from the NIS with U.S. firms which provide them with three to six months of hands-on training in a U.S. market economy.

Under the SABIT program, qualified U.S. firms will receive funds through a cooperative agreement with ITA to help defray the cost of hosting interns. The training must take place in the United States. ITA will interview and recommend eligible interns to participating companies. Interns may be from any of the following Independent States: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. However, restrictions may apply based on congressional sanctions. The U.S. firms will be expected to provide the interns with a hands-on, non-academic, executive training program designed to maximize their exposure to management or commercially-oriented scientific operations. At the end of the training program, interns must return to the NIS. If there is any evidence of a conflict of interest between an intern and the company, the intern is disqualified.

DATES: The closing date for applications is July 31, 2000. An original and two copies of the application (Standard Form 424 (Rev. 4–92) and supplemental material) are to be sent to the address designated in the Application Kit and postmarked no later than the closing date. Applications will be considered on a "rolling" basis as they are received, subject to the availability of funds. If available funds are depleted prior to the closing date, a notice to that effect will be published in the **Federal Register**. Processing of complete applications takes approximately three to five months. All awards are expected to be made by September 30, 2000.

ADDRESSES: Request for Applications: Competitive Application kits will be available from ITA starting on the day this notice is published. To obtain a copy of the Application Kit please contact SABIT by: (1) Email at *SABITApply@ita.doc.gov*, providing your name, company name and address; (2) Telephone (202) 482–0073; (3) Facsimile (202) 482–2443; (4) Send a written request with two self-addressed mailing labels to Application Request, The SABIT Program, HCHB Room 3319, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The telephone numbers are not toll free numbers. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requesters.

FOR FURTHER INFORMATION CONTACT: Liesel C. Duhon, Director, SABIT Program, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: SABIT exposes NIS business managers and scientists to a completely new way of thinking in which demand, consumer satisfaction, and profits drive production. Senior-level interns visiting the U.S. for internship programs with public or private sector companies will be exposed to an environment which will provide them with practical knowledge for transforming their countries' enterprises and economies to the free market. The program provides first-hand, eye-opening experience to managers and scientists which cannot be duplicated by American managers traveling to their territories.

Managers: SABIT assists economic restructuring in the NIS by providing top-level business managers with practical training in American methods of innovation and management in such areas as strategic planning, financing, production, distribution, marketing, accounting, wholesaling, and labor relations. This first-hand experience in the U.S. economy enables interns to become leaders in establishing and operating a market economy in the NIS, and creates a unique opportunity for U.S. firms to familiarize key executives from the NIS with their products and services. Sponsoring U.S. firms will benefit by establishing relationships with key managers in similar industries who are uniquely positioned to assist their U.S. sponsors do business in the Independent States.

Scientists: SABIT provides opportunities for gifted scientists to apply their skills to peaceful research and development in the civilian sector, in areas such as defense conversion, medical research, and the environment, and exposes them to the role of scientific research in a market economy where applicability of research relates to business success. Sponsoring firms in the U.S. scientific community also benefit from exchanging information and ideas, and different approaches to new technologies.

The Special American Business Internship Training program's Catalog of Federal Domestic Assistance (CFA) number is 11.114.

Funding Availability: Pursuant to section 632(a) of the Foreign Assistance Act of 1961, as amended (the "Act") funding for the program will be provided by the United States Agency for International Development (A.I.D). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act and other applicable Grant rules. The estimated amount of financial assistance available for the program is $810,000. At least $400,000 of that amount is reserved for U.S. organizations which will host interns from the Russian Far East. Additional funding may become available at a future date.

Funding Instrument and Project Duration: Federal assistance will be awarded pursuant to a cooperative agreement between ITA and the recipient firm. All internships are three to six months; however, ITA reserves the right to allow an intern to stay for a shorter period of time (no less than one month) if the U.S. company agrees and the intern demonstrates a need for a shorter internship based on his or her management responsibilities. ITA will reimburse companies for the round trip international travel (coach class tickets) of each intern from the intern's home

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city in the NIS to the U.S. internship site, upon submission to ITA of the paid travel invoice, payment receipt, or other evidence of payment and the form SF–270, "Request for Advance or Reimbursement." Travel under the program is subject to the Fly America Act. Recipient firms provide directly to interns a stipend of $30 a day; ITA will reimburse recipient firms for this stipend, up to a maximum of six months, upon submission by the company of an end-of-internship report and Form SF–270. Recipient firms will provide housing for the interns and ITA will reimburse recipient firms for up to $500 per month for housing costs (not including utilities or telephone service charges), upon submission by the company of the end-of-internship report and Form SF–270. In general, each award will have a cap of $11,400 per intern for total cost of airline travel, stipend and housing costs. ITA reserves the right to allow an award to exceed this cap in cases of unusually high costs, specifically airfare from remote regions of the NIS such as Central Asia and the Caucasus. However, the total reimbursement cannot exceed the award amount. There are no specific matching requirements for the awards. Host firms, however, are expected to bear the costs beyond those covered by the award, including: visa fees, insurance, any food and incidentals costs beyond the $30 per day stipend, training manuals, any training-related travel within the U.S., and provision of the hands-on training for the interns.

U.S. firms wishing to utilize SABIT in order to be matched with an intern without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern. However, prior to acceptance as a SABIT intern, work plans and candidates must be approved by the SABIT Program. Furthermore, program training will be monitored by SABIT staff and evaluated upon completion of training.

Eligibility: Eligible applicants for the SABIT program will include all for profit or non-profit U.S. corporations, associations, organizations or other public or private entities located in the United States. Agencies or divisions of the federal government are not eligible. Although, state and local governments are eligible.

Project Funding Priorities: Applicant proposal must provide an explanation, including description and extent of involvement, in priority business sector(s). While Applicants involved in any industry sector may apply to the program, priority consideration is given to those operating in the following sectors: (a). Agribusiness (including food processing and distribution, and agricultural equipment), (b). Defense conversion, (c). Energy, (d). Environment (including environmental clean-up), (e). Financial services (including banking and accounting), (f). Housing, construction and infrastructure, (g). Medical equipment, supplies, pharmaceuticals, and health care management, (h). Product standards and quality control, (i). Telecommunications, (j). Transportation and (k) Biotechnology.

Evaluation Criteria: Consideration for financial assistance will be given to those SABIT proposals which:

(1). Demonstrate a commitment to the intent and goals of the program to provide practical, on-the-job, non-academic, non-classroom, training; in the case of manager interns, an appropriate management training experience, or, in the case of scientist interns, a practical, commercially-oriented scientific training experience. Include a brief objectives section indicating why the Applicant wishes to provide an internship to a manager(s) or scientist(s) from the NIS, and how the proposed internship would further the purpose of the SABIT program as described above. Also, the Applicant should note how the internship to be provided will respond to the priority needs of senior business managers and scientists in the NIS, as determined by ITA.

(2). Present a realistic work plan describing in detail the training program to be provided to the SABIT intern(s). Work plans must include the proposed internship training activities. The components of the training activities must be described in as much detail as possible, preferably on a week-by-week basis. The description of the training activities should include an account of what the intern's(s') duties and responsibilities will be during the training.

(3). The application should also have a section noting: (a). Whether Applicant is applying to host managers or scientists, or both (and the number of each); (b). The duration of the internship; (c). The location(s) of the internship; (d). The name, address, and telephone number of the designated internship coordinator; (e). Name(s) of division(s) in which the intern(s) will be placed; (f). The individual(s) in the U.S. company under whose supervision the intern will train; (g). The anticipated housing arrangements to be provided for the intern(s). Note that housing arrangements should be suitable for mid- and senior-level professionals, and that each intern must be provided with a private room; (h). A statement that the host firm is solidly committed to interns' return to their own countries upon completion of the internships.

(4). Provide a general description of the profile of the intern(s) the Applicant would like to host, including: educational background; occupational/professional background (including number of years and areas of experience); size and nature of organization at which the intern(s) is/are presently employed; preference for the region of the NIS where the intern(s) is/are employed; and whether Applicant is open to sponsoring interns from a variety of NIS countries.

Evaluation criteria 1–4 will be weighted equally.

ITA does not guarantee that it will match Applicant with the profile provided to SABIT.

Selection Procedures: Each application will receive an independent, objective review by one or more three or four-member independent review panels qualified to evaluate applications submitted under the program. Applications will be evaluated on a competitive, "rolling" basis as they are received in accordance with the selection evaluation set forth above. Awards will be made to those applications which successfully meet the selection criteria. If funds are not available for all those applications which successfully meet the criteria, awards will be made to the first applications received which successfully do so. ITA reserves the right to reject any application; to limit the number of interns per applicant; and to waive informalities and minor irregularities in applications received. The final selecting official reserves the right to make awards based on U.S. geographic and organization size diversity among applicants, as well as to consider priority business sectors (listed in Project Funding Priorities, above) when making awards. Recipients may be eligible, pursuant to approval of an amendment of an active award, to host additional interns under the program. ITA reserves the right to evaluate applicants based on past performance. The Director of the SABIT Program is the final selecting official for each award.

Additional Information: Applicants must submit: (1). Evidence of adequate financial resources of Applicant organization to cover the costs involved in providing an internship(s). As evidence of such resources, Applicant should submit financial statements audited by an outside organization or an annual report including such statements. If these are not available, a letter should be provided from the Applicant's bank or outside accountant attesting to the financial capability of the firm to undertake the scope of work involved in training an intern under the SABIT program. (2). Evidence of a satisfactory record of performance in grants, contracts and/or cooperative agreements with the Federal Government, if applicable. (Applicants who are or have been deficient in current or recent performance in their grants, contracts, and/or cooperative agreements with the Federal Government shall be presumed to be unable to meet this requirement). (3). A statement that the Applicant will provide medical insurance coverage for interns during their internships. Recipients will be required to submit proof of the interns' medical insurance coverage to the Federal Program Officer before the interns' arrivals. The insurance coverage must include an accident and comprehensive medical insurance program as well as coverage for accidental death, emergency medical evacuation, and repatriation.

Other Requirements: All applicants are advised of the following:

1. No award of Federal funds shall be made to an Applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce (DOC) are made.

2. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

3. Recipients and subrecipients are subject to all Federal laws and Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.

4. Participating companies will be required to comply with all relevant U.S. tax and export regulations. Export controls may relate not only to licensing of products for export, but also to technical data transfer. The U.S. Department of Commerce's Bureau of Export Administration (BXA) reviews applications in question to determine whether export licenses are required. SABIT will not award a grant until the export license issue has been satisfied.

5. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

6. If applicants incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

7. Past performance: Unsatisfactory performance by an applicant under prior Federal awards may result in an application not being considered for funding.

8. No obligation for future funding: If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

9. Primary Applicant Certifications: All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(a) *Nonprocurement Debarment and Suspension:* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

(b) *Drug Free Workplace:* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

(c) *Anti-Lobbying:* Funds provided under the SABIT program may not be used for lobbying activities. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

(d) *Anti-Lobbying Disclosures:* Any applicant that has paid or will pay for lobbying in connection with this award using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

10. All primary applicants must also submit a completed Standard Form 424, "Application for Federal Assistance" and a Standard Form 424B, "Assurances—Non-Construction Programs." Form CD–511 and Standard Forms 424 and 424B are included in the Application Kit supplied by the SABIT office.

11. *Lower Tier Certifications:* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

12. *Indirect Costs:* Indirect costs are not allowed under the SABIT program.

13. Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the greatest extent practicable.

14. The following statutes apply to this program: Section 907 of the FREEDOM Support Act, Public Law 102–511, 22 U.S.C. 5812 note (Restriction on Assistance to the Government of Azerbaijan); 7 U.S.C. § 5201 *et seq.* (Agricultural Competitiveness and Trade—the Bumpers Amendment); The Foreign Assistance Act of 1961, as amended, including Chapter 11 of Part I, section 498A (b) Public Law 102–511, 22 U.S.C. 2295a(b) (regarding ineligibility for assistance); 22 U.S.C. 2420(a), Section 660(a) of The Foreign Assistance Act of 1961, as amended (Police Training Prohibition); and provisions in the annual Foreign Operations, Export Financing, and Related Programs Appropriations Acts, concerning impact on jobs in the United States (see, e.g., 536 of Public Law 106–113).

15. *Audit Requirements:* The DOC Office of Inspector General has authority under the Inspector General Act of 1978, as amended, to conduct an audit of any DOC award at any time.

16. *Payments.* As required by the Debt Collections Improvement Act of 1996, all Federal payments to award recipients pursuant to this announcement will be made by electronic funds transfer.

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17. The collection of information is approved by the Office of Management and Budget, OMB Control Number 0625–0225. Public reporting for this collection of information is estimated to be three hours per response, including the time for reviewing instructions, and completing and reviewing the collection of information. All responses to this collection of information are voluntary, and will be protected from disclosure to the extent allowed under the Freedom of Information Act. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Clearance Officer, International Trade Administration, Department of Commerce, Room 4001, 14th and Constitution Ave., NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Special American Business Internship Training, International Trade Administration, at (202) 482–0073. This is not a toll-free number.

Dated: June 1, 2000.

Liesel C. Duhon,

Director, SABIT Program.

[FR Doc. 00–14271 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053100B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Standing and Special Stone Crab Scientific and Statistical Committees (SSC).

DATES: The SSC meeting is scheduled to begin at 8:00 a.m. on June 21, 2000 and will conclude by 3:00 p.m.

ADDRESSES: The meeting will be held at the Pier House, 1 Duval Street, Key West, FL 33040; telephone: 305–296–4600.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Standing and Special Stone Crab SSC will convene to review an amendment to the Stone Crab Fishery Management Plan (FMP). The Stone Crab amendment proposes to extend the trap certificate program for the commercial stone crab fishery adopted by the state of Florida into the Federal waters off west Florida. The Florida Fish and Wildlife Conservation Commission (FFWCC), after working with the stone crab industry and the Council over the past 4 years, has adopted by rule a trap certificate program that will gradually reduce the number of traps over a 30-year period. The Florida legislature has approved the portion of this program pertaining to licenses and fees. Based on this review, the SSC may make recommendations to the Council for consideration at their meeting in Key Largo, July 10–14, 2000.

At the conclusion of the Stone Crab SSC meeting, the Standing SSC will also review an amendment for a Generic Amendment Addressing the Establishment of Tortugas Marine Reserves, which proposes to establish the Tortugas South marine reserve that will encompass the Riley's Hump mutton snapper spawning aggregation site established by the Council in 1994. The total area of the proposed Tortugas South marine reserve is 60 square nautical miles. The amendment also proposes to create the Tortugas North marine reserve cooperatively with the Florida Keys National Marine Sanctuary (FKNMS) program, the state of Florida, and the National Park system, which will encompass an area of 120 square nautical miles. The portion proposed to be established by the Council is 13 square nautical miles. The Council proposes that marine reserves be established for a period of at least 10 years, during which the ecological benefits of the reserve will be evaluated. The Council also proposes that fishing and anchoring be prohibited within the marine reserves.

Although other non-emergency issues not on the agendas may come before the SSCs for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the SSCs will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 7, 2000.

Dated: June 1, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14364 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052600A]

Marine Mammals; File No. 684–1458

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Donald Siniff, University of Minnesota, Department of Ecology, Evolution and Behavior, 100 Ecology Building, 1987 Upper Buford Circle, St. Paul, MN 55108 has requested an amendment to scientific research Permit No. 684–1458.

DATES: Written or telefaxed comments must be received on or before July 7, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (562/980–4001).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 684–1458, issued on August 17, 1998 (63 FR 43914) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 684–1458 authorizes the permit holder to capture, tag, sample, and lavage Weddell seals (*Leptonychotes weddellii*) of all age and sex classes on McMurdo Sound in the Antarctic. The permit holder requests authorization to place VHF transmitters on adult female Weddell seals, and apply a series of instrument packages that contain: a 3MPDT logger (3-dimensional, magnetic data recorder), DSL (digital still camera), DU (ultrasonic depth sounder), PD2GT (speed, acceleration, depth, and temperature recorder) and ECG (electrocardiogram monitor) to male and female Weddell seals of all age classes. For attachment of the instrument package, the permit holder requests authorization to anesthetize seals with the drug Sevoflurane. The permit holder also requests an increase in the number of adult female Weddell seals captured (400 to 500), the number of adult male Weddell seals fitted with VHF transmitters (30 to 100) and the number of Weddell seal pups fitted with satellite-linked radio transmitters and the PD2GT and ECG instruments (20 to 50).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 31, 2000.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–14363 Filed 6–6–00; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Monday, June 12, 2000, 8:30–11:30 a.m.

PLACE: The Westin Seattle, Rooms Vashon 1 & 2, 1900 Fifth Avenue, Seattle, Washington 98101.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks
II. Swearing-In of New Board Members
III. Approval of March Board Meeting Minutes
IV. Status Report by the Chief Executive Officer
V. Committee Reports
  A. Executive Committee
  B. Management, Budget, and Governance Committee
  C. Planning and Evaluation Committee
  D. Communications Committee Report on Corporate Initiatives Report on AmeriCorps Alumni Activities
VI. Presentations by Officials and Projects from the State of Washington
VII. Discussion of Results of 2000 Grant Processes
  A. Learn and Serve America
  B. AmeriCorps
VIII. AmeriCorps*VISTA Plans
IX. Future Board Meeting Dates
X. Public Comment
XI. Adjournment

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person.

CONTACT PERSON FOR FURTHER INFORMATION: Rhonda Taylor, Deputy Director of Special Projects and Initiatives, Office of Public Liaison, Corporation for National Service, 8th Floor, Room 8619, 1201 New York Avenue NW., Washington, D.C. 20525. Phone (202) 606–5000 ext. 282. Fax (202) 565–2794. TDD: (202) 565–2799.

Dated: June 2, 2000.

Thomasenia P. Duncan,

General Counsel, Corporation for National and Community Service.

[FR Doc. 00–14368 Filed 6–2–00; 4:19 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability of Federally Owned Inventions

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Pub. L. 96–517, the Department of the Air Force announces the availability of certain Air Force owned inventions. The following list of patent applications and patents are available for Nonexclusive or Exclusive Licensing from the Air Force Research Laboratory (AFRL/DE or /VS) at Kirtland Air Force Base (AFB). Additional information concerning the inventions is available upon request.

All communications concerning this Notice should be sent to Mr. Kenneth Callahan, Patent Attorney, 377 ABW/JAN, 2251 Maxwell SE, Kirtland AFB, NM 87117. Mr. Callahan can be reached by telephone at (505) 846–1542, e-mail: Kenneth.Callahan@Kirtland.AF.MIL, or fax to (505) 846–0279.

AIR FORCE RESEARCH LABORATORY PATENTS AVAILABLE FOR LICENSING AT KIRTLAND AFB, NM

	Title of invention
Application:	
09/563,469	Hermetically Sealed, High Energy Trigatron Switch.
09/562,873	Multifunctional Capillary System for Hoop Heat Pipe.
09/558,527	Circuit for Deriving the Position of a Fast Pulsing Laser.
09/558,456	Pneumatic Airborne Ejection System for Spacecraft Stages From Wide Body and Jet Transport Aircraft.
09/550,582	Smart Docking Surface for Space Serviceable Nano and Micro Satellites.
09/504,551	Space-based CW Laser Detector Package.

AIR FORCE RESEARCH LABORATORY PATENTS AVAILABLE FOR LICENSING AT KIRTLAND AFB, NM—Continued

	Title of invention
09/493,508	Birefringence Compensation Using a Single Nd:YAG Rod.
09/465,021	Liquid Spray Phase Change Cooling of Laser Devices.
09/444,984	Solar Sail for Power Generation in Space.
09/388,571	Space Environment Protection Satellite Door.
09/387,992	Molecular Field Programmable Gate Array.
09/384,901	Passive Vibroacoustic Attenuator for Structural Acoustic Control.
09/372,725	Broadband Grating Spectrometer Based on Dualband Focal Plane Array.
09/372,724	Adaptive Hersohel-Quincke Tubes.
09/326,058	Composite ChamberCore Sandwich-type Structure with Inherent Acoustic Attenuation.
09/277,596	Ultra Wideband RF-enhanced Chemotherapy for Cancer Treatment.
09/277,595	Whole-spacecraft Hybrid (Active/Passive) Isolation System for Launch Vehicles.
09/277,593	Time Domain Focused High-power Microwave System for Cancer Treatment.
09/266,181	High-density Optical Interconnect with an Increased Tolerance of Misalignment.
09/252,379	Coupled Helmholtz Resonators for Broadband Acoustic Attenuation.—Allowed.
09/231,149	Active Edge Controlled Optical Quality Membrane Mirror.—Allowed.
09/178,876	Advanced Instrument Controller.
09/169,495	Post Process Metallization Interconnects for Microelectromechanical Systems (MEMS).
09/169,494	Post Process Deposition Shielding for Microelectromechanical Systems.—Allowed.
09/092,608	Liquid Crystal Active Optics Correction for Large Space-Based Optical Systems.—Allowed.
Patent No.:	
6,061,034	Power Enhancer for Solid-state Switched Ultra Wideband Pulsers and array Transmitters.
6,047,541	HAN TEAN Mixing Gas Generator Propellant Tank Pressurizer for Launch Vehicles and Spacecraft.
6,040,935	Flexureless Multi-Stable Micromirrors for Optical Switching.
6,034,351	Cryogenic Pupil Stop for Dual-Band Infrared Focal Plane Array.
6,028,689	Multi-motion Micromirror.
6,020,724	Regulated Capacitor Charging Circuit Using a High Reactance Transformer.
6,005,305	Magnetic Voltage-Pulser.
5,944,913	High-Efficiency Multiple-Junction Solar Cells.
5,923,687	Bandwidth Enhancement and Broadband Noise Reduction in Injection-Locked Semiconductor Lasers.
5,900,986	Columnar Focal Lens.
5,835,545	Compact Intense Radiation System.
5,808,226	Grenade Shell Laser System.
5,774,490	Diode-Pumped Tm: YAG/HBr Four-Micron Laser System.
5,773,787	Plasma Gun Voltage Generator.
5,760,496	Inverse-Pinch Voltage Pulse Generator.
5,748,657	High Efficiency Constant Current Laser Drivers.
5,742,045	Apparatus Using Diode Laser Logic to Form a Configurable Optical Gate System.
5,734,303	Microwave Waveguide Mode Converter Having a Bevel Output End.
5,727,016	Spatially Coherent Diode Laser With Lenslike Media and Feedback From Straight-Toothed Gratings.
5,705,959	High Efficiency Low Distortion Amplification.
5,696,786	Solid-State Laser System.
5,694,602	Weighted System and Method for Spatial Allocation of a Parallel Load.
5,689,958	High Efficiency Thermal Electric Cooler Driver.
5,675,604	Portable Pumped Laser System.
5,658,488	Regeneration of BHP in a Plant Process.
5,656,873	Transmission Line Charging.
5,646,764	Optical Beam Scanner With Rotating Transmissive Optics.
5,629,802	Spatially Multiplexed Optical Signal Processor.
5,604,642	Laser Welding of Light-Weight Honeycomb Mirrors.
5,604,431	Integrated Grid Particle Impact Detector.
5,602,387	Method of Protecting an RF Receiver in a Hostile Electromagnetic Environment.
5,567,995	Multi-Winding Spiral Generator.
5,557,699	NLO Waveguide and Switch and Method.
5,553,629	Portable Medical Laser Pack System.
5,535,029	Spatial Light Modulator Having Amplitude Coupled With Binary Phase Mode.
5,504,578	Temporal Fringe Pattern Analysis System of a Laser Gain Media.
5,500,865	Phased Cascading of Multiple Nonlinear Optical Elements for Frequency Conversion.
5,458,043	Battery Charging Capacitors Electromagnetic Launcher.
5,457,685	Multi-Speaker Conferencing Over Narrowband Channels.
5,444,308	Nanosecond Transmission Line Charging Apparatus.
5,425,044	Compact, Burst Mode, Pulsed, High Energy, Blowdown Flow Photolytic Atomic Iodine Laser.
5,422,047	Carbonaceous Fuel Particles.
5,410,558	Variable Short Period Electron Beam Wiggler for Free Electron Lasers.
5,406,072	Method for Microbeam Ion Radiation Testing of Photonic Devices.

Janet A. Long,
Air Force Federal Register Liaison Officer.
[FR Doc. 00–14287 Filed 6–€ –00; 8:45 am]
BILLING CODE 5001–05–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference on Thursday, June 15, 2000 and a public hearing on Friday, June 16, 2000. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the River Run Restaurant at the West Branch Angler, 150 Faulkner Road, Deposit, New York.

The conference among the Commissioners and staff will begin at 1:30 p.m. on Thursday and will include status reports on the following subjects: a proposed coordinated drought plan; a study of the flow needs of the Delaware River and major tributaries; development of a TMDL for PCBs in the Delaware Estuary; a proposed agreement with the U.S. Army Corps of Engineers for storage at F.E. Walter Reservoir; and a proposal for joint DRBC-Corps of Engineers projects. In addition, there will be a presentation on a proposed new watershed atlas web site and discussion of possible source water protection activities.

The business meeting at 10:30 a.m. on Friday will include a public hearing on the projects summarized below. In addition, the Commission will address the following: minutes of the May 2, 2000 business meeting; announcements; report on hydrologic conditions in the basin; reports of the Executive Director and General Counsel; a resolution providing for the election of Commission officers for the fiscal year 2000–2001; and public dialogue.

The subjects of the hearing will be as follows:

1. *Manwalamink Water Company D–89–50 CP RENEWAL.* A renewal of a ground water withdrawal project to continue to supply up to 15 million gallons (mg)/30 days of water to the applicant's public water distribution system from Wells Nos. 1, 2, 3, 5 and 6. The project is located in Smithfield Township, Monroe County, Pennsylvania.

2. *Town of Felton D–99–26 CP.* A ground water withdrawal project to supply up to 4.9 mg/30 days of water to the applicant's distribution system from new Well No. 4, and to increase the existing withdrawal limit from all wells to 5.7 mg/30 days. The project is located in the Town of Felton, Kent County, Delaware.

3. *Whitehall Township Authority D–2000–9 CP.* A ground water withdrawal project to supply up to 33.3 mg/30 days of water to the applicant's public water distribution system from the new Lehnert Road Well, and to increase the existing withdrawal limit from all the applicant's wells to 91.2 mg/30 days. The project is located in Whitehall Township, Lehigh County, Pennsylvania.

4. *Uwchlan Township D–2000–16 CP.* A project to expand the applicant's Eagleview sewage treatment plant (STP) from 0.15 million gallons per day (mgd) to 0.475 mgd. The STP will continue to serve portions of Uwchlan and Upper Uwchlan Townships with tertiary treatment prior to discharge to Shamona Creek, a tributary of East Branch Brandywine Creek. The STP is located less than one mile south of the intersection of U.S. Route 76 and PA Route 100 in Uwchlan Township, Chester County, Pennsylvania.

5. *Westtown Township D–2000–21 CP.* A project to expand the applicant's existing 0.29 mgd Chester Creek STP to 0.495 mgd. The STP is located just southwest of Westtown Road in Westtown Township, Chester County, Pennsylvania and will continue to provide secondary treatment to Westtown Township. Treated effluent will continue to discharge to East Branch Chester Creek.

6. *Sunny Dell Foods, Inc. D–2000–23.* A project to construct a new 0.05 mgd industrial wastewater treatment plant to provide tertiary level treatment for the applicant's mushroom cannery facility. The facility straddles the border between the Borough of Kennett Square and Kennett Township immediately south of Baltimore Pike in Kennett Township, Chester County, Pennsylvania. Treated effluent will be discharged to West Branch Red Clay Creek in Water Quality Zone C5. After screening and disinfection, 0.09 mgd of cooling water will be discharged to West Branch Red Clay Creek via a separate outfall.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Commission Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Individuals planning to attend the hearing who need an accommodation as provided for in the Americans With Disabilities Act should contact the Commission Secretary directly at (609) 883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the Commission may accommodate your needs.

Dated: May 30, 2000.

Pamela M. Bush,
Commission Secretary.
[FR Doc. 00–14288 Filed 6–6–00; 8:45 am]
BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 7, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment

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addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 1, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Annual Performance Report for the Smaller Learning Communities (SLC) Grant Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 161; Burden Hours: 1,288.

Abstract: This Annual Performance Report will allow the Department of Education to collect data required by the Government Performance and Results Act (GPRA) and by House Appropriations language that established the Smaller Learning Communities grant program [H.R. 3424, 106th Congress (Appropriations 2000)]. The Department will use the information for GPRA report and the national evaluation of the SLC program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–14239 Filed 6–6–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 7, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 1, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Comprehensive School Reform Demonstration Field Focused Studies.

Frequency: Semi-Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 198. Burden Hours: 324.

Abstract: This study is being conducted as part of the national evaluation of the Comprehensive School Reform Demonstration Program. The study will examine the link among three components—school reform processes, instruction and other educational activities, and student achievement.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.1

[FR Doc. 00–14240 Filed 6–6–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.184H, 84.184K, 84.184M, 84.184N]

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities—National Programs

AGENCY: Department of Education.

ACTION: Notice reopening the application deadline date for Safe and Drug-Free Schools and Communities Act—National Programs grant competitions.

SUMMARY: On April 6, 2000, the Department published a combined notice inviting applications for new awards for Safe and Drug-Free Schools and Communities National Programs direct grant competitions (65 FR 18188). The Secretary reopens the deadline date for the submission of applications for four of the Safe and Drug-Free Schools and Communities—National Programs grant competitions from May 12, 2000, (May 22, 2000, for CFDA #84.184M) for applicants that can show a shipping label, invoice, or receipt for overnight delivery contracted to arrive by May 12, 2000 (May 22, 2000, for CFDA #84.184M). This action is taken due to unexpected or unavoidable delays in receipt of applications sent via certain overnight delivery services. Competitions affected by this change of application deadline date are CFDA #84.184H, Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students; CFDA #84.184K, Middle School Drug Prevention and School Safety Program Coordinators Grant Competition; CFDA #84.184M, Effective Alternative Strategies: Grant Competition to Reduce Student Suspensions and Expulsions and Ensure Educational Progress of Students who are Suspended or Expelled; and CFDA #84.184N, Alcohol and Other Drug Prevention Models on College Campuses Grant Competition.

DATES: For the competitions listed in this notice, the application deadline date is reopened to June 7, 2000, for applicants able to show a shipping label, invoice, or receipt for overnight delivery contracted to arrive by May 12, 2000 (May 22, 2000, for CFDA #84.184M). The deadline for intergovernmental review is extended to June 26, 2000 for these competitions.

FOR FURTHER INFORMATION CONTACT: Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6123. Telephone: (202) 260–3954. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

Authority: 20 U.S.C. 7131.

Dated: June 2, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–14278 Filed 6–6–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Denver Regional Office; Solicitation for Financial Assistance Applications; Weatherization Training and Program Enhancement

AGENCY: U.S. Department of Energy.

ACTION: Solicitation for financial assistance applications, solicitation number DE–PS48–00R810686.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for a state sponsor for Weatherization Training and Program Enhancement activities to be conducted for the Weatherization Assistance Program (WAP) in the Denver Region. The financial assistance award issued under this Solicitation will be a cooperative agreement.

DATES: The solicitation will be issued on or about May 31, 2000.

ADDRESSES: Copies of the Solicitation, once issued, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html. DOE does not intend to issue written copies of the solicitation.

SUPPLEMENTARY INFORMATION: DOE is soliciting Applications for a state sponsor for Weatherization Training and Program Enhancement activities to be conducted for the Weatherization Assistance Program (WAP) in the Denver Region. Eligibility is restricted to the twelve states within DOE's Denver Region. The selected applicant (hereinafter called recipient) will receive financial assistance to administer training and other activities that assist with the enhancement and advancement of the WAP under a cooperative agreement with the DOE. It is anticipated that one award will result from this solicitation. Under the cooperative agreement, the recipient will have primary responsibility for providing training and technical development activities that are intended to improve the depth, knowledge and the caliber of technical skills of grantees and subgrantees administering the DOE WAP in the Denver Region. It is expected that the recipient will coordinate and work in conjunction with Weatherization organizations within the region that specialize in the delivery of training and enhancement-type activities, such as the Weatherization Manager's Association (WMA), and other technical skills training organizations.

The recipient will conduct solicitations for WAP projects in the region, coordinate the selection process for subgrants, and oversee the management and monitoring of training and enhancement projects. The recipient will also ensure that information about the projects, through reports and minutes of informational meetings, are developed and distributed. It is estimated that $100,000 will be made available for the initial award in Fiscal Year 2000, and DOE anticipates that up to $750,000 may be made available over the five-year project period, depending upon availability of funding.

FOR FURTHER INFORMATION, CONTACT: Dennis D. Maez, Contract Specialist, at (303) 275–4825, or send an e-mail to dennis_maez@nrel.gov.

Issued in Golden, Colorado, on May 26, 2000.

Jerry L. Zimmer,

Procurement Director, GO.

[FR Doc. 00–14323 Filed 6–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, June 28, 2000; 6 p.m.–9 p.m.

ADDRESSES: Holiday Inn, 1005 Paseo de Pueblo Sur, Taos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: adubois@doeal.gov; or Internet http:www.nnmcab.org.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Opening Activities—6 p.m.–6:30 p.m.
Public Comment—6:30 p.m.–7 p.m.
Committee Reports:
Environmental Restoration.
Monitoring and Surveillance.
Waste Management.

Community Outreach.
Budget.

Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on June 1, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–14324 Filed 6–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Sandia

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM–SSAB), Kirtland Area Office (Sandia).

DATES: Wednesday, June 21, 2000: 6:00 p.m.–9:00 p.m. (MST).

ADDRESSES: North Valley Senior Citizens' Center, 3825 4th Street, NW., Albuquerque, NM 87107.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:00 p.m.—Check-In/Agenda Approval/Minutes.
6:15 p.m.—Meeting Manager Update.
6:30 p.m.—Public Comment (General Topics).
6:40 p.m.—Class III Permit modification (C3PM) Report.
7:25 p.m.—Break.
7:40 p.m.—Public Comment on C3PM Issue
7:50 p.m. Citizens' Advisory Board Consensus.
8:10 p.m.—Transition Plan.
8:30 p.m.—Environmental Management Science Program (EMSP).
8:40 p.m.—New/Other Business.
8:50 p.m.—Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on June 2, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–14325 Filed 6–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, June 27, 2000; 1:00 p.m.–5:00 p.m.

ADDRESSES: Carson County Square House Museum, Hwy 207 & 5th Street, Panhandle, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1:00—Agenda Review/Approval of Minutes.
1:15—Co-Chair Comments.
1:30—Task Force/Subcommittee Reports.
2:00—Ex-Officio Reports.
2:30—Updates—Concurrence Reports—DOE.
3:00—Lunch.
3:15—Presentation (To Be Decided).
4:15—Public Comments.
4:30—Closing Comments.
5:00—Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 p.m. Monday through Thursday; 7:45 am to 5:00 p.m. on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on May 31, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–14326 Filed 6–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–237–001]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 1, 2000.

Take notice that on May 26, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of May 1, 2000:

Substitute Fifth Revised Sheet No. 280
Substitute Seventh Revised Sheet No. 281
Substitute Fourth Revised Sheet No. 283

Columbia states that on March 31, 2000, it filed tariff sheets in Docket No. RP00–237 to revise its tariff to comply with the Commission's changes in its Order No. 637 to the right-of-first-refusal (ROFR) afforded certain firm shippers in 18 CFR 284.221(d)(2)(ii). In Order No. 637, the Commission revised the ROFR to limit its applicability. Columbia revised General Terms and Conditions (GTC) Section 4, which contains the procedures for the awarding the existing firm capacity and the exercise of the ROFR of Columbia, to reflect these changes. On April 26, 2000, the Commission accepted the filed tariff sheets to be effective May 1, 2000, subject to Columbia making certain revisions within 30 days. The instant filing is being made to comply with the April 26 Order.

Columbia states that copies of its filing and have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14234 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–21–005]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

June 1, 2000.

Take notice that on May 26, 2000, Dominion Transmission, Inc. (Dominion), formerly CNG Transmission Corporation, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, tariff sheets with a proposed listed on Appendix A to the filing, with an effective date of July 1, 2000.

Dominion states that the purpose of this filing is to implement two new rate schedules, Rate Schedules Delivery Point Operator (DPO) and City Gate Swing Customer (CSC). Rate Schedule DPO is designed primarily to allow operators of citygate interconnections with Dominion to offer no-notice service to marketers serving retail markets behind the citygate. Rate Schedule CSC, a companion service to Rate Schedule DPO, is designed for marketers behind the citygate where, under certain terms and conditions, such marketers can receive no-notice service from Dominion.

The Commission in its March 31, 2000 Order accepted Dominion's proposed Rate Schedule DPO and CSC with the exception of the Dominion's proposed hourly flow restrictions and certain penalty proposals. In that Order, the Commission ordered Dominion to refile revised tariff sheets consistent with the Commission's March 31, 2000 order.

Dominion states that the revised tariff sheets fully comply with the Order's requirements to remove the proposed hourly flow restrictions from Rate Schedules FT, IT and MCS and the other changes required by the Commission in the Order. Dominion also states that it has incorporated minor corrections and clarified tariff language in order to satisfy customers that have filed for rehearing of the March 31, 2000, order or otherwise commented on Dominion's April 17, 2000, compliance filing, including tariff changes that would give Dominion additional responsibility to enforce contract overrun provisions with its CSC customers. To that end, Dominion has requested a limited waiver of Section 154.203(b) of the Commission's regulations, 18 CFR 154.203(b).

Dominion indicated that it plans to file its motion to move these tariff sheets into effect on or before June 30, 2000, provided that these tariff sheets are accepted for filing by the Commission and are allowed to become effective as proposed.

Dominion states that copies of its filing have been served upon Dominion's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14233 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–129–000; Docket No. CP00–132–000]

Horizon Pipeline Company, L.L.C. and Natural Gas Pipeline Company of America; Notice of Intent To Prepare an Environmental Assessment for the Proposed Horizon Project and Request for Comments on Environmental Issues

June 1, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Horizon Project involving construction and operation of facilities by Horizon Pipeline Company, L.L.C. (Horizon) and Natural Gas Pipeline Company of America (Natural) in Cook, DuPage, Kane, McHenry, and Will counties, Illinois.[1] These facilities would consist of approximately 71 miles of various diameter pipeline, a new compressor station, modification to an existing compressor station, meter stations, taps, and values. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

[1] Horizon and Natural's application were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice the applicants provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

Summary of the Proposed Project

[Docket No. CP00–129–000]

Horizon does not currently own any pipeline facilities and is not engaged in any natural gas transportation operations. Upon approval of the subject applications, Horizon would become a new interstate pipeline company subject to Commission jurisdiction under the Natural Gas Act. Horizon proposes to provide 380 thousand dekatherms per day (Mdth/d) of gas transportation service to customers in northern Illinois. The Horizon Project would consist of 71 miles of pipeline from near Joliet, Illinois to near McHenry, Illinois. Approximately 29 miles would be new construction with the remaining 42 miles consisting of leased capacity along an existing Natural pipeline. Specifically, Horizon proposes to acquire, construct, and operate:

- 29 miles of new 36-inch-diameter pipeline in DuPage, Cook, Kane, and McHenry Counties, Illinois;
- Miscellaneous meter stations, taps, and values along the new 36-inch-diameter pipeline;
- 380 MDth/d of leased capacity along 42 miles of existing Natural pipeline in Will and DuPage Counties, Illinois; and
- 8,900 horsepower new compressor station adjacent to Natural's Compressor Station 113 in Will County, Illinois.

[Docket No. CP00–132–000]

Natural proposes to abandon 42 miles of leased capacity on its existing system to Horizon. The leased capacity would run from Natural's Gulf Cost mainline interconnect with Alliance Pipeline L.P. to an interconnect with the proposed Horizon pipeline. The capacity lease would require Natural to construct new facilities and to rearrange existing facilities. Specifically, Natural proposes to:

- Abandon by lease 380 MDth/d of capacity to Horizon;
- Increase the total horsepower of its existing Compressor Station 113 by 3,690 horsepower;
- Modify the Streamwood Meter Station; and
- Construct taps at the interconnects with the new Horizon pipeline in DuPage and McHenry Counties, Illinois.

The locations of all proposed facilities are shown in appendix 1.

Land Requirements for Construction

Construction of the proposed facilities would require about 424 acres of land. Following construction, approximately 139 acres would be maintained as new pipeline right-of-way and about 7 acres would be maintained as new aboveground facility sites. The remaining 278 acres of land would be restored and allowed to prevent to the former use.

The EA Process

The National Environmental Policy Act (NEPA) requires that Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Land use;
- Cultural Resources;
- Air quality and noise; and
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make or our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Horizon. This preliminary list of issues may be changed based on your comments and our analysis.

- The project would be cross 10 perennial streams, 24 acres of wetlands, and 22 acres of forest.
- Federally listed endangered or threatened species, such as the prairie bush clover and the eastern prairie fringed orchid, may occur in the proposed project area.
- The project would cross public lands and other designated areas, such as the Pratts Wayne Woods County Forest Preserve, the Stickney Run Conservation Area, and the Bates Fen Nature Preserve, in DuPage and McHenry Counties.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes, and measure to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1.
- Reference Docket Nos. CP00–129–000 & CP00–132–000.
- Mail your comments so that they will be received in Washington, DC on or before June 30, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only Intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–14229 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–149–000]

Midwest Electric Power, Inc.; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

June 1, 2000.

Take notice that on May 26, 2000, Midwest Electric power, Inc. (MEP), 2100 Portland Road, P.O. Box 165, Joppa, IL 62953, filed with the Federal Energy Regulatory Commission on amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy of accuracy of the application. All such motions and comments should be filed on or before June 21, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14226 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–020]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

June 1, 2000.

Take notice that on May 26, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing First Revised Sheet No. 26J to be a part of its FERC Gas Tariff, Sixth Revised

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Volume No. 1, to be effective April 25, 2000.

On April 25, 2000, Natural filed Original sheet No. 26J at Docket No. RP99–176–018 to implement a negotiated rate formula transaction under Rate Schedule ITS with the Peoples Gas Light and Coke Company. Original Sheet No. 26J was accepted by letter order dated May 19, 2000, to become effective April 25, 2000.

Subsequently to Natural's initial filing on April 25, 2000, it was discovered that the executed negotiated rate agreement inadvertently omitted all storage and pooling points in Natural's Iowa Illinois Gulf Receipt Zone from among the qualified delivery points. The negotiated rate agreement was amended to remedy this omission. Therefore, Natural is now submitting First Revised Sheet No. 26J reflecting the revised footnote six (6) to supersede Original Sheet No. 26J previously submitted on April 25, 2000.

Natural requests waiver of the Commission's Regulations, including the 30-day notice requirement of Section 154.207, to the extent necessary to permit First Revised Sheet No. 26J to become effective April 25, 2000, which coincides with the effective date of the amendment to the underlying negotiated rate agreement.

Natural states that copies of the filing are being mailed to Natural's customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.215 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14231 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2176–000]

New Hampshire Electric Cooperative, Inc.; Notice of Filing

June 1, 2000.

Take notice that on May 2, 2000, New Hampshire Electric Cooperative, Inc. (NHEC), tendered for filing a request for withdrawal of its petition for acceptance of changes to NHEC's FERC Rate Schedule No. 2 filed with the Commission on April 11, 2000 in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 9, 2000. Protests will be considered by the Commission to determine the appropriate to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14236 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–244–001]

Sumas International Pipeline Inc; Notice of Compliance Filing

June 1, 2000.

Take notice that on May 26, 2000, Sumas International Pipeline Inc. (SIPI), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets to become effective May 1, 2000:

Substitute Second Revised Sheet Number 10
Substitute Second Revised Sheet Number 11
Substitute Original Sheet Number 11A
Substitute First Revised Sheet Number 13A
Substitute First Revised Sheet Number 13B
Substitute First Revised Sheet Number 13C
Substitute Original Sheet Number 13D

SIPI asserts that the purpose of this filing is to comply with Order No. 587 issued on July 17, 1996; the Notice Clarifying procedures for Filing Tariff Sheets issued on September 12, 1996, in Docket No. RM96–1–000; and the Commission's direction of 10 May, 2000 in Docket No. RP00–244–000 to correct errors in definitions on certain tariff sheets and to revise tariff language to incorporate Gas Industry Standards Board (GISB) Standards 1.3.38 and 1.3.46.

SIPI states that copies of this filing were mailed to all customers of SIPI and Interested Parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14235 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–408–012]

Trailblazer Pipeline Company; Notice of Filing of Refund Report

June 1, 2000.

Take notice that on May 26, 2000, Trailblazer Pipeline Company (Trailblazer) filed a refund report in Docket No. RP97–408–000. Trailblazer states that the filing and refunds were made to comply with the Commission's Orders of April 3, 1999 and March 30, 2000. Trailblazer states that these amounts were paid by Trailblazer on April 28, 2000.

The refund report summarizes transportation refund amounts for the period January 1, 1998 through March 31, 2000 pursuant to Article II of Trailblazer's Stipulation and Agreement as approved in the Commission's April 3, 1999 Order.

Trailblazer states that the copies of its filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP97–408.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be on or before June 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14228 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–291–002]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

June 1, 2000.

Take notice that on May 26, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets for inclusion in its FERC Gas Tariff, Third Revised Volume No, 1, which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective April 14, 2000.

Transco states that the purpose of the instant filing is to revise Rate Schedules LNG and LNG–R to be consistent with the requirements for a Part 284 open-access service as discussed in the Commission's April 14, 2000 Order on Rehearing Rejecting Tariff Sheets in the referenced docket. (April 14 Order). In compliance with the April 14 Order, Transco is herein revising Rate Schedules LNG and LNG–R to provide some receipt and delivery point flexibility. Specifically, secondary point rights under these rate schedules will be provided, but will be limited to (1) the same zone in which the customer's primary receipt and delivery point are located and (2) physical points on Transco's system where measurement facilities exist, excluding pipeline interconnects.

Transco states that it is serving copies of the instant filing to its interveners as reflected on the official service list.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14232 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–52–037]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

June 1, 2000.

Take notice that on May 26, 2000, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing its report of activities regarding collection of Kansas ad valorem taxes.

Williams states that this filing is being made in compliance with Commission order issued September 10, 1997 in Docket Nos. RP97–397–000, *et al.* The September 10 order requires first sellers to make refunds for the period October 3, 1983 through June 28, 1988. The Commission also directed that pipelines file a report annually concerning their activities to collect and flow through refunds of the taxes at issue.

Williams states that a copy of its filing was served on all parties included on the official service list maintained by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in on or before June 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14230 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Meetings

June 1, 2000.

Take notice there will be meetings of the Ecological Resources subgroup of the Mokelumne Relicensing Collaborative on June 7–8, and 13–15, 2000. There will be meetings of the Recreation subgroup on June 8 and 14–15, 2000. The Ecological Resources and Recreation subgroups will meeting jointly on June 9, 2000. The Full Collaborative will meet on June 21–22, and 28–29, 2000. These meetings will be held from 9 a.m. to 4 p.m. at 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696.

For further information, please contact Diana Shannon at (202) 208–7774.

David P. Boergers,

Secretary.

[FR Doc. 00–14227 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

June 1, 2000.

Take notice that the format of the notice issued pursuant to section 3(a) of the Government in the Sunshine Act, Pub. L. 94–409, 5 U.S.C. 552b, is being revised to reflect the new organizational structure of the Commission's technical offices.

Consent agenda items from the Commission's Office of Markets, Tariffs, and Rates will be listed first as CAE- and CAG-items (for electric and gas, respectively) followed by consent agenda items from the Commission's Office of Projects listed as CAH- and CAC-items (for hydro and certificate, respectively). Regular agenda items will be listed in the following order: H-, C-, M-, E-, and G- (for hydro, certificate, miscellaneous, electric, and gas, and items, respectively).

The new format will be used for the first meeting in June. Accordingly, the Sunshine Act Notice will be issued under this format on June 7, 2000.

In addition, beginning on June 7, 2000, the Sunshine Act Notice will be available in the HTML format on the day of issuance to all interested persons on the Commission's Internet Web-Site at the following locations: Daily Notices, Commission Meeting Information, and Office of the Secretary.

David P. Boergers,

Secretary.

[FR Doc. 00–14225 Filed 6–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project—Notice of Proposed Extension of Firm and Nonfirm Transmission Service Rates—Rate Order No. WAPA–91

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed extension.

SUMMARY: This action is a proposal to extend the existing Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) firm point-to-point transmission service rate for the 500-kV transmission system and the nonfirm point-to-point transmission service rate for the 230/345/500-kV transmission system, Rate Order No. WAPA–71, through December 31, 2003. Both rates will expire September 30, 2000. This notice of proposed extension of rates is issued pursuant to 10 CFR part 903.23(a)(1). In accordance with 10 CFR part 903.23(a)(2), Western Area Power Administration (Western) will not have a consultation and comment period and will not hold public information and comment forums.

FOR FURTHER INFORMATION CONTACT: Mr. Maher Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2768, or by e-mail: nasir@wapa.gov.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator; and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary.

Pursuant with Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in power and transmission rate adjustments in 10 CFR part 903, Western's firm point-to-point transmission service rate for the AC Intertie 500-kV transmission system and nonfirm point-to-point transmission service rate for the AC Intertie 230/345/500-kV transmission system were submitted to FERC for confirmation and approval on January 31, 1996. On July 24, 1996, in Docket No. EF96–5191–000, at 76 FERC ¶ 62,061, FERC issued an order confirming, approving, and placing in effect on a final basis the firm point-to-point transmission service rate for the AC Intertie 500-kV transmission system and the nonfirm point-to-point transmission service rate for the AC Intertie 230/345/500-kV transmission system. The rates set forth in Rate Order No. WAPA–71 were approved for the 5-year period beginning February 1, 1996, and ending September 30, 2000.

The firm point-to-point transmission service rate for the AC Intertie 500-kV transmission system and the nonfirm point-to-point transmission service rate for the AC Intertie 230/345/500-kV transmission system will expire on September 30, 2000. This makes it necessary to extend the current rates pursuant to 10 CFR part 903. Upon its approval, Rate Order No. WAPA–71 will be extended under Rate Order No. WAPA–91. Under Rate Order No. WAPA–71, the three types of transmission service rates approved were (1) a firm point-to-point transmission service rate for the AC Intertie 230/345-kV transmission system; (2) a firm point-to-point transmission service rate for the AC Intertie 500-kV transmission system; and (3) a nonfirm point-to-point transmission service rate for the AC Intertie 230/345/500-kV transmission system.

Western's firm point-to-point transmission service rate for the AC Intertie 230/345-kV transmission system was superseded through Rate Order No. WAPA–76 and submitted to FERC for confirmation and approval on February 8, 1999. On June 22, 1999, in Docket No. EF99–5191–000, at 87 FERC ¶ 61,346, FERC issued an order confirming, approving, and placing in effect on a final basis the firm point-to-point transmission service rate of $12.00/kilowattyear for the AC Intertie 230/345-kV transmission system. The rate set forth in Rate Order No. WAPA–76 was approved for a 5-year period beginning January 1, 1999, and ending December 31, 2003.

Western is now proposing, through Rate Order No. WAPA–91, to extend the existing firm point-to-point transmission service rate of $17.23/kilowattyear for the AC Intertie 500-kV transmission system and the nonfirm point-to-point transmission service rate of 2.00 mills/kilowatthour for the AC Intertie 230/345/500-kV transmission system through December 31, 2003. This proposed extension will synchronize the expiration dates for all firm and nonfirm point-to-point transmission service rates for the AC Intertie 230/345/500-kV transmission system.

During the firm point-to-point transmission service rate development for the AC Intertie 230/345-kV transmission system (Rate Order No. WAPA–76), Western determined that it will take approximately 10 years for the AC Intertie 500-kV transmission system to be subscribed to a level sufficient to meet its own revenue repayment requirements. The ratesetting Power Repayment Study (PRS), established for the AC Intertie 230/345/500-kV transmission system (Rate Order No. WAPA–76), reflected the phasing-in of AC Intertie 500-kV transmission system revenues starting in FY 1999 through FY 2008. This ratesetting PRS remains valid. The projected revenue levels through sales of firm and nonfirm point-to-point transmission service and miscellaneous items are sufficient to recover project expenses and capital requirements through FY 2049 for the AC Intertie 230/345/500-kV transmission system.

All documents made or kept by Western for developing the proposed extension of the firm point-to-point transmission service rate for the AC Intertie 500-kV transmission system and the nonfirm point-to-point transmission service rate for the AC Intertie 230/345/500-kV transmission system will be made available for inspection and copying at the Desert Southwest Customer Service Region, located at 615 South 43rd Avenue, Phoenix, Arizona.

Within ninety days after publication of this notice, Rate Order No. WAPA–91 will be submitted to the Deputy Secretary for approval through December 31, 2003.

Dated: May 30, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–14327 Filed 6–6–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00664; FRL–6591–9]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3-day meeting of the Federal Insectide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to atrazine cancer and reproductive developmental hazard and dose response assessment. The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Larry Dorsey at the address listed under "FOR FURTHER INFORMATION CONTACT" at least 5 business days prior to the meeeting so that appropriate arrangements can be made.

DATES: The meeting will be held on June 27, 28, and 29 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Hotel is (703) 486–1111.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your request must identify docket control number OPP–00664 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Larry Dorsey, Designated Federal Official (7101C), Office of Science Coordination and Policy, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: dorsey.larry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT." This 3-day meeting concerns several scientific issues undergoing consideration within the EPA Office of Pesticide Programs (OPP). The topics to be discussed include both the cancer and non-cancer hazard and dose-response assessment of atrazine.

Copies of the Panel's report of their recommendations will be available approximately 45 working days after the meeting, and will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch (PIRIB) at the address and telephone listed below under Unit II.2. of "SUPPLEMENTARY INFORMATION."

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* A meeting agenda and copies of EPA background documents for the meeting are available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA/SAP Internet Home Page at http://www.epa.gov/scipoly/sap/. To access this document, on the Home Page, select "**Federal Register** *Notice Announcing This Meeting.*" You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00664. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to Atrazine: Hazard and Dose Response Assessment and Characterization, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00664 in the subject line on the first page of your request. Members of the public wishing to submit comments should contact the persons listed under "FOR FURTHER INFORMATION CONTACT" to confirm that the meeting date and agenda have not been modified or changed.

Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advanced written request to the persons listed under "FOR FURTHER INFORMATION CONTACT," interested persons may be permitted by the Chair of the FIFRA Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the

organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc.) There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral or written statements at the meeting should contact the persons listed under "FOR FURTHER INFORMATION CONTACT" and submit 30 copies of their presentation and/or remarks to the Panel. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: "opp-docket@epa.gov." Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00664. You may also file a request online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: June 2, 2000.

Steven Galson,

Director, Office of Science Coordination and Policy.

[FR Doc. 00–14420 Filed 6–6–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL—6711–5]

Notice of Scientific and Technological Achievement Awards Subcommittee—Closed Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An ad hoc Subcommittee of the Science Advisory Board will meet at the U.S. Environmental Protection Agency (EPA), Washington, DC, on June 22–23, 2000. Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), EPA has determined that the meeting will be closed to the public. The purpose of the meeting is to recommend to the Assistant Administrator of the Office of Research and Development (ORD) the recipients of the Agency's 1999 Scientific and Technological Achievement Cash Awards. These awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. In making these recommendations, including the actual cash amount of each award, the Agency requires full and frank advice from the Science Advisory Board. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel issues, where disclosure would constitute an unwarranted invasion of personal privacy, are protected from disclosure by section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Flaak, Team Leader, Committee Operations Staff, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20460, telephone: (202) 564–4546 or e-mail at: flaak.robert@epa.gov.

Dated: June 1, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–14460 Filed 6–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–301000; FRL–6556–1]

Cut-Roses; Request for Exception to Worker Protection Standard's Prohibition of Early Entry Into Pesticide-Treated Areas to Harvest Roses by Hand Cutting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of exception request; request for comment.

SUMMARY: EPA has received a request for an exception from some of the restricted entry provisions of the Worker Protection Standard for rose harvesters. The exception would allow rose harvesters to harvest roses by hand before restricted entry intervals (REIs) have expired. Roses, Inc. has submitted a request to the Agency for a 5-year WPS cut-rose exception similar to the terms of a previous exception. This Notice acknowledges receipt of Roses, Inc.'s request and invites comment on the request.

DATES: Comments, identified by docket control number OPP–301000, must be received on or before August 7, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301000 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Robert I. Rose, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., Washington, DC 20460; telephone number: (703) 305–6708; fax number: (703) 308–2962; e-mail address: rose.roberti@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a rose producer or harvester or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Agriculture	11	Agriculture, forestry, fishing and hunting
Agriculture pest control services	115112	Control of rose pests and diseases
Crop harvesting	115113	Cut rose harvesting
Postharvest crop activities	115114	Reentry for management and maintenance
Agriculture production or harvesting crews	115115	Rose harvesters

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. The complete NAICS codes and descriptions are listed at: http://www.census.gov/epcd/www/naics.html. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established a docket for this action under docket control number OPP–301000. The docket consists of documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action. The public version of the official record does not include any information claimed as confidential business information (CBI). The public version of the official record including printed paper versions of electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper handling by EPA, it is imperative that you identify docket control number OPP–301000 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov", or you can submit a computer disk to the address above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301000.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comments that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper handling by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

The Agency is announcing the receipt of a request from Roses, Inc., of Haslett

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Michigan, representing rose growers throughout the U.S. for an exception to the USEPA Worker Protection Standard to allow early entry of workers to harvest greenhouse grown fresh cut roses prior to the end of pesticide reentry intervals. The rationales supporting this request are provided. The Agency is providing a 60-day period for public comment before making a final decision.

B. WPS Background

Introduced in 1974, and revised in 1992, the Worker Protection Standard (WPS) 40 CFR part 170, is intended to protect agricultural workers and pesticide handlers from risks associated with agricultural pesticides. The WPS covers employees working in or on farms, forests, nurseries, and greenhouses who perform hand-labor operations in areas treated with pesticides. It also applies to workers who mix, load, apply or otherwise handle pesticides. The WPS contains requirements for pesticide safety training, notification of pesticide applications, use of personal protective equipment (PPE), restricted entry intervals (REIs) following pesticide application, decontamination supplies, and emergency medical assistance.

40 CFR 170.112 prohibits agricultural workers from entering a pesticide-treated area during an REI. Under specified conditions, the WPS contains exceptions (40 CFR 170.112(b–e)) to the general prohibition against worker entry into treated areas during the REI.

EPA may establish exceptions under 40 CFR 170.112(e) to the WPS provisions restricting early entry to perform routine hand-labor tasks. The WPS defines hand-labor as any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with treated surfaces such as plants or soil that may contain pesticide residues. The process and information that must be included in a request for exception is described in 40 CFR 170.112(e)(1). When a request is received, EPA issues a public notice stating that an exception is being considered and describes the nature of the exception. At least 30 days is allowed for public comment. EPA grants or denies the exception request based on a risk-benefit analysis as required by 40 CFR 170.112(e)(3).

C. WPS Cut-Rose Exception History

In June 1994, EPA granted a 2-year exception to the WPS for cut rose harvest in response to a request from the floral industry. This exemption allowed early entry to harvest greenhouse-grown cut roses under certain specified conditions. It expired on June 10, 1996. In the spring of 1996, Roses, Inc., a rose-grower association, approached the Agency with the need to continue the exception. Roses, Inc. stated the domestic cut-rose industry would not survive economically without the exception. After consulting with the rose industry, EPA published a notice in the **Federal Register** of October 30, 1996 (61 FR 56099) (FR–5571–8). This notice acknowledged receipt of Roses, Inc.'s request, described their proposal and provided a 30-day public comment period. On December 18, 1996, the Agency sent a letter to the cut-rose community announcing the WPS Cut-Rose Exception. In the **Federal Register** of October 3, 1997 (62 FR 51993) (FRL–5599–2), the Agency announced that it had granted a limited administrative exemption to the 1992 WPS restrictions on early entry into pesticide-treated areas allowing workers to hand harvest roses during REIs. It was effective from December 18, 1996 until October 4, 1999.

III. Regulatory Assessment

A. Roses, Inc.'s Exception Request

Summary of request: Roses, Inc. asserts that without an early-entry exception allowing cut roses to be harvested at least two times per day, cut-rose growers will lose a significant portion of the cash value of their crop. The competitive market in the United States requires that roses be cut at a narrowly specific stage of bud development, after which, they decrease in value. The required twice daily harvest is not possible when pesticides with an REI greater than 4 hours have been applied because the WPS early-entry restriction eliminates the possibility of a second harvest on the day of pesticide treatment. For longer reentry intervals, additional harvests on subsequent days may also not be possible. Roses, Inc. estimates the losses to be as high as $35,000 per acre per year from not being able to cut roses at the most appropriate stage of bud development due to pesticide REI requirements. The fresh cut-rose industry competes with roses imported from countries where labor costs are often less per day than a U.S. grower's pay per hour. Roses, Inc. states growers have not moved to alternative methods of crop pest and disease protection because reliable, safe, proven pest management controls are not yet in the market. Those that are available are typically more costly than conventional chemical pesticide programs and not as effective.

Considering the specific harvest and pest and disease control requirements of the crop, the need for a cosmetically perfect rose and competitive market pressure from imports, Roses, Inc. asserts that an early-entry exception to the WPS is essential to the cut-roses industry. Without it, the loss of roses would be more than rose flower producers could economically withstand.

Exemption usage: Roses, Inc. surveyed those cut-rose growers that had not registered to use the most recent exemption to determine their reasons. Twenty survey response forms were returned. Each response had one or more reasons for not registering to use the exemption. Eleven indicated they were making a tight bud cut and harvest before each spray application and did not enter before the expiration of the REI. Eight said they did not need the exception because they have a local market that will accept roses that are more open than would be accepted in traditional markets. Five reported they would rather suffer the loss of roses too far open to market or accept a lower price for open roses than use the exception. Eighteen also indicated they spray 12-hour REI (or less) pesticides at night and harvest in the morning when the REI has expired.

Exemption terms proposed by Roses, Inc: Roses, Inc. is proposing a further exception to the WPS to allow trained workers to enter a pesticide-treated greenhouse to harvest roses under certain conditions before the end of the REI. Roses, Inc. proposes the following conditions.

All growers who wish to use the exception would be required to register for the exemption with EPA. Roses, Inc. proposes that the appropriate form be filed with Roses, Inc. Roses Inc. would consolidate the forms and transmit them to EPA. Exemption would be granted only to growers that are members of Roses, Inc.

The exemption would last 5 years. Roses, Inc. proposes that the first 2 years of the exception have the same conditions as the current exception followed by a planned phaseout in years 3, 4, and 5. The third year of the exception would limit rose harvest before the end of the pesticide REI to only those harvest periods just prior to major floral holidays such as Mother's Day, Valentine's Day, Easter, Christmas, and New Year's and other recognized floral holidays. The frequency of use would be limited at other times of the year to no more than once every 2 weeks. Individual growers would be required to submit a statement to Roses, Inc. explaining their need for the exemption to justify its use during the 4th year of the exemption. Roses, Inc. would consolidate these statements and submit them to the Agency. An individual statement of need would continue to be required during the 5th year of the exemption. The exemption would terminate at the end of its 5th year.

Roses, Inc. bases its exception request on the following proposed conditions. There is continued development of IPM programs that include effective and economic predator and parasite biological control agents for the rose greenhouse industry during the proposed 5 years of the exemption. There is also continued development and registration of effective short REI pesticides for this industry during this time. An annual review of the exception and the industry's progress toward phasing out the exception would be conducted by Roses, Inc. and the Agency. There is continued EPA support of the Rose Exception Advisory Workgroup. The Food Quality Protection Act will not negatively impact the cut-rose industry because of mitigation measures or suspensions based on aggregate and cumulative risk assessments. Increasing foreign imports will not be priced so low that individual growers cannot afford transition to new insect and disease control agents and products that facilitate optimal harvesting procedures. The National Institute for Occupational Safety and Health study on risk to early-entry workers in the rose greenhouse does not produce significant adverse effects data on early entry after pesticide use or other adverse pesticide effects in floral greenhouses.

B. Agency Assessment, Concerns, and Opinion

Under CFR 40 170.112, (e) *Exception requiring Agency approval—(1) Requesting an exception*, the following information must be submitted to the Agency for an exception to be considered:

(i) The name, address and telephone number of the submitter.

(ii) The time period for which the exception is requested.

(iii) A description of the crop(s) and specific crop production tasks for which the exception is requested.

(iv) A description of the geographic area for which the exception is requested.

(v) An explanation as to why, for each requested crop-task combination, alternative practices would not be technically or financially viable. This information should include estimates or data on a per acre revenue and cost of production for the crop and area for which the exception is requested. These estimates or data should include: the situation prior to implementation of this final rule, the situation after implementation of this final rule if the exception is not granted, the situation after implementation of this final rule if the exception is granted, and specific information on individual factors which cause differences in revenues and costs among the three situations.

(vi) A description or documentation of the safety and feasibility of such an exception, including, but not limited to, the feasibility of performing the necessary hand labor activity while wearing the personal protective equipment required for early entry for the pesticide(s) expected to be applied, the means of mitigating heat-related illness concerns, the period of time required daily per worker to perform the hand labor activity, any suggested methods of reducing the worker's exposure, and any other mitigating factors such as the availability of running water for routine and emergency decontamination and mechanical devices that would reduce the workers' contact with the treated surfaces.

The information should include the costs associated with early-entry, such as decontamination facilities, special information and training for the workers, heat stress avoidance procedures, and provision, inspection, cleaning, and maintenance of PPE. EPA will not grant exceptions where the costs of early entry equal or exceed the expected loss in value of crop yield or quality.

Since receipt of Roses, Inc.'s request for an exception, the Agency has been discussing the content with Roses, Inc. and within the Agency to better understand and supplement the request with other information. Even though the request remains incomplete, the Agency has chosen to publish this notice of receipt and would like public comment prior to making a decision on the request.

The petition by Roses, Inc. does not adequately address the information requirements regarding specific information on individual factors which cause differences in revenues and costs. The petition also did not provide the information required regarding the means of mitigating heat-related illness concerns, the period of time required daily per worker to perform the hand labor activity, and the costs associated with early-entry as stated above.

The Agency would also like to consider a narrower exception request, such as one confined to specific pesticide products, time, pest or infestations where risks and benefits can be better defined. This would allow for an exception with potentially less risk for workers because of less frequent exposure.

C. Comments Solicited

The Agency is interested in a full range of comments and information on this exception request. The Agency particularly welcomes comments supported by information that would help establish the economic need for the exception in light of the significant number of rose growers that continue production without it, the appropriate group to administer or manage the exception since Roses Inc. has proposed to administer several aspects such as grower registration, justification of need, limitation of eligibility to use an exception to Roses, Inc. membership, and pesticide exposure risks to workers from allowing early entry for harvesting. Data and information that will assist worker and harvester risk assessment and adverse incident reports are of particular need. Through public comment, the Agency is seeking information to further improve the risk-benefit analysis. Individuals are encouraged to provide comments on all or any portions of the information sought by the Agency.

List of Subjects in 40 CFR Part 170

Environmental protection, Administrative practice and procedure, Occupational safety and health, Pesticides and pests, Roses.

Dated: May 23, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–14322 Filed 6–6–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed new information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning implementation of Project Impact Baseline and Progress Reports in Project Impact communities. These reports will provide data, both narrative and quantitative, for assessing

a community's progress towards disaster resistance.

SUPPLEMENTARY INFORMATION: Congress tasked FEMA with the responsibility to design and implement a meaningful pre-disaster initiative that would reduce rapidly escalating disaster costs, and provided funding towards that goal. This initiative is entitled Project Impact: Building a Disaster Resistant Community. Congress, through the mechanism of the Government Performance Results Act, requires that we show that the money is being used effectively by establishing a systematic process of evaluation. The Baseline Report and subsequent Annual Progress Report provide a means of data collection for this objective and have been developed to capture the progress of a community towards disaster resistance in a non-disaster situation. The questions in both reports request information relevant to the hazards and vulnerabilities faced by the community. There are also questions that request information about damage prevention activity and public education and awareness activity. The requested information will not only gauge the momentum towards disaster resistance but will indicate success of the collaborative processes as well. The data collected will also be used as a basis for initiative development.

The community may also use the data for their own evaluation. The results of the evaluation, particularly when they reflect hard work and accomplishment, can be publicized as a way of affirming the community's commitment to the initiative in the previous year. Included in the reports are questions about the community's insurance ratings (the Building Code Effectiveness Grading Scale (BCEGS) and the Community Rating System (CRS)). These indicators provide financial incentives, in the form of lower premium rates, to communities who are increasing their disaster resistance.

Collection of Information

Title. Project Impact Baseline and Annual Progress Reports.

Type of Information Collection. New.

Abstract. The Baseline report, due only the 1st year and 60 days after the Signing Ceremony, is critical to provide a picture of the community's ability to withstand disasters at the beginning of its designation as a Project Impact community. It requests information necessary to evaluate the disaster resistant status of a community and should help Project Impact Communities establish their initial focus. The Annual Progress Report, which is due annually to FEMA for five years starting on the 1st anniversary of the Signing Ceremony, allows FEMA to assess the community's progress with respect to both national goals and program initiatives. It also provides an opportunity for a community to evaluate its own success with respect to local goals. Both of these data collection mechanisms provide means to measure the proper use of grant funding as well as data for Government Performance Results Act (GPRA) reporting.

Affected Public: Completing the form will be the primary responsibility of the Local Government or their designee but will contain information about households, businesses, not for profit institutions, State, Local, and tribal Government.

FEMA Forms	No. of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A x B x C)
Baseline Report	65	One-time	2 Hours	130 Hours
Progress Reports	113	Annually	2 Hours	226 Hours
Total	178			356 Hours

Estimated Cost. $15,000.00 (Fifteen Thousand dollars).

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Record Management Branch, Program Service Division, Operations Support Directorates, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524, Or e-mail muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Priscilla Scruggs, Evaluation and Assessment Specialist, Mitigation Directorate—Project Impact, at (202) 646–4155 for additional information. Contact Muriel B. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Mike Bozzelli,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–14298 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1326–DR]

Maine; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine (FEMA–1326–DR), dated April 28, 2000, and related determinations.

EFFECTIVE DATE: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 26, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–14299 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1328–DR]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1328–DR), dated May 12, 2000, and related determinations.

EFFECTIVE DATE: May 23, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri is hereby amended to include Public Assistance to the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 2000:

Franklin, Jefferson, and Gasconade Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–14300 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1329–DR]

New Mexico; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–1329–DR), dated May 13, 2000, and related determinations.

EFFECTIVE DATE: May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New Mexico is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 13, 2000. Act (42 U.S.C. 5121 *et seq.*), as follows:

Otero County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–14301 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3154–EM]

New Mexico; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New Mexico, (FEMA–3154–EM), dated May 10, 2000, and related determinations.

EFFECTIVE DATE: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of New Mexico is hereby amended to include reimbursement for the eligible costs associated with the pre-staging of Federal, State, Compact, and Emergency Management Assistance Compact fire suppression assets for a 30-day period beginning with the incident period of May 5, 2000. This assistance period may be extended. All pre-staging will be provided contingent upon joint recommendations and staging plans of the New Mexico Department of Forestry and the U.S. Forest Service. Reimbursement for costs associated with suppressing wildland fires will continue to be authorized under Section 420 of the Stafford Act. This assistance is for the following areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of May 10, 2000:

Bernalillo, Catron, Chaves, Cibola, Colfax, Curry, DeBaca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, McKinley, Mora, Otero, Quay, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union, and Valencia Counties.

Los Alamos, Rio Arriba, Sandoval, and Santa Fe Counties (previously designated for emergency protective measures (Category B).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–14303 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–02–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3154–EM]

New Mexico; Amendment No. 4 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New Mexico, (FEMA–3154–EM), dated May 10, 2000, and related determinations.

EFFECTIVE DATE: May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of New Mexico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of May 10, 2000:

Lincoln and San Miguel Counties for emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–14304 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–02–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1330–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1330–DR), dated May 19, 2000, and related determinations.

EFFECTIVE DATE: May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 19, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from a severe winter storm, flooding, landslides, and mudslides on April 18–20, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steven Emory of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

Custer, Fall River, Jackson, Pennington, and Shannon Counties for Public Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–14302 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–02–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

U.S. Fire Administrator's National Fire Safety Campaign Grant Program

AGENCY: Federal Emergency Management Agency (FEMA), U.S. Fire Administration (USFA).

ACTION: Notice of funds and grant availability.

SUMMARY: We (USFA) give notice of $250,000 of appropriated grant funds to assist eligible organizations with their current fire prevention/reduction educational initiatives for high risk groups. This is a one-time, non-appealable grant. All selections are final.

DATES: We will issue the Request for Application (RFA) packages on or about June 7, 2000. Complete application packages must be postmarked and received by FEMA on or before July 24, 2000.

ADDRESSES: Eligible applicants can download the RFA from the FEMA/USFA website (*www.usfa.fema.gov*), or they may contact the Information Point of Contact listed below who will mail an RFA to them.

INFORMATION POINT OF CONTACT: Denise A. Brown, Program Analyst, Office of the U.S. Fire Administrator, Federal Emergency Management Agency, 500 C Street, SW., room 806, Washington, DC 20472; (telephone) (202) 646–3731; facsimile (202) 646–4301; (email) *denise.brown@fema.gov*.

REQUEST FOR APPLICATION POINT OF CONTACT: Cindy Adams, Contract Specialist, Federal Emergency Management Agency, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727; (telephone) (301) 447–1221; (facsimile) (301) 447–1092; or (email) *cindy.adams@fema.gov*.

SUPPLEMENTARY INFORMATION: Throughout this notice the term ''we'' refers to the USFA.

Under the Federal Fire Prevention and Control Act, 15 U.S.C. § 2218, we are issuing an RFA to implement a competitive $250,000 grant program that is limited to eligible grant applicants. (Please see Eligibility criteria below). We intend to award ten (10) grants of $25,000.00 each under this grant program. All grant awards will have a project period of one year, and will require a six (6) month report and a final report detailing the progress of the grant program, and how the grantees are spending the funds.

Description of Grant Program: Public fire safety education is an integral part of the USFA's mission. In order to meet that goal, the U.S. Fire Administrator will provide funding to grass roots groups, fire departments, and to other established organizations to assist them in their current fire prevention/reduction educational initiatives for high risk groups. Citizens who are at greatest risk of being injured or killed by fire include the elderly, children, African-Americans, Latinos, Native Americans, and rural and urban residents.

Grantees are to use grants awarded under this program to deliver educational services, materials, and information to strengthen fire and life safety awareness for high-risk audiences, and to enhance the continued partnerships between fire service organizations and other non-profit organizations within the community.

Eligibility: Applicants applying for grants must meet the following requirements:

(a) The applicant must be a community-based, grass roots organization or other established non-profit organization demonstrating that it works in partnership with a local fire department. The applicant can also be a fire department (but not Federal/military fire departments). The organization must currently work toward increasing the public's knowledge and awareness of the importance of fire safety and prevention in an innovative manner, implementing a unique delivery style. It is the hope of the Administrator that the grant recipients' programs can be replicated for use by other organizations that teach and reinforce fire safety education and initiatives, and can be ''best practices'' examples within USFA curriculum. We will limit the grants to U.S. organizations, and we intend that grantees use the funds only in this country and its protectorates. Examples of non-fire and fire organizations follow:

(1) Non-fire organizations. For example:

- Community-based organizations;
- Non-profit organizations;
- Civic organizations (i.e., civic clubs, youth or senior citizen organizations, fraternities/sororities, etc.);
- Schools (i.e., public or private schools—kindergarten through high school, colleges/universities).

(2) Fire Organizations. For example:

- Fire Departments (*i.e.*, municipal, volunteer, private),
- Fire Professional Organizations (at the local level),
- Fire Historical or Educational Organizations.

(b) The applicant's public fire safety and prevention program must have been in place for at least one (1) year.

(c) The applicant must be located in the United States.

Restrictions: Awards made under this grant program are one-time, non-appealable grants. All selections are final.

- Grants awarded under this program will support existing programs only; grantees may not use the funds to create or establish a new program.
- OMB Circular A–21, Cost Principles for Educational Institutions; A–87, Cost Principles for State and Local Governments; or A–122, Cost Principles for Non-Profit Organizations will govern the allowability of costs associated with supporting the program identified in a grant awardee's project description.
- Grantees are not to use this grant to purchase or acquire: fire prevention equipment or apparatus; office furniture and equipment such as computers and telephones; contractors, subcontractors or instructors for the program.
- Nor may grantees use this grant to lease, rent, alter, or construct real property.

Supplemental Application Information: Eligible applicants will explain, in detail, how they will spend the funds under this grant. All applicants must submit the following supplemental information as part of their application package (Please note: We will not return application packages):

(a) A one (1) page (maximum) summary that describes how the applicant meets the eligibility requirements. Please address each of the three (3) eligibility criteria separately.

(b) A five (5) page (maximum) project narrative that explains, in detail, how the applicant intends to use the grant funding.

(1) This narrative must include, but need not be limited to:

- specific program goals;
- target audience(s) the program reaches or will reach;
- innovative methodology the program uses to reach the target audience(s);
- the program's current operating budget/funding level/source of funding;
- number of citizens that the program serves,
- partnerships with local fire departments and other organizations in carrying out the program, and
- how the applicant promotes the program. (Please include samples of any existing promotional materials—i.e., print, audio, video, and media coverage—for review).

(2) A description of program results is also critical to the narrative, addressing:

- achievement of program goals (provide statistics);
- reduction of fire loss of life or property (provide statistics);
- publicity received (copies of media coverage); and
- other measures of success (provide evidence of measured results).

(3) Finally, the narrative must include an analysis of the growth potential for the program, describing how the applicant will use grant funds to reach a larger target audience(s).

Evaluation: We intend to evaluate all applications received by the established application due date and award ten (10) $25,000.00 grants based upon the following criteria:

(1) Demonstrated relevance/need for the program;

(2) Applicant's past use of resources for the program, and proposed future use of resources;

(3) Measured results of program, and future goals;

(4) Demonstrated growth and replicability of the program.

Dated: June 1, 2000.

Carrye B. Brown,

U.S. Fire Administrator.

[FR Doc. 00–14305 Filed 6–6–00; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573 within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 11305–007.

Title: United Alliance Agreement.

Parties:

Cho Yang Shipping Company, Ltd.
DSR-Senator Lines GmbH
Hanjin Shipping Co., Ltd.
United Arab Shipping Company

Synopsis: The proposed amendment would permit a party belonging to another agreement in the trade to obtain space from carriers operating under that agreement for its own use or sale to a member of this Agreement. It also lists other agreements, currently in effect, from which such space would be obtained and makes other conforming, administrative changes to the Agreement.

Agreement No.: 011441–004.
Title: NYK/NOS Joint Service Agreement.
Parties:
Wallenius Wilhelmsen Lines AS
Nippon Yusen Kaisha
Synopsis: The amendment deletes the Mediterranean, Black, Red and Arabian Seas from the geographic scope of the agreement, reduces the number of vessels operated, and restates/updates the agreement.

Agreement No.: 011675–001.
Title: DSEN/EMC-Slot Charter Agreement.
Parties:
DSR-Senator Lines GmbH
Evergreen Marine Corp. (Taiwan) Ltd.
Synopsis: The proposed modification reduces Evergreen's westbound slot allocation and establishes a 45-day notice period to terminate the agreement on or after September 30, 2000.

Dated: June 2, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–14346 Filed 6–6–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. § 817 (e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

American Classic Voyages Company, 1380 Port of New Orleans Place, New Orleans, LA 70130–1890
Vessels: *Coastal Queen No. 1* and *Coastal Queen No. 2*
Costa Crociere S.p.A. and Costa Cruise Lines N.V.,World Trade Center, 80 S.W. 8th Street, Miami, FL 33130–3097
Vessel: *Costa Atlantica*
Cunard Line Limited (d/b/a Seabourn Cruise Line), 6100 Blue Lagoon Drive, Suite 400, Miami, FL 33126
Vessels: *Seabourn Goddess I, Seabourn Goddess II* and *Seabourn Sun*
Premier Operations, Ltd. (d/b/a Premier Cruises and Premier Cruise Lines), 400 Challenger Road, Cape Canaveral, FL 32920
Vessels: *The Big Red Boat II, The Big Red Boat III, Oceanic, Rembrandt* and *Seabreeze I*
Princess Cruises, Inc., Princess Cruise Lines, Ltd., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessels: *Crown Princess, Dawn Princess, Golden Princess, Grand Princess, Ocean Princess, Regal Princess, Sea Princess* and *Sun Princess*
Radisson Seven Seas Cruises, Inc., 600 Corporate Drive, Suite 410, Fort Lauderdale, FL 33334
Vessel: *Seven Seas Mariner*
Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International), 1050 Caribbean Way, Miami, FL 33132–2096
Vessels: *Adventure of the Seas, Brilliance of the Seas, Radiance of the Seas, Vantage III* and *Vantage IV*
Silversea Cruises, Ltd., 110 East Broward Blvd., Fort Lauderdale, FL 33301
Vessel: *Silver Shadow*

Dated: June 2, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–14345 Filed 6–6–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury To Passengers or Other Persons On Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to meet Liability Incurred for Death or Injury to Passengers or other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Celebrity Cruises Inc. and Millennium Inc., 1050 Caribbean Way, Miami, FL 33132
Vessel: *Millennium*
Cunard Line Limited, 6100 Blue Lagoon Drive, Suite 400, Miami, FL 33126
Vessels: *Seabourn Goddess I* and *Seabourn Goddess II*
The Delta Queen Steamboat Co. and Great AQ Steamboat, L.L.C., 1380 Port of New Orleans Place, New Orleans, LA 70130–1890
Vessel: *American Queen*
The Delta Queen Steamboat Co. and Great Pacific NW Cruise Line, L.L.C., 1380 Port of New Orleans Place, New Orleans, LA 70130–1890
Vessel: *Columbia Queen*
The Delta Queen Steamboat Co. and Great River Cruise Line, L.L.C., 1380 Port of New Orleans Place, New Orleans, LA 70130–1890
Vessel: *Delta Queen*
The Delta Queen Steamboat Co. and Great Ocean Cruise Line, L.L.C., 1380 Port of New Orleans Place, New Orleans, LA 70130–1890
Vessel: *Mississippi Queen*
Imperial Majesty Cruise Line L.L.C., Celebration World Cruises, Inc. and OB Limited, 5100 N. State Road, Suite 137, Fort Lauderdale, FL 33319
Vessel: *Oceanbreeze*
Lindblad Expeditions, Inc., E.T.I.C.A. and Metrohotel C.A., 720 Fifth Avenue, New York, NY 10019
Vessel: *Polaris*
Lindblad Expeditions, Inc., SPEX Sea Bird Ltd. and Majestic Alaska Boat Company, 720 Fifth Avenue, New York, NY 10019
Vessel: *Sea Bird*
Lindblad Expeditions, Inc. and SPEX Sea Lion Ltd., 720 Fifth Avenue, New York, NY 10019
Vessel: *Sea Lion*
Premier Operations, Ltd. and International Shipping Partners, Inc., 400 Challenger Road, Cape Canaveral, FL 32920
Vessel: *The Big Red Boat III*
Princess Cruises, Inc., Princess Cruise Lines, Ltd., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessels: *Crown Princess* and *Regal Princess*
Princess Cruises, Inc., Princess Cruise Lines, Ltd., Fairline Shipping Corporation, Ltd., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessel: *Dawn Princess*
Princess Cruises, Inc., Princess Cruise Lines, Ltd., Fairline Shipping International Corporation, Ltd., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessel: *Grand Princess*
Princess Cruises, Inc., Princess Cruise Lines, Ltd., OP Shipping Corporation, Ltd., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessel: *Ocean Princess*
Princess Cruises, Inc., Princess Cruise Lines, Ltd., CP Shipping Corporation, Ltd, and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessel: *Sea Princess*
Princess Cruises, Inc., Princess Cruise Lines, Ltd., COROT Shipping Corporation (Sociedade Unipessoal) Lda., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067
Vessel: *Sun Princess*

Dated: June 2, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–14348 Filed 6–6–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

YT Youngtrans, Inc. d/b/a Youngtrans, 177–25 Rockaway Blvd., Jamaica, NY 11434, Officers: Young S. Sue, Vice President (Qualifying Individual); Veaumyung Yoon, President
Global Ocean (Chicago) Inc., d/b/a Global Logix, Inc., 659 Supreme Drive, Bensenville, IL 60106, Officers: Hyun Soon Yoon, President (Qualifying Individual); Hyo Sub (Steven) Yoon, Director
Worldlink Logix Service, Inc., 440 Route 17 North, Suite 3B, Hasbrouck Heights, NJ 07604, Officer: Yunyop Kim, Director

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Cosmic Express Corp., 14545 Valley View Avenue, #F, Santa Fe Springs, CA 90670, Officer: Jennifer Huang, President (Qualifying Individual)
Planes Moving & Storage, Inc., 9823 Cincinnati-Dayton Road, West Chester, OH 45069, Officers: Jimmy Huff, Vice President; John Planes, C.E.O.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Carolina Shipping Company, 1064 Gardner Rd., Suite 312, Charleston, SC 29407, Officers: Dennis Forsberg, President; John Springer, Chairman
AmCar Forwarding, Inc., 7700 NW 81 Place, #1, Miami, FL 33166, Officers: Henk Geenen, President (Qualifying Individual); Robert Van Vliet, Vice President

Dated: June 2, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–14344 Filed 6–6–00; 8:45 am]

BILLING CODE 6730–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 22, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. George Vibbert, Jr., Tullahoma, Tennessee; Elwanda Vibbert, Tullahoma, Tennessee; Faye Sawyer Stynchula, Isle of Palms, South Carolina; and Sam Sawyer, Tullahoma, Tennessee; to retain voting shares of American City Bancorp, Inc., Tullahoma, Tennessee, and thereby indirectly retain voting shares of American City Bank, Tullahoma, Tennessee.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Cobb Voting Trust, St. Croix Falls, Wisconsin; and Walter George Fries (as an individual and as a Trustee of the Trust), Wabasha, Minnesota; to acquire additional voting voting shares of Financial Services of St. Croix Falls, St. Croix Falls, Wisconsin, and thereby indirectly acquire voting shares of Eagle Valley Bank, N.A., St. Croix Falls, Wisconsin.

Board of Governors of the Federal Reserve System, June 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14307 Filed 6–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank

holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Cheaha Financial Group, Inc., Oxford, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Cheaha Bank, Oxford, Alabama (in organization).

Board of Governors of the Federal Reserve System, June 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14219 Filed 6–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. *Arvest Bank Group, Inc.*, Bentonville, Arkansas; to retain Arvest Bank, Joplin, Missouri, after its conversion from a savings bank to a commercial bank.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *American River Holdings*, Sacramento, California; to acquire 100 percent of the voting shares of North Coast Bank, N.A., Santa Rosa, California.

Board of Governors of the Federal Reserve System, June 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14306 Filed 6–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 21, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Regions Financial Corporation, Birmingham, Alabama; to acquire Heritage Mortgage Company, Hutto, Texas, and thereby engage in making, acquiring, brokering, or servicing loans or other extensions of credit, pursuant to § 225.28(b)(1) of Regulation Y. This activity will be conducted throughout the State of Texas.

Board of Governors of the Federal Reserve System, June 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14220 Filed 6–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, June 12, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14373 Filed 6–2–00; 4:40 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

[Account Number: 4151–04]

Technical Review Panel on the Medicare Trustees Reports; Notice of June 28–29 Meeting

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of June 28–29 meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the first meeting of the Technical Review Panel on the Medicare Trustees Reports (the Panel). This meeting is open to the public.

Pursuant to Public Law 92–463 (the Federal Advisory Committee Act), the Panel was established on August 12, 1999, by the Secretary of HHS to review the methods and assumptions underlying the annual reports of the Board of Trustees of the Hospital Insurance and Supplementary Medical Insurance Trust Funds.

DATES: The first meeting will be held on June 28, 2000 (11:00 a.m. to 5:00 p.m.) and June 29, 2000 (9:00 a.m. to 1:00 p.m.).

ADDRESSES: The meeting will be held at the Health Care Financing Administration (HCFA) Headquarters, Training Center Room C–101, 7500 Security Boulevard, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Ariel Winter, Executive Director, Technical Review Panel on the Medicare Trustees Reports, Department of Health and Human Services, Room 442E, 200 Independence Avenue, SW., Washington, DC, 20201, (202) 690–6860, medpanel@osaspe.dhhs.gov. Additional information is also available on the Panel's web site: http://aspe.hhs.gov/health/medpanel.htm.

SUPPLEMENTARY INFORMATION: The Board of Trustees of the Medicare Trust Funds (the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) Trust Funds) report annually on the funds' financial condition. The reports describe the trust funds' current and projected financial condition, within the next 10 years (the short term) and over the subsequent 65 years (the long term). The Medicare Board of Trustees has directed the Secretary of Health and Human Services (who is one of the Trustees) to establish a panel of technical experts to review the assumptions and methods underlying the HI and SMI annual reports.

The panel's review will include the following four topics:

1. Medicare assumptions (e.g., utilization rates, medical price increases).

2. Projection methodology (how assumptions are used to make cost projections).

3. Long-range growth assumptions for HI and SMI.

4. Use of stochastic forecasting techniques.

The Panel will issue its findings in reports to the Secretary and the other Trustees.

The Panel will consist of seven members who are experts in the fields of economics and actuarial science. The following individuals will be sworn in as members at the first meeting: Len Nichols, Ph.D.; David Cutler, Ph.D.; Michael Chernew, Ph.D.; Dale Yamamoto, F.S.A., M.A.A.A., F.C.C.A., E.A., B.S.; James Robinson, F.S.A., M.A.A.A., Ph.D.; Alice Rosenblatt, F.S.A., M.A.A.A., M.A.; and Sam Gutterman, F.S.A., F.C.A.S., M.A.A.A., M.A. (the chair-designate). The members' terms will end August 12, 2001.

The first meeting of the Panel is scheduled for June 28, 2000 (11:00 a.m. to 5:00 p.m.), and June 29, 2000 (9:00 a.m. to 1:00 p.m.). The meeting will be held at the Health Care Financing Administration (HCFA) Headquarters, Training Center, Room C–101, 7500 Security Boulevard, Baltimore, Maryland. The meeting is open to the public, but attendance is limited to the space available. There will also be an executive session on June 28 from 9:00 a.m. to 11:00 a.m. for the swearing-in of Panel members. This session will be closed to the public.

At this meeting, the members will discuss the Panel's scope of work. HCFA's Office of the Actuary will make presentations to the Panel on how the estimates in the Medicare Trustees' Reports are developed. Specific presentation topics may include: the HI and SMI benefits and income models, measures of actuarial soundness, and health care utilization assumptions.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues mentioned in this notice should contact the Executive Director by 12 noon on June 12, 2000. The number of oral presentations may be limited to the time available. A written copy of the presenters' oral remarks should be submitted to the Executive Director no later than 12 noon, June 19, 2000, for distribution to the Panel members.

Any interested member of the public may submit written comments to the Executive Director and Panel members for review. Comments should be received by the Executive Director by 12 noon, June 19, 2000, for distribution to the Panel members.

Individuals requiring sign language interpretation for the hearing impaired and/or other special accommodation, should contact Ariel Winter at (202) 690–6860 by June 16, 2000.

Dated: May 30, 2000.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–14238 Filed 6–6–00; 8:45 am]

BILLING CODE 4110–60–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00062]

Postdoctoral Fellowship Training Program in Infectious Diseases; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Postdoctoral Fellowship Training Programs in Infectious Diseases. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Immunization and Infectious Disease.

The purpose of this cooperative agreement is to assist recipients in the development and implementation of a two- to three-year Postdoctoral Fellowship Training Program in Infectious Diseases (PFTP) which provides a combination of clinical training and basic laboratory or epidemiologic training in infectious diseases. The goal is to improve the ability of the U.S. public health system to respond to the problem of infectious diseases by increasing the number of academic infectious disease physicians with demonstrated skills in the public health aspects of infectious diseases and to provide them with the essential, pertinent clinical and research skills.

PFTPs should be implemented as new distinct fellowship positions/tracks in recipient's existing infectious disease

postdoctoral training program. PFTPs should be aimed at physicians with training in infectious diseases who wish to pursue a career in academic infectious diseases of public health importance. The objective is to offer a combination of research and clinical training which will lead to eligibility for certification in infectious diseases by the American Board of Internal Medicine, Subspecialty Board of Infectious Diseases (the cognizant member board of the American Board of Medical Specialties). Specific areas of clinical concentration may include: Clinical rotations in infectious diseases, infectious diseases in transplant recipients, clinical microbiology, outpatient infectious diseases, pediatric infectious diseases, or infectious disease pharmacology. The recipient must be able to provide support for physicians of unusual ability and promise or proven achievement by giving them an opportunity to conduct clinical, laboratory, and epidemiologic research on significant public health problems caused by infectious diseases. Specific areas of research concentration may include: Viral and rickettsial infections, nosocomial infections, antimicrobial resistance, vector-borne infectious diseases, respiratory and food-borne bacterial diseases, parasitic diseases, sexually transmitted diseases, and acquired immunodeficiency syndrome.

In 1994, CDC initiated the Postdoctoral Fellowship Training Program in Infectious Diseases (PFTP) and made awards to two U.S. medical schools. The PFTP was renewed competitively in 1997 and continued programs at the original two schools and added a third. Under all three awards, the PFTP was integrated into the school's existing postdoctoral program as a separate PFTP track and several physicians have been enrolled.

B. Eligible Applicants

Assistance will be provided only to university affiliated schools of medicine with infectious disease programs accredited by the Accreditation Council for Graduate Medical Education (ACGME).

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $180,000 is available in FY 2000 to fund approximately three awards. It is expected that the average award will be $60,000, ranging from $25,000 to $100,000. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Grantee cost-sharing is required under this program. CDC will provide up to 50 percent of the total cost for items directly related to the support of fellows such as stipends (consistent with PHS policies) and professional travel. CDC funds will not be provided for supplies and equipment or for direct salaries/fringe, travel, space, *etc.*, for recipient's faculty or administrative personnel. In a training grant, recipient's indirect charges are limited to 8 percent of direct costs. CDC funds are not intended to supplant recipient's existing infectious disease fellowships, rather they are intended to support new fellowship opportunities that are consistent with the stated Purpose of this cooperative agreement program.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. As a distinct and separate track of recipient's existing infectious disease postdoctoral fellowship program, develop and conduct a two- to three-year PFTP that combines clinical and basic laboratory or epidemiologic research in prevention and control of infectious diseases of public health importance.

b. Design and conduct the PFTP such that, upon completion of the fellowship, fellows will become eligible for certification in infectious diseases by the American Board of Internal Medicine.

c. Provide preceptors for training.

d. Develop a fellowship candidate application, review, ranking, and selection process. Based on this process, select applicants to be awarded two- to three-year PFTP fellowships.

e. Provide administrative support to fellows during their tenure in the PFTP including the payment of stipends, professional travel, *etc.* (see Availability of Funds for cost sharing requirements).

f. Assist fellows in publishing and/or otherwise disseminating results of their research.

g. Monitor and evaluate the progress of fellows and progress toward achieving program goals. To measure the overall success of the PFTP, establish a mechanism to follow-up and report on fellows (*e.g.*, where they work, in what field, *etc.*) periodically for up to five years after they complete the PFTP.

h. If fellow's research involves the use of human subjects, assure appropriate IRB review by all cooperating institutions participating in the project.

2. CDC Activities

a. The laboratory or epidemiologic research training may occur at CDC facilities. Provide preceptors and facilities for research training that occurs at CDC facilities.

b. If CDC researchers participate in fellow's research that involves the use of human subjects, assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in this section and the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 10 single-spaced pages, printed on one side, with one inch margins (including headers and footers), and unreduced font.

Typing and Mailing

All pages must be clearly numbered and a complete index to the application and its appendices must be included. All pages of the application and appendices must be easily run through an automatic document feed copier, thus do not bind, staple, or paperclip any pages of any copy of the application and do not include any bound documents (*e.g.*, pamphlets or other publications) in the appendices. Do not include cardboard, plastic, or other page separators between sections.

Specific Instructions

The application narrative must not exceed 10 pages (excluding abstract, budget, and appendixes). Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that should be part of the narrative will not be accepted if placed in the appendices. The application narrative must contain the following sections in the order presented below:

1. Abstract

Provide a brief (less than two pages) summary of the proposed PFTP.

2. Background and Need

Demonstrate an understanding of the background and need for the PFTP. Discuss how your proposed PFTP track differs from existing tracks/opportunities in your fellowship program and how your proposed PFTP track meets the Purpose of this cooperative agreement program.

3. Capacity and Personnel

a. Describe applicant's goals, objectives, and efforts to promote the field of academic infectious diseases. Describe relevant degree programs and sponsored regular national meetings, seminars, and/or workshops devoted to pertinent issues in academic infectious diseases with relevance to public health.

b. Demonstrate applicant's experience in academic infectious diseases education and training in general, including experience in maintaining programs that lead to eligibility for certification in infectious diseases by the American Board of Internal Medicine. Describe applicant's existing postdoctoral fellowship training programs for physicians in infectious diseases.

c. Describe applicant's resources, facilities, and professional personnel that will be involved in conducting the project. Include (in an appendix) curriculum vitae for all professional personnel involved with the project. Describe plans for administration of the project and identify administrative resources/personnel that will be assigned to the project. Provide (in an appendix) letters of support from all key participating non-applicant organizations, individuals, *etc.*, which clearly indicate their commitment to participate as described in the operational plan.

d. If proposing that fellows conduct their laboratory or epidemiologic training at CDC facilities, include a letter of support (in an appendix) from the appropriate CDC scientist (co-signed by their Division/Program Principal Management Officer) that clearly indicates their commitment to participate as described in your application Operational Plan including agreement to 1) serve as preceptor for the research training and 2) provide space, facilities, supplies, *etc.*, for fellows.

4. Operational Plan

Present a detailed and time-phased plan for establishing and conducting the PFTP. Describe procedures to accomplish all of the required recipient activities. Describe how the clinical and research activities will be coordinated within the PFTP. Present a plan for monitoring and evaluating the progress of fellows and the progress toward achieving program goals. Describe how the plan will ensure that all fellows become eligible for certification in infectious diseases by the American Board of Internal Medicine by the end of fellowship tenure. Describe procedures and plans for assuring any fellow's research that involves the use of human subjects will receive appropriate IRB review by all cooperating institutions participating in the project.

5. Budget

Provide a line-item budget and accompanying detailed, line-by-line justification that demonstrates the request is consistent with the purpose and objectives of this program. Clearly indicate by line-item both (a) the full cost and (b) the amount requested from CDC (see Availability of Funds section for further information regarding cost-sharing).

F. Submission and Deadline

Letter of Intent (LOI)

In order to assist CDC in planning the evaluation of applications submitted under this Program Announcement, all parties intending to submit an application are requested to submit an LOI to inform CDC of their intention to do so as soon as possible but not later than 30 days prior to the application due date. The LOI should include (1) Name and address of institution, (2) name, address, and telephone number of contact person, and if proposing that research component be conducted at CDC facilities, (3) name and telephone number of CDC scientist agreeing to participate. Notification can be provided by facsimile, postal mail, or Email to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov/ . . . Forms, or in the application kit. On or before Friday, June 30, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (15 Points)

Extent to which applicant demonstrates an understanding of the background and need for the PFTP. Extent to which they clearly demonstrate that their proposed PFTP fellowship positions add to and do not supplant existing positions in their fellowship program. Extent to which they demonstrate and how the proposed PFTP track meets the Purpose of this cooperative agreement program.

2. Capacity (50 Points)

a. Institutional (25 points): The extent to which the applicant demonstrates that they have been and are devoted to promoting the field of academic infectious diseases. The extent to which the applicant has promoted the field of academic infectious diseases by conducting regular national meetings and workshops devoted to current topics. The extent to which the applicant documents experience in education and training in academic infectious diseases, including documentation of relevant degree programs offered and evidence of experience in successfully preparing students for certification in infectious diseases by the American Board of Internal Medicine. The extent to which the applicant demonstrates significant institutional experience in managing postdoctoral fellowship training programs for physicians in the area of infectious diseases. The extent to which applicant documents they have a successful existing postdoctoral

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fellowship program in infectious diseases.

b. Staff and administrative (25 points): The extent to which applicant describes adequate resources and facilities (clinical, academic, and administrative) for conducting the PFTP. The extent to which applicant documents that their professional personnel involved in the PFTP are qualified and have past experience and achievements related to that proposed as evidenced by curriculum vitae, publications, *etc.* If proposing that fellow's research be conducted at CDC facilities, the extent to which applicant includes a Letter of Support as described in Application Content section 3.b., above (*i.e.*, that is signed by the appropriate CDC officials and that clearly indicates their commitment to participate as proposed in the application).

3. Operational Plan (30 Points)

The extent to which the proposed operational plan is clear, detailed, time-phased, and meets the purpose and goals of this cooperative agreement program. The extent to which the proposed operational plan addresses all required Recipient Activities. If specific fellow(s) research projects are proposed that involve the use of human subjects, the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Evaluation Plan (5 Points)

The quality of the proposed plan to monitor, evaluate and track individual fellows; and overall plan to evaluate activities and objectives.

5. Budget (Not Scored)

The extent to which the proposed budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

6. If research involving the use of human subjects is proposed, does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? Yes____ No____

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of—

1. Annual progress reports (included with each noncompeting continuation application);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301 [42 U.S.C. 241] and 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave you name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2749, Email address: ayw3@cdc.gov.

For program technical assistance, contact: Greg J. Jones, M.P.A., Office of the Director, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop C–12, 1600 Clifton Road, N.E., Atlanta, GA 30333, Phone: (404) 639–4180, Facsimile: (404) 639–3106, Email: GJJones@cdc.gov.

Dated: June 1, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14267 Filed 6–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00C–1321]

Wesley Jessen Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Wesley Jessen Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of mica in contact lenses.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 0C0271) has been filed by Wesley Jessen Corp., 333 East Howard Ave., Des Plaines, IL 60018. The petition proposes to amend the color additive regulations in 21 CFR part 73 subpart D—Medical Devices to provide for the safe use of mica in contact lenses.

The agency has determined under 21 CFR 25.32(l) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: May 15, 2000.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–14272 Filed 6–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms (OMB No. 0915–0034) Extension

This clearance request is for extension of approval for four HEAL forms: the Lenders Application for Contract of Federal Loan Insurance (used by lenders to make application to the HEAL insurance program); the Lender's Manifest (used by the lender to report recent HEAL loan activity); the Loan Transfer Statement (used by the lender to report the transfer of a HEAL loan); and the Borrower Status Request (completed by the borrower and the borrower's employer and used by the lender to determine eligibility for deferment). The reports assist the Department in protecting its investment in this loan insurance program.

The estimate of burden for the forms are as follows:

Collection activity	Number of respondents	Responses per respondent	Total responses	Average time per response (in minutes)	Total burden hours
HRSA Form 504	22	1	22	8	3
HRSA Form 508:					
Borrowers	12,430	1	12,430	10	2,071
Employers	7,550	1.646	12,430	5	1,035
Borrower Loan Status Update Electronic Submission	22	8,498	186,970	3	9,348
Loan Purchase/consolidation Electronic Submission	22	850	18,700	4	1,246
Total	20,046		227,552		13,703

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 1, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–14273 Filed 6–6–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The Family Health Survey (Validation of a Family History of Cancer Questionnaire for Risk Factor Surveillance)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title The Family Health Survey (Validation of a Family History of Cancer Questionnaire for Risk Factor Surveillance). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* In this methologic pilot study, the NCI will develop a family history of cancer questionnaire for use in cancer risk factor surveillance, and will evaluate how accurately individuals in the general population can report major cancers occurring in their immediate and extended family. This study is needed because there are currently no validated questionnaires with which to collect comprehensive data for assessing the burden of family history of cancer in the U.S. population, and no general population estimates of reporting error for the major cancers that affect families. The results on reporting accuracy will be used to determine whether the quality of data is sufficient to justify conducting a comprehensive national prevalence study of family history of cancer. The questionnaire will be administered in a telephone survey of adults, age 25 to 64 years who will be randomly selected from households in Connecticut. Respondents will be asked to report about family structure and cancer diagnoses occurring in their first and second degree relatives. Positive and negative reports of five major cancer sites (i.e. breast, prostate, colorectal, lung, and ovarian cancers) will be validated for approximately four relatives per respondent through data linkage to state and federal health registries or by review of death certificates and medical records. Living relatives and next-of-kin of deceased relatives may be interviewed as part of the validation process. Information about the accuracy of reports and factors associated with reporting error will help to evaluate the feasibility of conducting surveys on family history of cancer. *Frequency of Response:* One-time study. *Affected Public:* Individuals or households. *Type of Respondents:* Adults, age 25 to 64, who reside in the state of Connecticut and their selected adult relatives over age 25 or the

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relative's next-of-kin. The annual reporting burden is presented in the table below. The annualized cost to respondents is estimated at: $23,700. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimate number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Adults age 25 to 64	1800	1	0.835	1503
Adults relatives or their next-of kin	5190	1	0.167	867
Total				2370

Request for Comments:

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, sand clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information:

To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Louise Wideroff, Project Officer, Applied Research Program, National Cancer Institute, 6130 Executive Blvd. EPN 4010, Bethesda, MD 20892, or call non-toll-free number (301) 435–6823 or E-mail your request, including your address to: *wideroff@nih.gov*.

Comments Due Date:

Comments regarding this information collection are best assured of having their full effect if received on or before August 7, 2000.

Dated: May 30, 2000.

Reesa Nichols,

OMB Project Liaison Officer.

[FR Doc. 00–14340 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Marlene Shinn, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 285; fax: 301/402–0220; e-mail: ms482m@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Direct C–14 Oxidation of Opioids

Andrew Coop, Kenner C. Rice (NIDDK)
DHHS Reference No. E–032–99/1 filed 04 May 2000

Opioid agonist drugs including the 14-hydroxy derivatives are utilized in the treatment of pain. The 14-hydroxy substituted opioid antagonists have also been found to be useful in the treatment of opiate abuse, opiate overdose and alcohol addiction. In addition, there are certain derivatives which have been found to be useful in the prevention of tolerance to morphine and as immunosuppressants. The 14-hydroxy agonist and antagonist drugs are produced by a multistep process from the starting material, thebaine, which is a minor constituent of opium and is generally in short supply. The demand for these products has resulted in a steadily increasing cost for thebaine and thebaine derivatives.

The present technology consists of a new and practical, nonchromatographic method of preparing 14-hydroxycodeinone by the direct oxidation of codeinone with cobalt (III) acetate (easily prepared in situ). The technology gives a 51% unoptimized yield of 14-hydroxycodeinone easily isolated by extractive workup and direct crystallization. This process is ultimately based on morphine (which is by far the major constituent and cheapest of the opium alkaloids) through the sequence: morphine to codeine to codeinone to 14-hydroxycodeinone. This technology is not limited by the availability of thebaine and thus offers more efficient production of the 14-hydroxy derivatives from opium.

Use of Oligonucleotides To Target Nucleic Acid Sequences Encoding Apolipoprotein B To Decrease Serum Apolipoprotein B and Cholesterol Levels

Thomas L Eggerman (FDA), Amy Patterson, Paul F. Torrence (NIDDK), Julie K Rhie
DHHS Reference No. E–236–98/0 filed 12 Oct 1999

Coronary heart disease is caused by the atherosclerotic narrowing of the coronary arteries affecting nearly 14 million persons in the United States. Approximately 480,000 deaths in 1995 were caused by the disease and it is the leading cause of death in the United States today. Two of the established causes of atherosclerosis include elevated cholesterol levels and elevations of the major protein responsible for carrying cholesterol—apolipoprotein B (apoB). Optimal therapy, however is still not available for the most severely affected patients, in particular those with familial hypercholesterolemia and those with elevated apoB levels.

The NIH announces a new gene therapy approach which will lower the risk for atherosclerotic heart disease by decreasing plasma cholesterol and apoB levels. Our researchers have shown that antisense DNA oligonucleotides targeted for apoB decreased apoB mRNA in a human liver cell line by up to 80%. This in turn has led to a new gene therapy which utilizes a vector designed to produce antisense mRNA targeted for apoB. The result is a decrease in liver apoB production, which is the major source of circulating apoB. These oligonucleotides and oligonucleotide analogs are a novel and useful way of reducing low density lipoprotein (LDL) in patients, as well as for research and diagnostic purposes.

T20/D178 and T21/D107 Are Activators of Human Phagocyte Formyl Peptide Receptors

Ji Ming Wang (NCI), Joost J Oppenheim (NCI), Shao-Bo Su, Wang-Hua Gong, Philip M. Murphy (NIAID), Ji-Liang Gao (NIAID)
DHHS Reference No. E–164–99/0 filed 05 May 1999

The use of immunotherapy to treat inflammatory diseases is prescribed to thousands each and every year. In use currently are steroidal and non-steroidal anti-inflammatory drugs, which have serious side effects including: adrenal suppression, gastrointestinal disorders, increased susceptibility to infections, fluid retention and bone loss.

The NIH announces a new technology which can be used in drug discovery dealing with the modulation of the immune response. This technology identifies two polypeptides, T20/DP178 and T21/DP107, which are peptide domains of the HIV–1 envelope protein and are potent chemoattractants and activators of human peripheral blood phagocytes (monocytes and neutrophils) but not T lymphocytes. These polypeptides have been determined to interact with the Formyl Peptide Receptors (FPR), which in turn up-regulates the immune response by inducing cell migration and calcium mobilization. The activation of FPR class receptors by their agonists also results in desensitization of cell responses to other chemotactic factors. By identifying analogs to T20/DP178 and T21/DP107 and then evaluating their ability to bind to the FPR, one will be able to determine if the analog is a good candidate for either inhibiting or activating the immune response.

Dated: May 30, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–14343 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center Executive Committee.

Date: July 21, 2000.

Time: 8:30 am to 1:30 pm.

Agenda: Topics Related to Clinical Center Budget.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Dated: May 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14332 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Diet, Lifestyle and Cancer in U.S. Special Populations.

Date: June 29, 2000.

Time: 12 pm to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, 6130 Executive Boulevard, Conference Room E, Rockville MD 20852, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8070, Rockville, MD 20892–7405, 301/496–7987.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of health, HHS)

Dated: May 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14333 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and

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the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Continuation of Follow-Up of DES-Exposed Cohorts.

Date: June 21–22, 2000.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kirt Vener, Branch Chief, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8072, Bethesda, MD 20892, 301/496–7174.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14334 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Environmental Health Sciences Review Committee.

Date: July 20–21, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS-South Campus, Building 101, Conference Room B, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: May 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14328 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 29, 2000.

Time: 4 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 1450 Glenarm Place, Denver, CO 80202.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 29, 2000.

Time: 12 pm to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 1450 Glenarm Place, Denver, CO 80202.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 30, 2000.

Time: 4 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 1450 Glenarm Place, Denver, CO 80202.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14330 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: July 17, 2000.

Time: 8:30 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John R. Lymangrover, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14335 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Phase II SBIR: "Develop CD–ROM Based Instrument Wizard".

Date: June 28, 2000.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14336 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: June 21–23, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gerald L. McLaughlin, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, gm145a@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14337 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: June 8–9, 2000.

Open: June 8, 2000, 8:30 am to 5:30 pm.

Agenda: Director's Presentation & Scientific Presentations.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Open: June 9, 2000, 9 am to 10 am.

Agenda: Concept review.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: June 9, 2000, 10 am to 5 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

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Contact Person: Dushanka V. Kleinman, Deputy Director National Institute of Dental & Craniofacial Res., National Institutes of Health, 9000 Rockville Pike, 31/2C39, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14338 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: June 28–29, 2000.

Time: June 28–9 a.m. to 5 p.m.; June 29–8:30 a.m. to 5 p.m.

Agenda: The agenda will include a discussion on novel human gene transfer protocol(s), DHHS Initiatives for Human Subjects Protections, continued deliberation on issues involving serious adverse events, review of the findings and recommendations from the Advisory Committee to the Director Working Group on Gene Transfer Studies, discussion of data management activities related to human gene transfer clinical trials, other matters to be considered by the Committee. Additional information is also available at the Officer of Biotechnology Activities' web site: http://www.nih.gov/od/oba/ on the Internet.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892

Contact Person: Amy P. Patterson, Director and Acting Executive Secretary, Officer of Biotechnology Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, MD 20892–7010, 301–496–9838.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: May 31, 2000

LaVerne Stringfield,

Director, Officer of Federal Advisory Committee Policy.

[FR Doc. 00–14342 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IFCN–7 (01)

Date: June 15–16, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Bernard F. Driscoll, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.

Date: June 15–16, 2000.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Sofitel, 1914 Connecticut Ave., NW., Washington, DC 20009.

Contact Person: Nancy Lamontagne, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

Name of Committee: Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 1.

Date: June 15–16, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Philip Perkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718, perkinsp@csr.nih.gov.

Name of Committee: Biochemical Sciences Integrated Review Group, Medical Biochemistry Study Section.

Date: June 15–16, 2000.

Time: 8:30 am to 5 pm

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Alexander S. Liacouras, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Biochemical Sciences Integrated Review Group, Biochemistry Study Section.

Date: June 15–16, 2000.

Time: 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Chhanda L. Ganguly, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 5.

Date: June 15–16, 2000.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Sherry L. Dupere, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, duperes@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The George Hotel, 15 E Street, NE, Washington, DC 20001.

Contact Person: Gillian Einstein, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892, 301–435–4433, einsteig@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov

Name of Committee: Immunological Sciences Integrated Review Group, Experimental Immunology Study Section.

Date: June 15–16, 2000.

Time: 8:30 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Calbert A. Laing, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Weller, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Visual Sciences A Study Section.

Date: June 15–16, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Michael H. Chaitin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301) 435–1245, richard.marcus@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Michael J. Kozak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 9 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Michael A. Lang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15–16, 2000.

Time: 9:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St, NW., Washington, DC 20037.

Contact Person: Carl D. Banner, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15, 2000.

Time: 3 p.m. to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 16, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Central, 1501 Rhode Island Ave, NW., Washington, DC 20005.

Contact Person: Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 16, 2000.

Time: 9 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Sandy Warren, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room, 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 16, 2000.

Time: 12 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 17–18, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Copper Mountain Resort, P.O. Box 3001, Copper Mountain, CO 80443.

Contact Person: Jay Joshi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18, 2000.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Dharam S. Dhindsa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126.

MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 18–19, 2000.
Time: 3 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000.
Contact Person: Ann A. Jerkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 18, 2000.
Time: 4 pm to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place: Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000.
Contact Person: N. Krish Krishnan, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 18, 2000.
Time: 6 pm to 8 pm.
Agenda: To review and evaluate grant applications.
Place: Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000.
Contact Person: Abubakar A. Shaikh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14329 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 5, 2000.
Time: 5 p.m. to 6 p.m.
Agenda: To Review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Bruce Maurer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14331 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 1.
Date: June 8–9, 2000.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.
Contact Person: Michael H. Sayre, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, Bethesda, MD 20892, (301) 435–1219.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 9, 2000.
Time: 8 a.m. to 9 a.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.
Contact Person: Ramesh K. Nayak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 4.
Date: June 19–20, 2000.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Mushtaq A. Khan, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, (301) 435–1778, khanm@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Human Embryology and Development Subcommittee 1.
Date: June 19–20, 2000.
Time: 8 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites & Chevy Pavilion, 4300 Military Road, NW., Wisconsin at Western Avenue, Washington, DC 20015.
Contact Person: Michael Knecht, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 45 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery and Bioengineering Study Section.
Date: June 19–20, 2000.

Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Teresa Nesbitt, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1172, nesbitt@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 19–20, 2000.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gloria B. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Nutritional and Metabolic Sciences Integrated Review Group, Metabolism Study Section.
Date: June 19–20, 2000.
Time: 8 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000.
Contact Person: Krish Krishnan, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 19–20, 2000.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852
Contact Person: Stephen M. Nigida, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Experimental Cardiovascular Sciences Study Section.
Date: June 19–20, 2000.
Time: 8 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Monarch Hotel, 2400 M Street, NW, Washington, DC 20037.
Contact Person: Anshumali Chaudhari, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4128, MSC 7801, Bethesda, MD 20892, (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IFCN–6 (01).
Date: June 19–20, 2000.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Joseph Kimm, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Nutritional and Metabolic Sciences Integrated Review Group, Nutrition Study Section.
Date: June 19–20, 2000.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000.
Contact Person: Sooja K. Kim, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Endocrinology Study Section.
Date: June 19–20, 2000.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000.
Contact Person: Syed M. Amir, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, amirs@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacteriology and Mycology Subcommittee 1.
Date: June 19–20, 2000.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn, Conference Room, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 20–21, 2000.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Custer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Nursing Research Study Section.
Date: June 20–22, 2000.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn-Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Gertrude McFarland, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 20–21, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Doyle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Syed Husain, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 20–21, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Herman Teitelbaum, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 20–21, 2000.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.

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Place: The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Lung Biology and Pathology Study Section.

Date: June 21–22, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: George M. Barnas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–0696, george_barnas@nih.gov

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 1.

Date: June 21–22, 2000.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Montgomery Village Ave, Gathersburg, MD 20879.

Contact Person: Martin L. Slater, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

Name of Committee: Biophysical and Chemical Sciencies Integrated Review Group, Medicinal Chemistry Study Section.

Date: June 21–22, 2000.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ronald J. Dubois, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, duboisr@csr.nih.gov

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Experimental Virology Study Section.

Date: June 21–22, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.

Contact Person: Rona L. Hirschberg, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 4.

Date: June 22–23, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Marcia Steinberg, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023.

Name of Committee: Biochemical Sciences Integrated Review Group, Physiological Chemistry Study Section.

Date: June 22–23, 2000.

Time: 8 a.m. to 3:30 p.m.

Agenda: to review and evaluate grant applications.

Place: Embassy Square, 2000 N Street, NW, Washington, DC 20036.

Contact Person: Richard Panniers, Scientific Review Administrator, Center for Scientific Review, National institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 22–23, 2000.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel, IFCN–8 (01).

Date: June 22–23, 2000.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Samuel Rawlings, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

Name of Committee: Immunological Sciences Integrated Review, Group, Immunological Sciences Study Section.

Date: June 22–23, 2000.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Ave, NW., Washington, DC 20037.

Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225.

Name of Committee: Immunological Sciences Integrated Review Group, Allergy and Immunology Study Section.

Date: June 22–23, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Eugene M. Zimmerman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 22–23, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Michael Nunn, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 2.

Date: June 22–23, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Rona L. Hirschberg, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Biophysical Chemistry Study Section.

Date: June 22–23, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: Arnold Revzin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 22–23, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: John L. Bowers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 22–23, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Mariana Dimitrov, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, Bethesda, MD 20892, (301) 435–1281.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 22, 2000.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: St James Preferred Residence, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Russell T. Dowell, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@csr.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14339 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-exclusive License: "Ultra Thin Walled Wire Reinforced Endotracheal Tubing"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a co-exclusive license to practice the inventions embodied in U.S. Patent Application S/N 08/645,887 entitled, "Ultra Thin Walled Wire Reinforced Endotracheal Tubing" filed on May 15, 1996 and now U.S. Patent 5,722,395 which issued on March 3, 1998 to Mallinckrodt, Inc. of St. Louis, MO. The patent rights in these inventions have been assigned to the United States of America.

The prospective co-exclusive license territory will be for the United States.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before August 7, 2000 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Girish C. Barua, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: 301/496–7056, ext. 263; Facsimile: 301/402–0220; E-mail: gb18t@nih.gov.

SUPPLEMENTARY INFORMATION: U.S. Patent 5,722,395 claims an ultra thin walled wire reinforced endotracheal tubing which includes a thin walled tubing comprising a polymeric material having a spring material incorporated therewith. Utilization of the spring wire material in combination with polymeric material results in a reduced wall thickness which results in a significant decrease in resistance to air flow through the endotracheal tubing and therefore should permit a patient to breathe in more relaxed fashion so as not to become exhausted. The endotracheal tubing of the present invention is made by depositing a dissolvable polymeric material onto a rotating mandrel in successive layers. A spring material is also applied around the mandrel to produce the ultra thin walled wire reinforced endotracheal tubing.

The prospective co-exclusive license: will be royalty-bearing; will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7; and it will be structured in such a way not to preclude the U.S. Public Health Service from licensing the patent rights of U.S. Patents 5,305,740, 5,429,127, 5,537,729, 5,711,296 and 5,785,998 and allowing appropriate licensees the right to practice these patent rights worldwide.

The prospective co-exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 30, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–14341 Filed 6–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT010–1220–DA]

Motorized Vehicle Use Within the Following Areas of Critical Environmental Concern: Bridger Fossil Area; East Pryor Mountain; Meeteetse Spires; Petroglyph Canyon and Weatherman Draw, within Carbon and Musselshell Counties, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The decision to approve the designation of seven ACEC's within Carbon and Yellowstone Counties, Montana with associated restrictions on motorized vehicle use is final. Motorized use in the Bridger Fossil Area, East Pryor Mountain, Meeteese Spires, Petroglyph Canyon and Stark Site ACEC's is restricted to designated roads. Motorized vehicle use in the Weatherman Draw ACEC is limited to authorized use only. The final decision was signed on March 10, 1999 and the restrictions became effective on April 10, 1999. These areas are posted with signs listing the specific restrictions for each area.

FOR FURTHER INFORMATION CONTACT: Sandra Brooks, Field Manager, BLM, Billings Field Office, PO BOX 36800, 5001 Southgate Drive, Billings, Montana, 59107 or 406–896–5013.

SUPPLEMENTARY INFORMATION: Authority for this action is outlined in sections 302, 303 and 310 of the Federal Land Policy and Mangement Act of October 21, 1976, (43 U.S.C. 1716) and Title 43 Code of Federal Regulations Subject 8364 (43 CFR 8364.1). Any person who fails to comply with this closure is subject to arrest and a fine up to $1000 or imprisonment not to exceed 12 months, or both. These restrictions apply to all persons except persons authorized by the Bureau of Land Management.

Dated: June 1, 2000.

Sandra S. Brooks,

Field Manager.

[FR Doc. 00–14268 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–$$–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-958-6333-ET; GPO-0083; (OR-9041A]

Public Land Order No. 7452; Partial Revocation of the Executive Order Dated April 17, 1926; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order insofar as it affects 4,231.09 acres of public lands withdrawn for the Bureau of Land Management's Public Water Reserve No. 107. The lands do not qualify for a public water reserve and the revocation is needed to permit several land disposals. This action will open the lands to surface entry and non-metalliferous mining, unless included in other segregations of record. All of the lands have been and will remain open to metalliferous mining and mineral leasing, unless included in other segregations of record.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Allison O'Brien, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6171.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated April 17, 1926, which established Public Water Reserve No. 107, is hereby revoked insofar as it affect the following described lands:

Willamette Meridian

(a) Federal Lands and Minerals

T. 22 S., R. 27 E.,
Sec. 23;
Sec. 26, NE¼, NW¼NW¼, S½NW¼, and S½.
T. 26 S., R. 27 E.,
Sec. 13, NW¼NE¼, N½N½NW¼, and SE¼NW¼.
T. 21 S., R. 29 E.,
Sec. 15, W½SW¼SE¼ and E½SE¼SE¼.
T. 29 S., R. 30 E.,
Sec. 29, SE¼SW¼ and SW¼SE¼;
Sec. 32, S½NW¼NE¼.
T. 21 S., R. 31 E.,
Sec. 32, SW¼SW¼.
T. 22 S., R. 31 E.,
Sec. 5, lot 4.
T. 21 S., R 33 E.,
Sec. 3, SW¼SE¼.
T. 33 S., R. 33 E.,
Sec. 3, S½SE¼NE¼;
Sec. 4, lots 3 and 4, S½NW¼, and N½S½;
Sec. 35, W½E½SW¼, S½NW¼SW¼, SW¼SW¼, and E½SE¼.
T. 34 S., R. 33 E.,
Sec. 2, lots 1 to 4, inclusive, and S½N½;
Sec. 4, N½NE¼SW¼, SW¼NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 35, SE¼SW¼.
T. 20 S., R. 33½ E.,
Sec. 7, NE¼NE¼;
Sec. 21, S½;
Sec. 25, SW¼NW¼ and NW¼SW¼.
T. 39 S., R. 34 E.,
Sec. 8, N½NW¼SE¼ and NE¼SE¼;
Sec. 9, NW¼SW¼.
T. 19 S., R. 35 E.,
Sec. 33, NW¼NE¼, NW¼SE¼, and SE¼SE¼;
Sec. 34, SW¼SW¼.
T. 40 S., R. 38 E.,
Sec. 9, NW¼NW¼.

(b) Private Surface/Federal Minerals

T. 27 S., R. 24 E.,
Sec. 11, S½NE¼, and S½;
Sec. 12, SW¼NE¼, S½NW¼, SW¼, and NW¼SE¼.
T. 19 S., R. 33½ E.,
Sec. 22, E½NW¼ and SW¼NW¼.

The areas described in (a) and (b) aggregate 4,231.09 acres in Harney County.

2. At 8:30 a.m. on July 7, 2000, the lands described in paragraph 1(a) will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on July 7, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 8:30 a.m. on July 7, 2000, the lands described in paragraph 1(a) and 1(b) will be opened to location and entry under the United States mining laws for non-metalliferous minerals, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws for non-metalliferous minerals prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Sylvia V. Baca,
Assistant Secretary of the Interior.

[FR Doc. 00–14289 Filed 6–6–00; 8:45 am]
BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 011167]

Public Land Order No. 7451; Partial Revocation of Bureau of Reclamation Order Dated December 17, 1954; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Bureau of Reclamation order insofar as it affects 5,274 acres of lands withdrawn for the Central Utah Project. The lands are no longer needed for the purpose for which they were withdrawn. This action returns 2,484 acres to Bureau of Land Management administration and opens them to surface entry but not to mining, and returns 2,790 acres to National Forest administration and opens them to mining and to such forms of disposition as may by law be made of National Forest System lands. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Rhonda Flynn, BLM Utah State Office (UT–942), 324 South State Street, Salt Lake City, Utah 84111–2303, 801–539–4132.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Bureau of Reclamation Order dated December 17, 1954, which withdrew lands for the Central Utah Project, is hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian

(a) Public Lands

T. 2 S., R. 6 E.,
Sec. 30, lot 4 and SE¼SW¼.
T. 3 S., R. 21 E.,
Sec. 23, NE¼SW¼;
Sec. 27, lots 1 and 2, E½NE¼, NW¼NE¼, and NW¼;
Sec. 33, lots 1 and 2, NE¼, and N½SE¼;
Sec. 34, lot 4 and NW¼NW¼.
T. 4 S., R. 21 E.,
Sec. 3, N½N½SE¼NW¼;
Sec. 4, lots 2 and 3.
T. 5 S., R. 1 W.,
Sec. 24, lots 2 and 4.

T. 5 S., R. 4 E.,
Sec. 3, NE¼SE¼.
T. 7 S., R. 2 E.,
Sec. 15, lot 1;
Sec. 25, lots 2 and 3, and SE¼SW¼;
Sec. 26, lots 1 to 4, inclusive;
Sec. 27, lot 1.
T. 9 S., R. 2 E.,
Sec. 31, lot 7.
T. 9 S., R. 3 E.,
Sec. 15, E½.
T. 9 S., R. 4 E.,
Sec. 9, lot 2.
T. 10 S., R. 1 W.,
Sec. 35, S½S½;
Sec. 36, lots 13 and 14.
T. 11 S., R. 1 W.,
Sec. 1, lots 3 and 4, S½NW¼, SW¼, and SW¼SE¼;
Sec. 12, N½NE¼, SW¼NE¼, N½NW¼, and SE¼NW¼.

The areas described aggregate approximately 2,484 acres in Uintah, Juab, Summit, Utah, and Wasatch Counties.

(b) Uinta National Forest

T. 6 S., R. 5 E.,
Sec. 7, lots 1 to 4, inclusive, and E½E½; secs. 8 and 17;
Sec.18, lots 1 to 4, inclusive, and E½E½.
T. 8 S., R. 4 E.,
Sec. 35, SE¼NW¼.
T. 9 S., R. 2 E.,
Sec. 28, W½NW¼;
Sec. 31, lot 8.
T. 9 S., R. 4 E.,
Sec. 9, lot 1, NW¼NE¼, NW¼, N½NE¼SW¼, SW¼NE¼SW¼, and NW¼SW¼.
T. 10 S., R. 1 E.,
Sec. 12, SE¼SE¼;
Sec. 13, SW¼NE¼, SE¼NW¼, E½SW¼, NE¼SE¼, and W½SE¼.
T. 10 S., R. 2 E.,
Sec. 5, lot 4;
Sec. 6, lots 8, 11, 12, and 13, and SE¼NW¼.
T. 12 S., R. 1 E.,
Sec. 16, SE¼SW¼;
Sec. 21, NE¼NW¼.

The areas described aggregate approximately 2,790 acres in Juab, Summit, and Wasatch Counties.

2. At 10 a.m. on July 7, 2000, the lands described in paragraph 1(a) will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on July 7, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands described in paragraph 1(a) will not be opened to mining until appropriate land use planning is completed.

4. At 10 a.m. on July 7, 2000, the lands described in paragraph 1(b) shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 22, 2000.

Sylvia V. Baca,
Assistant Secretary of the Interior.

[FR Doc. 00–14290 Filed 6–6–00; 8:45 am]
BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–650–1430–ET; CACA 42078]

Notice of Intention to Relinquish; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy has submitted to the Bureau of Land Management a notice of intention to relinquish the withdrawn status of 42.3 acres of public land in San Bernardino County, California, that was withdrawn for military purposes by the California Desert Protection Act of 1994.

DATES: Effective June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Duane Marti, (CA–931.4), California State Office, Bureau of Land Management, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886; 916–978–4675.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of the Navy has submitted, to the Bureau of Land Management, a notice of intention to relinquish the withdrawn status of 42.3 acres of public land in San Bernardino County, California, that was withdrawn for military purposes by the California Desert Protection Act of 1994. The land is no longer needed for that purpose, but is needed by the Bureau of Land Management for the expansion of the Ridgecrest Regional Wild Horse and Burro corrals.

Pursuant to section 808(b) of the California Desert Protection Act of 1994, the Navy has stated that the land was not contaminated and that no decontamination measures were required.

The Navy's notice will be processed in accordance with section 204 of the Federal Land Policy and Management Act of 1976, section 808 of the California Desert Protection Act of 1994, and the regulations set forth in 43 CFR 2370.

Dated: June 1, 2000.

David McIlnay,
Chief, Branch of Lands.

[FR Doc. 00–14269 Filed 6–6–00; 8:45 am]
BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention to Request Clearance of Information Collection—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, National Underground Railroad Network to Freedom Program.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Public Law, 104–13, 44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on a proposed information collection. Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected on respondents, including use of automated collection techniques or other forms of information technology.

Public Law 105–203 authorizes the National Railroad Network to Freedom Program (NURNFP) to develop and administer the Network to Freedom, a nationwide collection of governmental and nongovernmental properties, facilities, and programs associated with the historic Underground Railroad movement. The NURNFP is developing an application process through which associated elements can be included in the Network to Freedom. The information collected will:

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(a) Verify associations to the Underground Railroad,

(b) Measure minimum levels of standards for inclusion in the Network, and

(c) Identify general needs for technical assistance.

DATES: Public Comments on the proposed ICR will be accepted on or before August 7, 2000.

ADDRESSES: Send comments to Diane Miller, National Coordinator, National Underground Railroad Network to Freedom Program, National Park Service, Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska, 68102.

All responses to this notice will be summarized and included in the requests for Office and Management and Budget (OMB) approval. All comments will become a matter of public record. Copies of the proposed ICR can be obtained from Diane Miller, National Coordinator, National Underground Railroad Network to Freedom Program, National Park Service, Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska, 68102.

FOR FURTHER INFORMATION CONTACT: Diane Miller, 402–221–3749 or Aaron Mahr, 956–541–2785, ext. 3.

SUPPLEMENTARY INFORMATION: *Title:* Nomination Form to Underground Railroad Network to Freedom.

Bureau Form Number: To be requested.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Underground Railroad Network to Freedom Program is identifying guidelines and criteria for associated elements to enter the Network to Freedom. The Nomination Form documents properties, programs, and facilities, and demonstrates that they meet the criteria established for inclusion. The documentation will be incorporated into a database that will be available to the general public for information purposes.

Automated data collection: Respondents must verify associations and characteristics through descriptive texts that are the result of historical research. Evaluations are based on subjective analysis of the information provided. At the present time there is no automated way to gather this information.

Description of respondents: The affected public are state, tribal, and local governments, federal agencies, businesses, non-profit organizations, and individuals, throughout the United States. Nominations to the Network to Freedom are voluntary.

Estimated average number of respondents: 100.

Estimated average number of responses: 100.

Estimated average burden hours per response: 10 hours.

Estimated frequency of response: Once per respondent.

Estimated annual reporting burden: 1000 hours.

Dated: May 30, 2000.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 00–14350 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Selma to Montgomery National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Selma to Montgomery National Historic Trail Advisory Council will be held June 12, 2000 at 9:00 am, at the town hall in Whitehall, Alabama.

The Selma to Montgomery National Historic Trail Advisory Council was established pursuant to Public Law 100–192 establishing the Selma to Montgomery National Historic Trail. This law was put in place to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, and administrative matters.

The matters to be discussed include:

A. Update on status of Cultural Resource Inventory

B. Update of High priority projects

C. Further define high priority projects as input to ALDOT application for FY 2001 Scenic Byways funds. The application is due June 2000.

D. Update on Welcome Center at the Tent city Site.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on first come, first serve basis. Any member of the public may file a written statement concerning the matters to be discussed with Lee Edwards, Trail Superintendent.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Lee Edwards, Trail Superintendent, Selma to Montgomery National Historic Trail, P.O. Box 5690, Montgomery, Al 36103, telephone 334–353–3744 or 334–727–6390.

Lee Edwards,

Trail Superintendent.

[FR Doc. 00–14349 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR described the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 7, 2000.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington D.C. 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Attention Ms. Nancy Purdy, Contract and Repayment Specialist, Lower Colorado Dams Facilities Office, P.O. Box 60400, Boulder City, NV 89006.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information, contact Ms. Nancy Purdy at (702) 293–8533.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical use; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Title: Diversons, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin.

OMB No.: 1006–0015.

Abstract: Reclamation delivers Colorado River water to water users for diversion and beneficial consumptive use in the States of Arizona, California, and Nevada. Under Supreme Court order, the United States is required, at least annually, to prepare and maintain complete, detailed, and accurate records of diversions of water, return flow, and consumptive use. This information is needed to ensure that a State or a water user within a State does not exceed its authorized use of Colorado River water. Water users are obligated to provide information on diversions and return flows to Reclamation by provisions in their water delivery contracts. Reclamation determines the consumptive use by subtracting return flow from diversions or by other engineering means. Without the information collected, Reclamation could not comply with the order of the United States Supreme Court to prepare and maintain detailed and accurate records of diversions, return flow, and consumptive use.

Description of respondents: The Lower Basin States (Arizona, California, and Nevada), local and tribal entities, water districts, and individuals that use Colorado River water.

Frequency: Annually, or otherwise as determined by the Secretary of the Interior.

Estimated completion time: An average of 6 hours per respondent.

Annual responses: 54 respondents.

Annual burden hours: 290.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the forms. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on February 15, 2000 (65 FR 7562). Reclamation did not receive any comments on this collection of information during the comment period.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days, therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Murlin Coffey,

Manager, Property and Office Services.

[FR Doc. 00–14270 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted to OMB for Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of surveys to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with analysis of the effectiveness of section 337 remedial exclusion orders, instituted under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

Summary of Proposal

(1) *Number of forms submitted:* Two.

(2) *Title of form:* USITC Survey Regarding Outstanding § 337 Exclusion Orders.

(3) *Type of request:* New.

(4) *Frequency of use:* survey, single data gathering, scheduled for 2000.

(5) *Description of responding firms:* Complainants that obtained exclusion orders from the Commission following an investigation under Section 337 that remains in effect at the time of the survey.

(6) *Estimated number of responding firms:* 37.

(7) *Estimated total number of hours to complete the forms:* 37.

(8) Information obtained from the firm that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

DATES: To be assured of consideration, written comments must be received on or before July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents are posted on the Commission's World Wide Web site at http://www.usitc.gov or may be obtained from Lynn I. Levine, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone, 202–205–2560. Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102, Washington, DC 20503, ATTENTION: Desk Officer for the International Trade Commission. All comments should be specific, indicating which part of the survey is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: June 2, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14320 Filed 6–6–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–677 (Review)]

Coumarin From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on coumarin from China would be likely to lead to continuation or recurrence of material injury to an industry in the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 207.2(f)).

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United States within a reasonably foreseeable time.

Background

The Commission instituted this review on December 30, 1999 (64 FR 73576, December 30, 1999) and determined on April 6, 2000 that it would conduct an expedited review (65 FR 24504, April 26, 2000). The Commission transmitted its determination in this review to the Secretary of Commerce on May 30, 2000. The views of the Commission are contained in USITC Publication 3305 (May 2000), entitled Coumarin From China: Investigation No. 731–TA–677 (Review).

Issued: May 31, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14316 Filed 6–6–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–309–A–B (Review) and 731–TA–528 (Review)]

In the Matter of Magnesium From Canada; Notice of Commission Determination Not To Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Commission determination not to close any part of the hearing to the public.

SUMMARY: The Commission has determined to deny the request of respondents Gouvernement du Québec ("Québec") and Norsk Hydro Canada, Inc. ("NHCI"), to conduct a portion of its hearing in the above-captioned reviews scheduled for May 31, 2000, *in camera*. *See* Commission rules 201.13 and 201.36(b)(4) (19 CFR 201.13 and 201.36(b)(4)).

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3115, e-mail acasson@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission's policy and practice is to conduct its hearings in public except in limited circumstances. *See* 19 CFR 201.36. The Commission's Rules provide for it to close hearings in where a party identifies subjects to be discussed during a closed session and justifies the need for such a session. 19 CFR 207.24(d). Respondents did not indicate the subjects on which they intended to present testimony during the closed session, and merely stated that during a closed session information covered by the administrative protective order could be addressed as necessary. Absent any identification of the subjects to be discussed and an adequate justification of the need for a closed session, the Commission finds no reason to depart from its ordinary practice of holding fully open hearings. The Commission has determined that the public interest would be best served by a hearing that is entirely open to the public. *See* 19 CFR 201.36(c)(1).

Authority: This notice is provided pursuant to Commission Rule 201.35(b) (19 CFR 201.35(b)).

Issued: May 30, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14317 Filed 6–6–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–429 (Review)]

Mechanical Transfer Presses From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751© of the Tariff Act of 1930 (the Act),[3] that revocation of the antidumping duty order on mechanical transfer presses (MTPs)[4] from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on June 1, 1999,[5] and determined on September 3, 1999, that it would conduct a full review.[6] Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 15, 1999.[7] The hearing was held in Washington, DC, on April 4, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on May 26, 2000. The views of the Commission are contained in USITC Publication 3304 (May 2000), entitled Mechanical Transfer Presses from Japan: Investigation No. 731–TA–429 (Review).

Issued: June 1, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14319 Filed 6–6–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Thelma J. Askey dissenting.

[3] 19 U.S.C. 1675(c).

[4] For purposes of this review, the term "mechanical transfer press" (MTP) refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

Commerce published in the **Federal Register** several Notices of Scope Rulings with respect to MTPs from Japan and determined that: (1) spare and replacement parts are outside the scope of the order (57 FR 19602, May 7, 1992); (2) a destack sheet feeder designed to be used with a mechanical transfer press is an accessory and, therefore, is not within the scope of the order (57 FR 32973, July 24, 1992); (3) the FMX cold-forging press is within the scope of the order (59 FR 8910, February 24, 1994); and (5) certain mechanical transfer press parts exported from Japan are outside the scope of the order (62 FR 9176, February 28, 1997).

Commerce's scope identifies the Harmonized Tariff Schedule of the United States (HTS) statistical reporting numbers for MTPs as 8462.99.0035, mechanical transfer presses, and 8466.94.5040, parts of mechanical transfer presses. However, these numbers were replaced by statistical reporting numbers 8462.99.8035, 8466.94.6040, and 8466.94.8040 on January 1, 1994. Subsequently, on July 1, 1997, statistical reporting numbers 8466.94.6040 and 8466.94.8040 were replaced by statistical reporting numbers 8466.94.6540 and 8466.94.8540. For a further explanation of these changes, see the U.S. Tariff Treatment section presented later in this report. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

[5] 64 FR 29347, June 1, 1999.

[6] 64 FR 50107, September 15, 1999.

[7] 64 FR 61938, November 15, 1999.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–841 (Final)]

Certain Non-Frozen Concentrated Apple Juice From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of certain non-frozen concentrated apple juice,[3] provided for in subheadings 2009.70.00 and 2106.90.52 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective June 7, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Coloma Frozen Foods, Inc.; Coloma, MI; Green Valley Apples of California, Los Angeles, CA; Knouse Foods Cooperative, Inc., Peach Glen, PA; Mason County Fruit Packers Cooperative, Ludington, MI; and Tree Top, Inc., Selah, WA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain non-frozen concentrated apple juice from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 20, 2000 (65 FR 3247). The hearing was held in Washington, DC, on April 10, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 30, 2000. The views of the Commission are contained in USITC Publication 3303 (May 2000), entitled Certain Non-Frozen Concentrated Apple Juice from China: Investigation No. 731–TA–841 (Final).

Issued: June 1, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14318 Filed 6–6–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Lynn M. Bragg not participating.

[3] "Certain non-frozen concentrated apple juice" consists of all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of the investigation are frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)—1280]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the Coordinating Council on Juvenile Justice and Delinquency Prevention meeting.

DATES: A meeting of the advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will take place in the District of Columbia, beginning at 1 p.m. on Monday, June 26, 2000, and ending at 3 p.m., ET.

ADDRESSES: The meeting will take place at the U.S. Department of Justice, Office of Justice Programs, Main Conference Room, 3rd Floor, 810 Seventh Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Bob Altman, Program Manager, Juvenile Justice Resource Center at (301) 519–5721. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Coordinating Council, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*). This meeting will be open to the public. Members of the public who wish to attend the meeting should notify the Juvenile Justice Resource Center at the number listed above by 5 p.m., ET, on Friday, June 16, 2000. For security purposes, picture identification will be required.

Dated: June 2, 2000.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–14360 Filed 6–6–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Chief Financial Officer: Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of the Chief Financial Officer is soliciting comments concerning the proposed extension of Department of Labor regulations implementing the Salary Offset provision of the Debt Collection Act of 1982.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 7, 2000.

ADDRESSES: Comments are to be submitted in writing to Mark Wolkow, Department of Labor, Office of the Chief Financial Officer, Room S–4502 Frances Perkins Building, 200 Constitution Ave. NW, Washington, DC 20210; via fax to 202–219–4975; or via email to wolkow-mark@dol.gov.

FOR FURTHER INFORMATION CONTACT: Mark Wolkow, Division of Policy and Internal Control at 202–219–8184 x127, or via email at wolkow-mark@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Debt Collection Act of 1982 and the Office of Personnel Management salary offset regulations, as

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implemented in the Department by 29 CFR part 20, require Federal agencies to afford debtors the opportunity to exercise certain rights before the agency makes a salary offset to collect a debt. In the exercise of these rights, the debtor may be asked to provide a written explanation of the basis for disputing the amount or existence of a debt alleged owed the agency. A debtor may also be required to provide asset, income, liability, or other information necessary for the agency to determine the debtor's ability to repay the debt, including any interest, penalties and administrative costs assessed.

Information provided by the debtor will be evaluated by an independent hearing official in order to reconsider the responsible agency official's decision with regard to the existence or amount of the debt. Information concerning the debtor's assets, income, liabilities, etc., will be used by the independent hearing official to determine whether the agency's action with regard to salary would create undue financial hardship for the debtor, or to determine whether the agency should accept the debtor's proposed repayment schedule.

If a debtor disputes or asks for reconsideration of the agency's determination concerning the debt, the debtor will be required to provide the information or documentation necessary to state his/her case. While much or all of this information might be available in agency records, it would only be appropriate to offer the debtor the opportunity to supply any information deemed relevant to his/her case.

Information concerning the debtor's assets, income, liabilities, etc., would typically not be available to the agency unless submitted by the debtor.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Failure of the agency to request the information described would either violate the debtor's rights under the Debt Collection Act of 1982 or limit the agency's ability to collect outstanding debts.

If a debtor wishes to appeal an agency action based on undue financial hardship, he/she may be asked to submit information on his/her assets, income, liabilities, or other information considered necessary by the hearing official for evaluating the appeal. Use of the information will be explained to the debtor when it is requested; consent to use the information for the specified purpose will be implied from the debtor's submission of the information.

Type of Review: Extension of a currently approved collection.

Agency: Office of the Chief Financial Officer.

Title: Salary Offset.

OMB Number: 1225–0038.

Agency Form Number: N/A.

Affected Public: Federal employees.

Cite/Reference/Form/etc: It is estimated that 25% of the individuals indebted to the Department will contest the proposed collection action and will request a review and/or appeal an action based on undue financial hardship. In some cases the debtor will make one request, but not the other. However, in most cases, it is expected that the debtor will request both actions—first, review of the determination of indebtedness, and second, relief because of undue financial hardship.

Annual burden was estimated based on a review of debtor responses to similar requests for information. Debtors typically respond in 1–2 page letters, supplemented by copies of documents. Letters are most often typewritten. Annual burden is based on a 1¼ hour time allotment to prepare and type a letter. Debtors will not be asked to respond on a form.

Estimated Total Burden Hours: 375.

Total Annualized Costs: Capital/startup costs: $0; operating/maintaining systems or purchasing services: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 23, 2000.

Kenneth Bresnahan,

Chief Financial Officer.

[FR Doc. 00–14291 Filed 6–6–00; 8:45 am]

BILLING CODE 4510–23–P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Deletion of Privacy Act System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Notice of intent to delete and existing system of records.

SUMMARY: The Merit Systems Protection Board (MSPB) publishes this document pursuant to the requirements of the Privacy Act of 1974 at 5 U.S.C. 552a to inform the public that it will no longer maintain records in the system formerly known as MSPB/Internal-4 by the name or personal identifier of the record subject. Names and personal identifiers will be deleted for all existing and future documents maintained in the OAC Decision Data Base.

EFFECTIVE DATE: June 7, 2000.

ADDRESS: Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, (202) 653–7200.

SUPPLEMENTARY INFORMATION: By **Federal Register** Notice of July 2, 1996 (61 FR 34448) the Board announced a new system of records, Office of Appeals Counsel Decision Data Base, MSPB/Internal-4. The categories of records to be maintained in the system included advisory memoranda prepared by the Office of Appeals Counsel for the Board of individual members of the Board and instructions from members of the Board regarding the preparation of decisions for Board issuance. These records were to contain individual appellant's names, and could also contain social security numbers, home addresses, veterans status, race, sex, national origin and disability status data.

The Board hereby announces its intention to delete all names and personal identifiers from the records now maintained in this data base, and from any future records placed in the data base. Henceforth, the records in this data base will be retrieved by legal or factual issues. No personal information associated with any individual will be maintained.

Dated: June 1, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–14310 Filed 6–6–00; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 24, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it, too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–00–7, 2 items, 2 temporary items). Records relating to the monitoring of information systems and telecommunications. Included are requests, approvals, notifications, certifications of notification procedures, and information pertaining to the use of monitoring products. Also included are electronic copies of documents created using electronic mail and word processing.

2. Department of the Army, Agency-wide (N1–AU–98–8, 2 items, 2 temporary items). Documents relating to individual travel charge cards of Army military personnel and civilian employees. Included are travel authorizations, vouchers, charge card applications, charge card receipts, terms and conditions for the use of charge cards, and transaction reports. Also included are electronic copies of documents created using electronic mail and word processing.

3. Department of the Army, Agency-wide (N1–AU–00–9, 2 items, 1 temporary item). Electronic copies of documents created using electronic mail and word processing that pertain to security assistance activities provided under the International Security Assistance Act and the Arms Export Control Act. This schedule also proposes minor changes in the disposition instructions for recordkeeping copies of these files, which were previously approved for permanent retention.

4. Department of the Army, Agency-wide (N1–AU–00–10, 3 items, 3 temporary items). Respiratory protection program files relating to general program administration, training, and the results of fit and leak testing of respiratory protection devices. Included are electronic copies of records created using electronic mail and word processing.

5. Department of the Army, Agency-wide (N1–AU–00–11, 2 items, 2 temporary items). Records relating to inventories and examinations of test booklets, scoring keys, and all other accountable test materials. Included are electronic copies of records created using electronic mail and word processing.

6. Department of Defense, Office of the Secretary (N1–330–00–2, 5 items, 5 temporary items). Records relating to the adjudication of security clearances, including electronic copies of

documents created using electronic mail and word processing.

7. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–3, 2 items, 2 temporary items). Assessment calculation files relating to semi-annual assessments of government-sponsored enterprises for funds appropriated to the agency from Congress. Included are electronic copies of documents created using electronic mail and word processing. Notice of this schedule was previously published in the **Federal Register** of March 22, 2000. It is being re-published due to minor changes occasioned by an agency reorganization.

8. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–4, 11 items, 9 temporary items). Records accumulated by the Office of Policy Analysis and Research relating to the compensation received by government-supported enterprise executives and to requests for information concerning agency Notices of Proposed Rulemaking. Also included are selected subject files and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of selected subject files and quarterly reports to the Department of Housing and Urban Development are proposed for permanent retention. Notice of this schedule was previously published in the **Federal Register** of March 22, 2000. It is being re-published due to minor changes occasioned by an agency reorganization.

9. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–8, 7 items, 6 temporary items). Project tracking reports, records relating to trips, and selected chronological files accumulated by the Office of the Director. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of selected chronological files from the Director's Office are proposed for permanent retention, including files of the Deputy Director and several staff assistants.

10. Department of the Interior, Bureau of Land Management (N1–49–00–1, 2 items, 2 temporary items). Records in all media, including databases, that pertain to list servers, discussion groups, and news groups maintained on internal agency electronic communication and information sharing applications.

11. Department of the Interior, Bureau of Land Management (N1–49–00–2, 3 items, 3 temporary items). Records relating to solicited and unsolicited public commendations, complaints, and comments. Included are such records as letters of complaint and commendation and reports, plans, and other files relating to customer service focus groups and surveys. Also included are electronic copies of records created using electronic mail and word processing.

12. Department of the Interior, U.S. Geological Survey (N1–57–97–3, 2 items, 1 temporary item). Manuscripts and other background papers relating to agency publications. This schedule reduces the retention period for these records, which were previously approved for disposal. It also modifies the transfer instructions for publications, which were previously scheduled for permanent retention.

13. Department of Justice, Federal Bureau of Prisons (N1–129–00–21, 11 items, 9 temporary items). Records of the Office of Assistant Director and General Counsel, including such records as chronological files, Director's working files, executive staff meeting reports, files on foreign travel and speeches, meetings files, miscellaneous and quarterly reports, and tracked correspondence. Also included are electronic copies of documents created using electronic mail and word processing. An inmate issues file and subject files are proposed for permanent retention.

14. Department of Justice, Federal Bureau of Prisons (N1–129–00–22, 4 items, 4 temporary items). Records of the Litigation Branch, including representation requests, reference files, and tracked correspondence. Also included are electronic copies of documents created using electronic mail and word processing.

15. Department of Justice, Federal Bureau of Prisons (N1–129–00–23, 5 items, 5 temporary items). Records of the Legislative and Correctional Issues Branch, including compassionate release files, legislative files, subject files, and correspondence files. Also included are electronic copies of documents created using electronic mail and word processing.

16. Department of Justice, Federal Bureau of Prisons (N1–129–00–24, 2 items, 2 temporary items). Records of the Legal Administrative Branch, including program statement background files and electronic copies of documents created using electronic mail and word processing.

17. Department of Justice, Federal Bureau of Prisons (N1–129–00–25, 6 items, 6 temporary items). Records of the Administrative Complaints and Ethics Branch, including ethics opinions, outside employment and outside travel requests, controlled correspondence, and ethics reference materials. Also included are electronic copies of documents created using electronic mail and word processing.

18. Department of Justice, Federal Bureau of Prisons (N1–129–00–26, 3 items, 3 temporary items). Records of the Commercial Law Branch, including jurisdiction files and subject files. Also included are electronic copies of documents created using electronic mail and word processing.

19. Department of Justice, Federal Bureau of Prisons (N1–129–00–27, 5 items, 5 temporary items). Records of the Labor Law Branch, including controlled correspondence and Merit Systems Protection Board, Federal Labor Relations Authority, and Office of Special Counsel case files. Also included are electronic copies of documents created using electronic mail and word processing.

20. Department of Labor, Employment and Training Administration (N1–369–99–1, 16 items, 16 temporary items). Records relating to programs to provide assistance for workers whose jobs have been or will be impacted by increased imports. Included are such records as petitions, company information, correspondence, public inspection files, funding requests, and program regulations. Also included are electronic copies of documents created using electronic mail and word processing.

21. Department of Labor, Mine Safety and Health Administration (N1–433–98–1, 3 items, 2 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to reports and other records pertaining to the investigation of fatal mine accidents. Extra copies of final reports are also included. In addition, this schedule revises the series description and retirement instructions for recordkeeping copies of investigation files, which were previously approved for permanent retention.

22. Department of Veterans Affairs, Veterans Health Administration (N1–15–99–2, 28 items, 28 temporary items). Anatomic pathology, blood transfusion, and clinical pathology services records. Included are such files as laboratory test reports, test procedures records, pathology test reports, proficiency tests, logs, instrument maintenance records, quality control records, and other documents relating to patient care and laboratory procedures and certification. Also included are electronic copies of records created using electronic mail and word processing. Reports that relate to individual patient care are filed in the patient's medical folder, which was previously approved for disposal 75 years after last episode of care.

23. Consumer Product Safety Commission, Agency-wide (N1–424–00–1, 3 items, 2 temporary items). Records relating to the production of posters, including production materials, negatives, routine artwork, layouts, and preparatory graphic material. Also included are posters pertaining to events and subjects not related to the agency's mission. Posters relating to the agency's mission and operations are proposed for permanent retention.

24. Federal Retirement Thrift Investment Board, Agency-wide (N1–474–00–2, 3 items, 3 temporary items). Copies of Office of Administration internal directives accumulated by agency program offices. Electronic copies created using word processing are also included.

25. Federal Home Loan Bank Board (N1–195–00–1, 3 items, 2 temporary items). Older records, accumulated between 1932 and 1971, consisting of bills and receipts for legal fees, miscellaneous case files, and savings and loan associations' applications for membership in the Federal Home Loan Bank system and other actions, such as relocation and the establishment of branch offices. Records include financial statements, audits, transcripts of hearings, maps, photographs, and publicity materials. The agency's Central Subject File, 1934–1969, is proposed for permanent retention.

26. Tennessee Valley Authority, Chief Administrative Officer (N1–142–00–3, 4 items, 2 temporary items). Paper copies of records of the Chief Administrative Officer for which optical images have been created. Also included are electronic copies of documents created using word processing and electronic mail. Information that has been converted to optical image format is proposed for permanent retention and will be transferred to the National Archives in a medium and format that meets the requirements for archival records in effect at the time of transfer. Paper records that pre-date November 1, 1999, and will not be scanned, are also proposed for permanent retention.

27. Tennessee Valley Authority, Information Services (N1–142–00–4, 2 items, 2 temporary items). Correspondence, reports, and presentations pertaining to the management of the Y2K program. Also included are electronic copies created using electronic mail and word processing.

Dated: May 26, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–14275 Filed 6–6–00; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of June 5, 12, 19, 26, and July 3, and 10, 2000.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 5

There are no meetings scheduled for the Week of June 5.

Week of June 12—Tentative

Tuesday, June 13

9:25 a.m.
Affirmation Session (Public Meeting)
a: Final Rule—Clarification of Regulations to Explicitly Limit Which Types of Applications Must Include Antitrust Information

9:30 a.m.
Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Paul Lohaus, 301–415–3340)

1:00 p.m.
Meeting with Korean Peninsula Energy Development Organization (KEDO) and State Department (Public Meeting) (Contact: Donna Chaney, 301–415–2644)

Week of June 19—Tentative

Tuesday, June 20, 2000

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

9:30 a.m.
Briefing on Final Rule—Part 70—Regulating Fuel Cycle Facilities (Public Meeting) (Contact: Theodore Sherr, 301–415–7218)

1:30 p.m.
Briefing on Risk-Informed Part 50, Option 3 (Public Meeting) (Contact: Mary Drouin, 301–415–6675)

Wednesday, June 21, 2000

10:30 a.m.
All Employees Meeting (Public Meeting) ("The Green" Plaza Area)

1:30 p.m.
All Employees Meeting (Public Meeting) ("The Green" Plaza Area)

Week of June 26—Tentative

There are no meetings scheduled for the Week of June 26.

Week of July 3—Tentative

There are no meetings scheduled for the Week of July 3.

Week of July 10—Tentative

Tuesday, July 11

9:25 a.m.
Affirmation Session (Public Meeting) (If necessary.)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording) (301) 415–1292. Contact Person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (401–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: June 2, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–14467 Filed 6–5–00; 1:20 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

State of Oklahoma: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Oklahoma

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the State of Oklahoma.

SUMMARY: This notice is announcing that the Nuclear Regulatory Commission (NRC) has received a request from Governor Frank Keating of Oklahoma that the NRC consider entering into an Agreement with the State as authorized

by section 274 of the Atomic Energy Act of 1954, as amended (Act). Section 274 of the Act contains provisions for the Commission to enter into agreements with the Governor of any State providing for the discontinuance of the regulatory authority of the Commission. Under the proposed Agreement, submitted December 28, 1999, the Commission would discontinue and Oklahoma would take over portions of the Commission's regulatory authority over radioactive material covered under the Act within the State of Oklahoma. In accordance with 10 CFR 150.10, persons, who possess or use certain radioactive materials in Oklahoma, would be released (exempted) from portions of the Commission's regulatory authority under the proposed Agreement. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150. NRC is publishing the proposed Agreement for public comment, as required by the Act. NRC is also publishing the summary of an assessment conducted by the NRC staff of the proposed Oklahoma byproduct material regulatory program. Comments are invited on (a) the proposed Agreement, especially its effect on public health and safety, and (b) the NRC staff assessment.

DATES: The comment period expires July 7, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of the proposed Agreement, copies of the request for an Agreement by the Governor of Oklahoma including all information and documentation submitted in support of the request, and copies of the full text of the NRC staff assessment are also available for public inspection in the NRC's Public Document Room.

FOR FURTHER INFORMATION CONTACT: Patricia M. Larkins, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2309 or e-mail *pml@nrc.gov*.

SUPPLEMENTARY INFORMATION: Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 31 States. The Agreement States currently regulate approximately 16,000 agreement material licenses, while NRC regulates approximately 5800 licenses. Under the proposed Agreement, approximately 220 NRC licenses will transfer to Oklahoma. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274. Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials. In a letter dated December 28, 1999, Governor Keating certified that the State of Oklahoma has a program for the control of radiation hazards that is adequate to protect public health and safety within Oklahoma for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is included as Appendix A to this notice.

The radioactive material and activities (which together are usually referred to as the "categories of material") which the State of Oklahoma requests authority over are: (1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act; (2) the possession and use of special nuclear material in quantities not sufficient to form a critical mass; (3) the regulation of the land disposal of byproduct source or special nuclear material received from other persons; and (4) source material used to take advantage of its density and high mass properties where the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority;
—Continue the authority of the Commission to safeguard nuclear materials and restricted data;
—Commit the State of Oklahoma and NRC to exchange information as necessary to maintain coordinated and compatible programs;
—Provide for the reciprocal recognition of licenses;
—Provide for the suspension or termination of the Agreement;
—Specify the effective date of the proposed Agreement. The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Oklahoma.

(c) Oklahoma currently regulates the users of naturally-occurring and accelerator-produced radioactive materials (NARM). The regulatory program is authorized by law in the Oklahoma Environmental Quality Act at Okla. Stat. tit. 27A § 1–3–101(B)(11) and the Oklahoma Radiation Management Act at 27A § 2–9–103(A). Section 2–9–103(C) of the Act provides the authority for the Governor to enter into an Agreement with the Commission.

Oklahoma law contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. Oklahoma law provides that any person who possesses an existing NRC license shall be deemed to possess a like license issued under the Oklahoma Radiation Management Act. After the effective date of the Agreement, licenses issued by NRC would continue in effect until the license expiration specified in the existing NRC license. DEQ will notify affected licensees of the transfer of regulatory authority within fifteen (15) days after the effective date of the signed agreement.

(d) The NRC staff assessment finds that the Oklahoma program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

[1] The radioactive materials, sometimes referred to as agreement materials, are: (a) byproduct materials as defined in section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) source materials as defined in Section 11z. of the Act, and (d) special nuclear materials as defined in Section 11a. of the Act, restricted to quantities not sufficient to form a critical mass.

II. Summary of the NRC Staff Assessment of the Oklahoma Program for the Control of Agreement Materials

NRC staff has examined the Oklahoma request for an Agreement with respect to the ability of the radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (referred to herein as the "NRC criteria") (46 FR 7540; January 23, 1981, as amended).

(a) *Organization and Personnel.* The agreement byproduct material program will be located within the existing Radiation Management Section (RAM) of the Waste Management Division, an organizational unit of the Oklahoma Department of Environmental Quality (DEQ). The RAM Section currently has responsibility for directing and managing a formal registration program begun in 1993, that includes inspections and fees for radioactive material that occur naturally or are produced by particle accelerators, and industrial x-ray machines. The DEQ also has responsibility for regulation of machine produced radiation, and non-ionizing radiation. The regulatory authority over the use of sources of radiation by diagnostic medical x-ray remains with the Oklahoma Department of Health. Based on discussions with the RAM program manager, the DEQ plans to implement a licensing program for radioactive materials that occur naturally in the future after the State assumes regulatory authority under the Agreement. The program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the DEQ staff members are specified in the Oklahoma State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. Each current staff member has at least a bachelors' degree or equivalents in physical/life sciences or engineering, with one exception. One staff member trainee has a degree in Education. Several staff members hold advanced degrees. Most staff members were hired from other environmental programs in the DEQ with considerable experience in a variety of environmental program areas. The program staff has considerable experience in related regulatory program implementation including air pollution, hazardous waste, solid waste, sewage treatment, and water use issues. The program manager and two senior technical staff have 10 years of regulatory experience with DEQ and 6, 6, and 3 years respectively in the RAM program as well as several years of prior experience working with radioactive material, radiation protection, or hazardous waste.

A third senior staff member has three years of industry experience and three years with the DEQ RAM program. One junior staff member has three years experience as a laboratory technician using radionuclides for labeling and two years with the DEQ RAM program. Three other staff members, currently in training, have between 3 and 9 years experience, primarily in the environmental regulatory area. One has completed one year related experience with DEQ RAM, one has 3.5 years of related nuclear power plant experience as a health physicist decontamination technician, and one has six years related experience as a well logging engineer.

Based on information provided in the staffing analysis, the manager, three senior technical staff, and one junior staff member will conduct the licensing and inspection activities. These staff members have attended nearly all of the available relevant NRC training courses, including the 5-week Applied Health Physics course, inspection and licensing courses, and the majority of use-specific courses. In addition, staff members have accompanied NRC inspectors and worked with NRC licensing staff to obtain additional on-the-job experience.

The DEQ has adopted a written program for the training and qualification of staff members, which covers both new staff members and the continuing qualification of existing staff. NRC staff notes that the Oklahoma agreement materials program will be evaluated under the Commission's Integrated Materials Performance Evaluation Program (IMPEP). One IMPEP criterion addresses staff training and qualifications, and includes a specific criterion which addresses training and qualification plans. NRC staff reviewed the plan, and concludes that it satisfies the IMPEP criterion element.

The DEQ provided copies of memoranda authorizing full qualification to three senior staff, and limited interim qualification to one junior staff member, in accordance with Oklahoma's Formal Qualification Plan. All four staff are designated to provide technical support to the program at the time the Agreement is signed.

Based upon review of the information provided in the staffing analysis, NRC staff concludes that overall the program has an adequate number of technically qualified staff members and that the technical staff identified by the State to participate in the Agreement materials program are fully trained, and qualified in accordance with the DEQ plans, have sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of agreement materials to satisfy the criterion.

(b) *Legislation and Regulations.* The Oklahoma DEQ is designated by law in the Oklahoma Radiation Management Act at Okla. Stat. Tit. 27A § 2–9–103 as the radiation control agency. The law provides the DEQ the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The Environmental Quality Board is authorized to promulgate regulations.

The law requires the Environmental Quality Board to adopt rules that are compatible with the equivalent NRC regulations and that are equally stringent to, or to the extent practicable more stringent than, the equivalent NRC regulations. The DEQ has adopted, by reference, the NRC regulations in Title 10 of the Code of Federal Regulations. The adoption by reference is contained in Title 252 Chapter 410 of the Oklahoma Administrative Code (OAC). Oklahoma rule 252:410–10–2 specifies that references to the NRC will be construed as references to the Director of the DEQ.

The NRC staff review verified that the Oklahoma rules contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The adoption of the NRC regulations by reference assures that the standards will be uniform.

(c) *Storage and Disposal.* Oklahoma has also adopted, by reference, the NRC requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both the disposal of waste generated by the licensee and the disposal of waste generated by and received from other persons.

(d) *Transportation of Radioactive Material.* Oklahoma has adopted the NRC regulations in 10 CFR Part 71 by reference. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in

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transporting radioactive materials. Oklahoma will not attempt to enforce portions of the regulation related to activities, such as approving packaging designs, which are reserved to NRC.

(e) *Record Keeping and Incident Reporting.* Oklahoma has adopted, by reference, the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving materials.

(f) *Evaluation of License Applications.* Oklahoma has adopted, by reference, the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Oklahoma has also developed a licensing procedure manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The Oklahoma radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The program has adopted procedures for conducting inspections, reporting inspection findings, and reporting inspection results to the licensees from similar NRC documents. The program has also adopted, by rule in the OAC, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The Oklahoma DEQ is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Oklahoma law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Oklahoma law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Oklahoma under the Oklahoma Radiation Management Act. Such license will expire on the date of expiration specified in the existing NRC license. Oklahoma will retain the NRC license numbers of existing licenses until they expire under DEQ jurisdiction. As of the effective date of the Agreement, any pending or new license applications and renewals will be transferred to DEQ. DEQ will notify affected licensees of the transfer of regulatory authority within fifteen (15) days after the effective date of the signed agreement.

Oklahoma's Administrative Procedures Act also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The OAC provides exemptions from the State's requirements for licensing of sources of radiation for NRC and the U.S. Department of Energy contractors or subcontractors.

The proposed Agreement commits Oklahoma to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Oklahoma's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Oklahoma to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission will enter into an Agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its assessment, the NRC staff concludes that the State of Oklahoma meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 1st day of June, 2000.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

An Agreement Between the United States Nuclear Regulatory Commission and the State of Oklahoma for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Oklahoma is authorized under Section 2–9–103(c) of the Radiation Management Act (27A O.S. Supp. 1998 § 2–9–101 et seq.) to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Oklahoma certified on December 28, 1999 that the State of Oklahoma (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the health and safety with respect to materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on (date to be determined) that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now Therefore, It is hereby agreed between the Commission and the Governor of the State of Oklahoma, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct material as defined in Section 11e.(1) of the Act;

B. Source material used to take advantage of the density and high-mass property for the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material;

C. Special nuclear materials in quantities not sufficient to form a critical mass;

D. The regulation of the land disposal of byproduct source or special nuclear waste material received from other persons.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste material as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission.

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

F. Byproduct material as defined in Section 11e.(2) of the Act;

G. Source material except for source material used to take advantage of the density and high-mass property for the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material;

Article III

With the exception of those activities identified in Article II, paragraph A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, paragraphs E through G, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of byproduct material covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j(2) of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this

Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on [TBA], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Dated at Rockville, Maryland, this __th day of _____, 2000.

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION.

Chairman

Dated at Oklahoma City, Oklahoma this __th day of _____, 2000.

FOR THE STATE OF OKLAHOMA

Governor

[FR Doc. 00–14286 Filed 6–6–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form ADV–E; SEC File No. 270–318; OMB Control No. 3235–0361.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information on the following form:

Form ADV–E is the cover sheet for accountant examination certificates filed pursuant to rule 206(4)–2 under the Investment Advisers Act by investment advisers retaining custody of client securities or funds. The annual burden is approximately three minutes per respondent.

The estimate of burden hours set forth above is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Desk Office for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 25, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14244 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 12b–1; SEC File No. 270–188; OMB Control No. 3235–0212.

Notice is hereby given that under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501[, the Securities and Exchange Commission (the "SEC") has submitted to the Office of Management and Budget ("OMB"), a request for extension of OMB approval for rule 12b–1 [17 CFR 270.12b–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Act").

Rule 12b–1 permits a registered open-end investment company ("mutual fund") to distribute its own shares and pay expenses of distribution provided, among other things, that the mutual fund adopts a written plan ("rule 12b–1 plan") and has in writing any agreements relating to the implementation of the rule 12b–1 plan. The rule in part requires that (i) the adoption or material amendment of a rule 12b–1 plan be approved by the mutual fund's directors and shareholders; (ii) the board review quarterly reports of amounts spend under the rule 12b–1 plan; and (iii) the board consider continuation of the rule 12b–1 plan at least annually. Rule 12b–1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the rule 12b–1 plan, related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a rule 12b–1 plan.

The board and shareholder approval requirements of rule 12b–1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b–1 plan. The requirement of quarterly reporting to the board is designed to ensure that the 12b–1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule.

Based on information filed with the Commission by funds, Commission staff estimates that there are 4,500 mutual funds with the 12b–1 plans. As discussed above, 12b–1 requires the board of each fund with a 12b–1 plan to (i) review quarterly reports of amounts spent under the plan and (ii) annually consider the plan's continuation (which generally is combined with the foruth quarterly review). This results in a total number of annual responses per fund of four and an estimated total number of industry responses of 18,000 (4,500 funds × 4 annual responses per fund = 18,000 resonses).

Based on conversations with fund industry representatives, Commission staff estimates that for each of the 4,500 mutual funds that currently have a 12b–1 plan, the average annual burden of complying with the rule if 50 hours to maintain the plan. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's annual consideration of the plan's continuation. Commission staff therefore estimates that the total burden of the rule's paperwork requirements is 225,000 hours (4,500 funds x 50 hours per fund = 225,000 hours).

The estimate of burden hours is made solely for the purpose of the Paperwork Reduction Act. The estimate is not derived form a comprehensive or even a representative survey or study of Commission rules.

If a currently operating fund seeks to (i) adopt a new rule 12b–1 plan or (ii) materially increase the amount it spends for distribution under its rule 12b–1 plan, rule 12b–1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the cost of a proxy. Commission staff estimates that four funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b–1 plan. Commission staff further estimates that the cost of each fund's proxy is $15,000. Thus the total annualized cost burden of rule 12b–1 to the fund industry is $60,000 (4 funds requiring a proxy × $15,000 per proxy).

The collections of information required by rule 12b–1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the information above to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 30, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14245 Filed 6–06–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24486; 812–12122]

The Toronto Dominion Bank et al.; Temporary and Notice of Application

May 31, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application for permanent order under section 9(c) of the Investment Company Act of 1940 (the "Act").

SUMMARY: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to a securities-related injunction entered into in 1989, until the Commission takes final action on the application for a permanent order or, if earlier, July 31, 2000. Applicants also have requested a permanent order.

Applicants: The Toronto Dominion Bank "TD Bank", TD Investment Managewment Inc. ("TDIM"), TD Securities (USA) Inc., TD Waterhouse Asset Management, Inc. ("WAM"), TD Waterhouse Investor Services, Inc., and CT Investment Counsel (U.S.), Inc.

Filing Date: The application was filed on May 31, 2000.

Hearing or Notification of Hearing: Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 26, 2000 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary. An order granting the application will be issued unless the Commission orders a hearing or extends the temporary exemption.

ADDRESSES:

Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609

TD Bank, P.O. Box 1, Toronto Dominion Centre, Toronto, Ontario, Canada M5K 1A2

TDIM, 10th Floor, TD Tower, 55 King Street West, Toronto, Ontario, Canada M5K 1A2:

TD Securities (USA) Inc., 31 West 52nd Street, New York, NY 10019;

WAM and TD Waterhouse Investor Services, Inc., 100 Wall Street, New York, NY 10005; and

CT Investment Counsel (U.S.), Inc., 110 Yong Street, 10th Floor, Toronto, Ontario, Canada M5C 1T4.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytbalt, Assistant Director, at (202) 942–0610, Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street NW, Washington, DC 20549–0102; tel: (202) 942–8090.

Applicant's Representations

1. TD Bank is the fifth largest chartered bank in Canada. Directly and through its subsidiaries, TD Bank provides a range of financial services to individuals, corporate and commercial enterprises, financial institutions and governments.

2. WAM, a Delaware corporation, is an indirect wholly-owned subsidiary of TD Bank and is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"). WAM was acquired by TD Bank in 1996 when TD Bank purchased its parent company, Waterhouse Investor Services, Inc. ("Waterhouse"). WAM serves as investment adviser to three open-end management investment companies registered under the Act, consisting of nine portfolios ("WAM Funds"), with aggregate assets of approximately $12 billion. TDIM, a Canadian corporation and a wholly-owned subsidiary of TD Bank, was formed in 1999 and is registered under the Advisers Act. TDIM currently does not provide any services to registered investment companies ("funds").

3. On September 12, 1989, the U.S. District Court for the Southern District of New York ("District Court"), entered a Final Judgment of Permanent Injunction and Other Equitable Relief in a matter brought by the Commission ("1989 Injunction").[1] The Commission alleged that, in connection with certain so-called "free riding" transactions by certain securities clearance customers, TD Bank violated the margin lending requirements of Regulation U promulgated by the Board of Governors of the Federal Reserve Board, under section 7(d) of the Securities Exchange Act of 1934. In consenting to the 1989 Injunction, TD Bank undertook, among other things, to implement and maintain certain policies, procedures and training programs designed to detect and prevent future violations of the margin regulations. Under the terms of the 1989 Injunction, TD Bank also hired an independent outside consultant to conduct an audit of TD Bank's compliance policies and procedures and to report its findings to the Commission.

4. Applicants state that, in 1996, in connection with the acquisition by TD Bank of Waterhouse, at the request of TD Bank, the Commission supported a motion by TD Bank to the District Court for the issuance of an order modifying the 1989 Induction to enable Waterhouse to continue to provide securities clearance services. The modification to the 1989 Injunction was issued in 1996.[2]

5. Applicants also state that, at the time of TD Bank's acquisition of Waterhouse in 1996, WAM already was registered under the Advisers Act. Applicants further state that, following TD Bank's acquisition of Waterhouse, on November 27, 1996, WAM filed an amended Form ADV that disclosed the 1989 Injunction

[1] *SEC* v. *Jury Matt Hansen, et al.*, Final Judgment of Permanent Injunction and Equitable Relief as to The Toronto-Dominion Bank and the Toronto-Dominion Bank Trust Company, 89 Civ. 5242 (RO) (S.D.N.Y. Sept. 12, 1989).

[2] *SEC* v. *Jury Matt Hansen, et al.*, Stipulation & Order, 89 Civic. 5242 (RO) (S.D.N.Y. filed July 29, 1996).

on its initial Form ADV filed in December 1999.

6. Applicants state that they did not seek an order under section 9(c) around the time of the 1989 Injunction because TD Bank did not begin to engage in any fund-related activities until 1996 following the acquisition of Waterhouse. Applicants also state that they did not become aware of the section 9(a) violation until late December 1999.

7. Since the 1989 Injunction, several of TD Bank's subsidiaries—but not TD Bank, WAM or TDIM—have been involved in several administrative proceedings with state securities law administrators and self-regulatory organizations. Applicants state that none of these administrative proceedings, all of which are listed in the application, involved investment advisory or fund-related activities.

Applicants' Legal Analysis

1. Section 9(a) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as a principal underwriter or investment adviser for a registered investment company. Applicants state that, as a result of the 1989 Injunction, TD Bank and its affiliates may be prohibited by section 9(a) from serving as an investment adviser to funds.

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of applicant has been such as not to make it against the public interest or the protection of investors to grant the application.

3. Applicants seek temporary and permanent orders under section 9(c) with respect to the 1989 Injunction to permit TD Bank and its affiliates to serve an investment advisers to funds, including the WAM Funds, and in the future to provide other services to funds that might be prohibited by section 9(a). As noted above, applicants state that they did not seek an order under section 9(c) around the time of the 1989 Injunction because TD Bank did not begin to engage in any fund-related activities until 1996. Applicants also state that they did not become aware of the section 9(a) violation until late December 1999.

4. TD Bank has undertaken to develop procedures designed to prevent violations of section 9(a) by it and its affiliated persons. TD Bank's general counsel also has attested that he has reviewed TD Bank's compliance policies and procedures relating to compliance with section 9(a); that he reasonably believes that the policies and procedures have been fully implemented; and that the policies and procedures are designed reasonably to prevent violations of section 9(a) by TD bank and its affiliated persons.

5. Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe. Applicants assert that WAM's inability to act as an investment adviser to the WAM Funds would result in the WAM Funds and their shareholders facing potentially severe hardships. Applicants state that, at a special meeting of the boards of directors of the WAM Funds on February 10, 2000, the directors were apprised, among other things, of the circumstances surrounding the 1989 Injunction and the directors' fiduciary responsibilities in these circumstances. The boards found that the alleged misconduct underlying the 1989 Injunction does not adversely affect WAM's continuing ability to provide investment advisory services to the Funds or diminish the value of the services already provided. The boards unanimously voted to continue the Funds' current investment advisory contracts with WAM.

6. Applicants assert that if WAM were prohibited from providing services to the WAM Funds, the effect on WAM's business and employees would be severe. Applicants state that WAM has committed substantial resources over the past five years to establishing expertise in advising registered investment companies.

7. Applicants also assert that their conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicants note that over 10 years have passed since the 1989 Injunction. Applicants also note that the 1989 Injunction did not in any way involve fund-related activities. Applicants state that all of the employees, including senior management, involved in the matters underlying the 1989 Injunction are no longer employed at TB Bank or any of its affiliates. Applicants further state that since the 1989 Injunction, neither TD Bank nor any affiliated person of TD Bank has engaged in conduct that would result in disqualification under section 9(a) of the Act.

Applicants' Condition

Applicants agree that the requested order is subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Division has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicants, finds, in accordance with 17 CFR 200.30–5(a)(7), that it appears that: (i) The prohibitions of section 9(a), as applied to applicants, may be unduly or disproportionately severe; (ii) applicants' conduct has been such as not make it against the public interest or the protection of investors to grant the temporary exemption; and (iii) granting the temporary exemption would protect the interests of the investment companies served by applicants by allowing time for the orderly consideration of the application for permanent relief.

Accordingly, *It is hereby ordered*, under section 9(c), that applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the 1989 Injunction, subject to the condition in the application, until the Commission takes final action on the application for a permanent order or, if earlier, July 31, 2000.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14246 Filed 6–6–00 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24487; 812–12024]

Strategist Growth Fund, Inc., et al.; Notice of Application

June 1, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of a registered open-end management investment company to acquire all of the assets and stated liabilities of certain series of another registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: Strategist Growth Fund, Inc. on behalf of its underlying series: Strategist Growth Fund, Strategist Growth Trends Fund and Strategist Special Growth Fund; Strategist Growth and Income Fund, Inc. on behalf of its underlying series: Strategist Balanced Fund, Strategist Equity Fund, Strategist Equity Income Fund and Strategist Total Return Fund; Strategist Income Fund, Inc. on behalf of its underlying series: Strategist Government Income Fund, Strategist High Yield Fund and Strategist Quality Income Fund; Strategist Tax-Fee Income Fund, Inc. on behalf of its underlying series, Strategist Tax-Free High Yield Fund; Strategist World Fund, Inc. on behalf of its underlying series; Strategist Emerging Markets Fund, Strategist World Growth Fund, Strategist World Income Fund, and Strategist World Technologies Fund (Each series individually an "Acquired Fund" and collectively, the "Acquired Funds"); AXP Extra Income Fund, Inc.; AXP Federal Income Fund, Inc.; AXP Global Series, Inc. on behalf of its underlying series: AXP Emerging Markets Fund, AXP Global Bond Fund, AXP Global Growth Fund, and AXP Innovations Fund; AXP Growth Series, Inc. on behalf of its underlying series; AXP Growth Fund and AXP Research Opportunities Fund; AXP High Yield Tax-Exempt Fund, Inc.; AXP Investment Series, Inc. on behalf of its underlying series; AXP Diversified Equity Income Fund and AXP Mutual; AXP Managed Series, Inc. on behalf of its underlying series, AXP Managed Allocation Fund; AXP New Dimensions Fund, Inc.; AXP Stock Fund, Inc.; AXP Selective Fund, Inc. (each series individually an "Acquiring Fund" and collectively, the "Acquiring Funds") (the Acquired Funds and the Acquiring Funds collectively, the "Funds"); and American Express Financial Corporation ("AEFC").

Filing Dates: The application was filed on March 14, 2000 and amended on May 5, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commissions's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing request should be received by the Commission by 5:30 p.m. on June 26, 2000 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES:

Secretary, Commission, 450 5th Street NW, Washington, DC 20549–0609

Acquired Funds and AEFC, c/o Eileen J. Newhouse, American Express Financial Corporation, IDS Tower 10, T27/52, Minneapolis, MN 55440–0010

Acquiring Funds, c/o Leslie L. Ogg, American Express Funds, 901 Marquette Avenue South, Suite 2810, Minneapolis, MN 55402–3268.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574; or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Funds are registered under the Act as open-end management investment companies. Each of the Funds is a feeder fund in a master/feeder structure. Each Acquired Fund and its corresponding Acquiring Fund invest in the same master fund (the "Master Funds"). Each Master Fund is registered under the Act as an open-end management investment company.

2. AEFC, a Delaware corporation, is registered under the Investment Advisers Act of 1940 and serves as the investment for each Master Fund and as the administrator for each Fund. AEFC is a wholly-owned subsidiary of the American Express Company. Currently, AEFC or American Express Company owns, for its own account, more than 25% of the outstanding shares of each Acquired Fund and one of the Acquiring Funds.

3. On March 8, and 9, 2000 and March 10, 2000, the boards of directors of the Acquiring Funds and the Acquired Funds (the "Boards"), respectively, including all of the directors who are not interested persons of the Funds, as defined in section 2(a)(19) of the Act ("Independent Directors") approved an Agreement and Plan or Reorganization (the "Agreement"). Under the Agreement, each Acquiring Fund will acquire all of the assets and assume the stated liabilities of its corresponding Acquired Fund in exchange for class A shares of the Acquiring Fund (the "Reorganiation"). Pursuant to the Agreement, each shareholder of an Acquired Fund will receive class A Shares of the corresponding Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund shares held by that shareholder, determined as of the close of regular trading on the New York Stock Exchange on the day of the closing, which is expected to be on or about July 14, 2000 ("Closing Date"). The valuation will be made in accordance with the procedure set forth in the then-current prospectus and statement of additional information for the Funds. Or or as soon as practicable after the Closing Date, the class A shares of the Acquiring Fund received by the Acquired Fund will be distributed *pro rata* to the shareholders of the Acquired Fund and the Acquired Fund will be liquidated.

4. Each of the Acquired Funds has investment objectives, policies, and restrictions that are identical to those of its corresponding Acquiring Fund and to those of its Master Fund. The Acquired Funds have only one class of shares and are sold without a sales charge.[1] Class A shares of the Acquiring Funds are sold with a 5% front-end sales charge and a .25% 12b–1 fee. No sales charge will be assessed in connection with the Reorganization.

[1] Each of the Acquired Funds ceased offering shares to new investors and terminated its .25% 12b–1 plan on October 4, 1999.

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AEFC will pay the expenses of the Reorganization.

5. The Boards, including a majority of the Independent Directors, determined that participation in the Reorganization is in the best interests of each Fund, and that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered a number of factors, including: (a) The terms and conditions of the Reorganization; (b) the tax-free nature of the Reorganization; (c) the identical investment objectives, policies, and restrictions of the Acquired Funds and the Acquiring Funds; (d) that the shareholders of the Acquired Funds will be able to make future purchases of shares of the Acquiring Funds on a no-load basis; (e) that the expense ratio for each Acquiring Fund will be lower than the expense ratio of each Acquired Fund; and (f) the costs of the Reorganization will be borne by AEFC.

6. The Reorganization is subject to a number of conditions precedent, including that: (a) The shareholders of the Acquired Funds will have approved the Agreement; (b) the Funds will have received an opinion of tax counsel that the proposed Reorganization will be tax-free for the Funds and their shareholders; (c) applicants will have received from the Commission any exemption necessary to carry out the Reorganization; and (d) a registration statement on Form N–14 will have been filed with the Commission and declared effective for each of the Acquired Funds. The Agreement and the Reorganization may be terminated and abandoned by resolutions of the Boards at any time prior to the Closing Date. The Agreement may be terminated in the event that a material condition is not fulfilled, a material covenant is not fulfilled, or there is a material breach of the Agreement. Applicants agree not to make any material changes to the Agreement without prior Commission approval.

7. A prospectus/proxy statement was filed with the Commission on March 13, 2000 and was mailed to the Acquired Funds shareholders the week of April 17, 2000. The shareholders of the Acquired Funds considered and approved the Agreement on May 9, 2000.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the other person; (b) any person 5% or more of whose securities are directly or indirectly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consideations, purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants state that they may not rely on rule 17a–8 because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. Applicants state that AEFC or American Express Company owns more than 25% of the outstanding shares of each of the Acquired Funds and one of the Acquiring Funds and each of these Funds is an affiliated person of AEFC. AEFC is an affiliated person of the Funds because of its role as investment adviser to the Master Funds. Thus, each of the Acquired funds might be deemed to be an affiliated person of an affiliated person of an Acquiring Fund, other than by virtue of a common investment adviser.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exemption them from section 17(a) of the Act to the extent necessary to permit applicants to complete the proposed Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the terms of the proposed Reorganization are fair and reasonable and do not involve overreaching and that the Funds have identical investment objectives and policies. Applicants also state that the Boards, including a majority of the Independent Directors, have found that participation in the Reorganization is in the best interests of each Fund, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. In addition, applicants state the Reorganization will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14279 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24485; File 812–11666]

Nationwide Life Insurance Company, et al.

May 31, 2000.

AGENCY: The Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for an Order of Approval pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act").

Summary of the Applicant: Applicants seek an Order approving the proposed substitution of the American Century VP Balanced Portfolio ("VP Balanced"), a series fund of American Century Variable Portfolios, Inc. ("ACVP, Inc."), for another fund of ACVP, Inc., the American Century VP Advantage Portfolio ("VP Advantage"), currently held in the separate accounts.

Applicants: Nationwide Life Insurance Company ("NWL") and Nationwide Life and Annuity Insurance Company ("NWLAIC") (collectively the "Companies"); Nationwide Multi-Flex Variable Account, Nationwide VA Separate Account-A, Nationwide Variable Account-5, Nationwide VL Separate Account-A, Nationwide VLI Separate Account-3 (collectively the "Separate Accounts"); and Nationwide Advisory Services, Inc. (NAS) (all collectively the "Applicants").

Filing Date: The application was filed on June 18, 1999, and was amended on March 30, 2000.

Hearing or Notification of Hearing: An Order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 26, 2000, and should be accompanied by proof of service on Applicants in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES:

Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609.

Applicants, Elizabeth A. Davin, Nationwide Life Insurance Company, One Nationwide Plaza, 1–35–10, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Senior Attorney, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. NWL, a stock life insurance company organized under Ohio law, is a wholly owned subsidiary of Nationwide Financial Services, Inc. ("NFS"). NFS is ultimately controlled by Nationwide Mutual Insurance Company (95.24%) and Nationwide Mutual Fire Insurance Company (4.76%). NWL is the depositor and sponsor of the Nationwide Multi-Flex Variable Account, Nationwide Variable Account-5 and Nationwide VLI Separate Account-3.

2. NWLAIC, a stock life insurance company organized under Ohio law, is a wholly owned subsidiary of NWL. NWLAIC is the depositor and sponsor of Nationwide VA Separate Account-A and Nationwide VL Separate Account-A.

3. Each of the Separate Accounts is registered under the 1940 Act as a unit investment trust (File Nos. 811–3338, 811–8692, 811–6140, 811–5606 and 811–6137). Nationwide Multi-Flex Variable Account, Nationwide Variable Account-5 and Nationwide VA Separate Account-A issue flexible premium variable annuity contracts that are registered under the Securities Act of 1933 (the "1933 Act") on Form N–4 (File Nos. 2–75174, 33–71440 and 33–22940). Nationwide VL Separate Account-3 and Nationwide VL Separate Account-A issue flexible premium and single premium variable life insurance contracts. Nationwide VL Separate Account-A also issues multiple payment variable life insurance contracts. The contracts issued by both separate accounts are registered under the 1933 Act on Form S–6 (File Nos. 33–44296, 33–44790, 33–44300, 33–44792 and 33–35775).

4. Each Separate Account maintains multiple sub-accounts each of which invests exclusively in the shares of a single portfolio that is a series of an open-end management investment company registered on Form N–1A. All Separate Accounts maintain sub-accounts that invest in shares of VP Advantage and VP Balanced. The two sub-accounts are included among the investment options available under all contracts issued by any of the Separate Accounts (the "Contracts").

5. The Contracts reserve to NWL and NWLAIC, as relevant, the right, subject to Commission approval, to substitute shares of another open-end management investment company for the shares of an open-end management investment company held by any sub-account. The reservation is disclosed in the prospectus for the Contracts.

6. Although the Contracts reserve to Nationwide the right to restrict transfer privileges, Contract Owners currently may make transfers among the sub-accounts once per business day without the imposition of any transfer charge. The substitution will not count as a transfer among the sub-accounts for the purpose of the daily transfer limit.

7. Within 45 days of receiving the Order of Approval requested by the application, Applicants propose to substitute shares of VP Balanced for shares of VP Advantage. On the date that the substitution is effected (the "Exchange Date"), all shares held by the Separate Accounts in VP Advantage will be redeemed and, contemporaneously with the redemption, the Separate Accounts will purchase shares in VP Balanced. All shares will be purchased and redeemed at prices based on the current net asset values per share in a manner consistent with Rule 22c–1 under the 1940 Act.

8. The investment objective of VP Advantage is to seek long-term growth and current income. The fund achieves its objective by investing approximately 40% of its assets in equity securities, 40% in fixed income securities and the remaining 20% in cash and cash equivalents.

9. The investment objective of VP Balanced is to seek long-term growth and current income. The fund ach eves its objectives by investing approximately 60% of its assets in equity securities and the remainder in bonds and other fixed income securities.

10. American Century Investment Management, Inc., the adviser VP Advantage and VP Balanced, has informed Applicants that its wishes to halt all management and operations associated with VP Advantage because the fund, since its inception on June 4, 1987, has not attracted sufficient assets to grow to an efficient size. Furthermore, because VP Advantage is not being actively marketed, it is not expected to attain economies of scale. American Century Investment Management, Inc. has informed Applicants that as of January 10, 2000, VP Advantage had assets totaling $21,832,751.26. As of the same date, VP Balanced had assets of $281,394,733.05.

11. The following table shows the average annual total returns for VP Advantage and VP Balanced for periods of one, three and five years and since inception as well as expense ratios for the funds for the year ended December 31, 1999.

	Management fees	Other expenses	Average annual total returns (performance) [1]			
			1 year	3 year	5 year	Since inception
VP Advantage (in percent)(inception: 8/1/91)	1.00	0.00	14.5	12.3	12.0	9.4
VP Balanced [2] (in percent) (inception: 5/1/91)	0.99	0.00	11.4	12.4	13.3	10.8

[1] Performance as of September 30, 1999.

[2] With expense reimbursement, the management fees and other expenses were 0.97% and 0.00% respectively.

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12. On September 27, 1999, Nationwide supplemented the separate account prospectuses informing all existing and prospective Contract Owners that it is the process of applying for approval from the Commission to effect a substitution of VP Balanced for VP Advantage. In addition, the prospectus supplements state that Nationwide will not exercise any right reserved by it under the Contracts to impose an restriction or fee on transfers until at least 30 days after the proposed substitutions.

13. All Contract Owners have received a copy of the prospectus for VP Balanced because the portfolio is currently offered as an investment option under all contracts issued through the Separate Accounts.

14. Following the establishment of the Exchange Date, Contract Owners with interests remaining VP Advantage will be advised that the fund will be replaced on the Exchanged Date and that they are free to make any allocation change changes among the available investment options in advance of the Exchange Date.

15. Within five days of the Exchange Date, all Contract Owners affected by the substitution will receive a written confirmation of the substitution. The confirmation will state that Contract Owners may transfer all cash value in the affected sub-account to any other available sub-account(s). The confirmation will reiterate that Nationwide will not exercise any right reserved by it under the Contracts to impose any restriction or fee on transfers until at least 30 days after the proposed substitution.

16. The proposed substitution will take place at relative net asset value with no increase or decrease in the amount of any Contract Owner's policy value. The substitution will not result in any additional fees for Contract Owners nor will current charges increased. Contract Owners will not bear any added cost or expense, including any additional brokerage costs or expenses, associated with the proposed substitution. None of the contractual obligations currently assumed by Nationwide will in any way be abridged or modified as a result of the substitution. The proposed substitution will in no way alter a Contract Owner's right to surrender the contract at any time prior to or after the substitution in accordance with the terms of the contract. Finally, the substitution should in no way affect whatever tax benefits Contract Owners currently enjoy and will not engender any adverse tax consequences.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substitution of the securities held by the trust. The section further provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants assert that the proposed substitution meets the standards that the Commission has applied to past substitutions.

3. Applicants assert that the investment objectives and policies of VP Advantage and VP Balanced are sufficiently comparable that the investment strategies currently employed by Contract Owners may be maintained after the substitution. Both funds seek to provide investors with the benefits of a balanced portfolio of fixed income and equity securities that serves as a more conservative alternative to traditional growth funds and as a more aggressive alternative to traditional bond funds.

4. Applicants further assert that Contract Owners will benefit from the proposed substitution because VP Balanced has greater assets than VP Advantage. Accordingly, VP Balanced should continue to have lower expenses as a percentage of net asset than does VP Advantage, creating the opportunity for better performance.

Conclusion

Applicants assert, for the reasons stated above, that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act and the requested order approving the substitution should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14247 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42849; File No. SR–OPRA–00–05]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

May 26, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 18, 2000, the Options Price Reporting Authority ("OPRA")[2] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The proposed OPRA Plan amendment would modify the current temporary capacity allocation plan for peak usage periods, which minimize the likelihood that during this period the total number of messages generated by the OPRA participant exchanges will exceed the processor's (*i.e.*, Securities Industry Automation Corporation ("SIAC")) aggregate message handling capacity. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed OPRA Plan amendment and to grant accelerated approval to the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

OPRA proposes to modify the most recent amendment allocating the message handling capacity of its processor among the participant exchanges.[3] This modification will

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The six exchanges that are participants to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the International Securities Exchange ("ISE"); the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("PHLX").

[3] The current temporary allocation program is embodied in an amendment to the OPRA Plan proposed by OPRA and approved by the Commission. Securities Exchange Act Release No. 42779 (May 12, 2000), 65 FR 31950 (May 19, 2000) (order approving File No. SR–OPRA–00–04). As proposed by OPRA, that program was to expire by its terms on May 25, 2000. However, in its approval order the Commission modified the OPRA Plan amendment as filed by OPRA by extending the duration of the temporary allocation program for an additional 120 days from the date of the order, and further modified the program by providing an allocation of OPRA's capacity to ISE during this extended period. In its order, the Commission stated that any OPRA Plan amendment subsequently proposed by OPRA and found to be consistent with the Act would supersede the Commission's order. OPRA questions the authority of the Commission to impose such modifications to the OPRA Plan by order, as opposed to acting by rule, which is the procedure established in Rule 11Aa3–2(c)(2) for national market system plan amendments initiated by the Commission. Because the OPRA Plan amendment proposed in this filing would extend the temporary allocation program until the earlier of August 24, 2000, or the expansion of OPRA's capacity to the point where the allocation program is no longer needed, and because it would also provide an appropriate allocation of capacity to ISE during this period, OPRA believes that the approval of this amendment will obviate the need to resolve the issue of the Commission's authority to impose modifications to the OPRA Plan in its May 12 order.

[4] OPRA expects this upgrade to go into production on July 17, 2000.

[5] 17 CFR 240.11Aa3–2.

commence on May 26, 2000, which is the day when ISE is scheduled to commence trading, and will continue until the earlier of the date when OPRA implements a system upgrade that will increase its maximum message handling capacity from the current 3,540 messages per second ("mps") to 8,000 mps[4] or August 24, 2000. During the modification provided for in this amendment, the current allocation will continue in effect: from May 26, 2000, through June 22, 2000, ISE will be allocated 55 mps; from June 23, 2000, through July 27, 2000, ISE will be allocated 110 mps; and from July 28, 2000, through August 24, 2000, ISE will be allocated 165 mps. Each of the foregoing allocations to ISE is subject to being reduced if, on or before the third day preceding the first day preceding the first day of an allocation period, ISE notifies OPRA that it does not need its full share of capacity for the ensuing allocation period and agrees to accept a specified reduced capacity share. Any reduction in capacity share that may be agreed to by ISE will be reallocated proportionately to the other exchanges, and will not affect the capacity share to which ISE is entitled during the next allocation period.

OPRA has filed this proposed modification of its temporary capacity allocation program as an amendment to its national market system plan, and accordingly, is filing the proposed amendment for Commission review and approval pursuant to paragraph (b) of Rule 11Aa3–2 under the Act.[5] ISE has represented to OPRA that it finds the capacity share proposed to be allocated to it in the proposed amendment to be acceptable.

II. Implementation of the Plan Amendment

OPRA believes the proposed modification of the temporary capacity allocation program is necessary and appropriate to avoid delays and queues in the dissemination of options market information, which in tern helps to achieve the objectives of Section 11A(a)(1)(C)(iii),[6] including assuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Accordingly, OPRA requests the Commission permit the modification of the proposed allocation program be put into effect summarily upon publication of notice of this filing, pursuant to paragraph (c)(4) of Rule 11Aa3–2[7] of the Act, based on a finding by the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or is otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–00–05 and should be submitted by June 28, 2000.

[6] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[7] 17 CFR 240.11Aa3–2.

IV. Commission's Findings and Order Granting Accelerated Approval of Prosed Plan Amendment

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[8] Specifically, the Commission believes that the proposed amendment, which allocates the limited capacity of the OPRA system among the options markets during peak usage periods, is consistent with Rule 11Aa3–2 under the Act[9] in that it will contribute to the maintenance of fair and orderly markets and remove impediments to, and perfect the mechanisms of, a national market system. The Commission notes that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of, and at times surpasses, OPRA's systems capacity. OPRA estimates that its current plans to expand OPRA systems capacity will not be completed until July 17, 2000. Consequently, the Commission is concerned that, absent a program to allocate systems capacity among the options markets, systems queuing of options quotes may be the norm, to the detriment of all investors and other participants in the options markets. The Commission believes that the agreed-upon allocation plan is a reasonable means for addressing potential strains on capacity.

The Commission notes that the anticipated enhancements to the OPRA system should increase systems capacity from 3,540 mps to 8,000 mps. The Commission does not, however, believe that the enhancement will end the need for a capacity allocation[10] as the imminent move to decimalization and the dissemination of quotations with size will continue to strain OPRA systems capacity. For the above reasons, among others, the Commission modified the temporary allocation proposed by OPRA to extend its capacity allocation.[11]

[8] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 240.11Aa3–2.

[10] Consequently, the Commission recently solicited comment on a proposed amendment to the OPRA Plan to adopt an objective capacity allocation formula. *See* Securities Exchange Act Release No. 42755 (May 4, 2000), 65 FR 30148 (May 10, 2000) (File No. 4–434). The comment period on this proposal expires on June 9, 2000.

[11] *See* Securities Exchange Act Release No. 42779 (May 12, 2000), 65 FR 31950 (May 19, 2000) ("May 12 order"). The Commission has authority to modify by order an amendment to a national market system plan submitted by plan participants as it did in the May 12 order. Rule 11a3–2(c)(2).

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The Commission believes that the proposed amendment to the OPRA Plan is consistent with the Act and has determined to substitute the provisions of this proposal for the modifications made by the Commission to OPRA's previous capacity allocation amendment.[12] Therefore, OPRA capacity should be allocated according to the terms of the capacity allocation set forth in this amendment.

The Commission finds good cause to accelerate the proposed OPRA Plan amendment prior to the date of publication in the **Federal Register**. The Commission notes that the proposed OPRA Plan amendment is intended to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message traffic. The Commission believes that approving the amendment will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate, and possibly implement, other quote mitigation strategies. In addition, the limited time frame of this capacity allocation program provides the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, that granting accelerated approval of the proposed OPRA Plan amendment is appropriate and consistent with Section 11A of the Act.[13]

V. Conclusion

It Is Therefore Ordered, pursuant to Rule 11Aa3–2 of the Act,[14] that the proposed OPRA Plan amendment (SR-OPRA-00-05) is approved on an accelerated basis until the earlier of the date when OPRA implements a system upgrade that will increase its maximum message handling capacity to 8,000 mps or August 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14262 Filed 6–6–00; 8:45 am]

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[12] See note 11 *supra*.
[13] 15 U.S.C. 78k–1.
[14] 17 CFR 240.11Aa3–2.
[15] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42853; File No. SR–AMEX–00–19]

Self-Regulatory organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Establishment of an Interim Seat Allocation Program

May 30, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex is filing with the Commission a proposed rule change to establish an Interim Seat Allocation Program that would allow a member or member organization designate one or more iterim members. Thereafter, the member or member organization would be permitted to allocate temporarily its membership, with certain restrictions, to the interim member whenever the member or member organization's active member or nominee is absent from the trading floor. The text of the proposed rule change is available for inspection at the places specified in item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Active Exchange seats are assigned to a person not a firm. Consequently, when a person to whom a seat is assigned is absent from the trading floor, the seat cannot be used to participate in trading activities on the floor. In effect, at any given time, some measurable percentage of one of the Exchange's most valuable assets lies dormant and unavailable for use. Therefore, the Exchange is proposing an Interim Seat Allocation Program which would allow an active member (*i.e.* the person to whom the seat has been assigned and who actively participates in securities transactions on the floor of the Exchange) temporarily to allocate the membership to an interim member when the active member is absent from the trading floor. The active member would pay an interim member status annual fee of $1,500 and a flat fee of $250 for each allocation. A temporary allocation may be for a minimum of one day to a maximum of one year.

The interim member would have to be approved for membership in accordance with the Constitution and Rules of the Exchange. Once approved, and upon payment of the flat allocation fee and submission of the appropriate from to the Exchange's Membership Services Department, an interim member could be allocated the membership held by the active member. Contracts made on the trading floor of the Exchange by an interim member would be considered contracts made by the active member. The active member would also be responsible for all obligations to the Exchange and all obligations to other members resulting from Exchange transactions or transactions in other securities conducted by the interim member. The Exchange would require prior approval of the interim members by lessor.

The owner of the membership, rather than the interim member, would be deemed to be the member of the Exchange for purposes of participating in any distribution of the assets and funds of the Exchange in the event of any voluntary or involuntary final liquidation, dissolution, or winding up of the Exchange's affairs. The owner of the membership or active member, as the case may be, rather than the interim member, would be the Participant in the Exchange's Gratuity Fund and entitled to the benefits described in Article IX of the Exchange Constitution. In addition, an interim member will not be permitted to vote the active member's seat or serve on an Exchange committee in the place of the active member.[3]

If an interim member is not allocated the membership held by the active member within one year of approval by the Exchange's Membership Services Department, the individual's eligibility for interim membership would be terminated. To become eligible again for interim member status, the individual would have to requalify for membership pursuant to Article IV of the Exchange Constitution by repaying all fees, passing the test, and updating the application.

The Exchange believes that a confluence of competitive factors, such as the advent of the International Securities Exchange and the multiple listing of options, coupled with rising seat prices, make it critical for Exchange members to maximize their use of personnel and capital resources. This Interim Seat Allocation Program is an effort by the Exchange to assist its members in accomplishing that goal.

2. Statutory Basis

Amex believes that the proposed rule change would be consistent with the provisions of section 6(b) of the Act[4] in general and would further the objectives of section 6(b)(5)[5] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

[3] Telephone conversation between Ivonne T. Lugo, Assistant General Counsel, Legal and Regulatory Division, Amex, and Michael Gaw, Attorney, Division of Market Regulation, Commission, on May 22, 2000.
[4] 15 U.S.C. 78f(b).
[5] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Amex consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–00–19 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14255 Filed 6–6–00; 8:45 am]

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[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42834; File No. SR–Amex–00–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Amendment of Rule 126 on a Pilot Program Basis

May 26, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 126 on a six month pilot program basis by adding a new Commentary .03 to implement a program for processing electronically transmitted orders for the common stock of business corporations admitted to dealings on the Exchange ("eQPriority[sm]"). Below is the text of the proposed rule change, which is entirely new.

* * * * *

.03. Orders Delivered Electronically to the Specialist. At all times other than an opening or a reopening (Rule 108) or a block sold at a "clean-up" price (Rule 155), a round lot, regular way order for the common stock of a business corporation admitted to dealings on the Exchange that is sent to the specialist electronically and is executable according to its terms in whole or in part shall be handled in the following manner. Upon receipt of the electronic order by the specialist's order book, the specialist shall announce the order to the crowd and the order shall establish priority with respect to all other bids and offers. Once the specialist has announced the order, members who have bids or offers incorporated in the Amex Published quote ("APQ" shall not be permitted to withdraw or modify their interest except to provide price improvement (i.e., an execution between the APQ) to the incoming order.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

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Following the announcement of the order, the specialist and members in the crowd shall have a brief opportunity to provide price improvement to the incoming order. In the event that the incoming order is price improved but not entirely filled at the improved price, the sale shall not remove all bids and offers, and the incoming order shall retain priority over other bids and offers up to the full size of the APQ that was displayed at the time of the announcement of the order less any interest that provided price improvement to the order. In the event that the incoming order is larger than the size displayed in the APQ, the order shall be executed according to these procedures and any unfilled balance of the order shall be handled according to the Exchange's customary auction market processes.

This Commentary .03 will expire six months from the date the SEC approval. The SEC approved this rule change on (insert date of Approval Order when known).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Order execution has become increasingly automated and competitive. To encourage investors and order flow providers to send orders to the Exchange, the Amex is proposing to add a new Commentary .03 to Amex Rule 126. Commentary .03 would be effective for a six months pilot period. The commentary is intended to assure investors who send equity orders to the Exchange that their orders will be filled either (i) at the Amex Published Quote ("APO")[3] at the time the specialist announces the order up to the depth of the quote, or (ii) at an improved price.[4] Specifically, the proposed rule change would require that members may not withdraw or modify their bids and offers incorporated into the APQ during the processing of electronically delivered orders except to provide price improvement. The proposed rule change also provides that an incoming electronic order retains priority over other bids and offers on the Floor until the exhaustion of the APQ displayed at the time the specialist announces the electronic order.[5]

An example best illustrates how the program will work. Assume the APQ is 20 to 20⅛, 3,000 by 3,000 and that the *bid* consists of a broker in the crowd working a buy order (3,000 shares reflected in the APQ). Assume that the *offer* consists of a customer limit order (1,000 shares) and the specialist as principal (2,000 shares). (There is also a broker in the crowd working a sell order who has chosen not to reflect any of his interest in the APQ.) Assume that the specialist receives an electronic order to buy 3,000 shares at the market. Once the specialist announces the order, no one would be permitted to withdraw his or her interest from the APQ except to provide price improvement to the incoming electronic order. In this example, the specialist would announce to the crowd that there are 3,000 shares to buy. Both the specialist and the broker working the sell order each could sell, 1,500 shares to the incoming electronic order at an improved price of 20⅛.[6] If, however, the broker in the crowd were unwilling to price improve the order, and the specialist were willing to sell, 3,000 at 20 1/16, then the electronic order would buy 3,000 at 20 1/16 from the specialist. If neither the specialist nor the broker in the crowd were willing to price improve the order, it would be filled at 20⅛ against the customer limit order and the specialist's offer. The electronic order would have priority over all other purchasers at the Amex until the APQ displayed at the time it is announced is exhausted.

The Exchange's proposed eQPriority program is not limited to institutional size orders. In addition, the Exchange's program is available with respect to all interest displayed in the APQ at the time the order is announced. The Exchange believes that eQPriority will provide investors with the optimal combination of price improvement possibilities together with speed and certainty of execution.

The eQPriority program only will apply to the common stock of business corporations admitted to dealings. The Exchange believes that it would be inappropriate to apply eQPriority to options and equity derivatives because the Amex is not the price discovery market for these securities and the value of the underlying instruments may change very rapidly. The Exchange also believes that the program should not apply to openings and reopenings. Openings involve a balancing of supply and demand to reach a consensus price that, by definition, is the best execution. The program also will not apply to "clean-up" sales of blocks. The Exchange believes that the current procedure for affecting a clean-up sale at a single price outside the APQ is fairest to all parties and, accordingly, does not propose to amend this process.

The Exchange is proposing to adopt eQPriority on a six-month pilot program basis to assess its benefits and costs.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–07 and should be submitted June 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14259 Filed 6–6–00; 8:45 am]

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[3] The APQ is the best bid or offer that Amex conveys to the Consolidated Quotation System. Conversation between Bill Floyd-Jones, Assistant General Counsel, Arne Michelson, Senior Vice President, Laurence McDonald, Managing Director, Lauren Brophy, Vice President, Amex, and Joshua Kans, Special Counsel, Madge Hamilton, Special Counsel, Division of Market Regulation ("Division"), Commission, April 5, 2000.

[4] Current practices do not guarantee that an incoming electronic order will interact against the APQ. When an electronic order arrives on the Exchange, the specialist in the security will announce a crossing market in an attempt to provide price improvement to the order. For example, if an electronic market order to buy arrives on the Exchange, the specialist will announce a bid at a minimal fractional variation away from the APQ ask price, and the specialist will announce an offer at the APQ ask price. This gives floor brokers an opportunity to price improve the order by selling to the bid. This method of crossing, however, may also permit a floor broker to take the offer despite the presence of the electronic order. If an electronic market order to sell arrives, a floor broker similarly has the opportunity to sell to the bid first.

Also, if an electronic order is filled in part at an improved price, current practice allows floor brokers to interact with the APQ on parity with the remainder of the electronic order. This is because Amex Rules 126(e)(3) and 126(f) provide that each sale cancels all bids and offers. In that case, Amex Rules 126(e)(2) and 126(f) require the bids or offers on parity to be filled as equally as practicable. Conversations between Bill Floyd-Jones, Assistant General Counsel, Arne Michelson, Senior Vice President, Laurence McDonald, Managing Director, Lauren Brophy, Vice President, Amex and Joshua Kans, Special Counsel Madge Hamilton, Special Counsel, Division, Commission, March 31, 2000 and April 5, 2000.

[5] The proposed rule change further provides that once the specialist announces the order, the specialist and members of the crowd will have a brief opportunity to provide price improvement. If part of the order is filled at an improved price, the sale would not remove bids and offers, and the incoming order retains priority over other bids and offers up to the full size of the APQ less any interest that provided price improvement. If the incoming order is larger than the size displayed in the APQ, the unfilled portion will be handled according to the customary auction market procedures.

[6] This example presumes that the floor broker and the specialist simultaneously sell to the bid. In that situation, Amex Rules 126(e)(2) and 126(f) provide that all such bids and offers are on parity and any securities to be sold in execution of bush bids or offers are divided as equally as practicable between the specialist and the brokers, except when the specialist has an accumulation of orders on his book representing a substantial amount of the security at the same price. Conversation between Bill Floyd-Jones, Assistant General Counsel, Arne Michelson, Senior Vice President, Laurence McDonald Managing Director, Amex, and Joshua Kans, Special Counsel, Madge Hamilton, Special Counsel, Division, Commission, March 31, 2000.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42857; File No. SR–CBOE–00–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Governing the Final Settlement Value of Index Options in the Event of a Primary Market Closure

May 30, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 25, 2000, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules governing the settlement procedures for its index options in certain unusual circumstances. The text of the proposed rule change is available at the CBOE and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Based on recent events, the Exchange proposes to change settlement procedures for index options when a primary market for underlying stocks in an index does not open on the scheduled settlement day. Under such circumstances, the proposed rule change will allow the use of the next available opening prices for the affected underlying securities to calculate the settlement value of the index options.

On Thursday, September 16, 1999, it was feared that the New York Stock Exchange, Inc. ("NYSE") would not open for business the next day as Hurricane Floyd traveled up the Eastern seaboard. In the event that the NYSE had not opened on Friday, September 17, an expiration Friday, the settlement of index options and futures contracts would have been affected. A review of this situation demonstrates the critical need for this rule change.

Current CBOE index option settlement rules do not expressly address a situation when an entire primary market, such as the NYSE, fails to open for business. The closest applicable rules, such as CBOE Rule 24.9(a)(4), provide that a specific underlying security in an index does not open, the *last* reported sale price of such a security will be used to determine the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CBOE corrected the filing number, changing it from SR–CBOE–99–02. See letter from Christopher R. Hill, Attorney, Office of Enforcement, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 24 ("Amendment No. 1").

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settlement price of index options. Thus, if Hurricane Floyd had prevented the NYSE from opening on Friday, September 17, the final settlement value of September index options would have been established by looking *backward* to the previous day's *closing* prices for NYSE stocks (*i.e.*, the closing prices on Thursday, September 16.)

This 'backward focus' of the CBOE index option settlement rules threatened to cause severe difficulties during the Hurricane Floyd situation, both for investors who traded stock index options against the underlying stocks as well as those who traded the index options against index futures. Both groups of investors rely upon the final settlement value of index options to converge with the corresponding values of the underlying stock index or stock index future. For both groups, however, the backward focus of the CBOE index option settlement rules threatened to prevent this convergence in September.

Many public customers and market makers use stock index options to hedge "cash" positions they hold in the stocks which make up the index. Because current CBOE settlement rules would have looked backwards to the Thursday, September 16, closing prices of NYSE stocks to determine the final settlement value of September stock index options if the NYSE had not opened on Friday, September 17, investors who wished to make sure their stock position converged with their option position in the event of a Friday NYSE closure would have had to exit their NYSE stock positions that Thursday.

Obviously, however, no investor could know for certain on Thursday whether weather conditions on Friday would prevent the opening of the NYSE. *Thus, the backward focus of the current CBOE settlement rule forced investors who wished to stay hedged to guess about the future.* If they guessed that Hurricane Floyd would keep the NYSE closed on Friday, they would have to exit their stock positions on Thursday. If they guessed that Floyd would not close the NYSE, they would hold their stock positions until Friday. Either way, if they guessed wrong, their stock and option positions would not converge at expiration, and they would be exposed to the very market risk they had sought to use options to avoid.

Public customers and market makers that trade index options against stock index futures faced similar difficulties. For example, numerous investors trade the SPX (the index option based on the S&P 500 Stock Index) against the S&P 500 future, which trades at the Chicago Mercantile Exchange, Inc. ("CME"). Unlike CBOE's settlement rules, the CME's settlement rules for the S&P 500 future are *forward*-focused. If a primary market for a component stock in the S&P 500 Index does not open on the day scheduled for determination of the Final Settlement price of the S&P 500 future, then the price of that stock is determined, for the purposes of calculating the Final Settlement Price of the future, based on the *opening* price of that stock on the *next* day that its primary market is open for trading.[4]

Thus, if Hurricane Floyd had prevented the NYSE from opening on Friday, September 17, the final settlement value of the September S&P 500 futures would have been established under CME rules according to the opening price that following Monday, September 20, of those stocks which had not traded on Friday. At the same time, the final settlement value of the SPX options would have been established under CBOE rules according to the closing price of those stocks on Thursday, September 16. In other words, the final settlement values of the September SPX options and the September S&P 500 futures would most likely have differed, rather than converged.

Had this occurred, the Exchange believes that it would have affected a significant number of SPX traders (both public customers and market makers) because a lot of them hedge their option positions with S&P 500 futures contracts. Had the S&P futures and the SPX not converged at expiration on Friday, September 17, these traders could have faced significant unexpected exposure to market risk.

The problems detailed above can be prevented if the CBOE changes its index option settlement rules to be forward-focused. If such a rule had been in place for SPX options on Thursday, September 16, no public customer or market maker would have been forced to guess on Thursday about the impact of Hurricane Floyd on Friday. If weather had shut the NYSE down until Monday, September 20, the final settlement value of the September SPX options would be calculated using the Monday opening prices of the NYSE stocks. Any investor using SPX options to hedge stock positions in the S&P 500 Index could have held their stock positions until they knew what was going to happen on Friday. Even if the NYSE had been closed that day, they could have simply exited their stock positions with confidence on Monday simply by entering "Market on Open" orders for all affected stocks. Further, a forward-focused settlement rule in cases of primary market closure would also have assured convergence at settlement between the value of index options and index futures.

For all the above reasons, there is a strong consensus among market participants consulted by the Exchange that the Exchange should change its index option settlement rules to be forward-focused, and this proposed rule change achieves that in its amendment of CBOE Rule 24.9(a)(4) and its addition of the new CBOE Rule 24.7(e). The provision set forth in the proposed new Rule 24.7(e) would apply to all index options traded on the Exchange. In the event that a primary market for one or more securities underlying a current index does not open for trading on a given day, the price of such securities shall be determined, for purposes of calculating the current index value at expiration, by reference to the opening price of those securities on the next day that their primary market reopens for trading.

This provision also recognizes the authority of the Options Clearing Corporation ("OCC") to establish a final settlement value for index options in the event of a primary market closure pursuant to its Rules and By-Laws. The proposed rule change makes clear that such action by the OCC would take precedence in determining any final index settlement value.

2. Statutory Basis

CBOE believes that the proposed changes to CBOE Rules 24.7 and 24.9(a)(4) are consistent with and in furtherance of the provisions of section 6(b)(5)[5] of the Act. By establishing a CBOE Rule which defines current index option settlement values in the event of a primary market closure, and does so with a forward rather than a backward focus, this filing will help public customers and market makers alike to be better able to use stock index options to predictably hedge their transactions in stock index futures and/or the underlying stocks themselves. The Exchange believes that this will improve the efficiency of, remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, thus better protecting investors and the public interest.

[4] See CME Rule 4003.A. In part, CME Rule 4003.A states, "If the primary market for a component stock in the index does not open on the day scheduled for determination of the Final Settlement Price, then the price of that stock shall be determined, for the purposes of calculating the Final Settlement Price, based on the opening price of that stock on the next day that its primary market is open for trading."

[5] 15 U.S.C. 78f(b)(5).

3. Statutory Basis

The CBOE believes the proposed rule change is consistent with and furthers the objectives of section 6(b)(5)[6] of the Act in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Member, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–02 and should be submitted by June 28, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act.[7] In particular, the Commission finds the proposal is consistent with section 6(b)(5)[8] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposal promotes just and equitable principles of trade. In particular, the proposal clarifies index settlement procedures in the unusual situation when a primary market where component stocks trade is closed on the index settlement day. By way of example, the CBOE discusses a situation in the fall of 1999 when some people thought the NYSE would be closed on the settlement day. This closure would have affected many index options traded on CBOE, including S&P 500 index options. If the market did not open, CBOE's settlement rules would have required the Exchange and the OCC to look at the previous closing prices for component stocks that traded on the NYSE. This procedure varied from the settlement procedures of a futures exchange that traded futures on the S&P 500 index. Moreover, the settlement procedure also placed investors in S&P 500 index options in the unusual situation of having to guess as to whether the NYSE would open on the settlement day. By relying on the opening price of a security on the next day the primary market is open, the proposal helps clarify CBOE index settlement procedures and also makes these procedures conform to industry practice in the futures markets. Further, the proposal helps reduce investor confusion by implementing rules that foster investor certainty in the unusual situation when a primary market where component stocks trade is closed on the index settlement day.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. A virtually identical proposal, SR–OCC–00–01, was published in the **Federal Register** for the full 21-day comment period and the Commission received no public comments.[9] The current proposal mirrors the changes that were proposed by the OCC in SR–OCC–00–01. The Commission believes, therefore, that granting accelerated approval to the proposed rule change is appropriate and consistent with section 6 of the Act.[10]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–00–02), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14257 Filed 6–6–00; 8:45 am]

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[6] 15 U.S.C. 78f(b)(5).

[7] In addition, pursuant to section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Release No. 34–42769 (May 9, 2000), 65 FR 31036 (May 15, 2000) (order approving SR–OCC–00–01.)

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42850; File No. SR–CBOE–00–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Fees

May 30, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On April 12, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons,

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make certain changes to its fee schedule. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange corrected the Schedule of Dues and Fees contained in Appendix A to reflect what the Exchange's fee schedule stated with respect to equity option customer order fees and trade match fees before the proposed rule change was filed. See Letter from Angelo Evangelou, Attorney, Legal Division, CBOE, to Jennifer Colihan, Attorney, Division of Market Regulation, SEC, dated April 11, 2000 ("Amendment No. 1").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to rescind certain customer equity options fees. The foregoing fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22 and will be in effect as of March 1, 2000.

The Exchange proposes to rescind transaction fees for public customer equity option orders routed through CBOE's electronic Order Routing System ("ORS"). The Exchange further proposes to eliminate the trade match fee for public customer equity option orders routed through ORS. An overwhelming majority of CBOE customer orders are routed via ORS. The Exchange, therefore, believes this fee change will generate significant savings for its customers.

Manually executed public customer orders will retain the current $0.09 transaction fee and $0.05 trade match fee. Orders entered into ORS via the Exchange's Booth Entry and Routing System (BERS) after a manual execution will also be subject to the current $0.09 transaction fee and $0.05 trade match fee, and shall not be eligible for the fee reduction proposed herein.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with section 6(b)[4] of the Act in general and furthers the objectives of section 6(b)(4)[5] in particular because it provides for the equitable allocation of reasonable dues, fees and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate or unnecessary burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or charged imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE.[8]

All submissions should refer to the file number in the caption above and should be submitted by June 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14260 Filed 6–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42865; International Series Release No. 1225; File No. SR–DTC–00–07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated, Temporary Approval of a Proposed Rule Change Relating to the Admission of Non-U.S. Entities as Direct Depository Participants

May 30, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 18, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated, temporary approval of the proposed rule change through May 31, 2001.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend the Commission's temporary approval of DTC's admission criteria for entities that are organized in a country other than the United States ("non-U.S. entities").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to extend the Commission's temporary approval of DTC's admission criteria for non-U.S. entities as direct DTC participants. On May 9, 1997, the Commission originally granted temporary approval through May 31, 1998.[3] The admission criteria are designed to permit well-qualified, non-U.S. entities to obtain direct access to DTC's services without requiring the non-U.S. entities to obtain financial guarantees from another DTC participant. According to DTC, DTC established the program for admission of non-U.S. entities in response to requests it received from certain participants. These participants requested that DTC consider changes in its admissions policy that would allow non-U.S. affiliates of U.S. participants to become direct participants without having to obtain financial guarantees from their U.S. affiliates that are DTC participants. The Commission has subsequently extended its original temporary approval through May 31, 2000.[4]

In November 1999, DTC admitted one non-U.S. entity as a direct participant under the standards for admission of non-U.S. entities. DTC has received several inquiries from other non-U.S. entities and expects to admit several non-U.S. entities under its standards for the admission of non-U.S. entities. DTC is seeking an extension of the temporary approval so it can complete the admission of these non-U.S. entities and gain further experience with the admission standards for non-U.S. entities and with the unique risks posed by the activities of non-U.S. entities as direct DTC participants.

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations promulgated because the admission criteria takes into account the unique risks to DTC raised by the admission of non-U.S. entities while not unfairly discriminating against non-U.S. entities seeking admission as participants.

[3] For a complete discussion of the admission criteria, refer to Securities Exchange Act Release No. 38600 (May 9, 1997), 62 FR 27086 [File No. SR–DTC–96–13].

[4] See Securities Exchange Act Release Nos. 40064 (June 3, 1998), 63 FR 31818 [File No. SR–DTC–98–11] and 41466 (May 28, 1999), 64 FR 30077 [File No. SR–DTC–99–12].

(B) Self-Regulatory Organization's Statement on Burden on Competition

While DTC acknowledges that the proposed additional admissions criteria applicable to non-U.S. entities may impose some additional burden, for the reasons stated above, DTC believes that any such burden necessary and appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not sought or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[5] The Commission finds that the rule change is consistent with this obligation because DTC's admission criteria for non-U.S. entities has been designed in a manner that takes into account jurisdiction differences in regulatory structure and in business operations of non-U.S. entities with respect to DTC's risk control and management. Furthermore, DTC admission criteria should bind non-U.S. entities to DTC's rules and procedures in a manner similar to domestic participants and should lesson or eliminate the negative effects that jurisdictional issues could have on DTC's exercise of its rights against non-U.S. entities. Therefore, the Commission finds that the admissions criteria will assist DTC in assuring the safeguarding of securities and funds which are in its custody, control, or for which it is responsible.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing because accelerated approval will permit DTC to continue to use and study the effectiveness of its admission criteria for non-U.S. entities without interruption when the current temporary approval of these criteria expires on May 31, 2000.

[5] 15 U.S.C. 78q–1(b)(3)(F).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the DTC. All submissions should refer to file number SR–DTC–00–07 and should be submitted by June 28, 2000.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–00–07) be, and hereby is, temporarily approved on an accelerated basis through May 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14254 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42830; File No. SR–MSRB–00–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Technical Amendments to Rules A–3, G–15, G–17, and G–18

May 25, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2]

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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notice is hereby given that on May 2, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Board has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of rule 19b-4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change consisting of technical amendments to Rule A–3, on Board membership; Rule G–15, on confirmation, clearance and settlement of customer transactions with customers; rule G–17, on conduct of municipal securities business; and Rule G–18, on execution of transactions. The proposed rule change would become operative on June 1, 2000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Board proposes to adopt technical amendments to Rules A–3, G–15, G–17, and G–18 for the purpose of making certain non-substantive changes. The proposed amendments to subsections (a)(i), (c)(ii) and (c)(iv) of Rule A–3 correct an unintended omission from the technical amendments (the "1999 Technical Amendments"),[5] filed with and approved by the Commission last year, with respect to the definition of public representatives on the Board and its Nominating Committee. The proposed rule change is intended to make the rule language consistent with Section 15B(b)(1) of the Act.[6]

The proposed changes to Rule G–15(d)(ii) make subsection and paragraph references consistent with the Board's general usage of such references throughout the rules.

The proposed amendments to Rule G–17 change certain terminology used in the rule from "municipal securities business" to "municipal securities activities" to avoid any ambiguity with the term "municipal securities business" as used in Rules G–37 and G–38. The Board represents that the term "municipal securities business" as used in Rules G–37 and G–38 has a specific limited definition, whereas Rule G–17 uses that term in a manner intended to include all of the municipal securities activities of the dealer or its associated persons.[7]

The proposed amendment to Rule G–18 would delete a definition of "broker's broker" that pre-dated the Commission's definition of that term under Rule 15c3–1(a)(8)(ii) of the Act.[8] Because the language used to define brokers' broker differs in the two definitions, the Board believes that it is possible that some ambiguity may exist as to whether the term is intended to cover the same universe of dealers under the general federal securities laws and Board rules. The Board represents that the deletion of this definition from Rule G–18 would eliminate this potential ambiguity.[9]

2. Statutory Basis

The Board believes that the proposed rule is consistent with Section 15B(b)(2)(C) of the Act.[10] The Board further believes that the proposed rule change will ensure that existing rule provisions are accurate and understandable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board represents that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five business days prior to the filing date; and (iv) does not become operative for 30 days after the date of its filing, the Board has submitted this proposed rule change, pursuant to Section 19(b)(3)(A)[11] of the Act and Rule 19b–4(f)(6)[12] thereunder, to become operative on June 1, 2000. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–00–7 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14248 Filed 6–6–00; 8:45 am]

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[3] 17 CFT 240.19b-4(f)(6).

[4] Pursuant to Rule 19b-4(f)(6), the Board provided the required five-day advance notice to the Commission of its intent to file the proposed rule change. In the notice, the Board represented that the proposed rule change: (1) Will not significantly affect the protection of investors; (2) will not impose any significant burden on competition; and (3) will not become operative for thirty days after the date of this filing. *See* letter from Ernesto A. Lanza, Associate General Counsel, MSRB, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 25, 2000.

[5] *See* Securities Exchange Act Release No. 41528 (June 15, 1999), 64 FR 33334 (June 22, 1999).

[6] 15 U.S.C. 78o–4(b)(1).

[7] The proposed changes to Rule G–17 are consistent with similar amendments made to Rules A–14, A–15, G–3 and G–27 in the 1999 Technical Amendments.

[8] 17 CFR 240.15c3–1(a)(8)(ii).

[9] Rule D–1 provides that, unless the context otherwise specifically requires, the terms used in Board rules shall have the respective meanings set forth in the Act and the rules and regulations of the Commission thereunder. Thus, the deletion of the definition of brokers' broker from Rule G–18 would automatically result in this term having the same meaning as set forth under Rule 15c3–1(a)(8)(ii) of the Act.

[10] Section 15B(b)(2)(C) of the Act states in pertinent part that the rules of the Board "shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest." 15 U.S.C. 78o–4(b)(2)(C).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42852; File No. SR–NASD–00–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Minimum Quotation Sizes in the OTC Bulletin Board

May 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes an amendment to NASD Rule 6750 that would modify the minimum quotation sizes for securities quoted at a price exceeding $200 in the OTC Bulletin Board ("OTCBB"). Below is the text of the proposed rule change. Proposed new language is in *italic*; proposed deletions are in brackets.

6750. Minimum Quotation Size Requirements For OTC Equity Securities

(a) Every member firm that functions as a market maker in OTC Equity Securities by entering firm quotations into the OTC Bulletin Board Service (OTCBB) (or any other inter-dealer quotation system that permits quotation updates on a real-time basis) must honor those quotations for the minimum size defined in the table below. In this regard, it is the market maker's responsibility to determine the minimum size requirement applicable to its firm bid and/or offer in each of its registered securities (excluding OTC Equity Securities for which the OTCBB will not accept firm quotations). Depending on the price level of the bid or offer, a different minimum size can apply to each size of the market being quoted by the member firm in a given security.

Price (bid or offer)	Minimum quote size
0–.50*	5,000
.51–1.00	2,500
1.01–10.00	500
10.01–100.00	200
100.01–200.00	100
[200.01–+	50]
200.01–500	25
500.01–1000	10
1000.01–2500	5
2500.01+	1

*The OTCBB can accept bids/offers expressed in fractions as small as 1/256 or in decimals up to six places. In applying the price test for minimum quotation size, any increment beyond an upper limit in the right hand column will trigger application of the minimum quote size for the next tier. For example, a bid (or offer) of $.505 must be firm for a size of 2,500 shares.

[A Nasdaq officer at the Executive Vice President level or above, within its discretion, may modify the minimum quotation size for those securities with a price exceeding $200.]

(b) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to modify the minimum quotation size for securities quoted on the OTCBB that exceed a price of $200 per share. Nasdaq believes that this modification is necessary to correct a previously unforeseen problem with the schedule contained in Rule 6750, which presently mandates that securities priced over $200 per share be traded in blocks of 50 shares or more.[3] For certain highly priced and/or thinly traded securities, this rule has had an undesired and detrimental effect on transparency and liquidity.

Rule 6750 was originally approved by the Commission in 1993[4] during the early stages of the OTCBB service. Prior to implementation of the rule, all priced quotations on the OTCBB were required to be firm for blocks of 100 shares or more. This approach soon proved unworkable for lower priced securities for which a quote of 100 shares could represent an insignificant aggregate dollar value commitment to the market.

To remedy this situation, the NASD implemented this minimum quotation size rule for securities priced at $200 per share and below on a "graduated" or "tired" basis.[5] For securities quoted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that, in SR–NASD–99–32, the NASD added a provision to Rule 6750 allowing some Nasdaq officers to modify the minimum quotation size for securities with a price greater than $200 per share. *See* Exchange Act Release No. 41907 (Sept. 23, 1999), 64 FR 52817 (Sept. 30, 1999).

[4] *See* Exchange Act Release No. 32570 (July 1, 1993), 58 FR 36725 (July 8, 1993).

[5] This requirement applies only to market makers entering priced quotations. Market makers are

Continued

at 50 cents per share or less, the market maker quoting such security would be required to honor that quotation for a minimum of 5,000 shares. This approach was extended up to $200 per share, with different minimum block sizes at 2,500, 500, 200, and 100 shares. For all quotations exceeding $200 per share, the minimum quote size was determined to be 50 shares.

Since implementation of this rule, there have been unanticipated changes to the OTCBB. Among those changes has been the quotation of certain securities for thousands of dollars per share, and, in a few isolated instances, securities quoted in excess of $100,000 per share. The presence of these highly priced securities was not considered when Rule 6750 was originally proposed with the smallest minimum quotation size of 50 shares. A situation has resulted in which market makers have been unwilling to enter priced quotations for such highly priced and thinly traded securities for fear of potentially significant liability to their proprietary accounts.

To alleviate the potential exposure of quoting 50 shares of these highly priced securities, market makers have ceased entering quotations and instead post only indications of interest for these securities into the OTCBB. While posting an indication of interest is permitted in the OTCBB, the purpose of the OTCBB or any inter-dealer quotation medium is to permit multiple market participants to obtain quickly and efficiently the best bid or offer in a security and to execute the transaction without unnecessary delay. Additionally, priced quotations create a more competitive market and foster enhanced price discovery, ultimately benefiting the investing public.

Recognizing these goals and the present problems caused by the lack of flexibility in Rule 6750, the NASD recently proposed and was granted discretionary authority from the Commission to modify the tier sizes for securities quoted in excess of $200.[6] This authority was conferred to alleviate a pressing situation while providing Nasdaq with the necessary time to formulate and approve a permanent proposal for minimum quotation sizes. Accordingly, Nasdaq now submits this proposal to modify permanently the tier sizes for OTCBB securities quoted at prices in excess of $200 per share. The proposed new tier sizes were formulated to comport with the objectives of the original rule, effectively requiring that each quotation represent trading interest of approximately $5,000 to $20,000. At the same time, Nasdaq proposes to delete from Rule 6750 the provision granting certain officers of the Nasdaq discretionary authority to modify tier sizes, as this authority will no longer be necessary.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6) and 15A(b)(11) of the Act.[7] Section 15A(b)(6) requires, in part, that the rules of a registered national securities association be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals to trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 15A(b)(11) requires, among other things, that the rules of a registered national securities association be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

Nasdaq believes that the proposed rule specifically promotes the objectives of sections 15A(b)(6) and 15A(b)(11), respectively, by facilitating transactions free of impediments to a free and open market while producing fair and informative quotations. The rule will encourage market makers to display firm quotations in OTCBB securities, thereby providing increased transparency, competition, and price discovery.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–17 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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permitted to enter unpriced indications of interest into the OTCBB, *see* NASD Rule 6520, which are not held to the minimum quotation size standard.

[6] *See supra* note 3.

[7] 15 U.S.C. 78o–3(b)(6) and (11).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42851; File No. SR–NASD–99–49]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Regulation ATS

May 30, 2000.

I. Introduction

On September 21, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19(b)–4 thereunder,[2] a proposed rule change to amend NASD Rules 4623 and 4613(e) to incorporate the requirements of Regulation ATS into the NASD's rules.

The proposed rule change was published for comment in the **Federal Register** on March 2, 2000.[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposed Rule Change

The proposal would amend the NASD Rules to incorporate the requirements of Regulation ATS. Specifically, the proposal would amend NASD Rule 4623, which currently governs electronic communications networks ("ECNs") that display orders in Nasdaq ("ECN Rule"), and NASD Rule 4613(e), which governs locked and crossed markets ("Locked and Crossed Market Rule"). The amendments would: (1) Incorporate into the ECN Rule the new obligations that are imposed on ECNs under Regulation ATS, (2) extend the current ECN Rule so that it captures other types of alternative trading systems ("ATSs"), and (3) extend the current Locked and Crossed Market Rule to capture other types of ATSs.

ECN Rule

Regulation ATS requires ATSs (including ECNs) that account for a significant percentage of the volume in a security listed on Nasdaq to display in the public quotation stream the orders of all subscribers of the ATS, which includes orders from institutions and broker-dealers that are not market makers.[4] Currently, the ECN Rule only requires ECNs to display orders entered by market makers. Accordingly, the proposal would amend the ECN Rule to require ECNs to display in Nasdaq any subscriber orders required under Regulation ATS.

Regulation ATS also governs alternative trading systems that are organized other than as ECNs. Consequently, these other types of ATSs may be required to display orders in Nasdaq. The proposal would expand the current ECN Rule to encompass these other types of ATSs. These systems will have to fulfill a series of obligations identical to those imposed on ECNs that display orders in Nasdaq.

Locked and Crossed Markets

The Locked and Crossed Markets Rule, NASD Rule 4613(e), is designed to limit locked and crossed markets by imposing on market makers an obligation to take reasonable measures before locking or crossing a market. Currently included within the definition of market maker for purposes of this rule is: (1) Any NASD member that enters orders into an ECN, or (2) any NASD member that operates as an ECN (when the priced order being displayed by the ECN has been entered by an entity that is not an NASD member). Reasonable measures include attempting to execute against the contra side of the market prior to entering an order into Nasdaq's systems that would lock or cross the market in a security. The proposal would amend the Locked and Crossed Markets Rule to capture NASD members that place orders in an ATS or operate as an ATS (when the priced order being displayed by the ATS has been entered by an entity that is not an NASD member).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[5] and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds the proposal is consistent with the requirements of Sections 11A[6] and 15A(b)(6)[7] of the Act. Section 11A(a)(1)(C)[8] provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer. Section 15A(b)(6)[9] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Recently, the Commission adopted a set of rules under the Act[10] that govern alternative trading systems, including ECNs.[11] Regulation ATS governs alternative trading systems that choose to register as broker-dealers (ATSs). The most familiar type of ATS is an ECN; however, the definition of ATS encompasses other types of trading systems that register as broker dealers. For example, an electronic trading system that only accepts orders from institutions and non-market-maker broker-dealers would be an ATS. Such a system would not be an ECN, however, because, by definition, an ECN is a system that accepts orders from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42461 (February 25, 2000), 64 FR 11359.

[4] Specifically, if during at least 4 of the preceding 6 calendar months an ATS accounts for five percent or more of the aggregate average share volume in a Nasdaq National Market ("NNM") or SmallCap security, the ATS must display the best prices of orders entered by all subscribers (*e.g.*, market makers, nonmarket makers, and institutions). For example, if as calculated on July 1, 1999 an ATS account for 7% of the trading volume in an NNM security during January, February, April, and May 1999, the ATS would be required to reflect in Nasdaq its best priced order even if the order is from an institution or other entity that is not a Nasdaq market maker. The Nasdaq securities subject to this requirement are being phased-in according to a schedule set by the Commission. *See* Securities Exchange Act Release No. 41297 (April 16, 1999), 64 FR 19450 (April 21, 1999).

[5] The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78k–1.

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78k–1(a)(1)(C).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 17 CFR 242.300 *et seq.* ("Regulation ATS").

[11] *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

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market makers.[12] The NASD's current rules capture only those ATSs that meet the definition of ECN. Therefore, the Commission believes that it is necessary to amend these rules to capture those ATSs that do not meet the definition of ECN.

Accordingly, the Commission finds that the proposal is consistent with sections 11A(a)(1)(C) and section 15A(b)(6)[13] because it will permit Nasdaq to incorporate ATS orders into the Nasdaq quote montage and provide NASD members with the ability to access these orders. In addition, to limit market disruptions caused by locked or crossed markets, the proposal will require members that submit orders to ATSs and ATSs, in certain circumstances, to take reasonable measures before locking or crossing a market. Finally, the amendments will incorporate into the NASD's rules the new obligations imposed on ECNs by Regulation ATS.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD–99–49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14251 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[12] SEC Rule 11Ac1–1(a)(8), 17 CFR 240.11Ac1–1(a)(8).

[13] 15 U.S.C. 78k–1 and 78o–3(b)(6).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 42858; File No. SR–NASD–99–05]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 4 and 5 to the Proposed Rule Change Relating to Margin for Exempted Borrowers, Good Faith Accounts, Joint Back Office Arrangements and Options Transactions

May 30, 2000.

On January 19, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change amending the margin requirements for exempted borrowers, good faith accounts, joint back office ("JBO") arrangements, control and restricted securities, and options transactions. The NASD amended its proposal on June 1, 1999, July 7, 1999, July 15, 1999, October 7, 1999 and April 11, 2000.[3] The proposed rule change and Amendment Nos. 1, 2, and 3 were published for comment in the **Federal Register** on August 11, 1999.[4] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments and is simultaneously approving, on an accelerated basis, Amendment Nos. 4 and 5.

I. Description of the Proposal

NASD Regulation proposes to amend NASD rule 2520, "Margin Requirements," to revise the margin requirements for exempted borrowers, good faith accounts, JBO arrangements, control and restricted securities, and options transactions. NASD Regulation believes that the proposal will conform NASD Rule 2520 to recent changes to NYSE Rule 431 and recently adopted changes to Regulation T.[5] NASD Regulation is also proposing other minor changes to eliminate obsolete provisions and correct errors in the text of NASD Rule 2520.

A. Margin Requirements for Exempted Borrowers and Good Faith Accounts

Under the recent changes to Regulation T,[6] the Federal Reserve Board has created a new category of account called the "good faith account" to replace the "non-purpose," "arbitrage," and "government securities" accounts. In the good faith account, a customer may purchase certain securities (exempted and non-equity securities, and money market and exempted securities mutual funds) on "good faith" margin (the amount of margin specified by the creditor in the exercise of sound credit judgment) or the margin specified by the regulatory authority, whichever is greater. Regulation T no longer specifies initial margin, payment and liquidation time frames for transactions in these securities in a good faith account.

NASD Regulation believes that transactions in good faith accounts raise the same safety and soundness questions as transactions in cash and margin accounts. Accordingly, the proposal amends NASD Rule 2520(c) to require all accounts, including good faith accounts, to maintain margin as required by NASD Rule 2520.[7] Cash accounts will continue to be subject only to certain specific requirements, not to the overall requirements of the rule.

In addition, NASD Regulation states that the Federal Reserve Board established a classification of exempted borrowers which are exempt from Regulation T. An "exempted borrower," as defined in Regulation T, is a broker-dealer "a substantial portion of whose business consists of transactions with persons other than brokers or dealers."[8] The proposal codifies this exemption from Regulation T by excluding "exempted borrowers," as defined in Regulation T, from the definition of "customer" in NASD Rule 2520(a)(3), except for the proprietary account of a broker-dealer carried by a member pursuant to NASD Rule 2520(e)(6). Thus, proprietary accounts of an introducing member that are carried or cleared by another member will remain subject to the equity requirements of NASD Rule 2520(e)(6).

B. Amendments To Provide for Joint Back Office Arrangements

1. Background

Section 220.7(c) of Regulation T[9] allows special margin treatment for broker-dealers without clearing operations, known as "JBO participants," who invest in a "clearing and servicing"[10] broker-dealer, known as a "JBO-broker." Under Regulation T, the JBO participants are not treated as "customers"[11] of the JBO broker.

As part of a periodic review of its regulations, in 1995 the Federal Reserve Board proposed an amendment to Regulation T relating to JBO arrangements.[12] The Federal Reserve Board stated that the proposed amendment was prompted by the concerns of several stock exchanges that JBO brokers were extending credit to JBO participants far in excess of their ownership interests in the JBO broker.[13] Under the proposed amendment, the favorable margin treatment for a JBO arrangement would have been conditioned on the JBO participant's ownership interest in the JBO broker being related to the amount of business transacted through the JBO arrangement.

After Congress enacted the National Securities Market Improvement Act of 1996 ("NSMIA"),[14] the Federal Reserve Board stated that it decided not to adopt its proposed amendment to Regulation T relating to JBO arrangements.[15] Instead, the Federal Reserve Board stated that it "believes it is appropriate to rely on the authority of the JBO's examining authority to ensure the reasonableness of JBO arrangements under its supervision."[16]

2. Original Filing and Amendments Nos. 1–4

NASD Regulation proposes to amend NASD Rule 2520(e)(6) to provide for JBO arrangements established pursuant to section 220.7 of Regulation T. Under the proposal, either a carrying and clearing or carrying broker would be permitted to be a JBO broker.[17] A JBO broker would be required to: (1) Provide written notification to the NASD prior to establishing a JBO arrangement; (2) maintain minimum tentative net capital[18] of $25 million as computed under the Net Capital Rule or minimum net capital[19] of $7 million if it is engaged in the primary business of clearing options market maker accounts;[20] (3) maintain a written risk analysis methodology for assessing the amount of credit extended to each JBO participant; and (4) deduct from its net capital each JBO participant's haircut requirement under the Net Capital Rule in excess of the equity maintained in the JBO participant's account.

If a JBO broker's tentative net capital or net capital, whichever applies, falls below the prescribed requirement, the JBO broker must (1) promptly notify the NASD in writing of the deficiency; and (2) resolve the net capital deficiency within three business days. If a JBO broker fails to correct a net capital deficiency within three business days it would not be permitted to accept new transactions through the JBO arrangement.

A JBO participant must be a registered broker-dealer subject to the Net Capital Rule and must maintain an ownership interest in its JBO broker in accordance with Regulation T. The JBO participant must maintain in the JBO arrangement a minimum of $1 million in liquidating equity, exclusive of the JBO participant's ownership interest in the JBO broker required under Regulation T. If a JBO participant's liquidating equity falls below $1 million, it must cure the deficiency within five business days or lose its JBO participant status. Unless the JBO participant was an "exempted borrower,"[21] a JBO participant that lost its JBO participant status would become subject to the margin requirements prescribed for customers in Regulation T and other maintenance margin requirements under NASD Rule 2520.[22]

NASD Regulation will allow a six-month phase-in period for implementation of the requirements relating to JBO arrangements. NASD Regulation believes that the six-month phase-in will allow sufficient time for members and member organizations to comply with the new capital and risk analysis requirements and to implement new or make changes to existing arrangements or systems.[23]

3. Amendment No. 5

Amendment No. 5 proposed to incorporate a related rule change (the "Exempt Account Proposal") into the current proposal.[24] Under the Exempt Account Proposal, a broker-dealer's maintenance margin requirement would be reduced below the haircut requirement under the Net Capital Rule for certain non-equity securities held in

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 1, 1999 ("Amendment No. 1"); Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated July 7, 1999 ("Amendment No. 2"); Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Richard C. Strasser, Assistant Director, Division, Commission, dated July 15, 1999 ("Amendment No. 3"); Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Richard C. Strasser, Assistant Director, Division, Commission, dated October 7, 1999 ("Amendment No. 4"); and Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated April 11, 2000 ("Amendment No. 5"). Amendment No. 1 conforms several provisions of NASD rule 2520 to New York Stock Exchange ("NYSE") Rule 431. Among other things, Amendment No. 1 indicates that, for purposes of the JBO provisions of NASD Rule 2520, the NASD will interpret the terms "carrying and clearing member" and "carrying member" in the same manner as the NYSE. Amendment No. 1 also provides additional information regarding the proposed changes to the provisions of NASD Rule 2520 governing control and restricted securities. Amendment Nos. 2 and 3 make technical changes to the text of NASD Rule 2520. Amendment No. 4 states that the NASD will allow a six-month phase-in period for implementation of the proposed rule's requirements relating to JBO arrangements. Amendment No. 5 incorporates certain proposed maintenance margin requirements for non-equity securities and options-related requirements that are the subject of related rule filings by NASD Regulation and to ensure consistency with similar proposed changes to NYSE Rule 431.

[4] See Securities Exchange Act Release No. 41704 (August 4, 1999), 64 FR 43797 (August 11, 1999).

[5] 12 CFR 220 *et seq.* The Board of Governors of the Federal Reserve System ("Federal Reserve Board") promulgated Regulation T pursuant to Section 7(a) of the Exchange Act, which authorizes it to prescribe regulations relating to credit extensions on securities. See 15 U.S.C. 78g(a).

[6] See Board of Governors of the Federal Reserve System Docket Nos. R–0905, R–0923, and R–0944, 63 FR 2806 (January 16, 1998).

[7] See Amendment No. 1, *supra* note 3.

[8] 12 CFR 220.2.

[9] 12 CFR 220.7(c).

[10] Regulation T does not define the term "clearing and servicing." However, Regulation T describes a JBO broker as a clearing and servicing firm.

[11] The term "customer" is defined in section 220.2 of Regulation T.

[12] Board of Governors of the Federal Reserve System Docket No. R–0772 (June 21, 1995), 60 FR 33763 (June 29, 1995).

[13] *Id.*

[14] National Securities Markets Improvement Act of 1996, Pub. L. 104–209, 110 Stat. 3416 (October 11, 1996).

[15] Board of Governors of the Federal Reserve System Docket No. R–0772 (April 24, 1996), 61 FR 20386 (May 6, 1996).

[16] *Id.*

[17] See Letter from Scott Holz, Counsel, Federal Reserve Board, to Raymond J. Hennessey, Vice President, NYSE, dated April 16, 1999 (stating that a carrying firm may be considered a clearing and servicing firm within the meaning of the JBO provisions of Regulation T).

[18] The term "tentative net capital" generally refers to net capital before haircuts and undue concentration charges on proprietary securities and options positions. Haircuts are specified percentages of the market value of a broker-dealer's proprietary securities by which a broker-dealer must reduce its net worth under Exchange Act Rule 15c3–1 (the "Net Capital Rule").

[19] The term "net capital" is defined under the Net Capital Rule and is generally calculated by deducting illiquid assets from a firm's "net worth," as determined under Generally Accepted Accounting Principles (GAAP), adding to that amount properly subordinated debt under Appendix D of the Net Capital Rule, and further deducting haircuts from securities held in the firm's proprietary accounts.

[20] Under the proposal, the clearance of options market maker accounts would be deemed a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in its ratio of gross options market maker deductions to net capital (including gross deductions for JBO participant accounts) are options market maker deductions. Subparagraph (c)(2)(x) of the Net Capital Rule limits the amount of specialist and market maker options positions a firm may guarantee, endorse or carry to a ratio of 10 to one of options market maker and specialist deductions to net capital. In addition, subparagraph (a)(6) of the Net Capital Rule exempts an option market maker and specialist from the haircut provisions of the Net Capital Rule provided that, among other things, the firm maintains an account liquidating equity equal to the percentage described in subparagraph (a)(6)(iii)(A) of the Net Capital Rule.

[21] The term "exempted borrower" is defined in section 220.2 of Regulation T. NASD Rule 2520(a)(3), as revised by the current proposal, specifically excludes an exempted borrower from its definition of customer.

[22] See Amendment No. 5, *supra* note 3.

[23] See Amendment No. 4, *supra* note 3.

[24] In the Exempt Account Proposal (File No. SR–NASD–00–08), the NASD proposes to amend NASD Rule 2520(e)(2)(F) and to adopt NASD Rule 2520(e)(2)(G) to revise the margin requirements for certain non-equity securities held in "exempt accounts," as defined in the proposal. The NASD filed the Exempt Account Proposal with the Commission on March 3, 2000. To date, the Commission has not taken action on the Exempt Account Proposal. Accordingly, this order does not approve the Exempt Account Proposal or its application to the margin requirements contained in this filing.

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an exempt account. Under Amendment No. 5 to the current proposal, a JBO broker would be permitted to alternatively deduct from its net capital the difference between a JBO participant's account equity and the maintenance margin requirement under the Exempt Account Proposal, as opposed to the haircut requirement under the Net Capital Rule originally proposed. The NASD stated that this amendment would establish consistency by incorporating the most recent maintenance margin requirements of the Exempt Account Proposal into the JBO filing.[25]

C. Reduced Margin for Specialist, Market Maker, and Broker-Dealer Accounts

NASD Rules 2520(e)(5) and (e)(6) currently require a carrying broker-dealer to deduct from its net capital the difference between the equity maintained in the account of a specialist, market maker or broker-dealer and the required maintenance margin under NASD Rule 2520. The NASD proposes to amend subparagraphs (e)(5) and (e)(6) to require the carrying broker-dealer to deduct from its net capital the difference between the equity maintained in the account of a specialist, market maker or broker-dealer and the required haircut in accordance with the Net Capital Rule.[26]

D. Control and Restricted Securities

The "Concentration Reduction" provision in NASD Rule 2520(e)(8)(C)(ii) is designed to impose increasing margin requirements for customer positions in control and restricted securities based upon the percent of outstanding shares or the percent of average weekly volume that the position represented. However, the NASD believes that the provision unintentionally penalizes a customer for maintaining a position that exceeds the collateral necessary to cover his margin loan. To eliminate this unintended penalty, the proposed rule excludes "excess securities" from the concentration reduction calculation. The proposal defines "excess securities" as the amount of securities, if any, by which the aggregate position in control and restricted securities of any one issue exceeds the aggregate amount of securities that would be required to support the aggregate credit extended on such control and restricted securities if the applicable margin requirement were 50%. Thus, under the proposed rule change, the concentration reduction calculation will be performed on an aggregate position that is only as large as the collateral necessary to support a margin loan of 50%.

In addition, the proposed rule change expands the exception in paragraph (e)(8) to include all restricted securities that are then saleable, including affiliate securities, pursuant to SEC Rules 144(k), 145(d)(2), or 145(d)(3). Accordingly, those customer-owned, restricted securities that are then saleable can be sold under SEC Rule 144(k) would be subject to the same maintenance margin requirements that presently apply to ordinary stock (25%).

E. Amendments to Margin Rules Governing Options Transactions

NASD Regulation is proposing to amend NASD Rule 2520(f)(2) to add subparagraphs (L) and (M)(i), which are identical to current provisions in NYSE Rule 431(f)(2)(L) and (f)(2)(M)(i).[27] Proposed NASD Rule 2520(f)(2)(L) will allow a customer to designate which security position in an account will be utilized to cover the requested margin at the time the option order is entered, provided the member offers such a service. Proposed NASD Rule 2520(f)(2)(M)(i) will permit options transactions in customer cash accounts if the transaction is permissible under section 220.8 of Regulation T.

II. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change, as amended, is consistent with the Exchange Act and the rules and regulations under the Exchange Act applicable to a national securities association. In particular, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Exchange Act,[28] which requires the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.[29]

A. Exempted Borrowers and Good Faith Accounts

The Commission finds that it is reasonable for the NASD to amend NASD Rule 2520(c) to apply the existing maintenance margin requirements of NASD Rule 2520 to transactions in "good faith" accounts permitted under Regulation T. Although transactions permitted in a good faith account will not be subject to the initial margin requirements, payment requirements and liquidation time frames of Regulation T, as the NASD notes, transaction in a good faith account may raise the same safety and soundness concerns with regard to maintenance margin as do transactions in margin accounts. Accordingly, the Commission believes that applying the maintenance margin requirements of NASD Rule 2520(c) to transactions in a good faith account will protect investors and the public interest and help to maintain fair and orderly markets by ensuring that good faith accounts contain adequate margin reserves. The Commission notes that it approved a similar change to NYSE Rule 431(c).[30]

In addition, the Commission believes it is reasonable for the NASD to amend the definition of "customer" in NASD Rule 2520(a)(3) to codify the NASD's position that exempted borrowers, as defined under Regulation T, will remain exempt from the requirements of NASD Rule 2520, except for the proprietary accounts of a broker-dealer carried by a member pursuant to NASD Rule 2520(e)(6). The Commission believes that it is reasonable for the NASD to continue to apply the equity requirements of NASD Rule 2520(e)(6) to the proprietary accounts of broker-dealers that qualify as "exempted borrowers" under Regulation T and that are carried by another NASD member. By continuing to apply the equity requirements of NASD Rule 2520(e)(6) to these proprietary accounts, the Commission believes that the proposal will help to ensure that these accounts contain adequate margin, thereby protecting investors and the public interest. The Commission notes that it approved an identical change to the definition of "customer" in NYSE Rule 431(a)(2).[31]

B. JBO Provisions

The Commission believes that NASD Regulation has proposed reasonable capital and equity requirements for JBO brokers and JBO participants. The Commission also believes that the proposed rule change fulfills the Federal Reserve Board's mandate for the SROs to provide rules that "ensure the reasonableness of JBO arrangements."[32]

With respect to JBO brokers, the Commission believes that it is reasonable for the Association to require a JBO broker to: (1) Provide written notification to the Association prior to establishing a JBO arrangement; (2) provide prompt written notification to the Association if its tentative net capital or net capital, whichever applies, falls below the prescribed requirements; (3) resolve any net capital deficiency within three business days or not be permitted to accept additional transactions through the JBO arrangement; (4) maintain a written risk analysis methodology for assessing the amount of credit extended to each JBO participant; and (5) deduct from its net capital each JBO participant's haircut requirement in excess of the equity maintained in the JBO participant's account.[33] In addition, the Commission believes that it is reasonable for the Association to require a JBO broker to maintain a minimum of $25 million in tentative net capital or $7 million in net capital if the JBO broker's primary business is clearing options market maker accounts. The Commission also believes that it is reasonable to deem a broker-dealer's primary business to be the clearance of options market maker accounts if a minimum of 60% of its aggregate deductions in its ratio of gross options market maker deductions to net capital (including gross deductions for JBO participant accounts) are options market maker deductions.

In addition, the Commission believes that it is reasonable for the NASD to require a JBO broker to immediately notify the NASD if its tentative net capital or net capital, whichever applies, falls below the prescribe minimum levels. The Commission also believes that it is reasonable for a JBO broker to be subject to the equity capital withdrawal restrictions of paragraph (e) of the Net Capital Rule and the prohibitions against the reduction, prepayment, and repayment of subordination debt of paragraph (b) of Appendix D of the Net Capital Rule, as if the firm's net capital would be below the minimum standards specified by those sections.

The Commission believes that the $7 million net capital requirement for JBO brokers is a reasonable response to the need for a capital cushion for the fluctuations in net capital resulting from the daily changes in JBO participant accounts and would avoid unnecessary and inadvertent violations of the net capital requirements at the times when a firm's capital needs are more volatile, such as the week that options expire or during severe market stresses.

The Commission believes that it is reasonable for the Association to require a JBO broker to be either a clearing and carrying, clearing, or carrying firm in accordance with the requirements under Regulation T and the Federal Reserve Board's applicable interpretations.

With respect to JBO participants, the Commission believes that it is reasonable for the Association to require a JBO participant to: (1) Be a registered broker-dealer subject to the Net Capital Rule; (2) maintain an ownership interest in the JBO Broker in accordance with Regulation T; and (3) maintain a minimum liquidating equity of $1 million in the JBO arrangement. The Commission also believes that it is reasonable to require a JBO participant whose liquidating equity falls below the required $1 million to deposit the deficiency within five business days or lose its JBO participant status and become subject to the customer margin account requirements under Regulation T and the other NASD maintenance margin requirements.

The Commission believes that the requirement of $1 million equity in the account is not unreasonable, considering the lack of regular maintenance margin requirements and the substantial leverage that would be obtained by the JBO participant.

The Commission believes that it is important for the Association to be adequately prepared to implement and monitor the revised rules. Therefore, the Commission believes that it is appropriate to permit firms to allow a six-month phase-in of these new rules relating to JBO arrangements.

C. Reduced Margin for Specialist, Market Maker and Broker-Dealer Accounts

The Commission believes that it is reasonable to require a broker-dealer to deduct from its net capital the difference between the equity maintained in the account of a specialist, market maker and broker-dealer and the required haircut in accordance with the Net Capital Rule.[34] The Commission believes that it is appropriate and equitable for SROs to require the same maintenance margin requirements for specialist, market maker and broker-dealer accounts as JBO participant accounts.

D. Concentration Provisions for Control and Restricted Securities

The Commission believes that it is reasonable for the NASD to permit a firm to deduct the amount of its customers' excess control and restricted securities in determining if a concentration of control and restricted securities exists for purposes of deducting from its net capital any margin deficiencies in a customer's account under subparagraph (e)(8)(B)(i) of NASD Rule 2520. Excess securities includes securities by which a customer's aggregate position in control and restricted securities of any one issue exceeds the aggregate amount of securities that would be required to support the aggregate credit extended on those securities, assuming a 50% margin requirement.

The Commission notes that the current concentration provisions for control and restricted securities appear to be inappropriate because they impose stricter requirements on accounts that have more control and restricted securities than necessary to collateralize a credit extension. By limiting the determination of whether a concentration of control and restricted securities exists to two times the credit extension, the proposal would subject these securities to a greater margin requirement based only on financed control and restricted securities. The Commission believes that this is a reasonable and appropriate margin requirement.

The Commission also believes that it is reasonable for the NASD to exempt affiliate securities from the margin provisions relating to control and restricted securities provided that the securities otherwise meet the requirements of subparagraph (e)(8)(D), including that: (1) The securities are considered then saleable under Securities Act Rule 144(k), Securities Act Rule 145(d)(2) or Securities Act Rule 145(d)(3); and (2) the issuer is current in its filings pursuant to the continuous disclosure system under the Act.

The Commission notes that its interpretations under Securities Act

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[25] *See* Amendment No. 5, *supra* note 3.

[26] For example, in the case of a long position in an equity security, the proposal would require a carrying broker to compute its net capital deduction for deficient specialist, market maker and broker-dealer accounts based on the 15% haircut requirement of paragraph (c)(2)(vi)(J) of the Net Capital Rule, rather than the 25% maintenance margin requirement of NASD Rule 2520(c)(1).

[27] In Amendment No. 5, NASD Regulation revised its proposal to delete proposed subparagraph (f)(2)(M)(ii). On March 31, 2000, NASD Regulation filed a revised version of proposed subparagraph (f)(2)(M)(ii) in File No. SR–NASD–00–15. The Commission has not taken action on that proposal.

[28] 15 U.S.C. 78o–3(b)(6).

[29] In approving the proposed rule changes, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[30] *See* Securities Exchange Act Release No. 40529 (October 7, 1998), 63 FR 55567 (October 16, 1998) ("1998 Order").

[31] *See* 1998 Order, *supra* note 29.

[32] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (April 24, 1996), 61 FR 20386 (May 6, 1996).

[33] To date, the Commission has not taken action on the NASD's Exempt Account Proposal. Accordingly, this order does not approve the Exempt Account Proposal or its application to the margin amendments contained in this filing.

[34] As noted above, this order does not approve NASD's Exempt Account Proposal on its application to the margin requirements contained in this filing.

Rule 144(k) may, under certain circumstances, permit a broker-dealer to sell control and restricted securities of an affiliate in default without regard to the volume and other restrictions imposed on affiliates. In addition, subparagraph (d)(3)(iv) of Securities Act Rule 144 permits a broker-dealer to "tack" the ownership period of an affiliate in default to its own for purposes of determining if the time conditions of Securities Act Rule 144(k) are met. Accordingly, the Commission believes that it is appropriate for affiliate securities, which otherwise meet the requirements subparagraph (e)(8)(D), to be exempt from the maintenance margin rules for control and restricted securities.

E. Amendments to Margin Rules Governing Options Transactions

The NASD proposes to amend Rule 2520(f)(2) to add subsections (L) and (M)(i). Section 2520(f)(2)(L) incorporates the provisions currently contained in Regulation T regarding "exclusive designation" that allow a customer to designate which security position in an account is to be utilized to cover the required margin at the time an option order is entered, provided the member organization offers such a service. This section merely incorporates existing provisions of Regulation T into the NASD rule and, accordingly, is reasonable. The Commission notes that it approved an identical change to NYSE Rule 431.[35]

Further, proposed NASD Rule 2520(f)(2)(M)(i) does not raise new regulatory issues because it incorporates those provisions of Regulation T that allow certain defined options-related transactions to be maintained in a cash account. The Commission notes that it approved a similar change to NYSE Rule 431.[36]

F. Accelerated Approval of Amendment Nos. 4 and 5

The Commission finds good cause for approving Amendment Nos. 4 and 5 prior to the thirtieth day after the date of publication of notice of filing therefore in the **Federal Register.** Amendment No. 4 proposes a six-month phase-in of the rule changes relating to JBO arrangements. The Commission believes that this amendment is necessary because it is important for the NASD and its members to be adequately prepared to implement and monitor the new rules relating to JBO arrangements. Amendment No. 5 clarifies the proposal by incorporating references to the Exempt Account Proposal, and deleting a proposed change to NASD Rule 2520(f)(2)(m)(ii), which has been superseded by a change to subparagraph (f)(2)(m)(ii) proposed in File No. SR–NASD–00–15. Accordingly, the Commission finds it is consistent with sections 6(b)(5) and 19(b) of the Exchange Act to approve Amendment Nos. 4 and 5 on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 4 and 5, including whether Amendment Nos. 4 and 5 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should appropriately refer to SR–NASD–99–05.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act,[37] that the proposed rule change, SR–NASD–99–05, as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

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[35] See Securities Exchange Act Release No. 38708 (June 2, 1997), 62 FR 31650 (June 10, 1997) ("1997 Order").

[36] See 1997 Order, *supra* note 34. As discussed above, NASD Regulation withdrew proposed NASD Rule 2520(f)(2)(m)(ii) from the proposal.

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42876; File No. SR–NASD–99–69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Clarifying Certain Listing Standards of the Nasdaq Stock Market, Inc.

May 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 22, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Association submitted Amendments No. 1[3] and No. 2[4] to the proposed rule change on April 10, 2000, and April 2000, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq has filed with the Commission a proposed rule change to clarify certain provisions of its listing standards. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4200. DEFINITIONS

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(19) No change.

(20) *"Market Capitalization" means the closing bid price multiplied by total shares outstanding, including all common and convertible preferred shares (but excluding redeemable convertible preferred shares, other than preferred stock redeemable solely by the issuer).*

(20)–(36) renumbered as (21)–(37).

(b) No change.

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a) No change.

(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(7) No change.

(8)(A) A failure to meet the continued inclusion requirements for a number of market makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard.

Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(B) No change.

(C) A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(9)–(24) No change.

(25) Corporate Governance Requirements

* * * * *

(A)–(G) No change.

(H) Shareholder Approval

(i) Each issuer shall require shareholder approval of a plan or arrangement under subparagraph a. below, or prior to the issuance of designated securities under subparagraph b., c., or d. below:

a. No change.

b. When the issuance *or potential issuance* will result in a change of control of the issuer.

c. No change.

d. In connection with a transaction other than a public offering involving:

1. the sale, [or] issuance *or potential issuance* by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equal 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

2. the sale, [or] issuance *or potential issuance* by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(ii)–(vi) No change.

(26)–(28) No change.

(d) No change.

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1) No change.

(2) (A) No change.

(B) No change.

(C) No change.

(D) A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(E) In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.

(3)–(20) No change.

(21) Corporate Governance Requirements.

* * * * *

(A)–(G) No change.

(H) Shareholder Approval

(i) Each issuer shall require shareholder approval of a plan or arrangement under subparagraph a. below, or prior to the issuance of designated securities under subparagraph b., c., or d. below:

a. No change.

b. When the issuance *or potential issuance* will result in a change of control of the issuer;

c. No change.

d. in connection with a transaction other than a public offering involving:

1. The sale, [or] issuance *or potential issuance* by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

2. the sale, [or] issuance *or potential issuance* by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock for 20% or more of the voting power outstanding before the issuance for less than greater of book or market value of the stock.

(ii)–(vi) No change.

(22)–(24) No change.

(f) No change.

4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), or (g) below. Initial Public Offerings substantially meeting

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated April 7, 2000 ("Amendment No. 1"). Amendment No. 1 clarifies that the proposed time frame for gaining compliance with the continued inclusion market capitalization standards applies to issuers listed on both the Nasdaq SmallCap Market and the Nasdaq National Market. In addition, Amendment No. 1 clarifies that the method for regaining compliance with the continued inclusion requirement for the number of market makers set forth in Rule 4310(c)(8)(A) applies to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. Finally, Amendment No. 1 makes certain technical corrections to the proposed rule change.

[4] See Letter to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated April 25, 2000 ("Amendment No. 2"). Amendment No. 2 clarifies that Rule 4310(c)(8)(C) is being amended to specify time frames for determining when an issuer is non-compliant or has regained compliance with the Association's market capitalization standards. Amendment No. 2 also clarifies that the NASD's Rule 4300 series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets forth additional requirements for those securities designated for the Nasdaq National Market.

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such criteria are eligible for immediate inclusion in the Nasdaq National Market upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

(a)–(c) No change.

(d) *Rights and* Warrants

(1) *Rights or* warrants to purchase designated securities may be designated if [the warrants] *they* substantially meet the above criteria; provided, however, that they shall not be *subject to the publicly held shares, market value of publicly held shares, or bid price requirements and shall not be* required to meet the criteria set forth in paragraph (a)(2), *(b)(2), or (c)(1)* if immediately after the distribution, there are at least 450,000 *rights or* warrants outstanding.

(2) No change.

(e) Computations

The computations required by paragraph (a)(1), (a)(5), and (b)(1) shall be taken from the issuer's most recent financial information filed with Nasdaq. The computations required in paragraphs (a)(2), (a)(3), (b)(2), (b)(3), (c)(1), and (c)(2) shall be as of the date of application of the issuer. Determinations of beneficial ownership for purposes of paragraphs (a)(2), (b)(2), and (c)(1) shall be made in accordance with SEC Rule 13d–3. In the case of American Depositary Receipts, the computations required by paragraphs (a)(1), (a)(5), and (b)(1) shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form S–12 under the Securities Act of 1933. *In the case of American Depositary Receipts, the underlying security will be considered when determining the computations required by paragraphs (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), (b)(1), (b)(2), (b)(3), (b)(6), (b)(7), (c)(1), (c)(2), (c)(5), and (c)(6) of this rule.*

(f)–(g) No change.

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), and (f) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a)–(f) No change.

(g) American Depositary Receipts

In the case of American Depositary Receipts, the underlying security will be considered when determining the ADR's qualification for continued inclusion on Nasdaq under paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (b)(1), (b)(2), (b)(3), and (b)(5) of this rule.

4460. Non-Quantitative Designation Criteria for Issuers Excepting Limited Partnerships

(a)–(h) No change.

(i) Shareholder Approval

(1) Each NNM issuer shall require shareholder approval of a plan or arrangement under subparagraph (A) below, or prior to the issuance of designated securities under subparagraph (B), (C), or (D) below:

(A) No change.

(B) when the issuance *or potential issuance* will result in a change of control of the issuer;

(C) No change.

(D) in connection with a transaction other than a public offering involving:

(i) the sale, [or] issuance *or potential issuance* by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

(ii) the sale, [or] issuance *or potential issuance* by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(2)–(6) No change.

(j)–(n) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing certain clarifying, non-substantive amendments to certain provisions of its listing standards. Specifically, the proposed changes will: (1) Define market capitalization; (2) codify the time frames for determining compliance with the continued inclusion requirements for market capitalization and number of market makers; (3) clarify the need for shareholder approval for a transaction in which the *potential* issuance of shares could exceed the applicable threshold; (4) codify the method used to determine whether an American Depositary Receipt complies with the listing standards; and (5) clarify the non-application of the publicly held shares, market value of publicly held shares, and bid price initial inclusion requirements to rights and warrants to be listed on the National Market.

Rules 4310(c)(2)(B)(ii) and 4450(b)(1)(A) set forth the market capitalization standards for continued inclusion on The Nasdaq SmallCap Market and the Nasdaq National Market, respectively. These rules, however, unlike the bid price requirement, do not provide time frames for determining when an issuer is non-complaint or when it has regained compliance with these standards. Accordingly, Nasdaq proposes to amend Rule 4310(c)(8)(C)[5] to clarify that a failure to meet the market capitalization continued inclusion requirement shall result if the deficiency continues for a period of ten consecutive business days and that compliance may be regained by meeting the applicable standard for a minimum of ten consecutive business days.[6] Furthermore, NASD rules do not define market capitalization. In making this calculation, Nasdaq has traditionally considered the market value of all common and convertible preferred stock (excluding redeemable convertible preferred shares other than preferred stock redeemable solely by the issuer). As such, Nasdaq proposes to codify this definition is proposed Rule 4200(a)(20).

Rule 4310(c)(8)(A) provides that an issuer that fails to meet the continued inclusion requirements for the number of market makers has 30 calendar days to regain compliance. The rule, however, does not indicate how the issuer can regain compliance. Consequently, Nasdaq proposes to amend this rule to provide that compliance is achieved by meeting the applicable standard for a minimum of ten consecutive business days, which is similar to the method for determining compliance with the bid price requirement.[7]

Rules 4310(c)(25)(H)(i)(b) and (d), 4320(e)(21)(H)(i)(b) and (d), and 4460(i)(1)(B) and (D) refer only to the issuance of shares in conjunction with the requirement for shareholder approval, while Rules 4310(c)(25)(H)(i)(c)(2), 4320(e)(21)(H)(i)(c)(2), and 4460(i)(1)(C)(ii), require shareholder approval based on the present or potential issuance of shares. Nevertheless, Nasdaq has consistently interpreted the former shareholder approval rules as including potential issuances in order to protect shareholders' right to vote on significant corporate transactions. The proposed rule changes would therefore conform the language of these rules.

Historically, Nasdaq has looked to the underlying security of an American Depositary Receipt (ADR) for determining compliance with certain standards (*e.g.*, round lot shareholders, number of shares in the public float, market value of public float, and market capitalization). Rule 4320 provides the initial and continued listing standards for ADRs, but does not make clear whether the underlying security should be considered when determining compliance. The proposed rule change would clarify the continued inclusion time frame requirements for market capitalization purposes, and the fact that the underlying security should be considered when determining compliance in the case of ADRs.

Rule 4420(d)(1) does not currently reference the initial listing of rights on the Nasdaq National Market. Specifically, although the Nasdaq National Market continued listing standards address both warrants and rights, the initial listing standards mention only warrants. This Rule also states that warrants to purchase designated securities may be listed on the Nasdaq National Market provided that they substantially meet the initial inclusion requirements applicable to common stock. Consistent with the industry practices for pricing this type of security, Nasdaq has not historically required issuers to satisfy the publicly held shares, market value of publicly held shares, or bid price initial inclusion standards. As such, Nasdaq proposes to amend this rule to clarify the initial inclusion rules apply to rights as well as warrants and that issuers are not required to satisfy the publicly held shares, market value of publicly held shares, or bid price initial inclusion standards with respect to rights or warrants.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] which requires, among other things, the Association's rules to be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. As noted above, Nasdaq's proposed rule changes are aimed at clarifying certain listing standards, thus providing greater transparency in the rules for issuers and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate, up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Association consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–99–69 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[5] Although the time frames regarding compliance with the continued inclusion market capitalization standards are proposed to be set forth only in Rule 4310(c)(8)(A), these time frames, like those for the minimum bid price and market value of public float, are applicable to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. Specifically, the Rule 4300 Series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets forth additional requirements for those securities designated for the Nasdaq National Market. *See* Amendments No. 1 and 2, *supra* notes 3 and 4.

[6] Although this proposed rule, like the minimum bid price requirement, states that compliance may be regained by meeting the applicable standard for a minimum of ten consecutive business days, issuers are also required to demonstrate more than mere temporary compliance in order to protect the interests of prospective investors. *See, e.g., Ryan-Murphy, Inc.*, Securities Exchange Act Rel. No. 38999 (Sept. 2, 1997).

[7] Although the method of regaining compliance with the continued inclusion requirement for the number of market makers is proposed to be set forth only in Rule 4310(c)(8)(A), the method for regaining compliance is applicable to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. As stated previously, the Rule 4300 Series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets additional requirements for those securities designated for the Nasdaq National Market. *See* Amendments No. 1 and 2, *supra* notes 3 and 4.

[8] Issuers, however, must continue to comply with the requirement that there be at least 450,000 warrants outstanding immediately after the public distribution as set forth in existing NASD Rule 4420(d)(1). This rule is also being amended to clarify existing Nasdaq policy that there must be 450,000 rights outstanding immediately after the public distribution.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42871; File No. SR–NASD–00–21]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Trade-Reporting of Average-Price Trades

May 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 17, 2000, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 6420, Transaction Reporting, to require all transactions in exchange-listed securities that are executed on a weighted average basis, or effected based on other special pricing formulae, to be reported with a special indicator. Proposed deletions are in brackets.

* * * * *

Rule 6420. Transaction Reporting

(a)(1)–(5) No Change.

(6) All members shall report [agency cross] transactions at prices based on average-weighting or other special pricing formulae unrelated to the current or closing price of the security on the primary market to Nasdaq using a special indicator, as designated by the Association.

(b)–(e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD proposes to amend NASD Rule 6420, Transaction Reporting, to require all transactions in exchange-listed securities executed in the over-the-counter market and done on a weighted average or other special-pricing basis to be reported with a .W trade modifier.

NASD Rule 6420 sets out NASD member reporting obligations for transactions in exchange-listed securities effected in the over-the-counter market (*i.e*, third market transaction). NASD Rule 6420(a)(6) requires members to append a special indicator (.W) to a trade report when effecting agency crosses at prices based on average-weighting or other special pricing formulae unrelated to the current or closing price of the security. The NASD adopted this rule in 1994,[4] in part, because these weighted-average trades were being effected in the third market at a price that did not relate to the closing price on the primary exchanges, but such trades affected the reporting of the last sale in the exchange listed security to the media and vendors. Pursuant to Rule 6420, these weighted average or special pricing formulae trades, when reported with the .W modifier, do not affect the last sale price.

According to the NASD, when adopted, the scope of Rule 6420(a)(6) was limited to agency cross trades effected on a weighted average basis or other special pricing formulae because a majority of the trades at the time were being effected on an agency cross basis. Since 1991, the market has changed in many ways. In particular, the NASD recently amended a number of its rules to allow certain systems, including the Automated Confirmation and Transaction System ("ACT"), to stay open until 6:30 p.m. Eastern Time[5] to facilitate after-hours trading.[6] As part of this initiative, the NASD amended Rule 6420 to require members to report within 90 seconds transactions effected between 9:30 a.m. and 6:30 p.m. Prior to this change, the 90 second trade-reporting requirement applied to transactions effected between 9:30 a.m. and 5:15 p.m. and transaction effected between 5:15 and 6:30 p.m. were not subject to 90 second trade reporting requirements; rather, such transactions were reported the next day (*i.e.*, T+1) on an "as of" basis.

One effect of this rule change has been to subject transactions that previously were reported on an "as of" basis T+1—because they were effected between 5:15 p.m. and 6:30 p.m.—to 90 second trade reporting requirements. Recently, the NASD has learned that a sizable number of trades effected during the 5:15 p.m. and 6:30 p.m. time period are volume-weighted transactions, which are effected on a principal or riskless principal basis. These volume-weighted trades are often effected at a price unrelated to the close (or if effected during the trading day, the last sale) on the primary exchange. Because these trades are not executed as agency crosses and thus not subject to the .W reporting requirement in Rule 6420(a)(6), they are reported to the tape without a modifier and they affect the reporting to the media and vendors of the last sale in the exchanged-listed security. As such, there is the potential for disorderly markets when the security opens the next day on the primary exchange at a price that, although related to the last sale on the primary exchange, is unrelated to the last reported price that was effected on a weighted average basis on the previous day prior to 6:30 p.m. As a short-term method of alleviating confusion before this rule change could be proposed, the NASD requested that NASD members report these weighted average trades effected between 4:00 and 6:30 p.m. on an "as of" basis, T+1.

The NASD proposes to amend NASD Rule 6420 to require all transactions, not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq originally filed the proposal on April 14, 2000, pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2). On May 17, 2000, Nasdaq submitted a letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, Commission, amending the proposal ("Amendment No. 1"). In Amendment No. 1, Nasdaq requested that the Commission consider the proposal under Section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). Because Nasdaq amended the proposal to file it under Section 19(b)(3)(A) of the Act, the Commission considers the proposal re-filed as of the date of the amendment. Therefore, the date of the amendment is deemed the date of the filing of the proposal

[4] See Securities Exchange Act Release No. 29632 (August 30, 1991), 56 FR 46022 (September 9, 1991) (order approving File No. SR–NASD–91–37).

[5] All times mentioned in this proposal are Eastern Standard times.

[6] See Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (order approving File No. SR–NASD–99–57 on a pilot basis).

just agency crosses, in exchange-listed securities that are based on a weighted average or other special pricing formulae, to be reported with the .W modifier.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6)[7] of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. In addition, Nasdaq believes that the proposed rule change furthers the objective set forth in Section 11A(a)(1)(C)(iii)[8] of the Act by ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Nasdaq believes that reporting transactions in exchange-listed securities that are marked with a special indicator to identify their unique pricing formulae is appropriate for regulatory purposes and will reduce investor confusion with regard to these transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from May 17, 2000, the date on which it was filed and, since the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,[9] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–21 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[7] 15 U.S.C. 78o-3(b)(6).

[8] 15 U.S.C. 78k-1(a)(1)(C)(iii).

[9] The Commission notes that Nasdaq gave the Commission notice of its intent to file the proposed rule change through its original filing of the proposal pursuant to Section 19(b)(2) of the Act on April 14, 2000.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42859; File No. SR–NSCC–00–04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Change in Fee Schedule

May 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 6, 2000, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of changes to NSCC's fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 30, 1999, NSCC filed a rule change to amend its fee schedule to charge fees to members using its Insurance Processing Services ("IPS") for the transmission of test, as well as production, files.[3] These charges became effective on January 3, 2000. However, in order to encourage industry participation in pilot test development programs, NSCC has determined that it

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 42336 (January 12, 2000), 65 FR 3514.

will not impose test fees on participants participating with NSCC in pilot test programs to develop service enhancements or additional IPS products. Thus a participant in a pilot test program will not be charged for the transmission of pilot test files for the period of time from the date the participant commences participation in the pilot program through the date that is the last business day of the calendar month immediately following the month during which the pilot enhancement or new IPS product is first released by NSCC into production. Any current IPS participants participating in a prior pilot development program will not be charged for their applicable test files through April 30, 2000. Thereafter, they will be charged in accordance with NSCC's revised fee schedule.

The proposed rule change is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder since it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[4] of the Act and Rule 19b–4(f)(2)[5] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78s(b)(3)(A)(ii)
[5] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–00–04 and should be submitted by June 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14249 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42864; File No. SR–NSCC–99–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Additional Procedures for Class A Surveillance of Certain Settling Members and to the Collection of Clearing Fund and Other Collateral Deposits From These Settling Members

Pursuant to section 19(b)(i) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 16, 1999, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on May 12, 2000, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through May 31, 2001.

[6] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the temporary approval of additional procedures that govern the placement of NSCC members on Class A surveillance and the clearing fund deposit and other collateral requirements for such members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC seeks to extend the temporary approval of Addendum O, which governs the application of Class A surveillance procedures to and the additional collateralization requirements for settling members that engage in certain over-the-counter ("OTC") market making activities. Addendum O is designed to decrease the risks associated with OTC market makers by use of Class A surveillance and special collateralization procedures. The Commission originally granted temporary approval on May 10, 1996, and has subsequently extended its approval through May 31, 2000.[4]

[2] In its amendment, NSCC withdrew any proposed changes to Addendum O to NSCC Rules and requested that the Commission extend the temporary approval of Addendum O in its current form. Letter from Richard Paley, Associate Counsel, NSCC (May 11, 2000).

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] For a complete discussion of NSCC's Class A Surveillance procedures and collateralization requirements, refer to Securities Exchange Act Release Nos. 37202 (May 10, 1996), 61 FR 24993 [File No. SR–NSCC–95–17]; 38622 (May 19, 1997), 62 FR 27285 [File No. SR–NSCC–97–04]; 40034 (May 27, 1998), 63 FR 30277 [File No. SR–NSCC–98–03]; (June 4, 1999), 64 FR 31664 [File No. SR–NSCC–99–06].

[5] 15 U.S.C. 78q–1.

[6] *Supra* note 4.

NSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[5] and the rules and regulations thereunder because the surveillance and additional collateralization procedures will facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible, and in general will protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and generally to protect investors and the public interest. As the Commission previously stated, it finds that NSCC's proposed rule change is consistent with these obligations under the Act because it should help NSCC protect itself, its members, and investors from members that pose an increased risk because of their involvement in OTC market making.[6]

Under the proposal, NSCC will continue to have the authority with respect to members which participate in OTC market making activities or clear for correspondents that engage in such activity (1) to place such members on Class A surveillance, (2) to require such members to post additional collateral with NSCC, and (3) to calculate an alternative clearing fund requirement for such members when additional risk factors are present. Collectively, the higher level of surveillance, the additional level of collateralization, and the alternative clearing fund requirements should help ameliorate NSCC's exposure, which in turn should assist NSCC in fulfilling its obligations under the Act to safeguard securities and funds for which it has control of or is responsible for and to protect investors and the public interest.[7]

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing because accelerated approval will allow NSCC to continue to utilize its Class A surveillance procedures, the interim collateralization policy, and the alternative clearing fund formula without interruption until it makes a filing requesting permanent approval of the rule change. The Commission finds good cause for granting approval prior to the thirtieth day after the date of publication of the notice because this should allow NSCC to continue to protect itself and its participants from the potential risks of OTC market making activities without interruption when the current approval of Addendum O expires on May 31, 2000.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–99–09 and should be submitted by June 28, 2000.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–99–09) be, and hereby is approved on an accelerated basis through May 31, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14253 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[7] As noted in each of the previous approval orders, prior to filing a proposed rule change seeking permanent approval of the procedures set forth in this temporary approval order, NSCC shall present to the Commission a more detailed report of its findings regarding the adequacy of the controls and discussing any changes to be made to the procedures.

[8] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42873; File No. SR–NSCC–00–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Related to Certain Mini-Tender Offers

May 31, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 26, 2000, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change permits NSCC to process certain securities which are subject to mini-tender offers through NSCC's continuous net settlement ("CNS") system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B),

[8] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).

and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to permit NSCC to keep McDonalds Corp., USX-Maraton GR., and Blackrock Inc., securities, which are subject to mini-tender offers, in the CNS system. Under normal circumstances because these mini-tender offers have no protect period, NSCC would exit these securities from CNS. However, because of the high trading volume in these securities and the operational impact exiting this security from CNS would have on NSCC's participants, NSCC has filed this rule change to allow NSCC to continue to process these securities in CNS. If NSCC receives a request from a long participant, NSCC will exit the relevant position and will issue a receive and deliver instruction naming short participants selected by an allocation procedure using the oldest short position first. Participants who wish to participate in any of the tender offers must contact NSCC Operations no later than 1:00 PM on Tuesday, May 30, 2000, so arrangements can be made to remove the relevant positions from CNS.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with section 17A(b)(3)(F) of the Act[3] which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F).[4] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Allowing these securities which are subject to mini-tender offers to continue to be processed in the CNS system should help ensure the securities will be promptly and accurately cleared and settled.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will allow NSCC to continue to process these securities in the CNS system.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–00–07 and should be submitted by June 28, 2000.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–NSCC–00–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14258 Filed 6–6–00; 8:45 am]

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[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42848; File No. SR–PCX–99–18]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc., Relating to Facilitation Crosses

May 26, 2000.

I. Introduction

On June 4, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to give member firms a participation right in trades proposed as facilitation crosses in certain circumstances; and to allow facilitation crosses for broker-dealer orders. Notice of the proposed rule change was published for comment in the **Federal Register** on September 21, 1999.[3] On May 26, 2000, the PCX filed Amendment No. 1 to the proposal.[4] No comments were received on the proposal. This order approves the proposed rule change, as amended, accelerates approval of Amendment No. 1, and solicits comments from interested persons on that amendment.

II. Description of the Proposal

PCX Rule 6.47(b) sets forth the procedures by which a floor broker representing the order of a member firm's public customer may cross it with a contra side order provided by the firm from its own proprietary account. In these circumstances, the firm is said to be "facilitating" the customer order, and the transaction is called a "facilitation cross."

Under the current version of the rule, a floor broker seeking to execute a facilitation cross must first bring the transaction to the trading floor and request a market from the trading crowd. After receiving bids and offers from the crowd, the floor broker must propose a price at which to cross the order that improves upon the price provided by the crowd. However, before the floor broker can execute the cross, the market makers in the crowd are given the opportunity to take all or part of the transaction at the proposed price.

Under the current rule, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to take part of the order, however, the crowd has precedence and the floor broker may cross only that amount remaining after the crowd has taken its portion. If the crowd wants to take the entire order, the floor broker will not be able to cross any part of the order.

The proposed rule change, applicable to both equity options and index options,[5] would entitle the floor broker, under certain conditions, to cross a specified percentage of the customer order on behalf of the member firm before market makers in the crowd can participate in the transaction. This provision would apply only to orders of 200 contracts or more. The percentage of the floor broker's guarantee would depend upon whether the price at which the order is ultimately traded is at the crowd's best bid or offer in response to the broker's initial request for a market, or at an improved price.

First, the floor broker would be granted a right under the proposal to execute a facilitation cross event at the price that does not improve upon the best bid or offer provided by the crowd in response to his initial request for a market. The proposed rule change provides that where the trade takes place at the market provided by the crowd, all public customer orders in the book[6] and those represented in the crowd at the time the market was established would first need to be satisfied. Once these public customer orders are satisfied, the floor broker would be entitled to facilitate 25% of the contracts remaining in the customer order.

The proposed rule change further provides that if the floor broker proposes the facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker would be entitled to priority over the crowd to facilitate 40% of the contracts[7] remaining after any public customer orders represented at that improved price have been satisfied.[8]

In the case of orders for less than 200 contracts, the proposed rule change makes clear that the floor broker would be permitted to facilitate a customer order by following PCX Rule 6.47(b) procedures, but would not receive any priority over the crowd.[9]

As under the current version of the PCX facilitation cross rule, the order tickets for both the customer order and the firm's facilitation order would be required under the proposal to display all the terms of the orders, including any contingencies involving, and all related transactions in, either options or the underlying security. Similarly, the floor broker would continue to be required to disclose all securities that are components of the customer order before requesting the crowd's market.[10]

The proposed rule change adds a stipulation that would require the floor broker to clearly disclose to the crowd that he is intending to execute a facilitation cross when he initially asks for its market. Once the trading crowd provides that market, it would remain in effect under the proposal until (a) a reasonable amount of time has passed; (b) a significant change has occurred in the price of the underlying security of the option; or (c) the market is improved. "Significant change" would be interpreted on a case-by-case basis by two Floor Officials, based upon the extent of recent trading in the option and the underlying security and any other relevant factors.

The proposed rule change also provides that if the trade takes place at the quoted bid or offer of the Lead Market Maker ("LMM") in the options class being traded, the guaranteed participation to which the LMM is ordinarily entitled in such case[11] would apply only to the number of contracts remaining after all public customer orders have been filled and the facilitating firm's crossing rights have been exercised. Further, the total number of contracts allocated in the aggregate to the facilitating firm and the LMM as the result of their guaranteed participations could not exceed 40%.[12]

The proposed rule change makes clear, however, that it is not intended to prohibit either a floor broker or LMM from trading more than their percentage entitlements if the other members of the trading crowd do not choose to trade with the remainder of the order.[13] The proposal further makes clear, in accordance with PCX Rule 6.82, that if the trade takes place at a price other than that of the LMM's quoted bid or offer, the LMM would not be entitled to a guaranteed participation.[14]

The proposed rule change also provides that the members of the crowd who establish the facilitation market in response to the floor broker's initial request would have priority over all other non-public customer orders[15] that were not represented in the crowd at the time that market was established, except for orders that improve upon those quotes. Further, a floor broker holding a customer order and a facilitation order who calls for a facilitation market would be deemed to be representing both the customer order and the facilitation order, so that the customer order and the facilitation order would also have priority over all other non-public customer orders[16] that were not being represented in the trading crowd at the time the market was established.

Finally, the proposed rule change would permit facilitation crosses for broker-dealer orders.[17]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of the Act applicable to a national securities exchange, particularly those of section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 41867 (September 13, 1999), 64 FR 51171.

[4] The substantive modifications of Amendment No. 1 are incorporated in the description of the proposal in Section II below, and are further discussed in Section III below.

[5] Telephone conversation between Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, and Ira L. Brandriss, Attorney, Division of Market Regulation, the Commission, on May 23, 2000 ("Telephone conversation with the PCX").

[6] Telephone conversation with the PCX.

[7] See Amendment No. 1, which reduces the proposed percentage guarantee from 50% to 40%.

[8] Such orders are included within the meaning of "all public customer orders represented in the trading crowd" in the proposed rule text. Telephone conversation with the PCX

[9] See Amendment No. 1, concerning proposed subsection 6.47(b)(1). In this case, the members of the trading crowd would have priority over the floor broker seeking to cross a transaction. Telephone conversation with the PCX.

[10] As codified in PCX Rule 6.46, the floor broker must make all persons in the crowd aware of his request for a market, and must allow adequate time for a response. In its proposed amendments to Rule 6.47, the PCX has deleted current references to these procedural obligations to avoid redundancy. Telephone conversation with the PCX.

[11] See PCX Rule 6.82(d)(1).

[12] See Amendment No. 1, concerning proposed subsection 6.47(b)(5).

[13] *Id.*, concerning proposed subsection 6.47(b)(6).

[14] Thus the LMM participation right is not a concern where the facilitating firm receives a 40% crossing right, because that right is granted only when the trade occurs between the best bid and offer given by the crowd, which is by definition at a price other than the LMM's quoted bid or offer.

[15] See Amendment No. 1, concerning proposed subsection 6.47(b)(6).

[16] *Id.*

[17] Current Rule 6.47(b) authorizes facilitation crosses only for public customer orders.

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6(b)(5)[18] and section 6(b)(8)[19] of the Act, and the rules and regulations thereunder.[20] The Commission believes that the proposal will enable the PCX to better compete with other options exchanges in attracting the order flow of broker-dealer firms seeking to facilitate customer orders, with adversely impacting the prices those orders receive.

The Commission finds that the PCX's proposal to grant participation rights, under certain conditions, to member firms seeking to execute facilitation crosses on the Exchange is reasonable. Currently, PCX market makers have priority rights for the full size of a customer order over the firm that brings a crossing transaction to the PCX floor, as long as the market makers are willing to trade at the proposed price.

While the proposal entitles the member firm to a specified percentage of a facilitation transaction when executed at the trading crowd's best bid or offer, it does not eliminate the crowd's ability to trade with a portion of the order proposed to be crossed, or even so substantially reduce that ability so as to raise serious concern that the proposal would reduce price competition by the crowd. Moreover, the Commission believes that the proposal may contribute to better prices for crossing transactions. Specifically, it provides an incentive for upstairs firms to improve on the prices quoted by the crowd by offering these firms a greater participation in the trade when they better the crowd's price. In addition, market makers will always have an opportunity to improve the market and compete for a greater portion of the trade.

In evaluating the proposed rule change, the Commission considered, among other matters, whether the PCX's proposal to guarantee that a member firm could cross up to 40% of an order would reduce the incentive of crowds to compete for orders, and thus impair the price discovery mechanism of the Exchange's market.

In its recent approval of the application of the International Securities Exchange ("ISE") for registration as a national securities exchange, the Commission discussed the same concern with respect to the ISE's proposed "facilitation mechanism," a system designed to effect a type of facilitation guarantee in an electronic context. The Commission wrote:

> It is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. In the future, after the Commission has studied the impact of guarantees, the Commission may need to reassess the level of these guarantees. For the immediate term, the Commission believes that 40% is not clearly inconsistent with the statutory standards of competition and free and open markets.[21]

By the same token, the Commission believes that the PCX's proposed rule change, which allocates no more than 40% of an order to the firm seeking to facilitate an order, is not inconsistent with the statutory standard. The Commission notes, moreover, that for those crossing transactions in which an LMM is entitled to an allocation in addition to the proposed allocation for the facilitating firm, the PCX has included a provision to limit the combined allocations awarded to the firm and the LMM an aggregate of no more than 40% of the order.

Although facilitation cross rules have heretofore been limited to public customer orders, the Commission believes it is reasonable to permit the PCX to allow firms to facilitate orders of broker-dealers—to the degree permitted under the proposed rule change—in its belief that this will enable the PCX to better compete with other exchanges in attracting order flow to its market.

The Commission finds good cause, pursuant to section 19(b)(2)[22] of the Act, for approving Amendment No. 1 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 includes the provisions described above that limit the total percentage of an order that may be guaranteed to no more than 40%, a percentage that the Commission has previously found consistent with the Act. It also clarifies the application of the facilitation cross rule, as amended by the proposal, for orders of less than 200 contracts. Amendment No. 1 further includes several changes to the proposed new rule text that clarify its meaning and thus strengthen the proposal.[23] Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5)[24] and 19(b)(2)[25] of the Act to accelerate approval of Amendment No. 1 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–18 and should be submitted by June 28, 2000.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–PCX–99–18), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14256 Filed 6–6–00; 8:45 am]

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[18] 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designed to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. It also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[19] 15 U.S.C. 78f(b)(8). Section 6(b)(8) requires that the rules of the exchange do not impose any burden on competition not necessary to appropriate in furtherance of the purposes of the Act.

[20] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

[22] 15 U.S.C. 78s(b)(2).

[23] Among these is a textual revision that makes clear that members of the trading crowd who established the facilitation market will not maintain priority over any order that improves the market.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–42860; File No. SR–Phlx–00–07)]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Disclosure of Securities Accounts

May 30, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2000, the Philadelphia Stock Exchange, Inc. "Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 757 ("Disclosure of Securities Accounts"), which would require Exchange members, member organizations, foreign currency options participants, and foreign currency options participant organizations ("Exchange members and organizations") to report to the Exchange all securities accounts in which they have any financial interest or power to make investment decisions. In addition, the rule would require that Exchange members and organizations notify the institution that services the accounts, or at which the accounts are located, that the Exchange members and organizations are members of the Exchange. Below is the text of the proposed rule change, which is entirely new.

* * * * *

Rule 757—Disclosure of Securities Accounts

(a) *Every member, member organization, participant, and participant organization shall promptly report to the Exchange any securities account, including any error account, in the name of the member, member organization, participant, or participant organization or in which the member, member organization, participant, or participant organization has, directly or indirectly, any financial interest or power to make investment decisions.*

(b) *Every report shall, at a minimum, include the name of the account, the account number, the type of account, the current securities position(s) in the account, and the name, address, and telephone number of the institution that services the account or at which the account is maintained. A report shall contain such additional information as the Exchange may from time to time require.*

(c) *Every member, member organization, participant, or participant organization having a reportable account for purposes of this rule shall notify each institution that services an account or at which an account is maintained that the member, member organization, participant, or participant organization is a member of the Exchange.*

Commentary:

.01 Purchases of a security of a publicly traded registered investment company directly from the issuer or the principal underwriter shall not be deemed a reportable security for the purposes of this section. Interest in a non-publicly traded investment vehicle, including a hedge fund, is a reportable security for purposes of this section.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Proposed new Rule 757 would require Exchange members and organizations to report to the Exchange information about all securities accounts in which they have any financial interest or power to make investment decisions.[3] The Phlx states that this proposed rule change would aid the investigative efforts of the other exchanges, as well as its own efforts, by assisting the Intermarket Surveillance Group ("ISG") in creating a floor member securities account database.[4] The Phlx would transmit information it receives about accounts of Exchange members and organizations to the Securities Industry Automation Corporation, which would maintain the information on behalf of the ISG.[5]

Under the proposed rule, each report would include, at a minimum, the name of the account, the account number, the type of account, the current securities position(s) in the account, and the name, address, and telephone number of the institution that services the account or at which the account is maintained.[6] In addition, the rule requires every Exchange member and organization that has a reportable account to inform each institution that services the account, or at which the account is maintained, that the Exchange member or organization is a member of the Exchange. Also, a report shall contain such additional information as the Exchange may from time to time require. The proposed commentary to new Rule 757 states that purchases of a security of a publicly traded registered investment company directly from the issuer or the principal underwriter shall not be deemed a reportable security for the purposes of the rule. Interest in a non-publicly traded investment vehicle, including a hedge fund, would be a reportable security.

The Exchange represents that proposed new Rule 757 would also enhance Exchange surveillance and regulatory efforts by expanding current account reporting requirements. Phlx Rule 751 presently requires employees of Exchange members and organizations to report certain account information to the Exchange members and organizations that employ them, but there is no corresponding obligation on Exchange member and organization employers to report their account information to the Exchange. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Proposed new Rule 757 does not impose an obligation on Exchange members and organizations to report the securities positions in their accounts on an ongoing basis. Telephone conversation between Jurij Trypupenko, Counsel, Phlx, and Ira Brandriss, Attorney, Division of Market Regulation ("Division"), Commission, February 22, 2000.

[4] The ISG is an organization formed by representatives of exchanges in the United States (and certain international exchanges) to address surveillance issues.

[5] Telephone conversation between Jurij Trypupenko, Counsel, Phlx, and Ira Brandriss, Attorney, Division, Commission, and Joshua Kans, Special Counsel, Division, Commission, March 9, 2000.

[6] The term "institution" includes a non-member brokerage firm, investment adviser firm, bank, or other financial institution. Telephone conversation between Jurij Trypupenko, Counsel, Phlx, and Ira Brandriss, Attorney, Division, Commission, February 22, 2000.

Exchange believes that proposed new Rule 757's requirement that Exchange members and organizations report securities accounts to the Exchange should provide the Exchange with the capability to monitor and investigate quickly the trading of securities by personnel that trade on the equity, options, and foreign currency floors of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act [7] in general, and furthers the objectives of section 6(b)(5) [8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest by requiring disclosure of securities accounts in which Exchange members have a financial interest or power to make investment decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–07 and should be submitted by June 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14261 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3256]

State of Oklahoma

Creek County and the contiguous counties of Lincoln, Okfuskee, Okmulgee, Osage, Pawnee, Payne, and Tulsa in the State of Oklahoma constitute a disaster area as a result of damages caused by severe thunderstorms, rain, and flooding that occurred May 5–8, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 24, 2000 and for economic injury until the close of business on February 26, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	(Percent)
For Physical Damage:	
Homeowners with credit available elsewhere	7.375
Homeowners without credit available elsewhere	3.687
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 325606 for physical damage and 9H4300 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 25, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–14224 Filed 6–6–00; 8:45 am]

BILLING CODE 8025–01–P

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Administrative Review Process, Test of the Elimination of the Fourth Step of Administrative Review in the Disability Claim Process (Request for Review by the Appeals Council) in Conjunction With Testing of Modifications to the Disability Determination Procedures; Disability Claims Process Redesign Prototype

AGENCY: Social Security Administration.

ACTION: Notice of a test.

SUMMARY: The Social Security Administration (SSA) is announcing a test of the elimination of the fourth step of administrative review in the disability claim process (Request for Review by the Appeals Council) in conjunction with the present disability prototype test. Before making any decisions on the merits of the elimination of the request for review, SSA must obtain valid and reliable data on the effects of such elimination—including the impact it may have on agency operations, notices and other procedures, rates of filing to Federal District Courts, and quality and timeliness of service to the public.

DATES: Cases to be included in the test of the elimination of the Request for Review will be selected from those prototype case requests for hearing which are received in servicing hearing offices on or after June 1, 2000, or the date of this notice—whichever is later; and in which an initial application for Social Security Disability Insurance or Supplemental Security Income Disability Benefits was filed effective between and including January 1, 2000 and July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3632 or TTY 410–966–5609 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: Current rules codified at 20 CFR 404.966 and 416.966 authorize us to test procedures for eliminating the request for Appeals Council Review ("Request for Review Eliminated"—RRE) on randomly selected cases. Additional rules codified at 20 CFR 404.906 and 20 CFR 416.1406 authorize us to test other modifications to the disability determination procedures individually or in any combination. One test has already been conducted using the former authority and several tests have already been conducted using the latter. In fact, the sole test using the authority for elimination of request for Appeals Council Review was combined with a test using the authority to test modifications to the disability determination procedures individually or in any combination that we termed the full process model (FPM).

The FPM was an integrated test (authorized in part under 404.906 and 416.1406) that we initiated on April 7, 1997 (published in the **Federal Register** on April 4, 1997 (62 FR 16210)) that combined several modifications to the disability determination process including enhanced decision making authority for Disability Determination Services (DDS) disability examiners and a restructuring of the role of the DDS medical consultant; provision for a predecision interview conducted by the decision maker if the evidence is insufficient to support a fully favorable disability determination; and elimination of the reconsideration step of review for initial disability claims. It also included testing of the use of an adjudication officer for cases in which a request for hearing was filed. The test of the adjudication officer is authorized under rules at 20 CFR 404.943 and 416.1443.

As an adjunct to the FPM test, using regulatory authority at 20 CFR 404.966 and 416.1466 (published in the **Federal Register** on September 23, 1997 (62 FR 49598)) we tested the RRE in order to assess the effects of this change, in conjunction with the other FPM modifications. We are now announcing a retest of the RRE ("RRE II") because initial RRE study results failed to produce sufficient data upon which to base policy decisions and because testing the RRE in conjunction with recently implemented initiatives would yield valuable data for assessing the effects of the RRE upon claimant service and administrative processes.

Initial Level Prototype Testing

The latest test using the regulatory authority at 20 CFR 404.906 and 20 CFR 416.1406 was announced in the **Federal Register** on August 30, 1999 (64 FR 47218). There we announced a prototype that incorporates multiple modifications to the disability determination procedures employed by State Disability Determination Services (DDSs) which have been shown to be effective in earlier tests. Specifically, the prototype incorporates a series of changes that improve the initial disability determination process by: providing greater decisional authority to the disability examiner and more effective use of the expertise of the medical consultant; ensuring development and explanation of key issues; increasing opportunities for claimant interaction with the decision maker before a determination is made; and simplifying the appeals process by eliminating the reconsideration step. The test is focused on 10 states to enable us to further refine the process and learn more about potential operational impacts of the changes identified. This strategy should allow us to put the complete process together and ensure that the changes meet our goal of improved service to disability applicants.

The prototype test is being conducted in 10 states. Eight include all Social Security and Supplemental Security Income disability applications:

Alabama

—Department of Education, Disability Determination Services, 2545 Rocky Ridge Lane, Birmingham, AL 35216
—Department of Education, Disability Determination Services, 2000 Old Bayfont Drive, Mobile, AL 36652

Alaska

—Division of Vocational Rehabilitation, Disability Determination Unit, 619 East Ship Creek Avenue, Suite 305, Anchorage, AK 99501

Colorado

—Department of Human Services, Division of Disability Determination, 2530 South Parker Road, Suite 500, Aurora, CO 80014–1641

Louisiana

—Department of Social Services, Office of Family Support, Disability Determination Services, 5905 Florida Blvd. Suite 3, Baton Rouge, LA 70806
—Department of Social Services, Office of Family Support, Disability Determination Services, 2920 Knight Street, Suite 232, Shreveport, LA 71105
—Department of Social Services, Office of Family Support, Disability Determination Services, 3510 North Causeway Blvd., Metairie, LA 70002

Michigan

—Family Independence Agency, Disability Determination Services, 608 W. Allegan Street, Third Floor, Lansing, MI 48933
—Family Independence Agency, Disability Determination Services, MI Plaza Building, Tenth Floor, 1200 Sixth Street, Detroit, MI 48226
—Family Independence Agency, Disability Determination Services, 315 E. Front Street, Traverse City, MI 49684
—Family Independence Agency, Disability Determination Services, 151 South Rose Street, Kalamazoo, MI 49007–4715

Missouri

—Division of Vocational Rehabilitation, Section of Disability Determinations, 1500B Southridge Drive, Jefferson City, MO 65109
—Division of Vocational Rehabilitation, Section of Disability Determinations, 1845 Borman Court, Suite 200, St. Louis, MO 63146
—Division of Vocational Rehabilitation, Section of Disability Determinations, 4040 Seven Hills Drive, Florissant, MO 63033
—Division of Vocational Rehabilitation, Section of Disability Determinations, 8500 East Bannister Road, Kansas City, MO 64134
—Division of Vocational Rehabilitation, Section of Disability Determinations, 3014 Blattner Drive, Cape Girardeau, MO 63701
—Division of Vocational Rehabilitation, Section of Disability Determinations, 2530 I South Campbell, Springfield, MO 65807

New Hampshire

—Division of Adult Learning and Rehabilitation, Disability Determination Services, State Dept. of Education Building JB, 78 Regional Drive, Concord, NH 03301

Pennsylvania

—Bureau of Disability Determination, Room 200—Central Operations, 1171

South Camerson Street, Harrisburg, PA 17104–2594

—Bureau of Disability Determination, 264 Highland Park Blvd., Wilkes-Barre, PA 18702

—Bureau of Disability Determination, 351 Harvey Avenue, Greensburg, PA 15605

Two include only applicants whose disability claims are processed in designated Disability Determination Services (DDS) branches:

California

—Los Angeles North and West—Department of Social Services, Disability and Adult Programs Division, 3425 Wilshire Blvd., Suite 1500, Los Angeles, CA 90010

New York

—Brooklyn—New York State Department of Social Services, Division of Disability Determinations, 300 Cadman Plaza West, 13th floor, Brooklyn, NY 11201–2701

—Albany—New York State Department of Social Services, Division of Disability Determinations, 99 Washington Avenue, Room 1239, Albany, NY 12260.

Administrative Appeals Process Improvements and Testing of the RRE Paired With Prototype Test

Testing the use of an Adjudication Officer (AO) authorized under 20 CFR 404.943 and 416.1443 is not included in the prototype.

Along with the prototype changes, we are incorporating several initiatives to improve the hearings process, including administrative efficiencies designed to streamline case processing; structural changes in the management organization of hearings offices; improvements in automation and data collection; and implementation of a "national workflow model" that combines pre-hearing activities, a standardized pre-hearing conference, and processing-time benchmarks for various tasks. This initiative was announced in the **Federal Register** on August 30, 1999 (64 FR 47218) as the Hearing Process Improvement (HPI) initiative.

Additionally, since the announcement of the HPI initiative, we have undertaken an Appeals Council Process Improvement (ACPI) initiative. ACPI includes short range initiatives to reduce pending workloads and processing times and long-range improvements in structure and operations enabling high quality, timely, and efficient case processing. The short-range elements that already are being implemented and will be in place during this test include:

- "Differential case management"—a systematic technique of differentiating cases for processing based on substantive issues in the case.
- Processing of appeals by Office of Appellate Operations managers and supervisors without prior examination by hearings and appeals analysts;
- Temporary use of attorneys from the Office of the General Counsel to augment staff in the Appeals Council;
- Expedited presentation of cases to adjudicators; and
- Temporary use of Administrative Law Judges as Acting Administrative Appeals Judges to enhance the adjudicatory and analytic strength of the Appeals Council in the short term.

If appealed to the ALJ level, most, but not all, of the cases from the prototype sites will go to hearing offices (HOs) that are in the first phase of the HPI. Thus, they will be processed using the efficiencies such as the "national workflow model" mentioned above. The prototype process is effective in prototype sites for cases effectively filed October 1, 1999 or after, with the exception of Albany, New York which became operational on April 1, 2000.

Under the existing regulatory authority authorizing us to test RRE at 20 CFR 404.966 and 416.1466 (published in the **Federal Register** on September 23, 1997 (62 FR 49598)) we intend to add to the previously announced prototypes a test of the effects of the RRE on prototype cases that could potentially reach the Appeals Council level, following an unfavorable ALJ decision, that meet the following criteria:

- Effective date of initial filing is between and including January 1 and July 31, 2000.
- Request for an ALJ hearing has been filed;
- Case is received in the servicing HO on or after June 1, 2000 or the effective date of this notice *whichever is later;* and

The servicing HO has implemented HPI ("HPI Phase One"). A case meeting the other criteria but whose servicing HO is not an HPI phase One Office will not be included.

Cases meeting the criteria received at the following HOs will be included:

DDSs	HOs
Alabama	Burger-Phillips Centre, 1910 3rd Ave. North, Suite 100, Birmingham, AL 35203.
	Walnut St. Executive Center, 205 S. Walnut St., Suite D, Florence, AL 35630.
	3605 Springhill Business Park, Mobile, AL 36608.
	3381 Atlanta Highway, Montgomery, AL 36109.
Alaska	2101 4th Ave., Suite 900, Seattle, WA 98121.
California: Los Angeles West/ North.	City National Bank Bldg., 606 S. Olive St., Suite 1200, Los Angeles, CA 90014.
	11000 Wilshire Blvd., Rm. 8200, Los Angeles, CA 90024.
	Grosvenor Plaza, 150 S. Los Robles Avenue, Suite 500, Pasadena, CA 91101.
	8345 Firestone Blvd., Second Floor, Downey, CA 90241.
Colorado	1244 Speer Blvd., Suite 752, Denver, CO 80204.
Louisiana	3403 Government St., Alexandria, LA 71302.
	1515 Poydras St., Suite 1600, New Orleans, LA 70112.
	First Bank Center, 1 Galleria, Suite 2000, Metairie, LA 70001.
	700 Louisiana Towers 401 Edwards St., Shreveport, LA 71101.
Michigan	Patrick J. McNamara Federal Bldg., 477 Michigan Ave., Room 430, Detroit, MI 48226.
	605 N. Saginaw St., First Floor, Suite A, Flint, MI 48502.
	15 Ionia St. S.W., Third Floor, Grand Rapids, MI 49503.
	Everett Plaza, 3500 S. Cedar St, Suite 109, Lansing, MI 48910.
	Crown Pointe, 25900 Greenfield Rd., Room 430, Oak Park, MI 48237.
Missouri	11475 Olde Cabin Rd., Creve Coeur, MO 63141.
	Old Post Office Bldg., 815 Olive St., Rm. 220, St. Louis, MO 63101.
	901 E. St. Louis St., Suite 210, Springfield, MO 65806.
New Hampshire	Daniel Webster Hwy. North, 207 Hooksett Rd., Manchester, NH 03104.
New York—Brooklyn *	111 Livingston Street, 18th Floor, Brooklyn, NY 11201.
Pennsylvania	8380 Old York Rd., Suite 250, Elkins Park, PA 19027.
	Penn National Office Bldg., 2 N. 2nd St., 8th Floor, Harrisburg, PA 17101.
	334 Washington St., Suite 200, Johnstown, PA 15901.
	1601 Market St., 9th Floor, Philadelphia, PA 19103.
	601 Grant St., Suite 500, Pittsburgh, PA 15219.
	7 N. Wilkes-Barre Blvd., Suite 210, Wilkes-Barre, PA 18702.

* Prototype cases processed at New York—Albany will not be included in the test becasuse of Albany's later start date.

As stated in the **Federal Register** of August 30, 1999 (64 FR 47218) it is estimated that annually on a national level approximately 20 percent of applicants for disability benefits would potentially participate in the prototype. Since those applications covered under the provisions of this notice include just over half a year, we estimate that approximately 10–12% of applicants for disability benefits (effective filings between 1/1/00 and 7/31/00) would potentially participate in at least one aspect of the prototype. Based on past case experience, those actually included in the RRE II cohort would be well below 1 percent of the national applicant workload.

Selection of test and control cases will be done on a random basis. For those selected as test cases, the right to request review by the Appeals Council will be eliminated and the right of the claimant to appeal, in the case of an unfavorable ALJ decision, will be directly to Federal District Court.

Claimants who could potentially be included in this retest of the RRE will be supplied notice of their appeal rights.

Case outcome and appeals information about both Request for Review Retained (RRR) (control) and RRE II (test) cases will be collected and analyzed. Before making any decisions on the merits of the RRE, SSA must obtain valid and reliable data on the effects of such elimination—including the impact it may have on agency operations, notices and other procedures, rates of filing to Federal District Courts, and quality and timeliness of service to the public.

Dated: May 31, 2000.

Rita S. Geier,

Associate Commissioner for Hearings and Appeals.

[FR Doc. 00–14216 Filed 6–6–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3332]

Bureau of Educational and Cultural Affairs; U.S.-China Youth Exchange Initiative: Pilot Project; Notice: Request for Proposals

SUMMARY: The Youth Programs Division, Office of Citizen Exchanges, of the Bureau of Educational and Cultural Affairs announces an open competition to award one grant for the U.S.-China Youth Exchange Initiative: Pilot Project. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals for the recruitment and screening of schools, an assessment of communication technology, and the implementation of a pilot project of a reciprocal youth exchange program between secondary schools in the United States and in China. This program will develop linkages between schools and communities in the U.S. and China for the purpose of mutual education and the development of student participation in community affairs.

Program Information

Overview

During a June 1998 visit to China, President Clinton announced a youth exchange program that would link schools and communities in China and the United States. The program has been projected to span three years and to provide funding for the reciprocal exchange of students and teachers from the paired schools. It is in anticipation of this program being enacted in fiscal year 2001 that the Office of Citizen Exchanges offers this opportunity for organizations to apply for an assistance award to pilot a modest school exchange project this year. Expansion beyond the pilot phase is subject to the availability of funding in subsequent fiscal years, as well as to assessments by the Bureau of Educational and Cultural Affairs (ECA) and the U.S. Embassy in Beijing of the desired pace of expansion. The goal is to expand the program incrementally over the next few years.

The focus of the principal program is to link schools and communities in as many provinces of China as possible with schools and communities across the United States and to foster interaction and lasting relationships between these partnered schools through Internet connections and reciprocal student and educator exchanges with strong academic content. Each one-to-one school partnership will choose a theme relevant to their communities; students will work together to complete a joint project related to this theme. Support for Internet connectivity and computer training is also an important component of the program so that the paired schools can communicate throughout the school year and work on these joint projects. The three-to four-week exchange visits to the partner community will involve studying at the host school, working on the thematic project, participating in cultural activities, and spending time with host families. The overarching goals of this program are to support student participation in community affairs and to advance mutual understanding between the youth and teachers of the U.S. and China.

This competition is intended to allow the Youth Programs Division to select the organization that will best be able to establish these linkages and facilitate the joint projects and exchanges. The objectives of this project are (1) to plan for the principal program by recruiting and screening schools, (2) to assess the opportunities for establishing Internet access in the schools, and (3) to develop and implement a pilot partnership that will serve as a model for future development.

The components of the program are as follows:

(1) Planning and Selection

(a) Announce the program to recruit a strong pool of candidate schools and communities in the U.S. and China. Communities should represent the great geographic diversity of each country.

(b) Conduct an open, merit-based competition to screen secondary schools for participation in the principal program. Applicants should be prepared to select approximately 50 schools, or 25 partnerships.

(c) Determine the capacity of the schools to develop lines of

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communication, especially through the use of the Internet.

(2) Pilot Project

(a) Select a partnership to conduct a pilot exchange program (this will be selected outside of the larger competitive process noted above).

(b) Oversee the communications and project activity between the two schools.

(c) Manage the exchange of 22 participants: nine students and two educators (or one educator and one community member chaperone) from each school will visit the partner school for three to four weeks while the host school is in session.

(d) Monitor and evaluate the pilot project.

Guidelines

The grant will begin on or about November 1, 2000, and conclude 14 months later. The pilot project activity should begin as soon as possible. The exchanges should take place in Fall 2001.

This pilot project will create the foundation for the follow-on program. This project should be designed to best prepare the organization for the implementation of the full program. However, all applicants should be aware that there are no assurances of a specific level of funding for a follow-on program. As is the case with all Bureau exchange programs, actual funding for future activities is contingent upon the Congressional Appropriation and Authorization Process and final availability of funds. Funding to support the initial phase of this project is $98,900. Upon successful implementation of the pilot phase and pending the availability of funds, ECA reserves the right to amend the grant to support future program activities.

As ECA and the U.S. Embassy in Beijing will need to carefully gauge the appropriate rate of growth of this program (in terms of the number of states or provinces, schools, and participants) and future funding is indefinite, ECA requests that applicants create a rank ordered list of the schools that they recruit and screen so that the schools can be approached to participate once the FY–2001 funding level has been determined. ECA expects to work up to the participation of as many as 50 schools over the course of the initiative.

Eligible applicant organizations will have the following:

- Experience working in China;
- A demonstrated track record of conducting youth exchange;
- Experience with managing international institutional linkages and/or experience developing the program content for short-term exchanges;
- An established partnership with an individual or organization based in China or own branch office or representative there; and
- Access to schools in both the United States and China through the partner organization.

Programs must comply with J–1 visa regulations. Please refer to the complete Solicitation Package, which includes the Project Objectives, Guidelines, and Implementation (POGI) and the Proposal Submission Instructions (PSI), for further information.

Budget Guidelines

An initial assistance award for no more than $98,900 will be awarded. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/PE/C–00–58.

For Further Information Contact: The Youth Programs Division, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW, Washington, DC 20547, telephone (202) 619–6299; fax (202) 619–5311; e-mail address: clantz@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Carolyn Lantz on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5:00 p.m. Washington, DC time on Friday, July 28, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original proposal and eight copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–00–58, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Section at the U.S. Embassy in Beijing for its review.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * ; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: May 30, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–14361 Filed 6–6–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7465]

Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century; Accounting of

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Subsection (c) of section 7405 of the Transportation Equity Act for the 21st Century makes $5,000,000 available each of five fiscal years to the Secretary of Transportation for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. The Act also requires that the Secretary publish annually in the **Federal Register** a detailed accounting of the projects, programs, and activities under this subsection. This is the first report.

ADDRESSES: You may obtain a copy of this notice by calling the U. S. Coast Guard Infoline at 1–800–368–5647. This notice is available on the Internet at http://dms.dot.gov or at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org.

FOR FURTHER INFORMATION CONTACT: Captain Michael F. Holmes, USCG, Chief, Office of Boating Safety, telephone 202–267–1077, fax 202–267–4285, or Mr. Albert J. Marmo, Chief, Program Management Division, telephone 202–267–0950, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century became law on June 9, 1998. The Act requires that of the $5 million made available to carry out the national recreational boating safety program, $2,000,000 shall be available only to ensure compliance with chapter 43 of title 46, U.S. Code—Recreational Vessels. This responsibility is delegated to the Commandant of the United States Coast Guard. The statute directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized by this section. Amounts made available each fiscal year, 1999–2003, shall remain available until expended. Upon passage of the Act the U.S. Coast Guard Office of Boating Safety began the process of developing basic spending plans for this new source of revenue. For accounting purposes, funding was divided into two program elements: Boat Safety Compliance and National Recreational Boating Safety Program. Use of these funds entails compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. An accounting of the use of the funds to date follows, including a narrative summary and a table that reflects commitment, obligation, or expenditure of fiscal years 1999 and 2000 funds.

Boat Safety Compliance

Factory Visit Program

A contract was awarded to establish a national recreational boat factory visit program using contractor personnel. The contract includes the development

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of a plan of action and a pilot program to validate the elements of the plan and the concept of the program. The plan was completed at a cost of $133,912.55 using fiscal year 1999 funding. The pilot program will commence in the summer of 2000. The factory visit program will allow contractor personnel, acting on behalf of the Coast Guard, to visit approximately 2,000 recreational boat manufacturers each year to communicate with the manufacturers as to why they need to comply with the Federal regulations, educate them, as necessary, on how to comply with the Federal regulations, and inspect for compliance with the Federal regulations.

Associated Equipment Compliance Testing

Currently, the Office of Boating Safety conducts compliance testing by purchasing recreational boats in the open market and testing them for compliance with the Federal flotation standards. As a new initiative, the Office of Boating Safety is planning to buy recreational boat "associated equipment," e.g., starters, alternators, fuel pumps, bilge pumps, etc., and test this equipment for compliance with Federal safety regulations. The anticipated annual cost of this multi-year effort is estimated at $100,000. To date $44,000 of fiscal year 1999 funds have been expended, and $83,000 of fiscal year 2000 funds has been committed for this testing.

Articulated Mannequins/Computer Simulation Model

The objective of this multi-year program is to improve the safety of recreational boaters by encouraging the design of new/unique personal flotation devices (PFDs) through the development of a computer simulation program to evaluate the effectiveness of new/unique PFD designs. The computer simulation program will be validated through the use of a family of anthropomorphic articulated mannequins. Fiscal year 1999 funding for this effort is $300,000.

Compliance Associated Travel

Travel is being performed to carry out additional compliance actions and to gather background and planning information for proposed compliance initiatives or to research possible new compliance initiatives. Fiscal year 1999 funding for this travel has amounted to $13,332.44.

New Boat Manufacturer Outreach Package

A fiscal year 1999 contract for $357,582.34 was awarded to design and develop a comprehensive and user friendly outreach package for distribution to new recreational boat manufacturers. Included will be a brochure and video that will outline the many facets of the recreational boat manufacturing business, including, Federal regulations, voluntary standards, self-certification, financial aspects, insurance concerns, liability issues, points of contact and the steps necessary to become a new recreational boat manufacturer. The package will also include plain language guidelines that help clarify Federal requirements. The new outreach package is expected to increase the level of compliance with the Federal regulations among new recreational boat manufacturers.

Risk Analysis Study

This effort will develop a risk-based compliance approval process for Personal Flotation Devices (PFDs) using a Life Saving Index methodology. Fiscal year 1999 funding for this project amounted to $229,465.64. The results of this effort will provide a formal structure and consistency to the process for accepting new approaches to designing devices for drowning prevention. The risk-based process identifies critical factors for evaluating PFD lifesaving potential and defines the minimum level of performance necessary for approval.

Virtual Reality Personal Watercraft (PWC)

A contract was awarded to develop a virtual reality personal watercraft. If this application of virtual reality technology proves to be effective it will provide a platform to gather valuable data in many areas that would otherwise be unobtainable or would require more costly methods and sources. The data from this effort will give greater insight into the human/machine interface related to PWC and will assist in the effort to attempt to reduce PWC accidents. The contract award amount using fiscal year 2000 funds was $133,620.

National Recreational Boating Safety Program

Boating Accident Report Database (BARD)

The BARD system is aimed at effectively providing the capability to all States and the Coast Guard for the successful exchange of recreational boating accident data and information using BARD software. New fiscal year 1999 funding of $392,234 allows software module development, software module rework and unit testing, module integration testing and system testing associated with this innovative program, and for providing the software to the 50 States, five territories, and the District of Columbia.

Transfer of Funds to the Seventeenth Coast Guard District

A non-recurring transfer of $25,000 fiscal year 1999 funds was made to the Seventeenth Coast Guard District in support of a Coast Guard Boating Safety Detachment to assist in the transition of State of Alaska assumption of Recreational Boating Safety Program responsibilities.

National Boating Registration System

As a service for States/Territories that currently have inadequate (or no) computer software program to maintain their vessel numbering system information, $24,000 has been transferred to the U.S. Coast Guard Operations Systems Center (OSC) to develop a National Boating Registration System software program. OSC will modify an existing program currently used by the Coast Guard in Alaska (the only State that does not have a Coast Guard-approved vessel numbering system) to develop a generic version that can easily be adapted by any State/Territory for their own use. The software, which will be provided to interested States/Territories at no cost, will include a function to automatically generate the annual report on numbered vessels that must be submitted to the Coast Guard each year, which currently can be a very time-consuming process for States whose systems are not automated. The current schedule calls for delivery of the beta version system in July 2000.

Federal Requirements Publication

A customer friendly "Federal Requirements and Safety Tips for Recreational Boaters" publication is being developed based on easy to read high visibility graphics, focusing on provision of subject specific safety tips with retention factors built in. Support for this effort using fiscal year 1999 funds is $73,000. The Coast Guard anticipates expanding this development effort and intends to evaluate recreational boater retention factors for Federal regulations in August 2000. The end result will be publication of both hard copy and electronic interactive versions for public use.

Coast Guard Infoline/Office of Boating Safety Website

This effort provides both technology and educational enhancements to the Coast Guard Infoline, a toll free 800 telephone number (including a dedicated line for the hearing impaired) accessible to callers anywhere in the United States. The Infoline provides information about safety, regulations, communications, Coast Guard policy, and available material related to boating safety issues. Additionally, this effort provides a complete interactive recreational boating safety website that offers the public and boating safety agencies and organizations with up-to-the-minute information on every aspect of recreational boating safety. One of the goals of this program is to create a "one-stop" customer service center for all users. Fiscal year 1999 funding amounted to $186,435.

Marine Dealer Display Kiosks

An expenditure of $23,950 of fiscal year 1999 funds supports the Hunters and Anglers Outreach Program and supplies marine dealers with U.S. Coast Guard and U.S. Coast Guard Auxiliary literature display racks, including associated boating safety information pertaining to the hazards associated with Boating Under the Influence (BUI) as well as discipline specific information to this target group. Additional target group research and testing will be conducted during calendar year 2000 validating outreach components. This research will result in the release of a national "point-of-purchase" kiosk system, serving as an extension to the Office of Boating Safety's "one-stop" information system.

There are three new projects that are in final stages for commitment of funds.

The Vessel Safety Check Program

Fiscal year 2000 funding, estimated at less than $50,000 will be used to support the efforts of the U.S. Coast Guard Auxiliary, U.S. Power Squadrons and the National Association of State Boating Law Administrators in providing free safety inspections of recreational boats. The "safety check" provides a complete review of a recreational vessel ensuring that the vessel is in compliance with all Federal and State specific carriage requirements. Ultimately the end result will lead to fewer recreational boating accidents, injuries and fatalities.

Knowledge Management System and SEAFIT (State Electronic Administrative, Financial and Information Technology System)

This effort will enable the Coast Guard to reduce the amount of paper transactions required and obtained by its external customers. The States are one of the Coast Guard's largest external customer groups. The Knowledge Management and SEAFIT systems will provide for quicker more effective and efficient program oversight while providing each customer with the ability to electronically do business with the Coast Guard. This system will assist in the electronic monitoring, storage and daily use of all multi-disciplined information and materials within the Office of Boating Safety. We plan to convert current business processes that support activity in grant administration, program oversight, financial payments and requested program information to an electronic format and be web-based compatible.

National Boating Survey

The contracting process is being initiated for a comprehensive major national recreational boating survey. The survey will provide information on boats, boaters and their activities. In order to avoid taking the large amount of money required for a large-scale survey from available funds for a single fiscal year, we will escrow funds each year. We placed $900,000 of fiscal year 1999 funds and $400,000 of fiscal year 2000 funds in escrow.

The following table reflects commitment, obligation, or expenditure to date of fiscal years 1999 and 2000 funds.

RECREATIONAL BOATING SAFETY PROGRAMS ACCOUNTING

	FY 1999	FY 2000
Boat Safety Compliance		
Factory visit program	$133,912.55	
Associated equipment compliance testing	44,000.00	$83,000.00
Articulated mannequins/computer simulation model	300,000.00	
Compliance associated travel	13,332.44	
New boat manufacturer outreach package	357,582.34	
Risk analysis study	229,465.64	
Virtual reality personal watercraft		133,620.00
Total boat safety compliance	1,078,292.97	216,620.00
National Recreational Boating Safety Program		
Boating accident report database (BARD)	392,234.00	
17th CG District boating safety detachment	25,000.00	
National boating registration system	24,000.00	
Federal requirements publication	73,000.00	
CG Infoline/Office of boating safety website	186,435.00	
Marine dealer display kiosks	23,950.00	
Total recreational boating safety	724,619.00	
National boating survey escrow	900,000.00	400,000.00
Grand total	2,702,911.97	616,620.00

Note: This Chart Shows FY 1999 and FY 2000 Dedicated Funds Committed, Obligated, or Expended for the Individual Projects Listed.

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Dated: June 2, 2000.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 00–14362 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–443]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on the revalidation of recommendations for 46 CFR part 151 will meet to discuss the previous recommendations of CTAC.

DATES: The Subcommittee will meet on Wednesday, June 21, 2000, from 8:30 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before June 20, 2000. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before June 19, 2000.

ADDRESSES: The Subcommittee will meet in room 6103, U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC. Send written material and requests to make oral presentations to Commander Robert F. Corbin, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas J. Felleisen, Coast Guard Technical Representative to the Subcommittee, or Lieutenant Gregory F. Herold, Deputy Assistant to the Executive Director of CTAC, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda of the Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on the revalidation of recommendations for 46 CFR part 151 includes the following:

(1) Introduction of the Subcommittee members.

(2) Review and discussion of CTAC's previous recommendations.

(3) Evaluation of the validity of the CTAC's previous recommendations.

(4) Discussions of the comments submitted on the ANPRM.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. All attendees at the meeting are encouraged to fully review CTAC's previous recommendations prior to the meeting; additional copies of CTAC's previous recommendations are available from the Deputy Assistant to CTAC. At the discretion of the Subcommittee Chair, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Coast Guard Technical Representative to the Subcommittee on or before June 20, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Coast Guard Technical Representative to the Subcommittee no later than June 19, 2000.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Deputy Assistant to the Executive Director of CTAC as soon as possible.

Dated: May 31, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–14276 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket MARAD–2000–7470]

Farrell Lines Incorporated; Notice of Application for approvals to the proposed transfer of Maritime Security Program Operating Agreements MA/MSP–18 through 20

By applications dated June 1, 2000, Farrell Lines Incorporated (Farrell) and counsel for FLI Ships, Inc. (FLI Ships) have notified the Maritime Administration (MARAD) of the proposed transfer of three Maritime Security Program (MSP) Operating Agreements (MA/MSP–18 through 20) from Farrell to FLI Ships, a wholly owned subsidiary of Farrell, pursuant to section 652(j) of Subtitle B, Title VI, Merchant Marine Act, 1936, as amended (1936 Act). The vessels currently covered by those contracts are presently owned by FLI Ships, and will continue to be covered by those contracts after transfer.

The transfer of MSP Operating Agreements MA/MSP–18 through 20 is part of a series of overall transactions whereby Farrell will merge with P & O Nedlloyd Acquisition Corporation, a wholly owned subsidiary of P & O Nedlloyd Limited. After merger, Farrell will be the surviving entity (reconstituted Farrell).

With respect to the transfer of MSP Operating Agreements, section 652(j) of the 1936 Act provides that "A Contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any person eligible to enter into that Operating Agreement under this subtitle after notification of the Secretary [of Transportation] in accordance with regulations prescribed by the Secretary, unless the transfer is disapproved by the Secretary within 90 days after the date of Notification. A person to whom an Operating Agreement is transferred may receive payments from the Secretary under the agreement only if each vessel to be covered by the agreement after the transfer is an eligible vessel under section 651(b)."

In implementing the proposed transaction, FLI Ships is to be spun off by sale of all its stock to FLI Ships Holdings, Inc. (Holdings), a U.S. citizen corporation within the meaning of section 2 of the Shipping Act, 1916, as amended. Holdings will be independently capitalized and operationally independent of P & O Nedlloyd Limited and any of its affiliates. The MSP vessels will be time chartered from FLI Ships to either P&ONL FAME, Inc. (FAME), a U.S. documentation citizen owned by P & O Nedlloyd B.V., a Dutch corporation, or to a reconstituted Farrell for operation. In the event that Farrell becomes the time charterer, it will also become a documentation citizen. The time charters of two other MSP vessels owned by First American Bulk Carrier Corp. (FABC) and chartered to Farrell, will be novated to either FAME, or remain with the reconstituted Farrell for operation. FLI Ships will manage and operate the former Farrell vessels utilizing former Farrell personnel. The FABC vessels will continue to operate under their existing charters. One additional vessel operated by Farrell under bareboat charter from MARAD may be turned back to MARAD subject to settlement under that charter. Another vessel bareboat chartered by Farrell under a sale/leaseback agreement will most likely be paid off and scrapped.

A redacted copy of the transfer application will be available for inspection at the Department of Transportation (DOT) Dockets Facility and on the DOT Dockets website (address information follows). Any person, firm or corporation having an interest in this proposal, and desiring to submit comments concerning the application, may file comments as follows. You should mention the docket number that appears at the top of this notice. Written comments should be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the internet at http://dmses.dot.gov/submit/ . You may call Docket Management at (202) 366–9324. You may visit the docket room to inspect and copy comments at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov. Comments must be received by close of business June 14, 2000.

This notice is published as a matter of discretion, and the fact of its publication should in no way be considered a favorable or unfavorable decision on the application, as filed, or as may be amended. MARAD will consider all comments submitted in a timely fashion, and will take such action thereto as may be deemed appropriate.

By Order of the Maritime Administration.

Dated: June 2, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–14354 Filed 6–6–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund Open Meetings

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of open meetings.

SUMMARY: The Community Development Financial Institutions Fund (the "Fund") is considering revising its regulations implementing the Bank Enterprise Award ("BEA") Program. Before revising such regulations in the form of an interim rule, the Fund seeks to provide the public with meaningful participation in advance of the rulemaking process. Specifically, the Fund intends to convene four regional meetings that are open to the public for purposes of gathering facts and information on how to improve the BEA Program. The Fund will consider the facts and information gathered from such regional meetings in deciding whether to revise the BEA Program regulations.

DATES AND LOCATIONS: The four regional meetings are scheduled for the following cities and dates: (1) June 21, 2000, Los Angeles, CA; (2) June 23, 2000, Dallas, TX; (3) June 28, 2000, New York, NY; and (4) June 30, 2000, Chicago, IL. Registration is required, because space is limited in each city to 40 members of the public.

FOR FURTHER INFORMATION OR TO REGISTER CONTACT: The Community Development Financial Institutions Fund (the Fund), U.S. Department of Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC, 20005, (202) 622–8662 (this is not a toll free number) or visit the Fund's website at http://www.treas.gov/cdfi. Other information regarding the Fund and its programs also may be obtained through the Fund's website at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION: The purpose of the BEA Program is to assist in the revitalization of distressed urban and rural communities. Under the BEA Program, the Fund issues grant awards annually (e.g. in September 1999) to insured depository institutions that have increased their level of investment in Community Development Financial Institutions and distressed communities ("BEA Program activities") between a six month assessment period (e.g. January 1 through June 30, 1999) and a six month baseline period (e.g. January 1 through June 30, 1998). As part of its strategy to maximize the effectiveness of scarce public resources, the Fund is considering various means to enhance the efficacy of the BEA Program in revitalizing distressed urban and rural communities.

For example, the Fund is considering whether to measure increases in BEA Program activities from six month baseline/assessment periods (e.g. January 1 through June 30) to annual baseline/assessment periods (e.g. January 1 through December 31) for purposes of affording insured depository institutions greater flexibility in planning BEA Program activities year round as part of their community reinvestment strategies and to take into account the longer lead times often required to close complicated large dollar transactions.

The Fund also is considering selecting insured depository institutions to participate in the BEA Program before the commencement of the assessment period. The Fund is considering such a change to: (1) Provide greater incentives for insured depository institutions to engage in BEA Program activities that they would not otherwise engage in by (a) Assuring such institutions that if they carry out their BEA Program activities within the assessment period, they will receive a BEA Program award and (b) enabling such institutions to take into consideration the economic value of an award when underwriting a transaction; and (2) reduce paperwork burdens for those insured depository institutions that are not deemed competitive by relieving such institutions of the burden of having to submit a final report at the end of the assessment period. As part of this change, the Fund would utilize a competitive evaluation and selection process.

The Fund intends to provide the public with meaningful participation in improving the efficacy of the BEA Program by obtaining facts and information from the public prior to making any regulatory changes. The Fund intends to accomplish this by convening four regional information gathering sessions in the month of June that are open to the public. The Fund will consider the facts and information from such public meetings in deciding whether to revise the BEA Program regulations.

Authority: 12 U.S.C. 4703; 12 U.S.C. 4713; 12 U.S.C. 1834a; and E.O. 12866, § 6(a).

Dated: June 1, 2000.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 00–14308 Filed 6–6–00; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0219]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of

Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed Reinstatement, with change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to adjudicate and pay healthcare benefit claims.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 7, 2000.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–0219" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or Fax (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles

a. Application for CHAMPVA Benefits, VA Form 10–10D.

b. CHAMPVA Claim Form, VA Form 10–7959A.

c. CHAMPVA—Other Health Insurance (OHI) Certification, VA Form 10–7959C.

d. CHAMPVA Potential Liability Claim, VA Form 10–7959D.

e. VA Spina Bifida Healthcare Benefits, Claim for Miscellaneous Expenses, VA Form 10–7959E.

OMB Control Number: 2900–0219.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The following forms are used by Civilian Health and Medical Program-VA (CHAMPVA) and spina bifida claimants to claim reimbursement for medical care and by VA to determine eligibility, process claims, detect fraud and recover costs from third parties.

a. VA Form 10–10D is used to determine eligibility of persons applying for healthcare benefits under the CHAMPVA program.

b. VA Form 10–7959A is used to adjudicate claims for CHAMPVA benefits.

c. VA Form 10–7959C is used to systematically obtain Other Health Insurance information and to correctly coordinate benefits among all liable parties.

d. VA Form 10–7959D is used to recover costs associated with healthcare services related to injury or illness caused by a third party.

e. VA Form 10–7959E is used by VA Spina Bifida Healthcare beneficiaries to claim payment or reimbursement for healthcare services and related travel expenses.

Affected Public: Individuals or Households, Business or Other for-Profit.

Estimated Annual Burden: 60,467 hours.

a. VA Form 10–10D—1,500 hours.
b. VA Form 10–7959A—50,000 hours.
c. VA Form 10–7959C—6,200 hours.
d. VA Form 10–7959D—1,167 hours.
e. VA Form 10–7959E—1,600 hours.

Estimated Average Burden Per Respondent

a. VA Form 10–10D—10 minutes.
b. VA Form 10–7959A—10 minutes.
c. VA Form 10–7959C—6 minutes.
d. VA Form 10–7959D—7 minutes.
e. VA Form 10–7959E—4 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 405,000.

a. VA Form 10–10D—9,000.
b. VA Form 10–7959A—300,000.
c. VA Form 10–7959C—62,000.
d. VA Form 10–7959D—10,000.
e. VA Form 10–7959E—24,000.

Dated: May 11, 2000.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–14265 Filed 6–6–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0098."

SUPPLEMENTARY INFORMATION:

Title: Application for Survivors' and Dependents' Educational Assistance (Under Provisions of Chapter 35, Title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–5490 serves as an application for Dependents' Educational Assistance (DEA). Spouses, surviving spouses, and children of veterans must submit evidence to establish eligibility and entitlement to DEA under Title 38, U.S.C., 3513. VA uses the information to determine if an individual claimant qualifies for DEA benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 9, 2000 at page 12627.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,050 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Once—Initial Application.

Estimated Number of Respondents: 20,100.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0098" in any correspondence.

Dated: May 18, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–14264 Filed 6–6–00; 8:45 am]

BILLING CODE 8320–01–P

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Corrections

Federal Register
Vol. 65, No. 110
Wednesday, June 7, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42758; File No. SR-NYSE-99-48]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Change To Rescind Exchange Rule 390

May 5, 2000.

Correction

In notice document 00–11682 beginning on page 30175 in the issue of Wednesday, May 10, 2000, make the following correction:

On page 30175, in the second column, after the heading, the date is added to read as set forth above.

[FR Doc. C0–11682 Filed 6–6–00; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

In the Matter of Asthma Disease Management, Inc.; Order of Suspension of Trading

May 8, 2000.

Correction

In notice document 00–11798 appearing on page 30154 in the issue of Wednesday, May 10, 2000 make the following correction:

In the third column, after the heading, the date is added to read as set forth above.

[FR Doc. C0–11798 Filed 6–6–00; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42760; File No. SR-NASD-99-26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Denial of Access Procedures

May 5, 2000.

Correction

In notice document 00–11807 beginning on page 30460 in the issue of Thursday, May 11, 2000, make the following correction:

On page 30460, in the third column, after the heading, the date is added to read as set forth above.

[FR Doc. C0–11807 Filed 6–6–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
June 7, 2000

Part II

Department of Justice

Antitrust Division

United States v. Allied Waste Industries, et al.; Response to Public Comments on Antitrust Consent Decree and Joint Motion for Entry of a Modified Final Judgment; Notice

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DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 99–1962]

United States v. Allied Waste Industries, et al.; Response to Public Comments on Antitrust Consent Decree and Joint Motion for Entry of a Modified Judgment

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that on May 10, 2000, the United States filed its responses to public comments on the proposed Final Judgment in *United States* v. *Allied Waste Industries, Inc., et al.* ("Allied"), Civil No. 99–1962 (D.D.C. filed July 20, 1999), with the United States District Court in Washington, DC.

On July 20, 1999, the United States filed a civil antitrust complaint, which alleged that the proposed acquisition by Allied of Browning-Ferris Industries, Inc. ("BFI") would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in waste collection and/or disposal services, or both, in a number of markets around the country, including the greater Chicago metropolitan market.

The proposed Final Judgment, filed on July 20, 1999, requires Allied and BFI to divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Complaint. This includes the divestiture of commercial routes that serve the City of Chicago and Cook, DuPage, Will, Kane, McHenry and Lake counties, IL. These routes included municipal franchise waste business. Because of comments received objecting to the divestiture of the municipal franchises, the United States determined and Allied agreed that instead of the municipal franchise contract work being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed Final Judgment. These additional assets consist of residential and rolloff waste hauling business in the greater Chicago metropolitan market. A modified version of the proposed Judgment (Modified Final Judgment), filed on May 11, 2000, permits Allied to retain the municipal franchise business and to divest instead the residential and rolloff waste hauling business.

Public comment on the proposed Judgment was invited within the statutory 60-day comment period. The public comments and the United States responses thereto are hereby published in the **Federal Register** and have been filed with the Court. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, Competitive Impact Statement, the United States Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act (to which the public comments and the United States responses are attached), proposed Modified Final Judgment, and the Memorandum of the United States in Support of Entry of the Proposed Modified Final Judgment are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481), and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

Note: The letter dated October 5, 1999 from Peter Anderson of Recycle Worlds Consulting was not able to be published in the **Federal Register** but a copy can be obtained from the U.S. Department of Justice, Document Group, 325 7th Street, NW., Room 215, Washington, DC 20530 or you may call and request a copy at (202) 514–2481.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Peter Anderson,
Recycle Worlds, 4513 Vernon Blvd., Suite 15, Madison, WI 53705–4964.

Re Comment on Proposed Final Judgment in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Anderson: This letter responds to your letter of October 5, 1999 commenting on the Final Judgment in this case on behalf of Recycle Works. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you urged the United States not to approve any asset divestiture under the proposed Final Judgment to one of the major integrated waste collection and disposal firms. In your view, these firms may be more inclined to cooperate with the defendants in raising prices in some markets in order to avoid potential price wars with the defendants elsewhere. You state that selling the assets to a major integrated company could reduce competition and result in increased prices.

The United States could not categorically conclude that selling the assets required to be divested under the proposed Final Judgment to a large national waste collection and disposal firm would be less competitive than a sale to a municipal agency or small independent firm, or that large waste companies are more prone to collude, when given the opportunity, than small independent firms. Also, large waste collection and disposal companies may enjoy some competitive advantages, such as better access to capital and more extensive experience. These advantages would make them in some respects more formidable competitors than small independent firms.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

House of Representatives

Committee on the Judiciary

October 5, 1999.

J. Robert Kramer II, Esq.,
Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Re United States v. Allied Waste Industries, No. 99 CV 01962.

Dear Mr. Kramer: On August 6, 1999, the Department of Justice published a Tunney Act notice of a proposed final judgment in the above referenced case. 64 Fed. Reg. 42962 (August 6, 1999). As required by the Act, the Department has invited public comment on the proposed final judgment.

I have received correspondence from the DuPage Mayors and Managers Conference, representing most of the local governments in my district, and the Village of Lisle requesting, certain changes to the proposed final judgment. A copy of this correspondence is attached for your review.

In essence, the Conference asks that the consent decree not require local governments to rebid their waste collection contracts in the middle of the contract terms. I understand that these contracts tend to run from three to six years and that the current contracts are generally viewed as advantageous to the communities. By allowing current contracts to run their term, local governments will receive substantial savings, and the potentially procompetitive benefits of the consent decree will be delayed for only a short period. This strikes me as a reasonable short term accommodation, and I recommend it to you.

I appreciate your attention to my views and those of the local governments in my district. Please place this letter in whatever public files are appropriate under applicable law. Please feel free to contact me if I may be of further assistance.

Sincerely,

Henry J. Hyde,

Chairman.

cc: Mr. Ronald S. Ghilardi, DuPage Mayors and Managers Conference; Ms. Barbara J. Adamec, Village of Lisle.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Honorable Henry J. Hyde,
U.S. House of Representives, 2138 Rayburn Building, Washington, DC 20515–6216.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999)

Dear Congressman Hyde: This letter responds to your letter of October 5, 1999 commenting on the final Judgment in this case on behalf of the DuPage Mayors and Managers conference ("Conference") and Village of Lisle. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you state that the Conference and the Village of Lisle express concern that the Final judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contracts which also includes the disposal of the communities' residential waste. The local communities fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. The communities believe that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

I have responded directly to the Conference and the Village of Lisle addressing their concerns. Copies of my responses are enclosed.

Thank you for bringing your concerns and theirs to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and those of the Conference and Village of Lisle, and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Robert Kramer II,

Chief, Litigation II Section.

DuPage Mayors and Managers Conference

September 22, 1999.

Anthony Harris,
Antitrust Division, U.S. Department of Justice, 1401 H Street, Northwest, Suite 3000, Washington, DC 20530.

Re United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.—Case No. 1:99 CV 01962.

Dear Mr. Harris: The DuPage Mayors and Managers Conference, an association of the 35 municipalities located in DuPage County, Illinois, respectfully submits the following comments related to the proposed Final Judgment Order issued in United States v. Allied Waste Industries and Browning-Ferris Industries (BFI)

The proposed Final Judgment Order requires BFI to sell their small container commercial waste collection operations in several highly concentrated markets, including the Chicago region. BFI's divestiture of these operations will have the following adverse impacts on communities that have exclusive contracts with BFI for the provision of commercial and/or multi-family collection services;

(1) Since the proposed Final Judgment Order would allow BFI to maintain its hand pick-up collection services, it is likely that one company would be responsible for collecting small container solid waste from commercial and multi-family customers while BFI would still be responsible for the hand pick-up of recyclables from the same customers. This will undermine the policy decision made by many communities to have an exclusive contract with a single company to provide all waste collection services in the community.

(2) Many communities will have to re-bid their existing contracts to identify a new provider for small container commercial waste collection services.

The DuPage Mayors and Mangers Conference requests that the Department of Justice consider amending the proposed Final Judgment Order in a manner that would protect BFI's existing franchise agreements with units of local government.

The Conference supports consideration of the following suggestions previously submitted to the Department of Justice by the West Cook County Solid Waste Agency:

(1) Modify the definition of "Collection of small container solid waste" to exclude from the definition "any collection of waste from customers that is being provided subject to the terms of a properly executed, legally binding contract or franchise agreement with a unit of local government," or

(2) Modify the proposed Final Judgment Order to limit the divestiture of commercial routes that "serve any non-franchised or open competition ares."

Implementing either of these two suggestions will avoid the adverse impacts to local governments that currently have franchise agreements with BFI, while also preserving the Department of Justice's goal of promoting competition in waste hauling services.

Sincerely,

Ronald S. Ghilardi,

President, DuPage Mayors and Managers Conference.

cc: House Speaker Dennis Hastert; U.S. Senator Dick Durbin; U.S. Senator Peter Fitzgerald; Congresswoman Judy Biggert; Congressman Henry J. Hyde.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Ronald S. Ghilardi,
DuPage Mayors and Managers Conference, 1220 Oak Brook Road, Oak Brook, IL 60523–2203.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Ghilardi: This letter responds to your letter of September 22, 1999 commenting on the Final Judgment in this case on behalf of DuPage Mayors and Managers Conference. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you expressed concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contracts which also includes the disposal of the communities' residential waste. The local communities fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection

business between two firms—the purchaser who would have the franchise commercial waste business, and Allied, which would retain the residential and recycling collection services. The communities fear that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Natural Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts intially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Solid Waste Association of North America

October 5, 1999.

Mr. J. Robert Kramer II,
Chief, Litigation II Section, Anti Trust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Re Proposed Consent Decree in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.—Case No. 1:99 CV 01962

Dear Mr. Kramer: With over 6,700 members, and 47 chapters in the U.S. and Canada, the Solid Waste Association of North America (SWANA) is the largest professional association in the solid waste management field. Our mission is to advance the practice of environmentally and economically sound municipal solid waste management. On behalf of SWANA, I am writing to offer comments regarding the draft Final Judgment order that has been filed with the U.S. District Court for the District of Columbia in the above referenced case.

SWANA supports, in principle, the proposed Final Judgment directive which requires Allied Waste Industries, Inc. ("Allied") to divest itself of the Relevant Disposal Assets and Relevant Hauling Assets. One of SWANA's members, the West Cook County Solid Waste Agency (representing 36 local governments in Cook County, Illinois), has begun the process of pursuing its own interest in purchasing a portion of the Relevant Disposal Assets. The purchase of these assets by a unit of local government such as the Agency would enhance and foster competition in the marketplace. Yet the proposed timeline for the ordered divestitures in this case would make it virtually impossible for the Agency to successfully compete for this asset.

Requiring Allied to divest itself of these assets within 60 days after the approval of the Final Judgment by the Court creates an unfair and unreasonable bias towards large, highly liquid, waste hauling firms and denies smaller companies and local governments (either individually or in the form of a consortium) sufficient time to conduct proper due diligence and arrange for the necessary financing to be able to effectively bid on the available assets.

The proposed Final Judgment as drafted, would serve to exacerbate the decline in the number of local government agencies and independent solid waste companies that are able to compete in the marketplace. This would be especially true if, as according to recent press reports, Allied were to sell all assets in the Chicago area to only one entity. This would reduce competition to only three significant competitors—all of which would be vertically integrated and in a position to control pricing within the market. Such an event could create an anti-competitive market environment that could lead to increased prices that would clearly be harmful to municipalities and to the general business community.

Therefore, in order to ensure that all interested parties are provided a fair and equal opportunity to bid on one or more of the assets, SWANA strongly recommends that the proposed Final Judgment be modified to require Allied to take bids on the assets individually. Furthermore, SWANA recommends that the proposed Final Judgment be modified to require Allied to receive bids to acquire Relevant Disposal Assets and Relevant Hauling Assets for 180 days after the Final Judgment has been approved by the Court (rather than within a 60 day limit as specified in the proposed Final Judgment).

SWANA appreciates the opportunity provided by the Court to file these comments and looks forward to your favorable consideration of this request.

Sincerely,

John H. Skinner Ph.D.,

Executive Director and CEO.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

John H. Skinner,
SWANA, 1100 Wayne Avenue, Suite 700, Silver Spring, MD 20910.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Skinner: This letter responds to your letter of October 5, 1999 commenting on the Final Judgment in this case on behalf of SWANA. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you urged the United States not to approve any asset divestiture under the proposed Final Judgment to one of the major integrated waste collection and disposal firms. In your view, these firms may be more inclined to cooperate with the defendants in raising prices in some markets in order to avoid potential price wars with the defendants elsewhere. You state that selling the assets to a major integrated company could reduce competition and result in increased prices.

The United States could not categorically conclude that selling the assets required to be divested under the proposed Final Judgment to a large national waste collection and disposal firm would be less competitive than a sale to a municipal agency or small independent firm, or that large waste companies are more prone to collude, when given the opportunity, than small independent firms. Also, large waste collection and disposal companies may enjoy some competitive advantages, such as better access to capital and more extensive experience. These advantages would make them in some respects more formidable competitors than small independent firms.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Village of Lisle

August 24, 1999.

Anthony Harris,
Anti Trust Division, U.S. Department of Justice, 1401 H. Street, Northwest, Suite 3000, Washington, DC 20503.

Re United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.—Case No. 1:99 CV 0192.

Dear Mr. Harris: I am writing to you on behalf of the Village of Lisle Mayor and Board of Trustees, with regard to the above captioned matter.

With a population of 21,000, the Village of Lisle, Lisle, Illinois, is considered small compared to neighboring municipalities in the Chicago region. However, we are well known in this region and other parts of the United States as a leader in developing user fee based programs designed to significantly reduce solid waste to be landfilled. The Village has spent many hours and dollars developing creative, innovative programs based on sound economic theories. Our programs have greatly reduced the municipal solid waste stream in Lisle and, when other communities have copied our programs, those communities have experienced similar starting results.

To demonstrate a few of the many ways we have impacted solid waste programs across the nation, please note the following accomplishments:

1. Signed the first user-fee based, comprehensive solid waste program for refuse, recyclable and yard waste in the State of Illinois. Developed the program in 1989 and implemented it in 1990. Subsequently, the majority of communities in northern Illinois have adopted similar plans with great results. The success in Illinois was parroted in neighboring states and as word spread, our program was copied in states across the county. Attached please find a copy of an article published in Resource Recycling magazine shortly after our program in Lisle began. We handled hundreds of calls from people requesting information on the program and, in fact, received requests for information from as far away as Great Britain and Brazil.

2. Lisle is unique in that over 53% of the living units in the Village are multi-family residences. Once the single family program was up and running smoothly, we developed a pilot multi-family recycling program and experimented with ways to encourage waste reduction through on-site recycling centers. After analyzing the results of our experiments, we developed a comprehensive; user fee based system for all of the multi-family units in Lisle, meaning townhouses, coach homes, apartments and condominiums. Typically these units have dumpsters (small containers) on the site for refuse disposal along with mini-recycling centers for recyclable. *One waste hauler collects both materials from the property* As you can see from the attached brochure, the program has been extremely successful.

The proposed Final Judgment Order, which requires BFI to sell for their small container commercial waste collection operations, would destroy our LEAP Multi-Family Program and would severely impact our LEAP Curbside Program. BFI currently holds an exclusive contract with the Village of Lisle to service all of our residential living units, both single-family and multi-family, and those services are intertwined. If BFI must diversify itself or just the container business, then our contract will be challenged.

The suggestion that we can re-bid the existing contract to identify a new provider will be a severe hardship for the Village of Lisle. We just spent several months this year completing a Request For Competitive Proposals For Solid Waste Services, which resulted in an exclusive contract with BFI effective June 1, 1999. Subsequently, we incurred the expense of mailings to our residents, the time taken to re-educate residents on changes to our programs, and the exposure to higher prices for services for our residents.

As far as competition is concerned, attached please find a copy of my analysis of the three proposals received. Note the wide gap in prices between the Waste Management and ARC bids. If the Village of Lisle's contract is voided, and BFI/Allied is removed from bidding process, it is very likely that Waste Management will submit similar prices or higher prices on dumpsters which would represent an increase over the current contract costs.

The proposed Final Judgment Order will have a negative impact on both of our programs and will probably increase costs to our residents because fewer vendors will be proposing/bidding on our contract. In past bidding sessions, Waste Management and BFI were the only bidders in close competition with respect to prices and equivalent services. With BFI out of the picture, the opportunity to secure the same or lower prices appears less likely.

With increased costs aside, the greatest loss of all will be the loss of a very innovative, comprehensive program for Lisle residents whereby the pickup of refuse, recyclables and yard waste are collected by one vendor in a smooth, seamless manner. This user fee based program has influenced solid waste programs across the country and the damage done to our program in Lisle will be a loss others communities as well because we will not be able to continue to fine tune and experiment with our program as designed.

Historically speaking, the waste industry has defined residential service as curbside service whereby residents place garbage in bags or cans at the curb. They also defined commercial service as service whereby refuse is placed in a dumpster. We decided to change the definition in 1993 to suit our own needs. Therefore, in Lisle we define residential service as service for our residents, to include all living units (single-family homes or multi-family homes). Commercial service is defined as non-residential service. Perhaps you should consider applying our definitions to the Final Judgment Order and force BFI/Allied to diversify their "non-living unit" accounts. Opening competition up in the commercial/business arena would allow small waste hauler to compete fairly, particularly considering the fact that most small waste haulers do not have the equipment and manpower needed to handle large-scale community programs.

To reduce municipal garbage, programs must offer recycling opportunities, and the convenience factor of both activities must be very high before people will participate. Thus, most municipal solid waste officials will tell you that refuse removal/collections and recycling programs should not be separated from each other, either by physical location or by different vendors. Programs that fall to address this "marriage" lack continuity and more often than not fall.

We would appreciate it if you would find way to protect our current franchise agreement with BFI so that our current single family and multi-family programs remain intact and the Village of Lisle can continue to develop additional methods to reduce the municipal solid waste stream.

Sincerely,

Village of Lisle,

Barbara J. Adamec,

Assistant Village Manager.

Enclosures:
LEAP Curbside Program brochure
LEAP Multi-Family Program brochure
Illinois Recycling Association newsletter—4-9-93
Analysis A—Overview Analysis of Solid Waste Services
Village of Lisle Mayor & Board of Trustees
Carl Doerr, Village Manager

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Barbara J. Adamec,
Assistant Village Manager, Village of Lisle, 1040 Burlington Avenue, Lisle, IL 60532-1898,

Re Comment on Proposed final Judgment in the (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., No. 99 CV 1962 (D.D.C. July 21, 1999).

Dear Ms. Adamec: This letter responds to your letter of August 24, 1999 commenting on the Final Judgment in this case on behalf of the Village of Lisle. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, is approved by the Court, would establish one of more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by ordering divestiture of the BFI's small container commercial waste business, may interfere with BFI's existing government franchise contract which also includes the disposal of the village's residential waste. The Village of Lisle fears that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. You believe that this will result in the purchases providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved

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by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Department of the Navy

September 17, 2000.

Mr. J. Robert Kramer II,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Dear Mr. Kramer: I am forwarding information for your consideration in making a Final Judgment regarding the merger between Allied Waste Industries (Allied) and Browning Ferris Industries (BFI). The Department of the Navy contracts for the collection and disposal of residential and commercial solid waste generated at the Naval Training Center, Great Lakes, Illinois. This installation has a population of some 40,000 sailors, families and civilian employees. Current solid waste services are provided by BFI under two separate contracts.

The proposed Final Judgment requires that BFI divest the Zion landfill, commercial waste collection routes within Lake County, and transfer stations in Northern Cook County. Historically, the Navy has received only two competitive proposals for our waste service at this location—Waste Management and BFI. I am concerned that divesting the transfer and commercial collection routes from the Zion landfill operations will significantly reduce the competitive position of one of only two regional service providers. This concern could result in increased cost and decreased service quality due to a lack of competition.

Your consideration of this information in making a Final Judgment is appreciated. For further information, contact Mr. Mark Schultz, Environmental Director at (847) 688–5999, extension 40.

Sincerely,

E.J. Katzwinkel,

Captain, Civil Engineer Corps, U.S. Navy, Commanding Officer, Navy Public Works Center and Engineering Field Activity, Midwest.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

E.J. Katzwinkel,
Captain, Civil Engineer Corps, U.S. Navy, Navy Public Works Center, Bldg. 1–A, 201 Decatur Avenue, Great Lakes, IL 60088–5600.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., No. CV 1962 (D.D.C., July 21, 1999)

Dear Captain Katzwinkel: This letter responds to your letter of September 17, 1999 commenting on the Final Judgment in this case on behalf of the Department of the Navy. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contract which also includes the disposal of the Great Lakes residential waste. You fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. You believe that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down the streets of Great Lakes.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

City of Naperville

September 15, 1999.

Mr. J. Robert Kramer II,
Chief Litigation II Section, Anti-Trust Division, United States Department of Justice, 1401 H Street, Northwest, Suite 3000, Washington, DC 20530.

Regarding United States vs. Allied Waste Industries, Inc. and Browning-Ferris Industries Inc.; Case 199 CV 01962.

Dear Mr. Kramer: The City of Naperville, as one of the largest municipalities in Illinois, contracts for waste services for the majority of our 125,000 residents. We competitively bid our refuse and landscaping service contract in 1998 and awarded a five-year contract to Browning-Ferris Industries, Inc. (also known as BFI.) In reviewing the proposed final judgment, we are concerned that the proposed final judgment in the antitrust action against BFI will have an adverse impact on the City's five-year contract with BFI. The City is also concerned that if BFI is unable to find a successor to parts of its Naperville contract under the specific terms and conditions of the contract, the City may be forced to re-bid all or portions of the City's largest monetary contract within an unacceptably short time frame of sixty days. I believe that the final judgment, if implemented as presented, will create serious problems for the City of Naperville.

The City has three specific concerns related to the final judgment:

1. The final judgment dictates that BFI must sell the only transfer station within DuPage County. Three years ago, the City considered siting a transfer station when the nearest landfill closed. We declined because industry experts assured us that private haulers would site transfer stations. BFI was the only company in the area that pursued this goal and it took them until a few months ago to open a transfer station. As part of our contract with BFI, we receive collection service at a guaranteed rate per ton utilizing this transfer station. We are concerned that the sale of BFI's transfer station and its possible unavailability for Naperville's solid waste, may result in longer driving distances and increased disposal costs. The City needs written assurance that any successor to Naperville's contract with BFI will be bound by the terms and conditions of the contract, particularly the cost of $34.75 per ton for the cost of landfill, incinerator, or transfer station tipping fees.

2. The proposed divestiture of all small container collection services may require the City to waive its no-subcontract provision of its contract with BFI to accommodate BFI's commitments contained within the final judgment. We believe that to bid small container collection service separately from the rest of our services in the future will work to our economic disadvantage. That yard waste is not included in the decision and is collected at several City sites in small containers further complicates this situation.

3. If successors to BFI's small container collection service will not be bound by the terms and conditions already present in our contract with BFI, the sixty-day divestiture time frame does not provide the City with adequate time to prepare, release and evaluate bids on the services voided by the final judgment.

Finally, as you determine the wisest course of action to ensure competitiveness throughout the United States, please consider that municipalities such as Naperville face the possibility of rebidding entire collection agreements. If Naperville's agreement with BFI is re-bid, the proposed final judgment may impair Allied/BFI's ability to compete, and we believe invalidate the Justice Department's goal by resulting in an environment where there is less competition than currently exists.

If you or your staff would like to discuss the issues raised in this letter further please contact Mr. David Barber, Director of Public Works, 630/420–6096.

Thank you for your consideration.

Sincerely,

A. George Pradel,

Mayor, City of Naperville.

cc: U.S. Senator Richard Durbin, Congressman William O. Lipinski, Congressman Rod Blagojevich, Congressman Danny Davis, Congresswoman Judy Biggert, Mr. Peter T. Burchard, City Manager, U.S. Senator Peter Fitzgerald, Congressman Luis Gutierrez, Congressman Henry Hyde, Congressman Dennis Hastert, City Council Members.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

A. George Pradel,
Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60566–7020.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Pradel: This letter responds to your letter of September 15, 1999 commenting on the Final Judgment in this case on behalf of the City of Naperville. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contract which also includes the disposal of the city's residential waste. The city fears that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. The city believes that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Fulton County Board

September 14, 1999.

Mr. J. Robert Kramer II,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20005.

Re Allied/BFI Consent Decree Case No. 1:99CV01962.

Dear Mr. Kramer: The purpose of this letter is provide comment on the proposed Consent Decree which requires Allied Waste Industries, Inc. to sell certain assets in connection with its acquisition of Browning Ferris Industries, Inc. Specifically, the County of Fulton objects to the Department of Justice requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview, Fulton County, Illinois.

In your analysis of the Chicago market, it is stated that Allied's divestiture of the Spoon Ridge Landfill would insure that the benefits of competition, lower prices and better service would be preserved. It is the opinion of the County of Fulton that the Spoon Ridge Landfill is not an important waste disposal operation for the Chicago market. Requiring the divestiture of the Spoon Ridge Landfill would eliminate an opportunity for Allied to send waste from New York City to Spoon Ridge Landfill as previously planned by BFI. As such, the divestiture removes an important potential economic development opportunity for the County of Fulton.

Spoon Ridge Landfill/BFI is the second largest tax payer in the County of Fulton. It has a current assessed valuation of $2,292,970.00. It pays and annual tax to the various taxing districts in the County of Fulton slightly in excess of $232,077.00.

It is the understanding of the County of Fulton that Spoon Ridge Landfill was designated as a primary landfill site for waste from the City of New York. Spoon Ridge Landfill has been closed for the approximate last year. The New York contract previously secured by BFI would have caused the reopening and continued operation of Spoon Ridge Landfill.

It is the understanding of the County of Fulton that Allied was to receive benefit of the New York contract and would have continued with the plan to dispose of the New York waste at the Spoon Ridge Landfill.

It is the Country's understanding that the Spoon Ridge Landfill is proposed to be conveyed to another landfill/waste disposal firm known as Republic. It is the understanding of the County that Republic, if it acquires this site, would have no immediate plans to reopen the facility and would not be accepting any waste from New York.

The Spoon Ridge Landfill has previously entered into an agreement with the County of Fulton for payments of certain sums to the County of Fulton as and for or in lieu of a solid waste tippage fees. The County of Fulton is required by state law to have a solid waste management plan and implement its terms. The agreement between Spoon Ridge Landfill and the County of Fulton has generated for the County of Fulton since April of 1995; $180,000.00 to implement such plan.

If the Spoon Ridge Landfill is required by the proposed Consent Decree to go to another landfill operator, such as Republic, there does not appear to be much of a likelihood that Spoon Ridge Landfill will open, operate, or generate funds for the County of Fulton to implement its Solid Waste Management Plan.

The County of Fulton would disagree with a premise upon which the proposed Consent Decree has been based. The City of Chicago is 200 miles or more away from the Spoon Ridge Landfill site in Fulton County, Illinois. There is no direct rail access from Chicago to Spoon Ridge Landfill. Further, there is no direct interstate highway from Chicago to Spoon Ridge Landfill.

As previously indicated in this letter, Spoon Ridge Landfill has been closed for the approximate last year or so, except for opening for a day or two during the summer of 1999 to accept waste. If this facility was part of the Chicago geographic area, it would seem that there would be a steady stream of waste coming from Chicago to this site in Fulton County. Real economic facts have made the transportation of waste from the Chicago market to the County of Fulton cost prohibitive.

The County of Fulton and a number of affected taxing districts will likely suffer

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extreme if not devastating economic consequences if the proposed Consent Decree requires Allied to divest this property to a concern such as Republic. This landfill facility is the second largest tax payer in the County. If this facility is not reopened, certainly a fair argument could be made that its assessed valuation is over valued. If the assessment is reduced, the County of Fulton and a certain school district will see adverse financial consequences. Finally, if this facility can not have a ready stream of waste, then, the County of Fulton will be without sufficient funds to meet a state mandate requiring further implementation of a Solid Waste Management Plan.

It is respectfully requested that the Department of Justice reconsider and amend its Consent Decree with regard to the requirement that Allied divest itself of the Spoon Ridge Landfill. I remain.

Sincerely yours,

Mr. Bernard Oaks,

Chairman of the Fulton County Board.

cc: U.S. Senator Richard J. Durbin, U.S. Senator Peter G. Fitzgerald, Congressman Lane Evans, Governor George H. Ryan, State Senator George P. Shadid, State Representative Michael K. Smith, Mr. Thomas VanWeelden, President, Allied Waste Industries, Inc.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Bernard Oaks,

Chairman, Fulton County Board, Fulton County Courthouse, 100 North Main Street, Lewistown, IL 61542.

Re Comment on Proposed Final Judgment in United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Oaks: This letter responds to your letter of September 14, 1999 commenting on the Final Judgment in this case on behalf of Fulton County. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for effective relief and might undermine the tax base of the local communities. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago area to make it viable. By closing the landfill, BFI reduced its assessed value, and thus, the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of New York City's residential waste.

You stated that the future viability of Spoon Ridge depends on its ability to attract waste from New York City. By requiring Allied to divest this landfill to an independent competitor, ostensibly to help alleviate competitive problems in the Chicago market, the Final Judgment unnecessarily limits Allied's ability to compete for the contract to dispose of New York City's waste, and undermines the chances of Spoon Ridge ever opening again.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit the landfill to competing in that market. Leaving Spoon Ridge with Allied, which already controls nearly 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Spoon River Valley Schools

September 13, 1999.

Mr. J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20005.

In Re Allied/BFI Consent Decree Case No. 1.99CV01962.

Dear Mr. Kramer: The purpose of this letter is to provide comment on the proposed consent decree which requires Allied Waste Industries, Inc. to sell certain assets in connection with its acquisition of Browning Ferris Industries, Inc. Specifically the Spoon River Valley Community Unit School District No. 4 Board of Education wishes to comment on the requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview, Illinois.

Spoon River Valley CUSD No. 4 Overview

Spoon River Valley CUSD No. 4 is a rural school district comprised of 157 square miles in Fulton and Knox Counties. The school district serves the communities of Ellisville, Fairview, London Mills, Maquon, and Rapatee. The enrollment of the school district in grades K–12 as of August 31, 1999 was 429. The current equalized assessed valuation of the school district is $27,665,810. The current tax rate of $5.7774 generates $1,598,365 of local revenue for the school district. The total budgeted revenue for the school district is $3,717,512. Therefore, local property taxes represent 43% of the total budgeted revenue for the school district.

Spoon River Valley CUSD No. 4 Concerns

The current assessed valuation of the Spoon Ridge Landfill is approximately $2,000,000 or about 7.2% of the total assessed valuation of the school district. The landfill generates about $115,548 in property taxes for the district which is the equivalent of four (4) full-time teacher salaries. The Board of Education is naturally concerned with decisions related to Spoon Ridge Landfill that could have adverse consequences for the school district. We are concerned that the company that owns the landfill will have the necessary resources both in operating capital and viable disposal contracts to adequately maintain and operate the landfill so that it remains a major source of property tax income for the school district. The loss of this source of income would definitely have adverse affects upon the quality of education that we now provide to the students of the Spoon River Valley School District.

Summary

The Spoon River Valley CUSD No. 4 Board of Education respectfully requests that the Department of Justice re-examine its decision requiring that Allied divest itself of the Spoon Ridge Landfill. We ask that the Department re-evaluate its decision based upon what is best for the residents and students who would most closely be affected by this decision.

Sincerely,

David D. Smith,

President, Board of Education.

cc: U.S. Senator Richard J. Durbin, U.S. Senator Peter G. Fitzjerald, Congressman Lane Evans, Governor George H. Ryan, State Senator George P. Shadid, State Representative Michael K. Smith, Mr. Thomas VanWeelden, President, Allied Waste Industries, Inc.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

David D. Smith,

President, Board of Education, Spoon River Valley Schools, Community Unit Dist. No. 4, Rt. 1, London Mills, IL 61544.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Smith: This letter responds to your letter of September 13, 1999 commenting on the Final Judgment in this case on behalf of the Spoon River County

Schools. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for effective relief and might undermine the tax base of the local communities and the Spoon River Valley School District. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago area to make it viable. By closing the landfill, BFI reduced its assessed value, and thus, the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of New York City's residential waste.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit the landfill to competing in that market. This should ensure that the landfill remains a major source of property tax income for the school district. Leaving Spoon Ridge with Allied, which already controls nearly 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

West Cook County Solid Waste Agency

August 13, 1999.

Mr. J. Robert Kramer II,

Chief, Litigation II Session, Anti Trust Division, U.S. Department of Justice, 1401 H Street, Northwest, Suite 3000, Washington, D.C. 20530.

Re United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.—Case No. 1:99 CV 01962.

Dear Mr. Kramer: On behalf of the 36 local governments represented by the West Cook County Solid Waste Agency (Cook County, Illinois) (hereinafter, the "Agency"). I am writing to offer our comments and objections regarding the draft Final Judgement order that has been filed with the U.S. District Court for the District of Columbia ("Court") in the above referenced case.

The Agency strongly supports, in principle, the proposed Final Judgement directive which requires Allied Waste Industries, Inc. ("Allied") to divest itself of the Relevant Disposal Assets and Relevant Assets. However, the Agency objects to the time line by which Allied must divest of the Relevant Disposal Assets and Relevant Hauling Assets. The Agency has begun the process of pursuing its own interest in purchasing a portion of the Relevant Disposal Assets—namely the Browning-Ferris Industries, Inc. ("BFI") Melrose Park Transfer Station, located at 4700 W. Lake Street, Melrose Park, IL 60160 ("Melrose Park Facility"). The purchase of the Melrose Park Facility by a unit of local government such as the Agency would enhance and foster competition in the marketplace. Yet the proposed time line for the ordered divestitures in this case would make it virtually impossible for the Agency to successfully compete for this asset.

Requiring Allied to divest itself of these assets within 60 days after the approval of the Final Judgement by the Court creates an unfair and unreasonable bias towards large, highly liquid waste hauling firms and denies smaller companies (either individually or in the form of a consortium) and local governments sufficient time to conduct proper due diligence and arrange for the necessary financing to be able to effectively bid on the available assets. By denying small waste hauling companies and local governments fair access to the opportunity to bid on these assets, *the proposed Final Judgement itself serves to restrict and retard competition*. This is contrary to the intent and purpose of the proposed Final Judgement.

This bias is of great concern to the Agency given that competition in the solid waste services industry within the Agency's jurisdiction has been dramatically reduced in recent years as a result of previous consolidation efforts by Allied as well as Republic Services, Inc. ("Republic"). For example, whereas in 1997 there were eight non-vertically integrated solid waste companies serving the Agency's municipal/residential waste services needs, today there are only two such firms remaining.

By allowing the proposed Final Judgement to stand as drafted, the Court would serve to exacerbate this decline in the number of local, independent solid waste companies that are able to compete in the Agency's marketplace, thereby reducing competition to only three significant competitors—all of which would be vertically integrated and in a position to control pricing within the market. This would clearly by harmful to the Agency and its member local governments by creating an anti-competitive market environment. This, in turn, will increase costs to the Agency, its 36 member municipalities and to the general business community.

Consequently, the Agency respectfully recommends that the proposed Final Judgement be modified to allow Allied to divest itself of the Relevant Disposal Assets and Relevant Hauling Assets in the Chicago Metropolitan Area (collectively the "Assets") within 180 days after the Final Judgement has been approved by the Court (rather than the current 60-day limit as specified in the proposed Final Judgement). Furthermore, the Agency strongly recommends that the proposed Final Judgement be modified to *require* Allied to divest itself of the Assets individually rather than as a package in order to ensure that all interested parties are provided a fair and equal opportunity to bid on one or more of these assets.

Specific to this objection is the fact that Republic notified the Agency on August 4, 1999 (only 15 days after the proposed Final Judgement order was filed with the Court) of its intent to purchase the Melrose Park Facility as part of a larger acquisition of all the Assets from Allied pursuant to the proposed Final Judgement. The Agency strongly objects to the sale of all of the Assets to Republic for all of the reasons stated above. In addition, the Agency objects to the fact that Republic has reportedly executed a definitive letter of intent to purchase the Assets, including the Melrose Park Facility, within days after the proposed Final Judgement was filed with the Court. *This has not allowed the Agency* (or any other prospective purchaser) *sufficient time to pursue its interest in bidding for the Melrose Park Facility*. Given that the Agency, as a statutory unit of local government in Illinois, must follow a strict set of procedures which are designed to protect the public interest when attempting to purchase fixed assets such as the Melrose Park Facility, and given that the Agency must follow strict procedures in order to secure public debt, it is not fair or reasonable, nor is it in the best interest of the public, for the Court to allow Republic to purchase the Melrose Park Facility in such a hurried and non-competitive manner.

Therefore, the Agency respectfully requests that the United States exercise its authority as provided for in Article IV. Section A. of the Final Judgement order and withhold its approval of the sale of the Assets (particularly the Melrose Park Facility) to Republic for at least 180 days after the Final Judgement has been approved by the Court. This would allow the Agency and any other interested parties sufficient time to complete their due diligence process and secure the necessary financial commitments to fairly and equitably bid on any or all of the Assets.

The Agency's third point of comment and objection to the proposed Final Judgement is specific to the definition in Article II. Section H., "Collection of small container solid waste." In the context of the use of this phrase in the proposed Final Judgement, the definition would serve to force Allied to

divest itself of a subset of customers from which it is now obligated to collect waste. This subset of customers is part of a larger group of customers serviced in accordance with legally binding contracts between BFI/Allied and nine municipalities within the Agency's jurisdiction. This issue is also relevant to and will affect dozens of other municipalities throughout the Chicago Metropolitan Area.

In addition, since this part of the Final Judgement, as drafted, only applies to municipal solid waste, the order would have the effect of causing one company to be responsible for collecting waste from the affected customers who are served by the exclusive municipal contract, while Allied would still be responsible for collecting recyclable from those same customers! As a practical matter, this part of the order will force each municipality to void its current valid and binding refuse and recycling collection contract and rebid the very same contract or issue two contracts—one for the collection of small container solid waste only, and one for hand pick-up waste collection services and all recycling services. Philosophically, then, *the Final Judgement would undermine and interfere with local government's authority to determine the most appropriate way to protect the health, safety and welfare of its community.*

This part of the proposed order would not serve to enhance competition within the affected communities, but rather would cause serious disruption to the municipalities' traditional cost-effective methods of competitively procuring waste collection services for their communities. Furthermore, it would unnecessarily and unduly burden the affected communities by interfering with their existing contracts and forcing them to rewrite and rebid their contracts for solid waste services. *All of this would come at considerable expense to the communities.*

Therefore, the Agency respectfully requests that the Department of Justice recommend to the Court that the definition in Article II. Section H of the proposed Final Judgement to modified to exclude from the definition "any collection of waste from customers that is being provided subject to the terms of a properly executed, legally binding contract or franchise agreement with a unit of local government." Alternatively, in keeping with the precedent set with respect to the City of Dallas and Dallas County, TX in Article II. Section D. Paragraph 5., the proposed Final Judgement could be modified universally to limit the divestiture of commercial routes, in all cases, to only those commercial routes that "serve any nonfranchised or open competition areas."

The Agency appreciates the opportunity provided by the Court to file these comments and objections. If appropriate, the Agency would be available to discuss these matters in more detail.

Sincerely yours,

Timothy R. Hansen,

Chair, West Cook County Solid Waste Agency, President, Village of LaGrange, IL.

cc: U.S. Senator Richard Durbin, U.S. Senator Peter Fitzgerald, Congressman William O. Lipinski, Congressman Luis Guiterrez, Congressman Rod Blagojevich, Congressman Henry Hyde, Congressman Danny Davis, David M. Foster, Esq. (for BFI) Tom D. Smith, Esq. (for Allied)

West Cook County Solid Waste Agency

December 9, 1999.

Mr. J. Robert Kramer, II,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, Northwest, Suite 3000, Washington, DC 20530.

Re United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries Inc.—Case No. 1: 99 CV 01962.

Dear Mr. Kramer: The West Cook County Solid Waste Agency (Agency) is writing to respectfully request that the Agency be informed when Allied Waste Industries submits a potential buyer for approval by the Department of Justice, concerning the proposed divested assets located in or relevant to the Chicago metropolitan areas marketplace. These assets are:

BFI Orchard Hills landfill
BFI Zion landfill
BFI Spoon Ridge landfill
BFI Active transfer station
BFI Brooks transfer station
BFI Rolling Meadows transfer station
BFI Melrose Park transfer station
BFI DuKane transfer station
All BFI small container commercial collection routes in Cook, Lake, DuPage McHenry and Will countries, Illinois

As you may recall, the Agency previously submitted comments concerning the proposed Final Judgement of August 13, 1999. Since this time, the proposed sale of the above assets to Republic Services Inc. has been terminated and through press accounts, another sale to Superior Waste Services has been announced. However, the details of the proposed sale to Superior were not disclosed—namely which assets in the Chicago metropolitan area are included or excluded.

In order for the Agency to provide comments to the Department of the potential impact on the solid waste market place that a potential sale would have, the details of the proposed sale or sales of these assets needs to be known. Therefore, the Agency respectfully requests that the Department inform the Agency of all pending sales of the before mentioned assets prior to the Department granting approval of these sales.

Sincerely,

Allen P. Bonini,

Solid Waste Director.

U.S. Department of Justice

Antitrust Division

May 10,2000.

Timothy R. Hansen,

Chair, West Cook County Solid Waste Agency, President, Village of LaGrange, IL, 1127 S. Mannheim Road, Suite 102, Westchester, IL 60154–2551.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Hansen: This letter responds to your letter of August 13, 1999 and Allen P. Bonini's letter of December 9, 1999, commenting on the Final Judgment in this case on behalf of the West Cook County Solid Waste Agency ("Agency"). The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in the federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contracts which also includes the disposal of the communities' residential waste. The local communities fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchase who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. The communities fear that this will result in the purchase providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Mr. Bonini requests that the Agency be informed of all pending sales of the assets to be divested pursuant to the proposed Final Judgment. These assets include the three BFI landfills; five BFI transfer stations; an the BFI small container commercial routes in Cook, Lake, DuPage, McHenry and Will Counties, Illinois. He states that the Agency would evaluate the potential impact the sales may have on its solid waste marketplace.

Under the terms of the Final Judgment, the defendants must sell all of the relevant disposal and hauling assets described in the Final Judgment to a purchaser or purchasers acceptable to the United States, in its sole discretion. In approving a purchase, we always consider the competitive impact in the local market of that purchaser's acquisition of the hauling or disposal assets.

The Orchard Hills and Zion landfills have been acquired by Superior Services, Inc. a purchaser approved by the United States. Superior has no current hauling or disposal operations in the greater Chicago metropolitan market. Groot Industries is a potential purchaser of the Spoon Ridge landfill and is in the process of conducting a due diligence evaluation. The five transfer stations have also been divested with the approval of the United States—Superior has acquired four of the transfer stations, and Groot Industries has acquired one.

The BFI small container commercial routes in the five counties have been divested to Superior except for the municipal franchise contracts. These will be retained Allied if the court approves a modification to the Final Judgment. The United States and Allied have field a motion to have the court modify the Final Judgment to permit Allied to retain the franchise work which initially had to be divested.

Thank you for bringing your concerns to our attention and thank Mr. Bonini for bringing his concerns to our attention. We hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C.16(d), a copy of your comments and Mr. Bonini's comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Solid Waste Agency of Northern Cook County

September 2, 1999.

Mr. J. Robert Kramer II, Esquire,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, Suite 3000, Washington, DC 20005.

Re Proposed Consent Decree in United States of America v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.

Dear Mr. Kramer: The Solid Waste Agency of Northern Cook County (SWANCC or the Agency) is a unit of local government formed in 1988 by 23 Illinois municipalities having a total population of 700,000. The Agency's role in solid waste management is to provide for the efficient and environmentally sound disposal of waste generated by residences and businesses within its member municipalities.

SWANCC member municipalities collect residential waste themselves or by contracting with private entities. Most of that residential waste passes through a SWANCC-owned transfer station, managed by a private contractor, that processes over 250,000 tons of residential waste annually. That waste is disposed of in a private sector landfill.

The concerns expressed in this letter relate to the commercial and business waste stream. We estimate that the commercial and business sector in the Agency's territory—in which over 500,000 persons are employed—generates over 600,000 tons of waste annually. Currently a number of private entities compete for the collection and hauling of commercial and business waste in the SWANCC territory. An ever decreasing number of transfer and disposal locations process that waste.

The Agency is greatly concerned about the impact of the proposed consent decree (at least as Allied-BFI currently plan to satisfy it) on the commercial hauling and transfer services offered to the businesses located in our territory. For the reasons described more fully below, we ask that the proposed consent decree be modified (1) to prohibit the sale of the BFI transfer stations and landfill assets to any entity that currently operates a trnasfer station or landfill in northern Cook or Lake Counties and (2) to permit BFI, or its successor in the merger, to continue to provide small container commercial collection service when it does so as part of a franchise or contract for residential waste collection.

I. The Proposed Sale of Transfer Stations and Landfill Assets to Republic Services Would Reduce Competition and Likely Lead to Higher Prices

Unless there is competition in hauling, transfer and disposal services offered to our members and to businesses in the Agency's territory, the Agency's interests in a cost effective system will not be met, and residents and businesses will pay unnecessary amounts for this essential service.

In 1988 twelve private sector firms provided hauling, transfer and disposal services in the area; after entry of the proposed order, it will be four. The consolidation trend over the last decade has seen all but one of the independent operators in the area acquired by national firms. The proposed merger involves the joinder of two national firms. The divestiture that the combined Allied-BFI proposes to make to satisfy the consent decree merely would move some of the assets from one large national firm in the area to another.

Specifically, in metropolitan Chicago, the proposed consent decree currently would require that the following divestitures take place:

—BFI Zion landfill, Zion, Illinois
—BFI Active transfer station, Evanston, Illinois
—BFI Brooks transfer station, Northbrook, Illinois
—BFI Rolling Meadows transfer station, Rolling Meadows, IL
—BFI Melrose Park transfer station, Melrose Park, Illinois
—BFI DuKane transfer station, West Chicago, Illinois
—All BFI small container commercial collection routes in Cook, Lake, DuPage, McHenry, and Will counties, Illinois.

These proposed divestitures involve significant assets. Depending on the identity of the purchaser, they could increase competition in the solid waste collection and disposal markets in the Chicago metropolitan area. On the other hand, the sale of a portion of these assets to an existing competitor in the market place could further reduce competition in the solid waste collection and disposal market.

According to press accounts, Allied has entered into an agreement to sell the to-be-divested assets to Republic Services Inc. ("Republic"). If the BFI Active transfer station in Evanston, Illinois, the BFI Brooks transfer station in Northbrook, Illinois the BFI Rolling Meadows transfer station in Rolling Meadows, Illinois and the BFI Zion landfill in Zion, Illinois are sold to a single company like Republic that already operates in northern Chicago metropolitan area will be negatively impacted through the loss of one significant competitor. The only other remaining major competitor in northern Cook and Lake Counties would be Waste Management Inc., with Groot Industries existing as a minor nonintegrated (no landfill ownership) competitor.

Focusing on the prospective reduction in the number of competing transfer stations in the SWANCC territory illustrates the problems that are likely to result if Republic buys the disposal assets described above. The heavy congestion in the Chicago metropolitan area (specifically including northern Cook County) reduces to about 10–15 miles (for FEL trucks) and 8–10 miles (for roll-off trucks) the distance that a commercial waste collection firm can travel economically to a transfer station. Indeed, BFI's own transfer station development over the past two years demonstrates the limited economic travel distance for REL and FEL trucks. The three facilities that BFI developed were the Rolling Meadows transfer station, Melrose Park transfer station and the DuKane transfer station. These facilities are all within 15 miles of each other (see attachment A) and demonstrate the reduced economic travel time in the Chicago metropolitan area.[1]

In the attached map (Attachment B), we have shown the locations and owners of the privately operated transfer stations and landfills in northern Cook and Lake Counties. As shown in Attachment A, if Republic is allowed to purchase all of the proposed divested Allied-BFI assets in northern Cook and Lake Counties, the number of significant competitors for the disposal of solid waste would be reduced from three to two; Groot Industries would remain a minor nonintegrated competitor.[2]

With the choices of realistic disposal options reduced from three to two significant competitors, price competition will be

[1] If transporting waste 50 miles was economical in the Chicago area (as the Department of Justice suggested generally in ¶ 37 of the Complaint) then BFI would have built one large transfer station instead of three to reduce capital costs. In fact, BFI's Melrose Park transfer station has the capacity to handle all of the waste transferred through the three facilities.

[2] In addition, the two nearest transfer stations available for use outside of northern Cook and Lake Counties would be the to-be-divested BFI DuKane and BFI Melrose transfer stations, which Republic also proposes to buy. The closest landfills would be the Waste Management Woodlands landfill in Kane County and the Waste Management Pheasant Run landfill in Kenosha County, Wisconsin. The nearest fully integrated competitor would be the Allied National Transfer Station located in the City of Chicago, over 22 miles away through heavy Chicago traffic.

reduced, and the firms that collect and haul commercial and business waste in the SWANCC territory will face the prospect of substantial price increases as a result. Significantly, the Complaint in this matter acknowledges that having only two significant competitors and one minor competitor would be unacceptable; see ¶ 50, complaining that "In Chicago, the merger would reduce from four to three the number of significant competitors in the disposal of MSW * * *"

For the above reasons, the Agency respectfully requests that the divested assets located in northern Cook and Lake Counties not be sold to a company that already has a disposal presence, either a transfer station or landfill, in that area. Otherwise, the proposed divestiture is likely to have the perverse result of itself substantially reducing competition and increasing costs for business and commercial customers in northern Cook and Lake Counties.

II. The Proposed Divestiture of BFI's Small Container Commercial Collection Routes Would Disrupt Current Efficient Residential Waste Collection in Several Communities

A second and distinct problem would result from the provision in the proposed consent decree that would require Allied-BFI to divest all of BFI's small container commercial waste collection service in the Chicago metropolitan area. The DOJ defines this service in the Competitive Impact Statement as "* * * the collection of MSW from commercial businesses such as offices and apartment buildings and retail establishments * * *".

The divestiture of all of BFI's small container commercial collection routes would have significant impact on the current franchises and contracts of a number of municipalities in northern Cook County. All municipalities in northern Cook County have either franchises or contracts with a single hauler to collect residential waste—including, to varying degrees, waste from apartment buildings. BFI has four franchises or contracts with SWANCC municipalities pursuant to which BFI collects waste from apartment buildings as part of the arrangement.

Requiring the divestiture of small container commercial collection service that includes residential waste (i.e., from apartment buildings) that is collected as part of a franchise or contract for residential waste would be burdensome to the municipalities involved—for example, by increasing the number of solid waste collection vehicles in the community—and could increase costs due to the loss of route density. Further, it is likely that the relatively small amounts of apartment waste collected separately from other residential waste after the proposed divestitures would need to be combined for further disposal with waste from unknown sources from outside the municipality. That is likely to increase the costs of disposal and the potential environmental liability of these municipalities.

In addition, two BFI municipal franchises or contracts in northern Cook County provide for BFI to collect all residential *and* commercial waste in the jurisdiction. The inclusion of commercial waste as part of a residential contract provides benefits for those municipalities by lowering the cost of residential service and reducing the number of large solid waste vehicles in the community. These benefits are likely to be lost if the commercial component of the service is divested as proposed in the consent decree.

As a result, we respectfully request that small container commercial collection service that is part of a municipal franchise or contact in northern Cook County be excluded from the assets of Allied-BFI to be divested pursuant to the proposed consent decree.

The Agency appreciates the opportunity to provide these comments and would be pleased to provide any additional information that may be helpful.

Respectfully submitted,

C. Brooke Beal,

Executive Director.

Note: Attachments A & B of the letter dated September 2, 1999 from C. Brooke Beal, Executive Director of Solid Waste Agency of Northern Cook County was not able to be published in the **Federal Register** but a copy can be obtained from the U.S. Department of Justice, Document Group, 325 7th Street, NW., Room 215, Washington, DC 20530 or you may call and request a copy at (202) 514–2481.

Solid Waste Agency Of Northern Cook County

December 9, 1999.

Mr. J. Robert Kramer, III, Esquire,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1400 H Street, Suite 3000, Washington DC 20005.

Re Proposed Consent Decree in United States of America v. Allied Waster Industries, Inc. and Browning Ferris Industries, Inc.

Dear Mr. Kramer: The Solid Waste Agency of Northern Cook County (the Agency) is writing to request that the Agency be informed when Allied Waste Industries submits a potential buyer for approval concerning the proposed divested assets located in the Chicago metropolitan area. These assets are:

—BFI Orchard Hills landfill
—BFI Zion landfill
—BFI Active transfer station
—BFI Rolling Meadows transfer station
—BFI Melrose Park transfer station
—BFI DuKane transfer station
—All BFI small container commercial collection routes in Cook, Lake, DuPage, McHenry, and Will counties, Illinois.

As you already know, the Agency submitted previous comments concerning the proposed consent decree on September 2, 1999. Since this time, the proposed sale of the above assets to Republic Services, Inc. has been terminated and through press accounts, another sale to Superior Waste Services has been announced. Furthermore, the details of the proposed sale to Superior were not disclosed as to what assets in the Chicago metropolitan area are included or excluded.

In order for the Agency to provide comments to the Department on the potential impact, either negative or positive, on the solid waste market place that a potential sale would have, the details of the proposed sale or sales of these assets needs to be known.

In conclusion, we respectfully request that the Department inform the Agency of all pending sales of the before mentioned assets prior to the Department granting approval of these sales.

Sincerely,

C. Brooke Beal,

Executive Director.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

C. Brooke Beal,
Solid Waste Agency of Northern Cook County, 1616 East Gold Road, Des Plains, IL 60016.

Re Common on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999))

Dear Mr. Beal: This letter responds to your letters of September 2, 1999 and December 9, 1999, commenting on the Final Judgment in this case on behalf of Solid Waste Agency of Northern Cook County ("Agency"). The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, D.C., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your September 2nd letter, you express concern that the Final Judgment, by ordering divestiture of BFI's small container commercial waste business, may interfere with BFI's existing government franchise contracts which also includes the disposal of the communities' residential waste. The local communities fear that requiring Allied to divest only the franchise commercial waste collection business would, in effect, split the collection business between two firms—the purchaser who would have the franchise commercial waste business; and Allied, which would retain the residential and recycling waste collection services. The communities fear that this will result in the purchaser providing a lower level of service, or result in additional trucks being sent down city streets.

In light of this concern raised by you and others, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the proposed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification of the proposed Final Judgment.

In your December 9th letter, you requested that the Agency be informed of all pending sales of the assets to be divested to the proposed Final Judgment. These assets include the two BFI landfills; five BFI transfer stations; and the BFI small container commercial routes in Cook, Lake, DuPage, McHenry and Will Counties, Illinois. You further state that the Agency would evaluate the potential impact the sales may have on its solid waste marketplace.

Under the terms of the Final Judgment, the defendants must sell all of the relevant disposal and hauling assets described in the Final Judgment to a purchaser or purchasers acceptable to the United States, in its sole discretion. In approving a purchase, we always consider the competitive impact in a local market of that purchaser's acquisition of the hauling or disposal assets.

The Orchard Hills and Zion landfills have been acquired by Superior Services, Inc. a purchaser approved by the United States. Superior has not current hauling or disposal operations in the greater Chicago metropolitan market. The five transfer stations have been divested with the approval of the United States—Superior has acquired four of the transfer stations; and Groot Industries has acquired one.

The BFI small container commercial routes in the five counties have been divested to Superior except for the municipal franchise contracts. These will be retained by Allied if the court approves a modification to the Final Judgment. The United States and Allied have filed a motion to have the court modify the Final Judgment to permit Allied to retain the franchise work which initially had to be divested.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Solid Waste Agency of Lake County, IL

September 1, 1999.

Mr. J. Robert Kramer II,
Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Dear Mr. Kramer: The Solid Waste Agency of Lake County (Agency) is a joint action municipal agency formed to manage solid waste in Lake County Illinois. The Agency is made up of 36 municipalities and Lake County. The Agency has contracts for waste disposal capacity in landfills owned by Browning Ferris Industries (BFI) and Waste Management. The landfills are located within Lake County and nearby in the state of Wisconsin. The Agency also works with its members to obtain solid waste collection services for residents and businesses. In the past, the Agency had contracts with BFI for recycling services provided to commercial accounts with the Village of Gurnee.

The Agency is located within one of the areas (Chicago) where it is alleged that the combination of BFI and Allied would lessen competition. Currently, BFI serves an estimated 42% of the residential population. Allied serves approximately 9% of the residential population. Waste Management and one independent private hauler serve the remaining residential population. It is my opinion that the commercial accounts in Lake County reflect a similar distribution of service.

The Agency reviewed the proposed Final Judgment regarding the merger between Allied Waste Industries (allied) and BFI. Within Lake County, the proposed final judgment will require BFI to divest the Zion Landfill and its commercial waste collection routes. In northern Cook County, BFI will divest transfer stations in Melrose Park, Rolling Meadows, Brooks-Northbrook and Active-Evanston. These transfer stations serve a portion of southern Lake County. Further, FBI will divest the DuKane transfer station in DuPage County which serves the Southwest portion of Lake County.

According to press reports and informal contacts between the Agency and BFI, these assets will be sold to Republic Waste Industries. As part of the sale, Allied will be allowed to use these divested facilities to dispose of waste for a period of two years. This agreement will enable Allied to maintain waste collection service to over 50% of Lake County residential customers. This represents a population of over 300,000 residents.

The divestiture brings to Lake County, a waste company with little operating experience in the County. It also places that company in a position to effectively replace the former Allied/BFI Company at the expiration of the two-year period. The newly merged Allied Company will be unable to retain its current level of service in Lake County without disposal and transfer assets. The economic conditions created by the Final Judgment will also affect the company's ability to add new customers because of the loss of these disposal assets. Allied will be required to develop new disposal assets in Lake County to remain competitive. A more likely scenario is that Allied will sell their remaining assets to Republic and cease competitive marketing in Lake County.

The realities of today's waste market lend itself to vertical integration of assets. Waste companies rely upon their assets to manage the waste collected. Optimization enables companies to deliver services at the lowest cost to the customer. A review of the waste disposal records, at the two landfills in Lake County, reveals little cross utilization of assets by competing companies. This means that companies "drive by" landfill sites owned by competitors to dispose of waste at their own disposal sites. Vehicles drive twenty to thirty additional roundtrip miles to use their facilities.

The Chicago market is unique to others within the U.S., because public participation in the market is facilitated through contractual arrangements solicited in a competitive bid process. Public entities, by in large, do not compete with the private sector for waste collection opportunities. Public entities cannot raise the capital necessary to develop, operate and maintain a waste collection system. Therefore, the industry consolidation represents a considerable threat to a competitive market. The new Allied Company will be unable to effectively participate in this process because of a lack of disposal/transfer capacity.

It is unfortunate that this Final Judgement requires the divesture of these assets by Allied. The Melrose Park, DuKane and Rolling Meadows transfer facilities were developed within the last two years. They represent, to BFI, the optimum collection and disposal configuration to serve their customer base. While Republic has control of these facilities, Lake County customers will lose a choice in waste collection service provided by the formerly independent BFI and Allied. The only other waste disposal or transfer site not controlled by Republic or Waste Management is located in Racine, Wisconsin, which is approximately 25 miles from Lake County. This facility cannot serve southern Lake County in any competitive situation without a transfer station asset located in either Lake or northern Cook Counties. The travel realities of the metropolitan Chicago area are that travel over 10 to 15 miles rarely can be achieved in an efficient manner.

It is noted that the Department of Justice (DOJ) took unusual pains to describe the impacts upon the commercial waste collection market. Yet, the DOJ gave little consideration to the residential collection routes which are serviced by essentially the same type of vehicles in terms of weight and size. The divestiture will inevitably result in these Allied assets being sold to Republic after the two year period. Municipalities, with contracts formerly with BFI or Allied, will be faced with renewing or extending those contracts or re-bidding those contracts in a competitive environment with one less competitor.

It is an unintended consequence that the Final Judgement will not foster a truly competitive environment. Allied must develop additional and controversial waste disposal assets within Lake County or northern Cook County. The cost of these new assets will be borne by Allied customers. The impact of the transfer vehicles and other assets will be borne by the host communities. As the Complaint for Injunctive Relief noted these facilities are expensive and difficult to site. Local public opposition can be strenuous and difficult to overcome.

It seems that a re-examination of the Final Judgement is needed to maintain a competitive environment. Allied should be able to maintain at least one or two of its transfer station assets to allow it to compete.

This will diminish the need to develop new transfer/disposal facilities and optimize its service to their customer base. Alternatively, the Final Judgement can be modified to require that Allied divest its Chicago assets to at least a third party (in addition to Republic) to foster competition. If the divestiture is maintained as proposed, Republic Waste Industries will effectively replace two solid waste companies. Therefore, the proposed settlement is not "within the reaches of the public interest".

This Agency will provide additional information upon request by the Department of Justice. Attached is a study of the divestiture, which was provided to the Agency Board of Directors on August 25, 1999.

Very truly yours,

Andrew H. Quigley,

Executive Director.

CC: Richard Durbin, U.S. Senator; Peter Fitzgerald, U.S. Senator; Philip Crane, U.S. Representative; John Porter, U.S. Representative; Henry Hyde, U.S. Representative; Dorothy R. Schofield, SWALCO Board Chairman, Lake Barrington; Marilyn Shineflug, SWALCO Executive Committee Chairman, Antioch; Bill Pailey, SWALCO Legislative Committee Chairman, Kildeer; Jim Labelle, Lake County Board Chairman; Larry Clark, SWALCO General Counsel.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Andrew H. Quigley,

Executive Director, Solid Waste Agency of Lake County, IL, 1300 N. Skokie Highway, Suite 103, Gurnee, IL 60031.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Quigley: This letter responds to your letter of September 1, 1999 commenting on the Final Judgment in this case on behalf of SWALCO. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the divestiture of the disposal assets in the greater Chicago metropolitan market required by the Final Judgment will lead to less competition. You state that the purchaser of these assets will not be competitive because of a lack of disposal assets—a landfill and/or a transfer station. You also express concern that municipalities, who have commercial franchise contracts with BFI or Allied will be placed in a less competitive environment if Allied is forced to divest these franchise contracts.

Divestiture of the landfills (Orchard Hills and Zion) that serve municipalities and customers in Lake County has been made to a purchaser approved by the United States—Superior Services Inc., a company with no current hauling or disposal operations in the greater Chicago metropolitan market. The five waste transfer stations have also been divested with the approval of the United States. Superior has acquired four of the transfer stations and Groot Industries has acquired one. The divestiture of these disposal assets should make the new purchasers major competitive forces in Lake County and the surrounding countries.

In light of the concern raised by you and others regarding the possible divestiture of municipal franchise contracts, the United States and Allied reached agreement that instead of the municipal franchise contracts being divested, Allied would be permitted to retain the municipal franchise contracts and divest instead additional assets which are not required to be divested by the propsoed modified Final Judgment. These additional assets include residential and rolloff waste hauling business. These assets have been acquired by Superior Services Inc., a purchaser approved by the United States. The United States has filed a motion with the Court to modify the proposed Final Judgment which would permit Allied to retain the municipal franchise contracts initially required to be divested. Allied has agreed to keep separate the municipal franchise contracts, which were required to be divested, until the Court's acceptance of the modification to the proposed Final Judgment.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C.16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

House of Representatives

August 13, 1999.

Mr. J. Robert Kramer,

Antitrust Division, U.S. Department of Justice, 1401 H Street NW, Washington, DC 20005

Dear Mr. Kramer: I am writing on behalf of the Village of Fairview regarding the Department of Justice proposed rules that Allied Waste Industries must sell certain landfills in connection with its acquisition of Browning Ferris Industries (BFI). The Village of Fairview has expressed objections to the requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview.

Enclosed is a copy of a letter from the Village of Fairview regarding their concerns with the proposed Allied consent decree. I would appreciate the Department of Justice consideration and review of this issue.

Thank you for your assistance and attention to this matter.

Sincerely,

Lane Evans,

Member of Congress.

Enclosures.

Village of Fairview

August 9, 1999.

Mr. J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20005.

In re Allied/BFI Consent Decree, Case No. 1.99CV01962.

Dear Mr. Kramer: The purpose of this letter is to provide comment on the proposed consent decree which requires Allied Waste Industries, Inc. to sell certain assets in connection with its acquisition of Browning Ferris Industries, Inc. Specifically, the Village of Fairview strenuously objects to the Department of Justice requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview, Illinois.

In your analysis of the Chicago market, it is stated that Allied's divestiture of the Spoon Ridge Landfill would insure that the benefits of competition, lower prices and better service would be preserved. It is the opinion of the Village of Fairview that the Spoon Ridge Landfill is not an important waste disposal operation for the Chicago market. Requiring the divesture removes an important potential economic development opportunity for the Village of Fairview.

Fairview and Fulton County Overview

The Village of Fairview is a small west central Illinois community located in Fulton County, nearly 200 miles from Chicago. Fairview has a population of approximately 500 people.

At the turn of this century, Fulton County was a prosperous, dynamic area. Agriculture was productive and viable. A large number of underground coal mines were attracting immigrant to the area, increasing the population and wealth of Fulton County. International Harvester Company was growing in Canton, the largest city in the county.

A number of significant changes to the area occurred in the 1950's. Most were negative except for Caterpillar's expansion in Peoria, Illinois. The Mining operations changed from shaft to strip-mining. This mining method was much more efficient and used a much smaller work force. During this period, Caterpillar expanded in the Peoria area and many Fairview and Fulton County workers were able to secure work at Caterpillar. Through the 1960's and 1970's, about 2,500 people worked for International Harvester; about 1,000 people worked for several large strip mines in Fulton County; and about 1,700 people commuted to work for Caterpillar in Peoria.

The economic base of the area diminished in the period between 1980 and 1984. All of the large strip mines were closed. The International Harvester Plant in Canton closed in 1983. Caterpillar reduced employment by about 15,000 people in the 1980's. The net effect was that the number of Caterpillar employees in Fulton County dropped from about 1,700 people to about 900 people. Consequently, there was a loss of over 4,000 well paid jobs in Fulton County in the 1980's.

The overall effect of these events was devastating to the area. The population declined, property values plummeted, young people moved away, and the Fairview and Fulton County area realized that the prosperity had ended.

Project Background

In 1989, Gallatin National Company received approval from the Village of the Fairview to site a landfill within the Village limits. A siting, or host community, agreement was signed which secured for the Village a tipping fee of $1.00 per ton of garbage disposed at the landfill. The landfill was sited on a 3,000 acre tract of derelict, unreclaimed strip-mine property which, at that time, generated a paltry $5,000.00 in property taxes. The landfill was permitted by the Illinois Environmental Protection Agency in 1991 and opened for business in May, 1993.

Gallatin planned to take advantage of the impending closure of Chicago area landfills and provide a large regional landfill for the Chicago market. This plan failed when some of the Chicago market landfills expanded, garbage volumes dropped due to recycling, and Gallatin had no market hauling presence. The failure to competitively transport waste from the Chicago market to Fairview led to the demise of Gallatin National Company and the sale of its landfill to BFI.

BFI purchased the landfill from Gallatin National Company in December, 1994. It was understood that BFI needed the landfill because its sole operating Chicago area landfill, Mallard Lake, was rapidly filling up. Further, BFI's two other Chicago market landfills located in Davis Junction and Zion were closed and having difficulty obtaining siting approval for expansion. The Spoon Ridge Landfill in Fairview was intended to be the long term Chicago market disposal site for BFI.

Chicago market changes occurred shortly after the purchase of the Spoon Ridge Landfill by BFI. It was determined that the Mallard Lake Landfill had more site life than previously predicted. Also, BFI's landfills located in Davis Junction and Zion both received expansion siting approval. Additionally, BFI's competitors obtained expansion siting approval for landfills close to the Chicago market. These changes resulted in a glut of landfill air space in the Chicago market and rendered Spoon Ridge Landfill unable to compete.

In June, 19998, BFI decided to close Spoon Ridge Landfill after reportedly losing millions of dollars and determining that the facility could not, at least in the short term, compete in the Chicago market.

New York City

In 1998, the Department of Sanitation of the City of New York solicited a request for proposals for the disposal of approximately 13,000 tons per day of residential garbage. This request for proposals was made pursuant to a court order to close the Fresh Kills Landfill in the borough of Staten Island in 2001. BFI responded to the request for proposals and named Spoon Ridge Landfill as one of the locations at which it would dispose of the New York waste. Included in the response to the request for proposals was an endorsement of the project by the Village of Fairview. A copy of the letter from the Village of Fairview to the New York Department of Sanitation supporting and endorsing the disposal of New York City waste at Spoon Ridge Landfill is attached.

The New York Department of Sanitation awarded BFI the opportunity to negotiate for the disposal of 3,900 tons per day of New York garbage. BFI hoped to secure a contract from the Department of Sanitation at the end of this year. As BFI further analyzed their New York proposal, they reported that the Spoon Ridge Landfill appeared to be the most efficient and logical location for the disposal of New York waste.

If New York waste were disposed at the Spoon Ridge Landfill, the economic benefits to the VIllage of Fairview and the surrounding area would be tremendous. The estimated host community tipping fees would be approximately $1,000,000.00 per year. Property taxes approaching $250,000.00 per year and approximately 40 good paying jobs would also be secured for the area. In order for Allied to executive the New York proposal which it inherited from BFI, Allied must retain ownership of Spoon Ridge Landfill.

Summary

The Village of Fairview strongly objects to the Department of Justice requirement that Allied divest itself of the Spoon Ridge Landfill. Two companies, Gallatin National and BFI, have failed to make the landfill competitive in the Chicago market. Therefore, Spoon Ridge Landfill should not be considered important in minimizing the Department of Justice anti-competitive concerns for the market.

The economic development opportunity for the Village of Fairview and surrounding area from the receipt of New York garbage at Spoon Ridge Landfill is staggering. With a population of just 500 in an economically depressed county, the millions of dollars in revenue realized from this project would provide a once in a lifetime financial boost to the area.

Therefore, it is respectfully requested that the Department of Justice reconsider and change its consent decree with regard to the requirement that Allied divest itself of the Spoon Ridge Landfill.

Sincerely,

Village of Fairview

Gerald R. Hilton,

President.

cc: U.S. Senator Richard J. Durbin; U.S. Senator Peter G. Fitzgerald; Congressman Lane Evans; Governor George H. Ryan; State Senator George P. Shadid; State Representative Michael K. Smith; Mr. Thomas VanWeelden, President, Allied Waste Industries, Inc.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Honorable Lane Evans,

U.S. House of Representatives, 2335 Rayburn Building, Washington, DC 20515–1317.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999)).

Dear Congressman Evans: This letter responds to your letter of August 13, 1999 commenting on the Final Judgment in this case on behalf of the Village of Fairview. You enclosed a letter from Gerald R. Hilton, president of the Village of Fairview. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

I have responded directly to Mr. Hilton addressing his concerns. A copy of my response to Mr. Hilton is enclosed. Thank you for bringing the Village of Fairview's concerns to our attention. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and those of Mr. Hilton, and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Gerald R. Hilton,

President, Village of Fairview, P.O. Box 137, Fairview, IL 61432.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999)).

Dear Mr. Hilton: This letter responds to your letter of August 9, 1999 commenting on the Final Judgment in this case on behalf of the Village of Fairview. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for

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effective relief and might undermine the tax base of the local communities. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago area to make it viable. By closing the landfill, BFI reduced its assessed value, and thus, the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of new York City's residential waste.

You stated that the future viability of Spoon Ridge depends on its ability to attract waste from New York City. By requiring Allied to divest this landfill to an independent competitor, ostensibly to help alleviate competitive problems in the Chicago market, the Final Judgment unnecessarily limits Allied's ability to complete for the contract to dispose of New York City's waste, and undermines the changes of Spoon Ridge ever opening again.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit the landfill to competing in that market. Leaving Spoon Ridge with Allied, which already controls nearly 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Village of Fairview

August 9, 1999.

Mr. J. Robert Kramer, II,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20005.

In Re Allied/BFI Consent Decree Case No. 1.99CV01962

Dear Mr. Kramer: The purpose of this letter is to provide comment on the proposed consent decree which requires Allied Waste Industries, Inc. to sell certain assets in connection with its acquisition of Browning Ferris Industries, Inc. Specifically, the Village of Fairview strenuously objects to the Department of Justice requirement that Allied divest itself of the Spoon Ridge Landfill located in Fairview, Illinois.

In your analysis of the Chicago market, it is stated that Allied's divestiture of the Spoon Ridge Landfill would insure that the benefits of competition, lower prices and better service would be preserved. It is the opinion of the Village of Fairview that the Spoon Ridge Landfill is not an important waste disposal operation for the Chicago market. Requiring the divestiture of the Spoon Ridge Landfill will eliminate an opportunity for Allied to send waste from New York City to Spoon Ridge as planned by BFI. As such, the divestiture removes an important potential economic development opportunity for the Village of Fairview.

Fairview and Fulton County Overview

The Village of Fairview is a small west central Illinois community located in Fulton County, nearly 200 miles from Chicago. Fairview has a population of approximately 500 people.

At the turn of this century, Fulton County was a prosperous, dynamic area. Agriculture was productive and viable. A large number of underground coal mines were attracting immigrants to the area, increasing the population and wealth of Fulton County. International Harvester Company was growing in Canton, the largest city in the county.

A number of significant changes to the area occurred in the 1950's. Most were negative except for Caterpillar's expansion in Peoria, Illinois. The mining operations changed from shaft to strip-mining. This mining method was much more efficient and used a much smaller work force. During this period, Caterpillar expanded in the Peoria area and many Fairview and Fulton County workers were able to secure work at Caterpillar. Through the 1960's and 1970's, about 2,500 people worked for International Harvester; about 1,000 people worked for several large strip mines in Fulton County; and about 1,700 people commuted to work for Caterpillar in Peoria.

The economic base of the area diminished in the period between 1980 and 1984. All of the large strip mines were closed. The International Harvester Plant in Canton closed in 1983. Caterpillar reduced employment by about 15,000 people in the 1980's. The net effect was that the number of Caterpillar employees in Fulton County dropped from about 1,700 people to about 900 people. Consequently, there was a loss of over 4,000 well paid jobs in Fulton County in the 1980's.

The overall effect of these events was devastating to the area. The population declined, property values plummeted, young people moved away, and the Fairview and Fulton County area realized that the prosperity had ended.

Project Background

In 1989, Gallatin National Company received approval from the Village of Fairview to site a landfill within the Village limits. A siting, or host community, agreement was signed which secured for the Village a tipping fee of $1.00 per ton of garbage disposed at the landfill. The landfill was sited on a 3,000 acre tract of derelict, unreclaimed strip-mine property which, at that time, generated a paltry $5,000.00 in property taxes. The landfill was permitted by the Illinois Environmental Protection Agency in 1991 and opened for business in May, 1993.

Gallatin planned to take advantage of the impending closure of Chicago area landfills and provide a large regional landfill for the Chicago market. This plan failed when some of the Chicago market landfills expanded, garbage volumes dropped due to recycling, and Gallatin had no market hauling presence. The failure to competitively transport waste from the Chicago market to Fairview led to the demise of Gallatin National Company and the sale of its landfill to BFI.

BFI purchased the landfill from Gallatin National Company in December, 1994. It was understood that BFI needed the landfill because its sole operating Chicago area landfill, Mallard Lake, was rapidly filling up. Further, BFI's two other Chicago market landfills located in Davis Junction and Zion were closed and having difficulty obtaining siting approval for expansion. The Spoon Ridge Landfill in Fairview was intended to be the long term Chicago market disposal site for BFI.

Chicago market changes occurred shortly after the purchase of the Spoon Ridge Landfill by BFI. It was determined that the Mallard Lake Landfill had more site life than previously predicted. Also, BFI's landfills located in Davis Junction and Zion both received expansion siting approval. Additionally, BFI's competitors obtained expansion siting approval for landfills close to the Chicago market. These changes resulted in a glut of landfill air space in the Chicago market and rendered Spoon Ridge Landfill unable to compete.

In June, 1998, BFI decided to close Spoon Ridge Landfill after reportedly losing millions of dollars and determining that the facility could not, at least in the short term, compete in the Chicago market.

New York City

In 1998, the Department of Sanitation of the City of New York solicited a request for proposals for the disposal of approximately 13,000 tons per day of residential garbage. This request for proposals was made pursuant to a court order to close the Fresh Kills Landfill in the borough of Staten Island in 2001. BFI responded to the request for proposals and named Spoon Ridge Landfill as one of the locations at which it would dispose of the New York waste. Included in the response to the request for proposals was an endorsement of the project by the Village of Fairview. A copy of the letter from the Village of Fairview to the New York Department of Sanitation supporting and endorsing the disposal of New York City waste at Spoon Ridge Landfill is attached.

The New York Department of Sanitation awarded BFI the opportunity to negotiate for the disposal of 3,900 tons per day of New York garbage. BFI hoped to secure a contract from the Department of Sanitation at the end of this year. As BFI further analyzed their New York proposal, they reported that the Spoon Ridge Landfill appeared to be the most efficient and logical location for the disposal of New York waste.

If New York waste were disposed at the Spoon Ridge Landfill, the economic benefits to the Village of Fairview and the surrounding area would be tremendous. The estimated host community tipping fees would be approximately $1,000,000.00 per year. Property taxes approaching $250,000.00 per year and approximately 40 good paying jobs would also be secured for the area. In order for Allied to execute the New York proposal which it inherited from BFI, Allied must retain ownership of Spoon Ridge Landfill.

Summary

The Village of Fairview strongly objects to the Department of Justice requirement that allied divest itself of the Spoon Ridge Landfill. Two companies, Gallatin National and BFI, have failed to make the landfill competitive in the Chicago market. Therefore, Spoon Ridge Landfill should not be considered important in minimizing the Department of Justice anti-competitive concerns for the market.

The economic development opportunity for the Village of Fairview and surrounding area from the receipt of New York garbage at Spoon Ridge Landfill is staggering. With a population of just 500 in an economically depressed county, the millions of dollars in revenue realized from this project would provide a once in a lifetime financial boost to the area.

Therefore, it is respectfully requested that the Department of Justice reconsider and change its consent decree with regard to the requirement that Allied divest itself of the Spoon Ridge Landfill.

Sincerely,

Village of Fairview,

Gerald R. Hilton,

President.

cc: U.S. Senator Richard J. Durbin, U.S. Senator Peter G. Fitzjerald, Congressman Lane Evans, Governor George H. Ryan, State Senator George P. Shadid, State Representative Michael K. Smith, Mr. Thomas VanWeelden, President, Allied Waste Industries, Inc.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Gerald R. Hilton,
President, Village of Fairview, P.O. Box 137, Fairview, IL 61432.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CA 1962 (D.D.C., July 21, 1999).,

Dear Mr. Hilton: This letter responds to your letter of August 9, 1999 commenting on the Final Judgment in this case on behalf of the Village of Fairview. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC, would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for effective relief and might undermine the tax base of the local communities. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago area to make it viable. By closing the landfill, BFI reduced its assessed value, and thus the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of New York City's residential waste.

You stated that the future viability of Spoon Ridge depends on its ability to attract waste from New York City. By requiring Allied to divest this landfill to an independent competitor, ostensibly to help allievate competitive problems in the Chicago market, the Final Judgment unnecessarily limits Allied's ability to compete for the contract to dispose of New York City's waste, and undermines the chances of Spoon Ridge ever opening again.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit the landfill to competing in that market. Leaving Spoon Ridge with Allied, which already controls nealry 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Purusant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 169d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

United States Senate

October 22, 1999.

Mr. Joel Klein,
Assistant Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., #3109, Washington, DC 20530.

Dear Mr. Klein: Enclosed you will find a copy of a letter from a constituent who is concerned about an order issued by the Department of Justice that requires the sale of those Spoonridge landfill to Republic Waste. The order was issued in conjunction with the buyout of B.F.I. by Allied Waste.

Please provide an explanation of this decision to Mr. Taylor, and send a copy of your respond to David Lieber in my Washington office.

Thank you for your time and consideration.

Sincerely,

Richard J. Durbin,

United States Senator.

Barry Taylor

August 11, 1999.

Dear Sir: I am writing you in an effort to enlist your help in maintaining the financial stability of the village of Farivew Illinois. The United States Department of Justice has issued an order in the buyout of B.F.I. by Allied Waste which would require the sale of Spoonridge landfill to Republic Waste. They claim the retention of Spoonridge by Allied would create a monopoly situation in the Chicago market. This is not true, Spoonridge was originally built to service the Chicago metro area. But changes in the industry made this an unprofitable proposition.

B.F.I. then changed their strategy and decided to seek refuse from all over the country. This move was endorsed by both the village and county boards. As it began to look like the plan was working (B.F.I. hearing a contract with New York city) the sale took place and the justice department stepped in. It now appears Republic Waste will be purchasing Spoonridge. With Republic having ample landfill space in the Chicago market we believe Spoonridge will be indefinitely mothballed.

Fairview and B.F.I. had been participating in a public private partnership, which has been a great help to the village in providing needed services to the citizens. The fees paid by B.F.I have enabled the village to install a new water system. This was made necessary because the E.P.A. had determined our water to be unfit to drink. If the landfill is mothballed and the revenues to the village are lost it will cause a severe budge crisis.

We are against monopolies and the high prices they cause. But we feel that the Department of Justice has not gotten the correct picture in this case. If the order stands we feel the only ones to suffer will be the citizens of he Fairview area. The loss of the landfill revenue and the possible reduction in property taxes will endanger the village, school system and the other taxing bodies that depend on these funds. It is our hope that you will help persuade the Department of Justice to take a closer look at this situation. As a small village we are trying to provide quality of life without putting undo strain on the taxpayers. We hope you can help us achieve our goal.

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Thank You,

Barry Taylor,

Fairview Village Trustee.

Barry Taylor

August 8, 1999.

Subject: J Robert Kramer re Allied/BFI consent decree.

Dear Sir: I am writing you to protest a ruling by your agency that was meant to prevent a monopoly from being formed in the Chicago area. As a small part of this order Allied is ordered to sell the Spoonridge landfill in Fairveiw Illinois. The result of this action will not effect the price of waste disposal in the Chicago area, but will instead devestate a small rural community in west central Illinois. The Spoonridge landfill was built to service the Chicago metro area, but this never became finacialy competitive. B.F.I. then changed their strategy to attract waste from other parts of the country. This move was endorsed by both the village and county boards. As this process was nearing completion with a contract from New York city we are derailed by a ruling from your agency. The sell of this facility to Republic Waste will, we fear this will leave the site mothballed and eliminate the finacial benefit to the villiage. These funds are being used to pay for a new water system for the villiage which was forced upon us by the E.P.A.

Your agency's ruling is going to force the village of Fairview into near bankruptcy, while in no way changing the balance of waste disposal in the Chicago area. I plead with you to have your people review and dig a little deeper into this issue, before they make the citizens of Fairview pay a high price for Spoonridge being lumped into the Chicago area without any basis in fact.

Thank You,

Barry Taylor,

Village Trustee, Fairview Il.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Barry Taylor,
Fairview Village Trustee, 580 Main Street, Box 261, Fairview, IL 61432..

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Mr. Taylor: This letter responds to your letters of August 8 and 11, 1999 commenting on the Final Judgment in this case on behalf of the Village of Fairview. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste in the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competitors in this market for which relief was sought.

In your letter, you express concern that the Final Judgment, by requiring Allied to divest the Spoon Ridge landfill, is unnecessary for effective relief and might undermine the tax base of the local communities. The Spoon Ridge landfill is a relatively new site and the largest landfill in the State of Illinois. BFI recently closed the landfill because it found that the landfill was unable to attract enough waste from the Chicago are to make it viable. By closing the landfill, BFI reduced its assessed value, and thus, the taxes it paid to local communities. BFI intended to reopen the landfill if it obtained a long-term contract to dispose of New York City's residential waste.

You stated that the future viability of Spoon Ridge depends on its ability to attract waste from New York City. By requiring Allied to divest this landfill to an independent competitor, ostensibly to help alleviate competitive problems in the Chicago market, the Final Judgment unnecessarily limits Allied's ability to complete for the contract to dispose of New York City's waste, and undermines the chances of Spoon Ridge ever opening again.

The fact is that requiring Allied to divest Spoon Ridge to a new competitor in no way prevents Allied or any other firm from later contracting with the new owner to dispose of any New York City's waste. Indeed, the new owner would be free to make the landfill's disposal capacity available to any person who wishes to bid and enhance competition for the contract to dispose of New York City's waste. If the new owner believes, however, that the space in the landfill is much more valuable to use in competing for the disposal of waste from the city of Chicago, then the new owner can choose to commit to landfill to competing in that market. Leaving Spoon Ridge with Allied, which already controls nearly 35% of all disposal capacity in the greater Chicago metropolitan market, would ensure that a single firm could dominate waste disposal, and therefore, set the price of disposal in the Chicago market. While this may make the landfill more valuable to the local community, it would adversely affect the prices paid by consumers for the disposal of their municipal solid waste.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comments and this response will be published in the Federal Register and filed with the Court.

CC: Office of the Honorable Richard J. Durbin, ATTN.: David Lieber, United States Senate, 364 Russell Senate Office Building, Washington, DC 20510–1304.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

McHenry County Department of Planning and Development

December 14, 1999.

Mr. J. Robert Kramer, III, Esquire,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, Suite 3000, Washington, DC 20005.

Re Proposed Consent Decree in United States of America v. Allied Waste Industries, Inc. and Browning Ferris Industries, Inc. (Civil No. 1:99CV01962).

Dear Mr. Kramer: We respectfully request that the Solid Waste Sector of the McHenry County Department of Planning & Development (Department) be informed of all pending sales of the following assets prior to your Division granting final approval of the sales. The details of the proposed sale or sales of these assets would be used by this Department to evaluate the potential impact the sales may have on our solid waste market place. If an impact has been determined, the Department would submit comments, either negative or positive, for your review prior to final approval. The assets of concern in the Chicago Metropolitan area are:

- Two (2) BFI Landfills;
- Five (5) Transfer Stations; and
- All BFI small container commercial collection routes in Cook, Lake, DuPage, McHenry, and Will counties, Illinois.

Thank you, in advance, for your assistance in this matter. I may be reached at (815) 334–4560 or by e-mail at lmbuckle@co.mchenry.il.us.

Sincerely,

Leonore Buckley,

CPG, Solid Waste Coordinator.

U.S. Department of Justice

Antitrust Division

May 10, 2000.

Leonore Buckley,
Solid Waste Coordinator, Department of Planning and Development, McHenry County Government Center, Annex Building A, 2200 North Seminary Avenue, Woodstock, IL 60098.

Re Comment on Proposed Final Judgment in (United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc. No. 99 CV 1962 (D.D.C., July 21, 1999).

Dear Ms. Buckley: This letter responds to your letter of December 14, 1999 commenting on the Final Judgment in this case on behalf of the Department of Planning and Development of McHenry County. The Complaint in this case charged, among other things, that Allied's acquisition of BFI would substantially lessen competition in the collection or disposal of small container commercial waste the greater Chicago metropolitan market. The proposed modified Final Judgment, now pending in federal district court in Washington, DC., would settle the case by requiring the defendants to divest a number of waste collection routes and waste disposal facilities in the greater Chicago metropolitan market. This relief, if approved by the Court, would establish one or more new competition in this market for which relief was sought.

In your letter, you request that the Department of Planning and Development ("Department") be informed of all pending sales of the assets to be divested pursuant to the proposed Final Judgment. These assets include the two BFI landfills; five BFI transfer stations; and the BFI small container commercial routes in Cook, Lake, DuPage, McHenry and Will Counties, Illinois. Your

further state that the Department would evaluate the potential impact the sales may have on its solid waste marketplace.

Under the terms of the Final Judgment, the defendants must sell all of the relevant disposal and hauling assets described in the Final Judgment to a purchaser or purchasers acceptable to the United States, in its sole discretion. In approving a purchase, we always consider the competitive impact in the local market of that purchaser's acquisition of the hauling or disposal assets.

The Orchard Hills and Zion landfills have been acquired by Superior Services, Inc. a purchaser approved by the United States. Superior has no current hauling or disposal operations in the greater Chicago metropolitan market. The five transfer stations have also been divested with the approval of the United States—Superior has acquired four of the transfer stations, and Groot Industries has acquired one.

The BFI small container commercial routes in the five counties have been divested to Superior except for the municipal franchise contracts. These will be retained by Allied if the court approves a modification to the Final Judgment. The United States and Allied have filed a motion to have the court modify the Final Judgment to permit Allied to retain the franchise work which initially had to be divested.

Thank you for bringing your concerns to our attention, and we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), as copy of your comments and this response will be published in the Federal Register and filed with the court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

[FR Doc. 00–13019 Filed 06–06–00; 8:45 am]

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Federal Register

Wednesday,
June 7, 2000

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 11 et al.
Type Certification Procedures for Changed Products; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, and 25

[Docket No. 28903; Amdt. No. 11–45, 21–77, 25–99]

RIN 2120–AF68

Type Certification Procedures for Changed Products

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document amends the procedural regulations for the certification of changes to type certificated products. These amendments affect changes accomplished through either an amended type certificate or a supplemental type certificate. The amendments are needed to address the trend toward fewer products that are of completely new design and more products with multiple changes to previously approved designs. This final rule action will enhance safety by applying the latest airworthiness standards, to the greatest extent practicable, for the certification of significant design changes of aircraft, aircraft engines, and propellers.

DATES: Effective June 7, 2000. Mandatory compliance dates are December 10, 2001 for transport category airplanes and restricted category airplanes that have been certified using transport category standards, and December 9, 2002 for all other category aircraft and engines and propellers. Comments on the information collection requirements and the Regulatory Evaluation section, which includes the regulatory flexibility analysis, must be submitted on or before August 7, 2000.

ADDRESSES: Comments for this final rule should be mailed or delivered, in triplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 28903, Room 915G, 800 Independence Avenue, SW, Washington, DC 20591. Comments submitted must include the regulatory docket or amendment number. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed or examined in Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Randall Petersen, Certification Procedures Branch (AIR–110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9583.

SUPPLEMENTARY INFORMATION:

Compliance Dates

This final rule requires that major changes to transport category airplanes and restricted category airplanes that have been certified using transport category standards, be evaluated under the new rules beginning 18 months from today's date of publication in the **Federal Register**. Major changes to all other category aircraft and engines and propellers are required to be evaluated under the new rules beginning 30 months from today's date of publication in the **Federal Register**.

Comments Invited

In the NPRM, the FAA certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA has revisited the question of the potential impact on small entities and has determined that an analysis under the Regulatory Flexibility Act of 1980, as amended, is required. This analysis and a complete analysis of potential costs and benefits are set out in the Regulatory Evaluation Summary portion of this preamble. As stated in this final rule document, the FAA determined that there could be a significant impact on a substantial number of small entities. Additionally, the cost analysis of the regulatory evaluation has undergone a substantial revision, and comments on the entire regulatory evaluation are requested.

Since this rule is being adopted without prior notice and prior public comment on the increased information collection requirements listed in the Paperwork Reduction Act section of this document, interested persons are also invited to submit such written data, views, or arguments, as they may desire, relating to the information collection requirements.

Pending the evaluation of the public comments, the FAA has decided to proceed with due diligence. This rule differs from the NPRM and has been revised to address the concerns of the majority of small entities likely to be affected by the rule. The FAA will consider and respond to comments on the Regulatory Flexibility Analysis and the information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 before the compliance dates published in this document.

The FAA will consider all comments received, and will publish in the **Federal Register** a summary of the disposition of those comments and, if appropriate, changes to the rule that may result from consideration of those comments.

Comments must include the regulatory docket or amendment number and must be submitted in triplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket and will be considered by the FAA. The docket is available for public inspection before and after the comment closing date.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 28903." The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

An electronic copy of this final rule may be downloaded, by using a modem and suitable communications software, from: the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm, or the GPO's web page at http://www.access.gpo.gov/nara, for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to: FAA, Office of Rulemaking, Attention: ARM–1, 800 Independence Avenue, SW, Washington, DC 20591; or by telephoning (202) 267–9680. Individuals requesting a copy of this final rule should identify their request with the amendment number or docket number.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Background

Statement of the Problem

Under the regulations in effect prior to the early 1940's, an applicant for a changed product, such as an alternate engine installation, was required to apply for a new type certificate and comply with the standards current at the time of application. This did not present an unreasonable burden on the applicant then because the airworthiness standards did not change appreciably over short periods of time. That is, the standards current at the time of an application for a change were essentially the same as those with which the original product had to comply. Since the early 1940's, however, rapid changes in technology have resulted in significant changes in the airworthiness standards over relatively short periods of time. Therefore, an applicant for an extensive change to a type certificated product, which required a new type certificate, could be faced with complying with safety standards that varied considerably from the standards for the original product. To relieve this situation, the FAA's predecessor agency required an application for a new type certificate only if the change was quite extensive.

In recent years, a trend has developed towards fewer products that involve substantial design changes that would require a new type certificate. In many cases, over a period of time, a series of changes could permissively be made to a product by amending its original type certificate such that the resultant model is substantially different from the original model. Although each changed product in such a series of changes may differ little from its immediate predecessor, the changes could collectively result in a product with considerable differences from the original product. As a result, many changed aeronautical products have not been required to demonstrate compliance with all the recent airworthiness standards. This rule is intended to clarify under what conditions more recent airworthiness amendments need to be applied to changed products.

In order to achieve this goal, the FAA published a proposed rule (Notice No. 97–7; 62 FR 24288, May 2, 1997) to amend the procedural regulations for the certification of changes to type certificated products whether the change is accomplished through an amended type certificate or through a supplemental type certificate. The FAA's purpose in including supplemental type certificates (STC) was to ensure that all significant changes to a type certificated product would follow the same procedure. A related purpose was to avoid creating a loophole that would allow a type certificate (TC) applicant to choose the STC process thereby avoid complying with later amendments.

History of Type Certification

Title 49 U.S.C. 44701 authorizes the FAA Administrator to promote safety of flight of civil aircraft in air commerce by prescribing minimum standards governing the design and construction of aircraft, aircraft engines, and propellers as may be required in the interest of safety, and such minimum standards governing appliances as may be required in the interest of safety.

Under 49 U.S.C. 44704, the FAA may issue type certificates, including supplemental type certificates, for aircraft, aircraft engines, propellers, and certain appliances.

The general certification procedures for products (aircraft, aircraft engines, and propellers) and parts are set forth in 14 CFR part 21 (part 21). As described in §§ 21.13 and 21.15, any interested person may apply for a type certificate by submitting an application accompanied by the required documentation to the FAA. Sections 21.16 through 21.21, 21.101, and 21.115 specify certain regulations and designate the applicable airworthiness standards for type certification of both new and changed products. The term "changed product" is used throughout part 21 and throughout this preamble to include changes that are made through an amended type certificate, as well as those made under a supplemental type certificate. A person who is not the type certificate holder has only the STC option while the type certificate holder has the option of applying either for an amended type certificate or for an STC.

Section 21.17 designates the applicable regulations for the issuance of type certificates. In order to be issued a type certificate, the applicant must show that the product complies with the airworthiness standards contained in one of the following 14 CFR parts, as applicable: Part 23 for normal, utility, acrobatic, and commuter category airplanes; part 25 for transport category airplanes; part 27 for normal category rotorcraft; part 29 for transport category rotorcraft; part 31 for manned free balloons; part 33 for aircraft engines; part 35 for propellers; and part 21 (§ 21.17(b) and (f)) for special classes of aircraft and primary category aircraft, respectively.

The airworthiness standards in these parts of the regulations may be amended as needed to reflect continually changing technology, correct design deficiencies, and provide for safety enhancements. An applicant for a type certificate is required under current § 21.17, with certain exceptions, to show that the product meets the applicable airworthiness standards that are in effect on the date of the application. The exceptions include instances in which the Administrator specifies otherwise, or in which the applicant either elects or is required under specific circumstances to comply with later effective amendments. In addition, the Administrator may prescribe special conditions.

Under § 21.16, special conditions may be prescribed if the Administrator finds that the existing airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of the product to be type certificated relative to the design features considered in the applicable airworthiness standards. Also, under § 21.21(b)(1), if any applicable airworthiness standards are not complied with, an applicant may nevertheless be entitled to a type certificate if the Administrator finds that those standards not complied with are compensated for by factors that provide an equivalent level of safety. Such determinations are commonly referred to as "equivalent safety findings" and are made with respect to the level of safety intended by the applicable standard. In addition, under § 21.21(b)(2), an applicant may be denied a type certificate if the Administrator finds an unsafe feature or characteristic of the aircraft for the category in which type certification is requested, even though the aircraft may comply fully with the applicable airworthiness standards.

Taken together §§ 21.16, 21.17, and 21.21 designate the applicable airworthiness regulations for type certification and accommodate those circumstances when the airworthiness standards do not adequately cover the design features of a product. These sections recognize and balance the following four important considerations:

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(1) The FAA is obligated, under 49 U.S.C. 44701, to keep the airworthiness standards required in the interest of safety, (i.e., parts 23, 25, 27, 29, 31, 33 and 35) as current as practicable.

(2) The type certificate applicant needs to know, early in a certification program, what the applicable airworthiness standards will be in order to finalize the detailed design of its product and to enable the applicant to make reasonable performance guarantees to its potential customers.

(3) In the interest of safety, rapid technological advances presently being made by the civil aircraft industry necessitate that the FAA be able to issue special conditions to address novel or unusual design features that it has not yet had an opportunity to address in the airworthiness standards through the general rulemaking process, or to address novel or unusual design features that were not considered by the appropriate airworthiness standards applicable to changes to type certificates.

(4) It is also important to allow flexibility in design. Wherever possible, the airworthiness standards of 14 CFR Chapter 1, subchapter C, are intentionally written as performance standards, and the procedural regulations permit design changes over the operational life of a product.

History of Type Certification of Changes

Part 21 designates the applicable airworthiness standards for changed products. Section 21.19 describes the circumstances in which an applicant for type certification of a changed product must apply for a new type certificate. As previously discussed, before the early 1940's, an applicant for a changed product, such as an airplane with an alternative engine installation, was required to apply for a new type certificate. For the reasons already described, by the early 1940's, an application for a new type certificate was required only if the change was quite extensive.

Under § 21.101, the original type certificate may be amended to include changes to the product when the applicant demonstrates that it complies with the same airworthiness standards as the original product plus appropriate special conditions, and the change does not warrant making a new application for a type certificate under § 21.19. Because § 21.101(a) and (b) are incorporated by reference in § 21.115, these procedures are equally applicable to persons applying for supplemental type certificates.

Section 21.101(a) requires that an applicant for a change to a type certificate must comply with either the regulations incorporated by reference in the type certificate or the applicable regulations in effect on the date of application, plus any other amendments the Administrator finds to be directly related. The "regulations incorporated by reference" are the regulations that were the certification basis for the original issuance of the type certificate or any later regulations that were the certification basis for any changes to the original type certificate.

If an applicant chooses to show compliance with the regulations in effect on the date of the application for the change, the applicant must also comply with any other amendments that are directly related. In some instances, a regulation may have been amended to become less stringent, while a related regulation has become more stringent. In this situation, an applicant must also comply with the related more stringent regulation. Current § 21.101(a) does not otherwise require compliance with later amendments and does not grant the Administrator the authority to require compliance with later regulations as a method to increase the level of safety of a product.

An applicant for a change to a type certificated product is responsible for showing that the product, as altered, not just the change itself, complies with the existing certification basis, because areas that have not been changed may be affected by the change. However, the applicant need not resubstantiate those areas of the product where the original substantiation has not been invalidated by the change.

Current § 21.101(b) pertains to changes for which the regulations incorporated by reference do not provide adequate standards. Such changes generally involve features that were not envisaged at the time the regulations incorporated by reference were adopted and are, therefore, novel or unusual with respect to those regulations. For these changes, the applicant must comply with regulations in effect on the date of application for the change as found necessary to provide a level of safety equal to that established by the regulations incorporated by reference. In this case, the applicant is not able to select any amendment of the regulation it chooses between those incorporated by reference and those in existence on the date of the application. When regulations in effect on the date of application for the change fail to provide adequate standards, the applicant must comply with special conditions to provide a level of safety equal to that established by the regulations incorporated by reference.

Trends in Type Certification of Changes

In recent years, a trend has developed toward fewer products that are of completely new designs, which would require new type certificates. Over a period of time, a series of changes to an original product may have been made so that the current model is considerably different from the original model. Although each changed product in such a series of changes may differ little from its immediate predecessor, the changes could result collectively in a product with substantial differences from the original product.

Another trend in manufacturing is to keep products in production over several decades. Some currently manufactured airplanes have, for example, evolved from airplane models originally type-certificated 25 years ago. This does not imply that those airplanes are "unsafe," because they do, in practice, have features that address the intent of most of the current airworthiness standards. However, current procedural regulations (part 21) do not require that changed products demonstrate compliance with all the current airworthiness standards.

The basic premise behind the FAA's current policies for the procedures and airworthiness standards for type certification is that the highest possible degree of safety in the public interest should be achieved by products being certificated at any given time. In dealing with this premise, the FAA has had to continually weigh the desire for the highest level of safety with the cost to the manufacturers, operators, and traveling public for achieving the highest possible degree of safety in the public interest. This balance between safety and cost has been exacerbated by the introduction of highly sophisticated products whose development and manufacture have become enormously expensive. As already stated, this is one reason manufacturers choose to produce more and more changed products that, by the FAA regulations, are not required to have new type certificates.

The FAA maintains that the issue should not be whether a product is produced under a new type certificate or a changed one. The issue is whether or not the level of safety of the product, embodied in the airworthiness standards it complies with, is as high as practicable. In addition, to require areas unaffected by the change to comply with the later standards could not only be unreasonably costly but could reduce the level of safety of the product due to unforeseen developmental problems. The manufacturers are constantly issuing service information that

describes approved alterations that users may make to improve the level of safety of the product.

When establishing the highest practicable level of safety for a changed product, the FAA has determined that it is appropriate to assess the service history of a product, as well as the later airworthiness standards. It makes little sense to mandate changes to well understood designs, whose service experience has been acceptable, merely to comply with new standards. The clear exception to this premise is if the new standards were issued to address a deficiency in the design in question, or if the service experience is not applicable to the new standards. This consideration of airworthiness standards and service experience should form the basis for developing the certification basis for a change in a product.

While it can be argued that, for consistency, new airworthiness standards should apply across-the-board to the entire aircraft fleet, application of new standards would not be practical in every case. Although newly designed aircraft are required to meet all applicable current airworthiness standards, in many cases a product being changed, for which only an amended type certificate is needed, is required to meet only the standards referenced in the original type certificate or in an amended type certificate. Thus, there may be a considerable difference between the standards required for a new product and for a product undergoing change. A product undergoing change that met the applicable standards at the time of original or amended type certification is not currently required to meet more current airworthiness standards, except in those instances where retroactive regulations have been issued or the applicant elects to comply with later amendments.

In recent rulemakings, the FAA has carefully considered whether corresponding retroactive action is warranted whenever a change to the airworthiness standards for type certification was proposed. In those cases where it has been determined that an across-the-board safety benefit commensurate with the cost could be achieved, the rulemaking has also included a proposal to change the relevant operating regulations to require newly manufactured airplanes or airplanes in service, or both, to comply with the new standards, regardless of whether such compliance would be required as a condition of type certification. For instance, some of the regulations implemented in recent revisions to part 25 for newly designed airplanes were required for the existing fleet and were implemented in the operating regulations, such as part 121.

Recent FAA Actions

In addition to the safety considerations previously described, there has also been a growing international concern that some changed products are given an unfair competitive advantage over those that are of new design and must comply with later standards.

Because of these concerns, beginning in 1989 the FAA participated in an ad hoc committee sponsored by the Aerospace Industries Association of America, known as the International Certification Procedures Task Force (ICPTF). In addition to the FAA, this task force included representatives of the European Joint Aviation Authorities, Transport Canada Civil Aviation Authority (TCCAA), Aerospace Industries Association of America, Air Transport Association of America, General Aviation Manufacturers Association, International Air Transport Association, The European Association of Aerospace Industries (AECMA), Aerospace Industries Association of Canada, Air Line Pilots Association, and Association of European Airlines.

The ICPTF was organized to develop the philosophy and the necessary regulatory text and advisory material that would provide for the implementation of later regulatory amendments applicable to aeronautical products undergoing change, products in production, and products in service. The specific tasks of the ICPTF were: (1) develop the type certification philosophy for changes to aeronautical products, including revisions to the regulations and associated advisory material; (2) develop the necessary guidance information on the use of "service experience" in the type certification process; and (3) develop a method to evaluate the safety impact and cost effectiveness of revisions to the airworthiness standards.

In order to develop future proposed safety standards by using a system-type analysis, the FAA chartered a committee of safety experts, known as the Aviation Rulemaking Advisory Committee (ARAC), on February 5, 1991. This committee established the International Certification Procedures Working Group, which consisted of the original ad hoc committee formerly known as the ICPTF. The task assigned to this working group was to present to ARAC various proposals pursuant to its area of expertise. ARAC then had the option to submit these recommendations to the FAA, and the FAA would decide whether or not to issue a proposal based on the ARAC recommendations.

The working group presented to ARAC a recommended NPRM and associated advisory material concerning the type certification procedures for changes to aeronautical products, changed products, and products already in service. ARAC, in turn, submitted these documents, dated October 14, 1994, as recommendations to the FAA.

The rulemaking proposed by the FAA in Notice No. 97–7 reflects the ARAC recommendations in the type certification procedures for changed products with mostly minor changes in the preamble to the proposed rule. The Joint Aviation Authorities (JAA) have published similar proposed changes. That document was circulated for public comment on June 10, 1996, in NPA 21–7.

At the same time the FAA issued Notice No. 97–7, the FAA announced the availability of a proposed companion advisory circular (AC) for public comment. While the FAA's proposed AC was based on a draft submitted by the ARAC, the FAA's version was significantly reorganized and rewritten except for the proposed appendices which were identical to those recommended by the ARAC. Also, the FAA stated in Notice No. 97–7 that while the ARAC recommended that the safety benefit resource evaluation guide included in the proposed AC (Appendix 2) be considered an acceptable means of showing compliance with the exceptions of proposed § 21.101(b), the FAA included this guide for information purposes only. The FAA stated, "The safety benefit resource guide does describe some of the kinds of issues that the applicant would address, and the FAA would consider, in determining the certification basis in accordance with the proposed rule."

After the comment period on Notice No. 97–7 closed, the FAA tasked the ARAC to review the public comments and to recommend to the FAA a disposition of the comments and a draft final rule document. This final rule reflects most of the work of the ARAC under this task. This work was accomplished largely through a series of ARAC working group meetings held between August of 1997 and July of 1998. Because of an FAA imposed deadline date of September 1, 1998, the working group members submitted their comments to the ARAC based on a draft final rule dated August 4, 1998. The August 4, 1998, draft was based on the working group's previous recommended disposition of comments and on discussions and agreements reached at

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the final working group meeting held on July 7–8, 1998. The ARAC, at FAA's request, forwarded a report that included this draft and the comments to the FAA at the August 24, 1998, issues meeting. At the time of the report, consensus had not been reached on the draft final rule. Because many of the comments received from working group members and from the full ARAC members before and at the August 24 meeting duplicated comments that were made on the NPRM, the FAA has not attempted to deal separately and repetitively in this preamble with these post-comment period ARAC comments.

FAA Rulemaking on Changed Products

This rulemaking amends the type certification procedures for changes to type certificated products to bring the certification basis for significantly changed products (whether the change is by amended type certificate, supplemental type certificate, or amended supplemental type certificate) closer to the current regulations. The intent is to ensure that when an essentially new product is developed through a series of changes, the final product achieves a level of safety similar to that of a comparable new product.

By this rulemaking, the FAA requires all proposed changes for all type-certificated products to comply with the latest amendments of the airworthiness standards, unless one of the stated exceptions applies. The long term result of this rule change will be that a changed product will have a certification basis that provides a similar level of safety to that provided by the certification basis of a new type certificate for the same product, except as provided in the rule.

As discussed more fully later in this preamble, the final rule contains an approach that was not discussed in the NPRM. This approach should help minimize the procedural burden for applicants for amended type certificates and STC's for aircraft (other than a rotorcraft) with a maximum weight of 6,000 pounds or less and for non-turbine rotorcraft with a maximum weight of 3,000 pounds or less.

As stated, the FAA will issue an advisory circular based on this rulemaking. This advisory circular will provide guidance on determining the certification basis for changed aeronautical products, including identifying the conditions under which it will be necessary to apply for a new type certificate. For the reasons discussed below, this final advisory circular will follow the draft AC originally proposed by the ARAC, with changes as necessary to conform to the final rule language and to international harmonization.

Discussion of Comments Received on the NPRM

The FAA received over 90 comments on the NPRM. Commenters included aircraft manufacturers and operators, organizations representing these groups, foreign entities, and individuals.

More than half of the comments focus on the issue of applicability of the proposed rule changes to supplemental type certificates (STC's) and type certification amendments for small part 23 airplanes, particularly older airplanes. Virtually all of these commenters state that the proposed rule and advisory circular were designed for transport category aircraft by persons involved in manufacturing or using transport category aircraft. These commenters urge that non-transport category aircraft not be included in the final rule. Several request an extension of, or reopening of, the comment period, stating that the in-service modifier community was not involved in the development of the NPRM and asserting that much of this community was not even aware of the NPRM until after the comment period closed. (For further detail, see discussion of comments under the heading "Applicability to General Aviation Aircraft and to Supplemental Type Certificates.")

Many of the commenters request that the preamble and advisory circular be rewritten to reflect more closely the recommendations by the Aviation Rulemaking Advisory Committee (ARAC). Many of these commenters state that one of the main purposes of this NPRM was to achieve harmonization with the Joint Aviation Authorities (JAA) and that to the extent the FAA departed from the ARAC recommendation, harmonization was lost because the JAA Notice of Proposed Amendment (NPA) was very closely aligned with the ARAC recommended document. (For further detail, see discussion of comments under "ARAC Recommendation and Harmonization" and "Rewrite of AC from ARAC Draft.") Comments that suggest specific substantive changes to the proposed rule language are summarized and addressed under the section-by-section portion of this preamble.

Many commenters made specific comments on the proposed advisory circular. These comments are not discussed in this document but are being considered by the FAA.

In view of the harmonization goal of this rulemaking and the intended close relationship between the FAA's Notice No. 97–7 and the JAA's NPA 21–7, the FAA included the comments received by the JAA in the FAA public docket and the ARAC reviewed the relevant comments on NPA 21–7. Except for the issue of applicability to aircraft modifiers, the comments on NPA 21–7 were mostly from the same entities that commented on this rulemaking and these comments did not differ significantly from the comments on FAA's Notice No. 97–7. Therefore, this document does not separately address the comments received on NPA 21–7.

General and Miscellaneous Comments

Comments: One commenter, in reference to the preamble section "Recent FAA Actions," says that the FAA's mandate, under 49 U.S.C. § 44701, is to promote safety and safety regulations. This commenter says that the FAA has no mandate or legal basis for "making regulations designed to manipulate competitive forces or marketplace decisions."

Fairchild Aircraft Inc. (Dornier) also states its concern that the real problem being addressed by the FAA is not a safety problem, but rather the potential for an unfair trade advantage.

Hiller Aircraft expresses opposition to the proposal and states that current §§ 21.16, 21.19, and 39.1 already provide the FAA with "the regulatory flexibility to prescribe applicable rules for any newly proposed design, any design being considered for change and any design found to be unsafe through field experience." Hiller says that the proposal would be administratively burdensome on the FAA and manufacturers, while not providing the FAA with any additional regulatory power. Fairchild also concludes that the proposed rule would only create more bureaucratic paperwork, and increase the cost of the certificated product without compensating increases in safety.

FAA Response: While international concern over potential unfair competitive advantages that could result if different standards are applied to similar changed products, was cited as one of the triggering events for this rulemaking, that concern was not the basis for justifying the changes proposed in Notice No. 97–7. As the NPRM preamble described at some length, and as summarized in the Background section of this preamble, the FAA's justification for the proposed change was a safety justification, namely, to ensure that significantly changed products comply with later requirements that apply to new products to the maximum extent practicable.

With respect to the possible increased administrative burden on the FAA, this rule will, to some extent, decrease the FAA's administrative burden. Under the present rule, the FAA must demonstrate that the regulations incorporated by reference in the type certificate are not adequate to achieve the established level of safety when an applicant applies for a change to a type certificate. Under the proposed and final rule language, except for certain specified smaller aircraft, the initial burden will be on the applicant to show that it should not be required to comply with the regulations in effect on the date of the application because it meets one of the stated exceptions. As stated in the NPRM, compliance with the regulations in effect on the date of application where required by this rule will enhance the level of safety for the changed product. The burdens on the applicants are unavoidable if the objectives of the rule are to be achieved. Advisory Circular 21.101–XX that will be issued prior to the mandatory compliance dates of this rule will contain guidance intended to reduce the administrative burden on both the applicant and the FAA.

Retroactive and Retrofit Requirements

Comments: The European Association of Aerospace Industries (AECMA) states that the "key point in ensuring steps forward in safety is to clearly define the applicability of the new standards at the time of the rule elaboration." Applicability to changed, newly manufactured or in-service aircraft may be mandated through appropriate amendments to CFR §§ 23.2, 25.2, 27.2 and 29.2 (special retroactive requirements), or to the operational regulations (for instance part 121, subpart J).

AECMA also states that the methodology used to assess possible retroactive applicability of new standards should follow the principles of AC 21.101–XX, Appendix 2, with the necessary adjustments for each category of product. In addition, the harmonization process should be extended to the retroactive requirements. While promoting the implementation of the real safety improvements, this approach would allow the manufacturers to clearly anticipate the requirements applicable to their products, instead of entering into case by case non-public discussions with possible unequal treatment.

FAA Response: Whenever the FAA adopts a new design requirement, it determines whether to apply that requirement to previously type certificated, but changed products, through a retroactive design requirement, or to previously manufactured aircraft through an operating rule. However, that determination is not the same as the determination that must be made when the FAA receives an application for a changed product. The determination of which amendments should be applied depends on the safety benefits to be realized from the proposed change, and the design, operational, and other cost burdens. Therefore, the FAA does not agree that the generalized normal retroactive and retrofit determinations are sufficient for dealing with specific changed products.

Consistency of Application within FAA

Comments: Raytheon suggests that in conjunction with the implementation of this rule the FAA should consider an Aircraft Certification Office (ACO) oversight program that would include (1) annual review of ACO's and new changes to type certificated products; (2) quarterly report submittal from ACO's stating amendment level of rules mandated for incremental changes; and (3) feedback from the FAA Directorate if it sees a consistent pattern from one ACO where the later rule amendments are not being imposed. Raytheon's recommendations are intended to ensure more equitable compliance requirements to avoid giving some region or manufacturer an economic advantage. Raytheon also recommends that the FAA implement an appeal process for an applicant who strongly disagrees with an ACO decision.

FAA Response: One of the tasks assigned to the ARAC was to assist the FAA in developing follow-up training for both government and industry to facilitate implementation of this final rule. It is the FAA's intent that all FAA employees called on to implement this final rule will receive appropriate training and implementation documents, such as internal orders and handbooks. The FAA will also implement other appropriate follow-up actions to ensure that the rule is being implemented uniformly throughout the FAA.

The ability of an applicant to appeal an ACO certification decision would not be changed by this rule. If not sooner resolved by the FAA appeals process (through the accountable Directorate), such a decision would be, ultimately, adjudicated as part of a certificate denial. A certificate denial is a "final order of the Administrator," appealable to a U.S. Court of Appeals pursuant to 49 U.S.C. § 46110.

Potential for Adverse Safety Effect

Comments: One commenter predicts that the likely effect of enacting the proposed rule will be that no changes to existing aircraft designs will be incorporated due to the increased cost of certification. As a result, no safety improvements would occur.

Representatives of the in-service modifier community make the same point with respect to safety improvements that would require an STC. (See discussion under "Applicability to General Aviation Aircraft and to Supplemental Type Certificates").

FAA Response: The FAA does not agree that this rule will be a disincentive. The FAA recognizes the impact on airlines and independent modification companies of the requirement to have the data in order to determine significance. However, the FAA needs, in the interest of safety, to ensure that all significant changes move to the latest certification basis for affected areas when the change would contribute materially to the level basis of safety of the changed product and would be practical.

ARAC Recommendation and Harmonization

Comments: The most common issue discussed by the commenters (who were not focused on the in-service modifier/STC issue) related to the differences between the FAA NPRM and accompanying draft AC and the ARAC documents, and the resulting lack of harmonization with the JAA NPA which the commenters state is closer to the ARAC recommendation.

The United Kingdom's Civil Aviation Authority (CAA) states that in the NPRM the FAA policy appears to be moving towards accepting previously certificated products with a greater level of change before requiring certification as a new product. CAA comments support the need to positively limit the extent to which manufacturers should be allowed to change products without being required to certificate a product to the latest airworthiness standards. CAA suggests that the harmonization of FAA and JAA requirements remains incomplete until it is clearly understood by both FAA and JAA the extent to which the criteria for a changed product is to be applied in a particular instance.

The General Aviation Manufacturers Association (GAMA) submitted the complete ARAC recommendation dated October 14, 1994, with its comment and requests that the FAA reconsider the original ARAC recommendation in developing the final rule. Other

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commenters that state their concern that the FAA's NPRM and draft advisory circular were significantly different from the original ARAC recommendation (and therefore different from JAA's NPA 21–7) are the European Association of Aerospace Industries (AECMA), Pratt and Whitney Canada, Bombardier, and the Aerospace Industries Association.

FAA Response: A number of the commenters suggest rewording of the NPRM preamble to make it consistent with the document submitted by the ARAC to the FAA. The FAA has considered the substance of these comments and where appropriate, they are addressed in this final rule preamble. In general, the differences between Notice No. 97–7 and the document submitted to the FAA by the ARAC involved additional preamble language included by the FAA to clarify the intent of the proposed changes. With one exception the proposed rule language in Notice No. 97–7 was identical to the rule language recommended by the ARAC. The draft AC, which is a non-binding tool to aid compliance, is discussed later in this preamble.

Applicability to General Aviation Aircraft and to Supplemental Type Certificates

Comments: Over half of the comments received focus exclusively on the question of the applicability of the proposed changes to aircraft that are not certificated under part 25 (i.e., to non-transport category aircraft, frequently referred to by commenters as "general aviation aircraft") and the applicability to supplemental type certificates in general. Most of these commenters state that part 23 aircraft should be entirely excluded from this rulemaking. The specific substantive statements are summarized below.

The thrust of the comments from the general aviation and in-service modifier communities received in the public docket fell into one or more of the following categories:

1. The in-service modifier community was not aware until late in the comment period that the ARAC recommendation and the resulting FAA Notice No. 97–7 would affect it at all. Several request an extension of the comment period.

2. The basis for Notice No. 97–7 was developed and recommended by an ARAC working group composed entirely of representatives of manufacturers of transport category aircraft and their counterparts in the represented civil aviation authorities. The in-service modifier community believed that the ICPTF/ARAC working group was focused on a problem involving the manufacture of transport category aircraft, not the alteration of general aviation aircraft. The in-service modifier community argues that the older the aircraft, the more the burden would increase on STC applicants and the less relevant would be the problems and examples used to justify the rule change.

3. Notice No. 97–7 gave no indication that it would affect applicants for supplemental type certificates and none of the stated justification warranted changing the rules for STC's.

4. Nowhere in Notice No. 97–7 is there any statement to indicate a problem with STC's. The entire discussion of the problem, the regulatory history, and recent FAA actions used aircraft manufacturing examples and mostly examples involving transport category airplanes.

5. Little or no consideration was given to the potential impact of the proposed rule and associated advisory material on general aviation aircraft production or on the STC process. For example, the finding under the Regulatory Flexibility Act that the proposed amendments would not have a significant economic impact on a substantial number of small entities ignores the potential impact on persons seeking STC's for general aviation aircraft.

6. Substantively, and therefore of most significance, the proposed change would shift the burden from the FAA to the applicant to prove whether a proposed change should comply with type design amendments that have occurred after the original type certificate was issued. The in-service modifier comments and representatives state that this change in burden from a "bottom up" approach to a "top down" approach would add significant costs to numerous small businesses which apply for the majority of current STC's. The in-service modifiers also dispute the relevance of FAA Order 8110.4 that established a top-down approach as a matter of policy in 1990. The in-service modifiers state that this order cannot be used to justify the rule changes proposed in Notice No. 97–7 because it was not enforceable since the rule was not changed and further because the FAA has not previously sought to apply this policy to STC's. For these reasons, this community was not even aware of its existence.

Specific written comments on the STC issue can be summarized as follows:

GAMA, EAA, NATA, and AOPA state that the proposal would be burdensome for older general aviation airplanes that would have to undergo significant and costly changes each time the in-service product is upgraded under STC procedures. GAMA adds that the re-entry into production of airplanes with older type certificates would be prevented because "product changes dictated by the FAA would be so extensive that changed products would not be cost effective due to the expense of such changes." EAA states that the change "will block safety improvements in general aviation aircraft by creating such a difficult barrier to approving Supplemental Type Certificates (STC's) that few improvements will be attempted on older aircraft designs." These commenters believe that the rule could have exactly the opposite of the intended effect by discouraging general aviation aircraft owners from improving their aircraft.

GAMA and AOPA state that, if present type certificate holders were prevented from resuming production due to economic reasons, the result would be a lack of spare parts and technical assistance needed by current airplane owners for the continued airworthiness of their airplanes.

GAMA says that the proposal would, in effect, "render the type certificates for older out-of-production airplanes valueless due to the extensiveness of mandated FAA product changes. . . ." AOPA states that the "proposed changes would have a tremendous negative impact on the fledgling revitalization of the general aviation industry in this country by rendering nearly all existing out of production type certificates virtually valueless."

NATA states that the NPRM fails to specifically limit the application of the rule and expresses concern that the rule requirements could be applied to unintended areas such as maintenance.

FAA Response: The ARAC recommended an exception from the most burdensome impact of this rulemaking for a significant segment of aircraft that are mostly used in general aviation operations. The FAA has adopted, in this final rule, a process that will apply to changes to these aircraft. Therefore, as is more fully discussed and explained in the section by section discussion of § 21.101, changes to aircraft (other than rotorcraft) with a maximum weight of 6,000 pounds or less and non-turbine powered rotorcraft with a maximum weight of 3,000 pounds or less, will be evaluated starting with the latest certification basis for changes to a type certificate (whether through an amendment or an STC). This exception should address the concerns of most of the in-service modifiers listed above. Reduction of the potential costs from this change are discussed in the Regulatory Evaluation Summary portion of this preamble.

While it is unfortunate that the in-service modifier community may not have recognized the potential impact on it of this rulemaking, the in-service modifier community had full opportunity to participate in the ARAC process from the date that the FAA tasked the ARAC. The fact that in-service modifier interests may not have been fully represented in the ARAC working group is not because in-service modifiers were excluded but because they elected not to participate until after the NPRM was issued.

The working group distributed its draft NPRM and AC to all ARAC members on August 30, 1994, for review and consideration. The ARAC met on October 13 and unanimously passed the proposals as written, with no substantive comments or changes. Among the organizations present at the October 13 meeting were several in-service modifier community representatives, such as, Aviation Repair Station Association (ARSA), National Air Transportation Association (NATA), Experimental Aircraft Association (EAA), General Aviation Manufacturers Association (GAMA), and the Airline Suppliers Association (ASA).

Furthermore, while the FAA decided not to extend or reopen the comment period, as previously noted, representatives of the ARAC working group and the FAA met with representatives of in-service modifiers on several occasions during the ARAC working group meetings to dispose of the comments to the NPRM. Additionally, representatives from the General Aviation community met with the Associate and the Deputy Associate Administrators for Regulation and Certification to express their concern with the conduct of the working group meetings. Their concerns were addressed and a record of these meetings are reflected in the docket.

The STC issue and potential applicability to non-transport category airplanes were addressed in Notice No. 97–7. Section 21.1(a) of part 21 prescribes procedural requirements "for the issue of type certificates *and changes to those certificates;* the issue of production certificates; the issue of airworthiness certificates; and the issue of export airworthiness approvals." (Emphasis added.) Supplemental type certificates are not mentioned in § 21.1 or throughout part 21 because the word "changes" is clearly used to cover all possible changes to a type certificated product whether made by the type certificate holder, the aircraft owner, or a third party. Section 21.19 states that certain changes will require a new type certificate. Subpart D of part 21 prescribes "procedural requirements for the approval of changes to type certificates." Subpart E covers supplemental type certificates, which § 21.113 states must be applied for by any person "who alters a product by introducing a major change in type design, not great enough to require a new application for a type certificate under § 21.19 . . . except that the holder of a type certificate for the product may apply for amendment of the original type certificate." Section 21.115, which Notice No. 97–7 proposed to amend, states that an applicant for an STC must "show that the altered product meets applicable airworthiness requirements" of § 21.101, that is, the same requirements that would apply to the holder of the type certificate. Thus, persons familiar with part 21, as are the representatives of the major in-service modifiers that commented on Notice No. 97–7, know that each proposed rule that affects "changes" under part 21 has potential broad application.

Notice No. 97–7 contained numerous statements that made it clear that the proposed amendments to existing regulations would affect persons other than transport category type certificate holders. For example:

1. Section 21.115, which applies to all applicants for an STC, is referenced early in the "History of Type Certification" section of the preamble.

2. In the "History of Type Certification of Changes" section of the preamble the following sentence appears:

> Because § 21.101(a) and (b) are incorporated by reference in § 21.115 these procedures are equally applicable to persons applying for supplemental type certificates.

3. In the "Recent FAA Actions" portion of the preamble the following sentences appear:

> The ICPTF was organized to develop the philosophy and the necessary regulatory text and advisory material that would provide for the implementation of later regulatory amendments applicable to aeronautical products undergoing change, products in production, and *products in service.* (Emphasis added.)
>
> The working group presented to ARAC an NPRM and associated advisory material concerning the type certification procedures for changes to aeronautical products, changed products, and products *already in service.* (Emphasis added.)

4. In the section by section discussion of § 21.115 the following sentence appeared:

> There should not be a difference in the certification basis for a change to a type-certificated product between these two methods of approval, amended type certificate, or supplemental type certificate.

5. In the Regulatory Evaluation Summary the following sentence appears:

> The formalization of this policy by regulation would expedite decisions about the certification basis of proposed changed products and, therefore, would provide manufacturers and modifiers with earlier and more dependable information on which to base their product development decisions.

In view of the opportunity provided by the ARAC process before and after issuance of Notice No. 97–7 and the number of references to STC's and modifiers throughout the NPRM preamble, the in-service modifier community had adequate notice of the potential impact of Notice No. 97–7 and adequate opportunity to participate. In the Regulatory Evaluation Summary portion of this preamble the FAA has revisited the question of the potential impact on small entities and has determined that an analysis under The Regulatory Flexibility Act of 1980, as amended, is required. This analysis and a complete analysis of potential costs and benefits are set out in the Regulatory Evaluation Summary portion of this preamble.

Transport Category Aircraft STC's

Comments: ATA says that the proposal's requirement for an applicant to prove that a proposed change to be accomplished under an STC does not invoke a new safety standard will consume time and resources without improving airworthiness. ATA says that the current STC process is effective in ensuring that changes to an aircraft design are airworthy and recommends that the FAA exclude STC's from the proposed rule.

FAA Response: As discussed in the preamble to the NPRM Notice No. 97–7, the FAA has determined that an application for a design change through the STC process should be certificated to the same level of safety as an application for the same change through an amended type certificate. The FAA's intent is to establish an airworthiness certification basis that is not dependent on whether the applicant is applying for an amended or a supplemental type certificate.

Section-by-Section Discussion

Section 11.11

Current § 11.11 lists special conditions required as prescribed under § 21.101(b)(2) as an FAA record that is

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maintained in current docket form in the Office of the Chief Counsel. To remain consistent with the changes to § 21.101, described later, the NPRM proposed to amend § 11.11 to refer to § 21.101(c) (now § 21.101(d)) instead of § 21.101(b)(2). The NPRM also proposed revisions to make the section read easier.

There were no substantive comments on this section and it is adopted as proposed with the cross-reference change described above.

Section 21.19

Current § 21.19(a) states that any person who proposes to change a product must make a new application for a type certificate if the Administrator finds that the proposed change in design, configuration, power, power limitations (engines), speed limitations (engines), or weight is so extensive that a substantially complete investigation of compliance with the applicable regulations is required. In addition, current paragraphs (b), (c), and (d) list other specific types of changes that mandate a new application for a type certificate. Notice No. 97–7 proposed to include only the general language of current paragraph (a) into the new § 21.19, while the previously listed specific changes would be subject to case-specific evaluations to determine whether they are substantial.

Current § 21.19(b) describes specific changes for which the applicant must apply for a new aircraft type certificate. These include (1) changes in the number of engines or rotors; and (2) changes to engines or rotors using different principles of propulsion, or to rotors using different principles of operation. Historically, these types of changes have fallen into one of two categories—those that were not extensive enough to require a new application for a type certificate, as evidenced by the large number of exemptions that have been granted over the past quarter century, or those that were so extensive that a new application was required because a complete investigation of compliance was required. Accordingly, as was discussed in the NPRM preamble, the provisions of current § 21.19(b) are not needed and were not included in the proposal.

Recently, the FAA considered a petition for exemption from 14 CFR § 21.19(b)(2), to replace turbopropeller engines with turbofan engines on a transport category airplane. The petitioner argued that the certification basis for the changed airplane should be developed using the approach proposed in the NPRM. In responding to the petition, the FAA pointed out that while the NPRM proposed to eliminate the specific reference to a change to engines using different principles of propulsion, that kind of change normally would be considered so extensive that a substantially complete investigation of compliance would be required. Thus, it should be noted that new § 21.19 does not necessarily change how one would evaluate "extensive" in each case. Instead, new § 21.19 eliminates the legal presumption that certain changes are automatically "extensive."

Current § 21.19(c) describes another specific change in which the applicant must apply for a new aircraft engine type certificate. This change is in the principle of operation. In addition, current § 21.19(d) describes specific changes in which the applicant must apply for a new propeller type certificate. The NPRM proposed to delete these types of changes from § 21.19. Under proposed § 21.101, with certain exceptions, these types of changes and all areas, systems, components, equipment, and appliances affected by the changes would have to comply with the regulations in effect on the date of application for the change to the type certificate.

Comments: CAA recommends that this section (§ 21.19) be cross-referenced in § 21.101(a).

One commenter recommends that wing modifications be added to the list of design changes listed in the preamble. This would be written as: "New wing (external geometry, structure, and performance.)"

FAA Response: The CAA comment is discussed under § 21.101(a). The list of design changes typically regarded as substantial that were referenced in the NPRM preamble have not been included in this document. However, they will be addressed in the forthcoming Advisory Circular. Section 21.19 is adopted as proposed.

Section 21.101(a)

Current § 21.101(a) states that if a person applies for a change in a type certificate, the product must comply with either the regulations referenced in the type certificate or the applicable regulations in effect on the date of the application for the change, if elected by the applicant, plus any other amendments the Administrator finds to be directly related.

In Notice No. 97–7, the FAA proposed to amend § 21.101(a) to require an applicant for a change to a type certificate to comply with the applicable regulations in effect on the date of the application for the change and with parts 34 and 36, unless the applicant falls within one of the exceptions that would allow compliance with an earlier amendment. The primary purpose of this proposed change was to ensure that products being changed in a significant manner meet the latest airworthiness standards wherever practicable.

Under this approach, the starting basis is the applicable regulations in effect on the date of the application for the change. The burden is on the applicant to prove that compliance with earlier regulations would provide an acceptable safety level. Under the current regulation, the starting basis is the regulations incorporated by reference in the type certificate. In this case, the burden is on the FAA to find that later amendments are directly related to the proposed change, or that there are other reasons (e.g., the regulations incorporated in the type certificate do not provide adequate standards with respect to the proposed change) for requiring compliance with later amendments.

The FAA points out that current part 21 and amendments resulting from this rulemaking, only address "major" type design changes under § 21.93. "Minor" design changes are "approved" under § 21.95, and are not considered to be the changes to a type certificate that are covered under § 21.101.

Comments: The comments that address the substantive issue of the safety justification for, and potential cost of, changing from an original or previously amended certification basis approach to a current amendments approach were addressed earlier in the General and Miscellaneous Comments section of this preamble.

The CAA says that § 21.101(a) should be amended to cross reference § 21.19 to clarify that this section applies only when a new type certificate is not required under § 21.19. The CAA suggested rewording the paragraph to read as follows:

> Where the Administrator finds that an application for a new type certificate is not required under § 21.19 and except as provided in paragraph (b). . . .

Raytheon recommends that proposed paragraph (a)(1) of § 21.101 be rewritten so that the word "and" after the term "changed product" is deleted.

FAA Response: The FAA does not agree with the CAA's suggested rewording as § 21.19 stands on its own and there is no need for a cross-reference to it in § 21.101. As rewritten, the "and" in § 21.101(a)(1) is not included. The general phrase, "airworthiness requirements applicable to the category of product" has been substituted for the references to parts 23, 25, 27, 29, 31, 33, and 35. As adopted, § 21.101(a), with minor revisions for clarification, replaces proposed § 21.101(a)(1) and (2) without substantive changes.

Section 21.101(b)

Proposed § 21.101(b) provided exceptions to the regulation in proposed paragraph (a), that, when met, would allow the applicant to comply with earlier amendments to the regulations. When choosing the amendment level of a regulation, all regulations associated with any relevant paragraphs in that amendment level would have to be included. The amendment level chosen may not predate either the latest certification basis or anything required by the retroactive sections, that is, §§ 23.2, 25.2, 27.2, or 29.2.

The intent of the proposed change was to apply the applicable regulations in effect on the date of the application to those areas, systems, components, equipment, and appliances significantly affected by the change, unless the Administrator finds that compliance with a regulation would not, (1) contribute materially to the level of safety of the changed product, or (2) would be impractical. For those areas, systems, components, equipment, and appliances not significantly affected by the change, or otherwise excepted, continued compliance with the regulations incorporated by reference in the type certificate would be considered acceptable.

Proposed paragraph (b)(1) stated that the applicant would be allowed to demonstrate compliance with earlier regulations, but not earlier than the regulations incorporated in the latest certification basis, if the effect of the proposed change is not significant, taking into account earlier design changes and previous updating of the type certification basis.

Proposed paragraph (b)(2) stated that the applicant may show compliance with earlier regulations for those areas, systems, components, equipment, and appliances that are not affected by the change.

Proposed paragraph (b)(3) stated that, if compliance with a regulation in effect on the date of the application for the change would not contribute materially to the level of safety of the product to be changed, or would be impractical, the applicant may demonstrate compliance with an earlier amendment of a regulation provided that the amended regulation does not precede either the corresponding regulation in §§ 23.2, 25.2, 27.2, or 29.2 of this chapter, or the corresponding regulation incorporated by reference in the type certificate.

A proposed advisory circular contained a safety benefit resource evaluation guide, which was recommended by the ARAC to be an acceptable means of compliance with the "impractical" exception of proposed § 21.101(b)(3), but which was included by the FAA for purposes of information only.

For the reasons discussed in more detail below, proposed § 21.101(b) is adopted with minor clarification changes, but without substantive changes.

Comments: Erickson Air-Crane Co. recommended a change in the wording of the rule to make it clearer that "You don't comply with the amendment alone, but rather the entire regulation at a given amendment level."

FAA Response: The FAA does not agree that an applicant would always have to comply with an entire amendment level. The proposal was to require compliance only with the relevant portions of a particular amendment level.

Comments: CAA states that the objective of the certification policy for changed products should be to ensure, as far as is practicable, that a changed product will achieve the same level of safety as a new product introduced concurrently. CAA states that the proposal, Notice No. 97–7, will not achieve this objective for the following reasons:

(a) The proposed § 21.101(b)(2) allows areas not affected by the change being considered to continue to use superseded airworthiness requirements, some of which may have been amended with the objective of improving the general level of safety. The fact that a product is a changed product, rather than a new product, should not be the reason for allowing it to continue to use outdated safety standards indefinitely. Even for areas not affected by the changes there needs to be a point beyond which a changed product is required to comply with the latest standards where amendments have been made as part of an initiative to improve general safety levels in such areas.

(b) The proposed § 21.101(b)(3) allows the continued use of superseded airworthiness requirements where compliance "would not contribute materially to the safety of the changed product." Although NPRM 97–7 acknowledges the need to assess the accumulative effect of a number of small changes on the level of safety, the text of Paragraph (b)(3) is written in terms of the effect of a single change . . . there is a need to establish the datum as the original design standard of the product originally certificated.

CAA believes that § 21.101(b) is difficult to understand and should be re-drafted and cross-referenced to paragraphs (b)(1), (b)(2), and (b)(3).

CAA comments, as it did on the JAA proposal that the phrase "For each area, system, component, equipment, or appliance" should be replaced with "For each feature of the product." CAA acknowledges that this change, if adopted, would require extensive interpretive material to clarify what the word "feature" means.

FAA Response: There is very little language difference, and no substantive difference, between the FAA's proposed rule language and the language in JAA's NPA 21–7. Nonetheless, for reasons discussed below, § 21.101(b) has been rewritten for clarification. The ARAC working group had numerous discussions as to the meaning of "nonsignificant" in the proposed rule. The working group focused particularly on the draft Advisory Circular (AC) circulated for public comment at the same time as Notice No. 97–7 because the draft AC contained language explaining "nonsignificant." The ARAC recommended that some of the proposed AC language be included in the final rule to make it clear, in determining whether a change would be nonsignificant, that an applicant would go back to the latest certification basis and not the original certification basis. The draft AC provided that the following are nonsignificant:

"Changes that do not modify the general characteristics of the product in that: (1) The general configuration and principles of construction are retained; and (2) The assumptions used for certification of the basic product remain valid and the results can be extrapolated to cover the changed product."

In view of the ARAC discussions, the FAA has decided that it would be helpful to use the affirmative term "significant" rather than the negative term, "nonsignificant" and to more fully explain in the rule itself the term "significant." As adopted § 21.101(b)(1) reads as follows:

(b) If paragraphs (b)(1), (2), or (3) of this section apply, an applicant may show that the changed product complies with an earlier amendment of a regulation required by paragraph (a) of this section, and of any other regulation the Administrator finds is directly related. However, the earlier amended regulation may not precede either the corresponding regulation incorporated by reference in the type certificate, or any regulation in §§ 23.2, 25.2, 27.2, or 29.2 of this chapter that is related to the change. The applicant may show compliance with an earlier amendment of a regulation for any of the following:

(1) A change that the Administrator finds not to be significant. In determining whether a specific change is significant, the Administrator considers the change in context with all previous relevant design

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changes and all related revisions to the applicable regulations incorporated in the type certificate for the product. Changes that meet one of the following criteria are automatically considered significant:

(i) The general configuration and the principles of construction are not retained; and

(ii) The assumptions used for certification of the product to be changed do not remain valid.

This language should help both the applicant and the FAA reviewer to determine whether the effect of a change is significant, when considered in context with all previous changes to the design and all related changes to the latest "certification basis." Again, the overall intent of this rulemaking is to ensure that products developed through a series of changes, achieve a level of safety similar to that of a comparable new product. The final rule language makes it clear that, in determining whether a change is significant, the FAA will consider the latest amendments to the airworthiness standards adopted after the most recent type certification basis.

This is particularly important because a subsequent amendment of a regulation can indicate an important change in the emphasis in an area of the regulations. For example, if the regulations have been amended in an affected area, then the assumptions used for certification of the product may no longer be valid. The FAA considers these changes in the rule language to be clarifying since they are consistent with the intent of Notice 97–7 and with the explanations given in the accompanying draft Advisory Circular.

Comments: One commenter states that the FAA should reconsider its proposal to delete the existing § 21.101(b)(1) that allows the FAA to apply later regulations without regard to the exceptions in proposed § 21.101(b)(1), (2), and (3). This commenter provides an example of a transport category airplane with an early certification basis built with independent round dial instruments. The commenter notes that a number of rules were added that applied to replacing independent round dial instruments with a multifunction display or an electronic flight instrument system. The commenter suggests that the proposed rule would preclude compliance with the added rules for that kind of design change.

This commenter suggests that proposed § 21.101(b)(3) is not an improvement over the issue paper process, where that applicant would have an opportunity to apply for an exemption from the rule, which the applicant did not agree with, through a public notice process.

This commenter also expressed concerns regarding the use of the service history of an already changed product when analyzing the "impractical" exception to application of the latest regulations to a change of that product. Specifically, the commenter is concerned that, when a later rule addresses hazards or failures in very small probabilities and a product change is certificated using that later amendment, the older version of that product may have not yet reached the total exposure to the hazard or failure addressed by the later rule. In this case, the service history of the older version of the product would "bask in the glow" of the uneventful service history of the newer version that complies with the later amendment, making it appear that compliance with the latest amendments would be unwarranted.

Additionally, this commenter states that the preamble discussion of "impractical" mentions both a cost analysis and a benefit-resource evaluation and states that the applicant will only be able to provide a cost analysis and that there would not be enough data to make a comparison.

This commenter does not believe the use of a cost/benefit analysis to be practical as a tool to determine if a later rule should be applied under the proposed § 21.101. The commenter states that if such an approach is used then the FAA should at least eliminate the proposed AC Appendix 2 as it appears biased and without justification.

The ARAC working group had numerous discussions on the limited applicability of the data in Appendix 2 of the draft AC because this data was drawn from, and therefore only applicable to, transport category airplanes. The ARAC recommended that data be developed for other airplanes and for rotorcraft. The ARAC also recommended delayed compliance dates to allow time for development of this data.

FAA Response: The FAA construes the first comment to mean that the exceptions in proposed § 21.101(b)(1), (2), and (3) are too broad, so as to overly limit FAA discretion to impose later requirements. With respect to the example, the FAA notes that such a design change would be significant, and that it would be difficult, if not impossible, for the applicant to demonstrate that one of the exceptions applies. Therefore, compliance with the later regulations would most likely be required. The FAA has found that the public interest is satisfied by limiting the situations of required compliance with the latest airworthiness standards to each significant change, each area affected by the change, and each instance where compliance would contribute materially to the level of safety of the product and would be practical. In addition, special conditions may be required in accordance with the existing regulations. Nothing more is necessary for the safety enhancement of changed products.

Regarding the second comment, proposed § 21.101(b)(3) was not intended to replace the issue paper process, but to change the standards of certification, allowing an applicant to use earlier regulations if compliance with the latest regulation has been determined to be impractical or would not contribute to the level of safety. An individual's right to request an exemption from any rule has not been eliminated. As a result of the issue paper process, the applicant may still decide to petition for an exemption. This final rule does not change the applicant's ability to apply for that exemption.

The commenter's concerns with respect to service history are unwarranted. First, as was noted in the preamble to the NPRM, the service history that would be considered in deciding whether to invoke an exception to compliance with a later amendment would be the applicable service experience. In the case cited by the commenter, the relevant, service experience applicable to a change to the later version of the product would be the service experience of that later version, which complies with the later amendment. The relevant, service experience applicable to a change to the older version of the product would be the service experience of that older version, which doesn't comply with the later amendment. Second, as explained in this preamble and the preamble to the NPRM, the starting point of the analysis in determining whether the latest amendments should be applied to an already changed product is the changed product's latest certification basis.

In response to the last comment, the preamble to Notice No. 97–7 referenced a safety benefit resource evaluation guide as part of the draft advisory circular. The guide was developed by the Aviation Rulemaking Advisory Committee, and was included in the draft circular for information purposes only. In consideration of comments received and after further discussion with the ARAC, the FAA has determined that, in theory, a safety benefit resource evaluation guide could be used by the applicant to demonstrate that compliance with the later amendment would be impractical. An applicant who elects to make a showing using this guide would be required to submit data on potential benefits and costs that would justify compliance with an amendment level in effect before the date of the application for a change. As mentioned earlier, the burden of the initial showing of costs and benefits rests with the applicant. The FAA will consider the analysis along with other factors in its assessment and determination of the appropriate amendment level. A safety benefit resource evaluation guide, therefore, will likely be retained in the final advisory circular as a tool to assist the applicant in developing arguments as to the appropriate certification basis.

The safety benefit resource evaluation guide recommended by the ARAC could not be endorsed as a sole means of determining the amendment level because the process cannot be proven through any rational financial analysis determination. In addition, the guide includes factors that are not relevant in determining applicable regulations. For example, the guide suggested a change to a single production item could be certificated differently than the same change to multiple production items. In determining whether a regulation should apply, the FAA considers the level of safety, not the quantity of production items as the basis.

Comments: AECMA states that few of the changes proposed during the life of a product are really significant and that therefore, it is an administrative burden to require elaboration and documentation of a justification for application of one of the exceptions in § 21.101(b) for each change. This commenter emphasized an established procedure described in the Action Notice A8110.23, "requiring application of the latest requirements only for changed parts of the product and affected area warranted equivalent results with less bureaucratic burden."

FAA Response: FAA's Action Notice 8110.23, which was replaced by Order 8110.4, was an interim action intended to move applicants in the direction of the regulations in effect on the date of the application for a change. Neither document has, nor were they intended to have, the regulatory impact of the rule language proposed in Notice No. 97–7. These documents were, however, directed at all derivative aircraft, engines, and propellers where a change is significant, but not so extensive as to require a new type certificate. The action notice and subsequent order applied to all changed products whether the approval method was an amended type certificate or an STC.

Comments: Raytheon states that the intent of the word "impractical" in proposed § 21.101(b)(3) "should be defined as not providing added value (perceived or actual) to the operator, manufacturer, or traveling public, or not achieving the desired effect, as in non-meritorious or ineffectual." Raytheon suggests, "Perhaps impractical could be defined as 'without value enhancement,' to stress that any change required as a result of a new regulation which doesn't result in a value enhancement may, with analytical substantiation, be exempted from compliance."

FAA Response: There is little, if any, difference between the FAA's explanation of compliance that would not contribute materially to the level of safety and Raytheon's understanding of compliance that would be "impractical." The question of whether compliance with a later regulation would be impractical arises only after it has been determined that compliance with the later regulation would "contribute materially to the level of safety of the changed product. . . ." The cost burden introduced by impracticality is considered in relation to the potential safety benefit. In order to show impracticality the applicant considers whether the cost to incorporate the change, plus the cost of the subsequent operation of the changed product, would not be commensurate with the potential increase in safety.

Comments: One commenter states that if an applicant is granted an exception under proposed § 21.101(b)(2) (unaffected areas) it should be subject to mandatory periodic FAA reviews of safety related issues for airplanes that continue in production under the same type certificate. This commenter states that for airplanes that have continued in production for many years and at substantial quantities, the claim of excessive economic burden may be invalid and that a reasonable time period for periodic reviews would be ten years, starting from the date the exception was first granted. The commenter recommends that mandated changes should be incorporated in newly produced airplanes within three years after the review. Furthermore, the FAA should consider expected size of the future market when considering granting an exception for production airplanes.

On the topic of "impractical" this commenter believes the concept is acceptable, although balancing safety with economics is not something readily acceptable to the public at large. The commenter states "cost-effective/not cost-effective" should be used instead of "practical/impractical" since the latter terms are too broad and not descriptive of the concept.

FAA Response: Since the basis for an exception under proposed § 21.101(b)(2) is a finding that the area, system, component, etc. is not affected by the change, the FAA does not agree that there is a need for a periodic review of the ground for the exception, nor does the FAA agree that economic burden is a factor in this determination. With respect to whether compliance with the later regulation would be impractical, the FAA cannot agree that the terms "cost effective/not cost effective" would be more descriptive. While costs and benefits stated in dollar terms are essential ingredients, a safety benefit resource analysis involves more than costs.

The benefit-resource analysis is a composite evaluation of four elements that are key to determining the contribution to safety made by meeting a particular rule. The four critical elements are:

(1) The frequency of occurrence of the hazard the rule is intended to mitigate.

(2) The potential severity of the hazard.

(3) How well the configuration being certificated will mitigate the hazard by meeting the rule.

(4) What resources are required if the design must meet the rule. While cost is one element of this evaluation, all four elements must be considered in evaluating the application of a rule. Furthermore, because application of the rule will set appropriate standards for the product design and the design change, the concern of the comment regarding length of production where no design change is proposed is beyond the scope of this rulemaking.

Section 21.101(c) (New)

Section 21.101(c) in this final rule contains the previously mentioned exceptions for aircraft (other than rotorcraft) of 6,000 pounds or less maximum weight, as defined in § 23.25(a), and non-turbine rotorcraft of 3,000 pounds or less maximum weight, as defined in § 27.25(a). Inclusion of these exceptions will address some of the concerns expressed by the aircraft modifiers who commented on Notice No. 97–7.

The primary impact of the exception language in § 21.101(c) will be that the starting point for determining the applicable regulations for a changed product will continue to be, as in current § 21.101, the regulations incorporated by reference in the type certificate, rather than the regulations in effect on the date of application for the change. To ensure that later regulations

are applied when appropriate. § 21.101(c) contains language that allows the administrator "to designate an amendment to the regulation incorporated by reference that applies to the change and any regulation that the Administrator finds is directly related, unless the Administrator also finds that compliance with that amendment or regulation would not contribute materially to the level of safety of the changed product or would be impractical."

Thus, as adopted, for the excepted aircraft the starting point for determining the applicable regulations will be the latest certification basis rather than those regulations in effect on the date of application for the change. In this case, the FAA would make the finding that applying later amendments is necessary. The later amendments would not be applied, however, if the Administrator also finds that one of the exceptions applies. This part of the rule, like other regulations, leaves the burden on the applicant to demonstrate that compliance with those later amendments would not contribute materially to the level of safety, or would be impractical. For example, the burden is on an applicant for a pilot certificate to provide the evidence on which the Administrator finds that he or she is qualified to hold a certificate.

Historically FAA and its predecessor agencies have treated light airplanes and small non-turbine rotorcraft differently from other classes of aircraft. Aircraft of 6,000 pounds or less maximum weight and non-turbine rotorcraft of 3,000 pounds or less maximum weight are usually of less complex design than the larger aircraft. In addition design changes to these aircraft usually are of less complexity. Furthermore, the certification requirements for these aircraft are many times less complex than those for larger aircraft. Examples of this are simplified design load criteria and performance requirements.

The exception in § 21.101(c) is premised on the assumption that the lesser complexity of design, design changes, and requirements will allow the FAA Aircraft Certification Office (ACO) to more easily identify the current airworthiness standards appropriate for the areas of the product affected by the proposed change. Nonetheless, § 21.101(c) also allows the applicant to submit data on which the ACO could decide to allow one or more of the exceptions to requiring the latest airworthiness standards.

Most importantly, although the process for determining the appropriate level of safety for these aircraft and rotorcraft will be different from the more complex large aircraft, the final result should be the same. The level of safety for both types will be enhanced because the most appropriate airworthiness standards will be used.

Section 21.101(d)

Section 21.101(d) (proposed § 21.101(c)) retains the provisions of current § 21.101(b)(2) concerning special conditions. This paragraph addresses novel or unusual design features where the Administrator finds that the regulations incorporated by reference in the type certificate do not provide adequate standards. For a product that has a novel or unusual design feature, the applicant must comply with the regulations in effect on the date of the application for the change and any necessary special conditions "to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate for the product." For consistency with the other proposed changes to § 21.101, this proposed paragraph stated that an applicant for a change must comply with any special conditions, and amendments to those special conditions, if any, that provide a level of safety equal to that established by the regulations in effect on the date of the application for the change.

The provisions of current § 21.101(c), concerning the replacement of reciprocating engines with turbopropeller engines, have been removed because a change of this nature would usually be considered a significant change, and compliance with the regulations in effect on the date of application of the change would, therefore, be required.

Comments: CAA recommends that the words "established by the regulations" be replaced with the words "intended by the regulations."

FAA Response: The phrase "intended by the regulations" is not appropriate rule language. Except for the change from paragraph (c) to paragraph (d) this section is adopted as proposed.

Section 21.101(e)

Section 21.101(e) (proposed § 21.101(d)) sets a limit of five years on an application for a change to a type certificate for a transport category aircraft, and sets a limit of three years on an application for a change to a type certificate for all other products. The durations for these amended or supplemental type certificate applications are the same as those for applications for the corresponding type certificates. If an application for a design change expires, an applicant may file a new application or apply for an extension of the original application as provided in § 21.17(c) and (d).

This section is adopted as proposed, except that paragraph (e)(2) has been clarified. New paragraph (e)(2) allows the applicant to select a new date. The new application date may not precede the date the change is approved by more than the time period established under paragraph (e). For example, a person applies for a change to a transport category airplane in 2000. In 2003, the applicant decides that the project cannot be completed by 2005 (the time period required by paragraph (e)). The applicant, however, decides that the project can be completed by 2007. Under paragraph (e)(2), the applicant may elect 2002 (2007 minus 5 years equals 2002) as the new certification basis date.

Section 21.101(f)

Section 21.101(f) (proposed §§ 21.101(e)(1) and (2)) requires the certification basis for a change to a product certificated under predecessor regulations be established in the same manner as that for a change to a certification basis for a product certificated under parts 23, 25, 27, 29, 31, 33, or 35.

Changes to products type certificated under §§ 21.21 and 21.29 and changes to aircraft type certificated under §§ 21.24, 21.25, 21.27, as well as special classes of aircraft (where regulations from the airworthiness standards listed in Chapter 1 are a part of the certification basis) would be required to comply with the requirements of § 21.101(a).

Comments: Pratt & Whitney Canada states that neither the proposed Canadian regulation nor the related JAA NPA 21–7 contain requirements similar to this proposal and recommends that the FAA consider tasking ARAC to address this issue in the interest of harmonization, if a safety concern exists.

Bombardier and Transport Canada believe extending the applicability of this requirement to restricted category aircraft (§ 21.25) would be contrary to the ARAC recommendation. Bombardier advises that the ARAC proposal excluded this category of aircraft because "compliance with the 'applicable' regulations (whether earlier or latest) was not required for the original model when justified with the regulating Authority."

The Aerospace Industries Association (AIA) asserts that § 21.101(f) (proposed § 21.101(e)) contains the same requirements as § 21.101(a). AIA believes these sections "make no exception for products originally certificated to regulations that existed prior to the codification of the applicable part(s) of 14 CFR nor for products certificated as restricted, surplus military, or other unique types." AIA recommends this proposal be eliminated.

Transport Canada recommends the paragraph be revised in a manner similar to proposed § 21.101(a)(1), which specifically states "each regulation that is applicable to the changed product."

FAA Response: The intent of proposed paragraph (e)(1) was to ensure that the predecessor regulations (former CAR's, etc.) would continue to be the starting basis for aircraft that were originally type certificated under earlier regulations. The recodification of the regulations did not remove airworthiness requirements under which products were type certificated. Therefore, the FAA agrees, in part, with AIA in that proposed paragraph (e)(1) is redundant. Proposed paragraph (e)(1) has not been adopted.

However, § 21.101(f)(proposed § 21.101(e)(2)) is still needed to address aircraft type certificated under §§ 21.24, 21.25, 21.27, and special classes of aircraft covered by § 21.17(b). The airworthiness requirements applicable to the category of aircraft in effect on the date of the application for the change must include any airworthiness requirements that the Administrator finds to be appropriate for the type certification of the aircraft in accordance with those sections.

The FAA has determined that some restricted category aircraft should comply with the requirements of this rulemaking action and the reference to § 21.25 has been retained. Although Transport Canada has somewhat comparable "restricted category" provisions in their regulations, the JAA have no comparable provisions in their regulations. However, the FAA does certificate some restricted category aircraft using airworthiness standards and has determined that this requirement is needed to ensure that the aircraft certificated using regulations from parts 23, 25, 27, and 29 are included in the rule. The requirements of proposed § 21.101(e)(2) have been revised and retained as § 21.101(f) in the final rule. Due to the revision of § 21.101(f), the language to which Transport Canada referred is no longer in the paragraph.

Section 21.115

A type certificate holder may obtain approval for a change by amending the original type certificate under § 21.101, or by obtaining a supplemental type certificate under § 21.115. Other modifiers must obtain supplemental type certificates under § 21.115. Because the provisions of § 21.115 incorporate by reference the provisions of current § 21.101(a) and (b), the provisions to amend the type certificate are essentially the same as the provisions for supplemental type certificates. To align the provisions of proposed changes to § 21.101 and appropriate references to those changes in proposed § 21.115, the paragraph designators (a) and (b) have been removed.

By deleting the paragraph designators the FAA, in effect, proposed to require applicants for a supplemental type certificate to show that the modified product complies with the applicable regulations in effect on the date of the application for the STC is met.

Comments: Virtually all of the commenters who commented on proposed § 21.115 (including the oral comments from the in-service modifiers represented at the ARAC working group meetings) opposed this proposal and the substantive change proposed in § 21.101(a) that requires that STC applicants make a finding of compliance with later applicable regulations. These commenters recommend no changes to the current requirements for an STC.

FAA Response: As mentioned earlier under the discussions in § 21.101(b), the FAA has provided an exception, in § 21.101(c), for aircraft of 6,000 pounds or less maximum weight and non-turbine rotorcraft of 3,000 pounds or less maximum weight. The primary impact of this exception will be that the starting point for determining the applicable regulations for a changed product will continue to be the regulations incorporated by reference in the type certificate. The administrator may designate an amendment to the regulation incorporated by reference that applies to the change and any regulation that the Administrator finds is directly related, unless the Administrator also finds that compliance with that amendment or regulation would not contribute materially to the level of safety of the changed product or would be impractical.

The exception applies to both amended and supplemental type certificates. This is because there is no legal difference between the number of products that can be modified using an amended type certificate versus using supplemental type certificates.

Section 25.2

Current § 25.2(c) incorporates by reference the provisions of current §§ 21.101(a) and (b) concerning special retroactive requirements applicable to airplanes for which the regulations referenced in the type certificate predate subsequent amendments. Section 25.2(c) has been revised consistent with the changes to § 21.101(a).

Comments: Raytheon believes that §§ 23.2, 27.2, and 29.2 should be amended to use the same language as § 25.2.

FAA Response: Current §§ 23.2, 27.2, and 29.2 do not contain references to § 21.101 no change is needed in these sections.

Paperwork Reduction Act

This rule contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)). As previously stated, comments on the information were not invited at the proposed rule stage and therefore are being invited in this final rule document. The Department of Transportation has submitted the information requirements associated with this rule to the Office of Management and Budget (OMB) for its review. The title, description, and number of respondents, frequency of the collection, and estimate of the annual total reporting and recordkeeping burden are shown below.

Title: Type Certification Procedures for Changed Products.

Summary: This rule will constitute a reporting burden for applicants seeking an amended Type Certificate or a Supplemental Type Certificate for changes to aeronautical products. This rule requires applicants, with some exceptions, to comply with the latest regulations in effect on the date of the application for the design changes of aircraft, aircraft engines, and propellers. Compliance with the latest regulations will not be required:

(1) if the change is not significant,

(2) for those areas or components not affected by the change,

(3) if such compliance would not contribute materially to the level of safety, or

(4) if such compliance would be impractical.

The applicant for most product changes now will incur an additional incremental administrative cost to document an analysis based on the latest certification basis and identify to the FAA those regulations they will or will not be complying with, based on the above four criteria. This analysis is part of the applicant's compliance review document.

Applicants for product changes to non-turbine rotorcraft of 3,000 pounds or less maximum weight, or other aircraft of 6,000 pounds or less would

not necessarily be required to perform this analysis. For such applications, the FAA would make an initial finding to require compliance with appropriate regulations. In that case, the applicant may decide to demonstrate compliance with those regulations, or may perform the analysis to demonstrate that compliance is not warranted.

Use of: Because the rule shifts most of the responsibility from the FAA to the applicant to evaluate and demonstrate the applicable certification basis for product changes, the applicant must produce additional documentation when submitting an application to the FAA. The FAA will review all documentation provided with the amended TC or STC application and determine the certification basis for the changed product.

Respondents: Any individual or business entity desiring to submit an application for a change to a TC or an STC; i.e., a current TC or STC holder, a manufacturer, or a modifier of aeronautical products.

Frequency: Approximately 2,860 applications are received by the FAA annually. Of these, an average of 1,649 applications per year result in certificates being issued. The difference of 1,211 applications per year represents an estimate of the applications that are initiated but are never completed; e.g., withdrawn, canceled, or inactive. The sum of the 1,649 annual applications completed for certification, and 75 percent of the 1,211 applications not completed, equals the administrative equivalent of 2,557 applications per year.

Annual Burden Estimate: The full regulatory evaluation forecasts costs over a 20-year period, beginning in the year 2000, and assumes a 3 percent annual increase in applications. For all applicants, the first year administrative costs of the rule are projected to equal $1,975,530 (1998 present value $1,725,504) divided by an overhead rate of $105 an hour, which equals 18,815 total annual hours.

Using the 1500-employee size standard, small firms are projected to incur 56.6 percent of those costs, equaling $1,118,679 with a 1998 present value of $977,098. The small business proportion of expected administrative costs (56.6 percent) is lower than the proportion of applications expected from small business (62.1 percent) because a significantly higher proportion of the administrative exceptions under the rule are projected for small business applicants. This disproportionate exception rate also causes the average increased administrative cost per small business application ($664) to be smaller than the average for all applicants ($728.)

For the 20-year study period, incremental small business administrative costs under the rule are projected to total $30,059,321 with a 1998 present value of $13,938,179.

The agency solicits public comment on the information collection requirements to:

(1) evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submission responses).

Individuals and organizations may submit comments on this information collection requirements by August 7, 2000, and should direct them to the address listed in the **ADDRESSES** section of this document.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. The burden associated with this rule has been submitted to OMB for review. The FAA will publish a notice in the **Federal Register** notifying the public of the approval number.

Information collection requirements to other sections of part 21 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0018.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable.

The FAA has reviewed corresponding ICAO Standards and Recommended Practices and Joint Aviation Airworthiness Authorities regulations, where they exist, and has identified and discussed similarities and differences in these proposed amendments and foreign regulations.

The final rule results, primarily, from a recommendation harmonized with the aviation authorities of Canada and Europe. Transport Canada and the Joint Aviation Authorities have proposed similar corresponding changes to regulations governing type certification procedures for changed products.

Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. §§ 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the U.S. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this rule: (1) would generate benefits that justify its costs; and is "a significant regulatory action" under Executive Order 12866 and under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979), (2) would have a significant economic impact on a substantial number of small entities; (3) would not constitute a barrier to international trade; and (4) does not contain a significant intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

Response to Economic Comments

Comment: The Air Transport Association (ATA) and a private aircraft owner both raise due process concerns based on the failure of the FAA to quantify the costs and benefits of the proposal in the Notice of Proposed Rulemaking (NPRM). While the NPRM stated that the FAA was not able to quantify the costs and benefits of this proposal, the NPRM also stated that the benefits would exceed the costs. In previous rulemakings the FAA was able to justify part 25 amendments applicable to new type designs, but failed to satisfy reasonable cost-benefit criteria essential to making them applicable to derivatives, new production units, or the existing fleet. Based on this, ATA doubts that the benefits of the proposal exceed the costs, and, in general, holds that government should not adopt regulations for which the costs and benefits have not been quantified.

FAA Response: The FAA's assessment that the proposed rule would be cost-beneficial was, and is, based on the provision of the rule that, in the final instance, compliance with later regulations will not be required if such compliance ". . .would not contribute materially to the level of safety of the changed product or would be impractical." In the discussion of this provision, the NPRM further explained that "compliance with a later amendment would be considered 'impractical' when the applicant can establish that the cost of the design change and related changes necessary to demonstrate compliance with the amendment would not be commensurate with the resultant safety benefit."

Executive Order 12866, which is the basis for federal regulatory evaluation, explicitly recognizes that costs and benefits may not always be quantifiable. The Order states that, "costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider."

Discussion of Costs and Benefits

The costs imposed by the final rule will be incurred by future applicants for amended and supplemental type certificates for aeronautical products. Two categories of costs may be imposed: (1) administrative costs, and (2) the costs of compliance with later regulations.

The final rule will require applicants to comply with the regulations in effect on the date of the application for the change, as compared to the latest certification basis of the product to be changed, unless one of several conditions is met. Compliance with the later set of regulations will not be required:

(1) if the change is not significant,

(2) for those areas or components not affected by the change,

(3) if such compliance would not contribute materially to the level of safety of the changed product, or

(4) if such compliance would be impractical; i.e., would result in costs that would not be commensurate with the safety benefit that would be derived.

Applicants for changes to most products would incur the incremental administrative cost of evaluating and demonstrating to the FAA the applicability of these four conditions to their product changes. The final rule, unlike the proposed rule, would make an exception to this administrative responsibility for applicants for changes to either: (1) non-turbine rotorcraft of 3,000 pounds or less maximum weight, or (2) other aircraft of 6,000 pounds or less. For such applications, the FAA would maintain the administrative responsibility of demonstrating that the certification basis for a changed product should incorporate the latest airworthiness standards.

Survey Methodology

The evaluation of this rule was based on a sample of records from the FAA's Aircraft Certification Office Subsystem (ACOS) database. The ACOS system is used to track FAA certification projects at the individual certification office level. All pertinent (amended and supplemental) certification actions, where the date of application was 1994 or later, were selected and combined into a single database. That filter resulted in a set of 13,448 project records, from which, a random sample of 250 project records were selected for detailed review and analysis. These sample project records were then used to forecast the expected distribution of characteristics for future amended and supplemental certification actions under the final rule.

The 250 sample project records were evaluated by a team of field-experienced FAA certification employees. Based on the data provided for each project in the sample, the review team assessed the following five areas for each sample record:

1. Categorized the number of employees in the firm submitting each application. This information was used to evaluate the potential effects of the rule on small entities.

2. Assessed the weight and type of the affected aeronautical product in order to estimate the proportion of applications that would fall within the final rule's specified exceptions for certain small aircraft.

3. Estimated the existing administrative effort for each application under current procedures.

4. Estimated the incremental administrative work that would be caused by the final rule. The review team also estimated the additional administrative work for those applications that would actually be excepted by the rule's small-aircraft provision. These estimates were needed to measure the amount of relief that would be afforded by this exception.

5. Estimated the proportional split between the certification projects that would and would not be required to meet later regulations. For those projects that would not be required to meet later requirements, the responses were used to measure the distribution of conditions that would lead to that determination. Conversely, for those projects that would be required to meet later regulations, these responses were used to categorize the relative cost impact of meeting those regulations.

For 227 of the 250 sample project applications, the ACOS data system contained sufficient information for the FAA review team to estimate answers for the five-part evaluations described above. Insufficient data were available to assess the remaining 23 project records, which were removed and were not considered further.

Costs

The following procedure was used to estimate the administrative costs of the rule. First, the sample data were tabulated to determine the proportional distributions of results for each item area in the sample. This distribution for the sample project applications was then expanded to represent the characteristics that would be expected for all affected applications in a year. The ACOS data show that an average of 2,860 applications for amended or supplemental type certificates are received into the system each year. Of these, an average of 1,649 applications per year result in certificates being issued. The difference of 1,211 applications per year represents an estimate of the applications that are initiated but are never completed; e.g., withdrawn, canceled, or inactive.

The regulatory evaluation assumes that the additional administrative efforts caused by the final rule would apply to all projects that are completed, and that 75 percent of that additional administrative effort would actually take place for the "never completed" projects. The sum of the 1,649 annual applications completed for certification, and 75 percent of the 1,211 applications not completed, equals the administrative equivalent of 2,557 applications per year. The projected numbers of applications, by category,

were then computed by multiplying the percentage distributions of the sample data by this administrative equivalent of 2,557 applications per year.

Next, the annual increased hours of administrative work that will be caused by the rule was computed by multiplying the matrix of 2,557 applications by the respective average increases in administrative hours per application, as determined from the review team evaluations of Item 4. This methodology projects that the rule will impose a total additional 17,218 applicant hours of administrative work per year. By comparison, the rule's exception provision for small aircraft applications is projected to preclude an additional 3,985 hours of applicant administration from being imposed.

The increased annual administrative costs of the rule were then computed by multiplying the incremental administrative hours, from above, by a unit cost factor of $105 per hour. This factor is intended to be a representative, fully burdened labor rate for the highest skill level necessary to make and support the determinations called for under the rule. These calculations project a base annual administrative burden of approximately $1.8 million.

The administrative costs of the rule were then projected over a 20-year study period. For computational simplicity, all administrative costs were assumed to begin in the year 2000, even though the effective date of the rule will vary by product type. The computations assumed an annual 3 percent increase in certification applications, and accordingly, a 3 percent annual increase in attributable costs. The initial year 2000 cost was computed from the $1.8 million base annual administrative burden described above and inflated at 3 percent annually from 1997 to the year 2000. These calculations predict that the 20-year administrative costs of the rule will total $53.1 million, with a 1998 present value of $24.6 million. Parallel calculations were made for the costs that will be excepted under the rule's provision for certain small aircraft. This exception will preclude an estimated $12.3 million in applicant administrative costs over the study period, with a 1998 present value of $5.7 million.

In addition to the administrative costs detailed above, additional costs will be imposed by the rule's conditional requirements for compliance with later certification regulations. It is important to note that the final rule's exception for small aircraft only applies to the administrative burden of proof under the rule. Accordingly, applications that are excepted from the rule's incremental administrative costs may still incur the incremental costs of complying with later, and likely more stringent, regulations.

A second important difference between the calculations for administrative costs versus compliance costs concerns the base number of affected applications. The previous computations of administrative costs included a proportion (75 percent) of those applications that were never finalized, and where no amended or supplemental type certificate was issued. By comparison, any additional compliance requirements resulting from this rule would only apply in situations where an amended or supplemental type certificate is actually issued. As such, the compliance cost calculations are based on the average 1,649 amended and supplemental certificates issued each year, as reported from the ACOS data. Using this base number, the annual numbers of certifications that would be subject to the rule over the 20-year study period were forecast, based on a 3 percent growth rate.

The expected annual numbers of certification projects that would have to meet later regulations were estimated from the sample results. Item 5 from the team evaluation areas assessed the simulated effect of the rule on the certification basis of each sample project. The percentage distribution of that assessment follows.

	Percent of samples
Rule would not invoke later regulations:	
Change would be not significant	49.3
Change would not contribute materially to safety or would be impractical	9.7
Rule would invoke later regulations:	
Compliance costs would increase less than 10%	36.1
Compliance costs would increase 10%–25%	3.5
Compliance costs would increase over 25%	1.3
Total	100.0

This regulatory evaluation uses the three compliance impact level percentages to project the annual numbers of applications where later regulations would be invoked and additional compliance costs could result. Separate estimates were made for each of the three ranges of compliance impact. This procedure projected that, in the first year, cost increases of less than 10 percent would result from applying later regulations to 651 certification projects. Similarly, 64 projects were projected to incur cost increases of 11 to 25 percent, and 24 projects would have cost increases of over 25 percent. Annual impact estimates were projected over the entire study period through the year 2019, again assuming a 3 percent growth.

It would be informative to have more detailed compliance impact estimates than the broad categorizations of relative percentages that were possible using the sample review methodology employed in this evaluation. However, the scope of projects that will be affected by this rule is wide, and reliable measures of the sample project production levels were not available for this evaluation. Therefore, in an effort to provide useful information, without portraying a higher degree of confidence than is supportable, estimates were made of the future annual compliance cost impacts of the rule per assumed $100,000 unit of project size. This assumed average project size is a direct factor to the resulting projected compliance costs, and alternate assumptions are readily calculable.

While this analysis uses a compliance cost of $100,000 for a single project, the FAA believes there is a wide range of compliance costs. For example:

1. *A $100 thousand dollar project.* An emergency medical service system for a helicopter over 3,000 pounds. This modification includes a litter/restraint system, medical equipment (oxygen, ventilator, air pump, defibrillator, etc.), and an auxiliary electrical system.

2. *A $20 to $50 thousand dollar project.* An improved stainless steel exhaust system for a twin-engine general aviation aircraft.

3. *A $15 thousand dollar project.* The purchase and installation of an avionics instrument system. For a simple sensitivity test, the compliance cost estimate is directly related to changes in the assumed $100,000 compliance cost per project. If, for example, the project cost for small business is better represented by $20,000, then the compliance cost estimates should be reduced by 80 percent.

The unit-project-size cost estimates were computed as the product of: (1) the relevant number of annually affected projects described above, (2) an assumed median value for the percentage impact ranges at each of the three impact levels, and (3) the assumed $100,000 unit project size. For example, the year 2000 cost estimate for projects in the less-than-10-percent cost impact category was computed as the product of:

(1) the projected 651 affected projects from Table 7,

(2) an assumed mid-range cost impact of 5 percent, and

(3) the assumed unit project level of $100,000.

This subcalculation produces a cost impact estimate of $3,255,000 for projects in the "less-than-10-percent" cost impact category in the year 2000, as shown in Table 8. When applied to all 3 cost impact categories, and summed, this methodology produces an annual compliance cost impact of $4.8 million in the year 2000. Total twenty-year compliance costs, at the $100,000 unit project level, are projected to equal $128.0 million, with a 1998 present value of $59.4 million.

In summary, the 20-year administrative costs of the rule are projected to total $53.1 million, with a 1998 present value of $24.6 million. Parallel compliance costs, assuming a $100,000 unit project level, equal $128.0 million, with a 1998 present value of $59.4 million. An additional $12.3 million ($5.7 million, 1998 present value) in applicant administration costs will be averted by the small-aircraft exception provision in the rule.

Benefits

The directly attributable benefit of this final rule is the augmented safety that will result in those cases where future changed products will be required to comply with later, more stringent airworthiness standards than those that would be required in the absence of this rule. These benefits cannot be accurately predicted and quantified, but the rule includes provisions to assure that any actions taken pursuant to it will be cost-beneficial.

The benefits of amendments to the airworthiness standards are evaluated at the time of those amendments. Some amendments are based on the FAA's evaluation of accidents or incidents; other amendments are based on the FAA's evaluation of probable or likely safety problems that may not be attributable to a specific accident. The changed products rule is FAA's proactive approach to addressing safety issues before they arise. The FAA does not have to wait for an accident to justify a rule.

As noted previously, the rule will require compliance with all later regulations where such compliance will contribute materially to the level of safety. The rule will not require compliance with later regulations: (1) if the change in the aeronautical product is not significant, (2) for those areas or components of the product not affected by the change, (3) if such compliance would not contribute materially to the level of safety of the changed product, (4) or in the final analysis, if such compliance would be impractical. Compliance with later regulations will be considered impractical if the applicant can show that such compliance would result in costs that are not consistent with the possible safety benefits. Since each action taken under the rule will be cost-beneficial, the FAA has determined that the benefits of the rule will justify its costs.

Smaller Aircraft Exception Provision

The exception in § 21.101 for non-turbine rotorcraft under 3000 pounds and for other aircraft under 6000 pounds places the burden on the FAA to make an initial determination whether or not to require the applicant to demonstrate compliance with a later airworthiness standard. The certification basis for the change could be approved in several ways:

(a) If the FAA determines that no later regulation is to be applied, the applicant would demonstrate compliance with the existing certification basis, and there would be *no administrative or compliance costs* associated with application of this changed products rule.

(b) If the FAA determines that a later regulation is to be applied, the applicant can accept that determination, and, while there would be *compliance costs* associated with accepting the FAA determination, there would be *no administrative costs.*

(c) If the FAA determines that a later regulation is to be applied, the applicant could submit a technical analysis to demonstrate that, for example, compliance with the later regulation would be impractical or would not contribute materially to the level of safety of the product. In that case—

(1) If the FAA agrees with the applicant's technical analysis, the applicant would demonstrate compliance with the existing certification basis, and, while there would be *no compliance costs,* there would be *administrative costs.*

(2) If the FAA does not agree with the applicant's technical analysis, the applicant would demonstrate compliance with the later regulation, and there would be resultant *administrative and compliance costs.*

Thus, in practice, the total costs to applicants for changes to the smaller aircraft could be a combination of "no costs" (scenario "(a)" above), compliance costs only (scenario "(b)" above), administrative costs only (scenario "(c)(1)" above), and compliance and administrative costs (scenario "(c)(2)" above). The calculations in this regulatory analysis are based on the assumption that, if the FAA determines that a later regulation should apply, the applicant will demonstrate compliance with the later regulation, and will not attempt to demonstrate that one of the exceptions in § 21.101 applies, e.g., that compliance with the later regulation would be impractical or would not contribute materially to the level of safety.

However, one needs to consider the following. The applicant will make their own educated determination as to the applicability of the later regulation, and will decide to accept compliance with that regulation only when they are relatively certain that the administrative costs of demonstrating that one of the § 21.101 exceptions applies and will exceed the costs of demonstrating compliance with the later regulation. Thus, this regulatory analysis somewhat over-estimates total compliance costs in that it assumes that applicants will *always* forego their opportunities to convince the FAA that compliance with the later regulation would be impractical or would not contribute materially to the level of safety. By the same token, that assumption results, somewhat, in an under-estimation of the total administrative costs. Only when an applicant has decided that compliance costs are likely to actually exceed administrative costs, will the applicant choose to expend the resources to make the "impracticality," "contribution to safety," or other arguments. Furthermore, an applicant is more likely to choose to make those arguments when there is a persuasive technical foundation for them. Therefore, this regulatory analysis over-estimates compliance costs by including those costs that would tend to be avoided by the more efficient expenditure of administrative resources. And, by the same token, the administrative costs that are "unaccounted for" due to the above under-estimation are more likely to be spent in realistic efforts to avoid even higher compliance costs. The net effect is that this regulatory evaluation over-estimates total costs.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) establishes, "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle,

the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination finds that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify, and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Recently, the Office of Advocacy of the Small Business Administration (SBA) published new guidance for Federal agencies responding to the requirements of the Small Business Regulatory Enforcement Act of 1996. Following the SBA guidance, the FAA conducted the required review of this rule and determined that, based on the cost assumptions described above, it will have a significant impact on a substantial number of small entities. Accordingly, a full regulatory flexibility analysis was conducted and is summarized as follows.

1. A Description of The Reasons Why Action By The Agency Is Being Considered

In recent years, a trend has developed toward fewer products that are of completely new designs, which would require new type certificates. Over a period of time, a series of changes to an original product may have been made so that the current model is considerably different from the original model. Although each changed product in such a series of changes may differ little from its immediate predecessor, the collective changes can result in a product with substantial differences from the original product.

Another trend in manufacturing is to keep products in production over several decades. Some currently manufactured airplanes have evolved from airplane models originally type-certificated 25 years ago. This does not imply that those airplanes are unsafe, because they do, in practice, have features that address the intent of most of the current airworthiness standards. However, current procedural regulations (part 21) do not require that changed products demonstrate compliance with all current airworthiness standards.

The FAA maintains that the issue should not be whether a product is produced under a new type certificate or an amended one, or changed under a supplemental type certificate. Nor should the certification basis of a changed product turn on the fact that the product is to be modified or initially operated by a small (as opposed to a large) entity. The issue is whether or not the level of safety of the product, embodied in the airworthiness standards it complies with, is as high as practical.

2. A Succinct Statement of The Objectives Of, and Legal Basis For, The Proposed Rule

The objective of this rule is to enhance safety by applying the latest airworthiness standards, to the greatest extent practical, for the certification of significant design changes to aircraft, aircraft engines, and propellers.

The legal basis for the rule derives from Title 49, U.S.C. 44701 which authorizes the FAA Administrator to promote safety of flight of civil aircraft in air commerce by prescribing, in part, minimum standards governing the design and construction of aircraft, aircraft engines, and propellers, as may be required in the interest of safety. Under 49 U.S.C. § 44704, the FAA may issue type certificates, including supplemental type certificates, for aircraft, aircraft engines, and propellers.

3. A Description of The Projected Reporting, Recordkeeping and Other Compliance Requirements of The Proposed Rule, Including an Estimate of The Classes or Types of Small Entities That Will Be Subject to The Requirement and The Type of Professional Skills Necessary For Preparation of The Report or Record

As detailed previously in the regulatory evaluation, the requirements imposed by this rule will affect future applicants for amended and supplemental type certificates for changed aeronautical products. The rule will impose both administrative requirements (with certain exceptions) and compliance requirements. It will require applicants to comply with the regulations in effect on the date of the application for the change, as compared to the latest certification basis of the product to be changed, unless one of several conditions is met. Compliance with the later set of regulations will not be required: (1) if the change is not significant, (2) for those areas or components not affected by the change, (3) if such compliance would not contribute materially to the level of safety of the changed product, or (4) if such compliance would be impractical; i.e., would result in costs that would not be commensurate with the safety benefit that would be derived.

Applicants for changes to most products would need to evaluate and demonstrate to the FAA the applicability of these four conditions to their product changes, if compliance to regulations other than the most current is to be required. The skill level necessary to make these determinations will vary widely with the scale and engineering complexity of the individual product change involved. In general, these skills would include a working knowledge of the pertinent aviation regulations, the ability to evaluate and approve technical data, and a combination of training and responsible experience in the field or fields of engineering pertinent to the product change. In assessing the administrative costs of this rule, the regulatory evaluation assumes a fully burdened labor rate of $105 per hour for the highest skill level necessary to make and support the determinations called for under the rule.

4. An Identification, to The Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With The Rule

The FAA is unaware of any federal rules that would duplicate, overlap, or conflict with the final rule.

5. A Description and An Estimate of The Number of Small Entities To Which The Rule Will Apply

This rule will apply to future applicants for amended and supplemental type certificates for changed aeronautical products. FAA regulations are typically directed toward some closely identified industry or occupation; such as domestic air carriers or private pilots. By comparison, the applicants under this rule are not uniquely defined, and may be found in a wide variety of industries. In assessing this rule, the FAA identified 63 industry groups in 19 different four-digit standard industrial classifications (SIC) that would reasonably include applicants for certifications to changed aeronautical products. These industries are listed as Table 9 of the appendix to the full regulatory evaluation.

The Small Business Administration (SBA) provides descriptive national data for the year 1995 on U.S. firms, aggregated at the four-digit SIC level.

These data include the numbers of firms, numbers of establishments, employment, annual payroll, and estimated receipts by employment size of firm. Information for the 19 industry classifications identified under this rule were combined to produce the following distributions.

Number of employees	Percent of firms	Annual receipts per employee ($1,000's)
1—99	83.2	148.0
100—499	8.0	163.9
500 or more	8.8	207.6
Total	100.0	Avg: 200.1

The SBA also provides small business size standards for each industry. The 19 industry groups that could include firms affected under this rule fall into four separate SBA standards for small business definition: 500, 750, 1000, or 1500 employees. As part of the evaluation for this rule, the FAA analyzed the employment size of firms for a random sample of 227 supplemental and amended type certification projects. The size distribution of these samples is presented below.

Number of employees	Percent of samples	Cumulative percent of samples
1—100	44.1	44.1
101—500	12.3	56.4
501—750	2.6	59.0
751—1000	1.8	60.8
1001—1500	1.3	62.1
1501 or more	37.9	100.0
Total	100.00	

As presented in the table, depending on which size standard is applied, between 56.4 percent to 62.1 percent of the changed-product applications that would be affected by this rule will be submitted by small businesses. To simplify discussion, the remainder of this analysis is based on the 62.1 percent proportion and uses the under 1500-employee size standard. As estimated in the full regulatory evaluation, the FAA expects the administrative equivalent of 2,557 applications will be submitted each year, and 1,588 of those would be from small firms.

The final rule, unlike the original rule, includes an administrative exception for applications related to certain small aircraft. Based on the sample of projects that were analyzed for this rule, 16.7 percent of all applications would fall under this exception, and 97.4 percent of the excepted applications would be submitted by small firms. An estimated 417 of the total annual 1,588 small-business applications would qualify for this exception, and the remaining 1,171 would not.

In addition to the administrative requirements for applications that are submitted, the rule will also invoke certain regulatory compliance requirements for the proportion of applications that are completed and certificated. Some 1,649 of the total applications are completed annually as amended or supplemental type certificates and would be subject to the rule's compliance provisions. Of these, an estimated 1,024 will be from small firms.

Regulatory Flexibility Cost Analysis

The full regulatory evaluation forecasted costs over a 20-year period, beginning in the year 2000, and assumed a three-percent annual increase in applications. For all applicants, the first year administrative costs of the rule are projected to equal $1,975,530 (1998 present value $1,725,504). Using the 1500-employee size standard, small firms are projected to incur 56.6 percent of those costs, equaling $1,118,679 with a 1998 present value of $977,098. The small business proportion of expected administrative costs (56.6 percent) is lower than the proportion of applications expected from small business (62.1 percent) because a significantly higher proportion of the administrative exceptions under the rule are projected for small business applicants. This disproportionate exception rate also causes the average increased administrative cost per small business application ($664) [1] to be smaller than the average for all applicants ($728.) For the 20-year study period, incremental small business administrative costs under the rule are projected to total $30,059,321 with a 1998 present value of $13,938,179.

The regulatory evaluation also details the incremental costs expected under the rule for compliance with later regulations. Based on the evaluation of sample applications, 48 percent of the future certifications from small business firms would be required to meet some measure of additional later regulations. This proportion is higher than the parallel figure of 41 per cent for applications from all firms.[2] In turn, this higher incidence rate also produces higher small business costs per certification action *if it* is assumed that the scale and complexity of small business and large business certification projects are the same. In the absence of reliable project size estimates, the regulatory evaluation has employed a uniform $100,000 project size as a unit factor to facilitate decision-making. However, the FAA does not believe that the projects submitted by small and large businesses are typically equal in scale and complexity.

While this analysis uses a compliance cost of $100,000 for a single project, the FAA believes there is a wide range of compliance costs. For example:

1. *A $100 thousand dollar project.* An emergency medical service system for a helicopter over 3,000 pounds. This modification includes a litter/restraint system, medical equipment (oxygen, ventilator, air pump, defibrillator, etc.), and an auxiliary electrical system.
2. *A $20 to $50 thousand dollar project.* An improved stainless steel exhaust system for a twin-engine general aviation aircraft.
3. *A $15 thousand dollar project.* The purchase and installation of an avionics instrument system. For a simple sensitivity test, the compliance cost estimate is directly related to changes in the assumed $100,000 compliance cost per project. If, for example, the project cost for small business is better represented by $20,000, then the compliance cost estimates should be reduced by 80 percent.

With the above sensitivity test in mind and using the $100,000 project size cost, small business applications are expected to incur a year 2000 compliance cost of $3,582,317 (with a 1998 present value of $3,128,934).[3] This represents an average increase of $3,198 per project, assuming a unit $100,000 base project size.[4] Over the twenty-year study period, small business compliance costs under this scenario are projected to total $96,006,280 (with a 1998 present value of $44,532,108).

Affordability Analysis

If the assumed $100,000 unit of project size is also assumed to be the average size for a small-business project,

[1] Note that these are average costs per application, not per affected application. Based on the sample, 36 percent of all small business applications would meet the "small aircraft" exception under the rule and incur no incremental administrative costs.

[2] Note that the "small aircraft" exception under the rule will not alter compliance decisions nor alleviate their costs.

[3] For computational simplicity, the regulatory evaluation overstates initial annual compliance costs by assuming that all such costs would occur in the year that the project is approved. In reality, they would occur over several years.

[4] Aircraft operators or modifiers typically do not amortize the incremental cost of $3,200 for a modification totaling $100,000 or more.

the increased administrative cost per project ($664) can be added to the increased compliance cost per project ($3,198) to provide an expected average increase of $3,862 per project. The relative effect of these costs per small firm is a function of: (1) the size (receipts) of that firm, and (2) the number of project applications that a firm submits/completes per year.[5] The following table presents the average impact of the rule as a percentage of a firm's annual receipts, for various assumptions on firm size and annual number of projects. For example, a firm with 5 projects per year would incur additional costs of 5 times $3,862; or $19,310 for the year. If that firm employs 10 people, with each employee producing an average $148,000 of receipts per year (from the "annual receipts per employee" factors reported above in paragraph 5) the firm's total receipts would equal $1.48 million. For this example combination of employees and projects, the $19,310 one-year impact of the rule would equal 1.30 percent of the $1.48 million estimated annual receipts of the firm. As a matter of context, it should be noted that FAA analysis of the ACOS data shows that 52 percent of applications were submitted by firms that only submitted one application in that year.

AVERAGE IMPACT OF RULE AS A PERCENTAGE OF ANNUAL RECEIPTS

Employees	Annual No. of projects		
	1	5	10
10	0.26%	1.30%	2.61%
100	0.02%	0.12%	0.24%
1000	0.00%	0.01%	0.02%

Disproportionality Analysis

As discussed in the cost and affordability analyses above, a higher proportion of total certification applications is received from small businesses (62.1 percent) than from large businesses (37.9 percent). This is not surprising given the relative proportions of numbers of small and large businesses. By comparison, the small business proportion of expected administrative costs (56.6 percent) will be lower than the proportion of applications expected from small businesses (62.1 percent) because a significantly higher proportion of the administrative exceptions under the rule are projected for small business applicants. By comparison, the sample survey assessment predicts that small business applicants will disproportionately incur the additional costs of complying with later regulations as a result of the rule. The sample survey predicts that the rule will require 48 percent of small business applications, as compared to 29 percent of large business applications, to comply with later regulations.

Competitiveness Analysis

As discussed above, it appears that there will be proportionally higher compliance costs imposed by the rule on small than on large businesses. This information is not sufficient, however, to determine the impact of the competitiveness of small business vis-á-vis large entities. There is a wide divergence in the characteristics and ultimate consumer of products. There is a fundamental difference among large, fixed-wing commercial aviation, general aviation, and rotorcraft. Also, the products that are produced by the companies that are subject to the rule are not homogeneous. The wide range of products that would be certificated under this rule includes major aircraft components such as wings, diversely unique avionics, and small subassemblies such as seat fasteners. Also, many of the larger companies in this field are assemblers of products that often are produced by small companies. As such, the large companies may be customers rather than competitors to the affected small companies.

Business Closure Analysis

The FAA believes that the average impact of the rule gauged by the cost of the rule per year relative to an affected firm's average annual receipts is likely to be low. In cases where the potential costs would be prohibitive, firms may decide not to proceed with the intended change. This would prevent cash flow problems, losses, and business closure in the short run. However, a series of decisions not to certify new products could affect long run business viability. Based on the sample of 250 applications analyzed by the FAA, the agency believes that the vast majority of applications would not impose high enough compliance costs to threaten business closure of small business.

Description of Alternatives

Three primary alternatives were considered in crafting this rule. The first would be to take no new rulemaking action and to retain the changed-product certification process as it now exists. The FAA opposes this alternative because it would not address the problem whereby a series of cumulative changes can result in a model that is substantially different from the original model, yet that product is not required to demonstrate compliance with all the recent airworthiness standards.

The second evident alternative would be to retain the existing certification process for changes to small aircraft, since the bulk of these applications are submitted by small firms. Again, the FAA opposes this alternative since it would leave the existing problem for a segment of the industry and would create an unacceptable inequity across aircraft model sizes.

As an alternative to full exclusion from the rule, the FAA has included a small-aircraft exception for the administrative responsibilities of the final rule, but not for its compliance provisions. This exception was specifically added to address small business concerns that arose from the proposed rule. The exception will apply to applicants for changes to either: (1) non-turbine rotorcraft of 3,000 pounds or less maximum weight, or (2) other aircraft of 6,000 pounds or less. For changes to such products, the FAA (i.e., the Aircraft Certification Office (ACO) processing the application) may make an initial determination that one or more later airworthiness standards should be part of the certification basis of the changed product. If the ACO makes that determination, the applicant may submit technical analyses to convince the ACO that compliance with the later regulation(s) would be impractical or would not contribute materially to the level of safety of the product. However, as discussed previously in this summary, the regulatory analysis makes the conservative assumption that the applicant will forgo the administrative costs of those technical analyses and incur the compliance costs (estimated to be twice that of administrative costs) attributable to the later regulation(s).

Based on the sample survey, 16.7 percent of all project applications would qualify for this exception, and 97.4 percent of the excepted applications would come from small firms (fewer than 1500 employees). In point of fact, 81.6 percent of the exceptions would go to firms with less than 100 employees.

The value of applicant costs that will be averted by the small-aircraft exception is detailed in the full regulatory evaluation. The expected value of all exceptions in the first year of the rule (year 2000) is calculated at $457,224. Over the 20-year study period, the value of exceptions totals to $12.3 million with a 1998 present value of $5.7 million. Again, over 97 percent of this relief will go to small businesses.

[5] FAA analysis of the ACOS data shows that 52% of applications were submitted by firms that only submitted one application in that year.

The small-aircraft exception provision is predicted to reduce the rule's administrative burden on small businesses by 27.6 percent from the level that would exist without it. The total small business cost burden (administrative and compliance costs) will be 6 percent lower as a result of this exception.

Other alternatives were considered, but were determined not to be practicable. These included (1) requiring applicants for changes to comply with the latest regulations, with no exceptions; and (2) requiring a complete recertification at certain intervals (10 years).

Compliance Assistance

The FAA will issue an advisory circular based on this rulemaking. The circular will provide examples and guidance for determining the certification basis of changed aeronautical products. Small businesses and other applicants may follow this guidance in developing their own arguments as to the appropriate certification basis of their changed products. The circular will be available from the FAA's aircraft certification offices and through the FAA website.

The agency intends to use a variety of additional mechanisms to inform applicants and industry trade associations of the rule change and to explain the new procedures. The FAA will serve copies of this final rule document, with the Regulatory Evaluation Summary, on trade associations that represent most of the small entities affected by this rule. The FAA also will utilize its directorate newsletters to inform industry. The agency will present information on the new rule at industry and FAA designee meetings. In addition, a training video and instructional materials are being developed that will introduce the new rule and explain the respective roles of applicants and FAA personnel. These products will also be available to small businesses through the aircraft certification offices.

International Trade Impact Assessment

The provisions of this rule promote international trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States. The final rule results, primarily, from a recommendation harmonized with the aviation authorities of Canada and Europe. Transport Canada and the Joint Aviation Authorities have proposed similar corresponding changes to regulations governing type certification procedures for changed products.

The Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the U.S. This final rule imposes additional safety requirements for aviation products that are registered in the U.S. Thus, this final rule does not create any unnecessary obstacles to the foreign commerce of the U.S.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year.

This rule does not meet the thresholds of the Act. Therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 11

Administrative practices and procedures reporting

14 CFR Part 21

Aircraft, Aviation safety, Safety, Type certification

14 CFR Part 25

Aircraft, Aviation safety, Safety, Type certification

Adoption of Amendments

Accordingly, the FAA amends parts 11, 21, and 25, Chapter 1 of Title 14, Code of Federal Regulations, as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, 46102.

2. Section 11.11 is amended by removing the first sentence and adding two sentences, in its place, to read as follows:

§ 11.11 Docket.

Official FAA records relating to rulemaking actions are maintained in current docket form in the Office of the Chief Counsel. These records include: Proposals, notices of proposed rulemaking, written material received in response to notices, petitions for rulemaking and exemptions, written material received in response to summaries of petitions for rulemaking and exemptions, petitions for rehearing or reconsideration, petitions for modification or revocation, notices denying petitions for rulemaking, notices granting or denying exemptions, summaries required to be published under § 11.27, special conditions required as prescribed under §§ 21.16 or 21.101(d) of this chapter, written material received in response to published special conditions, reports of proceedings conducted under § 11.47, notices denying proposals, and final rules or orders. * * *

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

3. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

4. Section 21.19 is revised to read as follows:

§ 21.19 Changes requiring a new type certificate.

Each person who proposes to change a product must apply for a new type certificate if the Administrator finds that

the proposed change in design, power, thrust, or weight is so extensive that a substantially complete investigation of compliance with the applicable regulations is required.

5. Section 21.101 is revised to read as follows:

§ 21.101 Designation of applicable regulations.

(a) An applicant for a change to a type certificate must show that the changed product complies with the airworthiness requirements applicable to the category of the product in effect on the date of the application for the change and with parts 34 and 36 of this chapter. Exceptions are detailed in paragraphs (b) and (c) of this section.

(b) If paragraphs (b)(1), (2), or (3) of this section apply, an applicant may show that the changed product complies with an earlier amendment of a regulation required by paragraph (a) of this section, and of any other regulation the Administrator finds is directly related. However, the earlier amended regulation may not precede either the corresponding regulation incorporated by reference in the type certificate, or any regulation in §§ 23.2, 25.2, 27.2, or 29.2 of this chapter that is related to the change. The applicant may show compliance with an earlier amendment of a regulation for any of the following:

(1) A change that the Administrator finds not to be significant. In determining whether a specific change is significant, the Administrator considers the change in context with all previous relevant design changes and all related revisions to the applicable regulations incorporated in the type certificate for the product. Changes that meet one of the following criteria are automatically considered significant:

(i) The general configuration or the principles of construction are not retained.

(ii) The assumptions used for certification of the product to be changed do not remain valid.

(2) Each area, system, component, equipment, or appliance that the Administrator finds is not affected by the change.

(3) Each area, system, component, equipment, or appliance that is affected by the change, for which the Administrator finds that compliance with a regulation described in paragraph (a) of this section would not contribute materially to the level of safety of the changed product or would be impractical.

(c) An applicant for a change to an aircraft (other than a rotorcraft) of 6,000 pounds or less maximum weight, or to a non-turbine rotorcraft of 3,000 pounds or less maximum weight may show that the changed product complies with the regulations incorporated by reference in the type certificate. However, if the Administrator finds that the change is significant in an area, the Administrator may designate compliance with an amendment to the regulation incorporated by reference in the type certificate that applies to the change and any regulation that the Administrator finds is directly related, unless the Administrator also finds that compliance with that amendment or regulation would not contribute materially to the level of safety of the changed product or would be impractical.

(d) If the Administrator finds that the regulations in effect on the date of the application for the change do not provide adequate standards with respect to the proposed change because of a novel or unusual design feature, the applicant must also comply with special conditions, and amendments to those special conditions, prescribed under the provisions of § 21.16, to provide a level of safety equal to that established by the regulations in effect on the date of the application for the change.

(e) An application for a change to a type certificate for a transport category aircraft is effective for 5 years, and an application for a change to any other type certificate is effective for 3 years. If the change has not been approved, or if it is clear that it will not be approved under the time limit established under this paragraph, the applicant may do either of the following:

(1) File a new application for a change to the type certificate and comply with all the provisions of paragraph (a) of this section applicable to an original application for a change.

(2) File for an extension of the original application and comply with the provisions of paragraph (a) of this section. The applicant must then select a new application date. The new application date may not precede the date the change is approved by more than the time period established under this paragraph (e).

(f) For aircraft certificated under §§ 21.17(b), 21.24, 21.25, and 21.27 the airworthiness requirements applicable to the category of the product in effect on the date of the application for the change include each airworthiness requirement that the Administrator finds to be appropriate for the type certification of the aircraft in accordance with those sections.

6. Section 21.115 is amended by revising paragraph (a) to read as follows:

§ 21.115 Applicable requirements.

(a) Each applicant for a supplemental type certificate must show that the altered product meets applicable requirements specified in § 21.101 and, in the case of an acoustical change described in § 21.93(b), show compliance with the applicable noise requirements of part 36 of this chapter and, in the case of an emissions change described in § 21.93(c), show compliance with the applicable fuel venting and exhaust emissions requirements of part 34 of this chapter.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

7. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

8. Section 25.2 is amended by revising paragraph (c) to read as follows:

§ 25.2 Special retroactive requirements.

* * * * *

(c) Compliance with subsequent revisions to the sections specified in paragraph (a) or (b) of this section may be elected or may be required in accordance with § 21.101(a) of this chapter.

Issued in Washington, DC, on May 31, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–14052 Filed 6–2–00; 10:13 am]

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Federal Register

Wednesday,
June 7, 2000

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 2001; Request for Proposals and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 2001; Request for Proposals and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of Availability of Program Solicitation and Request for Proposals for Fiscal Year 2001 Small Business Innovation Research Grants Program and Request for Input.

SUMMARY: Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law Number 99–591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through phase I of its Small Business Innovation Research (SBIR) Grants Program.

By this notice, the Cooperative State Research, Education, and Extension Service (CSREES) additionally solicits stakeholder input from any interested party regarding the Fiscal Year 2001 SBIR Grants Program Request for Proposals for use in the development of the next request for proposals for this program.

DATES: All phase I proposals must be received at USDA on or before August 31, 2000. Proposals not received on or before this date will not be considered for funding.

ADDRESSES: All proposals must be submitted to the following address: Small Business Innovation Research Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW.; Washington, DC 20250–2245.

Note: The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Small Business Innovation Research Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW.; Washington, D.C. 20024. Telephone: (202) 401–5048.

Written user input comments should be submitted by mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA–CSREES; Stop 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding.

FOR FURTHER INFORMATION CONTACT: Dr. Charles F. Cleland; Director, SBIR Program; Cooperative State Research, Education, and Extension Service; STOP 2243; 1400 Independence Avenue, SW.; Washington, DC 20250–2243. Telephone: (202) 401–4002. Facsimile: (202) 401–6070.

SUPPLEMENTARY INFORMATION: This program will be administered by the Cooperative State Research, Education, and Extension Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging participation of women-owned and socially and economically disadvantaged small business concerns in technological innovation.

The total amount expected to be available for phase I of the SBIR Program in fiscal year (FY) 2001 is approximately $5,500,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of August 31, 2000. The research to be supported is in the following topic areas:

1. Forests and Related Resources.
2. Plant Production and Protection.
3. Animal Production and Protection.
4. Air, Water and Soils.
5. Food Science and Nutrition.
6. Rural and Community Development.
7. Aquaculture.
8. Industrial Applications.
9. Marketing and Trade.

The award of any grants under the provisions of this program is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR part 3403. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations (7 CFR part 3015), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) regulations (7 CFR part 3017), Restrictions on Lobbying regulations (7 CFR part 3018), and Debt Management regulations (7 CFR part 3) apply to this program. Copies of 7 CFR parts 3403, 3015, 3017, 3018, and 3 may be obtained by writing or calling the office indicated below.

The program solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the following office: Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW.; Washington, DC 20250–2245. Telephone: (202) 401–5048. Application materials also may be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov which states that you wish to receive a copy of the application materials for the FY 2001 Small Business Innovation Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible. Please note that applicants who submitted SBIR proposals for FY 2000 or who have recently requested placement on the list for FY 2001 will automatically receive a copy of the FY 2001 program solicitation.

Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of the next request for proposals for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2)). Written comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA-CSREES; STOP 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. (This e-mail address is intended only for receiving stakeholder input comments regarding this RFP, and not for requesting information or forms.)

In your comments, please indicate that you are responding to the FY 2001 Small Business Innovation Research Grants Program. Comments are requested within six months from the issuance of the solicitation of applications. Comments received after that date will be considered to the extent practicable.

Done at Washington, DC, this 30th day of May, 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 00–14237 Filed 6–6–00; 8:45 am]

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Federal Register

Wednesday,
June 7, 2000

Part V

Department of Housing and Urban Development

24 CFR Part 245

Tenant Participation in Multifamily Housing Projects; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 245

[Docket No. FR–4403–F–02]

RIN 2502–AH32

Tenant Participation in Multifamily Housing Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule enhances and expands the rights of tenants in HUD-insured and assisted housing to organize and participate in project operation. Pursuant to statutory changes enacted in 1998, the rule expands the assistance programs in which tenants have rights to organize. The rule also defines general characteristics of a legitimate tenant organization, such as regularity of meeting and democratic organization, while leaving the specific organizational structures and procedures to local decisionmaking by the tenants themselves. The rule outlines examples of appropriate tenant organization activities that housing owners and managers must allow, and requires that tenants have input on certain management decisions. The rule sets parameters as well for the conditions under which tenant organizers may operate. Finally, in response to public comments, the rule clarifies that existing administrative enforcement mechanisms apply.

DATES: *Effective Date:* July 7, 2000.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–3000 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. The June 17, 1999 Proposed Rule

The proposed rule of June 17, 1999 (see 64 FR 32782) amended the tenant participation rules in 24 CFR part 245. Implementing the statutory mandate of section 599 of the Public Housing Reform Act, Pub. L. 105–276 (approved October 21, 1998), codified at 12 U.S.C. 1715z–1b, the proposed rule expanded the categories of multifamily housing projects covered by part 245. The proposed rule sought to clarify the reasonable tenant organizing activities that the owner of a covered multifamily housing project must allow, and set forth extremely detailed requirements for establishing, operating, and structuring a tenant organization. In addition, the proposed rule established policies regarding outside tenant organizers, the establishment of more than one tenant organization, and the right of tenants to replace the leadership of existing tenant organizations. A discussion of the specific provisions is found in the preamble of the proposed rule at 64 FR 32782–32783 (June 17, 1999).

II. This Final Rule

This final rule adopts certain of the provisions of the proposed rule, while adding certain provisions and eliminating others in response to public comments. Specifically, this final rule significantly revises proposed § 245.110, and eliminates proposed §§ 245.115—245.135 (this final rule renumbers proposed §§ 245.140–160 as §§ 245.115—245.135). A large number of commenters stated that these sections, which proposed specific requirements for the structure, voting procedures, and governing boards of tenant organizations, tended to be overly prescriptive and that tenants should be allowed to decide these matters for themselves based on their particular situations and the best arrangements for their housing complexes. While HUD would like tenant organizations to move toward some sort of formal structures, HUD has decided to adopt this "grassroots" approach in arriving at those structures. Thus, rather than defining in detail what constitutes a properly established tenant organization, the final rule establishes basic general principles for legitimate tenant organizations. For similar reasons, the final rule eliminates proposed § 245.160, related to additional tenant organizations and recall elections.

The final rule revises the purpose statement in § 245.100 to more fully implement the purpose of the statute. In addition, the revision responds to commenters who noted that the proposed language defined the purpose of tenant organizations too narrowly.

One of the basic principles is that a tenant organization should be independent of management. In order to insure the independence of tenant organizations from owners and managers, the final rule revises proposed § 245.140 (now § 245.115) to clarify that management representatives may not attend organization meetings unless invited by the organization to attend specific meetings to discuss particular issues.

The final rule has made a change to the provisions regarding non-tenants who seek to organize the tenants at a complex, in order to conform this rule to the requirements of the mark-to-market program. Specifically, persons who have received HUD grants to inform tenants regarding mark-to-market, and who are acting pursuant to the terms of such grant, may enter the property and speak to tenants without being accompanied.

In response to comments regarding tenants with disabilities, the rule has been slightly revised to take into account the fact that, if a building, for whatever reason, does not have or has not been retrofitted with accessible common areas, the tenant organization may have to work with management to find a cooperative solution so that disabled tenants may attend.

Finally, numerous commenters stated that HUD should include an enforcement scheme. The rule adds a new § 245.135 to clarify that the administrative enforcement mechanisms in 24 CFR part 24 apply.

The public comment period on this proposed rule closed on August 16, 1999. HUD received 73 comments from a wide variety of commenters, including individual tenants, tenant organizations, public housing authorities, legal aid organizations, public interest advocacy groups, building industry representatives, multifamily management representatives, and one member of Congress. It should be noted that a number of commenters were organizations and associations whose comments were supported by a large number of other commenters. Because the commenters commented on a wide variety of topics related to the proposed rule, the following summary groups the comments by subject.

III. Summary of Public Comments

1. General Comments

Comment: The applicability of the rule should be curtailed. Tenant participation in rental housing is not essential to the operation of housing, and the final rule should not provide tenants with day to day input into management decisions.

Nonprofit elderly projects should be excluded from the rule.

Response. The rule implements a statutory requirement that project owners not impede the reasonable efforts of tenants to organize and represent their members (see 12 U.S.C. 1715z–1b(b)(4)). In addition, elderly projects are included in the tenant

management provisions of the statute, and hence cannot be excluded from the rule. Therefore, HUD has made no change to the rule as a result of these comments.

Comments: Certain technical changes should be made. The term "resident" should be used in place of "tenant."

The final rule should include a statement that it preempts local law with respect to tenant organization, because owners may claim that state laws allow them to bar one or more protected activities.

The regulations should be made consistent with the public housing tenant participation regulations at 24 CFR part 964.

Response. Regarding the use of the term "tenant," this is the appropriate term based on the language in the statute, which extends the right to organize to "tenants" (see section 202(a) of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z–1b(a)).

Regarding the suggestion that the regulation contain an explicit statement that it preempts State law, HUD has concluded that regulatory preemption is not necessary for HUD to fully implement the tenant participation statute.

Regarding consistency with the public housing regulations, there are important differences between public housing and housing with mortgages insured or assisted under other HUD programs. In public housing, the operation of the housing itself is much more pervasively regulated than the private assisted housing that this regulation affects. The tenant participation guidelines in this rule are designed to fit the characteristics of assisted housing programs other than public housing.

For these reasons, HUD has not made any changes to this rule as a result of these comments.

Comment: Sensitivity training is necessary. HUD should provide sensitivity training in tenants' rights to HUD field office staff and property owners and management.

Response. Any sensitivity issues will be addressed via handbook revisions, rather than implementing sensitivity training as part of this rule.

Comment: Cooperation by HUD field offices is necessary. HUD's Washington Headquarters must enforce cooperation from local HUD offices, since not all local HUD offices support tenant organization.

Response. All HUD offices will be required to comply with this regulation. No further change in this regulation is required as a result of this comment.

Comment: Notices to tenants. The rule should directly implement the policies regarding tenant organizations contained in the HUD publication entitled "Tenants' Rights and Responsibilities."

Owners and managers should be required to issue to tenants a notice regarding tenants' rights to organize.

Once a tenant organization has been formed at a particular housing complex, all local notices regarding building code violations and all Federal notices concerning programmatic regulations should be formally transmitted to the tenant organization.

Response. Regarding implementation of the policies concerning tenant organizations in the HUD publication (which is entitled "Resident Rights and Responsibilities"), the publication reiterates in a user-friendly manner the policies relating to tenant organizations that are incorporated in the rule itself. Therefore, it is not necessary to separately implement the policies stated in the brochure as a rule.

Regarding the suggestion that project owners be required to notify tenants of their rights to organize, however, HUD does plan to require affected property owners and managers to provide information on tenants' rights to tenants and tenant organizations through changes to the model lease, Use Agreement and Regulatory Agreement.

Regarding the formal transmission to tenant organizations of notices of local building code violations and all Federal notices regarding new program regulations, while HUD is sympathetic to the need for information, HUD does not believe that the best way to accomplish this goal is through a generally applicable regulation. Local code violations are a matter governed by local law, and individual tenant organizations can negotiate information sharing with management on this subject, in accordance with procedures and policies for their area. Certainly, HUD expects assisted housing owners to comply with HUD's Uniform Physical Conditions Standards as set forth in regulations.

As to new program regulations, such regulations are published in the **Federal Register**, which is publicly accessible (see HUD World Wide Web site instructions in the following paragraph). To the extent that HUD sends notices to assisted housing providers regarding HUD policies, these notices are also available from HUD's World Wide Web site or by calling the local HUD field office or HUD's Multifamily Housing Clearinghouse (800–685–8470).

Accessing HUD's World Wide Web: if you have a computer with Internet access, you can access HUD notices and rules. From the HUD home page - (http://www.hud.gov) select "Reading Room" from the left hand side of the HUD home page. On the next screen, select "Bookshelf 12: Legal Information." On the next screen, scroll down to "HUD Handbooks, Regulations and Notices." Click on that link. On the next page, click on "Search HUDCLIPS databases." Alternatively, you can go directly to HUDCLIPS at http://www.hudclips.org. HUDCLIPS provides tools to search or browse through various HUD materials, including **Federal Register** publications, handbooks and notices (please keep in mind that these instructions are current as of this date, and WWW pages may change from time to time).

2. Comments on Section 245.10, the Applicability of Part 245

Comment: Exemption from coverage should be omitted. The exception in § 245.10(a)(3), which exempts from the coverage of "Subpart B " Tenant Organizations" all State or local housing finance agency projects receiving assistance under section 236 of the National Housing Act (see 12 U.S.C. 1715z–1) but without FHA-insured or HUD-held mortgages, should be dropped.

Response: HUD is currently investigating whether the exclusion of the State-financed Section 236 projects is appropriate, and is strongly considering proposing a rule that would reverse this exclusion. However, that change will have to be part of a separate rulemaking, as notice of coverage of State-financed section 236 projects was not given in the proposed rule.

Comment: "Enhanced" vouchers should not be included. Projects receiving enhanced vouchers should not be included in the rule because doing so would segregate tenants paying market rent from those receiving rental assistance, and also because it may deter owners from accepting enhanced vouchers.

Some commenters questioned how the rule could be enforced as to enhanced vouchers in the absence of a regulatory agreement with HUD.

Other commenters took a contrary view and asserted that the rule should clearly state that it applies to housing with "enhanced" or "preservation" vouchers.

Response. Section 599 of the Public Housing Reform Act, Pub. L. 105–276 (approved October 21, 1998) expressly includes in the coverage of section 202 "* * * a project which receives * * * enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990,

the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997." Section 245.10(a)(5) implements this express legal requirement. Section 538 of the FY 2000 Department of Veteran's Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 106–74, approved October 20, 1999), unified the various enhanced voucher authorities. This section is codified at 42 U.S.C. 1437f(t).

As to the issue of enforcement, payments of the non-tenant portion of rent on enhanced vouchers are made to the owner by the PHA via a Housing Assistance Payment contract. Such a contract is a lower-tier covered transaction for the purposes of the enforcement mechanisms at 24 CFR part 24, which include Limited Denials of Participation, Suspension and Debarment. Therefore, the enforceability of this rule in the case of enhanced vouchers is clear.

Comment: Definition of "project.". The final rule should include a definition of the term "project" to make clear that an entire development or complex is encompassed in the rule.

Response. The term "project" is generally understood. For example, see the definition of project under HUD's part 200 regulations at 24 CFR 200.3. A further definition of "project" for part 245 is not required.

3. Comments on Section 245.100, the Right of Tenants To Organize

Comment: Purpose clause is too narrow. The proposed purpose for organizing and operating a tenant organization, that is, "for the purpose of addressing the terms and conditions of their tenancy," is too narrow. Tenant organizations can be involved in a variety of community activities, such as related to job training, neighborhood improvements, Crime Watch, Meals on Wheels, and other activities.

This section should be broadly phrased to protect tenants' First Amendment right to organize for any lawful purpose.

Response. The purpose of the underlying legislation includes a recognition of the benefits of tenant participation in "creating a suitable living environment in multifamily housing projects" (*see* 12 U.S.C. 1715z-1b(a)). Indeed, as commenters point out, tenant organizations have been involved in a variety of activities that enhance their living environment beyond merely the terms and conditions of their tenancy, including the examples mentioned by the commenters listed above. Therefore, HUD agrees that the purpose of addressing "terms and conditions of tenancy" should be revised. HUD has revised § 245.100 to read: "The tenants of a multifamily housing project covered under § 245.10 have the right to establish and operate a tenant organization for the purpose of addressing issues related to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development."

Regarding the suggestion that the rule should be as broad as the tenants' First Amendment right to organize for any purpose, HUD strongly supports the First Amendment rights of all assisted housing tenants, and expects assisted housing owners and managers to respect those rights. This statute and rule, however, are specifically addressed to tenant organizing for the purpose of enhancing the tenants" living environment.

Comment: Clarify independence from owners. Tenants have the right to operate tenant organizations independently of the owner and the owner's agents. To accomplish this, the final rule should add a provision that permits a tenant organization to exclude from its governing board, its membership, and its meetings any employee or agent of the owner, including one who is a tenant.

Response. HUD agrees that tenant organizations should be independent of owners and management. Therefore, this final rule revises § 245.110 to state in part that a legitimate tenant organization "meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives." The final rule also specifies that, in order to preserve independence, tenant organization meetings should take place without the presence of management representatives, unless the organization has invited them to specific meetings to discuss specific issues.

4. Section 245.105, Recognition of Tenant Organizations

Comment: Preamble language undercuts rule. One commenter stated that language in the preamble that states that "[w]hile HUD encourages owners to take these responses into consideration, the proposed rule would not require that owners modify or abandon their proposals based on the recommendations made by the tenant organization" weakens the assumption that tenant opinions will be given any reasonable consideration, and calls into question the purpose of the rule.

Response. HUD believes that the rule as crafted strikes the right balance between the rights of tenants and project owners and managers. The language in the preamble does nothing more than recognize, in the context of a discussion of the impact of the rule on small business, that the rule does not grant tenant organizations the right to force management to alter its proposals. On the other hand, the rule requires management "to give reasonable consideration" to concerns raised by tenant organizations and requires multifamily housing owners to allow tenants to formulate responses to owners' requests for rent increases, partial payment of insurance claims, reduction in tenant utility allowances, and other matters stated in § 245.115(a)(9). HUD fully expects owners to consider the comments and input of tenant organizations. Since HUD believes that the existing regulatory language strikes the appropriate balance, HUD has adopted no change as a result of this comment.

Comment: Rights of individual tenants. The proposed rule will negatively affect the rights of individual tenants outside of organizations. The rule implies that the owner is not required to give consideration to the concerns of individual tenants.

The rule should clarify that it does not supersede subparts D and E.

Response. HUD has carefully reviewed the rule, and determined that nothing in the rule purports to deprive individual tenants of any existing legal rights, or supersede subparts D and E (indeed, the rule only purports to revise a portion of subpart A, and subpart B). Therefore, HUD concludes that no further clarification of the regulation is needed.

5. Section 245.110, "Properly Established" Tenant Organization; Cross-References to Sections 245.115 (Constitution or By-Laws); 245.120 (Governing Board); 245.125 (Qualified Voting Member); 245.130 (Number of Votes); 245.135 (Election Notices)

Comments: The proposed rule micro-manages the structure of tenant organizations. A "properly established" tenant organization should not be defined in terms of its compliance with proposed § 245.110 and the other particular proposed organizational requirements that section cross-referenced, but rather, HUD should use the definition in its Management Agent Handbook 4381.5 REV–2, which states that legitimate tenant organizations are groups that meet regularly, operate democratically, are representative of all residents in the development, and are independent of non-resident owners and management agents. In addition, a legitimate tenant organization should be completely independent of management and the owner.

The "properly established" concept as proposed undermines the right of tenants to establish and operate tenant organizations.

The following proposed sections represent inappropriate and unnecessary intrusions into the rights of tenants to determine the structure of their organizations: §§ 245.115(b), 115(c); 245.120(a)(2), 120(b)(2), 120(c); 125; 130; and 135.

Proposed §§ 245.110–245.135 may be appropriate in the public housing context, but for privately owned housing, they are unreasonable, unworkable, unduly burdensome, and serve no useful purpose. HUD should adopt the definition from the Management Agent Handbook.

The proposed requirements would interfere with existing functional tenant organizations. Such organizations should be allowed to continue operating as they have.

A tenant organization's legitimacy is not derived from written by-laws, staggered terms, and term limits. Rather, it is derived from the respect tenants accord the organization. The organizational proposals are not based on reality and should be dropped.

Response. While HUD believes that tenant organizations should have formal organizational structures, HUD recognizes that, given the wide variety of possible structures that tenant organizations could use, depending on their particular needs and membership, it is appropriate to allow tenants to determine their organizations' structures and procedures based on their needs. Therefore, HUD has accepted the suggestion of a number of commenters to incorporate the guidance for tenant organizations from the Management Agent Handbook in place of the detailed organizational requirements of proposed §§ 245.110–245.135. Tenant organizations will be able to establish their procedures and structures within those basic requirements of meeting regularly, being democratically operated, representing all the residents of the development, and being completely independent of owners and management and their representatives.

6. Section 245.115, Constitution or By-Laws

Comment: Elections every three years. The rule should require that elections be held at least every three years. The rule should require that an independent third party oversee the elections.

Response. As stated above, given the multiplicity of different types of tenant organizations and the large number of comments opposed to HUD imposing specific organizational requirements by regulation, HUD has revised the rule to require that tenant organizations, inter alia, operate democratically and represent all the residents. Thus, tenant organizations will have flexibility to set their own election procedures within those guidelines.

7. Section 245.120, Governing Board

Comment: Independence from owners. The final rule should clarify that owners and management employees may not run for elected office or serve on a tenant organization's board of directors.

Response. The provision in § 245.110 that tenant organizations are completely independent of owners, management and their representatives implies that management personnel may not serve on a tenant organization's board of directors or as officers, and adequately addresses this issue.

Comment: Procedures for electing governing board. The governing board should be democratically elected by qualified voting members.

The issue of staggered terms (see proposed § 245.120(a)(2)) should be decided by the tenant organization.

The proposed three year term limit for members of the governing board should be removed because it will undermine the effectiveness of tenant organizations by depriving them of their best leaders after three years.

The requirement that governing board members be in compliance with their leases should be dropped. First, there are tenant confidentiality concerns. Secondly, the requirement gives the owner too much control over the membership of the governing board. The appropriate sanction for lease noncompliance is eviction.

Response. HUD agrees not to include the governing board regulations in the final rule, but rather, in accordance with the approach taken regarding other portions of the rule, to allow tenant organizations to select their own organizational structures. Any governing boards would be covered by the overall requirements that the tenant organization must operate democratically and be representative of the residents.

8. Section 245.125, Qualified Voting Member

Comment: Conformance with public housing requirements. This section should be revised to conform with 24 CFR 964.115(c), the public housing resident council requirements.

Response. The requirements of the public housing program are not necessarily appropriate for other assisted housing, which is privately owned and operated. Furthermore, considering the numerous comments that HUD received that the proposed rule was overly prescriptive as to the nature of tenant organizations, HUD has decided to allow the tenants themselves to decide this issue rather than closely regulating this area.

9. Section 245.130, Number of Votes

Comment: There should be more than one vote per unit. Commenters stated that there should be one vote per resident rather than one vote per unit. One suggestion was that each member of a tenant family whose income is counted toward rent should be allowed to vote. Other commenters stated that any resident who is at least 18 years of age and whose name appears on the unit lease should be allowed to vote, as in public housing.

Response. Considering the numerous comments that HUD received that the proposed rule was overly prescriptive as to the structure and procedures of tenant organizations, HUD has decided to allow the tenants themselves to decide this issue.

10. Section 245.135, Election Notices

Comment: 30 day notice. This section should require at least thirty days' notice of nominations, as does 24 CFR 964.115(c), relating to public housing resident councils.

Response. Considering this comment along with other comments stating that HUD's proposals, including this section, were too prescriptive in view of the varying needs of different tenant organizations, HUD has eliminated proposed § 245.135. Tenant organizations can establish their own procedures within the parameters of democratic operation.

11. 24 CFR 245.140, Protected Activities

Comment: Prior permission not required. The final rule should include additional language that makes it clear that no prior notice to or permission from owners and managers of a project is needed prior to the tenant organization undertaking the activities permitted by this section.

Response. Upon consideration of this comment, HUD agrees that a management requirement of prior permission before conducting activities permitted by the regulation could constitute a significant impediment to tenants' enjoyment of the right to

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organize and to the organization's independence, contrary to the purpose of the underlying statute. Therefore, HUD has revised the final rule to clarify this point. However, HUD believes that it is good practice for tenant organizations to communicate with management about their activities, and doing so supports a spirit of partnership in maintaining a positive living environment.

Comment: Certain permitted tenant activities should be omitted. HUD should remove from the list of permitted activities certain matters under § 245.140(a)(9) (§ 245.115(a)(9) in this final rule), including partial payment of claims; conversion from project-based paid utilities to tenant paid utilities; converting residential units to non-residential use, cooperative housing, or condominiums; major capital improvements; and prepayment of loans. Including these items in the list may give a false impression that an owner must do what the tenant organization recommends. These decisions are best determined by individuals who have specialized training, not tenants.

Requiring an owner to receive tenant comments on proposed capital improvements is unreasonable and unwarranted. Similarly, it is inappropriate for tenants to be involved in property financing decisions, such as prepayment of loans.

Response. The commenters' concern that the list of examples of permitted activities may give a false impression that owners have to comply with tenant recommendations is not supported by the text of the rule, which only requires that owners and their agents give "reasonable consideration" to concerns that tenant organizations raise. Therefore, HUD does not believe that the commenters' fears in this regard warrant a revision of the proposed rule. Furthermore, the list of areas on which tenant organizations may comment can affect the living conditions of tenants. Thus, permitting tenant comment in these areas is both reasonable and within the parameters of the underlying statute.

Comment: Permitting leaflets will permit offensive materials. Giving blanket protection to leaflet and post information on bulletin boards would strip the owners of the ability to control offensive materials, particularly in culturally diverse environments.

Response. Tenant activities, including distributing leaflets and posting on bulletin boards, are protected by this rule insofar as they are "related to the establishment or operation of a tenant organization" (see proposed § 245.140(a)). The purpose of a tenant organization is to address matters relating to the tenants' living environment. Activities outside of those parameters are not protected by this rule (although there may be other general legal protections, such as broader First Amendment rights). For this reason, HUD does not adopt the suggestion to eliminate leaflets and posting from the tenant organizations' permitted activities.

Comment: Additional facilities. One commenter asked whether the rule would require the installation of additional facilities, such as a bulletin board if the housing complex had none.

Response. The rule does not require housing complexes to add additional facilities.

Comment: The list of permitted activities is not exhaustive. The rule should make clear that the list of permitted activities in proposed § 245.140(a) is not exhaustive.

Response. Section 245.115(b) (proposed as § 245.140(b)) makes sufficiently clear that the list is not exhaustive.

Comment: Right of tenants to conduct door to door contact. The right of tenants to contact other tenants door to door should not be limited to an initial survey to solicit interest (see proposed § 245.140(a)(5)).

Response. While the list in proposed § 245.140(a) does not purport to be exhaustive, HUD agrees, for the sake of improved clarity, to amend proposed § 245.140(a)(5) as suggested (see § 245.115(a)(5) of this final rule). In accordance with the comment below regarding use of the word "solicit," HUD is substituting other language for that term in this section as well.

Comment: Remove the term "solicit" from the rule. Use of the term "solicit" inaccurately describes the work done by tenant organizers and will support attempts by management to prevent tenant organizers from conducting legitimate outreach activities.

Response. HUD agrees that the term "solicit" has negative connotations unrelated to tenant organizing, and will use other terms in the final rule.

Comment: The term "reasonable" should be removed from proposed § 245.140(b). Section 245.140(b) provides that tenant organizations may conduct other "reasonable" activities related to the establishment or operation of a tenant organization. Owners could use this language to attempt to intimidate tenants or tenant organizers by claiming they are not acting "reasonably." Alternatively, the rule could alter the wording to "activities reasonably related * * *".

Response. "Reasonableness" is a common, generally understood legal principle, which is also used in the underlying statute. The list of activities in proposed § 245.140(a) (§ 245.115(a) in this final rule) provides examples of the sorts of activities that might be considered "reasonable." Since the activities of tenant organizations do, in fact, have to be reasonable, HUD has made no changes to the rule as a result of this comment.

Comment: Support for proposed § 245.140. Proposed § 245.140 should not be "watered down."

Response: HUD is not making any change to § 245.140 that would "water it down."

Comment: There should be specific instructions regarding leaflets. Placing leaflets at tenants' doors creates a potential safety hazard. The rule should require that leaflets either be placed under doors, attached to doors, or placed in an orderly fashion in a public location.

Response. HUD has considered this comment, but does not believe that a rule concerned with general policies regarding tenant organizations is the appropriate venue for instructions on distributing leaflets. If HUD were to provide any such guidance, it would most likely be in the form of handbook revisions or informational brochures.

12. Section 245.145, Meeting Space

Comment: The rule should clarify that tenants have a right to meet without representatives of owners and management. A new paragraph should be added to this section clarifying this principle and further stating that tenants who are not management representatives should have the option to exclude tenants who are management representatives from their meetings.

Response. The final rule provides that legitimate tenant organizations are "completely independent of owners, management, and their representatives" (see § 245.110). In order to preserve this independence, while organizations can certainly choose to invite management representatives to attend specific meetings on specific issues, as a general practice, absent such invitation, meetings should be without the presence of management representatives or agents. This rule makes a clarifying change to § 245.115(a)(8) (redesignated from proposed § 245.140(a)(8)).

Comment: Persons with disabilities. The rule should require tenant organizations only to make "reasonable efforts" to make their meetings accessible to persons with disabilities. Under the proposed rule, a tenant organization may be effectively prohibited from holding meetings if the only reasonable place to hold a meeting is in a project's community room and the room is inaccessible to persons with disabilities.

Response. Under section 804(f)(3)(C) of the Fair Housing Amendments Act of 1988, 42 U.S.C. 3604(f)(3)(C), multifamily dwellings built for initial occupancy after March 13, 1991 are generally required to have accessible common areas. In addition, section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, prohibits discrimination against disabled individuals by recipients of federal financial assistance, which includes housing complexes receiving HUD assistance through the Section 8 and other programs. Pursuant to these legal requirements, HUD expects that many of the complexes at which tenant organizations have been or will be formed under this regulation would have accessible common areas, including meeting rooms. For those complexes which do not have accessible common areas, because, for example, they predate the legal requirement to have them and have not been retrofitted, HUD expects tenant organizations and management to work together to find a solution so that all tenants who wish to do so may participate in organizational meetings.

Comment: Owners should not be allowed to charge fees for meeting space. Through the charging of fees, deposits or amounts to cover additional insurance, owners could effectively deny tenants the right to use community rooms. As an alternative, the regulation could provide that the costs of providing meeting space are eligible project expenses.

Response. The proposed rule simply continues HUD's current policy of allowing reasonable, customary and usual fees, as approved by HUD, that owners would normally charge for the use of such facilities. Under this approach, owners may not charge fees for tenant organizations to use meeting space where they do not charge such fees for other uses of the space, and they may not single out tenant groups for higher fees. HUD believes that this approach reasonably balances the tenant organizations' needs against the owner's costs.

The alternative suggestion of charging the fees to project costs does not necessarily resolve the issue of owner's costs. While some owners may be willing to waive fees altogether and use their project accounts to defray the costs, others may not be in a financial position to do so because of other costs of operating the project.

13. Section 245.150, Tenant Organizers

Comment: Independence from owners. The rule should make clear that tenant organizers cannot be affiliated with current or prospective owners or management.

Response. In order to further the intent of the rule that tenant organizations be independent from owners and management, HUD has revised proposed § 245.150 as suggested. That section is renumbered as § 245.125 in this final rule.

Comment: Tenant organizers should be held to standards. Tenant organizers should be held to the same standards as agents and owners. Outside organizers should be required to disclose background qualifications, experience and potential conflicts of interest.

The final rule should establish qualifications for non-resident tenant organizers, who otherwise could potentially serve as agents for outside influences with no stake in the ultimate impact on the tenant community.

Response. HUD believes that the proposed disclosures and requirements would overly restrict tenant organizing activity. It should be up to the tenants themselves to assess whether to speak to tenant organizers and make their own judgments about the organizers' presentation and potential agenda.

Comment: Advance notification. Owners should be notified in advance when a non-resident tenant organizer plans to visit a property, and be permitted to have a representative monitor the organizer while he or she conducts organizing activities.

Response. While HUD believes it is good practice for tenants to provide information to owners regarding their organizing activities, the intent of this regulation is to ensure that tenant organizations are independent from owners and management. Thus, for example, § 245.115 (proposed § 245.140) does not require permission from owners to conduct organizing activities. Requiring advance notice of a non-resident tenant organizer would make such independence more difficult and could have the effect of impeding organizational efforts, contrary to section 202(b)(4) of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z-1b. Therefore, HUD has adopted no change to the rule as a result of this comment.

Comment: Owner's policies regarding door to door canvassing. With respect to non-resident tenant organizers, the proposed rule differentiates between a situation where the owner has a "consistently enforced" policy against door to door canvassing, and where the owner does not have such a policy. One comment inquires who will make the determination of whether the owner has such a policy. A number of comments stated that the policy should be required to be in writing to avoid disputes.

Response. In order to avoid disputes and selective enforcement of anti-canvassing rules, HUD has revised the proposed regulation to require that policies be in writing, in addition to being consistently enforced as the proposed rule stated. HUD hopes that these criteria are sufficiently objective so as to avoid most disputes, but in the event disputes arise the HUD field office can assist in resolving the issue.

Comment: New policies. The final rule should clarify that owners and management may not initiate a new policy against contacting residents door to door in response to, or to prevent tenant organizing.

Response. Under the system set forth in the rule, a policy against door to door canvassing would not serve to prevent tenant organizing. Rather, it would simply require non-resident tenant organizers to be accompanied by a tenant. Furthermore, the rule requires the policy to be both "consistently enforced" and "written." A written policy solely applied against tenant organizers and not other door to door canvassers would not meet the standards of the rule for a consistently enforced policy. Also, it is contrary to law and regulation for an owner to impede the reasonable efforts of tenants to organize. HUD can enforce this regulation by proceedings under 24 CFR part 24, including Limited Denials of Participation, suspension, and debarment. Thus, HUD believes there are sufficient protections in the rule and statute to guard against contrived or bad faith uses of anti-canvassing policies.

Comment: There should be no restrictions on tenant organizers. Tenants should not be required to accompany non-tenant organizers because tenants are often not willing to take on this role because of fears of retaliation by management.

The rule requiring that organizers be accompanied by a tenant when canvassing door to door if management has a consistently enforced policy against canvassing will likely lead to a proliferation of non-solicitation policies. It will be difficult to prove if the policies have been consistently enforced. There is a long tradition in this country of door to door outreach of this kind in buildings that are not subsidized by the Federal government. Supreme Court decisions have supported the right of organizers to go door to door.

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The final rule should provide that organizers may contact tenants door to door if either accompanied by a resident or acting at the request of one.

It would be preferable to omit any limitation on non-resident tenant organizers from the rule. However, if retained, § 245.150(c) should be revised as follows:

§ 245.150(c)(1): "If a multifamily project covered under § 245.10 has a consistently enforced pre-existing, written policy against contacting residents door-to-door that is not otherwise prohibited by law, then a non-tenant tenant organizer conducting door-to-door contact while on any property or building of the project may do so if either accompanied by or acting at the request of a tenant of the property."

§ 245.150(c)(2): Change the word "solicitation" to "door-to-door contact."

§ 245.150(c)(3): "Where a pre-existing, written policy against contacting residents door-to-door does not exist as of the date of publication of these regulations, an owner or management agent may not initiate a new policy against contacting residents door-to-door in response to or to prevent tenant organization activities."

§ 245.150(c)(4): "The limitation on door-to-door contact by non-tenant tenant organizers in paragraph (c)(1) shall not be construed to prohibit or limit any other protected activities by non-tenant tenant organizers enumerated in § 245.140 or to prohibit or limit the right of tenant of the covered project to contact other residents door-to-door or otherwise assert their rights under § 245.140."

§ 245.150(c)(5): "Where a pre-existing, written policy against contacting residents door-to-door already exists, a non-tenant tenant organizer may conduct an initial door-to-door contact without an invitation by a resident."

§ 245.150(c)(6:) "Non-tenant tenant organizers funded through HUD's Outreach and Training Grant or Intermediary Technical Assistant Grant program or through VISTA Volunteer positions provided by the Corporation for National Service (CNS) and funded by HUD through a contract with CNS to provide outreach and training assistance to residents of covered projects may conduct initial or on-going door-to-door contact with residents without an invitation by a resident."

Response. HUD believes that the issue of non-resident tenant organizers requires balancing of an owner's property rights with tenants' right to organize. There are a variety of forums by which non-residents can contact residents, including mail or meeting them in a public area outside the project property. In addition, HUD agrees that in cases where management has a *bona fide* policy against contacting residents door-to-door, it is reasonable to require outside organizers to be accompanied by a tenant to ensure that at least one tenant has invited the organizer onto the property. However, HUD also agrees that the activities of certain grant recipients whose purpose is to provide education and outreach to tenants concerning restructuring of assistance under the mark-to-market program, should not be so conditioned. HUD has therefore made a change to the proposed rule at § 245.150(c), codified in this final rule as § 245.125(c).

Comment: Section 245.150(c) violates the First Amendment. This section will have a chilling effect on tenants' rights of association, and as such is unconstitutional under *Laird* v. *Tatum,* 408 U.S. 1, 11 (1972). Therefore, the section should be omitted entirely.

Response. The proposed regulation permitting outside organizers to canvass on private property despite non-soliciting policies serves to protect tenants' organizational rights as well as the property interests of owners. HUD disagrees that this regulatory accommodation violates the holding of *Laird* v. *Tatum* or any case law concerning First Amendment rights that applies in this situation.

14. Section 245.155, Re-solicitation

Comment: Proposed § 245.155 should be omitted from rule. The section is not necessary, because any tenant can simply refuse to speak to tenant organizers and choose not to attend meetings of the tenant organization. On the other hand, the section can be used by owners to keep tenant organizers from the property. Owners can seek out dissenters as a means to undermine legitimate tenant organizations.

Response. HUD has considered this comment and believes that the rule should respect the wishes of tenants, having been made aware of their rights, not to be repeatedly solicited. Since the right not to be re-solicited only applies to "a tenant," that is, on an individual basis, HUD does not believe management can use this section as a mechanism to keep tenant organizers from talking to tenants who have not asserted this right. Proposed § 245.155 is renumbered as § 245.130 in this final rule.

15. Section 245.160, Additional Tenant Organizations

Comment: The rule should not allow more than one tenant organization at a project. Allowing more than one tenant organization could cause legal and administrative difficulties.

Allowing multiple tenant organizations would make it unclear who speaks for the community.

From management's perspective, multiple tenant organizations would be burdensome for management to accommodate. From the tenants' perspective, they would be better served by a single, strong organization that a multitude of fragmented organizations. At a minimum, the rule should provide that a tenant organization must represent at least 10% of all a project's residents, and not less than five residents in any case.

Allowing multiple tenant organizations could encourage confusion and dissension among tenants when a minority of tenants decide to form their own organization.

Allowing additional tenant organizations would create schisms, issue-based factions, and animosity among tenants and effectively destroy the effectiveness of the rule, and provide no means to establish an effective consensus among tenants in representing issues to management.

Response. The final rule omits the proposed language explicitly providing for multiple tenant organizations, in favor of the general definition in § 245.110. HUD believes that this general definition supplies sufficient guidance.

Comment: Management control. The rule should not permit the creation of a second organization under management control.

Response. HUD believes that the provision for complete independence of the tenant organization in § 245.110 adequately addresses this concern.

Comment: Proposed section 245.160(b), replacement of leadership. The final rule should only require owners to recognize the right of tenants to replace their leadership if the replacement is done according to the written procedures contained in the tenant organizations' by-laws, that meet the standards of proposed § 245.115.

Response. HUD also received numerous comments generally on proposed §§ 245.110—245.135, to the effect that these sections sought to excessively micro-manage tenant organizations, and would eliminate or hamper many effective organizations that follow different procedures. Therefore, HUD has decided to allow tenants to choose their organizational procedures and structures within the general guidelines of § 245.110. For this reason, the final rule omits proposed § 245.160(b).

16. Enforcement

Comment: Final rule should expressly provide tenants with the right to enforce the regulations. The rule will only be meaningful if it can be enforced by

tenants and tenant organizations in addition to HUD. In addition to providing by regulation tenant enforcement rights, HUD should explicitly make the tenants third party beneficiaries of the regulatory agreement between HUD and the owners. HUD should make tenants partners in the enforcement of HUD requirements.

The final rule should explicitly state enforcement procedures and penalties for violations.

The following should be added as new enforcement sections to the final rule:

Section 245.170 Enforcement.

(a) HUD staff shall utilize the procedures prescribed in the Management Agent Handbook 4381.5 REV–2 to identify, assess, and respond to resident complaints regarding owner agent conduct or omissions, including harassment of residents or resident associations who attempt to exercise their rights, lease violations, failure to maintain HQS requirements, or failure by the owner/agent to properly carry out its management responsibilities.

(b) HUD field staff shall assess resident complaints regarding harassment and owner/agent responses on these matters as part of field Management Reviews.

(c) If the owner/agent fails to adequately respond to outstanding resident complaints within a reasonable time period set by the HUD field office, HUD staff shall implement sanctions against the agent and/or owner.

(d) HUD staff shall classify the property as "troubled" due to persistent, validated resident complaints of a serious nature, including but not limited to harassment of the residents association or individual tenants for asserting their rights.

(e) Upon publication of a final rule, HUD shall revise regulatory agreements and contracts with owners and their agents to include the rights of tenants to organize and assert their individual rights explicitly in the agreements and contracts themselves, including but not limited to the renewal of expiring project-based or Preservation Voucher Section 8 contracts, amendments to existing regulatory agreements (which might occur in a partial payment of claim, bond refinancing, transfer of physical assets, or sale of the property), new regulatory agreements, and a revision to HUD's Model Lease as published in the Handbook 4350.3, Occupancy Standards for HUD Assisted Housing.

Section 245.180 Sanctions and Penalties.

(a) HUD shall pursue removal of the agent or appropriate civil and/or criminal penalties as sanctions for violations of residents rights to organize or assert their individual rights as tenants, including but not limited to:

(1) Removal of an agent under a HUD regulatory agreement, if any;

(2) Civil penalties up to $25,000 for violations of residents' right to organize or their individual rights as tenants;

(3) A fine of not more than $10,000, imprisonment of not more than five years or both for knowingly and willingly falsifying, concealing, or making any false, fictitious or fraudulent statement regarding harassment or interference with residents asserting their right to organize or their individual rights as tenants;

(4) Referral to the Attorney General and/or HUD's Enforcement Center with a recommendation for civil action, including mandatory or injunctive relief, to enjoin against owner/agent actions violating residents' right to organize or assert their individual rights as tenants.

(b) In cases of extended noncompliance affecting a property, or widespread noncompliance affecting more than one property, HUD will consider taking the following enforcement actions, without further notice to the owner/agent:

(1) Debarment from or limited denial of participation in HUD programs;

(2) Initiate legal action to place the property in receivership;

(3) Partially abate the project's assistance contracts;

(4) Take steps to have the property declared in default of the mortgage and initiate foreclosure proceedings.

(c) HUD shall otherwise follow the procedures prescribed in the Management Agent Handbook (4381.5, REV–2) in assessing these penalties.

Response. HUD agrees that it is important that tenants' rights to organize be enforceable. HUD can enforce the provisions of this tenant participation rule under the procedures of 24 CFR part 24, which provides for Limited Denials of Participation ("LDP"), debarment, and suspension in the case of such violations. These are powerful sanctions, and HUD will use them as necessary to address interference with tenants' right to organize. HUD has made an amendment to the rule to clarify that this existing authority applies with respect to this regulation.

Regarding tenant enforcement of the right to organize, HUD expects to consider whether to require prospective changes to the model lease, Regulatory Agreement and Use Agreement memorializing the right to tenant participation, and making tenants third-party beneficiaries of the Regulatory and/or Use Agreement. Such changes could strengthen the ability of tenants to enforce their rights to organize, if necessary.

On the issues of civil money penalties and criminal sanctions, HUD's statutes provide specific instances in which civil money penalties are applicable. HUD does not believe it can expand those instances to include tenant organizational rights without a statutory change. Likewise, HUD does not have statutory authority to impose criminal penalties such as imprisonment. However, HUD can use the existing administrative enforcement system. Because of the availability of the sanctions of LDP, suspension and debarment, HUD believes it currently has sufficient enforcement authority to address violations of this regulation.

Comment: The final rule should expressly prohibit harassment. Because of the lack of enforcement actions by HUD, the final rule should state that HUD will no longer tolerate harassment of tenants and tenant organizations asserting their protected rights.

The prohibited harassment tactics listed in chapter 7 of HUD's Management Agent Handbook should be included in the final rule, along with the listed sanctions available.

Response. The rule states that: tenants have a right to organize (§ 245.100); owners and their agents must recognize legitimate tenant organizations and give reasonable consideration to their concerns; and owners and their agents must allow tenants to conduct reasonable activities related to the establishment and operation of a tenant organization. These provisions suffice to require owners and their agents to allow tenant organizations to function. Violations of these regulatory provisions can be addressed through administrative means, as set forth in new § 245.135. A provision specifically on harassment would not add significantly to these existing protections, which apply to any interference with tenants' organizational rights.

Comment: The rule should include a list of prohibited activities. The rule should contain the following additional section:

Section 245.170 Impediments to residents or resident associations attempting to exercise their rights.

(a) Actions by owners/agents that constitute impediments to resident or

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resident associations attempting to exercise their rights include, but are not limited to, the following:

(1) Unreasonable denial of accessible meeting space to residents;

(2) Sending management representatives (including residents who are management employees or who receive rent concessions in exchange for management services) to resident meeting when residents have not invited these representatives to attend;

(3) Evicting, threatening to evict, withholding entitlements, or otherwise penalizing tenants for organizing or asserting their rights;

(4) Attempting to adversely influence resident leaders by offering individual inducements such as employment, preferential transfers, rent abatements, favored repairs, or other benefits not available to all residents in the development;

(5) Attempting to form a competing resident organization under the control of the management company or the owner;

(6) Sexual harassment of residents by owners/agents;

(7) Interfering with or obstructing residents or non-tenant tenant organizers from engaging in any protected activities set forth in § 245.140 of these regulations; and

(8) Engaging in any activity designed to intimidate, harass, or retaliate against tenant or non-tenant tenant organizers exercising their right to organize or assert their rights.

(b) Owner or management employees may not run for elected office or serve on the board of directors of the residents organization.

(c) HUD considers any of the above action taken by owner/agents to be a violation of residents' rights to organize and assert individual rights.

Response. The rule as proposed contains a list exemplifying protected activities (see § 245.115(a)), and also protects other reasonable activities related to establishing and operating a tenant organization (see § 245.115(b)). Therefore, actions that interfere with these activities are prohibited. Additionally, some of the suggested additions are simply beyond the scope of this rulemaking in any case; the prohibition on sexual harassment of residents, for example, is enforced through the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, and the regulations promulgated pursuant thereto. Therefore, HUD makes no change to the final rule as a result of this comment.

IV. Findings and Certifications

E.O. 12866 Statement

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this final rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule, while it requires owners and their agents to permit reasonable tenant organizing activities, does not impose any affirmative obligation on owners to give financial or other assistance to tenant organizations in the conduct of these activities.

The rule would permit tenant organizations to develop responses to economic proposals made by owners that could affect the living environment of the tenants, such as rent increases and major capital additions, and requires owners of give reasonable consideration to such responses. However, it does not require owners to adopt such proposals.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this rule is categorically excluded from review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538)(UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

List of Subjects in 24 CFR Part 245

Condominiums, Cooperatives, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

For the reasons stated in the preamble, HUD amends part 245 as follows:

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR part 245 continues to read as follows:

Authority: 12 U.S.C. 1715z–1b; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 245.10 [Amended]

2. Amend 24 CFR 245.10 as follows:

a. Remove paragraph (a)(2);

b. Remove from paragraph (c) the definition of "Section 202 Loans for the Elderly or Handicapped BMIR Program";

c. Redesignate paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3), respectively;

d. Revise redesignated paragraphs (a)(2)(ii) and (a)(3); and

e. Add paragraphs (a)(4)–(7) to read as follows:

§ 245.10 Applicability of part.

(a) * * *

(2) * * *

(ii) Was sold by the Secretary subject to a mortgage insured or held by the Secretary and an agreement to maintain the low- and moderate-income character of the project;

(3) *State or local housing finance agency project.* The project receives assistance under section 236 of the National Housing Act (12 U.S.C. 1715z–1) or the Rent Supplement Program administered through a State or local housing finance agency, but does not have a mortgage insured under the National Housing Act or held by the Secretary. Subject to the further limitation in paragraph (b) of this section, only the provisions of subparts A and C of this part and of subpart D of this part for requests for approval of a conversion of a project from project-paid utilities to tenant-paid utilities or of a reduction in tenant utility allowances, apply to a mortgagor of such a project;

(4) The project receives project-based assistance under section 8 of the United States Housing Act of 1937 (this regulation does not cover tenant participation in PHAs that administer such project-based assistance);

(5) The project receives enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended;

(6) The project receives assistance under the Section 202 Direct Loan program or the Section 202 Supportive Housing for the Elderly program; or

(7) The project receives assistance under the Section 811 Supportive Housing for Persons with Disabilities program.

* * * * *

3. Subpart B is revised to read as follows:

Subpart B—Tenant Organizations

Sec.

245.100 Right of tenants to organize.
245.105 Recognition of tenant organizations.
245.110 Legitimate tenant organizations.
245.115 Protected activities.
245.120 Meeting space.
245.125 Tenant organizers.
245.130 Tenants' rights not to be re-canvassed.
245.135 Enforcement.

Subpart B—Tenant Organizations

§ 245.100 Right of tenants to organize.

The tenants of a multifamily housing project covered under § 245.10 have the right to establish and operate a tenant organization for the purpose of addressing issues related to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development.

§ 245.105 Recognition of tenant organizations.

Owners of multifamily housing projects covered under § 245.10, and their agents, must:

(a) Recognize legitimate tenant organizations; and (b) Give reasonable consideration to concerns raised by legitimate tenant organizations.

§ 245.110 Legitimate tenant organizations.

A tenant organization is legitimate if it has been established by the tenants of a multifamily housing project covered under § 245.10 for the purpose described in § 245.100, and meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives.

§ 245.115 Protected activities.

(a) Owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenants and tenant organizers to conduct the following activities related to the establishment or operation of a tenant organization:

(1) Distributing leaflets in lobby areas;

(2) Placing leaflets at or under tenants' doors;

(3) Distributing leaflets in common areas;

(4) Initiating contact with tenants;

(5) Conducting door-to-door surveys of tenants to ascertain interest in establishing a tenant organization and to offer information about tenant organizations;

(6) Posting information on bulletin boards;

(7) Assisting tenants to participate in tenant organization activities;

(8) Convening regularly scheduled tenant organization meetings in a space on site and accessible to tenants, in a manner that is fully independent of management representatives. In order to preserve the independence of tenant organizations, management representatives may not attend such meetings unless invited by the tenant organization to specific meetings to discuss a specific issue or issues; and

(9) Formulating responses to owner's requests for:

(i) Rent increases;

(ii) Partial payment of claims;

(iii) The conversion from project-based paid utilities to tenant-paid utilities;

(iv) A reduction in tenant utility allowances;

(v) Converting residential units to non-residential use, cooperative housing, or condominiums;

(vi) Major capital additions; and

(vii) Prepayment of loans.

(b) In addition to the activities listed in paragraph (a) of this section, owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenants and tenant organizers to conduct other reasonable activities related to the establishment or operation of a tenant organization.

(c) Owners of multifamily housing projects and their agents shall not require tenants and tenant organizers to obtain prior permission before engaging in the activities permitted under paragraphs (a) and (b) of this section.

§ 245.120 Meeting space.

(a) Owners of multifamily housing projects covered under § 245.10, and their agents, must reasonably make available the use of any community room or other available space appropriate for meetings that is part of the multifamily housing project when requested by:

(1) Tenants or a tenant organization and used for activities related to the operation of the tenant organization; or

(2) Tenants seeking to establish a tenant organization or collectively address issues related to their living environment.

(b) Tenant and tenant organization meetings must be accessible to persons with disabilities, unless this is impractical for reasons beyond the organization's control. If the complex has an accessible common area or areas, it will not be impractical to make organizational meetings accessible to persons with disabilities.

(c) *Fees.* An owner of a multifamily housing project covered under § 245.10 may charge a reasonable, customary and usual fee, approved by the Secretary as may normally be imposed for the use of such facilities in accordance with procedures prescribed by the Secretary, for the use of meeting space. An owner may waive this fee.

§ 245.125 Tenant organizers.

(a) A tenant organizer is a tenant or non-tenant who assists tenants in establishing and operating a tenant organization, and who is not an employee or representative of current or prospective owners, managers, or their agents.

(b) Owners of multifamily housing projects covered under § 245.10, and their agents, must allow tenant organizers to assist tenants in

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establishing and operating tenant organizations.

(c) *Non-tenant tenant organizers.* (1) If a multifamily housing project covered under § 245.10 has a consistently enforced, written policy against canvassing, then a non-tenant tenant organizer must be accompanied by a tenant while on the property of the multifamily housing project, except in the case of recipients of HUD Outreach and Assistance Training Grants ("OTAG") or other direct HUD grants designed to enable recipients to provide education and outreach to tenants concerning HUD's mark-to-market program (see 24 CFR parts 401 and 402), who are conducting eligible activities as defined in the applicable Notice of Funding Availability for the grant or other effective grant document.

(2) If a multifamily housing project covered under § 245.10 has a written policy favoring canvassing, any non-tenant tenant organizer must be afforded the same privileges and rights of access as other uninvited outside parties in the normal course of operations. If the project does not have a consistently enforced, written policy against canvassing, the project shall be treated as if it has a policy favoring canvassing.

§ 245.130 Tenants' rights not to be re-canvassed.

A tenant has the right not to be re-canvassed against his or her wishes regarding participation in a tenant organization.

§ 245.135 Enforcement

(a) Owners of housing identified in § 245.10, and their agents, as well as any principals thereof (as defined in 24 CFR 24.105), who violate any provision of this subpart so as to interfere with the organizational and participatory rights of tenants, may be liable for sanctions under 24 CFR part 24. Such sanctions may include:

(1) Debarment. A person who is debarred is prohibited from future participation in Federal programs for a period of time. The specific rules and regulations relating to debarment are found at 24 CFR part 24, subpart C.

(2) Suspension. Suspension is a temporary action with the same effect as debarment, to be taken when there is adequate evidence that a cause for debarment may exist and immediate action is needed to protect the public interest. The specific rules and regulations relating to suspension are found at 24 CFR part 24, subpart D.

(3) Limited Denial of Participation. An LDP generally excludes a person from future participation in the Federal program under which the cause arose. The duration of an LDP is generally up to 12 months. The specific rules and regulations relating to LDPs are found at 24 CFR subpart G.

(b) These sanctions may also apply to affiliates (as defined in 24 CFR part 24) of these persons or entities.

(c) The procedures in 24 CFR part 24 shall apply to actions under this subpart.

Dated: June 1, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–14217 Filed 6–2–00; 2:57 pm]

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Federal Register

Wednesday,
June 7, 2000

Part VI

Department of Energy

Federal Energy Regulatory Commission

Open Access Same-Time Information System (OASIS) and Standards of Conduct; Notice

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–011]

Open Access Same-Time Information System (OASIS) and Standards of Conduct

May 19, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed changes.

SUMMARY: The Federal Energy Regulatory Commission (the Commission) proposes to adopt revisions to Version 1.3 of the OASIS Standards and Communication Protocols Document. The changes are being proposed to improve OASIS performance and to conform with Commission policy. The Commission invites written comments on this proposal and on four specific questions enumerated in the notice.

DATES: Written comments (an original and 14 paper copies) must be received by July 7, 2000. In addition, the Commission encourages the filing of a copy of the comments on computer diskette or by E-Mail by the same date.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 and by E-Mail to "comment.rm@ferc.fed.us".

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (technical information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426; (202) 208–1283

Paul Robb (technical information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426; (202) 219–2702

Gary D. Cohen (legal information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426; (202) 208–0321

SUPPLEMENTARY INFORMATION: The full text of this notice, including the OASIS Standards and Communication Protocols, Version 1.4, is available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours, is posted on both the Commission's Issuance Posing System (CIPS) and the Records and Information Management System (RIMS), and may be viewed and printed remotely via the Internet through FERC's Home Page (http://www.ferc.fed.us).

Notice of Proposed Changes

I. Introduction

In this notice, the Federal Energy Regulatory Commission (Commission) proposes to revise Version 1.3 of the OASIS Standards and Communication Protocols Document (S&CP Document, Version 1.3) to reflect recommended revisions put forth by the OASIS How Working Group (How Group) and the Market Interface Committee (MIC) (collectively How/MIC) [1] in a joint filing submitted on January 31, 2000 (January 31 submittal).

The January 31 submittal was filed prior to our issuance of our "Business Practice Standards for OASIS Transactions" (BPS) in Order No. 638 and thus does not reflect our findings in that order. Accordingly, in addition to inviting comments on our proposed revisions to S&CP Document, Version 1.3, we are inviting commenters to address four specific questions (enumerated below) that are designed to insure that any revised S&CP Document we issue will be consistent with our determinations in Order No. 638.

II. Background

The Commission first issued the S&CP Document (Version 1.0) on April 24, 1996, as a separate document whose issuance accompanied issuance of Order No. 889.[2] We explained in Order No. 889 that we would periodically update and revise the S&CP Document as needed.[3] On September 10, 1996, the Commission issued a revised S&CP Document (Version 1.1) in *Open Access Same-Time Information System and Standards of Conduct*, 76 FERC ¶ 61,243 (1996). On June 18, 1998, the Commission again issued a revised S&CP Document (Version 1.2) in *Open Access Same-Time Information System and Standards of Conduct*, 83 FERC ¶ 61,360 (1998). On September 29, 1998, the Commission issued a third revised S&CP Document (Version 1.3) in *Open Access Same-Time Information System and Standards of Conduct*, 84 FERC ¶ 61,329 (1998). This is the S&CP Document currently in effect.

III. Discussion

The January 31 submittal recommends the following changes to Version 1.3 of the S&CP Document: (1) Post procedures associated with capacity benefit margin; (2) post references on curtailment information, interruptions, and system studies; (3) modifications to the TRANSREQUEST template; (4) removal of the TRANSALT, CURTAIL, and AUDIT templates; (5) addition of templates for SECURITY, REDUCTION, and SYSTEMDATA; (6) rename the SCHEDULE template as SCHEDULEDETAIL; (7) revised procedures for posting information in the TRANSOFFERING template; (8) addition of a unique reference to continuation records; (9) revisions to OASIS performance response times (section 5.3) to add specific required response times; and (10) corrections to support the above changes and update the table of contents.[4]

These changes are designed to implement the Commission's findings in Order No. 605,[5] the Commission's OASIS Audit Template Experiment, recent orders on posting capacity benefit margin (CBM), and other miscellaneous changes. We propose to adopt these changes. However, these changes, as proposed in the January 31 submittal, were not designed to implement the Commission's findings in Order No. 638, which was issued on February 25, 2000.

We therefore have concerns that additional changes may be needed to the S&CP Document to ensure consistency between the S&CP Document and our findings in Order No. 638. Accordingly, although this notice proposes adoption of the How/MIC–sponsored revisions to the S&CP Document (as a baseline), we contemplate that our final notice on this subject may include further revisions to reflect our findings in Order No. 638. We therefore invite interested persons filing comments on this NOPR to address both the merits of the proposed revisions to the S&CP Document as well as the following:

1. If we adopt the proposed revisions to the S&CP Document, are changes needed to reflect our findings in Order No. 638?

2. Specifically, do any provisions of the proposed S&CP revisions conflict with provisions of Order No. 638? If so, how should those conflicts be resolved?[6]

3. With regard to section 4.3.4.4 on System Data (Recommended S&CP Document Version 1.4 at page 55), this section states that a transmission provider is obligated to post values for one or more of the defined system attributes, but does not state that all system attributes can be requested at the same time.[7] We therefore request comment on whether the description of the template in section 4.3.4.4 should be revised to clarify that all system attributes can be requested at the same time.

4. With regard to section 5.3.3 on Measurement Criteria for OASIS Node Functions (Recommended S&CP Document Version 1.4 at page 108), we see three possible problems. First, section 5.3.3, as recommended, provides performance standards (time limits) for responding to queries regarding TRANSSTATUS and TRANSOFFERING. It does not establish comparable requirements regarding response times for any other queries. We therefore invite comment on whether the proposed performance standards meet customer needs today and for the near term future.

Note: Proposed section 5.3.3 would require the following response times to OASIS queries:

Template or GUI equivalent	Average response not fewer than	90% of responses not fewer than
transstatus	100 rows/minute	10 rows/minute.
transoffering	500 rows/minute	100 rows/minute.

Second, we also note that the recommended performance standards in section 5.3.3 are so specific that they may become obsolete and fail to keep pace with changing technology, market conditions, and user needs. We therefore invite comment on whether it would be preferable to adopt a more general performance standard, such as one that would require a node's response to be sufficient to meet the legitimate needs of its customers.

Third, we also would be open to consideration of other possible revisions to section 5.3.3 that might contain a novel approach preferable to either that proposed in this NOPR or that contained in Version 1.3.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[8–9] requires the Commission to describe the impact a proposed rule would have on small entities or to certify that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

If promulgated, the same entities subject to the current S&CP Document would be required to comply with the revised S&CP Document (Version 1.4) proposed in this Notice. Moreover, the proposals in this Notice would not affect which entities would be eligible for a waiver. As we explained in Order No. 889–A, under appropriate circumstances the Commission will grant waiver of the OASIS Final Rule requirements (including compliance with the S&CP Document) to small public utilities. We further explained that the Commission's waiver policy follows the SBA definition of small electric utility [10] and that 34 small entities had received waivers of the requirement to establish and maintain an OASIS and five small entities had received waivers of the OASIS Standards of Conduct requirements.[11] These decisions show that the Commission carefully evaluates the effect of the OASIS requirements on small electric utilities and is granting waivers where appropriate, thus mitigating the effect of that rule on small public and non-public utilities. The Commission's standards for deciding on requests for waiver are unaffected by this Notice.

The proposed revisions to the S&CP Document are technical revisions intended to implement the Commission's findings in Order No. 605,[12] the Commission's OASIS Audit Template Experiment, recent orders on posting CBM, and other miscellaneous technical changes. We hereby certify, under section 605(b) of RFA, that this notice, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of RFA. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of RFA.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[13] In the Commission's view, the environmental impact of this proposal is negligible. This proposal makes technical revisions to existing technical requirements governing the format used for OASIS postings to ensure uniformity in the display of information posted on OASIS nodes. Accordingly, we find that this notice does not propose any action that might have a significant effect on the human environment and find that no environmental impact statement concerning this proposal is required.

VI. Statement of Information Collection and Public Reporting Burden

In this notice, based on recommendations from two industry working groups with input from diverse industry segments, we propose minor technical revisions to Version 1.3 of the S&CP Document.

On December 1, 1998, the Commission issued a proposed information collection and request for

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[1] As explained in Order No. 638, Open Access Same-time Information System and Standards of Conduct, Final Rule, 65 FR 17370 (March 31, 2000), FERC Stats. & Regs. ¶ at 31,398 n.2, 31,400 & n.8 (February 25, 2000), the MIC is an industry working group, sponsored by the North American Electric Reliability Council, that has taken over functions previously performed by the Commercial Practices Working Group.

[2] *See* Open Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 at 31,586 (April 24, 1996), *order on reh'g*, Order No. 889–A, 62 FR 12484 (March 14, 1997), FERC Stats. & Regs. ¶ 31,049 (March 4, 1997), *order on reh'g*, Order No. 889–B, 81 FERC ¶ 61,253 (1997), *order on reh'g*, Order No. 889–C, 82 FERC ¶ 61,046 (1998).

[3] Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,591.

[4] A more complete explanation of these recommended changes is included in the January 31 submittal.

[5] Open Access Same-Time Information System and Standards of Conduct, Final Rule, 64 FR 34117 (June 25, 1999), FERC Stats. & Regs. ¶ 31,075 (May 27, 1999).

[6] For example, this NOPR proposes modifying the TRANSQUEST template to allow Transmission Customers to request modifications to confirmed transmission reservations. Among the new types of transmission requests proposed is RENEWAL. This is intended to permit a customer to request to renew an expiring transmission reservation. Would such a request provide the existing customer rights it did not have under S&CP Document Version 1.3 or the OASIS Business Practice Standards? Does RENEWAL conflict with any OASIS Business Practice Standards or rights of first refusal under the *pro forma* tariff?

[7] We note that: (1) More than four system attributes are listed in section 4.3.4.4; (2) the system attribute query variable in section 4.3.4.4 is followed by an asterisk; and, (3) section 4.3.2 (Recommended S&CP Document Version 1.4 at page 44) states that a variable listed with an asterisk can have at least four multiple instances defined by the user in making a query. Taken together, these provisions show that multiple system attributes may be requested in one request, even though this is not explicitly stated in section 4.3.4.4.

[8–9] 5 U.S.C. 601–612.

[10] *See* 5 U.S.C. 601(3) and 601(6) and 15 U.S.C. 632(a). The RFA defines a small entity as one that is independently owned and not dominant in its field of operation. *See* 15 U.S.C. 632(a). The Small Business Administration defines a small electric utility as one that disposes of 4 million MWh or less of electric energy in a given year. *See* 13 CFR 121.601 (Major Group 49—Electric, Gas and Sanitary Services).

[11] *See* Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,578.

[12] Open Access Same-Time Information System and Standards of Conduct, Final Rule, 64 FR 34117, FERC Stats. & Regs. ¶ 31,075 (1999).

[13] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); 1986–90 Regs. Preambles FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR Part 380).

In the Open Access Final Rule, we concluded that, under these definitions, the Open Access Final Rule and the OASIS Final Rule would not have a significant economic impact on a substantial number of small entities. We reaffirmed that conclusion in Order Nos. 888–A and 889–A.

comments in Docket No. IC99–717–000 that covered all information collected under the requirements of FERC–717 "Open Access Same-Time Information System and Standards of Conduct" (OMB No. 1902–0173) over the next three years that provides as follows:

Information Collection Statement

Title: FERC–717, Open Access Same-Time Information Systems and Standards of Conduct.

Action: Proposed Collection.

OMB Control No: 1902–0173.

Respondents: Business or other for-profit, including small business.

Frequency of Responses: On occasion.

Necessity of the Information: The Notice of Proposed Rulemaking solicits public comments on proposed revisions to Version 1.3 of the OASIS Standards and Communication Protocols Document (S&CP Document, Version 1.3) to reflect recommended revisions put forth by two industry-led working groups. These technical revisions are designed to implement the Commission's findings in Order No. 605, the Commission's OASIS Audit Template Experiment, recent orders on posting CBM, and other miscellaneous changes.

In addition, the burden estimate submitted on December 1, 1998 for all OASIS requirements was as follows:

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
140	1	1,418	198,520 hours

The estimated total cost to respondents is $21,157,500.[14]

We are not preparing a separate estimate covering this notice only, because we find that the notice would not significantly alter the estimate contained in the December 1, 1998 notice. The December 1, 1998 burden estimate gave the Commission's estimate of OASIS-related information requirements over the next three years, and this estimate contemplated the Commission's continued use of the S&CP Document during this time frame. In any event, if a separate estimate were prepared, it would not be substantial, because the proposal in this notice, if promulgated, would not substantially increase the information collection requirements already specified in Version 1.3 of the S&CP Document.

The collection of information contained in this notice has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). For copies of the OMB submission, contact Michael Miller at 202–208–1415.

Internal Review

The Commission has conducted an internal review of the public reporting burden associated with this collection of information and has assured itself, by means of its internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information proposed by this notice and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this order, for the collection, efficient management, and use of the required information.[15]

Based on our experience in OASIS implementation over the past four years, the Commission has refined the estimate of reporting entities covered by OASIS regulations. Our latest estimate is that 140 respondents are required to collect information under the OASIS regulations. However, as discussed above, this notice does not impose any new information collection burdens.

The Office of Management and Budget's (OMB) regulations,[16] require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in this notice will be reflected in OASIS postings that are directly available to transmission users and subject to subsequent audit by the Commission. The more efficient posting of this information will help the Commission carry out its responsibilities under Part II of the FPA.

The Commission is submitting notification of this notice to OMB. Persons wishing to comment on the collections of information proposed by this notice should direct their comments to the Desk Officer for FERC, OMB, Room 10202 NEOB, Washington, DC 20503, phone 202–395–3087, facsimile 202–395–7285. Comments must be filed with OMB within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address: Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street NE, Washington, DC 20426. For further information on the reporting requirements, contact Michael Miller at (202) 208–1415.

VII. Public Comment Procedure

This notice gives notice of our intention to make certain technical revisions to S&CP Document, Version 1.3. Prior to taking final action on this notice, we are inviting comments from interested persons on the proposals discussed in this notice and compiled in the OASIS Standards and Communication Protocols, Version 1.4. In addition, the Commission specifically invites comments on four specific questions enumerated in the discussion above relating to whether the proposal is consistent with our findings in Order No. 638. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

[14] The estimated total cost of $21,157,500 was computed as follows:

The Commission has assumed that 4.5 personnel are necessary for staffing and using a total personnel cost of $109,889, the result is $494,501. To get the total cost, add annual ongoing costs of $110,000 plus staffing costs [$110,000 + $494,501] for a total of $604,501 divided by 4 = $151,125. The estimated total cost of the OASIS requirement is 140 respondents × $151,125 or $21,157,500.

[15] *See* 44 U.S.C. 3506(c).

[16] 5 CFR 1320.11.

The original and 14 copies of such comments must be received by the Commission by July 7, 2000. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington DC 20426 and should refer to Docket No. RM95–9–011.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM95–9–011; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM95–9–011. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter by telephone at 202–501–8145 or by E-Mail (to brooks.carter@ferc.fed.us).

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

VIII. Document Availability

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street NE, Washington DC 20426, during regular business hours. Additionally, comments may be viewed and printed remotely via the Internet through FERC's Home Page (http://www.ferc.fed.us) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222, or by E-Mail (to WebMaster@ferc.fed.us) or the Public Reference Room at (202) 208–1371 (E-Mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13103 Filed 6–6–00; 8:45 am]

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Wednesday,
June 7, 2000

Part VII

Federal Housing Finance Board

12 CFR Parts 900, 905, 965, 966, 969, 985 and 989

Office of Finance; Authority of Federal Home Loan Banks To Issue Consolidated Obligations; Final Rule and Changes to the Financial Management Policy of the Federal Home Loan Bank System; Notice

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 905, 965, 966, 969, 985 and 989

[No. 2000–24]

RIN 3069–AA88

Office of Finance; Authority of Federal Home Loan Banks To Issue Consolidated Obligations

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations governing the operations of the Office of Finance (OF), a joint office of the Federal Home Loan Banks (Bank or Banks), and the issuance of debt for the Federal Home Loan Bank System. The final rule authorizes the Banks to issue joint debt, *i.e.*, bonds, notes or debentures, on which the Banks are jointly and severally liable, to be called consolidated obligations (COs), under section 11(a) of the Federal Home Loan Act (Act). This action is intended to more closely reflect the reality of the Banks' current funding operations by allowing the Banks to be responsible for accessing the capital markets through the OF to fund their own operations, rather than having the Finance Board issue COs on behalf of the Banks as is currently the case. The final rule does not have a substantive effect on the debt issuance process or on the joint-and-several liability of the Banks on outstanding COs or COs to be issued in the future. This action is consistent with devolutionary actions taken by Congress to give the Banks greater autonomy over the management of their business and to remove the Finance Board from involvement in Bank management functions.

The final rule also incorporates changes to the leverage limit that were originally proposed as a part of conforming amendments to the policy statement entitled "Financial Management Policy of the Federal Home Loan Bank System" (FMP). Specifically, the final rule deletes the Bank System-wide leverage limit, recasts the Bank-by-Bank leverage limit from a liability-based limit to an asset-based limit and incorporates into regulation expanded leverage originally permitted for year 2000 liquidity purposes, all as consistent with the Act provisions of the recently enacted Gramm-Leach-Bliley Act.[1]

The final rule also authorizes the Finance Board to continue to issue COs under the authority of section 11(c) of the Act. At some point to be determined by the Finance Board and the OF, the issuance of debt under the authority of section 11(c) of the Act will cease and all COs will be issued under the authority of section 11(a) of the Act. The final rule makes clear that OF ultimately will be responsible for performing all CO issuance functions, including preparation of combined financial reports, for the Banks. The final rule also effects a number of other corporate governance changes to maximize the operating efficiency of the OF.

The Finance Board is also adopting in final form certain conforming amendments to the FMP. A Notice describing the FMP amendments in detail is published elsewhere in this issue of the **Federal Register**.

DATES: This final rule is effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Deputy Chief Economist, Office of Policy, Research and Analysis, 202/408–2845, *mckenziej@fhfb.gov*, Deborah F. Silberman, General Counsel, Office of General Counsel, 202/408–2570, *silberman@fhfb.gov*, or Charlotte A. Reid, Special Counsel, Office of General Counsel, 202/408–2510, *reidc@fhfb.gov*. Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On January 4, 2000, the Finance Board published for comment a proposed rule to amend parts 910 and 941 of the Finance Board's regulations governing operation of the OF and issuance of COs, to enable the OF to issue debt on behalf of the Banks pursuant to section 11(a) of the Act, require the OF to prepare the quarterly and annual combined financial reports of the Bank System, and provide services at the request of two or more Banks related to joint asset activities undertaken by the requesting Banks, including the administration of Member Mortgage Asset programs and liquidity management. The proposed rule also would have amended § 900.30 of the Finance Board's regulations to provide for the termination as of December 31, 2000, of the OF's authority to act as agent for the Finance Board in the issuance of COs under section 11(c) of the Act. By this provision, the Finance Board intended to transition itself out of, and the Banks into, the debt issuance function under the provisions of section 11(a) of the Act as soon as practicable. *See* 65 FR 324 (Jan. 4, 2000). The proposed rule described a new structure for the OF to accommodate additional functions proposed to address new challenges faced by the Bank System. The 60-day public comment period closed on March 6, 2000. The Finance Board received a total of 22 comments, 15 from Banks, 5 from trade associations, 1 from a Bank member, and 1 from a group of Bank members. A majority of the commenters generally supported the concept of devolving the debt issuance from the Finance Board to the Banks, but opposed the proposed restructuring of the OF.

II. Comments on the Proposed Rule and Analysis of Changes Made in the Final Rule

A. Joint Asset Activity Management and Restructuring of the Office of Finance

The proposed rule would have amended part 941 of the regulations to authorize the OF, as the only statutorily recognized joint office of the Banks, to operate as a centralized facility through which Bank assets could be efficiently administered on a joint basis. The proposed rule provided that, to the extent requested by two or more Banks pursuant to any agreement or contract, the OF shall facilitate or provide services to the Banks in connection with any Bank joint asset activities authorized by law. With regard to the joint asset activities of the Banks, the OF would have been required to provide administrative and technical support for the origination, purchase, management, servicing or sale of any asset owned by one or more Banks pursuant to any contract, including acquired member assets; provide market information to the Banks concerning acquired member assets and other assets or investments of the Banks; conduct and provide research on such assets and investments; develop effective systems to monitor credit exposure and manage counter-party risk; adopt procedures to assist the Banks in managing their liquidity; and adopt procedures to facilitate the inter-Bank sale of participation interests in advances and investments. This section would not have required the Banks to make use of the OF in this capacity, but it would have required the OF to provide the services outlined if two or more Banks wished the OF to do so. The OF would have been authorized to establish a reasonable fee structure or charge for its services by contract or otherwise. It also would have been authorized to mediate among competing Bank demands, in accordance with its specified duties and responsibilities.

[1] Pub. L. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

These proposed provisions were intended primarily to address the Finance Board's belief that the market has created an incentive and a business need for a facility controlled by the Banks and their members to provide economies and efficiencies of scale, as it has done for the issuance of COs by the Finance Board, by giving the Banks the flexibility to centralize certain of their common business functions. As discussed in the **SUPPLEMENTARY INFORMATION** of the proposed rulemaking, *see* 65 FR 324 (Jan. 4, 2000), the Finance Board anticipates that this need will become even more critical as the Banks develop asset activities such as acquired member assets as part of their core business.[2] Not only would such a facility provide operational benefits, it also would enhance the safety and soundness of the operations by providing both expertise and a mechanism for achieving risk management, and geographic diversity on a joint asset portfolio basis. In light of the recent enactment of Title VI of the Gramm-Leach-Bliley Act, the Federal Home Loan Bank System Modernization Act of 1999, the Finance Board proposed a reorganization of the OF that would allow OF, the only joint office of the Banks, to function in this way at the request of the Banks and facilitate growth in the Bank System's business as the Banks seek to provide their members with new credit products and respond to changes in the marketplace and congressional mandates.

The Finance Board believes that administering joint assets through a centralized facility could offer safety-and-soundness benefits of better risk-management capabilities and geographic diversity in the asset portfolio, which is particularly important given the national nature of the mortgage markets. The mortgage market is no longer the fragmented, localized market that it was when Congress created the Bank System in 1932. Driven by technological improvements, the mortgage market's delivery systems have become more national in scope, and the mortgage market now plays a central role in the national economy. The need for "an appropriate vehicle for coordination of System-wide business issues," such as a central facility to assist the Banks in managing various aspects of their operations, including mortgage-related assets, has grown in the ten years since Congress confirmed the OF as a joint office of the Banks in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).[3]

A majority of the commenters opposed this portion of the proposal, as well as the provisions of proposed § 941.4[4] concerning the restructuring of the OF board of directors to significantly alter both the size and composition of the OF board of directors by including representatives from each Bank, elected members of the Bank System, and appointed representatives of the general public with relevant experience, and other proposed changes designed to provide the structure, additional functions and operational capacity the OF would have to possess in order to accommodate the joint assets activities function. Because the Finance Board does not wish to delay adoption of the debt issuance provisions in final form, the Finance Board has decided to remove the joint asset activity management and restructuring provisions from the text of this final rule. The proposals regarding joint asset activity management functions for the OF and the necessity to adapt the structure of the OF for the addition of such functions, however, remain under active consideration and analysis by the Finance Board. It is anticipated that the Finance Board will respond to the comments and adopt those provisions in a future separate notice of final rulemaking.

B. Authorization of Banks To Issue Joint Debt Under Section 11(a) of the Act

As discussed in the **SUPPLEMENTARY INFORMATION** of the proposed rulemaking, section 11(a) of the Act provides that the Banks may issue bonds, debentures or other obligations "upon such terms and conditions" as the Finance Board may approve and "subject to the rules and regulations prescribed by" the Finance Board. 12 U.S.C. 1431(a). Proposed § 910.2(b) (redesignated as § 966.2(b) in the final rule) expressly authorizes the OF to undertake the issuance of joint Bank debt pursuant to section 11(a) of the Act as COs on which all of the Banks would be jointly and severally liable subject to § 966.9 of the Finance Board regulations (which governs the joint-and-several liability of the Banks on COs issued under section 11(c) of the Act). As adopted, § 966.2(b) also provides that the authorization contained therein shall be deemed to constitute satisfaction of the requirement for Finance Board approval of the "terms and conditions" pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

As discussed in the **SUPPLEMENTARY INFORMATION** of the proposed rulemaking, the Finance Board wishes to achieve the goals of continuing to give the Banks the autonomy to manage and run their own businesses by authorizing the Banks to issue the COs, while eliminating the continued potential for conflict with the Finance Board in its roles as regulator of the OF and the Banks and issuer of the COs. *See* 65 FR 324 at 325 (Jan. 4, 2000).

A majority of the commenters generally supported the concept of devolution of the CO issuance function to the Banks. However, almost all of the commenters expressed varying degrees of apprehension about recent market volatility and about how implementation of the final rule would be perceived in the capital markets, and many recommended delaying adoption of the final rule because of those concerns. Several commenters questioned whether the Finance Board had a legal basis to require, as a condition of authorizing the Banks to issue debt under section 11(a) of the Act, that the Banks be jointly and severally liable on the debt. One Bank commenter questioned whether COs issued by the OF as agent for the Banks would be afforded the same treatment under the Federal securities laws as COs issued by the Finance Board under section 11(c).

[2] Indeed, the General Accounting Office (GAO) foresaw this need, stating that "there may be a need for a central coordinating mechanism . . . [that] should reside in the [Bank] System itself. *See* report commissioned by Congress in section 1393 of the Housing and Community Development Act of 1992, issued on December 8, 1993 (GAO/GGD–94–38) (GAO Report), at 113. The GAO Report observed that there were certain positive goals that could be attained by relieving the Finance Board of certain Bank System governance functions, including enhanced cost control and the centralization of "certain business functions." *Id.* at 114.

[3] *See* Pub.L. 101–73, tit. VII, sec. 702, 103 Stat. 183 (Aug. 9, 1989). The GAO report noted that FIRREA made "many changes" to the Bank System that "introduced significant cultural changes for the Banks and their members." GAO Report at 19–20. Principally, after FIRREA, the Banks were no longer involved in the oversight and supervision of their members. The members henceforth only would view the Banks as a credit facility, and this change would promote the coöperative nature of the Bank System. GAO concluded, however, that to attract new, voluntary members and retain members, the Banks "must provide sufficient value—through the products and services offered and the dividends paid—to warrant the required stock investment for membership." *Id.* at 21. The GAO Report noted the need for coordination of System-wide business issues. *Id.* at 117.

[4] The Finance Board recently reorganized and redesignated all of its regulations. *See* 65 FR 8253 (Feb. 18, 2000). Part 900 of the Finance Board's regulations, 12 CFR part 900 (1999), was redesignated as part 905, *see* 65 FR 8253, 82 (*to be codified at* 12 CFR part 905); part 910, "Consolidated Bonds and Debentures," was redesignated as part 966 "Consolidated Obligations," *see* 65 FR 8253, 82 (*to be codified at* 12 CFR part 966); and part 941, "Operations of the Office of Finance, " was redesignated as part 985, *see* 65 FR 8253, 82 (*to be codified at* 12 CFR part 985).

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There are no conditions or restrictions attached to the Finance Board's authority to prescribe the rules and regulations or to approve the terms and conditions of issuance of Bank debt under section 11(a). So long as the Finance Board exercises its power to promulgate its rules in a form authorized by Congress,[5] and the rules are reasonable and consistent with the statute, the rules will be valid and enforceable, and will have the force and effect of law.[6]

As proposed, the final rule applies the same rules governing the apportionment of joint-and-several liability to COs issued by the Finance Board pursuant to section 11(c) of the Act as to COs issued by the Banks pursuant to section 11(a). By requiring joint-and-several liability as a condition of authorizing the Banks to issue debt under section 11(a), the Finance Board is implementing by regulation an issuance scheme that is identical to the issuance scheme established by Congress elsewhere in section 11 of the Act, and the Banks will be subject to the same payment provisions (*i.e.*, the joint-and-several liability provisions) currently established in the Finance Board's regulations. Nothing in the Finance Board's regulatory action requiring the Banks to be jointly and severally liable on debt issued under section 11(a) is inconsistent with any existing statutory or regulatory requirement.

The Finance Board has concluded that it has the authority both to promulgate this rule and to require, as a condition of authorizing the Banks to issue debt under section 11(a) of the Act, that the Banks be jointly and severally liable on that debt. Further, the Finance Board has concluded that the technical change in the issuer of the COs from the Finance Board to the Banks will have no effect on the treatment of COs under the Federal securities laws.[7]

C. Authorized Liabilities

Proposed § 910.2(a) (redesignated as § 965.2 in the final rule) set forth an exclusive list of liabilities authorized for Bank business operations, which was designed to replace the Funding Guidelines section of the FMP. *See* 65 FR 324 at 328; 65 FR 339 (Jan. 4, 2000). Five commenters expressed opposition to various aspects of this provision.

Two Bank commenters and one trade association commenter objected to limiting the purchase of Federal funds and the use of repurchase agreements to meet the short-term liquidity needs of the Banks, stating that the standard was ambiguous or that the limits would make liquidity management more difficult. The Finance Board has reconsidered the need for the limit in light of the comments and in light of its change to the leverage limit from a liability-based limit to an asset-based limit, and has determined not to limit the purchase of Federal funds or the use of repurchase agreements in the final rule.

Proposed § 910.2(a)(2) (redesignated as § 965.2(b) in the final rule) was designed to continue each Bank's authority to accept deposits from members, other Banks and instrumentalities of the United States, but provided that deposit transactions may not be conducted in such a way as to result in the offer or sale of a security in a public offering as those terms are defined under the Federal securities laws. *See* 65 FR at 328. Three commenters criticized this provision, noting that it was unclear as proposed whether deposits from categories of financial institutions from which the Banks now accept deposits still would be permitted, and that there was no justification for limiting or eliminating a significant, low-cost source of funds for the Banks. The Finance Board did not intend to preclude the Banks from accepting deposits or cash accounts from any category of financial institution from which the Banks are currently authorized by statute or regulation to do so. The final rule has been revised in light of the comments to remedy this. Two commenters objected to the "no public offering" provision relating to deposits and recommended that it be eliminated as difficult to apply in light of the rate posting practices of the Banks and unnecessary given the nature of the Banks' depositors. The Finance Board agrees with the comments and has eliminated that restriction from the final rule.

D. Powers and Responsibilities of the OF

Proposed § 941.2 stated that the OF is a joint office of the Banks under section 2B of the Act; set out a two-pronged purpose for the OF; provided that, as a part of its purpose, OF shall issue COs on behalf of the Banks or the Finance Board and shall support the Banks upon the request of two or more Banks undertaking joint asset activities that the Banks are otherwise authorized by law to undertake individually; and set out the functions the OF was authorized to undertake in support of the issuance of debt and the support to be provided to the Banks engaged in joint asset activities. *See* 65 FR 324 at 329. As previously discussed, because only the CO issuance provisions of the proposal are being adopted in final form at this time, only those comments are being addressed here. Three Banks, two trade associations, and one individual commented on some aspect of this provision of the proposed rule.

Proposed § 941.2(c) (redesignated as § 985.6(b) of the final rule) assigned to the OF the function of preparing the combined Bank System annual and quarterly financial reports as a part of the CO issuance or debt management function. The proposal codified current Finance Board policy (*See* Res. No. 98–27 (June 24, 1998)) (Policy Statement) and set forth the standards under which the OF would be required to prepare Bank System financial reports, including requiring that the scope, form and content of the disclosure contained in such financial reports generally be consistent with the requirements of the Securities and Exchange Commission's (SEC) Regulations S–K (specific narrative disclosure requirements) and S–X (accounting and financial statement disclosure requirements) (17 CFR parts 229 and 210) and be presented in accordance with the Statement Of Financial Accounting Standards No. 131, "Disclosures about Segments of an Enterprise and Related Information" (FAS 131).

The proposed rule included an Appendix listing exceptions to the standards set forth in proposed § 941.2(c)(1)(iv)(A) and (B), derived from the Finance Board's Policy Statement, which included certain disclosures concerning related-party transactions, biographical information, compensation, submission of matters to a vote of shareholders, exhibits, per-share information and beneficial ownership. The proposed rule also required the OF to file and distribute combined Bank System financial reports according to a schedule that mirrors the filing requirements applicable to corporate registrants under the Securities Exchange Act of 1934 (1934 Act) (*i.e.*, annual reports within 90 days after the end of the fiscal year and quarterly reports within 45 days after the end of each of the first 3 fiscal quarters). The proposal expressly confirmed the Finance Board's sole authority to determine compliance with the standards of proposed part 941 (redesignated as part 985) and provided an explicit compliance mechanism by requiring the OF to promptly comply with any Finance Board directive pertaining to the preparation, filing, amendment or distribution of financial reports.

Two commenters objected to the timeframes within which the financial statements are required to be prepared and recommended that those deadlines be relaxed. One commenter also suggested that the provision governing the preparation of the system financial statements make clear that the Finance Board would make its determination as to whether the reports conform to the appropriate disclosure and accounting requirements *prior to* the release of the financial statement by the OF. Two commenters suggested the addition of a provision stating that the failure to comply with the rule would not create any private right of action that would not have existed in the absence of the regulation's reporting requirement.

Section 985.6(b) is adopted as proposed, with only minor changes, in the final rule. With respect to the comments concerning relaxing the timeframes for preparation of financial reports, the Finance Board continues to believe that, just as disclosure concerning the Bank System should conform to industry standards, so too should the Bank System provide that information to interested parties within the timeframes applicable in the industry. In this regard, the Finance Board prepared and completed both the 1999 combined annual financial report and the first quarter 2000 combined financial report within the applicable timeframes. There does not appear to be any reason why the OF could not and should not continue to meet this standard. Therefore, no changes have been made in the final rule to the proposed timeframes.

With respect to the comment concerning Finance Board review of disclosure prior to release of financial reports, the Finance Board does not wish to impose any delay in the issuance or distribution process, nor to have the process of review of these reports differ from the process of review practiced by the SEC. When the SEC reviews 1934 Act reports, it does not generally do so prior to issuance. Therefore, the Finance Board has adopted the review provision as proposed.

A provision stating that the failure to comply with the rule would not create any private right of action that would not have existed in the absence of the regulation's reporting requirement has been added to the rule in § 985.6(b)(7), in response to a concern expressed by the commenters. The Finance Board has no intention by engaging in this rulemaking of creating any private right of action that would not have existed in the absence of this rule. It should be noted that the Finance Board does not believe that the Banks, the OF or the OF board of directors will incur any different or greater liability under any aspect of the final rule than existed previously. *See* Op. Gen. Counsel (May 22, 2000).

Proposed § 941.2(c)(ii)(C) (redesignated as § 985.8(c)(3) of the final rule) would have required OF to define, implement and maintain investor suitability standards, and assure that these standards are met. Several commenters noted that investor suitability is more properly dealt with by underwriters than by issuers. The Finance Board agrees with these comments and has revised the final rule to address suitability by requiring OF to require that *underwriters* of COs have and maintain adequate suitability sales practices and policies governing the distribution of Bank debt that are acceptable to, and subject to review by, the OF.

Proposed § 941.2(c)(2)(iv) (redesignated as § 985.6 of the final rule) would have required the OF to have systems in place for timely monitoring the unsecured credit exposure of the Banks, and appropriate systems to manage the Banks' counterparty risk. While the monitoring of counterparty risk is an existing function of the OF, management of counterparty risk, as at least two commenters pointed out, is a function more appropriately left to the Banks. The final rule has been revised to delete the requirement that the OF manage the Banks' counterparty risk, but retains the requirement that the OF timely monitor each Bank's and the Bank System's unsecured credit exposure to individual counterparties.

Proposed § 941.2(c)(1)(i) and (iii) (redesignated as § 985.8(c)(4) of the final rule) required the OF to consider or promote the cooperative nature of the Bank System, and be mindful of and preserve the relationship between the Banks and their members, which are also issuers of debt in the capital markets. Several commenters objected to the inclusion of these concepts as ambiguous, onerous, confusing and lacking clarity as standards. One commenter suggested that this rule was not the optimal forum for addressing the matter of retail debt issuance by the Banks *vis a vis* Bank members. Another commenter, while acknowledging that Bank System debt is not currently distributed directly to retail level investors, speculated that such distributions could raise a policy issue of "competition with the retail deposit offering of member institutions."

The Finance Board agrees that this regulation is the appropriate place to address the issue. The Finance Board agrees with the commenter that, ultimately, it should be up to the boards of directors of the Banks to determine such matters involving their members. Therefore, the final rule has been revised to prohibit the issuance of COs intended to be privately placed with or sold without the participation of an underwriter to retail investors, or issued with a concession structure designed to facilitate the placement of the COs in retail accounts, unless the OF has given notice to the board of directors of each of the Banks describing a policy permitting such issuances, soliciting comments from each Bank's board of directors, and considering the comments received before adopting a policy permitting such issuance activities. The language of the rule has been designed so as to have no effect on current debt issuance practices, which as noted above are not currently directed at retail level investors. Only departures from current practices would subject the issuance process to the notice procedure described in the rule. All other references to considering or promoting the cooperative nature of the Bank System have been deleted from the final rule.

E. Leverage Limit

The proposed rule, and corresponding proposed changes to the FMP, did not include the 20-to-1 leverage limit from § 910.1(b) of the Finance Board's regulations, or the 20-to-1 leverage limit on each Bank contained in the FMP. Instead, the proposed amendments to the FMP recast the leverage limit applicable to each Bank from a liability-based limit to an asset-based limit, and required that each Bank maintain capital in an amount equal to at least 4.76 percent of the Bank's total assets. *See* 65 FR at 328, 339. This limit required that the assets of a Bank not exceed 21 times its capital.

The Finance Board did not believe that either the elimination of the Bank System-wide leverage limit from the Finance Board's regulations, or the proposed revision to the leverage limit contained in the FMP, would have any practical effect on the Bank System or its bondholders. The Finance Board, as the regulator of the Banks, would continue to monitor each Bank for compliance with the individual leverage limit included in the FMP. The existing FMP provision prohibits a Bank from participating in COs if such transactions would cause the Bank's liabilities to

[5] Generally, Congress has authorized Federal agencies to issue binding rules through the use of the notice and comment procedure set forth in section 553 of the Administrative Procedure Act, 5 U.S.C. 551 *et seq. See generally*, 1 Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 6.3 at 236 (3rd ed. 1994 and Supp. 1999).

[6] *Id. (citing Fawcus Machine Co. v. United States*, 282 U.S. 375, 378 (1931); *Maryland Casualty Co. v. United States*, 251 U.S. 342, 349 (1920)).

[7] *See* Op. Gen. Counsel (May 22, 2000).

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exceed 20 times the Bank's capital.[8] The proposed revision to the FMP established an equivalent leverage standard, stated as a percentage of assets, which would require each Bank to maintain capital of at least 4.76 percent of its total assets. The imposition of the proposed standard on each Bank would ensure that the Bank System itself stays within the leverage limit, rendering any retention of a Bank System-wide leverage limit unnecessary. Further, the Finance Board noted that with the recent passage of the Gramm-Leach-Bliley Act, the Banks would be subject to asset-based statutory leverage limits and risk-based capital requirements. When implemented, the new risk-based capital regime would provide an additional safeguard to the Bank System and its bondholders by requiring Banks to hold capital in proportion to the risks they assume.

The final rule incorporates the leverage change that originally was proposed to be part of the FMP. In addition, the final rule extends and makes permanent the additional leverage authority originally permitted to the Banks for Year 2000 liquidity. In particular, the final rule allows a Bank to have asset-based leverage of up to 25 to 1 if the Bank's non-mortgage assets after deducting deposits and capital, do not exceed 11 percent of its total assets. For the purpose of the final rule, non-mortgage assets equal the total assets after deducting core mission activity assets and assets described in sections II.B.8 through II.B.11 of the FMP.[9] The Year 2000 leverage provision allowed a Bank to have liability-based leverage of up to 25 to 1 if its ratio of non-mortgage investments did not exceed 12 percent of the liabilities for which the Bank was the primary obligor. This 25 to 1 leverage requirement is consistent with the leverage requirements of the Gramm-Leach-Bliley Act.

A number of commenters objected to the proposed change on the basis that secured liabilities, principally repurchase agreements, are not now subject to a capital requirement. Under the proposed FMP, however, assets funded by repurchase agreements and other secured liabilities would be subject to capital charges.

Repurchase agreements are a *de minimis* portion of Bank funding. At December 31, 1999, repurchase agreements were less than one-tenth of one percent of the total funding of the Banks, eight of the Banks had no repurchase agreements, and one Bank accounted for a majority of the Bank System's repurchase agreements.

The Finance Board agrees with the recommendation that the leverage requirement be included in the Finance Board's regulations rather than in the FMP. The final rule incorporates the leverage limit provision into § 966.3(a).

The proposed rule deleted provisions of the Finance Board's regulations that purported to limit the Finance Board's ability to change the leverage limit only if the Finance Board received either written evidence from at least one major Nationally Recognized Securities Rating Organization (NRSRO) that the proposed change will not result in the lowering of that rating agency's then-current rating or assessment on senior bonds outstanding or next to be issued; or a written opinion from an investment banking firm that the proposed change would not have a materially adverse effect on the creditworthiness of senior bonds outstanding or next to be issued. *See* 65 FR 324 at 328–329. As proposed, these provisions are deleted by the final rule.[10] Instead, § 966.3(b) of the final rule requires the Banks to seek, obtain and maintain a rating on the COs from an NRSRO. It requires each Bank to operate in such a manner and take whatever actions are necessary to ensure that the COs receive and maintain the highest rating from an NRSRO. Section 966.3(c) of the final rule requires each Bank to obtain a rating, such as a long-term credit issuer rating from Standard and Poor's or a financial strength rating from Moody's that is no lower than the second highest credit rating. Each of the Banks now has an Aaa long-term issuer credit rating from Standard and Poor's. Therefore, the ratings requirements in the final rule merely reflect current practice and will impose no new costs or burdens on the Banks.

The ratings requirements in the final rule will enhance the protections afforded the holders of COs. Requiring each of the Banks on an ongoing basis to take whatever action may be necessary to maintain the rating of COs at the highest level is a substantially stronger protection than the current requirement of a one-time written statement from a rating agency or investment banking firm that a change in the leverage limit would not adversely affect the rating or creditworthiness of COs.

F. Other Changes

1. Amendments to Part 900

As proposed, the duplicative definitions in part 966 of the terms "Board" and "Bank," which are now defined in part 900, have been deleted. The definition of "consolidated obligation" is adopted as proposed, with minor edits, in § 900.1 of the final rule to clarify that it includes any bond, debenture or note authorized under part 966 to be issued jointly by the Banks under section 11(a) of the Act, or any bond or note issued by the Finance Board on behalf of all Banks pursuant to section 11(c) of the Act, on which the Banks are jointly and severally liable.

2. Amendment to Part 905

The proposal would have amended § 905.30 to add a new paragraph (a)(3) to provide for the termination as of December 31, 2000, of the OF's authority to act as agent for the Finance Board in the issuance of COs under section 11(c) of the Act. By this provision, the Finance Board intended to transition itself out of, and the Banks into, the debt issuance function under the provisions of section 11(a) of the Act as soon as practicable.

The Finance Board has determined that it can accomplish the same goal by deleting § 905.30 in its entirety, and providing in § 966.2 that the Finance Board may in its discretion from time to time delegate its issuance of COs under section 11(c) of the Act by resolution of the Board of Directors of the Finance Board.[11] The Finance Board anticipates working with the OF to determine a mutually acceptable date on which the OF will begin issuing COs under the authority of section 11(a) of the Act and ceasing to issue COs under the authority of section 11(c) of the Act.

3. Amendments to Part 966—Consolidated Obligations

Part 910 of the Finance Board's regulations was redesignated as part 966. The part has been reorganized and renumbered, terms have been modified as proposed in the final rule for regulatory consistency (such as by substituting "Finance Board" for "Board," "Bank" for "Federal Home Loan Bank," and "consolidated obligation" for "consolidated bond"), and a new § 966.10 has been added.

a. Definitions—§ 966.1. As proposed, the definitions of the terms "Board" and "Bank," which are now defined in part 900, and of the term "unsecured senior liabilities" have been deleted. The definition of "Nationally Recognized Statistical Rating Organizations" has been adopted as proposed in § 966.1.

b. Sections 966.2 through 966.10. The negative pledge requirement is adopted as proposed, in § 966.2(c), retaining the negative pledge requirement for debt previously issued by the OF on behalf of the Finance Board under section 11(c), and expressly requiring each Bank to maintain the specified assets free of pledge in an amount equal to the Bank's *pro rata* share in COs issued by the OF on behalf of the Banks under section 11(a) in which the Bank participated.

Proposed §§ 910.3 through 910.7 are adopted as proposed, with minor changes, in the final rule, but redesignated as §§ 966.4 through 966.8. One commenter argued that the provision in proposed § 910.3, reserving to the Finance Board the authority to prescribe the form of each CO, runs counter to the devolution of management issues. The Finance Board agrees and has therefore deleted that provision from § 966.4 of the final rule.

Proposed § 910.7, redesignated as § 966.8 in the final rule, provided the conditions under which the OF board of directors shall authorize the issuance of COs. As adopted, § 966.8 provides that the OF board of directors shall authorize the offering for current and forward settlement (not to exceed 12 months) or the reopening of COs as necessary and authorize the maturities, rates of interest, terms and conditions thereof, subject to the provisions of 31 U.S.C. 9108. It also provides that COs may be offered for sale only to the extent that the Banks are committed to take the proceeds, and continues the existing prohibition on directly placing COs with another Bank. As discussed previously, the requirements in the proposal that the OF board of directors shall implement investor suitability standards and adopt a policy addressing the relationship between the Banks and their members as debt issuers, have been deleted from the final rule.

Proposed § 910.8 (joint-and-several liability) has been redesignated as § 966.9 without change.

One commenter recommended the inclusion in the final rule of a provision stating that agreements and instruments entered into in connection with the issuance of COs prior to implementation of the final rule will continue to be effective with respect to the issuance of COs issued under the authority of the final rule by operation of law, and that references to COs in those agreements and instruments shall be deemed to refer to all COs by whomever issued. The Finance Board agrees that such a savings clause would be prudent and would further its goal of effecting a smooth and seamless transition of the CO issuance process between it and the Banks. Accordingly, the Finance Board has added such a savings clause as § 966.10 in the final rule.

4. Amendments to Part 985—the Office of Finance

The final rule has been significantly reorganized in form, but not in substance, from the proposed rule. The most important conceptual difference between the proposed and final rules is that certain powers and duties proposed to be powers and duties of the OF board of directors have been recast as authorities and responsibilities of the OF itself in the final rule. Part 941 has been redesignated as part 985.

a. Definitions, oversight, authority of the Office of Finance, functions and funding. i. Definitions. Section 985.1 of the final rule defines "OF" as the Office of Finance, a joint office of the Banks pursuant to section 2B of the Act. See 12 U.S.C. 1422b(b)(2).

ii. Authority of the OF. Proposed § 941.5 (redesignated as § 985.2(a)), which was entitled "Powers of the OF board of directors," has been adopted as "Authority of the OF," but otherwise is enacted substantively as proposed. It provides that the OF shall have the incidental powers under section 12(a) of the Act as are necessary, convenient and proper to accomplish the efficient operation and management of the OF, including having authority to contract with a Bank or Banks for the use of Bank facilities or personnel in order to perform its functions or duties. The rule empowers the OF to act as agent (rather than the OF board of directors) for the Banks in issuing COs pursuant to section 11(a) of the Act, for the Finance Board, by delegation, in issuing COs pursuant to section 11(c) of the Act, and in making principal and interest payments on COs issued in either capacity. Finally, § 985.2 gives the OF authority to assess the Banks for the funding of its operations in accordance with the provisions of § 985.5.

iii. Functions of the OF. Proposed § 941.2(b)(1) expressly provided that the OF could issue COs on which the Banks would be jointly and severally liable, on behalf of the Banks and the Finance Board under sections 11(a) and 11(c) of the Act, respectively. 12 U.S.C. 1431(a) and (c). That proposal has been adopted in § 985.3(a) of the final rule. Section 985.3 of the final rule goes on to provide that the OF shall prepare and issue the combined annual and quarterly financial reports for the Bank System, shall function as the Fiscal Agent for the Banks, and shall perform such duties and responsibilities for the Financing Corporation and the Resolution Funding Corporation as may be required under the Finance Board's regulations or the Act.

iv. Finance Board oversight. Proposed § 941.3 has been redesignated as § 985.4 and adopted without other changes from the proposal.

v. Funding of the OF. Proposed § 941.7 incorporated, with modest revisions, the existing provisions of the Finance Board's regulations regarding the responsibility of the Banks to fund the operations of the OF. That section has been redesignated as § 985.5 in the final rule and revised to eliminate unnecessary provisions and to more fully devolve the responsibility for this process. As adopted, § 985.5 retains the requirement that the Banks are responsible for jointly funding the OF, and makes explicit that this shall include the cost of indemnifying the members of the OF board of directors, the Managing Director, and other officers and employees of the OF. This requirement was added at the urging of several commenters, with whom the Finance Board agrees. As proposed, § 985.5(b) of the final rule provides that, at the direction of and pursuant to policies and procedures adopted by the OF board of directors, the Banks are required periodically to reimburse the OF to maintain sufficient operating funds under the budget approved by the OF board of directors. Also as proposed, the final rule provides that each Bank's respective *pro rata* share of the reimbursement must be based on the ratio of the total paid-in value of its capital stock relative to the total paid-in value of all capital stock in the Bank System. The final rule adopts the provision of the proposed rule providing authority for the OF board of directors, with the prior approval of the Finance Board, to implement an alternative formula for determining each Bank's respective share of the OF expenses or, by contract with a Bank or Banks, to choose to be reimbursed through a fee structure in lieu of or in addition to assessment, for services provided to the Bank or Banks for the

[8] By resolution the Board of Directors of the Finance Board directed that, through June 30, 2000, a Bank may have leverage up to 25 to 1 as long as that Bank's ratio of non-mortgage investments to COs does not exceed 12 percent. The Finance Board adopted this additional leverage flexibility on an interim basis to allow the Banks to provide Year 2000 funding to their members. *See* Res. No. 99–33 (May 28, 1999).

[9] On May 3, 2000, the Finance Board published for notice and comment a proposed rule that included a listing of activities that would qualify as core mission activities. *See* 65 FR 25676 at 25688 (May 3, 2000).

[10] Without conceding that the terms of the current rule apply, but in an abundance of caution, so as to be in compliance with the terms of the current rule, a written opinion from an NRSRO that the changes to the leverage limit would not have a materially adverse effect on the creditworthiness of COs outstanding or next to be issued was obtained prior to adoption of the final rule.

[11] The Finance Board annually adopts a debt-issuance authorization to the OF that includes parameters to which the debt must conform. See Res. No. 2000–11 (Feb. 23, 2000).

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issuance or servicing of COs or for other activities.

One commenter suggested not using the Banks' paid-in capital as the allocation method for assessments on the Banks for the OF operating expense, stating that soon there would no longer exist any direct connection between the paid-in capital of a member of a Bank and the member's advances outstanding. The commenter suggested that the measure should more directly approximate the issuance costs for the Bank System and recommended further that the measure be the Banks' apportionment of the proceeds of aggregate CO issuance for the prior year or quarter. While the Finance Board believes that there may be some merit in these suggestions, no changes have been made at this time to the final rule. The Finance Board has proposed a risk-based capital rule, but it will be some time before the new capital system is fully in place. At such time as the new capital system has been implemented, the Finance Board will consider the need to change this provision of the rule. In the interim, the Banks can take advantage of the provision allowing for alternative formulae for assessments if the current formula becomes unworkable.

The final rule does not require, as did the proposed rule, that the OF's checking account be called the Imprest Fund. The final rule does contain new provisions specifying that the OF's operating funds shall not be commingled with any proceeds received from the sale of COs, and that, pursuant to the provisions of section 2B(b)(1) of the Act, 12 U.S.C. 1422b(b)(1), none of the OF's operating funds or any of the proceeds from the sale of any COs shall be construed to be Government funds or appropriated monies or subject to apportionment for the purposes of chapter 15 of title 31 of the United States Code or any other authority.

b. Debt management activities. i. Debt management duties of the OF. Proposed § 941.2(c) (redesignated as § 985.6(a) in the final rule) set out the functions the OF is authorized to undertake in support of the issuance of debt; it also set forth functions the OF is authorized to undertake in support of joint asset activities which are not being addressed at this time. As adopted in § 985.6 of the final rule, this section sets out an abbreviated version of the debt management duties of the OF proposed in § 941.2(c), including: (1) That the OF shall issue and service COs pursuant to and in accordance with the policies and procedures established by the OF board of directors; (2) that the OF shall prepare and distribute the combined annual and quarterly financial reports for the Bank System (discussed previously in more detail); (3) that the OF shall manage relationships with the NRSROs; (4) that the OF shall conduct research reasonably related to the issuance or servicing of COs; and (5) that the OF shall timely monitor each Bank's and the Bank System's unsecured credit exposure to individual counterparties.

Proposed § 941.2(c)(3) provides that, in accordance with policies and procedures established by the OF board of directors, the OF shall perform such duties and responsibilities for the Financing Corporation (FICO) or the Resolution Funding Corporation (REFCorp) on behalf of the Banks, as may be required. This section preserves a current function of the OF as set forth in § 941.5(b).

ii. Structure of the OF board of directors. The proposed rule would have changed the current structure of the OF board of directors to accommodate proposed new functions for the OF. As discussed previously, no new functions for the OF are being adopted at this time, except the preparation of the Bank System's combined annual and quarterly financial reports. Therefore, no changes to the structure of the OF board of directors are being adopted in the final rule. Although the structure is not being changed, provisions relating to compensation and governance of the OF board of directors in the final rule have been revised to devolve responsibilities to the OF board of directors consistent with similar regulatory provisions relating to the boards of directors of the Banks.

Section 985.7 of the final rule maintains the current three-member structure of the OF board of directors, composed of two Bank presidents and one private citizen with demonstrated expertise in financial markets, all appointed by the Finance Board. This structure has served the OF and the Bank System well while the OF's only functions have been to issue COs and to make CO principal and interest payments when due. The Finance Board believes that this structure will continue to serve these purposes in an efficient and effective manner, under the oversight and supervision of the Finance Board.

The final rule provides that the directors shall serve three-year terms. The initial terms are staggered so that ⅓ of the terms will expire each year. The directors are subject to removal or suspension for cause by the Finance Board. The Finance Board fills vacancies, but only for the remainder of the term during which the vacancy occurs. Section 985.7(c) provides that the private citizen director shall serve as the Chair, with the Vice Chair being selected by a majority vote of the directors. The Chair is responsible for ensuring that the directives, resolutions and minutes of the OF board of directors are drafted and maintained.

Proposed § 941.4(e) (redesignated as § 985.7(d) in the final rule) would have replaced the multiple provisions of the current rule with a single standard of compensation permitting members of the OF board of directors to receive compensation and reimbursement for expenses incurred as a result of their service on the OF board of directors. The final rule maintains the existing compensation provisions, with modifications to reflect recent amendments to the Finance Board's rules in light of the enactment of Gramm-Leach-Bliley. In light of the OF's role, § 985.7 of the final rule also includes a new paragraph (e) requiring, rather than merely allowing, the OF to indemnify its directors, the Managing Director, and other officers and employees of the OF under such terms and conditions as shall be determined by the OF board of directors, provided that such terms and conditions shall be generally consistent with the terms and conditions of indemnification of directors, officers and employees of the Banks generally.

iii. General Duties of the OF board of directors. Section 985.8 of the final rule sets forth general duties of the OF board of directors, adopting provisions from proposed § 941.6 and applying to the OF board of directors appropriate provisions of the Finance Board's recently adopted rule on "Powers and Responsibilities of Federal Home Loan Bank Boards of Directors and Senior Management" at part 917. *See* 65 FR 25267 (May 1, 2000). It retains existing requirements that the OF board of directors shall adopt bylaws, but provides that it shall do so in accordance with the provisions of § 917.10 of the Finance Board's regulations, 12 CFR 917.10. It also retains existing requirements that the OF board of directors shall conduct its business by majority vote of its members convened at a meeting in accordance with its bylaws, but goes on to require, consistent with recently adopted provisions of § 918.7, that the OF board of directors shall hold no fewer than nine meetings annually.

Section 985.8(c) adopts provisions of proposed § 941.6(b)(2) requiring the OF board of directors to establish policies regarding COs which shall govern the frequency and timing of issuance, issue size, minimum denomination, bond concessions, underwriter qualifications, currency of issuance, interest-rate change or conversion features, call features, principal indexing features, selection and retention of outside counsel, and selection of clearing organizations. It also requires that the policies be intended to cause CO issuance efficiently and at the lowest all-in funding costs over time, consistent with: (i) Prudent risk-management practices, prudential debt parameters, short and long-term market conditions, and the Banks' role as government-sponsored enterprises; (ii) maintaining reliable access to the short-term and long-term capital markets; and (iii) positioning the issuance of debt to take advantage of current and future capital market opportunities.

Section 985.8(d) adopts without significant substantive change the provisions of proposed § 941.6(b), and requires the OF board of directors to be responsible for the conduct and performance of all duties, functions, operations and activities of the OF and for its efficient and effective operation. The final rule authorizes the OF board of directors to approve a strategic business plan for the OF and monitor the progress of its operations under such plan; and to review, adopt, and monitor the annual operating budget of the OF. The final rule requires the OF board of directors to select, employ and define the duties of the Managing Director, who shall be the chief executive officer of the OF, a member of the Directorate of the Financing Corporation, pursuant to section 21(b)(1)(A) of the Act, 12 U.S.C. 1441(b)(1)(A), and a member of the Directorate of the Resolution Funding Corporation, pursuant to section 21B(c)(1)(A) of the Act, 12 U.S.C. 1441b(c)(1)(A). The final rule provides that the OF will be the Fiscal Agent of the Banks. Additionally, the final rule requires the OF board of directors to review and approve all contracts of the OF. Pursuant to the final rule, the OF board of directors will have the exclusive authority to employ and contract for the services of an independent, external auditor for the Banks' annual and quarterly combined financial statements; select, evaluate, determine the compensation of, and, where appropriate, replace the internal auditor, who may be removed only by vote of the OF board of directors. Under the final rule, the OF board of directors will assume any other responsibilities that may from time to time be delegated to it by the Finance Board. The final rule expressly states that no private rights of action are created and none may be deemed to be created under part 985.

Also adopted is the provision of proposed § 941.4(f) that requires the OF board of directors to establish an audit committee. The final rule provides that the OF board of directors shall constitute and perform the duties of an audit committee, which to the extent possible shall operate consistent with the requirements of § 917.6 and the requirements pertaining to audit committee reports set forth in Item 306 of Regulation S-K promulgated by the SEC.

Proposed § 941.8, which would have retained a savings clause providing that all actions taken by the OF as it existed prior to these amendments will continue to be valid as regards the Finance Board and the Bank System, is deleted, along with the rest of the provisions of current § 941.12 (which were proposed to be deleted) as obsolete and no longer necessary. As discussed above, the appropriate savings clause applying to pre-existing contracts has been included as § 966.10.

The new § 989.2 sets forth audit requirements. At the present time, the process for selecting the independent outside accountant for the Bank System and independent audit requirements is governed by Decision Memorandum 95–DM–09 (Feb. 9, 1995), as modified by Resolution 96–94 (Dec. 12, 1996). These require the Banks to have a single independent outside accountant and that this independent outside accountant provide a separate opinion on the financial statements on each Bank and on the combined financial statements for all of the Banks that appears in the annual financial report for the Bank System. Although the selection of the independent outside accountant was up to the Banks, the Finance Board, as issuer of the COs under section 11(c) of the Act, annually ratified the Banks' selection.

New § 989.2 codifies most of the provisions of Decision Memorandum 95–DM–09, with the exception of the requirement that there be a single independent outside accountant for each Bank and the Bank System. It also removes the Finance Board from any role in selecting or ratifying the selection of the independent outside accountant.

The method of selecting the independent outside accountant must change for two reasons. First, the Banks will be taking over the function of issuing COs under the authority of section 11(a) of the Act, with the OF acting as their agent in issuing and servicing the debt and in preparing the Bank System's combined financial reports. Section 985.8(d)(7) of the final rule gives the OF board of directors the exclusive authority to select the independent outside accountant for the combined financial report.

Second, in its recently adopted governance rule, § 917.7, the Finance Board gives the audit committee of each Bank a role in the selection or retention of the independent outside accountant for that Bank. Section 989.2 of the final rule sets the criteria for selecting the independent outside accountant that each Bank and the OF must follow.

III. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 33 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

V. Effective Date

Because the final rule provides for revisions to the leverage limit previously authorized under Finance Board Resolution No. 99–33, dated May 28, 1999, which by its terms expires June 30, 2000, the Finance Board for good cause finds that the final rule should become effective on July 1, 2000. *See* 5 U.S.C. 553(d)(3).

List of Subjects

12 CFR Part 900

Administrative practice and procedure.

12 CFR Part 905

Organization and functions (Government agencies).

12 CFR Part 965

Federal home loan banks, Finance.

12 CFR Part 966

Federal home loan banks, Securities.

12 CFR 969

Federal home loan banks, Finance.

12 CFR Part 985

Federal home loan banks, Securities.

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12 CFR Part 989

Accounting, Federal home loan banks, Financial disclosure.

For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR parts 900, 905, 965, 966, 969, 985, and 989 as follows:

PART 900—DEFINITIONS

1. The authority citation for part 900 continues to read as follows:

Authority: 12 U.S.C. 1422b(a).

2. Amend § 900.1 to revise the definition of "Consolidated obligations" to read as follows:

§ 900.1 Definitions applying to all regulations.

* * * * *

Consolidated obligation or *CO* means any bond, debenture, or note authorized under part 966 of this chapter to be issued jointly by the Banks pursuant to section 11(a) of the Act, as amended (12 U.S.C. 1431(a)), or any bond or note issued by the Finance Board on behalf of all Banks pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)), on which the Banks are jointly and severally liable.

* * * * *

PART 905—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

3. The authority citation for part 905 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1422b(a) and 1423.

Subpart C [Removed and Reserved]

4. Remove and reserve subpart C.

5. Add part 965 to read as follows:

PART 965—SOURCE OF FUNDS

Sec.
965.1 Definitions.
965.2 Authorized liabilities.
965.3 Liquidity reserves for deposits.

Authority: 12 U.S.C. 1422a, 1422b, and 1431.

§ 965.1 Definitions.

As used in this part:

Deposits in banks or trust companies means:

(1) A deposit in another Bank;

(2) A demand account in a Federal Reserve Bank;

(3) A deposit in, or a sale of Federal funds to:

(i) An insured depository institution, as defined in section 2(12)(A) of the Act (12 U.S.C. 1422(12)(A)), that is designated by a Bank's board of directors;

(ii) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation, and is designated by a Bank's board of directors; or

(iii) A U.S. branch or agency of a foreign bank, as defined in the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*), that is subject to the supervision of the Board of Governors of the Federal Reserve System, and is designated by a Bank's board of directors.

Repurchase agreement means an agreement in which a Bank sells securities and simultaneously agrees to repurchase those securities or similar securities at an agreed upon price, with or without a stated time for repurchase.

§ 965.2 Authorized liabilities.

As a source of funds for business operations, each Bank is authorized to incur liabilities by:

(a) Accepting proceeds from the issuance of consolidated obligations issued in accordance with part 966 of this chapter;

(b) Accepting time or demand deposits from members, other Banks or instrumentalities of the United States, and cash accounts from members or associates pursuant to §§ 969.2, 950.24(b)(2)(i)(B), 950.24(d) or 961.4(a)(1), or other institutions for which the Bank is providing correspondent services pursuant to section 11(e) of the Act (12 U.S.C. 1431(e));

(c) Purchasing Federal funds; and

(d) Entering into repurchase agreements.

§ 965.3 Liquidity reserves for deposits.

Each Bank shall at all times have at least an amount equal to the current deposits received from its members invested in:

(a) Obligations of the United States;

(b) Deposits in banks or trust companies; or

(c) Advances with a maturity of not to exceed five years that are made to members in conformity with part 950 of this chapter.

6. Revise part 966 to read as follows:

PART 966—CONSOLIDATED OBLIGATIONS

Sec.
966.1 Definitions.
966.2 Issuance of consolidated obligations.
966.3 Leverage limit and credit rating requirements.
966.4 Form of consolidated obligations.
966.5 Transactions in consolidated obligations.
966.6 Lost, stolen, destroyed, mutilated or defaced consolidated obligations.
966.7 Administrative provision.
966.8 Conditions for issuance of consolidated obligations.
966.9 Joint and several liability.
966.10 Savings clause.

Authority: 12 U.S.C. 1422a, 1422b, and 1431.

§ 966.1 Definitions.

For purposes of this part:

Financial Management Policy (FMP) has the meaning set forth in § 956.1 of this chapter.

NRSRO means a credit rating organization regarded as a Nationally Recognized Statistical Rating Organization by the Securities and Exchange Commission.

§ 966.2 Issuance of consolidated obligations.

(a) *Consolidated obligations issued by the Finance Board.* The Finance Board may issue consolidated obligations under section 11(c) of the Act (12 U.S.C. 1431(c)), including the determination of the dates of issue, maturities, rates of interest, terms and conditions thereof, and the manner in which such consolidated obligations shall be issued. The Finance Board in its discretion from time to time may delegate this by resolution of the Board of Directors of the Finance Board, or may terminate such delegation.

(b) *Consolidated obligations issued by the Banks.* (1) Pursuant to the Banks' housing finance mission set forth in section 2A(a)(3)(B)(ii) of the Act (12 U.S.C. 1422a(a)(3)(B)(ii)), pursuant to the Finance Board's duty to ensure that the Banks carry out that mission and remain adequately capitalized and able to raise funds in the capital markets under section 2A(a)(3)(B)(ii) and (iii) of the Act (12 U.S.C. 1422a(a)(3)(B)(ii) and (iii)), and subject to the provisions of this part and such rules, regulations, terms and conditions as the Finance Board may prescribe, the Banks are authorized to issue joint debt under section 11(a) of the Act (12 U.S.C. 1431(a)), which shall be called consolidated obligations and on which the Banks shall be jointly and severally liable under § 966.9 of this part.

(2) Consolidated obligations shall be issued only through the Office of Finance, as agent of the Banks pursuant to this part and part 985.

(3) The authorization contained herein shall be deemed to constitute satisfaction of the requirement for Finance Board approval of the "terms and conditions" of the consolidated obligations pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

(c) *Negative pledge requirement.* Each Bank shall at all times maintain assets

described in paragraphs (c)(1) through (c)(6) of this section free from any lien or pledge, in an amount at least equal to a *pro rata* share of the total amount of currently outstanding consolidated obligations jointly issued by the Banks pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)) and by the Finance Board pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)) and equal to such Bank's participation in all such COs outstanding, *provided that* any assets that are subject to a lien or pledge for the benefit of the holders of any issue of consolidated obligations shall be treated as if they were assets free from any lien or pledge for purposes of compliance with this paragraph (c). Eligible assets are:

(1) Cash;

(2) Obligations of or fully guaranteed by the United States;

(3) Secured advances;

(4) Mortgages as to which one or more Banks have any guaranty or insurance, or commitment therefor, by the United States or any agency thereof;

(5) Investments described in section 16(a) of the Act (12 U.S.C. 1436(a)); and

(6) Other securities that have been assigned a rating or assessment by an NRSRO that is equivalent to or higher than the rating or assessment assigned by that NRSRO to consolidated obligations outstanding.

§ 966.3 Leverage limit and credit rating requirements.

(a) *Bank leverage.* (1) Except as provided in paragraph (a)(2) of this section, the total assets of any Bank shall not exceed 21 times the total of paid-in capital stock, retained earnings, and reserves (excluding loss reserves and liquidity reserves for deposits pursuant to 12 U.S.C. 1431(g)) of that Bank.

(2) The aggregate amount of assets of any Bank may be up to 25 times the total paid-in capital stock, retained earnings, and reserves of that Bank, provided that non-mortgage assets, after deducting the amount of deposits and capital, do not exceed 11 percent of such total assets. For the purposes of this section, the amount of non-mortgage assets equals total assets after deduction of core mission activity assets and assets described in sections II.B.8 through II.B.11 of the FMP.

(b) *Credit ratings.* (1) The Banks, collectively, shall obtain from an NRSRO and, at all times, maintain a current credit rating on the Banks' consolidated obligations.

(2) Each Bank shall operate in such a manner and take any actions necessary, including without limitation reducing Bank leverage, to ensure that the Banks' consolidated obligations receive and continue to receive the highest credit rating from any NRSRO by which the consolidated obligations have then been rated.

(c) *Individual Bank credit rating.* Each Bank shall operate in such a manner and take any actions necessary to ensure that the Bank has and maintains an individual issuer credit rating of at least the second highest credit rating from any NRSRO providing a rating, where such rating is a meaningful measure of the individual Bank's financial strength and stability, and is updated at least annually by an NRSRO, or more frequently as required by the Finance Board, to reflect any material changes in the condition of the Bank.

(d) *Transition provision.* Each Bank shall obtain the credit rating from an NRSRO required under paragraph (c) of this section by July 1, 2001.

§ 966.4 Form of consolidated obligations.

(a) All consolidated obligations shall be issued *in pari passu.*

(b) Consolidated obligations with maturities of one year or less may be designated consolidated notes.

§ 966.5 Transactions in consolidated obligations.

The general regulations of the Department of the Treasury now or hereafter in force governing transactions in United States securities, except 31 CFR part 357 regarding book-entry procedure, are hereby incorporated into this part 966, so far as applicable and as necessarily modified to relate to consolidated obligations, as the regulations of the Finance Board for similar transactions on consolidated obligations. The book-entry procedure for consolidated obligations is contained in part 987 of this subchapter.

§ 966.6 Lost, stolen, destroyed, mutilated or defaced consolidated obligations.

United States statutes and regulations of the Department of the Treasury now or hereafter in force governing relief on account of the loss, theft, destruction, mutilation or defacement of United States securities, so far as applicable and as necessarily modified to relate to consolidated obligations, are hereby adopted as the regulations of the Finance Board for the issuance of substitute consolidated obligations or the payment of lost, stolen, destroyed, mutilated or defaced consolidated obligations.

§ 966.7 Administrative provision.

The Secretary of the Treasury or the Acting Secretary of the Treasury is hereby authorized and empowered, as the agent of the Finance Board and the Banks, to administer §§ 966.5 and 966.6, and to delegate such authority at their discretion to other officers, employees, and agents of the Department of the Treasury. Any such regulations may be waived on behalf of the Finance Board and the Banks by the Secretary of the Treasury, the Acting Secretary of the Treasury, or by an officer of the Department of the Treasury authorized to waive similar regulations with respect to United States securities, but only in any particular case in which a similar regulation with respect to United States securities would be waived. The terms "securities" and "bonds" as used in this section shall, unless the context otherwise requires, include and apply to coupons and interim certificates.

§ 966.8 Conditions for issuance of consolidated obligations.

(a) The OF board of directors shall authorize the offering for current and forward settlement (up to 12 months) or the reopening of COs, as necessary, and authorize the maturities, rates of interest, terms and conditions thereof, subject to the provisions of 31 U.S.C. 9108.

(b) COs may be offered for sale only to the extent that Banks are committed to take the proceeds.

(c) COs shall not be directly placed with any Bank.

§ 966.9 Joint and several liability.

(a) *In general.* (1) Each and every Bank, individually and collectively, has an obligation to make full and timely payment of all principal and interest on consolidated obligations when due.

(2) Each and every Bank, individually and collectively, shall ensure that the timely payment of principal and interest on all consolidated obligations is given priority over, and is paid in full in advance of, any payment to or redemption of shares from any shareholder.

(3) The provisions of this part shall not limit, restrict or otherwise diminish, in any manner, the joint and several liability of all of the Banks on all of the consolidated obligations issued by the Finance Board pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)) and by the Banks pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

(b) *Certification and reporting.* (1) Before the end of each calendar quarter, and before declaring or paying any dividend for that quarter, the President of each Bank shall certify in writing to the Finance Board that, based on known current facts and financial information, the Bank will remain in compliance with the liquidity requirements set forth

in section 11(g) of the Act (12 U.S.C. 1431(g)), and the Finance Board's FMP or any regulations (as the same may be amended, modified or replaced), and will remain capable of making full and timely payment of all of its current obligations, including direct obligations, coming due during the next quarter.

(2) A Bank shall immediately provide written notice to the Finance Board if at any time the Bank:

(i) Is unable to provide the certification required by paragraph (b)(1) of this section;

(ii) Projects at any time that it will fail to comply with statutory or regulatory liquidity requirements, or will be unable to timely and fully meet all of its current obligations, including direct obligations, due during the quarter;

(iii) Actually fails to comply with statutory or regulatory liquidity requirements or to timely and fully meet all of its current obligations, including direct obligations, due during the quarter; or

(iv) Negotiates to enter or enters into an agreement with one or more other Banks to obtain financial assistance to meet its current obligations, including direct obligations, due during the quarter; the notice of which shall be accompanied by a copy of the agreement, which shall be subject to the approval of the Finance Board.

(c) *Consolidated obligation payment plans.* (1) A Bank promptly shall file a consolidated obligation payment plan for Finance Board approval:

(i) If the Bank becomes a non-complying Bank as a result of failing to provide the certification required in paragraph (b)(1) of this section;

(ii) If the Bank becomes a non-complying Bank as a result of being required to provide the notice required pursuant to paragraph (b)(2) of this section, except in the event that a failure to make a principal or interest payment on a consolidated obligation when due was caused solely by a temporary interruption in the Bank's debt servicing operations resulting from an external event such as a natural disaster or a power failure; or

(iii) If the Finance Board determines that the Bank will cease to be in compliance with the statutory or regulatory liquidity requirements, or will lack the capacity to timely and fully meet all of its current obligations, including direct obligations, due during the quarter.

(2) A consolidated obligation payment plan shall specify the measures the non-complying Bank will undertake to make full and timely payments of all of its current obligations, including direct obligations, due during the applicable quarter.

(3) A non-complying Bank may continue to incur and pay normal operating expenses incurred in the regular course of business (including salaries, benefits, or costs of office space, equipment and related expenses), but shall not incur or pay any extraordinary expenses, or declare, or pay dividends, or redeem any capital stock, until such time as the Finance Board has approved the Bank's consolidated obligation payment plan or inter-Bank assistance agreement, or ordered another remedy, and all of the non-complying Bank's direct obligations have been paid.

(d) *Finance Board payment orders; Obligation to reimburse.* (1) The Finance Board, in its discretion and notwithstanding any other provision in this section, may at any time order any Bank to make any principal or interest payment due on any consolidated obligation.

(2) To the extent that a Bank makes any payment on any consolidated obligation on behalf of another Bank, the paying Bank shall be entitled to reimbursement from the non-complying Bank, which shall have a corresponding obligation to reimburse the Bank providing assistance, to the extent of such payment and other associated costs (including interest to be determined by the Finance Board).

(e) *Adjustment of equities.* (1) Any non-complying Bank shall apply its assets to fulfill its direct obligations.

(2) If a Bank is required to meet, or otherwise meets, the direct obligations of another Bank due to a temporary interruption in the latter Bank's debt servicing operations (*e.g.*, in the event of a natural disaster or power failure), the assisting Bank shall have the same right to reimbursement set forth in paragraph (d)(2) of this section.

(3) If the Finance Board determines that the assets of a non-complying Bank are insufficient to satisfy all of its direct obligations as set forth in paragraph (e)(1) of this section, then the Finance Board may allocate the outstanding liability among the remaining Banks on a *pro rata* basis in proportion to each Bank's participation in all consolidated obligations outstanding as of the end of the most recent month for which the Finance Board has data, or otherwise as the Finance Board may prescribe.

(f) *Reservation of authority.* Nothing in this section shall affect the Finance Board's authority to adjust equities between the Banks in a manner different than the manner described in paragraph (e) of this section, or to take enforcement or other action against any Bank pursuant to the Finance Board's authority under the Act or otherwise to supervise the Banks and ensure that they are operated in a safe and sound manner.

(g) *No rights created.* (1) Nothing in this part shall create or be deemed to create any rights in any third party.

(2) Payments made by a Bank toward the direct obligations of another Bank are made for the sole purpose of discharging the joint and several liability of the Banks on consolidated obligations.

(3) Compliance, or the failure to comply, with any provision in this section shall not be deemed a default under the terms and conditions of the consolidated obligations.

§ 966.10 Savings clause.

Any agreements or other instruments entered into in connection with the issuance of COs prior to the amendments made to this part shall continue in effect with respect to all COs issued under the authority of section 11 of the Act and pursuant to this part. References to consolidated obligations in such agreements and instruments shall be deemed to refer to all joint and several obligations of the Banks.

PART 969—DEPOSITS

7. The authority citation for part 969 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1) and 1431.

§ 969.3 [Removed]

8. Remove § 969.3.

9. Revise part 985 to read as follows:

PART 985—THE OFFICE OF FINANCE

Sec.

985.1 Definitions.
985.2 Authority of the OF.
985.3 Functions of the OF.
985.4 Finance Board oversight.
985.5 Funding of the OF.
985.6 Debt management duties of the OF.
985.7 Structure of the OF board of directors.
985.8 General duties of the OF board of directors.
Appendix A to Part 985—Exceptions to the General Disclosure Standards

§ 985.1 Definitions.

For purposes of this part:

Bank System means the Banks and the Office of Finance.

Chair means the Chairperson of the board of directors of the Office of Finance.

Managing Director means the managing director of the Office of Finance.

OF means the Office of Finance, a joint office of the Banks pursuant to section 2B of the Act (12 U.S.C. 1422b(b)(2)).

§ 985.2 Authority of the OF.

(a) *General.* The OF shall enjoy such incidental powers under section 12(a) of the Act (12 U.S.C. 1432(a)), as are necessary, convenient and proper to accomplish the efficient execution of its duties and functions pursuant to this part, including the authority to contract with a Bank or Banks for the use of Bank facilities or personnel in order to perform its functions or duties.

(b) *Agent.* The OF in the performance of its duties, shall have the power to act on behalf of:

(1) The Banks in issuing consolidated obligations pursuant to section 11(a) of the Act (12 U.S.C. 1431(a));

(2) By delegation of the Finance Board under § 966.2 of this chapter in issuing consolidated obligations pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)); and

(3) The Banks in paying principal and interest due on the consolidated obligations, or other obligations of the Banks.

(c) *Assessments.* The OF shall have authority to assess the Banks for the funding of its operations in accordance with § 985.5.

§ 985.3 Functions of the OF.

(a) *Joint debt issuance.* Subject to parts 965 and 966 of this chapter, and this part, the OF as agent shall offer, issue and service (including making timely payments on principal and interest due) consolidated obligations on which the Banks are jointly and severally liable on behalf of the Finance Board pursuant to section 11(c) of the Act (12 U.S.C. 1431(c), or the Banks pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

(b) *Preparation of combined financial reports.* The OF shall prepare and issue the combined annual and quarterly financial reports for the Bank System in accordance with the requirements of § 985.6(b) and Appendix A of this part.

(c) *Fiscal agent.* The OF shall function as the Fiscal Agent of the Banks.

(d) *Financing Corporation and Resolution Funding Corporation.* The OF shall perform such duties and responsibilities for the Financing Corporation (FICO) as may be required under part 995 of this chapter, or for the Resolution Funding Corporation (REFCorp) as may be required under part 996 of this chapter or authorized by the Finance Board pursuant to section 21B(c)(6)(B) of the Act (12 U.S.C. 1441b(c)(6)(B)).

§ 985.4 Finance Board oversight.

(a) *Oversight and enforcement actions.* The Finance Board shall have the same regulatory oversight authority and enforcement powers over the OF, the OF board of directors, the directors, officers, employees, agents, attorneys, accountants or other OF staff, as it has over a Bank and its respective directors, officers, employees, attorneys, accountants, agents or other staff.

(b) *Examinations.* Pursuant to section 20 of the Act (12 U.S.C. 1440), the Finance Board shall examine the OF, all funds and accounts that may be established pursuant to this part 985, and the operations and activities of the OF, as provided for in the Act or any regulations promulgated pursuant thereto.

§ 985.5 Funding of the OF.

(a) *Generally.* The Banks are responsible for jointly funding all of the expenses of the Office of Finance, including the costs of indemnifying the members of the OF board of directors, the Managing Director and other officers and employees of the OF, as provided for in this part.

(b) *Funding policies.* (1) At the direction of, and pursuant to policies and procedures adopted by, the OF board of directors, the Banks shall periodically reimburse the OF in order to maintain sufficient operating funds under the budget approved by the OF board of directors. The OF operating funds shall be:

(i) Available for expenses of the Office of Finance and the OF board of directors, according to their approved budgets; and

(ii) Subject to withdrawal by check, wire transfer or draft signed by the Managing Director or other person designated by the OF board of directors.

(2) Each Bank's respective *pro rata* share of the reimbursement described in paragraph (b)(1) of this section shall be based on the ratio of the total paid-in value of its capital stock relative to the total paid-in value of all capital stock in the Bank System.

(c) *Alternative formula for assessment.* With the prior approval of the Finance Board, the OF board of directors may implement an alternative formula for determining each Bank's respective share of the OF expenses or, by contract with a Bank or Banks, may choose to be reimbursed through a fee structure in lieu of or in addition to assessment, for services provided to the Bank or Banks.

(d) *Prompt reimbursement.* Each Bank from time to time shall promptly forward funds to the OF in an amount representing its share of the reimbursement described in paragraph (b) of this section when directed to do so by the Managing Director pursuant to procedures of the OF board of directors.

(e) *Indemnification expenses.* All expenses incident to indemnification of the members of the OF board of directors, the Managing Director, and other officers and employees of the OF shall be treated as an expense of the OF to be reimbursed by the Banks under the provisions of this part.

(f) *Operating funds shall be segregated.* (1) Any funds received by the OF from the Banks pursuant to this section for OF operating expenses promptly shall be deposited into one or more accounts and shall not be commingled with any proceeds from the sale of consolidated obligations in any manner.

(2) Neither the proceeds from the sale of consolidated obligations under part 966, nor any operating expense reimbursements received by the OF from assessments on the Banks under this section shall be construed to be Government Funds or appropriated monies or subject to apportionment for the purposes of chapter 15 of title 31 of the United States Code, or any other authority, in accordance with section 2B(b)(1) of the Act (12 U.S.C. 1422b(b)(1)).

§ 985.6 Debt management duties of the OF.

(a) *Issuance and servicing of COs.* The OF shall issue and service (including making timely payments on principal and interest due, subject to §§ 966.8 and 966.9 of this chapter) consolidated obligations pursuant to and in accordance with the policies and procedures established by the OF board of directors under this part.

(b) *Combined financial reports requirements.* The OF shall prepare and distribute the combined annual and quarterly financial reports for the Bank System in accordance with the following requirements:

(1) The scope, form and content of the disclosure generally shall be consistent with the requirements of the Securities and Exchange Commission's Regulations S–K and S–X (17 CFR parts 229 and 210).

(2) Information about each Bank shall be presented as a segment of the Bank System as if Statement of Financial Accounting Standards No. 131, titled "Disclosures about Segments of an Enterprise and Related Information" (FASB 131) applied to the combined annual and quarterly financial reports of the Bank System.

(3) The standards set forth in paragraphs (b)(1) and (2) of this section

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are subject to the exceptions set forth in the Appendix to this part.

(4) The combined Bank System annual report shall be filed with the Finance Board and distributed to each Bank and Bank member within 90 days after the end of the fiscal year. The combined Bank System quarterly reports shall be filed with the Finance Board and distributed to each Bank and Bank member within 45 days after the end of the first three fiscal quarters of each year.

(5) The Finance Board in its sole discretion shall determine whether or not a combined Bank System annual or quarterly financial report complies with the standards of this part.

(6) The OF board of directors shall comply promptly with any directive of the Finance Board regarding the preparation, filing, amendment or distribution of the combined Bank System annual or quarterly financial reports.

(7) Nothing in this section shall create or be deemed to create any rights in any third party.

(c) *Capital markets data.* The OF board of directors shall provide capital markets information concerning debt to the Banks.

(d) *NRSROs.* The OF board of directors shall manage relationships with Nationally Recognized Statistical Rating Organizations in connection with their rating of consolidated obligations.

(e) *Research.* The OF shall conduct research reasonably related to the issuance or servicing of consolidated obligations.

(f) *Monitor Banks' credit exposure.* The OF shall timely monitor each Bank's and the Bank System's unsecured credit exposure to individual counterparties.

§ 985.7 Structure of the OF board of directors.

(a) *Membership.* The OF board of directors shall consist of three part-time members appointed by the Finance Board as follows:

(1) Two Bank Presidents; and

(2) A citizen of the United States with a demonstrated expertise in financial markets. Such appointee may not be an officer, director or employee of a Bank or Bank System member, hold shares, or any other financial interest in, any member of a Bank, or be affiliated with any consolidated obligation selling or dealer group member under contract with the OF.

(b) *Terms.* (1) Except as provided in paragraph (b)(2) of this section, the members of the OF board of directors shall serve for three-year terms (which shall be staggered), and shall be subject to removal or suspension for cause by the Finance Board.

(2) The Finance Board shall fill any vacancy occurring on the OF board of directors. An appointment to fill a vacancy shall be only for the remainder of the term during which the vacancy occurred.

(3) Any member of the OF board of directors is authorized to continue to serve on the OF board of directors after the expiration of the member's term until a successor has been appointed by the Finance Board.

(c) *Chair.* (1) The private citizen member of the OF board of directors shall serve as the Chair, and the Vice Chair shall be selected by a majority vote of the members of the OF board of directors.

(2) The Chair shall preside over the meetings of the OF board of directors. In the absence of the Chair, the Vice Chair shall preside.

(3) The Chair shall be responsible for ensuring that the directives and resolutions of the OF board of directors are drafted and maintained and for keeping the minutes of all meetings.

(d) *Compensation.* (1) The Bank President members shall not receive any additional compensation or reimbursement as a result of their service on the OF board of directors.

(2) Each Bank shall be entitled to be reimbursed by from the Office of Finance for its expenditure of travel and per diem expenses associated with its Bank President's attendance at an OF board of directors meeting as a director member thereof.

(3) The Office of Finance shall pay compensation and expenses to the private citizen member of the OF board of directors in accordance with the requirements for payment of compensation and expenses to Bank chairs as set forth in part 918 of this chapter.

(e) *Indemnification.* (1) The OF board of directors shall indemnify its members, the Managing Director, and other officers and employees of the OF under such terms and conditions as shall be determined by the OF board of directors, *provided that* such terms and conditions are consistent with the terms and conditions of indemnification of directors, officers and employees of the Bank System generally.

(2) The OF board of directors shall adopt indemnification procedures, which shall be supplemented by a contract of insurance.

(f) *Delegation.* The OF board of directors may delegate any of its authority or duties to any employee of the OF in order to enable the OF to carry out its functions.

§ 985.8 General duties of the OF board of directors.

(a) *General.* (1) *Conduct of business.* Each director shall have the duties prescribed in § 917.2(b) of this chapter, as appropriate.

(2) *Bylaws.* The OF board of directors shall adopt bylaws in accordance with the provisions of § 917.10 of this chapter.

(b) *Meetings and quorum.* The OF board of directors shall conduct its business by majority vote of its members at meetings convened in accordance with its bylaws, and shall hold no fewer than nine meetings annually. Due notice shall be given to the Finance Board by the Chair prior to each meeting. A quorum, for purposes of meetings of the OF board of directors, shall be not less than two members.

(c) *Duties regarding COs.* The OF board of directors shall establish policies regarding COs that shall:

(1) Govern the frequency and timing of issuance, issue size, minimum denomination, CO concessions, underwriter qualifications, currency of issuance, interest-rate change or conversion features, call features, principal indexing features, selection and retention of outside counsel, selection of clearing organizations, and the selection and compensation of underwriters for consolidated obligations, which shall be in accordance with the requirements and limitations set forth in paragraph (c)(4) of this section;

(2) Prohibit the issuance of COs intended to be privately placed with or sold without the participation of an underwriter to retail investors, or issued with a concession structure designed to facilitate the placement of the COs in retail accounts, unless the OF has given notice to the board of directors of each Bank describing a policy permitting such issuances, soliciting comments from each Bank's board of directors, and considering the comments received before adopting a policy permitting such issuance activities;

(3) Require all broker-dealers or underwriters under contract to the OF to have and maintain adequate suitability sales practices and policies, which shall be acceptable to, and subject to review by, the Office of Finance;

(4) Require that COs shall be issued efficiently and at the lowest all-in funding costs over time, consistent with:

(i) Prudent risk-management practices, prudential debt parameters, short and long-term market conditions, and the Banks' role as government-sponsored enterprises;

(ii) Maintaining reliable access to the short-term and long-term capital markets; and

(iii) Positioning the issuance of debt to take advantage of current and future capital market opportunities.

(d) *Other duties.* The OF board of directors shall:

(1) Set policies for management and operation of the OF;

(2) Approve a strategic business plan for the OF in accordance with the provisions of § 917.5 of this chapter, as appropriate;

(3) Review, adopt and monitor annual operating and capital budgets of the OF in accordance with the provisions of § 917.8 of this chapter, as appropriate;

(4) Constitute and perform the duties of an audit committee, which to the extent possible shall operate consistent with:

(i) The requirements of § 917.6 of this chapter, and

(ii) The requirements pertaining to audit committee reports set forth in Item 306 of Regulation S–K promulgated by the Securities and Exchange Commission.

(5) Select, employ, determine the compensation for, and assign the duties and functions of a Managing Director of the OF who shall:

(i) Be the chief executive officer for the OF and shall direct the implementation of the OF board of directors' policies;

(ii) Serve as a member of the Directorate of the Financing Corporation, pursuant to section 21(b)(1)(A) of the Act (12 U.S.C. 1441(b)(1)(A)); and

(iii) Serve as a member of the Directorate of the Resolution Funding Corporation, pursuant to section 21B(c)(1)(A) of the Act (12 U.S.C. 1441b(c)(1)(A)).

(6) Review and approve all contracts of the OF;

(7) Have the exclusive authority to employ and contract for the services of an independent, external auditor for the Banks' annual and quarterly combined financial statements;

(8) Select, evaluate, determine the compensation of, and, where appropriate, replace the internal auditor, who may be removed only by vote of the OF board of directors; and

(9) Assume any other responsibilities that may from time to time be delegated to it by the Finance Board.

(e) *No rights created.* Nothing in this part shall create or be deemed to create any rights in any third party.

Appendix A to Part 985—Exceptions to the General Disclosure Standards

A. Related-party transactions. Item 404 of Regulation S–K, 17 CFR 229.404, requires the disclosure of certain relationships and related party transactions. In light of the cooperative nature of the Bank System, related-party transactions are to be expected, and a disclosure of all related-party transactions that meet the threshold would not be meaningful. Instead, the combined annual report will disclose the percent of advances to members an officer of which serves as a Bank director, and list the top ten holders of advances in the Bank System and the top five holders of advances by Bank, with a further disclosure indicating which of these members had an officer that served as a Bank director.

B. Biographical information. The biographical information required by Items 401 and 405 of Regulation S–K, 17 CFR 229.401 and 405, will be provided only for the members of the Board of Directors of the Finance Board, Bank presidents, chairs and vice chairs, and the directors and Managing Director of the OF.

C. Compensation. The information on compensation required by Item 402 of Regulation S–K, 17 CFR 229.402, will be provided only for Bank presidents and the Managing Director of the OF. Since stock in each Bank trades at par, the Office of Finance will not include the performance graph specified in Item 402(l) of Regulation S–K, 17 CFR 229.402(l).

D. Submission of matters to a vote of stockholders. No information will be presented on matters submitted to shareholders for a vote, as otherwise required by Item 4 of the SEC's form 10–K, 17 CFR 249.310. The only item shareholders vote upon is the annual election of directors.

E. Exhibits. The exhibits required by Item 601 of Regulation S-K, 17 CFR 229.601, are not applicable and will not be provided.

F. Per share information. The statement of financial information required by Items 301 and 302 of Rule S–K, 17 CFR 229.301 and 302, is inapplicable because the shares of the Banks are subscription capital that trades at par, and the shares expand or contract with changes in member assets or advance levels.

G. Beneficial ownership. Item 403 of Rule S–K, 17 CFR 229.403, requires the disclosure of security ownership of certain beneficial owners and management. The combined financial report will provide a listing of the ten largest holders of capital stock in the Bank System and a listing of the five largest holders of capital stock by Bank. This listing will also indicate which members had an officer that served as a director of a Bank.

PART 989—FINANCIAL STATEMENTS OF THE BANKS

10. The authority citation for part 989 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431 and 1440.

11. Add § 989.1 to read as follows:

§ 989.1 Definitions.

For purposes of this part:

Audit means an examination of the financial statements by an independent accountant in accordance with Generally Accepted Accounting Principles for the purpose of expressing an opinion thereon.

Audit report means a document in which an independent accountant indicates the scope of the audit made and sets forth an opinion regarding the financial statement taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

§§ 989.2 and 989.3 [Redesignated]

12. Redesignate §§ 989.2 and 989.3 as §§ 989.3 and 989.4, respectively.

13. Add § 989.2 to read as follows:

§ 989.2 Audit requirements.

(a) Each Bank, the OF and the Financing Corporation shall obtain annually an independent, external audit of and an audit report on its individual financial statement.

(b) The OF board of directors shall obtain an audit and an audit report on the combined annual financial statements for the Bank System.

(c) All audits must be conducted in accordance with generally accepted auditing standards and in accordance with the most current government auditing standards issued by the Office of the Comptroller General of the United States.

(d) An independent, external auditor must meet at least twice each year with the audit committee of each Bank, the OF board of directors, and the Financing Corporation Directorate.

(e) Finance Board examiners shall have unrestricted access to all auditors' work papers and to the auditors to address substantive accounting issues that may arise during the course of any audit.

14. Revise newly designated § 989.3 to read as follows:

§ 989.3 Requirement to provide financial and other information to the Finance Board and the Office of Finance.

In order to facilitate the preparation by the Office of Finance of combined Bank System annual and quarterly reports, each Bank shall provide to the Office of Finance in such form and within such timeframes as the Finance Board or the Office of Finance shall specify, all financial and other information and assistance the Office of Finance shall request for that purpose. Nothing in this section shall contravene or be deemed to circumscribe in any manner the authority of the Finance Board to obtain any information from any Bank related to the preparation or review of any financial report.

§ 989.4 [Amended]

15. Amend newly designated § 989.4 by removing the words "Finance Board" wherever they appear and adding in their place the words "Office of Finance."

Dated: June 2, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–14366 Filed 6–6–00; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

[NO. 2000–25]

RIN 3069–AA86

Changes to the Financial Management Policy of the Federal Home Loan Bank System

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its policy statement entitled "Financial Management Policy of the Federal Home Loan Bank System" ("FMP") to: (1) delete the "Funding Guidelines" in section IV; (2) insert a new section IV titled "Hedging Requirements"; and (3) revise the "Interest Rate Risk Limitations" in section VII. These FMP amendments are being made in conjunction with changes to the Finance Board's regulations governing the issuance of consolidated obligations (COs) under section 11 of the Federal Home Loan Bank Act (Act) (12 U.S.C. 1431) and the authority and operations of the Office of Finance (OF), described in detail in a Final Rule published elsewhere in this issue of the **Federal Register** (OF Final Rule).

DATES: The FMP amendments are effective June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Deputy Chief Economist, Office of Policy, Research and Analysis, 202/408–2845, *mckenziej@fhfb.gov;* or Charlotte A. Reid, Special Counsel, Office of General Counsel, 202/408–2510, *reidc@fhfb.gov.* Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The FMP evolved from a series of policies and guidelines initially adopted by the former Federal Home Loan Bank Board (FHLBB), predecessor agency to the Finance Board, in the 1970s and revised a number of times thereafter. The Finance Board adopted the FMP in 1991, consolidating into one document the previously separate policies on funds management, hedging and interest-rate swaps, and adding new guidelines on the management of unsecured credit and interest-rate risks.[1]

The FMP governs how the Banks may implement their financial management strategies by specifying the types of investments the Banks may purchase pursuant to their statutory investment authority. The FMP also establishes mandatory guidelines relating to the funding and hedging practices of the Banks, the management of their credit, interest-rate, and liquidity risks, and the liquidity requirements for the Banks in addition to those required by statute. *See* FMP secs. III–IV.[2]

II. Proposed FMP Amendments

On January 4, 2000, the Finance Board published for comment a notice of proposed amendments to the FMP, in conjunction and conformance with proposed regulatory changes to the Finance Board's regulations regarding the OF (Proposed OF Rule). *See* 64 FR 339 (Jan. 4, 2000) (Proposed FMP Amendments). The Proposed FMP Amendments would have deleted FMP sec. IV. C. "Funding Guidelines," as unnecessary in light of the Proposed OF Rule, with the exception that the current Bank-by-Bank, liability-based leverage limit would have been replaced with a minimum total capital requirement recast as a percentage of assets. The Proposed FMP Amendments would have required that a Bank's capital must be at least 4.76 percent of assets, or, inversely, that a Bank's total assets could not exceed 21 times its capital. The Proposed FMP Amendments also would have amended section IV.C.3 of the FMP to eliminate the distinction between standard and non-standard debt issues and require the Banks to hedge debt issues linked to equity or commodity prices or those denominated in foreign currencies.

Finally, the Proposed FMP Amendments would have amended section VII[3] of the FMP, which currently permits the Banks to include the cash flows associated with their REFCorp and Affordable Housing Program (AHP) payment obligations in their duration of equity calculations, to restrict the Banks from treating the REFCorp obligation as if it were a fixed dollar obligation. In light of the Gramm-Leach-Bliley Act,[4] changes to the Banks' REFCorp obligation the Proposed FMP Amendments would have required the Banks to treat these obligations as typical variable expenses (similar to operating expenses) for purposes of the Banks' asset-liability management.

The sixty-day public comment period closed on March 6, 2000. The Finance Board received seven comment letters: six from Banks and one from a Bank trade association. Generally, the commenters opposed the proposed change to the leverage limit as more restrictive than the current allowance and premature in advance of the new statutory leverage limit and risk-based capital requirements imposed by the Gramm-Leach-Bliley Act.[5] The commenters offered no objection to the revisions to the hedging requirements or the duration of equity calculation.

III. Comments on the Proposed Amendments and Analysis of Changes Made in the FMP Amendments

A. Leverage Limit

The Proposed FMP Amendments, and corresponding Proposed OF Rule, did not include the 20-to-1 Bank System-wide leverage limit from the Finance Board's regulations, or the 20-to-1 liability-based leverage limit on each Bank contained in the FMP. Instead, the Proposed FMP Amendments recast the leverage limit applicable to each Bank from a liability-based limit to an asset-based limit, and required that each Bank maintain capital in an amount equal to at least 4.76 percent of the Bank's total assets. *See* 65 FR at 328; 339. This limit required that the assets of a Bank not exceed 21 times its capital.

The Finance Board did not believe that either the elimination of the Bank System-wide leverage limit from the Finance Board's regulations, or the proposed revision to the leverage limit contained in the FMP, would have any practical effect on the Bank System or its bondholders. The Finance Board, as the regulator of the Banks, would continue to monitor each Bank for compliance with the individual leverage limit included in the FMP. The existing FMP provision prohibits a Bank from participating in COs if such transactions would cause the Bank's liabilities to exceed 20 times the Bank's capital. The Proposed FMP Amendments established an equivalent leverage standard, stated as a percentage of assets, which would require each Bank to maintain capital of

[1] *See* Fin. Bd. Res. No. 96–45 (July 3, 1996), as amended by Fin. Bd. Res. No. 96–90 (Dec. 6, 1996), Fin. Bd. Res. No. 97–05 (Jan. 14, 1997), and Fin. Bd. Res. No. 97–86 (Dec. 17, 1997). *See also* 62 FR 13146 (Mar. 19, 1997)).

[2] *See* Fin. Bd. Res. No. 96–45, pp. 5–8.

[3] *See* Fin. Bd. Res. No. 96–45. p. 7.

[4] Title VI of the Gramm-Leach-Bliley Act, the Federal Home Loan Bank System Modernization Act of 1999, Pub. L. 106–102, 113 Stat. 1338 (Nov. 12, 1999) (Gramm-Leach-Bliley) changed the Banks' annual REF Corp. payment from a fixed, aggregate payment of $300 million to a payment of 20 percent of each Bank's net earnings (net of AHP and operating expenses). The Finance Board uses duration of equity as its primary measure of interest rate risk. Additionally, since 1995, each Bank has been required to contribute a minimum of 10 percent of its annual income (net of its REFCorp obligation) to the AHP, with a Bank System-wide minimum of $100 million.

[5] The Gramm-Leach-Bliley Act provides for a five-year phase-in for new statutory leverage limits and risk-based capital requirements for the Banks.

at least 4.76 percent of its total assets. The imposition of the proposed standard on each Bank would ensure that the Bank System itself stays within the leverage limit, rendering any retention of a Bank System-wide leverage limit unnecessary. Further, the Finance Board noted that with the recent passage of the Gramm-Leach-Bliley Act, the Banks would be subject to asset-based statutory leverage limits and risk-based capital requirements. When implemented, the new risk-based capital regime would provide an additional safeguard to the Bank System and its bondholders by requiring Banks to hold capital in proportion to the risks they assume.

The commenters uniformly opposed the proposed 4.76 percent asset-based, Bank-by-Bank, capital requirement. A number of commenters objected to the proposed change on the basis that secured liabilities, principally repurchase agreements, are not now subject to a capital requirement. Under the Proposed FMP Amendments, however, assets funded by repurchase agreements and other secured liabilities would be subject to capital charges. Repurchase agreements represent a *de minimis* portion of Bank funding. At December 31, 1999, repurchase agreements were less than one-tenth of one percent of the total funding of the Banks, eight of the Banks had no repurchase agreements, and one Bank accounted for a majority of the Bank System's repurchase agreements. The Finance Board finds these arguments unpersuasive.

Several commenters recommended providing the Banks with a level of asset/liability management flexibility similar to that provided under a resolution adopted by Finance Board to assist the Banks in meeting member demand for Year 2000 liquidity. *See* Finance Board Res. No. 99–33 (May 28, 1999)[6] (1999 Resolution). One commenter argued in favor of retaining the 25:1 leverage limit established in the 1999 Resolution, stating that the flexibility provided therein should not be forfeited. A majority of the commenters opposed eliminating the Bank System-wide leverage limit in the current regulations, and urged deferral of a new leverage limit until after the new capital regulations required under the Gramm-Leach-Bliley Act have been adopted and the Banks' capital plans have been reviewed and approved.

The Finance Board agrees with the recommendation that the leverage requirement should be included in the Finance Board's regulations rather than in the FMP. The OF Final Rule, published elsewhere in this issue of the **Federal Register** incorporates into § 966.3(a) of the Finance Board's regulations the leverage provision that was originally proposed in the notice of Proposed FMP Amendments. In addition, in response to the comments received, the OF Final rule extends and makes permanent the leverage authority provided to the Banks in the 1999 Resolution. In particular, the OF Final Rule allows a Bank to have asset-based leverage of up to 25 to 1 if that Bank's non-mortgage assets do not exceed 11 percent of that Bank's total assets that are not funded by deposits or capital. For the purpose of the OF Final Rule, non-mortgage assets equal the total assets after deducting core mission activity assets and assets described in sections II.B. 8 through II.B. 11 of the FMP.[7]

The Finance Board believes that, when implemented, the new risk-based capital regime would provide an additional safeguard to the Bank System and its bondholders by requiring Banks to hold capital in proportion to the risks they assume. The FMP Amendments, and the OF Final Rule published elsewhere in this issue of the **Federal Register**, are consistent with the requirements of the Gramm-Leach-Bliley Act.

Accordingly, the Finance Board is deleting existing section VI, "Funding Guidelines" from the FMP, as proposed.

B. Hedging Requirement

The Finance Board is replacing section IV of the FMP with a new section IV titled "Hedging Requirements." The "Hedging Requirements" provision is adopted as proposed, without change, to read as follows:

IV. Hedging Requirements

Prohibition on foreign currency or commodity positions. A Bank shall not take a position in any commodity or foreign currency. If a Bank participates in consolidated obligations denominated in a currency other than U.S. dollars or linked to equity or commodity prices, it must hedge the currency, equity, and commodity risks.

C. Duration of Equity Calculation

The Finance Board is revising section VII of the FMP, which sets forth guidelines for the Banks on the management of interest-rate risk, including certain interest rate risk limitations. New section VII.B.4 is adopted as proposed, without change, to read as follows:

Each Bank is required to report its cash flows and calculate its duration and market value of equity without projected cash flows that represent the Bank's share of the System's REFCorp and AHP obligations.

Dated: June 2, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–14367 Filed 6–6–00; 8:45 am]

BILLING CODE 6725–01–P

[6] By resolution of its board of directors, the Finance Board directed that, through June 30, 2000, a Bank may have leverage up to 25 to 1 as long as that Bank's ratio of non-mortgage investments to COs does not exceed 12 percent. The Finance Board adopted this additional leverage flexibility on an interim basis to allow the Banks to provide Year 2000 funding to their members. *See* Fin. Bd. Res. No. 99–33 (May 28, 1999).

[7] On May 3, 2000, the Finance Board published for notice and comment a proposed rule that included a listing of activities that would qualify as core mission activities. *See* 65 FR 25676 at 25688 (May 3, 2000).

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S.J. Res. 44/P.L. 106–205
Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)

H.R. 154/P.L. 106–206
To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)

H.R. 371/P.L. 106–207
Hmong Veterans' Naturalization Act of 2000 (May 26, 2000; 114 Stat. 316)

H.R. 834/P.L. 106–208
National Historic Preservation Act Amendments of 2000 (May 26, 2000; 114 Stat. 318)

H.R. 1377/P.L. 106–209
To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the "John J. Buchanan Post Office Building". (May 26, 2000; 114 Stat. 320)

H.R. 1632/P.L. 106–210
Muhammad Ali Boxing Reform Act (May 26, 2000; 114 Stat. 321)

H.R. 3629/P.L. 106–211
To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)

H.R. 3707/P.L. 106–212
American Institute in Taiwan Facilities Enhancement Act (May 26, 2000; 114 Stat. 332)

S. 1636/P.L. 106–213
To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)

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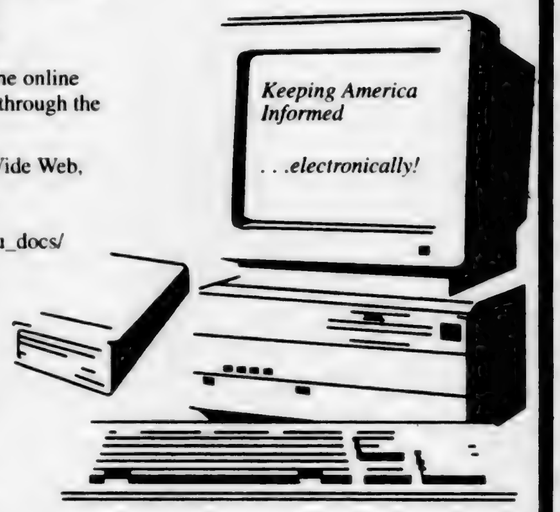

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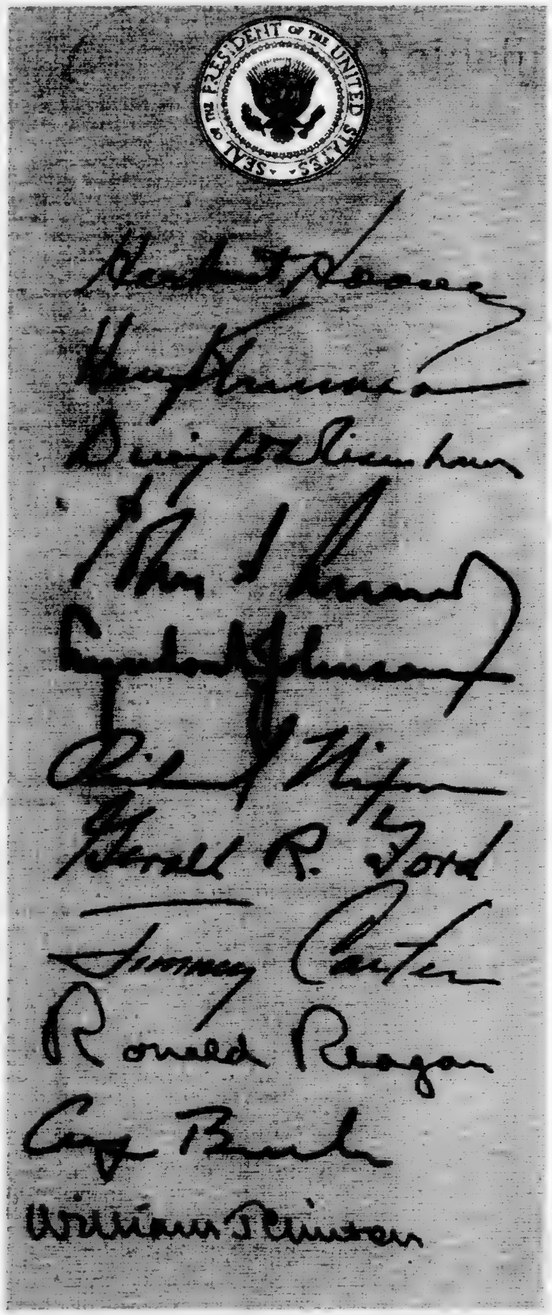

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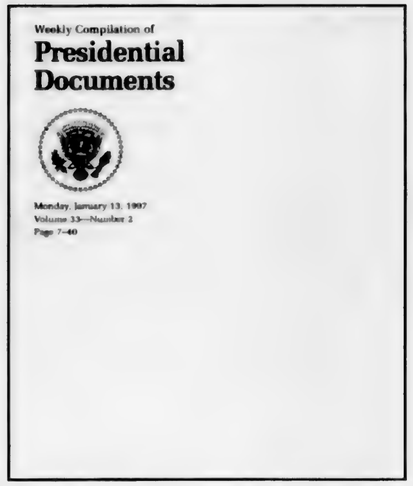

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–20 of May 31, 2000

Presidential Determination on Assistance for Peacekeeping in Sierra Leone

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President, including under section 10(d)(1) of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287 *et seq.*) (the "Act"), I hereby determine that the furnishing, without regard to section 10(a) of the Act, of assistance covered by section 10 of the Act that is provided in support of peacekeeping efforts in Sierra Leone is important to the security interests of the United States.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 31, 2000.

[FR Doc. 00–14619
Filed 6–7–00; 8:45 am]
Billing code 4710–10–M

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Presidential Documents

Presidential Determination No. 2000–21 of June 2, 2000

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended: Continuation of Waiver Authority for Vietnam

Memorandum for the Secretary of State

Pursuant to subsection 402(d)(1) of the Trade Act of 1974, as amended (the "Act"), 19 U.S.C. 2432(d)(1), I determine that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waiver applicable to Vietnam will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 2, 2000.

[FR Doc. 00–14620
Filed 6–7–00; 8:45 am]
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Presidential Documents

Presidential Determination No. 2000–22 of June 2, 2000

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended: Continuation of Waiver Authority for Belarus

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (the "Act"), I have determined, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to the Republic of Belarus will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 2, 2000.

[FR Doc. 00–14621
Filed 6–7–00; 8:45 am]
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Presidential Documents

Presidential Determination No. 2000–23 of June 2, 2000

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended: Continuation of Waiver Authority for the People's Republic of China

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (the "Act"), I have determined, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to the People's Republic of China will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 2, 2000.

[FR Doc. 00–14622
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584–AC92

National School Lunch Program and School Breakfast Program: Identification of Blended Beef, Pork, Poultry or Seafood Products

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule addresses the use of products or dishes containing more than 30 parts fully hydrated vegetable protein products to less than 70 parts beef, pork, poultry or seafood in the National School Lunch Program and the School Breakfast Program. To the extent that participating school food authorities identify foods in a menu or on the serving line or through other available means of communicating with program participants, this interim rule requires that school food authorities identify such products or dishes in a manner which does not characterize the product or dish solely as beef, pork, poultry or seafood. This interim rule is intended to ensure that program participants are not misinformed regarding the use of blended products and dishes.

DATES: *Effective Date:* This interim rule will become effective July 10, 2000. *Comment Date:* To be assured of consideration, comments must be postmarked on or before August 7, 2000.

ADDRESSES: Comments must be sent to: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302 or via E:Mail at CNDPROPOSAL@fns.usda.gov. All written submissions will be available for public inspection in Room 1007, 3101 Park Center Drive, Alexandria, Virginia during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. William Wagoner or Ms. Janice Fabina, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302 or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

What Is the Purpose of This Rule?

On March 9, 2000, the U.S. Department of Agriculture (USDA or we) published a rule in the **Federal Register** (65 FR 12429) updating the requirements for using vegetable protein products in the Child Nutrition Programs. Among the provisions of that rule, we removed the requirement that the meat/meat alternate component of the food-based menu planning approaches could consist of no more than 30 percent fully hydrated vegetable protein products (of the hydrated soy and meat total).

Subsequent to the publication of the final rule, concerns have been raised about the possibility that blended beef, pork, poultry or seafood products or dishes containing more than 30 percent fully hydrated vegetable protein products (of the hydrated soy and meat total) might be presented as beef, pork, poultry or seafood.

While these blended products and dishes fulfill an essential role in the programs, misrepresentation or misperception of the nature of those products serves neither industry nor program participants well. In addition to the primary mission of providing nutritious meals to school children, the lunch and breakfast programs serve as vehicles for nutrition and consumer education. Children and their parents must be aware of what is in the foods offered in the lunch and breakfast programs if they are to make informed food choices.

Thus, to the extent that school food authorities identify foods in the menu, or on the serving line or through other available means of communicating with program participants, they must identify beef, pork, poultry or seafood products and dishes containing more than 30 percent fully hydrated vegetable protein products (of the hydrated soy and meat total) in a manner which does not characterize the products or dishes solely as beef, pork, poultry or seafood. This interim rule revises 7 CFR 210.10(h) and 220.8 (m) to effect this change.

How Are Program Participants To Be Advised of the Use of Blended Products and Dishes?

This interim rule requires school food authorities to advise children and their parents of the use of these blended products and dishes through whatever means they currently use. If a school sends menus home, blended products and dishes must not be portrayed solely as beef, pork, poultry or seafood products or dishes on the menu. If a school uses point of service menu identification, it must not portray blended products and dishes solely as beef, pork, poultry or seafood products or dishes so that students and their parents can make choices that meet their dietary needs.

Miscellaneous

Commentors will note that the term "vegetable protein product" has been used in the preamble since this term reflects common usage; however, for technical reasons, the term "alternate protein products" is used in the regulatory text. The reasons for this change in terminology are discussed in the preamble to the proposed rule published in the **Federal Register** (64 FR 38839) on July 20, 1999.

Public Participation

This action is being issued as an interim rule without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). The Department has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and opportunity for public comments prior to issuing this interim rule is unnecessary and contrary to the public interest. The Department believes that program participants should be given the opportunity to make informed menu choices about the foods they eat without undue delay. However, the Department is encouraging interested parties to comment during the public comment period.

Executive Order 12866

This interim rule was determined to be non-significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

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Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This interim rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this interim rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This interim rule was reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of FNS has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule makes no changes to the National School Lunch and School Breakfast Program meal patterns. However, when certain products are used, this rule would require schools to use existing methods of communication to advise children and their parents of the use of such products.

Executive Order 12372

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively. Each is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule related notice at 48 FR 29112, June 24, 1983.)

Executive Order 12988

This interim rule was reviewed under Executive Order 12988, Civil Justice Reform. This interim rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This interim rule is not intended to have retroactive effect unless so specified in the "Dates" section of this preamble. Prior to any judicial challenge to the provisions of this interim rule or the application of the provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments and, for disputes involving procurements by State agencies and sponsors, any administrative appeal procedures to the extent required by 7 CFR Part 3016.

For the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Paperwork Reduction Act

Sections 210.10(h) and 220.8(m) of this interim rule contain third-party disclosure requirements. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), USDA has submitted a copy of these sections to the Office of Management and Budget for its review.

Written comments must be received on or before July 10, 2000.

Comments concerning the third-party disclosure of this interim rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Manish Desai, Desk Officer for FNS. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commentors are asked to separate their comments on the third-party disclosure aspects from their comments on the remainder of this interim rule.

OMB is required to make a decision concerning the third-party disclosure aspects contained in this interim regulation between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the interim regulation.

Comments are invited on: (a) Whether the third-party disclosure is necessary for the proper performance of the functions of the agency, including whether the disclosure will have practical utility; (b) the accuracy of the agency's estimate of the burden of the third-party disclosure aspects, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the third-party disclosure; and (d) ways to minimize the burden of the third-party disclosure, including through the use of appropriate automated, electronic, mechanical, or other techniques.

The title, description, and respondent description of the third-party disclosure are shown below with an estimate of the annual burden. Included in the estimate is the time for making the third-party disclosure.

Abstract

In order to give schools enhanced flexibility in planning menus, we now allow them to offer foods that may consist of up to 100 percent vegetable protein products. This interim rule requires that, to the extent a method (such as a menu) is already in place to communicate what foods are offered, school food authorities identify products or dishes with more than 30 percent vegetable protein products in a manner which does not characterize the products or dishes solely as beef, pork, poultry or seafood products or dishes. This is done in the interest of allowing program participants to make informed decisions about their choices under the school meals programs. Please note that we are only requiring this modification for school food authorities that already provide menus or otherwise communicate with program participants. This could include information provided on serving lines. This interim rule does not *require* that school food authorities use menus or other methods of communication.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to provide comments on the third-party disclosure aspects of the interim rule as noted below:

ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN

	Section	Annual number of affected entities	Annual frequency	Average burden per disclosure	Annual burden hours
For the National School Lunch Program, school food authorities modify existing menus, etc. to identify beef, pork, poultry or seafood products or dishes with more than 30 percent vegetable protein products in a manner that does not characterize these products or dishes as solely containing beef, pork, poultry or seafood:					
Total existing	7 CFR 210.10(h)	0	0	0	0
Total proposed	7 CFR 210.10(h)	10,000	1	.016	160
For the School Breakfast Program, school food authorities modify existing menus, etc. to identify beef, pork, poultry or seafood products or dishes with more than 30 percent vegetable protein products in a manner that does not characterize these products or dishes as solely containing beef, pork, poultry or seafood:					
Total existing	7 CFR 220.8(m)	0	0	0	0
Total proposed	7 CFR 220.8(m)	5,000	1	.016	80
Total Third-party Disclosure Burden:					
Total existing	0				
Total proposed	+240				
Change	+240				

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Children, Food assistance programs, Grant programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

Accordingly, 7 CFR Parts 210 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.10, revise the section heading and paragraph (h) to read as follows:

§ 210.10 What are the nutrition standards and menu planning approaches for lunches and the requirements for afterschool snacks?

* * * * *

(h) *What must schools do about nutrition disclosure?* To the extent that school food authorities identify foods in a menu, or on the serving line or through other available means of communicating with program participants, school food authorities must identify products or dishes containing more than 30 parts fully hydrated alternate protein products (as specified in appendix A of this part) to less than 70 parts beef, pork, poultry or seafood on an uncooked basis, in a manner which does not characterize the product or dish solely as beef, pork, poultry or seafood. Additionally, FNS encourages schools to inform the students, parents, and the public about efforts they are making to meet the nutrition standards (see paragraph (b) of this section) for school lunches.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for 7 CFR Part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.8, revise paragraph (m) to read as follows:

§ 220.8 What are the nutrition standards and menu planning approaches for breakfasts?

* * * * *

(m) *What must schools do about nutrition disclosure?* To the extent that school food authorities identify foods in a menu, or on the serving line or through other available means of communicating with program participants, school food authorities must identify products or dishes containing more than 30 parts fully hydrated alternate protein products (as specified in appendix A of this part) to less than 70 parts beef, pork, poultry or seafood on an uncooked basis, in a manner which does not characterize the product or dish solely as beef, pork, poultry or seafood. Additionally, FNS encourages schools to inform the students, parents, and the public about efforts they are making to meet the nutrition standards (see paragraph (a) of this section) for school breakfasts.

Dated: June 2, 2000.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 00–14385 Filed 6–7–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–07–AD; Amendment 39–1171; AD 2000–11–22]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company AE 3007A and AE 3007C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Allison Engine Company AE 3007A and AE 3007C series turbofan engines. This AD requires revisions to the Airworthiness Limitations Section of the Allison Engine Company AE 3007A and AE 3007C Engine Manuals to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This AD also requires an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. Air carriers with an approved continuous airworthiness maintenance program will be allowed to either maintain the records showing the current status of the inspections using the record keeping system specified in the air carrier's maintenance manual or establish an acceptable alternate method

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of record keeping. This amendment is prompted by an FAA study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions that, if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective August 7, 2000.

ADDRESSES: The Rules Docket may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Chung-Der Young, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7309, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Allison Engine Company AE 3007A and AE 3007C series turbofan engines was published in the **Federal Register** on August 17, 1999 (64 FR 44667). That action proposed to require revisions to the Airworthiness Limitations Section in the Allison Engine Company AE 3007A and AE 3007C Engine Manuals to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. It also proposed to require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures.

Editorial Change

The FAA has deleted the phrase "of this chapter" from the first sentence of paragraph (e) to eliminate confusion.

Conclusion

Interested persons have been afforded an opportunity to participate in the making of this amendment. One commenter supports the rule as written. No comments were received on the FAA's economic analysis. The FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously.

Revised Economic Analysis

Since the FAA issued the notice of proposed rulemaking (NPRM), the Allison AE3007A and AE3007C engine fleet has increased to 660 engines worldwide, but the U.S. fleet has decreased to 429 engines. The FAA continues to estimate that it will take approximately one work hour per engine to accomplish the required fan inspections and that the average labor rate is $60 per work hour. Assuming every engine underwent an inspection every year, based on these figures the total cost impact of this AD would be $60 per engine per year, for a total annual cost on U.S. operators of $25,740.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–22 Allison Engine Company: Amendment 39–11771. Docket 99–NE–07–AD.

Applicability

Allison Engine Company AE 3007A, AE 3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1, AE 3007A3, AE 3007A1P and AE 3007C series turbofan engines, installed on but not limited to EMBRAER EMB–135 and EMB–145 series and Cessna 750 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless previously accomplished.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Allison Engine Company AE 3007A and AE 3007C Engine Manuals, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"*MANDATORY INSPECTIONS*

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part No. (P/N)	Inspect per engine manual chapter
Wheel, Fan	All	72–21–21 (Task 72–21–21–200–801)

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is completely disassembled when done in accordance with the disassembly instructions in the engine manufacturer's Heavy Maintenance Manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Airworthiness Limitations Section of the Allison Engine Company AE 3007A and AE 3007C Engine Manuals.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)) must maintain records of the mandatory inspections that result from revising the Airworthiness Limitations Section and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)). However, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations (14 CFR 121.380 (a) (2) (vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

Effective Date

(f) This amendment becomes effective on August 7, 2000.

Issued in Burlington, Massachusetts, on June 2, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–14441 Filed 6–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 352, and 700

[Docket No. 78N–0038]

RIN 0910–AA01

Sunscreen Drug Products for Over-the-Counter Human Use; Final Monograph; Extension of Effective Date; Reopening of Administrative Record

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; extension of effective date; reopening of administrative record.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 31, 2002, the effective date for the final monograph for over-the-counter (OTC) sunscreen drug products that published in the **Federal Register** of May 21, 1999 (64 FR 27666). The final monograph established conditions under which OTC sunscreen drug products are generally recognized as safe and effective and not misbranded. The extension of the effective date applies to all OTC sunscreen drug products that would be regulated under parts 310, 352, and 700 (21 CFR parts 310, 352, and 700). In addition, FDA is reopening the administrative record for the rulemaking for OTC sunscreen drug products to allow for comment specifically on the information requested in this document. FDA is taking this action in response to a citizen petition requesting that the agency, among other things, initiate an administrative process to publish a "comprehensive" sunscreen final monograph that addresses formulation, labeling, and testing requirements for both ultraviolet B (UVB) and ultraviolet A (UVA) radiation protection.

DATES: *Effective date:* The effective date of the amendments to parts 310, 352, and 700 in the regulation published at 64 FR 27666, May 21, 1999, is delayed until December 31, 2002. The amendment in this final rule to § 310.545 is effective December 31, 2002.

Compliance dates: For products with annual sales less than $25,000 compliance is December 31, 2003. For all other OTC drug products compliance is December 31, 2002.

Comment date: Submit written comments by September 6, 2000. The administrative record will remain open until September 6, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Donald Dobbs, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 12, 1993 (58 FR 28194), the agency published a notice of proposed rulemaking in the form of a tentative final monograph (TFM) for OTC sunscreen drug products. The TFM proposed the conditions under which sunscreen drug products would be considered generally recognized as safe and effective, under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), and not misbranded under section 502 of the act (21 U.S.C. 352).

The TFM proposed labeling for products that claim to protect against UVB radiation and discussed the types of labeling claims that could be used for products that contain UVA-absorbing ingredients. The TFM included a list of proposed sunscreen active ingredients, including ingredients that were believed to have absorption spectra extending into the UVA range.

The TFM proposed a set of testing procedures for measuring a product's sun protection factor (SPF). The SPF value measures the performance of sunscreens that absorb erythema-causing UV radiation, but does not fully describe a product's UVA protection. As the agency acknowledged in the TFM, "currently there is no generally acceptable method for determining a

meaningful UVA protection factor that is analogous to the SPF" (58 FR 28194 at 28249).

Following publication of the TFM, the agency continued to work closely with interested parties to develop standardized UVA testing procedures and an accurate, helpful way to present information about UVA protection in product labeling. The agency held a public meeting, on May 12, 1994, to discuss UVA testing procedures. The agency also reopened the administrative record to allow additional submissions on UVA-related issues until July 31, 1994 (59 FR 16042, April 5, 1994).

In the **Federal Register** of September 16, 1996 (61 FR 48645) and October 22, 1998 (63 FR 56584), the agency amended the TFM to add the UVA-absorbing sunscreen ingredients avobenzone and zinc oxide to the proposed list of monograph ingredients. The agency proposed indications for these ingredients, such as "provides broad spectrum protection" and "provides protection from the UVA rays that may contribute to skin damage and premature aging of the skin" (61 FR 48645 at 48655 and 63 FR 56584 at 56589).

On November 21, 1997, Congress enacted the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA section 129 provided as follows:

Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall issue regulations for over-the-counter sunscreen products for the prevention or treatment of sunburn.

Section 129 of FDAMA prompted FDA to identify those parts of the TFM for OTC sunscreen drug products that could be finalized within the timeframe set by FDAMA. In late 1997, FDA was still working on the development of testing standards and labeling for UVA radiation protection. As recently as January 27, 1999, the agency held a public meeting to continue developing UVA testing methods and labeling (Ref. 1). Given these outstanding issues, the agency decided to address the FDAMA deadline by finalizing the UVB portions of the monograph (and related provisions on water resistant test methods and cosmetic labeling).

In the **Federal Register** of May 21, 1999 (64 FR 27666), FDA published a final rule in the form of a final monograph for OTC sunscreen drug products. The monograph included 16 active ingredients, required labeling for products that contain one or more of these active ingredients, a standardized test for measuring SPF values, and standard methods for measuring the water resistant properties of sunscreens. The monograph included modifications to the agency's general OTC drug product labeling rule in § 201.66 (21 CFR 201.66) to accommodate certain sunscreen drug products that are packaged in small containers, are intended to be applied to limited areas of the face, and otherwise meet the factors discussed in the OTC drug product labeling rule for monograph-specific modifications (64 FR 27666 at 27681 to 27682 and 64 FR 13254 at 13270). The monograph did not, however, address active ingredients, labeling, and test methods for products intended to provide UVA protection.

The agency set a 2-year effective date (May 21, 2001) for part 352 and the related nonmonograph conditions in § 310.545(a)(29). The agency also set a 2-year effective date for new § 700.35, which addresses cosmetic products that contain sunscreen active ingredients for nontherapeutic, nonphysiologic uses (e.g., as a color additive or to protect the color of the product). The agency set a 1-year effective date (May 22, 2000) for new § 740.19 (21 CFR 740.19), which addresses a warning statement for cosmetic suntanning preparations that do not contain a sunscreen active ingredient. The extension of the effective date in this document does not apply to § 740.19.

II. Citizen Petition

Prior to publication of the sunscreen final rule, a citizen petition (Ref. 2) requested the agency, among other things, to initiate an administrative process for publishing a "comprehensive" sunscreen final monograph that addresses formulation, labeling, and testing for both UVB and UVA radiation protection.

On July 22, 1999, the agency held a public meeting to hear the views of interested parties regarding the sunscreen final monograph (Ref. 3). At the meeting, the petitioner requested that FDA defer the effective date of the final rule until 2 years after it completes a comprehensive final monograph that includes UVA radiation protection. After several subsequent meetings with the agency (Ref. 4), the petitioner proposed that a 19-month extension of the effective date of the sunscreen final monograph would be sufficient time for it to submit the appropriate data to assist FDA in completing a comprehensive final monograph in time for a target December 2002 effective date.

FDA granted the petition in part by agreeing to extend the effective date of the monograph to December 31, 2002, with the expectation that appropriate data would be received within a reasonable timeframe so that a comprehensive UVA–UVB monograph could be issued in advance of that date. Accordingly, the agency is issuing this document to extend the effective date of the sunscreen final monograph for the reasons set forth in its October 1, 1999, response to the citizen petition (Ref. 5). Copies of the petition and the agency's response are on file in the Dockets Management Branch (address above) and are available through a freedom of information request.

III. Process for Completion of a Comprehensive Final Monograph

The agency has requested at public meetings on January 27, July 22, and October 26, 1999 (Refs. 1, 3, and 6, respectively), and in letters of July 16, and September 2, 1999, and March 20, 2000, to the petitioner (Refs. 7, 8, and 9, respectively), the type of specific data and information that would be helpful for the completion of a comprehensive final monograph for OTC sunscreen drug products. These data and information concerned: (1) Testing and labeling of high SPF products, (2) testing and labeling for UVA radiation protection and, (3) integration of UVA and UVB indications for use and performance statements. To date, the agency has received only a portion of this requested information (Ref. 9). As part of this reopening of the administrative record, the agency is including the above information and any other information submitted to the sunscreen docket related to the completion of a comprehensive UVA–UVB final monograph.

In order to complete a comprehensive final monograph by the target December 31, 2002, effective date, the agency intends to move forward and publish a proposed rule for a comprehensive final monograph, receive comments on that proposal, and issue a final rule by December 31, 2001. That final rule would then have a 1-year effective date of December 31, 2002. Therefore, in order not to delay this process, the agency has determined that all data and information to be considered for the proposed rule must be received by the close of the administrative record as stated in this document. After the administrative record closes on September 6, 2000, the agency will use the information in the administrative record to prepare a proposed rule for a comprehensive final monograph for OTC sunscreen drug products. The agency has determined that 90 days provides industry with a reasonable amount of time to prepare and submit the data requested in this document.

IV. Request for Comment

The agency stated in the sunscreen final rule that SPF values above 30 are not supported at this time and that sunscreen drug products with SPF values above 30 should be limited to one collective term, i.e., SPF 30 "plus" or "+" (64 FR 27666 at 27675). While the agency believes that the sunscreen final monograph test procedures for measuring SPF values up to 30 represent a straightforward, well-understood, and sound method for measuring these values, a number of comments submitted in response to the May 12, 1993, tentative final monograph for OTC sunscreen drug products (58 FR 28194) questioned the ability of current testing methods to accurately and reproducibly determine SPF values for high SPF (i.e., above SPF 30) sunscreen drug products (64 FR 27666 at 27680).

Most of the comments' concerns related to potential interlaboratory variation when utilizing SPF test methodology. Primary concerns included the potential for overestimation of high SPF values due to the spectra of currently used solar simulators and the need for one or more high SPF standard sunscreens (i.e., as laboratory controls). Long radiation exposures necessitated by SPF values well above 30 and the use of a relatively low SPF laboratory control may significantly increase the potential for decreased interlaboratory accuracy and reproducibility for high SPF sunscreen drug products. The agency invited interested persons to continue developing the test methods needed to measure high SPF values and to provide FDA data to support such methods. The agency is currently evaluating data and information subsequently received from two comments (Refs. 10 and 11) concerning this issue.

In the final rule, the agency discussed the difficulty in explaining the nonlinearity (i.e., percent reduction in erythemogenic UV radiation) of the SPF rating system in the limited space on a product label (64 FR 27666 at 27675). The agency also invited interested persons to consider proposed methods for communicating in labeling the level of protection associated with high SPF values. To date, the agency has not received any proposals relative to the labeling of sunscreens with high SPF values.

After review of the comments concerning the adequacy of current testing procedures for determining high SPF numbers, the agency has identified eight areas in which it seeks additional data and information. The agency is requesting further comment in these areas to provide interested parties the opportunity to submit data and information to address these issues. It is not necessary to resubmit data and information previously provided to the agency. A cross-reference to an earlier submission will be sufficient.

A. Solar Simulator Spectral Power Distribution

The agency has received several comments, including a recent citizen petition (Ref. 10), suggesting the adoption of a spectral power distribution that specifies the proportion of erythema-effective radiation in a table format. The comments suggested that the spectra of currently used solar simulators (especially around 290 nanometers (nm) and above 350 nm) could cause overestimation of SPF values for high SPF sunscreens. Because shorter wavelengths can make a very large contribution to erythema, the comments stated that small errors in the 290 nm region of solar simulator spectra could have considerable effects. In addition, the comments noted that spectral power deficiencies above 350 nm may give artificially high SPF values for sunscreen drug products that absorb poorly in the long wavelength UVA region. The comments suggested that the agency replace the specifications in § 352.71 of the sunscreen monograph that state "sun at a zenith angle of 10½" and "less than 1 percent shorter than 290 nm" with the European Cosmetic, Toiletry, and Perfumery Association (COLIPA) table of "percent erythemal contribution" (Ref. 10) as the spectral power distribution standard for the light source used in the SPF test procedures.

The agency is requesting comment on whether the solar simulator spectral distribution specifications contained in the COLIPA standard are appropriate for use in SPF testing procedures. The agency would also like comment on a potential modification of the standard that would modify the erythema-effective radiation contribution of wavelengths below 290 nm to less than 0.1 percent (to prevent overestimation of SPF values). The agency believes that this specification is readily obtainable with commercially available cut-off filters. In addition, the agency is interested in comment concerning the practicality of lowering the below-290 nm specification to 0.01 percent. Therefore, a solar simulator using the following modification of the COLIPA standard for determining the SPF of a sunscreen drug product would be filtered so that it provides a continuous emission spectrum from 290 to 400 nm with the following percentage of erythema-effective radiation in each specified range of wavelengths:

TABLE 1.—SOLAR SIMULATOR EMISSION SPECTRUM

Wavelength Range (nm)	Percent Erythemal Contribution
< 290	< 0.1
290–310	46.0–67.0
290–320	80.0–91.0
290–330	86.5–95.0
290–340	90.5–97.0
290–350	93.5–99.0

B. Thermal Overloading of the Skin

The testing of high SPF sunscreen drug products necessitates longer exposure times than testing of lower SPF values. Such increases in irradiance levels have the potential to produce thermal overloading of the skin and influence the UV radiation dose reciprocity relationship (and therefore SPF values). The comments suggested that limits such as 1,250 to 1,500 watts/meter^2 be placed on the total irradiance delivered to the skin for all wavelengths. Several comments, including a recent citizen petition (Ref. 10), also suggested that the "out of band" specification in § 352.71 of the sunscreen monograph (i.e., that not more than 5 percent of a solar simulator's total energy output can be contributed by wavelengths longer than 400 nm) is not obtainable from many devices currently utilized for evaluating sunscreens.

The agency considers it important to limit total energy delivered to the skin

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so that skin temperature does not reach a point that influences the UV dose reciprocity relationship when encountering the long exposure times necessary to test high SPF sunscreen drug products. The agency is requesting comment on whether replacing the "out of band" specifications in § 352.71 with a limit on total solar simulator irradiance for all wavelengths may be an appropriate modification of current testing procedures that will improve the testing of high SPF sunscreens. In addition, the agency is also requesting comment on an appropriate irradiance limit for this modification.

C. High SPF Standard Sunscreen

The agency received several comments suggesting that standard sunscreens (i.e., controls) with SPF values of 15 or higher be developed for testing high SPF sunscreen drug products. Studies submitted by the comments tend to support the conclusion that a specific control(s) may be needed to accurately test high SPF sunscreen drug products. However, these studies lacked sufficient numbers of subjects, did not address suitability of a standard across different laboratories, and did not document the following properties required in a standard sunscreen: (1) Low level of interlaboratory variation, (2) sensitivity to experimental error, and (3) ease of preparation with a reasonable degree of accuracy.

One comment supplied "round-robin," collaborative SPF testing data from 7 laboratories on 153 subjects, with 2 possible SPF 15 standard sunscreens, "Formulation A" and "Formulation B" (Refs. 12 and 13). The agency believes that the data could support "Formulation B" as an appropriate SPF 15 standard sunscreen if additional information is submitted and found acceptable. Because the formulation was supplied to all laboratories by a single source, there are no data to demonstrate that multiple laboratories can prepare, assay, and utilize the standard successfully. Further, the standards were not analyzed by the spectrophotometric method in § 352.70(c) of the sunscreen monograph, but rather by an alternate proposed method (see section IV.D of this document). The agency is requesting the submission of the additional data necessary to document the suitability of Formulation "B" and the analytical method.

In addition, the agency is requesting comment and any supporting data and information concerning the need for additional standard sunscreens (with SPF values higher than 15) as well as the use of specific standard sunscreens for specific ranges of SPF values (i.e., bracketing).

D. High-Performance Liquid Chromatography (HPLC) Assay

As discussed in section IV.C of this document, data supplied in support of an SPF 15 standard sunscreen preparation included the use of an HPLC assay instead of the spectrophotometric assay in § 352.70(c). The comment suggested that the HPLC protocol is now commonly used by analytical laboratories for the assay of sunscreen formulations (and that it can also be used for the homosalate standard sunscreen). The agency invites specific comment and data from analytical laboratories as to which assay method they use and why they use that particular method.

Before the agency can evaluate the HPLC method supplied with the SPF 15 standard sunscreen data, method validation data are necessary. The agency is requesting a validation package that documents specificity, accuracy, limit of detection, linearity, precision, and reproducibility of the method. The agency is especially concerned that the presence of any impurities (particularly UV radiation-absorbing impurities) in the standard sunscreen and product formulations can be detected by the HPLC method, because interfering substances could affect the SPF determination. The validation package should include chromatograms and demonstrate that the HPLC method is suitable for both the SPF 4 (homosalate) and SPF 15 standards (or other standard sunscreens, if appropriate). The chemistry guideline entitled "Reviewer Guidance, Validation of Chromatographic Methods" explains these requirements in greater detail and is available on the agency's Internet website for the Center for Drug Evaluation and Research (CDER) (http://www.fda.gov/cder/guidance/index.htm), or may be obtained from the Drug Information Branch (HFD–211), CDER, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573.

E. Number of Test Subjects

Several comments suggested that the "limitation" of 20 to 25 subjects in the SPF test in § 352.72(g) may be an issue for sunscreen drug products with high SPF values due to potential for high variability in the responses obtained. The comments indicated that more than 20 to 25 subjects may be necessary. The agency is requesting data and information on the testing of SPF values over 30 in relation to this issue and suggestions for an appropriate number of test subjects to be used in such testing.

F. Exposure Doses

Determination of the minimal erythemal dose on protected skin (MED(PS)) is described in § 352.73(c) of the SPF testing procedures as follows:

> * * * A series of seven exposures shall be administered to the protected test sites to determine the MED of the protected skin (MED(PS)). The doses selected shall consist of a geometric series of five exposures, where the middle exposure is placed to yield the expected SPF plus two other exposures placed symmetrically around the middle exposure. * * *

The agency proposed this format in the tentative final monograph (58 FR 28194 at 28269 to 28272), in the context of SPF values up to 30, because of its concern that a widely-spaced geometric progression offers less accuracy and precision in the upper SPF ranges and may produce overestimation of the true SPF. Exposure dose intervals in the above geometric series decrease as expected SPF values increase.

The agency is requesting comment and any supporting data and information concerning the adequacy of the current exposure dose format in the testing of sunscreen drug products claiming to have SPF values over 30.

G. Labeling

In the sunscreen final rule (64 FR 27666 at 27675), the agency stated that the nonlinearity (i.e., percent reduction in erythemogenic UV radiation) of the SPF rating system is a concept difficult to explain in the limited space on a product label. The agency noted the relatively small difference in additional sunburn protection for most people provided by SPF 30 and SPF 50 sunscreens in terms of their absorption of erythemal UV radiation. The agency has a continuing concern about consumers' perception and understanding of the difference in screening abilities between, for example, an SPF 4 and SPF 15 as opposed to an SPF 30 and SPF 50.

The agency is concerned that an average sunscreen consumer may ascribe more to high SPF values than is clinically relevant and that such products may further encourage the use of sunscreens as a safe way to prolong sun exposure. The concept of increasing SPF values has been described in the context of increasing the time for which a person could be exposed to the sun without burning. While such a description may be true, it omits essential information about skin cancers and photoaging that may occur from different (i.e., nonerythemogenic) wavelengths and/or at suberythemal doses of UV radiation in the erythemogenic wavelength region. Sunscreen use alone will not prevent all of the possible harmful effects of the sun for all consumers, even with the use of high SPF sunscreen drug products. Variation between individuals, UV radiation absorption and substantivity of sunscreen drug products, exposure conditions, and conditions of use (e.g., inadequate application/reapplication) preclude a precise result for each individual. Sunscreens are part of a sun protection program in which it is clear that the goal is to limit sun exposure even with the use of a sunscreen. Without adequate labeling, high SPF numbers may dilute the desired public health message. In addition, previously submitted labeling comprehension data, which were discussed at a public meeting (Ref. 14), indicated a fair amount of confusion concerning consumer comprehension of the SPF rating system.

The agency is requesting comment on any proposed methods for meaningfully communicating in product labeling the level of sun protection associated with high SPF sunscreen drug products. In addition to this information, the agency is also requesting comment relative to the use of professional labeling (and what that labeling might state) specifically to provide high SPF value information to health professionals.

H. Technical and Human Limitations

The agency is aware that the testing of sunscreen drug products with high SPF values necessitates the use of longer ultraviolet radiation exposure times. Such exposures can result in test subjects remaining in front of the light source for several hours, especially when a standard sunscreen and water resistance test are also included (Ref. 11).

Considering the generally available SPF test equipment currently used in testing laboratories, the agency is requesting comment on the practical human limitations of the test relative to high SPF values. Is the determination of an SPF value routinely practicable for SPF values of, for example, 60 or higher? What total exposure times would be involved at such SPF levels? What is the practical limit in terms of the SPF value?

V. Comment on the Extension of the Effective Date

In its October 1, 1999, citizen petition response (Ref. 5), the agency set forth in detail its finding that a stay of the effective date for the sunscreen final monograph, until December 31, 2002, would be in the public interest. Since the agency is extending the effective date of the sunscreen final monograph based on the citizen petition response, it finds, for good cause, that this extension of the effective date of the final monograph does not require further notice and comment procedures (5 U.S.C. 553(b)). More than 6 months have passed since the agency issued the petition response and the agency has received no adverse correspondence or comments with respect to its decision. Therefore, the agency is now extending the effective date of the final rule. However, in accordance with 21 CFR 10.40(e)(1), the agency will accept comment on this extension for a period of 90 days.

VI. Analysis of Impacts

The economic impact of the final monograph was discussed in the final rule (64 FR 27666 at 27683). This extension of the effective date provides additional time for companies to relabel, retest, and reformulate affected products and will reduce label obsolescence, as there will be additional time to use up more existing labeling. This extension will also eliminate a second relabeling of sunscreen drug products when UVA labeling is included in the monograph. Thus, extending the effective date of the final rule until December 31, 2002, and the compliance date for products with annual sales less than $25,000 to December 31, 2003, will significantly reduce the economic impact on industry.

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The purpose of the final rule is to reopen the administrative record and to extend the effective date which will provide manufacturers additional time to use up existing product labeling. The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

Under the Unfunded Mandates Reform Act, FDA is not required to prepare a statement of costs and benefits for this final rule because this final rule is not expected to result in any one-year expenditure that would exceed $100 million adjusted for inflation.

The agency also certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. References

The following references are on display in Docket No. 78N–0038 in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. MM16.
2. Comment No. CP11.
3. Comment No. MM21.
4. Comment No. MM17, MM18, and MM19.
5. Comment No. PAV2.
6. Comment No. MM22.
7. Comment No. LET168.
8. Comment No. ANS6.
9. Comment No. Let170
10. Comment No. CP12.
11. Comment No. C557
12. Comment No. C111 and RPT7.
13. Letter from T. J. Donegan, The Cosmetic, Toiletry, and Fragrance Association, to J. D. Lipnicki, FDA, in OTC Vol. 06FREXT.
14. Comment No. MM14.

List of Subjects in 21 CFR Part 310

Administrative practice and procedures, Drugs, Labeling, Medical

devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

2. Section 310.545 is amended by revising paragraph (d)(31) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

* * * * *

(d) * * *

(31) December 31, 2002, for products subject to paragraph (a)(29) of this section.

Dated: May 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–14212 Filed 6–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 98N–0786]

General Hospital and Personal Use Devices; Classification of Liquid Chemical Sterilants/High Level Disinfectants and General Purpose Disinfectants

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying liquid chemical sterilants/high level disinfectants intended for use as the terminal step in processing critical and semicritical medical devices prior to patient use into class II (special controls), and general purpose disinfectants intended to process noncritical medical devices and equipment surfaces into class I (general controls). FDA is also exempting the general purpose disinfectants from the premarket notification requirements. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA).

DATES: This rule is effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Chiu S. Lin, Center for Devices and Radiological Health (CDRH) (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and the FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act (21 U.S.C. 360c(f))) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by the FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Consistent with the act and the regulations, FDA consulted with the General Hospital and Personal Use Devices Panel (the Panel), an FDA advisory committee, regarding the classification of these devices.

The FDAMA added a new section 510(l) to the act. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. Hereafter, these are referred to as "reserved criteria." FDA has considered the general purpose disinfectants in accordance with the reserved criteria and determined that these devices do not require premarket notification. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA.

II. Regulatory History of the Device

In the **Federal Register** of November 6, 1998 (63 FR 59917), FDA proposed to classify both liquid chemical sterilants intended for use as the terminal step in processing critical and semicritical medical devices prior to patient use into class II and general purpose disinfectants intended to process noncritical medical devices and equipment surfaces into class I. In the same issue of the **Federal Register**, FDA proposed to exempt the general purpose disinfectants from the premarket notification requirements. FDA recognizes a "high level disinfectant" as a potential separate or subordinate condition of use of a sterilant and has included it in the final rule to clarify its classification status. Initially, interested persons were given until February 4, 1999, to comment on the proposed regulation. Subsequently, FDA extended the comment period to March 8, 1999, in response to an extension request.

FDA received one comment on the proposed rule from a non-profit trade association.

III. Summary of Final Rule

As required by 21 CFR 860.84(g)(1) of the regulations, FDA is classifying liquid chemical sterilants/high level disinfectants into class II with the following special controls: The 510(k) guidance document (Ref. 1) and user information and training. FDA is also classifying general purpose disinfectants into class I and exempting these devices from premarket notification.

Persons interested in obtaining a copy of the guidance (Ref. 1) may do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. The CDRH home page may be accessed at http://www.fda.gov/cdrh. "Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Sterilants/High Level Disinfectants" available at http://www.fda.gov/cdrh/ode/397.pdf.

IV. Analysis of Comment and FDA's Response

The one comment FDA received requested that general purpose disinfectants, in addition to being exempt from the premarket notification procedures, also be exempt from the good manufacturing practice (GMP) requirements set forth in the Quality System Regulation (21 CFR part 820). The comment stated that general purpose disinfectants should be exempt from the GMP requirements because the Environmental Protection Agency (EPA) and state controls on them are sufficient to assure their quality for commercial distribution.

FDA disagrees with the comment. The agency recognizes the dual regulatory functions and responsibilities of the FDA and EPA, but the functions and responsibilities of these agencies address different aspects of the product. Because of the continued classification of the general purpose disinfectants as a medical device, they remain subject to the GMP requirements of the act.

General purpose disinfectants are also regulated by EPA as environmental pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The EPA controls (EPA product registration, Good Laboratory Practices, State registration and testing, maintenance of records, and EPA establishment registration) focus on the quality and integrity of pesticide data. Although some States have programs regulating the sale and use of general purpose disinfectants as pesticides, not all States have adopted the same enforcement programs. This lack of uniformity does not provide the additional safeguard needed for the national use of these products for disinfection of medical devices.

Therefore, under section 513 of the act, FDA is adopting the summary of reasons for the Panel's recommendation and the summary of data upon which the Panel's recommendation is based, in their entirety. FDA also agrees with the assessment of the risks to public health stated in the proposed rule published on November 6, 1998. FDA is issuing this final rule, which classifies these generic types of devices as follows: Liquid chemical sterilants/high level disinfectants into class II and general purpose disinfectants into class I.

V. Reference

The following reference has been placed on display in the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, Center for Devices and Radiological Health, Office of Device Evaluation, "Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Sterilants/High Level Disinfectants," January 3, 2000.

VI. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The classification of these devices formalizes the current process for the class I and II devices. For the class I devices, FDA is not adding any additional burden, because they are effectively regulated as class I devices now. For the class II devices, they are in compliance with the guidance. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VIII. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no information that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The special controls do not require the respondent to submit additional information to the public.

List of Subjects in 21 CFR Part 880

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 880 is amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 880.6885 is added to subpart G to read as follows:

§ 880.6885 Liquid chemical sterilants/high level disinfectants.

(a) *Identification.* A liquid chemical sterilant/high level disinfectant is a germicide that is intended for use as the terminal step in processing critical and semicritical medical devices prior to patient use. Critical devices make contact with normally sterile tissue or

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body spaces during use. Semicritical devices make contact during use with mucous membranes or nonintact skin.

(b) *Classification.* Class II (special controls). Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Sterilants/High Level Disinfectants, and user information and training.

3. Section 880.6890 is added to subpart G to read as follows:

§ 880.6890 General purpose disinfectants.

(a) *Identification.* A general purpose disinfectant is a germicide intended to process noncritical medical devices and equipment surfaces. A general purpose disinfectant can be used to preclean or decontaminate critical or semicritical medical devices prior to terminal sterilization or high level disinfection. Noncritical medical devices make only topical contact with intact skin.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 880.9.

Dated: May 23, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–14462 Filed 6–7–00; 8:45 am]

BILLING CODE 4160–1–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[TD 8887]

RIN 1545–AV02

Deposits of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the availability of the safe harbor deposit rule based on look-back quarter liability and affects persons required to make deposits of excise taxes. This document also contains final regulations related to floor stocks taxes and affects persons liable for those taxes. The regulations implement changes made by the Small Business Job Protection Act of 1996 and the Airport and Airway Trust Fund Tax Reinstatement Act of 1997.

DATES: *Effective Date:* These regulations are effective June 8, 2000.

Applicability Dates: For dates of applicability of these regulations, see §§ 40.6302(c)–1(c)(2)(iv)(C) and 40.6302(c)–2(b)(2)(iii)(C).

FOR FURTHER INFORMATION CONTACT: Susan Athy, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations (TD 8740) relating to the safe harbor deposit rule based on look-back quarter liability and to floor stock taxes were published in the **Federal Register** on December 29, 1997 (62 FR 67568) along with a notice of proposed rulemaking (REG–102894–97) cross-referencing the temporary regulations (62 FR 67589). Written comments and requests for a public hearing were solicited. However, no comments or requests were received and no public hearing was held.

The proposed regulations are adopted without revision by this Treasury decision.

Effect on Other Documents

The following publication is obsolete as of June 8, 2000:

Notice 97–15, 1997–1 C.B. 387.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Susan Athy, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 40 is amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 40.0–1, paragraph (a) is amended by revising the second sentence to read as follows:

§ 40.0–1 Introduction.

(a) * * * The regulations set forth administrative provisions relating to the excise taxes imposed by chapters 31, 32, 33, 34, 36, 38, and 39 (except for the chapter 32 tax imposed by section 4181 (firearms tax) and the chapter 36 taxes imposed by sections 4461 (harbor maintenance tax) and 4481 (heavy vehicle use tax)), and to floor stocks taxes imposed on articles subject to any of these taxes. * * *

* * * * *

§ 40.0–1T [Removed]

Par. 3. Section 40.0–1T is removed.

Par. 4. In § 40.6011(a)–1, paragraph (a)(2)(iii) is added to read as follows:

§ 40.6011(a)–1 Returns.

(a) * * *

(2) * * *

(iii) *Floor stocks tax return.* A return reporting liability for a floor stocks tax described in § 40.0–1(a) is a return for the calendar quarter in which the tax payment is due and not the calendar quarter in which the liability for tax is incurred.

* * * * *

§ 40.6011(a)–1T [Removed]

Par. 5. Section 40.6011(a)–1T is removed.

Par. 6. Section 40.6302(c)–1 is amended as follows:

1. Paragraph (c)(2)(iv) is added.

2. Paragraph (f)(1) is amended by adding a sentence to the end of the paragraph.

The additions read as follows:

§ 40.6302(c)–1 Use of Government depositaries.

* * * * *

(c) * * *

(2) * * *

(iv) *Modification for new or reinstated taxes*—(A) *Applicability.* The safe harbor rule of paragraph (c)(2)(i) of this section is modified for any calendar quarter in which a person's liability for

a class of tax includes liability for any new or reinstated tax. For this purpose, a new or reinstated tax is—

(*1*) Any tax (including an alternative method tax) that was not in effect at all times during the look-back quarter; and

(*2*) Any alternative method tax that was not in effect at all times during the month preceding the look-back quarter.

(B) *Modification.* The safe harbor rule of paragraph (c)(2)(i) of this section does not apply to a class of tax unless the deposit of taxes in that class for each semimonthly period in the calendar quarter is not less than the greater of—

(*1*) 1/6 of the net tax liability reported for the class of tax for the look-back quarter; or

(*2*) The sum of—

(*i*) 95 percent of the net tax liability incurred with respect to new or reinstated taxes during the semimonthly period; and

(*ii*) 1/6 of the net tax liability reported for all other taxes in the class for the look-back quarter.

(C) *Effective date.* This paragraph (c)(2)(iv) applies to tax liabilities for new or reinstated taxes incurred after February 28, 1997, except that paragraph (c)(2)(iv)(A)(*2*) of this section applies only for calendar quarters beginning after December 31, 1997.

* * * * *

(f) * * * (1) * * * Also, no deposit is required in the case of any floor stocks tax described in § 40.0–1(a).

* * * * *

§ 40.6302(c)–1T [Removed]

Par. 7. Section 40.6302(c)–1T is removed.

Par. 8. In § 40.6302(c)–2, paragraph (b)(2)(iii) is added to read as follows:

§ 40.6302(c)–2 Special rules for use of Government depositaries under section 4681.

* * * * *

(b) * * *

(2) * * *

(iii) *Modification for new chemicals*—(A) *Applicability.* The safe harbor rule of paragraph (b)(2)(i) of this section is modified for any calendar quarter in which a person's liability for section 4681 tax includes liability with respect to any new chemical. For this purpose, a new chemical is any chemical that was not subject to tax at all times during the look-back quarter.

(B) *Modification.* The safe harbor rule of paragraph (b)(2)(i) of this section does not apply unless the deposit of section 4681 taxes for each semimonthly period in the calendar quarter is not less than the greater of—

(*1*) 1/6 of the net tax liability reported under section 4681 for the look-back quarter; or

(*2*) The sum of—

(*i*) 95 percent of the net tax liability incurred under section 4681 with respect to the new chemical during the semimonthly period; and

(*ii*) 1/6 of the net tax liability reported under section 4681 with respect to all other chemicals for the look-back quarter.

(C) *Effective date.* This paragraph (b)(2)(iii) applies to tax liabilities for new chemicals incurred after February 28, 1997.

* * * * *

§ 40.6302(c)–2T [Removed]

Par. 9. Section 40.6302(c)–2T is removed.

Approved: May 22, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–14007 Filed 6–7–00; 8:45 am]

BILLING CODE 4830–01–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1630

Interpretive Guidance on Title I of the Americans with Disabilities Act

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: This rule rescinds several sentences of the Equal Employment Opportunity Commission's (EEOC) Interpretive Guidance on Title I of the Americans with Disabilities Act that address mitigating measures used by persons with impairments. This action is necessary as a result of recent Supreme Court rulings.

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Christopher J. Kuczynski, Assistant Legal Counsel, ADA Division, Office of Legal Counsel, or Sharon Rennert, Senior Attorney Advisor, ADA Division, Office of Legal Counsel. They can be reached at 202–663–4503. This final rule is also available in the following formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the EEOC's Publication Center by calling 1–800–669–3362 (voice) or 1–800–800–3302 (TDD).

SUPPLEMENTARY INFORMATION: The EEOC is rescinding several sentences of the Interpretive Guidance on Title I of the Americans with Disabilities Act, found in the Appendix to 29 CFR 1630.2(h) and (j), that address mitigating measures used by persons with impairments. The guidance set forth in those sentences is no longer valid in light of the Supreme Court's rulings in *Sutton* v. *United Airlines, Inc.*, 527 U.S. ____(1999), and *Murphy* v. *United Parcel Service, Inc.*, 527 U.S.—(1999). In those cases, the Supreme Court held that the determination of whether an individual has an impairment that substantially limits a major life activity under the ADA must be made by considering any mitigating measures (such as medications or assistive devices) that the individual uses to eliminate or reduce the effects of an impairment.

Regulatory Procedures

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Public Law 96–354, as amended by Public Law 104–121), the Commission has reviewed this regulation, and by approving it, certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866 and is therefore not subject to review by the Office of Management and Budget.

List of Subjects in 29 CFR Part 1630

Equal employment opportunity, Individuals with disabilities.

For the Commission.

Ida L. Castro,

Chairwoman.

Accordingly, the Commission amends 29 CFR chapter XIV as follows:

PART 1630—[AMENDED]

1. The authority citation for part 1630 continues to read as follows:

Authority: 42 U.S.C. 12116.

Appendix to Part 1630 [Amended]

2. Amend the Appendix to Part 1630 as follows:

a. Section 1630.2(h) is amended by removing the second paragraph.

b. Section 1630.2(j) is amended by removing the third, fourth, and fifth sentences of the sixth paragraph, and by removing ", without regard to mitigating measures such as medicines, or assistive or prosthetic devices" from the first sentence of the eighth paragraph.

[FR Doc. 00–14476 Filed 6–7–00; 8:45 am]

BILLING CODE 6570–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC32

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Postlease Operations Safety, Correction

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Correction to final regulations.

SUMMARY: This document makes a correction to the final rule titled "Postlease Operations Safety" that was published Tuesday, December 28, 1999 (64 FR 72756). We are correcting a citation error in the table of Documents Incorporated by Reference.

EFFECTIVE DATE: January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, Engineering and Operations Division, (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections supersede 30 CFR 250, subpart A, General, regulations on the effective date and affect all operators and lessees on the Outer Continental Shelf.

The published final regulations contained a complete listing of all of the documents MMS has incorporated by reference in the 30 CFR part 250 regulations. The rulemaking also included revisions and reaffirmations of several documents. The table of documents incorporated by reference in § 250.198(e) of the published final rule contained an error, which we are correcting.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on December 28, 1999, of the final regulations, which were the subject of FR Doc. 99–31869, is corrected as follows:

§ 250.198 [Corrected]

On page 72792, in the table in § 250.198(e), the entry for API RP 14H, Recommended Practice for the Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, is corrected to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of document	Incorporated by reference at
. . . . .	. .
API RP 14H, Recommended Practice for the Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore Fourth Edition, July 1, 1994, API Stock No. G14H04.	§ 250.802(d); 250.804(a)(4)
. . . . .	. .

Dated: May 23, 2000.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 00–13868 Filed 6–7–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–070–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama proposed revisions to the Alabama Surface Mining Control and Reclamation Act (ASMCRA) concerning the repair or compensation for material damage to any occupied residential dwelling and related structures or any noncommercial building. The proposed revisions also concern the replacement of contaminated, diminished, or interrupted drinking, domestic or residential water supplies. The damage to the protected structures or water supplies has to have been caused by subsidence resulting from underground coal mining operations. Alabama proposed to revise its program at its own initiative.

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: aabbs@balgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22062). You can find later actions concerning the Alabama program and previous amendments at 30 CFR 901.15, 901.16, and 901.17.

II. Submission of the Amendment

By letter dated August 17, 1999 (Administrative Record No. AL–0589), Alabama submitted an amendment to its approved permanent regulatory program according to the Federal regulations at 30 CFR 732.17(b). Alabama sent the amendment at its own initiative.

We announced the proposed rulemaking in the September 7, 1999, **Federal Register** (64 FR 48573). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on October 7, 1999. We held a public hearing in Birmingham, Alabama, on October 4, 1999. We reopened the public comment period in the October 15, 1999, **Federal Register** (64 FR 55878) in order to allow the public additional time to submit comments. The public comment period closed on November 1, 1999.

During our review of the amendment, we identified concerns regarding section 9–16–91(f) of ASMCRA, remedies for subsidence damage and subsidence damage agreements. We notified Alabama of these concerns by letter dated February 3, 2000 (Administrative Record No. AL–0627). By letter dated February 15, 2000, and May 3, 2000 (Administrative Record Nos. AL–0629 and AL–0634, respectively), Alabama sent us additional explanatory information. Because the explanatory information did not make any change to Alabama's amendment regarding remedies for subsidence damage and subsidence damage agreements, we did not reopen the public comment period.

III. Director's Findings

Below, in accordance with SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment on the Alabama permanent regulatory program. Any revisions that we do not discuss below are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Alabama proposed to revise section 9–16–91(e)(1) of ASMCRA to read as follows:

> (1) Promptly repair or compensate for material damage to any occupied residential dwelling and related structures or any noncommercial building caused by surface subsidence resulting from underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and related structures or noncommercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and related structures or noncommercial building which shall be in the full amount of the diminution in value resulting from subsidence caused damage. Compensation may be accomplished by the purchase, prior to mining, of a non-cancelable premium-prepaid insurance policy.

The above proposed revision involves minor wording changes to this previously approved statute and it does not change its meaning. Therefore, we are approving the revision because it is no less stringent than the Federal statute at section 720(a)(1) of SMCRA.

B. Alabama proposed to add new section 9–16–91(e)(3) of ASMCRA to read as follows:

> (3) Promptly correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence.

We do not have a counterpart Federal statute in SMCRA for this proposed addition. However, the provision is consistent with requirements in section 516(b)(1) of SMCRA and is found in the Federal regulations at 30 CFR 817.121(c)(1). We are approving the addition of this provision to Alabama's statutes because it is consistent with our Federal regulations and SMCRA and will not make the Alabama statutes less stringent than the Federal statutes.

C. Alabama proposed to add new section 9–16–91(e)(4) of ASMCRA to read as follows:

> (4) The regulatory authority shall issue such notices or orders and take such actions as necessary to compel compliance with these requirements.

This provision that Alabama proposed to add to its statutes is not found in our Federal statutes. Alabama's intent by adding this provision is to make it clear that it has the power to enforce the provision of section 9–16–91 of ASMCRA. We are approving this statute because it is not inconsistent with our Federal regulations or statutes and will not make the Alabama statutes less stringent than the Federal statutes.

D. Alabama proposed to add new section 9–16–91(f) to read as follows:

> (f) Notwithstanding any other provision in this chapter to the contrary, the remedies prescribed in this section or any rule promulgated under authority of this chapter pertaining to repair or compensation for subsidence damage and replacement of water shall be the sole and exclusive remedies available to the owner for such damage and its effects. Neither punitive damages nor, except as specifically prescribed in this section or any rule promulgated under authority of this chapter pertaining to repair or compensation for subsidence damage and replacement of water, compensatory damages shall be awarded for subsidence damage caused by longwall mining or other mining process employing a planned subsidence method and conducted in substantial compliance with a permit issued under authority of this chapter. Nothing in this chapter shall prohibit agreements between the surface owner and the mineral owner or lessee that establish the manner and means by which repair or compensation for subsidence damage is to be provided. However, the remedies prescribed for subsidence damage shall not be diminished or waived by contrary provisions in deeds, leases, or documents (other than such subsidence damage agreements) which leave the owner without such prescribed remedies. Provided, however, the provisions of this subsection do not apply to any actions brought for, and in which the trier of the fact finds, intentional, willful, or wanton conduct; provided further, that conduct in substantial compliance with applicable mining permits may not be deemed to be intentional, willful, or wanton.

The above provision establishes that the remedies outlined in section 9–16–91 of ASMCRA are the sole and exclusive remedies available to a surface owner for subsidence damages, unless the operator violates the conditions or provisions of a permit issued under the authority of ASMCRA. It also allows a surface owner and mineral owner or lessee to enter into a subsidence damage agreement that establishes the manner and means that the mineral owner or lessee will provide repair or compensation.

1. *Remedies for Subsidence Damage.* Section 720(a) of SMCRA provides two remedies to surface landowners for material damage caused by subsidence to protected structures and water supplies. First, a coal operator must promptly repair or compensate a surface landowner for any material damage, caused by subsidence, to any occupied dwelling and related structures or non-commercial buildings. Second, a coal operator must promptly replace any drinking, domestic, or residential water supplies that are damaged as a result of subsidence.

Sections 9–16–91(e)(1) and (2) of ASMCRA provide the same remedies to surface landowners for material damage caused by subsidence to protected structures and water supplies that section 720(a) of SMCRA provides. Alabama's amendment at 9–16–91(f) establishes that these remedies found in 9–16–91 are the sole and exclusive remedies available to the surface owner for such damage and its effects as long as the operator is conducting longwall mining or other mining process employing a planned subsidence method in substantial compliance with a permit issued under the authority of ASMCRA. If the operator is found to have engaged in intentional, willful, or wanton conduct that is not in substantial compliance with a permit, the ability to seek additional damages is preserved. We interpret "substantial compliance with the permit" to be equivalent to "compliance with all rules, regulations, orders, and permits."

In a letter dated February 15, 2000 (Administrative Record No. AL–0629), Alabama confirmed that section 9–16–91(f) of ASMCRA does not limit any other remedies available under SMCRA.

The Alabama program contains all the remedies provided for under SMCRA for material damage caused to protected structures and water supplies. In addition, Alabama has stated that the provision does not limit any other remedies available under SMCRA.

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Therefore, we are approving the above provisions concerning remedies for subsidence damage in section 9–16–91(f) of ASMCRA, as clarified by the above interpretations, because the remedies are consistent with and are no less stringent than the remedies provided by section 720(a) of SMCRA. We note that Alabama has established conditions under which a surface owner may obtain additional damages. However, comparable provisions are not found in SMCRA and they do not conflict with any requirements of SMCRA. Therefore, the provisions do not render the Alabama program less stringent than SMCRA and we are approving them.

2. *Subsidence Damage Agreements.* Section 9–16–91(f) of ASMCRA provides for subsidence damage agreements between surface owners and mineral owners or lessees, and further contains a sentence that reads as follows:

> * * * However, the remedies prescribed for subsidence damage shall not be diminished or waived by contrary provisions in deeds, leases, or documents (other than such subsidence damage agreements) which leave the owner without such prescribed remedies * * *

The reference to subsidence damage agreements in the above quoted sentence would be inconsistent with and less stringent than SMCRA if interpreted to allow a surface landowner and mineral owner or lessee to enter into subsidence damage agreements that diminish or waive the surface landowner's right to the remedies prescribed in section 9–16-91 of ASMCRA. This is because sections 515(b)(2) and 516(b)(1) of SMCRA, as well as the implementing Federal regulations at 30 CFR 817.121(c)(1), establish that a permittee has a duty under SMCRA to maintain the value and reasonably foreseeable use of the surface land and to restore all land which is materially damaged by subsidence. Also, section 720(a)(1) of SMCRA and the implementing Federal regulations at 30 CFR 817.121(c)(2) provide that a permittee has a duty to repair or compensate for material damage to non-commercial buildings and occupied residential dwellings. Finally, section 720(a)(2) of SMCRA and its implementing Federal regulation at 30 CFR 817.41(j) provide that a permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities. Nothing can exempt a permittee from any one of these duties.

We stated in a June 1, 1983, **Federal Register** (48 FR 24644) final rule that "the duty to restore land materially damaged by subsidence will apply irrespective of the operator's liability under State law." In addition, in a March 31, 1995, **Federal Register** (62 FR 16735) final rule, we stated, "[a]ny permittee/owner agreements cannot negate the requirement of the Energy Policy Act to repair or compensate for subsidence-related material damage to occupied residential dwellings and related structures as well as non-commercial buildings."

Further, in the March 31, 1995, **Federal Register** (62 FR 16733) final rule, we stated that "the terms of the Energy Policy Act unequivocally require replacement" of water supplies adversely affected by underground mining operations. In other words, surface landowners and mineral owners or lessees may enter into private subsidence damage agreements, but these agreements cannot diminish or waive the surface landowner's right to the remedies prescribed in section 9–16–91 of ASMCRA. To do so would be inconsistent with and less stringent than sections 515(b)(2), 516(b)(1), and 720(a) of SMCRA and its implementing Federal regulations at 30 CFR 817.121(c)(1) and (2) and 817.41(j).

In its letter dated February 15, 2000 (Administrative Record No. AL–0629), Alabama responded to our concerns about the subsidence damage agreements provision in 9–16–91(f) of ASMCRA. The State asserted that the United States Court of Appeals for the District of Columbia had addressed the validity of subsidence damage agreements in its ruling in the case of *National Mining Association (NMA)* v. *Babbit*, No. 98–5320, decided April 27, 1999. Alabama interpreted the court's decision as saying that while a coal operator has an obligation to make full repair or compensation, the affected parties may agree among themselves as to what constitutes full repair or compensation.

In ruling on this issue, the court clearly confirmed OSM's longstanding policy that waiver agreements between surface landowners and underground coal operators cannot diminish or waive the surface landowner's right to full compensation for subsidence related damages to protected structures and water supplies.

We agree with Alabama's interpretation of the court's opinion that a mineral owner or lessee and a surface landowner may execute a pre-subsidence damage agreement in which they agree as to what constitutes full repair or compensation with the stipulation that such agreements do not constitute a waiver of the surface landowner's rights under the Energy Policy Act.

In addition, in a letter dated May 3, 2000 (Administrative Record No. AL–0634), Alabama stated that it recognizes that the Energy Policy Act mandates full compensation or repair for subsidence damage to protected structures and the prompt replacement of water for subsidence damage to protected water supplies. Alabama stated that it does not interpret section 9–16–91(f) to mean that a subsidence damage agreement can negate a surface owner's right to full and fair compensation or repair for subsidence damage to protected structures or replacement of water for subsidence damage to protected water supplies as provided for by the Alabama statutory equivalent to the Energy Policy Act requirements. Alabama further stated that it would take appropriate enforcement action against an operator who fails to fully repair or compensate for subsidence damage to protected structures or who fails to fully replace water for subsidence damage to protected water supplies.

Therefore, based on (1) Alabama's interpretation that the provisions of section 9–16–91(f) allow subsidence damage agreements only insofar as those agreements are consistent with the Energy Policy Act and do not purport to diminish or waive the surface landowner's right to full compensation for subsidence related damages to protected structures and water supplies and (2) Alabama's assurance that it will take appropriate action against an operator who fails to fully repair or compensate for subsidence damage to protected structures or who fails to fully replace water for subsidence damages to protected water supplies, we are approving section 9–16–91(f) of ASMCRA because it is no less stringent than SMCRA.

IV. Summary and Disposition of Comments

Federal Agency Comments

On August 25, 1999, we asked for comments from various Federal agencies who may have an interest in the Alabama amendment (Administrative Record No. AL–0590). We requested comments in accordance with section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations. We did not receive any comments.

Environmental Protection Agency (EPA)

According to 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the proposed program amendment that relate to air or water quality standards put into force under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

According to 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA in a letter dated August 25, 1999 (Administrative Record No. AL–0590). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

According to 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 25, 1999, we requested comments on Alabama's proposed program amendment (Administrative Record No. AL–0590), but neither responded to our request.

Public Comments

We received comments on Alabama's proposed amendment from fourteen individuals and twelve representatives of various groups. The comments consisted of both supporting and opposing statements about the amendment in general, as well as supporting and opposing statements about the specific provisions of the amendment. Further, several of these comments pertained to the impact of SMCRA on Alabama common law. Therefore, for ease of discussion, we will first discuss the comments pertaining to the impact of SMCRA on Alabama common law. Then, we will discuss general comments in favor of Alabama's amendment and general comments opposing Alabama's amendment. Finally, we will discuss comments on specific provisions of the amendment.

A. Comments Pertaining to the Impact of SMCRA on Alabama Common Law

We received several comments, both opposing and supporting the Alabama amendment, that pertained to the impact of SMCRA on Alabama common law. As commenters have informed us, Alabama's common law gives a surface owner an absolute right to subjacent support of the surface absent an express waiver of that right. See *Williams* v. *Gibson*, 4 So. 350 (Ala.1888), *West Pratt Coal Co.* v. *Dorman*, 49 So. 849 (Ala.1909), *Bibby* v. *Bunch*, 58 So. 916 (Ala.1912), and *Alabama Clay Products Co.* v. *Black*, 110 So.151 (Ala.1926). The commenters, however, disagree on the impact that the enactment of SMCRA, including the Energy Policy Act, has on the respective rights of surface owners and the holders of mineral interests.

Citing section 505(a) of SMCRA, supporters of Alabama's amendment argue that the enactment of section 516 of SMCRA and the Alabama counterpart at section 9–16–91 of ASMCRA have preempted the state law pertaining to subjacent support. According to these commenters the state property law is inconsistent with SMCRA since it provides for land use and environmental controls and regulations that are different from those required by SMCRA.

Opponents, on the other hand, argue that the enactment of SMCRA did not impact Alabama's common law. They argue that common law provides more stringent land use and environmental controls and regulations than do the provisions of SMCRA or its implementing regulations. Accordingly, as section 505(b) of SMCRA states, any State law that provides for more stringent land use and environmental controls can not be construed to be inconsistent with SMCRA.

Response: We think that the use of section 505 of SMCRA, whether it be subsection 505(a) or 505(b), to resolve this debate over whether SMCRA preempts the common law of Alabama, however, is inappropriate. Section 505 of SMCRA applies to State laws that directly address matters covered under SMCRA—such as environmental protection standards, reclamation standards, and the like. Section 505(a) was not intended to invalidate as "inconsistent" with SMCRA State common law of property rights which affords protection to surface owners by establishing the property right of the subjacent support.

Generally, preemption analysis is informed by two basic presumptions: (1) that historic police powers of the States are not superseded by the Federal act unless that was the clear and manifest purpose of Congress, and (2) the purpose of Congress is the ultimate touchstone in every preemption case. *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). Congress' intent is primarily discerned from the statutory text and from a "fair understanding" of the statute as a whole by looking at the statutory framework, the structure and purpose of the statute and the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law. *Medtronic* v. *Lohr*, 518 U.S. 470, 485 (1996).

The text and history of SMCRA reveal no "clear and manifest" congressional intent to modify the State common law pertaining to subjacent support. To the contrary, it is an express purpose of SMCRA to establish uniform national standards that will "fully protect the rights of the nation's surface landowners." 30 U.S.C. 1202 (b). It would hardly protect the rights of surface landowners for SMCRA to be interpreted as extinguishing their property right of subjacent support in exchange for more limited protection under SMCRA. Congress expressly indicated, moreover, that the respective property rights of the mineral interest holder and the surface owner are matters beyond the scope of SMCRA. Two separate sections of SMCRA state that SMCRA does not authorize a regulatory authority to resolve property rights disputes. Section 507(b)(9) of SMCRA provides in pertinent part:

> Provided, That nothing in this Act shall be construed as vesting in the regulatory authority the jurisdiction to adjudicate property title disputes;

30 U.S.C. 1257(b)(9). Section 510(b)(6)(C) of SMCRA contains an almost identical proviso:

> Provided, That nothing in this Act shall be construed to authorize the regulatory authority to adjudicate property rights disputes.

30 U.S.C. 1260(b)(6)(C). The legislative history of SMCRA indicates that the proper forum for resolving property rights disputes is the State courts and that it is the State common law that delineates the extent and scope of property rights. See H.R. Conf. Rep. No. 95–493, at 105,106 (1977). Consequently, contrary to the fears of at least one commenter, SMCRA does not authorize the regulatory authority to make a permitting decision that adjudicates a property rights dispute so as to augment the property rights of the mineral interest holder at the expense of the surface owner. See *Citizens Organized Against Longwalling* v. *Division of Reclamation*, 535 N.E.2d 687, 699–700 (Ohio App. 1987) where the Ohio court held that a permit obtained by a coal mine operator to continue longwall mining would not resolve property disputes between the operator and the owners of surface estates, and would not immunize the operator from liability for damages caused by mining pursuant to the permit. If, under Alabama's common law, a particular surface owner in fact possesses the absolute right to subjacent support of the surface absent an express waiver, SMCRA does not authorize a

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decision by the regulatory authority to extinguish that right.

B. General Comments in Favor of Alabama's Amendment

We received comments in favor of Alabama's amendment from five representatives of various coal companies, the Alabama Coal Association, and the State of Alabama Surface Mining Commission (ASMC). All the comments assert that we should approve Alabama's amendment because it is consistent with, and no less stringent than, SMCRA and the existing Alabama program. The comments are discussed below.

1. Several commenters assert that the proposed amendment reflects the Alabama Legislature's intent to modify state law, a power which is entirely within their discretion. Because this is a state matter, the amendment does not run afoul of any federal regulatory purpose. The proposed amendment deals only with a surface owner's right to recover punitive damages in state court, and as such, is entirely a State law matter.

Response: We agree that the amendment reflects the Alabama Legislature's intent to modify state law. However, we disagree that the amendment only deals with a surface owner's right to recover punitive damages in state court. The amendment concerns the repair or compensation to any occupied residential dwelling and related structures or any noncommercial building for material damage caused by subsidence resulting from underground coal mining operations. It also concerns the replacement of protected water supplies that are adversely affected by underground coal mining operations. Both of these issues are addressed in section 720(a) of SMCRA. We are approving Alabama's amendment because it is either no less stringent than SMCRA or is not inconsistent with SMCRA. Please refer to III. Director's Findings.

2. Commenters also believe that the proposed amendment does not give an unfair advantage to Alabama coal mining companies or impose an unfair burden on Alabama landowners. They state that the amendment "fairly balances the legal interests of surface landowners with Alabama's and the Nation's need for coal as an essential source of energy." This balance, the commenters point out, is exactly what SMCRA was designed to provide.

Response: In order to approve amendments to State program statutes, we must ensure that the amendments are consistent with and no less stringent than SMCRA or are not inconsistent with it. We believe that Alabama's amendment meets these criteria and we are approving it. Please refer to III. Director's Findings.

3. One commenter asserts that if the proposed amendment is not approved, the underground mining industry in Alabama will shut down. He writes, "[d]eath of an industry was not the purpose of the carefully crafted federal and state programs now in place."

Response: We agree that the demise of the underground mining industry in Alabama or any other State was not the purpose of the federal and state programs. Indeed, section 102(k) of SMCRA encourages the full use of coal resources through the development and application of underground extraction technologies. Therefore, we carefully review state statute amendments in light of SMCRA, including section 102(k), to ensure that they are consistent with and are no less stringent than SMCRA or are not inconsistent with it.

4. Several commenters allege that before the enactment of SMCRA and Alabama's counterpart to SMCRA, Alabama common law provided that coal mine operators could not subside the land unless they had the express permission of the surface owners. They state that the enactment of section 516 of SMCRA and the Alabama counterpart at section 9–16–91 of ASMCRA changed the applicability of Alabama's common law. They contend that the Federal and State Acts now allow coal mine operators to subside the land without the express consent of the surface owners, and provide specific remedies for correcting any damages that might result from such subsidence. The existing common law provision, they explain, is therefore inconsistent with SMCRA and the Alabama counterpart to SMCRA. The commenters further explain that section 505(a) of SMCRA states that SMCRA supercedes any state law that is inconsistent with its provisions. Therefore, the commenters maintain that Alabama's common law is superceded by SMCRA and Alabama's counterpart to SMCRA. The current proposed changes to Alabama's program merely "eliminates the application of inconsistent and contrary State law" which SMCRA specifically prohibits in the first place.

Response: Please refer to our response at IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law.*

5. Some commenters point out that the proposed amendment does not seek to lessen the federal requirements. They maintain that it "does not alter in any way a surface owner's right, or a coal company's obligation, to 'repair or compensation' for damages caused by subsidence."

Response: We agree that Alabama's proposed revisions and additions at section 9–16–91(e) of ASMCRA do not affect a surface owner's right or a coal company's obligation to repair or compensation for damages caused by subsidence. Please refer to III. Director's Findings A. through C. Neither does section 9–16–91(f) of ASMCRA that pertains to the remedies for subsidence damage affect a surface owner's right or a coal company's obligation to repair or compensation for damages caused by subsidence in light of Alabama's statement in its letter dated May 3, 2000, that it will take appropriate enforcement action against an operator who fails to fully repair or compensate for subsidence damage to protected structures or who fails to fully replace water for subsidence damage to protected water supplies. Please refer to III. Director's Findings D.

6. Finally, many commenters argue that the amendment merely clarifies what is implicit in both the state and federal regulatory schemes—that the remedies for damages caused by subsidence outlined in section 9–16–91 of ASMCRA are the "only" remedies available to surface owners. One commenter wrote, "The amendment simply makes clear that the 'repair or compensation' remedy available to surface owners for subsidence related damages is generally exclusive." The amendment clarifies that a surface owner cannot seek punitive damages in state court for subsidence related damage if the mining company is in substantial compliance with its mining permit. The remedy for the surface owner is the repair or compensation provisions of SMCRA.

Response: Nothing in SMCRA or the implementing Federal regulations explicitly or implicitly limits the remedies available to surface landowners for damages to protected structures and water supplies caused by subsidence to only those listed at sections 516 and 720 of SMCRA and the Federal regulations at 30 CFR 817.121(c). SMCRA provides minimum standards for repair and compensation of subsidence related damage to protected structures and for replacement of protected water supplies. States must, at the very least, adopt these minimum standards. Any remedies available under State law which exceed the minimum requirements set forth in SMCRA are not changed by SMCRA. However, a State may change or limit only those available remedies that exceed those found in SMCRA without violating SMCRA. As discussed in III. Director's Findings, Alabama's program provides these minimum standards.

C. General Comments Opposing Alabama's Amendment

We received comments from fourteen individuals, two attorneys representing surface landowners, and representatives from five organizations (the Alabama Farmers Federation, WildLaw, the Alabama Environmental Council, Friends of Hurricane Creek, and the Citizen's Coal Council). These individuals and groups oppose Alabama's amendment and assert that we should disapprove it because it is inconsistent with and less stringent than SMCRA and the existing Alabama program. The comments are discussed below.

1. Many commenters contend that the amendment is unconstitutional because it: (1) Deprives property owners of their property without due process; (2) is an ex post facto law; (3) does not distinguish between the two types of surface rights ownership in Alabama: surface rights that require surface support and surface rights where mineral release is a statement on the deed; (4) gives coal companies the right of eminent domain; (5) gives coal companies the private right of condemnation; (6) prevents property owners from suing; (7) prevents any relief from the violation of their surface rights; (8) is an unconstitutional interference with contracts; and (9) is an unconstitutional redrafting of the common law.

Response: We found that we can approve the amendment. Please refer to III. Director's Findings. Also, in approving or disapproving any amendment, we can only consider whether the amendment satisfies the applicable program and amendment approval criteria of 30 CFR 732.15 and 732.17(h)(10). The constitutionality of changes to State law cannot be determined by OSM, but must be addressed by the institutions of the State with the authority to determine such issues.

2. One commenter asserts that if unlimited power of destruction is given to the coal companies, then it must also be given to any other big company that wants it. There will be no end to it. He writes, "Act 99–593 could be the most devastating act ever introduced and passed through legislature, and if approved, would no doubt be the greatest threat to landownership ever recorded in history."

Response: In section 102 of SMCRA, two of the purposes of SMCRA are to assure that: (1) The rights of surface landowners and other persons with a legal interest in the land or its related appurtenances are fully protected from the adverse effects of coal mining operations and (2) the coal supply essential to the Nation's energy requirements and its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy. Therefore, we carefully review state statute amendments in light of SMCRA to ensure that they are consistent with and are no less stringent than SMCRA or are not inconsistent with SMCRA. Please refer to III. Director's Findings.

3. Commenters also contend that the amendment would exempt coal companies from having to pay penalties and compensatory damages for subsidence on land, or prevent compensation in the full amount of the diminution in value resulting from subsidence. One commenter states that the amendment allows coal companies to set their own standards as to what constitutes repair to a house or structure.

Response: We disagree that the amendment prevents compensation in the full amount of the diminution in value resulting from subsidence or allows coal companies to set their own standards as to what constitutes repair to a house or structure. As stated in III. Director's Findings, Alabama's proposed revisions to sections 9–16–91(e)(1), (e)(3), (e)(4), and (f) of ASMCRA which pertain to the repair and compensation for material damage to protected structures and water supplies caused by subsidence and subsidence damage agreements are no less stringent than or are not inconsistent with SMCRA. To the extent that the amendment affects Alabama law concerning penalties for subsidence on land, other than repair, compensation, or replacement required by SMCRA sections 515(b)(2), 516(b)(1), and 720(a), such penalties are beyond the scope of SMCRA. Also, please refer to IV. Summary and Disposition of Comments *Public Comments* B.5. and B.6.

4. Another commenter expressed a concern about the lack of balance in this law. He writes, "Under normal punitive damage laws, it is normal that if you take from one group, you give something to the other group. This law does not allow for that."

Response: Please refer to our response at IV. Summary and Disposition of Comments *Public Comments* C.2. and C.3.

5. One commenter asserts that the amendment is inconsistent with the basic premise of SMCRA, which is to regulate. He writes, "The changes proposed by the Act do nothing to regulate or to control [the coal] industry. Instead, the Act takes one activity of the industry—which is not currently controlled by the regulatory authority because of the interpretation and enforcement of SMCRA—and removes all other restraint on that activity. The sole purpose of this change is to give underground coal operators the right to lawfully subside property without purchasing that right from the surface owner. It turns a regulatory act into an enabling act."

Response: Although one of the premises of SMCRA involves regulating coal mining operations, other premises exist. Section 102(b) of SMCRA involves fully protecting the rights of surface landowners and other persons with a legal interest in the land or its related appurtenances from the adverse effects of coal mining operations. It is our responsibility when reviewing and approving amendments to State program statutes to make sure that the amendments are no less stringent than or are not inconsistent with SMCRA. We found that Alabama's proposed amendments in sections 9–16–91(e) and (f) of ASMCRA that pertain to the repair and compensation for material damage to protected structures and water supplies and subsidence damage agreements meet this requirement. Please refer to III. Director's Findings.

6. One commenter argues that the amendment is inconsistent with the Energy Policy Act of 1992 which added US Code section 1309(a) to SMCRA. The Energy Policy Act created federal substantive rights that extend beyond the protections afforded by inconsistent or less protective state laws. Accordingly, "[s]ection 1309(a) rights are remedial—not preventative—and were intended to serve as additional rights—not replacement rights." The commenter argues that the proposed amendment attempts to interpret section 1309(a) of SMCRA to preempt all rights and remedies a surface owner has that are not expressly provided by SMCRA. Clearly, this is inconsistent with the purposes of SMCRA as amended by the Energy Policy Act.

Response: The purpose of section 720(a), which was added to SMCRA by the Energy Policy Act, is to establish minimum standards for the repair of or compensation for material damage to protected structures and water supplies caused by subsidence. Remedies under State law which exceed these standards are unaffected by SMCRA. As stated in III. Director's Findings D.1., Alabama provides the minimum standards for

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repair or compensation. Therefore, we are approving this provision of Alabama's amendment.

In response to questions concerning the impact of SMCRA on State laws, please refer to IV. Summary and Disposition of Comments *Public Comments* A.

7. One commenter also asserts that the amendment is inconsistent with the fundamental principle that SMCRA is a minimum standard that cannot preempt more stringent State laws. He argues that the only real protection a surface landowner in Alabama has from subsidence is found outside of SMCRA under the Alabama common law. This common law, which is more stringent than SMCRA, allows a surface owner an absolute right to support and full recovery of damages for subsidence. The commenter argues that since section 505(a) of SMCRA prohibits the Federal Act from superceding any more stringent State law, Alabama's counterpart to SMCRA cannot supercede any more stringent State law. Therefore, the proposed amendment, which would supercede Alabama common law, makes Alabama's Act less stringent than SMCRA.

Response: We have addressed the impact of SMCRA on State laws in IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law*. The changes to State law contained in section 9–16-91 of ASMCRA and enacted by the Alabama legislature do not conflict with the requirements of SMCRA. In approving or disapproving any amendment, we can only consider whether the amendment satisfies the applicable program and amendment approval criteria of 30 CFR 732.15 and 732.17(h)(10). We found that Alabama's proposed amendments in sections 9–16–91(e) and (f) of ASMCRA that pertain to the repair and compensation for material damage to protected structures and water supplies and subsidence damage agreements meet this requirement. Please refer to III. Director's Findings.

8. Two commenters contend that the intention of SMCRA, demonstrated at 30 U.S.C. 1255, 1270(e) and (f), 1271(d), and Public Law 102–486, Title XXV, § 2504(a)(2), was to leave in place all common, property, contract, and tort laws.

Response: Please refer to our response at IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law* for a discussion of the impact of SMCRA on State law.

9. Commenters contend that the amendment gives the Alabama regulatory authority the right to adjudicate property disputes, which is specifically prohibited in both federal and state law. One commenter writes, "If the changes are approved, the [regulatory authority] will have the power to renegotiate deeds that are eighty years old in favor of the mineral owner merely by the grant of a permit to the operator." Since ASMC does not engage in any determination of whether an applicant has a right to subside in considering whether or not to grant a mining permit, it will allow the operator to decide unilaterally that the surface owner is not entitled to support of the surface. In effect, ASMC will have the jurisdiction to adjudicate title disputes without a hearing, without input from the surface owner, and will strip that surface owner of his right to be heard and strip his right to a jury.

Response: We disagree that this amendment gives the Alabama regulatory authority the right to adjudicate property disputes by the mere issuance of a mining permit. Nothing in the amendment addresses adjudication of property disputes. Further, the issuance of a permit does not automatically settle property disputes. Such disputes can be settled only in accordance with the appropriate State law. Please refer to our response at IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law* for a discussion of the impact of SMCRA on State laws.

10. One commenter suggests that if the proposed changes are accepted to any degree, it should be made clear that the changes apply only to those who have already waived their surface support right and not to those who have not waived it.

Response: Again, property rights issues are not addressed in SMCRA. Property rights are the topic of Alabama law. Please refer to our response at IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law* for a discussion of the impact of SMCRA on State laws.

11. Opponents contend that the proposed amendment is inconsistent with sections 101, 102, and 520(e) of SMCRA.

Response: We did not find that the above referenced sections of SMCRA were affected by changes to section 9–16–91 of ASMCRA. Therefore, we did not find that Alabama's amendment was inconsistent with or less stringent than any of the above referenced sections. Please refer to III. Director's Findings.

D. Comments on Specific Provisions of Alabama's Amendment

1. *Section 9–16–91(e)(1).* We received comments from three people on this section of Alabama's amendment. The first commenter stated that the provision in this section is fully consistent with the Energy Policy Act of 1992. Another commenter asserted that subparagraph (e)(1) merely makes modest amendments to language in the paragraph and does not make any substantive changes. Because the provision was previously approved by OSM as no less stringent than SMCRA, it should be approved in this instance. However, a third commenter questioned why Alabama is making changes in the language that was substantively identical to the language at the Federal counterpart if there are no changes to the substance of this provision.

Response: As stated in III. Director's Findings A., Alabama's revision at section 9–16-91(e)(1) involves minor wording changes to a previously approved statute, that do not change its meaning. Therefore, we are approving the revision because it is no less stringent than the Federal statute at section 720(a)(1) of SMCRA.

2. *Section 9–16–91(e)(3).* We received comments from two people on this section of Alabama's amendment. The first commenter stated that the provision extends a state legislative mandate to the existing requirement at section 880–X–10D–.58 of Alabama's surface mining regulations. Similarly, the second commenter contended that subparagraph (e)(3) is a necessary addition to the State program to make it compliant with the Federal regulation at 30 CFR 817.121(c)(1).

Response: As stated in III. Director's Findings B., we do not have a counterpart Federal provision in SMCRA for Alabama's section 9–16–91(e)(3) of ASMCRA. However, the provision is consistent with certain requirements of section 516(b)(1) of SMCRA and the language is substantively identical to the Federal regulations at 30 CFR 817.121(c). We are approving the addition of this provision to Alabama's statutes because it is consistent with our Federal regulations and statutes and will not make the Alabama statutes less stringent than the Federal statutes.

3. *Section 9–16–91(e)(4).* We received comments from two people on this section of Alabama's amendment. The first commenter stated that this new section makes no change to existing State program requirements. The second commenter contended that new subparagraph (e)(4), as required and consistent with 30 CFR 732.15(d), merely clarifies and established ASMC's authority to enforce the subsidence control requirements in section 9–16–91 of ASMCRA.

Response: As stated in III. Director's Findings C., we do not have a counterpart Federal statute in SMCRA for Alabama's statute addition at section 9–16–91(e)(4) of ASMCRA. However, Alabama's intent by adding this provision is to make it clear that it has the power to enforce the provision of section 9–16–91 of ASMCRA. We are approving this statute because it is not inconsistent with our Federal regulations or statutes and will not make the Alabama statutes less stringent than the Federal statutes.

4. *Section 9–16–91(f).* a. Supporting Comments. (1) Commenters contend that this particular provision represents an expression of the state legislative will in regards to the rights of the potentially aggrieved persons to seek and obtain particular remedies through the state civil justice system. Since the provision is in the nature of a civil damage limitation statute and has no direct bearing on the regulation of coal mining operations, review or approval by the Department of Interior should not be required in order for it to become law.

Response: We disagree with the assertion that Alabama's amendment does not require review or approval by the Department of the Interior. The provisions at 30 CFR 732.17(g) require States to submit any changes to their laws or regulations concerning their approved surface mining programs to the Director of OSM (Director) for review and approval. Further, no changes in a State's law or regulations concerning surface mining can take effect until such time as the Director approves them. Section 9–16–91(f) of ASMCRA is a revision to Alabama's Surface Mining Act. The revisions contained in section 9–16–91 of ASMCRA involve substantive changes to Alabama's surface mining regulatory program and, therefore, require our review and approval. We agree that certain aspects of the statute involve matters that are not covered by SMCRA. As discussed in III. Director's Findings D. we have approved changes to section 9–16–91(f) of ASMCRA because they are consistent with or do not conflict with provisions contained in SMCRA. While we have approved the changes, we made no judgment on changes that do not relate to or conflict with SMCRA.

(2) Commenters also assert that this provision does not impose any additional burdens or responsibilities on the State Regulatory Authority and does not undermine the requirements of the state and federal statutes that coal operators fully compensate or repair subsidence related damage to protected structures or water supplies. Since section 9–16–91 of ASMCRA does not limit, proscribe, eliminate, amend or otherwise alter performance standards or subsidence remedies established by SMCRA, it meets the requirements of 30 CFR 732.15(a) and (c), and is consistent with or no less stringent than SMCRA.

Response: We agree that Alabama's proposed revisions and additions at section 9–16–91(e) and (f) of ASMCRA do not affect a coal company's obligation to repair or compensate for damages caused by subsidence. Please refer to III. Director's Findings.

(3) Many commenters argue that because SMCRA does not explicitly provide any right to recover punitive damages as compensation for subsidence effects, it implicitly limits a surface owner's right to full compensation or repair for subsidence damage and nothing more. One commenter writes, "[n]either SMCRA nor the regulations thereunder provide that operators of underground coal mines shall 'repair or compensate' and pay such additional damages as a jury may assess for punishment or otherwise." Thus, section 9–16–91(f) merely makes specific what was implied by SMCRA.

Response: Nothing in SMCRA or the implementing Federal regulations explicitly or implicitly limits the remedies available to surface landowners for damages to protected structures and water supplies caused by subsidence to only those listed at sections 516 and 720 of SMCRA and the Federal regulations at 30 CFR 817.121(c). SMCRA provides minimum standards for repair and compensation of subsidence related damage to protected structures and for replacement of protected water supplies. States must, at the very least, adopt these minimum standards. Any remedies available under State law which exceed the minimum requirements set forth in SMCRA are not changed by SMCRA. However, a State may change or limit only those available remedies that exceed those found in SMCRA without violating SMCRA. As discussed in III. Director's Findings, Alabama's program provides these minimum standards.

(4) Many commenters state that Alabama's common law is different from SMCRA because it requires a coal mine operator to get the express permission of the surface owner before subsiding the land. Supporters contend that SMCRA does not require this. One commenter points to a 1997 proposed rule published by OSM (62 FR 4864) as proof that SMCRA and the implementing regulations do not require coal mine operators to obtain the consent of surface owners to subside the land. The existing common law provision, therefore, is inconsistent with SMCRA and the Alabama counterpart. Section 505(a) of SMCRA states that SMCRA supercedes any state law that is inconsistent with its provisions. Therefore, the common law is superceded by SMCRA and Alabama's counterpart. The addition of this section just makes it clear that the common law is superceded.

Response: Please refer to our response to the comment at IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law*.

(5) One commenter states that a surface owner in Alabama should not be allowed to recover punitive damages for subsidence damage because Congress specifically encourages longwall mining.

Response: SMCRA does not specifically encourage longwall mining, but at section 102(k) "encourages the full utilization of coal resources through the development and application of underground extraction technologies." Further, section 520(e) of SMCRA does not restrict the right that any person (or class of persons) may have under any State statute or common law to seek enforcement of any of the provisions of SMCRA and its implementing regulations or to seek any other relief available under State law. The limitation of additional damages as related to certain types of mining is a matter outside the scope of SMCRA.

(6) Finally, commenters contend that current Alabama common law is more stringent than SMCRA because it allows for the recovery of punitive damages. This is inconsistent with Alabama's surface mining law that states that its rules and regulations cannot be more stringent than the federal surface mining law.

Response: In approving or disapproving any amendment, we can only consider whether the amendment satisfies the applicable program and amendment approval criteria of 30 CFR 732.15 and 732.17(h)(10). The stringency of an amendment compared to other State laws is not relevant to this amendment. Therefore, we cannot consider it in our decision making.

b. Opposing Comments. (1) Opponents question the constitutionality of this provision. One commenter states that "[b]y restricting

punitive damages in the fashion proposed, the landowners' constitutional rights are violated." Another commenter states that this section "will not withstand constitutional challenges, either under Alabama's constitution or the federal constitution, because it is an unlawful taking of property, favors one class of citizens over another, and violates the landowner's right to a jury trial through its limitations on damages."

Response: In approving or disapproving any amendment, we can only consider whether the amendment satisfies the applicable program and amendment approval criteria of 30 CFR 732.15 and 732.17(h)(10). The constitutionality of an amendment is something that must be addressed by the institutions in the State with the authority to determine such issues.

(2) Several commenters argue that because SMCRA does not explicitly limit a surface owner's right to full compensation or repair for subsidence damage and nothing more, it implicitly allows surface owners to seek punitive damages as compensation for subsidence effects. Section 9–16–91(f) of ASMCRA narrows a surface owner's common law and remedial rights in direct contravention of this implicit congressional intent.

Response: Nothing in SMCRA or the implementing Federal regulations explicitly or implicitly limits the remedies available to surface landowners for damages to protected structures and water supplies caused by subsidence to only those listed at sections 516 and 720 of SMCRA and the Federal regulations at 30 CFR 817.121(c). Section 520(e) of SMCRA does not restrict the right that any person (or class of persons) may have under any State statute or common law to seek enforcement of any of the provisions of SMCRA and its implementing regulations or to seek any other relief under State law. The changes to State law in section 9–16–91 of ASMCRA as enacted by the Alabama legislature and as clarified by us and Alabama do not conflict with the requirements found in SMCRA. Please refer to III. Director's Findings.

(3) Several commenters also point out that SMCRA exists to regulate the mining industry, yet this provision does nothing to add to that regulation. Instead, it provides civil justice reform to allow the industry to violate surface owners' rights with impunity. Opponents contend that civil justice reform does not belong in a regulatory Act. One commenter writes, "[l]et SMCRA regulate mining industry and let the surface owner's damages be governed by the substantive law of property, contracts, tort and damages." Another commenter stated that he was disturbed by the attempt to use SMCRA as a vehicle for tort reform in Alabama.

Response: In approving or disapproving any amendment, we can only consider whether the amendment satisfies the applicable program and amendment approval criteria of 30 CFR 732.15 and 732.17(h)(10). Section 720 of SMCRA provides minimum standards that underground coal operators must adhere to regarding the repair and compensation for subsidence damage to protected structures and replacement of water for subsidence damage to protected water supplies. In part, section 9–16–91(f) of ASMCRA pertains to the remedies for subsidence damage and subsidence damage agreements and does not conflict with SMCRA. We are approving these provisions because they are no less stringent than the corresponding provisions in SMCRA. Please refer to III. Director's Findings D.

(4) Some commenters acknowledge that this provision may not affect the day-to-day operation of ASMC, but believe it will have a great impact on ASMC's ability to control the mining industry because it removes all deterrents on subsidence. One commenter writes, "The purpose of punitive damages is not to compensate for the injury suffered, but rather to punish the defendant for his conduct and to deter the defendant and others from engaging in the same conduct. If a coal mining company engages in activities that would subject it to punitive damages, then it deserves to be punished just like every other industry operating within Alabama. What will come of landowners rights if the only potential deterrent is removed?" Another commenter states that this provision allows underground mining companies to intentionally take the domestic water supplies from the landowners and force the landowners into long and costly legal battles with little adverse economic consequences. A third commenter points out that this provision eliminates a mining company's liability for damage to personal property, damage to physical injury, or wrongful death or emotional distress.

Response: For damage caused by subsidence, section 720 of SMCRA only requires coal companies to compensate or repair for material damage to protected structures and to replace for damage to protected water supplies. As stated in III. Director's Findings, Alabama's program provides these remedies. Any additional remedies including punitive damages are beyond the scope of SMCRA. However, section 520(e) of SMCRA allows any person (or class of persons) to seek enforcement of any of the provisions of SMCRA or any other relief that he or she may have under State statute or common law. Any remedies under State law which exceed the minimum requirements set forth in SMCRA are not changed by SMCRA. However, a State may change or limit only those remedies that exceed those found in SMCRA without violating SMCRA.

(5) Other commenters believe that while the provision will not inhibit the remedial requirements to repair or compensate for damages to structures, it will undermine the purpose of SMCRA—to fully protect the rights of surface landowners. One commenter writes, "This approach of limiting remedies for actual damage suffered simply does not provide adequate protection for surface property owners."

Response: Please refer to our response to comment number four (4) of this section.

(6) Some commenters state that this provision is especially unfair to those landowners that have the absolute right to support of their surface in its natural state. One commenter contends that section 9–16–91(f) does not provide adequate protection for those persons whose property has been damaged by underground mining operations and have not waived their rights to the support of their surface interests through appropriate contractual provisions. Another commenter writes, "statutory remedies provided under a legislative act should not necessarily be the exclusive method used in determining the amount of recoverable damages in cases where the surface owner has not waived his or her right of support and where his property is, in fact, permanently and severely damaged."

Response: For damage caused by subsidence, section 720 of SMCRA only requires coal companies to compensate or repair for material damage to protected structures and to replace for damage to protected water supplies. As stated in III. Director's Findings, Alabama's program provides these remedies. Any additional remedies including punitive damages are beyond the scope of SMCRA. However, section 520(e) of SMCRA allows any person (or class of persons) to seek enforcement of any of the provisions of SMCRA or any other relief that he or she may have under State statute or common law. Any remedies under State law which exceed the minimum requirements set forth in SMCRA are not changed by SMCRA. However, a State may change or limit only those remedies that exceed those found in SMCRA without violating SMCRA. In addition, sections 507(b)(9) and 510(b)(6)(C) of SMCRA clearly provide that nothing in SMCRA shall be construed to authorize the regulatory authority to adjudicate property rights or title disputes. Instead, matters concerning these issues are to be determined in accordance with State law. Changes in property rights or title disputes must be addressed by the institutions in the State with responsibilities for resolving such issues. Also, please refer to IV. Summary and Disposition of Comments *Public Comments* A. *Comments Pertaining to the Impact of SMCRA on Alabama Common Law.*

(7) One commenter asserts that actual cost of repair of an existing structure does not always reflect the actual loss of value that the structure may have suffered as a result of undermining. He writes, "The language of the Act in this provision would apparently lead to the especially bizarre result that no recovery at all would be available in situations where damage is particularly severe." Further, the commenter points out that the value of land typically includes not only the current use of the land, but also any potential future use. This provision would not allow these values to be taken into account when determining the loss in value of property as a result of subsidence. The commenter concludes that this provision is "grossly unfair to the surface landowner and amounts to a serious deprivation of important property rights that have been traditionally and are otherwise presently protected by Alabama law."

Response: For damage caused by subsidence, section 720 of SMCRA only requires coal companies to compensate or repair for material damage to protected structures and to replace for damage to protected water supplies. As stated in III. Director's Findings, Alabama's program provides these remedies. Any additional remedies including punitive damages are beyond the scope of SMCRA. However, section 520(e) of SMCRA allows any person (or class of persons) to seek enforcement of any of the provisions of SMCRA or any other relief that he or she may have under State statute or common law. Any remedies under State law which exceed the minimum requirements set forth in SMCRA are not changed by SMCRA. However, a State may change or limit only those remedies that exceed those found in SMCRA without violating SMCRA.

(8) One commenter states that the limitation of punitive damages is not inappropriate as a general manner. However, in cases where fraud or misrepresentation has served as the basis for the permit, the ability of a surface owner to seek and obtain punitive damages should not be limited. The commenter believes that Alabama needs to clarify the language in this section to make it clear that punitive damages are limited only in cases where lawful activities are being undertaken.

Response: We believe that Alabama's amendment makes it clear that the provisions at section 9–16–91(f) only apply in cases where lawful activities are being undertaken. If the operator is found to have engaged in intentional, willful, or wanton conduct that is not in substantial compliance with a permit, the ability to seek additional damages is preserved. Please refer to III. Director's Findings D.1.

V. Director's Decision

Based on the above findings, we are approving the amendments to the Alabama program.

To implement this decision, we are amending the Federal regulations at 30 CFR part 901, which codify decisions concerning the Alabama program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Alabama to bring its program into conformity with the Federal standards without undue delay. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously

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promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 16, 2000.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 901 is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
. .	. .	. .
August 17, 1999	June 8, 2000	ASMCRA sections 9–16–91(e)(1), (e)(3), (e)(4); and (f)

[FR Doc. 00–14359 Filed 6–7–00; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–00–001]

RIN–2115–AE47

Drawbridge Operation Regulations; Pine River (Charlevoix), Michigan

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule, confirmation of effective date.

SUMMARY: On March 22, 2000, the Coast Guard published a direct final rule (65 FR 15238, CGD09–00–001) in the **Federal Register**. This direct final rule notified the public of the Coast Guard's intent to revise the operating regulations governing the U.S. Route 31 bridge, mile 0.3 over Pine River in Charlevoix, Michigan, to alleviate vehicular traffic congestion during the peak tourist season while still providing for the reasonable needs of navigation. The Coast Guard has not received any adverse comments or any notice of intent to submit adverse comments objecting to this rule as written. Therefore, this rule will go into effect as scheduled.

DATES: The effective date of the direct final rule is confirmed as June 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Ninth Coast Guard District (obr), at (216) 902–6084.

Dated: May 24, 2000.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 00–14154 Filed 6–7–00; 8:45 am]
BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–137]

RIN 2115–AA97

Safety Zone: Fireworks Display, New York Harbor, Ellis Island

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display located on New York Harbor. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of New York Harbor.

DATES: This rule is effective from 8 p.m. (e.s.t.) until 9:30 p.m. (e.s.t.) on June 28, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–137) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4012.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM. Further, it is a local event with minimal impact on the waterway, vessels may still transit through New York Harbor during the event, the zone is only in affect for 1½ hours and vessels can be given permission to transit the zone except for about 45 minutes during this time. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: it is a local event with minimal impact on the waterway, vessels may still transit through New York Harbor during the event, the zone is only in affect for 1½ hours and vessels can be given permission to transit the zone except for about 45 minutes during this time. Vessel traffic will still be able to transit through Anchorage Channel as it is unaffected by this zone. Vessels will still be able to anchor in Federal Anchorage No. 20–B, to the north, and 20–C, to the south. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Background and Purpose

The Coast Guard has received an application to hold a fireworks program on the waters of New York Harbor. This regulation establishes a safety zone in all waters of New York Harbor within a 180-yard radius of the fireworks barge in approximate position 40°41′40.3″N, 074°02′33.5″W (NAD 1983), about 235 yards south of Ellis Island. The safety zone is in effect from 8 p.m. (e.s.t.) until 9:30 p.m. (e.s.t.) on Wednesday, June 28, 2000. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of New York Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will still be able to transit through Anchorage Channel as it is unaffected by this zone. Additionally, vessels will still be able to anchor in Federal Anchorage No. 20–B, to the north, and 20–C, to the south. This safety zone precludes the waterway users from entering only the safety zone itself. Public notifications will be made prior to the event via the Local Notice to Mariners.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through New York Harbor during the event, that vessels may still anchor in Federal Anchorage No. 20–B, to the north, and 20–C, to the south, that vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone, and advance notifications which will be made.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 6″ mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–137 to read as follows:

§ 165.T01–137 Safety Zone: Fireworks Display, New York Harbor, Ellis Island.

(a) *Location.* The following area is a safety zone: All waters of New York Harbor within a 180-yard radius of the fireworks barge in approximate position 40°41′40.3″ N 074°02′33.5″ W (NAD 1983), about 235 yards south of Ellis Island.

(b) *Effective period.* This section is effective from 8 p.m. (e.s.t.) until 9:30 p.m. (e.s.t.) on June 28, 2000. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 30, 2000.

R.E. Bennis,

Captain; U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–14508 Filed 6–7–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–005]

RIN 2115–AA97

Safety Zone: Coast Guard Activities New York Annual Fireworks Displays

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing five permanent safety zones for annual fireworks displays located on Sandy Hook Bay, Rondout Creek, Hempstead Harbor, the Arthur Kill, and the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in a portion of Sandy Hook Bay, Rondout Creek, Hempstead Harbor, the Arthur Kill, and the Hudson River.

DATES: This rule is effective June 8, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–005) and are available for inspection or copying at Waterways Oversight Branch, room 204, Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, NY between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 26, 2000, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Coast Guard Activities New York Annual Fireworks Displays in the **Federal Register** (65 FR 24436). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: They are locally supported, annual events with minimal impact on the waterways, the zones are only in affect for 1½ hours and vessels can be given permission to transit the zones except for about 45 minutes during this time, the public was additionally notified of the NPRM via the First Coast Guard District Local Notice to Mariners Number 019, dated May 9, 2000. Additionally, vessel traffic can transit around the safety zones with the exception of the locations in Sandy Hook Bay and Rondout Creek, vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zones with the exception of the locations in Sandy Hook Bay and Rondout Creek. The sponsors of the displays held in Highlands, NJ and Kingston, NY reported they have not received any objections from the public for these annual displays dating back to 1997. The display in Highlands, NJ has been held in the same location for 5 years and the display in Kingston, NY has been held in the same location for 10 years.

Background and Purpose

The Coast Guard is establishing five permanent safety zones that will be activated for fireworks displays occurring at the same location and time on an annual basis. The five locations are Highlands, New Jersey in Sandy Hook Bay; Kingston, New York on Rondout Creek; Glen Cove, New York on Hempstead Harbor; Elizabeth, New Jersey on the Arthur Kill; and Yonkers, New York on the Hudson River. Establishing permanent safety zones by notice and comment rulemaking gives the public the opportunity to comment on the zones, provides better notice than promulgating temporary rules annually, and decreases the amount of annual paperwork required for these events. The Coast Guard has received no prior notice of any impact caused by the previous events.

The sizes of these safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 5–12 inch mortars fired from a barge or shore, combined with the Coast Guard's knowledge of tide and current conditions in these areas. The five safety zones are:

Clamfest Fireworks, Highlands, New Jersey, Sandy Hook Bay

The Highlands Chamber of Commerce and Seastreak America sponsor this annual fireworks display. The safety zone in Sandy Hook Bay includes all waters of Sandy Hook Bay and the Shrewsbury River Channel within a 150-yard radius of the fireworks barge in approximate position 40°24′34″ N 073°59′45″ W (NAD 1983), about 140 yards south of Shrewsbury River Channel Lighted Buoy 9 (LLNR 35775). The regulation is effective annually from 8 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on the Saturday before Father's Day. The safety zone closes a portion of southern Sandy Hook Bay and the Shrewsbury River Channel and will prevent marine traffic from transiting a portion of these two areas. It is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area.

Kingston, New York Fireworks, Rondout Creek

The city of Kingston, New York sponsors this annual fireworks display. The safety zone in Rondout Creek includes all waters of Rondout Creek between the Kingston-Port Ewen Bridge (mile 1.1) and the Kingston-US 9 Bridge (mile 1.3). The fireworks are fired from shore at the Kingston Municipal Docks. The regulation is effective annually from 8 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on the last Sunday in June. The safety zone closes a portion of Rondout Creek and prevents marine traffic from transiting the area. It is needed to protect boaters from the hazards associated with fireworks launched from shore in the area.

Glen Cove, New York July 4th Fireworks, Hempstead Harbor

The city of Glen Cove sponsors this annual fireworks display. The safety zone in Hempstead Harbor includes all waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″ N 073°39′34″ W (NAD 1983), about 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065). The regulation is effective annually from 8 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on July 1st, 2nd, 3rd, 4th, and 5th. The safety zone prevents

vessels from transiting a portion of Hempstead Harbor, and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 1,075 yards of the 1,435-yard wide Hempstead Harbor during the event. Additionally, vessels are not precluded from getting underway from public or private facilities at Glen Cove or Red Spring Point, NY, in the vicinity of this event.

Yonkers, New York Fireworks, Hudson River

The safety zone west of Yonkers includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°56′14.5″ N 073°54′33″ W (NAD 1983), about 475 yards northwest of Yonkers Municipal Pier, New York. The regulation is effective annually from 8 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on July 4th and the third Saturday of September. If either event is canceled due to inclement weather, then this event will be held on July 5th and the third Sunday of September. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 715 yards and eastern 115 yards of the 1550 yard-wide Hudson River during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone.

Elizabeth, New Jersey July 4th Fireworks, Arthur Kill

The city of Elizabeth sponsors this annual fireworks display. The safety zone on the Arthur Kill includes all waters of the Arthur Kill within a 150-yard radius of the fireworks land shoot in Elizabeth, New Jersey, in approximate position 40°38′50″ N 074°10′58″ W (NAD 1983), about 675 yards west of Arthur Kill Channel Buoy 20 (LLNR 36780). The regulation is effective annually from 8 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on July 4th. If the event is canceled due to inclement weather, then this event will be held on July 5th. The safety zone prevents vessels from transiting a portion of the Arthur Kill, and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through the southern 90 yards of the Arthur Kill opposite the display site in Elizabeth, New Jersey during the event. Additionally, vessels will not be precluded from mooring at or getting underway from any piers in the vicinity of the safety zone.

The effective period for each proposed safety zone is from 8 p.m. (e.s.t.) to 11 p.m. (e.s.t.) However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners from the zones' activation. The sponsors of the displays held in Highlands, NJ and Kingston, NY reported they have not received any objections from the public for these annual displays dating back to 1997. The display in Highlands, NJ has been held in the same location for 5 years and the display in Kingston, NY has been held in the same location for 10 years. The Coast Guard has not received any negative comments on these annual displays. Marine traffic will only be precluded from transiting around these safety zones in southern Sandy Hook Bay and Rondout Creek. There is sufficient open water for expected marine traffic to transit around the other three safety zones. There are no commercial maritime facilities that will be affected by these regulated areas. Vessels may also still transit through Sandy Hook Bay, Hempstead Harbor, the Arthur Kill, and the Hudson River during these events. Vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zones with the exception of the locations in Sandy Hook Bay and Rondout Creek. Additionally, marine traffic can plan their transits through Rondout Creek, Sandy Hook Bay, and the Shrewsbury River Channel around the time the Kingston, New York and Highlands, New Jersey safety zones are in effect. The marine community will have advance notice of these two events as they are annual events with local community support. Advance notifications will also be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts, if needed.

The size of these safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 5–12 inch mortars fired from a barge or shore, combined with the Coast Guard's knowledge of tide and current conditions in these areas.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Sandy Hook Bay, Rondout Creek, Hempstead Harbor, the Arthur Kill, and the Hudson River during the times these zones are activated.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can transit around the safety zones with the exception of the locations in Sandy Hook Bay and Rondout Creek. Vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zones with the exception of the locations in Sandy Hook Bay and

Rondout Creek. The sponsors of the displays held in Highlands, NJ and Kingston, NY reported they have not received any objections from the public for these displays dating back to 1997. The display in Highlands, NJ has been held in the same location for 5 years and in Kingston, NY for 10 years. There are no commercial marine facilities that will be affected by any of these regulated areas. These are all annual events with local community support and vessels will normally be precluded from entering any of the zones for only a 45-minute period on an annual basis. Additionally, the Coast Guard has not received any negative reports from small entities affected by these displays.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agricultural Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–800–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes five safety zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. § 165.161 is revised to read as follows:

§ 165.161 Safety Zones: Coast Guard Activities New York Annual Fireworks Displays.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *Clamfest Fireworks, Highlands, New Jersey, Sandy Hook Bay:*

(i) *Location.* All waters of Sandy Hook Bay within a 150-yard radius of the fireworks barge in approximate position 40°24′34″ N, 073°59′45″ W (NAD 1983), about 140 yards south of Shrewsbury River Channel Lighted Buoy 9 (LLNR 35775).

(ii) *Effective period.* Paragraph (a)(1)(i) is in effect annually from 8 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on the Saturday before Father's Day.

(2) *Kingston, New York Fireworks, Rondout Creek Safety Zone:*

(i) *Location.* All waters of Rondout Creek between the Kingston-Port Ewen Bridge (mile 1.1) and the Kingston-US 9 Bridge (mile 1.3).

(ii) *Effective period.* Paragraph (a)(2)(i) is in effect annually from 8 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on the last Saturday in June.

(3) *Glen Cove, New York July 4th Fireworks Safety Zone:*

(i) *Location.* All waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″ N, 073°39′34″ W (NAD 1983), about 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065).

(ii) *Effective period.* Paragraph (a)(3)(i) is in effect annually from 8 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on July 1st, 2nd, 3rd, 4th, and 5th.

(4) *Yonkers, New York Fireworks Safety Zone:*

(i) *Location.* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°56′14.5″ N, 073°54′33″ W (NAD 1983), about 475 yards northwest of Yonkers Municipal Pier, New York.

(ii) *Effective period.* Paragraph (a)(4)(i) is in effect annually from 8 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on July 4th and the third Saturday of September. If the event is canceled due to inclement weather, then paragraph (a)(4)(i) is effective on July 5th and the third Sunday of September.

(5) *Elizabeth, New Jersey July 4th Fireworks, Arthur Kill, Safety Zone:*

(i) *Location.* All waters of the Arthur Kill within a 150-yard radius of the fireworks land shoot in Elizabeth, New Jersey, in approximate position 40°38′50″ N, 074°10′58″ W (NAD 1983), about 675 yards west of Arthur Kill Channel Buoy 20 (LLNR 36780).

(ii) *Effective period.* Paragraph (a)(5)(i) is in effect annually from 8 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on July 4th. If the event is canceled due to inclement weather, then paragraph (a)(5)(i) is effective from 8 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on July 5th.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 30, 2000.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–14507 Filed 6–7–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN117–1a, FRL–6708–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving nine negative declarations submitted by the State of Indiana on November 8, 1999, and January 10, 2000. Each of these negative declarations concerns sources located in Lake and Porter Counties, which are classified as a severe nonattainment area for the pollutant ozone. Each of the negative declarations indicates that the State has searched its emissions source inventory and permit files for Lake and Porter Counties and determined there are no sources with a potential to emit 25 tons per year or more of volatile organic compounds (VOC) in the following source categories: aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithographic operations, business plastics, automotive plastics, and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units.

DATES: This rule is effective on August 7, 2000, unless EPA receives adverse written comments by July 10, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the negative declarations are available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph O. Cano at (312) 886–6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used we mean EPA.

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I. What Is the Background for This Action?

The Clean Air Act (Act), as amended in 1977, required States to adopt emission controls reflective of reasonably available control technology (RACT) for sources of VOC emissions in ozone nonattainment areas. Subsequently, EPA issued three sets of control technique guidelines (CTGs) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that an area's State Implementation Plan (SIP) approved attainment date established which RACT rules the State needed to adopt and implement and for which areas. In those areas where the State sought from EPA an extension of the attainment date under section 172(a)(2) of the Act to as late as December 31, 1987, the Act as amended in 1977 required RACT for all CTG sources and for all major VOC non-CTG sources. The 1977 amendments to the Act defined as major any VOC non-CTG source with a potential to emit 100 tons per year or more of VOC emissions. Indiana sought and received such an extension from EPA for Lake and Porter Counties.

Congress amended the Act in 1990. The 1990 amendments to the Act reduced the size definition of major source to 25 tons per year or more of VOC emissions for sources located in severe ozone nonattainment areas. Section 182(b)(2) of the Act, as amended, requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. These section 182(b)(2) RACT requirements are referred to as the RACT "catch-up" requirements.

Section 183 of the amended Act requires EPA to issue CTGs for 13 source categories by November 15, 1993. EPA published a CTG by this date for the following source categories—Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors and Distillation, aerospace manufacturing coating operation, shipbuilding and ship repair coating operations, and wood furniture coating operation; however, EPA has not completed the CTGs for the remaining source categories. The amended Act requires States to submit rules for sources covered by a post-enactment CTG in accordance with a schedule specified in a CTG document.

The EPA created a CTG document as appendix E to the *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.* (57 FR 18070, 18077, April 28, 1992). In appendix E, EPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs EPA expected to issue to meet the requirement in section 183. Appendix E states that if EPA fails to issue a CTG by November 15, 1993 (which it did for 11 source categories), the responsibility shifts to the State to

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submit a non-CTG RACT rule for those sources by November 15, 1994. In accordance with section 182(b)(2), implementation of that RACT rule should occur by May 31, 1995.

II. What Are Negative Declarations and What Is Their Purpose?

The EPA does not require States to develop plans or regulations to control emissions from sources which are not located in the planning area. In order to determine whether this might be the case, the State may examine its emissions inventory before initiating the planning and regulation development process. If the State finds no subject sources, then the State may prepare and submit to EPA, a negative declaration stating there are no sources in the planning area which would be subject to the required rule, rather than a control plan for sources in a particular category. In addition to reviewing its emissions inventory, Indiana reviewed its permit files for sources with a potential to emit 25 tons or more of VOC annually located in Lake and Porter Counties.

III. What Types of Sources Are Covered by These Negative Declarations?

The State negative declarations addressed two CTG categories: Control of Volatile Organic Compound Emissions from Industrial Wastewater (EPA Document Number: EPA–453/D–93–056) and Control of Volatile Organic Emissions from Coating Operations at Aerospace Manufacturing and Rework Facilities (EPA Document Number: EPA–453/R–97–004, December 1997). The State's negative declarations also includes two source categories addressed by the Alternative Control Document: [1] Surface Coating of Automotive/ Transportation and Business Machine Plastic Parts (EPA 4531R–94–017, February 1994 including page 4–3a as revised April 4, 1994). The State negative declarations also addressed five non-CTG source categories because the State must control VOC emissions from all sources with a potential to emit 25 tons or more of VOC annually located in Lake and Porter Counties. Indiana searched its inventory and determined that no sources with a potential to emit 25 tons or more of VOC per year were located in Lake and Porter Counties in the following five non-CTG source categories: industrial clean up solvents, offset lithography operations, and SOCMI batch processes, reactors and distillation units.

[1] Alternative Control Documents are prepared by EPA to provide information on emissions, controls, control options and costs which the State can use in developing rules based on RACT

IV. If New Sources Are Constructed in Lake and Porter Counties, Will the VOC Emissions From These Source Categories Be Uncontrolled?

No, new major sources locating in a nonattainment area are subject to the more stringent emission control requirements of New Source Review under part D of the Clean Air Act.

V. EPA Rulemaking Action

EPA has examined the State's negative declarations regarding the lack of need for regulations controlling emissions from the source categories identified above and located in Lake and Porter Counties. EPA also examined the supporting evidence provided by the State. Based on these examinations, EPA agrees there are currently no major sources in the nine categories for which the State submitted negative declarations located in the Lake and Porter Counties severe ozone nonattainment area. As a result, EPA approves Indiana's negative declarations for these sources.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by July 10, 2000. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 7, 2000.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 7, 2000 unless EPA receives adverse written comments by July 10, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (w) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

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(w) Negative declarations—Aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithography operations, business plastics, automotive plastics, and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units categories. On November 8, 1999, and January 10, 2000, the State of Indiana certified to the satisfaction of the Environmental Protection Agency that no major sources categorized as part of the nine categories listed above and have a potential to emit 25 tons or more of volatile organic compounds annually are located in Lake or Porter Counties in northwest Indiana.

[FR Doc. 00–13841 Filed 6–7–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 52

[IN112–1a, FRL–6708–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving nine negative declarations submitted by the State of Indiana on November 8, 1999. Each of these negative declarations concerns sources located in Clark and Floyd Counties, which are classified as a moderate nonattainment area for the pollutant ozone. Each of the negative declarations indicates that the State has searched its emissions source inventory and permit files for Clark and Floyd Counties and determined that there are no sources with a potential to emit 100 tons per year or more of volatile organic compounds (VOC) in the following source categories: aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithographic printing, business plastics, automotive plastics, and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units.

DATES: This rule is effective on August 7, 2000 unless EPA receives adverse written comments by July 10, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the negative declarations are available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph O. Cano at (312) 886-6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used we mean EPA.

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I. What Is the Background for This Action?

The Clean Air Act (Act), as amended in 1977, required States to adopt emission controls reflective of reasonably available control technology (RACT) for sources of VOC emissions in ozone nonattainment areas. Subsequently, EPA issued three sets of control technique guidelines (CTGs) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that an area's State Implementation Plan (SIP) approved attainment date established which RACT rules the State needed to adopt and implement and for which areas. In those areas where the State sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987, RACT was required for all CTG sources and for all major (100 tons per year or more of VOC emissions under the 1977 Act) non-CTG sources. Indiana sought and received such an extension from EPA for Clark and Floyd Counties.

When Congress amended the Act in 1999, it included section 182(b)(2) which required States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG— *i.e.*, a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. These section 182(b)(2) RACT requirements are referred to as the RACT "catch-up" requirements.

Section 183 of the 1990 Amendments required EPA to issue CTGs for 13 source categories by November 15, 1993. EPA published a CTG by this date for the following source categories: Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors and Distillation, aerospace manufacturing coating operation, shipbuilding and ship repair coating operations, and wood furniture coating operation; however, EPA has not completed the CTGs for the remaining source categories. The amended Act requires States to submit rules for sources covered by a post-enactment CTG in accordance with a schedule specified in a CTG document.

The EPA created a CTG document as appendix E to the *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.* (57 FR 18070, 18077, April 28, 1992). In appendix E, EPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs EPA expected to issue to meet the requirement in section 183. Appendix E states that if EPA fails to issue a CTG by November 15, 1993 (which it did for 11 source categories), the responsibility shifts to the State to submit a non-CTG RACT rule for those sources by November 15, 1994. In accordance with section 182(b)(2), implementation of that RACT rule should occur by May 31, 1995.

II. What Are Negative Declarations and What Is Their Purpose?

The EPA does not require States to develop plans or regulations to control emissions from major sources which are not located in the planning area. In order to determine whether this might be the case, the State may examine its emissions inventory before initiating the planning and development process. If the State finds no subject sources, then it may prepare and submit to EPA, a negative declaration stating there are no sources in the planning area which would be subject to the required rule, rather than a control plan for sources in a particular category. In addition to reviewing its emissions inventory, Indiana reviewed its permit files for sources with a potential to emit 100 tons or more of VOC annually located in Clark and Floyd Counties.

III. What Types of Sources Are Covered by These Negative Declarations?

The State negative declarations addressed two CTG categories: Control of Volatile Organic Compound Emissions from Industrial Wastewater (EPA Document Number: EPA–453/D–93–056) and Control of Volatile Organic Emissions from Coating Operations at Aerospace Manufacturing and Rework Facilities (EPA Document Number: EPA–453/R–97–004, December, 1997). The State's negative declarations also includes two source categories addressed by the Alternative Control Document [1]: Surface Coating of Automotive/Transportation and Business Machine Plastic Parts (EPA 4531R–94–017, February 1994 including page 4–3a as revised April 4, 1994). The State negative declarations also addressed five non-CTG source categories because the State must control VOC emissions from all sources with a potential to emit 100 tons or more of VOC annually located in Clark and Floyd Counties. Indiana searched its inventory and determined that no sources with a potential to emit 100 tons or more of VOC per year were located in Clark and Floyd Counties in the following five non-CTG source categories: industrial clean up solvents, offset lithography operations, and SOCMI batch processes, reactors and distillation units.

[1] Alternative Control Documents are prepared by EPA to provide information on emissions, controls, control options and costs which the State can use in developing rules based on RACT.

IV. If New Sources Are Constructed in Clark and Floyd Counties, Will the VOC Emissions From These Source Categories Be Uncontrolled?

No, new major sources locating in a nonattainment area are subject to the more stringent emission control requirements of New source Review under part D of the Act.

V. EPA Rulemaking Action

EPA has examined the State's negative declarations regarding the lack of need for regulations controlling emissions from these source categories from sources located in Clark and Floyd Counties. EPA also examined the supporting evidence provided by the State. As a result, EPA approves Indiana's negative declarations for these sources.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by July 10, 2000. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 7, 2000.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under

Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 7, 2000 unless EPA receives adverse written comments by July 10, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (v) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(v) Negative declarations—Aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithography operations, business plastics, automotive plastics, and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units categories. On November 8, 1999, the State of Indiana certified to the satisfaction of the Environmental Protection Agency that no major sources categorized as part of the nine categories listed above and have a potential to emit 100 tons or more of volatile organic compounds annually are located in Clark or Floyd Counties in southeast Indiana, adjacent to Louisville, Kentucky.

[FR Doc. 00–13839 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA241–0238a; FRL–6709–1]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from metal parts coating operations. EPA is approving a local rule, Rule 330, Surface Coating of Metal Parts and Products, that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 7, 2000 without further notice, unless EPA receives adverse comments by July 10, 2000. If EPA receives such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812; and,

Santa Barbara County Air Pollution Control District 26, Castilian Drive, Suite B–23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SBCAPCD	330	Surface Coating of Metal Parts and Products	01/20/00	03/28/00

On May 19, 2000, EPA determined that this rule submittal met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We published a limited approval and limited disapproval of Rule 330 and incorporated the rule into the SIP on December 3, 1998. The SBCAPCD adopted this version of Rule 330 on April 21, 1995. SBCAPCD has not submitted to EPA any versions of Rule 330 prior to the January 20, 2000 version we are acting on today.

C. What Is the Purpose of the Rule Revisions?

SBCAPCD's January 20, 2000 amendments to Rule 330 included these significant changes to its 1995 adopted version:

—The 200 gallon per year allowance for non-compliant coating use was lowered to 55 gallons per year (section B.1, Exemptions);
—Daily recordkeeping of non-compliant coating use is required (H.6, Requirements-Recordkeeping); and,
—Test methods for determining capture efficiency have been updated (section I.3–Test Methods).

SBCAPCD adopted these amendments primarily to address the deficiencies described in EPA's December 3, 1998 limited disapproval action. EPA's Technical Support Document (TSD) for this rulemaking has more information about these rule amendments.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SBCAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 330 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the materials listed below.

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. "Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and

Products," USEPA, June 1978, EPA–450/2–78–015.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. On December 3, 1998, EPA gave a limited approval and limited disapproval of Rule 330 identifying several deficiencies within the rule that required correction. The deficiencies identified within EPA's limited disapproval have been either corrected or addressed adequately by the SBCAPCD's January 20, 2000 amendments to Rule 330.

EPA's approval action will incorporate the revised Rule 330 into the federally approved SIP. Our approval action will stop the sanctions process and Federal Implementation Plan clock, which were started on December 3, 1998 when EPA published its limited disapproval action in the **Federal Register** (see 63 FR 66758.) EPA's TSD provides more information concerning our evaluation.

C. EPA Recommendations to Further Improve the Rule

Our TSD does not describe additional rule revisions recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted Rule 330 because we believe it fulfills all relevant requirements. We do not think anyone will object to this action, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted Rule 330. If we receive adverse comments by July 10, 2000, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, this direct final approval will be effective without further notice on August 7, 2000. This final approval will incorporate SBCAPCD Rule 330 into the federally enforceable SIP.

III. Background Information

A. Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency VOC rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 23, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(277) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(277) New and amended regulations for the following APCDs were submitted on March 28, 2000, by the Governor's designee.

(i) Incorporation by reference.

(A) Santa Barbara County Air Pollution Control District.

(1) Rule 330, adopted on June 11, 1979 and amended on January 20, 2000.

* * * * *

[FR Doc. 00–14173 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI68–01–7319a; FRL–6706–3]

Approval and Promulgation of State Implementation Plans; Wisconsin; Site-Specific Revision for Uniroyal Engineered Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the volatile organic compound (VOC) control requirements for Uniroyal Engineered Products, Inc., located in Stoughton, Wisconsin. The Wisconsin Department of Natural Resources (WDNR) submitted this State Implementation Plan (SIP) revision on October 30, 1999 and revised it on February 17, 2000. Our approval of this revision makes federally enforceable the State's February 7, 2000, Consent Order AM–99–900, which establishes alternate control requirements for Uniroyal.

If we receive adverse comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

DATES: This "direct final" rule will be effective August 7, 2000, unless we receive adverse or critical comments by July 10, 2000. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Send written comments to Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Kathleen D'Agostino, at (312) 886–1767, before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

This Supplementary Information section is organized as follows:

A. What Action is EPA Taking?
B. How Does this Action Change Pollution Control Requirements for Uniroyal?
C. Will this Action Adversely Impact Air Quality in the Area?
D. What is EPA's Final Determination?

A. What Action Is EPA Taking?

EPA is approving a revision to Wisconsin's SIP to relax VOC control requirements for Uniroyal.

B. How Does This Action Change Pollution Control Requirements for Uniroyal?

In the early 1980s Wisconsin adopted Reasonably Available Control Technology (RACT) regulations for the entire state. We approved these regulations and incorporated them into Wisconsin's SIP for ozone. Uniroyal manufactures vinyl coated fabrics and, under these rules, is subject to a limit of 3.8 pounds of VOC per gallon of coating, excluding water, for coatings used on vinyl coating lines.

Our approval of alternate control requirements for Uniroyal exempts the company from the 3.8 pounds of VOC per gallon of coating limit for its vinyl coating lines and requires the following:

1. At least 95% of all vinyl yardage requiring topcoats must be coated with waterborne topcoats on a monthly basis *or* if the 95% requirement is not met, an incinerator must control emissions to the level that would have been attained had the 95% requirement been met.
2. No more than 65,630 pounds of VOC may be released into the ambient air per month.
3. No more than 5,435 pounds of VOC may be released into the ambient air per day.
4. Specific records and monitoring data must be kept and compliance testing must be performed.

C. Will This Action Adversely Impact Air Quality in the Area?

Uniroyal is located in Dane County which is designated as attainment for ozone. The county is, and has been monitoring attainment of both the 1-hour and 8-hour ozone standards. Since 1987, Uniroyal has been operating under a State-approved variance which allows emissions equivalent to the emissions allowed under the SIP revision that we are approving with this action. Consequently, our approval of the alternate control requirements for

Uniroyal should not interfere with attainment or continued maintenance of the ozone standard.

D. What Is EPA'S Final Determination?

Based on the rationale set forth above and in EPA's Technical Support Document, we are approving a revision to the VOC control requirements for Uniroyal Engineered Products. Our approval of this revision makes federally enforceable the State's February 7, 2000, Consent Order AM–99–900, which establishes alternate control requirements for Uniroyal.

We are publishing this action without prior proposal, because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the State variance should adverse written comments be filed.

This action will be effective August 7, 2000 without further notice unless relevant adverse comments are received by July 10, 2000. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective August 7, 2000.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

E. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

F. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

J. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

K. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

L. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

M. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 12, 2000.

Robert Springer,

Acting Regional Administrator, Region 5.

Accordingly, title 40 of CFR part 52, Subpart YY, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(100) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(100) On October 30, 1998, Wisconsin submitted a source-specific State Implementation Plan revision for Uniroyal Engineered Products, Inc., located in Stoughton, Wisconsin. The State supplemented the original submittal with Consent Order Number AM–99–900 on February 17, 2000. This source-specific variance relaxes volatile organic compound reasonably available control technology requirements for Uniroyal.

(i) Incorporation by reference.

(A) Consent Order Number AM–99–900, issued by the Wisconsin Department of Natural Resources to Uniroyal Engineered Products on February 17, 2000.

[FR Doc. 00–14175 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ072–0085; FRL–6601–7]

Approval and Promulgation of Maintenance Plan and Designation of Area for Air Quality Planning Purposes for Carbon Monoxide; State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to redesignate the Tucson Air Planning Area (TAPA) to attainment for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS) and to approve a maintenance plan that will insure that the area remains in attainment.

EFFECTIVE DATE: This action is effective on July 10, 2000.

ADDRESSES: Copies of the state submittal and other information are available for public inspection at EPA's Region IX office during normal business hours, 75 Hawthorne Street, San Francisco, CA 94105–3901.

The technical support document (TSD) and copies of other documents relevant to this action can be found in the docket for this proposal. The docket can be reviewed or copied during normal business hours at the following locations between 8:00 a.m. and 4:30 p.m. on weekdays. You may need to pay a fee for copying. Copies of the SIP submittal are also available for inspection at the following address: Pima County Department of Environmental Quality, 130 West Congress, Tucson, Arizona 85701, (520) 740–3340.

Electronic Availability

This document is also available as an electronic file on EPA's Region 9 Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1159, email: kaplan.eleanor@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 6, 1997 Arizona submitted a request to redesignate the CO Tucson Air Planning Area (TAPA) nonattainment area to attainment for the NAAQS and for approval of a maintenance plan. EPA found that the TAPA met all the redesignation requirements specified in section 107(d)(3)(E) of the Clean Air Act (CAA) and also that the TAPA was eligible to use the Limited Maintenance Plan (LMP) option provided for in EPA guidance.[1] EPA therefore proposed approval of the request and the maintenance plan on July 22, 1998 (see 63 FR 39258) and provided for a 30-day public comment period.

For a full discussion of EPA's evaluation of the TAPA redesignation request and the maintenance plan, the reader is referred to the original EPA proposal (63 FR 39258, July 22, 1998) and to the Technical Support Document (TSD) accompanying that proposal notice which may be found in the docket on file at the addresses noted above.

EPA received one set of comments during the 30-day comment period provided under the original proposal. Those comments came from the Arizona Center for Law in the Public Interest (ACLPI) in a letter dated August 21, 1998. To respond to the public comments, EPA requested supplementary information from the Pima Association of Governments (PAG) relating to CO emissions projections for the area for the 10-year maintenance period extending through 2010. EPA received the information in a letter from PAG dated June 18, 1999. EPA is responding to ACLPI's comments in section II below. On December 17, 1999 (see 64 FR 70660) EPA reproposed to approve the TAPA redesignation request in order to provide the public with the opportunity to comment on the additional information provided by PAG and on additional issues that had arisen since the original proposal. EPA received no public comments during the 30-day public comment period provided under the reproposal.

[1] Memorandum entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas", from Joseph W. Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina, October 6, 1995.

II. Public Comment and EPA Responses

EPA has considered all of the comments received from ACLPI on the original proposal and is providing the following responses.

Comment: ACLPI expressed concern that one of the CAA's requirements for redesignation, namely that the improvement in air quality is due to permanent and enforceable reductions, would not be met by the TAPA following redesignation because several Arizona statutes, including the state's auto emission inspection and maintenance program, the oxygenated fuels program and other control measures defined Tucson as "Area B", a carbon monoxide nonattainment area. ACLPI expressed concern that the area, following redesignation, would no longer be subject to these control measures and said that under the circumstances EPA cannot conclude that the emission reductions from these programs are permanent and enforceable.

Response: The Arizona legislature has acted to amend various Arizona Statutes to expand the definition of Area B to include CO maintenance areas. On May 18, 1999 Arizona Governor Hull signed into law House Bill 2189 which amended Arizona statutes 41-796.01, 41–2121, 49–401.01, 49–402, 49–404, 49–454, 49–541 and 49–571 to ensure continued implementation of committed SIP control measures in maintenance areas.

All of these statutory amendments have been submitted as SIP revisions and EPA in this notice is approving those SIP revisions. On the basis of these statutory amendments, EPA believes that this comment has been adequately addressed.

Comment: ACLPI questioned whether the assumption in the LMP option that an area beginning the maintenance period at or below 85% of exceedance levels will continue to meet the standard for another ten years is applicable to the TAPA, given the growth that is projected for the area.

ACLPI also questioned the LMP guidance waiver of the CAA's requirement for a 10 year maintenance demonstration and also the fact that under a LMP an emissions budget may be treated as essentially not constraining for the length of the maintenance period. ACLPI made the following arguments:

- With regard to the LMP's waiver of the maintenance demonstration, the mere fact that air quality and CO emissions are at or below 85% of exceedance levels does not assure that they will not increase to above exceedance levels in less than 10 years.
- The fact that under the LMP there is no emissions budget test for conformity purposes flagrantly violates EPA's own conformity rules which explicitly apply the emission budget test to all maintenance areas. There is no exception for areas that are at or below 85% of exceedance levels and EPA cannot amend or repeal rules with a guidance document.
- There is no factual or scientific basis for presuming that a motor vehicle emissions budget will not be constraining in a limited maintenance area. The potential for emissions growth has nothing to do with existing CO levels, but is driven by factors such as growth in vehicle miles traveled (VMT), increases in vehicle trips and increased congestion. In the Tucson area, VMT is almost doubling every 20 years, and congestion is expected to significantly worsen. Continued application of conformity rules is vital to ensuring that transportation plans, programs and projects, and federal activities, are consistent with maintenance of CO standards.

Response: The additional information provided by PAG included projections extending to 2010 and 2020 for CO mobile source emissions, vehicle miles traveled (VMT) and population growth, as well as information on ambient air CO concentrations for the years 1990 through 1998. That information is contained in Tables 1 and 2 below. The full text of the PAG letter and details on the sources used for these projections are in the TSD accompanying the reproposal notice, which may be found in the docket for this document.

TABLE 1.—PAG PROJECTIONS FOR CO MOBILE EMISSIONS AND VMT

Year (Population)	CO Mobile Emissions (tpd)	VMT	Population
1990	444.8	15,491,995	666,880
1995	.....	17,915,850	766,172
1999 (2000)	325.8	20,243,419	854,329
2003 (2005)	325.1	22,873,378	943,795
2010	367.2	27,286,950	1,031,623
2020	428.7	32,760,981	1,206,244

TABLE 2.—AMBIENT AIR CONCENTRATIONS—1990–1998

Year	Ambient air concentration
1990	6.5
1991	5.7
1992	5.8
1993	6.0
1994	5.5
1995	5.9
1996	5.1
1997	4.4
1998	4.0

EPA has reviewed the additional information provided by PAG and, based on that data, has come to the following conclusions:

- Although there are projected increases in population and vehicle miles traveled (VMT), the data indicates that CO emissions will drop from 444.8 tons per day in 1990 to 367.2 in 2010, rising again to a projected 428.7 tons per day in 2020 which is still below 1990 levels. In summary, despite the projected growth in population and VMT, CO mobile source emissions in the TAPA will continue to decrease. The decrease in projected CO emissions can be attributed to existing control measures and the impacts of other programs that were not included in the Mobile model used by PAG in preparing these projections including the Pima Travel Reduction, Rideshare and Traffic Signal Coordination programs. In addition it may be anticipated that national mobile source control programs that will take effect in the future will play a role in reducing CO emissions from mobile sources.
- According to data contained in Table 2, the design value for the Tucson area for 1993–1995 was 6.0 or 67% of the NAAQs standard for CO. The design value is the second highest eight-hour concentration observed at any site in the area. The data also indicated that the design value for the years 1996 through 1998 dropped to 5.1 or 57% of CO NAAQS. EPA believes that these design values provide an ample margin of safety and time to take action in the event of a possible violation of the CO NAAQS in the future.
- EPA reviewed the projected CO mobile source emissions, VMT and population values and the corresponding design values for the years 1990 through 1999 and concluded that it would be reasonable to assume that the future relationship of these four elements would be comparable through 2010.
- The control measures contained in the TAPA maintenance plan are currently mandated by federal and state statutes and are permanent and enforceable. They include the Federal Motor Vehicle Control program, the State Inspection and Maintenance program and the State Oxyfuels program. The Arizona legislature has amended the statutes that had defined Tucson as a nonattainment area to ensure continued implementation of SIP control measures following redesignation to attainment. In addition, the Arizona legislature has amended the statutes pertaining to the State's Vehicle Emission and Inspection Program (VEIP) to assure continuation of the program through December 31, 2008. With regard to the VEIP sunset date of 2008, which is two years short of the ten-year maintenance period, in a letter to EPA dated August 23, 1998, the Arizona Department of Environmental Quality (ADEQ) states that Arizona Revised Statutes 41–2955 limits to ten years the existence of a program before it undergoes a sunset review and therefore the VEIP has been extended for the maximum time allowed under this statute, *i.e.*, ten years. The letter supplies a recent history of legislative changes to the VEIP, concluding that "The VEIP has consistently received support for necessary program updates from the Legislature." EPA therefore believes that on the basis of this legislative history, it is reasonable to assume that the program will be extended when it expires in 2008. The full text of the letter from ADEQ is attached to the TSD accompanying the reproposal.
- The maintenance plan for the TAPA contains a pre-violation action level trigger which would set in motion a process designed to forestall a future violation of the CO NAAQS. Under the plan, a pre-violation action level would be reached when two verified 8-hour average concentrations in excess of 85% of the CO NAAQS occurred at any one monitor site in any CO season. When this criterion is reached, it would trigger field studies and technical evaluations and recommendations for implementation of contingency measures.
- With regard to the ACLPI's comments that: (1) The LMP policy flagrantly violates EPA's own conformity rules which explicitly apply the emission budget test to all maintenance areas; and (2) that the rule does not provide an exception for areas that are at or below 85% of exceedance levels, EPA's conformity policy has clearly provided for opportunities for a SIP to demonstrate that no budget is

needed (see Transportation Conformity Rule, 61 FR 36118, July 9, 1996, paragraph B, finalized on August 15, 1997, 62 FR 43780). This section addresses this question and mentions limited maintenance plans specifically. The policy states that areas must meet budgets that the SIP identifies, but if the SIP adequately justifies that no budget is necessary, then no regional emissions test is necessary.

Comment: ACLPI contends that under section 175(A)(a) of the CAA a maintenance plan must "provide for" and "ensure" maintenance for at least 10 years. ACLPI said that EPA's LMP is based on mere speculation and neither provides for, nor ensures, maintenance for ten years and is therefore contrary to the CAA.

Response: The LMP guidance provides the rationale for the policy. It states that "EPA believes it is justifiable and appropriate to apply a different set of maintenance plan requirements to nonclassifiable CO nonattainment areas whose monitored air quality is equal to or less than 85% of exceedance levels of the CO NAAQs. The EPA does not believe that the full maintenance plan requirements need be applied to these areas because they have achieved air quality levels well below the standard without the application of control measures required by the Act for moderate and serious nonattainment areas. Also, these areas do not have either a recent history of monitored violations of the CO NAAQS or a long prior history of monitored air quality problems. EPA believes that the continued applicability of prevention of significant deterioration (PSD) requirements, any control measures already in the SIP, and Federal measures (such as the Federal motor vehicle control program) should provide adequate assurance of maintenance for these areas."

EPA therefore believes that the LMP guidance considered the requirements of 175(A)(a) of the CAA, and interpreted those requirements in a manner consistent with the Act.

Comment: ACLPI expressed concern over the lack of clear commitments to address actual violations of the CO standards. According to ACLPI, the plan notes that state law gives ADEQ the option of reducing fuel volatility levels and raising fuel oxygen content, but there is no clear commitment from the state to take either of these steps if a violation occurs. The plan also lists various potential control measures that might be adopted to address future CO violations, but does not commit to any of them.

ACLPI asked EPA to seek clarification from the state and PAG that they are committed to adopt whatever additional controls are necessary to correct an actual violation, and to implement such controls by the start of the next CO season after the violation occurs. ACLPI claimed that without such clarification the plan will not satisfy the requirements of section 175A(d) to assure that any CO violation will be promptly corrected.

Response: As requested, EPA sought clarification from PAG as to whether they are committed to adopt whatever additional controls are necessary to correct an actual violation of the CO NAAQS, and to implement such controls by the start of the next CO season after the violation occurs. The following is a summary of the points made in the PAG response, dated November 19, 1998. The full text is contained in the TSD accompanying the reproposal notice.

- The TAPA CO LMP was designed to set evaluation triggers at a point where any violation of the CO NAAQS could be anticipated at least 5 years ahead of time. This would give enough time to fully evaluate the risk of violation and the best control measures to address any projected violations of the standard.
- The TAPA CO LMP provides that in the event of an exceedance (which must always precede a violation) the evaluation and implementation process described in the Plan will be triggered. The most likely control measure for immediate response is high oxygen requirement in the oxyfuels program that can be implemented no later than the following CO season.
- The TAPA plan provides that if the PAG finding indicates a probable violation of the CO NAAQS within 5 years, the recommended control measures to fully mitigate the projected violation must be initiated by the start of the next CO season after the violation occurs. EPA believes that the clarification of this issue provided by PAG is an adequate response to the ACLPI comment.

In summary, EPA considered the population growth and CO emissions projections provided by the PAG and the summary of the area's design values over the past few years and believes that the data, in conjunction with the pre-violation action triggers and the contingency measures provided for in the TAPA maintenance plan, provide reasonable assurance that the area will not violate the CO NAAQS during the maintenance period. EPA is therefore taking final action to approve the redesignation of the TAPA to attainment for the CO NAAQS and for approval of the maintenance plan on the grounds that the area meets the requirements for redesignation specified under the Clean Air Act, and that the TAPA is qualified to utilize the LMP option.

III. Summary of Final Actions

In this action EPA is approving the following SIP revisions relating to changes that were made in various Arizona statutes:

Amendments to A.R.S. 41–2083, 41–2122 and 41–2125 relating to the State's oxyfuels program in the Tucson area both as SIP revisions and as control measures in the maintenance plan to be implemented in the event of a probable or actual violation of the CO NAAQS in the TAPA. The SIP revision for these statutory amendments were submitted to EPA as part of the TAPA maintenance plan on October 6, 1997 and were found complete by operation of law on April 6, 1998.

Amendments to A.R.S. 49–401 and 49–406 which expand the authority of State and local certified metropolitan planning organizations to develop plans and to implement and enforce control measures for attainment as well as maintenance areas as required by section 110(a)(2)(E) of the CAA. Previous to those statutory amendments, those statutes referred only to nonattainment areas. These amendments were signed into law on May 29, 1998. They were submitted as a SIP revision on August 20, 1998 and were found complete by operation of law on February 20, 1999.

Amendments to A.R.S. 41–796.01, 41–2121, 49–401.01, 49–402, 49–404, 49–454, 49–541 and 49–571 revised the definition of the TAPA nonattainment area" to reflect continued application of all pertinent control measures in the TAPA following redesignation to attainment. Prior to these amendments, these statutes referred to the TAPA as Area B, a "carbon monoxide nonattainment area". These amendments were signed into law on May 18, 1999. SIP revisions containing these statutory amendments were submitted to EPA on September 1, 1999 and were found to be complete on October 20, 1999.

Amendments to A.R.S. 41–3009.01, 49–541.01, 49–542, 49–545, 49–557, 49–573, 41–803, and 41–401.01 which were signed into law on May 18, 1999 relate to the continued implementation of the State's Vehicle Emissions Inspection Program (VEIP) through December 31, 2008. The SIP revisions containing these statutory amendments were submitted to EPA on September 1, 1999 and were found to be complete on October 20, 1999.

EPA is approving the Emissions Inventory for the base year 1994 contained in the LMP as meeting the requirements of section 172(c)(3) of the CAA.

EPA is approving the TAPA CO maintenance plan because it meets the requirements set forth in section 175A of the CAA and the requirements of the LMP option contained in EPA guidance of October 6, 1995.

EPA is taking final action to remove the Agency's disapprovals (56 FR 5459, February 11, 1991) of the attainment demonstration and contingency measures that were contained in the 1988 Arizona CO SIP revision for Pima County. Those disapprovals were based on the finding of the Ninth Circuit Court of Appeals on March 1, 1990 in *Delaney vs. EPA*, 898 F.2d 687, that the Arizona CO plans for Maricopa and Pima Counties did not fully comply with the Clean Air Act as amended in 1977, and with EPA guidance issued pursuant to that law. (See 46 FR 7182, January 21, 1981). In vacating EPA's 1988 approval of the Arizona plans, the court determined that they did not contain sufficient control measures to attain the CO ambient air quality standard as soon as possible. The Court did not say that the measures submitted by the State were unworthy of approval for their effect in strengthening the SIP.

EPA is taking final action to remove the attainment demonstration disapproval because the TAPA has not had an exceedance of the CO NAAQS from 1988 to the present, and, therefore, the original reason for the disapproval, namely that the plan did not contain sufficient control measures to attain the CO ambient air quality standard as soon as possible, is no longer applicable.

EPA is also taking final action to remove the disapproval of the 1988 CO plan contingency measures. That disapproval was based on non-compliance with the EPA guidance of January 21, 1981. (46 FR 7182, January 21, 1981) That guidance has since been superseded by new guidance, specifically the section on the contingency provisions for not-classified CO nonattainment areas contained in the General Preamble (See 57 FR 13535, April 16, 1992). The contingency provisions contained in the TAPA Limited Maintenance Plan are in compliance with the guidance provided both in the General Preamble and in the Limited Maintenance Plan Policy Guidance.

Finally, EPA is approving Arizona's request for the redesignation to attainment of the CO NAAQS for the Tucson Air Planning Area.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

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Dated: April 24, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Parts 52 and 81, Chapter I, Title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c)(91), (c)(95), and (c)(96) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(91) The following amendments to the plan were submitted on October 6, 1997 by the Governor's designee.

(A) Arizona Revised Statutes.

(i) Incorporation by reference.

(*1*) Senate Bill 1002, Sections 26, 27 and 28: ARS 41–2083 (amended), 41–2122 (amended), 41–2125 (amended), adopted on July 18, 1996.

* * * * *

(95) The following amendments to the plan were submitted on August 11, 1998 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) Senate Bill 1427, Section 14: ARS 49–401.01 (amended) and Section 15: 49–406 (amended), approved on May 29, 1998.

* * * * *

(96) The following amendments to the plan were submitted on September 1, 1999 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) House Bill 2254, Section 1: ARS 41–3009.01 (amended); Section 2: 49–541.01 (amended); Section 3: 49–542 (amended); Section 4: 49–545 (amended); Section 5: 49–557 (amended); Section 6: 49–573 (amended), approved by the Governor on May 18, 1999.

(*2*) House Bill 2189, Section 3: ARS 41–796.01 (amended); Section 9: 41–2121 (amended); Section 40: 49–401.01 (amended), Section 41: 49–402 (amended); Section 42: 49–404 (amended); Section 43:49–454 (amended); Section 44: 49–541 (amended); and Section 46: 49–571 (amended), adopted on May 18, 1999

* * * * *

3. Section 52.123 is amended by removing and reserving paragraph (e)(2) and by adding paragraph (i) to read as follows:

§ 52.123 Approval Status.

* * * * *

(i) The Administrator approves the Maintenance Plan for the Tucson Air Planning Area submitted by the Arizona Department of Environmental Quality on October 6, 1997 as meeting the requirements of section 175(A) of the Clean Air Act and the requirements of EPA's Limited Maintenance Plan option. The Administrator approves the Emissions Inventory contained in the Maintenance Plan as meeting the requirements of section 172(c)(3) of the Clean Air Act.

§ 52.124 [Amended]

4. Section 52.124 is amended by removing and reserving paragraph (a)(2).

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671 *et seq.*

2. In § 81.303, the table for Arizona-Carbon Monoxide is amended by revising the entry for "Tucson Area" to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
. . .	.	.	.	.
Tucson Area:				
Pima County (part)	July 10, 2000	Attainment.		
Township and Ranges as follows: T–11–12S, R12–14E, Salt River Baseline and Meridian excluding portions of the Saguaro National Monument and the Coronado National Forest				
. . .	.	.	.	.

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 00–13978 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[GA–T5–2000–01a; FRL–6711–2]

Clean Air Act Full Approval of Operating Permit Program; Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to fully approve the operating permit program of the State of Georgia. Georgia's operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. EPA granted interim approval to Georgia's operating permit program on November 22, 1995. Georgia revised its program to satisfy the conditions of the interim approval and this action approves those revisions.

DATES: This direct final rule is effective on August 7, 2000 without further notice unless EPA receives adverse comments in writing by July 10, 2000. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Kim Pierce, Regional Title V Program Manager, Operating Source Section, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of the State's submittals and other supporting documentation relevant to this action are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA, Region 4, at (404) 562–9124.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
What are the program changes that EPA is approving?
What is involved in this final action?

What Is the Operating Permit Program?

The CAA Amendments of 1990 required all States to develop operating permit programs that met certain Federal criteria. In implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as serious, such as the metropolitan Atlanta area in Georgia, major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the State revising its program to correct the deficiencies. Because Georgia's operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the program in a rulemaking published on November 22, 1995 (60 FR 57836). The interim approval notice stipulated three conditions that had to be met in order for Georgia's program to receive full approval. Georgia submitted revisions to its interimly approved operating permit program on March 10, 1997, February 11, 1998, September 30, 1999, November 15, 1999, and January 11, 2000. This document describes the changes that have been made in Georgia's operating permit program.

What Are the Program Changes That EPA Is Approving?

One condition for full approval of Georgia's operating permit program was a rule revision to require that operating permits contain terms and conditions allowing for the trading of emissions changes within the facility. These emissions trades are solely for the purpose of complying with a Federally-enforceable emissions cap in accordance with 40 CFR 70.4(b)(12)(iii). Moreover, the permittee must provide written notification to EPA at least seven (7) days in advance of any change to the permit, and the written notification must state when the change will occur and describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit. Georgia took action in December 1997 to include these requirements in Rule 391–3–1–.03(10)(d)1.(ii) and submitted the final State-effective rule changes to EPA on February 11, 1998.

Another condition for full approval of Georgia's operating permit program was a rule revision to ensure that the permit shield provision in 40 CFR 70.6(f) would apply to any changes in emissions resulting from emissions trading within a facility solely for the purpose of complying with a Federally-enforceable emissions cap. The revised Rule 391–3–.03(10)(d)1.(ii) containing this provision was submitted to EPA on February 11, 1998.

The third, and final, condition for full approval of Georgia's operating permit program was correction of the deficient insignificant activities provisions in the State's rules. One deficiency concerned the exemption of insignificant activities from permit requirements. While the State has considerable discretion regarding the degree of monitoring, recordkeeping and reporting required for insignificant activities, these units cannot be categorically exempted from title V permitting requirements. Moreover, Georgia's rules did not make the distinction between activities which could be omitted from permit applications and those that were considered to be insignificant but were still required to be included in the application.

In response to this interim approval issue, the State revised its approach to insignificant activities by adding Rule 391–3–1–.03(10)(g), which identifies specific insignificant activities that must be included in the permit application. Moreover, rule revisions were made to eliminate the exemption from permitting requirements for insignificant activities. The final State-effective rule changes were submitted to EPA on February 11, 1998.

Georgia made additional program changes after the interim approval became effective on December 22, 1995. The State revised its title V permit application form to address the title VI requirements for stratospheric ozone and to incorporate the flexibility described in the EPA's July 10, 1995 guidance memorandum entitle "White Paper for Streamlined Development of Part 70 Permit Applications" (White Paper). The revised form was submitted to EPA on March 10, 1997 and is available for review on Georgia's Web site at *www.dnr.state.ga.us/dnr/environ*. The revised form incorporated the following aspects of the White Paper:

(1) The White Paper allowed industry to submit checklists, rather than emission descriptions, for insignificant activities based on size or production rate. As a result, Georgia included several different categories of insignificant activities in checklist format in section 4.10 of the permit application form. Georgia also removed the requirement for detailed information regarding air pollution control devices, since this information is requested in the preconstruction permit application.

(2) The White Paper allowed for group treatment of emissions units subject to the broadly applicable requirements that are often found in State Implementation Plans (SIPs). The State, therefore, created section 4.20 of the application form to group emissions units and

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activities that were subject to the following four State rules that are generic SIP requirements: Rule 391–3–1–.02(2)(b) entitled "Visible Emissions," Rule 391–3–1–.02(2)(d) entitled "Fuel-burning Equipment," Rule 391–3–1–.02(2)(e) entitled "Particulate Emissions from Manufacturing Process," and Rule 391–3–1–.02(2)(n) entitled "Fugitive Dust."

(3) The White Paper allowed for the generic treatment of short-term activities, so the State developed section 4.40 to address those activities that occur infrequently or for short durations.

(4) The White Paper identified a number of trivial activities that could be excluded from permit applications, so Georgia included a similar list in the instructions for its permit application form.

(5) The White Paper allows industry to provide descriptions, rather than estimates, for emissions not regulated at the source, unless such estimates were needed for other purposes such as calculating permit fees. As a result, the State developed sections 2.10 and 2.20 of its permit application form to only require estimates of facility-wide potential and anticipated actual emissions in tons per year. All significant facility emissions are still required to be listed by pollutant in section 7.10.

(6) The white Paper provided that where an emissions unit is subject to a specific standard, the emissions data could be reported in the units of that standard. Georgia revised its permit application form accordingly.

(7) In order to reduce the size and cost of preparing title V permit applications, the White Paper allowed for the submittal of sample calculations to illustrate the methodology used. As a result, the State revised its permit application form to require the submittal of sample calculations to support the emissions summary information contained in section 7.10

The other programmatic change made by Georgia involves the mechanism for determining the annual title V fee amount. The State's operating permit program received interim approval based on use of the "presumptive minimum" described in 40 CFR 70.9(b)(2)(i), but Georgia has been using a mechanism based on 40 CFR 70.9(b)(1) since September 1997. This mechanism involves establishing a fee schedule that results in the collection and retention of revenues sufficient to cover the costs of the operating permit program. To accomplish this, the State develops a biennial budget projection of title V program costs and adjusts the fee amount accordingly. Georgia described its revised mechanism for assessing fees in a letter to EPA dated January 11, 2000. The State submitted a fee program update on September 30, 1999 demonstrating that its operating permit program is adequately funded by operating permit fees.

What Is Involved in This Final Action?

The State of Georgia has fulfilled the conditions of the interim approval granted on November 22, 1995, so EPA is taking final action to fully approve the State's operating permit program. EPA is also taking action to approve other program changes made by the State since the interim approval was granted.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant final full approval should adverse comments be filed. This action will be effective August 7, 2000 unless the Agency receives adverse comments by July 10, 2000.

If EPA receives such comments, then EPA will withdraw the final rule and inform the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 7, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–266 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing operating permit programs, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use VCS, SPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that

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otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of NTTAA do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: May 15, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Appendix A to part 70 is amended by revising paragraph (b) in the entry for Georgia to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Georgia

(b) The Georgia Department of Natural Resources submitted program revisions on March 10, 1997, February 11, 1998, September 30, 1999, November 15, 1999, and January 11, 2000. The rule revisions contained in the February 11, 1998 submittal adequately addressed the conditions of the interim approval effective on December 22, 1995, and which would expire on June 1, 2000. The State is hereby granted final full approval effective on August 7, 2000.

[FR Doc. 00–14166 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TN–NASH–T5–2000–01a; FRL–6710–9]

Clean Air Act Final Approval of Operating Permit Program Revisions; Metropolitan Government of Nashville-Davidson County, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve revisions to the operating permit program of the Metropolitan Government of Nashville-Davidson County (TN). The County's operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction. EPA granted full approval to the County's operating permit program on February 14, 1996. The County has revised its program since it received full approval and this action approves those revisions.

DATES: This direct final rule is effective on August 7, 2000 without further notice unless EPA receives adverse comments in writing by July 10, 2000. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The public comments will be addressed in a subsequent final rule based on the proposed rule published in this **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Kim Pierce, Regional Title V Program Manager, Operating Source Section, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of the County's submittals and other supporting documentation relevant to this action are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA, Region 4, at (404) 562–9124.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
What are the program changes that EPA is approving?
What is involved in this final action?

What Is the Operating Permit Program?

The CAA Amendments of 1990 required all states to develop operating permit programs that met certain Federal criteria. In implementing the operating permit programs, the states require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as serious, major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

What Is Being Addressed in This Document?

Nashville-Davidson County made two changes to its approved title V program since EPA granted full approval on February 14, 1996 (see 61 FR 5705). This document describes the changes.

What Are the Program Changes That EPA Is Approving?

Nashville-Davidson County revised its title V permit application form to address the Title VI requirements for protection of the stratospheric ozone layer. The County's application form now contains Form APC V.34 for information regarding air conditioning units that use chlorofluorocarbons, hydrochlorofluorocarbons, or other ozone depleting substances. The new form was submitted to EPA on December 10, 1996 and is available for review on the Internet at *http://healthweb.nashville.org/pollution_downloads.html*.

The other programmatic change made by Nashville-Davidson County involves the mechanism for determining the annual title V fee amount. The County's operating permit program received full approval based on use of the "presumptive minimum" described in 40 CFR 70.9(b)(2)(i). But, since the

spring of 1997, the County has been using a mechanism based on 40 CFR 70.9(b)(1) which involves establishing a fee schedule that results in the collection and retention of revenues sufficient to cover the costs of the operating permit program. To accomplish this each year, the County prepares a projection of the title V expenses for the coming year based on the actual title V expenses during the previous year. The anticipated expenses are then compared with the revenue that would be generated based on section 10.56.080, "Permit and Annual Emission Fees," of Chapter 10.56, "Air Pollution Control," of the Metropolitan Code of Laws. If the fee schedule contained in section 10.56.080 would result in a surplus, then the County adopts a lesser fee schedule utilizing the variance procedures in section 10.56.130. The County described this policy in a letter to EPA dated December 6, 1999. The County also submitted a fee program update on August 27, 1999 demonstrating that its part 70 program is adequately funded by operating permit fee revenue.

What Is Involved in This Final Action?

The Metropolitan Government of Nashville-Davidson County made two changes to its approved title V program after it received full approval on February 14, 1996 and EPA is taking action by this notice to approve the changes. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant final full approval should adverse comments be filed. This action will be effective August 7, 2000 unless the Agency receives adverse comments by July 10, 2000.

If EPA receives such comments, then EPA will withdraw the final rule and inform the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 7, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing operating permit programs, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use VCS, EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of NTTAA do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: May 19, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (i) and adding and reserving paragraphs (f), (g), (h) and (j) to the entry for Tennessee to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Tennessee

(f) [Reserved]
(g) [Reserved]
(h) [Reserved]
(i) The Metropolitan Government of Nashville-Davidson County submitted program revisions on December 10, 1996, August 27, 1999, and December 6, 1999. The County is hereby granted revised approval effective on August 7, 2000.
(j) [Reserved]

* * * * *

[FR Doc. 00–14169 Filed 6–7–00; 8:45 am]

BILLING CODE 6710–00–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261 and 268

[FRL–6711–4]

Organobromines Production Wastes; Petroleum Refining Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Final Rule and Correcting Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors that appeared in the March 17, 2000 final rule (65 FR 14472) that announced the vacature of regulatory provisions governing the identification of certain organobromine production wastes as listed hazardous wastes under the Resource Conservation and Recovery Act (RCRA). EPA also is correcting a typographical error that appeared in the August 6, 1998 final rule (63 FR 42110) listing four wastes from the petroleum refining industry as hazardous.

This final rule creates no new regulatory requirements. Rather, it corrects errors associated with the March 17, 2000 **Federal Register** document. The rule also corrects a typographical error that appeared in the August 6, 1998 **Federal Register** document.

EFFECTIVE DATE: This rule is effective June 8, 2000.

ADDRESSES: EPA does not seek comment on this document. EPA will keep the official records for today's action in paper form. The official record for the Listing Determination for Organobromine Production Wastes is identified by Docket Number F–98–OBLF–FFFFF. The official record for the Listing Determination for Petroleum Refining Wastes is Docket Number F–98–PRLF–FFFFF. The public may view supporting materials in the RCRA Information Center (RIC), located at EPA, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. Supporting materials are available for viewing in the RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, US EPA Ariel Rios (5101), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For information on specific aspects of the rule, contact Patricia Overmeyer of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency, US EPA Ariel Rios, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. (E-mail address and telephone numbers: *Overmeyer.Patricia @epa.gov*, (703) 605–0708.)

SUPPLEMENTARY INFORMATION: The rule, "Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities," was issued in the **Federal Register** at 63 FR 24596 (May 4, 1998). The rule vacating the listing determination for organobromine production wastes was issued in the **Federal Register** at 65 FR 14472 (March 17, 2000). The rule, "Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastesa; and CERCLA Hazardous Substance Designation and Reportable Quantities," was issued the **Federal Register** at 63 FR 42110 (August 6, 1998). EPA will keep the official records for these actions in paper form. The official records are the paper records maintained at the address in the **ADDRESSES** section.

Contents of this Final Rule

I. Background
II. Amended Regulations
III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures
IV. Administrative Assessments

I. Background

On March 17, 2000 EPA published a final rule announcing the vacature of regulatory provisions governing the identification of certain wastes listed as hazardous. In that final rule, EPA amended its regulations to conform with an order issued by the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir.) in Great Lakes Chemical Corporation v. EPA (No. 98–1312). That court order vacated Agency regulations listing certain organobromine wastes as hazardous wastes under the Resource Conservation and Recovery Act (RCRA). The hazardous waste listing determinations that were vacated by the court and deleted from the regulations in the March 17, 2000 final rule included the wastes listed as K140 and U408. The effect of vacating the hazardous waste listing determination for these wastes was to clarify that these two wastestreams are not subject to the hazardous waste management and treatment standards under RCRA, as well as not subject to emergency notification requirements for releases of hazardous substances to the environment.

On August 6, 1998, EPA amended the regulations for hazardous waste management under RCRA to list as hazardous four wastes generated by the petroleum refining industry. The effect of the final rule was to subject the four wastes to stringent management and treatment standards under RCRA and to emergency notification requirements for releases of hazardous substances to the environment. As part of this final regulation, the Agency also amended the existing listing description for hazardous waste code F037 in 40 CFR 261.31. The intent of the amendment was to clarify that residuals generated from processing or recycling oil-bearing hazardous secondary materials (which are excluded from the definition of solid waste due to the newly promulgated exclusion at 40 CFR 261.4(a)(12)(i)) that are not returned to refinery operations and would otherwise meet a listing under subpart D of 40 CFR part 261, were to be designated as F037 listed wastes when disposed of or intended for disposal. However, the amending language included in the August 6, 1998 FR document included a typographical error that made the intent of the amendment unclear.

II. Amended Regulations

In the March 17, 2000 final rule vacating the hazardous waste listings for K140 and U408, EPA inadvertently removed and reserved paragraph (f) of 40 CFR 148.18. The Agency should have removed and reserved paragraph (h) of 40 CFR 148.18. Paragraph (h) of 40 CFR 148.18 is the provision prohibiting the underground injection of K140 and U408. Today, EPA is correcting this error by reinstating paragraph (f) and removing and reserving paragraph (h) of 40 CFR 148.18.

In addition, in the March 17, 2000 final rule, EPA neglected to delete the reference to U408 in appendix VII of 40 CFR part 268. Today, EPA is deleting the reference to U408 in appendix VII to 40 CFR part 268.

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In the August 6, 1998 final rule, a typographical error appeared in the amended listing description for hazardous waste code F037. Today, EPA is revising the listing description for hazardous waste code F037 in 40 CFR 261.31(a) to reflect the Agency's original intent of the amendment, as described in the preamble to the August 6, 1998 final rule.

III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule (5 U.S.C. 553(b)). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary (5 U.S.C. 553(b)(3)(B)).

EPA has determined that providing prior notice and opportunity for comment on today's notice that corrects regulations amending the RCRA hazardous waste management requirements to comply with the court decision vacating the hazardous waste listing determinations for waste codes K140 and U408, is not necessary. The regulations are no longer legally in effect by order of the federal court of appeals. Thus, amending the hazardous waste regulations has no legal impact and only states the current legal status of the rules.

For the same reasons stated above, EPA believes there is good cause for making the amending regulations immediately effective. (See 5 U.S.C. 553(d))

IV. Administrative Assessments

Today's amendments to the RCRA hazardous waste management regulations only correct errors in **Federal Register** documents issued on March 17, 2000 and August 6, 1998. These corrections have no regulatory impact, and do not impose annual costs of $100 million or more. Therefore, this action is not a "significant" regulatory action, as defined by Executive Order 12866, and is not subject to review by the Office of Management and Budget. In addition, the amending regulations promulgated today will have no effect on small entities. This is evidenced by the fact that today's rule only corrects errors in the CFR. There is no impact on public or private entities, or on state, local, and tribal governments. Because the rule will not have a "significant" economic impact on small entities, a regulatory flexibility analysis is not required. Also, this final rule is not subject to the Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Today's rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3510 *et seq.*).

Today's action will have no impact upon state, local, and tribal governments, or on the private sector. The amending regulations promulgated today reflect current law, there will be no legal impact on public or private entities. Therefore, today's rule is not subject to the provisions of sections 202, 204 or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

For the same reasons stated above, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

Today's final rule will have no effect upon minority and/or low-income populations. Therefore, today's rule is not subject to Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations."

List of Subjects

40 CFR Part 148

Environmental Protection Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 261

Environmental protection, Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 268

Environmental protection, Hazardous materials, Land disposal restrictions, Reporting and recordkeeping requirements, Treatment standards, Waste management.

Dated: May 30, 2000.

Timothy R. Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set forth in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.18 is amended by removing and reserving paragraph (h) and adding paragraph (f), to read as follows:

§ 148.18 Waste specific prohibitions-newly listed and identified wastes.

* * * * *

(f) On January 8, 1997, the wastes specified in 40 CFR 261.32 as EPA Hazardous waste number K088 is prohibited from underground injection.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: Sec. 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

4. In § 261.31(a), the table is amended by revising the entry for F037, to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
F037	Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oil cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under § 261.4(a)(12)(i), if those residuals are to be disposed of.	(T)

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PART 268—LAND DISPOSAL RESTRICTIONS

5. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Appendix VII to Part 268 [Amended]

6. In appendix VII to part 268 Table 1 is amended by removing the entry for U048.

[FR Doc. 00–14321 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301004; FRL–6558–4]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on stone fruit (Crop Group 12). This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on stone fruit. This regulation establishes maximum permissible levels for residues of imidacloprid on these food commodities. The tolerances will expire and are revoked on December 31, 2001.

DATES: This regulation is effective June 8, 2000. Objections and requests for hearings, identified by docket control number OPP–301004, must be received by EPA on or before August 7, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301004 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367; e-mail address: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301004. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an

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applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for the combined residues of the insecticide imidacloprid, in or on stone fruit at 1.0 part per million (ppm) and the processed commodity prunes at 3.5 ppm. These tolerances will expire and are revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18-related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Imidacloprid on Stone Fruit and FFDCA Tolerances

There are two situations that have arisen, resulting in the present emergency condition. First, currently there are no reliable insecticides to control the green peach aphid (GPA) on peaches and nectarines because of insecticide resistance. Second, aphids are a vector for Plum Pox Virus (PPV), a disease that damages the fruits of sensitive cultivars of stone fruits. The mechanism by which aphids transmit PPV is called non- persistent transmission. Once an aphid probes into infected plant tissue and acquires the virus, the virus can only remain infectious and be transmitted for a short period of time (minutes). Each aphid must feed directly on an infected plant, acquire sufficient virus, and then fly immediately to the next plant in order to effect a transmission.

PPV was discovered for the first time in the United States in 18 stone fruit orchards in Adams County, Pennsylvania in the fall of 1999. Indications are that PPV has been in Pennsylvania for several years, and it is possible that undetected infections of PPV exist in peach and nectarine orchards in New Jersey, New York, and West Virginia. EPA has authorized under FIFRA section 18 the use of imidacloprid on stone fruit for control of aphids in New Jersey, New York, Pennsylvania and West Virginia. After having reviewed the submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of imidacloprid in or on stone fruit. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on each emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on stone fruit after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether imidacloprid meets EPA's registration requirements for use on stone fruit or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of imidacloprid by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than New Jersey, New York, Pennsylvania, and West Virginia to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for imidacloprid, contact the Agency's Registration Division at the address provided under "FOR FURTHER INFORMATION CONTACT."

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of imidacloprid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on stone fruit at 1.0 ppm and prunes 3.5 ppm. EPA's assessment

of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imidacloprid are discussed in this unit.

B. Toxicological Endpoint

Only acute and chronic dietary endpoints were defined. The 10x FQPA factor was reduced to 3x for acute and chronic exposure, and applies to all population subgroups.

1. *Acute toxicity.* The acute reference dose (RfD) is 0.42 milligram/kilogram body weight/day (mg/kg bwt/day) based on a lowest observed adverse effect level (LOAEL) of 42 mg/kg bwt/day based on decreased motor activity in female rats. An additional 3x FQPA factor was incorporated for all population subgroups to account for neurotoxicity, structure-activity concerns and lack of a no observed adverse effect level (NOAEL). The acute population adjusted dose (aPAD), which is the reference dose (RfD/3) was calculated to be 0.14 mg/kg bwt/day. Acceptable acute dietary exposure (food plus water) of 100% or less of the aPAD is required for all population subgroups.

2. *Short- and intermediate-term toxicity.* Dermal and inhalation short- and intermediate-term risk assessments are not required for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity; however, because imidacloprid is registered for use on turf, home gardens and pets, EPA has identified potential short-term oral exposures to children for these uses.

A short-term oral endpoint was not identified for imidacloprid. According to current EPA policy, if an oral endpoint is needed for short-term risk assessment (for incorporation of food, water, or oral hand-to-mouth type exposures into an aggregate risk assessment), the acute oral endpoint (LOAEL = 42 mg/kg bwt/day) will be used to incorporate the oral component into aggregate risk.

3. *Chronic toxicity.* EPA has established the RfD for imidacloprid at 0.057 milligrams/kilograms/day (mg/kg/day). This RfD is based on increased number of thyroid lesions at the LOAEL of 16.9/24.9 mg/kg bwt/day (males and females, respectively). An additional 3x FQPA factor was used for all population subgroups. The chronic population adjusted dose (cPAD), which is the RfD/3, was calculated to be 0.019 mg/kg bwt/day. Acceptable chronic dietary exposure (food plus water) of 100% or less of the cPAD is required for all population subgroups.

4. *Carcinogenicity.* Imidacloprid has been classified by the Agency as a Group E chemical, no evidence of carcinogenicity for humans, thus, a cancer risk assessment is not required.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances, some time-limited, are currently established (40 CFR 180.472) for the combined residues of the insecticide imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on a variety of raw agricultural and animal commodities at levels ranging from 0.02 ppm in eggs to 15 ppm in raisins, waste. Risk assessments were conducted by EPA to assess dietary exposures and risks from imidacloprid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. In conducting the acute dietary (food) risk assessment, EPA used the Theoretical Maximum Residue Contribution (TMRC) which assumes tolerance level residues and 100% crop-treated (Tier 1). The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure. Resulting exposure values (at the 95th percentile) and percentage of aPAD utilized ranged from 23% for the U.S. population to 45% for children 1–6 years old.

ii. *Chronic exposure and risk.* In conducting the chronic dietary (food only) risk assessment, EPA used: Tolerance level residues for imidacloprid and percent crop- treated (PCT) information for some of these crops.

The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The percentages of cPAD consumed for the general population and subgroups of interest ranged from 11% for nursing infants <1 year old to 51% for children 1–6 years old.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings:

Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue.

Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group.

Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimated. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulation is taken into account through EPA's computer-based model for evaluating the exposure of

significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which imidacloprid may be applied in a particular area.

2. *From drinking water.* There is no established Maximum Contaminant Level for residues of imidacloprid in drinking water. No health advisory levels for imidacloprid in drinking water have been established.

Imidacloprid is persistent, water soluble, and fairly mobile. Thus, residues of imidacloprid may be transported to both surface and ground waters. As a condition of registration, the Agency is requiring the submission of the results of two prospective ground water monitoring studies. Results from these studies are not yet available.

i. *Acute exposure and risk.* Estimated concentrations of imidacloprid in surface and ground water used for the acute exposure analysis were 4.1 and 1.1 micrograms per liter (µg/L) (parts per billion (ppb)), respectively. These estimated concentrations of imidacloprid in surface and ground water were based upon an application rate of 0.5 lbs active ingredient/acre/year (ai/acre/year).

For purposes of risk assessment, the estimated maximum concentration for imidacloprid in surface and ground waters (which is 4.1 µg/L) should be used for comparison to the back-calculated human health drinking water levels of concern (DWLOCs) for the acute endpoint. The DWLOCs ranged from 800 µg/L for children 1–6 years old to 3,900 µg/L for the U.S. population. These figures are well above the drinking water estimate concentration (DWEC) of 4.1 µg/L.

ii. *Chronic exposure and risk.* Estimated concentrations of imidacloprid in surface and ground water for chronic exposure analysis were 0.1 and 1.1 µg/L (ppb), respectively. These estimated concentrations of imidacloprid in surface and ground water were based upon an application rate of 0.5 lbs ai/acre/year.

For purposes of chronic risk assessment, the estimated maximum concentration for imidacloprid in ground waters (which is 1.1 µg/L) should be used for comparison to the back-calculated human health DWLOCs for the chronic (non-cancer) endpoint. The DWLOCs ranged from 90 µg/L for children 1–6 years old to 490 µg/L for the U.S. population. These figures are well above the DWEC of 1.1 µg/L.

3. *From non-dietary exposure.* Imidacloprid is currently registered for use on the following residential non-food sites: ornamentals (e.g., flowering and foliage plants, ground covers, turf, lawns) tobacco, golf courses, walkways, recreational areas, household or domestic dwellings (indoor/outdoor), and cats/dogs.

i. *Acute exposure and risk.* Occupational/residential exposure risk assessments (namely, short-term dermal, intermediate-term dermal, long-term dermal, and inhalation) are not required owing to the demonstrated absence of dermal and inhalation toxicity.

ii. *Chronic exposure and risk.* Occupational/residential exposure risk assessments (namely, short-term dermal, intermediate-term dermal, long-term dermal, and inhalation) are not required owing to the demonstrated absence of dermal and inhalation toxicity.

iii. *Short- and intermediate-term exposure and risk.* Short- and intermediate-term oral exposure are not expected for adult population subgroups. However, since imidacloprid is registered for use on turf, home gardens and pets, EPA has identified potential short-term oral exposures to children for these uses. Thus, a residential short-term risk assessment via the oral route is required. See Unit IV.E.4. for a full discussion of this exposure and risk.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* EPA has determined that the acute exposure to imidacloprid from food will utilize 23% of the aPAD (95th percentile) for the most highly exposed population subgroup (U.S. population—all seasons). Despite the potential for exposure to imidacloprid in drinking water, the Agency does not expect the aggregate exposure to exceed 100% of the aPAD. The DWLOC calculated for the U.S. population was 3,900 µg/L, which is well above the DWEC of 4.1 µg/L.

2. *Chronic risk.* In conducting the chronic dietary (food only) risk assessment, EPA used: Tolerance level residues for imidacloprid, and PCT information for some of these crops. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The percentage of cPAD consumed for the U.S. population was 24%. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to imidacloprid in drinking water, the Agency does not expect the aggregate exposure to exceed 100% of the cPAD. The DWLOC calculated for the U.S. population was well above the DWEC of 1.1 µg/L.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Dermal and inhalation short- and intermediate-term risk assessments are not required for imidacloprid, as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. Short- and intermediate-term oral exposure are not expected for adult population subgroups. A discussion of short- and intermediate- term oral exposure and

risk for children 1–6 can be found in Unit IV.E.4.

4. *Aggregate cancer risk for U.S. population.* Imidacloprid has been classified as a Group E chemical, no evidence of carcinogenicity for humans, thus, a cancer risk assessment is not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity, and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In a developmental toxicity study with Sprague- Dawley rats, groups of pregnant animals (25/group) received oral administration of imidacloprid (94.2%) at 0, 10, 30, or 100 mg/kg bwt/day during gestation days 6 through 16. Maternal toxicity was manifested as decreased body weight gain at all dose levels and reduced food consumption at 100 mg/kg bwt/day. No treatment-related effects were seen in any of the reproductive parameters (i.e., Cesarean section evaluation). At 100 mg/kg bwt/day, developmental toxicity manifested as wavy ribs (fetus = 7/149 in treated vs. 2/158 in controls and litters, 4/25 vs. 1/25). For maternal toxicity, the LOAEL was 10 mg/kg bwt/day lowest dose tested (LDT) based on decreased body weight gain; a NOAEL was not established. For developmental toxicity, the NOAEL was 30 mg/kg bwt/day and the LOAEL was 100 mg/kg bwt/day based on increased wavy ribs.

In a developmental toxicity study with Chinchilla rabbits, groups of 16 pregnant does were given oral doses of imidacloprid (94.2%) at 0, 8, 24 or 72 mg/kg bwt/day during gestation days 6 through 18. For maternal toxicity, the NOAEL was 24 mg/kg bwt/day and the LOAEL was 72 mg/kg bwt/day based on mortality, decreased body weight gain, increased resorptions, and increased abortions. For developmental toxicity, the NOAEL was 24 mg/kg bwt/day and the LOAEL was 72 mg/kg bwt/day based on decreased fetal body weight, increased resorptions, and increased skeletal abnormalities.

iii. *Reproductive toxicity study.* In a 2–generation reproductive toxicity study, imidacloprid (95.3%) was administered to Wistar/Han rats at dietary levels of 0, 100, 250, or 700 ppm (0, 7.3, 18.3, or 52.0 mg/kg bwt/day for males and 0, 8.0, 20.5, or 57.4 mg/kg bwt/day for females). For parental/systemic/reproductive toxicity, the NOAEL was 250 ppm (18.3 mg/kg bwt/day) and the LOAEL was 750 ppm (52 mg/kg bwt/day), based on decreases in body weight in both sexes in both generations. Based on these factors, the Agency determined that the review be revised to indicate the parental/systemic/reproductive NOAEL and LOAEL to be 250 and 700 ppm, respectively, based upon the body weight decrements observed in both sexes in both generations.

iv. *Prenatal and postnatal sensitivity.* The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study data did not identify any increased sensitivity of rats to *in utero* or postnatal exposure. Parental NOAELs were lower or equivalent to developmental or offspring NOAELs.

v. *Conclusion.* There is a need for a developmental neurotoxicity study for assessment of potential alterations of functional development. However, the Agency has determined that this data gap does not preclude the establishment/continuance of tolerances. The 10x safety factor to account for enhanced sensitivity of infants and children (as required by FQPA) was reduced to 3x and the factor applies to all population subgroups.

2. *Acute risk.* Using the conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has estimated the acute exposure to imidacloprid from food for the most highly exposed population subgroup (children 1–6 years old) will utilize 45% of the aPAD. It was determined that an acceptable acute dietary exposure (food plus water) of 100% or less of the aPAD is needed to protect the safety of all population subgroups. Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD for children 1–6 years old. The maximum concentration of imidacloprid in surface and ground water for acute exposure is very small (4.1 µg/L) compared to the DWEC of 800 µg/L.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to imidacloprid from food will utilize 51% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD for children 1–6 years old. The maximum concentration of imidacloprid in surface and ground water for acute exposure is very small (1.1 µg/L) compared to the DWEC of 90 µg/L.

4. *Short- and intermediate-term risk.* As noted earlier in this document, dermal and inhalation short- and intermediate-term risk assessments are not required for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. Short- and intermediate-term oral exposure are not expected for adult population subgroups. However, since imidacloprid is registered for use on turf, home gardens and pets, EPA has identified potential short-term oral exposures to children for these uses.

A short-term oral endpoint was not identified for imidacloprid. According to current EPA policy, if an oral

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endpoint is needed for short-term risk assessment (for incorporation of food, water, or oral hand-to-mouth type exposures into an aggregate risk assessment), the acute oral endpoint (LOAEL = 42 mg/kg bwt/day) will be used to incorporate the oral component into aggregate risk.

The margin of exposure for chronic dietary exposure (food only) and residential exposure (hand-to-mouth from turf, garden, and pet uses) for children ages 1–6 was calculated to be 300. The safe level for imidacloprid is 300.

Potential short-term exposure from drinking water is at a level below the Agency's level of concern with the DWLOC (2 µg/L) being greater than the DWEC of 1.1 µg/L.

The Agency, concludes the short-term aggregate risk to the highest exposed population subgroup (children 1–6 years old) from home garden, turf, and pet uses of imidacloprid does not exceed EPA's level of concern.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to imidacloprid residues.

V. Other Considerations

A. Metabolism in Plants and Animals

The nature of imidacloprid residues in plants and in animals is adequately understood. The residue of concern is imidacloprid and its metabolites containing the 6- chloropyridinyl moiety, all expressed as parent, as specified in 40 CFR 180.472.

B. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

C. Magnitude of Residues

Crop field trials on peaches have been submitted, and the highest residues of imidacloprid were found to be 0.77 ppm. For the purposes of this section 18, the Agency will translate the peach residue data to all stone fruit and tolerances will be set at 1.0 ppm.

The only processed commodity associated with stone fruit is prunes, as plums can be processed into prunes. Since no processing study was submitted, a default factor of 3.4 was used, and therefore, the tolerance on prunes will be set at 3.5 ppm.

D. International Residue Limits

There are no Codex, Canadian, or Mexican Maximum Residue Limits for imidacloprid on sweet corn. Thus, harmonization is not an issue for these time-limited tolerances.

E. Rotational Crop Restrictions

The rotational crop restrictions follow the original section 3 labels. In addition, there is little concern over rotational crops for this section 18 as stone fruit are rarely rotated to other crops.

VI. Conclusion

Therefore, the tolerances are established for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on stone fruit at 1.0 ppm and prunes at 3.5 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301004 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 7, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301004, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations* and Low-Income Populations (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 25, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In §180.472, by alphabetically adding the following commodities to the table in paragraph (b) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.** * *

Commodity	Parts per million	Expiration/ Revocation Date
. . . . .		
Prunes	3.5	12/31/01
. . . . .		
Stone fruit, crop group 12	1.0	12/31/01
. . . . .		

* * * * *

[FR Doc. 00–14422 Filed 6–7–00; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1147; MM Docket No. 99–321; RM–9733]

Radio Broadcasting Services; Grand Isle and Empire, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of KBIL, LLC (formerly Blue Dolphin Communications, Inc.), the Commission substitutes Channel 283C2 for Channel 283A at Grand Isle, Louisiana, reallots Channel 283C2 to Empire, Louisiana, as that community's first local aural transmission service, and modifies the authorization for Station KBIL, as requested. *See* 64 FR 213, November 4, 1999. Coordinates used for Channel 283C2 at Empire are 29–29–07 NL and 89–46–39 WL.

DATES: Effective July 10, 2000.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–321, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Empire, Channel 283C2.

3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Grand Isle, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14381 Filed 6–7–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1148; MM Docket No. 99–246; RM–9593; RM–9770]

Radio Broadcasting Services; Winslow and Mayer, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of Desert West Air Ranchers Corporation, the Commission reallots Channel 236C from Winslow to Mayer, Arizona (RM–9770), as that community's first local aural transmission service, in lieu of previously proposed Camp Verde, Arizona (RM–9593), and modifies the license for Station KFMR(FM) to specify Mayer as its community of license. *See* 64 FR 37926, July 14, 1999. Coordinates used for Channel 236C at Mayer, Arizona, are 34–25–00 NL and 112–00–30 WL. With this action, this docketed proceeding is terminated.

DATES: Effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–246, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Mayer, Channel 236C.

3. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Winslow, Channel 236C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14379 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1159; MM Docket No. 98–151; RM–9320, RM–9653]

Radio Broadcasting Services; Douglas and Guernsey, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain Tower Broadcasting, allots Channel 223C1 to Douglas, Wyoming, as the community's second FM service, and third local aural service, and, at the request of Mount Rushmore Broadcasting, Inc., allots Channel 265A to Douglas as a third local FM fourth local aural service, and Channel 281A at Guernsey, Wyoming, as the community's first local aural service. *See* 63 FR 44601 (August 20, 1998). Channel can be allotted to Douglas in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 27.8 kilometers (17.3 miles) at coordinates 42–20–19 and 105–05–05. Channel 265A can be allotted at Douglas without the imposition of a site restriction, at coordinates 42–45–18 and 105–24–18 and Channel 281A can be allotted at Guernsey without the imposition of a site restriction, at coordinates 42–16–00 and 104–44–42. Filing windows for Channels 223C1 and 265A at Douglas and 281A at Guernsey will not be opened at this time. Instead, the issue of opening a filing window for each channel will be addressed by the Commission in a subsequent *Order*.

DATES: Effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–151, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channels 223C1 and 265A at Douglas, and Guernsey, Channel 281A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14377 Filed 6–7–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 95–31; FCC 00–120]

Reexamination of Comparative Standards for Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted new methods to select among competing applications to construct noncommercial educational (NCE) broadcast stations or to make changes in existing facilities of such stations. The Commission will use a point system to select among mutually exclusive applicants on reserved channels, to streamline the current selection process and make it faster and simpler for applicants and for the Commission. The Commission will use existing auction procedures to select among mutually exclusive applications on non-reserved ("commercial") channels, even if one or more of the applicants proposes to operate noncommercially. To facilitate the transition to new "filing window" procedures, the Commission implemented a freeze on the filing of new applications for reserved channel noncommercial educational broadcast stations.

DATES: Effective August 7, 2000, except for §§ 73.202, 73.3527, and 73.3572 which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these sections. The filing freeze became effective April 21, 2000 (*See* FCC News Releases, April 14, 2000 at www.fcc.gov).

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, http://www.fcc.gov.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Federal Communications Commission, Mass Media Bureau, Audio Services Division, 445 12th Street, S.W., Washington, D.C. 20554 (202) 418–2780, Internet address:ibleiwei@fcc.gov (inquiries abou' this proceeding other than information collection) or Edward C. Springer, OMB Desk Officer, Office of Management and Budget, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, Internet address: *edward.springer@omb.eop.gov* (inquiries about information collection).

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* adopted April 4, 2000, and released April 21, 2000. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036. The text can be obtained over the internet by going to the FCC web site, www.fcc.gov, and following the link entitled "FCC Adopts Comparative Standards for Noncommercial Educational Broadcast Stations, 4/27/00, under the "headlines" section.

Synopsis of Order

1. The Commission issued a *Notice of Proposed Rule Making* in this proceeding in 1995 [60 FR 15275 March 23, 1995] proposing to change the process used to select noncommercial educational applicants, because the existing process was cumbersome and no longer making meaningful distinctions among applicants. Subsequently, Congress addressed related issues in the Balanced Budget Act of 1997, and the Commission issued a *Further Notice of Proposed Rule Making* [63 FR 58358 October 30, 1998], seeking additional comments. After considering the comments received, the Commission now adopts new simpler filing procedures and selection methods for applications seeking to construct new noncommercial educational (NCE) FM, FM translator, and television stations and to make major changes to such existing stations.

2. Applications for new and major changes to NCE stations will be filed only within "filing windows" to be announced by the Commission. The Commission will study applications filed during the window for mutual exclusivity. This replaces a system in which applications were accepted at any time, and "cut-off" lists were issued to invite competing applications.

3. If mutually applications are received within a filing window, and for existing mutually exclusive applications that have already been "cut off," the Commission will first determine as a threshold issue, whether any application should be granted or dismissed on the basis of fair distribution of service pursuant to 47 U.S.C. 307(b) (FM stations proposing service to different communities) or on the basis of translator fill-in service as compared to non-fill-in service. If mutually exclusive applicants remain after these threshold issues, the Commission will proceed to a point system.

4. Points will be awarded as follows: (a) 3 points to an established local entity (a government applying for a station within its area of jurisdiction or any applicant that for at least the two years prior to application has had one of the following within 25 miles of the reference coordinates for the community of license: its headquarters, its campus, or the primary residences of 75% of its board members); (b) 1 to 2 points to the applicant with the best technical proposal (covering the largest area and population) depending on comparison to the next best technical proposal; and either (c) 2 points to applicants with local diversity of ownership (no overlap of attributable station principal community contours); or (d) 2 points to an applicant that does not claim local diversity of ownership points, if it is a state-wide network serving 50 accredited full-time elementary/

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secondary schools or 5 accredited full-time college/university campuses. Points are determined by the applicant's qualifications at the time of application, provided that the applicant must still qualify for those points at the time of point analysis. In determining points, the interests of attributable parties such as parent organizations, officers, board members, and parties with significant financial influence that also will supply substantial programming to the station will be considered.

5. To break ties, the Commission will select the applicant with the fewest authorizations (existing stations and construction permits). If that standard fails to break the tie, the Commission will select the applicant with the fewest pending applications. If these tie breakers do not result in selection of a prevailing applicant, the Commission will implement mandatory time sharing for full service applicants. For FM translator applicants only, the final tie breaker will select the first applicant to file, similar to existing translator-only rules. The Commission will permit settlements at any time under current settlement rules, which limit reimbursement to an applicant's reasonable and prudent expenses.

6. The new procedures will apply to applications already on file and applications filed in the future. The Commission will issue a Public Notice in the future providing existing applicants with information about how to supplement their applications to claim the points for which they qualify. Existing applicants may file settlements at any time.

7. Until a successful applicant selected through a point system has completed four years of on-air operations, it will be permitted to assign or transfer control of the station's license only to a party eligible to receive the same number of points, and for consideration not to exceed reasonable and prudent expenses application and construction expenses.

8. The Commission will not use the point system for channels that are available commercially (non-reserved channels), even if one or more noncommercial organizations apply for the channel. Such applications will be resolved by auction. In reaching this conclusion, the Commission conducted an in-depth analysis of conflicting directives in the enabling statute, and Commission policies concerning allocation and use of the reserved and non-reserved channels.

Final Regulatory Flexibility Analysis (FRFA)

Summary

As required by the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Further Notice of Proposed Rulemaking for the docket in this proceeding. The Commission sought written public comments on the proposals set forth in the Notice, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA") in this Report and Order ("Order") conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996).

Need for and Objectives of Action

The Commission previously determined that traditional hearings, the method used to select among competing applicants for new noncommercial educational broadcast construction permits, were time consuming and burdensome, and that the criteria used in those hearings were vague and difficult to apply. This Order amends the Commission's rules to establish a simpler, clearer, and more streamlined process for selecting among competing noncommercial educational applicants. Specifically, it (1) establishes a point system, a type of simplified paper hearing on channels reserved for NCE use; (2) clarifies that auctions will apply on non-reserved broadcast channels; and (3) provides additional circumstances in which an NCE entity can have a non-reserved channel allocated as reserved.

Significant Issues Raised by Public Comments in Response to the Initial Analysis

No comments were received specifically in response to the IRFA in MM Docket No. 95–31. However, one commenter, in expressing support for the use of lotteries, an option not selected, stated that it thought lotteries would have a positive effect on small businesses.

Description and Estimate of the Number of Small Entities Involved

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. S 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term that are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.[1] We received no comment in response to either IRFA on how to define radio and television broadcast "small businesses." Therefore, we will continue to utilize SBA's definitions for the purpose of this FRFA.

The rules adopted in this Order will apply to television and radio stations licensed to operate on channels reserved as "noncommercial educational." With respect to television stations, the Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Television stations that the Federal Communications Commission (FCC) would consider commercial, as well as those that the FCC would consider noncommercial educational, are included in this industry. Also included are other establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

For 1992 the total number of television stations that produced less than $10.0 million in revenue was 1,155 of the 1,509 television stations then operating, both commercial and

[1] While we believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this FRFA, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to these rules and to consider furher the issue of the number of small entities that are radio and television broadcasters or small media entities in the future. See Report and Order in MM Docket No. 93–48 (Children's Television Programming), 11 FCC Rcd 10660, 10737–38 (1996), citing 5 U.S.C. S 601(3).

noncommercial, or 77 percent. As of July 31, 1999, of the 1,599 total television stations, 370 are noncommercial educational. Thus, we estimate that the proposed rules will potentially affect 285 (77 percent of 370) noncommercial educational television stations that are small businesses. These existing stations would only be affected if they file an application for major modification of their existing facilities, and if another applicant files a mutually exclusive application. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. On the other hand they may understate the number of small entities, because we believe that a larger percentage of noncommercial educational stations are small businesses than the percentage applicable to the television industry as a whole. We recognize that the proposed rules may also affect minority and women owned stations, some of which may be small entities. In 1997, minorities owned and controlled 38 (3.2%) of 1,193 commercial television stations in the United States. Comparable figures are not available for noncommercial stations. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and noncommercial television stations in the United States. The proposal would also affect pending and future mutually exclusive applications for noncommercial television stations. As of August 1999, there are currently 67 pending applications for 22 channels reserved for noncommercial educational television usage.

The rule changes would also affect noncommercial educational radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Radio stations that the Federal Communications Commission (FCC) would consider commercial, as well as those that the FCC would consider noncommercial educational, are included in this industry. Also included are entities which primarily are engaged in radio broadcasting and which produce radio program materials. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 Census indicates that 96 percent of radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of July 31, 1999, official Commission records indicate that 12,582 radio stations are currently operating. Of the current radio station total, 2,055 stations are noncommercial educational. Thus, we estimate that 1,923 (96%) of these noncommercial educational stations are small businesses, possibly more because we believe that a greater percentage of noncommercial educational stations are small businesses than of the radio industry overall. These existing stations would only be affected by the proposal if they choose to file applications for major modification of facilities and if their applications are mutually exclusive with the application of another noncommercial entity. Applicants for new NCE radio stations would also potentially be affected. As of August 1999 there were 371 pending mutually exclusive groups of 1,102 applications, for new noncommercial FM radio stations. We also note that this proposal will affect future applications. With respect to minority ownership of radio stations, no information is available for noncommercial stations, but it is available for commercial stations. In 1997, minorities owned 284 (2.8%) of 10,282 commercial radio stations.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The measures adopted in the Order are anticipated to reduce the overall administrative burden of the Commission's application processes on applicants and the Commission. Use of a point system will eliminate the expense of preparing for and appearing at lengthy traditional hearings. Applicants should also receive decisions faster, because the Commission will make numerical calculations instead of preparing detailed hearing decisions. These savings should more than offset the time that would be required for applicants to gather and submit documentation supporting the points claimed. No additional professional services are required by applicants filing under these revised rules. Further, the cost of compliance will not vary between large and small entities.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

This Order sets forth the Commission's new streamlined procedures for selecting among competing noncommercial educational applicants. All significant alternatives presented in the comments were considered. Small entities participating in auctions for non-reserved channels may be eligible for a new entrant auction credit. Small entities may be eligible for points in the point system based on diversity of ownership, established local entity, and in a tie breaker for number of existing authorizations and applications.

Report to Congress

The Commission will send a copy of the Reexamination of the Comparative Standards for Noncommercial Educational Applicants, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. Further, the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Parts 73 and 74 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

Regulatory Text

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202 is amended by revising paragraph (a)(1) to read as follows:

§ 73.202 Table of Allotments.

(a) * * *

(1) Channels designated with an asterisk may be used only by noncommercial educational broadcast

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stations. The rules governing the use of those channels are contained in part 73, subpart C of this chapter. An entity that would be eligible to operate a noncommercial educational broadcast station can, in conjunction with an initial petition for rulemaking filed pursuant to part 1, subpart C of this chapter, request that a nonreserved FM channel (channels 221 through 300) be allotted as reserved only for noncommercial educational broadcasting by demonstrating the following:

(i) No reserved channel can be used without causing prohibited interference to TV channel 6 stations or foreign broadcast stations; or

(ii) The applicant is technically precluded from using the reserved band by existing stations or previously filed applications and the proposed station would provide a first or second noncommercial educational radio service to 2,000 or more people who constitute 10% of the population within the proposed allocation's 60 dBu (1 mV/m) service contour.

* * * * *

§ 73.502 [Removed and reserved]

3. Section 73.502 is removed and reserved.

4. Section 73.503 is amended by adding a new paragraph (e) to read as follows:

§ 73.503 Licensing requirements and service.

* * * * *

(e) Mutually exclusive applications for noncommercial educational radio stations operating on reserved channels will be resolved pursuant to the point system in subpart K.

* * * * *

5. Section 73.513 is amended by designating the undesignated text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 73.513 Noncommercial educational FM stations operating on unreserved channels.

* * * * *

(b) When a noncommercial educational applicant is among mutually exclusive applications for an unreserved FM channel, the mutually exclusive applications will be considered pursuant to Subpart I—Competitive Bidding Procedures and not Subpart K—Application and Selection Procedures On Reserved Noncommercial Educational Channels.

6. Section 73.621 is amended by adding a new paragraph (h) to read as follows:

§ 73.621 Noncommercial educational TV stations.

* * * * *

(h) Mutually exclusive applications for noncommercial educational TV stations operating on reserved channels shall be resolved pursuant to the point system in subpart K.

7. Section 73.622 is amended by adding two new sentences immediately preceding the last sentence of paragraph (a) to read as follows:

§ 73.622 Digital television table of allotments.

(a) * * * Rules governing noncommercial educational TV stations are contained in § 73.621. Where there is only one technically available channel available in a community, an entity that would be eligible to operate a noncommercial educational broadcast station may, prior to application, initiate a rulemaking proceeding requesting that an unoccupied or new channel in the community be changed or added as reserved only for noncommercial educational broadcasting upon demonstrating that the noncommercial educational proponent would provide a first or second noncommercial educational TV service to 2,000 or more people who constitute 10% of the population within the proposed allocation's noise limited contour.

* * *

* * * * *

8. Section 73.1150 is amended by adding a new paragraph (d) to read as follows:

§ 73.1150 Transferring a station.

* * * * *

(d) Authorizations awarded pursuant to the noncommercial educational point system in subpart K are subject to the holding period in § 73.7005. Applications for an assignment or transfer filed prior to the end of the holding period must demonstrate the factors enumerated therein.

9. Section 73.3522 is amended by revising paragraph (b) to read as follows:

§ 73.3522 Amendment of applications.

* * * * *

(b) *Reserved Channel FM and reserved noncommercial educational television stations.* Applications may be amended after Public Notice announcing a period for filing amendments. Amendments, when applicable, are subject to the provisions of §§ 73.3514, 73.3525, 73.3572, 73.3573, 73.3580, and § 1.65 of this chapter. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration. Amendments will be accepted as described below and otherwise will only be considered upon a showing of good cause for late filing or pursuant to § 1.65 of this chapter or § 73.3514:

(1) A § 73.7002 Selectee. A Public Notice will announce that the application of a § 73.7002 Selectee (selected based on fair distribution) has been found acceptable for filing. If any Selectee's application is determined unacceptable the application will be returned and the Selectee will be provided one opportunity for curative amendment by filing a petition for reconsideration requesting reinstatement of the application. All amendments filed in accordance with this paragraph must be minor and must not alter the § 73.7002 preference.

(2) A § 73.7003 Tentative Selectee. A Public Notice will announce that the application of a § 73.7003 Tentative Selectee (selected through a point system) has been found acceptable for filing. If any Tentative Selectee's application is determined unacceptable the application will be returned and the Tentative Selectee will be provided one opportunity for curative amendment by filing a petition for reconsideration requesting reinstatement of the application. All amendments filed in accordance with this paragraph must be minor and must claim the same number of qualitative points as originally claimed, or more points than claimed by the applicant with the next highest point total.

(3) A Public Notice will identify all other reserved channel applications, such as non-mutually exclusive applications and the sole remaining application after a settlement among mutually exclusive applications. If any such application is determined unacceptable the application will be returned and the applicant will be provided one opportunity for curative amendment by filing a petition for reconsideration requesting reinstatement of the application. All amendments filed in accordance with this paragraph must be minor.

10. Section 73.3527 is amended by revising the first sentence of paragraph (e)(2) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(2) *Applications and related materials.* A copy of any application tendered for filing with the FCC, together with all related material, including supporting documentation of any points claimed in the application pursuant to § 73.7003, and copies of FCC decisions pertaining thereto. * * *

* * * * *

11. Section 73.3555 is amended by revising paragraph (f) to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(f) The ownership limits of this section are not applicable to noncommercial educational FM and noncommercial educational TV stations. However, the attribution standards set forth in the Notes to this section are relevant to evaluation of mutually exclusive noncommercial educational FM and TV applicants pursuant to subpart K of this part.

* * * * *

12. Section 73.3572 is amended by revising paragraph (d) to read as follows:

§ 73.3572 Processing of TV broadcast, low power TV, TV translator and TV booster station applications.

* * * * *

(d)(1) The FCC will specify by Public Notice, a period for filing applications for new television stations on reserved noncommercial educational channels or for major modifications in the facilities of an authorized station on reserved channels. TV reserved channel applications for new facilities or for major modifications will be accepted only during the appropriate filing period or "window." Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely. Mutually exclusive applications for reserved channel television stations will be resolved using the point system in subpart K of this part.

(2) Concurrently with the filing of a new or major modification application for a reserved noncommercial educational channel, the applicant shall submit to the FCC's public reference room and to a local public inspection file consistent with § 73.3527(e)(2), supporting documentation of points claimed, as described in the application form.

* * * * *

13. Section 73.3573 is amended by revising paragraphs (d) and (e) to read as follows:

§ 73.3573 Processing FM broadcast station applications.

* * * * *

(d) If, upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of an application for FM broadcast facilities, the same will be granted. If the FCC is unable to make such a finding and it appears that a hearing may be required, the procedure given in § 73.3593 will be followed. In the case of mutually exclusive applications for reserved channels, the procedures in subpart K of this part will be followed. In the case of mutually exclusive applications for unreserved channels, the procedures in subpart I of this part will be followed.

(e) *Processing reserved channel FM broadcast station applications.* (1) Applications for minor modifications for reserved channel FM broadcast stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a "first come/first served" basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Conflicting applications received on the same day will be treated as simultaneously filed and mutually exclusive. Conflicting applications received after the filing of the first acceptable application will be grouped, according to filing date, behind the lead application in the queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent conflicting applicants only reserves a place in the queue. The right of an applicant in a queue ripens only upon a final determination that the lead applicant is unacceptable and that the queue member is reached and found acceptable. The queue will remain behind the lead applicant until the construction permit is finally granted, at which time the queue dissolves.

(2) The FCC will specify by Public Notice a period for filing reserved channel FM applications for a new station or for major modifications in the facilities of an authorized station. FM reserved channel applications for new facilities or for major modifications will be accepted only during the appropriate filing period or "window." Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely.

(3) Concurrently with the filing of a new or major modification application for a reserved noncommercial educational channel, the applicant shall submit to the FCC's public reference room and to a local public inspection file consistent with § 73.3527(e)(2), supporting documentation of points claimed, as described in the application form.

(4) Timely filed applications for new facilities or for major modifications for reserved FM channels will be processed pursuant to the procedures set forth in subpart K of this part (§ 73.7000 *et seq.*) Subsequently, the FCC will release Public Notices identifying: mutually exclusive groups of applications; applications selected pursuant to the fair distribution procedures set forth in § 73.7002; applications received during the window filing period which are found to be non-mutually exclusive; tentative selectees determined pursuant to the point system procedures set forth in § 73.7003; and acceptable applications. The Public Notices will also announce: additional procedures to be followed for certain groups of applications; deadlines for filing additional information; and dates by which petitions to deny must be filed in accordance with the provisions of § 73.3584. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the application, it will be granted. If an application is determined unacceptable for filing, the application will be returned, and subject to the amendment requirements of § 73.3522.

* * * * *

14. Section 73.3584 is amended by adding a new first and second sentence to paragraph (a) immediately preceding "Except" to read as follows:

§ 73.3584 Procedure for filing petitions to deny.

(a) For mutually exclusive applications subject to selection by competitive bidding (non-reserved channels) or fair distribution/point system (reserved channels), petitions to deny may be filed only against the winning bidders or tentative selectee(s), and such petitions will be governed by §§ 73.5006 and 73.7004, respectively. For all other applications the following rules will govern. * * *

* * * * *

15. Section 73.3593 is revised to read as follows:

§ 73.3593 Designation for hearing.

If the FCC is unable, in the case of any application for an instrument of authorization, to make the findings specified in § 73.3591(a), it will formally designate the application for hearing on the grounds or reasons then obtaining

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and will forthwith notify the applicant and all known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. If, however, the issue to be resolved is limited to the mutual exclusivity of applications for initial authorizations or for major changes to existing stations, that mutual exclusivity shall be resolved pursuant to competitive bidding procedures identified in subpart I (unreserved channels) or point system procedures identified in subpart K (reserved channels).

16. Add subpart K to part 73 to read as follows:

Subpart K—Application and Selection Procedures on Reserved Noncommercial Educational Channels

Sec.

73.7000 Definition of terms (as used in subpart K only).
73.7001 Services subject to evaluation by point system.
73.7002 Fair distribution of service on reserved band FM channels.
73.7003 Point system selection procedures.
73.7004 Petitions to deny tentative selectee(s).
73.7005 Holding period.

§ 73.7000 Definition of terms (as used in subpart K only).

Attributable interest. An interest of an applicant, its parent, subsidiaries, their officers, and members of their governing boards that would be cognizable under the standards in the notes to § 73.3555. Also an interest of an entity providing more than 33 percent of an applicant's equity and/or debt that also either (1) supplies more than 15% of the station's weekly programming, or (2) has an attributable interest pursuant to § 73.3555 in media in the same market.

Established local applicant. An applicant that has, for at least the two years (24 months) immediately preceding application, met the definition of local applicant.

Local applicant. An applicant physically headquartered, having a campus, or having 75% of board members residing within 25 miles of the reference coordinates for the community to be served.

Nonreserved (Unreserved) channels. Channels which are not reserved exclusively for noncommercial educational use, and for which commercial entities could thus be eligible to operate full power stations. Such channels appear without an asterisk designation in the FM Table of Allotments (§ 73.202) and TV Table of Allotments (§ 73.606). In the event of a request to allocate a nonreserved channel as reserved pursuant to §§ 73.202(a) or 73.606(a), the channel remains classified as nonreserved until release of a Commission decision granting such request.

On-air operations. Broadcast of program material to the public pursuant to Commission authority, generally beginning with program test authority, for periods of time that meet any required minimum operating schedule, *e.g.* § 73.561(a).

Population. The number of people calculated using the most recent census block data provided by the United States Census Bureau.

Reserved channels. Channels reserved exclusively for noncommercial educational use, whether by the portion of the spectrum in which they are located (*i.e.* FM channels 200 to 220) or by a case-by-case Commission allotment decision (channels that appear with an asterisk designation in the FM Table of Allotments (§ 73.202) or TV Table of Allotments (§ 73.606)).

§ 73.7001 Services subject to evaluation by point system.

(a) A point system will be used to evaluate mutually exclusive applications for new radio, television, and FM translator facilities, and for major changes to existing facilities, on reserved channels.

(b) Mutually exclusive applications for nonreserved broadcast channels are not subject to a point system, even if one or more of the applicants would be eligible to and intends to operate in a noncommercial educational manner. Mutually exclusive applications for nonreserved broadcast channels will be resolved by the competitive bidding procedures in subpart I of this part regardless of the noncommercial or commercial nature of the applicants.

§ 73.7002 Fair distribution of service on reserved band FM channels.

(a) If timely filed applications for full service stations on reserved FM channels are determined to be mutually exclusive, and will serve different communities, the Commission will first determine, as a threshold issue, whether grant of a particular application would substantially further the fair distribution of service goals enunciated in section 307(b) of the Communications Act, 47 U.S.C. 307(b).

(b) An applicant for a full service FM radio station that will provide the first or second noncommercial educational (NCE) aural signal to at least 10% of the population within the 60 dBu (1mV/m) service contours of a noncommercial educational FM station substantially furthers fair service goals and will be considered superior to mutually exclusive applicants not proposing that level of service, provided that such service to fewer than 2,000 people will be considered insignificant. First service to 2,000 or more people will be considered superior to second service to a population of any size. If only one applicant will provide such first or second service, that applicant will be selected as a threshold matter. If more than one applicant will provide an equivalent level (first or second) of NCE aural service, the size of the population to receive such service from the mutually exclusive applicants will be compared. The applicant providing the most people with the highest level of new service will be awarded a construction permit, if it will provide such service to 5,000 or more people than the next best applicant. Otherwise, the mutually exclusive applications will proceed to examination under a point system.

(c) For a period of four years of on-air operations, an applicant receiving a decisive preference pursuant to this section is required to construct and operate technical facilities substantially as proposed and shall not downgrade service to the area on which the preference was based.

§ 73.7003 Point system selection procedures.

(a) If timely filed applications for reserved FM channels or reserved TV channels are determined to be mutually exclusive, applications will be processed and assessed points to determine the tentative selectee for the particular channels. The tentative selectee will be the applicant with the highest point total under the procedure set forth in this section, and will be awarded the requested permit if the Commission determines that an award will serve the public interest, convenience, and necessity.

(b) Based on information provided in each application, each applicant will be awarded a predetermined number of points under the criteria listed:

(1) *Established local applicant.* Three points for local applicants as defined in § 73.7000 who have been local continuously for no fewer than the two years (24 months) immediately prior to application, if the applicant's own governing documents (*e.g.* by-laws, constitution, or their equivalent) require that such localism be maintained.

(2) *Local diversity of ownership.* Two points for applicants with no attributable interests as defined in § 73.7000, in any other broadcast station or authorized construction permit (comparing radio to radio and television to television) whose principal community (city grade) contour overlaps that of the proposed station, if the applicant's own governing documents (*e.g.* by-laws, constitution, or their equivalent) require that such diversity be maintained. The principal community (city grade) contour is the 5 mV/m for AM stations, the 3.16 mV/m for FM stations calculated in accordance with § 73.313(c), and the contour identified in § 73.685(a) for TV.

(3) *State-wide network.* Two points for an applicant that does not qualify for the credit for local diversity of ownership, if it is:

(i) An entity, public or private, with authority over a minimum of 50 accredited full-time elementary and/or secondary schools within a single state, encompassed by the combined primary service contours of the proposed station and its existing station(s), if the existing station(s) are regularly providing programming to the schools in furtherance of the school curriculum and the proposed station will increase the number of schools it will regularly serve; or

(ii) An accredited public or private institution of higher learning with a minimum of five full time campuses within a single state encompassed by the combined primary service contours of the proposed station and its existing station(s), if the existing station(s) are regularly providing programming to campuses in furtherance of their curriculum and the proposed station will increase the number of campuses it will regularly serve; or

(iii) An organization, public or private, with or without direct authority over schools, that will regularly provide programming for and in coordination with an entity described in paragraph (b)(3) (i) or (ii) of this section for use in the school curriculum.

(iv) No entity may claim both the diversity credit and the state-wide network credit in any particular application.

(4) *Technical Parameters.* One point to the applicant covering the largest geographic area and population with its relevant contour (60 dBu for FM and Grade B for TV), provided that the applicant covers both a ten percent greater area and a ten percent greater population than the applicant with the next best technical proposal. The top applicant will receive two points instead of one point if its technical proposal covers both a 25 percent greater area and 25 percent greater population than the next best technical proposal.)

(c) If the best qualified (highest scoring) two or more applicants have the same point accumulation, the tentative selectee will be determined by a tie-breaker mechanism as follows:

(1) Each applicant's number of attributable existing authorizations (licenses and construction permits, commercial and noncommercial) in the same service (radio or television) nationally, as of the time of application shall be compared, and the applicant with the fewest authorizations will be chosen as tentative selectee;

(2) If a tie remains after the tie breaker in paragraph (c)(1) of this section, the tentative selectee will be the remaining applicant with the fewest pending new and major change applications in the same service at the time of filing;

(3) If a tie remains after the tie breaker in paragraph (c)(2) of this section, each of the remaining applicants will be identified as a tentative selectee, with the time divided equally among them.

(d) Settlements. At any time during this process, the applicants may advise the Commission that they are negotiating or have reached settlement, and the Commission will withhold further comparative processing for a reasonable period upon such notification. Settlement may include an agreement to share time on the channel voluntarily or other arrangement in compliance with Commission rules. Parties to a settlement shall comply with § 73.3525, limiting any monetary payment to the applicant's reasonable and prudent expenses.

§ 73.7004 Petitions to deny tentative selectee(s).

(a) For mutually exclusive applicants subject to the selection procedures in subpart K of this part, Petitions to Deny will be accepted only against the tentative selectee(s).

(b) Within thirty (30) days following the issuance of a public notice announcing the tentative selection of an applicant through fair distribution (§ 73.7002) or point system (§ 73.7003) procedures, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The time for filing such oppositions shall be 10 days from the filing date for petitions to deny, and the time for filing replies shall be 5 days from the filing date for oppositions.

(d) If the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, the application will be granted. If the Commission determines that the points originally claimed were higher than permitted, but that there is no substantial and material question of fact of applicant qualifications, it will compare the revised point tally of the tentative selectee to the other mutually exclusive applicants and, either grant the original application or announce a new tentative selectee, as appropriate. If an applicant is found unqualified, the application shall be denied, and the applicant(s) with the next highest point tally named as the new tentative selectee.

§ 73.7005 Holding period.

(a) *Assignments/Transfers.* NCE stations awarded by use of the point system in § 73.7003 shall be subject to a holding period. From the grant of the construction permit and continuing until the facility has achieved four years of on-air operations, an applicant proposing to assign or transfer the construction permit/license to another party will be required to demonstrate the following two factors: that the proposed buyer would qualify for the same number of or greater points as the assignor or transferor originally received; and that consideration received and/or promised does not exceed the assignor's or transferor's legitimate and prudent expenses. For purposes of this section, legitimate and prudent expenses are those expenses reasonably incurred by the assignor or transferor in obtaining and constructing the station (*e.g.* expenses in preparing an application, in obtaining and installing broadcast equipment to be assigned or transferred, *etc.*). Costs incurred in operating the station are not recoverable (*e.g.* rent, salaries, utilities, music licensing fees, *etc.*). Any successive applicants proposing to assign or transfer the construction permit/license prior to the end of the aforementioned holding period will be required to make the same demonstrations.

(b) *Technical.* In accordance with the provisions of § 73.7002, an NCE applicant receiving a decisive preference for fair distribution of service is required to construct and operate technical facilities substantially as proposed, and can not downgrade service to the area on which the preference is based for a period of four years of on-air operations. (c) The holding period in this section does not

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apply to construction permits that are awarded on a non-comparative basis, such as those awarded to non-mutually exclusive applicants or through settlement.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

17. The authority citation for part 74 continues to read:

Authority: 47 U.S.C. 154, 303, 307, and 554.

18. Section 74.1233 is amended by adding paragraphs (b)(3) and (b)(4); revising paragraph (c)(1); removing paragraph (e)(4) and revising paragraphs (e)(3) introductory text, (e)(3), (i), (e)(3)(ii), and (e)(3)(iii) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

* * * * *

(b) * * *

(3) Applications for reserved band FM translator stations will be processed using filing window procedures. The FCC will specify by Public Notice, a period for filing reserved band FM translator applications for a new station or for major modifications in the facilities of an authorized station. FM translator applications for new facilities or for major modifications will be accepted only during these specified periods. Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely.

(4) Timely filed applications for new facilities or for major modifications for reserved band FM Translators will be processed pursuant to the procedures set forth in subpart K of Part 73 (§ 73.7000 *et seq.*) Subsequently, the FCC will release Public Notices identifying: mutually exclusive groups of applications; applications received during the window filing period which are found to be non-mutually exclusive; tentative selectees determined pursuant to the point system procedures set forth in § 73.7003 of this chapter; and acceptable applications. The Public Notices will also announce: additional procedures to be followed for certain groups of applications; deadlines for filing additional information; and dates by which petitions to deny must be filed in accordance with the provisions of § 73.7004 of this chapter. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the application, it will be granted. If an application is found not to be acceptable for filing, the application will be returned, and subject to the amendment requirements of § 73.3522 of this chapter.

(c) * * *

(1) There is not pending a mutually exclusive application.

* * * * *

(e) * * *

(3) Where there are no available frequencies to substitute for a mutually exclusive application, the FCC will apply the same point system identified for full service reserved band FM stations in § 73.7003(b) of this chapter. In the event of a tie, the FCC will consider:

(i) Each applicant's number of existing FM translator authorizations (licenses and construction permits) of the same type (fill-in or non fill-in as defined in paragraphs (e)(1) and (e)(2) of this section) as of the time of application shall be compared, and the applicant with the fewest authorizations will be chosen as tentative selectee;

(ii) If a tie remains, after the tie breaker in paragraph (c)(3)(i) of this section, the remaining applicant with the fewest pending new and major change applications for FM translators of the same type (fill-in or non fill-in) will be chosen as tentative selectee;

(iii) Where the procedures in paragraphs (e)(1), (e)(2) and (e)(3)(i) and (e)(3)(ii) of this section fail to resolve the mutual exclusivity, the applications will be processed on a first-come-first-served basis.

[FR Doc. 00–14439 Filed 6–7–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

Cable Television Consumer Protection and Competition Act of 1992; Horizontal Ownership Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule; lifting of stay.

SUMMARY: This document announces that the Commission's voluntarily-imposed stay of the cable horizontal ownership rules was lifted on May 19, 2000 and that the cable horizontal ownership rules became effective on May 19, 2000.

DATES: The stay of 47 CFR 76.503(a) through (f) was lifted May 19, 2000. Parties not in compliance with the horizontal ownership rules on this date must come into compliance on or before November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Darryl Cooper at (202) 418–7200 or via Internet at *dacooper@fcc.gov*.

SUPPLEMENTARY INFORMATION:

Synopsis of Action

1. On its own motion, the Commission reconsidered the conditions under which it would lift the voluntarily-imposed stay of the horizontal ownership rules, 47 CFR 76.503. These rules were adopted and stayed in part on October 8, 1999 at 64 FR 67198 (Dec 1, 1999).

2. Subsequently, the Commission ordered that its horizontal ownership rules be stayed until the U.S. Court of Appeals for the D.C Circuit issued a decision upholding the constitutionality of section 613(f)(1)(A) of the Communications Act of 1934, as amended, 47 U.S.C. 533(f)(1)(A). The Commission also ordered that parties not in compliance with the rules on the date the U.S. Court of Appeals for the D.C. Circuit issued such decision must come into compliance within 180 days of the court decision. This order was published in the **Federal Register** (65 FR 12135, March 8, 2000).

3. On May 19, 2000, the U.S. Court of Appeals for the D.C. Circuit issued its decision, upholding the constitutionality of section 613(f)(1)(A) of the Act, as amended 47 U.S.C. 533(f)(1)(A).

Federal Communications Commission.

William H. Johnson,

Deputy Bureau Chief, Cable Services Bureau.

[FR Doc. 00–14538 Filed 6–7–00; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1604, 1615, 1632, and 1652

RIN 3206 AI67

Federal Employees Health Benefits (FEHB) Program and Department of Defense (DoD) Demonstration Project; and Other Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: OPM is issuing a final regulation to implement the portion of the Defense Authorization Act for 1999 that establishes authority for a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans in certain geographic areas under the Federal Employees Health Benefits (FEHB) Program. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. This regulation specifies only the requirements that differ from existing FEHB Program regulations because of unique aspects of the demonstration project. This regulation also makes other miscellaneous changes to the Federal Employees Health Benefits Acquisition Regulations.

DATES: The effective date of this regulation is July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, Policy Analyst, Insurance Policy and Information Division, OPM, Room 3425, 1900 E Street, NW., Washington, DC 20415–0001. He can also be reached at (202) 606–0004 or by electronic mail (E-mail) at: *mwkaszyn@opm.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to implement the portion of the National Defense Authorization Act for 1999, Public Law 105–261, that amended chapter 55 of title 10, United States Code, and chapter 89 of title 5, United States Code, to establish a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans offered under the FEHB Program. The legislation was signed into law on October 17, 1998. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. DoD, with OPM concurrence, has selected eight geographic areas to serve as demonstration project areas. The legislation requires that between 6 and 10 geographic areas be selected. No more than 66,000 individuals can participate in the demonstration project at any one time. Beneficiaries who are provided coverage under the demonstration project will not be eligible to receive care at a military medical treatment facility or to enroll in a health care plan under DoD's TRICARE program. Individuals who disenroll or cancel enrollment from the demonstration project are not eligible to reenroll in the demonstration project. OPM will establish separate risk pools for developing demonstration project enrollee premium rates. The government contribution for demonstration enrollees will be paid by DoD and cannot exceed the maximum percentage or dollar amount that the government would have contributed had the enrollee been enrolled as a regular FEHB enrollee in the same health benefits plan and at the same level of benefits.

The legislation requires OPM and DoD to jointly produce and submit two reports to Congress designed to assess the viability of expanding access to the FEHB Program to certain Medicare and other eligible DoD beneficiaries permanently. The first report is due by April 1, 2001; the second is due by December 31, 2002. The reports will focus on enrollee participation levels, impact on Medicare Part B enrollment, premium rates and costs as compared to those for regular FEHB enrollees, impact on accessibility of care in military treatment facilities, impact on medical readiness and training in military treatment facilities, impact on the cost, accessibility, and availability of prescription drugs for DoD beneficiaries, and recommendations on eligibility and enrollment.

OPM has determined it is necessary to specify certain differences from existing FEHB Program regulations because of the unique features of the demonstration project. This regulation amends chapter 16 of title 48, Code of Federal Regulations (CFR) to enumerate these differences.

When developing premium rates for demonstration project community-rated carriers, OPM will not use similarly sized subscriber group (SSSG) rating methodologies to determine the reasonableness of the carrier's demonstration project premium rates. We are not using SSSG's because we have learned from our consultations with community-rated carriers that there are no similar employer sponsored groups with which to compare. Instead we are benchmarking premiums against adjusted community rates if available, Medigap offerings, or other similar products to determine reasonableness. We believe that these data will result in competitively developed premium rates.

We have determined the most cost effective and administratively efficient way for the federal government to track expenditures is to allow experience-rated carriers participating in the demonstration project to draw funds from their existing FEHB Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as they do for benefits costs incurred by regular FEHB members.

All carriers must account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project will be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity. This percentage will also be used to determine the amount of an experience-rated carrier's service charge that will be allocated to the demonstration project.

Because of the way premiums are collected from enrollees and annuitants and the way the government distributes them to carriers, there will be a period between the effective date of demonstration project enrollees' coverage and the first deposit of premium into experience-rated carriers' LOC accounts. DoD enrollments will become effective on January 1, 2000, and the first demonstration project premiums will be withheld from annuities on February 1, 2000. The enrollees' and government's share of the premiums are due to OPM from DoD on the first day of each month thereafter through the conclusion of the demonstration project. However, since enrollees will be entitled to coverage for at least a month before the first premium payment, there won't be an opportunity for carriers to build a sufficient cash flow to cover the costs of the demonstration project group during this period. We are addressing this problem by allowing experience-rated carriers to draw on their existing LOC accounts in the same manner as for regular FEHB claims.

Since this is a start-up program with no specific experience, we determined that experience-rated and community-rated carrier risk must be mitigated in order to keep premiums as low as possible. Carriers will report on demonstration project revenues, health benefits charges, and administrative expenses as directed by OPM. Experience-rated carriers will be required to perform a final reconciliation of revenue and costs for the demonstration group at the end of the demonstration project. If a community-rated carrier wants to make a claim on the Employees Health Benefits Fund, it will be required to perform annual reconciliations for the duration of the demonstration project. OPM will reimburse carrier costs in excess of the premiums first from the carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following

the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project. Should the program be extended beyond the three year demonstration project period, we will regulate to address any necessary changes to these provisions.

We also have made other miscellaneous changes to chapter 16 of title 48, CFR.

On July 6, 1999, OPM published an interim regulation in the **Federal Register** (64 FR 36271). OPM subsequently received comments from three organizations—one trade association representing FEHB fee-for-service/PPO plans, one fee-for-service/PPO health benefit carrier, and one employee union. One organization that commented on the proposed rule stated that OPM's proposed formula for allocating indirect administrative costs to the demonstration project is overly prescriptive and conflicts with Section 31.203 of the Federal Acquisition Regulations. The commenter indicates that the FAR allows contractors to allocate indirect administrative expenses using any sound method in accordance with generally accepted accounting principles. This entitles carriers to select among various methods of allocation. While it would seem reasonable to allow carriers to select among various methods for allocating administrative expenses to the demonstration project, OPM is required by the authorizing legislation, Public Law 105–261, to perform an analysis of the demonstration project's rates and costs. In order to perform this analysis, OPM must set a standard for comparison. Consequently, OPM is requiring that only one method be used to determine allocable indirect costs so that these costs can be credibly compared among carriers. We will continue to use claims as the basis for allocation of indirect administrative costs associated with the demonstration project.

One commenter believes that in order to fulfill its obligation to DoD retirees, the Department of Defense should pay DoD retirees' entire premium and reimburse them fully for any out-of-pocket charges they incur during the demonstration project. OPM and DoD do not have the legislative authority to fully pay the premiums and out-of-pocket costs for DoD beneficiaries and their family members. The National Defense Authorization Act for 1999 requires that the government contribution toward DoD beneficiaries be no more than the maximum the government contributes toward the premiums of regular federal employees. The commenter also believes that sufficient utilization and claims experience exists on the DoD demonstration project group for OPM to set premium rates based on the experience of the group without having to base the rates on those of similarly sized subscriber groups. While utilization and claims data does exist on the demonstration project group, not all of the carriers in the FEHB Program are experience-rated, so not all of them rely solely on this information to set rates. A community-rated carrier under the regular FEHB Program is required to use the same rating methodology to develop its FEHB Program rates as it does for other groups of a similar size. The regulation eliminates the requirement that a carrier must use the same methodology as it uses for similar sized employers so that the carrier can develop its rates using Medigap or other Medicare supplemental rating methodologies.

One commenter questions how separate accounting for benefits and administrative costs will be accomplished and verified in the absence of requiring application of the government's Cost Accounting Standards. The commenter believes that to uphold the integrity of the FEHB Program and to gain a true assessment of the success or failure of the demonstration project, OPM should require the application of relevant Cost Accounting Standards to charges made by FEHB participating carriers. OPM cannot require carriers to account for operations using the Cost Accounting Standards because the National Defense Authorization Act, 2000 exempts FEHB carriers from the standards for fiscal year 2000.

The commenter believes that it is inappropriate to use regular FEHB reserves to pay any costs in excess of premiums for the DoD group since a portion of the funds that comprise the Administrative Reserve are deducted from regular FEHB enrollee premiums. The commenter asserts that regular FEHB enrollees should not subsidize the DoD group. The National Defense Authorization Act for 1999 authorizes OPM to use the Employees Health Benefits Fund, which includes the FEHB Administrative Reserve, to pay costs the office incurs for activities associated with implementing the demonstration project. OPM believes that availability of the Administrative Reserve to mitigate risk is essential to maintain reasonable premiums given the short duration of the demonstration project, and the potential that a carrier could enroll a small number of enrollees. OPM believes that use of the Administrative Reserve is the most reliable and desirable manner in which to effectuate the intentions of Congress with regard to the demonstration project.

One commenter asserts that use of the Administrative Reserve to offset carrier losses, and requirements for carriers to pay surpluses to the Administrative Reserve, violates the FEHB Act and the demonstration project legislation. OPM believes that it has the legal authority to use the Administrative Reserve to mitigate carrier losses incurred as a result of the demonstration project. Therefore, OPM is retaining this aspect of the regulation in its final form.

The demonstration project constitutes a mandate to study the feasibility of providing coverage modeled after the FEHB Program to Medicare and other eligible military retirees and their families. This study will result in two reports to Congress that will influence the decision of Congress as to whether to expand the demonstration project to the entire population of eligible military retirees on a permanent basis.

The demonstration project is not a program of insurance in the same sense that the FEHB Program is a program of insurance. Although the carriers participating in the study are FEHB Program insurance carriers, and although the enrollees participating will be covered for their health insurance needs, the project is, in principle and in operation, a study rather than a continuing insurance program. Indeed, the statutory limitations imposed upon the project—limitations on number of enrollees and the duration of the project—are antithetical to a continuing program of insurance, but are appropriate to a study. OPM's mitigation of risk of losses during the study is analogous to self-insuring for purposes of mitigating risk, and allows the demonstration project to simulate normal conditions to overcome the artificial constraints of an uncertain number of enrollees and the short duration of the project.

OPM recognizes that the unknown participation rate and the short-term nature of the project generate an upward pressure on the premium rates for demonstration project enrollees. This is because in a typical, sustainable program of insurance, the risk pool is sufficiently large so that insurance risk is spread with some confidence across the pool while maintaining appropriate premium rates. In contrast, under the demonstration project, some plans may attract only a small number of beneficiaries, creating a small risk pool. In addition, the indefinite duration of a typical, ongoing program allows a carrier to anticipate the experience of the risk pool and provides the opportunity to recoup unexpected losses over the long term by making appropriate adjustments to future premium rates based upon past experience with the insured group. However, where the period over which a carrier is expected to cover the risk pool is limited, there is a substantial likelihood that there will be insufficient opportunity to offset losses in subsequent years. Thus, OPM recognizes that the risk inherent in covering the demonstration project population requires mitigation if the project is to succeed.

FEHB Program carriers can expect to attract a small demonstration project enrollment, may not have reserves sufficient to cover claims in excess of premium income, and may have reinsurance arrangements that preclude the use of their FEHB Program reserves to pay demonstration project claims. Although other strategies for implementing the demonstration project are available, OPM has determined that the strategy set forth in these regulations is the most appropriate for all FEHB Program carriers.

We believe that the commenter has made a valid point with respect to the portion of the interim regulation that required carriers to return surplus premium to the Administrative Reserve upon completion of the demonstration project. OPM initially required the return of any surplus to the Administrative Reserve (1) as the corresponding alternative to the Administrative Reserve bearing the mitigation of loss; and (2) for equitable purposes, to enable all carriers in the FEHB Program to ultimately enjoy any gains as well as bear any losses. OPM reasoned that this alternative was preferable to allowing a windfall resulting from higher than required premiums to go to any one carrier. However, as an alternative approach, OPM agrees that it is appropriate to treat the surplus as any other surplus reserve that a carrier maintains upon termination of its participation in the FEHB Program. Therefore, OPM is changing the final regulation to require demonstration project surpluses to be distributed to the Contingency Reserves of all carriers continuing in the FEHB Program in the year after the demonstration project ends, in proportion to the subscription charges paid and accrued for the carrier for the last year of the demonstration project.

A commenter indicated its view that OPM failed to follow required notice and comment procedures by failing to provide an opportunity for comment on the interim regulations. As we stated in the preamble to the interim regulations, carriers needed the information that was contained in the interim regulations in order to have sufficient time to develop reserve accounts and premiums for enrollments to be effective for contract year 2000. OPM has now followed all of the required procedures in adopting these final regulations. The final regulations are being issued after taking into consideration the carrier's comments together with other comments, in order for appropriate preparations to be made for contract year 2001. This commenter also indicated that because OPM does not advance any rationale for waiving notice and comment on 48 CFR 1652.216–71, Accounting and Allowable Cost, the rule making should be rendered invalid. OPM has simply rewritten this section of the FEHBAR in plain language, and has made no substantive changes to the regulation. The Administrative Procedures Act waives the advance notice and comment requirement when a change is not substantive. The commenter states that the date of the Audit Guide currently in effect is July 24, 1998, and that this date should be stated in the regulation. We did not list the specific date of the Audit Guide in the regulation because we want to be able to use the most recent version of the Audit Guide in effect at any given time. The commenter indicates that the regulation makes an erroneous statement that the Audit Guide should be used to resolve all audit findings, while the commenter believes that corrective action plans should apply only to audits of IPAs and should not be extended to OPM audit findings. We have revised the regulation accordingly. The commenter indicated that the word "actual" needs to be deleted from the phrase " actual, reasonable, allowable, and allocable" because the FAR makes certain imputed costs, such as facilities capital cost of money, allowable. The Armed Services Board of Contract Appeals has ruled that the cost of capital is an actual cost. Therefore, no changes were made to the regulation based on this comment. The commenter also stated that OPM had included a new requirement in paragraph (b)(1)(i) of 1652.216–71 by asking the carrier to justify that costs chargeable to the contract are reasonable and necessary. While we have reworded the paragraph in plain language, the requirement is not new. Carriers have always been required to show proper justification that costs are actual, necessary, and reasonable. The previous language in paragraph (b)(1)(i) stated that "The allowable costs chargeable to the contract for a contract period shall be the actual, necessary, and reasonable amounts incurred with proper justification and accounting support * * *." We are simply clarifying the requirement by stating it in the active voice. The carrier correctly notes that this requirement differs from a related FAR requirement.

Because we became aware during the rate negotiation process that some participating carriers did not understand that the risk mitigation provisions applied to all carriers, the regulation was clarified to indicate that community-rated carrier risk will be mitigated using the Employees Health Benefits Fund Administrative Reserve.

Section 7701(c) of title 31, United States Code, requires each contractor doing business with a government agency to furnish its Taxpayer Identification Number (TIN) to that agency [see FAR 4.902]. Accordingly, we have added a new clause FEHBAR 1652.204–73, Taxpayer Identification Number, to FEHBAR Subpart 1652.2 and the FEHBP Clause Matrix at Subpart 1652.3. We have also made reference changes and updated the Matrix to conform to changes in the Federal Acquisition Regulation (FAR) since the Matrix was last revised.

In addition to the above definitions, in 1652.216–70(b), we have clarified that the term "State" as used in 5 U.S.C. 8909(f) includes a U.S. territory or possession.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health insurance carriers under the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 48 CFR Parts 1604, 1615, 1632, and 1652

Government employees, Government procurement, Health insurance.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

For the reasons set forth in the preamble, OPM is amending chapter 16 of title 48, CFR as follows:

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CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATIONS

1. The authority citation for 48 CFR Parts 1604, 1615, 1632, and 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

PART 1604—ADMINISTRATIVE MATTERS

2. Subpart 1604.9 consisting of § 1604.970 is added to read as follows:

Subpart 1604.9—Taxpayer Identification Number

1604.970 Taxpayer Identification Number.

Insert the clause at section 1652.204–73 in all FEHBP contracts.

PART 1615—CONTRACTING BY NEGOTIATION

Subpart 1615.8—Price Negotiation

3. In section 1615.802 paragraph (e) is revised to read as follows:

1615.802 Policy.

* * * * *

(e) *Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

(1) Similarly sized subscriber group (SSSG) rating methodologies will not be used to determine the reasonableness of a community-rated carrier's demonstration project premium rates. Carrier premium rates will not be adjusted for equivalency with SSSG rating methodologies. Carriers will benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

(2) Community-rated carriers must propose premium rates with cost or pricing data and rating methodology, and experience-rated carriers must propose premium rates with cost data and rating methodology regardless of group size or annual premiums.

PART 1632—CONTRACT FINANCING

Subpart 1632.1—General

4. In section 1632.170 paragraph (c) is revised to read as follows:

1632.170 Recurring premium payments to carriers.

* * * * *

(c) *Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108)*

(1) Carriers will create and maintain separate risk pools for demonstration project experience and regular FEHB experience for the purpose of establishing separate premium rates.

(2) OPM will create and maintain a demonstration project Contingency Reserve separate from the regular FEHB Contingency Reserve for each carrier participating in the demonstration project.

(3) Carriers will account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project will be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity.

(4) The same percentage used to determine indirect cost allocation will also be used to determine the amount of an experience-rated carrier's service charge that will be allocated to the demonstration project.

(5) Experience-rated carriers participating in the demonstration project will draw funds from their Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as they do for benefits costs incurred by regular FEHB members.

(6) Carriers will report on demonstration project revenues, health benefits charges, and administrative expenses as directed by OPM.

(7) Experience-rated carriers will perform a final reconciliation of revenue and costs for the demonstration group at the end of the demonstration project. OPM will reimburse carrier costs in excess of the premiums first from the carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(8) Community-rated carriers may, at their discretion, request funds from the Employees Health Benefits Fund to mitigate excessive costs in relation to premiums. If a community-rated carrier requests funds from the Employees Health Benefits Fund to mitigate risk, it will be required to perform annual reconciliations for the duration of the demonstration project. OPM will reimburse carrier costs significantly in excess of the premiums first from the carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(9) Should the program be extended beyond the 3 year demonstration project period, OPM will regulate to address any necessary changes to these provisions.

PART 1652—CONTRACT CLAUSES

Subpart 1652.2—Texts of FEHBP Clauses

5. Section 1652.204–73 is added to read as follows:

1652.204–73 Taxpayer Identification Number.

As prescribed in 1604.970, insert the following clause.

Taxpayer Identification Number (Jan 2000)

(a) *Definitions.*

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Carrier is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Carrier in reporting income tax and other returns.

(b) The Carrier must submit the information required in paragraphs (d) through (f) of this clause to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. The Carrier is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904. The Carrier's failure or refusal to furnish the information will result in payment being withheld until the TIN number is provided.

(c) The Government may use the TIN to collect and report on any delinquent amounts arising out of the Carrier's relationship with the Government (31 U.S.C. 7701(c)(3)). The TIN provided hereunder may be matched with IRS records to verify its accuracy.

(d) Taxpayer Identification Number (TIN).

TIN:_____

(e) Type of organization.

☐ Sole proprietorship;

☐ Partnership;
☐ Corporate entity (not tax-exempt);
☐ Corporate entity (tax-exempt);
☐ Other _____.

(f) Common parent.

☐ Carrier is not owned or controlled by a common parent as defined in paragraph (a) of this clause.
☐ Name and TIN of common parent:

Name _____
TIN_____

(End of Clause)

6. Section 1652.215–70 is amended by removing "(JAN 1998)" from the clause heading and adding in its place "(JAN 2000)" and by revising a new paragraph (d) to read as follows:

1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

* * * * *

(d) *Exception for the 3-Year DoD Demonstration Project* (10 U.S.C. 1108).

(1) Similarly sized subscriber group (SSSG) rating methodologies shall not be used to determine the reasonableness of the Carrier's demonstration project premium rates. The Carrier's rates shall not be adjusted for equivalency with SSSG rating methodologies. The Carrier shall benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

(2) The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity.

(End of Clause)

7. Section 1652.216–70 is amended by removing "(JAN 1998)" from the clause heading and adding in its place "(JAN 2000)" and by revising a new paragraph (c) to read as follows:

1652.2161–70 Accounting and price adjustment.

* * * * *

(c) Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).

(1) Similarly sized subscriber group (SSSG) rating methodologies shall not be used to determine the reasonableness of the Carrier's demonstration project premium rates. The Carrier's rates shall not be adjusted for equivalency with SSSG rating methodologies. The Carrier shall benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

(2) The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity.

(End of Clause)

8. Section 1652.216–71 is amended by revising the clause to read as follows:

1652.216–71 Accounting and allowable cost.

* * * * *

ACCOUNTING AND ALLOWABLE COST (FEHBAR 1652.216–71) (JAN 2000)

(a) *Annual Accounting Statements.* (1) The Carrier shall furnish to OPM an accounting of its operations under the contract. In preparing the accounting, the Carrier shall follow the reporting requirements and statement formats prescribed by OPM in the OPM Annual and Fiscal Year Financial Reporting Instructions.

(2) The Carrier shall have its Annual Accounting Statements and that of its underwriter, if any, audited in accordance with the FEHBP Experienced-Rated Carrier and Service Organization Audit Guide (Guide). The Carrier shall submit the audit report and the Annual Accounting Statements to OPM in accordance with the requirements of the Guide.

(3) Based on the results of either the independent audit prescribed by the Guide or a Government audit, OPM may require the Carrier adjust its annual accounting statements (i) by amounts found not to constitute actual, allowable, allocable and reasonable costs; or (ii) to reflect prior overpayments or underpayments.

(4) The Carrier shall develop corrective action plans to resolve audit findings identified in audits that were performed in accordance with the Guide. The corrective action plans will be prepared in accordance with and as defined by the Guide.

(b) *Definition of costs.* (1) The Carrier may charge a cost to the contract for a contract term if the cost is actual, allowable, allocable, and reasonable. In addition, the Carrier must:

(i) on request, document and make available accounting support for the cost to justify that the cost is actual, reasonable and necessary; and

(ii) determine the cost in accordance with: (A) the terms of this contract, and (B) Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 1631.2 of the Federal Employees Health Benefits Program Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.

(2) In the absence of specific contract terms to the contrary, the Carrier shall classify contract costs in accordance with the following criteria:

(i) *Benefits.* Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers less any refunds, rebates, allowances or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all actual, allowable, allocable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier's overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes (excluding premium taxes, as provided in section 1631.205–41), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit. Administrative expenses exclude the cost of Carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) *Investment income.* While compliance with the checks presented letter of credit methodology will minimize funds on hand, the Carrier shall invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses. Investment expenses are those actual, allowable, allocable, and reasonable contract costs that are attributable to the investment of funds, such as consultant or management fees.

(iv) *Other charges.* (A) *Mandatory statutory reserve.* Charges for mandatory statutory reserves are not allowable unless specifically provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, the Carrier shall return to the FEHBP a pro rata share based upon FEHBP's contribution to the total Carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201–5.

(B) *Premium taxes.* (1) When the term "premium taxes" is used in this contract without further definition or explanation, it means a tax, fee, or other monetary payment directly or indirectly imposed on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico or by any political subdivision or other governmental authority of those entities, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is

applicable to a broad range of business activity.

(2) For purposes of this paragraph (B), OPM has determined that the term "State" as used in 5 U.S.C. 8909(f) includes, but is not limited to, a territory or possession of the United States.

(c) *Certification of Accounting Statement Accuracy.* (1) The Carrier shall certify the annual and fiscal year accounting statements in the form set forth in paragraph (c)(3) of this clause. The Carrier's chief executive officer and the chief financial officer shall sign the certificate.

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

Certification of Accounting Statement Accuracy

This is to certify that I have reviewed this accounting statement and to the best of my knowledge and belief:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this reporting period in conformity with those guidelines.

2. The costs included in the statement are actual, allowable, allocable, and reasonable in accordance with the terms of the contract and with the cost principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation;

3. Income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement;

4. If applicable, the letter of credit account was managed in accordance with 5 CFR part 890, 48 CFR chapter 16, and OPM guidelines.

Carrier Name: _____

Name of Chief Executive Officer: (Type or Print)

_____

Name of Chief Financial Officer:

_____

Signature of Chief Executive Officer:

_____

Signature of Chief Financial Officer:

_____

Date Signed: _____

Date Signed: _____

Underwriter: _____

Name and Title of Responsible Corporate Official:

(Type or Print:)

_____

Signature of Responsible Corporate Official:

_____

Date Signed: _____

(End of Certificate)

(d) Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).

(1) The Carrier shall draw funds from its Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as it does for benefits costs incurred by regular FEHB members. The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the dollar amount of total claims processed for FEHB Program activity. This same percentage will also be used to determine the amount of the Carrier's service charge that will be allocated to the demonstration project.

(2) The Carrier shall submit a separate annual accounting statement and monthly incurred claims report for demonstration project experience.

(End of Clause)

9. Section 1652.232–70 is amended by removing "(JAN 1998)" from the clause heading and adding in its place "(JAN 2000)," and adding a new paragraph (f) to read as follows:

1652.232–70 Payments—community-rated contracts.

* * * * *

(f) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

The Carrier may, at its discretion, request funds from the Employees Health Benefits Fund to mitigate excessive costs in relation to premiums. If the Carrier requests funds from the Employees Health Benefits Fund to mitigate risk, it will be required to perform annual reconciliations for the duration of the demonstration project. OPM will reimburse the Carrier's costs significantly in excess of the premiums first from the Carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(End of Clause)

10. Section 1652.232–71 is amended by revising paragraph (f) to read as follows:

1652.232–71 Payments—experience-rated contracts.

* * * * *

(f) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

The Carrier will perform a final reconciliation of revenue and costs for the demonstration project group at the end of the demonstration project. OPM will reimburse the Carrier's costs in excess of the premiums first from the Carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(End of Clause)

Subpart 1652.3—FEHBP Clause Matrix

11. In section 1652.370, the FEHB Program Clause Matrix, is revised to read as follows:

1652.370 Use of matrix.

* * * * *

FEHBP CLAUSE MATRIX

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
FAR 52.202–1	FAR 2.201	Definitions	M	T	T
FAR 52.203–3	FAR 3.202	Gratuities	M	T	T
FAR 52.203–5	FAR 3.404	Covenant Against Contingent Fees	M	T	T
FAR 52.203–7	FAR 3.502–3	Anti-Kickback Procedures	M	T	T
FAR 52.203–12	FAR 3.808(b)	Limitation on Payments to Influence Certain Federal Transactions.	M	T	T
1652.203–70	1603–7003	Misleading, Deceptive, or Unfair Advertising	M	T	T
1652.204–70	1604.705	Contractors Records Retention	M	T	T
1652.204–71	1604.7001	Coordination of Benefits	M	T	T

FEHBP CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
1652.204–72	1604.7101	Filing Health Benefit Claims/Court Review of Disputed Claims.	M	T	T
1652.204–73	1604.970	Taxpayer Identification Number	M	T	T
FAR 52.209–6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M	T	T
FAR 52.215–2	FAR 15.209(b)	Audit & Records—Negotiation	M	T	T
FAR 52.215–10	FAR 15.408(b)	Price Reduction for Defective Cost or Pricing Data	M	T	
FAR 52.215–12	FAR 15.408(d)	Subcontractor Cost or Pricing Data	M	T	
FAR 52.215–15	FAR 15.408(g)	Pension Adjustments and Asset Reversions	M	T	
FAR 52.215–16	FAR 15.408(h)	Facilities Capital Cost of Money	M	T	
FAR 52.215–17	FAR 15.408(i)	Waiver of Facilities Capital Cost of Money	A	T	
FAR 52.215–18	FAR 15.408(j)	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.	M	T	
1652.215–70	1615.804–72	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.	M		T
1652.215–71	1615.805–71	Investment Income	M	T	
1652.216–70	1616.7001	Accounting and Price Adjustment	M	T	T
1652.216–71	1616.7002	Accounting and Allowable Cost	M	T	
FAR 52.219–8	FAR 19.708(a)	Utilization of Small Business Concerns	M	T	T
FAR 52.222–1	FAR 22.103–5(a)	Notice to the Government of Labor Disputes	M	T	T
FAR 52.222–3	FAR 22.202	Convict Labor	M	T	T
FAR 52.222–4	FAR 22.305	Contract Work Hours and Safety Standards Act-Overtime Compensation.	M	T	T
FAR 52.222–21	FAR 22.810(a)(1)	Prohibition of Segregated Facilities	M	T	T
FAR 52.222–26	FAR 22.810(a)	Equal Opportunity	M	T	T
FAR 52.222–29	FAR 22.810(g)	Notification of Visa Denial	A	T	T
FAR 52.222–35	FAR 22.1308(a)	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.	M	T	T
FAR 52.222–36	FAR 22.1408(a)	Affirmative Action for Workers With Disabilities	M	T	T
FAR 52.222–37	FAR 22.1308(b)	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.	M	T	T
1652.222–70	1622.103–70	Notice of Significant Events	M	T	T
FAR 52.223–2	FAR 23.105(b)	Clean Air and Water	A	T	T
FAR 52.223–6	FAR 23.505	Drug–Free Workplace	A	T	T
1652.224–70	1624.104	Confidentiality of Records	M	T	T
FAR 52.227–1	FAR 27.201–2(a)	Authorization and Consent	M	T	T
FAR 52.227–2	FAR 27.202–2	Notice and Assistance Regarding Patent and Copyright Infringement.	M	T	T
FAR 52.229–3	FAR 29.401–3	Federal, State and Local Taxes	M		T
FAR 52.229–4	FAR 29.401–4	Federal, State and Local Taxes (Noncompetitive Contract).	M	T	
FAR 52.229–5	FAR 29.401–5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.	A	T	T
1652.229–70	FEHBAR 1629.402	Taxes—Foreign Negotiated Benefits Contracts	A	T	T
FAR 52.230–2	FAR 30.201–4(a)(1)	Cost Accounting Standards	A	T	T
FAR 52.230–3	FAR 30.201–4(b)(1)	Disclosure and Consistency of Cost Accounting Practices.	A	T	T
FAR 52.230–6	FAR 30.201–4(d)(1)	Administration of Cost Accounting Standards	A	T	T
FAR 52.232–8	FAR 32.111(c)(1)	Discounts for Prompt Payment	M	T	T
FAR 52.232–17	FAR 32.617(a) Modification: 1632.617	Interest	M	T	T
FAR 52.232–23	FAR 32.806(a)(1)	Assignment of Claims	A	T	T
FAR 52.232–33	FAR 32.1103(a)	Payment by Electronic Funds Transfer—Central Contractor Registration.	M	T	T
1652.232–70	1632.171	Payments—Community-Rated Contracts	A		T
1652.232–71	1632.172	Payments—Experience-Rated Contracts	A	T	
1652.232–72	1632.772	Non-Commingling of FEHBP Funds	M	T	
1652.232–73	1632.806–70	Approval for Assignment of Claims	M	T	T
FAR 52.233–1	FAR 33.215	Disputes	M	T	T
FAR 52.242–1	FAR 42.802	Notice of Intent to Disallow Costs	M	T	
FAR 52.242–3	FAR 42.709–6	Penalties for Unallowable Costs	M	T	
FAR 52.242–13	FAR 42.903	Bankruptcy	M	T	T
1652.243–70	1643.205–70	Changes—Negotiated Benefits Contracts	M	T	T
FAR 52.244–5	FAR 44.204(c)	Competition in Subcontracting	M	T	
FAR 52.244–6	FAR 44.403	Subcontracts for Commercial Items and commercial components.	M	T	

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FEHBP CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
1652.244–70	1644.270	Subcontracts	M	T	
1652.245–70	1645.303–70	Government Property (Negotiated Benefits Contracts).	M	T	T
FAR 52.246–25	FAR 6.805(a)(4)	Limitation of Liability—Services	M	T	
1652.246–70	1646.301	FEHB Inspection	M	T	T
FAR 52.247–63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M	T	T
1652.249–70	1649.101–70	Renewal and Withdrawal of Approval	M	T	T
1652.249–71	1649.101–71	FEHBP Termination for Convenience of the Government—Negotiated Benefits Contracts.	M	T	T
1652.249–72	1649.101–72	FEHBP Termination for Default—Negotiated Benefits Contracts.	M	T	T
FAR 52.251–1	FAR 51.107	Government Supply Sources	A	T	
FAR 52.252–4	FAR 52.107(d)	Alterations in Contract	A	T	T
FAR 52.252–6	FAR 52.107(f)	Authorized Deviations in Clauses	M	T	T

[FR Doc. 00–13851 Filed 6–7–00; 8:45 am]
BILLING CODE 6325–01–P

Proposed Rules

Federal Register
Vol. 65, No. 111
Thursday, June 8, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 35, 35A, 36, and 36A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Learjet Model 35, 35A, 36, and 36A series airplanes. This proposal would require revision of the Airplane Flight Manual (AFM) to add procedures for donning the flightcrew oxygen masks when the cabin altitude warning horn is activated. This action is intended to prevent incapacitation of the flightcrew due to lack of oxygen and consequent loss of control of the airplane due to absence of AFM procedures for donning the flightcrew oxygen masks when the cabin altitude warning horn is activated.

DATES: Comments must be received by July 24, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–127–AD" in the subject line and need not be submitted in triplicate.

Information regarding this docket may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ben Sorensen, Flight Test Pilot, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4165; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–127–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 25, 1999, a Learjet Model 35 series airplane operating under part 135 of the Federal Aviation Regulations (14 CFR 135) departed Orlando International Airport enroute to Dallas, Texas. Air traffic control lost communication with the airplane near Gainsville, Florida. Air Force and National Guard airplanes intercepted the airplane, but the flightcrews of the chase airplanes indicated that the windows of the Model 35 series airplane were apparently frosted over and prevented the chase airplane flightcrews from observing the interior of the Model 35 series airplane. The flightcrews of the chase airplanes reported that they did not observe any damage to the airplane. Subsequently, the Model 35 series airplane ran out of fuel and crashed in South Dakota. To date, causal factors of the accident have not been determined. However, lack of the Learjet flightcrew's response to air traffic control poses the possibility of flightcrew incapacitation and raises concerns with the pressurization and oxygen systems.

Recognizing these concerns, the FAA initiated a special certification review (SCR) to determine if pressurization and oxygen systems on Model 35 series airplanes were certificated properly, and to determine if any unsafe design features exist in the pressurization and oxygen systems.

The SCR team found that there have been several accidents and incidents that may have involved incapacitation of the flightcrews during flight. In one case, the airplane flightcrew did not activate the pressurization system or don their oxygen masks and the airplane flew in excess of 35,000 feet altitude. In another case, the airplane flightcrews did not don their oxygen masks when the cabin aural warning was activated. Further review by the SCR team indicates that the Airplane Flight Manual (AFM) of Learjet Model 35/36 series airplanes do not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is

activated. Additional review has found that the AFM's of Model 35A and 36A series airplanes also do not contain appropriate flightcrew actions when the cabin altitude aural warning is activated. However, the AFM's do contain an abnormal procedure that allows the flightcrew to troubleshoot the pressurization system prior to donning the oxygen masks after the cabin altitude warning sounds. Troubleshooting may delay donning of the oxygen masks to the point that flightcrews may become incapable of donning their oxygen masks.

The SCR findings indicated that the most likely cause for incapacitation was hypoxia (lack of oxygen). The only other plausible cause of incapacitation is exposure to toxic substances. However, no evidence was found to support the existence of toxic substances.

Delayed response of the flightcrew in donning oxygen masks when the activation of the cabin altitude warning horn could lead to incapacitation of the flightcrew and loss of control of the airplane.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising Emergency Procedures Section of the AFM to provide the flightcrew with appropriate and timely actions in response to activation of the cabin altitude warning horn.

Cost Impact

There are approximately 739 Learjet Model 35, 35A, 36, and 36A series airplanes of the affected design in the worldwide fleet. The FAA estimates that 500 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $30,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Learjet: Docket 2000–NM–127–AD.

Applicability: Model 35, 35A, 36, and 36A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew and consequent loss of control of the airplane due to delays in donning oxygen masks in response to the activation of the cabin altitude warning horn; accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Emergency Procedure Section of the FAA-Approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

"CABIN ALTITUDE WARNING HORN ACTIVATES (EMERGENCY DESCENT)

1. Oxygen Masks—Don. Select 100% oxygen.
2. Thrust Levers—IDLE.
3. Autopilot—Disengage.
4. SPOILER switch—EXT.
5. Landing gear switch—DN below MMO VLE as appropriate for altitude. Keep sideslip angles to a minimum (ball centered) when extending gear.
6. Descend at MMO or VLE as appropriate, but NOT below minimum safe altitude.
7. PASS OXY Valve—NORM.
8. PASS MASK Valve—MAN.

WARNING: If pressurization loss is due to structural failure, limit speeds and maneuvering loads as much as possible in descent.

NOTE:

Descent from 45,000 feet to 15,000 feet requires approximately 2 minutes 45 seconds.

Hats and "ear-muff" type headsets must be removed prior to donning crew oxygen masks.

Communication between crewmembers can be accomplished by using the INPH function of the AUDIO CONTROL PANEL and adjusting the MASTER VOL.

Communication with passengers can be accomplished by using PASS SPKR function of the AUDIO CONTROL panel and adjusting the PASS SPKR VOL level.

The HORN SILENCE switch will mute the cabin altitude warning horn for 60 seconds.

If Time and Conditions Permit:

9. Transponder—Emergency 7700.
10. Pilot and Copilot OXY—MIC switches—ON.
11. Notify controlling agency.
12. Check condition of passengers and provide assistance if conditions permit."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14438 Filed 6–7–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–146]

RIN 2115–AA97

Security Zone: Dignitary Arrival/ Departure and United Nations Meetings, New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two permanent security zones near the United Nations Headquarters located on the East River at East 43rd Street, Manhattan, New York. This action is necessary to protect the Port of New York/New Jersey and visiting dignitaries against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' meetings at the United Nations Headquarters. This action establishes two permanent exclusion areas that are active from shortly before the dignitaries' arrival at the United Nations General Assembly meetings until shortly after their departure.

DATES: Comments and related material must reach the Coast Guard on or before July 24, 2000.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01–00–006), Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–00–006), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. The comment period for this proposed regulation is 45 days. This time period is adequate to allow local input because the locations have been used for United Nations General Assembly Security Zones in previous years. The shortened comment period will still allow the full 30-day publication requirement prior to the final rule becoming effective. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

New York City is often visited by the President and Vice President of the United States, as well as visiting heads of foreign states or foreign governments, on the average of 12 times per year. Often these visits are on short notice. The President, Vice President, and visiting heads of foreign states or foreign governments require Secret Service protection. Due to the sensitive nature of these visits, a security zone is needed. Standard security procedures are enacted to ensure the proper level of protection to prevent sabotage or other subversive acts, accidents, or other activities of a similar nature. In the past, temporary security zones were requested by the U.S. Secret Service with limited notice for preparation by the U.S. Coast Guard and no opportunity for public comment. Establishing permanent security zones by notice and comment rulemaking gives the public the opportunity to comment on the proposed location and size of the zones. The proposed regulation establishes two permanent security zones that could be activated upon request of the U.S. Secret Service pursuant to their authority under 18 U.S.C. 3056.

These security zones have been narrowly tailored, in consultation with the United States Secret Service and the maritime industry, to impose the least impact on maritime interests yet provide the level of security deemed necessary. Entry into or movement within these proposed security zones would be prohibited unless authorized by the Coast Guard Captain of the Port, New York. The activation of a particular security zone will be announced via facsimile and marine information broadcasts.

Discussion of Proposed Rule

The two proposed security zones are as follows (all nautical positions are based on North American Datum of 1983):

The first proposed security zone at United Nations Headquarters includes all waters of the East River bound by the following points: 40°44′37″ N, 073°58′16.5″W (the base of East 35th Street, Manhattan), then east to 40°44′34.5″N, 073°58′10.5″W (about 175 yards offshore of Manhattan), then northeasterly to 40°45′29″ N, 073°57′26.5″W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45′31″ N, 073°57′30.5″W (Manhattan shoreline at the Queensboro Bridge), then southerly to the starting point at 40°44′37″ N, 073°58′16.5″W. The proposed security zone prevents vessels from transiting a portion of the East River. Marine traffic will still be able to transit through the eastern 100 yards of the western channel of the East River. Additionally, vessels may transit through the eastern channel of the East River during this security zone. This zone is generally enacted from 8 a.m. until 7 p.m. during the United Nations General Assembly meetings. Generally, these meetings take place from Monday through Saturday for two consecutive weeks. Normally this occurs between the final two weeks of September and the first two weeks of October.

This proposal is necessary to protect the Port of New York/New Jersey and visiting dignitaries against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' meetings at the United Nations Headquarters. This security zone has been narrowly tailored, in consultation with the United States Secret Service and the maritime

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industry, to impose the least impact on maritime interests yet provide the level of security deemed necessary.

The second proposed security zone at United Nations Headquarters includes all waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), to approximate position 40°44′23″ N, 073°57′44.5″ W (Hunters Point, Long Island City), and south of the Queensboro Bridge. Marine traffic will not be able to transit through this portion of the East River because the proposed zone extends bank to bank, and there are no alternate routes available in the river to go around the zone. This proposed zone extends bank to bank while the President of the United States addresses, or is in attendance at, the United Nations General Assembly. Generally, this zone will only be activated once per year during one day of the annual U.N. General Assembly meeting during the Presidential address or while the President is in attendance. This address has been held during the final week of September for the past two years. However, due to the late notification of the daily security requirements from the Secret Service, there was insufficient time to follow notice and comment rulemaking to give the public the opportunity to comment on the proposed location and size of the zones. The Coast Guard expects this zone to be activated for only 2.5 hours during the morning and 3 hours during the afternoon.

This proposal is necessary to protect the Port of New York/New Jersey, the President of the United States, and visiting dignitaries against terrorism, sabotage or other subversive acts and incidents of a similar nature during visits by the President of the United States and dignitaries' meetings at the United Nations Headquarters. This security zone has been narrowly tailored, in consultation with the United States Secret Service and the maritime industry, to impose the least impact on maritime interests yet provide the level of security deemed necessary.

The actual dates that these security zones will be activated are not known by the Coast Guard at this time. Coast Guard Activities New York will give notice of the activation of each security zone by all appropriate means to provide the widest publicity among the affected segments of the public. Marine information broadcasts will normally be made for these security zones beginning 24 to 48 hours before the zone is enacted. Facsimile broadcasts will also be made to notify the public. The Coast Guard expects that the notice of the activation of each permanent security zone in this rulemaking will normally be made less than seven days before the zone is actually activated.

The two new security zones are being proposed to ensure the Coast Guard can provide the U.S. Secret Service with the services they require to protect the Port of New York/New Jersey and visiting dignitaries in a timely manner. This proposal will also give the marine community the opportunity to comment on the proposed zones location and size.

This proposed rule revises 33 CFR 165.164 by renaming the section heading to "Dignitary Arrival/Departure and United Nations Meetings, New York, NY" and adding two new East River locations to the listed zones.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the fact that we anticipate these security zones will be activated on an average of 12 times per year, and the minimal time that vessels will be restricted from the zones. Marine traffic will still be able to transit through the eastern 100 yards of the western channel and recreational traffic will also be able to transit through the eastern channel of the East River while the first, smaller security zone at the United Nations Headquarters is enacted. We anticipate that the second security zone at the United Nations Headquarters, shutting down the East River in the vicinity of the United Nations Headquarters, will only be activated once per year during one day of the annual U.N. General Assembly meeting during the Presidential address. This zone that shuts down the East River will normally only be in effect for 2.5 hours during the morning and 3 hours during the afternoon. Extensive advance notifications will be made to the maritime community via facsimile and marine information broadcasts. These security zones have been narrowly tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Port of New York/New Jersey during the times these zones are activated.

These security zones would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic could transit through the eastern 100 yards of the western channel of the East River during the smaller security zone that is enacted when the President of the United States is not addressing the Assembly. Recreational traffic could also transit through the eastern channel of the East River during this same security zone. Before the effective period, we would issue maritime advisories widely available to users of the Port of New York/New Jersey by facsimile and marine information broadcasts.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it would establish two security zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. In § 165.164, revise the section heading and paragraphs (a)(4) and (a)(5), and add new paragraphs (a)(6) and (a)(7) to read as follows:

§ 165.164 Security Zones: Dignitary Arrival/Departure and United Nations Meetings, New York, NY.

(a) * * *

(4) *Location.* All waters of the East River bound by the following points: 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), then east to 40°44′34.5″ N, 073°58′10.5″ W (about 175 yards offshore of Manhattan), then northeasterly to 40°45′29″ N, 073°57′26.5″ W (about 125 yards offshore of Manhattan at the Queensboro Bridge), then northwesterly to 40°45′31″ N, 073°57′30.5″ W (Manhattan shoreline at the Queensboro Bridge), then southerly to the starting point at 40°44′37″ N, 073°58′16.5″ W. All nautical positions are based on North American Datum of 1983.

(5) *Location.* All waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), to approximate position 40°44′23″ N, 073°57′44.5″ W (Hunters Point, Long Island City), and south of the Queensboro Bridge. All nautical positions are based on North American Datum of 1983.

(6) The security zone will be activated 30 minutes before the dignitaries' arrival into the zone and remain in effect until 15 minutes after the dignitaries' departure from the zone.

(7) The activation of a particular zone will be announced by facsimile and marine information broadcasts.

* * * * *

Dated: May 30, 2000.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–14506 Filed 6–7–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Chapter II

Negotiated Rulemaking Advisory Committee; Fixed Anchors in Wilderness

AGENCY: Forest Service, USDA.

ACTION: Negotiated rulemaking; public meetings.

SUMMARY: The Secretary of Agriculture has established a negotiated rulemaking committee to develop recommendations for a proposed rule for the placement, use, and removal of fixed anchors used for recreational rock climbing purposes in congressionally designated wilderness areas administered by the Forest Service. This committee, called the Fixed Anchors in Wilderness Negotiated Rulemaking Advisory Committee, is made up of individuals representing a cross section of interests with a definable stake in the outcome of the proposed rule. The Committee has been established in accordance with the provisions of the Federal Advisory Committee Act and will be engaged in the process of negotiated rulemaking pursuant to the provisions of the Negotiated Rulemaking Act.

DATES: The first two meetings of the advisory committee will be held in Golden, Colorado on June 27–28 and July 19–20. The meetings are scheduled from 10 a.m. to 5:30 p.m. on the first day and from 8:30 a.m. to 3:00 p.m. on the second day of each session.

ADDRESSES: The advisory committee meetings will be held at the Rocky Mountain Regional Office, Forest Service, 740 Simms Street, Golden, Colorado.

FOR FURTHER INFORMATION CONTACT: Jerry Stokes, Recreation, Heritage, and Wilderness Resources, (202) 205–0956.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1999, the Secretary of Agriculture published in the **Federal Register** a notice of intent (64 FR 58368) to establish a negotiated rulemaking advisory committee to assist in the development of a proposed rule regarding the placement, use, and removal of fixed anchors in congressionally designated wilderness areas administered by the Forest Service. The Secretary received over 1,300 responses on the notice of intent. All of the comments are available for public inspection at the Forest Service's national office in Washington, DC. Arrangements to view the comments

may be made by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The Secretary has determined to proceed with resolving the issue on the placement, use and removal of fixed anchors in the wilderness areas on National Forest System lands through the negotiated rulemaking process pursuant to the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* An advisory committee has been established which consists of an agency representative and other parties representing a broad cross section of the interests significantly affected by the rulemaking. Through a series of meetings, the members of the advisory committee are expected to negotiate in good faith to reach a consensus on recommendations for a proposed rule.

The Committee's meetings will serve as a forum in which the committee members can discuss issues involved in regulating the use of fixed anchors for recreational climbing purposes in wilderness areas administered by the Forest Service. This process is expected to enable the agency to develop and promulgate effective regulations governing the use of these devices within wilderness areas on National Forest System lands.

The meetings of the Committee will be open to the public so that individuals who are not part of the Committee may attend and observe. Any person attending the Committee meetings may address the Committee, if time permits, and may file written statements with the Committee.

Consistent with FACA requirements, the facilitator must prepare summaries of each Committee meeting. These summaries and all documents submitted to the Committee must be placed in the rulemaking docket, which is available for public inspection through the contact person named in this notice.

Committee Membership

The members of the committee, and their affiliation, if any, are listed as follows: Lloyd Athearn, American Alpine Club, Golden, CO; Kathleen Beamer, Recreation Equipment Incorporated, Seattle, WA; Frank Buono, retired National Park Service Assistant Superintendent, Prineville, OR; David Custer, recreational rock climber, Cambridge, MA; Sam Davidson, The Access Fund, Salinas, CA; Larry Gadt, Forest Service, Washington, DC; Brian Huse, National Parks and Conservation Association, Oakland, CA; Stefan Jackson, National Outdoor Leadership School, Bridgton, ME; Myrna Johnson, Outdoor Recreation Coalition of America, Boulder, CO; Jon Krakauer, author/mountain climber, Boulder, CO; Craig Mackey, Outward Bound, Golden, CO; John McCarthy, Idaho Conservation League, Boise, ID; William Maher Jr., recreational climber, Alexandria, VA; Patrick Mullaney, The Mountaineers, Seattle, WA; Douglas Medville, National Speological Society, VA; George Nickas, Wilderness Watch, Missoula, MT; Phil Powers, The American Mountain Guide Association, Lander, Wy; Kevin Proescholdt, Friends of the Boundary Waters Wilderness, Minneapolis, MN; Scott Silver, Wild Wilderness, Bend, OR; Jay Watson, The Wilderness Society, San Francisco, CA; Jeff Widen, The Sierra Club, Durango, CO; Rick Wilcox, Mountain Rescue Service, Eaton, NH; and Steve Wolper, recreational rock climber, Ketchum, ID.

Dated: May 31, 2000.

Hilda Diaz-Soltero,

Associate Chief for Natural Resources.

[FR Doc. 00–14309 Filed 6–7–00; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN117–1b; FRL–6708–1]

Approval and Promulgation of State Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve nine negative declarations submitted by the State of Indiana on November 8, 1999, and January 10, 2000. Each of these negative declarations concerns sources located in Lake and Porter Counties which are classified as a severe nonattainment area for the pollutant ozone. Each of the negative declarations indicates that the State has searched its emissions source inventory for Lake and Porter Counties and determined that there are no unregulated sources with a potential to emit 25 tons per year or more of volatile organic compounds (VOC) in the following source categories: aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithographic operations, business plastics, automotive plastics, and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units.

DATES: Written comments must be received on or before July 10, 2000.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used we mean EPA.

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I. What action is EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action Is EPA Taking Today?

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II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: May 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–13842 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN112–1b; FRL–6708–4]

Approval and Promulgation of State Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve nine negative declarations submitted by the State of Indiana on November 8, 1999. Each of these negative declarations concerns sources located in Clark and Floyd Counties which are classified as a moderate nonattainment area for the pollutant ozone. Each of the negative declarations indicates that the State has searched its emissions source inventory for Clark and Floyd Counties and determined that there are no unregulated sources with a potential to emit 100 tons per year or more of volatile organic compounds (VOC) in the following source categories: aerospace coating operations, industrial clean up solvents, industrial wastewater processes, offset lithographic printing, business plastics, automotive plastics and synthetic organic chemical manufacturing industries (SOCMI) batch processes, reactors and distillation units.

DATES: Written comments must be received on or before July 10, 2000.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us" or "our" are used we mean EPA.

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I. What Action Is EPA Taking Today?

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II. Where Can I Find More Information About This Proposal and The Corresponding Direct Final Rule?

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: May 24, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–13840 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA241–0238b; FRL–6709–2]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from metal parts coating operations. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 10, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812; and, Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

SUPPLEMENTARY INFORMATION: This proposal concerns SBCAPCD Rule 330, Surface Coating of Metal Parts and Products. In the Rules and Regulations section of this **Federal Register**, EPA is approving this local rule in a direct final action without prior proposal because we believe this SIP revisions is not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 23, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–14174 Filed 6–7–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI88–01–7319b; FRL–6706–4]

Approval and Promulgation of State Implementation Plans; Wisconsin; Site-Specific Revision for Uniroyal Engineered Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a site specific revision to the volatile organic compound (VOC) control requirements for Uniroyal Engineered Products, Inc., located in Stoughton, Wisconsin. The Wisconsin Department of Natural Resources (WDNR) submitted this State Implementation Plan (SIP) revision on October 30, 1999 and revised it on February 17, 2000. Our approval of this revision would make federally enforceable the State's February 7, 2000, Consent Order AM–99–900, which establishes alternate control requirements for Uniroyal. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, we will withdraw the direct final rule and we will address all public comments received in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: We must receive written comments on this proposed action by July 10, 2000.

ADDRESSES: Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 Office.)

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 12, 2000.

Robert Springer,

Acting Regional Administrator, Region 5.

[FR Doc. 00–14176 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[GA–T5–2000–01b; FRL–6711–1]

Clean Air Act Proposed Full Approval of Operating Permit Program; Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes full approval of the operating permit program of the State of Georgia. In the final rules section of this **Federal Register**, EPA is approving the State's operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. An explanation for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by July 10, 2000.

ADDRESSES: Address comments to Kim Pierce, Regional Title V Program Manager, Operating Source Section, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of the State's submittals and other supporting documentation relevant to this action are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA, Region 4, at (404) 562–9124.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the final rules section of this **Federal Register**.

Dated: May 15, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–14167 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TN–NASH–T5–2000–01b; FRL–6710–8]

Clean Air Act Proposed Approval of Operating Permit Program Revisions; Metropolitan Government of Nashville-Davidson County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes approval of revisions to the operating permit program of the Metropolitan Government of Nashville-Davidson County (TN). In the final rules section of this **Federal Register**, EPA is approving the County's operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. An explanation for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by July 10, 2000.

ADDRESSES: Address comments to Kim Pierce, Regional Title V Program Manager, Operating Source Section, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of the County's submittals and other supporting documentation relevant to this action are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA, Region 4, at (404) 562–9124.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the final rules section of this **Federal Register**.

Dated: May 19, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–14170 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1144; MM Docket No. 98–218; RM–9388]

Radio Broadcasting Services; Peterstown, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This *Report and Order* grants a pleading seeking dismissal of a petition for rule making. The rule making petition had requested the allotment of Channel 244A at Peterstown, West Virginia and was mutually exclusive with an application (File No. BMPH–9811161F) of Equus Communications Inc. ("Equus"), licensee of Station WREL–FM, Buena Vista, Virginia. With the dismissal of the rule making petition, the proceeding was terminated and Equus's application was returned to the Audio Services Division, Mass Media Bureau, for further action.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 98–218, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW. Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14380 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1154, MM Docket No. 00–94, RM–9883]

Radio Broadcasting Services; Almont, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Morton County Radio seeking the allotment of Channel 294A to Almont, ND, as the community's first local aural service. Petitioner is requested to provide information showing that Almont is a community for allotment purposes. Channel 294A can be allotted to Almont without the imposition of a site restriction, at coordinates 46–43–30 NL; 101–30–07 WL. Canadian concurrence in the allotment is required because Almont is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before July 17, 2000, and reply comments on or before August 1, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Randy Parker, 25415 Glenn Loch, The Woodlands, TX 77380 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–94, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14378 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1155, MM Docket No. 00–93, RM–9881]

Radio Broadcasting Services; Lynn Haven, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Beacon House Communications, requesting the allotment of Channel 282A at Lynn Haven, Florida, as the community's first local FM broadcast service. The coordinates for Channel 282A at Lynn Haven are 30–11–20 NL and 85–42–20 WL. There is a site restriction 8.3 kilometers (5.2 miles) southwest of the community.

DATES: Comments must be filed on or before July 17, 2000, and reply comments on or before August 1, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Cary S. Tepper, Booth, Freret, Imlay & Tepper, P.C., 5101 Wisconsin Avenue, N.W., Suite 307, Washington, DC. 20016–4120.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–93, adopted May 17, 2000 and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased

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from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14376 Filed 6–7–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 65, No. 111

Thursday, June 8, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 2, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1951–A, Account Servicing Policies.

OMB Control Number: 0575–0075.

Summary of Collection: The Rural Housing Service (RHS) provides supervised credit in the form of Single Family Housing, Multi-Family Housing, and Community Facility loans and grants. Regulation 7 CFR 1951–A sets forth the policies and procedures, including the collection and use of information, regarding the application of payments on loans made under the programs administered by the agencies and the return of paid-in-full and satisfied promissory notes.

Need and Use of the Information: Information collection is submitted by Agency borrowers to the local Agency office servicing the county in which their operation is located and is used by agency servicing officials. The collection of information is required only when needed on an individual case basis.

Description of Respondents: Individuals or households; business or other for-profit.

Number of Respondents: 110.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 28.

Rural Utilities Service

Title: 7 CFR 1780, Water and Waste Disposal Loan and Grant Program.

OMB Control Number: 0572–NEW.

Summary of Collection: The Rural Utilities Service (RUS) is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, American Indian tribes, and nonprofit corporations for the development of drinking water and wastewater, and solid waste disposal facilities in rural areas of up to 10,000 residents. These regulations were also used to administer the Community Facilities programs, whose functions the Rural Housing Service also had assumed from Farmers Home Administration (FmHA) and Rural Development Administration (RDA). RUS amended the regulations to establish separate regulations for the Water and Waste Disposal programs. RUS also replaced references to FmHA and RDA with references to RUS and its officials.

Need and Use of the Information: RUS state and field offices will collect information from applicants, borrowers, and consultants to determine eligibility and project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility or improper use of funds.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 5,800.

Frequency of Responses: Recordkeeping; reporting: On occasion; Weekly; Annually.

Total Burden Hours: 134,240.

Animal and Plant Health Inspection Service

Title: Federal Plant Pest and Noxious Weeds Regulations.

OMB Control Number: 0579–0054.

Summary of Collection: The Plan Protection and Quarantine Program of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture is responsible for preventing plant pests and noxious weeds from entering the United States, preventing the spread of pests and weeds not widely distributed in the United States, and eradicating those imported pests and weeds when eradication is feasible. Section 150bb of the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and Section 4(a) of the Federal Noxious Weed Act (7 U.S.C. 2801–2813) provide that no plant pest or noxious weed can be moved from a foreign country into or through the United States, or interstate, unless the movement is authorized under a permit issued by the Secretary of Agriculture and the movement is carried out in accordance with the conditions the Secretary may prescribe to prevent the dissemination of plant pests or noxious weeds into the United States. APHIS will collect information using forms PPQ 525A, 526, 526–1, and 519.

Need and Use of the Information: APHIS will collect information to evaluate the risk associated with the proposed movement of plant pest, noxious weeds, and soil. APHIS will also collect information to monitor operations at facility to ensure permit conditions are being met. The information is used to determine whether a permit can be issued, and

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also to develop risk-mitigating conditions for the proposed movement. If the information were not collected, APHIS' ability to protect the United States from a plant pest or noxious weed incursion would be significantly compromised.

Description of Respondents: Business or other for-profit; individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 40,312.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 38,133.

Animal and Plant Health Inspection Service

Title: Conifer Solid Wood Packing Material to China, Export Certification.

OMB Control Number: 0579–0147.

Summary of Collection: The Plant Protection and Quarantine Program of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture is responsible for preventing plant diseases or insect pest from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pests and weeds when eradication is feasible. The Federal Plant Pest Act authorizes the Department to carry out this mission. APHIS provides export certification services to assure other countries that the plants and plant products (as well as associated packing materials) they are receiving from the United States are free of prohibited (or regulated) plant diseases and insect pest. Effective January 1, 2000, the government of China requires goods from the United States to be accompanied by either a statement from the exporter that the shipment does not contain any softwood (conifer) packing materials, or by an APHIS-issued certificate certifying that the conifer packing materials in the shipment have been heat treated by being subjected to a minimum core temperature of 56 degrees Celsius for 30 minutes. APHIS will collect information using form PPQ 553.

Need and Use of the Information: APHIS will collect the names and address of the exporter and the consignee and a description of the consignment. APHIS will also collect information certifying that heat treatment has been performed, as well as the actual certification. The information is needed to assure China that conifer packing materials from the United States do not harbor insect pests such as the pine wood nematode. If the information is not collected this would cause China to refuse any shipments from the United States that contained conifer packing materials.

Description of Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 6,500.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 2,808.

Agricultural Marketing Service

Title: Marketing Order No. 917 for Peaches Grown in California.

OMB Control Number: 0581–0080.

Summary of Collection: Marketing Order No. 917 (7 CFR 917), regulates the handling of peaches grown in California and emanates from enabling legislation (The Agricultural Marketing Agreement (AMS) Act of 1937, Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674). This legislation, hereinafter referred to as the Act, was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to producers. The Order authorizes the issuance of grade, size, and maturity regulations; inspection requirements; and marketing and production research, including paid advertising. Regulatory provisions apply to peaches shipped within and out of the area of production to any market, except those specifically exempted by the Order. There is no State order in effect at this time. The Order also has authority for production and marketing research and development projects. Data will be collected using AMS forms FV–75, FV–76, FM–91, FV–92, FV–93, and FV–103.

Need and Use of the Information: The committee powers, as set forth in the Order, are: (1) to administer the provisions of the Order in accordance with its terms; (2) to receive, investigate, and report to the Secretary complaints of violations of the Order; (3) to make and adopt rules and regulations to effectuate the Order; and (4) to recommend amendments to the Order.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 2,287.

Frequency of Responses: Recordkeeping; reporting; on occasion, Monthly.

Total Burden Hours: 1,411.

Rural Housing Service

Title: 7 CFR 1924–F, Complaints and Compensation for Construction Defects.

OMB Control Number: 0575–0082.

Summary of Collection: This regulation provides instruction to all Rural Housing Service (RHS) personnel to enable them to implement a procedure to accept and process complaints from borrowers/owners against builders and dealers/contractors, to resolve the complaint informally and when the complaint involves structural defects which cannot be resolved by cooperation of the builder or dealer/contractor, authorizes expenditure to resolve the defect with grant funds. Resolution could involve expenditure for (1) repairing defects; (2) reimbursing for emergency repairs; (3) pay temporary living expenses or (4) convey dwelling to RHS with release of liability for the RHS loan. Information is collected using RD Form 1924–4.

Need and Use of the Information: The information is collected from Agency borrowers and the local Agency office serving the county in which the dwelling is located. This information is used by Rural Housing Staff to evaluate the request and assist the borrower in identifying possible causes and corrective actions. The information is collected on a case-by-case basis when initiated by the borrower. RHS has reviewed the program's need for the collection of information versus the burden placed on the public.

Description of Respondents: Business or for-profit.

Number of Respondents: 5,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,350.

Office of Procurement and Property Management

Title: Maximum Workweek—Construction Schedule.

OMB Control Number: 0505–0011.

Summary of Collection: In order to obtain goods or services such as construction services, United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who solicit bids or offers for work from businesses in the private sector. When USDA contracts from construction services, both the contracting officer and the contractor need to establish a schedule for the work. The contractor needs to ensure that his weekly work schedule will not conflict with the time during which USDA may allow him access to the work side. The contracting officer needs to know when the contractor will be working in order to schedule on-site conferences, to perform quality assurance inspections, and to perform compliance checks required to enforce the Davis Bacon Act (40 U.S.C. 276a–276a–7). Such compliance checks are specifically required by the Federal Acquisition Regulations (FAR) to conduct employee interviews, to check the type of work being performed, to verify the number and pay classification of workers at the site, and to verify that posters informing workers of their rights are displayed at the site (FAR 22.406–7(b)). Contracting officers put the Maximum Workweek—Construction Schedule clause in solicitations and contracts for construction when the contractor's access to the work site may be restricted to certain times of the day or week.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to determine when government inspectors or representatives will be needed at the site, and to schedule contractor access to the work site. The information is not collected unless the contracting officer anticipates problems with contractor access or scheduling government inspections. If the information were not collected, contracting offices would be unable to allocate contract administration resources efficiently.

Description of Respondents: Business or other for-profit.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 150.

Office of Procurement and Property Management

Title: Instructions for the Preparation of Technical and Business Proposals.

OMB Control Number: 0505–0013

Summary of Collection:

In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who use various methods to award contracts for good or services. One method, prescribed by part 15 of the Federal Acquisition Regulation (FAR) is contracting by negotiation. In contracting by negotiation, contracting officers issue solicitations to request offers for required products or services from businesses in the private sector. Together with the solicitation document, the offeror's cost proposal and its technical and business proposals constitute the offer submitted to the contracting office for evaluation and acceptance. The technical proposal, together with the offeror's pricing, is needed to select the offeror who will be awarded a contract. The Agriculture Acquisition Regulation (AGAR) (48 CFR ch. 4) prescribes the provision titled *Instructions for the Preparation of Technical and Business Proposals* (48 CFR 452.215–71) help an offeror preparing a proposal to address the factors on which it will be evaluated.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to evaluate and determine the feasibility of the offeror's management, technical approach, and offered cost/price to provide the services and/or supplies required if awarded a contract. If the information were not collected OPPM would be unable to obtain goods and services required for its daily operations.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 3,200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 112,000.

Office of Procurement and Property Management

Title: Brand Name or Equal Provision and Clause.

OMB Control Number: 0505–0014.

Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. The Agriculture Acquisition Regulation (AGAR) (48 CFR ch. 4) and the (48 CFR 411.171), provision (48 CFR 452.211–70), and a clause (48 452.211–71) permits the use of "brand name or equal" purchase descriptions to procure commercial products. Such descriptions require the offeror on a supply procurement to identify the "equal" item being offered and to indicate how that item meets the salient characteristics stated in the purchase description. The use of brand name or equal descriptions eliminates the need for bidders or offerors to read and interpret detailed specifications or purchase descriptions.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to determine from the descriptive information furnished whether the offered "equal" item meet the salient characteristics of the Government's requirements. If information were not collected, PPM would spend more time developing purchase descriptions and offerors would spend more time reading and interpreting the purchase descriptions.

Description of Respondents: Business or other for-profit.

Number of Respondents: 45,170.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,517.

Office of Procurement and Property Management

Title: Procurement: Key Personnel Clause.

OMB Control Number: 0505–0015.

Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who issue solicitations to request offers (proposals) for required products or services from businesses in the private sector. When USDA wishes to acquire research and development services (R&D), Information Technology (IT) design or support services, or advisory and assistance services, it must consider the capabilities of the personnel who the contractor assigns to the job. The contributions of certain contractor employees may be critical to the success of the work. Such employees are designated as "Key personnel." The Agriculture Acquisition Regulation (AGAR) (48 CFR ch. 4) (48 CFR 437.110) and 48 CFR 452.237–74) prescribes the Key Personnel clause to collect information about key contractor personnel. The contracting officer uses the Key Personnel clause to require the contractor to inform USDA if a key person will no longer be available to perform work on the contract. Contractors whose contracts include the key personnel clause are required to notify the contracting officer about proposed substitutions for key personnel identified in the contract.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to determine whether the departure of a key person from the contractor's staff could jeopardize contract performance, and to determine what accommodations or remedies may be taken. If the OPPM could not obtain information about departing key personnel, it could not ensure that qualified personnel continue to perform contract work.

Description of Respondents: Business or other for-profit; non-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 200.

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Office of Procurement and Property Management

Title: Progress Reporting Clause.

OMB Control Number: 0505–0016.

Summary of Collection: In order to obtain goods or services, the United States Department of Agriculture (USDA), like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who request bids or offers for work from businesses in the private sector using solicitations. In order to administer contracts for research and development services (R&D), or for advisory and assistance services (AAS), contracting officers need information about contractor progress in performing the contracts. The Agriculture Acquisition Regulation (AGAR) (48 CFR ch.4) (48 CFR 437.270(a)) and (48 CFR 452.237–76) prescribe the Progress Reporting Clause to collect information about contractor progress. Contracting officers include the Progress Reporting Clause in R&D and AAS contracts to obtain information from the contractors about their performance.

Need and Use of the Information: The Office of Procurement and Property Management (OPPM) will collect information to compare actual progress and expenditures to anticipated performance and contractor representations on which the award was based. The information alerts the agency of technical problems; to the need for additional staff resources or finding; and to the probability of timely completion within the contract cost or price. If the contracting officers could not obtain progress report information, they would have to physically monitor the contractor's operation on a day to day basis throughout the performance period.

Description of Respondents: Business or other for-profit; non-for-profit institutions; State, Local, or Tribal Government.

Number of Repondents: 200.

Frequency of Responses: Reporting: Quarterly; monthly.

Total Burden Hours: 3,600.

Rural Housing Service

Title: 7 CFR 1940–G, Enviromental Program.

OMB Control Number: 0575–0094.

Summary of Collection: The National Environmental Policy Act (NEPA) requires Federal agencies, prior to the approval of proposed actions, to consider the potential environmental impacts of these actions. Consequently, for the Agencies to comply with NEPA, it is necessary that they have information on the types of environmental resources on site or in the vicinity that might be impacted by the proposed action, as well as information on the nature of the project selected by the applicant (the activities to be carried out at the site; any air, liquid and solid wastes produced by these activities, etc.). The agency will collect environmental data using form RD 1940–20.

Need and Use of the Information: The agency will collect information on the proposed project site and the activities to be conducted there. This will enable the Agency official to determine the magnitude of the potential environmental impacts and whether the project is controversial for environmental reasons.

Description of Respondents: Farms; individuals or households; Business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 3,050.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15,320.

Barbara Lacour,

Departmental Clearance Officer.

[FR Doc. 00–14412 Filed 6–7–00; 8:45 am]

BILLING CODE 3410–01–M

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, June 16, 2000, 8 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of May 12, 2000 Meeting
III. Announcements
IV. Staff Director's Report
V. Police Practices and Civil Rights in New York City Report
VI. Future Agenda Items
9 a.m. Briefing on National Police Practices and Civil Rights

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Edward A. Hailes, Jr.,

Acting General Counsel.

[FR Doc. 00–14597 Filed 6–6–00; 12:38 am]

BILLING CODE 6335–00–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815, A–533–807, C–533–806]

Continuation of Antidumping Duty Orders: Sulfanilic Acid From People's Republic of China and India; and Continuation of Countervailing Duty Order: Sulfanilic Acid From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notices of continuation of antidumping duty orders: Sulfanilic acid from People's Republic of China and India; and countervailing duty order, sulfanilic acid from India.

SUMMARY: On February 8, 2000 and on April 6, 2000 (as amended, with respect to the countervailing duty order), the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on sulfanilic acid from the People's Republic of China ("PRC") and India, and the countervailing duty order on sulfanilic acid from India, would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (65 FR 6156, 65 FR 6171 (as amended, 65 FR18070), respectively). On May 26, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of these antidumping and countervailing duty orders on sulfanilic acid would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 34232). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of antidumping duty orders on sulfanilic acid from the PRC and India, and the countervailing duty order on sulfanilic acid from India.

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 53320 and 64 FR 53412, respectively) of the antidumping duty orders on sulfanilic acid from the PRC and India, and the countervailing duty order on sulfanilic acid from India, pursuant to section 751(c) of the Act. As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked.[1] In addition, the Department determined that revocation of the countervailing duty order would likely lead to continuation or recurrence of countervailable subsidies and notified the Commission of the net countervailable subsidies likely to prevail were the order revoked.[2]

On May 26, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on sulfanilic acid from the PRC and India, and the countervailing duty order on sulfanilic acid from India, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Sulfanilic Acid from China and India*, 65 FR 34232 (May 26, 2000) and USITC Publication 3301, Investigations Nos. 701–TA–318 (Review), and 731–TA–538 and 561 (Review) (May 2000)).

Scope of the Orders

The products covered by these orders are all grades of sulfanilic acid from the PRC and India, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate). The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders. Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate) is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content. The merchandise is classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 2921.42.22 and 2921. 42.24.20.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders are dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping and countervailing duty orders would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on sulfanilic acid from the PRC and India, and the countervailing duty order on sulfanilic acid from India. The Department will instruct the Customs Service to continue to collect antidumping and countervailing duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than May 2005.

Dated: June 2, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14499 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] See Sulfanilic Acid From India and The People's Republic of China, 65 FR 6156 (February 8, 2000).

[2] See Final Results of Expedited Sunset Review: Sulfanilic Acid From India, 65 FR 6171 (February 8, 2000), as amended, Notice of Correction to Final Results of Expedited Sunset Review: Sulfanilic Acid From India, 65 FR 18070 (April 6, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Glycine from the People's Republic of China.

SUMMARY: On February 3, 2000, the Department of Commerce ("the Department") published the notice of initiation of sunset review of the antidumping duty order on glycine from the People's Republic of China ("PRC") (65 FR 5308), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Carole Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On February 3, 2000, the Department published the notice of initiation of sunset review of the antidumping duty order on glycine from the PRC (64 FR 67247). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an

expedited sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

Scope of Review

The product covered by this order is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, re-absorbable amino acid, chemical intermediate, and a metal complexing agent. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff schedule of the United States ("HTSUS"). The scope of this order includes glycine of all purity levels. In a separate scope ruling, the Department determined that D(-)Phenylglycine Ethyl Dane Salt is outside the scope of the order.[1]

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 2, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margin:

Manufacturer/exporter	Margin (percent)
PRC-wide	155.59

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: June 2, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14500 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] See Notice of Scope Rulings, 62 FR 62288 (November 21, 1997).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–506]

Notice of Final Results of Antidumping Duty New Shipper Review: Oil Country Tubular Goods From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On November 30, 1999, the Department of Commerce ("the Department") published the preliminary results of new shipper review of the antidumping duty order on oil country tubular goods ("OCTG") from Canada. This review covers one manufacturer/exporter, Atlas Tube, Inc. ("Atlas"), and the period June 1, 1998 through November 30, 1998.

We received comments by petitioners, Lone Star Steel Company and Maverick Tube Corporation, (collectively "the petitioners"), and rebuttal comments from Atlas. Based on our analysis of comments received and corrections from verification, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below, in the section entitled "Final Results of Review."

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Nithya Nagarajan, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3936 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR part 351 (1998).

Background

On November 30, 1999, the Department published the preliminary results of administrative review of the antidumping duty order on OCTG from Canada (64 FR 66886). The review covers one manufacturer/exporter. The period of review ("POR") is June 1, 1998 through November 30, 1998. We invited parties to comment on our preliminary results of review. None of the interested parties requested a public hearing; therefore, none was held. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review include shipments of OCTG from Canada. This includes American Petroleum Institute ("API") specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end-use certification procedure were not used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for OCTG with tolerances of plus 1/8 inch for diameters less than or equal to 8 5/8 inches and plus 1/4 inch for diameters greater than 8 5/8 inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded.

Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests. This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item numbers 7304.20, 7305.20, and 7306.20. The HTS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by Atlas. We used standard verification procedures, including: On-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the memoranda dated March 8, 2000, the public versions of which are on file in the Central Records Unit, Room B–099 of the Main Commerce building (B–099).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this new shipper review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from Holly A. Kuga, Acting Deputy Assistant Secretary, Important Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 1, 2000, which is hereby adopted by this notice. A list of the issues parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties will find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099. In addition a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/, under the heading "Applicable Country." The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results of Review

The Department, at verification, found certain errors in the reported values for inland freight in the home market and U.S. sales databases. The Department adjusted for these errors in these final results of new shipper review. *See Sales Verification Report*, dated March 8, 2000; *see also Final Calculation Memorandum*, dated June 1, 2000. No other changes were made to our margin calculation program.

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period June 1, 1998, through November 30, 1998:

Manufacturer/exporter	Margin (percent)
Atlas Tube, Inc	0.88

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an importer-specific duty assessment rate. With respect to both export price and constructed export price sales, we divided total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of OCTG from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Atlas will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, in a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.65 percent. This rate is the "All-Others" rate established in the less than fair value investigation.

These deposit requirements shall remain in effect until publication of the final results of administrative review for a subsequent review period.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and notice are in accordance with sections 751(a)(2) and 771(i) of the Act.

Dated: June 1, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments and Responses

1. Cost of Production and Constructed Value
   A. Product Specific Costs
2. Date of Sale
   A. Contract Date vs. Invoice Date
3. Home Market Sales and Export Price
   A. Billing Adjustments

[FR Doc. 00–14501 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–506]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

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SUMMARY: In response to a request from the respondent, Atlas Tube, Inc. ("Atlas"), the Department of Commerce (the "Department") is conducting an administrative review of the antidumping duty order on oil country tubular goods ("OCTG") from Canada. This review covers one manufacturer/exporter, Atlas, and the period December 1, 1998 through May 31, 1999. The period of review specified by the Department's opportunity to request administrative review was June 1, 1998 through May 31, 1999. However, due to the fact that the Department is conducting a concurrent new shipper review of the same manufacturer/exporter for the period June 1, 1998 through November 30, 1998, this administrative review only covers the remainder of the period, December 1, 1998 through May 31, 1999. *See Notice of Initiation of Administrative Review* 64 FR 47167 (August 30, 1999).

We have preliminarily determined the dumping margin for Atlas to be 4.41 percent during the period December 1, 1998 through May 31, 1999. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Nithya Nagarajan, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3936 or (202) 482–5253 respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR part 351 (1999).

Background

The Department published an antidumping duty order on OCTG from Canada on June 16, 1986 (51 FR 21782) and an amended order on August 19, 1986 (51 FR 29579). On June 9, 1999, the Department published an Opportunity to Request Review (64 FR 30,962). On June 30, 1999, Atlas Tube Inc., requested the Department initiate an administrative review pursuant to section 751(a)(1) of the Act, and 19 CFR 351.213(b)(2). We initiated this administrative review on August 30, 1999, (64 FR 47167) for the period December 1, 1998 through May 31, 1999.

The Department issued its questionnaire on September 1, 1999, and received Atlas' response to Section A on September 20, 1999, Sections B and C on November 5, 1999, and supplemental responses on January 31, 2000. After an analysis of Atlas' Section A, B, and C responses, and upon receipt of an allegation of below-cost sales from petitioners, Lone Star Steel Company and Maverick Tube Corporation, the Department initiated on January 6, 2000, an investigation to determine whether Atlas made sales below the cost of production ("COP"). Respondent submitted its Section D response on January 31, 2000, and supplemental Section D response on February 10, 2000.

The Department is conducting this administrative review in accordance with section 751(a)(1) of the Act. Concurrent with the instant administrative review, the Department is also conducting a new shipper review of Atlas under section 751(a)(2)(B) of the Act. Pursuant to respondent's request, due to the fact that the new shipper review covers shipments through November 30, 1999, the administrative review of Atlas (which would normally cover the period June 1, 1998 through May 31, 1999) is limited to the examination of shipments during the period December 1, 1998 through May 31, 1999. *See* 19 CFR 351.214(j).

Scope of the Review

The products covered by this review include shipments of OCTG from Canada. This includes American Petroleum Institute ("API") specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end-use certification procedure were not used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for OCTG with tolerances of plus 1/8 inch for diameters less than or equal to 8 5/8 inches and plus 1/4 inch for diameters greater than 8 5/8 inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests. This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item numbers 7304.20, 7305.20, and 7306.20. The HTS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by Atlas. We used standard verification procedures including; on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the memoranda dated March 8, 2000, the public versions of which are on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU—Public File).

United States Price

Atlas reported all United States sales of subject merchandise, as export price ("EP") transactions sold to unaffiliated U.S. customers prior to importation.

We calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold in the exporting country to the first unaffiliated purchaser in the United States prior to importation and constructed export price ("CEP") methodology was not otherwise warranted, based on the facts of record. We based EP on the delivered price to unaffiliated purchasers in the United States. We adjusted the starting price by the amount Atlas reported for billing adjustments and made deductions from the starting price for discounts. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, U.S. inland freight, and U.S. brokerage and handling charges.

Normal Value

After testing: (1) Home market viability and (2) whether home market sales were at below-cost prices, we calculated normal value ("NV") as noted in the "Price-to-Price Comparisons" section of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Atlas' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Because Atlas' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for Atlas.

2. Cost of Production Analysis

On November 24, 1999, petitioners filed an allegation that Atlas made home market sales at prices that were below the COP. Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Atlas had sold OCTG in the home market at prices less than the COP. As a result, pursuant to section 773(b) of the Act, we initiated a COP investigation on January 6, 2000, with respect to Atlas to determine whether sales were made at prices below the COP.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Atlas' cost of materials and fabrication for the foreign like product, plus an amount for home market selling, general and administrative expenses ("SG&A"), including interest expenses, and packing costs.

B. Test of Home Market Sales Prices

We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and rebates.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to be made in "substantial quantities" within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In the instant case, we compared Atlas' home market prices to weighted-average COPs for the POR, and determined that such sales were below cost and were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. Therefore, we disregarded such below-cost sales.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than the U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Atlas reported one customer category and one channel of distribution (*i.e.*, sales to unaffiliated distributors) for its home market sales. For its EP sales, Atlas also reported one customer category and one channel of distribution (*i.e.*, direct sales to unaffiliated distributors). Atlas claimed in its response that its EP sales were made at the same LOT as home market sales to unaffiliated distributors. For this reason, Atlas has not asked for a LOT adjustment to NV for comparison to its EP sales.

In determining whether separate LOTs actually existed in the home market and U.S. market, we examined whether Atlas' sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories and selling functions. Atlas reported that its selling functions for home market sales are arranging for freight, warehousing, and warranty service; however, we noted that Atlas did not report any warehouse or warranty expenses for home market sales during the POR. After reviewing the record evidence, we agree with Atlas that its home market sales comprise a single LOT.

In analyzing Atlas' selling activities for its EP sales, we noted that the sales generally involved the same selling functions associated with the home market LOT described above. Atlas reported that these selling activities included arranging for freight, warehousing, and warranty services; however, we noted that Atlas did not report any warehouse or warranty expenses for U.S. market sales during the POR. Based upon the record evidence, we have determined that there is one LOT for all EP sales and that it is the same LOT as in the home market. Therefore, because we find the U.S. sales and home market sales are at the same LOT, we determine that a LOT adjustment under section 773(a)(7)(A) is not warranted.

Price-to-Price Comparisons

We calculated NV based on delivered prices to unaffiliated customers. The NV price was reported on a Goods and Services Tax-exclusive basis. We adjusted the starting price by the amount Atlas reported for billing adjustments. We made deductions from the starting price for rebates, inland freight, and inland freight insurance. We made adjustments for differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made further adjustments, under section 773(a)(6)(C)(iii) of the Act, for differences in circumstances of sale for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

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Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that a 4.41 percent dumping margin exists for Atlas for the period December 1, 1998, through May 31, 1999.

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. There was only one importer during the POR for merchandise sold by Atlas. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. Atlas reported entered value by subtracting discounts, freight, and brokerage and handling costs from the its reported U.S. price. This rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of OCTG from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Atlas will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 16.65 percent, the "all-others" rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of administrative review for a subsequent review period.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1).

Dated: June 1, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14502 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No.97–3A003.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to The Association for the Administration of Rice Quotas, Inc. ("AARQ") on June 1, 2000. Notice of issuance of the original Certificate was published in the **Federal Register** on January 28, 1998 (63 FR 4223).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1998).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 97–00003, was issued to The Association for the Administration of Rice Quotas, Inc. ("AARQ") on January 21, 1998 (63 FR 4223, January 28, 1998) and lastly amended on September 25, 1998 (63 FR 53013, October 2, 1998).

AARQ's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): ADM Latin, Inc., Decatur, Illinois, and ADM Rice, Inc., Tarrytown, New York (subsidiaries of Archer Daniels Midland Company); AFE (USA), Inc., Houston, Texas; California Commodity Traders, LLC, Sacramento, California; California Pacific Rice Milling, Ltd., Arbuckle, California; Family & Sons, Inc., Miami, Florida; Far West Rice, Inc., Durham, California; Glencore Ltd., Stamford, Connecticut (a subsidiary of Glencore International AG), for the activities of Glencore Grain Division and Glencore Ltd.'s subsidiary, LaGrain International Inc., Baton Rouge, Louisiana; Incomar Texas, Ltd. and its subsidiary, Gulf Rice Arkansas, LLC, Houston, Texas; International Grain Brokerage, LLC, Yuba City, California; JFC International Inc., San Francisco, California (a subsidiary of Kikkoman Corp.); Kitoku America, Inc., Davis, California (a subsidiary of Kitoku Co., Ltd.);

Mermentau Rice, Inc., Mermentau, Louisiana; Nishimoto Trading Company, Ltd., Los Angeles, California (a subsidiary of Nishimoto Trading Company, Ltd. (Japan)); PS International, Ltd., Durham, North Carolina; Texana Rice, Inc., Houston, Texas; Wehah Farm, Inc., dba Lundberg Family Farms, Richvale, California;

2. Delete the following companies as "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Broussard Rice Mill, Inc.; Cargill, Inc., for the activities of its division, Cargill Rice Milling; Cargill Rice, Inc.; and Gulf Rice Arkansas, Inc.;

3. Change the listings of the current Members as follows: "AC HUMKO, Corp. for the activities of AC HUMKO Rice Specialties, Brinkley Rice Milling Company, and El Campo Rice Milling Company, Dallas, Texas" should be amended to read "AC HUMKO Corp., Cordova, Tennessee;" "Busch Agricultural Resources, Inc., St. Louis, Missouri" and "Pacific International Rice Mills, Inc., Woodland, California" should be amended to read "Busch Agricultural Resources, Inc., St. Louis, Missouri, and its subsidiary, Pacific International Rice Mills, Inc., Woodland, California;" "Continental Grain Company, New York, New York" should be amended to read "ContiGroup Companies, Inc., New York, New York;" "Gulf Rice Milling, Inc." and "Gulf Pacific Rice Co., Inc." should be amended to read "Gulf Pacific, Inc., and its subsidiaries, Gulf Pacific Rice Co., Inc., and Gulf Rice Milling, Inc., Houston, Texas;" and "The Connell Company for the activities of Connell Rice & Sugar Co. and Connell International Co." should be amended to read "The Connell Company, Westfield, New Jersey."; and

4. Include as export markets for the purpose of distributing tariff-rate quota auction proceeds the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: June 1, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–14382 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Performance Review Board; Announcement of New Members

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Announcement of new members for the performance review board.

FOR FURTHER INFORMATION CONTACT: LaVerne H. Hawkins, Department of Commerce, Office of Human Resources, Room 4803, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: This notice announces the appointment by the Acting Under Secretary for International Trade, Robert LaRussa, of the Performance Review Board (PRB). This is a revised list of new members and the reappointment of previous board members as listed in the September 3, 1998, **Federal Register** 63 FR 47000. The appointments are for a period of 2 years. The purpose of the International Trade Administration's Performance Review Board (PRB) is to review and make recommendations to the appointing authority on performance management issues such as appraisals, and bonuses, ES-level Increases and Presidential Rank Awards for members of the Senior Executive Service (SES). The members are:

Eleanor Roberts Lewis, Chief Counsel for International Trade.	Non-ITA career.
Stephen Jacobs, Deputy Assistant Secretary for Agreements Compliance, Market Access & Compliance.	Career.
Elizabeth Sears, Deputy Assistant Secretary for Domestic Operations, U.S. & Foreign Commercial Service.	Non-career
Barbara Tillman, Senior Director, Import Administration.	Career.
Jonathan C. Menes, Director, Office of Trade and Economic Analysis, Trade Development.	Career.
Tong S. Chung, Acting Deputy Assistant Secretary for Service Industries and Finance, Trade Development.	Non-Career.
Linda Moye Cheatham, Chief Financial Officer and Director of Administration.	Career.
LaVerne H. Hawkins, Office of Human Resources Management, 202–482–2537.	Executive Secretary.

Dated: June 2, 2000.

James T. King, Jr.,

Human Resources Manager, ITA.

[FR Doc. 00–14384 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000322079–0079–01]

RIN 0640–ZA06

Solicitation of Applications for the Minority Business Capital Access Policy Institute

AGENCY: Minority Business Development Agency, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations seeking to establish a Minority Business Capital Access Policy Institute. All information required for submission of a grant application by eligible applicants is contained in this announcement.

The MBDA provides business development services to minority entrepreneurs through different types of programs. Each program is designed to focus on the unique business problems of a specific market. MBDA's programs form a national business delivery network that addresses the needs of minority entrepreneurs throughout the United States. Currently, there is very limited information on the minority business community, especially with respect to capital demand and usage. To support the development of minority businesses and encourage informed decision-making by both the public and private sectors, it is critical to collect and analyze quantitative information on the capital needs of these businesses. MBDA will therefore provide seed funding for the planning, development and establishment of the Minority Business Capital Access Policy Institute ("MBCAPI" or "Institute"), a research and advocacy institute focused on

issues of capital access for minority businesses. For profit and non-profit organizations, state or local government entities, American Indian Tribes, colleges and universities are eligible to operate the MBCAPI.

DATES: Completed applications for the MBCAPI program must be: (1) Postmarked by the USPS by July 10, 2000; or (2) received by MBDA at the address below no later than 5 p.m. Eastern Daylight Time on July 10, 2000. Applications postmarked later than the closing date or received after the closing date will not be considered. The anticipated time for processing of applications is 90 days.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the application. Completed application packages must be submitted to: Office of Financial Access, Room 5600, Minority Business Development Agency, U.S. Department of Commerce, 14th & Constitution Avenues, NW, Washington, DC 20230.

If the application is hand-delivered by the applicant or its representative, it must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW, between Pennsylvania and Constitution Avenues. Unsigned applications and those that do not include required forms will be considered non-responsive and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For further information, contact Jason Everett of the Office of Financial Access, at (202) 482–1940.

Pre-Application Conference: A pre-application conference will be held for the MBCAPI program. Please contact Jason Everett of the Office of Financial Access, at (202) 482–1940, for the date, time and location. Please be aware that proper identification is required for entrance into any Federal building.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11625 and 15 U.S.C. 1512.

(Catalogue of Federal Domestic Assistance (CFDA): 11.802)

Program Description

MBDA promotes and encourages business opportunities for minority business enterprises. Although minority businesses are growing at approximately twice the rate of majority businesses, both in terms of the number of companies and revenues, minority businesses, according to the most recent Bureau of the Census data, currently account for only 6% of U.S. businesses, while representing nearly 25% of the U.S. population. Lack of access to capital is a leading cause of the low participation rate of minorities in the U.S. marketplace.

MBDA has determined that the lack of quantitative information regarding, and analysis of, the financing needs of minority businesses, strongly contributes to systemic difficulties in increasing the capital available to minority businesses. By providing seed capital for this project, MBDA will institute an effort to focus resources on issues of capital access for minority businesses. MBDA anticipates that the Institute will collect, analyze and disseminate information on the capital needs of minority businesses, review and assess new strategies and instruments for increasing financial access for minority businesses, and promote the importance of increased capital flows to minority business enterprises within the financial, general business and public sectors.

Although research and advocacy materials developed by the MBCAPI may be available to the general public, the Institute's primary objectives are: (1) To research and educate financial institutions and the capital markets about the needs of and opportunities presented by minority businesses; and (2) to serve as a source of data and expertise for minority businesses. The successful applicant will be required to design and establish the Institute during the twelve-month grant period; however, other than as set forth in this **Federal Register** notice, the grantee will not be required to provide other research and advocacy services during the grant period.

MBDA will provide funding for a twelve-month period for the development and implementation of the MBCAPI; however, after the initial grant, MBDA does not intend to fund the MBCAPI on an ongoing basis. As a result, a significant portion of MBDA's evaluation process will involve an assessment of the applicant's ability to develop sufficient resources to sustain the Institute on a continuing basis. However, it is not the intent of MBDA to have applicants use Federal funds from the award to solicit financial resources for the continued operation of the MBCAPI after the twelve-month award ends. Applicants should be aware that under applicable cost principles (OMB Circulars A–122, A–121 and A–87), the costs of organized fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under this award.

However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless may be treated as direct costs for purposes of determining indirect costs rates and be allocated their share of the organization's indirect costs if they represent activities which: (1) Include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

Work Requirements

Task 1

Formation and establishment of the MBCAPI, including, by the end of the ninth month after the award start date, a strategic plan ("Strategic Plan" or "Plan") describing the MBCAPI's strategy and methodology for becoming financially self-sustaining. The Strategic Plan must include an estimated budget and business plan for the first 12 months of operation after MBDA funding ends.

Work on the project must have commenced within 30 days after the start date of the award. By the end of the ninth month subsequent to the start date of the award, the grantee will submit to MBDA the Strategic Plan describing the approach the MBCAPI will use to become financially self-sustaining after the award period. In the Plan, the grantee must discuss strategies for funding MBCAPI's ongoing operations (*i.e.*, whether the MBCAPI will be a membership organization, where membership dues will finance ongoing operations or whether other forms of fundraising will be required) and identify likely sources of public and private support sufficient to fund the MBCAPI's needs for the first year of operation.

In particular, the Strategic Plan must discuss strategies for mobilizing the financial, investment and business communities, including the minority business community and minority business advocacy organizations, to obtain the necessary financial resources to continue the MBCAPI for the first twelve months after MBDA funding ends. The Strategic Plan also must include an estimated budget and business plan. The MBCAPI must be operational by the end of the award period and should be located in an office facility.

Task 2

Conduct needs assessment of the minority business community.

This assessment shall address the capital needs of the MBE community. The assessment should include a description of the existing sources and structures for financing minority businesses, particularly lending sources and evaluate the need for increased use of equity and mezzanine financing.

Task 3

Conduct financial institutions needs assessment.

This assessment shall include a review of the information, market research and other quantitative data that financial institutions need in order to serve the minority business community to a greater extent. This should include the information that financial institutions believe is currently unavailable, such as up-to-date demographic data on the MBE community, and the type of market research that would be likely to increase their marketing to and investment in the MBE community.

Task 4

Develop a statement of policy focus and research strategy.

Based on the foregoing assessments of minority businesses and financial institutions, the successful applicant must develop a statement of policy focus and research strategy to be used during its first two operational years. This statement must describe, in detail, the most critical issues for the minority business community and the strategies that the MBCAPI will use to address these issues. This should include an outline of the research that will be required and a description of the methodology that will be used to accomplish this work.

Task 5

Develop a work plan ("MBCAPI Work Plan") that will demonstrate how the MBCAPI, once operational, will complete the following:

- Creation of a clearinghouse for information related to capital access for minority businesses. This would include reports, studies and academic work on investment in minority businesses and emerging domestic markets. The Institute also will develop and implement a strategy to disseminate this information to a number of constituencies, including but not limited to organizations focused on minority capital access; minority business groups; the Minority Business Roundtable; the general financial and investment community; and economic and policy think tanks. Methods of dissemination could include a newsletter, electronic newsletters, e-mail, the press and other media.
- Development of research strategies and new instruments that can be utilized to increase capital access for minority businesses. The strategies include, but are not limited to, the creation of a secondary market for minority and small business loans; identification of new sources of equity, mezzanine and quasi-equity capital; and the development of new equity and debt products and instruments.
- Collection of information on the equity needs of minority businesses, including estimates of the equity needs of minority businesses, current available sources, industries in which such equity investments are concentrated, etc. The MBCAPI also will assess the difficulties of minority businesses in obtaining equity capital, including lack of access to venture capital networks and other equity investors.
- Creation and maintenance of a database of loans made to minority-owned businesses. The data to be gathered includes information on loans made by commercial banks, finance companies, community development lenders, Small Business Investment Companies and other lending institutions. This information would include asset size of each lender, average loan size and duration, borrower target groups, loan default and loan loss rates and other data generally used by rating agencies in assessing a securitization transaction. The data collected would also include general information about minority businesses, including but not limited to the primary industries where such businesses are concentrated, average gross revenues, primary sources of capital, average amount of bank or other financing, sources of equity financing, geographic location of businesses, numbers of employees, etc.
- Assessment of the impact of minority financial services companies on providing capital to minority businesses and recommend ways to improve the provision of capital by such companies.
- Implementation of an education strategy that includes an annual conference geared towards mainstream financial service companies and focused on the benefits of investing in minority businesses.
- Monitoring and evaluation of federal and state programs that significantly impact or target increased capital for minority businesses.
- Recommendation of minimum standards for loan documentation and servicing for community development lenders for purposes of promoting uniformity in evaluating new loans and performing due diligence.

Use of Program Income: Applicants are advised that any program income generated by the proposed project is subject to special conditions. Anticipated program income must be documented appropriately in the project budget. In addition, should an application be funded, unanticipated program income must be reported to MBDA, and the budget for the project must be renegotiated to reflect receipt of this program income. Program income means gross income earned by the recipient that is either directly generated by a supported activity or earned as a result of the award.

Performance Measures: In accordance with 15 CFR parts 14 and 24, the successful applicant must manage and monitor functions and activities supported by the financial award. Grantees will be required to use program performance measures in quarterly reports and to provide an end-of-the-year assessment of the accomplishments of the project using these measures. Applicants must include a detailed plan in their proposals which provides a timeline of proposed activities and milestones to implement each of the tasks set forth above.

Funding Availability: MBDA anticipates that approximately $350,000 will be available in FY 2000 for Federal assistance under this program. If MBDA receives sufficient funding for FY 2001, an additional $75,000 may be available to the grantee to enhance the project. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is canceled because of other Agency priorities.

Matching Requirements: Cost sharing of at least 15% is required. Additional cost sharing is encouraged. Cost sharing may be in the form of cash, third party in-kind contributions, non-cash applicant contributions or combinations thereof. The share may also be contributed by local, state, and private sector organizations or joint ventures between these organizations.

Type of Funding Instrument: A financial assistance award in the form of a grant will be used to fund this program.

Eligibility Criteria: State or local government entities, American Indian Tribes, colleges, universities, for-profit and non-profit organizations are eligible to operate the MBCAPI.

Award Period: The award period shall be for approximately twelve calendar months from the award start date. Publication of this notice does not obligate the Department of Commerce or MBDA to award any specific grant or to obligate all or any part of available funds.

Indirect Costs: The total dollar amount of the indirect costs proposed in

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an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

Application Forms and Package: Standard Forms 424, Application for Federal Assistance; 424A, Budget Information—Non-Construction Programs; 424B, Assurances—Non-Construction Programs, (Rev 4–97); SF–LLL (1996), Disclosure of Lobbying Activities; and Department of Commerce Forms CD–346; CD–511; and CD–512 shall be used in applying for financial assistance. Standard Forms 424, 424A, 424B and LLL may be downloaded at *www.whitehouse.gov/omb/grants/index* and Department of Commerce Forms CD–346, CD–511 and CD–512 may be downloaded at www.doc.gov/forms.

Evaluation Criteria

Proposals will be evaluated based on the following criteria:

I. Applicant Capability (45%)

The applicant's proposal will be evaluated with respect to the applicant firm's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

- Experience in and knowledge of issues related to capital access for minority businesses and innovative programs designed to increase such capital (10%);
- Resources and professional relationships within the financial and investment community (10%);
- Capacity to develop the resources to make the MBCAPI self-sustaining (10%);
- Experience and expertise in advocating on behalf of minority businesses, including education and advocacy resources (10%); and
- Assessment of the qualifications, experience and proposed roles of staff who will operate the MBCAPI (5%).

To assist MBDA in its evaluation process, the following types of information should be included in the proposal:

1. A brief Business Service History of the applicant firm or firms in addressing issues of capital access for minority businesses. This should address the organization's ability to perform work of the nature and level described in the work requirements of this **Federal Register** notice. If the applicant organization has an ISO 9000 Quality Assurance certification, then it should be expressed here. Knowledge possessed by individual staff members outside of the organization should not be provided here (see below).

2. A brief Subject Area Overview should demonstrate the applicant's knowledge and understanding of the subject of minority capital access. This should include knowledge of: (a) Minority business demographics; (b) the impediments within the capital markets to increased financing for minority businesses; (c) financial institutions, including non-depository lenders, and non-traditional financing sources such as community development funds; (d) the venture capital community and other sources of equity capital; and (e) economic development issues and the risks to the economy of limited growth within the minority business sector. The applicant also should demonstrate its background in education and advocacy.

3. A brief Business Relationships Overview which synopsizes the applicant's professional relationships which can be utilized to address issues of capital access. Particular emphasis should be placed on those relationships and/or partnerships within: (a) The financial and investment community and (b) the minority business development community that indicate applicant's ability to understand and address the concerns of the different ethnic groups (including African Americans, Native Americans, Puerto Ricans, Spanish speaking Americans, Eskimos, Aleuts, Asian Indians, Asian Pacific Americans and Hasidic Jews) served by MBDA. Information included in this overview should reflect business relationships of both the applicant firm(s) as an organization and those of individual proposed staff. This part should also include references (with telephone numbers) and letters of *support*, and should also answer the following questions:

- Is the applicant firm(s) or proposed MBCAPI staff known in the financial, investment, business and minority business development communities?
- Does the applicant enjoy solid working relationships in the financial investment, business and minority business development communities that verify its service quality and recommend it?

4. A Minority Business Summary that discusses the applicant's knowledge of the unique problems facing a cross-section of minority entrepreneurs in obtaining capital.

5. A Discussion of the Capabilities of Proposed Staff includes staff knowledge acquired both within the applicant firm and in previous work settings, and should specifically address knowledge in performing work of the nature and level described in the MBCAPI work requirements. The identification of key personnel, such as an executive director or program manager, to direct the MBCAPI on a day-to-day basis is important. Any change in the executive director or program manager requires grants officer approval.

6. Overview of the MBCAPI Staff Structure includes an organizational chart, which provides a distinct delegation of authority and which identifies all positions, with position descriptions and qualifications (both in-house and consultant subcontractors, if any) for the MBCAPI. This overview should be directly tied into the work requirements for the MBCAPI.

II. Techniques and Methodologies (40%)

The applicant will be evaluated according to the following sub-criteria:

- Applicant's specific plan on how to carry out each of the five MBCAPI work requirements, including proposed activities and milestones (timeline). For example, with regard to Task 1, in addition to discussing the development of the Strategic Plan, the applicant should describe how it intends to establish a detailed organizational and functional framework for the management of the MBCAPI, with a schedule of proposed activities and milestones for doing so. The evaluation of each task will be worth 5%.
- Applicant must provide a detailed discussion relating its plan for carrying out each of the five MBCAPI work requirements to the particular resources and business capabilities of its organization, including staff and networks, thus indicating how its organization will research, analyze and disseminate information on the capital needs of the minority business community. The evaluation of this sub-criteria will be worth 15%.

III. Proposed Budget and Supporting Budget Narrative (15%)

The applicant's proposal will be evaluated on the following sub-criteria:

- Reasonableness, allowability and allocability of costs (10%).
- Proposed cost sharing of 15% is required. The non-Federal share must be adequately documented (5%).
- Cost sharing which exceeds 15% will be awarded bonus points on the following scale: 16–20% 1 point; 21–25% 2 points; 26–30% 3 points; 31–35% 4 points; and over 36% 5 points.

An application must receive an average of at least a 70% of the total points available for all three evaluation criteria in order for the application to be considered for funding.

Selection Procedures: Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The independent review panel, consisting of at least three individuals, two of whom are reviewers who are not employees of MBDA, will review all applications based on the criteria above. The independent review panel will evaluate and rank the proposals. The Director of MBDA makes the final recommendations to the Department of Commerce Grants Officer regarding the funding of applications, taking into account the following selection criteria:

(1) The evaluations and rankings of the independent review panel;

(2) The extent to which the applicant demonstrates ongoing partnerships and relationships with organizations that have expertise and knowledge regarding the unique business development issues faced by the range of ethnic groups supported by MBDA; and

(3) The availability of funding.

The amount of funds awarded to the grantee, the scope of programmatic activities, and clarifications and/or correction of errors will be determined and/or conducted in pre-award negotiations between the applicant, the Grants Officer, and the MBDA Program Officer.

Other Requirements

(1) Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(2) Paperwork Reduction Act

This notice involves collections of information subject to the Paperwork Reduction Act, which have been approved by OMB under OMB control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number.

(3) Federal Policies and Procedures

Recipients and sub-recipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(4) Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(5) Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

(6) No Obligation for Future Funding

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

(7) Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

i. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to the Department of Commerce are made.

(8) Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(9) Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

i. *Non-procurement, Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

ii. *Drug-Free Workplace.* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

iii. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

iv. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(10) Lower Tier Certifications

Recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the award document.

(11) False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(12) Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(13) Executive Order 12866

It has been determined that this notice is not significant for purposes of Executive Order 12866.

Courtland Cox,

Director, Minority Business Development Agency.

Juanita E. Berry,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 00–14503 Filed 6–7–00; 8:45 am]

BILLING CODE 3510–21–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade: Proposed Amendments to the Chicago Board of Trade: Corn, Corn Yield Insurance (Six Contracts), Oats, Rough Rice, Soybeans, Soybean Meal, Soybean Oil, Wheat, Kilo Gold, 100 Ounce Gold, 1000 Ounce Silver, and 5000 Ounce Silver Futures Contracts, Increasing the Contracts, Maximum Daily Price Fluctuation Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The Chicago Board of Trade (CBOT or Exchange) has submitted proposed amendments which would increase the maximum daily price fluctuation limits for the Exchange's corn, corn yield insurance (six contracts), oats, rough rice, soybeans, soybean meal, soybean oil, wheat, kilo gold, 100 ounce silver, and 5000 ounce silver futures contracts. The CBT's proposals are described below. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on July 10, 2000—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposed amendments is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before June 23, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the CBOT's maximum daily price fluctuation limits.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov

SUPPLEMENTARY INFORMATION: Currently, the CBOT's rules specify maximum daily price fluctuation limits for the subject contracts that are applicable to trading until the second business day prior to the first business day of the expiring delivery month. No daily price limits are applicable to trading during the expiring contract month. The contracts' existing terms also provide for expansion of the maximum daily price fluctuation limits under specified circumstances. The existing terms of the option contracts based on the subject futures contracts specify that daily fluctuations in option premiums are subject to the same limits as are specified for the underlying futures contract.

The CBOT is proposing to increase the maximum daily price fluctuation limits for the subject contracts as shown below:

Contract	Proposed limit	Existing limit
Corn	$ 20 per bushel	$ 12 per bushel.
Corn Yield Insurance (Iowa, Illinois, Indiana, Nebraska, Ohio and U.S.)	22.5 bushels per harvested acre	15 bushels per harvested acre.
Kilo gold	$75.00 per ounce	$50.00 per ounce.
100 Ounce Gold	$75.00 per ounce	$50.00 per ounce.
Oats	$ 20 per bushel	$ 10 per bushel.
Rough Rice	$ 50 per hundredweight	$ 30 per hundredweight.
1000 Ounce Silver	$1.50 per ounce	$1.00 per ounce.
5000 Ounce Silver	$1.50 per ounce	$1.00 per ounce.
Soybeans	$ 50 per bushel	$ 30 per bushel.
Soybean Meal	$20.00 per ton	$10.00 per ton.
Soybean Oil	$ 020 per pound	$ 010 per pound.
Wheat	$ 30 per bushel	$ 20 per bushel.

The proposed amendments also would delete the contracts' existing provisions that provide for expansion of the maximum daily price fluctuation limits under specified circumstances. Since the option contracts specify that maximum daily premium fluctuation limits are subject to the same price limits specified for the underlying futures contracts, the proposed amendments also will increase the limits on daily premium fluctuations for such option contracts. Under the proposed amendments, trading in all contract months listed for particular futures or option contract would cease for the rest of the trading session when the prices for one or more contract months go to the revised limits. The Exchange intends to make the proposed amendments effective upon Commission approval for all existing and newly listed contract months.

In support of the proposed amendments, the Exchange said that:

The CBOT/Eurex Alliance electronic trading system does not have the ability to implement daily price limits electronically. Therefore, Electronic Trading System (ETS) staff would be required to halt trading manually when prices reached specified limits. If one futures contract month for a commodity goes to a limit, this event would trigger a manual shutdown of all futures contract months and the market would remain shut down for the remainder of the trading session. Likewise, if one option contract months and strike price goes to a limit, trading in all option contract months and strike prices would be terminated for the remainder of the session. Increasing the limits would reduce the number of occurrences of manual trading halts.

Price limits were established because of a perceived need for a "cooling off period" for futures when a major news release or event causes prices to move substantially. However, price limits, by their very nature, prevent futures markets from discovering the market price at times when market participants would most like to have that price information (i.e. after a major news release or other event). Widening daily price limits will allow the agricultural and metals futures markets to better reflect cash price movements and will provide greater access for market users during periods of uncertainty.

The CBOT also said that:

The proposed increases in price limits will increase the probability that the futures markets will continue to trade and provide a price discovery function following a major news release or unexpected event. This in turn will provide the marketplace with a benchmark price from which to base cash prices and production, marketing and buying decisions.

The Commission is requesting comments on the proposed amendments.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW., Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the Exchange in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such material should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 2, 2000.

Richard Shilts,

Acting Director.

[FR Doc. 00–14383 Filed 6–07–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; comment request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35.).

Title, Associated Form, and OMB Number: Department of Defense Medical Examination Review Board (DoDMERB) Medical Information Collection Forms; DD Forms 2351, 2369, 2370, 2372, 2374, 2375, 2378, 2379, 2380, 2381, 2382, 2883, 2480, 2489, 2492, 2632; OMB Number 0704–0396.

Type of Request: Extension.

Number of Respondents: 19,000.

Responses Per Respondent: 1.

Annual Responses: 19,000.

Average Burden Per Response: 1 hour (average).

Annual Burden Hours: 19,000.

Needs and Uses: This collection of information is necessary to determine the medical qualification of applicants to the five Service academies, the four-year Reserve Officer Training Corps (ROTC) College Scholarship Program, Uniformed Services University of Health Sciences, and the Army, Navy, and Air Force Scholarship Programs. The collection of medical history of each applicant is to determine if applicants meet medical standards outlined in Department of Defense Directive 6130.3, Physical Standards for Appointment, Enlistment and Induction, dated May 2, 1994. Respondents are individuals who are interested in applying to attend one of the five Service academies, the four-year ROTC Scholarship Program, Uniformed Services University of the Health Sciences, or Army, Navy, and Air Force Scholarship Programs. The forms are processed through medical reviewers representing their respective services to determine a medical qualification status. Associated forms may or may not be required depending on the medical information contained in the medical examination. It is essential that individuals have a medical qualification determination to ensure compliance with the physical standards established for each military service program.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 23, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–14416 Filed 6–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Third Party Collection program (Record of Other Health Insurance; DD Form 2569; OMB Number 0704–0323.

Type of Request: Revision.

Number of Respondents: 293,401.

Responses Per Respondent: 1.

Annual Responses: 293,401.

Average Burden Per Response: 2.5 minutes.

Annual Burden Hours: 12,030.

Needs and Uses: The information contained in the DD Form 2569 will be used to collect reimbursement from private insurers for medical care provided to family members of retirees and decreased Service members having health insurance. This information is collected either during the inpatient stay admission and/or discharge process or during the visit when a patient presents for an outpatient procedure. Reimbursement will be used to enhance healthcare delivery in the Medical Treatment Facility (MTF). Information will also be used by the Military Health Services System and CHAMPUS Fiscal intermediaries to determine eligibility for care, deductibles, and copayments and by Health Affairs for program planning and management.

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Affected Public: Individuals or Households.

Frequency: On occasion; annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 24, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–14417 Filed 6–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–40]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–40 with attached transmittal and policy justification.

Dated: June 2, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–01–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 MAY 2000
In reply refer to:
I-00/005567

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-40, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $62 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

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Transmittal No. 00-40

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$ 60 million
Other	$ 2 million
TOTAL	$ 62 million

(iii) Description of Articles or Services Offered: Two hundred forty-one thousand M107 high explosive 155mm projectiles and publications

(iv) Military Department: Army (YVG)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 26 MAY 2000

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - 155mm Projectiles

The Government of Israel has requested a possible sale of 241,000 M107 high explosive 155mm projectiles and publications. The estimated cost is $62 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed purchase of the projectiles is required to maintain projected sustainment rates and reserve levels. Israel, which already has projectiles in its inventory, will have no difficulty absorbing these additional projectiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be American Ordnance of Middletown, Iowa. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–14419 Filed 6–7–00; 8:45 am]
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0079]

Submission for OMB Review; Comment Request Entitled Corporate Aircraft Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0079).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Corporate Aircraft Costs. A request for public comments was published at 65 FR 17489, April 3, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before July 10, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Office of Federal Acquisition Policy, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Government contractors that use company aircraft must maintain logs of flights containing specified information to ensure that costs are properly charged against Government contracts and that directly associated costs of unallowable activities are not charged to such contracts.

B. Annual Reporting Burden

Number of Respondents: 3,000.
Responses Per Respondent: 1.
Total Responses: 3,000.
Average Burden Per Response: 6 hours.
Total Burden Hours: 18,000.
Obtaining Copies of Proposals: Requester may obtain a copy the of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0079, Corporate Aircraft Costs, in all correspondence.

Dated: June 5, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–14443 Filed 6–7–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0129]

Submission for OMB Review; Comment Request Entitled Cost Accounting Standards Administration

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0129).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Cost Accounting Standards Administration. A request for public comments was published at 65 FR 17490, April 3, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before July 10, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Federal Acquisition Policy Division, GSA, 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 30.6 and 52.230–5 include pertinent rules and regulations related to the Cost Accounting Standards along with necessary administrative policies and procedures. These administrative policies require certain contractors to submit cost impact estimates and descriptions in cost accounting practices and also to provide information on CAS-covered subcontractors.

B. Annual Reporting Burden

Number of Respondents: 644.
Responses Per Respondent: 2.27.
Total Responses: 1,462.
Average Burden Hours Per Response: 200.85.
Total Burden Hours: 293,643.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0129, Cost Accounting Standards Administration, in all correspondence.

Dated: June 5, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–14444 Filed 6–7–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session from 8 am until 6 pm, 19 June 2000 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: June 2, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–14415 Filed 6–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Interim Range Rule Risk Methodology (IR3M), Supporting DOD's Range Rule

AGENCY: Department of Defense (DoD).

ACTION: Notice of availability.

SUMMARY: The DoD is making available the Interim Range Rule Risk Methodology (IR3M). DoD has developed this guidance document to provide a consistent methodology to assess and manage risks posed by military munitions, unexploded ordnance, and other constituents. In developing this methodology, DOD consulted with U.S. Environmental Protection Agency and various federal, state, tribal, and public interest group stakeholders. The IR3M assists decisionmakers in the selection of appropriate response actions on closed, transferred, and transferring military ranges covered under DoD's rule regarding Closed, Transferred, and Transferring Ranges Containing Military Munitions (also known as DoD Range Rule) to be codified at 32 CFR 178. The IR3M guidance document is available on the World Wide Web at: http://www.acq.osd.mil/ens/.

ADDRESSES: Copies of the IR3M may also be requested from, and comments may be submitted to: Interim R3M Comments (MSR–3–3), c/o Science Applications International Corporation, 11251 Roger Bacon Drive, Reston, VA 20190.

FOR FURTHER INFORMATION CONTACT: R3M Hotline at (888) 541–1081, e-mail: r3m@aec.apgea.army.mil, or telephone Scott Hill at (410) 436–7085.

SUPPLEMENTARY INFORMATION: The DoD proposed the DoD Range Rule to identify a process for evaluating responses to risks from military munitions, unexploded ordnance, and associated materials on closed, transferred, and transferring (CTT) military ranges (62 FR 50795, September 26, 1997). The DoD Range Rule requires that response actions fully consider explosives safety hazards, are protective of human health and the environment, and address risks based upon reasonably anticipated future land use. The DoD Range Rule contains a process that is not inconsistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). It is tailored to the special risks posed by military munitions at the ranges that are no longer used or needed by the military for future training.

In the Proposed DoD Range Rule, DOD proposed to develop, in consultation with U.S. Environmental Protection Agency (EPA) and other stakeholders, a risk assessment model/protocol to address risks from military munitions, unexploded ordnance (UXO), and other constituents. DOD proposed to incorporate, to the maximum extent possible, the EPA's procedures to assess acute and chronic risks posed by releases at sites regulated under CERCLA and the Resource Conservation and Recovery Act (RCRA). The process described in this Interim Range Rule Risk Methodology (IR3M), is intended to satisfy, in part, the need for tools, models, and protocols to support decisionmaking under the DoD Range Rule.

In developing the IR3M, DOD established a Partnering Initiative to solicit input from a wide range of interested stakeholders. The Partnering Initiative includes representatives from DOD, EPA, federal land managers, state regulatory authorities, American Indian tribal governments, and several other organizations. The IR3M supports the process set forth in the DoD Range Rule and meets the following goals for the process, as established by the Partnering Initiative:

- ☐ Protect human health and the environment
- ☐ Minimize explosive safety risks to all personnel, including response personnel
- ☐ Emphasize risk reduction
- ☐ Identify threats from unexploded ordnance (UXO), explosives, and other constituents
- ☐ Focus on informed risk management decision-making, adequately supported with appropriate data
- ☐ Incorporate the National Contingency Plan's (NCP) nine criteria for evaluating response alternatives and consider reasonably anticipated future land uses
- ☐ Promote Federal and State regulator, tribal, and other stakeholders' involvement in order to achieve the greatest possible level of mutual understanding
- ☐ Consider the limitations of existing technology and promote the development and application of new technologies
- ☐ Complete response when the site-specific response objectives identified within the risk-based decision document have been attained
- ☐ During the recurring review phase of a response action, reevaluate response actions to determine if the risk assumptions were appropriate and whether conditions remain protective. Evaluate any finding of technical impracticality against new technology to determine if risk reduction can be attained, and/or performance can be maintained at significantly reduced costs
- ☐ Continue to respond appropriately to safety and environmental contamination problems discovered following administrative close-out
- ☐ Define risk attributed to military munitions as a function of exposure, detonation, and potential consequences of detonation, although the risk may not always be quantifiable
- ☐ Ensure process continuously improved upon by drawing upon lessons learned in related environmental programs

To achieve these goals, the Partnering Initiative split the R3M development into two parts—an Interim R3M and a Final R3M. The Interim R3M focuses on risk reduction and is aimed at the assessment and development of response actions at the ranges subject to the DoD Range Rule. The Interim R3M

identifies a process, tools, models, and protocols that decisionmakers may use to manage, assess, and communicate risks associated with military munitions, UXO, and other constituents at closed, transferred, and transferring ranges. This process resembles the risk-based decisionmaking process under CERCLA and the National Contingency Plan (NCP).

The Final R3M will refine the procedures in the Interim R3M and will contain the additional elements necessary to complete the range response process. Specifically, the Final R3M will address Recurring Reviews and Administrative Close-out, two of the response phases spelled out in the DoD Range Rule, which are not fully developed in the Interim R3M.

Dated: June 2, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–14418 Filed 6–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Education Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Education Excellence for Hispanic Americans (Commission). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act in order to notify the public of their opportunity to attend. The public is not receiving a 15 day notice of the meeting because of delays in finalizing meeting logistics.

DATES AND TIMES: Friday, June 16, from 9 a.m.–5 p.m.

ADDRESSES: U.S. Department of Education, 400 Maryland Ave., SW, FOB–6, Rm. 5E100, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Deborah Santiago, Deputy Director, at 202–401–1411 (telephone), 202–401–8377 (fax), deborah_santiago@ed.gov (e-mail) or mail: U.S. Department of Education, 400 Maryland Ave., SW, room 5E110; Washington, DC 20202–3601.

SUMMARY INFORMATION: The Commission was established under Executive Order 12900 (February 22, 1994) to provide the President and the Secretary of Education with advice on (1) the progress of Hispanic Americans toward achievement of the National Goals and other standards of educational accomplishment; (2) the development, monitoring, and education for Hispanic Americans; (3) ways to increase, State, county, private sector and community involvement in improving education; and (4) ways to expand and complement Federal education initiatives.

At this June meeting, the Commission will discuss current and future activities. Specifically, the Commission will focus on ways to institutionalize its work, including ongoing efforts to bring more awareness about federal programs and activities that are assisting Latinos.

Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Deborah Santiago, at (202) 401–1411, by no later than June 10. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Records of all Commission proceedings are available for public inspection at the White House Initiative, U.S. Department of Education, 400 Maryland Ave., SW, Room 5E110, Washington, DC 20202 from 9 a.m. to 5 p.m. (est).

Dated: June 1, 2000.

G. Mario Moreno,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 00–14423 Filed 6–7–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–350–000]

Bangor Gas Company; Notice of Application

June 2, 2000.

Take notice that on May 2, 2000, Bangor Gas Company (Bangor), c/o Sempra Energy, 555 West Fifth Street, Suite 1400, Los Angeles, CA 90013–1011, filed in Docket No. CP00–350–000 an application pursuant to Section 7(c) of the Natural Gas Act and Section 284.224 of the Commission's Regulations. Bangor requested a finding that it is exempt from Commission jurisdiction pursuant to the "Hinshaw exemption", and requested a blanket certificate of public convenience and necessity for authorization to transport natural gas in interstate commerce as though it were an intrastate pipeline as defined in Section 311 of the Natural Gas Policy Act. Bangor also requested approval of rates for the services as set forth more fully in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.us/online/rims.htm* (call 202–208–2222).

Bangor is a local distribution company which currently is constructing facilities to be used for the transportation and sale of natural gas in the State of Maine. The Maine Public Utilities Commission ("MPUC") regulates the rates (including rates for retail gas transportation), services, and facilities of Bangor in the Maine service areas to be served by Bangor immediately following construction of its natural gas pipeline and related facilities. Bangor expects to commence natural gas service in the City of Bangor, Maine, area by July 1, 2000.

Bangor will interconnect with the interstate pipeline facilities of Maritimes and Northeast Pipeline, L.L.C. (Maritimes Pipeline) within the State of Maine at a point in Veasie, Maine, near the City of Bangor and will transport gas from this point to distribute the gas to customer service lines in the Bangor area. Bangor states that all of the gas delivered by Bangor to its customers is expected to be obtained through the interconnection with Maritimes Pipeline and all of the gas so obtained will be consumed within the State of Maine.

Any person desiring to be heard or to make any protest with reference to said application should on or before, June 22, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission for abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Bangor to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–14401 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2570–000]

Blandin Paper Company; Notice of Cancellation

June 2, 2000.

Take notice that on May 22, 2000, Blandin Paper Company (Blandin) filed a Notice of Cancellation of Blandin Rate Schedule No. 1.

Any person desiring to protest such filing should file a motion to intervene or protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14402 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 1, 2000.

Take notice that on May 26, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of May 1, 2000:

Substitute Fourth Revised Sheet No. 144
Substitute Fifth Revised Sheet No. 145
Substitute Third Revised Sheet No. 147

Columbia Gulf states on March 31, 2000, it filed tariff sheets in Docket No. RP00–238 to revise its tariff to comply with the Commission's changes in its Order No. 637 to the right-of-first-refusal (ROFR) afforded certain firm shippers in 18 CFR 284.221(d)(2)(ii). In Order No. 637, the Commission revised the ROFR to limit its applicability. Columbia Gulf revised General Terms and Conditions (GTC) Section 4, which contains the procedures for the awarding of existing firm capacity and the exercise of the ROFR on Columbia Gulf, to reflect these changes. On April 26, 2000, the Commission accepted the filed tariff sheets to be effective May 1, 2000, subject to Columbia Gulf making certain revisions within 30 days. The instant filing is being made to comply with the April 26 Order.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14394 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–303–000]

Eastern Shore Natural Gas Company; Notice of Proposed Chances in FERC Gas Tariff

June 2, 2000.

Take notice that on May 31, 2000, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its annual Fuel Retention Adjustment filing pursuant to Section 31 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Eastern Shore states that Section 31, "Fuel Retention Adjustment", specifies that, with no less than thirty (30) days prior notice, Eastern Shore shall file with the Commission revised tariff sheets containing a re-determined Fuel Retention Percentage (FRP) for affected transportation rate schedules to be effective July 1 of each year. Such FRP is designed to reimburse Eastern Shore for the cost of its Gas Required for Operations (GRO) which consists of (a) gas used for compressor fuel and (b) gas otherwised used, lost or unaccounted for, in its operations. Eastern Shore's FRP is calculated by determining the GRO quantities attributable to system-wide operations for the affected transportation rate schedules using the last twelve (12) month period for which actual data is available and then dividing such quantity by the transportation quantities received by Eastern Shore for the corresponding twelve (12) month period.

Eastern Shore states that as shown in its filing, Eastern Shore's calculated FRP is .1%, which is a decrease of .2% from the current FRP in effect.

Eastern Shore states that copies of its filing has been mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's

Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14391 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–369–000]

Natural Gas Pipeline Company of America; Application for Permission and Approval To Abandon Interests in Offshore Lateral, Tap and Meter Facilities and Request for Nonjurisdictional Determination

June 2, 2000.

Take notice that on May 25, 2000, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations to abandon interests in offshore lateral, tap and meter facilities and a request for nonjurisdictional determination, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any questions regarding this application should be directed to James J. McElligott, Senior Vice President, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148 at (630) 691–3525.

Specifically Natural requests:

(1) Permission and approval to abandon, by sale to Green Canyon Pipe Line Company, L.L.C. ("Green Canyon"), a nonjurisdictional gathering company, interests in an aggregate of 110.31 miles of various diameter offshore laterals including related tap and meter facilities and appurtenances in the East Cameron ("EC"), West Cameron ("WC"), Eugene Island ("EI"), South Marsh Island ("SMI") and Vermilion ("VR") Areas, offshore Louisiana and in the High Island ("HI") Area, offshore Texas. Specifically, Natural seeks to abandon its interests in lateral facilities connecting gas supply in EC 38A, WC 116A, WC 118 (meter only), WC 165A, WC 225 A and B (meters only) and WC 229A (meter only), EI 57A/D, EI 72 Well #1, EI 133A, EI 305B, EI 331B, EI 341A, EI 361A, HI A–317A, HI A–327/12, HI A–327/16, HI A–472A, HI A–474A, HI A–489B, HI A–499C, HI A–511A, HI A–568A/B/D/F, HI A–573B, SMI 142A, SMI 236A, SMI 288A, VR 262A, VR 369A and VR 386B. Natural will also sell to Green Canyon facilities interests in an aggregate of 70.96 miles of previously abandoned and retired in place lateral facilities, which specifically had connected gas supply in EC 34B, EC 58, WC 28A, WC 436A, EI 321A, EI 345A, HI 68A, HI A–298A, HI A–342B, HI A–343A, HI A–414A, SMI 9CCA and SMI 143B; and

(2) A determination in the Commission's order in the present docket that following abandonment here, and upon transfer to Green Canyon, the subject facilities interests to be abandoned here and those in the previously abandoned/retired in place laterals to be sold will become part of Green Canyon's system and will be nonjurisdictional and not subject to NGA regulation by the Commission.

Natural states that its interests in the subject facilities were originally constructed as a means of receiving gas purchased from various suppliers for Natural's system supply to support Natural's merchant function. Natural's merchant function terminated effective December 1, 1993. Consequently, Natural states that it no longer has a need for the facilities interests to be abandoned in the present application.

Natural states that it proposes to abandon and transfer these facilities interests, as well as Natural's interests in thirteen (13) previously abandoned and retired in place laterals, to Green Canyon for $1,308,210.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 23, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–14392 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–299–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 2000.

Take notice that on May 24, 2000, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with an effective date of July 1, 2000:

Seventeenth Revised Sheet Number 156
Sixteenth Revised Sheet No. 157

Northern Border proposes to decrease the Maximum Rate for 4.095 cents per 100 Dekatherm-Miles to 4.038 cents per 100 Dekatherm-Miles and to decrease the Minimum Revenue Cerdit from 2.808 cents per 100 Dekatherm-Miles to 1.625 cents per 100 Dekatherm-Miles. The Maximum Rate reflects Northern Border's rate case at Docket no. RP99–322–000, which was suspended by the Commission in its order dated June 30, 1999 that became effective December 1, 1999. Thus, a portion of this Maximum Rate will be billed subject to refund. The revised Maximum Rate and Minimum Revenue Credit are being in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

Northern Border states that copies of the filing have been served to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14398 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–371–000]

Northern Natural Gas Company; Notice of Application

June 2, 2000.

Take notice that on May 30, 2000, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP00–371–000 an application pursuant to Sections 7(b) and (c) of the Natural Gas Act for permission and approval to abandon and replace certain pipeline facilities located in Iowa, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Northern states that during a hot spot survey conducted in April 1999, it discovered a leak on a portion of its A-Line located under a road in Cass County, Iowa. Northern indicates that, to immediately repair the leak, it replaced approximately 199 feet of its 24-inch line with 6-inch pipe without requesting authorization under the proper regulations. Northern states instead that it listed the replacement project in its annual blanket report as a like-for-like replacement.

Northern indicates that a total of approximately 45 feet of pipe was removed from either end of the 24-inch pipe to facilitate installation of the new pipe, and that approximately 199 feet of 6-inch pipe was placed through the 24-inch line and tied into the existing 24-inch A-Line. It is asserted that the 6-inch line will have sufficient capacity to meet current maximum contract obligations. It is further asserted that the proposed abandonment and replacement will not result in any loss of service to Northern's existing customers. The cost of the proposed replacement is estimated at $84,237.

Any questions regarding the application should be directed to Keith L. Petersen, Director, Certificates and Reporting, at (402) 398–7421, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103–0330.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 23, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–14393 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–301–000]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 2000.

Take notice that on May 30, 2000, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing, to be effective June 30, 2000.

Sea Robin states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to reflect tariff changes necessitated by the acquisition of Sea Robin by Trunkline Gas Company. Specifically, the modifications include: (1) Updating the General Terms and Conditions and the Form of Service Agreements for address and telephone number changes, as well as formatting the address area for consistency; (2) updating the marketing affiliate information in the General Terms and Conditions Section 18; (3) replacing references to Birmingham, Alabama time with Central Clock time; (4) reflecting that the laws of the State of Texas will govern the validity and interpretation of the srvice agreements; and (5) reflecting the system map image on Sheet No. 6.

Sea Robin states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party

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must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14389 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–300–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 2000.

Take notice that on May 24, 2000, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of June 23, 2000.

Tennessee is requesting authority: (1) To choose to record and maintain reserve prices, if established, for validation purposes as opposed to disclosing such reserve price as part of the open season and (2) to allow prearranged deals with the customer with the pre-arranged transaction will have a right of to match any higher bid. In addition, Tennessee is adding language to clarify how the NPV will be calculated for bids that include a customer's option to terminate its contract early or reduce capacity separate from the primary term. Tennessee is also adding tariff language that allows for a *pro rata* distribution of capacity prior to the use of first-in-time as a tiebreaker or for when aggregated bids have the highest NPV.

Finally, in addition to other minor tariff clean-ups, Tennessee is clarifying that in package bids where part of the package includes a change in primary points that negatively affects Tennessee's revenues, the value of the primary point amendment will be treated as a negative adjustment to the value of the package bid.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14388 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–302–000]

Williams Gas Pipelines Central, Inc; Notice of Filing of Cash-Out Report

June 2, 2000.

Take notice that on May 30, 2000, Williams Gas Pipelines Central, Inc. (Williams) tended for filing, pursuant to Article 9.8(d) of the General Terms and Conditions of its FERC Gas Tariff, its report of net revenue received from cash-outs. Williams proposes to make the refund upon Commission approval of its calculation method as set out in this report.

Williams states that pursuant to the cash-out mechanism in Article 9.8(a)(iv) of its FERC Gas Tariff, Shippers were given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing-out such imbalances at 100% of the spot market price applicable to Williams as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred. Net monthly imbalances which were not resolved by the end of the second month following the month in which the imbalance occurred and which exceeded the tolerance specified in Article 9.8(b) were cashed-out at a premium or discount from the spot price according to the schedules set forth in Article 9.8(c). Williams is herewith filing its report of net revenue (sales less purchase cost) received from cash-outs.

Williams states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 9, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14390 Filed 6–7–00 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–155–000, et al.]

PSEG Chorzow B.V., et al.; Electric Rate and Corporate Regulation Filings

May 31, 2000.

Take notice that the following filings have been made with the Commission:

1. PSEG Chorzow B.V.

[Docket No. EG00–155–000]

Take notice that on May 26, 2000, PSEG Chorzow B.V. (PSEG Chorzow) with its principal office at Weena 340, 3012 NJ Rotterdam, The Netherlands (mailing address: Postbus 21850, 3001 AW Rotterdam, The Netherlands), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG Chorzow is a company organized under the laws of The Netherlands. PSEG Chorzow will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in (i) owning, or both owning and operating, primarily during the construction of a new facility hereinafter described, an existing coal-fired, co-generation, electric generating facility consisting of an approximately 100 MWe and 490 MWt coal-fired electrical and thermal plant, located in Chorzow, Poland and (ii) owning, or both owning and operating a coal-fired electric and thermal generating facility, consisting of two electric generating units with a combined nominal capacity of approximately 226 MWe (net) and approximately 360 MWt (net) located in Chorzow, Poland; selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: June 21, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Ameren Energy Generating Company

[Docket No. ES00–40–000]

Take notice that on May 25, 2000, Ameren Energy Generating Company (Generating Co.) submitted an application with the Commission seeking blanket authorization to issue securities or assume liabilities similar to those granted to other utility-affiliated generation-only companies. In the alternative, Generating Co. requests authorization to issue from time to time during the period from June 23, 2000, through June 22, 2002, (a) long-term debt in an amount not to exceed $1 billion, and (b) short-term debt with the aggregate amount outstanding at any time not to exceed $300 million.

Comment date: June 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Midwest Electric Power, Inc.

[Docket No. ES00–41–000]

Take notice that on May 25, 2000, Midwest Electric Power, Inc. (MEP) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue from time to time during the period from June 19, 2000, through June 18, 2002, (a) long-term debt in an amount not to exceed $120 million and (b) short-term debt with the aggregate amount outstanding at any time not to exceed $70 million.

MEP also requests a waiver of the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2 in order to obtain the requested funds from Electric Energy, Inc., its corporate parent.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. American Electric Power Service Corporation

[Docket No. ER00–1727–001]

Take notice that on May 26, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an amendment to the subject docket to include revised Specifications for the Long-Term Firm Point-to-Point Transmission Service to be attached as addenda to the previously filed Firm Point-to-Point Transmission Service Agreement Number 225, executed by American Municipal Power'Ohio, Inc. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service on and after January 1, 2000.

A copy of the filing was served upon the affected Parties and state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company, Commonwealth Edison Company of Indiana

[Docket No. ER00–1820–001]

Take notice that on May 26, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing tariff sheet changes in compliance with the Commission's order of April 26, 2000 in this proceeding.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Company

[Docket No. ER00–2354–001]

Take notice that on May 26, 2000, Tampa Electric Company (Tampa Electric), amended its initial filing in this docket by withdrawing its request for acceptance of updated rates for short term power service under its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Company Services, Inc. (collectively, Southern Companies).

Tampa Electric continues to request that the updated rates for emergency assistance service under the contract with Southern Companies be accepted and made effective on May 1, 2000.

Copies of the filing have been served upon Southern Companies and the Florida Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER00–2567–000]

Take notice that on May 23, 2000, pursuant to Section 35.15, 18 CFR 35.15, of the Commission's regulations, Florida Power Corporation (Florida Power), tendered for filing notice of termination of the Contract for Interchange Service dated December 1, 1995, between Florida Power and El Paso Merchant Energy, L.P., Florida Power Rate Schedule FERC No. 166. El Paso Merchant Energy, L.P., requested that Florida Power file to terminate the agreement.

Florida Power has requested waiver of the Commission's 60-day prior notice requirement to permit the termination to be effective as March 25, 2000.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER00–2568–000]

Take notice that on May 23, 2000, Florida Power Corporation (Florida Power), pursuant to 18 CFR 35.15, of the Commission's regulations, tendered for filing notice of termination of the Contract for Interchange Service dated March 11, 1996, between Florida Power and El Paso Merchant Energy, L.P., Florida Power Rate Schedule FERC No. 160. El Paso Merchant Energy, L.P., requested that Florida Power file to terminate the agreement.

Florida Power has requested waiver of the Commission's 60-day prior notice requirement to permit the termination to be effective as of March 25, 2000.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Lake Benton Power Partners, LLC

[Docket No. ER00–2596–000]

Take notice that on May 23, 2000, Lake Benton Power Partners, LLC (Lake Benton I), tendered for filing pursuant to 18 CFR 385.205, an application for an order accepting for filing, Amendment No. 1 to Lake Benton Power Partners, LLC, Rate Schedule FERC Supplement No. 1 to Zond Minnesota Development Corporation II Rate Schedule FERC No. 1, that reflects clarification agreed upon by Lake Benton Power Partners, LLC, and the purchaser, Northern States Power Company.

Lake Benton I requests that the Commission permit the Agreement to become effective on the date of filing of this application.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Lake Benton Power Partners II, L.L.C.

[Docket No. ER00–2597–000]

Take notice that on May 23, 2000, Lake Benton Power Partners II, L.L.C. (Lake Benton II), tendered for filing pursuant to 18 CFR § 385.205, an application for an order accepting for filing, Supplement Nos. 1 and 2 to Lake Benton Power Partners II, L.L.C., Rate Schedule FERC No. 1, that reflect clarifications agreed upon by Lake Benton Power II and the purchaser, Northern States Power Company.

Lake Benton II requests that the Commission permit the Agreement to become effective on the date of filing of this application.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER00–2598–000]

Take notice that on May 25, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing (1) blanket service agreements by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff), (2) letters of assignment under the Power Sales Tariff and (3) two notices to terminate service agreements under the Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements, assignments and notices of termination to be made effective as specified in the submittal letter to the Commission with this filing.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Gas and Electric Company

[Docket No. ER00–2599–000]

Take notice that on May 25, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing three agreements: an Interconnection Agreement between Pacific Gas and Electric Company and Lassen Municipal Utility District (Lassen); an Islanding Agreement between Lassen, HL Power Company and PG&E; and a Letter Agreement dated May 12, 2000, regarding Interconnection Capacity and Study Procedures. Lassen and PG&E entered into the Interconnection Agreement (IA) to provide for the continued interconnection of their electric systems. The IA provides the terms and conditions for such interconnection, and contains no rates or services. Lassen will have a Scheduling Coordinator and will use transmission services provided under separate agreements with the California Independent System Operator Corporation (ISO), upon which agreements the effective date of this IA is contingent. The Islanding Agreement provides the terms and conditions to facilitate Lassen's separation from PG&E's transmission system at the Lassen-PG&E interconnection point and the HL Power Plant's sole provision of Lassen's electric energy and capacity requirements during periods of outages of the interconnection point. The Letter Agreement waives certain study requirements in the IA during times when there is unused capacity on the interconnecting transmission line.

Copies of this filing have been served upon Lassen, HL Power Company, the ISO and the California Public Utilities Commission.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Central Illinois Light Company

[Docket No. ER00–2600–000]

Take notice that on May 25, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for one new customer, Public Service Company of Colorado.

CILCO requested an effective date of May 16, 2000, for the service agreements.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Light Company

[Docket No. ER00–2601–000]

Take notice that on May 25, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and one service agreement with one new customer, Dynegy Power Marketing, Inc.

CILCO requested an effective date of May 22, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Energy Corporation

[Docket No. ER00–2602–000]

Take notice that on May 25, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Carolina Power and Light Company for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 15, 2000.

Duke states that this filing is in accordance with part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Trigen-Syracuse Energy Corporation

[Docket No. ER00–2603–000]

Take notice that on May 25, 2000, Trigen-Syracuse Energy Corporation (Trigen-Syracuse), tendered for filing an application with the Federal Energy Regulatory Commission (Commission) requesting acceptance of Trigen-Syracuse FERC Electric Rate Schedule Nos. 1 and 2; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Trigen-Syracuse is seeking blanket approval to sell electric energy and capacity at market-based rates from a cogeneration facility located in Syracuse, New York (the Facility), to Sempra Energy Trading Corp. under Trigen-Syracuse FERC Electric Rate Schedule No. 1. Trigen-Syracuse also requests that the Commission accept Trigen-Syracuse FERC Electric Rate Schedule No. 2 so that Trigen-Syracuse may make sales of energy and capacity from the Facility other than pursuant to Trigen-Syracuse FERC Electric Rate Schedule No. 1 at market-based rates should the opportunity arise.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER00–2604–000]

Take notice that on May 25, 2000, Virginia Electric and Power Company tendered for filing a Control Area Service Agreement with Aquila Energy Marketing Corporation. The agreement is proposed to be effective as on June 1, 2000.

The filing has been served on Aquila, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Central Vermont Public Service Corporation

[Docket No. ER00–2605–000]

Take notice that on May 25, 2000, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Sempra Energy Trading Corp., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on April 28, 2000.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER00–2606–000]

Take notice that on May 25, 2000, Niagara Mohawk Power Corporation tendered for filing an Interconnection Agreement between Niagara Mohawk Power Corporation and NEPA Energy LP, dated as of May 10, 2000.

Niagara Mohawk Power Corporation requests an Interconnection Agreement effective date of May 10, 2000. To the extent necessary, Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–2607–000]

Take notice that on May 25, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed unilateral transmission service agreement with Public Service of Colorado. This agreement allows Public Service of Colorado to take firm point-to-point transmission service from LG&E/KU.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–2608–000]

Take notice that on May 25, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed unilateral transmission service agreement with Public Service of Colorado. This agreement allows Public Service of Colorado to take non-firm point-to-point transmission service from LG&E/KU.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2609–000]

Take notice that on May 25, 2000, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Amerada Hess Corporation as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of May 8, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Potomac Electric Power Company

[Docket No. ER00–2610–000]

Take notice that on May 25, 2000, Potomac Electric Power Company (Pepco), tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 5, entered into between Pepco and Tenaska Power Services Co.

An effective date of May 22, 2000 for this service agreement, with waiver of notice, is requested.

Comment date: June 15, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Carolina Power & Light Company

[Docket No. ER00–2611–000]

Take notice that on May 26, 2000, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Carolina Power & Light Company—Wholesale Power Department. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of October 1, 2000, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Carolina Power & Light Company

[Docket No. ER00–2612–000]

Take notice that on May 26, 2000, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement between CP&L and Amerada Hess Corporation. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

CP&L requests an effective date of May 17, 2000, for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Carolina Power & Light Company

[Docket No. ER00–2613–000]

Take notice that on May 26, 2000, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement and Operating Agreement for Network Integration Transmission Service executed between CP&L and City of Camden, South Carolina. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of July 1, 2000, for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission

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and the South Carolina Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–2614–000]

Take notice that on May 26, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 80 to add The Legacy Energy Group, LLC to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is May 25, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–2615–000]

Take notice that on May 26, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 81 to add Pepco Energy Services to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is May 25, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Florida Power & Light Company

[Docket No. ER00–2616–000]

Take notice that on May 26, 2000, Florida Power & Light Company (FPL), tendered for filing Service Agreements with Cinergy Services, Inc., as Agent for and on Behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc., and Louisville Gas & Electric Company/Kentucky Utilities for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreements be made effective on May 1, 2000.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. New Century Services, Inc.

[Docket No. ER00–2617–000]

Take notice that on May 26, 2000, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Tri-State Generation and Transmission Association, Inc.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Tampa Electric Company

[Docket No. ER00–2618–000]

Take notice that on May 26, 2000, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to the interchange service contract between Tampa Electric and Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Company Services, Inc. (collectively, Southern Companies) that deletes Service Schedules B and C from the contract. Tampa Electric also submitted a notice of cancellation of Service Schedules B and C and the rates under Service Schedule B.

Tampa Electric proposes that the amendment and cancellations be made effective on April 26, 2000, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Southern Companies and the Florida Public Service Commission.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Wisconsin Public Service Corporation

[Docket No. ER00–2619–000]

Take notice that on May 26, 2000, on behalf of WPS Resources Operating Companies (WPSR), Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 3 to its partial requirements service agreement with Upper Peninsula Power Company (UPPCO). Supplement No. 3 provides UPPCO's contract demand nominations for January 2001—December 2001, under WPSC's W–2A partial requirements tariff and UPPCO's applicable service agreement.

The company states that copies of this filing have been served upon UPPCO and to the State Commissions where WPSC serves at retail.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Tucson Electric Power Company

[Docket No. ER00–2620–000]

Take notice that on May 26, 2000, Tucson Electric Power Company tendered for filing one (1) umbrella service agreement (for short-term firm service) and one (1) service agreement (for non-firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. OA96–140–000.

The details of the service agreements are as follows:

(1) Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of May 15, 2000 by and between Tucson Electric Power Company and PPL Montana, LLC. No service has commenced at this time.

(2) Non-Firm Service Agreement dated as of May 15, 2000 by and between Tucson Electric Power Company and PPL Montana, LLC. No service has commenced at this time.

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Entergy Services, Inc.

[Docket No. ER00–2621–000]

Take notice that on May 26, 2000, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an Interconnection and Operating Agreement with Occidental Chemical Corporation (Occidental), and a Generator Imbalance Agreement with Occidental.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. International Transmission Company

[Docket No. ER00–2622–000]

Take notice that on May 26, 2000, International Transmission Company tendered for filing its open access transmission tariff, Original Volume 1, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d (1994).

Comment date: June 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14387 Filed 6–7–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–231–000]

Southern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Wren Compressor Station Project and Request for Comments on Environmental Issues

June 2, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Wren Compressor Station Project involving the installation and operation of compressor facilities by Southern Natural Gas Company (Southern) in Jefferson County, Georgia.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the company's intent to install certain compressor unit facilities at an adjacent or nearby commercial property owned by Southern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Southern provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

Summary of the Proposed Project

Southern wants to add one compressor unit at its existing Wrens Compressor Station (C.S.). The Wrens C.S. is located at about milepost 459.87 on Southern's South Main Line System in Jefferson County, Georgia. The compressor unit installation is part of a provision of the Stipulation and Agreement filed by Southern in Docket Nos. RP990496–000 and RP99–496–001 (Settlement). Specifically, the Settlement provides that Southern file an application for authorization to install a 3,500 horsepower (hp) compressor unit at its existing Wrens Compressor Station.

Currently, there is a total of 2,120 hp at the Wrens C.S. With the addition of the compressor unit proposed in this application, the compressor station would have a total of 5,620 hp. Southern also proposes to install certain facilities to implement noise mitigation measures. Southern proposes to install the additional facilities beginning in April 2001, with an in-service date of October 1, 2001.

The general location of Southern's Wrens C.S. and a layout/plot plan of the facility are shown in appendix 1.[2]

[1] Southern's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20425, or call (202) 208–1371. For instructions on connecting to RIMS, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

The area to be impacted by the installation is less than 0.5 acres in size. The additional compressor unit and other appurtenances would be installed using standard construction methods for compressor installations. The previously cleared and graded area would be excavated for footing, utility and piping stubs, and concrete footings. Flooring would be poured, and the walls erected. The building would be wired for electricity, and would be completed with the installation of the compressor unit.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified two issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern. This preliminary list of issues may be

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changed based on your comments and our analysis.

- Impacts on local air environment as a result of the operation of the new compressor upgrades.
- Impacts on four noise-sensitive areas (NSAs) located between 600 and 740 feet from the proposed compressor building.

Public Participation

You can make a different by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative [locations/routes]), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1.
- Reference Docket No. CP00–231–000.
- Mail your comments so that they will be received in Washington, DC on or before July 3, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link of the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–14399 Filed 6–7–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–233–000]

Southern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed South System Expansion Project and Request for Comments on Environmental Issues

June 2, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the South System Expansion Project involving construction and operation of facilities by Southern Natural Gas Company (Southern) in several counties in Alabama, Mississippi, and Georgia.[1] These facilities would consist of about 73 miles of various diameter pipeline and 24,220 horsepower (hp) of compression. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Southern provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

Summary of the Proposed Project

Southern wants to expand the capacity of its facilities in Alabama, Mississippi, and Georgia to transport an additional 335,800 thousand cubic feet per day of natural gas to Southern Company Services, Inc. (SCS), South Carolina Pipeline Corporation (SCPC), and the City of LaGrange, Georgia. Southern proposes to construct the project in two phases, with in-service dates proposed for June 1, 2002 (Phase I) and June 1, 2003 (Phase II), respectively. Southern seeks authority to construct and operate:

Phase I Facilities (2002)

- 5.67 miles of 30-inch-diameter pipeline loop[2] on its South Main 3rd Loop Line System from milepost (MP) 67.230 to MP 72.889 in Clark County, Mississippi (Loop 1);
- 5.0 miles of 30-inch-diameter pipeline loop on its South Main Lop 3rd Loop Line System from MP 102.845 to MP 107.849 in Sumter County, Alabama (Loop 2);
- 7.82 miles of 30-inch-diameter pipeline loop on its South Main 3rd Loop Line System from MP 172.553 to MP 175.630 in Perry County, Alabama and from MP 175.630 to MP 180.357 in Dallas County, Alabama (Loop 3);
- 7.97 miles of 30-inch-diameter pipeline loop on its South Main 3rd Loop Line System from MP 185.157 to MP 187.270 in Dallas County, Alabama and from MP 187.270 to MP 193.130 in Autagua County, Alabama (Loop 4);
- 5.96 miles of 30-inch-diameter pipeline loop on its South Main 4th Loop Line System from MP 255.000 to MP 260.963 in Macon County, Alabama (Loop 5);
- 5.08 miles of 24-inch-diameter pipeline loop on its South Main 2nd Loop Line System from MP 459.869 to MP 464.950 in Jefferson County, Georgia (Loop 6);
- 1.50 miles of 8-inch-diameter pipeline loop on its LaGrange Extension Loop Line System from MP 14.250 to 15.750 in Lee County, Alabama (Loop 7); and
- One new meter station (Plant Urquhart Meter Station) at MP 493.82 on Southern's existing 16-inch-diameter South Main Line and 16-inch South Main Loop Line Systems in Aiken County, South Carolina.

Southern also proposes to install additional compression and make other modifications at its following compressor stations:

- One 4,445 horsepower (hp) unit at the Enterprise Compressor Station (C.S.) in Clarke County, Mississippi;
- One 4,700 hp unit at the York Compressor Station in Sumter County, Alabama;
- One 10,310 hp unit at the Auburn C.S. in Lee County, Alabama; and
- One 4,445 hp unit at the Thomaston C.S. in Upson County, Georgia.

As part of its Phase I facilities, Southern proposes to construct dual 20-inch taps at about MP 297.5 on Southern's 24-inch-diameter South Main Loop Line and 30-inch-diameter South Main 2nd Loop Line Systems in Lee County, Alabama. This interconnect would deliver natural gas to the planned Goat Rock Plan in Lee County, Alabama.

Phase II Facilities (2003)

Southern also seeks authority to construct and operate about:

- 10.39 miles of 30-inch-diameter pipeline loop on its South Main 3rd Loop Line System extending Loop 1 from MP 72.899 to 81.65 in Clarke County, Mississippi, and from MP 81.65 to MP 83.293 in Lauderdale County, Mississippi;
- 10.54 miles of 30-inch-diameter pipeline loop on its South Main 3rd Loop Line System extending Loop 2 from MP 107.849 to MP 118.386 in Sumter County, Alabama;
- 8.06 miles of 30-inch-diameter pipeline loop on its South Main 3rd Loop Line System extending Loop 4 from MP 193.30 to MP 201.193 in Autauga County, Alabama; and
- 5.0 miles of 30-inch-diameter pipeline loop on its South Main 4th Loop Line System extending Loop 5 from MP 250.00 to MP 252.77 in Tallapoosa County, Alabama, and from MP 250.00 to 255.00 in Tallapoosa and Macon Counties, Alabama.

Southern also proposes to install one 10,310 hp compressor and make other modifications at Southern's existing Selma C.S. in Dallas County, Alabama.

As part of its Phase II facilities, Southern would also construct one 20-inch- tap and connection crossover (Autaugaville Tap) at MP 201.19 to connect Southern's 24-inch-diameter South Main Loop Line, 26-inch-diameter South Main Loop Line, 26-inch-diameter South Main 2nd Loop Line, and the proposed 30-inch-diameter South Main 3rd Loop Line Systems in Autauga County, Alabama. This interconnect would deliver natural gas to the planned Autaugaville Plant in Autagua County, Alabama.

The general location of Southern's proposed project facilities is shown on the map attached as appendix 1. Appendix 1 also includes a more detailed description of the facilities.[3]

Land Requirements for Construction

Construction of the proposed facilities would require about 889 acres of land, including the construction right-of-way and pipe storage yards, staging areas, and warehouse sites. For the construction of the 30-inch-diameter loop segments, Southern proposes to use a 95-foot construction right-of-way, which includes a 40- to 55-foot overlap of the existing right-of-way for workspace and temporary spoil storage. For the smaller diameter pipelines, Southern proposes to use either a 50- or 75-foot-wide construction right-of-way, which includes a 30- to 60-foot overlap of existing right-of-way. Because of the use of Southern's existing right-of-way for construction, Southern indicats that only 25 acres would be maintained as new permanent right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils

—Erosion control and right-of-way restoration.
—Potential for mixing of topsoil and subsoil.

- Water Resources and Wetlands

—A total of 52 perennial waterbodies would be crossed.
—A total of 24 wetlands, including 84.53 acres of forested, 12.79 acres of scrub/shrub, and 8.09 acres of emergent, would be crossed.

- Biological Resources

—Impacts on 28 federally threatened and/or endangered species that may be present in the project area.
—Impacts on about 234 acres of upland forest or woodland habitat.
—Impact on the Kinterbish Wildlife Management Area in Sumter County, Alabama.

- Cultural Resources

[1] Southern's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

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—Impacts on prehistoric and historic sites.
—Native American concerns.
• Land Use
—Impacts on 158 acres of planted pine.
—Impacts on residential area.
—Visual effect of the aboveground facilities on surrounding areas.
—Impacts on 4 residences within 50 feet of the proposed construction work area.
• Air and Noise Quality
—Impacts on local air and noise environment as a result of the operation of the new compressor upgrades.
• Alternatives
—Evaluate possible alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.
• Nonjurisdictional Facilities
—Consideration of effects of construction of the associated facilities that may be constructed by SCS and SCPC, including the planned Goat Rock and Autaguaville Power Plants, and those associated laterals and meter stations which are planned to interconnect to Southern's facilities proposed herein.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative [locations/routes]), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426
• Label one copy of the comments for the attention of Gas 1.
• Reference Docket No. CP00–233–000.
• Mail your comments so that they will be received in Washington, DC on or before July 3, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known at an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link of the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–14400 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–07–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–47–000]

Trans-Union Interstate Pipeline, L.P., Notice of Availability of the Environmental Assessment for the Proposed Trans-Union Interstate Pipeline Project

June 2, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Trans-Union Interstate Pipeline, L.P. (Trans-Union) in the above referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the environmental effects of the construction and operation of the proposed facilities in Claiborne and Union Parishes, Louisiana and Union County, Arkansas. These facilities would consist of about 41.7 miles of 30-inch-diameter pipeline, two mainline valves, and launcher/receiver facilities at the beginning and end of the pipeline.

The pipeline would supply 430,000 decatherms per day of natural gas to the planned nonjurisdictional electric power generation facility being developed by Union Power Partners (UPP) in Union County, Arkansas. In addition, Gulf States Pipeline Company plans to construct about 30.4 miles of 16- and 20-inch-diameter pipeline in Louisiana under section 311(a)(2) of the Natural Gas Policy Act which would provide a secondary supply as well as serve other customers.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your comments to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of the Gas Group 1, PJ–11.1;

• Reference Docket No. CP00–47–000; and

• Mail your comments so that they will be received in Washington, DC on or before July 3, 2000.

Comments will be considered by the Commission but will not serve to make the commentor a party to the preceding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–14396 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–82–000]

Williams Gas Pipelines Central, Inc.; Notice of Availability of the Environmental Assessment for the Proposed Pleasant Hill Pipeline Project

June 2, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Williams Gas Pipelines Central, Inc. (Williams) in the above-referenced docket. The proposed project would include the construction and operation of approximately 1.5 miles of 24-inch-diameter pipeline; and 2,890-horsepower (hp) of compression at an existing compressor station; and the conversion of the regulatory authority of an 800–hp compressor unit at an existing compressor station from Natural Gas Policy Act (NGPA) Section 311 to Natural Gas Act (NGA) Part 284 service.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Williams proposes to build new pipeline and compression facilities to expand the capacity of its system in Kansas and Missouri. The new facilities would enable Williams to transport an additional 44,200 Dekatherms per day (Dth/d) of natural gas in the winter and an additional 88,200 Dth/d of natural gas in the summer.

The EA assesses the potential environmental effects of the construction and operation of the following proposed natural gas transmission facilities:

• About 1.5 miles of 24-inch-diameter pipeline from the Ottawa Compressor Station to the Ottawa Crossover in Franklin County, Kansas;
• Two upgraded compressor units: from 1,350-hp each to 2,000-hp each at the existing Peculiar Compressor Station in Cass County, Missouri; and
• One 1,590-hp turbine compressor at the Peculiar Compressor Station.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, affected landowners, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your comments to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
• Label one copy of the comments for the attention of the Gas/Hydro Group, PJ–11.3;

Reference Docket No. CP00–082–000; and

• Mail your comments so that they will be received in Washington, DC on or before July 1, 2000.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the "RIMS" link to information this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For

assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–14397 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

June 2, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt:		
1. Project No. 696	5–24–00	Thomas H. Nelson.
2. CP00–59–001	5–5–00	Curtis B. James.
3. CP00–232–000	5–23–00	Charles de la Rock.
4. Project No. 2551	5–4–00	Frank M. Simms.
5. CP99–392–000	4–25–00	Don L. Klima.
6. CP00–6–000	5–30–00	Ken Huntington.
Prohibited:		
1. ER00–1262–001	5–31–00	Lydia B. Vollmer.

David P. Boergers,

Secretary.

[FR Doc. 00–14395 Filed 6–7–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6713–4]

Adequacy Status of Motor Vehicle Emissions Budgets In Submitted State Implementation Plans for Transportation Conformity Purposes; Pennsylvania; Revised Attainment and ROP Plans for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the revised motor vehicle emissions budgets (budgets) contained in the revised attainment plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and in the revised Rate of Progress Plans (ROP) for the Pennsylvania portion of the area submitted by the Commonwealth of Pennsylvania as a State Implementation Plan (SIP) revision are adequate for transportation conformity purposes. The Commonwealth submitted the revised plans to EPA on February 25, 2000. The plans consist of the 2005 attainment demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and the 1999, 2002, and 2005 ROP plans for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area. EPA has found the budgets for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area in the revised attainment and ROP plans submitted by the Pennsylvania Department of Environmental Protection (DEP) on February 25, 2000 adequate for transportation conformity purposes.

DATES: The findings that the budgets are adequate were made in a letter dated May 31, 2000 from EPA Region III to the Pennsylvania Department of Environmental Protection and are effective on June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Budney, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–2184 or by e-mail at: Budney.Larry @epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document the terms "we," "us," or "our" refer to EPA. The word "budgets" refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The words "revised SIP" in this document refers to the revised attainment plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and the revised ROP plans for the Pennsylvania portion of the area submitted to EPA by the Pennsylvania DEP on February 25, 2000. The revised SIP includes the revised attainment demonstration for the one-hour National Ambient Air Quality Standard (NAAQS) for ozone for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and the revised ROP plans (1999, 2002 and 2005) for the Pennsylvania portion of the area. The Pennsylvania portion of the nonattainment area consists of Philadelphia, Delaware, Chester, Montgomery, and Bucks Counties.

On March 2, 1999, the D.C. Circuit Court ruled that the budgets contained in submitted SIPs cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate.

By a transmittal letter dated February 25, 2000, PADEP submitted its revised SIP for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area. On March 13, 2000, we posted the availability of the revised SIP and motor vehicle emission budgets on our conformity website for the purpose of soliciting public comment on the adequacy of the mobile budgets. The comment period closed on April 24, 2000.

On May 31, 2000, we sent a letter to the Pennsylvania DEP that constituted final Agency actions on the adequacy of the budgets contained in the revised SIP. Those actions were EPA's findings that the budgets in the revised SIP are adequate for transportation conformity purposes. As a result of our findings, the budgets contained in the revised SIP submitted on February 25, 2000 by Pennsylvania DEP for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area may be used for future conformity determinations. This is an announcement of adequacy findings that we already made on May 31, 2000. The effective date of these findings is June 23, 2000. These findings will also be announced on EPA's website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). The website will contain a detailed analysis of our adequacy findings and our responses to the public comments received.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The criteria by which we determine whether a SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

Please note that an adequacy finding of mobile budgets in a submitted SIP is separate from EPA's completeness determination on that SIP, and separate from EPA's final action as to whether or not the SIP is approvable. Even if we find budgets adequate, the SIP could later be disapproved. We describe our process for determining the adequacy of submitted SIP budgets in a guidance memorandum dated May 14, 1999 entitled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision". We followed this guidance in making our adequacy findings for the budgets contained in the revised SIP submitted on February 25, 2000 by the Commonwealth of Pennsylvania. You may obtain a copy of this guidance from EPA's conformity website referred to above or by calling the contact name listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 1, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–14598 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6713–3]

Adequacy Status of Motor Vehicle Budgets in Submitted State Implementation Plans for Transportation Conformity Purposes; District of Columbia, Maryland, Virginia; Revised Phase II Plans for the Metropolitan Washington D.C. Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the revised motor vehicle emissions budgets (budgets) contained in the revised Phase II Plans for the Metropolitan Washington D.C. Ozone Nonattainment Area submitted by the Maryland Department of the Environment, Virginia Department of Environmental Quality and the District of Columbia Environmental Regulation Administration as State Implementation Plans (SIPs) revisions are adequate for transportation conformity purposes. The revised Phase II Plans were submitted to EPA on February 9, 2000 (VA), February 14, 2000 (MD) and on February 16, 2000 (DC). The revised Phase II SIPs consist of the revised attainment demonstration (attainment plan) for the Metropolitan Washington D.C. Ozone Nonattainment Area. EPA has found the attainment budgets in the submitted revised Phase II SIPs for the Metropolitan Washington D.C. area adequate for transportation conformity purposes.

DATES: The finding that the budgets of the revised attainment plan are adequate were made in letters dated May 31, 2000 from EPA Region III to the Maryland Department of the Environment, Virginia Department of Environmental Quality and the District of Columbia Environmental Regulation Administration are effective on June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, P.E., U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–2183 or by e-mail at: wentworth.paul@epa.gov .

SUPPLEMENTARY INFORMATION: Throughout this document "we, us," or "our" refer to EPA. The word "budgets" refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The word "SIP" in this document refers to the revised Phase II SIPs submitted on February 9, 2000, February 14, 2000 and February 16, 2000 by Virginia, Maryland and the District, respectively. The revised Phase II SIPs include the revised attainment plan for the one-hour National Ambient Air Quality Standard (NAAQS) for ozone for the Metropolitan Washington D.C. Nonattainment Area.

On March 2, 1999, the D.C. Circuit Court ruled that budgets contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. By transmittal letters dated as shown below, the Virginia Department of Environmental Quality, the Maryland Department of the Environment, and the Washington D.C. Department of Health, Air Quality Division each formally submitted revisions to the attainment plan consisting of changes to the budgets for the Metropolitan Washington D.C. Ozone Nonattainment Area. The revised Phase II SIPs submittal dates are:

Virginia—February 9, 2000
Maryland—February 14, 2000
Washington D.C.—February 16, 2000

On March 2, 2000, we posted the availability of the revised Phase II SIPs and their budgets on our conformity website for the purpose of soliciting public comment on the adequacy of the budgets. The comment period closed on April 3, 2000.

On May 31, 2000, EPA Region III sent letters to the Virginia Department of Environmental Quality, the Maryland Department of the Environment, and the Washington D.C. Department of Health, Air Quality Division which constituted final Agency actions on the adequacy of the budgets contained in the revised Phase II SIPs. Those actions were EPA's finding that the mobile budgets contained in the revised attainment plan are adequate for transportation conformity purposes. As a result of our finding, the attainment budgets contained in the submitted revised Phase II SIPs for the Metropolitan Washington D.C. Nonattainment Area may be used for future conformity determinations. This is an announcement of an adequacy finding that we already made on May 31, 2000. The effective date of this finding is June

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23, 2000. This finding will also be announced on EPA's website: http://www.epa.gov/oms/traq (once there, click on the "Conformity" button, then look for "Adequacy Review of Submissions for Conformity"). The website will contain a detailed analysis of our adequacy finding and our responses to the public comments.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The criteria by which we determine whether SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

Please note that an adequacy finding of the mobile budgets of a submitted SIP is separate from EPA's completeness determination on that SIP, and separate from EPA's final action as to whether or not the SIP is approvable. Even if we find budgets adequate, the SIP could later be disapproved. We describe our process for determining the adequacy of submitted SIP budgets in guidance memorandum dated May 14, 1999 and titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision". We followed this guidance in making this adequacy finding for the budgets contained in the revised Phase II SIPs submitted on February 9, 2000, February 14, 2000 and February 16, 2000 by Virginia, Maryland, and the District, respectively. You may obtain a copy of this guidance from EPA's conformity web site: http://www.epa.gov/oms/traq (once there, click on the "Conformity" button) or by calling the contact name listed in **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 1, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–14599 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6713–5]

Adequacy Status of Motor Vehicle Emissions Budgets in Submitted State Implementation Plans for Transportation Conformity Purposes; Delaware; Revised Phase II SIP for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the revised motor vehicle emissions budgets (budgets) contained in the revised Phase II Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area submitted by the State of Delaware as a State Implementation Plan (SIP) revision are adequate for transportation conformity purposes. The State of Delaware submitted its revised 2005 attainment demonstration (attainment plan) for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area on January 24, 2000. On February 3, 2000, Delaware submitted and its Post 1999 Rate-of-Progress (ROP) Plan (for milestone year 2002) for the Delaware portion of the Philadelphia-Wilmington-Trenton area , Kent and New Castle Counties. The combination of the attainment plan and Post 99 ROP plan are commonly referred to as the Phase II plan. EPA has found the budgets in the revised Phase II Plan submitted by the State of Delaware for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area adequate for transportation conformity purposes.

DATES: The findings that the budgets are adequate were made in a letter dated May 31, 2000 from EPA Region III to the Delaware Department of Natural Resources and Environmental Control (DNREC) and are effective on June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Budney, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA. 19103 at (215) 814–2184 or by e-mail at: Budney.Larry@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document the terms "we," "us," or "our" refer to EPA. The word "budgets" refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The words "revised Phase II SIP" in this document refers to the 2005 attainment demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area submitted to EPA by the DNREC on January 24, 2000 and the Post 1999 ROP plan (2002) for the Delaware portion of the area submitted to EPA by DNREC on February 3, 2000. The Phase II SIP includes the attainment demonstration for the one-hour National Ambient Air Quality Standard (NAAQS) for ozone for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and the Post 99 ROP plan (2002) for the Delaware portion of the area.

On March 2, 1999, the D.C. Circuit Court ruled that the budgets contained in submitted SIPs cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate.

The State of Delaware submitted a revised 2005 attainment plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area to EPA on January 24, 2000 and a Post 1999 ROP plan (2002) for the Delaware portion of the area on February 3, 2000. On March 2, 2000, we posted the availability of the revised Phase II plan and the budgets contained in the plan on our conformity website for the purpose of soliciting public comment on the adequacy of the mobile budgets. The comment period closed on April 3, 2000.

On May 31, 2000, we sent a letter to DNREC that constituted final Agency actions on the adequacy of the budgets contained in the revised Phase II SIP. Those actions were EPA's findings that the budgets are adequate for transportation conformity purposes. As a result of our findings, the budgets contained in Delaware's revised Phase II SIP for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area may be used for future conformity determinations.

This is an announcement of adequacy findings that we already made on May 31, 2000. The effective date of these findings is June 23, 2000. These findings will also be announced on EPA's website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). The website will contain a detailed analysis of our adequacy findings and our responses to the public comments received.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay

timely attainment of the NAAQS. The criteria by which we determine whether a SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

Please note that an adequacy finding of budgets in a submitted SIP is separate from EPA's completeness determination of that SIP, and separate from EPA's final action as to approve or disapprove the SIP. Even if we find budgets adequate, the SIP could later be disapproved. We describe our process for determining the adequacy of submitted SIP budgets in a guidance memorandum dated May 14, 1999 entitled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision". We followed this guidance in making our May 31, 2000 adequacy findings for the budgets contained in the Delaware's January 24, 2000 submittal of its revised 2005 attainment plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and in its February 3, 2000 submittal of its Post 1999 ROP plan (2002) for the Delaware portion of the area. You may obtain a copy of this guidance from EPA's conformity website referred to above or by calling the contact name listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 1, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–14600 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6713–6]

Adequacy Status of Motor Vehicle Budgets in Submitted State Implementation Plans for Transportation Conformity Purposes; Maryland; Revised Phase II Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the revised motor vehicle emissions budgets (budgets) contained in the revised Phase II Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area submitted by the Maryland Department of the Environment (MDE) as State Implementation Plan (SIP) revisions are adequate for transportation conformity purposes. The revised Phase II Plan was submitted to EPA on December 21, 1999. Maryland's revised Phase II Plan consists of the 2005 attainment demonstration for the Philadelphia-Wilmington-Trenton nonattainment area and the 2002 and 2005 Post 99 Rate-of-Progress (ROP) plans for the Maryland portion of the Philadelphia-Wilmington-Trenton Nonattainment Area, Cecil County. EPA has found the budgets in Maryland's revised Phase II Plan for the Philadelphia-Wilmington-Trenton nonattainment area adequate for transportation conformity purposes.

DATES: The findings that the budgets are adequate were made in a letter dated May 31, 2000 from EPA Region III to the Maryland Department of the Environment. These adequacy findings are effective on June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, P.E., U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–2183 or by e-mail at: wentworth.paul@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. The word "budgets" refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The word "SIP" in this document refers to the revised Phase II Plan for the Philadelphia-Wilmington-Trenton nonattainment area submitted on December 21, 1999. The revised Phase II Plan includes the 2005 attainment demonstration for the one-hour National Ambient Air Quality Standard (NAAQS) for ozone for the Philadelphia-Wilmington-Trenton nonattainment area and the Post 99 ROP plans (2002 and 2005) for the Maryland portion of the Philadelphia-Wilmington-Trenton nonattainment area, Cecil County.

On March 2, 1999, the D.C. Circuit Court ruled that budgets contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. By a transmittal letter dated December 21, 1999, the Maryland Department of the Environment formally submitted revisions to the Phase II Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area. On March 2, 2000, we posted the availability of the Revised Phase II Plan and the budgets on our conformity website for the purpose of soliciting public comment on the adequacy of the budgets. The comment period closed on April 3, 2000.

On May 31, 2000, EPA Region III sent a letter to the Maryland Department of the Environment which constitute final Agency actions on the adequacy of the budgets contained in the revised Phase II SIP. Those actions were EPA's findings that the budgets of the revised Phase II plan submitted by MDE for the Philadelphia-Wilmington-Trenton area are adequate for transportation conformity purposes. As a result of our May 31, 2000 findings, the attainment budgets and the ROP budgets contained in Maryland's December 21, 1999 revised Phase II SIP for the Philadelphia-Wilmington-Trenton nonattainment area may be used for future conformity determinations.

This is an announcement of adequacy findings that we have already made on May 31, 2000. The effective date of these findings is June 23, 2000. These findings will also be announced on EPA's website: http://www.epa.gov/oms/traq (once there, click on the "Conformity" button, then look for "Adequacy Review of Submissions for Conformity"). The website will contain a detailed analysis of our adequacy findings and our responses to the public comments.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The criteria by which we determine whether a SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

Please note that an adequacy finding for budgets contained in a SIP is separate from EPA's completeness determination of the SIP submission, and separate from EPA's action to approve or disapprove the SIP. Even if we find budgets adequate, the SIP could later be disapproved. We describe our process for determining the adequacy of submitted SIP budgets in guidance memorandum dated May 14, 1999 and titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision". We followed this guidance in making these adequacy findings of the budgets in Maryland's revised Phase II plan. You may obtain a copy of this guidance from EPA's conformity web site: http://www.epa.gov/oms/traq (once there, click on the "Conformity" button) or by calling the contact name listed in **FOR FURTHER INFORMATION CONTACT** section of this notice.

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Authority: 42 U.S.C. 7401–7671q.

Dated: June 1, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–14601 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –6711–6]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a committee of the US EPA Science Advisory Board (SAB) will meet on the date and times noted below. All times noted are Eastern Daylight Time. The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. Ecological Processes and Effects Committee (EPEC)—June 19, 2000

The Ecological Processes and Effects Committee of the US EPA Science Advisory Board (SAB), will hold a public teleconference call on June 19, 2000 from 1 pm—3 pm Eastern Daylight Time.

Purpose of the Meeting—The purpose of the meeting is for the Committee to continue work on a self-initiated project to offer advice to the Agency on the content and design of an ecological report card. The Committee met on April 25–26, 2000 to discuss a proposed conceptual framework for reporting on ecological condition, and will meet in Washington, DC on September 20–22, 2000 to apply the framework to several Agency examples or programs. The June 19 teleconference call will provide an opportunity for Committee members to discuss the materials they are drafting to describe the conceptual framework. The Committee may also receive briefings from Agency staff on EPA activities relating to ecological indicators, and may discuss programs/projects that may be suitable case examples for the September EPEC meeting. The output of the Committee deliberations, following the September meeting, is expected to be a report to the Agency describing a proposed framework, with illustrative case examples relevant to EPA programs.

For Further Information—Instructions about how to participate in the teleconference call may be obtained by contacting Ms. Mary Winston, Management Assistant to the Committee, the week prior to the meeting (no later than June 14) at (202) 564–4538 or via e-mail at winston.mary@epa.gov. For additional information on the project, contact Ms. Stephanie Sanzone, Designated Federal Officer, at (202) 564–4561 or via e-mail at *sanzone.stephanie@epa.mail.* Any member of the public wishing to submit brief oral comments (5 minutes or less) must contact Ms. Sanzone at Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4561; FAX (202) 501–0582; or via e-mail. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Sanzone no later than noon Eastern Daylight Time on June 12, 2000.

Providing Oral or Written Comments At SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at SAB meetings, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 1, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–14490 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00648A; FRL–6591–7]

Pesticides; List of Pests of Significant Public Health Importance; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On March 29, 2000, EPA issued a notice of availability for the draft Pesticide Registration Notice paper titled: "List of Pests of Significant Public Health Importance." The comment period would have ended May 30, 2000. In order to solicit additional public comment, EPA has decided to extend the comment period to July 30, 2000.

DATES: Comments, identified by docket control number OPP–00648, must be received by EPA on or before July 30, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00648 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kevin Sweeney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5063; fax number: (703) 305–6596; e-mail address: sweeney.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general, but may be of particular interest to manufacturers of pesticides intended for use against public health pests, and those responsible for public health programs involved in the control or regulation of public health pests. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by the notice being made available today. If you have any questions regarding the applicability of the notice to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and the draft Pesticide Registration Notice from the EPA Home Page at the following web address: http://www.epa.gov/opppmsd1/PR—Notices/index.html#2000. You can also go directly to the **Federal Register** listings: http://www.epa.gov/fedrgstr/.

2. *Fax on demand.* You may request a faxed copy of the draft science policy paper, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6125 for the paper titled "List of Pests of Significant Public Health Importance." You may also follow the automated menu.

3. *In person.* The official record for this notice, as well as the public version, has been established under docket control number OPP–00648, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection from the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00648 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Avenue., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–00648. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice.

II. What Action Is EPA Taking?

The Agency has issued the draft Pesticide Registration Notice titled "List of Pests of Significant Public Health Importance" and solicited comments on it. The background on this document can be found in the previous **Federal Register** notice published on March 29, 2000 (65 FR 16615) (FRL–6498–2). Due to a need to gain additional public comment, EPA has decided to extend the comment period to July 30, 2000.

List of Subjects

Environmental protection, Public health pests, Public health pesticides.

Dated: June 1, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–14498 Filed 6–7–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

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Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—05/08/2000			
20002875	CGW Southeast Partners IV, L.P	Johnston Industries, Inc	Johnston Industries, Inc.
20002896	Genzyme Corporation	Leslie Koo	Synpac (North Carolina), Inc.
			Synpac Pharmaceuticals (U.K.), Ltd.
20002958	Joseph Littlejohn and Levy Fund II, L.P	Fisher Holdings, Inc	Fisher Holdings, Inc.
20002959	Unilever N.V	S. Daniel Abraham	Slim.Fast Foods Company.
			Slim.Fast Nutritional Foods, L.L.C., Sun Nutritional, Inc.
20002961	CMGI, Inc	Primedia, Inc	Primedia, Inc.
20002962	Primedia, Inc	CMGI, Inc	CMGI, Inc.
20002970	MTD Products, Inc	Ryobi Limited	Ryobi Outdoor Produts, Inc.
20002976	Bill Gross' Idealab!	eve.com, Inc	eve.com, Inc.
20002979	InfoSpace.com, Inc	IQorder.com, Inc	IQorder.com, Inc.
20002983	Peter J. King	Peter J. King	Sunrise International Leasing Corporation.
20002990	Pequot Private Equity Fund II, L.P	SkyOnline, Inc	SkyOnline, Inc.
20002995	Starmark Holdings, L.L.C	Roger S. Ralph	Four Sports, Inc.
20002997	Morgenthaler Partners VI, L.P	Aztech Technology Partners, Inc	Copel, LLC; Fortran Corp; Mahon Communication Corporation.
20002998	Inverness/Phoenix Partners LP	PennCorp Financial Group, Inc., debtor-in-possession.	PennCorp Financial Group, Inc., debtor-in-possession.
20003011	Arthur L. Allen	Viasoft, Inc	Viasoft, Inc.
Transactions Granted Early Termination—05/09/2000			
20002933	Cap Gemini S.A	Ernst & Young U.S. LLC	Ernst & Young U.S. LLC.
20002934	Ernst & Young U.S. LLP	Cap Gemini S.A	Cap Gemini S.A.
20002973	HotJobs.com, Ltd	Resumix, Inc	Resumix, Inc.
Transactions Granted Early Termination—05/10/2000			
20002833	CMGI, Inc	AdAuction.com, Inc	AdAuction.com, Inc.
20002893	Rexam PLC	American National Can Group, Inc	American National Can Group, Inc.
20002946	Anadarko Petroleum Corporation	Union Pacific Resources Group, Inc	Union Pacific Resources Group, Inc.
20002964	Conseco, Inc	Fortis (B)	Ardiel Insurance Service, Inc.
			Associated California State Ins. Agencies, Inc.
20002965	Conseco, Inc	Fortis (NL) N.V	Ardiel Insurance Service, Inc.
			Associated California State Insurance Agencies, Inc.
Transactions Granted Early Termination—05/11/2000			
20002800	Neoforma.com, Inc	Eclipsys Corporation	Eclipsys Corporation.
20002834	Intergraph Corporation	3Dlabs, Inc. Ltd	3Dlabs, Inc. Ltd.
20002835	3Dlabs, Inc. Ltd	Intergraph Corporation	Intergraph Corporation.
20002884	Morgan Stanley Dean Witter Capital Partners IV, L.P.	Baptist Health Hospitals and Health Systems, Inc.	Arizona Network Development, Inc.
			Arrowhead Community Hospital and Medical Center, Inc.
			Bethany Enterprises, Inc.
			CRV, Inc.
			Phoenix Baptist Hospital and Medical Center, Inc.
			Pleasant Properties, Inc.
20002887	The Williams Companies, Inc	SBC Communications, Inc	SBCI-Pacific Networks, Inc.
20002905	Paul G. Allen	Cablevision Systems Corporation	Cablevision of Michigan, Inc.
20002937	Robert J. Gourley	HPS, Inc	HPS, Inc.
20002940	Jay L. Wertheimer	Laguna Corporation	Laguna Corporation.
20002956	Deutsche Lufthansa AG	William L. Walker	Bizjet International Sales and Support, Inc.
20002985	Cecil Van Tuyl	Robert M. Kent	Kenny Kent Chevrolet, Inc.
20002988	Westburne, Inc	Eureka Holdings, Inc	Eureka Holdings, Inc.
20002993	The Bank of New York Company, Inc	ING Groep N.V	BHF Securities Corporation.
20002994	Koninklijke Ahold nv	Peapod, Inc	Peapod, Inc.
20002999	RSTW Partners III, LP	Packaging Services Incorporated	Packaging Services Incorporated.
20003013	AutoNation, Inc	Lawrence Konieczny	Six Flags Automotive, Inc.
			Westside Automotive, Inc.
20003019	President and Fellows of Harvard College.	Randall M. Hass	T.O. Hass Holding Co., Inc.
Transactions Granted Early Termination—05/12/2000			
19994584	Allied Waste Industries, Inc	Vivendi S.A	CBF, Inc.

Trans No.	Acquiring	Acquired	Entities
			Noble Road Landfill, Inc.
			Superior of Missouri, Inc.
			Superior of Ohio, Inc.
			Superior Services, Inc.
			Sycamore Landfill, Inc.
19994585	Vivendi S.A	Allied Waste Industries, Inc	American Disposal, Inc.
			BFI Waste Systems of North America, Inc.
			County Disposal, Inc.
20002793	Projekt Finanz Consult GmbH	A. Ahlstrom Corporation	Ahlstrom Machinery Corporation.
20002869	Hewlett-Packard Company	Zymed, Inc	Zymed, Inc.
20002904	Waste Connections, Inc	Allied Waste Industries, Inc	BFI Waste Systems of North America, Inc.
			Waste Connections of Kansas, Inc.
Transactions Granted Early Termination—05/15/2000			
20002847	Province Healthcare Company	New American Healthcare Corporation	NAHC of Wyoming, Inc.
20002882	General Electric Company	Atlas Copco AB	Atlas Copco Rotoflow, Inc.
20002891	Ashtead Group PLC	Rentokil Initial plc	BET USA, Inc.
20002899	NewSouth Holdings, Inc	Frank B. Stewart, Jr	UniversalCom, Inc.
20002915	Wind Point Partners IV, L.P	Northstar Health Services, Inc	Northstar Health Services, Inc.
20002953	Credit Suisse First Boston Equity Partners, L.P.	CTC Communications Group, Inc	CTC Communications Group, Inc.
20002954	Grace Investments, Ltd	Illinois Superconductor Corporation	Illinois Superconductor Corporation.
20002977	Fortress Investments Fund LLC	Brookdale Living Communities, Inc	Brookdale Living Communities, Inc.
20002980	Timothy F. Corwin	Kemp Biddulph	Biddulphland, Inc.
20002987	SGE Groupe	Michael Baker Corporation	Baker Support Services, Inc.
20003001	Bernard & Audre Rapoport	PennCorp Financial Group, Inc., debtor-in-possession.	PennCorp Financial Group, Inc., debtor-in-possession.
20003005	Kirtland Capital Partners III L.P	Vincent A. Morano	Essex Crane, Inc.
			Essex Crane Rental Corp.
20003006	Kirtland Capital Partners III L.P	Christopher J. Morano	Essex Crane, Inc.
			Essex Crane Rental Corp.
20003021	The Profit Recovery Group International, Inc.	EPS Solutions Corporation	TSL Services, Inc.
20003063	Severn Trent Plc	Kevin P. Murphy	Hydra-Stop, Inc.
20003072	Tribune Company	Hollywood.com, Inc	Hollywood.com, Inc.
20003097	UnitedHealth Group Incorporated	ChannelPoint, Inc	ChannelPoint, Inc.
20003107	Koninklijke Philips Electronics N.V	TriMedia Technologies, Inc	TriMedia Technologies, Inc.
Transactions Granted Early Termination—05/16/2000			
20002936	Telscape International, Inc	Pointe Communications Corporation	Pointe Communications Corporation.
20002967	Ledcor, Inc	GlobeNet Communications Group Limited.	GlobeNet Communications Group Limited.
20002969	TSG Capital Fund III L.P	Telscape International, Inc	Telscape International, Inc.
20002989	Solectron Corporation	Nortel Networks Corporation	Nortel Networks Corporation.
20003008	Jerome Seydoux	Ivex Packaging Corporation	Ultra Pac, Inc.
20003010	Babcock International Group PLC	Calvin Bamford, Jr	Globe Acquisition Corp. d/b/a Burelbach Industries Corp.
			Globe International, Inc.
			Globe Machine Manufacturing Company.
20003012	Thyssen Krupp AG	Linda E. Moore	Stahl Specialty Company.
Transactions Granted Early Termination—05/17/2000			
20002981	International Paper Company	Champion International Corporation	Champion International Corporation.
20003014	Cablevision Systems Corporation	Chum Limited	MuchMusic USA Venture.
20003016	NEC Corporation	Newco	Newco.
20003017	Mitsubishi Electric Corporation	Newco	Newco.
20003023	Calpine Corporation	Den norske stats oljeselskap a.s	Statoil Energy Power, Inc., and Celtic Power Corporation.
20003026	Bechtel Group, Inc	Madison Dearborn Capital Partners III, L.P.	@Link Holdings, Inc.
20003035	John Hancock Financial Services, Inc	MCN Energy Group, Inc	COBISA-Person Limited Partnership.
20003039	Oak Hill Capital Partners, L.P	GATX Corporation	GATX Corporation.
20003049	Vedior NV	Acsys, Inc	Acsys, Inc.
20003051	Cecil Van Tuyl	The Estate of Abram Misle, Deceased	Park Place Chevrolet & Imports, Inc.
			Park Place Pontiac-Cadillac-GMC, Inc.
20003053	Dr. Otto Happel	Sumner M. Redstone	WF Cinema Holdings, L.P.
20003054	Dr. Otto Happel	Time Warner, Inc	WF Cinema Holdings, L.P.
20003058	Meritor Automotive, Inc	Arvin Industries, Inc	Arvin Industries, Inc.
20003059	Arvin Industries, Inc	Meritor Automotive, Inc	Meritor Automotive, Inc.

Trans No.	Acquiring	Acquired	Entities
20003061	Westvaco Corporation	IMPAC Group, Inc	IMPAC Group, Inc.
20003064	Bill Gross' Idealab!	PayMyBills.com, Inc	PayMyBills.com, Inc.
20003070	Safeway, Inc	GroceryWorks.com, Inc	GroceryWorks.com, Inc.
20003073	Novell, Inc	CMGI, Inc	CMGion, Inc.
20003075	Robert Andy	Carl M. and Marie T. Bouckaert	Epsilon Products Company.
	Transactions Granted Early Termination—05/18/2000		
20002984	Interdean Group Limited	Interconex, Inc	Interconex, Inc.
20003020	Peninsular and Oriental Steam Navigation Company.	Texas Freezer Company, Inc	Texas Freezer Company, Inc.
20003048	Telia A.B	Apex Global Information Services, Inc	Apex Global Information Services, Inc.
20003055	World Access, Inc	Joseph D. Fail	Prime TEC International, Inc.
20003069	Informa Group plc	The BISYS Group, Inc	BISYS Research Services, Inc.
20003080	Galen Holdings PLC	Duke University	Applied Clinical Concepts, Inc. Duke Clinical Research Institute.
20003081	Professor Kurt Jenny	Dr. Helmut List	AVL Medical Instruments AG.
20003083	ABRY Broadcast Partners III, L.P	Kelso Investment Associates V, L.P	Cygnus Business Media Holdings, Inc.
20003084	TCV III (Q), L.P	eLoyalty Corporation	eLoyalty Corporation.
20003086	Nortrax, Inc	Donald Neidetcher	METCO.
20003087	Nortrax, Inc	Roger N. Michaud	METCO.
20003089	Nortrax, Inc	K.C. Canary-Clifton Park, Inc	K.C. Canary-Clifton Park, Inc.
20003090	CSR Limited	Leppert Concrete Products, LLC	Leppert Concrete Products, LLC.
20003091	St. Ives plc	Joseph H. Weiss	Packard Press, Inc.
20003092	VS&A Communications Partners II, L.P	Third Millennium Communications, Inc	Third Millennium Communications, Inc.
20003095	REMEC, Inc	SkyOnline, Inc	SkyOnline, Inc.
20003100	MGC Communications, Inc	Primary Network Holdings, Inc	Primary Network Holdings, Inc.
20003109	Heywood Williams Group PLC	Fastec Industrial Corp	Fastec Industrial Corp.
20003119	Hicks, Muse, Tate & Furst Equity Fund III, L.P.	Top Line Electronics Corporation	Top Line Electronics Corporation.
20003120	Illinois PCS, LLC	Sprint Corporation	Sprint Spectrum L.P., Sprint Spectrum Equipment Co., L.P.
	Transactions Granted Early Termination—05/19/2000		
20001681	Healtheon/WebMD Corporation	Quintiles Transnational Corp.	ENVOY Corporation.
20001682	Quintiles Transnational Corp	Healtheon/WebMD Corporation	Healtheon/WebMD Corporation.
20003050	ING Groep N.V	Acsys, Inc	Acsys, Inc.

For Further Information Contact: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–14450 Filed 6–7–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00127]

Developing a Model System for the Collection, Analysis, and Dissemination of Data on Genetic Tests; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Developing a Model System for the Collection, Analysis, and Dissemination of Data on Genetic Tests. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Public Health Infrastructure. For the conference copy of "Healthy People 2010," visit the Internet site: <http://www.health.gov/healthypeople>.

The purpose of the program is to develop and evaluate a model system to assess the availability, quality, and usefulness of existing data on DNA-based genetic tests and testing algorithms. These data are needed to facilitate the appropriate transition of genetic tests from investigational settings to clinical and public health practice. By identifying data gaps and needs, this project can influence the way that genetic testing data are collected and analyzed in the future.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $200,000 is available in FY 2000 to fund one award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may not be used to support genetic testing or generate new genetic test results.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities). Please see Addendum II (in the application kit) for important additional information.

1. Recipient Activities

a. Develop a comprehensive plan including time-phased and measurable objectives and proposed methods for implementing and evaluating the project.

b. Identify all applicable laws and develop procedures to protect confidentiality and maintain the anonymity of all test results.

c. Using experts, identify three DNA-based tests to guide in the finding, collection, and analysis of relevant data (published and unpublished).

d. Evaluate the availability, quality, and usefulness of data, identify data gaps and needs, and design simple and common data formats that support pooled analysis and comparison among studies.

e. Determine the core data elements needed (test- and population-specific) and assess the analytic validity, clinical validity and clinical utility of the studied genetic tests.

f. Develop and test a model system for actively collecting, analyzing, and disseminating aggregate data.

g. Evaluate the model system and summarize its strengths and limitations in transitioning genetic tests to clinical and public health practice and describe possible future enhancements.

h. Publish and disseminate results.

2. CDC Activities

a. Provide technical assistance and oversight of all project activities.

b. Assist in identifying DNA test experts to participate in collaborative analysis.

c. Provide scientific guidance in establishing selection criteria for the genetic tests to be studied.

d. Present project findings to relevant agencies and the Secretary's Advisory Committee on Genetic Testing.

e. Provide staff expertise in the implementation of the model system to be developed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 single-spaced pages, printed on one side, with one inch margins, and unreduced font. The application must be submitted unstapled and unbound.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit.

On or before August 4, 2000 submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the Objective Review Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background (15 Points)

The extent to which the applicant demonstrates an understanding of the program objectives by including a critical review of existing approaches to assessing the performance of DNA-based tests in public health applications.

2. Qualifications and Experience (25 Points)

The extent to which the applicant:

a. Identifies a principal investigator with demonstrated ability to carry out the proposed project,

b. Documents access to the necessary administrative, clinical, genetic, epidemiologic, laboratory, data management and statistical talent needed to carry out the project, and

c. Describes a project team that is experienced in collecting, organizing, analyzing, and interpreting DNA-based data on different conditions.

3. Plan and Objectives (20 Points)

a. The extent to which the applicant presents a well-defined project plan, including time-phased, measurable objectives.

b. The extent to which the applicant includes letters of support indicating the nature and extent of collaboration of key experts.

4. Methods (25 Points)

The extent to which the applicant describes detailed methods for implementing the project, including:

a. Identifying, recruiting, and collaborating with key experts,

b. Ensuring data anonymity and protecting confidentiality,

c. Identify available data for three DNA-based tests, identifying data gaps, and developing common data formats,

d. Determining core data elements and performing critical analysis,

e. Developing and testing a system for organizing and updating aggregate data sets, and disseminating results.

5. Evaluation (15 Points)

The extent to which the applicant:

a. Describes a plan to evaluate the ability of the model to collect, analyze, and disseminate data on genetic tests to facilitate their use in clinical and public health practice, and

b. Provides an evaluation plan that allows measurement of progress toward the achievement of the stated objectives.

6. Budget (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of grant funds. All budget categories should be itemized.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this

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program. For a complete description of each, see Addendum I in the application kit.

AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 of the Public Health Service Act, [42 U.S.C. sections 241 and 247b, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements may be downloaded through the CDC Home Page on the Internet at <http://www.cdc.gov> (click on Funding). Please refer to Program Announcement Number 00127 when requesting information. To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, E–13, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: 770–488–2718, Email address: mij3@cdc.gov

For program technical assistance, contact: Marta Gwinn, MD, MPH, Senior Medical Epidemiologist, Office of Genetics and Disease Prevention, National Center for Environmental Health Centers for Disease Control and Prevention, K–28, 4770 Buford Highway, NE, Atlanta, GA 30341–3724, Telephone number: 770–488–3235, Email address: mlg1@cdc.gov

Dated: June 2, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Conrol and Prevention (CDC).

[FR Doc. 00–14424 Filed 6–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 00141]

Notice of Availability of Funds; Surveillance of Intimate Partner Violence (IPV)

A. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Surveillance of Intimate Partner Violence (IPV). The purpose(s) of the program announcement are (1) to improve state injury surveillance capacity through the implementation of the Consensus Recommendations For Injury Surveillance In State Health Departments, September 1999 Report, for a copy of this report, visit the Internet site: (http://www.injuryprevention.org/stipda/s-pubs) and (2) to support the integration of population-based IPV surveillance systems into existing injury surveillance systems that will help determine the magnitude of IPV in population subgroups, and continued revision and testing of uniform definitions and recommended data elements. This program addresses "Healthy People 2010," a national activity to reduce morbidity and mortality and improve health. This announcement is related to the focus area of Injury and Violence Prevention. For the conference copy of "Healthy People 2010", visit the Internet site: http://www.health.gov/healthypeople.

B. Eligible Applicants

Assistance will be provided only to the official public health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. States previously funded under announcement number 94483 "State Injury Prevention Programs" are eligible to apply (Massachusetts, Michigan and Rhode Island). States previously funded under announcement number 99134 "State Injury Prevention Programs" are not eligible to apply (Kentucky and Oklahoma).

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant cooperative agreement contract, loan, or any other form.

C. Availability of Funds

Approximately $1.2 million is available to fund up to four awards. It is expected that the average award will be $300,000. It is expected that the awards will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress, as evidenced by required reports, and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under (1) Recipient Activities, and CDC will be responsible for the activities listed under (2) CDC Activities.

1. Recipient Activities

a. Enhance existing injury surveillance activities to support Intimate Partner Violence (IPV) surveillance to identify victims and occurrences of IPV, including data describing the magnitude of the problem and the extent of injuries (i.e., who is affected, areas and persons at greatest risk, and the type and source of the information used).

b. Enhance an existing injury surveillance system, capable of linking with one or more health-related data sources to determine intimate partner violence incidence and prevalence in the targeted area (*e.g.*, linkage of emergency department injury surveillance data or hospital discharge data with health-care based IPV surveillance data).

c. Enhance the capacity for general injury surveillance by incorporating the IPV surveillance system into other existing injury surveillance systems.

d. Using the Uniform Definitions for IPV Surveillance, assess the feasibility of enhancing existing injury surveillance and integrating a subset of the fifty recommended data elements: Uniform Definitions and Recommended Data Elements, 1999; http://www.cdc.gov/ncipc/pub-res/intimate.html into an existing health-care related injury surveillance system. Explain decisions made in selecting the subset of 50 data elements.

e. Establish and maintain cooperative partnerships with key personnel of potential data source agencies (*e.g.*, hospitals, emergency departments, etc.).

f. Monitor quality, representativeness and completeness of IPV surveillance data.

g. Collect and analyze surveillance data.

h. Produce and distribute periodic, progress reports to appropriate state and local agencies, and develop replication guidelines for future use by other states and localities.

i. Establish an advisory committee to exchange information and increase the likelihood of integrated injury surveillance systems.

In addition to the above, applicants should have well-developed surveillance capacity that includes the ability to: (See Consensus Recommendations for Injury Surveillance in State Health Departments—September 1999 Report.)

a. Access the 11 core data sets recommended for injury surveillance. The 11 data sets are vital records (VR), hospital discharge data (HDD), Fatality Analysis Reporting System (FARS), the Behavioral Risk Factor Surveillance System (BRFSS), the Youth Risk Behavioral Surveillance System (YRBSS), emergency department data (ED), medical examiner data and coroner data (ME), child death review data (CDR), the National Occupant Protection System (OPU), Uniform Crime Reporting System (UCR), and emergency medical services data (EMS).

b. Assess the completeness and validity of the 11 core data sets and evaluate the surveillance systems that generated these data using standard evaluation criteria.

c. Link data sets.

d. Ensure that each injury event is counted only once when using patient records.

e. Conduct special analyses.

f. Identify and measure interim program outcomes.

g. Evaluate state injury prevention program.

h. Use surveillance to support applied research.

i. Produce routine reports based on core data to support the five components of a model state injury prevention program: data collection and analysis; program design, implementation, and evaluation; coordination and collaboration; technical support and training; and public policy.

j. Develop and implement a surveillance system for additional major injury problems (*e.g.*, nonfatal interpersonal violence including intimate partner violence, sexual assault, and child abuse).

k. Develop unique surveillance systems to meet the state's individual data needs.

2. CDC Activities

a. If needed, provide technical assistance in the design of all phases of the IPV surveillance programs, including consultation on data collection instruments and procedures.

b. Provide technical assistance in developing a standardized approach to surveillance and related evaluation activities.

c. Provide consultation and assistance in problem assessment and target population identification, the evaluation of coverage, cost, and impact of surveillance activities, and design of scientific protocols.

d. Collaborate in the analysis and dissemination of IPV surveillance data.

e. Provide up-to-date scientific information about intimate partner violence and coordinate with related activities at CDC's National Center for Injury Prevention and Control.

f. Assist in the transfer of information and methods developed in this program to other geographical areas.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the Evaluation Criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 45 double-spaced pages, printed on one side, with one inch margins, no smaller than 12 point Courier Font. Number each page consecutively and provide a complete Table of Contents. The total number of pages should not exceed 60 pages including the appendix. No bound booklets, etc. should be attached.

In developing the application, the applicant must also include a two-page, double-spaced abstract. In following the format shown below, the applicant should also provide a detailed description of the first year activities and briefly describe future-year objectives and activities.

Format

1. Abstract.
2. Background and Need.
3. Goals.
4. Objectives.
5. Methodology.
6. Evaluation.
7. Coordination and Collaboration.
8. Project Management and Staffing.
9. Budget.
10. Human Subjects.
11. Other Requirements and Attachments.

F. Submission and Deadline

Application: Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before August 8, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Abstract (Not To Exceed Two Pages) (Not Scored)

The extent to which the applicant summarizes the existing injury surveillance system, the proposed IPV surveillance system, and the proposed integration of the IPV system into the injury surveillance system.

2. Background and Need (15 Points)

a. The extent to which the applicant documents the magnitude of the intimate partner violence problem in the applicant's targeted area, and provides a profile of the persons and groups at greatest risk.

b. The extent to which the applicant documents its current activities and previous experiences in injury surveillance, intimate partner violence surveillance, evaluation, and coordination with other agencies and potential partners.

c. The extent to which the applicant documents the current capacity and demonstrates the existence of a well-developed injury surveillance system to

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collect and link health related data; what information is collected and what data sources are used, *e.g.* Hospital discharge data, emergency department data, and emergency services data, etc.

3. Goals (10 Points)

a. The extent to which the applicant states specific goals that indicate where the applicant anticipates the integration of intimate partner violence into the existing injury surveillance system will be at the end of the five-year project period.

b. The extent to which the applicant describes and provides evidence of its willingness and ability to undertake related projects to expand the capacity of the IPV surveillance system should additional funds become available.

4. Objectives (15 Points)

a. The extent to which the applicant states specific, time-phased, measurable and achievable objectives.

b. The extent to which the applicant relates the objectives directly to the project goals and the use of various health-related information sources, effort to achieve representativeness, surveillance system evaluation, collaboration, and demonstrates the utility of the surveillance system in replication efforts.

5. Methodology (20 Points)

a. The extent to which the applicant documents the capacity of the existing injury surveillance system; the proposed IPV surveillance system; and the proposed integration of the intimate partner violence surveillance system into the injury surveillance system.

b. The extent to which the applicant describes specific activities that are proposed to achieve each of the program objectives during the budget period.

c. The extent to which the applicant provides a time-line which indicates when each activity and preparations for activities will occur.

d. The extent to which the applicant provides evidence of an organizational chart that represents the actual structure of the integrated IPV injury surveillance system operating organization and its placement within the organizational units with existing jurisdiction and authority over other injury surveillance systems.

e. The extent to which the applicant provides evidence it has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

6. Evaluation (15 Points)

a. The extent to which the applicant describes the methods and design to be used to evaluate the integrated subset of the IPV surveillance system into the injury surveillance system, including what will be evaluated, data to be used, who will perform the evaluation and the time it will take (timeline) to do the evaluation.

b. The extent to which the applicant provides evidence of staff availability, expertise, and capacity to evaluate surveillance activities.

7. Coordination and Collaboration (10 Points)

a. The extent to which the applicant describes the relationship between the program and other organizations, agencies, and health department units that will relate to the program or which conduct related activities.

b. The extent to which applicant provides evidence of collaboration with academic institutions, public safety officials, or with other agencies. In addition, the extent to which the applicant describes responsibilities and composition of the surveillance advisory committee.

8. Project Management and Staffing (15 Points)

a. The extent to which the applicant documents the experience in the management of intimate partner violence surveillance, and describes the roles and responsibilities of the project director, epidemiologist, and each staff member, including a description of staff with appreciable experience in other injury surveillance systems expected to work in the integrated surveillance system.

b. The extent to which the applicant describes the allocation of staff to the activities outlined in the Methodology section.

c. The extent to which the applicant includes letters in the appendix from each collaborating consultant or outside agency stating their willingness and ability to fulfill the proposed responsibilities.

9. Budget (Not Scored)

The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient, and consistent with the stated objectives and planned activities.

10. Human Subject (Not Scored)

a. The extent to which the applicant describes the degree to which human subjects may be at risk.

b. The extent to which the applicant describes assurances that all activities will conform to the requirements of 45 CFR part 46.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Projects that involve the collection of information from 10 or more individuals and funded by a resulting cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum in the application package.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2), and 391–394A [42 U.S.C. 241(a), 247b(k)(2), and 280b–280b–3] of the Public Health Service Act as amended.

J. Where To Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet at: http://www.cdc.gov. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the program announcement number (00141).

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Joanne Wojcik, Lead, Grants Management Specialist, Announcement #00141, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number (770) 488–2717.

For program technical assistance, contact: John D. Hemphill, National Center for Injury Prevention and Control Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop K60, Atlanta, GA 30341, Telephone (770) 488–1285, Email address: jdh2@cdc.gov, FAX (770) 488–1011

Dated: June 2, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14425 Filed 6–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 00066]

Using Private Provider Partnerships To Strengthen the Immunization Message; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2000 funds to fund a cooperative agreement program with national private provider organizations which was published in the **Federal Register** on May 1, 2000, [Vol. 65, No. 84, Pages 25334–25336]. The notice is amended as follows:

On page 25335, Third Column, under Section F. Submission and Deadline, the submission due date is revised to read on or before July 18, 2000.

Dated: June 2, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14426 Filed 6–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 29, 2000, from 8:30 a.m. to 5:30 p.m. and on June 30, 2000, from 8:30 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact: Tracy K. Riley or Angie Whitacre, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting. Current information may also be accessed on the Internet at the FDA Website, www.FDA.GOV.

Agenda: On June 29, 2000, during the initial open session, the committee will discuss new drug application (NDA) 20–010, Lotrisone™ Lotion (clotrimazole/betamethasone diproprionate), Schering-Plough, Inc., for treatment of tinea pedis, tinea cruris, and tinea corporis; and NDA 20–996, Dermex II™ Ointment (zinc oxinate), Dermex Pharmaceuticals, Limited Liability Corp., for treatment of actinic keratosis, basal cell carcinoma, and squamous cell carcinoma. On June 30, 2000, the committee will discuss NDA 21–026, (miconazole nitrate, USP 0.25%) ointment, Johnson & Johnson Consumer Companies, Inc., for treatment of diaper dermatitis.

Procedure: On June 29, 2000, from 10 a.m. to 5:30 p.m. and on June 30, 2000, from 8:30 a.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 21, 2000. Oral presentations from the public will be scheduled between approximately 10 a.m. and 10:30 a.m. on June 29, 2000, and between approximately 8:30 a.m. and 9:30 a.m. on June 30, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 21, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On June 29, 2000, from 8:30 a.m. to 10 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information regarding pending investigational new drug applications issues (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 31, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–14461 Filed 6–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 19, 2000, 10 a.m. to 5 p.m.

Location: Hilton, Salons D and E, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Mary J. Cornelius, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194, ext. 118, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12523. Please call the information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a device for the treatment of obesity.

Procedure: Interested persons may present data, information, or views,

orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 12, 2000. Oral presentations from the public will be scheduled between approximately 10 a.m. and 10:30 a.m., and between approximately 3:30 p.m. and 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 12, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the June 19, 2000, Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 1, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–14370 Filed 6–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Technical Electronic Product Radiation Safety Standards Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Technical Electronic Product Radiation Safety Standards Advisory Committee.

General Function of the Committee: To provide advice on technical feasibility, reasonableness, and practicality of performance standards for electronic products to control the emission of radiation under 42 U.S.C. 263f(f)(1)(A).

Date and Time: The meeting will be held on June 21, 2000, 8:30 a.m. to 5 p.m., and June 22, 2000, 8:30 a.m. to 12 noon.

Location: Quality Suites, Potomac II and III, 3 Research Ct., Rockville, MD.

Contact Person: Orhan H. Suleiman, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12399. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 21, 2000, the committee will discuss: (1) A reproposal for amendments to the performance standard for lasers (part 1040 (21 CFR part 1040)), (2) amendments being considered for the sunlamps standard (part 1040), and hear (3) a presentation addressing nonmedical ionizing radiation security systems, (4) a presentation concerning computed tomography fluoroscopy (CT) and the Year 2000 Nationwide Evaluation of X-Ray Trends Survey of CT. On June 22, 2000, the committee will hear: (1) An update on the reengineering of the radiological health program at the Center for Devices and Radiological Health, (2) a presentation on manufacturers' requirements and the medical device approval process, and (3) a presentation regarding how ultrasound diathermy (21 CFR part 1050) is regulated by FDA.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 16, 2000. Oral presentations from the public will be scheduled on June 21, 2000, between approximately 11 a.m. and 11:20 a.m., and between approximately 1:45 p.m. and 2:05 p.m. Oral presentations from the public will be scheduled on June 22, 2000, between approximately 10:30 a.m. and 11 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 16, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the June 21, 2000, Technical Electronic Product Radiation Safety Standards Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Technical Electronic Product Radiation Safety Standards Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 1, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–14369 Filed 6–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1267]

Draft "Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria" dated May 2000. The draft guidance document provides recommended questions for deferral of donors at increased risk for malaria. The guidance document also provides the recommendations for donor questioning regarding travel to vacation resorts located in malarious regions. The draft guidance document currently being announced, when finalized, will replace the recommendations in the guidance entitled "Recommendations for Deferral of Donors for Malaria Risk" dated July 26, 1994.

DATES: Submit written comments on the draft guidance to ensure their adequate consideration in preparation of the final document by September 6, 2000.

ADDRESSES: Submit written requests for single copies of "Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria" dated May 2000 to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled "Guidance for Industry: Recommendations for Donor Questioning Regarding Possible Exposure to Malaria" dated May 2000. The draft guidance document recommends questions to be asked of donors to determine possible exposure to malaria. The draft guidance document also provides recommendations for deferral of donors for malarial risk. The recommendations apply only to donations containing intact Red Blood Cells or platelets. Donations used for preparing plasma or plasma derivatives devoid of intact Red Blood Cells or platelets are excluded. The draft guidance document currently being announced, when finalized, will replace the recommendations in the guidance entitled "Recommendations for Deferral of Donors for Malaria Risk" dated July 26, 1994.

The draft guidance document represents the agency's current thinking on malarial risks for prospective donors. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

The draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Submit written comments to ensure adequate consideration in preparation of the final document by September 6, 2000. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: May 18, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–14371 Filed 6–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10003]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: Medicare + Choice Beneficiary Appeal Notices, "Notices of Denial of Medical Services," "Notice of Denial of Request for Payment" and Supporting Regulations in 42 CFR 422.568.

Form No.: HCFA–10003 (OMB# 0938–NEW).

Use: This collection includes two Medicare + Choice appeal notices, Denial of Service and Denial of Payment. Pursuant to the Social Security Act Section 1852(g)(1)(B), M+C organizations are required to issue notices to Medicare managed care beneficiaries when a request for either medical service or payment is denied. Additionally, the notices inform beneficiaries of their right to file an appeal.

All M+C organizations will be required to use these forms. Neither the Health Care Financing Administration (HCFA) nor the M+C organizations will use such notices to collect and analyze data on M+C beneficiary appeals. They are for information purposes only.

Frequency: On occasion.

Affected Public: Business or other for-profit and Individuals or Households.

Number of Respondents: 29,892.

Total Annual Responses: 29,892.

Total Annual Hours: 2,994.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 30, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–14451 Filed 6–07–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2384]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Third Party Premium Billing Request and Supporting Regulations in 42 CFR 408.6;

Form No.: HCFA–2384 (OMB 0938–0041);

Use: The Third Party Premium Billing Request is used as an authorization form to designate that a family member or other interested party receive the Medicare premium bill and pay it on behalf of a Medicare beneficiary.

Frequency: On occasion;

Affected Public: Individuals or Households;

Number of Respondents: 15,000;

Total Annual Responses: 15,000;

Total Annual Hours: 6,250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 30, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–14452 Filed 6–7–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–216]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Organ Procurement Organization/Histocompatibility Laboratory Statement of Reimbursable Costs, Manual Instructions and Supporting Regulations Contained in 42 CFR 413.20 and 413.24;

Form No.: HCFA–216 (OMB No. 0938–0102);

Use: This form is required by statute for participation in the Medicare program. The information is used to determine reasonable costs incurred to furnish treatment to End Stage Renal Disease (ESRD) patients by Organ Procurement Organizations and Histocompatibility Laboratories.

Frequency: Annually;

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government;

Number of Respondents: 108;

Total Annual Responses: 108;

Hours: 4,860.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 30, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–14453 Filed 6–7–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Chicago Zoological Park, Brookfield Zoo, Brookfield, IL, PRT–805165.

The applicant requests a permit to import 50 blood, fecal and urine samples from 50 of the following animals: Black rhinoceros (*Diceros bicornis*), African wild dogs (*Lycaon pictus*), and Cheetah (*Acinonyx jabatus*). The samples are being collected by the Ministry of Environment and Tourism, Windhoek, Namibia and will be imported for scientific research.

Applicant: James Robbins, Harwood Heights, IL, PRT–027986.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John D. Pearson, Long Grove, IL, PRT–027538.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: David B. Cull, Yanktown, SD, PRT–028159.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Smithsonian Institution, Washington, DC, PRT–027997.

The applicant requests a permit to import from Guyana study skins and associated frozen tissue samples obtained from five wild caught red siskin (*Carduelis cuculatta*). The specimens were collected and will be imported for scientific research.

Applicant: Ursula Bechert, Oregon State University, Corvallis, OR, PRT–023519.

The applicant requests a permit to import blood samples from Asian elephants (*Elephas maximus*) collected from captive-held specimens at the Bowmanville Zoo, Ontario, Canada, for scientific research.

Marine Mammal

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Gordon F. Kolling, Hermosa, SD, PRT–028025.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: William C. McClure, Pittsburgh, PA, PRT–027989.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: George H. Brimhall, Paradise Valley, AZ, PRT–027988.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: John T. Shillingburg, Riviera Beach, FL, PRT–027987.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Dennis Lord, Woodstock, GA, PRT–027525.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Stanley S. Golub, Chester, NJ, PRT–028044.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Kevin Small, Bakersfield, CA, PRT–027926.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: John Martin, Forest Hill, MD, PRT–022471.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Fox Basin polar bear population, Nunavut, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 2, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–14414 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (*Bufo Houstonensis*) During Construction of One Single Family Residence on 0.5 acres of the 2.0-acre Lot 56, Unit 7, Block 1 in the Pine Forest Subdivision, Bastrop County, TX (Berger)

SUMMARY: David and Carol Berger (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–027260–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad *(Bufo Houstonensis)*. The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 2.0-acre Lot 56, Unit 7, Block 1 in the Pine Forest Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before July 10, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, Austin Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–027260–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

David and Carol Berger plan to construct a single family residence on 0.5 acres of the 2.0–acre Lot 56, Unit 7, Block 1 in the Pine Forest Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicants propose to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Geoffrey L. Haskett,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–14428 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (*Bufo Houstonensis*) During Construction of One Single Family Residence on 0.5 acres of the 5.0-acre Lot 9 of the Deer Trail Subdivision, Bastrop County, TX (Cooper)

SUMMARY: Lyle and Leah Cooper (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–027163–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo Houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 5.0-acre Lot 9 of the Deer Trail Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before July 10, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–027163–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Lyle and Leah Cooper plan to construct a single family residence on 0.5 acres of the 5.0-acre Lot 9 of the Deer Trail Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicants propose to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Geoffrey L. Haskett,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–14429 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston toad (*Bufo Houstonensis*) During Construction of One Single Family Residence on 0.5 Acres of the 7.637-acre Tract 9 in the Overlook Subdivision, Bastrop County, TX

SUMMARY: G. Neil Mixon, Jr. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–027746.

The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (**Bufo Houstonensis**). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 Acres of the 7.637-acre Tract 9 in the Overlook Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before July 10, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, Austin Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–027746 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

G. Neil Mixon, Jr. plans to construct a single family residence on 0.5 Acres of the 7.637-acre Tract 9 in the Overlook Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Geoffrey L. Haskett,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–14427 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, DOI.

ACTION: Notice of issuance of two Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that two Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration activities have been issued to the following companies:

Company	Activity	Date issued
Western Geophysical Company	Exploration	May 22, 2000.
ARCO Alaska, Inc.	Exploration	May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: The Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities (65 FR 16828; March 30, 2000)."

Dated: May 31, 2000.

Gary Edwards,

Deputy Regional Director.

[FR Doc. 00–14454 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Quinault Indian Nation Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Quinault Indian Nation Liquor Ordinance. The Ordinance regulates the control of, the possession of, and the sale of liquor on the Quinault Indian Nation trust lands, and is in conformity with the laws of the State of Washington, where applicable and necessary. Although the Ordinance was adopted on January 20, 2000, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on June 8, 2000.

FOR FURTHER INFORMATION CONTACT: Jim D. James, Office of Tribal Services, 1849 C Street, NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Quinault Indian Nation Liquor Ordinance, Resolution No. 00–156–77, was duly adopted by the Quinault Business Committee on January 20, 2000. The Quinault Indian Nation, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol

abuse and its debilitating effects among individuals and family members within the Quinault Indian Nation.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 Departmental Manual 8.

I certify that by Resolution No. 00–156–77, the Quinault Indian Nation Liquor Ordinance, was duly adopted by the Quinault Business Committee on January 20, 2000.

Dated: June 5, 2000.

Kevin Gover,

Assistant Secretary-Indian Affairs.

The Quinault Business Committee Liquor Ordinance, Resolution No. 00–156–77, reads as follows:

QUINAULT INDIAN NATION'S LIQUOR ORDINANCE, RESOLUTION NO. 00–156–77

TITLE 71

LIQUOR CONTROL

SECTION 71.01 PURPOSE

§ 71.01.010 Purpose

The Quinault Business Committee being vested with the power to protect the public health and to provide for the peace, safety and welfare of residents of the Quinault Indian Nation, hereby adopts this Title for the purpose of regulating the manufacture, distribution, sale, possession and consumption of liquor on the Quinault Indian Nation Reservation and lands under the jurisdiction of the Quinault Indian Nation. It is the Quinault Indian Nation's intent in enacting this Title to prohibit all traffic in liquor on the Quinault Indian Nation except to the extent allowed and permitted under the express terms of this Title. This Title is promulgated pursuant to the constitutional, delegated and inherent authority of the Quinault Indian Nation for the purpose of protecting the welfare, health, peace, and safety of all people residing on the Quinault Indian reservation and on lands under the jurisdiction of the Quinault Indian Nation.

SECTION 71.02 DEFINITIONS

§ 71.02.030 Definitions

The terms used in this Title shall mean:

(a) *Alcoholic Beverages.* Any distilled spirits, wine and malt beverages as defined in this Ordinance.

(b) *Alcoholic Beverage Dealer.* Any person who sells or engages in commercial traffic in alcoholic beverages, including manufacturers, retailers, solicitors, transporters and wholesalers.

(c) *Commission.* The Liquor Control Commission.

(d) *Contraband.* Any alcoholic beverage introduced into, or possessed, offered for sale or used within, the Quinault Indian Nation contrary to law and any receptacle or container in which such alcoholic beverages are found.

(e) *Director.* The Director of the Department of Revenue.

(f) *Distilled Spirits.* Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, bandy, gin and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use containing not less than one-half of 1 percent of alcohol by volume.

(g) *Distiller.* Any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any distillery or other establishment for the production, rectifying, blending or bottling of intoxicating liquor other than beer.

(h) *Liquor.* Any alcoholic beverage.

(i) *Malt Beverage.* A beverage made by the alcoholic fermentation of an infusion or location, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption containing not less than one-half of 1 percent of alcohol by volume and commonly referred to as beer or ale.

(j) *Manufacturer.* Any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any facility which produces alcoholic beverages.

(k) *Off Sale.* The sale of any alcoholic beverage for consumption off the premises where sold.

(l) *On Sale.* The sale of any alcoholic beverage for consumption only upon the premises where sold.

(m) *One-Sale Dealer.* Any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

(n) *Package.* The bottle or immediate container of any alcoholic beverage.

(o) *Person.* Any individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, business receiver, or any group or combination acting as a unit and the plural as well as the singular in number.

(p) *Quinault Indian Reservation.* Shall include the Quinault Indian Reservation and any and all lands owned, leased or under the jurisdiction of the Quinault Indian Nation, whether said lands are trust or allotted or lands held in fee patent status.

(q) *Retailer or Retail Dealer.* Any person who sells alcoholic beverages for other than resale.

(r) *Retail License.* An on-or off-sale license issued under the provisions of this Ordinance.

(s) *Revenue Department.* The Quinault Indian Nation Department of Revenue.

(t) *Sale.* The transfer, for a consideration, of title to any alcoholic beverage.

(u) *Solicitor.* Any person employed by a licensed wholesaler within or without the territorial limits of the Quinault Indian Nation, or by any distiller or manufacturer within or without the reservation, who solicits orders of intoxicating liquor from wholesale or retail dealers within the reservation.

(v) *Transportation Company or Transporter.* Any common carrier or operator of a private vehicle transporting or accepting for transportation any alcoholic beverage destined to be delivered to the Quinault Indian Nation, but not including transportation by carriers in interstate commerce where the shipment originates outside of the State and is destined to a point outside of the State.

(w) *Treasurer.* The duly elected and acting Treasurer of the Quinault Indian Nation.

(x) *Wholesaler.* Any person who sells alcoholic beverages to retailer for resale.

(y) *Wine.* Any liquid either commonly used for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less than one-half of 1 percent of alcohol by volume but not more than 24 percent of alcohol by volume.

SECTION 71.03 LIQUOR CONTROL COMMISSION

§ 71.03.010 Liquor Control Commission

There is hereby created a Liquor Control Commission.

(a) The Liquor Control Commission shall consist of five members of the Business Committee appointed to the Commission by the President of the Quinault Indian Nation Business Committee.

(b) The President shall appoint one Commissioner as Chairman of the Liquor Control Commission. The Chairman shall preside at Commission hearings but shall not exercise his power to vote, except in the case of a tie.

(c) A quorum of the Commission shall consist of three members, and a quorum is required to exercise Commission authority.

(d) No Commission member shall participate in any Commission decision in which he has a direct interest or in which any member of his immediate family has a direct interest.

(e) In the absence of a duly constituted Commission, the Business Committee shall act as the Commission.

§ 71.03.020 Powers of the Liquor Control Commission

Commissioners shall be appointed for terms of 2 years, and shall be removed only for cause, after notice and an opportunity for a hearing before the Business Committee. When a vacancy occurs on the Commission, the President shall appoint a new Commissioner for the balance of the term.

(a) The Liquor Control Commission shall have the power to:

(1) Review license application and grant licenses;

(2) Conduct hearings on alleged violations of this Title;

(3) Establish rules and regulations governing the conduct of the Commission and the exercise of the Commission Authority;

(4) Collect taxes when authorized by the Business Committee, impose penalties, suspend and/or revoke licenses when violations of this Title are proved by a preponderance of the evidence; and

(5) Enjoin violations of this Title and enforce the orders of the Commission.

(b) Collections:

(1) Taxes, when authorized by the Business Committee, may be collected by the Commission through assessment and distraint or other necessary means;

(2) Penalties may be collected through the attachment, levy and sale of property or other necessary means; and

(3) Orders suspending or revoking licenses or enjoining the operations of liquor dealers may be enforced by the tribal police acting at the direction of the Commission.

SECTION 71.04 RETAIL LICENSES AND FEES

§ 71.03.010 Introduction, Sale, Possession for Sale and Distribution of Liquor

The introduction for the retail or wholesale sale, possession for the retail or wholesale sale, sale or the manufacture of liquor shall be unlawful within the Quinault Indian Reservation unless pursuant to a license issued by the Liquor Control Commission and in conformity with this Title, regulations adopted pursuant to this Title and the laws of the State of Washington when required by 18 U.S.C. 1161. This Title shall supersede and amend all prior laws inconsistent with this Title, including section 12.10.040.

§ 71.04.020 Retail License

The Liquor Control Commission may issue a retail license for the retail sale of liquor in business establishments within the Quinault Indian Reservation.

§ 71.04.040 Retail Licensing Fee

The fee for an annual retail license shall be $250 and may be increased annually by the Liquor Control Commission.

§ 71.04.050 Other Licenses

The Commission shall only grant Retail Licenses. No licenses for the manufacture of liquor or wholesale of liquor shall be granted until such time as the Business Committee amends this Title authorizing the Commission to grant such licenses under such terms and conditions as the Business Committee deems appropriate.

§ 71.04.060 Qualifications for License

No license under this Title shall be issued unless the applicant shall be 21 years of age, has filed a sworn application showing the applicant meets the standards in section 71.04.070 and has paid the license fee.

§ 71.04.070 Standards

An applicant, other than a corporation, must be a legal resident of the United States and a person of good moral character. If the applicant is a corporation, partnership, joint venture, association, municipal corporation, estate, trust, business receiver, Indian tribe or firm, the manager of the licensed premises must be a resident of the United States and a person of good moral character. Officers and directors of corporations, and partners, and directors of corporations, and partners, joint venturers, principals of associations and municipal corporations, trustees, business receivers and members of firms must be legal residents of the United States and person of good moral character. Applicants must also be licensed with the Quinault Indian Nation as entitled to do business on the Quinault Indian Nation and qualified to obtain or have obtained a license to sell liquor from the State of Washington.

(a) The Liquor Control Commission may require the applicant to set forth such other information as is necessary to enable it to determine if a license should be granted.

(b) The Liquor Control Commission shall issue a license only if the qualifications set forth herein are satisfied and if it concludes, within its discretion, that the best interests of the reservation community shall be served. In considering applications, the Commission may take into account the following factors, among others, in determining whether the issuance of a license will serve the best interests of the Nation:

(1) Whether the license applied for is for the operation of a new or an existing retail liquor establishment;

(2) Whether the applicant is in compliance with applicable tribal, state and federal law;

(3) Whether the applicant has violated any provision of this Title, and if so, whether the violation has been remedied;

(4) The location, number and density of retail liquor establishments in the community;

(5) Whether food is sold at the establishment; and

(6) The health and welfare of the public.

§ 71.04.080 Public Comments

Before the issuance of any liquor license, the Commission may, but is not required, to take comments from the public. The Commission, however, shall be the determining authority for the granting of any tribal liquor license. If the Commission denies an application for a liquor license, the applicant may appeal that decision to the Business Committee within 30 days from the date of the Commission's decision. The Business Committee's decision shall be final.

SECTION 71.05 PROHIBITIONS

§ 71.05.010 General Prohibition

It shall be unlawful for any person to introduce for sale, manufacture or manufacture for sale, sell, offer or keep for sale or transport alcoholic beverages for sale on the Quinault Indian Reservation except where the person is licensed to conduct such activities by the Commission and only under the terms, conditions, limitations, and restrictions specified in this Title or regulations adopted pursuant to this Title. In addition to any other civil penalty provided for in this Title, each violation of this section may subject the violator to a civil fine not to exceed $5,000.

§ 71.05.020 Disposal Prohibited on Certain Days

No licensee shall sell alcoholic beverages on those days or at those times prohibited by the State of Washington. In addition, to any other civil penalty provided for in this Title,

any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

§ 71.05.030 Prohibition as a Person Under 21 Years of Age

No licensee shall provide directly or by a clerk, agent or servant, intoxicating beverages to any person under the age of 21 years. In addition to any other civil penalty provided for in this Title, any licensee who violates this section may be subject to a civil fine not to exceed $100 for each violation.

(a) In addition, any person who is injured as a result of a violation of this section shall have a right of action against the person who contributed to his injury by providing alcoholic beverages to a minor person. The Tribal Court shall have jurisdiction to hear such actions.

(b) An action under subsection (a) of this section shall be commenced within 2 years after the damage, injury or death.

§ 71.05.040 Prohibition as to Provision to Intoxicated Persons

(a) No licensee shall provide directly or by a clerk, agent or servant, alcoholic beverages to a visibly intoxicated person. In addition to any other civil penalty provided for in this Title, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

(b) In addition, any person who is injured as a result of a violation of this section shall have a right of action against the person who contributed to his injury by providing alcoholic beverages to a visibly intoxicated person. The Tribal Court shall have jurisdiction to hear such actions.

(c) An action under subsection (b) of this section shall be commenced within 2 years after the damage, injury or death.

§ 71.05.050 Prohibition as to Provision to Pregnant Persons

No licensee shall knowingly provide directly or by a clerk, agent or servant alcoholic beverages to any person who is pregnant. In addition to any other civil penalty provided for in this Title, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

§ 71.05.060 Prohibition Against Cashing Subsistence Checks

No licensee shall, directly or by a clerk, agent or servant, knowingly cash or accept any General Assistance check issued by the Federal, State or tribal government, any aid to families with Dependent Children check issued by the Federal, State or tribal government or any other Federal, State or tribal government subsistence check. In addition to any other civil penalty provided for in this Title, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

§ 71.05.070 Prohibition Against Drive-Up Windows

No licensee shall sell or provide alcoholic beverages from a drive through window or entrance. In addition to any other civil penalty provided for in this Title, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

SECTION 71.06 VIOLATIONS OF TITLE/APPEAL

§ 71.06.010 General Penalties

Any person violating this Title or the regulations adopted pursuant to this Title shall, in addition to any other penalties authorized by this Title, be subject to suspension or revocation of their tribal license.

§ 71.06.020 Hearing on Alleged Violations

Anyone having information that a person has violated any provisions of this Title may file with the Department an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the Department shall set the matter for a hearing before the Commission within 60 days. A copy of the affidavit and notice of hearing shall be mailed to the affected person by registered mail not less than 5 days before the hearing. A record of such hearings will be made by stenographic notes or by the use of an electronic recording device. The person shall have the right to be represented by counsel, question witnesses and examine the evidence against him or her as well as to present evidence and witnesses in his or her own defense.

§ 71.06.030 Suspension or Revocation of License

If after such hearing the Commission finds the violation set forth in the affidavit has been proved by preponderance of the evidence, an order shall be served on the licensee revoking or suspending the license for a period of time or imposing such other civil penalties as is provided for in this Title.

§ 71.06.040 Powers of the Chairman

The Chair of the Commission, or his designee, at a hearing under this Title shall have the power to administer oaths and to subpoena and examine witnesses.

§ 71.06.050 Appeal

Any Licensee may appeal the Commission's decision to the Quinault Tribal Court by filing a notice of appeal with the court, clearly stating the grounds therefor, and serving a copy of the notice of appeal by hand on the Director of the Department within 30 days from the date of the decision. The Quinault Tribal Court shall uphold the decision of the Liquor Control Commission unless its finds that the Commission's decision was arbitrary and capricious, an abuse of discretion, or not in accordance with this Title or other applicable law.

SECTION 71.07 CONTRABAND

§ 71.07.010 Contraband Alcoholic Beverages—Container—Forfeiture

The introduction, manufacture, distribution or possession for sale or sale of alcoholic beverages within the Quinault Indian Nation Reservation contrary to this Title is inimical to the public interest and such alcoholic beverages and any receptacle or container of any kind in which said alcoholic beverages are found, are hereby declared to be contraband. No property right shall exist in contraband alcoholic beverages or any receptacle or container wherein such alcoholic beverages are found. Contraband alcoholic beverages and any receptacle or container in which such alcoholic beverages are found are hereby declared forfeited and shall be seized forthwith.

§ 71.07.020 Seizure of Contraband Alcoholic Beverages—Containers—Search Warrant

When an officer of the tribe has probable cause to believe that a person has contraband alcoholic beverages within the Quinault Indian Reservation and a search warrant is required under tribal law or under the Federal Indian Civil Right Act, 25 U.S.C. 1301 *et seq.*, he may apply to the Tribal Court for a warrant to authorize the search of said person and any places, containers conveyances, and receptacles, etc., which the officer has probable cause to believe contain said contraband alcoholic beverages. If the Tribal Court determines that probable cause exists that a person has contraband alcoholic beverages within the territory of the tribe, then the court shall issue a search warrant describing the person, places and things to be searched and the things to be seized. The officer shall execute the search warrant and seize any and all contraband alcoholic beverages found and any receptacles and any containers in which said contraband alcoholic beverages are found.

§ 71.07.030 Judicial Determination as to Nature of Alcoholic Beverages Seized

(a) Within 10 calendar days after the seizure of any alcoholic beverages, or any receptacle or container in which said alcoholic beverages are found, on the grounds that they are contraband, any person claiming an interest therein may initiate an action for a determination as to whether the items seized are contraband by filing a claim with the Tribal Court and serving notice of the claim on the Director of the Department. The Tribal Court shall then schedule a hearing on the matter within 15 calendar days after the filing of the claim.

(b) The Tribal Court shall, upon good cause shown, permit discovery to be taken on an expedited basis. The Tribal Court shall regulate the manner and timing of such discovery; provided that when the Tribal Court orders expedited discovery, the time for a hearing may be postponed for a period of 60 days. All discovery shall be completed prior to the hearing date.

(c) The Nation shall have the burden to establish a prima facie case that items seized are contraband, and after such proof is made, the burden shall shift to the claimant to prove by a preponderance of the evidence that the items seized are not contraband.

(d) If the Tribal Court determines that the items seized by the Nation are not contraband, the court shall order the return of the items to the claimant after the time for filing an appeal has elapsed. If the court determines that the items seized are contraband, the court shall declare the items to be contraband and the Nation may dispose of the contraband as it deems fit after the time for filing an appeal has elapsed.

(e) The Nation may appeal an adverse decision of the Tribal Court under this section to the Appellate Court by filing a notice of appeal within 10 calendar days of the date of the decision of the Tribal Court. Filing of the notice of appeal by the Nation shall automatically stay the decision of the Tribal Court. The Appellate Court shall uphold the decision of the Tribal Court unless it is clearly erroneous.

(f) The claimant may appeal an adverse decision of the Tribal Court under this section to the Appellate Court by filing a notice of appeal within 10 calendar days of the date of the decision of the Tribal Court and posting an appeal bond in an amount set by the Tribal Court. The Tribal Court shall set the appeal bond in an amount sufficient to pay for the storage of the items in dispute during the pendency of the appeal and any court costs which may be incurred by the Nation on the appeal. Filing of the notice of appeal by the claimant and payment of the appeal bond shall automatically stay the decision of the Tribal Court. The Appellate Court shall uphold the decision of the Tribal Court unless it is clearly erroneous.

SECTION 71.08 EXCEPTION

§ 71.08.010 Exceptions to this Title

The provisions of this Ordinance shall not apply to the sale of alcoholic beverages, or to ethanol, used or intended for use, for the following purposes:

(a) For scientific research or manufacturing products other than liquor;

(b) Medical use under the direction of a physician, medical or dental clinic, or hospital;

(c) In preparation not fit for human consumption such as cleaning compounds and toilet products, or flavoring extracts;

(d) By persons exempt from regulation in accordance with the laws of the United States; or

(e) For sacramental use such as wines delivered to priests, rabbis, and ministers.

SECTION 71.09 MISCELLANEOUS PROVISION

§ 71.09.010 Agreement by Licensee to Grant Access for Inspection Purposes

Every licensee under this Title, as a condition of the grant of tribal license, consents to the inspection of his premises, including all buildings, safes, cabinets, lockers and storerooms thereon. Such inspection shall be available upon the demand of the Commission. These inspections shall be conducted by a duly appointed designee of the Commission, or tribal police. All books and records dealing with the sale and ownership of alcoholic beverages shall be open for inspection purposes by the Commission.

§ 71.09.020 Transferability

No license issued pursuant to this Title shall be transferable; provided, however, upon death of an individual licensee, the personal representative of the estate may operate under a valid license for 60 days after the licensee's death, so long as said personal representative shall apply to the Commission for a new license within said 60-day period.

§ 71.09.030 Server Training

Every person who serves alcoholic beverages on the premises of an on-sale licensee shall attend 8 hours of training in a server training program approved by the Commission or the State of Washington on the latter of his or her 60th day of employment or within 60 days after the effective date of this Title.

§ 71.09.040 Tribal Sovereign Immunity

No provision of this Title shall be construed to permit the recovery of money damages against the tribe. No provision of this Title shall be construed to waive the sovereign immunity of the tribe.

§ 71.09.050 Consent to Civil Jurisdiction

A licensee shall stipulate in the license that for the purpose of this Title the licensee shall be subject to the civil jurisdiction of the Quinault Tribal Court.

SECTION 71.10 SEVERABILITY

§ 71.10.010 Severability

If for any reason, or circumstances, any provision(s) or section(s) of this Title are held invalid by the appropriate court of jurisdiction, the remainder of this Title and other provisions or sections shall not be affected in the application of this Title or to any person covered by this Title.

SECTION 71.11 EFFECTIVE DATE OF TITLE

§ 71.11.010 Continued Operation under existing Tribal or State License

This Title is effective after its adoption by the Business Committee. Any Licensee operating under an existing tribal or state license may continue to operate thereunder until December 31, 1998, provided that the licensee complies with all of the provisions contained herein. After December 31, 1998, any person operating under an existing state license, must apply with the Commission for a tribal license.

[FR Doc. 00–14465 Filed 6–7–00; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant

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Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Seventh Renewal of Agreement between the Northern Cheyenne Tribe and the State of Montana regarding Class III gaming on the Northern Cheyenne Reservation which was executed on April 7, 2000.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: May 25, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–14504 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–00–0777–XQ]

Notice of Meeting of the Utah Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management's Utah Statewide Resource Advisory Council meeting will be held on June 21–22, 2000. On June 21, the Council will focus on recreation issues in northwestern Utah. The RAC will participate in a field tour of the west half of Box Elder County and the northwest corner of Tooele County. Other resources such as minerals, range condition, and fire rehabilitation may be addressed as time allows. They will be departing from the Bureau of Land Management's Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, at 8 a.m. and concluding the tour in Wendover, Nevada.

On June 22, the RAC will continue working on the draft guidelines for recreation management. This meeting will be held in the Silver Room of the Silver Smith Hotel, Wendover, NV, at 8 a.m. and conclude at 4 p.m. with a public comment period scheduled from 3:30–4.

All meetings of the BLM's Resource Advisory Council are open to the public; however, transportation, meals, and overnight accommodations are the responsibility of the participating public.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, 84111; phone (801) 539–4195.

Dated: June 2, 2000.

Sally Wisely,

Utah BLM State Director.

[FR Doc. 00–14430 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–DS–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–XU; GPO–0245]

Notice of the Meeting of the Eastern Washington Advisory Council; June 22, 2000, in Spokane, Washington

AGENCY: Bureau of Land Management, Spokane District.

SUMMARY: A meeting of the Eastern Washington Resource Advisory Council will be held on June 22, 2000. The meeting will convene at 9 a.m., at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275. The meeting will adjourn upon conclusion of business, but no later than 4 p.m. Public comments will be heard from 10:00 a.m. until 10:30 a.m. If necessary, to accommodate all wishing to make public comments, a time limit may be placed upon each speaker. At an appropriate time, the meeting will adjourn for approximately one hour for lunch. The Topic to be discussed is the Interior Columbia Basin Ecosystem Management Project (ICBEMP).

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated June 2, 2000.

Joseph K. Buesing,

District Manager.

[FR Doc. 00–14431 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

National Park Service

Recommendations Regarding the Disposition of Culturally Unidentifiable Native American Human Remains

AGENCY: National Park Service, Interior

ACTION: Notice

The Native American Graves Protection and Repatriation Act directs the Secretary of the Interior to establish and maintain an advisory committee composed of seven private citizens nominated by Indian tribes, Native Hawaiian organizations, and national museum organizations and scientific organizations [25 U.S.C. 3006]. One of the review committee's responsibilities is to make recommendations regarding specific actions for developing a process for the disposal of culturally unidentifiable Native American human remains in the possession or control of museums and Federal agencies [25 U.S.C. 3006 (c)(5)]. After lengthy deliberations, the committee makes the following recommendations.

A. Intent of NAGPRA

1. The legislative intent of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) is stated by the title of the statute. Repatriation means the return of control over human remains and cultural items to Indian tribes and Native Hawaiian organizations.

2. Specifically, the statute required:

a. The disposition of all Native American human remains and cultural items excavated on or removed from Federal lands after November 16, 1990 [25 U.S.C. 3002 (d)(2)]. Disposition is based on linkages of lineal descent, tribal land, cultural affiliation, or aboriginal land.

b. The repatriation of culturally affiliated human remains and associated funerary objects in Federal agency and museum collections if requested by a culturally affiliated Indian tribe or Native Hawaiian organization [25 U.S.C. 3005]. Repatriation is based on linkages of lineal descent or cultural affiliation.

c. The development of regulations for the disposition of unclaimed human remains and objects [25 U.S.C. 3002 (3)(b)] and culturally unidentifiable human remains in Federal agency and museum collections [25 U.S.C. 3006].

3. Although the legal standing of funerary objects associated with culturally unidentifiable human remains is not addressed in NAGPRA, the statute does not prohibit their voluntary repatriation by museums or Federal agencies to the extent allowed by Federal law.

4. The statute acknowledges the legitimate need to return control over ancestral remains and funerary objects to Native people, and the legitimate public interest in the educational, historical, and scientific information conveyed by those remains and objects [25 U.S.C. 3002 (3)(b) and 3006 (8)(b)].

5. While the statute does not always specify repatriation, it is implicit that the process be guided by the rights and needs of Indian tribes and Native Hawaiian organizations.

B. Culturally Unidentifiable Human Remains

1. Federal agencies and museums must make a determination as to whether Native American human remains in their control are related to lineal descendants, culturally affiliated with a present-day Federally recognized Indian tribe or a Native Hawaiian organization, or are culturally unidentifiable. This determination must be made in consultation with any appropriate Indian tribes or Native Hawaiian organizations, and through a good faith evaluation of all relevant and available documentation.

2. A determination that human remains are culturally unidentifiable may change to one of cultural affiliation as additional information becomes available through ongoing consultation or any other source. There is no statute of limitations for lineal descendants, Indian tribes, or Native Hawaiian organizations to make a claim.

3. A Federal agency or museum determination that human remains are culturally unidentifiable may occur for different reasons. At present, three categories are recognized:

a. Those for which cultural affiliation could be determined except that the appropriate Native American organization is not Federally recognized as an Indian tribe.

b. Those which represent an earlier identifiable group, but for which no present-day Indian tribe has been identified by the Federal agency or museum.

c. Those for which the Federal agency or museum believes that evidence is insufficient to identify an earlier group.

4. Documentation

a. Documentation is required for inventory completion and determinations of cultural affiliation by Federal agencies and museums [25 U.S.C. 3003 (5)(b)(2)]. Documentation should be prepared in accordance with standards such as those outlined in 43 CFR 10.9 (c) and 10.14.

b. Documentation must occur within the context of the consultation process. Additional study is not prohibited if the parties (Federal agencies, museums, lineal descendants, Indian tribes, and Native Hawaiian organizations) in consultation agree that such study is appropriate.

c. Once inventories have been completed, the statute may not be used to require new scientific studies or other means of acquiring or preserving additional scientific information from human remains and associated funerary objects [25 U.S.C. 3003 (b)(2)].

d. With the exception of information exempted from the Freedom of Information Act, documentation prepared in compliance with the statute is a public record.

C. Guidelines for the Disposition of Culturally Unidentifiable Human Remains

1. Respect must be the foundation for any disposition of culturally unidentifiable human remains. Human remains determined to be culturally unidentifiable are no less deserving of respect than those for which cultural affiliation has been established.

2. Since human remains may be unclaimed, or determined to be culturally unidentifiable for different reasons, there will be more than one appropriate disposition (repatriation) solution. Examples of appropriate repatriation solutions include the return of:

a. Human remains that are determined to be culturally unidentifiable that were recovered from tribal land.

b. Human remains that are determined to be culturally unidentifiable that were recovered from the aboriginal land of an Indian tribe.

c. Human remains that are culturally unidentifiable for which there is a relationship of shared group identity with a non-Federally recognized Native American group.

3. A Federal agency or museum may also seek the recommendation of the review committee for the disposition of culturally unidentifiable human remains based on other criteria than those listed above.

D. Proposed Models for the Disposition of Culturally Unidentifiable Human Remains

1. Joint recommendations by Federal agencies, museums, and claimants. Repatriation of culturally unidentifiable human remains may proceed in those cases where:

a. All the relevant parties have agreed in writing,

b. Statutory requirements have been met; and

c. The guidelines listed above have been followed.

Note: The review committee has recommended repatriation of culturally unidentifiable human remains that have met these criteria for both museums—including the Robert S. Peabody Museum of Archaeology-Phillips Academy; Commonwealth of Virginia-Department of Historic Resources; Dartmouth College-Hood Museum; Minnesota Indian Affairs Council; Iowa Historical Society; Sonoma State University; Peabody Museum-Harvard University; University of Nebraska-Lincoln; New Hampshire Division of Historical Resources; California State University-Fresno; and Washington State Historical Society—and Federal agencies, including the US Army-Fort Hunter-Liggett; National Park Service-Fort Clatsop National Monument; National Park Service-Carlsbad Caverns National Park/Guadalupe Mountains National Park; and US Forest Service-Ocala National Forest.

2. Joint recommendations from regional consultations

a. Historical and cultural factors, and therefore issues concerning the definition and disposition of culturally unidentifiable human remains, vary significantly across the United States. For example, issues in the Southeast, where most Indian tribes were forcibly removed during the 19th Century, are very different from those in the Southwest where many Indian tribes remain on their ancestral lands. Similarly, issues in the Northeast and California differ significantly from those in the Great Plains. Therefore, it is recommended that regional solutions be developed that best fit regional circumstances.

b. The review committee recommends a process in which:

i. Indian tribes and Native Hawaiian organizations define regions within which the most appropriate solutions for disposition of culturally unidentifiable human remains may be determined.

ii. Within each region, the appropriate Federal agencies, museums, Indian tribes, and Native Hawaiian organizations consult together and propose a framework and schedule to develop and implement the most appropriate model for their region.

iii. Regional consultation meetings may be open to other parties with a legitimate interest in disposition, with the consent of the appropriate Federal agencies, museums, Indian tribes, and Native Hawaiian organizations.

iv. Dispositions agreed upon through regional consultation meetings will be made by the appropriate Federal agencies, museums, and Indian tribes.

v. If a disposition agreement can not be reached through regional consultation meetings, the dispute may be brought before the review committee.

vi. Any proposed regional disposition agreement must meet all statutory requirements as well as the guidelines listed above.

E. Regulations.

The review committee requests that the Secretary of the Interior develop a draft proposed rule [43 CFR 10.11] based on these recommendations to be considered by the review committee at its next meeting. Following review by the committee, the proposed rule will be published for additional public comment in the **Federal Register**.

Dated: May 9, 2000.

Armand Minthorn,

Chair, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 00–14487 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Clay County, SD in the Possession of the South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Clay County, SD in the possession of the South Dakota State Archaeological Research Center, Rapid City, SD. This notice is being published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal Agency who has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by South Dakota State Archaeological Research Center (SARC) professional staff in consultation with representatives of the Yankton Sioux Tribe of South Dakota and the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota.

In 1926, human remains representing one individual were recovered from the Vermillion Bluff Village (39CL1), located on the left bank of the Vermillion River, Clay County, SD by workmen at the R.C. Davis residence. These human remains were donated to the W.H. Over Museum, Vermillion, SD. In 1974, these human remains were transferred to the SARC for documentation and repatriation. No known individual was identified. The 14 associated funerary objects include a circular-shaped iron rod, an elk metapodial scraper, an elk antler scraper, three polished pipestone balls, a top-shaped piece of pipestone, three undrilled pipestone pipes, a used pipestone pipe, a steel knife with a horn handle, and two pieces of scoria.

Based on associated funerary objects and manner of interment, this individual has been identified as Native American. The associated funerary objects and manner of interment also indicate this burial dates to the historic period (post-1800 A.D.). Based on continuities of material culture, oral tradition, and historical evidence, the cultural affiliation of the Historic-period component of the Vermillion Bluff Village site and the burial listed above have been affiliated with the Yankton Sioux Tribe of South Dakota. In 1859, the Yankton tribe was removed from this area in Clay County, SD to the Yankton Indian Reservation in South Dakota.

Based on the above mentioned information, officials of the South Dakota Archaeological Research Center have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the South Dakota Archaeological Research Center have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 14 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the South Dakota Archaeological Research Center have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Yankton Sioux Tribe of South Dakota. This notice has been sent to officials of the Yankton Sioux Tribe of South Dakota and the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Renee Boen, Curator, State Archaeological Center, South Dakota Historical Society, P.O. Box 1257, Rapid City, SD 57709–1257; telephone: (605) 394–1936, before July 10, 2000. Repatriation of the human remains and associated funerary objects to the Yankton Sioux Tribe of South Dakota may begin after that date if no additional claimants come forward.

Dated: May 31, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnership Programs.

[FR Doc. 00–14489 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Sledge Island, AK in the Possession of the University of Alaska Museum, Fairbanks, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Sledge Island, AK in the possession of University of Alaska Museum, Fairbanks, AK. This notice is being published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal Agency who has control of these Native American human remains and associated funerary objects.

A detailed assessment of the human remains was made by University of Alaska Museum professional staff in consultation with representatives of the Nome Eskimo Community.

In 1950, human remains representing five individuals were recovered from Sledge Island, AK during surveys conducted under the auspices of the University of Alaska Museum by George Schumann. No known individuals were identified. No associated funerary object are present.

In 1956, human remains representing one individual were recovered from Sledge Island, AK during surveys conducted under the auspices of the University of Alaska Museum by Otto Geist and Ivar Skarland. No known individual was identified. The nine associated funerary objects are two knife handles and seven faunal remains consisting of three dog bones and four polar bear bones.

In 1968, human remains representing four individuals were recovered from Sledge Island, AK by William Tuttle, who donated these human remains to the University of Alaska Museum. No known individuals were identified. No associated funerary objects are present.

Based on material culture, the sites listed above have been identified as historic period occupations (post-1780 A.D.).

Based on the above mentioned information, officials of the University of Alaska Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of ten individuals of Native American ancestry. Officials of the University of Alaska Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the nine objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Alaska Museum have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Nome Eskimo Community.

This notice has been sent to officials of the Nome Eskimo Community. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Gary Selinger, Special Projects Manager, University of Alaska Museum, 907 Yukon Drive, Fairbanks, AK 99775–1200; telephone: (907) 474–6117, fax: (907) 474–5469, before July 10, 2000. Repatriation of the human remains and associated funerary objects to the Nome Eskimo Community may begin after that date if no additional claimants come forward. The National Park Service is not responsible for the determinations within this notice.

Dated: May 30, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–14488 Filed 6–7–00; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: June 12, 2000 at 2 p.m.

PLACE: Room 101, 500 E Street SW. Washington, DC 20436 Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–762 (Remand)(Static Random Access Memory Semiconductors from Taiwan)— briefing and vote. (The Commission will transmit its views on remand to the U.S. Court of International Trade on June 26, 2000.)
5. Inv. Nos. 701–TA–253 and 731–TA–132, 252, 271, 276–277, 296, 409–410, 532–534, and 536–537 (Review) (Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on June 26, 2000).
6. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 5, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14580 Filed 6–6–00; 11:09 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that a proposed consent decree in the actions entitled *United States* v. *Gayner, et al.*, Civil Action No. 00CV11037EFH (D. Mass.), and *United States* v. *Glynn*, Civil Action No. 99–40133 (D. Mass.), was lodged on May 26, 2000, with the United States District Court for the District of Massachusetts. The proposed consent decree resolves the claims of the United States against several potentially responsible parties ("Settling Defendants") at the Nyanza Chemical Waste Dump Superfund Site, located in Ashland, Massachusetts ("Site"), under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* The consent decree will also resolve the claims of the Commonwealth of Massachusetts ("Commonwealth") in connection with the Site under CERCLA and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E. The Settling Defendants include Robert E. Gayner, MCL Development Corporation, Edward J. Camille, and John J. Glynn, Jr., as Trustee of the Environmental Restoration Engineering Trust and the AIF Realty Trust. The consent decree includes a covenant not to sue by the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607 (including claims for natural resource damages), and under section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

Under the proposed consent decree, the Settling Defendants will pay $300,000 to the United States in order to reimburse the United States for its past unreimbursed response costs incurred in connection with the Site and $75,000 to the Commonwealth to reimburse the Commonwealth for its past unreimbursed response costs incurred in connection with the Site. In addition, the Settling Defendants have agreed to record an Environmental Restriction and Easement ("Easement") with respect to each of their properties located at the Site. The Easements will impose certain restrictions on the use of these properties and will also provide access rights to the United States (until completion of the remedial action at the Site) and the Commonwealth (after completion of the remedial action at the Site).

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, Ben Franklin Station, Washington D.C. 20044, and should refer to *United States* v. *Gayner et al.*, DOJ Ref. Number 90–11–2–340D. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at EPA Region 1, located at One Congress Street, Suite 1100, Boston, MA 02114 (contact Peter DeCambre, 617–918–1890). A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC, 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $30 (25 cents per page reproduction costs).

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–14455 Filed 6–7–00; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. *Holden, et. al.*, Civil Action No. 00CV11036EFH (D. Mass.), was lodged on May 26, 2000, with the United States District Court for the District of Massachusetts. The proposed consent decree resolves the claims of the United States claims against several potentially responsible parties ("Settling Defendants") at the Nyanza Chemical Waste Dump Superfund Site, located in Ashland, Massachusetts ("Site"), under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* The consent decree will also resolve the claims of the Commonwealth of Massachusetts ("Commonwealth") in connection with the Site under CERCLA and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E. The Settling Defendants include Nelson W. Holden, as Trustee of the Holden–Ashland Trust, Martha E. Holden, as Trustee of the Holden–Ashland Trust, and William M. Leacu. The Environmental Protection Agency has determined that the Settling Defendants qualify for a *de mimimis* settlement under section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(B). The consent decree includes a covenant not to sue by the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607 (including claims for natural resources damages), and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

Under the proposed consent decree, the Settling Defendants have agreed to record an Environmental Restriction and Easement ("Easement") with respect to each of their properties located at the Site. The Easements will impose certain restrictions on the use of these properties and will also provide access rights to the United States (until completion of the remedial action at the Site) and to the Commonwealth (after completion of the remedial action at the Site).

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. box 7611, Ben Franklin Station, Washington DC 20044, and should refer to *United States* v. *Holden, et al.*, DOJ Ref. Number 90–11–2–340C. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at EPA Region 1, located at One Congress Street, Suite 1100, Boston, MA 02114 (contact Peter DeCambre, 617–918–1890). A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $23.75 (25 cents per page reproduction costs).

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–14456 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 10, 2000, and published in the **Federal Register** on February 17, 2000, (65 FR 33) Ganes Chemicals Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropopoxyphene, bulk (non-dosage forms) (9273)	II

The firm plans to manufacture the listed controlled substances for distribution as bulk products to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Ganes Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Ganes Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 25, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–14478 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 12, 1999, and published in the **Federal Register** on May 25, 1999, (64 FR 28214), Noramco, Inc., 1400 Olympic Drive, Athens, Georgia 30601, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

The firm plans to support its other manufacturing facility with manufacturing and analytical testing.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. The investigations included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 26, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–14477 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 19, 2000, and April 27, 2000, Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York 12144, made application by letters to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Pentobarbital (2270)	II

The firm plans to manufacture amphetamine and pentobarbital as a bulk product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 7, 2000.

Dated: May 25, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–14479 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection; Fiscal Year 1999 State Domestic Preparedness Equipment Program Needs Assessment.

The Department of Justice, Office of Justice Programs (OJP), Office for State and Local Domestic Preparedness (OSLDPS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by June 16, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Frank Lepage, Chief, Grants Management Operations Branch, Office for State and Local Domestic Preparedness, 810 7th Street, NW., Washington, DC 20531, or facsimile at (202) 616–2922.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Fiscal Year 1999 State Domestic Preparedness Equipment Program Needs Assessment.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* U.S. Department of Justice, Office of Justice Programs, Office for State and Local Domestic Preparedness Support.

(4) *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal, State, and Local Government.

Abstract: Section 1404 of the Defense Against Weapons of Mass Destruction Act of 1998 (Title XIV of Public Law 105–261; 50 U.S.C. 2301) as amended by Section 1064 of the National Defense Authorization Act of 2000 (Title X of Public law 106–65; 50 U.S.C. 2301) authorizes the Department of Justice to collect information from state and local jurisdictions to assess the threat and risk of terrorist employment of weapons of mass destruction against cities and other local areas. This data collection is a one-time event that will allow states to: (1) Report current jurisdictional needs for equipment, training, exercises, and technical assistance; (2) forecast projected needs for this support; and, (3) identify the gaps that exist at the jurisdictional level in equipment, training, exercises, and technical assistance that OJP/OSLDPS funding will be used to address. Additionally, the information collected will guide OJP/OSLDPS in the formulation of domestic preparedness policies and with the development of OSLDPS programs to enhance state and local first responder capabilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The data collection being

proposed is a one-time effort incorporating three main components: A terrorist threat and risk assessment, a public health capabilities assessment, and an equipment needs and capabilities assessment. Information will be collected by approximately 9,000 local law enforcement, public health, and emergency management agencies. In addition, a state administrative agency in each state will roll-up the local data and submit this information to OJP/OSLDPS. Collection and tabulation of the raw data at the local level may take up to one month. Jurisdictions using the OJP data collection tool designed for this exercise may experience burdens ranging from 4–8 hours to collect tabulate and input data. In addition, roll-up of the data at the state level and electronic submission to OJP may take up to 4 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total public burden associated with this one-time data collection will be approximately 66,200 hours.

If additional information is required, contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: June 2, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–14421 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1279]

National Institute of Justice Announcement of the Tenth Meeting of the National Commission on the Future of DNA Evidence

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the tenth meeting of the National Commission on the Future of DNA Evidence.

DATES: The tenth meeting of the National Commission on the Future of DNA Evidence will take place on Sunday, July 9, 2000 from 1 p.m. to 5 p.m.,EST, and on Monday, July 10, 2000 from 9 a.m. to 5 p.m., EST.

ADDRESSES: The meeting will take place at the Grand Hyatt Hotel, 1000 H Street, N.W. Washington, D.C. 20001 Phone: (202) 584–1234.

FOR FURTHER INFORMATION CONTACT: Christopher H. Asplen, AUSA, Executive Director. Phone: (202) 616–8123. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Commission on the Future of DNA Evidence, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, will meet to carry out its advisory functions under Sections 201–202 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. This meeting will be open to the public.

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

The Commission will address issues in five specific areas: (1) The use of DNA in postconviction relief cases, (2) legal concerns including *Daubert* challenges and the scope of discovery in DNA cases, (3) criteria for training and technical assistance for criminal justice professionals involved in the identification, collection and preservation of DNA evidence at the crime scene, (4) essential laboratory capabilities in the face of emerging technologies, and (5) the impact of future technological developments in the use of DNA in the criminal justice system. Each topic will be the focus of the in-depth analysis by separate working groups comprised of prominent professionals who will report back to the Commission.

Dated: June 2, 2000.

Doug Horner,

Acting Director, National Institute of Justice.

[FR Doc. 00–14442 Filed 6–7–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,011]

Cooper Energy Services, Grove City, Pennsylvania; Notice of Revised Determination on Reconsideration

On April 27, 200, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former worker of the subject firm. The notice was published in the **Federal Register** on May 4, 2000 (65 FR 25947).

Investigation findings show that the workers are primarily engaged in the production of castings and machined components. The worker were denied TAA because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The workers were denied NAFTA–TAA on the basis that there was no shift in production to Mexico or Canada, nor were there company or customer imports of castings or machined components from Mexico or Canada.

The petitioners presented evidence that some of the production of pistons was shifted to Canada and is being returned to the United States.

New information obtained from the subject firm on reconsideration reveal that for a short period of time during which the machining centers were being transferred from Grove City, Pennsylvania, to another domestic location, the company source machined components from a Canadian firm. Other findings on reconsideration show that the company is increasing its reliance on castings from Mexico.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Cooper Energy Services, Grove City, Pennsylvania, were adversely affected by increased imports, including those from Canada and Mexico, of articles like or directly competitive with castings and machined components produced at the subject firm.

"All workers of Cooper Energy Services, Grove City, Pennsylvania, who became totally or partially separated from employment on or after October 13, 1998, through two years from the date of this issuance, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974;" and

"All workers of Cooper Energy Services, Grove City, Pennsylvania, who became totally or partially separated from employment on or after October 13, 1998, through two years from the date of this issuance, are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974."

Signed at Washington, DC, this 31st day of May 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14472 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May and June, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,582; Forge Products Corp., Cleveland, OH
TA–W–37,503; Swiss–M–Tex L.P., Travelers Rest, SC
TA–W–37,605; Hyperion Seating Corp., Lewisburg, TN
TA–W–37,573; Santa Cruz Industries, Santa Cruz, CA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37,621; Westwood Lighting, Inc., El Paso, TX
TA–W–37,548; Red Plating, Inc., Providence, RI
TA–W–37,640; The Montana Power Co., Butte, MT
TA–W–37,561; Manpower Staffing Services, San Jose, CA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–37,563; Tecumseh Products Co., Somerset, KY
TA–W–37,597; Lebanon Machine, Lebanon, OR

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–37,606 & A; Rocky Apparel LLC, Greenwood, MS and Ruleville, MS: March 28, 1999
TA–W–37,630; Motor Coils Manufacturing Co., Braddock, PA: April 17, 1999
TA–W–37,630; Motor Coils Manufacturing Co., Braddock, PA: April 17, 1999
TA–W–37,416; Triboro Electric Co L.P., Doylestown, PA: April 1, 2000
TA–W–37,609; TI Group Automotive Systems Corp., Valdosta, GA: March 28, 1999
TA–W–37,639; Peninsula Light Metals, LLC and Optima Wheels Formerly Known as Pacific Baja Light Metals, La Miranda, CA: April 29, 1999
TA–W–37,581; General Electric Industrial Systems, 60 Frame Area, Tell City, IN: March 9, 1999
TA–W–37,607; Henry I. Siegel, Inc., Bruceton, TN: April 30, 2000.
TA–W–37,448; Regal Ware, Inc., Jacksonville, AR: February 23, 1999
TA–W–37,552; Williamette Industries, Dallas, OR: May 29, 1999
TA–W–37,554; Ross Corp., Eugene, OR: March 25, 1999
TA–W–37,656; United Protective Clothing, Inc., Purvis, MS: April 11, 1999
TA–W–37,575; Southeastern Apparel Finishing, Inc., Johnson City, TN: March 20, 1999
TA–W–37,558; Exide Corp., Reading, PA: March 20
TA–W–37,569; National Castings, Cicero, IL: March 16, 1999
TA–W–37,362; Jasper Sportswear Corp., Brooklyn, NY: February 1, 1999
TA–W–37,647; The Eureka Co. Div. of White Consolidated Industries, Inc., Bloomington, IL: April 14, 1999
TA–W–37,477; Pinewood Casual, Inc., Philipsburg, PA: February 21, 1999
TA–W–37,535; Alliance Carolina Tool and Mold Corp., Arden, NC: March 22, 1999
TA–W–37,482; Quantum Corp., DLT and Storage Systems Group, Colorado Springs, CO: March 1, 1999
TA–W–37,530; Kellwood Co d/b/a American Recreation Products, Inc., Mineola, TX: March 23, 1999

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May and June, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or thereat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3)

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and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. there was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03849; A. Schulman, Inc., Dispersion Div., Orange, TX
NAFTA–TAA–03810; SWISS–M–Tex L.P., Travelers Rest, SC
NAFTA–TAA–03882; Schmalbach-Lubeca Plastic Containers USA, Inc., Novi, MI
NAFTA–TAA–03846; Lebanon Mchine, Lebanon, OR
NAFTA–TAA–03848; Coho Energy, Inc. d/b/a Coho Resources, Inc., Dallas, TX
NAFTA–TAA–03828; Oregon Manufacturing Services, Inc.; Klamath Falls, OR
NAFTA–TAA–03916; Pope & Talbot, Inc., Newcastle Plant, Newcastle, WY

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–03886; Ingersoll-Rand Transportation Organization, Los Angeles, CA

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–03865; Sharp Manufacturing Company of America, Memphis, TN

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03851; National Castings, Cicero, IL: April 7, 1999
NAFTA–TAA–03827; Ross Corp., Eugene, OR: March 24, 1999
NAFTA–TAA–03897; Hillsville Apparel, Inc., Hillsville, VA: May 1, 1999
NAFTA–TAA–03823; Alliance Carolina Tool and Mold Corp., Arden, NC March 22, 1999
NAFTA–TAA–03836; Sony Professional Products Co., Transcom Div., Boca Raton, FL: April 4, 1999
NAFTA–TAA–03893; Peninsula Light Metals, LLC and Optima Wheels, Formerly Known as Pacific Baja Light Metals, La Miranda, CA: April 24, 1999
NAFTA–TAA–03899; TI Group Automotive Systems, Corp., Valdosta, GA: May 2, 1999
NAFTA–TAA–03875; Motor Coils Manufacturing Co., Braddock, PA: May 1, 1999
NAFTA–TAA–03867; Sensus Technologies, Inc., Foundry and Bronze Machining, Uniontown, PA: April 12, 1999
NAFTA–TAA–03873; Solectron Corp., Suwanee, GA: April 25, 1999
NAFTA–TAA–03885; Lind Shoe Co., Somerset, WI: April 20, 1999
NAFTA–TAA–03891; Nortel Networks, Santa Clara, CA: April 27, 1999
NAFTA–TAA–03843; Trinity Industries, Inc., Butler, PA: April 1, 1999
NAFTA–TAA–03838; Rugged Sportswear, Siler City, NC: March 31, 1999
NAFTA–TAA–03864; DTM Products, Div. of Flextronics International, Niwot, CO: April 17, 1999
NAFTA–TAA–03889; Pairgain Technologies, Inc., Tustin, CA: February 25, 1999
NAFTA–TAA–03884; Grayson Enterprises, Inc., Eaton, IN: April 26, 1999
NAFTA–TAA–03833; Berne Apparel, Berne, IN: March 30, 1999
NAFTA–TAA–03718; Oneida Limited Silversmiths, Sherrill, NY: February 4, 1999
NAFTA–TAA–03862; Elcon Products International, Fremont, CA: April 6, 1999
NAFTA–TAA–03901; Hamilton Beach/ Proctor Silex, Inc., Mt Airy, NC: January 28, 2000
NAFTA–TAA–03616 & A; Tuckaseigee Mills, Inc., Sewing Div., Bryson City, NC and Sylva, NC: December 1, 1998
NAFTA–TAA–03900; Triboro Electric Co., L.P., Doylestown, PA: April 1, 2000

I hereby certify that the aforementioned determinations were issued during the month of May and June, 2000. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 1, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14475 Filed 6–7–00; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,893]

Chemall, Inc., Calabrian Chemical Corporation, CuC1 Department, Port Neches, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 22, 1999 applicable to workers of Calabrian Chemical Corporation, CuC1 Department, Port Neches, Texas. The notice was published in the **Federal Register** on January 14, 2000 (FR 65 2432).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of Cuprous Chloride (CuC1). New information provided by the State shows that Chemall, Inc., Kingwood, Texas is the parent firm of Calabrian Chemical Company, located in Port Neches, Texas. New information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account at Chemall, Inc., Kingwood, Texas.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Calabrian Chemical Corporation, CuC1 Department who were adversely affected by increased imports of Cuprous Chloride (CuC1).

The amended notice applicable to TA–W–36,893 is hereby issued as follows:

All workers of the CuC1 Department engaged in employment related to the production of Cuprous Chloride (CuC1) at Chemall, Inc., Calabrian Chemical Corporation, Port Neches, Texas who became totally or partially separated from employment on or after September 20, 1998 through December 22, 2001 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 31st day of May, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–14470 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37–451A and TA–W–37–451B]

Cross Creek Apparel, Inc.; Walnut Cove, NC; Newport, NC; Amended Certification Regarding Eligibility To Apply for worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 4, 2000, applicable to workers of Cross Creek Apparel, Inc., Walnut Cove, North Carolina. The notice was published in the **Federal Register** on April 21, 2000 (65 FR 21473).

At the request of the company, the Department reviewed the determination for workers of the subject firm. New information provided by the company shows that worker separations will occur at Cross Creek's Newport, North Carolina facility when it closes in July, 2000. The workers are engaged in employment related to the production of knit apparel. Accordingly, the Department is amending the determination to cover workers of Cross Creek Apparel, Inc., Newport, North Carolina.

The intent of the Department's certification is to include all workers of Cross Creek Apparel, Inc. adversely affected by increased imports.

The amended notice applicable to TA-W–37,451A is hereby issued as follows:

All workers of Cross Creek Apparel, Inc., Walnut Cove, North Carolina (TA–W–37,451A) and Newport, North Carolina (TA–W–37,451B) who became totally or partially separated from employment on or after February 21, 1999 through April 4, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 1st day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14469 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,261, and TA–W–37,261A)

Ithaca Industries, Inc., Glennville, Georgia; Corporate Headquarters, Wilkesboro, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 29, 2000, applicable to workers of Ithaca Industries, Inc., Glennville, Georgia. The notice was published in the **Federal Register** on March 17, 2000 (65 FR 14627).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Corporate Office, Wilkesboro, North Carolina location of Ithaca Industries, Inc. The Corporate Office provides administration and support function services for Ithaca's manufacturing plants located throughout North Carolina and Georgia.

The intent of the Department's certification is to include all workers of Ithaca Industries, Inc. who were adversely affected by increased imports. Accordingly, the Department is amending the worker certification to cover the workers of Ithaca Industries, Inc., Corporate Office, Wilkesboro, North Carolina.

The amended notice applicable to TA–W–37,261 is hereby issued as follows:

"All workers of Ithaca Industries, Inc., Glennville, Georgia (TA–W–37,261), and Corporate Office, Wilkesboro, North Carolina (TA–W–37,261A) who became totally or partially separated from employment on or after January 6, 1999 through March 1, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington D.C. this 1st day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14468 Filed 6–7–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37, 446]

Mulay Plastics Casa Grande, AZ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Mulay Plastics, Casa Grande, Arizona. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,446; Mulay Plastics, Casa Grande, Arizona.

(May 31, 2000)

Signed at Washington, D.C. this 31st day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14474 Filed 6–7–00; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3857]

Fort James Operating Company, Wauna Mill, Clatskanie, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 11, 2000, in response to a petition filed on behalf of workers at Fort James Operating Company, Wauna Mill, Clatskanie, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 30th day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14473 Filed 6–7–00; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3921]

Mid-American Electro-Cords, Riblet Products Corporation, Middlebury, Indiana; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on May 18, 2000, in response to a petition filed on May 15, 2000 on behalf of workers at Mid-American Electro-Cords, Riblet Products Corporation, Middlebury, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 1st day of June, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–14471 Filed 6–7–00; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–066]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Monday, July 10, 2000, 8:15 a.m. to 5:30 p.m.; Tuesday, July 11, 2000, 8:15 a.m. to 5:30 p.m; and Wednesday, July 12, 2000, 8:15 a.m. to noon.

ADDRESSES: NASA Headquarters, Conference Room 6H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Mars Program Restructuring
—OSS Strategic Plan
—OSS Program/Budget Status
—Theme Status Reports
—Explorer Program Status
—NASA-University Study
—Reports from Subcommittees
—Research Program Report

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 1, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–14372 Filed 6–7–00; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–067)]

NASA Advisory Council, Space Flight Advisory Committee (SFAC); Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Flight Advisory Committee.

DATES: Wednesday, June 28, 2000 from 8 a.m. until 11:30 a.m.; on Thursday, June 29, 2000 from 8 a.m. until 5 p.m.; and on Friday, June 30, 2000 from 8 a.m. until 2 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW, Room MIC 7, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mrs. Stacey Edgington, Code ML, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4519.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to seating capacity of the room. The agenda for the meeting is as follows:

—Shuttle upgrades review.
—Overview, status and metrics for Office of Space Flight programs.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 2, 2000.

Matthew Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–14374 Filed 6–7–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Continued Management of the Fund for U.S. Artists at International Festivals and Exhibitions

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to one (1) award of a Cooperative Agreement for continued management of the Fund for U.S. Artists at International Festivals and Exhibitions. This is a public-private partnership that ensures representation of the excellence, diversity, and vitality of the arts of the United States at international festivals and exhibitions worldwide. The work includes: identifying and resolving Fund operational issues; recommending policy positions; providing monthly activity and budget reports; linking artists with festivals abroad; promoting the Fund to U.S. artists; providing a structure to support performing artists and arts organizations invited to international festivals; and administering certain funds recommended for disbursal by the Federal Advisory Committee on International Exhibitions (FACIE) to support exhibitions that represent the United States at significant international venues. Those interested in receiving the solicitation package should reference Program Solicitation PS 00–06 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. It is anticipated that the Program Solicitation will also be posted on the Endowment's Web site at http://www.arts.gov.

DATES: Program Solicitation PS 00–06 is scheduled for release approximately June 28, 2000 with proposals due on August 1, 2000

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements.

[FR Doc. 00–14457 Filed 6–7–00; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that three meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Media Arts section (Creativity & Organizational Capacity categories)—June 26–28, 2000, Room 716. A portion of this meeting, from 1:45 p.m. to 2:45 p.m. on June 28th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on June 26th, from 9 a.m. to 6:30 p.m. on June 27th, and from 9 a.m. to 1:45 p.m. and 3:45 p.m. to 5:30 p.m. on June 28th will be closed.

Folk & Traditional Arts section (Creativity & Organizational Capacity categories)—June 22, 2000, Room 716, from 8:30 a.m. to 6 p.m. This will be a closed meeting.

Theater/Musical Theater section A (Creativity & Organizational Capacity categories)—July 10–14, 2000, Room 714. A portion of this meeting, from 3:30 p.m. to 5:30 p.m. on July 13th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 7 p.m. on July 10–12, from 9:30 a.m. to 3:30 p.m. on July 13th, and from 9:30 to 5 p.m. on July 14th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: June 1, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–14274 Filed 6–07–00; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 71, "Packaging and Transportation of Radioactive Material."

2. *Current OMB approval number:* 3150–0008.

3. *How often the collection is required:* Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.

4. *Who is required or asked to report:* All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

5. *The number of annual respondents:* 350 licensees.

6. *The number of hours needed annually to complete the requirement or request:* 57,012 hours for reporting requirements and 6,825 for recordkeeping requirements, or a total of 63,837 hours (approximately 182 hours per respondent).

7. *Abstract:* NRC regulations in 10 CFR Part 71 establish requirements for packing, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities.

Submit, by August 7, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 1st day of June 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–14285 Filed 6–7–00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–237]

Commonwealth Edison Company; Dresden Nuclear Power Station, Unit 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–19, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of the Dresden Nuclear Power Station, Unit 2, located in Grundy County, Illinois.

Environmental Assessment

Identification of the Proposed Action

Dresden, Unit 2, is currently licensed to operate 40 years commencing with the issuance of the construction permit on January 10, 1966. At present, the Facility Operating License for Dresden, Unit 2, expires on January 10, 2006. The licensee seeks an extension of the license term for Dresden, Unit 2, to allow it to operate until 40 years from the issuance of its Provisional Operating License. The Dresden, Unit 2, Provisional Operating License was issued on December 22, 1969. The proposed change would extend the license term for Dresden, Unit 2, to December 22, 2009. This action would extend the period of operation to the full 40 years, from the date of the Provisional Operating License, as provided by the Atomic Energy Act and the Code of Federal Regulations.

The proposed action is in accordance with the licensee's application for license amendment dated April 30, 1999.

The Need for the Proposed Action

The proposed action is needed to allow the licensee to continue to operate Dresden, Unit 2, for 40 years from the date of issuance of their Provisional Operating License. This extension would permit the unit to operate for the full 40-year design-basis lifetime, consistent with the Commission policy stated in Memorandum dated August 16, 1982, from William Dircks, Executive Director for Operations, to the Commissioners, and as evidenced by the issuance of more than 50 such extensions to other licensees.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that extending the Dresden, Unit 2, Facility Operating License No. DPR–19 for approximately forty-seven months would not create any new or unreviewed environmental impacts. This change does not involve any physical modifications to the facilities, and there are no new or unreviewed environmental impacts that were not considered as part of the *Final Environmental Statement related to operation of Dresden Nuclear Power Station, Units 2 and 3* (FES), dated November 1973, as supplemented by Environmental Assessment (EA) dated February 26, 1990, to extend the Unit 3 Facility Operating License to 40 years and EA dated June 7, 1990, to convert the Unit 2 Provisional Operating License to a 40-year full-term Facility Operating License. Evaluations for the FES, as supplemented by the EAs, considered a 40-year operating life. The considerations involved in the NRC staff's determination are discussed below.

Radiological Impacts of the Hypothetical Design-Basis Accidents

The offsite exposure from releases during postulated accidents was evaluated and found acceptable during the operating license stage and subsequent license amendments. This type of evaluation involves four issues: (1) Type and probability of postulated accidents, (2) the radioactivity releases calculated for each accident, (3) the assumed meteorological conditions, and (4) population size and distribution in the vicinity of the facility. The staff has concluded that neither the type and probability of postulated accidents nor the radioactivity releases calculated for each accident would change through the proposed extended operation. Also, the meteorological conditions are not expected to change during the proposed extended operation and, therefore, any further consideration is not warranted. Thus, the population size and distribution in the vicinity of the facility are the only time-dependent parameters that require consideration. Dresden Units 2 and 3 are located on the same site. The February 26, 1990, Unit 3 EA on extending the Unit 3 Facility Operating License to 40 years evaluated population changes to 2011. The staff used the same population assessment in the June 7, 1990, EA on converting the Unit 2 Provisional Operating License to a full-term Facility Operating License. Therefore, this licensing action, which extends the Unit 2 Facility Operating License to December 22, 2009, does not represent a change from what the staff previously evaluated and found acceptable. Further, there are no changes to the current exclusion area, low population zone, and nearest population center distance, and the licensee will continue to meet the requirements of 10 CFR 100.11(a) for the proposed license term extension. Also, there is no expected change in land usage during the license terms that would affect offsite dose calculations. Therefore, cumulative exposure to the general public due to a design-basis accident would not be adversely affected. Accordingly, the staff concludes that the proposed action will not significantly change previous conclusions regarding the potential environmental effects of offsite releases from postulated accident conditions.

Radiological Impacts of Annual Releases

On an annual basis, the licensee submits an Occupational Radiation Exposure Report to the NRC. The data show that the collective occupational exposure at Dresden is in a declining trend. The 3-year annual average collective occupational exposure per reactor at Dresden, Units 2 and 3, has dropped from about 614 person-rem/year in 1989 to about 243 person-rem/year in 1999. Through continued implementation of "As Low As Reasonably Achievable (ALARA)" and other programs, and by continuing to apply new techniques as they are developed by the industry, the licensee expects to minimize occupational exposure for Dresden, Unit 2, during the period of the license extension. Based on its review of historical radiation exposure data at Dresden, the licensee's continued implementation of ALARA, and the licensee's continued compliance with the requirements of 10 CFR Part 20, the staff concludes that the projected occupational exposures through the proposed extended period will continue to remain significantly below the exposures experienced during the first half of the plant's operation.

In accordance with the plant Technical Specifications (TSs), the licensee has established several radiation monitoring programs including a program that follows 10 CFR Part 50, Appendix I guidelines to maintain radiation doses to members of the public "As Low As Reasonably Achievable (ALARA)." The Appendix I guidelines establish radioactive design/dose objectives for liquid and gaseous offsite releases including iodine particulate radionuclides. In addition, routine releases to the environment are governed by 10 CFR Part 20, which states that such releases should be ALARA. Each year, the licensee submits an "Annual Radioactive Effluent Release Report" that provides an annual assessment of the radiation dose as a result of effluents released from the facility. These reports show that release of radioactive liquids and gases have historically been only a small percentage of the Appendix I guidelines. As a result of the continued implementation of the ALARA program, offsite exposures can be expected to remain lower than the Appendix I guidelines and FES estimates.

In accordance with plant TSs, the licensee has an established Radiological Environmental Monitoring Program by which the licensee monitors the effect of operation of its facilities on the environment. This is accomplished by continuously measuring radiation levels and airborne radioactivity levels and periodically measuring amounts of radioactivity in samples at various locations surrounding the plants. Continued environmental monitoring and surveillance under the program ensure early detection of any increase in exposures over the proposed license term extension.

Accordingly, the staff concludes that the radiological impact on the public due to the proposed license term extension would not increase over that previously evaluated in the FES and the occupational exposures will be consistent with the industry average and in accordance with 10 CFR Part 20.

The staff has reviewed the environmental impacts attributable to the transportation of spent fuel and waste from the Dresden site. With respect to the normal conditions of transport and possible accidents in transport, the staff concludes that the environmental impacts are bounded by those identified in Table S–4, "Environmental Impact of Transportation of Fuel and Waste to and from One Light-Water-Cooled Nuclear Power Reactor," of 10 CFR 51.52 for burnup levels up to 60,000 MWD/MTU and 5 weight percent U–235 enrichment (53 FR 6040 and 53 FR 30355). The staff concludes that the environmental impact related to the transportation of fuel and waste remains low and is not significantly increased by the change in the expiration date of the operating license.

Based on the conservative population estimate in the FES dated November 1973 and EAs dated February 26, 1990, and June 7, 1990, and low radiological exposure from plant releases during normal operation and postulated accidents, and the environmental monitoring program, the staff concludes that the radiological impact on the public due to the proposed action would be insignificant and the conclusions of the FES remain valid.

Environmental Impact of the Uranium Fuel Cycle

At present, Dresden, Unit 2, is licensed to store new fuel with enrichments up to 5.0 weight percent uranium-235 (U–235). In its EA dated February 29, 1988 (53 FR 6040), the staff concluded that the environmental impact of extended fuel irradiation up to 60,000 megawatt-days per metric ton uranium (MWD/MTU) and increased enrichment up to 5 weight percent are bounded by the impacts reported in Table S–4 of 10 CFR 51.52.

On March 3, 2000, the licensee submitted an application to extend fuel cycles from eighteen to twenty-four months. Based on twenty-four month cycle lengths, the total projected number of fuel cycles remaining at Unit 2 before the current Facility Operating License expiration date (January 10, 2006) is 3. The proposed extended operating license term will increase the number of Unit 2 fuel cycles to a total 5. The licensee has projected that Unit 2 will lose full core discharge capability in 2001, well before any operation under the proposed extended license term. The licensee states that it is pursuing various options including on-site dry cask storage to store additional fuel assemblies; such matters are beyond the scope of this license amendment.

Based on the above, the staff concludes that there are no significant changes in the environmental impact related to the uranium fuel cycle due to the proposed extended operation of Dresden, Unit 2.

Non-radiological Impacts

The major non-radiological impact of the plant on the environment is the operation of the plant's cooling water system and discharge to the Illinois River. The Illinois Environmental Protection Agency (IEPA), Division of Water Pollution Control, has reviewed and considered the environmental impacts of the Dresden, Unit 2, water discharge into the Illinois River in its issuance of the National Pollutant Discharge Elimination System (NPDES) permit and renewals. The NPDES permit is conditional upon the discharge's complying with provisions of the Illinois Environmental Protection Act and of the Clean Water Act (as amended or as supplemented by implementing guidelines and regulations). On August 28, 1995, the Board adopted and renewed NPDES permits to Dresden, Unit 2, until June 1, 2000. The Board found that discharges from Dresden, Unit 2, are consistent with its policy with respect to maintaining high quality waters in Illinois. The licensee will continue to abide by the NPDES permits and, accordingly, expects the IEPA to renew and issue NPDES permits every 5 years. Also, the proposed action does not involve any historic sites. Therefore, the NRC concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no action" alternative). Denial of the proposed action would result in Dresden, Unit 2, shutting down prematurely upon expiration of the present operating license.

Chapters 9 and 10 of the Dresden FES present alternatives and a cost-benefit analysis for Dresden, Units 2 and 3. Operation of Dresden, Unit 2, in the present plant configuration for approximately 4 additional years would only require incremental yearly costs. The environmental costs for the extended period of operation would be less than the cost of replacement power or the installation of new electrical generating capacity. Continued operation of the facility would avert potential non-radiological environmental effects of greenhouse gases and other airborne effluents from non-nuclear plants that would be required to operate in order to replace the power from Dresden, Unit 2. Moreover, the overall cost per year of the facility would decrease under the proposed action because the initial capital outlay and the decommissioning fund outlay would be averaged over a greater number of years. In summary, the cost-benefit advantage of Dresden, Unit 2, compared to alternative electrical generating capacity improves with the extended plant lifetime.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the FES for Dresden, Unit 2.

Agencies and Persons Consulted

In accordance with its stated policy, on May 9, 2000, the staff consulted with

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the Illinois State official, Mr. Frank Niziolek, of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 30, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library Component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 1st day of June 2000.

For the Nuclear Regulatory Commission.

Lawrence W. Rossbach,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–14492 Filed 6–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–37]

Commonwealth Edison Company, Dresden Nuclear Power Station, Unit 1; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption From Certain Requirements of 10 CFR Part 72

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 to Commonwealth Edison Company (ComEd). The requested exemption would allow ComEd to deviate from the requirements of Certificate of Compliance 1008 (the Certificate), Appendix B, Items 1.4.6.b and 1.4.6.c and place HI-STAR 100 Cask Systems, loaded with spent nuclear fuel, on a concrete storage pad with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material at the Dresden Nuclear Power Station (Dresden) Independent Spent Fuel Storage Installation (ISFSI).

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated April 24, 2000, ComEd requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 to deviate from the requirements of Certificate of Compliance 1008, Appendix B, Items 1.4.6.b and 1.4.6.c. ComEd is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K.

ComEd plans to use the HI-STAR 100 Cask System to store spent nuclear fuel, generated at Dresden Unit 1, at an ISFSI located in Morris, Illinois, on the Dresden Nuclear Power Station site. The Dresden ISFSI has been constructed for interim dry storage of spent nuclear fuel.

By exempting ComEd from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214, ComEd will be authorized to place loaded HI–STAR 100 Casks Systems on cask storage pads that include the following characteristics:

(1) Compressive Strength: ≤ 4,200 psi at 28 days.

(2) Reinforcement top and bottom (both directions): Reinforcement area and spacing determined by analysis Reinforcement shall be 60 ksi yield strength ASTM material.

The storage pad characteristics specified above would be in lieu of those specified in Certificate of Compliance 1008, Appendix B, Items 1.4.6.b and 1.4.6.c, respectively. The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

On November 24, 1999, as supplemented February 4, 18 and 28, and March 2, 16 and 31, 2000, the cask designer, Holtec International (Holtec), submitted to NRC an application to amend Certificate of Compliance 1008. The requested amendment includes revisions to the storage pad specifications in Items 1.4.6.b and 1.4.6.c in Appendix B to the Certificate. Item 1.4.6.b requires a concrete compressive strength of less than or equal to 4,200 psi; Holtec is requesting that this requirement be revised to specify a concrete compressive strength of less than or equal to 4,200 psi at 28 days. Item 1.4.6.c includes the requirement that the reinforcement yield strength be less than or equal to 60,000 psi; Holtec is requesting that this requirement be revised to specify that reinforcement shall be 60 ksi yield strength ASTM material. The NRC staff has reviewed the application and determined that placement of HI–STAR 100 Cask Systems on storage pads with the revised characteristics would have minimal impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action: There are a number of Dresden Unit 1 spent fuel assemblies in the Dresden Unit 2 spent fuel pool. To maintain full core offload capability in the Dresden Unit 2 spent fuel pool once new fuel arrives for the Fall 2001 refueling outage, ComEd needs to begin loading Dresden Unit 1 spent fuel into storage casks in June 2000. Unless the exemption is granted or the Certificate is amended, the storage pads at the Dresden ISFSI will not be in full conformance with the Certificate. Because the 10 CFR Part 72 rulemaking to amend the Certificate will not be completed prior to the date that ComEd plans to begin loading HI–STAR 100 Cask Systems, the NRC is granting this exemption based on the staff's technical review of information submitted by ComEd and Holtec.

Environmental Impacts of the Proposed Action: The potential environmental impact of using the HI–STAR 100 Cask System was initially presented in the Environmental Assessment (EA) for the Final Rule to add the HI–STAR 100 Cask System to the list of approved spent fuel storage casks in 10 CFR 72.214 (64 FR 171, 09/03/99). Furthermore, each general licensee must assess the environmental impacts of the specific ISFSI in accordance with the requirements of 10 CFR 72.212(b)(2). This section also requires the general licensee to perform written evaluations to demonstrate compliance with the environmental requirements of 10 CFR 72.104, "Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS [Monitored Retrievable Storage Installation]."

The HI–STAR 100 Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquake, design basis flood, accidental cask drop, lightning effects, fire, explosions, and other incidents.

The HI–STAR 100 Cask System consists of a stainless steel multi-purpose canister and a steel overpack. The welded MPC provides confinement and criticality control for the storage and transfer of spent nuclear fuel. The overpack provides radiation shielding and structural protection of the MPC during storage and handling operations. Special design feature requirements for the cask and for the site are specified in Certificate of Compliance 1008, Appendix B. These include the storage pad design characteristics.

Considering the specific cask and site design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. Without the loss of either containment, shielding, or criticality control, the risk to public health and safety is not compromised.

The staff performed a safety evaluation of the proposed exemption and the Certificate amendment. The proposed exemption and Certificate amendment request authorization to use storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days. This is a deviation from the pad requirement currently given in Certificate of Compliance 1008, Appendix B, Item 1.4.6.b, which does not specify a time frame for when the concrete compressive strength is to be measured. A time frame is necessary because concrete typically gets stronger as it ages. Measuring the concrete compressive strength at 28 days is standard practice. Thus, specifying a time frame of 28 days provides clarification and ensures that full compliance with the Certificate can be achieved.

The proposed exemption and Certificate amendment also request authorization to use storage pads with concrete reinforcement made of 60 ksi yield strength ASTM material. This is a deviation from the storage pad requirements currently given in Certificate of Compliance 1008, Appendix B, Item 1.4.6.c, which specifies a reinforcement yield strength of less than or equal to 60,000 psi. The standard practice for reinforcing bar specification and procurement is by the grade of the material. Reinforcing bar specified as Grade 60 has a nominal yield strength of 60 ksi and may in fact exceed 60 ksi. Thus, specifying the concrete reinforcement as "60 ksi yield strength ASTM material" takes into account that the yield strength is a nominal value and ensures that full compliance with the certificate can be achieved.

The staff found that the proposed exemption and Certificate amendment are consistent with the cask drop and tipover analyses presented in the Safety Analyses Report for the HI–STAR 100 Cask System and do not reduce the safety margin. In addition, the staff has determined that placement of loaded HI–STAR 100 Cask Systems on storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material does not pose any increased risk to public health and safety. Furthermore, the proposed action now under consideration would not change the potential environmental effects assessed in the initial rulemaking (64 FR 171, 09/03/99).

Therefore, the staff has determined that there is no reduction in the safety margin nor significant environmental impacts as a result of placing loaded HI–STAR 100 Cask Systems on storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request will have the same environmental impact.

Agencies and Persons Consulted: On May 19, 2000, Mr. F. Niziolek, Reactor Safety Section Head, Illinois Department of Nuclear Safety, was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 so that ComEd may place loaded HI–STAR 100 Cask Systems on concrete storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material at the Dresden ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this exemption request, see the ComEd exemption request dated April 24, 2000, which is docketed under 10 CFR Part 72, Docket No. 72–37.

The exemption request is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC, 20555.

Dated at Rockville, Maryland, this 1st day of June, 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–14494 Filed 6–7–00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket 72–36]

Southern Nuclear Operating Company, Inc., Edwin I. Hatch Nuclear Plant; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption from Certain Requirements of 10 CFR Part 72

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 to Southern Nuclear Operating Company, Inc. (SNC). The requested exemption would allow SNC to deviate from the requirements of Certificate of Compliance 1008 (the Certificate), Appendix B, Items 1.4.6.b and 1.4.6.c and place HI–STAR 100 Cask Systems, loaded with spent nuclear fuel, on a concrete storage pad with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material at the Edwin I. Hatch Nuclear Plant (Hatch) Independent Spent Fuel Storage Installation (ISFSI).

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated May 1, 2000, SNC requested an exemption from the requirements of 10 CFR 72.212(b)(2)(i) and 72.214 to deviate from the requirements of Certificate of Compliance 1008, Appendix B, Items 1.4.6.b and 1.4.6.c. The NRC staff determined that, to deviate from those conditions of the Certificate, an exemption from the requirement of 10 CFR 72.212(a)(2) is also necessary. SNC is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K.

SNC plans to use the HI–STAR 100 Cask System to store spent nuclear fuel, generated at Hatch, at an ISFSI located in Baxley, Georgia, on the Edwin I. Hatch Nuclear Plant site. The Hatch

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ISFSI has been constructed for interim dry storage of spent nuclear fuel.

By exempting SNC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214, SNC will be authorized to place loaded HI–STAR 100 Casks Systems on cask storage pads that include the following characteristics:

(1) Compressive Strength: ≤ 4,200 psi at 28 days.

(2) Reinforcement top and bottom (both directions): Reinforcement area and spacing determined by analysis Reinforcement shall be 60 ksi yield strength ASTM material.

The storage pad characteristics specified above would be in lieu of those specified in Certificate of Compliance 1008, Appendix B, Items 1.4.6.b and 1.4.6.c, respectively. The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

On November 24, 1999, as supplemented February 4, 18 and 28, and March 2, 16 and 31, 2000, the cask designer, Holtec International (Holtec), submitted to NRC an application to amend Certificate of Compliance 1008. The requested amendment includes revisions to the storage pad specifications in Items 1.4.6.b and 1.4.6.c in Appendix B to the Certificate. Item 1.4.6.b requires a concrete compressive strength of less than or equal to 4,200 psi; Holtec is requesting that this requirement be revised to specify a concrete compressive strength of less than or equal to 4,200 psi at 28 days. Item 1.4.6.c includes the requirement that the reinforcement yield strength be less than or equal to 60,000 psi; Holtec is requesting that this requirement be revised to specify that reinforcement shall be 60 ksi yield strength ASTM material. The NRC staff has reviewed the application and determined that placement of HI–STAR 100 Cask Systems on storage pads with the revised characteristics would have minimal impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action: SNC needs to reduce the inventory of spent nuclear fuel assemblies at the Hatch Units 1 and 2 spent fuel pools to maintain sufficient spent fuel storage capacity to provide full-core offload capability for Hatch Units 1 and 2. With the discharge of spent fuel from Unit 2 during the 1998 refueling outage, the combined capacity of the two spent fuel pools no longer provides adequate reserve to allow full-core offload for both Units 1 and 2. Following the Unit 1 Fall 2000 outage, the combined storage capacity of the Unit 1 and 2 spent fuel pools will be less than required to allow full-core discharge from either Unit 1 or 2. To allow preparation for the Unit 1 Fall 2000 refueling outage, SNC must begin cask loading activities in June 2000 and complete them by July 2000. Unless the exemption is granted or the Certificate is amended, the storage pads at the Hatch ISFSI will not be in full conformance with the Certificate. Because the 10 CFR Part 72 rulemaking to amend the Certificate will not be completed prior to the date that SNC plans to begin loading HI–STAR 100 Cask Systems, the NRC is granting this exemption based on the staff's technical review of information submitted by SNC and Holtec.

Environmental Impacts of the Proposed Action: The potential environmental impact of using the HI–STAR 100 Cask System was initially presented in the Environmental Assessment (EA) for the Final Rule to add the HI–STAR 100 Cask System to the list of approved spent fuel storage casks in 10 CFR 72.214 (64 FR 171, 09/03/99). Furthermore, each general licensee must assess the environmental impacts of the specific ISFSI in accordance with the requirements of 10 CFR 72.212(b)(2). This section also requires the general licensee to perform written evaluations to demonstrate compliance with the environmental requirements of 10 CFR 72.104, "Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS [Monitored Retrievable Storage Installation]."

The HI–STAR 100 Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquake, design basis flood, accidental cask drop, lightning effects, fire, explosions, and other incidents.

The HI–STAR 100 Cask System consists of a stainless steel multi-purpose canister and a steel overpack. The welded MPC provides confinement and criticality control for the storage and transfer of spent nuclear fuel. The overpack provides radiation shielding and structural protection of the MPC during storage and handling operations. Special design feature requirements for the cask and for the site are specified in Certificate of Compliance 1008, Appendix B. These include the storage pad design characteristics.

Considering the specific cask and site design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. Without the loss of either containment, shielding, or criticality control, the risk to public health and safety is not compromised.

The staff performed a safety evaluation of the proposed exemption and the Certificate amendment. The proposed exemption and Certificate amendment request authorization to use storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days. This is a deviation from the pad requirement currently given in Certificate of Compliance 1008, Appendix B, Item 1.4.6.b, which does not specify a time frame for when the concrete compressive strength is to be measured. A time frame is necessary because concrete typically gets stronger as it ages. Measuring the concrete compressive strength at 28 days is standard practice. Thus, specifying a time frame of 28 days provides clarification and ensures that full compliance with the Certificate can be achieved.

The proposed exemption and Certificate amendment also request authorization to use storage pads with concrete reinforcement made of 60 ksi yield strength ASTM material. This is a deviation from the storage pad requirements currently given in Certificate of Compliance 1008, Appendix B, Item 1.4.6.c, which specifies a reinforcement yield strength of less than or equal to 60,000 psi. The standard practice for reinforcing bar specification and procurement is by the grade of the material. Reinforcing bar specified as Grade 60 has a nominal yield strength of 60 ksi and may in fact exceed 60 ksi. Thus, specifying the concrete reinforcement as "60 ksi yield strength ASTM material" takes into account that the yield strength is a nominal value and ensures that full compliance with the certificate can be achieved.

The staff found that the proposed exemption and Certificate amendment are consistent with the cask drop and tipover analyses presented in the Safety Analyses Report for the HI-STAR 100 Cask System and do not reduce the safety margin. In addition, the staff has determined that placement of loaded HI-STAR 100 Cask Systems on storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material does not pose any increased risk to public health and safety. Furthermore, the proposed action now under consideration would not change the potential environmental effects assessed in the initial rulemaking (64 FR 171, 09/03/99).

Therefore, the staff has determined that there is no reduction in the safety margin nor significant environmental impacts as a result of placing loaded HI-STAR 100 Cask Systems on storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request will have the same environmental impact.

Agencies and Persons Consulted: On May 19, 2000, Mr. J. Setzer, State Liaison Officer, Environmental Protection Division, State of Georgia, was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), and 72.214 so that SNC may place loaded HI-STAR 100 Cask Systems on concrete storage pads with a concrete compressive strength of less than or equal to 4,200 psi at 28 days and concrete reinforcement of 60 ksi yield strength ASTM material at the Hatch ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this exemption request, see the SNC exemption request dated May 1, 2000, which is docketed under 10 CFR Part 72, Docket No. 72–36.

The exemption request is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC, 20555.

Dated at Rockville, Maryland, this 1st day of June, 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–14495 Filed 6–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nuclear Byproduct Material Risk Review; Results of Survey of NRC and Agreement State Materials Licensing and Inspection Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1712, "Nuclear Byproduct Material Risk Review: Results of Survey of NRC and Agreement State Materials Licensing and Inspection Personnel."

ADDRESSES: Copies of NUREG–1712 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, D.C. 20555–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Torre Taylor, Mail Stop TWFN 9–C–24, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: (301) 415–7900, e-mail: tmt@nrc.gov.

SUPPLEMENTARY INFORMATION: On August 25, 1999 (64 FR 46456), NRC published draft NUREG–1712, "Nuclear Byproduct Material Risk Review: Results of Survey of NRC and Agreement State Materials Licensing and Inspection Personnel" for public comment. All comments received during the comment period were considered in the preparation of the final NUREG report. The final version of NUREG–1712 is now available. The NUREG presents the results of a survey conducted of NRC and Agreement State materials licensing and inspection personnel concerning: (1) Typical annual doses to workers for the various systems defined for nuclear byproduct material uses; (2) safety of each system under various conditions; (3) the types and frequencies of incidents occurring at each system; (4) definitions of safety; and (5) opinions about the appropriate bases for regulatory decision making.

Electronic Access

NUREG–1712 will also be available at NRC's web site under Reference Library—Technical Reports or directly at http://www.nrc.gov/NRC/NUREGS/1712/index.html.

Dated at Rockville, Maryland, this 1st day of June, 2000.

For the Nuclear Regulatory Commission.

Patricia Holahan,

Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 00–14493 Filed 6–7–00; 8:45 am]

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PEACE CORPS

Office of Volunteer Recruitment and Selection; Information Collection Requests Under OMB Review; OMB Number: 0420–0001

AGENCY: Peace Corps.

ACTION: Notice of public use of form review request to the Office of Management and Budget.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the continued use of the National Agency Check Questionnaire for Peace Corps Volunteers Background Investigation. Section 22 of the Peace Corps Act (22 U.S.C. 2501 *et seq.*) mandates that "all persons employed or assigned to duties under the Act shall be investigated to ensure employment or assignment is consistent with national interest in accordance with standards and procedures established by the President."

DATES: The Peace Corps invites comments on or before July 10, 2000.

ADDRESSES: A copy of the information collection may be obtained from Paul Davis, Manager Placement Unit, Peace Corps, 1111 20th Street NW., Washington, DC 20526. Mr. Davis may be contacted by telephone at (202) 692–1836. Comments on these forms should be addressed to Mr. David Rostker, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20523.

Dated: June 1, 2000.

Michael J. Kole,

Director of Administrative Services and Certifying Official.

[FR Doc. 00–14458 Filed 6–5–00; 1:18 pm]

BILLING CODE 6051–01–M

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RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection:

Evidence for Application of Overall Minimum: OMB 3220–0083.

Under Section 3(f)(3) of the Railroad Retirement Act (RRA), the total monthly benefits payable to a railroad employee and his/her family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act. The Social Security Overall Minimum Guarantee is prescribed in 20 CFR 229. To administer this provision, the Railroad Retirement Board (RRB) requires information about a retired employee's spouse and child(ren) who would not be eligible for benefits under the RRA but would be eligible for benefits under the Social Security Act if the employee's railroad service had been covered by that Act. The RRB obtains the required information by the use of forms G–319 (Statement Regarding Family and Earnings for Special Guaranty Computation) and G–320 (Statement by Employee Annuitant Regarding Student Age 18–19). One form is completed by each respondent. The RRB proposes no changes to Form G–319 or Form G–320.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No(s).	Annual responses	Time (min)	Burden (hrs)
G–319 *Employee Completed:*			
With assistance	95	26	41
Without assistance	5	55	5
G–319 *Spouse Completed:*			
With assistance	95	30	48
Without assistance	5	60	5
G–320:			
With assistance	86	10	14
Without assistance	4	26	2
Total	290	.....	115

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–14459 Filed 6–7–00; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Voluntary Customer Surveys in Accordance with E.O. 12862.

(2) *Form(s) submitted:* G–201.

(3) *OMB Number:* 3220–0192.

(4) *Expiration date of current OMB clearance:* 7/31/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other-for-profit, Regulatory or Compliance.

(7) *Estimated annual number of respondents:* 2,050.

(8) *Total annual responses:* 2,050.

(9) *Total annual reporting hours:* 727.

(10) *Collection description:* The Railroad Retirement Board (RRB) utilizes voluntary customer surveys to ascertain customer satisfaction with the RRB in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys involve individuals that are direct or indirect beneficiaries of RRB services as well as railroad employers who must report earnings.

ADDITIONAL INFORMATION OR COMMENTS:

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Joe Lackey (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–14413 Filed 6–7–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 12, 2000.

Closed meetings will be held on Monday, June 12, 2000 at 10:30 a.m. and on Thursday, June 15, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9) (A) and (10), permit consideration for the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Monday, June 12, 2000 will be:

- An administrative proceeding of an enformcement nature.

The subject matter of the closed meeting scheduled for Thursday, June 15, 2000 will be:

- Institution of injunctive actions; and
- Institution and settlement of adminstrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meetng items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: June 5, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–14535 Filed 6–5–00; 4:19 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Published elsewhere in this issue.

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: June 5, 2000.

CHANGE IN THE MEETING: Cancellation of Meeting.

The closed meeting scheduled for Thursday, June 15, 2000 at 11 a.m. has been canceled.

Dated: June 6, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–14581 Filed 6–6–00; 11:10 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42862; File No. SR–CBOE–00–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Permit the Chairman of the Appropriate Floor Procedure Committee To Exercise the Authority of the Committee To Decrease the Size of Orders Eligible for Entry Into the Retail Automatic Execution System During Unusual Market Conditions

May 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to permit the Chairman of the appropriate Floor Procedure Committee ("FPC"), or the Chairman's designee, to exercise the authority of the Committee to decrease the size of orders eligible for entry into CBOE's Retail Automatic Execution System ("RAES") during unusual market conditions.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 1, 1998, the Commission approved a CBOE rule change that allowed the Chairman of the appropriate FPC, or the Chairman's designee, to exercise the authority of the FPC to *increase* the size of orders eligible for entry into RAES.[3] This measure, which has been successfully utilized at the Exchange, is exercised when the Chairman, or his/her designee, believes that taking such action could alleviate a potential backlog of unexecuted orders where an option class is experiencing a large influx of orders. It has allowed the Exchange to react more quickly and efficiently to potential backlog situations. However, CBOE rules do not currently allow the Chairman to decrease the contract size limit for orders eligible for entry into RAES (an ability that the FPC maintains pursuant to CBOE Rule 6.8(e)).

The Exchange now proposes to amend its rules to allow the Chairman of the appropriate FPC, or the Chairman's designee, to exercise the authority of the FPC to *decrease* the size of orders eligible for entry into RAES for equity option classes during unusual market conditions.

Exchange Rule 6.8(a)(i) states, "the appropriate Floor Procedure Committee shall determine the size of orders eligible for entry into RAES." Paragraph (e) of CBOE Rule 6.8 states that "[e]ligible orders must be for fifty or fewer contracts on series placed on the system * * *. The appropriate FPC, in its discretion, may determine to restrict the size and kind of eligible orders, including but not limited to, lowering contract limits." The FPCs, particularly the Equity Floor Procedure Committee ("EFPC"), have discovered through experience in overseeing the operation of RAES, that it is sometimes necessary to temporarily reduce the eligible order size levels (which are amounts that the Exchange has been aggressively increasing in recent years) in situations where unusual market conditions exist.

However, the decision to decrease the RAES eligible order size to address these unusual market situations must be made quickly to be effective. Because the EFPC commonly consists of twenty or more members who conduct business in all parts of the floor, it is not practicable to provide notice to all the

[3] See Securities Exchange Act Release No. 40736 (December 1, 1998), 63 FR 66323 (December 10, 1998) (File No. SR–CBOE–98–37).

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members of the Committee and convene a meeting to make these decisions. It is also not practicable to expect these members to monitor the situation when they are trying to conduct a business on the floor that requires their attention. Intra-day meetings are not only impracticable to convene but would distract these members from the conduct of their business on the floor.

Consequently, the EFPC has determined to delegate its authority under CBOE Rule 6.8 to the Chairman of the EFPC, or to the Chairman's designee, to decrease the eligible order size for RAES in unusual market conditions provided that the Chairman or his designee believes the action is warranted and provided the decision is made for no more than one trading day (as is currently the case for the Chairman increasing the order size eligibility for RAES). As proposed, to the extent the conditions exist on the following trading day, the Chairman or his designee must review the situation and make an independent decision to decrease the RAES eligible order size for that subsequent day. Further, any decisions made by the Chairman or his designee to decrease the RAES eligible order size for a particular option class for consecutive days will be reviewed by the FPC at its next regularly scheduled meeting. After reviewing these decisions the FPC can provide guidance to the Chairman or his designee about the use of this authority if they feel it is appropriate.

2. Statutory Basis

By allowing the Chairman of the appropriate FPC or his designee to make decisions to decrease the eligible order size for RAES, the Exchange can sustain the operation of RAES during unusual market conditions in an efficient manner. The filing, therefore, is consistent with and furthers the objectives of Section 6(b)(5) of the Act[4] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–00–10 and should be submitted by June 29, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14405 Filed 6–7–00; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42869; File No. SR–NASD–00–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Trade-Reporting of Average-Price Trades in Nasdaq-Listed Securities

May 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 17, 2000, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to require all transaction in Nasdaq-listed securities that are done on a weighted average basis or effected based on other special-pricing formulae, to be reported with a special .W indicator. Proposed deletions are in brackets.

* * * * *

Rule 4632. Transaction Reporting

(a)(1)–(5) No Change.

(6) All members shall report [agency cross] transactions occurring at prices based on average-weighting or other special-pricing formulae to Nasdaq using a special indicator, as designated by the Association and set out in the Symbol Directory.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq originally filed the proposal of May 11, 2000, pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2). On May 17, 2000, Nasdaq submitted a letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, Commission, amending the proposal ("Amendment No. 1"). In Amendment No. 1, Nasdaq requested that the Commission consider the proposal under Section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). Because Nasdaq amended the proposal to file it under Section 19(b)(3)(A) of the Act, the Commission considers the proposal re-filed as of the date of the amendment. Therefore, the date of the amendment is deemed the date of the filing of the proposal.

(7)–(8) No Change.

(b)–(f) No Change.

Rule 4642. Transaction Reporting

(a)(1)–(5) No Change.

(6) All members shall report [agency cross] transactions occurring at prices based on average-weighting or other special-pricing formulae to Nasdaq using a special indicator, as designated by the Association and set out in the Symbol Directory.

(7)–(8) No Change.

(b)–(f) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, the NASD filed SR–NASD–00–21 with the Commission to amend Rule 6420, Transaction Reporting, to require all transactions in exchange-listed securities that are executed in the over-the-counter market (*i.e.*, in the "Third Market") and that are executed on a weighted average or other special-pricing basis to be reported with a .W indicator.[4] The purpose of SR–NASD–00–21 is to increase pricing transparency and eliminate investor confusion that could occur if investors see prints go across the tape that are unrelated to the current market. Faced with similar concerns for Nasdaq-listed securities, Nasdaq proposes in this filing to amend NASD Rules 4632 and 4642, to require all transactions (not just agency crosses) in Nasdaq-listed securities that are executed on a weighted-average or other special-pricing formulae basis to be reported with a .W trade modifier.

By way of background, prior to proposing the amendments to NASD Rule 6420 for the listed environment, the NASD learned that a sizable number of trades in exchange-listed securities effected in the Third Market after hours are volume-weighted/special-pricing formula transactions, which are effected on a principal or riskless principal basis. These volume-weighted/special-pricing formula trades are often effected at a price unrelated to the close—or if effected during the trading day, the last sale—on the primary exchange. These trades are then reported to the NASD and the consolidated tape without a special modifier to denote they are being effected at a price *unrelated* to the last sale on the primary exchange. Because these trades are not effected as agency crosses and thus not subject to the .W reporting requirement in NASD Rule 6420(a)(6), they are reported to the NASD and the consolidated tape without a modifier. Consequently, these weighted average/special-pricing formula trades affect the reporting to the media and vendors of the last sale in the exchange-listed security. The reporting of trades on a weighted average/special-pricing formulae basis without a modifier creates investor confusion regarding the last sale price. Moreover, there exists the potential for disorderly markets when a security opens the next day on the primary exchange at a price that, although related to the last sale on the primary exchange, is unrelated to the last reported price that was effected on a weighted average basis on the previous day prior to 6:30 p.m. Eastern Time.[5] In response to these concerns, the NASD recently proposed to amend NASD Rule 6420 to require a .W trade modifier for all weighted average price trades, not just those effected on an agency-cross basis. This proposal (SR–NASD–00–21) currently is pending before the Commission.

Nasdaq believes that many of the same concerns associated with last sale reporting of weighted average or special-priced formula trades that exist for listed securities also exist for Nasdaq securities. In an effort to reduce investor confusion by increasing pricing transparency for last sale data, Nasdaq proposes to amend NASD Rules 4632 and 4642 to require the .W modifier for all weighted average and special-pricing formula trades that occur in Nasdaq-listed securities.

Specifically, NASD Rules 4632(a)(6) and 4642(a)(6) require members to append a .W to a trade report when effecting transactions occurring at prices based on average-weighting or other special-pricing formulae in the security. When adopted, the scope of Rules 4632(a)(6) and 4642(a)(6) was limited to agency cross trades effected on a weighted average or other special-pricing formulae basis because a majority of the trades, at the time, were being effected on an agency-cross basis. Since 1992, the market has changed in many ways. In particular, Nasdaq recently amended a number of its rules to allow certain systems, including the Automated Confirmation and Transaction System ("ACT"), to stay open until 6:30 p.m. to facilitate the reporting of trades executed after-hours.[6] As part of this initiative, Nasdaq amended Rules 4632 and 4642 to require members to report within 90 seconds transactions effected between 9:30 a.m. and 6:30 p.m. Prior to this change, the 90 second trade-reporting requirement applied to transactions effected between 9:30 a.m. and 5:15 p.m. and transaction effected between 5:15 and 6:30 p.m. were not subject to 90 second trade reporting requirements. Rather, such transactions were reported the next day (*i.e.*, T+1) on an "as of" basis.

One effect of the after-hours rule changes has been to subject transactions that previously were reported on an "as of" basis, T+1—because they were effected between 5:15 p.m. and 6:30—to 90 second trade reporting requirements. Similar to the listed environment, Nasdaq recently has learned that a sizable number of trades effected during the 5:15 p.m. and 6:30 p.m. time period are volume-weighted or special-pricing formula transactions, which are effected on a principal or riskless principal basis. These trades are often effected at a price unrelated to the close or if effected during the trading day, the last sale on Nasdaq. Because these trades are not executed as agency crosses, they are not subject to the .W reporting requirements in Rules 4632(a)(6) and 4642(a)(6). Thus, these trades are reported to the tape without a modifier. Nasdaq believes that there is the potential for investor confusion because these trades are often effected at a price unrelated to the current market, yet investors have no way of knowing this from the media report. Thus, investors may believe that the trade they are seeing represents the current market, when in actuality, the trade represents a price determined by a special formula. As a short-term method of alleviating confusion before this rule change could be proposed, the Nasdaq requested that NASD members report these weighted average trades effected between 4:00 and 6:30 p.m., on an "as of" basis, T+1.

In light of the foregoing efforts, the Nasdaq proposes to amend NASD Rules 4632 and 4642 to require all

[4] *See* SR–NASD–00–21.

[5] All times mentioned in this proposal are Eastern Standard times.

[6] *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (order approving File No. SR–NASD–99–57 on a pilot basis).

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transactions, not just agency crosses, in Nasdaq-listed securities that are based on a weighted average or other special-pricing formulae, to be reported with the .W modifer.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6)[7] of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. In addition, the Nasdaq believes that the proposed rule change furthers the objective set forth in Section 11A(a)(1)(C)(iii)[8] of the Act by ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Nasdaq believes that reporting transactions in exchange-listed securities that are marked with a special indicator to identify their unique pricing formulae is appropriate for regulatory purposes and reduces investor confusion with regard to these transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from May 17, 2000, the date on which it was filed and, since the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,[9] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–28 and should be submitted by June 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14407 Filed 6–7–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78k–1(a)(1)(C)(iii).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42876; File No. SR–NASD–99–59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Clarifying Certain Listing Standards of The Nasdaq Stock Market, Inc.

May 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 22, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Association submitted Amendments No. 1[3] and No. 2[4] to the proposed rule change on April 10, 2000, and April 27, 2000, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq has filed with the Commission a proposed rule change to clarify certain provisions of its listing standards. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4200. DEFINITIONS

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(19) No change

(20) *"Market Capitalization" means the closing bid price multiplied by total shares outstanding, including all common and convertible preferred shares (but excluding redeemable convertible preferred shares, other than preferred stock redeemable solely by issuer).*

(20)–(36) renumbered as (21)–(37)

(b) No change

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a) No change

(b) No change

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(7) No change

(8)(A) A failure to meet the continued inclusion requirements for a number of market makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. *Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.*

(B) No change

(C) A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(9)–(24) No change

(25) Corporate Government Requirements

* * * * *

(A)–(G) No change

(H) Shareholder Approval

(i) Each issuer shall require shareholder approval of a plan or arrangement under subparagraph a. below, or prior to the issuance of designated securities under subparagraph b., c., or d. below:

a. No change

b. when the issuance *or potential issuance* will result in a change of control of the issuer;

c. No change

d. in connection with a transaction other than a public offering involving:

1. the sale, [or] issuance *or potential issuance* by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

2. the sale, [or] issuance *or potential issuance* by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(ii)–(vi) No change

(26)–(28) No change

(d) No change

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify the inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1) No change

(2)(A) No change

(B) No change

(C) No change

(D) A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(E) In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.

(3)–(20) No change

(21) Corporate Governance Requirements

* * * * *

(A)–(G) No change

(H) Shareholder Approval

(i) Each issuer shall require shareholder approval of a plan or arrangement under subparagraph a. below, or prior to the issuance of designated securities under subparagraph b., c., or d. below:

a. No change

b. when the issuance *or potential issuance* will result in a change of control of the issuer;

c. No change

d. in connection with a transaction other than a public offering involving:

1. the sale, [or] issuance *or potential issuance* by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

2. the sale, [or] issuance *or potential issuance* by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(ii)–(vi) No change

(22)–(24) No change

(f) No change

4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), or (g) below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in the Nasdaq National Market upon prior application and with the written consent of the managing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated April 7, 2000 ("Amendment No. 1"). Amendment No. 1 clarifies that the proposed time frame for gaining compliance with the continued inclusion market capitalization standards applies to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. In addition, Amendment No. 1 clarified that the method for regaining compliance with the continued inclusion requirement for the number of market makers set forth in Rule 4310(c)(8)(A) applies to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. Finally, Amendment No. 1 makes certain technical corrections to the proposed rule change.

[4] See Letter to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated April 25, 2000 ("Amendment No. 2"). Amendment No. 2 clarifies that Rule 4310(c)(8)(C) is being amended to specify time frames for determining when an issuer is non-compliant or has regained compliance with the Association's market capitalization standards. Amendment No. 2 also clarifies that the NASD's Rule 4300 series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets forth additional requirements for those securities designated for the Nasdaq National Market.

[9] The Commission notes that Nasdaq gave the Commission notice of its intent to file the proposed rule change through its original filing of the proposal pursuant to Section 19(b)(2) of the Act on May 11, 2000.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

(a)–(c) No change

(d) *Rights and* Warrants

(1) *Rights or* warrants to purchase designated securities may be designated if [the warrants] *they* substantially meet the above criteria; provided, however, that they shall not be *subject to the publicly held shares, market value of publicly held shares, or bid price requirements and shall not be* required to meet the criteria set forth in paragraph (a)(2), *(b)(2), or (c)(1)* if immediately after the distribution, there are at least 450,000 *rights or* warrants outstanding.

(2) No change

(e) Computations

The computations required by paragraph (a)(1), (a)(5), and (b)(1) shall be taken from the issuer's most recent financial information filed with Nasdaq. The computations required in paragraphs (a)(2), (a)(3), (b)(2), (b)(3), (c)(1), and (c)(2) shall be as of the date of application of the issuer. Determinations of beneficial ownership for purposes of paragraphs (a)(2), (b)(2), and (c)(1) shall be made in accordance with SEC Rule 13d–3. In the case of American Depositary Receipts, the computations required by paragraphs (a)(1), (a)(5), and (b)(1) shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form S–12 under the Securities Act of 1933. *In the case of American Depositary Receipts, the underlying security will be considered when determining the computations required by paragraphs (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), (b)(1), (b)(2), (b)(3), (b)(6), (b)(7), (c)(1), (c)(2), (c)(5), and (c)(6) of this rule.*

(f)–(g) No change

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), and (f) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a)–(f) No change

(g) American Depositary Receipts

In the case of American Depositary Receipts, the underlying security will be considered when determining the ADR's qualification for continued inclusion on Nasdaq under paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (b)(1), (b)(2), (b)(3), and (b)(5) of this rule.

4460. Non-Quantitative Designation Criteria for Issuers Excepting Limited Partnerships

(a)–(h) No change

(i) Shareholder Approval

(1) Each NNM issuer shall require shareholder approval of a plan or arrangement under subparagraph (A) below, or prior to the issuance of designated securities under subparagraph (B), (C), or (D) below:

(A) No change

(B) when the issuance *or potential issuance* will result in a change of control of the issuer;

(C) No change

(D) in connection with a transaction other than a public offering involving:

(i) the sale, [or] issuance *or potential issuance* by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

(ii) the sale, [or] issuance *or potential issuance* by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(2)–(6) No change

(j)–(n) No change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nadaq is proposing certain clarifying, non-substantive amendments to certain provisions of its listing standards. Specifically, the proposed changes will: (1) Define market capitalization; (2) codify the time frames for determining compliance with the continued inclusion requirements for market capitalization and number of market makers; (3) clarify the need for shareholder approval for a transaction in which the *potential* issuance of shares could exceed the applicable threshold; (4) codify the method used to determine whether an American Depository Receipt complies with the listing standards; and (5) clarify the non-application of the publicly held shares, market value of publicly held shares, and bid price initial inclusion requirements to rights and warrants to be listed on the National Market.

Rule 4310(c)(2)(B)(ii) and 4450(b)(1)(A) set forth the market capitalization standards for continued inclusion on The Nasdaq SmallCap Market and the Nasdaq National Market, respectively. These rules, however, unlike the bid price requirement, do not provide time frames for determining when an issuer is non-compliant or when it has regained compliance with these standards. Accordingly, Nasdaq proposes to amend Rule 4310(c)(8)(C) [5] to clarify that a failure to meet the market capitalization continued inclusion requirement shall result if the deficiency continues for a period of ten consecutive business days and that compliance may be regained by meeting the applicable standard for a minimum of ten consecutive business days.[6] Furthermore, NASD rules do not define market capitalization. In making this calculation, Nasdaq has traditionally considered the market value of all common and convertible preferred stock (excluding redeemable convertible preferred shares other than preferred stock redeemable solely by the issuer).

[5] Although the time frames regarding compliance with the continued inclusion market capitalization standards are proposed to be set forth only in Rule 4310(c)(8)(A), these time frames, like those for the minimum bid price and market value of public float, are applicable to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. Specifically, the Rule 4300 Series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets forth additional requirements for those securities designated for the Nasdaq National Market. See Amendments No. 1 and 2, *supra* notes 3 and 4.

[6] Although this proposed rule, like the minimum bid price requirement, states that compliance may be regained by meeting the applicable standard for a minimum of ten consecutive business days, issuers are also required to demonstrate more than mere temporary compliance in order to protect the interests of prospective investors. *See, e.g., Ryan-Murphy, Inc.*, Securities Exchange Act Rel. No. 38999 (Sept. 2, 1997).

As such, Nasdaq proposes to codify this definition in proposed Rule 4200(a)(20).

Rule 4310(c)(8)(A) provides that an issuer that fails to meet the continued inclusion requirements for the number of market makers has 30 calendar days to regain compliance. The rule, however, does not indicate how the issuer can regain compliance. Consequently, Nasdaq proposes to amend this rule to provide that compliance is achieved by meeting the applicable standard for a minimum of ten consecutive business days, which is similar to the method for determining compliance with the bid price requirement.[7]

Rules 4310(c)(25)(H)(i)(b) and (d), 4320(e)(21)(H)(i)(b) and (d), and 4460(i)(1)(B) and (D) refer only to the issuance of shares in conjunction with the requirement for shareholder approval, while Rules 4310(c)(25)(H)(i)(c)(2), 4320(e)(21)(H)(i)(c)(2), and 4460(i)(1)(C)(ii), require shareholder approval based on the present or potential issuance of shares. Nevertheless, Nasdaq has consistently interpreted the former shareholder approval rules as including potential issuances in order to protect shareholders' right to vote on significant corporate transactions. The proposed rule changes would therefore conform the language of these rules.

Historically, Nasdaq has looked to the underlying security of an American Depositary Receipt (ADR) for determining compliance with certain standards (*e.g.*, round lot shareholders, number of shares in the public float, market value of public float, and market capitalization). Rule 4320 provides the initial and continued listing standards for ADRs, but does not make clear whether the underlying security should be considered when determining compliance. The proposed rule change would clarify the continued inclusion time frame requirements for market capitalization purposes, and the fact that the underlying security should be considered when determining compliance in the case of ADRs.

Rule 4420(d)(1) does not currently reference the initial listing of rights on the Nasdaq National Market. Specifically, although the Nasdaq National Market continued listing standards address both warrants and rights, the initial listing standards mention only warrants. This Rule also states that warrants to purchase designated securities may be listed on the Nasdaq National Market provided that they substantially meet the initial inclusion requirements applicable to common stock. Consistent with the industry practices for pricing this type of security, Nasdaq has not historically required issuers to satisfy the publicly held shares, market value of publicly held shares, or bid price initial inclusion standards. As such, Nasdaq proposes to amend this rule to clarify that the initial inclusion rules apply to rights as well as warrants and that issuers are not required to satisfy the publicly held shares, market value of publicly held shares, or bid price initial inclusion standards with respect to rights or warrants.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act [9] which requires, among other things, the Association's rules to be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. As noted above, Nasdaq's proposed rule changes are aimed at clarifying certain listing standards, thus providing greater transparency in the rules for issuers and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate, up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Association consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–99–69 and should be submitted by June 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14447 Filed 6–07–00; 8:45 am]

BILLING CODE 8010–01–M

[7] Although the method of regaining compliance with the continued inclusion requirement for the number of market makers is proposed to be set forth only in Rule 4310(c)(8)(A), the method for regaining compliance is applicable to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. As stated previously, the Rule 4300 Series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series sets forth additional requirements for those securities designated for the Nasdaq National Market. *See* Amendments No. 1 and 2, *supra* notes 3 and 4.

[8] Issuers, however, must continue to comply with the requirement that there be at least 450,000 warrants outstanding immediately after the public distribution as set forth in existing NASD Rule 4420(d)(1). This rule is also being amended to clarify existing Nasdaq policy that there must be 450,000 rights outstanding immediately after the public distribution.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42863; File No. SR–NYSE–99–30]

Self-Regulatory Organizations; New York Stock Exchange Inc., Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 Relating to NYSE's Procedures for Delisting a Security and Related Issuer Appeals

May 30, 2000.

I. Introduction

On June 23, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its procedures for delisting a security and the accompanying appeals process available to the issuer. The Exchange submitted Amendment No. 1 to its proposal on December 27, 1999,[3] Amendment No. 2 on March 9, 2000,[4] and Amendment No. 3 on March 26, 2000.[5]

The proposed rule change, as amended, was published for comment in the **Federal Register** on April 20, 2000.[6] No comments were received on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange is proposing to modify the Exchange's procedures for delisting a security and related issuer appeals. The Exchange proposes to amend its process by changing the composition of the Committee for Review of the Exchange's Board of Directors, which hears delisting appeals by issuers, to consist of its Public Directors and one of its Industry Directors and by allowing the Committee to meet by telephone without seeking the permission of the Chairman of the Board.

The Exchange also proposes to issue a press release disclosing the status of a company that the Exchange has determined should be removed from the list, along with the rationale for that determination. In addition, the Exchange is proposing to append an identifier suffix to the ticker symbols of securities that have been determined by Exchange staff to warrant suspension and delisting. The Exchange would also append an identifier suffix during a transition by a listing company that falls below the continued listing criteria to another market.

Finally, in a change that the Exchange believes will address both timing and the anomaly of hearing an issuer's listing appeal *after* the suspension in trading, the appeal would also generally stay the suspension of trading. Reviews would be conducted on the next monthly review day, which is at least 25 business days from the date the issuer's request for review is filed with the Exchange.

Specifically, with regard to the changes to the appeal process and the implementation of a press release requirement, the Exchange proposes to amend its Listed Company Manual ("Manual") and NYSE Rule 499 as follows:

1. Implement a press release process triggered by a staff decision to suspend and delist security;

2. Clarify that a request for appeal would stay the suspension unless the staff determines that a stay is contrary to the interest of the public and investors;

3. Specify that issuers can request to appear before the Committee for Review and that the Committee may grant or deny such request, provided that an explicit rationale for a denial is provided;

4. Shorten the time periods relating to the appeal process such that (a) the issuer must notify the Exchange of its intent to appeal within ten business days of receiving notice that the Exchange staff has determined that its security should be delisted and (b) written submissions must be served within seventeen business days from the date the issuer received notice of its right to a review; and

5. Clarify that counterparty service is the responsibility of each party (not the Exchange's Office of the General Counsel) and that such service must be made in the same manner as service on the Office of the General Counsel.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public.

The Commission believes that the proposal strikes a reasonable balance between the Exchange's obligation to protect investors and their confidence in the market, with its parallel obligation to perfect the mechanism of a free and open market, by providing investors with notice when a company is being considered for delisting by the Exchange by issuing a press release and appending a suffix to the security. The Commission believes that some investors may consider the NYSE's intent to delist a security from the Exchange an important factor in their investment decision. The proposed rule change allows investors to consider this factor while continuing to allow the securities to be traded on the Exchange pending the listed company's appeal.

The Commission also believes that the proposal provides fair procedures for issuers, while giving the Exchange the ability to delist an issuer that has failed to meet the Exchange's standards for continued listing. The Commission believes that the proposed appeals process is fair to issuers because it would allow companies to appeal suspension decisions, require written denials for oral appeals, and generally allow companies to trade on the NYSE pending their appeal. The Commission believes this process should ensure that the issuer's concerns are heard, yet eliminate unreasonable delays between the time that a company is identified as not meeting the continued listing requirements and the suspension of its securities from trading.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–99–30) is approved, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 21, 1999 ("Amendment No. 1").

[4] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated March 7, 2000 ("Amendment No. 2").

[5] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Belinda Blaine, Associate Director, Division, Commission, dated March 23, 2000 ("Amendment No. 3").

[6] Securities Exchange Act Release No. 42689 (April 13, 2000), 65 FR 21230.

[7] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14448 Filed 6–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42884; File No. SR–OCC–99–16]

Self Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Exercises by Put Holders During a Shortage of the Underlying Security

June 1, 2000.

On November 2, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–99–16) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on March 29, 2000.[2] On April 10, 2000, OCC filed an amendment to the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

OCC is amending Article VI, Section 19 of its By-laws to eliminate OCC's authority to prohibit exercises by put holders that would be unable to deliver the underlying security due to a shortage of the underlying security. In lieu thereof, the amended By-laws give OCC the right to suspend settlement until it can determine whether the unavailability of the underlying stock will extend past the option expiration date and upon making that determination to take the appropriate action under Article VI, Section 19(b) or (c). Thus, the rule change allows OCC to protect the benefit of the put holder's bargain and to treat puts and calls equally when there is a shortage of the underlying securities.

A similar change will be made to Article XV, Section 3 and Article XX, Section 3 with respect to dollar-denominated and cross-rate foreign currency options by deleting Article XV, Section 3 (b)(2) and Article XX, Section 3(b)(2). The deletions will conform the treatment of foreign currency puts to the treatment of equity puts by eliminating OCC's authority to prohibit exercises by put holders who would be unable to deliver the underlying interest. OCC already has the authority to fix cash settlement prices for foreign currency puts in appropriate circumstances.

Finally, Article XXIV, Section 5 of OCC's By-laws, which relates to buy-write options unitary derivatives (BOUNDs),[4] has been amended to conform OCC's treatment of BOUNDs put holders in shortage situations with its treatment of equity and foreign currency options holders in similar situations.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency not be designed to permit unfair discrimination among participants in the use of the clearing agency. The Commission finds that OCC's rule change is consistent with OCC's obligation under the Act because it amends OCC's rules so that put and call holders are treated similarly when there is a shortage of the underlying security.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–99–16) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14408 Filed 6–7–00; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 42563 (Mar. 22, 2000), 65 FR 16679.

[3] OCC amended its proposed rule change to extend the proposed change to cover foreign currency options and cross-rate foreign currency options. Because the amendment made no substantive changes to OCC's proposal other than to include additional option products OCC clears, republication of notice was not required.

[4] See Securities Exchange Act Release No. 37603 (Aug. 26, 1996) 61 FR 46500 (Sept. 3, 1996), for amendments to OCC's By-laws and Rules to provide for the issuance, clearance, and settlement of BOUNDs.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42861; File No. SR–PCX–99–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to House-Keeping Amendments to Rules on Floor Brokers

May 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rules 19b–4 thereunder,[2] notice is hereby given that on November 5, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange")) filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Additionally, on March 23, 2000, the Exchange filed with the Commission Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify its options Floor Broker rules by renumbering certain Options Floor Procedure Advices ("OFPAs"), clarifying existing provisions, eliminating superfluous provisions, and incorporating current policies and procedures into the text of Rule 6. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Senior Special Counsel, Division of Market Regulations, SEC, dated March 22, 2000. The Amendment corrects several typographical errors and clarifies the wording of the proposed rule change.

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forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With regard to current PCX rules governing activities of Floor Brokers, the Exchange is proposing to make the following changes to the text of Rule 6 ("Options Trading—Rules Principally Applicable to Trading of Options Contracts"):

First, the Exchange proposes to change the procedures on registration of Floor Brokers pursuant to Rule 6.44.[4] Currently, the application for registration as a Floor Broker will be approved when the applicant passes a Floor Broker examination. The Exchange proposes to eliminate the current rule provision stating that the Options Floor Trading Committee ("OFTC") must review and approve each application as outlined in Rule 6.44. The Exchange believes that the OFTC review and approval of each Floor Broker is unnecessary because each Floor Broker's name is routinely posted. If there are any problems with a particular Floor Broker that the Exchange has not otherwise identified, those problems can be brought to the attention of the Exchange's Membership Committee before the Floor Broker's application for membership is approved. In addition, the rule, as amended, will provide that an applicant Floor Broker's name will be posted on the bulletin board of the floor of the Exchange for ten calendar days (rather than three business days, as currently stated).[5]

Second, the Exchange proposes to add a provision to Rule 6.45 which states that, regarding FLEX Options, "Floor Brokers may not act as such in respect of FLEX Options contracts unless one or more Letter(s) of Authorization on behalf of such Floor Brokers has been issued by a Clearing Member in accordance with Rule 8.115(b)." This restates the same requirement as provided in Rule 8.115(b), and is being added to centralize the obligations of Floor Brokers in one section of the rules.

Third, the Exchange proposes to renumber OFPA A–10, Subject: Broker Responsibility on Print Throughs, as Rule 6.46(d).[6] The Exchange also proposes to make technical changes to new Rule 6.46(d). Specifically, the Exchange proposes to eliminate the third sentence of OFPA A–10, (proposed Rule 6.46(d)), which states that "[w]ith respect to trading during the day, the Options Floor Trading Committee finds that it is a generally accepted industry practice that a Broker is responsible for whatever number of contracts print-through a limit order." The Exchange proposes to eliminate this language because it believes it is redundant and superfluous given the text of Rule 6.46 pertaining to the responsibilities of Floor Brokers and proposed Rule 6.46(d), which requires that Floor Brokers take responsibility for print-throughs. The Exchange proposes this rule change to centralize the responsibilities of Floor Broker with respect to print-throughs.

Fourth, the Exchange proposes to renumber OFPA A–11, Subject: Broker Responsibility to Cancel Best Bid or Best Offer, as Rule 6.46(e).[7] The Exchange proposes this change to centralize the responsibilities of Floor Brokers with respect to their responsibilities to cancel bids and offers.

Fifth, the Exchange proposes to renumber OFPA D–4, Use of Order Which Specify More than One Contract, as Rule 6.46(f).[8] The Exchange proposes to clarify the types of orders referred to in this rule. Specifically, where Floor Brokers may accept orders that bid for or offer a specified number of contracts and no less, the Exchange proposes to codify that these orders include designated as "fill or kill," "all or none," or "immediate or cancel," (including such orders specifying that any unfilled portion of a multiple order is to be immediately canceled). However, the Floor Brokers must assure that all such orders (including the contingency) are vocalized in the trading crowd, and that the bid or offer is not disseminated. The Exchange proposes this change to clarify and centralize the responsibilities of Floor Brokers with respect to trading responsibilities.

Sixth, the Exchange also proposes to change Rule 6.46, Commentary .02, which currently requires Floor Brokers to make all persons in the trading crowd aware of each request for a quote. Since this requirement is not feasible when applied to large, active trading crowds, the Exchange proposes to modify the rule to require Floor Brokers to make reasonable attempts to make all persons in the crowd aware of such requests.

Seventh, the Exchange proposes to add Rule 6.47(c)(5), relating to crossing of solicited orders, to allow a Floor Broker to step out of a crowd to solicit interest, after announcing an order, and then return to the crowd without re-announcing the order if he continued to be within hearing distance while outside the crowd. Specifically, the Exchange proposes that if a Floor Broker announces an order in the trading crowd, and then steps out of the trading crowd to solicit interest, but continues to be within hearing distance, the Floor Broker need not re-announce the order upon returning to the trading crowd. This change is intended to codify the current practice on the trading floor.

Eighth, the Exchange proposes to renumber OFPA A–6, Subject: Responsibility of Floor Brokers in Effecting A Cross Trassanaction as new PCX Rules 6.47(d), (e) and (f).[9] Specifically, the Exchange proposes to renumber paragraph one of OFPA A–6, pertaining to the requirement of a Floor Broker to allow members in the trading crowd a reasonable period in which to respond to the bid and/or offer prior to consummating a cross transaction, as Rule 6.47(d).

The Exchange also proposes to renumber the second and third paragraphs of OFPA A–6 as Rule 6.47(e). The second and third paragraphs of OFPA AA–6 pertain to situations when a Floor Broker may deem it necessary to place one side of the proposed cross transactions on the Order Book with the intention of effecting the cross transaction with the Order Book.

With respect to the renumbering of OFPA AA–6, the Exchange proposes to renumber the fourth and fifth paragraphs of OFPA AA–6, pertaining to stock/option orders, as Rule 6.47(f). The Exchange proposes these changes to centralize rules relating to crossing transactions within Rule 6.47.

Ninth, the Exchange proposes to renumber OFPA AA–9, Subject: Discretionary Transactions (Floor Brokers) as Rule 6.48(b).[10] The Exchange also proposes to renumber OFPA BA–10, Subject: Discretionary Transactions by Market Makers, as Rule 6.48(c).[11] The Exchange proposes to renumber OFPA A–9 and B–10 to centralize obligations of Members regarding Discretionary Transactions by Floor Brokers and Market Makers.

Tenth, the Exchange proposes to adopt new Rule 6.49(a) to provide that Floor Brokers who are required to establish and maintain error accounts pursuant to Rule 4.21 may only use such accounts for the purpose of correcting bona fide errors. The Exchange proposes this rule change to clarify the Floor Broker's proper use of an error account. This change is consistent with the provisions of Rule 6.14.

Finally, the Exchange proposes to renumber OFPA A–2, Subject: Floor Broker Acting as Both Principal and Agent in the Same Transaction, as Rule 6.50.[12] The Exchange proposes these changes to centralize all rules applicable to Floor Brokers with respect to use of error accounts.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b)[13] of the Act, in general, and Section 6(b)(5)[14] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

[4] Rule 6.44 currently states that:

"An applicant for registration as a Floor Broker shall file his application in writing with the Department of Operations on such forms as the Exchange may prescribe. Applications shall be reviewed by the Options Floor Trading Committee, which shall consider an applicant's ability as demonstrated by his passing a Floor Broker examination prescribed by the Exchange, or such other factors as the Option Floor Trading Committee deems appropriate. After reviewing the application, the Options Floor Trading Committee shall either approve or disapprove the applicant's registration as a Floor Broker. Before a registration shall become effective, the Exchange, upon direction of the Options Floor Trading Committee, shall post the name of the applicant on the bulletin board on the Floor of the Exchange for at least three (3) business days. The registration of any person as a Floor Broker may be suspended or terminated by the Options Floor Trading Committee upon a determination that such person has failed to perform properly as a Floor Broker."

[5] Similar changes are proposed for registration of Market Makers under Rule 6.33. See Securities Exchange Act Release No. 42035 (Oct. 19, 1999), 64 FR 57681 (Oct. 26, 1999) (File No. SR–PCX–99–13).

[6] OFPA A–10 states that:

"Pursuant to Rule 6.46(a), the Options Floor Trading Committee has made a determination regarding print-throughs on limit orders held either by a Floor Broker, or an Order Book Official. This determination distinguishes print-throughs which occur intra-day from print-throughs occurring on the opening. With respect to trading during the day, the Options Floor Trading Committee finds that it is a generally accepted industry practice that a Broker is responsible for whatever number of contracts print-through a limit order. when a print-through is discovered, the Broker should ascertain whether the limit price or a more favorable price is available. If a more favorable price is available, the order for the customer should be filled at the more favorable price; if a more favorable price is not available, the Broker, or the Exchange, to the extent provided in Rule 6.59, in the case of a Book trade, is responsible at the original limit price for whatever number of contracts have traded-through the limit. The Options Floor Trading Committee has determined that print-throughs on the opening should be treated differently than those which occur intra-day. On the opening, the Floor Broker, or the Exchange, to the extent provided in Rule 6.59, in the case of a Book trade, is responsible for the number of contracts which trade-through the customer's limit at the opening price, rather than at the limit price. If a more favorable price than the opening price is available, the order should be filled at the more favorable price."

[7] OFPA A–11 states that:

"Under certain circumstances a best bid or best or best offer is disseminated as a result of an order presented by a Floor Broker. It shall be the responsibility of the Floor Broker holding such order to instruct the Order Book staff to remove such bid or offer when it is canceled or when such order which represented such best bid or offer has been filled in its entirety."

[8] OFPA D–4 states that:

"Rule 6.74 states in part: 'A bid or offer for more than one option contract shall be deemed to be for that amount or any lesser number of option contracts, unless specified otherwise.' This Rule permits Floor Brokers to accept orders which bid for or offer a specified number of contracts and no less. Thus the Rule permits vocalization of such bids or offers in the trading crowds. However, any Floor Broker making a bid or offer contingent upon the execution of a specified amount of contracts must vocalize such contingent [sic] and should use diligence in assuring that the posted market does not reflect such bid or offer. 'Immediate or cancel' orders which specify that any unfilled portion of a multiple order is to be immediately canceled, are covered by this provision."

[9] "Floor Brokers are cautioned that they must allow members in the trading crowd a reasonable period in which to respond to the bid and/or offer prior to consummating the cross transaction. While the Options Floor Trading Committee will not attempt to define a reasonable period in terms of a specific time limit, they will deem an obvious attempt to execute the cross in an uninterrupted sequence with the announcement of the bid and offer to be a violation of Rule 6.47, and grounds for objection to the cross transaction. In some instances, a Floor Broker may deem it necessary to place one side of the proposed cross transaction on the Order Book with the intention of effecting the cross transacting with the Order Book. To effect such a transaction, the Floor Broker must use the following procedure: Following the announcement of the new bid or offer by the Order Book Official or his clerk, the Floor Broker must again request a market in the series, and upon determination that the bid or offer represented by the Order Book is the best market, he may then execute the cross by trading with the order on the Book. When a stock/option order is taken to a crowd for execution, the stock transaction must be effected prior to the option transaction pursuant to Rule 6.47, Commentary .04. The following procedure should be observed: After agreement with other members of the crowd has been reached as to the terms of the transaction, the option order tickets shall be written up and time-stamped. However, the order tickets should not be turned in to the Order Book Official at this time. The members shall attempt to immediately effect the transaction in the underlying or related security. If the stock transaction cannot be executed immediately or is effected at a price different than the agreed-upon price, the members shall not be held to the option transaction. If the stock transaction is effected at the agreed-upon price, then all the members who participated in the option transaction shall be held to their agreed-upon price. At the time the stock transaction is effected, the option trade tickets should be given to the Order Book Official. This procedure applies to all executions of stock/option orders."

[10] OFPA A–9 states that:

"Pursuant to Rule 6.48, the Options Floor Trading Committee has determined that no Floor Broker shall hold concurrently a 'not held' market order to buy [sic] a 'not held' market order to sell (or orders which have the effect of such 'not held' market orders to buy and to sell) the same series of options for the same account or for accounts of the same beneficial owner. Holding such orders will be interpreted as allowing the Floor Broker discretion with respect to whether to purchase or sell such options. A 'not held' order is an order market 'not held,' 'NH' or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed."

[11] OFPA B–10 states that:

"Rule 6.48 provides that a Floor Broker shall not exercise discretion with respect to choice of class or series of options to be bought or sold, number of contracts to be bought or sold, or whether the transaction shall be a purchase or a sale. It further provides that a Market Maker shall not exercise discretion over an account unless he has a direct interest in such account. The Options Floor Trading Committee has determined that a Market Maker may not exercise discretion over any account other than: (i) A joint account approved pursuant to Rule 6.39, or (ii) an account in which he has a direct interest. For purposes of this Advice and Rule 6.48, the term 'direct interest' in an account shall be limited in its meaning to include only a participation in the profits and losses in such account, or in the case of a partnership or corporation, a representative of such partnership or corporation who has a supervisory responsibility over such account. Furthermore, only persons registered as Market Makers and subject to the performance obligations set forth in Rule 6.37, may exercise discretion over an account. A Market Maker wishing to effect such discretionary transactions for accounts other than his personal account or a joint account must enter the order with a Floor Broker and the procedures set forth in Options Floor Procedure Advice BA–6 shall be applicable with the following modifications: (A) The name of the Market Maker for whom the transaction is being executed must be printed at the bottom of the ticket (BA–6A–1(c)), along with the badge number of the Market Maker exercising discretion (*i.e.*, Joe Trader/M07); and (B) A 'D' shall be placed after the Market Maker's number, for whose account the trade is executed, in the firm box (*i.e.*, M05 D). NOTE: The identification of the order as a discretionary order is required under Rule VI, Section 43(7), 'Record of Orders.'"

[12] OFPA A–2 states that:

"Under Rule 6.43, a Floor Broker 'is an individual * * * who is registered with the Exchange for the purpose, while on the Exchange Floor, of accepting and executing option orders received from members.' Pursuant to this Rule, a Floor Broker holding an agency order shall under no circumstances fill any part of such order as principal unless he inadvertenly 'misses the market' for the account of his customer and, owing a report at a specified price or better, cannot effect the necessary transaction except by filling all or some portion of the order as principal. For the purposes of facilitating a customer order via the firm error account, in connection with a broker's 'missing the market,' the Options Floor Trading Committee has determined that the following procedures shall be applicable. (1) Floor Broker errors (positions resulting from a broker's error or omission) shall be liquidated promptly except for unusual circumstances which are beyond the control of such Floor Broker. (2) Error account positions not liquidated by the next business day shall be maintained in a customer (investment) account and subject to customer margin. (3) Error account positions, not initially established as part of an investment transaction (*i.e.*, executed as agent) may not subsequently be transferred, adjusted, or journaled into a market maker account. (4) The price and size of the transaction, if made through the Exchange's adjustment system, must be justified by the market condition at the time the order was entered, if it was a market order and at the limit or better if it was a limit order."

[13] 15 USC 78f(b).

[14] 15 USC 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–45 and should be submitted by June 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14406 Filed 6–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42866; File No. SR–Phlx–00–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Codifying a Provision Implementing a Closing Rotation on the Last Day of Each Calendar Quarter

May 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 16, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 1047 to codify a provision implementing a closing rotation on the last trading day of each calendar quarter. Specifically, Phlx Rule 1047, Commentary .01(e) would provide that on the last day of each calendar quarter, a closing rotation for some equity options series may be commenced at 4:02 p.m. or after the closing price of the stock in its primary market is established, whichever is later. Orders will not be accepted at or after 4:02 p.m. The trading floor will be given prior notice regarding which options series will be subject to a closing rotation. The text of the proposed rule is available at the Exchange and at the Commission.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, under Phlx Rule 1047, Commentary .01, two Floor Officials, with the concurrence of a Market Regulation Officer, may direct that a trading rotation be employed to aid in producing a fair and orderly market and shall specify for each trading rotation, the options contracts to be included and the sequence of such options contracts in the rotation. According to the Phlx, this provision is commonly relied upon to permit quarterly rotations.

The Phlx is proposing to amend its Rule 1047 to expressly provide for closing rotations on the last trading day of each calendar quarter, for certain equity options traded on the Phlx. The Exchange will provide prior notice to the trading floor of which options series will be subject to a closing rotation. As with other rotations, the procedures governing quarterly closing rotations will require that two Floor Officials and a Market Regulation Officer may direct that the rotation take place. They will specify the particular equity options contracts to be included and the sequence of such options contracts in the rotation.

The Exchange believes that on the last day of the calendar quarter there is increased order flow in exchange-traded options and in the underlying securities, particularly at the end of the trading day. For instance, many large money managers adjust their positions at the end of the calendar quarter for tax reasons. As a result of this activity in both the underlying and the options market, the last sale print for many stocks is often delayed. Therefore, the Exchange believes that it is important to provide the opportunity for a closing rotation at the end of each calendar quarter to account for late prints and increased order flow. These rotations will allow the Exchange members to adjust options prices in line with the closing prices of the underlying securities.

In addition, quarterly rotations allow the execution at the end of the day of orders at a single price more efficiently. The closing rotation will also give investors and other interested parties more accurate closing prices for Phlx options on these high volume days. The Exchange believes that a specific rule governing quarterly closing rotation acts as notification to the investing public that a quarterly rotation may take place. However, the Exchange believes that the procedure described above also allows flexibility for those equity options series which do not experience increased activity, and, thus, will not be subject to a closing rotation.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5)[4] in particular, in that it is designed to promote just and equitable principles of trade and provide for a fair and orderly market by codifying specific provisions which allow the Exchange to conduct quarterly rotations in order to account for late prints and high amounts of order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx represents that it does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(1)[6] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. Phlx Rule 1047 currently provides the authority to floor officials to direct trading rotations in specific option classes, thus the Exchange believes the proposal satisfies the requirements of Rule 19b–4(f)(1). This proposed rule change serves as clarification to note that there may be closing rotations in certain equity options on the last day of the calendar quarter.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and coping in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File No. SR–Phlx–00–27 and should be submitted by June 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14403 Filed 6–07–00; 8:45 am]

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42868; File No. SR–Phlx–99–26]

Self-Regulatory Organizations; Order Approving Proposed Amendment to the By-Laws and Corresponding Changes to the Rules of the Philadelphia Stock Exchange, Inc., Relating to Various Committees

May 31, 2000.

I. Introduction

On July 30, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the Exchange's By-Laws and corresponding Phlx Rules to streamline its committee process. The Phlx filed Amendments No. 1 and No. 2 to the proposed rule change on October 4, 1999[3] and February 23, 2000, respectively. The **Federal Register** published the proposed rule change, Amendment No. 1, and the substance of Amendment No. 2, for comment on March 6, 2000.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of Proposal

The Exchange has proposed By-Law amendments to provide for streamlining the committee process as follows: (i) Dissolving the Arbitration Committee, whose limited remaining functions would be transferred to the Executive committee, who will oversee ongoing arbitrations filed before the transfer of arbitration responsibilities to the National Association of Securities Dealers, Inc. ("NASD") in October,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Michael Walinskas, Associate Director, Division of Market Regulation (Division"), Commission, from John Dayton, Counsel, Phlx, dated October 1, 1999 ("Amendment 1"). Amendment No. 1 proposes certain technical changes. Specifically, it amends Phlx Rule 930 to reflect the fact that the Arbitration Committee is being eliminated from the By-Laws. Amendment No. 1 also proposes changes to Phlx Rule 950, §§ 1 and 2, to reflect the elimination of the Arbitration Committee. The Phlx also submitted a letter (hereinafter referred to as "Amendment No. 2"), confirming that the board will continue to engage an independent auditing firm to administer all elections. The contents of Amendment No. 2 were substantively discussed in the notice.

[4] Securities Exchange Act Release No. 42464 (Feb. 28, 2000), 65 FR 11826.

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1998;[5] (ii) dissolving the Elections Committee and transferring its functions, along with those of the Nominating Committee, to the Nominating and Elections Committee; and (iii) consolidating the three Quality of Markets Committees into a single Quality of Markets Committee with responsibilities for all three Phlx trading floors.

First, the Exchange has proposed to amend its By-Laws to dissolve the Arbitration Committee and transfer its duties to the Executive Committee. The Phlx states that it ceased accepting arbitration cases on October 1, 1998 and that jurisdiction for Phlx arbitration cases now resides with the NASD. Currently, the Exchange is processing and closing the cases that were filed prior to October 1, 1998.[6] Following the cessation of these cases, the arbitration function at the Exchange will cease, as will the need for any committee oversight of these matters.

Second, the Exchange has proposed several changes to the Nominating Committee and the Elections Committee, essentially collapsing them into a single committee. The Exchange proposes to eliminate the Elections Committee, and move its powers to the Nominating Committee. The Exchange also proposes to amend its By-Laws to change the name of the Nominating Committee to the Nominating and Elections Committee. The Exchange believes this change will help to streamline the functions of the two committees.

The Elections Committee administers membership elections. The Nominating Committee submits nominations for industry and non-industry Governors who stand for election by the members. Because these two Committees perform functions related to the election and appointment of Governors of the Exchange, the Exchange believes that the merging of the Elections Committee with the Nominating Committee will not impair the functioning of any of their tasks.[7] The Exchange believes that merging these responsibilities should improve efficiency as well as coordination, as the same group of committee members will oversee the complete election-related process.

Finally, the Exchange has proposed to reduce the number of Quality of Markets Committees from three to one, also to improve efficiency.[8] In addition, the Exchange proposes to amend its By-Laws to ensure that the Committee will contain at least as many non-industry as industry members. The proposed language provides that "[t]he [Quality of Markets] Committee will have broad representation that shall include at least as many non-industry as industry Committee members."[9] The current language requires present committees to be "equally balanced". The Exchange believes that the proposed language will give it more flexibility to constitute the proposed Committee while retaining the appropriate non-industry representation.

The Exchange believes that the consolidation of the Quality of Markets Committees should also improve the input of the committee on the overall committee process by taking advantage of the overlap in issues emanating from each of the three trading floors, as well as providing for more singular input. The Exchange further believes that this consolidation of committee functions will be beneficial to the functioning of the committee process by decreasing the number of committee assignments for some public, non-industry and industry Governors, allowing them to concentrate more of their energies to their remaining assignments, as well as lowering the costs associated with convening meetings. The Exchange believes the quality of information received from the committees by the Board of Governors will not be affected by the consolidation.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change meets the requirements of Section 6(b)(5) of the Act,[10] which states that, among other things, the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. In addition, the Commission finds that the proposed rule change further the objectives of sectin 6(b)(3)[11] which requires an exchange's rules, among other things, to be designed to assure a fair representation of its members in the administration of its affairs.[12]

The Commission believes that it is reasonable for the Exchange to dissolve the Arbitration Committee and transfer its remaining duties to the Executive Committee. The Commission notes that the NASD has jurisdiction over Phlx arbitration cases filed after October 1, 1998 and that following the completion of cases filed before October 1, 1998, the Exchange will have no arbitration duties.[13] In addition, the Commission believes that the Executive Committee is fully capable of overseeing the adjudication of the remaining cases. The Commission also notes that although the Executive Committee contains more members (9) than the current Phlx Arbitration Committee (4), the members of the Executive Committee represent varying interests similar to the Arbitration Committee and include on-floor, off-floor, and non-industry (including one public) members.

The Commission also believes that it is reasonable for the Exchange to combine the Nominating Committee and the Elections Committee into one committee—the Nominating and Elections Committee. These committees perform distinct but related functions. As noted above, the Elections Committee oversees the election process while the Nominating Committee submits nominations for industry and non-industry governors who stand for election by the members. While the Commission believes it is within the Phlx's business judgment in determining that the merged committees should be able to function more efficiently as a single unit, we are concerned about assuring that elections are administered fairly and adequately monitored. The Commission notes that the Exchange has addressed this by committing itself to continue its current practice of engaging an independent auditing firm to administer all Exchange elections. The Commission believes that this safeguard will help to ensure that all Exchange elections, particularly contested elections, will be administered in a manner that is fair to all participants in the election process.

Finally, the Commission believes that it is reasonable for the Exchange to consolidate all three of its Quality of Markets Committees into one Quality of Markets Committee responsible for all three Phlx trading floors. The COmmission does not disagree with the Phlx's conclusion that the resulting committee could function more efficiently by taking advantage of the overlap in issues that face each of the three current committees. The Commission notes that the resulting committee will be required to contain at least as many non-industry as industry members, which will ensure that the committee will retain appropriate non-industry representation. While current rules require each of the Quality of Markets Committees to be "equally balanced," the new language will, in the Phlx's view, give it more flexibility in the new committee's composition. Without specifically addressing this issue, the Commission simply notes that by requiring the newly merged committee to be comprised of broad representation with at least the same number of non-industry and industry directors, the new rule language should ensure that the composition of the new Quality of Markets Committee is consistent with the section 6(b)(3) requirement for fair representation in the administration of the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PHLX–99–26), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14404 Filed 6–7–00; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* Securities Exchange Act Release No. 40517 (Oct. 1, 1998), 63 FR 54177 (Oct. 8, 1998) (SR–Phlx–98–28).

[6] As of May 26, 2000, one case is currently pending with the Arbitration Committee that would be transferred to the Executive Committee. Potentially twelve arbitration cases in federal court could be transferred back to the Phlx. Phone call between John Dayton, Counsel, Phlx, and Sonia Patton, Attorney, Division, Commission, on May 26, 2000.

[7] The Commission notes that the Exchange currently has a policy of engaging an independent auditing firm to administer elections. This practice will continue following the merger of the Nominations Committee and the Elections Committee. *See* Amendment No. 2, *supra* note 3. Of course, any changes to the practice would have to be submitted pursuant to Section 19(b)(1) of the Act.

[8] Currently the Exchange has three separate Quality of Markets Committees for each of the three trading floors: equity, equity-index options, and foreign currency options.

[9] *See* Proposed Phlx By-Law Art. X, § 10.20.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(3).

[12] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See supra*, note 6.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42883; File No. SR–Phlx–00–40]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Proposing To Amend Phlx By-Law Article IV, Section 4–18

June 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx By-Law Article IV, sections 4–18(a) and (e) by expanding its indemnification and insurance coverage to directors and committee members of the Exchange. Below is the text of the proposed rule change. New language is *italicized*.

By-Law Article IV

Indemnification

Sec. 4–18.(a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was Governor, officer, or committee member of the Exchange or is or was serving at the request of the Exchange as an officer, *director*, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a Governor, officer, *committee member, director*, employee or agent or in any other capacity while serving as a Governor, officer, *committee member, director*, employee or agent, shall be indemnified and held harmless by the Exchange to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Exchange to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorney's fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee who has ceased to be a Governor, officer, *committee member, director*, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in paragraph (c) hereof with respect to proceedings to enforce rights to indemnification, the Exchange shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Governors of the Exchange.

Section 4–18(b) through (d). No change.

Sec. 4–18.(e) Insurance. The Exchange may maintain insurance, at its expense, to protect itself and any Governor, officer, committee member, *director*, employee or agent of the Exchange or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Exchange would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx represents that the purpose of the proposed rule change is to clarify the original intent of the Exchange, by expanding the Exchange's indemnification and insurance coverage to include persons serving at the request of the Exchange as a Governor, officer, committee member, director, employee, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan. Although Governors, officers,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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employees, and agents are expressly covered by the relevant provisions, the words "director" and "committee member" were inadvertently omitted from Phlx By-Law Article IV, section 4–18(a) when it was last amended on August 22, 1997.[3] The word "director" was also inadvertently omitted from Phlx By-Law Article IV, section 4–18(e).[4]

The Exchange believes that the proposed amendments to its By-Law Article IV, sections 4–18(a) and (e) will remove any uncertainty as to whether a person serving as a director or committee member of another entity, at the request of the Exchange, is entitled to mandatory indemnification to the fullest extent provided in the Exchange's By-Laws.[5] The Phlx claims that such persons arguably are already covered as "agents" in sections 4–18(a) and (e). The Phlx, however, proposes to amend By-Law Article IV, sections 4–18(a) and (e) to make this coverage more explicit. The Phlx believes that clarifying the extent of its indemnification and insurance coverage is important in the recruitment of qualified persons to serve as Governors, directors, committee members and or agents for the Exchange, to actively participate in Exchange Governance, and to represent the Exchange on the boards of other committees and entities.

2. Statutory Basis

The Phlx represents that the proposed rule change would afford persons such as Governors, employees, agents, committee members, and directors for the Exchange, mandatory indemnification and insurance coverage to the fullest extent provided in the Exchange's By-Laws. For this reason, the Exchange believes that the proposed rule change is consistent with section 6 of the Act[6] in general, and in particular, with section 6(b)(5),[7] in that it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] *See* Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997).

[4] Telephone conversation between Murray Ross, Vice President and Secretary, Phlx, and Susie Cho, Attorney, Division of Market Regulation ("Division"), Commission (May 8, 2000).

[5] *Id.*

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission has reviewed the Phlx's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with section 6(b)(5) of the Act,[9] because it promotes just an equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest, by permitting persons serving as committee members and directors for the Exchange to receive mandatory indemnification and insurance coverage as provided in the Exchange's By-Laws.[10]

The Commission finds that the Phlx's proposed rule change will correct the Phlx's inadvertent omission of persons serving as directors and committee members for the Exchange from its indemnification and insurance provisions, thus clarifying the Exchange's original intentions. The Commission also supports the Phlx's goal of attracting qualified candidates to serve as Governors, directors, committee members and/or agents for the Exchange, to participate in Exchange Governance, and to represent the exchange on the boards or other committees and entities.

The Commission finds good cause for approving the proposed rule change (SR–Phlx–00–40) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the Commission notes that other exchanges, the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation") and the Nasdaq Stock Market, Inc. ("Nasdaq") have similar indemnification and insurance provisions.[11] The Commission also notes that the proposed rule change concerns issues that previously have been the subject of a full comment period pursuant to section 19(b) of the Act.[12] Accordingly, the Commission believes that there is good cause, consistent with section 6(b)(5) and 19(b) of the Act,[13] to approve the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–40 and should be submitted by June 29, 2000.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14409 Filed 6–7–00; 8:45 am]

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[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Chicago Board Options Exchange, Inc., Constitution Article IX, Section 9.1; New York Stock Exchange, Inc., Constitution Article XII, Section 1; NASD Regulation, By-Law Article X, Sections 10.1 and 10.2; and Nasdaq By-law Article VII, sections 8.1 and 8.2.

[12] 15 U.S.C. 78s(b). *See* Securities Exchange Act Release No. 39175 (September 30, 1997), 62 FR 62385 (October 10, 1997); Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997).

[13] 15 U.S.C. 78f(b)(5) and 78s(b).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of the notice. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. *State Vocational Rehabilitation Agency Claim (SSA–199–U2) and Subpart V—Payments for Vocational Rehabilitation Services, 20 CFR Sections 404.2104, 404.2108, 404.2113, 404.2117, 404.2121, 416.2204, 416.2208, 416.2213 and 416.2217—0960–0310.* The information collected on Form SSA–199–U2 and through these current rules is used by the Social Security Administration (SSA) to determine if State vocational rehabilitation agencies are providing appropriate services, including referrals when necessary, and whether those claims for services should be paid. The respondents are the 80–100 State vocational rehabilitation agencies and alternate participants who offer vocational and employment services for SSA beneficiaries.

Number of Respondents: 80–100.
Frequency of Response: On occasion.
Number of Responses: 16,300.
Average Burden Per Response: Varies from 23 minutes to 4 hours.
Estimated Annual Burden: 9,048 hours.

2. *SSA/DDS Cost-Effectiveness Measurement System (CEMS) Data Reporting Form—0960–0384.* Form SSA–1461 is used by SSA to collect data necessary for detailed analysis and evaluation of costs incurred by State Disability Determination Services (DDS's) in making determinations of disability. The data are also used in determining funding levels for each DDS. The respondents are State DDS's that collect data for cost analysis and evaluation.

Number of Respondents: 52.
Frequency of Response: 4.
Average Burden Per Response: 6 hours.
Estimated Annual Burden: 1,248 hours.

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

Dated: June 2, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–14445 Filed 6–7–00; 8:45 am]

BILLING CODE 4190–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–196]

WTO Consultations Regarding Argentina—Patent and Test Data Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on May 30, 2000, the United States requested consultations with Argentina under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding Argentina's failure to fully implement its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) with respect to its legal regimes governing patents and data protection. The United States considers Argentina's patent and data protection regimes to be inconsistent with its obligations under the TRIPS Agreement, including Articles 27, 28, 31, 34, 39, 50, 62, 65 and 70 of the Agreement. Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding (DSU), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and Argentina. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 28, 2000, to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, Attn: Argentina—Patent and Test Data Protection Dispute: Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: Stephen Kho, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C., (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

On May 6, 1999, the United States filed a consultation request (WT/DS171/1) regarding Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, and to ensure that changes in its laws and regulations do not result in a lesser degree of consistency with the provisions of the TRIPS Agreement. Consultations were held on June 15, 1999 and again on July 27, 1999. On May 30, 2000, the United States supplemented its claims in this dispute with additional concerns that have arisen as a result of Argentina's failure to fully implement its remaining TRIPS obligations that came due on January 1, 2000. These new concerns relate to Argentina's regimes governing patents in Law 24,481 (as amended by Law 24,572), Law 24,603, and Decree 260/96; and data protection in Law 24,766 and Regulation 440/98, and in other related statutes and regulations. Specifically,

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the United States believes that, in addition to the previous claims, Argentina:

• Fails to protect against unfair commercial use of undisclosed test or other data, submitted as a requirement for market approval of pharmaceutical or agricultural chemical products;

• Improperly excludes certain subject matter, including micro-organisms, from patentability;

• Fails to provide prompt and effective provisional measures, such as preliminary injunctions, for purposes of preventing infringements of patent rights from occurring;

• Denies certain exclusive rights for patents, such as the protection of products produced by patented processes and the right of importation;

• Fails to provide certain safeguards for the granting of compulsory licenses, including timing and justification safeguards for compulsory licenses granted on the basis of inadequate working;

• Improperly limits the authority of its judiciary to shift the burden of proof in civil proceedings involving the infringements of process patent rights; and

• Places impermissible limitations on certain transitional patents so as to limit the exclusive rights conferred by these patents, and to deny the opportunity for patentees to amend pending applications in order to claim certain enhanced protection provided by the TRIPS Agreement.

As such, these new concerns appear to be inconsistent with Argentina's obligations under the TRIPS Agreement, including Articles 27, 28, 31, 34, 39, 50, 62, 65, and 70 of the Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(3) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–196, Argentina—Patent and Test Data Protection Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–14510 Filed 6–7–00; 8:45 am]

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–199]

WTO Consultation Regarding Brazil—Patent Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on May 31, 2000, the United States requested consultants with Brazil under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding provisions in Brazil's patent regime that establish a "local working" requirement for the enjoyment of exclusive patent rights that can only be satisfied by the local production—and not the importation—of the patented subject matter. The United States considers that such a requirement is inconsistent with Brazil's obligations under Articles 27 and 28 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), and Article III of the General Agreement on Tariffs and Trade 1994 (GATT 1994). Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding (DSU), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and Brazil. USTR invites written comments from the public concerning the issues raised on this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 28, 2000, to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, N.W.,, Washington, DC, 20508, Attn: Brazil—Patent Protection Dispute. Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: Stephen Kho, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

Although Brazil has a largely WTO-consistent patent regime that has been in place for some time, there remains a longstanding difference of views between the United States and Brazil over a narrow provision in the TRIPS Agreement that the United States considers Brazil to be violating. Specifically, the United States is concerned about provisions of Brazil's 1996 industrial property law (Law No. 9,279 of May 14, 1996; effective may 1997) and other related statutes and regulations, which establish a "local working " requirement for the enjoyment of exclusive patent rights that can only be satisfied by the local production—and not the importation—of the patented subject matter.

Brazil's "local working" requirement stipulates that a patent shall be subject to compulsory licensing if the subject matter of the patent is not "worked" in the territory of Brazil. Brazil then explicitly defines "failure to be worked"as "failure to manufacture or incomplete manufacture of the product," or "failure to make full use of the patented process." The United States considers that such a requirement is inconsistent with Brazil's obligations under Articles 27 and 28 of the TRIPS Agreement, and Article III of the GATT 1994.

Having been unable to resolve this difference over the past five years, the United States decided to resort to WTO dispute settlement procedures and on May 31, 2000, requested consultations with Brazil.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19.U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–199, Brazil—Patent Protection) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–14511 Filed 6–7–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–198]

WTO Consultations Regarding Romania's Use of Minimum Import Prices for Customs Valuation Purposes

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on May 31, 2000, the United States requested consultations with Romania under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding Romania's 1997 Customs Code (L141/1997) and Ministry of Finance General Customs Directive (Ordinance No. 5, 4 August 1998) and other related statutes and regulations. The United States alleges that Romania's customs code, directives, regulations and practice arbitrarily establish minimum and maximum import prices for such products as meat, eggs, fruits and vegetables, clothing, footwear, and certain distilled spirits. Additionally, Romania has instituted burdensome procedures for investigating import prices when the C.I.F. value falls below the minimum import price. The United States considers that this practice is inconsistent with Articles 1 through 7, and 12 of the Agreement on Customs Valuation ("CVA"); general notes 1, 2, and 4 of Annex 1 of the CVA; Articles II, X, and XI of the GATT 1994; Article 4.2 of the Agreement on Agriculture; and Articles 2 and 7 of the Agreement of Textiles and Clothing. Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding ("DSU"), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and Romania. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 31 to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C., 20508, Attn: Romania Customs Valuation Dispute. Telephone: (202) 395–3581.

FOR FURTHER INFORMATION CONTACT: Melida N. Hodgson, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street N.W., Washington, D.C., (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meeting in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

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Major Issues Raised by the United States

The Agreement on Customs Valuation sets forth a clear hierarchy for the determination of the customs value of imported goods, and in no case may the customs value be determined on the basis of a minimum price (Articles 1 through 7). Romania's customs code, directives and regulations arbitrarily establish minimum and maximum import prices for such products as meat, eggs, fruits and vegetables, clothing, footwear, and certain distilled spirits. Additionally, Romania has instituted burdensome procedures for investigating import prices when the C.I.F. value falls below the minimum import price.

Therefore, on May 31, 2000, the United States requested consultations with Romania under certain WTO agreements regarding Romania's customs valuation practices. Romania's customs valuation regime utilizes unpublished arbitrary minimum import prices to supplant the valuation methodology established in Articles 1 through 7 of the CVA, and therefore appears to be inconsistent with that Agreement. Furthermore, if an importer's declared value falls below the set minimum price, a "guarantee" is required based on the difference between the declared value and the minimum price. The use of this guarantee operates as a rejection of the declared value in a manner inconsistent with Articles 1 through 7 of the CVA and, in practice, a refund is not given to importers that established the correctness of the declared value. The United States' consultation request also alleges that Romania's customs regime is inconsistent with general notes 1, 2, and 4 of Annex 1 of the CVA; Articles II, X, and XI of the GATT 1994; Article 4.2 of the Agreement on Agriculture; and Articles 2 and 7 of the Agreement on Textiles and Clothing.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submission to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–198, Romania Customs Valuation Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–14512 Filed 6–7–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–197]

WTO Consultations Regarding Brazil Customs Valuation Regime

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on May 31, 2000, the United States requested WTO consultations with Brazil regarding its system for verification of the declared values of imported goods, such as textile products. Brazil uses minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. In practice, this system works to prohibit the import of products with declared values below established minimum prices, and, as such, appears to violate provisions of the Agreement on Customs Valuation; the GATT 1994; the Agreement on Import Licensing Procedures; the Agreement on Textiles and Clothing; and the Agreement on Agriculture. Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding ("DSU"), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and Brazil. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 31, 2000 to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: Brazil Customs Valuation Dispute. Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: David J. Ross, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

On February 13, 1998, Brazil established under Decree No. 2.498/98 and other related statutes and regulations a system to verify the declared values of imported goods. In practice, however, Brazil utilizes this verification system—in conjunction with non-automatic import licensing procedures—to prohibit or restrict the import of products with declared values below the minimum prices. This situation appears inconsistent with Articles 1 through 7, and 12 of the Agreement on Customs Valuation; general notes 1, 2, and 4 of Annex 1 of the Agreement on Customs Valuation; Articles II and XI of the GATT 1994; Articles 1 and 3 of the Agreement on Import Licensing Procedures; Articles 2 and 7 of the Agreement on Textiles and Clothing; and Article 4.2 of the Agreement on Agriculture.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–197, Brazil Customs Valuation Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–14513 Filed 6–7–00; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Solicitation of Public Comments on Institutional Improvements to the World Trade Organization (WTO), Particularly With Respect to the Transparency of Its Operations and Outreach to Civil Society

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is soliciting public comments on U.S. objectives and proposals for improving the functioning of the WTO, particularly with respect to its outreach activities and the transparency of its operations, and in light of the WTO's ongoing work program and mandated negotiations in agriculture and services. Attention is drawn to the solicitation of Public Comments for the Mandated Multilateral Trade Negotiations on Agriculture and Services in the WTO and Priorities for Future Market Access Negotiations on Non-Agricultural Goods, published on March 28, 2000 (Volume 65, Number 60). That notice called for public comments on general as well as specific negotiating objectives. The issues of outreach and transparency are on-going matters before the WTO and the subject of continuing consultations conducted under the auspices of the WTO General Council. It is also anticipated that, like other internation institutions, the WTO will need to continue to consider appropriate responses to the challenges as well as the benefits offered by "globalization" as its future agenda is fashioned. The TPSC, therefore, also welcomes comments on whether and how the WTO might undertake activities to ensure that the social, environmental and development dimensions of continued trade liberalization are adqquately addressed. Comments received will be considered by the Executive Branch in formulating U.S. positions for these discussions and deliberations.

DATES: Public comments are due by July 10, 2000.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Paul Moore, Office of WTO and Multilateral Affairs, at (202) 395–5097, or Karissa Kovner, Office of the Environment and Natural Resources, at (202) 395–6169. Procedural inquiries concerning the public comment process should be directed to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–3475.

SUPPLEMENTARY INFORMATION: Information about the WTO can be obtained via the WTO website (*www.wto.org*) Attention is also drawn to the 2000 Trade Policy Agenda and 1999 Annual Report of the President of the United States on the Trade Agreements Program, which can be found on USTR's website (*www.ustr.gov*) via the "What's New" icon. Chapter 2 of the Report presents a report to the Congress assessing the first five years' operation of the WTO, the annexes to which contain substantial background information on the WTO, its organization and the work of its Councils and Committees. Also accessible via USTR's website are U.S. submissions made to the WTO General Council as part of the preparatory process for the third WTO Ministerial Conference in December 1999, including submissions covering agricultural, services and non-agcultural market access as well as trade and sustainable development, trade and core labor standards and WTO institutional issues (e.g., transparency and openness). Information about U.S. contributions to and participation in the WTO's 1999 High Level Meeting on Trade and the Environment can also be obtained via the "What's New" icon. Finally, the USTR home page includes a recent communication from USTR to the Chairman of the WTO General Council reiterating U.S. priorities for improving the internal and external transparency of the WTO and its subsidiary bodies.

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The TPSC invites written comments from the public on the important institutional issues raised about the WTO in terms of its openness and accountability, including its outreach to citizens. The Administration has been active in seeking institutional improvements to the WTO, while preserving its intergovernmental nature. For example, the United States has consistently called for the WTO to build upon past progress by (i) expanding the range of WTO documents available to the public; (ii) strengthening the guidelines for consultations with non-governmental organizations (NGOs); (iii) enhancing the WTO's program of symposia and consultations on specific topics of mutual interest; (iv) expanding and improving the use of Internet facilities to reach more stakeholders in more creative ways; and (v) broadening the range of WTO meetings and events that would be open to the public. Last year, the United States specifically called upon the WTO membership to agree upon methods to permit the organizations of civil society (including businesses, labor organizations, agricultural producers, environmental groups, academic associations and others) to observe meetings, as appropriate, and share views as Member delegations develop policy. The United States has proposed updating the 1996 WTO General Council Decisions on Document Derestriction and Relations with NGOs as a near term opportunity for making progress in certain of these areas, but additional opportunities and progress should be pursued—including with respect to opening dispute settlement panel proceedings to public observation and clarifying procedures for acceptance of amicus curiae submissions from interested non-governmental parties.

In terms of dispute settlement, the United States has proposed that the WTO procedures include a mechanism to permit non-governmental stakeholders to present their written views on disputes, and that the WTO allow the public to observe WTO panel and appellate proceedings. The United States continues to urge other WTO Members to work with the United States to enhance the transparency of the WTO dispute settlement process, through changes in the working procedures applied in individual disputes, and through an ongoing assessment of the operation of the WTO Dispute Settlement Understanding.

The United States has taken many steps on its own to improve the transparency of the WTO dispute settlement process. USTR seeks public comment, through a **Federal Register** notice, on every dispute settlement proceeding where the United States is a party. USTR also makes its written submissions to panels and the WTO Appellate Body available to the public as soon as they are submitted. The United States routinely requests the parties to any WTO case (even cases in which it is not a party) to provide it with a copy of their submissions or non-confidential summaries for release to the public.

USTR makes WTO panel reports available to the public upon receipt, and the WTO makes WTO panel and Appellate Body reports available on the Internet for downloading the day after they are circulated in Geneva, and sometimes the same day. This is also true of other WTO documents regarding disputes. The consultation requests and panel requests in every dispute are circulated to all WTO Members in all three official languages (English, French and Spanish) as public documents, and immediately put on the WTO website. Any member of the public can access WTO documents through the Internet and follow the progress of WTO disputes on that website. In this way, members of the public can find out from these WTO documents that there will be a panel proceeding and what issues the panel will address, even before the panel is established.

Written Comments

Comments are welcome with as much specificity as the respondent can provide on the range of opportunities which should be sought for achieving greater transparency and openness as well as on the nature of achievements to be sought. The Administration is particularly interested in determining if there are additional mechanisms that can be utilized to ensure broader interaction with consumer and other parties interested in developments in the WTO and the trading system. This is part of a broader dialogue initiated by the Administration these issues. Submissions need not duplicate submissions provided in response to the March 28 solicitation regarding objectives for the mandated negotiations in agriculture and services and potential industrial market access negotiation.

Persons submitting written comments should provide twenty (20) copies no later than July 10, 2000 to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 122, 600 17th Street Northwest, Washington, DC 20508. Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th Street, Northwest, Washington, DC. An appointment to review the file may be made by calling Brenda Webb at 202–395–6186. The Reading Room is open to the public from 10:00 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Confidetnial" at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked at the top and bottom of each page "Public Version" or "Non-Confidential."

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 00–14514 Filed 6–7–00; 8:45 am]

BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–6950]

Information Collection Under Review by the Office of Management and Budget (OMB): 2115–0614 and 2115–0545

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the two Information Collection Reports (ICRs) abstracted below to OMB for review and comment. Our ICRs describe the information that we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before July 10, 2000.

ADDRESSES: Please send comments to both (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001, and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street NW, Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of the complete ICRs are available for inspection and copying in public docket USCG 2000–6950 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–SII–2), U.S. Coast Guard, room 6106, 2100 Second Street SW, Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published [65 FR 10143 (February 25, 2000)] the 60-day notice required by OMB. That request elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Numbers of all ICRs addressed. Comments to DMS must contain the docket number of this request, USCG 2000–6950. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Alteration of Unreasonable Obstructive Bridges.

OMB Control Number: 2115–0614.

Type of Request: Extension of currently approved collection.

Affected Public: Owners of bridges.

Form(s): N/A.

Abstract: The collection of information requires the owner of a bridge whose bridge the Coast Guard has found to be an unreasonable obstruction to navigation to prepare, and submit to the Coast Guard, general plans and specifications of that bridge.

Annual Estimated Burden Hours: The estimated burden is 120 hours annually.

2. *Title:* Financial Responsibility for Water Pollution (Vessels).

OMB Control Number: 2115–0545.

Type of Request: Extension of a currently approved collection.

Affected Public: Vessels operators or owners of vessels over 300 gross tons.

Forms: CG–5585, CG–5586, CG–5586–1, CG–5586–2, CG–5586–3, CG–5586–4, CG–5586–5.

Abstract: The collection of information requires operators of vessels over 300 gross tons to submit to the Coast Guard evidence of their financial responsibility to meet the maximum amount of liability in case of an oil spill or hazardous substance incident.

Annual Estimated Burden Hours: The estimated burden is 2,162 hours annually.

Dated: May 31, 2000.

Daniel F. Sheehan,

Director of Information and Technology.

[FR Doc. 00–14505 Filed 6–7–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 30, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 10, 2000 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0012.
Form Number: PD F 1455.
Type of Review: Extension.
Title: Request by Fiduciary for Reissue of United States Savings Bonds/Notes.
Description: PD F 1455 is use by fiduciary to request distribution of U.S. Savings Bonds/Notes to the person(s) entitled.
Respondents: Individuals or households.
Estimated Number of Respondents: 72,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 36,000 hours.

OMB Number: 1535–0025.
Form Number: PD F 3360.
Type of Review: Extension.
Title: Request for Reissue of United States Savings Bonds/Notes in the Name of a Person or Persons Other Than the Owner (including Legal Guardian, Custodian for a Minor Under a Statute, *etc.*).
Description: This form is used by the owner to request reissue of Savings Bonds/Notes in the name of another person.
Respondents: Individuals or households.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 8,350 hours.

OMB Number: 1535–0032.
Form Number: PD F 3565.
Type of Review: Extension.
Title: Application for Disposition of Retirement Plan and/or Individual Retirement Bonds Without Administration of Deceased Owner's Estate.
Description: This form is used by heirs of deceased owners of Retirement Plan and/or Individual Retirement bonds to request disposition when no beneficiaries are designated.
Respondents: Individuals or households.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: On occasion.

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Estimated Total Reporting Burden Hours: 17 hours.

OMB Number: 1535–0055.

Form Number: PD F 1050.

Type of Review: Extension.

Title: Creditor's Consent to Disposition of United States Securities and Related Checks Without Administration of Deceased Owner's Estate.

Description: This form is used to obtain creditor's consent to dispose of Savings Bonds/Notes in Settlement of a deceased owner's estate without administration.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 300 hours.

OMB Number: 1535–0084.

Form Number: PD F 5263, PD F 5263–1, PD F 5374 and PD F 5374–1.

Type of Review: Extension.

Title: Order for Series EE U.S. Savings Bonds (PD F 5263); Order for Series EE U.S. Savings Bonds to be Registered in Name of Fiduciary (PD F 5263–1); Series I Order for U.S. Savings Bonds (PD F 5374); and Series I Order for U.S. Savings Bonds to be Registered in Name of Fiduciary (PD F 5374–1).

Description: These forms are completed by the purchaser to issue United States Savings Bonds.

Respondents: Individuals or households.

Estimated Number of Respondents: 10,000,000.

Estimated Burden Hours Per Respondent: 5 minutes per form.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 830,000 hours.

OMB Number: 1535–0102.

Form Number: PD F 1071.

Type of Review: Extension.

Title: Certificate of Ownership of United States Bearer Securities.

Description: PD F 1071 is used to establish ownership and support of a request for payment.

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 500 hours.

OMB Number: 1535–0126.

Form Number: PD F 3871.

Type of Review: Extension.

Title: Application for Issue of United States Mortgage Guaranty Insurance Company tax and Loss Bonds.

Description: PD F 3871 is submitted by companies engaged in the business of writing mortgage guaranty insurance for the purpose of purchasing "Tax and Loss" bonds.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 37.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 20 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–14410 Filed 6–7–00; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

June 1, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 10, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0169.

Form Number: IRS Forms 4461, 4461–A and 4461–B.

Type of Review: Extension.

Title: Application for Approval of Master or Prototype Defined Contribution Plan (4461); Application for Approval of Master or Prototype Defined Benefit Plan (4461–A); and Application for Approval of Master or Prototype Plan, Mass Submitter Adopting Sponsor (4461–B).

Description: The IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:.

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
4461	43 hr., 17 min	6 hr., 44 min	8 hr., 40 min	16 min.
4461–A	42 hr., 34 min	6 hr., 2 min	7 hr., 55 min	16 min.
4461–B	5 hr., 59 min	52 min	1 hr., 56 min	16 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 109,388 hours.

OMB Number: 1545–1418.

Regulation Project Number: REG–119227–97 Final and Temporary).

Type of Review: Extension.

Title: Kerosene Tax; Aviation Fuel Tax; Taxable Fuel Measurement and Reporting; Tax on Heavy Trucks and Trailers; Highway Vehicle Use Tax.

Description: The regulation finalizes proposed and temporary regulations relating to the tax on kerosene, the refund for certain aviation fuel producers, and the registration rules for certain truck dealers.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 346,080.

Estimated Burden Hours Per Respondent/Recordkeeper: 17 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 97,583 hours.

OMB Number: 1545–1504.

Form Number: IRS Form 911.

Type of Review: Extension.

Title: Application for Taxpayer Assistance Order (ATAO).

Description: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails to take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the state or city where the taxpayer lives.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, farms, State, Local or Tribal Government.

Estimated Number of Respondents: 93,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 34,960 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–14411 Filed 6–7–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Customs Service

Evaluation of and Request for Comments Regarding the Reconciliation Prototype

AGENCY: Customs Service, Treasury.

ACTION: General notice: Solicitation of comments from prototype participants.

SUMMARY: This document requests comments, via participation in a voluntary survey, on the Reconciliation Prototype for the purpose of evaluation and possible revision or expansion of the prototype.

DATES: Surveys must be received by July 10, 2000.

ADDRESSES: For those able to use the electronic survey format, the survey form is available at *http://www.customs.gov/recon*. Electronic survey responses should be emailed to: *Recon.help@customs.treas.gov*. For those without access to the internet, contact the following for a hard copy of the survey: U.S. Customs Service, 1300 Pennsylvania Ave., NW, Room 5.2A, Washington, DC 20229–0001, ATTN: Mr. Don Luther or Ms. Shari McCann, Reconciliation Team. Hard copy survey responses should be faxed to the Headquarters Reconciliation Team at (202) 927–1096.

FOR FURTHER INFORMATION CONTACT: Ms. Shari McCann at (202) 927–1106 or Mr. Don Luther at (202) 927–0915.

SUPPLEMENTARY INFORMATION: Customs announced and explained the Automated Commercial System (ACS) Prototype Test of Reconciliation in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998. Changes and clarifications to the prototype were announced in **Federal Register** documents published on August 18, 1998 (63 FR 44303), July 21, 1999 (64 FR 39187), and December 29, 1999 (64 FR 73121). Additional information regarding the Reconciliation Prototype can be found at *http://www.customs.gov/recon*.

The **Federal Register** notice of February 6, 1998, entitled "Revised National Customs Automation Program Test Regarding Reconciliation," provided for evaluation of the prototype and strongly encouraged that participants participate in the evaluation process. It set forth various evaluation methods, including the use of questionnaires (surveys). Customs has prepared a survey form that is available at *http://www.customs.gov/recon*. For those without access to the internet, a survey can be obtained by contacting the following for a hard copy: U.S. Customs Service, 1300 Pennsylvania Ave., NW, Room 5.2A, Washington, DC 20229–0001, ATTN: Mr. Don Luther or Ms. Shari McCann, Reconciliation Team.

This notice requests comments from participants through the survey. Participants should email electronic survey responses to the following address by July 10, 2000: *Recon.help@customs.treas.gov*. Hard copy survey responses should be faxed to the Headquarters Reconciliation Team at (202) 927–1096. Survey responses will be compiled and used to evaluate the prototype. Results of the survey evaluation will be published in the **Federal Register**, along with any changes or modifications made to the prototype as suggested by the evaluation.

Dated: June 5, 2000.

Robert J. McNamara,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–14509 Filed 6–7–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–15]

Application of Producers' Good Versus Consumers' Good Test in Determining Country of Origin Marking

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretation; extension of delayed effective date.

SUMMARY: On March 14, 2000, Customs published as T.D. 00–15 a notice setting forth a final interpretation stating that Customs would no longer rely on the distinction between producers' goods and consumers' goods in making country of origin marking determinations. The notice prescribed a delayed effective date of June 12, 2000, for the final interpretation. The effective date was applicable to pipe fittings and flanges produced in the United States from imported forgings except for those which were the subject of a ruling subject to the procedure specified in 19 U.S.C. 1625. This document advises the public that the delayed effective date period for pipe fittings and flanges is being extended by an additional 90 days.

DATES: This extension is effective June 8, 2000. T.D. 00–15 is applicable to pipe fittings and flanges on or after September 11, 2000.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Attorney, Special Classification and Marking Branch, Office of Regulations and Rulings (202–927–1254).

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2000, Customs published in the **Federal Register** (65 FR 13827) T.D. 00–15 a notice setting forth a final interpretation that adopted a previously published proposal to the effect that Customs would no longer rely on the producers' good to consumers' good test of *Midwood Industries Inc.* v. *United States*, 313 F.Supp. 951 (Cust. Ct. 1970), in determining whether a substantial transformation of an imported good has occurred for purposes of making a country of origin determination under the Customs

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marking statute (section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304)).

The preamble portion of T.D. 00–15 contained a discussion of the public comments solicited in response to the published proposal, including comments on whether a delayed effective date for the final Customs interpretation should be employed, consistent with the principle set forth in *National Juice Products Association* v. *United States*, 628 F.Supp. 978 (CIT 1986). One commenter argued in favor of a one-year delayed effective date period on the basis that the change proposed by Customs would be drastic for pipe fitting and flange producers because it would require the purchase and installation of new machinery. In response, Customs first noted that when the marking rules were adopted, importations from NAFTA countries became subject to a marking requirement and those importers were able to make these changes in far less than a one-year period. Although Customs specifically rejected the suggested one-year delay as not being necessary based on prior experience with other changes in country of origin marking regimes, Customs nevertheless agreed that a delayed effective date period would be appropriate. Accordingly, Customs stated in T.D. 00–15 that although Customs would require that all pipe fittings and flanges produced in the United States from imported forgings be marked with the country of origin of the imported forging, Customs would make the change effective 90 days after publication of the notice in the **Federal Register**, except in the case of a ruling subject to the procedure specified in 19 U.S.C. 1625. The final interpretation set forth in T.D. 00–15 therefore was published with a delayed effective date of June 12, 2000.

Customs has received a request on behalf of several companies seeking a further delay in the effective date of the notice. The request claims that these companies would suffer irreparable harm if the June 12, 2000, effective date set forth in T.D. 00–15 were not extended, because they are unable to comply with the marking requirements by that date. Customs believes based on this representation that it would be reasonable in the case of pipe fittings and flanges to provide up to 6 months from the March 14, 2000, publication of the final interpretation for producers and importers to conform to the new standard. Accordingly, Customs is modifying the effective date set forth in T.D. 00–15 in order to extend the delayed effective date period by an additional 90 days.

Extension of Delayed Effective Date Period

Based on the above, in T.D. 00–15 published in the **Federal Register** on March 14, 2000, at 65 FR 13827, under the Effective Date caption the date "June 12, 2000" is revised to read "September 11, 2000".

Approved: June 2, 2000.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–14466 Filed 6–7–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–W

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–W, Estimated Tax for Corporations.

DATES: Written comments should be received on or before August 7, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Estimated Tax for Corporations.

OMB Number: 1545–0975.

Form Number: 1120–W.

Abstract: Under section 6655 of the Internal Revenue Code, a corporation with an income tax liability of $500 or more must make four required installments of estimated tax during the tax year or be subject to a penalty for failure to pay estimated income tax. Form 1120–W is used by corporations to compute their estimated income tax and the amount of each required installment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 900,000.

Estimated Time Per Respondent: 11 hrs., 1 min.

Estimated Total Annual Burden Hours: 9,910,661.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14515 Filed 6–7–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–34

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–34, Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

DATES: Written comments should be received on or before August 7, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

OMB Number: 1545–1538.

Notice Number: Notice 99–34.

Abstract: Notice 97–34 provides guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 3,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14516 Filed 6–7–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–QFT

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–QFT, U.S. Income Tax Return for Qualified Funeral Trusts.

DATES: Written comments should be received on or before August 7, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U. S. Income Tax Return for Qualified Funeral Trusts.

OMB Number: 1545–1593.

Form Number: 1041–QFT

Abstract: Internal Revenue Code section 685 allows the trustee of a qualified funeral trust to elect to report and pay the tax for the trust. Form 1041–QFT is used for this purpose. The IRS uses the information on the form to determine that the trustee filed the proper return and paid the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 15,000.

Estimated Time Per Respondent: 14 hr., 34 min.

Estimated Total Annual Burden Hours: 218,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

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of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14517 Filed 6–7–00; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act

DATE/TIME: Thursday—June 15, 2000 (4 p.m.–9:00 p.m.), Friday—June 16, 2000 (9 a.m.–6 p.m.), Saturday—June 17, 2000 (9 a.m.–12 noon).

LOCATION: Airlie Conference Center, Airlie, Virginia.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: June 2000 Board Meeting; Approval of Minutes of the Ninety-Fourth Meeting (March 16, 2000) of the Board of Directors; Chairman's Report; President's Report; Review and Discussion of Individual Grants and Fellowships; Review Essay Finalists and Select Winners; Committee Reports; Discuss Research & Studies Project Reports; Review Fellowship Policies; Review Plans for Education and Training Programs; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: May 31, 2000.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 00–14575 Filed 6–5–00; 4:59 pm]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR), authorized by Public Law 96–466, Subsection 1521, will be held on July 11th through 13th, 2000. The meeting will be held at VA Central Office, 810 Vermont Avenue NW, Room 430, Washington, DC 20420. On July 11th and 12th, the meeting will convent at 9:00 a.m. and adjourn at 4:00 p.m. On July 13th, the meeting will convene at 9:00 a.m. and adjourn at 12:00 noon. The purpose of the meeting is to review the quality of the services which the Department of Veterans Affairs provides to disabled veterans who participate in VA sponsored programs of rehabilitation. In addition, VACOR will conduct an internal business meeting focusing on a review of past activities and the development of future initiatives.

On July 11th, the meeting will begin with opening remarks and an overview of VACOR activities (including the introduction of new members) by the new VACOR Chairman, Mr. Richard K. Pimentel. Schedule permitting, the Honorable Togo D. West, Jr., Secretary of Veterans Affairs, will address VACOR and present certificates of appointment to its new members. Following the Secretary's presentation, Mr. James Adams, Deputy Assistant General Counsel, will brief members on the Federal regulations covering ethical standards for members as well as assist in the completion of required Financial Disclosure Forms. The afternoon session will consist of a review of the VACOR mandate and charter.

On July 12, Mr. Julius Williams, Director of Vocational Rehabilitation and Employment Service (VR&E), along with selected program staff members, will present an update of new VR&E Program initiatives installed with VR&E during the past year. During the afternoon of the 12th, Dr. Mindy L. Aisen, Director of Rehabilitation Research and Development Service, will present a program report on VA rehabilitation research projects entitled, "What We Do Today Impacts On Tommorrow's Rehabilitation Decisions" Honorable Dennis Duffy, Assistant Secretary for Planning and Analysis, will conclude the day's program with a review of the background and research developed in support of the new VA publication, "The Changing Veteran Population: 1990–2020."

The final day of the meeting, July 13, will consist of a review of past unfinished business, the generation and formulation of recommendations for needed program changes, and a discussion of future meeting sites and potential agenda topics.

All meetings will be open to the public. Oral statements will be heard at the July 13 morning meeting. If additional information is needed, please contact Mr. Frank J. Donlan, Counseling Psychologist, Department of Veterans Affairs, at (202) 273–7436.

Dated: June 1, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–14375 Filed 6–7–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 65, No. 111

Thursday, June 8, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the White River Minimum Flow Study, Arkansas and Missouri

Correction

In notice document 00–13345 appearing on page 34453 in the issue of Tuesday, May 30, 2000, make the following corrections:

1. In the second column, in the **SUPPLEMENTARY INFORMATION** section, in the third paragraph, in the sixth line, "Norfok" should read "Norfork".

2. In the same column, in the fourth paragraph, in the ninth line,"dish" should read "fish".

[FR Doc. C0–13345 Filed 6–7–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Western Area Power Administration

2005 Resource Pool

Correction

In notice document 00–13967, beginning on page 35630, in the issue of Monday, June 5, 2000, make the following corrections:

1. On page 35631, in the table, under the heading, 500 MW (MW), in the second line, "1.100" should read "1.105".

2. On page 35631, in the table, under the heading 1000 MW (MW), in the second line, "52.210" should read "2.210".

[FR Doc. C0–13967 Filed 6–7–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96M–0311]

Agency Information Collection Activities; Proposed Collection; Comment Request

Correction

In notice document 00–13340 beginning on page 34196 in the issue of Friday, May 26, 2000, make the following correction:

On page 34196, in the second column, in the **DATES** section,"July 25, 2002" should read "July 25, 2000".

[FR Doc. C0–13340 Filed 6–7–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Thursday,
June 8, 2000

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Arroyo Southwestern Toad; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AG15

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Arroyo Southwestern Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the arroyo southwestern toad *(Bufo microscaphus californicus)* pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 193,600 hectares (478,400 acres) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, and San Diego Counties, California. If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of designation and our approaches for handling habitat conservation plans (HCPs). We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments from all interested parties until August 7, 2000. Two public hearings have been scheduled for June 27, 2000, and June 29, 2000, see locations below.

ADDRESSES:

1. Comments: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

a. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2394 Portola Road, Suite B, Ventura, California 93003.

b. You may hand-deliver written comments to our Ventura Office, at the address given above.

c. You may send comments by electronic mail (e-mail) to fw1artoch@fws.gov. Please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: [*RIN number*]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Office at phone number 805/644–1766.

2. Public hearings: Two public hearings are scheduled. Both public hearings will be held from 1:00 p.m. to 3:00 p.m. and 6:00 p.m. to 8:00 p.m. Public hearing dates and locations are:

a. Tuesday, June 27, 2000, at the Hyatt Valencia, 24500 Town Center Drive, Valencia, California.

b. Thursday, June 29, 2000, at the Temecula Embassy Suites, 29345 Rancho California Road, Temecula, California.

3. Review of data: Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, 2394 Portola Road, Suite B, Ventura, California, or at the Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California (telephone 760/431–9440).

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958). For information about Los Angeles and San Bernardino Counties, and Riverside, Orange, and San Diego Counties, contact the Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008 (telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Background

The following discussion is adapted from the final recovery plan for the arroyo toad (Service 1999), which contains additional details and is available from the addresses above. The arroyo southwestern toad *(Bufo microscaphus californicus)* is one of three members of the southwestern toad *(B. microscaphus)* complex, in the family of true toads, Bufonidae. The taxonomy of the complex has been examined recently by Gergus (1998). Based on his genetic studies, the arroyo toad should be considered a separate species, *Bufo microscaphus californicus*.

The arroyo toad is a small (adults: snout-urostyle (body) length 55 to 82 millimeters (mm) (2.2 to 3.2 inches (in.)), dark-spotted toad of the family Bufonidae, with females larger than males. Adult arroyo toads have a light-olive green or gray to tan dorsum (back) with dark spots and warty skin. The venter (underside) is white or buff and without dark blotches or spots. A light-colored, V-shaped stripe crosses the head and eyelids, and the anterior portion of the oval parotoid glands (just behind the eyes) are pale. There is usually a light area on each side of the sacral (pelvic) hump and in the middle of the back. The arroyo toad generally does not have a middorsal stripe, but if one is present, it extends only partway along the back.

The arroyo toad is found in coastal and desert drainages from Monterey County, California, south into northwestern Baja California, Mexico. These systems are inherently quite dynamic, with marked seasonal and annual fluctuations in climatic regimes, particularly rainfall. Natural climatic variations as well as other random events, such as fires and floods, coupled with the species' specialized habitat requirements, lead to annual fluctuations in arroyo toad populations. Human alterations of habitat can have unpredictable effects on arroyo toad populations. As a result of agriculture and urbanization, and the construction, operation, and maintenance of water storage reservoirs, flood control structures, roads, and recreational facilities such as campgrounds and off-highway vehicle parks, many arroyo toad populations have been reduced in size or extirpated (eliminated) due to extensive habitat loss from the 1920s into the 1990s. The loss of habitat, coupled with habitat modifications due to the manipulation of water levels in many central and southern California streams and rivers, as well as predation from introduced aquatic species, and habitat degradation from introduced plant species, caused arroyo toads to be extirpated from about 75 percent of the previously occupied habitat in California (Jennings and Hayes 1994).

Because relatively little was known about this animal, and it was often confused with the California toad *(Bufo boreas halophilus)*, which is very common in the same region, detailed studies of the natural history of the arroyo toad were not conducted until the 1980s and 1990s. The arroyo toad exhibits breeding habitat specialization that favors shallow pools and open sand and gravel channels along low-gradient reaches of medium to large-sized streams (Service 1999). These streams can have either intermittent or perennial streamflow and typically experience

periodic flooding that scours vegetation and replenishes fine sediments. In at least some portions of its range, the species also breeds in smaller streams and canyons where low-gradient breeding sites are more sporadically distributed. Populations in smaller drainages are likely to be much smaller and at greater risk of extirpation than those on larger streams and in larger habitat patches (Service 1999).

Arroyo toads also require and spend most of their adult life in upland habitats. Individual toads have been observed as far as 2 kilometers (km) (1.2 miles (mi)) from the streams where they breed, but are most commonly found within 0.5 km (0.3 mi) of those streams (Service 1999; Griffin *et al.* 1999; Dan C. Holland, Camp Pendleton Amphibian and Reptile Survey, Fallbrook, California, unpublished data). Arroyo toads typically burrow underground during periods of inactivity and thus tend to utilize upland habitats that have sandy, friable (readily crumbled) soils. Although the upland habitat use patterns of this species are poorly understood, activity probably is concentrated in the alluvial flats (areas created when sediments from the stream are deposited) and sandy terraces found in valley bottoms (Service 1999; Griffin *et al.* 1999; Ramirez 2000; D.C. Holland, unpubl. data).

Habitat Characteristics and Ecological Considerations

Arroyo toads have specialized requirements for breeding habitats. Specifically, they require shallow, slow-moving streams, and riparian (areas near a source of water) habitats that are disturbed naturally on a regular basis, primarily by flooding. Periodic flooding helps maintain areas of open, nonvegetated sandy stream channels and terraces. Throughout their range, arroyo toads are found in foothill canyons and intermountain valleys where medium- to large-sized streams and rivers are bordered closely by low hills, riverbed gradients are low, and the surface stream flows frequently pool or are intermittent for at least a few months of the year. South of the Santa Clara River, Los Angeles County, they also occur on a few desert slopes and on the coastal plain.

For breeding, adult arroyo toads use open sites such as overflow pools, old flood channels, and pools on streams of first to sixth order. Rivers and streams are classified by order. The order refers to how many branches or tributaries a stream has. The smallest unbranched tributary in a watershed is considered an order of one. A channel formed by the confluence of two such tributaries is designated an order of two. In general, the higher the order number, the larger the watershed, and the greater the channel dimensions. Such habitats rarely have closed canopies over the lower banks of the stream channel due to regular flood events. Heavily shaded pools are generally unsuitable for larval and juvenile arroyo toads because of lower water and soil temperatures and poor algal mat development. Episodic (temporary) flooding is critical to keep the low stream terraces relatively vegetation-free and the soils friable enough for juvenile and adult toads to create burrows. Pools less than 30 centimeters (cm) (12 in.) deep with clear water, flow rates less than 5 cm per second (0.2 foot (ft) per second), and bottoms composed of sand or well-sorted fine gravel are favored by adults for breeding.

Areas that are used by juveniles consist primarily of sand or fine gravel bars with varying amounts of large gravel or cobble with adjacent stable sandy terraces and streamside flats. Areas that are damp and have less than 10 percent vegetation cover provide the best conditions for juvenile survival and rapid growth (Service 1999).

The adjacent sandy terraces, which are used by subadults and adults for foraging and burrowing, may be sparsely to heavily vegetated with brush and trees such as mulefat (*Baccharis* spp.), California sycamore (*Platanus racemosa*), cottonwoods (*Populus* spp.), coast live oak (*Quercus agrifolia*), and willow (*Salix* spp.). The understory of stream terraces may consist of scattered short grasses, herbs, and leaf litter, with patches of bare or disturbed soil, or have no vegetation at all. Substantial areas of fine sand, into which adult toads burrow, must be present, but can be interspersed with gravel or cobble deposits.

Upland habitats used by arroyo toads during the nonbreeding season include alluvial scrub, coastal sage scrub, chaparral (shrubby plants adapted to dry summers and moist winters), grassland, and oak woodland. When foraging, subadult and adult arroyo toads often are found around the driplines of oak trees. These areas often lack vegetation, yet have appropriate levels of prey. When active at night, toads often can be observed near ant trails feeding on passing ants, beetles, and other prey.

Males call from the streams during the breeding period, which is generally from February to early July, although it can be extended in some years, depending on weather conditions. Males may remain at or near the breeding pools for several weeks and are particularly susceptible to predation at this time. Females apparently move to the breeding pools in the streams for only short time periods, in order to soak in the water and to breed (Griffin *et al.* 1999; Nancy Sandburg, Santa Barbara, California, pers. comm. 1999). Amplexus (mating embrace of the female by the male) and egg-laying generally occur at the site where the male was calling. Female arroyo toads apparently release their entire clutch of 2,000 to 10,000 eggs as a single breeding effort and probably are unable to produce a second clutch during the mating season. If conditions are unsuitable, females may not obtain sufficient food for egg production and will forgo breeding during that year. The eggs are laid on substrates of sand, gravel, cobble, or mud generally located away from vegetation in the shallow margins of the pool. High water flows will wash the eggs out of the pools, breaking up the egg strands and killing the developing embryos. Silt eroding into the streams from road crossings, adjacent roads, overgrazing, or mining activities can cover and suffocate the eggs.

Embryos usually hatch in 4 to 6 days at water temperatures of 12 to 16 degrees Celsius (54 to 59 degrees Fahrenheit). Larvae may take 8 to 14 days to become free-swimming, depending on the water temperature. They are particularly susceptible to the effects of high water flows during this time period, and heavy rains or untimely releases of water from dams can kill thousands of tadpoles very quickly. The larval period for arroyo toads lasts about 65 to 85 days, depending on water temperatures. Metamorphosis may occur at any time between April and the beginning of September, depending on the time of breeding, weather, and water quality. Peak metamorphosis occurs from the end of June to mid-July in the northern part of the toad's range and from late April to mid-May in southern California. For several days before metamorphosis, arroyo toad larvae cease feeding and aggregate in shallow water along the edges of gravel or sand bars, often under or along stranded algal mats. The metamorphosing and newly metamorphosed toads are extremely susceptible to predation, habitat disturbance, and activities in the streams during this period, as they cannot escape (Service 1999).

Juvenile arroyo toads remain in the saturated substrate at the edges of breeding pools for 1 to 3 weeks. They are active during the day and often exposed on the barren sand because they are too small to burrow into the

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substrate. During this period, many toads are lost due to predation unless they can find some cover, such as cobble, algal mats, or pieces of debris, under which to hide. As the toads mature, they move further from the pools onto sand and gravel bars. Crushing of toads by humans and livestock can be a substantial source of mortality at this stage (Service 1999).

As the toads grow, they begin to dig shallow burrows in fine sand, and switch to a night-time activity pattern, when they forage for ants and beetles. Suitable sandy habitat can be highly localized resulting in dense concentrations of juvenile toads. If the substrate is not friable enough, juvenile toads often disperse farther away from the breeding pool into nearby stands of willows and mulefat. Most toads will move into willows or other vegetation as they grow, and as the stream dries naturally. Removal of native vegetation, in addition to increasing erosion into the streams, can leave small toads at risk of dehydration and death.

Male arroyo toads usually reach adulthood in 2 years. Females become sexually mature in 2 to 3 years, when they attain lengths greater than 54 mm (2.1 in.). However, males may reach adulthood at 1 year if conditions are favorable. We have little data on lifespan; based on age-size distributions, many individuals live only about 5 years. Longevity may vary with local conditions. Recapture rates of marked individuals from one breeding season to the next range from 15 to 50 percent.

Little is known of the seasonal and annual movements or physiological ecology of adults, but data suggest that many subadults and some adult males move along streams as much as 0.8 km (0.5 mi) and over 1.0 km (0.6 mi) in a few cases during a single breeding season (Griffin *et al.* 1999; Ramirez 2000). Dispersal movements may be over 8 km (5 mi) (U.S. Forest Service (Forest Service) 1999). Amount of rainfall, availability of surface water, width of streamside terraces and floodplains, vegetative cover, and topography can all influence the habitat available to arroyo toads and the distances they will move from the streambed (Griffin *et al.* 1999; Ramirez 2000). In San Diego County, Griffin *et al.* (1999) found that the female adult arroyo toads they radiotracked moved an average maximum distance of 135 meters (m) (443 feet (ft)) and a maximum of more than 300 m (984 ft) perpendicularly from streams, while males moved an average maximum of 73 m (240 ft) from the streams. Males along a coastal stream with a broad floodplain moved an average maximum of 92 m (302 ft) from the streams, while those in a narrower canyon moved only 23 m (75 ft) from the streambed (Griffin *et al.* 1999). Ramirez (2000) recorded a maximum distance from the stream of 37 m (121 ft) in one desert slope stream with a very narrow floodplain, and 145 m (476 ft) in another desert slope system with a broader floodplain. Extended movement away from streams may be facilitated by microclimates wherein lower temperatures and high humidity on foggy days in the spring and summer create moist substrates in upland habitats where adult arroyo toads can survive (Service 1999). We do not have enough data to accurately characterize overwintering activities and habitat use in all of the systems that arroyo toads inhabit.

Several land use activities may affect the hydrology of arroyo toad stream habitats and destroy or severely modify the dynamic nature of the riparian systems upon which arroyo toads depend for reproduction, development, and survival. Arroyo toad breeding habitat is created and maintained by the fluctuating hydrological, geological, and ecological processes operating in riparian ecosystems and the adjacent uplands. These riparian/wash habitats as well as adjacent upland habitats are essential for this species' survival. Periodic flooding that modifies stream channels, redistributes channel sediments and alters pool location and form, coupled with upper terrace stabilization by vegetation, is required to keep a stream segment suitable for all life stages of the arroyo toad. Human activities that affect water quality, influence the amount and timing of nonflood flows or frequency and intensity of floods, affect riparian plant communities, or alter sedimentation dynamics can reduce or eliminate the suitability of stream channels for arroyo toad breeding habitat. Degradation or loss of surrounding riparian and upland habitats reduces and eliminates foraging and overwintering habitat. The introduction of nonnative plant and animal species can reduce the quality of all habitats used by arroyo toads, lead to detrimental levels of competition and predation, or reduce the availability of toad food. Run-off from roads can decrease habitat quality for arroyo toads, and roads provide access for humans, domestic animals, and invasive species that can lead to additional habitat degradation.

The effects of such activities and factors may not become apparent until many years later when the habitat finally becomes sufficiently degraded that arroyo toads can no longer reproduce and survive. Combined with the normal climatic fluctuations in the arroyo toad's range, which can include consecutive years of extremely high or low rainfall, human impacts can cause temporary or permanent extirpations of toads from some areas. Human activities that may cause adverse impacts to arroyo toads include urbanization and agriculture within and adjacent to riparian habitats, the use of pesticides and herbicides within or adjacent to arroyo toad habitat, dam building and the resulting reservoirs, water flow manipulations, sand and gravel mining, suction dredge mining, road placement across and within stream terraces, livestock grazing, off-highway vehicle use of roads and stream channels, the placement of campgrounds and other recreational facilities in arroyo toad habitat (especially on stream terraces), and the use of stream channels and terraces for recreational activities.

Previous Federal Actions

We first included the arroyo southwestern toad as a Category 2 candidate species in the September 18, 1985, Notice of Review of Candidate Species (50 FR 37958). It was included under the same category in subsequent notices on January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804). We were petitioned to list the arroyo toad under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), on December 30, 1992, and we published a proposed rule on August 3, 1993 (58 FR 41231). The arroyo toad was listed as endangered on December 16, 1994 (59 FR 64859). The designation of critical habitat was determined to be not prudent due to threats of vandalism and collection. A draft recovery plan for the arroyo southwestern toad was made available for public comment on May 6, 1998 (63 FR 25062), and we published the final recovery plan in September 1999.

At the time of listing, we concluded that designation of critical habitat for the arroyo toad was not prudent because such designation would not benefit the species. We were concerned that critical habitat designation would likely increase the degree of threat from vandalism, collection, or other human-induced impacts. We were aware of at least one instance of the apparent collection of a group of breeding males that had occurred during the listing process, following the publication of information regarding an ongoing scientific study. During the development of the final recovery plan, concern was raised about collecting activities on some public lands (Service 1999). However, we have determined that instances of vandalism have not increased since the listing of the arroyo toad, and the threats to this species and its habitat from specific instances of collection and habitat destruction do not outweigh the broader educational, potential regulatory, and other possible benefits that designation of critical habitat would provide for this species. A designation of critical habitat can provide educational benefits by formally identifying those areas essential to the conservation of the species. These areas are also identified in the recovery plans as the focus of our recovery efforts for the arroyo toad.

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior (Secretary), for failure to designate critical habitat for seven species: the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helminthoglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider (*Polysticta stelleri*) (*Southwest Center for Biological Diversity* v. *U.S. Fish and Wildlife*, CIV 99–1003 MMC). On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit pursuant to a settlement agreement entered into by the parties. Publication of this proposed rule is consistent with that settlement agreement.

Absent the settlement agreement, the processing of this proposed rule does not conform with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. We are processing this proposed rule in compliance with the above-mentioned settlement agreement.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. In 50 CFR 402.02, "jeopardize the continued existence" (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation and management plans, and through section 7 consultations and section 10 permits.

This critical habitat designation identifies specific units that are essential to the conservation of a listed species and that may require special management considerations or protection. All of the proposed critical habitat areas are considered essential to the conservation of the arroyo toad as described in the final recovery plan. The proposed critical habitat units contain a mosaic of habitats that provide breeding, foraging, sheltering, and living spaces for arroyo toads, as well as migration and dispersal corridors. Each critical habitat unit currently may not contain all of the primary constituent elements, but could develop them in the future. Some of the habitat in the proposed units could be improved through habitat rehabilitation or improved management (*e.g.*, removal of nonnative species or restoration of more natural streamflow regimes).

Methods

In determining areas that are essential to conserve the arroyo toad, we used the best scientific and commercial data available. We have reviewed the overall approach to the conservation of the arroyo toad undertaken by the local, state, Tribal, and Federal agencies operating within the species' range since its listing in 1994, and the identified steps necessary for recovery

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outlined in the final Recovery Plan for the Arroyo Southwestern Toad (Service 1999).

We have also reviewed available information that pertains to the habitat requirements of this species, including material received since completion of the recovery plan. This material included data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; regional Geographic Information System (GIS) coverages; habitat evaluation models developed for and data submitted by the Los Padres, Angeles, San Bernardino, and Cleveland National Forests; habitat evaluation models for the San Diego County Multiple Species Conservation Program (MSCP), the North San Diego County Multiple Habitat Conservation Program (MHCP), and the North County Subarea of the MSCP for Unincorporated San Diego County; and a habitat capability model developed by Barto (1999) for San Diego County.

The areas we are proposing to designate as critical habitat currently provide some or all of those habitat components essential for the primary biological needs of the arroyo toad as defined by the primary constituent elements. Additionally, section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat.

Relationship to Mexico

We are not aware of any existing national level regulatory mechanism in Mexico that would protect the arroyo toad or its habitat, although new legislation for wildlife is pending in Mexico and Mexico has laws that could provide protection for rare species, there are enforcement challenges. If specific protections were available and enforceable in Mexico, for this species the portion of the range in Mexico alone, in isolation, would not be adequate to ensure the long-term conservation of this species.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act, and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Due to the complex life history and dispersal capabilities of the toads, and the dynamic nature of the environment in which they are found, all of the primary constituent elements may not be found in or adjacent to every stream reach and associated upland habitats proposed for critical habitat. It is important to provide for dispersal and migration corridors, as well as allowing room for expansion of the populations. Habitat rehabilitation efforts, as well as changes in current management activities, may be necessary in some areas in order to attain an optimal distribution of the primary constituent elements in each critical habitat unit.

The primary constituent elements of critical habitat for the arroyo toad include rivers and streams with a hydrologic regime that supplies sufficient flowing water of suitable quality at the appropriate times to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads; low-gradient stream segments (typically less than 4 percent) with sandy or fine gravel substrates which support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; a natural flooding regime or one sufficiently corresponding to a natural regime that will periodically scour riparian vegetation, rework stream channels and terraces, and redistribute sands and sediments, such that adequate numbers and sizes of breeding pools and sufficient terrace habitats with appropriate vegetation are maintained to provide for the needs of all life stages of the toad; upland habitats of sufficient width and quality (i.e., with areas of loose, sandy soil where toads can burrow underground) to provide foraging and living areas for subadult and adult arroyo toads (loose, sandy soils are typically most prevalent on alluvial terraces and valley bottomlands and occur primarily, but not exclusively, within 1.5 km (0.9 mi) of the streamcourse and less than 25 m (80 ft) in elevation above the adjacent stream channel); few or no nonnative species that prey upon or compete with arroyo toads, or degrade their habitat; stream channels and upland habitats where manmade barriers do not completely or substantially impede migration to overwintering sites, dispersal between populations, or recolonization of areas that contain suitable habitat; and undisturbed habitats. Primary constituent elements, or components thereof, are found in all of the areas proposed for critical habitat.

Arroyo toads are not distributed uniformly throughout the critical habitat units. Arroyo toad breeding habitat is patchily distributed along the stream courses, and the same may be true of appropriate upland habitat. Some areas are suitable only for migration and dispersal between breeding and foraging habitats or to additional breeding pools that will accommodate expanding populations. The areas within the proposed units contain some or all of the primary constituent elements. Areas within the proposed critical habitat that may not have toads present at a given point in time may be capable of supporting the constituent elements because habitat conditions can change rapidly in response to flows and other factors, such as the development and shifting of sand and gravel bars, and creation and disappearance of pools. Terrace and upland habitat characteristics and suitability are dynamic and may change as a result of rainfall, earthquakes, fires, and other natural events.

Criteria Used To Identify Critical Habitat

The final recovery plan (Service 1999) for the arroyo toad identified the specific recovery needs of the species and serves as a starting point for identifying areas essential to the conservation of the toad. Those drainage basins identified in the final recovery plan as areas that should be maintained or rehabilitated in order to achieve arroyo toad recovery are generally reflected in this proposed critical habitat designation. The designation of critical habitat is one of several tools available for implementing the recovery strategy for the toad.

The recovery strategy for the arroyo toad focuses on providing sufficient breeding and upland habitat to maintain self-sustaining populations of arroyo toads throughout the historic range of the species in California, and minimizing or eliminating impacts and threats to arroyo toad populations. Self-sustaining populations are those documented as having successful recruitment (i.e., inclusion of newly matured individuals into the breeding population) equal to 20 percent or more of the average number of breeding adults in 7 of 10 years of average to above average rainfall amounts with normal rainfall patterns. The level of recruitment is based on the currently available information, which indicates that arroyo toads may live for only about 5 years, and that losses of overwintering adults can be high. Having 20 percent or greater recruitment in 7 of 10 good rainfall years should provide a sufficient population base to maintain the population through adverse conditions such as during drought years or high flow years, or following fires.

Self-sustaining populations should require little or no direct human assistance such as captive breeding or rearing, or translocation of arroyo toads between sites. Protection and management of areas on a watershed basis is the most effective means of achieving such distributions of habitat. Areas should be large enough to allow a dynamic spatial and temporal distribution of suitable breeding, foraging, dispersal, and migration habitats in the event of random natural or human-related events such as fires, floods, and droughts.

Arroyo toads survive in areas that are ecologically and geographically distinct from one another, and the threats in those areas differ. To better address the recovery needs of the arroyo toad in each of these areas, we identified three recovery units, the Northern, Southern, and Desert, that reflect the ecological and geographic separations, and cover the known and historic range of the species. We are proposing some critical habitat in each of the recovery units to identify for the public and land managers those distinct ecological environments in which the toad is found that are essential to its recovery, and to enable land managers to make management decisions that may help stabilize and expand the populations in these units to preserve the species' full genetic diversity. The recovery units as identified in the final recovery plan are provided for reference in Table 1.

TABLE 1. RECOVERY UNITS FOR THE ARROYO TOAD.

Northern Unit:
San Antonio River, Monterey County
Sisquoc River and tributaries, Santa Barbara County
Upper Santa Ynez River Basin (Indian, Mono, Agua Caliente), Santa Barbara County
Sespe Creek., Ventura County
Piru Creek (Upper and Lower), Ventura and Los Angeles counties
Upper Santa Clara River Basin, Los Angeles County
Upper Los Angeles Basin: (Big Tujunga, tributaries, Arroyo Seco), Los Angeles County
Southern Unit:
Santiago Creek, Orange County
San Jacinto and Bautista Creek, Riverside County
San Juan basin and Trabuco Creeks, Orange and Riverside counties
San Mateo and San Onofre Creek Basins, San Diego and Orange counties
Lower Santa Margarita basin (De Luz, Roblar, and Sandia Creeks), San Diego County
Upper Santa Margarita Basin (Temecula Creek, Arroyo Seco), Riverside and San Diego Counties
Lower and Middle San Luis Rey Basin (below Lake Henshaw), San Diego County
Upper San Luis Rey basin (above Lake Henshaw), San Diego County
Santa Ysabel Creek, San Diego County
San Diego basin (including San Vicente Creek), San Diego County
Sweetwater River Basin (including Viejas, Peterson Creeks), San Diego County
Cottonwood Creek Basin, San Diego County
Desert Recovery Unit:
Little Rock Creek, Los Angeles County
Upper Mojave River Basin (Mojave, Deep, Horsethief, Little Horsethief), San Bernardino County
Whitewater River Basin, Riverside County.

In an effort to map areas essential to the conservation of the species, we used data on known arroyo toad locations, focusing specifically on those areas identified in the recovery plan as essential for the stabilization and reclassification of the species. We then used spatial data on stream gradient to better determine the extent of suitable breeding habitat in these areas. Stream segments containing suitable stream gradient are often patchily distributed and interspersed with higher gradient segments. These interspersed high-gradient segments were included in the mapped essential stream reaches because of their proximity to suitable breeding habitat and their importance in facilitating movement between breeding sites.

GIS-based modeling was then used to identify upland areas within a 25-m (80-ft) elevation range of each essential stream reach and no more than 1.5 km (0.9 mi) away from the stream. This technique was effective at capturing alluvial areas associated with river valleys without extending appreciably up the adjacent hillsides. Thus, the width of the upland component of critical habitat varies based on topography. The habitat is wide in broad alluvial valleys and narrow in places where streams run through constricted canyons or between surrounding hills.

To provide a legal description of the proposed critical habitat units, a 1-km^2 (0.62 mi^2) Universal Transverse Mercator (UTM) grid was overlaid on each essential stream reach and its surrounding upland habitat area (as defined by the GIS-based modeling described above). The proposed critical habitat units represent all 1-km^2 (0.62 mi^2) UTM grid squares that contain portions of an essential stream segment or upland habitat area. Defining critical habitat unit boundaries at a 1-km^2 (0.62 mi^2) scale resolution does result in the inclusion of some areas that potentially lack the primary constituent elements necessary for arroyo toads.

To identify proposed critical habitat units, we first examined those lands under Federal jurisdiction. Those lands include areas managed by the Department of Defense (DOD), the U.S. Forest Service (USFS), the Bureau of Land Management (BLM), the Army Corps of Engineers (Army Corps), and the U.S. Fish and Wildlife Service (Service). We also considered the existing status of non-Federal and private lands in designating areas as critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Non-Federal and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) for arroyo toads under section 10(a)(1)(B) of the Act receive special management and protection under the terms of the HCP/IA and are therefore not being proposed for inclusion in critical habitat as discussed in section 3(5) of the Act.

We considered, and are proposing, portions of the Pala, Rincon, Capitan Grande, Sycuan, Viejas, La Posta, and Soboba Indian Reservations because we believe that riparian and adjoining upland areas on Tribal lands may be essential to the continued existence of arroyo toads. However, the short

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amount of time allowed under the settlement agreement approved by the court to propose critical habitat precluded us from adequately coordinating with the respective Tribes. Subsequent to this proposal, we will coordinate with the Tribes before making a final determination as to whether any Tribal lands should be included as critical habitat for the arroyo toad. We will consider whether these Tribal lands require special management considerations or protection; we may also exclude some or all of these lands from critical habitat upon a determination that the benefits of excluding them outweighs the benefits of designating these areas as critical habitat, as provided under section 4(b)(2) of the Act. This consultation will take place under the auspices of Secretarial Order 3206 and the Presidential Memorandum of April 29, 1994, which require us to coordinate with federally recognized Tribes on a Government-to-Government basis.

We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for arroyo toad conservation. Areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat by county and land ownership is shown in Table 2. Proposed critical habitat includes arroyo toad habitat throughout the species' range in the United States (*i.e.*, Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Riverside, San Bernardino, Orange, and San Diego Counties, California). Lands proposed are under private, local agency, county, State, Tribal, and Federal ownership. Lands proposed as critical habitat have been divided into 22 Critical Habitat Units. Brief descriptions of each unit, and reasons for proposing them as critical habitat, are presented below. The units are generally based on geographically distinct river basins. In several instances, a river basin has been broken into two or more units based on human or natural landscape features that effectively separate portions of the basin (*e.g.*, a large reservoir or gorge).

Jennings and Hayes (1994) estimate that arroyo toads have lost up to 75 percent of their historic habitat. Although the linear measure of historically occupied streams may not be four times what is currently occupied, it is clear from museum records and data on extant populations that the habitats capable of supporting large numbers of arroyo toads have decreased dramatically in the last 100 years. The reaches that typically support or historically supported the highest densities of toads are those in the lower and middle portions of river basins, typically associated with third order or larger streams. Many of those reaches have been lost to urban development, intensive agriculture, and reservoirs.

Arroyo toads now occur as isolated subpopulations on the middle and upper reaches of tributaries of many large rivers. They probably occurred on these creeks downstream to the confluences with the mainstems. If so, and if arroyo toads used the mainstems for breeding or dispersal, all of the arroyo toads in a single basin would have constituted a single metapopulation. The isolation of subpopulations on the tributaries can lead to inbreeding and genetic instability, making them more susceptible to losses from disease or other problems. Losses of genetic variability associated with inbreeding can make it more difficult for a population to survive when environmental conditions change, as associated with long-term climatic changes or fluctuations (*e.g.*, ice ages, global warming). When populations in isolated reaches are greatly reduced or lost due to natural or human-related impacts, including catastrophic fires or floods, the loss of habitat continuity and the greater distances between subpopulations will make it more difficult for arroyo toads to recolonize those fragmented habitats (see *e.g.*, Barto 1999).

Northern Recovery Unit

The following seven critical habitat units are located in the Northern Recovery Unit for the arroyo toad, as discussed in the final recovery plan. Most of the lands are Federal, and management needs are being addressed through the section 7 consultation process and the development of management plans and conservation strategies.

Unit 1: San Antonio River, Monterey County

Unit 1 consists of the San Antonio River and adjacent uplands, from the junction of Forest Creek downstream to San Antonio Reservoir. The unit encompasses approximately 9,100 ha (22,600 ac), 98 percent of which is on the Fort Hunter Liggett Military Reservation. This is the northernmost known occurrence of arroyo toads and is approximately 160 km (100 mi) north of the nearest documented extant population. The protection and recovery of this population are essential to maintain the complete genetic variability of the species and the full range of ecological settings within which it is found.

Unit 2: Sisquoc River, Santa Barbara County

Unit 2 consists of the Sisquoc River and adjacent uplands, from Sycamore Campground downstream to its confluence with the Santa Maria River. The unit encompasses approximately 11,700 ha (28,900 ac), of which 67 percent is private land and 33 percent is within the Los Padres National Forest. Upper stretches of the river are within the National Forest and mostly within the San Rafael Wilderness Area. Below the National Forest boundary, the river and adjacent uplands are on private lands. This long, unregulated stream is occupied arroyo toad habitat and is one of the few remaining major rivers in southern California with a natural flow regime.

Unit 3: Upper Santa Ynez River Basin, Santa Barbara County

Unit 3 is located upstream of Gibraltar Reservoir and incorporates portions of the upper Santa Ynez River, Indian Creek, Mono Creek, and adjacent uplands. The unit encompasses approximately 5,700 ha (14,100 ac) within the Los Padres National Forest, with over 90 percent on National Forest lands and the remainder in private inholdings. Proposed portions of the upper Santa Ynez River watershed extend from Jameson Reservoir down to Gibraltar Reservoir. Indian Creek basin is proposed from the Buckthorn Creek confluence down to the Mono Debris Dam. Mono Creek is proposed from the first unnamed stream below The Narrows to its confluence with the Santa Ynez River. A substantial and well-studied arroyo toad population occurs in this area (Sweet 1992, 1993). It is likely the remnants of a much larger population that historically extended downstream below what is now Lake Cachuma and upstream into the area occupied by Jameson Reservoir.

Unit 4: Sespe Creek, Ventura County

Unit 4 includes Sespe Creek and adjacent uplands, from the lower end of Sespe Gorge (elevation approximately 1,075 m (3,530 ft)) downstream to the confluence with Alder Creek. The unit encompasses approximately 5,800 ha (14,300 ac), of which 96 percent is on the Los Padres National Forest and the remainder is in private inholdings. A substantial arroyo toad population occurs in this unit (Service 1999) along an undammed stream in a watershed that is predominately National Forest land. In all likelihood, arroyo toad populations in units 4, 5, and 6 historically were part of a large Santa Clara River Basin metapopulation. Substantive barriers to toad movement now exist between these units, including dams, agriculture, and urban development.

Unit 5: Piru Creek, Ventura and Los Angeles Counties

Unit 5 includes Piru Creek and adjacent uplands from the confluence with Lockwood Creek downstream to Pyramid Reservoir (Subunit A), and from Piru Gorge downstream to Lake Piru (Subunit B). Subunit B also includes Agua Blanca Creek from Devil's Gateway downstream to the confluence with Piru Creek. The unit encompasses approximately 7,800 ha (19,300 ac), 95 percent of which is within the Los Padres and Angeles National Forests, with the remaining on private inholdings. A substantial arroyo toad population occurs in this unit (Service 1999).

Unit 6: Upper Santa Clara River Basin, Los Angeles County

Unit 6 includes portions of Castaic Creek, San Francisquito Creek, the upper Santa Clara River, and adjacent uplands. The unit encompasses approximately 13,900 ha (34,300 ac), of which 77 percent is private land and 23 percent is within the Angeles National Forest. The proposed portion of Castaic Creek extends from Cienega Spring downstream to Castaic Lake (Subunit A). A portion of Fish Creek above the confluence with Castaic Creek is also included in Subunit A. Arroyo toads occur below Castaic Lake to the confluence of the Santa Clara River (Subunit B). The upper Santa Clara River is proposed from Bee Canyon downstream to the confluence with Castaic Creek (Subunit B). San Francisquito Creek is proposed from Bee Canyon (a different Bee Canyon) to the confluence with the Santa Clara River (Subunit B). San Francisquito Creek offers an excellent opportunity for expanding the Upper Santa Clara arroyo toad population with appropriate management of nonnative plants and habitat rehabilitation.

Unit 7: Upper Los Angeles River Basin, Los Angeles County

Unit 7 includes portions of Big Tujunga, Mill, Alder, and Arroyo Seco creeks, and adjacent uplands. The unit encompasses approximately 8,700 ha (21,500 ac), of which 68 percent is within the Angeles National Forest and 32 percent is private land. Big Tujunga Creek is proposed from Big Tujunga Dam downstream to Hansen Lake (Subunit A) (excluding Big Tujunga Reservoir). Big Tujunga Creek upstream from Big Tujunga Lake to 2 km (1.2 mi) above the confluence with Alder Creek, Mill Creek from the Monte Cristo Creek confluence downstream to Big Tujunga Creek, and Alder Creek from the Mule Fork confluence downstream to Big Tujunga Creek are proposed (Subunit B). Arroyo Seco is proposed from the Long Canyon confluence downstream to Devil's Gate Reservoir (Subunit C). Arroyo toads occupy each of these drainages. Big Tujunga Creek below the reservoir is an area with high potential for expanding toad numbers through careful management of land use activities and water releases from the dam.

Southern Recovery Unit

The following 12 critical habitat units are located in the Southern Recovery Unit for the arroyo toad, as discussed in the final recovery plan. Arroyo toads probably occurred in and along the coastal plain portions of all the streams in this unit, but are now found on the coastal plain only in units 8, 10, 11, and 12. The latter two units are largely encompassed by Camp Pendleton Marine Corps Base.

Unit 8: Santiago Creek, Orange County

Unit 8 is centered around the confluence of Santiago, Black Star, and Baker creeks, just above Irvine Lake. The unit encompasses approximately 1,200 ha (3,000 ac), 95 percent of which is private land and 5 percent is within the Cleveland National Forest. Black Star Creek is proposed from near the southwest corner of Section 30 (T4S, R7W) downstream to Santiago Creek. An approximately 3 km (1.9 mi) stretch of lower Baker Canyon is proposed. Portions of the Orange County Central/Coastal Natural Community Conservation Planning Act of 1991 (NCCP)/HCP planning area fall within the unit boundaries, but areas where take has been authorized are not being proposed for critical habitat. The current status of arroyo toads in this unit is poorly known, but there are historic records from the 1970s and high-quality habitat still exists in the area. The unit is important for arroyo toad recovery, as it is the northernmost remaining habitat in Orange County and supports the only remaining population within the lower Santa Ana River Basin.

Unit 9: San Jacinto River and Bautista Creek, Riverside County

Unit 9 includes portions of the San Jacinto River and Bautista Creek and adjacent uplands, several miles east of the town of Hemet. The unit encompasses approximately 5,370 ha (13,300 ac), of which 62 percent is private land and 24 percent is within the San Bernardino National Forest. The San Jacinto River is proposed from the Sand Canyon confluence downstream to just below the confluence with Indian Creek. The lower 1 km (0.6 mi) of Indian Creek is also included. Bautista Creek is proposed from near the middle of section 20 (T6S, R2E) downstream to near the middle of section 21 (T5S, R1E), at the point where the levee starts. The current status of arroyo toads in this unit is poorly known, but there are historic records from the 1970s and high quality habitat still exists in the area. It is an important area for recovery, being the only remaining area in the San Jacinto River Basin capable of supporting a substantial population.

Approximately 330 ha (815 ac) of the Soboba Indian Reservation are included in this unit. Within the Reservation, riparian and associated upland habitats along lower Indian Creek and the San Jacinto River are considered essential for the conservation of the arroyo toad. Based on the outcome of discussions with the Soboba Tribe, and the results of our 4(b)(2) analysis, critical habitat on these Tribal lands may be appropriate and has been identified in this proposed rule.

Unit 10: San Juan and Trabuco Creeks, Orange and Riverside Counties

Unit 10 includes portions of San Juan Creek, Bell Canyon, Trabuco Creek, and adjacent uplands. The unit encompasses approximately 8,600 ha (21,300 ac), of which 59 percent is private land, 21 percent is Orange County park land (*i.e.*, Caspers Wilderness Park and O'Neil Regional Park), and 20 percent is on the Cleveland National Forest. The proposed portion of San Juan Creek extends from the bottom of Decker Canyon downstream to Interstate 5 (Subunit A). The proposed portion of Bell Canyon extends from just below

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Crow Canyon downstream to the confluence with San Juan Creek (Subunit A). An approximately 8 km (5 mi) stretch of Trabuco Creek is proposed, extending downstream from Falls Canyon (Subunit B). San Juan Creek supports a large arroyo toad population, which is concentrated within Caspers Wilderness Park and private lands downstream. Trabuco Creek is occupied by arroyo toads, but there is little additional information on their distribution and abundance in this drainage. Although habitat has been degraded in the far downstream portions of San Juan Creek, there is still high potential for restoration and recovery in this area.

Unit 11: San Mateo and San Onofre Basins, San Diego and Orange Counties

Unit 11 includes portions of San Mateo, San Onofre, Christianitos, Talega, Gabino, and La Paz creeks, and adjacent uplands. The unit encompasses approximately 11,200 ha (27,600 ac), of which 78 percent is within the Camp Pendleton Marine Corps Base and 20 percent is on private land. The proposed portion of San Mateo Creek extends from Devils Canyon downstream to Interstate 5. The proposed portion of San Onofre Creek extends approximately 16 km (10 mi) upstream from Interstate 5 and includes portions of Jardine Canyon. Christianitos Creek is proposed from just above Gabino Creek downstream to the confluence with San Mateo Creek. An approximately 5 km (3.1 mi) stretch of Gabino Creek upstream from its confluence with Christianitos Creek is proposed, including about 1 km (0.6 mi) of La Paz Creek. An approximately 7 km (4.4 mi) stretch of Talega Creek upstream from its confluence with Christianitos Creek is also proposed. This unit supports a large number of arroyo toads (D.C. Holland, unpubl. data) and one of the few remaining populations on the coastal plain.

Unit 12: Lower Santa Margarita River, San Diego County

Unit 12 includes the Santa Margarita River and adjacent uplands, from the lower end of Temecula Canyon to Interstate 5. It also includes De Luz Creek from the town of De Luz to the confluence with the Santa Margarita River and approximately 2.5 km (1.6 mi) of Roblar Creek above its confluence with the Santa Margarita River. The unit encompasses approximately 9,800 ha (24,200 ac), of which 74 percent is within either the Camp Pendleton Marine Corps Base or the Fallbrook Naval Weapons Station and 25 percent is on private land. The arroyo toad population within this unit is large (D.C. Holland, unpubl. data) and one of the few remaining on the coastal plain.

Unit 13: Upper Santa Margarita River Basin, Riverside and San Diego Counties

Unit 13 is located above Vail Lake and includes portions of Temecula Creek, Wilson Creek, Arroyo Seco Creek, and adjacent uplands. The unit encompasses approximately 9,800 ha (24,200 ac), of which 78 percent is private land and 18 percent is within the Cleveland National Forest. Temecula Creek is proposed from Dodge Valley downstream to Vail Lake. Wilson Creek is proposed from Lancaster Valley down to Vail Lake, and the Arroyo Seco segment extends from Crosley Homestead down to Vail Lake. The broad, flat alluvial valleys found in this unit contain high-quality habitat for arroyo toads, and the species occurs in each of the proposed drainages. It is the largest and highest quality area of suitable arroyo toad habitat in Riverside County.

Unit 14: Lower and Middle San Luis Rey River Basin, San Diego County

Unit 14 includes portions of the San Luis Rey River below Lake Henshaw and adjacent uplands, and includes the lower portion of Keys Creek. The unit encompasses approximately 13,400 ha (33,100 ac), of which 77 percent is private land and 17 percent is Tribal land. The San Luis Rey River is proposed from the western edge of the La Jolla Indian Reservation downstream to the confluence with Guajome Creek near the city of Oceanside. Approximately 2.7 km (1.7 mi) of Keys Creek upstream from the confluence with the San Luis Rey is also proposed. This long, low-elevation (all below 305 m (1,000 ft) in elevation) unit, situated in a broad, flat valley, is prime occupied habitat for arroyo toads. Approximately 1,365 ha (3,375 ac) of the Pala Indian Reservation and 920 ha (2,275 ac) of the Rincon Indian Reservation are included in this unit. Within these reservations, riparian and associated upland habitats along the San Luis Rey River, Pala Creek, and other tributary streams are considered essential for the conservation of the arroyo toad.

The San Luis Rey River provides important high quality habitat for the arroyo toad. However, intensive urbanization and agriculture near the coast, and dams and water diversions in the upper end, have greatly reduced habitat quality in the upper and lower portions of this drainage, leaving only the middle stretch of the river with any remaining high quality, occupied toad habitat. Approximately 19 percent of the identified remaining suitable habitat along the San Luis Rey is on Tribal land (13 percent on the Pala and 6 percent on the Rincon). The Pala Reservation is in the middle of the San Luis Rey critical habitat unit. If habitat on the reservation is lost, the remaining population would be highly fragmented and vulnerable to extirpation. Also, land uses on the stream terrace (primarily agricultural fields) have been more intensive on the private lands, particularly in the lower end of the unit. Thus, the Tribal lands actually support a greater percentage of high quality upland habitat. Based on the outcome of discussions with the Pala and Rincon Indian Tribes, and the results of our 4(b)(2) analysis, critical habitat on these Tribal lands may be appropriate and has been identified in this proposed rule.

Unit 15: Upper San Luis Rey Basin, San Diego County

Unit 15 includes the upper San Luis Rey River above Lake Henshaw, two of its headwater tributaries, and adjacent uplands. The unit encompasses approximately 7,400 ha (18,300 ac), of which 68 percent is private land and 32 percent is within the Cleveland National Forest. The upper San Luis Rey River is proposed from the Indian Flats area downstream to the upper end of Lake Henshaw (Subunit A). Agua Caliente Creek is proposed from the western edge of section 13 (T10S, R3E) to the confluence with the San Luis Rey (Subunit A). An approximately 2.5 km (1.6 mi) stretch of the West Fork of the San Luis Rey River is proposed where it runs through Barker Valley (Subunit B). Arroyo toads occur in each of these drainages, with the largest concentration found along Agua Caliente Creek. This unit contains an important assemblage of several small, disjunct, high-elevation populations and one large, core population in an area where in-stream and/or overland dispersal between populations is probably still possible.

Unit 16: Santa Ysabel Creek, San Diego County

Unit 16 includes portions of Santa Ysabel Creek and adjacent uplands, and includes portions of Santa Maria Creek, Guejito Creek, and Temescal Creek (Pamo Valley). The unit encompasses approximately 9,500 ha (23,500 ac), of which 76 percent is private land and 20 percent is within the Cleveland National Forest. Santa Ysabel Creek is proposed from Sutherland Reservoir downstream to the western boundary of the Cleveland National Forest near Boden Canyon (which is the eastern boundary of the San Diego MSCP area) (Subunit A). Approximately 7 km (4.3 mi) of Temescal Creek is proposed from the northern edge of Pamo Valley to the confluence with Santa Ysabel Creek (Subunit A). Approximately 12 km (7.5 mi) of Guejito Creek is proposed from the 610 m (2,000 ft) elevation contour downstream to the San Diego MSCP boundary near San Pasqual Valley (Subunit B). Approximately 10 km (6 mi) of Santa Maria Creek is proposed from the west side of Ramona to the San Diego MSCP boundary near San Pasqual Valley (Subunit C). Arroyo toads occur in each of these drainages, with a particularly substantial concentration in Pamo Valley. This unit provides an important linkage to a substantial arroyo toad population in San Pasqual Valley that occurs within the San Diego MSCP area.

Unit 17: San Diego River/San Vicente Creek, San Diego County

Unit 17 includes portions of the San Diego River and San Vicente Creek and adjacent uplands. The unit encompasses approximately 5,100 ha (12,600 ac), of which 65 percent is private land and 22 percent is within the Cleveland National Forest. Subunit A includes the San Diego River from Ritchie Creek downstream to the upper edge of El Capitan Reservoir (including approximately 1 km (0.6 mi) of lower Cedar Creek) and San Vicente Creek from the eastern end of San Diego Country Estates downstream to where the creek crosses Wildcat Canyon Road (the MSCP area boundary). Subunit B extends from El Capitan Reservoir to El Monte County Park. Subunit C extends from approximately 2 km (1.2 mi) below El Monte County Park downstream to the confluence with San Vicente Creek. The upper San Diego River and San Vicente Creek are both occupied by arroyo toads. This unit also provides an important linkage to populations occurring within the San Diego MSCP area. Approximately 360 ha (900 ac) of the Capitan Grande Indian Reservation are included in this unit. Within the Reservation, riparian and associated upland habitats along the upper San Diego River above El Capitan Lake are considered essential for the conservation of the arroyo toad. Based on the outcome of discussions with the Barona and Viejas Indian Tribes (which jointly govern the Capitan Grande Reservation), and the results of our 4(b)(2) analysis, critical habitat on these Tribal lands may be appropriate and has been identified in this proposed rule. Approximately 190 acres of the Barona Indian Reservation south of San Vicente Creek are also included in this unit. These acres are not considered to be high-quality arroyo toad habitat; they lie within the unit boundary because of the spatial scale at which these units were mapped. Thus, Tribal lands on the Barona Indian Reservation are not considered essential to conserve the toad and are not being proposed for critical habitat. Because of the short time-line associated with this proposal, we were unable to accurately remove this area from the proposed critical habitat boundaries.

Unit 18: Sweetwater River Basin, San Diego County

Unit 18 includes portions of the Sweetwater River, Peterson Canyon, Viejas Creek, and adjacent uplands. The unit encompasses approximately 11,410 ha (28,200 ac), of which 52 percent is private land, 22 percent is on California State Park land, 17 percent is within the Cleveland National Forest, and 6 percent is on the San Diego National Wildlife Refuge. Three disjunct portions of the Sweetwater River are proposed: from the top of Upper Green Valley in Cuyamaca Rancho State Park downstream to the San Diego MSCP area boundary (Subunit A), an approximately 1-km (0.6-mi) segment immediately above Loveland Reservoir that is outside the MSCP area boundary (Subunit B), and from immediately below Loveland Dam downstream to the upper edge of Sweetwater Reservoir (Subunit C). Peterson Canyon is proposed from just east of the Taylor Creek confluence downstream to the top of Loveland Reservoir (Subunit A). Viejas Creek is proposed from the western end of Viejas Valley downstream to the Congressional boundary of the Cleveland National Forest (which is the eastern boundary of the San Diego MSCP area) (Subunit A). All of the drainages included in this unit support arroyo toads. The unit provides an important linkage to populations on the lower Sweetwater River, which occur within the San Diego MSCP area. Approximately 185 ha (460 ac) of the Sycuan Indian Reservation and 100 ha (250 ac) of the Viejas Indian Reservation are included in this unit. Within the reservations, riparian and associated upland habitats along Viejas Creek (Viejas Reservation) and the lower part of Sycuan Creek (Sycuan Reservation) are considered essential for the conservation of the arroyo toad. Based on the outcome of discussions with the Viejas and Sycuan Indian Tribes, and the results of our 4(b)(2) analysis, critical habitat on these Tribal lands may be appropriate and has been identified in this proposed rule.

Unit 19: Cottonwood Creek Basin, San Diego County

Unit 19 includes portions of Cottonwood Creek, adjacent uplands, and portions of the following tributaries: Potrero Creek, Pine Valley Creek, Scove Canyon, Morena Creek, La Posta Creek, and Kitchen Creek. The unit, which is the largest proposed, encompasses approximately 18,000 ha (44,500 ac), of which 54 percent is within the Cleveland National Forest and 34 percent is private land. Two disjunct portions of Cottonwood Creek are proposed: From Buckman Springs (near Interstate 8) downstream to Morena Reservoir including approximately 13 km (8.1 mi) of La Posta Creek, 6 km (3.7 mi) of Morena Creek, and 2.5 km (1.6 mi) of Kitchen Creek (Subunit A). Subunit B extends from approximately 4 km (2.5 mi) below Morena Reservoir downstream to State Highway 94 (excluding Barrett Reservoir) and Potrero Creek from approximately the 752 m (2,466 ft) elevation benchmark downstream to the confluence with Cottonwood Creek. Two disjunct portions of Pine Valley Creek are proposed: From the north edge of section 12 (T15S, R4E) downstream to approximately 1 km (0.6 mi) south of Interstate 8 including approximately 4 km (2.5 mi) of Scove Canyon and 1 km (0.6 mi) of Noble Creek (Subunit C) and from the Nelson Canyon confluence downstream to Barrett Reservoir (Subunit D). Approximately 170 ha (425 ac) of the La Posta Indian Reservation are included in this unit. Within the Reservation, riparian and associated upland habitats along La Posta Creek are considered essential for the conservation of the arroyo toad. Based on the outcome of discussions with the La Posta Tribe, and the results of our 4(b)(2) analysis, critical habitat on these Tribal lands may be appropriate and has been identified in this proposed rule. This unit encompasses a large number of distinct arroyo toad occurrences in an area where in-stream and/or overland dispersal between populations is probably still possible. It also provides an important linkage to populations occurring within the San Diego MSCP area.

Desert Recovery Unit

The following four critical habitat units are in the Desert Recovery Unit as described in the final recovery plan. Each of these units is isolated from each other and from any other units, making the issues of inbreeding, fragmentation, and random negative impacts of great concern. Sufficient habitat needs to be secured and managed so that threats are

reduced and each population can increase in size.

Unit 20: Little Rock Creek, Los Angeles County

Unit 20 includes approximately 5 km (3.1 mi) of Little Rock Creek below Little Rock Reservoir (Subunit A) and from the South Fork confluence downstream to Little Rock Reservoir (Subunit B). Also included in Subunit B is an approximately 1.5 km (0.9 mi) segment of Santiago Creek upstream of the confluence with Little Rock Creek and adjacent uplands. The unit encompasses approximately 3,000 ha (7,400 ac), of which 79 percent is within the Angeles National Forest and 20 percent is private land. A substantial arroyo toad population occurs in this unit, in which the management of recreational activities has recently changed. Studies are currently under way to better determine the distribution of the population along the creek and to assess upland habitat use (Ramirez 2000).

Unit 21: Upper Mojave River Basin, San Bernardino County

Unit 21 includes portions of the Mojave River, the West Fork of the Mojave River, Horsethief and Little Horsethief creeks, Deep Creek, and adjacent uplands. The unit encompasses approximately 14,200 ha (35,100 ac), of which 26 percent is within the San Bernardino National Forest, 56 percent is private land, and 9 percent is U.S. Army Corps of Engineers-managed land associated with the flood control reservoir. Two separate segments of the Mojave River are proposed: (1) From Mojave River Forks Dam downstream approximately 4 km (2.5 mi) and (2) from approximately 2 km (1.2 mi) southeast of the Upper Narrows (section 14, T5N, R4W) downstream to approximately 6 km (3.7 mi) below the Lower Narrows (section 13, T6N, R5W). The West Fork is proposed from near the 1462 m (3,613 ft) elevation benchmark downstream to the confluence with Deep Creek (excluding Silverwood Lake). Deep Creek is proposed from near Devil's Hole to the confluence with the West Fork. Horsethief Canyon is proposed from Little Horsethief Creek to the confluence with the West Fork of the Mojave River. Little Horsethief Creek is proposed from approximately the western edge of section 28 (T3N, R5W) downstream to the confluence with Horsethief Creek. Summit Valley, through which Horsethief Creek flows, to and downstream of the confluence with the West Fork, is a broad, flat, alluvial valley that supports large numbers of arroyo toads (Ramirez 1999). It is probably the largest concentration of arroyo toads on the desert side of the mountains.

Unit 22: Whitewater River, Riverside County

Unit 22 includes portions of the Whitewater River and adjacent uplands, from near Red Dome downstream to one-quarter mile south of Interstate 10. The unit encompasses approximately 2,400 ha (5,900 ac), of which 56 percent is BLM land and 44 percent is private land. The current status of arroyo toads in this unit is poorly known, but recent sightings have occurred and high-quality habitat still exists in the area.

TABLE 2.—APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within]

County	Forest service	BLM	FWS	Military	State/Local	Tribal	Private	Total
Monterey	0	0	0	8,908 ha (22,013 ac).	0	0	218 ha (539 ac)	9,126 ha (22,552 ac)
San Luis Obispo	0	0	0	0	0	0	253 ha (625 ac)	253 ha (625 ac)
Santa Barbara	9,008 ha (22,260 ac).	0	0	0	0	0	8,120 ha (20,066 ac).	17,128 ha (42,326 ac)
Ventura	10,575 ha (26,130 ac).	0	0	0	0	0	546 ha (1,350 ac)	11,121 ha (27,480 ac)
Los Angeles	13,914 ha (34,382 ac).	58 ha (143 ac)	0	0	58 ha (143 ac)	0	14,050 ha (34,719 ac).	28,080 ha (69,387 ac)
San Bernardino	3,725 ha (9,204 ac).	496 ha (1,225 ac)	0	1,221 ha (3,017 ac).	816 ha (2,016 ac)	0	7,943 ha (19,627 ac).	14,200 ha (35,089 ac)
Riverside	3,132 ha (7,738 ac).	1,949 ha (4,817 ac).	0	0	103 ha (255 ac)	330 ha (815 ac)	10,085 ha (24,920 ac).	15,599 ha (38,545 ac)
Orange	1,178 ha (2,910 ac).	0	0	51 ha (125 ac)	1,854 ha (4,581 ac).	0	8,431 ha (20,833 ac).	11,514 ha (28,449 ac)
San Diego	18,062 ha (44,631 ac).	1,424 ha (3,519ac).	723 ha (1,787 ac)	15,922 ha (39,344 ac).	4,436 ha (10,960 ac).	3,100 ha (7,660 ac).	42,924 ha (106,066 ac).	86,591 ha (213,963 ac)
Total	59,594 ha (147,255 ac).	3,927 ha (9,704 ac).	723 ha (1,787 ac)	26,103 ha (64,499 ac).	7,267 ha (17,955 ac).	3,430 ha (8,475 ac).	92,572 ha (228,745 ac).	193,616 ha (478,419 ac)

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Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminish the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat. Conference reports assist the agency in eliminating conflicts that may be caused by the proposed action, and may include recommendations on actions to eliminate conflicts with or adverse modifications to proposed critical habitat. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the arroyo toad or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Army Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e. g., Federal Highway Administration or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of the arroyo toad. Within critical habitat, this pertains only to those areas containing the primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by the arroyo toad is not likely to result in a regulatory burden above that already in place due to the presence of the listed species.

Designation of critical habitat could affect Federal agency activities. Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agencies;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities on Federal lands (such as those managed by the Service, Forest Service, DOD, or BLM);

(4) Regulation of grazing, mining, and recreation by the BLM, DOD, Army Corps, or Forest Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Military training and maneuvers on Fort Hunter Liggett, Camp Pendleton, and other applicable DOD lands;

(7) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service (INS);

(8) Licensing of construction of communication sites by the Federal Communications Commission, and;

(9) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency.

Relationship to Habitat Conservation Plans

A number of habitat conservation planning efforts have been completed within the range of the arroyo toad. Principal among these are the NCCP efforts in San Diego and Orange counties. The San Diego MSCP, and its approved subarea plans, provide measures to conserve known populations of the arroyo toad within Santa Ysabel Creek in San Pasqual Valley, San Vicente Creek above San Vicente Reservoir, Sweetwater River, Otay River, and Cottonwood Creek in Marron Valley. Area-specific management directives for MSCP subarea plans must address the conservation of the arroyo toad by protecting and maintaining sufficient, suitable low-gradient sandy stream habitat to meet breeding requirements, preserving sheltering and foraging habitats within 1 km (0.6 mi) of occupied breeding habitat within designated preserve lands, controlling nonnative predators, and controlling human impacts within designated preserves. Incidental take of arroyo toads is authorized through the MSCP, but only for certain upland areas outside of U.S. Army Corps of Engineers jurisdiction.

All lands within the MSCP planning areas considered essential to the conservation of the arroyo toad were identified as preserve areas and are managed for the benefit of the arroyo toad under the terms of the MSCP. Therefore, with one exception, we have determined that non-Federal lands within MSCP planning areas that have an approved plan and an executed implementation agreement, approved as of the date of this rule, do not meet the definition of critical habitat in the Act, and we are not proposing designation of such lands as critical habitat. The exception concerns the reach of the Sweetwater River between Loveland and Sweetwater Reservoirs that is within the County of San Diego's MSCP plan. This area is affected by activities (*e.g.*, reservoir water transfers) that are outside the authority of the approved County's MSCP plan. Therefore, we have included this limited reach of the Sweetwater River as critical habitat.

The arroyo toad has been identified as a "conditionally covered" species by the Orange County Central/Coastal Subregion NCCP/HCP. "Conditional coverage" allows projects to proceed within the Central/Coastal subregion that will impact "smaller populations (except for the lower Limestone Creek population), reintroduced populations, or populations that have expanded due to NCCP reserve management" (pg. 94, Orange County Central/Coastal NCCP/HCP IA, Section 8.3.2). However, "habitat that supports a major arroyo toad population that plays an essential role in the distribution of the arroyo toad in the subregion is not covered" (pg. 94, Orange County Central/Coastal NCCP/HCP IA, Section 8.3.2). We are not proposing designation of critical habitat in the Orange County Central/Coastal NCCP/HCP planning area where take has been authorized.

Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the arroyo toad, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the arroyo toad. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (*e.g.*, counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of proposed HCPs and proposed projects under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in destruction or adverse modification of critical habitat.

We provide technical assistance and work closely with applicants throughout the development of HCPs to identify lands essential for the long-term conservation of the arroyo toad and appropriate conservation and management actions. Several HCP efforts are currently under way that address listed and nonlisted species in areas within the range of the arroyo toad and in areas we propose as critical habitat. These HCPs, which will incorporate appropriate adaptive management, should provide for the conservation of the species. Furthermore, we will be doing intra-service consultation on the impacts of these HCPs on designated critical habitat and determining whether it would destroy or adversely modify critical habitat. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the arroyo toad should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (*see* Public Comments Solicited section).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura or Carlsbad Fish and Wildlife Offices (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion

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will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will reopen the comment period 30 days at that time to accept comments on the economic analysis or further comments on the proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat for the arroyo toad as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the distribution of the arroyo toad, the amount and distribution of its habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for the arroyo toad, such as those derived from nonconsumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

In this proposed rule, we do not propose to designate critical habitat on non-Federal and private lands within the boundaries of any existing HCP and subarea plan with an executed Implementation Agreement and permit for arroyo toads approved under section 10(a)(1)(B) of the Act on or before the date of the final rule designating critical habitat for the toad. We believe that, since an existing HCP provides for long-term commitments to conserve the species and areas essential to the conservation of the arroyo toad, such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach, and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat;

(2) Designate as critical habitat reserves, preserves, and other conservation lands identified by approved HCPs on the premise that they encompass areas that are essential to conservation of the species within the HCP area and will continue to require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for the arroyo toad is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for the arroyo toad in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

Additionally, we are also seeking comments on critical habitat designation relative to future HCPs. Several conservation planning efforts are now under way within the range of the arroyo toad, and other listed and nonlisted species, in areas we are proposing as critical habitat. For areas where HCPs are currently under development, we are proposing to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection. We invite comments on the appropriateness of this approach.

In addition, we invite comments on the following, or other approaches, for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the arroyo toad:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the arroyo toad, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting; or

(5) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Given the large geographic extent covered by this proposal, the high likelihood of multiple requests, and the need to publish the final determination by January 1, 2001, we have scheduled two public hearings. The hearings are scheduled to be held in Valencia, California, on June 27, 2000, and in Temecula, California, on June 29, 2000. Written comments submitted during the comment period are considered to be of equal weight as comments presented at a public hearing. For additional information on public hearings, see the **ADDRESSES** section.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event of large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the hearings are published in the **ADDRESSES** section of this **Federal Register** notice.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The arroyo toad was listed as an endangered species in 1994. In fiscal years 1994 through 1999, the Ventura and Carlsbad Fish and Wildlife Offices conducted 27 and 55, respectively, formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the arroyo toad.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act (see Table 3). Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

TABLE 3.—IMPACTS OF ARROYO TOAD LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3].	Removing, degrading, or destroying arroyo toad habitat (as defined in the primary constituent elements discussion), whether by activities such as road construction, grading, and maintenance; fencing; off-road vehicle use; airport improvement activities; road right-of-way designation; overgrazing; mining activities including suction dredging; recreational activities including development of campgrounds; changes in long and short-term water flows including damming, diversion, alteration by agriculture and urbanization, and channelization; military training and maneuvers; licensing for construction of communication sites; chemical, or other means including herbicide or pesticide application, etc.); and appreciably decreasing habitat value or quality through indirect effects (edge effects, invasion of exotic plants or animals, or fragmentation that the Federal Government carries out.	None.

TABLE 3.—IMPACTS OF ARROYO TOAD LISTING AND CRITICAL HABITAT DESIGNATION—Continued

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Private Activities Potentially Affected [4].	Removing, degrading, or destroying arroyo toad habitat (as defined in the primary constituent elements discussion), whether by activities such as road construction, grading, and maintenance; fencing; off-road vehicle use; airport improvement activities; road right-of-way designation; overgrazing; mining activities including suction dredging; recreational activities including development of campgrounds; changes in long and short-term water flows including damming, diversion, alteration by agriculture and urbanization, and channelization; military training and maneuvers; licensing for construction of communication sites; chemical, or other means including herbicide or pesticide application, etc.); and appreciably decreasing habitat value or quality through indirect effects (edge effects, invasion of exotic plants or animals, or fragmentation) that require a Federal action (permit, authorization, or funding).	None.

[1] This column represents the activities potentially affected by listing the arroyo toad as an endangered species (December 16, 1994 (59 FR 64859) under the Endangered Species Act.
[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the arroyo toad since the listing in 1994. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in occupied areas of proposed critical habitat.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. As indicated on Table 2 (see Proposed Critical Habitat Designation section), we designated property owned by Federal, Tribal, State, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agencies;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities on Federal lands (such as those managed by the Service, Forest Service, DOD, or BLM);

(4) Regulation of grazing, mining, and recreation by the BLM, Department of Defense, Army Corps, or Forest Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Military training and maneuvers on Fort Hunter Liggett, Camp Pendleton, and other applicable DOD lands;

(7) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the INS;

(8) Licensing of construction of communication sites by the Federal Communications Commission, and;

(9) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency.

Many of the activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of occupied areas as critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not destroy or adversely modify the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency action. The rule will not increase or decrease the current restrictions on private property concerning take of the arroyo toad. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Owners of areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the arroyo toad.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California. We will continue to coordinate any future designation of critical habitat for the arroyo toad with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the arroyo toad imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act, and will hold public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the arroyo toad.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements that require Office of Management and Budget approval under the Paperwork Reduction Act.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we understand that we must coordinate with federally recognized Tribes on a Government-to-Government basis.

We determined that certain Tribal lands are essential for the conservation of the arroyo toad because they support essential populations and habitat, and activities conducted or planned on those lands may adversely affect the conservation of the arroyo toad. Therefore, we are considering designating critical habitat for the arroyo toad on Tribal lands. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat according to section 4(b)(2) of the Act. However, we cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. Due to the short amount of time allowed under the settlement agreement for preparing this rule, we have not yet consulted with the affected Tribes, but we will do so before making a final decision on critical habitat.

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Ramirez, R. S., Jr. 2000. Arroyo toad (*Bufo californicus*) radio telemetry study, Little Rock Creek, Los Angeles County, California. Interim Report. Prepared for U.S.D.A. Forest Service, Angeles National Forest, Arcadia, California. 62 + v pp., plus appendix.

U.S. Fish and Wildlife Service. 1999. Arroyo southwestern toad (*Bufo microscaphus californicus*) recovery plan. U.S. Fish and Wildlife Service, Portland, Oregon. vi + 119 pp.

U.S. Forest Service. 1999. Untitled, unpublished document regarding arroyo toad findings on Piru Creek. Los Padres National Forest, Mt. Pinos Ranger District. 4 pp.

Author(s)

The primary authors of this proposed rule are Grace McLaughlin (Ventura) and John Stephenson (Carlsbad) (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Toad, arroyo southwestern" under "AMPHIBIANS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.
AMPHIBIANS							
.	.	.	.	.	.	.	.
Toad, arroyo (= arroyo south-western).	*Bufo microscaphus californicus.*	U.S.A. (CA), Mexico	Entire	E	568	17.95(d)	NA
.	.	.	.	.	.	.	.

3. Amend § 17.95(d) by adding critical habitat for the arroyo southwestern toad (*Bufo microscaphus californicus*), in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) Amphibians.

* * * * *

Arroyo southwestern toad (*Bufo microscaphus californicus*)

1. Critical habitat units are depicted for Monterey, Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, and San Diego counties, California, on the maps below.

2. Critical habitat includes stream and river courses, riparian habitats, and terrace and upland habitats up to 25 m (80 ft) elevation above the stream course and within 1.5 km (0.9 mi) from the stream course.

3. Within these areas, primary constituent elements for the arroyo toad include a hydrologic regime that supplies sufficient flowing water of suitable quality at the appropriate times to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads; low-gradient stream segments (typically less than 4 percent) with sandy or fine gravel substrates which support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; a natural flooding regime or one sufficiently corresponding to a natural regime that will periodically scour riparian vegetation, rework stream channels and terraces, and redistribute sands and sediments, such that adequate numbers and sizes of breeding pools and sufficient terrace habitats with appropriate vegetation are maintained to provide for the needs of all life stages of the toad; upland habitats of sufficient width and quality (*i.e.*, with areas of loose, sandy soil where toads can burrow underground) to provide foraging and living areas for subadult and adult arroyo toads (loose, sandy soils are typically most prevalent on alluvial terraces and valley bottomlands and occur primarily, but not exclusively, within 1.5 km (0.9 mi) of the streamcourse and less than 25 m (80 ft) in elevation above the adjacent stream channel); few or no nonnative species that prey upon or compete with arroyo toads, or degrade their habitat; stream channels and upland habitats where manmade barriers do not completely or substantially impede migration to overwintering sites, dispersal between populations, or recolonization of unoccupied areas that contain suitable habitat; and habitats free of, or with limited levels of, land use activities that substantially reconfigure stream channels, remove or impede the deposition of sand and gravel deposits, compact soils, or crush individual toads (see maps labeled Index 1 and Index 2 for overview of proposed critical habitat).

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Index 1:

Proposed Arroyo Toad Critical Habitat Units

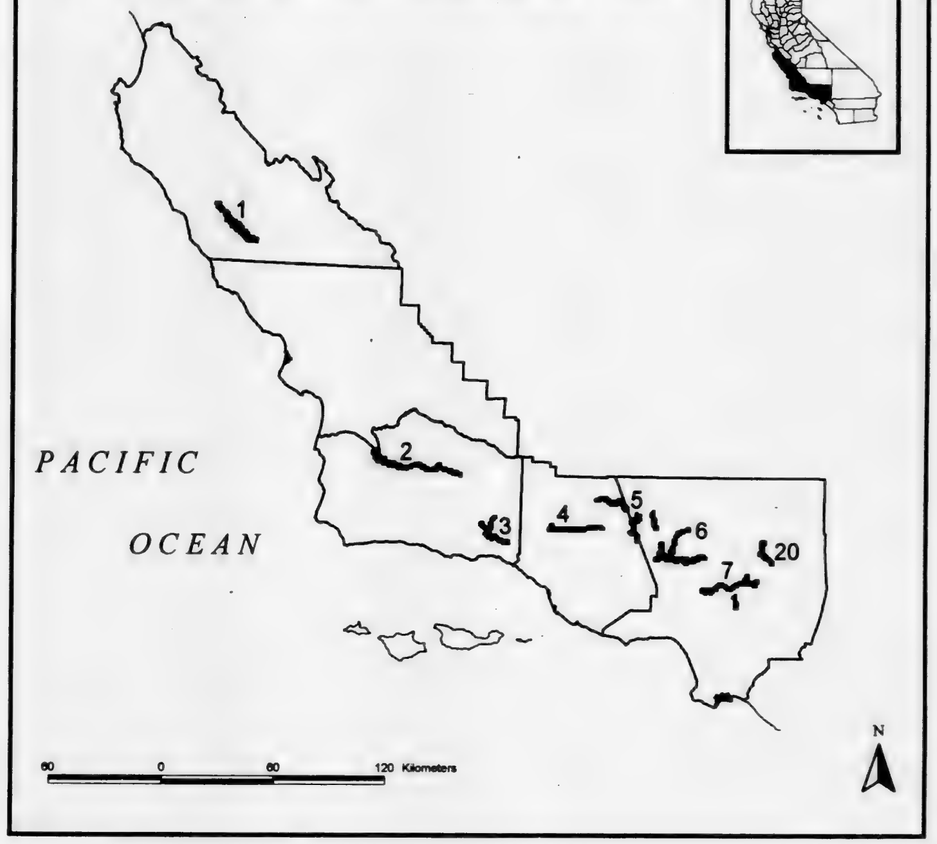

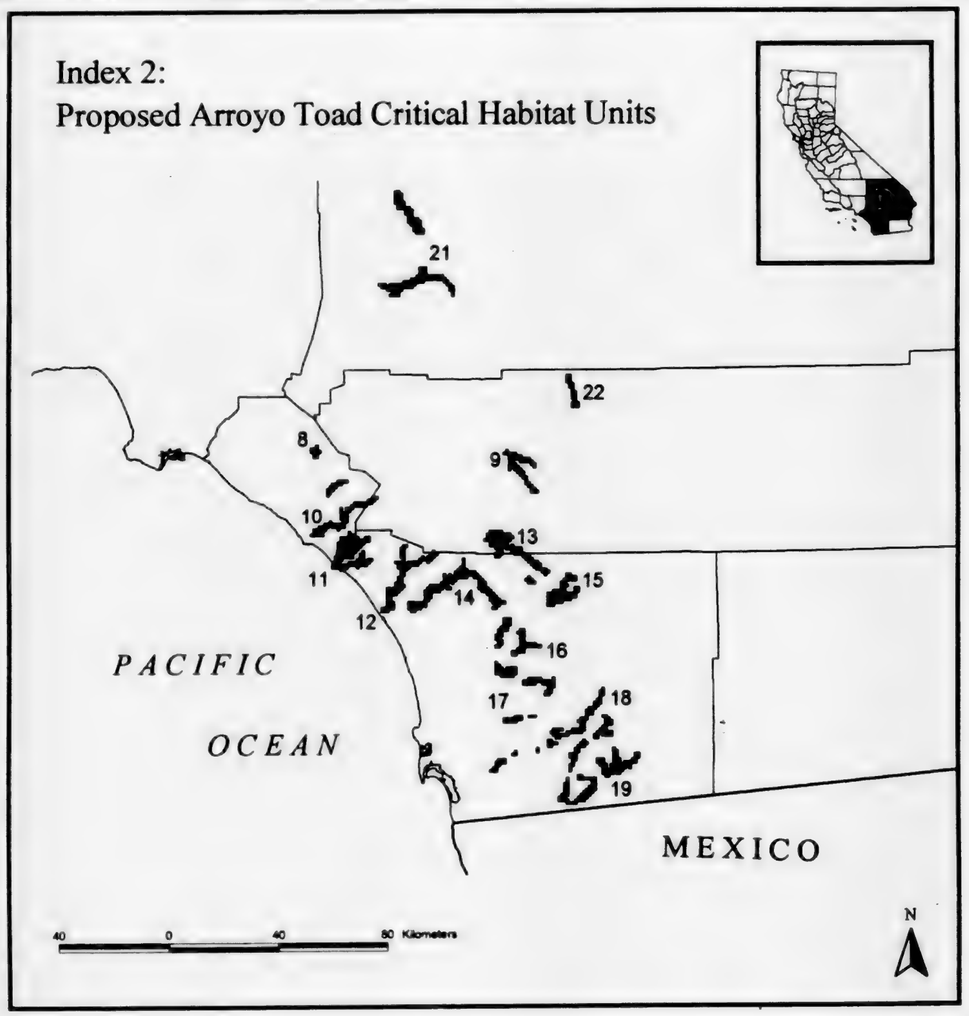

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Map Unit 1: San Antonio River, Monterey County, California. From USGS 1:24,000 quadrangle maps Bear Canyon, Cosio Knob, Alder Peak, Jolon, and Williams Hill. In UTM Zone 10, the lands, primarily on Fort Hunter Liggett Military Reservation, bounded by the following UTM NAD27 coordinates (E,N): 651000, 3993000; 654000, 3993000; 654000, 3991000; 655000, 3991000; 655000, 3990000; 656000, 3990000; 656000, 3989000; 658000, 3989000; 658000, 3988000; 659000, 3988000; 659000, 3986000; 660000, 3986000; 660000, 3985000; 661000, 3985000; 661000, 3984000; 663000, 3984000; 663000, 3983000; 665000, 3983000; 665000, 3982000; 666000, 3982000; 666000, 3981000; 667000, 3981000; 667000, 3979000; 669000, 3979000; 669000, 3978000; 670000, 3978000; 670000, 3976000; 671000, 3976000; 671000, 3975000; 672000, 3975000; 672000, 3976000; 673000, 3976000; 673000, 3975000; 675000, 3975000; 675000, 3973000; 669000, 3973000; 669000, 3974000; 668000, 3974000; 668000, 3975000; 667000, 3975000; 667000, 3976000; 666000, 3976000; 666000, 3977000; 665000, 3977000; 665000, 3978000; 663000, 3978000; 663000, 3979000; 662000, 3979000; 662000, 3980000; 660000, 3980000; 660000, 3982000; 659000, 3982000; 659000, 3983000; 657000, 3983000; 657000, 3986000; 656000, 3986000; 656000, 3988000; 654000, 3988000; 654000, 3989000; 653000, 3989000; 653000, 3990000; 652000, 3990000; 652000, 3992000; 651000, 3992000; 651000, 3993000.

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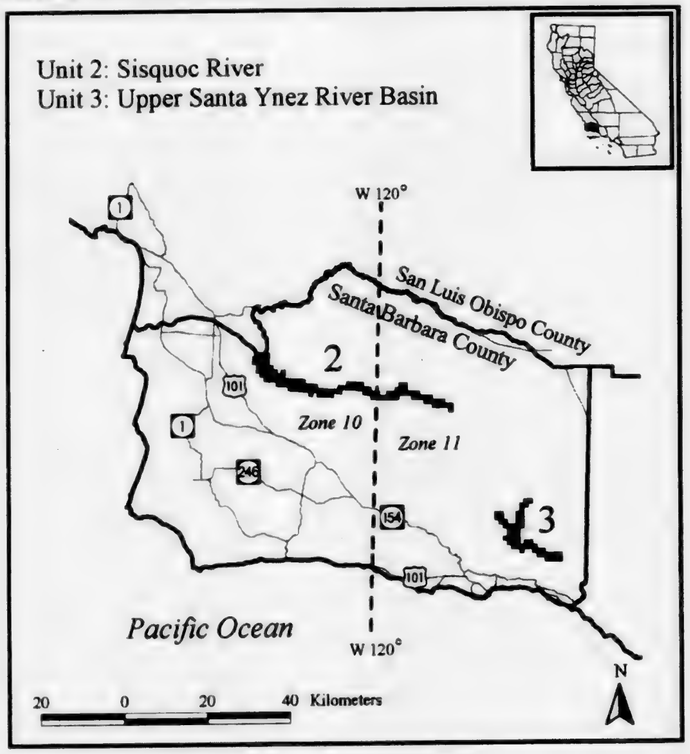

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Map Unit 2; Sisquoc River, Santa Barbara and San Luis Obispo counties, California. From USGS 1:24,000 quadrangle maps Twitchell Dam, Sisquoc, Foxen Canyon, Zaca Lake, Bald Mtn., and Hurricane Deck. In UTM Zone 10, the lands bounded by the following UTM NAD27 coordinates (E,N): 748000, 3867000; 748000, 3864000; 749000, 3864000; 749000, 3863000; 750000, 3863000; 750000, 3862000; 751000, 3862000; 751000, 3863000; 752000, 3863000; 752000, 3861000; 757000, 3861000; 757000, 3860000; 760000, 3860000; 760000, 3859000; 765000, 3859000; 765000, 3860000; 767000, 3860000; 767000, 3861000; 771000, 3861000; 771000, 3860000; 773000, 3860000; 773000, 3859000; 775000, 3859000; 775000, 3857000; 773000, 3857000; 773000, 3858000; 771000, 3858000; 771000, 3859000; 766000, 3859000; 766000, 3858000; 764000, 3858000; 764000, 3857000; 760000, 3857000; 760000, 3858000; 759000, 3858000; 759000, 3857000; 758000, 3857000; 758000, 3858000; 753000, 3858000; 753000, 3859000; 750000, 3859000; 750000, 3860000; 747000, 3860000; 747000, 3861000; 746000, 3861000; 746000, 3862000; 745000, 3862000; 745000, 3864000; 744000, 3864000; 744000, 3866000; 745000, 3866000; 745000, 3867000. In UTM zone 11, the lands bounded by the following UTM NAD83 coordinates (E,N): 231000, 3861000; 233000, 3861000; 233000, 3859000; 236000, 3859000; 236000, 3858000; 239000, 3858000; 239000, 3857000; 242000, 3857000; 242000, 3856000; 244000, 3856000; 244000, 3854000; 243000, 3854000; 243000, 3855000; 239000, 3855000; 239000, 3856000; 237000, 3856000; 237000, 3857000; 234000, 3857000; 234000, 3858000; 231000, 3858000; 231000, 3857000; 225000, 3857000; 225000, 3858000; 228000, 3858000; 228000, 3859000; 230000, 3859000; 230000, 3860000; 231000, 3860000; 231000, 3861000.

All remaining critical habitat units are in UTM zone 11, North American Datum 1927 (NAD27).

Map Unit 3; Upper Santa Ynez River Basin, Santa Barbara County, California. From USGS 1:24,000 quadrangle maps Little Pine Mtn., Hildreth Peak, and Carpinteria, the lands bounded by the following UTM coordinates (E,N): 261000,3833000; 263000,3833000; 263000,3832000; 262000,3832000; 262000,3831000; 261000,3831000; 261000,3826000; 260000,3826000; 260000,3822000; 261000,3822000; 261000,3823000; 263000,3823000; 263000,3822000; 264000,3822000; 264000,3821000; 266000,3821000; 266000,3820000; 270000,3820000; 270000,3818000; 266000,3818000; 266000,3819000; 264000,3819000; 264000,3820000; 263000,3820000; 263000,3821000; 261000,3821000; 261000,3820000; 260000,3820000; 260000,3821000; 258000,3821000; 258000,3822000; 257000,3822000; 257000,3823000; 256000,3823000; 256000,3824000; 257000,3824000;

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Map Unit 4; Sespe Creek, Ventura County, California. From USGS 1:24,000 quadrangle maps Wheeler Springs, Lion Canyon, Topatopa Mts., and Devil's Heart Peak, the lands bounded by the following UTM coordinates (E,N): 292000,38290; 294000,3829000; 294000,3828000; 293000,3828000; 293000,3827000; 312000,3827000; 312000,3828000; 320000,3828000; 320000,3827000; 321000,3827000; 321000,3826000; 319000,3826000; 319000,3827000; 317000,3827000; 317000,3826000; 316000,3826000; 316000,3827000; 315000,3827000; 315000,3826000; 311000,3826000; 311000,3825000; 291000,3825000; 291000,3827000; 292000,3827000; 292000,3829000.

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Map Unit 5; Piru Creek, Ventura and Los Angeles counties, California. Unit 5A: From USGS 1:24,000 quadrangle maps Lockwood Valley, Alamo Mtn., and Black Mtn., the lands upstream of Pyramid Lake bounded by the following UTM coordinates (E,N): 318000,3843000; 323000,3843000; 323000,3842000; 324000,3842000; 324000,3841000; 328000,3841000; 328000,3842000; 330000,3842000; 330000,3841000; 332000,3841000; 332000,3839000; 333000,3839000; 333000,3838000; 334000,3838000; 334000,3836000; 332000,3836000; 332000,3837000; 331000,3837000; 331000,3839000; 330000,3839000; 330000,3840000; 328000,3840000; 328000,3839000; 324000,3839000; 324000,3840000; 323000,3840000; 323000,3841000; 321000,3841000; 321000,3842000; 319000,3842000; 319000,3841000; 316000,3841000; 316000,3842000; 318000,3842000; 318000,3843000. Unit 5B: From USGS 1:24,000 quadrangle maps Black Mtn., Liebre Mtn., Whitaker Peak, and Cobblestone Mtn, the lands between Pyramid Lake and Lake Piru bounded by the following UTM coordinates (E,N): 338000,3835000; 339000,3835000; 339000,3834000; 341000,3834000; 341000,3831000; 340000,3831000; 340000,3830000; 338000,3830000; 338000,3824000; 339000,3824000; 339000,3823000; 340000,3823000; 340000,3820000; 339000,3820000; 339000,3819000; 338000,3819000; 338000,3823000; 335000,3823000; 335000,3824000; 334000,3824000; 334000,3825000; 336000,3825000; 336000,3829000; 335000,3829000; 335000,3832000; 339000,3832000; 339000,3833000; 338000,3833000; 338000,3835000.

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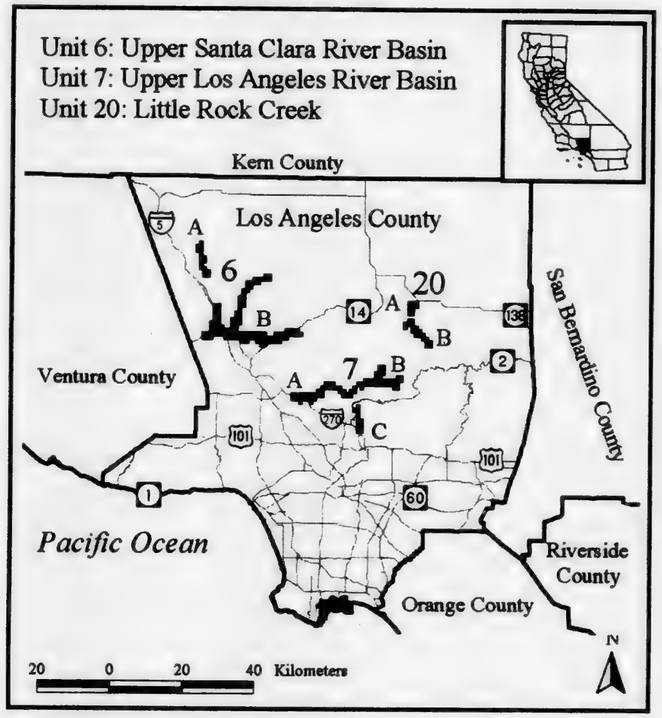

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Map Unit 6; Upper Santa Clara River basin, Los Angeles County, California. Unit 6a: From USGS 1:24,000 quadrangle maps Liebre Mtn. and Whitaker Peak, the lands, upstream of Castaic Lake, bounded by the following UTM coordinates (E,N): 347000,3836000; 348000,3836000; 348000,3832000; 349000,3832000; 349000,3830000; 348000,3830000; 348000,3829000; 349000,3829000; 349000,3828000; 350000,3828000; 350000,3826000; 348000,3826000; 348000,3828000; 347000,3828000; 347000,3833000; 346000,3833000; 346000,3835000; 347000,3835000; 347000,3836000. Unit 6b: From USGS 1:24,000 quadrangle maps Warm Springs Mtn., Green Valley, Val Verde, Newhall, Mint Mtn. and Agua Dulce, the lands bounded by the following UTM coordinates (E,N): 365000,3827000; 367000,3827000; 367000,3825000; 364000,3825000; 364000,3824000; 362000,3824000; 362000,3823000; 361000,3823000; 361000,3822000; 360000,3822000; 360000,3818000; 359000,3818000; 359000,3813000; 358000,3813000; 358000,3811000; 366000,3811000; 366000,3810000; 368000,3810000; 368000,3811000; 371000,3811000; 371000,3812000; 375000,3812000; 375000,3811000; 376000,3811000; 376000,3810000; 372000,3810000; 372000,3809000; 370000,3809000; 370000,3808000; 366000,3808000; 366000,3807000; 364000,3807000; 364000,3808000; 363000,3808000; 363000,3809000; 361000,3809000; 361000,3808000; 359000,3808000; 359000,3809000; 354000,3809000; 354000,3810000; 351000,3810000; 351000,3809000; 348000,3809000; 348000,3811000; 350000,3811000; 350000,3814000; 351000,3814000; 351000,3819000; 353000,3819000; 353000,3813000; 354000,3813000; 354000,3812000; 356000,3812000; 356000,3815000; 357000,3815000; 357000,3817000; 358000,3817000; 358000,3821000; 359000,3821000; 359000,3823000; 360000,3823000; 360000,3825000; 362000,3825000; 362000,3826000; 365000,3826000; 365000,3827000.

Map Unit 7; Upper Los Angeles River basin, Los Angeles County, California. Unit 7a: From USGS 1:24,000 quadrangle maps San Fernando, Sunland and Condor Peak, the lands in the Big Tujunga Creek basin bounded by the following UTM coordinates (E,N): 382000,3797000; 385000,3797000; 385000,3796000; 387000,3796000; 387000,3795000; 388000,3795000; 388000,3794000; 389000,3794000; 389000,3795000; 390000,3795000; 390000,3796000; 391000,3796000; 391000,3794000; 390000,3794000; 390000,3793000; 387000,3793000; 387000,3794000; 386000,3794000; 386000,3795000; 382000,3795000; 382000,3793000; 380000,3793000; 380000,3792000; 379000,3792000; 379000,3791000; 378000,3791000; 378000,3792000; 376000,3792000; 376000,3791000; 375000,3791000; 375000,3792000; 373000,3792000; 373000,3794000; 380000,3794000; 380000,3795000; 381000,3795000; 381000,3796000; 382000,3796000;

382000,3797000. Unit 7b: From USGS 1:24,000 quadrangle maps Condor Peak and Chilao Flat, the lands bounded by the following UTM coordinates (E,N): 397000,3802000; 399000,3802000; 399000,3799000; 398000,3799000; 398000,3798000; 402000,3798000; 402000,3799000; 404000,3799000; 404000,3797000; 403000,3797000; 403000,3795000; 401000,3795000; 401000,3796000; 393000,3796000; 393000,3795000; 392000,3795000; 392000,3796000; 391000,3796000; 391000,3797000; 393000,3797000; 393000,3798000; 396000,3798000; 396000,3800000; 397000,3800000; 397000,3802000. Unit 7c: From USGS 1:24,000 quadrangle maps Condor Peak and Pasadena, the lands bounded by the following UTM coordinates (E,N): 391000,3791000; 392000,3791000; 392000,3787000; 393000,3787000; 393000,3783000; 391000,3783000; 391000,3789000; 390000,3789000; 390000,3790000; 391000,3790000; 391000,3791000

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Map Unit 8; Santiago Creek, Orange County. From USGS 1:24,000 quadrangle maps Black Star Canyon and El Toro, the lands bounded by the following UTM coordinates (E,N): 438000,3739000; 439000,3739000; 439000,3737000; 440000,3737000; 440000,3736000; 439000,3736000; 439000,3734000; 437000,3734000; 437000,3736000; 436000,3736000; 436000,3738000; 438000,3738000; 438000,3739000.

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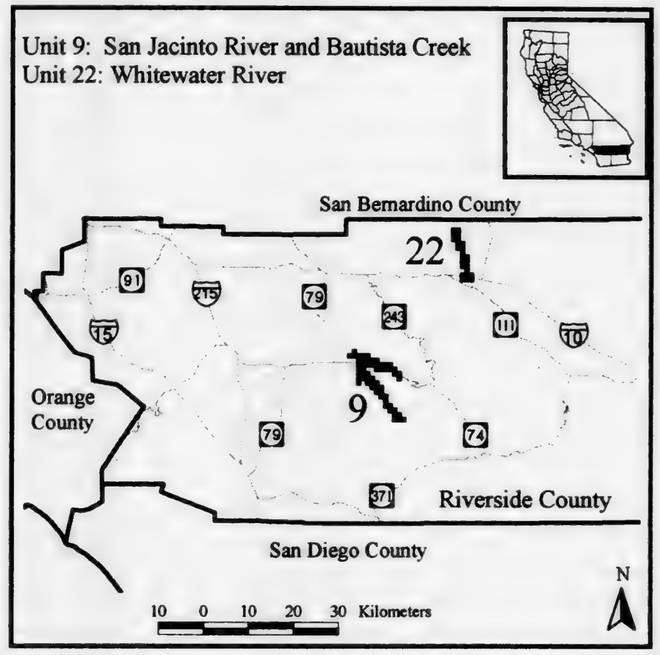

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Map Unit 9; San Jacinto River and Bautista Creek, Riverside County. From USGS 1:24,000 quadrangle maps San Jacinto, Lake Fulmor, Hemet and Blackburn Canyon, the lands bounded by the following UTM coordinates (E,N): 508000,3737000; 509000,3737000; 509000,3736000; 512000,3736000; 512000,3735000; 514000,3735000; 514000,3734000; 517000,3734000; 517000,3733000; 518000,3733000; 518000,3732000; 519000,3732000; 519000,3730000; 518000,3730000; 518000,3731000; 517000,3731000; 517000,3732000; 513000,3732000; 513000,3733000; 511000,3733000; 511000,3732000; 512000,3732000; 512000,3731000; 513000,3731000; 513000,3730000; 514000,3730000; 514000,3729000; 515000,3729000; 515000,3727000; 516000,3727000; 516000,3725000; 517000,3725000; 517000,3724000; 518000,3724000; 518000,3723000; 519000,3723000; 519000,3722000; 520000,3722000; 520000,3721000; 517000,3721000; 517000,3723000; 516000,3723000; 516000,3724000; 515000,3724000; 515000,3726000; 514000,3726000; 514000,3727000; 513000,3727000; 513000,3728000; 512000,3728000; 512000,3729000; 511000,3729000; 511000,3730000; 510000,3730000; 510000,3729000; 509000,3729000; 509000,3735000; 507000,3735000; 507000,3736000; 508000,3736000; 508000,3737000.

Map Unit 10; San Juan and Trabuco Creeks, Orange and Riverside counties, California.

Unit 10a: From USGS 1:24,000 quadrangle maps Dana Point, San Juan Capistrano, Canada Gobernadora and Sitton Peak, the lands bounded by the following UTM coordinates (E,N): 459000,3720000; 461000,3720000; 461000,3719000; 460000,3719000; 460000,3718000; 459000,3718000; 459000,3717000; 457000,3717000; 457000,3716000; 452000,3716000; 452000,3715000; 451000,3715000; 451000,3714000; 450000,3714000; 450000,3710000; 449000,3710000; 449000,3708000; 447000,3708000; 447000,3707000; 446000,3707000; 446000,3708000; 444000,3708000; 444000,3709000; 443000,3709000; 443000,3708000; 442000,3708000; 442000,3707000; 441000,3707000; 441000,3705000; 436000,3705000; 436000,3706000; 437000,3706000; 437000,3708000; 439000,3708000; 439000,3709000; 441000,3709000; 441000,3710000; 443000,3710000; 443000,3711000; 444000,3711000; 444000,3710000; 448000,3710000; 448000,3711000; 447000,3711000; 447000,3716000; 448000,3716000; 448000,3714000; 449000,3714000; 449000,3716000; 451000,3716000; 451000,3717000; 452000,3717000; 452000,3718000; 457000,3718000; 457000,3719000; 459000,3719000; 459000,3720000.

Unit 10b: From USGS 1:24,000 quadrangle maps Santiago Peak and Canada Gobernadora, the lands bounded by the following UTM coordinates (E,N): 446000,3726000; 450000,3726000; 450000,3725000; 448000,3725000; 448000,3724000; 446000,3724000; 446000,3723000; 445000,3723000; 445000,3722000; 444000,3722000; 444000,3721000; 443000,3721000; 443000,3720000; 442000,3720000; 442000,3723000; 443000,3723000; 443000,3724000; 444000,3724000; 444000,3725000; 446000,3725000; 446000,3726000.

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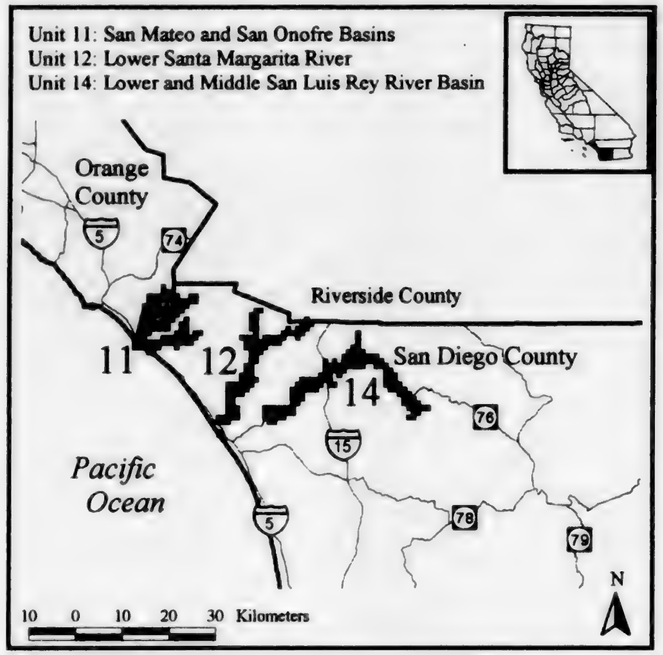

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Map Unit 11; San Mateo and San Onofre Basins, Orange and Riverside counties, California. From USGS 1:24,000 quadrangle maps San Clemente, Margarita Peak, Canada Gobernadora and San Onofre Bluff, the lands bounded by the following UTM coordinates (E,N): 450000,3707000; 451000,3707000; 451000,3706000; 452000,3706000; 452000,3704000; 453000,3704000; 453000,3705000; 454000,3705000; 454000,3704000; 456000,3704000; 456000,3705000; 458000,3705000; 458000,3703000; 456000,3703000; 456000,3702000; 455000,3702000; 455000,3701000; 454000,3701000; 454000,3700000; 453000,3700000; 453000,3699000; 452000,3699000; 452000,3697000; 448000,3697000; 448000,3696000; 447000,3696000; 447000,3695000; 450000,3695000; 450000,3696000; 453000,3696000; 453000,3697000; 454000,3697000; 454000,3699000; 455000,3699000; 455000,3700000; 456000,3700000; 456000,3696000; 457000,3696000; 457000,3697000; 459000,3697000; 459000,3696000; 458000,3696000; 458000,3695000; 457000,3695000; 457000,3694000; 454000,3694000; 454000,3693000; 453000,3693000; 453000,3694000; 450000,3694000; 450000,3693000; 449000,3693000; 449000,3692000; 447000,3692000; 447000,3693000; 444000,3693000; 444000,3696000; 445000,3696000; 445000,3698000; 446000,3698000; 446000,3703000; 447000,3703000; 447000,3705000; 450000,3705000; 450000,3707000.

Map Unit 12; Lower Santa Margarita Basin, San Diego County, California. From USGS 1:24,000 quadrangle maps Fallbrook, Temecula, Morro Hill, Las Pulgas Canyon, Oceanside and San Luis Rey, the lands bounded by the following UTM coordinates (E,N): 470000,3702000; 472000,3702000; 472000,3701000; 471000,3701000; 471000,3695000; 472000,3695000; 472000,3696000; 476000,3696000; 476000,3697000; 477000,3697000; 477000,3698000; 478000,3698000; 478000,3697000; 479000,3697000; 479000,3698000; 480000,3698000; 480000,3699000; 481000,3699000; 481000,3700000; 482000,3700000; 482000,3699000; 483000,3699000; 483000,3698000; 482000,3698000; 482000,3697000; 481000,3697000; 481000,3696000; 480000,3696000; 480000,3695000; 479000,3695000; 479000,3696000; 477000,3696000; 477000,3695000; 476000,3695000; 476000,3694000; 473000,3694000; 473000,3693000; 472000,3693000; 472000,3692000; 471000,3692000; 471000,3690000; 470000,3690000; 470000,3687000; 471000,3687000; 471000,3686000; 470000,3686000; 470000,3685000; 469000,3685000; 469000,3684000; 468000,3684000; 468000,3683000; 466000,3683000; 466000,3681000; 467000,3681000; 467000,3678000; 465000,3678000; 465000,3677000; 462000,3677000; 462000,3679000; 464000,3679000; 464000,3686000; 467000,3686000; 467000,3688000; 468000,3688000; 468000,3690000; 469000,3690000; 469000,3693000; 468000,3693000; 468000,3695000; 467000,3695000; 467000,3696000; 470000,3696000; 470000,3697000; 469000,3697000; 469000,3701000; 470000,3701000; 470000,3702000.

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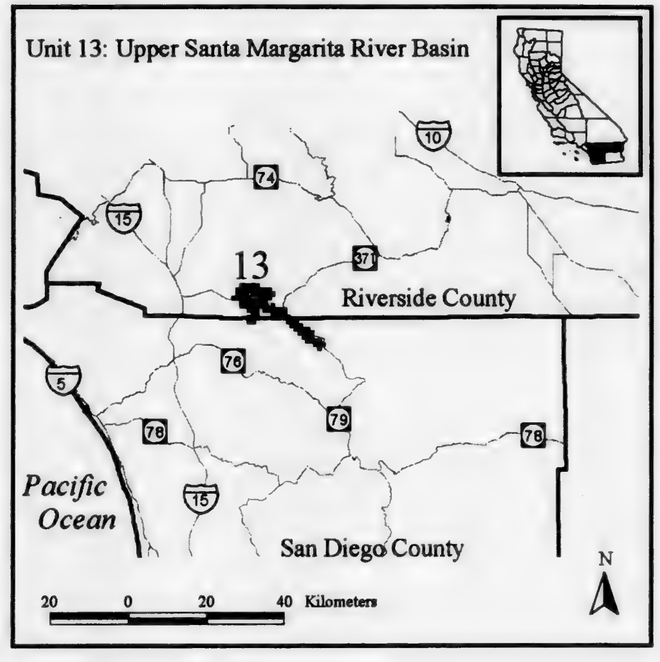

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Map Unit 13; Upper Santa Margarita Basin, San Diego County, California. From USGS 1:24,000 quadrangle maps Sage, Vail Lake, Aquanga, Palomar Observatory and Warner Springs, the lands bounded by the following UTM coordinates (E,N): 502000,3707000; 507000,3707000; 507000,3706000; 510000,3706000; 510000,3705000; 511000,3705000; 511000,3704000; 510000,3704000; 510000,3703000; 509000,3703000; 509000,3701000; 510000,3701000; 510000,3702000; 511000,3702000; 511000,3701000; 514000,3701000; 514000,3699000; 515000,3699000; 515000,3698000; 517000,3698000; 517000,3697000; 518000,3697000; 518000,3696000; 520000,3696000; 520000,3695000; 521000,3695000; 521000,3693000; 523000,3693000; 523000,3692000; 524000,3692000; 524000,3691000; 523000,3691000; 523000,3690000; 522000,3690000; 522000,3691000; 521000,3691000; 521000,3692000; 519000,3692000; 519000,3693000; 518000,3693000; 518000,3694000; 517000,3694000; 517000,3695000; 516000,3695000; 516000,3696000; 515000,3696000; 515000,3697000; 514000,3697000; 514000,3698000; 511000,3698000; 511000,3699000; 510000,3699000; 510000,3700000; 508000,3700000; 508000,3701000; 507000,3701000; 507000,3698000; 506000,3698000; 506000,3697000; 504000,3697000; 504000,3699000; 505000,3699000; 505000,3700000; 504000,3700000; 504000,3701000; 502000,3701000; 502000,3703000; 500000,3703000; 500000,3704000; 501000,3704000; 501000,3706000; 502000,3706000; 502000,3707000.

Map Unit 14; Lower and Middle San Luis Rey Basin, San Diego County, California. From USGS 1:24,000 quadrangle maps Pechanga, San Luis Rey, Morro Hill, Bonsall, Pala, Boucher Hill and Rodriguez Mtn., the lands bounded by the following UTM coordinates (E,N): 492000,3697000; 493000,3697000; 493000,3693000; 494000,3693000; 494000,3692000; 497000,3692000; 497000,3691000; 498000,3691000; 498000,3690000; 499000,3690000; 499000,3689000; 500000,3689000; 500000,3688000; 501000,3688000; 501000,3686000; 502000,3686000; 502000,3685000; 503000,3685000; 503000,3684000; 504000,3684000; 504000,3683000; 505000,3683000; 505000,3682000; 506000,3682000; 506000,3681000; 508000,3681000; 508000,3680000; 506000,3680000; 506000,3679000; 505000,3679000; 505000,3678000; 503000,3678000; 503000,3679000; 504000,3679000; 504000,3680000; 503000,3680000; 503000,3681000; 502000,3681000; 502000,3683000; 501000,3683000; 501000,3684000; 499000,3684000; 499000,3685000; 498000,3685000; 498000,3689000; 496000,3689000; 496000,3690000; 494000,3690000; 494000,3689000; 490000,3689000; 490000,3688000; 489000,3688000; 489000,3687000; 488000,3687000; 488000,3688000; 487000,3688000; 487000,3686000; 488000,3686000; 488000,3685000; 486000,3685000; 486000,3686000; 485000,3686000; 485000,3685000; 484000,3685000; 484000,3684000; 481000,3684000; 481000,3682000; 480000,3682000; 480000,3681000; 479000,3681000; 479000,3679000; 477000,3679000; 477000,3678000; 475000,3678000; 475000,3677000; 473000,3677000; 473000,3678000; 472000,3678000; 472000,3681000; 478000,3681000; 478000,3685000; 479000,3685000; 479000,3686000;

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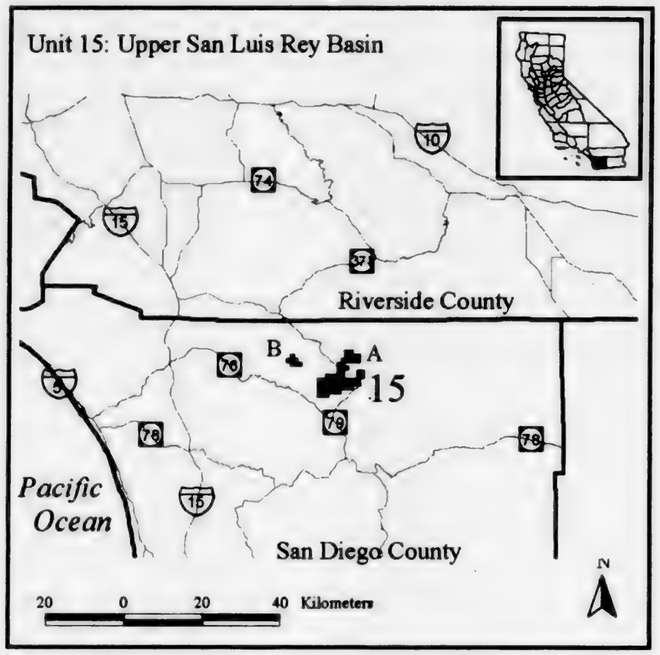

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Map Unit 15; Upper San Luis Rey Basin, San Diego County, California.

Unit 15a: From USGS 1:24,000 quadrangle maps Palomar Observatory, Warner Springs and Hot Springs Mtn., the lands bounded by the following UTM coordinates (E,N):
530000,3691000; 532000,3691000; 532000,3690000; 534000,3690000; 534000,3688000; 530000,3688000; 530000,3687000; 531000,3687000; 531000,3686000; 530000,3686000; 530000,3684000; 533000,3684000; 533000,3686000; 535000,3686000; 535000,3684000; 534000,3684000; 534000,3682000; 532000,3682000; 532000,3681000; 529000,3681000; 529000,3680000; 526000,3680000; 526000,3679000; 523000,3679000; 523000,3684000; 525000,3684000; 525000,3685000; 528000,3685000; 528000,3688000; 529000,3688000; 529000,3689000; 530000,3689000; 530000,3691000.

Unit 15b: From USGS 1:24,000 quadrangle map Palomar Observatory, the lands bounded by the following UTM coordinates (E,N):
516000,3690000; 517000,3690000; 517000,3689000; 518000,3689000; 518000,3688000; 519000,3688000; 519000,3687000; 516000,3687000; 516000,3688000; 515000,3688000; 515000,3689000; 516000,3689000; 516000,3690000.

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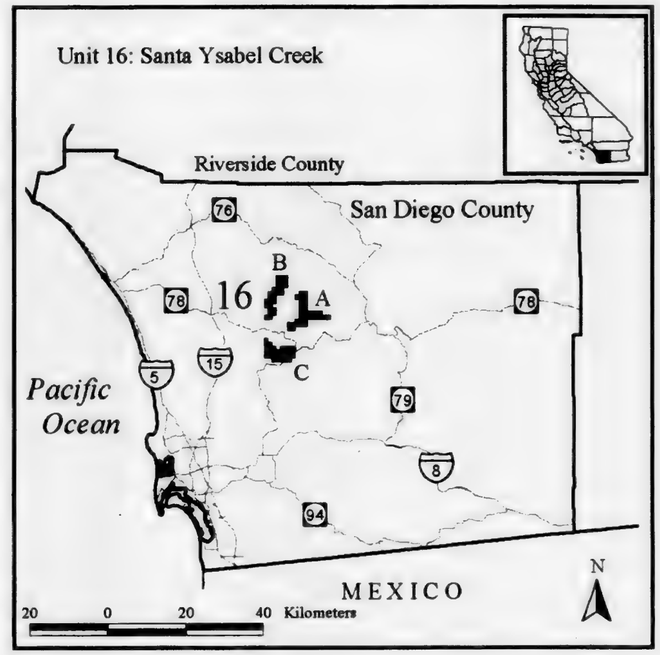

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Map Unit 16; Santa Ysabel Creek, San Diego County, California.

Unit 16a: From USGS 1:24,000 quadrangle maps Mesa Grande, Ramona and San Pasqual, the lands bounded by the following UTM coordinates (E,N):
513000,3671000; 515000,3671000; 515000,3666000; 519000,3666000; 519000,3665000; 521000,3665000; 521000,3664000; 515000,3664000; 515000,3662000; 512000,3662000; 512000,3661000; 510000,3661000; 510000,3663000; 512000,3663000; 512000,3664000; 513000,3664000; 513000,3669000; 512000,3669000; 512000,3670000; 513000,3670000; 513000,3671000.

Unit 16b: From USGS 1:24,000 quadrangle maps Rodriguez Mtn. and San Pasqual, the lands bounded by the following UTM coordinates (E,N):
507000,3675000; 510000,3675000; 510000,3672000; 509000,3672000; 509000,3670000; 507000,3670000; 507000,3668000; 506000,3668000; 506000,3667000; 507000,3667000; 507000,3665000; 506000,3665000; 506000,3664000; 504000,3664000; 504000,3665000; 505000,3665000; 505000,3667000; 504000,3667000; 504000,3669000; 505000,3669000; 505000,3671000; 506000,3671000; 506000,3672000; 507000,3672000; 507000,3675000.

Unit 16c: From USGS 1:24,000 quadrangle maps Ramona and San Pasqual, the lands bounded by the following UTM coordinates (E,N):
504000,3659000; 505000,3659000; 505000,3658000; 506000,3658000; 506000,3657000; 507000,3657000; 507000,3656000; 508000,3656000; 508000,3657000; 512000,3657000; 512000,3654000; 511000,3654000; 511000,3653000; 506000,3653000; 506000,3654000; 504000,3654000; 504000,3659000.

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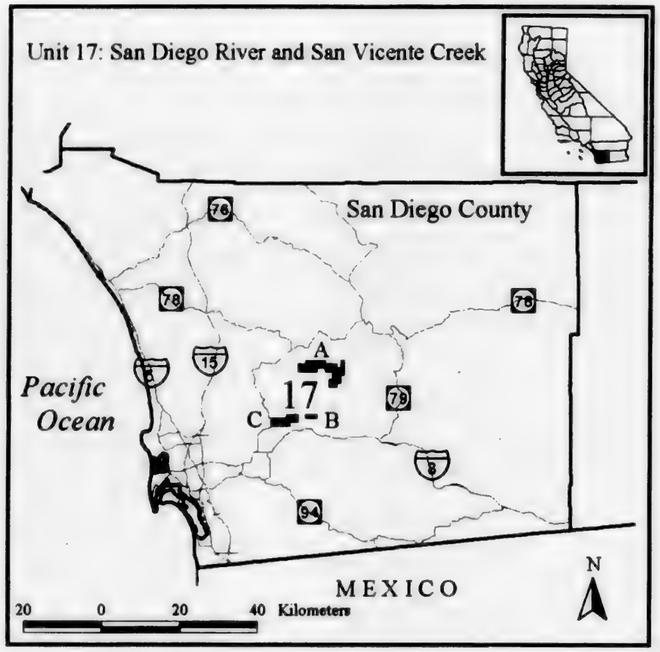

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Map Unit 17; San Diego River and San Vicente Creek, San Diego County, California.

Unit 17a: From USGS 1:24,000 quadrangle maps Ramona, El Cajon, Tule Springs and Santa Ysabel, the lands bounded by the following UTM coordinates (E,N): 516000,3653000; 521000,3653000; 521000,3652000; 524000,3652000; 524000,3651000; 525000,3651000; 525000,3653000; 526000,3653000; 526000,3649000; 525000,3649000; 525000,3647000; 524000,3647000; 524000,3646000; 522000,3646000; 522000,3648000; 523000,3648000; 523000,3650000; 521000,3650000; 521000,3651000; 519000,3651000; 519000,3650000; 514000,3650000; 514000,3652000; 516000,3652000; 516000,3653000.

Unit 17b: From USGS 1:24,000 quadrangle map El Cajon Mtn., the lands bounded by the following UTM coordinates (E,N): 516000,3639000; 519000,3639000; 519000,3638000; 516000,3638000; 516000,3639000.

Unit 17c: From USGS 1:24,000 quadrangle maps San Vicente Reservoir, El Cajon, Alpine and El Cajon Mtn., the lands bounded by the following UTM coordinates (E,N): 511000,3639000; 514000,3639000; 514000,3637000; 512000,3637000; 512000,3636000; 507000,3636000; 507000,3638000; 511000,3638000; 511000,3639000.

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Map Unit 18; Sweetwater River, San Diego County, California. Unit 18a: From USGS 1:24,000 quadrangle maps Viejas Mountain (1988), Descanso (1960), Tule Springs (1988), and Cuyamaca Peak (1960), California. The lands bounded by the following UTM coordinates (E, N): 543000,3649000; 544000,3649000; 544000,3646000; 543000,3646000; 543000,3643000; 542000,3643000; 542000,3642000; 541000,3642000; 541000,3641000; 540000,3641000; 540000,3639000; 538000,3639000; 538000,3637000; 537000,3637000; 537000,3633000; 536000,3633000; 536000,3632000; 531000,3632000; 531000,3631000; 528000,3631000; 528000,3630000; 526000,3630000; 526000,3631000; 525000,3631000; 525000,3632000; 524000,3632000; 524000,3633000; 525000,3633000; 525000,3634000; 529000,3634000; 529000,3633000; 527000,3633000; 527000,3632000; 530000,3632000; 530000,3633000; 532000,3633000; 532000,3634000; 535000,3634000; 535000,3636000; 534000,3636000; 534000,3637000; 535000,3637000; 535000,3638000; 537000,3638000; 537000,3641000; 538000,3641000; 538000,3642000; 540000,3642000; 540000,3644000; 541000,3644000; 541000,3645000; 542000,3645000; 542000,3648000; 543000,3648000; 543000,3649000.

Map Unit 18b: From USGS 1:24,000 quadrangle maps Viejas Mountain (1988), and Alpine (1982), California. The lands bounded by the following UTM coordinates (E, N): 523000,3630000; 525000,3630000; 525000,3629000; 527000,3629000; 527000,3628000; 525000,3628000; 525000,3627000; 523000,3627000; 523000,3630000.

Map Unit 18c: From USGS 1:24,000 quadrangle maps Jamul Mountains (1971), El Cajon (1967), and Alpine (1982), California. The lands bounded by the following UTM coordinates (E, N): 510000,3628000; 512000,3628000; 512000,3627000; 513000,3627000; 513000,3628000; 515000,3628000; 515000,3627000; 520000,3627000; 520000,3625000; 516000,3625000; 516000,3624000; 514000,3624000; 514000,3625000; 513000,3625000; 513000,3626000; 512000,3626000; 512000,3624000; 510000,3624000; 510000,3622000; 508000,3622000; 508000,3621000; 506000,3621000; 506000,3620000; 505000,3620000; 505000,3618000; 502000,3618000; 502000,3619000; 503000,3619000; 503000,3620000; 504000,3620000; 504000,3622000; 505000,3622000; 505000,3624000; 508000,3624000; 508000,3625000; 510000,3625000; 510000,3628000.

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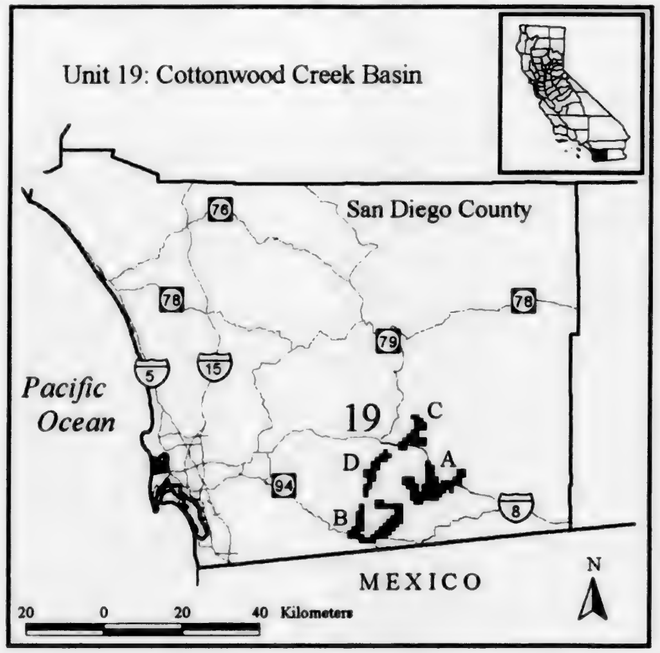

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Map Unit 19; Cottonwood-Tijuana Basin, San Diego County, California. Unit 19a: From USGS 1:24,000 quadrangle maps Morena Reservoir, Cameron Corners and Mount Laguna, the lands bounded by the following UTM coordinates (E,N): 547000,3627000; 548000,3627000; 548000,3626000; 549000,3626000; 549000,3623000; 550000,3623000; 550000,3621000; 551000,3621000; 551000,3622000; 554000,3622000; 554000,3623000; 555000,3623000; 555000,3625000; 557000,3625000; 557000,3623000; 556000,3623000; 556000,3621000; 554000,3621000; 554000,3619000; 553000,3619000; 553000,3620000; 552000,3620000; 552000,3619000; 551000,3619000; 551000,3618000; 550000,3618000; 550000,3617000; 546000,3617000; 546000,3616000; 544000,3616000; 544000,3617000; 543000,3617000; 543000,3620000; 542000,3620000; 542000,3621000; 541000,3621000; 541000,3623000; 544000,3623000; 544000,3621000; 545000,3621000; 545000,3619000; 546000,3619000; 546000,3621000; 547000,3621000; 547000,3627000.

Unit 19b: From USGS 1:24,000 quadrangle maps Barrett Lake, Tecate, Potrero and Morena Reservoir, the lands bounded by the following UTM coordinates (E,N): 534000,3617000; 536000,3617000; 536000,3616000; 541000,3616000; 541000,3611000; 540000,3611000; 540000,3610000; 539000,3610000; 539000,3609000; 538000,3609000; 538000,3608000; 537000,3608000; 537000,3607000; 534000,3607000; 534000,3606000; 530000,3606000; 530000,3607000; 527000,3607000; 527000,3609000; 528000,3609000; 528000,3610000; 529000,3610000; 529000,3614000; 530000,3614000; 530000,3616000; 531000,3616000; 531000,3609000; 530000,3609000; 530000,3608000; 531000,3608000; 531000,3607000; 533000,3607000; 533000,3608000; 534000,3608000; 534000,3609000; 535000,3609000; 535000,3610000; 536000,3610000; 536000,3611000; 537000,3611000; 537000,3612000; 538000,3612000; 538000,3613000; 539000,3613000; 539000,3615000; 534000,3615000; 534000,3617000.

Unit 19c: From USGS 1:24,000 quadrangle maps Descanso, Cuyamaca Peak and Mount Laguna, the lands bounded by the following UTM coordinates (E,N): 543000,3639000; 545000,3639000; 545000,3638000; 546000,3638000; 546000,3637000; 547000,3637000; 547000,3635000; 545000,3635000; 545000,3633000; 547000,3633000; 547000,3631000; 543000,3631000; 543000,3632000; 542000,3632000; 542000,3630000; 540000,3630000; 540000,3632000; 541000,3632000; 541000,3633000; 542000,3633000; 542000,3634000; 543000,3634000; 543000,3635000; 544000,3635000; 544000,3638000; 543000,3638000; 543000,3639000.

Unit 19d: From USGS 1:24,000 quadrangle maps Barrett Lake, Viejas Mtn. and Descanso, the lands bounded by the following UTM coordinates (E,N): 536000,3630000; 537000,3630000; 537000,3629000; 538000,3629000; 538000,3628000; 537000,3628000; 537000,3627000; 535000,3627000; 535000,3625000; 534000,3625000; 534000,3622000; 533000,3622000; 533000,3620000; 532000,3620000; 532000,3618000; 531000,3618000; 531000,3621000; 532000,3621000; 532000,3623000; 531000,3623000; 531000,3625000; 533000,3625000; 533000,3627000; 534000,3627000; 534000,3628000; 535000,3628000; 535000,3629000; 536000,3629000; 536000,3630000.

Map Unit 20 (see map of Units 6, 7, and 20); Little Rock Creek, Los Angeles County, California. Unit 20a: From USGS 1:24,000 quadrangle maps Palmdale and Pacifico Mtn., the lands bounded by the following UTM coordinates (E,N): 405000,3820000; 408000,3820000; 408000,3818000; 407000,3818000; 407000,3816000; 405000,3816000; 405000,3820000.

Unit 20b: From USGS 1:24,000 quadrangle maps Pacifico Mtn. and Juniper Hills, the lands bounded by the following UTM coordinates (E,N): 405000,3815000; 407000,3815000; 407000,3813000; 408000,3813000; 408000,3812000; 409000,3812000; 409000,3811000; 410000,3811000; 410000,3810000; 411000,3810000; 411000,3809000; 412000,3809000; 412000,3807000; 410000,3807000; 410000,3809000; 409000,3809000; 409000,3810000; 407000,3810000; 407000,3811000; 406000,3811000; 406000,3813000; 405000,3813000; 405000,3812000; 404000,3812000; 404000,3814000; 405000,3814000; 405000,3815000.

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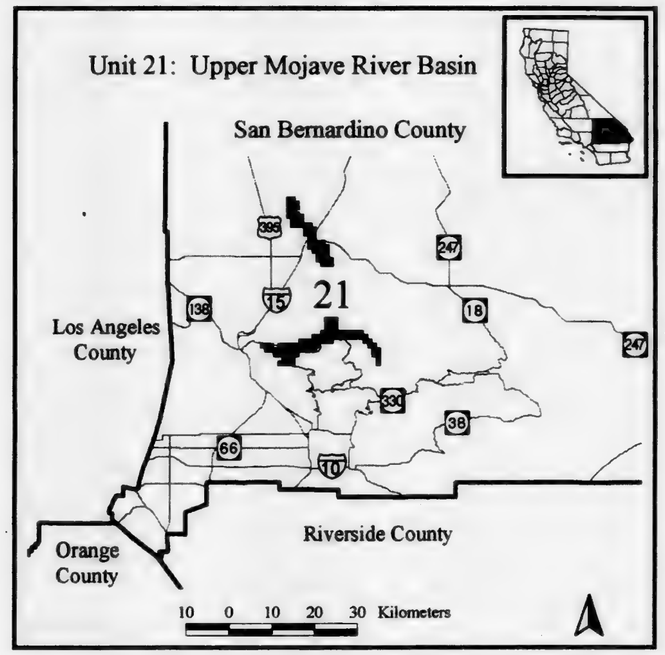

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Map Unit 21; Mojave River, San Bernardino County, California. Unit 21a: From USGS 1:24,000 quadrangle maps Cajon, Silverwood Lake, Hesperia, Apple Valley, Lake Arrowhead and Butler Peak, the lands bounded by the following UTM coordinates (E,N): 476000,3804000; 479000,3804000; 479000,3801000; 485000,3801000; 485000,3800000; 486000,3800000; 486000,3799000; 487000,3799000; 487000,3798000; 488000,3798000; 488000,3797000; 489000,3797000; 489000,3793000; 488000,3793000; 488000,3795000; 487000,3795000; 487000,3797000; 486000,3797000; 486000,3798000; 485000,3798000; 485000,3799000; 478000,3799000; 478000,3798000; 475000,3798000; 475000,3797000; 474000,3797000; 474000,3796000; 470000,3796000; 470000,3795000; 469000,3795000; 469000,3793000; 465000,3793000; 465000,3794000; 466000,3794000; 466000,3795000; 464000,3795000; 464000,3796000; 462000,3796000; 462000,3797000; 461000,3797000; 461000,3798000; 464000,3798000; 464000,3797000; 465000,3797000; 465000,3798000; 470000,3798000; 473000,3799000; 473000,3800000; 475000,3800000; 475000,3801000; 476000,3801000; 476000,3804000. Unit 21b: From USGS 1:24,000 quadrangle maps Victorville, Hesperia, Apple Valley North and Apple Valley South, the lands bounded by the following UTM coordinates (E,N): 467000,3832000; 469000,3832000; 469000,3831000; 470000,3831000; 470000,3828000; 471000,3828000; 471000,3826000; 473000,3826000; 473000,3825000; 474000,3825000; 474000,3822000; 476000,3822000; 476000,3821000; 477000,3821000; 477000,3818000; 478000,3818000; 478000,3816000; 475000,3816000; 475000,3817000; 474000,3817000; 474000,3819000; 473000,3819000; 473000,3820000; 472000,3820000; 472000,3823000; 471000,3823000; 471000,3825000; 468000,3825000; 468000,3827000; 467000,3827000; 467000,3832000.

Map Unit 22 (see map of Units 9 and 22); Whitewater River, Riverside

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County, California. From USGS 1:24,000 quadrangle maps Catclaw Flat, White Water and Desert Hot Springs, the lands bounded by the following UTM coordinates (E,N): 530000,3764000; 532000,3764000; 532000,3761000; 533000,3761000; 533000,3758000; 534000,3758000; 534000,3754000; 535000,3754000; 535000,3752000; 532000,3752000; 532000,3754000; 533000,3754000; 533000,3755000; 532000,3755000; 532000,3759000; 531000,3759000; 531000,3761000; 530000,3761000; 530000,3764000.

* * * * *

Dated: May 25, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–14085 Filed 6–7–00; 8:45 am]

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Part III

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1400 et al.
Agricultural Disaster and Market Assistance; Interim Final Rule

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1400, 1411, 1427, 1439, 1464, 1479

RIN 0560–AG14

Agricultural Disaster and Market Assistance

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule and final rule.

SUMMARY: This rule implements agricultural disaster and market assistance provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 and the Omnibus Consolidated Appropriations Act, 2000. It will implement statutory provisions related to cottonseed market loss, a competitiveness program for extra long staple (ELS) cotton, warehouse-stored tobacco loss assistance, pasture recovery, oilseeds marketing loss, livestock disaster assistance for contract growers and emergency assistance for Harney County, Oregon. It will also define the base quality for upland cotton, finalize existing regulations for the Livestock Indemnity and American Indian Livestock Feed Programs and reorganize all of the Emergency Livestock Assistance regulations to remove obsolete regulations. Certain provisions of this rule will be implemented as interim rules and others as final rules. See **SUPPLEMENTARY INFORMATION** for details.

DATES: This rule is effective June 1, 2000, except for the amendments to § 1427.25, which is effective August 1, 2000.

Comments on the provisions of this interim rule related to cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon must be received by July 10, 2000 to be assured of consideration. Comments on the information collections for these programs must be received by August 7, 2000.

ADDRESSES: Comments on the regulations should be sent to: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0540, 1400 Independence Ave., SW, Washington, DC, 20250–0540, telephone (202)205–5851, or by e-mail to: tom_witzig@wdc.fsa.usda.gov. Comments can be inspected in Room 6734 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments on the information collection should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Tom Witzig at the address above.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, FSA, USDA, STOP 0540, 1400 Independence Avenue, SW, Washington, D.C. 20250–0540, Telephone: (202) 205-5851; e-mail: tom_witzig@wdc.fsa.wdc.gov.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 824 of Pub. L. 106–78 requires that the regulations necessary to implement Title VIII, Subtitle A of Pub. L. 106–78 be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553, or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking, or the Paperwork Reduction Act. The provisions of this interim rule related to tobacco warehouse assistance, pasture recovery, oilseeds assistance, and livestock assistance for contract growers implement provisions of Subtitle A and thus are issued as final and are effective immediately.

The provisions of this interim rule related to the Livestock Indemnity and the American Indian Livestock Feed Programs finalize regulations for which interim rules were previously issued and are thus issued as final. The public comments to those interim rules are addressed in the Background section of this rule.

The provisions of this interim rule related to 7 CFR 1400 and 7 CFR 1427.25 are simply technical amendments to clarify the existing regulations for consistent and efficient administration and are thus issued as final.

The provisions of this interim rule related to the reorganization of 7 CFR 1439, Emergency Livestock Assistance, simply remove obsolete regulations and are thus issued as final.

The provisions of this interim rule related to cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon are not exempt from the notice and comment requirements, and are issued as interim rules, effective immediately, but public comments are requested and will be considered before the regulations are issued as final. Comments on the provisions of this interim rule related to cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon must be received by July 10, 2000 to be assured of consideration. Comments on the information collections for these programs must be received by August 7, 2000.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be economically significant and has been reviewed by the Office of Management and Budget. A cost-benefit assessment was completed and is summarized after the background section explaining the actions this rule will take.

Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loan Deficiency Payments—10.051; Production Flexibility Payments for Contract Commodities—10.055; Conservation Reserve Program—10.069, Disaster Reserve Assistance—10.452.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because

the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 824 of Pub. L. 106–78 requires that the regulations necessary to implement Title VIII, Subtitle A of Pub. L. 106–78 be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. It also requires that the Secretary use the provisions of 5 U.S.C. 808 (the Small Business Regulatory Enforcement Fairness Act (SBREFA)), which provides that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose, and thus does not have to meet the requirements of § 801 of SBREFA requiring a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. This interim rule is considered a major rule for the purposes of SBREFA. However, the regulations for tobacco warehouse assistance, pasture recovery, oilseeds assistance, and livestock assistance for contract growers implement provisions of Subtitle A of Pub. L. 106–78. These regulations affect the incomes of a large number of agricultural producers who have been hit hard by natural disasters and poor market conditions. Accordingly, because it would be contrary to the public interest to delay those provisions of this rule, as expressed in Pub. L. 106–78, they are issued as final and are effective immediately.

The provisions of this interim rule for cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon are not exempt from the notice and comment or the Congressional Review requirements. With respect to these items, for which public comment will be sought, it has been determined that the new regulations should be made effective immediately as in each one of the cases further delay in making benefits available would delay legislated emergency relief. In the case of the provision for extra long staple cotton, the rule merely codifies a statutory formula for relief. In the case of cottonseed payments, the rule will allow recovery in a timely manner for damages that have already been suffered, as will also be the case with the relief provide for Harney County producers. The new regulations, however, are flexible enough to allow the agency to suspend the new provisions for these three new programs in the event that cause for doing so should appear in the comments. In the meantime, however, should no such cause appear, making the regulations effective will allow the regulations to proceed to be used to provide what could be much needed and timely relief for the parties involved, just as relief for others has been provided through a number of other new programs provided for in recent legislation. Likewise, with respect to the Small Business Regulatory Enforcement Fairness Act (SBREFA), which allows for a pre-issuance Congressional review period for some rules, it has been determined that this rule should be made effective immediately on all of its provisions as a delay in implementing the rule would be impracticable and contrary to the public interest.

Paperwork Reduction Act

Section 824 of Pub. L. 106–78 requires that the regulations implementing the provisions of Subtitle A, Title VIII of Pub. L. 106–78 are to be promulgated without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not required before the regulations may be made effective. However, the 60-day public comment period and OMB approval under the provisions of 44 U.S.C. chapter 35 are still required after the rule is published. The provisions of this rule that are not mandated by Subtitle A are subject to the normal requirements of the Paperwork Reduction Act. Those provisions are cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon. Information Collection Packages and requests for emergency approval for those provisions have been submitted to OMB and are summarized as follows:.

Title: Emergency Assistance for Harney County, Oregon (7 CFR part 1478)

OMB Control Number: 0560–NEW

Type of Request: Approval of a new information collection.

Abstract: Emergency Assistance for Harney County, Oregon is authorized under H.R. 3194, P.L. 106–113 (113 Stat. 1501). To determine benefits due to eligible producers requesting assistance in accordance with regulations, FSA proposes to use the CCC–454 (Flood Compensation Program). The CCC–454 will be used to document the verification of loss of production because of flooding in 1999.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per producer.

Respondents: Producers of Harney County, Oregon

Estimated Number of Respondents: 40

Estimated Number of Responses per Respondents: 1

Estimated Total Annual Burden on Respondents: 80 hours

Copies of the information collection may be obtained from Helen Smith, USDA–FSA–PECD, 1400 Independence Avenue, S.W., STOP 0517, Washington, D.C. 20250–0515: Telephone (202) 720–7954 or e-mail *helen_smith@wdc.fsa.usda.gov.*

Title: Cottonseed Payment Program Application/Certification

OMB Control Number: 0560–NEW

Type of Request: Approval of a new information collection.

Abstract: This new collection instrument is the application and certification form to be used by cotton gins to request payments under the Cottonseed Payment Program. The information requested will be used to determine the national payment rate and to compute individual program payment amounts for each applicant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 40 minutes per producer.

Respondents: Cotton Gins

Estimated Number of Respondents: 1,100

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 733 hours

Copies of the information collection may be obtained from Gene Rosera, USDA–FSA–PSD, 1400 Independence Avenue, S.W., STOP 0512, Washington, D.C. 20250: Telephone (202) 720–8481 or e-mail gene_rosera@wdc.fsa.usda.gov.

Title: ELS Cotton Competitiveness Payment Program

OMB Control Number: 0560–NEW

Type of Request: Approval of a new information collection

Abstract: This collection will enroll Extra Long Staple (ELS) cotton exports and textile manufacturers in the ELS Cotton Competitiveness Payment Program and allow them to report their activity with respect to ELS cotton so that proper payments can be made to them. The ELS competitive payment program was authorized by the Consolidated Appropriations Act for

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Fiscal Year 2000, Pub.L. 106–113, and was mandated to begin October 1, 1999. A method has been devised to determine each Tuesday whether a payment should be made during the following Wednesday-through-Tuesday week and rate per pound of any payment. In the period since October 1, 1999, were triggered only during the period April 4, 2000, through May 2, 2000. Clearance of CCC–1045A (ELS Cotton Exporter/Domestic User Agreement) would facilitate enrollment of the exporters and textile manufacturing firms who wish to participate.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 sminutes per respondent.

Respondents: Cotton Exports and Textile Manufacturers

Estimated Number of Respondents: 40

Estimated Number of Responses per Respondents: 58

Estimated Total Annual Burden on Respondents: 780 hours

Copies of the information collection may be obtained from Wayne Bjorlie, USDA–FSA–EPAS, 1400 Independence Avenue, S.W., STOP 0515, Washington, D.C. 20250–0515: Telephone (202) 720–7954 or e-mail *wayne_bjorlie@wdc.fsa.usda.gov.*

Proposed topics for comments for each of the three information collections are: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Tom Witzig, USDA–FSA–ORAS, 1400 Independence Avenue, S.W., STOP 0540, Washington, D.C. 20250–0540: Telephone (202) 205–5851 or e-mail *tom_witzig@wdc.fsa.usda.gov.*

Background

This rule will implement requirements of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, (Pub. L. 106–78), and the Omnibus Consolidated Appropriations Act, 2000 (Pub. L. 106–113) related to agricultural disaster and market assistance for agricultural producers. It will also implement several other provisions of those and other Acts that are related to but not in themselves crop or market loss assistance provisions. Crop and market assistance provisions of the Acts that are being implemented are the Cottonseed Market Loss Assistance Program, the competitiveness program for ELS cotton, Warehouse-Stored Tobacco Loss Assistance, the Pasture Recovery Program, the Oilseeds Program, emergency assistance for Harney County, Oregon, and livestock assistance for contract growers. This rule will also finalize the existing regulations for the Livestock Indemnity and American Indian Livestock Feed Programs, reorganize 7 CFR 1439, Livestock Disaster Assistance, and make clarifying amendments to 7 CFR 1400. Descriptions of this rule's provisions follow.

1. 7 CFR Part 1400—Payment Limitation and Payment Eligibility

Amendments are being made to 7 CFR part 1400 to supplement and clarify the existing regulations for consistent and efficient administration. The revisions are not considered significant in that no additional requirements are imposed upon the producers and no additional responsibilities are placed on the Farm Service Agency or USDA to administer the provisions of this part. The table in § 1400.1(g) is being amended to include the applicable limitation on cost-share payments for conservation practices under the Environmental Quality Incentives Program (EQIP). Section 1400.2 is being amended to include the requirement that all necessary forms be submitted and applicable determinations made before any payments can be issued for the programs subject to this part. The section is further amended to include a provision for the review of the applicable forms and information submitted by producers for the determination of compliance with this part.

2. 7 CFR Part 1411—Oilseeds Program

Section 804 of Pub. L. 106–78 provides generally that the Secretary shall use $475 million of funds of the Commodity Credit Corporation (CCC) to make payments to producers of the 1999 crop of oilseeds who are eligible to obtain a marketing assistance loan under § 131 of the Agricultural Market Transition Act (7 U.S.C. 7231). Section 804 further provides that a payment to producers on a farm under that section for an oilseed shall be equal to the product obtained by multiplying (1) the payment rate determined by the Secretary, by (2) the acreage of the producers on the farm for the oilseed, as determined under the statute, by (3) the producers' yield for the oilseed, as determined under the statute. With respect to acreage, the statute provided generally that the payment acreage of the producers on the farm for an oilseed shall be equal to the greater of (1) the number of acres planted to the oilseed by the producers on the farm during the 1997 crop year, as reported by the producers on the farm to the Secretary (including any acreage reports that are filed late), or (2) the number of acres planted to the oilseed by the producers on the farm during the 1998 crop year, as reported by the producers on the farm to the Secretary (including any acreage reports that are filed late). As an exception, however, the statute provides that in the case of producers on a farm that planted acreage to an oilseed during the 1999 crop year but did not plant that oilseed in the 1997 or 1998 crop years, the acreage of such "new" producers for that oilseed shall be equal to the number of acres planted to the oilseed by the producers on the farm during the 1999 crop year, as reported by the producers on the farm to the Secretary (including any acreage reports that are filed late). With respect to yield, the statute provides that in the case of soybeans, the yield of established eligible producers (those with 1999 production and production in 1997 or 1998) on a farm shall be equal to the greatest of (1) the average county yield per harvested acre for each of the 1994 through 1998 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre, (2) the actual yield of the producer for the 1997 crop year; or (3) the actual yield of the producer for the 1998 crop year. For other oilseeds the statute provides that the yield of established producers shall be equal to the greatest of (1) the average national yield per harvested acre for each of the 1994 through 1998 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre, (2) the actual yield of the producer for the 1997 crop year; or (3) the actual yield of the producer for the 1998 crop year. For new producers, for all oilseeds, the statute provides that the yield will be the greater of (1) the average county yield per harvested acre for each of the 1994 through 1998 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre; or (2) the actual yield of the producers on the farm for the 1999 crop. Finally, the statute provides that to the maximum extent available, the Secretary shall use data provided by the National Agricultural Statistics Service to carry out the new program.

As provided in the legislation, only those producers who planted an eligible oilseed for the 1999 crop year will be eligible for benefits under this program and no more than $475 million may be expended, subject further to such administrative deductions as may apply.

Benefits will be determined by multiplying the eligible producer's payment acreage times the applicable yield by the applicable payment rate. The final payment rate will be determined by the Secretary after the sign-up period, to allow the Secretary to establish a rate that will limit total payments to not more than the allocated amount. Because proration can only be made if all claims are made in a timely fashion, no late-filed applications will be permitted. Deadlines will be announced by press release and information about the program will be available at local Farm Service Agency offices.

If the producer is considered to be a "new" producer, the producer's qualifying acreage will be all acreage planted by the producer on all farms in which the producer has an interest for the 1999 crop, adjusted to reflect partial interests where there is more than one producer on the same acreage. If the producer is considered to be an "established" producer, the acreage, similarly adjusted for partial interests, will be the producer's highest acreage use in 1997 or 1998 at all locations for that oilseed. In all cases, however, for all oilseeds, the producer, in order to be eligible for payment, must have actually planted that particular oilseed for the 1999 crop year. Producers are eligible to receive payments on more than one oilseed so long as the producer shared in the production of each such oilseed for the 1999 crop year. A producer is considered to be a new producer of an oilseed if the producer shared in the production of the oilseed for the 1999 crop year, but did not share in the production of the oilseed on any farm for the 1998 or 1997 crop years. The producer is not considered to be a new producer of an oilseed if the producer shared in the production of an oilseed on any farm in which the producer had an interest in the 1999 crop year, and shared in the production of that specific oilseed in either or both of the 1998 or 1997 crop years. Acreage not planted to an oilseed crop, even if that acreage was approved as acreage for prevented-planting credit for some other purpose (that is, was acreage on which planting was prevented by circumstances beyond the producer's control, so called "prevented-planting acreage") does not qualify for any benefit calculation under this new program. That is, that acreage will not qualify the producer for a payment.

With respect to yields, the Secretary will announce average soybean yields for each county, and, for minor oilseeds, a national average yield will be announced. Producers may substitute actual yields for average yields and, if subject to a spot check, shall document oilseed disposition on FSA–658 for all planted acres for the year in question or by providing RMA documentation with proven yield information for all of the planted acres in question. All documentation must be approved by the county committee. New producers may receive an oilseed payment based on the higher of the applicable average yield of the control county for soybeans or national average yield for all other eligible oilseeds, or the producer's actual yield for all acreage for the 1999 crop year (if established to the county committee's satisfaction). An oilseed producer who is not a new producer may receive an oilseed payment based on the higher of the applicable average yield for the producer's control county, for soybeans or national average yield for all other eligible oilseeds, or the higher actual yield for all the producer's planted acreage of the oilseed for either the 1997 or 1998 crop year (regardless of which of those two years was used to set the qualifying acreage).

As provided for in the statute, producers are entitled to receive a payment amount equal to the result of multiplying the payment acreage, times the payment yield, times the final payment rate determined by the Secretary. All persons must meet all eligibility requirements and must, to receive payments, be in compliance with the provisions for highly-erodible land, wetland conservation, and with those regarding controlled substances that are found in 7 CFR part 12 and 7 CFR 718.11. Additionally, a producer who is determined to have intentionally misrepresented any fact affecting a program determination will not be entitled to oilseed payments and must refund all payments, plus interest, and be subject to such other remedies as may be allowed by law.

While the statute involved may be open to several interpretations on significant questions, these rules are intended to provide for an efficient administration of the program consistent with the provisions of the statute itself. Thus, for example, while the references in the legislation to producers "on a farm" could suggest that the program was to be interpreted as allowing producers to qualify separately farm-by-farm, rather than qualify on the basis of all farms in which they have an interest, such an interpretation would produce a windfall for some producers (at the expense of other producers) and would not seem to be consistent with the intent of the statute to have producers share in the program based on actual production levels. That is, while there are references in the statute to "producers on the farm" the statute does not itself specify that the calculation of production history will be limited to what the producer produced on a particular farm. There is a chance for a windfall with a different interpretation in that if a farmer produced soybeans for 1997 and 1998 on two different farms in rotation or otherwise, that farm would be able to receive a double benefit if the producer could qualify for benefits for each farm separately. Such a doubling of benefit would be to the detriment of other soybean producers who are to share in the finite amount of money available for the program, including those that maybe have grown an equal amount of soybeans in 1997 and 1998 but did so on the same "farm."

Also, with respect to yields for new producers of oilseeds other than soybeans, the statute does call for using a county average yield if the producer cannot prove a higher yield. However, because county data for these other oilseeds is limited, so as to raise doubts about its reliability, national average data will be considered to establish the county yield for these oilseeds unless there is adequate proof of a county yield to the contrary, as determined by the local county committee with State Committee approval.

Also, this rule contains a special rule with respect to powers of attorney. In those instances in which, prior to the issuance of this regulation, a producer has signed a power of attorney on an approved FSA form FSA–211 for a person or entity indicating that such power shall extend to "all above programs", without limitation, such power will be considered to extend to this program unless within 14 days of the issuance of this regulation the person granting the power shall notify the local FSA office that the grantee of the power is not authorized to handle transactions for this program for the grantor. This will allow payments to be

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made quickly and efficiently while also allowing a mechanism for the grantor of the power to make program decisions directly.

3. 7 CFR Part 1427—Cottonseed Payment and Extra Long Staple Cotton Competitiveness Payment Programs and Definition of Base Quality for Upland Cotton

A. Cottonseed Market Assistance

Section 104(a) of Pub. L. 106–113 provides authority for the Secretary to provide assistance to producers or first handlers of the 1999 crop of cottonseed. This authority is being used to implement a new program because of the continuing low prices of cottonseed that, in some cases, have been passed along to cotton producers in the form of increased ginning fees. Specifically, in Pub. L. 106–113, Congress provided that of the funds made available under § 802 of Pub. L. 106–78 that were not otherwise needed to fully implement that section, the Secretary may use up to $4.7 million to carry out title IX of Pub. L. 106–78. Further, however, Congress provided that of the funds made available under § 802 of Pub. L. 106–78 (excluding any funds authorized by to carry out title IX of Pub. L. 106–78) and under § 1111 of Pub. L. 105–277 not otherwise needed to fully implement those sections, the Secretary may provide assistance to producers or first-handlers for the 1999 crop of cottonseed. Both of those sections provided for market loss assistance through the making of supplemental payments to person with contracts under the Production Flexibility Contract program operated by the Department. Finally, in this respect the Congress provided that if any funds remained, the Secretary could use the funds to provide for a new program for extra long staple cotton, which is addressed later in this rule.

Consistent with the legislation, funding for the cottonseed program is provided from a portion of the residual funds authorized for Pub. L. 106–78 and Pub. L. 105–277. Because outlays for this program will be limited to a fixed amount, all payments will be made only after the total eligible quantity of cottonseed can be determined from approved applications.

The major provisions of this program are as follows. CCC will announce an application period during which U.S. cotton gins may apply for cottonseed payments based on the number of bales of cotton and weight of lint ginned from the 1999 cotton crop.

At the close of the application period, based on the number of bales for which payment is requested, CCC will estimate the total national quantity of cottonseed for payment. The payment rate per ton of cottonseed and payments to applicants will then be determined based on total available program funds. The resulting payments to cotton gins will not be subject to any per-person payment limitation. Applicants must agree to share any payment received with the producer of the cotton that was the basis of the payment to the extent that the effect of low cottonseed prices was borne by the producer rather than the gin. To the extent such funds will go to individual producers, those funds will be considered to have been received by the applicant on behalf of such producers. The recourse for producers dissatisfied with the distribution by the gin will be to make use of whatever private civil remedies they may possess against the gin. This distribution has been settled upon in light of the impossibility of making timely, reasonable, and effective individual determinations for each gin and each bale of cotton as to how the effect of cottonseed prices was actually distributed. This is consistent with the precise wording of the statute, which appears to contemplate a distribution to gins alone. In that regard, the statute allows for payments to gins "or" producers, rather than to gins "and" producers.

B. Extra Long Staple Cotton Competitiveness Payment Program

As indicated above, Congress authorized the use of a particular source of funds for a cottonseed program and allowed any remaining funds to be used for a new program for extra long staple cotton. Specifically, within those limits, Congress provided for this new program by adding a new section, 136A, to the Agricultural Market Transition Act. That new section specifies that, within funding limits, notwithstanding any other provision of law, during the period beginning October 1, 1999, and ending July 31, 2003, the Secretary shall carry out a program to maintain and expand the domestic use of extra long staple cotton produced in the United States, to increase exports of extra long staple cotton produced in the United States, and to ensure that extra long staple cotton produced in the United States remains competitive in world markets. Under the program, the statute provides, the Secretary shall make payments available whenever (1) for a consecutive 4-week period, the world market price for the lowest priced competing growth of extra long staple cotton (adjusted to United States quality and location and for other factors affecting the competitiveness of such cotton), as determined by the Secretary, is below the prevailing United States price for a competing growth of extra long staple cotton; and (2) the lowest-priced competing growth of extra long staple cotton (adjusted to United States quality and location), as determined by the Secretary, is less than 134 percent of the loan rate for extra long staple cotton. Further, § 136 provides that the Secretary shall make payments available under this section to domestic users of extra long staple cotton produced in the United States and exporters of extra long staple cotton produced in the United States who enter into an agreement with CCC to participate in the program. Payments are, by the statute, to be based on the amount of the difference in the prices as determined for the last week of the qualifying period multiplied by the amount of documented purchases by domestic users and sales for export by exporters made in the week following such 4-week period. Finally, the statute provides payments shall be made through the issuance of cash or marketing certificates, at the option of eligible recipients of the payments. As set out in the statute and as implemented in the regulations provided for in this rule, the program is designed so that payments would trigger in response to a deterioration in the competitive position of U.S.-grown ELS cotton in relation to foreign ELS cotton growths. If non-U.S. prices move sufficiently lower, or if U.S. spot prices move sufficiently higher, payments to exporters of U.S.-grown ELS cotton would be triggered after four weeks during which the U.S. spot price for a specific quality of ELS cotton exceeds the lowest adjusted foreign price quotation for a comparable quality. Exporters then would receive the payment on every eligible bale shipped while the program is triggered. U.S. domestic mills also would receive the payment on every eligible bale of U.S.-grown ELS cotton opened during that time.

C. Definition of Base Quality for Upland Cotton

A base quality for upland cotton must be defined so that a bale of upland cotton showing any deviation from the base quality may be properly valued for purpose of determining a loan rate under the marketing assistance loan program for upland cotton. In an effort to improve the quality of American raw cotton for spinning, the cotton industry recommended a redefinition of base fiber strength and the introduction of the length uniformity percentage for purposes of the marketing loan. The regulation at 7 CFR 1427.25 is being revised to conform to the schedule of loan premiums and discounts for the 2000 crop. Beginning August 1, 2000, the definition of base strength will be changed and a definition of base length uniformity will be introduced. The changes bring the regulation and the loan schedule back into balance, reestablishing the base quality at zero premium/discount so that no additional program cost will result.

4. 7 CFR Part 1439—Emergency Livestock Assistance

A. Pasture Recovery Program

Section 805 of Pub. L. 106–78 provides that the Secretary shall use $325 million of CCC funds to provide assistance directly to livestock and dairy producers, in a manner determined appropriate by the Secretary, to compensate the producers for economic losses incurred during 1999. Further, in § 825 of the same legislation Congress provided that of the funds provided in §§ 801 and 805 of that Act, no less than $200 million in assistance would be required to be made in the form of assistance to livestock producers for losses due to drought or other natural disasters. In § 801 of that Act, Congress, without limitation to particular kinds of production, authorized the use of $1.2 billion in Commodity Credit Corporation funds to make emergency financial assistance available to producers on farms that have incurred losses in a 1999 crop due to a disaster, as determined by the Secretary. Pub. L. 106–113 appropriated an additional $186 million to the sum provided for in § 801 of Pub. L. 106–113.

Pursuant to the authority contained in Pub. L. No. 106–78, new Livestock Indemnity and Livestock Assistance Programs for losses incurred during 1999 were provided for in an omnibus rule published on February 16, 2000 (65 FR 7942).

However, it has been further decided that additional relief should be provided for livestock interests under the authority contained in Pub. L. 106–78. To that end, this rule uses the authorities set forth above to provide for a new Pasture Recovery Program (PRP) that is to be included in 7 CFR part 1439 and will provide payments to owners and operators of pasture land on which livestock is normally grazed who suffered pasture losses due to drought during calendar year 1999. Eligible producers must agree to reestablish the forage crop and maintain the crop for three full years after the calendar year of installation. PRP payments will be authorized only in counties determined eligible for the most recent Livestock Assistance Program and approved for assistance for 1999 losses due to drought under the Emergency Conservation Program that is provided for in 7 CFR part 701. For the land to be eligible, it must be established pasture land on which livestock is normally grazed but that was so damaged or destroyed by drought or related conditions that seeding is required to reestablish a cover. Hayland and rangeland will not be eligible, nor will land operated by the Federal or a State Government or a political subdivisions of a State. To be an eligible recipient of program benefits, the applicant must be an owner or operator of eligible land damaged or destroyed in 1999 who normally grazes livestock on such land and such applicant must be the person who will restore and maintain the property for three full years after the calendar year of installation.

All conditions must be satisfied if a person is to be eligible for a PRP payment. For example, if an owner leases pasture land to an operator for grazing the operator's livestock, then the operator is eligible for a PRP payment only if the operator reestablishes the forage crop on the leased pasture land and has a lease and the equipment necessary to maintain the forage crop for one full year after the calendar year of installation. If an owner leases pasture land to an operator who normally grazes the operator's livestock but the owner agrees to reestablish the forage crop on the pasture land, then neither the operator nor the owner are eligible for PRP benefits because neither can meet all of the eligibility requirements. The owner is ineligible because the owner does not normally graze livestock on the pasture land, and the operator is ineligible because the operator did not reestablish the forage crop on the pasture land. Other restrictions will apply as well in the administration of the program. Among them, the land must be in a county that was approved for participation in the 1999 Livestock Assistance Program (LAP), which was provided for by a rule published on February 16, 2000, and that county must have had a 120-day payment period for purposes of the 1999 LAP. Further, the county in which the land is located must be a county that, based on 1999 drought-induced losses, was approved for participation in the Emergency Conservation Program (ECP) by virtue of an application submitted prior to March 1, 2000. The ECP is provided for in 7 CFR part 701.

This program will be subject to the general provisions for emergency livestock assistance programs found in what will now be Subpart A of part 1439. That subpart is republished in this rule. That subpart provides for limitations on payments that are effectively adopted in this rule by not exempting the PRP from those provisions. In addition limits on payments are provided in the rules themselves.

Accordingly, and in order to efficiently maximize the use of program funds for those farmers most in need of relief, this new program, like others in part 1439, will not be available to a person whose annual gross revenue is in excess of $2.5 million. Further, however, benefits are limited to $2,500 per "person" determined according to the "person" determination regulations at 7 CFR part 1400 applicable to a number of other USDA programs.

In order to receive payments, applicants will be required to certify that pasture land to be enrolled in the PRP was so damaged or destroyed by drought or related conditions during calendar year 1999 that seeding is required to reestablish the forage crop. State Farm Service Agency (FSA) committees will establish per-acre payment rates equal to 50 percent of the eligible area's average cost of reestablishing the approved forage crop on eligible pasture land not to exceed $75 per acre. The FSA Deputy Administrator for Farm Programs may approve higher per-acre payment rates not to exceed $125 per acre. In no case will per-acre payment rates exceed $125 per acre. Seeding and related fertilizing requirements will be required to be carried out according to standards for agronomic practices and applicable environmental laws and regulations. Payments may be issued upon certification by the participant that approved practices to reestablish the forage crop have been completed. Certifications are subject to spot check by FSA.

Signup periods for this new program will be announced by CCC, but are expected to be conducted no later than the spring 2000 planting season for affected regions. It is expected that all seeding will be required to be completed in calendar year 2000 by a date announced by CCC. Because this new program is operated under authority contained in Pub. L. 106–78, it is subject to the exemptions from rulemaking and from the Paperwork Reduction Act that are contained in Pub. L. 106–78.

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B. Livestock Indemnity Program for Contract Growers

Title I of Pub. L. 106–113 provided an additional $10 million for the livestock assistance authorized by § 805 of Pub. L. 106–78 and specified that this additional amount could be used to provide assistance to persons who raise livestock owned by other persons so as to provide relief for income losses sustained with respect to such livestock during 1999, if the Secretary finds that such losses are the result of natural disasters. In order to make use of that authority, a new subpart for 7 CFR part 1439 is provided for in this rule that will establish regulations for such relief. The new Livestock Indemnity Program for Contract Growers (CG–LIP) would provide benefits to eligible livestock producers who, due to a natural disaster in calendar year 1999, sustained a loss of income handling livestock in which they did not have an ownership interest. The loss must have been suffered in an area that was the subject of a Presidential or Secretarial disaster declaration. Producers in contiguous counties that were not designated as a disaster area are not eligible for benefits. Eligible livestock for purposes of the program are beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and buffalo and beefalo when maintained on the same basis as beef cattle. Such livestock must have been handled pursuant to a contract between the producer and owner. Applications for benefits must be submitted at the local county FSA office by May 1, 2000, or such other date as established by CCC. Livestock producers must provide adequate proof of loss and of the corresponding reduction in income. Subject to the availability of funds, payments shall be made in an amount determined by multiplying the national payment rate for the livestock category as determined by CCC by the qualifying loss. If the claims exceed the allotted funds, claims may be prorated or otherwise adjusted to account for the limited funds. For the same reasons as for the new Pasture Recovery Program, the $2.5 million gross revenue test will apply, as will a $40,000 per-person payment limit. FSA may, as needed, reduce benefits to avoid duplication with other programs and may exclude those claimants who were related to, or affiliated with the owners of the livestock so as to limit the program to those contract producers who were truly separate from the owners of the livestock and thus did not benefit directly or indirectly from other livestock programs, which were owner-focused.

C. General Revision of 7 CFR Part 1439

This rule also finalizes other amendments recently made to part 1439. In a final rule published on March 19, 1999 (64 FR 13497), part 1439 was generally reorganized. Also, that rule provided for a new LAP program. Thereafter, an interim rule was published on August 31, 1999 (64 FR 47358), which provided for a new Flood Compensation Program (FCP). Likewise, the FCP was codified in part 1439. That rule was followed in turn by an interim rule published on November 1, 1999 (64 FR 58766), which provided for a new Livestock Indemnity Program. In the meantime, as indicated, Pub. L. 106–78 was enacted, which allowed for new relief for livestock interests and led to a new rule published on February 16, 2000 (65 FR 7942) that updated the LIP and LAP regulations so as to provide for the new LIP and LAP provisions.

The March 19, 1999 rule reorganizing part 1439 took into account the existence of the regulations published on November 27, 1998 (63 FR 65524), creating, by an interim rule, the American Indian Livestock Feed Program (AILFP), but did not finalize those regulations. Hence, prior to this time, there have been three interim rules pending for part 1439: (1) The AILFP rule of November 27, 1998, (2) the FCP rule of August 31, 1999, and (3) the LIP rule of November 1, 1999. For all three interim rules, the comment periods are closed and those rules are made final in this rule.

With respect to comments, none were received for the LIP and FCP rules. Accordingly, and on further review, no changes were needed in those regulations. For the AILFP two comments were received. First, the comments suggested that the benefits of the AILFP should not be limited to tribal-governed land but should include non-dependent lands that are now held by private persons but were formerly reservation. The AILFP is a very limited program with very limited funds. This comment was not adopted in light of the limited funds available and also because the limitations contained in the program reflected the sovereign-to-sovereign nature of this special program. Also, citing Executive Order No. 13804, § 3(b), a comment suggested that the tribes be compensated for their AILFP efforts. This comment was not adopted because the program is not a regulatory program but a voluntary program to which the Executive Order does not apply. Also, however, on reviewing the rule, it was determined that a definition of "dependent Indian community" should be added. Under the interim rule, a "dependent Indian community" is one of the categories of land that are considered under the rule to be "tribal governed land." In this new rule, that phrase would be defined to mean a limited category of Indian lands that are neither reservations nor allotments and are found by FSA to be: (a) Land set aside by the Federal Government for the use of Indians as Indian land; and (b) under Federal superintendence.

With respect to the FCP, as all claims in that program are past claims, there does not appear to be a good reason to republish the regulations. Hence, they are removed by this rule, though such removal will not affect any past, pending, or future claims under that program. Also, with respect to the AILFP regulations, a provision has been added to § 1439.902 so that the regulations for that program will, except for the change noted above, be the same as they were in substance despite the reorganization of part 1439. Also, for consolidation purposes, the LIP regulations have been renumbered. Conforming amendments to existing rules have also been added as needed to reflect the reorganization of part 1439. The language dealing with the application deadline for the 1999 LAP program was changed because of changed circumstances. Also at various places in the regulations provisions have been added to make explicit that nothing in the regulations will require expenditures for programs beyond that which is deemed appropriate by CCC with respect to overall funding levels, taking into account statutory limits.

5. 7 CFR Part 1464—Assistance for Losses of Certain Warehouse-Stored Tobacco

Section 803 of Pub. L. 106–78 authorized the Secretary to use $328 million of CCC funds to make payments to States with tobacco producers whose 1999 poundage quotas or acreage allotments for tobacco were reduced from 1998 crop year levels due to a drop in the national marketing quote or poundage quota for their kind of tobacco. In addition, Pub. L. 106–78 made provision for a number of other programs, which were implemented by a final rule published in the **Federal Register** on February 16 (65 FR 7942). The provisions dealing with the $328 million for tobacco producers were codified at 7 CFR Part 1464, Subpart C. Those regulations call for the funds to be distributed by the individual States with qualifying persons. This follows the language of § 803, which basically calls for the distribution of the funds to be made in the same way that state trusts are making $5 billion available to tobacco growers using the so-called "Phase II" funds made available by tobacco companies.

Section 803(c) of Pub. L. 106–78 defines those persons who were eligible to receive the tobacco payments as being those persons who own or operate, or produce tobacco on, a farm: (A) For which the quantity of quota allotted to the farm under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*) was reduced from the 1998 crop year to the 1999 crop year; and (B) that was used for the production of tobacco during the 1998 or 1999 crop year. As for the distribution of the funds and amounts, § 803 called for the funds to be distributed in the same way as the States were or are distributing the so-called "Phase II" funds made available by tobacco companies to producers through state trusts.

While Pub. L. 106–78 was being considered there was a series of severe weather conditions in the flue-cured tobacco growing area of North Carolina. In particular, there were three hurricanes that hit in quick succession, leading to widespread flooding in that area. That flooding destroyed some 1999-crop tobacco that had been delivered to warehouses for sale by producers under the customary auction warehouse system. Some of this tobacco had not yet, however, been sold at auction and producers still held the risk of loss on that tobacco even though the tobacco had been harvested and thus was not eligible for coverage under the normal crop loss programs run by the Department.

Subsequently, Pub. L. 106–113, provided an additional $2.8 million for tobacco assistance authorized by § 803(c)(1) of Pub. L. 106–78 and provided "that the definition of eligible persons in § 803(c)(2) of Pub. L. 106–78 shall include producers who have suffered quality or quantity losses due to natural disasters on crops harvested and placed in a warehouse and not sold." The quoted language constitutes essentially the entirety of the statutory provision.

Literally, the new language would only seem to simply add an additional amount to the $328 provided for in § 803 without, as such, changing the distribution method called for in § 803, and would seem to be limited to a technical adjustment of the eligibility definition contained in § 803(c)(3). However, the intent of the language seems clearly, instead, given the background set forth above and other factors, to provide relief to those flue-cured producers who had tobacco that was still theirs in the flooded warehouses but that was lost. This would follow from the nature of the language adopted, from the timing of the bill and from the amount allotted. The original $328 million roughly corresponded to a dollar per pound for all tobacco that met the eligibility criteria of the original legislation and the additional $2.8 million corresponds to roughly a dollar per pound for the amount of producer tobacco that internal Department assessments made prior to the passage of Pub. L. 106–113 indicated had been lost in flue-cured warehouses in North Carolina as the result of the three hurricanes. Damage of the kind covered by the legislation appears to be limited to North Carolina. Furthermore, simply adding to the definition of 803(c)(3) would not seem to be purposeful in and of itself if that addition was not meant to indicate a separate kind of payment, since, presumably all of the persons who lost tobacco in the warehouses during the natural disaster were persons who already met the definition in 803(c)(3). Rather, the addition only appears to make sense as a method of indicating a separate form of recovery for producers whose incomes for the tobaccos covered by § 803 were reduced by the warehouse disasters caused by the floods. Of the tobaccos covered in § 803 (those which, nationally, had reduced quotas or allotment for 1999), the only tobacco that appears to have had any sort of widespread 1999-crop loss in warehouses due to a natural disaster at or near the time that Pub. L. 106–113 enacted was flue-cured tobacco.

In addition, there is a limited amount of funds made available by Pub. L. 106–113, and no payment formula is specified. Accordingly there is some discretion involved in deciding which claims to honor and how the funds will be distributed. Further, timely decision must be made about the distribution of the funds so that the universe of claims can be determined and the funds apportioned.

To that end, this rule provides for the $2.8 million to be distributed directly by the Department and provides that, except as determined by the Deputy Administrator for Farm Program of the Farm Service Agency upon petition, payable only on flue-cured tobacco and only for those losses in North Carolina as a result of the recent hurricanes. Because material damage appears to be limited to North Carolina, normal signup will be limited to that State. However, there are references in the rule to the ability of persons to petition the Deputy Administrator for relief so as to provide the leeway necessary in the event that there are meritorious circumstances of which the Department is not aware that were widespread and that should be considered to assure that all claims are reviewed. In all cases, requests for relief must meet the deadlines provided for in the regulations that are published in this rule.

6. 7 CFR Part 1479—Flood Assistance for Harney County, Oregon

In Pub. L. No. 106–113 Congress also provided that CCC could use up to $1.09 million of its funds to provide emergency assistance to producers on farms located in Harney County, Oregon, who suffered flood-related crop and forage losses in 1999 and several previous years and are expected to suffer continuing economic losses until the flood waters recede. Congress provided that any amounts made available should be for such losses for such years as determined appropriate by the Secretary to compensate such producers for hay, grain, and pasture losses due to the floods and for related economic losses.

General regulations for programs of this type are provided for in 7 CFR part 1478, 1999 Crop Disaster Program, published on February 16, 2000 (65 FR 7942), which was a new part intended to allow for a single-year disaster program in accordance with Pub. L. 106–7.

The regulations set out in this rule will provide for Harney County, in a new part, 7 CFR part 1479, compensation to producers whose land was not usable from January 1, 1999 through December 31, 1999. To be eligible for benefits, producers in Harney County, Oregon, must have owned or leased land that was intended to be used for crop or forage production or grazing during crop year 1999, and which was subject to flooding January 1, 1999, through December 31, 1999, and for which it is determined that due to flood-related losses, the land was unfit for crop or forage production, or grazing, at all times during CY 1999. Producers will be required to certify that the acreage was unable to be used due to flooding. In the new program, no "person", as "person" is defined in the applicable regulations, will be able to receive over $40,000 in program payments and no person can receive any payment if that person's gross revenue for 1998 was in excess of $2.5 million. These limits will also insure the most efficient use of funds for the producers most in need. The applicant must be the owner or lessee of the affected property under a binding lease during the 1999

crop year, and must still be the owner or lessee of the land. Other restrictions apply as well, including a requirement that the land must have been unusable for at least one other crop year in the years 1994 though 1998, and must be land that actually produced a crop, or that was actually used for pasture, on or after 1990.

Unadjusted payment rates will be based on the average local rental rates for crop land and pasture land, using, where possible, 5-year data of the National Agricultural Statistics Service.

Cost-Benefit Assessment

Summary

Outlays under the programs implemented by this rule will total approximately $616.5 million, of which approximately $604 million will be direct payments to producers. The outlays for the Livestock Indemnity Program and the American Indian Livestock Feed Program, totaling $15.5 million, have, for the most part already been made, and therefore do not represent a new funding commitment. The table summarizes the outlays and the discussion following summarizes the Cost/Benefit Assessments for each program.

SUMMARY OF OUTLAYS

Program	Outlays
Oilseeds Program	[1] 462.6
Cottonseed Payment Program	74.0
ELS Cotton Competitiveness Program	[2] 6.0
Pasture Recovery Program	[3] 40.0
Livestock Indemnity Program for Contract Growers	[4] 2.0
Finalization of Existing Livestock Regulations	[5] 15.5
Warehouse-Stored Tobacco Assistance	2.8
Harney Co., Ore. Emergency Assistance	1.09
Total	603.99

[1] After administrative expenses of approximately $12.4 million.
[2] Total of actual outlays up to May 4, 2000 and maximum expected outlays through September 30, 2000.
[3] Reallocated from funding previously attributed to the 1999 Crop Disaster Program.
[4] After administrative expenses of approximately $100,000.
[5] Includes $3 million for LIP in FY 1999 and $12.5 million for AILFP for FY's 1997 and subsequent years.

1999 Oilseed Market Loss Assistance Program

U.S. oilseed producers are experiencing serious financial hardship as a result of low oilseed prices. The farm-level market value of oilseed production has dropped substantially since the mid-1990's. In fact, the farm value of the 1999 U.S. oilseed crop was down an estimated $5 billion, or 27 percent from the previous 5-year high set in 1996, despite a 12-percent increase in production. Some producers have also had their financial problems exacerbated by isolated weather problems that reduced their 1999 production.

Section 804 of Pub. L. 106–78 authorized the use of $475 million in Commodity Credit Corporation funds to assist oilseed producers suffering from reduced farm income as a result of large supplies and low prices. To be eligible for payments from these funds, a producer must have produced an oilseed in 1999 that is eligible to obtain a marketing assistance loan under § 131 of the Agricultural Market Transition Act (7 U.S.C. 7231). These oilseeds include: soybeans, safflower seed, canola, rapeseed, mustard seed, sunflower seed, flaxseed, and crambe.

The payment rate determined by the Secretary must consider the number of eligible payment acres and payment yields as well as the fixed amount of Commodity Credit Corporation funds authorized by Congress for the Oilseed Program. Section 822 of Pub. L. 106–78 provides that the Secretary may reserve up to $56 million of the amounts made available under subtitle A to cover administrative costs incurred by the Farm Service Agency directly related to carrying out that subtitle. For the Oilseed Program the authorized amount of $475 million will be reduced by approximately $12.4 million to cover administrative costs. After accounting for administrative costs, direct payments to producers under the Oilseed Program are expected to total approximately $462.6 million. Of this total about $442.7 million (96 percent) is expected to go to soybean producers. The remaining $19.9 million will be split among the producers of the other minor oilseeds eligible for marketing assistance. Payments to producers of those oilseed are estimated to be $13.2 million for sunflower seed producers, $3.8 million for canola producers, $1.7 million for safflower producers, $938,923 for flaxseed producers, $172,471 for mustard seed producers, $112,990 for crambe producers, and $16,260 for rapeseed producers. Because assistance will be in the form of direct payments, the program is expected to result in a dollar-for-dollar increase in farm income for oilseed producers.

Pre-enrollment estimates of per-unit payment rates are expected to be highest for safflower seed and mustard seed at 34 and 31 cents per hundredweight (cwt.), respectively. The lowest per unit rate is expected to be for flaxseed at 22 cents per cwt. (12 cents per bushel). The pre-enrollment estimate for the soybean payment rate is 24 cents per cwt. (14 cents per bushel). On a per-acre basis, the safflower seed payment will be highest among the various crops at $6.13 per acre. The pre-enrollment payment for soybeans is estimated at $5.92 per acre. For the remaining oilseeds, pre-enrollment estimates indicate that per-acre payments will range from a low of $2.55 for flaxseed to a high of $3.69 for rapeseed.

Cottonseed Market Loss Assistance

The cottonseed support payment program is designed to provide payments to cotton ginners in response to a severe decline in the price of cottonseed in the 1999 crop year. Throughout the Cotton Belt, in most years, the value of the cottonseed that is the by-product of the ginning process has been accepted by cotton ginners as payment in full for the cost of ginning seed cotton. Unless they are members of a co-operative gin (many are) or they own or are partners in a gin, farmers do not secure any benefit from the seed other than to have their ginning costs canceled.

This season, the average price of cottonseed has dropped by about $48 per ton (37 percent) from the average level received last year, and about $36 per ton (31 percent) from the average of 1994 through 1998. In the 1999 season, cottonseed prices in many parts of the Cotton Belt do not cover the cost of ginning.

Cottonseed prices this season equate to about $34 worth of seed per bale of cotton lint produced, on a national average. The national average ginning cost for 1999 is estimated at $46 per bale. Thus, the national average value of cottonseed falls about $12 short of the cost of ginning a bale of cotton. That is the equivalent of about 2.5 cents per pound of lint. For ginning services, some farmers are being asked to pay in cash to the ginner an additional 2 or 3 cents per pound of cotton lint beyond the value of the seed, while, in other cases, ginners are holding ginning bills until they see how this payment program will be implemented.

The most viable option to assist cotton producers is a direct payment program in which payments are made to ginners. There are between 1,000 and 1,100 gins in the United States. About 25 percent of those are co-operatives. Another 50 percent are owned as corporations by farmers who gin their own and their neighbors' cotton. About 25 percent are independent gins.

Thus, farmers have a direct interest in about 75 percent of the gins and can be expected to receive nearly the full benefit of payments made to the gins. In the other 25 percent of gins where farmers do not directly operate or share in the ownership of the gins, farmers still may be expected to receive a substantial portion of the program benefits because the gins may have held the ginning bills pending the implementation of this program, the gins may rebate to farmers any ginning bill already paid, or competition among gins may dictate that any payments beyond those needed to cover the shortfall in seed prices will be rebated to the gins customers.

Funding for this program is provided from a portion of the residual funds authorized for Pub. L. 106–78 and Pub. L. 105–277. Approximately $74 million of those funds will be available for cottonseed payments for crop year 1999. This will allow payments of approximately $4 per bale of lint, or about 1 cent per lb.

Extra Long Staple Cotton Competitiveness Program

The program is designed so that payments trigger in response to a reduction in other world prices, as specified in the legislation. In the period since October 1, 1999, were triggered only during the period April 4, 2000, through May 2, 2000.

It is not possible to predict whether there will be further reductions in foreign prices, nor how large they will be, nor how long they will last. There would be no theoretical maximum payment rate. However, during the 6-week period April 4, 2000, through May 2, 2000, in which payments were triggered, outlays were less than $1 million. For the remainder of FY 2000 (mid-May through September), the program could incur from $3 million to $5 million in outlays if there is no drastic change in price relationships currently being observed and if it operates every week until September 30.

It is projected that ELS competitiveness payments could increase domestic use of American Pima cotton by about 5,000 bales (about 3 percent) per year and exports by 25,000 bales (about 6 percent) per year. This increase in disappearance could add about 2 cents to the average price of American Pima and reduce net lending costs to CCC by about $25 million. Farm receipts would rise by about $4 million for the 1999 crop.

Funding for this program is provided from a portion of the residual funds authorized for Pub. L. 106–78 and Pub. L. 105–277. Approximately $10 million of those funds will be available for the ELS Cotton Competitiveness Payment Program.

Pasture Recovery Program

Weather-related disasters in calendar year 1999 exacerbated the financial crisis affecting the Nation's agricultural sector. Prolonged drought, predominantly in the Mid-Atlantic and Northeastern United States, left livestock producers with destroyed or severely damaged pasture. The purpose of the Pasture Recovery Program (PRP) is to provide payments to owners and operators of pasture who suffered pasture losses due to drought in 1999 and who reestablish the forage crop on their pastures.

Funds to reestablish pasture damaged by drought will be allocated from funds provided for crop and livestock loss assistance under Pub. L. 106–78 and Pub. L. 106–113 that otherwise would be committed to the Crop Disaster Program, the Livestock Assistance Program, or the Livestock Indemnity Program.

PRP payments will be authorized only in counties determined eligible for the Livestock Assistance Program and approved for the Emergency Conservation Program. As of mid-January, 2000, about 400 counties met both of these requirements and about 30,000 producers had applied for the 1999 LAP. The funding level of $40 million will be met if slightly more than half of the 30,000 eligible producers receive the maximum payment of $2,500 per person. To be eligible, land must be established pasture land on which livestock are normally grazed and that was so damaged by drought that seeding is required to reestablish a cover crop. Neither hay land nor rangeland is eligible.

Payment rates per acre will equal 50 percent of the eligible area's average cost of reestablishing the approved forage crop and are not to exceed $125 per acre. FSA's Deputy Administrator for Farm Programs must approve payment rates above $75 per acre.

The cost to reestablish pastures is estimated to be between $100 and $250 per acre, depending on the tillage and fertilization rates required. Most are expected to fall between $100 and $150 per acre, which will allow producers a payment rate of $50-$75 per acre. At an average payment rate of $62.50 per acre and subject to the $2,500 limitation producers could reestablish pasture on a maximum of 40 acres.

The Pasture Recovery Program will provide benefits to livestock producers who graze animals on land that has been damaged by drought. It will partially offset the cost of reestablishing a forage crop where cover has been destroyed, which will provide some reduction in soil erosion due to wind and water.

Funding for the program will provide payments for livestock producers who have suffered losses due to drought. Payments will be reduced for some producers in some programs in order to provide payments under PRP. Some funding will be shifted from crop programs to livestock producers and some will be shifted from other livestock producers to those using pastures affected by drought.

Livestock Indemnity Program for Contract Growers

Contract livestock growers are eligible for assistance through the Livestock Indemnity Program for Contract Growers (CG–LIP) if livestock or poultry lost on the farm exceeds normal nationally-determined mortality rates, and if the livestock or poultry lost were on a farm in a region affected by a natural disaster between January 1, 1999, and December 31, 1999.

The CG–LIP program will be administered in a manner similar to the 1999 LIP program for livestock owners. However, owing to the differing financial interests between the owners of livestock and poultry and contract growers of the lost livestock and poultry, payment rates will need to be adjusted to reflect the losses suffered by the contract growers. Generally, payment rates per animal lost for contract growers are expected to be less than for the livestock and poultry owners, reflecting the smaller per-animal investment (and loss) by contract growers. Contract growers will be paid on those losses exceeding normal mortality. Based on the numbers of livestock lost, claims are expected to be approximately $2 million, well short of the $10 million available. Consequently, it is unlikely that payments will be factored. On a sectoral basis, the payments represent a small fraction of the total value of livestock production.

However, for those contract growers who actually suffered the losses, the impact on their equity and cash flow positions is significant. Indemnity payments will assist contract growers affected by the disaster in meeting their financial obligations for inputs used in the production of the lost livestock and poultry, replace lost income, and to service debt. It is assumed, in part as a result of the CG-LIP, that contract producers affected by the disaster would remain in business and rebuild their contract growing operations to their previous size.

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Finalization of Existing Regulations for the Livestock Indemnity Program and American Indian Livestock Feed Program

The Livestock Indemnity Program (LIP) provides financial assistance to livestock producers who suffered significant financial losses due to natural disasters between May 2, 1998, and May 21, 1999. The impact of the indemnity payments on livestock and milk market prices and consumers is not expected to be measurable. Farm income was expected to be $3 million higher, equaling the amount of indemnity payments. Federal outlays would also increase by the indemnity payment of $3 million.

For those producers who actually suffered the losses, the impact on their equity and cash flow positions is significant. Indemnity payments assist producers affected by the disaster in meeting their financial obligations for inputs used in the production of the lost livestock and to replace breeding stock. It is assumed, in part as a result of LIP, that producers affected by the disaster would remain in business and rebuild their foundation herds to their previous size.

The American Indian Livestock Feed Program (AILFP) provides assistance to eligible livestock producers who have suffered significant loss of livestock feed production for 1997 and subsequent years. Theses funds will help eligible producers to meet financial obligations against feed stocks purchased to maintain livestock as a result of lost feed production. It is expected that up to 45,000 livestock producers will receive assistance and be able to maintain their herds. The impact of the program on livestock and feed prices is not expected to be measurable. Aggregate American Indian farm income losses will be somewhat reduced by AILFP payments. Federal outlays for the 1997 and subsequent crop years might total around $12.5 million, which will be funded from the Feed Grain Disaster Reserve.

Warehouse-Stored Tobacco Loss Assistance

During the late summer and early fall of 1999, three major hurricanes dropped an unprecedented amount of rain in North Carolina. A substantial amount of warehouse-stored tobacco was destroyed in the flooding that resulted. Some producers, because they had placed their tobacco in warehouses and it had not been sold, suffered flood losses to that tobacco. However, because the tobacco had been harvested and placed in a warehouse, those producers were not eligible for disaster assistance under FSA's normal crop-loss programs and the producers therefore incurred the entire financial burden of the loss. Pub. L. 106–113 appropriated an additional $2.8 million to the assistance authorized by § 803 of Pub. L. 106–78, which authorized the Secretary to use $328 million of CCC funds to make payments to States for the reduction of quota or acreage allotted farms from the 1998 crop year to the 1999 crop year, provided that producers who suffered quality or quantity losses due to natural disasters on crops harvested and placed in a warehouse and not sold shall also be eligible.

The $2.8 million will assist quota holders and growers to roughly defray production costs for crops lost in crop year 1999 due to the flooding in auction warehouses. The Tobacco Disaster Assistance Program (TDAP) will pay producers approximately $1 for each pound of unsold 1999-crop tobacco lost to warehouses flooded by the hurricanes. Due to program provisions, producers may carry these unmarketed pounds over to crop year 2000.

Most tobacco operations are small family-owned affairs. The tobacco program run by the U.S. Department of Agriculture, along with topological limitations, limit the size of the typical farm and substitutability of competing crops. Accordingly, there currently may be few alternatives for tobacco. With no crop alternatives and little diversification in tobacco-growing regions, cash from the tobacco crop is vital to these producers. To the extent that the $2.8 million payment to producers and quota-holders defrays tobacco production costs, the TDAP enhances solvency. The production short-fall caused by the flooding is expected to be made up in the following year. In the short-term, the cost to the government roughly equals the benefits to the producers. In the longer term, to the extent that these disaster payments protect producers from bankruptcy, there is a net benefit.

Flood Assistance for Harney County, Oregon

Pub. L. 106–113 provides that the Secretary may use no more than $1.09 million for disaster assistance to Harney County. High precipitation during the winter of 1998 and 1999 led to flooding in the areas around Harney Lake and Malheur Lake in Harney County, Oregon. Heavy flooding began in February 1999 and continued until June when snow pack runoff slowed.

Such flooding can change the basic character of the land and render the land ineligible for other benefits or for enrollment in programs like the Conservation Reserve Program (CRP). Generalized conditions of that sort can produce tertiary effects in the local community and accordingly, problems such as those in Harney County have been the source of considerable attention and concern with respect to the exercise of discretionary authorities that may be available to the Secretary of Agriculture.

The impact on ranches in Harney County has been a loss of approximately 43,000 acres of pasture, 11,000 acres of native grass hay, 200 acres of alfalfa hay, and 200 acres of barley that were prevented from being planted. Approximately forty producers in Harney County are expected to be eligible for the program. Assistance therefore will average about $25,000 each if total claims meet or exceed $1.09 million. The expected average is well below the per-person payment limit of $40,000. Assistance will be in addition to assistance provided under other FSA programs.

For further information, the following individuals may be contacted regarding the different parts of the Cost/Benefit Assessment:

Livestock and Pasture Recovery—Dan Colacicco, 202–720–6733
Cotton—Wayne Bjorlie, 202–720–7954
Cottonseed—Gene Rosera, 202–720–8481
Harney County, Oregon—Brad Karmen, 202–720–4635
Oilseeds—Phil Sronce, 202–720–2711
Tobacco—Dan Stevens, 202–720–5291

List of Subjects

Part 1400

Agriculture, Grant programs—agriculture, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements.

Part 1411

Oilseeds, Production Flexibility Contracts.

Part 1427

Cotton, Cottonseed, Loan programs/agriculture, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Part 1439

Animal feeds, Disaster assistance, Livestock, Reporting and recordkeeping requirements.

Part 1464

Imports, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Tobacco.

Part 1479

Crop insurance, Disaster assistance, Floods, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR Chapter XIV is amended as set forth below.

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 1308, 1308–1, and 1308–2; 16 U.S.C. 3834.

§ 1400.1 [Amended]

2. Amend the table in § 1400.1(g) by adding a line to read, in the first column, "Environmental Quality Incentives Program (EQIP)", and, in the second column, "10,000".

3. Amend § 1400.2 by redesignating paragraphs (e) and (f) as (f) and (g), respectively, and adding new paragraphs (e) and (h) to read as follows:

§ 1400.2 Administration

* * * * *

(e) Benefits from programs subject to this part may not be issued until all required forms and necessary payment eligibility and payment limitation determinations are made.

* * * * *

(h) Reviews of farming operations and corresponding documentation submitted by program participants may be conducted to determine compliance with applicable statutes and regulations.

4. Add part 1411 to subchapter B of 7 CFR XIV to read as follows:

PART 1411—OILSEEDS PROGRAM

Subpart A—General Provisions

Sec.
1411.101 Applicability.
1411.102 Administration.
1411.103 Definitions.
1411.104 Misinformation and misaction.
1411.105 Appeals.

Subpart B—Eligibility Determinations

1411.201 Eligible producers.
1411.202 Violations, misrepresentation, or scheme or device.
1411.203 Payment amount.
1411.204 Payment acreage.
1411.205 Payment yield.

Subpart C—Application for Payment

1411.301 Signup period.
1411.302 Submitting application.
1411.303 Late-filed acreage reports.

Subpart D—Miscellaneous

1411.401 Limitation of payments.
1411.402 Offsets and Assignments; Powers of Attorney.

Authority: Sec. 804, Pub. L. 106–78, 113 Stat. 1178.

Subpart A—General Provisions

§ 1411.101 Applicability.

This part implements the oilseed provisions enacted in section 804 of the Agriculture, Rural Development, Food and Drug Administration, and Related Appropriations Act, 2000 (Public Law 106–78). That section provided funds to allow for payments to producers who planted eligible oilseeds in 1999 and who meet other conditions of eligibility.

§ 1411.102 Administration.

(a) This part shall be administered by CCC through the Farm Service Agency Deputy Administrator for Farm Programs under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and county committees of the Farm Service Agency of the U.S. Department of Agriculture.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation in this section to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. The Deputy Administrator may waive or modify deadlines or other program requirements of this part to the extent that such a waiver or modification is otherwise permitted by law and is determined to be appropriate on the ground that it serves the goals of the program or other goals, and does not adversely affect the operation of the program.

§ 1411.103 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the 1999 Oilseeds Program, and shall be used for Oilseeds Program purposes only. Definitions contained in parts 718 and 1412 of this title shall also apply but to the extent that they conflict, the definitions in this section govern with respect to the Oilseeds Program in this part.

Actual yield means an oilseed yield certified by the producer on CCC–780, and if subject to spot check, documented by acceptable production evidence provided by the producer for all the producer's planted acreage of the oilseed for the year in which the yield is proven. If subject to a certified yield spot check, the producer must document an actual yield on form FSA–658 or present RMA documentation indicating actual yields for all of the producer's planted acreage of the oilseed for the year in which the yield is proven.

Control county means the county that for FSA administrative purposes will be considered to be controlling for purposes of making payment determinations with respect to particular applicants under the program provided for in this part.

County average soybean yield means an average yield approved by DAFP using an Olympic average of the county's average soybean yield for each of the crop years 1994 through 1998 as determined by the State committee. To the extent such data is available, data from NASS shall be used.

DAFP means the Deputy Administrator for Farm Programs, FSA.

Deputy Administrator means DAFP.

Eligible oilseed means one of the following kinds of oilseeds: soybeans, safflower seed, canola, rapeseed, mustard seed, sunflower seed (oil and confectionary), flaxseed, and crambe.

Established producer means a producer who planted an oilseed for the 1999 crop year, and shared in the production of that specific oilseed in 1997 or 1998.

National average oilseed yield means the Olympic average yield for an eligible oilseed using the National average yields for the oilseed for the years 1994 through 1998. Such yields shall be considered valid only if approved by DAFP.

New producer means a producer who planted an eligible oilseed for crop year 1999, but did not plant or share in the production of that oilseed in 1997 or 1998. A producer may be a new producer of one eligible oilseed, while being an established producer for another oilseed.

Oilseed Program Application means form CCC–780.

Olympic average yield means the average yield for the stated period, after dropping the highest and lowest yields of that period.

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RMA means the Risk Management Agency of the United States Department of Agriculture.

Sunflower seed acreage means the total acreage planted to sunflower seed on the farm in the applicable crop year without regard to the type of market to which the sunflower seed will be committed, oil or confectionary use.

§ 1411.104 Misinformation and misaction.

The provisions of § 718.8 of this title are applicable to this part, with respect to performance based upon advice or action of county or State committees.

§ 1411.105 Appeals.

A producer may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart B—Eligibility Determinations

§ 1411.201 Eligible producers.

(a) Section 804 of Public Law 106–78 authorizes the Secretary to make payments to a producer who planted an eligible oilseed in 1999. Accordingly, producers of the 1999 crop of oilseeds identified in § 1411.203 are eligible to receive 1999 Oilseeds Program benefits, providing the producer meets the requirements of this part, and is in compliance with part 12 of this title regarding the conservation and protection of highly erodible lands and wetlands, and § 718.11 of this title regarding denials of program benefits for activities relating to the use of controlled substances.

(b) Eligibility determinations made under this part will be made for each producer separately for each specific eligible oilseed planted by that producer in 1999. A producer is not eligible for payment with respect to an oilseed that the producer did not plant in 1999 regardless of whether the producer did or did not plant that oilseed in 1997 or 1998.

§ 1411.202 Violations, misrepresentation, or scheme or device.

Any person who is determined to have intentionally misrepresented any fact affecting a program determination made in accordance with this part shall not be entitled to oilseed payments under this part and must refund all payments, plus interest determined in accordance with part 1403 of this chapter (relating to debt settlement polices and procedures).

§ 1411.203 Payment amount.

Subject to the availability of funds, eligible persons can receive a payment under this part. The payment amount shall be equal to the payment rate established under this part multiplied by the producer's payment acreage multiplied, in turn, by the producer's payment yield. The payment rate shall be determined by DAFP after the level of program participation is known with sufficient clarity to allow for the calculation of the amount of payment that can be made, by unit of production, within the limits of the available funds. To the extent practicable, separate payment rates may be established for separate eligible oilseeds. Payments can be made only with respect to the production of eligible oilseeds.

§ 1411.204 Payment acreage.

(a) The oilseed payment acreage for an established producer shall, for a particular oilseed, be the higher of the two acreage amounts determined by calculating, for the 1997 and 1998 crops separately, the acreage determined to be equal to the producer's acreage for that oilseed at all locations for that crop year, adjusted to reflect interests that are only partial interests in such acreage.

(b) The payment acreage for a new producer of an eligible oilseed will be the producer's acreage for that oilseed for the 1999 crop at all locations, adjusted to reflect interests that are only partial interests in such acreage.

(c) Acreage not planted to an oilseed crop because of weather, or because of crop rotation practices or other management decisions, or because of any other reason, shall not be treated as qualifying production for determining a person's general eligibility for payment, a person's payment acreage, or for any other reason under this part.

§ 1411.205 Payment yield.

(a) For purposes of making yield determinations, under this part and for purposes of this section in particular, a producer's "applicable average yield" shall be, with respect to soybeans, the county average soybean yield. In the case of other oilseeds, the "applicable average yield" shall, for all persons qualifying for payment, be the national average oilseed yield for that oilseed. National and county average yields may be announced in advance of signup by DAFP.

(b) A new producer's payment yield with respect to a particular eligible oilseed shall be the higher of the:

(1) Applicable average yield for that oilseed or

(2) Producer's actual yield for the 1999 crop year.

(c) For established producers, the producer's payment yield for a particular oilseed shall be the higher of:

(1) Applicable average yield; or

(2) The higher for the 1997 and 1998 crops of the producer's actual yield respectively for those crop years for all acres of the oilseed planted by the producer.

(d) In making determinations under paragraph (c) of this section for established producers, the choice of a crop year history will not be limited to the same history year chosen to set the producer's payment acres.

(e) Where actual yields are used for purposes of establishing the producer's payment yields, the producer, if subject to a yield spot check or otherwise asked to do so, must document those actual yields using form FSA–658 and must establish those yields to the satisfaction of the county committee.

(f) In making yield determinations, the producer's yields and payments may be adjusted by DAFP and the county and state committees, as necessary and practicable to reflect instances in which the producer has different yields at different locations and to reflect partial interests that the producer may have in some acreages.

Subpart C—Application for Payment

§ 1411.301 Signup period.

A signup period shall be announced by the Secretary. Late-filed applications shall not be accepted so that DAFP may establish, to the extent practicable, a final payment rate that will limit total payments to not more than the allocated amount, which shall be, unless determined otherwise by DAFP, $475 million minus such administrative expenses as can be deducted by law and minus such reserve as may be determined needed to resolve disputes and problematic claims.

§ 1411.302 Submitting application.

(a) Producers shall properly complete, sign and file the application Form CCC–780, and submit the application to the Farm Service Agency during the signup period.

(b) A separate CCC–780 is required for each producer.

(c) For a producer to be considered to have properly filed the application, such applications must be filed by the producer in the FSA county office established as the control county for that producer at the time of application.

§ 1411.303 Late-filed acreage reports.

Late-filed acreage reports may be submitted for Oilseed Program purposes no later than February 18, 2000, or as determined by DAFP, provided that the producer shall submit sufficient documentation to verify the acreage to the satisfaction of the county committee.

Subpart D—Miscellaneous

§ 1411.401 Limitation of payments.

(a) No more than the allotted funds may be used for payments under this part. However, no "per-person" limit on payments shall apply nor shall there be a gross revenue test as a condition of payment for a person or entity.

(b) No person shall receive a payment under this part except upon a properly completed application properly submitted to the Farm Service Agency during the signup period announced by the Secretary.

§ 1411.402 Offsets and assignments; powers of attorney.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

(c) In those instances in which, prior to the issuance of this part, a producer has signed a power of attorney on an approved FSA–211 for a person or entity indicating that such power shall extend to "all above programs", without limitation, such power will be considered to extend to this program unless by June 22, 2000 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

PART 1427—COTTON

5. The authority citation for 7 CFR part 1427 is revised to read as follows:

Authority: 7 U.S.C. 7231–7235–7237; 15 U.S.C. 714b and 714c; sec. 813 of Pub. L. 106–78, 113 Stat 1182; and sec. 104, Pub. L. 106–113.

6. In § 1427.25 revise paragraphs (c)(1)(ii), (c)(2), (d)(1) introductory text, (d)(2)(i), (d)(3)(ii), and (f)(2)(ii) to read as follows:

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

* * * * *

(c) * * *

(1) * * *

(ii) The average price of M 1$^{3}/_{32}$ inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted each Thursday in the designated U.S. spot markets.

* * * * *

(2) The price determined in accordance with paragraph (c)(1) of this section shall be adjusted to reflect the price of Strict Low Middling (SLM) 1$^{1}/_{16}$ inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton (U.S. base quality) by deducting the difference, as announced by CCC, between the applicable loan rate for a crop of upland cotton for M 1$^{3}/_{32}$ inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

* * * * *

(d) * * *

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1$^{3}/_{32}$ inch cotton C.I.F. northern Europe and the average price of M 1$^{3}/_{32}$ inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

* * * * *

(2) * * *

(i) May use the available northern Europe quotation to determine the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1$^{3}/_{32}$ inch, cotton C.I.F. northern Europe and the average price of M 1$^{3}/_{32}$ inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted each Thursday in the designated U.S. spot markets for that week, or

* * * * *

(3) * * *

(ii) the average price of M 1$^{3}/_{32}$ inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted in the designated U.S. spot markets, that week will not be taken into consideration.

* * * * *

(f) * * *

(2) * * *

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1$^{3}/_{32}$ inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton and the loan rate for a crop of upland cotton for SLM 1$^{1}/_{16}$ inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton.

* * * * *

7. Add subpart F to 7 CFR part 1427 to read as follows:

Subpart F—Cottonseed Payment Program

Sec.

1427.1100 Applicability.
1427.1101 Administration.
1427.1102 Definitions.
1427.1103 Eligible cottonseed.
1427.1104 Eligible first handlers.
1427.1105 Payment application.
1427.1106 Total available program funds.
1427.1107 Applicant payment quantity.
1427.1108 Total payment quantity.
1427.1109 Payment Rate.
1427.1110 Payment calculation and form.
1427.1111 Liability of first handler.

§ 1427.1100 Applicability.

(a) The regulations in this subpart are applicable to the 1999 crop of cottonseed. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to first handlers who have applied to participate in the cottonseed payment program in accordance with section 104(a) of the Omnibus Consolidated Appropriations Act, 2000 (Public Law 106–113). Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive cottonseed payments.

(b) Payments shall be available only for cottonseed produced and ginned in the United States.

§ 1427.1101 Administration.

(a) The cottonseed payment program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee and shall be carried out by FSA's Kansas City Management Office (KCMO) and Price Support Division (PSD).

(b) The KCMO and PSD representatives and employees thereof do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCMO or PSD shall preclude the Executive Vice President, CCC, or a

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designee, from determining any question arising under the program or from reversing or modifying any determination made by KCMO or PSD.

(d) The Executive Vice President, CCC, or a designee, may authorize KCMO or PSD to waive or modify deadlines and other non-statutory program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the cottonseed payment program. The Executive Vice President may suspend the program should cause to do so appear as a result of a public rulemaking or otherwise.

(e) A representative of CCC may execute cottonseed payment program applications and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

(g) The Deputy Administrator for Farm Programs, FSA, may waive or modify non-statutory deadlines and other non-statutory program requirements in cases where lateness or failure to meet such other program requirements does not adversely affect the operation of the cottonseed payment program.

(h) This subpart shall be administered only to the extent that it is determined by the Executive Vice President, CCC, that it is lawful and appropriate to commit funds to the program from sources specifically identified in the authorizing legislation.

§ 1427.1102 Definitions.

The definitions set forth in this section shall be applicable for purposes of administering the 1999 cottonseed payment program. The terms applied in §§ 1427.3, 1427.52, and 1427.102 shall be applicable to this subpart.

Cottonseed means the seed from any variety of upland cotton and extra long staple (ELS) cotton produced and ginned in the United States.

Gin means a person (*i.e.*, an individual, partnership, association, corporation, cooperative marketing association, estate, trust, State or political subdivision or agency thereof, or other legal entity) that removes cottonseed from cotton lint in commercial quantities as determined by CCC.

Number of bales means the absolute number of ginned cotton bales based on individual bale weights unadjusted to a uniform bale weight.

Olympic average means the average for the stated period after excluding the highest and lowest values.

Ton means a unit of weight equal to 2,000 pounds avoirdupois (907.18 kilograms).

§ 1427.1103 Eligible cottonseed.

To be eligible for payments under this subpart, cottonseed must:

(a) Have been grown in the United States during the 1999-crop production period.

(b) Have been ginned by the applicant from 1999-crop cotton.

(c) Not have been destroyed or damaged by fire, flood, or other events such that its loss or damage was compensated by other local, State, or Federal government or private or public insurance or disaster relief payments.

§ 1427.1104 Eligible first handlers.

(a) For the purpose of this subpart, an eligible first handler of cottonseed shall be a gin that ginned 1999-crop cotton.

(b) Applicants must comply with the terms and conditions set forth in this subpart and instructions issued by CCC, and sign and submit an accurate, legible and complete Cottonseed Payment Program Application/Certification.

(c) Applicants must agree to share any payment received with the producer of the cotton that was the basis of the payment to the extent that the effect of low cottonseed prices was borne by the producer rather than the gin. To the extent that such funds will go to individual producers, those funds will be considered to have been received by the applicant on behalf of such producers.

§ 1427.1105 Payment application.

(a) Payments in accordance with this subpart shall be made available to eligible first handlers of cottonseed based on information provided on a Cottonseed Payment Program Application/Certification.

(b) Payment applications must be received within the program application period announced by CCC. Applications received after such application period will not be accepted for payment.

(c) Cottonseed Payment Program Application/Certifications may be obtained from the CCC as announced by news release. In order to participate in the program authorized by this subpart, first handlers of cottonseed must execute the Cottonseed Payment Program Application/Certification and forward the original according to announced instructions.

§ 1427.1106 Total available program funds.

The total available program fund shall be determined by CCC based on the funds available under section 802 of Public Law 106–78 (excluding any funds authorized to carry out title IX of Public Law 106–78) and under section 1111 of Public Law 105–277 not otherwise needed to fully implement those sections.

§ 1427.1107 Applicant payment quantity.

(a) The applicant's payment quantity of cottonseed will be determined by CCC based on the eligible number of ginned cotton bales and cotton lint weight indicated on the Cottonseed Payment Application/Certification and/or obtained by from the Agricultural Marketing Service.

(b) The applicant's payment quantity of cottonseed shall be calculated by multiplying:

(1) The applicant's eligible weight of lint, in tons, for which payment is requested, as approved by CCC, by

(2) 1.59 (the 1994–98 Olympic average ratio of estimated pounds of cottonseed per pound of ginned cotton lint).

§ 1427.1108 Total payment quantity.

(a) The total quantity of 1999-crop cottonseed produced in the United States is eligible for payment under this subpart. The total payment quantity of cottonseed will be the total of eligible quantities of cottonseed for which applications for payment are received within the application period announced by CCC.

(b) The total payment quantity of cottonseed shall be calculated by multiplying:

(1) The eligible weight of cotton lint, in tons, for which payment is requested by all applicants, as approved by CCC, by

(2) 1.59 (the 1994–98 Olympic average ratio of estimated pounds of cottonseed per pound of ginned cotton lint).

§ 1427.1109 Payment rate.

The payment rate (dollars per ton) for the purpose of calculating payments made available in accordance with this subpart shall be determined by CCC by dividing the total available program funds, as determined by CCC, by

(a) The higher of:

(1) The total payment quantity, or

(2) The total quantity of 1999-crop cottonseed, as estimated by CCC, or by

(b) A quantity of cottonseed determined by CCC to provide applicants with payments at a level consistent with the statutory objectives.

§ 1427.1110 Payment calculation and form.

(a) Payments in accordance with this subpart shall be determined for individual applicants by multiplying:

(1) The payment rate, determined in accordance with § 1427.1109, by

(2) The eligible payment quantity of the applicant, determined in accordance with § 1427.1107.

(b) After receipt of the application for payment, together with required supporting documents, CCC will issue payments to the applicant, at the option of the applicant, to the applicant's mail address or by electronic deposit to the applicant's account.

§ 1427.1111 Liability of first handler.

(a) If a first handler makes any fraudulent representation in obtaining a cottonseed payment, such payment shall be refunded upon demand by CCC. The first handler shall be liable for the amount of the payment and applicable interest on such payment, as determined by CCC.

(b) Persons executing a joint payment application will be jointly and severally liable for any program violation, ineligibility, or refund due CCC, and each such person shall be and remain liable for the repayment of the entire payment of any amount due to CCC until the payment is fully repaid, without regard to such person's claimed share in the cottonseed payment.

(c) If the payment recipient is suspected by CCC to have knowingly: adopted any scheme or device to defeat the purposes of this program; made any fraudulent representation; or misrepresented any fact affecting a determination under this application, CCC will notify the appropriate investigating agencies of the United States and take steps as deemed necessary to protect the interests of the government.

(d) If the payment applicant receives a payment in excess of the entitled payment, the applicant shall refund to CCC an amount equal to the excess payment, plus interest thereon, as determined by CCC.

(e) From the date of the payment application until the earlier of three years after the date of the application or July 31, 2003, the applicant shall keep records and furnish such information and reports relating to the application as may be requested by CCC. After that time, destruction of records shall be at the party's own risk. CCC may require the retention of the records for a longer period of time as the need arises. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, the United States Department of Agriculture, or the Comptroller General of the United States. Failure to keep, or make available, such records may result in refund to CCC of all payments received, plus interest thereon, as determined by CCC.

(f) Unless otherwise approved by CCC, no Member or Delegate of Congress or Resident Commissioner shall be admitted to any share or part of payments provided under this program or to any benefit to arise therefrom, except that this provision shall not be construed to extend to their interest in any incorporated company, if the payment is for the general benefit of such company, or to any benefit in which it is determined by CCC such person's interest is that of a producer of cotton.

8. Add subpart G to 7 CFR Part 1427 to read as follows:

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

Sec.

1427.1200 Applicability.
1427.1201 Administration.
1427.1202 Definitions.
1427.1203 Eligible ELS cotton.
1427.1204 Eligible domestic users and exporters.
1427.1205 ELS Cotton Domestic User/Exporter Agreement.
1427.1206 Form of payment.
1427.1207 Payment rate.
1427.1208 Payment.

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

§ 1427.1200 Applicability.

(a) Except as specified by CCC, the regulations in this subpart are applicable to the period beginning June 8, 2000, unless the Executive Vice President, CCC, shall apply the regulations to an earlier period, but not earlier than October 1, 1999, consistent with the authorizing statute. These regulations set forth the terms and conditions under which CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of extra long staple (ELS) cotton who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC to participate in the ELS cotton competitiveness payment program in accordance with section 136A(c) of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127).

(b) During the effective period of these regulations, CCC may issue marketing certificates or cash payments to domestic users and exporters, at the option of the recipient, in accordance with this subpart in any week following a consecutive 4-week period in which:

(1) The lowest adjusted Wednesday through Tuesday average price quotation for foreign growths (LFQ), as quoted for ELS cotton, delivered C.I.F. (cost, insurance and freight) Northern Europe is less than the Wednesday through Tuesday adjusted average domestic spot price quotation for U.S. Pima cotton, grade 3, staple 44, micronaire 3.5 or higher, uncompressed, F.O.B. warehouse; and

(2) The LFQ, determined in accordance with § 1427.1207, is less than 134 percent of the current crop year loan level for the ELS cotton grade 3, staple 44, micronaire 3.5 or higher.

(c) Additional terms and conditions may be set forth in the ELS Cotton Domestic User/Exporter Agreement, which must be executed by the domestic user or exporter in order to receive such payments.

(d) Forms that are used in administering the ELS cotton competitiveness payment program shall be prescribed by CCC.

§ 1427.1201 Administration.

(a) The ELS cotton competitiveness payment program shall be administered under the general supervision of the Executive Vice-President, CCC (Administrator, FSA), or a designee and shall be carried out by FSA's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

(b) The KCCO and KCMO, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCCO or KCMO shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by KCCO or KCMO.

(d) The Executive Vice President, CCC, or a designee, may authorize KCCO or KCMO to waive or modify non-statutory deadlines and other non-statutory program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the ELS cotton competitiveness payment program. In addition, the Executive Vice President may suspend the program to the extent that cause to do so may appear as a result of a public rulemaking or otherwise.

(e) A representative of CCC may execute ELS cotton competitiveness payment program payment applications, ELS Cotton Domestic User/Exporter Agreements and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications, ELS Cotton Domestic User/Exporter Agreements and related documents not executed in accordance with the terms and

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conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

(g) This program shall only be administered to the extent that it is determined by the Executive Vice President, CCC, that it is lawful and appropriate to commit funds to this program from those sources specifically identified as the funding source in the authorizing legislation.

§ 1427.1202 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in §§ 1427.3 and 1427.52 of this part and part 1413 of this chapter shall also be applicable.

Adjusted spot price means the spot price adjusted to reflect any lack of data for grade 3 or staple 44 to make the adjusted spot price comparable to a spot price assuming grade 3 and staple 44. If grade 3 spot price data are not available, spot prices for grade 2, grade 1, or grade 4 will be used and will be adjusted by the average difference between spot prices for grade 3 and those for grade 2, grade 1 or grade 4, as the case may be, over the available observations during the previous 12 months. If spot prices for staple 44 are not available, spot prices for staple 46 may be used and will be adjusted by the average difference between spot prices for staple 44 and those for staple 46 over the available observations during the previous 12 months.

Bale opening means the removal of the bagging and ties from a bale of eligible ELS cotton in the normal opening area, immediately prior to use, by a manufacturer in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing raw cotton into cotton products in the United States.

Consumption means, the use of eligible ELS cotton by a domestic user in the manufacture in the United States of ELS cotton products.

Cotton product means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the LFQ for the foreign growth quoted C.I.F. Northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Forward shipment price means, during the period in which two daily price quotations are available for the LFQ for foreign growths quoted C.I.F. Northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

LFQ means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Wednesday-through-Tuesday week of the price quotations for foreign growths of ELS cotton, quoted C.I.F. Northern Europe, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, grade 3, staple 44, micronaire 3.5 and higher, provided that the lowest adjusted quotation becomes the LFQ after it is further adjusted to reflect the estimated cost of transportation between an average U.S. location and northern Europe.

(1) *Current LFQ* means the average for the preceding Wednesday through Tuesday of the current shipment prices for the lowest adjusted foreign growth, C.I.F. Northern Europe.

(2) *Forward LFQ* means the average for the preceding Wednesday through Tuesday of the forward shipment prices for the lowest adjusted foreign growth quoted C.I.F. Northern Europe.

Spot price means the Wednesday-Tuesday weekly average of the domestic spot prices reported by the Agricultural Marketing Service, USDA, for U.S. Pima, grade 3, staple 44, micronaire 3.5 or higher, uncompressed, F.O.B. warehouse, for the San Joaquin and Desert Southwest markets. When both San Joaquin Valley and Desert Southwest spot quotations are available, the U.S. quotation will be the average of the two quotations. If only one quotation is available, that quotation will be used.

§ 1427.1203 Eligible ELS cotton.

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is—

(1) Opened by an eligible domestic user on or after October 1, 1999, or,

(2) Exported by an eligible exporter on or after October 1, 1999, during a Wednesday through Tuesday period in which a payment rate, determined in accordance with § 1427.1207, is in effect, and that meets the requirements of paragraphs (b) and (c) of this section;

(b) Eligible ELS cotton must be either—

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade;

(2) Loose;

(3) Semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(4) Reginned (processed) motes.

(c) Eligible ELS cotton must not be—

(1) ELS Cotton with respect to which a payment, in accordance with the provisions of this subpart, has been made available;

(2) Imported ELS cotton;

(3) Raw (unprocessed) motes;

(4) Semi-processed motes that are not of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(5) Textile mill wastes; or

(6) Semi-processed or reginned (processed) motes that have been blended with textile mill waste or other fibers.

§ 1427.1204 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible domestic users and exporters of ELS cotton:

(1) A person regularly engaged in the business of opening bales of eligible ELS cotton for the purpose of manufacturing such cotton into cotton products in the United States ("domestic user"), who has entered into an agreement with CCC to participate in the ELS cotton competitiveness payment program; or

(2) A person, including a producer or a cooperative marketing association approved in accordance with part 1425 of this chapter, regularly engaged in selling eligible ELS cotton for exportation from the United States ("exporter"), who has entered into an agreement with CCC to participate in the ELS cotton competitiveness payment program.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the ELS Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

§ 1427.1205 ELS Cotton Domestic User/Exporter Agreement.

(a) Payments in accordance with this subpart shall be made available to eligible domestic users and exporters who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions set forth in this subpart, the ELS Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

(b) ELS Cotton Domestic User/Exporter Agreements may be obtained from the Cotton and Rice Branch, Warehouse Contract Division, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205. Telephone requests for copies of the agreement will be accepted at (816) 926–6662. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the ELS Cotton Domestic User/Exporter Agreement and forward the original and one copy to KCCO.

§ 1427.1206 Form of payment.

Payments in accordance with this subpart shall be made available in the form of commodity certificates issued in accordance with part 1470 of this chapter, or in cash, at the option of the participant, as determined and announced by CCC.

§ 1427.1207 Payment rate.

(a) The payment rate for purposes of calculating the payments made in accordance with this subpart shall be determined as follows:

(1) Beginning the Tuesday following August 1 and ending the week in which the current LFQ and the forward LFQ may first become available, the payment rate shall be the difference between the U.S. Pima spot price and the LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the LFQ each week, and the LFQ was less than 134 percent of the current crop year loan level for U.S. Pima cotton, grade 3, staple 44, micronaire 3.5 or higher in all weeks of the 4-week period; and

(2) Beginning the Wednesday through Tuesday week after the week in which the current LFQ and the forward LFQ may first become available and ending the Tuesday following July 31, the payment rate shall be the difference between the U.S. Pima spot price and the current LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the current LFQ each week, and the current LFQ was less than 134 percent of the current crop year loan level for U.S. Pima grade 3, staple 44, micronaire 3.5 or higher in all weeks of the 4-week period. If the current LFQ is not available, the payment rate may be the difference between the U.S. Pima spot price and the forward LFQ.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ for only for one to three weeks and current LFQ and forward LFQ only for one to three weeks, such as may occur in the spring when the LFQ price is succeeded by the current LFQ and the forward LFQ ("Spring transition") and at the start of a new marketing year when the current LFQ and the forward LFQ are succeeded by the LFQ ("marketing year transition"), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the current LFQ in combination with the LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if the current LFQ is not available, the forward LFQ in combination with the LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart, with respect to the determination of the U.S. Pima spot price, the LFQ, the current LFQ and the forward LFQ:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If the U.S. Pima spot price is not available or if none of the LFQ, current LFQ or forward LFQ is available, the payment rate shall be zero and shall remain zero unless and until sufficient U.S. Pima spot prices and/or LFQ again become available, the U.S. Pima spot price exceeds the LFQ, the current LFQ or the forward LFQ, as the case may be, and the LFQ, the current LFQ, or the forward LFQ, as the case may be, is less than 134 percent of the current crop year loan rate for U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose, reginned motes and semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

§ 1427.1208 Payment.

(a) Payments in accordance with this subpart shall be determined by multiplying:

(1) The payment rate, determined in accordance with § 1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined in accordance with paragraph (b) of this section, of eligible ELS cotton bales that are opened by an eligible domestic user or sold for export by an eligible exporter during the Wednesday through Tuesday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be determined based upon:

(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based ("landed mill weight");

(2) For reginned motes processed by an end user who converted such motes, without rebaling, to an end use in a continuous manufacturing process, the net weight of the reginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered—

(1) Purchased by the domestic user on the date the bale is opened in preparation for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, including proof of purchases and consumption of eligible ELS cotton by the domestic user or proof of export of eligible ELS cotton by the exporter, as required by the provisions of the ELS Cotton Domestic User/Exporter Agreement issued by CCC.

9. Revise 7 CFR part 1439 to read as follows:

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

Subpart A—General Provisions

Sec.
1439.1 Applicability and general statement.
1439.2 Administration.
1439.3 Definitions.
1439.4 Liens and claims of creditors.
1439.5 Assignments of payments.
1439.6 Appeals.
1439.7 Misrepresentation, scheme or device.
1439.8 Refunds to CCC; joint and several liability.
1439.9 Cumulative liability.
1439.10 Benefits limitation.
1439.11 Gross revenue limitation.
1439.12 Maintenance of books and records.

Subpart B—1998–99 Livestock Assistance Program

1439.101 Applicability.
1439.102 Definitions.
1439.103 Application process.
1439.104 County committee determinations of general applicability.
1439.105 Loss criteria.
1439.106 Livestock producer eligibility.
1439.107 Calculation of assistance.
1439.108 Availability of funds.

Subpart C—Livestock Indemnity Program

1439.201 Applicability.
1439.202 Administration.

1439.203 Definitions.
1439.204 Sign-up period.
1439.205 Proof of loss.
1439.206 Indemnity benefits.
1439.207 Availability of funds.
1439.208 Limitations on payments.

Subpart D—Pasture Recovery Program

1439.301 Administration.
1439.302 Definitions.
1439.303 General description.
1439.304 Eligible persons.
1439.305 Eligible land.
1439.306 Duration of contracts.
1439.307–1439.319 [Reserved]
1439.320 Obligations of participant.
1439.321 Obligations of the Commodity Credit Corporation.
1439.322 Eligible practices.
1439.323–1439.329 [Reserved]
1439.330 Signup.
1439.331 Applications for PRP contracts.
1439.332 PRP contract.
1439.333 Contract modifications.
1439.334–1439.339 [Reserved]
1439.340 Payments.
1439.341 Levels and rates for payments.
1439.342 Method of payment.
1439.344–1439.349 [Reserved]
1439.350 Payments to participants.
1439.351 Violations.
1439.352 Executed PRP contract not in conformity with regulations.
1439.353 Performance based upon advice or action of the Department.
1439.354 Access to land under contract.
1439.355 Miscellaneous.

Subpart E—Livestock Indemnity Program for Contract Growers

1439.401 Applicability.
1439.402 [Reserved]
1439.403 Definitions.
1439.404 Application period.
1439.405 Proof of loss.
1439.406 Indemnity benefits.
1439.407 Proration of claims.
1439.408 Miscellaneous provisions.

Subparts F–H [Reserved]

Subpart I—American Indian Livestock Feed Program

1439.900 [Reserved]
1439.901 Applicability.
1439.902 Administration.
1439.903 Definitions.
1439.904 Region.
1439.905 Responsibilities.
1439.906 Program availability.
1439.907 Eligibility.
1439.908 Payment application.
1439.909 Payments.
1439.910 Program suspension and termination.
1439.911 Appeals.
1439.912—1439.915 [Reserved]

Authority: 15 U.S.C. 714b and 714c9; Pub. L. 105–277, 112 Stat. 2681–42 through 44; Pub. L. 106–31, 113 Stat. 57; Pub. L. 106–78, 113 Stat. 1135; and Pub. L. 106–113, 113 Stat. 1501.

Subpart A—General Provisions

§ 1439.1 Applicability and general statement.

(a) The regulations in this part set forth the terms and conditions applicable to programs that may be made available to livestock producers under various statutory provisions. Unless otherwise specified, the regulations in this subpart shall apply to all programs operated under this part.

(b) The regulations in this part 1439 in effect prior to March 17, 1999, (See 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) are applicable with respect to any emergency livestock assistance program that existed prior to March 17, 1999. The part 1439 regulations in effect on January 1, 2000 (See 7 CFR Parts 1200 to 1599, revised as of January 1, 2000) for the Flood Compensation Program shall continue to apply to all pending or new matters under that program.

(c) Nothing in this subpart shall be read as to require any expenditure of funds for a program in an overall amount greater than that determined to be appropriate by CCC.

§ 1439.2 Administration.

(a) This part shall be administered by CCC through, and as delegated to the Deputy Administrator for Farm Programs under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and county committees of the Farm Service Agency of the U.S. Department of Agriculture.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation in this section to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. The Deputy Administrator may waive or modify deadlines or other program requirements of this part to the extent that such a waiver or modification is otherwise permitted by law and is determined to be appropriate, serves the goals of the program, and does not adversely affect the operation of the program.

§ 1439.3 Definitions.

The definitions set forth in this section shall be applicable to all subparts contained in this part unless otherwise noted, or unless the definitions conflict with the definitions in subparts other than this subpart A, in which case they shall not apply.

Carrying capacity means the number of acres of pasture required to provide 15.7 pounds of feed grain equivalent per day for one animal unit during the period the pasture is normally grazed.

CCC means the Commodity Credit Corporation.

Deputy Administrator or DAFP means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Equine animals used for food or in the production of food means horses, mules, and donkeys that are:

(1) Used commercially for human food;

(2) Maintained for commercial sale to processors of food for human consumption; or

(3) Used in the production of food and fiber on the owner's farm, such as draft horses, or cow ponies.

Executive Vice President means the Executive Vice President, CCC, or a designee of the Executive Vice President.

FSA means the Farm Service Agency.

Livestock producer means a person who is determined to receive 10 percent or more of the person's gross income, as determined by the Secretary, from the production of livestock and is:

(1) A citizen of, or legal resident alien in the United States; or

(2) A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in the United States; any Indian tribe under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*); any Indian organization or entity chartered under the Indian Reorganization Act (25 U.S.C. 461 *et seq.*) or entity chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Education Assistance Act; and any economic enterprise under the Indian Financing Act of 1974 (25 U.S.C. 1451 *et seq.*).

Natural disaster means a generalized disease, insect infestation, flood, drought, fire, hurricane, earthquake, storm, hot weather, or other natural disaster.

Person means an individual or entity, including any organization, of any kind, provided that for per-person payment limitations the rules in part 1400 of this chapter shall be determinative in defining who is considered to be a separate person for such purposes.

Poultry means domesticated chickens, including egg-producing poultry, ducks, geese and turkeys.

Secretary means the Secretary of Agriculture or a designee of the Secretary.

Seeded small grain forage crops means wheat, barley, oats, rye, and triticale.

State committee, State office, county committee, or county office, means the respective FSA committee or office.

United States means all fifty states of United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia.

§ 1439.4 Liens and claims of creditors.

Any payment or benefit or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government.

§ 1439.5 Assignments of payments.

Payments that are earned by a person under this part may be assigned in accordance with the provisions of part 1404 of this chapter and the applicable FSA or CCC forms for assignments.

§ 1439.6 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 780 and 11 of this title.

§ 1439.7 Misrepresentation, scheme or device.

A person shall be ineligible to receive assistance under any program under this part, and be subject to such other remedies as may be allowed by law, if, with respect to such program, it is determined by the State committee or the county committee or an official of FSA that such person has:

(a) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(b) Made any fraudulent representation with respect to such program; or

(c) Misrepresented any fact affecting a program determination.

§ 1439.8 Refunds to CCC; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a payment if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such benefits. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the livestock owner or other individual or entity receiving benefits.

(d) Interest otherwise determined due in accordance with paragraph (c) of this section may be waived with respect to refunds required of the owner or other program recipient because of unintentional misaction on the part of the owner or other individual or entity, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in part 1403 of this chapter.

(f) Individuals or entities who are a party to any program operated under this part must refund to CCC any excess payments made by CCC with respect to such program.

(g) In the event that any request for assistance or payment under this part was established as a result of erroneous information or a miscalculation, the assistance or payment shall be recomputed and any excess refunded with applicable interest.

§ 1439.9 Cumulative liability.

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1439.10 Benefits limitation.

The total amount of benefits that a person, as determined in accordance with part 1400 of this chapter, shall be entitled to receive under any subpart may not exceed $40,000 for any one loss or year. Also, the Deputy Administrator may take such action as needed, whether or not specifically provided for, to avoid a duplication of benefits under the several programs provided for in this part and may impose such cross-program payment limitations as may be consistent with the intent of this section and this part.

§ 1439.11 Gross revenue limitation.

A person, as defined in part 1400 of this chapter, who has annual gross revenue in excess of $2.5 million shall not be eligible to receive assistance under this part. For the purpose of this determination, annual gross revenue means:

(a) With respect to a person who receives more than 50 percent of such person's gross income from farming and ranching, the total gross revenue received from such operations; and

(b) With respect to a person who receives 50 percent or less of such person's gross income from farming and ranching, the total gross revenue from all sources.

§ 1439.12 Maintenance of books and records.

Livestock producers or any other individual or entity seeking or receiving assistance under this part shall maintain and retain financial books and records that will permit verification of all transactions with respect to the provisions of this part for at least 3 years following the end of the calendar year in which assistance was provided, or for such additional period as CCC may request. Destruction of records after that date shall be at the risk of the producer or other person receiving assistance. An examination of such books and records by a duly authorized representative of the United States Government shall be permitted at any time during business hours.

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Subpart B—1998–99 Livestock Assistance Program

§ 1439.101 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the 1998 Livestock Assistance Program authorized by Public Law 105–277 and the 1999 Livestock Assistance Program authorized by the Public Law 106–78. Benefits will be provided to eligible livestock producers in the United States but only in counties where a natural disaster occurred, and that were subsequently approved for relief under this part by the Deputy Administrator for Farm Programs. For purposes of reference, the program authorized by Public Law 105–277 shall be referred to in this subpart as the 1998 LAP program and that administered under Public Law 106–78 shall be referred to in this subpart as the 1999 LAP program.

(b) The two LAP programs provided for in this part will be treated as separate programs for purposes of payment limitations and for other purposes relating to eligibility.

(c) A county must have suffered a 40-percent or greater grazing loss for 3 consecutive months during the 1998 calendar year for 1998 LAP or for 3 consecutive months during the 1999 calendar year for the 1999 LAP, as a result of damage due to a natural disaster as determined by the Deputy Administrator for Farm Programs, or a designee. Grazing losses must have occurred on native and improved pasture with permanent vegetative cover and other crops planted specifically for the sole purpose of providing grazing for livestock, but such losses do not include losses on, or with respect to, seeded small grain forage crops.

(d) To be eligible for assistance under this subpart, a livestock producer's pastures in an eligible county must have suffered at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months during the relevant calendar year. The percent of loss eligible for compensation shall not exceed the maximum percentage of grazing loss for the county as determined by the county committee. In addition, the producer will not be compensated for that part of any loss that would represent payment of a loss greater than 80 percent.

(e) Unless otherwise specified or determined by the Deputy Administrator, a livestock producer is not eligible to receive payments for the same loss under both this subpart and another Federal program.

§ 1439.102 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart.

Application means the Form CCC–740, Livestock Assistance Program Application. The CCC–740 is available at county FSA offices.

LAP means, depending on the context, either the 1998 Livestock Assistance Program provided for in this subpart, the 1999 Livestock Assistance Program provided for in this subpart, or the overall 1998–99 Livestock Assistance Program provided for in this subpart.

Livestock means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals where such equine animals are used commercially for human food or kept for the production of food or fiber on the owner's farm.

§ 1439.103 Application process.

(a) Livestock producers must submit a completed application prior to the close of business on March 31, 1999, for the 1998 LAP or, for the 1999 LAP, such other date as established by the Deputy Administrator, or by prior rule. The application and any other supporting documentation shall be submitted to the county FSA office with administrative authority over a producer's eligible grazing land or to the county FSA office that maintains the farm records for the livestock producer.

(b) Livestock producers shall certify as to the accuracy of all the information contained in the application, and provide any other information to CCC that the county FSA office or committee deems necessary to determine the livestock producer's eligibility.

§ 1439.104 County committee determinations of general applicability.

(a) County committees shall determine whether due to natural disasters their county has suffered a 40-percent loss affecting pasture and normal grazing crops for at least 3 consecutive months during the calendar year 1998 for the 1998 LAP or calendar year 1999 for the 1999 LAP. In making this determination, county committees, using the best information available from sources including but not limited to: the Extension Service, the Natural Resources Conservation Service; the Palmer Drought Index; and general knowledge of local rainfall data, pasture losses, grazing livestock movement out of county, abnormal supplemental feeding practices for livestock on pasture and liquidation of grazing livestock, shall determine the percentage of grazing losses for pastures on a county wide basis. The county committee shall submit rainfall data, percentage of grazing losses for each general type of pasture, and the weighted average percentage of grazing loss for the county, with State Committee concurrence, to the Deputy Administrator on Form CCC–654. The maximum grazing losses the county committees shall submit on Form CCC–654 is 80 percent. These determinations shall be subject to review and approval of the Deputy Administrator. For purposes of this subpart, such counties are called "eligible counties."

(b) In each county, the county committee shall determine a LAP crop year. The LAP crop year shall be that period of time in a calendar year that begins with the date grazing of new growth pasture normally begins and ends on the date grazing without supplemental feeding normally ends in the county.

(c) In and for each eligible county, the county committee shall determine normal carrying capacities for each type of grazing or pasture during the LAP crop year. The normal carrying capacity for the LAP crop year shall be the normal carrying capacity the county committee determines could be expected from pasture and normal grazing crops for livestock for the LAP crop year if a natural disaster had not diminished the production of these grazing crops.

(d) In each eligible county, the county committee shall determine the payment period for the county. The payment period for the county shall be the period of time during the county's LAP crop year where for 3 consecutive months during 1998 for the 1998 LAP or during 1999 for the 1999 LAP, the carrying capacity for grazing land or pasture was reduced by 40 percent or more from the normal carrying capacity.

§ 1439.105 Loss criteria.

(a) The grazing land for which a livestock producer requests benefits must be within the physical boundary of the eligible county. Livestock producers in unapproved counties contiguous to an eligible county will not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a livestock producer in an eligible county must have suffered a loss of grazing production equivalent to at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months.

(c) A producer shall certify each type of pasture and percentage of loss suffered by each type on the application. In establishing the percentage of grazing loss, producers shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal.

(d) The county committee shall determine the producer's grazing loss and shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal. The county committee shall request the producer to provide proof of loss of grazing production if the county committee determines the producer's certified loss exceeds other similarly situated livestock producers.

(e) The percentage of loss claimed by a livestock producer shall not exceed the maximum allowable percentage of grazing loss for the county as determined by the county committee in accordance with § 1439.104(a). Livestock producers will not receive benefits under this subpart for any portion of their loss that exceeds 80 percent of normal carrying capacity.

(f) Conservation Reserve Program acres released for haying and/or grazing and seeded small grain forage crops shall not be used to calculate losses under this subpart.

§ 1439.106 Livestock producer eligibility.

(a) Only one livestock producer will be eligible for benefits under this subpart with respect to an individual animal.

(b) Only owners of livestock who themselves provide the pasture or grazing land, including cash leased pasture or grazing land, for the livestock may be considered as livestock producers eligible to apply for benefits under this subpart.

(c) An owner of livestock who uses another person to provide pasture or grazing land on a rate-of-gain basis is not considered to be the livestock producer eligible to apply for benefits under this subpart.

(d) An owner who pledges livestock as security for a loan shall be considered as the person eligible to apply for benefits under this subpart if all other requirements of this part are met. Livestock leased under a contractual agreement that has been in effect at least 3 months and establishes an interest for the lessee in such livestock shall be considered as being owned by the lessee.

(e) Livestock must have been owned for at least 3 months before becoming eligible for payment.

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of §§ 1400.501 and 1400.502 of this chapter.

§ 1439.107 Calculation of assistance.

(a) The value of LAP assistance determined with respect to a livestock producer for each type and weight class of livestock owned or leased by such producer shall be the lesser of the amount calculated under paragraph (b) of this section (the total value of lost feed needs for eligible livestock) or calculated under paragraph (c) of this section (the total value of lost eligible pasture).

(b) The total value of lost feed needs shall be the amount obtained by multiplying:

(1) The number of days in the payment period the livestock are owned or, in the case of purchased livestock, meet the 3-month ownership requirement; by

(2) The daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the weight class and type of livestock, as determined by CCC); by

(3) The 5-year national average market price for corn (1998 LAP: $2.56 per bushel, or $.0457 per pound; 1999 LAP: $2.47 per bushel or $.0441 per pound); by

(4) The number of eligible animals of each type and weight range of livestock owned or leased by the person; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(c) The total value of lost eligible pasture shall be the amounts for each type of pasture calculated by:

(1) Dividing the number of acres of each pasture type by the carrying capacity established for the pasture; and multiplying:

(2) The result of paragraph (c)(1) of this section for each pasture type; by

(3) The daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the weight class and type of livestock, as determined by CCC); by

(4) The 5-year national average market price for corn (1998 LAP: $2.56 per bushel, or $.0457 per pound; 1999 LAP: $2.47 per bushel or $.0441071 per pound); by

(5) The applicable number of days in the LAP payment period; by

(6) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(d) The final payment shall be the smaller of paragraph (b) of this section or paragraph (c) of this section multiplied by the national factor if required under § 1439.108. The final payment shall not exceed 50 percent of the smaller of paragraph (b) or (c) of this section determined prior to applying the national factor provided for in § 1439.108.

(e) Seeded small grain forage crops shall not be counted as grazing land under paragraph (c) of this section with respect to supporting eligible livestock.

(f) The number of equine animals that are used to calculate benefits under this subpart and in paragraph (a) of this section are limited to the number actually needed to produce food and fiber on the producer's farm or to breed horses and mules to be used to produce food and fiber on the owner's farm, and shall not include animals that are used for recreational purposes or are running wild or uncontrolled on land owned or leased by the owner.

§ 1439.108 Availability of funds.

In the event that the total amount of claims submitted under this subpart shall in the case of the 1998 LAP exceed $270 million or in the case of the 1999 LAP exceed the amount determined appropriate by the Deputy Administrator, then such payments under such program shall be reduced by a uniform national percentage. Such payment reductions shall be after the imposition of applicable payment limitation provisions. Total 1999 LAP payments shall be prorated with payments for the Livestock Indemnity Program, Phase II provided for in this part such that total payments under the two programs shall not exceed $200 million minus, as deemed appropriate, other assistance provided to livestock producers unless CCC makes additional funds available.

Subpart C—Livestock Indemnity Program

§ 1439.201 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the original 1999 Livestock Indemnity Program

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(hereafter "1999 Livestock Indemnity Program, Phase I") and the 1999 Livestock Indemnity Program, Phase II. Benefits will be provided under this subpart only for losses (deaths) of livestock occurring as a result of a natural disasters in counties included in the geographic area covered by a qualifying natural disaster declaration:

(1) With respect to the 1999 Livestock Indemnity Program ("LIP"), Phase I, issued by the President of the United States or the Secretary of Agriculture of the United States in the period from May 2, 1998, through May 21, 1999, or

(2) With respect to the 1999 Livestock Indemnity Program ("LIP"), Phase II, issued by the President of the United States or the Secretary of Agriculture, which declaration was requested between May 22, 1999, through December 31, 1999, inclusive, and subsequently approved.

(b) Losses in contiguous counties, or any other counties not the subject of the declaration, will not be compensable. Producers will be compensated by livestock category as established by CCC. The producer's loss must be the result of the declared disaster and in excess of the normal losses, established by CCC, for the producer's livestock operation. Losses to livestock due to drought conditions are deemed to have been avoidable and are not eligible for benefits under the 1999 LIP, Phase II.

§ 1439.202 Administration.

Where circumstances preclude compliance with § 1439.204 due to circumstances beyond the applicant's control, the county or State committee may request that relief be granted by the Deputy Administrator under this section. In such cases, except for statutory deadlines and other statutory requirements, the Deputy Administrator may, in order to more equitably accomplish the goals of this subpart, waive or modify deadlines and other program requirements if the failure to meet such deadlines or other requirements does not adversely affect operation of the program and are not prohibited by statute.

§ 1439.203 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The terms defined in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Application means the Form CCC–661, Livestock Indemnity Program Application.

Livestock means beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and buffalo and beefalo when such buffalo and beefalo are maintained on the same basis and in the same manner as beef cattle maintained for commercial slaughter.

Livestock producer means one who possesses a beneficial interest in eligible livestock as defined in this subpart, has a financial risk in the eligible livestock, and is a citizen of, or legal resident alien in, the United States. A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in, the United States, if such cooperative, corporation, partnership, or joint operation owns or jointly owns eligible livestock or poultry, will be considered livestock producers. Any Native American tribe (as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act and Education Assistance Act); any Native American organization or entity chartered under the Indian Reorganization Act or chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Education Assistance Act; and any economic enterprise under the Indian Financing Act of 1974 will be considered livestock producers so long as they meet the terms of the definition.

§ 1439.204 Sign-up period.

A request for benefits under this subpart must be submitted to the CCC at the Farm Service Agency county FSA office serving the county where the livestock loss occurred. All applications and supporting documentation must be filed in the county FSA office prior to the close of business on:

(a) November 1, 1999, or such other date as established by CCC for 1999 LIP, Phase I, or

(b) February 18, 2000, or such other date as established by CCC for 1999 LIP, Phase II.

§ 1439.205 Proof of loss.

(a) Livestock producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the:

(1) Loss of eligible livestock occurred in an eligible county in the area of Presidential designation or Secretarial declaration;

(2) That the death of the eligible livestock was reasonably related to the recognized natural disaster; and

(3) The death of the livestock occurred:

(i) Between May 2, 1998, and May 21, 1999 inclusive for 1999 LIP, or

(ii) For 1999 LIP, Phase II, due to a disaster that was the subject of a Presidential or Secretarial disaster declaration, that was requested between May 22, 1999, and December 31, 1999, inclusive, and was subsequently approved.

(b) The livestock producer shall provide any available supporting documents that will assist the county committee, or is requested by the county committee, in verifying the loss and quantity of eligible livestock that perished in the natural disaster. Examples of supporting documentation include, but are not limited to: purchase records, veterinarian receipts, bank loan papers, rendering truck certificates, Federal Emergency Management Agency and National Guard records, auction barn receipts, and any other documents available to confirm the presence of the livestock and subsequent losses. Certifications by third parties or the producer and other such documentation as the county committee determines to be necessary in order to verify the information provided by the producer must also be submitted. Third-party verifications may be accepted only if the producer certifies in writing that there is no other documentation available. Third-party verification must be signed by the party that is verifying the information. Failure to provide documentation that is satisfactory to the county committee will result in the disapproval of the application by the county committee.

(c) Livestock producers shall certify the accuracy of the information provided. All information provided is subject to verification and spot checks by the CCC. A failure to provide information requested by the county committee or by agency officials is cause for denial of any application filed under this part.

§ 1439.206 Indemnity benefits.

(a) Livestock indemnity payments for losses of eligible livestock as determined by CCC are authorized to be made to livestock producers who file an application for the specific livestock category in accordance with instructions issued by the Deputy Administrator, if the:

(1) Livestock producer submits an approved proof of loss in accordance with § 1439.205; and

(2) County or State committee determines that because of an eligible disaster condition the livestock producer had a loss in the specific livestock category in excess of the normal mortality rate established by CCC, based on the number of animals in the livestock category that were in the producer's inventory at the time of the disaster.

(b) If the number of losses in the animal category exceeds the normal mortality rate established by CCC for such category, the loss of livestock that shall be used in making a payment shall be the number of animal losses in the animal category that exceed the normal mortality threshold established by CCC.

(c) Payments shall be calculated by multiplying the national payment rate for the livestock category as determined by CCC, by the number of qualifying animals determined under (b) of this section. Adjustments, if necessary, shall apply in accordance with § 1439.207.

(d) Payments that are earned by a person under the livestock indemnity program may be assigned in accordance with the provisions of part 1404 of this chapter.

§ 1439.207 Availability of funds.

(a) In the event that the total amount of eligible claims submitted under this subpart exceeds the amount available as specified in paragraph (b) of this section, then each payment shall be reduced by a uniform national percentage.

(b) Amounts available for payments under this subpart shall be:

(1) $3 million for 1999 LIP, Phase I or

(2) The amount determined to be appropriate such that payments for LIP, Phase II and the 1999 Livestock Assistance Program provided for in this part do not exceed $200 million as specified in § 1439.108 minus other adjustments as may be appropriate.

(c) Such payment reductions shall be applied after the imposition of applicable per-person payment limitation provisions. Notwithstanding any other provision of law, the payment limits for Phase I and II shall be considered separate limits except to the extent, if any, that a producer's recovery under the 2 phases are for losses from the same disaster.

§ 1439.208 Limitations on payments.

(a) No person, as determined in accordance with part 1400 of this chapter, may receive benefits for livestock losses in excess of:

(1) $50,000 for 1999 LIP, or

(2) $40,000 for 1999 LIP, Phase II.

(b) No person may receive payments under this subpart for the same losses that the producer has received or will receive compensation under any other program provided for in this part. Payments under this part for other losses shall not, however, reduce the amount payable under this part. As provided for in § 1439.11, no person shall be eligible to receive any payment under this subpart if such person's annual gross revenue exceeds $2.5 million.

(c) Disaster benefits under this part are not subject to administrative offset under § 1403.8 of this chapter except as otherwise provided by the Deputy Administrator.

(d) No interest will be paid or accrue on disaster benefits under this part that are delayed or are otherwise not timely issued unless otherwise mandated by law.

Subpart D—Pasture Recovery Program

§ 1439.301 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, Farm Service Agency (FSA), through the Deputy Administrator. In the field, the regulations in this part will be administered by the State and county FSA committees ("State committees" and "county committees", respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee that has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, FSA, or a designee, or the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in the PRP is voluntary, program benefits will not be provided unless the participant furnishes the appropriate data.

(f) CCC may consult with other Federal agencies, State agencies, or other non-USDA sources for such assistance as is determined by CCC to be necessary to implement this part.

§ 1439.302 Definitions.

The following definitions shall be applicable to this subpart:

Applicant means, unless the context indicates otherwise, the owner or operator.

Contract Period means the period of time the PRP contract is in effect.

Federally-owned land means land owned by the Federal Government or any department, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Forage crop means a perennial stand of grasses or legumes that are intended for use by livestock for grazing and are customarily used for that purpose by local producers.

Hayland means land that was or has been routinely used to produce hay.

Livestock means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals used commercially for human food or kept for the production of food or fiber.

Local FSA office means the FSA office in the local USDA service center in which the FSA records are maintained for the farm or ranch that includes the pasture land that the applicant is seeking to enroll in the PRP.

Operator means a person who is in general control of the farming operation on the farm, as determined by FSA for CCC.

Owner means a person or entity who is determined by FSA to have sufficient legal ownership of the land, including a person who is buying the acreage under a purchase agreement; each spouse in a community property State; each spouse when spouses own property jointly; and a person who has life-estate in the property.

Participant means an owner or operator or tenant who has entered into a PRP contract.

Pasture land means generally enclosed land devoted to a perennial forage crop used and suitable for grazing of livestock.

Payment means, unless the context indicates otherwise, the payment specified in the PRP contract that, subject to the availability of funds, is made to a participant to compensate such participant for reestablishing an approved forage crop on eligible pasture land in the PRP.

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Practice means with respect to practices to be approved for relief under this subpart, an approved measure to cost-effectively reseed pasture, and, in conjunction with seeding, as necessary, fertilize to reestablish a forage crop on eligible pasture land damaged or destroyed by drought, as determined by CCC.

Rangeland means land having indigenous, unimproved vegetation that may be used or suitable for open roaming and grazing of livestock.

State-owned land means land owned by a State Government or any department, bureau, or agency thereof, including political subdivision of a State, as determined by CCC.

State Technical Committee means that committee established pursuant to 16 U.S.C. 3861 to provide information, analysis, and recommendations to the Department of Agriculture.

Technical assistance means the assistance provided in connection with the PRP to owners or operators by FSA or other authorized designee of the Secretary in determining the eligibility of land and implementing and certifying eligible practices.

§ 1439.303 General description.

Under the PRP, the CCC will enter into contracts with eligible producers to provide payments to assist producers to reestablish the damaged or destroyed pasture land to an approved forage crop. Contracts will require the producer to maintain the new crop for three full years after the calendar year of installation.

§ 1439.304 Eligible persons.

In order to be eligible to enter into a PRP contract in accordance with this part, a person must be an owner or operator of eligible pasture land that was damaged or destroyed by drought or related conditions during calendar year 1999 and:

(a) Must normally graze livestock on such pasture land; and

(b) If an operator of eligible land that the operator does not own, must provide satisfactory evidence that such operator will be in control of such eligible pasture land for the full term of the PRP contract period.

§ 1439.305 Eligible land.

(a) Except as otherwise provided in this section, as determined by CCC or the Deputy Administrator, to be eligible for the PRP, land must be pastureland that:

(1) As determined by CCC, is located within a county that was:

(i) Approved for participation in the 1999 Livestock Assistance Program;

(ii) Had a 1999 LAP payment period of at least 120 days; and

(iii) As of March 1, 2000, was approved for assistance under the Emergency Conservation Program provided for in 7 CFR part 701 because of a 1999 drought designation, or was later approved for such participation based upon an application filed by March 1, 2000, and based upon drought damage suffered in 1999.

(2) Has been established pasture land on which livestock is normally grazed or on which the forage crop was so damaged or destroyed by drought or related conditions in calendar year 1999 that the forage crop will not return in the 2000 grazing year, and seeding is required to reestablish the forage crop, as determined by the Deputy Administrator;

(b) Notwithstanding paragraph (a) of this section, land, as determined by CCC or the Deputy Administrator, shall be ineligible for enrollment if the pasture land is:

(1) Federal-operated land;

(2) State-operated land;

(3) Hayland; or

(4) Rangeland, as determined by the Deputy Administrator.

§ 1439.306 Duration of contracts.

Contracts under this subpart and their forage crop maintenance requirements shall run through December 31, 2003; provided further that the installation of the practice must be completed no later than December 31, 2000.

§§ 1439.307–1439.319 [Reserved]

§ 1439.320 Obligations of participant.

All participants subject to a PRP contract must agree to:

(a) Carry out the terms and conditions of the PRP contract including carrying out all approved practices and meeting the schedule of dates for seeding and for maintenance measures provided for in the contract to establish and maintain the approved forage crop;

(b) Comply with all requirements of part 12 of this title;

(c) Do whatever else is necessary to establish and maintain the required forage crop according to the required practice requirements on the land subject to that contract and take such other actions that may be required by CCC throughout the PRP contract period as needed to insure that the purposes of the contract are met;

(d) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(e) Control, subject to the contract, all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved forage crop is adequately protected, as determined by CCC;

(f) Not harvest the re-seeded cover crop at any time during the contract period; and,

(g) Be jointly and severally responsible with other persons qualifying for payments under this program on the same land for compliance with such contract and the provisions of this part and for any refunds, payment adjustments, or liquidated damages that may be required for violations of any of the terms and conditions of the PRP contract.

§ 1439.321 Obligations of the Commodity Credit Corporation.

Subject to the availability of funds, CCC shall:

(a) Upon establishment of the required forage crop, and provided all other eligibility criteria have been met, make PRP payments to participants in accordance with the provisions of this part; and

(b) Provide such technical assistance as it determines necessary to assist the participant in carrying out the PRP contract.

§ 1439.322 Eligible practices.

Eligible practices are those practices specified in the contract that meet all quantity and quality standards needed to cost-effectively:

(a) Reestablish the approved forage crop, as determined by the Deputy Administrator, on acreage subject to the contract, including reseeding;

(b) Meet environmental laws and regulations, as applicable, for the contract period; and

(c) Accomplish other purposes of the program as determined by the Deputy Administrator.

§§ 1439.323–1439.329 [Reserved]

§ 1439.330 Signup.

Only applications for contracts submitted during designated signup periods as announced by CCC will be approved.

§ 1439.331 Applications for PRP contracts.

Applicants may submit applications to participate in the PRP subject to § 1439.330 of this part. Applications may be automatically accepted upon certification by the applicant that:

(a) The land meets the eligibility requirements of § 1439.305; and

(b) The applicant meets the eligibility requirements of § 1439.304; and

(c) The applicant certifies that the pasture land to be enrolled in the PRP was damaged or destroyed by drought or related conditions in calendar year 1999 so that seeding is required to reestablish the qualifying forage crop.

§ 1439.332 PRP contract.

(a) In order to enroll land in the PRP, the participant must enter into a contract with CCC.

(b) The PRP contract will be comprised of:

(1) The terms and conditions for participation in the PRP; and

(2) Any other materials or agreements determined necessary by CCC.

(c) In order to enter into a PRP contract, the applicant must submit an application to participate at the local FSA office in the USDA service center.

(d) The PRP contract must, within the dates established by CCC, be signed by the applicant.

(e) The Deputy Administrator is authorized to approve PRP contracts on behalf of CCC.

(f) As determined by CCC, PRP contracts may be terminated before the expiration date when:

(1) The owner loses control of, or transfers, all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant(s) voluntarily request in writing to terminate the contract and obtains the approval of CCC subject to such conditions on approval as may be imposed by CCC;

(3) The participant(s) are not in compliance with the terms and conditions of the contract;

(4) The same acreage is later enrolled in another State, Federal, or local conservation program, unless the Deputy Administrator approves otherwise;

(5) The PRP practice fails after a certain time period, as determined by the Deputy Administrator, and the CCC determines the cost of restoring the cover outweighs the benefits received from the restoration; or

(6) The PRP contract was approved based on erroneous eligibility determinations.

(g) When a PRP contract is terminated, the participant must, except as agreed to by CCC, refund all or part of the payments made with respect to such contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in such contract. CCC, in its discretion, may permit a lesser payment to the extent that such a reduction will not impair program operations.

§ 1439.333 Contract modifications.

By mutual agreement between CCC and the participant, a PRP contract may be modified in order to:

(a) Decreasc acreage in the PRP;

(b) Facilitate the practical administration of the PRP; or

(c) Accomplish the goals and objectives of the PRP, as determined by the Deputy Administrator.

§ 1439.334–1439.339 [Reserved]

§ 1439.340 Payments.

(a) Payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications. Payments will be prorated if requests for assistance exceed available funding.

(b) Except as otherwise provided for in this part, payments may be made under the PRP only for the cost-effective establishment or installation of an eligible practice.

(c) Subject to the availability of funds, payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the PRP contract.

(d) Payment shall be made on a per-acre basis.

(e) The payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(f) The maximum amount of all payments that a person may receive under the PRP shall not exceed $2,500. The regulations set forth at part 1400 of this chapter shall be applicable in making certain eligibility and "person" determinations as they apply to payment limitations under this part.

(g) Payments shall be limited as needed or appropriate to account for mandatory or discretionary limits on payments.

§ 1439.341 Levels and rates for payments.

(a) As determined by the Deputy Administrator, CCC shall pay not more than 50 percent of the average cost of reestablishing the approved forage crop, including reseeding, on eligible land.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee or on such other basis as it deemed appropriate. Such cost may be the average cost in a State, a county, or a part of a county or counties, as determined by the Deputy Administrator.

(c) Notwithstanding paragraph (a) or (b) of this section, no payment shall exceed $75 per acre without approval of the Deputy Administrator. In no case shall a payment exceed $125 per acre.

§ 1439.342 Method of payment.

Payments made by CCC under this part may be made in cash, in kind, in commodity certificates, or any combination of such methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

§§ 1439.343–1439.349 [Reserved]

§ 1439.350 Payments to participants.

Payments shall be made to the participants responsible for the establishment of the practice.

§ 1439.351 Violations.

(a) If a participant fails to carry out the terms and conditions of a PRP contract, CCC may terminate the PRP contract.

(b) If the PRP contract is terminated by CCC in accordance with this section then, in addition to all such other remedies as may be provided for in this subpart or elsewhere:

(1) The participant shall forfeit all rights to payments under such contract and refund all payments previously received together with interest; and

(2) Pay liquidated damages to CCC in such amount as specified in the contract.

(c) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

(d) CCC may also terminate a PRP contract without sanction if the participant agrees to such termination and CCC determines such termination to be in the public interest.

(e) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1439.352 Executed PRP contract not in conformity with regulations.

If, after a PRP contract is approved by CCC, CCC discovers that the PRP contract is not in conformity with the provisions of this part, the provisions of the regulations shall prevail and the contract may be terminated.

§ 1439.353 Performance based upon advice or action of the Department.

The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 1439.354 Access to land under contract.

(a) The applicant or participant shall, as requested, provide all representatives

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or designees of CCC with access to all land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) With respect to such land identified in paragraph (a) of this section, the participant or applicant shall provide such representatives with access to examine records with respect to such land for the purpose of determining compliance with the terms and conditions of the PRP.

§ 1439.355 Miscellaneous.

(a) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(b) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of PRP acreage due to foreclosure, the Deputy Administrator may waive the demand that could otherwise be made for refunds.

(c) Payments under this subpart are subject to provisions contained in Subpart A of this part including, but not limited to provisions concerning misrepresentations, payment limitations, limitations on eligibility tied to the person's gross income, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition other parts of this chapter and of chapter VII relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(d) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(e) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(f) Nothing in this subpart shall require a commitment of funds to this subpart in excess of that determined to be appropriate by the Deputy Administrator and/or CCC.

(g) Any payment otherwise due under this subpart will be reduced to the extent that it is determined that such payment produces a duplicate benefit under another program operated by the Department of Agriculture and that to make such duplicate payment would be contrary to the purposes of the program.

(h) In no instance, unless approved by the Deputy Administrator in accordance with law, may the amount expended under this subpart exceed an amount that, when added to the amounts expended for the 1999 LAP payments and for the Livestock Indemnity Program, Phase II, exceeds $200 million.

(i) Payments under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments except to the extent that an exemption if provided for by the Executive Vice President, CCC.

(j) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

(k) In those instances in which, prior to the issuance of this regulation, a producer has signed a power of attorney on an approved FSA–211 for a person or entity indicating that such power shall extend to "all above programs", without limitation, such power will be considered to extend to this program unless by June 22, 2000 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

Subpart E—Livestock Indemnity Program for Contract Growers

§ 1439.401 Applicability.

This subpart sets forth the terms and conditions of the Livestock Indemnity Program for Contract Growers. Under Title I of the Supplemental Appropriations Act (Public Law 106–113, 113 Stat. 1501), the Secretary is specifically authorized to use $10 million to provide assistance to persons who raise livestock owned by other persons for income losses sustained with respect to livestock during 1999 if the Secretary finds that such losses are the result of natural disasters. Utilizing that authority, this subpart, accordingly, allows for benefits to be paid, up to that amount, to eligible producers that sustained a loss of income directly attributed to a reduction in the production of livestock and livestock products from livestock that were entirely owned by others, due to or as a result of natural disasters that occurred from January 1 through December 31, 1999, in those areas for which a Presidential or Secretarial Declaration was approved. Producers in contiguous counties that were not designated as a disaster area in their own right are not eligible for benefits under this part. Benefits will be provided with respect to eligible livestock where the death occurred in the disaster area during January 1 through December 31, 1999, and where the death was reasonably related to the disaster that prompted the disaster declaration as determined by the Deputy Administrator of Farm Programs, or designee. The livestock had to be in possession of the applicant during the time in which the disaster occurred.

§ 1439.402 [Reserved]

§ 1439.403 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this Livestock Indemnity Program for Contract Growers. Definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Application means the request for benefits and the necessary documentation supporting such a request.

Contract means, with respect to contracts for the handling of livestock, an agreement between the livestock producer or grower and the livestock owner setting forth the specific terms, conditions and obligations of the parties involved regarding the production of livestock and livestock products.

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Eligible livestock means livestock that are:

(1) Beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and buffalo and beefalo when buffalo and beefalo are maintained on the same basis as beef cattle, and

(2) Was produced by the applicant subject to a contractual agreement between the such producer or grower and the livestock owner.

Eligible livestock producer means, with respect to particular livestock, one, other than the owner of the livestock, who possesses an independent financial interest in the eligible livestock or products derived from such eligible livestock, as defined and limited by the terms and conditions of a contractual agreement with the livestock owner; and is a citizen or a legal resident alien of the United States. Such producer may be individual or may be a farm cooperative, private domestic corporation, partnership, or joint operation in which the majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in, the United States, if such cooperative, corporation, partnership, or joint operation possesses a financial interest, but not as owner, in the eligible livestock or products derived from such eligible livestock. Also such producer may also be an Indian tribe (as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act and Education Assistance Act); an Indian organization or entity chartered under the Indian Reorganization Act or chartered under the Indian Self-Determination and Education Assistance Act; or an economic enterprise under the Indian Financing Act of 1974.

§ 1439.404 Application period.

(a) A request for benefits under this subpart must be submitted to CCC at the county FSA office serving the county where the loss occurred. All requests for benefits and supporting documentation must be filed in the county FSA office by May 1, 2000, or such other date as established by CCC.

(b) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without such data, program benefits will not be approved or provided.

§ 1439.405 Proof of loss.

(a) Livestock producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the loss of eligible livestock or livestock products, and the corresponding reduction of income, occurred in the area of a Presidential designation or Secretarial declaration referred to in § 1439.401 and that the death of the eligible livestock was reasonably related to the recognized natural disaster. The documentary evidence of loss, quantity of the loss, and type of eligible livestock claimed for payment, shall be reported to CCC together with any supporting documentation under paragraph (b) of this section.

(b) The livestock producer shall provide any available supporting documents that will assist the county committee in verifying the loss and the quantity of eligible livestock that perished in the natural disaster. Examples of supporting documentation include, but are not limited to: written contracts, production records, veterinarian receipts, bank loan papers, rendering truck receipts, Federal Emergency Management Agency and National Guard records, and any other documents available to confirm the presence of the livestock and the subsequent losses. Certification of third parties or the producer and other such documentation as the county committee determines to be necessary for the verification of the information provided by the applicant may be submitted, subject to review and approval of the county committee. Failure to provide documentation that is satisfactory to the county committee can result in disapproval of the application by the county committee.

(c) In all circumstances, livestock producers shall certify to the accuracy of the information provided. As provided by various statutes, providing a false certification to the government is punishable by imprisonment, fines and other penalties. All such remedies, as well as all civil remedies, may be applied. All information provided is subject to verification and spot check by the CCC.

§ 1439.406 Indemnity benefits.

(a) Payment under this part shall only be made to livestock producers who file a Certification of Livestock Losses for Eligible Disaster—Contract Growers, Form CCC–661B, for the specific livestock category for which relief is sought and file such form in accordance with instructions issued by the Deputy Administrator. In addition, payment may be made only if:

(1) The livestock producer submits a proof of loss that meets the requirements of § 1439.405; and

(2) The county or State committee determines that because of an eligible disaster condition the livestock producer had a loss in the specific category in excess of the normal mortality rate established by CCC, based on the number of animals in the livestock category that were in the livestock producer's inventory at the time of the disaster event.

(b) If the number of losses in the animal category exceeds the normal mortality rate established by CCC for such category, the loss of eligible livestock that shall be used in making a payment shall be the number of animal losses in the category that exceed the normal mortality threshold established by CCC.

(c) Subject to the availability of funds, payments shall be made in an amount determined by multiplying: the national payment rate for the livestock category as determined by CCC by the amount specified in paragraph (b) of this section.

§ 1439.407 Proration of claims.

In the event that the funds made available to satisfy claims shall be less than the demand for such funds, the Deputy Administrator may reduce all claims by a uniform percentage to account for the level of available funds, or may take such other measures as he deems appropriate to apportion the funds among the claimants. Such payment reductions as are made shall be applied after the imposition of applicable payment limitation provisions.

§ 1439.408 Miscellaneous provisions.

(a) Payments under this subpart are subject to provisions contained in subpart A of this part including, but not limited to provisions concerning misrepresentations, payment limitations, limitations on eligibility tied to the person's gross income, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition other parts of this chapter and of chapter VII of this title relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(b) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(c) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(d) Nothing in this subpart shall require a commitment of funds to this subpart in excess of that determined to be appropriate by the Deputy Administrator and/or CCC.

(e) The Deputy Administrator can deny or adjust claims in those instances in which the party seeking relief was affiliated with or related to the owner of the livestock if it is determined by the Deputy Administrator that such action is consistent with the purposes of this subpart and may take such action as is deemed appropriate to avoid overlap with relief available under other subparts in this part.

(f) In no instance, unless otherwise approved by the Deputy Administrator, will the amount to be expended under this program exceed $10 million.

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Subparts F-H [Reserved]

Subpart I—American Indian Livestock Feed Program

§ 1439.900 [Reserved].

§ 1439.901 Applicability.

This subpart sets forth the terms and conditions of a government-to-government program titled the American Indian Livestock Feed Program (AILFP). The AILFP has been allocated a budget of $12.5 million. Assistance will be available in those regions that CCC determines have been affected by natural disaster, and where a determination is made by the Deputy Administrator for Farm Programs that a livestock feed emergency exists on tribal land. Funds made available under the AILFP shall be available beginning in crop year 1997 and in subsequent crop years. Payments may become available as contracts with tribal governments are approved. If any other benefits are received from the Department of Agriculture for the same loss, then payments under this part will be reduced accordingly. Payments will terminate when funds have been exhausted, without respect to the date of any application, or of when any contract has been entered into by any tribal government and CCC. Applicants will receive benefits on a first-come, first-served basis.

§ 1439.902 Administration.

(a) This subpart shall be administered by CCC under the general supervision of the Deputy Administrator for Farm Programs, Farm Service Agency (FSA). This program shall be carried out in the field as prescribed in these regulations and as directed in the contract executed between the applicable tribal government and CCC, except that in the event any contract provision conflicts with these regulations, the regulations shall apply.

(b) Tribal governments, their representatives, and employees do not have authority to modify or waive any provisions of the regulations of this subpart.

(c) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any provisions of regulations of this subpart.

(d) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, and other program requirements in cases where the applicant or tribe, as applicable, show that circumstances beyond the applicant's or tribe's control precluded compliance with the deadline and where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(e) The tribal government will, in accordance with this part and in coordination with the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) and FSA State and county committees, recommend the geographical size and shape of the region where the natural disaster has occurred, and whether the regional eligibility requirement has been satisfied. Documentation to support the reported natural disaster shall be provided by the State FSA office and shall accompany the recommendation. The recommendation of eligibility must be acted on by the Deputy Administrator.

(f) The Deputy Administrator will determine all prices with respect to implementing the AILFP.

(g) The FSA State committee will determine crop yields and livestock carrying capacity with respect to implementing the AILFP.

(h) Participation in the AILFP by a tribal government for either the tribal government's benefits or for the benefit of any eligible owner is voluntary and is with the understanding that CCC will not reimburse the tribal government or its members for any administrative costs associated with the administration or implementation of the program.

(i) The provisions of subpart A shall not apply to this part; however the following provisions of 7 CFR part 1439, as in effect on January 1, 1999 (see 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) shall apply in the conduct of this program: §§ 1439.3, 1439.11 through 1439.22, 1439.24 as well as §§ 1439.6(i)(1)(i), 1439.8(a), and 1439.9(d) through (f). Further, from those same regulations, the provisions of §§ 1439.10(a) and 1439.15, as in effect on January 1, 1999 (see 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) shall apply as set forth in §§ 1439.908 and 1439.909.

§ 1439.903 Definitions.

The definitions set forth in this section shall be applicable to the program authorized by this subpart. The terms defined in § 1439.3 shall also be applicable except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Animal Unit (AU) means a standard expression of livestock based on a net energy maintenance requirement equal to 13.6 megacalories per day.

Animal Unit Day (AUD) means an expression of expected or actual stocking rate equal to one day.

Approving official means a representative of the tribal government who is authorized to approve an application for assistance made in accordance with this subpart.

Carrying capacity means the stocking rate expressed as acres per animal unit that is consistent with maintaining or improving vegetation or related resources.

Dependent Indian Community means a limited category of Indian lands that are neither reservations nor allotments and is:

(1) Land set aside by the Federal Government for the use of Indians as Indian land, and

(2) Under Federal superintendence.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or designee.

Disaster period means the length of time that damaging weather, adverse natural occurrence, or related condition has a detrimental affect on the production of livestock feed.

Eligible feed for assistance means any type of feed (feed grain, oilseed meal, premix, or mixed or processed feed, liquid or dry supplemental feed, roughage, pasture, or forage) that provides net energy megacalories and that is consistent with acceptable feeding practices and was not produced by the owner.

Eligible livestock means beef and dairy cattle; buffalo and beefalo maintained on the same basis as beef cattle; equine animals used for food or used directly in the production of food; sheep; goats; and swine.

Eligible owner means an individual or entity, including the tribe, eligible to participate in this program, who:

(1) Contributes to the production of eligible livestock or their products;

(2) Has such contributions at risk;

(3) Meets the criteria set forth in § 1439.907; and

(4) Meets eligibility criteria set forth by the tribal government in an approved contract.

Livestock feed emergency means a situation in which a natural disaster causes more than a 35-percent reduction in the feed produced in a region determined in accordance with § 1439.904 for a defined period, as determined by CCC. Any loss of feed production attributable to overgrazing or other factors not considered to be a natural disaster as specified in this subpart shall not be included in the loss used to determine if a livestock feed emergency occurred.

Natural disaster means damaging weather, including but not limited to

drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or an adverse natural occurrence such as earthquake, flood, or volcanic eruption; or a related condition, including but not limited to heat, or insect infestation, that occurs as a result of aforementioned damaging weather or adverse natural occurrence prior to or during the crop year that directly causes, accelerates, or exacerbates the reduction of livestock feed production.

Net energy maintenance means the appropriate amount of net energy needed to meet the daily maintenance needs for livestock based on the weight range by type of eligible livestock as provided in this section, as determined by CCC.

Region means a geographic area suffering a livestock feed emergency because of natural disaster as determined by a tribal government in accordance with § 1439.904.

Tribal Governed Land means:

(1) All land within the limits of any Indian reservation;

(2) Dependent Indian communities;

(3) Any lands title to which is either held in trust by the United States for the benefit of an Indian tribe or Indian, or held by an Indian tribe or Indian subject to a restriction by the United States on alienation; and

(4) Land held by an Alaska Native, Alaska Native Village or village or regional corporation under the provisions of the Alaska Native Claim Settlement Act or other Act relating to Alaska Natives.

Tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

Type and weight range means the weight range by type of livestock and appropriate amount of energy required to provide the daily maintenance needs for livestock, as follows:

Kind/type	Weight range (lbs.)	Daily energy requirement
(1) Beef cattle (Buffalo/Beefalo):		
Beef	Less than 400	3.01 NEm Mcal.
Beef	400–799	5.59 NEm Mcal.
Beef	800–1099	7.31 NEm Mcal.
Beef	1100+	10.75 NEm Mcal.
Beef, cow	All	13.60 NEm Mcal.
Beef, bull	1000+	11.18 NEm Mcal.
(2) Dairy cattle:		
Dairy	Less than 400	3.01 NEm Mcal.
Dairy	400–799	5.59 NEm Mcal.
Dairy	800–1099	7.31 NEm Mcal.
Dairy	1100+	10.75 NEm Mcal.
Dairy, cow	Less than 1100	23.22 NEl Mcal.
Dairy, cow	11–1299	26.66 NEl Mcal.
Dairy, cow	1300–1499	28.38 NEl Mcal.
Dairy, cow	1500+	29.67 NEl Mcal
Dairy, bull	1000+	12.47 NEm Mcal.
(3) Equine:		
Equine	Less than 450	6.2 DE Mcal.
Equine	450–649	8.9 DE Mcal.
Equine	650–874	11.6 DE Mcal.
Equine	875+	17.3 DE Mcal.
(4) Swine:		
Swine	Less than 45	780 DE Kcal.
Swine	45–124	1630 DE Kcal.
Swine	125+	2867 DE Kcal.
Swine, sow	235+	9854 DE Kcal.
Swine, boar	235+	5446 DE Kcal.
(5) Sheep:		
Sheep	Less than 44	0.34 NEm Mcal.
Sheep	44–82	0.77 NEm Mcal.
Sheep	83+	0.95 NEm Mcal.
Sheep, ewe	150+	2.66 NEm Mcal.
Sheep, ram	150+	1.46 NEm Mcal.
(6) Goats:		
Goats	Less than 44	0.43 NEm Mcal.
Goats	44–82	0.95 NEm Mcal.
Goats	83+	1.29 NEm Mcal.
Goats, doe	125+	3.00 NEm Mcal.
Goats, doe, dairy 1994 and subsequent crop years.	125+	4.47 NEm Mcal.
Goats, buck	125+	1.80 NEm Mcal.

§ 1439.904 Region.

(a) The size of a region will consist of:

(1) An entire reservation, even if the reservation is less than 320,000 acres; or

(2) Contiguous acreage of at least 320,000 acres and include land acreage of an Indian reservation or tribal governed land. If a region is delineated based on minimum size of 320,000 acres, the region shall be delineated without regard to the boundary of a reservation or tribal governed land. If

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the acreage affected by the natural disaster does not meet the minimum acreage requirement specified in this paragraph (a)(2), acreage will be added from surrounding land until the minimum requirement is met.

(b) The region must:

(1) Include acreage affected by the natural disaster that is the basis for the region's designation;

(2) Correspond to the shape of the natural disaster to the maximum extent possible;

(3) Be defined in a manner that does not intentionally include or exclude owners or crops;

(4) Contain some acreage of tribal governed land; and

(5) Have suffered a livestock feed emergency as defined in § 1439.903.

§ 1439.905 Responsibilities.

(a) During the operation of this program, CCC shall:

(1) Provide weather data, crop yields and carrying capacities to tribes requesting such information;

(2) Review contracts submitted by tribal governments requesting disaster regions; and

(3) Act as an agent for disbursing payments to eligible livestock owners in approved disaster regions.

(b) Tribal governments shall be responsible for:

(1) Approaching CCC to obtain a contract to participate in the AILFP based on the tribe's voluntary decisions that participation will benefit its members;

(2) Gathering, organizing, and reporting accurate information regarding disaster conditions and region;

(3) Advising livestock owners in an approved region that they may be eligible for payments, in addition to the method and requirements for filing applications;

(4) Accepting applications for payment from individual livestock owners;

(5) Determining that the information provided by individual livestock owners on payment applications is accurate and complete and that the owner is eligible for payments under this program;

(6) Submitting only accurate and complete payment applications to the designated FSA office acting as an agent for disbursing payments to eligible livestock owners.

(c) The owner or authorized representative, shall:

(1) Furnish all the information specified on the payment application, as requested by CCC;

(2) Provide any other information that the tribal government deems necessary to determine the owner's eligibility; and

(3) Certify that purchased feed was or will be fed to the owner's eligible livestock.

§ 1439.906 Program availability.

(a) When a tribal government determines that a livestock feed emergency exists due to a natural disaster, the tribal government may submit a properly completed contract requesting approval of a region. All contracts requesting region approval must be submitted by the later of December 28, 1998, or 30 days after the end of the disaster period specified on the contract.

(b) Properly completed contracts shall consist of:

(1) A completed form CCC–453, Contract To Participate; and

(2) A completed form CCC–648, Region Designation And Feed Loss Assessment; and

(3) Supportive documentation as determined by CCC including, but not limited to:

(i) A map of the region delineated in accordance with § 1439.904;

(ii) Historical production data and estimated or actual production data for the disaster year;

(iii) Climatological data provided by the State FSA office; and

(iv) A report of an on-site survey.

(c) The Deputy Administrator shall make a determination as to whether a livestock feed emergency exists not later than 30 days after receipt of a properly completed contract made in accordance with this subpart and shall notify the tribal government and State FSA office of such determination as applicable.

(d) The feeding period provided in the approved contract will be for a term not to exceed 90 days, except as provided in paragraph (e) of this section. The feeding period shall not be extended if the livestock feed emergency no longer exists. Notwithstanding the duration of any feeding period, assistance under this subpart terminates immediately and without notice when program funds are exhausted as specified in § 1439.901.

(e) The tribal government may request to extend the feeding period not to exceed an additional 90 days for each extension if disaster conditions have not diminished significantly and a livestock feed emergency continues.

§ 1439.907 Eligibility.

(a) An eligible owner must own or jointly own the eligible livestock for which payments under this subpart are requested. Notwithstanding any other provision of this subpart, livestock leased under a contractual agreement that has been in effect at least 6 months prior.to the date of application for assistance made under this subpart shall be considered as being owned by the lessee if the lease:

(1) Requires the lessee to furnish the feed for such livestock; and

(2) Provides for an interest in such livestock, such as the right to market a share of the increase in weight of livestock.

(b) A State or non-tribal local government or subdivision thereof, or any individual or entity determined to be ineligible in accordance with § 1400.501 of this chapter are not eligible for benefits under this subpart.

(c) Any eligible owner of livestock, including the tribe, may file a CCC-approved AILFP payment application with the tribal government. When such a payment application is filed, the owner and an authorized tribal government representative shall execute the certification contained on such payment application no later than the deadline established by CCC upon approval of the region.

(d) To be eligible for benefits under this subpart, livestock owners must own or lease tribal governed land in the delineated region; and have had livestock on such land at the time of disaster that is the basis for the region's designation.

(e) Eligible livestock owners shall be responsible for providing information to the tribal government that accurately reflects livestock feed purchases for eligible livestock during the feeding period. False or inaccurate information may affect the owner's eligibility.

§ 1439.908 Payment application.

(a) Except as provided in paragraph (d) of this section, payment applications from interested eligible owners must be:

(1) Submitted to the tribal government by the owner no later than a date announced by the tribe, such date being no later than the applicable date in § 1439.907(c); and

(2) Submitted by the tribal government to the office designated by CCC no later than a date announced by CCC; and

(3) Accompanied by valid receipts substantiating purchase of eligible feed for assistance. Valid receipts must also be accompanied by the certification referenced in § 1439.907(d)(3) and shall contain:

(i) The date of feed purchase, which must fall within the eligible feeding period as approved on the contract;

(ii) The names and addresses of the buyer and the vendor;

(iii) The type of feed purchased;

(iv) The quantity of the feed purchased;

(v) The cost of the feed; and

(vi) The vendor's signature if the vendor is not licensed to conduct this type of business transaction.

(b) The tribal government shall review each payment application, as specified by CCC, for completeness and accuracy. Except as provided in paragraphs (c) and/or (d) of this section, the tribal government shall approve those eligible owners and applications meeting the requirements of this subpart.

(c) No approving tribal government member shall review and approve a payment application for any operation for which such member has a direct or indirect interest. Such payment application may be reviewed for approval by a member of the tribal government who is not related to the applicant by blood or marriage.

(d) Tribal governments do not have the authority to approve a payment application for any operation for which the tribe has a direct or indirect interest. Payment applications for tribal owned livestock shall contain an original signature of a member of the tribal government, signing as representing all owners of the tribal owned livestock, who possesses the authority to sign documents on behalf of the tribe and shall be submitted to an office designated by the Secretary for approval.

(e) No payment application, as specified by CCC, shall be approved unless the owner meets all eligibility requirements. Information submitted by the owner and any other information, including knowledge of the tribal government concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If either the payment application is incomplete or information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operation in order to make a determination as to the owner's eligibility, the owner's payment application, as specified by CCC, shall be denied. The tribal government shall be responsible for notifying the owner of the reason for the denial and shall provide the owner an opportunity to submit additional information as requested.

(f) All payment applications, as specified by CCC, approved by the tribal government will be submitted to a designated FSA office for calculation of payment.

§ 1439.909 Payments.

(a) Provided all other eligibility requirements of this subpart are met and funds are available, all eligible payment applications submitted to the designated FSA office shall have payments issued to the applicant by CCC.

(b) If any term, condition, or requirement of these regulations or contract are not met, payments and benefits previously provided by CCC that were not earned under the provisions of the application shall be refunded.

(c) Each owner's share of the total payment shall be indicated on the application, and each owner shall receive benefits or final payment from CCC according to benefits or payments earned under the provisions of the application.

(d) CCC may reduce the benefits payable to an applicant under this program if CCC has made assistance available to such applicant under any other CCC program with respect to the same natural disaster.

(e) The amount of assistance provided to any owner shall not exceed the smaller of either:

(1) The dollar amount of eligible livestock feed purchased, as documented by acceptable purchase receipts, less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the feeding period; or

(2) 30 percent of the amount computed by multiplying:

(i) The number of animal units determined on the basis of the number of eligible livestock of each type and weight range; by

(ii) The smaller of the number of days the owners provided feed to eligible livestock or the total days in the contract's feeding period; by

(iii) The Animal Unit Day value, as established by the Deputy Administrator for Farm Programs, less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the feeding period.

(f) Payments issued in conjunction with this program will not be subject to offset for debts incurred through participation in any other program conducted by the Department of Agriculture.

§ 1439.910 Program suspension and termination.

(a) The tribal government that requested the AILFP assistance, may at any time during the operation of a program recommend suspension or termination of the program.

(b) The Deputy Administrator may suspend or terminate the program at any time if:

(1) The tribal government requests termination or suspension; or

(2) Funding is exhausted.

§ 1439.911 Appeals.

Any person who is dissatisfied with a CCC determination made with respect to this subpart may make a request for reconsideration or appeal of such determination in accordance with part 780 of this chapter. Any person who is dissatisfied with a determination made by the tribal authority should seek reconsideration of such determination with the tribe. Decisions and determinations made under this subpart not rendered by CCC or FSA are not appealable to the National Appeals Division.

§§ 1439.912–1439.915 [Reserved].

PART 1464—TOBACCO

10. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b, 714c.

11. Amend 7 CFR part 1464 by adding a new subpart D to read as follows:

Subpart D—Tobacco Disaster Assistance Program

Sec.

1464.300 [Reserved]
1464.301 Applicability and basic terms for payment.
1464.302 Administration.
1464.303 Definitions.
1464.304 Loss requirements.
1464.305 Signup.
1464.306 Proof of loss.
1464.307 Benefits.
1464.308 [Reserved]
1464.309 Offsets and assignments.
1464.310 Misrepresentation and scheme or device.
1464.311 Refunds to CCC.
1464.312 Cumulative liability.
1464.313 Estate, trusts, and minors.
1464.314 Death, incompetence, or disappearance.
1464.315 Appeals.

Subpart D—Tobacco Disaster Assistance Program

§ 1464.300 [Reserved]

§ 1464.301 Applicability and basic terms for payments.

(a) This subpart sets forth the terms and conditions of the Tobacco Disaster Assistance Program (TDAP) authorized by Public Law 106–113. That legislation provides $2.8 million to the Commodity Credit Corporation (CCC) to be made available to eligible persons who have suffered quality or quantity losses due to natural disasters on tobacco crops harvested and placed in a warehouse and not sold.

(b) Payments from the $2.8 million allotted to this program shall be made to eligible persons in proportion, as determined by the Executive Vice President of CCC, to each person's

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relative quantity of qualifying tobacco losses suffered due to natural disasters on crops harvested and placed in a warehouse and not sold.

§ 1464.302 Administration.

(a) This subpart shall be administered by CCC under the general supervision of the Executive Vice President of the CCC and the Deputy Administrator for Farm Programs of the Farm Service Agency of the Department of Agriculture (who shall be hereafter referred to in this part as the "Deputy Administrator"). The program shall be carried out in the field by State and county Farm Service Agency committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegations herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1464.303 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Tobacco Disaster Assistance Program of this subpart. The terms defined in § 723.104 of this title shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Eligible tobacco means 1999 marketing year flue-cured tobacco, (types 11, 12, 13 and 14).

Tobacco producer means one who possesses a beneficial interest in eligible tobacco as defined in this subpart.

§ 1464.304 Loss requirements.

Except as otherwise determined by the Deputy Administrator consistent with the provisions of Public Law. 106–113 authorizing the payment of the $2.8 million, to qualify for payment under this part, the person seeking the payment must have had a loss of eligible tobacco in 1999 in North Carolina due to hurricanes Dennis, Floyd or Irene and such loss must have been a quality or quantity loss on crops harvested and placed in a warehouse and not yet sold at the time that the loss occurred in the warehouse.

§ 1464.305 Signup.

(a) For losses in North Carolina (as provided for in § 1464.304) a request for benefits under this subpart must be submitted to the CCC at the county FSA office that is designated as the administrative office for the farm on which the tobacco was produced. All requests for benefits and supporting documentation must be filed in the county FSA office by the date established by the Deputy Administrator. However, parties seeking an exception to the normal rules of eligibility in § 1464.304 shall, in lieu of filing a claim with the county committee, file a petition directly with the Deputy Administrator. Such petitions for exception must be filed by the date established by the Deputy Administrator for filing requests for benefits and supporting documentation, or fifteen days after the date of the publication of this regulation, whichever is later, in order to be considered.

(b) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1464.306 Proof of loss.

(a) Tobacco producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that they suffered the claimed loss. The documentary evidence of the loss, quantity of the loss and type of tobacco claimed for payment shall be reported to CCC together with any supporting documentation as may be required under paragraph (b) of this section.

(b) The tobacco producer shall provide any available supporting documents that may be requested by the Farm Service Agency county committee for purposes of verifying the loss. Examples of supporting documentation include, but are not limited to: auction barn floor sheets, transportation receipts, and any other documents available to confirm the presence of the tobacco on the warehouse floor and the subsequent losses. Certifications of third parties or the producer and other such documentation as the county committee determines to be necessary in order to verify the information provided by the producer may be requested and be subject to review by the county committee. Failure to provide documentation that is satisfactory to the county committee will result in disapproval of the application by the county committee.

(c) In all circumstances, tobacco producers shall certify the accuracy of the information provided.

§ 1464.307 Benefits.

The payment amount shall be determined by apportioning the available funds on a poundage basis among the timely claims that are filed, with an allowance for a reserve to handle disputes. The Deputy Administrator may make a preliminary payment before making a final payment in which case later adjustments may be made and a refund may be due from the payee to the CCC after such an adjustment.

§ 1464.308 [Reserved]

§ 1464.309 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except that the regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to payments made under this part and such offsets and withholdings may be taken against such payments.

(b) Any producer entitled to any payment may assign the right to receive such payments, in whole or in part, as provided in part 1404 of this chapter.

§ 1464.310 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to payments and must refund all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter received by such producer with respect to all applications and the producer's interest in all applications shall be terminated.

§ 1464.311 Refunds to CCC.

(a) Persons who are party to the tobacco disaster assistance program application must refund to CCC any excess payments made by CCC with respect to such application.

(b) In the event that a benefit under this subpart was established as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

§ 1464.312 Cumulative liability.

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1464.313 Estate, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is a producer shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1464.314 Death, incompetence, or disappearance.

In the case of death, incompetence, or disappearance, of any person who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this title may receive such assistance.

§ 1464.315 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the eligibility provisions for kinds of tobacco and others for which there are no appeal rights because they involve matters of general applicability, shall be allowed in accordance with parts 11 and 780 of this title.

12. Add part 1479 to subchapter B of 7 CFR chapter XIV to read as follows:

PART 1479—HARNEY COUNTY FLOOD ASSISTANCE

Sec.
1479.1 Applicability.
1479.2 Administration.
1479.3 Definitions.
1479.4 Application process.
1479.5 County committee determinations of general applicability.
1479.6 Loss criteria.
1479.7 Producer eligibility.
1479.8 Calculation of assistance.
1479.9 Availability of funds; payments.

Authority: Sec. 207, Pub. L. 106–113, 113 Stat. 1501.

§ 1479.1 Applicability.

This subpart sets forth the terms and conditions applicable to flood assistance for Harney County, Oregon. Benefits will be provided to eligible producers in Harney County, Oregon, on land where flooding occurred during the 1999 crop year, and has been subject to flooding, one of the years 1994 through 1998.

§ 1479.2 Administration.

(a) This program shall be, to the extent practicable and to the extent not inconsistent with the provisions of this part, be administered in the same manner as the program provided for in 7 CFR part 1478 utilizing the regulations effective in that part as of March 1, 2000.

(b) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (CCC), and shall be carried out in the field by State and county Farm Service Agency (FSA) committees.

(c) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(d) The State FSA committee shall take any action required by this part that has not been taken by a county FSA committee. The State FSA committee shall also:

(1) Correct or require a county FSA committee to correct any action taken by such county FSA committee that is not in accordance with this part; and

(2) Require a county FSA committee to withhold taking or reverse any action that is not in accordance with this part.

(e) No delegation herein to a State or county FSA committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(f) The Deputy Administrator may authorize the State and county committees to waive or modify deadlines or other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program or when, in his or her discretion, it is determined that an exception should be allowed to provide for a more equitable distribution of benefits consistent with the goals of the program provided for in this part.

§ 1479.3 Definitions.

Terms in this part shall have the same meanings as those defined in § 1478.1 of this chapter. In addition, for purposes of this part and notwithstanding any contrary definitions in part 718 of this title or part 1478 of this chapter:

Application means the Form CCC–454, which was previously used for the Flood Compensation Program formerly provided for in this chapter, which form shall now be used for the program provided for in this part. The CCC–454 shall be used to collect the information necessary to determine the total acres flooded for purposes of this program.

Calendar year 1999 means January 1, 1999 through December 31, 1999.

Cropland means cropland as defined in part 718 of this chapter.

Forage means growing vegetation used for food for domestic animals.

NASS means the National Agricultural Statistics Service.

§ 1479.4 Application process.

(a) Producers must submit a completed application by the date established by the Deputy Administrator. The application and any supporting documentation shall be submitted to the county FSA office with administrative authority over a producer's eligible flooded land or to the county FSA office that maintains the farm records for the producer.

(b) Producers shall certify as to the accuracy of all the information being requested in the application, and provide any other information to CCC that the county FSA office or committee deems necessary to determine the producer's eligibility.

§ 1479.5 County committee determinations of general applicability.

(a) County committees shall determine whether land that is the subject of the application is land that has suffered flood-related production losses during calendar year 1999, and is at the same time land to which the following apply:

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(1) It is land that otherwise would have been used for crops or for pasture and could not be used because it was inaccessible, incapable of production, or the production was unusable during CY 1999, due to flooding;

(2) The land was inaccessible, incapable of production, or the production was unusable any one of the years 1994 through 1998, due to flooding; and

(3) The land has, otherwise, a history of actual crop production or use as pastureland at some time since 1990.

(b) In making the determination called for in paragraph (a) of this section, the County committee shall use what it considers to be the best information available including but not limited to: Extension Service; Natural Resources Conservation Service; aerial photography; rainfall data; and general knowledge of losses due to flooding.

(c) If the county Committee makes an affirmative determination under paragraph (a) of this section, the producer with the affected acreage shall be considered an "eligible producer" for purposes of this part.

(d) For purposes of setting rental rates for calculations required to be made elsewhere in this part the county committee shall use the established rental rates for Harney County, for cropland and pasture-land. These rates shall be reviewed by the State Committee and may be equal to the estimated 5-year average rental rates for all such land of each type in the county. The State Committee may take into account rates established for the Conservation Reserve Program operated under 7 CFR part 1410 and ensure, subject to paragraph (e) of this section, that the rates are comparable. The Deputy Administrator shall review and may adjust the rates for reasonableness and consistency.

(e) Except as provided by the Deputy Administrator, rental rates shall be established based on NASS data, if available for 1999.

§ 1479.6 Loss criteria.

(a)(1) The flooded land for which a producer requests benefits must be within the physical boundary of Harney County, Oregon.

(b) To be eligible for benefits under this subpart, a producer in Harney County and contiguous counties must have a tract of land that meets all the following criteria:

(1) The land is cropland or pasture land intended to be used for the production of feed for livestock (haying, grazing, or feed grain production) or other agricultural use in CY 1999 and one of the years 1994 through 1998;

(2) The land, for calendar year 1999, was inaccessible or unable to be used for crop production, grazing, or haying, or the production was unusable because of flooding;

(3) The land has been owned, leased or under a binding cash lease by the producer for crop year 1999;

(4) The land is a contiguous parcel of land with an area equal to one acre or more;

(5) The land actually produced a crop, or was used for pasture, during or after the 1990 crop year.

(c) On the CCC–454 producers shall be required to certify on each farm the number of flooded cropland and non-cropland acres for the farm in 1999.

(d) All determinations as to the amount of land eligible for enrollment and compensation under this subpart are subject to approval by the county committee.

(e) The county committee may use any available documentation to make the determinations under paragraphs (b) and (c) of this section, including but not limited to: maps, acreage reports, slides, precipitation data, water table levels and disaster reports.

§ 1439.7 Producer eligibility.

(a) Producers in Harney County will be eligible to receive benefits under this part only if they have suffered 1999-crop losses of eligible crops as a result of flooding.

(b) Payments made for losses suffered by eligible producers under this subpart shall be subject to the provisions of §§ 1478.4 through 1478.12 of this chapter, and their successor regulations, except as otherwise provided in this subpart.

(d) No person as defined and determined under part 1400 of this chapter may receive more than $40,000 under this subpart.

(e) No person as defined and determined under part 1400 of this chapter will be eligible for payment under this subpart if that person's annual gross receipts for the 1998 tax year were in excess of $2.5 million. That determination shall be made in the manner provided for in § 1478.6 of this chapter.

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of § 1400.501 and § 1400.502 of this chapter.

§ 1479.8 Calculation of assistance.

(a) The unadjusted value of this emergency assistance determined with respect to the flooded land in Harney County for each producer shall not exceed the amount obtained by adding paragraphs (b) and (c) of this section.

(b) For each eligible producer with respect to the applicable qualifying cropland, the number of qualifying acres will be multiplied by the established local payment rate for cropland, as determined by the county Committee in accordance with instructions of the Deputy Administrator.

(c) For each eligible producer with respect to the applicable qualifying pastureland or other land that does not meet the FSA definition of "cropland," the number of qualifying acres will be multiplied by the established payment rate for "non-cropland" acres.

§ 1479.9 Availability of funds; payments.

In the event that the total amount of claims submitted under this subpart exceeds the $1.09 million appropriated for the program provided for in this part, payments otherwise calculated under § 1478.8 shall be reduced by a uniform percentage to allow for a proration of claims within the appropriated amount. Such payment reductions shall be after the imposition of applicable payment limitation provisions. Applications for payment must be submitted by the time and in the manner specified by the Deputy Administrator.

Signed at Washington, DC, on May 30, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–13934 Filed 6–1–00; 3:45 pm]

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June 8, 2000

Part IV

Department of Education

Educating Blind and Visually Impaired Students; Policy Guidance; Notice

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DEPARTMENT OF EDUCATION

Educating Blind and Visually Impaired Students; Policy Guidance

AGENCY: Office of Special Education and Rehabilitative Services, U.S. Department of Education.

ACTION: Notice of policy guidance.

SUMMARY: The Department issues this Notice of Policy Guidance (notice) to address the requirements of Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Act Amendments of 1997, as they apply to the education of blind and visually impaired students. This notice updates OSEP memorandum 96–4, Policy Guidance on Educating Blind and Visually Impaired Students dated November 3, 1995, to reflect new and revised statutory provisions added by the IDEA Amendments of 1997 and conforming regulatory changes to implement those requirements. The Department issued guidance for the education of students who are deaf in the form of a Notice of Policy Guidance published in the **Federal Register** on October 30, 1992 (57 FR 49274). That policy guidance also is being updated for consistency with the IDEA Amendments of 1997.

This notice provides important background information to educators in meeting their obligations to ensure that blind and visually impaired students receive appropriate educational services in the least restrictive environment appropriate to their unique needs. A description of procedural safeguards also is included to ensure that parents are knowledgeable about their rights, including their right to participate in decisions regarding the provision of services to their children.

FOR FURTHER INFORMATION CONTACT: Rhonda Weiss or JoLeta Reynolds, U.S. Department of Education, Office of Special Education Programs, Mary E. Switzer Building, Room 3086, 330 C Street, SW, Washington, D.C. 20202. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD), may call (202) 205–5465.

Individuals with disabilities may obtain this document in an alternate format (*e.g.* Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center, telephone (202) 205–8113.

SUPPLEMENTARY INFORMATION: To respond to concerns that services for some blind and visually impaired students were not appropriate to address their unique educational and learning needs, particularly their needs for instruction in reading, writing, and composition, as well as orientation and mobility and other self-help skills, policy guidance on educating blind and visually impaired students was issued as OSEP memorandum 96–4 (November 3, 1995). This policy guidance provided some background information on these students and their unique needs, and applicable requirements of Part B of the Individuals with Disabilities Education Act (Part B) were explained.[1]

In the reauthorization of the IDEA Amendments of 1997, Public Law 105–17, Congress clarified public agencies' responsibilities in educating blind and visually impaired students in two important respects. Specifically, the reauthorized statute provides that Individualized Education Program (IEP) teams are required to make provision for instruction in Braille and the use of Braille for blind and visually impaired students, unless, based on relevant evaluations, the IEP team determines that instruction in Braille or the use of Braille is not appropriate.

Also, reflecting an awareness that a blind or visually impaired individual's ability to move around independently is closely linked to the individual's self esteem, an amendment to the statutory definition of "related services" adds "orientation and mobility services" to the list of examples of supportive services specifically identified in the statute.

The IDEA Amendments of 1997 contain other new requirements applicable to all children with disabilities, particularly in areas relating to requirements for evaluations and reevaluations, focusing IEPs on a student's meaningful involvement and progress in the general curriculum, and strengthening procedural safeguards and opportunities for parent participation in important educational decisions. Even with these significant statutory changes, the core concepts that were applicable prior to the enactment of the IDEA Amendments of 1997 continue to apply.

Background

The population of children who receive services under Part B because of blindness or visual impairment is extremely diverse. These children display a wide range of vision difficulties and varying adaptations to vision loss. With regard to degree of vision, the student population includes persons who are totally blind or persons with minimal light perception, as well as persons with varying degrees of low vision. For some individuals, blindness or visual impairment is their only disability, while for others, blindness or vision impairment is one of several identified disabilities that will affect, to varying degrees, learning and social integration. For example, some children who are blind or visually impaired also have hearing, orthopedic, emotional, or cognitive disabilities.

In addition, persons with similar degrees of vision loss may function very differently. A significant visual deficit that could pose formidable obstacles for some children may pose far less formidable obstacles for others. This is because adaptations to vision loss are shaped by individual factors, such as availability and type of family support and degree of intellectual, emotional, physical, and motor functioning. Therefore, in addition to the nature and extent of vision loss, a variety of factors needs to be considered in designing an appropriate educational program for a blind or visually impaired child, and these factors could change over time.

The challenge for educators of blind and visually impaired children, including those with other disabilities, is how to teach skills that sighted children typically acquire through vision. Blind and visually impaired students have used a variety of methods to learn to read, write, and acquire other skills, both academic and nonacademic. For example, for reading purposes, some students use Braille exclusively; others use large print or regular print with or without low vision aids. Still others use a combination of methods, including Braille, large print, low vision aids and devices with computer-generated speech, while others have sufficient functional vision to use regular print, although with difficulty.

In order to receive an appropriate education under Part B, it is generally understood that students who are blind or visually impaired must be provided appropriate instruction in a variety of subjects, including language arts, composition, and science and mathematics. However, in order to be educated in these subject areas effectively, blind and visually impaired children must be taught the necessary skills to enable them to learn to read and to use other appropriate technology to obtain access to information. It also is very important for blind and visually impaired children, including those with other disabilities, who need orientation and mobility services, to receive appropriate instruction in orientation and mobility as early as possible. Providing these children with needed orientation and mobility services at the appropriate time increases the likelihood that they can participate meaningfully in a variety of aspects of their schooling, including academic,

nonacademic, and extracurricular activities. Once these individuals are no longer in school, their use of acquired orientation and mobility skills should greatly enhance their ability to move around independently in a variety of educational, employment, and community settings. These skills also should enhance the ability of blind and visually impaired students to obtain employment, retain their jobs, and participate more fully in family and community life.

This policy guidance contains an explanation of the provisions of Part B of IDEA as amended by the IDEA Amendments of 1997 and Department regulations that address public agencies' obligations in educating blind and visually impaired students. Statements that utilize the word "should" constitute guidance and do not mean "must," and are not intended to impose any new requirements that go beyond the requirements of the applicable statutory and regulatory provisions explained below.

Application of the Free Appropriate Public Education Requirements of Part B to Blind and Visually Impaired Students

A. In General

Under Part B, each State and its public agencies must ensure that a free appropriate public education (FAPE) is made available to all children with specified disabilities residing in the State in mandatory age ranges, and that the rights and protections of Part B are afforded to those children and their parents. FAPE includes, among other elements, special education and related services that are provided at no cost to parents, under public supervision and direction, that meet State education standards and Part B requirements, that include an appropriate preschool, elementary, or secondary school education in the State involved, and that are provided in conformity with an individualized education program (IEP) that meets Part B requirements.[2]

Consistent with this obligation to ensure FAPE, the Part B regulations also provide that the services and placement provided to a child with a disability under Part B must be based on all of the child's identified special education and related services needs, and not on the child's disability.[3] This includes meeting the child's needs that result from identified disabilities other than blindness or visual impairment.

B. Evaluation Requirements

Before the initial provision of special education and related services to a child with a disability under Part B, a full and individual initial evaluation must be conducted in accordance with 34 CFR §§ 300.532 and 300.533.[4] The IDEA Amendments of 1997 require that a variety of assessment tools and strategies must be used in the evaluation process to gather relevant functional and developmental information about the child. This includes information provided by the parents, to assist in determining (1) whether the child is a child with a disability, and (2) the content of the child's IEP, including the extent to which the child can be involved and progress in the general curriculum, and for a child of preschool age, to participate in appropriate activities.[5] Through the evaluation process, determinations also can be made about the range of accommodations and modifications necessary for a blind or visually impaired child to be involved and progress in the general curriculum, the same curriculum as for nondisabled children.

An evaluation under Part B must assess the child in all areas related to the suspected disability, including, if appropriate, "health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities."[6] In addition, the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.[7] Any standardized tests that are utilized for those assessments must be conducted by trained and knowledgeable personnel.[8]

An assessment of a child's vision status generally would include the nature and extent of the child's visual impairment and its effect, for example, on the child's ability to learn to read, write, do mathematical calculations, and use computers and other assistive technology, as well as the child's ability to be involved in and progress in the general curriculum. For children with low vision, this type of assessment also generally should include an evaluation of the child's ability to utilize low vision aids, as well as a learning media assessment and a functional vision assessment. For children who are blind and for children who have low vision, consistent with the new statutory requirement regarding Braille instruction, the assessment of vision status generally would be closely linked to the assessment of the child's present and future reading and writing skills, needs, and appropriate reading and writing media. This information would be used by the IEP team in determining whether it would be inappropriate to provide a blind or visually impaired child with instruction in Braille or the use of Braille.[9]

As required for children with other disabilities, appropriate assessments of blind and visually impaired children, including those with other disabilities, also must address each child's ability to be involved and progress in the general curriculum, the same curriculum as for nondisabled children. This information could be obtained, for example, from an assessment of academic performance that would focus on the child's ability to learn to read, including reading comprehension, and to learn composition, science and mathematics, and computing.

As part of the evaluation process, it is especially important to address a blind or visually impaired child's ability to be involved and progress in the general curriculum, the same curriculum as for nondisabled children, particularly in situations where the child has other disabilities. This is because of the relationship of the evaluation to the child's IEP, which focuses specifically on participation in the general curriculum offered to nondisabled students, including the need for any supplementary aids and services, other accommodations, modifications, or devices to facilitate the blind or visually impaired child's involvement in the general curriculum. This information is needed regardless of whether a child will be educated in a regular classroom or in a separate classroom or school.[10] The evaluation also should identify any necessary program modifications or supports for school personnel needed for a child or on behalf of a child to ensure that the child's unique needs arising from blindness or visual impairment or other identified disabilities are appropriately addressed in the IEP.

Because of the importance for some blind and visually impaired students of acquiring the skills necessary to access information, additional assessments may be necessary to determine whether a child should receive specific instruction in listening skills. Possible assessments for this purpose could include assessments of hearing, general intelligence, or communicative status. A child's need for orientation and mobility services and the appropriate method or methods for acquiring the requisite skills also should be assessed, and this generally would be accomplished through an assessment of motor abilities, as well as vision and communicative status, which should be conducted as early as possible. This is

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especially important because parents and organizations representing the interests of blind and visually impaired individuals have reported that, in some instances, these students are not receiving appropriate orientation and mobility services and that appropriate evaluations of their needs for these services are not being conducted. In all instances, the results of all assessments administered to the child, including those administered to determine the child's needs resulting from one or more disabilities other than blindness or visual impairment, must be considered as the child's IEP is developed.[11]

C. IEP Development and Content Requirements

The IDEA Amendments of 1997 make a number of significant changes to the Act's IEP requirements, which are applicable to all disabled students, including blind and visually impaired students.[12] Under Part B, an IEP developed in accordance with 34 CFR §§ 300.341-300.350 is the essence of each child's entitlement to a FAPE. The IDEA Amendments of 1997 clarify that each child's IEP must (1) relate the child's education to the child's involvement and progress in the general curriculum, the same curriculum as for nondisabled children, and (2) address unique needs arising out of the child's disability or disabilities. The IDEA Amendments of 1997 also require that IEPs for disabled children, including blind and visually impaired children, contain a statement of measurable annual goals, including benchmarks or short-term objectives.[13] The annual goals must be related to (1) meeting the child's needs that result from the disability, or disabilities, to enable the child to be involved in and progress in the general curriculum, and (2) meeting each of the child's other educational needs that result from the child's disability, or disabilities.

With regard to these criteria for developing annual goals, IEP teams for blind and visually impaired children must ensure that those children can appropriately access the general curriculum offered to nondisabled children, and that unique needs relating to the child's blindness or visual impairment or other identified disabilities are addressed.[14] Therefore, if IEP teams identify educational needs of individual children arising from their blindness or visual impairment or other disability, that the general curriculum does not sufficiently address, those specific needs must be addressed.[15] For example, if a particular student has little or no skill in Braille reading and writing, the IEP team may conclude that more frequent and intensive instruction in Braille likely would be necessary before the student could be fully involved and make meaningful progress in the general curriculum offered to nondisabled children. In addition, once the child's initial need for Braille instruction has been met, the IEP team should periodically make a determination of the child's ability to be involved and progress in the general curriculum, and the extent to which continued intensive Braille instruction and other accommodations would be needed.

The IDEA Amendments of 1997 include specific requirements regarding including children with disabilities in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary.[16] For example, each child's IEP must include a statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed for the child to participate in the assessment. Also, if the IEP team determines that a child will not participate in a particular assessment or part of an assessment, the IEP must include a statement of why that assessment is not appropriate for the child, and how the child will be assessed.[17]

Consistent with the emphasis in the IDEA Amendments of 1997 on relating the child's IEP to the child's involvement and progress in the general curriculum, IEP teams must ensure that blind and visually impaired students, including those with other disabilities, receive appropriate instructional accommodations and modifications. Providing appropriate instructional accommodations and modifications will help prepare these students to participate in State or district-wide assessments of student achievement with appropriate accommodations or individual modifications in test administration.

The IDEA Amendments of 1997 also require the development of guidelines for use of alternate assessments, which are used if an IEP team determines that an individual child cannot participate in regular assessments, even with appropriate accommodations or individual modifications in test administration.[18] However, it is expected that if IEP teams properly make individualized determinations about what testing accommodations or individual modifications in test administration are appropriate for a child, it should be necessary to use alternate assessments for a relatively small percentage of children with disabilities. In addition, if the purpose of a test is to measure a student's ability to read, States need to be able to test to determine whether blind or visually impaired students, whose primary reading medium is not standard print, can read, whether by providing them with a Braille or large print version of the test, or through some other means, as appropriate.

Each child's IEP must be developed by an IEP team, that is, a group of individuals that includes:

- The parents of the child;
- At least one regular education teacher of the child if the child is, or may be, participating in the regular education environment;
- At least one special education teacher of the child, or, if appropriate, at least one special education provider of the child;
- A public agency representative who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general curriculum, and about the availability of resources of the public agency;
- An individual who can interpret the instructional implications of evaluation results, who may be another member of the IEP team;
- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and,
- If appropriate, the child.[19]

Public agencies must ensure that students are invited to attend IEP meetings if the participation of the student would be appropriate.

For IEP meetings involving transition services, there are additional requirements. The Part B regulations provide that the public agency must invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of either the student's transition services needs, the statement of needed transition services for the student, or both. In these situations, if the student does not attend the meeting, the public agency must ensure that the student's preferences and interests are considered. If another agency would likely be responsible for providing or paying for needed transition services, the public agency must ensure that a representative of that agency is invited to the meeting.[20] The public agency responsible for the student's education generally must initiate and conduct meetings for the purpose of developing, reviewing, and, if necessary, revising the IEP, or the individualized family service plan (IFSP), of a child with a disability. The public agency must ensure that the child's IEP team (1) reviews the child's IEP periodically, but not less than annually, to determine whether the child's annual goals are being achieved, and (2) revises the IEP as appropriate.[21]

An IFSP, the written plan for providing early intervention services under Part C of IDEA to an infant or toddler with disabilities and his or her family, may serve as the IEP for a child with a disability aged 3 through 5 (or at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year). For this to occur, the IFSP must contain the material described in section 636 of the Act, and must be developed in accordance with §§ 300.341–300.346 and §§ 300.349–300.350. In addition, using the IFSP to serve as the IEP must be consistent with State policy and agreed to by the agency and the child's parents.[22] If an IFSP is to be used, the public agency must provide the child's parents a detailed explanation of the differences between an IFSP and an IEP and must obtain written, informed parental consent to use an IFSP.[23]

D. Special Factors in IEP Development

In developing IEPs, the IDEA Amendments of 1997 require IEP teams to consider a range of special factors. The following two factors are particularly relevant for blind and visually impaired students.

1. Instruction in Braille and the Use of Braille

One of the most serious concerns voiced by parents of blind or visually impaired children and their advocates, as well as by adults who are blind or visually impaired, is that the number of students receiving instruction in Braille has decreased significantly over the past several decades. As a result, these individuals believe that Braille instruction is not being provided to some students for whom it may be appropriate. Braille has been a very effective reading and writing medium for many blind and visually impaired persons, and knowledge of Braille provides numerous tangible and intangible benefits, including increased likelihood of obtaining productive employment and heightened self-esteem.

The IDEA Amendments of 1997, therefore, include a specific provision with regard to instruction in Braille and the use of Braille and state:

The IEP team must—* * * (iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;[24]

This statutory provision requires IEP teams to make provision for instruction in Braille or the use of Braille, unless it is determined, after appropriate evaluations of the child's reading and writing needs, that this instruction is not appropriate for a particular child. Decisions about instruction in Braille and the use of Braille must be made on a case-by-case basis, consistent with the individual needs of a particular child. In developing IEPs for children with low vision, even for those with a high degree of functional vision, IEP teams also must consider evaluations of the child's need for instruction in Braille and the use of Braille, and must make provision for such instruction unless it is determined, after appropriate evaluation, to be inappropriate for the child. Factors such as shortages of trained personnel to provide Braille instruction, the availability of alternative reading media, such as large print, recorded materials, or computers with speech output, or the amount of time needed to provide a child with sufficient and regular instruction to attain proficiency in Braille or the use of Braille, may not be used to deny Braille instruction to a child for whom that instruction has not been determined individually to be inappropriate. Once the IEP team includes instruction in Braille in the IEP, this instruction, as is true for other aspects of the child's IEP, must be implemented as soon as possible following the child's IEP meeting.[25]

For a child to become proficient in Braille, systematic and regular instruction from knowledgeable and appropriately trained personnel is essential. For blind and visually impaired children, including those with other disabilities, IEP teams must ensure that the instructional time allocated for Braille instruction is adequate to provide the level of instruction determined appropriate for the child. IEP teams also must ensure, as discussed more fully below, that appropriate assistive technology is provided to facilitate necessary Braille instruction. Likewise, for children with low vision, instruction in the appropriate utilization of functional vision and in the effective use of low vision aids requires regular and intensive intervention from knowledgeable and appropriately trained personnel.

IEP teams also must consider the method or methods for teaching blind and visually impaired children, including those with other disabilities, how to write and compose. Children whose reading medium is Braille likely will use Braille for these purposes. For composition, however, in addition to writing Braille manually, these children also may benefit from using assistive technology devices, such as a personal computer with speech output or a Braille display. IEP teams must make individualized determinations about the needs of blind and visually impaired children, including those with other disabilities, for instruction in writing and composition, and must include effective methods for teaching writing and composition, including the appropriate use of assistive technology, in the IEPs of these students.

In addition to mastering the skills taught to all children, blind and visually impaired children, including those with other disabilities, must receive instruction in the skills that the IEP team determines are necessary for the child to obtain access to information needed to participate in the general curriculum, as a supplement to instruction in the reading method determined appropriate for the child. The skills that could be taught to access information include use of cassette recordings, including recordings that utilize compressed speech, personal computers with speech output or a Braille display, and optical scanners with speech output. Use of these devices, methods, and services should be considered on an individual basis to supplement Braille instruction for students for whom Braille is the primary reading medium, or to supplement print or large print for children using print as their primary reading medium. While instruction in the skills necessary to access information is extremely important, local educational agencies also are required by Part B and Section 504 to provide instructional materials in the format determined appropriate for the child by the IEP team to enable the child to participate in the public agency's program.[26]

In addition, for most students who are blind or visually impaired, including those with other disabilities, the development of skills related to future employment, vocational training, or postsecondary education, such as the use of reader services, would be appropriate. For example, reader

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services have proven to be vital for the workplace success of many adults who are blind or visually impaired. As appropriate, IEP teams should consider making reader services available, as well as providing instruction in the skills necessary to the effective use of those services. In considering whether reader services or other services related to the workplace success of these students would be appropriate, IEP teams should consider whether those services would be necessary to supplement the techniques that the student already may be receiving to access information, or necessary for the student's successful transition from school to post-school activities.

2. Assistive Technology

The IDEA Amendments of 1997 continue to recognize the importance of assistive technology in the education of children with disabilities, and specify assistive technology as one of the special factors that IEP teams must consider in IEP development.[27] Issues related to accessing information frequently arise in the education of blind and visually impaired students, as well as those with other disabilities. Therefore, it is especially important that IEP teams for blind and visually impaired students give appropriate consideration to these students' needs for assistive technology and the full range of assistive technology devices and services that are available for them, and this consideration needs to occur as early as possible. As is true for students with other disabilities, a blind or visually impaired student's ability to become proficient in the use of appropriate assistive technology could have a positive effect on the development of the student's overall self-confidence and self-esteem. Students taught the skills necessary to address their disability-specific needs are more capable of participating meaningfully in the general curriculum offered to nondisabled students.

The Department's regulations also provide that, on a case-by-case basis, consideration of the use of school-purchased assistive technology devices in a child's home or in other settings may be required. If the child's IEP team determines that the child needs to have access to a school-purchased device at home or in another setting in order to receive FAPE, a statement to this effect must be included in the child's IEP, the child's IEP must be implemented as written, and the device must be provided at no cost to the parents.[28]

In meeting the assistive technology needs of blind and visually impaired students, public agencies may use whatever State, local, Federal, and private sources of support available in the State to finance required services.[29] To obtain information about assistive technology, including information about assistive technology that could be used to assist in the education of blind and visually impaired students, public agencies may wish to consult the Assistive Technology Act of 1998 (Tech Act) project that serves their State.[30] In making assistive technology purchases, public agencies also need to ensure that they comply with applicable requirements of Federal law, including Section 504, Title II of the ADA, and the Tech Act.[31]

E. Orientation and Mobility Services

For some blind and visually impaired children, the inability to move around independently can be a formidable obstacle to participating in school, family, and community life. In some instances, blind and visually impaired individuals have felt discouraged from seeking employment opportunities because of their inability to get to the job or negotiate the work environment once on the job, or because of their fears that this will be the case. Still in other instances, some blind and visually impaired individuals have been denied access to employment opportunities because of employers' misperceptions that the individual will be unable to get around without sighted assistance. Therefore, acquisition of orientation and mobility skills, like the acquisition of other skills such as academic and social skills, is of great importance to the social and economic independence of blind and visually impaired persons.

Orientation and mobility services are generally recognized as encompassing distinctive strategies particular to the educational needs of blind or visually impaired students. The IDEA Amendments of 1997 amended the list of examples of "related services" contained in the statute to include "orientation and mobility services."[32] The term "orientation and mobility services" is defined in the Part B regulations, at 34 CFR § 300.24(b)(6), as follows:

(i) * * * services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching students the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (*e.g.*, using sound at a traffic light to cross the street);

(B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

The responsible public agency must ensure that orientation and mobility services are provided by trained and knowledgeable personnel who meet appropriate State qualification standards. In some instances, these personnel will need to be qualified to work with blind and visually impaired students who, in addition to their blindness or visual impairments, have other physical, sensory, or emotional disabilities. Because the need for safe movement throughout their school, home, and community environments is of critical importance for blind and visually impaired students, and because inadequate skill in this area could have an adverse impact on the ability of some blind and visually impaired persons to obtain appropriate employment, orientation and mobility services should be considered for each blind and visually impaired child. The extent to which orientation and mobility services are necessary for an individual child and, if so, the amount and duration of those services that are necessary for a child to receive FAPE are decisions for the child's IEP team. If a blind or visually impaired child has other disabilities, such as hearing, motor, or emotional disabilities, the child's unique disability-specific needs arising from those other disabilities also must be considered in designing an appropriate program of orientation and mobility services for the child. Orientation and mobility services should be provided as early as possible in a child's education, and updated or supplemented periodically, as needed. For example, while it may not be appropriate to teach a very young child how to cross a busy street, a very young child still could be taught the skills necessary to move around inside a school building. As students mature, it might be appropriate, depending on individual factors, for the student to be taught how to cross a busy street. Therefore, IEP teams need to be aware of individual factors that would affect the nature and extent to which orientation and mobility services may be needed for a particular student.

For some children with disabilities such as children with significant cognitive disabilities, "travel training * * * is often an integral part of their special educational program in order for them to receive FAPE and be prepared for post-school activities, including employment and independent living."[33] Providing blind or visually impaired students, particularly those with other disabilities, with travel training also could facilitate their fuller integration into their communities in and outside of school, both during and following their school attendance. Therefore, the definition of "special education" has been amended at 34 CFR § 300.26(a)(2)(ii) to include "travel training," and the pertinent definition reads as follows:

Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (*e.g.*, in school, in the home, at work, and in the community).[34]

Since the importance of travel training has been recognized for children with disabilities, such as children with significant cognitive disabilities, IEP teams for blind and visually impaired students, particularly those with significant cognitive disabilities, may need to consider these students' need for travel training, as appropriate. Travel training is often integral to ensuring that some children with disabilities receive FAPE and are prepared for post-school activities such as employment and independent living. Travel training is important to enable these students to attain systematic orientation to and safe movement within their environment in school, at home, at work and in the community.[35]

F. Additional Factors in IEP Development

The following needs[36] also may need to be considered and appropriately addressed by the child's IEP team to ensure a child's appropriate access to the general curriculum:

- Compensatory skills, such as communication and listening modalities;
- Extended school year services, if determined necessary to provide FAPE to the student;[37]
- Social interaction skills;
- Recreation and leisure skills;
- Career education; and
- For students with low vision, visual efficiency skills.

This list is not intended to be exhaustive. A child's IEP team could determine that it would be appropriate to consider an individual child's need for other skills or services, in addition to those listed above. Therefore, in making decisions about the educational programs for a blind or visually impaired child, as is true for other disabled children, IEP teams must consider the full range of skills and services necessary for the child to receive FAPE, and to be involved and progress in the general curriculum, as appropriate.

Least Restrictive Environment and Provision of Services Requirements

Part B requires States to have policies and procedures for ensuring that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.[38] This requirement is known as the least restrictive environment (LRE) requirement. Consistent with this LRE principle, the IDEA Amendments of 1997 require that each child's IEP contain an explanation of the extent, if any, to which the child will not be educated and participate with nondisabled children in the regular class and in academic, extracurricular and other nonacademic activities.[39] Department regulations also provide that a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum for that child.[40]

Thus, before a disabled child can be removed from the regular classroom, the placement team, which includes the child's parents, must consider whether the child can be educated in less restrictive settings with the use of appropriate supplementary aids and services and make a more restrictive placement only when they conclude that education in the less restrictive setting with appropriate supplementary aids and services cannot be achieved satisfactorily.[41]

Recognizing that the regular classroom may not be the LRE placement for every disabled student, the Part B regulations require public agencies to make available a continuum of alternative placements or a range of placement options, to meet the needs of students with disabilities for special education and related services. The options on this continuum include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. In addition, the continuum must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.[42]

Part B also requires that each child's placement must be based on the child's IEP.[43] That is why placement decisions cannot be made before a student's IEP is developed. Rather, it is the child's IEP that forms the basis for the placement decision. This means, for example, that the statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, the statement of the program modifications or supports for school personnel that will be provided for the child, and the explanation of the extent, if any, to which the child will not participate with nondisabled children in regular classes and other academic, nonacademic and extracurricular activities, form the basis for the placement decision. Under Part B, the IEP team for each child with a disability must make an individualized determination regarding how the child will participate in the general curriculum, including supports needed for the child, and what, if any, educational needs will not be met through involvement in the general curriculum. If, in the evaluation process, full consideration has been given to the range of accommodations and modifications that might be needed for the blind or visually impaired student, including a student who has other disabilities, such as a hearing impairment or an emotional disability, to access the general curriculum offered to nondisabled students, information about those needs should be readily available to the IEP team. After the student's IEP is developed, the placement determination, that is, the determination as to the setting in which services will be provided, must be made on an individual basis, consistent with the student's IEP and the Act's LRE requirements.

The IDEA Amendments of 1997 specify that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.[44] Public agencies and parent training and information centers should take steps to ensure that parents of blind and visually impaired

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students are informed about available placement options for their child, including those addressing unique needs arising from a child's blindness or visual impairment and other disabilities, if applicable, and other identified educational needs. This will help to ensure that parents can provide meaningful input to the group making the placement decision.

The overriding rule in placement is that each student's placement must be determined on an individual basis.[45] In addition, as is true for students with other disabilities, the potential harmful effect of the placement on the blind or visually impaired student, or the quality of services he or she needs, must be considered in determining the LRE.[46] As in other situations, placements of blind and visually impaired students, including those with other disabilities, may not be based solely on factors such as category of disability, significance of disability, availability of special education and related services, availability of space, configuration of the service delivery system, or administrative convenience.[47]

In implementing Part B's LRE requirements, in some instances, placement decisions are inappropriately made before IEPs that address a child's unique needs are developed. Individual determinations of appropriate special education and related services, supplementary aids and services, and program modifications and supports for school personnel must be made through the IEP process, which must address the development of skills necessary for a student to cope with the impact of blindness or low vision or other identified disabilities on the student's ability to learn and to be involved and progress in the general curriculum. Since Part B requires that each child's placement must be based on his or her IEP, making placement decisions before a student's IEP is developed is a practice that violates Part B and could result in the denial of FAPE in the LRE.

Still in other instances, some students have been inappropriately placed in the regular classroom although it has been determined that their IEPs cannot be appropriately implemented in the regular classroom even with the necessary and appropriate supplementary aids and services. In these situations, the nature of the student's disability and individual needs could make it appropriate for the student to be placed in a setting outside of the regular classroom in order to ensure that the student's IEP is satisfactorily implemented. By contrast, there are other instances where some blind and visually impaired students have been inappropriately placed in settings other than the regular classroom, even though their IEPs could have been implemented satisfactorily in the regular classroom with the provision of appropriate supplementary aids and services. As is true for all educational decisions under Part B, these concerns about the misapplication of the LRE requirements for blind and visually impaired students underscore the importance of making individual placement determinations based on each student's unique abilities and needs.

In making placement determinations regarding children who are blind or visually impaired, it is essential that groups making decisions regarding the setting in which appropriate services are provided consider the full range of settings that could be appropriate depending on the individual needs of the blind or visually impaired student, including needs that arise from any other identified disabilities that the student may have. The following are some examples:

- A regular classroom with needed support services provided in that classroom by an itinerant teacher or by a special education teacher assigned to that school;
- The regular classroom with services provided outside the classroom by an itinerant teacher or by a special education teacher assigned to that school;
- A self-contained classroom in a regular school that provides services that address needs arising from the student's blindness or visual impairment as well as other identified disabilities, if applicable; and
- A special school with a residential component that provides services that address the full range of the blind or visually impaired student's disability-specific needs, including those arising from other disabilities, if applicable.

Procedural Safeguards

Part B also requires that public agencies afford parents of children with disabilities an array of procedural safeguards. These include giving parents written notice, in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. This written notice must be given a reasonable time before a public agency proposes or refuses to initiate, or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. Included in this notice, among other components, are a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, a description of any options the agency considered and the reasons why those options were rejected, a description of any evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action, and sources for parents to contact, such as parent training and information centers or Protection and Advocacy entities or other advocacy organizations, to gain assistance in understanding the provisions of the Act.[48] The requirement to provide a description of any option considered includes a description of the types of placements that were actually considered for the child, e.g., regular class placement with needed supplementary aids and services, regular classroom with pull-out services, special school, and the reasons why these placement options were rejected. Providing this kind of information to parents will enable them to play a more knowledgeable and informed role in the education of their children.

Informed parental consent must be obtained before conducting an initial evaluation or reevaluation, with certain limited exceptions, and before the initial provision of special education and related services to a child with a disability.[49] Section 300.500(b)(1) of the Part B regulations defines "consent" to mean that the parent has been fully informed of the activity for his or her consent has been sought in his or her native language or other mode of communication.

The IDEA Amendments of 1997 also require public agencies to give parents a copy of a notice of procedural safeguards available to parents under Part B, written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. Such a notice must be provided prior to an initial referral of a child for evaluation, before an IEP meeting, before a reevaluation, and upon receipt of a request for a due process hearing. This notice, among other matters, must inform parents of their right to file a complaint under the State complaint procedures at 34 CFR §§ 300.660–300.662, as well as their right to seek mediation or request a due process hearing.[50] Part B affords parents and public educational agencies the right to initiate an impartial due process hearing on any matter regarding the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.[51]

The IDEA Amendments of 1997 provide that, when a parent requests a due process hearing on matters involving the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, the public agency must inform the parents of the availability of mediation as a means to resolve the dispute. Mediation, at a minimum, must be available whenever an impartial due process hearing is requested. The mediation process must be voluntary on the part of the parties, not be used to deny or delay a parent's right to a due process hearing or any other rights afforded under Part B of the Act, and be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.[52]

Disagreements between parents and public agencies over issues such as the extent that Braille instruction should be included in a child's IEP, or the educational setting in which the child's IEP should be implemented, are examples of some of the matters that can be the subject of mediation or an impartial due process hearing. The use of mediation is strongly encouraged, since its use could eliminate the need to utilize the Act's due process procedures to resolve the dispute. Public agencies need to inform parents of all children with disabilities, including parents of blind and visually impaired students, about their right to initiate a due process hearing if agreement cannot be reached on important educational decisions, as well as their right to file a complaint under the State complaint procedures at 34 CFR §§ 300.660–300.662 of the Part B regulations, including a description of how to file a complaint and the timelines under those procedures.

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Dated: June 5, 2000.

Richard W. Riley,

Secretary of Education.

Appendix

[1] Two other related Federal laws also are applicable to the education of blind and visually impaired students. Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. 794 and Title II of the Americans with Disabilities Act of 1990 (Title II of the ADA), 42 U.S.C. 12131, are civil rights laws that protect persons with disabilities from discrimination on the basis of disability. The Department's Office for Civil Rights (OCR) enforces Section 504, as it applies to recipients of Federal financial assistance from the Department. OCR also enforces Title II of the ADA, as it applies to public entities, regardless of receipt of Federal funds. Under Section 504 and its implementing regulations at 34 CFR Part 104, children with disabilities in public elementary and secondary education programs operated by recipients of Federal financial assistance are entitled to a free appropriate public education in accordance with the Section 504 regulations at 34 CFR 104.33–104.36. With respect to elementary and secondary education programs, OCR generally interprets Title II of the ADA and its prohibition against discrimination on the basis of disability in a manner consistent with Section 504 and its regulations. The IDEA requirements described in this Notice are consistent with recipients' and public entities' obligations to provide FAPE to blind and visually impaired students under Section 504 and Title II of the ADA.

For further information about the requirements of Section 504 and Title II of the ADA, as they apply to the education of blind and visually impaired students, contact the OCR Customer Service Team at the following address and telephone number: OCR Customer Service Team, U.S. Department of Education, 330 C Street, S.W. Room 5212, Washington, D.C. 20202–1100, Telephone: (202) 205–5413; (202) 260–0471 for TTD services, Toll Free: 1–800–421–3481. Fax: (202) 205–9862, E-mail: ocr@ed.gov.

[2] 20 U.S.C. 1412(a)(1) and 34 CFR 300.121; 20 U.S.C. 1401(8) and 34 CFR 300.13.

[3] 34 CFR 300.300(a)(3)(i)–(ii).

[4] 34 CFR 300.531.

[5] 34 CFR 300.532(b).

[6] 34 CFR 300.532(g).

[7] 34 CFR 300.532(h).

[8] 20 U.S.C. 1414(b)(3)(B)(i) and 34 CFR 300.532(c)(1)(ii).

[9] *See* 20 U.S.C. 1414(d)(3)(B)(iii).

[10] 34 CFR 300.532(b)(1)–(2); *see also* Appendix A to 34 CFR Part 300, question 2 (Appendix A), 64 FR at 12472 (Mar. 12, 1999).

[11] The IEP is a written statement for a child with a disability that is developed, reviewed, and revised at a meeting in accordance with the requirements of 34 CFR 300.341–300.350. *See* 34 CFR 300.340(a).

[12] For a fuller explanation of IEP and other requirements of the Individuals with Disabilities Education Act Amendments of 1997, *see* Notice of Interpretation, Appendix A to 34 CFR Part 300, published at 64 FR 12406, 12469 (Mar. 12, 1999).

[13] 34 CFR 300.347(a)(2).

[14] *See* National Agenda for the Education of Children and Youths with Vision Impairments, including Multiple Disabilities, AFB Press (1995).

[15] 34 CFR 300.347(a)(2); Appendix A, question 2, 64 FR at 12472 (Mar. 12, 1999).

[16] 34 CFR 300.138(a).

[17] 34 CFR 300.347(a)(5)(i)–(ii).

[18] 34 CFR 300.138(b); *see also* Attachment 1, 64 FR at 12564 (Mar. 12, 1999).

[19] 34 CFR 300.344(a)(1)–(7).

[20] 34 CFR 300.344(b).

[21] 34 CFR 300.343(c).

[22] 34 CFR 300.343(a) and 300.342(c).

[23] 34 CFR 300.342(c)(2).

[24] 20 U.S.C. 1414(d)(3)(B)(iii) and 34 CFR 300.346(a)(2)(iii).

[25] 34 CFR 300.342(b)(1)(ii).

[26] *See* Analysis of Comments and Changes, published as Attachment 1 to 34 CFR Part 300 (Attachment 1), 64 FR at 12590 (Mar. 12, 1999).

[27] 34 CFR 300.346(a)(2)(v).

[28] 34 CFR 300.308(b); Appendix A, question 36, 64 FR at 12479 (Mar. 12, 1999).

[29] 34 CFR 300.301(a). *See also* 34 CFR 300.244 regarding an LEA's obligations to use up to 5 percent of the amount the agency receives in any fiscal year in combination with other amounts other than education funds to develop and implement a coordinated services system designed to improve results for children and families; OSEP memorandum 00–7 dated January 13, 2000 to State Directors of Special Education, entitled Enhancing Coordinated Services Systems among LEAs and SEAs.

[30] For a complete list, see a project sponsored by the National Institute on Disability and Rehabilitation Research (NIDRR), a component of the Office of Special Education and Rehabilitative Services, at http://www.resna.org/taproject/at/statecontacts.html

[31] *See* the October 9, 1997 "Dear Colleague" letter from the Secretary and the attached technical assistance packet. For guidance on standards that the Department uses for its suppliers, *see* Requirements for Accessible Software Design, 1997, at http://gcs.ed.gov/coninfo/clibrary/software.htm

[32] 20 U.S.C. 1401(22).

[33] *See* Attachment 1, 64 FR at 12549 (Mar. 12, 1999).

[34] 34 CFR 300.26(a)(4).

[35] *See* Attachment 1, 64 FR at 12549 (Mar. 12, 1999).

[36] National Agenda for the Education of Children and Youth with Visual Impairments, including Multiple Disabilities, AFB Press, at p. 14 (1995).

[37] 34 CFR 300.309.

[38] 34 CFR 300.550(b).

[39] 20 U.S.C. 1414(d)(1)(A)(iv) and 34 CFR 300.347(a)(3)–(4); Appendix A, question 1, 64 FR at 12471 (Mar. 12, 1999).

[40] 34 CFR 300.552(e).

[41] 34 CFR 300.550(b); Attachment 1, 64 FR at 12638 (Mar. 12, 1999).

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[42] 34 CFR 300.551(b).
[43] 34 CFR 300.552(b)(2). That regulation requires that each child's placement is determined at least annually, is based on his or her IEP, and is in the school or facility as close as possible to the child's home. 34 CFR 300.552(b)(1)–(3). Further, unless a disabled student's IEP requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. 34 CFR 300.552(c).
[44] 20 U.S.G. 1414(f) and 34 CFR 300.501(c) and 300.552(a).
[45] *See* 34 CFR 300.552.
[46] 34 CFR 300.552(d).
[47] Appendix A, question 1, 64 FR 12406 at 12471 (Mar. 12, 1999).
[48] 34 CFR 300.503(a)(1) and (b)(2)–(4), and (7).
[49] 34 CFR 300.505(a)(1).
[50] 34 CFR 300.504.
[51] 34 CFR 300.507(a).
[52] 34 CFR 300.507(a)(2), 300.506(a)(2) and (b).

[FR Doc. 00–14485 Filed 6–7–00; 8:45 am]
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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Thursday,
June 8, 2000

Part V

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Research and Training Centers and Notice Inviting Applications for Fiscal Year (FY) 2000; Correction Notice

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Research and Training Centers and Notice Inviting Applications for Fiscal Year (FY) 2000

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On May 18, 2000 a notice of final funding priorities and a notice inviting applications for new awards for three Rehabilitation Research and Training Centers (RRTCs) for FY 2000 were published in the **Federal Register** (65 FR 31752, 31757).

The absolute priority for the Improving Services and Supports for Individuals with Long-Term Mental Illness (84.133B–7) shown on page 31755 was published as incomplete. This notice corrects the absolute priority to include additional requirements and a changed point value for the selection criteria. It is corrected to read:

In carrying out these purposes, the Center must:

(1) Develop measures that can be applied to evaluate self-determination activities in terms of rehabilitation outcomes, quality of services, and availability of community resources;

(2) Identify and assess self-determination direction theories, models, and activities, as well as the barriers to participation in self-determination activities for individuals with disabilities;

(3) Develop and evaluate management tools to enable service providers to support self-determination;

(4) Develop, conduct, and evaluate, training on self-determination and consumer choice to improve understanding and support of self-determination;

(5) Identify factors that prevent access and expanded use of technology to enhance self-determination;

(6) Identify or develop and evaluate self-determination models that integrate technology into activities and services that support self-determination and assess consumer satisfaction and benefits;

(7) Identify and evaluate the extent of knowledge and experience that service providers (*e.g.*, rehabilitation counselors, therapists, job coaches, psychiatrists and psychologists, and other service providers) have using technology to support self-determination; and

(8) Assess policies of service providers and payers in terms of their implications for fostering or impeding self-determination, and identify strategies for policy improvements.

In addition to the activities proposed by the applicant to carry out these purposes, the RRTC must:

(1) Conduct in the third year of the grant, a state-of-the-science conference on self-determination for persons with significant and persistent mental illness and publish a comprehensive report in the fourth year of the grant; and

(2) Address in its research the specific needs of minority populations with LTMI.

This notice corrects the "Maximum Award Amount Per Year" as shown on page 31758 for the Improved Management of CIL Programs and Services (84.133B–1). The published maximum award amount per year reads "$500,000". It is corrected to read "$600,000". This notice also corrects the "Maximum Award Amount Per Year" for Improving Services and Supports for Individuals with Long-Term Mental Illness (84.133B–7). The published maximum award amount per year reads "$550,000". It is corrected to read "$750,000".

The published point total in the selection criteria for (h) *Collaboration* as shown on page 31759 reads "(2 points total)". It is corrected to read "(3 points total)".

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: Donna_Nangle@ed.gov.

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Applicable Program Regulations: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Centers)

Dated: May 31, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–14386 Filed 6–7–00; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S.J. Res. 44/P.L. 106–205

Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)

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To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)

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To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the "John J. Buchanan Post Office Building". (May 26, 2000; 114 Stat. 320)

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To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)

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To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27 and 28

[Docket No. CN–00–001]

RIN 0581–AB67

Revision of Cotton Classification Procedures for Determining Upland Cotton Color Grade

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the procedure for determining the official color grade for Upland cotton. The color grade for Upland cotton is a part of the official classification which denotes cotton fiber quality used in the marketing and manufacturing of cotton. Previously, the color grade was determined by visual examination and comparison to the Official Cotton Standards by qualified cotton classers. The revision replaces the classer's color determination with the instrument color measurement made by the High Volume Instrument (HVI) system used for official cotton classification for Upland Cotton since 1991.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revision was published in the **Federal Register** on March 1, 2000 (65 FR 10979). A 30-day comment period was provided for interested persons to respond to the proposed rule. No comments were received.

This final rule has been determined to be not significant for purposes of Executive Order 12866, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 35,150 cotton growers, merchants, and textile manufacturers in the U.S. who voluntarily use the AMS cotton classing services annually under the United States Cotton Standards Act, the Cotton Statistics and Estimates Act, and the Cotton Futures Act. The majority of these entities are small businesses under the criteria established by the Small Business Administration (13 CFR § 121.601). The change in procedure will not significantly affect small businesses as defined in the RFA because:

(1) Classification will continue to be based upon the Official Standards for Upland Cotton Color Grade established and maintained by the Department;

(2) The High Volume Instrument color measurement has been a part of the official classification record since 1991. Implementation of the revision for all cotton classification will not affect competition in the marketplace or adversely impact on cotton classification fees; and

(3) The use of cotton classification services is voluntary. For the 1999 crop, 15,825,000 running bales were produced by growers, and virtually all of them were voluntarily submitted for USDA classification. Classification services provided for merchants and manufacturers during the same period totaled approximately 404,000 bales.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions amended by this final rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Background

Pursuant to the authority contained in the United States Cotton Standards Act, the Secretary of Agriculture maintains official cotton standards of the United States and provides classification and testing services to cotton producers, textile manufacturers, merchants, and others in the domestic and international cotton industry. The standards are used for the classification of American upland cotton and provide a basis for the determination of value for commercial purposes. Classification services provide information on quality of cotton. The National Cotton Council represents the interests of all seven segments of the U.S. cotton industry: growers, ginners, warehousers, merchants, cooperatives, manufacturers, and cottonseed oil crushers.

Need for Revisions

High Volume Instrument classification was adopted for all USDA classification of American upland cotton in 1991. The color grade is a component of the official USDA classification. Although High Volume Instrument colormeter readings have been reported since 1991, at the request of the industry, USDA continued the procedure of determining the official color grade by human cotton classers because of the historical importance of color in determining the quality of cotton. With the passage of time, confidence in USDA High Volume Instrument measurements of fiber quality characteristics for classification of cotton grew to the extent that industry representatives requested that High Volume Instrument colormeter readings be used for the official determination of color grade.

AMS conducted a pilot project during the 1998 and 1999 cotton classing seasons to implement an adjustment to the existing High Volume Instrument color measurement so that it would

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more closely match the Official Cotton Standards used by classers for official color grade determination. Data from the project, which the AMS Cotton Program conducted in cooperation with the National Cotton Council's Quality Task Force, showed that the HVI color measurement closely matched the Official Cotton Grade Standards for color. Results from the 1998 and 1999 crops showed that the HVI colormeter determines Official color grades as accurately as cotton classers. In December of 1999, the National Cotton Council Quality Task Force recommended that AMS replace the cotton classer determination with the HVI colormeter determination for color grade. AMS will now use the HVI colormeter determination as the official component of classification of American Upland cotton for color grade.

For the reasons set forth above, this proposal amends the sections in Parts 28—Cotton Classing, Testing, and Standards, Subpart A—Regulations Under the United States Cotton Standards Act, which establish the procedures for determining official cotton classification based on the Official Cotton Grade Standards. Since cotton classification services under the United States Cotton Futures Act must conform to the requirements of the Cotton Standards Act, this final rule also amends the sections in Part 27—Cotton Classification Under Cotton Futures Legislation which establish the procedures for determining cotton classification for cotton submitted for futures certification.

Accordingly, under Part 27, in § 27.2 (n), the definition of the term "classification" is revised to reflect the changes in procedures made under Part 28.

Also under Part 27, § 27.31 is revised to reflect the deletion of the requirement for cotton classers to determine color grade. The revised heading and section reflect the changes made in procedures for determination of cotton quality in accordance with the official standards.

In Part 28, § 28.8 is revised to reflect the change in cotton classification procedures which replaces classer visual examinations to fix color with instrument color measurement by High Volume Instruments. Miscellaneous other changes are made to the sections to better reflect current procedures in view of color determination change. For example, those determinations made by cotton classers or by authorized Cotton Program employees will be specified.

These changes will be made effective on July 1, 2000, when classification of newly harvested 2000 crop cotton will begin.

List of Subjects

7 CFR Part 27

Commodity Futures, Cotton.

7 CFR Part 28

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Warehouses.

For the reasons set forth in the preamble, 7 CFR parts 27 and 28 is revised to read as follows:

PART 27—[AMENDED]

1. The authority citation for 7 CFR part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

2. In § 27.2, paragraph (n) is revised to read as follows:

§ 27.2 Terms defined.

* * * * *

(n) Classification. The classification of any cotton shall be determined by the quality of a sample in accordance with Official Cotton Standards of the United States for the color grade and the leaf grade of American upland cotton, the length of staple, and fiber property measurements such as micronaire. High Volume Instruments will determine all fiber property measurements except leaf grade and extraneous matter. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers, designated as such by the Director, will determine the official leaf grade and extraneous matter, and authorized Cotton Program employees will determine all fiber property measurements using High Volume Instruments.

* * * * *

3. Section 27.31 is revised to read as follows:

§ 27.31 Classification of Cotton.

For the purposes of subsection 15b (f) of the Act, classification of cotton is the determination of the quality of a sample in accordance with the Official Cotton Standards of the United States for the color grade and the leaf grade of American upland cotton, the length of staple, and fiber property measurements such as micronaire. High Volume Instruments will determine all fiber property measurements except leaf grade and extraneous matter. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers, designated as such by the Director, will determine the official leaf grade and extraneous matter, and authorized Cotton Program employees will determine all fiber property measurements using High Volume Instruments.

PART 28—[AMENDED]

1. The authority citation for 7 CFR part 28, Subpart A is revised to read as follows:

Authority: 7 U.S.C. 55 and 61.

2. Section 28.8 is revised to read as follows:

§ 28.8 Classification of cotton; determination.

For the purposes of the Act, the classification of any cotton shall be determined by the quality of a sample in accordance with Official Cotton Standards of the United States for the color grade and the leaf grade of American upland cotton, the length of staple, and fiber property measurements such as micronaire. High Volume Instruments will determine all fiber property measurements except leaf grade and extraneous matter. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers will determine the official leaf grade and extraneous matter, and authorized Cotton Program employees will determine all fiber property measurements using High Volume Instruments. The classification record of a classing office or the Quality Assurance Unit with respect to any cotton shall be deemed to be the classification record of the Department.

Dated: June 6, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–14693 Filed 6–8–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[Docket No. CN–00–003]

RIN 0581–AB82

Grade Standards and Classification for American Pima Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the official standards for the grade of American Pima to provide for the separation of grade into its chief components of color and leaf. This change was requested by representatives of the American Pima industry. Each component of the composite grade will stand on its own so that its effect on end use value or processing capability can be fully and separately evaluated. The separation of grade into color and leaf will require a change in three of the physical standards for American Pima cotton as currently maintained by USDA. This change will enhance the Agency's ability to provide useful and cost-effective classification, standardization and market news services for American Pima cotton.

EFFECTIVE DATE: June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, Cotton Program, AMS, USDA, 202–720–2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on April 4, 2000 (FR 65 17609). A 30-day comment period was provided for interested persons to respond to the proposed rule. Four comments were received asking for modifications to section 28.522, explanatory terms of the proposed rule. Three comments, from ginning associations, disagreed that preparation describes the roughness or smoothness with which cotton is ginned. They argued that the statement insinuates that "preparation" is a result of the ginning of cotton, and that cotton classification can measure the nappiness or neppiness of cotton, but cannot determine the cause of that condition. They suggested that cultural practices in the growing of cotton as well as harvesting of cotton can also contribute to nappiness or neppiness. This suggestion has merit. Accordingly, the definition of "preparation" has been rewritten in section 28.522 (a) to clarify that it describes the degree of smoothness or roughness of the ginned lint (cotton) without addressing any possible cause. The fourth comment, from a merchant association, suggested that spindle twist be included on the classification record. The agency agrees with this comment and has rewritten section 28.522 (b), to add spindle twist and preparation as explanatory terms to be entered on the classification record.

This final rule has been determined to be not significant for purposes of Executive Order 12866, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 1,000 growers of Pima cotton in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these entities are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). The change in procedure will not significantly affect small entities as defined in the RFA because:

(1) Classification will continue to be based upon the Official Standards for American Pima Cotton established and maintained by the Department;

(2) The change in official American Pima cotton standards will be consistently implemented for all American Pima cotton classed by USDA, with each component, color and leaf, standing on its own so that its effect on end use value or processing capability can be fully and separately evaluated. Therefore, it will not adversely affect competition in the marketplace; and

(3) The use of cotton classification services is voluntary. In 1999, 645,000 bales of American Pima cotton were produced—the largest Pima crop on record, and virtually all of them were submitted by growers for USDA classification. Over the last ten years, U.S. production of Pima has averaged 440,000 bales annually.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this final rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act.

Background

Pursuant to the authority contained in the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*), the Secretary of Agriculture maintains official cotton standards of the United States for the grades of American Pima cotton. These standards are used for the classification of American Pima cotton and provide a basis for the determination of value for commercial purposes. American Pima cotton is extra long staple cotton—1¾ to 1⁹⁄₁₆ inches—from the botanical group Gossypium barbadense, and it accounts for only 3–5 percent of the total U.S. cotton crop each year.

The existing official cotton standards for the grades of American Pima cotton are listed and described in the regulation at 7 CFR 28.501–28.507. There are six physical standards represented by practical forms, and one descriptive standard for which practical forms are not made. The descriptive standard describes cotton which is lower in grade than that represented by the physical standards.

The first grade standards for American Pima (American Egyptian) cotton were promulgated by USDA in 1918. They have been revised several times since, mainly because of changing varietal characteristics and harvesting and ginning practices. The last complete revision of the standards was published in the **Federal Register** of June 18, 1985 (50 FR 25198), and became effective in 1986.

Pursuant to the United States Cotton Standards Act, any standard change or replacement to the standards shall become effective not less than one year after the date promulgated. It is anticipated that the changes proposed in this document, if adopted, would be implemented to coincide with the beginning of the 2001 crop year.

Need for Revisions

The current classification system for American Pima combines color and leaf and some extraneous matter into a composite grade, complicating the individual evaluation of the two primary components of color and leaf. Separation of the composite grade into its chief components of color and leaf and removal of any extraneous matter from the component standards will permit each quality factor to be recognized clearly on its own, and its effect on end use value or processing capability will be fully and separately evaluated. Manufacturers will be able to determine the utility value of each component and any premiums and discounts. American Upland cotton has been classified by separate color and

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leaf grades since 1993. The success of this separation for American Upland cotton prompted the representatives of the American Pima industry to request this change in the standards for American Pima. The USDA's ability to provide useful and cost-effective cotton classification, standardization, and market news services will be enhanced by this change.

Revisions to Standards

The existing official cotton standards for the grades of American Pima cotton listed and described in the regulations at (7 CFR 28.501–28.507) will be revised.

There will be established seven official cotton standards for color grades of American Pima cotton. Of these seven standards, six will be physical standards represented by practical forms and one will be descriptive for the lowest quality color for which practical forms are not made. The six practical forms will have the same color ranges as currently maintained in the corresponding physical standards for the grades of American Pima cotton for Grade No. 1, Grade No. 2, Grade No.3, Grade No. 4, Grade No. 5, and Grade No. 6 described at 7 CFR 28.501, 28.502, 28.503, 28.504, 28.505, and 28.506. The descriptive color standard for which practical forms will not be made will have the same color as currently described in the standards for the grade of American Pima cotton for Grade No. 7 at 7 CFR 28.507, which is any color inferior to Grade No. 6.

There will be established seven official cotton standards for leaf grade of American Pima cotton. Of these, six will be physical standards represented by practical forms and one will be a descriptive standard to describe the lowest quality cotton for which practical forms will not be made. The physical standards for leaf grades will each have the same leaf content ranges as currently maintained in the corresponding physical standards for the grades of American Pima cotton for Grade No. 1, Grade No. 2, Grade No.3, Grade No. 4, Grade No. 5, and Grade No. 6 described at 7 CFR 28.501, 28.502, 28.503, 28.504, 28.505, and 28.506. Grade No. 7 is described at § 28.507, and no physical standard will be made for it because it will continue to include all ranges of leaf content inferior to Grade No. 6. The standards for Grade No. 4, Grade No. 5, Grade No. 6, and Grade No. 7 will also be changed to remove the bark now present in those standards. After removal of bark from the standards, the presence of bark, which is extraneous matter, will be noted on classification records without regard to the grades assigned as any other extraneous matter is listed under the current standard. American Pima cotton will not be reduced in grade due to the presence of any extraneous matter when it is present in any grade.

For practical considerations the color standards and the leaf standards will be represented by the same set of physical samples. There will be one container for Grade No. 1 Color and Grade No. 1 Leaf, one container for Grade No. 2 Color and Grade No. 2 Leaf, one container for Grade No. 3 Color and Grade No. 3 Leaf, one container for Grade No. 4 Color and Grade No. 4 Leaf, one container for Grade No. 5 color and Grade No. 5 Leaf, and one container for Grade No. 6 Color and Grade No. 6 Leaf.

The definition of official standards in § 28.2 (p) will be changed to reflect the separation of color and leaf grades for American Upland and American Pima cotton.

A new section, § 28.521, will be added to state that Color Grade designation shall be made independently of the leaf content, and Leaf Grade designation shall be made independently of the color content. Section 28.522 will be added for explanatory terms that include preparation and extraneous matter.

The table of symbols and code numbers used in lieu of cotton grade names in 7 CFR 28.525 will be revised to reflect these changes.

The changes in this document will be implemented to coincide with the beginning of the 2001 crop year.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set out in the preamble, title 7 CFR Part 28, subpart A and C, is amended as follows:

PART 28—COTTON CLASSING, TESTING, AND STANDARDS

1. The authority citation for 7 CFR part 28, Subpart A continues to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

2. In § 28.2, paragraph (p) is revised to read as follows:

§ 28.2 Terms defined.

* * * * *

(p) Official Cotton Standards. Official Cotton Standards of the United States for the color grade and the leaf grade of American upland cotton, the color grade and the leaf grade of American Pima cotton, the length of staple, and fiber property measurements, adopted or established pursuant to the Act, or any change or replacement thereof.

* * * * *

3. The authority citation for Part 28, Subpart C—Standards, Official Cotton Standards of the United States for the Grade of American Pima Cotton, will continue to read as follows:

Authority: Sections 28.501 to 28.507 and 28.511 to 28.517 issued under Sec. 10, 42 Stat. 1519 (7 U.S.C. 61). Interpret or apply sec. 6, 42 Stat. 1518, as amended, sec. 4854, 68A Stat. 580;7 U.S.C. 56, 26 U.S.C. 4854.

4. The undesignated centerheading following § 28.482 and §§ 28.501 through 28.507 will be revised to read as follows [§§ 28.508 through 28.510 continue to be reserved]:

Official Cotton Standards of the United States for the Color Grade of American Pima Cotton

28.501 Color Grade No. 1.
28.502 Color Grade No. 2.
28.503 Color Grade No. 3.
28.504 Color Grade No. 4.
28.505 Color Grade No. 5.
28.506 Color Grade No. 6.
28.507 Color Grade No. 7.
28.508–28.510 [Reserved]

Official Cotton Standards of the United States for the Color Grade of American Pima Cotton

§ 28.501 Color Grade No. 1.

Color grade No. 1 shall be American Pima cotton which in color is within the range represented by a set of samples in the custody of the U.S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Color Grade No. 1, effective July 1, 1986."

§ 28.502 Color Grade No. 2.

Color grade No. 2 shall be American Pima cotton which in color is within the range represented by a set of samples in the custody of the U.S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Color Grade No. 2, effective July 1, 1986."

§ 28.503 Color Grade No. 3.

Color grade No. 3 shall be American Pima cotton which in color is within the range represented by a set of samples in the custody of the U.S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Color Grade No. 3, effective July 1, 1986."

§ 28.504 Color Grade No. 4.

Color grade No. 4 shall be American Pima cotton which in color is within the range represented by a set of samples in the custody of the U.S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Color Grade No. 4, effective July 1, 1986."

§ 28.505 Color Grade No. 5.

Color grade No. 5 shall be American Pima cotton which in color is within the range represented by a set of samples in the custody of the U.S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Color Grade No. 5, effective July 1, 1986."

§ 28.506 Color Grade No. 6.

Color grade No. 6 shall be American Pima cotton which in color is within the range represented by a set of samples in the custody of the U.S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Color Grade No. 6, effective July 1, 1986."

§ 28.507 Color Grade No. 7.

American Pima cotton which in color is inferior to Color Grade No. 6 shall be designated as "Color Grade No. 7."

5. An undesignated centerheading following §§ 28.508—28.510 [Reserved] and §§ 28.511 through 28.517 would be added to read as follows:

Official Cotton Standards of the United States for the Leaf Grade of American Pima Cotton

28.511 Leaf Grade No. 1.
28.512 Leaf Grade No. 2.
28.513 Leaf Grade No. 3.
28.514 Leaf Grade No. 4.
28.515 Leaf Grade No. 5.
28.516 Leaf Grade No. 6.
28.517 Leaf Grade No. 7.

Official Cotton Standards of the United States for the Leaf Grade of American Pima Cotton

§ 28.511 Leaf Grade No. 1.

Leaf grade No. 1 shall be American Pima cotton which in leaf is within the range represented by a set of samples in the custody of the U.S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Leaf Grade No. 1, effective July 1, 1986."

§ 28.512 Leaf Grade No. 2.

Leaf grade No. 2 shall be American Pima cotton which in leaf is within the range represented by a set of samples in the custody of the U.S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Leaf Grade No. 2, effective July 1, 1986."

§ 28.513 Leaf Grade No. 3.

Leaf grade No. 3 shall be American Pima cotton which in leaf is within the range represented by a set of samples in the custody of the U.S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Leaf Grade No. 3, effective July 1, 1986."

§ 28.514 Leaf Grade No. 4.

Leaf grade No. 4 shall be American Pima cotton which in leaf is within the range represented by a set of samples in the custody of the U.S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Leaf Grade No. 4, effective July 1, 2001."

§ 28.515 Leaf Grade No. 5.

Leaf grade No. 5 shall be American Pima cotton which in leaf is within the range represented by a set of samples in the custody of the U.S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Leaf Grade No. 5, effective July 1, 2001."

§ 28.516 Leaf Grade No. 6.

Leaf grade No. 6 shall be American Pima cotton which in leaf is within the range represented by a set of samples in the custody of the U.S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Leaf Grade No. 6, effective July 1, 2001."

§ 28.517 Leaf Grade No. 7.

American Pima cotton which in leaf is inferior to Leaf Grade No. 6 shall be designated as "Leaf Grade No. 7."

6. An undesignated centerheading following § 28.517 and §§ 28.521 and 28.522 would be added to read as follows:

Application of Standards and Explanatory Terms

§ 28.521 Application of color and leaf grade standards.

American Pima cotton which in color is within the range of the color standards established in this part shall be designated according to the color standard irrespective of the leaf content. American Pima cotton which in leaf is within the range of the leaf standards established in this part shall be designated according to the leaf standard irrespective of the color content.

§ 28.522 Explanatory terms.

(a) The term preparation is used to describe the degree of smoothness or roughness of the ginned lint. Normal preparation for any color grade of American Pima cotton for which there is a physical color standard shall be that found in the physical color standard. If the preparation is other than normal, it shall be entered on the classification record.

(b) Explanatory terms considered necessary to adequately describe the presence of preparation, spindle twist, and extraneous matter such as bark, grass, seed coat fragments, oil, etc. in the sample, shall be part of the classification record.

7. The authority citation for § 28.525, would continue to read as follows:

Authority: Sec. 28.525 issued under Sec. 10, 42 Stat. 1519 (U.S.C. 61). Interpret or apply Sec. 6, 42 Stat. 1518, as amended (7 U.S.C. 56).

8. In § 28.525, paragraph (d) would be redesignated as paragraph (e), paragraph (c) would be revised, and a new paragraph (d) would be added to read as follows:

§ 28.525 Symbols and code numbers.

* * * * *

(c) Symbols and Code Numbers for Color Grades of American Pima Cotton.

Full grade name	Symbol Code	No.
Color Grade No. 1	AP C1	01
Color Grade No. 2	AP C2	02
Color Grade No. 3	AP C3	03
Color Grade No. 4	AP C4	04
Color Grade No. 5	AP C5	05
Color Grade No. 6	AP C6	06
Color Grade No. 7	AP C7	07

(d) Symbols and Code Numbers for Leaf Grades of American Pima Cotton.

Full grade name	Symbol Code	No.
Leaf Grade No. 1	AP L1	1
Leaf Grade No. 2	AP L2	2
Leaf Grade No. 3	AP L3	3
Leaf Grade No. 4	AP L4	4
Leaf Grade No. 5	AP L5	5
Leaf Grade No. 6	AP L6	6
Leaf Grade No. 7	AP L7	7

* * * * *

Dated: June 6, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–14694 Filed 6–8–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–9]

Amendment to Class E Airspace; Orange City, IA; Confirmation of Effective Date and Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Orange City, IA, and corrects an error in the airspace designation for Orange City Municipal Airport as published in the **Federal Register** April 18, 2000 (65 FR 20723), Airspace Docket No. 00–ACE–9.

DATES: The direct final rule published at 65 FR 20723 is effective on 0901 UTC, August 10, 2000. This correction is effective on August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

On April 18, 2000, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Orange City, IA (FR Doc. 00–9548, 65 FR 20723, Airspace Docket No. 00–ACE–9). An error was subsequently discovered in the airspace designation for Orange City Municipal Airport. This action corrects that error. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the error in the airspace designation and confirms the effective date to the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for Orange County Airport, as published in the **Federal Register** on April 18, 2000 (65 FR 20723), FR Doc. 00–9548 is corrected as follows:

§ 71.1 [Corrected]

ACE IA E5 Orange City, IA [Corrected]

1. On page 20724, in the second column, line 10 of the airspace designations, correct "north" to read "south".

Issued in Kansas City, MO on May 24, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–14047 Filed 6–8–00; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249b

[Release No. 34–42892; File No. S7–11–99]

RIN 3235–AH44

Revised Transfer Agent Form and Related Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to Rule 17Ac2–2 and to related Form TA–2 and rescinding Rule 17a–24 under the Securities Exchange Act of 1934. The amendments are designed to clarify filing requirements and instructions; eliminate or change ambiguous terms and phrases; delete certain redundant or unnecessary questions; and add questions that will help the Commission to more effectively monitor the transfer agent industry.

EFFECTIVE DATE: July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, Lori R. Bucci, Special Counsel, or Michael G. Rae, Staff Attorney, at 202/942–4187, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Rule 17Ac2–2 and Form TA–2

In 1986, the Securities and Exchange Commission (Commission) adopted Rule 17Ac2–2 [1] under the Securities Exchange Act of 1934 (Exchange Act), which requires all registered transfer agents to file an annual report of their business activities on Form TA–2.[2] Rule 17Ac2–2 and Form TA–2 have not been revised since their adoption.

On March 23, 1999, as part of the Commission's continuing efforts to improve and simplify rules and forms, the Commission proposed for comment amendments to Rule 17Ac2–2 and Form TA–2.[3] The Commission and the other appropriate regulatory agencies (ARA) have direct oversight responsibility for transfer agents, and there is no self-regulatory organization for transfer agents.[4] The receipt by ARAs of annual information about transfer agent activities is therefore an essential component of their oversight of transfer agents. The proposed amendments were intended to allow the Commission to obtain clearer and more comprehensive information from transfer agents about their activities.

B. Lost Securityholders

To help address the problem of lost securityholders, on October 1, 1997, the Commission adopted Rules 17Ad–17 and 17a–24.[5] Rule 17Ad–17 requires transfer agents to conduct database searches in an effort to locate lost securityholders. Rule 17a–24 requires transfer agents to submit on Form TA–2 aggregate data regarding the accounts of lost securityholders.[6] The purpose of Rule 17a–24 is to gather data to assess the effectiveness of the search requirements of Rule 17Ad–17. As a result of its continuing review of the lost securityholder issue, the Commission is reviewing the information that transfer agents must submit to help the Commission assess the effectiveness of the search requirements of Rule 17Ad–17. Therefore, the Commission proposed to require transfer agents to report on Form TA–2 specific information about the results of the required database searches for lost securityholders and proposed to rescind Rule 17a–24 and its reporting requirements.

II. Discussion

The Commission received 12 comment letters on the proposal, most of which were favorable.[7] As discussed below, the Commission has decided to adopt the amendments to Rule 17Ac2–2 and Form TA–2 and to rescind Rule 17a–24 substantially as proposed but with certain modifications suggested by the commenters.

A. Rule 17Ac2–2

1. Elimination of Filing Exception

The Commission proposed several modifications to Rule 17Ac2–2. Rule 17Ac2–2 currently provides that a transfer agent that engages a service company to perform all of its transfer and processing functions is not required to file Form TA–2.[8] As a consequence, in processing Form TA–2 filings, the Commission's staff frequently cannot determine whether a transfer agent that did not file Form TA–2 is properly using the exception or has simply neglected to file. To address this problem, we proposed to eliminate the exception and to require a transfer agent that engaged a service company to perform all of its transfer and processing functions to answer four questions on Form TA–2 about the service company relationship.[9]

Two comment letters received on the elimination of the filing exception were favorable.[10] Three commenters, however, expressed concern that asking for information other than the service company's name was redundant.[11] One commenter argued that if the service company and the transfer agent for which it acts as the service agent both are required to submit data about the number of items it received for transfer, the Commission will receive duplicative information.[12]

The Commission has decided that in order to strike a balance between obtaining more comprehensive information from transfer agents about their activities and not imposing unnecessary burdens on transfer agents that outsource all of their transfer agent functions, the Commission is adopting this provision with several changes.[13] As adopted, transfer agents that hire service companies to perform all of their transfer agent functions will not be required to provide the number of items it received for transfer during the reporting period. In addition, in order to obtain the most current and complete information regarding a transfer agent's use of a service company, the Commission is adopting an additional question that requires the transfer agent to state whether it has been engaged as a service company during the reporting period.

2. Reporting Period

Current Rule 17Ac2–2 states that every registered transfer agent shall file an annual report on Form TA–2 in accordance with the instructions contained therein by August 31 of each calendar year. Most of the data reported on the pre-amended Form TA–2 is as of June 30, but some of the data reported is as of December 31. In order to have a uniform annual reporting period, the Commission proposed that the term "reporting period" mean the 12 months ended June 30 of the year for which the form was filed. The June 30 date was chosen to avoid increasing the year-end reporting burden on transfer agents.

No commenters supported June 30 as the reporting period. Three commenters suggested that it made more sense for Rule 17Ac2–2 to require that data be reported on Form TA–2 as of the end of the calendar year, or December 31.[14] For example, one commenter explained that year-end reporting would not only "coincide with the usual corporate accounting standards, it should make the information more accurate and consistent and would likely lessen the burden of creating reports from mid-stream data." [15] This commenter pointed out that because the employees that prepare Form TA–2 are usually different from those that prepare other general corporate reporting, compiling data for Form TA–2 reporting at year-end would not create significant additional work. In response to these comments, the Commission has modified the definition of the reporting period to require that, beginning with the reporting period for the Year 2000, each transfer agent registered on December 31 must file a report on Form TA–2 by March 31 [16] covering the prior calendar year.[17]

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[1] 17 CFR 240.17Ac2–2.

[2] Securities Exchange Act Release No. 23084 (March 27, 1986), 51 FR 12124. Form TA–2 is referenced in 17 CFR 249b.102.

[3] Securities Exchange Act Release No. 41204 (March 23, 1999), 64 FR 15310 (March 31, 1999).

[4] "ARA" is defined in Section 3(a)(34) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(34), and includes the Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

[5] Securities Exchange Act Release No. 39176 (October 1, 1997), 62 FR 52229. "Lost securityholder," as defined in Rule 17Ad–17, means a securityholder: (i) to whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent may deem the securityholder to be a lost securityholder as of the day the re-sent item is returned as undeliverable; and (ii) for whom the transfer agent has not received information regarding the securityholder's new address. The Commission also adopted amendments to Rule 17Ad–7 incorporating the time periods for retention of records required by Rule 17Ad–17.

[6] Rule 17a–24 requires registered transfer agents to report the number of lost securityholder accounts as of June 30 of each year and the percentage of total accounts represented by such lost securityholder accounts. These figures are broken down by the length of time the securityholder was classified as lost: one year or less; three years or less; five years or less; or more than five years. Rule 17a–24 also requires that transfer agents annually report information on lost securityholder accounts that were remitted to state unclaimed property administrators.

[7] Letters from Lynette M. States, Assistant Director, Arizona Department of Revenue (May 14, 1999); Scott Muirhead, Vice President, Bankers Trust (May 17, 1999); Robert E. Smith, President, Corporate Transfer Agents Association, Inc. (CTA) (July 29, 1999); Charles V. Rossi, President, EquiServe (May 17, 1999); Nancy C. Ashcom, Corporate Secretary, FirstEnergy (May 14, 1999); Kathleen C. Joaquin, Director—Transfer Agency & International Operations, Investment Company Institute (May 17, 1999); Jessie Baker, President, National Association of Unclaimed Property Administrators (NAUPA) (May 17, 1999); Thomas L. Montrone, President and Chief Executive Officer, Registrar and Transfer Company (RTC) (May 5, 1999); Robert Dietz, President, Securities Transfer Association, Inc. (STA) (May 17, 1999); James R. Alden, Manager and Assistant Secretary, Shareholder Services (April 27, 1999); and James R. Alden, Assistant Secretary and Manager of Shareholder Services, Southern California Edison (April 27, 1999). The comment letters and a Commission staff summary of the comments are contained in File No. S7–11–99 and are available for inspection in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549.

[8] "Named transfer agent" is defined in Rule 17Ad–9(j) as the registered transfer agent that is engaged by an issuer to perform transfer agent functions for an issue of securities but has engaged a service company to perform some or all of those functions. 17 CFR 240.17Ad–9(j).

"Service company" is defined in Rule 17Ad–9(k) as the registered transfer agent engaged by a named transfer agent to perform transfer agent functions for that named transfer agent. 17 CFR 240.17Ad–9(k).

[9] As proposed, the portion of Form TA–2 such a transfer agent would be required to complete would provide basic information such as the transfer agent's name, its use of a service company, the name of its ARA, whether it filed any amendments to its registration, and the number of items it received for transfer and processing during the reporting period.

[10] Letters from CTA and RTC.

[11] Letters from CTA, EquiServe, and STA.

[12] Letter from EquiServe.

[13] Rule 17Ac2–2 requires a named transfer agent that engages a service company to perform some but not all of its transfer and processing functions to file a Form TA–2 and to enter zero for those questions that relate to transfer agent activities performed by the service company on behalf of the named transfer agent. These requirements would not be changed.

[14] Letters from CTA, FirstEnergy, and STA.

[15] Letter from CTA.

[16] While some transfer agents have said they prefer a later reporting date because of other year-end processing, the Commission believes that a reporting date past March 31 would make the data less useful.

[17] As a transition measure, transfer agents' next required From TA–2 filing will be on March 31, 2001, which will cover their activities during calendar Year 2000. This will eliminate the filing for the period ending June 30, 2000 (which would have been due on August 31, 2000).

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3. Clarification on Filing Requirements

The Commission proposed that Rule 17Ac2–2 be amended to require every transfer agent that is registered on June 30 to file Form TA–2 by August 31 of that calendar year. The Commission received no comment letters on this provision. We are adopting this provision with modifications to conform it to the new reporting period. As adopted, Rule 17Ac2–2 states that every transfer agent registered on December 31 must file Form TA–2. Therefore, a transfer agent that withdraws from registration prior to December 31 is not required to file Form TA–2 for the portion of the year that it was registered.

4. Items Received for Transfer and Processing

Current Rule 17Ac2–2 provides that a registered transfer agent is required to complete only Items 1 through 4 of Form TA–2 if it: Received fewer than 500 items for transfer and fewer than 500 items for processing in the six months ending June 30 and did not maintain master securityholder files for more than 1,000 individual securityholder accounts as of June 30. The Commission proposed to revise this partial exception to conform it to the full 12 month reporting period so that it applied to a registered transfer agent that received fewer than 1,000 items for transfer and fewer than 1,000 items for processing in the 12 months ending June 30 of the year for which the form is being filed.[18]

No commenters objected to this change, although two commenters said that "the receipt of 1,000 items for processing is not adequately defined."[19] The "processing" term refers to transfer agents acting as a registrar. However, today transfer agents are rarely hired to act solely as a registrar. Therefore, the rule as adopted omits the reference to processing but includes the other proposed changes.

B. Form TA–2

This section describes major proposed modifications to Form TA–2, the comments received, and the changes we are adopting.

1. CUSIP Number

Currently, in determining the number of investment company securities for which they act as transfer agents, transfer agents are instructed to count each prospectus as one issue. The Commission proposed that transfer agents count investment company securities as one issue per CUSIP number rather than by prospectuses. We received one favorable comment on this proposal, and are adopting the change.[20]

2. Amendments to Form TA–1

The Commission proposed adding a new question to Form TA–2 which would ask if the transfer agent had amended Form TA–1 as required by existing transfer agent rules.[21] The new question would also require the transfer agent to provide an explanation if it had failed to file a required amendment. The Commission received no comments regarding this provision. We are adopting this provision as proposed.

3. Direct Purchase and Dividend Reinvestment Plans

Currently, Form TA–2 elicits information regarding dividend reinvestment plans for which a transfer agent provides services. The Commission proposed revising Form TA–2 to require transfer agents to include data about direct purchase plans as well.

The Commission received five comments on this proposed change. One commenter stated that it had no objection to the proposed change that would require transfer agents to report separately the number of direct purchase and dividend reinvestment plan accounts.[22] One commenter noted that the question that requests the combined total of the number of direct purchase and dividend reinvestment plan accounts can be interpreted "to mean the number of accounts in issues that have open enrollment plans or the issues that have optional cash investment features included with dividend reinvestment plans."[23] The commenter suggested that in order to clarify what information is requested, the section should be divided into two distinct categories, one for dividend reinvestment plans and one for direct purchase facilities.[24] Three commenters essentially stated that it is common for a dividend reinvestment plan and a direct purchase plan to be the same plan. As a result, there is no need, for recordkeeping purposes, to segregate a dividend reinvestment plan from a direct purchase plan.[25] One commenter also highlighted that Direct Registration System (DRS)[26] shares are also not distinguished from plan shares.[27]

In response to the commenters' concerns, Form TA–2 has been modified to elicit information regarding the number of issues for which dividend reinvestment plan and/or direct purchase plan services are provided. We are requiring that transfer agents provide the number of individual securityholder dividend reinvestment plan and/or direct purchase plan accounts. In addition, Form TA–2 has been modified to elicit information regarding the number of issues for which DRS services are provided. We are also requiring that transfer agents provide the number of individual securityholder DRS accounts.

4. Securityholder Accounts

Currently, Form TA–2 requires transfer agents to set forth the percentage of individual securityholder accounts they maintain broken down into six categories: corporate equity securities, corporate debt securities, investment company securities, limited partnership securities, municipal debt securities, and other securities. For clarification purposes, we proposed that the category of investment company securities be renamed as "open-end investment company securities." In addition, we proposed that closed-end investment company securities be included in the corporate equity category. No comments were received on these proposed changes. We are adopting these changes as proposed.

[18] As proposed, the matter securityholder account element did not change. In addition, as proposed, low volume transfer agents were still required to complete a partial Form TA–2.

[19] Letters from RTC and STA.

[20] Letter from CTA.

[21] Transfer agents registered with the Commission are required by Rule 17Ac2–1(c) to amend Form TA–1 or the SEC Supplements to Form TA–1 within 60 calendar days following the date on which information reported therein became inaccurate, incomplete, or misleading. 17 CFR 240.17Ac2–1(c). Federal bank regulators (FBRs) also require their registrants to amend their Form TA–1 within 60 calendar days following the date on which the reported information became inaccurate, incomplete, or misleading. FBRs send copies of the submitted filings to the Commission on behalf of their registrants.

[22] Letter from EquiServe.

[23] Letter from RTC.

[24] *Id.* The commenter suggested that the categories should include one dealing with dividend reinvestment plans, whether or not they have an optional cash contribution for current participants, and a second for issues that have the open availability/direct purchase functionality Issues in the later category usually have dividend reinvestment and optional cash features for participants. The commenter further recommended that the questions on dividend reinvestment plans should include only those plans that are not listed under the direct purchase responses.

[25] Letters from CTA, FirstEnergy, and STA.

[26] "Direct Registration System" means the system, as administered by The Depository Trust Company, that allows investors to hold their securities in electronic book-entry from directly on the books of the issuer or its transfer agent. Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600. DRS securityholdings are growing. Currently, 11 transfer agents service 292 DRS eligible issues.

[27] Letter from CTA.

5. Securities Record Differences Upon Change of Transfer Agents

Form TA–2 requires transfer agents to provide information about the number and aggregate market value of (1) securities record differences that the current transfer agent received as an out of balance issue from the prior transfer agent and (2) securities record differences resulting from the current transfer agent.[28] The Commission proposed requiring transfer agents to report the number and aggregate market value of securities aged record differences with no detail as to whether the securities differences occurred before or after the change in transfer agents. Several commenters expressed concern that the Commission would not be able to differentiate between differences for which the current agent is or may be responsible versus those created by a former agent.[29] In light of these comments, we have determined not to adopt the proposed change.

6. Buy-Ins and Turnaround Time

We proposed to add two sections dealing with buy-ins and turnaround time to Form TA–2. The first section would require the number of quarterly reports of aged record differences that were filed and that should have been filed by the registrant with its ARA during the reporting period pursuant to Rule 17Ad–11(c)(2).[30] These reports contain information such as the size and dollar value of the record difference, the reason for the record difference, and the size and dollar value of any buy-ins executed to remedy the record difference. The second section would require transfer agents to report the number of months during the reporting period in which the registrant was not in compliance with the specified turnaround time for routine items pursuant to Rule 17Ad–2.[31] This section also would require transfer agents to report the number of written notices the transfer agent filed and should have filed during the reporting period documenting its noncompliance with turnaround time for routine items pursuant to Rule 17Ad–2. Lastly, the proposed section would require transfer agents to respond to the same questions with respect to compliance with turnaround times for when the transfer agent acted as an outside registrar.

Three commenters argued that the proposed sections regarding buy-ins and turnaround time seemed unnecessary and redundant, as the Commission or other appropriate regulatory agencies have received and should know the number of reports made to it by a transfer agent.[32] One commenter, however, stated that the additional information requested regarding transfer turnarounds is relevant and easy to report.[33]

While these proposals will elicit information regarding buy-ins and turnaround time that are required to be reported to the Commission or to other appropriate regulatory agencies, the Commission believes that it will be helpful to both issuers and the Commission to have this self-reported information included on the annual summary report, Form TA–2. These reporting elements will assist the ARAs in fulfilling their oversight responsibilities for transfer agents. The annual report would provide a better picture of patterns of a transfer agent's activity, and also would alert the ARA to instances where a transfer agent failed to file required reports. We are adopting these sections as proposed with one change. Consistent with the other changes to the proposal regarding registrar activities, we are not adopting the proposal pertaining to compliance with turnaround time by a transfer agent that acted as an outside registrar.

7. Technical Changes

The proposal also included numerous technical and conforming changes. For example, we proposed: changing the format of the box at the top of Form TA–2 that reflects the reporting period; adding definitions; requesting that the actual amounts be reported instead of abbreviated amounts; eliminating the collection of information about transfer agent custodian (TAC) arrangements; and eliminating requests for certain percentages and figures. We received two comments supporting the changes to these provisions.[35] No negative comments regarding these provisions were received. We are adopting these modifications as proposed.

C. Rule 17a–24

Rule 17a–24 requires registered transfer agents to report the aggregate number of lost securityholder accounts as of June 30 of each year and the percentage of total accounts represented by such lost securityholder accounts. These figures currently must be reported for lost securityholder accounts outstanding for: one year or less, three years or less, five years or less, or more than five years. Rule 17Ad–17 requires transfer agents to conduct periodic searches of databases to obtain current addresses for lost securityholders. We adopted Rule 17a–24 to obtain information on aged lost securityholder accounts in order to assess the effectiveness of searches. Rule 17a–24 also requires information on lost securityholder accounts that were escheated to state unclaimed property administrators. Frequently, transfer agent representatives have told our staff that they have difficulty compiling information on the aging of lost securityholder accounts.

In the proposal, we intended to refine transfer agents' reporting requirements so that the reported information would give a better indication of the effectiveness of the database searches and be less burdensome to compile. We proposed that: (1) Transfer agents be required to report on Form TA–2 the number of lost securityholder accounts for which a first and a second database search has been conducted, and the number of lost securityholder accounts for which a correct address has been obtained as a result of each of these searches; (2) transfer agents continue, as required by Rule 17a–24, to report on Form TA–2 the current number of lost securityholder accounts and the number of lost securityholder accounts that were remitted to the states during the last year; (3) the remaining information (*i.e.*, aging of lost securityholder accounts) would no longer be required to be reported; and (4) Rule 17a–24 would be rescinded.

Several commenters stated that the proposed reporting requirements would not be easier to comply with than the current reporting requirements. Most of the commenters pointed out that, while

[28] "Record difference," as defined in Rule 17Ad–9(g), occurs when either (1) the total number of shares or total principal dollar amount of securities in the master securityholder file does not equal the number of shares or principal dollar amount in the control book, or (2) the security transferred or redeemed contains certificate detail different from the certificate detail currently on the master securityholder file, which difference cannot be immediately resolved.

[29] Letters from EquiServe, RTC, and STA.

[30] 17 CFR 240.17Ad–11(c)(2). Generally, Rule 17Ad–11(c)(2) requires a transfer agent to file a report at the end of each quarter during which it has an aged record difference (*i.e.*, where the number of shares on the securityholder file does not equal the number of shares authorized and issued by the issuer). A buy-in is required when a registered transfer agent overissues shares. The registered transfer agent within 60 days of the discovery of such overissuance buys-in securities equal to the number of shares in the case of equity securities or equal to the principal dollar amount in the case of debt securities. 17 CFR 240.17Ad–10(g).

[31] Turnaround times for routine items are set forth in Rule 17Ad–2. 17 CFR 240.17Ad–2.

[32] Letters from EquiServe, RTC, and STA.

[33] Letter from Bankers Trust.

[34] TAC arrangements, which are more commonly referred to as fast automated securities transfer (FAST) arrangements, exist between large transfer agents and The Depository Trust Company.

[35] Letters from CTA and Banker Trust.

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they can determine the number of *different* addresses generated by database searches for lost securityholder accounts, it is virtually impossible to determine the number of lost securityholder accounts for which a *correct* address has been obtained during any specific database search.[36] For example, address changes are received from account holders continuously without the transfer agent knowing the cause or the source of the change. Therefore, transfer agents would have to manually research every address received from an account holder in order to determine if the address change resulted from the transfer agent's actions following a database search or from some other cause.

A few commenters expressed concern that the proposed requirement that transfer agents report the number of lost securityholder accounts that have been remitted to the states needs to be clarified as to whether the Commission wanted information on remittance of funds or securities.[37] These commenters also pointed out that with respect to state escheatment laws some transfer agents do not distinguish between lost and dormant accounts.

Two commenters also essentially argued that the Commission should prohibit a transfer agent from using any service that results in the lost securityholders not receiving the full value of their property.[38] These commenters believe that often the securityholder becomes lost as a result of poor recordkeeping on the transfer agent's books rather than the neglect of the owner. The commenters further suggested that to the extent that search firms are used, the requirements of fee limits and full disclosure to the securityholder would be reasonable.

In response to the comments, we are simplifying the reporting requirements. As adopted, transfer agents will be required to provide the date of each database search for lost securityholders during the reporting period, the number of lost securityholder accounts submitted for each database search, and the number of lost securityholder accounts for which a different address was obtained as a result of each database search. Transfer agents will continue to report on Form TA–2 the number of lost securityholder accounts that were remitted to the states during the reporting period, but will not be required to report aging of lost securityholder accounts. For purposes of clarification, transfer agents should only report those accounts held by securityholders that are defined as lost by Rule 17Ad–17[39] and should only report those accounts where the underlying securities have been remitted to the states. These reporting requirements should provide the Commission with useful information about the number of lost securityholders and the efficiency of the searches, but should not be burdensome for transfer agents to implement.

[36] Letters from Bankers Trust, CTA, EquiServe, RTC, Shareholder Services, Southern California Edison, and STA.

[37] Letters from CTA, RTC, and STA.

[38] Letters from Arizona Department of Revenue and NAUPA. 17Ad–17 provides in pertinent part that every recordkeeping transfer agent whose master securityholder file includes accounts of lost securityholders shall exercise reasonable care to ascertain such lost securityholders' current addresses. Each recordkeeping transfer agent shall conduct two database searches without charge to a lost securityholder.

[39] *Supra*, note 4.

[40] 44 U.S.C. 3501 *et seq.*

[41] Since the proposing release, the total number of registered transfer agents has decreased.

III. Paperwork Reduction Act

Certain provisions of the amendments to Rule 17Ac2–2 and Form TA–2 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[40] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission notes that it is rescinding Rule 17a–24. However, the Commission is keeping two questions generated by Rule 17a–24 on Form TA–2 and is adding a question to Form TA–2 about the results of the required database searches for lost securityholders. The title for the collection of information is: "Transfer Agents Annual Report 17 CFR 240.17Ac2–2, Form TA–2." The OMB control number for the collection of information is 3235–0337.

In the proposing release, the Commission requested comment on the proposed collections of information. No comments were received that addressed the PRA submission. In the proposing release, the Commission based its estimates of the collection of information on statistics gathered from 1998. Because transfer agent statistics gained from various filings are now available for the year 1999, the Commission has revised the figures it used in the proposing release to update the collections of information required under the rules, as discussed below.

Under the amendments, Rule 17Ac2–2 requires the collection of additional information on amended Form TA–2. First, the amendments eliminate the filing exception for named transfer agents and require every named transfer agent using a service company for all of its transfer agent functions to complete only the first three questions (which request only simple information) and the signature section of Form TA–2. Second, registered transfer agents that meet the criteria based on volume of transfer business and number of shareholder accounts are required to answer Questions 1 through 5, 11, and the signature section of Form TA–2. Finally, registered transfer agents that file a complete Form TA–2 are required to respond to new questions regarding the use of service companies, amendments to Form TA–1, direct purchase and dividend reinvestment plan accounts, buy-ins, DRS, lost securityholders, and turnaround time for routine items.

The Commission uses the information on Form TA–2 to monitor the annual business activities of registered transfer agents. The proposed collection of information under amended Rule 17Ac2–2 and Form TA–2 is intended to facilitate greater accuracy of transfer agents' records. Furthermore, the information elicited from the additional questions regarding lost securityholder accounts should help the Commission to assess the effectiveness of the search requirements of Rule 17Ad–17 and the scope of the lost securityholder problem.

The collection of information required by the amendments to Rule 17Ac2–2 and Form TA–2 should not result in any new significant burden to transfer agents. All information required by Form TA–2 is available in the internal files of the transfer agents and a large portion of the information is already required to be calculated or maintained by existing Commission transfer agent rules.

The amount of time needed to comply with the requirements of amended Rule 17Ac2–2 and Form TA–2 will vary. There are approximately 1,093 registered transfer agents.[41] From this total number, approximately 270 registrants will be required to complete only Questions 1 through 3 and the signature section of amended Form TA–2, which the Commission estimates will take each registrant about 30 minutes, for a total of 135 hours (270 × .5 hours). Approximately 371 registrants will be required to answer Questions 1 through 5, 11, and the signature section, which the Commission estimates will take about 1 hour and 30 minutes, for a total of 557 hours (371 × 1.5 hours). The remaining registrants, approximately 452, will be required to complete the entire Form TA–2, which the Commission estimates will take about 6 hours, for a total of 2,712 hours (452 × 6 hours). The Commission estimates that the total burden will be 3,404 hours (135 + 557 + 2712).[42]

The collection of information pursuant to the amendments to Form TA–2 and Rule 17Ac2–2 does not contain any additional burdensome recordkeeping requirements. Providing the information will be mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

IV. Costs and Benefits of the Proposed Amendments

The Commission believes that significant benefits will result from the amendments to Rule 17Ac2–2 and Form TA–2 and the rescission of Rule 17a–24. To assist the Commission in its evaluation of the costs and benefits that may result from the new rules, commenters were requested to provide analysis and data, if possible, relating to costs and benefits associated with the proposed rule changes. In particular, the Commission requested comment on the potential costs for any necessary modifications to information gathering, management, and recordkeeping systems or procedures. The Commission received three comments that touched on this issue.[43]

Since the proposing release was issued, we have made a few changes to the proposed amendments to further improve the information obtained from the Form TA–2. In particular, we changed the reporting period to year end; shortened the questions on turnaround time; and further simplified the reporting requirements pertaining to lost securityholder information.

A. Benefits

The Commission believes that the rules will provide the following benefits:

- The elimination of the filing exception will help the Commission to keep complete records on all registered transfer agents.
- The additional questions to Form TA–2, including those regarding the use of service companies, amendments to Form TA–1, direct purchase and dividend reinvestment plan accounts, DRS, buy-ins, and turnaround time, will provide more accurate information about transfer agent business activities.
- The uniform reporting period at year-end should eliminate confusion from varying reporting periods.
- The simplification of the reporting requirements regarding lost securityholder accounts and the associated database searches should be less burdensome for transfer agents to report. This information should enable the Commission to assess the scope of the lost securityholder problem and to assess the effectiveness of the search requirements of Rule 17Ad–17 more effectively.

B. Costs

The simplification of Rule 17Ac2–2 and Form TA–2 through the amendments will most likely lead to a reduction of costs to transfer agents. The majority of information required by Form TA–2 is available in the internal files of the transfer agents, and a large portion of the information is already required to be calculated or maintained by other Commission rules.

The primary cost associated with the rule and Form TA–2 is the time that it will take transfer agent personnel to complete the form and file it with the Commission. The Commission estimates that because there is no increase in complexity to Form TA–2, there will be no increase in costs imposed on transfer agents over the amount previously spent in complying with the pre-amended versions of Rule 17Ac2–2 and Form TA–2. The amount of time needed to comply with the requirements of amended Rule 17Ac2–2 and Form TA–2 will vary depending on a particular transfer agent's activity. There are approximately 1,093 transfer agents who are registered with the Commission. Of this number, approximately 270 registrants would be required to complete only Questions 1 through 3 and the signature section of amended Form TA–2.[44] Approximately 371 registrants will be required to answer only Questions 1 through 5, 11 and the signature section due to their low volume of transfer business and number of shareholder accounts. The remaining registrants, approximately 452, would be required to complete the entire Form TA–2.

Additionally, the Commission sought comment and empirical data on the cost associated with modifying computer systems to report all items for a twelve month reporting period, instead of for a six month period. The Commission estimated that this likely would require a simple, one-time change to database reporting functions and would have a negligible cost on transfer agents. Only one commenter directly addressed the Commission's request for information regarding the cost required to modify transfer agents' systems to comply with the reporting changes on Form TA–2. The commenter wrote that the proposed amendments to Rule 17Ac2–2 and Form TA–2 do not pose significant modifications to p.ocedures or systems.[45] The Commission believes that the rule changes are necessary to improve information regarding transfer agent business activities and lost securityholder information.

[42] Based on an estimated average administative labor cost of $31.50 per hour, the Commission's staff estimates that the labor cost to the transfer agent industry for complying with Rule 17Ac2–2 and Form TA–2 would be $107,226 annually ($31.50 × 3,404).

[43] Letters from Bankers Trust ("amendments * * * do not pose significant modifications to procedures or systems"), RTC and STA ("costs cannot be accurately estimated").

[44] Registrants that hire service companies to perform all of their transfer agent functions will be required to complete questions one through three and the signature section.

[45] Letter from Bankers Trust.

[46] 15 U.S.C. 78w(a)(2).

[47] Letters from FirstEnergy, STA, and CTA.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires that the Commission, when adopting or amending rules under the Exchange Act, consider the anticompetitive effects of those rules, if any, and refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act.[46] Moreover, Section 3(f) of the Exchange Act as amended by the National Securities Markets Improvement Act of 1996 provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection on investors, whether the action will promote efficiency, competition, and capital formation. In the proposing release, the Commission solicited comment on the effects of the proposed amendments to Rule 17Ac2–2 and Form TA–2 on competition, efficiency and capital formation as cited in Sections 3(f) and 23(a)(2). The Commission received no comments in direct response to this solicitation. However, several commenters did suggest that calendar year-end reporting would be more efficient than would a reporting period ending in June.[47]

The Commission has considered the amendments to Rule 17Ac2–2 and Form TA–2 in light of the comments received and the standards cited in Sections 3(f)

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and 23(a)(2) of the Exchange Act.[48] The Commission proposed these amendments not only to enhance the Commission's ability to monitor more effectively the transfer agent industry, but to make the Form TA–2 more efficient for both the Commission and transfer agents. Because transfer agents of a similar size and with similar business are required to complete the Form in the same manner, there should be no negative impact on competition.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the provisions of the Regulatory Flexibility Act ("RFA"), as amended by Public Law No. 104–121, 110 Stat. 847, 864 (1996), 5 U.S.C. 604. The FRFA relates to the adoption of the amendments to Rule 17Ac2–2 and Form TA–2 and to the rescission of Rule 17a–24 under the Exchange Act.

An Initial Regulatory Flexibility Analysis (IRFA) summary regarding the proposed amendments to Rule 17Ac2–2 and Form TA–2 and the proposed rescission of Rule 17a–24 appeared in Securities Exchange Act Release No. 41204 (March 23, 1999).

A. Need for and Objectives of Amendments to Rule 17Ac2–2 and Form TA–2 and Rescission of Rule 17a–24

The purpose of the amendments to Rule 17Ac2–2 and Form TA–2 and the rescission of Rule 17a–24 is to allow the Commission to obtain more comprehensive information from transfer agents about their activities while making Form TA–2 clearer and easier for transfer agents to complete. The objectives of the amendments are to: Elicit information regarding transfer agent business activities, such as direct purchase and dividend reinvestment plan accounts, buy-ins, and turnaround time for routine items; obtain more comprehensive lost securityholder information; enhance service company information; eliminate the filing exception; clarify the filing requirements and instructions; conform reporting periods; delete unnecessary questions; and make technical changes.

Prior to being amended, Rule 17Ac2–2 and Form TA–2 required transfer agents to submit information regarding the number of issues for which they provided dividend reinvestment plan services. Because many dividend reinvestment plans can now include, or can be separate from, a direct stock purchase plan, the Commission is now requesting the number of issues and individual securityholder accounts with dividend reinvestment plans and/or direct stock purchase plans on Form TA–2.

In addition, the Commission is now requiring registrants to report the number of Direct Registration System (DRS) accounts that they maintain for securityholders. Because DRS is relatively new in the securities industry, Form TA–2 did not address transfer agent activity concerning it. By requiring registrants to report their involvement with DRS, the Commission will now be in a better position to monitor this new system in the securities industry.

As amended, Rule 17Ac2–2 and Form TA–2 now require two sections dealing with buy-ins and turnaround time. The first section requires the transfer agent to report the number of quarterly reports that were filed and that should have been filed by the transfer agent with its ARA during the reporting period pursuant to Rule 17Ad–11(c)(2). The second section requires transfer agents to report the number of months during the reporting period in which the transfer agent was not in compliance with the specified turnaround time for routine items pursuant to Rule 17Ad–2. This section also requires transfer agents to report the number of written notices the transfer agent filed and should have filed during the reporting period documenting its noncompliance with turnaround time for routine items pursuant to Rule 17Ad–2. The Commission added these sections to Form TA–2 because the information requested will be helpful to issuers and to the Commission in monitoring overissuance and buy-in activities and compliance with turnaround time by registered transfer agents.

In addition, Form TA–2 now requires a registrant to state whether it had amended Form TA–1 during the reporting period if it was required to do so under existing transfer agent rules.[49] The Commission believes that the addition of this information in a year-end report will enable the Commission to monitor more comprehensively transfer agent business activities conducted during the course of a year.

Since 1998, registrants using Form TA–2 have been required to submit information regarding the aging of lost securityholder accounts.[50] Since that time, transfer agent representatives have informed Commission staff that compiling this information is extremely difficult and burdensome and frequently is impossible. In an effort to simplify the reporting requirements, the Commission proposed to eliminate Rule 17a–24, which required the reporting of information on aged lost securityholder accounts, and to require registrants to report on the number of database searches conducted and the results of such searches, and the number of lost securityholder accounts that were remitted to the states during the reporting period. In response to the near unanimity of comment letters opposing the format and content of the requested information, the Commission decided to further simplify the rule's lost securityholder reporting requirements by requiring registrants to report the dates and number of lost securityholder accounts submitted for each database search, and to report the number of lost securityholder accounts for which a different address was obtained as a result of each search. This information is needed for the Commission to assess the effectiveness of transfer agents' efforts to find lost securityholders. Transfer agents will continue to report on Form TA–2 the number of lost securityholder accounts that were remitted to the states during the reporting period.

An additional component of the amended rule and Form TA–2 enhances the Commission's collection of information about registrants' use of service companies. Before the adoption of the amendments to Rule 17Ac2–2 and Form TA–2, a transfer agent that engaged a service company to perform all of its transfer and processing functions was exempt from filing an annual TA–2 form. This exception had the unintended result of making it difficult for the Commission to determine if a transfer agent was actually engaging a service company or whether the transfer agent was merely neglecting to file the TA–2 form as required by the rule. Therefore, in adopting the new rule, the Commission eliminated the filing exception for transfer agents that engage service companies to perform all of their transfer functions. However, such transfer agents must only complete the first three questions of the TA–2 form.

Additional changes to Rule 17Ac2–2 and Form TA–2 seek to clarify the filing requirements and instructions. Before the amendments, some transfer agents were unsure of whether they were required to file if they withdrew during the filing period. The amended rule now clarifies that if a transfer agent is registered as of December 31, then a Form TA–2 must be filed by March 31 of the following calendar year. Additionally, the pre-amended Form TA–2 lacked definitions for several key terms. As amended, Form TA–2 adds several definitions.

Additionally, some technical changes that make reporting more accurate and informative are incorporated into the amended Rule 17Ac2–2 and Form TA–2. These changes include counting investment company securities by CUSIP number instead of by prospectus and using actual numerical figures on Form TA–2 instead of omitting the zeroes at the end. The Commission believes that these changes are necessary to avoid confusion and to obtain a more accurate assessment of the types of securities that are being serviced by transfer agents.

Another change which the Commission made concerns the reporting period for the TA–2 which formerly ran from June 30 to June 29 of the following year. The amended Rule 17Ac2–2 and Form TA–2 change the reporting period to conform with current accounting and tax preparation methods. This will make it easier for transfer agents to use the information contained within their tax and accounting records for purposes of filing Form TA–2.

B. Significant Issues Raised by Public Comments

The Commission requested comment with respect to the Initial Regulatory Flexibility Analysis ("IRFA") that was prepared when the amendments to Rule 17Ac2–2 and form TA–2 were proposed. While no comment letters were received that directly addressed the IRFA, one commenter wrote that the proposed amendments do not pose significant modifications to procedures or systems.[51]

C. Description and Estimate of the Number of Small Entities Subject to the Amendments

The amended rule and form will affect transfer agents that are small entities pursuant to Rule 0–10(h) under the Exchange Act.[52] Rule 0–10(h) defines the term "small business" or "small organization" to include any transfer agent that: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); (3) only transferred items of issuers with total assets of $5 million or less; and (4) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Rule 0–10.

When the Commission adopted the new definition of "small entity" with respect to transfer agents in 1998, the Commission estimated that approximately 180 registered transfer agents would qualify as small entities under Rule 0–10. Since that time, the total number of registered transfer agents has fallen. As a result, the Commission is revising its estimate of registered transfer agents that would qualify as small entities under Rule 0–10 from 180 to 163. As a result of the new rule, the Commission now estimates that 163 small entities would be subject to the requirements of the proposed amendments to Rule 17Ac2–2 and Form TA–2.

The amendments to Rule 17Ac2–2 provide that a registered transfer agent that received fewer than 1,000 items for transfer in the twelve months ending December 31, and did not maintain master securityholder files for more than 1,000 individual securityholder accounts as of December 31, would have to complete only a portion of Form TA–2. Therefore, all "small entities" as defined by Rule 0–10 would continue to have reduced reporting requirements under the proposal.

In addition, the proposed amendments will impose different reporting and compliance requirements on certain transfer agents because it eliminates the filing exception for named transfer agents using service companies and requires every registered transfer agent to file Form TA–2 annually. The Commission estimates that the incremental annual burden on all "small entities" will be approximately 73 hours and $2,300.[53]

D. Description of Steps Taken to Minimize the Economic Impact on Small Entities

The RFA directs the Commission to consider significant alternatives to the amendments to Rule 17Ac2–2 and Form TA–2 that would accomplish the stated objectives while minimizing any significant adverse economic impact on small entities. Such alternatives include: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (3) the use of performance rather than design standards; and (4) an exception from coverage of the rule or any part thereof for small entities.

Taking into account the burden that would be imposed on small transfer agents, the Commission proposed that transfer agents that meet the definition of a "small entity" still be required to respond to only a portion of Form TA–2. Accordingly, the Commission has determined that it is not feasible to further clarify, consolidate, or simplify the rule for "small entities" beyond its current form. The Commission also believes that it would be inconsistent with the purpose of the Exchange Act to exempt "small entities" from the proposed amendments or to use performance standards to specify different requirements for small entities. Therefore, as adopted, the rule will not have an additional significant economic impact on a substantial number of small entities.

E. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments to Rule 17Ac2–2 and Form TA–2 will not result in any significant additional costs to transfer agents. The majority of information required by Form TA–2 is available in the internal files of the transfer agents, and a large portion of the information is already required by the Commission to be calculated or maintained.

The primary cost associated with the rule and Form TA–2 is the time that it will take transfer agent personnel to complete the form and file it with the Commission. The Commission estimates that because there is no increase in complexity to Form TA–2, there will be no increase in costs imposed on transfer agents over the amount previously spent in complying with Rule 17Ac2–2 and Form TA–2. The amount of time needed to comply with the requirements of

[48] *See* 15 U.S.C. 78w(a)(2).

[49] 17 CFR 240.17Ac2–1(c).

[50] 17 CFR 240.17a–24.

[51] *See* letter from Bankers Trust. In addition, the Bankers Trust letter indicated that the proposed changes regarding the lost securityholder accounts would cost Bankers Trust a total of forty person-hours and $6,260 to comply with the rule. However, as the Commission had decided to significantly simplify the reporting requirements for lost securityholder account searches, the Commission believes that the Bankers Trust cost estimate will be greatly reduced.

[52] 17 CFR 240.0–10(h). The Commission recently amended this definition. Securities Exchange Commission Release Nos. 33–7548, 34–40122, IC–23272, and IA–1727 (June 24, 1998), 63 FR 35508.

[53] The FRFA arrives at this estimate, which is different then the IRFA estimate, by using the latest available transfer agent data. The IRFA, using the data available at that time, estimated that the total burden to 180 small entity trasfer agents would be 81 hours (180 × .45) at a cost of $2,552 ($31.5 × 81 hours). The FRFA, with a revised figure of 163 small entity transfer agents, calculate the following burden: 163 × .45=73 hours; and $31.5 × 73 hours=$2300.

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amended Rule 17Ac2–2 and Form TA–2 would vary depending on a particular transfer agent's activity. There are approximately 1093 registered transfer agents.[54] Of this number, approximately 270 registrants would be required to complete only Questions 1 through 3 and the signature section of amended Form TA–2. Based on their low volume of transfer business and number of shareholder accounts, approximately 371 registrants would be required to answer only Questions 1 through 5, 11, and the signature section. The remaining registrants, approximately 452, would be required to complete the entire Form TA–2.

Additionally, in order to comply with the rule, transfer agents will make minor modifications to computer systems to report all items for the twelve months ending December 31, instead of the previous six month reporting cycle. The Commission estimates that this likely would require a simple, one-time change to database reporting functions and would have a negligible cost on transfer agents. The only commenter who directly addressed the Commission's request for information regarding this cost agreed with the Commission's assessment and wrote that the proposed amendments to Rule 17Ac2–2 and Form TA–2 do not pose significant modifications to procedures or systems.[55]

VII. Statutory Basis

Pursuant to the Exchange Act and particularly Sections 3(f), 17, 17A, and 23(a) thereof, 15 U.S.C. 78q, 78q–1, and 78w(a), the Commission is adopting amendments to § 240.17Ac2–2 and Form TA–2 (referenced in 17 CFR 249b.102) of Chapter II of Title 17 of the *Code of Federal Regulations* in the manner set forth below.

List of Subjects in 17 CFR Parts 240 and 249b

Reporting and recordkeeping requirements, Securities.

Text of Amendment

In accordance with the foregoing, Title 17, Chapter II of the *Code of Federal Regulations* is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 77mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.17a–24 [Removed]

2. Section 240.17a–24 is removed.

3. Section 240.17Ac2–2 is revised to read as follows:

§ 240.17Ac2–2 Annual reporting requirement for registered transfer agents.

(a) Every transfer agent registered on December 31 must file a report covering the reporting period on Form TA–2 (§ 249b.102 of this chapter) by March 31 following the end of the reporting period. Form TA–2 must be completed in accordance with the instructions contained in the Form.

(1) A registered transfer agent that received fewer than 1,000 items for transfer in the reporting period and that did not maintain master securityholder files for more than 1,000 individual securityholder accounts as of December 31 of the reporting period must complete Questions 1 through 5, 11, and the signature section of Form TA–2.

(2) A named transfer agent that engaged a service company to perform all of its transfer agent functions during the reporting period must complete Questions 1 through 3 and the signature section of Form TA–2.

(3) A named transfer agent that engaged a service company to perform some but not all of its transfer agent functions during the reporting period must complete all of Form TA–2 but should enter zero (0) for those questions that relate to transfer agent functions performed by the service company on behalf of the named transfer agent.

(b) For purposes of this section, the term *reporting period* shall mean the calendar year ending December 31 for which Form TA–2 is being filed. The term *named transfer agent* shall have the same meaning as defined in § 240.17Ad–9(j). The term *service company* shall have the same meaning as defined in § 240.17Ad–9(k).

(c) As a transition measure, transfer agents' next required Form TA–2 filing will be on March 31, 2001, which will cover their activities during calendar Year 2000. This will eliminate the filing for the period ending June 30, 2000, which would have been due on August 31, 2000.

PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for Part 249b continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted;

* * * * *

§ 249b.1202 [Amended]

5. Form TA–2 (referenced in § 249b.102) is revised to read as set forth in the attached appendix.

Note: Form TA–2 is attached as an Appendix.)

Dated: June 2, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: This Appendix to the Preamble will not appear in the Code of Federal Regulations.

United States Securities and Exchange Commission Washington, D.C. 20549

Instructions for Use of Form TA–2

Form TA–2 is to be used by transfer agents registered pursuant to Section 17A of the Securities Exchange Act of 1934 for the annual report of transfer agent activities.

Attention: Certain sections of the Securities Exchange Act of 1934 applicable to transfer agents are referenced below. Transfer agents are urged to review all applicable provisions of the Securities Exchange Act of 1934, the Securities Act of 1933, and the Investment Company Act of 1940, as well as the applicable rules promulgated by the SEC under those Acts.

I. General Instructions for Filing and Amending Form TA–2

A. *Terms and Abbreviations.* The following terms and abbreviations are used throughout these instructions:

1. "Act" means the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*

2. "Aged record difference," as defined in Rule 17Ad–11(a)(2), 17 CFR 240.17Ad–11(a)(2), means a record difference that has existed for more than 30 calendar days.

3. "ARA" means the appropriate regulatory agency, as defined in Section 3(a)(34)(B) of the Act, 15 U.S.C. 78c(a)(34)(B).

4. "Direct Registration System" means the system, as administered by The Depository Trust Company, that allows investors to hold their securities in electronic book-entry form directly on the books of the issuer or its transfer agent.

5. "Form TA–2" includes the Form TA–2 itself and any attachments.

6. "Lost securityholder," as defined in Rule 17Ad–17, 17 CFR 240.17Ad–17, means a securityholder: (i) to whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent may deem the securityholder to be a lost securityholder as of the day the re-sent item is returned as undeliverable; and (ii) for whom the transfer agent has not received information regarding the securityholder's new address.

7. "Named transfer agent" is defined in Rule 17Ad–9(j), 17 CFR 240.17Ad–9(j), and means a registered transfer agent that has been engaged by an issuer to perform transfer agent functions for an issue of securities but has engaged a service company (another registered transfer agent) to perform some or all of those functions.

8. "Record difference" means any of the imbalances described in Rule 17Ad–9(g), 17 CFR 240.17Ad–9(g).

9. "Registrant" means the transfer agent on whose behalf the Form TA–2 is filed.

10. "Reporting period" means the calendar year ending December 31 of the year for which Form TA–2 is being filed.

11. "SEC" means the United States Securities and Exchange Commission.

12. "Service company" is defined in Rule 17Ad–9(k), 17 CFR 240.17Ad–9(k), and means the registered transfer agent engaged by a named transfer agent to perform transfer agent functions for that named transfer agent.

13. "Transfer agent" is defined in Section 3(a)(25) of the Act, 15 U.S.C. 78c(a)(25), and means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer in at least one of the functions enumerated therein.

B. *Who Must File; When to File.*

1. Every transfer agent that is registered on December 31 must file Form TA–2 in accordance with the instructions contained therein by the following March 31.

a. A registered transfer agent that received fewer than 1,000 items for transfer during the reporting period and that did not maintain master securityholder files for more than 1,000 individual securityholder accounts as of December 31 of the reporting period is required to complete Questions 1 through 5, 11, and the signature section of Form TA–2.

b. A named transfer agent that engaged a service company to perform all of its transfer agent functions during the reporting period is required to complete Questions 1 through 3 and the signature section of Form TA–2.

c. A named transfer agent that engaged a service company to perform some but not all of its transfer agent functions during the reporting period must complete all of Form TA–2 but should enter zero (0) for those questions that relate to functions performed by the service company on behalf of the named transfer agent.

2. The date on which any filing is actually received by the SEC is the Registrant's filing date provided that the filing complies with all applicable requirements. The SEC may reject a filing that does not comply with applicable requirements. The SEC's receipt of a filing, however, shall not constitute a finding that the filing has been filed as required or that the information therein is accurate, current, or complete.

C. *Number of Copies; How and Where to File.* The Registrant must file the original and two copies of Form TA–2 with the SEC. The original copy of Form TA–2 must be manually signed and any additional copies may be photocopies of the signed original copy. All copies must be legible and on good quality 8½ × 11 inch white paper. The Registrant must keep an exact copy of any filing in its records. (For recordkeeping rules see 17 CFR 240.17Ad–6 and 7).

The Registrant must file Form TA–2 directly with the SEC at: Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549–0013.

II. Special Instructions for Filing Form TA–2

A. Indicate the calendar year for which Form TA–2 is filed in the box at the upper left hand corner. A transfer agent registered on December 31 shall file Form TA–2 by the following March 31 even if the transfer agent conducted business for less than the entire reporting period.

B. In answering Question 4, indicate the number of items received for transfer during the reporting period. Omit the purchase and redemption of open-end investment company shares. Report those items in response to Question 10.

C. In answering Questions 5 and 6, include closed-end investment company securities in the corporate equity securities category.

In answering Question 5.a, include Direct Registration System, dividend reinvestment plan and/or direct purchase plan accounts in the total number of individual securityholder accounts maintained. In Question 5.b., include dividend reinvestment plan and/or direct purchase plan accounts only. In Question 5.c., include Direct Registration System accounts only. In Question 5.d., include American Depositary Receipts (ADRs) in the corporate equity or corporate debt category, as appropriate, and include dividend reinvestment plan and/or direct purchase plan accounts in the corporate equity or open-end investment company securities category.

In answering Question 6, debt securities are to be counted as one issue per CUSIP number. Open-end investment company securities portfolios are to be counted as one issue per CUSIP number.

D. In answering Question 7.c., exclude coupon payments and transfers of record ownership as a result of corporate actions.

E. In answering Question 10, exclude non-value transactions such as name or address changes.

F. In answering Question 11.b., include only those accounts held by securityholders that are defined as lost by Rule 17Ad–17 when the underlying securities (*i.e.*, not just dividends and interest) have been remitted to the states.

III. Federal Information Law and Requirements

SEC's Collection of Information: An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Under Sections 17, 17A(c) and 23(a) of the Act and the rules and regulations thereunder, the SEC is authorized to solicit from registered transfer agents the information required to be supplied on Form TA–2. The filing of this Form is mandatory for all registered transfer agents. The information will be used for the principal purpose of regulating registered transfer agents but may be used for all routine uses of the SEC or of the ARAs. Information supplied on this Form will be included routinely in the public files of the ARAs and will be available for inspection by any interested person. Any member of the public may direct to the SEC any comments concerning the accuracy of the burden estimate on the application facing page of this Form, and any suggestions for reducing this burden. The Office of Management and Budget has reviewed this collection of information in accordance with the clearance requirements of 44 U.S.C. 3507. The applicable Privacy Act system of records is SEC–2. Form TA–2 is subject to the routine uses set forth at 40 FR 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

[54] This figure is different than the figure put forth in the proposing release because data available since publication of the proposing release has shown a decrease in the number of registered transfer agents.

[55] Letter from Bankers Trust.

File Number:	OMB Approval
For the reporting period ended December 31	OMB Number: 3235–0337. Expires: June 30, 2002. Estimated average burden hours per full response: 6.00. Estimated average burden hours per intermediate response: 1.50. Estimated average burden hours per minimum response: .50.

United States Securities and Exchange Commission, Washington, D.C. 20549

Form TA–2—Form for Reporting Activities of Transfer Agents Registered Pursuant to Section 17A of the Securities Exchange Act of 1934

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)

1. Full name of Registrant as stated in Question 3 of Form TA–1: (Do not use Form TA–2 to change name or address.)

2. a. During the reporting period, has the Registrant engaged a service company to perform any of its transfer agent functions? (Check appropriate box.)

☐ All ☐ Some ☐ None

b. If the answer to subsection (a) is all or some, provide the name(s) and transfer agent file number(s) of all service company(ies) engaged.

Name:	File No. (beginning with 84– or 85–):

c. During the reporting period, has the Registrant been engaged as a service company by a named transfer agent to perform transfer agent functions?

__Yes __No

d. If the answer to subsection (c) is yes, provide the name(s) and file number(s) of the named transfer agent(s) for which the Registrant has been engaged as a service company to perform transfer agent functions: (If more room is required, please complete and attach the Supplement to Form TA–2.)

Name:	File No. (beginning with 84– or 85–):

3. a. Registrant's appropriate regulatory agency. (Check one box only.)

__ Comptroller of the Currency
__ Federal Deposit Insurance Corporation
__ Board of Governors of the Federal Reserve System
__ Securities and Exchange Commission

b. During the reporting period, has the Registrant amended Form TA–1 within 60 calendar days following the date on which information reported therein became inaccurate, incomplete, or misleading? (Check appropriate box.)

__ Yes, filed amendment(s)
__ No, failed to file amendment(s)
__ Not applicable

c. If the answer to subsection (b) is no, provide an explanation.

If the response to any of questions 4–11 below is none or zero, enter "0."

4. Number of items received for transfer during the reporting period .....

5. a. Total number of individual securityholder accounts, including accounts in the Direct Registration System (DRS), dividend reinvestment plans and/or direct purchase plans as of December 31 .....

b. Number of individual securityholder dividend reinvestment plan and/or direct purchase plan accounts as of December 31 .....

c. Number of individual securityholder DRS accounts as of December 31 .....

d. Approximate percentage of individual securityholder accounts from subsection (a) in the following categories as of December 31 .....

Corporate equity securities	Corporate debt securities	Open-end investment company securities	Limited partnership securities	Municipal debt securities	Other securities

6. Number of securities issues for which Registrant acted in the following capacities, as of December 31:

	Corporate equity & debt securities		Open-end investment company securities	Limited partnership securities	Municipal debt securities	Other securities
	Equity	Debt				
a. Receives items for transfer and maintains the master securityholder files						
b. Receives items for transfer but does not maintain the master securityholder files						
c. Does not receive items for transfer but maintains the master securityholder files						

7. Scope of certain additional types of activities performed:

a. Number of issues for which dividend reinvestment plan and/or direct purchase plan services were provided, as of December 31 .....

b. Number of issues for which DRS services were provided, as of December 31 .....

c. Dividend disbursement and interest paying agent activities conducted during the reporting period:

i. number of issues .....

ii. amount (in dollars) .....

8. a. Number and aggregate market value of securities aged record differences, existing for more than 30 days, as of December 31:

	Prior transfer agent (If applicable)	Current transfer agent
i. Number of issues	.....	.....
ii. Market value (in dollars)	.....	.....

b. Number of quarterly reports regarding buy-ins filed by the Registrant with its ARA (including the SEC) during the reporting period pursuant to Rule 17Ad–11(c)(2) .....

c. During the reporting period, did the Registrant file all quarterly reports regarding buy-ins with its ARA (including the SEC) required by Rule 17Ad–11(c)(2)? .....

__ Yes __ No

d. If the answers to subsection (c) is no, provide an explanation for each failure to file.

9. a. During the reporting period, has the Registrant always been in compliance with the turnaround time for routine items as set forth in Rule 17Ad–2?

__Yes __ No

If the answer to subsection (a) is no, complete subsections (i) through (ii).

i. Provide the number of months during the reporting period in which the Registrant was not in compliance with the turnaround time for routine items according to Rule 17Ad–2

ii. Provide the number of written notices Registrant filed during the reporting period with the SEC and with its ARA that reported its noncompliance with turnaround time for routine items according to Rule 17Ad–2

10. Number of open-end investment company securities purchases and redemptions ("transactions") excluding dividend, interest and distribution postings processed during the reporting period:

a. Total number of transactions processed:

b. Number of transactions processed on a date other than date of receipt of order ("as ofs"):

11. a. During the reporting period, provide the date of all database searches conducted for lost securityholder accounts listed on the transfer agent's master securityholder files, the number of lost securityholder accounts for which a database search has been conducted, and the number of lost securityholder accounts for which a different address has been obtained as a result of a database search.

Date of database search	Number of lost securityholder accounts submitted for database search	Number of different addresses obtained from database search

b. Number of lost securityholder accounts that have been remitted to states during the reporting period .....

SIGNATURE: The Registrant submitting this Form, and the person signing the Form, hereby represent that all the information contained in the Form is true, correct, and complete.

Manual signature of Official responsible for Form	Title: Telephone number:
Name of Official responsible for Form: (First name, Middle name, Last name)	Date signed (Month/Day/Year):
File Number	Supplement to Form TA–2
For the reporting period ended December 31,———	Full Name of Registrant

Use this schedule to provide the name(s) and file number(s) of the named transfer agent(s) for which the Registrant has been engaged as a service company to perform transfer agent functions:

Name:	File No. (beginning with 84– or 85–):

Name:	File No. (beginning with 84– or 85–):

[FR Doc. 00–14594 Filed 6–8–00; 8:45 am]
BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's address for Medicis Dermatologics, Inc.

DATES: This rule is effective June 9, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Medicis Dermatologics, Inc., 4343 East Camelback Rd., suite 250, Phoenix, AZ 85018–2700, has informed FDA of a change of sponsor's address to 8125 North Hayden Rd., Scottsdale, AZ 85258. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor's address.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "Medicis Dermatologics, Inc." and in the table in paragraph (c)(2) by revising the entry for "099207" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
• • •	• • •
099207 Medicis Dermatologics, Inc., 8125 North Hayden Rd., Scottsdale, AZ 85258	
• • •	• • •

(2) * * *

Drug labeler code	Firm name and address
• • •	• • •
099207	Medicis Dermatologics, Inc., 8125 North Hayden Rd., Scottsdale, AZ 85258
• • •	• • •

Dated: May 29, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine

[FR Doc. 00–14464 Filed 6–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 524 and 556

Ophthalmic and Topical Dosage Form New Animal Drugs; Moxidectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of American Home Products Corp. The supplemental NADA provides for topical use of a 0.5 percent moxidectin solution on dairy cattle of breeding age for treatment and control of infections and infestations of certain internal and external parasites. FDA is also amending the regulations to establish a tolerance for moxidectin residues in milk.

DATES: This rule is effective June 9, 2000.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7584.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of American Home Products Corp., 800 Fifth St. NW., Fort Dodge, IA 50501, filed supplemental NADA 141–099 that provides for use of Cydectin® (moxidectin) 0.5 percent pouron for dairy cattle at 500 micrograms moxidectin per kilogram of body weight for treatment and control of infections and infestations of certain gastrointestinal roundworms, lungworms, cattle grubs, mites, lice, and horn flies. The supplemental NADA is approved as of November 2, 1999, and the regulations are amended in 21 CFR 524.1451 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, the regulations are amended in 21 CFR 556.426 to add a tolerance for residues of moxidectin in milk and, editorially, to reflect current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning November 2, 1999, because the application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the application and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 524

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 524 and 556 are amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1451 [Amended]

2. Section 524.1451 *Moxidectin* is amended in the first sentence of paragraph (d)(2) by removing the phrase "Beef and non-lactating dairy cattle" and by adding in its place the phrase "Beef and dairy cattle", and in paragraph (d)(3) by removing the first and second sentences.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.426 is revised to read as follows:

§ 556.426 Moxidectin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of moxidectin is 4 micrograms per kilogram of body weight per day.

(b) *Tolerances.* The tolerance for parent moxidectin (the marker residue) in edible tissues of cattle is 200 parts per billion (ppb) in liver (the target tissue) and 50 ppb in muscle. The tolerance for parent moxidectin is 50 ppb in milk.

Dated: May 29, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–14463 Filed 6–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

State Plans: Coverage of the United States Postal Service and Other Coverage Issues—Changes to Level of Federal Enforcement for Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, the Virgin Islands, Washington and Wyoming

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: This document amends OSHA's regulations to reflect declination of jurisdiction over the United States Postal Service (U.S. Postal Service or USPS) and its facilities by all twenty-three (23) approved State Plans which cover the private sector. The Postal Employees' Safety Enhancement Act of 1998 (PESEA) amended the Occupational Safety and Health Act of 1970 (the Act) to include the USPS within its definition of "employer." Accordingly, OSHA assumed jurisdiction for the USPS on September 29, 1998. PESEA extends all provisions of the Act to the USPS, including section 18 of the Act, thus granting the OSHA-approved State plans the authority to regulate the USPS. Subsequently, OSHA required the State plan States to either elect to amend their State plans to cover the USPS, or to decline to exercise such coverage, in which case coverage would remain a Federal OSHA responsibility. All affected State plans declined. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect the declination of State jurisdiction and the continuation of Federal OSHA enforcement authority over the USPS, including contract employees and contractor-operated facilities engaged in USPS mail operations, in all of the twenty-three (23) States operating OSHA-approved State plans covering the private sector, and notifying affected employers and employees of this action. As a result, Federal OSHA is responsible for safety and health enforcement with respect to the USPS and its facilities in all States nationwide. In addition, technical corrections are being made pertaining to maritime jurisdiction in several of the States; military jurisdiction in the State of Washington; coverage on Indian Reservations in the State of Oregon; and information on where the plan documents for the various State plans may be inspected.

EFFECTIVE DATE: June 9, 2000.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW, Washington, D.C. 20210, (202) 693–1999.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting and obtaining Federal approval of a State plan. State plan approval occurs in stages which include initial approval under section 18(c) of the Act and ultimately, final approval under section 18(e) of the Act. In the interim, between initial approval and final approval, there is a period of concurrent Federal/State jurisdiction within a State operating an approved plan. In the following States which have not received section 18(e) final approval, concurrent Federal enforcement authority remains in effect but has been suspended voluntarily in accordance with operational status agreements between OSHA and the individual States. See 29 CFR 1954.3 for guidelines and procedures. These States are: California, Michigan, New Mexico, Oregon, Puerto Rico, Vermont and Washington. In the following States which have received final approval pursuant to section 18(e) of the Act, Federal OSHA standards and enforcement authority have been relinquished. These States are: Alaska, Arizona, Hawaii, Indiana, Iowa, Kentucky, Maryland, Minnesota, Nevada, North Carolina, South Carolina, Tennessee, Utah, Virginia, and Wyoming. (Concurrent Federal enforcement authority is currently being exercised in the Virgin Islands. Connecticut and New York operate State plans limited in coverage to State and local government employees and are not affected by this rule.)

Background

United States Postal Service

States ordinarily cannot exercise regulatory authority over Federal agencies or other Federal institutions or

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instrumentalities, unless specifically authorized by Congress. The Postal Employees' Safety Enhancement Act (Public Law 105–241) (PESEA), enacted on September 28, 1998, subjects the United States Postal Service (U.S. Postal Service or USPS) to all provisions of the Occupational Safety and Health Act (the Act) in the same manner as a private sector employer. PESEA amends two sections of the Act to provide full private-sector coverage of the USPS. The first provision amends section 3(5) of the Act, 29 U.S.C. 652(5), to exclude the USPS from the existing exemption of the United States from the definition of "employer." As a result, the USPS is now covered by OSHA in the same manner as a private sector employer. The second provision clarifies the status of the USPS under section 19 of the OSH Act, 29 U.S.C. 668(a), which deals with Federal agency safety and health programs. The new provision affirmatively states that the USPS is not to be considered a "Federal agency" for purposes of section 19. Thus, PESEA makes the USPS subject to coverage under all provisions of the federal OSHAct which are applicable to private sector employment, including the State plan provisions of section 18 of the Act, thus granting the States with OSHA-approved State plans the authority to regulate this Federal instrumentality. (Prior to enactment, a colloquy on the floor of the House of Representatives confirmed this intent.)

Federal OSHA now regulates the working conditions of USPS employees as well as contract employees engaged in official USPS mail operations, e.g., contract mail carriers and truck drivers transporting and unloading mail. (OSHA notes that pursuant to section 4(b)(1), OSHA standards do not apply to working conditions regulated by the Department of Transportation, Office of Motor Carrier and Highway Safety.) Federal OSHA also regulates the working conditions of postal stations located in other public or commercial facilities.

In a memorandum dated October 20, 1998, OSHA offered the State plan States the opportunity to amend their State plans to extend State jurisdiction to the USPS, as authorized by PESEA, or to decline to exercise such jurisdiction, in which case coverage would remain a Federal OSHA responsibility. All 23 State plan States with private sector responsibility determined they would not assume responsibility for coverage of USPS employees and contractors engaged in USPS mail handling operations. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect this declination of State jurisdiction and continuation of Federal OSHA enforcement authority over this occupational safety and health issue in the twenty-three (23) States operating approved State plans. This rule modifies each State's subpart at 29 CFR 1952 to document that coverage of USPS workplaces and employees is not an issue covered by the State plan and remains a Federal OSHA responsibility. Federal coverage in State plan States encompasses USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations. State plan States will continue to exercise jurisdiction, where permitted by State law, over all other private sector contractors and employees working on USPS sites but not engaged in USPS mail operations, such as building maintenance and construction workers.

Connecticut and New York operate State plans limited in coverage to State and local government employees and are not affected by this rule

Other Technical Corrections

Five (5) States (California, Washington, Oregon, Minnesota, Vermont) include some aspects of private sector maritime operations (shipyards, longshoring, marine terminals, gear certification) within the scope of their plans. All State plans provide coverage to State and local government employees engaged in maritime activities. This rule modifies pertinent sections of 29 CFR 1952 to reflect, in more uniform language, the extent of State Plan and Federal OSHA maritime jurisdiction. This rule also makes other technical corrections and updates with regard to military jurisdiction in the State of Washington and coverage on Indian Reservations in the State of Oregon. Finally, this rule updates information in each State's subpart regarding where the plan documents for that State are made available to the public.

Decision

29 CFR Part 1953 sets forth the procedures by which the Assistant Secretary will review changes to State plans approved in accordance with section 18(c) of the Act and Part 1902. Upon review of the twenty-three State plan decisions in accordance with these procedures, OSHA hereby approves these actions and amends each State's subpart in 29 CFR Part 1952 to reflect the State's determination not to extend State Plan jurisdiction to the U.S. Postal Service. Today's rule in the **Federal Register** further provides notice to affected employers and employees of the extent of Federal OSHA enforcement authority over the U.S. Postal Service in each of the 23 State plan States which cover private sector employment. Technical corrections with regard to the extent of State and Federal enforcement authority over safety and health issues in the maritime industry in several of the States; military jurisdiction in the State of Washington; coverage on Indian Reservations in the State of Oregon; and information on where the plan documents for the various State plans may be inspected are also approved, and the pertinent subparts of Part 1952 amended. (Note: In the interest of clarity, the full text of each of the amended sections, including unchanged provisions which reflect previously approved determinations by the affected States, is included in the following amendments to Part 1952.)

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. As these State actions impose no new responsibilities or requirements on employers, employees or the State, no opportunity for public comment is required.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this action will not have a significant economic impact on a substantial number of small entities. No additional burden will be placed upon the State government beyond the responsibilities already assumed as part of the approved State plan.

Federalism

Executive Order 13132 on "Federalism" emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal government must follow as it carries out policies which affect State or local governments. OSHA has included in the Supplementary Information section of today's notice a general explanation of the relationship between Federal OSHA and the State Plan States under the Occupational Safety and Health Act and the effect of the Postal Employees' Safety Enhancement Act and other issues on this relationship. OSHA has consulted extensively with the States on their individual decisions on these issues. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to State decisions on the extent of State Plan coverage under the OSH Act which have no effect outside the particular State, OSHA has reviewed the decisions approved today and believes they have been made in a manner consistent with the principles and criteria set forth in the Executive Order.

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under section 18 of the OSH Act, (29 U.S.C. 667), 29 CFR Part 1902, and Secretary of Labor's Order No. 1–90 (55 FR 9033).

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Reporting and recordkeeping requirements.

Signed at Washington, D.C. this 30th day of May 2000.

Charles N. Jeffress,

Assistant Secretary.

For the reasons set out in the preamble, 29 CFR Part 1952 is hereby amended as set forth below:

PART 1952—[AMENDED]

1. The authority citation for part 1952 continues to read as follows:

Authority: Sec 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

Subpart C—South Carolina

2. Section 1952.94 is amended by revising paragraph (b) to read as follows:

§ 1952.94 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in South Carolina. The plan does not cover private sector maritime employment; military bases; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; private sector employment at Area D of the Savannah River Site (power generation and transmission facilities operated by South Carolina Electric and Gas) and at the Three Rivers Solid Waste Authority; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that South Carolina retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

3. Section 1952.95 is amended by revising paragraph (b)(1) to read as follows:

§ 1952.95 Level of Federal enforcement.

* * * * *

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the South Carolina plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities, and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification), as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments; employment on military bases; and private sector employment at Area D of the Savannah River Site (power generation and transmission facilities operated by South Carolina Electric and Gas) and at the Three Rivers Solid Waste Authority. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.94(b). Federal jurisdiction is also retained with respect to Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

4. Section 1952.96 is revised to read as follows:

§ 1952.96 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Atlanta Federal Center, 61 Forsyth Street, SW, Room 6T50, Atlanta, Georgia 30303; and

Office of the Director, South Carolina Department of Labor, Licensing and Regulation, Koger Office Park, Kingstree Building, 110 Centerview Drive, P.O. Box 11329, Columbia, South Carolina 29210.

Subpart D—Oregon

5. Section 1952.105 is amended by revising paragraphs (a)(2), (a)(7), (a)(8), (a)(9) and (a)(10) to read as follows:

§ 1952.105 Level of Federal enforcement.

(a) * * *

(2) Standards in the maritime issues covered by 29 CFR Parts 1915, 1917, 1918, and 1919 (shipyards, marine terminals, longshoring, and gear certification), and enforcement of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments, which have been specifically excluded from coverage under the plan. This includes: employment on the navigable waters of the U.S.; shipyard and boatyard employment on or immediately adjacent to the navigable waters—including floating vessels, dry docks, graving docks and marine railways—from the front gate of the work site to the U.S. statutory limits; longshoring, marine terminal and marine grain terminal operations, except production or manufacturing areas and their storage facilities; construction activities emanating from or on floating vessels on the navigable waters of the U.S.; commercial diving originating from an object afloat a navigable waterway; and all other private sector places of employment on or adjacent to navigable waters whenever the activity occurs on or from the water;

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(7) Enforcement of occupational safety and health standards at all private sector establishments, including tribal and Indian-owned enterprises, on all Indian and non-Indian lands within the currently established boundaries of all Indian reservations, including the Warm Springs and Umatilla reservations, and on lands outside these reservations that are held in trust by the Federal government for these tribes. (Businesses owned by Indians or Indian tribes that conduct work activities outside the tribal reservation or trust lands are subject to the same jurisdiction as non-Indian owned businesses.);

(8) Enforcement of occupational safety and health standards at worksites located within Federal military reservations, except private contractors working on U.S. Army Corps of Engineers dam construction projects, including reconstruction of docks or other appurtenances;

(9) Investigations and inspections for the purpose of the evaluation of the plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)); and

(10) Enforcement of occupational safety and health standards with regard to all Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

6. Section 1952.107 is amended by adding a new paragraph (g) to read as follows:

§ 1952.107 Changes to approved plans.

* * * * *

(g) Oregon's State plan changes extending Federal enforcement jurisdiction to shore side shipyard and boatyard employment, as described in a 1998 Memorandum of Understanding and addendum to the State's operational status agreement; and to all private sector employment, including tribal and Indian-owned enterprises, on all Indian reservations, including establishments on trust lands outside of reservations, as described in a separate 1998 addendum, were approved by the Assistant Secretary on January 6, 1999.

Subpart E—Utah

7. Section 1952.114 is amended by revising paragraph (b) to read as follows:

§ 1952.114 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Utah. The plan does not cover private sector maritime employment; employment on Hill Air Force Base; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Utah retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

8. Section 1952.115 is amended by revising paragraph (b) to read as follows:

§ 1952.115 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Utah plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health enforcement in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification), as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.114(b). Federal jurisdiction is also retained with regard to: all employment on the Hill Air Force Base; Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations. In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

9. Section 1952.116 is revised to read as follows:

§ 1952.116 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N3700, Washington, DC 20210;
Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1999 Broadway Suite 1690, Denver, Colorado 80202–5716; and
Office of the Commissioner, Labor Commission of Utah, 160 East 300 South, 3rd Floor, P.O. Box 146650, Salt Lake City, Utah 84114–6650.

Subpart F—Washington

10. Section 1952.121 is revised to read as follows:

§ 1952.121 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N3700, Washington, DC 20210;
Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Suite 715, 1111 Third Avenue, Seattle, Washington, 98101–3212;
Office of the Director, Washington Department of Labor and Industries, General Administration Building, P.O. Box 44001, Olympia, Washington 98504–4001; and
Office of the Director, Washington Department of Labor and Industries, General Administration Building, 7273 Linderson Way, SW., Tumwater, Washington, 98502.

11. Section 1952.122 is revised to read as follows:

§ 1952.122 Level of Federal enforcement.

(a) Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter under which an agreement has been entered into with Washington, effective May 30, 1975, and amended several times effective October 2, 1979, May 29, 1981, April 3, 1987, and October 27, 1989; and based on a determination that Washington is operational in the issues covered by the Washington occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Parts 1910 and 1926, except as provided in this section. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to:

(1) Enforcement of new Federal standards until the State adopts a comparable standard;

(2) Enforcement of all Federal standards, current and future, in the maritime issues covered by 29 CFR Parts 1915, 1917, 1918, and 1919 (shipyards, marine terminals, longshoring, and gear certification), and enforcement of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments, as they relate to employment under the exclusive jurisdiction of the Federal government on the navigable waters of the United States, including but not limited to dry docks or graving docks, marine railways or similar conveyances (*e.g.*, syncrolifts and elevator lifts), fuel operations, drilling platforms or rigs, dredging and pile driving, and diving;

(3) Complaints and violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660(c));

(4) Enforcement in situations where the State is refused entry and is unable to obtain a warrant or enforce its right of entry;

(5) Enforcement of unique and complex standards as determined by the Assistant Secretary;

(6) Enforcement in situations when the State is unable to exercise its enforcement authority fully or effectively;

(7) Enforcement of occupational safety and health standards within the borders of all military reservations;

(8) Enforcement at establishments of employers who are enrolled members of the Yakima Indian Nation, where such employers' establishments are located within the Yakima reservation;

(9) Enforcement at Tribally-owned establishments or at establishments owned by enrolled members of the Colville Confederated Tribes, where such establishments are located within the Colville reservation;

(10) Investigations and inspections for the purpose of evaluation of the Washington plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)); and

(11) Enforcement of occupational safety and health standards with regard to all Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(b) The OSHA Regional Administrator will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Washington.

Subpart I—North Carolina

12. Section 1952.154 is amended by revising paragraph (b) to read as follows:

§ 1952.154 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in North Carolina. The plan does not cover Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; private sector maritime activities; employment on Indian reservations; enforcement relating to any contractors or subcontractors on any Federal establishment where the land has been ceded to the Federal Government, railroad employment, and enforcement on military bases.

* * * * *

13. Section 1952.155 is amended by revising paragraph (b)(1) to read as follows:

§ 1952.155 Level of Federal enforcement.

* * * * *

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the North Carolina plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to private sector maritime activities (occupational safety and health standards comparable to 29 CFR Parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919; gear certification, as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments); employment on Indian reservations; enforcement relating to any contractors or subcontractors on any Federal establishment where the land has been ceded to the Federal Government; railroad employment, not otherwise regulated by another Federal agency; and enforcement on military bases. Federal jurisdiction is also retained with respect to Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

14. Section 1952.156 is revised to read as follows:

§ 1952.156 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;
Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Atlanta Federal Center, 61 Forsyth Street, SW, Room 6T50, Atlanta, Georgia 30303; and
Office of the Commissioner, North Carolina Department of Labor, 4 West Edenton Street, Raleigh, North Carolina 27601–1092.

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Subpart J—Iowa

15. Section 1952.164 is amended by revising paragraph (b) to read as follows:

§ 1952.164 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Iowa. The plan does not cover private sector maritime employment; Federal government-owned, contractor-operated military/munitions facilities; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other States; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Iowa retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

16. Section 1952.165 is amended by revising paragraph (b) to read as follows:

§ 1952.165 Level of Federal enforcement.

* * * * *

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Iowa plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification), as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments; Federal government-owned, contractor-operated military/munitions facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other States. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.164(b). Federal OSHA will also retain authority for coverage of all Federal government employers and employees; and of the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

17. Section 1952.166 is revised to read as follows:

§ 1952.166 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, City Center Square, 1100 Main Street, Suite 800, Kansas City, Missouri 64105; and

Office of the Commissioner, Iowa Division of Labor , 1000 E. Grand Avenue, Des Moines, Iowa 50319.

Subpart K—California

18. Section 1952.171 is revised to read as follows:

§ 1952.171 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 71 Stevenson Street, 4th Floor, San Francisco, California 94105; and

Office of the Director, California Department of Industrial Relations, 455 Golden Gate Avenue, 10th Floor, San Francisco 94102.

19. Section 1952.172 is amended by adding a new paragraph (b)(9) to read as follows:

§ 1952.172 Level of Federal enforcement.

* * * * *

(b) * * *

(9) Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

Subpart N—Minnesota

20. Section 1952.204 is amended by revising paragraph (b) to read as follows:

§ 1952.204 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Minnesota. The plan does not cover private sector offshore maritime employment on the navigable waters of the United States; employment at the Twin Cities Army Ammunition Plant; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; any tribal or private sector employment within any Indian reservation in the State; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Minnesota retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

21. Section 1952.205 is amended by revising paragraph (b) to read as follows:

§ 1952.205 Level of Federal enforcement.

* * * * *

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Minnesota plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector offshore maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments, as they relate to employment under the exclusive jurisdiction of the Federal government on the navigable waters of the United States. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.204(b). Federal jurisdiction is also retained over the Twin Cities Army Ammunition Plant; over Federal government employers and employees; over any tribal or private sector employment within any Indian reservation in the State; and over the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

22. Section 1952.206 is revised to read as follows:

§ 1952.206 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 230 S. Dearborn Street, 32nd Floor, Room 3244, Chicago, Illinois 60604; and

Office of the Commissioner, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, Minnesota 55155.

Subpart O—Maryland

23. Section 1952.214 is amended by revising paragraph (b) to read as follows:

§ 1952.214 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Maryland. The plan does not cover private sector maritime employment; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; and employment on military bases.

* * * * *

24. Section 1952.215 is amended by revising paragraph (b) to read as follows:

§ 1952.215 Level of Federal enforcement.

* * * * *

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Maryland plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to private sector maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification), as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments; and employment on military bases. Federal jurisdiction is also retained with respect to Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

25. Section 1952.216 is revised to read as follows:

§ 1952.216 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health

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Administration, U.S. Department of Labor, The Curtis Center, 170 South Independence Mall West—Suite 740 West, Philadelphia, Pennsylvania 19106–3309; and
Office of the Commissioner, Maryland Division of Labor and Industry, Department of Labor, Licensing and Regulation, 1100 N. Eutaw Street, Room 613, Baltimore, Maryland 21201–2206.

Subpart P—Tennessee

26. Section 1952.224 is amended by revising paragraph (b) to read as follows:

§ 1952.224 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Tennessee. The plan does not cover private sector maritime employment; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; railroad employment; employment at Tennessee Valley Authority facilities and on military bases, as well as any other properties ceded to the United States Government.

* * * * *

27. Section 1952.225 is amended by revising paragraph (b) to read as follows:

§ 1952.225 Level of Federal enforcement.

* * * * *

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Tennessee plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments; railroad employment, not otherwise regulated by another Federal agency; employment at Tennessee Valley Authority facilities and on military bases. Federal jurisdiction is also retained with respect to Federal government employers and employees, and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

28. Section 1952.226 is revised to read as follows:

§ 1952.226 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;
Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Atlanta Federal Center, 61 Forsyth Street, SW, Room 6T50, Atlanta, Georgia 30303; and
Office of the Commissioner, Tennessee Department of Labor, 710 James Robertson Parkway, Nashville, Tennessee 37243–0659.

Subpart Q—Kentucky

29. Section 1952.234 is amended by revising paragraph (b) to read as follows:

§ 1952.234 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Kentucky. The plan does not cover private sector maritime employment; employment at Tennessee Valley Authority facilities; military bases; properties ceded to the U.S. Government; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Kentucky retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

30. Section 1952.235 is amended by revising paragraph (b) to read as follows:

§ 1952.235 Level of Federal enforcement.

* * * * *

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Kentucky plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments; employment at Tennessee Valley Authority facilities and on all military bases, as well as any other properties ceded to the U.S. Government. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.234(b). Federal jurisdiction is also retained with respect to Federal government employers and employees; and the U.S. Postal Service (USPS),

including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

31. Section 1952.236 is revised to read as follows:

§ 1952.96 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;
Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Atlanta Federal Center, 61 Forsyth Street, SW., Room 6T50, Atlanta, Georgia 30303; and
Office of the Secretary, Kentucky Labor Cabinet, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601.

Subpart R—Alaska

32. Section 1952.243 is amended by revising paragraph (b) to read as follows:

§ 1952.243 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Alaska. The plan does not cover private sector maritime employment; worksites located on the navigable waters, including artificial islands; operations of private sector employers within the Metlakatla Indian Community on the Annette Islands; operations of private sector employers within Denali (Mount McKinley) National Park; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; or the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Alaska retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

33. Section 1952.244 is amended by revising paragraph (b) to read as follows:

§ 1952.244 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Alaska plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments. Federal jurisdiction will be retained over marine-related private sector employment at worksites on the navigable waters, such as floating seafood processing plants, marine construction, employments on artificial islands, and diving operations in accordance with section 4(b)(1) of the Act. Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor (Secretary's Order 5–96, December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.243(b). Federal jurisdiction is also retained for private sector worksites located within the Annette Islands Reserve of the Metlakatla Indian Community, for private sector worksites located within the Denali (Mount McKinley) National Park, for Federal government employers and employees, and for the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

34. Section 1952.245 is revised to read as follows:

§ 1952.245 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;
Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Suite 715, 1111 Third Avenue, Seattle, Washington, 98101–3212; and
Office of the Commissioner, Alaska Department of Labor, 1111 W. 8th Street, Room 306, P.O. Box 24119, Juneau, Alaska 99802–1149.

Subpart S—The Virgin Islands

35. Section 1952.253 is amended by revising paragraph (b) to read as follows:

§ 1952.253 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in the Virgin Islands. The plan does not cover private sector maritime employment; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the

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number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Virgin Islands retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

Note: The Virgin Islands' final approval status under section 18(e) of the Act was suspended and full Federal concurrent enforcement authority reinstated on November 13, 1995.

* * * * *

36. Section 1952.254 is amended by revising paragraph (b) to read as follows:

§ 1952.254 Level of Federal enforcement.

* * * * *

(b) Federal OSHA also continues to retain full authority over issues which have not been subject to State enforcement under the Virgin Islands plan. Thus, OSHA retains authority to enforce all provisions of the Act, Federal standards, rules, or orders which relate to occupational health in private sector employment in the Virgin Islands. OSHA also retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, Federal standards, rules, or orders specifically directed to maritime employment (*e.g.*, 29 CFR Part 1915, shipyard employment; 29 CFR Part 1917, marine terminals; 29 CFR Part 1918, longshoring; 29 CFR Part 1919, gear certification), as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments. Federal jurisdiction is retained with respect to Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations. Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.253(b).

* * * * *

37. Section 1952.255 is revised to read as follows:

§ 1952.255 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;
Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 201 Varick Street, Room 670, New York, New York 10014.
Office of the Commissioner, Virgin Islands Department of Labor, 16–AB Church Street, St. Croix, Virgin Islands 00820–4666.

Subpart T—Michigan

38. Section 1952.265 is revised to read as follows:

§ 1952.265 Level of Federal enforcement.

Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter under which an agreement has been entered into with Michigan, effective January 6, 1977, and based on a determination that Michigan is operational in the issues covered by the Michigan occupational safety and health plan, discretionary Federal enforcement activity under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Parts 1910 and 1926, except as provided in this section. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: Complaints filed with the U.S. Department of Labor about violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660(c)); Federal standards promulgated subsequent to the agreement where necessary to protect employees, as in the case of temporary emergency standards promulgated under section 6(c) of the Act (29 U.S.C. 655(c)), in the issues covered under the plan and the agreement until such time as Michigan shall have adopted equivalent standards in accordance with subpart C of 29 CFR Part 1953; private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments; which issues have been specifically excluded from coverage under the Michigan plan; and investigations and inspections for the purpose of the evaluation of the Michigan plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). Federal OSHA will also retain authority for coverage of Federal government employers and employees; and of the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations. The OSHA Regional Administrator will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Michigan.

39. Section 1952.266 is revised to read as follows:

§ 1952.266 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3700, Washington, DC 20210;
Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 230 S. Dearborn Street, 32nd Floor, Room 3244, Chicago, Illinois 60604;
Office of the Director, Michigan Department of Consumer and Industry Services, 4th Floor, Law Building, 525 West Ottawa Street, Lansing, Michigan 48933 (Mailing address: P.O. Box 30004, Lansing, Michigan 48909).

Subpart U—Vermont

40. Section 1952.271 is revised to read as follows:

§ 1952.271 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3700, Washington, DC 20210;
Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, John F. Kennedy Federal Building, Room E–340, Boston, Massachusetts 02203; and
Office of the Commissioner, Vermont Department of Labor and Industry, National Life Building-Drawer 20, 120 State Street, Montpelier, Vermont 05620–3401.

41. Section 1952.272 is revised to read as follows:

§ 1952.272 Level of Federal enforcement.

Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter under which an agreement has been entered into with Vermont, effective February 19, 1975, and based on a determination that Vermont is operational in issues covered by the Vermont occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Parts 1910 and 1926, except as provided in this section. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: Complaints filed with the U.S. Department of Labor about violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660(c)); federal standards promulgated subsequent to the agreement where necessary to protect employees, as in the case of temporary emergency standards promulgated under section 6(c) of the Act (29 U.S.C. 665(c)), in the issues covered under the plan and the agreement until such time as Vermont shall have adopted equivalent standards in accordance with Subpart C of 29 CFR Part 1953; in private sector offshore maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments, as they relate to employment under the exclusive jurisdiction of the Federal government on the navigable waters of the United States, including dry docks, graving docks, and marine railways; and investigations and inspections for the purpose of the evaluation of the Vermont plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). Federal OSHA will also retain authority for coverage of Federal government employers and employees; and of the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations. The OSHA Regional Administrator will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Vermont.

Subpart W—Nevada

42. Section 1952.294(b) is revised to read as follows:

§ 1952.294 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Nevada. The plan does not cover Federal government employers and employees; any private sector maritime activities; employment on Indian land; any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction; and the U.S. Postal Service (USPS), including USPS employees, contract employees, and contractor-operated facilities engaged in USPS mail operations.

* * * * *

43. Section 1952.295(b)(1) is revised to read as follows:

§ 1952.295 Level of Federal enforcement.

* * * * *

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Nevada plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to any private sector maritime activities (occupational safety and health standards comparable to 29 CFR Parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919, gear certification, as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments), employment on Indian land, and any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction. Federal jurisdiction is also retained with respect to Federal government employers and employees. Federal OSHA will also retain authority for coverage of the U.S. Postal Service (USPS), including USPS employees, contract employees, and contractor-operated facilities engaged in USPS mail operations.

Subpart Y—Hawaii

44. Section 1952.313 is amended by revising paragraph (b) to read as follows:

§ 1952.313 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Hawaii. The plan does not cover maritime employment in the private sector; Federal government employers and employees; enforcement relating to any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

45. Section 1952.314 is amended by revising paragraph (b) to read as follows:

§ 1952.314 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Hawaii plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments. Federal jurisdiction also remains in effect with respect to Federal government employers and employees, enforcement relating to any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal

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jurisdiction; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

46. Section 1952.315 is revised to read as follows:

§ 1952.315 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3700, Washington, DC 20210;
Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 71 Stevenson Street, 4th Floor, San Francisco, California 94105; and
Office of the Director, Hawaii Department of Labor and Industrial Relations, 830 Punchbowl Street, Honolulu, Hawaii 96831.

Subpart Z—Indiana

47. Section 1952.324 is amended by revising paragraph (b) to read as follows:

§ 1952.324 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Indiana. The plan does not cover maritime employment in the private sector; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Indiana retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

48. Section 1952.325 is amended by revising paragraph (b)(1) to read as follows:

§ 1952.325 Level of Federal enforcement.

* * * * *

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Indiana plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification), as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.324(b). Federal jurisdiction is also retained with respect to Federal government employers and employees, and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

49. Section 1952.326 is revised to read as follows:

§ 1952.326 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3700, Washington, DC 20210;
Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 230 S. Dearborn Street, 32nd Floor, Room 3244, Chicago, Illinois 60604; and
Office of the Commissioner, Indiana Department of Labor, State Office Building, 402 West Washington Street, Room W195, Indianapolis, Indiana 46204.

Subpart BB—Wyoming

50. Section 1952.344 is amended by revising paragraph (b) to read as follows:

§ 1952.344 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Wyoming. The plan does not cover private sector maritime employment; employment on the Warren Air Force Base; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Wyoming retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

51. Section 1952.345 is amended by revising paragraph (b) to read as follows:

§ 1952.345 Level of Federal enforcement.

* * * * *

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Wyoming plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, Federal standards, rules, or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.344(b). Federal jurisdiction is also retained for employment at Warren Air Force Base; Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

52. Section 1952.346 is revised to read as follows:

§ 1952.346 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3700, Washington, DC 20210;
Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1999 Broadway Suite 1690, Denver, Colorado 80202–5716; and
Office of the Assistant Administrator, Worker's Safety and Compensation Division, Wyoming Department of Employment, Herschler Building, 2nd Floor East, 122 West 25th Street, Cheyenne, Wyoming 82002.

Subpart CC—Arizona

53. Section 1952.354 is amended by revising paragraph (b) to read as follows:

§ 1952.354 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Arizona. The plan does not cover private sector maritime employment; Federal government employers and employees; enforcement relating to any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; copper smelters; concrete and asphalt batch plants that are physically connected to a mine or so interdependent with a mine as to form one integral enterprise; and Indian reservations.

* * * * *

54. Section 1952.355 is amended by revising paragraph (b) to read as follows:

§ 1952.355 Level of Federal enforcement.

* * * * *

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Arizona plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments. Federal jurisdiction is also retained with respect to Federal government employers and employees; enforcement relating to any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; in copper smelters; in concrete and asphalt batch plants which are physically connected to a mine or so interdependent with the mine as to form one integral enterprise; and within Indian reservations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

* * * * *

55. Section 1952.356 is revised to read as follows:

§ 1952.356 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3700, Washington, DC 20210;
Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 71 Stevenson Street, 4th Floor, San Francisco, California 94105; and
Office of the Director, Industrial Commission of Arizona, 800 W. Washington, Phoenix, Arizona 85007.

Subpart DD—New Mexico

56. Section 1952.365 is amended by removing "and" at the end of paragraph (a)(8), by revising paragraph (a)(9), and by adding paragraph (a)(10) to read as follows:

§ 1952.365 Level of Federal enforcement.

* * * * *

(a) * * *

(9) Enforcement of occupational safety and health standards with regard to Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; and

(10) Investigations and inspections for the purpose of the evaluation of the New Mexico plan under sections 18(e)

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and (f) of the Act (29 U.S. C. 667 (e) and (f)).

* * * * *

Subpart EE—Virginia

57. Section 1952.374 is amended by revising paragraph (b) to read as follows:

§ 1952.374 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Virginia. The plan does not cover private sector maritime employment; worksites located within Federal military facilities as well as on other Federal enclaves where civil jurisdiction has been ceded by the State to the Federal government; Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

58. Section 1952.375 is amended by revising paragraph (b)(1) to read as follows:

§ 1952.375 Level of Federal enforcement.

* * * * *

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Virginia plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments, and employment at worksites located within Federal military facilities as well as on other Federal enclaves where civil jurisdiction has been ceded by the State to the Federal government. Federal jurisdiction is also retained with respect to Federal government employers and employees, and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

59. Section 1952.376 is revised to read as follows:

§ 1952.376 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, The Curtis Center, 170 South Independence Mall West—Suite 740 West, Philadelphia, Pennsylvania 19106–3309; and

Office of the Commissioner, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia 23219.

Subpart FF—Puerto Rico

60. Section 1952.381 is revised to read as follows:

§ 1952.381 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3700, Washington, DC 20210;

Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 201 Varick Street, Room 670, New York, New York 10014.

Office of the Secretary, Puerto Rico Department of Labor and Human Resources, Prudencio Rivera Martinez Building, 505 Munoz Rivera Avenue, Hato Rey, Puerto Rico 00916.

61. Section 1952.382 is revised to read as follows:

§ 1952.382 Level of Federal enforcement.

* * * * *

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with Puerto Rico, effective December 8, 1981, and based on a determination that Puerto Rico is operational in the issues covered by the Puerto Rico occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Parts 1910 and 1926 except as provided in this section. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under section 11(c) of the Act (29 U.S.C. 660(c)); safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules of orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments; enforcement relating to any contractors or subcontractors on any Federal establishment where the State cannot obtain entry; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; situations when the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of the agreement; and investigations and inspections for the purpose of the evaluation of the Puerto Rico plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). Federal OSHA will also retain authority for coverage of Federal employers and employees, and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations. The OSHA Regional Administrator will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Puerto Rico.

[FR Doc. 00–14150 Filed 6–8–00; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[USCG–2000–7386]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast guard and temporarily effective between January 1, 2000 and March 31, 2000 which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between January 1, 2000 and March 31, 2000.

ADDRESSES: The docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact Lieutenant Bruce Walker, Office of Regulations and Administrative Law, telephone (202) 267–6233. For questions on viewing, or on submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation (202) 866–9329.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations and security zones listed in this notice have been exempted from review under Executive Order 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period January 1, 2000 and March 31, 2000, unless otherwise indicated.

Dated: June 2, 2000.

Pamela M. Pelcovits,

Chief, Office of Regulations and Administrative Law.

COTP QUARTERLY REPORT

COPT Docket	Location	Type	Effective date
GUAM 00–018	TINIAN ENTRANCE CHANNEL	SAFETY ZONE	01/22/2000
HOUSTON-GALVESTON 00–001	HOUSTON, TX	SAFETY ZONE	02/17/2000
HOUSTON-GALVESTON MSU 00–001	GULF INTRACOASTAL WATERWAYS, M. 440 TO 442.	SAFETY ZONE	01/25/2000
HOUSTON-GALVESTON MSU 00–002	HOUSTON SHIP CHANNEL BETWEEN BUOYS 38–42.	SAFETY ZONE	01/29/2000
HOUSTON-GALVESTON MSU 00–003	GULF INTRACOASTAL WATERWAY, MILE MARKER 396.	SAFETY ZONE	03/10/2000
LA/LB 00–002	PORT HUENEME HARBOR, CA	SECURITY ZONE	01/31/2000
LOUISVILLE 00–001	OHIO RIVER M. 472 TO 476	SAFETY ZONE	01/03/2000
MEMPHIS 00–013	WHITE RIVER	SAFETY ZONE	02/03/2000
NEW ORLEANS 00–001	LWR MISSISSIPPI RIVER, M. 94 TO 96	SAFETY ZONE	02/08/2000
NEW ORLEANS 00–002	LWR MISSISSIPPI RIVER, M. 430 TO 0	SAFETY ZONE	02/26/2000
NEW ORLEANS 00–003	LWR MISSISSIPPI RIVER, M. 228 TO 231	SAFETY ZONE	03/24/2000
NEW ORLEANS 00–004	LWR MISSISSIPPI RIVER, M. 94 TO 96	SAFETY ZONE	03/22/2000
NEW ORLEANS 00–005	LWR MISSISSIPPI RIVER, M. 94.4 TO 97.2	SAFETY ZONE	03/22/2000
NEW ORLEANS 00–006	LWR MISSISSIPPI RIVER, M. 94 TO 96	SAFETY ZONE	03/29/2000
NEW ORLEANS 99–034	HARVEY CANAL, M. 3.4 TO 5.5	SAFETY ZONE	01/01/2000
PADUCAH 00–002	OHIO RIVER	SAFETY ZONE	01/05/2000
PADUCAH 00–003	M/V W.H.ZIMMER, OHIO RIVER, M 973 TO 981.	SAFETY ZONE	02/26/2000
PADUCAH 00–004	M/V W.H.ZIMMER, OHIO RIVER, 977.8 TO 980.5.	SAFETY ZONE	02/26/2000
PITTSBURGH 00–001	ALLEGHENY RIVER, M. 1, W. END BRIDGE, OH.	SAFETY ZONE	01/01/2000
SAN JUAN 00–002	SAN JUAN HARBOR, PR	SAFETY ZONE	01/06/2000

COTP QUARTERLY REPORT—Continued

COPT Docket	Location	Type	Effective date
SAN JUAN 00–003	SAN JUAN HARBOR, PR	SAFETY ZONE	01/10/2000
SUAN JUAN 00–027	SAN JUAN HARBOR, PR	SAFETY ZONE	03/29/2000
SOUTHEAST ALASKA 00–001	NORTHERN EDGE 2000, SITKA HARBOR, AK.	SECURITY ZONE	03/05/2000
TAMPA 00–007	TAMPA BAY, FL	SAFETY ZONE	02/15/2000
TAMPA 00–024	TAMPA BAY, FL	SAFETY ZONE	03/18/2000
TAMPA 00–031	WIGGINS PASS, FL	SAFETY ZONE	03/29/2000

DISTRICT QUARTERLY REPORT

District docket	Location	Type	Effective date
01–00–010	U.S.S. SALEM, BOSTON HARBOR, BOSTON, MA.	SAFETY ZONE	02/23/2000
01–00–011	PORTLAND, ME	SAFETY ZONE	02/22/2000
01–00–013	BATH IRON WORKS, BATH, ME	SAFETY ZONE	03/18/2000
01–99–199	BOSTON HARBOR, BOSTON, MA	SAFETY ZONE	01/01/2000
05–00–001	UPPER CHESAPEAKE BAY, MD	SAFETY ZONE	03/01/2000
05–00–006	WESTERN, BRANCH, ELIZABETH RIVER	SPECIAL LOCAL	03/24/2000
05–00–007	ATLANTIC OCEAN, N.C. 6 MILES SW, CAPE FEAR.	SAFETY ZONE	03/15/2000
07–00–011	SAINT CROIX, USVI	SPECIAL LOCAL	02/17/2000
07–00–019	WATER BAY, SAINT THOMAS, USVI	SPECIAL LOCAL	03/18/2000
07–00–021	SAINT THOMAS, USVI	SPECIAL LOCAL	03/17/2000

[FR Doc. 00–14654 Filed 6–8–00; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–054]

Drawbridge Operation Regulations; Wappoo Creek (ICW), Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Wappoo Creek (SC Route 171) drawbridge across the Atlantic Intracoastal Waterway, mile 470.8, Charleston, Charleston County, South Carolina. This deviation allows the drawbridge owner or operator to open only a single leaf. This temporary deviation is required from June 22, 2000 until August 19, 2000, to allow the bridge owner to safely conduct necessary repairs to the drawbridge. Double leaf openings are available with a one-hour notice to the bridge tender.

DATES: This deviation is effective from June 22, 2000 to August 19, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Wappoo Creek (SC 171) drawbridge across the Atlantic Intracoastal Waterway at Charleston, has a vertical clearance of 33 feet above mean high water (MHW) and 38 feet above mean low water (MLW) measured at the fenders in the closed position. On May 22, 2000, Coastal Marine Construction, Incorporated, the contractor representing the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.5 which requires drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary repairs to the drawbridge.

The District Commander has granted a temporary deviation for the purpose of conducting repairs to the drawbridge. Under this deviation, the Wappoo Creek (SC Route 171) Drawbridge need only open one leaf of the drawbridge except when a double leaf opening is requested with a one-hour notice. The single-leaf openings are scheduled for a period of 10 days beginning on June 22, 2000 and ending on July 2, 2000 and a period of 41 days beginning on July 6, 2000 and ending on August 19, 2000.

Dated: June 2, 2000.

Greg Shapley,

Chief, Bridge Branch, Seventh Coast Guard District 2.

[FR Doc. 00–14653 Filed 6–8–00; 8:45 am]
BILLING CODE 4910–15–U

DEPARTMENT OF EDUCATION

34 CFR Part 379

RIN 1820–AB45

Projects With Industry; Correction

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On April 6, 2000, final regulations for the Projects With Industry program were published in the **Federal Register** (65 FR 18214). This document corrects the April 6 document.

DATES: This correction is effective May 3, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3315, Mary E. Switzer Building, Washington DC 20202–2575. Telephone: (202) 205–8292. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person named in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or, in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.234 Projects With Industry.)

Dated: May 31, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

In final rule, FR Doc. 00–8523, published on April 6, 2000 (65 FR 18214) make the following corrections:

1. On page 18215, in the first column, in the preamble, under the *Discussion* heading, in line 37, correct "will be served" to read "will be placed".

2. On page 18215, in the first column, in the preamble, under the *Changes* heading, in line 11, correct "will be served" to read "will be placed".

§ 379.21 [Corrected]

3. On page 18219, in the second column, in § 379.21(c), in line 9, correct "will be served" to read "will be placed".

[FR Doc. 00–14073 Filed 6–8–00; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 2

RIN 0651–AB00

Trademark Law Treaty Implementation Act Changes; Correction

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office published in the **Federal Register** of September 8, 1999, (64 FR 48900) a final rule amending its rules to implement the Trademark Law Treaty Implementation Act of 1998, Pub. L. 105–330, 112 Stat. 3064 (15 U.S.C. 1051), and to otherwise simplify and clarify procedures for registering trademarks and for maintaining and renewing trademark registrations. This document corrects an error in one of the amendatory instructions in the final rule.

DATES: Effective on October 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Hannon, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, extension 137; by facsimile transmission addressed to her at (703) 308–9395; or by mail marked to her attention and addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office published a final rule in the **Federal Register** of September 8, 1999 (64 FR 48900) entitled "Trademark Law Treaty Implementation Act Changes." A correction of this final rule was published in the **Federal Register** of September 22, 1999 (64 FR 51244). This second correction revises amendatory instruction 35, amending 37 CFR 2.89.

In FR Doc. 99–22957, published on September 8, 1999 (64 FR 48900), make the following corrections:

§ 2.89 [Corrected]

1. On page 48923, in the second column, correct amendatory instruction 35 to read as follows:

35. Amend § 2.89 by revising paragraphs (a), (b), and (d), revising the last two sentences of paragraph (g), and by adding paragraph (h) to read as follows:

Dated: June 5, 2000.

Albin F. Drost,

Acting Solicitor.

[FR Doc. 00–14634 Filed 6–8–00; 8:45 am]
BILLING CODE 3510–16–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AD11

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance Administration) are revising the effective date of the Financial Assistance/Subsidy Arrangement ("the Arrangement") to October 1, 2000. The Arrangement governs the duties and obligations of insurers that participate in the Write Your Own (WYO) Program of the National Flood Insurance Program (NFIP) and also sets forth the responsibilities of the Government to provide financial and technical assistance to these insurers.

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance Administration, (202) 646–3443, (facsimile) (202) 646–3445, or (email) *edward.pasterick@fema.gov*.

SUPPLEMENTARY INFORMATION: On May 21, 1999, we published in the **Federal Register** (Vol. 64, page 27705) a final rule amending the regulations of the National Flood Insurance Program (NFIP) to include the revised Financial Assistance/Subsidy Arrangement for 1999–2000. The Arrangement governs the duties and obligations of insurers participating in the Write Your Own (WYO) program of the NFIP and the responsibilities of the Government to provide financial and technical assistance to these insurers. The 1999–2000 Arrangement ends September 30, 2000. Except for the new effective date of October 1, 2000, the Arrangement for 2000–2001 is unchanged from last year's version. (We have posted the text of the current Arrangement at *http://www.fema.gov/nfip/wyoarr99*.)

During July 2000 we will send a copy of the offer for the 2000–2001 Arrangement year to all private insurance companies participating under the current 1999–2000 Arrangement, together with related materials and submission instructions. Any private insurance company not currently participating in the WYO program but wishing to consider FEMA's offer for 2000–2001 may request a copy of the offer by writing: Federal Emergency Management Agency, ATTN: Federal Insurance Administrator, WYO Program, Washington, DC 20472.

Administrative Procedure Act Determination

We are publishing this final rule without opportunity for prior public comment under the Administrative Procedure Act, 5 U.S.C. 553. This final rule is a rule of agency procedure or practice that is excepted from the prior public comment requirements of § 553(b). Except as the rule revises the

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effective date of the Financial Assistance/Subsidy Arrangement ("the Arrangement") from October 1, 1999 to October 1, 2000, this rule makes no significant, substantive changes to the Arrangement between FEMA and the WYO companies.

National Environmental Policy Act

The requirements of 44 CFR Part 10, Environmental Consideration, sec. 10.8(d)(2)(i) categorically exclude this final rule. By revising the effective date of the Arrangement, this rule is an administrative action in support of day-to-day activities. We have not prepared an environmental impact assessment.

Executive Order 12866, Regulatory Planning and Review

We have reviewed this final rule under the provisions of E.O. 12866 of September 30, 1993, 58 FR 51735 and determined that it is not a significant regulatory action within the meaning of section 2(f) of that executive order. The rule only revises the effective date of the existing Arrangement from October 1, 1999 to October 1, 2000, and makes no other changes to the Arrangement. In all other respects the rule adheres to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has reviewed this final rule under E.O. 12866.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) approved the collections of information applicable to this final rule: OMB Number 3067–0169, Write Your Own (WYO) Program (expires March 31, 2002).

Executive Order 13132, Federalism

We have reviewed this rule under the provisions of under E.O. 13132, Federalism, dated August 4,1999, and have concluded that revision of the effective date of the Arrangement involves no policies that have federalism implications.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is exempt from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Revise the *Effective Date* of Appendix A to Part 62 to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Effective Date: October 1, 2000.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance", No. 83.516, "Disaster Assistance")

Dated: June 2, 2000.

Jo Ann Howard,

Administrator, Federal Insurance Administration.

[FR Doc. 00–14656 Filed 6–8–00; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7313]

Changes In Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Morgan	City of Decatur	Jan. 25, 2000, Feb. 1, 2000, *The Decatur Daily News.*	The Honorable Julian Price, mayor of the city of Decatur, P.O. Box 488, Decatur, Alabama 35602.	May 1, 2000	010176 D
Georgia: Gwinnett	Unincorporated areas.	Dec. 3, 1999, Dec. 10, 1999, *Gwinnett Daily Post.*	Mr. Wayne Hill, chairman of the Gwinnett County, Board of Commissioners, 751 Langley Drive, Lawrenceville, Georgia 30045.	Mar. 9, 1999	130322 C
Illinois:					
Cook and DuPage.	Village of Burr Ridge.	Mar. 29, 2000, Apr. 5, 2000, *Suburban Life News.*	Ms. Jo V. Irmen, Village of Burr Ridge President, 7660 County Line Road, Burr Bridge, Illinois 60521.	July 4, 2000	170071 B
DuPage	Unincorporated areas.	Mar. 10, 2000, Mar. 17, 2000, *Daily Herald.*	Mr. Robert J. Schillerstrom, chairman, DuPage County Board, DuPage Center, 421 North County Farm Road, Wheaton, Illinois 60187.	Mar. 3, 2000	170197 B
Lake	Village of Green Oaks.	Aug. 12, 2000, Aug. 19, 2000, *The Daily Herald.*	Mr. Thomas Adams, president of the Village of Green Oaks, 14052 Petronella, Suite 102B, Green Oaks, Illinois 60048–1547.	July 18, 2000	170364 F
Will	City of Joliet	Dec. 3, 1999, Dec. 10, 1999, *The Herald-News.*	The Honorable Arthur Schultz, mayor of the city of Joliet, Municipal Building, 150 West Jefferson Street, Joliet, Illinois 60432.	Mar. 9, 2000	170702 E
Lake	Unincorporated areas.	Apr. 12, 2000, Apr. 19, 2000, *The News-Sun.*	Mr. Jim LaBelle, chairman of the Lake County Board, 18 North County Street, 10th Floor, Waukepan, Illinois 60085.	July 18, 2000	170357 F
Will and Cook	Village of Tinley Park.	Mar. 8, 2000, Mar. 15, 2000, *Daily Southtown.*	The Honorable Edward J. Zabrocki, mayor of the Village of Tinley Park, 16250 South Oak Park Avenue, Tinley Park, Illinois 60477.	Mar. 31, 2000	170169 C
DuPage	Village of Winfield	Mar. 30, 2000, Apr. 6, 2000, *The Winfield Press.*	Mr. John Kirschbaum, president of the Village of Winfield, 27 W. 465 Jewel Road, Winfield, Illinois 60190.	July 5, 2000	170223 C
Will	Unincorporated areas.	Dec. 3, 1999, Dec. 10, 1999, *The Herald-News.*	Mr. Charles R. Adelman, Will County Executive, 302 North Chicago Street, Joliet, Illinois 60432.	Mar. 9, 2000	170695 E
Indiana:					
Marion	City of Indianapolis	Apr. 5, 2000, Apr. 12, 2000, *The Indianapolis Star.*	The Honorable Barton Peterson, mayor of the city of Indianapolis, 200 East Washington Street, Suite 2501, Indianapolis, Indiana 46204.	Mar. 30, 2000	180159 D

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Johnson	Unincorporated areas.	Mar. 27, 2000, Apr. 3, 2000 *Daily Journal.*	Mr. Joseph E. Dettart, chairman of the Johnson County Board of Commissioners, 86 West Court Street, Courthouse Annex, Franklin, Indiana 46131.	Mar. 20, 2000	180111 C
Kentucky:					
Jefferson	Unincorporated areas.	Nov. 19, 1999, Nov. 26, 1999, *The Courier-Journal.*	The Honorable Rebecca Jackson, Jefferson County Judge Executive, Jefferson County Courthouse, 527 West Jefferson Street, Suite 400, Louisville, Kentucky 40202.	Nov. 10, 1999	210120 D
Rowan	City of Morehead	Dec. 10, 1999, Dec. 17, 1999, *The Morehead News.*	The Honorable Bradley Collins, mayor of the city of Morehead, 105 East Main Street, Morehead, Kentucky 40351.	Mar. 16, 2000	210204 B
Rowan	Unincorporated areas.	Dec. 10, 1999, Dec. 17, 1999, *The Morehead News.*	Mr. Clyde A. Thomas, county executive for Rowan County, 127 East Main Street, Morehead, Kentucky 40351.	Mar. 16, 2000	210203 B
Michigan: Macomb	Charter Township of Clinton.	Mar. 31, 2000, Apr. 7, 2000, *The Macomb Daily.*	Mr. James Sinnamon, Charter Township of Clinton Supervisor, 40700 Romeo Plank Road, Clinton, Michigan 48038.	July 6, 2000	260121 E
New Hampshire: Coos.	Town of Gorham	Dec. 9, 1999, Dec. 16, 1999, *The Berlin Reporter.*	Mr. William H. Jackson, Manager of the Town of Gorham, 20 Park Street, Gorham, New Hampshire 03581.	Dec. 1, 1999	330032 C
North Carolina: Mecklenburg.	Unincorporated areas.	Jan. 21, 2000, Jan. 28, 2000, *Charlotte Observer.*	Mr. Gerald G. Fox, Mecklenburg County Manager, 600 East 4th Street, Charlotte, North Carolina 28202–2835.	Jan. 14, 2000	370158 D
Ohio:					
Cuyahoga	City of Garfield Heights.	Mar. 16, 2000, Mar. 23, 2000, *Neighborhood News.*	The Honorable Thomas Longo, mayor of the city of Garfield Heights, 5107 Turney Road, Garfield Heights, Ohio 44125.	June 21, 2000	390109 B
Pike	Unincorporated areas.	Apr. 19, 2000, Apr. 26, 2000, *Pike County News Watchman.*	Mr. Charles Osborne, chairman of the Pike County commissioners, 100 East Second Street, Waverly, Ohio 45690.	July 25, 2000	390450 B
Shelby	Unincorporated areas.	Feb. 10, 2000, Feb. 17, 2000, *The Sidney Daily News.*	Mr. Larry Klainhans, chairman, Shelby County Board of Commissioners, 129 East Court Street, Suite 100, Sidney, Ohio 45365.	May 17, 2000	390503 C
Pike	City of Waverly	Apr. 19, 2000, Apr. 26, 2000, *Pike County News Watchman.*	The Honorable William Kelly, mayor of the city of Waverly, 201 West North Street, Waverly, Ohio 45690.	July 25, 2000	390452 B
Pennsylvania:					
York	Township of Heidelberg.	Nov. 19, 1999, Nov. 26, 1999, *The Evening Sun.*	Mr. Harry Rodgers, chairman, township of Heidelberg, Route Number 3, Box 3447A, Spring Grove, Pennsylvania 17362.	Nov. 10, 1999	422221 C
York	Township of Penn	Nov. 19, 1999, Nov. 26, 1999, *The Evening Sun.*	Mr. Frederick W. Stine, president of the Penn Township, Board of Commissioners, 20 Wayne Avenue, Hanover Pennsylvania 17331.	Nov. 10, 1999	421025 C
Chester	Township of Valley	Feb 8, 2000, Feb. 15, 2000, *The Daily Local News.*	Mr. Grover E. Koon, chairperson, Township of Valley, Board of Supervisors, P.O. Box 467, Coatesville, Pennsylvania 19320.	Feb. 1, 2000	421206 D
Virginia: Loudoun	Town of Leesburg	Dec. 1, 1999, Dec. 8, 1999, *Loudoun Times-Mirror.*	The Honorable James E. Clem, mayor of the town of Leesburg, P.O. Box 88, Leesburg, Virginia 20178.	Nov. 19, 1999	510091 C

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 16, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–14662 Filed 6–8–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–170; FCC 99–72]

Truth-in-Billing and Billing Format

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On October 18, 1999 (64 FR 56177), the Commission published a document correcting a final rule that was published on June 25, 1999 (64 FR 34488). This document corrects the subpart for that rule.

DATES: Effective June 9, 2000.

FOR FURTHER INFORMATION CONTACT: Michele Walters, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document revising part 64 of the Commission's rules in the **Federal Register** on June 25, 1999, (64 FR 34488). On October 18, 1999, the Commission published a document in the **Federal Register** correcting typographical errors. See 64 FR 56177 (October 18, 1999). This document corrects the **Federal Register**, FR Doc. 99–26884, published October 18, 1999, 64 FR 56177, by revising "Subpart U" to read "Subpart Y."

In the rule changes, page 56177, in the second column, "Subpart W" is corrected to read "Subpart Y."

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–14537 Filed 6–8–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1165; MM Docket No. 99–357; RM–9780]

Radio Broadcasting Services; Eldorado, Beeville, Colorado City, Cotulla, Cuero, Kerrville, Mason, McQueeney, and San Angelo, TX

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: At the request of Schleicer County Radio, this document allots Channel 285A to Eldorado, Texas, as a first local service. At the request of Rawhide Radio, L.L.C., this document substitutes Channel 249C1 for Channel 249C3 at Cuero, Texas, reallots Channel 249C1 from Cuero to McQueeney, Texas, and modifies the license of Station KVCQ to specify operation on Channel 249C1 at McQueeney. *See* 64 FR 73462, published December 13, 1999. This document also substitutes Channel 296A for Channel 250C2 at Beeville, Texas, and modifies the license of Station KYTX to specify operation on Channel 296A. This document substitutes Channel 291C2 for Channel 289C3 at San Angelo, Texas, and modifies the license of Station KMDX to specify operation on Channel 291C2. This document substitutes Channel 296A for Channel 291A at Colorado City, Texas, and modifies the license of Station KAUM to specify operation on Channel 296A. In addition, this document substitutes Channel 281C2 for vacant Channel 249C2 at Mason, Texas, and substitutes Channel 242A for vacant Channel 249A at Cotulla, Texas. Finally, this document changes the reference coordinates for the Channel 291A allotment at Kerrville, Texas. The reference coordinates for the Channel 285A allotment at Eldorado, Texas, are 30–51–36 and 100–36–00. The reference coordinates for the Channel 249C1 allotment at McQueeney, Texas, are 29–21–24 and 97–39–48. The reference coordinates for the Channel 296A allotment at Beeville, Texas, are 28–27–03 and 97–50–15. The reference coordinates for the Channel 291C2 allotment at San Angelo, Texas, are 31–18–09 and 100–35–45. The reference coordinates for the Channel 296A allotment at Colorado City, Texas, are 32–23–15 and 100–53–33. The reference coordinates for the Channel 281C2 allotment at Mason, Texas, are 30–44–55 and 99–13–49. The reference coordinates for the Channel 242A allotment at Cotulla, Texas, are 28–30–22 and 99–12–46. The reference coordinates for the Channel 291A allotment at Kerrville, Texas, are 30–01–54 and 99–09–01. With this action, the proceeding is terminated.

DATES: Effective July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 99–357, adopted May 24, 2000, and released May 26, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 250C2 and adding Channel 296A at Beeville.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 291A and adding Channel 296A at Colorado City.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 249A and adding Channel 242A at Cotulla.

5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Cuero, Channel 249C3, and adding McQueeney, Channel 249C1.

6. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 249C2 and adding Channel 281C2 at Mason.

7. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 289C3 and adding Channel 291C2 at San Angelo.

8. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Eldorado, Channel 285A.

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Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14542 Filed 6–8–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1179; MM Docket No. 98–216; RM–9381]

Radio Broadcasting Services; Arnoldsburg, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountaineer Communications, allots Channel 264A at Arnoldsburg, West Virginia, as the community's first local aural transmission service. *See* 63 FR 68720, December 14, 1998. Channel 264A can be allotted in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) northeast to avoid a short-spacing to the licensed for Station WJYP(FM), Channel 265A, South Charleston, West Virginia. The coordinates for Channel 264A are 38–49–00 North Latitude and 81–06–00 West Longitude.

DATES: Effective July 10, 2000. A filing window for Channel 264A at Arnoldsburg, West Virginia, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–216, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Arnoldsburg, Channel 264A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14605 Filed 6–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1156; MM Docket No. 99–42; RM–9467; RM–9618]

Radio Broadcasting Services; Whitefield and Northumberland, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dana Puopolo, allots Channel 256A to Whitefield, NH, as the community's first local aural service. *See* 64 FR 7841, February 17, 1999. Channel 256A can be allotted to Whitefield in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.9 kilometers (6.8 miles) northeast, at coordinates 44–27–17 NL; 71–31–36 WL, to avoid a short-spacing to Station WOKO, Channel 255C1, Burlington, VT. Canadian concurrence in the allotment has been obtained since Whitefield is located within 320 kilometers (200 miles) of the U.S.-Canadian border. The counterproposal filed by Barry P. Lunderville to allot Channel 256A to Northumberland, NH, is denied based on a finding that Northumberland is not a community for allotment purposes. A filing window for Channel 256A at Whitefield will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–42, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Hampshire, is amended by adding Whitefield, Channel 256A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14606 Filed 6–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1145; MM Docket No. 00–43; RM–9633]

Radio Broadcasting Services; Ebro, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 236A to Ebro, Florida, in response to a petition filed by Washington County Communications. *See* 65 FR 16160, March 27, 2000. The coordinates for Channel 236A at Ebro are 30–28–15 NL and 85–53–45 WL. With this action, this proceeding is terminated. A filing window for Channel 236A at Ebro will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 00–43, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Ebro, Channel 236A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14608 Filed 6–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[ET Docket No. 00–11; FCC 00–185]

Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document prescribes an improved point-to-point predictive model for determining the ability of individual locations to receive an over-the-air television broadcast signal of a specific intensity through the use of a conventional, outdoor rooftop receiving antenna. This document also provides for the model's continued refinement by the use of additional data as they become available. In the absence of on-site measurements of signal intensity, the model will be used to establish whether individual households are eligible to receive certain satellite home viewing services. The Commission is complying with new statutory requirements set forth in the Satellite Home Viewer Improvement Act of 1999.

DATES: Effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Eckert (202–418–2433), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order in ET Docket No. 00–11, FCC 00–185, adopted May 22, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) 445 12th Street, SW., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Summary of the First Report and Order

1. In this First Report and Order (Report and Order), the Commission prescribes an improved point-to-point predictive model for determining the ability of individual locations to receive an over-the-air television broadcast signal of a specific intensity through the use of a conventional, outdoor rooftop receiving antenna. The Report and Order also provides for the model's continued refinement by the use of additional data as they become available. Under the provisions of the 1988 Satellite Home Viewer Act (SHVA), a household that cannot receive the over-the-air signal of a local network affiliate is eligible to receive the distant network signal through satellite carriers. In the absence of on-site measurements of signal intensity, the predictive model will provide a reliable and presumptive means for determining whether the over-the-air signal of a network affiliated television station can be received at an individual location.

2. A Notice of Proposed Rule Making (Notice) issued on January 20, 2000, 65 FR 4923 (February 2, 2000) addressed the SHVIA statutory requirement for prescribing the Individual Location Longley-Rice model, a version of Longley-Rice 1.2.2. At issue is how the basic Longley-Rice radio propagation prediction model should be refined so that it will accurately take land cover variations into account as required by the SHVIA. The Notice proposed a specific computational procedure based on a certain database of land cover variations published by the United States Geological Survey. According to this procedure, individual locations are to be identified as lying in one of 10 land use and land cover (LULC) categories ranging from open land to urban environments. The computational procedure then finds a clutter loss value (a reduction in available signal intensity) associated with this environmental class for the TV channel of interest, and subtracts that clutter loss from the signal intensity predicted by the Longley-Rice model. The Notice proposed a specific set of clutter loss values based on the results published in a recent engineering journal by Thomas N. Rubinstein.

3. There are three major issues to be resolved in this matter. These are first, whether it would improve the accuracy of the ILLR model to assign clutter loss values as a function of the LULC category of the receiving location, as proposed in the Notice. Second, whether there are specific clutter loss values that would have the desired effect of improving prediction accuracy. Third, the provisions to be made for the introduction of further improvements in prediction accuracy as additional data become available. The Report and Order also addresses certain matters of technical detail raised by the comments having to do with error flags and the surface refractivity parameter of the ILLR model. In a separate but related matter, an independent and neutral entity is designated that will in turn designate who shall conduct the objective test of received signal intensity for verification purposes in case a satellite provider and network station cannot agree on a person to conduct such a test.

4. *Clutter Loss Assignment by LULC Category.* The proposal to assign clutter loss values according to LULC category was supported by the major providers of direct-to-home satellite services, DIRECTV, Inc. (DIRECTV) and EchoStar Satellite Corporation (EchoStar). These organizations stated that the LULC database is a source of credible and verifiable information regarding vegetation, water and other features on the land surface, and that it is widely relied upon by the scientific and technical communities for a variety of applications. Engineering firms generally agreed that this approach has merit, at least until a more up-to-date source of land use and land clutter information with finer resolution, such as Landsat, becomes available. Commenters representing terrestrial broadcasting interests, however, argued

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that increased prediction accuracy will not be obtained by the approach proposed in the Notice because there are serious deficiencies with the LULC database for purposes of modifying the ILLR model. Based on analysis of these comments, the Commission finds that the assignment of clutter loss values based on LULC categories would enhance the accuracy of predictions made with the ILLR model. Therefore, although they are not ideal, the LULC categories proposed in the Notice are adopted as an integral part of the ILLR. The addition of these LULC categories will provide the ILLR with an approximate means for accounting for the reception environment of individual locations, as those environments are affected by vegetation and building structures as well as the specific terrain elevation features already accounted for by the basic Longley-Rice model. The effect of each reception environment on signal reception is dependent on the clutter loss value assigned to each of the LULC categories.

5. *Clutter Loss Values.* Commenters expressed strongly opposing views on the specific clutter loss values to use for improving ILLR predictions. While DIRECTV and EchoStar recommended specific values for clutter loss, namely those proposed in the Notice, parties representing the interests of the network affiliates believe that the predictions of the ILLR model in its present form already include the effects of clutter so that no prescription of additional losses is appropriate. Middle ground was found in the comments of engineering firms. These generally favored assignment of clutter loss values to be determined by further study of existing measurement data or data acquired by further measurement programs. The Commission believes that the values assigned as clutter losses should be determined by statistical study of actual measurements in the specific LULC environments to which they are to be applied. The results of a study of this type were reported in the comments of the National Association of Broadcasters and the Association for Maximum Service Television, Inc. (NAB/AMSTV). The NAB/AMSTV study compared predictions of all the various proposed models with measured data to determine the relative accuracy of the models. The prediction at each of approximately 1000 locations was classified as correct, an under-prediction, or an over-prediction. A model was deemed to have made an under-prediction if it predicted that a location could not receive a signal of at least Grade B strength, when the location in fact did receive a Grade B signal; it was charged with an over-prediction if it predicted that a location could receive a signal of at least Grade B when the household in fact was measured not to receive a Grade B signal.

6. For VHF channels, the comparisons indicate that a prescription of additional losses would make the ILLR model less accurate because it already produces more under-predictions than over-predictions (a condition that favors the interests of satellite service providers). For both VHF and UHF, the ILLR model without clutter corrections proves superior to other models by making the correct prediction more often. For UHF, however, even though more correct than the competing models, the ILLR model tends to over-predict the field intensity substantially more often than it under-predicts. This is a condition that could be restored to approximate balance by assigning clutter losses. Based on the available measured data of television signals, the Commission reduced the clutter loss values from those proposed in the Notice in order to make the ILLR model more accurate. The clutter loss values for VHF channels are set to zero because the measurement data indicate that larger values produce fewer correct predictions. Thus the ILLR model is not changed for VHF. For UHF channels, small clutter loss values are set in order to obtain a better balance between under-predictions and over-predictions. Specifically, the clutter loss values are reduced to one-third of those proposed in the Notice because the Commission's assessment of the data indicates that this will produce a better balance between under-predictions and over-predictions without adversely affecting the overall percentage of correct predictions.

7. *Error Flags.* In the Notice it was proposed to presume lack of service in the rare instances where the output of the Longley-Rice computational procedure includes an error flag along with the predicted field strength to indicate a possible error in the prediction. No argument can be made for the accuracy of either convention, since the error flag simply indicates uncertainty in the predicted value of field strength due to the fact that the parameters presented to the ILLR are somewhat outside their proper limits. The Commission believes that the best approach is to ignore the error flag and simply accept the predicted value for comparison with the signal intensity standard. Thus, in uncertain cases the improved ILLR model will prefer neither under-prediction nor over-prediction errors.

8. *Surface Refractivity.* Commenters stated that it could improve the accuracy of the ILLR model to use the actual surface refractivity in the geographical region between the transmitter and individual reception point in place of the fixed median value proposed in the Notice. However, commenters did not propose a precise algorithm or particular database for determining the refractivity value to be used for individual radio paths. While it would be desirable to include surface refractivity in the ILLR model as a geographic variable, the Commission believes that the effects on the precise signal strength predictions made by the ILLR model would be too small to make a difference, as a practical matter, in the determination of served/unserved status of individual locations. Therefore, due to the lack a precise procedure and database for this proposed ILLR refinement, the fixed median value of surface refractivity is retained in the ILLR model as proposed in the Notice.

9. *Provisions for Further Improvements in Prediction Accuracy.* The comments indicate that improvements in the accuracy of the ILLR model beyond those specifically proposed may be possible either by obtaining additional measurement data or through further analysis of existing data. In the Report and Order the Commission declared that it will initiate a further rule making, *i.e.*, a standard notice-and-comment procedure, to improve the accuracy of the ILLR model upon the filing of a petition for such rule making that is supported by high quality engineering studies containing conclusions based on reliable and publicly available measurement data. Changes to the ILLR model based on such additional data may be proposed by referencing the present Docket, which will be held open for this purpose.

10. *Designation of Neutral and Independent Entity for Signal Tests Purposes.* The SHVIA relies on the ILLR model to determine presumptively whether a subscriber is served or unserved for purposes of eligibility to receive satellite retransmission of distant network signals. The SHVIA further provides that subscribers who are denied retransmission of distant signals may request that the satellite carrier seek a waiver of the denial from the network station that is asserting that retransmission is prohibited. If the network station rejects the waiver request, the subscriber may request an on-site test. To address those circumstances in which the satellite provider and network station cannot agree on a person to conduct the test, the SHVIA requires that the Commission designate by rule an independent and neutral entity that shall in turn designate the person to conduct the test. The American Radio Relay League (ARRL) is particularly appropriate in this role since it has no commercial connection with delivery of television services, its field offices cover the United States, and its members are actively engaged in activities related to the measurement of radio field intensity. Accordingly, the Report and Order provides that the ARRL shall serve as the independent and neutral entity that shall designate the person to conduct the test.

11. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act (RFA) [1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." [2] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." [3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

12. In this Report and Order, the Commission prescribes a prediction technique for determining the ability of individual households to receive television signals broadcast over-the air by local stations. The prediction technique applies exclusively to the sources of data for certain engineering calculations and to the manner in which these calculations are made. Television station licensees, Direct Broadcast Satellite (DBS) operators, and other Direct to Home (DTH) Satellite operators may use the technique to establish the eligibility or non-eligibility of individual households for satellite delivery of distant television programming. These determinations will usually be made at the point of sale of satellite receiving equipment for homes and will tend to increase the number of eligible customers. As noted in paragraph 3 of the Report and Order, the statute requires that we increase the accuracy of the prediction model based on technical data regarding terrain and land cover variations. Thus, the prescribed prediction technique is of a purely electrical engineering, scientific nature, and the Commission's aim is to improve its scientific accuracy. Moreover, the changes prescribed in the technique are small and will have only a minor effect on the proportion of households that are eligible to receive distant network signals. The number of viewers served by network affiliate stations will not be significantly reduced, and hence the economic effect on network affiliates and satellite carriers will not be significant. Therefore, the Commission certifies that the requirements of this First Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the First Report and Order including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the First Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 605(b).

13. Pursuant to Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j); Section 1008 of the Intellectual Property and Communications Omnibus Reform Act of 1999, Public Law 106–113, 113 Stat. 1501, Appendix I; and Section 119(d)(10)(a) of the Copyright Act, 17 U.S.C. 119(d)(10)(a), the rule changes set forth *shall be effective* June 26, 2000.

14. That the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of the First Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Television.

[1] The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriarte to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[5] Small Business Act, 15 U.S.C. S 632.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. In § 73.683, the section heading is revised and paragraphs (d) and (e) are added to read as follows:

§ 73.683 Field strength contours and presumptive determinstion of field strength at individual locations.

* * * * *

(d) For purposes of determining the eligibility of individual households for satellite retransmission of distant network signals under the copyright law provisions of 17 U.S.C. 119(d)(10)(A), field strength shall be determined by the Individual Location Longley-Rice (ILLR) propagation prediction model. Guidance for use of the ILLR model for these purposes is provided in OET Bulletin No. 72. This document is available through the Internet on the FCC Home Page at http://www.fcc.gov.

(e) In the case of measurements to determine the eligibility of individual households to receive satellite retransmission of distant network signals under the copyright law provisions of 17 U.S.C. 119(d)(10), if a satellite carrier and the network station or stations asserting that the retransmission of a signal of a distant network station is prohibited are unable to agree on a person to conduct the test, the American Radio Relay League, Inc., 225 Main Street, Newington, CT 06111–1494, shall designate the person or organization to conduct measurements based on the technical qualifications and independence of proposed testers. The satellite carrier and network station shall propose testers and provide their qualifications in writing to the American Radio Relay League (ARRL). Individuals may also volunteer themselves as testers by submitting their qualifications to the ARRL. The ARRL can be reached by telephone at 860–594–0200, or email at hq@arrl.org.

[FR Doc. 00–14536 Filed 6–8–00; 8:45 am]

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AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 715 and 742

[AIDAR Circular 00–1]

RIN 0412–AA44

Contractor Performance Evaluation

AGENCY: Agency for International Development.

ACTION: Final rule.

SUMMARY: The U.S. Agency for International Development is amending the USAID Acquisition Regulation (AIDAR) to implement its contractor performance evaluation system as a subscriber to the National Institutes of Health (NIH) Contractor Performance System.

EFFECTIVE DATE: July 10, 2000.

FOR FURTHER INFORMATION CONTACT: M/OP/P, Mr. Kenneth Monsess, U.S. Agency for International Development (USAID), 1300 Pennsylvania Ave., N.W., Washington, D.C. 20523. Telephone: (202) 712–4913. E-mail: partperformance@usaid.gov.

SUPPLEMENTARY INFORMATION: The AIDAR is being amended to implement USAID's adoption of the NIH Contractor Performance System. As a corollary to the implementation of this system, USAID has authorized a deviation to the Federal Acquisition Regulation (FAR) to:

1. recognize that USAID personal services contractors are Government personnel with respect to the restriction on the disclosure of contractor performance information in FAR 42.1503(b) when such access is required in the performance of their duties as contracting office personnel and/or in their participation on source evaluation panels; and

2. exempt USAID personal services contracts from the FAR 42.1502(a) requirement for preparing contractor performance evaluations.

The changes made by this Notice are administrative and not considered major rules as defined by E.O. 12866. This Notice will neither impact a substantial number of small entities, nor establish an information collection as contemplated by the Regulatory Flexibility Act and the Paperwork Reduction Act. Because of the nature of this Notice, use of the proposed rule/public comment approach was not considered necessary. USAID has decided to issue this Notice as a final rule; however, the Agency welcomes public comment on the material covered by this Notice or any part of the AIDAR at any time. Comments or questions may be addressed as specified in the **FOR FURTHER INFORMATION CONTACT** section of the preamble.

List of Subjects in 48 CFR Parts 715 and 742

Government procurement.

Accordingly, for the reasons set out in the preamble, 48 CFR Chapter 7 is amended as follows:

1. The authority citations in Parts 715 and 742 continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 715—CONTRACTING BY NEGOTIATION

Subpart 715.3—Source Selection

2. In Section 715.305, paragraph (a) is added to read as follows:

715.305 Proposal evaluation.

(a)(1) [Reserved].

(2) USAID shall use the information on offerors made available from the NIH Contractor Performance System to evaluate past performance. (Access to the system by USAID contracting office personnel is authorized by the USAID Past Performance Coordinator, E-mail address: AIDNET: Past Performance@op.spu@aidw/Internet: pastperformance@usaid.gov.)

* * * * *

AIDAR Subchapter G—Contract Management

PART 742—CONTRACT ADMINISTRATION

3. Subpart 742.15 is added to read as follows:

Subpart 742.15—Contractor Performance Information

Sec.
742.1501 [Reserved]
742.1502 Policy.
742.1503 Procedures.

Subpart 742.15—Contractor Performance Information

742.1501 [Reserved]

742.1502 Policy.

(a) USAID contracting officers shall report contractor performance information at least annually, employing the procedures prescribed by the NIH Contractor Performance System. (Access to the system by USAID contracting officer personnel is authorized by the USAID Past Performance Coordinator, E-mail address: AIDNET: Past Performance@op.spu@aidw/Internet: pastperformance@usaid.gov.)

(b) Performance for personal services contracts awarded under AIDAR Appendices D and J shall not be evaluated under the contractor performance reporting procedures prescribed in FAR subpart 42.15.

742.1503 Procedures.

(a) [Reserved]

(b) Personal services contractors shall be recognized as Government personnel for the purposes of the restriction on access to contractor performance information in FAR 42.1503(b).

Dated: May 2, 2000.

Rodney W. Johnson,

Director, Office of Procurement.

[FR Doc. 00–13486 Filed 6–8–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AF52

1999–2000 Refuge-Specific Hunting and Sport Fishing Regulations; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations which were published Friday, May 12, 2000 (65 FR 30772). The document related to the 1999–2000 refuge-specific hunting and sport fishing regulations.

DATES: This correction is effective May 12, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie Marler, (703) 358–2397.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections add certain national wildlife refuges to the list of areas open for hunting and/or sport fishing, along with pertinent refuge-specific regulations for such activities; and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 1999–2000 season.

Need for Correction

As published, an amendatory instruction contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on May 12, 2000 of the final regulation, which was the subject of FR Doc. 00–11410, is corrected as follows:

§ 32.67 [Corrected]

1. On page 30793, in the first column, amendatory instruction 44.e. is corrected to read as follows:

e. Revising paragraphs A.6. and B.4. of Umatilla National Wildlife Refuge to read as follows:

Dated: June 1, 2000.

Leslie A. Marler,

Division of Refuges, Federal Register Liaison.

[FR Doc. 00–14202 Filed 6–8–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 991210334–0122–02; I.D. 112399A]

RIN 0648–AN41

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Extension of Effective Date of Red Snapper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; extension of effective date.

SUMMARY: An interim rule is in effect through June 19, 2000, that changes the management measures for the red snapper fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico in order to reduce overfishing, as requested by the Gulf of Mexico Fishery Management Council (Council). That interim rule modifies the recreational and commercial fishing seasons, increases the recreational minimum size limit, and reinstates a 4–fish bag limit for the captain and crew of for-hire vessels (i.e., charter vessels and headboats). NMFS extends this interim rule for an additional 180 days. The intended effect is to reduce overfishing of red snapper in the Gulf of Mexico.

DATES: The effective date for the interim rule published at 64 FR 71056, December 20, 1999, is extended from June 19, 2000, through December 16, 2000.

ADDRESSES: Copies of the documents supporting this rule, i.e., an analysis of the economic consequences and an environmental assessment, may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 727–570–5305, fax: 727–570–5583.

FOR FURTHER INFORMATION CONTACT: Dr. Roy Crabtree, telephone: 727–570–5305; fax: 727–570–5583; e-mail: Roy.Crabtree@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In response to a request from the Council, NMFS issued an interim rule (64 FR 71056, December 20, 1999), under section 305(c)(1) of the Magnuson-Stevens Act, that changed the management measures for the red snapper fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico by (1) increasing the recreational minimum size limit to 16 inches (40.6 cm); (2) establishing a recreational season of April 21 to October 31, 2000; (3) reinstating the 4–fish bag limit for captain and crew of for-hire vessels; and (4) changing the openings of the spring red snapper commercial season from the first 15 days of each month to the first 10 days of each month, beginning February 1. This action was, and remains, necessary to address overfishing of the red snapper resource.

Under section 305(c)(3)(B) of the Magnuson-Stevens Act, NMFS may extend the effectiveness of an interim rule for one additional period of 180 days, provided the public has had an opportunity to comment on the interim rule and the Council is actively preparing proposed regulations to address the overfishing on a permanent basis. NMFS solicited public comments on the initial interim rule and received numerous comments. These comments are summarized herein along with agency responses. The Council has prepared a regulatory amendment, under the FMP's framework procedure for regulatory adjustments, that is intended to address overfishing of the red snapper resource; if approved and implemented by NMFS, the regulatory amendment would replace this interim rule. The expiration date of the interim rule is being extended because red snapper remain overfished and NMFS cannot take action to address the overfishing via the regulatory amendment by June 19, 2000.

Additional details concerning the basis for these changes to the red snapper management measures and discussion of the ongoing efforts of the Council and NMFS to evaluate and implement measures to rebuild the red snapper stock consistent with the requirements of the Magnuson-Stevens Act are contained in the preamble to the interim rule and are not repeated here.

Comments and Responses

NMFS received a total of 1,488 comments addressing the interim rule (64 FR 71056, December 20, 1999). Most of these supported the Council's request for the interim rule and were received prior to publication of the interim rule. All comments received before, during, or after the comment period are summarized and addressed below.

Comment 1: A total of 1,359 letters supported the measures contained in the interim rule. Specifically, these letters supported the April 21–to-October 31 recreational season because this season would provide the greatest economic benefits.

Response: NMFS agrees that the measures implemented by the interim rule will provide economic benefits to the greatest number of Gulf fishers, as well as reduce overfishing and allow the recovery of the red snapper stock.

Comment 2: A total of 179 letters opposed the interim rule. Most opposition was from fishers and organizations in south Texas who believe that the recreational season will cause economic hardship in their area. Many of those who objected to the April 21–to-October 31 recreational season requested a year-round fishery.

Response: Based on public testimony and the best available scientific information, NMFS concluded that a season from April 21 to October 31 offers the greatest benefits to Gulf anglers and is compatible with the recreational quota. A year-round fishery is expected to exceed the 2000 recreational quota.

The measures implemented by this interim rule are based, in part, on the recommendations to the Council from a stakeholder conference held in New Orleans, LA, on September 27, 1999. Stakeholders' recommendations for the 2000 recreational red snapper fishery included a 4–fish bag limit for the captain and crew of for-hire vessels, a size limit not to exceed 16 inches (40.6

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cm), and a March 1–to-October 31 recreational season.

The Council attempted, to the extent possible, to implement the stakeholders' recommendations; however, based on the best available scientific information, the harvest from a March 1 to October 31 season would exceed the current recreational quota. A group of south Texas anglers who participated in the stakeholders conference submitted a minority report requesting a year-round fishery with a 4–fish bag limit and a 13–inch (33.0–cm) minimum size limit. However, the harvest from a year-round fishery, if implemented, would greatly exceed the quota and jeopardize the recovery of the stock. Therefore, the Council recommended a shorter season as close to the stakeholders' recommendation as possible.

The stakeholders discussed the request for a winter fishery from some south Texas anglers, but neither the stakeholders nor the south Texas minority report recommended a winter fishery. At its November 1999 meeting, the Council considered adding a January-February opening with a reduced bag limit to allow a winter fishery but concluded that, to do so, the reduced bag limit would substantially shorten the prime April-to-October season and, thus, increase the likelihood of illegal fishing during the closed season; such occurrence would result in a harvest that would exceed the recreational quota. Further, because other Gulf states, including Texas, would not likely enact the compatible closures required to accommodate a winter fishery, the EEZ would be closed without compatible state closures, thereby resulting in overfishing of red snapper.

The interim rule provides Texas anglers, as well as anglers in other states, the opportunity to fish during the months of the greatest historical demand. During 1996, the last year that the red snapper recreational fishery was open all year, Texas monthly recreational landings during May-October exceeded those of any other monthly period. Analyses based on recent years (1995–1998) show that, during January-March, monthly landings in Texas average 96,000 lb (43,545 kg), substantially less than during August-October when monthly landings average 137,000 lb (62,142 kg). Furthermore, the interim rule will provide economic benefits to the Texas for-hire industry by allowing the industry to operate during the months of greatest demand. Texas headboat trips during January-March average 5,000 trips per month as opposed to 8,000 trips per month during August-October. Texas charter boat trips show a similar trend, with an average of 1,200 trips per month during January-March and of 2,000 trips per month during August-October.

Comment 3: An environmental organization and several individuals expressed concerns regarding regulatory discards, mortality rates of released fish, and the use of minimum size limits as conservation measures in the red snapper fishery.

Response: NMFS is also concerned with regulatory discards and the mortality rates of released red snapper. Based on the best scientific information available, NMFS believes that minimum size limits are an effective conservation measure in this fishery. Minimum size limits are a widely used fishery management tool designed to allow females to spawn at least once before entering the fishery. This pool of unfished mature females acts as a buffer against overfishing and recruitment failure in a severely overfished stock. The effectiveness of this strategy depends on the survival rate of released fish. NMFS' stock assessments assume a survival rate of 80 percent for released red snapper in the recreational fishery and 67 percent in the commercial fishery. NMFS is currently reviewing recent studies on the release mortality rates of red snapper and will recommend changes in management measures, if justified.

Comment 4: One commercial fishing organization objected to the status quo total allowable catch (TAC) of 9.12 million lb (4.14 million kg) and stated that the TAC should be no greater than 6 million lb (2.72 million kg). Two individuals also expressed concerns regarding the magnitude of the TAC.

Response: The interim rule was intended to reduce overfishing by increasing the probability of achieving compatible state and Federal regulations. The Council recommended no change to the status quo TAC of 9.12 million lb (4.14 million kg); thus, this interim rule does not address or alter the current TAC.

The Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of 1996 (SFA), mandates that overfished stocks be rebuilt to a biomass level capable of producing maximum sustainable yield (MSY). On November 17, 1999, NMFS disapproved the Council's red snapper rebuilding plan, as proposed in the Generic SFA Amendment to the Gulf of Mexico Fishery Management Council's Fishery Management Plans, because it specified a fishing-mortality-based rebuilding target rather than a biomass-based target and because it did not estimate the time to rebuild in the absence of fishing mortality; these are requirements of the Magnuson-Stevens Act and the national standard guidelines. The Council must submit a new red snapper rebuilding plan as soon as possible to NMFS for agency review, approval, and implementation.

The recent stock assessment included a wide range of estimates of MSY and the stock biomass associated with MSY for red snapper. NMFS recognizes that a considerable uncertainty associated with these estimates exists and that the Council has latitude to consider this uncertainty when developing a new rebuilding plan. Conditions approaching those estimated to exist for red snapper resource near MSY have not been seen in decades, and, thus, the assessment models for estimatinng MSY require assumptions regarding the productivity of the stock. The SFA requires greater reductions in the red snapper harvest and in shrimp trawl bycatch mortality of juvenile red snapper to rebuild this resource than were required by the Magnuson-Stevens Act prior to the SFA. The Council's Reef Fish Stock Assessment Panel estimate of the acceptable biological catch (ABC) of red snapper for 2000 ranges from 0 to 9.12 million lb (0 to 4.14 million kg), depending on the reduction of red snapper bycatch mortality achieved in the shrimp fishery and appropriate rebuilding parameters. The best available scientific information indicates that the status quo 9.12 million-lb (4.14 million-kg) TAC for 2000 may slow the rate of recovery in the early years of any rebuilding program but would not jeopardize recovery of the stock consistent with the rebuilding requirements of the Magnuson-Stevens Act, particularly if greater reductions in bycatch mortality are achieved as expected. However, an immediate and significant reduction in TAC would have devastating effects upon participants in the fishery.

NMFS will continue to provide the Council with the best available scientific information regarding the status of the red snapper stock, the effectiveness of bycatch reduction devices (BRDs), and the effectiveness of the FMP's management measures in rebuilding the overfished red snapper resource. NMFS is working with the commercial shrimp fishing industry to develop new BRDs that will further reduce finfish bycatch while minimizing shrimp loss. Also, NMFS will continue to work with the Council in implementing the FMP's current red snapper stock rebuilding plan and in modifying this plan as necessary to restore the stock to a biomass level capable of producing MSY. Management options include, but are not limited to, adjustments to the fishing season, bag limit changes, quota reductions, fishing effort reduction, vessel buy-back programs, and additional measures to reduce shrimp trawl bycatch mortality.

Comment 5: One environmental group stated that a set recreational fishing season, i.e., beginning and closing dates fixed, violates the Sustainable Fisheries Act requirement that the red snapper recreational fishery be closed once its quota is reached.

Response: NMFS disagrees. The SFA requires that the Gulf of Mexico red snapper recreational fishery be closed when the quota is reached. To comply with this requirement, NMFS works jointly with the Council to implement management measures and establish closure dates that, based upon the best available scientific information, are likely to result in annual catches that approximate the quota within the margin of error of the harvest projections. NMFS uses a computer simulation model to assess the future status of the red snapper stock. The model integrates estimates of stock abundance with fishing effort to project estimates of how many fish will be caught for various time periods. This projection assumes that the current year's fishing effort will be similar to that of previous years. In-season data are not used to establish or adjust closure dates; instead, closure is based entirely on projections. This is the only practicable method of setting closure dates because the NMFS Marine Recreational Fisheries Statistics Survey (MRFSS) is not designed for real-time quota monitoring. MRFSS data are available only in 2-month blocks, referred to as waves, and landings are not available until 5 weeks after the end of a wave. Thus, there is a time lag of at least 3 months before even preliminary MRFSS landings data can be evaluated; consequently, NMFS cannot determine the closure date based on real-time fishery data. In projecting recreational fishery harvest rates, NMFS attempts to approximate the quota in the long term, while recognizing that annual variations in the catch are inevitable.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), after considering all public comments received on the interim rule, has determined that this extension of the interim rule is necessary to reduce overfishing of red snapper in the Gulf of Mexico and is consistent with the Magnuson-Stevens Act and other applicable laws.

This extension of the interim rule is not subject to review under E.O. 12866.

This extension of the interim rule is exempt from the procedures of the Regulatory Flexibility Act because the initial interim rule was issued without opportunity for prior public comment.

NMFS prepared an economic analysis of the expected regulatory impacts of the interim rule. NMFS analyzed commercial fishing derbies during the last decade to determine the probable economic consequences of commercial spring and fall seasons consisting of a series of 10-day mini derbies during the year 2000. NMFS concluded that compared to 15-day openings, a series of 10-day commercial derbies conducted under a 9.12 million-lb (4.14 million-kg) TAC could measurably increase the average total and net revenues for the year. Shorter mini-seasons during 1998–99 reduced landings per month, supported higher ex-vessel prices, and extended domestic supplies. The expected economic consequences for the recreational sectors are less definite because of uncertainties regarding the recreational catch that may be realized versus recreational catches that can be forecast with available data.

If the changes in the recreational fishery regulations, which include an April 21 to October 31 season and an increase in the size limit to 16 inches (40.6 cm), result in catches that are no greater than the recreational quota, then NMFS expects an increase in net benefits for all portions of the recreational fishery in aggregate. However, if the realized catches exceed the quota, then longer term benefits will be reduced because stock recovery will be slowed by an indeterminate amount. In theory, if the management measures in this interim rule are very different from the management measures preferred by the Gulf states, it is unlikely that the Gulf states will adopt compatible regulations. Under incompatible Federal and state regulations, harvests will probably continue in state waters after Federal closures. These harvests will impede stock rebuilding efforts. Under the existing management scheme, for example, harvests during the Federal closures could exceed 600,000 lb (272,155 kg) during a fishing year. The Gulf states are more likely to adopt any scenario approximating the Council's requested season of April 15–October 31, thus reducing the negative effects of incompatible Federal and state rules.

Copies of the economic analysis are available upon request (see **ADDRESSES**).

This extension of the interim rule will help to ensure that management measures necessary to address the overfishing of the red snapper resource will remain in effect until a more permanent regulatory solution can be implemented. In the past, the lack of compatible management of the red snapper fishery by most Gulf states resulted in continued fishing in state waters after Federal waters were closed. This contributed to quota overruns and overfishing. NMFS anticipates that four of the five Gulf states will adopt measures compatible with the measures of the interim rule. This will enhance the effectiveness of the closed seasons and will significantly reduce the probability of overfishing. The increase in the recreational minimum size limit will reduce the harvest rate and, in combination with the bag limit and closed seasons, will help ensure that the recreational quota is not exceeded and that overfishing does not occur. Reducing the openings of the commercial fishery from 15 days per month to 10 days per month will slow the harvest rate and reduce the probability of exceeding the commercial quota and overfishing. Reinstating the 4–fish bag limit for captain and crew of for-hire vessels relieves a restriction on that sector of the fishery. The majority of public comments received on the interim rule supported the rule. None of the relatively few comments opposing various aspects of the interim rule warranted a revision of any measures in the interim rule. Delaying action to reduce overfishing in the red snapper fishery of the Gulf of Mexico to provide further notice and an opportunity for public comment would increase the likelihood of a loss of long-term productivity from the fishery and increase the probable need for more severe restrictions in the future. Furthermore, the Council has submitted for Secretarial review a regulatory amendment that contains the measures implemented by this interim rule; an opportunity for public comment on the proposed rule for the regulatory amendment will be provided.

Accordingly, under authority set forth at 5 U.S.C. 553(b)(B), the AA finds, for good cause, namely the reasons set forth above, that providing prior notice and the opportunity for prior public comment would be contrary to the public interest. For these same reasons, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this interim rule would be contrary to the public interest.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment

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on any ambiguity or unnecessary complexity arising from the language used in this interim rule. Such comments should be directed to NMFS Southeast Regional Office (see **ADDRESSES**).

Dated: June 2, 2000.

Bruce C. Morehead,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14529 Filed 6–8–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 060200A]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 2 Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest for Quarter 2 period.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the Quarter 2 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in the Northeast Region for the remainder of the 2000 Quarter 2 quota period (through June 30, 2000). Regulations governing the black sea bass fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3′ N.lat.

DATES: Effective June 9, 2000, 0001 hrs, local time through June 30, 2000, 2400 hrs, local time.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist, at (978) 281–9226.

SUPPLEMENTARY INFORMATION: Regulations governing the black sea bass fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into four quota periods based upon percentages of the annual quota. The Quarter 2 commercial quota (April through June) is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota is described in § 648.140.

The initial total commercial quota for black sea bass for the 2000 calendar year was set equal to 3,024,742 lb (1,372,000 kg) (65 FR 33486, May 24, 2000). The Quarter 2 period quota, which is equal to 29.26 percent of the annual commercial quota, was set at 885,040 lb (401,447 kg).

Section 648.141 requires the Regional Administrator, Northeast Region, NMFS (Regional Administrator), to monitor the commercial black sea bass quota for each quota period that is based upon dealer reports, state data, and other available information to determine when the commercial quota has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the black sea bass commercial quota has been harvested and no commercial quota is available for landing black sea bass for the remainder of the Quarter 2 period, north of 35°15.3′ N. lat. The Regional Administrator has determined, based upon dealer reports and other available information, that the black sea bass commercial quota for the 2000 Quarter 2 period has been harvested.

The regulations at § 648.4(b) provide that Federal black sea bass moratorium permit holders agree as a condition of the permit not to land black sea bass in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the black sea bass is available. The Regional Administrator has determined that the Quarter 2 period for black sea bass no longer has commercial quota available. Therefore, effective 0001 hrs local time, June 9, 2000, further landings of black sea bass in coastal states from Maine through North Carolina, north of 35°15.3′ N. lat. by vessels holding commercial Federal fisheries permits are prohibited through June 30, 2000, 2400 hrs local time. The Quarter 3 period for commercial black sea bass harvest will open on July 1, 2000. Effective June 9, 2000, federally permitted dealers are also advised that they may not purchase black sea bass from federally permitted black sea bass moratorium permit holders that land in coastal states from Maine through North Carolina for the remainder of the Quarter 2 period (through June 30, 2000).

The regulations at § 648.4(b) also provide that, if the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3′ N. lat., any vessel owners who hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their Black Sea Bass moratorium permit by certified mail addressed to the Regional Administrator (see Table to § 600.502) and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 5, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14518 Filed 6–5–00; 4:17 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 112
Friday, June 9, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[Docket No. PRM–72–5]

Nuclear Energy Institute; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute. The petition has been docketed by the NRC and has been assigned Docket No. PRM–72–5. The petitioner is requesting that the NRC regulations governing storage of spent nuclear fuel be amended to establish a more efficient process for issuing and amending certificates of compliance (CoC) for dry cask storage of spent nuclear fuel under a general license. The petitioner believes the current NRC process of traditional notice and comment rulemaking is not appropriate for the routine task of maintaining a list of certified casks and that the burden of maintaining this listing in the regulations outweighs any benefit. The petitioner proposes that the list of CoCs be deleted from the regulations and that NRC should notice applications for new CoCs and amendments in the **Federal Register** for a 60-day comment period. The petitioner also proposes that amendments for existing CoCs that do not have the potential to have a significant impact on public health and safety be immediately effective upon publication of the amendment in the **Federal Register**.

DATES: Submit comments by August 23, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (*http://ruleforum.llnl.gov*). At this site, you may view the petition for rulemaking, this **Federal Register** notice of receipt, and any comments received by the NRC in response to this notice of receipt. Additionally, you may upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Documents related to this action are available for public inspection at the NRC Public Document Room (PDR) located at the Gelman Building, 2120 L Street, NW, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll-Free: 1–800–368–5642 or E-mail: DLM1@NRC.Gov.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking dated April 18, 2000, submitted by the Nuclear Energy Institute (petitioner). The petitioner is requesting that the regulations in 10 CFR Part 72 governing storage of spent nuclear fuel in dry storage casks be amended. Specifically, the petitioner is requesting that the NRC establish a more efficient process for issuing new and amending existing certificates of compliance (COC) for dry cask storage of spent nuclear fuel under a general license. The petitioner believes that the current process of traditional notice and comment rulemaking for issuing and amending CoCs is inefficient and that the burden of maintaining the list of approved dry storage casks in § 72.214 outweighs any benefit.

The petitioner has concluded that the listing of CoCs in § 72.214 is not necessary and believes that removal of these requirements will have no impact. The petitioner requests that the regulations in 10 CFR Part 72 be amended by removing § 72.214. Instead, the petitioner proposes that NRC notice applications for new CoCs and amendments to existing CoCs in the **Federal Register** for a 60-day comment period. When the NRC determines that an amendment to an existing CoC does not have the potential to have a significant impact on public health and safety, the petitioner recommends that the amendment become immediately effective upon publication in the **Federal Register**. The petitioner recommends that initial applications and significant amendments would not become effective until the NRC has evaluated public comments and published its findings in the **Federal Register**.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–72–5. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner notes that the NRC Spent Fuel Project Office staff is currently considering an alternative process to the NRC's current practice of listing and amending CoCs by rulemaking. The petitioner supports the NRC staff's efforts and encourages the NRC to expeditiously amend 10 CFR Part 72 to establish an efficient process for issuing new and amending existing CoCs for dry cask storage of spent nuclear fuel under a general license. The petitioner requests that the NRC consider a streamlined process proposed by the petitioner that focuses opportunities for public input on issues that have the potential to have a significant impact on public health and safety. The petitioner proposes that the NRC discontinue the use of traditional notice and comment rulemaking and that § 72.214, the listing of CoCs, be repealed.

The petitioner believes there is no benefit in using rulemaking for the ministerial act of maintaining a list of

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certified casks and that the burden of maintaining the list in the regulations outweighs any benefit. The petitioner has concluded that the list of certified casks neither affords any additional authority on the CoC holder nor places additional weight on requirements that govern dry cask usage. The petitioner proposes that NRC notice applications for new CoCs and amendments to existing CoCs in the **Federal Register** for a 60-day comment period. For amendments to certified casks, applicants could propose that the requested amendment has no potential to adversely affect public health and safety. If NRC agreed with the applicant and found that no significant hazard exists, the amendment would be effective immediately upon publication in the **Federal Register**. The petitioner proposes that initial applications and other amendments would not become effective until the NRC evaluated public comments and published its findings in the **Federal Register**.

The petitioner notes that by 2005, as many as 50 plants will require dry cask spent fuel storage to continue operating or to proceed through decommissioning. In the Nuclear Waste Policy Act of 1982, as amended (NWPA), Congress conferred responsibility on the Federal Government to "expedite the effective use of existing storage facilities and the addition of new needed storage capacity" at civilian nuclear power facilities. The petitioner also notes that cask vendors must amend CoCs frequently to meet the growing need for dry cask storage and that, by 2001, the fuel discharged from operating plants will exceed the maximum licensed burnup limits of current casks. The petitioner contends that the current NRC practice of issuing CoCs and associated amendments by rulemaking is inadequate because it takes about 24 months to amend CoCs through the rulemaking process. The petitioner believes that with a 24-month response time, the unavailability of dry casks will impede plant operations and decommissioning at some point.

The petitioner contends that NRC's practice of listing and amending cask CoCs by cask-specific rulemaking goes beyond Congress' intent in the NWPA. The petitioner believes that by issuing more than ten CoCs under 10 CFR Part 72, the NRC has fulfilled its legislative obligation and demonstrated that the regulations are sufficient to certify technologies for use as directed in the NWPA. The petitioner states that conducting cask-specific rulemakings wastes resources and requires constant reconsideration of the same technical issues. The petitioner believes that many CoC amendments do not involve new or novel technical issues and are only being reviewed to demonstrate that a certificate holder has complied with NRC requirements for cask certification.

The petitioner recommends that NRC provide notice in the **Federal Register** and consider public comments before issuing CoCs for new casks and amendments to existing CoCs that potentially impact public health and safety. The petitioner states that proceeding in this manner would show that the NRC provides for public input and does not waste the agency's or the public's resources that could be directed toward actions on new casks and issues that may significantly affect public health and safety and away from actions that only demonstrate compliance with existing requirements and guidance. The petitioner also believes that the process for issuing and amending CoCs for spent fuel storage should be similar to that used for transportation CoCs under 10 CFR Part 71. The petitioner states that it is illogical to certify casks used for the dual purpose of storage and transportation by two entirely different processes. The petitioner further states that the certification process for transportation CoCs has been effective since its inception over 20 years ago and that no reason exists for the process for certification of casks for storage to be any more demanding than that for certifying casks for transportation.

The petitioner recommends that NRC consider an application process for new CoCs as follows: Submittal of application for new CoC; NRC prepares a draft Safety Evaluation Report (SER); the draft CoC and SER are noticed in the **Federal Register** for public comment; NRC publishes its findings in a **Federal Register** notice; and the CoC and SER are issued.

The petitioner recommends the following process for amendments to existing CoCs. The change to the CoC is identified and developed by the CoC holder, and an evaluation under § 72.48, "Changes, tests, and experiments" is performed to determine if prior NRC approval is needed. If NRC's approval is not required, the amendment may be implemented and the Safety Analysis Report (SAR) is updated. If prior NRC approval is required, the CoC holder performs a "Significant Impact" evaluation and submits the proposed amendment to the NRC. If the NRC agrees that the proposed amendment poses "No Significant Impact," the amendment is published in the **Federal Register** and becomes immediately effective upon publication, the change is implemented, and the SAR is updated. If the NRC does not determine that the amendment poses no significant impact, the draft CoC is published in the **Federal Register** for a 60-day public comment period. After the comment period expires, the NRC publishes its findings in a **Federal Register** notice, the change is implemented, and the SAR is updated.

The petitioner proposes that § 72.214, "List of approved spent fuel storage casks" be deleted from the regulations. The petitioner also proposes that § 72.238, "Issuance of an NRC Certificate of Compliance" be amended by inserting the following language after the existing codified text:

> The Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee will publish each initial application and each application for amendment in the **Federal Register** for a 60-day comment period. An application may include a proposed determination that the amendment proposed does not involve a "significant impact consideration" based on an analysis of the criteria listed below. Upon receipt of an application, the Director, or the Director's designee will make a determination of whether it agrees with the applicant's "no significant impact considerations" proposal. If the Director or the Director's designee agrees with the applicant's proposed determination, the amendment will be effective upon publication in the **Federal Register** prior to receipt and analysis of public comments.
>
> An amendment is considered to have the potential to pose a significant impact if subsequent use of the cask would:
>
> (a) Result in a significant increase in the probability or consequences of an accident previously evaluated;
>
> (b) Create the possibility for a new or different kind of accident from any accident previously evaluated; or
>
> (c) Involve a significant reduction in a margin of safety.

The petitioner has also submitted examples of amendments considered likely to involve significant impact considerations that it proposes for inclusion in a regulatory guidance document. These would be amendments that result in a significant increase in offsite doses and leakage across the confinement boundary, an increase in Keff above 0.95 without compensatory changes, significant increases in mechanical stress beyond allowable limits in codes referenced in the NRC Standard Review Plans (SRPs), and cladding temperatures that significantly exceed SRP limits.

Lastly, the petitioner has submitted examples of amendments it believes would not likely involve significant impact considerations that it proposes for inclusion in a regulatory guidance document. Examples include amendments that consist of:

(1) An administrative change to technical specifications (TS) including a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature.

(2) A TS change to ensure that no significant increase exists in the probability or consequences of analyzed accidents and does not significantly reduce safety margins such as an increase in the allowable leak rate compensated by an increase in fill gas quantity, an increase in the allowable handling height of the cask compensated by energy absorbing features, addition of a more reactive fuel design that could lead to Keff exceeding 0.95 compensated by an increase in areal poison density of fixed neutron poison sheets, and an increase in helium backfill pressure compensated by increased material properties to prevent components from exceeding code allowables.

(3) A change in the TS that includes an additional limitation, such as a more stringent surveillance requirement.

(4) A change that may result in some increase to the probability or consequences of a previously analyzed accident or may reduce the safety margin in some way, but where the results are within all acceptable criteria at the time of approval, such as an increase in Keff or offsite exposures beyond "minimal."

(5) Replacing explicit limits on fuel assemblies, decay heat, and source terms with a table that incorporates limits and ensures that these limits are met by prescribing minimum cooling times for various combinations of enrichment versus burnup.

(6) Substitution of another NRC-approved quality assurance program for fabrication of casks such as modifying Part 50, Appendix B for Part 72.

(7) A change to a CoC that consists of minor changes to storage operations that remain within regulatory requirements such as a reduction in the center-to-center cask spacing in the Independent Spent Fuel Storage Installation (ISFSI), a reduced storage cask temperature monitoring frequency, an increased time duration without transfer cask annulus cooling for canisters with fuel loading below a certain kilowatt level, or a reduction in the areal poison density in boral fixed poison sheets offset by an increase in the allowable percentage of the manufacturer's minimum assured boron content in criticality calculations.

(8) An expansion of the cask capacity including the number of bundles, higher initial enrichment, or higher burnup bundles when certain conditions are satisfied.

(9) Inclusion of a more recent NRC requirement than is contained in the licensee's CoC or site-specific license.

(10) Inclusion of an exception or alternative approved by the NRC for another licensee.

(11) Administrative improvements such as the use of generic organization position titles that clearly indicate position function as opposed to specific titles or use of generic organization charts to delineate functional responsibilities.

The Petitioner's Conclusions

The petitioner has concluded that the NRC requirements governing storage of spent nuclear fuel in 10 CFR Part 72 should be amended to establish a more efficient process for issuing and amending CoCs for dry cask storage under a general license. The petitioner has also concluded that the current NRC process of traditional notice and comment rulemaking is not appropriate for the routine task of maintaining a list of certified casks and that the burden of maintaining this listing in the regulations outweighs any benefit. The petitioner requests that the list of CoCs be removed from the regulations and that the NRC notice applications for new CoCs and amendments to existing CoCs in the **Federal Register** for a 60-day comment period. The petitioner also requests that amendments for existing CoCs that have no potential to have a significant impact on public health and safety be immediately effective upon publication in the **Federal Register**.

Dated at Rockville, Maryland, this 5th day of June, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–14686 Filed 6–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Re-evaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is re-evaluating its power reactor physical protection regulations and the proposed definition of radiological sabotage, using performance criteria as the basis. The purpose of this re-evaluation is to state precisely what kinds of sabotage-induced events a licensee is expected to protect against. This request invites public comment on these issues. The NRC is publishing as an attachment to this **Federal Register** Notice, a Commission paper entitled, "Staff Re-Evaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage," (SECY–00–0063).

DATES: Submit comments by August 23, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website at (http://ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

The attached Commission paper is associated with a rulemaking plan, "Physical Security Requirements for Exercising Power Reactor Licensees" Capability to Respond to Safeguards Contingency Events," which is located on the NRC's rulemaking website.

Copies of any comments received and certain documents related to this re-evaluation may be examined at the NRC Public Document Room, 2120 L Street NW, (Lower Level), Washington, DC. These same documents may be viewed and downloaded electronically via the rulemaking website.

FOR FURTHER INFORMATION CONTACT: Richard P. Rosano, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2933, e-mail: RSS@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In a Staff Requirements Memorandum (SRM) of November 22, 1999, the Commission approved the staff's recommendation in SECY–99–241 (Rulemaking Plan, Physical Security Requirements for Exercising Power Reactor Licensees' Capability to

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Respond to Safeguards Contingency Events, October 5, 1999) to begin a comprehensive review of 10 CFR 73.55 and associated power reactor physical protection regulations. The Commission directed the staff to provide position papers on: (1) The attributes of the design basis threat; and (2) the definition of radiological sabotage. The purpose of the first position paper is to identify the types of weapons and equipment that may be used in the design basis threat and clarify the intent of the regulations concerning the strength of the response and the strategy of a licensee's security organization. The purpose of the second position paper is to define precisely what kinds of sabotage-induced events a licensee is expected to protect against. This request for comments responds to the Commission's second direction to the NRC staff regarding development of a position paper on radiological sabotage at reactors.

Discussion

In accordance with the SRM dated November 22, 1999, the staff began considering the fundamental issues that would guide a re-evaluation of the power reactor physical protection requirements, including conducting several public meetings with stakeholders on the subject. This process highlighted a longstanding issue with the implementation of 10 CFR 73.55 requirements at power reactors. Specifically, the implementation of these requirements assumed that compliance with the prescriptive requirements of the physical protection plans written in accordance with 10 CFR 73.55(b) through (h) would provide the high assurance required by 10 CFR 73.55(a). In fact, results of force-on-force drills conducted pursuant to the Regulatory Effectiveness Review (RER) program and the Operational Safeguards Response Evaluation (OSRE) program cast doubt on the validity of this assumption, due in part to the way the requirements were (a) understood by licensees and (b) inspected and enforced by NRC. However, overall site security and the security organization's readiness to respond to an adversary attack were tested and confirmed during regional inspection activity and OSREs.

The staff examined approaches and principles used in existing NRC regulations, including the use of margin of safety. The staff also integrated appropriate results of previous analyses, such as the study to re-evaluate the guidelines and bases used to determine vital equipment and areas to be protected in nuclear power plants, as documented in "Vital Equipment/Area Guidelines Study: Vital Area Committee Report," NUREG–1178 (March 1988).

In the attachment to SECY–99–241, the staff proposed to review the definition of radiological sabotage and consider ways to clarify the issue in a way that is meaningful for the protective strategy and enhances the process of performance evaluation. After considerable discussion, the staff determined that a definition of radiological sabotage at power reactors in the new rule may not be necessary if the regulation could delineate more clearly the performance criteria to be used as the basis for the new physical protection regulations. Several public meetings were held with representatives from the Nuclear Energy Institute (NEI), the Nuclear Control Institute (NCI), and the media, from which the staff developed a set of physical protection performance criteria that are consistent with criteria used in other areas of nuclear power plant regulation. These performance criteria would provide the risk-informed basis for the comprehensive review of 10 CFR 73.55 and associated power reactor physical protection requirements, including the exercise requirement.

These performance criteria are based on ensuring that a plant retains the capability to shutdown the reactor safely and assure long-term heat removal in the face of a malevolent act by the design basis threat against the facility. The staff is developing performance criteria and requirements for 10 CFR 73.55(a) to protect the plant against a malevolent act by protecting critical safety functions, with an appropriate margin of safety, that include:

(1) reactivity control;

(2) reactor coolant makeup for maintaining reactor and spent fuel pool inventory;

(3) reactor and spent fuel pool heat removal;

(4) containment of radioactive materials;

(5) process monitoring necessary to perform and control the above functions; and

(6) actions necessary to support the operation of the equipment used for safe shutdown.

These performance criteria would clarify the scope of radiological sabotage against which a licensee is expected to protect. In 10 CFR 73.55(b) and succeeding paragraphs, specific performance criteria would be provided for the physical security organization and response elements. As described in SECY–99–241, new paragraphs of 10 CFR 73.55 would require periodic drills and exercises and corrective actions for vulnerabilities identified in the exercises.

The above performance criteria represent a new concept in formulating security programs and aligning security with other areas of regulation involving plant operations. This approach would provide insights on how the remainder of 10 CFR 73.55 might be revised. The staff believes that it is important to continue to have stakeholder involvement in the early stages of development of performance criteria.

Dated at Rockville, Maryland, this 5th day of June, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Rulemaking Issue—SECY–00–0063

(Notation Vote)

March 9, 2000.

For: The Commissioners.

From: William D. Travers, Executive Director for Operations.

Subject: Staff Re-evaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage.

Purpose: To obtain Commission approval of the staff's (a) approach to re-evaluation of the power reactor physical protection regulations, and (b) definition of radiological sabotage by providing design criteria as the basis for physical protection regulations.

Background: In the Staff Requirements Memorandum (SRM) of November 22, 1999, the Commission approved the staff's recommendation in SECY–09–241 (Rulemaking Plan, Physical Security Requirements for Exercising Power Reactor Licensees' Capability to Respond to Safeguards Contingency Events, October 5, 1999) to begin a comprehensive review of 10 CFR 73.55 and associated power reactor physical protection regulations, and directed the staff to provide position papers on: (a) the attributes of the design basis threat, and (b) the definition of radiological sabotage. The first is used to define the weapons and equipment used by the design basis threat and clarify the intent of the regulations concerning the response strength and strategy of the licensees' security organizations. The purpose of the second is to precisely state what sabotage-induced event sequences the licensees are expected to protect against. This paper addresses the second request regarding development of a position paper on radiological sabotage at reactors.

Contact: Richard Rosano, NRR, (301) 415–2933.

Discussion: In accordance with the Staff Requirements Memorandum dated

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November 22, 1999, the staff began consideration of the fundamental issues that would guide a re-evaluation of the power reactor physical protection requirements, including conducting several public meetings with stakeholders on the subject. This process highlighted a longstanding issue with the implementation of 10 CFR 73.55 requirements at power reactors. Specifically, the implementation of these requirements assumed that compliance with the prescriptive requirements of the physical protection plans written in accordance with 10 CFR 73.55(b) through (h) would provide the high assurance required by 10 CFR 73.55(a). In fact, results of force-on-force drills conducted pursuant to the Regulatory Effectiveness Review (RER) program and the Operational Safeguards Response Evaluation (OSRE) program cast doubt on the validity of this assumption, due in part to the way the requirements were (a) understood by licensees and (b) inspected and enforced by NRC. However, overall site security and the security organization's readiness to respond to an adversary attack were tested and confirmed during regional inspection activity and OSREs.

The staff examined approaches and principles used in existing NRC regulations, including the use of margin of safety. The staff also integrated appropriate results of previous analyses, such as the study to re-evaluate the guidelines and bases used to determine vital equipment and areas to be protected in nuclear power plants, as documented in "Vital Equipment/Area Guidelines Study: Vital Area Committee Report," NUREG–1178.

In the attachment to SECY–99–241, the staff proposed to review the definition of radiological sabotage and consider ways to clarify the issue in a way that is meaningful for the protective strategy and enhances the process of performance evaluation. After considerable discussion, the staff determined that a definition of radiological sabotage at power reactors in the new rule may not be necessary if the regulation could delineate more clearly the performance criteria to be used as the basis for the new physical protection regulations. A series of public meetings were conducted, including representatives from Nuclear Energy Institute (NEI), Nuclear Control Institute (NCI), and media, from which the staff developed a set of physical protection performance criteria in terms of public protection that are consistent with criteria used in other areas of nuclear power plant regulation. These performance criteria would provide the risk-informed basis for the comprehensive review of 10 CFR 73.55 and associated power reactor physical protection requirements, including the exercise requirement.

These performance criteria are based on ensuring that a plant retains the capability to safely shutdown the reactor and assure long-term heat removal in the face of a malevolent act by the design basis threat against the facility. The staff is developing performance criteria and requirements for 10 CFR 73.55(a) to protect the plant against a malevolent act by protecting critical safety functions, including appropriate margin of safety, including:

(1) reactivity control,

(2) reactor coolant makeup for maintaining reactor and spent fuel pool inventory,

(3) reactor and spent fuel pool heat removal,

(4) containment of radioactive materials,

(5) process monitoring necessary to perform and control the above functions, and

(6) actions necessary to support the operation of the equipment used for safe shutdown.

These performance criteria would clarify the scope of radiological sabotage which licensees are expected to protect. 10 CFR 73.55(b) and succeeding paragraphs would provide specific performance criteria for the physical security organization and response elements. As described in SECY–99–241, a new sub-section of 10 CFR 73.55 would require periodic drills and exercises and corrective actions for vulnerabilities identified in the exercises.

The above performance criteria represent a new concept in formulating security programs and align security with other areas of regulation involving plant operations. This approach would provide insights on how the remainder of 10 CFR 73.55 might be revised. The staff believes that it is important to continue to have stakeholder involvement in the early stages of development of performance criteria.

OSREs have been conducted since 1992 to test licensees' performance relative to the requirements in 10 CFR 73.55(a). The last OSRE in the current cycle is scheduled for May 2000 and with the final rule not expected to be published for three years, steps have been taken by the staff to fill the gap between May 2000 and the time when the new rule is in place. In the short-term, OSREs will continue. Then, pending NRC endorsement, an industry proposal for a Self-Assessment Program will be used on a trial basis, with NRC oversight, to pilot the performance criteria envisioned in the revised physical protection regulations.

Coordination: The Office of the General Counsel has reviewed this paper and has no legal objection to its content. The FTE and resource issues involved in this paper are already budgeted.

Recommendations: That the Commission: *Approve* (a) the staff's approach to re-evaluation of the power reactor physical protection regulations, and (b) the definition of radiological sabotage by providing design criteria as the basis for physical protection regulations.

Note that: Upon the Commission's approval, the staff will (a) continue with this work to implement this approach in the new security regulations; (b) test these concepts in the industry Self-Assessment Program, as appropriate; and (c) publish this paper in the **Federal Register** for public comment, seeking comment on the approach described above for revising 10 CFR 73.55(a).

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–14685 Filed 6–8–00; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129; DA 00–1220]

Common Carrier Bureau Extends Pleading Cycle on Proposal to Require Resellers to Obtain Carrier Identification Codes

AGENCY: Federal Communications Commission.

ACTION: Reopening of comment period.

SUMMARY: This document extends the comments and reply comments due dates of a document published at 65 FR 33281 (May 23, 2000). The Common Carrier Bureau published a document soliciting comments on proposals in this proceeding to require resellers to obtain their own carrier identification codes.

DATES: Submit comments on or before June 13, 2000 and reply comments on or before June 20, 2000.

ADDRESSES: See 65 FR 33281 (May 23, 2000) for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: William J. Scher or Dana Walton-Bradford (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: In a recent *Public Notice*, 65 FR 33281 (May 23,

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2000), the Common Carrier Bureau asked for supplemental filings on a proposal in this proceeding to require resellers to obtain their own carrier identification codes, establishing comment and reply comment dates of June 6 and June 13, 2000, respectively. *See Common Carrier Bureau Asks Parties to Refresh Record and Seeks Additional Comment on Proposal to Require Resellers to Obtain Carrier Identification Codes, Public Notice*, DA 00–1093, released May 17, 2000. On May 30, 2000, the Association of Communications Enterprises (ASCENT), formerly the Telecommunications Resellers Association, requested that the comment periods be extended by 30 days, to July 6 and July 13, 2000, respectively. ASCENT contends, among other things, that it is working with its members to compile data responsive to the Public Notice, but that the time allotted "has unfortunately proven inadequate[.]" ASCENT Request for Extension of Time at 3.

Based on consideration of ASCENT's filing, we conclude that a one-week extension of time is warranted. Therefore, we shall extend the respective comment and reply comment dates to June 13 and June 20, 2000. This extension will provide interested parties with more than three weeks from the date of release of the *Public Notice* in which to prepare their supplemental filings, a period that we believe should be sufficient to prepare the requested information.

For the foregoing reasons, pursuant to 47 CFR 1.46 of the Commission's rules, the Common Carrier Bureau hereby extends the comment and reply comment dates in this matter to June 13 and June 20, 2000, respectively.

Dated: June 5, 2000.

K. Michele Walters,

Associate Division Chief, Accounting Policy Division.

[FR Doc. 00–14519 Filed 6–8–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1143; MM Docket No. 99–133; RM–9523]

Radio Broadcasting Services; Evergreen, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting requesting the allotment of Channel 230A at Evergreen, Montana. *See* 64 FR 24996, May 10, 1999. Based on the information submitted by Mountain West Broadcasting, we believe it has failed to establish that Evergreen qualifies as a community for allotment purposes and therefore it would not serve the public interest to allot a channel to Evergreen. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–133, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14541 Filed 6–8–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1142; MM Docket No. 00–92; RM–9857]

Radio Broadcasting Services; Dos Palos and Livingston, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of All American Broadcasting, Inc., licensee of FM Station KNTO, Channel 240A, Livingston, California, requesting the reallotment of Channel 240A to Dos Palos, California, as that locality's first local aural transmission service, and modification of its authorization accordingly. Coordinates used for Channel 240A at Dos Palos, California, are 37–04–03 NL and 120–44–52 WL.

DATES: Comments must be filed on or before July 17, 2000, and reply comments on or before August 1, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Dan J. Alpert, Esq., The Law Office of Dan J. Alpert, 2120 N. 21st Rd., Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–92, adopted May 17, 2000, and released May 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–14607 Filed 6–8–00; 8:45 am]

BILLING CODE 6710–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 80

RIN 1018–AD63

Federal Aid in Sport Fish Restoration Program; Participation by the District of Columbia and U.S. Insular Territories and Commonwealths

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We propose to conform our regulations for the Federal Aid in Sport Fish Restoration Program to a recently enacted law by letting the States spend up to 15 percent (not just 10 percent) of their Federal Aid funds on aquatic education and outreach and communications. We also propose to let the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa spend more for these purposes, with the approval of the appropriate Fish and Wildlife Service Regional Director. While making these changes in this section of our regulations, we also propose to rewrite that entire section to put it in plain language, without making substantive change.

We also propose a new section to define existing requirements for the collection of informatoin required by the Paperwork Reduction Act and the Office of Management and Budget's implementing regulation. This section is also presented in plain language format. Comments are welcome on both sections.

DATES: Comments must be received by August 8, 2000.

ADDRESSES: Comments may be addressed to the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Arlington Square 140, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Jack Hicks, Division of Federal Aid, U.S. Fish and Wildlife Service. Telephone: (703) 358–1851.

SUPPLEMENTARY INFORMATION:

Background

Through the Federal Aid in Sport Fish Restoration Program, the U.S. Fish and Wildlife Service (Service) disburses funds to States (including the District of Columbia and the U.S. insular territories and Commonwealths) to restore and manage the Nation's fishery resources. The States use the funds to fund fisheries research, surveys, and management; purchase and restore habitat; operate hatcheries; build boat access; and provide aquatic education and outreach and communications programs.

The program is authorized by the Federal Aid in Sport Fish Restoration Act (Act), 16 U.S.C. 777 *et seq.*, enacted in 1950, and carried out by regulations in 50 CFR part 80, "Administrative Requirements, Federal Aid in Fish and Federal Aid in Wildlife Restoration Acts." Funds for the program are derived from excise and import taxes on fishing tackle and motorboat fuel. The manufacturer or importer collects the tax and pays it to the U.S. Department of the Treasury, who transfers the money to the Service for distribution to the States.

Congress has amended the Act several times, most recently via the Transportation Equity Act for the 21st Century (Pub. L. 105–178), passed in 1998. Among other things, that law, commonly referred to as TEA–21, increased, from 10 to 15 percent, the maximum allowable expenditure of Sport Fish Restoration apportioned dollars for aquatic education, which now also applies to related outreach and communications projects. Section 777g(c) of the Act states, "(E)ach State may use not to exceed 15 percent of the funds apportioned to it under Section 777c of this title to pay up to 75 percent of the costs of an aquatic resource education and outreach and communications program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms."

To carry out TEA–21, we are proposing changes to 50 CFR part 80. Specifically, we are proposing to amend part 80 by revising § 80.15 and by adding a new § 80.27 pertaining to information collection requirements. Currently, 50 CFR 80.15(e) states, "(N)ot more than 10 per centum of the annual amount apportioned to each State under provisions of the Federal Aid in Sport Fish Restoration Act may be obligated on projects for aquatic education." In accordance with TEA–21, we propose to amend part 80 to raise the amount that States may expend for aquatic education and outreach and communications to 15 percent. However, we also propose to allow the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa to spend a higher portion of their funds for this purpose, as described below. We further propose to convert the existing language in § 80.15 to plain language.

As proposed, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa would not be subject to the statutory cap of 15 percent for aquatic education and outreach and communications expenditures; that cap would apply only to the actual States. Section 777k of the Act states in part that "(T)he secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Mayor of the District of Columbia, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of fish restoration and management projects, as defined in Section 777a of this title, upon such terms and conditions as he shall deem fair, just, and equitable* * *" Under this authority, we propose to let these jurisdictions spend a higher share of their program funds on aquatic education and outreach and communications, on the grounds that doing so is fair, just, and equitable because of the unique characteristics that set them apart from the States.

The District of Columbia has a very small land base in District ownership (most of the riverfront land is owned by the National Park Service), limited aquatic resources (portions of two rivers and assorted small ponds and streams), and a very high urban population. The District commits a steady amount of funding for fisheries research and survey work in those portions of the two rivers that flow through its boundaries and for maintenance of its boating access facilities. Because of the land ownership situation, however, limited opportunities exist for the District to acquire land or to build additional boat access facilities, hatcheries, or fishing piers. In 1987 the District began an aquatic education program that has grown steadily and provides diverse, high-quality education programs for D.C. students and other citizens. The District's urban population creates the opportunity and need for developing innovative education strategies. While the demand for aquatic education remains high, the District's program cannot provide all the services requested because, under the current rules, the agency is limited to 10 percent of the total apportionment to spend on aquatic education programs.

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Islands, and American Samoa, although located over large geographical areas, have limited land mass. These islands are mostly small, separate land masses, creating special educational needs on an island-by-island basis. Unlike the U.S. mainland, which has reservoirs and lakes, the islands have an array of riverine, estuarine, and coastal habitats in very close proximity. Island aquatic ecosystems are less resilient than their continental counterparts. Thus, education on the conservation of aquatic resources on these islands becomes more critical.

Despite these unique characteristics, our current regulations in 50 CFR part 80 impose the same limitation on the education, outreach and communications funding of the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa as they do on all the States. For the reasons just described, we believe the District of Columbia and the U.S. insular territories and commonwealths should be allowed discretion in determining the funding needed for aquatic education and outreach and communications. However we are proposing to authorize Service Regional Directors to make final determinations regarding spending for this purpose. With this proposed rule change, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa will gain the flexibility to spend more on aquatic education and outreach and communications programs, if given approval to do so by the appropriate Service Regional Director.

Required Determinations

We have examined this action under the Paperwork Reduction Act (PRA) of 1995 and found it to contain no new or revised information collection requirements. However a new section, 50 CFR 80.27, is added to fulfill the public notice requirements of the PRA for existing approved information collection requirements contained in part 80.

This document was not subject to review by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. It is not a significant regulatory action.

This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required because of the low dollar amount of this proposed rule change. This change would simply redistribute existing money. The District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa (but not Puerto Rico) each receive an annual apportionment of one-third of one percent of the Sport Fish Restoration account. Over the last 10 years, this amount has ranged from about $580,000 to $910,000, with an average of approximately $720,000 per year. In 2000, the apportionment was $803,128, which permitted them to each spend $120,469 (15 percent) for aquatic education and outreach and communications. Puerto Rico, which receives 1 percent, has a 10-year average of $2,164,533, with a 2000 apportionment of $2,409,383, and currently has an aquatic education and outreach and communications spending limit of $361,407. The dollar amounts of this proposed rule will not have a major effect on the affected economies, since the money would have been obligated under programs other than aquatic education and outreach and communications without this change.

This rule will not create inconsistencies with other agencies' actions or materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule increases the allowable spending levels of Sport Fish Restoration dollars for aquatic education and outreach and communications, not the total apportionment for the recipients.

This rule will not raise novel legal or policy issues. The 15-percent limit applying to States was done through congressional action. The requested raised spending authority for the District of Columbia and the U.S. insular territories and commonwealths simply recognizes the different situations that these recipients have concerning opportunities for aquatic education and outreach and communications projects. The Act authorizes cooperation with the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa. If not obligated, the money reverts after 2 years to the Service.

We are soliciting comments on the readability of this proposed rule change and conformance with "plain language" guidelines. Please send comments to Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, 4401 North Fairfax, Suite 140, Arlington, VA 22030. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifyng themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Department of the Interior certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. *et seq.*). This action affects, by giving them more flexibility, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa. These governmental entities govern populations of more than 50,000, and, therefore, they are not small entities as defined in 5 U.S.C. 601. The proposed change simply allows for the redistribution of existing funds.

In the District of Columbia, two constraints on the use of Sport Fish Restoration funds are (1) fisheries and water resources are limited to about 30 miles of river and a few impoundments and wetland areas and (2) most of the undeveloped shoreline in the District, which would be used to develop boat access sites, is owned by the National Park Service. The District's population of 650,000 people offers both a need and an opportunity for education. A greater public benefit can be achieved by allowing spending above the cap for the District of Columbia. The District would expand and improve the work outlined in its current 5-year plan, including building an addition to the heavily used Aquatic Education Center to include classrooms and a wet lab for both fisheries research and educational demonstrations and expanding the summer youth program and in-school program to reach a greater percentage of constituents.

The Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa are very diverse in culture and language, creating a need for multiple approaches to similar conservation issues. Letting the Regional Directors approve spending above 15 percent will allow more flexibility to use education and outreach and communications to help prevent and solve fisheries and aquatic resource problems.

Additional funding for aquatic education and outreach and communications will benefit local residents without appreciable losses in management capability. No discernible effects on product prices or other economic effects are associated with this rule.

We have determined and certify pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rulemaking will not impose a cost of $100 million or more in any given year on local, State, or territorial governments or private entities.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, territorial, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule change would allow redirection of certain monies within a total apportionment; no added or reduced total funding is involved in this change.

We have determined that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule gives the recipients (the District of Columbia, the Commonwealth of Puerto Rico, the commonwealth of the northern Mariana Islands, Guam, the Virgin Islands, and American Samoa) more self-determination by allowing them more flexibility in their spending decisions.

List of Subjects in 50 CFR Part 80

Fish, Grant programs, Natural resources, Reporting and recordkeeping requirements, Wildlife.

Accordingly, we propose to amend part 80 of title 50 of the Code of Federal Regulations as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: 16 U.S.C. 777i; 16 U.S.C. 669i; 18 U.S.C. 701.

2. Section 80.15, is revised to read as follows:

§80.15 Allowable costs.

(a) *What are allowable costs?* Allowable costs are costs that are necessary and reasonable for accomplishment of approved project purposes and are in accordance with the cost principles of OMB Circular A–87.

(b) *What is required to determine the allowability of costs?* All costs must be supported by source documents or other records as necessary to substantiate the application of funds. Such documentation and records are subject to review by the U.S. Fish and Wildlife Service and, if necessary, the Secretary to determine the allowability of costs.

(c) *Are costs allowable if they are incurred prior to the date of the grant agreement?* Costs incurred prior to the effective date of the grant agreement are allowable only when specifically provided for in the grant agreement.

(d) *How are costs allocated in multipurpose projects or facilities?* Projects or facilities designed to include purposes other than those eligible under either the Sport Fish Restoration or Wildlife Restoration Acts must provide for the allocation of costs among the various purposes. The method used to allocate costs must produce an equitable distribution of costs based on the relative uses or benefits provided.

(e) *What is the limit on administrative costs for State central services?* Administrative costs in the form of overhead or indirect costs for State central services outside of the State fish and wildlife agency must be in accord with an approved cost allocation plan and cannot exceed in any 1 fiscal year 3 per centum of the annual apportionment to that State. Each State has a State Wide Cost Allocation Plan that describes approved allocations of indirect costs to agencies and programs within the State.

(f) *How much money may be obligated for aquatic education and outreach and communications?*

(1) Each of the 50 States may spend no more than 15 percent of the annual amount apportioned to it under provisions of the Federal Aid in Sport Fish Restoration Act for an aquatic education and outreach and communications program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms.

(2) The Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa are not limited to the 15-percent cap imposed on the 50 States. Each of these entities may spend more for these purposes with the approval of the appropriate Regional Director.

3. A new § 80.27 is added to read as follows:

§ 80.27 What are the information collection requirements in this part?

(a) Information gathering requirements include filling out forms to apply for certain benefits offered by the Federal Government. Information gathered under this part is authorized under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777l) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i). The Service may not conduct or sponsor, and you are not required to respond to, a collection of information unless the request displays a currently valid OMB control number. Our requests for information will be used to apportion funds and to review and make decisions on grant applications and reimbursement payment requests submitted to the Federal Aid Program.

(b) OMB Circulars A–110 and A–102 require the use of several Standard Forms: SF–424, SF–424A and SF–424B, SF–269A and SF–269B, SF–270, SF–271 and SF–272. Combined, as many as 12,000 of these forms are used annually by grant applicants. The individual burden is approximately 1 hour to compile information and complete each form; the total burden is approximately 12,000 hours (approximately 3,500 grants are awarded/renewed each year, but not all forms are used for all grants). These forms are needed to document grant applications and requests for reimbursement.

(c) Part 1 Certification (form 3–154A) and Part 2 Summary of Hunting and Sport Fishing License Issued (form 3–154B) (OMB Approval 1018–0007) require approximately ½ hour from each of 56 respondent States and territories for a total burden of 28 hours. The information is routinely collected by the States and territories and easily transferred to these forms and certified. This information is used in a statutory formula to apportion funds among the grant recipients.

(d) The Grant Agreement, 3–1552, and Amendment to Grant Agreement, 3–1591 (OMB Approval 1018–0049) require approximately 1 hour to gather

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relevant information, review, type, and sign. This information is compiled in the normal agency planning processes and transferred to these forms. Recipients nationwide complete approximately 3,500 Grant Agreement forms and 1,750 Amendment to Grant Agreement forms during any fiscal year for a total burden of 5,250 hours. This information is used to document financial awards made to grant recipients and amendments to these awards.

(e) The public is invited to submit comments on the accuracy of the estimated average burden hours needed for completing Part I—Certification, Part II—Summary of Hunting and Sport Fishing License Issued, Grant Agreement, and Amendment to Grant Agreement forms and to suggest ways in which the burden may be reduced. Comments may be submitted to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203.

Dated: May 11, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–14586 Filed 6–8–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000511132–0132–01; I.D. 042400I]

RIN 0648–AM04

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). These proposed regulations would modify the recreational and commercial red snapper fishing seasons; allocate two-thirds of the commercial red snapper quota for the spring fishing season, with the remainder available for the fall fishing season; increase the recreational minimum size limit for red snapper; and reinstate a 4-fish recreational red snapper bag limit for captain and crew of for-hire vessels (charter vessels and headboats). The intended effect of these proposed regulations is to maximize the economic benefits from the red snapper resource within the constraints of the stock rebuilding program for this overfished resource.

DATES: Comments must be received no later than 4:30 p.m., eastern standard time, on July 10, 2000.

ADDRESSES: Written comments on the proposed rule must be sent to Dr. Roy E. Crabtree, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the regulatory amendment, which includes an environmental assessment, a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Phone: 813–228–2815; Fax: 813–225–7015; E-mail: gulf.council@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Roy.Crabtree@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Under the regulatory amendment, the Council has proposed adjusted management measures for the Gulf red snapper commercial and recreational fisheries. Under provisions of the FMP, these measures, if approved and implemented, would continue in effect until changed through a subsequent rulemaking action. The Council has submitted the regulatory amendment to NMFS for review, approval, and implementation. The measures in this regulatory amendment were developed and submitted to NMFS under the terms of the FMP's framework procedure for annual adjustments in management measures for the red snapper fishery. The proposed regulations would implement the measures contained in the Council's regulatory amendment.

Background

The measures contained in the proposed rule, except for the change in the start date of the fall commercial season and the minor change in the allocation of the commercial quota, were implemented by interim rule (64 FR 71056, December 20, 1999). This proposed rule would implement these measures on a permanent basis.

The measures contained in this proposed rule are needed to reduce overfishing, while allowing the total allowable catch (TAC) of red snapper to be harvested by fair, equitable, and effective means. These changes would reduce overfishing by: (1) increasing the likelihood of compatible closures of state waters during Federal closures, thereby improving enforcement of closures of the EEZ recreational red snapper fishery and reducing the harvest from state waters during Federal closures; (2) improving compliance with Federal regulations by opening the recreational fishery during the time of greatest demand and reducing confusion among anglers by promoting compatible state and Federal regulations; and (3) reducing the rate of harvest in the commercial fishery, thus reducing the probability of the commercial fishery exceeding its quota.

These red snapper measures are based, in part, on the recommendations to the Council from a stakeholder conference held in New Orleans, LA, on September 27, 1999. Stakeholders' recommendations for the recreational red snapper fishery included a 4-fish bag limit for the captain and crew of for-hire vessels, a minimum size limit not to exceed 16 inches (40.6 cm), and a March 1 to October 31 recreational season. The interim rule was necessary to implement these changes before the 2000 fishing seasons began.

Section 407(d) of the Magnuson-Stevens Act requires NMFS to close the Gulf of Mexico recreational red snapper fishery after the recreational quota (currently 4.47 million lb (2.03 million kg)) is caught. The recreational fishery was closed on November 27 in 1997, on September 29 in 1998, and on August 29 in 1999. Under the regulations in place prior to promulgation of the interim rule, i.e., a 4-fish bag limit and a 15-inch (38.1-cm), minimum size limit, NMFS projected that with a January 1 opening date for the recreational fishery, the 2000 quota (4.7 million lb (2.03 million kg)) would be reached on July 29, 2000; consequently, the fishery would be closed at 12:01 am on July 30, 2000.

The recreational fishery has exceeded its quota each year since 1997, when NMFS first closed it as required by section 407(d) of the Magnuson-Stevens Act. The proposed rule is intended to address this problem and to reduce overfishing. Compatible state closures are essential for Federal closures to be effective. If the Gulf states do not implement compatible recreational seasons, the harvest of red snapper in state waters will continue after the Federal closure. Furthermore, the lack of compatible regulations impedes enforcement of Federal regulations, results in reduced compliance, and increases overfishing. During 1999, the recreational red snapper fishery in most Gulf states' waters remained open for at least 3 months after the Federal closure. Under the regulations in effect prior to promulgation of the interim rule, the recreational fishery in the EEZ would have opened on January 1, 2000, and closed on July 30, 2000. NMFS expects that the Gulf states would have opened their fisheries on January 1 if Federal waters had opened, but the states would probably not have closed state waters until at least October 31, as occurred during 1999. By opening the recreational fishery during the time of greatest demand, the interim rule has achieved compatible seasons with four of the five Gulf states. The recreational fishery in Texas is expected to remain open all year. Thus, fishing that would have occurred after closure of the Federal season under the regulations in effect prior to the interim rule has been reduced.

Recreational Season

The stakeholders at the September 27, 1999, conference recommended a red snapper recreational season from March 1 to October 31. The Council attempted, to the extent possible, to implement the stakeholders' recommendations; however, based on the best available scientific information, the harvest from a March 1 to October 31 season would exceed the current recreational quota. Therefore, the Council recommended a shorter season as close to the stakeholders' recommendation as possible. The stakeholders' recommendations and the preponderance of public testimony presented to the Council indicate that a season from April 21 to October 31 offers the greatest benefits to Gulf anglers and, based upon the best available scientific information, is compatible with the recreational quota. A group of south Texas anglers, who participated in the stakeholders conference, submitted a minority report requesting a year-round fishery with a 4-fish bag limit and a 13-inch (33.0-cm) minimum size limit. However, the harvest from a year-round fishery, if implemented, would greatly exceed the quota and jeopardize the recovery of the stock.

The Council recommended an April 15-to-October 31 season but authorized the Regional Administrator to adjust the season as needed to allow reinstatement of the 4-fish bag limit for the captain and crew of for-hire vessels. To compensate for the increase in catch rates resulting from reinstatement of this measure, NMFS delayed the season opening by 6 days until April 21.

The stakeholders discussed the request from some south Texas anglers for a winter fishery, but neither the stakeholders nor the south Texas minority report recommended a winter fishery. At its November 1999 meeting, the Council considered adding a January-February opening with a reduced bag limit to allow a winter fishery. The Council concluded that it was impossible to do so without substantially shortening the prime April-to-October season and, thus, increasing the likelihood that illegal fishing during the closed season would occur, resulting in a harvest that exceeds the recreational quota. Furthermore, it is unlikely that all of the Gulf states would enact the compatible closures required to accommodate a winter fishery; consequently, the EEZ would be closed without compatible state closures resulting in overfishing and impeded enforcement.

The proposed rule would provide Texas anglers, as well as anglers in other states, the opportunity to fish during the months of greatest historical demand. During 1996, the last year that the red snapper fishery was open all year, Texas monthly landings during May-October exceeded those of any other months. Analyses based on recent years (1995–1998) show that during January-March, monthly landings in Texas average 96,000 lb (43,545 kg), substantially less than during August-October when monthly landings average 137,000 lb (62,142 kg). Further, the proposed rule would provide economic benefits to the Texas for-hire fishing industry by allowing the industry to operate during the months of greatest demand. Texas headboat trips during January-March average 5,000 trips per month, as opposed to 8,000 trips per month during August-October. Texas charter boat trips show a similar trend, with an average of 1,200 trips per month during January-March and 2,000 trips per month during August-October.

Recreational Size Limit

The increase in the recreational minimum size limit from 15 inches (38.1 cm) to 16 inches (40.6 cm) is an essential component of the modified recreational fishing season. The increase would reduce the harvest rate and, in combination with the bag limit and closed seasons, would help ensure that the recreational quota is not exceeded, thereby reducing overfishing. NMFS' projections indicate that the reduction in catch rates from the increased size limit would allow the season to be extended by approximately three weeks without a significant increase in harvest. The best available scientific information indicates that increasing the minimum size limit constrains harvest rates by increasing the proportion of anglers who are unable to catch their bag limit. The NMFS Southeast Fisheries Science Center (Center) has determined that the measures contained in this proposed rule, including any additional release mortality associated with the increase in the minimum size limit, would not jeopardize the long-term recovery of the stock. The extension of the fishing season would provide social and economic benefits to the recreational fishery and the Gulf tourism industry. The stakeholders recommended 16 inches (40.6 cm) as the largest minimum size acceptable to the recreational fishery.

The Council did not propose a corresponding increase in the existing commercial size limit of 15 inches (38.1 cm). The Council justified the discrepancy between the two size limits based on the different release mortality rates in the two fisheries and on the need to extend the recreational season by increasing the minimum size limit. Commercial fishers fish in deeper water than recreational fishers and use electric reels, which bring fish to the surface more quickly than does rod-and-reel gear used by recreational fishers; consequently, the mortality rate of fish released in the commercial fishery (33 percent) is greater than that in the recreational fishery (20 percent). The best available scientific information suggests that further increases in the minimum size limit above 15 inches (38.1 cm) provided few conservation benefits at release mortality rates of 33 percent or greater.

Recreational Bag Limit

Reinstating the 4-fish bag limit for captain and crew of for-hire vessels would relieve a restriction on that sector of the fishery. The final rule for the Council's 1999 red snapper regulatory amendment (64 FR 47711, September 1,

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1999) implemented the current 0-fish bag limit for captain and crew. The for-hire industry has vigorously opposed this measure. NMFS approved the 0-fish bag limit for captain-and-crew for the 1999 season because it extended the recreational season without a corresponding increase in harvest. Subsequent public comment and the recommendations of the stakeholders indicate that fishery participants are willing to sacrifice fishing days to reinstate the bag limit for captain and crew. Thus, the Council's regulatory amendment proposes to reinstate the 4-fish bag limit for the for-hire sector and delay the starting date of the recreational season to April 15 or to a date determined by the NMFS Regional Administrator (RA) that would accommodate the reinstatement of the 4-fish bag limit and prevent a corresponding increase in harvest. The RA has determined that this season starting date should be April 21 for 2000, as was implemented by the interim rule.

NMFS expected that none of the Gulf states would have enacted a compatible 0-fish bag limit measure (for 2000 and beyond), and, thus, enforcement of this measure would have been difficult. By restoring the captain-and-crew bag limit, the projected fishery closure date would be based on an assumed catch rate reduction that would, in fact, be realized because of compatible state regulations. In addition, the measure should reduce overfishing by encouraging cooperation and voluntary compliance by the for-hire sector, which accounts for the greatest portion of the recreational harvest.

Spring Commercial Season

Reducing the openings of the spring commercial fishery from 15 days per month to 10 days per month would slow the overall harvest rate, allow additional time between 10-day fishing periods to evaluate landings and, thus, reduce the probability of exceeding the commercial quota and overfishing. This measure also would reduce confusion among fishers by providing consistent spring and fall fishing periods and, thus, increase compliance. Projections by the Council's Socioeconomic Panel and the experience of the 10-day openings (9 fishing days) during the 1999 fall season suggest that the reduced harvest rate also would help maintain price stability. This action should allow commercial red snapper fishermen to generate more revenue with the same amount of catch, which should help reduce the incentive to pursue a derby fishery that would likely result in a quota overrun.

Fall Commercial Season

Changing the opening of the fall season from September 1 to October 1 is proposed to increase economic benefits to the fishery. Seafood dealers have stated that there is low demand for seafood in September but that demand and prices improve in October. Delaying the start of the fall commercial season until October is intended to allow fishermen to get better prices for their catches and make fresh red snapper available at a time when the consumer demand is greater. This measure is not expected to have any biological consequences.

Allocation of the Commercial Quota

The proposed rule would implement a minor change in the allocation of the commercial quota (4.65 million lb (2.11 million kg)) between the spring and fall seasons. Currently the spring allocation is a fixed amount, 3.06 million lb (1.39 million kg), with the remainder available for the fall fishing season. The proposed rule would specify that the spring sub-quota be set as a proportion (two-thirds) of the annual commercial quota rather than as a fixed quantity. This would allow any future changes in the commercial quota to be distributed proportionally between the spring and fall seasons, rather than the entire adjustment being applied only to the fall season. Based on the current annual commercial quota, the two-thirds proportion for the spring sub-quota would be 3.10 million lb (1.41 million kg), thus leaving 1.55 million lb (0.705 million kg) for the fall sub-quota.

The Center has determined that this proposed rule is based on the best available scientific information. The Center emphasized that to be considered consistent with the FMP's current management objective of achieving a 20-percent spawning potential ratio (SPR) by 2019, the Council's selection of a 9.12 million-lb (4.14 million-kg) TAC carries the implicit belief that red snapper bycatch reduction of at least 50 percent will be achieved in year 2000 and beyond, that harvests will not exceed quotas, and that future recruitment, on average, will increase as spawning stock biomass increases. In its certification of the interim rule, which implemented most of the measures contained in this proposed rule, the Center concluded that these measures would not jeopardize the long-term recovery of the red snapper stock and that the measures address overfishing and are consistent with the FMP and the Magnuson-Stevens Act. The Center also emphasized the uncertainty associated with projections of catch rates in the recreational fishery and certified that the recreational quota is within the margin of error of the harvest projected under the measures contained in this proposed rule.

Classification

This proposed rule has been determined to be not significant for purposes of E. O. 12866.

The Council prepared an IRFA, based on the RIR. A summary of the IRFA follows:

This proposed rule is being considered because the red snapper stock is overfished, and the Magnuson-Stevens Act requires the Council to take action to resolve the overfished status of the stock. The Council determined that 450 to 650 commercial vessels with a history of red snapper landings from the EEZ waters of the Gulf of Mexico would be directly affected by the rule. The Council also determined that about 1,200 charterboats and headboats would be affected by the rule, and all of these units are classified as small business entities. Most of the commercial vessels use handline gear, have an average length of 38 ft (11.6 m), have an estimated resale value of $52,817 and generate average annual gross revenues of about $52,000. The charterboat businesses tend to use traditional charter fishing boats that average 37 ft (11.3 m.) in length and generate about $56,000 in sales, while the headboats have an average length of 62 feet (18.9 m.) and have annual receipts of about $140,000. No additional reporting, record keeping or other compliance costs were identified, and no duplicative, overlapping, or conflicting Federal rules were identified.

Four alternatives, including the minimum size limit of 15 inches (38.1 cm) total length in effect prior to change by the interim rule, are identified for the proposal to increase the recreational red snapper minimum size limit from 15 inches (38.1 cm) to 16 inches (40.6 cm). The 15-inch (38.1 cm) size limit and a lower size limit of 14 inches (35.6 cm) were rejected as minimum size limits because both alternatives would increase the rate of harvest and lead to a shorter season, thereby reducing the recreational value. The 15-inch size limit leads to a shorter season because the stocks are recovering, and catch per unit effort is rising. A minimum size limit from 16 inches (40.6 cm) to 18 inches (45.7 cm) was rejected because larger fish suffer from a higher release mortality because they tend to be harvested from greater depths. If this is so, then the larger minimum size limits would reduce the potential for stock recovery and reduce long-term benefits.

A final alternative of no size limit with a requirement to retain the first four fish (current bag limit) was considered. With good compliance, this alternative could assist stock recovery and lengthen the season, thus generating larger short-term as well as long-term economic benefits. However, the Council concluded that it was not enforceable and would lead to high-grading and a reduction in benefits.

The Council proposed a bag limit allowance of 4 fish for the captain and crew of for-hire vessels and considered one other alternative—the zero bag limits for captain and crew in effect prior to change by interim rule. The RIR found that the captain and crew bag limit of 4 fish may lead to a reduction in net economic benefits to the recreational fishery because the season would be shortened. However, the Council chose the alternative because it believed that not enough additional income would be generated to justify the loss of harvest privileges for captain and crew.

The Council considered five alternatives to the proposal to set the recreational red snapper season from April 15 through October 31 including the January 1 opening in effect prior to change by the interim rule. Under the regulations in effect prior to implementation of the interim rule, the recreational season starts on January 1 and closes when the quota is met. The January 1 opening has resulted in short seasons that eliminate some of the more profitable for-hire fishing trips that occur later in the year. Hence, the Council investigated suitable alternatives and chose the April 15-through-October 31 season alternative. The current regulations still require a closure whenever the recreational quota is determined (projected) to be met, and the RIR indicates that trips occurring later in the season are more valuable than trips occurring earlier in the year. For this reason, the Council also proposed giving the Regional Administrator, Southeast Region, NMFS, the authority to delay the opening date to accommodate overruns that were projected to be associated with the proposed captain and crew bag limit (4-fish bag limit). The Council's intent was to maintain the October 31 closing date while keeping the recreational sector within its quota. Another alternative rejected by the Council was to open the recreational season for January and February, close it for late winter, reopen at an unspecified date in the spring or summer, and then close it for the year whenever the quota was met. The idea was an attempt to maximize for-hire profits because the peak vacation seasons vary in different areas of the Gulf of Mexico. Since there was not enough information available to evaluate the economic consequences of this alternative and there was also no spring/summer opening date specified, the economic outcome of the alternative could not be evaluated. A final recreational season alternative rejected by the Council would split the Gulf of Mexico into subregions, with the possibility of different seasons, suballocations, size limits, and bag limits for each subregion. Since there were no specific regulatory proposals identified, it was not possible to forecast economic outcomes.

For the commercial sector, the regulations in effect prior to change by the interim rule allow the available quota to be split into spring and fall seasons to take advantage of periods when demand is highest and producer surplus can be generally increased. However, the Council has the ability to set specific regulations for each of the seasons. For the spring season, the Council proposed starting the season on February 1 and having mini-seasons of 10 days each month until the spring quota is reached. The Council rejected the alternative in effect prior to change by interim rule of 15 day mini-seasons in the spring because an economic analysis conducted by NMFS, and included in the RIR, indicated an increase of net benefits from the shorter, 10-day, mini-seasons. The Council elected to maintain the fall mini-seasons that were already established at 10 days per month. The Council proposes to begin the fall season on October 1 instead of the status quo of September 1 because some seafood dealers indicated that demand is higher in October.

A copy of the IRFA is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 2, 2000.

Bruce C. Morehead,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.34, paragraph (n) is removed; the suspension of paragraph (l) is lifted; and paragraphs (l) and (m) are revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(A) is reached or until noon on October 1, whichever occurs first. From October 1 to December 1, the commercial fishery for red snapper in or from the Gulf EEZ is closed from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(B) is reached or until the end of the fishing year, whichever occurs first. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, the limit for such possession during a closed period is zero.

(m) *Closures of the recreational fishery for red snapper.* The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1 through April 20 and from November 1 through December 31. During a closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

3. In § 622.37, paragraph (d)(1)(vi) is removed; the suspension of paragraph (d)(1)(iv) is lifted; and paragraph (d)(1)(iv) is revised to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(1) * * *

(iv) Red snapper—16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(iii) and 15 inches (38.1

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cm), TL, for a fish taken by a person not subject to the bag limit.

* * * * *

4. In § 622.39, paragraphs (b)(1)(viii) and (b)(1)(ix) are removed; the suspensions of paragraphs (b)(1)(iii) and (b)(1)(v) are lifted; and paragraph (b)(1)(iii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(iii) Red snapper—4.

* * * * *

5. In § 622.42, paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(A) Two-thirds of the quota specified in § 622.42(a)(1)(i), 3.10 million lb (1.41 million kg), available at noon on February 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

(B) The remainder available at noon on October 1 each year, subject to the closure provisions of §§ 622.34(l) and 622.43(a)(1)(i).

* * * * *

[FR Doc. 00–14525 Filed 6–8–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 65, No. 112

Friday, June 9, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–046–1]

Availability of a Draft Environmental Assessment for Field Testing Rinderpest Vaccine, Vaccinia Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental assessment concerning authorization to ship to Kenya for the purpose of field testing, and then to field test in Kenya, an unlicensed, genetically engineered, vaccinia-vectored rinderpest vaccine for use in cattle. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by July 10, 2000.

ADDRESSES: Please send your comments and three copies to: Docket No. 00–046–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–046–1.

Copies of the draft environmental assessment may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the docket number, date, and complete title of this notice when requesting copies. A copy of the draft environmental assessment (as well as the risk analysis with confidential business information removed) and any comments that we receive on this docket are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and have a reasonable expectation of efficacy before a field trial may be authorized. The purpose of a field trial is to gather additional information concerning the safety and efficacy of a vaccine when used under field conditions that are similar to those in the area(s) where the vaccine will be distributed and used. Prior to conducting a field test on an experimental vaccine, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed vaccine referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared a draft environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Dr. Tilahun Yilma, Director, International Laboratory of Molecular Biology for Tropical Disease Agents, School of Veterinary Medicine, University of California, Davis.

Product: A live, genetically engineered, vaccinia-vectored rinderpest vaccine.

Field test location: Kikuyu, Kenya.

The above-mentioned vaccine is for use as an aid in the prevention of rinderpest in cattle. The vaccine was constructed with the Wyeth vaccine strain of the vaccinia virus and further attenuated by insertional inactivation of the thymidine kinase and hemagglutinin genes of the vaccinia virus.

The draft EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to issue a final EA and finding of no significant impact and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 5th day of June 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–14615 Filed 6–8–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Revision and Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension and revision for a currently approved information collection. This information collection is used in support of the Environmental Quality Incentives Program (EQIP) which offers flexible assistance to counter serious threats to soil, water, grazing lands, wetlands, and wildlife habitat and, also, to address natural resource concerns, such as nonpoint source pollution, water quality protection or improvement, and wetland restoration, protection, and creation, as authorized by the Food Security Act of 1985 (the 1985 Act).

DATES: Comments on this notice must be received on or before August 8, 2000 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Ilka Gray, Agricultural Program Specialist, USDA, FSA, CEPD, STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513; telephone (202) 690–0794; e-mail Ilka_Gray@wdc.fsa.usda.gov; or facsimile (202) 720–4619.

SUPPLEMENTARY INFORMATION:

Title: CCC Conservation Contract.

OMB Control Number: 0560–0174.

Expiration Date of Approval: December 31, 2000.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The 1985 Act authorized the EQIP to assist farmers and ranchers in solving natural resource related problems on agricultural land. The information is necessary to ensure the integrity of the program and to ensure that only eligible producers are authorized contracts.

Producers requesting cost-share or incentive payments from the Commodity Credit Corporation must provide specific data related to the conservation payment request. Forms included in this information collection package require farm and tract numbers, conservation practice or benefits requested, major resource concerns, and similar information, in order to determine eligibility. Producers must also agree to the terms and conditions contained in the conservation contract. Without the collection of this information, CCC cannot ensure the integrity of CCC conservation programs.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average .23 hours per response.

Respondents: Individuals producers, partnerships, corporations, tribal members, or other eligible agricultural producers.

Estimated Number of Respondents: 80,000.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 1.53 hrs.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments must be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Ilka Gray, Agricultural Program Specialist, USDA–FSA–CEPD, STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513; telephone (202) 690–0794; e-mail Ilka_Gray@wdc.fsa.usda.gov; or facsimile (202) 720–4619. Copies of the information collection may be obtained from Mrs. Gray at the above address.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives in within 30 days of publication.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Parks Shackelford,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–14573 Filed 6–8–00; 8:45 am]

BILLING CODE 3410–05–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 10, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Strap, Mail Tray
5340–01–365–1043
NPA: Work, Incorporated, North Quincy, Massachusetts
Logo, BDU Coat and Shirt
8455–00–NSH–0001 (Coat)
8455–00–NSH–0002 (Shirt)
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky

Services

Administrative Services
General Services Administration, 100 Penn Square East, Philadelphia, Pennsylvania
NPA: Delaware County Branch of the Pennsylvania Association for the Blind, Chester, Pennsylvania
Administrative/General Support Services
Chaplain's Office, Great Lakes Naval Training Center, Great Lakes, Illinois
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois
Base Supply Center, Operation of Individual Equipment Element Store & HAZMART
McChord Air Force Base, Washington
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington
Grounds Maintenance
U.S. Army Reserve Center, 50 East Street, Springfield, Massachusetts
NPA: CW Resources, Inc., New Britain, Connecticut
Grounds Maintenance
U.S. Army Reserve Center, AMSA 68(G), 42 Albion Road, Lincoln, Rhode Island
NPA: Greater Providence Chapter, Rhode Island Association for Retarded Citizens, North Providence, Rhode Island
Janitorial/Custodial
Marine Corps Reserve Training Center, 4201 Chester Avenue, Bakersfield, California
NPA: The Bakersfield Association for Retarded Citizens, Inc., Bakersfield, California
Janitorial/Custodial
Weapons Support Facility, Seal Beach, California
NPA: Goodwill Industries of Orange County, Santa Ana, California
Janitorial/Custodial
Ford House Office Building, Washington, DC
NPA: Davis Memorial Goodwill Industries, Washington, DC
Janitorial/Custodial
GSA Distribution Depot, 500 Edwards Avenue, Harahan, Louisiana
NPA: Louisiana Industries for the Disabled, Baton Rouge, Louisiana
Janitorial/Custodial for the following locations:
Veterans Center #401, 1766 Fort Street, Lincoln Park, Michigan
Veterans Center #402, 4161 Cass, Detroit, Michigan
NPA: Jewish Vocational Service and Community Workshop, Inc., Southfield, Michigan
Temporary Medical Record Filing for the following locations:
VA Medical Center, Nashville, Tennessee
Alvin C. York VA Medical Center, Murfreesboro, Tennessee
NPA: Ed Lindsey Industries f/t Blind, Inc., Nashville, Tennessee

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–14683 Filed 6–8–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities and services previously furnished by such agencies.

EFFECTIVE DATE: July 10, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 20, 1999, and March 31, April 7, 14 and 21, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 45506 and 65 FR 17255, 18281, 18282, 20134 and 21395) of proposed additions to and deletions from the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Sac Saver
M.R. 1010
Handle, Jack
5120–01–032–6042

Services

Janitorial/Custodial
Fort Huachuca, Arizona
Janitorial/Custodial
Naval and Marine Corps Reserve Center, 1620 East Saginaw Street, Lansing, Michigan
Janitorial/Custodial
PFC Cloyse E. Hall USARC, Salem, Virginia
Laundry Service
Veterans Affairs Medical Center, 800 Zorn Avenue, Louisville, Kentucky
Medical Courier Service
Veterans Affairs Medical Center, 4100 West 3rd Street, Dayton, Ohio
Release of Information Copying Services for the following locations:
Veterans Affairs Medical Center, 421 North Main Street, Leeds, Massachusetts
Springfield Outpatient Clinic
1550 Main Street, Springfield, Massachusetts

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

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Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities and services.

3. The action may result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities and services are hereby deleted from the Procurement List:

Commodities

Cover, Shipping, Blade
1615–01–160–3748
Ladder, Straight (Wood)
5440–00–816–2585
Cleaning Compound, Windshield
6850–00–926–2275
Ink, Marking Stencil, Opaque
7510–00–183–7697
7510–00–183–7698
Cleaning Compound, Rug and Upholstery
7930–00–113–1913
7930–01–393–6762
7930–01–393–6757
Disinfectant-Detergent, General Purpose
7930–01–393–6753
Rinse Additive, Dishwashing
7930–00–619–9575
Aerosol Paint, Lacquer
8010–00–584–3148
8010–00–721–9743
8010–00–141–2950
8010–00–965–2392
Enamel
8010–01–332–3743
8010–01–336–5061
8010–01–336–5063
8010–01–331–6120
8010–01–332–3742
8010–01–363–3376
Enamel, Aerosol, Waterbase
8010–01–350–5254
8010–01–350–5255
8010–01–350–4746
8010–01–350–4747
8010–01–350–4755
8010–01–350–5248
8010–01–350–5249
8010–01–350–5258
8010–01–397–3985
Enamel, Lacquer
8010–00–852–9033
8010–00–846–5117
8010–00–181–7371
8010–00–988–1458
8010–00–935–7075
Trousers, Men's, Medical Assistant
8405–00–110–8290
8405–00–110–8291
8405–00–110–8292
8405–00–110–8293
8405–00–110–8294
8405–00–110–8295
8405–00–110–8296
8405–00–110–8297
8405–00–110–8298
8405–00–110–8299
8405–00–110–8301
8405–00–110–8302
8405–00–110–9468
8405–00–110–9469
8405–00–110–9470
8405–00–110–9471
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8405–00–110–9488
8405–00–110–9489
8405–00–110–9490
8405–00–110–9697
8405–00–113–5418
8405–00–008–8848

Services

Administrative Services
Defense Reutilization and Marketing Office, Sheppard Building, Sheppard Air Force Base, Texas
Food Service Attendant
Naval Undersea Warfare Center, Building 35, Keyport, Washington
Janitorial/Custodial
U.S. Courthouse, 500 State Avenue, Kansas City, Kansas
Janitorial/Custodial
Federal Building, 500 Quarrier Street, Charleston, West Virginia
Mail and Messenger Service
U.S. Army Garrison-Fitzsimons, Aurora, Colorado
Restocking Parts
Kelly Air Force Base, Texas
Scrap Breakdown
Defense Reutilization and Marketing Office, Kelly Air Force Base, Texas

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–14684 Filed 6–8–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904, NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On May 25, 2000, IBP, Inc. filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty determination made by the Secretaria de Comercio y Fomento Industrial, respecting Bovine Carcasses and Half Carcasses, Fresh or Chilled, Originating in the United States of America. This determination was published in the *Diario Oficial de la Federacion del*, on April 28, 2000 and May 9, 2000. The NAFTA Secretariat has assigned Case Number MEX–USA–00–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Mexican Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 25, 2000, requesting panel review of the final determination described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 26, 2000);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 10, 2000); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 5, 2000.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–14678 Filed 6–8–00; 8:45 am]

BILLING CODE 3510–GT–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060500B]

Submission For OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application for Commercial Fisheries Authorization under Section 118 of the Marine Mammal Protection Act.

Form Number(s): None.

OMB Approval Number: 0648–0293.

Type of Request: Regular submission.

Burden Hours: 620.

Number of Respondents: 4,000.

Average Hours Per Response: 15 minutes for an initial application, 9 minutes for a renewal application.

Needs and Uses: The Marine Mammal Protection Act (MMPA) requires any commercial fisher operating in a Category I or II fishery to register for a certificate of authorization that will allow the fisher to take marine mammals incidental to commercial fishing operations. Category I and II fisheries are those identified by NOAA as have either frequent or occasional takings of marine mammals.

Affected Public: Business or other for-profit institutions and individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 2, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–14526 Filed 6–8–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

[I.D. 060500LE]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Project Design for Research, Exploration, or Salvage of the R.M.S. Titanic and/or Its Artifacts.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 48.

Number of Respondents: 2.

Average Hours Per Response: 12 hours per project design or report.

Needs and Uses: The R.M.S. Titanic Act of 1986 directs NOAA to enter into consultations with other nations to develop international guidelines for research on, exploration of, or salvage of the Titanic. Proposed guidelines are being published. They include requests for the voluntary submission of project designs and later reports. The information will allow NOAA to assess the potential and actual impacts of activities.

Affected Public: Business or other for-profit institutions, not-for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 1, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–14527 Filed 6–8–00; 8:45 am]

BILLING CODE 3510–08–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060600A]

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Atlantic Bluefin Tuna Mandatory Catch Reporting.

Agency Form Number(s): None.

OMB Approval Number: 0648–0328.

Type of Request: Revision of a currently approve collection.

Burden Hours: 955.

Number of Respondents: 8,697.

Average Hours Per Response: 5 minutes per permit holder per fish using the call-in system; 10 minutes per permit holder per fish using the catch card system.

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Needs and Uses: As a member of the International Commission for the Conservation of Atlantic Tunas (ICCAT), the U.S. is required to take part in the collection of biological statistics for research purposes. In addition to this requirement, the U.S. must abide by the specific quota assigned to it by the ICCAT. The mandatory catch reporting program provides current information on the vessel owners participating in the Atlantic tuna fisheries, thus facilitating the quota monitoring necessary to avoid exceeding the quota. It also aids the National Marine Fisheries Service in the enforcement of fishery regulations.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DoC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 2, 2000.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–14672 Filed 6–8–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.060100C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for an enhancement permit (1258); Issuance of permits 1245 and 1231; Issuance of Amendment #1 to Permit #1178.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from the North Carolina Zoological Park (NCZP) (1258); NMFS has issued permit 1245 to Mr. J. David Whitaker, of South Carolina Department of Natural Resources (SCDNR) (1245); Amendment #1 to permit 1178 to Mr. Darryl Christenson, of the National Marine Fisheries Service, Northeast Fisheries Science Center (NMFS-NEFSC) (1178);and permit 1231 to Dr. Llewellyn M. Ehrhart, of University of Central Florida, Dept. of Biological Science (UCF) (1231).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5:00 pm eastern standard time on July 10, 2000.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For Amendment #1 to permit 1178, and permits 1258, 1231 and 1245, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910 (Ph.: 301–713–1401).

FOR FURTHER INFORMATION CONTACT: For Amendment #1 to permit 1178, and permits 1258, 1231 and 1245: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

The following species are covered in this notice: endangered shortnose sturgeon (*Acipenser brevirostrum*), endangered Green turtle (*Chelonia mydas*), Endangered Kemp's ridley turtle (*Lepidochelys kempii*), Endangered Leatherback turtle (*Dermochelys coriacea*), Threatened Loggerhead turtle (*Caretta caretta*).

New Applications Received

NMFS has received and application from the North Carolina Zoological Park has requested a five year permit to continue to maintain four (4) adult shortnose sturgeon in captivity for enhancement purposes. The applicant currently possesses four adult shortnose sturgeon received from the US Fish and Wildlife Service hatchery at Warm Springs Georgia in November 1996 under scientific research permit #986. Permit 986 will expire on December 31, 2000 and the permit holder does not wish to renew the enhancement aspects of the permit. As a result, the North Carolina Zoological Park is applying for an individual permit to continue maintenance of these fish.

Permits and Amendments Issued

Notice was published on March 21, 2000 (65 FR 15131) that Mr. J. David Whitaker, of South Carolina Department of Natural Resources applied for a scientific research permit (1245). The applicant has requested a three year permit to establish scientifically-valid indices of abundance for the northern sub-population of the threatened loggerhead turtle and the endangered Kemp's ridley, green and leatherback sea turtles which occur in the Atlantic Ocean off the southeastern United States. This study is intended to capture juveniles and adults, thereby providing a more comprehensive assessment of total population abundance and an assessment of the health of individual animals. Permit 1245 was issued on May 19, 2000, authorizing take of listed species. Permit 1245 expires October 31, 2002.

NMFS has amended permit #1178 issued October 19, 1998. The amendment removes three annual

reporting requirements and revises a permit special condition. The permit holder possesses a 5-year scientific research permit to take listed sea turtles incidentally taken in foreign and domestic commercial fisheries operating in state waters and the Exclusive Economic Zone in the Northwest Atlantic Ocean. The work will be conducted by scientific observers aboard commercial fishing vessels. This research supports the National Marine Fisheries Service's mission of assessing the impacts of commercial fisheries on marine resources of interest to the United States. Amendment #1 to Permit 1178 was issued on May 31, 2000, authorizing take of listed species. Permit 1178 expires December 21, 2003.

Notice was published on January 14, 2000 (65 FR 2381) that Dr. Llewellyn M. Ehrhart, of the University of Central Florida, Dept of Biological Science applied for a scientific research permit (1231). The Recovery Plan for the U.S. Population of Atlantic Green Turtle states that the foremost problem in management and conservation of sea turtles is the lack of basic biological information. This study proposes to capture turtles living in the Indian River Lagoon Estuary of central Florida in Brevard and Indian River counties. The data provided by the study will include information regarding habitat requirements, seasonal distribution and abundance, movement and growth, feeding preferences, sex distribution and the prevalence and severity of fibropapilloma. Permit 1231 was issued on May 31, 2000, authorizing take of listed species. Permit 1231 expires March 31, 2005.

Dated: June 5, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–14673 Filed 6–8–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051000A]

Marine Mammals; Permit No. 1004 (P595)

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research no. 1004 submitted by the Whale Conservation Institute/Ocean Alliance, 191 Weston Road, Lincoln, MA 01773, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: February 11, 2000, notice was published in the **Federal Register** (65 FR 6997) that an amendment of permit no. 1004, issued June 21, 1996 (61 FR 33906) had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972 as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 as amended (ESA, 16 U.S.C. 1531 *et seq.*), and the regulations governing endangered and threatened species (50 CFR parts 222–226).

Permit No. 1004 has been amended to: (1) extend the expiration date of the permit to December 31, 2000; (2) increase the number of imported tissue samples from all species, except southern right whale (*Eubalaena australis*); and (3) increase locations from which samples may be imported.

Issuance of this amendment as required by the ESA of 1973 was based on a finding that the permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: June 5, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–14674 Filed 6–8–00; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Application of BrokerTec Futures Exchange, L.L.C. for Designation as a Contract Market in U.S. Treasury Note and U.S. Treasury Bond Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: BrokerTec Futures Exchange, L.L.C. ("BTEX" or "Exchange") has applied for designation as a contract market for the automated trading of futures contracts on short-term U.S. Treasury Notes (2 Year), medium-term U.S. Treasury Notes (5 Year), long-term U.S. Treasury Notes (6½–10 Year), and U.S. Treasury Bonds (15–30 Year) on an electronic trading system, the BrokerTec Execution Capability ("BTEC") trading system.

The Exchange has not previously been approved by the Commodity Futures Trading Commission ("Commission") as a contract market in any commodity. Accordingly, in addition to the terms and conditions of the four proposed futures contracts, BTEX has submitted to the Commission a proposed trade-matching algorithm; proposed bylaws and rules pertaining to BTEX membership, governance, trading standards and disciplinary and arbitration procedures; and various other materials to meet the requirements for a board of trade seeking initial designation as a contract market. BTEX's submission also includes various proposed bylaws and rules of the BrokerTec Clearing Company, L.L.C. ("BCC"), an affiliate that would be responsible for clearing and settlement functions for the Exchange.

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Economic Analysis and the Division of Trading and Markets have determined to publish the Exchange's proposal for public comment. The Divisions believe that publication of the proposal for comment at this time is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the Commodity Exchange Act. The Divisions seek comment regarding all aspects of BTEX's application and addressing any issues commenters believe the Commission should consider.

DATES: Comments must be received on or before July 10, 2000.

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FOR FURTHER INFORMATION CONTACT: With respect to questions about the terms and conditions of BTEX's proposed futures contracts, please contact Michael A. Penick, Industry Economist, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, Dc 20581: telephone number (202) 418–5279; facsimile number (202) 418–5527; or electronic mail: *mpenick@cftc.gov*. With respect to BTEX's and BCC's other proposed rules, please contact Duane C. Andresen, Special Counsel, Division of Trading and Markets, at the same address; telephone number: (202) 418–5492; facsimile number (202) 418–5536; or electronic mail: *dandresen@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

By letter dated and received May 8, 2000, BTEX, an affiliate of BrokerTec Global, L.L.C. ("BrokerTec"), which includes 12 of the world's largest debt and capital markets dealers as its shareholders,[1] has applied to the Commission for designation as a contact market for electronic trading of futures contracts on short-term U.S. Treasury Notes (2 Year), medium-term U.S. treasury Notes (5 Year), long-term U.S. Treasury Notes (6½–10 Year), and U.S. Treasury Bonds (15–30 Year). The Exchange has not previously been approved as a contract market in any commodity. Thus, in addition to the terms and conditions of the four proposed futures contracts, BTEX has submitted, among other things, a proposed trade-matching algorithm and proposed bylaws and rules pertaining to BTEX membership rights and obligations, governance, trading standards and disciplinary and arbitration procedures. BTEX's submission also includes various proposed BCC bylaws and rules.

BTEX is organized as a Delaware limited liability company with three classes of shares. Class A shares would be held by BrokerTec or an affiliate thereof, and possibly other entities with whom BrokerTec may become associated.[2] Class B shares would be held by BTEX clearing members in proportion to their contributions to the BCC Guaranty Fund, thereby providing them with the ability to participate in the governance of BTEX in proportion to the amount of capital they would have at risk in connection with trading at BTEX. Class C shares would be held by BTEX members who were on non-clearing members. Once operational, the Exchange would be governed by a Board of Directors ("Board"), which would include one Class A Director, ten Class B directors, one Class C Director, and three public Directors, chosen by the Board. At its annual meeting, the Board would appoint a chairman of the Board, President, Secretary, and Treasurer, and could appoint one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers, and such other officers as may be required.[3] The President would be the chief executive officer of the Exchange. BCC would similarly be governed by a Board of Directors that would, among other things, appoint a President as chief executive officer of the company.[4]

Eligibility requirements for BTEX membership would include demonstration of operational capabilities deemed appropriate by the Exchange in light of the applicant's anticipated type and level of trading activity. A non-clearing member would be required to make a security deposit, purchase one share of Class C stock, and file an agreement under which a clearing member would agree to accept for clearing any transactions effected by the non-clearing member which were not accepted for clearing by any other clearing member. Any Exchange member could become a clearing member, provided that it met certain net capital and other specified requirements, including operational capacity. A clearing member would be required to purchase a number of Class B shares that is approximately the same proportion of the total number of outstanding shares of Class B stock as the amount required to be deposited by the clearing member into BCC's Guaranty Fund bears to the total amount required to be on deposit in the Guaranty Fund.[5] Each member would be responsible for diligently supervising all activities of its employees relating to transactions affected on the Exchange or subject to its rules, including those employees who have access to BTEC ("Authorized Traders"). Each member would also be required to establish a working connection with BTEC and be responsible for training and testing its employees with respect to BTEX rules and the proper use of BTEC and of any terminal or other device used for obtaining access thereto.

BTEX contracts would trade over BTEC, an electronic trading system that will be based on a customization of the OM CLICK Exchange System. The OM CLICK Exchange System, provided by OM Technology AB ("OM"), is used by more than ten exchanges worldwide. BTEC will also be based on the BrokerTec fixed income cash market trading system that has been developed by OM and is scheduled to commence operations in June 2000. OM would operate BTEC and provide facilities management and ongoing technical and other support.[6]

[1] Included as shareholders are the following: ABN AMRO Bank N.V., Banco Santander Central Hispano, S.A., Barclays Electronic Commerce Holdings, Inc., Credit Suisse First Boston, Inc., DB U.S. Financial Markets Holding Corporation, Dresdner Bank, AG, The Goldman Sachs Group, Inc., LB I Group, Inc., Merrill Lynch L.P. Holdings Inc., Morgan Stanley Dean Witter & Co., Salomon Brothers Holding Company Inc., and UBS (USA) Inc. BrokerTec's operating subsidiaries are headquartered in Jersey City, New Jersey, and London.

[2] Only the holders of Class A shares would be entitled to receive any dividends or distributions that may be declared or paid by the Exchange, including upon liquidation.

[3] Other Board responsibilities would include, among others, setting executive compensation, imposing dues or other charges upon Class B and Class C members of the Exchange, imposing or reducing fees or charges for contracts effected on or subject to the Exchange's rules, and appointing the following committees: Adjudication, Appeals, Arbitration, Business Conduct, Membership, Nominating, and trade Review. Certain specified actions relating to corporate and business matters, such as mergers or acquisitions, joint ventures or similar arrangements, and eligibility standards for membership, may be taken by a majority of the Class A Directors, regardless of the votes of other members of the Board, and may not be taken without the concurrence of a majority of the Class A Directors. Certain other specified matters, including appointment of a chief executive officer and any action to approve or modify the Exchange's budget, may be taken only with the concurrence of a majority of the Class A Directors.

[4] BBC is organized as a Delaware limited liability company with two classes shares. Class A shares would be held by BrokerTec or an affiliate thereof, and possibly other entities with whom BrokerTec may become associated. Class B shares would be held by BCC members in proportion to their contributions to the BCC Guaranty Fund, thereby providing them with the ability to participate in the governance of BCC in proportion to the amount of capital they would have at risk in the BTEX market. Once operational, BCC would be governed by a Board of Directors comprised of one Class A Director and eight Class B Directors. Dividends or other distributions that may be declared or approved by BCC's Board of Directors would be payable as follows: 75 percent to holders of Class A stock and 25 percent to holders of Class B stock. Certain specified actions relating to corporate and business matters, such as mergers, consolidations, joint ventures, alliances or similar arrangements, and the creation of any new class of members, may be taken by a majority of the Class A Directors, regardless of the votes of other members of the Board of Directors, and may not be taken without the concurrence of a majority of the Class A Directors. Certain other specified matters, including any action to dissolve, liquidate or wind up BCC, appointment of the President, and any action to approve or modify BCC's budget, may be taken only with the concurrence of a majority of the Class A Directors.

[5] Required deposits would be determined in accordance with a formula based on cleared volume and open interest over the previous six months.

[6] OM and BrokerTec have executed numerous agreements governing the design, development, and implementation of the BrokerTec trading platform, proprietary network, and facilities management support. The parties are currently completing

Under the proposal, orders could be entered into BTEC only by or through BTEX members, who would be responsible for all orders placed through them.[7] BTEC would accept orders for outright trades and calendar spreads.[8] Orders entered would be required to include user identity (including member identity), series (listed contract month), bid or ask, price, quantity, validity time,[9] and account or client. Except for bunched orders, each customer order entered into BTEC would be for one account.

BTEC would accept the entry of limit orders[10] and market orders.[11] These orders would be executed pursuant to a trade-matching algorithm that would give first priority to orders at the best prices, and then give priority among orders at the same price based upon time of entry into BTEC.[12] Upon execution of transaction, transaction data would be automatically transmitted to the BCC for clearing. Trade data and bids and offers would also be provided to members through BTEC.[13] Once executed, a member may cancel an erroneous transaction only if, among other things, the price of the transaction is outside the Board-specified No-Cancellation Range and the member advises the Exchange of the error within 10 minutes after the transaction was confirmed.

BTEX also would permit block trades, exchanges of futures for physicals ("EFP"), and exchanges of futures for swaps ("EFS"). Specifically, BTEX would allow a block trade to be effected between a member's customers, between the member and a customer, and between the member and any other member (acting for itself or its customers), subject to the parties meeting certain specified requirements. The minimum lot size for a block trade would be 250 lots, and the period within which the block trade would be required to be reported to the Exchange would vary, depending upon the size of the trade, *i.e.*, larger block trades would be reported within longer intervals than smaller block trades. BTEX would impose no parameters on the price at which the block trade could be executed.[14]

A member would be able to effect an EFP at any price as may be mutually agreed upon by the parties to the transaction without entering the transaction into BTEC. The commodity being exchanged would be required to have a high degree of price correlation to the underlying commodity for the futures contract such that the futures contract would serve as an appropriate hedge for such commodity. A member would similarly be able to effect an EFS at any price as may be mutually agreed upon by the parties to the transaction without entering the transaction into BTEC. The fluctuations in the value of the swap would be required to have a high degree of correlation to fluctuations in the price of the underlying commodity for the futures contract being exchanged such that the futures contract would serve as an appropriate hedge for such swap Block trades, EFPs, and EFSs would be submitted to the BCC for clearing at the time they are reported to the Exchange.

BCC would have its own financial resources (including a Guaranty Fund), market protection mechanisms, risk management staff, and internal controls in place in order to monitor risk exposure and maintain the financial integrity of BTEX and BCC. The amount that would be deposited and maintained in the Guaranty Fund by each clearing member would be equal to that member's proportionate percentage of volume and open interest. BCC would also have the ability to impose assessments on nondefaulting clearing members to meet a shortfall caused by the default of another clearing member, subject to specified limitations. BCC would secure an outside party to provide certain processing services with respect to clearing and settlement of BTEX contracts. Although the details of the duties that would be performed have not been finalized, any such operation would be conducted consistent with BCC rules.

BTEX's provisions for compliance and surveillance programs would include market surveillance, trade practice surveillance, disciplinary functions, financial surveillance in cases where BTEX is the member firm's self-regulatory organization, and arbitration. BTEX would secure an outside party to perform certain trade practice and market surveillance activities and other functions in support of the BTEX compliance program. The details of the surveillance techniques to be applied and the allocation of functions between BTEX and the third party have not been finalized.[15]

II. Request for Comments

Any person interested in submitting written data, views, or arguments on the proposal to designate BTEX should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. The Divisions seek comment on all aspects to BTEX's application for designation as a new contract market. Reference should be made to BTEX's application for designation as a contract market in U.S. Treasury Note and U.S. Treasury Bond futures contracts. Copies of each contract's proposed terms and conditions are available for inspection at the Office of the Secretariat at the above address. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100.

definitive documentation governing the complete OM-BrokerTec relationship.

[7] Customers of members may be able to place orders through automated order routing systems, but all such orders would have to pass through a server or other connection of an Exchange member.

[8] Other types of combination trades may be introduced at a later date.

[9] The validity time rules for an order would require that the order be one of the following: good until cancelled (expiration); good up to a specified number of trading days (maximum of 255 days); or good until the end of the trading day.

[10] A limit order could be any of the following: (1) "fill or kill," an order to be filled for the entire quantity against opposite orders open in BTEC or to be automatically canceled; (2) "fill and kill," an order to be executed to the extent there are opposite orders open in BTEC, with any balance of the order to be automatically canceled; and (3) "fill and store," an order to be executed to the extent there are opposite orders open in BTEC, with any balance of the order to remain an open order until it expires, is executed, or is canceled.

[11] A market order may be either "fill or kill" or "fill and kill."

[12] Subject to this sequence, orders for combination trades would be executed and the legs thereof would be priced pursuant to an algorithm that gives priority to execution of each leg of the transaction as a separate transaction rather than to execution of the transaction at a differential, if the legs of the transaction are better than, or equal to, the differential price.

[13] BTEX represents that it intends to make the trade data available on a commercial basis to trade dissemination vendors.

[14] BTEX's rules permit the Board to establish a market-maker program whereby members or their affiliates may be designated as market makers and may be granted benefits in return for assuming obligations in order to provide liquidity and orderliness in an Exchange market. Benefits accruing to market makers could include, among others, access to information regarding standing orders in BTEC, priority in the execution of transactions effected in the capacity of market maker, reduced transaction fees, and receipt of compensatory payments. The Board may also restrict the right to effect block trades only to members which are market makers.

[15] The Exchange's proposed disciplinary rules generally follow the provisions of Part 8 of the Commission Regulations. As previously noted, the Board would appoint Business Conduct, Adjudication, and Appeals Committees. Investigations of any suspected violation of Exchange bylaws or rules would be presented to the Business Conduct Committee. BTEX rules also would include summary proceedings, under which the compliance staff could summarily impose a fine against a member for certain types of violations.

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Other materials submitted by BTEX may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552), except to the extent that they are entitled to confidential treatment pursuant to 17 CFR 145.5 or 145.9. Requests for copies of such materials should be made to the Freedom of Information, Privacy and Sunshine Act compliance staff of the Office of the Secretariat at the Commission headquarters in accordance with 17 CFR 145.7 and 145.8.

Issued in Washington, DC, on June 5, 2000.

Alan L. Seifert,

Deputy Director.

[FR Doc. 00–14523 Filed 6–8–00; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0010]

Red Rock Trading Co., Inc., a Corporation, and Blackjack Fireworks, Inc., a Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with Red Rock Trading Co., Inc., a corporation, and Blackjack Fireworks, Inc., a corporation, containing a civil penalty of $90,000.[1]

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 24, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 00–C0010, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: June 5, 2000.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. Red Rock Trading Company, Inc. (hereinafter, "Red Rock"), a corporation and Blackjack Fireworks, Inc. (hereinafter, "Blackjack"), a corporation enter into this Settlement Agreement and Order (hereinafter, "Settlement Agreement" or "Agreement") with the staff of the Consumer Product Safety Commission, and agree to the entry of the attached Order incorporated by reference herein. The purpose of the Settlement Agreement is to settle the staff's allegations that Red Rock and Blackjack knowingly violated sections 4(a) and (c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1263(a) and (c).''

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent regulatory commission of the United States government established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

3. Red Rock is a corporation organized and existing under the laws of the State of Nevada. Red Rock's corporate address is 6000 South Eastern, Suite 11E, Las Vegas, NV 89119. Red Rock imports and distributes consumer fireworks.

4. Blackjack is a corporation organized and existing under the laws of the State of Nevada. Blackjack's corporate address is 6000 South Eastern, Suite 11E, Las Vegas, NV 89119. Blackjack sells consumer fireworks.

II. Allegations of the Staff

5. On 19 occasions between December 14, 1994 and May 20, 1999, Red Rock and Blackjack introduced or caused the introduction in interstate commerce of 36 different kinds of fireworks devices (703,823 retail units) identified and described below that failed to comply with the Commission's Fireworks Regulations at 16 CFR Part 1507 and 16 CFR 1500.14(b)(7) and 1500.17(a)(3).

Collection date* Entry date	Sample No.	Product	Violation
12/14/94*	T–830–7216	Bottle Rockets	Fuse Attachment.
05/08/95	T–830–4030	Candle Star	Fuse Burn Time, Side Ignition.
05/08/95	T–830–4162	News Transmitter	Fuse Attachment, Fuse Burn Time.
06/02/95	T–830–7345	Moon Traveller	Fuse Burn Time, Fuse Attachment.
09/26/96*	96–860–6467	Jumping Jacks	Fuse Burn Time.
09/26/96*	96–860–6468	Whistling Moon Traveller	Stick Rigidity.
09/26/96*	96–860–6470	General Custer's Last Stand	Fuse Burn Time.
09/26/96*	96–860–6472	Artillery Shell	Fuse Burn Time.
04/21/97*	97–830–3219	Cobra Black Snake	Excess Arsenic.
04/21/97*	97–860–3220	Battle of Colors	Excess Pyrotechnic, Composition.
05/15/97	97–830–4214	Night Shell	Fuse Burn Time.
05/15/97	97–830–4215	Overlord in Sky	Excess Pyrotechnic, Composition, Pyrotechnic Leakage.
05/15/97	97–830–4216	Battle of Colors	Excess Pyrotechnic, Compositon, Fuse Burn Time, Burnout/Blowout.
06/19/97	97–830–3259	Spring Thunder	Excess Pyrotechnic, Composition.
06/19/97	97–830–3530	Rattles Colored Snakes	Excess Arsenic.
07/11/97	97–830–6350	Ninja Shell	Fuse Burn Time.
04/09/98	98–860–6074	News Transmitter	Fuse Burn Time.
04/09/98	98–860–6079	7 Shot Night Shell	Fuse Attachment, Tipover.
05/05/98	98–860–6848	Sky Travel Barrage	Fuse Burn Time.
05/21/98	98–860–6999	Victory Celebration	Fuse Attachment.

[1] Chairman Ann Brown and Commissioner Thomas H. Moore voted to provisionally accept the agreement. Commissioner Mary Sheila Gall voted to reject the agreement. Chairman Brown and Commissioner Gall filed statements concerning their respective votes, copies of which are available from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Collection date* Entry date	Sample No.	Product	Violation
05/22/98	98–860–6810	Smoke Toy Device	Fuse Burn Time, Side Ignition, External Flame.
05/22/98	98–860–6811	2 Color Smoke	Fuse Burn Time, External Flame.
06/19/98	98–830–3830	Night Shell	Tipover, Side Ignition.
06/19/98	98–830–3831	Thunder Crackling	Labeling, Excess Pyrotechnic, Composition, Fuse Burn Time, Side Ignition.
06/19/98	09–830–3832	Thunder & Rain	Labeling Excess Pyrotechnic, Composition, Fuse Burn Time, Side Ignition.
06/19/98	98–830–3833	Command Teste	Excess Pyrotechnic, Composition.
06/19/98	98–830–3834	Sunglow	Excess Pyrotechnic, Composition.
06/15/98	98–830–6843	Moon Travellers	Stick Rigidly.
06/15/98	98–830–6844	Air Travel	Fuse Burn Time.
12/09/98	99–830–3311	96 Color Peal	Fuse Burn Time, Side Ignition.
03/30/99	99–860–5662	10 Ball Roman Candle	Fuse Burn Time.
03/30/99	99–860–5663	10 Ball Roman Candle	Excess Pyrotechnic, Composition.
04/19/99	99–860–6063	Jumping Jacks	Pyrotechnic, Leakage.
05/12/99	99–860–5654	Small Festival Balls	Fuse Burn Time.
05/12/99	99–860–5658	Dragon Dancing	Side Ignition.
05/20/99	99–860–6192	Artillery Shell	Pyrotechnic, Leakage.

6. Each of the fireworks devices identified in paragraph 5 above is a "banned hazardous substance" pursuant to section 2(q)(1)(B) of the FHSA, 15 U.S.C. 1261(q)(1)(B), 16 CFR Part 1507, and 16 CFR 1500.17(a)(3).

7. Each of the fireworks devices identified in paragraph 5 above that failed to comply with the labeling requirements are "misbranded hazardous substances" pursuant to section 3(b) of the FHSA, 15 U.S.C. 1262(b) and 16 CFR 1500.14(b)(7).

8. Red Rock and Blackjack knowingly introduced or caused the introduction in interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the banned and misbranded hazardous fireworks identified in paragraph 5 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

III. Response of Red Rock and Blackjack

9. Red Rock and blackjack deny the allegations of the staff set forth in paragraphs 5 through 8 above.

10. Red Rock's and Blackjack's products comply with all federal statutes and regulations (including those cited above) and are specifically manufactured to comply with such laws. Red Rock and Blackjack, in fact, have arranged for many of their products to be tested by qualified individuals to ensure compliance with all such laws. Moreover, Red Rock and Blackjack are aware of no injuries associated with any products imported by them over the years.

11. Red Rock and Blackjack vehemently deny they knowingly introduced or caused the introduction in interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise any banned hazardous substances and/or misbranded hazardous substances, including the alleged banned hazardous substances and/or alleged misbranded hazardous substances described above in paragraph 5.

12. Red Rock and Blackjack are only entering into this Settlement Agreement because of the tremendous legal cost of contesting a fine action against the Commission in Court as well as the negative publicity that could be associated with a long drawn out trial.

IV. Agreement of the Parties

13. The Consumer Product Safety Commission has jurisdiction over Red Rock and Blackjack, and the subject matter of this Settlement Agreement and incorporated Order under the following acts: Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

14. Red Rock and Blackjack agree to the entry of the attached Order which is incorporated herein by reference.

15. This Settlement Agreement and Order is entered into for the purposes of settlement only and does not constitute a determination by the Commission or an admission by Red Rock and Blackjack that Red Rock and Blackjack knowingly violated the FHSA and the Commission's Fireworks Regulations.

16. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Red Rock and Blackjack knowingly, voluntarily, and completely waived any rights they may have in this matter (1) to an administrative or judicial hearing (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Red Rock and Blackjack failed to comply with the FHSA, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

17. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and incorporated Order.

18. In settlement of the staff's allegations, Red Rock and Blackjack agree to pay a civil penalty of $90,000.00 as set forth in the incorporated Order.

19. Upon the full payment of the civil penalty as set forth in the Final Order, the Commission fully releases, acquits, and forever discharges Red Rock and Blackjack and its officers, directors, and/or employees from all claims for civil penalties, demands for civil penalties, liabilities for civil penalties, actions for civil penalties, or causes of actions for civil penalties for all violations from December 14, 1994 through December 31, 1999 for which the Commission has issued letters of advice to Red Rock and Blackjack.

20. Upon provisional acceptance of this Settlement Agreement by the Commission, the Commission will place the Settlement Agreement and the incorporated Order on the public record, and publish it in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written requests not to accept the Settlement Agreement within 15 days, the Settlement Agreement shall

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be deemed finally accepted and the Final Order issued on the 16th day.

21. Red Rock and Blackjack have recently become members of the American Fireworks Standards Laboratory (AFSL). Based on current data, the Commission staff believes that fireworks imported under the AFSL testing and certification program are more likely to comply with the Commission's Fireworks Regulations than non-AFSL fireworks are. Accordingly, the Commission will not pursue FHSA violations against Red Rock and Blackjack for those fireworks products legitimately tested and certified by AFSL as complying with the Commission's Fireworks Regulations, as the AFSL program is currently structured and administered. However, the Commission staff will continue to monitor the AFSL program. If the Commission staff determines that the AFSL program does not adequately assure compliance with the fireworks regulations, it will notify Red Rock and Blackjack in writing. After providing such written notice to Red Rock and Blackjack, the Commission staff will have the enforcement discretion to pursue violations of the FHSA and the Commission's Fireworks Regulations against Red Rock and Blackjack for AFSL tested fireworks products received and/or imported by Red Rock and Blackjack after such notification date. The Commission staff's determination on the adequacy of the AFSL testing and certification program is neither reviewable nor subject to challenge by Red Rock and Blackjack nor provides a basis for Red Rock and Blackjack to challenge this Agreement.

22. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and incorporated Order may not be used to vary or contradict its terms.

23. The provisions of this Settlement Agreement and Order shall apply to Red Rock and Blackjack and each of their successors and assigns.

24. Upon final acceptance of this Agreement, the Commission shall issue the attached Final Order.

Respondent's Red Rock Trading Company, Inc. and Blackjack Fireworks, Inc.

Dated: March 13, 2000.

Tim McCoy,

President, Red Rock Trading Company, Inc. and Blackjack Fireworks, Inc., 6000 South Eastern, Suite 11E, Las Vegas, NV 89119.

Commission Staff

Alan H. Schoem,

Assistant Executive Director, Consumer Product Safety Commission, Office of Compliance, Washington, D.C. 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: March 16, 2000.

Dennis C. Kacoyanis,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondents Red Rock Trading Company, Inc., a corporation, Blackjack Fireworks, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Red Rock Trading Company, Inc. and Blackjack Fireworks, Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further ordered, that upon final acceptance of the Settlement Agreement and Order, Red Rock Trading Company, Inc. and Blackjack Fireworks, Inc. shall pay a civil penalty in the amount of ninety thousand and 00/100 dollars ($90,000.00) in three (3) payments. The first payment of forty thousand and 00/100 dollars ($40,000.00) shall be due within twenty (20) days after service upon Red Rock Trading Company, Inc. and Blackjack Fireworks, Inc. of the Final Order of the Commission accepting the Settlement Agreement (hereinafter, the "anniversary date"). The second payment of twenty-five thousand and 00/100 dollars ($25,000.00) shall be paid on or before August 1, 2000. The third payment of twenty-five thousand and 00/100 dollars ($25,000.00) shall be made within one year of the anniversary date. Upon the failure of Red Rock Trading Company, Inc. and Blackjack Fireworks, Inc. to make a payment or upon Red Rock Trading Company, Inc. and Blackjack Fireworks, Inc. making a late payment (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (c).

Provisionally accepted and Provisional Order issued on the 5th day of June, 2000.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–14543 Filed 6–8–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Reissuance of MFTRP No. 1A as MFTRP No. 1B, Including PowerTrack Requirements

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Department of Defense (DoD) Traffic Manager for surface and surface intermodal traffic management services, hereby cancels MTMC Freight Traffic Rules Publication (MFTRP) No. 1A in its entirety and replaces it with MFTRP No. 1B, effective September 30, 2000. The actual text of the 1B will be available on the Internet at MTMC's website at *www.mtmc.army.mil* by clicking in succession on: (1) Transportation Services, (2) Freight Logistics, (3) Freight Traffic Rules Publications and then clicking on the appropriate box indicating the 1B. In conjunction with the replacement of the 1A with the 1B, use of the PowerTrack automated billing and payment system will become mandatory on September 30, 2000 for all DoD freight shipped in accordance with the 1B motor rules publication. Specifically, motor carriers wishing to transport DoD freight effective September 30, 2000 must have a signed agreement with US Bank and be PowerTrack certified to be eligible to pick up shipments on or after that date. The 1B is being issued by MTMC Headquarters in Alexandria, Virginia; however, responsibility for the publication after its original issuance will pass from MTMC Headquarters to MTMC's Deployment Support Command at Fort Eustis, Virginia.

DATES: MFTRP No. 1A is cancelled and MFTRP No. 1B is effective September 30, 2000.

ADDRESSES:

(Until September 30, 2000)
Headquarters, Military Traffic Management Command, ATTN: MTOP–MRM, Room 10N–07, Hoffman II Building, 200 Stovall Street, Alexandria, VA 22332–5000, attn: Jerome Colton, e-mail: coltonj@mtmc.army.mil

(After September 30, 2000)
MTMC Deployment Support Command, attn: Steve Lord, Room 201, Bldg. 664 Sheppard Place, Fort Eustis, VA 23604, e-mail: lords@mtmc.army.mil

FOR FURTHER INFORMATION CONTACT: For additional information contact Mr. Jerome Colton at 703–428–2324.

SUPPLEMENTARY INFORMATION: This change is effective on September 30, 2000. A notice proposing this change was published in the **Federal Register**, Vol. 64, No. 245, page 71742, Wednesday, December 22, 1999. In response to this notice, a total of three (3) letters (two from carriers and one from a carrier association) were received during the 60-day comment period. The synopsis of the comments and MTMC's responses appear below. Comments pertaining to material which did not change from the 1A from the 1B will be referenced but not synopsized, and will be followed by the standard response "There has been no substantive change from the 1A to the 1B". The comments and responses are as follows:

Comment: Electronic Commerce/Electronic Data Interchange and PowerTrack (Items 16 and 20). Will there be ample time to implement these programs prior to their becoming mandatory? When will these programs be mandatory? Some aspects of these programs impose an unfair burden on carriers.

Response:

(a) PowerTrack and other automation programs are required by the Secretary of Defense under Management Reform Memorandum Number 15.

(b) Motor carriers wishing to transport DoD motor freight must have a signed agreement and be PowerTrack certified by September 30, 2000.

(c) These initiatives were publicized at various times in the past year including announcements at workshops and symposia and carriers have had ample time to prepare. Item 20 of the 1B draft text, referenced in the **Federal Register** announcement of and posted on MTMC's website since December 22, 1999 stated: "Implementation of PowerTrack began in 1999, and is expected to become mandatory in September 2000 * * *, at which time it will become the exclusive mechanism for payment of freight bills by DoD. Carriers are therefore strongly encouraged to become PowerTrack-certified as soon as possible." Qualified motor carriers still not PowerTrack capable who wish to continue carrying DoD freight after September 30, 2000 are urged to contact US Bank immediately at 1010 South Seventh Street, Minneapolis, MN 55415, Tel: 612–973–6597. Additional information on PowerTrack is available at www.usbank.com/powertrack.

(d) Over three hundred MTMC-qualified motor carriers already have a signed PowerTrack agreement with US Bank.

(e) Although MTMC is not privy to the individual PowerTrack agreement between US Bank and each carrier, it is our understanding that the fees charged are well within industry norms and lower than those charged by factoring companies. This is in part due to the elimination of paper from the billing process and the benefits of automation, which has also resulted in carriers being paid in a fraction of the time it has taken in a non-automated environment. Overall response to PowerTrack has been overwhelmingly positive.

Comment: After-the-fact negotiations (Items 18 and 21).

Response: There has been no substantive change from the 1A and 1B.

Comment: GBL Correction Notices (Item 19). The thirty-day time limit for carriers to request a Correction Notice is restrictive, unfair, and unrealistic, and not in the spirit of related statutes which provide for a 180-day time limit.

Response: In accordance with the implementation of PowerTrack which will eliminate GBLs, the new PowerTrack procedures will come into effect vice GBL Correction Notices.

Comment: Alternation—Item 60. (1) Transportation Officers (TOs) should be permitted to authorize a non-alternating point-to-point tender in special cases or by specifying same on the GBL; (2) Sixteen point-to-point exceptions in PowerTrack territorial tenders will not be sufficient; (3) Alternation to the lowest rate will result in service degradation, as certain shipping lanes have special requirements.

Response: (1) Both the automated environment and necessary administrative procedures make it unfeasible to allow TOs to authorize non-alternating point-to-point tenders. (2) The 1B has increased point-to-point exceptions from six to sixteen. Sixteen exceptions is more than sufficient for virtually all situations, as confirmed by both experience and multiple informal conversations and meetings with carriers. If ever a rare case arises where this is insufficient, that one tender can be restructured or divided using various options, such as reducing the size of the territory covered. (3) Shipping lanes with special requirements should be listed as one of the exceptions to the territorial rate.

Comment: Customs or In Bond Freight (Item 80). Why is this deleted?

Response: This Item is deleted because it is virtually never used. Customs fees are rarely, if ever, applied to DoD shipments. DoD does not ship items on a COD basis.

Comment: Detention (Item 85).

Response: There has been no substantive change from the 1A to the 1B.

Comment: Expedited Service (Item 110).

Response: There has been no substantive change from the 1A to 1B. Please note that the redundant phrase "in addition to all other transportation charges" which appeared throughout the 1A in describing various accessorial services has been deleted in favor of a single sentence to be inserted in Item 13 stating that accessorial charges shall be paid in addition to line haul rates.

Comment: Handling of Freight at Positions Not Immediately Adjacent to Vehicle (Item 125). Why is this rule eliminated? There is no justification for converting this service, for which a price can legitimately be set, to an after-the-fact negotiation.

Response: Item 125 has been restored.

Comment: Routing—Items 200, 300, 400. (1) Some shipments and/or routes require mileages in excess of the applicable DTOD module. (2) Implementation of the 1B should be held up while a study of DTOD's accuracy is conducted. (3) A MTMC letter authorizing payment on these extra miles should be (but has not been) incorporated into the 1B.

Response: This issue will be largely eliminated as the majority of such cases arise for Overdimensional/Overweight (ODOW) Shipments, which will become moot under the 1B, which requires that ODOW shipments be handled under Spot Bid (under which mileage calculations do not exist) except in special circumstances (see Item 400). However, for those few remaining cases where such issues will continue to arise:

(1) It is a well-established principle that a discrepancy between actual mileage and the mileage listed by a Governing Mileage Guide (GMG) is resolved in favor of the GMG. Any discrepancy or anomaly in a particular lane should be reported to the GMG manager for correction.

(2) DTOD is currently in effect under the 1A, so DTOD as such is not a 1A to 1B issue.

(3) The new rule reflects both commercial transportation practice and the realities of an automated environment such as PowerTrack whereby the GMG is the sole mileage authority. The relevant rule in the 1A

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(which was so confusing and impractical that the cited letter has to be written to interpret it) was changed because it: (a) Is not feasible in a non-paper environment, (b) does not correspond to commercial practice of using a GMG as the sole arbiter of mileage, and (c) resulted in an unrealistic administrative burden calculating and reconciling mileages in each and every state through which a shipment passed, and typically involved adding mileages from one state line to the next.

Comment: Towaway Service (Item 228) This new Item does not fairly divide liability issues between shipper and carrier; instead all liabilities are imposed on the carrier.

Response: We have adopted the language "or other failure to properly maintain * * *". We have considered the additional request that DoD assume liability, including attorney fees, for third-party claims resulting from Towaway Service. We cannot assume this liability and do not believe that it would be equitable to do so. Each claim, if any, would have to be decided on a case-by-case basis.

Comment: Weight Verification (Item 250).

Response: There has been no substantive change from the 1A to the 1B.

Comment: Dromedary Services (old Items 325 and 327). Why are these Items eliminated? While much of the information has been incorporated elsewhere (*e.g.* Item 105), some essential information appears nowhere in the 1B. 5000 and 10000 pound minimum charges for regular and 410 dromedary shipments, respectively, have been eliminated for Dual Driver and Protective Security accessorials, and for White Phosphorus and similar commodities.

Response: These provisions have not been eliminated for the two accessorials cited; the 1B includes them in Item 35, para 1n, Item 40, para 2b, and Item 105, para c. The provisions for white phosphorus and similar commodities have been restored, and now appear in Item 328, paragraph 2.

Regulatory Flexibility Act: This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act: The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.*, does not apply because no information collection requirement or recordskeeping responsibilities are imposed on offerors, contractors, or members of the public.

Thomas Hicks,

Deputy Chief of Staff for Operations.

[FR Doc. 00–14677 Filed 6–8–00; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Notice of Intent To Prepare an Environmental Assessment for Proposed Authorization of an Ohio River Ecosystem Restoration Program

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: This Notice of Intent is an amendment to the Department of the Army, Corps of Engineers, "Notice of Intent to Prepare an Environmental Impact Statement for the Ohio River Main Stem System Study," published in **Federal Register**, volume 63, number 203 page 56165, on Wednesday, October 21, 1998.

The U.S. Army Corps of Engineers, in partnership with the U.S. Fish and Wildlife Service, and resource agencies of states bordering the Ohio River, is currently evaluating various ecosystem restoration opportunities for the Ohio River corridor. The proposed action is being conducted under the authority of United States Senate, Committee on Public Works resolution dated May 16, 1955; and, United States House of Representatives. Committee on Public Works and Transportation resolution dated March 11, 1982.

The Corps of Engineers will prepare and circulate a Decision Document and integrated Environmental Assessment which will announce an intention to prepare a Finding of No Significant Impact (FONSI), IF appropriate. Public review of this report is scheduled to begin in July 2000. Interested parties are encouraged to send written comments or requests for information, regarding the proposed study process, to the point-of-contact below. All comments and information requests should be postmarked no later than 30 days after this Notice of Intent is published.

FOR FURTHER INFORMATION CONTACT: Please address questions regarding this notice to Mr. Michael Q. Holley, PM–C, Louisville District, Corps of Engineers, P.O. Box 59, Louisville, Kentucky 40201–0059, Telephone: (502) 582–5152.

SUPPLEMENTARY INFORMATION:

a. Reference **Federal Register**, volume 63, number 203, dated Wednesday, October 21, 1998. Within that document, the Corps of Engineers gave notice of intent to prepare an Environmental Impact Statement for the Ohio River Main Stem System Study.

This study is designed to capture foreseeable maintenance, rehabilitation and new construction needs for the navigation infrastructure of the Ohio River until the year 2060 and to investigate habitat restoration options along the main stem Ohio River. The study would also identify those actions which are economically justified and environmentally prudent.

b. As part of the Ohio River Main Stem System Study, an environmental team, consisting of personnel from the U.S. Fish and Wildlife Service, the natural resource agencies of six states, and the Corps of Engineers was formed. This team investigated opportunities and established general goals for ecosystem restoration projects. During the initial study process, resource officials of states bordering the Ohio River, identified over 250 site-specific environmental projects for further analysis. Because of the considerable interest, the Corps of Engineers, with support from state officials, initiated a study report for proposed authorization of a cost shared ecosystem restoration program for the Ohio River.

c. The Corps of Engineers originally intended to study ecosystem restoration, within the entire Ohio River Main Stem System Study, as indicated in the Supplemental Information of **Federal Register**, volume 63, number 203. However, an ecosystem restoration program does not relate directly to navigational improvements and can stand independent of those improvements. It was therefore determined that an ecosystem restoration program would be developed as a separate product of the Ohio River Main Stem System Study.

d. The primary purpose of the proposed ecosystem restoration program is to restore and protect aquatic, wetland, floodplain and riparian habitats that would benefit from such a program for the Ohio River watershed. These goals would be accomplished by means of erosion control, island restoration, bottomland reforestation, creation of aquatic habitat, and other generally accepted environmental measures. As a secondary objective, the program would preserve the historic and cultural resources of the Ohio River through implementation of various low cost educational and recreational amenities that would not detract from the environmental restoration goals of the program.

e. The Corps of Engineers will prepare and circulate a Decision Document and integrated Environmental Assessment which will announce an intention to prepare a FONSI, if a FONSI is determined to be appropriate. Circulation of this document will assist the Corps in determining whether an Environmental Impact Statement (EIS) or a FONSI is the next appropriate step in the NEPA process prior to authorization of a cost shared ecosystem restoration program for the Ohio River.

Daniel E. Steiner,

Chief, Planning Division.

[FR Doc. 00–14676 Filed 6–8–00; 8:45 am]

BILLING CODE 3710–85–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Announcement of Army Corps of Engineers Regional Listening Sessions

AGENCY: Corps of Engineers, DoD.

ACTION: Notice correction.

SUMMARY: In a previous **Federal Register** notice (65 FR 34453), Tuesday, May 30, 2000, an incorrect phone number was inadvertently provided on page 34454, column 1, line 12. The correct phone number for local calls in Northern Virginia area is (703) 428–8535.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gmitro, Program Manager, phone toll free (877) 447–6342 or if you're in the Northern Virginia area, please refer to the correct phone number as listed above.

SUPPLEMENTARY INFORMATION: None.

John A. Hall,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 00–14675 Filed 6–8–00; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of Navy.

U.S. Patent Application Serial No. 09/551,364 entitled, "Collaborative Development Network for Widely Dispersed Users and Methods Therefor," filing date: April 17, 2000, Navy Case No. 79260.

ADDRESS: Requests for copies of the patent application cited should be directed to the Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, and must include the Navy Case number. Interested parties will be required to sign a Confidentiality, Non-Disclosure and Non-Use Agreement before receiving copies of requested patent applications.

FOR FURTHER INFORMATION CONTACT: James B. Bechtel, Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgre, VA 22448–5100, telephone (540) 653–8016.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: May 31, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–14640 Filed 6–8–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 8, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 5, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: National Longitudinal Transition Study—2.

Frequency: One time.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 432.

Burden Hours: 354.

Abstract: NLTS2 will provide nationally representative information about youth with disabilities in secondary school and in transition to adult life, including their characteristics, programs and services, and achievements in multiple domains (*e.g.*, postsecondary education, employment).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be

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electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–14578 Filed 6–8–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 10, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 5, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Final Performance Report for the Business and International Education Program.

Frequency: After the completion of the project.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 30.

Burden Hours: 150.

Abstract: The data collected through the final performance report will enable ED officials to determine the impact of the Business and International Education federal funds on its recipients. US/ED will use the information collected to meet Government Performance and Results Act requirements and to provide budget justification.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–14579 Filed 6–8–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[Docket No. EA–224]

Application To Export Electric Energy; Dominion Resources

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Dominion Resources, on behalf of its subsidiaries, Virginia Electric and Power Company and Dominion Energy, Inc., has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before July 10, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On May 16, 2000, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Dominion Resources to export electric energy to Canada on behalf of two of its operating subsidiaries, Virginia Electric and Power Company ("Virginia Power") and Dominion Energy Inc. ("Dominion Energy"). Dominion Resources requests DOE to renew Virginia Power's existing export authorization granted by DOE on July 16, 1998, (Order No. EA–180) and to grant new export authority to Dominion Energy to sell electric energy to Canada.

Virginia Power owns generation, transmission and distribution facilities in Virginia and North Carolina and has a franchised service area. Dominion Energy, an independent producer of power operating in five U.S. States, has no franchised service territory.

Virginia Power and Dominion Energy propose to export electric energy to Canada using the existing international electric transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Joint Owners of Highgate, Long Sault, Inc., Maine Electric Power Company, Maine Public Service, Eastern Maine Electric Cooperative, Minnesota Power and Light, Minnkota Power, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power and Vermont Electric Transmission Company. The construction of each of the international transmission facilities to be utilized, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Dominion Resources application to export electric energy to Canada should be clearly marked with Docket EA–224. Additional copies are to be filed directly with Michael C. Regulinski, Esq., Virginia Electric and Power Co, 1 James River Plaza, 701 East Carey Street, Richmond, Virginia 23219 and James H. McGrew, Esq., Bruder, Gentile & Marcoux, LLP., 1100 New York Avenue, N.W., Suite 510 East, Washington, D.C. 20005–3934.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory," then "Electricity," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on June 5, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–14593 Filed 6–8–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Notice of Solicitation for Financial Assistance Applications for Cooperative Research and Development for Advanced Natural Gas Reciprocating Engines

AGENCY: Chicago Operations Office, Department of Energy.

ACTION: Notice of solicitation availability.

SUMMARY: The Department of Energy (DOE) announces its interest in receiving applications for federal assistance for research and development of Advanced Natural Gas Reciprocating Engines. Development, subsystem testing, and demonstration of optimized and fully integrated components for advanced natural gas engines must be performed.

DATES: The solicitation document is available on the Internet. The due date for applications is July 31, 2000.

ADDRESSES: The solicitation is available on the Internet by accessing the DOE Chicago Operations Office Acquisition and Assistance Group home page at *http://www.ch.doe.gov/business/acq.html* under the heading "Current Solicitations", Solicitation No. DE-SC02–00CH11029. Completed applications referencing Solicitation No. DE–SC02–00CH11029 must be submitted to the U.S. Department of Energy, Chicago Operations Office, Communications Center, Building 201, Room 168, 9800 South Cass Avenue, Argonne, IL 60439–4899, Attn: Nadine S. Kijak, Acquisition and Assistance Group.

FOR FURTHER INFORMATION CONTACT: Nadine S. Kijak at 630/252–2508, U.S. Department of Energy, Chicago Operations Office, Acquisition and Assistance Group, 9800 South Cass Avenue, Argonne, IL 60439–4899, by facsimile at 630/252–5045, or by electronic mail at *nadine.kijak@ch.doe.gov*

SUPPLEMENTARY INFORMATION: For purposes of this solicitation, an Advanced Natural Gas Reciprocating Engine is a new or upgraded internal combustion reciprocating piston engine that deploys one or more technologies that partially or totally accomplish the following goals for higher energy efficiency (ultimate program target goal of 50%), lower emissions (NO_X less than .1g/hp-hr), and increased competitiveness. The fully-developed, demonstrated Advanced Natural Gas Reciprocating Engine would accomplish the following objectives:

1. Improve the performance of Advanced Natural Gas Reciprocating Engines. Potential benefits to energy consumers include: (1) Decreased energy consumption and emissions; (2) increased manufacturing process efficiencies; (3) enhanced U.S. industrial competitiveness; (4) decreased reliance on strategic materials; and (5) reduced operational and maintenance costs. Other projected benefits may include longer operating time before maintenance and overhaul, utilization of waste fuels, *etc.*

2. Transition the technology to back-up fuels as well as alternative biomass-derived fuels, while achieving a substantial reduction in oxides of nitrogen (NO_X) emissions for these fuels, and decrease in energy consumption.

3. Demonstrate the durability for up to 8000 hours while otherwise maintaining reliability, availability, and maintainability of the Advanced Natural Gas Reciprocating Engine and its component subsystems.

4. Incur no negative impacts on the performance of gas engines including efficiency, fuel flexibility, cost of power, and reliability and maintainability.

5. Encourage adoption and use of energy-efficient, cost-effective natural gas engines by the distributed generation markets.

The Scope of Work covers applied research and pre-commercial demonstration in five work areas as described below as Tasks 1, 2, 3, 4 and 5. In addition to these tasks, the Scope of Work includes Subtasks A and B. Subtask A will require the Participant to provide a report covering the potential technical market and technical/economic barriers. Subtask B will require the Participant to provide a commercialization plan for Advanced Natural Gas Reciprocating Engines.

The tasks represent an increasing progression of maturation stages for technology development. Task 1 involves component development and testing; Task 2 involves system development and testing; Task 3 involves engine integration and preparation; Task 4 involves engine system fabrication and proof test, and Task 5 involves pre-commercial demonstration. Depending on current maturation of proposed technologies, the work may start at any task if prior work has been performed that would satisfy completion or sufficient progress of the previous task(s). Applications may address any combination or portions of the tasks.

The ultimate maturation of technologies will be reached upon the attainment of the solicitation objectives

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in a pre-commercial demonstration of 8000 hours (Task 5). Although it is the intention of this solicitation to support development of advanced engine technologies that will so culminate, there also is relevancy in gaining a better understanding of the advanced engine technologies and their impact on natural gas engines. In such a case, development of a completed commercial system may not be feasible. For example, development may end prior to the maturation state of Task 5, or Task 5 may be scheduled to complete less than the 8000 hours (but more than 4000 hours as discussed below) identified as a goal for commercialization.

Regardless of the tasks proposed, applications will raise the maturation level of the concept relative to the solicitation objectives.

Under Tasks 1 and 2 that follow, the work may be performed with respect to test devices or engines that could serve as a logical and cost effective intermediate basis for developing technologies for Advanced Natural Gas Reciprocating Engines. However, any such technology developed under Tasks 1 and 2 must have applicability to Advanced Natural Gas Reciprocating Engines.

Under Tasks 3, 4 and 5 that follow, all work must be performed with respect to Advanced Natural Gas Reciprocating Engines, and the demonstration required under Task 5 must be performed on an Advanced Natural Gas Reciprocating Engines. All work proposed to be performed under an application must be scheduled for completion within the five-year life expectancy of this program. Work under all tasks requires the participation of a natural gas engine manufacturer.

Task 1

The starting point of this task shall be, as a minimum, a concept of an advanced engine technology with prior experimental evidence of its potential for meeting the solicitation objectives. The Participant will identify the form, function, and fit of all components necessary to execute the proposed technology. The Participant will also develop preliminary component designs. First article components will be constructed and tested at a scale suitable to confirm the design parameters that were used and to give qualitative and quantitative indications that the components will perform as planned.

Task 2

The Participant will complete detailed designs of the selected system components. The design process will include the optimization and cost reduction of the processing, fabrication, and integration of the selected components into a viable engine system. The components will be manufactured and the sub-system will be assembled. Development and testing will be done to verify and optimize the overall approach, to provide operating and control parameters during manufacture and use, and to provide full-scale definition such as allowable engine operating ranges, sensitivity to fuel variability, and other factors affecting the performance and competitiveness of the engine system.

Task 3

The design of an Advanced Natural Gas Reciprocating Engine will be adapted in parallel to component development to assure compatibility, optimum fit, and functionality. The work under this task will integrate hardware, controls, and operating procedures for startup, steady operation over the engine's usual power range (for example 50% to 100% of rated output), planned changes (such as anticipated shutdown or transitions of operating load), and unexpected changes in power output (such as lost load).

Task 4

The Participant shall design and fabricate a complete engine system that utilizes the components developed under Task 2 or elsewhere. The components shall exhibit the form, function, and fit compatible with the modified engine developed either under Task 3 or elsewhere. The Participant shall prove, either by subsystem rig testing or by demonstrating on an engine, the ability of the subsystem components to perform as planned. Such testing shall include those sensors and controllers needed to maintain testing over the design operating range of the engine. Test results shall include relationships among performance, efficiency, emissions, temperatures, and all other relevant parameters that quantify and qualify the system for commercial delivery. The proof testing shall be based on natural gas fuel or any other fuel with a viable market presence in the distributed generation market such as waste fuels and biomass. Also, the market may require dual fuel capabilities. Such dual fuel capabilities may be considered in the design.

The completion of Task 4 would result in the assembly of an Advanced Natural Gas Reciprocating Engine that incorporates components completed under this task or elsewhere. The engine shall be ready for insertion into a commercial package that is suitable for shipment, installation, and demonstration in the field under Task 5.

Task 5

A host site(s) will be selected for demonstration of the Advanced Natural Gas Reciprocating Engine qualified either by the completion of Task 4 or elsewhere. The Participant will integrate the engine with the balance of plant equipment such as a generator that is compatible with the needs of a specific host site(s). The completion of Task 5 would result in an 8000-hour demonstration of the engine that can be reasonably expected to meet project objectives. At a minimum, the demonstration shall comprise 4000 hours of operation with natural gas fuel at a host site that is compatible with an operating rate of at least 4000 hours per annum. The applicant shall complete a coordinated plan for the demonstration that incorporates the perspectives of all relevant parties, including the host site. The plan will also assign responsibilities on all matters necessary to execute the demonstration plan, such as business arrangements, balance of plant equipment, site construction, site integration, periodic inspections of hardware, visitations of third parties, data acquisition at the host site to verify expected benefits, and obtainment of environmental, construction, operating, and other permits.

The demonstration shall be representative of significant market segments of the distributed power generation industry. As a result, the successful demonstration at the host site will be expected to exemplify the resolution of the typical barriers (such as technical, environmental, industry acceptance, and utility grid control issues) that impede the widespread adoption of distributed generation. In this regard, all hours of operation accumulated under the demonstration shall be gained while generating electric power. Additionally, all such hours of operation shall be accumulated while the host site is interconnected to the existing local utility transmission and distribution grid that exists for the routine transmission and distribution of electric power. Accordingly, the balance of plant equipment shall be sufficient to generate and condition such electric power, and all hardware shall be provided for interconnection, transmission, and distribution on the local utility grid. (The sole use of isolation switches shall not be sufficient to meet this requirement.)

Subtask A

Subtask A is required for any applicant selected for award and is to be performed in conjunction with the lowest numbered task proposed. The completed report must be received within 90 days of award of the cooperative agreement and will be submitted in accordance with topical report requirements. Relative to gas engine(s), the Participant will do program definition and planning studies that identify all essential steps for enabling the use of an Advanced Natural Gas Reciprocating Engine and meeting the objectives of this solicitation. The elements of these steps will include the critical research and development needs, areas and degree of risk, types and quantities of resources, schedule, and cost.

The report will further define completed distributed energy resource and/or cooling, heating and power systems likely to be available at the successful completion of this project. The Participant will identify and quantify the potential technical markets for such systems. In areas such as energy efficiency, performance, cost, and emissions, the Participant will provide detailed rationale that supports these projections. All barriers such as the lack of uniform code standards that will impact on the technical market will be identified. However, any such barriers that are out of the control of the Participant shall be deemed not to impact on the projected technical market.

Subtask B

Subtask B is required to be performed in conjunction with the lowest numbered task of Tasks 3, 4, and/or 5 under which the Participant will do work. The completed report must be received within 180 days of initiation of the lowest numbered Task (3–5) proposed. This report will be submitted in accordance with topical report requirements.

The main impetus for this work is the commercial implementation of an efficient, clean, and cost effective Advanced Natural Gas Reciprocating Engine that is deployed in distributed generation and combined heat and power systems. It is essential that a commercialization plan support the proposed Advanced Natural Gas Reciprocating Engine and achieves the goals of this solicitation (Section 1.1.2). Participants doing work under Tasks 3, 4, or 5 shall complete commercialization plans and strategies for all relevant functions in the commercialization process such as cost-effective manufacturing, marketing, production volumes, and support for the Participant's engine system.

DOE expects to award three (3) to five (5) cooperative agreements under this solicitation. It is estimated that individual awards will range in value between approximately $500,000 and $10,000,000 of DOE funding and will require awardee Cost Sharing.

A minimum non-federal cost sharing commitment of 30% of the total proposed costs for Tasks 1 or 2; 45% of Tasks 3 and 4; and 60% of Task 5 is required. Any non-profit or for-profit organization, university or other institution of higher education, or non-federal agency or entity is eligible to apply, unless otherwise restricted by the Simpson-Craig Amendment. DOE Laboratory participation as a subcontractor is limited to no more than 50% of the cost of any individual task under which the laboratory participates. This amount is further limited to 40% if laboratory participation is proposed under Task 5.

As applicants may apply under one or more of the five tasks within the solicitation Scope of Work, there is a range in the number of potential awards and award values.

Estimated DOE funding is $40 million over the five-year period. DOE reserves the right to fund any, all, or none of the applications submitted in response to this solicitation. All awards are subject to the availability of funds.

Issued in Argonne, Illinois on June 1, 2000.

John D. Greenwood,

Acquisition and Assistance Group Manager.

[FR Doc. 00–14591 Filed 6–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Department of Energy.

ACTION: Notice of proposed Agency information collection and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed information collection that DOE is developing for submission to the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995. This collection would gather information over a three-year period from participants in the Industrial Assessment Center (IAC) Program (specifically clients, alumni and web-site users), concerning details of energy, waste, production and cost savings generated through their participation in IAC assessments, or through their use of IAC-sponsored web-sites.

DATES: Written comments must be submitted by August 14, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to M. Martin, Oak Ridge National Laboratory, PO Box 2008, MS–6070, Oak Ridge, TN 37831–6070; or by FAX at (865) 574–9338; or by e-mail at martinma@ornl.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to M. Martin using the contact information listed above.

SUPPLEMENTARY INFORMATION:

Collection Title: Impact Evaluation of IAC Program Participants: Clients, Alumni and Web-users.

OMB Control Number: None.

Type of Request: New collection.

Frequency of response: One time only.

Respondents: IAC Program clients, alumni and web-users (businesses and individuals).

Estimated number of annual respondents: 570.

Estimated total annual burden hours: 355 hours.

Background

The Department of Energy, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of information conducted by or in conjunction with DOE. Any comments received help the Department to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, DOE will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3506(c) of the Paperwork Reduction Act of 1995.

Data will be collected from IAC participants concerning energy, waste, productivity and cost savings generated through their participation in IAC assessments or through their use of technical information provided by IAC-sponsored web-sites. Data will be collected from clients, program alumni, and IAC web-users using either electronic, web-based surveys or telephone interviews. The data will

provide input for an impact evaluation of the IAC Program, to be used for reporting on program performance in compliance with the Government Performance and Results Act 1993 (GPRA). The evaluation approach and summarized results will be published.

Request for Comments

DOE invites comments from prospective respondents and other interested parties on: (1) Whether the proposed collection of data is necessary to measure savings impacts generated by IAC participants; (2) enhancements to the quality, utility, and clarity of the information to be collected; (3) the accuracy of DOE's estimate of the burden of the proposed information collection; (4) any means of minimizing the burden of the collection of information on those who choose to respond; (5) the availability and details of similar information collected by other Federal, State or local industrial assistance programs. Additional information about DOE's proposed information collection may be obtained from the contact person named in this notice.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC on June 5, 2000.

Peter J. Grahn,

Director, Office of Records and Resource Management.

[FR Doc. 00–14592 Filed 6–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–176–001]

ANR Pipeline Company; Notice of Refund Report

June 5, 2000.

Take notice that on May 30, 2000, ANR Pipeline Company (ANR) tendered for filing this refund report as required by Section 154.501(e) of the regulations of the Commission. ANR reports that it made refunds totaling $1,143,861 on April 28, 2000, consisting of $1,112,881 in principal and $30,980 in interest, in compliance with the Commission's letter order dated April 13, 2000 at Docket No. RP00–176–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14564 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–308–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2000.

Take notice that on May 31, 2000, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 45E.1 to be effective July 1, 2000.

ANR states that the purpose of this filing is to designate in its tariff a new point eligible for service under its existing Rate Schedule IPLS.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14569 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–312–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2000.

Take notice that on May 31, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective June 1, 2000:

Forty-second Revised Sheet No. 8,
Forty-second Revised Sheet No. 9,
Forty-first Revised Sheet No. 13, Fifty-first Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.5 million of above-market costs that are associated with its obligations to Dakota Gasification Company ("Dakota"). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that this filing also includes the annual restatement of the "Eligible MDQ" used to design the reservation surcharge. ANR also advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $2,586,210 to $2,543,133.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14572 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2398–000]

Baconton Power LLC; Notice of Issuance of Order

June 5, 2000.

Baconton Power LLC (Baconton) submitted for filing a rate schedule under which Baconton will engage in wholesale electric power and energy transactions as a marketer. Baconton also requested waiver of various Commission regulations. In particular, Baconton requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability of Baconton.

On May 31, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Baconton should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Baconton is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Baconton's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 30, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14630 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–311–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

June 5, 2000.

Take notice that on May 31, 2000, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventeenth Revised Sheet No. 11A reflecting a decrease in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 1.01% to 0.70% effective July 1, 2000.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14571 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–310–000]

Discovery Gas Transmission LLC; Notice of Lost and Unaccounted for Gas Filing

June 5, 2000.

Take notice that on May 31, 2000, Discovery Gas Transmission LLC (Discovery) filed to comply with the terms of its FERC Gas Tariff, First Revised Sheet Nos. 34, 44, and 53 relating to lost and unaccounted for gas for the calendar year 1999.

Discovery states that it has reviewed the amount of lost and unaccounted for gas experienced by the Discovery system during the 1999 calendar year, and based on that review it proposes to retain the current retention rate of 0.5 percent for the period commencing July 1, 2000.

Discovery states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14570 Filed 6–8–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–051]

El Paso Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

June 5, 2000.

Take notice that on June 1, 2000, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective June 1, 2000:

Thirtieth Revised Sheet No. 30
Twenty-Fifth Revised Sheet No. 31
Seventh Revised Sheet No. 31A

El Paso states that the above tariff sheets are being filed to implement two negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14558 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2333–000]

Horsehead Industries, Inc.; Notice of Issuance of Order

June 5, 2000.

Horsehead Industries, Inc. (Horsehead) submitted for filing a rate schedule under which Horsehead will engage in wholesale electric power and energy transactions as a marketer. Horsehead also requested waiver of various Commission regulations. In particular, Horsehead requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuance of securities and assumptions of liability by Horsehead.

On May 31, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Horsehead should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Horsehead is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Horsehead's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 30, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14629 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–157–004

Kern River Gas Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

June 5, 2000.

Take notice that on May 31, 2000, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 912, to be effective June 1, 2000.

Kern River states that the purpose of this filing is to implement a negotiated rate transaction between Kern River and Nevada Power Company (Nevada Power), and to reflect the revised negotiated rate transaction between Kern River and Sempra Energy Trading Corporation (Sempra) in the Tariff, in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Kern River states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14563 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–000]

Mississippi River Transmission Corporation; Notice of Tariff Filing

June 5, 2000.

Take notice that on June 1, 2000, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed below to be effective July 1, 2000.

Second Revised Sheet No. 12,
Fourth Revised Sheet No. 71,
Sixth Revised Sheet No. 72,
Sixth revised Sheet No. 73,
Fourth Revised Sheet No. 74,
Third Revised Sheet No. 126,
Third Revised Sheet No. 164,
First Revised Sheet No. 226A,
Original Sheet No. 226B,
Pro-Forma Sheet No. 10,
Pro-Forma Sheet No. 10A

MRT states that the purpose of this filing is to enable MRT and its Transportation Customers, upon FERC authorization, the opportunity to negotiate a rate for transportation service that varies from the current Tariff rate. MRT also states that all customers under the Tariff would continue to have recourse to service at the traditional cost-based rate available under the Tariff for that service.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rimbs.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14566 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–367–011]

Northwest Pipeline Corporation; Notice of Compliance Filing

June 5, 2000.

Take notice that on May 31, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets to be effective July 1, 2000:

Third Revised Volume No. 1

Eighteenth Revised Sheet No. 5
Thirteenth Revised Sheet No. 5–A

Original Volume No. 2

Twenty-Fifth Revised Sheet No. 2
Twenty-Eighth Revised Sheet No. 2.1
Twenty-Seventh Revised Sheet No. 2–A

Northwest states that the purpose of this filing is to move into effect the Period Two Rates contained in Appendix A of Northwest's Stipulation and Agreement of Settlement filed on July 22, 1997 in Docket No. RP96–367 and approved by the Commission on November 25, 1997.

Northwest states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14556 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–56–001]

Northwest Pipeline Corporation; Notice of Compliance Report

June 5, 2000.

Take notice that on June 1, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing a compliance report.

Northwest states that the compliance report shows that during the 1999–2000 winter heating season, Northwest did not cut any primary gas during the timely scheduling process and that there were no adverse impacts associated with the letter Agreement dated August 24, 1999 between Northwest and Pan Alberta Gas (U.S.) Inc. with respect to the use of firm transportation through primary corridor rights.

Northwest states that a copy of this compliance report has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14562 Filed 6–8–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–304–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

June 5, 2000.

Take notice that on May 31, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Twenty-fourth Revised Sheet No. 5. PG&E GT–NW requests that the above-referenced tariff sheet become effective July 1, 2000.

PG&E GT–NW asserts that the purpose of this filing is to comply with Paragraph 37 of the terms and conditions of First Revised Volume No. 1–A of its FERC Gas Tariff, "Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages." These tariff changes reflect that PG&E GT–NW's fuel and line loss surcharge percentage will increase to 0.0015% per Dth per pipeline-mile for the six-month period beginning July 1, 2000. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14565 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3393–002]

PJM Interconnection, L.L.C.; Notice of Filing

June 5, 2000.

Take notice that on May 30, 2000, Jersey Central Power & Light Company (doing business as GPU Energy) hereby submitted for filing a Refund Report with supporting materials.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 20, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http//www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14553 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–004]

Questar Pipeline Company; Notice of Tariff Filing

June 5, 2000.

Take notice that on June 1, 2000, pursuant to 18 CFR 154.7 and 154.203, and as provided by Section 30 (Negotiated Rates) to the General Terms and Conditions of Part 1 of Questar Pipeline Company's (Questar) FERC Gas Tariff, Questar filed a tariff filing to implement a negotiated-rate contract as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.* The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar states that the tendered tariff sheet revises Questar's Tariff to implement a new negotiated-rate transportation service agreement between Questar and Barrett Resources Corp. Questar requested waiver of 18 CFR 154.207 so that the tendered tariff sheet may become effective June 1, 2000.

Questar states that copies of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be fled in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14561 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–054]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 5, 2000.

Take notice that on May 31, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective June 1, 2000:

Fifth Revised Sheet No. 8F
Fourth Revised Sheet No. 8G

REGT states that the purpose of this filing is to reflect the expiration of an existing negotiated rate contract and the addition of a new negotiated rate contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14555 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2648–000]

Southern California Edison Company; Notice of Filing

June 5, 2000.

Take notice that on May 26, 2000, Southern California Edison Company (SCE) tendered for filing a Service Agreement for wholesale Distribution service and an Interconnection Facilities Agreement (Agreements) between Gas Recovery Systems (GRS) and SCE.

These Agreements specify the terms and conditions pursuant to which SCE will interconnect GRS's generating facility to its electrical system and provide Distribution Service for up to 17.1 MW of power produced by GRS's Coyote Canyon generating facility upon the termination date of the CPUC-jurisdictional Power Purchase Contract between SCE and GRS.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14551 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP91–203–071 and RP92–132–059]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

June 5, 2000.

Take notice that on May 31, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing certain revised tariff sheets for inclusion in Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee requests that the attached sheets be made effective July 1, 2000.

Tennessee states that pursuant to the May 15, 1995 comprehensive settlement agreement in the referenced proceeding, which resolved outstanding issues relating to Tennessee's recovery through rates of the costs of remediating polychlorinated biphenyl ("PCB") and other hazardous substance list ("HSL") contamination on its system ("Settlement"), Tennessee is seeking to extend the initial PCB adjustment period and to decrease the PCB adjustment surcharge amount to $0.00, all as provided for under the Settlement. Tennessee also states that although there are uncertainties attached to the PCH/HSL remediation project ("Project"), based on its best reasonable expectations to date, Tennessee may be able to complete the Project by the end of 2004.

Tennessee further states that the extended adjustment period is required under the Settlement to reflect additional eligible costs that Tennessee expects to expend to complete the Project. Tennessee also notes that its request to reduce the surcharge to $0.00 is meant to temporarily relieve its customers of the surcharge obligation while at the same time leaving the recovery mechanism intact if unforeseen circumstances arise.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action be taken, but will not serve to protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims/htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14554 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–306–000]

Tennessee Gas Pipeline Company, Notice of Filing and Request for Waiver

June 5, 2000.

Take notice that on June 1, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing 1) a revised accounting of Tennessee's take-or-pay transition surcharges.

Tennessee states that this filing of the revised accounting is in compliance

with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any significant recoverable take-or-pay costs since its last filing on December 1, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14567 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–007]

TransColorado Gas Transmission Company; Notice of Tariff Filing

June 5, 2000.

Take notice that on May 31, 2000, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000, TransColorado Gas Transmission Company tenders for filing and acceptance, to be effective May 26, 2000, Seventh Revised Sheet No. 21, Third Revised Sheet No. 22 and Second Revised Sheet No. 23 to Original Volume No. 1 of its FERC Gas Tariff (TransColorado's tariff).

TransColorado states that the tendered tariff sheets revise TransColorado's Tariff to implement new negotiated-rate transportation service agreements between TransColorado and Western Gas Resources, Inc., Enron North America, Inn., Enserco Energy, Inc. and Barrett Resources Corporation. TransColorado requests waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective May 26, 2000.

TransColorado states that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14557 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1–000]

TransEnergie U.S., Ltd.; Notice of Issuance of Order

June 5, 2000.

On October 1, 1999, TransEnergie U.S., Ltd. (TransEnergie) filed with the Commission a petition for an order accepting a tariff offering non-discriminatory transmission service over a 26-mile undersea high-voltage, bi-directional, direct current cable it proposes to build underneath the Long Island Sound. TransEnergie also requested certain waivers and authorizations. In particular, TransEnergie requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the TransEnergie. On June 1, 2000, the Commission issued an Order Approving Proposal Subject To Conditions (Order), in the above-docketed proceedings.

The Commission's June 1, 2000 Order granted TransEnergie's request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (E):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by TransEnergie should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, TransEnergie is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of TransEnergie, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(E) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of TransEnergie's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 3, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. This issuance may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14632 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–373–000]

Tuscarora Gas Transmission Company; Notice of Application

June 5, 2000.

Take notice that on May 31, 2000, Tuscarora Gas Transmission Company (Tuscarora), 1575 Delucchi Lane, Suite 225, Reno, Nevada 89520–3057, filed in Docket No. CP00–373–000 an application pursuant to Section 7 of the Natural Gas Act (NGA) and the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing Tuscarora to construct, own, operate, and maintain facilities in order to provide up to 10,000 dth per day of additional firm transportation for Sierra Pacific Power Company (SPPC), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Specifically, Tuscarora proposes to construct a new 16.4 mile, 16-inch diameter lateral (Hungry Valley Lateral) extending from its mainline at milepost 205.9 in Hungry Valley, Nevada to a city gate to be constructed by SPPC in Lemmon Valley, Nevada. Tuscarora also proposes to construct a new meter station and valve assemblies in Golden Valley, Nevada. All of the facilities will be located in Washoe County, Nevada. Tuscarora estimates that the proposed facilities will cost approximately $10.2 million. Tuscarora states that the additional mainline capacity will result from an increase in its receipt pressure from PG&E Gas Transmission-Northwest Corporation from 700 psig to 825 psig. Tuscarora proposes to charge Sierra Pacific its existing Part 284 firm transportation rate.

Any questions regarding this application should be directed to Gregory L. Galbraith, Tuscarora Gas Transmission Company, 1575 Delucchi Lane, Suite 225, P.O. Box 30057, Reno, Nevada 89520–3057, call (775)–834–4292, or fax (775)–834–3886.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before June 26, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties, or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Tuscarora to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–14633 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–307–000]

U–T Offshore System, L.L.C.; Notice of Compliance Filing

June 5, 2000.

Take notice that on May 31, 2000, U–T Offshore System, L.L.C. (U–TOS) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to be effective September 28, 1999:

First Revised Sheet No. 56
First Revised Sheet No. 57
First Revised Sheet No. 60
First Revised Sheet No. 61
Original Sheet No. 61A
First Revised Sheet No. 95
First Revised Sheet No. 96
First Revised Sheet No. 97

U–TOS states that the instant filing incorporates and properly paginates in UTOS' current tariff changes that were pending at the time UTOS' conversion tariff filing was being approved.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

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rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14568 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–290–008]

Viking Gas Transmission Company; Notice of Tariff Filing

June 5, 2000.

Take notice that on May 30, 2000, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective July 1, 2000.

Twenty-Second Revised Sheet No. 6
Fifteenth Revised Sheet No. 6A
Fifth Revised Sheet No. 6B

Viking states that the purpose of this filing is to comply with the Offer of Settlement and Stipulation and Agreement (Settlement) filed by Viking on March 16, 1999 in the above-referenced docket and approved by the Commission by order issued May 12, 1999 by filing to place the Stage 2 Settlement Rates into effect in accordance with the terms and conditions of the Settlement.

Viking states that copies of this filing have been served on all parties designated on the official service list in this proceeding, on all Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14559 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–371–005]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Report of Activities Under Rate Schedule PLS, Parking and Loan Service

June 5, 2000.

Take notice that on June 1, 2000, Williams Gas Pipelines Central, Inc. (Williams) filed a report of activities for the first year of operation under Rate Schedule PLS as required by the Commission's September 2, 1998 order in Docket No. RP98–371. Williams first offered service under Rate Schedule PLS for March 1999. Therefore, the report covers the period March 1999 through February 2000. The report lists total volumes parked or loaned by month and the peak daily volumes for service by month, all PLS contracts, the term of the contracts, including the dates gas was parked or loaned and the dates the gas was returned, the contract dates, and the location where gas was parked or loaned and returned, whether the contract was with an affiliate, and aggregate revenues derived from PLS service during the first year.

Williams states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14560 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2236–000]

Worthington Generation L.L.C.; Notice of Issuance of Order

June 5, 2000.

Worthington Generation L.L.C. (Worthington) submitted for filing a rate schedule under which Worthington will engage in wholesale electric power and energy transactions as a marketer. Worthington also requested waiver of various Commission regulations. In particular, Worthington requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Worthington.

On May 31, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Worthington should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Worthington is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Worthington's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 30, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14631 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

New York Power Authority; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

June 5, 2000.

On April 14, 2000, the Federal Energy Regulatory Commission (Commission) issued a notice of the St. Lawrence-FDR Power Project (FERC No. 2000–010) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement for managing properties included in or eligible for inclusion in the National Register of Historic Places. The St. Lawrence-FDR Power Project is located on the St. Lawrence River, in St. Lawrence County, New York. The New York Power Authority is the licensee.

On May 1, 2000, the Department of the Interior (Interior) filed a request to be added to the restricted service list established pursuant to Commission's Notice of April 14, 2000. In support of the request, Interior notes that it has an interest in the development of a Programmatic Agreement for managing and protecting Historic Properties affected by the St. Lawrence-FDR Power Project. Furthermore, Interior notes that it is an active participant in the St. Lawrence-FDR Power Project proceeding and should be included on the restricted service list.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

Interior has been and would continue to be an active party in the relicensing proceeding for the project. Therefore, Interior will be added to the restricted service list.

The following additions are made to the restricted service list notice issued on April 14, 2000, for Project No. 2000–010:

Francis Jock, St. Regis Mohawk Tribe, 561 County Rte. 1, Fort Covington, NY 12937.
Lydia T. Grimm, Department of the Interior, Office of the Solicitor-Div. Indian Affairs, 1849 C Street, NW, Mailstop 6456, Washington, DC 20240.
Malka Pattison, Department of the Interior, Bureau of Indian Affairs, 1849 C Street, NW, Mailstop 4513, Washington, DC 20240.
Kevin Mendik, National Park Service, 15 State Street, Boston, MA 02109.
Judith M. Stolfo, Department of the Interior, Office of the Regional Solicitor, One Gateway Center, Suite 612, Newton, MA 02458–2802.

David P. Boergers,

Secretary.

[FR Doc. 00–14552 Filed 6–8–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6712–6]

Adequacy Status of the Submitted Attainment Demonstration for the Ozone National Ambient Air Quality Standards for Transportation Conformity Purposes for the New Jersey Severe Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets for volatile organic compounds and nitrogen oxides in the submitted ozone attainment demonstration for the New Jersey severe nonattainment areas to be adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted state implementation plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the New Jersey portions of the New York-New Jersey-Connecticut and Philadelphia-Wilmington-Trenton severe ozone nonattainment areas can use the motor vehicle emissions budgets of volatile organic compounds and nitrogen oxides for 2007 and 2005, respectively, from the submitted ozone attainment demonstration for future conformity determinations.

DATES: This finding is effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns, Mobile Source Team, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3895, e-mail address: cairns.matthew@epa.gov.

The finding and the response to comments will be available at EPA's conformity website: *http://www.epa.gov/oms/traq,* (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to the New Jersey Department of Environmental Protection on May 31, 2000, stating that the motor vehicle emissions budgets in the submitted ozone attainment demonstration (dated April 26, 2000) for the New Jersey portions of the New York-New Jersey-Connecticut and Philadelphia-Wilmington-Trenton severe nonattainment areas are adequate for conformity purposes. This finding will also be announced on EPA's conformity website: http://www.epa.gov/oms/traq, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

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The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 31, 2000.

Jeanne M. Fox,

Regional Administrator, Region 2.

[FR Doc. 00–14637 Filed 6–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Region II Docket No. NY 36–201 FRL–6712–9]

Adequacy Status of the Submitted 2007 Attainment Demonstration for the Ozone National Ambient Air Quality Standards for Transportation Conformity Purposes for the New York State Portion of the New York-New Jersey-Connecticut Severe Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets for volatile organic compounds and nitrogen oxides in the submitted 2007 ozone attainment demonstration for the New York State portion of the New York-New Jersey-Connecticut severe nonattainment area for ozone to be adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted state implementation plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the New York State portion of the New York-New Jersey-Connecticut severe nonattainment area for ozone can use the motor vehicle emissions budgets for volatile organic compounds and nitrogen oxides from the submitted 2007 attainment demonstration for ozone for future conformity determinations. These budgets are effective June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Rudolph K. Kapichak, Mobile Source Team Leader, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3804, e-mail address: Kapichak.Rudolph@epa.gov.

The finding and the response to comments will be available at EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to the New York State Department of Environmental Conservation on May 31, 2000 stating that the motor vehicle emissions budgets in the submitted 2007 attainment demonstration for the New York State portion of the New York-New Jersey-Connecticut severe nonattainment area for ozone are adequate for conformity purposes. This finding will also be announced on EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 31, 2000.

Jeanne M. Fox,

Regional Administrator Region 2.

[FR Doc. 00–14638 Filed 6–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6607–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements

Filed May 29, 2000 Through June 02, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000170, Draft Supplement, FHW, WA, North Spokane Freeway Project, Improvements Transportation through the City of Spokane and Spokane County between I–90, Spokane County, WA, Due: July 24, 2000, Contact: Gene Fong (360) 753–9480.

EIS No. 000171, Draft EIS, AFS, WY, State of Wyoming School Section 16 T.12N., R.83W., 6th P.M., Issuing a Forest Road Special-Use-Permit for Access, Medicine Bow-Routt National Forests, Brush Creek/Hayden Ranger District, Carbon County, WY, Due: July 24, 2000, Contact: John Baumchen (307) 326–2500.

EIS No. 000172, Final EIS, AFS, MT, Swamp Timber Sales Project, Implementation, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT, Due: July 10, 2000, Contact: Edward C. Monning (406) 882–4451.

EIS No. 000173, Final EIS, AFS, MN, Gunflint Corridor Fuel Reduction, Implementation, Superior National Forest, Gunflint Ranger District, Cook County, MN, Due: July 10, 2000, Contact: Becky Bartol (218) 387–1750.

EIS No. 000174, Draft EIS, SFW, NV, Clark County Multiple Species Habitat Conservation Plan, Issuance of a Permit to Allow Incidental Take-of-79 Species, Clark County, NV, Due: July 24, 2000, Contact: Ben Harrison (503) 231–2066.

EIS No. 000175, Draft EIS, IBR, CA, Colusa Basin Drainage District, Developing an Integrated Resource Management Program for the Control of Flooding, Glenn, Colusa and Yolo Counties, CA, Due: August 25, 2000, Contact: Russ Smith (530) 275–1554.

EIS No. 000176, Draft SUPPLEMENT, UAF, TX, Programmatic EIS—Kelly Air Force Base (AFB), Disposal and Reuse, Implementation, San Antonio County, TX, Due: July 24, 2000, Contact: Jonathan D. Farthing (210) 536–3787.

EIS No. 000177, Draft EIS, GSA, DC, Department of Transportation Headquarters, Proposal to Lease 1.3 to 1.35 Million Rentable Square Feet of Consolidated and Upgraded Space, Five Possible Sites, Located in the Central Employment Area, Washington, DC, Due: July 24, 2000, Contact: John Simeon (202) 260–9586.

Amended Notices

EIS No. 000101, Draft EIS, FAA, NC, Piedmont Triad International Airport, Construction and Operation, Runway 5L/23R and New Overnight Express Air Cargo Sorting and Distribution Facility, and Associated Developments, Funding, NPDES and COE Section 404 Permit, City of Greensboro, Guilford County, NC, Due: June 22, 2000, Contact: Donna M. Meyer (404) 305–7150. Revision of FR notice published on 05/19/2000: CEQ Comment Date has been Extended from 06/07/2000 to 06/22/2000.

Dated: June 6, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–14668 Filed 6–8–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6606–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 22, 2000 Through May 26, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–L65348–ID Rating EC2, Idaho Panhandle National Forests, Small Sales, Harvesting Dead and Damaged Timber, Coeur d'Alene River Range District, Kootenai and Shoshone Counties, ID.

Summary: EPA expressed environmental concerns about potential adverse impacts to old growth units and the level and nature of risk to landowners from wildfire from the proposed actions.

ERP No. D–AFS–L65349–ID Rating EC2, Warm Springs Ridge Vegetation Management Project, Improve Forest Condition, Boise National Forest, Cascade Resource Area, Boise County, ID.

Summary: EPA expressed environmental concerns about potential adverse impacts to already impaired streams within the watershed. EPA recommends that the final EIS supply additional information on watershed condition and proposed restoration strategies.

ERP No. D–TVA–E39052–MS Rating EO2, Union County Multipurpose Reservoir/Other Water Supply Alternatives Project, To Provide an Adequate and Reliable Water Supply, COE Section 404 Permit and NPDES Permit, City of New Alban, Union County, MS.

Summary: EPA raised objections to foreseeable reservoir water quality impacts and engineering design uncertainties. Omission of water conservation and reuse as an alternative should be re-evaluated for the FEIS. EPA could favor the pipeline alternative, depending on additional requested information regarding the impacts on the Tennessee-Tombigbee Waterway source water and potential interbasin water transfer issues.

ERP No. DS–COE–K32046–CA Rating EC2, Port of Los Angeles Channel Deepening Project, To Improve Navigation and Disposal of Dredge Material for the Inner Harbor Channels, Los Angeles County, CA.

Summary: EPA expressed environmental concerns regarding potential impacts to air quality and aquatic resources, indirect and cumulative impacts, environmental justice considerations, and mitigation measures proposed in the supplemental EIS. EPA is concerned that the EIS fails to address hazardous air pollutants (air toxics) currently emitted at the Port and reasonably foreseeable air toxic emissions that could occur under the project.

Final EISs

ERP No. F–AFS–L65302–AK, Kuakan Timber Sale, Timber Harvesting in the Kuakan Project Area, Implementation, Deer Island within the Wrangell Ranger District, Stikine Area of the Tongass National Forest, AK.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FB–NOA–E86002–00 Fishery Management Plan (FMP), Regulatory Impact Review, Snapper-Grouper Complex, South Atlantic Region.

Summary: EPA has no objections to the proposed plan. EPA strongly supports the proposed stock reassessment every two years and adaptive management approach of the FMP. While agreeing with the overall FMP, EPA prefers the alternative to enact a moratorium on red porgy fishing.

Dated: June 6, 2000.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 00–14669 Filed 6–8–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6712–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) will meet on Monday, June 26, 2000 from 11 am to 12 pm Eastern Daylight Time to review a report developed by its Technical Subcommittee on Fine Particle Monitoring. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available (phone lines will be very limited). Additional instructions about how to participate in the meeting can be obtained by calling Ms. Diana Pozun prior to the meeting at (202) 564–4544, or via e-mail at <pozun.diana@epa.gov>.

Background

The CASAC Technical Subcommittee on Fine Particle Monitoring (the Subcommittee) was established in 1996 to provide advice and comment to EPA (through CASAC) on appropriate

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methods and network strategies for monitoring fine particles in the context of implementing the revised national ambient air quality standards (NAAQS) for particulate matter. The Subcommittee provided such advice on the Federal Reference Method (FRM) and mass-based fine particle network in July 1996, and has recently examined (at a public meeting on April 18–19, 2000) EPA's plans and guidance for several components of the fine particle monitoring network and how these components are linked to research priorities for particulate matter (see 65 **Federal Register** 16916, March 30, 2000 for more details). As a result of that meeting, the Subcommittee prepared a draft report advising the Agency on the $PM_{2.5}$ Monitoring Network.

Purpose of the Meeting

At this meeting, the Clean Air Scientific Advisory Committee, chartered under 42 U.S.C. 7409, will review a report (*Clean Air Scientific Advisory Committee Advisory on the $PM_{2.5}$ Monitoring Network*) developed by its Technical Subcommittee on Fine Particle Monitoring.

Availability of Review Materials

Single copies of the review document (*Clean Air Scientific Advisory Committee Advisory on the $PM_{2.5}$ Monitoring Network*, draft dated May 31, 2000) are available from Ms. Diana Pozun, Clean Air Scientific Advisory Committee, Science Advisory Board (1400A), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Ms. Pozun can also be reached by telephone at (202) 564–4544, fax at (202) 501–0582, or e-mail: <pozun.diana@epa.gov>. The draft report is also available on the SAB Website (*www.epa.gov/sab*) under the *Reports* heading, and *Draft Reports* subheading.

For Further Information

Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4546; fax at (202) 501–0582; or via e-mail at <flaak.robert@epa.gov>. A copy of the draft agenda is available from Ms. Diana Pozun at (202) 564–4544 or by FAX at (202) 501–0582 or via e-mail at <pozun.diana@epa.gov>.

Members of the public who wish to make a brief oral presentation to the Subcommittee (in Room 6013 only) must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Daylight Savings Time, Monday, June 19, 2000 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization; 15 minutes total. The request should identify the name of the individual making the presentation, and the organization (if any) they will represent. **Please note:** If we receive more requests than we can accommodate, time of receipt in the CASAC office will determine priority, with the first three requests granted time. All others will have to provide written comments. Written comments of any length may be submitted to Mr. Flaak at any time until the date of the meeting. Please provide at least 25 copies. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 1, 2000.

John R. Fowle III,

Deputy Staff Director, Science Advisory Board.

[FR Doc. 00–14636 Filed 6–8–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 31, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 10, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0056.

Title: Registration of Telephone and Data Terminal Equipment.

Form No.: FCC Form 730.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 2,400.

Estimated Time Per Response: 24 hours.

Frequency of Response: On occasion reporting requirement .

Total Annual Burden: 57,600 hours.

Total Annual Cost: $2,700,000.

Needs and Uses: Telephone and data equipment located on customer premises must be registered with the Commission. Part 68 of the FCC's rules and regulations establish nationwide technical standards for telephone and data equipment designed for connection to the network. Part 68 also sets forth the terms and conditions for connection and for the registration of customer provided terminal equipment. The purpose of Part 68 is to protect the network from certain types of harm and interference to other subscribers.

The FCC Form 730 is used to obtain registration of telephone equipment pursuant to Part 68. In addition to filing the form, applicants are required to submit exhibits and other informational showings as specified in Part 68.

This notice is necessary to obtain public comment so that the Commission can continue to collect the necessary information subject to the Paperwork Reduction Act. There is no change to this collection. The Commission is extending the current Office of Management and Budget (OMB) approval for the next three years.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–14539 Filed 6–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–2674]

Responsible Accounting Officer—Letter 28—Re: Auditor Independence and Objectivity

AGENCY: Federal Communications Commission.

ACTION: Notice; announcement of OMB approval.

SUMMARY: This document discusses the importance of independence and objectivity in the performance of audit work required by the Commission and adopts, as modified for Commission purposes, *Standard No. 1* of the Independence Standards Board, which requires auditors to disclose and discuss potential independence problems.

DATES: Effective May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Stone, Accounting Safeguards Division, Common Carrier Bureau, (202) 418–0816.

SUPPLEMENTARY INFORMATION: On December 1, 1999 the Common Carrier Bureau, Accounting and Audits Division adopted and released a Responsible Accounting Officer (RAO) Letter 28, Re: Auditor Independence and Objectivity, a summary of which was published in the **Federal Register**. See 64 FR 71785 (December 22, 1999). In that document we address the independence implications for the new consulting and advocacy services provided by auditors. In that document the Commission establishes the following standard based on Independence Standards Board's *Standard No. 1*. For independent audits performed pursuant to part 32 and § 64.901 *et seq.* of the Commission's rules (including audits, attest examinations, agreed-upon procedures engagements, and any other engagement required by independent auditors), the auditor shall at least annually: (a) Disclose to the Accounting Safeguards Division (ASD) of the Common Carrier Bureau in writing all relationships between the auditor and its related entities and the carrier and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence; (b) confirm in writing to ASD that in its professional judgment it is independent of the carrier; and (c) discuss the auditor's independence with ASD.

We stated that "because items in the RAO letter pertain to the collection of information, Office of Management and Budget (OMB) approval of the proposed collection is required by the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act, members of the public are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor a collection, unless the information collection contains a currently valid OMB control number. Accordingly, independent auditors will not be required to comply with this RAO until OMB has given such approval. ASD will notify the public when OMB has approved the proposed information collection." The information collection was approved by OMB on May 19, 2000. See OMB No. 3060–0927. This publication satisfies our statement that the Commission would publish a document announcing OMB approval of proposed information collection.

Federal Communications Commission.

Kenneth P. Moran,

Chief, Accounting Safeguards Division, Common Carrier Bureau.

[FR Doc. 00–14609 Filed 6–8–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–971]

Annual Adjustment of Revenue Threshold

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This notice announces that the 1999 revenue threshold used for classifying carriers for various accounting and reporting purposes is increased to $114 million. Section 402(c) of the 1996 Act mandates that the Commission adjusts the revenue threshold annually to reflect the effect of inflation.

DATES: The agency must receive comments on or before September 7, 2000.

ADDRESSES: Federal Communications Commission, 445–12th Street, SW, Room TW–A325, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Debbie Weber, Accounting Systems Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0812.

SUPPLEMENTARY INFORMATION: This gives notice that the revenue threshold used for classifying carriers for various accounting and reporting purposes is increased to $114 million. Section 402(c) of the 1996 Act mandates that we "adjust the revenue requirements" of Sections 32.11, 43.21, 43.43 and 64.903 of our rules "to account for inflation as of the release date of the Commission's Report and Order in CC Docket No. 91–141, and annually thereafter." Prior to passage of the 1996 Act, our rules established a $100 million threshold to classify carriers for accounting purposes in Section 32.11, for filing cost allocation manuals in Section 64.903, and for filing certain reports with the Commission in Part 43.

In accordance with the 1996 Act, the Commission adjusts the revenue threshold based on the ratio of the Gross Domestic Product Chain-type Price Index (GDPPI) in the revenue year and the GDPPI for 1992, rounded to the nearest $1 million. The 1999 indexed revenue threshold was calculated as follows:

(1) 1992 GDPPI	91.62
(2) 1999 GDPPI	104.57
(3) Inflation Factor (line 2 / line 1)	1.1413
(4) Original Revenue Threshold	[1] $100
(5) 1999 Revenue Threshold (line 3 * line 4)	[1] $114

[1] Million.

Accordingly, the 1999 indexed revenue threshold is $114 million.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–14540 Filed 6–8–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:19 a.m. on Tuesday, June 6, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift

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Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than June 3, 2000, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: June 6, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–14736 Filed 6–7–00; 10:00 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: *Tuesday, June 13, 2000, at 10 a.m.*

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

Internal personnel rules and procedures or matters affecting a particular employee.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, June 15, 2000 at 10 a.m. Meeting open to the public.

This meeting was canceled.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 00–14670 Filed 6–6–00; 4:17 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments on the National Fire Academy (NFA) Course Evaluation Form.

SUPPLEMENTARY INFORMATION: The NFA is mandated under the Fire Prevention and Control Act of 1974 (Public Law 93–498) to provide training and education to the Nation's fire service and emergency service personnel. To maintain the quality of the training program and courses, it is necessary to evaluate them on an ongoing basis.

Collection of Information:

Title: National Fire Academy Course Evaluation Form.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0234.

Form Number: FEMA Form 95–20, National Fire Academy Course Evaluation Form.

Abstract: FEMA uses the National Fire Academy Course Evaluation Form to evaluate on-campus courses delivered at the NFA facility, located in Emmitsburg, Maryland. It is also used to evaluate regional courses, which are identical to the NFA resident courses, offered in selected regions to students unable to travel to the Emmitsburg campus for the resident offering of the course. The data provided by students evaluating an NFA course are used to determine the need for course improvements and the degree of student satisfaction with the course experience.

Affected Public: Individuals participating in NFA on-campus or regional courses.

Estimated Total Annual Burden Hours: 1,375.

Estimated Number of Respondents: 5,500.

Estimated Hour Burden Per Response: 15 minutes.

Frequency of Response: The evaluation form is completed after completion of a course.

Estimated Cost: The estimated cost to the respondent is minimal.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625, Facsimile number (202) 646–3524, or e-mail muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Polly Barnett-Birdsall, Instructional Systems Specialist, National Fire Academy at (301) 447–1228 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: May 24, 2000.

Mike Bozzelli,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–14661 Filed 6–8–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1326–DR]

Maine; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine, (FEMA–1326–DR), dated April 28, 2000, and related determinations.

EFFECTIVE DATE: June 2, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Maine is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 28, 2000:

Washington County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–14657 Filed 6–8–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3154–EM]

New Mexico; Amendment No. 6 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New Mexico (FEMA–3154–EM), dated May 10, 2000, and related determinations.

EFFECTIVE DATE: June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of New Mexico is hereby amended to extend the assistance period for reimbursement of the eligible costs associated with the pre-staging of Federal, State, Compact, and Emergency Management Assistance Compact fire suppression assets. This assistance period is extended to July 7, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–14658 Filed 6–8–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1329–DR]

New Mexico; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Mexico (FEMA–1329–DR), dated May 13, 2000, and related determinations.

EFFECTIVE DATE: June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joe D. Bray of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Mark S. Ghilarducci as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3154–EM]

New Mexico; Amendment No. 5 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New Mexico, (FEMA–3154–EM), dated May 10, 2000, and related determinations.

EFFECTIVE DATE: June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery

Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–14660 Filed 6–8–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before August 8, 2000.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M-P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Request for Proposal (RFP); Request for Price Quotations (RFPQ).
Agency form number: RFP; RFPQ.
OMB control number: 7100–0180.
Frequency: On occasion.
Reporters: Vendors and suppliers.
Annual reporting hours: 15,000 hours.
Estimated average hours per response: 56 hours, RFP; 2 hours, RFPQ.
Number of respondents: 75, RFP; 5,400, RFPQ.
Small businesses are affected.
General description of report: This information collection is required to obtain or retain a benefit (12 U.S.C. sections 243, 244, and 248) and is not given confidential treatment unless a respondent requests that portions of the information be kept confidential and the Board grants the request pursuant to the applicable exemptions provided by the Freedom of Information Act (5 U.S.C. section 552).
Abstract: The Federal Reserve Board uses the RFP and the RFPQ as needed to obtain competitive proposals and contracts from approved vendors of goods and services. Depending upon the goods and services for which the Federal Reserve Board is seeking competitive bids, the respondent is requested to provide either prices for providing the goods or services (RFPQ) or a document covering not only prices, but also the means of performing a particular service and a description of the qualification of the staff who will perform the service (RFP). The Board staff uses this information to analyze the proposals and select the offer providing the best value.

2. *Report title:* Recordkeeping Requirements Associated with Real Estate Appraisal Standards for Federally Related Transactions Pursuant to Regulations H and Y.
Agency form number: FR H–4.
OMB control number: 7100–0250.
Frequency: On occasion.
Reporters: State member banks and bank holding company subsidiaries.
Annual reporting hours: 67,588 hours.
Estimated average hours per response: 15 minutes.
Number of respondents: 2,235.
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 3331–3351) and is not given confidential treatment.
Abstract: For federally related transactions, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires state member banks and bank holding company subsidiaries to use appraisals prepared in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. These standards include the methods and techniques used to analyze a property as well as the requirements for reporting such analysis and a value conclusion in the appraisal. There is no formal reporting form and the information is not submitted to the Federal Reserve.

Board of Governors of the Federal Reserve System, June 5, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14577 Filed 6–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829) OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Senior Loan Officer Opinion Survey on Bank Lending Practices.
Agency form numbers: FR 2018.
OMB control number: 7100–0058.
Frequency: Up to six times per year.
Reporters: Large U.S. commercial banks and large U.S. branches and agencies of foreign banks.
Annual reporting hours: 1,008 hours.
Estimated average hours per response: 2 hours.
Number of respondents: 84.
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. §§ 248 (a), 324, 335, 3101, 3102, and 3105) and is given confidential treatment (5 U.S.C. § 552 (b)(4)).
Abstract: The FR 2018 is conducted with a senior loan officer at each respondent bank, generally by means of a telephone interview, up to six times a year. The interview is administered by a Reserve Bank officer having in-depth knowledge of bank lending practices. The reporting panel consists of sixty large domestically chartered commercial banks, distributed as evenly as possible across Federal Reserve Districts, and twenty-four large U.S. branches and agencies of foreign banks. The purpose of the survey is to provide primarily qualitative information pertaining not only to current price and flow developments but also to evolving techniques and practices in the U.S. banking sector. A significant fraction of the questions in each survey consists of unique questions on topics of timely interest. There is the option to survey other types of respondents (such as other depository institutions, bank holding companies, or corporations) should the need arise. The FR 2018 survey provides crucial information for monitoring and understanding the evolution of lending practices at banks and developments in credit markets generally.

2. *Report title:* Senior Financial Officer Survey.
Agency form number: FR 2023.
OMB control number: 7100–0223.
Frequency: Up to four times per year.
Reporters: Commercial banks, other depository institutions, corporations or large money-stock holders.
Annual reporting hours: 240 hours.
Estimated average hours per response: 1 hour.
Number of respondents: 60.
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. §§ 225a, 248(a), and 263); confidentiality will be determined on a case-by-case basis.
Abstract: The FR 2023 requests qualitative and limited quantitative information about liability management and the provision of financial services from a selection of sixty large commercial banks or, if appropriate, from other depository institutions or corporations. Responses are obtained from a senior officer at each participating institution through a telephone interview conducted by Reserve Bank or Board staff. The survey is conducted when major informational needs arise and cannot be met from existing data sources. The survey does not have a fixed set of questions; each survey consists of a limited number of questions directed at topics of timely interest.

3. *Report title:* Consolidated Report of Condition and Income for Edge and Agreement Corporations.
Agency form number: FR 2886b.
OMB control number: 7100–0086.
Frequency: Quarterly.
Reporters: Edge and agreement corporations.
Annual reporting hours: 3,566 hours.
Estimated average hours per response: 14.7 hours, banking corporations; 8.5 hours, investment corporations.
Number of respondents: 30 banking corporations; 53 investment corporations.
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 602 and 625) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: This report collects a balance sheet, income statement, and ten supporting schedules from banking Edge corporations and investment (nonbanking) Edge corporations. Information collected on the FR 2886b is used by the Federal Reserve to supervise Edge corporations, identify present and potential problems, and monitor and develop a better understanding of activities within the industry.
The Federal Reserve has made several clarifying updates to the reporting instructions to reflect the implementation of FASB Statement No. 133, "Accounting for Derivative Instruments and Hedging Activities," to address the reporting of inactive corporations, and has clarified the reporting of certain International Banking Facility transactions.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report

1. *Report title:* Report of Repurchase Agreements (RPs) on U.S. Government and Federal Agency Securities with Specified Holders.
Agency form number: FR 2415.
OMB control number: 7100–0074.
Frequency: weekly, quarterly, or annually.

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Reporters: U.S.-chartered commercial banks, U.S. branches and agencies of foreign banks, and thrift institutions.

Annual reporting hours: 2,754 hours.

Estimated average hours per response: 30 minutes.

Number of respondents: 84 weekly, 153 quarterly, and 528 annually.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2) and 3105(b)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This report collects one data item—repurchase agreements (RPs) in denominations of $100,000 or more, in immediately-available funds, on U.S. government and federal agency securities, transacted with specified holders. It is filed by three reporting panels of depository institutions with different reporting frequencies (weekly, quarterly, and annual). The weekly panel reports daily data once each week. The quarterly panel files daily data for four one-week reporting periods that contain quarter-end dates. The annual panel reports daily data only for the week encompassing June 30 each year. Data from the FR 2415 supply information necessary for construction of the M3 monetary aggregate.

Current Actions: The Federal Reserve has made two changes to this report: (1) Raised the thresholds for re-screening existing respondents on two of the three reporting panels (weekly and quarterly) and (2) adjusted the cutoff for screening thrift institutions that do not file the FR 2415 to accommodate a definition change on the report of condition for thrift institutions. The Federal Reserve estimates the revision will decrease the annual reporting burden by 314 hours and annual respondent costs by approximately $6,280.

Board of Governors of the Federal Reserve System, June 5, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14546 Filed 6–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 23, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. William P. Johnson, Boulder, Colorado; to acquire voting shares of FirstBank Holding Company of Colorado, Lakewood, Colorado, and thereby indirectly acquire voting shares of FirstBank, Littleton, Colorado; FirstBank of Adams County, Thornton, Colorado; FirstBank of El Paso County, Colorado Springs, Colorado; FirstBank of Arvada, Arvada, Colorado; FirstBank of Aurora, Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of Boulder, Boulder, Colorado; FirstBank of Breckenridge, Breckenridge, Colorado; FirstBank of Douglas County, Castle Rock, Colorado; FirstBank of Colorado Springs, Colorado Springs, Colorado; FirstBank of Cherry Creek, Denver, Colorado; FirstBank of Denver, Denver, Colorado; FirstBank of Longmont, Longmont, Colorado; FirstBank of Evergreen, Evergreen, Colorado; FirstBank of Northern Colorado, Fort Collins, Colorado; FirstBank of Greeley, Greeley, Colorado; FirstBank of Tech Center, Englewood, Colorado; FirstBank of Colorado, Lakewood, Colorado; FirstBank of South Jeffco, Littleton, Colorado; FirstBank of Lakewood, Lakewood, Colorado; FirstBank of Littleton, Littleton, Colorado; FirstBank of Arapahoe County, Littleton, Colorado; FirstBank of Parker, Parker, Colorado; FirstBank of Silverthorne, Silverthorne, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank of North, Westminster, Colorado; and FirstBank of Wheat Ridge, Wheat Ridge, Colorado.

Board of Governors of the Federal Reserve System, June 5, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14545 Filed 6–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. First Interstate BancSystem, Inc., Billings, Montana; to acquire 100 percent of the voting shares of Equality Bankshares, Inc., Cheyenne, Wyoming, and thereby indirectly acquire Equality State Bank, Cheyenne, Wyoming.

Board of Governors of the Federal Reserve System, July 5, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14544 Filed 6–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, June 14, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

Matters To Be Considered

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14742 Filed 6–7–00; 10:34 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Analysis of Guidelines for the Conduct of Research Adopted by Medical Schools or their Components—NEW—The Office of Research Integrity (ORI) is responsible for ensuring the integrity of the research supported by the Public Health Service. Section 493 of the Public Health Service Act, provides that the Secretary by regulation shall require that each entity which applies for a grant, contract or cooperative agreement which involves the conduct of biomedical or behavioral research shall establish policies and procedures to review, investigate and report allegations of research misconduct in connection with the research conducted at or sponsored by the applicant institute with PHS supported funds. ORI plans on requesting copies of the guidelines for the conduct of research adopted by accredited medical schools in the United States. ORI will use the information to develop technical assistance materials and an instructional workshop which will assist medical schools in formulating guidelines. *Respondents:* State and Local governments; Businesses or other for-profit, non-profit institutions—Burden Information for Solicitation—*Number of Respondents:* 125; *Burden per Response:* .25 hours; *Total Burden for Solicitation:* 31 hours; Burden Information for Check List—Number of Respondents: 125; *Burden per Response:* 1 hour; *Total Burden for Check List:* 125 hours; Burden Information for Telephone Calls—*Number of Respondents:* 13; *Burden per Response:* 625 hours; *Total Burden for telephone calls:* 16 hours; *Total Burden:* 172 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection package listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above the following address:

Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Hubert H. Humphrey Building, 200 Independence Ave S.W., Washington, D.C., 20201. Written comments should be received within 30 days of this notice.

Dated: June 1, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–14688 Filed 6–8–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Grants and Cooperative Agreements Awards: Association of Schools of Public Health (ASPH)

AGENCY: Office of International and Refugee Health, Office of Public Health and Science, DHHS

ACTION: The Office of Public Health and Science announces that it will enter into an umbrella cooperative agreement in fiscal year 2000 with the Association of Schools of Public Health (ASPH). This cooperative agreement will establish a framework in which specific projects, which will further department program objectives, will be funded as they are identified over the 5 year period of the agreement. This agreement will be administered by the Office of International and Refugee Health, which will award individual projects on behalf of the DHHS agencies. The cooperative agreement will establish a ceiling of $6 million for the aggregate amount of the individual projects with funds to be obligated as the projects are funded.

SUMMARY: The purpose of the cooperative agreement with the Association of Schools of Public Health (ASPH) is to promote and sustain collaborations and partnerships between ASPH member schools and international schools of public health thereby improving the functions of these institutions, furthering the development of global public health professionals, and stimulating global public health policy.

This cooperative agreement is a collaborative effort between the Office of International and Refugee Health and the Association of Schools of Public Health (ASPH) to develop the next generation of professionals trained in public health and to promote and sustain the development of the global public health professional by facilitating collaborative efforts and partnerships between American schools of public health and schools abroad. These collaborations will include, but not be limited to, training opportunities such as internships and fellowships, research projects, exchanging information through publications, meetings, distance learning opportunities, and faculty exchanges. The collaborative effort will provide for a more diverse and globally capable public health workforce. In today's world, it is essential for public health workers both in the U.S. and abroad to be trained to address health issues in a global environment as well

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as those in their own nations. This cooperative agreement will provide a mechanism to stimulate global public health education. Results from collaborative research can be used in curriculum development, publications, and presentations at national or international meetings and to contribute to the improvement of global health. International cooperation such as this serves to meet the objectives of Healthy People 2010. This cooperative agreement will assist the OIRH in its mission to promote the health of the world's population by advancing the Department of Health and Human Service's global strategies and partnerships, thus serving the health of the people of the United States.

This program addresses the 1997 IOM report titled, "America's Vital Interest in Global Health: Protecting Our People, Enhancing Our Economy, and Advancing Our International Interests." This IOM report states the need for public health workers to be exposed to international health training to deal with the health issues of a world that is growing more diverse, but closer due to international travel and commerce, for example, emerging and drug resistant infectious diseases in one country represent a threat to the health and economics of all countries. Tobacco is a global problem by virtue of global marketing and cultural development. Answers to these challenges requires global thinking, training, and collaboration.

AUTHORITY: This cooperative agreement is authorized by Section 307 of the Public Health Service Act.

Background

Assistance will be provided only to the Association of Schools of Public Health (ASPH). No other applications are solicited. ASPH is the only organization providing services specified under this cooperative agreement because:

1. ASPH represents the 29 accredited schools of public health in the United States. These schools represent the primary educational system that trains personnel to operate the Nation's public health agencies, and to administer disease prevention and health promotion programs. ASPH has the institutional knowledge of the needs of both the schools of public health and the public health agencies as well as the access and communications network to coordinate activities of the accredited schools of public health.

2. ASPH is the only organization that can comprehensively affect the development and implementation of international health curricula to public health workers in all of its 29 member schools of public health and provide international experiences to students and faculty in the environment of public health organizations.

3. ASPH is uniquely positioned to partner with international practitioners of public health because of its affiliation with international organizations such as the Association of Schools of Public Health in the European Region (ASPHER), the World Federation of Public Health Associations, the Pan American Health Organization (PAHO), and the World Health Organization (WHO).

4. ASPH is working through its Global Health Committee to provide the framework for its member schools of public health and the practitioners of public health in Federal, State and local governments to partner and share their experience and expertise with international schools of public health, and to enable the international perspectives of Public health to be incorporated into curricula for teaching health administration, health promotion and disease prevention, prevention-based health service delivery and health research methods. This will assist future public health workers to improve the health of the people of the United States and the world and to reduce health disparities suffered by racial and ethnic minorities. Such exchanges will assure consistent approaches to the preparation of public health workers worldwide and their performance in controlling today's major global health issues.

5. ASPH provides the structure and experience for instituting comprehensive international public health education programs and implementing programs that strengthen the public system by preparing public health workers to work in international locations and with diverse populations.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact *Jerry Rutkoski* at *301–443–4560*.

Dated: June 2, 2000.

David Satcher,

Assistant Secretary for Health and Surgeon General.

[FR Doc. 00–14532 Filed 6–8–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–38]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne E. O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

NIOSH Training Grants, 42 CFR Part 86, Application and Regulations (OMB No. 9020–0261)—Extension—National Institute for Occupational Safety and Health (NIOSH). Public law 91–596 requires CDC/NIOSH to provide an adequate supply of professionals to carry out the purposes of the Act to assure a safe and healthful work environment. NIOSH supports educational programs through training grant awards to academic institutions for the training of industrial hygienists, occupational physicians, occupational health nurses and safety professionals. Grants are provided to 15 Education and Research Centers (ERCs) which provide multi-disciplinary graduate academic and research training for professionals, continuing education for practicing professionals and outreach programs in the Region. There are also currently 41 Training Project Grants (TPGs) which provide single discipline academic and technical training throughout the country. 42 CFR Part 86, Grants for Education Programs in Occupational Safety and Health, Subpart B-Occupational Safety and Health Training, provides guidelines for implementing Public Law 91–596.

The training grant application form (CDC2.145.A) is used by the National Institute of Occupational Safety and Health to collect information from new grant applicants submitting competing applications, and from existing applicants for competing renewal grants. The information is used to determine the eligibility of applicants for grant review and by peer reviewers during the peer review process to evaluate the merit of the proposed training project. CDC Form 2.145B is used for non-competing awards to evaluate the annual progress of the applicant during the approved project period.

Extramural training grant awards are made annually following an extramural review process of the training grant applications, review by an internal Training Grants Council and an internal review of non-competing applicants.

The total cost to respondents is $220,170.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden per response (hrs)	Total burden
Universities	61	1	101	6,161
Total				6,161

Dated: June 5, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14583 Filed 6–8–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–39]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne E. O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Hearing Loss Intervention for Carpenters—New—The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Using Health Belief/ Promotion models and stages of change theory (Prochaska's Transtheoretical Model), NIOSH has collaborated with the United Brotherhood of Carpenters (UBC) to develop a comprehensive hearing loss prevention program targeted specifically for carpenter apprentices. This program is scheduled for implementation and evaluation in a large apprentice training center during 2001. As part of the impact and evaluation component of this project, a 31-question survey will be administered to assess carpenter apprentices' hearing health attitudes, beliefs, and behavioral intentions before and after they receive the training program and at a one-year follow-up interval. The survey was developed and validated by NIOSH in collaboration with university partners and the UBC. Initially, survey data will be gathered from 300 apprentices participating in baseline testing—200 at the experimental site and 100 at the control site. This will be followed by a re-survey of the 200 apprentices at the experimental site after they have received the enhanced educational elements of the hearing loss prevention program. Finally, all 300 apprentices will participate in a re-survey one year later to assess the lasting effects of the training. Data collected in this investigation will enable NIOSH to better evaluate the effectiveness of the hearing loss prevention program in educating and motivating these workers to actively protect their hearing well before they suffer permanent noise-induced hearing loss.

There are no costs to respondents.

Respondents (apprentices)	No. of respondents	No. of responses/respondent	Avg. burden per response (in hrs)	Total burden (in hrs)
Baseline	300	1	.25	75
Post Training	200	1	.25	50
One-year Follow-up	300	1	.25	75
Totals				200

Dated: June 5, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14584 Filed 6–8–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Training and Technical Assistance Assessment.

OMB No.: New Collection.

Description: This data will be used to assess the Head Start Training and Technical Assistance (T/TA) delivery system. Data collected will provide information on the quality of services that Head Start Quality Improvement Centers (QICs) provide to Head Start grantees. Respondents will include QIC staff, collaborative partners of QIC organizations, and Head Start grantees. Specifically, site visit interviews will be conducted with QIC Directors and QIC Area Specialists, while telephone interviews will be conducted with QIC Directors, Grantee Directors, and Partner Agencies.

Training and technical assistance are critical in supporting the continuous improvement efforts of Head Start grantee and delegate agencies serving children birth to five and their families. The reports of the Advisory Committee on Head Start Quality and Expansion in December 1993 and the Advisory Committee on Services for Families with Infants and Toddlers reaffirmed the importance of T/TA to support program quality. The Head Start Act of 1994 (Public Law 103–252) also emphasized the importance of T/TA and stated that T/TA activities must ensure that needs of local Head Start agencies relating to improving program quality and expansion are addressed to the maximum extent feasible.

The assessment is designed to gather information for program management and planning purposes about the kind and quality of services provided by each QIC. Information collected will be used by the Bureau to: (1) Identify the quality of approaches undertaken in each phase of the strategic planning cycle; (2) identify any patterns or changes over time in the delivery of T/TA; and (3) determine the feasibility of future initiatives and funding decisions. The data collected will provide a means for the Head Start Bureau to carry out the Federal role outlines in the Cooperative Agreement establishing the QICs.

Respondents: Head Start Quality Improvement Centers (QIC), Head Start Grantees, Head StartPartner Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
QIC Director Site Visit Interview	28	30	.1	84
QIC Area Specialists Site Visit Interview	116	19	.16*	348
QIC Director Telephone Interview	28	8	.19	42
HS Partner Agency Telephone Interview	112	11	.09	112
Grantee Director Telephone Interview	256	18	.11	512
Estimated Total Annual Burden Hours				1,098

*Actual figure is .1578, which creates total burden hours of 348.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Desk Officer for ACF.

Dated: June 5, 2000.

Bob Sargis,

Reports Clearance Officer

[FR Doc. 00–14531 Filed 6–8–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–15]

Notice of Proposed Information Collection: Comment Request; Lease and Sale of HUD-Acquired Single Family Properties for the Homeless

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 8, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Asset Management Division, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Lease and Sale of HUD-Acquired Single Family Properties for the Homeless.

OMB Control Number, if applicable: 2502–0412.

Description of the need for the information and proposed use: HUD seeks to assist individuals and families who are homeless by providing them with transitional housing and appropriate supportive services with the goal of helping them move to independent living. This information collection allows HUD to determine whether an applicant qualifies as a homeless provider for the purpose of lease or purchase of a HUD-acquired property. Without the information, the Department would be unable to establish eligibility. Eligible applicants, including State and local governments, may apply to HUD to become approved as homeless providers. Such approval permits the applicant to lease a HUD-owned single family home with an option to purchase, for use in housing the homeless.

Agency Form Numbers, if applicable: Not applicable.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is 600, number of respondents is 300, frequency response is one-time, and the hours of response is 2.

Status of the proposed information collection: Reinstatement without change of a previously approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 4 U.S.C., Chapter 35, as amended.

Dated: May 30, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–14521 Filed 6–8–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–16]

Notice of Proposed Information Collection: Comment Request; Single Family Premium Collection Subsystem—Upfront

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 8, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Natalia Yee, Single Family Insurance Operations Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1858, Ext. 3506 (this is not a toll free number) for information on the Single Family Premium Collection Subsystem-Upfront (formerly form HUD–27001, Transmittal of Upfront Mortgage Insurance Premium).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Premium Collection Subsystem—Upfront.

OMB Control Number, if applicable: 2502–0423.

Description of the need for the information and proposed use: The Single Family Premium Collection Subsystem-Upfront (SFPCS–U) replaced the One-Time Mortgage Insurance Premium System which lenders used to remit Upfront Mortgage Insurance Premiums using funds obtained from the mortgagor during the closing of the mortgage transaction at settlement. The form HUD–27001, Transmittal of Upfront Mortgage Insurance Premium, is now obsolete. However, the information collection is still in effect. SFPCS–U strengthens HUD's ability to manage and process single family mortgage insurance premium collections and corrections for the majority of insured single family mortgages. It also improves data integrity for the Single Family Mortgage Insurance Program. FHA approved lenders use versions of Mellon's Telecash and HUD Mortgage Premium Connection (HUD–MPC) software for all transmissions with SFPCS–U. The authority for this collection of information is specified in 24 CFR 203.283 and 24 CFR 203.284. The collection of information is also used in calculating refunds due to former FHA mortgagors when they apply for homeowner refunds of the unearned portion of the mortgage insurance premium, 24 CFR 203.283, as appropriate. Without this information the premium collection/monitoring process would be severely impeded, and program data would be unreliable. In general, lenders use the new software to remit the upfront premium through SFPCS–U to obtain mortgage insurance for the homeowner.

Agency form numbers, if applicable: Not applicable.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collecting of information. The burden of completing the form will be eliminated.

Lenders will be able to key the information online or have their computer transmit the information. The number of respondents is 3,378 and the frequency of response is on occasion, that is, a mortgage closing. Since remittances are made through the Automated Clearinghouse, the upfront remittance is submitted electronically and there is no paperwork to complete and mail in.

Status of the proposed information collection: Reinstatement without change of a previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 30, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–14522 Filed 6–8–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–23]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Mr. Jeff Holste, Military Programs, U.S. Army Corps of Engineers, Installation Support Center, Planning & Real Property Branch, Attn: CEMP–IP, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318; (These are not toll-free numbers).

Dated: June 1, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

Title V, Federal Surplus Property Program; Federal Register Report for 6/9/00

Suitable/Available Properties:

Buildings (by State)

Alaska

Bldg. 760
Fort Richardson
Ft. Richardson Co: AK 95505–6500
Landholding Agency: Army
Property Number: 21200020156
Status: Unutilized
Comment: 24,896 sq. ft., concrete, most recent use—veh. maint., off-site use only

Bldg. 08100
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020157
Status: Unutilized
Comment: 4688 sq. ft., concrete, most recent use—hazare bldg., off-site use only

Bldgs. 09100, 09104–09106
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020158
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

5 Bldgs.
Fort Richardson
09108, 09110–09112, 09114
Ft. Richardson Co: AK 99505–6500
Property Number: 21200020159
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldgs. 09128, 09129
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020160
Status: Unutilized

Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldgs. 09151, 09155, 09156
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020161
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldg. 09158
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020162
Status: Unutilized
Comment: 672 sq. ft., most recent use—storage shed, off-site use only

Bldgs. 09160–09162
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020163
Status: Unutilized
Comment: 11520 sq. ft., concrete, most recent use—NCO–ENL FH, off-site use only

Bldgs. 09164, 09165 Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020164
Status: Unutilized
Comment: 2304 & 2880 sq. ft., most recent use—storage, off-site use only

Bldg. 10100
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020165
Status: Unutilized
Comment: 4688 sq. ft., concrete, most recent use—hazard bldg., off-site use only

Arizona

34 Bldgs.
Fort Huachuca
62001–62022, 64001–64012
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200020166
Status: Unutilized
Comment: 658 and 587 sq. ft., presence of asbestos/lead paint, most recent use—one bedroom family housing, off-site use only

California

Bldgs. 204–207, 517
Presidio of Monterey
Monterey Co: CA 93944–5006
Landholding Agency: Army
Property Number: 21200020167
Status: Unutilized
Comment: 4780 and 10950 sq. ft., presence of asbestos/lead paint, most recent use—classroom/admin/storage, off-site use only

Colorado

Bldg. S–6223
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200020168
Status: Unutilized
Comment: 9574 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—personnel bldg., off-site use only

Bldg. S–6270
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200020169
Status: Unutilized
Comment: 19,067 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. S–6276
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200020170
Status: Unutilized
Comment: 2522 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—maint. shop, off-site use only

Georgia

Bldg. 2214
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200020171
Status: Unutilized
Comment: 13,508 sq. ft., possible asbestos/lead paint, most recent use—storage/admin., off-site use only

Bldg. 2233
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200020172
Status: Unutilized
Comment: 1720 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Hawaii

6 Bldgs.
Schofield Barracks
Wahiawa Co: HI 96786–
Location: P–3632, 3633, 3644, 3703, 3801, 3806
Landholding Agency: Army
Property Number: 21200020173
Status: Unutilized
Comment: 4 units/each bldg., family housing, termite damaged, off-site use only

10 Bldgs.
Schofield Barracks
Wahiawa Co: HI 96786–
Location: P–3444, 4312, 4322, 4336, 4341, 4412, 4416, 4710, 5016, 4915
Landholding Agency: Army
Property Number: 21200020174
Status: Unutilized
Comment: 5 units/each bldg., family housing, termite damaged, off-site use only

Bldgs. P4454, 4552
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200020175
Status: Unutilized
Comment: 8 units/each bldg., family housing, termite-damaged, roof leaks, off-site use only

Bldg. P4460
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200020176
Status: Unutilized
Comment: 4 units, family housing, termite damaged, off-site use only

Illinois

Bldg. 137A
Sheridan Army Rsv Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21200020177
Status: Unutilized
Comment: 120 sq. ft., storage bldg., off-site use only

Bldgs. 255–261
Sheridan Army Rsv Complex
Sheridan Co: IL 60037
Landholding Agency: Army
Property Number: 21200020178
Status: Unutilized
Comment: 960 sq. ft., steel storage bldgs., off-site use only

Kansas

Bldg. T–901
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020179
Status: Unutilized
Comment: 52 sq. ft., poor, most recent use—storage, off-site use only

Bldg. P–3010
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020180
Status: Unutilized
Comment: 144 sq. ft., poor, most recent use—storage, off-site use only

Bldgs. S–7705, S–7706
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020181
Status: Unutilized
Comment: 648 sq. ft., poor, presence of asbestos, most recent use—storage, off-site use only

Bldgs. P–7708, P–7709
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020182
Status: Unutilized
Comment: 206 and 1435 sq. ft., poor, most recent use—storage, off-site use only

Bldg. P–9007
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020183
Status: Unutilized
Comment: 540 sq. ft., poor, off-site use only

Bldg. T–9017
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020184
Status: Unutilized
Comment: 128 sq. ft., poor, off-site use only

Bldg. T–9088
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020185
Status: Unutilized

Comment: 246 sq. ft., poor, off-site use only

Maryland

Bldg. 176
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020187
Status: Unutilized
Comment: 2441 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 618
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020188
Status: Unutilized
Comment: 12,713 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. E5722, E5730, E5732
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200020189
Status: Unutilized
Comment: 4070 sq. ft., most recent use—storage, off-site use only

Massachusetts

Bldg. P–3713
Devens RFTA
Devens Co: MA 01432
Landholding Agency: Army
Property Number: 21200020186
Status: Unutilized
Comment: 256,760 sq. ft., needs renovation—estimated cost in excess of $5 million, most recent use—veh. maint., presence of asbestos

New Jersey

Bldg. 353
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200020191
Status: Unutilized
Comment: 24,800 sq. ft., most recent use—physics lab, off-site use only

Bldg. 1530
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200020192
Status: Unutilized
Comment: 10,550 sq. ft., most recent use—electronic lab, off-site use only

Bldg. 3050
Armament Research
Picatinny Aresenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200020193
Status: Unutilized
Comment: 10,550 sq. ft., most recent use—barracks, off-site use only

New York

Bldgs. T00021, T00022, T00024
Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 21200020194
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—aces facility, off-site use only

Bldg. T00214
Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 21200020195
Status: Unutilized
Comment: 3663 sq. ft., needs rehab, most recent use—scv outlet, off-site use only

Bldg. T–6002
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200020196
Status: Unutilized
Comment: 31212 sq. ft., needs rehab, most recent use—veh. storage, off-site use only

Ohio

Quarters 104
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020197
Status: Unutilized
Comment: 1917 sq. ft., poor condition, presence of lead paint, most recent use—family housing, off-site use only

Quarters 106
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number 21200020198
Status: Unutilized
Comment: 3650 sq. ft., poor condition, presence of lead paint, most recent use—family housing, off-site use only

Quarters 109
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020199
Status: Unutilized
Comment: 1642 sq. ft., poor condition, presence of lead paint, most recent use—family housing, off-site use only

Quarters 142
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020200
Status: Unutilized
Comment: 3200 sq. ft., poor condition, presence of lead paint, most recent use—family housing, off-site use only

Quarters 133A, 133B
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020201
Status: Unutilized
Comment: 4752 sq. ft., poor condition, presence of lead paint, most recent use—family housing, off-site use only

Texas

Bldg. P–2375A
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21200020202
Status: Unutilized
Comment: 108 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. T–5004
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21200020203
Status: Unutilized
Comment: 4489 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5005
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21200020204
Status: Unutilized
Comment: 4320 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–5101, T–5102
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21200020205
Status: Unutilized
Comment: 18,792 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 92043
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020206
Status: Unutilized
Comment: 450 sq. ft., most recent use—storage, off-site use only

Bldg. 92044
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020207
Status: Unutilized
Comment: 1920 sq. ft., most recent use—admin., off-site use only

Bldg. 92045
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020208
Status: Unutilized
Comment: 2108 sq. ft., most recent use—maint., off-site use only

Virginia

Bldg. TT0114
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020209
Status: Unutilized
Comment: 1440 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. TT0117
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020210
Status: Unutilized
Comment: 1920 sq. ft., needs rehab, most recent use—transient UOQ, off-site use only

Bldg. TT0118
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020211
Status: Unutilized

Comment: 2400 sq. ft., needs rehab, most recent use—transient UOQ, off-site use only

Bldg. TT0130
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020213
Status: Unutilized
Comment: 861 sq. ft., needs rehab, presence of asbestos, most recent use—transient UOQ, off-site use only

Bldgs. TT0131
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020214
Status: Unutilized
Comment: 861 sq. ft., needs rehab, presence of asbestos, most recent use—transient UOQ, off-site use only

Bldg. TT0132
Fort A. P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020215
Status: Unutilized
Comment: 800 sq. ft., needs rehab, presence of asbestos, most recent use—transient UOQ, off-site use only

Bldg. TT0133
Fort A. P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020216
Status: Unutilized
Comment: 800 sq. ft., needs rehab, presence of asbestos, most recent use—transient UOQ, off-site use only

Bldg. TT0139
Fort A. P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020217
Status: Unutilized
Comment: 800 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. TT0158
Fort A. P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020218
Status: Unutilized
Comment: 361 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. TT0163
Fort A. P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020219
Status: Unutilized
Comment: 1920 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only

Bldg. TT0206
Fort A. P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020220
Status: Unutilized
Comment: 792 sq. ft., needs rehab, presence of asbestos, most recent use—garage, off-site use only

Bldg. T00167
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020221
Status: Unutilized
Comment: 96 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. P01530
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200020222
Status: Unutilized
Comment: 112 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. 218
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200020223
Status: Unutilized
Comment: 7680 sq. ft., most recent use—storage, off-site use only

Bldg. 1512
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200020224
Status: Unutilized
Comment: 2971 sq. ft., presence of asbestos, most recent use—dining facility, off-site use only

Bldg. 1914
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200020225
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Suitable/Available Properties:

Land (by State)

Missouri

Land
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–8994
Location: East ½ of Section 14, Township 35
Landholding Agency: Army
Property Number: 21200020190
Status: Underutilized
Comment: Approx. 70 acres, rolling hills w/ 50% of area covered w/trees, env. documents in progress

[FR Doc. 00–14223 Filed 6–8–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4574–N–02]

Fiscal Year 2000 Notice of Funding Availability for the Indian Housing Drug Elimination Program; Amendment Concerning Minimum Grant Amounts

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA); Amendment.

SUMMARY: On May 11, 2000, HUD published its FY 2000 NOFA for Indian Housing Drug Elimination Program ("IHDEP"). This document amends the NOFA to provide a minimum grant award which would ensure that all eligible tribes or tribally designated housing entities who submit successful applications receive a minimum funding amount to initiate substance abuse prevent/intervention programs in their community. Minimum grant awards were included in the drug elimination program NOFAs in previous years when HUD issued NOFAs that addressed both public and Indian housing, and a minimum grant award amount was intended to be included in the FY 2000 IHDEP NOFA. This document corrects that omission.

DATES: The application due date of July 10, 2000, is not changed by this document.

FOR FURTHER INFORMATION CONTACT: Please call the local AONAPs with jurisdiction over your Tribe/tribally designated housing entity (TDHE) or HUD's Public and Indian Housing Resource Center at 1–800–955–2232 or Tracy C. Outlaw, National Office of Native American Programs (ONAP), Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600 (these are not toll-free numbers). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. Also, please see ONAP's website at http://www.codetalk.fed.us.html where you will be able to download a copy of the IHDEP NOFA, published on May 11, 2000, as well as this notice, and application kit from the Internet.

SUPPLEMENTARY INFORMATION: On May 11, 2000, HUD published its FY 2000 IHDEP NOFA (65 FR 30502). The purpose of IHDEP is to provide grants to eliminate drugs and drug-related crime in American Indian and Alaskan Native

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communities. The May 11, 2000 NOFA announced the availability of approximately $22 million ($11 million of FY 1999 funding and $11 million of FY 2000 funding) for the program.

It was HUD's intention that the May 11, 2000 IHDEP NOFA include a minimum grant award of $25,000 which would ensure that all eligible tribes or tribally designated housing entities who submit successful applications receive a minimum funding amount to initiate substance abuse prevention/intervention programs in their community. Minimum grant awards were included in the drug elimination program NOFAs in previous years when HUD issued NOFAs that addressed both public and Indian housing, and a minimum grant award amount was intended to be included in the FY 2000 IHDEP NOFA. This document corrects that omission.

Therefore, in the FY 2000 Notice of Funding Availability for the Indian Housing Drug Elimination Program, notice document 00–11882, beginning at 65 FR 30502, in the issue of Thursday, May 11, 2000, the following amendment is made:

On page 30507, in the second column, continuing into the third column, the introductory paragraph of Section IV.(A) (the title of Section IV is Program Requirements) and paragraph (A)(1)(a) are amended to read as follows:

(A) *Grant Award Amounts.* HUD is distributing grant funds for IHDEP under this NOFA on a national competition basis. The maximum grant award amounts are computed for IHDEP on a sliding scale, using an overall maximum cap, depending upon the number of Tribe/TDHE units eligible for funding. This figure (number of eligible units for funding) will determine the grant amount that the Tribe/TDHE is eligible to receive if they meet the IHDEP criteria and score a minimum of 70 out of 105 points. No selected applicant, however, will receive a grant award of less than $25,000.

(1) *Amount per unit.* (a) for tribes/TDHEs with 1–1,250 units: The minimum grant award amount is $25,000. The maximum grant award cap is $600 multiplied by the number of eligible units.

* * * * *

Dated: June 6, 2000.

Milan Ozdinec,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–14604 Filed 6–8–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–09]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, (HUD).

ACTION: Notice of a computer matching program between the Department of Housing and Urban Development (HUD) and the Department of Veterans Affairs (VA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a recurring computer matching program with the Department of Veterans Affairs (VA) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with VA's debtor files. This match will allow prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or VA direct or guaranteed loans. Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file and verify that the loan applicant is not in default on a Federal judgment or delinquent on direct or guaranteed loans of participating Federal programs. The CAIVRS data base contains delinquent debt information from the Departments of Agriculture, Education, Veteran Affairs, the Small Business Administration and judgment lien data from the Department of Justice.

Authorized users do a prescreening of CAIVRS to determine a loan applicant's credit status with the Federal Government. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: *Effective Date:* Computer matching is expected to begin 30 days after publication of this notice unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: July 10, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th St., SW, Room P8001, Washington, DC 20410, telephone number (202) 708–2374. [This is not a toll-free number.] A telecommunication device for hearing and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Mark Gottsacker, Debt Management Center, Department of Veterans Affairs, Bishop Henry Whipple Federal Building, One Federal Drive, Room 156, Fort Snelling, Minnesota 55111–4050, telephone number (612) 725–1843. [This is not a toll-free number.]

Reporting: In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority: The matching program will be conducted pursuant to Public Law 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objectives to be Met by the Matching Program: The matching program will allow VA access to a system which permits prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to VA's debtor data for prescreening purposes.

Records to be Matched: HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records.* The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default.

The VA will provide HUD with debtor files contained in its system of records entitled SS–VA26, Loan Guaranty Systems of Records. Central Accounts Receivable On Line System is a subsidiary of SS–VA26. HUD is maintaining VA's records only as a ministerial action on behalf of VA, not as a part of HUD's HUD/DEPT–2 system of records. VA's data contain information on individuals who have defaulted on their guaranteed loans. The VA will retain ownership and responsibility for their systems of records that they place with HUD. HUD serves only as a record location and routine use recipient for VA's data.

Notice Procedures: HUD and the VA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the VA will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

Categories of Records/Individuals Involved: The debtor records include these data elements from HUD's systems of records, HUD/Dept–2: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures.

Categories of individuals include former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

Period of the Match: Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreements are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: May 30, 2000.

Gloria R. Parker,

Chief Information Officer.

[FR Doc. 00–14576 Filed 6–8–00; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit and Availability of the Draft Multiple Species Habitat Conservation Plan/Draft Environment Impact Statement for Clark County, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Clark County, Nevada; the Cities of Las Vegas, North Las Vegas, Henderson, Boulder City, and Mesquite; and the Nevada Department of Transportation (Applicants) have applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed 30-year permit would authorize the incidental take of 2 federally threatened and endangered species, and 77 non-listed species of concern in the event that these species become listed under the Act during the term of the permit, in connection with economic growth and development of up to 145,000 acres of non-Federal lands in Clark County.

The Service has assisted in the preparation of the Draft Clark County Multiple Species Habitat Conservation Plan (Multispecies Plan) and Implementation Agreement, and has directed the preparation of a Draft Environmental Impact Statement addressing the potential effects on the human environment that may result from the granting of an incidental take permit and other Federal actions associated with implementation of the Multispecies Plan.

The Draft Multispecies Plan/Draft Environmental Impact Statement, and associated Implementation Agreement, are available for public review and comment. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: We must receive your written comments on or before July 24, 2000.

ADDRESSES: Send comments to Mr. Bob Williams, Field Supervisor, Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada, 89502; or by facsimile to (775) 861–6301.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Williams, Field Supervisor, Fish and Wildlife Service, Reno, Nevada, at (775) 861–6331; or Ms. Janet Bair, Assistant Field Supervisor, Fish and Wildlife Service, Las Vegas, Nevada, at (702) 647–5230.

SUPPLEMENTARY INFORMATION: You may request a copy of the document on CD–ROM by calling Ms. Sandy Helvey, Administrative Secretary, Clark County Department of Comprehensive Planning, at (702) 455–4181. To view the document, you will need access to an IBM or Macintosh computer with the capacity to read CD–ROMs.

Alternatively, you may view the document at the following Internet website: www.clark.co.nv.us. Click on "Health and the Environment," then click on "Environmental Planning", and finally click on "Habitat Conservation."

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In addition, you may review paper copies of the document at the following government offices and library:

Government Offices—Fish and Wildlife Service, Southern Nevada Field Office, 1510 North Decatur Boulevard, Las Vegas, Nevada 89108, tel: (702) 647–5230; Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502, (775) 861–6300; Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108, (702) 647–5000; U.S. Forest Service, 2881 South Valley View Boulevard, Las Vegas, Nevada 89102, (702) 873–8800; National Park Service, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005, (702) 293–8946; Nevada Department of Transportation, Environmental Services Division, 1263 South Stewart Street, Room 104A, Carson City, Nevada 89712, (775) 888–7889; Clark County Deparatment of Comprehensive Planning, 500 South Grand Central Parkway, Third Floor, Las Vegas, Nevada 89155, (702) 455–3859; Clark County Northeast Office, Moapa Community Center, 320 North Moapa Valley Boulevard, Overton, Nevada 89040, (702) 397–6475; City of Las Vegas, Department of Public Works, 731 South Fourth Street, Las Vegas, Nevada 89101, (702) 229–6541; City of North Las Vegas Public Works, 2266 Civic Center Drive, North Las Vegas, Nevada 89030, (702) 633–1225; City of Henderson, 240 Water Street, Henderson, Nevada 89015, (702) 565–2474; City of Boulder City, City Hall, 401 California Avenue, Boulder city, Nevada 89005, (702) 293–9200; and the City of Mesquite 10 East Mesquite Boulevard, Mesquite, Nevada 89027, (702) 346–2835.

Library—Clark County Public Library, Main Branch, 833 Las Vegas Boulevard North, Las Vegas, Nevada 89101, (702) 382–3493.

Background

Section 9 of the Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). "Harm" is defined by regulation to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Under certain circumstances, the Service may issue permits to authorize "incidental" take of listed animal species (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The taking prohibitions of the Act do not apply to listed plants on private land unless their destruction on private land is in violation of State law. The Applicants have considered plants in the Multispecies Plan and request permits for them to the extent that State law applies. Regulations governing permits for threatened and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

On July 11, 1995, the Service issued an incidental take permit, effective August 1, 1995, to Clark County; the Cities of Las Vegas, North Las Vegas, Henderson, Mesquite, and Boulder City; and the Nevada Department of Transportation for the Clark County Desert Conservation Plan (Desert Conservation Plan). This plan provides conservation measures for the threatened desert tortoise (*Gopherus agassizii*). In Clark County. The associated permit authorizes incidental take of the desert tortoise in Clark County consistent with the long-term viability of the species in this portion of its range.

The Desert Conservation Plan includes provisions for a proactive approch to conservation planning for multiple species in Clark County. The intent was to reduce the likelihood of future listings of plants and wildlife as threatened or endangered under the Act. the Multispecies Plan is the direct outgrowth of the provisions of the Desert Conservation Plan. If approved by the Service, The Multispecies Plan will supercede the Desert Conservation Plan and will provide stand-alone conservation measures for species included in the plan. We anticipate that implementation of the conservation measures in the Multispecies Plan will be a cooperative effort among the Applicants, the Service, Bureau of Land Management, U.S. Forest Service, National Park Service, Nevada Division of Wildlife, and other Federal and State land managers and regulators.

Clark County and the Cities of Las Vegas, North Las Vegas, Henderson, Mesquite, and Boulder City are seeking a 30–year permit for the incidental take of federally threatened and endangered species, and other non-listed species of concern in the event that these species become listed under the Act during the term of the permit, in connection with the development of non-Federal lands within Clark County, Nevada. In addition, the Nevada Department of Transportation has joined as an Applicant for the permit to allow the incidental take of desert tortoise within desert tortoise habitat below 5,000 feet in elevation and south of the 38th parallel in Nye, Lincoln, Mineral, and Esmeralda Counties, Nevada, and the incidental take of other non-listed species of concern within Clark County in connection with the construction and maintenance of roads, highways, and material sites.

The permit to the Applicants would authorize incidental take of 79 species on no more than 145,000 acres of land potentially available for development in Clark County. This acreage includes non-Federal lands that currently exist and non-Federal lands which result from sales or transfers from the Federal government after issuance of the permit. This acreage excludes existing development, the Boulder City Conservation Easement established under the current Desert Conservation Plan for the desert tortoise, and State lands managed for resource values. The 79 species proposed for incidental take coverage under the Multispecies Plan (covered species) include 2 listed species (the desert tortoise and the southwestern willow flycatcher, *Empidonax traillii extimus*), 1 candidate for listing (Blue diamond cholla, *Opuntia whipplei* var. *multigeniculata*), and 76 unlisted species comprised of 4 mammals, 7 birds, 14 reptiles, 1 amphibian, 10 invertebrates, and 40 plants.

To minimize and mitigate the impacts of take, the Applicants propose to impose a $550 per-acre development fee and maintain an endowment fund that will provide up to $4.1 million per biennial period to fund conservation measures for covered species and to administer the Multispecies Plan. The plan includes measures to implement a public information and education program; purchase grazing allotments and interest in real property and water; maintain and manage allotments, land, and water rights which have been acquired; construct barriers to wildlife movement along linear features such as roads; translocate displaced desert tortoises; participate in and fund local habitat rehabilitation and enhancement programs; and develop and implement an adaptive management process that allows for responses to new information.

The underlying purpose of the Multispecies Plan is to achieve a balance between (1) long-term conservation of natural habitat and native plant and animal diversity that are an important part of the natural heritage of Clark County, and (2) the orderly and beneficial use of land in order to promote the economy, health, well-being, and custom and culture of the growing population of Clark County, Nevada.

On March 3, 1997, th eService published a notice in the **Federal Register** (62 FR 9443) announcing that we would take the lead in preparing an Environmental Impact Statement addressing the Federal actions associated with the Multispecies Plan. This notice invited comments on the scope of the Environmental Impact Statement. Our consideration of comments received is reflected in the Draft Multispecies Plan/Draft Environmental Impact Statement made available for comment through this notice.

The Draft Multispecies Plan/Draft Environmental Impact Statement analyzes the potential environmental impacts that may result from the Federal action requested in support of the proposed development of up to 145,000 acres of non-Federal land in Clark County. The document identifies various alternatives, including the No Action Alternative, the Proposed Multispecies Plan, a Low-Elevation Ecosystems Multispecies Plan, a Permit Only for Threatened or Endangered and Candidate Species, and Alternative Permit Durations for the Multispecies Plan. Alternatives considered but not advanced for further analysis include a Permit to Include the Entire Mojave Desert Ecosystem, a Permit to Mitigate Impacts Only on Non-Federal Lands, and a High-Elevation Ecosystems Multispecies Plan.

The analysis provided in the Draft Multispecies Plan/Draft Environmental Impact Statement is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comment received during the scoping period; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

The Service invites the public to comment on the Draft Multispecies Plan/Draft Environmental Impact Statement during a 45–day comment period. All comments received will become part of the public record and may be released. This notice is provided pursuant to section 10(a) of the Endangered Species Act and regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: May 31, 2000.

Elizabeth H. Stevens,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 00–14099 Filed 6–8–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Establishment of the Little Darby National Wildlife Refuge.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for the proposed establishment of the Little Darby National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather the information necessary for the preparation of an EIS. The action to be evaluated by this EIS is the establishment of the Little Darby National Wildlife Refuge, located in Madison and Union counties, Ohio. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7 and 1508.22). The intent of the notice is to obtain suggestions and additional information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received on or before July 10, 2000. The dates and schedule of the public scoping meetings are: June 19—(6:00 p.m.–9:00 p.m.) at the Made From Scratch Conference Center, 7500 Montgomery Dr., Plain City, OH, and June 20 (6 p.m.–9 p.m.) at the Della Selsor Building located on the Madison County Fairgrounds, London, Ohio.

Public Involvement: The public will be invited to participate in the scoping process, review of the draft EIS, and a public hearing. Release of the draft EIS for public comment and the public hearing will be announced in the local news media, as these dates are established.

Comments that were received during the scoping process for the Environmental Assessment and on the draft Environmental Assessment will be considered in the draft EIS. The Service appreciates all those that have taken time to provide comments during the Environmental Assessment process. At this stage, the Service is especially seeking new ideas or concepts beyond those that have already been raised. Written comments should be received within 30 days from the date of publication of this Notice of Intent.

All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)]. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

ADDRESSES: Comments should be address to: Regional Director, Region 3, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota 55111. Electronic mail comments may also be submitted within the comment period to: http://www.fws.gov/r3pao/planning/public/htm.

FOR FURTHER INFORMATION CONTACT: Mr. William Hegge, Darby Creek Watershed Project Manager, Reynoldsburg Field Office, U.S. Fish and Wildlife Service, 6950–H Americana Parkway, Reynoldsburg, Ohio 43068–4132; telephone 614–469–6923, extension 17; or Mr. Thomas Larson, Chief of Ascertainment and Planning, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111; telephone 612–713–5430.

SUPPLEMENTARY INFORMATION:

Purpose of Action

The general purpose of the refuge would be "for the development, advancement, management, conservation, and protection of fish and wildlife resources" (Fish and Wildlife Act of 1956). More specifically, the Service's interests include preservation and restoration of Federal threatened and endangered species and migratory birds and their habitats in the Little Darby Creek Watershed, ensuring that the overall Darby Creek watershed biodiversity and Federal wildlife trust resources are protected and enhanced, while providing opportunities for wildlife-dependent public uses consistent with preservation and restoration of the natural resources.

After having developed a draft Environmental Assessment and conducting a series of public meetings, the Service had decided that the preparation of an EIS is appropriate for this proposed action. The decision to prepare an EIS is based upon strong public interest in the project, both supportive and non-supportive. There has also been interest expressed in development of an EIS by local governments and by members of the Ohio Congressional delegation.

Need for Action

Big and Little Darby Creeks, located 20 miles west of downtown Columbus, are the major streams in a 580-square mile watershed encompassing portions of 6 counties in central Ohio. The Darby watershed is one of the healthiest aquatic systems of its size in the Midwest and is ranked among the top five warm freshwater habitats in Ohio by the Ohio Environmental Protection Agency. Land use in the drainage basin has historically been agriculture, with appropriately 80 percent of the land area in fields, row-cropped, in a corn-soybean rotation. The project area was the location of the easternmost extension of the mid-continent tallgrass prairie. The following eight points help explain the need to preserve this area:

(1) Existing and threatened conversion of the watershed, from agriculture to urban land uses, presents an increased risk to the health of this aquatic system.

(2) Scientists (Ohio EPA surveys) place the number of fish species in the Darby Creek System at 94 and 60+; in the Little Darby Creek sub watershed. The number of mollusk species, including the federally endangered Northern riffle shell and the Northern club shell, is 35 (Dr. Tom Watters). They are reported to be declining.

(3) There are 3 federally endangered, 1 threatened, 1 candidate, and 10 monitored species confirmed in the original project area or likely to be in the original project area.

(4) Collectively, 44 species are designated as being state threaten or endangered throughout the watershed. Another 36 species are identified as potentially threatened or of special interest in the state. A total of 38 (24 percent) species listed in the Service's regional conservation priorities would be affected potentially by the project as proposed in the draft Environmental Assessment.

(5) While the Refuge project area encompasses only 14–15 percent of the entire Little Darby Creek Watershed, it includes almost 50 percent of all stream miles and important aquatic habitat that is in the watershed.

(6) The Ohio Department of Natural Resources, the National Park Service and the Nature Conservancy have all given special designations to the Big Darby and Little Darby Creeks. The Nature Conservancy identified this watershed as one of the "Last Great Places" in the Western Hemisphere.

(7) A 1996 report (Swanson, D.) found that the population trend in Ohio for 10 species of nongame grassland migratory birds exhibited declines in populations from 30 to 84 percent.

(8) The Service's Regional Wetlands Concept Plan, November 1990, identified the Big Darby Creek Watershed that includes Little Darby Creek as, "One of the last remaining watersheds in Ohio with excellent biological diversity." Under threat from development for water use and urban development, the area was listed as a potential wetland acquisition site.

Alternatives

A draft Environmental Assessment has been prepared and undergone public review and comment prior to this notice. This EIS will further evaluate alternative methods of establishing the Little Darby National Wildlife Refuge including alternatives for agricultural land use conservation that supports the Service's primary mission of fish and wildlife habitat protection. Socioeconomic, fiscal, and other community impacts related to alternative methods for refuge establishment will be further explored. Critical biological and potential management impacts will be evaluated as part of each part of each alternative or suite of alternatives that may have similar effects. Development of new alternatives and further evaluation of previously formulated alternatives will be made in conjunction with the local community, and interested state agencies. As required by NEPA, the Service will also analyze the "no action" alternative as a baseline for gauging the impacts of the establishment of the refuge.

Potential impacts that may be addressed in the EIS include effects on development, land use, habitat, wildlife populations, economics and listed species. Potential associated impacts may be related to drainage maintenance, school district revenue, tax revenue, fire management, and wildlife disease.

The environmental review of the proposed establishment of the Little Darby National Wildlife Refuge will be conducted in accordance with the requirements of the NEPA Act of 1969 as amended (42 U.S.C. 4371 *et seq.*), NEPA Regulations (42 CFR 1500–1508), other appropriate Federal regulations, and Service procedures for compliance with those regulations.

The Service estimates that the draft EIS will be made available to the public during the summer of 2000.

Dated: May 31, 2000.

William F. Hartwig,

Regional Director.

[FR Doc. 00–14101 Filed 6–8–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–056–1110–PH:GP0–0208]

Notice of Closure of Public Lands

AGENCY: Bureau of Land Management, Prineville District Office.

ACTION: Notice is hereby given that all roads and trails as legally described below are seasonally closed to all uses (including, but not limited to motorized vehicle use, hiking, mountain biking, horseback riding) from March 1 through August 31 annually. In addition, the area legally described below is seasonally closed to shooting from March 1 through August 31 annually. "Shooting", in this closure, is defined as the discharge of firearms.

The purpose of this closure is to protect wildlife resources. More specifically, this closure is ordered to reduce negative impacts to a nesting pair of prairie falcons. Prairie falcons are sensitive to human disturbance within the sensitive habitat area surrounding the nest site during the nesting season. Current uses at the site could jeopardize the persistence and nesting success of prairie falcons at this location.

Exemptions to this closure order will apply to administrative personnel for monitoring purposes; other exceptions to this restriction may be made on a case-by-case basis by the authorized officer. This emergency order will be in effect until further notice and will be evaluated in the Upper Deschutes Resource Management Plan/EIS. The authority for this closure is 43 CFR 89268.3(d)(i)(iii)(v): Operations—closures.

LEGAL DESCRIPTION: This closure order applies to all roads and trails located in Township 18 South, Range 14 East, WM, Sections 22, 23, 27 and 28, within ¼ mile the Badlands Rock.

FOR FURTHER INFORMATION CONTACT: Paul Schmidt, Wildlife Biologist, BLM Prineville District, P.O. Box 550, Prineville Oregon 97754, telephone (541) 416–6784.

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 9268.3(d)(iv).

Dated: June 1, 2000.

Don L. Smith,

Acting District Manager, Prineville District Office.

[FR Doc. 00–14641 Filed 6–8–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–4120–05; OKNM 104590]

Invitation To Participate; Exploration for Coal in Oklahoma

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with Farrell Cooper Mining Company on a pro rata cost sharing basis, in a program for the exploration of coal deposits owned by the United States of America. The lands are located in Haskell County, Oklahoma, and are described as follows:

T. 10 N., R. 21 E., Indian Meridian
Sec. 1, S½, NE¼;
Sec. 12, NW¼, N½SW¼, SW¼SW¼, NW¼SE¼, W½NE, and NE¼NE¼;
Containing 920.00 acres, more or less.

Any parties electing to participate in this exploration program shall notify in writing, both the Sate Director, Bureau, of Land Management, NW Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, and Farrell Cooper Mining Company, P.O. Box 11050, Fort Smith, Arkansas 72917. such written notice must include a justification for wanting to participate and any recommended changes in the exploration plan with specific reasons for such changes. The notice must be received no later than 30-calendar days after the publication of this notice in the Federal Register.

This proposed exploration program is for the purpose of determing the quality and quantity of the coal in the area and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by Farrel Cooper Mining company may be examined at the Bureau of land Management, New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502, and the Tulsa Field Office, 7906 East 33rd Street, Suite 101, Tulsa, Oklahoma 74145.

Dated: June 1, 2000.

Carsten F. Goff,

Acting State Director.

[FR Doc. 00–14642 Filed 6–8–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Impact Statement for Fruitland Coalbed Methane Gas Development

AGENCY: Bureau of Land Management, USDI, and Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Forest Service San Juan National Forest and the Bureau of Land Management San Juan Field Office published a notice of intent to prepare an environmental impact statement for the Fruitland Coalbed Methane Gas Development on April 4, 2000, (65 FR 17672). Included in the notice were dates for public meetings to review the notice of intent. This notice changes the public meeting dates from May 16 to June 28, 2000, and from May 17 to June 29, 2000, and extends the comment period for written comments for the notice of intent from June 1 to July 14, 2000. These changes are necessary to accommodate increased public interest.

DATES: The meetings will be held on June 28, 2000, and June 29, 2000; written comments must be received by July 14, 2000.

ADDRESSES: The June 28 meeting will be held at La Plata County Fairgrounds, Exhibit Hall, 2500 Main Street, Durango, Colorado; the June 29 meeting will be held at Bayfield High School, 800 County Road 501, Bayfield, Colorado. Both meetings will be from 5 p.m. to 8 p.m. Written comments should be sent to the San Juan Field Office Manager, Bureau of Land Management, USDI, 15 Burnett Court, Durango, Colorado 81301.

FOR FURTHER INFORMATION CONTACT: Jim Powers (970) 247–4874.

Dated: June 1, 2000.

Calvin N. Joyner,

San Juan Field Office Manager, Colorado, Bureau of Land Management, USDI, and Forest Supervisor, San Juan National Forest, Colorado, Forest Service, USDA.

[FR Doc. 00–14639 Filed 6–8–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management.

[NV–056–1430–ES; N–41567–29]

Notice of Realty Action: Lease/conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public lands in Las Vegas, Clark County, Nevada, were segregated on December 1, 1996 for administrative purposes under serial number N–61855. This segregation on the lands listed below will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to amend their current Recreation and Public Purposes lease N–41567–29 to include the following lands for development and expansion of Edith Garehime Elementary School.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Section 8: S½NW¼NE¼NW¼, Containing 5 acres, more or less.

The land is not required for any federal purpose. The leases/conveyances are consistent with current Bureau planning for this area and would be in the public interest. The leases/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and each will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Easements in favor of City of Las Vegas for roads, public utilities and flood control purposes.

2. All valid and existing rights, which are identified and shown in the case file.

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The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (Pub. L. 105–263).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an elementary school site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for the development of an elementary school.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: May 26, 2000.

Rex Wells,

Assistant Field Manager, Las Vegas, NV.

[FR Doc. 00–14643 Filed 6–8–00; 8:45 am]

BILLING CODE 1430–ES–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EQ; N–63154]

Notice of Realty Action: Commercial Lease of Public Lands, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Commercial lease.

SUMMARY: The Notice of Realty Action involves a long term lease of public lands administered by the Bureau of Land Management in Clark County, Nevada. The lease is intended to authorize Rank Brewing, LLC (N–63154) to utilize the land for a public parking lot, in conjunction with their private land, and subject to a right-of-way granted to (NEV–061518) Nevada Power Company and to a Recreation & Public Purpose lease issued to (N–51565) City of Las Vegas.

The land has been examined and found suitable for Commercial Leasing under (43 U.S.C. 2920). The legal description of the site is as follows:

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec. 15, E½SE¼NE¼NW¼, E½NE¼NE¼NW¼.

Containing 0.89 acres, more or less, generally located on the west side of Tenaya Way approximately 600 feet south of Cheyenne Avenue and Tenaya Intersection.

The site will be leased on a non-competitive basis. Detailed information is available for review at the Las Vegas Field Office, Bureau of Land Management, 4765 Vegas Dr., Las Vegas, Nevada 89108. Contact Frederick Marcell at 702/647–5164.

Reimbursement of costs shall be in accordance with the provisions of 43 CFR 2920.6.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the Assistant Field Manager, Division of Lands, Bureau of Land Management, 4765 Vegas Drive., Las Vegas, NV 89108. Any adverse comments will be evaluated by the Assistant Field Manager, Division of Lands who may vacate or modify this Realty Action and issue a final determination. In the absence of any adverse comments, this Realty Action will become the final determination of the Bureau.

Dated: March 30, 2000.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 00–14645 Filed 6–8–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–06–00–1220–EA]

Trail Use Restrictions

AGENCY: Bureau of Land Management, Interior.

ACTION: Restriction of uses on the Muddy Mountain Interpretive Nature Trail in the Muddy Mountain Environmental Education Area, Natrona County, Wyoming.

SUMMARY: Notice is hereby given that the following restrictions are placed on using the Muddy Mountain Interpretive Nature Trail:

a. All mechanized and motorized transportation devices are prohibited from using the trail. Examples include bicycles, all-terrain vehicles, passenger vehicles, and snowmobiles.

b. Horses are prohibited from using the trail.

c. Exemptions: The following persons are excluded from these prohibitions: (1) Handicapped persons using wheelchairs and similar devices are permitted to use the devices on the trail; (2) Strollers; (3) Federal, State and local emergency personnel and BLM employees while performing their official duties; and, (4) any person expressly authorized in writing by the Field Manager, Casper Field Office.

d. These restrictions are in effect year-round.

Penalties: Any person who fails to comply with the provisions of this notice may be subject to penalties outlined in 43 CFR 8360.0–7.

EFFECTIVE DATE: June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Don Whyde, Assistant Field Manager Resources, Casper Field Office, Bureau of Land Management, 2987 Prospector Drive, Casper, WY 82604. Telephone: 307–261–7600.

SUPPLEMENTARY INFORMATION: These trail restrictions are established in accordance with Environmental Assessment Number WY–062–EA–99–114 (Muddy Mountain Environmental Education Area, August 1999), and the Record of Decision and Finding of No Significant Impact, dated February 2, 2000.

The Muddy Mountain Interpretive Nature Trail was built as a handicapped accessible trail. In order for the trail to be maintained in good condition, it is necessary to restrict certain uses. Excessive use by any of the prohibited devices would cause rapid deterioration of the trail and its effectiveness as a handicapped accessible trail.

Dated: May 31, 2000.

James K. Murkin,

Field Manager.

[FR Doc. 00–14646 Filed 6–8–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GPO–0228]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 6 S., R. 45 E., accepted April 28, 2000
T. 22 S., R. 4 W., accepted April 28, 2000
T. 18 S., R. 12 W., accepted May 10, 2000
T. 21 S., R. 5 W., accepted May 16, 2000

Washington

T. 33 N., R. 16 W., accepted April 28, 2000
T. 33 N., R. 15 W., accepted April 28, 2000
T. 33 N., R. 14 W., accepted April 28, 2000
T. 32 N., R. 15 W., accepted April 28, 2000
T. 23 N., R. 13 W., accepted May 3, 2000
T. 18 N., R. 11 W., accepted May 19, 2000

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97210, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: May 31, 2000.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 00–14644 Filed 6–8–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Record of Decision for Combined Final Lower Sheenjek Wild and Scenic River Study and Legislative EIS

AGENCIES: National Park Service, Interior.

ACTION: Notice of availability of the record of decision for the combined final Lower Sheenjek Wild and Scenic River Study and Legislative EIS

SUMMARY: The National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the combined final Lower Sheenjek Wild and Scenic River Study and Legislative EIS.

The final study/LEIS was required by Section 5(a) of the National Wild and Scenic Rivers Act as amended by Section 604 of the Alaska National Interest Lands Conservation Act. It evaluates the segment of the Lower Sheenjek River from the mouth to the northern Boundary of the Yukon Flats National Wildlife Refuge, a distance of about 99 river miles.

The final study/LEIS and Record of Decision were done cooperatively by the U.S. Fish and Wildlife Service and National Park Service, as the latter agency was delegated wild and scenic river study responsibility by the Secretary of the Interior.

The Record of Decision (ROD) documents the decision of the Department of the Interior regarding the lower Sheenjek River. This ROD briefly discusses the background of the planning effort, states the decision and discusses the basis for it, describes other alternatives considered, specifies the environmentally preferable alternative, identifies measures adopted to minimize potential environmental harm, and summarizes the results of public involvement during the planning process.

The Record of Decision recommends congressional designation of the segment as a wild river. The directors of the National Park Service and U.S. Fish and Wildlife Service will continue coordination of the joint recommendation to the Secretary of the Interior. The Secretary will forward the final study/LEIS to the President, who will provide his recommendation and send it to Congress. Congress will make the final decision whether or not to designate the Lower Sheenjek River as a component of the National Wild and Scenic River System.

ADDRESSES: Copies of the ROD are available on request from: Jack Mosby, Program Manager—Rivers, Trails, and Conservation Assistance, National Park Service, 2525 Gambell Street, Anchorage, AK 99503–2892. Telephone (907) 257–2650 or email: jack_mosby@nps.gov

FOR FURTHER INFORMATION CONTACT: Jack Mosby, Program Manager—Rivers, Trails, and Conservation Assistance, National Park Service, 2525 Gambell Street, Anchorage, AK 99503–2892. Telephone (907) 257–2650 or email: jack_mosby@nps.gov

Dated: May 26, 2000.

Robert D. Barbee,

Regional Director, Alaska.

[FR Doc. 00–14680 Filed 6–8–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Johnson*, Civil Action No. 00CV11014 (D. Mass.), was lodged with the United States District Court for the District of Massachusetts on May 23, 2000. This proposed Consent Decree concerns a complaint filed by the United States against William Johnson and Virginia Riley, pursuant to section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), and imposes civil penalties against the Defendants for discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States at portions of an approximately 107 acre parcel of land located at 136 Holly Lane in Bridgewater, Massachusetts, where a cranberry farm now exists.

The proposed Consent Decree prohibits the discharge of pollutants into the waters of the United States and requires the payment of civil penalties in the amount of $500.00 to be paid by Defendant Virginia A. Riley and

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$1000.00 to be paid by Defendant William Johnson.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Jon M. Lipshultz, Environment and Natural Resources Division, Environmental Defense Section, U.S. Department of Justice, P.O. Box 23986, Washington, D.C. 20026–3986 and refer to *United States* v. *Johnson*, DJ # 90–5–1–1–05400/1.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Massachusetts, 2300 United States Courthouse, One Courthouse Way, Boston, MA 02210–3002.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 00–14618 Filed 6–8–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Application by the Denver Rocky Mountain News and The Denver Post for Approval of a Joint Newspaper Operating Arrangement

AGENCY: Department of Justice.

ACTION: Notice of public's right to comment.

SUMMARY: Notice is hereby given that the Attorney General has received an application for approval of a joint newspaper operating arrangement involving two daily newspapers in Denver, Colorado. The application was filed on May 12, 2000 by The E.W. Scripps Company, whose subsidiary, the Denver Publishing Company, publishes the Denver Rocky Mountain News, and the MediaNews Group, Inc., whose subsidiary, the Denver Post Corporation, publishes The Denver Post. The proposed arrangement provides that the printing and commercial operations of both newspapers would be handled by a third entity, the "Agency" which will be owned by the parties in equal shares. The joint operating agreement provides for the complete independence of the news and editorial departments of the two newspapers.

The Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.*, requires that joint newspaper operating arrangements such as that proposed by the Denver newspapers have the prior written consent of the Attorney General of the United States in order to qualify for the antitrust exemption provided by the Act. Before granting her consent, the Attorney General must find that one of the publications is a failing newspaper and that approval of the arrangement would effectuate the policy and purpose of the Act. Any person with views about the proposed arrangement may file written comments stating the reasons why approval should or should not be granted, or requesting that a hearing be held on the application. A request for hearing must set forth the issues of fact to be determined and the reason that a hearing is believed necessary to determine them.

All correspondence to the Department of Justice, the Attorney General and other Senior Department Officials commenting on the proposed JOA will be placed in the public file and made available as described below.

DATES AND PLACE FOR FILING: Comments shall be filed by mailing or delivering five copies to the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, Washington, DC 20530, and must be received by July 10, 2000. Replies to any comments filed on or before that date may be filed on or before August 8, 2000.

ADDRESSES: In accordance with the Newspaper Preservation Act Regulations, at 28 CFR Part 48, copies of the proposed arrangement and other materials filed by the newspapers in support of the application are available for public inspection in the main offices of the newspapers involved. In addition, these materials plus any filed comments are available for public inspection in the Department of Justice, National Place Building, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Stuart Frisch, General Counsel, Justice Management Division, 202–514–3452.

Dated: June 6, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 00–14692 Filed 6–8–00; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28, CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Dyer*, Civil Action No. 00CV11013 (D. Mass.), was lodged with the United States District Court for the District of Massachusetts on May 23, 2000. This proposed Consent Decree concerns a complaint filed by the United States against Bruce S. Dyer and the Holly Farms Nominee Trust, pursuant to section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), to obtain injunctive relief from, and impose civil penalties against the Defendants for the discharge of pollutants into the waters of the United States at portions of an approximately 107 acre parcel of land located at 36 Holly Lane in Bridgewater, Massachusetts where a cranberry farm now exists.

The proposed Consent Decree prohibits the discharge of pollutants into waters of the United States without authorization by the United States Department of the Army Corps of Engineers and requires Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by their unlawful activities. This proposed Consent Decree further requires Defendants to pay civil penalties to the United States as follows: two thousand dollars ($2,000) within thirty (30) days of the date of entry of this Consent Decree; three thousand dollars ($3,000) at the one year anniversary of the date of entry; three thousand dollars ($3,000) at the two year anniversary of the date of entry; and four thousand dollars ($4,000) at the four year anniversary of the date of entry.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Jon M. Lipshultz, Environment and Natural Resources Division, Environmental Defense Section, U.S. Department of Justice, P.O. Box 23986, Washington, D.C. 20026–3986 and refer to *United States* v. *Dyer*, DJ # 909–5–1–1–05400/1.

The proposed Consent decree may be examined at the Clerk's Office, United States District Court for the District of Massachusetts, 2300 United States Courthouse, One Courthouse Way, Boston, MA 02210–3002.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 00–14617 Filed 6–8–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department of Justice policy codified at 28 CFR 50.7 and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on May 26, 2000, two proposed Consent Decrees in *United States* v. *Elsa Morgan-Skinner, et al.*, Civ. Action No. C–1–00–424, were lodged with the United States District Court for the Southern District of Ohio. The first Consent Decree represents a settlement of claims of the United States for recovery of response costs incurred by the United States in connection with the Skinner Landfill Superfund Site (Site) in West Chester, Ohio, under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9607(a), against Elsa Morgan-Skinner and seventy-two (72) other potentially responsible parties (PRPs) that contributed hazardous substances to the Site. Under the terms of the Consent Decree (the Remedial Action or "RA Consent Decree"), the Settling Generator/Transporter Defendants, including approximately sixty-six (66) companies, (Work Parties) will implement an EPA-approved remedial action which includes, among other things, the construction of a cap over a former dump and buried waste lagoon area; and the interception, capture and treatment of contaminated groundwater located down-gradient from the capped area. The Settling Owner/Operator Defendant Elas Morgan-Skinner, the current Site owner, agrees to grant access to and restrictive use covenants on the Site, and resolve her liability by selling an option to purchase the Site for $5,000 to the Work Parties. A portion of the proceeds of any such sale will be deposited into an account known as the Skinner Landfill Special Account. Two Settling Federal Agencies, the General Services Administration and the Defense Logistics Agency, will pay $602,599.12 into the Skinner Landfill Special Account. Finally, the Settling *De Minimis* Federal Agencies, including the United States Army, United States Air Force, United States Information Agency and the United States Postal Service, each of which contributed less than 1% of the total volume of waste at the Site, will pay $87,804.29 into the Skinner Landfill Special Account. Eighty percent of the funds in the Special Account will be available for disbursement to the Work Parties for their remediation work. In exchange for these payments and performance of the remedial action, each of the Settling Defendants under the RA Consent Decree will receive covenants not to sue and contribution protection.

The second Consent Decree resolves the United States' claims for recovery of response costs incurred at the Site against seven municipalities, including the Cities of Blue Ash, Deer Park, Madiera, Mason, Sharonville and the Villages of Lincoln Heights and Monroe, each of which contributed municipal solid waste (MSW) to the Site. Under the terms of this Consent Decree (known as the "MSW Consent Decree") the Settling Municipalities will pay a total of $17,218 into the Skinner Special Account. These funds will be made available to the Work Parties for their remediation work. In exchange for this payment, each of the Settling Municipalities will receive a covenant not to sue and contribution protection.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, and should refer to *United States* v. *Elsa Morgan-Skinner et al.* Civ. Action No. C–1–00–424, D.F. Ref. Nos. 90–11–3–1620, 90–11–6–118, 90–11–6–128.

The Consent Decrees may be examined at the Office of the United States Attorney, 220 United States Post Office & Courthouse, 100 E. 5th Street, Cincinnati, Ohio, 45202, and at the United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. A copy of the Consent Decrees may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy of the Consent Decree, please enclose a check payable to the Consent Decree Library in amount of $65.50 for both Consent Decrees; or $60.00 (240 pages at 25 cents per page reproduction cost) for the RA Consent Decree; or $5.50 (22 pages at 25 cents per page reproduction cost) for the MSW Consent Decree.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental & Natural Resources Division.

[FR Doc. 00–14624 Filed 6–8–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on May 23, 2000, a proposed Consent Decree in *United States* v. *Riverside Plating Company, Inc. et al.*, Civil Action No. 00–C–0320 was lodged with the United States District court for the Western District of Wisconsin.

This consent decree represents a settlement of claims brought against Riverside Plating Company, Inc. ("Riverside Plating") and Richard J. Bouziane under Section 107 of CERCLA, 42 U.S.C. 9607, for the recovery of costs incurred by the United States in responding to the release or threatened release of hazardous substances at and from the Riverside Plating Superfund Site in Janesville, Wisconsin. John C. Bouziane, Michael J. Bouziane, Bouziane Enterprises, Bouziane Plating, the Ruth Bouziane Trust, the Bouziane Family Trust and the Estate of Ruth Bouziane are also parties to the consent decree.

Under the proposed settlement, Riverside Plating and Richard Bouziane will, *inter alia*, pay the United States $50,000 in partial reimbursement of response costs incurred by the United States in connection with the Riverside Plating Superfund Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Riverside Plating Company, Inc. et al*, D.J. Ref. 90–11–2–06129/2.

The Consent Decree may be examined at the Office of the United States Attorney, 660 West Washington Ave., Suite 200, Madison, Wisconsin, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. In requesting a copy, please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–14623 Filed 6–8–00; 8:45 am]

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DEPARTMENT OF JUSTICE

[AAG/A Order No. 199–2000]

Privacy Act of 1974; System of Records

The Department of Justice (DOJ), Justice Management Division (JMD), proposes to modify the Employee Assistance Program (EAP) Treatment and Referral Records, Justice/JMD–16. The primary purpose for establishing the system of records was to permit the standard medical practice of retaining and recording the mental health history of EAP clients, the rationale for the counseling and referral provided by the EAP counselor and to record the number of contacts made over time. The Department now proposes to modify the routine uses of records maintained in the system to reflect changes in program personnel, policy and procedures. The existing routine use allowing for disclosures to state or local authorities to report, where required under State law, incidents of child abuse or neglect, has been revised to include incidents of elder or domestic abuse or neglect. In addition, to reflect the fact that the Department refers EAP clients to contract counselors, the Notice adds a routine use allowing for the disclosure of records to such contractors. The Notice also adds a routine use permitting disclosures to any person who is responsible for the care of an EAP client when the EAP client to whom the records pertain is mentally incompetent or under legal disability. Finally, the Notice adds a routine use allowing for disclosures to any person or entity to the extent necessary to meet a bona fide medical emergency. When this last routine use was suggested when the Department published its original EAP System of Records notice, it was eliminated based on the argument that exemption (b)(8), 5 U.S.C. sec. 552a(b)(8), to the Privacy Act, already provided authority to make such disclosures. Recognizing that there is ambiguity in exemption (b)(8) as to whether records about an individual may be disclosed to a third person, we have added this routine use to clearly allow for such disclosures in medical emergencies.

In addition, the Department is revising the System Location and System Manager and Address sections to reflect personnel changes, and updating the "Storage" and "Retention" sections to reflect a partial automation of the system.

Title 5 U.S.C. sec. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the proposed modifications. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed modifications. Therefore, please submit any comments by 40 days from publication of this notice. The public, OMB and the Congress are invited to submit written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530, (202) 307–1823.

As required by 5 U.S.C. sec. 552a(r), the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

A modified system description is set forth below.

Dated: June 1, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/JMD–016

SYSTEM NAME:

Employee Assistance Program (EAP) Counseling and Referral Records, Justice/JMD–016.

SYSTEM LOCATION:

Records are maintained by the JMD EAP staff. Interested parties wishing to correspond regarding records should direct their inquiries to the EAP System Manager, DOJ EAP and Worklife Group Assistant Director, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Ave. NW, Washington, DC, 20530, or call (202) 514–1846.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Offices, Boards, Divisions and occasionally Bureaus of the Department (as listed at 28 CFR 0.1), including the Office of the Inspector General, the Executive Office of the U.S. Trustees, the Executive Office for Immigration Review and the Office of Justice Programs, who have sought counseling or have been referred for counseling or treatment through the EAP. To the limited degree that counseling and referral may be provided to family members of these employees, these individuals are covered by the EAP System. The remainder of this notice will refer to all persons covered by the System as "EAP client(s)." Categories of records in the system:

Records include any record, written or electronic, which may assist in diagnosing, evaluating, counseling and/or treating an EAP client, or resolving an EAP client's complaint or management's concerns (management consultation) regarding the EAP client's performance, attendance, or conduct problems. Included are the EAP counselor's intake/termination and outcome documents; case notes; pertinent psychosocial, medical and employment histories; medical tests or screenings, including drug and alcohol tests and information on positive drug tests generated by the staff of the Drug Free Workplace Program or treatment facilities from which the EAP client may be receiving treatment; treatment and rehabilitation plans; behavioral improvement plans; and records of referrals. Referrals include those to community treatment resources and social service agencies that provide legal, financial or other assistance not related to mental health or general medical services. Where clinical referrals have been made, records may include relevant information related to counseling, diagnosis, prognosis, treatment and evaluation, together with follow-up data that may be generated by the community program providing the relevant services. Other records included in the system are the written consent forms used to permit the disclosure of information outside the EAP. Records may also include account information, such as contractor billings and government payments, when EAP services are provided by an EAP contractor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. sec. 290dd–2; 42 CFR part 2; 5 U.S.C. 3301, 7361, 7362, 7901 and 7904; 44 U.S.C. 3101; Executive Order 12564; and Pub. L. 100–71, 101 Stat. 391, sec. 503 (July 11, 1987).

PURPOSE:

Records are maintained to document the work performed by the EAP on behalf of the EAP client and to allow for the tracking of the EAP client's progress and participation in the EAP or community programs. These records may also be used to track compliance with Abeyance or Last Change Agreements that include treatment options, in which the EAP is an integral part of establishing and/or monitoring treatment compliance as directed by the EAP client. Routine uses of records maintained in the system, including categories of users and purposes of such uses:

In addition to those disclosures permitted by the Privacy Act itself, 5 U.S.C. sec. 552a(b), relevant information may be disclosed from this system of records without EAP client consent as follows: [1]

1. To appropriate State or local authorities to report, where required under State law, incidents of suspected child, elder or domestic abuse or neglect.

2. To any person or entity to the extent necessary to prevent an imminent crime which directly threatens loss of life or serious bodily injury.

3. To JMD contractors that provide counseling and other services through referrals from the EAP staff to the extent that it is appropriate, relevant, and necessary to enable the contractor to perform his or her counseling, treatment, rehabilitation, and evaluation responsibilities.

4. To any person who is responsible for the care of an EAP client when the EAP client to whom the records pertain is mentally incompetent or under legal disability.

5. To any person or entity to the extent necessary to meet a bona fide medical emergency.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained on paper and computer discs which are stored in locked GSA-approved security containers.

RETRIEVABILITY:

Records are indexed and retrieved by identifying number or symbol, cross-indexed to EAP client names.

SAFEGUARDS:

Paper records and computer discs are kept in locked GSA-approved security containers, and the computer discs are password protected. Only EAP staff will have access to the records. Records may be reviewed by any EAP staff member as may be needed to provide EAP services. No record may be released by the DOJ EAP staff without prior approval of the DOJ EAP System Manager.

RETENTION AND DISPOSAL:

Records are retained for three years after the EAP client ceases contact with the counselor (in accordance with General Records Schedule No. 1, Item No. 26) unless a longer retention period is necessary because of administrative or judicial proceedings. In such cases, the records are retained for six months after the conclusion of the proceedings. Paper records are destroyed by shredding, which must be performed by an EAP staff member. Computer discs are erased, degaussed or physically destroyed by an EAP staff member.

SYSTEM MANAGER AND ADDRESS:

DOJ EAP and Worklife Group Assistant Director, Justice Management Division, U.S. Department of Justice 950 Pennsylvania Ave. NW, Washington, DC 20530, (202) 514–1846.

NOTIFICATION PROCEDURE:

Some as Record Access Procedures.

RECORD ACCESS PROCEDURES:

Make all requests for access in writing to the EAP System Manager identified above. Clearly mark the envelope and letter "Freedom of Information Act/Privacy Act Request." Provide the full name and notarized signature of the individual who is the subject of the record, the dates during which the individual was in counseling , any other information which may assist in identifying and locating the record, and a return address.

CONTESTING RECORD PROCEDURES:

Director all requests to contest or amend information to the EAP System Manager identified above. The request should follow the Record Access Procedures, listed above, and should state clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope and letter "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Records are generated by EAP personnel, referral counseling and treatment programs or individuals, the EAP client who is the subject of the record, the personnel office and the EAP client's supervisor. In the case of drug abuse counseling, records may also be generated by the staff of the Drug-Free Workplace Program and the Medical Review Officer.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

[FR Doc. 00–14616 Filed 6–8–00; 8:45 am]

BILLING CODE 4910–CJ–M

[1] To the extent that the release of alcohol and drug abuse records is more restricted than other records subject to the Privacy Act. DOJ will follow such restrictions. See 42 U.S.C. 290dd–2; 42 CFR part 2.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2065R–00]

RIN 1115–AE26

Extension of Re-registration Period and Work Authorization for Honduras Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends the re-registration period until July 5, 2000 for those eligible nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who may re-register for Temporary Protected Status (TPS) and apply for a new period of employment authorization. On May 11, 2000, through a notice in the **Federal Register** at 65 FR 30438, the Attorney General extended the TPS designation of Honduras for an additional 12-month period, until July 5, 2001. The May 11, 2000 **Federal Register** notice also set the end of the filing period for re-registration at June 12, 2000, which is now being changed to July 5, 2000.

In addition to extending the re-registration period, this notice extends until December 5, 2000 the validity of Employment Authorization Documents (EADs) that were issued to Honduran nationals (or aliens having no nationality who last habitually resided in Honduras) under the initial TPS designation and that are set to expire on July 5, 2000. To be eligible for this automatic extension of employment authorization, an individual must be a national of Honduras (or an alien having no nationality who last habitually resided in Honduras) who previously applied for and received an EAD under the initial January 5, 1999 designation of Honduras for TPS. This automatic extension is limited to EADs bearing an expiration date of July 5, 2000 and the notation:

- "A–12" or "C–19" on the face of the card under "Category" for EADs issued on Form I–766; or,
- "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law" for EADs issued on Form I–688B.

EFFECTIVE DATES: The extension of the TPS designation for Honduras is effective July 6, 2000, and will remain in effect until July 5, 2001. The re-registration period began May 11, 2000 and will remain in effect until July 5, 2000. All EADs that were issued to

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Honduran nationals (or aliens having no nationality who last habitually resided in Honduras) under the initial Honduras TPS designation and that are set to expire on July 5, 2000 are automatically extended until December 5, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Hardin, Office of Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Why Did the Immigration and Naturalization Service Decide To Extend the Re-registration Period for Hondurans Filing for an Extension of Temporary Protected Status?

The extreme devastation of Hurricane Mitch prompted the Attorney General to make an unprecedented original 18-month designation under TPS for Honduras. Typically, TPS designations are for 12 months, which is also the time period after which TPS applicants must annually register with the Immigration and Naturalization Service (Service). 8 U.S.C. 1254a(c)(3)(C). This annual registration must take place within 30 days of the anniversary of the initial grant of Temporary Protected Status. 8 CFR 244.17.

The initial 18-month grant of TPS status to Honduras, combined with EADs issued under TPS designations for Honduras stating July 5, 2000 as their expiration date, has caused confusion is to when a Honduran TPS applicant is required to file for a TPS extension. Because of this, the Service is extending the dates for re-registration by this Notice until the last day of the initial Honduras TPS designation, July 5, 200.

When Can I Register for an Extension of TPS?

The re-registration period begins May 11, 2000 and will remain in effect until July 5, 2000. Applications must be physically received, not just postmarked, at the appropriate Service Center by July 5, 2000. For further filing instructions, see the previous notice in the May 11, 2000 **Federal Register**.

What Forms Must I Send in Order To Register for an Extension of TPS?

As stated previously, in the May 11, 2000, **Federal Register** notice, in order to re-register under the TPS program, you must file your TPS application, Form I–821 (without fee) and an application for employment authorization, Form I–765. If you want an EAD, you must submit a fee of $100. If you are not requesting employment authorization, you do not need to submit a fee. Both forms I–821 and I–765 must be received by the appropriate Service Center by July 5, 2000.

Why Is the Service Automatically Extending the Expiration Date of EADs From July 5, 2000 to December 5, 2000?

As stated above, qualified individuals must apply for a new EAD in order to register for and extension of TPS. Conserving both the number of applications that the Service anticipates it will receive and Service processing capabilities given the short timeframe provided by statute for the decision to extend the Attorney General's designation of Honduras under the TPS program, it is likely that many re-registrants will receive their new EAD after the expiration date of their current EAD. Unless an extension on the expiration date of their EAD is provided, re-registrants may experience a gap in employment authorization. Therefore, to afford the Service sufficient processing time and to ensure that re-registrants will be able to maintain their employment authorization until they receive a new EAD in connection with their re-registration for the new period of TPS, the Service, through this notice, is extending the validity of applicable EADs to December 5, 2000.

Who Is Eligible To Receive an Automatic Extension of Employment Authorization?

To be eligible for an automatic extension of employment authorization, an individual must be a national of Honduras (or an alien having no nationality who last habitually resided in Honduras) who previously applied for and received and EAD under the initial January 5, 1999 designation of Honduras for TPS. This automatic extension is limited to EADs bearing an expiration date of July 5, 2000 and the notation:

- "A–12 or "C–19" on the face of the card under "Category" for EADs issued on Form I–766; or,
- "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law" for EADs issued on Form I–688B.

Does a Qualified Individual Have To Apply to the Service for the Automatic Extension to December 5, 2000 of His or Her TPS-related EAD?

No, the extension of the validity of the previously issued EADs to December 5, 2000 is automatic and there is no fee. However, as discussed below, qualified individuals are encouraged to retain a copy of this **Federal Register** notice for purposes of the employment verification process. Also, qualified individuals must re-register by July 5, 2000 in order to be eligible for a new EAD that is valid until July 5, 2001.

What Documents Can a Qualified Individual Show to His or Her Employer as Proof of Employment Authorization and Identity When Completing the Employment Eligibility Verification Form (Form I–9)?

For completion of the Form I–9 at the time of hire or reverification, qualified individuals who have received an extension of employment authorization by virtue of their **Federal Register** notice can present their employer their TPS-related EAD as proof of valid employment authorization and identity until December 5, 2000. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this **Federal Register** notice regarding the extension of employment authorization to December 5, 2000. In the alternative to presenting a TPS-related EAD, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

How Can Employers Determine Which EADs That Have Been Automatically Extended Through December 5, 2000, Are Acceptable for Completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until December 5, 2000, employers of TPS Honduran nationals (or aliens having no nationality who last habitually resided in Honduras) whose employment authorization has been automatically extended by this notice must accept an EAD that contains an expiration date of July 5, 2000 and that bears the notation:

- "A–12" or "C–19" on the face of the card under "Category" for EADs issued on Form I–766; or,
- "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law" for EADs issued on Form I–688B.

New EADs or extension stickers showing the December 5, 2000 expiration date will not be issued. Employers should not request proof of Honduran citizenship. Employers presented with an EAD that has been extended by this **Federal Register** notice and that appears to be genuine and to relate to the employee should accept the document as a valid List A document and should not ask for additional I–9 documentation. This action by the Service through this **Federal Register** notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment. Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. Employers may call the Service's Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a Service representative about this Notice. Employers can also call the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Employees or applicants can call the OSC Employee Hotline at 1–800–255–7688 about the automatic extension.

Doe This Notice Affect Any Other Portion of the May 11, 2000 Federal Register Notice Extending TPS Designation for Honduras Until July 5, 2001?

No. All other TPS requirements contained in the May 11, 2000, **Federal Register** notice at 65 FR 30438 are accurate and remain in effect.

Dated: May 25, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–14534 Filed 6–8–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2064R–00]

RIN 1115–AE26

Extension of Re-Registration Period and Work Authorization for Nicaraguans Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service.

ACTION: Notice.

SUMMARY: This notice extends the re-registration period until July 5, 2000 for those eligible nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who may re-register for Temporary Protected Status (TPS) and apply for a new period of employment authorization. On May 11, 2000, through a notice in the **Federal Register** at 65 FR 30440, the Attorney General extended the TPS designation of Nicaragua for an additional 12-month period, until July 5, 2001. The May 11, 2000 **Federal Register** notice also set the end of the filing period for re-registration at June 12, 2000, which is now being changed to July 5, 2000.

In addition to extending the re-registration period, this notice extends until December 5, 2000 the validity of Employment Authorization Documents (EADs) that were issued to Nicaraguan nationals (or aliens having no nationality who last habitually resided in Nicaragua) under the initial TPS designation and that are set to expire on July 5, 2000. To be eligible for this automatic extension of employment authorization, an individual must be a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua) who previously applied for and received an EAD under the initial January 5, 1999 designation of Nicaragua for TPS. This automatic extension is limited to EADs bearing an expiration date of July 5, 2000 and the notation:

- "A–12" or "C–19" on the face of the card under "Category" for EADs issued on Form I–766; or,
- "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law" for EADs issued on Form I–688B.

EFFECTIVE DATES: The extension of the TPS designation for Nicaragua is effective July 6, 2000, and will remain in effect until July 5, 2001. The re-registration period began May 11, 2000 and will remain in effect until July 5, 2000. All EADs that were issued to Nicaraguan nationals (or aliens having no nationality who last habitually resided in Nicaragua) under the initial Nicaragua TPS designation and that are set to expire on July 5, 2000 are automatically extended until December 5, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Hardin, Office of Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Why Did the Immigration and Naturalization Service Decide To Extend the Re-Registration Period for Nicaraguans Filing for an Extension of Temporary Protected Status?

The extreme devastation of Hurricane Mitch prompted the Attorney General to make an unprecedented original 18-month designation under TPS for Nicaragua. Typically, TPS designations are for 12 months, which is also the time period after which TPS applicants must annually register with the Immigration and Naturalization Service (Service). 8 U.S.C. 1254a(c)(3)(C). This annual registration must take place within 30 days of the anniversary of the initial grant of Temporary Protected Status. 8 CFR 244.17.

The initial 18-month grant of TPS status to Nicaragua, combined with EADs issued under TPS designations for Nicaragua stating July 5, 2000 as their expiration date, has caused confusion as to when a Nicaraguan TPS applicant is required to file for a TPS extension. Because of this, the Service is extending the dates for re-registration by this Notice until the last day of the initial Nicaragua TPS designation, July 5, 2000.

When Can I Register for an Extension of TPS?

The re-registration period begins May 11, 2000 and will remain in effect until July 5, 2000. Applications must be physically received, not just postmarked, at the appropriate Service Center by July 5, 2000. For further filing instructions, see the previous notice in the May 11, 2000 **Federal Register**.

What Forms Must I Send in Order To Register for an Extension of TPS?

As previously stated in the May 11, 2000 **Federal Register** notice, in order to re-register under the TPS program, you must file your TPS application, Form I–821 (without fee) and an application for employment authorization, Form I–765. If you want an EAD, you must submit a fee of $100. If you are not requesting employment authorization, you do not need to submit a fee. Both forms I–821 and I–765 must be received by the appropriate Service Center by July 5, 2000.

Why Is the Service Automatically Extending the Expiration Date of EADs From July 5, 2000 to December 5, 2000?

As stated above, qualified individuals must apply for a new EAD in order to register for an extension of TPS. Considering both the number of applications that the Service anticipates it will receive and Service processing capabilities given the short timeframe provided by statute for the decision to extend the Attorney General's designation of Nicaragua under the TPS program, it is likely that many re-registrants will receive their new EAD after the expiration date of their current EAD. Unless an extension on the expiration date of their EAD is provided, re-registrants may experience a gap in employment authorization. Therefore, to afford the Service sufficient processing time and to ensure that re-registrants will be able to maintain their employment authorization until they receive a new

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EAD in connection with their re-registration for the new period of TPS, the Service, through this notice, is extending the validity of applicable EADs to December 5, 2000.

Who Is Eligible To Receive an Automatic Extension of Employment Authorization?

To be eligible for an automatic extension of employment authorization, an individual must be a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua) who previously applied for and received an EAD under the initial January 5, 1999 designation of Nicaragua for TPS. This automatic extension is limited to EADs bearing an expiration date of July 5, 2000 and the notation:

- "A–12" or "C–19" on the face of the card under "Category" for EADs issued on Form I–766; or,
- "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law" for EADs issued on Form I–688B.

Does a Qualified Individual Have To Apply to the Service for the Automatic Extension to December 5, 2000 of His or Her TPS-Related EAD?

No, the extension of the validity of the previously issued EADs to December 5, 2000 is automatic and there is no fee. However, as discussed below, qualified individuals are encouraged to retain a copy of this **Federal Register** notice for purposes of the employment verification process. Also, qualified individuals must re-register by July 5, 2000 in order to be eligible for a new EAD that is valid until July 5, 2001.

What Documents Can a Qualified Individual Show to His or Her Employer as Proof of Employment Authorization and Identity When Completing the Employment Eligibility Verification Form (Form I–9)?

For completion of the Form I–9 at the time of hire or reverification, qualified individuals who have received an extension of employment authorization by virtue of this **Federal Register** notice can present to their employer their TPS-related EAD as proof of valid employment authorization and identity until December 5, 2000. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this **Federal Register** notice regarding the extension of employment authorization to December 5, 2000. In the alternative to presenting a TPS-related EAD, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

How can Employers Determine Which EADs That Have Been Automatically Extended Through December 5, 2000 are Acceptable for Completion of the Form I–9?

For the purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until December 5, 2000, employers of TPS Nicaraguan nationals (or aliens having no nationality who last habitually resided in Nicaragua) whose employment authorization has been automatically extended by this notice must accept an EAD that contains an expiration date of July 5, 2000 and that bears the notation:

- "A–12" or "C–19" on the face of the card under "Category" for EADs issued on Form I–766; or,
- "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law" for EADs issued on Form I–688B.

New EADs or extension stickers showing the December 5, 2000 expiration date will not be issued. Employers should not request proof of Nicaraguan citizenship. Employers presented with an EAD that has been extended by this **Federal Register** notice and that appears to be genuine and to relate to the employee should accept the document as a valid List A document and should not ask for additional I–19 documentation. This action by the Service through this **Federal Register** notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment. Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. Employers may call the Service's Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a Service representative about this Notice. Employers can also call the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Employees or applicants can call the OSC Employee Hotline at 1–800–255–7688 about the automatic extension. Does this notice affect any other portion of the May 11, 2000 **Federal Register** notice extending TPS designation for Nicaragua until July 5, 2001?

No. All other TPS requirements contained in the May 11, 2000, **Federal Register** notice at 65 FR 30440 are accurate and remain in effect.

Dated: May 25, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–14533 Filed 6–8–00; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP(BJS)–1272]

Profiles of Criminal Justice Systems in Selected Countries

AGENCY: Office of Justice Programs, Bureau of Justice Statistics, Justice.

ACTION: Notice of solicitation.

SUMMARY: The purpose of this notice is to announce a solicitation for the preparation of criminal justice system profiles for five countries in Latin America, to be added to BJS's *World Factbook of Criminal Justice Systems.*

DATES: Proposals must be received by 5 p.m. EST on July 24, 2000.

ADDRESSES: Proposals should be mailed to Lea S. Gifford, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, D.C. 20531; Phone: (202) 307–0765 [This is not a toll-free number].

FOR FURTHER INFORMATION CONTACT: Lea S. Gifford, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, D.C. 20531; Phone: (202) 307–0765 [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

Statutory Authority

The grant awarded through this solicitation will be funded by the Bureau of Justice Statistics consistent with its mandate under 42 U.S.C. 3732(c).

Program Goals

The purpose of this award is to support the development of descriptive criminal justice system profiles of individual countries written in English, designed to facilitate comparisons between the United States and the other Latin American countries profiled. These profiles will serve as a resource for program and policy development in Latin America, for researchers engaged in cross-country analysis, and for those examining the relationship between differing systems of justice and cross-national crime.

Background

In the early 1990s, the Bureau of Justice Statistics funded a project entitled the *World Factbook of Criminal Justice Systems.* When the *Factbook* was first compiled, it consisted of articles on 42 countries, each written to a common template by someone fluent in the language of, and having detailed knowledge of, that country. These profiles are available on the BJS website at http://www.ojp.usdoj.gov/bjs/abstract/wfcj.htm. This project was undertaken to improve the availability and comparability of descriptions of the criminal justice systems in various countries. Such descriptions are necessary to enable the appropriate collection and accurate analysis of crime and justice data from these countries, as well as to inform researchers and officials who plan to work with such countries with regard to their criminal justice operations.

Scope of Work

The objectives of the proposed project are to expand the *World Factbook* template for maximum utility, update the pre-existing profile of the criminal justice system in Costa Rica accordingly, and to create criminal justice system profiles for four additional Latin American countries based on the revised template. Applicants should familiarize themselves with the current template which appears at *www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjint.txt* and should carefully read the entire introduction as well as one or two of the profiles.

Phase One of the project will consist of collaborating with BJS and other interested parties in order to revise the template, so that resulting profiles will include all the information that a researcher or visitor would reasonably need to know to accurately analyze and understand crime and justice data. The grantee will then update the profile of Costa Rica according to the revised template. Upon completion of this task to BJS" satisfaction, the grantee will proceed to Phase Two.

Phase Two will consist of preparing new criminal justice system profiles for four Latin American countries (other than Costa Rica).

Preparation of the country profiles will require significant contact with persons at all stages of the criminal justice system within each country. It is strongly suggested, but not required, that the applicant collaborate with a local criminal justice researcher in each profiled country. The grantee is encouraged to propose which four Latin American countries will be profiled; however BJS will make the final selection by considering the following factors: (1) Representation of the diversity of criminal justice systems in Latin America (Central America, Mexico, South America), (2) recent systemic changes that have policy relevance and merit documentation, (3) availability of reliable contacts and statistical data, and (4) importance as a source of transnational crime.

Statistical material for each country will be the latest available official data from the country. Sources and contacts made for each country will be carefully documented. The profiles should include descriptions of how statistics are collected and maintained in each country and how the public can access them. The profiles should incorporate important information from and/or reference similar country profiles, such as those provided by the CIA and the Library of Congress, and any country-specific sources of crime or criminal justice data.

Products

The grantee will deliver to BJS Web-ready electronic versions of the template and all five country profiles on diskette in text file format. These files will be posted on the BJS Website and may be used for subsequent publications.

Application and Award Process

An original and three (3) copies of a full proposal must be submitted with a Standard Form 424, Application for Federal Assistance, Budget Detail Worksheet, OJP Forms 4000/3, and 4061/6. These forms can be obtain online *www.ojp.usdoj.gov/forms.htm.* In addition, fund recipients are required to comply with regulations designed to protect human subjects and ensure confidentiality of data. In accordance with 28 CFR Part 22, a Privacy Certificate must be submitted to BJS. Furthermore a Screening Sheet for Protection of Human Subjects must be completed prior to the award being issued. Questions regarding Protection of Human Subjects and/or privacy certificate requirements can be directed to the Human Subject Projection Officer (HPSO) at (202) 616–3282 [This is not a toll-free number].

Proposals must include both narrative description and a detailed budget. The narrative shall describe activities as discussed in the previous section. The budget shall contain detailed costs of personnel, travel, equipment, supplies and other expenses. The grant award will be in the form of a copperative agreement. It is anticipated that the entire project can be completed for less than $30,000.

Timing

This award will be made for a period of 12 months. The first phase will be concluded and evaluated within two months. The second phase will commence upon the successful completion of the first phase and will be completed within 12 months of the award date.

Eligibility Requirements

Applicants must be reasonably proficient in the Spanish language. If applicants contemplate preparing each profile themselves, they need to have demonstrated fluency in speaking, reading, and writing both Spanish and English. Applicants should have a background in criminal justice. Knowledge of Latin American organizations and governmental structures, including political events which might influence the criminal justice system, and contacts with individuals in these countries will be extremely beneficial. Familiarity with Latin America through travel, residence, and/or study is highly desirable.

BJS will evaluate proposals based on (1) the credentials of the applicant (how experienced the applicant is in work related to criminal justice in Latin America), (2) the merit of the proposal (how the applicant intends to satisfy the needs described in this announcement), and (3) the competitiveness of the proposed budget.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 00–14486 Filed 6–8–00; 8:45 am]
BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

[OJP (BJA)—1278]

Announcement of the Availability of the State Criminal Alien Assistance Program for FY2000

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the Bureau of Justice Assistance State Criminal Alien Assistance Program (SCAAP) funding for FY2000.

DATES: Applications for payments may be made through a new Internet-based system beginning Thursday, June 1, 2000 and continuing until Monday, July 17, 2000.

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ADDRESSES: Bureau of Justice Assistance, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For program guidance and technical assistance, please log on to the Office of Justice Programs Home Page at: *http://www.ojp.usdoj.gov* and select "Funding Opportunities" and then "SCAAP," or call the Office of Justice Programs Grants Management System Hotline at 1–888–549–9901. For general information about on-line application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

SCAAP provides Federal assistance to states and units of local government for costs incurred for the imprisonment of undocumented criminal aliens who are convicted of felony or misdemeanor offenses. Potential applicants no longer may submit hard copy application forms and diskettes. For FY2000, state and local governments apply for payment via a paperless, electronic, end-to-end distributive, Internet-based web-site. BJA anticipates providing over 390 payments of varying amounts from a FY2000 funding total of $585,000,000.

Potential applicants with questions should call the U.S. Department of Justice Response Center at 1–800–421–6770 or the Office of Justice Programs Grants Management System Hotline at 1–888–549–9901. For access to program guidance and the on-line application, connect to *http://www.ojp.usdoj.gov* and select "Funding Opportunities" and then "SCAAP."

Nancy E. Gist,

Director, Bureau of Justice Assistance

[FR Doc. 00–14530 Filed 6–8–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Critical Issues in Managing Women Offenders

AGENCY: National Institute of corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2000 for a cooperative agreement to develop a 24–36 hour curriculum on Critical Issues in Managing Women Offenders. The cooperative agreement represents the first part of a two-phased project to develop and deliver the curriculum in the next 15 months. NIC will award this project in two parts: in the current year (FY 2000), NIC will award a cooperative agreement for a six month project to develop the curriculum. Based on satisfactory performance in the development phase, in FY 2001 NIC will award a supplement to deliver the curriculum as a regional training program at two different locations. $50,000 is available for part one of the project, and $50,000 will be available in FT 2001 for training program delivery under a regional partnership format. Regional partnerships are funded in part by participating agencies. The funding for FY 2001 is contingent on congressional approval of the federal budget at the beginning of the fiscal year.

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. An award is made to an organization that will, in concert with the Institute, provide a clearer articulation of gender-responsive strategies which are grounded in current theory and research, drawn from different relevant disciplines and agencies, and applied to the realities of correctional practice in prisons, jails, and community corrections. No funds are transferred to state or local governments.

Background

Women offenders and related gender issues are gaining increased focus from policy makers in corrections for numerous reasons. During the last decade, the women offender population has nearly tripled in every sector of corrections. Changes in mandatory sentencing for drug offenders on the federal and state levels are resulting in larger numbers of women serving longer periods of time in correctional facilities. A variety of critical issues such as cross-gender supervision, appropriate relationships between staff and offenders, management of population growth, parity in programming, and appropriate interventions are increasing in numbers and visibility within the criminal justice community and with the public, many due to residual court action.

NIC has a five year history of designing and delivering a seminar on Critical Issues in Managing Women Offenders. The first seminar occurred in July, 1994; a group of highly motivated and experienced practitioners convened to consider the issues facing them in promoting more effective correctional practice with women offenders. Over time, through four seminars, the program has solidified its focus on policy makers and top managers as the primary audience. Its purpose is to provide a solid grounding in policy and practice issues which face criminal justice agencies in addressing the unique circumstances and needs of women offenders from a system-wide perspective. Participants include agency administrators and deputy directors from jails, community corrections and prisons; judges, prosecutors, public defenders, and other court personnel. Participants attend as individuals and not as agency teams.

The goals of the seminar (as defined for the April, 1999, session) were to:

- Better understand and articulate the emerging and critical issues to consider in shaping policy for women offenders;
- Be able to identify the benefits of applying a systems perspective in planning for women offenders;
- Have increased knowledge of the information and resource (research, expertise, and practical strategies) available to address women offender issues and how to access them;
- Articulate a vision for improving criminal justice policy and practice regarding women offenders in their jurisdiction and develop three action steps for moving toward that vision.

Based on the success of this program, NIC seeks to expand its capacity to deliver the seminar through a multi-state regional format. The audience will remain individuals from across the system who are policy makers.

NIC assumes that the successful applicant will review the materials developed for the prior 5 seminars including the agendas, participant manuals and handouts, and records of meeting, and will work closely with the Project Manager in designing the curriculum.

Purpose

The National Institute of Corrections is seeking an applicant organization or team which offers curriculum design expertise, overall knowledge of women offenders and corrections, experience with training of policy level participants, expertise in competency-based curriculum including writing, editing, formation, assembling and packaging; and knowledge of adult learning theory and training.

The purpose of the cooperative agreement is:

(1) To fully develop and refine one (1) 24–36 hour training curriculum package on Critical Issues in Managing Women Offenders. The curriculum will have the following elements:

a. *Instructors Guide with Lesson Plans.* This must include performance objectives that specify the knowledge or skills/competencies that will be obtained by the participants. They must be detailed to the degree that other trainers with some experience in the topic can use them to deliver training.

b. *Computer Generated View Graphs* created in Corel Presentations of key points that will be emphasized by the trainers. The lesson plans must include a small representation of the full size view graph and indicate where and when they are used. As appropriate, some of the view graphs may be designed as handouts to participants. Other multi-media or visual aids (such as news print, videos, etc.) used to support the delivery of lesson modules must be coordinated and indicate when and where to be used.

c. *Participant Manual and Materials* that correlate with each module, topic by topic, as appropriate to deliver the training. These materials may include overviews, published articles (if copyrighted must obtain copyright release), check lists, key points outlines, examples of instruments, reports and other materials used by participants to perform their work.

d. *Evaluation Questions and Strategies* (if appropriate) that will be used pre or post delivery for the curriculum. These should directly relate to the objectives in each module.

e. *Resource Materials,* such as video and audio tapes, books, journals and other information to support the objectives of the curriculum.

(2) To deliver the curriculum in two regional seminars in the spring and summer, 2001, under a supplemental cooperative agreement.

Work to be Performed by the Service Provider: The following represents the kinds of work activity required by the project and the expectations of the relationship between NIC, the Program Manager and the service provider.

- Consult with the NIC Program Monitor on an agreed time line to assure progress and understanding of the scope of work.
- Conduct a review of the Critical Issues in Managing Women Offenders agendas, participant materials, and records of meeting.
- Thoroughly review any other existing training materials developed by NIC, OJP, or other agencies for relevant parts that could be re-written for application to this project.
- Conduct necessary planning with content experts (selections with input from Program Manager) to generate the framework, concepts, modules, content, strategies and performance objectives. (All of the above is subject to final approval by the Program Manager.)
- Assign and coordinate writing, development and revisions of the modules and content areas for the curriculum including multi-media materials.
- Develop, edit, revise, format and package the curriculum, lesson plans, and other course materials.
- Submit preliminary draft for review by the Program Manager per the specified time line. Make revisions and submit second draft if requested.
- Prepare all materials using WordPerfect 7.0 or higher word processing software and Corel Presentations (visuals) and submit final copies of all materials on 3.5″ computer disks (or zip drive disks) and in "camera ready" hard copy format (4 paper copies).

Application Requirements

Applicants must prepare a proposal that describes their plan to provide the project outcomes. The plan must include goals and objectives, methodology, deliverables, management plan, an overall project budget for the full two years, and a budget and budget narrative for the first 6 month phase. Applicants must identify their key project staff and the relevant expertise of each, and address the manner in which they would perform all tasks in collaboration with the NIC Project Manager. Proposals are limited to twenty-five double-spaced pages in length, not including resumes, other addenda, and SF–424 forms. Please note that the Standard Form 424, Application for Federal Assistance, submitted with the proposal must contain the cover sheet, budget, budget narrative, assurances, and management plan for the FY 2000 funded portion only, for a maximum of $50,000.

Authority: Public Law 93–415.

Funds Available

Project funds are limited to a maximum total of $100,000 for both direct and indirect costs for two years. A grant award of $50,000 will be made in FY 2000, and a supplemental award of $50,000 will be made in FY 2001. (Contingent on FY 2001 congressional budget approval) NIC is committed to funding the full fifteen month project and project activity must be completed within 15 months of the date of the award. Funds may only be used for activities that are linked to the desired outcomes of the project.

All products from this funding effort will be in public domain and available to interested agencies through the National Institute of Corrections.

Deadline for Receipt of Applications

Applications must be received by 4:00 p.m. on Friday, July 17, 2000. They should be addressed to: National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534, Attention: Administrative Officer. Hand delivered applications can be brought to 500 First Street, NW, Washington, DC 20534. The Front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Addresses and Further Information

Requests for the application kit, which consists of a copy of this announcement and copies of the required forms, should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling (800) 995–6423, extension 159 or (202) 307–3106, extension 159. She can also be contacted by E-mail via *jevens@bop.gov.* All technical and/or programmatic questions concerning this announcement should be directed to Andie Moss at the above address or by calling (800) 995–6423 or (202) 307–3106, extension 140, or by E-mail via *amoss@bop.gov.* Application forms may also be obtained through the NIC website: http://www.nicic.org. (Click on "What's New" and then, "Cooperative Agreements.")

Eligible Applicants

An eligible applicants is any state or general unit of local government, public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations

Applications received under this announcement will be subjected to an NIC three to five member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 00P17. This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424.

The Catalog of Federal Domestic Assistance number is: 16.602.

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Dated: June 2, 2000.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 00–14671 Filed 6–8–00; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision/extension for collection of the ETA 227 Report, Overpayment Detection and Recovery Activities. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before August 8, 2000.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue NW, Room S4231, Washington, DC 20010, Attention: Bob Whiting. Telephone number: 202–219–5340, ext. 182 (this is not a toll-free number). Fax: 202–219–8506. E-mail: rwhiting@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303(a)(1) of the Social Security Act requires a State's Unemployment Insurance (UI) law to include provisions for:

"Such methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due * * *"

Section 303(a)(5) of the Social Security Act further requires a State's UI law to include provisions for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation * * *"

Section 3304(a)(4) of the Internal Revenue Code of 1954 provides that:

"all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation * * *"

The Secretary of Labor has interpreted the above sections of Federal law in Section 7511, Part V, ES Manual to further require a State's UI law to include provisions for such methods of administration as are, within reason, calculated (1) to detect benefits paid through error by the State Employment Security Agency (SESA) or through willful misrepresentation or error by the claimant or others, (2) to deter claimants from obtaining benefits through willful misrepresentation, and (3) to recover benefits overpaid. The ETA 227 is used to determine whether SESAs meet these requirements of the Secretary of Labor's interpretation of the Federal laws.

The ETA–227 contains data on the number and amounts of fraud and nonfraud overpayments established, the methods by which overpayments were detected, the amounts and methods by which overpayments were collected, the amounts of overpayments waived and written off, the accounts receivable for overpayments outstanding, and data on criminal/civil actions. These data are gathered by 53 SESAs and reported to the Department of Labor following the end of each calendar quarter. The overall effectiveness of SESAs' UI integrity efforts can be determined by examining and analyzing the data. These data are also used by SESAs as a management tool for effective UI program administration.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses. III. Current Actions: The UI program pays approximately $20 billion in benefits annually. Although the overpayment rate is relatively low (less than one percent), high amounts of money are involved, and it is in the national interest to maintain the program's integrity. Therefore, we are proposing to extend the authorization to continue collecting data to measure the effectiveness of benefit payment controls in the SESAs. Several modifications have been made to the report format to improve the effectiveness of the collection vehicle, including additions and deletions of data cells:

Additions

- Overpayments established involving multi-claimant fraud schemes.
- Totals for controllable and uncontrollable under Section B, "Overpayments Established—Methods of Detection".
- Overpayments detected through the "new hire" system.
- Overpayments detected by "special projects" (new methodologies).
- Overpayments Recovered—Total.
- Overpayments recovered by offset of state income tax refunds.
- Overpayments recovered by other states.
- Penalty and interest collected for Federal programs.
- Overpayments collected for other states.

Deletions

- All columns in the section titled "Reconciliation of Overpayment Activities" that pertain to the number of cases. (Only dollar amounts will be reported in the future.)
- The following under-utilized lines in the section titled "Detection Activities': verification of low earnings; verification of return to work; quality control.
- The following lines also in the "Detection" section because states cannot exercise control over their incidence, and gathering data is of less value than that of other activities which have been added: employer protest of charges; tips and leads; other noncontrollable activities.
- Cells identifying nonfraud fictitious employer schemes.

Other Modifications

- The order of sections B and C have been reversed so that "Overpayments Established—Methods of Detection" precedes "Recovery/Reconciliation".
- In Section A "Overpayments Established—Causes", the line for administrative penalty has been removed from under the subheading "Nonfraud" so that it stands alone.
- In Section B "Overpayments Established—Methods of Detection", the lines have been reordered so all controllable methods are grouped under the appropriate heading.
- In Section C "Recovery/Reconciliation", the line formerly identified as "Allowance for Doubtful Accounts" has been redefined, and data will be reported as "Receivables Removed at End of Report Period".

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Overpayment Detection and Recovery Activities.

OMB Number: 1205–0173.

Agency Number: ETA–227.

Record keeping: State agencies are required to maintain all documentation supporting the information reported on the ETA–227 for three years following the end of each report period.

Affected Public: State Government.

Cite/Reference/Form/etc: Form.

Total Respondents: 53 State agencies.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 14 hours.

Estimated Total Burden Hours: 2968.

Total Burden Cost (operating/maintaining): Estimated at $76,396 which is allowable cost under the administrative grants awarded to States by the Federal government. Additionally, there will be a one time cost of reprogramming the State systems at the cost of $20,758 (annualized).

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 5, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 00–14682 Filed 6–8–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedures thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective for their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decisions, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Maryland
- MD000008 (Feb. 11, 2000)
- MD000021 (Feb. 11, 2000)
- MD000039 (Feb. 11, 2000)
- MD000042 (Feb. 11, 2000)

Pennsylvania
- PA000005 (Feb. 11, 2000)
- PA000006 (Feb. 11, 2000)
- PA000014 (Feb. 11, 2000)
- PA000025 (Feb. 11, 2000)
- PA000026 (Feb. 11, 2000)

Virginia
- VA000014 (Feb. 11, 2000)
- VA000044 (Feb. 11, 2000)
- VA000059 (Feb. 11, 2000)
- VA000067 (Feb. 11, 2000)

Volume III

None

Volume IV

None

Volume V

Kansas
KS000009 (Feb. 11, 2000)
Texas
TX000003 (Feb. 11, 2000)
TX000018 (Feb. 11, 2000)

Volume VI

None

Volume VII

California
CA000001 (Feb. 11, 2000)
CA000002 (Feb. 11, 2000)
CA000004 (Feb. 11, 2000)
CA000009 (Feb. 11, 2000)
CA000027 (Feb. 11, 2000)
CA000028 (Feb. 11, 2000)
CA000029 (Feb. 11, 2000)
CA000030 (Feb. 11, 2000)
CA000031 (Feb. 11, 2000)
CA000032 (Feb. 11, 2000)
CA000033 (Feb. 11, 2000)
CA000034 (Feb. 11, 2000)
CA000035 (Feb. 11, 2000)
CA000036 (Feb. 11, 2000)
CA000037 (Feb. 11, 2000)
CA000039 (Feb. 11, 2000)
CA000040 (Feb. 11, 2000)
CA000041 (Feb. 11, 2000)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 1st day of June 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–14284 Filed 6–8–00; 8:45 am]

BILLING CODE 4510–27–M

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is requesting a three-year extension of approval of its optional appeal form, Optional Form 283 (Rev. 10/94) from the Office of Management and Budget (OMB) under section 3506 of the Paperwork Reduction Act of 1995. The appeal form is currently displayed in 5 CFR Part 1201, Appendix I, and on the MSPB Web Page at http://www.mspb.gov/foia/applform.pdf.

In this regard, we are soliciting comments on the public reporting burden. The reporting burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201 and 1209	9,000	1	9,000	.5	4,500

In addition, the MSPB invites comments on (1) Whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility; (2) the accuracy of MSPB's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate and other forms of information technology.

DATES: Comments must be received on or before August 8, 2000.

ADDRESSES: Copies of the appeal form may be obtained from Arlin Winefordner, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419 or by calling (202) 653–7200. Comments concerning the paperwork burden should also be addressed to Mr. Winefordner.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–14690 Filed 6–8–00; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL COMMUNICATIONS SYSTEM

Proposed Collection; Comment Request

AGENCY: National Communications System (NCS).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Manager, National Communications System announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 8, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to National Communications System, Code N31, Attn: Deborah Bea, 701 South Court House Road, Arlington, VA 22204–2198.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Office of Priority Telecommunications at 703–607–4933.

Title; Associated Forms; and OMB Number: Telecommunications Service Priority (TSP) System Revalidation for Service Users, Standard Form 314; OMB Number 0704–0305;
Telecommunications Service Priority (TSP) System TSP Request for Service Users, Standard Form 315, OMB Number 0704–0305;
Telecommunications Service Priority (TSP) System TSP Action Appeal for Service Users, Standard Form 317, OMB Number 0704–0305;
Telecommunications Service Priority (TSP) System TSP Service Confirmation for Service Vendors, Standard Form 318, OMB Number 0704–0305;
Telecommunications Service Priority (TSP) System TSP Service Reconciliation for Service Vendors, Standard Form 319; OMB Number 0704–0305.

Needs and Uses: The Telecommunications Service Priority (TSP) System forms are used to determine participation in the TSP system, facilitate TSP system administrative requirements, and to maintain TSP system database accuracy.

Affected Public: Businesses or other for-profit institutions, not-for-profit institutions, the Federal Government, and state and local governments.

Annual burden Hours: 3600.

Number of Respondents: 94.

Responses per Respondent: 18.

Average Burden per Response: 2.13 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The purpose of the TSP system is to provide a legal basis for telecommunications vendors to provide priority provisioning and restoration of telecommunications services supporting national security or emergency preparedness functions. The information gathered via the TSP system forms is the minimum necessary for the NCS to effectively manage the TSP system.

Frank McClelland,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 00–14647 Filed 6–8–00; 8:45 am]

BILLING CODE 5001–06–M

NATIONAL INSTITUTE FOR LITERACY

[CFDA No. 84.257S]

NIFL Content Development Partners (Special Collections); Notice Inviting Applications for New Awards for Fiscal Year 2000

AGENCY: The National Institute for Literacy (NIFL).

ACTION: Notice.

Purpose

The purpose of this project is to establish a first generation of Content Development Partners to extend the work of the Literacy Information aNd Communication System (LINCS) in developing subject oriented Special Collections of Internet-based resources for adult education and adult and family literacy practice. The Content Development Partners will maintain, refine, and enhance the existing Special Collections available through the LINCS network by locating, evaluating, and organizing Web-based resources and Web-based pointers to other materials (videos, research reports, etc.). These partners will work in collaboration with the National LINCS staff and the staff at the LINCS Regional Technology Centers. Content Development Partners will be expected to follow National LINCS guidelines, protocols, and common design templates. (See Background and Definitions: NIFL Standards.)

Eligible Applicants

Public and private nonprofit organizations with knowledge of and expertise in adult literacy and the subject matter of the Special Collection, or consortia of such organizations.

Deadline for Applications: July 15, 2000.

Estimated Range of Awards

$20,000–$50,000 for year 1; funding for years 2 and 3 is subject to program authorization and availability of appropriations, and is contingent upon satisfactory completion of the previous year's plan of action.

Estimated Number of Awards

Up to 10 awards. Awards will be made to organizations with experience in the defined subject areas. Consortia efforts are encouraged. No more than two Content Development Partner awards will be made to the same applicant.

Note: The National Institute for Literacy is not bound by any estimates in this notice.

Project Period

Three years, with the possibility of renewal for 2 subsequent years.

Applicable Regulations

The National Institute for Literacy has adopted the following regulations included in the Education Department General Administrative Regulations (EDGAR): 34 CFR parts 74, 77, 80, 82, and 85, and 34 CFR part 75, Secs. 75.50, 75.51, 75.100–102, 75.104, 75.109–192, 75.200–201, 75.215–217, 75.231–236, 75.250–251, 75.253, 75.261, 75.525, 75.531, 75.560–569, 75.591, 75.620–21, 75.700–707; 75.77, 75.79, 75.80–82, 75.85–86(6/6/1997 and EDGAR Expanded Authorities, 1/27/98).

This document is available through your public library and the National Institute for Literacy's Website (http://www.nifl.gov). It is recommended that appropriate administrative officials become familiar with the EDGAR policies and procedures that are applicable to this award.

FOR FURTHER INFORMATION, CONTACT: William Hawk; National Institute for Literacy; 1775 I Street, NW., Suite 730; Washington, DC 20006; Telephone: 202–233–2042; FAX: 202–233–2050; E-mail: *whawk@nifl.gov* Information about the NIFL's funding opportunities, including Application Notices, etc., can be viewed on the NIFL server (under What's New and Grants & Funding) at *http://www.nifl.gov/lincs*; however, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

SUPPLEMENTARY INFORMATION:

Definitions

For purposes of this announcement the following definitions apply:

Adult Education and Literacy Community—The aggregate of individuals and groups at all levels nationwide that are actively involved with adult education and adult and family literacy instruction, including

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individuals such as researchers, practitioners, policymakers, adult learners, and administrators, and groups such as state and local departments of education, human services, and labor; libraries; community-based organizations; businesses and labor unions; and volunteer and civic groups.

Content Development Partners—LINCS partners responsible for maintaining, refining, and enhancing the Special Collections of Web-accessible resources available through the LINCS network. These partners locate, evaluate, and organize Web-based resources and Web-based pointers to other materials (videos, research reports, etc.).

Core Knowledge Group—An Advisory Group of subject experts to assist in the quality control of the collection. Ideally, this group will include NIFL Discussion List moderators, researchers, and subject specialists from the Department of Education's Office of Vocational and Adult Education (OVAE), among others.

LINCS Affiliates—National, state, or local organizations that support LINCS and want to be a part of the expanding LINCS network, but are not considered partners.

LINCS Network—Including LINCS national, regional, state and local partners and affiliates.

LINCS Partners—State level organizations that provide professional development, technical assistance, and other informational services to local programs. There may be more than one state-level partners depending on the needs of the state and the resources available. Decisions about the selection of the LINCS partner will be made jointly with the state adult education office and other state-level organizations. Through a formal agreement with the Regional LINCS organization, state organizations will receive services and contribute to LINCS.

LINCS Standards—NIFL's quality guidelines and standards for organizing materials in a uniform format for posting on the Internet. These standards are found in NIFL's "Starting Point" manual, LINCS Selection Criteria (http://www.nifl.gov/lincs/selection_criteria.html), *LINCS* Special Collections Guidelines (http://www.nifl.gov/lincs/special_collections.html), the Adult Literacy Thesaurus (ALT), the Adult Literacy Thesaurus User's Manual, the template for state and local program Websites (http://hub2.coe.utk.edu/adopt/default.html) and other documentation.

LINCS Web Sites—Include LINCS national, regional, and state sites and Special Collections.

Literacy—An individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals and develop one's knowledge and potential (as stated in the National Literacy Act of 1991).

Regional Hub or Regional Technology Center—The lead site acting as the focal point for implementing LINCS grants requirements and activities, including serving states and local programs in a particular region.

Special Collections—One-stop electronic gateways to high-quality resources related to specific subject areas judged to be of high interest to the adult education and literacy community. Resources include Web-based resources and resources in other media, including descriptions of research and evaluation results, policy-related information, curricula, best practices, fact sheets, and directories. LINCS Special Collections are built around specific content areas (such as English as a Second Language), specific settings or contexts (such as Workforce Education), and professional development topics (such as the use of Technology in Professional Development).

Background

The National Institute for Literacy (NIFL), as authorized by Title II of the Workforce Investment Act of 1998, has the legislative mandate to develop a national literacy database. The intent of this mandate is to assure the consolidation and accessibility of scattered and hard-to-access information resources for literacy. For more background information on the LINCS Network, visit *http://www.nifl.gov/lincs/about/about.html#history*.

Now in its fifth full year of operation, LINCS is steadily pursuing its mission of using technology to strengthen the adult basic education and literacy community. Beginning in mid-1994 with a single national site on the Internet, LINCS is now well on its way to fulfilling its goals. Visit *http://www.nifl.gov/lincs/millennium/achievements.html* for a summary of the national and regional LINCS achievements.

Plans for the Future

Over the past seven years, the NIFL has provided the leadership and tools to prepare the adult literacy community for the 21st century through major system-building initiatives, including the creation of LINCS and its regional hubs. The NIFL intends to sustain the momentum of building systems that help professionalize the adult literacy community by continuing its initiatives in technology. Please see the LINCS Vision Statement at *http://www.nifl.gov/lincs/millennium/vision.html* for additional information about the future plans for the LINCS project.

Application Requirements

A. Overview of Content Development Partners (Special Collections)

Grants will be awarded to up to ten Content Development Partners for the development of Special Collections on the following subjects—as defined by LINCS and/or in the Adult Literacy Thesaurus:

1. Assessment;
2. Correctional Education;
3. English as a Second Language (inclusive of citizenship and civic participation);
4. Family Literacy;
5. Health and Literacy;
6. International Literacy;
7. Literacy & Learning Disabilities;
8. Science & Numeracy;
9. Technology Training (for Professional Development); and
10. Workforce Education.

The focus of each Special Collection must be on the subject as it relates to adult literacy instruction, learning, policy, or other dimensions of the practice of adult and family literacy and adult education. Applicants must clearly identify the subject area of the Special Collections(s) they are proposing to be the Content Development Partners for. The existing LINCS Special Collections can be accessed through the index page—*http://www.nifl.gov/lincs/collections/*.

B. Project Narrative

The project narrative is critical and must thoroughly reflect the capacity of the applicant to organize the development of a Special Collection. The narrative must encompass the full three years of project activities, with detailed plans for Year 1 and milestones for Years 2 and 3. The narrative must clearly describe the applicant's plan for attaining measurable goals as identified in each of the sections listed below and propose specific mechanisms for collecting and developing resources for the Special Collection. The narrative should not exceed ten (10) single-spaced pages, or twenty (20) double-spaced pages. The narrative may be amplified by material in attachments and appendices (not exceeding 10 pages), but the body should stand alone to give a complete picture of the project. Proposals that exceed 10 single-spaced pages or 20 double-spaced pages will not be reviewed. The format for the project narrative should follow the order and format of the following selection criteria.

C. Selection Criteria

In evaluating applications for a grant under this competition, the Director uses the following seven selection criteria set out in this notice. The maximum combined score for all the criteria in this section is 100 points. The maximum score for each criterion is indicated in parentheses.

1. Mission and Strategy (5 Points)

The Director reviews each application to determine the appropriateness of the applicant's stated mission and strategy for the proposed Content Development Partner, including consideration of: (a) The degree to which the stated mission and strategy for developing a Special Collection reflect an understanding of NIFL's goals and purposes for LINCS and the Special Collections as outlined in this notice; (b) The degree to which the application demonstrates an understanding of the Special Collection's scope and the existing special collection's strengths and weaknesses (where applicable); (c) The quality and coherence of proposed strategies for refining, enhancing, and maintaining the existing collection to meet the field's need for information; and (d) How the project will serve (and be marketed to) the entire adult education and literacy community, including the full range of public and private programs (libraries, local education agencies, community colleges, volunteer and community-based organizations, etc.).

2. Institutional Capabilities (15 Points)

The Director reviews each application to determine the capabilities of the organization to sustain a long-term, high quality, and coherent program, including consideration of: (a) The organization's expertise in the chosen subject area and its familiarity with the information needs of the Adult and Family Literacy and Adult Education Community around this topic; (b) The applicant's experience in establishing and carrying out collaborative working relationships with LINCS member states, state agencies, local programs, and other public and private groups; (c) The applicant's capacity to maintain and continuously enhance a sizable literacy collection on the Internet that includes resources produced by other agencies and individuals as well as the organization's own resources; (d) The applicant's use of technology to enhance accessibility of information; (e) The applicant's capacity to provide training and technical assistance to users of the collection(s); (f) A secure funding base for the organization for the duration of the project; (g) The applicant's willingness and ability to continue the project at the end of the three-year grant period; and (h) The applicant's ability to leverage other funding and resources to sustain the project beyond the grant through pursuing partnerships with private entities, including telecommunications and high tech business and industry partners.

3. Core Knowledge Group and Collaborations (20 Points)

The Director reviews each application to determine the capabilities of the organization to sustain a long-term, high quality, and coherent program, including consideration of: (a)The applicant's plans for organizing and managing a Core Knowledge Group to advise the development of the Special Collection and assist in the quality control of the collection; please provide names of expected or confirmed members of the group; (b) The extent to which the applicant will consider the perspectives of a variety of users and stakeholders in developing the Special Collection; (c) The applicant's ability to ensure close collaboration with NIFL and the LINCS Regional Technology Centers, including cooperation in implementing new requirements or standards developed by NIFL in concert with the LINCS Regional Technology Centers to assure uniformity across the LINCS network; (d) The applicant's plans to ensure broad-based collaborative relationships with other appropriate agencies, organizations, and projects (especially those dealing with education, labor, and human services and the topics of each Special Collection) with similar or complementary subject expertise; (e) Mechanisms for attracting/collecting or developing additional resources for inclusion in the Special Collections (see the LINCS Special Collections Guidelines and Recommendations available at http://www.nifl.gov/lincs/special_collections.html and the LINCS Special Collections Protocol available at http://www.nifl.gov/2000_rfp/collections_protocol.html); and (f)The extent to which the applicant demonstrates a commitment to provide a minimum of 2 training sessions per year and collect direct user feedback at those times.

4. Quality of Plan of Operation (30 Points)

The Director reviews each application to determine the quality of the three-year plan of operation, including consideration of: (a) The quality of the design of the project and plans for collecting high quality resources, instructional materials, and tools; (b) How well the objectives of the project relate to the intended purposes of the Special Collections, as outlined in this request for applications; (c) The quality of the applicant's three-year plan of operation to use its resources and personnel to achieve each project objective; (d) The extent to which the plan of management is effective and ensures proper and efficient administration of the project; (e)The quality of the plan to establish effective working relationships with the members of the Core Knowledge Group and other organizations as required for effective development of the project; (f) The quality of the plan for determining the information needs of the customers or users of the Special Collection; (g) The quality of the plan for developing unique selection criteria and guidelines specific to each Special Collection based on the LINCS general selection criteria and Special Collections protocols *(http://www.nifl.gov/lincs/selection_criteria.html* and *http://www.nifl.gov/lincs/2000_rfp/collections_protocol.html)*; (h) The quality of the plan for organizing the Special Collection according to the NIFL standards for quality control, access, and organization (see LINCS Special Collections Guidelines and Recommendations http://www.nifl.gov/lincs/special_collections.html) and for working with NIFL and the LINCS Regional Technology Centers to ensure uniformity across the network; (i) The quality of the plan for enhancing the knowledge base of the field by updating the Special Collection on a regularly scheduled basis with the Content Development Partner's own materials and materials from other content developers, including making provisions for including summaries of or pointers to quality print and non-print materials, such as audio and video materials, in their entirety, as well as Web-based materials print and non-print materials, all of which respond to end users' educational, informational, and training needs; (j) The quality of the plan for marketing the Special Collection, training users, and leveraging additional resources for the project; (k) The extent of the application's understanding of cataloging form and LINCS

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infrastructure; and (l) The extent to which the applicant's plan includes sound methods for achieving measurable goals and outcomes.

5. Budget and Cost Effectiveness (10 Points)

The Director reviews each application to determine the extent to which: (a) The budget is adequate to support project activities and allocations are deemed cost-effective; (b) Costs are reasonable in relation to the objectives of the project; (c) The budgets for any subcontracts are detailed and appropriate; (d) Provisions are made for identifying and securing additional funds to continue and expand the project beyond the end of the grant; (e) The applicant's inclusion of a timeline for the project, consisting of a table or diagram listing major tasks or milestones and including estimates of funds, time (including presentations), personnel, facilities, and equipment allocated to each program area, as well as the timing of quarterly progress and other reports, meetings, etc. (A format of approximately 2 pages will be provided for quarterly reports; a final report will be expected at the end of each year in lieu of a 4th quarter report.); and (f) The budget details resources, cash and in-kind, that the applicant and others will provide to the project in addition to grant funds. Please note that overhead for this project is restricted as per EDGAR CPR 75–562.

6. Quality of Monitoring and Evaluation Plan (10 Points)

The Director reviews each application to determine the quality of the evaluation plan for the project, including consideration of the NIFL's adherence to Federal Government Performance Reporting Act (GPRA) requirements (See the Notice to Applicants at *http://ocfo.ed.gov/grntinfo/gposbul/gpos23.htm* for more information.) and: (a) The strength of the applicant's statement of measurable outcomes for all project goals; (b) The quality of methods and mechanisms to be used to document and evaluate progress in relation to the project's mission and goals; (c) The quality of methods that will be used to document and evaluate the impact—both quality of usefulness and quantity of use—of the project on target audiences; and (d) The effectiveness of the Content Development Partner's role in working with partners, particularly by using on-line methods (such as web tools) to collect and analyze data on the effectiveness of the resources presented.

7. Quality of Key Personnel (10 Points)

The Director reviews each application to determine the quality of key personnel for all project activities, including consideration of: (a) The qualifications of the project director with regard to the creation of a Special Collection on the subject selected; (b) The qualifications of other key personnel with regard to the creation of a Special Collection on the subject selected; (c) The experience and training of key personnel in facilitating teams of advisors/reviewers and working in fields related to project objectives; (d) The roles of key personnel and the number of hours dedicated to carrying out their tasks; and (d) The applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected for employment without regard to race, color, national origin, religion, gender, age, or disability. (See *http://ocfo.ed.gov/grntinfo/gposbul/gpos15.htm* for additional information on Key Personnel.)

Additional Application Requirements

The application shall include the following:

Project Summary

The proposal must contain a 200-word summary of the proposed project suitable for publication. It shall not be an abstract of the proposal, but rather a self-contained description of the activities that would explain the proposal. The summary should be free of jargon and technical terminology, and should be understandable by a non-specialist reader.

Budget Proposal

ED Form 524 must be completed and submitted with each application. The form consists of Sections A, B, and C. On the back of the form are general instructions for completion of the budget. All applicants must complete Sections A and C. If Section B is completed, include the nature and source of non-federal funds. Attach to Section C a detailed explanation and amplification of each budget category. Included in the explanation should be complete justification of costs in each category. Additional instructions include:

- Prepare an itemized budget narrative for the project as a whole.
- Personnel items should include names (titles or position) of key staff, number of hours proposed and applicable hourly rates.
- Include the cost, purpose, and justification for travel, equipment, supplies, contractual and other.

Training stipends are not authorized under this program.

- Clearly identify in all instances contributed costs and support from other sources, if any.
- Show budget detail for financial aspects of any cost-sharing, joint or cooperative funding.

Disclosure of Prior NIFL Support

If any partner has received NIFL funding in the past 2 years, the following information on the prior awards is required.

- NIFL award number, amount and period of support;
- A summary of the results of the completed work; and
- A brief description of available materials and other related research products not described elsewhere.

If the applicant has received a prior award, the reviewers will be asked to comment on the quality of the prior work described in this section of the proposal.

Reporting

In addition to working closely with the National Institute for Literacy, the applicant will be required to submit Quarterly Performance reports, which are to be brief, 3–4 page reports of progress; a final annual report of activities replaces the 4th quarterly report. Due: Within 30 days at the end of each quarter. Detailed specifications for the reports will be provided within three months after the awards are made.

Instructions for Transmittal of Applications

(a) To apply for a Content Development Partner grant—

(1) Mail the original and seven (7) copies of the application on or before the deadline date of July 15, 2000 to National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006, Attention: William B. Hawk (CFDA #257S).

(2) Hand deliver the application by 4:30 p.m. (Washington, DC time) on the deadline date to the address above.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(c) If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes:

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

(2) The NIFL will mail a Grant Applicant Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the NIFL at (202) 233–2055.

(3) The applicant must indicate on the envelope and in Item 10 of the application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Electronic Access to This Document

You may view this document, as well as National Institute for Literacy documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Web from the following sites:

http://www.nifl.gov/nifl/news_events.html
http://www.nifl.gov/lincs/2000_rfp.html

To view the PDF version, you must have the Adobe Acrobat Reader Program.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at *http://www.access.gpo.gov/nara/index.html*

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials follow. (Additional forms for the completion of this application are available from *http://ocfo.ed.gov/grnt/appforms.htm.*)

Part I: Application for Federal Assistance

(Standard Form 424 (Rev. 4–94)) and instructions.

Part II. Budget Information

Non-Construction Programs (ED Form 524) and instructions.

Part III: Application Narrative

Additional Materials: Estimated Public Reporting Burden.

Assurances-Non—Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of recipients and should not be transmitted to the NIFL.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. An applicant may submit information on a Photostat copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and certifications must each have an original signature. No award can be made unless a complete application has been received.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information is under OMB control number 3430–0006, Expiration date: 06/30/2003. The time required to complete this information collection is 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: the National Institute for Literacy 1775 I Street, NW., Suite 730, Washington, DC 20006.

Dated: June 5, 2000.

Andrew J. Hartman,

Director, NIFL.

[FR Doc. 00–14547 Filed 6–8–00; 8:45 am]
BILLING CODE 6055–01–U

NATIONAL INSTITUTE FOR LITERACY

[CFDA NO. 84.257T]

NIFL Regional Technology Centers Project; Notice Inviting Applications for New Awards for Fiscal Year 2000

AGENCY: The National Institute for Literacy (NIFL).

ACTION: Notice.

Purpose:

The purpose of this project is to establish Regional Technology Centers that will work with the NIFL to:

1. Expand the Literacy Information and Communication System (LINCS) network to include the broadest possible range of national, state, and local partners.

2. Extend the knowledge and use of LINCS web sites, infrastructure, resources, and services throughout the state and local adult education and adult and family literacy communities in each region.

3. Assist the adult education and adult and family literacy community in integrating LINCS resources and new technology into teaching and staff development.

4. Enhance the literacy field's electronic knowledge base by creating, collecting, and organizing new high quality literacy information resources on-line, especially locally developed materials.

Each regional center will be expected to build on the achievements of the region's previous regional hub (where applicable), to work with a consortium of partners and affiliates in the region, and, in cooperation with them, to:

1. Build new partnerships at the regional, state and local level (expand the number of partners and affiliates).

2. Implement a comprehensive regional training plan for the use of LINCS and related technology. This plan is to result in the effective integration of technology in teaching and learning.

3. Market LINCS resources and services widely to various potential LINCS audiences, with a priority on adult education and adult and family literacy practitioners.

4. Implement a regional plan to locate and organize high quality resources, particularly for LINCS Special Collections, and facilitate the creation of new resources to meet target audience needs.

5. Connect increasingly larger numbers of literacy stakeholders of all kinds—researchers, practitioners, administrators, students, and policymakers.

6. Build evaluation tools and methods, based on the project's goals, that will show the impact of LINCS use in improving professional development and instruction.

7. Take advantage of the strengths and unique capabilities of each region, the regional training centers will work with each other and the NIFL to coordinate their activities, and whenever possible carryout joint activities, in order to maximize the total mount of resources available to LINCS and allow them to have the greatest impact possible.

Deadline for Applications: July 15, 2000.

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Eligible Applicants

Public and private non-profit organizations with knowledge and expertise adult basic education, adult literacy, and family literacy, or consortia of such organizations.

Available Funds

This notice envisions a three-year cooperative agreement. In the first year, up to $150,000 is available for each of five grantees. Funding for years 2 and is subject to program authorization and availability of appropriations, and contingent upon satisfactory completion of the previous year's plan of action.

Estimated Number of Awards: 5 (one award in each region).

Estimated Award Amount: $150,000 for Year 1.

Note: The National Institute for Literacy is not bound by any estimates in this notice.

Project Period: Three years, with the possibility of renewal for 2 subsequent years.

Applicable Regulations

The National Institute for Literacy has adopted the following regulations included in the Education Department General Administrative Regulations (EDGAR): 34 CFR parts 74, 77, 80, 82, and 85, and 34 CFR part 75, Secs. 75.50, 75.51, 75.100–102, 75.104, 75.109–192, 75.200–201, 75.215–217, 75.231–236, 75.250–251, 75.253, 75.261, 75.525, 75.531, *75.560–569*, 75.591, 75.620–21, 75.700–707; 75.77, 75.79, 75.80–82, 75.85–86 (36/6/1997 and EDGAR Expanded Authorities, 1/27/98).

This document is available through your public library and on the National Institute for Literacy web site at *http://www.nifl.gov/*. Appropriate administrative officials are advised to become familiar with the policies and procedures in the EDGAR that are applicable to this award. If a proposal is recommended for an award, the Grants Officer will request certain organizational, management, and financial information. Grant administration questions regarding General Requirements, Prior Approval Requirements, Transfer of Project Director, and Suspension or Termination of Award should be referred to the Grants Officer.

FOR FURTHER INFORMATION, CONTACT: Jaleh Behroozi Soroui; LINCS Director; National Institute for Literacy; 1775 I Street, NW., Suite 730; Washington, DC 20006; Telephone: 202–233–2039; FAX: 202–233–2050; E-mail: *jbehroozi@nifl.gov*. Information about NIFL's funding opportunities, including Application Notices, etc., can be viewed on the LINCS WWW server (under What's New and Grants & Funding) at http://www.nifl.gov/LINCS. However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

SUPPLEMENTARY INFORMATION:

Definitions

For purposes of this announcement, the following definitions apply:

Adult Education and Literacy Community—. The aggregate of individuals and groups at all levels nationwide that are actively involved with adult education and adult and family literacy instruction, including individuals such as researchers, practitioners, policymakers, adult learners, and administrators, and groups such as state and local departments of education, human services, and labor; libraries; community-based organizations; businesses and labor unions; and volunteer and civic groups.

LINCS Affiliates—National, state, or local organizations that support LINCS and want to be a part of the expanding LINCS network, but are not formal partners. (see details in appendix #1)

LINCS Network—LINCS national, regional, state, and local partners and affiliates.

LINCS Partners—State and in some cases, national organizations that provide professional development, technical assistance, and other technology services to local programs. In the case of states, there may be more than one partner, depending on the needs of the state and the resources available, and decisions about the selection of the partners are made jointly with the state adult education office and other state-level organizations. Through a formal agreement with the regional LINCS Hub, state organizations will receive services and contribute to LINCS. (see details in appendix #1)

LINCS Standards—NIFL's guidelines and standards for organizing materials in a uniform format for posting on the Internet. These standards are found in NIFL's "Starting Point" manual, *LINCS Selection Criteria*, (http://www.nifl.gov/lincs/selection_criteria.html), LINCS Special Collections Guidelines (http://www.nifl.gov/lincs/special-collections.html), the Adult Literacy Thesaurus (ALT), the Adult Literacy Thesaurus User's Manual, and other documentation.

LINCS Web Sites—LINCS national, regional, and state home pages and Special Collections.

Literacy—An individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals and develop one's knowledge and potential (as stated in the National Literacy Act of 1991).

Literacy Resource Centers, State Education Agencies—State or regional organizations supported through federal, state, or private funds for the purpose of coordinating the delivery and improvement of literacy services across agencies and organizations in the state or region, enhancing the capability of state and local organizations to provide literacy services, building a database of literacy-related information, and working closely with the NIFL and other national literacy organizations to enhance the national literacy infrastructure.

Regional Hubs or *Regional Technology Centers*—The lead site acting as the regional focal point for implementing LINCS grant requirements and activities, including serving states and local programs in that region.

Regional Library Team—As part of the Regional Technology Center work groups, the Regional Library Team include librarians from the region who work together in locating, organizing, and evaluating quality of resources contributed to the LINCS databases, based on the LINCS standards.

Regional Training Team—As part of the Regional Technology Center work groups the Regional training team(s) include trainers from partners and affiliates helping to enhance training capacity of the region through training trainers, providing technical assistance and resources.

Regions—Region I: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands. Region II: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia. Region III: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin. Region IV: Arizona, California, Colorado, Nevada, New Mexico, Federal States of Micronesia, Guam, Marshall Islands, Northern Mariana Islands. Hawaii. Region V: Alaska, Idaho, Montana, Oregon, Utah, Washington, Wyoming.

Special Collections—The LINCS Special Collections are one-stop electronic gateways to high-quality resources related to specific subject areas judged to be of high interest to the Adult Education and Literacy Community. Resources include Web-based resources and resources in other media, including descriptions of research and evaluation results, policy-related information, curricula, best practices, fact sheets, and directories. LINCS Special Collections are built around specific content areas (such as English Second Language), specific settings or contexts (such as Workforce Education), and professional development topics (such as the use of Technology in Professional Development).

Appendix #1

LINCS Partners and Affiliates: The success of LINCS as a national information and communication system depends on its use by practitioners in the field. A leading strategy for increasing its use is the LINCS structure. NIFL's national LINCS site is connected to regional sites. Each regional site is connected to key contacts in state sites. State sites are connected to local contacts and programs. In this way, practitioners can begin to use LINCS at a site near to them (their own local area or state), while still having access to the vast resources on the national system. Similarly, people can enter through the national site and find regional, state, and local resources. State and local association with LINCS occurs in two ways—partnership and affiliation.

1. LINCS partners enter into formal agreements with regional technology centers. These agreements spell out what services the partner will receive and what services the partner will render.

a. What LINCS partners receives:

(1) Direct involvement in LINCS work groups, which participate in shaping policies, procedures, and standards for LINCS network.

(2) Server space (if needed) and technical assistance to house a web site.

(3) Discussion list services and server space for all levels.

(4) Programming codes and technical assistance in implementing any of the LINCS tools (calendar/grant databases, search tools, etc.).

(5) Assistance in converting an in-house material database to an Internet usable database format, where it will be added to the LINCS global database.

(6) A directory for agency-specific materials contributed by the partner to the LINCS databases, and search tools that will allow users to search agency-specific materials.

(7) National visibility for the partner's resources through postings on the material database, hot sites, and listings of events.

(8) A web-based template (with major categories and design) for organizing resources, with or without pre-populated resources for teachers, learners, and administrators, search functions, and many other useful features.

(9) Technical assistance for web site development and cataloging.

(10) A self-updateable comprehensive directory of local programs.

(11) Multi-level training (including trainer training) and materials to pass on to local programs and practitioners in their state.

(12) Attendance at LINCS events, with a major portion of the expense to be paid by the LINCS project.

(13) The opportunity to leverage membership in LINCS for other purposes, such as obtaining grants from other sources.

(14) Eligibility to receive mini-grants to help promote LINCS and the integration of technology into teaching and learning, or to produce new web-based resources.

(15) Involvement in facilitated joint interagency projects with the goal of maximizing efficiency and enhancing the capacity of participating agencies.

(16) The opportunity to network with other states in the region to exchange ideas, products, and expertise.

(17) A set of national standards for publishing materials on the Web, including the Adult Literacy Thesaurus (ALT). These standards are key to the foundation of a national system.

b. What state level partners are required to do:

(1) Represent their state and local programs as a part of the LINCS national system.

(2) Have (or be willing to build) the capacity to house and maintain a web site, and a commitment to distribute LINCS resources to practitioners.

(3) Adopt the LINCS Web site template, or, if there are state restrictions, as much of the LINCS template as possible (at a minimum, the major categories, LINCSearch, and LINCS logo).

(4) Contribute locally produced materials for inclusion in the LINCS databases.

(5) Contribute time to catalog locally produced materials and web sites that are on the state LINCS web site so these can be found through the LINCS search. (If partners do not have the resources to catalog items directly, they can contact their regional LINCS for cataloging assistance.)

(6) Promote LINCS services, resources, and standards by making presentations, providing training, establishing projects through mini-grants to expand the integration of technology in teaching and learning, and reporting on these activities quarterly.

(7) Participate in joint technology projects and activities (*i.e.*, regional technology training teams and library teams) with other partners in the state or other states.

(8) Contribute resources to LINCS Special Collections.

(9) Contribute calendar and news items that would be useful for clients outside the agencies' service area.

2. LINCS Affiliates: In addition to LINCS partners, there are LINCS Affiliates. Affiliates are national, state, or local organizations that support LINCS and want to be a part of the expanding LINCS network, but are not considered partners.

a. What national, state and local Affiliates receive:

(1) Recognition on the appropriate LINCS web site (national, regional, or state). .

(2) National visibility for their state and their particular organization resources through the LINCS Hot Sites and LINCS multiple search programs and also publicizing their events through LINCS Calendar of Events.

(3) A directory (specific to their agency) for materials they contribute to the LINCS databases, and search tools that will allow users to search these materials.

(4) Online cataloging training and technical assistance.

(5) A self-updateable comprehensive directory of local programs.

(6) Discussion list services and server space.

(7) Access to online training for use with their constituencies.

(8) Training materials on the use of LINCS and on integrating technology into teaching and learning.

(9) The opportunity to disseminate information about their program or projects through the LINCS network.

(10) The opportunity to catalog their locally produced, full-text documents for identification through the LINCS search engines.

(11) Invitations to attend LINCS events.

(12) The opportunity to be part of LINCS workgroups.]

(13) The opportunity to network with other LINCS partners and affiliates

b. What national, state, and local Affiliates are encouraged to do:

(1) Contribute locally produced materials from their Web sites for inclusion in the LINCS databases.

(2) Adopt the LINCS Web site template, or at a minimum, the LINCSearch link and LINCS logo.

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(3) Promote LINCS services and resources in their state by making presentations about LINCS.

(4) Contribute resources to LINCS Special Collections.

(5) Contribute calendar and news items that would be useful to clients outside the agencies' service area.

Background

The National Institute for Literacy (NIFL), as authorized by Title II of the Workforce Investment Act of 1998, has the legislative mandate to develop a national literacy database. The intent of this mandate is to assure the consolidation and accessibility of scattered and hard-to-access information resources for literacy. (See *http://www.nifl.gov/LINCS/about/about.html#history*) Now in its fifth full year of operation, LINCS is steadily pursuing its mission of using technology to strengthen the adult basic education and literacy community. Beginning in mid-1994 with a single national site on the Internet, LINCS is now well on its way to fulfilling its goals. For a summary of national and regional LINCS achievements, go to *http://www.nifl.gov/lincs/millenium/achievements.html.*

Plans for the future: Over the past seven years, the NIFL has provided the leadership and tools to prepare the adult literacy community for the 21st century through major system-building initiatives, including the creation of LINCS and its regional hubs. The NIFL intends to sustain the momentum of building systems that help professionalize the adult literacy community by continuing its initiatives in technology (view the LINCS Vision Statement at *http://www.nifl.gov/lincs/millennium/vision.html*).

Application Requirements

A. Overview of Regional Technology Centers

The NIFL will award five grants to public and private organizations, or consortia of organizations, for the support of one regional technology center in each of the five designated regions. No more than one grant will be made in each region.

B. Project Narrative

The project narrative is critical and must thoroughly reflect the capacity of the applicant to lead the regional technology effort, and build on the achievements of the previous regional hub and work with LINCS partners and affiliates. The narrative must encompass the full three years of project activities, with detailed plans for Year 1 and milestones for Years 2 and 3. The narrative must clearly describe the applicant's plan for attaining measurable goals and outcomes as identified in each of the sections listed below and propose specific implementation plan. The narrative should not exceed twenty (20) single-spaced pages, or forty (40) double-spaced pages. The narrative may be amplified by material in attachments and appendices, (not exceeding 20 pages) but the body should stand alone to give a complete picture of the project. Proposals that exceed 20 single-spaced pages or 40 double-spaced pages will not be reviewed. The format for the project narrative should follow the order and format of the following selection criteria.

C. Selection Criteria

In evaluating applications for a grant under this competition, the Director uses the following selection criteria. The maximum score for all the criteria in this section is 100 points and the maximum score for each criterion is indicated in parentheses with the criterion.

1. Mission and Strategy (5 Points)

The Director reviews each application to determine the appropriateness of the applicant's stated mission and strategy for the proposed regional center. The applicant must state goals, objectives, and overall expected project achievements for the three year grant period, including:

a. The degree to which the stated mission and strategy for operating a regional center reflect an understanding of the purpose for this project, and NIFL's vision and strategy for LINCS.

b. The degree to which the application demonstrates an understanding of the previous regional hub's strengths and weaknesses; and presents a plan to build on the work of the previous regional hub in enhancing the technological capacity of the region's adult education and literacy community.

c. The extent to which the application provides for a seamless and uninterrupted transition of services and resources from the previous Hub.

d. The quality and coherence of proposed strategies for providing leadership to partners and affiliates at the state and local level in strengthening regional collaboration, and expanding the number of key agencies collaborating at the state and local levels.

e. The degree to which the project will serve the entire adult education and literacy community, including the full range of public and private programs (including libraries, local education agencies, community colleges, volunteer and community-based organizations, etc.).

2. Institutional Capabilities (15 Points)

The Director reviews each application to determine the qualifications and capabilities of the organization to sustain a long-term, high quality, coherent program, and to act as the lead site of a region, including consideration of:

a. The strengths and assets of the applying organization in terms of overall capacity to support adult education and literacy services its base of financial support and commitment of the overall organization to this project.

b. The applicant's successful leadership track record in establishing and implementing a coordinated regional and interstate/interagency plan.

c. The applicant's successful experience in implementing the policies and requirements of a national project at the regional, state, and local level. The applicant must demonstrate how it has built collaborative working relationships with states and local programs;

d. The applicant's experience in training and in applying technology to enhance accessibility of information and ease of communication;

e. The strength of the applicant's partnerships (existing or previous) with private and public entities, especially those that have resulted in leveraging resources and enhancing the applicant's institutional capacity.

f. The capabilities of staff who will oversee project implementation;

g. The applicant's knowledge of current Internet technologies, databases, telecommunications practices, equipment configurations, and maintenance.

h. The applicant's capacity to provide resources—including hardware, software, and training, and technical assistance—to partners and affiliates in state and local programs; and

i. The applicant's capabilities to leverage other funding and resources to sustain the project at the end of the three-year grant period.

3. Plan of Operation (30 Points)

The applicant must develop a three-year plan of operation that addresses both the immediate needs and the future vision and direction of the project. The plan must clearly identify the measurable outcomes that will result from project implementation. The Director reviews each application to determine the quality of the plan of operation, including consideration of the quality of the applicant's plan to use its resources, personnel, and methods to achieve each indicated project objective, especially in the following areas:

a. Building Partnerships and Collaboration:

(1) The quality of the plan to establish effective working relationships with other organizations in the region as required for effective development of the project.

(2) The extent to which the applicant's plan includes sound methods for achieving measurable goals for expanding the number of LINCS partners and affiliates in each member state—especially those dealing with education, labor, and human services—that will further project objectives.

(3) The extent to which the applicant has been able to attract formal support or agreement from the previous hub's consortium members. The applicant should include any formal agreements or support letters as attachments to the application.

(4) The extent that the plan provides a measurable goal for developing local LINCS partnerships and affiliations

(5) The quality of the plan for leveraging additional resources for the project at the regional level and in each state, including a plan to develop partnerships with technology-based educational projects, especially those in the areas of telecommunications, on-line services, networking, and multi-media; and private entities, including telecommunication and high tech business and industry.

b. Facilitating Communication and Community Building: How the applicant will enhance communication throughout the region's adult education and literacy community, across LINCS partners and affiliates, and among practitioners and learners through the use of telecommunication tools (such as discussion lists, bulletin boards, audio/video conferencing and networking, and virtual workspace programs). The applicant should specify—

(a) The kind of tools to be used.

(b) The specific content to be offered.

(c) The degree to which these tools will provide a medium for professional development within and among the partners and affiliates and targeted local programs.

c. Enhancing the knowledge base:

(1) The degree to which the applicant's regional plan for collecting resources with partners and affiliates is comprehensive and will deepen the literacy field's knowledge base and enhance LINCS content. The plan should describe:

(a) Systems or mechanisms that will be developed by the applicant and partners (such as Regional Library Teams) to identify, locate, review (for quality of content and quality of presentation) and organize useful print and on line resources available within and outside the LINCS network and include them in the LINCS databases

(b) A measurable goal for the number of resources to be contributed to the LINCS databases each year by all partners and affiliates, with the focus being on high quality instructional and training resources. The quality of resources should follow LINCS selection criteria standards and guidelines. The applicant should make provisions for including non-print materials, such as audio and video materials, in their entirety.

(c) The type of resources that will be provided to partners, practitioners, and individuals to develop innovative web-based resources.

(2) The extent to which tools and mechanism will be used to identify common strengths and expertise among partners and affiliates in creating rich multi-state agency collections, training packages, and technical assistance.

d. Marketing:

(1) The extent to which the plan for LINCS regional marketing will increase awareness and use of LINCS among adult education and literacy programs and practitioners.

(2) The extent to which resources will be made available to partners and affiliates for enhancing LINCS awareness and use.

(3) The extent to which resources will be used to enhance the use of LINCS among adult learners.

e. Management:

(1) The extent to which the plan of management is effective and ensures proper and efficient overall administration of the project and also in the following areas:

(2) Supporting partners and affiliates in enhancing their technological capacity, implementing project activities, contributing to LINCS, and creating new resources, including their ability to:

(3) Maintain a strong home page that is seamlessly integrated with the LINCS network and that uses LINCS state and local templates.

(4) Provide technical assistance, training, and high quality, updated resources to local adult education and literacy programs.

(5) Provide for efficient use of regional resources by creating project-based multi-partner collaborations and building on the strength and expertise of partners and affiliates.

(6) Implement new requirements or standards developed by NIFL in concert with regional technology centers to assure uniformity across the LINCS network.

(7) The quality of the strategy and timeline for implementing a formal agreement between the applicant, partners, and affiliates that clearly identifies the rights, roles, and responsibilities of each partner and affiliate with regard to all project activities.

(8) How the applicant will provide for expanding the roles of partners and affiliates in carrying out project activities (*i.e.*, by providing states with resources and funds appropriate to their level of need and expertise), as well as in monitoring project implementation.

(9) The quality of the tools that will be used to maintain communication among the partners and affiliates.

(10) How the applicant will help partners and affiliates leverage other sources of financial support, market their achievements, and develop active state-level partnerships, especially with state education agencies.

4. Training and Technical Assistance (15 Points)

The applicant should present a regional technology training and technical assistant plan. The Director reviews each application to determine the quality and design of the plan, including:

a. The extent to which the applicant demonstrates a commitment to provide technical support, training, and equipment to partners and affiliates;

b. The extent to which the goals of the proposed training are measurable, with clear plan on how the impact of such training will be assessed;

c. The extent to which the training plan, methods, mechanisms, and structures are likely to be effective in achieving stated measurable goals;

d. The extent to which the applicant will use the information and expertise of other Regional LINCS in developing training resources and approaches; and

e. The extent to which the proposed training content and plan is comprehensive and at appropriate levels, including:

(1) How the proposed plan addresses the need for raising awareness and educating practitioners, through broad-based training, about resources available through LINCS, and will build greater knowledge and skills in using the LINCS technology for teaching and learning and interaction with others.

(2) How targeted training models, methods, mechanisms, and structures will result in integrating technology in

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teaching and learning within the region. The applicant's timeline for a formal agreement with partners should include an agreement to provide an implementation plan for technology integration in the first quarter of the award. At the minimum the formal agreement should cover the following issues:

(a) How the applicant and LINCS partners will assess the existing level of integration in each state;

(b) How the applicant will identify and disseminate information about other state and local efforts in integrating technology into teaching and learning;

(c) How the applicant will support partners and/or affiliates in developing the technology integration plan;

(d) The resources that will be recruited for the development of a three year plan;

(e) The kind of partnership that will be developed with other regional and state agencies involved in similar efforts;

(f) How the applicant will evaluate progress in integrating technology;

(g) How the training plan will be incorporated in the overall state or partners' staff development plan;

(h) How the training content, tools, and methods developed will train learners in using LINCS;

(i) How the training plan provides for cross-state collaboration (*i.e.*, by establishing regional trainer teams).

(j) How the methods, mechanisms, structures, and materials provided for training—both on-line and off-line—can be used to meet the needs of geographically diverse populations and be replicated, maintained, easily accessible, and updated during and beyond the life of this project.

(k) What innovative technologies will be used to provide easy and efficient methods of delivering training resources to the adult education and literacy community, including—

(i) The extent to which the applicant will provide technical assistance, funding, and other resources to partners and affiliates.

(ii) The extent to which the applicant will provide technical assistance to the end users at varying levels of technical sophistication.

5. Technical Soundness (5 Points)

The Director reviews each application to determine the technical soundness of the proposed project, including consideration of:

a. The extent to which the applicant demonstrates knowledge of current Internet technologies, databases, telecommunications practices, equipment configurations, and maintenance;

b. The extent to which the applicant demonstrates a thorough knowledge of literacy data collections, and dissemination, as well as the LINCS web template, selection criteria, and cataloging standards;

c. The extent to which it will mirror the LINCS information structure, system architecture, and design.

d. The extent to which the applicant demonstrates a commitment to provide technical support, training, and equipment to partners and affiliates.

e. The extent to which the applicant will provide for the provision of hardware, software, and a networking system that will:

(1) Address issues of interpretability and scalability,

(2) Support using audio-video, multi-media, and interactive Internet tools, and

(3) Keep pace with new development in technology.

f. Assurances that the following will be in place—

(1) An electronic system that consists of a UNIX-based server capable of providing the following services for the regional technology training center, its partners, and affiliates.

(a) World Wide Web (WWW) HTTP services;

(b) Internet Electronic Mail (SMTP) services;

(c) File Transfer Protocol (FTP) services;

(d) List (listproc, majordomo) services;

(2) A dedicated Internet connection of sufficient capacity (a minimum of up to T1) to allow sustained usage of the site, be able to transfer an average web page at a rate of 20 kilobytes in three seconds to a client web browser at NIFL during peak usage times, and also be able to deliver quality audio and video products at useable rates to multiple concurrent users;

(3) Maintain information in both HTML documents and text and pdf format.

(4) Serve as a server to house state and local program web sites, any LINCS Special Collections located in the region, Audio and Video server; and communication server (for activities such as online chats, discussion lists, and incubators).

6. Budget and Cost Effectiveness (10 Points)

The Director reviews each application to determine the extent to which the applicant describes plans for managing the project budget and ensuring cost-effectiveness, including—

a. Provisions for ensuring the most efficient and cost-effective use of project funds.

b. Provisions for identifying and securing additional funds to continue and expand the project beyond the end of the grant.

c. A project time line that consists of a table or diagram listing major tasks or milestones and including estimates of funds, time, training schedules, formal agreements with partners and affiliates, personnel, facilities, and equipment allocated to each program area, as well as the timing of progress and other reports, meetings, and other similar events.

Please note that overhead for this project is restricted as per EDGAR CPR 75–562.

7. Evaluation Plan (10 Points)

The Director reviews each application to determine the quality of the evaluation plan for the project, including consideration of:

a. The quality of methods and mechanisms to be used to document and evaluate progress in relation to the project's mission and goals, including use of on-line methods (such as web tools) to collect and analyze data on the effectiveness of the resources presented.

b. The strength of the applicant's statement of measurable outcomes for all project goals; and the quality of methods that will be used to document and evaluate the impact of the project on:

(1) Partners, affiliates, and the broader literacy community.

(2) Improving professional development and instruction.

(3) Integrating technology in teaching and learning.

(4) Raising awareness of LINCS and its use.

[The grantee must commit to working with NIFL to incorporate GPRA requirements into the evaluation plan.]

8. Quality of Key Personnel (10 Points)

The Director reviews each application to determine the quality of key personnel for all project activities, including consideration of:

a. The qualifications of the project director with respect to carrying out the purposes of this grant;

b. The qualifications of other key personnel the applicant,

c. The experience and training of key personnel in leading a consortium of states and working in fields related to project objectives; and

d. The applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected for employment without regard to race, color, national origin, religion, gender, age, or disability.

Additional Application Requirements

The application shall include the following:

Project Summary: The proposal must contain a 200-word summary of the proposed project suitable for publication. It shall not be an abstract of the proposal, but rather a self-contained description of the activities that would explain the proposal. The summary should be free of jargon and technical terminology, and should be understandable by a non-specialist reader.

Budget Proposal: ED Form 524 must be completed and submitted with each application. The form consists of Sections A, B, and C. On the back of the form are general instructions for completion of the budget. All applicants must complete Sections A and C. If Section B is completed, include the nature and source of non-federal funds. Attach to Section C a detailed explanation and amplification of each budget category. Included in the explanation should be complete justification of costs in each category. Additional instructions include the following:

- Prepare an itemized budget narrative for the project as a whole.
- Personnel items should include names (titles or position) of key staff, number of hours proposed, and applicable hourly rates.
- Include the cost, purpose, and justification for travel, equipment, supplies, contractual and other. Training stipends are not authorized under this program.
- Clearly identify in all instances contributed costs and support from other sources, if any.
- Show budget detail for financial aspects of any cost-sharing or joint or cooperative funding.

Disclosure of Prior NIFL Support: If any consortium member has received NIFL funding in the past 2 years, the following information on the prior awards is required.

- NIFL award number, amount and period of support;
- A summary of the results of the completed work; and
- A brief description of available materials and other related research products not described elsewhere.

If the applicant has received a prior award, the reviewers will be asked to comment on the quality of the prior work described in this section of the proposal.

Reporting: In addition to working closely with the National Institute for Literacy, the applicant will be required to submit Quarterly Performance reports, which are to be brief, 3–4 page reports of progress; a final annual report of activities replaces the 4th quarterly report. Due: Within 30 days at the end of each quarter. Detailed specifications for the reports will be provided to the consortium within three months after the awards are made.

Instructions for Transmittal of Applications

To apply for a cooperative agreement grant—

1. Mail the original and seven (7) copies of the application on or before the deadline date of July 15, 2000 to: National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, Attention: Jaleh Behroozi Soroui (CFDA NO. 84.257T)

2. Hand deliver the application by 4:30 p.m. (Washington, DC time) on the deadline date to the address above.

a. An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

b. If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office. (2) The NIFL will mail a Grant Applicant Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the NIFL at (202) 233–2055. (3) The applicant must indicate on the envelope and in Item 10 of the application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Electronic Access to This Document

You may view this document, as well as National Institute for Literacy and Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Web at or from the following sites:

http://ocfo.ed/gov/fedreg.htm
http://www.nifl.gov/nifl/news_events.html
http://www.nifl.gov/lincs/2000_rfp.html

To view the PDF version, you must have the Adobe Acrobat Reader Program. **Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at *http://www.access.gpo.gov/nara/index.html*

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. Additional forms for the completion of this application are available on-line at *http://octo.ed.gov/grnt/appforms*. The parts and additional materials are as follows:

Part I: Application for Federal Assistance [Standard Form 424 (Rev. 4–94)) and instructions].

Part II. Budget Information [Non-Construction Programs (ED Form 524) and instructions].

Part III: Application Narrative [Additional Materials: Estimated Public Reporting Burden].

Assurances-Non—Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of recipients and should not be transmitted to the NIFL.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. An applicant may submit information on a Photostat copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and certifications must each have an original signature. No award can be made unless a complete application has been received.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid

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OMB control number. The valid OMB control number for this information is under OMB control number 3430–0007, Expiration date: 06/30/2003. The time required to complete this information collection is 55 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

Dated: June 5, 2000.

Andrew J. Hartman,

Director, NIFL.

[FR Doc. 00–14548 Filed 6–8–00; 8:45 am]

BILLING CODE 6055–01–U

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation—Applicant Survey

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 65 FR 17681, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–306–1125 X2017.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimption on (703) 306–1125 x2017 or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: "National Science Foundation Applicant Survey."

OMB Approval Number: 3145–0096

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The current National Science Foundation Applicant Survey has been in use for several years. Data are collected from applicant pools to examine the racial/sexual/disability composition and to determine the source of information about NSF vacancies.

Use of the Information: Analysis of the applicant pools is necessary to determine if NSF's targeted recruitment efforts are reaching groups that are underrepresented in the Agency's workforce and/or to defend the Foundation's practices in discrimination cases.

Burden on the Public: The Foundation estimates about 2,000 responses annually at 3 minutes per response; this computes to approximately 200 hours annually.

Dated: June 5, 2000.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 00–14590 Filed 6–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure Research #1207).

Date & Time: June 26, 2000; 8:00 AM–6:00 PM.

Place: Room 1150, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–14587 Filed 6–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date and Time: June 23, 2000–8:30 a.m. to 5 p.m.

Place: National Science Foundation, Room 360, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Kishan Baheti, Program Director, Control, Networks, and Computational Intelligence (CNCI), Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230, Telephone: (703) 306–1339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals in the Control, Networks, and Computational Intelligence program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. Closed portions are proper under Sunshine Act exemptions cited. The CMO's signature on this Notice is the required determination.

Dated: June 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–14588 Filed 6–8–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Public Affairs Advisory Group; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Public Affairs Advisory Group (5292).

Date/Time: June 27, 2000, 6 p.m.–9 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA. (A specific room number has not been determined, but may be obtained by calling the contact person listed below before the meeting.)

Type of Meeting: Open.

Contact Person: Mr. Michael Sieverts, Acting Director, Office of Legislative and Public Affairs, Room 1245, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1070.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and engineering outreach activities.

Agenda: The committee will be considering the following:

(1) The case for the importance of basic research;

(2) Effective ways to communicate the importance of basic research to various audiences; and

(3) How NSF can increase public appreciation of science and engineering research and education.

Meeting Minutes: May be obtained from the contact person listed above.

Dated: June 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–14589 Filed 6–8–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8905]

Quivira Mining Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of Quivira Mining Company's application for establishing alternate concentration limits in source material license SUA–1473 for the Ambrosia Lake, Utah, facility and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated February 17, 2000, an application from Quivira Mining Company (Quivira) to establish Alternate Concentration Limits and amend the Source Material License No. SUA–1473 for the Ambrosia Lake uranium mill facility.

FOR FURTHER INFORMATION CONTACT: Jill S. Caverly, Uranium Recovery and Low Level Waste Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6699.

SUPPLEMENTARY INFORMATION: The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Quivira Mining Company, 6305 Waterford Blvd., Suite 325, Oklahoma City, Oklahoma 73118, Attention: William Paul Goranson; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services,Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 31st day of May 2000.

For the U.S. Nuclear Regulatory Commission.

Thomas H. Essig,

Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–14687 Filed 6–8–00; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Office of the Crisis Corps; Information Collection Requests Under OMB Review OMB Number 0420–0533

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35). This notice announces that the Peace Corps has submitted to the Office of

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Management and Budget a request to approve the use of the peace Corps/ Crisis Corps Volunteer Application Form. The initial Federal Register notice, for a 60 day emergency approval, was published on March 3, 2000. The Peace Corps is now seeking three year OMB approval using the standard review procedures. The Peace Corps invited comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on these forms should be addressed to Desk Officer for the Peace Corps, Office of Management and Budget, NEOB, Washington, DC 20503.

DATES: The Peace Corps invited comments for a period of 30 days following the initial publication in the **Federal Register**.

ADDRESSES: A copy of the information collection may be obtained from Joan Timoney, Director of the Crisis Corps, Peace Corps, 1111 20th Street, NW, Washington, DC 20526. Ms. Timoney may be contacted by telephone at 202–692–2250. Comments on these forms should be addressed to Mr. Davis Rostker, Desk Officer, Office of Management and Budget, NEOB, Washington DC 20523.

Dated: June 1, 2000.

Michael J. Kole,

Director of Administrative Services and Certifying Official.

[FR Doc. 00–14602 Filed 6–8–00; 8:45 am]

BILLING CODE 6051–01–M

OFFICE OF PERSONNEL MANAGEMENT

[RI 25–41]

Submission for OMB Review; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–41, Initial Certification of Full-Time School Attendance, is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity benefits to children who are age 18 or older.

Approximately 1,200 RI 25–41 forms are completed annually. It takes approximately 90 minutes to complete the form. The annual burden is 1,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before July 10, 2000.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415–3540

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, (202) 606–0623

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–14626 Filed 6–8–00; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

[RI 92–19]

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of a revised information collection. RI 92–19, Application for Deferred or Postponed Retirement: Federal Employees' Retirement System (FERS), is used by separated employees to apply for either a deferred or a postponed FERS annuity benefit.

Approximately 1,272 forms are completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual estimated burden is 1,272 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before July 10, 2000.

ADDRESS: Send or deliver comments to—

John Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3313, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, (202) 606–0623

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–14627 Filed 6–8–00; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

[RI 38–128]

Submission for OMB Review; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 38–128, It's Time to Sign Up for Direct Deposit, is used to give recent retirees the opportunity to waive Direct Deposit of their payments from OPM. The form is sent only if the separating agency did not give the retiring employee this election opportunity.

Approximately 45,500 forms are completed annually. The form takes approximately 30 minutes to complete. The annual estimated burden is 22,750 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before July 10, 2000.

ADDRESSES: Send or deliver comments to:

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415;

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW Room 3002, Washington, DC 20503.

For information regarding administrative coordination contact: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–14628 Filed 6–8–00; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

January 2000 Pay Adjustments

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The President adjusted the rates of basic pay and locality payments for certain categories of Federal employees in January 2000. This notice documents those pay adjustments for the public record.

FOR FURTHER INFORMATION CONTACT: Denise Jenkins, Office of Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, (202) 606–2858, FAX (202) 606–0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On December 21, 1999, the President signed Executive Order 13144 (64 FR 72237, December 23, 1999), which established the January 2000 across-the-board adjustments for the statutory pay systems and the 2000 locality pay adjustments for General Schedule (GS) employees in the 48 contiguous States and the District of Columbia. The President made these adjustments consistent with section 646 of the Treasury and General Government Appropriations Act, 2000 (Public Law 106–58, September 29, 1999). Schedule 1 of Executive Order 13144 provides the rates for the 2000 General Schedule and reflects a 3.8 percent general increase. Executive Order 13144 also includes the percentage amounts of the 2000 locality payments. (See Section 5 and Schedule 9 of Executive Order 13144.) The publication of this notice satisfies the requirement in section 5(b) of Executive Order 13144 that the Office of Personnel Management (OPM) publish appropriate notice of the 2000 locality payments in the **Federal Register**.

GS employees receive locality payments under 5 U.S.C. 5304. Locality payments apply in the 48 contiguous States and the District of Columbia. In 2000, locality payments ranging from 6.78 percent to 15.01 percent apply to GS employees in 32 locality pay areas. These 2000 locality pay percentages, which replaced the locality pay percentages that were applicable in 1999, became effective on the first day of the first applicable pay period beginning on or after January 1, 2000. An employee's locality-adjusted annual rate of pay is computed by increasing his or her scheduled annual rate of basic pay (as defined in 5 U.S.C. 5302(8) and 5 CFR 531.602) by the applicable locality pay percentage. (See 5 CFR 531.604 and 531.605.)

On December 7, 1999, the President's Pay Agent extended the 2000 locality-based comparability payments to the same Governmentwide and single-agency categories of non-GS employees that received the 1999 locality payments. The Governmentwide categories include members of the Senior Executive Service (SES), the Foreign Service, the Senior Foreign Service, employees in senior-level (SL) and scientific or professional (ST) positions, administrative law judges, and members of Boards of Contract Appeals.

Executive Order 13144 establishes the new Executive Schedule, which incorporates the 3.4 percent increase required under 5 U.S.C. 5318. The Executive order also reflects a decision by the President to increase the rates of basic pay for members of the Senior Executive Service (SES) by 3.8 percent (rounded to the nearest $100) at SES levels ES–1 through ES–3 and by 3.6 percent (rounded to the nearest $100) at ES–4. Since the maximum rate of basic pay for SES members is limited by law to the rate for level IV of the Executive Schedule, which was increased to $122,400, the rates of basic pay for levels ES–5 and ES–6 were increased by approximately 3.4 percent (rounded to the nearest $100).

Public Law 106–97 of November 12, 1999, amended 5 U.S.C. 5372 to provide the President with authority to adjust the rates of basic pay for administrative law judges (ALJs) at the time of the pay increase for the statutory pay systems. The Executive order reflects a decision by the President to increase the rates of basic pay for ALJs at level AL–2 and AL–3 by 3.8 percent (rounded to the nearest $100). The President increased the rate of basic pay for AL–1 by approximately 3.4 percent (rounded to the nearest $100), since that rate is capped at the rate of basic pay for level IV of the Executive Schedule.

The rates of basic pay for Board of Contract Appeals (BCA) members are calculated as a percentage of the rate for level IV of the Executive Schedule. (See 5 U.S.C. 5372a.) Therefore, BCA rates of basic pay were increased by approximately 3.4 percent. Also, the maximum rate of basic pay for senior-level (SL) and scientific or professional (ST) positions was increased by approximately 3.4 percent (to $122,400) because it is tied to the rate for level IV of the Executive Schedule. The minimum rate of basic pay for SL/ST positions is equal to 120 percent of the minimum rate of basic pay for GS–15, and thus was increased by 3.8 percent (to $93,137). (See 5 U.S.C. 5376.)

OPM published "Salary Tables for 2000" (OPM Doc. 124–48–6) in March 2000. This document provides complete salary tables incorporating the 2000 pay adjustments, information on general pay administration matters, locality pay area definitions, Internal Revenue Service withholding tables, and other related information. The rates of pay shown in "Salary Tables for 2000" are the official rates of pay for affected employees and are hereby incorporated as part of this notice. You may purchase copies of "Salary Tables for 2000" from the Government Printing Office (GPO) by calling (202) 512–1800 or FAX (202) 512–2250. You may order copies directly from GPO on the Internet at *http://orders.access.gpo.gov/su_docs/sale/prf/prf.html*. In addition, you can find pay tables on OPM's Internet website at *http://www.opm.gov/oca/payrates/index.htm*.

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Office of Personnel Management.
Janice R. Lachance,
Director.
[FR Doc. 00–14625 Filed 6–8–00; 8:45 am]
BILLING CODE 6325–01–U

POSTAL SERVICE

Quality Control Reviews for Discounted Letters (Presorted/ Automation Rate Mail)

AGENCY: Postal Service.
ACTION: Notice.

SUMMARY: This second notice provides responses to comments submitted concerning the notice published in the **Federal Register** (65 FR 141–142) about the Mail Quality Analysis (MQA) program. MQA is an automated quality control review tool for automation letter mail preparation. It focuses on presort and piece count accuracy. MQA uses existing automation equipment, software, and reports to compare actual sortation to mailer documentation for sampled mail.

DATES: Effective May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Richards, (703) 329–3684.

SUPPLEMENTARY INFORMATION: On January 3, 2000, the Postal Service published a Notice and Request for Comments concerning the MQA program in the **Federal Register**. Descriptions of the MQA program and announcements to business mailers about MQA were published in Postal Bulletin 22012 (December 2, 1999) and in the December issue of Mailers Companion. Further details will appear in Mailers Companion and will be presented at Postal Customer Council meetings.

MQA will begin on May 1, 2000, and will phase in to full implementation on October 15, 2000. From May 1 to October 15, 2000, MQA reports will be provided to mailers as diagnostic information, enabling mailers to assure that their design, preparation, and production procedures result in mailings that qualify for the postage rates claimed. After October 15, 2000, mailings showing more than a 5 percent presort error rate will result in a postage adjustment if the adjustment totals more than $50. After October 15, a mailer's first-ever MQA analysis will serve as a notice only. In all cases, MQA feedback will help mailers to identify and fix the root causes of any presort and/or piece count errors.

The Postal Service and mailers have worked together for many years to improve the quality of mail, which ultimately benefits all customers through more stable postage rates. MQA incorporates a quality control analysis process, with feedback to the mailer on the results of the review. Only mailers with consistent quality control problems will experience routine postage adjustments. The MQA feedback process, however, is designed to help prevent consistent problems from happening. MQA, as a process management tool, is analogous to the in-process quality/inventory/productivity indicators used by other businesses and industries in their quality control efforts.

MQA uses existing equipment, software, and reports to compare mail sortation and piece counts with mail qualification reports submitted by the mailer. MQA provides an additional return to the Postal Service and our customers from ongoing investments in technology and software. MQA is not a developmental program, but a new application of existing capabilities. The Postal Service believes it is vital to create an environment that leads to high-quality mail and also bolsters the integrity of the worksharing discount program. MQA enhances an environment where each mailer pays postage commensurate with preparation of their mail.

Summary of Comments Received

The Postal Service received five comments in response to the January 3, 2000, **Federal Register** notice. The commenters were two mailer associations, one mailing logistics firm, one mailing service, and one large mail-order firm.

Specific issues raised in the comments are presented below. All commenters supported the goal of improving mail quality for the benefit of all postal customers. Concerns were primarily related to the postage adjustment aspect of MQA. One commenter limited his concern to say that calculations for postage adjustments need to be clearly stated, and the MQA reports as described do so. The following is a summary of the other comments:

1. Implementation should not have occurred before the comment period expired. The mailing industry should have been involved up front in the development of MQA.
2. Mailers should be given advance notice when their mail is to be reviewed under MQA.
3. After initial verification and acceptance, can the Postal Service perform additional quality reviews?
4. Can the Postal Service legally initiate a postage adjustment for mail after acceptance? There is a limited opportunity for "rework" of mail preparation errors.
5. Mailers are not responsible for their mail after it has been accepted by the Postal Service.
6. Are MQA reports linked to the sample and mailing (associated with the mailing and custody of sample), and are MQA samples dispatched in a timely manner?
7. Do equipment issues (reading accuracy and availability of machine maintenance records) affect MQA?
8. It is not fair to calculate postage adjustments against the entire mailing; the sample size is small compared to the potential postage adjustment.
9. Postage adjustments are difficult for mailers to pay. Institute a delay for collection of postage.
10. How will mailers know what to fix?
11. Will mailers have appeal rights and protection from arbitrary determinations?
12. The MQA program should be discontinued, and costs of presort errors spread among all mailers.
13. MQA is a threat to customers and will not encourage more mail.
14. MQA should be rolled out to all mailers, not just to larger mailers.

Responses to Comments

Item 1: Full implementation of MQA was scheduled for June 3, 2000 (well after expiration of the comment period on February 2), and has now been deferred to October 15, 2000. Mailers and their associations have been engaged in dialogue with the Postal Service for the past several months. It also is significant that the diagnostic and feedback provisions incorporated within MQA have been requested by a variety of mailers for some time. MQA uses existing equipment, software, and reports to compare mail sortation with mailer presort documentation and provides an additional return to the Postal Service and our customers from ongoing investments in technology and software.

Item 2: To assure that MQA reviews are a true picture of mail as routinely submitted to the Postal Service, advance notification of mailings selected for review will not occur, either internally or to mailers. Mailers with on-site detached mail units (DMUs), however, likely will notice that a particular mailing has been selected for analysis, because trays will be isolated for the MQA review. Mailers whose mailings are submitted to a business mail entry unit (BMEU) may not know their mail was analyzed until they receive an MQA report. In recent industry discussion

groups, some mailers expressed the strong desire to be present at the USPS barcode sorting equipment when their mail is being analyzed. The Postal Service agreed to craft a procedure to offer mailers the opportunity to observe the analysis. This will be a straightforward procedure that maintains the integrity of the analysis while giving mailers the opportunity for first-hand observation of the MQA analysis. Information about this procedure will appear in an upcoming issue of Mailers Companion.

Item 3: Authorization to mail at discounted rates is granted with the understanding that mail will be prepared to qualify for the rates claimed. Mail submitted with preparation problems leads to extraordinary processing costs as it is rehandled. Domestic Mail Manual (DMM) G020.2.1 states that all mailers are required to comply with applicable postal standards. DMM G020.2.2 and the mailer certification on each postage statement provide notice that when proper postage is not claimed on the postage statement, the Postal Service expects to collect the proper amount. The USPS will continue the verification process at mail acceptance units. However, to avoid "double jeopardy," a mailing assessed a postage adjustment as the result of the presort verification and presort errors disclosed at acceptance will not be subject to MQA. The failure to use existing assets to provide an efficient method for feedback on mail quality would be a great disservice to all who have properly prepared their mail. Therefore, the Postal Service believes it is responsible and proper to administer MQA as defined. MQA will not impact mailers whose systems and procedures produce high-quality mailings, but will benefit all mailers through more stable postage rates.

Items 4 and 5: The Postal Service has a statutory obligation to collect postage owed under 39 U.S.C. 404(a). Moreover, the Postal Service is prohibited from discriminating between mailers, as could occur if some do not pay the full legal rate of postage. Postal standards (such as DMM P011.4.0) provide the necessary mechanism for determining amounts owed to the Postal Service and provide appeal procedures for mailers if they dispute such postage adjustments. DMM G022.2.1 requires mailers to comply with all applicable postal standards, and payment of correct postage is an obvious and important component of compliance. DMM G022.2.2 states that the Postal Service is not restricted from demanding proper payment of postage after acceptance when it becomes apparent that such payment was not made. Further, mailers have ample additional notice of these standards and the requirement that each mailer must pay postage commensurate with their mail preparation through: (1) The application and approval process for authorization to mail at discounted rates; (2) the mailer certification on each postage statement that the mail qualifies for the rates claimed; and, (3) the mailer agreement in that same certification to pay any postage deficiencies assessed on the mailing. The MQA report is clear documentation of presort and piece count discrepancies, as compared to the mail qualification report and rates claimed on the postage statement. Fairness has been applied through the initial notification of presort errors exceeding 5 percent without a postage adjustment prior to October 15, 2000, and not assessing postage adjustments under $50 thereafter.

MQA analyzes mail as it is run on delivery barcode sorters (DBCSs). It is not feasible to reconstruct a mailing and offer the mailer the opportunity to rework mail when presort errors are first disclosed during actual processing of that mail. This fact is true today and MQA does not change it.

Item 6: Initial MQA reviews will be conducted at the origin postal facility. MQA samples (including DMU/ destination entry trays) will be isolated and their integrity secured through special placarding, handling, and tray label recording procedures. The direct relationship between the MQA sampled mail and the MQA report is shown by recording information directly from the tray labels onto the MQA documentation. Scheduling of MQA reviews and processing of samples will be coordinated with Mail Processing. Dispatch of sampled mail will not normally be affected by MQA reviews, although in some cases alternative means of routing may be used. In cases where presort errors exceeding 5 percent are found, mailers will receive copies of all documentation involved as a final quality control check of the process.

Item 7: DBCS equipment is used every day by the Postal Service to process live mail. Preventive maintenance is performed regularly and documented. It is important to note that MQA does not measure barcode readability but rather records mailer-applied barcodes to measure presort and piece count accuracy, as compared to mailer documentation for the sample. Because of the mathematical check digit incorporated in a barcode, DBCS equipment does not misinterpret barcodes. Only when the barcode and its check digit formula add up correctly is a barcode "read." Barcodes that are not read are rejected, and rejected pieces are not counted as errors under MQA. Rejected pieces will be analyzed and information reported to the mailer, as this may also assist mailers in improving quality. Moreover, for computer list sorted mailings, MQA will run thousands of similar pieces through the DBCS at the same time, optimizing the capabilities of the equipment to read barcodes on sampled mail.

Item 8: Postage adjustments are applied only to the actual pieces sampled or to the sort level sampled (5-digit, 3-digit, AADC, Mixed AADC). Sample sizes for MQA reviews are larger than any possible to date.

Items 9 and 10: Mailers with effective quality controls, who prepare mailings to qualify for the rates claimed, will not have difficulties. Difficulty in paying appropriate postage for a mailing is not used to establish the postage a particular mailer should pay and should not mean that one mailer is not required to meet the same preparation standards as others. If a postage adjustment is initiated, mailers also can discuss terms and conditions, or other alternatives that might be considered, with the USPS District Manager, Finance. Even mailers who have consistent quality control and qualification problems will not experience continuing postage adjustments if they make necessary corrections to their mail preparation procedures. Diagnostic feedback from the MQA report will be in sufficient detail to assist mailers in determining where in their operations a problem originated, but MQA also is designed to encourage mailers to perform ongoing self-assessments of their quality controls. Until October 15, 2000, mailers will have ample opportunity to both review internal quality control procedures and use MQA feedback to improve their operations.

Item 11: MQA postage adjustments will be based on objective data received from detailed machine reports of the presort and piece counts found in the mail sample. Mailers have appeal rights to the Rates and Classification Service Center for MQA determinations made at local or district offices.

Item 12: Measuring and documenting the quality of mail at points where it is most efficient to do so will lead to improved operations, efficiencies, and lower costs for both the Postal Service and mailers. In preliminary testing of MQA, several mailers already have made significant improvements in quality and in some cases also increased their efficiency and reduced their internal costs. MQA is a benefit, not a

burden, to mailers. The many high-quality mailers should not bear the burden of paying additional costs associated with poor-quality mail submitted by a small number of mailers.

Item 13: Improving quality throughout all mailing processes is a long-term need to which all members of the mailing industry should subscribe. As quality is improved and corresponding increases in efficiencies and stabilization of rates are achieved, more, not less, mail will result.

Item 14: MQA will focus initially on the largest volume mailers, then move down the chain to smaller volume mailers. The USPS will monitor this process and has built an objective approach to selecting which mail will be analyzed.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–14681 Filed 6–8–00; 8:45 am]

BILLING CODE 7710–12–U

PRESIDIO TRUST

Presidio Theatre Building 99, The Presidio of San Francisco, CA; Notice of Intent to Prepare an Environmental Impact Statement

AGENCY: The Presidio Trust.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for the rehabilitation and expansion of the Presidio Theatre (Building 99) within The Presidio of San Francisco, San Francisco, California (Presidio).

SUMMARY: The Presidio Trust (Trust) has received a proposal from one of its tenants, the San Francisco Film Centre, for rehabilitation and expansion of the Presidio Theatre (Theatre) within the Presidio. Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–90 as amended) (NEPA), and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Trust has determined that an EIS rather than an Environmental Assessment, as previously noticed in the **Federal Register** (65 FR 20218), will better serve the agency to comply with the NEPA. Therefore, the Trust will prepare an EIS for rehabilitating the existing 15,140-square-foot Theatre and adding up to 45,000 square feet of new construction for theater uses, a restaurant, retail museum and library store (proposed action). The EIS will include a discussion of the significant environmental impacts, and will inform decisionmakers and the public of reasonable alternatives which would minimize adverse impacts or enhance the quality of the environment, including "no action" and reuse of existing buildings to avoid new construction. Based on a preliminary review of the proposed action and input received during scoping to date, issues and impact topics to be analyzed include: traffic and transportation systems; cultural resources (effect on national historic landmark district and archeological resources); hydrology and water quality; visual resources and scenic viewing; air quality; and noise.

Public Comment

The Trust will hold a second public workshop/open house on June 19, 2000 to solicit comment regarding the range of alternatives to be evaluated in the EIS. A tour of the Theatre will be conducted from 5:30 to 6 p.m.; those interested in the tour will meet at 5:30 p.m. on June 19, 2000 in front of the Theatre, which is located at the corner of Moraga Avenue and Montgomery Street on the Main Post in the Presidio. The workshop will run from 6 to 8 p.m. at the San Francisco Film Centre (Building 39), which is located opposite the flagpole at the top of Graham Street on the Main Post in the Presidio. The Trust has chosen to extend the public scoping period to July 28, 2000 to provide additional time for the public to comment on the project. Comments regarding the scope of alternatives and impacts that the Trust received before its decision to proceed with an EIS will still be considered. The Trust will provide other informal information updates and notices concerning this project through postings on its website at www.presidiotrust.gov or through its monthly publication, the *Presidio Post.* The Trust will announce the release of the EIS by notice in the **Federal Register** and the *Presidio Post*, and through a direct mailing to the affected public.

ADDRESSES: Written comments concerning this notice must be sent by July 28, 2000 to John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Fax: 415–561–5315. E-mail: jpelka@presidiotrust.gov.

FOR FURTHER INFORMATION CONTACT: John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: June 5, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–14585 Filed 6–8–00; 8:45 am]

BILLING CODE 4310–4R–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirements of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Student Beneficiary Monitoring; OMB 3220–0123.

Under provisions of the Railroad Retirement Act (RRA), there are two types of benefits whose payment is based upon the status of a child being a full-time student, a survivor benefit under Section 2 and an increased retirement benefit under Section 3(f)(3). A survivor benefit is paid directly to the student unless there is a representative payee. The benefit for a student in a life case is paid by increasing the retired parent's annuity rate under the overall minimum guaranty. The requirements for obtaining benefits based on full-time student status are prescribed in 20 CFR 219.54 and 219.55.

The RRB requires evidence of full-time school attendance in order to determine that a child is entitled to student benefits. The RRB utilizes the following forms to conduct its student monitoring program. Form G–315, Student Questionnaire, obtains certification of a student's full-time school attendance. It also obtains information on a student's marital status, Social Security benefits, and employment which are needed to determine entitlement or continued entitlement to benefits under the RRA. Form G–315a, Statement by School Official of Student's Full-time Attendance, is used to obtain verification from a school that a student attends school full-time and provides their expected graduation date. Form G–315a.1, Notice of Cessation of Full-Time Attendance, is used by a school to notify the RRB that a student has ceased full-time school attendance. Completion is required to obtain or retain a benefit. One response is requested of each respondent.

The RRB proposes no changes to Form G–315, G–315a, or G–315a.1. The completion time for the G–315 is estimated at seven minutes per response. The completion time for the G–315a and G–315a.1 is estimated at two minutes. The RRB estimates that approximately 960 Form G–315's, 210 Form G–315a's and 60 Form G–315a.1's are received annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–14649 Filed 6–8–00; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In adcordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 2000, shall be at the rate of 26½ cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 2000, 37.7 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 62.3 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: June 1, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–14648 Filed 6–8–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42896; File No. SR–NASD–00–18]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Entry of Locking/Crossing Quotations Prior to the Nasdaq Market Opening

June 2, 2000.

Introduction

On April 13, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)91) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the entry of locking/crossing quotations prior to the Nasdaq market opening. On April 18, 2000, the NASD submitted Amendment No. 1 to the proposal. The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on May 10, 2000.[3] The Commission received one comment regarding this proposal.[4] This order approves the proposed rule change, as amended.

II. Description of the Proposal

Currently, under NASD Rule 4613(e) if a market participant locks/crosses the market between 9:20 a.m. and 9:29:59 a.m. Eastern Time, the market participant must send the market maker(s) or ECN(s) being locked/crossed, a SelectNet® message that has appended to it a "TRD OR MOV" administrative message ("Trade-or-Move Message").[5] The aggregate size of these Trade-or-Move Messages must be at least 5,000 shares. Thus, in order to lock/cross the market during this 10 minute period before the market opens, a market participant must send a Trade-or-Move Message for 5,000 shares and be willing to trade at least this amount. The party being locked or crossed must respond to the Trade-or-Move Message within 30 seconds by trading with the incoming message or moving its quotation to a price level that resolves the locked/crossed market.[6]

Nasdaq proposes to amend NASD Rule 4613(e), to permit market participants, when representing agency interests, to lock/cross the market at the actual size of the agency order, instead of 5,000 shares as currently required by rule. Under the proposal, if between 9:20 a.m. and 9:29:59 a.m. a market participant receives an agency order that would lock/cross the market, the market participant may lock/cross the market and send a Trade-or-Move Message for the actual size of the agency order, instead of 5,000 shares.[7] (For purposes of the amended rule, an agency order would not include an order for the account of a market maker in the issue, but would include orders for individuals, institutions, and broker-dealers who are not market makers in the security at issue.) Market participants whose proprietary quotes lock/cross the market between 9:20 and 9:29:59 a.m., would still be subject to the 5,000 aggregate share size requirement for Trade-or-Move Messages. Thus, if a market participant wishes to lock/cross the market while acting as principal, the market participant must send an aggregate of at least 5,000 shares through a Trade-or-Move Message to the parties being locked/crossed.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. In particular, the Commission finds that the proposal is consistent with the requirements of Sections 15A(b)(6), 15A(b)(11), and 11A(a)(1)(C) of the Act.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42754 (May 3, 2000), 65 FR 30167.

[4] *See* letter from Cameron Smith, General Counsel, Island ECN, to Jonathan Katz, Secretary, Commission, dated June 1, 2000.

[5] *See* Exchange Act Release No. 42400 (February 7, 2000), 65 FR 7407 (February 14, 2000) (order approving File No. SR–NASD–99–23 to amend NASD Rule 4613(e)).

[6] *Id.*

[7] This requirement does not apply when the market maker is holding agency interest where there is no understanding with the customer to have its order displayed and/or executed prior to the market's open, and the market maker otherwise is engaging in *bona fide* market making activity during the pre-opening period.

[8] 15 U.S.C. 78o–3(b)(6). 15 U.S.C. 78o–3(b)(11), and 15 U.S.C. 78k–1(a)(1)(C).

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Section 15A(b)(6)[9] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 15A(b)(11)[10] requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and to promote orderly procedures for collection, distributing, and publishing quotations. In Section 11A(a)(1)(C),[11] Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.[12]

Specifically, the Commission finds that the proposal is consistent with Sections 15A(b)(6), 15A(b)(11), and 11A(1)(C) of the Act[13] because it is designed to further reduce the frequency of pre-opening locked and crossed markets, which should help to provide more informative quotation information, facilitate price discovery, and contribute to the maintenance of a fair and orderly market. The proposal will require a market participant to send a Trade-or-Move Message for agency orders that lock or cross the market between 9:20 and 9:29:59 a.m., for the actual size of the agency order, rather than 5,000 shares. Under the proposal, an agency order would not include an order for the account of a market maker in the issue, but would include orders for individuals, institutions, and broker-dealers who are not market makers in the security at issue. The recipient of a Trade-or-Move Message must respond to that message within 30 seconds of receiving it.

The Commission believes that the Trade-or-Move Message requirement for agency orders may reduce instances of pre-opening locked and crossed markets by providing an effective mechanism for promptly resolving any pre-opening locked or crossed markets that occur. In this regard, the Commission notes that the recipient of a Trade-or-Move Message must respond to the message within 30 seconds by either (1) trading in full with the incoming Trade-or-Move Message; (2) declining to trade with the incoming Trade-or-Move Message and moving its quotation to a price level that unlocks or uncrosses the market; or (3) trading with a portion of the incoming Trade-or-Move Message and moving its quotation to a price level that unlocks or uncrosses the market. By reducing instances of pre-opening locked and crossed markets, and facilitating the prompt resolution of any pre-opening locked or crossed markets that occur, the proposal should help to provide a more orderly opening in Nasdaq securities, to the benefit of all market participants.

The Commission believes, as it has concluded previously,[14] that continued locking and crossing of the market can negatively impact market quality. By helping to reduce the frequency of pre-opening locked and crossed markets, the Commission believes that the proposal should improve market quality and enhance the production of fair and orderly quotations. Accordingly, the Commission believes that the proposal is designed to produce fair and informative quotations, consistent with Section 15A(b)(11),[15] and to remove impediments to and perfect the mechanism of a free and open market and a national markey system, consistent with Section 15A(b)(6).[16]

In addition, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that this proposal, which effectively creates an agency order exception to NASD Rule 4613, could increase market liquidity and transparency by allowing more customers to participate in Nasdaq's pre-opening market.[17] The Commission notes that this proposal is responsive to concerns raised by certain ECN commenters SR–NASD–99–23 that NASD Rule 4613(e) would disproportionately impact ECNs and limit the participation of ECNs, retail investors, and small broker-dealers in the pre-opening market.[18] The Commission believes that the amendments to NASD Rule 4613(e), which would permit agency orders for quotes of less than 5,000 shares to be appended to a Trade-or–Move Message, should help allay the concerns of ECNs with regard to the application of NASD Rule 4613(e).

Finally, as the Commission noted in approving NASD–99–23,[19] under this proposal ECNs can still handle orders that lock or cross markets in the pre-opening in alternative ways. Specificaly, an ECN could (1) reject a locking or crossing order, just as ECNs reject locking or crossing orders during normal trading hours; or (2) trade with the incoming Trade-or-Move Message up to the size of its subscriber's order and decline the remainder of the Trade-or-Move Message.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NASD–00–18) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14596 Filed 6–8–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78o–3(b)(11).

[11] 15 U.S.C. 78k–1(a)(1)(C).

[12] In approving the proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78o–3(b)(6), 15 U.S.C. 78o–(b)(11), and 15 U.S.C. 78k–1(a)(1)(C).

[14] See Securities Exchange Act Release No. 40455 (September 22, 1998), 63 FR 51978 (September 29, 1998) (order approving File No. SR-NASD–98–01).

[15] 15 U.S.C. 78o–3(b)(11).

[16] 15 U.S.C. 78o–3(b)(6).

[17] As noted above, the Commission received one comment letter regarding the proposal. The commenter argued that market participants receiving Trade-or-Move Messages would be able to monitor the market so as to selectively execute orders only when market conditions are favorable. The commenter also noted that is not technologically equipped, at present, to implement the proposal. The commenter recommended that Nasdaq address the problem of pre-opening locked and crossed markets by requiring market participants to open firm, pre-opening quotations. *See* note 4, *above.*

In response to similar comments on NASD–99–23, the NASD stated that an ECN with an order of less than 5,000 shares that would lock or cross the market could (1) attempt to match the order internally with the order of another subscriber; (2) attempt to fill the order by sending a Select Net message to the market participant(s) it would lock or cross; or (3) wait to accumulate the 5,000 shares and then send a Trade-or-Move Message. in addition, an ECN whose subscriber entered a locking or crossing quotation between 9:20 a.m. and 9:29:59 a.m. could require its subscriber to comply with the Trade-or-Move Message requirement. Nasdaq also noted that an ECN with a pre-opening order that locked or crossed the market could wait until the opening of the market before sending a SelectNet message to the market participants it would lock or cross. *See* note 5, *above.*

[18] *See* note 4, *above.*

[19] *Id.*

[20] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42893; File No. SR–NSCC–00–03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Relating to Processing Government Securities Trades

June 2, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 5, 2000, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow NSCC to receive government securities trade data from the American Stock Exchange ("AMEX"), process the trade data, and transmit the trade data to the Government Securities Clearing Corporation ("GSCC").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to amend NSCC's rules and procedurres to permit NSCC to: (1) Receive trade data concerning members' government security transactions conducted on the AMEX; (2) record trade information about those transactions on NSCC members' contract lists; and (3) transmit at the request of members the trade information to GSCC for processing.

Specifically, the rule change amends NSCC's rules and procedures as follows:

- The AMEX may submit locked-in trade data for transactions in "eligible government securities" included in the AMEX Order File ("AOF") System to NSCC. NSCC will maintain a list of "eligible government securities" which must be unmatured, marketable debt securities in book-entry form that are direct obligations of the United States Government; securities issued or guaranteed by the United States, a U.S. government agency or instrumentality, or a U.S. government-sponsored corporation; or such other security as determined by NSCC from time to time.[3]
- The AMEX may submit its trade data throughout trade date ("T") until a time specified by NSCC. The trade data must include quantity, security identification, identification of the marketplace of execution, contra-broker, trade value, and other identifying details that NSCC may require or permit.[4]
- NSCC will report back to members their AOF trade data items, including final contract amount as calculated by NSCC, on the morning of T+1 in a separate section of NSCC's regular way T+1 contract list.[5]
- Unless otherwise processed through GSCC, as described below, the settlement of AFO trade data items will be the responsibility of parties to the trade. Such items will not be settled through the facilities of NSCC.[6]

The rule change permits NSCC to transmit, at the request of members, AOF trade data items to GSCC for processing as follows[7]:

- Each member that would like to settle its AFO trades through GSCC must complete and deliver to NSCC an authorization agreement.[8]
- NSCC will submit AOF trade data items to GSCC within the timeframes established by NSCC.[9]

NSCC believes that the proposed rule change is consistent with the requirements of the Act,[10] and the rules and regulations thereunder. In particular, the proposed rule change is consistent with section 17A(b)(3)(F) of the Act, which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[11] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. For the reasons set forth below, the Commission believes that NSCC's rule change is consistent with this obligation.

The rule change permits NSCC to build upon its existing facilities to receive and process trade data concerning government securities traded through the AMEX's AOF System by NSCC members. After processing this information, NSCC will report back to members trade information relating to their AOF trades. At the request of members who wish to settle these trades through GSCC, NSCC will then transmit trade data to GSCC for processing. By providing this service, NSCC will be facilitating the prompt and accurate clearance and settlement of Amex-traded government securities. Therefore, the Commission finds that the proposed rule change is consistent with NSCC's obligations to promote the prompt and

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepred by NSCC.

[3] NSCC Rule 3, Section 10.

[4] NSCC Procedure 11.D4(a)(ii).

[5] *Id.* at (iii).

[6] *Id.* at (iv).

[7] NSCC Procedure 11.D.4(b).

[8] *Id.* at 4(b)(i).

[9] *Id.* at 4(b)(ii).

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78q–1(b)(3)(F).

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accurate clearance and settlement of securities transactions.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice because accelerated approval will enable NSCC to coordinate with GSCC and the AMEX in order to begin providing these clearance and settlement services on the target start date of June 2, 2000.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–00–03 and should be submitted by June 30, 2000.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–00–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14574 Filed 6–8–00; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42897; File No. SR–OCC–99–9]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change To Merge the Equity and Non-Equity Elements of OCC's Clearing Fund

June 5, 2000.

On September 24, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–99–9) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 8, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the rule change, OCC will merge the equity and non-equity elements of its clearing fund into combined clearing fund. A member's contribution to the combined clearing fund will be based on the member's total margin requirements, with a minimum contribution of $150,000.[3]

In 1982, when OCC first began clearing non-equity products, including treasury, currency, and stock index options, OCC instituted a separate non-equity element to the clearing fund to limit the impact of a member default in one product base (*i.e.*, either equity or non-equity) on members trading only the other product base. The element of the clearing fund applicable to the product(s) involved in the default would be utilized first; only after that element was exhausted would the other element be used. Beginning in 1986, with the introduction of the Theoretical Intermarket Margin System ("TIMS") for non-equity products, some margin offsets were allowed between equity and non-equity products. Such offsets further expanded following the implementation of TIMS for equity products in 1991. The blurring of the distinction between equity and non-equity margin requirements and the integration of OCC's equity and non-equity systems in general has reached a level such that clearing members only receive a single margin requirement each day. OCC computes distinct equity and non-equity margin requirements only on a monthly basis for the purpose of determining the size of each element of the clearing fund.

Consistent with Article VIII, Section 2 of OCC's Bylaws, OCC will issue a memorandum to its clearing members at least five business days prior to the effective date of the rule change advising them of the change in the minimum contribution and advising them of their ability to withdraw from membership should they choose not to make the required clearing fund contribution.

II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that combing the two clearing funds will have no effect on OCC's margining and risk management procedures that protect OCC against a member default. As a result, OCC will maintain its current level of protection while enhancing the efficiency of its operations. Accordingly, the rule change is consistent with OCC's obligation to safeguard securities and funds which are in OCC's custody or control.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–99–9) be, and hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 42195 (December 1, 1999), 64 FR 68712.

[3] According to OCC, almost all clearing members already contribute to both the equity and non-equity elements of the clearing fund and thus are subject to the $75,000 minimum contribution for each element. For those members, a merger of the two elements into one combined clearing fund will clause no aggregate change in the size of their clearing fund contribution. Five clearing members clear either only equity or only non-equity products and therefore contribute to only one element of the clearing fund. Three of these five members, however, will not have their contributions affected by the proposed $150,000 minimum. Thus, the merger of the two elements into one clearing fund will not materially change the overall size of the clearing fund and will not have a minor impact on a small number of members.

[4] 15 U.S.C. 78q–1(b)(3)(F).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 00–14595 Filed 6–8–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3257]

Commonwealth of Massachusetts and a Contiguous County in the State of New Hampshire

Middlesex County and the contiguous Counties of Essex, Norfolk, Suffolk, and Worcester in Massachusetts, and Hillsborough County, New Hampshire constitute a disaster area as a result of damages caused by a fire that occurred on May 4, 2000 in the Town of Concord. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 31, 2000, and for economic injury until the close of business on March 2, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.375
Homeowners Without Credit Available Elsewhere	3.687
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.750
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned for physical damages are 325705 for Massachusetts and 325805 for New Hampshire. For economic injury the numbers are 9H4400 for Massachusetts and 9H4500 for New Hampshire.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 30, 2000.

Kris Swedin,

Acting Administrator.

[FR Doc. 00–14549 Filed 6–8–00; 8:45 am]

BILLING CODE 8025–01–U

[5] 17 C.F.R. 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3259]

State of Texas

Liberty County and the contiguous counties of Chambers, Hardin, Harris, Jefferson, Montgomery, Polk, and San Jacinto in the State of Texas constitute a disaster area as a result of damages caused by severe thunderstorms, flooding, and a tornado that occurred on May 19–20, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 31, 2000, and for economic injury until the close of business on March 2, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.375
Homeowners Without Credit Available Elsewhere	3.687
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.750
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster are 325906 for physical damage and 9H4600 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 30, 2000.

Kris Swedin,

Acting Administrator.

[FR Doc. 00–14550 Filed 6–8–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

Bureau of European Affairs

[Public Notice 3333]

30-Day Notice of Information Collection: Irish Peace Process Cultural and Training Program

AGENCY: Department of State.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: New Collection.

Originating Office: EUR.

Title of Information Collection: Irish Peace Process Cultural and Training Program ("IPPCTP").

Frequency: 1.

Form Number: N/A.

Respondents: Entities wishing to provide employment.

Estimated Number of Respondents: 4200.

Average Hours Per Response: (a) *Prospective Employers:* up to 2 hours in providing employer background information and up to 1 hour in reporting on participants' work experience (for each participant hired by an employer.) (b) *Participants:* up to 2 hours in providing background/resume information, a photograph, and tracking information. Where participation originates with an employer nomination, the increase of time required of an employer in providing employee-related information will be offset by a corresponding reduction in the time otherwise required of employees in providing the same information.

Total Estimated Burden: 12,400 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from the Officer for Ireland and Northern Ireland Affairs, Bureau of European Affairs (EUR/UBI), Room 4513, U.S. Department of State, Washington, DC 20520, (202) 647-6585.

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Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: May 25, 2000.

William Eaton,

Executive Director, Bureau of European Affairs, Department of State.

[FR Doc. 00–14665 Filed 6–8–00; 8:45 am]

BILLING CODE 4710–23–U

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice 3335]

Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the ten letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: June 2, 2000.

William J. Lowell,

Director, Office of Defense Trade Controls.

Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 12, 2000.

Dear Mr. Speaker: Pursuant to sections 36(c) & (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with the Republic of Korea.

The transaction described in the attached certification involves the manufacture of twenty (20) F–16C/D aircraft for the Republic of Korea Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 001–00

Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 11, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, services and information for the design and development of Ground System elements for tracking, telemetry, command, control and management of the Astrolink Commercial Communications Satellite System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 008–00

Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 12, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defensive services to the United Kingdom for the design, development, manufacture, assembly and delivery of Wing Trailing Edge Panels and Flap Hinge Fairings for the C–17 Globemaster Aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 015–00

Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 12, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense services to Japan for the overhaul and manufacture of SIIIS–3XT4/T4 Ejection Seats.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 017–00

Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 19, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification concerns the Sea Launch joint venture, in which Norway, Ukraine, Russia and United Kingdom will also participate, to provide commercial space launch services for communications satellites from a modified oil platform in the Pacific Ocean.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 026–00

Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 12, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture 65 Armored Combat Vehicles in Turkey for Malaysia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 27–00

Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 17, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense services to establish in-country warehousing of spare parts, overhaul and depot-level repair of F100–PW–220/220E and F100–PW–229 engines in Saudi Arabia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 32–00

Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 17, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves an extension in the duration of DTC 99–99, related to the export of technical data, hardware and assistance to support the acquisition, maintenance and operation of twenty-four (24) T–6A–1 aircraft for end-use in Canada for the NATO Flying Training in Canada (NFTC) Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 037–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of 747 High Mobility Multi-Purpose Wheeled Vehicles(HMMWV) to the Government of Israel for use by the Israeli Defense Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 048–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 12, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical assistance for the manufacture of F–15 Structural Components in Israel for return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 58–99

[FR Doc. 00–14667 Filed 6–8–00; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF STATE

[Public Notice Number 3326]

Notice of Meetings; International Telecommunication Advisory Committee (ITAC), Telecommunication Development Sector (ITAC–D), Telecommunication Standardization Sector (ITAC–T), National Committee & U.S. Study Group A

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC)—Telecommunication Standardization (ITAC–T) National Committee and US Study Group A, and ITAC—Telecommunication Development (ITAC–D). The purpose of the Committees is to advise the Department on policy and technical issues with respect to the International Telecommunication Union and international telecommunication standardization and development. Except where noted, meetings will be held at the Department of State, 2201 "C" Street, NW, Washington, DC.

The ITAC–D will meet in Room 5951 at the Department of State from 10 to 12 noon on June 21, 2000, to prepare positions for the September meetings of the ITU D Study Groups 1 & 2.

The ITAC–T National Committee will meet from 9:00 to 3:30 on June 22, 2000, at the Telecommunications Industry Association, Wilson Boulevard, Arlington, VA to review the results of the ITU Telecommunication Sector Advisory Group (TSAG), and make preparations for the ITU Council meeting in July 2000 and the World Telecommunication Sector Assembly in September 2000.

The ITAC–T U.S. Study Group A will meet from 2:00 to 4:00 on June 21, 2000, at the Federal Communications Commission to prepare positions regarding "international internet connection" and other matters for the September 2000 WTSA.

Members of the general public may attend these meetings. Directions to meeting locations and actual room

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assignments may be determined by calling the Secretariat at 202 647–0965/2592. Entrance to the Department of State is controlled; people intending to attend any of the ITAC meetings should send a fax to (202) 647–7407 not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC T, US Study Group A, or ITAC–D) and date of meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: U.S. driver's license, passport, US Government identification card. Enter from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of members will be limited to seating available.

Dated: June 5, 2000.

Marian Gordon,

Director, Telecommunication & Information Standardization, Department of State.

[FR Doc. 00–14664 Filed 6–8–00; 8:45 am]

BILLING CODE 4710–45–U

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The Regional Resource Stewardship Council (Regional Council) will hold a meeting to consider various matters. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

1. Lake Improvement Plan of 1990 and reservoir operating schedules
2. Subcommittee and working group reports
3. Public comments

The meeting is open to the public. Members of the public who wish to make oral public comments may do so during the Public comments portion of the agenda. Up to one hour will be allotted for the Public comments with participation available on a first-come, first-served basis. Speakers addressing the Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak register at the door and are then called on by the Council Chair during the public comment period. Hand out materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902–1499, or faxed to (865) 632–3146.

DATES: The meeting will be held on June 22, 2000, from 8 a.m. to 4 p.m. CDT.

ADDRESSES: The meeting will be held in Memphis, Tennessee, in the Embassy Hall at the Embassy Suites Hotel, 1022 South Shady Grove Road, Memphis, Tennessee 38120, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902–1499, (865) 632–2333.

Dated: June 2, 2000.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 00–14650 Filed 6–8–00; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement for the Proposed Kelly Parkway; Bexar County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed Kelly Parkway highway project in Bexar County, Texas.

FOR FURTHER INFORMATION CONTACT: Walter Waidelich, Federal Highway Administration, 300 East 8th Street, Room 826, Austin, Texas 78701, (512) 916–5988; John Kelly, District Engineer, San Antonio District, Texas Department of Transportation, P.O. Box 29928, San Antonio, Texas 78284, (210) 615–1110.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation, will prepare an environmental impact statement (EIS) on a proposed highway project in Bexar County, Texas. The proposed action is to construct the "Kelly Parkway" in and near southwest San Antonio, Texas. The purpose of and need for the proposed facility is to accommodate access and mobility needs related to traffic growth in the southwest San Antonio area and the redevelopment of the former Kelly Air Force Base (currently Kelly USA) and nearby areas. The proposed project will either be reconstructing an existing facility or building a new-location facility designed to be a direct link from Kelly USA and the Union Pacific South San Antonio Intermodal Rail Terminal to IH 35, IH 410, US 90 and State Highway 16.

The proposed Kelly Parkway termini are at US 90, between General Hudnell Drive on the west and the Union Pacific Railroad on the east, and SH 16, south of the San Antonio City limits. The length of the proposed project is approximately 8.8 miles. These boundaries form the northern and southern limits of the corridor for the EIS and are termed the "Kelly Parkway Corridor Study Area." The proposed Kelly Parkway Corridor Study Area limits begin along US 90 between the General McMullen drive interchange and Loop 353 (Nogalitos Street), and extends southeasterly to SH 16 south of the San Antonio city limits.

A full range of modal alternatives were examined for the proposed Kelly Parkway during the development of Mobility 2025, the San Antonio Metropolitan Transportation Plan (MTP). The proposed Kelly Parkway is included in this region's long range plan (MTP) as a highway facility in combination with transit accommodations to serve Kelly USA. As such, the range of alternatives for the proposed facility within the limits described above include: various alignments for a new-location facility, improvements to existing facilities, combinations of existing facility improvements and a new-location facility, and a no-build option. The number of lanes and roadway configuration will be determined as a part of the study.

A scoping meeting is planned and will be announced at a later date, followed by a series of public meetings. A local public involvement office will be established. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies having special interest or expertise, as well as private organizations and citizens who have previously expressed or are known to have interest in the proposed project. A public hearing will be held. The draft EIS will be available for public and agency review and comment prior to the public hearing. Public notice will be given of the time and place for the meetings and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Brett M. Jackson,

Urban Programs Engineer, Austin, Texas.

[FR Doc. 00–14651 Filed 6–8–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement for the Burlington Northern Santa Fe Rail Yard; Vancouver, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed rail improvement at the Burlington Northern Santa Fe (BNSF) rail yard in Vancouver, Washington, and for the possible elimination of the 39th Street Crossing, which falls within the limits of the yard.

FOR FURTHER INFORMATION CONTACT: Gary S. Hughes, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington 98501, Telephone: (360) 753–9025; Mr. James Slakey, Washington State Department of Transportation, 310 Maple Park East, Olympia, Washington, 98504, Telephone: (360) 705–7920.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Washington State Department of Transportation (WSDOT) will prepare an environmental impact statement (EIS) on the Vancouver Rail Project, a proposal to construct a multi-track bypass of the existing Burlington Northern Santa Fe (BNSF) yard facility in Vancouver, Washington, including the possible elimination of the 39th Street at-grade crossing located within the limits of the BNSF yard.

Six preliminary alternatives, including the no-action, are currently under consideration. The five build alternatives all include construction of a multi-track bypass along the eastern edge of the BNSF yard, but differ on what would be done to the 39th Street at-grade crossing. The alternatives for the 39th Street crossing include leaving the crossing as is, closing the crossing, closing the crossing and providing a pedestrian/bicycle overpass of the tracks, closing the crossing and carrying 39th Street over the tracks on structure, and closing the crossing and improving other nearby streets.

Agency and public involvement programs have been on-going in the Vancouver area since the proposal to institute intercity passenger service on the corridor was introduced several years ago. These have described the proposed action and solicited comment from citizens, organizations, and federal, state, and local agencies. Numerous public and agency meetings and open houses have been held, and comments and questions solicited and accepted via telephone, internet, public meetings, and the mail. In addition, targeted direct mail, advertisements, and media relations efforts have been used to reach the public and agencies. These types of efforts will continue throughout the environmental process for this proposal.

Advertisements offering interested persons the opportunity to attend and offer comments at a public hearing will be published prior to circulation of the draft environmental impact statement. Public notice of actions related to the proposal that identify the date, time, place of meetings, and the length of review periods will be published when appropriate.

To ensure that the full range of issues related to this proposed improvement program and its reasonable alternatives are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or FRA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program)

Issued on: May 26, 2000.

Gary S. Hughes,

Operations Team Leader, Federal Highway Administration, Washington Division.

[FR Doc. 00–14652 Filed 6–8–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–175–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–175–86, (TD 8357), Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans (§§ 1.401(k)–1, 1.401(m)–1, and 54.4979–1).

DATES: Written comments should be received on or before August 8, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans.

OMB Number: 1545–1069.

Regulation Project Number: EE–175–86.

Abstract: This regulation provides the public with the guidance needed to comply with sections 401(k), 401(m), and 4979 of the Internal Revenue Code. The regulation affects sponsors of plans that contain cash or deferred arrangements or employee or matching contributions, and employees who are entitled to make elections under these plans.

Current Actions: There are no changes to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit

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institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 355,500.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 1,060,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14689 Filed 6–8–00; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 65, No. 112

Friday, June 9, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Correction

In notice document 00–13428 beginning on page 34468 in the issue of Tuesday, May 30, 2000, make the following correction:

On page 34469, in the third column, in the *Comments:* paragraph, "[insert date 30 days after date of publication in the **Federal Register**]" should read "June 29, 2000".

[FR Doc. C0–13428 Filed 6–8–00; 8:45 am]

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Federal Register

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Part II

Department of Education

34 CFR Part 5
The Freedom of Information Act;
Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 5

The Freedom of Information Act

AGENCY: Office of the Chief Information Officer, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Department's regulations that implement the Freedom of Information Act (FOIA). These amendments are needed to establish new provisions implementing the Electronic Freedom of Information Act Amendments of 1996. The regulations have been streamlined and condensed, with more user-friendly language wherever possible.

DATES: We must receive your comments on or before July 10, 2000.

ADDRESSES: Address all comments about these proposed regulations to John Tressler, U.S. Department of Education, 400 Maryland Avenue, SW., ROB3, Room 5640, Washington, DC 20202–4110. If you prefer to send your comments through the Internet use the following address: comments@ed.gov

You must include the term FOIA in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: John Tressler. Telephone: (202) 708–8900. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 5640, ROB3, Seventh and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

The FOIA generally provides that any person has a right, enforceable in court, of access to Federal agency records. However, some records (or portions of those records) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

The FOIA was amended by the Electronic Freedom of Information Act Amendments of 1996 (Public Law 104–231, October 2, 1996). The amendments provided specifically for the disclosure of electronic records.

The proposed revisions of part 5 change the language and structure of the regulations and would implement the provisions of the Electronic Freedom of Information Act Amendments of 1996. The new provisions implementing the 1996 amendments are in § 5.11(a)(4) (electronic reading rooms) and § 5.20 (How do I make a FOIA request?). Proposed revisions of the Department's fee schedule are in § 5.30. Other changes would make the regulations easier to understand.

Clarity of the Regulations

Executive Order 12866 and the President's memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (*e.g.*, grouping and order of sections, use of headings, paragraphing) improve or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 5.30 What is the schedule of fees?*
- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments concerning how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These proposed regulations involve procedural rights of individuals under the Freedom of Information Act. Individuals are not considered to be entities under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) at (202) 512–1530 or, toll free, at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 5

Freedom of Information.

Dated: June 2, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 5 to read as follows:

PART 5—THE FREEDOM OF INFORMATION ACT

Subpart A—General

Sec.
5.1 What is the purpose of these regulations?
5.2 What definitions apply?

Subpart B—Records Available to the Public

5.10 What is the Department's general policy regarding disclosure of agency records?
5.11 How does the Department make agency records publicly available?
5.12 Does the FOIA require the Department to create new records?

Subpart C—Procedures for Requesting Access to Records

5.20 How do I make a FOIA request?
5.21 What procedures does the Department follow for requests for business information?
5.22 Who may deny a FOIA request?

Subpart D—Fees and Charges

5.30 What is the schedule of fees?
5.31 Will I be notified of my estimated fees?
5.32 How are fee payments made?
5.33 Under what circumstances must fees be paid in advance?
5.34 What happens if fees are not paid?
5.35 Under what circumstances may fees be waived?

Subpart E—Administrative Appeals

5.40 How do I appeal the denial of a FOIA request or an adverse fee determination?
5.41 Who decides administrative appeals?
5.42 What is the review process for appeals?
Appendix A to Part 5—Summary of Current U.S. Department of Education Fees for Processing FOIA Requests

Authority: 5 U.S.C. 552.

Subpart A—General

§ 5.1 What is the purpose of these regulations?

This part contains the rules that the Department of Education (Department or "we") follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These regulations inform you of the Department's FOIA policies and procedures.

§ 5.2 What definitions apply?

As used in this part:

Act and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552.

Agency records. (1) The term means documentary materials, regardless of physical form or characteristics, including those in electronic form, made or received by the Department under Federal law in connection with the transaction of public business and in the Department's possession and control at the time a FOIA request is received.

(2) These records include all documentary materials either preserved by the Department or appropriate for preservation as evidence of its organization, functions, policies, decisions, procedures and operations, or because of the informational value of the data contained in the records.

(3) Records do not include the following:

(i) Tangible, evidentiary objects or equipment;

(ii) Library or museum materials made or acquired and preserved solely for reference or exhibition purposes;

(iii) Extra copies of documents preserved only for convenience of reference; and

(iv) Stocks of publications.

FOIA request means a written request for agency records that reasonably describes the records sought, made by any individual, organization or business.

Subpart B—Records Available to the Public

§ 5.10 What is the Department's general policy regarding disclosure of agency records?

The Department's policy is one of full disclosure limited only by the obligations of confidentiality and the administrative necessities recognized by the Act. Thus, the Department makes agency records available for public inspection and copying, subject to the exemptions in 5 U.S.C. 552 (b)(1)–(9). As a matter of policy, the Department makes discretionary disclosures of records exempt under the FOIA if it is not foreseeable that disclosure would harm an interest protected by the FOIA. This policy, however, does not create any right enforceable in court.

§ 5.11 How does the Department make agency records publicly available?

(a)(1) The Department maintains a FOIA Reading Room containing a wide variety of agency records, including Department publications, whether available for purchase or not.

(2) The FOIA Reading Room currently contains the following agency records:

(i) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases (initial decisions and reconsiderations in matters that are not the result of administrative proceedings such as hearings or formal appeals are not opinions and orders in the adjudication of cases).

(ii) Those statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(iii) Administrative staff manuals and instructions to staff that affect any member of the public.

(iv) Copies of all records that have been released to any person under 5 U.S.C. 552(a)(3) and that, because of the nature of their subject matter, the Department determines have become (or are likely to become) the subject of subsequent requests for substantially the same records.

(v) An index of the records referred to under paragraph (a)(2)(iv) of this section.

(3) The FOIA Reading Room is located at the National Library of Education, 400 Maryland Avenue, SW., Washington, DC, Levels B and SB, and is open to the public between 9 a.m. and 5 p.m., Eastern time, Monday through Friday, except Federal holidays.

(4) Reading room records created after November 1, 1996 are available on the Department's Web site at http://www.ed.gov/offices/ocio/infocall/info9.html

(b) The Department publishes the following records in the **Federal Register:**

(1) Descriptions of the Department's central and field organization and established locations, including Department contacts and methods by which the public can obtain information or decisions, or make submissions or requests.

(2) Statements of the general course and method the Department uses to channel and determine functions, including the nature and requirements of all formal and informal procedures available.

(3) Rules of procedures, descriptions of forms available and locations where forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Department.

(5) Every amendment, revision, or repeal of the materials described in paragraphs (b)(1) through (4) of this section.

(c)(1) You may seek access to agency records not available as described in

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paragraphs (a) and (b) of this section by submitting a written request to the Department, in accordance with the procedures in § 5.20.

(2) The Department may deny access to agency records or portions of records under one or more of the FOIA exemptions listed at 5 U.S.C. 552(b)(1)–(9).

§ 5.12 Does the FOIA require the Department to create new records?

We are not required to create records by compiling selected items from the files, or by creating data such as ratios, proportions, percentages, per capitas, frequency distributions, trends, correlations, and comparisons. If these data have been compiled and are available as an existing agency record, we make the record available as provided in § 5.11.

Subpart C—Procedures for Requesting Access to Records

§ 5.20 How do I make a FOIA request?

(a)(1) In order to seek access to agency records you must submit your request in writing by one of the following methods:

(i) U.S. mail or its equivalent to FOIA Officer, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–4651.

(ii) Fax transmitted to FOIA Officer, Department of Education at (202) 708–9346.

(iii) An e-mail message submitted to OCIO_FOIA@ed.gov.

(2) Be sure to clearly mark your submission as a "FOIA Request" and include your name, address, and telephone number or numbers with your request.

(b) Your request must reasonably describe the records sought and may include additional information that would assist the Department in locating the responsive records. In some instances, we may require you to submit additional information in order to clarify the nature of your request. In those situations, your request is not considered to be received for the purposes of 5 U.S.C. 552(a)(6) until we have received the necessary information from you.

(c) Your request may also specify that the records be provided in a specific form or format. We make reasonable efforts to comply with those requests.

(d) We process requests for electronic records and retrieve those records if retrieval can be achieved through reasonable efforts (in terms of both time and resources), and these efforts would not significantly interfere with the operation of an automated information system.

(e) Your request must also indicate whether you are willing to pay the fees associated with processing the request or if you are seeking a fee waiver.

(f) Once the office that maintains the records sought in your request has received your request, and you have provided us with any necessary clarifications, we make every reasonable effort to process your request within the twenty working day statutory requirement. Where unusual circumstances arise as defined in 5 U.S.C. 552(a)(6)(B)(iii), the Department may grant an extension of up to ten (10) additional working days.

§ 5.21 What procedures does the Department follow for requests for business information?

(a) Definitions. For purposes of this section:

(1) *Business information* means commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity from whom the Department obtains business information, directly or indirectly. The term includes corporations and state, local, tribal, and foreign governments.

(b) *Designation of business information.* A submitter of business information must use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable later time, any portions of its submission that it considers to be protected from disclosure under 5 U.S.C. 552(b)(4). These designations expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Notice to submitters.* The Department provides a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information if required under paragraph (d) of this section, except as provided in paragraph (g) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (e) of this section. If the Department must notify a voluminous number of submitters, we may post or publish the notice in a place reasonably likely to accomplish notification.

(d) *If notice is required.* The Department notifies a submitter if—

(1) The submitter in good faith has designated the information as information considered protected from disclosure under 5 U.S.C. 552(b)(4); or

(2) The Department has reason to believe that the information may be protected from disclosure under 5 U.S.C. 552(b)(4).

(e) *Opportunity to object to disclosure.* We allow a submitter a reasonable time to respond to the notice described in paragraph (c) of this section and specify that time period within the notice. If a submitter has any objection to disclosure, it must submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of objecting to disclosure under 5 U.S.C. 552(b)(4), it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified in it, the submitter may not object to disclosure of the information. The Department only considers information provided by the submitter that we receive before we make a disclosure decision. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* We consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. If we decide to disclose business information over the objection of a submitter, we give the submitter written notice, which includes the following:

(1) A statement of the reason or reasons why each of the submitter's disclosure objections was not sustained.

(2) A description of the business information to be disclosed.

(3) A specified disclosure date that is a reasonable time after the notice of intent to disclose.

(g) *Exceptions to notice requirements.* The notice requirements of paragraphs (c) and (f) of this section do not apply if—

(1) The Department determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous—except that, in such a case, the Department, within a reasonable time before a specified disclosure date, gives

the submitter written notice of any final decision to disclose the information.

(h) *Notice of FOIA lawsuit.* If a requester files a lawsuit seeking to compel the disclosure of business information, we promptly notify the submitter.

(i) *Corresponding notice to requesters.* If we provide a submitter with notice and an opportunity to object to disclosure under paragraph (c) of this section, we also notify the requester or requesters. If we notify a submitter of our intent to disclose requested information under paragraph (f) of this section, we also notify the requester or requesters. If a submitter files a lawsuit seeking to prevent the disclosure of business information, we notify the requester or requesters.

§ 5.22 Who may deny a FOIA request?

The Department's FOIA Officer, the Inspector General or designee, and the Regional FOIA Review Officers may deny a FOIA request. Denials of requests—

(a) Are in writing;

(b) Contain a statement of the reasons for the denial and information on how to file an appeal under subpart E of this part; and

(c) Identify the person to whom an appeal should be submitted.

Subpart D—Fees and Charges

§ 5.30 What is the schedule of fees?

(a) Fees under this part are assessed in accordance with the Office of Management and Budget's "Uniform FOIA Fee Schedule and Guidelines," 52 FR 10012 (March 27, 1987), as follows:

(1) *Search for records*—(i) *General.* We charge full search fees for records requested for commercial use. We do not charge a search fee for requests made by representatives of the news media or by educational or noncommercial scientific institutions whose purpose is scholarly or scientific research and whose request is not for commercial use. For any other non-commercial requests, we provide the first two hours of search time without charge, except as provided in paragraph (a)(1)(iii) of this section. We calculate and assess search fees to the nearest quarter hour.

(ii) *Manual search.* We calculate the charge for a manual search by multiplying the search time (to the nearest quarter hour) by the sum of the basic rate of pay per hour of the employee conducting the search plus 16 percent of that rate.

(iii) *Computer search.* The charge for a computer search is the actual direct cost of providing the service, including the cost of operating the central processing unit (CPU) for the operating time that is directly attributable to searching for records responsive to a FOIA request, and the operator's or programmer's salary apportionable to the search.

(2) *Review of records.* If records are requested for commercial use, we charge fees for the initial examination of a record to determine whether it should be disclosed. We calculate review fees by multiplying the review time (to the nearest quarter hour) by the sum of the basic rate of pay per hour of the employee conducting the review plus 16 percent of that rate. If you request records that are stored outside Washington, DC, we add the mailing and handling costs of transporting records for review.

(3) *Duplication of records.* We do not charge a duplication fee for the first 100 pages, except in the case of commercial use requests. Duplication charges for paper copy reproduction of documents on photocopy machines is 15 cents per page.

(4) *Certification of records.* The charge for certifying records is $5 per record certified.

(5) *Other.* If we have not established a specific fee for a service, or you request a service that does not fall under one of the categories in paragraphs (a)(1) through (a)(4) of this section, the FOIA Officer may establish an appropriate fee, based on direct costs, on a case-by-case basis.

(b) If we award a contract for the search or duplication of records responsive to FOIA requests, the fees charged are the actual costs under the contract.

(c) We do not charge a fee if the total amount of the fee would be less than $10. If the total amount of the fee is $10 or more, we charge applicable search and review costs even if no records are located or disclosed.

(d) If the Department determines that a requester, or a group of requesters, is attempting to break down a request into multiple requests for the purpose of avoiding fee assessment, we combine the requests for the purposes of charging fees.

§ 5.31 Will I be notified of my estimated fees?

If the estimated fees total more than $25, or more than the amount specified in the request if that amount exceeds $25, we—

(a) Promptly notify you of the amount of the estimated fee or that portion of the fee that can readily be estimated; and

(b) Offer you the opportunity to modify your request.

§ 5.32 How are fee payments made?

You must make fee payments by personal check or bank draft drawn on a bank in the United States, postal money order, or credit card (once necessary procedures are established). You must make fee payments payable to the U.S. Department of Education, and mail your payment to the FOIA Officer, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–4651. On request, we give you a receipt for fees paid.

§ 5.33 Under what circumstances must fees be paid in advance?

(a) If the estimated fee for processing a request exceeds $250, the FOIA Officer—

(1) Notifies you of anticipated fees and obtains satisfactory assurance of payment; or

(2) Requires advance payment before records are released.

(b) If you have previously failed to pay a fee, we require that the previous charges plus any accrued interest be paid before we process any subsequent requests. In addition, we require advance payment of estimated fees for your current request.

(c) Requests under this part are not deemed to have been received for purposes of 5 U.S.C. 552(a)(6) until we receive satisfactory assurance of payment or advance payment.

§ 5.34 What happens if fees are not paid?

If you do not pay a fee within 30 days after we send you a bill, we charge you interest at the rate designated at 31 U.S.C. 3717. The FOIA Officer may take other steps permitted by Federal debt collection statutes, including the use of collection agencies or disclosure to consumer-reporting organizations.

§ 5.35 Under what circumstances may fees be waived?

(a) The FOIA provides for a fee waiver if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(b)(1) You must apply to the FOIA Officer for a fee waiver and address in detail each of the factors in paragraphs (b)(2)(i) through (b)(2)(vi) of this section. Simply stating that the fee waiver criteria have been satisfied is insufficient for a fee waiver. In evaluating the fee waiver request, the FOIA Officer may ask for clarification or additional information.

(2) The FOIA Officer will grant a fee waiver only if each of the following six fee waiver criteria have been met:

(i) The subject of the requested records concerns the operations or activities of the Government.

(ii) The disclosure is likely to contribute to an understanding of government operations or activities.

(iii) The disclosure of the requested information will contribute to the understanding of the public at large, as opposed to an individual's understanding of government operations or activities.

(iv) The disclosure is likely to contribute significantly to public understanding of government operations or activities.

(v) The requester either does not have a commercial interest that would be furthered by the requested disclosure.

(vi) Any commercial interest of the requester is outweighed by the public interest in disclosure.

(c) You must ask for a fee waiver for each request to which the waiver may apply. We do not grant a standing fee waiver. We consider the merit of each fee waiver request.

Subpart E—Administrative Appeals

§ 5.40 How do I appeal the denial of a FOIA request or an adverse fee determination?

(a) *Appeal of denials.* If we deny your FOIA request in whole or in part under § 5.21, or when we advise you that we are unable to locate responsive records, you may file an appeal seeking administrative review of the denial, within 30 calendar days of your receipt of the denial letter.

(b) *Appeal of adverse fee determinations.* If we issue an adverse fee determination, you may file an appeal seeking administrative review of the adverse determination, within 30 calendar days from receipt of the denial letter. You may appeal any of the following:

(1) Our estimate of fees to be charged.

(2) Our calculation of fees.

(3) Our denial of a request for a fee waiver, in whole or in part.

(c) *Contents of an appeal letter.* Your appeal must be in writing and must include—

(1) Copies of the request and the denial;

(2) A statement of all legal and factual bases for the appeal; and

(3) Any evidence or argument you wish us to consider in deciding the appeal.

§ 5.41 Who decides administrative appeals?

The Secretary delegates authority to serve as the Department's FOIA Appeals Officer to a specific position or person. We provide the name and address of that person to the requester in a denial issued under § 5.21.

§ 5.42 What is the review process for appeals?

(a) An appeal determination is in writing. A determination denying an appeal in whole or in part states the reasons for the adverse decision, and advises you of the right to judicial review of the decision.

(b) Once the FOIA Appeals Officer has received your appeal for a denial of a FOIA request, we make every reasonable effort to process it within the twenty working day statutory requirement. Where unusual circumstances arise as defined in 5 U.S.C. 552(a)(6)(B)(iii), the Department may grant an extension of up to ten (10) additional working days.

(c) Failure to comply with time limits stated in 5 U.S.C. 552(a)(6) constitutes an exhaustion of your administrative remedies.

BILLING CODE 4000–01–P

Appendix A

Summary of Current U.S. Department of Education Fees for Processing FOIA Requests[1]

TYPE OF REQUESTER	TYPE OF SERVICE				
	Manual Searches	Computer Searches	Review of Records[2]	Photocopying	Certification
CATEGORY I (Commercial Businesses)	[3]Employee's or employees' actual rate of pay plus a 16% administrative charge	Actual direct cost of providing the service (incl. portion of the programmer's or operator's time and CPU usage)	Employee's or employees'; actual rate of pay plus a 16% administrative charge	15 cents per photocopied page (no free pages)	$5.00 per record certified
CATEGORY II (Educational Institutions or Scientific Research Organizations or the News Media)	No Charge	No Charge	No Charge	15 cents per photocopied page (with 100 Pages free)	$5.00 per record certified
CATEGORY III (All Others, including individuals and non-profit organizations)	[3]Employee's or employees' actual rate of pay plus 16%	Actual direct cost of providing the service (incl. the portion of the programmer's or operator's time and CPU usage)	No Charge	15 cents per photocopied page (with 100 Pages free)	$5.00 per record certified
	A *Total* of Two Hours of Search Time (including Manual and/or Computer Search Activities) is Free				

[1]Note that the minimum fee that the Department will charge is $10.00;
[2]If records are stored outside of Washington, DC, the costs of mailing and handling to transport the records for review must be included; and
[3]If any portion of fulfilling the request is performed by a contractor, his/her hourly rate on the contract -- plus 16% -- shall be used in determining charges.

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Part III

Office of Management and Budget

48 CFR Part 9903
Cost Accounting Standards Board; Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage; Final Rule

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board, is revising applicability, thresholds and procedures for the application of the Cost Accounting Standards (CAS) to negotiated government contracts. This rulemaking is authorized pursuant to Section 26 of the Office of Federal Procurement Policy Act. The Board is taking final action on this topic in order to adjust CAS applicability requirements and dollar thresholds in accordance with the provisions of the National Defense Authorization Act for Fiscal Year 2000.

DATES: This final rule is effective June 9, 2000.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION

A. Background

On February 7, 2000, the Cost Accounting Standards Board issued an interim rule with request for comment, 65 FR 5990. That rule, implemented Sec. 802 of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106–65, "Streamlined Applicability of Cost Accounting Standards." This final rule implements the provisions of Sec. 802 and provides responses to public comments received on the interim CAS Board rule. Many of the public comments received by the Board addressed issues that were beyond the scope of Sec. 802. The Board is limiting its revisions in this final rule to the items specified in Sec. 802.

B. Summary of Amendments

"Trigger contract": 48 CFR 9903.201–1(b) is amended by adding a new subparagraph (7) that exempts contracts and subcontracts from CAS coverage, provided that the business unit of the contractor or subcontractor is currently performing one or more CAS-covered contracts or subcontracts of $7.5 million or more.

"Firm-fixed price contract exemption": The Board is implementing this statutory exemption by amending 48 CFR 9903.201–1(b) to revise subparagraph (15) to exempt from CAS coverage, firm-fixed-price contracts and subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data. The Board is using the term "cost or pricing data" rather than "certified" cost or pricing data in order to conform to the statutory requirements of 10 U.S.C. § 2306(h)(1) and 41 U.S.C. § 254(b), which defines "Cost or pricing data" as data that requires certification.

"Types of CAS coverage": 48 CFR 9903.201–2(a) is amended by revising the dollar threshold for "full CAS coverage" from $25 million to $50 million, and deleting the requirement that to be subject to "full CAS coverage", that a contractor or subcontractor have received at least one contract or subcontract that exceeded $1 million (the previous "trigger contract" amount for initiation of "full CAS coverage"). 48 CFR 9903.201–2(b) is amended by revising the definition of "modified CAS coverage" to indicate that such coverage applies to covered contracts and subcontracts where the total value of CAS-covered contracts and subcontracts received by a business unit is less than $50 million.

Conforming amendments have also been made to the solicitation provisions and contract clauses appearing at 9903.201–3 and 9903.201–4, respectively.

"Waiver": 48 CFR 9903.201–5 is amended by revising this section to provide for agency CAS waiver authority under certain circumstances.

"Disclosure requirements": 48 CFR 9903.202–1(b) is amended by revising the dollar amount for disclosure from $25 million to $50 million, and deleting the requirement that a contractor or subcontractor have received at least one contract in excess of $1 million.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rule, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. §3501, *et seq.* The purpose of this rule is to implement Pub. L. 106–65.

D. Executive Order 12866 and the Regulatory Flexibility Act

This rule serves to eliminate certain administrative requirements associated with the application and administration of the Cost Accounting Standards by covered government contractors and subcontractors. The economic impact on contractors and subcontractors is therefore expected to be minor. As a result, the Board has determined that this is not a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis is not required. Furthermore, this rule will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

This final rule is based upon the Board's interim rule that was issued on February 7, 2000, 65 FR 5990. Thirteen public comments were received, including eleven timely comments and two late comments. The major comments received and the Board's actions taken in response thereto are summarized below:

Comment: Eight commenters generally supported the interim rule.

Response: The Board noted these supportive comments.

Comment: Four commenters opposed the rule, stating their belief that it provides too many opportunities for contractors to avoid CAS coverage, leaving the Government exposed to undue risk, primarily by permitting the use of inconsistent or inappropriate accounting conventions.

Response: The Board noted the commenters concerns. However, this rule is designed to implement the requirements of Sec. 802 of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106–65. In this respect, the Board believes that it is faithfully implementing the requirements of that law.

Comment: Seven commenters recommended that the Board retain the language of the previous CAS exemption found at 48 CFR 9903.201–1(b)(15), while adding the revised language found in the interim rule at 9903.201–1(b)(15), to constitute a new CAS exemption. These commenters believe that CAS should not apply regardless of whether a TINA waiver or exemption was granted.

Conversely, four commenters stated that they believed that the revised language at 9903.201–1(b)(15) represented a compromise, inasmuch as the statutory language at Sec. 802 appears to be designed to avoid encouraging contractors to seek TINA waivers merely in order to be exempted from CAS requirements.

Response: Based on the legal, legislative and administrative history of this issue (including agency CAS waiver reporting requirements), the Board believes that it is adhering to the statutory intent of Sec. 802. As such, the language contained in the interim rule with respect to 9903.201–1(b)(15) is being adopted in this final rule.

Comment: Seven commenters recommended revisions to the language at 9903.201–1(b)(7) to define the term "currently performing". Four of the seven commenters recommended a definition(s) that would have the effect of exempting more contracts from CAS coverage; while three commenters recommended definition(s) that would have the effect of including more contracts within the scope of CAS coverage.

Response: The Board believes that the term "currently performing" is more than adequately defined in the Board's rules at 48 CFR 9903.301. "Currently performing", as used in the Board's rules, means that a contractor has been awarded a CAS-covered contract, but has not yet received notification of final acceptance of all supplies, services and data deliverable under the contract (including options). The Board would draw the commenters attention to the existence of this long-standing definition.

Comment: The Board also received a number of comments regarding additional CAS exemptions, waivers, dollar threshold and applicability changes, and other regulatory matters that would have the general effect of further reducing CAS applicability to contracts and subcontracts. In addition, one commenter opposed the delegation of any CAS waiver authority to the procuring agencies.

Response: While the Board has considered all the comments it has received, it is specifically limiting the scope of this rulemaking to those items required to be addressed by Sec. 802 of Pub. L. 106–65.

List of Subjects in 48 CFR Part 9903

Cost accounting standards, Government procurement.

Nelson F. Gibbs,
Executive Director, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 9903 of chapter 99 of title 48 continues to read as follows:

Authority: Pub. L. 100–679, 102 Stat 4056, 41 U.S.C. 422.

9903.201 [Amended]

2. Section 9903.201–1 is amended by revising paragraph (b)(7) and revising paragraph (b)(15) to read as follows:

9903.201–1 CAS applicability.

* * * * *

(b) * * *

(7) Contracts or subcontracts of less than $7.5 million, provided that, at the time of award, the business unit of the contractor or subcontractor is not currently performing any CAS-covered contracts or subcontracts valued at $7.5 million or greater.

* * * * *

(15) Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data.

3. Section 9903.201–2 is amended by revising paragraphs (a)(1) and (2) and (b)(1) and (2) to read as follows:

9903.201–2 Types of CAS coverage.

(a) * * *

(1) Receive a single CAS-covered contract award of $50 million or more; or

(2) Received $50 million or more in net CAS-covered awards during its preceding cost accounting period.

(b) *Modified coverage.* (1) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard 9904.405, Accounting for Unallowable Costs and Standard 9904.406, Cost Accounting Standard—Cost Accounting Period. Modified, rather, than full, CAS coverage may be applied to a covered contract of less than $50 million awarded to a business unit that received less than $50 million in net CAS-covered awards in the immediately preceding cost accounting period.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exception: if the business unit receives a single CAS-covered contract award of $50 million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

* * * * *

4. Section 9903.201–3 is amended by revising the clause heading; by revising paragraph (c)(3) in Part I of the clause, by revising the CAUTION paragraph following paragraph (c)(4) in Part I of the clause; and by revising Part II of the clause, to read as follows:

9903.201–3 Solicitation provisions.

* * * * *

Cost Accounting Standards Notices and Certification (April 2000)

* * * * *

I. Disclosure Statement—Cost Accounting Practices and Certification

* * * * *

(c) * * *

■(3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling $50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted.

The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

(4) * * *

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of $50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost Accounting Standards—Eligibility for Modified Contact Coverage

If the offeror is eligible to use the modified provisions of 9903.201–2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

■The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 9903.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period

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immediately preceding the period in which this proposal was submitted, the offeror received less than $50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of $50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of $50 million or more.

* * * * *

5. Section 9903.201–4 is amended by revising paragraph (c)(1) to read as follows:

9903.201–4 Contract clauses.

* * * * *

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000 but less than $50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (*see* 9903.201–2, unless the clause prescribed in paragraph (d) of this subsection is used).

* * * * *

6. Section 9903.201–5 is revised to read as follows:

9903.201–5 Waiver

(a) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract with a value of less than $15 million, if that official determines, in writing, that the business unit of the contractor or subcontractor that will perform the work—

(1) Is primarily engaged in the sale of commercial items; and

(2) Would not otherwise be subject to the Cost Accounting Standards under this Chapter.

(b) The head of an executive agency may waive the applicability of the Cost Accounting Standards by the agency head shall be set forth in writing, and shall include a statement of the circumstances justifying the waiver.

(c) The head of an executive agency may not delegate the authority under paragraphs (a) and (b) of this section, to any official below the senior policymaking level in the agency.

(d) The head of each executive agency shall report the waivers granted under paragraphs (a) and (b) of this section, for that agency, to the Cost Accounting Standards Board, on an annual basis, not later than 90 days after the close of the Government's fiscal year.

(e) Upon request of an agency head or his designee, the Cost Accounting Standards Board may waive all or any part of the requirements of 9903.201–4(a), Cost Accounting Standards, or 9903.201–4(c), Disclosure and Consistency of Cost Accounting Practices, with respect to a contract subject to the Cost Accounting Standards. Any request for a waiver shall describe the proposed contract or subcontract for which the waiver is sought and shall contain—

(1) An unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of a CAS clause and the specific reason for that refusal;

(2) A statement as to whether the proposed contractor or subcontractor has accepted any prime contract or subcontract containing a CAS clause;

(3) The amount of the proposed award and the sum of all awards by the agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding 3 years;

(4) A statement that no other source is available to satisfy the agency's needs on a timely basis;

(5) A statement of alternative methods considered for fulfilling the need and the agency's reasons for rejecting them;

(6) A statement of steps being taken by the agency to establish other sources of supply for future contracts for the products or services for which a waiver is being requested; and

(7) Any other information that may be useful in evaluating the request.

(f) Except as provided by the Cost Accounting Standards Board, the authority in paragraph (e) of this section shall not be delegated.

9903.202 Disclosure requirements.

7. Section 9903.202–1 is amended by revising paragraphs (b)(1) and (2) to read as follows:

9903.202–1 General requirements.

* * * * *

(b) * * *

(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of $50 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling $50 million or more in its most recent cost accounting period, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

* * * * *

[FR Doc. 00–14242 Filed 6–8–00; 8:45 am]
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June 9, 2000

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121, et al.
Prohibition of Smoking on Scheduled Passenger Flights; Final Rules

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 252

[Docket No. OST–2000–7473; OST Docket No. 46783; Notice 90–5; OST Docket No. 44778; Notice 91–1]

RIN 2105–AC85; 2105–AB58

Smoking Aboard Aircraft

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; Disposition of comments; disposition of petition for rulemaking.

SUMMARY: The Department is amending its smoking rule to implement a recent statutory ban on smoking aboard aircraft in scheduled passenger interstate, intrastate and foreign air transportation. This rule is being issued in conjunction with a related FAA final rule on smoking that makes its rules consistent with the statutory ban. The FAA rule is published elsewhere in today's issue of the Federal Register.

This rule also confirms certain portions of the Department's 1990 interim final rule that incorporated a statutory ban on smoking aboard aircraft on almost all flight segments within the United States. The 1990 rule codified a blanket waiver concerning single-entity charters and made other clarifying changes. Finally, this rule responds to a petition for rulemaking to prohibit smoking aboard commercial aircraft

DATES: This final rule is effective June 4, 2000, in order to meet the effective date for the statutory ban on smoking.

FOR FURTHER INFORMATION CONTACT: Arnold Konheim, Office of the Assistant Secretary for Transportation Policy, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–4849.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*. You can also view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "search." On the next page, type in the last four digits of the docket number shown on the first page of this document. Then click on "search."

Background

Throughout this preamble and rule, we have used the terms "air carrier" and "foreign air carrier", as defined in 49 U.S.C. 40102, in which an "air carrier" is a citizen of the United States undertaking to provide air transportation, and a "foreign air carrier" is a person, not a citizen of the United States, undertaking to provide foreign air transportation.

In 1973, the Civil Aeronautics Board (CAB) adopted its first regulation (ER–800, 38 FR 12207, May 10, 1973) restricting smoking on air carrier flights. In subsequent years, the CAB and then the Office of the Secretary (OST) of the Department of Transportation, to which CAB functions were transferred on January 1, 1985, strengthened this rule in accord with public input, scientific studies and statutory requirements.

In its initial form, the rule required the separation of smoking passengers from no-smoking passengers. With each revision, the rule provided additional protections to nonsmokers, reflecting findings by the Surgeon General, the National Academy of Sciences, and the U.S. Environmental Protection Agency that exposure to environmental tobacco smoke is deleterious to health.

The increase in restrictions on smoking on air carrier flights also reflected global policy and public trends. In its 1992 session, the Assembly of the International Civil Aviation Organization passed Resolution A29–15, which called on its member nations "to take necessary measures as soon as possible to restrict smoking progressively on all international passenger flights." To reduce the health hazards to passengers and crew and to enhance aviation safety, the governments of Australia, Canada, New Zealand and the United States have since entered into an international agreement banning smoking on all non-stop flights of their airlines between the signatory countries. This ban applies to all locations within the aircraft, including the flight deck.

The Federal Aviation Administration (FAA) also regulates smoking to enhance safe air transportation and to implement statutory bans on smoking. The FAA has issued rules in furtherance of the statutory bans on smoking and the Department's ban on smoking contained in 14 CFR part 252. The FAA, under its safety mandate, has also issued rules to deal with the safety problems that can develop when people on board aircraft violate the statutory ban on smoking and try to conceal their smoking. For example, smoke detectors are required in lavatories because sometimes people try to hide cigarette butts in paper-towel refuse compartments that could lead to a fire in flight.

The statute on which the current rules are based is Public Law 101–164, which was enacted in 1989 and reads as follows:

> * * * it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight segment in air transportation or intrastate air transportation, which is—
>
> (i) between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any state of the United States (other than Alaska and Hawaii), or between any point in any one of the aforesaid jurisdictions (other than Alaska and Hawaii) and any point in any other of such jurisdictions;
>
> (ii) within the State of Alaska or within the State of Hawaii; or
>
> (iii) scheduled for 6 hours or less in duration, and between any point described in clause (1) and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

The current 14 CFR part 252, which applies to air carriers and foreign air carriers, incorporates these statutory requirements and also requires air carriers to ban smoking when the ventilation system is not fully functioning, when a plane is on the ground, and on all aircraft with less than 30 seats. It also requires air carriers to ban smoking of cigars and pipes. In addition, on flights where smoking is not banned, the rule provides that each air carrier furnish any confirmed passenger who checks in on time a seat in a no-smoking section, if requested. The air carrier must expand the no-smoking section to accommodate all qualified passengers and must make special provision to ensure that, if a no-smoking section is placed between the smoking sections, the nonsmoking passengers are not "unreasonably burdened." Air carriers are otherwise free to ban smoking if they choose.

In fact, all air carriers ban smoking on all scheduled passenger flights, and most foreign air carriers ban smoking. At present, 97.7 percent of all scheduled passenger flight segments to and from the United States are smoke-free.

Recent Statutory Changes

On April 5, 2000, President Clinton signed H.R. 1000 (P.L. 106–181), the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, containing the following section:

> Sec. 708. Prohibitions Against Smoking on Scheduled Flights
>
> (a) In General * * *

> 41706. Prohibitions against smoking on scheduled flights.
>
> (a) Smoking Prohibition in Intrastate and Interstate Air Transportation: An individual may not smoke in an aircraft in scheduled passenger interstate air transportation or scheduled passenger intrastate air transportation.
>
> (b) Smoking Prohibition in Foreign Air Transportation: The Secretary of Transportation shall require all air carriers and foreign air carriers to prohibit smoking in any aircraft in scheduled passenger foreign air transportation.
>
> (c) Limitation on Applicability:
>
> (1) In general: If a foreign government objects to the application of subsection (b) on the basis that subsection (b) provides for an extraterritorial application of the laws of the United States, the Secretary shall waive the application of subsection (b) to a foreign air carrier licensed by that foreign government at such time as an alternative prohibition negotiated under paragraph (2) becomes effective and is enforced by the Secretary.
>
> (2) Alternative prohibition: If, pursuant to paragraph (1), a foreign government objects to the prohibition under subsection (b), the Secretary shall enter into bilateral negotiations with the objecting foreign government to provide for an alternative smoking prohibition.
>
> (d) Regulations: The Secretary shall prescribe such regulations as are necessary to carry out this section.
>
> (b) *Effective Date:* The amendment made by subsection (a) shall take effect on the date that is 60 days after the date of enactment of this Act.

Final Rule

The Office of the Secretary's current smoking regulations are contained in 14 CFR Part 252 and require that air carriers and foreign air carriers prohibit smoking on certain flights. This rule amends Part 252 to implement the recent statutory ban on smoking for air carriers and foreign air carriers. This rule bans smoking on all scheduled passenger flights of air carriers, and on all scheduled passenger flight segments of foreign air carriers (1) between points in the U.S. and (2) between the U.S. and foreign points. The statutory ban on passengers smoking on aircraft in interstate and intrastate air transportation is self-executing and goes into effect on the 60th day after enactment of the statute whether or not we update this regulation. Since this rule essentially restates a statutory mandate with an imminent deadline, seeking prior notice and comment on it is unnecessary under 5 U.S.C. 553(b).

The rule also incorporates the waiver provision for foreign air carriers under criteria provided in the statute. That is, a foreign government can object to the rule as an extraterritorial application of U.S. laws and request a waiver of the requirements, once bilateral negotiations with the U.S. have put in place an alternative smoking prohibition.

Smoking on the flight deck is now prohibited by the government only on scheduled non-stop flights between Australia, Canada, New Zealand and the United States. Consistent with the recent statute, the new section 252.8 in the rule now bans smoking in all locations within the aircraft, including the flight deck. This new ban applies to all air carrier and foreign air carrier flights covered by the rule. The rule does not change the current requirement in §252.11 that air carriers prohibit smoking whenever their aircraft are on the ground. The ban, as it applies to foreign air carriers, is less extensive. In particular, it is flight-specific, applying only from the time the aircraft begins enplaning passengers to the time that all passengers complete deplaning.

The recent statutory ban on smoking applies to individual passengers and flight crew as well as to air carriers and foreign air carriers. This rule applies only to air carriers and foreign air carriers. The companion FAA rule published elsewhere in today's **Federal Register** implements the statutory ban on smoking by such individuals.

We have made nonsubstantive changes to Part 252 to use the terms "air carrier" and "foreign air carrier", as defined in 49 USC 40102, in all sections, changed and otherwise unchanged. As stated above, an "air carrier" is a citizen of the United States undertaking to provide air transportation, and a "foreign air carrier" is a person, not a citizen of the United States, undertaking to provide foreign air transportation.

Effective Date

The Administrative Procedure Act, 5 U.S.C. 553(d)(3), states that regulations may not go into effect less than 30 days after publication except where good cause is shown. The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century directs the Secretary of Transportation to issue regulations to prohibit smoking on scheduled flights within 60 days of its enactment. Therefore, we must make this amendment effective by June 4, 2000. We have determined that good cause exists to make this amendment effective on June 4, 2000, rather than 30 days after publication. All air carrier flights and nearly 98 percent of foreign air carrier flights to and from the U.S. already meet this requirement. As a result, making the rule effective in less than 30 days after publication will burden very few foreign air carriers.

Disposition of Comments to the 1990 Interim Final Rule (Docket No. 46783)

On February 13, 1990, the Office of the Secretary published an interim final rule in the **Federal Register** (55 FR 4991) implementing Public Law 101–164. That act banned smoking on most scheduled airline flight segments within the United States. The rule also codified a blanket waiver concerning single-entity charters and made other clarifying changes. In addition, the interim rule requested comments on changing the applicability of section 252.13 from "less than 30 seats" to "30 seats or less" in order to conform to the terminology used in the Federal Aviation Administration's (FAA) carrier operating rules found in 14 CFR Parts 135 and 121. We did not receive any comments on the proposed change. Accordingly, this final rule adopts the change.

We received four comments in response to the interim final rule. One commenter, a private citizen, expressed his opposition to the act because it had the effect of "alleviat[ing] any fiscal responsibilities the airline industry may encounter" to install more efficient airplane ventilation systems. However, the smoking ban should improve the efficiency of existing ventilation systems.

Sun Country Airlines suggested that the smoking ban be extended to all carriers, whether scheduled or charter operations. Both the 1989 and 2000 legislation apply only to "scheduled flights." Both rules simply implement the legislation. Nevertheless, there has never been a requirement to permit smoking aboard aircraft, and charter operators have always been free to ban smoking on any or all of their flights.

Another private citizen commented that smokers also have rights and suggested that proper ventilation would solve the problem of "germ ridden" air. The Tobacco Institute [TI], a trade association of cigarette manufacturers, stated that the Department's "broad statements [in the interim final rule's preamble] as to 'rights' of smokers and nonsmokers" is "neither necessary nor supported by the legislation." DOT's use of the word "rights" merely emphasizes that smokers do not have the right to demand that an airline provide a "smoking seat." We did not intend the discussion in the interim final rule's preamble to be a policy statement of the overall rights of smokers versus nonsmokers.

TI also asserted that air carriers would "likely suffer competitive disadvantage" if smoking is banned on those air carriers' international flights. Finally, TI

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asserted that the rule exempting "single-entity charters" should avoid imposing unnecessary administrative burdens on charter operators. Specifically, TI believes that the advance notice provisions of §252.19 preclude "administrative flexibility" for charter operators. The advance notice provisions of §252.19 merely codified a blanket waiver for single-entity charter operators that has been in effect since 1982 with no serious problems. In addition, we note that no charter operator has commented in opposition to this section.

Petition of David James Biss (Docket No. 44778)

On April 7, 1987, Mr. David Biss petitioned the Department to ban all smoking on passenger-carrying commercial aircraft operating under the jurisdiction of the DOT. This final rule addresses most of Mr. Biss' concerns. Accordingly, this rule disposes of his petition for rulemaking.

Regulatory Process Matters

This rule is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that order. This rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation, 44 FR 11034, (February 26, 1979), because it primarily implements a statutory directive. This rule is expected to have a minimal economic effect, therefore further regulatory evaluation is not necessary.

Regulatory Assessment

The additional number of flights on which airlines will be required to ban all smoking will be a very small percentage of all those between the United States and foreign countries. A total of 159 air carriers and foreign air carriers performed departures from the United States to foreign countries in 1998. Of these, 35 were certificated in the U.S., and none of them permits smoking. Of 124 foreign air carriers, only 17 permitted smoking on any flight. Except for Aeroflot and Olympic Airways, all major European airlines ban smoking. So do most of those in other regions, excepting certain foreign air carriers in South and Central America, Asia, and the Middle East. Out of 191,000 departures from the U.S. by foreign air carriers, only 11,000, or 5.4 percent, permitted smoking in 1998. Since more than half of the departures are performed by air carriers, this represents an average of 2.3 percent of all departures. Even this figure probably overstates the proportion of passengers newly affected by this legislation and rule, because the majority of such flights are by smaller airlines on less densely traveled routes. For example, 2,800 departures are performed by the Mexican carrier Aero California, which operates DC–9 aircraft seating fewer than 100 passengers.

The benefits of protection against environmental tobacco smoke in aircraft include improved comfort of passengers and crew, as well as lower risk of both acute and chronic adverse health impacts associated with increased incidence of respiratory illnesses, lung cancer, heart disease, and fetal defects for those repeatedly exposed over a long period. Safety will be augmented by reduced risk of fire, preventing impairment of the alertness of crews resulting from smoke intoxication, and improved reliability of equipment that will not be subjected to accumulated deposits of smoke residues. It is possible that smokers will suffer some discomfort through being prevented from smoking during the flight, but they too will receive the stated health and safety benefits.

The airlines required to discontinue their present policies of permitting smoking in flight will benefit from reduced maintenance costs for cleaning and replacing upholstery, servicing no-smoking lights, and emptying ashtrays. They will suffer no loss of revenue through diversion of smoking passengers; because there are no close substitutes for scheduled airline flights in international transportation, and all flights will be covered by the same no-smoking rule.

Small Business Impact

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller air carriers.

All small air carriers already meet the requirements of this rule, since all air carriers already ban smoking on all scheduled passenger service. This rule contains no direct reporting or record-keeping requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with this rule. Therefore, I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. Chapter 35.

Federalism Implications

We have reviewed this rule in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule will not limit the policymaking discretion of the States. Nothing in it would directly preempt any State law or regulation. Because the rule will have no significant effect on State or local governments, no consultations with State and local governments on this rule were necessary and it does not warrant the preparation of a Federalism Assessment.

National Environmental Policy Act (NEPA)

Issuing this rule is exempt from any requirement to prepare an environmental impact statement under NEPA because the Department's action is ministerial without discretion. In addition, the department has determined that this rule will not have any significant impact on the quality of the human environment. Smoking within an aircraft has a negligible effect on the environment outside of the aircraft and its elimination would also have a negligible effect.

Within the aircraft, smoking can result in non-smoking passengers and crew being exposed to environmental tobacco smoke (ETS). A study by the Department showed that ETS contaminants are not restricted to the smoking section of an aircraft but are found throughout the cabin, particularly in the no-smoking area closest to the smoking section. The effect of a smoking ban would be to reduce the health risk to passengers and crew from exposure to ETS. It would also enhance aviation safety by reducing the risk of (a) fire, (b) failure of compartments holding oxygen masks to open because of the accumulation of tobacco tar residue and (c) degradation of the crew's ability to function properly.

The issuance of a rule banning smoking on all scheduled passenger flights to and from this country by foreign air carriers and on all international scheduled passenger flights of air carriers would have no adverse effect on the environment. In fact, the rule would improve air quality within the aircraft, reduce the risk of adverse health effects, and enhance aviation safety.

Therefore, the department has found that the rule will have no significant adverse economic impact. A copy of the environmental assessment has been filed in the public docket.

List of Subjects in 14 CFR Part 252

Air carriers, Aircraft, Consumer protection, Foreign air carriers, smoking.

Accordingly, the Office of the Secretary of the U.S. Department of Transportation revises 14 CFR part 252 to read as follows:

PART 252—SMOKING ABOARD AIRCRAFT

Sec.

252.1 Purpose.
252.2 Applicability.
252.3 Smoking ban: air carriers
252.5 Smoking ban: foreign air carriers.
252.7 No-smoking sections.
252.8 Extent of smoking restrictions 252.9 Ventilation systems.
252.11 Aircraft on the ground.
252.13 Small aircraft.
252.15 Cigars and pipes.
252.17 Enforcement.
252.19 Single-entity charters.

Authority: Pub. L 101–164; 49 U.S.C. 40102, 40109, 40113, 41701, 41702, 41706, as amended by section 708 of Pub. L 106–181, 41711, and 46301.

Cross Reference: For smoking rules of the Federal Aviation Administration, see 14 CFR 121.317(c), 121.571(a)(1)(i), 129.29, 135.117(a)(1), and 135.127(a).

§ 252.1 Purpose.

This part implements a ban on smoking of tobacco products on air carrier and foreign air carrier flights in scheduled intrastate, interstate and foreign air transportation, as required by 49 USC 41706. It also addresses smoking on charter flights. Nothing in this regulation shall be deemed to require air carriers or foreign air carriers to permit the smoking of tobacco products aboard aircraft.

Note to § 252.1: As defined in 49 U.S.C. 40102, an "air carrier" is a citizen of the United States undertaking to provide air transportation, and a "foreign air carrier" is a person, not a citizen of the United States, undertaking to provide foreign air transportation.

§ 252.2 Applicability.

This part applies to all operations of air carriers engaged in interstate, intrastate and foreign air transportation and to foreign air carriers engaged in foreign air transportation, but does not apply to the on-demand services of air taxi operators.

§ 252.3 Smoking ban: air carriers.

Air carriers shall prohibit smoking on all scheduled passenger flights.

§ 252.5 Smoking ban: foreign air carriers.

(a) Foreign air carriers shall prohibit smoking on all scheduled passenger flight segments:

(1) Between points in the United States, and

(2) Between the U.S. and any foreign point.

(b) A foreign government objecting to the application of paragraph (a) of this section on the basis that paragraph (a) provides for extraterritorial application of the laws of the United States may request and obtain a waiver of paragraph (a) from the Assistant Secretary of Transportation for Transportation Policy, provided that an alternative smoking prohibition resulting from bilateral negotiations is in effect.

§ 252.7 No-smoking sections.

(a) Except as provided in paragraph (b) of this section, air carriers operating nonstop flight segments to which §§ 252.3 and 252.13 do not apply shall provide, at a minimum:

(1) A no-smoking section for each class of service;

(2) A sufficient number of seats in each no-smoking section to accommodate all persons in that class of service who wish to be seated there;

(3) Expansion of no-smoking sections to meet passenger demand; and

(4) Special provisions to ensure that if a no-smoking section is placed between smoking sections, the nonsmoking passengers are not unreasonably burdened.

(b) On flights for which passengers may make confirmed reservations and on which seats are assigned before boarding, an air carrier need not provide a seat in a no-smoking section to a passenger who has not met the carrier's requirements as to time and method of obtaining a seat on the flight, or who does not have a confirmed reservation. If a seat is available in the established no-smoking section, however, an air carrier shall seat there any enplaning passenger who so requests, regardless of boarding time or reservation status.

§ 252.8 Extent of smoking restrictions.

The restrictions on smoking described in §§ 252.3 through 252.7 shall apply to all locations within the aircraft.

§ 252.9 Ventilation systems.

Air carriers shall prohibit smoking whenever the ventilation system is not fully functioning. Fully functioning for this purpose means operating so as to provide the level and quality of ventilation specified and designed by the manufacturer for the number of persons currently in the passenger compartment.

§ 252.11 Aircraft on the ground.

(a) Air carriers shall prohibit smoking whenever the aircraft is on the ground.

(b) With respect to the restrictions on smoking described in § 252.5, foreign air carriers shall prohibit smoking from the time an aircraft begins enplaning passengers until the time passengers complete deplaning.

§ 252.13 Small aircraft.

Air carriers shall prohibit smoking on aircraft designed to have a passenger capacity of 30 or fewer seats.

Note to § 252.13: This section, like the rest of this part, does not apply to on-demand services of air taxi operators; see § 252.2 in this part.

§ 252.15 Cigars and pipes.

Air carriers shall prohibit the smoking of cigars and pipes aboard aircraft.

§ 252.17 Enforcement.

Air carriers and foreign air carriers shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in the passenger cabin or lavatories on no-smoking flight segments. Air carriers shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in no-smoking sections or at other times or places where smoking is prohibited by this part, and to maintain required separation of passengers in smoking and no-smoking areas.

§ 252.19 Single-entity charters.

On single-entity charters operated pursuant to §§ 207.50 or 208.300 of this title, air carriers need not comply with the procedures of this part 252 if such a request is made by the charterer, provided that each passenger on such flights is given notice of the smoking procedures for the flight at the time he or she first makes arrangements to take the flight.

Issued in Washington, D.C. on June 2, 2000, under authority delegated by 49 CFR 1.56a (h)2.

Robert S. Goldner,

Acting Deputy Assistant Secretary for Aviation and International Affairs.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 129, and 135

[Docket No. FAA–2000–7467; Amendment Nos. 121–277, 129–29 and 135–76]

RIN 2120–AH04

Prohibition of Smoking on Scheduled Passenger Flights

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending its regulations to bring them into conformance with recent legislation prohibiting smoking aboard all aircraft in scheduled passenger interstate or intrastate air transportation and scheduled passenger foreign air transportation. This rule is being issued with a related DOT rule on smoking, which is published elsewhere in today's issue.

DATES: Effective June 4, 2000. See also "Discussion of Dates" under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Aviation Safety Inspector, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8321.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Internet users can find information on SBREFA on the FAA's web page at *http://www.faa.gov/avr/arm/sbrefa/htm* and may send electronic inquiries to the following internet address: 9–AWA–SBREFA@faa.gov.

Background

On April 5, 2000, Congress enacted Public Law 106–181, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. Among other things, section 708 of Public Law 106–181 amended 49 U.S.C. 41706 by directing the Secretary of Transportation to "require all air carriers and foreign air carriers to prohibit smoking in any aircraft in scheduled passenger foreign air transportation." The legislation also stated, "If a foreign government objects to the application [of the smoking prohibition in foreign air transportation] on the basis that [it] provides for an extraterritorial application of the laws of the United States, the Secretary shall waive the application of [the prohibition] to a foreign air carrier licensed by that foreign government at such time as an alternative prohibition negotiated * * * becomes effective and is enforced by the Secretary." In addition, the legislation stated, "* * * the Secretary shall enter into bilateral negotiations with the objecting foreign government to provide for an alternative smoking prohibition."

Previously, under the Office of the Secretary's rules (14 CFR part 252), smoking was prohibited for the following scheduled flight segments of air carriers:

- Between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska or Hawaii) or between any two points in any one of the above-mentioned jurisdictions (other than Alaska or Hawaii);
- Within the State of Alaska or within the State of Hawaii; or
- Scheduled in the current Worldwide or North American Edition of the *Official Airline Guide* for 6 hours or less in duration and between any point listed in [the first bulleted paragraph above] and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

The Office of the Secretary's regulations applied predominantly to smoking in the passenger cabin, but smoking on the flight deck was permitted under the FAA's rules if authorized by the pilot in command for any part of the operation, except during airplane movement on the surface, takeoff, or landing. (*See* former 14 CFR 121.317(g).) However, since 1994, an international agreement has prohibited smoking on the flight deck of specified international flights (*e.g.*, certain flights between the United States and Australia). Many air carriers have voluntarily limited smoking in response to customer request. For example, at least one major air carrier has banned smoking on all airline property, including airplanes, crew buses, vehicles, and buildings.

Today's final rule is a direct result of legislative amendments to 49 U.S.C. 41706. Because Congress mandated these changes, good cause exists for the Department of Transportation to amend its rules concerning smoking (14 CFR part 252) and for the FAA to make conforming amendments to its own rules. A legislative mandate of this nature makes it "unnecessary" to provide notice and comment procedures. (*See* 5 U.S.C. 553 (b)(B).)

Section-by-Section Analysis

Section 121.317—Passenger information requirements, smoking prohibitions, and additional seat belt requirements—The heading is being revised to reflect the fact that the section contains smoking prohibitions in addition to passenger information and seat belt requirements.

Paragraph (c) is being revised in its entirety to apply to situations in which the new legislation and 14 CFR part 252 ban smoking. For those operations, no person may operate an airplane unless either the "No Smoking" passenger information sign is lighted for the entire flight, or one or more "No Smoking" placards meeting the requirements of 14 CFR 25.1541 are posted for the entire flight segment. Thus, paragraph (c) itself does not ban smoking on certain flights. Instead, the paragraph informs people who operate airplanes in part 121 operations that when smoking is banned for the entire flight segment (*e.g.*, on those flights identified in 14 CFR part 252), then either the "No Smoking" passenger information signs must be lighted, or "No Smoking" placards must be posted.

Other situations exist in which the new legislation and recent amendments to 14 CFR part 252 do not ban smoking.

In those situations, the FAA's long-standing rules have banned, and continue to ban, smoking at certain times. For example, in a part 121 supplemental operation (either an all-cargo operation or a passenger-carrying operation in which the air carrier/commercial operator did not hold out a schedule to the public), the recent legislative ban on smoking and the recent amendments to 14 CFR part 252 do not apply because it applies only on scheduled passenger flights. On supplemental operations, smoking has been banned, and continues to be banned, for example, "during any movement [of the airplane] on the surface, for each takeoff, for each landing, and at any other time considered necessary by the pilot in command." However, for supplemental operations, the legislation does not ban smoking in the passenger cabin during en route phases of the flight, unless the pilot in command considers it necessary to turn on the "No Smoking" signs. For all part 121, part 129, and part 135 operations, smoking has been, and continues to be, prohibited in any aircraft lavatory. The FAA's ban on smoking in lavatories applies regardless of whether the 14 CFR part 252 smoking ban applies to the entire flight segment or whether it is, for example, a part 121 supplemental or part 135 on-demand operation where the operator may permit smoking during an en route segment of the flight in some circumstances. (*See* 14 CFR 121.317 (h), 129.29 (a), and 135.127 (c).) These operators of supplemental and on-demand flights must keep in mind that there are additional smoking prohibitions for "small aircraft" specified in 14 CFR 252.13.

Also under newly revised § 121.317 (c), the word "aircraft" is being changed to "airplane" because part 121 has only airplanes, and former paragraphs (c)(1), (c)(2), and (c)(3) are being deleted since these provisions reflect the former statutory provisions.

Paragraph (g) of § 121.317 is being revised to identify certain kinds of operations conducted under part 121 where smoking has been neither banned by the recent legislative amendments nor changed by 14 CFR part 252. The revised paragraph specifies the situations during which a pilot in command permits smoking on the flight deck. It is important to explain what newly revised (g) does not do. It does not apply in those situations where Congress banned smoking on the entire aircraft. For example, the legislation and recently amended 14 CFR part 252 ban smoking on aircraft in scheduled passenger interstate air transportation or scheduled passenger intrastate air transportation. Thus, for purposes of part 121, smoking is banned for the entire flight segment on the entire airplane (including the flight deck) on most part 121 domestic operations.

Smoking is banned on all part 121 operations that are engaged in "interstate air transportation" operations, as that term is defined in 49 U.S.C. 40102(a)(25). However, some part 121 domestic operations that are conducted entirely within a State of the United States are not covered by the legislative ban on smoking. Congress provided that a person may not smoke in an aircraft in scheduled passenger "intrastate air transportation." The term "intrastate air transportation" is defined in 49 U.S.C. 40102(a)(27). To meet the statutory definition of "intrastate air transportation," the transportation must be provided by a common carrier for compensation or hire entirely within one State, and it must be done in a "turbojet powered aircraft capable of carrying at least 30 passengers." (See 49 U.S.C. 40102 (a)(27).) Therefore, if a part 121 domestic operation or a part 135 commuter operation is conducted entirely within one State but it is conducted with a turbojet aircraft that is not capable of carrying at least 30 passengers, or is conducted with an aircraft that is not turbojet powered, then it is not engaged in the statutory "intrastate air transportation." Thus, the legislative ban on smoking does not apply to those operations; however, a Department of Transportation ban on smoking in certain "small aircraft" may apply. (See 14 CFR 252.13.) On those domestic operations and commuter operations that are not covered by the legislative ban, by the Department of Transportation's 14 CFR part 252 ban, or by international agreement, the former regulations and the revised regulations permit the pilot in command to authorize smoking on the flight deck (if it is physically separated from the passenger compartment), except during aircraft movement on the surface or during takeoff or landing. However, when the 14 CFR part 252 ban applies, it also prohibits smoking whenever the aircraft is on the ground. The pilot in command may authorize smoking on the flight deck on flights not covered by the legislative ban or 14 CFR part 252, even when the "No Smoking" signs are lighted or when the "No Smoking" placards are posted, except during the aircraft movement specified in the previous sentence.

It should also be noted that the legislative ban does not apply to all-cargo operations and to "unscheduled" passenger-carrying operations, and thus, does not apply to most part 121 supplemental operations and most part 135 on-demand operations. There are a few scheduled passenger-carrying operations that are defined in § 119.3 as "On-demand operations." (See paragraph (2) of the definition of "On-demand operation" in § 119.3.) The few scheduled passenger-carrying operations that are classified by part 119 as "on-demand" are subject to the legislative ban and the 14 CFR part 252 ban, provided the flights are either scheduled passenger flights in interstate air transportation, or the flights are scheduled passenger intrastate air transportation operations conducted in turbojet powered aircraft capable of carrying at least 30 passengers. Therefore, in revised paragraph (g), the FAA is carrying forward the authority for the pilot in command to permit smoking on the flight deck (if it is physically separated from the passenger compartment) in certain situations (even when the "No Smoking" signs are lighted) for those flights not covered by the legislative ban or the 14 CFR part 252 ban on smoking. One situation in which the pilot in command does not have the authority to permit smoking on the flight deck is when the aircraft is moving on the surface, or during takeoff or landing.

Finally, because scheduled passenger-carrying public charter operations under 14 CFR part 380 are subject to the legislative ban on smoking, and because those operations are also subject to the 14 CFR part 252 ban on smoking, the FAA must make it clear in its rules that the pilots in command of aircraft in those operations do not have the authority to permit smoking on the flight deck. Scheduled passenger-carrying public charter operations conducted under 14 CFR part 380 are treated as Supplemental Operations under part 121, or On-Demand Operations under part 135, even though the operator may well hold out to the public a departure location, departure time, and arrival location, which satisfies the definition of "scheduled operations" in § 119.3.

Section 129.29 Smoking prohibitions—This section is being revised in its entirety to prohibit smoking by anyone anywhere on an aircraft during scheduled passenger foreign air transportation or during any scheduled passenger interstate or intrastate air transportation. The revised section also includes the words "unless authorized by the Secretary of Transportation," because the legislation states that foreign governments that object to the ban may negotiate alternatives with the Secretary.

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Section 135.127 Passenger information requirements and smoking prohibitions—The heading of the section is being revised to include a reference to smoking prohibitions.

Paragraph (a) is being revised in its entirety to require that smoking by anyone at any time during any scheduled flight is prohibited and to specify the methods by which passengers may be notified of no smoking.

Paragraph (b) is being revised in a manner similar to the revisions to § 121.317(g). See discussion of § 121.317(g) above, except that part 121 refers only to airplanes, while part 135 refers to aircraft.

Discussion of Dates

Section 708 of Public Law 106–181 states that the amendment to 49 U.S.C. 41706 is effective on June 4, 2000 (60 days after the date of enactment of the legislation). This final rule, which implements conforming amendments to the FAA's regulations, is effective on June 4, 2000. Because Congress mandated these changes, good cause exists for the Department of Transportation to amend its rules concerning smoking (14 CFR part 252) and for the FAA to make conforming amendments to its rules. A legislative mandate makes it "unnecessary" to provide for notice and comment procedures. (See 5 U.S.C. 553 (b)(B).)

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this rule.

International Compatibility

In keeping with U.S. obligations under the convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA reviewed ICAO Standards and Recommended Practices but did not find corresponding provisions that differ from this rulemaking action.

In its 1992 session, the ICAO Assembly passed Resolution A29–15 concerning smoking on international passenger flights. The resolution called on member states to take appropriate measures "to restrict smoking progressively on all international flights." To reduce health hazards to passengers and crew and to enhance aviation safety, the governments of Australia, Canada, New Zealand, and the United States have since entered into an international agreement banning smoking on their airlines during all non-stop flights between those countries. This international agreement applies to all locations within an aircraft in passenger operation, including the flight deck, cabin, and lavatories.

Economic Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined this rule: (1) Has benefits that do justify its costs, is not a "significant regulatory action," as defined in the Executive Order, and is "significant," as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) reduces barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are summarized below.

This rule incorporates the provisions of 49 U.S.C. 41706 (as amended by section 708 of Pub. L. 106–181) into 14 CFR Parts 121, 129, and 135, and any costs and benefits that will result from this rulemaking are attributable to the legislation. Former Department of Transportation provisions allowing smoking on flights over 6 hours in duration are superseded by the new legislation. In addition, if a foreign air carrier's host government objects to these provisions and comments to the Secretary of Transportation, the Secretary will negotiate the issue.

The methods that will be used to inform passengers of the smoking prohibition are the lighted passenger information sign or posted "No Smoking" placards, and the required safety briefing. The costs involved with this rule, which are attributable to the legislation, are minor, as a smoking prohibition has been in place domestically for a decade, and some air carriers have already banned smoking on all flights without regulation.

Air carriers will realize some savings from this rule, which are attributable to the legislation. There will be less wear and tear on the ventilation systems on newly covered aircraft, and each of these aircraft may have to be cleaned less often. Air carriers will not have to deal with the logistics of smoking versus no-smoking sections. In addition, there are health benefits to people from prohibiting smoking aboard aircraft.

The FAA concludes that there are some economic benefits to the air carriers from prohibiting smoking on these newly included flights. Congress, which reflects the will of the American public, has also determined that the smoking ban is in the best interest of the nation. As stated above, this rule directly reflects legislative requirements and therefore the associated minor costs and benefits occur as a result of the legislation rather than the rule.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (the Act) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For this rule, the small entity group is considered to be part 121, part 129, and part 135 air carriers or commercial operators (Standard Industrial Classification Code (SIC) 4512). As noted above, the costs for each air carrier and commercial operator will be minimal.

The FAA conducted the required review of this rule and determined that it will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the states or the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Determination

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pubic Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pubic Law 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety.

14 CFR Part 129

Air carriers, Aircraft, Airports, Aviation safety.

14 CFR Part 135

Aircraft, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends title 14 CFR parts 121, 129, and 135 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Amend § 121.317 by revising the section heading and paragraphs (c) and (g) to read as follows:

§ 121.317 Passenger information requirements, smoking prohibitions, and additional seat belt requirements.

* * * * *

(c) No person may operate an airplane on a flight on which smoking is prohibited by part 252 of this title unless either the "No Smoking" passenger information signs are lighted during the entire flight, or one or more "No Smoking" placards meeting the requirements of § 25.1541 of this chapter are posted during the entire flight segment. If both the lighted signs and the placards are used, the signs must remain lighted during the entire flight segment.

* * * * *

(g) No person may smoke while a "No Smoking" sign is lighted or while "No Smoking" placards are posted, except as follows:

(1) *Supplemental operations.* The pilot in command of an airplane engaged in a supplemental operation may authorize smoking on the flight deck (if it is physically separated from any passenger compartment), but not in any of the following situations:

(i) During airplane movement on the surface or during takeoff or landing;

(ii) During scheduled passenger-carrying public charter operations conducted under part 380 of this title; or

(iii) During any operation where smoking is prohibited by part 252 of this title or by international agreement.

(2) *Certain intrastate domestic operations.* Except during airplane movement on the surface or during takeoff or landing, a pilot in command of an airplane engaged in a domestic operation may authorize smoking on the flight deck (if it is physically separated from the passenger compartment) if—

(i) Smoking on the flight deck is not otherwise prohibited by part 252 of this title;

(ii) The flight is conducted entirely within the same State of the United States (a flight from one place in Hawaii to another place in Hawaii through the airspace over a place outside of Hawaii

is not entirely within the same State); and

(iii) The airplane is either not turbojet-powered or the airplane is not capable of carrying at least 30 passengers.

* * * * *

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

3. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 41706, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

4. Revise § 129.29 to read as follows:

§ 129.29 Smoking prohibitions.

(a) No person may smoke and no operator may permit smoking in any aircraft lavatory.

(b) Unless otherwise authorized by the Secretary of Transportation, no person may smoke and no operator may permit smoking anywhere on the aircraft (including the passenger cabin and the flight deck) during scheduled passenger foreign air transportation or during any scheduled passenger interstate or intrastate air transportation.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

5. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

6. Amend § 135.127 by revising the heading and paragraphs (a) and (b) to read as follows:

§ 135.127 Passenger information requirements and smoking prohibitions.

(a) No person may conduct a scheduled flight on which smoking is prohibited by part 252 of this title unless the "No Smoking" passenger information signs are lighted during the entire flight, or one or more "No Smoking" placards meeting the requirements of § 25.1541 of this chapter are posted during the entire flight. If both the lighted signs and the placards are used, the signs must remain lighted during the entire flight segment.

(b) No person may smoke while a "No Smoking" sign is lighted or while "No Smoking" placards are posted, except as follows:

(1) *On-demand operations.* The pilot in command of an aircraft engaged in an on-demand operation may authorize smoking on the flight deck (if it is physically separated from any passenger compartment), except in any of the following situations:

(i) During aircraft movement on the surface or during takeoff or landing;

(ii) During scheduled passenger-carrying public charter operations conducted under part 380 of this title;

(iii) During on-demand operations conducted interstate that meet paragraph (2) of the definition "On-demand operation" in § 119.3 of this chapter, unless permitted under paragraph (b)(2) of this section; or

(iv) During any operation where smoking is prohibited by part 252 of this title or by international agreement.

(2) *Certain intrastate commuter operations and certain intrastate on-demand operations.* Except during aircraft movement on the surface or during takeoff or landing, a pilot in command of an aircraft engaged in a commuter operation or an on-demand operation that meets paragraph (2) of the definition of "On-demand operation" in § 119.3 of this chapter may authorize smoking on the flight deck (if it is physically separated from the passenger compartment, if any) if—

(i) Smoking on the flight deck is not otherwise prohibited by part 252 of this title;

(ii) The flight is conducted entirely within the same State of the United States (a flight from one place in Hawaii to another place in Hawaii through the airspace over a place outside Hawaii is not entirely within the same State); and

(iii) The aircraft is either not turbojet-powered or the aircraft is not capable of carrying at least 30 passengers.

* * * * *

Issued in Washington DC on June 2, 2000.

Jane F. Garvey,

Administrator.

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To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the "John J. Buchanan Post Office Building". (May 26, 2000; 114 Stat. 320)

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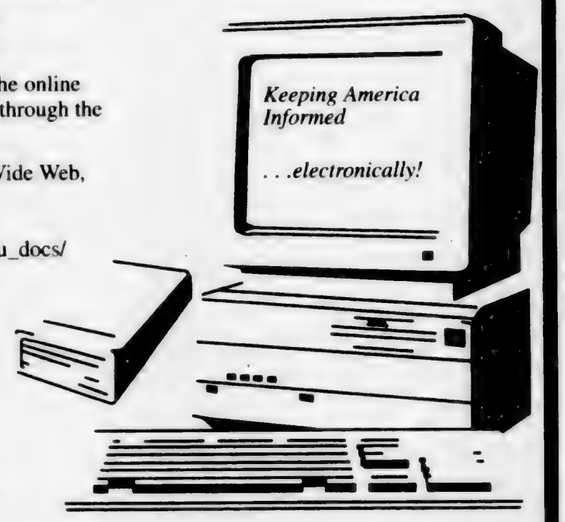

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–99–10]

RIN 0581–AB65

Tobacco Inspection; Subpart B—Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is adopting, as a final rule, with changes, an interim final rule revising the regulations governing permissive inspection of tobacco that special tests and services be provided by AMS, as requested by the industry. This action incorporates recommendations made by the Burley Tobacco Advisory Committee and the buying segment of the tobacco industry that moisture testing be performed by AMS on all burley tobacco marketed during the 1999–2000 marketing season. The revisions will continue to provide regulatory authority to conduct moisture testing and collect fees and charges for these services.

EFFECTIVE DATE: July 12, 2000.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456; or Fax: (202) 205–0235.

SUPPLEMENTARY INFORMATION: The Department published in the **Federal Register** on December 2, 1999 (64 FR 67469) an interim final rule amending the regulations at 7 CFR part 29, subpart B. The Department requested comments on the regulation. The comment period expired on January 31, 2000, and AMS received no comments on the amendments.

This final rule revises the regulations governing the permissive inspection of tobacco pursuant to the provisions of the Tobacco Inspection Act (49 Stat. 741, 7 U.S.C. 511 *et seq.*).

The Burley Tobacco Advisory Committee made a recommendation at its June 10, 1999, meeting that AMS conduct moisture testing on all burley tobacco offered for sale at designated auction markets. The recommendation was contingent on successful price negotiations between the buying segment and burley tobacco warehouse operators. The committee further recommended that tobacco marketed in an experimental unitized package be turned 90 degrees within the row as a condition of the testing process.

During the 1998–99 marketing season, approximately 60 million pounds of burley tobacco was sold in the experimental unitized package and tested for moisture content by the warehouse operators. The unitized bale is a new experimental package consisting of an even number of traditional burley bales with one additional bale opened and evenly arranged on top which is securely bound with metal wires to form a rectangular cube.

Due to integrity issues between the buying and warehouse segments of the industry, it was recommended that a third party entity perform the moisture testing. After three months of discussions and negotiations by the buying segment and the Burley Auction Warehouse Association, representing 95 percent of burley tobacco warehouse operators, a commitment was obtained from the four major tobacco companies purchasing burley tobacco to reimburse AMS $.0020 per pound for providing moisture testing services. These testing services were conducted on all burley tobacco during the 1999–2000 marketing season, including the traditional lot consisting of a maximum of eight bales and the experimental unitized package, offered for sale at designated markets.

Therefore, at the recommendation of the Burley Tobacco Advisory Committee and the buying segment of the tobacco industry, the Department implemented revised regulations to conduct special testing services for interested parties and charge fees to recover the costs of providing the service as determined by the Deputy Administrator, Tobacco Programs.

This rule has been determined to be "non significant" for purposes of Executive Order 12866, and therefore, has not be reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are approximately 190 tobacco warehouses and approximately 30,000 producers and most warehouses and producers may be classified as small entities. The Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities because the fees are not mandatory but apply only when special inspections or services are requested. This rule continues revisions that amended the regulation governing the permissive inspection of tobacco to conduct special testing services for interested parties and charge fees to recover the costs of providing the service as determined by the Deputy Administrator, Tobacco Programs.

The rule is changed slightly to make it clearer that the amount of the fees for special tests and services will be determined by agreement.

Lists of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

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Accordingly, the interim final rule amending 7 CFR part 29 which was published at 64 FR 67469 on December 2, 1999, is adopted as a final rule with the following changes:

PART 29—TOBACCO INSPECTION

Subpart B—Permissive Inspection

1. The authority citation for 7 CFR part 29, subpart B, continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. Section 29.56 is amended by revising the last sentence to read as follows:

§ 29.56 Permissive inspection.

* * * Special tests and services may be performed for interested persons to the extent that available facilities will permit, subject to the payment of fees as provided in § 29.123.

3. In § 29.123, paragraph (e) is revised to read as follows:

§ 29.123 Fees and charges.

* * * * *

(e) Fees for special tests and services will be determined by agreement between the Deputy Administrator, Tobacco Programs, and the applicant or applicants for service.

Dated: June 6, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–14730 Filed 6–9–00; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 716

Privacy of Consumer Financial Information

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is issuing a final rule to amend the requirements for privacy and opt out notice where there is a joint relationship on a loan. The amendment provides that a credit union is required to provide a separate initial notice and a separate opt out notice to each borrower and guarantor only if the credit union actually shares their nonpublic personal information with nonaffiliated third parties outside of one of the permissible exceptions. This amendment does not affect the right of borrowers and guarantors to receive notices if they are otherwise entitled to receive them as members of the credit union.

EFFECTIVE DATE: This rule is effective November 13, 2000. However, compliance is not required until July 1, 2001.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp or Regina M. Metz, Staff Attorneys, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 2000, the NCUA Board issued a proposed rule and, on May 8, 2000, a final rule applicable to all federally-insured credit unions, as required by the Gramm-Leach-Bliley Act (GLB Act). 65 FR 10988 (March 1, 2000) and 65 FR 31722 (May 18, 2000). The Board received 99 comments on its proposal. The final rule required credit unions to have a privacy policy and provide certain disclosures and notices to individuals about whom credit unions collect nonpublic personal information. In drafting the rule, the NCUA participated as part of an interagency group composed of representatives from the NCUA, the Federal Trade Commission, the Office of Comptroller of the Currency, Board of Governors of the Federal Reserve System, Secretary of the Treasury, and Securities and Exchange Commission (collectively, the Agencies). The final rule took into account the unique circumstances of federally-insured credit unions and their members but, as required by the GLB Act, was consistent and comparable with the regulations of the other Agencies.

The other Agencies' final regulations, which were issued after the NCUA, permit a financial institution to provide a single initial notice and opt out notice if two or more consumers jointly obtain a financial product or service. Unlike the other Agencies, NCUA's rule specifically excluded from the provisions governing joint relationships, the authority to provide only one notice in the case of a loan. 65 FR at 31743, 31745. The Board's rationale for the exclusion was that "co-makers and guarantors should receive the notice and right to opt out because of the extent and nature of nonpublic personal information provided to the credit union in conjunction with these types of transactions." 65 FR at 31728. Upon further reflection, the Board is persuaded by the 50 commenters that objected to requiring separate notices for all joint account holders. The commenters noted that the administrative and financial burden of tracking down joint account holders is substantial and that one notice is consistent with other consumer loan regulations. The Board believes that to accomplish its goal of protecting borrowers and guarantors from the sharing of their nonpublic personal information, notice to all borrowers and guarantors is not necessary and has amended its rule to require notices only under limited circumstances. The Board is amending the rule to provide that a credit union must only provide separate notices to individuals, other than the primary borrower, if a credit union is actually sharing nonpublic personal information about them.

Final Amendment

Sections 716.4(f)(2) and 716.7(d)(6) of this amendment only require a credit union to provide a separate initial notices and opt out notice to all borrowers and guarantors if the credit union shares their nonpublic personal information with nonaffiliated third parties other than for purposes permitted under §§ 716.13, 716.14 and 716.15. In addition, no annual notices are required.

This amendment does not affect the notice requirements for existing members in § 716.4(d) or the duty in §§ 716.4, 716.5 and 716.7 to provide initial, annual and opt out notices to co-borrowers and guarantors who have a member relationship with the credit union, in addition to a co-borrower or guarantor relationship. Finally, this provision does not affect the right of a co-borrower or guarantor to opt out as permitted for other types of joint relationships.

This provision is effective November 13, 2000, and compliance is mandatory July 1, 2001. This means that, like the recently passed final rule, all notices required by this amendment must be mailed by July 1, 2001. 65 FR at 31749.

The Board is issuing this rule as a final rule because it decreases the regulatory burden and there is a strong public interest in having a final privacy rule in place that allows federally-insured credit unions ample time to comply. Accordingly, and for good cause, because the rule decreases the regulatory burden, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public interest.

Regulatory Procedures

A. Paperwork Reduction Act

The final rule does not impose any additional paperwork requirements on federally-insured credit unions.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires, subject to certain exceptions, that NCUA prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule and a final regulatory flexibility analysis (FRFA) with a final rule, unless NCUA certifies that the rule will not have a significant economic impact on a substantial number of small credit unions. For purposes of the Regulatory Flexibility Act, and in accordance with NCUA's authority under 5 U.S.C. 601(4), NCUA has determined that small credit unions are those with less than one million dollars in assets. *See* 12 CFR 791.8(a). NCUA's final rule will apply to approximately 1,626 small credit unions, out of a total of approximately 10,627 federally-insured credit unions.

The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit union. The reason for this determination is that the final rule decreases the regulatory burden for all federally-insured credit union. This will result in reduced costs for all federally-insured credit unions.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule will apply to all federally-insured credit unions, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Section 507 of the GLB Act states that state law may provide greater consumer protections than this proposed rule. In that event, federal law would not preempt state law. NCUA has determined the final rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Small Busines. Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. NCUA has recommended to The Office of Management and Budget that it determine that this is not a major rule, and is awaiting its determination.

E. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose minimal regulatory burden. This rule reduces a requirement for federally-insured credit unions and so it meets the agency's goal of reducing regulatory burden.

List of Subjects 12 CFR Part 716

Consumer protection, Credit unions, Privacy, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on June 5, 2000.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble, NCUA amends 12 CFR part 716 as follows:

PART 716—PRIVACY OF CONSUMER FINANCIAL INFORMATION

1. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 6801 *et seq.*, 12 U.S.C. 1751 *et seq.*

2. Amend § 716.4 by redesignating paragraph (f) as paragraph (f)(1) and adding paragraphs (f)(2) to read as follows:

§ 716.4 Initial privacy notice to consumers required.

* * * * *

(f)(1) * * *

(2) *Special rule for loans.* (i) You are required to provide an initial notice to a borrower or guarantor on a loan if you share his or her nonpublic personal information with nonaffiliated third parties other than for purposes under §§ 716.13, 716.14 and 716.15. (ii) You may satisfy the annual notice requirements of § 716.5 by providing one notice to those borrowers and guarantors jointly.

* * * * *

3. Amend § 716.7 by adding paragraphs (d)(6) to read as follows:

§ 716.7 Form of opt out notice to consumers and opt out methods.

* * * * *

(d) * * *

(6) *Special rule for loans.* (i) You are required to provide an initial opt out notice to a borrower or guarantor on a loan if you share his or her nonpublic personal information with nonaffiliated third parties other than for purposes under §§ 716.13, 716.14 and 716.15.

(ii) You may satisfy your annual opt out notice requirement by providing one notice to those borrowers and guarantors jointly.

* * * * *

[FR Doc. 00–14785 Filed 6–9–00; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–45–AD; Amendment 39–11783; AD 2000–12–05]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG V2500–A1/–A5/–D5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to International Aero Engines AG (IAE) V2500–A1/–A5/–D5 series turbofan engines, that requires revisions to the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA), located in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals, to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional critical life-limited parts for enhanced inspection. This action is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this AD are intended to prevent critical life-limited

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rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date August 11, 2000.

ADDRESSES: The rulemaking docket may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–08–11, Amendment 39–11117 (64 FR 17956, April 13, 1999), to require revisions to the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA), located in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals, for International Aero Engines AG (IAE) V2500–A1/–A5/–D5 series turbofan engines to include focused inspection procedures for additional critical life-limited parts at each piece-part exposure was published in the **Federal Register** on October 7, 1999 (64 FR 54580). This AD will also require an air carrier's approved continuous airworthiness maintenance program to incorporate these additional inspection procedures.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Publication of Inspection Procedures

Two commenters request that the comment period be extended until after the proposed inspection procedures have been provided to operators to allow time to review those inspection procedures. The FAA does not agree. The FAA believes that the nature and scope of the added inspections will not be significantly different from existing inspections. However, the effective date of this AD has been extended to 90 days after publication to allow time for the specific procedures to be published. Operators may submit comments on the specific procedures once they are published and the FAA will consider extending the effective date further or initiating additional rulemaking, as necessary. The extra time until the AD becomes effective should also allow the manufacturer to issue a manual revision. The FAA does not believe, however, that this final rule need be delayed pending the publication of the inspection procedures, or extend the initial compliance time to accommodate the manufacturer's manual revision cycle.

Time Limits Manual

One commenter states that paragraph (a) of the Compliance section refers to the V2500 Time Limits Manuals as if they are part of the V2500 Engine Manuals. However, the Time Limits Manuals are separate documents with part numbers T–V2500–1IA and T–V2500–3IA. The commenter believes that all references to the Engine Manuals and their part numbers should be replaced with references to the Time Limits Manuals and their part numbers. The FAA does not concur. The V2500 Engine Manuals E–V2500–1IA and E–2500–3IA contain the required Instructions for Continued Airworthiness, including the Chapter 5 Time Limits Manual section. Since the Time Limits Manuals T–V2500–1IA and T–V2500–3IA are referenced in the V2500 Engine Manual chapter 5 requirements, the AD references the Engine Manuals.

Compliance Section Paragraph Identification

One commenter notes that the Compliance Section of the proposed rule does not conform to FAA's conventional paragraph identification structure (*e.g.* a, 1, i, *etc.*). The FAA concurs and the paragraph structure will be changed. Additionally, an error was discovered in the proposed supersedure and paragraph (a)(2) has been changed from "Whenever a Group A part identified in this paragraph (see 2.1 for definition of Group A) * * *" to "Whenever a Group A part identified in this paragraph (see 3.0 for definition of Group A) * * *" Also, it was determined that subparagraph designators (a)(2) (A) and (B) were unnecessary and they have been dropped.

Discussion Section Wording

One commenter notes that the preamble published with this Notice of Proposed Rulemaking (NPRM) does not include the same explaination of when the enhanced disk inspections are required compared to the preamble published for the current AD. This commenter requests that those guidelines be added to the final rule. The FAA does not agree. The inspection program established by the current AD remains unchanged. This NPRM proposed to add additional parts to the list of parts that must be inspected, but did not proposed to change how air carriers must manage the inspection program. Future AD's may be issued to introduce additional intervention strategies in order to further reduce uncontained engine failures, including AD's that add new parts to the list of parts requiring inspection. However, the inspection program established by the current AD will remain unless specifically altered in a future proposal.

Request To Remove "of This Chapter" From Paragraph (e) of the Compliance Section

One commenter requests that the FAA remove the statement "of this chapter" from the first sentence of paragraph (e) of this AD. The commenter feels that removing the statement will improve the clarity of the paragraph. The FAA agrees. The statement "of this chapter" has been removed from the first sentence of paragraph (e).

Economic Analysis

No comments were received on the economic analysis contained in the proposed rules. The FAA has determined that the annual cost of complying with this AD does not create a significant economic impact on small entities.

Adoption of the Proposed Rule

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Impact

This final rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11117 (64 FR 17956, April 13, 1999), and by adding a new airworthiness directive, Amendment 39–11783, to read as follows:

2000–12–05 International Aero Engines AG: Amendment 39–11783. Docket No. 98–ANE–45–AD. Supersedes AD 99–08–11, Amendment 39–11117.

Applicable Engines

International Aero Engines AG (IAE) V2500–A1/–A5/–D5 series turbofan engines, installed on but not limited to Airbus Industrie A319, A320, and A321 series, and McDonnell Douglas MD–90 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Part nomenclature	Part No. (P/N)	Inspect per engine manual chapter
Fan Disk	All	Chapter 72–31–12, Subtask 72–31–12–230–054.
Stage 1 HP Turbine Hub	All	Chapter 72–45–11, Task 72–45–11–200–002.
Stage 2 HP Turbine Hub	All	Chapter 72–45–31, Task 72–45–31–200–004".

Inspections

(a) Within the next 90 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA), located in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals, part number (P/N) E–V2500–1IA and P/N E–V2500–3IA, and for air carrier operations revise the approved continuous airworthiness maintenance program, by

(1) Adding the following to paragraph 1, entitled "Airworthiness Limitations:" "Refer to paragraph 2—Maintenance Scheduling for information that sets forth the operator's maintenance requirements for the V2500 On-Condition engine."

(2) Adding the following paragraph 2, entitled "Maintenance Scheduling:" "Whenever a Group A part identified in this paragraph (see 3.0 for definition of Group A) satisfies both of the following conditions:

The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the engine manufacturer's engine manual; and

The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine; then that part is considered to be at the piece-part level and it is mandatory to perform the inspections for that part as specified in the following:

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the ALS and MSS of the ICA in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals, P/N E–V2500–1IA and P/N E–V2500–3IA.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the recordkeeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] must maintain records of the mandatory inspections that result from revising the ALS and MSS of the ICA in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals, P/N E–V2500–1IA and P/N E–V2500–3IA, and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

(f) This amendment becomes effective on August 11, 2000.

Issued in Burlington, Massachusetts, on June 6, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–14787 Filed 6–9–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 99F–1581]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of imidazolium compounds, 2–(C_{17} and C_{17}-unsaturated alkyl)-1–[2–(C_{18} and C_{18}-unsaturated amido)ethyl]-4,5-dihydro-1-methyl, methyl sulfates as a debonding agent in the manufacture of paper and paperboard intended for use in contact with aqueous and fatty food and in contact with dry food. This action is in response to a petition filed by Witco Corp.

DATES: This rule is effective June 12, 2000. Submit written objections and requests for a hearing by July 12, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 4, 1999 (64 FR 30038), FDA announced that a food additive petition (FAP 9B4669) had been filed by Witco Corp., One American Lane, Greenwich, CT 06831–2559. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) and § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) to provide for the safe use of imidazolium compounds, 2–(C_{17} and C_{17}-unsaturated alkyl)-[2–(C_{18} and C_{18}-unsaturated amido)ethyl]-4,5-dihydro-1-methyl, methyl sulfates as a debonding agent in the manufacture of paper intended for use in contact with food. The name of the additive was incorrect in the June 4, 1999, notice, but is being used correctly as imidazolium compounds, 2–(C_{17} and C_{17}-unsaturated alkyl)-1–[2–(C_{18} and C_{18}-unsaturated amido)ethyl]-4,5-dihydro-1-methyl, methyl sulfates in this document.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in §§ 176.170 and 176.180 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the environmental effects of this rule as announced in the notice of filing for the petition. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by July 12, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding an entry under the headings "List of substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
. . . .	. . . .
Imidazolium compounds, 2–(C_{17} and C_{17}-unsaturated alkyl)-1–[2–(C_{18} and C_{18}-unsaturated amido)ethyl]-4,5-dihydro-1-methyl, methyl sulfates (CAS Reg. No. 72749–55–4).	For use only at a level not to exceed 0.5 percent by weight of the dry paper and paperboard.
. . . .	. . . .

* * * * *

3. Section 176.180 is amended in the table in paragraph (b)(2) by alphabetically adding an entry under the headings "List of substances" and "Limitations" to read as follows:

§ 176.180 Components of paper and paperboard in contact with dry food.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
. . . .	. . . .
Imidazolium compounds, 2–(C_{17} and C_{17}-unsaturated alkyl)-1–[2–(C_{18} and C_{18}-unsaturated amido)ethyl]-4,5-dihydro-1-methyl, methyl sulfates (CAS Reg. No. 72749–55–4).	For use only at levels not to exceed 0.5 percent by weight of the dry paper and paperboard.
. . . .	. . . .

Dated: May 31, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–14700 Filed 6–9–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's address for ADM Animal Health & Nutrition Division.

DATES: This rule is effective June 12, 2000.

FOR FURTHER INFORMATION CONTACT: Norman J. Turner, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0214.

SUPPLEMENTARY INFORMATION: ADM Animal Health & Nutrition Division, P.O. Box 2508, Fort Wayne, IN 46801–2508, has informed FDA of a change of sponsor's address to 1000 North 30th St., Box 1C, Quincy, IL 62305–3115. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor's address.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "ADM Animal Health & Nutrition Division" and in the table in paragraph (c)(2) by revising the entry for "017519" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
. . .	. . .
ADM Animal Health & Nutrition Division, 1000 North 30th St., Box 1C, Quincy, IL 62305–3115	017519
. . .	. . .

(2) * * *

Drug labeler code	Firm name and address
. . .	. . .
017519	ADM Animal Health & Nutrition Division, 1000 North 30th St., Box 1C, Quincy, IL 62305–3115
. . .	. . .

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Dated: May 29, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–14699 Filed 6–9–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska 00–002]

RIN 2115–AA97

Safety Zone; Port Graham, Cook Inlet, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; correction.

SUMMARY: This document corrects a temporary final rule published in the **Federal Register** of May 15, 2000, concerning temporary regulations at Port Graham, Cook Inlet, Alaska and the heavy-lift vessel SWAN. That document contained an arrival date that has been changed; thus a correction is necessary.

DATES: The temporary final rule published on May 15, 2000 is effective beginning on June 10, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Rodriguez, Chief of Port Operations, USCG Marine Safety Office, Anchorage, at (907) 271–6724.

SUPPLEMENTARY INFORMATION:

Correction

In temporary final rule FR Doc 00–12151, the effective date is no longer correct because the arrival date for the vessel has been changed to June 10, 2000 instead of June 12, 2000 and a correction is needed.

Correction of publication.

Accordingly, the publication on May 15, 2000, of the temporary final rule [COTP Western Alaska 00–002], which is the subject of FR Doc. 00–12151, is corrected as follows:

1. On page 30885, second column, in the **DATES** section, remove the words "June 12, 2000" and add in their place the words " June 10, 2000".

2. On page 30886, first column, in amendatory instruction number 2, remove the words "June 12, 2000" and add in their place the words " June 10, 2000".

3. On page 30886, second column, paragraph (b), remove the words "June 12, 2000" and add in their place the words " June 10, 2000".

Dated: June 6, 2000.

W.J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 00–14843 Filed 6–8–00; 3:25 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 086–0207a; FRL–6710–5]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maricopa County Environmental Services Department portion of the Arizona State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from ferrous sand casting operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 11, 2000 without further notice, unless EPA receives adverse comments by July 12, 2000. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andrew Steckel, Chief, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule and our technical support document (TSD) at our Region IX office from 8:00 am to 4:30 pm, Monday through Friday. To see copies of the submitted rule, you may also go to the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, AZ 85004

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1135.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used, we mean EPA.

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I. The State's Submittal

A. What rule did the State submit?

The rule we are approving for incorporation into the Arizona SIP is MCESD Rule 347, Ferrous Sand Casting. This rule was adopted on March 4, 1998 by the MCESD and submitted to us on August 4, 1999 by the Arizona Department of Environmental Quality. On August 25, 1999, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There is no previous version of MCESD Rule 347 in the SIP. There are no previous submittals on which we have not acted.

C. What is the purpose of the submitted rule?

MCESD Rule 347 limits the amount of volatile organic compounds (VOCs) emitted by organic binder materials and other organic materials used in molds made of sand or other finely divided refractory material in ferrous metal sand casting operations. The emission of VOC is limited to 150 pounds per day or 25 tons per year, unless VOC emissions are controlled by a device with at least 81% capture or by maintaining an organic binder to sand ratio of less than 1.35 to 100 by weight. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The MCESD regulates a serious ozone nonattainment area (see 40 CFR part 81), so MCESD Rule 347 must fulfill the requirements of RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "*Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987* **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. *Profile of the Metal Casting Industry,* EPA 310–R097–004, September 1997 (cover only.)

B. Does the Rule Meet the Evaluation Criteria?

We believe the rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action.

As authorized in section 110(k)(3) of the Act, EPA is approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by July 12, 2000, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 11, 2000. This will incorporate this rule into the federally enforceable SIP.

III. Background Information

Why was this rule submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 1 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 1.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule

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cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Organics, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 12, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(94)(i)(C) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(94) * * *

(i) * * *

(C) Rule 347, adopted on March 4, 1998.

* * * * *

[FR Doc. 00–14171 Filed 6–9–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301006; FRL–6590–4]

RIN 2070–AB78

Cyprodinil; Extension of Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the fungicide cyprodinil in or on strawberries at 5 part per million (ppm) for an additional 1-year period. This tolerance will expire and is revoked on May 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on strawberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective June 12, 2000. Objections and requests for hearings, identified by docket control number OPP-301006, must be received by EPA on or before August 11, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301006 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number:703–308–9362; and e-mail address: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301006. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of April 14, 1999 (64 FR 18346) (FRL–6073–3), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of cyprodinil in or on strawberries at 5 ppm, with an expiration date of May 31, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of the product Switch 62.5 WG, containing the active ingredients fludioxonil and cyprodinil, on strawberries for this year's growing season due to the urgent and non-routine situation which exists for South Carolina strawberry growers due to the cancellation of vinclozolin use on strawberries and the restriction on iprodione use to pre-bloom only; this reduces the number of fungicide applications available for season-long control below that needed, should disease pressure be heavy. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of cyprodinil on strawberries for control of gray mold in South Carolina.

EPA assessed the potential risks presented by residues of cyprodinil in or on strawberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 14, 1999 (64 FR 18346). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on May 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301006 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 11, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its

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inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–30010006, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule extends a time limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 25, 2000

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.532 [Amended]

2. In § 180.532, in the table to paragraph (b), the entry for strawberries is amended by revising the date "5/31/00" to read "5/31/01".

[FR Doc. 00–14774 Filed 6–9–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–6710–3]

State of West Virginia: Final Program Determination of Adequacy of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: This document approves the portions of the West Virginia Municipal Solid Waste Management Permit Program which did not receive Environmental Protection Agency (EPA) approval in the **Federal Register** document published on March 29, 2000 (65 FR 16523–16528). EPA published a document in the **Federal Register** on March 29, 2000 (65 FR 16523–16528), giving final approval to the portions of West Virginia's Solid Waste Management Rule which had been tentatively approved in the March 8, 1996 document (61 FR 9451–9454). This action approves those portions of West Virginia's solid waste permit program which were not previously approved by EPA.

DATES: This final determination of program adequacy for the State of West Virginia shall become effective August 11, 2000 unless adverse comments are received on or before July 12, 2000.

ADDRESSES: Comments should be sent to the following address where the full West Virginia application supporting program adequacy is on file and may be reviewed: EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, or alternatively at West Virginia Division of Environmental Protection (WVDEP), 1356 Hansford Street, Charleston, West Virginia 25301–1401.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, Attn: Mr. Michael C. Giuranna, mailcode 3WC21, telephone (215) 814–3298. The contact for the State of West Virginia Division of Environmental Protection is Mr. Larry Atha, 1356 Hansford Street, Charleston, West Virginia 25301–1401, telephone (304) 558–6350.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised criteria for Municipal Solid Waste Landfills (MSWLFs) (40 CFR part 258). Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments, requires states to develop permit or other similar programs that incorporate the federal criteria under 40 CFR part 258. Section 4005(c)(1)(C) of RCRA requires that EPA determine the adequacy of state MSWLF permit programs to ensure that facilities comply with the revised federal criteria. To fulfill this requirement, the Agency promulgated the State Implementation Rule (SIR) on October 23, 1998 (63 FR 57025) which provides procedures by which EPA will approve or partially approve state landfill permit programs.

EPA interprets the requirements for states or tribes to develop "adequate" programs for permits, or other forms of prior approval, as imposing several minimum requirements. First, each state must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the state must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The state also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the state must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator who fails to comply with an approved MSWLF program.

EPA Regions determine whether state programs are "adequate" based on the criteria outlined above.

B. State of West Virginia

In September 1998, West Virginia submitted its revised Solid Waste Management Rule (the Rule), which incorporated all of the provisions of 40 CFR part 258. After a thorough review, EPA determined that the Rule met the requirements of 40 CFR part 258 and on July 1, 1999, West Virginia submitted the Rule with proper documentation as required by the SIR to EPA and requested approval under 40 CFR part 258. Upon review of this submittal, EPA found that West Virginia is in compliance with all provisions of the SIR and that West Virginia has demonstrated that the State's MSWLF permit program adequately meets the location restrictions, operating criteria, design criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria in the revised federal criteria. In addition, the State of West Virginia also demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement.

EPA issued final partial approval for all of subparts B, C and D and portions of subparts A, E and F of 40 CFR part 258, in the **Federal Register** of March 29, 2000 (65 FR 16523–16528). These portions of West Virginia's Municipal Solid Waste Landfill Permit Program had received tentative approval in a **Federal Register** document published on March 8, 1996 (61 FR 9451–9454). EPA is today publishing this document approving the remaining elements of West Virginia's MSWLF permit program that are analogous to the subpart G, Financial Assurance Criteria, of 40 CFR part 258 and the remaining portions of subparts A, E and F listed below.

1. Subpart A—General— The definitions listed in 40 CFR 258.2;

2. Subpart E—Groundwater Monitoring and Corrective Action—The requirements of 40 CFR 258.51, Groundwater Monitoring Systems; 40 CFR 258.54, Detection Monitoring Program; and 40 CFR 258.55, Assessment Monitoring Program;

3. Subpart F—Closure and Post Closure Care—The criteria in 40 CFR 258.60, Closure Criteria, pertaining to the time allowed to apply the final cover.

By approving these portions of the West Virginia Municipal Solid Waste Permit Program, EPA will be in effect granting full program approval of West Virginia's MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the federal MSWLF criteria in 40 CFR part 258 independent of any state enforcement program. As explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions of a state program approved by EPA should be considered to be in compliance with the federal criteria (see 56 FR 50978, 50995, October 9, 1991).

C. Decision

EPA concludes that West Virginia's application for a full program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, West Virginia is granted approval of the provisions of its municipal solid waste landfill permit program noted above. This action will take effect 60 days from the date of publication, if no significant adverse comments are received within 30 days. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect 60 days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. EPA is approving the State regulations noted above through this immediate final action and is publishing this rule without a prior proposal to approve the changes because EPA believes it is not controversial and expects no comments that oppose this action. EPA is providing an opportunity for public comment now. In the proposed rules section of today's **Federal Register** EPA is publishing a separate document that proposes to approve the State changes. If EPA receives comments which oppose this approval or portion(s) thereof, that document will serve as a proposal to approve such changes. If EPA receives comments that oppose this approval decision or portion(s) thereof, we will withdraw this approval, or those portion(s) for which EPA received comments opposing its decision, by publishing a document in the **Federal Register**. We will address all public comments in a subsequent final action based on the proposed rule.

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The EPA's action today does not impose any new requirements that the regulated community must begin to comply with nor do these requirements become enforceable by EPA as federal law.

Compliance With Executive Order 12866—Regulatory Planning and Review

The Office of Management and Budget has exempted today's action from the requirements of Executive Order 12866.

Compliance With Executive Order 12898—Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. EPA does not believe that today's action will have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community.

Compliance With Executive Order 13045—Children's Health Protection

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. West Virginia is not authorized to implement the MSWLF permit program in Indian country.

Compliance With Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This approval does not have federalism implications. It will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves portions of West Virginia's MSWLF permit program that the State has voluntarily chosen to operate. Thus, the requirements of section 6 of the Executive Order do not apply.

Certification Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this approval on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are owners or operators of municipal sold waste landfills are already subject to the regulatory requirements under the State laws which EPA is now approving. This action merely approves for the purpose of RCRA 4005(c) those existing State requirements.

Compliance With the Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each house of the Congress and to the Comptroller General of the United States. EPA will submit a report containing today's document and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of today's action in the **Federal Register**. Today's action is not a "major rule" as defined by section 5 U.S.C. 804(2).

Compliance With the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4; establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the West Virginia program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may own or operate municipal solid waste landfills, they are already subject to the regulatory requirements under the existing State laws that are being approved by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

Compliance With the National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Authority: This notice is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated:

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–14164 Filed 6–9–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000119015–0015–01; I.D. 010500A]

RIN 0648–AM32

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Pollock Fisheries Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; extension of expiration date; request for comments.

SUMMARY: NMFS extends the expiration date of an emergency interim rule that implemented reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions, or adversely modify their critical habitat. The emergency interim rule that is effective from January 20, 2000, through July 19, 2000, is extended through December 31, 2000. This emergency action is necessary to continue to implement reasonable and prudent alternatives until permanent rulemaking is implemented.

DATES: The expiration date of the emergency interim rule published January 25, 2000 (65 FR 3892), is extended to December 31, 2000. Comments must be received by July 12, 2000.

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ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Gravel, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Biological Opinion (BiOp) on the pollock fisheries of the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) and the Atka mackerel fishery of the Aleutian Islands subarea, the Revised Final Reasonable and Prudent Alternatives (RFRPAs), and the Environmental Assessment/Regulatory Impact Review prepared for the emergency interim rule may be obtained from the same address. The BiOp and the RFRPAs are also available on the Alaska Region home page at http://www.fakr.noaa.gov. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228 or shane.capron@noaa.gov

SUPPLEMENTARY INFORMATION: NMFS issued a BiOp dated December 3, 1998, and revised December 16, 1998, on the pollock fisheries of the BSAI and GOA, and the Atka mackerel fishery of the Aleutian Islands Subarea. The BiOp concluded that the BSAI and GOA pollock trawl fisheries, as previously prosecuted, were likely to jeopardize the continued existence of the western population of Steller sea lions, and adversely modify its critical habitat.

The BiOp concluded that, to avoid the likelihood of jeopardizing the continued existence of the western population of Steller sea lions, or adversely modifying its critical habitat, reasonable and prudent alternatives to the existing pollock trawl fisheries in the BSAI and GOA must accomplish three basic principles: (1) Temporal dispersion of fishing effort, (2) spatial dispersion of fishing effort, and (3) pollock trawl exclusion zones around Steller sea lion rookeries and haulouts.

NMFS published an emergency interim rule implementing the RFRPAs in the **Federal Register** on January 25, 2000 (65 FR 3892), amended on February 10, 2000 (65 FR 6561), and is effective through July 19, 2000.

At its April 2000 meeting, the North Pacific Fishery Management Council (Council) voted to recommend extension of the emergency rule. The preamble to the original emergency interim rule provides a detailed description of the purpose and need for the action. This action extends the expiration date of the emergency interim rule establishing Steller sea lion conservation measures (65 FR 3892, January 25, 2000) from July 19, 2000, to December 31, 2000.

NMFS intends to initiate proposed and final rulemaking later in 2000 to permanently implement Steller sea lion conservation measures as required by the BiOp and the RFRPAs, and as recommended by the Council at its June 1999 meeting. This extension of an emergency interim rule is necessary to prosecute the remainder of the 2000 pollock fishery after July 19, 2000.

Details concerning the basis for this action are contained in the initial emergency interim rule and are not repeated here.

The comments received on the initial emergency interim rule and this emergency rule extension will be responded to later this year in NMFS' final rulemaking to permanently implement Steller sea lion conservation measures. Also, there will be an additional opportunity for comments when the proposed rule is published prior to final rulemaking.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: June 6, 2000.

Bruce C. Morehead,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14776 Filed 6–9–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 113
Monday, June 12, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

The Production of Nonpublic Records and Testimony of NCUA Employees in Legal Proceedings and the Privacy Act

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to make minor and technical revisions to its regulation implementing the Privacy Act of 1974 (PA). The proposal updates the rule to conform to current law governing the method an individual may use to establish his or her identity to obtain access to protected records and the requirements for the release of medical records. The proposed rule changes time limits so that they conform more closely to those under the Freedom of Information Act (FOIA) and clarifies that the agency maintains four, rather than three, systems of records subject to exemptions under the PA. The proposal also updates the rule to reflect organizational changes within NCUA and corrects cross-references in Subpart C.

DATES: Comments must be received on or before August 11, 2000.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: The PA, 5 U.S.C. 552a, governs the collection, maintenance, use and disclosure of personal information in a federal agency's systems of records. NCUA's PA regulation sets forth procedures for individuals to follow to obtain access to records about themselves in systems of records. It also permits the amendment of any inaccurate records and places restrictions on the disclosure of information in the records.

As part of a government-wide initiative, NCUA recently reviewed its practices related to privacy and personal information in federal records. In its review of the agency systems of records, it identified several changes in recordkeeping practices and agency organization. As a result of that review, NCUA revised its systems notices to make them clearer and simpler and to eliminate redundancies. 65 FR 3486, January 21, 2000. Now, as a result of its review of the PA regulation, NCUA proposes to update the regulation to reflect current law, terminology and organizational functions and clarify which of its systems of records are subject to PA exemptions.

The revisions are minor or technical in nature. The changes seek to align PA processing more closely with Office and Management and Budget (OMB) guidelines and FOIA, 5 U.S.C. 552, practices. Specifically, the current regulation calls for an agency response within 10 working days of receipt. The PA itself does not set a time limit for agency responses. OMB guidelines recommend that agencies acknowledge requests within 10 days and, when records will be produced, do so within 30 days. 40 FR 28957, July 9, 1975. For ease of administration, NCUA proposes to adopt processing time limits similar to those imposed by the FOIA: 20 working days to respond to initial PA requests, with a 10-day extension if necessary. The proposal also changes the time period for an individual to file an appeal of an adverse decision, currently 180 days, to the time period commonly used in the FOIA context, which is 30 days. The current regulation sets the copying fee at $0.25 per page. In connection with the FOIA, NCUA establishes a fee schedule adjusted periodically to reflect actual costs. The current rate for copies on the NCUA FOIA fee schedule is $0.05 per page. The proposal makes the copying fee for PA records the same as the fee on the FOIA fee schedule.

The proposal eliminates the requirement in the current regulation that an individual produce a notarized statement affirming his identity when he is seeking access to a record about himself and he cannot produce documentation to establish his identity, or when he submits a request by mail. Current case law requires that an individual need only submit an unsworn declaration, subscribed to as true under penalty of perjury. *Summers* v. *DOJ*, 999 F.2d 570 (D.C. Cir. 1993).

The current regulation requires that an NCUA official determine whether to release to an individual his non-exempt medical information in a system of records. The proposal eliminates that provision and conforms the rule to current law that holds that an agency may impose special procedures to minimize the potential harm to an individual from disclosure of sensitive medical records, but ultimately the agency must ensure that the individual receives all nonexempt medical records. *Benavides* v. *Bureau of Prisons*, 995 F.2d 269 (D.C. Cir. 1993).

The proposal also amends the regulation to reflect the correct number of systems of records subject to a PA exemption. The PA requires agencies to promulgate a rule to exempt a system of records from its access and notice provisions. The following four of NCUA's notices of systems of records state that the systems are exempt from certain provisions of the PA: NCUA–1, Employee Suitability and Security Investigations Containing Adverse Information, NCUA, and; NCUA–8, Investigative Reports Involving Any Crime, Suspected Crime or Suspicious Activity Against a Credit Union, NCUA, and; NCUA–11, Office of Inspector General (OIG) Investigative Records, and; NCUA–13, Litigation Case Files, NCUA. However, the current regulation only describes three systems subject to exemption from provisions of the PA, excluding the Litigation Case Files system. 12 CFR 792.34.

The Litigation Case Files system, designated NCUA–13, will be exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I) and (f) of the PA. 5 U.S.C. 552a (c)(3), (d),(e)(1), (e)(4)(G), (H), (I) and (f). Because the system covers investigatory materials compiled for law enforcement purposes, it is eligible for these exemptions under subsection (k)(2) of the PA. 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit to which the individual would otherwise

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be entitled by federal law, or for which the individual otherwise would be eligible, as a result of the maintenance of such records, the records or information will be made available to the individual, provided the identity of a confidential source is not disclosed. The records in the Litigation Case Files system are used in connection with the execution of NCUA's legal and enforcement responsibilities. These files may contain unverified, unsolicited statements, sometimes received from confidential sources. In addition, investigative reports and other internal agency memoranda concerning violations of laws or regulations may be included in the files. The NCUA Board believes that the disclosure of the existence of such information in the files or the nature of information obtained in law enforcement investigations may seriously hamper and undermine effective enforcement actions. Disclosure might prematurely alert individuals that they are under investigation or provide access to evidentiary information. Similarly, this system must be exempt from the PA provision requiring agencies to make an accounting of disclosures from the system upon request from the individual. An accounting would risk revealing to the individual that NCUA has forwarded records to the U.S. Department of Justice for consideration of criminal proceedings. If such an accounting were required, an individual might flee the jurisdiction or otherwise interfere with criminal prosecution. During litigation, authorized NCUA employees may disclose case file information within the bounds of discovery rules.

Finally, the proposal also corrects certain cross-references in Subpart C that are necessary due to earlier revisions of part 792. 63 FR 14338, March 25, 1998.

Regulatory Procedures

Paperwork Reduction Act

This regulation, if adopted, will impose no additional information collection, reporting or recordkeeping requirements.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), NCUA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. NCUA expects that this proposal will not: (1) Have significant secondary or incidental effects on a substantial number of small entities; or (2) create any additional burden on small entities. These conclusions are based on the fact that the proposed regulations are minor changes intended to simplify and clarify agency recordkeeping and disclosure procedures. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule, if adopted, is procedural in nature and will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendment is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 792

Administrative practice and procedure, Archives and records, Credit unions, Information, Records.

By the National Credit Union Administration Board on June 6, 2000.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble, the NCUA proposes to amend 12 CFR Part 792 as follows:

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

1. The authority citation for part 792 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C. 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

§ 792.41 [Amended]

2. In § 792.41, remove " § 792.4(b)(2)" and add, in its place, "§ 792.32."

§ 792.47 [Amended]

3. In § 792.47(b), remove "§ 792.5" and add, in its place, "§ 792.19."

§ 792.49 [Amended]

4. In § 792.49, in the definition of *Nonpublic records*, remove "§ 792.3" and add, in its place, "§ 792.11".

5. Amend § 792.55 by revising paragraph (a)(3) to read as follows:

§ 792.55 Times, places and requirements for identification of individuals making requests and identification of records requested.

(a) * * *

(3) An individual seeking access to records about himself by mail or in person, who cannot provide the required documentation or identification, may provide an unsworn declaration subscribed to as true under penalty of perjury.

* * * * *

6. Amend § 792.56 by revising paragraphs (b)(1), (b)(2) and (b)(3) to read as follows:

§ 792.56 Notice of existence of records, access decisions and disclosure of requested information; time limits.

* * * * *

(b) * * *

(1) A request concerning a single system of records which does not require consultation with or requisition of records from another agency will be responded to within 20 working days after receipt of the request.

(2) A request requiring requisition of records from or consultation with another agency will be responded to within 30 working days of receipt of the request.

(3) If a request under paragraphs (b)(1) or (2) of this section presents unusual difficulties in determining whether the records involved are exempt from disclosure, the Privacy Act Officer, in the Office of General Counsel, may extend the time period established by the regulations by 10 working days.

* * * * *

7. Amend § 792.57 by revising paragraph (b) to read as follows:

§ 792.57 Special Procedures: Information furnished by other agencies; medical records.

* * * * *

(b) When an individual requests medical records concerning himself, the NCUA official responsible for action on the request may advise the individual that the records to be released will be provided first to a physician designated in writing by the individual. The physician will provide the records to the individual.

8. Amend § 792.58 by revising the fourth sentence of paragraph (a) to read as follows:

§ 792.58 Requests for correction or amendment to a record; administrative review of requests.

* * * * *

(a) * * * An individual who does not have access to NCUA's "Notice of Systems of Records," and to whom the appropriate address is otherwise unavailable, may submit a request to the Privacy Act Officer, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314–3428, in which case the request will then be referred to the appropriate NCUA official.* * *

* * * * *

9. Amend § 792.59 by revising paragraph (e) to read as follows:

§ 792.59 Appeal of initial determination.

* * * * *

(e) If access is denied because of an exemption, the individual will be notified of the right to appeal that determination to the General Counsel within 30 days after receipt. Appeals will be determined within 20 working days.

10. Amend § 792.65 by revising paragraph (a)(1) to read as follows:

§ 792.65 Fees.

(a) * * *

(1) For copies of documents provided, copy fees as stated in NCUA's current FOIA fee schedule; and

* * * * *

11. Amend § 792.66 by revising the first sentence of paragraph (a), and the first two sentences of paragraph (b)(1), and the first sentence of paragraph (b)(2), and adding a new paragraph (b)(4) as follows:

§ 792.66 Exemptions.

(a) NCUA maintains four systems of records that are exempted from some provisions of the Privacy Act. * * *

(b)(1) System NCUA–1, entitled "Employee Suitability Security Investigations Containing Adverse Information," consists of adverse information about NCUA employees that had been obtained as a result of routine U.S. Office of Personnel Management (OPM) security Investigations. To the extent that NCUA maintains records in this system pursuant to OPM guidelines that may require retrieval of information by use of individual identifiers, those records are encompassed by and included in the OPM Central system of records number Central-9 entitled, "Personnel Investigations Records," and thus are subject to the exemptions promulgated by OPM. * * *

(2) System NCUA–8, entitled, "Investigative Reports Involving Any Crime or Suspicious Activity Against a Credit Union, NCUA," consists of investigatory or enforcement records about individuals suspected of involvement in violations of laws or regulations, whether criminal or administrative. * * *

* * * * *

(4) System NCUA–13, entitled, "Litigation Case Files," consists of investigatory materials compiled for law enforcement purposes. Records in the Litigation Case Files system are used in connection with the execution of NCUA's legal and enforcement responsibilities. Because the system covers investigatory materials compiled for law enforcement purposes, it is eligible for exemption under subsection (k)(2) of the Privacy Act. 5 U.S.C. 552a(k)(2). The Litigation Case Files system is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I) and (f) of the Privacy Act. 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), (I) and (f). However, if an individual is denied any right, privilege, or benefit to which he would otherwise be entitled by federal law, or for which he otherwise would be eligible, as a result of the maintenance of such records, the records or information will be made available to him, provided the identity of a confidential source is not disclosed.

* * * * *

12. Amend § 792.69 by revising the first sentence of paragraph (a) to read as follows:

§ 792.69 Training and employee standards of conduct with regard to privacy.

(a) The Director of the Office of Training and Development, with advice from the General Counsel, is responsible for training NCUA employees in the obligations imposed by the Privacy Act and this subpart.* * *

* * * * *

[FR Doc. 00–14784 Filed 6–9–00; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–329–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 series airplanes, that would have required replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the electrical power control unit (EPCU) to separate grounding points. That proposal was prompted by reports of complete loss of the primary electrical power on an airplane during flight. This new action revises the proposed rule by expanding the applicability of the proposed AD to include additional airplanes. The actions specified by this new proposed AD are intended to prevent a loose electrical ground block of the circuit ground wires of the EPCU, which could result in complete loss of the primary electrical power of an airplane during flight.

DATES: Comments must be received by July 7, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–329–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent

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via the Internet must contain "Docket No. 99–NM–329–AD" in the subject line and need not be submitted in triplicate.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–329–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–329–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 7, 1999 (64 FR 68302). That NPRM would have required replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the electrical power control unit (EPCU) to separate grounding points. That NPRM was prompted by reports of complete loss of the primary electrical power on an airplane during flight. That condition, if not corrected, could result in a loose electrical ground block of the circuit ground wires of the EPCU, which could result in complete loss of the primary electrical power of an airplane during flight.

Comments

Due consideration has been given to the comment received in response to the NPRM:

One commenter requests that the FAA revise paragraph (b) of the NPRM to reference McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000, as the appropriate source of service information for accomplishing the proposed retermination rather than a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The commenter states that referencing the service bulletin will eliminate the requirement for the ACO to approve an alternative method of compliance (AMOC), and that the proposed retermination could be accomplished easily in accordance with the service bulletin.

The FAA concurs with the commenter. Since issuance of the NPRM, the FAA has reviewed and approved McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000. The service bulletin describes procedures for relocating the ground wires of the EPCU system and installing a new ground stud bracket. Accomplishment of this modification will minimize the possibility of electrical power loss of an airplane during flight. Therefore, the FAA has revised paragraph (b) of the supplemental NPRM to reference the subject service bulletin as the appropriate source of service information for accomplishing the proposed retermination. In addition, the FAA has revised the work hour estimate of the final rule for accomplishing the retermination to conicide with the estimates in the subject service bulletin.

Explanation of Changes to the Applicability of the NPRM

The applicability statement of the NPRM referenced McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999, as the appropriate source of service information for determining the affected airplanes. However, the FAA has revised the applicability statement of the supplemental NPRM to also reference McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000. McDonnell Douglas Service Bulletin MD90–24–062 (described above) includes additional airplanes that are subject to the identified unsafe condition of this AD. As a result of this change, the FAA also has revised the applicability of paragraphs (a) and (b) accordingly.

Conclusion

Since these changes expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 104 Model MD–90–30 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be procured from the operator's stock. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $1,260, or $60 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed retermination of the circuit ground wires of the EPCU, at an average labor rate of $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on these figures, the cost impact of the retermination proposed by this AD on U.S. operators is estimated to be $1,260, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–329–AD.

Applicability: Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999, and McDonnell Douglas Service Bulletin MD90–24–062, dated Feburary 3, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a loose electrical ground block of the circuit ground wires of the electrical power control unit (EPCU), accomplish the following:

Replacement

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999: Within 30 days after the effective of this AD, replace the electrical ground block screws with new screws in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999.

Note 2: Accomplishment of the replacement of electrical ground block screws prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, dated July 28, 1999, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Modification of the Electrical Power Control Unit

(b) For airplanes listed in McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000: Within 12 months after the effective date of this AD, reterminate the circuit ground wires of the EPCU to separate grounding points to ensure that a single point failure does not occur, in accordance with McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14795 Filed 6–9–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–104–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 and all Model A300–600 and A310 series airplanes, that currently requires performing a pitch trim system test to detect any continuity defect in the autotrim function, and follow-on corrective actions, if necessary. This action would require repetitive inspections of the autotrim function to detect such defects, and corrective actions, if necessary. This action also would expand the applicability to include additional airplanes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent a sudden change in pitch due to an out-of-trim condition combined with an autopilot disconnect, which could result in reduced controllability of the airplane.

DATES: Comments must be received by July 12, 2000.

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ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–104–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 18, 2000, the FAA issued AD 2000–02–04, amendment 39–11522 (65 FR 3799, January 25, 2000), applicable to certain Airbus Model A300 and all Model A300–600 and A310 series airplanes. That AD requires performing a pitch trim system test to detect any continuity defect in the autotrim function, and follow-on corrective actions, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent a sudden change in pitch due to an out-of-trim condition combined with an autopilot disconnect, which could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since issuance of AD 2000–02–04, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised the FAA that repetitive inspections are necessary to maintain the fleet in an airworthy condition, and that additional airplanes may be subject to the identified unsafe condition. In light of the DGAC's recommendation, the FAA has determined that further rulemaking action is necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–22A6042, Revision 01 (for Model A300–600 series airplanes); A300–22A0115, Revision 02 (for Model A300 series airplanes); and A310–22A2053, Revision 01 (for Model A310 series airplanes); all dated March 7, 2000. These service bulletins describe procedures for repetitive inspections of the autotrim function by testing the integrity of the flight control computer (FCC) and flight augmentation computer (FAC) in logic activation of the autotrim. For any default found during the test, the service bulletins describe procedures for trouble-shooting and follow-on corrective actions, including replacing the FCC and/or FAC, retesting, checking the wires between certain FCC and FAC pins, and repairing damaged wires.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2000–115–304(B) R1, dated May 3, 2000, in order to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2000–02–04 to require repetitive inspections to detect continuity defects in the autotrim function and to expand the applicability to include additional airplanes. The actions would be required to be accomplished in accordance with the applicable service bulletin described previously. The proposed AD also would require that operators report results of inspection findings to Airbus.

Interim Action

This is considered to be interim action for Model A300–600 and A310 series airplanes. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking for these airplanes.

Cost Impact

There are approximately 120 airplanes of U.S. registry that would be affected by this proposed AD. The inspection that is proposed by this AD would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed actions on U.S. operators is estimated to be $7,200, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11522 (65 FR 3799, January 25, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 2000–NM–104–AD. Supersedes AD 2000–02–04, Amendment 39–11522.

Applicability: Model A300 B2–203 and B4–203 series airplanes in a forward facing cockpit version, as listed in Airbus Service Bulletin A300–22A0115, Revision 02, dated March 7, 2000; and all Model A300–600 and A310 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a sudden change in pitch due to an out-of-trim condition combined with an autopilot disconnect, which could result in reduced controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Perform an inspection of the autotrim function by testing the flight control computer (FCC)/flight augmentation computer (FAC) integrity in logic activation of the autotrim, in accordance with Airbus Service Bulletin A300–22A6042, Revision 01 (for Model A300–600 series airplanes); A300–22A0115, Revision 02 (for Model A300 series airplanes); or A310–22A2053, Revision 01 (for Model A310 series airplanes); all dated March 7, 2000; as applicable. If any discrepancy is found, prior to further flight, perform all applicable corrective actions (including trouble-shooting, replacing the FCC and/or FAC, retesting, checking the wires between certain FCC and FAC pins, and repairing damaged wires) in accordance with the applicable service bulletin. Repeat the inspection thereafter at intervals not to exceed 500 flight hours.

(1) For airplanes on which the pitch trim system test has been performed in accordance with the requirements of AD 2000–02–04, amendment 39–11522: Inspect within 500 flight hours after accomplishment of the test required by that AD, or within 20 days after the effective date of this AD, whichever occurs later.

(2) For all other airplanes: Inspect within 20 days after the effective date of this AD.

Reporting Requirement

(b) For all inspections required by paragraph (a) of this AD: At the applicable time specified by paragraph (b)(1) or (b)(2) of this AD, submit a report of the inspection results (both positive and negative findings) to AI/SE-D32 Technical Data and Documentation Services, Airbus Industrie Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; fax (+33) 5 61 93 28 06.

(1) For inspections accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection.

(2) For inspections accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–115–304(B) R1, dated May 3, 2000.

Issued in Renton, Washington, on June 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14794 Filed 6–9–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–107–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737–300, –400, and –500 series airplanes. This proposal would require replacement of the existing autothrottle computer with a new, improved autothrottle computer. This proposal is prompted by reports of asymmetric thrust conditions during flight caused by irregular autothrottle operation in which the thrust levers slowly move apart causing the airplane

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to bank excessively and go into a roll. The actions specified by the proposed AD are intended to prevent such conditions, which could result in loss of control of the airplane.

DATES: Comments must be received by July 27, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Thanh Truong, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2552; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–107–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports on certain Boeing Model 737–300, –400, and –500 series airplanes indicating an asymmetric thrust condition caused by irregular autothrottle operation, in which the thrust levers slowly move apart causing the airplane to bank and roll. This thrust condition exceeds the autopilot roll authority and results in a bank angle of more than 30 degrees. In one incident, the airplane rolled more than 46 degrees without crew recognition. Without pilot intervention, an airplane that has asymmetric thrust can bank excessively and go into a roll. Such conditions, if not corrected, could result in loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–22A1130, dated September 24, 1998, which describes procedures for replacement of the existing autothrottle computer with a new, improved autothrottle computer. The improved autothrottle computer disengages the autothrottle if an asymmetric thrust condition is detected, and prevents the airplane from rolling to an excessive bank angle.

Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that this proposed AD would require replacement of the autothrottle computer to be accomplished within one year after the effective date of this AD. The alert service bulletin recommends that this replacement should be accomplished "as soon as manpower and materials are available." However, in developing an appropriate compliance time for the proposed replacement, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but also the number of proposed requirements and the availability of required parts. The FAA has determined that one year represents an appropriate interval of time allowable wherein all of these actions can be accomplished during scheduled airplane maintenance and an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. The FAA also finds that such a compliance time will not adversely affect the safety of the affected airplanes.

Cost Impact

There are approximately 1,974 airplanes of the affected design in the worldwide fleet. The FAA estimates that 799 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost between $1,400 and $4,200 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $1,460 and $4,260 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–107–AD.

Applicability: All Model 737–300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a severe asymmetric thrust condition during flight which could result in loss of control of the airplane, accomplish the following:

Replacement

(a) Within 1 year after the effective date of this AD: Replace the existing autothrottle computer with a new, improved autothrottle computer in accordance with Boeing Alert Service Bulletin 737–22A1130, dated September 24, 1998.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane, an autothrottle computer having part number 10–62017–1, –2, –3, –4, –5, –11, –21, –23, –25, or –27.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14793 Filed 6–9–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASW–6]

Proposed Modification of Federal Airways in the Vicinity of Dallas/Fort Worth; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend fourteen Federal airways in the vicinity of Dallas/Fort Worth, TX. The FAA is proposing this action to simplify the airway structure, thereby, enhancing the management of aircraft operations in the area.

DATES: Comments must be received on or before July 28, 2000.

ADDRESSES: Send comments on this proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 00–ASW–6, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASW–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the

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Superintendent of Documents's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On October 10, 1996, the Dallas/Fort Worth Metroplex Plan (DFW/MP) was implemented. The DFW/MP was a major airspace redesign project which, in part, decommissioned four Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and relocated and commissioned four new VORTAC facilities. The four new navigational VORTAC facilities were designed to enhance the management of aircraft operations in the vicinity of DFW. In support of the DFW/MP, the FAA amended twelve VOR Federal airways (61 FR 41736). However, since the implementation of this amended Federal airway structure the FAA has discovered that further amendment of the existing airway structure would improve aircraft movement and thus management of the navigable airspace in the DFW area. Therefore, revisions to the current airway system in the DFW area are necessary.

The Proposal

The FAA is proposing to amend part 71 of Title 14 Code of Federal Regulations to revise fourteen Federal airways in the vicinity of Dallas/Fort Worth, TX. The proposed rule would amend the following Federal airways: V–15, V–16, V–17, V–566 by modifying the route descriptions; V–63, V–69, V–131, V–305, V–507, V–573 by amending the start points; and V–66, V–163, V–358, and V–407 by modifying the end points. The FAA is proposing this action to simplify the airway structure, thereby, enhancing the management of aircraft operations in the area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document would be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–15 [Revised]

From Hobby, TX, via Navasota, TX; College Station, TX; Waco, TX; Cedar Creek, TX; Bonham, TX; McAlester, OK; Okmulgee, OK; to Neosho, MO. From Sioux City, IA; INT Sioux City 340° and Sioux Falls, SD, 169° radials; Sioux Falls; Huron, SD; Aberdeen, SD; Bismarck, ND; to Minot, ND.

V–16 [Revised]

From Los Angeles, CA; Paradise, CA; Palm Springs, CA; Blythe, CA; Buckeye, AZ; Phoenix, AZ; INT Phoenix 155° and Stanfield, AZ, 105° radials; Tucson, AZ; Cochise, AZ; Columbus, NM; El Paso, TX; Salt Flat, TX; Wink, TX; INT Wink 066° and Big Spring, TX, 260° radials; Big Spring; Abilene, TX; Bowie, TX; Bonham, TX; Paris, TX; Texarkana, AR; Pine Bluff, AR; Marvell, AR; Holly Springs, MS; Jacks Creek, TN; Shelbyville, TN; Hinch Mountain, TN; Volunteer, TN; Holston Mountain, TN; Pulaski, VA; Roanoke, VA; Lynchburg, VA; Flat Rock, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Cedar Lake, NJ; Coyle, NJ; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; Deer Park, NY; Calverton, NY; Norwich, CT; Boston, MA. The airspace within Mexico and the airspace below 2,000 feet MSL outside the United States is excluded. The airspace within Restricted Areas R–5002A, R–5002C, and R–5002D is excluded during their times of use. The airspace within Restricted Areas R–4005 and R–4006 is excluded.

V–17 [Revised]

From Brownsville, TX, via Harlingen, TX; McAllen, TX; 29 miles 12 AGL, 34 miles 25 MSL, 37 miles 12 AGL; Laredo, TX; Cotulla, TX; INT Cotulla 046° and San Antonio, TX, 198° radials; San Antonio; Centex, TX; Waco, TX; Glen Rose, TX; Millsap, TX; Bowie, TX; Ardmore, OK; Will Rogers, OK; Gage, OK; Garden City, KS; to Goodland, KS.

V–63 [Revised]

From Bowie, TX; Texoma, OK; McAlester, OK; Razorback, AR; Springfield, MO; Hallsville, MO; Quincy, IL; Burlington, IA; Moline, IL; Davenport, IA; Rockford, IL; Janesville, WI; Badger, WI; Oshkosh, WI; Stevens Point, WI; Wausau, WI; Rhinelander, WI; to Houghton, MI. Excluding that airspace at and above 10,000 feet MSL from 5 NM north to 46 NM north of Quincy during the time that the Howard West MOA is activated by NOTAM.

V–66 [Revised]

From Mission Bay, CA; Imperial, CA; 13 miles, 24 miles, 25 MSL; Bard, AZ; 12 miles, 35 MSL; INT Bard 089° and Gila Bend, AZ, 261° radials; 46 miles, 35 MSL; Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM, 277° radials; Columbus; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth 287° radials; 6 miles wide; Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; to Millsap, TX.

V–69 [Revised]

From El Dorado, AR; Pine Bluff, AR; INT Pine Bluff 038° and Walnut Ridge, AR, 187° radials; Walnut Ridge; Farmington, MO; Troy, IL; Capital, IL; Pontiac, IL; to Joliet, IL.

V–131 [Revised]

From Okmulgee, OK; Tulsa, OK; Chanute, KS; to Topeka, KS.

V–163 [Revised]

From Matamoros, Mexico; via Brownsville, TX; 27 miles standard width, 37 miles 7 miles wide (3 miles E and 4 miles W of centerline); Corpus Christi, TX; Three Rivers, TX; INT Three Rivers 345° and San Antonio, TX, 168° radials; San Antonio; Lampasas, TX; to Glen Rose, TX.

V–305 [Revised]

From El Dorado, AR; Little Rock, AR; Walnut Ridge, AR; Malden, MO; Cunningham, KY; Pocket City, IN; INT Pocket City 046° and Hoosier, IN, 205° radials; Hoosier; INT Hoosier 025° and Brickyard, IN, 185° radials; Brickyard; INT Brickyard 038° and Kokomo, IN, 182° radials; Kokomo.

V–358 [Revised]

From San Antonio, TX, via Stonewall, TX; Lampasas, TX; INT Lampasas 041° and Waco, TX, 249° radials; Waco.

V–407 [Revised]

From Harlingen, TX; via INT Harlingen 006° and Corpus Christi, TX, 193° radials; Corpus Christi; via INT Corpus Christi 039° and Palacios, TX, 241° radials; Palacios; via INT Palacios 017° and Humble, TX, 242° radials; Humble; Daisetta, TX; Lufkin, TX; Elm Grove, LA; to El Dorado, AR.

V–507 [Revised]

From Ardmore, OK; Will Rogers, OK, via INT Will Rogers 284° and Gage, OK, 152° radials; Gage; Liberal, KS; to Garden City, KS.

V–566 [Revised]

From Gregg County, TX; Belcher, LA; Elm Grove, LA; Alexandria, LA; INT Alexandria 109° and Reserve, LA, 323° radials; Reserve; excluding the portion within R–3801B and R–3801C.

V–573 [Revised]

From Will Rogers, OK; INT Will Rogers 195°T(188°M) and Ardmore, OK, 327°(321°M) radials; Ardmore; Bonham, TX; Sulpher Springs, TX; Texarkana, AR; INT Texarkana 037° and Hot Springs, AR, 225° radials; Hot Springs; to Little Rock, AR.

* * * * *

Issued in Washington, DC, on June 1, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–14655 Filed 6–9–00; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 086–0207b; FRL–6710–6]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from ferrous sand casting operations. We are proposing to approve a local rule to regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 12, 2000.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule at the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, AZ 85004

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1135.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: MCESD Rule 347. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 12, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–14172 Filed 6–9–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–6710–4]

State of West Virginia: Final Approval of State Municipal Solid Waste Management Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to grant complete program approval for West Virginia's Municipal Solid Waste Permit Program. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the remaining elements of the State's program as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this program approval in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule, and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before July 12, 2000.

ADDRESSES: Comments should be sent to the following address where the full West Virginia program approval application is on file and may be reviewed: EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, or alternatively at West Virginia Division of Environmental Protection (WVDEP), 1356 Hansford Street, Charleston, WV 25301–1401.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, Attn: Mr. Michael C. Giuranna, mailcode 3WC21, telephone (215) 814–3298. The contact for the State of West Virginia Division of Environmental Protection is Mr. Larry Atha, 1356 Hansford Street, Charleston, West Virginia 25301–1401, telephone (304) 558–6350.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the

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"Rules and Regulations" section of this **Federal Register**.

Authority: This notice is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–14165 Filed 6–9–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1216, MM Docket No. 00–98, RM–9811]

Digital Television Broadcast Service; Thomasville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WCTV Licensee Corporation, licensee of station WCTV–TV, NTSC Channel 6, Thomasville, Georgia, requesting the substitution of DTV Channel 46 for station WCTV–TV's assigned DTV Channel 52. DTV Channel 46 can be allotted to Thomasville, Georgia, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 30–40–13 N and 83–56–26 W with a power of 1000 (kW) and a height above average terrain (HAAT) of 619 meters.

DATES: Comments must be filed on or before July 27, 2000, and reply comments on or before August 11, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert A. Beizer, Secretary, WCTV Licensee Corporation, 1201 New York Avenue, NW., Suite 1000, Washington, DC 20005–3917, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–98, adopted June 2, 2000, and released June 5, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–14614 Filed 6–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1215, MM Docket No. 00–97, RM–9865]

Digital Television Broadcast Service; Richmond, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Central Virginia Educational Telecommunications Corporation, licensee of station WCVE–TV, NTSC Channel *23 requesting the substitution of DTV Channel *42 for station WCVE–TV's assigned DTV Channel *24. DTV Channel *42 can be allotted to Richmond, Virginia, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 37–30–46 N and 77–36–06 W. As requested, we propose to allot DTV Channel *42 to Richmond with a power of 100 (kW) and a height above average terrain (HAAT) of 327 meters.

DATES: Comments must be filed on or before July 27, 2000, and reply comments on or before August 11, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Bodorff, E. Joseph Knoll III, Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006 (Counsel for Central Virginia Educational Telecommunications Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–97, adopted June 2, 2000, and released June 5, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–14613 Filed 6–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1217, MM Docket No. 00–99, RM–9858]

Digital Television Broadcast Service; Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Fireweed Communications Corporation, licensee of station KYES–TV, NTSC Channel 5, Anchorage, Alaska, requesting the substitution of DTV Channel 6 for its assigned DTV Channel 22. DTV Channel 6 can be allotted to Anchorage, Alaska, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 61–20–10 N and 149–30–47 W. As requested, we propose to allot DTV Channel 6 to Anchorage with a power of 45 (kW) and a height above average terrain (HAAT) of 250 meters.

DATES: Comments must be filed on or before July 27, 2000, and reply comments on or before August 11, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeremy Lansman, President, Fireweed Communications Corporation, 3700 Woodland Drive, #800, Anchorage, Alaska, (petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–99, adopted June 2, 2000, and released June 5, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–14612 Filed 6–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1218, MM Docket No. 00–100, RM–9860]

Digital Television Broadcast Service; San Antonio, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Alamo Pubic Telecommunications Council, licensee of noncommercial station KLRN–TV, NTSC Channel *9 San Antonio, Texas, requesting the substitution of DTV Channel *8 for station KLRN–TV's assigned DTV Channel *20. DTV Channel *8 can be allotted to San Antonio, Texas, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 29–19–38 N and 98–21–17 W. As requested, we propose to allot DTV Channel *8 to San Antonio with a power of 8.3 (kW) and a height above average terrain (HAAT) of 263 meters. However, since the community of San Antonio is located within 275 kilometers of the U.S.-Mexican border, concurrence by the Mexican government must be obtained for this allotment.

DATES: Comments must be filed on or before July 27, 2000, and reply comments on or before August 11, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Margaret L. Tobey, Morrison & Foerster LLP, 2000 Pennsylvania Avenue, NW, Suite 5500, Washington, DC 20006 (Counsel Alamo Public Telecommunications Council).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–100, adopted June 2, 2000, and released June 5, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–14611 Filed 6–9–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 390, 394, 395 and 398

[Docket No. FMCSA–97–2350]

RIN 2126–AA23

Additional Public Hearing for Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Proposed rule; notice of hearing.

SUMMARY: The FMCSA is announcing two more days of hearings for additional interested persons to speak with FMCSA officials about the agency's proposed hours-of-service regulations (65 FR 25540, May 2, 2000). This action is necessary to inform the public about the dates, times, and location of the hearing. The FMCSA continues to hope to hear from the public about how the proposed hours-of-service regulations would improve highway safety and affect drivers' professional, personal and family lives. All oral presentations will be transcribed and placed in the public docket.

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DATES: Additional hearings will be held on July 6 and 7, 2000, 8:30 a.m. to 4:30 p.m. in Washington, DC.

FOR FURTHER INFORMATION CONTACT: *General Information.* To request time to be heard and for other general information about the session, contact Mr. Stanley Hamilton, Office of Regulatory Development, (202) 366–0665. *Specific Information.* For information concerning the rulemaking, contact Mr. David Miller, Office of Bus and Truck Standards, (202) 366–1790, or Mr. Charles Medalen, Office of the Chief Counsel, Federal Highway Administration, (202) 366–1354. Office hours are from 7:45 a.m. to 4:15 p.m. et, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days a year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's web page at *http://www.access.gpo.gov./nara.* Internet users may also find this document at the FMCSA's Motor Carrier Regulatory Information Service (MCREGIS) web site for notices at *http://www.fmcsa.dot.gov/rulesregs/fmcsr/rulemakings.htm.*

Background

The earlier hearings, each of two days' duration, took place between May 31 and June 30 in Washington, DC; Ontario, CA; Golden, CO; Kansas City, MO; Indianapolis, IN; Vernon, CT; and Jackson, GA.

The additional hearing will be held Thursday and Friday, July 6 and 7, 2000, from 8:30 a.m. to 4:30 p.m. in Room 4200 of the DOT headquarters building, 400 Seventh Street, SW., Washington, DC 20590. Speakers must limit their oral presentations to not more than 10 minutes duration. Presenters may submit additional written documentation to be placed in the public docket.

All persons who would like to participate must request to do so by telephoning Mr. Stanley Hamilton at (202) 366–0665 by 4 p.m., et., on Friday, July 7, 2000.

All persons participating will be subject to Federal and DOT workplace security measures. All persons will need identification with a picture on it and must display the identification to DOT security officers. All persons will be required to sign in at the guard desk and walk through metal detectors. All visitors will be required to wear a "Visitor" badge at all times while in the DOT building.

The DOT security office will limit and monitor the public's access and movement through the DOT building. All persons requesting to participate in the sessions, but failing to satisfy DOT security requirements, will be denied entry into the building and will forfeit the opportunity to participate. Such persons will be allowed to submit written comments to the docket, at the above address, by the close of business on July 31, 2000.

Authority: 49 U.S.C. 504, 14122, 31133, 31136, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

Issued on: June 1, 2000.

Julie Anna Cirillo,

Acting Assistant Administrator.

[FR Doc. 00–14691 Filed 6–9–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 679

[Docket No. 000524152–0152–01; I.D. 030100C]

RIN 0648–AM34

Fisheries of the Exclusive Economic Zone Off Alaska; Requirement to Use Vessel Monitoring System Transmitter for Atka Mackerel in Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS publishes a proposed rule to require vessels participating in the directed fishery for Atka mackerel in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands Area to carry and use a Vessel Monitoring System (VMS) transmitter. This action is necessary to enhance monitoring of fishery activities within critical habitat areas. It is intended to further the conservation goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Comments must be received by June 26, 2000.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments will not be accepted if submitted via e-mail or Internet. Hand or courier delivered comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907–586–7228. Send comments on collection-of information requirements to the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The number of Steller sea lions (*Eumetopias jubatus*) in the Bering Sea and Aleutian Islands Management Area has declined significantly during the past several decades and in 1997 NMFS listed the western stock of Steller sea lions as an endangered species. A requirement of the Endangered Species Act is that Federal actions affecting the critical habitat of a listed species must not jeopardize the continued existence of the populations of those species or adversely affect or modify their critical habitat. Atka mackerel is an important prey species for Steller sea lions and stocks adequate for the food needs of Steller sea lions must remain available in Steller sea lion critical habitat. Hence, the Atka mackerel fishery must be managed to provide for the food needs of Steller sea lions and avoid potential jeopardy to them.

On January 22, 1999, NMFS published a final rule that reduces the percentage of Atka mackerel taken from Steller sea lion critical habitat over a 4-year period in the Western and Central Districts of the AI (64 FR 3446). The final rule also prohibits all trawling for groundfish within areas designated as Steller sea lion critical habitat when NMFS determines that the harvest of Atka mackerel has reached the applicable limits specified in the

regulations for the year and district. A critical habitat trawl closure remains in effect until NMFS closes the Atka mackerel fishery in that area.

The Atka mackerel fishery is a high-volume, low-value fishery pursued by a small group of large factory trawlers, mostly greater than 200 feet (61 m) in length. In 1997, for example, 12 factory trawlers participated in the AI Atka mackerel fishery, with 8 of these vessels accounting for over 80 percent of the retained catch in the fishery. The fishery is highly localized and occurs at depths between 100 and 200 meters in the same few locations each year, most commonly in island passes. Important Atka mackerel fishing locations in the AI include Seguam Pass, Tanaga Pass, Petrel Bank, and the seamounts and reefs near Buldir Island. All of these locations are in or near Steller sea lion critical habitat.

When critical habitat areas are closed, continued Atka mackerel fishing takes place very close or adjacent to the closed critical habitat areas. The boundaries of these areas are complex, the areas are remote, and the weather is frequently poor. Ensuring that no fishing is taking place inside critical habitat using traditional methods of enforcement, such as aerial surveillance, is difficult. Effective enforcement of these closures will be greatly enhanced if vessels participating in the fishery use a VMS transmitter that automatically and frequently transmits vessel position to NMFS so that vessels fishing near critical habitat can be monitored closely.

NMFS' intent to implement a VMS in 1999 before the Atka mackerel "B" season, beginning September 1, 1999, was noted in the final rule that established the protective measures (64 FR 3446, January 22, 1999). The North Pacific Fishery Management Council determined that the additional information provided by a VMS program would assist in the management of the Atka mackerel fishery and requested that NMFS develop regulations to implement such a system.

Under this action, a vessel participating in a directed fishery for Atka mackerel in the AI would be required to have an operating NMFS-approved VMS transmitter on board. These transmitters automatically determine the vessel's location several times per hour using Global Positioning System satellites and send the position information to NMFS via a mobile communication service provider. The VMS transmitters are designed to be tamper-resistant and automatic. In most cases, the vessel owner would be unaware of exactly when the unit was transmitting and would be unable to alter the signal or the time of transmission. NMFS estimates that a NMFS-approved VMS transmitter would cost approximately $1,800 per unit and the charge to the vessel owner for the transmission of VMS position data would be $5 per day.

The VMS Approval Process

A VMS consists of a NMFS-approved VMS transmitter that automatically determines the vessel's position and transmits it to a NMFS-approved communications service provider. The communications service provider receives the transmission and relays it to NMFS. On March 31, 1994, NMFS published standards for the use of VMS (59 FR 15180). NMFS will use the criteria described below, which are based on the 1994 standards, to approve VMS transmitters and communication service providers.

1. The VMS transmitter must be tamper-proof and it must be impossible for the vessel operator to input false position information;

2. The VMS transmitter must be able to determine, store and transmit vessel position;

3. The VMS transmitter must allow for regular as well as random automatically generated position reporting. The interval between position reports must be programmable;

4. Each position report must include: (a) the vessel location, accurate within 400 m; (b) a transmitter identifier that is unique to that transmitter; and (c) the date and time that the vessel position was taken;

5. The VMS transmitter must be equipped with an onboard alarm system that will alert the vessel crew if the unit malfunctions or is not able to transmit;

6. The VMS transmitter, in conjunction with the VMS communication service provider, must provide seamless and transparent communications from any location within the exclusive economic zone off Alaska;

7. The transmitter must be able to fix the vessel's position at least once every 20 minutes and be able to store those positions in local, non-volatile memory until they can be transmitted to, and received by, the communication service provider;

8. In addition to regular position reports, the VMS transmitter must be capable of transmitting a specially identified status report giving the vessel position whenever the transmitter is powered-up, powered-down, is unable to determine vessel position or has its antenna disconnected;

9. It must not be possible for the vessel operator to determine when the VMS transmitter is transmitting or taking a position for later transmission;

10. Transmissions from the VMS transmitter and the communication service provider must be secure, and it must not be possible for unauthorized parties to intercept vessel location information.

NMFS will publish notice in the **Federal Register** as VMS components are approved for use. At this time, NMFS believes that only the Argos system is suitable for use in all areas off Alaska. The Argos system uses the ArgoNet Mar GE transmitter in conjunction with the Argos system of polar-orbiting satellites. While there are other space-based communications service providers that provide coverage for waters off Alaska, such as Inmarsat-C, only the Argos system has demonstrated that it offers 100 percent coverage of all areas off Alaska. However, because of the rapid pace of technological change in the field of satellite-based vessel monitoring, NMFS anticipates that other vendors will produce VMS components that meet all NMFS standards in the near future.

NMFS will contact the owners of all vessels that participated in the AI Atka mackerel fishery in 1998 or 1999 and ensure that they are aware of which VMS transmitters have been approved by NMFS and have received installation instructions. Owners of vessels that wish to participate in AI Atka mackerel fisheries that did not do so in 1997 or 1998 would need to contact the Sustainable Fisheries Division (see ADDRESSES) and request a list of NMFS-approved VMS transmitters. In most instances, NMFS anticipates that the installation of the VMS transmitter would take less than 6 hours. Installation would be the responsibility of the vessel owners.

This regulatory amendment would require that the owner or operator of a vessel participating in the AI Atka mackerel fishery carry and use a NMFS-approved VMS transmitter at all times when engaging in directed fishing for Atka mackerel. Trawl vessels not carrying properly installed and operating VMS units would be prohibited from retaining Atka mackerel at more than the maximum retainable amount of 20 percent established in regulations at § 679.20(e) and (f) while fishing in the AI subarea.

This proposed rule would also revise regulations governing Atka mackerel harvest in the Community Development Quota (CDQ) fisheries. Current regulations prohibit any trawling by a CDQ group in the critical habitat areas

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after the specified percent of the group's annual Atka mackerel CDQ has been reached. These regulations do not allow the CDQ groups to account separately for Atka mackerel catch inside and outside the critical habitat areas, but rather assume that all catch of Atka mackerel is made within the critical habitat areas until the maximum percent is reached and the critical habitat area closes. NMFS proposes to change these requirements so that each CDQ group would be prohibited from catching more than the specified percentage of its Atka mackerel CDQ inside the critical habitat areas. The CDQ groups and NMFS would use catch location data for each haul collected by observers onboard the vessels to determine whether the Atka mackerel was caught inside the critical habitat area. This action will provide greater flexibility to the CDQ groups for management of their Atka mackerel CDQs. Further, these proposed revisions would create a management structure for the CDQ Atka mackerel fishery consistent with the management structure that NMFS intends to propose later in 2000 for management of pollock CDQ fishing in the Bering Sea critical habitat areas.

Classification

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

This proposed rule contains a new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This collection-of-information requirement has been submitted to OMB for approval. The new information requirements include the requirement to install, maintain, and use a NMFS-approved VMS unit. The public reporting burden for this collection of information is estimated to average 6 hours to install the unit, 4 hours per year to maintain the unit, and 5 seconds per response to transmit data. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of the collection of information to NMFS at the previously listed ADDRESS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Att: NOAA Desk Officer).

NMFS prepared an IRFA for this proposed rule pursuant to the requirements of 5 U.S.C. 603, without first determining whether the proposal would have a significant impact on a substantial number of small entities. The following is a summary of the IRFA:

This action would require that factory trawlers participating in the Aleutian Islands Atka mackerel fishery carry and use a VMS unit. It is intended to facilitate NMFS' ability to ensure that federally managed fisheries not adversely affect designated critical habitat, and it is being promulgated under the authority of the Magnuson-Stevens Act. This action will have a small but negative impact on the approximately 13 factory trawlers that fish for Atka mackerel in the Aleutian Islands. NMFS believes that none of the vessels that fish for Atka mackerel in the Aleutian Islands would qualify as small entities. The preferred alternative would impose a new reporting and recordkeeping requirement on these vessels of approximately 12.1 hours per year per vessel. It would not duplicate, overlap, or conflict with existing Federal rules. In addition to the preferred alternative, NMFS considered a "no action" alternative that would not require the use of VMS units for vessels engaged in directed fishing for Atka mackerel in the Aleutian Islands. This alternative was rejected because it would fail to relieve an unnecessary restriction on vessels participating in other fisheries, and because it would fail to meet NMFS' need to facilitate monitoring and enforcement of Steller sea lion protective measures.

A copy of the RIR/IRFA can be obtained from NMFS (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 6, 2000.

Bruce C. Morehead,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

2. In § 679.7, paragraph (a)(2) is revised and a new paragraph (c)(3) is added to read as follows:

§ 679.7 Prohibitions.

(a) * * *

(2) Conduct any fishing contrary to notification of inseason action, closure, or adjustment issued under § § 679.20, 679.21, 679.22 or 679.25.

* * * * *

(c) * * *

(3) Use a vessel to participate in a directed fishery for Atka mackerel in the Aleutian Islands subarea unless that vessel carries a NMFS-approved Vessel Monitoring System (VMS) transmitter and complies with the requirements described at § 679.28(f).

* * * * *

3. In § 679.22, paragraph (a)(8)(iii)(D) is revised to read as follows:

§ 679.22 Closures.

(a) * * *

(8) * * *

(iii) * * *

(D) *CDQ fishing.* Harvesting groundfish CDQ with trawl gear is prohibited within areas designated as Steller sea lion critical habitat in the Western and/or Central Districts of the AI (see Table 1, Table 2, and Figure 4 to part 226 of this title) for the duration of the year when the Regional Administrator announces, by notification in the **Federal Register**, that the harvest of Atka mackerel within the critical habitat areas by vessels fishing for CDQ groups has reached the applicable percentage specified for the year and district at paragraph (a)(8)(iii)(B) of this section.

* * * * *

4. In § 679.28, the section heading and paragraph (a) are revised and a new paragraph (f) is added to read as follows:

§ 679.28 Equipment and operational requirements.

(a) *Applicability.* This section contains the requirements for scales, observer sampling stations, bins for volumetric estimates, and vessel monitoring system hardware. This section does not require any vessel or processor to provide this equipment. Such requirements appear elsewhere in this part.

* * * * *

(f) *Vessel Monitoring System (VMS) Requirements.* (1) *What is a VMS?* A VMS consists of a NMFS-approved VMS transmitter that automatically determines the vessel's position and transmits it to a NMFS-approved communications service provider. The communications service provider receives the transmission and relays it to NMFS.

(2) *How are VMS transmitters and communications service providers approved by NMFS?* (i) NMFS publishes type approval specifications for VMS components in the **Federal Register**.

(ii) Transmitter manufacturers or communication service providers may submit products or services to NMFS for evaluation based on the published specifications.

(iii) NMFS will publish a list of NMFS-approved transmitters and communication service providers in the **Federal Register**. As necessary, NMFS will publish amendments to the list of approved components in the **Federal Register**.

(3) *What are the vessel owner's responsibilities?* If you are a vessel owner that must participate in a VMS, you or your crew must:

(i) Obtain a NMFS-approved VMS transmitter and have it installed onboard your vessel in accordance with the instructions provided by NMFS. You may get a copy of the VMS installation and operation instructions from the Regional Administrator upon request.

(ii) Activate the VMS transmitter and receive confirmation from NMFS that the VMS transmissions are being received before participating in a fishery requiring the VMS;

(iii) Continue the VMS transmissions until the fishery requiring VMS has closed or until notified by NMFS staff that you may stop transmissions;

(iv) Stop fishing immediately if informed by NMFS staff or an authorized officer that NMFS is not receiving position reports from the VMS transmitter;

(v) Make the VMS transmitter available for inspection by NMFS personnel, observers, or an authorized officer;

(vi) Ensure that the VMS transmitter is not tampered with, disabled, destroyed, or operated improperly;

(vii) Pay all charges levied by the communication service provider.

(2) [Reserved]

[FR Doc. 00–14775 Filed 6–9–00; 8:45 am]

BILLING CODE 3510–22–F

VOL 65 ISS 113 JE 12 2000 UMI

Notices

Federal Register
Vol. 65, No. 113
Monday, June 12, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

GENERAL SERVICES ADMINISTRATION

Notice of the Availability of the Draft Environmental Impact Statement and Notice of Public Hearing on the Draft Environmental Impact Statement for a Proposed Department of Transportation Headquarters

AGENCY: National Capital Region; General Services Administration, Department of Transportation.

ACTION: Proposed lease acquisition of a new or renovated headquarters for the Department of Transportation in the Central Employment Area of Washington, DC.

SUMMARY: The General Services Administration (GSA) announces the availability of the Draft Environmental Impact Statement (Draft EIS) for the proposed lease acquisition of a new or renovated headquarters for the Department of Transportation (DOT) in the Central Employment Area (CEA) of Washington, DC. GSA also announces that a public hearing on the Draft EIS will be held on July 12, 2000.

Background Information

DOT seeks to update its facilities, maximize efficiency, and reorganize and consolidate its operations. To this end, GSA is currently conducting a competitive procurement of 1.35 million rentable square feet of new or renovated space under an operating lease for a term of fifteen years. Consolidation in a new or renovated headquarters will produce significant operating efficiencies in support of DOT's mission.

The Government is conducting this procurement as a negotiated, best value source selection. This procurement process has been developed with full integration of the NEPA process, incorporating NEPA compliance into the agency's decision making framework. The results of this effort will be full public participation and submission of final proposals that address potential environmental impacts. The Government's evaluation of final proposals will include consideration of an offeror's ability and willingness to address impacts and implement proposed mitigation measures identified through the NEPA process, including public comments received on the Draft EIS.

Draft EIS Availability

Copies of the Draft EIS will be available for review at the locations identified below. Also available for review will be copies of the transcript of proceedings from the April 11th Public Scoping Meeting and public comments submitted. In addition, the Draft EIS and other information regarding this project are available on the internet at http://www.evolv.com/DOT.

The Draft EIS may be viewed at the following locations:

1. Department of Transportation, Dockets Room, PL–401, 400 7th Street, SW, Washington, DC 20590.
2. Martin Luther King Library, 9th & G Streets, NW, Washington, DC.
3. Public Affairs Office, Navy, Bldg, 200, 2nd Floor, Wing 1 North, Washington Navy Yard, Washington, DC.

Public Hearing

A Notice of Intent to prepare an EIS and conduct a public scoping meeting was issued on June 30, 1999. The public scoping meeting was held on July 29, 1999 to assist GSA in determining the significant issues related to this project. A second public scoping meeting was held on April 11, 2000 to provide the public a further opportunity to comment on the project and, specifically, the sites and proposals selected to participate in Phase II of the competition. Comments from both these meetings have been incorporated into the Draft EIS.

The subject of this notice is a public hearing that will be held to solicit comment from agencies and the public on the Draft EIS. This public hearing will be held at 7 pm on Wednesday, July 12, 2000, at the Ronald Reagan Building and International Trade Center Horizon Ballroom (Ground Level, 13½ Street Entrance) 13th Street and Pennsylvania Avenue, NW., Washington, DC 20004.

The hearing will be advertised in local and regional newspapers as the date of the hearing approaches. At the hearing, a short formal presentation will precede the request for public comments. GSA representatives will be available to receive comments from the public regarding issues of concern, including comments on the potential impacts of the proposed project, means of mitigating those impacts, and project alternatives.

GSA encourages Federal, regional, state and local agencies, and interested individuals and groups, to take this opportunity to identify environmental concerns that they believe should be addressed in the Final EIS. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. However, agencies and the general public are encouraged to provide written comments on the scoping issues in addition to, or in lieu of, presenting oral comments at the public hearing.

Written comments will be accepted through July 24, 2000. All written and oral comments will be addressed and incorporated into the Final EIS. GSA anticipates that the Final EIS will be released in the Fall of 2000.

Project Information

Topics of environmental analysis presented in the Draft EIS include short term impacts of construction and long-term impacts of site operations and maintenance on land use, historic resources, visual resources, physical and biological resources, public transportation, traffic and parking, public services and utilities, and socio-economic conditions. The environmental analysis also addresses cumulative impacts that would result from this end and other development projects that have been completed recently, are currently under development, and are proposed within each study area.

Time and Location of Meeting

The public meeting will be held: At 7 p.m. Wednesday, 12, 2000 at the Ronald Reagan Building and International Trade Center Horizon Ballroom (Ground Level, 13½ Street Entrance) 13th Street and Pennsylvania Avenue, NW Washington, DC 20004.

DATES: Written comments on the Draft EIS must be postmarked no later than July 24, 2000, to the following address: General Services Administration, Attn: Mr. John Simeon, Portfolio Development Division (WPC), 7th and D Streets, SW., Suite 2002, Washington, DC 20407.

FOR FURTHER INFORMATION PLEASE CONTACT: Mr. John Simeon, General Services Administration, (202) 260–9586.

Dated: June 6, 2000.

Anthony Costa,

Assistant Regional Administrator, National Capital Region, General Services Administration.

[FR Doc. 00–14734 Filed 6–9–00; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service Operating Divisions; Delegation of Authority

Notice is hereby given that I have delegated to the Public Health Service (PHS) Operating Division (OPDIV) Heads the service fellowships related authorities vested in the Secretary of Health and Human Services under Sections 207 and 208 of the PHS Act, 42 U.S.C. 209 and 210, and under Title 42 CFR, Subpart B, Part 61—Service Fellowships.

This delegation supersedes the delegation of authority memorandum titled, "Delegation of Authority—Service Fellowships," to the PHS Agency Heads from the Deputy Assistant Secretary for Health Management Operations, Office of the Assistant Secretary for Health, dated January 8, 1993.

This delegation becomes effective upon date of signature. Also, I hereby ratify and affirm the actions taken by you or your subordinates, which involved the exercise of authorities delegated herein prior to the effective date of this delegation.

Dated: June 2, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–14751 Filed 6–9–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–42–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Silicosis, No Mas!: Evaluation of Materials Used for Outreach to Hispanic Construction Workers—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC)—Over 14,000 workers in the U.S. have died from silicosis and hundreds more add to the death toll each year. Silicosis is the third leading cause of death attributed to occupational diseases in the U.S. In the state of Texas, 300 cases of silicosis and workers exposed to silica were reported between 1990 and 1997. Among these cases, construction was one of the most frequently reported industries. Silicosis was diagnosed in workers as young as 22 years of age, and one third of the cases were found among Hispanic workers, most of whom were diagnosed with silicosis in their thirties.

Despite the alarming number of reports, few attempts have been made to educate construction workers in Texas, particularly workers of Hispanic/Latino decent. An evaluation of the outreach activities conducted during the 1996 National Campaign to Eliminate Silicosis and the Special Emphasis Program (SEP) for silicosis indicated that no effort was undertaken to meet the needs of Hispanic workers. In both events, educational outreach was directed at the mainstream industry, trade associations, employers, and labor unions. Yet, while some educational materials were directly translated into Spanish, no special efforts were directed at Hispanic workers in the course of the campaign nor in the SEP. In addition, the results of 11 focus groups recently conducted in Texas indicated that most Hispanic workers were unaware of silicosis and most knew little about the cause and health effects of silicosis. Barriers to silicosis prevention raised by the focus group participants included lack of knowledge about prevention and lack of proper protective equipment provided by their employers. While most workers in the focus groups could read either Spanish or English, there were individuals who could not read either language. Hence, other mediums of communication, such as audio or video tapes, were recommended to reach the workers.

The goal of the overall project is to increase awareness of and information about the nature, extent, and seriousness of silica exposure, and to increase the use of appropriate engineering controls and respiratory protection among construction workers in Texas. A culturally and linguistically relevant silicosis education and prevention program targeting construction workers will be developed, implemented, and evaluated. The goal of the evaluation is to determine if culturally tailored health messages are more effective than non-culturally tailored health messages in promoting changes in knowledge, attitudes, and behaviors.

Information and data obtained from this evaluation will help direct future outreach efforts in silicosis prevention among the Hispanic population. In addition, results from this study will be used to further current understanding of the effects of cultural values in the design of safety and health messages, thereby helping future development of culturally and linguistically appropriate occupational safety and health messages tailored for the Hispanic population.

The total annual burden hours are 200.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden per response (in hours)
Construction workers	600	1	20/60

Dated: June 6, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14737 Filed 6–9–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–005]

Administration for Native Americans Programs—Supplemental Funding for InterTribal Bison Cooperative/90NA7059

AGENCY: Administration for Native Americans (ANA), ACF, DHHS.

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ACTION: Notice of Supplemental Funding Award.

SUMMARY: The Administration for Native Americans announces that a non-competitive grant award is being made to the InterTribal Bison Cooperative in the amount of $140,190 for Grant #90NA7059. The project period is September 1, 1998—August 341, 2000. This supplement will augment Year 2 funding to allow for the hiring of necessary staff as well as other supports to facilitate the completion of all original objectives projected under the grant. The InterTribal Bison Cooperative is funded to provide services to forty-two member tribes, including: Marketing and sales; land base and production capacity; research and development of herd management and a collaboration with tribal colleges in developing bison curricula.

FOR FURTHER INFORMATION CONTACT: Lois Hodge, Grants Officer, Department of Health and Human Services, Administration for Children and Families, Office of Grants Administration, 370 L'Enfant Promenade SW., Mail Stop HHH 326F, Washington, DC 20447, telephone: 202–401–2344 or Georgeline Sparks, Program Specialist, Administration for Native Americans, DHHS./ACF/ANA, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone: 202–690–6420.

Authority: This award will be made pursuant to Native Americans Programs Act of 1974 as amended, 42 U.S.C. 2991 B. (CFDA 93.612).

Dated: June 5, 2000.

Gary Mounts,

Acting Commissioner, Administration for Native Americans.

[FR Doc. 00–14750 Filed 6–9–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N-1303]

Agency Information Collection Activities: Proposed Collection; Comment Request; Agreement for Shipment of Devices for Sterilization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements relating to shipment of nonsterile devices that are to be sterilized elsewhere or are shipped to other establishments for further process labeling or repacking.

DATES: Submit written comments on the collecion of information by August 11, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Agreement for Shipment of Devices for Sterilization—21 CFR 801.150(e) (OMB Control No. 0910–0131)—Extension

Under sections 501(c) and 502(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(c) and 352(a)), nonsterile devices that are labeled as sterile but are in interstate transit to a facility to be sterilized are adulterated and misbranded. FDA regulations in § 801.150(e) (21 CFR 801.150(e)) establish a control mechanism by which firms may manufacture and label medical devices as sterile at one establishment and ship the devices in interstate commerce for sterilization at another establishment, a practice that facilitates the processing of devices and is economically necessary for some firms. Under § 801.150(e), manufacturers and sterilizers may sign an agreement containing the following: (1) Instructions for maintaining accountability of the number of units in each shipment; (2) acknowledgment that the devices are nonsterile, being shipped for further processing; and (3) specifications for sterilization processing.

This agreement allows the manufacturer to ship misbranded products to be sterilized without initiating regulatory action and provides FDA with a means to protect consumers from use of nonsterile products. During routine plant inspections, FDA normally reviews agreements that must be kept for 2 years after final shipment or delivery of devices.

The respondents to this collection of information are device manufacturers and contract sterilizers.

FDA estimates the reporting burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801.150(e)	90	20	1,800	4	7,200
Total					7,200

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the burden is based on actual data obtained from industry during the past 3 years where there are approximately 90 firms subject to this requirement.

No burden has been estimated for the recordkeeping requirement in § 801.150(a)(2) because these records are maintained as a usual and customary part of normal business activities. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Dated: June 5, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–14701 Filed 6–9–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 00M–0811, 00M–1215, 00M–1216, 00M–0915, 99M–4619, 00M–0901, 99M–4763, 00M–0424, 00M–1073, 00M–0577, 00M–0579, 00M–0599, 00M–0445, 00M–0580, 00M–0578, 00M–0810, 00M–0809, 00M–1212]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMA's) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMA's through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Summaries of safety and effectiveness are available on the Internet at http://www.fda.gov/cdrh/pmapage.html. Copies of summaries of safety and effectiveness are also available by submitting a written request to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 in the **SUPPLEMENTARY INFORMATION** section of this document when submitting a written request.

FOR FURTHER INFORMATION CONTACT: Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's Internet home page at http://www.fda.gov; by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch; and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMA's and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMA's for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure explained previously from January 1, 2000, through March 31, 2000. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMA'S MADE AVAILABLE JANUARY 1, 2000, THROUGH MARCH 31, 2000

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P970005/00M–0811	Kremer Laser Eye Center	Kremer Exciber Laser System (Serial #KEA940202)	July 30, 1998
P970055/00M–1215	Biotrin International, Ltd.	Biotrin Parvovirus IgM EIA (V619IMUS)	August 6, 1999
P970054/00M–1216	Biotrin International, Ltd.	Biotrin Parvovirus IgG EIA (V519IGUS)	August 6, 1999
P980049/00M–0915	ELA Medical, Inc.	Defender II Model 9201 Implantable Cardiovascular Defibrillator	September 15, 1999
H990003/99M–4619	American Medical Systems	Acticon™ Neosphincter	September 20, 1999

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TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMA'S MADE AVAILABLE JANUARY 1, 2000, THROUGH MARCH 31, 2000—Continued

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P850022(S9)/00M–0901	Biolectron Inc.	SpinalPak® Stimulator	September 24, 1999
H990005/99M–4763	Nitinol Medical Technologies	CardioSEAL® Septal Occlusion System	September 28, 1999
P930034(S12)/00M–0424	Summit Technology	SVS Apex Plus Excimer Laser Workstation w/the Emphasis Discs	October 21, 1999
P910066(S11)/00M–1073	Orthologic Corp.	Orthologic™ 1000 Bone Growth Stimulator	December 17, 1999
P990035/00M–0577	Sunlight Ultrasound Technologies, Ltd.	The Sunlight™ Omnisense Ultrasound Bone Sonometer	January 20, 2000
P990066/00M–0579	GE Medical Systems	Senographe 2000D	January 28, 2000
H990011/00M–0599	Nitinol Medical Technologies	CardioSEAL® Septal Occlusion System	February 1, 2000
P980040/00M–0445	Allergan Inc.	Sensar Soft Acrylic UV–Light Absorbing Posterior Chamber Intraocular Lens	February 3, 2000
P990016/00M–0580	McCue Corporation, Inc.	McCue CUBAClinical Ultraonic Bone Sonometry System w/CUBAplus+V4.1.0	February 15, 2000
P940034(S8)/00M–0578	Gen-Probe Incorporated	Gen-Probe® Amplified™ Mycobacterium Tuberculosis Direct (MTD) Test	February 15, 2000
P900009(S6)/00M–0810	Smith & Nephew Inc.	Exogen 2000 or Sonic Accelerated Fracture Healing System	February 22, 2000
P990023/00M–0809	Alcon Labs	Celliugel® Ophthalmic Viscosurgical Device	February 24, 2000
P950019(S9)/00M–1212	United States Surgical Corp.	Ray Threaded Fusion Cage (TFC) w/Instrumentation	March 2, 2000

Dated: May 23, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–14702 Filed 6–9–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Draft OIG Compliance Program for Individual and Small Group Physician Practices

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice and comment period.

SUMMARY: This **Federal Register** notice seeks the comments of interested parties on draft compliance guidance developed by the Office of Inspector General (OIG) for individual and small group physician practices. Through this notice, the OIG is setting forth its general views on the value and fundamental principles of individual and small group physician practices' compliance programs, and the specific elements that these practices should consider when developing and implementing an effective compliance program.

DATES: To ensure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on July 27, 2000.

ADDRESSES: Please mail or deliver written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–7P–CPG, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–7P–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 2 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Kimberly Brandt, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION:

Background

By issuing compliance program guidance, the OIG seeks to engage the private health care community in combating fraud and abuse. In the last few years, the OIG has developed and issued compliance program guidance directed at the following segments of the health care industry: Hospitals; home health agencies; clinical laboratories; third-party medical billing companies; suppliers of durable medical equipment, prosthetics, orthotics and supplies; hospices; Medicare+Choice organizations; and nursing facilities. The development of these types of compliance program guidance is based on the OIG's belief that health care providers and related entities can use internal controls more effectively to monitor adherence to applicable Federal health care statutes, regulations and program requirements.

Copies of these compliance program guidances can be found on the OIG website at http://www.hhs.gov/oig.

Developing Draft Compliance Program Guidance for Individual and Small Group Physician Practices

On September 8, 1999, the OIG published a solicitation notice seeking information and recommendations for developing formal guidance for individual and small group physician practices (64 FR 48846). In response to that solicitation notice, the OIG received 83 comments from various outside sources. In developing this notice for formal public comment, we have considered those comments, as well as previous OIG publications, such as other compliance program guidance and Special Fraud Alerts. In addition, we have also taken into account investigations and audits conducted by the OIG, and have consulted with the Health Care Financing Administration and the Department of Justice.

This draft compliance program guidance for individual and small group physician practices contains seven elements that the OIG has determined are fundamental to an effective compliance program:

- Implementing written policies;
- Designating a compliance officer/contact;
- Conducting comprehensive training and education;
- Developing accessible lines of communication;
- Conducting internal monitoring and auditing;
- Enforcing standards through well-publicized disciplinary guidelines; and
- Responding promptly to detected offenses and undertaking corrective action.

These elements are contained in previous guidance issued by the OIG. As with previously-issued guidance, this draft compliance program guidance represents the OIG's suggestions on how individual and small group physician practices can best voluntarily establish internal controls to prevent fraudulent or other improper activities. The contents of this guidance are not mandatory or binding, nor is this guidance an exclusive discussion of the advisable elements of a compliance program.

Public Input and Comment in Developing Final Guidance

To ensure that all parties have an opportunity to provide input, we are publishing this guidance in draft form, and welcome all comments from interested parties. The OIG will consider all comments that are received within the above-cited time frame, incorporate any specific recommendations, as appropriate, and prepare a final version of the guidance thereafter for publication in the **Federal Register**.

Draft Compliance Program Guidance for Individual and Small Group Physician Practices

I. Introduction

This compliance program guidance is intended to assist individual and small group physician practices ("physician practices")[1] in developing and implementing internal controls and procedures that promote adherence to statutes and regulations applicable to the Federal health care programs ("Federal health care program requirements") and private insurance program requirements. Compliance programs strengthen the efforts of Government and the private sector to prevent and reduce improper conduct. These programs can also further the mission of all physician practices[2] to provide quality care to their patients.

Many physicians have expressed an interest in better protecting their practices from the potential for fraudulent or erroneous conduct through the implementation of compliance programs. While the Office of Inspector General (OIG) believes that the great majority of physicians are honest and share our goal of protecting the integrity of Medicare and other Federal health care programs, all health care providers have a duty to ensure that the claims submitted to Federal health care programs are true and accurate. The development of effective compliance programs in physician practices will go a long way toward achieving this goal.

Through this document, the OIG provides its views on the fundamental elements of physician practice compliance programs, as well as the principles that each physician practice should consider when developing and implementing an effective compliance program. While this document presents basic procedural and structural guidance for designing a compliance program, it is not in and of itself a compliance program. Rather, it is a set of guidelines that physician practices should consider when developing and implementing a compliance program. As stated in previous guidance,[3] these guidelines are not mandatory. Nor do they represent an exclusive document of advisable elements of a compliance program. They are a resource to be considered in addition to other OIG outreach efforts, as well as other Federal agency efforts to promote compliance.[4]

[1] For the purpose of this guidance, the term "physician" is defined as: (1) A doctor of medicine or osteopathy; (2) a doctor of dental surgery or of dental medicine; (3) a podiatrist; (4) an optometrist; or (5) a chiropractor, all of whom must be appropriately licensed by the State. 42 U.S.C. 1395x(r).

[2] Much of this guidance can also apply to other independent practitioners, such as psychologists, physical therapists, speech language pathologists, and occupational therapists.

[3] Currently, the Office of Inspector General has issued compliance program guidance for the following eight industry sectors: hospitals, clinical laboratories, home health agencies, durable medical equipment suppliers, third-party medical billing companies, hospices, Medicare+Choice organizations offering coordinated care plans, and nursing facilities. All of the guidance is available on the OIG website at http://www.hhs.gov/oig in the Electronic Reading Room, or by calling the OIG Public Affairs office at (202) 619–1343.

[4] The OIG periodically issues Advisory Opinions responding to specific inquiries concerning the application of the OIG's authorities, in particular, the anti-kickback statute, and Special Fraud Alerts setting forth activities that raise legal and enforcement issues. These documents, as well as reports from the OIG's Office of Audit Services (OAS) and Office of Evaluation and Inspections (OEI) can be obtained on the Internet at: http://www.hhs.gov/oig. We also recommend that physician practices regularly review the Health Care Financing Administration (HCFA) website on the Internet at http://www.hcfa.gov, for up-to-date regulations, manuals, and program memoranda related to the Medicare and Medicaid programs.

A. Benefits of a Compliance Program

The OIG believes that physician practices can gain numerous benefits by implementing an effective compliance program. These benefits may include:

- The development of effective internal procedures to ensure compliance with regulations, payment policies and coding rules;
- Improved medical record documentation;
- Improved education for practice employees;
- A reduction in the denial of claims;
- More streamlined practice operations through better communication and more comprehensive policies;
- The avoidance of potential liability arising from noncompliance; and
- Reduced exposure to penalties.[5]

An effective compliance program is essential for physician practices of all sizes and does not have to be costly or resource-intensive. With the development of a formal program, a physician practice may find it easier to comply with its affirmative duty to ensure the accuracy of claims submitted for reimbursement.

B. Application of Compliance Program Guidance

The OIG recognizes that there is no "one size fits all" compliance program, especially for physician practices. The applicability of these recommendations will depend on the circumstances of the particular physician practice. Each practice should undertake reasonable steps to respond to each of the seven elements of this guidance, depending on the size and resources of that practice.

Compliance programs not only help to prevent fraudulent or erroneous claims, but they may also show that the physician practice is making a good faith effort to submit claims appropriately. Physician practices should view compliance programs as analogous to practicing preventive medicine.

An effective compliance program also sends an important message to a physician practice's employees that while the practice recognizes that mistakes will occur, employees have an affirmative, ethical duty to come

[5] The OIG, for example, will consider the existence of an effective compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative sanctions. However, the burden is on the physician practice to demonstrate the operational effectiveness of the compliance program. *See* 62 FR 67392. In addition, criminal sanctions may be mitigated by an effective compliance program that was in place at the time of the criminal offense. *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8 A1.2, Application Note 3(d).

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forward and report fraudulent or erroneous conduct, so that it may be corrected.

C. The Difference Between Fraudulent and "Erroneous" Claims to Federal Health Programs

There appear to be significant misunderstandings among physicians regarding the critical differences between fraudulent (intentionally or recklessly false) health care claims on the one hand and innocent "erroneous" claims on the other. Some physicians feel that Federal law enforcement agencies have maligned medical professionals and are focused on innocent billing errors. These physicians are under the impression that innocent billing errors can subject them to civil penalties, or even jail. These feelings and impressions are mistaken.

To these concerns, OIG would like to make the following points. First, we do not disparage physicians, other medical professionals or medical enterprises. In our view, the great majority of them are working ethically to render high quality medical care to our Medicare beneficiaries and to submit proper claims to Medicare.

Second, under the law, physicians are not subject to civil or criminal penalties for innocent errors, or even negligence. The Government's primary enforcement tool, the civil False Claims Act, covers only offenses that are committed with actual knowledge of the falsity of the claim, reckless disregard, or deliberate ignorance of the falsity of the claim.[6] The False Claims Act simply does not cover mistakes, errors, or negligence. The other major civil remedy available to the Federal Government, the Civil Monetary Penalties Law, has exactly the same standard of proof.[7] The OIG is very mindful of the difference between innocent errors ("erroneous claims") on one hand, and reckless or intentional conduct ("fraudulent claims") on the other. For criminal penalties, the standard is even higher—criminal intent to defraud must be proved beyond a reasonable doubt. The Attorney General of the United States has stated, "[i]t is not the [Justice Department's] policy to punish honest billing mistakes * * * [or] mere negligence. * * * These are not cases where we are seeking to punish someone for honest billing mistakes."[8]

Third, even ethical physicians (and their staffs) make billing mistakes and errors through inadvertence or negligence. When billing errors, honest mistakes, or negligence result in erroneous claims, the physician practice will be asked to return the funds erroneously claimed, but without penalties. In other words, erroneous claims result only in the return of funds claimed in error.

Fourth, innocent billing errors are a significant drain on the programs and all parties (physicians, providers, carriers, fiscal intermediaries, Government agencies, and beneficiaries) need to work cooperatively to reduce the overall error rate. But again, it should be emphasized that civil or criminal penalty action will not be initiated with respect to billing errors due to inadvertence or negligence, or for billings based on a negligent medical judgment.

Finally, it is reasonable for physicians (and other providers) to ask: what duty do they owe the Federal health care programs? The answer is that all health care providers have a duty to reasonably ensure that the claims submitted to Medicare and other Federal health care programs are true and accurate. The OIG continues to engage the provider community in an extensive, good faith effort to work cooperatively on voluntary compliance to minimize errors and to prevent potential penalties for improper billings before they occur. We encourage all physicians and other providers to join in this effort.

II. Compliance Program Elements

A. The Seven Basic Compliance Elements

The OIG believes that every effective compliance program should begin with a commitment by the physician practice to address all of the applicable elements listed below, which are based on the seven elements set forth in the Federal Sentencing Guidelines:[9]

- Establishing compliance standards through the development of a code of conduct and written policies and procedures;
- Assigning compliance monitoring efforts to a designated compliance officer or contact;
- Conducting comprehensive training and education on practice ethics and policies and procedures;
- Conducting internal monitoring and auditing focusing on high-risk billing and coding issues through performance of periodic audits;
- Developing accessible lines of communication, such as discussions at staff meetings regarding fraudulent or erroneous conduct issues and community bulletin boards, to keep practice employees updated regarding compliance activities;
- Enforcing disciplinary standards by making clear or ensuring employees are aware that compliance is treated seriously and that violations will be dealt with consistently and uniformly; and
- Responding appropriately to detected violations through the investigation of allegations and the disclosure of incidents to appropriate Government entities.

The OIG recognizes that full implementation of all elements may not be feasible for all physician practices. However, as a first step, a good faith meaningful commitment to compliance will substantially contribute to the program's successful implementation. Smaller practices should consider addressing each of the elements in a manner that best suits the practice. By contrast, larger practices should address the elements in a more systematic manner. For example, larger practices can use both this guidance and the Third-Party Medical Billing Compliance Program Guidance to create a compliance program unique to the practice.[10]

The OIG recognizes that physician practices need to find the best way to achieve compliance for their given circumstances. Specifically, the OIG encourages physician practices to participate in other compliance programs, such as the compliance programs of the hospitals or other settings in which the physicians practice. A physician's participation in another provider's compliance program could be a way, at least partly, to satisfy recommended elements of the physician's or physician practice's own compliance program. The OIG encourages this type of collaborative effort, where the content is appropriate to the setting involved, because it provides a means to promote the desired objective without imposing an undue burden or requiring physicians to undertake duplicative action.

B. Written Policies and Procedures

Any effective compliance program should have compliance standards and procedures that will be followed by the practice and that describe the lines of responsibility for implementing the compliance program. Those standards and procedures should be reasonably capable of reducing the prospect of

[6] 31 U.S.C. 3729.

[7] 42 U.S.C. 1320a–7a.

[8] Reno Willing to Work With Hospitals to Ensure Proper Use of False Claims Act, 6 Health Care Pol'y Rep. 261 (1998).

[9] See United States Sentencing Commission Guidelines, *Guidelines Manual*, 8 A1.2, Application Note 3(k). The Federal Sentencing Guidelines are detailed policies and practices for the Federal criminal justice system that prescribe the appropriate sanctions for offenders convicted of Federal crimes.

[10] Available on the OIG website at http://www.hhs.gov/oig.

fraudulent activity while also helping to identify any incorrect billing practices.

1. Code of Conduct

Developing standards of conduct is the first step to an effective compliance program. A good way to begin creating a standard of conduct for a physician practice is by looking at the standards of conduct implemented by other physician practices and/or by requesting information from professional associations to get ideas as to the items to include in a standard of conduct. However, it is important that the physician practice not simply copy another practice's standards. The standards of conduct for the physician practice should be specific to that practice. This can be accomplished by tailoring the standards of conduct to address the particularized needs of the practice.

The practice's expectations with respect to billing and coding, patient care, documentation, and payer relationships should be made clear to practice employees in the form of a code of conduct. This can also be succinctly stated in a practice mission statement. For example, employees should be told that the practice bills only for services that are actually rendered, codes accurately, documents medical necessity and appropriateness, and adheres to all payer contracts.

The concept of commitment to compliance is different from the mere existence of written policies and procedures. This commitment should be clearly established during training and in the practice's policies. Everyone in the practice should understand the obligation to comply with the applicable standards. They should be informed and understand that the organization will take actions to uphold those standards. Upon development, the code of conduct and policies should be distributed and/or made continually available to all employees, contractors and agents, once implemented. These materials should be reviewed at least annually and revised as necessary.

2. Policies and Procedures

The code of conduct should be reinforced with basic policies reaffirming the key points in the code of conduct. The practice's policies should explain in clear and plain language the procedures by which compliance measures are to be incorporated into standard operating practices.

The OIG believes that written policies and procedures are essential to all physician practices, regardless of size and capability. If a lack of resources to develop such policies is genuinely an issue, the OIG recommends that a physician practice focus first on those risk areas most likely to arise in its particular practice.[11] Additionally, if the physician practice relies on a physician practice management company (PPMC) or management services organization (MSO), the practice can incorporate the compliance policies of those entities, if appropriate, into its own policies.

Physician practices can meet the goal of developing policies and procedures by: (1) Developing a written compliance manual; and (2) updating clinical forms periodically to make sure they elicit the data required for the different levels of coding. All written policies and procedures should be tailored to the physician practice where they will be applied.

Areas in which a policy may be helpful to the practice include:

- Employee hiring and retention;
- Creation and maintenance of encounter forms, including the registration form, history and physical form and charge master (superbill and patient statement);
- Coding and billing competency and responsibilities;
- Correct coding initiatives;
- Patient outreach and communication;
- General marketing; and
- Patient quality of care.

Creating a resource manual from publicly available information may be a cost-effective approach for developing policies and procedures. For example, the practice can develop a "binder" that contains the practice's written policies and procedures, relevant HCFA directives and carrier bulletins, and summaries of informative OIG documents (*e.g.*, Special Fraud Alerts, Advisory Opinions, inspection and audit reports). This binder should be regularly updated and should be accessible to all employees. It could also include a summary of the relevant reimbursement requirements of Federal and private payer plans (including those relating to reasonable and necessary services, coding and documentation).[12] In the case of more technical materials, it may be advisable to provide summaries in the handbook and make the source documents available upon request. If individualized copies of this handbook are not made available to all employees, then a reference copy should be available in a readily accessible location.

If updates to the policies and procedures are necessary, those updates should be given to employees. New employees should receive both the code of conduct and policies when hired and be trained on their contents immediately thereafter. As part of the compliance effort, the distribution of the code and policies should be documented.

3. Specific Risk Areas

The OIG recognizes that many physician practices may not have in place policies and procedures to prevent fraudulent or erroneous conduct in their practices. In order to develop policies and procedures, the physician practice should determine what types of fraud and abuse related topics need to be addressed based on its specific needs. One of the most important things in making that determination is a listing of risk areas where the practice may be vulnerable.

To assist physician practices in performing this initial assessment, the OIG has developed a list of potential risk areas affecting physician providers. These risk areas include: (a) Coding and billing; (b) reasonable and necessary services; (c) documentation and (d) improper inducements, kickbacks and self-referrals. This list of risk areas is not exhaustive, or all encompassing. Rather, it should be viewed as a starting point for an internal review of potential vulnerabilities within the physician practice.[13] The objective of such an assessment should be to ensure that key personnel in the physician practice is aware of these risk areas and that steps are taken to minimize, to the extent possible, the types of problems identified. While there are many ways to accomplish this objective, clear written policies and procedures that are communicated to all employees are important to ensure the effectiveness of a compliance program. Specifically, the following are discussions of risk areas for physicians:[14]

[11] Practices with laboratories or arrangements with third-party billing companies should check the risk areas included in the guidance for those industries. The guidance is available on the OIG website at http://www.hhs.gov/oig.

[12] There are many published summaries of reimbursement requirements of varying specificity and quality. Various specialty and trade associations may also have developed such summaries.

[13] The OIG recommends that, in addition to the list set forth below, physicians review the OIG's Work Plan to identify vulnerabilities and risk areas on which the OIG will focus in the future. In addition, it is recommended that physician practices review the OIG's semiannual reports, which identify program vulnerabilities and risk areas that the OIG has targeted during the preceding six months. All of these documents are available on the OIG's webpage at http://www.hhs.gov/oig.

[14] A listing of additional risk areas that a physician practice may want to include in its

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a. Coding and Billing. The identification of risk areas associated with coding and billing should be a major part of any physician practice's compliance program.

The following risk areas associated with billing have been among the most frequent subjects of investigations and audits by the OIG:

- Billing for items or services not rendered or not provided as claimed;[15]
- Submitting claims for equipment, medical supplies and services that are not reasonable and necessary;[16]
- Double billing;[17]
- Billing for non-covered services as if covered;
- Knowing misuse of provider identification numbers, which results in improper billing;[18]
- Billing for unbundled services;[19]
- Failure to properly use coding modifiers;[20]
- Upcoding the level of service provided.[21]

The written policies and procedures concerning proper coding should reflect the current reimbursement principles set forth in applicable statutes, regulations[22] and Federal, State or private payer health care program requirements and should be developed in tandem with coding and billing standards used in the physician practice. Furthermore, written policies and procedures should ensure that coding and billing are based on medical record documentation. Particular attention should be paid to issues of appropriate diagnosis codes and individual Medicare Part B claims (including documentation guidelines for evaluation and management services).[23] The physician practice should also institute a policy that all rejected claims pertaining to diagnosis and procedure codes be reviewed by the coder. This should facilitate a reduction in similar errors.

b. Reasonable and Necessary Services. The compliance program should provide guidance that claims be submitted only for services that the physician practice finds to be reasonable and necessary in the particular case. The OIG recognizes that physicians should be able to order any tests, including screening tests, they believe are appropriate for the treatment of their patients. However, the physician practice should be aware that Medicare will only pay for services that meet the Medicare definition of reasonable and necessary.[24]

Medicare (and many insurance plans) may deny payment for a service that the physician believes is clinically appropriate, but which is not reasonable and necessary. Thus, when a physician provides services to a patient, he or she should only bill those services believed to be reasonable and necessary for the diagnosis and treatment of a patient. Upon request, the physician practice should be able to provide documentation, such as a patient's medical records and physician's orders, to support the appropriateness of a service that the physician has provided.

c. Documentation. Timely, accurate and complete documentation is critical to nearly every aspect of a physician practice. Therefore, one of the most important physician practice compliance issues is the appropriate documentation of diagnosis and treatment. Physician documentation is necessary to determine the appropriate medical treatment for the patient and is the basis for coding and billing determinations. Most importantly, failure to document properly has the potential to compromise good patient care. Thorough and accurate documentation helps to ensure accurate recording and timely transmission of information.

i. Medical Record Documentation. In addition to facilitating high quality patient care, a properly documented medical record verifies and documents precisely what services were actually provided. The medical record may be used to validate: (a) The site of the service; (b) the appropriateness of the services provided; and (c) the accuracy of the billing. Accurate medical record documentation should comply, at a minimum, with the following principles:[25]

- The medical record should be complete and legible;
- The documentation of each patient encounter should include the reason for the encounter; any relevant history; physical examination findings; prior diagnostic test results; assessment, clinical impression, or diagnosis; plan of care; and date and legible identity of the observer;
- If not documented, the rationale for ordering diagnostic and other ancillary services should be easily inferred by an independent reviewer or third party. Past and present diagnoses should be accessible to the treating and/or consulting physician; and
- Appropriate health risk factors should be identified. The patient's progress, his or her response to, and any changes in, treatment, and any revision in diagnosis should be documented.

The CPT and ICD–9–CM codes reported on the health insurance claims form should be supported by documentation in the medical record and the medical chart should contain all required information. Additionally, HCFA and the local carriers should be able to determine who provided the services. These issues can be the root of investigations of inappropriate or erroneous conduct, and have been identified by HCFA and OIG as a leading cause of inappropriate payments.

ii. HCFA 1500 Form. Another documentation area that physician practices should monitor closely is the proper completion of the HCFA 1500 form. The following practices will help ensure that the form has been properly completed:

- Link the diagnosis code with the steps taken to perform an examination and the record of personal history obtained;
- Link a single most appropriate diagnosis with the corresponding procedure code;
- Use modifiers appropriately; and
- Provide Medicare with all information about a patient's other insurance coverage.

d. Kickbacks, Inducements and Self-Referrals. A physician practice should have policies and procedures to ensure compliance with the anti-kickback statute,[26] and the physician self-referral law.[27] Remuneration for referrals is illegal because it can distort medical decision-making, cause overutilization of services or supplies, increase costs to Federal health care programs, and result in unfair competition by shutting out competitors who are unwilling to pay it. Remuneration for referrals can also affect the quality of patient care by encouraging physicians to order services or supplies based on profit rather than the patients' best medical interests.[28]

In particular, arrangements with hospitals, hospices, nursing facilities, home health agencies, durable medical equipment suppliers and vendors are areas of potential concern. In general the anti-kickback statute prohibits knowing and willfully giving or receiving anything of value to induce referrals of Federal health care program business. It is generally recommended that all business arrangements wherein physician practices refer business to an outside entity should be on a fair market value basis.[29] Whenever a physician practice intends to enter into a business arrangement that involves its making referrals, the arrangement should be reviewed by counsel familiar with the anti-kickback statute and physician self-referral statute.

In addition to developing policies to address arrangements with other health care providers and suppliers, physician practices should implement measures to avoid offering inappropriate inducements to patients.[30] Examples of such inducements include routinely waiving coinsurance or deductible amounts without a good faith determination that the patient is in financial need or failing to make reasonable efforts to collect the cost-sharing amount.[31]

Possible risk areas that should be addressed in the policies and procedures include:

- Financial arrangements with outside entities to whom the practice may refer Federal health care program business;[32]
- Joint ventures with entities supplying goods or services to the physician practice or its patients;[33]
- Consulting contracts or medical directorship;
- Office and equipment leases with entities to which the physician refers; and
- Soliciting, accepting or offering any gift or gratuity of more than nominal value to or from those who may benefit from a physician practice's referral of Federal health care program business.[34]

In order to keep current with this area of the law, a physician practice may obtain copies, available on the OIG website, of all relevant OIG Special Fraud Alerts and Advisory Opinions that address the application of the anti-kickback and physician self-referral laws to ensure that the policies reflect current positions and opinions.[35]

4. Retention of Records. A physician practice's policies and procedures should also contain a section on the retention of compliance, business and medical records. These records primarily include documents relating to patient care and the practice's business activities. The physician practice's designated compliance officer should keep an updated binder or record of compliance-related activities. This involves, at a minimum, keeping track of compliance meetings, educational activities, and internal audit results. Particular attention should be paid to documenting violations uncovered by the compliance program and the resulting remedial action.

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policies can be found at Appendix A of this document.

[15] For example, Dr. X, an ophthalmologist, bills for laser surgery he did not perform. As proof, he did not even have laser equipment or access to such equipment at the place of service designated on the claim form to perform the surgery.

[16] Billing for services which are not reasonable and necessary, supplies and equipment involves seeking reimbursement for a service that is not warranted by a patient's documented medical condition. See 42 U.S.C. 1395l(a)(1)(A) ("no payment may be made under part A or part B [of Medicare] for any expenses incurred for items or services which * * * are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of the malformed body member"). See also Appendix A for further discussion on this topic.

[17] Double billing occurs when the physician bills for the same item or service more than once or when another party bills the Federal health care program for an item or service also billed by the physician. Although duplicate billing can occur due to simple error, the knowing submission of duplicate claims—which is sometimes evidenced by systematic or repeated double billing—can create liability under criminal, civil, and/or administrative law.

[18] Of particular concern, physician practices should be aware of the provisions of reassignment of benefits. These provisions govern who may receive payment due to a provider or supplier of services or a beneficiary. See 42 CFR 424.70–424.80. See also *Medicare Carrier Manual* § 3060.10.

[19] Unbundling is the practice of a physician billing for multiple components of a service that must be included in a single fee. For example, if dressings and instruments are included in a fee for a minor procedure, the provider may not also bill separately for the dressings and instruments.

[20] A modifier, as defined by the CPT–4 manual, provides the means by which the physician practice can indicate a service or procedure that has been performed has been altered by some specific circumstance, but not changed in its definition or code. Assuming the modifier is used correctly and appropriately, this specificity provides the justification for payment for those services. For correct use of modifiers, the physician practice should reference the appropriate sections of the *Medicare Carrier Manual*. See *Medicare Carrier Manual* § 4630. For general information on the correct use of modifiers, the physician practice should also consult the National Correct Coding Initiative (NCCI) system. See Appendix F for information on how to access the NCCI system. The NCCI coding edits are updated on a quarterly basis and are used to process claims and determine payments to physicians.

[21] Upcoding is billing for a more expensive service than the one actually performed. For example, Dr. X defrauds Medicare by intentionally billing at a higher evaluation and management (E & M) code than what he actually renders to the patient. Upcoding has been a major focus of the OIG's law enforcement efforts. In fact, the Health Insurance Portability and Accountability Act of 1996 added another civil monetary penalty to the OIG's sanction authorities for upcoding violations. See 42 U.S.C. 1320a–7a(a)(1)(A).

[22] The official coding guidelines are promulgated by HCFA, the National Center for Health Statistics, the American Medical Association and the American Health Information Management Association. See International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9 CM) (and its successors); 1998 Health Care Financing Administration Common Procedure Coding System (HCPCS) (and its successors); and Physicians' Current Procedural Terminology (CPT). In addition, there are specialized coding systems for specific segments of the health care industry. Among these are ADA (for dental procedures), DSM IV (psychiatric health benefits) and DMERCs (for durable medical equipment, prosthetics, orthotics and supplies).

[23] The failure of a physician practice to: (i) document items and services rendered; and (ii) properly submit them for reimbursement is a major area of potential fraudulent or erroneous conduct involving Federal health care programs. The OIG has undertaken numerous audits, investigations, inspections and national enforcement initiatives aimed at reducing potential and actual fraud, abuse and waste in these areas.

[24] See 42 U.S.C. 1395y(a)(1)(A).

[25] For additional information on proper documentation, physician practices should also reference the *Documentation Guidelines for Evaluation and Management (E and M) Services*, published by HCFA. These guidelines are available on the Internet at http://www.hcfa.gov/medicare/mcarpti.htm.

[26] The anti-kickback statute provides criminal penalties for individuals and entities that knowingly offer, pay, solicit, or receive bribes or kickbacks or other remuneration in order to induce business reimbursable by Federal health care programs. See 42 U.S.C. 1320a–7b(b). Civil penalties, exclusion from participation in the Federal health care programs, and civil False Claims Act liability may also result from a violation of the prohibition. See 42 U.S.C. 1320a–7a(a)(5), 42 U.S.C. 1320a–7(b)(7), and 31 U.S.C. 3729–3733.

[27] The physician self-referral law, 42 U.S.C. 1395nn, (also known as the "Stark law"), prohibits a physician from making a referral to an entity with which the physician or any member of the physician's immediate family has a financial relationship if the referral is for the furnishing of designated health services, unless the financial relationship fits into an exception set forth in the statute or implementing regulations.

[28] See Appendix B for additional information on the anti-kickback statute.

[29] The OIG's definition of "fair market value" is not the typical commercial definition of this term. The OIG's definition of this term excludes any value attributable to referrals of Federal program business on the ability to influence the flow of such business. Adhering to the rule of keeping business arrangements at fair market value is not a guarantee of legality, but is a highly useful general rule.

[30] See 42 U.S.C. 1128A(a)(5).

[31] In the OIG Special Fraud Alert "Routine Waiver of Part B Co-payments/ Deductibles" (May 1991), the OIG describes several reasons why routine waivers of these cost-sharing amounts pose concerns. The Alert sets forth the circumstances under which it may be appropriate to waive these amounts. See also 42 U.S.C. 1320a–7a(a)(5).

[32] All physician contracts and agreements with parties in a position to influence Federal health care program business or to whom the doctor is in such a position to influence should be reviewed to avoid violation of the anti-kickback, self-referral, and other relevant Federal and State laws. The OIG has published safe harbors that define practices not subject to the anti-kickback statute, because such arrangements would be unlikely to result in fraud or abuse. Failure to comply with a safe harbor provision does not make an arrangement per se illegal. Rather, the safe harbors set forth specific conditions that, if fully met, would assure the entities involved of not being prosecuted or sanctioned for the arrangement qualifying for the safe harbor. One such safe harbor applies to personal services contracts. See 42 CFR 1001.952(d).

[33] See OIG Special Fraud Alert "Joint Venture Arrangements" (August 1989) available on the OIG website at http://www.hhs.gov/oig. See also OIG Advisory Opinion 97–5.

[34] Physician practices should establish clear policies governing gift-giving because such exchanges may be viewed as inducements to influence business decisions. Practice policies should emphasize that accepting gifts of any kind may influence the employee's independent judgment. To the extent such gifts are accepted, they should be reported to the designated person charged with recording such information for the practice.

[35] Practices should also check the HCFA website for the most recent regulations regarding these issues.

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Physician practices that implement a compliance program should provide for the development and implementation of a records retention system. This system should establish policies and procedures regarding the creation, distribution, retention, and destruction of documents. In designing a record system, privacy concerns and Federal and State regulatory requirements should be taken into consideration. In addition to maintaining appropriate and thorough medical records on each patient, the OIG recommends that the system include the following types of documents:

- All records and documentation (*e.g.*, billing and claims documentation) required for participation in Federal, State, and private payer health care programs; and
- All records necessary to demonstrate the integrity of the physician practice's compliance process and to confirm the effectiveness of the program.[36]

While conducting its compliance activities, as well as its daily operations, a physician practice should document its efforts to comply with applicable Federal health care program requirements. For example, when a physician practice requests advice from a Government agency (including a Medicare fiscal intermediary or carrier) charged with administering a Federal health care program, the practice should document and retain a record of the request and any written or oral response. This step is extremely important if the practice intends to rely on that response to guide it in future decisions, actions, or claim reimbursement requests or appeals. A log of oral inquiries between the practice and third parties, such as carrier representatives, will help the practice document its attempts at compliance. In addition, in a subsequent investigation these records may become relevant to the issue of whether the practice's reliance was "reasonable" and whether it exercised due diligence in developing procedures and practices to implement the advice.

In short, all physician practices, regardless of size, should have procedures to create and retain appropriate documentation. The following record retention guidelines should be followed:

- The length of time that a physician's medical record documentation is to be retained should be specified in the physician practice's policies and procedures (Federal and State statutes should be consulted for specific time frames);
- Medical records should be secured against loss, destruction, unauthorized access, unauthorized reproduction, corruption, or damage; and
- Policies and procedures should stipulate the disposition of medical records in the event the practice is sold or closed.

C. Designation of a Compliance Officer/Contact

To administer the compliance program, the practice should designate an individual who is responsible for overseeing the compliance program. This person, often called a "compliance officer," may have duties in addition to serving in this role. This person could be the office manager or the primary biller. The key, however, is that the person be sufficiently independent in his or her position so as to protect against any conflicts of interest that may arise from performing assigned duties and compliance duties. Additional attributes and qualifications that this person should possess include:

- Attention to detail;
- Experience in billing and coding; and
- Effective communication skills, both oral and written, with employees, physicians and carriers.

It is acceptable for a physician practice to designate more than one employee with compliance monitoring responsibility. In lieu of having a designated compliance officer, the physician practice could instead describe in its policies and procedures the compliance functions for which designated employees, known as "compliance contacts," would be responsible. For example, one employee could be responsible for preparing written policies and procedures, while another could be responsible for conducting or arranging for periodic audits and ensuring that billing questions are answered. Therefore, the compliance-related responsibilities of the designated person or persons may be only a portion of his or her duties.

Another possibility is that one individual could serve as compliance officer for more than one entity. In situations where staffing limitations mandate that the practice cannot afford to designate a person(s) to oversee compliance activities, the practice could outsource all or part of the functions of a compliance officer to a third party, such as a consultant, PPMC, MSO, Independent Physician Association, billing company or professional association. However, if this role is outsourced, the compliance officer should have sufficient interaction with the physician practice to be able to effectively serve as the compliance officer. Outsourced compliance officers, who spend most of their time offsite, will naturally have certain limitations that a physician practice should consider before making such a critical decision.

The primary responsibilities assigned to a compliance officer/contact should include the following:

- Overseeing and monitoring the implementation of the compliance program;
- Establishing methods, such as periodic audits, to improve the practice's efficiency and quality of services, and to reduce the practice's vulnerability to fraud and abuse;
- Periodically revising the compliance program in light of changes in the needs of the practice or changes in the law and in the policies and procedures of Government and private payer health plans;
- Developing, coordinating and participating in a training program that focuses on the elements of the compliance program, and seeks to ensure that training materials are appropriate;
- Ensuring that the HHS–OIG's List of Excluded Individuals and Entities, and the General Services Administration's List of Parties Debarred from Federal Programs have been checked with respect to all employees, medical staff and independent contractors;[37]
- Ensuring that employees and physicians know, and comply with, pertinent Federal and State statutes, regulations and standards;

[36] Among the materials useful in documenting the compliance program are employee certifications relating to training and other compliance initiatives, copies of compliance training materials, and any corresponding reports of investigation, outcomes, and employee disciplinary actions. In addition, the physician practice should keep all relevant correspondence with carriers, private payer insurers, and HCFA.

[37] The HHS–OIG "List of Excluded Individuals/Entities" provides information to health care providers, patients, and others regarding individuals and entities that are excluded from participation in Federal health care programs. This report, in both an on-line searchable and downloadable database, can be located on the Internet at http://www.hhs.gov/oig. The OIG sanction information is readily available to users in two formats on over 15,000 individuals and entities currently excluded from program participation through action taken by the OIG. The on-line searchable database allows users to obtain information regarding excluded individuals and entities sorted by: (1) The legal bases for exclusions; (2) the types of individuals and entities excluded by the OIG; and (3) the States where excluded individuals reside or entities do business. In addition, the General Services Administration maintains a monthly listing of debarred contractors, "List of Parties Debarred from Federal Programs," at http://www.arnet.gov/epls.

- Investigating any report or allegation concerning possible unethical or improper business practices, and monitoring subsequent corrective action and/or compliance.

Each physician practice needs to assess its own practice situation and determine what best suits that practice in terms of compliance oversight.

D. Conducting Effective Training and Education

Education is an important part of any compliance program. Education programs should be tailored to the physician practice's needs and include both compliance and specific training. Training expectations should be commensurate with the size and speciality of the practice.

There are three basic steps for setting up educational objectives:

- Determining who needs training (both in coding and billing and in compliance);
- Determining the type of training that best suits the practice's needs (*e.g.*, seminars, in-service training, self-study or other programs); and
- Determining when the education is needed and how much each person should receive.

Training can be accomplished through a variety of means, including in-person training sessions (*i.e.*, either on site or at outside seminars), distribution of newsletters,[38] or even a readily accessible office bulletin board. Regardless of the training modality used, a physician practice should ensure that the necessary education is communicated effectively. Simply providing individuals with documents for their own reading and comprehension is seldom sufficient.

1. Compliance Training

Under the direction of the designated compliance officer/contact, both initial and recurrent training in compliance is advisable, both with respect to the compliance program itself and applicable statutes and regulations. The operation and importance of the compliance program, the consequences of violating the policies set forth in the program, and the role of each employee in the operation of the compliance program should also be addressed.

Compliance training should have two goals: (1) All employees should receive training on how to perform their jobs in compliance with the standards of the practice and any applicable regulations; and (2) each employee should understand that compliance is a condition of continued employment. Compliance training should center on explaining why the practice is developing and establishing a code of conduct and written policies and procedures. The training should emphasize that following the policies will not get a practice employee in trouble, but violating the policies will. New employees should be trained on the compliance program within 60 days of their start date and such training should be documented. Thereafter, employees should receive refresher training on an annual basis or as appropriate.

2. Coding and Billing Training

Coding and billing training on the Federal health care program requirements may be necessary for certain members of the physician practice staff depending on their respective responsibilities. Individuals who are directly involved with billing, coding or other aspects of the Federal health care programs should receive extensive education specific to that individual's responsibilities. Items to cover in coding and billing training can include:

- Coding requirements;
- Claim development and submission processes;
- Marketing practices that reflect current legal and program standards;
- The ramifications of submitting a claim for physician services when rendered by a non-physician;
- Signing a form for a physician without the physician's authorization;
- The ramifications of altering medical records;
- Proper documentation of services rendered;
- How to report misconduct;
- Proper billing standards and procedures and submission of accurate bills for services or items rendered to Federal health care program beneficiaries;
- The personal obligation of each person involved in the billing process to ensure claims are properly and accurately submitted;
- The legal sanctions for submitting deliberately false or reckless billings;
- Informing physicians that they cannot receive payment or any type of incentive to induce referrals and that claims should not be submitted for physician services when those services are rendered by a non-physician (unless they follow the applicable Federal health care program requirements, *e.g.*, "incident to" rules).

3. Format of the Training Program

Training may be conducted either in-house or by an outside source.[39] Training at outside seminars, instead of internal programs and in-service sessions, can be an effective way to achieve the practice's training goals. In fact, many community colleges offer certificate or associate degree programs in billing and coding, and professional associations provide various kinds of continuing education and certification programs. Many carriers also offer billing training.

As part of the training, practices should make sure all employees are familiar with at least the key risk areas in this guidance and areas of particular OIG interest as identified in the OIG's Work Plan published each year.[40] The physician practice also needs to work with its third-party billing company, if one is used, to ensure that documentation is of a level that is adequate for the billing company to submit accurate claims on behalf of the physician practice. If it is not, these problem areas should also be covered in the training. In addition to the billing training, physician practices should be certain that updated ICD–9, HCPCS and CPT manuals (in addition to the carrier bulletins construing those sources) are available to all employees involved in the billing process. A source of continuous updates on current billing policies should also be readily available.[41]

Physician practices are not required to have separate education and training programs for both the compliance and coding and billing training. All in-service training and continuing education can integrate compliance issues, as well as other core values adopted by the practice, such as quality improvement and improved patient service, into their curriculum.

[38] HCFA also offers free online training for general fraud and abuse issues at http://www.medicaretraining.com. See Appendix F for additional information.

[39] Another way for physician practices to receive effective training is for the physicians and/or the employees of the practice to attend training programs offered by larger entities, such as a hospital, a local medical society or a carrier. This sort of collaborative effort is an excellent way for the practice to meet the desired training objective without having to expend the resources to develop and implement in-house training.

[40] The OIG's work plan is currently available on the Internet at http://www.hhs.gov/oig. The OIG Work Plan details the various projects the OIG intends to address in the fiscal year. The Work Plan contains the projects of the Office of Audit Services, Office of Evaluation and Inspections, Office of Investigations and the Office of Counsel to the Inspector General.

[41] Some publications, such as OIG's Special Fraud Alerts, audit and inspection reports, and Advisory Opinions are readily available from the OIG and can provide a basis for educational courses and programs for physician practice employees. These can be obtained through the Internet. See Appendix F.

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4. Continuing Education on Compliance Issues

There is no set formula for determining how often training sessions should occur.[42] The OIG recommends that there be at least an annual training program for all individuals involved in the coding and billing aspects of the practice. New billing and coding employees should be trained within 60 days of assuming their duties and should work under an experienced employee until their training has been completed.

E. Developing Effective Lines of Communication

An open line of communication is essential to proper implementation of an effective compliance program. Guidance previously issued by the OIG has encouraged the use of several forms of communication between the compliance officer/committee and provider personnel, many of which focus on formal processes and are more costly to implement (*e.g.*, hotlines and e-mail). However, the OIG recognizes that the nature of some physician practices is not as conducive to implementing these types of measures. The nature of a small physician practice dictates that such communication and information exchanges need to be conducted through a less formalized process than that which has been envisioned by prior OIG guidance.

In the small physician practice setting, the communication element can be met by implementing a clear "open door" policy between the physicians and compliance personnel and practice employees. This policy can be implemented in conjunction with less formal communication techniques, such as conspicuous notices posted in common areas and/or the development and placement of a compliance bulletin board where everyone in the practice can go for up-to-date compliance information.[43]

A compliance program's system for effective communication should include the following:

- The requirement that employees report conduct that a reasonable person would, in good faith, believe to be fraudulent or erroneous;
- Creation of a user-friendly process, such as an anonymous drop box, for effectively reporting fraudulent or erroneous conduct;
- Provisions in the policies and procedures that state that a failure to report fraudulent or erroneous conduct is a violation of the compliance program;
- Development of a simple and readily accessible procedure to process reports of fraudulent or erroneous conduct;
- Utilization of a process that maintains the confidentiality of the persons involved in the alleged fraudulent or erroneous conduct and the person making the allegation; and
- Provisions in the policies and procedures that there will be no retribution for reporting conduct that a reasonable person acting in good faith would have believed to be fraudulent or erroneous.

The OIG recognizes that protecting anonymity may be infeasible for small physician practices. However, the OIG believes all practice employees, when seeking answers to questions or reporting potential instances of fraudulent or erroneous conduct, should know to whom to turn for assistance in these matters and should be able to do so without fear of retribution. While the physician practice should always strive to maintain the confidentiality of an employee's identity, it should also make clear that there may be a point at which the individual's identity may become known or may have to be revealed in certain instances.

F. Auditing and Monitoring

An ongoing evaluation process is important to a successful compliance program. This ongoing evaluation should include not only whether the practice's standards and procedures are in fact current and accurate, but also whether or not the compliance program is effective, *i.e.*, whether individuals are properly carrying out their responsibilities and claims are submitted appropriately.

1. Policies and Procedures

It is recommended that the individual(s) in charge of the compliance program also be charged with the responsibility of periodically reviewing the policies and procedures to see if they are current and complete. If the policies and procedures are found to be ineffective or outdated, they should be updated to reflect changes in CPT codes and Government regulations.

2. Claims Submission Audit

In addition to the policies and procedures themselves, bills and medical records should be reviewed for compliance with applicable coding, billing and documentation requirements. The people involved in these self-audits should include the person in charge of billing compliance and a medically trained person (*e.g.*, registered nurse or preferably a physician (physicians can rotate in this position)). Each practice needs to decide for itself whether to review claims retrospectively or concurrently with the claims submission. In the Third-Party Medical Billing Compliance Program Guidance,[44] the OIG recommended that a baseline, or "snapshot," be used as part of the benchmarking analysis that would enable a practice to judge its progress in reducing or eliminating potential areas of vulnerability.

The practice's self-audits should be used to determine whether:

1. Bills are accurately coded and accurately reflect the services provided;
- Services or items provided are reasonable and necessary;
- Any incentives for unnecessary services exist; and
- Medical records contain sufficient documentation to support the charge.

A baseline audit should examine the claim development and submission process, from patient intake through claim submission and payment, and identify elements within this process that may contribute to non-compliance or that may need to be the focus for improving execution.[45] This audit should establish a consistent methodology for selecting and examining records, and this methodology should serve as a basis for future audits. It should be conducted based on claims submitted during the initial three months after implementation of the education and training program so as to give the physician practice a benchmark against which to measure future compliance effectiveness.

Following the baseline audit, periodic audits could be conducted at least once each year to ensure that the compliance program is being followed. A randomly selected number of medical records could be reviewed to ensure that the coding was performed accurately. Although there is no set formula to how many medical records should be reviewed, a basic guide is two to five medical records per payer, or five to ten medical records per physician. Of course, the larger the sample size, the greater the confidence in the results. If problems are identified, focused review should be conducted on a more frequent basis. When audit results reveal areas needing additional information or education of employees and physicians, these areas should be incorporated into the training and educational system.

Periodic audits could include the following:

- A valid sample of the practice's top ten denials, or the practice's top ten services provided;
- Confirmation that the physician practice has been using specific codes, as some codes are too general for "reasonable and necessary" purposes;
- A check for data entry errors;
- Confirmation that all orders are written and signed by a physician;
- A check for reasonable and necessary services performed;
- Confirmation that all tests ordered by the physician(s) were actually performed and documented and that only those tests were billed; and
- A review of assignment codes and modifiers to the claims.

One of the most important elements of a successful billing compliance program is appropriate action when the physician practice identifies a problem in its internal audit. This action should be taken as soon as possible, but it is recommended that the action be taken within 60 days from the date the problem is identified. The specific action a physician practice takes should depend on the circumstances of the situation it has identified. In some cases, the action can be as simple as generating a repayment to Medicare or the appropriate payer. Alternatively, the repayment could be effectuated through offsets to other billings, such as undercodings. In others, the physician practice may want to seek legal advice and/or consult with a coding/billing expert to determine the next best course of action. There is no boilerplate solution to how to handle problems that are identified.

It is important that the physician practice monitor its billing program to ensure claims are correctly submitted. If a physician practice identifies, through its internal audits, what it believes is a potential problem, there should be sufficient confidence in the compliance procedures developed by the physician practice to reasonably believe that the problem is in fact a potential issue. Steps should be taken to remedy the situation immediately.

All physician practices should create a system to address how they will respond to and report potential problems. In addition, preserving information relating to identification of the problem is as important as preserving information that tracks the physician practice's reaction to, and solution for, the issue.

G. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

An effective physician practice compliance program includes procedures for enforcing and disciplining individuals who violate the practice's compliance standards. Enforcement and disciplinary provisions are necessary to put teeth into a compliance program.

A physician practice's enforcement and disciplinary mechanisms should ensure that violations of the practice's compliance policies will result in consistent and appropriate sanctions, including the possibility of termination, against the offending individual. At the same time, the practice's enforcement and disciplinary procedures should be flexible enough to account for mitigating or aggravating circumstances. The program should also stipulate that individuals who fail to detect or report violations of the compliance program may also be subject to discipline. Disciplinary actions could include: warnings (oral); reprimands (written); probation; demotion; temporary suspension; discharge of employment; restitution of damages; and referral for criminal prosecution. Inclusion of disciplinary guidelines in in-house training and procedure manuals is sufficient to meet the "well publicized" standard of this element.

Any communication resulting in the finding of non-compliant conduct should be documented in the compliance files by including the date of incident, name of the reporting party, name of the person responsible for taking action, and the follow-up action taken. Physician practices should also conduct checks to make sure all current and potential practice employees are not listed on the OIG or GSA lists of individuals excluded from participation in Federal health care or Government procurement programs.[46]

H. Responding to Detected Offenses and Developing Corrective Action Initiatives

Violations of a physician practice's compliance program, significant failures to comply with applicable Federal or State law, and other types of misconduct threaten a practice's status as a reliable, honest, and trustworthy provider of health care. Fraudulent or erroneous conduct that has been detected, but not corrected, can seriously endanger the reputation and legal status of the practice. Consequently, upon receipt of reports or reasonable indications of suspected noncompliance, it is important that the compliance officer or other practice employee investigate the allegations to determine whether a material violation of applicable law or the requirements of the compliance program has occurred, and, if so, take decisive steps to correct the problem.[47] As appropriate, such steps may include a corrective action plan,[48] the return of any overpayments, a report to the Government, [49] and/or a referral to law enforcement authorities.

There are several key warning signs of when a compliance program is not working well, *e.g.*, high rates of rejected and/or suspended claims and the placement of a practice on pre-payment review by the carrier. These warning signs should be followed up on immediately and the compliance procedures of the practice changed to prevent the problem from recurring.

As previously stated, the physician practice should take appropriate corrective action, including prompt identification of any overpayment to the affected payer. A knowing and willful failure to disclose overpayments within a reasonable period of time could be interpreted as an attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the physician practice, as well as any individual who may have been

[42] Currently, the OIG is monitoring a significant number of corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one hour annually for basic training in compliance areas. Additional training is required for specialty fields such as claims development and billing.

[43] In addition to whatever other method of communication is being utilized, practices should post in a prominent area the HHS–OIG Hotline telephone number (1–800–HHS–TIPS). See Appendix D for additional information.

[44] Available on the OIG website at http://www.hhs.gov/oig.

[45] See Appendix D.II. referencing the Provider Self-Disclosure Protocol for information on how to conduct a baseline audit.

[46] See Footnote 37 for information on how to access these lists.

[47] Instances of noncompliance must be determined on a case-by-case basis. The existence or amount of a monetary loss to a health care program is not solely determinative of whether the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss, but corrective actions are still necessary to protect the integrity of the applicable program and its beneficiaries, *e.g.*, where services required by a plan of care are not provided.

[48] The physician practice may seek advice from its legal counsel to determine the extent of the practice's liability and to plan the appropriate course of action.

[49] The OIG has established a Provider Self-Disclosure Protocol that encourages providers to voluntarily report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems, and work with the Government to resolve these matters. The Provider Self-Disclosure Protocol can be located on the OIG's website at: www.hhs.gov/oig. See Appendix D for further information on the Provider Self-Disclosure Protocol.

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involved.[50] For this reason, physician practice compliance programs should emphasize that overpayments should be promptly disclosed and returned to the entity that made the erroneous payment.

After an offense has been detected, a physician or group practice should take all reasonable steps to respond to the offense and to prevent similar offenses. The compliance program should provide for a full internal investigation of all reports of detected violations. The goodwill that physicians generate by developing an effective compliance program will quickly dissipate if the physician ignores reports of possible fraudulent activity.

The compliance program procedures should include provisions to ensure that a violation is not compounded once discovered. The individuals involved in the violation should either be retrained, or, if appropriate, terminated. The physician practice may also prevent the compounding of the violation by conducting a review of all confirmed violations, and, if appropriate, self-reporting the violations to the applicable authority. This should be done within 90 days of the discovery of a violation.

The physician practice should recognize that if a violation occurred and was not immediately detected, its compliance program may require modification. Physicians who detect violations should analyze the situation to determine whether a flaw in their compliance program failed to anticipate the detected problem, or whether the compliance program's procedures failed to prevent the violation. In any event, it is prudent, even absent the detection of any violations, for physician practices to periodically review and modify their compliance programs.[51]

III. Conclusion

Just as immunizations are given to patients to prevent them from becoming ill, physician practices should view the implementation of an effective compliance program as comparable to a form of preventive medicine to protect against fraudulent or erroneous conduct. This compliance program guidance is intended to assist physician practices in developing and implementing internal controls and procedures that promote adherence to Federal health care program and private insurance program requirements. By implementing an effective compliance program, physician practices can help prevent and reduce fraudulent or erroneous conduct in their practices, as well as furthering their mission to provide quality care to their patients.

Dated: June 6, 2000.

Michael F. Mangano,

Principal Deputy Inspector General.

Appendix A: Additional Risk Areas

I. Reasonable and Necessary Services

A. Local Medical Review Policy

An area of concern relating to determinations of reasonable and necessary services is the variation in local medical review policies (LMRPs) among carriers. Physicians are supposed to bill the Federal health care programs only for items and services that are reasonable and necessary. However, in order to determine whether an item or service is reasonable and necessary under Medicare guidelines, the physician must apply the appropriate LMRP.[1]

Physician practices are to bill the Federal health programs only for items and services that are covered. In order to determine if an item or service is covered for Medicare, physician practices must be knowledgeable of the LMRPs applicable to their practices jurisdiction. When the LMRP indicates that an item or service may not be covered by Medicare, the physician practice is responsible to convey this information to the patient so that the patient can make an informed decision concerning the health care services he/she may want to receive. Physician practices convey this information through Advanced Beneficiary Notices (ABNs).

B. Advanced Beneficiary Notices

Physicians are required to provide ABNs before they provide services that they know or believe Medicare does not consider reasonable and necessary. A properly executed ABN acknowledges that coverage is uncertain or yet to be determined, and stipulates that the patient promises to pay the bill if Medicare does not. Patients who are not notified before they receive such services are not responsible for payment. The ABN must be sufficient to put the patient on notice of the reasons why the physician believes that the payment may be denied. The objective is to give the patient sufficient information to allow an informed choice as to whether to pay for the service.

Accordingly, each ABN should:

1. Be in writing;
2. Identify the specific service that may be denied (procedure name and CPT/HCPC code is recommended);
3. State the specific reason why the physician believes that service may be denied; and
4. Be signed by the patient acknowledging that the required information was provided and that the patient assumes responsibility to pay for the service.

The *Medicare Carrier's Manual*[2] provides that an ABN will not be acceptable if: (1) The patient is asked to sign a blank ABN form; and (2) the ABN is used routinely without regard to a particularized need. The routine use of ABNs is generally prohibited because the ABN must state the specific reason the physician anticipates that the specific service will not be covered.

A common risk area associated with ABNs is in regard to diagnostic tests or services. There are four steps that a physician practice can take to help ensure it is in compliance with the regulations concerning ABNs for diagnostic tests or services:

1. Determine which tests are not covered under national coverage rules;
2. Determine which tests are not covered under local coverage rules such as LMRPs (contact the practice's carrier to see if a listing has been assembled); and
3. Determine which tests are only covered for certain diagnoses.

The OIG is aware that the use of ABNs is an area where physician practices experience numerous difficulties. Practices can help to reduce problems in this area by educating their physicians on the correct use of ABNs, obtaining guidance from the carrier regarding their interpretation of whether an ABN is necessary where the service is not covered, developing a standard form for all diagnostic tests (most carriers have a developed model), and developing a process for handling patients who refuse to sign ABNs.

C. Physician Liability for Certifications in the Provision of Medical Equipment and Supplies and Home Health Services

In January 1999, the OIG issued a Special Fraud Alert on this topic, which is available on the OIG website at www.hhs.gov/oig/frdalrt/index.htm. The following is a summary of the Special Fraud Alert.

The OIG issued the Special Fraud Alert to reiterate to physicians the legal and programmatic significance of physician certifications made in connection with the ordering of certain items and services for Medicare patients. In light of information obtained through OIG provider audits, the OIG deemed it necessary to remind physicians that they may be subject to criminal, civil, and administrative penalties for signing a certification when they know that the information is false or for signing a certification with reckless disregard as to the truth of the information. (See Appendix B and Appendix C for more detailed information on the applicable statutes).

Medicare has conditioned payment for many items and services on a certification signed by a physician attesting that the physician has reviewed the patient's condition and has determined that an item or service is reasonable and necessary. Because Medicare primarily relies on the professional judgment of the treating physician to determine the reasonable and necessary nature of a given service or supply, it is important that physicians provide complete and accurate information on any certifications they sign. Physician certification is obtained through a variety of forms, including prescriptions, orders, and Certificates of Medical Necessity (CMNs). Two areas where physician certification as to whether an item or service is reasonable and necessary is essential and which can result in fraudulent or erroneous conduct are: (1) home health services; and (2) durable medical equipment.

By signing a CMN, the physician represents that:

1. He or she is the patient's treating physician and that the information regarding the physician's address and unique physician identification number (UPN) is correct;
2. The entire CMN, including the sections filled out by the supplier, was completed *prior* to the physician's signature; and
3. The information in section B relating to whether the item or service is reasonable and necessary is true, accurate, and complete to the best of the physician's knowledge.

Activities such as signing blank CMNs, signing CMNs without seeing the patient to verify the item or service is reasonable and necessary, and signing a CMN for a service that the physician knows is not reasonable and necessary are activities that can lead to criminal, civil and administrative penalties.

Ultimately, physicians should be sure to carefully review any form of certification (order, prescription or CMN) before signing it to verify that the information contained in the certification is both complete and accurate.

D. Billing for Non-Covered-Services as If Covered

In some instances, we are aware that physician practices submit claims for services in order to receive a denial from the carrier, thereby enabling the patient to submit the denied claim for payment to a secondary payer.

A common question relating to this risk is: If the medical services provided are not covered under Medicare, but the secondary or supplemental insurer requires a Medicare rejection in order to cover the services, then would the original submission of the claim to Medicare be considered fraudulent? Under the applicable regulations, the OIG would not consider such submissions to be fraudulent. For example, the denial may be necessary to establish patient liability protections as stated in section 1879 of the Social Security Act (the Act) (codified at 42 U.S.C. 1395pp). As stated, Medicare denials may also be required so that the patient can seek payment from a secondary insurer. In instances where a claim is being submitted to Medicare for this purpose, the physician should indicate on the claim submission that the claim is being submitted for the purpose of receiving a denial, in order to bill a secondary insurance carrier. This step should assist carriers and prevent inadvertent payments to which the physician is not entitled. In some instances, however, the carrier pays the claim even though the service is non-covered, and even though the physician did not intend for payment to be made. When this occurs, the physician has a responsibility to refund the amount paid and indicate that the service is not covered.

II. Physician Relationships With Hospitals

A. The Physician Role in the Patient Anti-Dumping Statute

The Patient Anti-Dumping Statute, 42 U.S.C. 1395dd, is an area that has been receiving increasing scrutiny. The statute is intended to ensure that all patients who come to the emergency department of a hospital receive care, regardless of their insurance or ability to pay. Both hospitals and physicians need to work together to ensure compliance with the provisions of this law.

The statute imposes three fundamental requirements upon hospitals that participate in the Medicare program with regard to patients requesting emergency care. First, the hospital must conduct an appropriate medical screening examination to determine if an emergency medical condition exists.[3] Second, if the hospital determines that an emergency medical condition exists, it must either provide the treatment necessary to stabilize the emergency medical condition or comply with the statute's requirements to effect a proper transfer of a patient whose condition has not been stabilized.[4] A hospital is considered to have met this second requirement if an individual refuses the hospital's offer of additional examination or treatment, or refuses to consent to a transfer, after having been informed of the risks and benefits.[5]

If an individual's emergency medical condition has not been stabilized, the statute's third requirement is activated. A hospital may not transfer an individual with an unstable emergency medical condition unless: (1) The individual or his or her representative makes a written request for transfer to another medical facility after being informed of the risk of transfer and the transferring hospital's obligation under the statute to provide additional examination or treatment; (2) a physician has signed a certification summarizing the medical risks and benefits of a transfer and certifying that, based upon the information available at the time of transfer, the medical benefits reasonably expected from the transfer outweigh the increased risks; or (3) if a physician is not physically present when the transfer decision is made, a qualified medical person signs the certification after the physician, in consultation with the qualified medical person, has made the determination that the benefits of transfer outweigh the increased risks. The physician must later countersign the certification.[6]

Physician and/or hospital misconduct may result in violations of the statute.[7] One area of particular concern is physician on-call responsibilities. Physician practices whose members serve as on-call emergency room physicians with hospitals should make sure they are familiar with the hospital's policies regarding on-call physicians. This can be done by reviewing the medical staff bylaws or policies and procedures of the hospital that must define the responsibility of on-call physicians to respond to, examine, and treat patients with emergency medical conditions. Physicians should also be aware that, in most cases, on-call physicians must come to the hospital to examine the patient when a request is made for their services. If, however, their offices are located in a hospital-owned facility on contiguous land or on the hospital campus, the patient may be seen in the physician's office.

B. Teaching Physicians

Special regulations apply to teaching physicians' billings. Regulations provide that services provided by teaching physicians in teaching settings are payable under the physician fee schedule only if the services are personally furnished by a physician who is not a resident or the services are furnished by a resident in the presence of a teaching physician.[8]

The teaching physician must be present during the key portion of any service or procedure for which payment is sought.[9] Physicians should ensure the following with respect to services provided in the teaching physician setting:[10]

1. Only services actually provided are billed;
2. Every physician who provides or supervises the provision of services to a patient is responsible for the correct documentation of the services that were rendered;
3. Every physician is responsible for assuring that in cases where the physician provides evaluation and management (E and M) services, a patient's medical record includes appropriate documentation of the applicable key components of the E and M services provided or supervised by the physician (*e.g.*, patient history, physician examination, and medical decision making), as well as documentation to adequately reflect the procedure or portion of the services provided by the physician; and
4. Every physician must document his or her presence during the key portion of any service or procedure for which payment is sought.

C. Gainsharing Arrangements and Civil Monetary Penalties for Hospital Payments to Physicians To Reduce or Limit Services to Beneficiaries

In July 1999, the OIG issued a Special Fraud Alert on this topic, which is available on the OIG website at www.hhs.gov/oig/frdalrt/index.htm. The following is a summary of the Special Fraud Alert.

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[50] See 42 U.S.C. 1320a–7b(a)(3) and 18 U.S.C. 669.

[51] Previous OIG Compliance Program Guidance have set forth criteria for assessing the effectiveness of a compliance program. See Footnote 3 for a listing of previous Compliance Program Guidance and information on how to access them.

[1] HCFA has recently developed a website which, when completed by the end of the year 2000, will contain the LMRPs for each of the contractors across the country. The website can be accessed at http://www.lmrp.net.

[2] The relevant manual provisions are located at *MCM*, Part III, §§ 7300, 7320. This section of the manual also includes the carrier's recommended form of an ABN.

[3] See 42 U.S.C. 1395dd(a).

[4] See 42 U.S.C. 1395dd(b)(1).

[5] See 42 U.S.C. 1395dd(b)(2)–(3).

[6] See 42 U.S.C. 1395dd(c)(1)(A).

[7] Hospitals and physicians, including on-call physicians, who violate the statute may face stiff penalties. Those penalties include civil fines of up to $50,000 (or not more than $25,000 in the case of a hospital with less than 100 beds) per violation and exclusion of a physician from participation in the Federal health care programs.

[8] 42 CFR 415.150-.190.

[9] *Id.*

[10] This section is not intended to be and is not a complete reference for teaching physicians. It is strongly recommended that those physicians who practice in a teaching setting consult their respective hospitals for more guidance.

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The term "gainsharing" typically refers to an arrangement in which a hospital gives a physician a percentage share of any reduction in the hospital's costs for patient care attributable in part to the physician's efforts. The civil monetary penalty (CMP) that applies to gainsharing arrangements is set forth in 42 U.S.C. 1320a–7a(b)(1). This section prohibits any hospital or critical access hospital from knowingly making a payment directly or indirectly to a physician as an inducement to reduce or limit services to Medicare or Medicaid beneficiaries under a physician's care.

It is the OIG's position that the CMP law clearly prohibits any gainsharing arrangements that involve payments by or on behalf of a hospital to physicians with clinical care responsibilities, directly or indirectly, to induce a reduction or limitation of services to Medicare or Medicaid patients. However, hospitals and physicians are not prohibited from working together to reduce unnecessary hospital costs through other arrangements. For example, hospitals and physicians may enter into personal services contracts where hospitals pay physicians based on a fixed fee at fair market value for services rendered to reduce costs rather than a fee based on a share of cost savings.

III. Physician Billing Practices

A. Third-Party Billing Services

Physicians should remember that they remain responsible to the Medicare program for bills sent in the physician's name or containing the physician's signature, even if the physician had no actual knowledge of a billing impropriety. The attestation on the HCFA 1500 form, *i.e.*, the physician's signature line, states that the physician's service were billed properly. In other words, it is no defense for the physician if the physician's billing service improperly bills Medicare.

One of the most common risk areas involving billing services deals with physician practices contracting with billing services on a percentage basis. Although percentage based billing arrangements are not illegal per se, the Office of Inspector General has a longstanding concern that such arrangements may increase the risk of intentional upcoding and similar abusive billing practices.[11]

A physician may contract with a billing service on a percentage basis. However, the billing service cannot directly receive Medicare payments made to the physician. Under 42 U.S.C. 1395u(b)(6), Medicare payments can only be made to either the beneficiary or a party (such as a physician) that furnished the services and accepted assignment of the beneficiary's claim. A billing service that contracts on a percentage basis does not qualify as a party that furnished services to a beneficiary, thus a billing service cannot directly receive Medicare payments. According to the *Medicare Carriers Manual* § 3060(A), a payment is considered to be made directly to the billing service if the service can convert the payment to its own use and control without the payment first passing through the control of the physician. For example, the billing service cannot bill the claims under its own name or tax identification number. The billing service must bill claims under the physician's name and tax identification number. Nor can a billing service have the Medicare payments sent directly to its office or its bank account. The Medicare payments should instead be sent to the physician's office or bank account.

Physician practices should review the third-party medical billing guidance for additional information on third-party billing companies and the compliance risk areas associated with billing companies.

B. Billing Practices by Non-Participating Physicians

Even though nonparticipating physicians do not accept payment directly from the Medicare program, there are a number of laws that apply to the billing of Medicare beneficiaries by non-participating physicians.

Limiting Charges

42 U.S.C. 1395w–4(g) prohibits a nonparticipating physician from knowingly and willfully billing or collecting on a repeated basis an actual charge for a service that is in excess of the Medicare limiting charge. For example, a nonparticipating physician may not bill a Medicare beneficiary $50 for an office visit when the Medicare limiting charge for the visit is $25. Additionally, there are numerous provisions that prohibit nonparticipating physicians from knowingly and willfully charging patients in excess of the statutory charge limitations for certain specified procedures, such as cataract surgery, mammography screening, and coronary artery bypass surgery. Physicians who fail to comply with these sections may be fined up to $10,000 per violation or be excluded from participation in Federal health care programs for up to five years.

Refund of Excess Charges

42 U.S.C. 1395w–4(g) mandates that if a nonparticipating physician collects an actual charge for a service that is in excess of the limiting charge, the physician must refund the amount collected above the limiting charge to the individual within 30 days notice of the violation. For example, if a physician collected $50 from a Medicare beneficiary for an office visit, but the limiting charge for the visit was $25, the physician must refund $25 to the beneficiary, which is the difference between the amount collected ($50) and the limiting charge ($25). Physicians who fail to comply may be fined up to $10,000 per violation or be excluded from participation in Federal health care programs for up to 5 years.

42 U.S.C. 1395u(l)(A)(iii) mandates that a nonparticipating physician must refund payments received from a Medicare beneficiary if it is later determined by a Peer Review Organization or a Medicare carrier that the services were not reasonable and necessary. Physicians who fail to refund the payments may be fined up to $10,000 per violation or be excluded from participation in Federal health care programs for up to 5 years.

C. Professional Courtesy

The term "professional courtesy" is used to describe a number of analytically different practices. The traditional definition is the practice by a physician of waiving all, or a part, of the fee for services provided to the physician's office staff, other physicians, and/or their families. In recent times, "professional courtesy" has come to also mean the waiver of coinsurance obligations or other out-of-pocket expenses for physicians or their families (*i.e.*, "insurance only" billing), and similar payment arrangements by hospitals or other institutions for services provided to their medical staffs or employees. While only the first of these practices is truly "professional courtesy," in the interests of clarity and completeness, we will address all three.

In general, whether a professional courtesy arrangement runs afoul of the fraud and abuse laws is determined by two factors: (i) how the recipients of the professional courtesy are selected; and (ii) how the professional courtesy is extended. If recipients are selected in a manner that directly or indirectly takes into account their ability to affect past or future referrals, the anti-kickback statute—which prohibits giving anything of value to generate Federal health care program business—may be implicated. If the professional courtesy is extended through a waiver of copayment obligations (*i.e.*, "insurance only" billing), other statutes may be implicated, including the prohibition of inducements to beneficiaries, section 1128A(a)(5) of the Act (codified at 42 U.S.C. 1320a–7a(a)(5)). Claims submitted as a result of either practice may also implicate the civil False Claims Act.

The following are general observations about professional courtesy arrangements that physician practices should consider:

- A physician's regular and consistent practice of extending professional courtesy by waiving the entire fee for services rendered to a group of persons (including employees, physicians, and/or their family members) may not implicate any of the OIG's fraud and abuse authorities so long as membership in the group receiving the courtesy is determined in a manner that does not take into account directly or indirectly any group member's ability to refer to, or otherwise generate Federal health care program business for, the physician.
- A non-referring physician's regular and consistent practice of extending professional courtesy by waiving otherwise applicable copayments for services rendered to physicians, referring and non-referring alike, their employees and family members, would not implicate the anti-kickback statute so long as membership in the group is determined in a manner that does not take into account directly or indirectly any group member's ability to refer to, or otherwise generate Federal health care program business for, the physician.
- Any waiver of copayment practice, including that described in the preceding bullet, does implicate section 1128A(a)(5) of the Act if the patient for whom the copayment is waived is a Federal health care program beneficiary who is not financially needy.

The legality of particular professional courtesy arrangements will turn on the specific facts presented, and, with respect to the anti-kickback statute, on the specific intent of the parties. Physicians who are concerned that their particular practices may run afoul of the Federal fraud and abuse laws may request an OIG advisory opinion pursuant to regulations at 42 CFR Part 1008 (See Appendix D for further detail), except for matters pertaining to the physician self-referral law, which are addressed by HCFA.

IV. Other Risk Areas

A. Rental of Space in Physician Offices by Persons or Entities to Which Physicians Refer

In February 2000, the OIG issued a Special Fraud Alert on this topic, which is available on the OIG website at www.hhs.gov/oig/frdalrt/index.htm. The following is a summary of the Special Fraud Alert.

Among various relationships between physicians and labs, hospitals, home health agencies, etc., the OIG has identified potentially illegal practices involving the rental of space in a physician's office by suppliers that provide items or services to patients who are referred or sent to the supplier by the physician-landlord. An example of a suspect arrangement is the rental of physician office space by a durable medical equipment (DME) supplier in a position to benefit from referrals of the physician's patients. The OIG is concerned that in such arrangements the rental payments may be disguised kickbacks to the physician-landlord to induce referrals.

Space Rental Safe Harbor to the Anti-Kickback Statute

To avoid potentially violating the anti-kickback Statute, the OIG recommends that rental agreements should comply with *all* of the following criteria for the space rental safe harbor:

- The agreement is set out in writing and signed by the parties.
- The agreement covers all of the space rented by the parties for the term of the agreement and specifies the space covered by the agreement.
- If the agreement is intended to provide the lessee with access to the space for periodic intervals of time rather than on a full-time basis for the term of the rental agreement, the rental agreement specifies exactly the schedule of such intervals, the precise length of each interval, and the exact rent for each interval.
- The term of the rental agreement is for not less than one year.
- The aggregate rental charge is set in advance, is consistent with fair market value, and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.
- The aggregate space rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental.

B. Unlawful Advertising

42 U.S.C. 1320b–10 makes it unlawful for any person to advertise using the names, abbreviations, symbols, or emblems of the Social Security Administration, Health Care Financing Administration, Department of Health and Human Services, Medicare, Medicaid or any combination or variation of such words, abbreviations, symbols or emblems in a manner that such person knows or should know would convey the false impression that the advertised item is endorsed by the named entities. For instance, a physician may not place an ad in the newspaper that reads "Dr. X is a cardiologist approved by both the Medicare and Medicaid programs." A violation of this section may result in a penalty of up to $5,000 ($25,000 in the case of a broadcast or telecast) for each violation.

Appendix B: Criminal Statutes

This Appendix contains a description of criminal statutes related to fraud and abuse in the context of health care. The Appendix is not intended to be a compilation of all Federal statutes related to health care fraud and abuse. It is merely a summary of some of the more frequently cited Federal statutes.

I. Health Care Fraud (18 U.S.C. 1347)

Description of Unlawful Conduct

It is a crime to knowingly and willfully execute (or attempt to execute) a scheme to defraud any health care benefit program, or to obtain money or property from a health care benefit program through false representations. Note that this law applies not only to Federal health care programs, but to most other types of health care benefit programs as well.

Penalty for Unlawful Conduct

The penalty may include the imposition of fines, imprisonment of up to 10 years, or both. If the violation results in serious bodily injury, the prison term may be increased to a maximum of 20 years. If the violation results in death, the prison term may be expanded to include any number of years, or life imprisonment.

Examples

1. Dr. X, a chiropractor, intentionally billed Medicare for physical therapy and chiropractic treatments that he knew were never rendered.

2. Dr. X, a psychiatrist, billed Medicare, Medicaid, CHAMPUS, and private insurers for psychiatric services that were provided by his nurses rather than himself.

II. Theft or Embezzlement in Connection With Health Care (18 U.S.C. 669)

Description of Unlawful Conduct

It is a crime to knowingly and willfully embezzle, steal or intentionally misapply any of the assets of a health care benefit program. Note that this law applies not only to Federal health care programs, but to most other types of health care benefit programs as well.

Penalty for Unlawful Conduct

The penalty may include the imposition of a fine, imprisonment of up to 10 years, or both. If the value of the asset is $100 or less, the penalty is a fine, imprisonment of up to a year, or both.

Example

An office manager for Dr. X knowingly embezzles money from the bank account for Dr. X's practice. The bank account includes reimbursement received from the Medicare program; thus, intentional embezzlement of funds from this account is a violation of the law.

III. False Statements Relating to Health Care Matters (18 U.S.C. 1035)

Description of Unlawful Conduct

It is a crime to knowingly and willfully falsify or conceal a material fact, or make any materially false statement or use any materially false writing or document in connection with the delivery of or payment for health care benefits, items or services. Note that this law applies not only to Federal health care programs, but to most other types of health care benefit programs as well.

Penalty for Unlawful Conduct

The penalty may include the imposition of a fine, imprisonment of up to 5 years, or both.

Example

Dr. X certified on a claim form that he performed laser surgery on a Medicare beneficiary when he knew that the surgery was not actually performed on the patient.

IV. Obstruction of Criminal Investigations of Health Care Offenses (18 U.S.C. 1518)

Description of Unlawful Conduct

It is a crime to willfully prevent, obstruct, mislead, delay or attempt to prevent, obstruct, mislead, or delay the communication of records relating to a Federal health care offense to a criminal investigator. Note that this law applies not only to Federal health care programs, but to most other types of health care benefit programs as well.

Penalty for Unlawful Conduct

The penalty may include the imposition of a fine, imprisonment of up to 5 years, or both.

Examples

1. Dr. X instructs his employees to tell OIG investigators that Dr. X personally performs all treatments when, in fact, medical technicians do the majority of the treatment and Dr. X is rarely present in the office.

2. Dr. X was under investigation by the FBI for reported fraudulent billings. Dr. X altered patient records in an attempt to cover up the improprieties.

V. Mail and Wire Fraud (18 U.S.C. 1341, 1343)

Description of Unlawful Conduct

It is a crime to use the mail, private courier, or wire service to conduct a scheme to defraud another of money or property. The term "wire services" includes the use of a telephone, fax machine or computer. Each use of a mail or wire service to further fraudulent activities is considered a separate

[11] This concern is noted in Advisory Opinion No. 98–4 and also the Office of Inspector General Compliance Program Guidance for Third-Party Medical Billing Companies. Both are available on the OIG website at http://www.hhs.gov/oig.

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crime. For instance, each fraudulent claim that is submitted electronically to a carrier would be considered a separate violation of the law.

Penalty for Unlawful Conduct

The penalty may include the imposition of a fine, imprisonment of up to 5 years, or both.

Examples

1. Dr. X electronically submits claims to the Medicare fiscal intermediary via his computer for office visits that he did not actually provide to Medicare beneficiaries.

2. Dr. X, a neurologist, knowingly submitted claims for tests that were not reasonable and necessary and intentionally upcoded office visits and Electromyograms to Medicare.

VI. Criminal Penalties for Acts Involving Federal Health Care Programs (42 U.S.C. 1320a–7b)

Description of Unlawful Conduct

False Statements and Representations

It is a crime to knowingly and willfully:

- Make, or cause to be made, false statements or representations in applying or benefits or payments under all Federal health care programs;
- Make, or cause to be made, any false statement or representation for use in determining rights to such benefit or payment;
- Conceal any event affecting an individual's initial or continued right to receive a benefit or payment with the intent to fraudulently receive the benefit or payment either in an amount or quantity greater than that which is due or authorized;
- Convert a benefit or payment to a use other than for the use and benefit of the person for whom it was intended;
- Present, or cause to be presented, a claim for a physician's service when the service was not furnished by a licensed physician;
- For a fee, counsel an individual to dispose of assets in order to become eligible for medical assistance under a State health program, if disposing of the assets results in the imposition of an ineligibility period for the individual.

Anti-Kickback Statute

It is a crime to knowingly and willfully solicit, receive, offer, or pay remuneration of any kind (*e.g.*, money, goods, services):

- For the referral of an individual to another for the purpose of supplying items or services that are covered by a Federal health care program; or
- For purchasing, leasing, ordering, or arranging for any good, facility, service, or item that is covered by a Federal health care program.

There are a number of limited exceptions to the law, also known as "safe harbors," which provide immunity from criminal prosecution and which are described in greater detail in the statute and related regulations (found at 42 CFR 1001.952 and at www.hhs.gov/oig/ak/index.htm#OIG Safe Harbor Regulations). Current safe harbors include:

- Investment interests;
- Space rental;
- Equipment rental;
- Personal services and management contracts;
- Sale of practice;
- Referral services;
- Warranties;
- Discounts;
- Employment relationships;
- Waiver of Part A co-insurance and deductible amounts;
- Group purchasing organizations;
- Increased coverage or reduced cost sharing under a risk-basis or prepaid plan; and
- Charge reduction agreements with health plans.

Penalty for Unlawful Conduct

The penalty may include the imposition of a fine of up to $25,000, imprisonment of up to 5 years, or both. In addition, the provider can be excluded from participation in Federal health care programs. The regulations defining the aggravating and mitigating circumstances that must be reviewed by the OIG in making an exclusion determination are set forth in 42 CFR Part 1001.

Examples

1. Dr. X accepted payments to sign Certificates of Medical Necessity for durable medical equipment for patients she never examined.

2. Home Health Agency disguises referral fees as salaries by paying referring physician Dr. X for services Dr. X never rendered to Medicare beneficiaries or by paying Dr. X a sum in excess of fair market value for the services he rendered to Medicare beneficiaries.

Appendix C: Civil and Administrative Statutes

This Appendix contains a description of civil and administrative statutes related to fraud and abuse in the context of health care. The Appendix is not intended to be a compilation of all Federal statutes related to health care fraud and abuse. It is merely a summary of some of the more frequently cited Federal statutes.

I. The False Claims Act (31 U.S.C. 3729–3733)

Description of Unlawful Conduct

This is the law most often used to bring a case against a health care provider for the submission of false claims to a Federal health care program. The False Claims Act prohibits knowingly presenting (or causing to be presented) to the Federal Government a false or fraudulent claim for payment or approval. Additionally, it prohibits knowingly making or using (or causing to be made or used) a false record or statement to get a false or fraudulent claim paid or approved by the Federal Government or it agents, like a carrier, other claims processor, or state Medicaid program.

Definitions

False Claim—A false claim is a claim for payment for services or supplies that were not provided specifically as presented or for which the provider is otherwise not entitled to payment. Examples of false claims for services or supplies that were not provided specifically as presented include, but are not limited to:

- A claim for a service or supply that was never provided.
- A claim indicating the service was provided for some diagnosis code other than the true diagnosis code in order to obtain reimbursement for the service (which would not be covered if the true diagnosis code were submitted).
- A claim indicating a higher level of service than was actually provided.
- A claim for a service that the provider knows is not reasonable and necessary.
- A claim for services provided by an unlicensed individual.

Knowingly—To "knowingly" present a false or fraudulent claim means that the provider: (1) has actual knowledge that the information on the claim is false; (2) acts in deliberate ignorance of the truth or falsity of the information on the claim; or (3) acts in reckless disregard of the truth or falsity of the information on the claim. It is important to note the provider does not have to deliberately intend to defraud the Federal Government in order to be found liable under this Act. The provider need only "knowingly" present a false or fraudulent claim in the manner described above.

Deliberate Ignorance—To act in "deliberate ignorance" means that the provider has deliberately chosen to ignore the truth or falsity of the information on a claim submitted for payment, even though the provider knows, or has notice, that information may be false. An example of a provider who submits a false claim with deliberate ignorance would be a physician who ignores provider update bulletins and thus does not inform his/her staff of changes in the Medicare billing guidelines or update his/her billing system in accordance with changes to Medicare billing practices. When claims for non-reimbursable services are submitted as a result, the False Claims Act has been violated.

Reckless Disregard—To act in "reckless disregard" means that the provider pays no regard to whether the information on a claim submitted for payment is true or false. An example of a provider who submits a false claim with reckless disregard would be a physician who assigns the billing function to an untrained office person without inquiring whether the employee has the requisite knowledge and training to accurately file such claims.

Penalty for Unlawful Conduct

The penalty for violating the False Claims Act is a minimum of $5,000 up to a maximum of $10,000 for *each* false claim submitted. In addition to the penalty, a provider could be found liable for up to three times the amount unlawfully claimed.

Examples

- A physician and his oncology clinic knowingly submitted improper claims to Medicare and Medicaid for services rendered at the clinic by nonphysicians without a physician's supervision or attendance.

- Dr. X intentionally upcoded office visits and angioplasty consultations that were submitted for payment to Medicare.
- Dr. X, a podiatrist, knowingly submitted claims to the Medicare and Medicaid programs for non-routine surgical procedures when he actually performed routine, non-covered services such as the cutting and trimming of toenails and the removal of corns and calluses.

II. Civil Monetary Penalties Law (42 U.S.C. 1320a–7a)

Description of Unlawful Conduct

The Civil Monetary Penalties Law (CMPL) is a comprehensive statute that covers an array of fraudulent and abusive activities and is very similar to the False Claims Act. For instance, the CMPL prohibits a health care provider from presenting, or causing to be presented, claims for services that the provider "knows or should know" were:

- Not provided as indicated by the coding on the claim;
- Not reasonable or necessary;
- Furnished by a person who is not licensed as a physician (or who was not properly supervised by a licensed physician);
- Furnished by a licensed physician who obtained his or her license through misrepresentation of a material fact (such as cheating on a licensing exam);
- Furnished by a physician who was not certified in the medical specialty that he or she claimed to be certified in; or
- Furnished by a physician who was excluded from participation in the Federal health care program to which the claim was submitted.

Additionally, the CMPL contains various other prohibitions, including:

- Offering remuneration to a Medicare or Medicaid beneficiary that the person knows or should know is likely to influence the beneficiary to obtain items or services billed to Medicare or Medicaid from a particular provider; and
- Employing or contracting with an individual or entity that the person knows or should know is excluded from participation in a Federal health care program.

The term "should know" means that a provider: (1) Acted in deliberate ignorance of the truth or falsity of the information; or (2) acted in reckless disregard of the truth or falsity of the information. The Federal Government does not have to show that a provider specifically intended to defraud a Federal health care program in order to prove a provider violated the statute.

Penalty for Unlawful Conduct

Violation of the CMPL may result in a penalty of up to $10,000 per item or service and up to three times the amount unlawfully claimed. In addition, the provider may be excluded from participation in Federal health care programs. The regulations defining the aggravating and mitigating circumstances that must be reviewed by the OIG in making an exclusion determination are set forth in 42 CFR Part 1003.

Examples

1. Dr. X paid Medicare and Medicaid beneficiaries $20 each time they visited him to receive services and have tests performed that were not preventive care services and tests.

2. Dr. X hired Physician Assistant P to provide services to Medicare and Medicaid beneficiaries without conducting a background check on P. Had Dr. X performed a background check by reviewing the HHS–OIG List of Excluded Individuals/Entities, Dr. X. would have discovered that he should not hire P because P is excluded for a period of 5 years from participation in Federal health care programs.

3. Dr. X and his oximetry company billed Medicare for pulse oximetry that they knew they did not perform and services that had been intentionally upcoded.

III. Limitations on Certain Physician Referrals ("Stark Laws") (42 U.S.C. 1395nn)

Description of Unlawful Conduct

Physicians (and immediate family members) who have an ownership, investment or compensation relationship with an entity providing "designated health services" are prohibited from referring patients for these services where payment may be made by a Federal health care program unless a statutory or regulatory exception applies. An entity providing a designated health service is prohibited from billing for the provision of a service that was provided based on a prohibited referral. Designated health services include: clinical laboratory services; physical therapy services; occupational therapy services; radiology services, including magnetic resonance imaging, axial tomography scans, and ultrasound services; radiation therapy services and supplies; durable medical equipment and supplies; parenteral and enteral nutrients, equipment and supplies; prosthetics, orthotics, prosthetic devices and supplies; home health services; outpatient prescription drugs; and inpatient and outpatient hospital services.

New regulations clarifying the exceptions to the Stark Laws are expected to be issued by HCFA during the summer of 2000. Current exceptions articulated within the Stark Laws include the following, provided all conditions of each exception as set forth in the statute and regulations are satisfied.

Exceptions for Ownership or Compensation Arrangements

1. Physician's services;
2. In-office ancillary services; and
3. Prepaid plans.

Exceptions for Ownership or Investment in Publicly Traded Securities and Mutual Funds

1. Ownership of investment securities which may be purchased on terms generally available to the public;
2. Ownership of shares in a regulated investment company as defined by Federal law, if such company had, at the end of the company's most recent fiscal year, or on average, during the previous 3 fiscal years, total assets exceeding $75,000,000;
3. Hospital in Puerto Rico;
4. Rural provider; and
5. Hospital ownership (whole hospital exception).

Exceptions Relating to Other Compensation Arrangements

1. Rental of office space and rental of equipment;
2. Bona fide employment relationship;
3. Personal service arrangement;
4. Remuneration unrelated to the provision of designated health services;
5. Physician recruitment;
6. Isolated transactions;
7. Certain group practice arrangements with a hospital (pre-1989); and
8. Payments by a physician for items and services

Penalty for Unlawful Conduct

Violations of the statute subject the billing entity to denial of payment for the designated health services, refund of amounts collected from improperly submitted claims, and a civil monetary penalty of up to $15,000 for each improper claim submitted. Physicians who violate the statute may also be subject to additional fines per prohibited referral. In addition, providers that enter into an arrangement that they know or should know circumvents the referral restriction law may be subject to a CMP of up to $100,000 per arrangement.

Examples

1. Dr. A worked in a medical clinic located in a major city. She also owned a free standing laboratory located in a major city. Dr. A referred all orders for laboratory tests on her patients to the laboratory she owned.

2. Dr. X agreed to serve as the Medical Director of Home Health Agency, HHA for which he was paid a sum substantially above the fair market value for his services. In return, Dr. X routinely referred his Medicare and Medicaid patients to HHA for home health services.

3. Dr. Y received a monthly stipend of $500 from a local hospital to assist him in meeting practice expenses. Dr. Y performed no specific service for the stipend and had no obligation to repay the hospital. Dr. Y referred patients to the hospital for in-patient surgery.

IV. Exclusion of Certain Individuals and Entities From Participation in Medicare and Other Federal Health Care Programs (42 U.S.C. §1320a–7)

Mandatory Exclusion

Individuals or entities convicted of the following conduct must be excluded from participation in Medicare and Medicaid for a minimum of five years:

- A criminal offense related to the delivery of an item or service under Medicare or Medicaid;
- A conviction under Federal or State law of a criminal offense relating to the neglect or abuse of a patient;
- A conviction under Federal or State law of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct against a health care program financed by any Federal, State, or local government agency; or
- A conviction under Federal or State law of a felony relating to unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

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If there is one prior conviction, the exclusion will be for 10 years. If there are two prior convictions, the exclusion will be permanent.

Permissive Exclusion

Individuals or entities may be excluded from participation in Federal health care programs for a minimum of 3 years if they meet any of the following criteria:

- A criminal offense related to the delivery of an item or service under Medicare or Medicaid;
- A misdemeanor related to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct against a health care program financed by any Federal, State, or local government agency;
- Interference with, or obstruction of, any investigation into certain criminal offenses;
- A misdemeanor related to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance;
- Exclusion or suspension under a Federal or State health care program;
- Submission of claims for excessive charges, unnecessary services or services that were of a quality which fails to meet professionally recognized standards of health care;
- Violating the CMP law or the statute entitled "Criminal Penalties for Acts Involving Federal Health Care Programs";
- Ownership or control of an entity by a sanctioned individual or immediate family member (spouse, natural or adoptive parent, child, sibling, stepparent, stepchild, stepbrother or stepsister, in-laws, grandparent and grandchild);
- Failure to disclose information required by law;
- Failure to supply claims payment information; and
- Defaulting on health education loan or scholarship obligations.

The above list is not all inclusive. Additional grounds for permissive exclusion are detailed in the statute.

Examples

1. Nurse R was excluded based on a conviction involving obtaining dangerous drugs by forgery. She also altered prescriptions that were given for her own health problems before she presented them to the pharmacist to be filled.

2. Practice T was excluded due to its affiliation with its excluded owner. The practice owner, excluded from participation in the Federal health care programs for soliciting and receiving illegal kickbacks, was still participating in the day-to-day operations of the practice after his exclusion was effective.

Appendix D: OIG–HHS Contact Information

I. OIG Hotline Number

One method for providers to report potential fraud, waste, and abuse problems is to contact the OIG Hotline number. All HHS and contractor employees have a responsibility to assist in combating fraud, waste and abuse in all departmental programs. As such, providers are encouraged to report matters involving fraud, waste and mismanagement in any departmental program to the OIG. The OIG maintains a hotline that offers a confidential means for reporting these matters.

Contacting the OIG Hotline

By Phone: 1–800–HHS–TIPS (1–800–447–8477)
By E–Mail: HTips@os.dhhs.gov
By Mail: Office of Inspector General
Department of Health and Human Services
Attn: HOTLINE,
330 Independence Ave., S.W.,
Washington, D.C. 20201

When contacting the Hotline, please provide the following information to the best of your ability:

- Type of Complaint:
  Medicare Part A
  Medicare Part B
  Indian Health Service
  TRICARE
  Other (please specify)
- HHS Department or program being affected by your allegation of fraud, waste, abuse/mismanagement:
  Health Care Financing Administration (HCFA)
  Indian Health Service
  Other (please specify)

Please provide the following information. (However, if you would like your referral to be submitted anonymously, please indicate such in your correspondence or phone call.)

  Your Name
  Your Street Address
  Your City/County
  Your State
  Your Zip Code
  Your email Address
- Subject/Person/Business/Department that allegation is against.
  Name of Subject
  Title of Subject
  Subject's Street Address
  Subject's City/County
  Subject's State
  Subject's Zip Code
- Please provide a brief summary of your allegation and the relevant facts.

II. Provider Self-Disclosure Protocol

The recommended method for a provider to contact the OIG regarding potential fraud or abuse issues that may exist in the provider's own organization is through the use of the Provider Self-Disclosure Protocol. This program encourages providers to voluntarily disclose irregularities in their dealings with Federal health care programs. While voluntary disclosure under the protocol does not guarantee a provider protection from civil, criminal or administrative actions, the fact that a provider voluntarily disclosed possible wrongdoing is a mitigating factor in OIG's recommendations to prosecuting agencies. Self-reporting offers providers the opportunity to minimize the potential cost and disruption of a full-scale audit and investigation, to negotiate a fair monetary settlement, and to avoid an OIG permissive exclusion preventing the provider from doing business with Federal health care programs.

In addition, if the provider is obligated to enter into an Integrity Agreement (IA) as part of the resolution of a voluntary disclosure, there are three benefits the provider might receive as a result of self-reporting:

- If the provider has an effective compliance program and agrees to maintain its compliance program as part of the False Claims Act settlement, the OIG may not even require an IA;
- In cases where the provider's own audits detected the disclosed problem, the OIG may consider alternatives to the IA's auditing provisions. The provider may be able to perform some or all of its billing audits through internal auditing methods rather than be required to retain an independent review organization to perform the billing review; and
- Self-disclosing can help to demonstrate a provider's trustworthiness to the OIG and may result in the OIG determining that they can sufficiently safeguard the Federal health care programs through an IA without the exclusion remedy for a material breach, which is typically included in an IA.

Specific instructions on how to submit a voluntary disclosure under the Provider Self-Disclosure Protocol can be found on the OIG's internet site at www.hhs.gov/oig or in the **Federal Register** at 63 FR 58399.

The Provider Self-Disclosure Protocol can also be a useful tool for conducting baseline audits. The protocol details the OIG's views on the appropriate elements of an effective investigative and audit plan for providers. Physician practices can use the self-disclosure protocol as a model for conducting audits and self-assessments.

In relying on the protocol for audit design and sample selection, a physician practice should pay close attention to the sections on self-assessment and sample selection. These two sections provide valuable guidance regarding how these two functions should be performed.

The self-assessment section of the protocol contains information that can be applied to audit design. Self-assessment is an internal financial assessment to determine the monetary impact of the matter. The approach of a review can include reviewing either all claims affected or a statistically valid sample of the claims.

Sample selection must include several elements. These elements are drawn from the Government sampling program known as RAT–STATS.[1] All of these elements are set forth in more detail in the Provider Self-Disclosure Protocol, but the elements include: (1) Sampling unit, (2) sampling frame, (3) probe sample, (4) sample size, (5) random numbers, (6) sample design and (7) missing sample items. All of these sampling elements should be clearly documented by the physician practice and compiled in the format set forth in the Provider Self-Disclosure Protocol. Use of the format set forth in the Provider Self-Disclosure Protocol will help physician practices to ensure that the elements of their internal audits are in conformance with OIG standards.

[1] Available through the OIG website at http://www.hhs.gov/oas/ratstat.html.

III. Advisory Opinion Requests

Health care professionals or others may request an advisory opinion from OIG on the following issues:

- What constitutes prohibited "remuneration" or payment under the anti-kickback statute;
- Whether the arrangement or proposed arrangement fits into a safe harbor to the anti-kickback statute;
- What constitutes an inducement to reduce or limit services to Medicare/Medicaid beneficiaries; and
- Whether any activity or proposed activity constitutes grounds for the imposition of fraud and abuse sanctions.

The OIG issues Advisory Opinions on specific existing or proposed arrangements in which the requesting party is engaged or in good faith intends to engage; the OIG does not issue Advisory Opinions on hypothetical arrangements. Advisory Opinions will not be issued on questions of fair market value or whether an individual is a bona fide employee. Advisory Opinions will be binding only on the requesting party and the OIG. Failure to seek an Advisory Opinion is not admissible as evidence of intent to violate the law.

Procedures for requesting an Advisory Opinion are available on the OIG website at www.hhs.gov/oig or at 42 CFR 1008.1 through 1008.59.

Appendix E: Carrier Contract Information

Medicare

A complete list of contact information (address, phone number, email address) for Medicare Part A Fiscal Intermediaries, Medicare Part B Carriers, Regional Home Health Intermediaries, and Durable Medical Equipment Regional Carriers can be found on the HCFA website at www.hcfa.gov/medicare/incardir.htm.

Medicaid

Contact information (address, phone number, email address) for each state Medicaid carrier can be found on the HCFA website at www.hcfa.gov/medicaid/mcontact.htm. In addition to a list of Medicaid carriers, the website includes contact information for each State survey agency and the HCFA Regional Offices.

Contact information for each state Medicaid Fraud Control Unit can be found on the OIG website at www.hhs.gov/oig/oi/mfcu/index.htm.

Appendix F: Internet Resources

Office of Inspector General—U.S. Department of Health and Human Services (www.hhs.gov/oig)

This website includes a variety of information relating to Federal health care programs, including the following:

Advisory Opinions
Anti-Kickback Information
Compliance Program Guidance
Corporate Integrity Agreements
Fraud Alerts
Links to web pages for the:
  Office of Audit Services (OAS)
  Office of Evaluation and Inspections (OEI)
  Office of Investigations (OI)
OIG List of Excluded Individuals/Entities
OIG News
OIG Regulations
OIG Semi-Annual Report
OIG Workplan

Health Care Financing Administration (www.hcfa.gov)

This website includes information on a wide array of topics, including the following:

Medicare
  National Correct Coding Initiative
  Intermediary-Carrier Directory
  Payment
  Program Manuals
  Program Transmittals & Memorandum
  Provider Billing/HCFA Forms
  Statistics and Data
Medicaid
  HCFA Regional Offices
  Letters to State Medicaid Directors
  Medicaid Hotline Numbers
  Policy & Program Information
  State Medicaid Contacts
  State Medicaid Manual
  State Survey Agencies
  Statistics and Data

HCFA Medicare Training (www.medicaretraining.com)

This site provides computer-based training on the following topics:

HCFA 1500 Form
Fraud & Abuse
ICD–9–CM Diagnosis Coding
Adult Immunization
Medicare Secondary Payer (MSP)
Women's Health
Front Office Management
Introduction to the World of Medicare
Home Health Agency
HCFA 1450 (UB92)

Government Printing Office (www.access.gpo.gov)

This site provides access to Federal laws and regulations pertaining to Federal health care programs.

The U.S. House of Representatives Internet Library (uscode.house.gov/usc.htm)

This site provides access to the United States Code, which contains laws pertaining to Federal health care programs.

[FR Doc. 00–14703 Filed 6–9–00; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Cancer Education Grant (R25 application).

Date: June 28, 2000.

Time: 4 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave, NW, Washington, DC 20007.

Contact Person: David E. Maslow, PhD, Scientific Review Administrator, Grants Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8054, Bethesda, MD 20892–7405, 301/496–2330.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14745 Filed 6–9–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation of other reasonable accommodations, should

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notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.
Date: June 22, 2000.
Time: 8:30 AM to 6:00 PM.
Agenda: Report of the Director, NCI; Ongoing and New Business, Special Initiative Updates, Budget Presentation, and RFA Concept Reviews.
Place: 900 Rockville, Pike, Building 31, Conference Room 10, Bethesda, MD 20892.
Contact Person: Paulette S. Gray, PhD, Executive Secretary, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Rm. 8141, Bethesda, MD 20892.
This notice is being published less than 15 days prior to the meeting due to scheduling changes.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14747 Filed 6–9–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, National Cooperative Drug Discovery Group.
Date: June 7–9, 2000.
Time: 7:00 PM to 5:00 PM
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Hilton, 620 Perry Park, Gaithersburg, MD 20877.
Contact Person: C.M. Kerwin, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8086, Rockville, MD 20892–7405, 301/496–7421.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14748 Filed 6–9–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.
Date: June 19, 2000.
Time: 1 pm to 4 pm.
Agenda: To review and evaluate contract proposals.
Place: 6700B Rockledge Drive, Room 2148, Bethesda, MD 20817. (Telephone Conference Call)
Contract Person: Hagit S. David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, 301–496–2550.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 2, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–14746 Filed 6–9–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Antagonists of the $\alpha^E\beta_7$ Integrin as Therapeutic Agents for Inflammatory Diseases

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. § 209 (c) (1) and 37 CFR § 404.7 (a) (1) (i), that the National Institutes of Health, Department of Health and Human Services is contemplating the grant of an exclusive license to practice the inventions embodied in PCT Patent Application S/N PCT/US99/27817 (filed November 23, 1999) based on U.S. Patent Application 60/109,957 (filed November 25, 1998), entitled "Antagonists of the $\alpha^E\beta_7$ Integrin as Therapeutic Agents for Inflammatory Diseases", to BioSeek, Inc., having a place of business in San Francisco, CA. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to $\alpha^E\beta_7$-related human therapeutics for the treatment of inflammatory diseases.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before August 11, 2000 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Vasant Gandhi, J.D., Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, X224; Facsimile (301) 402–0220; E-mail vg48q@nih.gov.

SUPPLEMENTARY INFORMATION: The pathogenesis of inflammatory reactions may depend upon the traffic of inflammatory mediating cells from sites of induction to sites of inflammation. This trafficking is known to be mediated, in part, by the interaction of the integrin, $\alpha^4\beta_7$, and the addressin, mucosa adressin cell adhesion molecule-1. This homing, which governs the entry of cells into tissues, is accompanied by additional adhesion molecule-ligand interactions that ensure the retention of cells in the target tissue.

The inventors believe the integrin, $\alpha^E\beta_7$, may play a role in retaining intraepithelial lymphocytes in the intraepithelial site via its interaction with E-cadherin. Experiments have shown in IL–2$^{-/-}$ mice, that administration of anti-$\alpha^E\beta_7$ can prevent colonic inflammation and reverse pre-existing inflammation. This data is important because it strongly suggests that both entry and retention of cells are necessary for the induction and maintenance of colitis in these IL–2$^{-/-}$ mice. The present technology relates to methods for treating inflammatory reactions for but not necessarily limited to: autoimmune diseases, graft-versus-host disease and transplantation rejections.

The prospective exclusive license: will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. § 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. § 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. § 552.

Dated: June 1, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–14749 Filed 6–9–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4560–C–08]

FY 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development and Empowerment Programs and Section 8 Housing Voucher Assistance; Amendment to Funding Availability Announcement for Economic Development Initiative (EDI); Extension of Application Due Date for Regional Economic Development Projects

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Grant Programs; Amendment to EDI Announcement—Extension of EDI Regional Application Due Date.

SUMMARY: On February 24, 2000, HUD published its Fiscal Year (FY) 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance. This document extends the application due date to apply for funding for regional economic development projects under the Economic Development Initiative (EDI). This application due date extension is only for the regional economic development project applications.

DATES: The application due date for EDI regional economic development projects applications is extended by this notice to July 14, 2000.

FOR FURTHER INFORMATION CONTACT: You may contact either Tony Johnston or Paul Webster of the Office of Economic Development Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7136, Washington, DC 20410; telephone (202) 708–1871 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. You may also call the SuperNOFA Information Center, which you may reach by calling 1–800–HUD–8929 or the Center's TTY number at 1–800–HUD–2209. Other than the "800" number, these numbers are not toll-free.

SUPPLEMENTARY INFORMATION: On February 24, 2000 (65 FR 9322), HUD published its Fiscal Year (FY) 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance. The FY 2000 SuperNOFA announced the availability of approximately $2.424 billion in HUD program funds covering 39 grant categories within programs operated and administered by HUD offices and Section 8 housing voucher assistance. The FY 2000 SuperNOFA included HUD's funding availability announcement for the Economic Development Initiative (EDI). The EDI section of the SuperNOFA announced the availability of approximately $24.1 million in EDI funds to stimulate economic development by local governments and private sector parties.

This document extends the application due date to apply for funding for regional economic development projects under the Economic Development Initiative (EDI) to July 14, 2000. This application due date extension is only for regional economic development project applications. It has been brought to HUD's attention that the amount of time necessary to collect and compile the information necessary for a regional economic development project application is more time consuming than that required for general economic development project applications. Accordingly, HUD is providing additional time to prepare and submit regional economic development project applications. (Please note that the EDI application due was extended previously to June 13, 2000, for all applications by notice published in the **Federal Register** on May 9, 2000 (65 FR 26844).)

Please note that applicants that already submitted applications for regional economic development projects by the June 13, 2000, application due date, need not resubmit a new application and need not amend their applications. Applicants that already submitted applications for regional economic development projects, however, may submit new or amended applications if they choose to do so. Applicants that already submitted applications and plan to submit new or amended applications should clearly identify whether the information submitted is new and replaces a previously submitted application in its entirety or is an addendum or amendment to the previously submitted application.

The funding availability announcement for EDI is found at page 9787 of the February 24, 2000 SuperNOFA. The original announcement contains all the information with respect to EDI application contents and where to submit EDi applications. This notice only provides the extended due date for

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regional economic development project applications.

Therefore, in the Super Notice of Funding Availability for Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance for Fiscal Year 2000, notice document 00–4123, beginning at 65 FR 9322, in the issue of Friday, February 24, 2000, the following clarification is made:

Economic Development Initiative (EDI) Section, Beginning at 65 FR 9789

• On page 9789, in the first column, continuing to the second column, under Section I, the paragraphs concerning "Application Deadline" under the Program Overview and "Application Due Date" under Section I of the Additional Information are corrected to read as follows:

Application Deadline. July 14, 2000, for the regional economic development project applications, and June 13, 2000, for general economic development project applications.

* * * * *

Application Due Date. Please submit your completed applications (one original and two copies) for general economic development project(s) on or before 12:00 midnight, Eastern time, on June 13, 2000, to the addresses shown below. Please submit your completed applications (one original and two copies) for regional economic development project(s) on or before 12:00 midnight, Eastern time, on July 14, 2000.

Applicants that already submitted applications by the June 13, 2000, application due date need not resubmit a new application and need not amend their applications. Applicants that already submitted applications, however, may submit new or amended applications if they choose to do so.

Applicants that submit new or amended applications should clearly identify whether the information submitted is new and replaces a previously submitted application in its entirety or is an addendum or amendment to the previously submitted application.

Dated: June 7, 2000.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 00–14852 Filed 6–8–00; 2:32 pm]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4581–C–02]

FY 2000 NOFA for the Assisted Living Conversion Program (ALCP) for Section 202 Projects; Technical Correction

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability (NOFA); technical correction.

SUMMARY: This document makes certain technical corrections to the FY 2000 NOFA for the Assisted Living Conversion Program (ALP) for Section 202 Projects, published on March 17, 2000.

DATES: The application due date for this NOFA, as published on March 17, 2000, is not changed by this notice. The application due date is July 17, 2000.

FOR FURTHER INFORMATION, CONTACT: You should contact the lead Multifamily Hub where you will be mailing your ALCP Application. (Please refer to Hub telephone numbers in Appendix B to the March 17, 2000, ALCP NOFA, published at 65 FR 14705.)

You also may contact Aretha Williams, Housing Project Manager, Office of Housing Assistance and Grant Administration, Room 6138, at (202) 708–2866 x2480, for questions regarding the physical conversion of the ALF. Ms. Williams can be reached, also by e:mail, at "aretha_m._williams@hud.gov". For questions about management of the ALF and coordination with agencies of the Department of Health and Human Services and other third parties, you may contact Carissa Janis, Housing Project Manager, Office of Housing Assistance and Grant Administration, Room 6168 at (202) 708–3730 x2487. Ms. Janis may be reached also by e:mail at "carissa_l._janis@hud.gov". Both Ms. Williams and Ms. Janis are located at the Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Please note that the above-listed telephone numbers are not toll free numbers.

If you have a hearing or speech impairment, you may access either telephone number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION

I. Background

On March 17, 2000 (65 FR 14694), HUD published the NOFA for ALCP for Section 202 Projects which announced the availability of $50,000,000 for the physical conversion of Section 202 projects or portions of Section 202 projects to Assisted Living Facilities. The purpose of this document is to correct certain technical errors that appeared in the published NOFA.

Technical Errors To Be Corrected

The page numbers referred to in this notice refer to **Federal Register** page numbers.

On page 14694, second column, under the fourth full paragraph, which addresses Application Kits, HUD failed to include the toll free TTY number and to indicate that application kits for the ALCP NOFA and the Service Coordinators NOFA are available on the Internet. The TTY number and a statement that both application kits are available on the Internet are included by this document.

On page 14696, second column, under the sixth full paragraph, which identifies contact persons for technical assistance, HUD is correcting the name of the office of the contact persons and replacing the name of one of the contact persons.

On page 14696, second column, the paragraph designated "(14)" is revised by adding a new sentence to the end of the first full paragraph of paragraph (14) to clarify that a Section 202/PRAC project is not eligible to request funding under the NOFA for Service Coordinators for Multifamily Housing, published also on March 17, 2000 (65 FR 14708), because the Section 202/PRAC project may pay for the service coordinator out of PRAC funds.

On page 14699, third column, the first full paragraph under "Rating Factor 1," contains an incorrect cross reference to other sections of the NOFA and this reference is corrected by this document.

On page 14699, third column, the last paragraph in that column which continues on page 14700, contains an incorrect cross reference to other sections of the NOFA and this reference is corrected by this document.

On page 14700, first column, the first full paragraph under Rating Factor 3, contains an incorrect cross-reference to other sections of the NOFA, and the reference is corrected by this document.

On page 14700, second column, the second full paragraph under Rating Factor 4 contains an incorrect cross-reference to other sections of the NOFA and the reference is corrected by this document.

On page 14700, third column at the top, the paragraph designated "(3)" under Rating Factor 4 contains an incorrect point assignment where the answer is "yes" and this is corrected by this document.

On page 14700, third column, the first paragraph under Rating Factor 5 contains an incorrect cross-reference to other sections of the NOFA, and the reference is corrected by this document.

On page 14700, third column, in the paragraph designated "(1)" under Rating Factor 5, the parenthetical phrase (including minority residents) is added to relate application submission requirements to the appropriate Rating Factor.

On page 14700, third column, in the paragraph designated "(3)" under Rating Factor 5, the phrase "the community at large and with the minority and elderly communities in particular" is added to relate application submission requirements to the appropriate Rating Factor.

On page 14702, first column, the paragraph designated "paragraph (8)" contains an incorrect cross-reference to another section of the NOFA and the reference is corrected.

On page 14702, second column, a new sentence is added at the end of paragraph (b) to require the applicant to also indicate how the applicant intends to pay for the service coordinator role.

On page 14704, third column, paragraph (b) of Appendix A is corrected to add "Birmingham" to the list of HUD Field Offices which will submit applications to HUD's Greensboro Hub.

Accordingly, in the FY 2000 NOFA for Assisted Living Conversion Program (ALCP) for Section 202 Projects, notice document 00–6572, beginning at 65 FR 14694, in the issue of Friday, March 17, 2000, the following corrections are made:

1. On page 14694, second column, the paragraph titled "For Application Kits" is corrected to read as follows:

For Application Kits. You may obtain an ALCP application kit and supplemental information by calling either the Multifamily Housing Clearinghouse at (voice) 1–800–MULTI–70 (1–800–685–8470). Persons with hearing or speech impairments may call the Clearinghouse's TTY number—1–800–483–2209. There is a separate application kit for service coordination information (which is necessary for those needing to enhance or add service coordination per Section III(A)(14) of this NOFA). Please make sure to provide your name, address (including zip code), and telephone number (including area code). The application kit is also available on the Internet through the HUD web site at http://www.hud.gov.

2. On page 14694, second column, the paragraphs titled "For Further Information and Technical Assistance" are corrected to read as follows:

For Further Information and Technical Assistance. You should contact the lead Multifamily Hub where you will be mailing the ALCP Application. (Please refer to Hub telephone numbers in Appendix B).

You also may contact Aretha Williams, Housing Project Manager, Office of Housing Assistance and Grant Administration, Room 6138, at (202) 708–2866 x2480, for questions regarding the physical conversion of the ALF. Ms. Williams can be reached, also by e:mail, at "aretha_m._williams@hud.gov". For questions about management of the ALF and coordination with agencies of the Department of Health and Human Services and other third parties, you may contact Carissa Janis, Housing Project Manager, Office of Housing Assistance and Grant Administration, Room 6168 at (202) 708–3730 x2487. Ms. Janis may be reached also by e:mail at "carissa_l._janis@hud.gov". Both Ms. Williams and Ms. Janis are located at the Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. (The telephone numbers listed in this paragraph are not toll free.)

3. On page 14696, second column, "paragraph (14)" is corrected to read as follows:

(14) The ALCP requires service coordination responsible for linking the ALF to services in the community which are available to low income persons. All section 202 projects funded under this NOFA must have sufficient service coordination in place, or request additional funds if appropriate, to ensure that services meeting licensing requirements are available to ALF residents on an ongoing basis. Service coordination must be described in the application (see Section VI(B)(8)(b) through (c) of this NOFA). If you need to enhance an existing service coordination program or add one where it does not exist, you must apply for funding through the Service Coordinator NOFA, published elsewhere in this edition of the **Federal Register**, and attach a copy of the Form HUD 424M so indicating the request to the ALCP application. Alternatively, you may show evidence that funding for the enhanced service coordination is provided by other sources and indicate such funding on the HUD Form 424M which is exhibit 10(c) of your ALF application. If you are funded under this NOFA and requested new or enhanced service coordination in this application, you will be funded first under the service coordinator NOFA.

Note: If you are a Section 202/PRAC project, you are NOT eligible to request funding under the service coordinator NOFA because you can pay for the service coordinator out of PRAC funds.

4. On page 14699, third column, the first full paragraph under "Rating Factor 1" is corrected to read as follows:

This factor addresses your capacity to carry out the conversion in a timely, cost-conscious and effective manner. It also reviews your experience with the supportive services which the ALF intends to provide to elderly residents, especially in such areas as meals, 24-hour staffing and on-site health care. Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(5)(a), (8)(h), and (2)(d) of this NOFA.

5. On page 14699, third column, the last paragraph in that column which continues on page 14700 is corrected to read as follows:

The factor also addresses your inability to fund the repairs or conversion activities from existing financial resources. In making this determination, HUD will consider project financial information. The Department will also review more favorably those applications which establish a connection between the proposed ALF and the community's Analysis of Impediments to Fair Housing Choice (AI) or other planning document that analyzes fair housing issues and is prepared by a local planning or similar organization. Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(4)(a) through (d), (2)(c) and (9)(a) through (c) of the NOFA. In evaluating this factor, HUD will consider: * * *

6. On page 14700, first column, the first full paragraph under Rating Factor 3 is corrected to read as follows:

This factor addresses the quality and effectiveness of your proposal in addressing the proposed conversion, effectiveness of service coordination and management planning and the meals and supportive services which the ALF intends to provide. There must be a relationship between the proposed activities, the project's and the community's needs and purposes of the program funding for your application to receive points for this factor. Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(5)(b) through (e), and (h) and (7) and (B)(8))(a) through (e) and (g) and (h) of this NOFA.

7. On page 14700, second column, the second full paragraph under Rating Factor 4 is corrected to read as follows:

Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(5)(f),(g), and (B)(8)(f) of this NOFA.

8. On page 14700, third column at the top, the paragraph designated "paragraph (3)" under Rating Factor 4 is corrected to read as follows:

(3) (2 points) The extent of local organizational support which is firmly committed to providing funds for additional repair or retrofit necessary for the project NOT specifically directed to activities eligible under this NOFA (consider yes = 2 point, no = 0 points).

9. On page 14700, third column, the first paragraph under Rating Factor 5 is corrected to read as follows:

This factor addresses the extent to which you have evidenced general support for conversion by participating in your

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community's Consolidated Planning Process, involving the residents in the planning and are working toward addressing the need in a holistic and comprehensive manner through linkages with other activities in the community. Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(2)(a) through (d) of this NOFA.

10. On page 14700, third column, the paragraph designated "(1)" under Rating Factor 5, is corrected to read as follows:

(1) (3 points) The involvement of project residents (including minority residents) or their representatives, in the development of the ALCP application, and your intent to involve residents, in the development and operation of the project and in relocation planning (Minus one (-1) point if not addressed);

11. On page 14700, third column, the paragraph designated "(3)" under Rating Factor 5 is corrected to read as follows:

(3) (1 point) The extent to which you developed linkages with the community at large and the elderly and minority communities in particular and with other activities, programs or projects related to the proposed project to coordinate your activities so solutions are holistic and comprehensive.

12. On page 14702, first column, the paragraph designated "paragraph 8" is corrected to read as follows:

(8) A supportive services plan (SSP), a copy of which must be submitted to the appropriate state and/or local agency as instructed in Section IV(B) of this NOFA. For those applicants needing to contact state Medicaid offices, a list of them may be accessed on the Internet at "www.hcfa.gov/medicaid/scon1.htm". The fifth character from the end is the numeral "1", not the letter "l" that includes: * * *

13. On page 14702, second column, the paragraph designated "(b)" is corrected to read as follows:

(b) A description of how you will provide the supportive services to those who are frail and have disabilities (i.e., on or off-site or combination of on or off-site), including an explanation of how the service coordination role will facilitate the adequate provision of such services to ALF residents, and how the services will meet the identified needs of the residents. Also indicate how you intend to fund the service coordinator role.

14. On page 14704, third column, paragraph (b) of Appendix A is corrected to read as follows:

(b) Applicants required to submit applications to the Greensboro Hub are normally serviced by the Greensboro, Columbia, Atlanta, Caribbean, Knoxville, Louisville, Nashville, Jacksonville, Miami, Jackson, Birmingham, Ft. Worth, Albuquerque, Dallas, Houston, Little Rock, New Orleans, San Antonio, and Shreveport Field Offices.

Dated: June 2, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–14520 Filed 6–9–00; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–000–1430–EQ; AZA 25117]

Arizona: Expiration of Segregative Effect, and Opening Order for Proposed Airport Lease AZA 25117, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: This action recognizes the expiration of the segregative effect as of August 20, 1998, on the following described public lands in La Paz County, Arizona. The land is hereby opened to the operation of the public land laws, including location and entry under mining laws, subject to valid existing rights.

Gila and Salt River Meridian, Arizona

T. 4 N., R. 18 W.,
Sec. 19, those lands south of Interstate 10 within lot 4, SE¼SW¼, SE½SE¼;
Sec. 30, lots 1 to 4, inclusive, E½, E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, E½W½.

The area described contains approximately 1, 380 acres, more or less.

EFFECTIVE DATE: June 12, 2000.

FOR FURTHER INFORMATION CONTACT: Lucas Lucero, Realty Specialist, Yuma Field Office, 2555 E. Gila Ridge Road, Yuma, Arizona 85365, or (520) 317–3237.

SUPPLEMENTARY INFORMATION: The segregative effect for Airport Lease Application AZA 25117, was made on August 19, 1993; August 24, 1994; August 29, 1995; and August 21, 1997. The segregation was made pursuant to the Act of May 24, 1928 (49 U.S.C. Appendices 211–213) as amended by the Act of August 16, 1941 (55 Stat. 621).

The segregative effect is hereby terminated for all public lands encumbered by Airport Lease Application AZA 25117.

At 9 a.m. on June 12, 2000, the land encumbered by Airport Lease Application AZA 25117, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on (date of publication), shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 6, 2000.

Mervin Boyd,

Assistant Field Manager, Yuma.

[FR Doc. 00–14715 Filed 6–9–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–020–1210–00]

Notice of Availability of the Decision Record and Plan Amendment Addressing Management for Bureau of Reclamation Withdrawn Lands Restored to Bureau of Land Management Jurisdiction in the Cody Field Office Planning Area, and Notice of Off-road Vehicle (ORV) Designations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management (BLM), Cody Field Office, announces the availability of a decision record and plan amendment addressing the management of approximately 149,783.31 acres of Federal lands in Park and Big Horn counties of Wyoming. The lands were formerly withdrawn for use by the Bureau of Reclamation and have been restored to BLM jurisdiction in the Cody Field Office Planning Area. The BLM is also providing Notice of ORV Designations affecting these Federal lands.

The decision record includes a general management plan which amends the 1990 Cody Resource Management Plan (RMP). The general management plan is adopted as the management prescription for the formerly withdrawn Federal lands which have been restored to BLM jurisdiction. (The decision record describes these as restored lands). The process used in developing the plan amendment involved the publication of an Environmental Assessment (EA) (WY–020–EA9–126) in September 1999 to document the review of existing planning decisions in the 1990 Cody RMP. The purpose of that review was to determine (1) Which of the decisions would apply to the restored lands; (2) whether any decisions would need to be deferred because further analysis was needed before RMP decisions could be applied or made for any of the restored lands; and (3) whether it would be necessary to pursue new withdrawals to protect specific resources on any of the restored lands. By virtue of the former Bureau of Reclamation withdrawals, the lands have remained closed to surface entry and (or) mining, prohibiting activities such as desert land entry, the transfer of public lands through sale or exchange, and the staking and development of mining claims for locatable minerals. In addition, a moratorium on leasing Federal minerals on the restored lands was enacted by the Wyoming BLM State Director, pending completion of the planning review and the establishment of multiple-use management decisions for the restored lands.

The planning review determined that there was sufficient National Environmental Policy Act analysis, as documented in the 1990 Environmental Impact Statement for the Cody RMP and the September 1999 EA, to adopt existing Cody RMP decisions for the restored lands. The review further established that, generally, the lands will be opened to surface entry and (or) mining through the publication of "opening orders" in the **Federal Register**, but that new closures will be pursued on about 651.83 acres to provide for expansion of the Park County Landfill and to protect public safety, scenic resources, and recreational opportunities. With the publication of the decision record and RMP amendment, the moratorium on leasing Federal minerals on the restored lands has been lifted.

The decision record also puts applicable restored lands in the Rivers and Historic Trails Special Recreation Management Areas (SRMAs). Public lands within these SRMAs will be managed intensively for recreational use. The remaining restored lands are included within the Cody Planning Area extensive recreation management area. ORV Designations have been adopted, as well, and are described under **SUPPLEMENTARY INFORMATION** in this notice.

FOR FURTHER INFORMATION CONTACT: Tom Hare, Assistant Field Manager, Bureau of Land Management, Cody Field Office, P.O. Box 518, Cody, Wyoming 82414–0518, or call (307) 587–2216.

SUPPLEMENTARY INFORMATION: EA WY–020–EA9–126 was available for a formal 30-day review and protest period during September and October 1999. For 60 days ending on November 8, 1999, the public also had an opportunity to comment on potential Areas of Critical Environmental Concern (ACEC). The State of Wyoming participated in a 60-day Governor's consistency review during the same period. Six comment letters addressing 33 concerns were received and were carefully considered in developing the decision record. There were no protests received, nor any comments, on potential ACEC. Comments received on the EA resulted in a number of changes, additions, and clarifications reflected in the decision record and plan amendment.

The plan amendment includes the following ORV Designations: Vehicle use on the restored lands is limited to designated roads and trails in the following areas: (1) Essential and recovery habitat for threatened or endangered species, (2) areas with fragile soils or with Class I or II visual resource management ratings, and (3) areas containing significant cultural or paleontological resources. In the remainder of the planning area, ORV use on BLM-administered public land is limited to existing roads and trails. "Existing" roads and trails are roads and trails in existence as of the date the decision record was signed (March 3, 2000) and any BLM-authorized roads and trails constructed after that date. Until activity planning specifically addresses the use of over-the-snow vehicles, they will be subject to the same requirements and limitations as all other vehicles.

Parties who are interested in, and who wish to be involved in, future activity planning and implementation of management actions that may involve, or affect, the resource values addressed in the Cody RMP (including the RMP amendment for the restored lands) are requested to identify themselves. Please contact the Cody Field Office and request to be placed on a future contact list for activity planning and implementation activities concerning the Cody RMP.

Dated: June 5, 2000.

Alan R. Pierson,

State Director.

[FR Doc. 00–14786 Filed 6–9–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Completion of an Environmental Assessment on Exploration, Development, and Production Operations and Activities in the Deepwater Gulf of Mexico Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Completion of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) has completed an environmental assessment (EA) on exploration, development, and production activities in the deepwater areas (generally beyond 1,000 feet water depth) of the Gulf of Mexico (GOM) Outer Continental Shelf (OCS). The MMS is mandated to manage the development of OCS oil and natural gas resources, while also ensuring safe operations and protection of the human and natural environment. To meet these objectives, MMS has used the National Environmental Policy Act (NEPA) process as a planning tool to assist in managing these activities and assure appropriate environmental reviews. The findings of the EA are summarized below.

Based on the information and analyses in the EA, MMS has determined that a programmatic Environmental Impact Statement (EIS) on regional deepwater activities on the Gulf of Mexico OCS is not required. Most deepwater operations and activities are substantially the same as those associated with conventional operations and activities on the continental shelf. These deepwater components and activities include anchoring, mooring, stationkeeping, most drilling and well completion activities (the exceptions are discussed below), well test and cleanup operations, flaring/burning, facility installation and production operations, host facilities, pipeline installation and operations, alternative transportation options, operational emissions, routine produced-water discharges, support service activities, decommissioning, and site clearance. Existing NEPA documents, established project-specific and programmatic NEPA review

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processes, and established mitigation measures are fully sufficient to address these deepwater components and associated activities.

Specific deepwater operations and activities that are substantially different from those associated with conventional operations and activities on the continental shelf have been addressed by requiring specific mitigation measures, initiating a more in-depth EA, and initiating an EIS.

Seafloor discharges from pre-riser and riserless drilling operation, and the discharge of synthetic-based drilling fluids (SBF) and cuttings wetted with SBF may pose potentially significant localized impacts to chemosynthetic communities. An appropriate mitigation measure has been developed to avoid or reduce the potential for significant impacts from these factors. Deepwater wells must be at least 1,000 ft away from any potential high-density chemosynthetic communities. Notice to Lessees (NTL) 98–11 is being modified to include this 1,000 ft buffer zone around all deepwater well sites. As the NTL goes through the formal review and implementation process, this mitigation is currently being applied on a site-by-site basis. Accidental spills of chemical products and the subsea release of oil are low-probability events. Extensive mitigation measures for spill prevention and response are currently required.

Deepwater seismic surveying operations are essentially the same as seismic surveying operations on the continental shelf. Historically, the potential impacts of noise associated with seismic surveying have been considered insignificant, and the EA supports this view. As this position has recently become controversial, the potential impacts of geological and geophysical (G&G) activities, including seismic surveying operations, on the GOM OCS are currently being analyzed in detail in a separate EA. The decision on the need to prepare an EIS on seismic surveying operations is pending completion of the G&G EA.

The use of floating production, storage, and offloading (FPSO) systems represents new and unusual technology for the GOM OCS and may pose potentially significant impacts to the marine and coastal environments. The need for an EIS was recognized early during the preparation of this EA. A Notice of Intent to Prepare an EIS was published in the **Federal Register** on June 10, 1999.

Copies of the EA are available from the Public Information Office (MS 5034), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 by asking for publication MMS 2000–001. Copies of the Technical Report (OCS Report MMS 2000–015) prepared in support of the EA will also be available in mid-July 2000. Both the EA and the Technical Report will eventually be available on CD and will be placed on the MMS website http://www.mms.gov.

FOR FURTHER INFORMATION: Questions regarding the EA should be directed to Ms. Deborah Cranswick, Leasing and Environment, at (504) 736–2744. Questions regarding deepwater operations should be directed to Mr. Jim Regg, Field Operations, at (504) 736–2843. The mailing address is Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Dated: June 6, 2000.

J. Hammond Eve,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 00–14738 Filed 6–9–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES 00–20]

Woodbridge Irrigation District and City of Lodi's Lower Mokelumne River Restoration Program, San Joaquin County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the final environmental impact report/environmental impact statement (Final EIR/EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation), Woodbridge Irrigation District (WID), and the City of Lodi have prepared a joint final EIR/EIS for the Lower Mokelumne River Restoration Program (LMRRP). The LMRRP encompasses an area located in northern San Joaquin County along the lower Mokelumne River between Camanche Dam and the Mokelumne and Cosumnes Rivers. The Proposed Project comprises four elements: Improving fish passage at Woodbridge Dam, upgrading the fish screen at the WID diversion, placing screens on unscreened or underscreened riparian diversions on the Mokelumne River between Camanche Dam and the Cosumnes Rivers on a voluntary basis, and restoring riparian vegetation along the Mokelumne River. The final EIR/EIS describes and presents the environmental effects of the four elements of the program. The first two elements are addressed at a project level in this final EIR/EIS, including five fish passage alternatives and five optional fish passage actions. The remaining two elements are addressed at a programmatic level. The preferred alternative is to construct a new dam and new fish-passage facilities, and includes optional actions to improve predator control below the dam, move the WID diversion point to just upstream of the dam, and construct a downstream splash pool.

DATES: Reclamation will not make a decision on the proposed action until after Endangered Species Act (ESA) compliance has been completed. After ESA compliance has been completed, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: Copies of the final EIR/EIS may be requested from Mr. Anders Christensen, Woodbridge Irrigation District, 18777 N. Lower Sacramento Road, Woodbridge, California 95258, or Mr. Buford Holt, Bureau of Reclamation, 16349 Shasta Dam Boulevard, Shasta Lake, California 96019.

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the final EIR/EIS are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Buford Holt, Bureau of Reclamation, at (530) 275–1554; or Mr. Anders Christensen, Woodbridge Irrigation District, at (209) 369–6808.

SUPPLEMENTARY INFORMATION: The LMRRP was developed to implement important elements from resource management plans prepared by CALFED, USFWS, and DFG. The goal of the LMRRP is to substantially increase fall-run chinook salmon and steelhead populations, enhance critical and limiting aquatic habitats, and restore riparian ecosystem integrity and diversity. In addition to a No-Project Alternative, which involves the continued operation of the existing Woodbridge Dam and fish passage facilities, four action alternatives are examined, including: (1) Construct new fish passage facilities on the existing Woodbridge Dam; (2) construct a new Woodbridge Dam with operable weir gates and new fish passage facilities; (3) construct a new Woodbridge Dam with operable weir gates and new fish passage facilities, and diversion pumps; and (4) replace the existing Woodbridge Dam and pump water from the river. The final EIR/EIS considers the environmental effects of the five alternatives in all topical areas required under NEPA and CEQA. Of particular importance for this project are the following topics: Fisheries, water quality, vegetation and wetland resources, wildlife, recreation, and visual resources.

Notice of the draft environmental impact report/environmental impact statement was published in the **Federal Register** on November 3, 1999 (64 FR 0212). A public hearing was held on November 16, 1999. The written comment period closed on January 4, 2000. The final EIR/EIS contains responses to all comments received and changes made to the text of the draft EIR/EIS as a result of those comments.

Locations for Inspecting/Reviewing the Final EIR/EIS

Copies of the final EIR/EIS are available for public inspection and review at the following locations:

- Woodbridge Irrigation District Office, 18777 N. Lower Sacramento Road, Woodbridge, California 95258; telephone: (209) 369–6808
- Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street NW., Washington, DC 20240; telephone: (202) 208–4662
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225; telephone: (303) 445–2072
- Bureau of Reclamation, Regional Director, Attention: MP–140, 2800 Cottage Way, Sacramento CA 95825–1898; telephone: (916) 978–5100
- Natural Resources Library, U.S. Department of the Interior, Main Interior Building, 1849 C Street NW., Washington, DC 20240–0001
- Lodi Public Library, 201 W. Locust Street, Lodi, CA 95240–2099.

Dated: May 26, 2000.

Lester A. Snow,

Regional Director.

[FR Doc. 00–14744 Filed 6–9–00; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–395]

Notice of Decision To Extend the Deadline for Determining Whether To Review an Initial Determination on Inventorship

In the Matter of Certain Eprom, Eeprom, Flash Microcontroller Semiconductor Devices and Products Containing Same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by two weeks, *i.e.*, until July 17, 2000, the deadline for determining whether to review an initial determination (ID) issued on May 17, 2000, by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–3104. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this patent-based investigation on March 18, 1997, based on a complaint filed by Atmel Corporation. 62 FR 13706. The complaint alleged that several respondents violated section 337 by importing into the United States, selling for importation, and/or selling in the United States after importation certain electronic products and/or components that infringe one or more of claim 1 of U.S. Letters Patent 4,511,811 (the '811 patent), claim 1 of U.S. Letters Patent 4,673,829 (the '829 patent), claim 1 of U.S. Letters Patent 4,974,565 (the '565 patent) and claims 1–9 of U.S. Letters Patent 4,451,903 (the '903 patent). The '565 patent was later withdrawn from the case.

On July 2, 1998, the Commission found that the '903 patent was unenforceable for failure to name a co-inventor. During the Commission investigation, a U.S. District Court found the '811 and '829 patents invalid and the Commission, therefore, applied collateral estoppel to find that the '811 and '829 patents were invalid. Atmel obtained a "Certificate of Correction" from the U.S. Patent and Trademark Office which changed the inventorship of the '903 patent. In view of the fact that the inventors had been corrected on the '903 patent, Atmel petitioned the Commission on September 8, 1998, to reconsider its finding of no violation based on the unenforceablility of the '903 patent. The Commission referred the petition to the presiding ALJ on January 25, 1999, for issuance of an ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42(h) of the Commission Rules of Practice and Procedure, 19 CFR 210.42(h).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. Public documents are also available for downloading from the Commission's website at http://www.usitc.gov.

By order of the Commission.

Dated: June 6, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14762 Filed 6–9–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–571 (Review)]

Professional Electric Cutting Tools From Japan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in November 1999 to determine whether revocation of the existing antidumping duty order on professional electric cutting tools would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On June 2, 2000, the Department of Commerce published notice that it was revoking the order "[b]ecause the domestic interested parties have withdrawn, in full, their participation in the ongoing sunset review" (65 FR 35324). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

EFFECTIVE DATE: June 2, 2000.

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FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: June 6, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14761 Filed 6–9–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–433]

Certain Safety Eyewear and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting an unopposed motion to amend the complaint and notice of investigation to delete references to "claim 18" of U.S. Letters Patent 5,457,505.

FOR FURTHER INFORMATION CONTACT: Gracemary Rizzo, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3117. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 1, 2000, based on a complaint filed by Bacou USA Safety, Inc. and Uvex Safety Manufacturing, Inc. ("complainants"), both of Smithfield, Rhode Island. The complaint named one respondent, Crews, Inc. of Memphis, Tennessee.

Complainants alleged that respondent had violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and/or selling within the United States after importation certain safety eyewear and components thereof by reason of (a) infringement of claims 1–5, 8–14, and 16–18 of U.S. Letters Patent 5,457,505 (the '505 patent); (b) the claim of U.S. Letters Patent Des. 322,616; and (c) misappropriation of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States.

On May 17, 2000, complainants filed an unopposed motion to amend the complaint and notice of investigation to delete "claim 18" of the '505 patent. In their motion, complainants stated that the '505 patent has only 17 claims and that references to "claim 18" were due to a typographical error.

On May 18, 2000, the presiding ALJ issued an ID (Order No. 4) granting complainants' motion. The ALJ found that there was good cause for the amendment, and that there was no prejudice to the parties or to the public interest. Accordingly, the complaint and the notice of investigation were amended to delete all references to "claim 18" of the '505 patent.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: June 5, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14759 Filed 6–9–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 332–350 and 332–351]

Monitoring of U.S. Imports of Tomatoes; Monitoring of U.S. Imports of Peppers

AGENCY: United States International Trade Commission.

ACTION: Publication of monitoring reports in 2000.

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: For general information, Timothy McCarty (202–205–3324) or Lowell Grant (202–205–3312), Agriculture and Forest Products Division, Office of Industries, or for information on legal aspects, William Gearhart (202–205–3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on these studies by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Background

Section 316 of the North American Free-Trade Agreement Implementation Act (NAFTA Implementation Act), 19 U.S.C. 3381, directs the Commission to monitor imports of fresh or chilled tomatoes (HTS heading 0702.00) and fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00), until January 1, 2009. As a result of such monitoring, the domestic industry producing a like or directly competitive perishable agricultural product may request, in a global safeguard petition filed under section 202 of the Trade Act of 1974 or a bilateral safeguard petition filed under section 302 of the NAFTA Implementation Act, that provisional relief be provided pending completion of a full section 202 or 302 investigation. If provisional relief is requested, the Commission has 21 days in which to make its decision and to transmit any provisional relief recommendation to the President. In response to the monitoring directive, the Commission instituted investigation No. 332–350, Monitoring of U.S. Imports of Tomatoes (59 FR 1763) and investigation No. 332–351, Monitoring of U.S. Imports of Peppers (59 FR 1762).

Although section 316 of the NAFTA Implementation Act does not require that the Commission publish reports on the results of its monitoring activities, the initial notices of investigation for these studies indicated that the Commission planned to publish reports on the monitoring annually. Subsequently, the Commission has published statistical reports in those years in which it was not conducting an investigation under other statutory authority with respect to such products.

Written Submissions

The Commission does not plan to hold a public hearing in connection with preparation of the 2000 statistical reports. However, interested persons are invited to submit written statements concerning the matters to be addressed in the reports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be provided on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission in accordance with section 201.8 of the Commission's rules at the earliest practical date and should be received no later than the close of business on June 28, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Room 112–A, Washington, DC 20436. The Commission plans to publish both monitoring reports in September 2000.

Issued: June 6, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14760 Filed 6–9–00; 8:45 am]

BILLING CODE 7020–02–U

NATIONAL SCIENCE FOUNDATION

Subcommittee on Global Change Research; Draft Report Availability

AGENCY: National Science Foundation.

ACTION: Notice of the availability of draft report for public comment.

SUMMARY: On behalf of the Subcommittee on Global Change Research (SGCR) of the Committee on Environment and Natural Resources of the National Science and Technology Council (NSTC), the National Science Foundation (NSF) announces the availability of the draft version of the National Assessment Synthesis Report for a 60-day public comment period (June 12 through August 11, 2000). The National Assessment's goal is to analyze and evaluate what is known about the potential consequences of climate variability and change for the Nation, in the context of other pressures on the public, the environment, and the Nation's resources. The National Assessment Synthesis Team (NAST) was formed in 1998 under the Federal Advisory Committee Act and was charged with, among other responsibilities, integrating key findings from the regional and sectoral analyses, augmented as appropriate with additional analyses and material from the scientific literature. The NAST prepared the report to address questions of importance to stakeholders and the Nation. The draft report is titled Climate Change Impacts on the United States: The Potential Consequences of Climate Variability and Change. The report consists of an Overview and a Foundation document that contains 19 chapters detailing and documenting the findings presented in the Overview. A list of chapters making up the draft NAST report is included with this notice. The comments received will be considered by the NAST in the preparation of the final version of its report. Although the report has already undergone extensive peer-review, this is still a draft version of the report and it should not be definitively quoted or cited as it is still undergoing review and is likely to be changed based on comments received. Due to its length and the extensive use of color graphics in parts of the report, the report is available for review primarily over the Worldwide Web. Information about how to access and download copies of the relevant chapters and the Overview report is available at the Web site of the Global Change Research Information Office (GCRIO) at *http://www.gcrio.org/National Assessment/*. The Web site also provides information on how to submit comments on the draft. For those who cannot access the report over the Web, one copy is available for public inspection weekdays during normal business hours at the library of the National Science Foundation in Arlington, VA. Appointments can be made by calling 703–306–0658.

DATES: Reviewer comments on the draft report of the NAST must be received at the postal or email address indicated below on or before August 11, 2000.

ADDRESSES: Review comments should be formatted based on the guidelines provided by GCRIO upon notification of how to access the report. Review comments should be submitted via email over the Internet as a Microsoft Word or WordPerfect attachment using a separate file for the Overview report and for each chapter of the Foundation report that is reviewed. Review comments should be emailed to napubcmt@usgcrp.gov. If email submission is not possible, review comments may be submitted via mail to: National Assessment Comments, Office of the U.S. Global Change Research Program, 400 Virginia Avenue, SW, Suite 750, Washington, DC 20024. When submitting comments by mail, please provide comments both as hardcopy *and* on a 3.5" DS/HD disk (either Mac or IBM format) as a text file.

FOR FURTHER INFORMATION CONTACT: National Assessment Review Coordinator, Office of the U.S. Global Change Research Program, Suite 750, 400 Virginia Avenue, SW, Washington, DC 20024; or telephone 202–488–8630, fax at 202–488–8681, or send an email to *office@usgcrp.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The 1990 Global Change Research Act (PL 101–606) that established the US Global Change Research Program (USGCRP) required the program to conduct periodic assessments that would: Integrate and interpret the findings of USGCRP; analyze trends in global change over the next 25 to 100 years; analyze the effects of global change on the natural environment, agriculture, energy, land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and discuss associated scientific uncertainties. Responsibility for undertaking the assessment was vested in the NSTC.

In 1998, the President's Science Advisor, acting in his capacity as executive secretary of the NSTC, requested that the SGCR conduct the first national assessment of the consequences of global climate change and variability. The SGCR established the NAST, which is a 14-member FACA-chartered committee established on behalf of the SGCR by the NSF. The NAST developed the plan for the Assessment and it was approved by the SGCR and the NSTC. The National Assessment process was designed to be broadly inclusive, drawing on inputs from academia, government, the public and private sectors, and interested citizens through a distributed set of

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regional and sectoral activities. Among other responsibilities, the NAST has been responsible for preparing the National Assessment Synthesis Report and providing overall intellectual guidance on the Assessment.

II. Review Process

Drafts of the National Assessment Synthesis Report have undergone two rounds of technical peer review. In the first round that took place in November and December of 1999, over 500 experts were asked to review the Overview report plus one to four chapters of the Foundation report for technical and scientific accuracy. Review drafts were also sent to federal agency representatives, all members of the Synthesis Team, and the chairs of all regional and sectoral teams. Over 300 technical reviews of the Overview and individuals chapters were received. In the second round that took place in March and April, about two dozen additional experts were asked to review the report as a whole.

The technical review process has been overseen by a small panel of eminent persons from the private and public sectors that has been assembled under the auspices of the President's Council of Advisors on Science and Technology (PCAST). This special panel has assured a representative mix of reviewers and the responsiveness of the NAST to the technical comments received. In addition to the outside technical review, the report was provided to the federal agency members of the SGCR for comment as part of the overall review process.

The SGCR is now responsible for coordinating a public comment period on this draft version of the National Assessment Synthesis Report. This notice announces the availability of this report for public comment by experts, interested organizations and individuals, and the public. Comments that are provided will be evaluated, integrated, and used, as appropriate, in the revision of this draft of the report. An information sheet providing specific requests for formatting submissions of comments is available on the Web site. All comments must indicate who is submitting the comments. The emphasis should be on providing detailed recommendations on the Overview and/or on specific chapters of the Foundation report so that changes can be considered that address the comment. To be most useful, comments should be specific in suggesting alternative wording or other changes to the text of a particular paragraph or chapter and, where appropriate, offer supporting information and peer-reviewed references supporting the proposed changes. Comments on the overall tone, internal consistency, and scientific validity of the Overview and chapters and comments expressing the reasons for agreement or disagreement with specific major points are also invited.

The materials available for review include the draft versions of the Overview report and Foundation chapters. Documents available for review include the following:

Overview Report

Foundation Report (listing is of subject matter of chapter)

1. Climate Change
2. Vegetation and Biochemistry Scenarios
3. Socioeconomic Change
4. Northeast
5. Southeast
6. Midwest
7. Great Plains
8. West
9. Pacific Northwest
10. Alaska
11. Islands
12. Native Peoples and Homelands
13. Agriculture
14. Water Resources
15. Human Health
16. Coastal Areas and Marine Resources
17. Forests
18. Conclusions
19. Research Needs

III. Public Availability of Comments

Subsequent to the receipt and collation of the comments, the collection of comments received will be available for public inspection weekdays during normal business hours at the library of the National Science Foundation in Arlington, VA. Appointments can be made by calling 703–306–0658.

Dated: June 6, 2000.

Karen J. York,

Human Resource and Management Specialist.

[FR Doc. 00–14732 Filed 6–9–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Service Provider Licenses

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability and Request for Comments.

SUMMARY: The NRC is announcing the availability of, and requesting comments on, draft NUREG–1556, Volume 18, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Service Provider Licenses," dated May 2000.

The NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, "Methodology and Findings of the NRC's Materials Licensing Process Redesign." A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This draft NUREG report is the 18th guidance document developed to support an improved materials licensing process.

This guidance is intended for use by applicants, licensees, and the NRC staff, and will also be available to Agreement States. This document combines and updates the guidance found in the following draft regulatory guides: "Guide for the Application for a License for the Use of Radioactive Materials for Calibrating Radiation Survey and Monitoring Instruments," "Guide for the Application for the Use of Radioactive Materials in Leak-Testing Services," and "Guide for the Applications for the Use of Radioactive Materials in Servicing Preregistered Gauges, Measuring Devices, and Sealed Sources Used in Such Devices." Additionally, NRC staff included information contained in the corresponding Standard Review Plans for these three draft regulatory guides. This draft report takes a more risk-informed, performance-based approach to licensing service providers, and reduces the information (amount and level of detail) needed to support an application for these activities. This document is strictly for public comment and is not for use in preparing or reviewing service provider licenses until it is published in final form. It is being distributed for comment to encourage public participation in its development.

DATES: The comment period ends August 11, 2000. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to dlm1@nrc.gov.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 18, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop TWFN 9–C–24, Washington, D.C. 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to cxb@nrc.gov. A copy of draft NUREG–1556, Volume 18, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, D.C. 20555–0001.

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. The NRC requests comments on this licensing guidance NUREG specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

FOR FURTHER INFORMATION CONTACT: Mrs. Carrie Brown, TWFN 9–F–24, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415–8092; electronic mail address: cxb@nrc.gov.

Electronic Access

Draft NUREG–1556, Vol. 18 is available electronically by visiting the NRC's Home Page (*http://www.nrc.gov/nrc/nucmat.html*).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 6th day of June, 2000.

Catherine Haney,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 00–14758 Filed 6–9–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f–1, SEC File No. 270–236, OMB Control No. 3235–0222

Form N–17f–1, SEC File No. 270–316, OMB Control No. 3235–0359

Rule 17f–2, SEC File No. 270–233, OMB Control No. 3235–0223

Form N–17f–2, SEC File No. 270–317, OMB Control No. 3235–0360

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 17f–1 under the Investment Company Act of 1940 (the "Act") is entitled: "Custody of Securities with Members of National Securities Exchanges." Rule 17f–1 provides that any registered management investment company ("fund") that wishes to place its assets in the custody of a national securities exchange member may do so only under a written contract that must be ratified initially and approved annually by a majority of the fund's board of directors. The written contract also must contain certain specified provisions. In addition, the rule requires an independent public accountant to examine the fund's assets in the custody of the exchange member at least three times during the fund's fiscal year. The rule requires the written contract and the certificate of each examination to be transmitted to the Commission. The purpose of the rule is to ensure the safekeeping of fund assets.

Commission staff estimates that approximately five funds maintain their assets with a national securities exchange member.[1] The annual burden of the rule's requirements is estimated to be approximately 4.5 hours for each of these funds.[2] Commission staff estimates the total annual burden for all funds is 22.5 hours.

Compliance with the collection of information required by rule 17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange. Responses will not be kept confidential. Form N–17f–1 is entitled: "Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges." Form N–17f–1 is the cover sheet for accountant examination certificates filed under rule 17f–1 of the Act. Rule 17f–1 requires the accountant's certificate of each examination be attached to Form N–17f–1 and transmitted to the Commission promptly after each examination. The form facilities the filing of the accountant's certificate, and increases the accessibility of the certificate to both Commission's staff and interested investors.

Commission staff estimates that approximately five funds maintain their assets with a national securities exchange member. The annual burden of the rule's requirements is estimated to be approximately 27 minutes for each of these funds.[3] The total annual burden for all funds is therefore estimated to be 2.25 burden hours.

Compliance with the collection of information required by Form N–17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member.

Rule 17f–2 under the Act is entitled: "Custody of Investments by Registered Management Investment Company." Rule 17f–2 establishes safeguards for arrangements in which a registered management investment company is deemed to maintain custody of its own assets, such as when the fund maintains its assets in a facility that provides safekeeping but not custodial services. The rule includes several recordkeeping or reporting requirements. The fund's directors must prepare a resolution designating not more than five fund officers or responsible employees who may have access to the fund's assets. The designated access persons (two or more of whom must act jointly when handling fund assets) must prepare a written notation providing certain information about each deposit or withdrawal of fund assets, and must transmit the notation to another officer or director designated by the directors. Independent public accounts must verify the fund's assets at least three times a year, and two of the examinations must be unscheduled.

The requirement that directors designate access persons is intended to ensure that directors evaluate the trustworthiness of insiders who handle fund assets. The requirements that access persons act jointly in handling fund assets, prepare a written notation of each transaction, and transmit the notation to another designated person

[1] The Commission's records show that five funds filed Form N–17f–1 during calendar year 1999.

[2] The Commission staff estimates, based upon the experience of staff familiar with the information collection requirements of the rule, that each fund spends approximately 4.5 hours annually in complying with the rule's requirements: 4 hours of clerical time (1 hour to prepare the custodial contract for board review and to transmit the contract, and 1 hour to transmit of the accountant's certificates three times yearly), and 0.5 hours for the board of directors to ratify the custodial contract.

[3] Commission staff estimates that it takes approximately 9 minutes of clerical time to prepare each Form N–17f–1. This estimated is based on Commission staff members filling out the Form N–17f–1. Each fund is required to file Form N–17f–1 three times annually, for an average hour burden per dund of 27 minutes.

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are intended to reduce the risk of misappropriation of fund assets by access persons, and to ensure that adequate records are prepared, reviewed by a responsible third person, and available for examination by the Commission. The requirement that auditors verify fund assets without notice twice each year is intended to provide an additional deterrent to the misappropiation of fund assets and to detect any irregulatirites.

Commission staff estimates that approximately 204 funds rely upon the rule (and that each fund offers an average of two separate series or portfolios subject to the rule) [4] Commission staff estimates that each fund spends approximately 2 hours annually in drafting resolutions by directors, 24 hours annually in preparing transaction notations, and 100 hours annually assisting independent public accountants perform unscheduled verifications of assets.[5] The total annual burden of the rule's paperwork requirements thus is estimated to be 25,704 hours. This represents an increase of 10,844 hours from a prior estimate of 13,860 hours, based on an increase in the number of funds relying on the rule from 110 to 204 funds.

Form N–17f–2 is entitled "Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies." Form N–17f–2 is the cover sheet for the accountant examination certificates filed under rule 17f–2 of the Act by registered management investment companies maintaining custody of securities or other investments. Form N–17f–2 facilitates the filing of the accountant's examination certificates. The use of the form allows the certificates to be filed electronically, and increases the accessibility of the examination certificates to both the Commission's examination staff and interested investors by ensuring that the certificates are filed under the proper SEC file number and the correct name of a fund.

Commission staff estimates that approximately 204 funds rely on rule 17f–2, and therefore, file Form N–17f–2 with the Commission. A fund relying on rule 17f–2 must file the form with the Commission at least three times a year. Commission staff estimates that each fund spends approximately nine minutes (0.15 hours) preparing each response on Form N–17f–2 [6] Therefore, the total annual burden of Form N–17f–2's annual paperwork requirements is estimated to be approximately 92 hours,[7] an increase of 72 hours from the prior estimate of 20 hours. The increase in the annual hour burden is primarily attributable to the increase in the number of respondents from 130 funds to 204 funds.[8]

Complying with the collection of information requirements of the rule is mandatory for those funds that maintain custody of their own assets. The information provided to the Commission by the fund's independent public accounts about each verification of the fund's assets will not be kept confidential.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 5, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–14716 Filed 6–9–00; 8:45 am]

BILLING CODE 8010–01–M

[4] A fund relying upon rules 17f–2 is required to file Form N–17f–2 with the Commission three times yearly. The Commission's records indicate that approximately 204 funds filed Form N–17f–2 with the Commission during calendar year 1999.

[5] Each of these hour burden estimates is based upon conversations with attorneys and accountants familiar with the information collection requirements of the rule.

[6] This estimate is based on the experience of members of the Commission staff in completing Form N–17f–2.

[7] This estimate is based on the following calculation: 204 (respondents) × 3 (responses per fund per year) × .015 (hours per response) = 91.8 burden hours.

[8] The estimate of the hour burden per fund per response remains 9 minutes for each Form N–17f–2 filed with the Commission. The prior annual hour burden estimate was based on a calculation of .05 hours (which equals 3 minutes) instead of .015 hours (9 minutes). The annual hour burden for Form N–17f–2 has, therefore, increased by only 42.3 burden hours if the prior annual hour burden is recalculated: 110 (respondents) x 3 (responses per respondent per year) x .015 (hours per response) = 49.5 burden hours.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27180]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 5, 2000.

AGENCY: Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 27, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 27, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–9627)

Allegheny Energy, Inc., ("Allegheny"), a registered holding company, Allegheny Energy Service Company ("AESC"), a service subsidiary of Allegheny, The Potomac Edison Company ("Potomac Edison"), a wholly owned electric public utility subsidiary of Allegheny, all located at 10435 Downsville Pike, Hagerstown, Maryland 21740–1766, and Allegheny Energy Supply Company, LLC, a wholly owned nonutility subsidiary of Allegheny located at 10435 Downsville Pike, Hagerstown, Maryland 21740–1766, and Allegheny Energy Supply Company, LLC, a wholly owned nonutility subsidiary of Allegheny located at R.R. 12, P.O. Box 1000, Roseytown, Pennsylvania 15601 ("Genco" and collectively, "Applicants"), have filed an application-declaration under sections

6(a), 7, 9(a), 10, 12(b), 12(c), 12(d), and 13(b) of the Act, and rules 43, 44, 45, 46, 54, 90 and 91 under the Act.

Potomac Edison, subject to obtaining the requisite regulatory approvals, intends to leave the generating business entirely. To accomplish this, Applicants request authority for Potomac Edison to transfer most of its electric generating business to Genco, which was organized to compete in deregulated, competitive electricity generation markets. Specifically, Applicants request authority for Potomac Edison to transfer to Genco, at net book value, Potomac Edison's undivided ownership interests in certain jointly held and certain wholly owned generating facilities and related fixed assets ("Generating Assets"), in certain current assets related to the Generating Assets ("Related Assets"), and other related interests ("Other Interests") each of which is more particularly described below. In addition, Applicants request authority for Potomac Edison to transfer and for Genco to assume certain net liabilities and debt associated with the Generation Assets and Related Assets ("Related Liabilities"). As discussed below, Applicants also request authority for Potomac Edison to transfer its undivided ownership interests in certain hydroelectric generating stations located in Virginia ("Virginia Hydros") to a subsidiary it proposes to organize, PE VA Hydro, LLC ("PE VA Hydro").

The Generating Assets consist of the undivided ownership interests in the following generating facilities: a 25% interest in the Fort Martin Power station located in Maidsville, West Virginia; a 33% interest in the Albright Power Station located in Albright, West Virginia; a 32.76% interest in the Harrison Power Station located in Shinnston, West Virginia; a 20% interest in the Hatfield's Ferry Power Station located in Masontown, Pennsylvania; a 30% interest in the Pleasants Power Station, located in Saint Mary's, West Virginia; a 100% interest in the R. Paul Smith Station and R. Paul Smith Ash Basin, both located in Williamsport, Maryland; and a 100% interest in the Millville, Dam #4 and Dam #5 hydro stations located in West Virginia. The Generating Assets also consist of step-up transformers and ancillary transmission and distribution equipment, production equipment, buffers and rights of way, and other equipment that connect the Generating Assets to the transmission grid. Applicants project that the total net book value of the Generating Assets will be approximately $448.4 million as of June 30, 2000. Potomac Edison also intends to transfer fuel, supplies, and other inventory ("Inventory") to Genco through intermediate subsidiaries more particularly described below.[1]

The Related Assets consist of current assets, deferred charges, cash, temporary cash investments, and an undivided 28% ownership interest in Allegheny Generating Company ("ACC").[2] Applicants project that the net book value of the Related Assets will be approximately $57.9 million as of June 30, 2000. The Other Interests consist of an undivided 2% ownership interest in Ohio Valley Electric Corporation ("OVEC"), a public utility, and Potomac Edison's rights and obligations under four agreements regarding the operation of four of the generating facilities included as Generating Assets.

The Related Liabilities consist of accounts payables, accrued taxes, tax deferrals, pollution control bonds, and other deferred credits related to the Generating Assets. Applicants project that the book value of the Related Liabilities will be approximately $215.3 million as of July 1, 2000. Applicants state that the Related Liabilities do not include Potomac Edison's first mortgage bonds. Applicants state that Potomac Edison expects to obtain a release from the lien of the first mortgage by pledging additional bondable property in an amount not to exceed the net book value of the Generating Assets, which could include remaining utility assets of Potomac Edison, and request authority to pledge those assets to obtain the described release.

The Virginia Hydros consist of Potomac Edison's undivided 100% ownership interests in the Luray, Newport, Shenandoah and Warren hydroelectric generating stations. According to Applicants, the net book value of the Virginia Hydros will be approximately $3.6 million as of June 30, 2000.

To accomplish the proposed transfers, Applicants request authority to form two limited liability corporations, PE Transferring Agent, LLC ("PE Transferring Agency") and PE Genco, LLC ("PE Genco"). Potomac Edison would acquire the ownership interests in PE Transferring Agent in exchange for an initial cash contribution of $200,000, and PE Transferring Agent would acquire the membership interests in PE Genco for an initial cash contribution of $100,000, with the contributions to be in the form of collateralized government obligations.

Potomac Edison would then transfer its undivided ownership interests in the Generating Assets, Related Assets, Inventory and Other Interests to PE Transferring Agent. PE Transferring Agent would issue a promissory note to Potomac Edison in an amount equal to the sum of the net book values of the Generating Assets and Inventory ("Purchase Note") in exchange for the transfer of these assets. In order to assure that PE Transferring agent has sufficient assets to cover the principal amount of the Purchase Note and its accrued interest, Potomac Edison would issue a non-interest bearing note to PE Transferring agent in an amount $20 million greater than the Purchase Note as a capital contribution. In addition, Potomac Edison would issue a non-interest bearing promissory note to PE Transferring Agency in an amount constituting the difference between the net book values of the Related Assets and the Related Liabilities.

PE Transferring Agent would in turn contribute the undivided ownership interests in the Generating Assets, Related Assets, Inventory and Other Interests to PE Genco, which would also assume the Related Liabilities. PE Transferring Agent would then dividend its membership interests in PE Genco to Potomac Edison, which would in turn dividend these membership interests to Allegheny, after which PE Genco would merge with Genco.

Applicants state that it is undesirable, at this time, for Genco to directly acquire the Virginia Hydros because the acquisition could subject Genco to regulation as a "public utility" under Virginia law. In order to facilitate Potomac Edison's exit from the generation business and Genco's entry into Virginia"s deregulated generation market, Applicants request authority for Potomac Edison to organize and acquire PE VA Hydro and for Potomac Edison to transfer the Virginia Hydros to PE VA Hydro. Applicants also request authority for Potomac Edison to dividend the membership interests in PE VA Hydro to Allegheny, and for Allegheny to contribute these interests in PE VA Hydro to Genco, making PE VA Hydro a wholly owned subsidiary of Genco.

In addition, Applicants request authority for Potomac Edison to render operating services with respect to the Generating Assets on behalf of Genco, and to render operating services with respect to the Virginia Hydros on behalf of PE VA Hydro, until Genco and PE VA

[1] Applicants state that Potomac Edison will transfer the Inventory at net book value. Applicants project that the net book value of the Inventory will be approximately $32.8 million as of June 30, 2000.

[2] AGC, a Virginia corporation that is currently jointly owned by Potomac Edison, Genco, and Monongahela Power Company, owns a 40% undivided interest in a pumped storage hydroelectric generating facility and related facilities located in Bath County, Virginia.

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Hydro obtain the necessary permits and licenses to operate the Generating Assets and the Virginia Hydros, respectively. These services will be rendered at cost, in accordance with rules 90 and 91 under the Act. Further, Applicants request authority for AE Units 1 and 2, LLC ("AEU"), a public utility subsidiary of Allegheny, to merge with Genco in exchange for Genco assuming the former company's outstanding debt.[3]

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14717 Filed 6–9–00; 8:45 am]

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[3] AEU's principal assets are to 44MW generation units in Springdale, Pennsylvania.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Reunion Industries, Inc., Common Stock, $.01 Par Value) File No. 1–15739

June 5, 2000.

Reunion Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

Following the completion of its merger with Chatwins Group, Inc., on March 16, 2000, the Company, whose Security has been listed on the PCX, additionally effected its listing and registration on the American Stock Exchange ("Amex"). Trading in the Security on the Amex began on March 23, 2000. The Company's board of directors subsequently determined that the Security's limited trading volume on the PCX, compared with that on the Amex, did not justify the cost of maintaining such listing. On March 27, 2000, therefore, the Company's board passed a resolution authorizing the withdrawal of the Security from listing and registration on the PCX.

The PCX, having determined that the Company complied with the rules of the PCX governing the withdrawal of the Security from listing and registration, has indicated by letter to the Company that it shall not interpose any objection to the proposed withdrawal. The matter was considered and decided by the Equity Listings Committee of the PCX at a meeting held on May 2, 2000.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the PCX and shall have no effect upon the Security's continued listing and registration on the Amex under Section 12(b) of the Act.[3]

Any interested persons may, on or before June 26, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–14719 Filed 6–9–00; 8:45 am]

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42894; File No. SR–Amex–99–36]

Self-Regulatory Organizatons: Orders Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the American Stock Exchange LLC Relating to Facilitation, Solicitation, and Crossing Transactions

June 2, 2000.

I. Introduction

On September 2, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19–4 thereunder,[2] a proposed rule change to amend its rules by adopting Commentary .02(d) and Commentary .04 to Amex Rule 950(d).[3] The proposed rule change was published for comment in the **Federal Register** on October 15, 1999.[4] On November 1, 1999, May 26, 2000, and May 31, 2000, the Amex filed Amendment Nos. 1, 2, and 3, respectively, to the proposal.[5] No comments were received regarding the proposed rule change. This order approves the portion of the proposal, as amended, adopting Commentary .04 to Amex Rule 950(d); this order also approves the portion of the proposal adopting Commentary .02(d) to Amex Rule 950(d) on a pilot basis until August 31, 2000. Finally, this order accelerates approval of Amendment Nos. 1, 2 and 3, and solicits comments from interested persons on those amendments.

II. Description of the Proposal

A. Proposed New Commentary .02(d)

Commentary .02 to Amex Rule 950(d) generally sets forth the procedures by which a floor broker representing the order of a public customer of a member firm may cross that order with a contra side order from the firm's proprietary account. In these circumstances, the firm is said to be "facilitating" the customer order, and the transaction is called a "facilitation cross."

Under the current version of the rule, a floor broker seeking to execute a facilitation cross must first bring the transaction to the trading floor and request a market from the trading crowd. After receiving bids and offers from the crowd, the floor broker must propose a price at which to cross the order that improves upon the price provided by the crowd. However, before the floor broker can effect the cross, the market makers in the crowd are given the opportunity to take all or part of the transaction at the proposed price.

Under the current rule, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to take part of the order, however, the crowd has precedence and the floor broker may cross only that amount remaining after the crowd has taken its portion. If the crowd wants to take the entire order, the floor broker will not be able to cross any part of the order.

[1] 15 U.S.C. 78*s*(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current proposal replaces an earlier proposed (file No. SR–Amex–98–19) that the Amex withdrew. *See* Securities Exchange Act Release No. 41864 No. 41864 (September 10, 1999), 64 FR 50843 (September 20, 1999).

[4] *See* Securities Exchange Act Release No. 41985 (October 7, 1999), 64 FR 55998.

[5] The modifications made by these amendments are incorporated in the description of the proposal in Section II below, and are further discussed in Section III below.

The proposed rule change would add new paragraph (d) to Commentary .02 to establish a 90-day pilot program that would apply to facilitation cross transactions in equity options.[6] The proposal would entitle the floor broker, under certain conditions, to cross a specified percentage of the customer order on behalf of the member firm before market makers in the crowd can participate in the transaction. This provision would generally apply to orders of 400 contracts or more. However, the Exchange would be permitted to establish a smaller eligible order size, so long as that size is not smaller than 50 contracts.[7]

The percentage of the floor broker's guarantee would depend upon whether the price at which the order is ultimately traded is at the crowd's best bid or offer in response to the broker's initial request for a market, or at an improved price.

First, the floor broker would be granted a right under the proposal to execute a facilitation cross even at a price that does not improve upon the best bid or offer provided by the crowd in response to his initial request for a market. The proposed rule change provides that where the trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established would need to be satisfied first. Once these public customer orders are satisfied, the floor broker would be entitled to facilitate 20% of the contracts remaining in the customer order.[8]

The proposed rule change further provides that if the floor broker proposes the facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker would be entitled to priority over the crowd to facilitate 40% of the contracts.[9] However, if the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would be entitled to priority to facilitate 20% of the contracts.[10]

The proposed rule change also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices[11] would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised. However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.[12]

The proposed rule change makes clear that if the facilitation transaction takes place at a price at which the specialist is not on parity with registered options traders in the crowd, the specialist would not be guaranteed any participation. The proposal also makes clear, however, that it is not intended to prohibit either a member firm or specialist from trading more than their percentage entitlements if the other members of the trading crowd do not choose to trade with the remaining portion of the facilitated order.[13]

B. Proposed New Commentary .04

Proposed new Commentary .04 to Amex 950(d) states that it may be considered conduct inconsistent with just and equitable principles of trade for any member or person associated with a member, who has knowledge of all material terms and conditions of (1) an originating order[14] and a solicited order, (2) an order being facilitated, or (3) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until either (1) all of the terms of the originating order[15] and any changes in the terms or conditions of the order of which the member or associated person has knowledge are disclosed to the trading crowd, or (2) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of proposed Amex Rule 950(d), Commentary .04, an order to buy or sell a "related instrument," means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

The Amex stated that it seeks to codify and expand its policy prohibiting either a member or a person associated with a member from using non-public information for the member's or associated person's benefit by trading in the underlying stock or any closely related instrument. Specifically, proposed Commentary .04 is designed to prevent members and associated persons from using undisclosed information about imminent solicited, facilitated, or crossed options transactions to trade the relevant option or any closely related instrument in advance of persons represented in the trading crowd. The Amex believes that trading on the basis of undisclosed information could threaten the integrity of the auction market or disadvantage other market participants.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of the Act applicable to a national securities exchange, particularly those of Section

[6] *See* Amendment No. 2.

[7] Amendment No. 2 concerning proposed subsection (d)(2). The Exchange would be permitted to adjust the eligible order size on a class by class basis. Telephone conversation between Clarie McGrath, Vice President and Special Counsel, Derivative Securities, Amex, and Ira Brandriss, Attorney, Division of Market Regulation, the Commission, on May 26, 2000.

[8] *See* Amendment No. 1, concerning proposed subsection(d)(1)(i).

[9] *See* Amendment No. 2, which reduces the proposed percentage guarantee from 50% to 40%.

[10] *See* Amendment No. 2.

[11] These practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. *See* Amendment No. 3. The Commission notes that the Amex has separately filed a proposal to codify its specialist allocation practices. *See* File No. SR–Amex–00–30, available for inspection in the Commission's Public Reference Room.

[12] *See* Amendment No. 3, concerning proposed subsection (d)(3).

[13] *See* Amendment No. 2, concerning proposed subsection (d)(4).

[14] Amex Rule 950(d), Commentary .03 states, in part, that a member or member organization representing an order in options ("originating order") may solicit another member, member organization, or non-member broker-dealer outside the trading crowd ("solicited party") to participate in the transaction on a proprietary basis provided the member or member organization, upon entering the trading crowd to execute the transaction, announces to the trading crowd the same terms and conditions about the originating order as disclosed to the solicited party and bids at the price he is prepared to buy from the solicited party or offers at the price he is prepared to sell to the solicited party.

[15] The proposal as originally filed refers to "all the terms of the order." Amendment No. 2 modifies this phrase to refer to "all the terms of the originating order," defining more clearly the disclosure requirement. See Section III.C below.

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6(b)(5) [16] and Section 6(b)(8) [17] of the Act, and the rules and regulations thereunder.[18]

A. Proposed New Commentary .02(d)

The Commission believes that proposed new Commentary .02(d) to Amex Rule 950(d) will enable the Amex to better compete with other options exchanges in attracting the order flow of broker-dealer firms seeking to facilitate customer orders, without adversely impacting the prices those orders receive.

The Commission finds that the Amex's proposal to grant participation rights, under certain conditions, to member firm seeking to execute facilitation crosses on the Exchange is reasonable. Currently, Amex market makers have priority rights for the full size of a customer order over the firm that brings a crossing transaction of the Amex floor, as long as the market makers are willing to trade at the proposed price.

While the proposal entitles the member firm to a specified percentage of a facilitation transaction when executed at the trading crowd's best bid or offer, it does not eliminate the crowd's ability to trade with a portion of the order proposed to be crossed, or even so substantially reduce that ability so as to raise serious concern that the proposal would reduce price competition by the crowd. Moreover, the Commission believes that the proposal may contribute to better prices for crossing transactions. Specifically, it provides an incentive for upstairs firms to improve on the prices quoted by the crowd by offering these firms a greater participation in the trade when they better the crowd's price. In addition, market makers will always have an opportunity to improve the market and compete for a greater portion of the trade.

In evaluating the proposed rule change, the Commission considered, among other matters, whether the Amex's proposal to guarantee that a member firm could cross up to 40% of an order would reduce the incentive of crowds to compete for orders, and thus impair the price discovery mechanism of the Exchange's market.

It is recent approval of the application of the International Securities Exchange ("ISE") for registration as a national securities exchange, the Commission discussed the same concern with respect to the ISE's proposed "facilitation mechanism," a system designed to effect a type of facilitation guarantee in an electronic context. The Commission wrote:

> It is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. In the future, after the Commission has studied the impact of guarantees, the Commission may need to reassess the level of these guarantees. For the immediate term, the Commission believes that 40% is not clearly inconsistent with the statutory standards of competition and free and open markets.[19] By the same token, the Commission believes that the Amex's proposed rule change,

which allocates no more than 40% of an order to the firm seeking to facilitate an order, is not inconsistent with the statutory standard. The Commission notes, moreover, that for those crossing transactions in which a specialist, pursuant to Amex trading floor practices, is entitled to an allocation in addition to the proposed allocation for the facilitating firm, the Amex has included a provision to limit the combined allocations awarded to the firm and the specialist an aggregate of no more than 40% of the order.

B. Proposed New Commentary .04

As described more fully above, proposed Commentary .04 restricts trading by a member or associated person who has knowledge of all of the material terms of a solicited order, an order being facilitated, or orders being crossed. The restriction does not apply however, if either (1) all of the terms of the originating order and any changes in the terms and conditions of the order of which the member or associated person has knowledge are disclosed to the trading crowd; or (2) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received.

According to the Amex, proposed Amex Rule 950(d), Commentary .04 is designed to prevent members and associated persons from using undisclosed information about imminent solicited, facilitated, or crossing transactions to trade the relevant option or any closely related instrument in advance of persons represented in the trading crowd.

The Commission believes that it is reasonable for the Amex to prohibit, as inconsistent with just the equitable principles of trade, transactions by members or associated persons based on the knowledge of imminent undisclosed solicited, facilitated, or crossing transactions. The Commission believes that such trading could threaten the integrity of the auction market or disadvantage other market participants.[20] Accordingly, by restricting trading based on knowledge of an imminent undisclosed solicited, facilitated, or crossing transaction, the Commission believes that the proposal will help to maintain the integrity of the Amex's market. As noted above, a member or associated person who has knowledge of all of the material terms of a solicited order, an order being facilitated, or orders being crossed may trade after disclosing to the trading crowd the terms of the originating order and any changes in the terms and conditions of the order.[21] The Commission believes that this disclosure requirement should provide the trading crowd with a fair and full opportunity to make informed trading decisions.[22]

The Commission notes that proposed Commentary .04 does not relieve market participants of the general Amex requirement that their acts and practice be consistent with just and equitable principles of trade.[23] Thus, the Commission notes, as it has concluded previously,[24] that disclosing the terms of an order and any change in the terms and conditions of the order to the trading crowd prior to effecting a trade does not provide a safe harbor from possible violations of front-running prohibitions.[25]

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[16] 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designed to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. It also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[17] 15 U.S.C. 78f(b)(8). Section 6(b)(8) requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[18] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

[20] See Securities Exchange Act Release No. 34959 (November 9, 1994), 59 FR 59446 (November 17, 1994) (order approving File No. SR–CBOE–94–15).

[21] Under proposed Commentary .04, a member or associated person with knowledge of the terms and conditions of a solicited, facilitated, or crossing transaction also may trade based on knowledge of the order if the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received.

[22] See Securities Exchange Act Release No. 36195 (August 25, 1995), 60 FR 45753 (September 1, 1995) (order approving File No. SR–CBOE–95–07) ("1995 CBOE Order").

[23] See Amex Constitution, Article V, Section h(4).

[24] See 1995 CBOE Order, *supra* note 22.

[25] See Securities Exchange Act Release No. 25233 (December 30, 1987), 53 FR 296 (January 6, 1998) (noting the filing and immediate effectiveness of frontrunning policies filed by the American Stock Exchange, New York Stock Exchange, Pacific Exchange, Philadelphia Stock Exchange, Chicago Board Options Exchange, and the National Association of Securities Dealers).

The Commission notes that proposed Commentary .04 is substantially similar to current Chicago Board Options Exchange ("CBOE") Rule 6.9(e). The Commission believes that it is reasonable for the Amex to adopt a rule that is substantially similar to CBOE Rule 6.9(e) to provide similar protections for the Amex's marketplace. In addition, Commission believes that it is reasonable for the Amex to include solicited, facilitated, and crossing transactions in Amex Rule 950(d), Commentary .04 because solicited, facilitated, and crossing transactions could present opportunities for misuse of non-public information.

C. Accelerated Approval of Amendments

The Commission finds good cause, pursuant to Section 19(b)(2)(B) [26] of the Act, for approving Amendment Nos. 1, 2, and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.**

Amendment No. 1 adds the provision, described above, that would provide an allocation to a member firm seeking to facilitate a customer order even when it only matches, but does not improve upon, the prices given by the crowd in response to the floor broker's initial request for a market. The Commission has already approved rules of the ISE, the CBOE, and the Pacific Exchange ("PCX") that establish participation guarantees for firms seeking to facilitate orders even when they only match the best prices offered by other market participants.[27] Thus, the addition of this provision to the Amex proposal raises no new regulatory issues. Further, it should benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms under the rules of the various exchanges, and will allow the Amex to compete without disadvantage for facilitation orders.

Amendment No. 2 reduces the allocation to the member firm seeking to facilitate a customer order from 50% to 40% when the firm improves the price given by the crowd in response to the floor broker's request for a market. It thus limits guaranteed participation to a percentage that the Commission has previously found consistent with the Act and raises no new regulatory issues. Amendment No. 2 also includes the provisions described above concerning specialist allocations, and stipulates that the allocations guaranteed to the member firm and the specialist in the aggregate may not exceed 40% of the order. It thus strengthens the proposal by adding a necessary clarification of priority rights pursuant to current trading practices.

Amendment No. 2 also provides the Exchange the authority to reduce the size of orders to which the new guarantee applies from 400 to 50 contracts. The Commission has already approved ISE and CBOE rules permitting guarantees to firms facilitating crosses in order sizes as low as 50 contracts.[28] Thus, this modification of the Amex proposal raises no new regulatory issues. Further, it will benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms under the rules of the ISE, the CBOE, and the Amex, and will allow the Amex to compete without disadvantage for facilitation orders.

Amendment No. 2 also seeks to establish proposed Commentary .02(d) to Rule 950(d) as a 90-day pilot program. The Commission finds no reason to delay approval of this modification.

With respect to proposed Commentary .04, Amendment No. 2 clarifies that the restriction on trading for a person who has knowledge of the terms of a solicited, facilitation, or crossing order no longer applies as long as he disclosed all the terms of the *originating* order.[29] This clarification brings the proposed rule change in conformity with the disclosure requirement of CBOE Rule 6.9(e) and raises no new regulatory issue.

Amendment No. 3 includes several modifications of the proposed new rule text that were made for technical purposes [30] or to clarify its meaning, and thus strengthen the proposal.

Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) [31] and 19(b)(2) [32] of the Act to accelerate approval of Amendment Nos. 1, 2, and 3 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3, including whether they are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–99–36 and should be submitted by July 3, 2000.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the portion of the proposed rule change (SR–Amex–99–36), as amended, adopting Commentary .04 to Amex Rule 950(d) is approved, and the portion of the proposed rule change adopting Commentary .02(d) to Amex Rule 950(d) is approved on a pilot basis until August 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14720 Filed 6–9–00; 8:45 am]

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[26] 15 U.S.C. 78s(b)(2)(B).

[27] See Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (approving ISE's registration as a national securities exchange); 42835 (May 26, 2000) (approving File No. SR–CBOE–99–10); and 42848 (May 26, 2000) (approving File No. SR–PCX–99–18).

[28] See relevant citations at *supra*, note 27.

[29] See *supra*, note 14.

[30] One modification refers to current trading floor practices on the Amex regarding specialist allocations, rather than to the Amex proposal that would codify these practices, which is still pending before the Commission. See *supra*, note 11.

[31] 15 U.S.C. 78f(b)(5).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42895; File No. SR–AMEX–00–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to the Listing and Trading of Trust Issued Receipts

June 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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("Act")[1] and Rule 196–4 thereunder,[2] notice is hereby given that on February 14, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on June 2, 2000.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 1202 to provide for the trading of Holding Company Depository Receipts ("HOLDRs") pursuant to Rule 19b–4(e) of the Act.[4] The text of the proposed rule change follows. *Italics* indicate text to be added.

TRUST ISSUED RECEIPTS
Initial and Continued Listing
Rule 1202

Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria:

(a)–(e) No change.

Commentary .01 The Exchange may approve a series of HOLDRs for listing and trading on the Exchange pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 ("Act"), provided each of the component securities satisfies the following criteria:

Eligibility Criteria for Component Securities Represented by a series of HOLDRs:

(i) each component security must be registered under Section 12 of the Exchange Act;

(ii) each component security must have a minimum public float of at least $150 million;

(iii) each component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and be a reported national market system security;

(iv) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(v) each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million; and

(vi) the most heavily weighted security may not initially represent more than 20% of the overall value of the HOLDR.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Amex rule 1202 to provide for the trading of HOLDRs pursuant to Rule 19b–4(e) of the Act. On September 21, 1999, the Amex received approval to adopt new Rules 1200 *et seq.* to permit the trading of Trust Issued Receipts (of which HOLDRs are a type).[5] Since that time, the Exchange has listed Internet, Biotechnology, Pharmaceutical, Telecommunications, Business to Business, Internet Architecture, Internet Infrastructure, Broadband, and Semiconductor HOLDRs. The Exchange anticipates additional proposals to list new HOLDRs products.

To accommodate the listing of additional HOLDRs, the Exchange now proposes to revise existing listing criteria and trading rules to permit the listing and trading of HOLDRs pursuant to Rule 19b–4(e).[6] The Exchange believes listing newly proposed HOLDRs products pursuant to Rule 19–4(e) is appropriate because the Commission has approved, pursuant to Section 19(b) of the Act, trading rules, procedures and listing standards for the HOLDRs product class and the Exchange has a surveillance program for the HOLDRs' product class.[7] In addition, the Commission has reviewed a number of proposals to list and trade the Internet and Biotech holders that comprised the same product structure. The Commission noticed these proposed rule changes regarding the Internet and Biotech HOLDRS in the **Federal Register** and did not receive any comments concerning the proposals.

Amex Rule 1200 subjects HOLDRs to all of the Exchange's trading rules by providing that the provisions of the Exchange's Constitution and all other rules and policies of the Board of Governors apply to the trading of HOLDRs on the Exchange. Further, initial and continued listing standards applicable to HOLDRs, as set forth in Amex Rule 1202, currently provide that HOLDRs will be listed and traded on the Exchange subject to application of the following criteria: (a) Initial Listing—For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange: (b) Continued Listing—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances: (i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; (ii) if the Trust has fewer than 50,000 receipts issued and outstanding; (iii) if the market value of all receipts issued and outstanding is less than $1,000,000; or, (iv) if such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

In addition, the component securities represented by the securities in the portfolio underlying HOLDRs must meet the following minimum criteria: (1) Each component security must be registered under Section 12 of the Exchange Act; (2) the minimum public float of each component security included in the portfolio must be at least $150 million; (3) each component security must either be listed on a national securities exchange or be traded through the facilities of Nasdaq and be a reported national market system security; (4) the average daily trading volume for each component security must be at least 100,000 shares during the preceding sixty-day trading period; and (5) the average daily dollar value of the shares traded during the preceding sixty-day trading period must be at least $1 million. And lastly, no component security may initially represent more than 20% of the overall value of the receipt.[8]

The Exchange believes codifying the abovbe listing criteria for HOLDRs listed pursuant to Rule 19b–4(e) will ensure that no security included in the basket and HOLDRs will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various HOLDRs baskets to meet investors' needs. Additionally, the listing criteria will further serve to ensure sufficient liquidity for those investors seeking to purchase and deposit in basket securities with the trustee to create HOLDRs.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[9] in general and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–00–10 and should be submitted by July 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14721 Filed 6–9–00; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which has been incorporated into the proposed rule change, the Exchange replaced the word "companies" with the term "component securities" throughout the proposed rule change and the proposed rule text. The Exchange also clarified that the Exchange, and not the Commission, may approve a series of HOLDRs for listing pursuant to Rule 19b–4(e) provided each of the component securities satisfies the proposed listing criteria. See Letter from Scott Van Hatten, Attorney, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated May 24, 2000.

[4] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class. 17 CFR 240.19b–4(e).

[5] HOLDRs are negotiable receipts issued by trusts that represent investors' discrete identifiable and undivided beneficial ownership interest in the securities deposited into the trust. See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

[6] Rule 19b–4(e), adopted by the Commission on December 8, 1998, permits the Exchange to list and trade new derivative securities products without a rule change provided the Exchange has in place trading rules, procedures, a surveillance program and listing standards that pertain to the class of securities covering the new product. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[7] See Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products and Order Approving the Listing and Trading of Trust Issued Receipts, Securities Exchange Act Release Nos. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) and 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999), respectively.

[8] See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42888; File No. SR–Amex–00–05]

Self-Regulatory Organizations; American Stock Exchange LLC.; Order Approving Proposed Rule Change to Rescind Rules 5 and 6, the Exchange's Off-Board Trading Rules, and to Make Conforming Changes to Rules 25, 317, 900 and 959

June 1, 2000.

I. Introduction

On February 1, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind Rules 5 and 6, the Exchange's off-board trading rules, and to make conforming changes to Rules 25, 317, 900 and 959. The proposed rule change was published for comment in the **Federal Register** on March 3, 2000.[3] Proposed rule changes filed by thee Chicago Stock Exchange and the Philadelphia Stock Exchange to rescind their off-board trading rules were published on the same date as the Amex proposing release.[4] Shortly thereafter, the Boston Stock Exchange and the Pacific Exchange filed similar proposed rule changes.[5] The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to rescind off-board trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618.

[4] Securities Exchange Act Release No. 42459 (February 25, 2000). 65 FR 11619 (March 3, 2000) (File No. SR–CHX–99–28); Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628 (March 3, 2000) (File NO. SR–Phlx–00–12).

[5] Securities Exchange Act Release No. 42661 (April 10, 2000), 65 FR 20497 (April 17, 2000) (File No. SR–BSE–00–02); Securities Exchange Act Release NO. 42660 (April 10, 2000), 65 FR 21052 (April 19, 2000) (File No. SR–PCX–00–11).

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rules filed by the exchanges noted above.[6]

II. Description of the Proposal

Exchange Rules 5 and 6 restrict a member's ability to effect transactions in Exchange-listed securities (Rule 5) and bonds (Rule 6) off a national securities exchange. In the proposing release, the Exchange explained that these rules were originally intended to "centralize buying and selling interest in listed securities to ensure the execution of orders at the best possible prices. Over time, however, these off-board trading restrictions came to be viewed by many as anticompetitive." The Exchange also noted that Chairman Levitt had recently called for the elimination of off-board trading rules.

The Exchange proposed to eliminate Exchange Rule 5 because the rule is "largely irrelevant" to the trading of Amex-listed equity securities, given the applicability of Commission Rule 19c–3[7] and the fact that most Amex-listed stocks were listed for trading after April 26, 1979. The Exchange also noted that Exchange Rule 5 only applies to Amex members, and that non-member firms do in fact trade Amex-listed equities off an exchange. With respect to Exchange Rule 6, the Exchange stated that the rule was of "little practical consequence" due to the exceptions in the rule that permit "the great bulk of listed bond transactions to occur over-the counter." Therefore, in light of the "limited practical impact of the Exchange's off-board trading rules and the changing view on their propriety," the Exchange proposed to eliminate its off-board trading restrictions for Amex-listed equities and bonds.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act[8] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act. The rescission of the Exchange's off-board trading restrictions is also consistent with Section 11A of the Act[9] which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Specifically, rescinding the off-board trading restrictions will help further the national market system objective in Section 11(A)(a)(1)(C)(i) to assure the economically efficient execution of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.[10]

As discussed more fully in the NYSE Approval Order, the existence of off-board trading restricting can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Exchange Rules 5 and 6 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in the Act.[11] The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Exchange Rules 5 and 6 may have in enhancing the interaction of investor orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market centers should depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task is removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers."[12] The same rationale and motivation support the Commission's action today.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR-Amex-00–05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14724 Filed 6–09–00; 8:45 am]

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[6] The New York Stock Exchange was first to submit a proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

On May 5, 2000 the Commission approved the New York Stock Exchange's proposed rule change to rescind Rule 390. Securities Exchange Act Release 34–42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for public comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

[7] Commission Rule 19c–3 prohibits a national securities exchange from imposing off-board trading restrictions to equity securities listed after April 26, 1979. 17 CFR 240.19c(3).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1.

[10] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] Section 11A(a)(1)(C)(v) of the Act.

[12] NYSE Approval Order at 30179.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42887; File No. SR–BSE–00–02]

Self-Regulatory Organizations; Boston Stock Exchange Inc.; Order Approving Proposed Rule Change to Rescind Chapter II, Section 23, the Exchange's Off-Board Trading Rule

June 1, 2000.

I. Introduction

On March 9, 2000, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind Chapter II, Section 23, the Exchange's off-board trading rule. The proposed rule change was published for comment in the **Federal Register** on April 17, 2000.[3] Shortly thereafter, a proposed rule change filed by the Pacific Exchange rescinding its off-board trading rule was published for public comment.[4] Similar proposed rule changes filed by the American Stock Exchange, Chicago Stock Exchange, and the Philadelphia Stock Exchange had already been published for public comment.[5] The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to rescind off-board trading rules filed by the exchange noted above.[6]

II. Description of the Proposal

Chapter II, Section 23 restricts a member's ability to effect transactions in Exchange-listed securities off a national securities exchange. In the proposing release, the Exchange noted that "[a]dvances in the application of technology have resulted in the creation of new competitors to the regional exchanges, such as Alternative Trading Systems. As such, the Exchange recognizes the need for exchanges and their members to take part in the greater level of free market trading." The Exchange also noted that the NYSE had proposed to rescind its off-board trading rule, and that the Commission had requested that the Exchange review its restrictions on off-board trading.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act[7] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act. The rescission of the Exchange's off-board trading restrictions is also consistent with Section 11A of the Act[8] which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Specifically, rescinding the off-board trading restrictions will help further the national market system objective in Section 11A(a)(1)(C)(i) to assure the economically efficient execution of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.[9]

As discussed more fully in the NYSE Approval Order, the existence of off-board trading restrictions can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Chapter II, Section 23 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in the Act.[10] The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Chapter II, Section 23 may have in enhancing the interaction of investor orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market centers should depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers."[11] The same rationale and motivation support the Commission's action today.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–BSE–00–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14726 Filed 6–9–00; 8:45 am]

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[3] Securities Exchange Act Release No. 42661 (April 10, 2000), 65 FR 20497.

[4] Securities Exchange Act Release No. 42660 (April 10, 2000, 65 FR 21052 (April 19, 2000) (File No. SR–PCX–00–11).

[5] Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR–Amex–00–05); Securities Exchange Act Release No. 42459 (February 25, 2000, 65 FR 11619 (March 3, 2000) (File No. SR–CHX–99–28); Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628 (March 3, 2000) (File No. SR–Phlx–00–12).

[6] The New York Stock Exchange was first to submit a proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

On May 5, 2000, the Commission approved the New York Stock Exchange's proposed rule change to rescind Rule 390. Securities Exchange Act Release No. 34–42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for public comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1.

[9] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] Section 11A(a)(1)(C)(v) of the Act.

[11] NYSE Approval Order at 30179.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42891; File No. SR–CHX–00–07]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Eliminate the Series 7B Qualification Examination for Floor Clerks Who May Accept Orders From Professional Customers for Execution on the Exchange's Trading Floor

June 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2000, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Interpretation .01(d) of CHX Article VI, Rule 3 by eliminating the Series 7B Qualification Examination [3] for Exchange floor clerks who may, among other functions, accept orders from professional customers [4] for execution on the Exchange's complete the Exchange's Floor Membership Examination and either the Series 7 Examination or the Series 7A Qualification Examination.[5] Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

ARTICLE VI

RESTRICTIONS AND REQUIREMENTS

* * * * *

Training and Examination of Registrants

Rule 3. The Exchange may require the successful completion of a training course or an examination, or both, in connection with registration of members and persons associated with a member or member organization, and may charge fees for such registration and examination. This provision shall apply to all members[,] and member organizations, including members and member organizations which are to be solely on the Floor of the Exchange.

Interpretations and Policies:

.01 (a) No change.

(b) No change.

(c) No change.

(d) Public Business Exam

Floor members who successfully complete the Series 7 Examination may conduct a public business which is limited to accepting orders while on the floor directly from non-broker-dealer customers. In lieu of the Series 7 Examination, Floor members who successfully complete the Series 7A examination may conduct a public business which is limited to accepting orders directly from professional customers for execution on trading floor. Floor clerks of floor members that have successfully completed the

Series 7 or Series 7A examination may accept orders from professional customers for execution on the trading floor so long as such clerks successfully complete *both the Floor Membership Exam and either* the Series 7 *Examination* or *the* Series *7A*[7B]*E*[e]*xamination*. For purposes of this interpretation and policy, a "professional customer" includes a bank; trust company; insurance company; investment trust; a state or political subdivision thereof; *a* charitable or nonprofit educational institution regulated under the laws of the United States, or any state;[,] *a* [or] pension or profit sharing plan subject to ERISA, or of any agency of the Untied States *or* [as] of a state or political subdivision thereof; or any person (other than a natural person) who has, or who has under management, net tangible assets of at least sixteen million dollars.

.02 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In this filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Interpretation .01(d) of CHX Article VI, Rule 3 to eliminate the Series 7B Examination for Exchange floor clerks. Under existing Exchange rules, a floor clerk of a qualified floor member may accept orders from professional customers for execution on the Exchange's trading floor, so long as the floor clerk has successfully completed either the Series 7 Examination or the Series 7B Examination.[6] The Exchange's proposed rule change would require that Exchange floor clerks who will accept professional orders pass (i) the Floor Membership Examination [7] already administered by the Exchange to prospective floor members and (ii) either the Series 7 or the Series 7A Examination. The CHX's Floor Membership Examination addresses the rules and practices of the Exchange's trading floor but has broader coverage than the Series 7B Examination.[8]

The Exchange notes that the New York Stock Exchange, Inc. ("NYSE") recently eliminated the Series 7B Examination and now requires its floor clerks to pass both a new Trading Assistant Examination ("Series 25 Examination") [9] and either the Series 7 Examination or the Series 7A Examination before becoming eligible to accept professional orders.[10] Like the CHX's Floor Membership Examination, the NYSE's new Trading Assistant Examination contains questions relating to its floor rules and policies but has broader coverage that the questions formerly included in the Series 7B Examination. The CHX therefore proposes to change its examination requirements to correspond to the recent NYSE changes that have been approved by the Commission. The CHX represents that successful completion of the Exchange's Floor Membership Examination would ensure that clerks wishing to perform certain functions on the floor, such as accepting professional orders, are sufficiently familiar with the rules and practices of the Exchange's trading floor.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b) of the Act [11] in general and furthers the objectives of Section 6(b)(5) [12] in particular in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period(i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–07 and should be submitted by July 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14723 Filed 6–9–00; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Series 7B Qualification Examination ("Series 7B Examination") was originally implemented by the NYSE in 1994, to serve as an alternative qualification examination to the General Securities Registered Representative Examination ("Series 7 Examination"). *See* Securities Exchange Act Release No. 34334 (July 8, 1994), 59 FR 35964 (July 14, 1994).

[4] The Exchange's proposed rule change defines the term "professional customer" to include a bank; trust company; insurance company; investment trust; a state or political subdivision thereof; a charitable or nonprofit education institution regulated under the laws of the United States, or any state; a pension or profit sharing plan subject to ERISA, or of an agency of the United States or of a state or political subdivision thereof; or any person (other than a natural person) who has, or who has under management, net tangible assets of at least sixteen million dollars.

[5] The Series 7A Qualification Examination ("Series 7A Examination") was originally implemented by the NYSE in 1993, to serve as an alternative qualification exam to the Series 7 Examination. *See* Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993).

[6] *See* Securities Exchange Act Release No. 37690 (September 17, 1996), 61 FR 49803 (September 23, 1996).

[7] The Exchange adopted the Floor Membership Exam in 1996. *See* Securities Exchange Act Release No. 37690 (September 17, 1996), 61 FR 49803 (September 23, 1996).

[8] Telephone conversation between Michael Cardin, Market Regulation Department, CHX, and Susie Cho, Attorney, Division of Market Regulation, Commission, on April 5, 2000.

[9] *See* Securities Exchange Act Release No. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999) (order approving the Series 25 Examination).

[10] *See* Securities Exchange Act Release No. 42092 (November 2, 1999), 64 FR 61375 (November 10, 1999) (order approving the elimination of the Series 7B Examination and establishing the Series 7A Examination as the appropriate qualification examination for NYSE floor clerks).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42886; File No. SR–CHX–99–28]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change To Delete Certain Provisions of Article VIII, Exchange Rule 9, Prohibiting Off-Floor Transactions by Exchange Members

June 1, 2000.

I. Introduction

On December 27, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind certain provisions of Article VIII, Exchange Rule 9, the Exchange's off-board trading rules. The proposed rule change was published for comment in the **Federal Register** on March 3, 2000.[3] Proposed rule changes filed by the American Stock Exchange and the Philadelphia Stock Exchange to rescind their off-board trading rules were published on the same date as the CHX proposing release.[4] Shortly thereafter, the Boston Stock Exchange and the Pacific Exchange filed similar proposed rule changes.[5] The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to rescind off-board trading rules filed by the exchanges noted above.

II. Description of the Proposal

Certain provision of Article VIII, Exchange Rule 9 restricts a member's ability to effect transactions in Exchange-listed securities off a national securities exchange. In the proposing release, the Exchange noted that the New York Stock Exchange, along with other exchanges, had submitted similar proposals to rescind their off-board trading rules,[6] and that the Commission had recently adopted amendments to the Intermarket Trading System Plan ("ITS") to expand the ITS linkage with the National Association of Securities Dealers' Computer Assisted Execution System. Thus, "to confirm the Exchange's commitment to the competitive ideals on which those actions are based," the Exchange proposed to rescind certain provisions of its off-board trading rule, Article VIII, Exchange Rule 9.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42459 (February 25, 2000), 65 FR 11619.

[4] Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR–Amex–00–05); Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628 (March 3, 2000) (File No. SR–Phlx–00–12).

[5] Securities Exchange Act Release No. 42461 (April 10, 2000), 65 FR 20497 (April 17, 2000) (File No. SR–BSE–00–02); Securities Exchange Act Release No. 42660 (April 10, 2000), 65 FR 21052 (April 19, 2000) (File No. SR–PCX–00–11).

[6] Referring to Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

On May 5, 2000, the Commission approved the New York Stock Exchange's proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 34–42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for public comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

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Act [7] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act. The rescission of the Exchange's off-board trading restrictions is also consistent with Section 11A of the Act [8] which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Specifically, rescinding the off-board trading restrictions will help further the national market system objective in Section 11A(a)(1)(C)(i) to assure the economically efficient execution of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.[9]

As discussed more fully in the NYSE Approval Order, the existence of off-board trading restrictions can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Articles VIII, Exchange Rule 9 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in the Act.[10] The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Article VIII, Exchange Rule 9 may have in enhancing the interaction of investors orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market centers should depend on which market centers are most able to serve investors interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task is removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investors interest to control the success or failure of individual market centers." [11] The same rationale and motivation support the Commission's action today.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CHX–99–28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14727 Filed 6–9–00; 8:45 am]

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[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1.

[9] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] Section 11A(a)(1)(C)(v) of the Act.

[11] NYSE Approval Order at 30179.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42885; File No. SR–NASD–99–67]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by NASD Regulation, Inc. Relating to Amendments to Membership Rules

June 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On May 1, 2000, the NASD Regulation filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend the Rule 1010 Series, which concerns member admission. Additions are *italicized;* deletions are [bracketed].

1010. Membership Proceedings

1011. Definitions

Unless otherwise provided, terms used in the Rule 1010 Series shall have the meaning as defined in Rule 0120.

(a) "Applicant"

The term "Applicant" means a person [or entity] that applies for membership in the Association under Rule 1013[,] *or a member that* files an application [to remove or modify a restriction under Rule 1017, or files a notice and application for continuance in membership under Rule 1018] *for approval of a change in ownership, control, or business operations under Rule 1017.*

(b) "Associated Person"

The term "Associated Person" means: (*1*) a natural person registered under the Rules of the Association; or (*2*) a sole proprietor, partner, officer, director, branch manager, or *other* natural person occupying a similar status or performing similar functions who will be or is anticipated to be associated with the Applicant, or a natural person engaged in the investment banking or securities business who will be or is anticipated to be directly or indirectly controlling or controlled by the Applicant, whether or not any such person is registered or exempt from registration under the NASD By-Laws or the Rules of the Association.

(c) "Department"

The term "Department" means the Department of Member Regulation of NASD Regulation.

(d) "Director"

The term "Director" means a member of the NASD Regulation Board.

(e) "district"

The term "district" means a district established by the NASD Regulation Board.

(f) "district office"

The term "district office" means an office of NASD Regulation located in a district.

(g) "Governor"

The term "Governor" means a member of the NASD Board.

(h) "Interested Association Staff"

The term "Interested Association Staff" means an employee who directly participates in a decision under Rule 1014[,] *or* 1017, [or 1018,] an employee who directly supervises an employee with respect to such decision, an employee who conducted an investigation or examination of a member that files an application under Rule 1017 [or a notice and application under Rule 1018], the District Director for the relevant district, and the head of the Department.

(i) "material change in business operations"

The term "material change in business operations" includes, but is not limited to:

(1) removing or modifying a membership agreement restriction;

(2) market making, underwriting, or acting as a dealer for the first time; and

(3) adding business activities that require a higher minimum net capital under SEC Rule 15c3–1.

[(i)](*j*) "NASD Board"

The term "NASD Board" means the Board of Governors of the NASD.

[(j)](*k*) "NASD Regulation Board"

The term "NASD Regulation Board" means the Board of Directors of NASD Regulation.

(l) "principal place of business"

The term "principal place of business" means the executive office from which the sole proprietor or the officers, partners, or managers of the Applicant direct, control, and coordinate the activities of the Applicant, unless the Department determines that the principal place of business is where: (1) the largest number of Associated Persons of the Applicant are located; or (2) the books and records necessary to provide information and data to operate the business and comply with applicable rules are located.

[(k)](*m*) "sales practice [violations] *event*"

The term "sales practice [violations] *event*" means any [conduct directed at or involving a customer that would constitute a violation of any Rule in the Rule 2000 or 3000; any provision of the Act, Securities Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale, or purchase of a security or in connection with the rendering of investment advice] *customer complaint, arbitration, or civil litigation that has been reported to the Central Registration Depository, currently is required to be reported to the Central Registration Depository, or otherwise has been reported to the Association.*

[(l)](*n*) "Subcommittee"

The term "Subcommittee" means a subcommittee of the National Adjudicatory Council that is constituted pursuant to Rule 1015 to conduct a review of a Department decision issued under the Rule 1010 Series.

IM–1011–1. Safe Harbors for Business Expansions

This interpretive material concerns the types of business expansions that will not require a member to submit a Rule 1017 application to obtain NASD Regulation's approval of the expansion. This safe harbor applies to: (1) firms that do not have a membership agreement, and (2) firms that have a membership agreement that does not contain a restriction on the factors listed below.

The safe harbor is not available to a member that has a membership agreement that contains a specific restriction as to one or more of the factors listed below. In that case, the agreement takes precedence because NASD Regulation has determined that a particular restriction should apply as to one or more of the factors, and NASD Regulation has issued a decision with a rationale for that restriction. Similarly, the safe harbor also does not apply if the member has a membership agreement that permits expansion beyond the limits set forth below (e.g., an Applicant requests and obtains approval for ten registered representatives in the first six months with an additional ten registered representatives in the next year); in such case, the Department has specifically considered the firm's expansion plans and approved them.

The safe harbor is not available to any member that has disciplinary history. For purposes of this Interpretation, "disciplinary history" means a finding of a violation by the member or a principal of the member in the past five years by the Securities and Exchange Commission, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following provisions (or a comparable foreign provision) or rules or regulations thereunder: Sections 15(b)(4)(E) and 15(c) of the Securities Exchange Act of 1934; Section 17(a) of the Securities Act of 1933; SEC Rules 10b–5 and 15g–1 through 15g–9; NASD Rules 2110, 2120, 2310, 2330, 2440, 3010 (failure to supervise only), 3310, and 3330; and MSRB Rules G–19, G–30, and G–37(b) & (c).

For those firms to which the safe harbor is available, the following types of expansions are presumed not to be a material change in business operations and therefore do not require a Rule 1017 application. For any expansion beyond these limits, a member should contact its district office prior to implementing the change to determine whether the proposed expansion requires an application under Rule 1017. Expansions in each area are measured on a rolling 12-month basis; members are required to keep records of increases in personnel, offices, and markets to determine whether they are within the safe harbor.

"Associated Persons involved in sales" includes all Associated Persons, whether or not registered, who are involved in sales activities with public customers, including sales assistants and cold callers, but excludes clerical, back office, and trading personnel who are not involved in sales activities.

	Safe Harbor-Number of Increase Permitted Within One Year Period Without Rule 1017 Application
Number of Associated Persons Involved in Sales	
1–10	*10 persons.*
11 or more	*10 persons or a 30 percent increase, whichever is greater.*
Number of Offices (registered or unregistered)	
1–5	*3 offices.*
6 or more	*3 offices or a 30 percent increase, whichever is greater.*
Number of Markets Made	
1–10	*10 markets.*
11 or more	*10 markets or a 30 percent increase, whichever is greater.*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This 19b–4 filing, represents Amendment No. 1 to File No. SR–NASD–99–67.

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1012. General Provisions

(a) [Service of Notices and Decisions;] Filing by Applicant or *Service by the Association*

[A notice or a decision issued by the Association under the Rule 1010 Series with respect to an application shall be served promptly by first-class mail on the Applicant or its counsel, unless a Rule specifies a different method of service. Service by the Association or filing by an Applicant by mail shall be deemed complete upon mailing. Service by the Association or filing by an Applicant by commercial courier or facsimile shall be deemed complete on the date specified in the written confirmation of receipt.]

(1) An Applicant may file an application or any document or information requested under the Rule 1010 Series by first-class mail, overnight courier, or hand delivery. If the Department and the Applicant agree, the Applicant also may file a requested document or information by facsimile.

(2) The Association shall serve a notice or decision issued under the Rule 1010 Series by first-class mail on the Applicant or its counsel, unless a Rule specifies a different method of service.

(3) Service by the Association or filing by an Applicant shall be deemed complete as follows:

(A) Service or filing by first-class mail shall be deemed complete on the date of postmark;

(B) Service or filing by overnight courier shall be deemed complete on the date of delivery to the overnight courier as specified in the airbill;

(C) Service or filing by hand delivery shall be deemed complete on the date of receipt as evidenced by a date stamp; and

(D) Service or filing by facsimile shall be deemed complete on the date specified in the document and on the written confirmation of transmission.

(b) Lapse of Application

(1) Absent a showing of good cause, an application filed under Rule 1013 or 1017 shall lapse if an Applicant fails to:

(A) respond fully within 60 days after service of an initial written request for information or documents under Rule 1013, within 30 days after service of an initial written request for information or documents under Rule 1017, within 30 days after service of a subsequent written request for information or documents under Rule 1013 or 1017, or within such other time period agreed to by the Department and the Applicant;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to Rule 1013(b) or 1017(f); or

(C) file an executed membership agreement under Rule 1014(d) or Rule 1017(g)(4) within 25 days after service of the agreement, or within such other period agreed to by the Department and the Applicant.

(2) If an Applicant wishes to continue to seek membership or approval of a change in ownership, control, or business operations, then the Applicant shall be required to submit a new application and fee under Rule 1013 or 1017, respectively. The Association shall not refund any fee for a lapsed application.

[(b)] *(c)* Ex Parte Communications

(1) The prohibitions against ex parte communications shall become effective when Association staff has knowledge that an Applicant intends to file a written request for review by the National Adjudicatory Council under Rule 1015.

[(1)] *(2)* Unless on notice and opportunity for an Applicant and Interested Association Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rules of the Association:

(A) an Applicant, a counsel or representative of an Applicant, or an Interested Association Staff shall not make or knowingly cause to be made an ex parte communication relevant to the merits of a membership proceeding under the Rule 1010 Series to a Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or an Association employee who is participating or advising in a decision of such a person with respect to that proceeding; and

(B) a Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or an Association employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall not make or knowingly cause to be made to an Applicant, a counsel or representative of the Applicant, or an Interested Association Staff an ex parte communication relevant to the merits of that proceeding.

[(2)] *(3)* A Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or an Association employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:

(A) all such written communications;

(B) memoranda stating the substance of all such oral communications; and

(C) all written responses and memoranda stating the substance of all oral responses to all such communications.

[(3) The prohibitions against ex parte communications shall become effective when Association staff has knowledge that an Applicant intends to file a written request for review by the National Adjudicatory Council under Rule 1015.]

[(c)] *(d)* Recusal or Disqualification

A Governor or a member of the National Adjudicatory Council or a Subcommittee thereof shall not participate in a matter governed by the Rule 1010 Series as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person shall recuse himself or shall be disqualified as follows:

(1) The Chair of the NASD Board shall have authority to direct the disqualification of a Governor, and a majority of the Governors of the NASD Board excluding the Chair shall have authority to direct the disqualification of the Chair of the NASD Board.

(2) The Chair of the National Adjudicatory Council shall have authority to direct the disqualification of a member of the *National Adjudicatory* Council or a member of a Subcommittee appointed pursuant to Rule 1015, and the Vice Chair of the *National Adjudicatory* Council shall have authority to direct the disqualification of the Chair of the National Adjudicatory Council.

[(d)] *(e)* Computation of Time

(1) Calendar Day

In the Rule 1010 Series, "day" means calendar day.

(2) Formula

In computing a period of time under the Rule 1010 Series, the day of the act, event, default, or lapse from which the period of time designated begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less.

1013. New Member Application [and Membership] and Interview

(a) Filing of Application

(1) Where To File

[Each Applicant for Association membership shall file its application in two parts. The first part of the application shall be filed with the Membership Department and shall include the following documents:]

An Applicant for Association membership shall file its application with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business as defined in Rule 1011(l).

(2) Contents

The application shall include:

(A) an original signed and notarized *paper* Form BD, with applicable schedules;

(B) an original signed *paper* Form U–4 for each Associated Person who is required to be registered under the Rules of the Association;

(C) an original NASD-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f–2;

(D) a new member assessment report;

[(E) a new member firm contact questionnaire; and]

[(F)] *(E)* a check for the appropriate fee[.];

[(2) The second part of the application shall be filed with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business and shall include the following information and documents:]

[(A)] *(F)* a detailed business plan [, in a form prescribed by the Association,] that *adequately and comprehensively* describes all material aspects of the business that will be, or are reasonably anticipated to be, performed at and after the initiation of business operations, *including future business expansion plans, if any,* and includes:

(i) a trial balance, balance sheet, supporting schedules, and computation of net capital, each of which has been prepared as of a date that is within 30 days before the *filing* date of *the* application;

(ii) a monthly projection of income and expenses, with a supporting rationale, for the first twelve months of operations;

(iii) an organizational chart;

(iv) [a list of] the intended [locations] *location* of [all offices,] *the Applicant's principal place of business and all other offices, if any,* whether or not such offices would be required to be registered under the Rules of the Association, and the names of the persons who will be in charge of each office;

(v) a list of the types of securities to be offered and sold and the types of retail or institutional customers to be solicited;

(vi) a description of the methods and media to be employed to develop a customer base and to offer and sell products and services to customers, including the use of the Internet, telephone solicitations, seminars, or mailings;

(vii) a description of the business facilities and a copy of any proposed or final lease;

(viii) the number of markets to be made, if any, the type and volatility of the products, and the anticipated maximum inventory positions;

(ix) any plan to enter into contractual commitments, such as underwritings or other securities-related activities;

(x) any plan to distribute or maintain securities products in proprietary positions, and the risks, volatility, degree of liquidity, and speculative nature of the products; [and]

(xi) any other activity that the Applicant may engage in that reasonably could have a material impact on net capital within the first twelve months of business operations*; and*

(xii) a description of the communications and operational systems the Applicant will employ to conduct business with customers or other members and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures that may impede customer usage or firm order entry or execution; system redundancies; disaster recovery plans; system security; disclosures to be made to potential and existing customers who may use such systems; and supervisory or customer protection measures that may apply to customer use of, or access to, such systems;

[(B) a copy of the Applicant's most recent Form BD;]

[(C)] *(G)* a copy of any decision *or order* by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

[(D)] *(H)* a list of all Associated Persons[, the most recent Form U–4 and Form U–5 for each Associated Person, any other document that discloses the disciplinary history of each Associated Person, and a list of any other persons or entities that will exercise control with respect to the Applicant's business];

[(E)] *(I)* documentation *of any of the following events, unless the event has been reported to the Central Registration Depository:*

(i) *a* regulatory action against or investigation of the Applicant or an Associated Person by the Commission, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization that is pending, adjudicated, or settled;

(ii) *an* investment-related civil action for damages or an injunction against the Applicant or an Associated Person that is pending, adjudicated, or settled;

(iii) *an* investment-related customer complaint or arbitration [involving sales practice violations, theft, misappropriation, conversion, or breach of fiduciary duty, against the Applicant or an Associated Person that is pending, settled, or has resulted in an award or judgment] *that is required to be reported on Form U–4*; [and]

(iv) *a* criminal action (other than a minor traffic violation) against the Applicant or an Associated Person that is pending, adjudicated, or that has resulted in a guilty or no contest plea; *and*

[(F)](v) a copy of any document evidencing a termination for cause or a permitted resignation after investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or an industry standard of conduct;

[(G)](*J*) a description of any remedial action, such as special training [or], continuing education requirements, or heightened supervision, imposed on an Associated Person by a state or federal authority or self-regulatory organization;

[(H)](*K*) a written acknowledgment that heightened supervisory procedures and special educational programs may be required *pursuant to Notice To Members 97–19* for an Associated Person whose record[s] reflects[:

(i)] disciplinary actions [involving] *or* sales practice [violations] *events;*

[(ii) customer complaints; or

(iii) arbitrations that were resolved adversely to the Associated Person;]

[(I)](*L*) a copy of final or proposed contracts with banks, clearing entities, or service bureaus, and a general description of any other final or proposed contracts;

[(J)](*M*) a description of the nature and source of Applicant's capital *with supporting documentation,* including a

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list of all persons or entities that have contributed or plan to contribute financing to the Applicant's business, the terms and conditions of such financing arrangements, the risk to net capital presented by the Applicant's proposed business activities, and any arrangement for additional capital should a business need arise;

[(K)](*N*) a description of the financial controls to be employed by the Applicant;

[(L)](*O*) a description of the Applicant's supervisory system and a copy of its written supervisory procedures, internal operating procedures (including operational and internal controls), internal inspections plan, written approval process, and qualifications investigations required by Rule 3010;

[(M)](*P*) a description of the number, experience, and qualifications of supervisors and principals and the number, experience, and qualifications of persons to be supervised by such personnel, the other responsibilities of the supervisors and principals with the Applicant, their full-time or part-time status, any business activities that the supervisors or principals may engage in outside of their association with the Applicant, the hours per week devoted to such activities, and an explanation of how a part-time supervisor or principal will be able to discharge his or her designated functions on a part-time basis;

[(N)](*Q*) a description of Applicant's proposed recordkeeping system;

[(O)](*R*) a copy of the Applicant's written training plan to comply with Firm Element continuing education requirements described in Rule 1120(b), including the name of the Associated Person responsible for implementation; and

(P) [a copy of the documents described in paragraph (a)(1)] *a Web CRD entitlement request form and a Member Contact Questionnaire user access request form.*

(3) *Electronic Filings* [The Applicant shall file both parts of the application simultaneously by commercial courier. The application shall be deemed received on the date specified in the written confirmation of receipt generated by the commercial courier for the delivery of the second part of the application to the district office.] *Upon approval of the Applicant's Web CRD entitlement request form, the Applicant shall submit any amendments to its Forms BD or U–4, any additional Forms U–4, and any Form U–5 electronically via Web CRD. Upon approval of the Applicant's membership, the Applicant shall submit any amendments to its Member Contact Questionnaire electronically.*

(4) Rejection Of Application That Is Not Substantially Complete

If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. The Association shall refund the application fee, less $350, which shall be retained by the Association as a processing fee. If the Applicant determines to continue to seek membership, the Applicant shall submit a new application and fee under this Rule.

(5) Request For Additional Documents Or Information

Within 30 days after the [receipt] *filing* of an application, the Department shall [determine whether the application is complete and, if not, shall request] *serve an initial request for any* additional information or documents *necessary to render a decision on the application.* The Department may [request] *serve subsequent requests for* additional information or documents at any time during the membership application process.

[(5)] Unless otherwise agreed by the Department and the Applicant, the Applicant shall file any additional information and documents with the Department within 60 days after *service of* the Department's initial request and 30 days after *service* of any subsequent request.

[(b) Lapse of Application]

[(1) Absent a showing of good cause, an application for membership shall lapse if an Applicant fails to:

(A) respond fully within 60 days after an initial request for information or documents, within 30 after any subsequent request, or within such other time period agreed to by the Department and the Applicant;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (c); or

(C) return an executed membership agreement under Rule 1014(c) within 25 days after service of the agreement.]

[(2) The lapse of an application shall require an Applicant continuing to seek membership to submit a new application under paragraph (a).]

[(c)](*b*) Membership Interview

(1) Requirement for Interview

Before the Department [issues a] *serves its* decision on an application for *new* membership in the Association, the Department shall conduct a membership interview with a representative or representatives of the Applicant.

(2) Service of Notice

At least seven days before the membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the Applicant who are required to participate in the interview. The Department shall serve the notice by facsimile or [commercial] *overnight* courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service under this subparagraph.

(3) Time

Unless the Department directs otherwise for good cause shown, a membership interview shall be scheduled to occur within 90 days after the [receipt] *filing* of an application or within 60 days after the [receipt] *filing* of all additional information or documents requested, whichever is later.

(4) Place

Unless the Department and the Applicant otherwise agree, the membership interview shall be conducted in the district office for the district in which the Applicant has or intends to have its principal place of business.

(5) *Updated Financial Documents*

On or before the date of the membership interview, the Applicant shall file an updated trial balance, balance sheet, supporting schedules, and computation of net capital. The Applicant shall prepare such documents as of a date that is within 45 days before the date of the membership interview, unless the Applicant and the Department agree on a longer period. The Applicant shall promptly notify the Department in writing of any material adverse change in its financial condition that occurs before a decision constituting final action of the Association is served on the Applicant.

[(5)](*6*) Review of Standards for Admission

During the membership interview, the Department shall review the application and the standards for admission to membership with the Applicant's representative or representatives.

[(6)](*7*) Information From Other Sources

During the membership interview, the Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under Rule 1014. If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

1014. Department Decision

(a) Standards for Admission

After considering the application, the membership interview, other information and documents provided by the Applicant, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall determine whether the Applicant meets each of the following standards:

(1) The application and all supporting documents are complete and accurate.

(2) The Applicant and its Associated Persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations.

(3) The Applicant and its Associated Persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association, including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department may take into consideration whether:

(A) a state or federal authority or self-regulatory organization has taken permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

(B) an Applicant's or Associated Person's record[s] reflects[: (i) disciplinary actions involving sales practice violations; (ii) customer complaints; or (iii) arbitrations that were resolved adversely to the Applicant or Associated Person] *a sales practice event;*

(C) an Applicant or Associated Person is the subject of a pending, adjudicated, or settled regulatory action or investigation by the Commission, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; a pending, adjudicated, or settled investment-related civil action for damages or an injunction; [an investment-related customer complaint or arbitration alleging sales practice violations, theft, misappropriation, conversion, or breach of fiduciary duty that is pending, settled, or has resulted in an award or judgment;] or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea;

(D) an Associated Person was terminated for cause or permitted to resign after an investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or industry standard of conduct;

(E) a state or federal authority or self-regulatory organization has imposed a remedial action, such as special training [or], continuing education requirements, or heightened supervision, on an Associated Person; and

(F) a state or federal authority or self-regulatory organization has provided information indicating that the Applicant or an Associated Person otherwise poses a threat to public investors.

(A) The Applicant has established all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus, or others necessary to:

a. initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel; and

b. comply with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(5) The Applicant has or has adequate plans to obtain facilities that are sufficient to:

(B) initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel; and

(C) comply with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(6) The communications and operational systems that the Applicant intends to employ for the purpose of conducting business with customers and other members are adequate and provide reasonably for business continuity in each area set forth in Rule 1013(a)(2)(F)(xii);

[(6)](*7*) The Applicant is capable of maintaining a level of net capital in excess of the minimum net capital requirements set forth in SEC Rule 15c3–1 adequate to support the Applicant's intended business operations on a continuing basis, based on information [that is current within 30 days before the membership interview] *filed under Rule 1013(b)(5).* The Department may impose a reasonably determined higher net capital requirement for the initiation of operations after considering:

(A) the amount of net capital sufficient to avoid early warning level reporting requirements, such as SEC Rule 17a–11;

(B) the amount of capital necessary to meet expenses net of revenues for at least twelve months, based on reliable projections agreed to by the Applicant and the Department;

(C) any planned market making activities, the number of markets to be made, the type and volatility of products, and the anticipated maximum inventory positions;

(D) any plan to enter into other contractual commitments, such as underwritings or other securities-related activities;

(E) any plan to distribute or maintain securities products in proprietary positions, and the risks, volatility, degree of liquidity, and speculative nature of the products; and

(F) any other activity that the Applicant will engage in that reasonably could have a material impact on net capital within the first twelve months of business operations.

[(7)](*8*) The Applicant has financial controls to ensure compliance with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

[(8)](*9*) The Applicant has compliance, supervisory, operational, and internal control practices and standards that are consistent with practices and standards regularly employed in the investment banking or securities business, taking into account the nature and scope of Applicant's proposed business.

[(9)](*10*) The Applicant has a supervisory system, including written supervisory procedures, internal operating procedures (including operational and internal controls), and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and the Rules of the Association. In evaluating the adequacy of a supervisory system, the Department shall consider the overall nature and scope of the Applicant's intended business operations and shall consider whether:

(A) the number, location, experience, and qualifications of supervisory personnel are adequate in light of the number, location, experience, and qualifications of persons to be

supervised; the [disciplinary history of such] *Central Registration Depository record or other disciplinary history of supervisory personnel and* persons *to be supervised*, [any criminal, civil, administrative, or arbitration actions or written customer complaints against such persons;] and the number and locations of the offices that the Applicant intends to open *and the nature and scope of business to be conducted at each office*;

(B) the Applicant has identified specific Associated Persons to supervise and discharge each of the functions in Applicant's business plan, and to supervise each of the Applicant's intended offices, whether or not such offices are required to be registered under the Rules of the Association;

(C) the Applicant has identified the functions to be performed by each Associated Person and has adopted procedures to assure the registration with the Association and applicable states of all persons whose functions are subject to such registration requirements.

[(C)](*D*) each Associated Person identified *in the business plan* to discharge a supervisory function [in the business plan] has at least one year of direct experience or two years of related experience in the subject area *to be supervised*;

[(D)](*E*) the Applicant will solicit retail or institutional business;

[(E)](*F*) the Applicant will recommend securities to customers;

[(F)](*G*) the location or part-time status of a supervisor or principal will affect such person's ability to be an effective supervisor;

[(G)](*H*) [the records of an Associated Person reflect: (i) disciplinary actions involving sales practice violations; (ii) customer complaints; or (iii) arbitrations that were resolved adversely to the Associated Person] *the Applicant should be required to place one or more Associated Persons under heightened supervision pursuant to Notice to Members 97–19*;

[(H)](*I*) any remedial action, such as special training or continuing education requirements or heightened supervision, has been imposed on an Associated Person by a state or federal authority or self-regulatory organization; and

[(I)](*J*) any other condition that will have a material impact on the Applicant's ability to detect and prevent violations of the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

[(10)](*11*) The Applicant has a recordkeeping system that enables Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements and a staff that is sufficient in qualifications and number to prepare and preserve required records.

[(11)](*12*) The Applicant has completed a training needs assessment and has a written training plan that complies with the continuing education requirements imposed by the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

[(12)](*13*) The Association does not possess any information indicating that the Applicant may circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, or the Rules of the Association.

[(13)](*14*) The application and all supporting documents otherwise are consistent with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(b) Granting or Denying Application

(1) If the Department determines that the Applicant meets each of the standards in paragraph (a), the Department shall grant the application for membership.

(2) If the Department determines that the Applicant does not meet one or more of the standards in paragraph (a) in whole or in part, the Department [may] *shall*:

(A) grant the application subject to one or more restrictions reasonably designed to address a specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern based on the standards for admission in Rule 1014(a); or

(B) deny the application.

[(c) Submission of Membership Agreement

If the Department grants an application, with or without restriction, the Applicant's approval for membership shall be contingent upon the Applicant's submission of a written membership agreement, satisfactory to the Department, undertaking to:

(1) engage only in the business set forth in the business plan and the membership agreement;

(2) abide by any restriction specified in the Department's decision;

(3) obtain the Department's prior approval of the removal or modification of such a restriction pursuant to Rule 1017; and

(4) notify and obtain the Department's approval of a change in ownership or control or a material change in business operations pursuant to Rule 1018. The Applicant shall not waive the right to file a written request for review under Rule 1015 by executing a membership agreement under this paragraph.]

[(d)](*c*) Decision

(1) Time

The Department shall [issue] *serve* a written decision on the membership application within 30 days after the conclusion of the membership interview or after the [submission] *filing* of additional information or documents, whichever is later.

(2) Content

If the Department denies the application, the decision shall explain *in detail* the reason for denial, referencing the applicable standard or standards in paragraph (a). If the Department grants the application subject to restrictions, the decision shall explain *in detail* the reason for each restriction, referencing the applicable standard or standards in paragraph (a) upon which the restriction is based and identify the specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern that the restriction is designed to address and the manner in which the restriction is reasonably designed to address the concern.

(3) Failure to [Issue] *Serve* Decision

If the Department fails to [issue] *serve* a decision within 180 days after [receipt] *the filing* of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the Department to [issue] *serve* a decision. Within seven days after [receipt] *the filing* of such a request, the NASD Board shall direct the Department to serve its written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the NASD Board may extend the 180 day time limit by not more than 90 days.

(d) Submission of Membership Agreement

If the Department grants an application, with or without restriction, the Applicant's approval for membership shall be contingent upon the Applicant's filing of an executed written membership agreement, satisfactory to the Department, undertaking to:

(1) abide by any restriction specified in the Department's decision; and

(2) obtain the Department's approval of a change in ownership, control, or business operations pursuant to Rule 1017, including the modification or removal of a membership agreement restriction.

The Applicant shall not waive the right to file a written request for review under Rule 1015 by executing a membership agreement under this paragraph.

(e) Service and Effectiveness of Decision

The Department shall serve its decision and the membership agreement on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National Adjudicatory Council, the NASD Board, or the Commission.

(f) Effectiveness of Restriction

A restriction imposed under this Rule shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless:

(1) removed or modified by [the Department under Rule 1017] *a decision constituting final action of the Association issued under Rule 1015, 1016, or 1017*;

[(2) removed or modified by a decision constituting final action of the Association issued under Rule 1015 or 1016;] or

[(3)](*2*) stayed by the National Adjudicatory Council, the NASD Board, or the Commission.

(g) Final Action

Unless the Applicant files a written request for a review under Rule 1015, the Department's decision shall constitute final action by the Association.

1015. Review by National Adjudicatory Council

(a) Initiation of Review *by Applicant*

[(1) Request by Applicant]

Within 25 days after service of a decision under Rule 1014[,] *or* 1017 [or 1018], an Applicant may file a written request for review with the National Adjudicatory Council. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the membership standards set forth in Rule 1014, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall [send] *file* by first-class mail a copy of the request to the district office where the Applicant filed its [membership] application.

[(2) Notice by National Adjudicatory Council

A decision issued under Rule 1014, 1017, or 1018 shall be subject to a call for review by any member of the National Adjudicatory Council or the Review Subcommittee defined in Rule 9120 within 30 days after service of the decision. If the National Adjudicatory Council calls a decision for review, a written notice of review shall be served promptly on the Applicant by first-class mail. The written notice of review shall state the specific grounds for the review and whether a hearing is directed. If a decision is called for review by any member of the National Adjudicatory Council or the Review Subcommittee, the decision shall be reviewed by the National Adjudicatory Council. The National Adjudicatory Council simultaneously shall send by first-class mail a copy of the notice to the district office where the Applicant filed its membership application.]

(b) Transmission of Documents

Within ten days after [receipt] *the filing* of a request for [or notice of] review, the Department shall:

(1) transmit to the National Adjudicatory Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and

(2) serve on the Applicant a copy of such documents (other than those documents originally submitted by Applicant) and a copy of the index.

(c) Membership Application Docket

The Department shall promptly record in the Association's membership application docket each request for [or notice of] review filed with the National Adjudicatory Council under this Rule and each material subsequent event, filing, and change in the status of a membership proceeding.

(d) Appointment of Subcommittee

The National Adjudicatory Council or the Review Subcommittee defined in Rule 9120 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of at least two members. One member shall be a current member of the National Adjudicatory Council. The remaining member or members shall be current or past Directors or past Governors.

(e) Powers of Subcommittee

If a hearing is requested [or directed], the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the Applicant or the Department in connection with the request for review.

(f) Hearing

(1) Notice

If a hearing is requested or directed, the hearing shall be held within 45 days after the [receipt] *filing* of the request [or service of the notice by] *with* the National Adjudicatory Council *or service of the notice by the Subcommittee*. The National Adjudicatory Council shall [send] *serve* written notice of the date and time of the hearing to the Applicant by facsimile or [commercial] *overnight* courier not later than 14 days before the hearing.

(2) Counsel

The Applicant and the Department may be represented by counsel at a hearing conducted pursuant to this Rule.

(3) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the National Adjudicatory Council. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

(4) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. A transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The Applicant, the Department, or a witness may seek to correct the transcript. A proposed correction of the transcript shall be submitted to the Subcommittee within a reasonable period of time prescribed by the Subcommittee. Upon notice to the Applicant and the Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

[(5) Failure to Appear at Hearing]

[If an Applicant fails to appear at a hearing for which it has notice, the National Adjudicatory Council may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Association. Upon a showing of good cause, the National

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Adjudicatory Council may withdraw a dismissal entered pursuant to this subparagraph.]

(g) Additional Information, Briefs

At any time during its consideration, the Subcommittee or the National Adjudicatory Council may direct the Applicant or the Department to [submit] *file* additional information [and to file] *or* briefs. Any additional information or brief [submitted] *filed* shall be provided to all parties before the National Adjudicatory Council renders its decision.

(h) Abandonment of Request for Review

If an Applicant fails to specify the grounds for its request for review under Rule 1015(a)(1), appear at a hearing for which it has notice, or file information or briefs as directed, the National Adjudicatory Council or the Review Subcommittee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Association. Upon a showing of good cause, the National Adjudicatory Council or the Review Subcommittee may withdraw a dismissal entered pursuant to this paragraph.

[(h)](*i*) Subcommittee Recommendation

The Subcommittee shall present a recommended decision in writing to the National Adjudicatory Council within 60 days after the date of the hearing held pursuant to paragraph (f), and not later than seven days before the meeting of the National Adjudicatory Council at which the membership proceeding shall be considered.

[(i)](*j*) Decision

(1) Proposed Written Decision

After considering all matters presented in the review and the Subcommittee's recommended written decision, the National Adjudicatory Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The National Adjudicatory Council shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents

The decision shall include:

(A) a description of the Department's decision, including its rationale;

(B) a description of the principal issues raised in the review;

(C) a summary of the evidence on each issue; and

(D) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the applicable standards in Rule 1014.

(3) Issuance of Decision After Expiration of Call for Review Periods

The National Adjudicatory Council shall provide its proposed written decision to the NASD Board. The NASD Board may call the membership proceeding for review pursuant to Rule 1016. If the NASD Board does not call the membership proceeding for review, the proposed written decision of the National Adjudicatory Council shall become final. The National Adjudicatory Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The National Adjudicatory Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d–3, unless the National Adjudicatory Council remands the membership proceeding.

(4) Failure to Issue Decision

If the National Adjudicatory Council fails to serve its final written decision within the time prescribed in subparagraph (3), the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the National Adjudicatory Council to serve its decision immediately or to show good cause for an extension of time. Within seven days after [receipt] *the filing* of such a request, the NASD Board shall direct the National Adjudicatory Council to serve its written decision immediately or to show good cause for an extension of time. If the National Adjudicatory Council shows good cause for an extension of time, the NASD Board may extend the 15 day time limit by not more than 15 days.

1016. Discretionary Review by NASD Board

(a) Call for Review by Governor

A Governor may call a membership proceeding for review by the NASD Board if the call for review is made within the period prescribed in [sub]paragraph [(2)](*b*).

(b) 15 Day Period; Waiver

A Governor shall make his or her call for review at the next meeting of the NASD Board that is at least 15 days after the date on which the NASD Board receives the proposed written decision of the National Adjudicatory Council. By unanimous vote of the NASD Board, the NASD Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the 15 day period, vote to extend the period to more than 15 days.

(c) Review At Next Meeting

If a Governor calls a membership proceeding for review within the time prescribed in paragraph (b), the NASD Board shall review the membership proceeding not later than the next meeting of the NASD Board. The NASD Board may order the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

(d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. Alternatively, the NASD Board may remand the membership proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 1015[(i)(2)](*j)(2).*

(e) Issuance of Decision

The NASD Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d–3, unless the NASD Board remands the membership proceeding.

1017. [Removal or Modification of Business Restriction] *Application for Approval of Change in Ownership, Control, or Business Operations*

(a) *Events Requiring* Application

[A member of the Association may seek modification or removal of a restriction on its business activities imposed pursuant to the Rule 1010 Series by filing a written application with the Department at the district office for the district in which the member's principal place of business is located. The application shall present facts showing that the circumstances that gave rise to the restriction have changed and state with specificity why the restriction should be modified or removed in light of the standards set forth in Rule 1014 and the articulated rationale for the imposition of the restriction. A copy of the decision and membership agreement pertaining to such restriction shall be appended to the application.]

A member shall file an application for approval of any of the following changes to its ownership, control, or business operations:

(1) a merger of the member with another member, unless both are members of the New York Stock Exchange, Inc. or the surviving entity will continue to be a member of the New York Stock Exchange, Inc.;

(2) a direct or indirect acquisition by the member of another member, unless the acquiring member is a member of the New York Stock Exchange, Inc.;

(3) a direct or indirect acquisition of substantially all of the member's assets, unless the acquirer is a member of the New York Stock Exchange, Inc.;

(4) a change in the equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or

(5) a material change in business operations as defined in Rule 1011(i).

(b) *Filing and Content of Application*

(1) The member shall file the application with the Department at the district office in the district in which the member's principal place of business is located. If the application involves a merger between members with principal places of business in two or more districts, the application shall be filed and processed by the district office wherein the surviving firm's principal place of business will be located.

(2) The application shall describe in detail the change in ownership, control, or business operations and include a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the change.

(A) If the application requests approval of a change in ownership or control, the application also shall include the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member.

(B) If the application requests the removal or modification of a membership agreement restriction, the application also shall:

(i) present facts showing that the circumstances that gave rise to the restriction have changed; and

(ii) state with specificity why the restriction should be modified or removed in light of the standards set forth in Rule 1014 and the articulated rationale for the imposition of the restriction.

(C) If the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.

(c) Effecting Change and Imposition of Interim Restrictions

(1) A member shall file an application for approval of a change in ownership or control at least 30 days prior to such change. A member may effect a change in ownership or control prior to the conclusion of the proceeding, but the Department may place new interim restrictions on the member based on the standards in Rule 1014, pending final Department action.

(2) A member may file an application to remove or modify a membership agreement restriction at any time. An existing restriction shall remain in effect during the pendency of the proceeding.

(3) A member may file an application for approval of a material change in business operations, other than the modification or removal of a restriction, at any time, but the member may not effect such change until the conclusion of the proceeding, unless the Department and the member otherwise agree.

(d) Rejection Of Application That Is Not Substantially Complete

If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. If the Applicant determines to continue to apply for approval of a change in ownership, control, or business operations, the Applicant shall submit a new application under this Rule.

[(b)](*e*) Request for *Additional* Documents *and Information*

Within 30 days after the [receipt] *filing* of an application [to remove or modify a restriction], the Department shall [determine whether the application is complete, and if not, shall] *serve a* request *for* any additional information or documents necessary to render a decision [under paragraph (e)] *on the application*. The Department may serve subsequent requests for additional information or documents at any time during the application process. Unless otherwise agreed by the Department and the Applicant, the Applicant shall file any additional information and documents with the Department within 30 days after service of a request.

[(c) Lapse]

[(1) Absent a showing of good cause, an application to modify or remove a restriction shall lapse if an Applicant fails to:

(A) respond fully within 30 days after a request for information or documents;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (d); or

(C) return an executed membership agreement under paragraph (e)(4) within 25 days after service of the agreement.

(2) The lapse of an application shall require the Applicant to submit a new application to modify or remove a restriction under paragraph (a).]

[(d)](*f*) Membership Interview

(1) The Department may require the Applicant to participate in a membership interview within 30 days after the [receipt] *filing* of the application, or if the Department requests additional information or documents, within 30 days after the filing of the additional information or documents by the Applicant.

(2) At least seven days before the membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and [the representative or representatives of the Applicant] *persons* who are required to participate in the interview. The Department shall serve the notice by facsimile or [commercial] *overnight* courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service.

(3) Unless the Department and the Applicant otherwise agree, the membership interview shall be conducted in the district office for the district in which the Applicant has its principal place of business.

(4) During the membership interview, the Department shall review the application and the considerations for the Department's decision set forth in paragraph [(e)(1)](*g)(1).* The Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under paragraph *[(e)](g).* If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

[(e)](*g)* Department Decision

(1) [In evaluating an application submitted under paragraph (a)] *The*

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Department shall consider the application, the membership interview, other information and documents provided by the Applicant or obtained by the Department, the public interest, and the protection of investors.

(A) In rendering a decision on an application for approval of a change in ownership or control, or an application for approval of a material change in business operations that does not involve modification or removal of a membership agreement restriction, the Department shall determine if the Applicant would continue to meet the standards in Rule 1014(a) upon approval of the application.

(B) In rendering a decision on an application requesting the modification or removal of a membership agreement restriction, the Department shall consider whether maintenance of the restriction is appropriate in light of:

[(A)]*(i)* the standards set forth in Rule 1014;

[(B)]*(ii)* the circumstances that gave rise to the imposition of the restriction;

[(C)]*(iii)* the Applicant's operations since the restriction was imposed;

[(D)] *(iv)* [a] *any* change in ownership or control or supervisors and principals; and

[(E)]*(v)* any new evidence submitted in connection with the application.

(2) The Department shall [issue] *serve* a written decision on the application within 30 days after the *conclusion of the* membership interview or the [submission] *filing* of additional information or documents, whichever is later. If the Department does not require the Applicant to participate in a membership interview or request additional information or documents, the Department shall [issue] *serve* a written decision within 45 days after the [receipt] *filing* of the application under paragraph (a). The decision shall state whether the application [to modify or remove the restriction] is granted or denied in whole or in part, and shall provide a rationale for the Department's decision, referencing the applicable standard in Rule 1014.

(3) If the Department fails to [issue] *serve* a decision within 180 days after [receipt] *filing* of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the Department to issue a decision. Within seven days after [receipt] *the filing* of such a request, the NASD Board shall direct the Department to issue a written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the NASD Board may extend the time limit for issuing a decision by not more than 30 days.

(4) If the Department [modifies or removes a restriction on the Applicant's business activities, the] *approves an application under this Rule in whole or part, the Department shall require an Applicant to file an executed* membership agreement [submitted under Rule 1014 shall be modified accordingly].

[(f)]*(h)* Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is [issued] *served* under Rule 1015 or 1016, unless otherwise directed by the National Adjudicatory Council, the NASD Board, or the Commission.

[(g)]*(i)* Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the National Adjudicatory Council pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such review, and the National Adjudicatory Council's decision shall be subject to discretionary review by the NASD Board pursuant to Rule 1016. If the Applicant does not file a request for a review, the Department's decision shall constitute final action by the Association.

[(h)]*(j)* Removal or Modification of Restriction on Department's Initiative

The Department shall modify or remove a restriction on its own initiative if the Department determines such action is appropriate in light of the considerations set forth in paragraph [(e)(1)]*(g)(1).* The Department shall notify the member in writing of the Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph (a).

(k) Lapse or Denial of Application for Approval of Change in Ownership

If an application for approval of a change in ownership lapses, or is denied and all appeals are exhausted or waived, the member shall, no more than 60 days after the lapse or exhaustion or waiver of appeal:

(1) submit a new application;

(2) unwind the transaction; or

(3) file a Form BDW.

For the protection of investors, the Department may shorten the 60 day period. For good cause shown by the member, the Department may lengthen the 60 day period. The Department shall serve written notice on the Applicant of any change in the 60-day period and the reasons therefor. During the 60-day or other imposed period, the Department may continue to place interim restrictions on the member for the protection of investors.

[1018. Change in Ownership, Control, or Operations]

[(a) Notice

At least 30 days prior to the occurrence of any of the following changes in ownership, control, or operations, a member shall file a written notice and application for continuance in membership with the Department at the district office in the district in which the member's principal place of business is located:

(1) a merger of the member with another member;

(2) an acquisition by the member of another member;

(3) an acquisition of substantially all of the member's assets;

(4) a change in the equity ownership or partnership capital of the member that results in one person or entity owning or controlling 25 percent or more of the equity or partnership capital; or

(5) a material change in the member's business operations.]

[(b) Review and Imposition of Interim Restrictions

The Department shall review a change in ownership, control, or operations described in paragraph (a) prior to the change taking effect. The Department may maintain existing restrictions on the member's business activities and place new interim restrictions on the member based on the standards in Rule 1014, pending final Department action.]

[(c) Request for Information

Within 30 days after receipt of the notice and application under paragraph (a), the Department shall request any additional information or documents necessary to render a decision under paragraph (f). Unless otherwise agreed by the Department and the Applicant, the Applicant shall file such additional information or documents with the Department within 30 days after the Department's request. The Department may request additional information and documents at any time during the application process; unless the Applicant and the Department agree otherwise, the Applicant shall file such information or documents within 30 days after the Department's request.]

[(d) Lapse

(1) Absent a showing of good cause, an application for continuance in membership shall lapse if an Applicant fails to:

(A) respond fully within 30 days after a request for information or documents;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (e); or

(C) return an executed membership agreement under paragraph (g) within 25 days after service of the agreement.

(2) The lapse of an application shall require the Applicant to submit a new application under paragraph (a).]

[(e) Membership Interview

(1) The Department may require the Applicant to participate in a membership interview. The membership interview shall be held within 30 days after the receipt of the application, or if the Department requests additional information or documents, within 30 days after the filing of such additional information or documents by the Applicant.

(2) At least seven days before the membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the Applicant who are required to participate in the interview. The Department shall serve the notice by facsimile or commercial courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service.

(3) Unless the Department and the Applicant otherwise agree, the membership interview shall be conducted in the district office for the district in which the Applicant has or intends to have its principal place of business.

(4) During the membership interview, the Department shall review the application and the considerations for the Department's decision set forth in paragraph (f). The Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under paragraph (f). If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.]

[(f) Department Decision

(1) In evaluating an application submitted under paragraph (a), the Department shall consider whether the Applicant continues to meet the standards set forth in Rule 1014 in light of the change in ownership, control, or operations, and whether current restrictions, if any, or new restrictions are necessary for the Applicant to continue to meet such standards.

(2) The Department shall issue a written decision within 30 days after the membership interview or the submission of additional information or documents, whichever is later. If the Department does not require the Applicant to participate in a membership interview or submit additional information or documents, the Department shall issue a written decision within 45 days after receipt of an application under paragraph (a). The decision shall state the terms for continuance in NASD membership, whether current restrictions, if any, are maintained or new restrictions are imposed, and shall provide a rationale for the Department's decision, referencing the applicable standard in Rule 1014.

(3) If the Department fails to issue a decision within 180 days after receipt of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the Department to issue a decision. Within seven days after receipt of such a request, the NASD Board shall direct the Department to issue a written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the NASD Board may extend the time limit for issuing a decision by not more than 30 days.]

[(g) Submission of Membership Agreement

The Department may condition approval of an application for continuance in membership on the Applicant's submission of a new written membership agreement pursuant to Rule 1014(c).]

[(h) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National Adjudicatory Council, the NASD Board, or the Commission.]

[(i) Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the National Adjudicatory Council pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such a review, and the National Adjudicatory Council's decision shall be subject to discretionary review by the NASD Board pursuant to Rule 1016. If the Applicant does not file a request for review, the Department's action shall constitute the final action of the Association.]

1018. Stay of Application During Pendency of Criminal or Other Proceeding

(a) The Department may stay an application filed under Rule 1013 or 1017 if:

(1) a state or federal authority files criminal charges against the Applicant or a principal or proposed principal of the Applicant;

(2) the Commission files a complaint or a request for injunctive relief against the Applicant or a principal or proposed principal of the Applicant; or

(3) the Association, another self-regulatory organization, or a state files a disciplinary complaint against the Applicant or a principal or proposed principal of an Applicant alleging a violation of a law or rule listed in IM-1011-1 (or a comparable state law, rule, or regulation).

In such case, the application shall be stayed during the pendency of the proceeding. If the Department has imposed interim restrictions under Rule 1017(c), the restrictions shall remain in effect during the stay.

(b) If the Applicant or principal or proposed principal prevails in the proceeding, the stay shall be lifted automatically.

(c) If there is a material change in the circumstances that gave rise to the stay, the Applicant may file a written request with the Department to lift the stay. The Department shall serve a written response on the Applicant within 14 days after the filing of the request by the Applicant. If the Department denies the request, the Applicant may file a written request for review with the National Adjudicatory Council. The National Adjudicatory Council or the Review Subcommittee shall serve a written

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response on the Applicant within 30 days.

1019. Application to Commission for Review

No change.

* * * * *

Rule 1140. Electronic Filing Rules

(a) Filing Requirement

Except as provided in Rule 1013(a)(2), all [All] forms required to be filed by the By-Laws shall be filed through an electronic process or such other process the Association may prescribe to the Central Registration Depository.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Regulation proposes to amend the Rule 1010 Series, which governs NASD membership. NASD Regulation staff worked with the Member Admission Review Committee (Committee),[4] an ad-hoc committee convened in August 1998, to develop the proposed changes. The purpose of the proposed rule change is to streamline the Rules and make them more efficient while preserving their investor protection function.

The most significant changes are as follows:

- reorganizing and consolidating some of the current rules to make them easier to use;
- clarifying the rules and policies that apply to business expansions by—
- adopting a policy of building expansion plans into membership agreements,
- defining in the rules what kinds of "material changes in business operations" require a member to file an application for approval with NASD Regulation, and
- providing a safe harbor for modest expansions that will not require an application,

which together are intended to provide more even-handed treatment among members for various business expansions, provide more certainty regarding which expansions require approval, and eliminate unnecessary applications;

- permitting the staff to stay membership applications if a firm or one of its principals is the subject of a disciplinary action;
- permanently rescinding the National Adjudicatory Council's authority to review membership decisions that are not appealed by an Applicant;
- simplifying administrative procedures for submitting an application and calculating the various time limits that apply to the process; and
- permitting the staff to reject immediately applications that are not substantially complete.

A detailed explanation of the proposed rule change follows.

a. Proposed Rule 1011

The definition of "Associated Person" is amended to clarify that it includes only natural persons.

The term "material change in business operations" is defined for the first time. The definition is significant because it triggers a requirement for a member to apply to the district office for approval of the change under proposed Rule 1017. The term is defined to include removing or modifying a membership agreement restriction;[5] market making, underwriting, or acting as a dealer for the first time; or adding business activities that require a higher minimum net capital.

NASD Regulation does not believe that it is possible to develop an exhaustive definition of the term "material change in business operations." If a change in a member's business falls outside of the definition, or the safe harbor described below (*e.g.*, because it exceeded the safe harbor limits or the member has disciplinary history), then the member may contact the district office to determine if the district would deem the change to be material. A member is not required to contact the district office if the member believes the change is not material. However, if the staff later determines that the change is indeed material, then the member potentially could be subject to disciplinary action for failure to file an application under proposed Rule 1017.

Proposed Interpretive Material 1011–1 (IM–1011–1) is added to create a safe harbor for certain changes that are presumed not to be material and therefore do *not* require a member to submit an application for approval of the change. The safe harbor would not be available to members that have a "disciplinary history." The term "disciplinary history" shall mean a finding of a violation by the member or a principal of the member in the past five years by the Commission, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following provisions (or comparable foreign provisions) or rules or regulations thereunder: Sections 15(b)(4)(E) and 15(c) of the Act (failure to supervise; fraud and manipulation); Section 17(a) of the Securities Act of 1933 (fraudulent interstate transactions); Exchange Act 10b–5 (fraud and manipulation), and 15g–1 through 15g–9 (penny stock rules); NASD Rules 2110 (just and equitable principles of trade), 2120 (fraud and manipulation), 2310 (suitability), 2330 (protection of customer securities and funds), 2440 (fair prices and commissions), 3010 (failure to supervise only), 3310 (manipulative and deceptive quotations), and 3330 (payments to influence market prices); and MSRB Rules G–19 (suitability), G–30 (prices and commissions), and G–37(b) and (c) (political contributions).

The term "principal place of business" is defined for the first time. An Applicant's principal place of business determines which district office will process its application. "Principal place of business" means the location where the officers, partners, or managers direct and control the activities of the Applicant, unless NASD Regulation staff designates a different location. That location may be where the largest number of associated persons are located or where the books and records are kept. This definition is designed to prevent an Applicant from trying to select a particular district office to process its application through its designation of a principal place of business.

[4] Members of the Committee are: Faith Colish, New York, New York; Linda Lerner, All-Tech Investment Group, Inc., Montvale, New Jersey; Brian T. Shea, Pershing, Jersey City, New Jersey; Theodore W. Urban, Ferris, Baker & Watts, Incorporated, Washington, D.C.; and Richard P. Woltman, Spelman & Co., Inc., San Diego, California. Mr. Urban chairs the Committee.

[5] NASD Regulation included removing or modifying a restriction in this definition to effect the consolidation of current Rules 1017 and 1018. The rationale for the consolidation is set forth in the section titled "Proposed Rule 1017," below.

NASD Regulation proposes to redefine "sales practice violations" as "sales practice event" because the definition includes not only proven violations, but also unproven allegations.[6] The proposed definition includes any customer complaint, arbitration, or civil litigation that has been or is required to be reported to the Central Registration Depository ("CRD") or otherwise is required to be reported to the Association (*e.g.*, via Rule 3070).

The terms "Applicant" and "Interested Association Staff" are amended to make them consistent with other rule changes.

b. Proposed Rule 1012

NASD Regulation proposes to amend the service and filing provisions to permit additional methods of delivery and to use consistent terminology for calculating deadlines. The term "commercial courier" is replaced with "overnight courier" to clarify that Applicants and NASD Regulation staff may use the overnight delivery service offered by the United States Post Office. NASD Regulation interprets the term "overnight courier" to refer to any entity that regularly provides such overnight delivery services, such as Federal Express, DHL, or the United States Post Office. Use of the term "overnight courier" is not intended to imply that only actual overnight delivery may be used under the Rule. Overnight delivery should be used if it is available. However, if overnight delivery is not available for a particular location, the Applicant or NASD Regulation staff may use the most rapid delivery option available (*e.g.*, two day service) from the overnight courier and still be in compliance with the proposed Rule.

Throughout the proposed rules, the term "file" is used uniformly to refer to submissions by an Applicant, and the term "serve" is used uniformly to refer to delivery of requests, decisions, and the like by the Association; other terminology, such as "issuance" or "receipt" is deleted.[7] These changes provide greater clarity in calculating deadlines in accordance with proposed Rule 1012(a).

The lapse of application provisions are consolidated and moved from Rules 1013(b), 1017(c), and 1018(d) to proposed Rule 1012(b) for ease of reference. The lapse rule, which is discussed in greater detail in the next section, permits the staff to discontinue processing an application if an Applicant does not timely provide requested information or documents. The only changes to the lapse rule are to permit the staff and the Applicant to agree on a submission date for the membership agreement, rather than requiring that all agreements be submitted within 25 days, and clarify that fees are not refunded for lapsed applications.

The subparagraphs of Rule 1012(c) are reordered for ease of reading.

c. *Proposed Rule 1013*

One of the major changes to this Rule is to simplify application submission procedures. Currently, this Rule requires Applicants to submit their applications in two parts. Part One, which includes primarily forms and fees (*e.g.*, the initial Forms BD and U–4), is sent directly to the CRD in Rockville, Maryland, for processing. Part Two, which includes all remaining documents required for member admission, is sent to the district office that will review the application. At the time the rule was adopted, the staff thought it would be more efficient to send each part to the location where it would be processed. In practice, this has created problems when both parts of the application are not submitted at the same time, or one or both parts are incomplete, making it difficult to determine when the application should be treated as filed and when the staff should begin reviewing it. The application filing date is critical because the 180-day limitation placed on the staff for rendering a decision on the application is measured from this date.

To alleviate these problems, NASD Regulation recommends one point of entry for the entire application, the district office. District staff will review the entire application to determine if it is substantially complete. If so, they will forward any documents that need to go to CRD and continue processing the application.

NASD Regulation proposes a new rule for dealing with applications that are not substantially complete at the time of submission. Currently, the staff does not have any authority to refuse to begin processing an inadequately prepared application. Instead, they attempt to begin processing such an application by sending a request for further information to the Applicant. If the Applicant does not timely provide the requested information, then the rules permit the staff to "lapse" the application. The staff then notifies the Applicant that the application has lapsed, all fees are forfeited, and the Applicant is required to start over with the application process if it still wants to become an NASD member. These procedures can consume as much as 90 days and a considerable amount of staff and Applicant resources, but still result in a rejected application.

Under the proposed rule, if an application is so deficient upon initial submission that the staff cannot begin processing it (*e.g.*, it is missing major components of the application, such as written supervisory procedures or a business plan), then the staff may reject the application. The staff would have no more than 30 days after submission to do this, and would be required to provide reasons for its action in writing. NASD Regulation proposes a $350 processing fee for the rejection of an application that is not substantially complete. NASD Regulation considered but rejected defining the term "substantially complete" because the determination will vary depending on the type and complexity of the proposed business, among other things. The lapse rules will still apply to those situations where an Applicant stops providing information in the middle of the application process.

Rule 1013 also is simplified by removing requirements for Applicants to submit information that has already been submitted to CRD. The district staff has full access to CRD and can obtain the information they need directly from it. This change will make the application process simpler for Applicants by eliminating duplicative submissions to NASD Regulation.

Under the proposed Rule 1013(a)(2), an Applicant will continue to submit only its initial Forms BD and U–4 in paper along with the rest of the application. The Applicant also will submit a Web CRD entitlement request form with its application. Under proposed Rule 1013(a)(3), upon approval of the Web CRD entitlement request form by NASD Regulation, the Applicant must make all subsequent Form filings and amendments electronically via Web CRD℠. A conforming change is proposed for Rule 1140. This process will be in conformity with Commission requirements for the submission of Form BD and amendments to it.[8] Similarly, the initial Member Contact Questionnaire and user access request form also are submitted on paper; upon approval of a membership application, the member may update the Member Contact Questionnaire electronically.

The proposed rule adds new requirements for Applicants to submit information concerning their ability to

[6] NASD Regulation is not proposing any change to the definition of sales practice violation on the Form U–4.

[7] *See, e.g.*, proposed Rules 1013(a)(5), (b)(1), and 1014(c)(3).

[8] *See* Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586 (July 12, 1999).

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ensure business continuity, including information about the capacity of their communications and operational systems, contingency plans, disaster recovery plans, and the like. NASD Regulation also proposes a new standard for admission that requires that such systems, plans, and procedures be adequate in proposed Rule 1014(a)(6). The staff would not be required to investigate the adequacy themselves; rather, the Applicant would certify that the systems, plans, and procedures are adequate for the Applicant's business. The Applicant may self-certify or may rely on a third party (*e.g.*, a vendor of such a system) to provide the certification if the Applicant so chooses.

NASD Regulation also wishes to clarify that under Rule 1013(b)(4), the Applicant and the staff may agree to hold the membership interview at the Applicant's place of business.

Rule 1013 is amended by adding new subparagraph (b)(5) to require Applicants to provide updated financial information at the time of their membership interview.

d. Proposed Rule 1014

NASD Regulation proposes few changes with respect to the standards for admission. NASD Regulation proposes a new standard with respect to business continuity, as described above. NASD Regulation also proposes that the Applicant's supervisory procedures must specifically include procedures to ensure proper registrations are obtained by the firm. All other changes to the standards for admission are conforming changes.[9]

NASD Regulation also considered the requirement of Rule 1014(a)(9)(C) that prospective supervisors have at least one year of direct experience or at least two years of related experience in the subject area to be supervised. NASD Regulation believes that this requirement should continue to be imposed and has published interpretive guidance on this subject in *How To Become A Member*, which is available at www.nasdr.com/4700_toc.htm. NASD Regulation does not believe that supervisory experience requirements should be increased.

[9] NASD Regulation also wishes to provide some guidance on how it treats unadjudicated violations under Rule 1014. The Rule permits the staff to consider unadjudicated violations as part of a decision on a membership application. In most cases, an unadjudicated violation by itself will not result in a restriction or a denial, but depending on the circumstances, may require heightened supervision. However, a particularly egregious allegation, *e.g.*, a criminal charge involving a large number of customers, may cause the staff to consider a restriction or denial.

Rule 1014(c), which concerns the submission of membership agreements, is amended by deleting the requirement that any member with a membership agreement obtain approval from NASD Regulation of any change in business outside the terms of the agreement. NASD Regulation believes that this provision is too restrictive, particularly for firms with no disciplinary history. The provision also puts members with a membership agreement at a disadvantage vis-aacute;-vis members that do not have a membership agreement.[10] Therefore, this provision is deleted. When the proposed rule change becomes effective, to ensure that members are treated equally, NASD Regulation will permit members that are eligible for the safe harbor to use it, even if their membership agreement includes a general requirement to obtain approval from NASD Regulation of any change in business outside the terms of the agreement. When NASD Regulation examines a member, it will update the membership agreement to reflect the new rule. As part of the proposed rule change, paragraphs 1014(c) and (d) also are reordered for ease of reading.

In addition, upon adoption of the proposed rules, NASD Regulation will begin including business expansions plans in membership agreements to the extent practicable.

e. Proposed Rule 1015

Under current Rule 1015, the NAC or the Review Subcommittee may call for review a district decision on a membership application, even if the Applicant does not appeal the decision. NASD Regulation considered at length whether a procedure or policy could be developed to implement this provision effectively, but ultimately determined that it is unworkable. NASD Regulation has temporarily suspended calls for review of membership decisions and proposes to delete this provision altogether for the reasons set forth in Exchange Act Release No. 41311 (Apr. 20, 1999), 64 FR 20347 (Apr. 26, 1999) (File SR–NASD–99–15).

[10] In 1984, the SEC approved a codification of the NASD's member admission procedures, which included a requirement that any restriction on a member's business be included in a membership agreement executed by the member. *See* Exchange Act Release No. 21159 (July 20, 1984), 49 FR 30268 (July 27, 1984) (File No. SR–NASD–82–24). Thus, a member admitted before 1984 or a member admitted without any restriction from 1984 to 1997 may not have a membership agreement. In 1997, NASD Regulation began requiring all new members to execute a membership agreement, regardless of whether NASD Regulation imposed any restriction. *See* NASD Rule 1014(c); Exchange Act Release. No. 38908 (Aug. 7, 1997), 62 FR 43385 (Aug. 13, 1997) (File No. SR–NASD–97–28).

NASD Regulation believes that the oversight function envisioned for the call for review provision, which has proved to be unworkable, is performed through a variety of other existing mechanisms. The Home Office of the Member Regulation Department employs a full time Membership Manager to coordinate and oversee the national program. Part of the manager's responsibility includes a quality control function. This function is carried out in several ways: maintenance of a Membership Procedures Manual; periodic advice memoranda sent to District Office staff ("MAP Bulletins"); regularly scheduled telephone conferences with District Office staff to discuss procedural and substantive issues arising in the program; and periodic training sessions for new and incumbent staff. To supplement these tools, Member Regulation's Office of Quality Assurance conducts periodic peer reviews of the membership admission program, most recently in 1998 and 1999. The purpose of these peer reviews was to assess the District Offices' application of the membership rules and procedures. The reviews included an examination of 265 files in recently-issued membership decisions. The reviews included spot checks of source documents to confirm the facts underlying the decisions. In addition, peer reviews of the membership program will be conducted in the future.

NASD Regulation also proposes a new paragraph (h) for dismissing appeals that are abandoned by an applicant, which includes failing to appear at a hearing as set forth in current Rule 1015(f)(5), among other things.

f. Proposed Rule 1017

Current Rule 1017, which addresses applications for removal or modification of a business restriction, and Rule 1018, which addresses applications for approval of changes in ownership, control, or operations, are consolidated in proposed Rule 1017. Sometimes a member initiates business changes that involve both rules, which creates confusion as to which rule should be used. Therefore, NASD Regulation proposes to consolidate these rules to make them easier for staff and applicants to use and to eliminate any confusion that may arise from overlapping provisions.

This consolidation is achieved in part by defining the term "material change in business operations" in proposed Rule 1011(i) to include the removal or modification of a business restriction. All material changes in business operations would trigger a review under proposed Rule 1017. Members should note that a "restriction" is specifically labeled as such in the membership agreement, and NASD Regulation issues a decision that states the rationale for the restriction.

A restriction is distinct from other limitations that a member may set forth in its business plan that may be recited as part of the "Business Activities" section of a membership agreement. For example, an applicant may include in its business plan that it intends to have 10–20 registered representatives and make markets in no more than 10 stocks. If the NASD approves the application, these self-imposed limitations, which have been considered as part of the application, may be included in the "Business Activities" section of the membership agreement. These types of limitations are not considered "restrictions" under the Rules because they are not imposed by NASD Regulation, and therefore NASD Regulation does not have to include a rationale for them in the decision in the application. Under the proposed Rules, a member that has such limitations in its membership agreement may expand beyond those limitations to the extent permitted in the safe harbor in IM–1011–1.

In contrast, for example, NASD Regulation may specifically restrict the number of markets a member makes because NASD Regulation determines and issues a decision stating that the member cannot adequately supervise a large number of markets. In such a case, the restricted member cannot take advantage of the safe harbor in proposed Rule 1011 and must apply under proposed Rule 1017 to lift the restriction.

Another type of change that triggers an application under proposed Rule 1017 is a change in the equity ownership or partnership capital of the member that results in one person or entity owning or controlling 25 percent or more of the equity or partnership capital. NASD Regulation wishes to clarify that a group of individuals acting in concert to obtain control of 25 percent or more of the equity or partnership capital of a member will be deemed to be an "entity" under the Rule, and as such, trigger the requirement to submit an application to obtain approval of the ownership change.

NASD Regulation proposes to discontinue its review of certain changes. Under proposed Rule 1017, NASD Regulation would discontinue review of member mergers and acquisitions that are reviewed by the New York Stock Exchange, thereby eliminating duplication by self-regulatory organizations.

Proposed Rule 1017 also sets forth for the first time what type of information should be included in an application and the content of the staff's decision on an application under this Rule. The Rule also clarifies when the application should be filed and what changes can be effected prior to obtaining NASD Regulation's approval.

NASD Regulation proposes a new paragraph (k) to clarify what happens if a change in ownership application lapses or is denied. The proposed rule change provides that if the ownership change application lapses or is denied, then the member has a fixed period of time to submit a new application,[11] unwind the transaction, or file a Form BDW. Of course, as under the current rules, a member could continue to operate with the approved owners if the transaction has not closed. The Department may shorten the 60-day period for the protection of investors or lengthen it upon good cause shown by the Applicant. The Department may continue to place interim restrictions on the member during the 60-day (or other imposed) period. NASD Regulation's practice has been to inform Applicants of these options, but not impose particular deadlines. The purpose of the proposed rule change is to provide more structure to this process and ensure that members who do not timely obtain approvals of ownership changes are not doing business with the public.

As part of its review of the Rule 1010 Series, NASD Regulation considered whether the time frames in Rule 1017 could be shortened so that the overall process would be completed in 90 days. NASD Regulation determined not to shorten the time frames at this time because other rule revisions (*e.g.*, defining material change in operations and listing the documents required for the application), should speed up processing of applications. NASD Regulation also intends to publish on its Web site further guidance to members on what types of documents and information the staff will require if a member requests approval to engage in certain specialized areas of the securities or investment banking business. NASD Regulation believes that these changes should be given a chance to work before any time frames are shortened. NASD Regulation will reconsider the issue one year after the rule revisions have become effective and more information is available about the processing time for applications.

[11] A lapsed Applicant may propose the same owners; a denied Applicant must propose new owners.

g. Proposed Rule 1018

NASD Regulation proposes to adopt a new NASD Rule 1018, which would permit the staff to stay a membership application under NASD Rule 1013 or 1017 if a state or federal authority files criminal charges against the Applicant or a principal or proposed principal of the Applicant; the SEC files a complaint or a request for injunctive relief against the Applicant or a principal or proposed principal of the Applicant; or the NASD, another self-regulatory organization, or a state files a complaint alleging a violation of one of the laws or rules listed in IM–1011–1 (or a comparable state provision).

Under the proposed rule, the stay would be lifted automatically if the Applicant prevailed in the disciplinary action. The staff also would be authorized to lift the stay if circumstances changed. If the staff denied the request to lift the stay, the Applicant could appeal to the National Adjudicatory Council.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Section 15A(b)(8) of the Act[13] requires that a national securities association establish rules providing a fair procedure for the denial of membership in such association. NASD Regulation believes that the proposed rule change is consistent with these sections because it provides better notice to applicants about the various requirements of the application process, simplifies and clarifies the rules, and better protects investors by circumscribing expansions by members with disciplinary histories and by permitting the Association in certain circumstances to stay applications by members who are subject to disciplinary action. The proposed rule change also provides better notice to applicants whose change in ownership is denied by informing them of their options once the denial is final.

[12] 15 U.S.C. 78o–3(b)(6).
[13] 15 U.S.C. 78o–3(b)(8).

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B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 99–67. Two comments were received in response to the Notice.

The commenters raised several issues. One commenter, the Jeffrey Matthews Financial Group LLC, stated that the staff has been given too much time to review an Applicant's submission and request additional information. As part of its deliberations on the proposed rules, NASD Regulation considered shortening certain deadlines. NASD Regulation determined not to shorten the time frames at this time because other rule revisions (*e.g.*, defining material change in operations and listing the documents required for the application) should speed up processing of applications. NASD Regulation also has provided additional guidance to members on what types of documents and information the staff will require if a member requests approval to engage in certain specialized areas of the securities or investment banking business. This guidance is posted at www.nasdr.com/cm__apps__1.htm. NASD Regulation concluded that these changes should be given a chance to work before any time frames are shortened. NASD Regulation will reconsider the issue one year after the rule revisions have become effective and more information is available about the processing time for applications. In the meantime, NASD Regulation will make every effort to respond promptly and within the time limits to each submission of information.

This same commenter also suggested that a member should be permitted to add business activities without approval from NASD Regulation if the revenues from the activity are less than five percent of total revenue. Certain types of business expansions (adding a limited numbers of sales personnel, offices, and markets) are permitted under the proposed safe harbor. After further consideration of this comment by the Board, NASD Regulation determined to revise the definition of material change in business operations as proposed in Notice To Members 99–67 so that the definition would not apply to adding any new type of business, but only to adding market making, underwriting, or acting as a dealer for the first time.

The California Association of Independent Broker-Dealers ("CAIBD") also submitted a comment letter. CAIBD stated that: (1) the staff has too much discretion in determining whether a member should be permitted to expand; (2) NASD Regulation does not need to ask for lease arrangement information or descriptions of communications and operations systems; (3) supervisory experience should not be required; (4) membership interviews should be waived in certain circumstances; (5) a list of persons to be registered should not be required; and (6) an Applicant should not be required to describe the volatility of its products.

First, NASD Regulation does not believe that the staff has too much discretion in rendering a decision on a member's application to expand its business. Indeed, the criteria for approval of membership applications is set forth in detail in Rule 1014. To the extent a decision on an application is denied in whole or in part or approved subject to restrictions, the rules require that the reason for the denial or imposition of restrictions be specifically explained, referencing the applicable standard for membership upon which the decision is based.

Furthermore, as part of its proposal, NASD Regulation is creating a safe harbor that will permit members to undertake certain types of business expansions without obtaining NASD Regulation approval. NASD Regulation believes that it is appropriate to continue exercising discretion in reviewing expansions outside of the safe harbor because such expansions could be material.

Second, NASD Regulation has routinely required Applicants to provide information about their lease arrangements. This permits NASD Regulation to verify certain aspects of an application. For example, an Applicant that proposed to have a very small number of registered persons in most cases would lease space commensurate with staffing. If that Applicant instead leased a very large space, NASD Regulation would most likely request further information about the business purpose for the lease and to ensure that the Applicant was not planning an unapproved expansion. Likewise, if an applicant proposed to employ a large number of associated people in a relatively small space, NASD Regulation would question the Applicant's ability to support the number of personnel proposed from both a supervisory and operational standpoint.

Third, NASD Regulation determined that it should begin asking Applicants for information about their ability to ensure business continuity, including information about the capacity of their communications and operational systems, contingency plans, disaster recovery plans, and the like. The staff would not be required to investigate the adequacy themselves; rather, the applicant would certify that the systems, plans, and procedures are adequate for the applicant's business. The applicant may rely on a third party (*e.g.*, a vendor of such a system) to provide the certification if the applicant so chooses. This review will be less extensive in the case of an introducing broker-dealer that is relying on the systems of a clearing broker.

Fourth, NASD Regulation staff, as well as the NAC and the District Committees, have expressed the view that the experience requirement for supervisors is appropriate. In some cases, NASD Regulation has appropriately denied membership or a business expansion application where the Applicant has not demonstrated any experience in the proposed business line.[14] NASD Regulation believes that this experience requirement serves an important investor protection function.

Fifth, NASD Regulation believes that membership interviews are essential for new member Applicants under NASD Rule 1013. The in-person interview plays an important role in determining whether the Applicant and its principals are knowledgeable about the legal and regulatory requirements of operating a broker-dealer and can demonstrate that they are capable of complying with all laws and regulations, as required by the membership standard in proposed NASD Rule 1014(a)(3). Interviews with a current member applying to remove a restriction or expand its business are not required by the rules, but may be held at the election of staff under proposed NASD Rule 1017.

Sixth, a list of prospective registered persons is also essential to rendering a decision under proposed Rule 1014. NASD Regulation must check the disciplinary history of all such persons in determining whether an Applicant meets the standards set forth in proposed Rule 1014(a)(3) and (10).

Finally, NASD Regulation believes taking the volatility of a firm's products into consideration is necessary in order to assess a firm's ability to maintain an adequate net capital level under

[14] *In the Matter of Sierra Nevada Securities, Inc.*, Exchange Act Release No. 41330, 1999 SEC LEXIS 833, Apr. 26, 1999.

Exchange Act Rule 15c3–1 and the adequacy of the firm's procedures for supervising its financial and operational functions.

NASD Regulation requested, but did not receive, comment on several issues in NTM 99–67. NASD Regulation has determined to retain the safe harbor numbers as proposed in the Notice. However, NASD Regulation has determined that the definition of disciplinary history should be amended to include violations by officers or principals of the member. NASD Regulation also has determined that restrictions in a membership agreement should not automatically sunset after a fixed period (*e.g.*, five years) if the applicant does not have any disciplinary history; instead, restrictions will continue to be individually reviewed. Finally, NASD Regulation determined that it should clarify what happens if a change in ownership is denied and has proposed Rule 1017(k) to address this situation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–67 and should be submitted by July 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14718 Filed 6–9–00; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42890; File No. SR–PCX–00–11]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change To Rescind Rules 5.43–5.49, and Modify Rule 5.5(b), Relating to the Exchange's Off-Board Trading Restrictions

June 1, 2000.

I. Introduction

On March 26, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind Rules 5.43–5.49, the Exchange's off-board trading rules, and to make a conforming change to Rule 5.5(b). The proposed rule change was published for comment in the **Federal Register** on April 19, 2000.[3] Similar proposed rule changes filed by the American Stock Exchange, Chicago Stock Exchange, the Philadelphia Stock Exchange, and the Boston Stock Exchange had already been published for public comment.[4] The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to rescind off-board trading rules filed by the exchanges noted above.[5]

II. Description of the Proposal

Exchange Rules 5.43–5.49 restrict a member's ability to effect transactions in Exchange-listed securities off a national securities exchange. In the proposing release, the Exchange stated that "once the Commission approves the NYSE's proposal to rescind its off-board trading restrictions, the Exchange's off-board trading restrictions will no longer be necessary or appropriate." Therefore, the Exchange proposed to rescind Rules 5.43–5.49, and to make a conforming change to Rule 5.5(b).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act[6] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act. The rescission of the Exchange's off-board trading restrictions is also consistent with Section 11A of the Act[7] which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Specifically, rescinding the off-board trading restrictions will help further the national market system objective in Section 11A(a)(1)(C)(i) to assure the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42660 (April 10, 2000), 65 FR 21052.

[4] Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR–Amex–00–05); Securities Exchange Act Release No. 42459 (February 25, 2000), 65 FR 11619 (March 3, 2000) (File No. SR–CHX–99–28); Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628 (March 3, 2000) (File No. SR–Phlx–00–12); Securities Exchange Act Release No. 42661 (April 10, 2000), 65 FR 20497 (April 17, 2000) (File No. SR–BSE–00–02).

[5] The New York Stock Exchange was first to submit a proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

On May 5, 2000, the Commission approved the New York Stock Exchange's proposed rule change to rescind Rule 390. Securities Exchange Act Release No. 34–42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for public comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1.

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economically efficient execution of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.[8]

As discussed more fully in the NYSE Approval order, the existence of off-board trading restrictions can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Rules 5.43–5.49 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in the Act.[9] The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Rules 5.43–5.49 may have in enhancing the interaction of investor orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market centers should depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task is removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers."[10] The same nationale and motivation support the Commission's action today.

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] Section 11A(a)(1)(C)(v) of the Act.

[10] NYSE Approval Order at 30179.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PCX–00–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14722 Filed 6–9–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42889; File No. SR–Phlx–00–12]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Ordering Approving Proposed Rule Change to Rescind Rule 132, the Exchange's Off-Board Trading Rule

June 2, 2000.

I. Introduction

On February 10, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind Rule 132, the Exchange's off-board trading rule. The proposed rule change was published for comment in the **Federal Register** on March 3, 2000.[3] Proposed rule changes filed by the American Stock Exchange and the Chicago Stock Exchange to rescind their off-board trading rules were published on the same date as the Phlx proposing release.[4] Shortly thereafter, the Boston Stock Exchange and the Pacific Exchange filed similar proposed rule changes.[5] The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to rescind off-board trading rules filed by the exchanges noted above.[6]

II. Description of the Proposal

Exchange Rule 132 restricts a member's ability to effect transactions in Exchange-listed securities off a national securities exchange. In the proposing release the Exchange noted that the "staff of the Commission recently asked the Exchange to review its off-board trading restrictions and consider measures to repeal such restrictions." Therefore, the Exchange proposed rescinding Rule 132 to "broaden the free market trading activities of Exchange members and the investors they represent by removing restrictions on over-the-counter trading in listed securities."

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act[7] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act. The rescission of the Exchange's off-board trading restrictions is also consistent with Section 11A of the Act[8] which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Specifically, rescinding the off-board trading

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628.

[4] Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR–Amex–00–05); Securities Exchange Act Release No. 42459 (February 25, 2000), 65 FR 11619 (March 3, 2000) (File No. SR–CHX–99–28).

[5] Securities Exchange Act Release No. 42661 (April 10, 2000), 65 FR 20497 (April 17, 2000) (File No. SR–BSE–00–02); Securities Exchange Act Release No. 42660 (April 10, 2000), 65 FR 21052 (April 19, 2000) (File No. SR–PCX–00–11).

[6] The New York Stock Exchange was first to submit a proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

On May 5, 2000, the Commission approved the New York Stock Exchange's proposed rule change to rescind Rule 390. Securities Exchange Act Release No. 34–42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for pubic comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1.

restrictions will help further the national market system objective in Section 11A(a)(1)(C)(i) to assure the economically efficient executive of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.[9]

As discussed more fully in the NYSE Approval Order, the existence of off-board trading restrictions can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Rule 132 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in the Act.[10] The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Rule 132 may have in enhancing the interaction of investor orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market center should depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task is removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers."[11] The same rationale and motivation support the Commission's action today.

[9] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] Section 11A(a)(1)(C)(v) of the Act.

[11] NYSE Approval Order at 30179.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–00–12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14725 Filed 6–9–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 42898; File No. SR–Phlx–00–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program Regarding Exchange Rule 98, Emergency Committee, Until August 21, 2000

June 5, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 18, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 20, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change, as amended, pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the pilot program relating to Exchange Rule 98, Emergency Committee, for an additional 120 days, or until August 21, 2000. No changes to the existing rule language are being proposed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 23, 1999, the Commission granted approval to amendments to Exchange Rule 98, Emergency Committee (the "Committee") on a 120-day pilot basis.[6] In general, the Committee is authorized to determine the existence of, and take action with respect to, extraordinary market conditions or other emergencies at the Exchange. The amendments to Exchange Rule 98 updated the composition of the Committee to reflect the current governance structure of the Exchange,[7] clarified that the Committee was authorized to act in the event of any emergency condition created by the Year 200 date change, and deleted a provision referencing CENTRAMART, an equity order entry system which is no longer used on the Exchange. The Committee is now composed of five individuals: the Chairman of the Board of Governors; the On-Floor Vice Chairman of the Board of Governors;

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.16b–4.

[3] *See* April 19, 2000 letter from Richard S. Rudolph, Counsel, Exchange, to Rebekah Liu, Special Counsel, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, the Exchange requested that the proposed rule change be filed under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6). The Exchange also requested that the Commission waive the 5-day notice of its intent to file the proposal, and requested that the Commission waive the 30-day period before the proposal becomes effective to permit the proposed rule change to become immediately effective.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Exchange Act Release No. 42272 (December 23, 1999), 65 FR 153 (January 3, 2000) SR–Phlx–99–42).

[7] The amendments replaced the President, which the Exchange no longer has, with the On-Floor Vice Chairman of the Board of Governors.

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and the Chairmen of the Floor Procedure Committee, the Options Committee, and the Foreign Currency Options Committee.

The Commission approved the amendments to Exchange Rule 98 on a pilot basis in order to allow the Exchange to examine the operation of the Committee to ensure that the Committee is not dominated by any one Exchange interest (e.g., On-Floor or Off-Floor interests). The Commission requested that the Exchange report back to the Commission on its views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee. The Exchange has requested that the pilot program be extended in order to provide it more time to examine the operation of the Committee and submit the requested information to the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b)(5) of the Act[8] which requires that the rules of an Exchange be designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission finds that it is appropriate to accelerate the effective date of the proposed rule change and to permit the proposed rule change to become immediately effective because the proposal simply extends a previously approved pilot program for an additional 120 days, or until August 21, 2000. By extending the pilot program, the Commission will enable the Committee to be in place and operational in the event of any extraordinary market conditions or emergencies at the Exchange, and will afford the Exchange the opportunity to respond to the Commission's request to provide information on whether the Committee is fairly representing all interests of the Exchange.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying with the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Phlx–00–41 and should be submitted by July 3, 2000.[12]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14728 Filed 6–9–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of preliminary policy priorities for amendment cycle ending May 1, 2001. Request for comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission has preliminarily identified and hereby proposes certain priorities as the focus of its policy development work, including possible amendments to guidelines, policy statements, and commentary, for the amendment cycle ending May 1, 2001. The Commission invites comment on these proposed priority areas and on any other sentencing issues that it should address in the coming year.

DATES: Public comment should be received by the Commission not later than July 7, 2000.

ADDRESSES: Send comment to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2–500, South Lobby, Washington, DC 20002–8002. Attn: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States Government, is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to the Congress not later than the first day of May each year. See 18 U.S.C. 994(o), (p).

The Commission hereby gives notice that, during the amendment cycle ending May 1, 2001, it may consider possible amendments to guidelines, policy statements, and commentary, relating to the following: (1) Certain economic crimes, particularly fraud, theft, and tax offenses; (2) money laundering; (3) counterfeiting of bearer obligations of the United States; (4) further response to the Protection of Children from Sexual Predators Act of 1998; (5) firearms; (6) nuclear, chemical, and biological weapons, and related national security issues; (7) the payment to, or receipt by, federal employees of unauthorized compensation, and related offenses; (8) offenses implicating the privacy interests of taxpayers; (9) the resolution of a number of conflicts among the circuit courts on sentencing guideline issues; (10) the implementation of any crime legislation enacted during the second session of the 106th Congress requiring a Commission response; and (11) any minor technical or conforming amendments necessary for proper operation of the sentencing guideline system.

In addition to inviting comment on any of the preliminary priority issues proposed in this notice, the Commission welcomes comment on any other issue that interested persons believe the Commission should address during the amendment cycle ending May 1, 2001, including short-and long-term research issues. To the extent practicable, comments submitted on additional issues should include the following: (1) A statement of the issue, including the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

Authority: 28 U.S.C. § 994(a), (o), (p); USSC Rules of Practice and Procedure 5.2.

Diana E. Murphy,

Chair.

[FR Doc. 00–14781 Filed 6–9–00; 8:45 am]

BILLING CODE 2210–01–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on February 9, 2000 (65 FR 6438).

DATES: Comments must be submitted on or before July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590 (telephone: (202) 493–6292), or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On February 9, 2000, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 65 FR 6438. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Bridge Worker Safety Rules.
OMB Control Number: 2130–0535.
Type of Request: Extension of a currently approved collection.
Affected Public: Businesses.
Form(s): N/A.

Abstract: Section 20139 of Title 49 of the United States Code required FRA to issue rules, regulations, orders, and standards for the safety of maintenance-of-way employees on railroad bridges, including for "bridge safety equipment" such as nets, walkways, handrails, and safety lines, and requirements for the use of vessels when work is performed on bridges located over bodies of water. FRA has added 49 CFR Part 214 to establish minimum workplace safety standards for railroad employees as they apply to railroad bridges. Specifically, section 214.15(c) establishes standards and practices for safety net systems. Safety nets and net installations are to be drop-tested at the job site after initial installation and before being used as a fall-protection system, after major repairs, and at six-month intervals if left at one site. If a drop-test is not feasible and is not performed, then a written certification must be made by the railroad or railroad contractor, or a designated certified person, that the net does comply with the safety standards of this section. FRA and State inspectors use the information to enforce Federal regulations. The information that is maintained at the job site promotes safe bridge worker practices.

Annual Estimated Burden Hours: .2 hour.

Title: Two-way End-of-Train Devices.
OMB Control Number: 2130–0540.
Type of Request: Extension of a currently approved collection.
Affected Public: Businesses.
Form(s): N/A.

Abstract: Section 20141 of the United States Code amended the Federal

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railroad safety laws by adding certain statutory mandates related to power brake safety, specifically regarding two-way end-of-train telemetry devices (two-way EOTs). This section required two-way end-of-train devices (or devices able to perform the same function) on road trains other than locals, road switchers, or work trains to enable the initiation of emergency braking from the rear of the train. The information collected enhances rail safety by ensuring that the locomotive engineer is notified if someone other than a train crew member tests the two-way end-of-train devices at the initial terminal or other point of installation to confirm that the device is capable of initiating an emergency power brake application from the rear of the train. The information collected is also used to by FRA to verify that the end-of-train telemetry equipment is properly calibrated for accuracy according to the manufacturer's specifications at least every 365 days. Additionally, the information collected verifies that two-way end-of-train standards, such as the front unit having a manually operated switch that is labeled "emergency" which can initiate an emergency brake transmission command to the rear unit (when activated), are met.

Annual Estimated Burden Hours: 5,797 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, N.W., Washington, D.C., 20503; Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–14764 Filed 6–9–00; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2000–6827 (12412–N)]

Hazardous Materials: Proposed DOT Exemption for Discharging Intermediate Bulk Containers on Motor Vehicles

AGENCY: Research and Special Programs Administration (RSPA) DOT.

ACTION: Notice of proposed exemption.

SUMMARY: RSPA proposes to consolidate and standardize all existing DOT Exemptions that authorize the discharge of intermediate bulk containers (IBC) from a motor vehicle without removing the IBC from the vehicle. These are DOT Exemptions 12245, 12013, 11911, 11769, 11646, 11537, and 10429.

DATES: *Comment Date:* Comments must be received on or before August 11, 2000.

ADDRESSES: *Written Comments:* Address comments to the Dockets Management System, U.S. Department of Transportation, PL 401, 400 Seventh St., SW, Washington, DC 20590–0001. Comments should identify the docket number, RSPA–2000–6827 (12412–N), and should be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Management System is located on the Plaza Level of the Nassif Building, at the above address. Public dockets may be reviewed between the hours of 10:00 a.m. to 5:00 p.m., Monday thru Friday, excluding Federal holidays. In addition, comments can be reviewed by accessing the DMS Website (http://dms.dot.gov). Comments may also be submitted by E-mail to "ibc@rspa.dot.gov". In every case, the comment should refer to the Docket number set forth above.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Burger, telephone number (202) 366–4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The rationale and justification presented to RSPA with the original exemption applications to authorize the unloading of IBCs while onboard a motor vehicle were:

- A demonstrated need to deliver hazardous materials to sites which did not have the capability to safely unload an IBC from a motor vehicle prior to discharging the contents;
- The delivery and transfer of small quantities of hazardous materials into storage tanks was safer from IBCs than from several drums and not feasible from a cargo tank motor vehicle; and
- Carriers would have sufficient operational controls in place to ensure safety during the transfer operation.

Based on numerous requests for modification of the subject exemptions, particularly with regard to IBC capacity limitations and authorized materials, RSPA sent a May 27, 1999 letter to each holder and person having party status to DOT Exemptions 11911, 11769, 11646, 11537, 10429, 12013 and 12245. The letter contained 14 procedural and shipment questions regarding the operations of the respective holders. RSPA received numerous responses to the letter. The information gathered from each response was compiled and evaluated. In the replies to the letter, more than one third of the respondents indicated they unload in excess of 1,200 gallons of one hazardous material during a single delivery. Under this scenario, RSPA believes that the IBCs are being used as cargo tanks.

On October 27, 1999 RSPA sent a letter and a draft exemption (draft) to the individuals who received the May 27, 1999 letter. The draft contained many provisions similar to the existing IBC exemptions. In addition, the draft proposed that the maximum quantity of hazardous material discharged from an IBC was not to exceed 300 gallons per shipment per day. RSPA received numerous comments on this draft. The majority of the comments addressed the restriction placed upon the maximum quantity of hazardous material that could be discharged at one location. These comments were an additional indication to RSPA that the IBCs are being used as cargo tanks. Instead of imposing a quantity limitation, RSPA is considering a requirement that the discharge system provide the same level of safety during discharge as is required for use of a cargo tank. On July 10, 1998, RSPA issued a Final Rule under Docket RSPA–1997–2905 (HM–166Y) (63 FR 37454), addressing this issue for IM Portable Tanks where RSPA permitted an IM portable tank to be unloaded while remaining on a vehicle with the power unit attached, provided the tank meets the outlet requirements of § 178.345–11. Section 178.345–11(b)(1)(iii) provides that the remote means of closure for the stop valve on a cargo tank must be capable of thermal activation when required by Part 173 for materials which are flammable, pyrophoric, oxidizing, or poisonous

liquids. The tank outlets are required to be equipped with this feature to ensure that the valve closes in a fire situation. Cargo tanks have been required to have this feature for many years. RSPA believes that when an IM portable tank, as well as an IBC, is used in the same manner as a cargo tank it should have the same level of safety in the event the operator cannot manually operate the closure.

The intended effect of this proposal is to develop a standardized exemption and to provide for the safe discharge of materials from intermediate bulk containers that have not been removed from the transport vehicle prior to unloading. Under this exemption, the holder and all parties to the exemption each would operate under the same controls and provisions. A second major draft of the proposed exemption is provided below.

Expiration Date: TBD

(For Renewal, See 49 CFR 107.109)

1. *Grantee:* TBD

2. *Purpose and Limitation:*

a. This exemption authorizes the discharge of liquid hazardous materials from DOT Specification UN Intermediate Bulk Containers (IBCs) without removing the IBC from the vehicle on which it is transported. This exemption provides no relief from the Hazardous Materials Regulations (HMR) other than as specifically stated herein.

b. The safety analyses performed in development of this exemption only considered the hazards and risks associated with transportation in commerce.

3. *Regulatory System Affected:* 49 CFR Parts 106, 107 and 171–180.

4. *Regulations From Which Exempted:* 49 CFR 177.834(h), in that an IBC is unloaded while on a motor vehicle, and the marking requirements in § 172.302(c).

5. *Basis:* This exemption is based on the application of XXXXXX dated ZZZZZ, submitted in accordance with § 107.105 and the public proceeding thereon.

6. *Hazardous Materials (49 CFR 172.101):*

Proper shipping name/hazardous materials description	Hazard class/ division	Identi-fication No.	Packing group
All materials authorized to be shipped in UN IBCs	As appro-priate.	As appro-priate	As appro-priate

7. *Safety Control Measures:*

a. *Packaging*—Packaging prescribed is a DOT Specification UN IBC.

(1) IBCs may not be manifolded together or have discharge outlets hard piped onto the vehicle.

(2) Discharge outlets must meet the requirements of § 178.345–11.

b. *Operational Controls*—

(1) Two or more materials may not be loaded on the same vehicle if any mixture of the materials would cause an unsafe condition.

(2) The IBC must be attended by a qualified person at all times during unloading operations. For the purposes of this requirement, "attended" and "qualified" have the meanings described in § 177.834(i)(3) and (4), respectively.

(3) IBCs must be discharged using a mechanical pump with a positive means of stopping the flow of liquid from the pump, by gravity, or by pressurizing the IBC.

(4) Before starting each transfer from an IBC to a receiving system, the person performing the function must determine that each component of the discharge system (including hose) is of sound quality and free of leaks and that connections are secure.

(5) A hose or associated equipment that shows signs of leakage, significant bulging, or other defects may not be used.

(6) If an IBC is unloaded using a pump, or if the IBC is pressurized for unloading, prior to using a new or repaired transfer hose, the hose assembly (the hose and associated fittings) must be subjected to a pressure test. The pressure test must be performed at no less than the pressure the hose is expected to be subjected to during product transfer. This test must include all hose and hose fittings arranged in the configuration to be employed during transfer operations. Burst pressure of the hose must be at least four times the service pressure of the pump.

(7) If the IBC is pressurized, the IBC must be equipped with a pressure relief device set to open at not higher than two-thirds of the IBC test pressure or 9 psig in the case of a metal IBC.

(8) All hazardous material must be purged from the pump, if equipped, piping and the IBC discharge hose prior to re-entering transportation. Hoses may not remain attached to the IBCs during transportation.

(9) Prior to refilling, each IBC and its service equipment must be visually inspected in accordance with the provisions of § 173.35(b).

(10) Transportation is limited to private or contract motor vehicle.

8. *SPECIAL PROVISIONS:*

a. A current copy of this exemption must be maintained at each facility where the package is offered for transportation.

b. The marking requirement of § 172.302(c) is waived.

9. *MODES OF TRANSPORTATION AUTHORIZED:* Motor vehicle.

10. *MODAL REQUIREMENTS:* A current copy of this exemption must be carried aboard each motor vehicle used to transport packages covered by this exemption.

11. *COMPLIANCE:* Failure by a person to comply with any of the following may result in suspension or revocation of this exemption and penalties prescribed by the Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq:*

- All terms and conditions prescribed in this exemption and the Hazardous Materials Regulations, 49 CFR Parts 171–180.
- Registration required by § 107.601 *et seq.*, when applicable.

Each "Hazmat employee," as defined in § 171.8, who performs a function subject to this exemption must receive training on the requirements and conditions of this exemption in addition to the training required by §§ 172.700 through 172.704.

No person may use or apply this exemption, including display of its number, when this exemption has expired or is otherwise no longer in effect.

12. *REPORTING REQUIREMENTS:* The carrier is required to report any incident involving loss of packaging contents or packaging failure to the Associate Administrator for Hazardous Materials Safety (AAHMS) as soon as practicable. In addition, the holder(s) of this exemption must inform the AAHMS, in writing, of any incident involving the package and shipments made under the terms of this exemption. (Sections 171.15 and 171.16 apply to any activity undertaken under the authority of this exemption.)

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Issued in Washington, DC, on May 17, 2000, under the authority delegated in 49 CFR Part 107.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–14481 Filed 6–9–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans (Committee) will be held on June 26–27, 2000, at the Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 230, Washington, DC. On June 26, the meeting will begin at 9:00 a.m. and adjourn at 5:00 p.m. On June 26, the meeting will begin at 9:00 a.m. and adjourn at 5:00 p.m. On June 27, the meeting will begin at 9:00 a.m. and adjourn at 12 noon.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

Both days of the meeting will be to discuss the proceedings of the National Summit on Women Veterans Issues, scheduled on June 23–25, 2000, in preparation of the Committee's annual report. All sessions will be open to the public.

Those who plan to attend should contact Ms. Maryanne Carson, Department of Veterans Affairs, Center for Women Veterans, 810 Vermont Avenue, NW, Washington, DC 20420 at (202) 273–6193.

Dated: June 5, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–14757 Filed 6–9–00; 8:45 am]

BILLING CODE 8320–01–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, June 23, 2000. The meeting will be held in the Appropriations Committee Hearing Room, Room 228, The State House, State Street, Augusta, Maine, Beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Chairman's Report
III. Millennium Discussion
  A. Follow up from Thursday's Lighthouse Tour—Action
  B. Council Millennium Report on Federal Stewardship: Primary Findings and Recommendations—Action
  C. Proposed Executive Order on Federal Stewardship: Working Draft—Action
  D. Task Force on Balancing Cultural and Natural Values in National Parks—Action
IV. Tribal Issues
  A. Proposed Council Policy Regarding Tribal Relations—Action
  B. Narragansett Section 106 Substitution Agreement—Report
V. Executive Director's Report
  A. Lawsuit on Section 106 Regulations—Report
  B. Follow up from March Council Actions—Report
  C. Los Alamos Fire Damage—Report and Possible Action
  D. A Citizen's Guide to Section 106 Review—Report
VI. New Business
  A. Foreclosure of Council's Opportunity to Comment—Corps of Engineer's Civil Works
  B. Proposal to Recognize Federal Preservation Policy Leaders—Action
VII. Adjourn

Note: The meetings of the Council are open to the public. If you need accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, D.C., 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: June 7, 2000.

John M. Fowler,

Executive Director.

[FR Doc. 00–14765 Filed 6–9–00; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–055–1]

General Conference Committee of the National Poultry Improvement Plan; Reestablish

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reestablishment.

SUMMARY: We are giving notice that the Secretary of Agriculture has reestablished the General Conference Committee of the National Poultry Improvement Plan for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, Suite A102, 1500 Klondike Road, Conyers, GA 30207–5115; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The purpose of the General Conference Committee of the National Poultry Improvement Plan (Committee) is to maintain and ensure industry involvement in Federal administration of matters pertaining to poultry health.

The Committee Chairperson and the Vice Chairperson shall be elected by the Committee from among its members. There are seven members on the Committee. This Committee differs somewhat from other advisory committees in the selection process and composition of its membership. The poultry industry elects the members of the Committee. The members represent six geographic areas with one member-at-large. The membership is not subject to the U.S. Department of Agriculture's review, and a formal request for nominations for membership is not published in the **Federal Register**.

Done in Washington, DC, this 7th day of June 2000.

Paul W. Fiddick,

Assistant Secretary for Administration.

[FR Doc. 00–14779 Filed 6–9–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–048–1]

National Poultry Improvement Plan; General Conference Committee Meeting and Biennial Conference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan and of the Biennial Conference.

DATES: The General Conference Committee will meet on June 29, 2000, from 8:30 a.m. to 5 p.m. The Biennial Conference will meet on June 30, 2000, from 8 a.m. to 5 p.m. and on July 1, 2000, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 1775 East Cheyenne Mountain Boulevard, Colorado Springs, CO.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 200, Conyers, GA 30094–1231; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, this Committee assists the Department in planning, organizing, and conducting the NPIP Biennial Conference.

Topics for discussion at the upcoming meetings include:

1. Establishment of "U.S. Salmonella Enteritidis Clean State" classifications for egg-and meat-type chickens.
2. Establishment of a "U.S. Salmonella Enteritidis Monitored" program for commercial table egg pullets.
3. Good management practices for the control of Salmonella and Mycoplasma infections in poultry.
4. Review of the laboratory protocol for the isolation and identification of Salmonella.
5. Review of the approval system for authorized laboratories of the NPIP.

The meetings will be open to the public. The sessions held on June 30 and July 1, 2000, will include delegates to the NPIP Biennial Conference, representing State officials and poultry industry personnel from the 48 cooperating States. However, due to time constraints, the public will not be allowed to participate in the discussions during either of the meetings. Written statements on meeting topics may be filed with the Committee before or after the meetings by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT:** Written statements may also be filed at the meetings. Please refer to Docket No. 00–048–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 7th day of June 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–14780 Filed 6–9–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension to a currently approved information collection in support of the regulations governing the foreign donation of agricultural commodities under both the section 416(b) and the Food for Progress programs based on re-estimates.

DATES: Comments on this notice must be received by August 11, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Merle Brown, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1031, Washington, DC 20250–1031, telephone (202) 720–3573. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Title: Foreign Donation of Agricultural Commodities.

OMB Number: 0551–0035.

Expiration Date of Approval: October 31, 2000.

Type of Request: Extension of currently approved information collection.

Abstract: Cooperating sponsors must provide proposal documents and compliance and related reports until commodities or local currencies generated from the sale thereof are utilized. Shipping agents must submit information and certifications regarding their activities and affiliations. Documents are used to develop effective agreements and assure statutory requirements and objectives are met.

Estimate of Burden: The public reporting burden for these collections vary in direct relation to the number and type of agreements.

Respondents: U.S. private voluntary organizations, U.S. cooperatives, foreign governments, shipping agents, ship owners and brokers, and survey companies.

Estimated Number of Respondents: 180 per annum.

Estimated Number of Responses per Respondent: 21 per annum.

Estimated Total Annual Burden of Respondents: 38,827 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Requests for comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Merle Brown, Director, Program Administration Division, FAS, USDA, Stop 1031, Washington, DC 20250, or the Desk Officer for Agriculture, Office of Information and Regulatory Affairs,

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Office of Management and Budget, Washington, DC 20503.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C. on June 2, 2000.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 00–14663 Filed 6–9–00; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to extend and revise a currently approved information collection, the Agricultural Surveys Program.

DATES: Comments on this notice must be received by August 16, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Surveys Program.

OMB Control Number: 0535–0213.

Expiration Date of Approval: November 30, 2000.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The National Agricultural Statistics Service is responsible for collecting and issuing state and national estimates of crop and livestock production, grain stocks, farm numbers, land values, on-farm pesticide usage, and pest crop management practices. The Agricultural Surveys Program contains a series of surveys that obtains basic agricultural data from farmers and ranchers throughout the Nation for preparing agricultural estimates and forecasts of crop acreage, yield, and production; stocks of grains and soybeans; hog and pig numbers; sheep inventory and lamb crop; cattle inventory; and cattle on feed. Grazing fees, land values, pesticide usage, and pest management practices data are also collected.

Uses of the statistical information are extensive and varied. Producers, farm organizations, agribusinesses, state and national farm policy makers, and government agencies are important users of these statistics. Agricultural statistics are used to plan and administer other, related Federal and state programs in such areas as consumer protection, conservation, foreign trade, education, and recreation.

One important modification to the program is the addition of a Monthly Hog Survey. NASS was directed to publish on a monthly basis the Hogs and Pigs Inventory Report with the passage by Congress and signature of the President of H.R. 1906, the FY2000 Department of Agriculture budget. The Monthly Hog Survey will supplement the Hog Survey Program currently conducted as part of the Quarterly Agricultural Surveys. The monthly surveys will use a shorter version of the quarterly questionnaire and will be conducted eight times a year, during the months between the Quarterly Hog Surveys. The sampling frame for the monthly program will be hog owners who reported breeding females on the December Quarterly Hog Survey.

A second revision to the program is the addition of questions regarding damage to crops caused by wildlife, methods being used to reduce these losses, and the cost of preventative measures. These additional questions will be asked only in January 2001. Aggregated totals will be provided to the USDA's Animal and Plant Health Inspection Service action agency, Wildlife Services, to help identify and monitor crop losses caused by wildlife.

The third revision is the discontinuance of the Fall Area Survey. A reduced sample of the 1999 Fall Area Surveys respondents will be selected for an Integrated Pest Management Survey (IPM). This survey will be conducted only in January 2001 to collect information on IPM practices formerly collected as part of the Fall Area Survey. This is the fourth year of the USDA plan to measure the general adoption of IPM practices for the Nation's agricultural production.

The Agricultural Surveys Program has approval from OMB for a 3-year period. NASS intends to request that the program be approved for another 3 years. These data are collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 547,000.

Estimated Total Annual Burden on Respondents: 139,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, D.C., June 1, 2000.

Rich Allen,

Associate Administrator.

[FR Doc. 00–14729 Filed 6–9–00; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 24–2000]

Foreign-Trade Zone 9—Honolulu, HI Request for Removal of Board Order Restriction, Pacific Allied Products, Ltd. (Plastic Food/Beverage Containers)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Department of Business, Economic Development & Tourism of the State of Hawaii, grantee of FTZ 9, requesting authority, on behalf of Pacific Allied Products, Ltd. (PAP), to extend its authority to manufacture plastic food/beverage containers under FTZ procedures, subject to restriction. It was formally filed on June 2, 2000.

Board Order 735 (60 FR 26715, 5/18/95) authorized the manufacture of plastic food/beverage containers under zone procedures within FTZ 9 solely for the Hawaiian and export markets for a period ending July 1, 2000. The State of Hawaii is now requesting that the manufacturing authority for PAP be extended on a permanent basis. Foreign-sourced components used in PAP's manufacturing include polyethylene terephthalate and high density polyethylene.

FTZ procedures exempt PAP from Customs duty payments on the foreign components used in export production. On its Hawaiian sales, the company is able to choose the duty rate that applies to the plastic containers (3%) for the foreign components noted above (duty rates 1.2¢/kg. + 7.5% and 8.9%, respectively). The request indicates that the savings from FTZ procedures will continue to help improve the facility's international competitiveness. In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 11, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 28, 2000.

A copy of the application will be available for public inspection at the following location:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 2, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14798 Filed 6–9–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 25–2000]

Foreign-Trade Zone 158 Jackson, MS—Application for Subzone Status: Alliant Aerospace Composite Structures Company Plant (Space Launch Vehicle Composite Structures), Iuka, Mississippi

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Vicksburg/Jackson Foreign Trade Zone, Inc., grantee of FTZ 158, requesting special-purpose subzone status for the space launch vehicle composite structures manufacturing plant of Alliant Aerospace Composite Structures Company (Alliant), located in Iuka, Mississippi. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 2, 2000.

The Alliant plant (20 acres/317,000 sq. ft.) is located at within the Tri State Commerce Park at 751 County Road 989, Iuka (Tishomingo County), Mississippi. The facility (200 employees) is used to produce composite foam structural components (thermal shield, center body, forward skirt, nose cone) for space launch vehicles (*i.e.*, rockets) manufactured by U.S. aerospace firms. The production process involves heat forming polymethacrylimide ("Rohacell") foam, machining, layering with carbon fiber and adhesives, pressurization/heat curing, and trimming. The only material input purchased from abroad that would be admitted to the proposed subzone in foreign status (19 CFR 146.42(a)) is polymethacrylimide foam—HTSUS# 3921.19.00; duty rate: 6.5% (representing 8% of finished product value).

FTZ procedures would exempt Alliant from Customs duty payments on the foreign polymethacrylimide foam used in export production. On its domestic sales, the company would be able to choose the duty rate that applies to finished composite structures (duty free) for the foreign foam input noted above. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 11, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 28, 2000).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 704 East. Main Street, Raymond, MS 39154.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th Street & Constitution Avenue, NW, Washington, DC 20230–0001.

Dated: June 2, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14799 Filed 6–9–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23–2000]

Foreign-Trade Zone 78, Nashville, Tennessee Application for Expansion and Request for Manufacturing Authority (Personal Computers)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Metropolitan Government of Nashville and Davidson County, grantee of FTZ 78, requesting authority to expand its zone in the Nashville, Tennessee area, and requesting, on behalf of Dell Computer Corporation (Dell), authority to manufacture personal computers under zone procedures within FTZ 78 (Nashville Customs port of entry). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended, (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 1, 2000.

FTZ 78 was approved on March 2, 1982 (Board Order 190, 47 FR 16191, 4/

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15/82) and expanded on February 18, 1999 (Board Order 1024, 64 FR 9472, 2/26/99). The zone currently consists of five sites in the Nashville, Tennessee area:

Site 1—(52,000 square feet) within a 200,000 square foot warehouse located at 750 Cowan Street, Nashville;

Site 2—(63 acres) within the 2,000-acre Cockrill Bend industrial park, Nashville;

Site 3—(275,000 square feet) within a 400,000 square foot warehouse located at 323 Mason Road, La Vergne, Tennessee;

Site 4—(39 acres) Space Park North Industrial Park, 1000 Cartwright Street, Goodlettsville, Tennessee; and

Site 5—(19 acres) Old Stone Bridge Industrial Park, Old Stone Bridge, Goodlettsville.

The applicant is now requesting authority to expand the FTZ to include two additional sites:

Site 6—"Airport Site," to include 806 acres located in Nashville at Nashville International Airport, One Terminal Drive, Nashville. The Airport Site involves an industrial-park type of facility that will include manufacturing, distribution, and logistics facilities for Dell and warehousing and logistics facilities for other parties requiring FTZ procedures at the airport, particularly involving air freight; and

Site 7—"Eastgate Site," at 3850 Eastgate Boulevard, Lebanon, Tennessee. This site is in the Eastgate Business Park, off Interstate 40, twelve miles east of Nashville International Airport. The site contains 38 acres with one 300,000 square foot building currently occupied by Dell—the remainder of the site will be available for other users.

The application also requests authority on behalf of Dell to manufacture personal computers, including servers and workstations, within FTZ 78 (within the proposed expansion sites). Dell is already authorized to manufacture such computers under zone procedures within Foreign Trade Zone 183 and Subzone 183A. This proposal requests the same scope of manufacturing authority under FTZ procedures in terms of products or components as requested in Dell's previous applications, and involves an increase in the overall level of production under FTZ procedures for Dell.

The specific finished products for which Dell seeks authority to produce under FTZ procedures are various types of computers (desktop and notebook computers, workstations, and network servers) and data storage products. All of these products fall into HTSUS classifications which are duty free. The imported components for which Dell is seeking inverted tariff benefits include: plastic and rubber components; cloth tape; metal screws, clamps, washers, clips, and springs; locks and keys; fans; adapters and battery chargers; magnets; batteries; microphones; speakers; surge protectors; switches; sockets and plugs; cables, connectors, and power cords; "populated" printed circuit boards; and leather carrying cases. Duty rates on these items range up to 6.2% *ad valorem*.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 11, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 28, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th and Pennsylvania Avenue, N.W., Washington, DC 20230.

Nashville Export Assistance Center, 211 Commerce Ave, Suite 100, Nashville, TN 37201.

Dated: June 1, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14797 Filed 6–9–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

FEDERAL TRADE COMMISSION

Public Workshop: Alternative Dispute Resolution for Consumer Transactions in the Borderless Online Marketplace

AGENCY: International Trade Administration, Department of Commerce; Federal Trade Commission.

ACTION: Notice Announcing Reopening of Public Comment Period.

SUMMARY: The United States Department of Commerce (the "Department") and the Federal Trade Commission (the "FTC") have extended the deadline to June 29, 2000, for submitting comments in the public workshop on alternative dispute resolution ("ADR") for online consumer transactions (announced in 65 FR 7831 (Feb. 16, 2000)).

DATES: Public comments will be accepted until June 29, 2000.

ADDRESSES: Mail written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

Submission of Documents: Comments should be captioned "Alternative Dispute Resolution for Consumer Transactions in the Borderless Online Marketplace." To enable prompt review and public access, paper submissions should include three hard copies and a version on diskette in ASCII, WordPerfect (please specify version), or Microsoft Word (please specify version) format. Diskettes should be labeled with the name of the party and the name and version of the word processing program used to create the document. As an alterntive to paper submissions, email comments to: *adr@ftc.gov*. Messages to that address will receive a reply in acknowledgment. Comments submitted in electronic form should be in ASCII, WordPerfect (plese specify verion), or Microsoft Word (please specify version) format. Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552 and Commission regulations, 16 CFR Part 4.9 on normal business days between the hours of 8:30 a.m. and 5 p.m. at 600 Pennsylvania Avenue, NW, Washington, DC 20580. The Department and the FTC will make this notice, and, to the extent possible, all papers or comments received in response to this notice available to the public through the Internet at: *http://www.ecommerce.gov/adr*.

FOR FURTHER INFORMATION CONTACT: For questions about the workshop, please contact either Kate Rodriguez, International Trade Administration, phone (202) 482–2145; email: *kate_rodriguez@ita.doc.gov* or Maneesha Mithal, Federal Trade Commission, phone: (202) 326–2771; email: *mmithal@ftc.gov*. All materials relating to the workshop can also be found at http://www.ecommerce.gov/adr.

By direction of the Commission.

Donald S. Clark,

Secretary.

Barbara S. Wellbery,

Counsellor to the Under Secretary for Electronic Commerce, International Trade Administration, Department of Commerce.

[FR Doc. 00–14763 Filed 6–9–00; 8:45 am]

BILLING CODE 3510–25–M

DEPARTMENT OF COMMERCE

International Trade Administration

Closed Meeting of the U.S. Automotive Parts Advisory Committee (APAC)

AGENCY: International Trade Administration, Commerce

ACTION: Notice.

SUMMARY: The APAC will have a closed meeting on June 23, 2000, at the U.S. Department of Commerce to discuss U.S.-made automotive parts sales in Japanese and other Asian markets.

DATES: June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, U.S. Department of Commerce, Room 4036, Washington, D.C. 20230, telephone: 202–482–1418.

SUPPLEMENTARY INFORMATION: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Public Law 105–261). The Committee: (1) Reports to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviews and considers data collected on sales of U.S.-made auto parts and accessories in Japanese and other Asian markets; (3) advises the Secretary of Commerce during consultations with other Governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; and (4) assists in establishing priorities for the initiative to increase sales of U.S.-made auto parts and accessories to Japanese markets, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and (5) assists the Secretary of Commerce in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to its authorizing legislation. At the meeting, committee members will discuss specific trade and sales expansion programs related to automotive parts trade policy between the United States and Japan and other Asian markets.

The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on June 6, 2000, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the June 23 meeting of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: June 6, 2000.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 00–14714 Filed 6–9–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of Intent to Evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the American Samoa Coastal Management Program.

This evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, and regulations at 15 CFR Part 928. The CZMA requires a continuing review of the performance of states and U.S. territories with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs requires findings concerning the extent to which a state or territory has met the national objectives, adhered to its coastal program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, Territorial, and local agencies and members of the public. A public meeting will be held as part of the site visit. Notice is hereby given of the date of the site visit for the listed evaluation, and the date, local time, and location of the public meeting during the site visit.

The American Samoa Coastal Management Program evaluation site visit will be from July 24–28, 2000. The public meeting will be held on Wednesday, July 26, 2000, at 5:00 p.m., in the Rainmaker Hotel, Pago Pago, American Samoa.

Copies of the Territory's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the Territory, are available upon request from OCRM. Written comments from interested parties regarding this Program are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 114.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: June 7, 2000.

CAPT Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 00–14874 Filed 6–8–00; 2:32 pm]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051800G]

Marine Mammals; File No. 675–1563

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Graham A.J. Worthy, (Principal

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Investigator), Department of Marine Biology, Texas A&M University, 5001 Avenue U, Suite 105, Galveston, Texas 77551, has been issued a permit to take Northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Simona Roberts, 301/713–2289.

SUPPLEMENTARY INFORMATION: On February 11, 2000, notice was published in the **Federal Register** (65 FR 6997) that a request for a scientific research permit to take fur seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Dated: June 6, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–14777 Filed 6–9–00; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is schedule for June 15, 2000, at 10 a.m. in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C., 20001–2728. Items of discussion will include designs for projects affecting the appearance of Washington, D.C., including buildings and parks.

Inquiries regarding the agenda and request to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C., May 31, 2000.

Charles H. Atherton,

Secretary.

[FR Doc. 00–14756 Filed 6–9–00; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Petitions Requesting Standards, Labeling, and Identification Tags for Mattresses

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received petitions (FP 00–1, FP 00–2, FP 00–3 and FP 00–4) requesting that the Commission issue performance standards and labeling requirements to address the flammability of mattresses. The petitioner also requests that the Commission require a permanent tag stating the mattress's manufacturer and other identifying information. The Commission solicits written comments concerning the petitions.

DATES: The Office of the Secretary must receive comments on the petitions by August 11, 2000.

ADDRESSES: Comments, preferably in five copies, on the petitions should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "Petitions FP 00–1 through FP 00–4, Petitions on Mattress Flammability." Copies of the petitions are available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from Whitney A. Davis, director of the Children's Coalition for Fire-Safe Mattresses, requesting that the Commission take various actions concerning mattress flammability. The Commission is docketing as petitions his requests for rules requiring: (1) An open flame standard similar to the full-scale test set forth in California Technical Bulletin 129; (2) an open flame standard similar to the component test set forth in British Standard 5852; (3) a warning label for flammable mattresses; and (4) a permanent mattress identification tag attached to the innerspring of the mattress. The petitioner focuses primarily on the role polyurethane foam plays in mattress fires. He notes that the Commission's existing mattress flammability standard only addresses cigarette ignition; yet childplay with open-flame sources causes nearly two-thirds of mattress fires. He argues that with polyurethane foam mattresses, fires have become increasingly more deadly than with cotton batting mattresses due to increased smoke generation, heat production and flame spread. With regard to labels, he notes that polyurethane foam manufacturers provide warnings to mattress manufacturers, but these warnings are not passed on to the consumer. With regard to an identification tag, the petitioner argues that such a tag would help to identify mattresses involved in fires because often only the innerspring unit remains after a mattress fire. The Commission is docketing these petitions under provisions of the Flammable Fabrics Act, 15 U.S.C. 1191–1204.

Interested parties may obtain copies of the petitions by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. Copies of the petitions are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: June 6, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–14696 Filed 6–9–00; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

New Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, (44 U.S.C. Chapter 35)). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation, Tracy Stone, Director, AmeriCorps Promise Fellows, (202) 606–5000, extension 173. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Information and Regultory Affairs (OIRA), Room 10235, Washington, D.C. 20503, (202) 395–6466, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Description: The AmeriCorps Promise Fellows program supports a leadership cadre of AmeriCorps members spearheading community efforts to provide young people with five basic promises:

- Caring adults in their lives as parents, mentors, tutors, and coaches;
- Safe places with structured activities in which to learn and grow;
- A healthy start;
- An effective education that equips them with marketable skills; and
- An opportunity to give back to communities through their own service.

The AmeriCorps Promise Fellows Continuation Application Instructions provide the requirements, instructions and forms that current grantees of the program need to complete an application to the Corporation for continued funding.

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these continuation application instructions.

Type of Review: New collection.
Agency: Corporation for National and Community Service.
Title: AmeriCorps Promise Fellows Continuation Application Instructions.
OMB Number: None.
Agency Number: None.
Affected Public: Entities in their first or second year of operation as grantees of the Corporation's AmeriCorps Promise Fellows program.
Total Respondents: 66.
Frequency: Once per year.
Average Time Per Response: 25 hours.
Estimated Total Burden Hours: 1,650 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.

Dated: June 6, 2000.

Tracy Stone,

Director, AmeriCorps Promise Fellows.

[FR Doc. 00–14695 Filed 6–9–00; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 11, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 6, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.
Title: Assessing Literacy Models in the Boston Public Schools.
Frequency: Semi-Annually.
Affected Public: Not-for-profit institutions; Individuals or households.
Reporting and Recordkeeping Hour Burden: Responses: 873; Burden Hours: 2,055.

Abstract: Funding has been granted to carry out an evaluation of four literacy models currently implemented in the Boston Public Schools. The purpose of the evaluation will be to gather information about the strengths and weaknesses of these models across all domains of literacy and for all types of students. The data collected from sixteen schools and approximately 800 students over a two-year period will inform practice in the school district and nationwide through dissemination in professional publications.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or

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faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–14735 Filed 6–9–00; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[Dockets No. EA–181–A and EA–182–A]

Application to Export Electric Energy; H.Q. Energy Services (U.S.) Inc.

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of Application.

SUMMARY: Under two separate applications, H.Q. Energy Services (U.S.) Inc. (HQUS) has applied for renewal of its authority to transmit electric energy from the United States to Mexico and from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before July 12, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 16, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized HQUS to transmit electric energy from the United States to Mexico using the international electric transmission facilities of San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national utility of Mexico. That two-year authorization (Order EA–181) will expire on July 16, 2000.

On August 21, 1998, FE authorized HQUS to transmit electric energy from the United States to Canada using the international electric transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Fraser Paper Limited, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Transmission Company and Washington Water Power. That two-year authorization (Order EA–182) will expire on August 21, 2000.

On May 16, 2000, HQUS filed two applications with FE for renewal of both of the above export authorizations and requested that the authorization for each be issued for a 5-year term.

DOE notes that the circumstances described in these applications are virtually identical to those for which export authority had previously been granted in FE Order EA–181 and FE Order EA–182. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–181 and FE Docket EA–182 proceedings.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the HQUS application to export electric energy to Mexico should be clearly marked with Docket EA–181–A. Comments on the HQUS application to export electric energy to Canada should be clearly marked with Docket EA–182–A. Additional copies are to be filed directly with Pierre F. de Ravel d'Esclapon, H. Liza Moses, LeBoeuf, Lamb, Greene & MacRae, L.L.P., 125 West 55th Street, New York, New York 10019–5389.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Electricity", then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on June 6, 2000.

Anthony J. Como,
Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.
[FR Doc. 00–14743 Filed 6–9–00; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2299–000]

Consumers Energy Company; Notice of Issuance of Order

June 6, 2000.

Consumers Energy Company (Consumers Energy) submitted for filing a rate schedule under which Consumers Energy will engage in wholesale electric power and energy transactions as a marketer. Consumers Energy also requested waiver of various Commission regulations. In particular, Consumers Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Consumers Energy.

On June 1, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Consumers Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Consumers Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Consumers Energy, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Consumers Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 3, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Lindwood A. Watson, Jr.
Acting Secretary.
[FR Doc. 00–14712 Filed 6–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–314–000]

Discovery Gas Transmission LLC; Notice of Request for Waiver

June 6, 2000.

Take notice that on May 31 2000, Discovery Gas Transmission LLC (Discovery) filed a Request for Waiver of section 284.12(c)(3) of the Commission's regulations with respect to conducting electronic transactions on the public internet. Discovery states that it is a relatively small company whose customers conduct relatively few transactions. It claims that implementation of the services required under this regulation is not warranted and would not be cost effective under the circumstances.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–14708 Filed 6–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2623–000]

Idaho Power Company; Notice of Filing

June 6, 2000.

Take notice that on May 26, 2000, Idaho Power Company (IPC), tendered Point-to-Point Transmission Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service between Idaho Power Company and Puget Sound Energy.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–14713 Filed 6–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–80–000]

Indeck Maine Energy, LLC v. ISO New England, Inc.; Notice of Complaint

June 6, 2000.

Take notice that on June 2, 2000, Indeck Maine Energy, LLC submitted for filing, pursuant to Section 206 of the Federal Power Act, a Complaint Requesting Fast Track Processing And Request for Immediate Action against the ISO New England, Inc.

Any person desiring to be heard or to protests this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before June 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before June 12, 2000.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–14711 Filed 6–9–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–315–000]

Koch Gateway Pipeline Company; Notice of Cash Out Report

June 6, 2000.

Take notice that on June 1, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing its cash-in/cash-out report for the period April 1, 1999 through March 31, 2000.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party

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must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 00–14709 Filed 6–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–014]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

June 6, 2000.

Take notice that on June 1, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets with an effective date of June 1, 2000:

Tenth Revised Sheet No. 7
First Revised Sheet No. 7.01
First Revised Sheet No. 7C
Original Sheet No. 7D

PG&E GT–NW states that these sheets are being filed to reflect the implementation of four negotiated rate agreements.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers, and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14706 Filed 6–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR00–5–000]

Sinclair Oil Corporation v. Equilon Pipe Line Company LLC; Notice of Complaint

June 6, 2000.

Take notice that on June 2, 2000, Sinclair Oil Corporation (Sinclair) tendered for filing a complaint against Equilon Pipe Line Company LLC (Equilon).

Sinclair states that it is a shipper of crude oil on a pipeline operated by Equilon that originates at South Terminal, Cushing, Lincoln County, Oklahoma and terminates at West Tulsa, Tulsa County, Oklahoma. Sinclair further states that its crude oil shipments on that line constitute transportation in interstate commerce and that Equilon has refused to publish a tariff with the Commission to govern the use of the pipeline.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before June 26, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before June 26, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14707 Filed 6–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2348–000]

Wester Generating II, Inc.; Notice of Withdrawal

june 6, 2000.

Take notice that on June 2, 2000, Westar Generating II, Inc. filed a Notice of Withdrawal of its April 28, 2000, application for acceptance of the Purchase Power Agreement between Westar and Western Resources, Inc.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 00–14710 Filed 6–9–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–156–000, et al.]

CED Operating Company, L.P., et al.; Electric Rate and Corporate Regulation Filings

June 2, 2000.

Take notice that the following filings have been made with the Commission:

1. CED Operating Company, L.P.

[Docket No. EG00–156–000]

Take notice that on May 25, 2000, CED Operating Company, L.P., c/o Consolidated Edison Development, Inc., 111 Broadway, 16th Floor, New York, New York 10006, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

CED Operating Company, L.P. (CED Opco) is a Delaware limited partnership. CED Generation Holding Company, L.P., a Delaware limited liability company, ("Holdco") owns a 99 percent limited partner's interest in Applicant. Holdco is a direct subsidiary of Consolidated Edison Development ("CED"), a New York corporation, which is a wholly-owned direct subsidiary of Consolidated Edison, Inc. ("Con Ed, Inc."), also a New York corporation. CED Management Company, Inc., a Delaware corporation, owns a one (1) percent general partner's interest in Applicant, and is a wholly-owned subsidiary of Holdco. CED Opco will operate under an operations and maintenance agreement with the owner, a facility with a maximum capacity of approximately 238 MW located in Lakewood Township, New Jersey.

Comment date: June 23, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Kiowa Power Partners, L.L.C.

[Docket No. EG00–157–000]

Take notice that on May 25, 2000, Kiowa Power Partners, L.L.C. (the Applicant) whose address is 359 Lake Park Road, Suite 128, Lewisville, Texas 75057, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant states that it will be engaged directly and exclusively in the business of owning and/or operating an electric generating facility located near Kiowa, Oklahoma and selling electric energy at wholesale. The Applicant requests a determination that the Applicant is an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: June 23, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Servicios Energéticos, S.A.

[Docket No. EG00–158–000]

Take notice that on May 25, 2000, Servicios Energéticos, S.A. (the Applicant) whose address is Servicios Energéticos, S.A., Av. Hernando Siles No. 5635, Obrajes, La Paz, Bolivia, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant states that it will be engaged directly and exclusively in the business of owning and/or operating an electric generating facility located in the Republic of Bolivia and selling electric energy at wholesale. The Applicant requests a determination that the Applicant is an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: June 23, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Cinergy Services, Inc.

[Docket No. ER00–2625–000]

Take notice that on May 30, 2000, Cinergy Services, Inc. (Services), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (collectively Cinergy Operating Companies) a Letter Agreement, dated April 24, 2000, as a supplement to the Service Agreement No. 43, dated January 22, 1997, between Southwestern Electric Cooperative, Inc. (SWEC) and the Cinergy Operating Companies under the COC FERC Electric Market-Based Power Sales Tariff, Volume No. 7.

SWEC and the Cinergy Operating Companies have agreed to procedures for the curtailment of some of SWEC's load.

Copies of the filing were served on SWEC and the State Regulatory Commissions of Illinois, Ohio, Kentucky and Indiana.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2626–000]

Take notice that on May 30, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Amendment No. 1 to Supplement No. 12 to the Market Rate Tariff to incorporate a Settlement Procedures Agreement with Citizens Power Sales LLC into the tariff provisions.

Allegheny Energy Supply Company requests a waiver of notice requirements to make the Amendment effective as of May 23, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Duquesne Light Company

[Docket No. ER00–2627–000]

Take notice that on May 30, 2000, Duquesne Light Company (DLC) filed a Service Agreement dated May 8, 2000 with Constellation Power Source under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Constellation Power Source as a customer under the Tariff.

DLC requests an effective date of May 8, 2000 for the Service Agreement.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Broad River Energy LLC

[Docket No. ER00–2628–000]

Take notice that on May 30, 2000, Broad River Energy LLC (Broad River) tendered for filing an executed umbrella service agreement under which Broad River will make short-term market-based power sales under its Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1, to Carolina Power & Light Company (CP&L).

Broad River requests an effective date of June 1, 2000, for the umbrella service agreement.

Broad River states that a copy of the filing has been served on CP&L.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. PJM Interconnection, L.L.C.

[Docket No. ER00–2629–000]

Take notice that on May 30, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing two executed umbrella service agreements for network integration transmission service under state retail access programs under the PJM Open Access Transmission Tariff with BGE Home Products & Service, Inc. and ECONnergy PA, Inc. with effective dates of May 23, 2000 and May 1, 2000, respectively.

Copies of this filing were served upon the parties to the service agreements and the state commissions within the PJM control area.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

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9. California Power Exchange Corporation

[Docket No. ER00–2630–000]

Take notice that on May 30, 2000, the California Power Exchange Corporation (CalPX) tendered for filing its Tariff Amendment No. 15, designed to track changes in the Payments Calendar implemented by Tariff Amendment No. 25 of the California Independent System Operator Corporation.

CalPX requests an effective date of July 24, 2000.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. California Power Exchange Corporation

[Docket No. ER00–2631–000]

Take notice that on May 30, 2000, the California Power Exchange Corporation (CalPX) tendered for filing proposed Tariff Amendment No. 16, designed to track certain changes implemented by Tariff Amendment Nos. 25 and 28 of the California Independent System Operator Corporation (CAISO).

CalPX requests an effective date of March 27, 2000 for changes related to charges for cancellation of maintenance outages and June 15, 2000 for payments and charges related to the CAISO's Demand Relief Program.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. California Power Exchange Corporation

[Docket No. ER00–2632–000]

Take notice that on May 30, 2000, the California Power Exchange Corporation (CalPX) tendered for filing its Tariff Amendment No. 17, designed to track the ten-minute market implemented by Tariff Amendment No. 29 of the California Independent System Operator Corporation.

CalPX requests an effective date to coincide with the effective date of CAISO's ten-minute market in its Tariff Amendment No. 29.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER00–2633–000]

Take notice that on May 30, 2000, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an Interconnection and Operating Agreement with Cleco Midstream Resources LLC (Cleco), and a Generator Imbalance Agreement with Cleco.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER00–2634–000]

Take notice that on May 30, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an Interconnection and Operating Agreement with Warren Power, LLC (Warren), and a Generator Imbalance Agreement with Warren.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Consumers Energy Company

[Docket No. ER00–2635–000]

Take notice that on May 30, 1999, Consumers Energy Company (Consumers) tendered for filing an executed transmission service agreement with Croswell Light & Power (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreement has an effective date of May 5, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. PJM Interconnection, L.L.C.

[Docket No. ER00–2636–000]

Take notice that on May 30, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the service agreement for Network Integration Transmission Service for PP&L Inc. (now PPL Electric Utilities Corporation) (PPL) so as to reflect that, commencing May 1, 2000, the load of the Borough of Lewisberry, Pennsylvania (Lewisberry) will be served by PPL rather than GPU.

Copies of this filing were served upon PPL, GPU, Lewisberry, and the Pennsylvania Public Utility Commission.

PJM requests an effective date of May 1, 2000, for the amendments to the service agreements.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Deseret Generation & Transmission Co-operative

[Docket No. ER00–2637–000]

Take notice that on May 30, 2000, Deseret Generation & Transmission Co-operative tendered an informational filing in compliance with its rate schedules. The filing sets forth the revised approved costs for member-owned generation resources and the revised approved reimbursements under its Resource Integration Agreements with two of its members, Garkane Power Association, Inc., and Moon Lake Electric Association, Inc.

A copy of this filing has been served upon all of Deseret's members.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Broad River Energy LLC

[Docket No. ER00–2638–000]

Take notice that on May 30, 2000, Broad River Energy LLC (Broad River) tendered for filing Amendment Nos. 2 and 3 to the long-term market-based rate power purchase agreement between Broad River and Carolina Power & Light Company (the Agreement), which was accepted for filing by the Commission in an order dated November 23, 1999 in Docket No. ER00–38–000 (89 FERC ¶61,202).

Broad River requests an effective date concurrent with the commencement of service under the Agreement.

Broad River states that a copy of the filing has been served on Carolina Power & Light Company.

Comment date: June 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–14705 Filed 6–9–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

June 7, 2000.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 14, 2000, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **NOTE:** Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400, For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

743rd—Meeting June 14, 2000, Regular Meeting (10:00 a.m.)

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
Docket# ER00–2295, 000, Wisconsin Public Service Corporation
CAE–2.
Omitted
CAE–3.
Docket# ER00–2208, 000, California Independent System Operator Corporation
CAE–4.
Docket# ER00–2256, 000, TXU Electric Company
Other#s ER00–2257, 000, TXU Electric Company and TXU Sesco
CAE–5.
Docket# ER00–2268, 000, Pinnacle West Capital Corporation
CAE–6.
Omitted
CAE–7.
Docket# ER00–2274, 000, California Independent System Operator Corporation
CAE–8.
Docket# ER00–2309, 000, Allegheny Energy Supply Company, L.L.C., The Potomac Edison Company and West Penn Power Company
CAE–9.
Docket# ER00–2297, 000, New England Power Pool
CAE–10.
Omitted
CAE–11.
Omitted
CAE–12.
Docket# ER00–2148, 000, New England Power Pool
CAE–13.
Docket# ER00–1655, 000, Southern Company Services, Inc.
Other#s ER00–1655 001 Southern Company Services, Inc.
CAE–14.
Omitted
CAE–15.
Docket# ER00–1711, 000, Public Service Company of New Mexico
Other#s EL00–46, 000, Entergy Power Marketing Corporation v. Southwest Power Pool, Inc.
EL00–53, 000, Texas-New Mexico Power Company v. Public Service Company of New Mexico
ER00–1829, 000, Southwest Power Pool, Inc.
CAE–16.
Docket# ER00–175, 000, Utilicorp United Inc.
Other#s ER00–175 001 Utilicorp United Inc.
CAE–17.
Docket# OA96–194, 000, Niagara Mohawk Power Corporation
CAE–18.
Omitted
CAE–19.
Docket# EC00–66, 000, Consolidated Water Power Company Stora Enso OYJ
CAE–20.
Docket# ER99–2770 001 Florida Power & Light Company
Other#s EL99–69 001 Florida Power & Light Company
CAE–21.
Omitted
CAE–22.
Omitted
CAE–23.
Docket# EF99–3021 001 United States Department of Energy—Southeastern Power Administration
CAE–24.
Docket# OA97–163 009 Mid-Continent Area Power Pool
Other#s OA97–658 009 Mid-Continent Area Power Pool
ER97–1162 008 Mid-Continent Area Power Pool
CAE–25.
Docket# ER00–1598 001 Baltimore Gas & Electric Company, Calvert Cliffs, Inc., Constellation Generation, Inc. and Constellation Power Source, Inc.
CAE–26.
Omitted
CAE–27.
Docket# EL00–12 001 Tennessee Power Company
CAE–28.
Docket# OA00–5, 000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.
CAE–29.
Docket# NJ00–2, 000, Department of Energy—Bonneville Power Adminstration
CAE–30.
Omitted

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
Docket# RP00–289, 000, Tennessee Gas Pipeline Company
CAG–2.
Docket# RP96–383 004 Dominion Transmission, Inc. (formerly CNG Transmission Corporation)
CAG–3.
Docket# RP00–284, 000, Southern Natural Gas Company
CAG–4.
Docket# RP00–243, 000, Alliance Pipeline L.P.
CAG–5.
Omitted
CAG–6.
Omitted
CAG–7.
Docket# RP98–249, 000, Columbia Gas Transmission Corporation
Other#s RP98–250, 000, Columbia Gulf Transmission Company
CAG–8.
Docket# TM00–1–22, 001, Dominion Transmission, Inc. (formerly CNG Transmmission Corporation)
CAG–9.
Docket# RP00–24, 005, Transcontinental Gas Pipe Line Corporation
CAG–10.
Docket# RP97–287, 050, El Paso Natural Gas Company
CAG–11.
Docket# PR00–5, 001, Coral Mexico Pipeline, L.L.C.
Other#s PR00–5, 000, Coral Mexico Pipeline, L.L.C.

Consent Agenda—Energy Projects—Hydro

CAH–1.
Omitted
CAH–2.
Docket# P–2588, 005, City of Kaukauna, Wisconsin
CAH–3.
Omitted
CAH–4.
Docket# P–2543, 045, Montana Power Company

Consent Agenda—Energy Projects—Certificates

CAC–1.
Docket# CP00–196, 000, Transcontinental Gas Pipe Line Corporation
CAC–2.
Docket# CP00–36, 000, Guardian Pipeline L.L.C.
Other#s CP00–37, 000, Guardian Pipeline L.L.C.
CP00–38, 000, Guardian Pipeline L.L.C.
CAC–3.
Omitted
CAC–4.
Docket# CP96–684, 001, Interenergy Sheffield Processing Company and Bear Paw Energy, L.L.C.
CAC–5.
Docket# CP00–58, 000, Columbia Gas Transmission Corporation
CAC–6.
Omitted
CAC–7.
Omitted

CAC–8.
Omitted
CAC–9.
Docket# RM98–17, 002, Landowners Notification Expanded Categorical Exclusions and Other Environmental Filing Requirements
CAC–10.
Omitted

Energy Projects—Hydro Agenda

H–1. Reserved

Energy Projects—Certificates Agenda

C–1.
Reserved

Markets, Tariffs and Rates—Electric Agenda

E–1.
Reserved

Markets, Tariffs and Rates—Gas Agenda

G–1.
Reserved

David P. Boergers,

Secretary.

[FR Doc. 00–14836 Filed 6–8–00; 10:59 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6714–9]

Draft Dioxin Reassessment Documents; Toxicity Equivalence Factors (TEFs) for Dioxin and Related Compounds and Integrated Summary and Risk Characterization for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds

AGENCY: Environmental Protection Agency

ACTION: Notice of peer review workshop and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that an EPA contractor will be organizing, convening, and conducting an external peer review workshop to review the external review draft documents entitled, Part II. Chapter 9: Toxicity Equivalence Factors (TEFs) for Dioxin and Related Compounds (hereafter, TEF chapter) and Part III. Integrated Summary and Risk Characterization for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds (hereafter, Integrated Summary and Risk Characterization). The EPA is also announcing an extended public comment period for these two draft documents. The peer review workshop will be organized, convened, and conducted by the Eastern Research Group, Inc. (ERG), an EPA contractor for this external scientific peer review. The documents were prepared by the EPA's Office of Research and Development (ORD) and with the involvement of other federal agencies, in particular the National Institutes of Health's National Institute of Environmental Health Sciences. EPA will consider the peer review advice and public comment submissions in revising these draft dioxin reassessment documents in preparation for an upcoming review by EPA's Science Advisory Board (SAB).

DATES: The two-day peer review workshop will be held on Tuesday, July 25, 2000, 9 a.m. to 5:30 p.m. and Wednesday, July 26, 2000, 8:30 a.m. to 5:00 p.m. Members of the public may attend as observers, and there will be a limited time for comments from the public. The extended public comment period begins June 12, 2000, and concludes two weeks following the SAB's peer review meeting on the dioxin reassessment which is scheduled for October 2000. The specific date of that meeting has not been determined. EPA will announce in a subsequent **Federal Register** (FR) notice the formal closing date of the public comment period.

ADDRESSES: The external peer review workshop will be held at the Holiday Inn Capital, 550 C Street, SW, Washington, DC 20024, Tel: 202–479–4000. The Eastern Research Group, Inc. (ERG), an EPA contractor, is organizing, convening, and conducting the peer review workshop. To attend the workshop as an observer, please register by Monday, July 17, 2000, by calling ERG at Tel: 781–674–7374, or send a facsimile to: 781–674–2906. Space is limited, and registrations to attend will be accepted on a first-come, first-served basis. Time will be set aside each day to hear comments from observers. Individual comments will be limited to no more than 5 minutes per person, and the number of people giving oral comments will be limited by the time available. If you wish to make comments at the workshop, please sign up in advance by contacting ERG. Commenters will be scheduled on a first-come, first-served basis. Please reference the "EPA Dioxin Workshop" when contacting ERG or the hotel.

Document Availability: The primary distribution method for the external review drafts of the TEF chapter and Integrated Summary and Risk Characterization to the public will be via the Internet on ORD's National Center for Environmental Assessment (NCEA) website. These external review drafts are available at *http://www.epa.gov/ncea/dioxin.htm*. These documents can be viewed and downloaded from the Internet for review and comment. Background information is also available at the above-mentioned website. This information, provided as background only, consists of other exposure and health sections of the reassessment, specifically Part I: Estimating Exposure to Dioxin-Like Compounds (Volumes 2–4) and Part II: Health Assessment for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds (Chapters 1–8).

In addition, a Compact Disk-Read Only Memory (CD–ROM) containing the external review draft of the TEF chapter and the background information, is available from EPA's National Service Center for Environmental Publications (NSCEP) in Cincinnati, Ohio (telephone: 1–800–490–9198, or 513–489–8190; facsimile 513–489–8695). If you are requesting a copy of the CD–ROM, please provide your name, mailing address, and reference the "Dioxin CD" and Document number EPA/600/P–00/001Ab-Ae. The background documents are available only on CD–ROM and the Internet.

Also, a limited number of paper copies of only the draft TEF chapter and the Integrated Summary and Risk Characterization will be available from NSCEP. If you are requesting a paper copy of either the draft TEF chapter or draft Integrated Summary and Risk Characterization, please provide your name, mailing address, and the document title and number, Part II. Chapter 9: Toxicity Equivalence Factors (TEFs) for Dioxin and Related Compounds, Document number NCEA–I–0836; and/or Part III. Integrated Summary and Risk Characterization for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds, Document number EPA/600/P–00/001Ag. Copies of draft documents or background information are not available from ERG.

Comment Submission: Comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Ariel Rios Building, Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, NW., 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050. Comments should be in writing. Please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies. Electronic comments may be emailed to: dioxin.ncea@epa.gov.

Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For workshop information, registration, and logistics, contact ERG, 110 Hartwell Avenue, Lexington, Massachusetts, 02421–3136; Tel: 781–674–7374; Fax: 781–674–2906.

For information on the public comment period, contact Linda C. Tuxen, NCEA, telephone: 202–564–3332; facsimile: 202–565–0090; or email: tuxen.linda@epa.gov. This is an extended public comment period that will continue until the SAB meeting in the Fall 2000. It is very important to note that, as the dioxin reassessment process continues, two versions of the draft sections will be put on the dioxin website. The external review drafts, the availability of which are announced in this FR notice, will be replaced by the SAB review drafts in early September. The public is requested to make clear in their submitted comments on which draft document they are commenting.

SUPPLEMENTARY INFORMATION: In April 1991, EPA announced that it would conduct a scientific reassessment of the health risks of exposure to dioxin and dioxin-like compounds. Previous EPA dioxin assessment documents, one final and one draft, were completed in 1985 and 1988, respectively. EPA undertook the 1991 reassessment in light of significant advances in our scientific understanding of mechanisms of dioxin toxicity, significant new studies of dioxin's carcinogenic potential in humans and increased evidence of other adverse health effects. EPA has worked to make each phase of the dioxin reassessment an open and participatory process. These efforts have included the involvement of outside scientists as principal authors of several chapters, frequent public meetings to report progress and take public comment, and publication of early drafts for public comment and peer review. Early in the reassessment process, EPA held public meetings (1991 and 1992) to inform the public of the Agency's plans and activities for the reassessment, to hear and receive public comments and reviews of the proposed plans, and to receive any current, scientifically relevant information. In 1992 and 1993, the Agency convened three peer-review workshops to review early drafts of the reassessment chapters.

In September 1994, EPA released the external review drafts of the health effects and exposure documents which amounted to over 2,200 pages. In late 1994 EPA took public comment and held numerous public meetings across the country on the drafts, followed by SAB review of the draft dioxin reassessment in May 1995. The SAB's report was received in the Fall of that year. In its report to the Agency, the SAB responded favorably to most portions of the reassessment, but recommended substantive revision of two key sections. The SAB recommended the revision of these two sections, Chapter 8: Dose-Response Modeling for 2,3,7,8-TCDD and the Risk Characterization document, and the development of an additional document that would focus on the toxicity equivalent factors (TEFs) for dioxin and dioxin-like compounds. In addition to these substantive recommendations, the SAB suggested that the redrafting process include broader participation of outside scientists from both the public and private sectors. They also requested that the two redrafted chapters and the new TEF chapter be submitted to independent external peer review, before being returned to the SAB for re-review. With respect to Chapters 1–7 of the health document and the full exposure reassessment document, the SAB accepted these sections. They suggested that the sections be updated to address public and SAB comments and to incorporate new scientific data, but the SAB's report stated that substantive further review of these sections by the SAB was not needed.

After receipt of the SAB's report, the Agency worked with over 40 individual stakeholders from the private and public sectors, representing environmental, industry, academic, state, and other public interest and public health communities, on the next steps and to gather input on possible approaches for conducting the revision process. The Agency has tried to keep these individuals apprised of reassessment activities at critical points in the revision process. The Agency expects that these individuals will be important avenues of public comment on the draft documents.

The final dioxin reassessment will consist of three parts. Part I: Estimating Exposure to Dioxin-Like Compounds focuses on sources, levels of dioxin-like compounds in environmental media, and human exposures. Part II: Health Assessment for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds includes information on critical human health end points, mode of action, pharmacokinetics, dose-response, and TEFs. There will be a total of nine chapters in Part II. Part III: Integrated Summary and Risk Characterization for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds is intended to be a stand-alone document. In this part, key findings pertinent to understanding the potential hazards and risks of dioxins are described and integrated, including a discussion of all important assumptions and uncertainties.

The two draft documents that are the subject of the independent scientific peer review meeting announced today are the new TEF chapter and the updated, revised, and reformatted Integrated Summary and Risk Characterization. The TEF chapter was developed as a result of a recommendation from the SAB to gather in one place the discussion and scientific information on the complex issue and use of TEFs for dioxin and dioxin-like compounds. The draft TEF chapter was developed by a team of experts and has undergone internal EPA review. The Integrated Summary and Risk Characterization, formerly identified as Chapter 9: Risk Characterization in the 1994 draft reassessment, was initially revised using a writing team process. The writing team was composed of approximately 12 leading scientific experts in fields related to dioxin exposure and health effects. These experts came from a wide range of public and private organizations, as well as academia. A preliminary revised draft was developed by a writing group and was reviewed by the 40 individual stakeholders. This preliminary draft was used as the framework for an extensively revised document developed by a small internal EPA writing group.

The third section of the reassessment on which the SAB recommended substantive revisions is Chapter 8: Dose-Response Modeling for 2,3,7,8-TCDD. The draft Chapter 8 underwent public comment and external peer review in March 1997. A writing team developed the draft final chapter based on the peer review and public comments and any relevant new scientific data in January 2000. Because this section has already undergone extensive review, we are not soliciting further comments. The next step for Chapter 8 is SAB review in the Fall 2000.

After the July 25 and 26 external peer review workshop, the TEF chapter and Integrated Summary and Risk Characterization will be revised to

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reflect the comments of the independent scientific peer reviewers, other Federal agencies, and the public. In the Fall, the SAB will conduct a scientific peer review of the TEF chapter, the dose-response modeling chapter, and the Integrated Summary and Risk Characterization. The SAB review will be announced in the **Federal Register**. EPA expects to conclude the dioxin reassessment about six months from now, incorporating appropriate changes that have been indicated by the comments of Federal agencies, the public, the external peer reviewers, and the SAB review panel. Final SAB approval is needed to produce a final EPA dioxin reassessment document.

Dated: June 6, 2000.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 00–14853 Filed 6–9–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6713–8]

Casmalia Disposal Site; Notice of Extension of the Public Comment Period for Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; extension of public comment period.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), and section 7003(d) of the Resource Conservation and Recovery Act, as amended ("RCRA") 42 U.S.C. 6973(d), the Environmental Protection Agency ("EPA") provided notice in the March 15, 2000, **Federal Register**, 65 FR 13967–13969, of a proposed administrative *de minimis* settlement concerning the Casmalia Disposal Site in Santa Barbara County, California ("the Casmalia Disposal Site"). This notice extends the public comment period through June 26, 2000. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative *de minimis* settlements. This settlement is intended to resolve the liabilities of 433 settling parties for the Casmalia Disposal Site under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, and section 7003 of RCRA, 42 U.S.C. 6973. For most of the settling parties, the settlement will also resolve their Casmalia Disposal Site-related liability for the response costs incurred or to be incurred by the federal Natural Resources Trustees' (the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the United States Department of the Air Force), and potential natural resource damages. The settling parties will pay a total of $27.6 million toward Casmalia Disposal Site response costs.

Through June 26, 2000, EPA will receive written comments relating to the settlement. In addition, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), EPA will hold a public hearing to receive comments on the proposed settlement, on June 26, 2000, from 7–9 p.m., in the Board of Supervisors' Hearing Room, at the County Administration Building, 511 E. Lakeside Parkway, Santa Maria, California. EPA will consider all comments it receives during this comment period, and may modify or withdraw its consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate. EPA's written responses to all comments will be made available at the EPA Region IX Superfund Records Center (415–536–2000), 95 Hawthorne Street, Suite 403 S, San Francisco, CA 94105–3901 and at the Santa Maria Library (805–925–0994), 420 South Broadway, Santa Maria, CA 93454.

DATES: Original, signed comments must be received by EPA on or before June 26, 2000.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. EPA Region IX (ORC–1), 75 Hawthorne Street, San Francisco, CA 94105–3901, and should refer to: Casmalia Disposal Site, Santa Barbara County, CA, U.S. EPA Docket No. 99–02(a). The proposed settlement and additional background information relating to the settlement are available for inspection at the EPA Region IX Superfund Records Center (415–536–2000), 95 Hawthorne Street, Suite 403 S, San Francisco, CA 94105–3901 and at the Santa Maria Library (805–925–0994), 420 South Broadway, Santa Maria, CA 93454. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above.

FOR FURTHER INFORMATION CONTACT: Karen Goldberg, Assistant Regional Counsel, U.S. EPA Region IX (ORC–3), 75 Hawthorne Street, San Francisco, CA 94105–3901; E-Mail: goldberg.karen@epa.gov; Tel: (415) 744–1382.

Keith Takata,

Director, Superfund Division, Region IX.

[FR Doc. 00–14770 Filed 6–9–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6714–1]

Lancaster Plating Site/Lillington, NC; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the Lancaster Plating Site (Site) located in Lillington, North Carolina, with Kimrick, Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: May 25, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–14772 Filed 6–9–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[ET Docket No. 98–237, FCC 00–181]

3650–3700 MHz Government Transfer

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document modifies the freeze imposed on applications for new earth stations and major modifications in existing earth stations in the 3650–3700 MHz band, which is also referred to as the extended C-band. We are partially lifting the freeze to allow the acceptance of applications for new extended C-band earth station receive sites that are within close proximity (i.e., 10 miles or less) of an existing grandfathered extended C-band earth station receive site. Additionally, we are lifting the freeze with respect to major modifications to existing grandfathered extended C-band earth station receive sites.

DATES: Effective May 22, 2000.

FOR FURTHER INFORMATION CONTACT: Rodney Conway, Office of Engineering and Technology, (202) 418–2904.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, ET Docket 98–237, FCC 00–181, adopted May 17, 2000, and released May 22, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room Cy–A257, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW Washington, DC 20036.

Summary of the Memorandum Opinion and Order

1. In the Notice of Proposed Rule Making and Order ("Notice and Order"), 64 FR 2462, January 14, 1999, the Commission proposed to allocate the 3650–3700 MHz band to the non-government fixed service on a primary basis. To ensure that adequate opportunities would continue to exist for the provision of fixed services in the 3650–3700 MHz band, the Commission stated that it would no longer accept applications for new earth stations or major modifications in existing earth station facilities for the fixed-satellite service ("FSS") in the 3650–3700 MHz band. The Notice and Order grandfathered existing extended C-band earth stations.

2. The Commission continues to believe that a freeze limiting the growth of new earth station facilities in the extended C-band is necessary to ensure that adequate opportunities exist for fixed services in the 3650–3700 MHz band. As noted in the Notice and Order a broad range of fixed services could be implemented in the 3650–3700 MHz band which could help to achieve the overarching goals of Section 706 of the Telecommunications Act of 1996 by providing advanced telecommunications capability to all Americans. The proposals submitted by New Skies and the C-Band Coalition to lift the freeze are unacceptable because such action would likely have the effect of significantly limiting or precluding future fixed service operations in this band. However, we find that a limited lifting of the freeze will provide relief for satellite users of the extended C-band without jeopardizing its future availability for terrestrial uses. We will therefore accept applications for new extended C-band earth stations or major modifications of an existing extended C-band earth station if the proposed earth station facilities are located in close proximity (i.e. 10 miles or less) to an existing, grandfathered extended C-band earth station in the 3650–3700 MHz band. We find that this will provide reasonable opportunities to obtain suitable real estate for the placement of new extended C-band earth stations near grandfathered extended C-band earth stations. Below is a list of existing sites. We find that the introduction of new extended C-band earth stations in close proximity to an existing grandfathered extended C-band earth stations will not substantially impede the opportunities for the introduction of fixed services in the 3650–3700 MHz band. Further, we find that this action will provide relief to satellite operators while having a de minimis impact on the opportunities for the provision of fixed services in the 3650–3700 MHz band.

TABLE 1.—AUTHORIZED EXTENDED C-BAND EARTH STATIONS [1]

(Receive at 3625–3700 MHz and Transmit at 5850–5925 MHz) [2]

State/City	North latitude	West longitude
California:		
Carmel Valley	36° 24′10″	121° 38′48″
Culver City	34° 01′ 06″	118° 24′ 13″
Livermore	37° 45′ 39″	121° 47′ 50″
Los Angeles	34° 01′ 53″	118° 27′ 18″
	34° 01′ 54″	118° 27′ 15″
	34° 01′ 54″	118° 27′ 18.3″
	34° 01′ 54″	118° 27′ 21.3″
Malibu	34° 04′ 49.67″	118° 53′ 43.91″
	34° 04′ 50.32″	118° 53′ 46.40″
Mountain House	37° 45′ 01″	121° 35′ 34″
	37° 45′ 02″	121° 35′ 35″
Niles Canyon	37° 35′ 56″	121° 56′ 32″
	37° 36′ 00″	121° 56′ 35″
Salt Creek	38° 56′ 20.2″	122° 08′ 48″
	38° 56′ 21″	122° 08′ 49.2″
	38° 56′ 22.3″	122° 08′ 49.6″
Somis	34° 19′ 31″	118° 59′ 41″
Sylmar	34° 19′ 04″	118° 29′ 00″
Florida:		
Medley	25° 50′ 26″	80° 19′ 03″
	25° 51′ 19″	80° 19′ 52″
Melbourne	28° 02′ 25″	80° 35′ 48″
	28° 05′ 10″	80° 38′ 10″
Miami	25° 48′ 34″	80° 21′ 11″
	25° 48′ 35″	80° 21′ 10″
	25° 48′ 35″	80° 21′ 11″
Miramar [3]	25° 58′ 32″	80° 17′ 00″
Orlando	28° 25′ 29″	81° 07′ 21″

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TABLE 1.—AUTHORIZED EXTENDED C-BAND EARTH STATIONS [1]—Continued

(Receive at 3625–3700 MHz and Transmit at 5850–5925 MHz) [2]

State/City	North latitude	West longitude
Palm Bay	28° 02' 28"	80° 35' 42"
Guam: Pulantat	13° 25' 00"	144° 44' 57"
Maine: Andover	44° 37' 57"	70° 42' 01"
	44° 37' 58"	70° 41' 54"
Maryland:		
Etam	39° 16' 48"	79° 44' 14"
	39° 16' 50"	79° 44' 13"
	39° 13' 07"	77° 16' 12"
Clarksburg	42° 06' 59"	71° 38' 08"
Massachusetts: Whitinsville	41° 07' 04"	74° 34' 33"
New Jersey: Franklin	40° 36' 13"	74° 10' 39"
New York: Staten Island	36° 25' 50"	81° 23' 45"
North Carolina: West Jefferson	45° 20' 33"	123° 17' 15"
Oregon: Moores Valley	40° 53' 34"	76° 26' 23"
Pennsylvania: Roaring Creek	40°53'35.9"	76° 26' 22.6"
	40°53'37"	76° 26' 22"
	40 53'37.5"	76° 26' 21.8"
Puerto Rico:		
Carolina	18° 26' 00"	65° 59' 35"
Caguas	18° 17' 53"	66° 03' 14"
Cayey	18° 08' 00"	66° 07' 57"
Humacao	18° 09' 05"	65° 47' 20"
Rio Piedras	18° 14' 30"	66° 01' 50"
	18° 22' 59"	66° 04' 09"
Tennessee: Nashville	36° 14' 06"	86° 45' 21"
	36° 14' 5.7"	86° 45' 19.4"
	36° 14' 5.7"	86° 45' 21.4"
Texas: Woodland Hills	32° 37' 48"	96° 50' 33"
Virginia:		
Alexandria	38° 47' 39"	77° 09' 51"
Shenandoah Court	38° 43' 45"	78° 39' 26"
Washington: Brewster	48° 08' 49"	119° 41' 28"
	48° 08' 51"	119° 41' 29"
West Virginia:		
Lennox	39° 34' 07"	79° 34' 45"
Rowlesburg	39° 16' 52.1"	79° 44' 10.7"

[1] In addition, there is an extended C-band earth station on the Midway Atoll.

[2] Most of these earth stations are authorized to make use of both C-band (3700–4200 MHz for downlinks and 5925–6425 MHz band for uplinks) and extended C-band frequencies (3625–3700 MHz for downlinks and 5850–5925 MHz for uplinks).

[3] This is a receive-only station.

[4] Guam's longitude coordinate is East, not West.

TABLE 2.—SITES AUTHORIZED FOR LESS THAN THE FULL EXTENDED C-BAND

Band	City, State	Latitude	Longitude
3685–3700 MHz	Miami, Florida	25°28'48"	80°10'48"
	Atlanta, Georgia	33°52'38.23"	84°27'58.35"
	Marietta, Georgia	33°55'41"	84°29'45"
	Guaynabo, Puerto Rico	18°34'10"	66°23'00"
	San Juan, Puerto Rico	18°22'00"	66°07'00"
3650–3700 MHz	Auburn University, Alabama	32°35'47"	85°29'27"

TABLE 3.—AUTHORIZED TT&C SITES

[Receive at 3698.5–3699.5 MHz and Transmit at 5923.5–5924.5 MHz]

City/State	Latitude	Longitude
Three Peaks, California	38°8'51.9"	122°47'38"
Hawley, Pennsylvania	41°27'51"	75°7'47.9"

3. Pursuant to the authority contained in sections 4(i), 302, 303(e), 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, *it is ordered* that the Request For Relief and Modified Request For Emergency Relief and Request For Expedited Action filed by New Skies Satellites N.V., *are hereby granted*, in part, and *denied* in part. The application processing changes are effective May 22, 2000.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–14610 Filed 6–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Retail Credit Classification and Account Management Policy

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Final notice.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC), on behalf of the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS), collectively referred to as the Agencies, is publishing revisions to the Uniform Retail Credit Classification and Account Management Policy, to clarify certain provisions, especially regarding the re-aging of open-end accounts and extensions, deferrals, renewals, and rewrites of closed-end loans. The National Credit Union Administration (NCUA), also a member of FFIEC, does not plan to adopt the Uniform Policy at this time. This Policy is a supervisory policy used by the Agencies for uniform classification and treatment of retail credit loans in financial institutions.

DATES: Any changes to an institution's policies and procedures as a result of the Uniform Retail Credit Classification and Account Management Policy issued on February 10, 1999, as modified by these revisions, should be implemented for reporting in the December 31, 2000, Call Report or Thrift Financial Report, as appropriate.

FOR FURTHER INFORMATION CONTACT:

FRB: David Adkins, Supervisory Financial Analyst, (202) 452–5259, or Anna Lee Hewko, Financial Analyst, (202) 530–6260, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

OCC: Daniel L. Pearson, National Bank Examiner, (202) 874–5170, Credit Risk Division, or Ron Shimabukuro, Senior Attorney, (202) 874–5090, Legislative and Regulatory Activities Division, Chief Counsel's Office, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

FDIC: James Leitner, Examination Specialist, (202) 898–6790, Division of Supervision, or Michael Phillips, Counsel, (202) 898–3581, Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

OTS: William J. Magrini, Senior Project Manager, (202) 906–5744, Donna M. Deale, Manager, Supervision Policy, (202) 906–7488, Supervision Policy, or Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906–7133, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background Information

On June 30, 1980, the FRB, FDIC, and OCC adopted the Uniform Policy for Classification of Consumer Installment Credit Based on Delinquency Status (1980 policy). The Federal Home Loan Bank Board, the predecessor of the OTS, adopted the 1980 policy in 1987. The 1980 policy established uniform guidelines for the classification of retail installment credit based on delinquency status and provided charge-off time frames for open-end and closed-end credit.

The Agencies undertook a review of the 1980 policy as part of their review of all written policies mandated by Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994. As a result of this review, on February 10, 1999 (64 FR 6655), the Agencies issued the Uniform Retail Credit Classification and Account Management Policy (Uniform Policy). In general, the Uniform Policy:

- Established a charge-off policy for open-end credit at 180 days delinquency and closed-end credit at 120 days delinquency.
- Provided guidance for loans affected by bankruptcy, fraud, and death.
- Established guidelines for re-aging, extending, deferring, or rewriting past due accounts.
- Provided for classification of certain delinquent residential mortgage and home equity loans.
- Provided an alternative method of recognizing partial payments.

As issued on February 10, 1999, the Uniform Policy was effective for manual adjustments to an institution's policies and procedures as of the June 30, 1999, Call Report or Thrift Financial Report, as appropriate. In addition, the Uniform Policy allowed institutions until the December 31, 2000, Reports to make changes involving computer programming resources. In a modification issued on November 23, 1999 (64 FR 65712), the implementation date for manual changes was extended to the December 31, 2000, Reports.

Following the issuance of the Uniform Policy, the Agencies received numerous inquiries for clarifications of the standards contained in the Policy, especially with respect to the re-aging of open-end accounts and extensions, deferrals, renewals, or rewrites of closed-end loans. In response to these inquiries for clarification, the Agencies have decided to publish this revised Uniform Policy. In addition to various editorial changes, the Agencies have changed the Uniform Policy to clarify various items in the Uniform Policy with respect to (1) the re-aging of open-end accounts; (2) extensions, deferrals, renewals, and rewrites of closed-end loans; (3) examiner considerations; and (4) the treatment of specific categories of retail loans.

1. *Re-aging of open-end accounts.* The Uniform Policy provided that open-end accounts should not be re-aged more than once within any twelve-month period and no more than twice within any five-year period. The Agencies have decided to clarify the Uniform Policy by stating that institutions may adopt a more conservative re-aging standard (e.g., some institutions allow only one re-aging in the lifetime of an open-end account). In addition, this modification of the Uniform Policy recognizes the importance of formal workout programs and provides guidance on the handling of open-end accounts that enter into this type of program.

Specifically, the Agencies have modified the Uniform Policy to provide that institutions may re-age an account after it enters a workout program, including internal and third-party debt counseling services, but only after receipt of at least three consecutive minimum monthly payments or the equivalent cumulative amount. Re-aging for workout program purposes is limited to once in a five-year period and is in addition to the once-in-twelve-months/twice-in-five-years limitation. The term "re-age" is defined in the document (in footnote 3) to mean "returning a delinquent, open-end account to current status without collecting the total amount of principal, interest, and fees that are contractually due." In the Agencies' view, management information systems should track the principal reductions and charge-off history of loans in workout programs by type of program.

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2. *Extensions, deferrals, renewals, and rewrites of closed-end loans.* The Agencies have modified the Uniform Policy to provide that institutions should adopt and adhere to explicit standards that control the use of extensions, deferrals, renewals, and rewrites of closed-end loans. Such standards would be based on the borrower's willingness and ability to repay the loan and would limit number and frequency of such treatment of closed-end loans. The Agencies have also defined the terms "extension," "deferral," "renewal," and "rewrite."

This modification of the Uniform Policy states that institutions should adopt standards that prohibit additional advances that finance the unpaid interest and fees. The Agencies have added guidance that comprehensive and effective risk management, reporting, and internal controls be established and maintained to support the collection process and to ensure timely recognition of losses.

3. *Examination considerations.* The Agencies have added guidance that an examiner may classify retail portfolios, or segments thereof, where underwriting standards are weak and present unreasonable credit risk and may criticize account management practices that are deficient.

Adoption of the Uniform Policy may affect an institution's timing and measurement of probable loan losses that have been incurred. As a result of changes the Uniform Policy made to the 1980 policy, an institution may need to adjust its loan loss allowance to reflect any shortening in its time frame for recording charge-offs. Moreover, a larger allowance may be necessary if an institution's charge-off practices are different than the new guidelines for accounts of deceased persons and accounts of borrowers in bankruptcy.

4. *Treatment of specific categories of retail loans.* These modifications to the Uniform Policy clarified the Policy's treatment of various categories of retail loans:

- Regarding retail loans that are due to be charged off, in lieu of charging off the entire loan balance, loans with non-real estate collateral may be written down to the value of the collateral, less cost to sell, if repossession of collateral is assured and in process.
- For open- and closed-end loans secured by one-to four-family residential real estate, a current assessment of value should be made no later than 180 days past due, and any outstanding loan balance in excess of the value of the property, less cost to sell, should be charged off. The Agencies removed the condition in the Uniform Policy that such assessment would be required when a residential or home equity loan is 120 days past due.
- Loans in bankruptcy with collateral may be written down to the value of the collateral, less cost to sell.

As modified, the Uniform Policy now reads as follows:

Uniform Retail Credit Classification and Account Management Policy [1]

The Uniform Retail Credit Classification and Account Management Policy establishes standards for the classification and treatment of retail credit in financial institutions. Retail credit consists of open- and closed-end credit extended to individuals for household, family, and other personal expenditures, and includes consumer loans and credit cards. For purposes of this policy, retail credit also includes loans to individuals secured by their personal residence, including first mortgage, home equity, and home improvement loans. Because a retail credit portfolio generally consists of a large number of relatively small-balance loans, evaluating the quality of the retail credit portfolio on a loan-by-loan basis is inefficient and burdensome for the institution being examined and for examiners.

Actual credit losses on individual retail credits should be recorded when the institution becomes aware of the loss, but in no case should the charge-off exceed the time frames stated in this policy. This policy does not preclude an institution from adopting a more conservative internal policy. Based on collection experience, when a portfolio's history reflects high losses and low recoveries, more conservative standards are appropriate and necessary.

The quality of retail credit is best indicated by the repayment performance of individual borrowers. Therefore, in general, retail credit should be classified based on the following criteria:

- Open- and closed-end retail loans past due 90 cumulative days from the contractual due date should be classified Substandard.
- Closed-end retail loans that become past due 120 cumulative days and open-end retail loans that become past due 180 cumulative days from the contractual due date should be classified Loss and charged off.[2] In lieu of charging off the entire loan balance, loans with non-real estate collateral may be written down to the value of the collateral, less cost to sell, if repossession of collateral is assured and in process.
- One- to four-family residential real estate loans and home equity loans that are past due 90 days or more with loan-to-value ratios greater than 60 percent should be classified Substandard. Properly secured residential real estate loans with loan-to-value ratios equal to or less than 60 percent are generally not classified based solely on delinquency status. Home equity loans to the same borrower at the same institution as the senior mortgage loan with a combined loan-to-value ratio equal to or less than 60 percent need not be classified. However, home equity loans where the institution does not hold the senior mortgage, that are past due 90 days or more should be classified Substandard, even if the loan-to-value ratio is equal to, or less than, 60 percent.

For open- and closed-end loans secured by residential real estate, a current assessment of value should be made no later than 180 days past due. Any outstanding loan balance in excess of the value of the property, less cost to sell, should be classified Loss and charged off.

- Loans in bankruptcy should be classified Loss and charged off within 60 days of receipt of notification of filing from the bankruptcy court or within the time frames specified in this classification policy, whichever is shorter, unless the institution can clearly demonstrate and document that repayment is likely to occur. Loans with collateral may be written down to the value of the collateral, less cost to sell. Any loan balance not charged off should be classified Substandard until the borrower re-establishes the ability and willingness to repay for a period of at least six months.
- Fraudulent loans should be classified Loss and charged off no later than 90 days of discovery or within the time frames adopted in this classification policy, whichever is shorter.
- Loans of deceased persons should be classified Loss and charged off when the loss is determined or within the time frames adopted in this classification policy, whichever is shorter.

Other Considerations for Classification

If an institution can clearly document that a past due loan is well secured and in the process of collection, such that collection will occur regardless of delinquency status, then the loan need not be classified. A well-secured loan is collateralized by a perfected security interest in, or pledges of, real or personal property, including securities with an estimable value, less cost to sell, sufficient to recover the recorded investment in the loan, as well as a reasonable return on that amount. In the process of collection means that either a collection effort or legal action is proceeding and is reasonably expected to result in recovery of the loan balance or its restoration to a current status, generally within the next 90 days.

Partial Payments on Open-and Closed-End Credit

Institutions should use one of two methods to recognize partial payments. A payment equivalent to 90 percent or more of the contractual payment may be considered a full payment in computing past due status. Alternatively, the institution may aggregate payments and give credit for any partial payment received. For example, if a regular installment payment is $300 and the borrower makes payments of only $150 per month for a six-month period, the loan would be $900 ($150 shortage times six payments), or three full months past due. An institution may use either or both methods in its portfolio, but may not use both methods simultaneously with a single loan.

Re-Aging, Extensions, Deferrals, Renewals, and Rewrites [3]

Re-aging of open-end accounts, and extensions, deferrals, renewals, and rewrites of closed-end loans can be used to help borrowers overcome temporary financial difficulties, such as loss of job, medical emergency, or change in family circumstances like loss of a family member. A permissive policy on re-agings, extensions, deferrals, renewals, or rewrites can cloud the true performance and delinquency status of the portfolio. However, prudent use is acceptable when it is based on a renewed willingness and ability to repay the loan, and when it is structured and controlled in accordance with sound internal policies.

Management should ensure that comprehensive and effective risk management and internal controls are established and maintained so that re-ages, extensions, deferrals, renewals, and rewrites can be adequately controlled and monitored by management and verified by examiners. The decision to re-age, extend, defer, renew, or rewrite a loan, like any other modification of contractual terms, should be supported in the institution's management information systems. Adequate management information systems usually identify and document any loan that is re-aged, extended, deferred, renewed, or rewritten, including the number of times such action has been taken. Documentation normally shows that the institution's personnel communicated with the borrower, the borrower agreed to pay the loan in full, and the borrower has the ability to repay the loan. To be effective, management information systems should also monitor and track the volume and performance of loans that have been re-aged, extended, deferred, renewed, or rewritten and/or placed in a workout program.

Open-End Accounts

Institutions that re-age open-end accounts should establish a reasonable written policy and adhere to it. To be considered for re-aging, an account should exhibit the following:

- The borrower has demonstrated a renewed willingness and ability to repay the loan.
- The account has existed for at least nine months.
- The borrower has made at least three consecutive minimum monthly payments or the equivalent cumulative amount. Funds may not be advanced by the institution for this purpose.

Open-end accounts should not be re-aged more than once within any twelve-month period and no more than twice within any five-year period. Institutions may adopt a more conservative re-aging standard; for example, some institutions allow only one re-aging in the lifetime of an open-end account. Additionally, an over-limit account may be re-aged at its outstanding balance (including the over-limit balance, interest, and fees), provided that no new credit is extended to the borrower until the balance falls below the predelinquency credit limit.

Institutions may re-age an account after it enters a workout program, including internal and third-party debt counseling services, but only after receipt of at least three consecutive minimum monthly payments or the equivalent cumulative amount, as agreed upon under the workout or debt management program. Re-aging for workout purposes is limited to once in a five-year period and is in addition to the once in twelve-months/twice in five-year limitation described above. To be effective, management information systems should track the principal reductions and charge-off history of loans in workout programs by type of program.

Closed-End Loans

Institutions should adopt and adhere to explicit standards that control the use of extensions, deferrals, renewals, and rewrites of closed-end loans. The standards should exhibit the following:

- The borrower should show a renewed willingness and ability to repay the loan.
- The standards should limit the number and frequency of extensions, deferrals, renewals, and rewrites.
- Additional advances to finance unpaid interest and fees should be prohibited.

Management should ensure that comprehensive and effective risk management, reporting, and internal controls are established and maintained

[1] The agencies' classifications used for retail credit are Substandard, Doubtful, and Loss. These are defined as follows: Substandard: An asset classified Substandard is protected inadequately by the current net worth and paying capacity of the obligor, or by the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the institution will sustain some loss if the deficiencies are not corrected. Doubtful: An asset classified Doubtful has all the weaknesses inherent in one classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. Loss: An asset, or portion thereof, classified Loss is considered uncollectible, and of such little value that its continuance on the books is not warranted. This classification does not mean that the asset has absolutely no recovery or salvage value; rather, it is not practical or desirable to defer writing off an essentially worthless asset (or portion thereof), even though partial recovery may occur in the future.

Although the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and Office of Thrift Supervision do not require institutions to adopt identical classification definitions, institutions should classify their assets using a system that can be easily reconciled with the regulatory classification system.

[2] For operational purposes, whenever a charge-off is necessary under this policy, it should be taken no later than the end of the month in which the applicable time period elapses. Any full payment received after the 120- or 180-day charge-off threshold, but before month-end charge-off, may be considered in determining whether the charge-off remains appropriate.

OTS regulation: 12 CFR 560.160(b) allows savings institutions to establish adequate (specific) valuation allowances for assets classified Loss in lieu of charge-offs.

Open-end retail accounts that are placed on a fixed repayment schedule should follow the charge-off time frame for closed-end loans.

[3] These terms are defined as follows. Reage: Returning a delinquent, open-end account to current status without collecting the total amount of principal, interest, and fees that are contractually due. Extension: Extending monthly payments on a closed-end loan and rolling back the maturity by the number of months extended. The account is shown current upon granting the extension. If extension fees are assessed, they should be collected at the time of the extension and not added to the balance of the loan. Deferral: Deferring a contractually due payment on a closed-end loan without affecting the other terms, including maturity, of the loan. The account is shown current upon granting the deferral. Renewal: Underwriting a matured, closed-end loan generally at its outstanding principal amount and on similar terms. Rewrite: Underwriting an existing loan by significantly changing its terms, including payment amounts, interest rates, amortization schedules, or its final maturity.

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to support the collection process and to ensure timely recognition of losses. To be effective, management information systems should track the subsequent principal reductions and charge-off history of loans that have been granted an extension, deferral, renewal, or rewrite.

Examination Considerations

Examiners should ensure that institutions adhere to this policy. Nevertheless, there may be instances that warrant exceptions to the general classification policy. Loans need not be classified if the institution can document clearly that repayment will occur irrespective of delinquency status. Examples might include loans well secured by marketable collateral and in the process of collection, loans for which claims are filed against solvent estates, and loans supported by valid insurance claims.

The Uniform Classification and Account Management policy does not preclude examiners from classifying individual retail credit loans that exhibit signs of credit weakness regardless of delinquency status. Similarly, an examiner may also classify retail portfolios, or segments thereof, where underwriting standards are weak and present unreasonable credit risk, and may criticize account management practices that are deficient.

In addition to reviewing loan classifications, the examiner should ensure that the institution's allowance for loan and lease losses provides adequate coverage for probable losses inherent in the portfolio. Sound risk and account management systems, including a prudent retail credit lending policy, measures to ensure and monitor adherence to stated policy, and detailed operating procedures, should also be implemented. Internal controls should be in place to ensure that the policy is followed. Institutions that lack sound policies or fail to implement or effectively adhere to established policies will be subject to criticism.

Implementation

This policy should be fully implemented for reporting in the December 31, 2000 Call Report or Thrift Financial Report, as appropriate.

Dated: June 6, 2000.

Keith J. Todd,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 00–14704 Filed 6–9–00; 8:45 am]

BILLING CODE 6210–01–P (25%) 6714–01–P (25%) 6720–01–P (25%) 4810–33–P (25%)

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 26, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Robert M. Alexander, Calhan, Colorado; Sean A. Gooding, Cherry Hills Village, Colorado; Alexander R. Gooding, Cherry Hills Village, Colorado; Leslie A. Melzer, Denver, Colorado; Robert J. Breidenthal, Bonner Springs, Kansas; Arcadia Partners, Ltd.(Dan & Patricia League), Colorado Springs, Colorado; Michael S. League, Colorado Springs, Colorado; and Joe F. Jenkins, Tonganoxie, Kansas; to acquire voting shares of Financial Services of the Rockies, Inc., Colorado Springs, Colorado, and thereby indirectly acquire voting shares of First National Bank of Colorado Springs, Colorado Springs, Colorado.

Board of Governors of the Federal Reserve System, June 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14733 Filed 6–9–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

NAME: Employee Thrift Advisory Council.

TIME: 10 a.m.

DATE: June 27, 2000.

PLACE: 4th Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approve minutes of the May 19, 1999, meeting.
2. Report of the Executive Director on Thrift Savings Plan status.
3. November 15, 1999–January 31, 2000, Thrift Savings Plan Open Season.
4. Legislation.
5. New TSP record keeping system/investment funds.
6. New Business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact Elizabeth S. Woodruff, Committee Management Officer, on (202) 942–1660.

Dated: June 6, 2000.

Elizabeth S. Woodruff,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 00–14739 Filed 6–9–00; 8:45 am]

BILLING CODE 6760–01–M

Federal Register

Monday,
June 12, 2000

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1 et al.

Use of Actuarial in Valuing Annuities, Interests for Life or Terms of Years, and Remainder or Reversionary Interests; Final Rule

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[TD 8886]

RIN 1545–AX07

Use of Actuarial Tables in Valuing Annuities, Interests for Life or Terms of Years, and Remainder or Reversionary Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the use of actuarial tables in valuing annuities, interests for life or terms of years, and remainder or reversionary interests. These regulations will effect the valuation of inter vivos and testamentary transfers of interests dependent on one or more measuring lives. Section 7520 of the Internal Revenue Code of 1986 (Code) was enacted by section 5031 of the Technical and Miscellaneous Revenue Act of 1988 and was effective on May 1, 1989. These regulations are necessary because section 7520(c)(3) directs the Secretary to revise the actuarial tables used in valuing interests dependent on mortality experience not less frequently than once each 10 years to take into account the most recent mortality experience available as of the time of the revision. This document contains amendments to the regulations revising certain tables used for the valuation of partial interests in property under section 7520 to reflect the most recent mortality experience available.

DATES: These regulations are effective June 12, 2000.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1999, the IRS published in the **Federal Register** (64 FR 23187 and 64 FR 23245) temporary regulations and a notice of proposed rulemaking by cross reference to temporary regulations (REG–103851–99) under sections 642, 664, 2031, 2512, and 7520 relating to the use of actuarial tables in valuing annuities, interests for life or terms of years, and remainder or reversionary interests. No written comments responding to the notice of proposed rulemaking by cross reference to temporary regulations were received and, thus, no hearing was held. This document adopts, with no substantive changes, final regulations with respect to this notice of proposed rulemaking by cross reference to temporary regulations.

The following chart summarizes the applicable interest rates and the citations to textual materials and tables for the various periods covered under the regulations:

CROSS REFERENCE TO REGULATION SECTIONS

Valuation period	Interest rate	Regulation section	Table
Section 642			
Valuation, in general		1.642(c)–6	
Before 01/01/52	4%	1.642(c)–6A(a)	
01/01/52–12/31/70	3.5%	1.642(c)–6A(b)	
01/01/71–11/30/83	6%	1.642(c)–6A(c)	
12/01/83–04/30/89	10%	1.642(c)–6A(d)	Table G.
05/01/89–04/30/99	§ 7520	1.642(c)–6A(e)	Table S (05/01/89–4/30/99)
After 04/30/99	§ 7520	1.642(c)–6(e)	Table S (after 04/30/99).
Section 664			
Valuation, in general		1.664–4	
Before 01/01/52	4%	1.664–4A(a)	
01/01/52–12/31/70	3.5%	1.664–4A(b)	
01/01/71–11/30/83	6%	1.664–4A(c)	
12/01/83–04/30/89	10%	1.664–4A(d)	Table E, Table F(1).
05/01/89–04/30/99	§ 7520	1.664–4A(e)	Table U(1) (05/01/89–4/30/99).
After 04/30/99	§ 7520	1.664–4(e)(6)	Table D and Tables F(4.2)–F(14.0)
		1.664–4(e)(7)	Table U(1) (after 04/30/99).
Section 2031			
Valuation, in general		20.2031–7	
Before 01/01/52	4%	20.2031–7A(a)	
01/01/52–12/31/70	3.5%	20.2031–7A(b)	
01/01/71–11/30/83	6%	20.2031–7A(c)	
12/01/83–04/30/89	10%	20.2031–7A(d)	Table A, Table B, Table LN.
05/01/89–04/30/99	§ 7520	20.2031–7A(e)	Table S (05/01/89–4/30/99) Life Table 80CNSMT.
After 04/30/99	§ 7520	20.2031–7(d)(6)	Table B, Table J, Table K
		20.2031–7(d)(7)	Table S (after 04/30/99) and Life Table 90CM.
Section 2512			
Valuation, in general		25.2512–5	
Before 01/01/52	4%	25.2512–5A(a)	
01/01/52–12/31/70	3.5%	25.2512–5A(b)	
01/01/71–11/30/83	6%	25.2512–5A(c)	
12/01/83–04/30/89	10%	25.2512–5A(d)	

CROSS REFERENCE TO REGULATION SECTIONS—Continued

Valuation period	Interest rate	Regulation section	Table
05/01/89–04/30/99	§ 7520	25.2512–5A(e)	
After 04/30/99	§ 7520	25.2512–5(d)	

Effective Dates

These regulations are applicable in the case of annuities, interests for life or terms of years, and remainder or reversionary interests created after April 30, 1999.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking by cross reference to temporary regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is William L. Blodgett, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, and 25 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for 1.642(c)–6T, 1.664–4T and 1.7520–1T to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.170A–12 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 1.170A–12 Valuation of a remainder interest in real property for contributions made after July 31, 1969.

* * * * * * *

(b) * * *

(2) *Computation of depreciation factor.* If the valuation of the remainder interest in depreciable property is dependent upon the continuation of one life, a special factor must be used. The factor determined under this paragraph (b)(2) is carried to the fifth decimal place. The special factor is to be computed on the basis of the interest rate and life contingencies prescribed in § 20.2031–7 of this chapter (or for periods before May 1, 1999, § 20.2031–7A) and on the assumption that the property depreciates on a straight-line basis over its estimated useful life. For transfers for which the valuation date is after April 30, 1999, special factors for determining the present value of a remainder interest following one life and an example describing the computation is contained in Internal Revenue Service Publication 1459, "Actuarial Values, Book Gimel," (7–1999). A copy of this publication is available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. For transfers for which the valuation date is after April 30, 1989, and before May 1, 1999, special factors for determining the present value of a remainder interest following one life and an example describing the computation is contained in Internal Revenue Service Publication 1459, "Actuarial Values, Gamma Volume," (8–89). This publication is no longer available for purchase from the Superintendent of Documents. However, it may be obtained by requesting a copy from: CC:DOM:CORP:R (IRS Publication 1459), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. See, however, § 1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). Otherwise, in the case of the valuation of a remainder interest following one life, the special factor may be obtained through use of the following formula:

$$\left(1+\frac{i}{2}\right)\sum_{t=0}^{n-1} v^{(t+1)}\left[\left(1-\frac{l_{x+t+1}}{l_x}\right)-\left(1-\frac{l_{x+1}}{l_x}\right)\right]\left(1-\frac{1}{2n}-\frac{t}{n}\right)$$

Where:

n=the estimated number of years of useful life,

i=the applicable interest rate under section 7520 of the Internal Revenue Code,

v=1 divided by the sum of 1 plus the applicable interest rate under section 7520 of the Internal Revenue Code,

x=the age of the life tenant, and

lx=number of persons living at age x as set forth in Table 90CM of § 20.2031–7 (or, for periods before May 1, 1999, the tables set forth under § 20.2031–7A) of this chapter.

(3) *Example.* The following example illustrates the provisions of this paragraph (b):

Example. A, who is 62, donates to Y University a remainder interest in a personal residence, consisting of a house and land, subject to a reserved life estate in A. At the time of the gift, the land has a value of $30,000 and the house has a value of

$100,000 with an estimated useful life of 45 years, at the end of which the value of the house is expected to be $20,000. The portion of the property considered to be depreciable is $80,000 (the value of the house ($100,000) less its expected value at the end of 45 years ($20,000)). The portion of the property considered to be nondepreciable is $50,000 (the value of the land at the time of the gift ($30,000) plus the expected value of the house at the end of 45 years ($20,000)). At the time of the gift, the interest rate prescribed under section 7520 is 8.4 percent. Based on an interest rate of 8.4 percent, the remainder factor for $1.00 prescribed in § 20.2031–7(d) of this chapter for a person age 62 is 0.27925. The value of the nondepreciable remainder interest is $13,962.50 (0.27925 times $50,000). The value of the depreciable remainder interest is $16,148.80 (0.20186, computed under the formula described in paragraph (b)(2) of this section, times $80,000). Therefore, the value of the remainder interest is $30,111.30.

* * * * *

§ 1.170A–12T [Removed]

Par. 3. Section 1.170A–12T is removed.

Par. 4–5. Section 1.642(c)–6 is amended by revising paragraphs (d), (e) and (f) to read as follows:

§ 1.642(c)–6 Valuation of a remainder interest in property transferred to a pooled income fund.

* * * * *

(d) *Valuation.* The present value of the remainder interest in property transferred to a pooled income fund after April 30, 1999, is determined under paragraph (e) of this section. The present value of the remainder interest in property transferred to a pooled income fund for which the valuation date is before May 1, 1999, is determined under the following sections:

Valuation Dates		Applicable regulations
After	Before	
	01–01–52	1.642(c)–6A(a)
12–31–51	01–01–71	1.642(c)–6A(b)
12–31–70	12–01–83	1.642(c)–6A(c)
11–30–83	05–01–89	1.642(c)–6A(d)
04–30–89	05–01–99	1.642(c)–6A(e)

(e) *Present value of the remainder interest in the case of transfers to pooled income funds for which the valuation date is after April 30, 1999*—(1) *In general.* In the case of transfers to pooled income funds for which the valuation date is after April 30, 1999, the present value of a remainder interest is determined under this section. See, however, § 1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). The present value of a remainder interest that is dependent on the termination of the life of one individual is computed by the use of Table S in paragraph (e)(6) of this section. For purposes of the computations under this section, the age of an individual is the age at the individual's nearest birthday.

(2) *Transitional rules for valuation of transfers to pooled income funds.* (i) For purposes of sections 2055, 2106, or 2624, if on May 1, 1999, the decedent was mentally incompetent so that the disposition of the property could not be changed, and the decedent died after April 30, 1999, without having regained competency to dispose of the decedent's property, or the decedent died within 90 days of the date that the decedent first regained competency after April 30, 1999, the present value of a remainder interest is determined as if the valuation date with respect to the decedent's gross estate is either before May 1, 1999, or after April 30, 1999, at the option of the decedent's executor.

(ii) For purposes of sections 170, 2055, 2106, 2522, or 2624, in the case of transfers to a pooled income fund for which the valuation date is after April 30, 1999, and before July 1, 1999, the present value of the remainder interest under this section is determined by use of the section 7520 interest rate for the month in which the valuation date occurs (see §§ 1.7520–1(b) and 1.7520–2(a)(2)) and the appropriate actuarial tables under either paragraph (e)(6) of this section or § 1.642(c)–6A(e)(5), at the option of the donor or the decedent's executor, as the case may be.

(iii) For purposes of paragraphs (e)(2)(i) and (ii) of this section, where the donor or decedent's executor is given the option to use the appropriate actuarial tables under either paragraph (e)(6) of this section or § 1.642(c)–6A(e)(5), the donor or decedent's executor must use the same actuarial table with respect to each individual transaction and with respect to all transfers occurring on the valuation date (for example, gift and income tax charitable deductions with respect to the same transfer must be determined based on the same tables, and all assets includible in the gross estate and/or estate tax deductions claimed must be valued based on the same tables).

(3) *Present value of a remainder interest.* The present value of a remainder interest in property transferred to a pooled income fund is computed on the basis of—

(i) Life contingencies determined from the values of l_x that are set forth in Table 90CM in § 20.2031–7(d)(7) of this chapter (see § 20.2031–7A of this chapter for certain prior periods); and

(ii) Discount at a rate of interest, compounded annually, equal to the highest yearly rate of return of the pooled income fund for the 3 taxable years immediately preceding its taxable year in which the transfer of property to the fund is made. For purposes of this paragraph (e), the yearly rate of return of a pooled income fund is determined as provided in paragraph (c) of this section unless the highest rate of return is deemed to be the rate described in paragraph (e)(4) of this section for funds in existence less than 3 taxable years. For purposes of this paragraph (e)(3)(ii), the first taxable year of a pooled income fund is considered a taxable year even though the taxable year consists of less than 12 months. However, appropriate adjustments must be made to annualize the rate of return earned by the fund for that period. Where it appears from the facts and circumstances that the highest yearly rate of return of the fund for the 3 taxable years immediately preceding the taxable year in which the transfer of property is made has been purposely manipulated to be substantially less than the rate of return that would otherwise be reasonably anticipated with the purpose of obtaining an excessive charitable deduction, that rate of return may not be used. In that case, the highest yearly rate of return of the fund is determined by treating the fund as a pooled income fund that has been in existence for less than 3 preceding taxable years.

(4) *Pooled income funds in existence less than 3 taxable years.* If a pooled income fund has been in existence less than 3 taxable years immediately preceding the taxable year in which the transfer is made to the fund and the transfer to the fund is made after April 30, 1989, the highest rate of return is deemed to be the interest rate (rounded to the nearest two-tenths of one percent) that is 1 percent less than the highest annual average of the monthly section 7520 rates for the 3 calendar years immediately preceding the calendar year in which the transfer to the pooled income fund is made. The deemed rate of return for transfers to new pooled income funds is recomputed each calendar year using the monthly section 7520 rates for the 3-year period immediately preceding the calendar year in which each transfer to the fund is made until the fund has been in existence for 3 taxable years and can compute its highest rate of return for the 3 taxable years immediately preceding the taxable year in which the transfer of property to the fund is made in accordance with the rules set forth in the first sentence of paragraph (e)(3)(ii) of this section.

(5) *Computation of value of remainder interest.* The factor that is used in determining the present value of a remainder interest that is dependent on the termination of the life of one individual is the factor from Table S in paragraph (e)(6) of this section under the appropriate yearly rate of return opposite the number that corresponds to the age of the individual upon whose life the value of the remainder interest is based (see § 1.642(c)–6A for certain prior periods). The tables in paragraph (e)(6) of this section include factors for yearly rates of return from 4.2 to 14 percent. Many actuarial factors not contained in the tables in paragraph (e)(6) of this section are contained in Table S in Internal Revenue Service Publication 1457, "Actuarial Values, Book Aleph," (7–1999). A copy of this publication is available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. For other situations, see paragraph (b) of this section. If the yearly rate of return is a percentage that is between the yearly rates of return for which factors are provided, a linear interpolation must be made. The present value of the remainder interest is determined by multiplying the fair market value of the property on the valuation date by the appropriate remainder factor. This paragraph (e)(5) may be illustrated by the following example:

Example. A, who is 54 years and 8 months, transfers $100,000 to a pooled income fund, and retains a life income interest in the property. The highest yearly rate of return earned by the fund for its 3 preceding taxable years is 9.47 percent. In Table S, the remainder factor opposite 55 years under 9.4 percent is .17449 and under 9.6 percent is .17001. The present value of the remainder interest is $17,292.00, computed as follows:

Factor at 9.4 percent for age 55	.17449
Factor at 9.6 percent for age 55	.17001
Difference	.00448

Interpolation adjustment:

$$\frac{9.47\% - 9.4\%}{0.2\%} = \frac{x}{.00448}$$

$$x = .00157$$

Factor at 9.4 percent for age 55	.17449
Less: Interpolation adjustment	.00157
Interpolated factor	.17292

Present value of remainder interest:

($100,000 × .17292) $17,292.00

(6) *Actuarial tables.* In the case of transfers for which the valuation date is after April 30, 1999, the present value of a remainder interest dependent on the termination of one life in the case of a transfer to a pooled income fund is determined by use of the following Table S:

TABLE S.—BASED ON LIFE TABLE 90CM SINGLE LIFE REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1999

[Interest rate]

Age	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
0	.06752	.06130	.05586	.05109	.04691	.04322	.03998	.03711	.03458	.03233
1	.06137	.05495	.04932	.04438	.04003	.03620	.03283	.02985	.02721	.02487
2	.06325	.05667	.05088	.04580	.04132	.03737	.03388	.03079	.02806	.02563
3	.06545	.05869	.05275	.04752	.04291	.03883	.03523	.03203	.02920	.02668
4	.06784	.06092	.05482	.04944	.04469	.04048	.03676	.03346	.03052	.02791
5	.07040	.06331	.05705	.05152	.04662	.04229	.03845	.03503	.03199	.02928
6	.07310	.06583	.05941	.05372	.04869	.04422	.04025	.03672	.03357	.03076
7	.07594	.06849	.06191	.05607	.05089	.04628	.04219	.03854	.03528	.03236
8	.07891	.07129	.06453	.05853	.05321	.04846	.04424	.04046	.03709	.03407
9	.08203	.07423	.06731	.06115	.05567	.05079	.04643	.04253	.03904	.03592
10	.08532	.07734	.07024	.06392	.05829	.05326	.04877	.04474	.04114	.03790
11	.08875	.08059	.07331	.06683	.06104	.05587	.05124	.04709	.04336	.04002
12	.09233	.08398	.07653	.06989	.06394	.05862	.05385	.04957	.04572	.04226
13	.09601	.08748	.07985	.07304	.06693	.06146	.05655	.05214	.04816	.04458
14	.09974	.09102	.08322	.07624	.06997	.06435	.05929	.05474	.05064	.04694
15	.10350	.09460	.08661	.07946	.07303	.06725	.06204	.05735	.05312	.04930
16	.10728	.09818	.09001	.08268	.07608	.07014	.06479	.05996	.05559	.05164
17	.11108	.10179	.09344	.08592	.07916	.07306	.06755	.06257	.05807	.05399
18	.11494	.10545	.09691	.08921	.08227	.07601	.07034	.06521	.06057	.05636
19	.11889	.10921	.10047	.09259	.08548	.07904	.07322	.06794	.06315	.05880
20	.12298	.11310	.10417	.09610	.08881	.08220	.07622	.07078	.06584	.06135
21	.12722	.11713	.10801	.09976	.09228	.08550	.07935	.07375	.06866	.06403
22	.13159	.12130	.11199	.10354	.09588	.08893	.08260	.07685	.07160	.06682
23	.13613	.12563	.11612	.10748	.09964	.09250	.08601	.08009	.07468	.06975
24	.14084	.13014	.12043	.11160	.10357	.09625	.08958	.08349	.07793	.07284
25	.14574	.13484	.12493	.11591	.10768	.10018	.09334	.08708	.08135	.07611
26	.15084	.13974	.12963	.12041	.11199	.10431	.09728	.09085	.08496	.07956
27	.15615	.14485	.13454	.12513	.11652	.10865	.10144	.09484	.08878	.08322
28	.16166	.15016	.13965	.13004	.12124	.11319	.10580	.09901	.09279	.08706
29	.16737	.15567	.14497	.13516	.12617	.11792	.11035	.10339	.09699	.09109
30	.17328	.16138	.15048	.14047	.13129	.12286	.11510	.10796	.10138	.09532
31	.17938	.16728	.15618	.14599	.13661	.12799	.12004	.11272	.10597	.09974
32	.18568	.17339	.16210	.15171	.14214	.13333	.12520	.11769	.11076	.10435
33	.19220	.17972	.16824	.15766	.14790	.13889	.13058	.12289	.11578	.10920
34	.19894	.18627	.17460	.16383	.15388	.14468	.13618	.12831	.12102	.11426
35	.20592	.19307	.18121	.17025	.16011	.15073	.14204	.13399	.12652	.11958
36	.21312	.20010	.18805	.17691	.16658	.15701	.14814	.13990	.13225	.12514
37	.22057	.20737	.19514	.18382	.17331	.16356	.15450	.14608	.13825	.13096
38	.22827	.21490	.20251	.19100	.18031	.17038	.16113	.15253	.14452	.13705
39	.23623	.22270	.21013	.19845	.18759	.17747	.16805	.15927	.15108	.14344
40	.24446	.23078	.21805	.20620	.19516	.18487	.17527	.16631	.15795	.15013

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Age	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
41	.25298	.23915	.22626	.21425	.20305	.19259	.18282	.17368	.16514	.15715
42	.26178	.24782	.23478	.22262	.21125	.20062	.19069	.18138	.17267	.16450
43	.27087	.25678	.24360	.23129	.21977	.20898	.19888	.18941	.18053	.17220
44	.28025	.26603	.25273	.24027	.22860	.21766	.20740	.19777	.18873	.18023
45	.28987	.27555	.26212	.24953	.23772	.22664	.21622	.20644	.19724	.18858
46	.29976	.28533	.27179	.25908	.24714	.23591	.22536	.21542	.20606	.19725
47	.30987	.29535	.28171	.26889	.25682	.24546	.23476	.22468	.21518	.20621
48	.32023	.30563	.29190	.27897	.26678	.25530	.24447	.23425	.22460	.21549
49	.33082	.31615	.30234	.28931	.27702	.26543	.25447	.24412	.23434	.22509
50	.34166	.32694	.31306	.29995	.28756	.27586	.26479	.25432	.24441	.23502
51	.35274	.33798	.32404	.31085	.29838	.28658	.27541	.26482	.25479	.24528
52	.36402	.34924	.33525	.32200	.30946	.29757	.28630	.27561	.26547	.25584
53	.37550	.36070	.34668	.33339	.32078	.30882	.29746	.28667	.27643	.26669
54	.38717	.37237	.35833	.34500	.33234	.32031	.30888	.29801	.28766	.27782
55	.39903	.38424	.37019	.35683	.34413	.33205	.32056	.30961	.29918	.28925
56	.41108	.39631	.38227	.36890	.35617	.34405	.33250	.32149	.31099	.30097
57	.42330	.40857	.39455	.38118	.36844	.35629	.34469	.33363	.32306	.31297
58	.43566	.42098	.40699	.39364	.38089	.36873	.35710	.34600	.33538	.32522
59	.44811	.43351	.41956	.40623	.39350	.38133	.36968	.35855	.34789	.33768
60	.46066	.44613	.43224	.41896	.40624	.39408	.38243	.37127	.36058	.35033
61	.47330	.45887	.44505	.43182	.41914	.40699	.39535	.38418	.37347	.36318
62	.48608	.47175	.45802	.44485	.43223	.42011	.40848	.39732	.38660	.37629
63	.49898	.48478	.47115	.45807	.44550	.43343	.42184	.41069	.39997	.38966
64	.51200	.49793	.48442	.47143	.45895	.44694	.43539	.42427	.41357	.40326
65	.52512	.51121	.49782	.48495	.47255	.46062	.44912	.43805	.42738	.41709
66	.53835	.52461	.51137	.49862	.48634	.47449	.46307	.45206	.44143	.43118
67	.55174	.53818	.52511	.51250	.50034	.48860	.47727	.46633	.45576	.44556
68	.56524	.55188	.53899	.52654	.51452	.50291	.49168	.48083	.47034	.46020
69	.57882	.56568	.55299	.54071	.52885	.51737	.50627	.49552	.48513	.47506
70	.59242	.57951	.56703	.55495	.54325	.53193	.52096	.51034	.50004	.49007
71	.60598	.59332	.58106	.56918	.55767	.54651	.53569	.52520	.51503	.50516
72	.61948	.60707	.59504	.58338	.57206	.56108	.55043	.54009	.53004	.52029
73	.63287	.62073	.60895	.59751	.58640	.57561	.56513	.55495	.54505	.53543
74	.64621	.63435	.62282	.61162	.60073	.59015	.57985	.56984	.56009	.55061
75	.65953	.64796	.63671	.62575	.61510	.60473	.59463	.58480	.57523	.56591
76	.67287	.66160	.65063	.63995	.62954	.61940	.60952	.59989	.59050	.58135
77	.68622	.67526	.66459	.65419	.64404	.63415	.62450	.61509	.60590	.59694
78	.69954	.68892	.67856	.66845	.65858	.64895	.63955	.63036	.62140	.61264
79	.71278	.70250	.69246	.68265	.67308	.66372	.65457	.64563	.63690	.62836
80	.72581	.71588	.70618	.69668	.68740	.67833	.66945	.66077	.65227	.64396
81	.73857	.72899	.71962	.71045	.70147	.69268	.68408	.67566	.66741	.65933
82	.75101	.74178	.73274	.72389	.71522	.70672	.69840	.69024	.68225	.67441
83	.76311	.75423	.74553	.73700	.72864	.72044	.71240	.70451	.69678	.68919
84	.77497	.76645	.75809	.74988	.74183	.73393	.72618	.71857	.71110	.70377
85	.78665	.77848	.77047	.76260	.75487	.74728	.73982	.73250	.72530	.71823
86	.79805	.79025	.78258	.77504	.76764	.76036	.75320	.74617	.73925	.73245
87	.80904	.80159	.79427	.78706	.77998	.77301	.76615	.75940	.75277	.74624
88	.81962	.81251	.80552	.79865	.79188	.78521	.77865	.77220	.76584	.75958
89	.82978	.82302	.81636	.80980	.80335	.79699	.79072	.78455	.77847	.77248
90	.83952	.83309	.82676	.82052	.81437	.80831	.80234	.79645	.79064	.78492
91	.84870	.84260	.83658	.83064	.82479	.81902	.81332	.80771	.80217	.79671
92	.85716	.85136	.84563	.83998	.83441	.82891	.82348	.81812	.81283	.80761
93	.86494	.85942	.85396	.84858	.84326	.83801	.83283	.82771	.82266	.81767
94	.87216	.86690	.86170	.85657	.85149	.84648	.84153	.83664	.83181	.82704
95	.87898	.87397	.86902	.86412	.85928	.85450	.84977	.84510	.84049	.83592
96	.88537	.88060	.87587	.87121	.86659	.86203	.85751	.85305	.84864	.84427
97	.89127	.88672	.88221	.87775	.87335	.86898	.86467	.86040	.85618	.85200
98	.89680	.89245	.88815	.88389	.87968	.87551	.87138	.86730	.86326	.85926
99	.90217	.89803	.89393	.88987	.88585	.88187	.87793	.87402	.87016	.86633
100	.90738	.90344	.89953	.89567	.89183	.88804	.88428	.88056	.87687	.87322
101	.91250	.90876	.90504	.90137	.89772	.89412	.89054	.88699	.88348	.88000
102	.91751	.91396	.91045	.90696	.90350	.90007	.89668	.89331	.88997	.88666
103	.92247	.91912	.91579	.91249	.90922	.90598	.90276	.89957	.89640	.89326
104	.92775	.92460	.92148	.91839	.91532	.91227	.90924	.90624	.90326	.90031
105	.93290	.92996	.92704	.92415	.92127	.91841	.91558	.91276	.90997	.90719
106	.93948	.93680	.93415	.93151	.92889	.92628	.92370	.92113	.91857	.91604
107	.94739	.94504	.94271	.94039	.93808	.93579	.93351	.93124	.92899	.92675
108	.95950	.95767	.95585	.95404	.95224	.95045	.94867	.94689	.94512	.94336
109	.97985	.97893	.97801	.97710	.97619	.97529	.97438	.97348	.97259	.97170

Age	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
0	.03034	.02857	.02700	.02559	.02433	.02321	.02220	.02129	.02047	.01973
1	.02279	.02094	.01929	.01782	.01650	.01533	.01427	.01331	.01246	.01168

Age	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
2	.02347	.02155	.01983	.01829	.01692	.01569	.01458	.01358	.01268	.01187
3	.02444	.02243	.02065	.01905	.01761	.01632	.01516	.01412	.01317	.01232
4	.02558	.02349	.02163	.01996	.01846	.01712	.01590	.01481	.01382	.01292
5	.02686	.02469	.02275	.02101	.01945	.01804	.01677	.01562	.01458	.01364
6	.02825	.02600	.02398	.02217	.02053	.01906	.01773	.01653	.01544	.01445
7	.02976	.02742	.02532	.02343	.02172	.02019	.01880	.01754	.01640	.01536
8	.03137	.02894	.02675	.02479	.02301	.02140	.01995	.01864	.01744	.01635
9	.03311	.03059	.02832	.02627	.02442	.02274	.02122	.01985	.01859	.01745
10	.03499	.03237	.03001	.02788	.02595	.02420	.02262	.02118	.01987	.01867
11	.03700	.03428	.03183	.02961	.02760	.02578	.02413	.02262	.02125	.02000
12	.03913	.03632	.03377	.03146	.02937	.02748	.02575	.02418	.02275	.02144
13	.04135	.03843	.03579	.03339	.03122	.02924	.02744	.02580	.02431	.02294
14	.04359	.04057	.03783	.03534	.03308	.03102	.02915	.02744	.02587	.02444
15	.04584	.04270	.03986	.03728	.03493	.03279	.03083	.02905	.02742	.02593
16	.04806	.04482	.04187	.03919	.03674	.03452	.03248	.03063	.02892	.02736
17	.05029	.04692	.04387	.04108	.03855	.03623	.03411	.03218	.03040	.02877
18	.05253	.04905	.04588	.04299	.04036	.03795	.03574	.03373	.03187	.03017
19	.05484	.05124	.04796	.04496	.04222	.03972	.03742	.03532	.03339	.03161
20	.05726	.05354	.05013	.04702	.04418	.04158	.03919	.03700	.03498	.03313
21	.05980	.05595	.05242	.04920	.04625	.04354	.04105	.03877	.03667	.03473
22	.06246	.05847	.05482	.05147	.04841	.04559	.04301	.04063	.03844	.03642
23	.06524	.06112	.05734	.05387	.05069	.04777	.04508	.04260	.04032	.03821
24	.06819	.06392	.06001	.05642	.05312	.05008	.04728	.04470	.04232	.04012
25	.07131	.06690	.06285	.05913	.05570	.05255	.04964	.04695	.04447	.04218
26	.07460	.07005	.06586	.06200	.05845	.05518	.05215	.04936	.04677	.04438
27	.07810	.07340	.06907	.06508	.06140	.05800	.05485	.05195	.04925	.04676
28	.08179	.07693	.07246	.06833	.06451	.06098	.05772	.05469	.05189	.04929
29	.08566	.08065	.07603	.07176	.06780	.06414	.06075	.05761	.05469	.05198
30	.08973	.08456	.07978	.07536	.07127	.06748	.06396	.06069	.05766	.05483
31	.09398	.08865	.08372	.07915	.07491	.07098	.06733	.06394	.06078	.05785
32	.09843	.09294	.08785	.08313	.07875	.07468	.07089	.06737	.06409	.06103
33	.10310	.09745	.09220	.08732	.08279	.07858	.07466	.07100	.06759	.06441
34	.10799	.10217	.09676	.09173	.08705	.08269	.07862	.07483	.07129	.06798
35	.11314	.10715	.10157	.09638	.09155	.08704	.08283	.07890	.07522	.07179
36	.11852	.11236	.10662	.10127	.09628	.09162	.08726	.08319	.07938	.07581
37	.12416	.11783	.11193	.10641	.10126	.09645	.09194	.08772	.08377	.08006
38	.13009	.12359	.11751	.11183	.10652	.10155	.09689	.09253	.08843	.08459
39	.13629	.12962	.12338	.11753	.11206	.10693	.10212	.09761	.09337	.08938
40	.14281	.13597	.12955	.12355	.11791	.11262	.10766	.10299	.09860	.09447
41	.14966	.14264	.13606	.12989	.12409	.11864	.11352	.10870	.10417	.09989
42	.15685	.14966	.14291	.13657	.13061	.12500	.11972	.11475	.11006	.10564
43	.16437	.15702	.15010	.14360	.13747	.13171	.12627	.12115	.11631	.11174
44	.17224	.16472	.15764	.15098	.14469	.13876	.13317	.12789	.12290	.11819
45	.18042	.17274	.16550	.15867	.15223	.14615	.14040	.13496	.12982	.12496
46	.18893	.18110	.17370	.16671	.16011	.15387	.14796	.14238	.13708	.13207
47	.19775	.18975	.18220	.17505	.16830	.16190	.15584	.15010	.14466	.13950
48	.20688	.19873	.19102	.18373	.17682	.17027	.16406	.15817	.15258	.14727
49	.21633	.20804	.20018	.19274	.18568	.17898	.17262	.16658	.16084	.15539
50	.22612	.21769	.20969	.20210	.19490	.18805	.18155	.17536	.16948	.16388
51	.23625	.22769	.21955	.21182	.20448	.19749	.19084	.18452	.17849	.17275
52	.24669	.23799	.22973	.22186	.21438	.20726	.20047	.19400	.18784	.18196
53	.25742	.24861	.24022	.23222	.22461	.21735	.21043	.20383	.19753	.19151
54	.26845	.25952	.25101	.24290	.23516	.22777	.22072	.21399	.20756	.20140
55	.27978	.27074	.26212	.25389	.24604	.23853	.23136	.22450	.21793	.21166
56	.29140	.28227	.27355	.26522	.25725	.24963	.24233	.23535	.22867	.22227
57	.30333	.29411	.28529	.27686	.26879	.26106	.25365	.24656	.23976	.23324
58	.31551	.30621	.29731	.28878	.28061	.27278	.26528	.25807	.25116	.24453
59	.32790	.31854	.30956	.30095	.29269	.28477	.27716	.26986	.26284	.25610
60	.34050	.33107	.32202	.31334	.30500	.29699	.28929	.28190	.27478	.26794
61	.35331	.34384	.33473	.32598	.31757	.30948	.30170	.29422	.28701	.28007
62	.36639	.35688	.34772	.33892	.33044	.32229	.31443	.30687	.29958	.29255
63	.37974	.37020	.36101	.35216	.34363	.33542	.32750	.31986	.31250	.30539
64	.39334	.38378	.37456	.36568	.35711	.34884	.34087	.33317	.32574	.31857
65	.40718	.39761	.38838	.37947	.37087	.36257	.35455	.34681	.33932	.33208
66	.42128	.41172	.40249	.39357	.38496	.37663	.36858	.36079	.35326	.34597
67	.43569	.42616	.41694	.40803	.39941	.39107	.38299	.37518	.36761	.36028
68	.45038	.44089	.43170	.42281	.41419	.40585	.39777	.38994	.38235	.37499
69	.46531	.45587	.44672	.43786	.42927	.42094	.41286	.40503	.39743	.39006
70	.48040	.47103	.46194	.45312	.44456	.43626	.42820	.42038	.41278	.40540
71	.49558	.48629	.47727	.46851	.46000	.45174	.44371	.43591	.42832	.42095
72	.51082	.50162	.49268	.48399	.47554	.46733	.45934	.45157	.44401	.43666
73	.52607	.51697	.50813	.49952	.49114	.48299	.47506	.46733	.45981	.45249
74	.54139	.53241	.52367	.51515	.50686	.49879	.49092	.48325	.47578	.46849
75	.55683	.54798	.53936	.53095	.52276	.51477	.50698	.49938	.49197	.48474

Age	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
76	.57243	.56373	.55524	.54696	.53888	.53100	.52330	.51579	.50846	.50130
77	.58819	.57965	.57132	.56318	.55523	.54747	.53988	.53247	.52523	.51815
78	.60408	.59572	.58755	.57957	.57177	.56414	.55668	.54939	.54225	.53527
79	.62001	.61184	.60385	.59604	.58840	.58092	.57360	.56644	.55943	.55256
80	.63582	.62786	.62007	.61244	.60497	.59765	.59048	.58347	.57659	.56985
81	.65142	.64367	.63608	.62864	.62135	.61421	.60721	.60034	.59361	.58701
82	.66673	.65920	.65182	.64458	.63748	.63052	.62368	.61698	.61041	.60395
83	.68175	.67444	.66728	.66024	.65334	.64656	.63991	.63338	.62696	.62066
84	.69657	.68950	.68256	.67574	.66904	.66246	.65599	.64964	.64340	.63727
85	.71128	.70446	.69775	.69116	.68467	.67830	.67204	.66587	.65982	.65386
86	.72576	.71919	.71272	.70636	.70010	.69394	.68789	.68193	.67606	.67029
87	.73981	.73349	.72726	.72114	.71511	.70917	.70333	.69757	.69190	.68632
88	.75342	.74735	.74137	.73548	.72968	.72396	.71833	.71279	.70732	.70194
89	.76658	.76076	.75503	.74938	.74381	.73832	.73290	.72757	.72231	.71712
90	.77928	.77371	.76823	.76281	.75748	.75221	.74702	.74190	.73684	.73186
91	.79131	.78600	.78075	.77557	.77046	.76542	.76044	.75553	.75068	.74589
92	.80246	.79737	.79235	.78740	.78250	.77767	.77290	.76818	.76353	.75893
93	.81274	.80788	.80307	.79832	.79363	.78899	.78441	.77989	.77542	.77100
94	.82232	.81766	.81306	.80850	.80401	.79956	.79517	.79082	.78653	.78228
95	.83141	.82695	.82254	.81818	.81387	.80961	.80539	.80122	.79710	.79302
96	.83996	.83569	.83147	.82729	.82316	.81907	.81503	.81103	.80707	.80315
97	.84787	.84378	.83973	.83573	.83176	.82784	.82396	.82012	.81632	.81255
98	.85530	.85138	.84750	.84366	.83985	.83609	.83236	.82867	.82502	.82140
99	.86255	.85880	.85508	.85140	.84776	.84415	.84057	.83703	.83353	.83005
100	.86960	.86601	.86246	.85894	.85546	.85200	.84858	.84519	.84183	.83849
101	.87655	.87313	.86974	.86638	.86305	.85975	.85648	.85324	.85003	.84684
102	.88338	.88012	.87689	.87369	.87052	.86738	.86426	.86116	.85809	.85505
103	.89015	.88706	.88399	.88095	.87793	.87494	.87197	.86903	.86611	.86321
104	.89737	.89446	.89157	.88871	.88586	.88304	.88024	.87745	.87469	.87195
105	.90443	.90170	.89898	.89628	.89360	.89094	.88830	.88568	.88307	.88049
106	.91351	.91101	.90852	.90605	.90359	.90115	.89873	.89632	.89392	.89154
107	.92452	.92230	.92010	.91791	.91573	.91356	.91141	.90927	.90714	.90502
108	.94161	.93987	.93814	.93641	.93469	.93298	.93128	.92958	.92790	.92622
109	.97081	.96992	.96904	.96816	.96729	.96642	.96555	.96468	.96382	.96296

Age	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
0	.01906	.01845	.01790	.01740	.01694	.01652	.01613	.01578	.01546	.01516
1	.01098	.01034	.00977	.00924	.00876	.00833	.00793	.00756	.00722	.00691
2	.01113	.01046	.00986	.00930	.00880	.00834	.00791	.00753	.00717	.00684
3	.01155	.01084	.01020	.00962	.00909	.00860	.00816	.00775	.00737	.00702
4	.01211	.01137	.01069	.01008	.00952	.00900	.00853	.00810	.00770	.00733
5	.01279	.01201	.01130	.01065	.01006	.00952	.00902	.00856	.00814	.00775
6	.01356	.01274	.01199	.01131	.01068	.01011	.00959	.00910	.00865	.00824
7	.01442	.01356	.01277	.01205	.01140	.01079	.01023	.00972	.00925	.00881
8	.01536	.01446	.01363	.01287	.01218	.01154	.01096	.01041	.00991	.00945
9	.01641	.01546	.01460	.01380	.01307	.01240	.01178	.01120	.01068	.01019
10	.01758	.01659	.01567	.01484	.01407	.01336	.01270	.01210	.01154	.01103
11	.01886	.01781	.01686	.01598	.01517	.01442	.01373	.01310	.01251	.01196
12	.02024	.01915	.01814	.01721	.01636	.01558	.01485	.01419	.01357	.01299
13	.02168	.02054	.01948	.01851	.01762	.01679	.01603	.01533	.01467	.01407
14	.02313	.02193	.02083	.01981	.01887	.01801	.01721	.01646	.01578	.01514
15	.02456	.02330	.02214	.02107	.02009	.01918	.01834	.01756	.01684	.01617
16	.02593	.02462	.02340	.02229	.02126	.02030	.01942	.01860	.01785	.01714
17	.02728	.02590	.02463	.02346	.02238	.02138	.02046	.01960	.01880	.01806
18	.02861	.02717	.02584	.02462	.02348	.02243	.02146	.02056	.01972	.01894
19	.02998	.02847	.02708	.02580	.02461	.02351	.02249	.02154	.02066	.01984
20	.03142	.02984	.02839	.02704	.02580	.02465	.02357	.02258	.02165	.02079
21	.03295	.03130	.02978	.02837	.02706	.02585	.02473	.02368	.02271	.02180
22	.03455	.03283	.03124	.02976	.02839	.02712	.02594	.02484	.02382	.02286
23	.03626	.03446	.03279	.03124	.02981	.02847	.02723	.02608	.02500	.02400
24	.03809	.03620	.03446	.03283	.03133	.02993	.02863	.02741	.02628	.02522
25	.04005	.03808	.03625	.03456	.03298	.03151	.03014	.02887	.02768	.02656
26	.04216	.04010	.03819	.03641	.03476	.03322	.03178	.03044	.02919	.02802
27	.04444	.04229	.04029	.03843	.03670	.03508	.03357	.03217	.03085	.02962
28	.04687	.04463	.04254	.04059	.03877	.03708	.03550	.03402	.03263	.03133
29	.04946	.04712	.04493	.04289	.04099	.03922	.03756	.03600	.03455	.03318
30	.05221	.04976	.04748	.04534	.04335	.04149	.03975	.03812	.03659	.03515
31	.05511	.05255	.05017	.04794	.04585	.04390	.04208	.04037	.03876	.03725
32	.05818	.05551	.05302	.05069	.04851	.04647	.04455	.04276	.04107	.03948
33	.06144	.05866	.05606	.05363	.05135	.04921	.04720	.04532	.04355	.04188
34	.06489	.06200	.05928	.05674	.05436	.05212	.05002	.04805	.04619	.04444
35	.06857	.06555	.06273	.06007	.05758	.05524	.05304	.05097	.04902	.04718
36	.07246	.06932	.06638	.06361	.06101	.05856	.05626	.05409	.05205	.05012

Age	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
37	.07659	.07332	.07025	.06737	.06466	.06210	.05969	.05742	.05528	.05325
38	.08098	.07758	.07439	.07138	.06855	.06588	.06336	.06099	.05874	.05662
39	.08563	.08210	.07878	.07565	.07270	.06992	.06729	.06480	.06245	.06023
40	.09059	.08692	.08347	.08021	.07714	.07423	.07149	.06889	.06643	.06411
41	.09586	.09206	.08848	.08509	.08189	.07886	.07600	.07329	.07072	.06828
42	.10147	.09753	.09381	.09029	.08696	.08381	.08083	.07800	.07531	.07277
43	.10742	.10334	.09948	.09583	.09237	.08909	.08598	.08304	.08024	.07758
44	.11373	.10950	.10551	.10172	.09813	.09472	.09148	.08841	.08549	.08272
45	.12035	.11599	.11185	.10792	.10420	.10066	.09730	.09410	.09106	.08817
46	.12732	.12281	.11853	.11447	.11061	.10694	.10345	.10013	.09696	.09395
47	.13460	.12995	.12553	.12133	.11733	.11353	.10991	.10646	.10317	.10004
48	.14223	.13743	.13287	.12853	.12439	.12046	.11671	.11313	.10972	.10646
49	.15020	.14526	.14056	.13608	.13181	.12774	.12385	.12015	.11661	.11322
50	.15855	.15347	.14862	.14401	.13960	.13540	.13138	.12754	.12388	.12037
51	.16727	.16205	.15707	.15232	.14777	.14344	.13929	.13532	.13153	.12789
52	.17634	.17098	.16587	.16097	.15630	.15183	.14755	.14345	.13953	.13577
53	.18576	.18027	.17501	.16999	.16518	.16057	.15616	.15194	.14789	.14400
54	.19552	.18990	.18451	.17935	.17441	.16968	.16514	.16078	.15661	.15260
55	.20564	.19989	.19437	.18908	.18402	.17915	.17449	.17001	.16571	.16157
56	.21613	.21025	.20461	.19919	.19400	.18901	.18422	.17962	.17519	.17093
57	.22698	.22098	.21522	.20968	.20436	.19925	.19434	.18961	.18507	.18069
58	.23816	.23204	.22616	.22051	.21507	.20984	.20481	.19996	.19530	.19080
59	.24962	.24339	.23740	.23163	.22608	.22073	.21558	.21062	.20584	.20123
60	.26136	.25502	.24892	.24304	.23738	.23192	.22666	.22158	.21669	.21196
61	.27339	.26695	.26075	.25477	.24900	.24343	.23806	.23288	.22787	.22304
62	.28578	.27925	.27295	.26687	.26100	.25533	.24985	.24456	.23945	.23451
63	.29854	.29192	.28553	.27935	.27339	.26762	.26205	.25666	.25145	.24641
64	.31164	.30494	.29846	.29221	.28615	.28030	.27463	.26915	.26384	.25870
65	.32508	.31831	.31177	.30543	.29930	.29336	.28761	.28203	.27663	.27140
66	.33891	.33208	.32547	.31906	.31285	.30684	.30101	.29536	.28987	.28456
67	.35318	.34630	.33963	.33316	.32689	.32081	.31491	.30918	.30363	.29823
68	.36785	.36093	.35422	.34770	.34138	.33524	.32928	.32349	.31787	.31240
69	.38290	.37595	.36920	.36265	.35628	.35009	.34408	.33824	.33256	.32703
70	.39823	.39127	.38450	.37791	.37151	.36529	.35924	.35335	.34762	.34204
71	.41378	.40681	.40003	.39343	.38701	.38076	.37467	.36875	.36298	.35736
72	.42950	.42253	.41575	.40914	.40271	.39644	.39034	.38438	.37858	.37293
73	.44535	.43840	.43162	.42502	.41858	.41231	.40619	.40022	.39440	.38872
74	.46139	.45446	.44771	.44112	.43469	.42842	.42230	.41632	.41049	.40479
75	.47769	.47080	.46408	.45752	.45111	.44485	.43874	.43277	.42693	.42123
76	.49430	.48747	.48079	.47427	.46790	.46167	.45558	.44963	.44380	.43811
77	.51123	.50447	.49786	.49139	.48506	.47888	.47282	.46690	.46111	.45543
78	.52845	.52177	.51523	.50884	.50257	.49645	.49044	.48457	.47881	.47317
79	.54584	.53926	.53282	.52650	.52032	.51426	.50833	.50251	.49681	.49122
80	.56325	.55678	.55044	.54423	.53813	.53216	.52630	.52056	.51492	.50939
81	.58054	.57419	.56797	.56186	.55587	.54999	.54422	.53856	.53300	.52754
82	.59762	.59140	.58530	.57931	.57343	.56766	.56198	.55641	.55094	.54557
83	.61448	.60840	.60243	.59657	.59081	.58515	.57958	.57411	.56874	.56346
84	.63124	.62531	.61949	.61376	.60813	.60259	.59715	.59179	.58652	.58134
85	.64800	.64224	.63657	.63099	.62550	.62010	.61478	.60955	.60441	.59934
86	.66461	.65902	.65351	.64810	.64276	.63751	.63233	.62724	.62222	.61728
87	.68083	.67541	.67008	.66483	.65965	.65455	.64953	.64458	.63970	.63489
88	.69663	.69140	.68624	.68116	.67615	.67121	.66634	.66154	.65680	.65213
89	.71201	.70696	.70199	.69708	.69224	.68747	.68276	.67811	.67353	.66900
90	.72694	.72209	.71730	.71257	.70791	.70330	.69876	.69427	.68984	.68547
91	.74117	.73650	.73190	.72735	.72286	.71842	.71404	.70972	.70545	.70123
92	.75439	.74991	.74548	.74110	.73678	.73251	.72829	.72412	.72000	.71593
93	.76664	.76233	.75806	.75385	.74969	.74557	.74150	.73748	.73350	.72957
94	.77809	.77394	.76983	.76578	.76177	.75780	.75388	.75000	.74616	.74237
95	.78899	.78500	.78106	.77715	.77329	.76947	.76569	.76195	.75826	.75460
96	.79928	.79544	.79165	.78790	.78418	.78050	.77686	.77326	.76970	.76617
97	.80883	.80514	.80149	.79787	.79430	.79075	.78725	.78377	.78033	.77693
98	.81781	.81427	.81075	.80727	.80382	.80041	.79703	.79368	.79036	.78708
99	.82661	.82320	.81982	.81648	.81316	.80988	.80662	.80340	.80020	.79704
100	.83519	.83192	.82868	.82547	.82228	.81913	.81600	.81290	.80982	.80678
101	.84368	.84055	.83744	.83437	.83131	.82829	.82529	.82231	.81936	.81643
102	.85203	.84904	.84607	.84313	.84021	.83731	.83444	.83159	.82876	.82596
103	.86034	.85748	.85465	.85184	.84906	.84629	.84355	.84082	.83812	.83544
104	.86923	.86653	.86385	.86119	.85855	.85593	.85333	.85074	.84818	.84563
105	.87792	.87537	.87283	.87032	.86782	.86534	.86287	.86042	.85799	.85557
106	.88918	.88683	.88450	.88218	.87987	.87758	.87530	.87304	.87079	.86855
107	.90291	.90082	.89873	.89666	.89460	.89255	.89051	.88849	.88647	.88447
108	.92455	.92288	.92123	.91958	.91794	.91630	.91468	.91306	.91145	.90984
109	.96211	.96125	.96041	.95956	.95872	.95788	.95704	.95620	.95537	.95455

Age	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
0	.01488	.01463	.01439	.01417	.01396	.01377	.01359	.01343	.01327	.01312
1	.00662	.00636	.00612	.00589	.00568	.00548	.00530	.00513	.00497	.00482
2	.00654	.00626	.00600	.00576	.00554	.00533	.00514	.00496	.00479	.00463
3	.00670	.00641	.00613	.00588	.00564	.00542	.00522	.00502	.00484	.00468
4	.00699	.00668	.00639	.00612	.00587	.00563	.00542	.00521	.00502	.00484
5	.00739	.00706	.00675	.00646	.00620	.00595	.00571	.00550	.00529	.00510
6	.00786	.00751	.00718	.00687	.00659	.00633	.00608	.00585	.00563	.00543
7	.00841	.00803	.00769	.00736	.00706	.00678	.00652	.00627	.00604	.00582
8	.00902	.00863	.00826	.00791	.00759	.00730	.00702	.00675	.00651	.00628
9	.00973	.00931	.00892	.00856	.00822	.00790	.00760	.00733	.00706	.00682
10	.01055	.01010	.00969	.00930	.00894	.00861	.00829	.00799	.00772	.00746
11	.01146	.01099	.01055	.01014	.00976	.00940	.00907	.00875	.00846	.00818
12	.01246	.01196	.01150	.01106	.01066	.01028	.00993	.00960	.00928	.00899
13	.01351	.01298	.01249	.01204	.01161	.01121	.01084	.01049	.01016	.00985
14	.01455	.01400	.01348	.01300	.01255	.01213	.01173	.01136	.01102	.01069
15	.01555	.01497	.01443	.01392	.01345	.01300	.01259	.01220	.01183	.01148
16	.01648	.01587	.01530	.01477	.01427	.01380	.01336	.01295	.01257	.01220
17	.01737	.01673	.01612	.01556	.01504	.01455	.01408	.01365	.01324	.01286
18	.01822	.01754	.01691	.01632	.01576	.01525	.01476	.01430	.01387	.01347
19	.01908	.01837	.01770	.01708	.01650	.01595	.01544	.01495	.01450	.01407
20	.01999	.01924	.01854	.01788	.01726	.01669	.01615	.01564	.01516	.01471
21	.02096	.02017	.01943	.01874	.01809	.01748	.01691	.01637	.01586	.01539
22	.02197	.02114	.02036	.01963	.01895	.01830	.01770	.01713	.01660	.01610
23	.02306	.02218	.02136	.02059	.01987	.01919	.01855	.01795	.01739	.01686
24	.02424	.02331	.02245	.02163	.02087	.02016	.01948	.01885	.01825	.01769
25	.02552	.02455	.02364	.02278	.02197	.02122	.02051	.01984	.01920	.01861
26	.02692	.02589	.02493	.02403	.02318	.02238	.02162	.02091	.02025	.01961
27	.02846	.02738	.02636	.02541	.02451	.02367	.02287	.02212	.02141	.02074
28	.03012	.02898	.02791	.02690	.02595	.02506	.02422	.02342	.02267	.02196
29	.03190	.03070	.02957	.02851	.02751	.02656	.02567	.02483	.02404	.02329
30	.03381	.03254	.03135	.03023	.02917	.02817	.02723	.02634	.02551	.02471
31	.03583	.03450	.03324	.03206	.03094	.02989	.02890	.02796	.02707	.02623
32	.03799	.03659	.03527	.03402	.03284	.03173	.03068	.02968	.02874	.02785
33	.04031	.03883	.03744	.03612	.03488	.03371	.03260	.03155	.03055	.02961
34	.04279	.04123	.03976	.03838	.03707	.03583	.03465	.03354	.03249	.03149
35	.04545	.04382	.04227	.04081	.03943	.03812	.03688	.03571	.03459	.03354
36	.04830	.04658	.04495	.04341	.04196	.04058	.03927	.03803	.03685	.03573
37	.05134	.04953	.04782	.04620	.04467	.04321	.04183	.04052	.03928	.03809
38	.05462	.05272	.05092	.04921	.04760	.04606	.04461	.04322	.04191	.04066
39	.05812	.05613	.05424	.05245	.05075	.04913	.04760	.04614	.04475	.04343
40	.06190	.05981	.05782	.05594	.05415	.05245	.05083	.04929	.04783	.04643
41	.06597	.06378	.06170	.05972	.05784	.05605	.05435	.05272	.05118	.04970
42	.07035	.06806	.06587	.06380	.06182	.05994	.05815	.05644	.05481	.05326
43	.07505	.07265	.07036	.06818	.06611	.06414	.06225	.06045	.05874	.05710
44	.08008	.07757	.07518	.07290	.07072	.06865	.06667	.06478	.06298	.06125
45	.08542	.08279	.08029	.07791	.07563	.07346	.07138	.06940	.06750	.06569
46	.09108	.08834	.08573	.08324	.08085	.07858	.07640	.07432	.07233	.07043
47	.09705	.09419	.09147	.08886	.08637	.08399	.08172	.07954	.07745	.07545
48	.10335	.10038	.09754	.09482	.09222	.08973	.08735	.08507	.08288	.08078
49	.10999	.10690	.10394	.10111	.09840	.09581	.09332	.09093	.08864	.08644
50	.11701	.11380	.11073	.10778	.10496	.10225	.09965	.09716	.09477	.09247
51	.12441	.12108	.11789	.11482	.11189	.10907	.10636	.10376	.10126	.09886
52	.13217	.12871	.12540	.12222	.11916	.11623	.11341	.11071	.10810	.10560
53	.14028	.13670	.13327	.12997	.12680	.12375	.12082	.11801	.11529	.11268
54	.14875	.14505	.14150	.13808	.13480	.13163	.12859	.12566	.12284	.12012
55	.15760	.15378	.15011	.14657	.14317	.13989	.13674	.13370	.13077	.12794
56	.16684	.16290	.15911	.15546	.15194	.14855	.14528	.14213	.13909	.13615
57	.17648	.17242	.16851	.16474	.16111	.15760	.15422	.15096	.14781	.14477
58	.18647	.18229	.17827	.17438	.17064	.16702	.16353	.16015	.15689	.15374
59	.19678	.19249	.18835	.18435	.18049	.17676	.17316	.16968	.16631	.16305
60	.20740	.20300	.19875	.19464	.19066	.18682	.18311	.17952	.17604	.17268
61	.21837	.21385	.20949	.20527	.20119	.19724	.19341	.18971	.18613	.18266
62	.22973	.22511	.22064	.21631	.21212	.20807	.20414	.20033	.19664	.19306
63	.24152	.23680	.23222	.22779	.22350	.21934	.21530	.21139	.20760	.20392
64	.25372	.24890	.24422	.23969	.23529	.23103	.22690	.22289	.21899	.21521
65	.26633	.26141	.25664	.25201	.24752	.24316	.23893	.23482	.23083	.22695
66	.27940	.27439	.26953	.26481	.26023	.25577	.25145	.24724	.24316	.23918
67	.29299	.28790	.28296	.27815	.27348	.26894	.26453	.26024	.25606	.25200
68	.30709	.30193	.29691	.29202	.28728	.28265	.27816	.27378	.26952	.26537
69	.32166	.31643	.31134	.30639	.30157	.29687	.29230	.28785	.28351	.27928
70	.33661	.33133	.32618	.32116	.31628	.31152	.30688	.30235	.29794	.29364
71	.35188	.34654	.34134	.33627	.33133	.32651	.32181	.31722	.31275	.30838
72	.36742	.36204	.35679	.35168	.34668	.34181	.33706	.33241	.32788	.32345
73	.38317	.37776	.37248	.36733	.36229	.35738	.35257	.34788	.34330	.33882

Age	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
74	.39923	.39380	.38849	.38330	.37823	.37328	.36844	.36370	.35908	.35455
75	.41566	.41021	.40489	.39968	.39459	.38961	.38474	.37997	.37531	.37074
76	.43254	.42709	.42176	.41655	.41144	.40645	.40156	.39677	.39208	.38749
77	.44988	.44444	.43912	.43391	.42880	.42380	.41891	.41411	.40940	.40479
78	.46765	.46224	.45694	.45174	.44665	.44166	.43677	.43197	.42726	.42265
79	.48574	.48037	.47510	.46993	.46487	.45990	.45502	.45024	.44554	.44094
80	.50397	.49865	.49343	.48830	.48327	.47834	.47349	.46873	.46406	.45947
81	.52219	.51693	.51176	.50669	.50171	.49682	.49201	.48729	.48265	.47809
82	.54029	.53510	.53000	.52499	.52007	.51523	.51047	.50580	.50120	.49667
83	.55826	.55315	.54813	.54319	.53834	.53356	.52886	.52424	.51969	.51522
84	.57624	.57123	.56629	.56144	.55666	.55195	.54732	.54277	.53828	.53386
85	.59435	.58944	.58460	.57984	.57516	.57054	.56599	.56151	.55710	.55275
86	.61241	.60762	.60289	.59824	.59365	.58913	.58468	.58029	.57596	.57170
87	.63015	.62548	.62087	.61633	.61185	.60744	.60309	.59880	.59456	.59039
88	.64753	.64299	.63851	.63409	.62973	.62543	.62118	.61700	.61287	.60879
89	.66454	.66013	.65579	.65150	.64726	.64308	.63895	.63488	.63086	.62689
90	.68115	.67689	.67268	.66853	.66442	.66037	.65637	.65241	.64851	.64465
91	.69706	.69294	.68887	.68486	.68089	.67696	.67309	.66925	.66547	.66173
92	.71190	.70792	.70399	.70011	.69627	.69247	.68872	.68501	.68134	.67771
93	.72569	.72184	.71804	.71429	.71057	.70689	.70326	.69967	.69611	.69259
94	.73861	.73490	.73123	.72759	.72400	.72044	.71692	.71344	.71000	.70659
95	.75097	.74739	.74384	.74033	.73686	.73342	.73002	.72665	.72331	.72001
96	.76267	.75922	.75579	.75240	.74905	.74572	.74243	.73917	.73595	.73275
97	.77356	.77022	.76691	.76363	.76039	.75718	.75399	.75084	.74772	.74463
98	.78382	.78059	.77740	.77423	.77110	.76799	.76491	.76186	.75884	.75584
99	.79390	.79079	.78771	.78465	.78162	.77862	.77565	.77270	.76978	.76688
100	.80376	.80076	.79779	.79485	.79193	.78904	.78617	.78333	.78051	.77771
101	.81353	.81066	.80780	.80497	.80217	.79938	.79662	.79388	.79117	.78847
102	.82318	.82042	.81768	.81496	.81227	.80960	.80694	.80431	.80170	.79911
103	.83278	.83014	.82752	.82491	.82233	.81977	.81723	.81470	.81220	.80971
104	.84310	.84059	.83810	.83563	.83317	.83073	.82831	.82591	.82352	.82115
105	.85318	.85079	.84843	.84607	.84374	.84142	.83911	.83682	.83455	.83229
106	.86633	.86413	.86193	.85975	.85758	.85543	.85329	.85116	.84904	.84694
107	.88247	.88049	.87852	.87656	.87460	.87266	.87073	.86881	.86690	.86500
108	.90825	.90666	.90507	.90350	.90193	.90037	.89881	.89727	.89572	.89419
109	.95372	.95290	.95208	.95126	.95045	.94964	.94883	.94803	.94723	.94643

Age	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
0	.01298	.01285	.01273	.01261	.01250	.01240	.01230	.01221	.01212	.01203
1	.00468	.00455	.00443	.00431	.00420	.00410	.00400	.00391	.00382	.00374
2	.00448	.00435	.00421	.00409	.00398	.00387	.00376	.00366	.00357	.00348
3	.00452	.00437	.00423	.00410	.00398	.00386	.00375	.00365	.00355	.00345
4	.00468	.00452	.00437	.00423	.00410	.00397	.00386	.00375	.00364	.00354
5	.00493	.00476	.00460	.00445	.00431	.00418	.00405	.00393	.00382	.00371
6	.00524	.00506	.00489	.00473	.00458	.00444	.00430	.00418	.00406	.00394
7	.00562	.00543	.00525	.00508	.00492	.00477	.00462	.00449	.00436	.00423
8	.00606	.00586	.00566	.00548	.00531	.00515	.00499	.00485	.00471	.00458
9	.00659	.00637	.00616	.00597	.00579	.00561	.00545	.00529	.00514	.00500
10	.00721	.00698	.00676	.00655	.00636	.00617	.00600	.00583	.00567	.00552
11	.00792	.00767	.00744	.00722	.00701	.00682	.00663	.00645	.00628	.00612
12	.00871	.00845	.00821	.00797	.00775	.00754	.00735	.00716	.00698	.00681
13	.00955	.00928	.00902	.00877	.00854	.00831	.00810	.00790	.00771	.00753
14	.01038	.01009	.00981	.00955	.00930	.00907	.00885	.00864	.00843	.00824
15	.01116	.01085	.01056	.01028	.01002	.00977	.00954	.00932	.00910	.00890
16	.01186	.01153	.01123	.01094	.01066	.01040	.01015	.00992	.00969	.00948
17	.01250	.01215	.01183	.01152	.01124	.01096	.01070	.01045	.01022	.00999
18	.01308	.01272	.01238	.01206	.01175	.01147	.01119	.01093	.01068	.01044
19	.01367	.01329	.01293	.01259	.01227	.01196	.01167	.01140	.01113	.01088
20	.01428	.01388	.01350	.01314	.01280	.01248	.01217	.01188	.01161	.01134
21	.01494	.01451	.01411	.01373	.01337	.01303	.01271	.01240	.01211	.01183
22	.01562	.01517	.01475	.01435	.01397	.01361	.01326	.01294	.01263	.01233
23	.01635	.01588	.01543	.01501	.01460	.01422	.01386	.01351	.01319	.01287
24	.01716	.01665	.01618	.01573	.01530	.01489	.01451	.01415	.01380	.01347
25	.01804	.01751	.01701	.01653	.01608	.01565	.01524	.01485	.01448	.01413
26	.01902	.01845	.01792	.01741	.01693	.01648	.01604	.01563	.01524	.01487
27	.02011	.01951	.01895	.01841	.01790	.01742	.01696	.01652	.01610	.01571
28	.02129	.02066	.02006	.01949	.01895	.01844	.01795	.01748	.01704	.01662
29	.02258	.02191	.02127	.02067	.02009	.01955	.01903	.01853	.01806	.01762
30	.02396	.02325	.02257	.02193	.02132	.02074	.02019	.01966	.01916	.01869
31	.02543	.02467	.02396	.02328	.02263	.02201	.02143	.02087	.02034	.01983
32	.02701	.02621	.02545	.02472	.02404	.02338	.02276	.02217	.02160	.02106
33	.02871	.02786	.02706	.02629	.02556	.02487	.02420	.02357	.02297	.02240
34	.03054	.02964	.02879	.02797	.02720	.02646	.02576	.02509	.02445	.02383

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Age	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
35	.03253	.03158	.03067	.02981	.02898	.02820	.02745	.02674	.02606	.02541
36	.03467	.03366	.03269	.03178	.03090	.03007	.02928	.02852	.02779	.02710
37	.03697	.03590	.03488	.03391	.03298	.03209	.03125	.03044	.02967	.02893
38	.03947	.03833	.03725	.03622	.03524	.03430	.03340	.03254	.03172	.03094
39	.04217	.04096	.03982	.03873	.03768	.03669	.03573	.03482	.03395	.03312
40	.04510	.04383	.04262	.04146	.04035	.03930	.03828	.03732	.03639	.03550
41	.04830	.04695	.04567	.04445	.04327	.04215	.04108	.04005	.03907	.03812
42	.05177	.05035	.04900	.04770	.04646	.04527	.04413	.04304	.04200	.04100
43	.05553	.05404	.05261	.05123	.04992	.04866	.04746	.04630	.04520	.04413
44	.05960	.05802	.05651	.05506	.05368	.05235	.05107	.04985	.04867	.04754
45	.06395	.06229	.06069	.05917	.05770	.05630	.05495	.05365	.05241	.05121
46	.06860	.06685	.06517	.06356	.06202	.06053	.05911	.05774	.05643	.05516
47	.07353	.07169	.06992	.06823	.06660	.06504	.06353	.06209	.06070	.05936
48	.07877	.07684	.07498	.07320	.07149	.06984	.06826	.06673	.06527	.06385
49	.08433	.08231	.08036	.07849	.07669	.07495	.07329	.07168	.07013	.06864
50	.09026	.08814	.08609	.08413	.08224	.08042	.07867	.07698	.07535	.07378
51	.09655	.09433	.09219	.09013	.08815	.08624	.08440	.08262	.08091	.07926
52	.10318	.10086	.09863	.09647	.09439	.09239	.09046	.08860	.08680	.08506
53	.11017	.10774	.10541	.10315	.10098	.09888	.09686	.09491	.09302	.09120
54	.11750	.11498	.11254	.11019	.10792	.10572	.10361	.10156	.09958	.09767
55	.12522	.12258	.12005	.11759	.11522	.11294	.11072	.10859	.10652	.10451
56	.13332	.13059	.12794	.12539	.12292	.12054	.11823	.11599	.11383	.11174
57	.14183	.13899	.13624	.13359	.13102	.12853	.12613	.12380	.12154	.11936
58	.15070	.14775	.14490	.14215	.13948	.13689	.13439	.13197	.12962	.12734
59	.15990	.15685	.15389	.15103	.14826	.14558	.14298	.14046	.13801	.13564
60	.16942	.16626	.16321	.16024	.15737	.15459	.15189	.14927	.14673	.14426
61	.17929	.17603	.17287	.16981	.16684	.16395	.16115	.15844	.15580	.15324
62	.18960	.18623	.18297	.17980	.17673	.17375	.17085	.16803	.16530	.16264
63	.20035	.19688	.19352	.19025	.18708	.18400	.18100	.17809	.17525	.17250
64	.21154	.20797	.20451	.20114	.19787	.19469	.19159	.18859	.18566	.18281
65	.22318	.21951	.21595	.21249	.20912	.20584	.20265	.19955	.19652	.19358
66	.23532	.23156	.22790	.22434	.22088	.21751	.21422	.21102	.20791	.20487
67	.24804	.24419	.24044	.23679	.23324	.22977	.22640	.22311	.21990	.21678
68	.26133	.25740	.25356	.24983	.24618	.24263	.23917	.23579	.23250	.22929
69	.27516	.27114	.26723	.26341	.25969	.25605	.25251	.24905	.24567	.24237
70	.28945	.28536	.28137	.27747	.27367	.26996	.26633	.26279	.25934	.25596
71	.30412	.29996	.29590	.29193	.28806	.28427	.28057	.27696	.27343	.26998
72	.31913	.31491	.31078	.30675	.30281	.29895	.29519	.29150	.28790	.28438
73	.33444	.33016	.32597	.32188	.31788	.31396	.31013	.30638	.30271	.29913
74	.35012	.34579	.34155	.33741	.33335	.32938	.32549	.32168	.31795	.31430
75	.36628	.36190	.35762	.35343	.34932	.34530	.34136	.33750	.33372	.33001
76	.38299	.37858	.37427	.37004	.36589	.36183	.35784	.35394	.35011	.34636
77	.40028	.39585	.39151	.38725	.38307	.37898	.37496	.37103	.36716	.36337
78	.41812	.41368	.40933	.40506	.40086	.39675	.39271	.38874	.38485	.38103
79	.43641	.43198	.42762	.42334	.41914	.41502	.41096	.40698	.40308	.39924
80	.45496	.45054	.44619	.44192	.43772	.43360	.42954	.42556	.42164	.41779
81	.47360	.46920	.46487	.46061	.45643	.45231	.44827	.44429	.44038	.43653
82	.49223	.48785	.48355	.47932	.47516	.47106	.46703	.46307	.45916	.45532
83	.51081	.50648	.50221	.49802	.49388	.48982	.48581	.48187	.47799	.47416
84	.52951	.52523	.52101	.51686	.51277	.50874	.50477	.50086	.49701	.49321
85	.54847	.54425	.54009	.53600	.53196	.52798	.52406	.52019	.51638	.51262
86	.56749	.56335	.55926	.55523	.55126	.54734	.54348	.53966	.53591	.53220
87	.58627	.58221	.57820	.57425	.57035	.56650	.56270	.55895	.55526	.55161
88	.60477	.60079	.59688	.59301	.58919	.58542	.58170	.57802	.57439	.57081
89	.62297	.61909	.61527	.61149	.60776	.60408	.60044	.59685	.59330	.58979
90	.64084	.63707	.63335	.62968	.62604	.62246	.61891	.61540	.61194	.60851
91	.65803	.65437	.65076	.64719	.64366	.64017	.63672	.63330	.62993	.62659
92	.67412	.67058	.66707	.66360	.66017	.65678	.65342	.65010	.64682	.64357
93	.68911	.68567	.68227	.67890	.67557	.67227	.66901	.66578	.66258	.65942
94	.70321	.69988	.69657	.69330	.69006	.68686	.68369	.68055	.67744	.67437
95	.71674	.71351	.71031	.70713	.70399	.70088	.69781	.69476	.69174	.68875
96	.72959	.72646	.72335	.72028	.71724	.71422	.71123	.70828	.70534	.70244
97	.74156	.73853	.73552	.73254	.72959	.72666	.72376	.72089	.71804	.71522
98	.75287	.74993	.74702	.74413	.74126	.73842	.73561	.73282	.73006	.72732
99	.76401	.76117	.75834	.75555	.75277	.75002	.74730	.74459	.74191	.73926
100	.77494	.77219	.76946	.76676	.76408	.76142	.75878	.75616	.75357	.75099
101	.78580	.78315	.78052	.77791	.77532	.77275	.77021	.76768	.76517	.76268
102	.79654	.79399	.79146	.78894	.78645	.78397	.78152	.77908	.77666	.77426
103	.80724	.80479	.80236	.79994	.79755	.79517	.79280	.79046	.78813	.78582
104	.81879	.81646	.81413	.81183	.80954	.80726	.80501	.80276	.80054	.79832
105	.83005	.82782	.82560	.82340	.82121	.81904	.81688	.81474	.81260	.81049
106	.84485	.84277	.84071	.83866	.83662	.83459	.83257	.83057	.82857	.82659
107	.86311	.86124	.85937	.85751	.85566	.85382	.85199	.85017	.84835	.84655
108	.89266	.89114	.88963	.88812	.88662	.88513	.88364	.88216	.88068	.87922

Age	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
109	.94563	.94484	.94405	.94326	.94248	.94170	.94092	.94014	.93937	.93860

(f) *Effective dates.* This section applies after April 30, 1999.

§ 1.642(c)–6T [Removed]

Par. 6. Section 1.642(c)-6T is removed.

Par. 7. Section 1.664–4 is amended by:

1. Revising paragraph (a)(1).
2. Removing existing paragraphs (d) through (e)(5).
3. Adding paragraphs (d), (e) heading and (e)(1) through (e)(5).
4. Adding paragraph (e)(7).
5. Revising paragraph (f).

The revisions and additions read as follows:

§ 1.664–4 Calculation of the fair market value of the remainder interest in a charitable remainder unitrust.

(a) * * *

(1) Life contingencies determined as to each life involved, from the values of *lx* set forth in Table 90CM contained in § 20.2031–7(d)(7) of this chapter in the case of transfers for which the valuation date is after April 30, 1999; or from Table 80CNSMT contained § 20.2031–7A(e)(4) of this chapter in the case of transfer for which the valuation date is after April 30, 1989, and before May 1, 1999. See § 20.2031–7A(a) through (d) of this chapter, whichever is applicable, for transfers for which the valuation date is before May 1, 1989;

* * * * *

(d) *Valuation.* The fair market value of a remainder interest in a charitable remainder unitrust (as described in § 1.664–3) for transfers for which the valuation date is after April 30, 1999, is its present value determined under paragraph (e) of this section. The fair market value of a remainder interest in a charitable remainder unitrust (as described in § 1.664–3) for transfers for which the valuation date is before May 1, 1999, is its present value determined under the following sections:

Valuation dates		Applicable Regulations
After	Before	
	01–01–52	1.664–4A(a)
12–31–51	01–01–71	1.664–4A(b)
12–31–70	12–01–83	1.664–4A(c)
11–30–83	05–01–89	1.664–4A(d)
04–30–89	05–01–99	1.664–4A(e)

(e) *Valuation of charitable remainder unitrusts having certain payout sequences for transfers for which the valuation date is after April 30, 1999—*

(1) *In general.* Except as otherwise provided in paragraph (e)(2) of this section, in the case of transfers for which the valuation date is after April 30, 1999, the present value of a remainder interest is determined under paragraphs (e)(3) through (e)(7) of this section, provided that the amount of the payout as of any payout date during any taxable year of the trust is not larger than the amount that the trust could distribute on such date under § 1.664-3(a)(1)(v) if the taxable year of the trust were to end on such date. See, however, § 1.7520–3(b) (relating to exceptions to the use of the prescribed tables under certain circumstances).

(2) *Transitional rules for valuation of charitable remainder unitrusts.* (i) For purposes of sections 2055, 2106, or 2624, if on May 1, 1999, the decedent was mentally incompetent so that the disposition of the property could not be changed, and the decedent died after April 30, 1999, without having regained competency to dispose of the decedent's property, or the decedent died within 90 days of the date that the decedent first regained competency after April 30, 1999, the present value of a remainder interest under this section is determined as if the valuation date with respect to the decedent's gross estate is either before May 1, 1999, or after April 30, 1999, at the option of the decedent's executor.

(ii) For purposes of sections 170, 2055, 2106, 2522, or 2624, in the case of transfers to a charitable remainder unitrust for which the valuation date is after April 30, 1999, and before July 1, 1999, the present value of a remainder interest based on one or more measuring lives is determined under this section by use of the section 7520 interest rate for the month in which the valuation date occurs (see §§ 1.7520–1(b) and 1.7520–2(a)(2)) and the appropriate actuarial tables under either paragraph (e)(7) of this section or § 1.664–4A(e)(6), at the option of the donor or the decedent's executor, as the case may be.

(iii) For purposes of paragraphs (e)(2)(i) and (ii) of this section, where the donor or decedent's executor is given the option to use the appropriate actuarial tables under either paragraph (e)(7) of this section or § 1.664–4A(e)(6), the donor or decedent's executor must use the same actuarial table with respect to each individual transaction and with respect to all transfers occurring on the valuation date (for example, gift and income tax charitable deductions with respect to the same transfer must be determined based on the same tables, and all assets includible in the gross estate and/or estate tax deductions claimed must be valued based on the same tables).

(3) *Adjusted payout rate.* For transfers for which the valuation date is after April 30, 1989, the adjusted payout rate is determined by using the appropriate Table F in paragraph (e)(6) of this section, for the section 7520 interest rate applicable to the transfer. If the interest rate is between 4.2 and 14 percent, see paragraph (e)(6) of this section. If the interest rate is below 4.2 percent or greater than 14 percent, see paragraph (b) of this section. The adjusted payout rate is determined by multiplying the fixed percentage described in § 1.664–3(a)(1)(i)(*a*) by the factor describing the payout sequence of the trust and the number of months by which the valuation date for the first full taxable year of the trust precedes the first payout date for such taxable year. If the governing instrument does not prescribe when the distribution or distributions shall be made during the taxable year of the trust, see paragraph (a) of this section. In the case of a trust having a payout sequence for which no figures have been provided by the appropriate table, and in the case of a trust that determines the fair market value of the trust assets by taking the average of valuations on more than one date during the taxable year, see paragraph (b) of this section.

(4) *Period is a term of years.* If the period described in § 1.664–3(a)(5) is a term of years, the factor that is used in determining the present value of the remainder interest for transfers for which the valuation date is after November 30, 1983, is the factor under the appropriate adjusted payout rate in Table D of paragraph (e)(6) of this section corresponding to the number of years in the term. If the adjusted payout rate is an amount that is between adjusted payout rates for which factors are provided in Table D, a linear interpolation must be made. The present value of the remainder interest is determined by multiplying the net fair market value (as of the appropriate valuation date) of the property placed in trust by the factor determined under this paragraph. For purposes of this section, the valuation date is, in the case of an inter vivos transfer, the date on which

the property is transferred to the trust by the donor. However, if an election is made under section 7520 and § 1.7520–2(b) to compute the present value of the charitable interest by use of the interest rate component for either of the 2 months preceding the month in which the date of transfer falls, the month so elected is the valuation date for purposes of determining the interest rate and mortality tables. In the case of a testamentary transfer under section 2055, 2106, or 2624, the valuation date is the date of death, unless the alternate valuation date is elected under section 2032, in which event, and within the limitations set forth in section 2032 and the regulations thereunder, the valuation date is the alternate valuation date. If the decedent's estate elects the alternate valuation date under section 2032 and also elects, under section 7520 and § 1.7520–2(b), to use the interest rate component for one of the 2 months preceding the alternate valuation date, the month so elected is the valuation date for purposes of determining the interest rate and mortality tables. The application of this paragraph (e)(4) may be illustrated by the following example:

Example. D transfers $100,000 to a charitable remainder unitrust on January 1. The trust instrument requires that the trust pay 8 percent of the fair market value of the trust assets as of January 1st for a term of 12 years to D in quarterly payments (March 31, June 30, September 30, and December 31). The section 7520 rate for January (the month that the transfer occurred) is 9.6 percent. Under Table F(9.6) in paragraph(e)(6) of this section, the appropriate adjustment factor is .944628 for quarterly payments payable at the end of each quarter. The adjusted payout rate is 7.557 (8%× .944628). Based on the remainder factors in Table D in paragraph(e)(6) of this section, the present value of the remainder interest is $38,950.30, computed as follows:

Factor at 7.4 percent for 12 years	.397495
Factor at 7.6 percent for 12 years	.387314
Difference	.010181

Interpolation adjustment:

$$\frac{7.557\% - 7.4\%}{0.2\%} = \frac{x}{.010181}$$

$$x = .007992$$

Factor at 7.4 percent for 12 years	.397495
Less: Interpolation adjustment	.007992
Interpolated factor	.389503

Present value of remainder interest:

($100,000× .389503).....$38,950.30

(5) *Period is the life of one individual.* If the period described in § 1.664–3(a)(5) is the life of one individual, the factor that is used in determining the present value of the remainder interest for transfers for which the valuation date is after April 30, 1999, is the factor in Table U(1) in paragraph (e)(7) of this section under the appropriate adjusted payout. For purposes of the computations described in this paragraph, the age of an individual is the age of that individual at the individual's nearest birthday. If the adjusted payout rate is an amount that is between adjusted payout rates for which factors are provided in the appropriate table, a linear interpolation must be made. The present value of the remainder interest is determined by multiplying the net fair market value (as of the valuation date as determined in paragraph (e)(4) of this section) of the property placed in trust by the factor determined under this paragraph (e)(5). If the adjusted payout rate is between 4.2 and 14 percent, see paragraph (e)(7) of this section. If the adjusted payout rate is below 4.2 percent or greater than 14 percent, see paragraph (b) of this section. The application of this paragraph (e)(5) may be illustrated by the following example:

Example. A, who is 44 years and 11 months old, transfers $100,000 to a charitable remainder unitrust on January 1st. The trust instrument requires that the trust pay to A semiannually (on June 30 and December 31) 9 percent of the fair market value of the trust assets as of January 1st during A's life. The section 7520 rate for January is 9.6 percent. Under Table F(9.6) in paragraph (e)(6) of this section, the appropriate adjustment factor is .933805 for semiannual payments payable at the end of the semiannual period. The adjusted payout rate is 8.404 (9% X .933805). Based on the remainder factors in Table U(1) in paragraph (e)(7) of this section, the present value of the remainder interest is $10,109.00, computed as follows:

Factor at 8.4 percent at age 45	.10117
Factor at 8.6 percent at age 45	.09715
Difference	.00402

Interpolation adjustment:

$$\frac{8.404\% - 8.4\%}{0.2\%} = \frac{x}{.00402}$$

$$x = .00008$$

Factor at 8.4 percent at age 45	.10117
Less: Interpolation adjustment	.00008
Interpolated Factor	.10109

Present value of remainder interest:

($100,000× .10109).....$10,109.00

* * * * *

(7) *Actuarial Table U(1) for transfers for which the valuation date is after April 30, 1999.* For transfers for which the valuation date is after April 30, 1999, the present value of a charitable remainder unitrust interest that is dependent on the termination of a life interest is determined by using the section 7520 rate, Table U(1) in this paragraph (e)(7), and Table F(4.2) through (14.0) in paragraph (e)(6) of this section. See, however, § 1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). Many actuarial factors not contained in the following tables are contained in Internal Revenue Service Publication 1458, "Actuarial Values, Book Beth," (7–1999). A copy of this publication is available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

TABLE U(1).—BASED ON LIFE TABLE 90CM UNITRUST SINGLE LIFE REMAINDER FACTORS APPLICABLE FOR TRANSFERS AFTER APRIL 30, 1999

[Adjusted payout rate]

Age	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	.8%	6.0%
0	.06177	.05580	.05061	.04609	.04215	.03871	.03570	.03307	.03075	.02872
1	.05543	.04925	.04388	.03919	.03509	.03151	.02838	.02563	.02321	.02109
2	.05716	.05081	.04528	.04045	.03622	.03252	.02927	.02642	.02391	.02170
3	.05920	.05268	.04699	.04201	.03765	.03382	.03046	.02750	.02490	.02260
4	.06143	.05475	.04889	.04376	.03926	.03530	.03182	.02876	.02605	.02366
5	.06384	.05697	.05095	.04567	.04103	.03694	.03334	.03016	.02735	.02487
6	.06637	.05933	.05315	.04771	.04292	.03870	.03497	.03168	.02876	.02618
7	.06905	.06183	.05547	.04987	.04494	.04058	.03673	.03332	.03029	.02761
8	.07186	.06445	.05792	.05216	.04708	.04258	.03859	.03506	.03192	.02914
9	.07482	.06722	.06052	.05460	.04936	.04471	.04060	.03694	.03369	.03079

Age	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	.8%	6.0%
10	.07793	.07015	.06327	.05718	.05179	.04700	.04274	.03896	.03559	.03259
11	.08120	.07323	.06617	.05991	.05435	.04942	.04502	.04111	.03762	.03450
12	.08461	.07645	.06920	.06277	.05706	.05197	.04744	.04339	.03978	.03655
13	.08812	.07976	.07234	.06574	.05985	.05461	.04993	.04576	.04202	.03867
14	.09168	.08313	.07552	.06874	.06269	.05729	.05247	.04815	.04428	.04081
15	.09527	.08652	.07872	.07176	.06554	.05999	.05501	.05055	.04655	.04296
16	.09886	.08991	.08192	.07478	.06839	.06267	.05754	.05294	.04880	.04508
17	.10249	.09334	.08515	.07782	.07126	.06537	.06008	.05533	.05105	.04720
18	.10616	.09680	.08842	.08090	.07415	.06809	.06264	.05774	.05332	.04933
19	.10994	.10037	.09178	.08407	.07714	.07091	.06529	.06023	.05566	.05153
20	.11384	.10406	.09527	.08737	.08025	.07383	.06805	.06283	.05811	.05384
21	.11790	.10790	.09891	.09080	.08349	.07690	.07094	.06555	.06068	.05626
22	.12208	.11188	.10267	.09436	.08686	.08008	.07395	.06839	.06336	.05879
23	.12643	.11601	.10659	.09808	.09038	.08342	.07710	.07138	.06618	.06146
24	.13095	.12031	.11069	.10197	.09408	.08692	.08042	.07452	.06915	.06427
25	.13567	.12481	.11497	.10605	.09795	.09060	.08392	.07784	.07230	.06726
26	.14058	.12950	.11945	.11032	.10202	.09447	.08760	.08134	.07563	.07042
27	.14571	.13442	.12415	.11481	.10631	.09856	.09149	.08505	.07916	.07379
28	.15104	.13953	.12904	.11949	.11078	.10284	.09558	.08895	.08288	.07733
29	.15656	.14484	.13414	.12438	.11546	.10731	.09986	.09304	.08679	.08106
30	.16229	.15034	.13943	.12946	.12034	.11198	.10433	.09732	.09089	.08498
31	.16821	.15605	.14493	.13474	.12541	.11685	.10900	.10179	.09517	.08909
32	.17433	.16196	.15063	.14023	.13069	.12193	.11387	.10647	.09966	.09339
33	.18068	.16810	.15655	.14595	.13620	.12723	.11897	.11137	.10437	.09791
34	.18724	.17446	.16270	.15189	.14193	.13275	.12430	.11650	.10930	.10265
35	.19405	.18107	.16910	.15808	.14791	.13853	.12987	.12187	.11448	.10764
36	.20109	.18791	.17574	.16451	.15414	.14456	.13569	.12749	.11990	.11287
37	.20838	.19500	.18263	.17120	.16062	.15083	.14177	.13337	.12558	.11835
38	.21593	.20236	.18979	.17816	.16739	.15739	.14813	.13953	.13154	.12412
39	.22374	.20998	.19723	.18540	.17443	.16423	.15477	.14597	.13779	.13017
40	.23183	.21789	.20496	.19294	.18177	.17138	.16172	.15272	.14434	.13653
41	.24021	.22611	.21299	.20079	.18943	.17885	.16899	.15980	.15123	.14322
42	.24889	.23463	.22134	.20896	.19741	.18665	.17660	.16721	.15845	.15025
43	.25786	.24344	.23000	.21744	.20572	.19477	.18453	.17496	.16601	.15762
44	.26712	.25257	.23896	.22625	.21435	.20322	.19281	.18305	.17391	.16534
45	.27665	.26196	.24821	.23534	.22328	.21198	.20139	.19145	.18213	.17338
46	.28644	.27163	.25774	.24472	.23251	.22105	.21028	.20018	.19068	.18174
47	.29647	.28155	.26754	.25438	.24201	.23040	.21947	.20919	.19952	.19041
48	.30676	.29173	.27760	.26431	.25181	.24004	.22896	.21852	.20868	.19941
49	.31729	.30217	.28794	.27453	.26190	.24999	.23876	.22817	.21817	.20873
50	.32808	.31289	.29856	.28505	.27229	.26026	.24889	.23814	.22799	.21839
51	.33912	.32387	.30946	.29585	.28299	.27083	.25933	.24845	.23815	.22840
52	.35038	.33507	.32060	.30691	.29395	.28168	.27005	.25904	.24861	.23872
53	.36185	.34651	.33198	.31821	.30517	.29280	.28106	.26993	.25937	.24934
54	.37352	.35815	.34358	.32976	.31664	.30418	.29234	.28110	.27042	.26026
55	.38539	.37002	.35542	.34155	.32836	.31583	.30390	.29256	.28177	.27149
56	.39746	.38209	.36748	.35358	.34034	.32774	.31574	.30431	.29342	.28303
57	.40971	.39437	.37976	.36584	.35257	.33992	.32785	.31634	.30536	.29488
58	.42212	.40682	.39222	.37829	.36500	.35231	.34019	.32862	.31756	.30699
59	.43464	.41939	.40482	.39090	.37759	.36488	.35272	.34109	.32996	.31932
60	.44726	.43207	.41754	.40364	.39034	.37761	.36542	.35375	.34257	.33186
61	.45999	.44488	.43041	.41655	.40326	.39053	.37833	.36662	.35540	.34463
62	.47286	.45785	.44345	.42964	.41639	.40367	.39146	.37974	.36848	.35767
63	.48589	.47098	.45667	.44293	.42972	.41703	.40484	.39311	.38184	.37100
64	.49903	.48426	.47005	.45638	.44324	.43060	.41843	.40671	.39544	.38458
65	.51229	.49766	.48357	.47001	.45694	.44435	.43223	.42054	.40927	.39841
66	.52568	.51121	.49726	.48381	.47084	.45833	.44626	.43461	.42337	.41252
67	.53924	.52495	.51115	.49784	.48498	.47256	.46056	.44898	.43778	.42696
68	.55293	.53883	.52521	.51205	.49932	.48701	.47511	.46360	.45246	.44169
69	.56671	.55283	.53940	.52640	.51382	.50165	.48985	.47844	.46738	.45666
70	.58052	.56687	.55365	.54084	.52843	.51639	.50473	.49342	.48245	.47181
71	.59431	.58091	.56791	.55529	.54306	.53118	.51966	.50847	.49761	.48707
72	.60804	.59490	.58213	.56973	.55768	.54598	.53461	.52357	.51283	.50239
73	.62168	.60881	.59629	.58411	.57227	.56076	.54955	.53866	.52806	.51774
74	.63528	.62268	.61042	.59848	.58686	.57555	.56453	.55380	.54335	.53316
75	.64887	.63657	.62458	.61290	.60151	.59041	.57959	.56904	.55875	.54872
76	.66249	.65049	.63880	.62739	.61625	.60538	.59478	.58443	.57432	.56446
77	.67612	.66446	.65307	.64194	.63108	.62046	.61009	.59995	.59005	.58037
78	.68975	.67843	.66736	.65654	.64596	.63561	.62548	.61558	.60590	.59643
79	.70330	.69233	.68160	.67109	.66081	.65074	.64088	.63123	.62178	.61253
80	.71666	.70605	.69566	.68548	.67550	.66573	.65615	.64676	.63755	.62853
81	.72975	.71950	.70946	.69961	.68995	.68047	.67117	.66205	.65310	.64433
82	.74250	.73263	.72293	.71342	.70407	.69490	.68589	.67705	.66837	.65984
83	.75493	.74542	.73608	.72690	.71788	.70902	.70031	.69175	.68333	.67506

Age	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	.8%	6.0%
84	.76712	.75798	.74900	.74016	.73147	.72292	.71451	.70624	.69810	.69010
85	.77913	.77037	.76175	.75326	.74491	.73668	.72859	.72061	.71276	.70503
86	.79086	.78248	.77423	.76610	.75808	.75019	.74241	.73474	.72719	.71974
87	.80218	.79418	.78628	.77850	.77083	.76326	.75580	.74844	.74118	.73402
88	.81307	.80544	.79790	.79047	.78313	.77589	.76874	.76169	.75473	.74786
89	.82355	.81628	.80909	.80200	.79500	.78808	.78125	.77450	.76783	.76125
90	.83360	.82668	.81985	.81309	.80642	.79982	.79330	.78685	.78048	.77418
91	.84308	.83650	.83000	.82357	.81721	.81092	.80470	.79855	.79246	.78645
92	.85182	.84556	.83937	.83325	.82718	.82119	.81525	.80937	.80356	.79780
93	.85985	.85390	.84800	.84215	.83637	.83064	.82497	.81936	.81379	.80829
94	.86732	.86164	.85601	.85044	.84491	.83944	.83402	.82865	.82333	.81806
95	.87437	.86895	.86359	.85827	.85300	.84778	.84260	.83746	.83237	.82733
96	.88097	.87582	.87070	.86563	.86060	.85561	.85066	.84575	.84088	.83605
97	.88708	.88216	.87727	.87243	.86762	.86285	.85811	.85341	.84875	.84413
98	.89280	.88810	.88343	.87880	.87420	.86964	.86511	.86061	.85614	.85171
99	.89836	.89388	.88943	.88501	.88062	.87626	.87193	.86763	.86336	.85911
100	.90375	.89948	.89525	.89103	.88685	.88269	.87856	.87445	.87037	.86632
101	.90905	.90500	.90097	.89696	.89298	.88902	.88509	.88118	.87729	.87342
102	.91424	.91040	.90658	.90278	.89900	.89524	.89150	.88778	.88408	.88040
103	.91939	.91575	.91214	.90854	.90496	.90139	.89785	.89432	.89081	.88732
104	.92485	.92144	.91805	.91467	.91131	.90796	.90463	.90131	.89800	.89471
105	.93020	.92701	.92383	.92067	.91751	.91437	.91125	.90813	.90502	.90193
106	.93701	.93411	.93122	.92834	.92546	.92260	.91974	.91689	.91405	.91122
107	.94522	.94268	.94013	.93760	.93507	.93254	.93002	.92750	.92499	.92249
108	.95782	.95583	.95385	.95187	.94989	.94791	.94593	.94396	.94199	.94002
109	.97900	.97800	.97700	.97600	.97500	.97400	.97300	.97200	.97100	.97000

Age	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
0	.02693	.02534	.02395	.02271	.02161	.02063	.01976	.01898	.01828	.01765
1	.01922	.01756	.01610	.01480	.01365	.01263	.01171	.01090	.01017	.00951
2	.01975	.01802	.01650	.01514	.01393	.01286	.01190	.01104	.01028	.00959
3	.02056	.01876	.01717	.01575	.01449	.01336	.01235	.01145	.01064	.00992
4	.02155	.01967	.01800	.01652	.01520	.01401	.01296	.01201	.01116	.01039
5	.02266	.02071	.01898	.01741	.01603	.01479	.01368	.01269	.01179	.01098
6	.02389	.02184	.02003	.01841	.01696	.01566	.01450	.01345	.01251	.01166
7	.02522	.02309	.02120	.01950	.01799	.01663	.01540	.01431	.01332	.01242
8	.02665	.02444	.02246	.02069	.01910	.01768	.01640	.01524	.01420	.01326
9	.02821	.02590	.02384	.02199	.02033	.01884	.01750	.01629	.01520	.01421
10	.02990	.02750	.02535	.02342	.02169	.02013	.01872	.01745	.01631	.01526
11	.03172	.02922	.02698	.02497	.02316	.02153	.02006	.01872	.01752	.01643
12	.03365	.03106	.02872	.02663	.02474	.02303	.02149	.02010	.01884	.01769
13	.03566	.03297	.03054	.02835	.02638	.02460	.02299	.02154	.02021	.01901
14	.03770	.03490	.03237	.03010	.02804	.02619	.02450	.02298	.02159	.02033
15	.03973	.03682	.03419	.03182	.02968	.02775	.02599	.02439	.02294	.02162
16	.04173	.03871	.03598	.03352	.03129	.02926	.02743	.02576	.02424	.02286
17	.04372	.04059	.03775	.03519	.03287	.03076	.02884	.02710	.02551	.02406
18	.04573	.04248	.03953	.03686	.03444	.03224	.03024	.02842	.02676	.02524
19	.04780	.04443	.04137	.03859	.03607	.03378	.03169	.02978	.02804	.02646
20	.04997	.04647	.04329	.04040	.03778	.03539	.03321	.03122	.02940	.02773
21	.05226	.04862	.04532	.04232	.03958	.03709	.03481	.03274	.03083	.02909
22	.05465	.05088	.04745	.04432	.04148	.03888	.03650	.03433	.03234	.03052
23	.05716	.05325	.04969	.04645	.04348	.04077	.03830	.03603	.03394	.03203
24	.05983	.05578	.05208	.04871	.04562	.04280	.04021	.03784	.03566	.03367
25	.06266	.05846	.05463	.05112	.04791	.04497	.04227	.03980	.03752	.03543
26	.06566	.06131	.05734	.05369	.05035	.04729	.04448	.04189	.03951	.03732
27	.06887	.06436	.06024	.05646	.05298	.04979	.04686	.04416	.04168	.03939
28	.07225	.06758	.06331	.05938	.05577	.05245	.04940	.04658	.04398	.04159
29	.07581	.07099	.06656	.06248	.05873	.05528	.05210	.04916	.04645	.04394
30	.07956	.07457	.06998	.06575	.06186	.05827	.05495	.05189	.04906	.04644
31	.08348	.07833	.07358	.06920	.06515	.06142	.05797	.05478	.05182	.04908
32	.08761	.08228	.07736	.07282	.06863	.06475	.06116	.05783	.05475	.05189
33	.09195	.08645	.08136	.07666	.07231	.06828	.06454	.06108	.05786	.05488
34	.09651	.09082	.08557	.08070	.07619	.07200	.06812	.06452	.06117	.05805
35	.10131	.09545	.09002	.08498	.08030	.07596	.07193	.06818	.06469	.06144
36	.10635	.10031	.09470	.08949	.08465	.08015	.07596	.07206	.06842	.06503
37	.11165	.10542	.09963	.09424	.08923	.08457	.08022	.07617	.07238	.06885
38	.11722	.11081	.10484	.09927	.09409	.08926	.08475	.08054	.07661	.07293
39	.12308	.11648	.11032	.10458	.09922	.09422	.08955	.08518	.08109	.07726
40	.12925	.12246	.11612	.11020	.10466	.09949	.09465	.09011	.08587	.08189
41	.13575	.12877	.12225	.11614	.11043	.10508	.10007	.09537	.09097	.08683
42	.14259	.13542	.12871	.12243	.11654	.11101	.10583	.10097	.09640	.09210
43	.14977	.14242	.13552	.12905	.12298	.11729	.11193	.10690	.10217	.09771
44	.15731	.14976	.14269	.13604	.12979	.12391	.11838	.11318	.10828	.10367

Age	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
45	.16516	.15743	.15017	.14334	.13691	.13086	.12516	.11979	.11472	.10994
46	.17334	.16544	.15800	.15099	.14438	.13816	.13228	.12674	.12150	.11656
47	.18184	.17375	.16613	.15895	.15217	.14576	.13972	.13400	.12860	.12349
48	.19066	.18240	.17461	.16724	.16029	.15371	.14749	.14161	.13604	.13077
49	.19981	.19138	.18342	.17588	.16875	.16201	.15562	.14956	.14383	.13839
50	.20931	.20072	.19259	.18489	.17759	.17067	.16412	.15790	.15199	.14639
51	.21917	.21042	.20212	.19426	.18679	.17971	.17299	.16660	.16054	.15477
52	.22933	.22043	.21198	.20395	.19633	.18909	.18220	.17566	.16943	.16350
53	.23981	.23076	.22216	.21399	.20621	.19881	.19176	.18506	.17867	.17258
54	.25060	.24141	.23267	.22434	.21642	.20886	.20166	.19480	.18826	.18201
55	.26171	.25239	.24351	.23504	.22697	.21927	.21192	.20491	.19821	.19182
56	.27313	.26369	.25468	.24608	.23787	.23003	.22254	.21538	.20854	.20199
57	.28487	.27531	.26618	.25746	.24912	.24114	.23351	.22621	.21923	.21254
58	.29688	.28722	.27798	.26914	.26067	.25257	.24481	.23738	.23025	.22343
59	.30913	.29937	.29002	.28107	.27249	.26427	.25639	.24882	.24157	.23461
60	.32159	.31175	.30231	.29325	.28457	.27623	.26823	.26055	.25317	.24608
61	.33429	.32437	.31485	.30571	.29692	.28848	.28037	.27257	.26507	.25786
62	.34728	.33730	.32770	.31847	.30960	.30106	.29285	.28495	.27734	.27001
63	.36057	.35053	.34087	.33157	.32262	.31400	.30569	.29769	.28998	.28255
64	.37412	.36404	.35433	.34498	.33596	.32726	.31887	.31078	.30298	.29545
65	.38794	.37783	.36809	.35868	.34961	.34085	.33239	.32422	.31633	.30871
66	.40205	.39193	.38216	.37272	.36361	.35479	.34628	.33804	.33008	.32238
67	.41650	.40639	.39661	.38715	.37800	.36915	.36059	.35230	.34428	.33651
68	.43126	.42117	.41139	.40193	.39277	.38390	.37530	.36697	.35890	.35108
69	.44628	.43622	.42648	.41703	.40787	.39898	.39037	.38201	.37391	.36604
70	.46150	.45149	.44178	.43236	.42321	.41433	.40571	.39735	.38922	.38132
71	.47683	.46689	.45723	.44785	.43873	.42987	.42126	.41290	.40476	.39685
72	.49225	.48238	.47279	.46346	.45439	.44556	.43697	.42862	.42048	.41257
73	.50770	.49793	.48841	.47915	.47013	.46135	.45280	.44447	.43635	.42844
74	.52324	.51358	.50416	.49498	.48603	.47731	.46880	.46051	.45242	.44454
75	.53894	.52939	.52008	.51100	.50214	.49349	.48505	.47681	.46877	.46092
76	.55483	.54543	.53624	.52728	.51852	.50996	.50160	.49344	.48546	.47766
77	.57091	.56167	.55263	.54380	.53516	.52671	.51845	.51038	.50247	.49475
78	.58716	.57809	.56922	.56053	.55203	.54372	.53557	.52760	.51980	.51216
79	.60346	.59459	.58590	.57738	.56904	.56086	.55286	.54501	.53732	.52978
80	.61969	.61102	.60252	.59419	.58601	.57800	.57014	.56243	.55487	.54745
81	.63571	.62726	.61897	.61082	.60283	.59499	.58729	.57974	.57232	.56503
82	.65146	.64324	.63515	.62722	.61942	.61176	.60423	.59683	.58957	.58242
83	.66693	.65893	.65108	.64335	.63575	.62828	.62093	.61371	.60660	.59962
84	.68222	.67447	.66684	.65934	.65195	.64468	.63753	.63049	.62356	.61674
85	.69742	.68993	.68255	.67528	.66812	.66106	.65411	.64727	.64053	.63389
86	.71241	.70517	.69805	.69102	.68410	.67727	.67054	.66390	.65736	.65091
87	.72696	.72000	.71313	.70635	.69967	.69307	.68656	.68014	.67381	.66756
88	.74108	.73438	.72777	.72125	.71480	.70845	.70217	.69597	.68985	.68380
89	.75475	.74832	.74198	.73571	.72951	.72339	.71734	.71137	.70547	.69963
90	.76796	.76180	.75572	.74971	.74376	.73788	.73207	.72633	.72065	.71503
91	.78049	.77460	.76878	.76302	.75732	.75168	.74610	.74058	.73512	.72972
92	.79211	.78647	.78089	.77537	.76990	.76449	.75913	.75383	.74858	.74338
93	.80283	.79743	.79208	.78679	.78154	.77634	.77119	.76610	.76105	.75604
94	.81283	.80765	.80253	.79744	.79240	.78741	.78247	.77756	.77270	.76789
95	.82233	.81737	.81245	.80757	.80274	.79795	.79320	.78849	.78382	.77918
96	.83126	.82651	.82180	.81712	.81248	.80788	.80332	.79880	.79431	.78985
97	.83953	.83498	.83046	.82597	.82152	.81710	.81271	.80836	.80404	.79976
98	.84731	.84294	.83860	.83429	.83002	.82577	.82155	.81737	.81321	.80908
99	.85490	.85071	.84656	.84243	.83832	.83425	.83020	.82618	.82219	.81822
100	.86229	.85828	.85431	.85035	.84642	.84252	.83864	.83478	.83095	.82714
101	.86958	.86575	.86195	.85818	.85442	.85069	.84698	.84329	.83962	.83597
102	.87674	.87310	.86947	.86587	.86229	.85873	.85518	.85166	.84815	.84466
103	.88384	.88038	.87694	.87351	.87010	.86671	.86334	.85998	.85663	.85331
104	.89143	.88817	.88492	.88169	.87847	.87526	.87207	.86889	.86573	.86258
105	.89885	.89578	.89272	.88967	.88664	.88361	.88060	.87760	.87461	.87163
106	.90840	.90559	.90278	.89999	.89720	.89442	.89165	.88888	.88613	.88338
107	.91999	.91750	.91501	.91253	.91005	.90758	.90511	.90265	.90019	.89774
108	.93805	.93609	.93412	.93216	.93020	.92824	.92629	.92434	.92239	.92044
109	.96900	.96800	.96700	.96600	.96500	.96400	.96300	.96200	.96100	.96000

Age	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
0	.01709	.01658	.01612	.01570	.01532	.01497	.01466	.01437	.01410	.01386
1	.00892	.00839	.00791	.00747	.00708	.00672	.00639	.00609	.00582	.00557
2	.00896	.00840	.00790	.00744	.00702	.00664	.00629	.00598	.00569	.00542
3	.00926	.00867	.00814	.00765	.00721	.00681	.00644	.00611	.00580	.00552
4	.00970	.00908	.00851	.00800	.00753	.00711	.00672	.00636	.00604	.00574
5	.01026	.00960	.00900	.00846	.00796	.00751	.00710	.00672	.00637	.00606

Age	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
6	.01089	.01019	.00956	.00899	.00846	.00799	.00755	.00715	.00678	.00644
7	.01161	.01088	.01021	.00960	.00905	.00854	.00808	.00765	.00726	.00690
8	.01241	.01163	.01093	.01029	.00970	.00917	.00867	.00822	.00781	.00743
9	.01331	.01249	.01175	.01107	.01045	.00988	.00936	.00889	.00845	.00804
10	.01432	.01346	.01268	.01196	.01131	.01071	.01016	.00965	.00918	.00875
11	.01543	.01453	.01370	.01295	.01226	.01162	.01104	.01051	.01001	.00956
12	.01664	.01569	.01482	.01403	.01330	.01263	.01202	.01145	.01093	.01045
13	.01791	.01691	.01600	.01516	.01440	.01369	.01304	.01245	.01190	.01139
14	.01918	.01813	.01717	.01629	.01548	.01474	.01406	.01343	.01285	.01231
15	.02041	.01931	.01831	.01738	.01653	.01576	.01504	.01437	.01376	.01320
16	.02160	.02044	.01938	.01841	.01752	.01670	.01595	.01525	.01460	.01401
17	.02274	.02152	.02041	.01940	.01846	.01760	.01680	.01607	.01539	.01476
18	.02386	.02258	.02142	.02035	.01936	.01846	.01762	.01685	.01613	.01547
19	.02500	.02367	.02245	.02132	.02029	.01933	.01845	.01764	.01689	.01619
20	.02621	.02481	.02353	.02235	.02126	.02025	.01933	.01847	.01768	.01694
21	.02749	.02603	.02468	.02344	.02229	.02124	.02026	.01936	.01852	.01774
22	.02884	.02730	.02589	.02458	.02338	.02227	.02124	.02029	.01940	.01859
23	.03028	.02867	.02718	.02581	.02454	.02337	.02229	.02128	.02035	.01949
24	.03183	.03013	.02857	.02713	.02580	.02456	.02342	.02236	.02138	.02047
25	.03350	.03172	.03008	.02857	.02717	.02587	.02467	.02355	.02251	.02155
26	.03530	.03344	.03172	.03013	.02865	.02729	.02602	.02484	.02375	.02273
27	.03727	.03532	.03351	.03183	.03028	.02885	.02751	.02627	.02511	.02404
28	.03937	.03732	.03543	.03367	.03204	.03052	.02911	.02780	.02658	.02545
29	.04162	.03947	.03748	.03564	.03392	.03233	.03084	.02946	.02818	.02698
30	.04401	.04176	.03967	.03773	.03593	.03425	.03269	.03124	.02988	.02861
31	.04654	.04419	.04200	.03996	.03807	.03630	.03466	.03312	.03169	.03035
32	.04923	.04676	.04447	.04233	.04034	.03849	.03676	.03514	.03363	.03221
33	.05210	.04952	.04711	.04487	.04278	.04083	.03901	.03731	.03571	.03422
34	.05515	.05245	.04993	.04758	.04538	.04333	.04142	.03962	.03794	.03637
35	.05841	.05558	.05295	.05048	.04818	.04603	.04401	.04212	.04035	.03869
36	.06187	.05892	.05616	.05358	.05116	.04890	.04678	.04480	.04293	.04118
37	.06555	.06247	.05958	.05688	.05435	.05198	.04975	.04766	.04570	.04385
38	.06949	.06627	.06325	.06043	.05777	.05528	.05295	.05075	.04868	.04674
39	.07368	.07032	.06717	.06421	.06143	.05882	.05637	.05406	.05189	.04984
40	.07816	.07465	.07137	.06827	.06537	.06263	.06006	.05764	.05535	.05320
41	.08295	.07930	.07587	.07264	.06960	.06674	.06405	.06150	.05910	.05683
42	.08807	.08427	.08069	.07733	.07415	.07116	.06833	.06567	.06315	.06077
43	.09352	.08957	.08585	.08233	.07902	.07589	.07294	.07014	.06750	.06500
44	.09932	.09521	.09134	.08768	.08423	.08096	.07787	.07495	.07218	.06956
45	.10543	.10117	.09715	.09334	.08974	.08634	.08311	.08005	.07716	.07441
46	.11189	.10747	.10329	.09933	.09559	.09204	.08867	.08548	.08245	.07958
47	.11866	.11408	.10974	.10564	.10174	.09805	.09454	.09121	.08805	.08504
48	.12577	.12103	.11654	.11228	.10823	.10439	.10074	.09727	.09397	.09083
49	.13323	.12833	.12368	.11926	.11506	.11107	.10728	.10366	.10022	.09695
50	.14107	.13601	.13120	.12663	.12228	.11813	.11419	.11043	.10685	.10344
51	.14928	.14407	.13910	.13437	.12987	.12558	.12149	.11758	.11386	.11031
52	.15785	.15248	.14735	.14247	.13781	.13337	.12913	.12508	.12122	.11752
53	.16678	.16124	.15597	.15093	.14612	.14153	.13714	.13294	.12893	.12509
54	.17606	.17037	.16493	.15974	.15478	.15004	.14550	.14116	.13700	.13302
55	.18570	.17986	.17428	.16893	.16382	.15893	.15424	.14976	.14546	.14134
56	.19573	.18974	.18400	.17851	.17325	.16821	.16338	.15875	.15430	.15004
57	.20613	.20000	.19412	.18848	.18307	.17789	.17291	.16814	.16355	.15914
58	.21688	.21060	.20458	.19880	.19325	.18792	.18280	.17788	.17316	.16861
59	.22793	.22151	.21535	.20943	.20374	.19827	.19301	.18795	.18309	.17840
60	.23927	.23272	.22642	.22036	.21454	.20893	.20354	.19834	.19334	.18851
61	.25092	.24425	.23782	.23163	.22567	.21993	.21440	.20907	.20393	.19898
62	.26295	.25616	.24961	.24329	.23721	.23134	.22568	.22021	.21494	.20985
63	.27538	.26847	.26180	.25537	.24916	.24316	.23738	.23179	.22639	.22117
64	.28817	.28116	.27438	.26783	.26150	.25539	.24949	.24377	.23825	.23291
65	.30134	.29423	.28735	.28069	.27426	.26803	.26201	.25618	.25054	.24508
66	.31493	.30772	.30075	.29399	.28746	.28113	.27500	.26906	.26331	.25774
67	.32899	.32170	.31464	.30780	.30118	.29475	.28852	.28248	.27663	.27095
68	.34349	.33614	.32901	.32209	.31538	.30887	.30256	.29643	.29047	.28469
69	.35841	.35100	.34381	.33683	.33005	.32346	.31707	.31085	.30481	.29894
70	.37366	.36620	.35896	.35193	.34509	.33844	.33197	.32568	.31957	.31362
71	.38916	.38167	.37440	.36732	.36043	.35372	.34720	.34084	.33466	.32864
72	.40486	.39736	.39006	.38295	.37602	.36927	.36270	.35629	.35005	.34396
73	.42074	.41323	.40591	.39878	.39182	.38504	.37843	.37198	.36568	.35955
74	.43685	.42934	.42202	.41488	.40791	.40110	.39446	.38798	.38165	.37547
75	.45326	.44577	.43846	.43132	.42435	.41754	.41088	.40438	.39802	.39181
76	.47004	.46259	.45530	.44818	.44122	.43442	.42776	.42125	.41488	.40865
77	.48718	.47979	.47255	.46547	.45853	.45175	.44511	.43861	.43225	.42601
78	.50467	.49735	.49017	.48314	.47626	.46951	.46290	.45643	.45008	.44386
79	.52239	.51515	.50806	.50110	.49427	.48758	.48102	.47459	.46828	.46209

Age	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
80	.54018	.53304	.52603	.51916	.51242	.50580	.49930	.49292	.48666	.48052
81	.55788	.55085	.54396	.53718	.53053	.52399	.51757	.51126	.50507	.49898
82	.57540	.56851	.56173	.55506	.54851	.54207	.53574	.52951	.52339	.51737
83	.59274	.58598	.57933	.57279	.56635	.56001	.55378	.54765	.54161	.53567
84	.61002	.60341	.59690	.59049	.58418	.57796	.57184	.56582	.55988	.55403
85	.62734	.62090	.61454	.60828	.60211	.59603	.59004	.58414	.57832	.57258
86	.64455	.63828	.63210	.62600	.61999	.61406	.60821	.60244	.59675	.59113
87	.66139	.65531	.64930	.64337	.63752	.63175	.62605	.62043	.61488	.60939
88	.67783	.67194	.66612	.66037	.65469	.64908	.64354	.63807	.63267	.62733
89	.69387	.68817	.68254	.67698	.67148	.66605	.66068	.65537	.65012	.64493
90	.70947	.70398	.69855	.69318	.68786	.68261	.67742	.67228	.66719	.66217
91	.72437	.71908	.71385	.70867	.70354	.69847	.69345	.68848	.68357	.67870
92	.73823	.73314	.72810	.72310	.71816	.71326	.70841	.70361	.69886	.69415
93	.75109	.74618	.74132	.73650	.73173	.72700	.72232	.71768	.71308	.70852
94	.76312	.75839	.75370	.74905	.74445	.73988	.73536	.73087	.72643	.72202
95	.77459	.77004	.76552	.76104	.75660	.75220	.74783	.74350	.73920	.73494
96	.78543	.78105	.77670	.77238	.76810	.76386	.75964	.75546	.75131	.74720
97	.79550	.79128	.78709	.78293	.77880	.77470	.77063	.76659	.76258	.75860
98	.80498	.80091	.79687	.79286	.78888	.78492	.78099	.77709	.77322	.76937
99	.81428	.81036	.80647	.80261	.79877	.79496	.79117	.78741	.78367	.77995
100	.82336	.81959	.81586	.81214	.80845	.80478	.80113	.79751	.79390	.79032
101	.83234	.82873	.82515	.82158	.81804	.81451	.81101	.80753	.80406	.80062
102	.84119	.83774	.83431	.83089	.82750	.82412	.82076	.81742	.81409	.81078
103	.84999	.84670	.84342	.84016	.83691	.83368	.83046	.82726	.82408	.82091
104	.85944	.85632	.85321	.85011	.84703	.84396	.84090	.83786	.83483	.83182
105	.86866	.86570	.86276	.85982	.85690	.85399	.85109	.84820	.84532	.84245
106	.88065	.87792	.87520	.87248	.86978	.86708	.86440	.86172	.85905	.85638
107	.89530	.89286	.89042	.88799	.88557	.88315	.88073	.87833	.87592	.87352
108	.91849	.91654	.91460	.91266	.91072	.90879	.90685	.90492	.90299	.90106
109	.95900	.95800	.95700	.95600	.95500	.95400	.95300	.95200	.95100	.95000

Age	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
0	.01363	.01342	.01323	.01305	.01288	.01272	.01258	.01244	.01231	.01219
1	.00534	.00512	.00493	.00474	.00458	.00442	.00427	.00414	.00401	.00389
2	.00518	.00495	.00474	.00455	.00437	.00421	.00405	.00391	.00377	.00365
3	.00526	.00502	.00480	.00459	.00440	.00422	.00406	.00391	.00376	.00363
4	.00546	.00521	.00497	.00475	.00455	.00436	.00419	.00402	.00387	.00373
5	.00576	.00549	.00524	.00501	.00479	.00459	.00440	.00423	.00406	.00391
6	.00613	.00584	.00557	.00532	.00509	.00488	.00468	.00449	.00432	.00415
7	.00657	.00626	.00598	.00571	.00547	.00524	.00502	.00482	.00464	.00446
8	.00707	.00675	.00644	.00616	.00590	.00565	.00542	.00521	.00501	.00482
9	.00766	.00732	.00699	.00669	.00641	.00615	.00591	.00568	.00547	.00527
10	.00835	.00798	.00764	.00732	.00702	.00675	.00649	.00624	.00602	.00580
11	.00913	.00874	.00838	.00804	.00772	.00743	.00715	.00689	.00665	.00642
12	.01000	.00959	.00920	.00884	.00851	.00819	.00790	.00762	.00737	.00712
13	.01091	.01048	.01007	.00969	.00933	.00900	.00869	.00840	.00813	.00787
14	.01181	.01135	.01092	.01052	.01014	.00979	.00947	.00916	.00887	.00860
15	.01267	.01218	.01173	.01130	.01091	.01054	.01019	.00987	.00956	.00928
16	.01345	.01294	.01246	.01201	.01160	.01121	.01084	.01050	.01018	.00988
17	.01418	.01364	.01313	.01266	.01222	.01181	.01143	.01107	.01073	.01041
18	.01486	.01429	.01375	.01326	.01279	.01236	.01196	.01158	.01122	.01088
19	.01554	.01494	.01438	.01385	.01336	.01291	.01248	.01208	.01170	.01135
20	.01626	.01562	.01503	.01448	.01396	.01348	.01303	.01260	.01220	.01183
21	.01702	.01635	.01573	.01514	.01460	.01409	.01361	.01316	.01274	.01235
22	.01782	.01711	.01645	.01584	.01526	.01472	.01422	.01374	.01330	.01288
23	.01868	.01793	.01724	.01658	.01597	.01540	.01487	.01437	.01390	.01345
24	.01962	.01883	.01809	.01740	.01675	.01615	.01558	.01505	.01455	.01408
25	.02065	.01981	.01903	.01830	.01762	.01698	.01638	.01581	.01528	.01478
26	.02178	.02089	.02006	.01929	.01856	.01789	.01725	.01665	.01609	.01556
27	.02303	.02209	.02122	.02040	.01963	.01891	.01824	.01760	.01700	.01644
28	.02439	.02339	.02247	.02160	.02079	.02002	.01931	.01863	.01800	.01740
29	.02585	.02480	.02382	.02290	.02204	.02123	.02047	.01976	.01908	.01845
30	.02742	.02631	.02527	.02430	.02339	.02253	.02172	.02096	.02025	.01957
31	.02910	.02793	.02683	.02579	.02482	.02391	.02306	.02225	.02149	.02077
32	.03089	.02965	.02849	.02739	.02636	.02540	.02449	.02363	.02282	.02206
33	.03282	.03151	.03028	.02912	.02803	.02701	.02604	.02513	.02427	.02346
34	.03489	.03350	.03220	.03097	.02982	.02873	.02771	.02674	.02583	.02497
35	.03713	.03567	.03429	.03299	.03177	.03061	.02953	.02850	.02753	.02661
36	.03953	.03798	.03653	.03515	.03386	.03263	.03148	.03039	.02936	.02838
37	.04211	.04048	.03894	.03748	.03611	.03481	.03359	.03243	.03134	.03030
38	.04490	.04318	.04155	.04001	.03856	.03719	.03589	.03466	.03350	.03239
39	.04791	.04609	.04437	.04274	.04120	.03975	.03837	.03707	.03583	.03466
40	.05116	.04924	.04742	.04571	.04408	.04254	.04108	.03970	.03839	.03714

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Age	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
41	.05469	.05267	.05075	.04894	.04722	.04559	.04405	.04258	.04119	.03987
42	.05851	.05638	.05436	.05245	.05063	.04891	.04728	.04573	.04425	.04285
43	.06263	.06039	.05827	.05625	.05433	.05252	.05079	.04915	.04759	.04610
44	.06707	.06472	.06248	.06035	.05834	.05642	.05459	.05286	.05121	.04963
45	.07180	.06933	.06698	.06474	.06262	.06059	.05867	.05684	.05509	.05342
46	.07685	.07425	.07178	.06943	.06720	.06507	.06304	.06110	.05926	.05750
47	.08218	.07946	.07687	.07440	.07205	.06981	.06768	.06564	.06369	.06183
48	.08784	.08499	.08228	.07969	.07722	.07487	.07262	.07047	.06842	.06646
49	.09382	.09085	.08801	.08530	.08271	.08024	.07788	.07562	.07346	.07140
50	.10018	.09707	.09410	.09127	.08856	.08597	.08349	.08112	.07885	.07667
51	.10691	.10367	.10057	.09761	.09477	.09206	.08946	.08697	.08459	.08231
52	.11399	.11061	.10738	.10429	.10132	.09849	.09577	.09316	.09066	.08826
53	.12142	.11791	.11454	.11132	.10823	.10526	.10242	.09969	.09707	.09456
54	.12921	.12556	.12206	.11870	.11548	.11239	.10942	.10657	.10383	.10120
55	.13738	.13359	.12995	.12646	.12311	.11989	.11679	.11382	.11096	.10820
56	.14595	.14202	.13824	.13462	.13113	.12778	.12456	.12146	.11847	.11560
57	.15491	.15084	.14693	.14317	.13955	.13607	.13272	.12949	.12638	.12338
58	.16424	.16004	.15599	.15209	.14834	.14473	.14125	.13789	.13465	.13153
59	.17390	.16955	.16537	.16134	.15746	.15371	.15010	.14662	.14325	.14001
60	.18387	.17939	.17507	.17091	.16689	.16302	.15927	.15566	.15217	.14880
61	.19420	.18958	.18513	.18084	.17669	.17268	.16881	.16506	.16145	.15795
62	.20494	.20020	.19561	.19119	.18691	.18277	.17877	.17490	.17115	.16753
63	.21613	.21126	.20654	.20199	.19758	.19331	.18918	.18518	.18131	.17757
64	.22774	.22274	.21791	.21322	.20869	.20429	.20004	.19592	.19192	.18805
65	.23979	.23467	.22971	.22490	.22025	.21573	.21135	.20710	.20299	.19899
66	.25233	.24709	.24202	.23709	.23231	.22767	.22318	.21881	.21457	.21045
67	.26543	.26009	.25489	.24985	.24496	.24021	.23560	.23111	.22676	.22252
68	.27908	.27363	.26833	.26319	.25819	.25332	.24860	.24400	.23954	.23519
69	.29324	.28769	.28230	.27705	.27195	.26699	.26216	.25746	.25288	.24843
70	.30783	.30219	.29671	.29137	.28618	.28112	.27619	.27139	.26672	.26216
71	.32277	.31706	.31150	.30608	.30079	.29564	.29063	.28573	.28096	.27631
72	.33803	.33225	.32661	.32112	.31575	.31052	.30542	.30044	.29559	.29084
73	.35356	.34772	.34201	.33645	.33101	.32571	.32053	.31547	.31053	.30571
74	.36943	.36354	.35778	.35215	.34666	.34129	.33604	.33091	.32590	.32100
75	.38574	.37980	.37400	.36833	.36278	.35735	.35205	.34686	.34178	.33681
76	.40256	.39660	.39076	.38505	.37947	.37400	.36864	.36340	.35827	.35324
77	.41991	.41394	.40808	.40235	.39674	.39124	.38585	.38056	.37539	.37032
78	.43777	.43180	.42594	.42020	.41457	.40906	.40365	.39834	.39314	.38803
79	.45602	.45007	.44422	.43849	.43287	.42735	.42193	.41661	.41139	.40627
80	.47449	.46856	.46275	.45704	.45143	.44592	.44051	.43519	.42997	.42484
81	.49300	.48712	.48134	.47566	.47008	.46460	.45921	.45391	.44870	.44357
82	.51145	.50563	.49990	.49427	.48873	.48328	.47792	.47265	.46746	.46235
83	.52983	.52407	.51841	.51284	.50735	.50195	.49663	.49139	.48624	.48116
84	.54828	.54261	.53702	.53151	.52609	.52075	.51549	.51030	.50519	.50015
85	.56693	.56135	.55586	.55044	.54510	.53983	.53464	.52952	.52447	.51949
86	.58560	.58013	.57474	.56943	.56418	.55901	.55390	.54886	.54389	.53898
87	.60398	.59864	.59337	.58817	.58303	.57795	.57294	.56799	.56310	.55828
88	.62206	.61685	.61170	.60662	.60159	.59663	.59173	.58688	.58209	.57736
89	.63980	.63474	.62972	.62477	.61987	.61503	.61024	.60551	.60083	.59620
90	.65719	.65227	.64741	.64259	.63783	.63312	.62846	.62385	.61928	.61477
91	.67388	.66912	.66440	.65973	.65511	.65053	.64600	.64152	.63708	.63269
92	.68949	.68487	.68030	.67577	.67129	.66685	.66245	.65809	.65378	.64950
93	.70401	.69954	.69511	.69072	.68637	.68205	.67778	.67355	.66935	.66519
94	.71765	.71332	.70902	.70477	.70055	.69636	.69222	.68810	.68403	.67998
95	.73072	.72653	.72237	.71825	.71416	.71010	.70608	.70209	.69813	.69421
96	.74311	.73906	.73504	.73105	.72709	.72316	.71926	.71539	.71155	.70774
97	.75465	.75073	.74684	.74297	.73914	.73533	.73155	.72780	.72407	.72037
98	.76555	.76175	.75798	.75424	.75052	.74683	.74317	.73953	.73591	.73232
99	.77626	.77260	.76895	.76534	.76174	.75817	.75462	.75109	.74759	.74411
100	.78676	.78323	.77971	.77622	.77274	.76929	.76586	.76245	.75906	.75569
101	.79719	.79379	.79040	.78703	.78368	.78035	.77704	.77375	.77048	.76722
102	.80749	.80422	.80096	.79772	.79450	.79130	.78811	.78494	.78178	.77864
103	.81775	.81461	.81149	.80838	.80529	.80221	.79914	.79609	.79306	.79003
104	.82881	.82582	.82284	.81988	.81693	.81399	.81106	.80815	.80525	.80236
105	.83959	.83674	.83391	.83108	.82826	.82546	.82267	.81988	.81711	.81435
106	.85373	.85108	.84844	.84581	.84319	.84058	.83797	.83537	.83278	.83020
107	.87113	.86875	.86636	.86399	.86161	.85925	.85689	.85453	.85218	.84984
108	.89913	.89721	.89529	.89337	.89145	.88953	.88762	.88571	.88380	.88189
109	.94900	.94800	.94700	.94600	.94500	.94400	.94300	.94200	.94100	.94000

Age	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
0	.01208	.01197	.01187	.01177	.01168	.01159	.01151	.01143	.01135	.01128
1	.00378	.00367	.00358	.00348	.00340	.00331	.00323	.00316	.00309	.00302

Age	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
2	.00353	.00342	.00331	.00322	.00312	.00304	.00295	.00288	.00280	.00273
3	.00350	.00339	.00327	.00317	.00307	.00298	.00289	.00281	.00273	.00265
4	.00359	.00347	.00335	.00324	.00313	.00303	.00294	.00285	.00276	.00268
5	.00377	.00363	.00351	.00339	.00327	.00317	.00306	.00297	.00288	.00279
6	.00400	.00386	.00372	.00359	.00347	.00335	.00325	.00314	.00305	.00295
7	.00430	.00414	.00400	.00386	.00373	.00360	.00349	.00338	.00327	.00317
8	.00465	.00448	.00432	.00417	.00403	.00390	.00378	.00366	.00354	.00344
9	.00508	.00490	.00473	.00457	.00442	.00428	.00414	.00402	.00389	.00378
10	.00560	.00541	.00523	.00506	.00490	.00475	.00460	.00446	.00433	.00421
11	.00620	.00600	.00581	.00563	.00546	.00529	.00514	.00499	.00485	.00472
12	.00689	.00668	.00647	.00628	.00610	.00593	.00576	.00560	.00545	.00531
13	.00763	.00740	.00718	.00698	.00678	.00660	.00642	.00626	.00610	.00595
14	.00834	.00810	.00787	.00766	.00745	.00726	.00707	.00689	.00673	.00657
15	.00901	.00875	.00851	.00828	.00807	.00786	.00767	.00748	.00730	.00714
16	.00959	.00932	.00907	.00883	.00860	.00839	.00818	.00799	.00780	.00762
17	.01011	.00983	.00956	.00930	.00907	.00884	.00862	.00842	.00822	.00804
18	.01057	.01027	.00999	.00972	.00947	.00923	.00900	.00879	.00858	.00839
19	.01101	.01070	.01040	.01012	.00985	.00960	.00936	.00914	.00892	.00871
20	.01148	.01115	.01083	.01054	.01026	.00999	.00974	.00950	.00927	.00905
21	.01197	.01162	.01129	.01098	.01068	.01040	.01014	.00988	.00964	.00941
22	.01249	.01211	.01176	.01143	.01112	.01082	.01054	.01027	.01002	.00978
23	.01304	.01264	.01227	.01192	.01159	.01127	.01098	.01069	.01042	.01017
24	.01364	.01322	.01283	.01246	.01210	.01177	.01145	.01115	.01087	.01060
25	.01431	.01387	.01345	.01306	.01268	.01233	.01199	.01168	.01137	.01109
26	.01506	.01459	.01415	.01373	.01333	.01295	.01260	.01226	.01194	.01163
27	.01591	.01541	.01494	.01449	.01407	.01367	.01329	.01293	.01259	.01226
28	.01684	.01631	.01580	.01533	.01488	.01445	.01405	.01367	.01330	.01296
29	.01785	.01728	.01675	.01624	.01577	.01531	.01488	.01447	.01408	.01372
30	.01893	.01833	.01776	.01723	.01672	.01623	.01578	.01534	.01493	.01453
31	.02010	.01946	.01885	.01828	.01773	.01722	.01673	.01627	.01582	.01540
32	.02134	.02066	.02002	.01940	.01883	.01828	.01776	.01726	.01679	.01634
33	.02270	.02197	.02128	.02063	.02002	.01943	.01887	.01835	.01784	.01736
34	.02415	.02338	.02265	.02195	.02130	.02067	.02008	.01951	.01897	.01846
35	.02574	.02492	.02414	.02340	.02270	.02203	.02140	.02080	.02022	.01967
36	.02746	.02658	.02575	.02496	.02422	.02350	.02283	.02218	.02157	.02098
37	.02932	.02838	.02750	.02666	.02586	.02510	.02438	.02369	.02303	.02241
38	.03135	.03035	.02941	.02851	.02766	.02685	.02608	.02534	.02464	.02397
39	.03355	.03249	.03149	.03053	.02962	.02876	.02793	.02715	.02640	.02568
40	.03596	.03484	.03377	.03275	.03178	.03086	.02998	.02914	.02833	.02757
41	.03861	.03742	.03628	.03520	.03416	.03318	.03224	.03134	.03048	.02966
42	.04152	.04025	.03903	.03788	.03678	.03573	.03473	.03377	.03285	.03198
43	.04468	.04333	.04205	.04082	.03965	.03853	.03746	.03644	.03546	.03453
44	.04813	.04670	.04533	.04403	.04278	.04159	.04045	.03936	.03832	.03732
45	.05183	.05032	.04887	.04748	.04616	.04489	.04368	.04252	.04141	.04034
46	.05582	.05421	.05267	.05121	.04980	.04846	.04717	.04593	.04475	.04362
47	.06006	.05836	.05673	.05518	.05369	.05226	.05089	.04958	.04832	.04711
48	.06459	.06279	.06107	.05943	.05785	.05634	.05488	.05349	.05216	.05087
49	.06942	.06752	.06571	.06397	.06230	.06070	.05916	.05768	.05626	.05490
50	.07459	.07259	.07068	.06884	.06708	.06538	.06376	.06219	.06069	.05924
51	.08012	.07801	.07599	.07406	.07220	.07041	.06869	.06703	.06544	.06391
52	.08596	.08375	.08163	.07959	.07763	.07574	.07392	.07218	.07049	.06887
53	.09214	.08982	.08759	.08544	.08338	.08139	.07948	.07763	.07586	.07415
54	.09867	.09623	.09389	.09164	.08946	.08737	.08536	.08342	.08154	.07974
55	.10556	.10301	.10055	.09819	.09591	.09371	.09159	.08955	.08757	.08567
56	.11283	.11016	.10759	.10511	.10272	.10042	.09819	.09605	.09397	.09197
57	.12050	.11771	.11502	.11243	.10993	.10751	.10518	.10293	.10075	.09864
58	.12852	.12562	.12281	.12011	.11749	.11496	.11252	.11016	.10787	.10567
59	.13687	.13385	.13092	.12810	.12537	.12273	.12017	.11770	.11531	.11299
60	.14554	.14240	.13935	.13641	.13356	.13080	.12813	.12555	.12305	.12063
61	.15457	.15130	.14813	.14507	.14210	.13923	.13644	.13375	.13113	.12860
62	.16402	.16063	.15734	.15415	.15107	.14808	.14518	.14237	.13964	.13699
63	.17393	.17042	.16700	.16370	.16049	.15738	.15437	.15144	.14860	.14584
64	.18429	.18065	.17712	.17369	.17036	.16714	.16400	.16096	.15800	.15513
65	.19511	.19135	.18769	.18415	.18070	.17735	.17410	.17094	.16787	.16488
66	.20645	.20257	.19880	.19513	.19157	.18810	.18473	.18146	.17827	.17517
67	.21841	.21441	.21052	.20673	.20305	.19947	.19599	.19259	.18929	.18608
68	.23096	.22685	.22284	.21895	.21515	.21146	.20786	.20436	.20094	.19762
69	.24409	.23987	.23575	.23175	.22784	.22404	.22033	.21672	.21320	.20976
70	.25772	.25339	.24918	.24507	.24106	.23715	.23333	.22961	.22598	.22244
71	.27178	.26735	.26304	.25882	.25471	.25070	.24679	.24296	.23923	.23559
72	.28622	.28170	.27729	.27298	.26877	.26467	.26065	.25673	.25290	.24915
73	.30100	.29639	.29189	.28749	.28320	.27899	.27489	.27087	.26694	.26310
74	.31621	.31152	.30694	.30246	.29807	.29378	.28959	.28548	.28146	.27753
75	.33195	.32719	.32253	.31797	.31351	.30914	.30486	.30067	.29657	.29255

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Age	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
76	.34832	.34350	.33877	.33415	.32961	.32517	.32082	.31656	.31238	.30828
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78	.38302	.37811	.37329	.36856	.36392	.35937	.35490	.35051	.34621	.34198
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80	.41980	.41485	.40998	.40520	.40050	.39588	.39134	.38688	.38249	.37818
81	.43854	.43358	.42871	.42392	.41921	.41457	.41001	.40553	.40112	.39678
82	.45733	.45238	.44752	.44273	.43802	.43338	.42881	.42431	.41989	.41553
83	.47616	.47123	.46638	.46161	.45690	.45227	.44770	.44320	.43877	.43441
84	.49519	.49030	.48548	.48073	.47604	.47143	.46688	.46239	.45797	.45361
85	.51458	.50974	.50496	.50025	.49560	.49102	.48650	.48204	.47763	.47329
86	.53413	.52935	.52463	.51998	.51538	.51084	.50636	.50194	.49758	.49327
87	.55351	.54881	.54416	.53957	.53503	.53055	.52613	.52176	.51744	.51317
88	.57268	.56806	.56349	.55898	.55451	.55010	.54574	.54144	.53718	.53296
89	.59162	.58710	.58262	.57819	.57382	.56949	.56520	.56097	.55678	.55263
90	.61030	.60588	.60151	.59718	.59290	.58866	.58447	.58032	.57621	.57214
91	.62834	.62403	.61977	.61554	.61136	.60722	.60312	.59907	.59505	.59107
92	.64527	.64107	.63692	.63280	.62872	.62468	.62068	.61672	.61279	.60890
93	.66107	.65699	.65294	.64893	.64495	.64101	.63711	.63323	.62940	.62559
94	.67597	.67200	.66806	.66415	.66027	.65643	.65262	.64884	.64509	.64138
95	.69031	.68645	.68262	.67881	.67504	.67130	.66759	.66390	.66025	.65662
96	.70396	.70021	.69648	.69279	.68912	.68548	.68186	.67828	.67471	.67118
97	.71670	.71305	.70943	.70584	.70227	.69872	.69520	.69171	.68824	.68480
98	.72875	.72521	.72169	.71819	.71472	.71127	.70784	.70444	.70106	.69770
99	.74065	.73721	.73379	.73040	.72703	.72368	.72035	.71704	.71375	.71048
100	.75234	.74901	.74570	.74241	.73914	.73589	.73265	.72944	.72625	.72307
101	.76399	.76077	.75757	.75438	.75122	.74807	.74494	.74183	.73873	.73565
102	.77552	.77241	.76932	.76625	.76319	.76015	.75712	.75411	.75111	.74813
103	.78703	.78404	.78106	.77809	.77514	.77221	.76929	.76638	.76348	.76060
104	.79948	.79662	.79377	.79093	.78810	.78528	.78248	.77969	.77691	.77414
105	.81159	.80885	.80612	.80340	.80069	.79799	.79530	.79262	.78995	.78729
106	.82763	.82506	.82250	.81995	.81741	.81488	.81235	.80983	.80732	.80482
107	.84749	.84516	.84283	.84051	.83819	.83587	.83356	.83126	.82896	.82666
108	.87999	.87808	.87618	.87428	.87238	.87049	.86859	.86670	.86481	.86293
109	.93900	.93800	.93700	.93600	.93500	.93400	.93300	.93200	.93100	.93000

(f) *Effective dates.* This section applies after April 30, 1999.

§ 1.664–4T [Removed]

Par. 8. Section 1.664–4T is removed.

Par. 9. Section 1.7520–1 is amended by:

1. Revising paragraph (b)(2).
2. Revising paragraphs (c)(1) and (c)(2).
3. Revising paragraph (d).

The revisions read as follows:

§ 1.7520–1 Valuation of annuities, unitrust interests, interests for life or terms of years, and remainder or reversionary interests.

* * * * *

(b) * * *

(2) *Mortality component.* The mortality component reflects the mortality data most recently available from the United States census. As new mortality data becomes available after each decennial census, the mortality component described in this section will be revised periodically and the revised mortality component tables will be published in the regulations at that time. For transactions with valuation dates after April 30, 1999, the mortality component table (Table 90CM) is contained in § 20.2031–7(d)(7) of this chapter. See § 20.2031–7A of this chapter for mortality component tables applicable to transactions for which the valuation date falls before May 1, 1999.

(c) * * *

(1) *Regulation sections containing tables with interest rates between 4.2 and 14 percent for valuation dates after April 30, 1999.* Section 1.642(c)–6(e)(6) contains Table S used for determining the present value of a single life remainder interest in a pooled income fund as defined in § 1.642(c)–5. See § 1.642(c)–6A for actuarial factors for one life applicable to valuation dates before May 1, 1999. Section 1.664–4(e)(6) contains Table F (payout factors) and Table D (actuarial factors used in determining the present value of a remainder interest postponed for a term of years). Section 1.664–4(e)(7) contains Table U(1) (unitrust single life remainder factors). These tables are used in determining the present value of a remainder interest in a charitable remainder unitrust as defined in § 1.664–3. See § 1.664–4A for unitrust single life remainder factors applicable to valuation dates before May 1, 1999. Section 20.2031–7(d)(6) of this chapter contains Table B (actuarial factors used in determining the present value of an interest for a term of years), Table K (annuity end-of-interval adjustment factors), and Table J (term certain annuity beginning-of-interval adjustment factors). Section 20.2031–7(d)(7) of this chapter contains Table S (single life remainder factors), and Table 90CM (mortality components). These tables are used in determining the present value of annuities, life estates, remainders, and reversions. See § 20.2031–7A of this chapter for single life remainder factors and mortality components applicable to valuation dates before May 1, 1999.

(2) *Internal Revenue Service publications containing tables with interest rates between 2.2 and 22 percent for valuation dates after April 30, 1999.* The following documents are available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402:

(i) Internal Revenue Service Publication 1457, "Actuarial Values, Book Aleph," (7–1999). This publication includes tables of valuation factors, as well as examples that show how to compute other valuation factors, for determining the present value of annuities, life estates, terms of years, remainders, and reversions, measured by one or two lives. These factors may also be used in the valuation of interests in a charitable remainder annuity trust as defined in § 1.664–2 and a pooled income fund as defined in § 1.642(c)–5. See § 20.2031–7A of this chapter for publications containing tables for valuation dates before May 1, 1999.

(ii) Internal Revenue Service Publication 1458, "Actuarial Values, Book Beth," (7–1999). This publication includes term certain tables and tables of one and two life valuation factors for determining the present value of remainder interests in a charitable remainder unitrust as defined in § 1.664–3. See § 1.664–4A for publications containing tables for valuation dates before May 1, 1999.

(iii) Internal Revenue Service Publication 1459, "Actuarial Values, Book Gimel," (7–1999). This publication includes tables for computing depreciation adjustment factors. See § 1.170A–12.

(d) *Effective date.* This section applies after April 30, 1989.

§ 1.7520–1T [Removed]

Par. 10. Section 1.7520–1T is removed.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 11. The authority citation for part 20 is amended by removing entries for sections 20.2031–7T and 20.7520–1T to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 20.2031–0 [Amended]

Par. 12. Section 20.2031–0 is amended by removing the entry for § 20.2031–7T from the contents listing.

Par. 13. Section 20.2031–7 is amended by:

1. Removing existing paragraphs (c) through (d)(5).
2. Adding paragraphs (c), (d) heading, and (d)(1) through (d)(5).
3. Revising the introductory text of paragraph (d)(6).
4. Adding paragraph (d)(7).
5. Revising paragraph (e).

The revisions and additions read as follows:

§ 20.2031–7 Valuation of annuities, interests for life or term of years, and remainder or reversionary interests.

* * * * *

(c) *Actuarial valuations.* The present value of annuities, life estates, terms of years, remainders, and reversions for estates of decedents for which the valuation date of the gross estate is after April 30, 1999, is determined under paragraph (d) of this section. The present value of annuities, life estates, terms of years, remainders, and reversions for estates of decedents for which the valuation date of the gross estate is before May 1, 1999, is determined under the following sections:

Valuation date		Applicable regulations
After	Before	
	01–01–52	20.2031–7A(a)
12–31–51	01–01–71	20.2031–7A(b)
12–31–70	12–01–83	20.2031–7A(c)
11–30–83	05–01–89	20.2031–7A(d)
04–30–89	05–01–99	20.2031–7A(e)

(d) *Actuarial valuations after April 30, 1999*—(1) *In general.* Except as otherwise provided in paragraph (b) of this section and § 20.7520–3(b) (pertaining to certain limitations on the use of prescribed tables), if the valuation date for the gross estate of the decedent is after April 30, 1999, the fair market value of annuities, life estates, terms of years, remainders, and reversionary interests is the present value determined by use of standard or special section 7520 actuarial factors. These factors are derived by using the appropriate section 7520 interest rate and, if applicable, the mortality component for the valuation date of the interest that is being valued. For purposes of the computations described in this section, the age of an individual is the age of that individual at the individual's nearest birthday. See §§ 20.7520–1 through 20.7520–4.

(2) *Specific interests*—(i) *Charitable remainder trusts.* The fair market value of a remainder interest in a pooled income fund, as defined in § 1.642(c)–5 of this chapter, is its value determined under § 1.642(c)–6(e) of this chapter. The fair market value of a remainder interest in a charitable remainder annuity trust, as defined in § 1.664–2(a) of this chapter, is the present value determined under § 1.664–2(c) of this chapter. The fair market value of a remainder interest in a charitable remainder unitrust, as defined in § 1.664–3 of this chapter, is its present value determined under § 1.664–4(e) of this chapter. The fair market value of a life interest or term of years in a charitable remainder unitrust is the fair market value of the property as of the date of valuation less the fair market value of the remainder interest on that date determined under § 1.664–4(e)(4) and (5) of this chapter.

(ii) *Ordinary remainder and reversionary interests.* If the interest to be valued is to take effect after a definite number of years or after the death of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate remainder interest actuarial factor (that corresponds to the applicable section 7520 interest rate and remainder interest period) in Table B (for a term certain) or the appropriate Table S (for one measuring life), as the case may be. Table B is contained in paragraph (d)(6) of this section and Table S (for one measuring life when the valuation date is after April 30, 1999) is contained in paragraph (d)(7) of this section and in Internal Revenue Service Publication 1457. For information about obtaining actuarial factors for other types of remainder interests, see paragraph (d)(4) of this section.

(iii) *Ordinary term-of-years and life interests.* If the interest to be valued is the right of a person to receive the income of certain property, or to use certain nonincome-producing property, for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate term-of-years or life interest actuarial factor (that corresponds to the applicable section 7520 interest rate and term-of-years or life interest period). Internal Revenue Service Publication 1457 includes actuarial factors for an interest for a term of years in Table B and for the life of one individual in Table S (for one measuring life when the valuation date is after April 30, 1999). However, term-of-years and life interest actuarial factors are not included in Table B in paragraph (d)(6) of this section or Table S in paragraph (d)(7) of this section. If Internal Revenue Service Publication 1457 (or any other reliable source of term-of-years and life interest actuarial factors) is not conveniently available, an actuarial factor for the interest may be derived mathematically. This actuarial factor may be derived by subtracting the correlative remainder factor (that corresponds to the applicable section 7520 interest rate and the term of years or the life) in Table B (for a term of years) in paragraph (d)(6) of this section or in Table S (for the life of one individual) in paragraph (d)(7) of this section, as the case may be, from 1.000000. For information about obtaining actuarial factors for other types of term-of-years and life interests, see paragraph (d)(4) of this section.

(iv) *Annuities.* (A) If the interest to be valued is the right of a person to receive an annuity that is payable at the end of each year for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the aggregate amount payable annually by the appropriate annuity actuarial factor (that corresponds to the applicable section 7520 interest rate and annuity period). Internal Revenue Publication 1457

includes actuarial factors in Table B (for an annuity payable for a term of years) and in Table S (for an annuity payable for the life of one individual when the valuation date is after April 30, 1999). However, annuity actuarial factors are not included in Table B in paragraph (d)(6) of this section or Table S in paragraph (d)(7) of this section. If Internal Revenue Service Publication 1457 (or any other reliable source of annuity actuarial factors) is not conveniently available, a required annuity factor for a term of years or for one life may be mathematically derived. This annuity factor may be derived by subtracting the applicable remainder factor (that corresponds to the applicable section 7520 interest rate and annuity period) in Table B (in the case of a term-of-years annuity) in paragraph (d)(6) of this section or in Table S (in the case of a one-life annuity when the valuation date is after April 30, 1999) in paragraph (d)(7) of this section, as the case may be, from 1.000000 and then dividing the result by the applicable section 7520 interest rate expressed as a decimal number.

(B) If the annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods, the product obtained by multiplying the annuity factor by the aggregate amount payable annually is then multiplied by the applicable adjustment factor as contained in Table K in paragraph (d)(6) of this section for payments made at the end of the specified periods. The provisions of this paragraph (d)(2)(iv)(B) are illustrated by the following example:

Example. At the time of the decedent's death, the survivor/annuitant, age 72, is entitled to receive an annuity of $15,000 a year for life payable in equal monthly installments at the end of each period. The section 7520 rate for the month in which the decedent died is 9.6 percent. Under Table S in paragraph (d)(7) of this section, the remainder factor at 9.6 percent for an individual aged 72 is .38438. By converting the remainder factor to an annuity factor, as described above, the annuity factor at 9.6 percent for an individual aged 72 is 6.4127 (1.00000 minus .38438, divided by .096). Under Table K in paragraph (d)(6) of this section, the adjustment factor under the column for payments made at the end of each monthly period at the rate of 9.6 percent is 1.0433. The aggregate annual amount, $15,000, is multiplied by the factor 6.4127 and the product multiplied by 1.0433. The present value of the annuity at the date of the decedent's death is, therefore, $100,355.55 ($15,000 × 6.4127 × 1.0433).

(C) If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for a term of years, the value of the annuity is computed by multiplying the aggregate amount payable annually by the annuity factor described in paragraph (d)(2)(iv)(A) of this section; and the product so obtained is then multiplied by the adjustment factor in Table J in paragraph (d)(6) of this section at the appropriate interest rate component for payments made at the beginning of specified periods. If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for one or more lives, the value of the annuity is the sum of the first payment plus the present value of a similar annuity, the first payment of which is not to be made until the end of the payment period, determined as provided in this paragraph (d)(2)(iv).

(v) *Annuity and unitrust interests for a term of years or until the prior death of an individual.* See § 25.2512–5(d)(2)(v) of this chapter for examples explaining how to compute the present value of an annuity or unitrust interest that is payable until the earlier of the lapse of a specific number of years or the death of an individual.

(3) *Transitional rule.* (i) If a decedent dies after April 30, 1999, and if on May 1, 1999, the decedent was mentally incompetent so that the disposition of the decedent's property could not be changed, and the decedent dies without having regained competency to dispose of the decedent's property or dies within 90 days of the date on which the decedent first regains competency, the fair market value of annuities, life estates, terms for years, remainders, and reversions included in the gross estate of the decedent is their present value determined either under this section or under the corresponding section applicable at the time the decedent became mentally incompetent, at the option of the decedent's executor. For example, see § 20.2031–7A(e)(2).

(ii) If a decedent dies after April 30, 1999, and before July 1, 1999, the fair market value of annuities, life estates, remainders, and reversions based on one or more measuring lives included in the gross estate of the decedent is their present value determined under this section by use of the section 7520 interest rate for the month in which the valuation date occurs (see §§ 20.7520–1(b) and 20.7520–2(a)(2)) and the appropriate actuarial tables under either paragraph (d)(7) of this section or § 20.2031–7A(e)(4), at the option of the decedent's executor.

(iii) For purposes of paragraphs (d)(3)(i) and (ii) of this section, where the decedent's executor is given the option to use the appropriate actuarial tables under either paragraph (d)(7) of this section or § 20.2031–7A(e)(4), the decedent's executor must use the same actuarial table with respect to each individual transaction and with respect to all transfers occurring on the valuation date (for example, gift and income tax charitable deductions with respect to the same transfer must be determined based on the same tables, and all assets includible in the gross estate and/or estate tax deductions claimed must be valued based on the same tables).

(4) *Publications and actuarial computations by the Internal Revenue Service.* Many standard actuarial factors not included in paragraphs (d)(6) or (d)(7) of this section are included in Internal Revenue Service Publication 1457, "Actuarial Values, Book Aleph," (7–1999). Publication 1457 also includes examples that illustrate how to compute many special factors for more unusual situations. A copy of this publication is available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. See § 20.2031–7A for publications containing actuarial factors for valuing interests for which the valuation date is before May 1, 1999. If a special factor is required in the case of an actual decedent, the Internal Revenue Service may furnish the factor to the executor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts including a statement of the date of birth for each measuring life, the date of the decedent's death, any other applicable dates, and a copy of the will, trust, or other relevant documents. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see §§ 601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee.

(5) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Remainder payable at an individual's death. The decedent, or the decedent's estate, was entitled to receive certain property worth $50,000 upon the death of A, to whom the income was bequeathed for life. At the time of the decedent's death, A was 47 years 5 months old. In the month in which the decedent died, the section 7520 rate was 9.8 percent. Under Table S in paragraph (d)(7) of this section, the remainder factor at 9.8 percent for determining the present value of the remainder interest due at the death of a person aged 47, the number of years nearest A's actual age at the decedent's death, is .10317. The present value of the remainder interest at the date of the decedent's death is, therefore, $5,158.50 ($50,000 × .10317).

Example 2. Income payable for an individual's life. A's parent bequeathed an income interest in property to A for life, with the remainder interest passing to B at A's death. At the time of the parent's death, the value of the property was $50,000 and A was 30 years 10 months old. The section 7520 rate at the time of the parent's death was 10.2 percent. Under Table S in paragraph (d)(7) of this section, the remainder factor at 10.2 percent for determining the present value of the remainder interest due at the death of a person aged 31, the number of years closest to A's age at the decedent's death, is .03583. Converting this remainder factor to an income factor, as described in paragraph (d)(2)(iii) of this section, the factor for determining the present value of an income interest for the life of a person aged 31 is .96417. The present value of A's interest at the time of the parent's death is, therefore, $48,208.50 ($50,000 × .96417).

Example 3. Annuity payable for an individual's life. A purchased an annuity for the benefit of both A and B. Under the terms of the annuity contract, at A's death, a survivor annuity of $10,000 a year payable in equal semiannual installments made at the end of each interval is payable to B for life. At A's death, B was 45 years 7 months old. Also, at A's death, the section 7520 rate was 9.6 percent. Under Table S in paragraph (d)(7) of this section, the factor at 9.6 percent for determining the present value of the remainder interest at the death of a person age 46 (the number of years nearest B's actual age) is .10013. By converting the factor to an annuity factor, as described in paragraph (d)(2)(iv)(A) of this section, the factor for the present value of an annuity payable until the death of a person age 46 is 9.3736 (1.00000 minus .10013, divided by .096). The adjustment factor from Table K in paragraph (d)(6) of this section at an interest rate of 9.6 percent for semiannual annuity payments made at the end of the period is 1.0235. The present value of the annuity at the date of A's death is, therefore, $95,938.80 ($10,000 × 9.3736 × 1.0235).

Example 4. Annuity payable for a term of years. The decedent, or the decedent's estate, was entitled to receive an annuity of $10,000 a year payable in equal quarterly installments at the end of each quarter throughout a term certain. At the time of the decedent's death, the section 7520 rate was 9.8 percent. A quarterly payment had just been made prior to the decedent's death and payments were to continue for 5 more years. Under Table B in paragraph (d)(6) of this section for the interest rate of 9.8 percent, the factor for the present value of a remainder interest due after a term of 5 years is .626597. Converting the factor to an annuity factor, as described in paragraph (d)(2)(iv)(A) of this section, the factor for the present value of an annuity for a term of 5 years is 3.8102. The adjustment factor from Table K in paragraph (d)(6) of this section at an interest rate of 9.8 percent for quarterly annuity payments made at the end of the period is 1.0360. The present value of the annuity is, therefore, $39,473.67 ($10,000 × 3.8102 × 1.0360).

(6) *Actuarial Table B, Table J, and Table K where the valuation date is after April 30, 1989.* Except as provided in § 20.7520–3(b) (pertaining to certain limitations on prescribed tables), for determination of the present value of an interest that is dependent on a term of years, the tables in this paragraph (d)(6) must be used in the application of the provisions of this section when the section 7520 interest rate component is between 4.2 and 14 percent.

* * * * *

(7) *Actuarial Table S and Table 90CM where the valuation date is after April 30, 1999.* Except as provided in § 20.7520–2(b) (pertaining to certain limitations on the use of prescribed tables), for determination of the present value of an interest that is dependent on the termination of a life interest, Table 90CM and Table S, single life remainder factors applicable where the valuation date is after April 30, 1999, contained in this paragraph (d)(7) (or Table S and Table 80CNSMT contained in § 20.2031–7A(e)(4) for valuation dates after April 30, 1989, and before May 1, 1999) and Table J and Table K contained in paragraph (d)(6) of this section, must be used in the application of the provisions of this section when the section 7520 interest rate component is between 4.2 and 14 percent.

TABLE S.—BASED ON LIFE TABLE 90CM SINGLE LIFE REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1999

[Interest rate]

Age	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
0	.06752	.06130	.05586	.05109	.04691	.04322	.03998	.03711	.03458	.03233
1	.06137	.05495	.04932	.04438	.04003	.03620	.03283	.02985	.02721	.02487
2	.06325	.05667	.05088	.04580	.04132	.03737	.03388	.03079	.02806	.02563
3	.06545	.05869	.05275	.04752	.04291	.03883	.03523	.03203	.02920	.02668
4	.06784	.06092	.05482	.04944	.04469	.04048	.03676	.03346	.03052	.02791
5	.07040	.06331	.05705	.05152	.04662	.04229	.03845	.03503	.03199	.02928
6	.07310	.06583	.05941	.05372	.04869	.04422	.04025	.03672	.03357	.03076
7	.07594	.06849	.06191	.05607	.05089	.04628	.04219	.03854	.03528	.03236
8	.07891	.07129	.06453	.05853	.05321	.04846	.04424	.04046	.03709	.03407
9	.08203	.07423	.06731	.06115	.05567	.05079	.04643	.04253	.03904	.03592
10	.08532	.07734	.07024	.06392	.05829	.05326	.04877	.04474	.04114	.03790
11	.08875	.08059	.07331	.06683	.06104	.05587	.05124	.04709	.04336	.04002
12	.09233	.08398	.07653	.06989	.06394	.05862	.05385	.04957	.04572	.04226
13	.09601	.08748	.07985	.07304	.06693	.06146	.05655	.05214	.04816	.04458
14	.09974	.09102	.08322	.07624	.06997	.06435	.05929	.05474	.05064	.04694
15	.10350	.09460	.08661	.07946	.07303	.06725	.06204	.05735	.05312	.04930
16	.10728	.09818	.09001	.08268	.07608	.07014	.06479	.05996	.05559	.05164
17	.11108	.10179	.09344	.08592	.07916	.07306	.06755	.06257	.05807	.05399
18	.11494	.10545	.09691	.08921	.08227	.07601	.07034	.06521	.06057	.05636
19	.11889	.10921	.10047	.09259	.08548	.07904	.07322	.06794	.06315	.05880
20	.12298	.11310	.10417	.09610	.08881	.08220	.07622	.07078	.06584	.06135
21	.12722	.11713	.10801	.09976	.09228	.08550	.07935	.07375	.06866	.06403
22	.13159	.12130	.11199	.10354	.09588	.08893	.08260	.07685	.07160	.06682
23	.13613	.12563	.11612	.10748	.09964	.09250	.08601	.08009	.07468	.06975
24	.14084	.13014	.12043	.11160	.10357	.09625	.08958	.08349	.07793	.07284
25	.14574	.13484	.12493	.11591	.10768	.10018	.09334	.08708	.08135	.07611
26	.15084	.13974	.12963	.12041	.11199	.10431	.09729	.09085	.08496	.07956
27	.15615	.14485	.13454	.12513	.11652	.10865	.10144	.09484	.08878	.08322
28	.16166	.15016	.13965	.13004	.12124	.11319	.10580	.09901	.09279	.08706
29	.16737	.15567	.14497	.13516	.12617	.11792	.11035	.10339	.09699	.09109
30	.17328	.16138	.15048	.14047	.13129	.12286	.11510	.10796	.10138	.09532
31	.17938	.16728	.15618	.14599	.13661	.12799	.12004	.11272	.10597	.09974
32	.18568	.17339	.16210	.15171	.14214	.13333	.12520	.11769	.11076	.10435

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Age	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
33	.19220	.17972	.16824	.15766	.14790	.13889	.13058	.12289	.11578	.10920
34	.19894	.18627	.17460	.16383	.15388	.14468	.13618	.12831	.12102	.11426
35	.20592	.19307	.18121	.17025	.16011	.15073	.14204	.13399	.12652	.11958
36	.21312	.20010	.18805	.17691	.16658	.15701	.14814	.13990	.13225	.12514
37	.22057	.20737	.19514	.18382	.17331	.16356	.15450	.14608	.13825	.13096
38	.22827	.21490	.20251	.19100	.18031	.17038	.16113	.15253	.14452	.13705
39	.23623	.22270	.21013	.19845	.18759	.17747	.16805	.15927	.15108	.14344
40	.24446	.23078	.21805	.20620	.19516	.18487	.17527	.16631	.15795	.15013
41	.25298	.23915	.22626	.21425	.20305	.19259	.18282	.17368	.16514	.15715
42	.26178	.24782	.23478	.22262	.21125	.20062	.19069	.18138	.17267	.16450
43	.27087	.25678	.24360	.23129	.21977	.20898	.19888	.18941	.18053	.17220
44	.28025	.26603	.25273	.24027	.22860	.21766	.20740	.19777	.18873	.18023
45	.28987	.27555	.26212	.24953	.23772	.22664	.21622	.20644	.19724	.18858
46	.29976	.28533	.27179	.25908	.24714	.23591	.22536	.21542	.20606	.19725
47	.30987	.29535	.28171	.26889	.25682	.24546	.23476	.22468	.21518	.20621
48	.32023	.30563	.29190	.27897	.26678	.25530	.24447	.23425	.22460	.21549
49	.33082	.31615	.30234	.28931	.27702	.26543	.25447	.24412	.23434	.22509
50	.34166	.32694	.31306	.29995	.28756	.27586	.26479	.25432	.24441	.23502
51	.35274	.33798	.32404	.31085	.29838	.28658	.27541	.26482	.25479	.24528
52	.36402	.34924	.33525	.32200	.30946	.29757	.28630	.27561	.26547	.25584
53	.37550	.36070	.34668	.33339	.32078	.30882	.29746	.28667	.27643	.26669
54	.38717	.37237	.35833	.34500	.33234	.32031	.30888	.29801	.28766	.27782
55	.39903	.38424	.37019	.35683	.34413	.33205	.32056	.30961	.29918	.28925
56	.41108	.39631	.38227	.36890	.35617	.34405	.33250	.32149	.31099	.30097
57	.42330	.40857	.39455	.38118	.36844	.35629	.34469	.33363	.32306	.31297
58	.43566	.42098	.40699	.39364	.38089	.36873	.35710	.34600	.33538	.32522
59	.44811	.43351	.41956	.40623	.39350	.38133	.36968	.35855	.34789	.33768
60	.46066	.44613	.43224	.41896	.40624	.39408	.38243	.37127	.36058	.35033
61	.47330	.45887	.44505	.43182	.41914	.40699	.39535	.38418	.37347	.36318
62	.48608	.47175	.45802	.44485	.43223	.42011	.40848	.39732	.38660	.37629
63	.49898	.48478	.47115	.45807	.44550	.43343	.42184	.41069	.39997	.38966
64	.51200	.49793	.48442	.47143	.45895	.44694	.43539	.42427	.41357	.40326
65	.52512	.51121	.49782	.48495	.47255	.46062	.44912	.43805	.42738	.41709
66	.53835	.52461	.51137	.49862	.48634	.47449	.46307	.45206	.44143	.43118
67	.55174	.53818	.52511	.51250	.50034	.48860	.47727	.46633	.45576	.44556
68	.56524	.55188	.53899	.52654	.51452	.50291	.49168	.48083	.47034	.46020
69	.57882	.56568	.55299	.54071	.52885	.51737	.50627	.49552	.48513	.47506
70	.59242	.57951	.56703	.55495	.54325	.53193	.52096	.51034	.50004	.49007
71	.60598	.59332	.58106	.56918	.55767	.54651	.53569	.52520	.51503	.50516
72	.61948	.60707	.59504	.58338	.57206	.56108	.55043	.54009	.53004	.52029
73	.63287	.62073	.60895	.59751	.58640	.57561	.56513	.55495	.54505	.53543
74	.64621	.63435	.62282	.61162	.60073	.59015	.57985	.56984	.56009	.55061
75	.65953	.64796	.63671	.62575	.61510	.60473	.59463	.58480	.57523	.56591
76	.67287	.66160	.65063	.63995	.62954	.61940	.60952	.59989	.59050	.58135
77	.68622	.67526	.66459	.65419	.64404	.63415	.62450	.61509	.60590	.59694
78	.69954	.68892	.67856	.66845	.65858	.64895	.63955	.63036	.62140	.61264
79	.71278	.70250	.69246	.68265	.67308	.66372	.65457	.64563	.63690	.62836
80	.72581	.71588	.70618	.69668	.68740	.67833	.66945	.66077	.65227	.64396
81	.73857	.72899	.71962	.71045	.70147	.69268	.68408	.67566	.66741	.65933
82	.75101	.74178	.73274	.72389	.71522	.70672	.69840	.69024	.68225	.67441
83	.76311	.75423	.74553	.73700	.72864	.72044	.71240	.70451	.69678	.68919
84	.77497	.76645	.75809	.74988	.74183	.73393	.72618	.71857	.71110	.70377
85	.78665	.77848	.77047	.76260	.75487	.74728	.73982	.73250	.72530	.71823
86	.79805	.79025	.78258	.77504	.76764	.76036	.75320	.74617	.73925	.73245
87	.80904	.80159	.79427	.78706	.77998	.77301	.76615	.75940	.75277	.74624
88	.81962	.81251	.80552	.79865	.79188	.78521	.77865	.77220	.76584	.75958
89	.82978	.82302	.81636	.80980	.80335	.79699	.79072	.78455	.77847	.77248
90	.83952	.83309	.82676	.82052	.81437	.80831	.80234	.79645	.79064	.78492
91	.84870	.84260	.83658	.83064	.82479	.81902	.81332	.80771	.80217	.79671
92	.85716	.85136	.84563	.83998	.83441	.82891	.82348	.81812	.81283	.80761
93	.86494	.85942	.85396	.84858	.84326	.83801	.83283	.82771	.82266	.81767
94	.87216	.86690	.86170	.85657	.85149	.84648	.84153	.83664	.83181	.82704
95	.87898	.87397	.86902	.86412	.85928	.85450	.84977	.84510	.84049	.83592
96	.88537	.88060	.87587	.87121	.86659	.86203	.85751	.85305	.84864	.84427
97	.89127	.88672	.88221	.87775	.87335	.86898	.86467	.86040	.85618	.85200
98	.89680	.89245	.88815	.88389	.87968	.87551	.87138	.86730	.86326	.85926
99	.90217	.89803	.89393	.88987	.88585	.88187	.87793	.87402	.87016	.86633
100	.90738	.90344	.89953	.89567	.89183	.88804	.88428	.88056	.87687	.87322
101	.91250	.90876	.90504	.90137	.89772	.89412	.89054	.88699	.88348	.88000
102	.91751	.91396	.91045	.90696	.90350	.90007	.89668	.89331	.88997	.88666
103	.92247	.91912	.91579	.91249	.90922	.90598	.90276	.89957	.89640	.89326
104	.92775	.92460	.92148	.91839	.91532	.91227	.90924	.90624	.90326	.90031
105	.93290	.92996	.92704	.92415	.92127	.91841	.91558	.91276	.90997	.90719
106	.93948	.93680	.93415	.93151	.92889	.92628	.92370	.92113	.91857	.91604

Age	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
107	.94739	.94504	.94271	.94039	.93808	.93579	.93351	.93124	.92899	.92675
108	.95950	.95767	.95585	.95404	.95224	.95045	.94867	.94689	.94512	.94336
109	.97985	.97893	.97801	.97710	.97619	.97529	.97438	.97348	.97259	.97170

Age	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
0	.03034	.02857	.02700	.02559	.02433	.02321	.02220	.02129	.02047	.01973
1	.02279	.02094	.01929	.01782	.01650	.01533	.01427	.01331	.01246	.01168
2	.02347	.02155	.01983	.01829	.01692	.01569	.01458	.01358	.01268	.01187
3	.02444	.02243	.02065	.01905	.01761	.01632	.01516	.01412	.01317	.01232
4	.02558	.02349	.02163	.01996	.01846	.01712	.01590	.01481	.01382	.01292
5	.02686	.02469	.02275	.02101	.01945	.01804	.01677	.01562	.01458	.01364
6	.02825	.02600	.02398	.02217	.02053	.01906	.01773	.01653	.01544	.01445
7	.02976	.02742	.02532	.02343	.02172	.02019	.01880	.01754	.01640	.01536
8	.03137	.02894	.02675	.02479	.02301	.02140	.01995	.01864	.01744	.01635
9	.03311	.03059	.02832	.02627	.02442	.02274	.02122	.01985	.01859	.01745
10	.03499	.03237	.03001	.02788	.02595	.02420	.02262	.02118	.01987	.01867
11	.03700	.03428	.03183	.02961	.02760	.02578	.02413	.02262	.02125	.02000
12	.03913	.03632	.03377	.03146	.02937	.02748	.02575	.02418	.02275	.02144
13	.04135	.03843	.03579	.03339	.03122	.02924	.02744	.02580	.02431	.02294
14	.04359	.04057	.03783	.03534	.03308	.03102	.02915	.02744	.02587	.02444
15	.04584	.04270	.03986	.03728	.03493	.03279	.03083	.02905	.02742	.02593
16	.04806	.04482	.04187	.03919	.03674	.03452	.03248	.03063	.02892	.02736
17	.05029	.04692	.04387	.04108	.03855	.03623	.03411	.03218	.03040	.02877
18	.05253	.04905	.04588	.04299	.04036	.03795	.03574	.03373	.03187	.03017
19	.05484	.05124	.04796	.04496	.04222	.03972	.03742	.03532	.03339	.03161
20	.05726	.05354	.05013	.04702	.04418	.04158	.03919	.03700	.03498	.03313
21	.05980	.05595	.05242	.04920	.04625	.04354	.04105	.03877	.03667	.03473
22	.06246	.05847	.05482	.05147	.04841	.04559	.04301	.04063	.03844	.03642
23	.06524	.06112	.05734	.05387	.05069	.04777	.04508	.04260	.04032	.03821
24	.06819	.06392	.06001	.05642	.05312	.05008	.04728	.04470	.04232	.04012
25	.07131	.06690	.06285	.05913	.05570	.05255	.04964	.04695	.04447	.04218
26	.07460	.07005	.06586	.06200	.05845	.05518	.05215	.04936	.04677	.04438
27	.07810	.07340	.06907	.06508	.06140	.05800	.05485	.05195	.04925	.04676
28	.08179	.07693	.07246	.06833	.06451	.06098	.05772	.05469	.05189	.04929
29	.08566	.08065	.07603	.07176	.06780	.06414	.06075	.05761	.05469	.05198
30	.08973	.08456	.07978	.07536	.07127	.06748	.06396	.06069	.05766	.05483
31	.09398	.08865	.08372	.07915	.07491	.07098	.06733	.06394	.06078	.05785
32	.09843	.09294	.08785	.08313	.07875	.07468	.07089	.06737	.06409	.06103
33	.10310	.09745	.09220	.08732	.08279	.07858	.07466	.07100	.06759	.06441
34	.10799	.10217	.09676	.09173	.08705	.08269	.07862	.07483	.07129	.06798
35	.11314	.10715	.10157	.09638	.09155	.08704	.08283	.07890	.07522	.07179
36	.11852	.11236	.10662	.10127	.09628	.09162	.08726	.08319	.07938	.07581
37	.12416	.11783	.11193	.10641	.10126	.09645	.09194	.08772	.08377	.08006
38	.13009	.12359	.11751	.11183	.10652	.10155	.09689	.09253	.08843	.08459
39	.13629	.12962	.12338	.11753	.11206	.10693	.10212	.09761	.09337	.08938
40	.14281	.13597	.12955	.12355	.11791	.11262	.10766	.10299	.09860	.09447
41	.14966	.14264	.13606	.12989	.12409	.11864	.11352	.10870	.10417	.09989
42	.15685	.14966	.14291	.13657	.13061	.12500	.11972	.11475	.11006	.10564
43	.16437	.15702	.15010	.14360	.13747	.13171	.12627	.12115	.11631	.11174
44	.17224	.16472	.15764	.15098	.14469	.13876	.13317	.12789	.12290	.11819
45	.18042	.17274	.16550	.15867	.15223	.14615	.14040	.13496	.12982	.12496
46	.18893	.18110	.17370	.16671	.16011	.15387	.14796	.14238	.13708	.13207
47	.19775	.18975	.18220	.17505	.16830	.16190	.15584	.15010	.14466	.13950
48	.20688	.19873	.19102	.18373	.17682	.17027	.16406	.15817	.15258	.14727
49	.21633	.20804	.20018	.19274	.18568	.17898	.17262	.16658	.16084	.15539
50	.22612	.21769	.20969	.20210	.19490	.18805	.18155	.17536	.16948	.16388
51	.23625	.22769	.21955	.21182	.20448	.19749	.19084	.18452	.17849	.17275
52	.24669	.23799	.22973	.22186	.21438	.20726	.20047	.19400	.18784	.18196
53	.25742	.24861	.24022	.23222	.22461	.21735	.21043	.20383	.19753	.19151
54	.26845	.25952	.25101	.24290	.23516	.22777	.22072	.21399	.20756	.20140
55	.27978	.27074	.26212	.25389	.24604	.23853	.23136	.22450	.21793	.21166
56	.29140	.28227	.27355	.26522	.25725	.24963	.24233	.23535	.22867	.22227
57	.30333	.29411	.28529	.27686	.26879	.26106	.25365	.24656	.23976	.23324
58	.31551	.30621	.29731	.28878	.28061	.27278	.26528	.25807	.25116	.24453
59	.32790	.31854	.30956	.30095	.29269	.28477	.27716	.26986	.26284	.25610
60	.34050	.33107	.32202	.31334	.30500	.29699	.28929	.28190	.27478	.26794
61	.35331	.34384	.33473	.32598	.31757	.30948	.30170	.29422	.28701	.28007
62	.36639	.35688	.34772	.33892	.33044	.32229	.31443	.30687	.29958	.29255
63	.37974	.37020	.36101	.35216	.34363	.33542	.32750	.31986	.31250	.30539
64	.39334	.38378	.37456	.36568	.35711	.34884	.34087	.33317	.32574	.31857
65	.40718	.39761	.38838	.37947	.37087	.36257	.35455	.34681	.33932	.33208
66	.42128	.41172	.40249	.39357	.38496	.37663	.36858	.36079	.35326	.34597
67	.43569	.42616	.41694	.40803	.39941	.39107	.38299	.37518	.36761	.36028

Age	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
68	.45038	.44089	.43170	.42281	.41419	.40585	.39777	.38994	.38235	.37499
69	.46531	.45587	.44672	.43786	.42927	.42094	.41286	.40503	.39743	.39006
70	.48040	.47103	.46194	.45312	.44456	.43626	.42820	.42038	.41278	.40540
71	.49558	.48629	.47727	.46851	.46000	.45174	.44371	.43591	.42832	.42095
72	.51082	.50162	.49268	.48399	.47554	.46733	.45934	.45157	.44401	.43666
73	.52607	.51697	.50813	.49952	.49114	.48299	.47506	.46733	.45981	.45249
74	.54139	.53241	.52367	.51515	.50686	.49879	.49092	.48325	.47578	.46849
75	.55683	.54798	.53936	.53095	.52276	.51477	.50698	.49938	.49197	.48474
76	.57243	.56373	.55524	.54696	.53888	.53100	.52330	.51579	.50846	.50130
77	.58819	.57965	.57132	.56318	.55523	.54747	.53988	.53247	.52523	.51815
78	.60408	.59572	.58755	.57957	.57177	.56414	.55668	.54939	.54225	.53527
79	.62001	.61184	.60385	.59604	.58840	.58092	.57360	.56644	.55943	.55256
80	.63582	.62786	.62007	.61244	.60497	.59765	.59048	.58347	.57659	.56985
81	.65142	.64367	.63608	.62864	.62135	.61421	.60721	.60034	.59361	.58701
82	.66673	.65920	.65182	.64458	.63748	.63052	.62368	.61698	.61041	.60395
83	.68175	.67444	.66728	.66024	.65334	.64656	.63991	.63338	.62696	.62066
84	.69657	.68950	.68256	.67574	.66904	.66246	.65599	.64964	.64340	.63727
85	.71128	.70446	.69775	.69116	.68467	.67830	.67204	.66587	.65982	.65386
86	.72576	.71919	.71272	.70636	.70010	.69394	.68789	.68193	.67606	.67029
87	.73981	.73349	.72726	.72114	.71511	.70917	.70333	.69757	.69190	.68632
88	.75342	.74735	.74137	.73548	.72968	.72396	.71833	.71279	.70732	.70194
89	.76658	.76076	.75503	.74938	.74381	.73832	.73290	.72757	.72231	.71712
90	.77928	.77371	.76823	.76281	.75748	.75221	.74702	.74190	.73684	.73186
91	.79131	.78600	.78075	.77557	.77046	.76542	.76044	.75553	.75068	.74589
92	.80246	.79737	.79235	.78740	.78250	.77767	.77290	.76818	.76353	.75893
93	.81274	.80788	.80307	.79832	.79363	.78899	.78441	.77989	.77542	.77100
94	.82232	.81766	.81306	.80850	.80401	.79956	.79517	.79082	.78653	.78228
95	.83141	.82695	.82254	.81818	.81387	.80961	.80539	.80122	.79710	.79302
96	.83996	.83569	.83147	.82729	.82316	.81907	.81503	.81103	.80707	.80315
97	.84787	.84378	.83973	.83573	.83176	.82784	.82396	.82012	.81632	.81255
98	.85530	.85138	.84750	.84366	.83985	.83609	.83236	.82867	.82502	.82140
99	.86255	.85880	.85508	.85140	.84776	.84415	.84057	.83703	.83353	.83005
100	.86960	.86601	.86246	.85894	.85546	.85200	.84858	.84519	.84183	.83849
101	.87655	.87313	.86974	.86638	.86305	.85975	.85648	.85324	.85003	.84684
102	.88338	.88012	.87689	.87369	.87052	.86738	.86426	.86116	.85809	.85505
103	.89015	.88706	.88399	.88095	.87793	.87494	.87197	.86903	.86611	.86321
104	.89737	.89446	.89157	.88871	.88586	.88304	.88024	.87745	.87469	.87195
105	.90443	.90170	.89898	.89628	.89360	.89094	.88830	.88568	.88307	.88049
106	.91351	.91101	.90852	.90605	.90359	.90115	.89873	.89632	.89392	.89154
107	.92452	.92230	.92010	.91791	.91573	.91356	.91141	.90927	.90714	.90502
108	.94161	.93987	.93814	.93641	.93469	.93298	.93128	.92958	.92790	.92622
109	.97081	.96992	.96904	.96816	.96729	.96642	.96555	.96468	.96382	.96296

Age	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
0	.01906	.01845	.01790	.01740	.01694	.01652	.01613	.01578	.01546	.01516
1	.01098	.01034	.00977	.00924	.00876	.00833	.00793	.00756	.00722	.00691
2	.01113	.01046	.00986	.00930	.00880	.00834	.00791	.00753	.00717	.00684
3	.01155	.01084	.01020	.00962	.00909	.00860	.00816	.00775	.00737	.00702
4	.01211	.01137	.01069	.01008	.00952	.00900	.00853	.00810	.00770	.00733
5	.01279	.01201	.01130	.01065	.01006	.00952	.00902	.00856	.00814	.00775
6	.01356	.01274	.01199	.01131	.01068	.01011	.00959	.00910	.00865	.00824
7	.01442	.01356	.01277	.01205	.01140	.01079	.01023	.00972	.00925	.00881
8	.01536	.01446	.01363	.01287	.01218	.01154	.01096	.01041	.00991	.00945
9	.01641	.01546	.01460	.01380	.01307	.01240	.01178	.01120	.01068	.01019
10	.01758	.01659	.01567	.01484	.01407	.01336	.01270	.01210	.01154	.01103
11	.01886	.01781	.01686	.01598	.01517	.01442	.01373	.01310	.01251	.01196
12	.02024	.01915	.01814	.01721	.01636	.01558	.01485	.01419	.01357	.01299
13	.02168	.02054	.01948	.01851	.01762	.01679	.01603	.01533	.01467	.01407
14	.02313	.02193	.02083	.01981	.01887	.01801	.01721	.01646	.01578	.01514
15	.02456	.02330	.02214	.02107	.02009	.01918	.01834	.01756	.01684	.01617
16	.02593	.02462	.02340	.02229	.02126	.02030	.01942	.01860	.01785	.01714
17	.02728	.02590	.02463	.02346	.02238	.02138	.02046	.01960	.01880	.01806
18	.02861	.02717	.02584	.02462	.02348	.02243	.02146	.02056	.01972	.01894
19	.02998	.02847	.02708	.02580	.02461	.02351	.02249	.02154	.02066	.01984
20	.03142	.02984	.02839	.02704	.02580	.02465	.02357	.02258	.02165	.02079
21	.03295	.03130	.02978	.02837	.02706	.02585	.02473	.02368	.02271	.02180
22	.03455	.03283	.03124	.02976	.02839	.02712	.02594	.02484	.02382	.02286
23	.03626	.03446	.03279	.03124	.02981	.02847	.02723	.02608	.02500	.02400
24	.03809	.03620	.03446	.03283	.03133	.02993	.02863	.02741	.02628	.02522
25	.04005	.03808	.03625	.03456	.03298	.03151	.03014	.02887	.02768	.02656
26	.04216	.04010	.03819	.03641	.03476	.03322	.03178	.03044	.02919	.02802
27	.04444	.04229	.04029	.03843	.03670	.03508	.03357	.03217	.03085	.02962
28	.04687	.04463	.04254	.04059	.03877	.03708	.03550	.03402	.03263	.03133

Age	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
29	.04946	.04712	.04493	.04289	.04099	.03922	.03756	.03600	.03455	.03318
30	.05221	.04976	.04748	.04534	.04335	.04149	.03975	.03812	.03659	.03515
31	.05511	.05255	.05017	.04794	.04585	.04390	.04208	.04037	.03876	.03725
32	.05818	.05551	.05302	.05069	.04851	.04647	.04455	.04276	.04107	.03948
33	.06144	.05866	.05606	.05363	.05135	.04921	.04720	.04532	.04355	.04188
34	.06489	.06200	.05928	.05674	.05436	.05212	.05002	.04805	.04619	.04444
35	.06857	.06555	.06273	.06007	.05758	.05524	.05304	.05097	.04902	.04718
36	.07246	.06932	.06638	.06361	.06101	.05856	.05626	.05409	.05205	.05012
37	.07659	.07332	.07025	.06737	.06466	.06210	.05969	.05742	.05528	.05325
38	.08098	.07758	.07439	.07138	.06855	.06588	.06336	.06099	.05874	.05662
39	.08563	.08210	.07878	.07565	.07270	.06992	.06729	.06480	.06245	.06023
40	.09059	.08692	.08347	.08021	.07714	.07423	.07149	.06889	.06643	.06411
41	.09586	.09206	.08848	.08509	.08189	.07886	.07600	.07329	.07072	.06828
42	.10147	.09753	.09381	.09029	.08696	.08381	.08083	.07800	.07531	.07277
43	.10742	.10334	.09948	.09583	.09237	.08909	.08598	.08304	.08024	.07758
44	.11373	.10950	.10551	.10172	.09813	.09472	.09148	.08841	.08549	.08272
45	.12035	.11599	.11185	.10792	.10420	.10066	.09730	.09410	.09106	.08817
46	.12732	.12281	.11853	.11447	.11061	.10694	.10345	.10013	.09696	.09395
47	.13460	.12995	.12553	.12133	.11733	.11353	.10991	.10646	.10317	.10004
48	.14223	.13743	.13287	.12853	.12439	.12046	.11671	.11313	.10972	.10646
49	.15020	.14526	.14056	.13608	.13181	.12774	.12385	.12015	.11661	.11322
50	.15855	.15347	.14862	.14401	.13960	.13540	.13138	.12754	.12388	.12037
51	.16727	.16205	.15707	.15232	.14777	.14344	.13929	.13532	.13153	.12789
52	.17634	.17098	.16587	.16097	.15630	.15183	.14755	.14345	.13953	.13577
53	.18576	.18027	.17501	.16999	.16518	.16057	.15616	.15194	.14789	.14400
54	.19552	.18990	.18451	.17935	.17441	.16968	.16514	.16078	.15661	.15260
55	.20564	.19989	.19437	.18908	.18402	.17915	.17449	.17001	.16571	.16157
56	.21613	.21025	.20461	.19919	.19400	.18901	.18422	.17962	.17519	.17093
57	.22698	.22098	.21522	.20968	.20436	.19925	.19434	.18961	.18507	.18069
58	.23816	.23204	.22616	.22051	.21507	.20984	.20481	.19996	.19530	.19080
59	.24962	.24339	.23740	.23163	.22608	.22073	.21558	.21062	.20584	.20123
60	.26136	.25502	.24892	.24304	.23738	.23192	.22666	.22158	.21669	.21196
61	.27339	.26695	.26075	.25477	.24900	.24343	.23806	.23288	.22787	.22304
62	.28578	.27925	.27295	.26687	.26100	.25533	.24985	.24456	.23945	.23451
63	.29854	.29192	.28553	.27935	.27339	.26762	.26205	.25666	.25145	.24641
64	.31164	.30494	.29846	.29221	.28615	.28030	.27463	.26915	.26384	.25870
65	.32508	.31831	.31177	.30543	.29930	.29336	.28761	.28203	.27663	.27140
66	.33891	.33208	.32547	.31906	.31285	.30684	.30101	.29536	.28987	.28456
67	.35318	.34630	.33963	.33316	.32689	.32081	.31491	.30918	.30363	.29823
68	.36785	.36093	.35422	.34770	.34138	.33524	.32928	.32349	.31787	.31240
69	.38290	.37595	.36920	.36265	.35628	.35009	.34408	.33824	.33256	.32703
70	.39823	.39127	.38450	.37791	.37151	.36529	.35924	.35335	.34762	.34204
71	.41378	.40681	.40003	.39343	.38701	.38076	.37467	.36875	.36298	.35736
72	.42950	.42253	.41575	.40914	.40271	.39644	.39034	.38438	.37858	.37293
73	.44535	.43840	.43162	.42502	.41858	.41231	.40619	.40022	.39440	.38872
74	.46139	.45446	.44771	.44112	.43469	.42842	.42230	.41632	.41049	.40479
75	.47769	.47080	.46408	.45752	.45111	.44485	.43874	.43277	.42693	.42123
76	.49430	.48747	.48079	.47427	.46790	.46167	.45558	.44963	.44380	.43811
77	.51123	.50447	.49786	.49139	.48506	.47888	.47282	.46690	.46111	.45543
78	.52845	.52177	.51523	.50884	.50257	.49645	.49044	.48457	.47881	.47317
79	.54584	.53926	.53282	.52650	.52032	.51426	.50833	.50251	.49681	.49122
80	.56325	.55678	.55044	.54423	.53813	.53216	.52630	.52056	.51492	.50939
81	.58054	.57419	.56797	.56186	.55587	.54999	.54422	.53856	.53300	.52754
82	.59762	.59140	.58530	.57931	.57343	.56766	.56198	.55641	.55094	.54557
83	.61448	.60840	.60243	.59657	.59081	.58515	.57958	.57411	.56874	.56346
84	.63124	.62531	.61949	.61376	.60813	.60259	.59715	.59179	.58652	.58134
85	.64800	.64224	.63657	.63099	.62550	.62010	.61478	.60955	.60441	.59934
86	.66461	.65902	.65351	.64810	.64276	.63751	.63233	.62724	.62222	.61728
87	.68083	.67541	.67008	.66483	.65965	.65455	.64953	.64458	.63970	.63489
88	.69663	.69140	.68624	.68116	.67615	.67121	.66634	.66154	.65680	.65213
89	.71201	.70696	.70199	.69708	.69224	.68747	.68276	.67811	.67353	.66900
90	.72694	.72209	.71730	.71257	.70791	.70330	.69876	.69427	.68984	.68547
91	.74117	.73650	.73190	.72735	.72286	.71842	.71404	.70972	.70545	.70123
92	.75439	.74991	.74548	.74110	.73678	.73251	.72829	.72412	.72000	.71593
93	.76664	.76233	.75806	.75385	.74969	.74557	.74150	.73748	.73350	.72957
94	.77809	.77394	.76983	.76578	.76177	.75780	.75388	.75000	.74616	.74237
95	.78899	.78500	.78106	.77715	.77329	.76947	.76569	.76195	.75826	.75460
96	.79928	.79544	.79165	.78790	.78418	.78050	.77686	.77326	.76970	.76617
97	.80883	.80514	.80149	.79787	.79430	.79075	.78725	.78377	.78033	.77693
98	.81781	.81427	.81075	.80727	.80382	.80041	.79703	.79368	.79036	.78708
99	.82661	.82320	.81982	.81648	.81316	.80988	.80662	.80340	.80020	.79704
100	.83519	.83192	.82868	.82547	.82228	.81913	.81600	.81290	.80982	.80678
101	.84368	.84055	.83744	.83437	.83131	.82829	.82529	.82231	.81936	.81643
102	.85203	.84904	.84607	.84313	.84021	.83731	.83444	.83159	.82876	.82596

Age	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
103	.86034	.85748	.85465	.85184	.84906	.84629	.84355	.84082	.83812	.83544
104	.86923	.86653	.86385	.86119	.85855	.85593	.85333	.85074	.84818	.84563
105	.87792	.87537	.87283	.87032	.86782	.86534	.86287	.86042	.85799	.85557
106	.88918	.88683	.88450	.88218	.87987	.87758	.87530	.87304	.87079	.86855
107	.90291	.90082	.89873	.89666	.89460	.89255	.89051	.88849	.88647	.88447
108	.92455	.92288	.92123	.91958	.91794	.91630	.91468	.91306	.91145	.90984
109	.96211	.96125	.96041	.95956	.95872	.95788	.95704	.95620	.95537	.95455

Age	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
0	.01488	.01463	.01439	.01417	.01396	.01377	.01359	.01343	.01327	.01312
1	.00662	.00636	.00612	.00589	.00568	.00548	.00530	.00513	.00497	.00482
2	.00654	.00626	.00600	.00576	.00554	.00533	.00514	.00496	.00479	.00463
3	.00670	.00641	.00613	.00588	.00564	.00542	.00522	.00502	.00484	.00468
4	.00699	.00668	.00639	.00612	.00587	.00563	.00542	.00521	.00502	.00484
5	.00739	.00706	.00675	.00646	.00620	.00595	.00571	.00550	.00529	.00510
6	.00786	.00751	.00718	.00687	.00659	.00633	.00608	.00585	.00563	.00543
7	.00841	.00803	.00769	.00736	.00706	.00678	.00652	.00627	.00604	.00582
8	.00902	.00863	.00826	.00791	.00759	.00730	.00702	.00675	.00651	.00628
9	.00973	.00931	.00892	.00856	.00822	.00790	.00760	.00733	.00706	.00682
10	.01055	.01010	.00969	.00930	.00894	.00861	.00829	.00799	.00772	.00746
11	.01146	.01099	.01055	.01014	.00976	.00940	.00907	.00875	.00846	.00818
12	.01246	.01196	.01150	.01106	.01066	.01028	.00993	.00960	.00928	.00899
13	.01351	.01298	.01249	.01204	.01161	.01121	.01084	.01049	.01016	.00985
14	.01455	.01400	.01348	.01300	.01255	.01213	.01173	.01136	.01102	.01069
15	.01555	.01497	.01443	.01392	.01345	.01300	.01259	.01220	.01183	.01148
16	.01648	.01587	.01530	.01477	.01427	.01380	.01336	.01295	.01257	.01220
17	.01737	.01673	.01612	.01556	.01504	.01455	.01408	.01365	.01324	.01286
18	.01822	.01754	.01691	.01632	.01576	.01525	.01476	.01430	.01387	.01347
19	.01908	.01837	.01770	.01708	.01650	.01595	.01544	.01495	.01450	.01407
20	.01999	.01924	.01854	.01788	.01726	.01669	.01615	.01564	.01516	.01471
21	.02096	.02017	.01943	.01874	.01809	.01748	.01691	.01637	.01586	.01539
22	.02197	.02114	.02036	.01963	.01895	.01830	.01770	.01713	.01660	.01610
23	.02306	.02218	.02136	.02059	.01987	.01919	.01855	.01795	.01739	.01686
24	.02424	.02331	.02245	.02163	.02087	.02016	.01948	.01885	.01825	.01769
25	.02552	.02455	.02364	.02278	.02197	.02122	.02051	.01984	.01920	.01861
26	.02692	.02589	.02493	.02403	.02318	.02238	.02162	.02091	.02025	.01961
27	.02846	.02738	.02636	.02541	.02451	.02367	.02287	.02212	.02141	.02074
28	.03012	.02898	.02791	.02690	.02595	.02506	.02422	.02342	.02267	.02196
29	.03190	.03070	.02957	.02851	.02751	.02656	.02567	.02483	.02404	.02329
30	.03381	.03254	.03135	.03023	.02917	.02817	.02723	.02634	.02551	.02471
31	.03583	.03450	.03324	.03206	.03094	.02989	.02890	.02796	.02707	.02623
32	.03799	.03659	.03527	.03402	.03284	.03173	.03068	.02968	.02874	.02785
33	.04031	.03883	.03744	.03612	.03488	.03371	.03260	.03155	.03055	.02961
34	.04279	.04123	.03976	.03838	.03707	.03583	.03465	.03354	.03249	.03149
35	.04545	.04382	.04227	.04081	.03943	.03812	.03688	.03571	.03459	.03354
36	.04830	.04658	.04495	.04341	.04196	.04058	.03927	.03803	.03685	.03573
37	.05134	.04953	.04782	.04620	.04467	.04321	.04183	.04052	.03928	.03809
38	.05462	.05272	.05092	.04921	.04760	.04606	.04461	.04322	.04191	.04066
39	.05812	.05613	.05424	.05245	.05075	.04913	.04760	.04614	.04475	.04343
40	.06190	.05981	.05782	.05594	.05415	.05245	.05083	.04929	.04783	.04643
41	.06597	.06378	.06170	.05972	.05784	.05605	.05435	.05272	.05118	.04970
42	.07035	.06806	.06587	.06380	.06182	.05994	.05815	.05644	.05481	.05326
43	.07505	.07265	.07036	.06818	.06611	.06414	.06225	.06045	.05874	.05710
44	.08008	.07757	.07518	.07290	.07072	.06865	.06667	.06478	.06298	.06125
45	.08542	.08279	.08029	.07791	.07563	.07346	.07138	.06940	.06750	.06569
46	.09108	.08834	.08573	.08324	.08085	.07858	.07640	.07432	.07233	.07043
47	.09705	.09419	.09147	.08886	.08637	.08399	.08172	.07954	.07745	.07545
48	.10335	.10038	.09754	.09482	.09222	.08973	.08735	.08507	.08288	.08078
49	.10999	.10690	.10394	.10111	.09840	.09581	.09332	.09093	.08864	.08644
50	.11701	.11380	.11073	.10778	.10496	.10225	.09965	.09716	.09477	.09247
51	.12441	.12108	.11789	.11482	.11189	.10907	.10636	.10376	.10126	.09886
52	.13217	.12871	.12540	.12222	.11916	.11623	.11341	.11071	.10810	.10560
53	.14028	.13670	.13327	.12997	.12680	.12375	.12082	.11801	.11529	.11268
54	.14875	.14505	.14150	.13808	.13480	.13163	.12859	.12566	.12284	.12012
55	.15760	.15378	.15011	.14657	.14317	.13989	.13674	.13370	.13077	.12794
56	.16684	.16290	.15911	.15546	.15194	.14855	.14528	.14213	.13909	.13615
57	.17648	.17242	.16851	.16474	.16111	.15760	.15422	.15096	.14781	.14477
58	.18647	.18229	.17827	.17438	.17064	.16702	.16353	.16015	.15689	.15374
59	.19678	.19249	.18835	.18435	.18049	.17676	.17316	.16968	.16631	.16305
60	.20740	.20300	.19875	.19464	.19066	.18682	.18311	.17952	.17604	.17268
61	.21837	.21385	.20949	.20527	.20119	.19724	.19341	.18971	.18613	.18266
62	.22973	.22511	.22064	.21631	.21212	.20807	.20414	.20033	.19664	.19306
63	.24152	.23680	.23222	.22779	.22350	.21934	.21530	.21139	.20760	.20392

Age	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
64	.25372	.24890	.24422	.23969	.23529	.23103	.22690	.22289	.21899	.21521
65	.26633	.26141	.25664	.25201	.24752	.24316	.23893	.23482	.23083	.22695
66	.27940	.27439	.26953	.26481	.26023	.25577	.25145	.24724	.24316	.23918
67	.29299	.28790	.28296	.27815	.27348	.26894	.26453	.26024	.25606	.25200
68	.30709	.30193	.29691	.29202	.28728	.28265	.27816	.27378	.26952	.26537
69	.32166	.31643	.31134	.30639	.30157	.29687	.29230	.28785	.28351	.27928
70	.33661	.33133	.32618	.32116	.31628	.31152	.30688	.30235	.29794	.29364
71	.35188	.34654	.34134	.33627	.33133	.32651	.32181	.31722	.31275	.30838
72	.36742	.36204	.35679	.35168	.34668	.34181	.33706	.33241	.32788	.32345
73	.38317	.37776	.37248	.36733	.36229	.35738	.35257	.34788	.34330	.33882
74	.39923	.39380	.38849	.38330	.37823	.37328	.36844	.36370	.35908	.35455
75	.41566	.41021	.40489	.39968	.39459	.38961	.38474	.37997	.37531	.37074
76	.43254	.42709	.42176	.41655	.41144	.40645	.40156	.39677	.39208	.38749
77	.44988	.44444	.43912	.43391	.42880	.42380	.41891	.41411	.40940	.40479
78	.46765	.46224	.45694	.45174	.44665	.44166	.43677	.43197	.42726	.42265
79	.48574	.48037	.47510	.46993	.46487	.45990	.45502	.45024	.44554	.44094
80	.50397	.49865	.49343	.48830	.48327	.47834	.47349	.46873	.46406	.45947
81	.52219	.51693	.51176	.50669	.50171	.49682	.49201	.48729	.48265	.47809
82	.54029	.53510	.53000	.52499	.52007	.51523	.51047	.50580	.50120	.49667
83	.55826	.55315	.54813	.54319	.53834	.53356	.52886	.52424	.51969	.51522
84	.57624	.57123	.56629	.56144	.55666	.55195	.54732	.54277	.53828	.53386
85	.59435	.58944	.58460	.57984	.57516	.57054	.56599	.56151	.55710	.55275
86	.61241	.60762	.60289	.59824	.59365	.58913	.58468	.58029	.57596	.57170
87	.63015	.62548	.62087	.61633	.61185	.60744	.60309	.59880	.59456	.59039
88	.64753	.64299	.63851	.63409	.62973	.62543	.62118	.61700	.61287	.60879
89	.66454	.66013	.65579	.65150	.64726	.64308	.63895	.63488	.63086	.62689
90	.68115	.67689	.67268	.66853	.66442	.66037	.65637	.65241	.64851	.64465
91	.69706	.69294	.68887	.68486	.68089	.67696	.67309	.66925	.66547	.66173
92	.71190	.70792	.70399	.70011	.69627	.69247	.68872	.68501	.68134	.67771
93	.72569	.72184	.71804	.71429	.71057	.70689	.70326	.69967	.69611	.69259
94	.73861	.73490	.73123	.72759	.72400	.72044	.71692	.71344	.71000	.70659
95	.75097	.74739	.74384	.74033	.73686	.73342	.73002	.72665	.72331	.72001
96	.76267	.75922	.75579	.75240	.74905	.74572	.74243	.73917	.73595	.73275
97	.77356	.77022	.76691	.76363	.76039	.75718	.75399	.75084	.74772	.74463
98	.78382	.78059	.77740	.77423	.77110	.76799	.76491	.76186	.75884	.75584
99	.79390	.79079	.78771	.78465	.78162	.77862	.77565	.77270	.76978	.76688
100	.80376	.80076	.79779	.79485	.79193	.78904	.78617	.78333	.78051	.77771
101	.81353	.81066	.80780	.80497	.80217	.79938	.79662	.79388	.79117	.78847
102	.82318	.82042	.81768	.81496	.81227	.80960	.80694	.80431	.80170	.79911
103	.83278	.83014	.82752	.82491	.82233	.81977	.81723	.81470	.81220	.80971
104	.84310	.84059	.83810	.83563	.83317	.83073	.82831	.82591	.82352	.82115
105	.85318	.85079	.84843	.84607	.84374	.84142	.83911	.83682	.83455	.83229
106	.86633	.86413	.86193	.85975	.85758	.85543	.85329	.85116	.84904	.84694
107	.88247	.88049	.87852	.87656	.87460	.87266	.87073	.86881	.86690	.86500
108	.90825	.90666	.90507	.90350	.90193	.90037	.89881	.89727	.89572	.89419
109	.95372	.95290	.95208	.95126	.95045	.94964	.94883	.94803	.94723	.94643

Age	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
0	.01298	.01285	.01273	.01261	.01250	.01240	.01230	.01221	.01212	.01203
1	.00468	.00455	.00443	.00431	.00420	.00410	.00400	.00391	.00382	.00374
2	.00448	.00435	.00421	.00409	.00398	.00387	.00376	.00366	.00357	.00348
3	.00452	.00437	.00423	.00410	.00398	.00386	.00375	.00365	.00355	.00345
4	.00468	.00452	.00437	.00423	.00410	.00397	.00386	.00375	.00364	.00354
5	.00493	.00476	.00460	.00445	.00431	.00418	.00405	.00393	.00382	.00371
6	.00524	.00506	.00489	.00473	.00458	.00444	.00430	.00418	.00406	.00394
7	.00562	.00543	.00525	.00508	.00492	.00477	.00462	.00449	.00436	.00423
8	.00606	.00586	.00566	.00548	.00531	.00515	.00499	.00485	.00471	.00458
9	.00659	.00637	.00616	.00597	.00579	.00561	.00545	.00529	.00514	.00500
10	.00721	.00698	.00676	.00655	.00636	.00617	.00600	.00583	.00567	.00552
11	.00792	.00767	.00744	.00722	.00701	.00682	.00663	.00645	.00628	.00612
12	.00871	.00845	.00821	.00797	.00775	.00754	.00735	.00716	.00698	.00681
13	.00955	.00928	.00902	.00877	.00854	.00831	.00810	.00790	.00771	.00753
14	.01038	.01009	.00981	.00955	.00930	.00907	.00885	.00864	.00843	.00824
15	.01116	.01085	.01056	.01028	.01002	.00977	.00954	.00932	.00910	.00890
16	.01186	.01153	.01123	.01094	.01066	.01040	.01015	.00992	.00969	.00948
17	.01250	.01215	.01183	.01152	.01124	.01096	.01070	.01045	.01022	.00999
18	.01308	.01272	.01238	.01206	.01175	.01147	.01119	.01093	.01068	.01044
19	.01367	.01329	.01293	.01259	.01227	.01196	.01167	.01140	.01113	.01088
20	.01428	.01388	.01350	.01314	.01280	.01248	.01217	.01188	.01161	.01134
21	.01494	.01451	.01411	.01373	.01337	.01303	.01271	.01240	.01211	.01183
22	.01562	.01517	.01475	.01435	.01397	.01361	.01326	.01294	.01263	.01233
23	.01635	.01588	.01543	.01501	.01460	.01422	.01386	.01351	.01319	.01287
24	.01716	.01665	.01618	.01573	.01530	.01489	.01451	.01415	.01380	.01347

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Age	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
25	.01804	.01751	.01701	.01653	.01608	.01565	.01524	.01485	.01448	.01413
26	.01902	.01845	.01792	.01741	.01693	.01648	.01604	.01563	.01524	.01487
27	.02011	.01951	.01895	.01841	.01790	.01742	.01696	.01652	.01610	.01571
28	.02129	.02066	.02006	.01949	.01895	.01844	.01795	.01748	.01704	.01662
29	.02258	.02191	.02127	.02067	.02009	.01955	.01903	.01853	.01806	.01762
30	.02396	.02325	.02257	.02193	.02132	.02074	.02019	.01966	.01916	.01869
31	.02543	.02467	.02396	.02328	.02263	.02201	.02143	.02087	.02034	.01983
32	.02701	.02621	.02545	.02472	.02404	.02338	.02276	.02217	.02160	.02106
33	.02871	.02786	.02706	.02629	.02556	.02487	.02420	.02357	.02297	.02240
34	.03054	.02964	.02879	.02797	.02720	.02646	.02576	.02509	.02445	.02383
35	.03253	.03158	.03067	.02981	.02898	.02820	.02745	.02674	.02606	.02541
36	.03467	.03366	.03269	.03178	.03090	.03007	.02928	.02852	.02779	.02710
37	.03697	.03590	.03488	.03391	.03298	.03209	.03125	.03044	.02967	.02893
38	.03947	.03833	.03725	.03622	.03524	.03430	.03340	.03254	.03172	.03094
39	.04217	.04096	.03982	.03873	.03768	.03669	.03573	.03482	.03395	.03312
40	.04510	.04383	.04262	.04146	.04035	.03930	.03828	.03732	.03639	.03550
41	.04830	.04695	.04567	.04445	.04327	.04215	.04108	.04005	.03907	.03812
42	.05177	.05035	.04900	.04770	.04646	.04527	.04413	.04304	.04200	.04100
43	.05553	.05404	.05261	.05123	.04992	.04866	.04746	.04630	.04520	.04413
44	.05960	.05802	.05651	.05506	.05368	.05235	.05107	.04985	.04867	.04754
45	.06395	.06229	.06069	.05917	.05770	.05630	.05495	.05365	.05241	.05121
46	.06860	.06685	.06517	.06356	.06202	.06053	.05911	.05774	.05643	.05516
47	.07353	.07169	.06992	.06823	.06660	.06504	.06353	.06209	.06070	.05936
48	.07877	.07684	.07498	.07320	.07149	.06984	.06826	.06673	.06527	.06385
49	.08433	.08231	.08036	.07849	.07669	.07495	.07329	.07168	.07013	.06864
50	.09026	.08814	.08609	.08413	.08224	.08042	.07867	.07698	.07535	.07378
51	.09655	.09433	.09219	.09013	.08815	.08624	.08440	.08262	.08091	.07926
52	.10318	.10086	.09863	.09647	.09439	.09239	.09046	.08860	.08680	.08506
53	.11017	.10774	.10541	.10315	.10098	.09888	.09686	.09491	.09302	.09120
54	.11750	.11498	.11254	.11019	.10792	.10572	.10361	.10156	.09958	.09767
55	.12522	.12258	.12005	.11759	.11522	.11294	.11072	.10859	.10652	.10451
56	.13332	.13059	.12794	.12539	.12292	.12054	.11823	.11599	.11383	.11174
57	.14183	.13899	.13624	.13359	.13102	.12853	.12613	.12380	.12154	.11936
58	.15070	.14775	.14490	.14215	.13948	.13689	.13439	.13197	.12962	.12734
59	.15990	.15685	.15389	.15103	.14826	.14558	.14298	.14046	.13801	.13564
60	.16942	.16626	.16321	.16024	.15737	.15459	.15189	.14927	.14673	.14426
61	.17929	.17603	.17287	.16981	.16684	.16395	.16115	.15844	.15580	.15324
62	.18960	.18623	.18297	.17980	.17673	.17375	.17085	.16803	.16530	.16264
63	.20035	.19688	.19352	.19025	.18708	.18400	.18100	.17809	.17525	.17250
64	.21154	.20797	.20451	.20114	.19787	.19469	.19159	.18859	.18566	.18281
65	.22318	.21951	.21595	.21249	.20912	.20584	.20265	.19955	.19652	.19358
66	.23532	.23156	.22790	.22434	.22088	.21751	.21422	.21102	.20791	.20487
67	.24804	.24419	.24044	.23679	.23324	.22977	.22640	.22311	.21990	.21678
68	.26133	.25740	.25356	.24983	.24618	.24263	.23917	.23579	.23250	.22929
69	.27516	.27114	.26723	.26341	.25969	.25605	.25251	.24905	.24567	.24237
70	.28945	.28536	.28137	.27747	.27367	.26996	.26633	.26279	.25934	.25596
71	.30412	.29996	.29590	.29193	.28806	.28427	.28057	.27696	.27343	.26998
72	.31913	.31491	.31078	.30675	.30281	.29895	.29519	.29150	.28790	.28438
73	.33444	.33016	.32597	.32188	.31788	.31396	.31013	.30638	.30271	.29913
74	.35012	.34579	.34155	.33741	.33335	.32938	.32549	.32168	.31795	.31430
75	.36628	.36190	.35762	.35343	.34932	.34530	.34136	.33750	.33372	.33001
76	.38299	.37858	.37427	.37004	.36589	.36183	.35784	.35394	.35011	.34636
77	.40028	.39585	.39151	.38725	.38307	.37898	.37496	.37103	.36716	.36337
78	.41812	.41368	.40933	.40506	.40086	.39675	.39271	.38874	.38485	.38103
79	.43641	.43198	.42762	.42334	.41914	.41502	.41096	.40698	.40308	.39924
80	.45496	.45054	.44619	.44192	.43772	.43360	.42954	.42556	.42164	.41779
81	.47360	.46920	.46487	.46061	.45643	.45231	.44827	.44429	.44038	.43653
82	.49223	.48785	.48355	.47932	.47516	.47106	.46703	.46307	.45916	.45532
83	.51081	.50648	.50221	.49802	.49388	.48982	.48581	.48187	.47799	.47416
84	.52951	.52523	.52101	.51686	.51277	.50874	.50477	.50086	.49701	.49321
85	.54847	.54425	.54009	.53600	.53196	.52798	.52406	.52019	.51638	.51262
86	.56749	.56335	.55926	.55523	.55126	.54734	.54348	.53966	.53591	.53220
87	.58627	.58221	.57820	.57425	.57035	.56650	.56270	.55895	.55526	.55161
88	.60477	.60079	.59688	.59301	.58919	.58542	.58170	.57802	.57439	.57081
89	.62297	.61909	.61527	.61149	.60776	.60408	.60044	.59685	.59330	.58979
90	.64084	.63707	.63335	.62968	.62604	.62246	.61891	.61540	.61194	.60851
91	.65803	.65437	.65076	.64719	.64366	.64017	.63672	.63330	.62993	.62659
92	.67412	.67058	.66707	.66360	.66017	.65678	.65342	.65010	.64682	.64357
93	.68911	.68567	.68227	.67890	.67557	.67227	.66901	.66578	.66258	.65942
94	.70321	.69988	.69657	.69330	.69006	.68686	.68369	.68055	.67744	.67437
95	.71674	.71351	.71031	.70713	.70399	.70088	.69781	.69476	.69174	.68875
96	.72959	.72646	.72335	.72028	.71724	.71422	.71123	.70828	.70534	.70244
97	.74156	.73853	.73552	.73254	.72959	.72666	.72376	.72089	.71804	.71522
98	.75287	.74993	.74702	.74413	.74126	.73842	.73561	.73282	.73006	.72732

Age	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
99	.76401	.76117	.75834	.75555	.75277	.75002	.74730	.74459	.74191	.73926
100	.77494	.77219	.76946	.76676	.76408	.76142	.75878	.75616	.75357	.75099
101	.78580	.78315	.78052	.77791	.77532	.77275	.77021	.76768	.76517	.76268
102	.79654	.79399	.79146	.78894	.78645	.78397	.78152	.77908	.77666	.77426
103	.80724	.80479	.80236	.79994	.79755	.79517	.79280	.79046	.78813	.78582
104	.81879	.81646	.81413	.81183	.80954	.80726	.80501	.80276	.80054	.79832
105	.83005	.82782	.82560	.82340	.82121	.81904	.81688	.81474	.81260	.81049
106	.84485	.84277	.84071	.83866	.83662	.83459	.83257	.83057	.82857	.82659
107	.86311	.86124	.85937	.85751	.85566	.85382	.85199	.85017	.84835	.84655
108	.89266	.89114	.88963	.88812	.88662	.88513	.88364	.88216	.88068	.87922
109	.94563	.94484	.94405	.94326	.94248	.94170	.94092	.94014	.93937	.93860

TABLE 90CM.—LIFE TABLE APPLICABLE AFTER APRIL 30, 1999

Age x (1)	l(x) (2)	Age x (1)	l(x) (2)	Age x (1)	l(x) (2)
0	100000	37	95969	74	62852
1	99064	38	95780	75	60449
2	98992	39	95581	76	57955
3	98944	40	95373	77	55373
4	98907	41	95156	78	52704
5	98877	42	94928	79	49943
6	98850	43	94687	80	47084
7	98826	44	94431	81	44129
8	98803	45	94154	82	41091
9	98783	46	93855	83	37994
10	98766	47	93528	84	34876
11	98750	48	93173	85	31770
12	98734	49	92787	86	28687
13	98713	50	92370	87	25638
14	98681	51	91918	88	22658
15	98635	52	91424	89	19783
16	98573	53	90885	90	17046
17	98497	54	90297	91	14466
18	98409	55	89658	92	12066
19	98314	56	88965	93	9884
20	98215	57	88214	94	7951
21	98113	58	87397	95	6282
22	98006	59	86506	96	4868
23	97896	60	85537	97	3694
24	97784	61	84490	98	2745
25	97671	62	83368	99	1999
26	97556	63	82169	100	1424
27	97441	64	80887	101	991
28	97322	65	79519	102	672
29	97199	66	78066	103	443
30	97070	67	76531	104	284
31	96934	68	74907	105	175
32	96791	69	73186	106	105
33	96642	70	71357	107	60
34	96485	71	69411	108	33
35	96322	72	67344	109	17
36	96150	73	65154	110	0

(e) *Effective dates.* This section applies after April 30, 1999.

§ 20.2031–7T [Removed]

Par. 13a. Section 20.2031–7T is removed.

Par. 14. Section 20.7520–1 is amended by revising paragraphs (a)(2), (b)(2), (c)(1), (c)(2) and (d) to read as follows:

§ 20.7520–1 Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests.

(a) * * *

(2) In the case of a transfer to a pooled income fund with a valuation date after April 30, 1999, see § 1.642(c)–6(e) (or, for certain prior periods, § 1.642(c)–6A of this chapter) of this chapter with respect to the valuation of the remainder interest.

* * * * *

(b) * * *

(2) *Mortality component.* The mortality component reflects the mortality data most recently available from the United States Census. As new mortality data becomes available after each decennial census, the mortality component described in this section will be revised periodically and the mortality component tables will be published in the regulations at that time. For decedents' estates with valuation dates after April 30, 1999, the mortality component table (Table 90CM)

VOL
65
ISS
113
JE
12
2000
UMI

is included in § 20.2031–7(d)(7). See § 20.2031–7A for mortality component tables applicable to decedent's estates with valuation dates before May 1, 1999.

(c) * * *

(1) *Regulation sections containing tables with interest rates between 4.2 and 14 percent for valuation dates after April 30, 1999.* Section 1.642(c)–6(e)(6) of this chapter contains Table S used for determining the present value of a single life remainder interest in a pooled income fund as defined in § 1.642(c)–5 of this chapter. See § 1.642(c)–6A of this chapter for single life remainder factors applicable to valuation dates before May 1, 1999. Section 1.664–4(e)(6) of this chapter contains Table F (payout factors) and Table D (actuarial factors used in determining the present value of a remainder interest postponed for a term of years). Section 1.664–4(e)(7) of this chapter contains Table U(1) (unitrust single life remainder factors). These tables are used in determining the present value of a remainder interest in a charitable remainder unitrust as defined in § 1.664–3 of this chapter. See § 1.664–4A of this chapter for unitrust single life remainder factors applicable to valuation dates before May 1, 1999. Section 20.2031–(d)(6) contains Table B (actuarial factors used in determining the present value of an interest for a term of years), Table K (annuity end-of-interval adjustment factors), and Table J (term certain annuity beginning-of-interval adjustment factors). Section 20.2031–7(d)(7) contains Table S (single life remainder factors) and Table 90CM (mortality components). These tables are used in determining the present value of annuities, life estates, remainders, and reversions. See § 20.2031–7A for single life remainder factors and mortality components applicable to valuation dates before May 1, 1999.

(2) *Internal Revenue Service publications containing tables with interest rates between 2.2 and 22 percent for valuation dates after April 30, 1999.* The following documents are available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402:

(i) Internal Revenue Service Publication 1457, "Actuarial Values, Book Aleph," (7–1999). This publication includes tables of valuation factors, as well as examples that show how to compute other valuation factors, for determining the present value of annuities, life estates, terms of years, remainders, and reversions, measured by one or two lives. These factors may also be used in the valuation of interests in a charitable remainder annuity trust as defined in § 1.664–2 of this chapter and a pooled income fund as defined in § 1.642(c)–5 of this chapter. See § 20.2031–7A for publications containing tables for valuation dates before May 1, 1999.

(ii) Internal Revenue Service Publication 1458, "Actuarial Values, Book Beth," (7–1999). This publication includes term certain tables and tables of one and two life valuation factors for determining the present value of remainder interests in a charitable remainder unitrust as defined in § 1.664–3 of this chapter. See § 1.664–4A of this chapter for publications containing tables for valuation dates before May 1, 1999.

(iii) Internal Revenue Service Publication 1459, "Actuarial Values, Book Gimel," (7–1999). This publication includes tables for computing depreciation adjustment factors. See § 1.170A–12 of this chapter.

(d) *Effective date.* This section applies after April 30, 1989.

§ 20.7520–1T [Removed]

Par. 15. Section 20.7520–1T is removed.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 16. The authority citation for part 25 is amended by removing the entries for Sections 25–2512–5T and 25.7520–1T to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 25.2512–0 [Amended]

Par. 17. Section 25.2512–0 is amended by removing the entry for § 25.2512–5T from the contents listing.

Par. 18. Section 25.2512–5 is amended by revising paragraphs (c), (d) and (e) to read as follows:

§ 25.2512–5 Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests.

* * * * *

(c) *Actuarial valuations.* The present value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions transferred by gift after April 30, 1999, is determined under paragraph (d) of this section. The present value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions transferred by gift before May 1, 1999, is determined under the following sections:

Transfers		Applicable regulations
After	Before	
	01–01–52	25.2512–5A(a)
12–31–51	01–01–71	25.2512–5A(b)
12–31–70	12–01–83	25.2512–5A(c)
11–30–83	05–01–89	25.2512–5A(d)
04–30–89	05–01–99	25.2512–5A(e)

(d) *Actuarial valuations after April 30, 1999*—(1) *In general.* Except as otherwise provided in paragraph (b) of this section and § 25.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances), if the valuation date for the gift is after April 30, 1999, the fair market value of annuities, life estates, terms of years, remainders, and reversions transferred after April 30, 1999, is the present value of such interests determined under paragraph (d)(2) of this section and by use of standard or special section 7520 actuarial factors. These factors are derived by using the appropriate section 7520 interest rate and, if applicable, the mortality component for the valuation date of the interest that is being valued. See §§ 25.7520–1 through 25.7520–4. The fair market value of a qualified annuity interest described in section 2702(b)(1) and a qualified unitrust interest described in section 2702(b)(2) is the present value of such interests determined under § 25.7520–1(c).

(2) *Specific interests.* When the donor transfers property in trust or otherwise and retains an interest therein, generally, the value of the gift is the value of the property transferred less the value of the donor's retained interest. However, if the donor transfers property after October 8, 1990, to or for the benefit of a member of the donor's family, the value of the gift is the value of the property transferred less the value of the donor's retained interest as determined under section 2702. If the donor assigns or relinquishes an annuity, life estate, remainder, or reversion that the donor holds by virtue of a transfer previously made by the donor or another, the value of the gift is the value of the interest transferred. However, see section 2519 for a special rule in the case of the assignment of an income interest by a person who received the interest from a spouse.

(i) *Charitable remainder trusts.* The fair market value of a remainder interest in a pooled income fund, as defined in § 1.642(c)–5 of this chapter, is its value determined under § 1.642(c)–6(e) of this chapter (see § 1.642(c)–6A for certain prior periods). The fair market value of a remainder interest in a charitable remainder annuity trust, as described in § 1.664–2(a) of this chapter, is its present value determined under § 1.664–2(c) of this chapter. The fair market value of a remainder interest in a charitable remainder unitrust, as defined in § 1.664–3 of this chapter, is its present value determined under § 1.664–4(e) of this chapter. The fair market value of a life interest or term for years in a charitable remainder unitrust is the fair market value of the property as of the date of transfer less the fair market value of the remainder interest, determined under § 1.664–4(e)(4) and (5) of this chapter.

(ii) *Ordinary remainder and reversionary interests.* If the interest to be valued is to take effect after a definite number of years or after the death of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate remainder interest actuarial factor (that corresponds to the applicable section 7520 interest rate and remainder interest period) in Table B (for a term certain) or the appropriate Table S (for one measuring life), as the case may be. Table B is contained in § 20.2031–7(d)(6) of this chapter and Table S (for one measuring life when the valuation date is after April 30, 1999) is included in § 20.2031–7(d)(7) of this chapter and Internal Revenue Service Publication 1457. See § 20.2031–7A(e)(4) of this chapter containing Table S and Life Table 80CNSMT for valuation of interests after April 30, 1989, and before May 1, 1999. For information about obtaining actuarial factors for other types of remainder interests, see paragraph (d)(4) of this section.

(iii) *Ordinary term-of-years and life interests.* If the interest to be valued is the right of a person to receive the income of certain property, or to use certain nonincome-producing property, for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate term-of-years or life interest actuarial factor (that corresponds to the applicable section 7520 interest rate and term-of-years or life interest period). Internal Revenue Service Publication 1457 includes actuarial factors for an interest for a term of years in Table B and for the life of one individual in Table S (for one measuring life when the valuation date is after April 30, 1999). However, term-of-years and life interest actuarial factors are not included in Table B in § 20.2031–7(d)(6) or Table S in § 20.2031–7(d)(7) (or in § 20.2031–7A(e)(4)) of this chapter. If Internal Revenue Service Publication 1457 (or any other reliable source of term-of-years and life interest actuarial factors) is not conveniently available, an actuarial factor for the interest may be derived mathematically. This actuarial factor may be derived by subtracting the correlative remainder factor (that corresponds to the applicable section 7520 interest rate) in Table B (for a term of years) in § 20.2031–7(d)(6) of this chapter or in Table S (for the life of one individual) in § 20.2031–7(d)(7) of this chapter, as the case may be, from 1.000000. For information about obtaining actuarial factors for other types of term-of-years and life interests, see paragraph (d)(4) of this section.

(iv) *Annuities.* (A) If the interest to be valued is the right of a person to receive an annuity that is payable at the end of each year for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the aggregate amount payable annually by the appropriate annuity actuarial factor (that corresponds to the applicable section 7520 interest rate and annuity period). Internal Revenue Service Publication 1457 includes actuarial factors in Table B (for an annuity payable for a term of years) and in Table S (for an annuity payable for the life of one individual when the valuation date is after April 30, 1999). However, annuity actuarial factors are not included in Table B in § 20.2031–7(d)(6) of this chapter or Table S in § 20.2031–7(d)(7) (or in § 20.2031–7A(e)(4)) of this chapter. If Internal Revenue Service Publication 1457 (or any other reliable source of annuity actuarial factors) is not conveniently available, an annuity factor for a term of years or for one life may be derived mathematically. This annuity factor may be derived by subtracting the applicable remainder factor (that corresponds to the applicable section 7520 interest rate and annuity period) in Table B (in the case of a term-of-years annuity) in § 20.2031–7(d)(6) of this chapter or in Table S (in the case of a one-life annuity) in § 20.2031–7(d)(7) of this chapter, as the case may be, from 1.000000 and then dividing the result by the applicable section 7520 interest rate expressed as a decimal number. See § 20.2031–7(d)(2)(iv) of this chapter for an example that illustrates the computation of the present value of an annuity.

(B) If the annuity is payable at the end of semiannual, quarterly, monthly or weekly periods, the product obtained by multiplying the annuity factor by the aggregate amount payable annually is then multiplied by the applicable adjustment factor set forth in Table K in § 20.2031–7(d)(6) of this chapter at the appropriate interest rate component for payments made at the end of the specified periods. The provisions of this paragraph (d)(2)(iv)(B) are illustrated by the following example:

Example. In July, the donor agreed to pay the annuitant the sum of $10,000 per year, payable in equal semiannual installments at the end of each period. The semiannual installments are to be made on each December 31st and June 30th. The annuity is payable until the annuitant's death. On the date of the agreement, the annuitant is 68 years and 5 months old. The donee annuitant's age is treated as 68 for purposes of computing the present value of the annuity. The section 7520 rate on the date of the agreement is 10.6 percent. Under Table S in § 20.2031–7(d)(7) of this chapter, the factor at 10.6 percent for determining the present value of a remainder interest payable at the death of an individual aged 68 is .29691. Converting the remainder factor to an annuity factor, as described above, the annuity factor for determining the present value of an annuity transferred to an individual age 68 is 6.6329 (1.00000 minus .29691 divided by .106). The adjustment factor from Table K in § 20.2031–7(d)(6) of this chapter in the column for payments made at the end of each semiannual period at the rate of 10.6 percent is 1.0258. The aggregate annual amount of the annuity, $10,000, is multiplied by the factor 6.6329 and the product multiplied by 1.0258. The present value of the donee's annuity is, therefore, $68,040.29 ($10,000 × 6.6329 × 1.0258).

(C) If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for a term of years, the value of the annuity is computed by multiplying the aggregate amount payable annually by the annuity factor described in paragraph (d)(2)(iv)(A) of this section; and the product so obtained is then multiplied by the adjustment factor in Table J in § 20.2031–7(d)(6) of this chapter at the appropriate interest rate component for payments made at the beginning of specified periods. If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for one or more lives, the value of the annuity is the sum of the first payment plus the present value of a similar annuity, the first payment of which is not to be made until the end of the payment period, determined as provided in paragraph (d)(2)(iv)(B) of this section.

(v) *Annuity and unitrust interests for a term of years or until the prior death of an individual*—(A) *Annuity interests.* The present value of an annuity interest that is payable until the earlier to occur of the lapse of a specific number of years or the death of an individual may be computed with values from the tables in § 20.2031–7(d)(6) and (d)(7) of this chapter as described in the following example:

Example. The donor transfers $100,000 into a trust and retains the right to receive an annuity from the trust in the amount of

$6,000 per year, payable in equal semiannual installments at the end of each period. The semiannual installments are to be made on each June 30th and December 31st. The annuity is payable for 10 years or until the donor's prior death. At the time of the transfer, the donor is 59 years and 6 months old. The donor's age is taken as 60 for purposes of computing the present value of the retained annuity. The section 7520 rate for the month in which the transfer occurred is 9.8 percent. The present value of the donor's retained interest is $35,709.13, determined as follows:

TABLE S value at 9.8 percent, age 60	.21669
TABLE S value at 9.8 percent, age 70	.34762
TABLE 90CM value at age 70	.71357
TABLE 90CM value at age 60	.85537
TABLE B value at 9.8 percent, 10 years	.392624
TABLE K value at 9.8 percent	1.0239

Factor for donor's retained interest at 9.8 percent:

$$\frac{(1.00000-.21669)-(.392624\times(71357/85537)\times(1.00000-.34762))}{.098}=5.8126Fc$$

Present value of donor's retained interest:

($6,000 × 5.8126 × 1.0239)...$35,709.13

(B) *Unitrust interests.* The present value of a unitrust interest that is payable until the earlier to occur of the lapse of a specific number of years or the death of an individual may be computed with values from the tables in §§ 1.664–4(e)(6) and (e)(7) and § 20.2031–7(d)(7) of this chapter as described in the following example:

Example. The donor who, as of the nearest birthday, is 60 years old, transfers $100,000 to a unitrust on January 1st. The trust instrument requires that each year the trust pay to the donor, in equal semiannual installments on June 30th and December 31st, 6 percent of the fair market value of the trust assets, valued as of January 1st each year, for 10 years or until the prior death of the donor. The section 7520 rate for the January in which the transfer occurred is 9.8 percent. Under Table F(9.8) in § 1.664–4(e)(6) of this chapter, the appropriate adjustment factor is .932539 for semiannual payments payable at the end of the semiannual period. The adjusted payout rate is 5.595 percent (6% × .932539). The present value of the donor's retained interest is $40,848.00 determined as follows:

TABLE U(1) value at 5.6 percent, age 60	.35375
TABLE U(1) value at 5.6 percent, age 70	.49342
TABLE 90CM value at age 70	71357
TABLE 90CM value at age 60	85537
TABLE D value at 5.6 percent, 10 years	.561979

Factor for donor's retained interest at 5.6 percent:

(1.000000 − .35375) − (.561979 × (71357/85537) × (1.000000 − .49342)) = .40876

TABLE U(1) value at 5.4 percent, age 60	.36542
TABLE U(1) value at 5.4 percent, age 70	.50473
TABLE 90CM value at age 70	71357
TABLE 90CM value at age 60	85537
TABLE D value at 5.4 percent, 10 years	.573999

Factor for donor's retained interest at 5.4 percent:

$$(1.000000-.36542)-(.573999\times(71357/85537)\times(1.000000-.50473))=\frac{.39742}{0.1134}$$

Difference ...

Interpolation adjustment:

$$\frac{5.595\%-5.4\%}{0.2\%}=\frac{x}{.01134}$$

$$x = .01106$$

Factor at 5.4 percent, age 60	.39742
Plus: Interpolation adjustment	.01106
Interpolated Factor	.40848

Present value of donor's retained interest:

($100,000 × .40848).....$40,848.00

(3) *Transitional rule.* If the valuation date of a transfer of property by gift is after April 30, 1999, and before July 1, 1999, the fair market value of the interest transferred is determined by use of the section 7520 interest rate for the month in which the valuation date occurs (see §§ 25.7520–1(b) and 25.7520–2(a)(2)) and the appropriate actuarial tables under either paragraph (d)(2) of this section or § 25.2512–5A(e), at the option of the donor. However, with respect to each individual transaction and with respect to all transfers occurring on the valuation date, the donor must use the same actuarial tables (for example, gift and income tax charitable deductions with respect to the same transfer must be determined based on the same tables, and all transfers made on the same date must be valued based on the same tables).

(4) *Publications and actuarial computations by the Internal Revenue Service.* Many standard actuarial factors not included in §§ 20.2031–7(d)(6) or (d)(7) of this chapter are included in Internal Revenue Service Publication 1457, "Actuarial Values, Book Aleph," (7–1999). Internal Revenue Service Publication 1457 also includes examples that illustrate how to compute many special factors for more unusual situations. A copy of this publication is available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. See § 25.2512–5A for publications containing actuarial factors for valuing interests for which the valuation date is before May 1, 1999. If a special factor is required in the case of a completed gift, the Service may furnish the factor to the donor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts including a statement of the date of birth for each measuring life, the date of the gift, any other applicable dates, and a copy of the will, trust, or other relevant documents. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see §§ 601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee.

(e) *Effective dates.* This section applies after April 30, 1999.

§ 25.2512–5T [Removed]

Par. 19. Section 25.2512–5T is removed.

Par. 20. Section 25.7520–1 is amended by revising paragraphs (b)(2), (c)(1), (c)(2) and (d) to read as follows:

§ 25.7520–1 Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests.

* * * * *

(b) * * *

(2) *Mortality component.* The mortality component reflects the mortality data most recently available from the United States Census. As new mortality data becomes available after each decennial census, the mortality component described in this section will be revised periodically and the mortality component tables will be published in the regulations at that time. For gifts with valuation dates after April 30, 1999, the mortality component table (Table 90CM) is included in § 20.2031–7(d)(7) of this chapter. See § 20.2031–7A of this chapter for mortality component tables applicable to decedent's estates with valuation dates before May 1, 1999.

(c) * * *

(1) *Regulation sections containing tables with interest rates between 4.2 and 14 percent for valuation dates after April 30, 1999.* Section 1.642(c)–6(e)(6) of this chapter contains Table S used for determining the present value of a single life remainder interest in a pooled income fund as defined in § 1.642(c)–5 of this chapter. See § 1.642(c)–6A for single life remainder factors applicable to valuation dates before May 1, 1999. Section 1.664–4(e)(6) of this chapter contains Table F (payout factors) and Table D (actuarial factors used in determining the present value of a remainder interest postponed for a term of years). Section 1.664–4(e)(7) of this chapter contains Table U(1) (unitrust single life remainder factors). These tables are used in determining the present value of a remainder interest in a charitable remainder unitrust as defined in § 1.664–3 of this chapter. See § 1.664–4A for unitrust single life remainder factors applicable to valuation dates before May 1, 1999. Section 20.2031–7(d)(6) of this chapter contains Table B (actuarial factors used in determining the present value of an interest for a term of years), Table K (annuity end-of-interval adjustment factors), Table J (term certain annuity beginning-of-interval adjustment factors). Section 20.2031–7(d)(7) of this chapter contains Table S (single life remainder factors) and Table 90CM (mortality components). These tables are used in determining the present value of annuities, life estates, remainders, and reversions. See § 20.2031–7A of this chapter for single life remainder factors and mortality components applicable to valuation dates before May 1, 1999.

(2) *Internal Revenue Service publications containing tables with interest rates between 2.2 and 22 percent for valuation dates after April 30, 1999.* The following documents are available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402:

(i) Internal Revenue Service Publication 1457, "Actuarial Values, Book Aleph," (7–1999). This publication includes tables of valuation factors, as well as examples that show how to compute other valuation factors, for determining the present value of annuities, life estates, terms of years, remainders, and reversions, measured by one or two lives. These factors may also be used in the valuation of interests in a charitable remainder annuity trust as defined in § 1.664–2 of this chapter and a pooled income fund as defined in § 1.642(c)–5 of this chapter. See § 25–2512–5A for publications containing tables for valuation dates before May 1, 1999.

(ii) Internal Revenue Service Publication 1458, "Actuarial Values, Book Beth," (7–1999). This publication includes term certain tables and tables of one and two life valuation factors for determining the present value of remainder interests in a charitable remainder unitrust as defined in § 1.664–3 of this chapter. See § 1.664–4A of this chapter for publications containing tables for valuation dates before May 1, 1999.

(iii) Internal Revenue Service Publication 1459, "Actuarial Values, Book Gimel," (7–1999). This publication includes tables for computing depreciation adjustment factors. See § 1.170A–12 of this chapter.

(d) *Effective date.* This section applies after April 30, 1989.

§ 25.7520–1T [Removed]

Par. 21. Section 25.7520–1T is removed.

PARTS 1, 20 AND 25—[AMENDED]

Par. 22. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.170A–12(e)(2), following the formula	§ 20.2031–7T	§ 20.2031–7.
1.642(c)–6A(e)(2)(ii), last sentence	§ 1.642(c)–6T(e)(3)(ii)	§ 1.642(c)–6(e)(3)(ii).
1.642(c)–6A(e)(3)	§ 1.642(c)–6T(e)(4)	§ 1.642(c)–6(e)(4).
1.642(c)–6A(e)(4), last sentence	§ 1.642(c)–6T(e)(5)	§ 1.642(c)–6(e)(5).
1.664–1(a)(6), introductory text	§§ 1.664–4T(e), 1.664–4T(e) and 1.664–4A(d) and (e)	§§ 1.664–4(e) and 1.664–4A(d) and (e).
1.664–4(e)(6), second sentence	§ 1.664–4T(e)(7)	paragraph (e)(5) of this section.
1.664–4A(e)(4), fifth sentence	§ 1.664–4T(e)(4)	§ 1.664–4(e)(4).
1.664–4A(e)(4), last sentence	§ 1.664–4T(e)(4)	§ 1.664–4(e)(4).
1.664–4A(e)(5), fourth sentence	§ 1.664–4T(e)(5)	§ 1.664–4(e)(5).
1.664–4A(e)(5), last sentence	§ 1.664–4T(e)(5)	§ 1.664–4(e)(5).
1.7520–1(a)(2)	§ 1.642(c)–6T(e)	§ 1.642(c)–6(e).
20.2031–7A(e)(1), first sentence	§ 20.2031–7T(d)	§ 20.2031–7(d).
20.2055–2(f)(4)	§ 20.2031–7T(d)	§ 20.2031–7(d).
25.2512–5A(e)(1), first sentence	§ 25.2512–5T(d)	§ 25.2512–5(d).
25.7520–1(a)(2)	§ 1.642(c)–6T(e)	§ 1.642(c)–6(e).
25.7520–3(b)(2)(v), *Example 5* (iii)	§ 20.2031–7T(d)(7)	§ 20.2031–7(d)(7).

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Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved: May 17, 2000.

Jonathan Talisman,
Deputy Assistant Secretary of the Treasury (Tax Policy).

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Part III

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedule; 100% Fee Recovery, FY 2000; Final Rule

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG50

Revision of Fee Schedules; 100% Fee Recovery, FY 2000

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 2000, less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2000 is approximately $447.0 million.

EFFECTIVE DATE: August 11, 2000.

ADDRESSES: Copies of comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555. Comments received may also be viewed via the NRC's interactive rulemaking website http://ruleforum.llnl.gov). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*.

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or by email to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to Comments.
III. Final Action.
IV. Voluntary Consensus Standards.
V. Environmental Impact: Categorical Exclusion.
VI. Paperwork Reduction Act Statement.
VII. Regulatory Analysis.
VIII. Regulatory Flexibility Analysis.
IX. Backfit Analysis.
X. Small Business Regulatory Enforcement Fairness Act.

I. Background

OBRA–90, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF). Certain NRC costs related to reviews and other assistance provided to the Department of Energy (DOE) and other Federal agencies are excluded from the fee recovery requirement for FY 2000 by the FY 2000 Energy and Water Development Appropriations Act.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

This final rule is based on the current 100 percent fee recovery requirement under OBRA–90. To address fairness and equity concerns related to NRC licensees paying for agency expenses which do not provide a direct benefit to them, the NRC has submitted legislation to the Congress which would reduce the fee recovery amount, beginning in FY 2001. The Senate has passed legislation that would reduce the fee recovery amount to 98 percent for FY 2001, and further reduce the fee recovery amount by an additional two percent per year in FYs 2002 through 2004, and by 4 percent in FY 2005, for a final fee recovery requirement of 88 percent in FY 2005.

Also, in the FY 1999 final fee rule published June 10, 1999 (64 FR 31450), the NRC responded to a comment requesting that NRC designate as small entities, for reduced fee purposes, all those companies with small business certification under the U.S. Small Business Administration's (SBA) Small Disadvantaged Business Program, commonly known as the 8(a) Program. The Commission agreed to give further consideration to the issue raised by this commenter.

The Commission has declined to adopt the suggested approach, for the following reasons. On April 11, 1995 (60 FR 18344), the NRC promulgated a final rule, after notice and comment rulemaking, that revised its size standards. The final rule established the small entity classification applicable to small businesses as follows. Those companies providing services having no more than $5 million in average annual gross receipts over its last three completed fiscal years, or, for manufacturing concerns, having an average of 500 or fewer employees during the preceding 12-month period qualify as small entities (10 CFR 2.810).

The NRC promulgated this rule pursuant to Section 3(a)(2) of the Small Business Act, which permits Federal agencies to establish size standards via notice and comment rulemaking, subject to the approval of the SBA Administrator. Unlike the NRC, the SBA's Standard Industrial Classification (SIC) System establishes size standards based on types of economic activity or industry. The NRC rule, which the SBA approved, established generic size standards for small businesses because NRC's regulatory scheme is not well suited to setting standards for each component of the regulated nuclear industry.

II. Responses to Comments

The NRC published a proposed rule that presented the amendments necessary to revise the licensing, inspection, and annual fees charged to its licensees and applicants for FY 2000 on March 27, 2000 (65 FR 16250). A total of 13 comments were received on the proposed rule. Many of the comments were similar in nature. These comments have been grouped, as appropriate, and addressed as single issues in this final rule.

The comments are as follows:

A. Legal Issues

1. NRC's Interpretations of OBRA–90 and IOAA

Comment. Several commenters again raised questions about the NRC's legal interpretations of OBRA–90 and the IOAA. For example, some commenters argued that OBRA–90 prohibits exemptions from Part 170 fees, and that accordingly the NRC must charge federal agencies, state agencies, and state licensees fees under Part 170 for

specific services rendered. The same commenters claim that the current fee structure denies reactor licensees due process and equal protection under the U.S. Constitution.

Response. These arguments are not new, all having been raised by the same commenters when the fee schedules were revised for FY 1999. In the FY 1999 final fee rule, the NRC carefully set forth both these comments and the NRC's responses to them. The NRC's response explained how the current fee structure fully complies with all statutory and constitutional requirements. Because last year's discussion was sufficiently detailed, and because there have been no new legal developments over the past year that would call for a different resolution of the issues, interested parties are referred to the FY 1999 final fee rule responses to comments (64 FR 31448–50; June 10, 1999).

However, there is one update to the discussion in the June 10, 1999, final rule that outlines actions NRC has taken over the past six years to reduce any residual inequity and unfairness in the current fee structure (64 FR 31450; June 10, 1999). Among those actions has been consistent support for legislation that would address the remaining fairness and equity issues by decreasing the amount of NRC's budget to be recovered through fees. The Senate has passed legislation that would reduce the fee recovery amount by 2 percent per year in FYs 2001 through 2004, and by 4 percent in FY 2005, resulting in a final fee recovery requirement of 88 percent in FY 2005 (S. 1627).

2. Information Provided by NRC in Support of Proposed Rule

Comment. One commenter complained that, in deriving the FY 2000 annual fees by simply escalating last year's fee by 1.4 percent, the NRC has not given "any consideration" to whether underlying costs have any rational connection to reactor regulation or any consideration of whether the total assessment is as fair and equitable as is feasible. The commenter also claims that the proposed rule fails to provide "any explanation and accounting of the expenses that are covered by this charge," and thus "denies the companies a meaningful opportunity to comment."

Another commenter indicated that, under the provisions of the Administrative Procedure Act, the NRC has not provided sufficient information to enable licensees to evaluate costs. For instance, the NRC should provide detailed cost information associated with each component of reactor regulation and other generic costs. The commenter believes this would provide for more effective feedback and comment and would promote increased Commission efficiency because the costs of services and other agency expenses, such as overhead, would be more visible to stakeholders. The commenter also requested that NRC provide a more detailed account of major research contracts, their purpose, and their costs.

Response. The NRC believes there is nothing obscure about the 1.4 percent increase in annual fees or its relation to reactor regulation. The FY 2000 proposed rule clearly describes the calculation that leads to the 1.4 percent increase (65 FR 16251, 16253–4; March 27, 2000). This calculation is also repeated in this final rule. In addition, the proposed rule announced the availability of the agency's work papers that support these calculations. Furthermore, the NRC has made available in the Public Document Room NUREG–1100, Volume-15, "Budget Estimates and Performance Plan, Fiscal Year 2000 (February 1999)." This document discusses the NRC's budget for FY 2000 in detail, including the activities to be performed in each strategic arena. Reactor-related research activities are described under the Nuclear Reactor Safety arena. These explanations satisfy all legal requirements and afford commenters ample information upon which to base their comments.

The fact that the NRC decided to derive the FY 2000 annual fees by means of a percentage increase in no way indicates that the fee was derived without regard to the costs of reactor regulation. To the contrary, the very decision to proceed by percentage increase is based on a consideration of, among other things, whether there has been a substantial change in the magnitude of the budget allocated to a specific class of licensees. The percent change method exists not so the agency can avoid the effort of making the best possible match between fees and services, but rather to give licensees some cost stability. Last year the NRC solicited comment on whether it should retain the percent change method or rebaseline annual fees every year (63 FR 15884; April 1, 1999). The majority of commenters favored continued use of the percent change method because they desired some stability in fees. The Commission has retained this method, with the additional provision that fees will be rebaselined at least every three years.

The total budgeted amount to be recovered in FY 2000 through fees charged to NRC applicants and licensees actually decreased by approximately $2.6 million from the FY 1999 level. The slight increase in annual fees is therefore primarily a result of the absence of a carryover from prior years, a decrease in estimated payments for prior year invoices, and a reduction in the number of licensees. Although inflation ran 2.4 percent over FY 1999, the annual fees are increasing only 1.4 percent.

The NRC emphasizes that, considering inflation, the NRC's budget, in real terms, is down once again—to an all-time low. It represents a 25 percent decrease in the last 7 years alone and staffing levels are their lowest in 20 years. This has all been achieved while the NRC has expended large resources in extraordinary reform efforts, particularly in enforcement and power reactor oversight.

B. Specific Part 170 Issues

1. Project Manager Billings Issues

Comment. Uranium recovery industry commenters strongly opposed the NRC's current billing method for Project Managers (PMs). Many of these comments were directed towards the unfairness of certain types of PM activities being charged to licensees that had little or no apparent connection to the sites the PMs were managing, such as Combined Federal Campaign activities or support to other offices. One commenter stated that indirect PM charges should be captured under Part 171 annual fees versus Part 170 fees due to the inequities of the NRC's current billing system, thereby allowing indirect PM charges to be evenly distributed to all uranium recovery licensees paying annual fees. Another concern was the unequal distribution of PMs to licensee sites, thereby subjecting certain licensees to a disproportionate share of indirect (*e.g.*, administrative) PM costs.

Response. In FYs 1998 and 1999, the NRC shifted cost recovery for certain activities from Part 171 annual fees to Part 170 fees. As part of this effort, in FY 1999, the NRC made a conscious decision to recover the full costs for PMs, with the exception of PM activities that are generic in nature (*e.g.*, rulemaking and preparation of generic guidance documents, *etc.*) and leave time, through Part 170 fees. This decision is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and previous Commission guidance. In summary, these guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. These

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special benefits include services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, amendment, or other services necessary to assist a recipient in complying with statutory obligations under the Commission's regulations.

With the exception of generic activities and leave time, PM activities are services which the NRC provides to specific, identifiable beneficiaries (*i.e.*, the site or sites to which the PM is assigned). Thus, as the NRC stated in the FY 1999 final rule, it is more appropriate that the costs of these activities be recovered through Part 170 fees assessed to the recipient of the service than through annual fees assessed to all of the licensees in a particular class (64 FR 31448; June 10, 1999). This results in licensees who have ceased operations being charged for the full costs of PMs assigned to their sites. If indirect PM costs were included in the Part 171 annual fee, then only operating licensees, licensees in standby, and power reactor licensees who are in decommissioning or possession only status and having fuel on-site would pay these PM costs.

As indicated in the final FY 1999 fee rule, the NRC readily acknowledges that certain PM activities are not directly related to a specific licensing action or inspection, or even to a specific site. However, these activities are part of the costs to the agency of providing the PM services, and these costs are most appropriately recovered from the licensee benefitting from those services. Day-to-day PM activities to be recovered through Part 170 fees include the general management and oversight of the particular site or sites to which they are assigned, and general activities such as training, travel, general correspondence, staff meetings, coordination with and support to other offices, and processing documents into the NRC's Agencywide Document Access and Management System (ADAMS). A review of the PM time reported in the first two quarters of FY 2000 indicates that approximately 10–15 percent of a PM's time is spent on general or non-site specific administrative duties. The NRC believes it is appropriate to recover the costs for this small percentage of the PM's time from the assigned site or sites as a necessary function in support of the NRC's overall mission.

The NRC stated in the FY 1999 final rule that leave time would be excluded from PM time billed under Part 170. For purposes of Part 170 fees for PMs and resident inspectors, leave time includes approved leave, excused absences, and absences in a duty status. After further review, the NRC has determined that Combined Federal Campaign activities are most appropriately identified as an excused absence for fee billing purposes, and thereby excluded from Part 170 fee assessments. Accordingly, NRC is adjusting those Part 170 invoices that included these charges.

The NRC understands some commenters' concerns about the unequal distribution of licensee sites among PMs in the NRC's uranium recovery program. In the case of PMs assigned to more than one license or site, the PM time that is not directly related to a specific site or to generic activities is prorated to each of the assigned licenses or sites. A site having a fully dedicated PM should bear more of the PM's general and administrative costs, and therefore the distribution of these costs between the licensees in the fee class reflects the proportion of time devoted to one or more sites. As previously noted, this time is a small percentage of the total PM's time.

2. Hourly Rates

Comment. Several uranium recovery commenters stated the hourly rate of $143 for PMs/professional staff was excessive considering that senior-level private consultants in the industry charge far less for comparable services. A reactor licensee called the $3 per hour increase unacceptable, and suggested that NRC help the regulated community by controlling and reducing annual fees, not increasing them to "pay higher wages." Another commenter requested that before issuing the FY 2000 final fee rule, the NRC address the NRC's Office of the Inspector General (OIG) recommendation to evaluate the hourly rate methodology. This commenter believes no substantive justification has been given for formulating hourly rates by using budget data rather than actual data from previous year's billings.

Response. The NRC's hourly rates are established to recover the cost of maintaining a professional employee, such as salaries and benefits and overhead, and to recover general and administrative costs, such as heat, lighting, and supplies. These budgeted costs are incurred whether a professional employee is performing work that is billable under Part 170 or work that is recovered through annual fees. The time spent by a professional employee in performing work that is subject to Part 170 fees is traced to the billable activities and charged at the professional hourly rate to the recipient of the service. Any direct contract support costs incurred in providing the service are also traced and billed directly to the recipient. Because the hourly rate is not intended to be used only for work that is billable under Part 170, the NRC believes it is more appropriate to use budget data than to base the hourly rate calculations on historical Part 170 type billing data.

The NRC is revising the professional hourly rates to $143 for the nuclear materials and nuclear waste program and $144 for the reactor program. As required by OBRA–90, the NRC must recover approximately 100 percent of its budget authority, less the appropriation from the Nuclear Waste Fund, through either fees for direct services (Part 170) or annual fees (Part 171). The professional hourly rates, which are based on budgeted costs, must be established at these levels to meet the fee recovery requirement.

The revised professional hourly rates of $143 and $144 mark a $3 per hour increase over FY 1999. This is primarily attributable to the Government-wide pay increase which went into effect January 2000. This equates to approximately a 2 percent increase over the previous year for professional hourly rates, while at the same time inflation, as measured by the Consumer Price Index, was approximately 2.4 percent.

With regard to the OIG's findings and recommendations, the Commission continues to assert that its fee schedules are in full compliance with the requirements of OBRA–90, IOAA, and OMB Circular A–25. The NRC's methodology for calculating the IOAA fees was upheld by the Court in *Mississippi Power & Light* v. *NRC* [601 F. 2d 223 (5th Cir. 1979) *cert. denied 444 U.S. 1102 (1980)*]. Further, a comprehensive response was published with the OIG report concerning the NRC fee development process, which may be accessed via the NRC's homepage *(http://www.nrc.gov)*. Interested individuals may review the response in detail by selecting "Reference Library," then "IG Audit Rpts," then "99A–01".

3. Invoice Information

Comment. Several commenters expressed concern over the lack of appropriate invoice detail regarding quarterly billings for NRC staff services provided to licensees.

Response. The NRC believes that sufficient information is currently provided to licensees or applicants on which to base payment of invoices. The NRC has addressed this issue previously in a similar response to the American Mining Congress (now the National Mining Association) (60 FR 20918; April 28, 1995). The NRC's invoices for full-cost licensing actions and inspections currently contain information detailing the type of service for which the costs are being billed, the date or date range the service was performed, the number of professional staff-hours expended in providing the service, the hourly rate, and the contractual costs incurred.

A licensee or applicant who does not understand the charges, or who feels it needs more information to interpret a bill, may request additional information from the NRC regarding the specific bill in question. The NRC will provide all available data used to support the bill in response to this type of request. Additionally, if requested, the NRC program staff will provide a best estimate of the hours required to complete a specific licensing action, with the caveat that the actual hours expended may differ from that estimate based on certain circumstances (*e.g.*, timeliness of submittals, quality of products being submitted for review, etc.). However, OMB Circular A–25, which establishes guidelines for Federal agencies to assess fees for Government services, provides that new cost accounting systems need not be created solely for the purpose of determining or estimating full cost. Therefore, the NRC does not currently plan to develop additional systems solely to provide further details to support the fee invoices.

C. Specific Part 171 Issues

1. Percentage Change Methodology

Comment. One commenter stated that, although it agrees that fee stability is "a reasonable goal," and rebaselining might require more resources, the "industry" believes annual fees should be rebaselined each year. The commenter believes that annual rebaselining would serve to promote agency efficiency by focusing on the value of the programs and other changes that have an impact on resource requirements. The commenter referenced a recent audit by the OIG which concluded that extended use of the percentage change method may result in a deviation from associating fees with the costs of services provided.

Response. After evaluating all pertinent factors, the Commission has determined that the use of the percentage change method for determining FY 2000 annual fees does not result in a loss of the required "reasonable relationship" between fees and the costs of providing services. In the FY 1999 proposed fee rule (64 FR 15884; April 1, 1999), the Commission specifically solicited public comment on whether the NRC should continue to use the percent change method and rebaseline fees every several years, or return to a policy of rebaselining annual fees every year. The majority of the comments received on this issue supported continuing the use of the percent change method, and rebaselining every several years as warranted. These commenters were concerned about fee stability and predictability. Therefore they did not favor annual rebaselining.

Before FY 1999, Commission policy required that annual fees be rebaselined every five years, or earlier if there was a substantial change in the total NRC budget or in the magnitude of the budget allocated to a class of licensees. In FY 1999, based on experience gained as a result of applying the criteria for rebaselining over the previous four years, the Commission implemented a revised policy requiring that future annual fees be rebaselined every three years, or earlier if warranted. The Commission's decision on the appropriate method for establishing annual fees (*i.e.*, rebaselining or percentage change) is made each year after considering the criteria for rebaselining and all relevant facts.

2. Small Entity Fee Increase

Comment. Several comments were received on the proposed 25 percent increase in the small entity annual fees. Some commenters indicated that a 25 percent increase would have negative economic impacts on their businesses. These commenters said it would be difficult for them to recover the increase, and it could force some small companies to give up their licenses. One commenter attributed the reason for the proposed small entity fee increase to the decrease in the number of licensees. This commenter said that businesses faced with reduced sales would not be able to increase prices, but rather would be forced to reduce their budgets, and that this would be an obvious solution for the NRC to follow. Two commenters noted that while the annual fee assessed to small entities would increase by 25 percent, the annual fee for certain other licensees, such as gauge users, would not increase.

Several commenters suggested alternatives to the current basis for the small entity annual fee. One commenter suggested that the fee be based on net receipts or receipts from regulated activities instead of gross receipts. Another recommended that the small entity fee be based on the number of gauges owned or leased. This commenter indicated that there are increased licensing and inspection costs associated with larger numbers of gauges and there would be no additional expense for licensees to provide this information because they already maintain a gauge inventory. A third commenter requested that small entity size standards be established for reactor licensees based on the utility's total capacity, number of employees, customers in the rate base, or a combination of these factors.

Some commenters requested that the NRC establish more tiers or levels of fees, indicating that the spread between the current tiers is too great. One commenter said one company should not be burdened with the same fee as a company with fourteen times the gross receipts. Another commenter said the current lower tier of $350,000 in annual gross receipts should be increased to $1 million to reflect FY 2000 equivalent dollars.

Response. The NRC is increasing the small entity annual fee and the lower tier small entity fee by 25 percent in this final rule. This is the first change to the small entity fee amounts since their introduction in FYs 1991 and 1992. While NRC recognizes the effect this increase may have on some small entities, the NRC believes this action strikes a balance between the requirement of OBRA–90 to collect approximately 100 percent of the NRC's budget authority through fees, and the Regulatory Flexibility Act (RFA) requirement to consider the impact of agency actions on small entities.

The NRC has determined that assessing costs to the materials class of licensees which are attributable to that class, as indicated in the Conference report accompanying OBRA–90, results in a significant impact on a substantial number of small entities. However, the NRC is not required to reduce or eliminate the impact on small businesses, but to evaluate the impact and explain its decisions. The NRC has developed the Regulatory Flexibility Analysis for this final rule (see Appendix A to this document). Given the conflicting goals of OBRA–90 and the RFA, the Commission determined that the impact on small entities should be reduced by establishing a maximum annual fee for licensees who qualify as small entities.

In order to recover approximately 100 percent of the budget as required by law, other licensees must pay for costs not recovered from small entities. With the 25 percent increase to the small entity annual fees, the FY 2000 small entity subsidy to be recovered from other licensees is approximately $5.6 million; without the increase the subsidy would be approximately $6.0 million. The 25 percent increase means that small entities will pay more of the

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costs attributable to them, but still benefit from reduced annual fees. For most fee categories, the $2,300 annual fee per license category for small entities is approximately 26 percent less than the $3,400 in average total fees paid by small entities in FY 1991.

In order to put this increase in perspective, it must be recognized that the small entity fee policy represents a subsidy program, for which small entities are paying only a small percentage of the costs attributable to them. The small entity annual fee levels have remained constant since they were established in FY 1991 and FY 1992, despite the fact that some types of NRC activities previously billed separately under Part 170 have been absorbed into the annual fee. Therefore, small entities have benefitted from the additional activities covered by the annual fees, but without the associated expense.

The 25 percent increase in the small entity annual fee is not due to a decrease in the number of licensees as one commenter believes. A decrease in the number of licensees is a contributing factor in the overall 1.4 percent increase in FY 2000 annual fees. However, the 25 percent increase in the small entity annual fee results from changes that have occurred in the types of costs recovered through annual fees and increases to costs since the $1,800 small entity fee was established. When the $1,800 maximum small entity annual fee was established in FY 1991, small entities also paid fees for inspections, amendments, and license renewals, resulting in an average of $3,400 in fees paid by small entities per year. However, since 1991 the inspection, amendment, and renewal fees have been eliminated from Part 170 charges and have been incorporated in the annual fees assessed to the materials class of licensees. As a result of these and other changes, the average total fees paid per year by other materials licensees increased by approximately 25 percent, from $6,700 in FY 1991 to $8,400 in FY 1999. For the same period, the average total fees paid per year by small entities decreased approximately 47 percent, from $3,400 in FY 1991 to $1,800 in FY 1999.

The NRC's size standards, which are codified in 10 CFR 2.810, are outside the scope of this rulemaking. Therefore, commenters' suggestions that the size standards be revised are not being addressed in this final rule. The NRC's receipts-based size standard for small businesses not engaged in manufacturing is based on the most commonly used Small Business Administration (SBA) size standard of $5.0 million in annual gross receipts for these types of businesses. Gross receipts include revenues from sales of products or services, interest, rent, fees, commissions and/or whatever sources derived.

The NRC has considered comments that the fees for small businesses be based on such factors as the number of gauges used, the volume of patients administered to, or receipts from the use of regulated activities in each fiscal year fee rulemaking, beginning in FY 1991 (56 FR 31472; July 10, 1991, at pp. 31511–31512, *et al.*). The NRC has consistently rejected these alternatives because they would not necessarily meet the goal of the RFA to minimize the impact of agency actions on small entities. For example, if the NRC based the reduced annual fee on the number of gauges owned, a large firm with only one gauge would get a reduced fee, while a small business with more than one gauge would pay a larger fee. Similarly, a large medical establishment would pay a reduced fee if only a small part of its business involved nuclear procedures, whereas a small medical facility whose entire business involves nuclear procedures would pay a larger fee. Basing the fees on the small entity size standards ensures that benefits of the reduced fees apply only to small entities.

In FY 1999, approximately 43 percent of the licensees qualifying as small entities for purposes of reduced annual fees qualified for the lower-tier small entity fee. Therefore, because the current lower tier fee significantly reduces the impact of the annual fee for licensees with relatively low gross annual receipts or supporting populations, the NRC does not believe any additional tiers are appropriate.

3. Effects of Shifting Cost Recovery From Part 171 to Part 170

Comment. Some commenters indicated that the NRC's attempt to shift cost recovery from Part 171 to Part 170 is illusory at best and represents no real savings to the licensee. They further expounded that shifting these costs to Part 170 fees has not resulted in an offsetting decrease in Part 171 fees, thereby exacerbating an already unfair and inequitable situation.

Response. It is incorrect to assume that Part 170 have increased with no corresponding drop in Part 171 fees. As required by OBRA–90, the Part 171 annual fee recovery amounts are offset by the estimated Part 170 fee collections. The estimated collections for FY 2000 include a $2.4 million increase in estimated Part 170 fees, from $103.5 million in FY 1999 to $105.9 million for FY 2000. This increase is largely attributable to changes in Commission policy included in the FY 1999 final fee rule, such as billing full cost under Part 170 for PMs, performance assessments, incident investigations, and reviews of reports and other documents that do not require formal or legal approval. However, this increase is offset by other factors, as described in the proposed fee rule (65 FR 16253, 16254; March 27, 2000). To reiterate, as the NRC explained in the FY 1999 proposed and final fee rules (64 FR 15876; April 1, 1999; and 64 FR 31458; June 10, 1999), a $4.1 million carryover from additional FY 1998 collections was applied to FY 1999 collections, thereby reducing the total fee recovery amount for FY 1999. However, this carryover does not exist for FY 2000. The $1.7 million decrease in estimated total collections for FY 2000 is the difference between the $4.1 million carryover from additional 1998 collections and the estimated $2.4 million increase in Part 170 collections for FY 2000 as compared to FY 1999. In addition, the FY 2000 net annual fee billing adjustment, which is for invoices that will not be paid in FY 2000, the small entity subsidy, and payments received in FY 2000 for FY 1999 invoices, is approximately $5.7 million, compared to the FY 1999 adjustment of $3.2 million. As a result of these changes, which are summarized in Table II of this final rule, the total Part 171 billing amount increased from $345.1 million in FY 1999 to $346.7 million in FY 2000. In addition, there are approximately 530 fewer licensees available to pay the annual fees in FY 2000, primarily because Ohio became an Agreement State in August, 1999.

4. Impacts of the Revised Annual Fees on Licensees

Comment. Several commenters stated that the NRC's FY 1999 rebaselining placed a significant financial burden on the uranium recovery industry due to increased fees and that uranium recovery licensees bore a disproportionate share of the cost burden from this process. Many uranium recovery commenters asserted the uranium market is depressed and at a historical low. These commenters claimed that the NRC's current fee structure is excessive and unfair to the uranium recovery industry class of licensee. Furthermore, they indicated that licensees do not have the capability of passing through these additional costs to the consumer, thereby adversely affecting the viability of some companies. A reactor licensee who referred to the challenge of the competitive, unregulated marketplace for utilities, commented that the cost of regulating the industry is passed on to the consumer. This commenter indicated that businesses do not locate in the company's area, or end up leaving the area, because the electric rates there are among the highest in the State.

Response. The NRC acknowledges the commenters' concern about the depressed state of the uranium industry and that any increase in fees to uranium recovery licensees may pose a significant financial hardship. However, without legislative relief, the NRC is mandated by OBRA–90 to collect approximately 100 percent of its budget authority. As stated in response to similar comments on this issue in the FY 1993 fee rule (58 FR 38667; July 20, 1993), the Commission lacks the expertise or information needed to determine whether, in a market economy, particular licensees can or cannot recapture the costs of annual fees from their customers. The Commission is not a financial regulatory agency and does not have the resources necessary to continuously evaluate purely business factors. The annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services in order to meet the requirements of OBRA–90. Therefore, the Commission is not changing its previous decisions against basing fees on licensees' economic status or market conditions, and has only considered the fee impacts it is obligated by law to consider. In the FY 1993 final fee rule, after full consideration of the question, the NRC determined not to establish fees or base any fee exemptions on the alleged inability of a licensee to pass through the costs to its customers (58 FR 38667, 38668; July 20, 1993).

The Commission established its policy regarding rebaselining frequency in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). The Commission determined that future annual fees should be rebaselined every three years or earlier, if warranted. This decision was based on the experience gained as a result of applying the criteria from rebaselining over the previous four years. The Commission's decision on the appropriate method for establishing annual fees (*e.g.*, rebaselining vs percentage change) is made each year after considering all relevant factors. Rebaselining on a periodic basis or when there has been a substantial change in the total NRC budget or the magnitude of the budget allocated to a class of licensees is necessary to meet the statutory criteria that the annual fees be fairly and equitably allocated among licensees or classes of licensees, and, to the maximum extent practicable, have a reasonable relationship to the cost of providing regulatory services.

5. Effects of Decreasing Numbers of Licensees

Comment. Several commenters broached the issue of annual fee increases that result from a decreasing number of licensees available to pay the fees. Some commenters questioned why NRC's budget did not decrease commensurate with the decrease in licensees. One commenter, representing commercial nuclear reactor licensees, stated that a decrease in the number of materials licensees was the only reason given for the 1.4 percent increase in power reactor licensee's annual fees which, in the commenter's view, suggests that the increase is solely attributable to the costs of regulating materials licensees. Therefore, these costs have no relation to nuclear power reactors. The uranium recovery industry expressed apprehension about the decreasing number of licensees in the uranium recovery industry, thereby raising concern over the last remaining licensee in the class supporting the NRC's entire Uranium Recovery Branch singlehandedly.

Response. The NRC acknowledges the commenters' concern regarding the effects a declining licensee base has on the Part 171 fees assessed to the remaining licensees. Given the requirements of OBRA–90, the NRC has no option but to assess annual fees to NRC licensees to recover the budgeted costs not recovered through Part 170 fees and other receipts.

The NRC's fee-based budget for FY 2000 did, in fact, decrease by $2.6 million from FY 1999, as shown in Table II of the proposed rule and this final rule. However, the need for generic efforts and other activities of the agency may not necessarily decrease at the same rate as the decrease in the number of licensees. For example, the NRC's cost to establish a risk-informed, performance-based regulatory framework is not affected by a decrease in the number of licensees. Similarly, the costs to maintain the Emergency Response Center are not affected by the number of licensees. The NRC continually evaluates options to reduce costs without sacrificing its health and safety mission, including costs in those areas where the licensee base is diminishing.

In the years that annual fees have been based on the percent change method (FYs 1996, 1997, 1998, and 2000), there have been decreases in both materials licenses and reactor licenses. For example, in FY 1998, the equivalent of 2.3 fewer reactor licensees were available to pay the annual fees compared to FY 1997. This represented a reduction of approximately 2 percent of the total operating reactors. In FY 2000, there are approximately 530 fewer materials licensees compared to FY 1999, a reduction of approximately 10 percent.

Under the percent change method, which has been endorsed by most of those commenting on the methodology since it was introduced in FY 1995, the number of licensees is only one factor in the determination of the percentage change to the annual fees needed to assure 100 percent fee recovery. This does not mean that the percentage change to the previous year's annual fees is related to a change in the costs of regulating the class of licensees that experienced the decrease in licensees. Rather, the percentage change is based on the factors shown in Table II (*e.g.*, changes to the total fee recovery amount, the estimated collections from Part 170 fees and other receipts, and billing adjustments necessary to meet the 100 percent fee recovery requirement), and the number of licensees paying annual fees compared to FY 1999.

The NRC supports legislative relief with respect to the NRC activities that have no direct relation to the licensees who are assessed the costs as part of their annual fee (*e.g.*, Agreement State program oversight, international programs, etc.). As noted previously, the Senate has passed such legislation. That same legislation would provide the Commission with the authority to charge Part 170 fees to all Federal agencies.

6. Fee Stability

Comment. Several commenters expressed concern over the instability of fees from year to year. As a result, it becomes increasingly difficult for licensees to accurately budget for NRC's annual costs.

Response. To address licensee concerns about fee stability and predictability, the Commission adopted the policy of adjusting the annual fees by the percentage change in the total NRC budget, with adjustments for numbers of licensees in particular fee classes and other necessary adjustments to meet the requirement of recovering approximately 100 percent of the budget through fees. This percentage change method is used only if there has not been a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fees will be rebaselined. As of FY 1999, the

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maximum interval for rebaselining is three years. However, the Commission has stated that it will rebaseline earlier if warranted.

7. Assessment of Annual Fees to Licensees in Standby or Decommissioning

Comment. One commenter indicated that it is inappropriate for the NRC to charge uranium recovery licensees in "standby" mode the same annual fees as licensees who are actively operating a facility, especially in light of the fact that regulatory review and inspection efforts by the NRC are minimal for these dormant sites. Similarly, another commenter remarked that the NRC should lessen or discontinue its assessment of annual licensing fees on decommissioned facilities that are simply awaiting NRC approval of reclamation plans.

Response. In the FY 1991 fee rule, the Commission made a determination to assess annual fees to uranium recovery licensees in operation or in standby in order to recover the generic costs and other costs not recovered through Part 170 fees attributable to the uranium recovery class. The Commission stated that this method was practical, equitable, and a fair way to recover NRC costs given the limited number of operating mills and is consistent with the approach taken for other classes of licensees. The Commission further elaborated on this issue in response to a similar comment from the American Mining Congress (now the National Mining Association) in 1995 (60 FR 20918; April 28, 1995). There the Commission asserted it would continue to assess annual fees based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material, regardless of whether the facility is actively operating or in a standby status. The basic premise for this policy is that the benefit the NRC provides a licensee is the authority to use licensed material. The choice of whether or not to exercise that authority is a business decision of the licensee.

Because of the mandate that the NRC recover approximately 100 percent of its budget through fees, to refrain from charging annual fees to licensees in a standby mode would increase the annual fees for other licensees in the class because the number of licensees assessed annual fees would decrease. Such an approach would raise fairness and equity concerns. Licensees in standby status receive benefit from NRC's generic guidance and rules applicable to their class of licensee. Additionally, any reduction in required licensing reviews and inspections for licensees in a standby mode would be reflected in reduced Part 170 fees assessed to them.

However, the annual fee is waived for those licensees who voluntarily relinquish the authority to operate and have permanently ceased operations, including sites with reclamation or decommissioning plans pending NRC review. Thus, the commenter's remark about the NRC assessing annual fees to uranium recovery sites in decommissioning is incorrect.

8. Relationship Between Benefits and Fees

Comment. Several uranium recovery commenters found a lack of relationship between NRC's regulatory program and the benefits derived by industry, such as a disparity in Part 171 fees versus Part 170 fees and excessive levels of oversight/inspections for operating licensees for what amounts to a relatively benign industry from a health and safety standpoint.

Response. In FYs 1998 and 1999, the NRC considered ways to recover more of its costs through Part 170 fees. The Commission decided in FY 1999, for example, to expand the scope of Part 170 fees to include incident investigations, certain performance assessments and evaluations, reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for time expended by PMs (except time spent on generic activities such as rulemaking, and leave). The NRC believes that the costs for the activities not recovered through Part 170 fees are appropriately included in the Part 171 annual fees. These activities include generic efforts, activities exempted from Part 170 fee recovery based on NRC policy or legal constraints, and certain activities that raise fairness and equity concerns because they do not benefit the licensees who pay the costs. In the FY 1999 final fee rule, the NRC outlined the actions it has taken to address the fairness and equity concerns (64 FR 31448–50; June 10, 1999). The response to comments on the FY 2000 proposed fee rule concerning legal issues (A.1. of this Section) provides an update to the FY 1999 discussion.

The NRC takes issue with the commenters' remark about the uranium recovery industry being subjected to excessive regulatory oversight by the NRC for a relatively low risk operation. The NRC is charged with the responsibility of regulating the nation's civilian radioactive source material supply in a manner that is safe to public health and the environment. Uranium recovery is one of the activities that the NRC regulates under its mandate. The commenters' suggestion that uranium recovery presents a relatively low health and safety risk does not obviate the NRC's responsibility to regulate the industry, nor does it address the potential health, safety, and environmental issues associated with groundwater clean-up, tailings impoundments, facility decommissioning, yellowcake processing and handling, etc. When developing its annual budget, the NRC's Uranium Recovery Branch looks at the level of regulatory effort needed to fulfill its mission and bases its inspections and review efforts accordingly. This budget is closely scrutinized by the NRC's Office for Nuclear Material Safety and Safeguards, the Commission, the Office of Management and Budget, and the U.S. Congress before it is approved to ensure that proper resources are allocated to sufficiently protect public health and safety and the environment, at the most efficient staffing level.

Additionally, the NRC has examined ways to reduce or eliminate inspections associated with uranium recovery facilities. In establishing inspection frequencies, the NRC considers the risk to public health and safety, and the environment. Sites under reclamation are to be inspected once every three years, unless a specific request is received from a licensee for the NRC staff to review elements of construction earlier. Generally, sites on standby status are to be inspected every two to three years. Facilities that are currently in operational status are to be inspected twice a year, with the option for a reduction to once a year made by the NRC based on the site's previous inspection record. Thus, if an operating uranium recovery licensee has a good inspection record and the NRC determines that a reduced number of inspections is warranted, it will eliminate one biannual inspection. Furthermore, the NRC has instituted performance-based licensing for uranium recovery licensees to help streamline licensing and oversight activities, and when implemented properly by the licensee, should result in reduced review efforts by the NRC staff.

These programmatic efficiencies are intended to reduce the amount of resources expended on licensing and inspection activities. However, there are other activities that have required increased resources. For example, three uranium recovery licensees were involved in Atomic Safety Licensing Board administrative hearings over the last several years. These contested hearings have consumed substantial NRC staff resources. The budgeted resources devoted to contested hearings affect the Part 171 fee base because, for policy and legal reasons, the Commission does not charge Part 170 fees for contested hearings. Commenters have opposed cost recovery under Part 170 for contested hearings.

Comment. Many commenters voiced their displeasure with the inequities of OBRA–90 and encouraged the NRC to continue its efforts in pursuing legislative action to obtain fee relief for the uranium recovery industry.

Response. The FY 1999 fee rule outlines the actions the NRC has taken to address the inequities of the annual fees. As noted previously, the NRC has submitted proposed legislation that would reduce the NRC's fee recovery amount in order to address fairness and equity concerns. The Senate has passed such legislation.

D. Other Issues

1. NRC's Budget

Comment. One commenter, referring to the NRC's FY 2001–2005 Five Year Plan, indicated that NRC's overall budget does not reflect the agency's stated objectives to become more effective and efficient. The commenter believes that changes in NRC's regulatory approach, the industry's good performance, and decreases in licensing actions, generic communications, inspection requirements, and time spent on allegations, should lead to a reduction in FTE, not an increase as projected in the budget plan.

Response. The NRC's budgets, current or future, are not within the scope of this rulemaking. The purpose of this rulemaking is to establish the fees necessary to recover approximately 100 percent of the agency's FY 2000 budget authority as required by OBRA–90. The NRC's budget requests undergo extensive internal examination before they are submitted to the Office of Management and Budget (OMB). After OMB review, the budget requests are submitted to Congress, where they undergo additional scrutiny. This review process assures that the budget reflects the resources necessary for the NRC to carry out its health and safety mission.

While there are decreases in resource needs as the commenter noted, there are also major increases. These increases are needed for efforts such as timely license renewal, license transfers, and risk-informing NRC regulations, all of which have been supported by the industry.

2. NRC's Jurisdiction for In-Situ Leach

Comment. Uranium recovery commenters urged the NRC to relinquish its jurisdiction of in-situ leach (ISL) uranium mining wellfield regulation as outlined in the National Mining Association's (NMA's) 1998 White Paper to the Commission.

Response. The NRC recognizes the commenters' concern regarding NRC's role in ISL wellfield regulation as discussed in the FY 1999 fee rule. In summary, the NRC began examining its role in the regulation of ISL wellfields and the associated groundwater in 1997. The NMA provided its White Paper outlining four major concerns, including one related to in-situ facility regulation. The matter is now before the Commission.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 2000 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 2000, the NRC's budget authority is $470.0 million, of which $19.15 million has been appropriated from the NWF. In addition, $3.85 million has been appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the DOE and other Federal agencies. The NRC's FY 2000 Appropriations Act states that this $3.85 million appropriation shall be excluded from license fee revenues. Therefore, the NRC is required to collect approximately $447.0 million in FY 2000 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. The total amount to be recovered in fees for FY 2000 is $2.6 million less than the total amount estimated for recovery in the NRC's FY 1999 fee rule.

The NRC estimates that approximately $106.0 million will be recovered in FY 2000 from Part 170 fees and other offsetting receipts. The remaining $341.0 million would be recovered through Part 171 annual fees.

The NRC also estimates a net adjustment for FY 2000 of approximately $5.7 million for the small entity subsidy, for FY 2000 invoices that would not be paid in FY 2000, and for payments received in FY 2000 for FY 1999 invoices. These adjustments are approximately $2.5 million more than in FY 1999. In addition, there are approximately 530 fewer licenses subject to annual fees in FY 2000 than in FY 1999, due primarily to Ohio becoming an Agreement State in August, 1999.

As a result of these changes, the FY 2000 annual fees increased slightly, by approximately 1.4 percent, compared to the FY 1999 actual (prior to rounding) annual fees. As a result of rounding, the FY 2000 annual fees for several fee categories are the same as the final (rounded) FY 1999 annual fees. The change to the annual fees is described in more detail in Section B. The following examples illustrate the changes in annual fees: FY 1999 FY 2000

Class of licensees	FY 1999 annual fee	FY 2000 annual fee
Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning fee)	$2,776,000	$2,815,000
Spent Fuel Storage/Reactor Decommissioning	206,000	209,000
Nonpower Reactors	85,900	87,100
High Enriched Uranium Fuel Facility	3,281,0000	3,327,000
Low Enriched Uranium Fuel Facility	1,100,000	1,116,000
UF_6 Conversion Facility	472,000	478,000
Uranium Mills	131,000	132,000
Typical Materials Licenses:		
Radiographers	14,700	14,900
Well Loggers	9,900	10,100
Gauge Users	2,600	2,600
Broad Scope Medical	27,800	28,100

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The final FY 2000 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2000 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2000 final rule. For these licensees, payment will be due on the effective date of the FY 2000 rule. Those materials licensees whose license anniversary date during FY 2000 falls before the effective date of the final FY 2000 rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1999 rate in FY 2000. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2000 rule will be billed at the FY 2000 revised rates during the anniversary month of the license and payment will be due on the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

As announced in FY 1998 rule, as a cost-saving measure, the NRC will no longer mail the final rule to all licensees. However, the NRC will send the final rule to any licensee or other person upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at fees@nrc.gov. In addition to publication in the **Federal Register**, the final rule will be available on the internet at *http://ruleforum.llnl.gov*.

The NRC is also making other changes to 10 CFR Parts 170 and 171 as discussed in Sections A and B below:

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

The NRC is revising the hourly rates used to calculate fees and is adjusting the 10 CFR Part 170 fees based on the revised hourly rates. An administrative amendment has also been made to § 170.12(c) to clarify that the site to which a resident inspector is assigned will not be assessed Part 170 fees for time spent by the resident inspector in support of activities at another site. The amendments to 10 CFR Part 170 are as follows:

1. Hourly Rates

The NRC is revising the two professional hourly rates for NRC staff time established in § 170.20. These rates are based on the number of FY 2000 direct program full time equivalents (FTEs) and the FY 2000 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The hourly rate for the reactor program is $144 per hour ($255,848 per direct FTE). This rate is applicable to all activities for which fees are based on full cost under § 170.21 of the fee regulations. The hourly rate for the nuclear materials and nuclear waste program is $143 per hour ($253,478 per direct FTE). This rate is applicable to all activities for which fees are based on full cost under § 170.31 of the fee regulations. In the FY 1999 final fee rule, these rates were $141 and $140, respectively. The approximately 2 percent increase is primarily due to the Government-wide pay increase in FY 2000.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the nuclear material and waste program.

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other direct program costs (*i.e.*, Salaries and Benefits, Travel) represent "in-house" costs and are allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and the Office of the Inspector General are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates.

TABLE I.—FY 2000 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

	Reactor program	Materials program
Direct Program Salaries & Benefits	$103.3M	$29.0M
Overhead Salaries & Benefits, Program Travel and Other Support	$ 53.2M	$15.3M
Allocated Agency Management and Support	$ 98.8	$27.9
Subtotal	$255.3	$72.2
Less offsetting receipts	−1	
Total Budget Included in Hourly Rate	$255.2	$72.2
Program Direct FTEs	997.5	284.9
Rate per Direct FTE	$255,848	$253,478
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	$144	$143

As shown in Table I, dividing the $255.2 million (rounded) budgeted amount included in the hourly rate for the reactor program by the reactor program direct FTEs (997.5) results in a rate for the reactor program of $255,848 per FTE for FY 2000. The Direct FTE Hourly Rate for the reactor program is $144 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($255,848) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, "Performance of Commercial Activities." Dividing the $72.2 million (rounded) budgeted amount included in the hourly rate for the nuclear materials and nuclear waste program by the program direct FTEs (284.9) results in a rate of $253,478 per FTE for FY 2000. The Direct FTE Hourly Rate for the materials program is $143 per hour (rounded to the nearest whole dollar).

This rate is calculated by dividing the cost per direct FTE ($253,478) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments

The NRC is adjusting the current Part 170 fees in §§ 170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§ 170.21 and 170.31 are based on the professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule would be assessed at the FY 2000 hourly rates.

The fees in §§170.21 and 170.31 that are based on the average time to review an application ("flat" fees) have been adjusted to reflect the increase in the professional hourly rates from FY 1999. The amounts of the materials licensing "flat" fees were rounded as follows. Fees under $1,000 are rounded to the nearest $10. Fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100. Fees that are greater than $100,000 are rounded to the nearest $1,000.

The licensing "flat" fees are applicable to fee categories K.1 through K.5 of § 170.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of § 170.31. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

3. Administrative Amendment

The NRC is amending § 170.12 (c)(1) to clarify that the fees assessed for a resident inspector's time exclude time spent by the resident inspector in support of activities at another site. This provision was inadvertently omitted from the revision of 10 CFR 170 in the FY 1999 fee rule.

4. Other

The NRC solicited public comment in the FY 1999 proposed fee rulemaking (64 FR 15878; April 1, 1999) on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violations (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in the fees collected for identifiable services under Part 170 in the FY 2000 proposed fee rule. Those commenting on this issue presented arguments both for and against assessing Part 170 fees for these activities. The NRC stated in the final fee rule (64 FR 31452; June 10, 1999), that it would further evaluate this issue before promulgation of the FY 2000 fee rule.

Three of the four commenters who addressed this issue in FY 1999 did not support recovering the costs for these activities under Part 170. These commenters were concerned that assessing these costs to the specific licensees under Part 170 could be viewed as penalizing the licensee when the licensee identifies and corrects violations. One commenter supported Part 170 fee assessment for escalated enforcement actions, indicating that it is inappropriate for one licensee to subsidize oversight for another licensee. This commenter also stated that the perception that these actions serve as an industry-wide deterrent is not borne out.

In addition to concerns raised by the commenters, there are other problems with assessing Part 170 fees for these activities. These problems include the handling of escalated enforcement costs if the enforcement action is reduced to a non-escalated enforcement action or is dropped altogether. Based on the public comments received in FY 1999 and legal and policy concerns (*e.g.*, whether adoption of such a policy would deter licensees from requesting hearings on proposed enforcement actions), the NRC will continue to recover costs for orders and escalated enforcement actions through Part 171 annual fees.

In summary, the NRC is amending 10 CFR Part 170 to:

1. Revise the two hourly rates;

2. Revise the licensing fees to be assessed to reflect the revised hourly rates; and

3. Make an administrative amendment to § 170.12(c) to clarify that the site to which a resident inspector is assigned will not be assessed Part 170 fees for time spent by the resident inspector in support of activities at another site.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC is revising the annual fees for FY 2000, increasing the maximum annual fees assessed to those licensees who qualify as small entities, and making several administrative amendments. The amendments are as follows:

1. Annual Fees

The NRC is amending §§ 171.15 and 171.16 to establish the annual fees for FY 2000 to recover approximately 100 percent of the FY 2000 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY 1996, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority, unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either case should occur, the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees. In addition, beginning in FY 1997, the NRC made an adjustment to recognize that all fees billed in a fiscal year are not collected in that year.

In the FY 1999 proposed fee rule (63 FR 15884; April 1, 1999), public comment was solicited on whether the NRC should, in future years, continue to use the percent change method and rebaseline annual fees every several years, as established in FY 1995, or return to a policy of rebaselining annual fees every year. The majority of those commenting on the frequency for rebaselining annual fees supported rebaselining every several years, as warranted. Based on the comments received, licensees have continuing concerns about fee stability. Therefore, in the final FY 1999 fee rule (64 FR 31448; June 10, 1999), the NRC stated that it is continuing the policy of adjusting the annual fees only by the percent change in the NRC's total budget, with additional adjustments for the numbers of licensees paying fees, changes in Part 170 fees, and other adjustments that may be required, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. However, based on experience gained from applying the criteria from FY 1996 to FY 1999, the Commission determined that, in the future, annual fees should be rebaselined at least every three years, or earlier, if warranted.

After evaluating NRC's budget data for FY 2000 and concluding that there has not been a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees, the NRC is continuing to stabilize annual fees by adjusting the FY 1999 annual fees by the percent change in the NRC's total budget, with adjustments for the number of licensees paying fees, changes in estimated Part

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170 collections and other offsetting receipts, and other changes required to assure that the amounts billed result in the required collections.

The $447.0 million to be recovered through Part 170 and Part 171 fees for FY 2000 is $2.6 million less than the total amount estimated for recovery in the NRC's FY 1999 fee rule. The NRC estimates that approximately $106.0 million will be recovered in FY 2000 from Part 170 fees and other offsetting receipts, compared to $107.7 million in FY 1999, a $1.7 million decrease. As the NRC explained in the FY 1999 proposed and final fee rules (64 FR 15876; April 1, 1999, and 64 FR 31458; June 10, 1999), the amount for FY 1999 included a $4.1 million carryover from additional FY 1998 collections which reduced the total fee recovery amount for FY 1999. This circumstance does not exist for FY 2000. The $1.7 million decrease in estimated collections for FY 2000 is the difference between the $4.1 million reduction available in FY 1999 from FY 1998 collections and an estimated $2.4 million increase in Part 170 collections for FY 2000 compared to FY 1999. The increase in estimated Part 170 collections, from $103.5 in FY 1999 to $105.9 for FY 2000, is largely attributable to changes in Commission policy included in the FY 1999 final fee rule, such as billing full cost under Part 170 for project managers, performance assessments, incident investigations, and reviews of reports and other documents that do not require formal or legal approval.

The remaining $341.0 million ($447.0 million total FY 2000 fee recovery amount less $106.0 million for estimated Part 170 collections and other receipts) is to be recovered through the Part 171 annual fees. The $341.0 million annual fee recovery amount for FY 2000 is approximately $1.0 million less than in FY 1999.

In addition to the slight reduction in the total amount to be recovered through annual fees, the NRC estimates a net annual fee billing adjustment of approximately $5.7 million for FY 2000 resulting from: (1) bills that will not be paid in FY 2000; (2) the small entity subsidy; and (3) payments received in FY 2000 for FY 1999 invoices. The billing adjustment, which is necessary to assure that the "billed" amount results in the required collections, is approximately $2.5 million more than in FY 1999.

In addition to these changes, there are approximately 530 fewer licenses subject to annual fees in FY 2000 than in FY 1999, due primarily to Ohio becoming an Agreement State in August 1999. As a result of these changes, the FY 2000 annual fees increased slightly, by approximately 1.4 percent, compared to the FY 1999 actual (prior to rounding) annual fees. As a result of rounding, the FY 2000 annual fees for several fee categories are the same as the final (rounded) FY 1999 annual fees. The effects of these changes on the annual fees are shown in Table II.

TABLE II.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1999 ANNUAL FEES

[Dollars in millions]

	FY 1999	FY 2000
Total Budget	$469.80	$470.00
Less NWF	−17.00	−19.15
Less General Fund (Regulatory reviews, and other assistance to other Federal agencies)	−3.20	−3.85
Total Fee Base	$449.60	$447.00
Less Part 170 Fees	−103.50	−105.90
Less other receipts	−4.20	−0.10
Part 171 Fee Collections Required	$341.90	$341.00
Part 171 Billing Adjustment: [1]		
Small Entity Allowance	5.30	5.60
Estimated Unpaid Current FY Part 171 Invoices	3.40	3.30
Estimated Payments from Prior Year Invoices	−5.50	−3.20
Subtotal	3.20	5.70
Total Part 171 Billing	$345.10	$346.70

[1] These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 2000.

2. Small Entity Annual Fees

The current maximum small entity annual fee and the lower tier small entity annual fee are increased by 25 percent. The maximum small entity annual fee increased from $1,800 to $2,300, and the lower tier small entity fee increased from $400 to $500. The current maximum small entity annual fee was established in FY 1991; the current lower tier small entity annual fee was established in FY 1992. The 25 percent increase is consistent with the increase in NRC fees for other NRC materials licensees since FY 1991. The increase is less than the increase in the average fees paid by small entity licensees in Agreement States during this time.

Between 1991 and 1999, changes in both the external and internal environment have affected NRC's costs and those of its licensees. Increases in the NRC materials license fees, Agreement States' materials license fees, and the Consumer Price Index all indicate that the NRC small entity fee established in 1991 should be revised. In addition, the structure of the fees that NRC charges to its materials licensees changed during the period between 1991 and 1999. In the past, costs for materials license inspections, renewals, and amendments were recovered through Part 170 fees for services. The costs of these activities are now included in the Part 171 annual fees assessed to materials licensees.

While the annual fees increased for most materials licensees as a result of these changes, the NRC's annual fees assessed to small entities have not been adjusted to include the additional costs. As a result, small entities are currently paying a smaller percentage of the total

NRC regulatory costs related to them than they did in FY 1991 and FY 1992 when the small entity fees were established.

Based on the changes that have occurred since FY 1991, the NRC has reanalyzed its maximum small entity annual fee. As part of the reanalysis, the NRC considered the 1999 fees assessed by Agreement States, the NRC's FY 1999 fee structure, and the increase in the Consumer Price Index between FY 1991 and FY 1999. The reanalysis and alternatives considered by the NRC for revising the small entity annual fees are described in the Regulatory Flexibility Analysis, which is Appendix A to this final rule.

In the future, the NRC plans to re-examine the small entity fees each year that annual fees are rebaselined.

3. Administrative Amendments

a. The NRC is revising § 171.5, Definitions, to include Certificates of Compliance (Certificates) issued under Part 76. The NRC issued two Certificates of Compliance under Part 76 to the United States Enrichment Corporation (USEC) for the operation of the gaseous diffusion uranium enrichment plants located at Paducah, Kentucky, and Piketon, Ohio. The definition of Materials License in § 171.5 has been amended to include Part 76 Certificates. This change is an administrative change to codify agency practice in the definitions for 10 CFR Part 171. Section 171.16(a)(1) already provides that annual fees covered by the section apply to person(s) authorized to conduct activities under 10 CFR Part 76 for uranium enrichment. USEC has been subject to annual fees since FY 1997.

b. Section 171.15 is revised as follows:

(1) Paragraphs (b) and (c) of § 171.15 are revised in their entirety to establish the FY 2000 annual fees for operating power reactors, power reactors in decommissioning or possession only status, and Part 72 licensees who do not hold Part 50 licenses. The fees have been established by increasing the FY 1999 actual (prior to rounding) annual fees by approximately 1.4 percent. In the FY 1999 fee rule, the NRC stated it would continue to stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and other adjustments that may be required, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. The activities comprising the FY 1999 base annual fees and the additional charge (surcharge) are listed in § 171.15(b)(2), (c)(2) and (d)(1) for convenience purposes.

The FY 2000 annual fee for each operating reactor is $2,815,000, which includes the annual fee of $209,000 for spent fuel storage/reactor decommissioning. Each power reactor holding a Part 50 license that is in decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is subject to the spent fuel storage/reactor decommissioning annual fee of $209,000 in FY 2000.

(2) Paragraph (e) of § 171.15 is revised to establish the FY 2000 annual fee for non-power (test and research) reactors. The fee has been established by increasing the FY 1999 actual (prior to rounding) annual fee by approximately 1.4 percent. The FY 2000 annual fee for each non-power reactor is $87,100. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in § 171.11(a)(2).

c. Section 171.16 is amended as follows:

(1) Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526. This section is revised to reflect the 25 percent increase in the small entity fees. The NRC is maintaining a two-tier fee structure for licensees that qualify as small entities under the NRC's size standards. In general, licensees who qualify as small entities will pay a maximum annual fee of $2,300. A second or lower-tier small entity fee of $500 is in place for those licensees who are considered to be very small entities for the purposes of this regulation.

(2) Section 171.16(d) is revised to establish the FY 2000 annual fees for materials licensees, including Government agencies, licensed by the NRC. The FY 2000 annual fees were determined by increasing the FY 1999 actual (prior to rounding) annual fees by approximately 1.4 percent. After rounding, the FY 2000 annual fees for several categories of materials licenses are the same as in FY 1999. The amount or range of the FY 2000 annual fees for materials licenses is summarized as follows:

MATERIALS LICENSES, ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel facility.	$3,327,000
Part 70—Low enriched fuel facility.	1,116,000
Part 40—UF_6 conversion facility.	478,000
Part 40—Uranium recovery facilities.	$30,800 to $132,000
Part 30—Byproduct Material Licenses.	$620 to $28,100 [2]
Part 71—Transportation of Radioactive Material.	$2,300 to $67,600

[2] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is $363,000

(3) Footnote 1 of § 171.16(d) is amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1999, and permanently ceased licensed activities entirely by September 30, 1999. All other licensees and approval holders who held a license or approval on October 1, 1999, are subject to the FY 2000 annual fees.

Holders of new licenses issued during FY 2000 are subject to a prorated annual fee in accordance with the current proration provision of § 171.17. For example, those new materials licenses issued during the period October 1, 1999, through March 31, 2000, are assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 2000, are not subject to an annual fee for FY 2000. Thereafter, the full annual fee will be due and payable each subsequent fiscal year on the anniversary date of the license. Materials licensees whose annual fees are less than $100,000 are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

d. Section 171.19 Payment, is amended as follows:

(1) Section 171.19(b) is revised to update the fiscal year references, and to give credit for partial payments made by certain licensees in FY 2000 toward their FY 2000 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 2000 will have been made by operating power reactor licensees and some large materials licensees before the final rule

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becomes effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

(2) The remainder of this section, although unchanged, is presented for the convenience of the user. As in FY 1999, the NRC will continue to bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are $100,000 or more would continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date, unless the annual fee for the prior year was less than $100,000 and the revised annual fee for the current fiscal year is $100,000 or more. In this case, the revised amount will be billed to the licensees upon publication of the final rule in the **Federal Register**, adjusted for any annual fee payments already made for that fiscal year based on the anniversary month billing process. For FY 2000, the anniversary date billing process applies to those materials licenses in the following fee categories: 1C, 1D, 2A(2) Other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4A through 9D, 10A, and 10B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee will continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 2000 before the effective date of the FY 2000 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1999 rate in FY 2000. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 2000 final rule will be billed at the FY 2000 revised rates during the anniversary month of their license.

The NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license or certificate that authorizes possession and use of radioactive material.

In summary, the NRC is revising 10 CFR Part 171 as follows:

1. The percent change method has been used to determine the annual fees for FY 2000. The FY 2000 annual fee for each license fee category have been established by increasing the FY 1999 actual annual fee by approximately 1.4 percent;

2. The maximum small entity annual fee for each fee category is increased from $1,800 to $2,300, and the lower tier small entity fee is increased from $400 to $500; and

3. Certificates of Compliance issued under Part 76 have been added to the definition of Materials License in § 171.5.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 100 percent of its budget authority in FY 2000 as is required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1999 to extend the 100 percent fee recovery requirement for the NRC through FY 2000. To comply with this statutory requirement, and in accordance with § 171.13, the NRC is publishing the final amount of the FY 2000 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provide that—

(1) The annual fees be based on the Commission's FY 2000 budget of $470.0 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

In addition, the NRC's FY 2000 appropriations language provides that $3.85 million appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies be excluded from fee recovery.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), cert. denied, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2000. The final rule will result in increases in the annual fees charged to licensees and holders of certificates, registrations, and approvals, including those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

The Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2000.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, the NRC has determined that this action is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.12, paragraph (c)(1) is revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(c) *Inspection fees.* (1) Inspection fees will be assessed to recover full cost for each resident inspector (including the senior resident inspector), assigned to a specific plant or facility. The fees assessed will be based on the number of hours that each inspector assigned to the plant or facility is in an official duty status (*i.e.*, all time in a non-leave status), excluding time spent by a resident inspector in support of activities at another site. The hours will be billed at the appropriate hourly rate established in 10 CFR 170.20. Resident inspectors' time related to a specific inspection will be included in the fee assessed for the specific inspection in accordance with paragraph (c)(2) of this section.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities)—$144 per hour

Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities)—$143 per hour

4. In § 170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

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§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
. . . . .	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110:	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application—new license	$9,300
Amendment	9,300
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application—new license	5,700
Amendment	5,700
3. Application for export of components requiring foreign government assurances only.	
Application—new license	1,700
Amendment	1,700
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.	
Application—new license	1,100
Amendment	1,100
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review.	
Amendment	210

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application	$660.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	
Application	$1,300.
E. Licenses or certificates for construction and operation of a uranium enrichment facility.	
Licensing and inspection	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Licensing and inspection	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1).	
Licensing and inspection	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).	
Licensing and inspection	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$160.
C. All other source material licenses:	
Application	$5,600.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$6,700.
B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$2,500.
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	$10,300.
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4).	
Application	$2,400.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$1,700.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$3,300.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$3,500.
H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application	$2,100.

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SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application	$3,200.
J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application	$1,000.
K. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application	$590.
L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application	$5,600.
M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	$2,300.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$2,400.
O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations:	
Application	$5,900.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,300.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$1,700.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,600.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$6,100.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$11,400.
7. Medical licenses:	
A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,200.
B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$4,500.
C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained teletherapy devices:	
Application	$2,400.
8. Civil defense:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$330.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$5,300.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$3,800.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,600.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$540.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Licensing and inspections	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application	$400.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects: [5]	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under Parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.
15. Import and Export licenses:	
Licenses issued under Part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.	
Application—new license	$9,300.
Amendment	$9,300.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.	
Application—new license	$5,700.
Amendment	$5,700.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	$1,700.
Amendment	$1,700.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	$1,100.
Amendment	$1,100.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$210.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application (initial filing of Form 241)	$1,200.

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SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Revisions	$200.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees.* Applications for new materials licenses and export and import licenses, applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs, applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for preapplication consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment/revision fees.*

Applications for amendments to export and import licenses and revisions to reciprocity initial applications must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now in the future) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

[5] Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC.

6. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213), sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

7. In § 171.5, the definition of the term Materials License is revised to read as follows:

§ 171.5 Definitions.

* * * * *

Materials License means a license, certificate, approval, registration or other form of permission issued by the NRC under the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71, 72, and 76.

* * * * *

8. In § 171.15, paragraphs (b), (c), (d)(1), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and spent fuel storage/reactor decommissioning.

* * * * *

(b)(1) The FY 2000 annual fee for each operating power reactor which must be collected by September 30, 2000, is $2,815,000. This fee has been determined by adjusting the FY 1999 actual (prior to rounding) annual fee upward by approximately 1.4 percent.

(2) The FY 1999 annual fee was comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 1999 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 1999 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 1999 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under Part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, *e.g.*, updating Part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2000 annual fee for each power reactor holding a Part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is $209,000. This fee has been determined by increasing the FY 1999 actual (prior to rounding) annual fee by approximately 1.4 percent.

(2) The FY 1999 annual fee was comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 1999 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 1999 spent fuel storage/reactor decommissioning base annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 1999 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licensees (*e.g.*, international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR Part 170 licensing and inspection fees based on existing law or Commission policy, *e.g.*, reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

(e) The FY 2000 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter have been determined by revising the FY 1999 actual (prior to rounding) annual fee upward by approximately 1.4 percent. The FY 2000 annual fee for each nonpower reactor, unless the reactor is exempted from fees under § 171.11(a), is as follows:

Research reactor—$87,100

Test reactor—$87,100

9. In § 171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification with the annual fee payment, the licensee may pay reduced annual fees as shown below. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

	Maximum annual fee per licensed category
Small businesses not engaged in manufacturing and small not-for-profit organizations (gross annual receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. The NRC will include a copy of NRC Form 526 with each annual fee invoice sent to a licensee. A licensee who seeks to qualify as a small entity must submit the completed NRC Form 526 with the reduced annual fee payment.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is 2,300 for each category applicable to the license(s).

(d) The FY 2000 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 2000 annual fees, which must be collected by September 30, 2000, have been determined by adjusting the FY 1999 actual (prior to rounding) annual fees upward by approximately 1.4 percent. As a result of rounding, the FY 2000 annual fee for several fee categories is the same as the FY 1999 annual fee. In the FY 1999 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority

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and adjustments based on changes in 10 CFR Part 170 fees, the number of licensees paying the fees, and other required adjustments. The FY 1999 annual fees were comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 1999 surcharge are shown for convenience in paragraph (e) of this section.

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
1. Special nuclear material:	
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox SNM–42	$3,327,000
Nuclear Fuel Services SNM–124	3,327,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Combustion Engineering (Hematite) SNM–33	1,116,000
General Electric Company SNM–1097	1,116,000
Siemens Nuclear Power SNM–1227	1,116,000
Westinghouse Electric Company SNM–1107	1,116,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations:	
Framatome Cogema SNM–1168	438,000
(b) All Others:	
General Electric SNM–960	319,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)	([11])
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,200
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,400
E. Licenses or certificates for the operation of a uranium enrichment facility	2,072,000
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	478,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	132,000
Class II facilities [4]	111,000
Other facilities [4]	30,800
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)	81,700
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	12,900
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	630
C. All other source material licenses	11,800
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	26,300
B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	6,400
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D	15,600
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license	3,800
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,500
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	5,800

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	15,000
H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	3,300
I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	4,700
J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	2,100
K. Licenses issued under Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	1,800
L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,300
M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution	5,000
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	5,300
O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when authorized on the same license	14,900
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,600
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	11,500
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	8,500
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	10,100
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	19,200
7. Medical licenses:	
A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	15,500
B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	28,100
C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	5,900
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,200
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,100

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SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	4,400
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,900
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	620
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Quality assurance program approvals issued under 10 CFR Part 71.	
Users and Fabricators	67,600
Users	2,300
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR Parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	363,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 884,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	881,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1999, and permanently ceased licensed activities entirely by September 30, 1999. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (*e.g.*, human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the FEDERAL REGISTER for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. Once NRC issues a license for these categories, the Commission will consider establishing an annual fee for that type of license.

[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE for activities whose costs are not covered by the Nuclear Waste Fund.

[11] See 10 CFR 171.15(c).

[12] See 10 CFR 171.15(c).

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or classes of licensees; *e.g.*, international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy, *e.g.*, reviews and inspections conducted of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

10. Section 171.19 is revised to read as follows:

§ 171.19 Payment.

(a) Method of payment. Annual fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange), check, draft, money order, or credit card. Federal agencies may also make payment by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the invoices to applicants and licensees, payment should be made accordingly, e.g. invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

(b) Annual fees in the amount of $100,000 or more and described in the **Federal Register** document issued under § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee for FY 1999 was less than $100,000 (billed on the anniversary date of the license), and whose revised annual fee for FY 2000 would be $100,000 (subject to quarterly billing), would be issued a bill upon publication of the final rule for the full amount of the FY 2000 annual fee, less any payments received for FY 2000 based on the anniversary date billing process.

(c) Annual fees that are less than $100,000 are billed on the anniversary date of the license. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. Licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but before the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

(d) Annual fees of less than $100,000 must be paid as billed by the NRC. Materials license annual fees that are less than $100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1.D, 2(A)(2) other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

(e) Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

Dated at Rockville, Maryland, this 25th day of May, 2000.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This appendix will not appear in the code of federal regulations.

Appendix A to This Final Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this final rule are based on the NRC's size standards.

The Omnibus Budget Reconciliation Act (OBRA–90), as amended, requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to recovered from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. The amount to be collected for FY 2000 is approximately $447.0 million.

Since 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licensees and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue the policy established in FY 1995 to adjust the annual fees by the percent change method, unless there was a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished.

After evaluating budget data for FY 2000, the NRC has concluded that there has not been a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees since FY 1999. Therefore, the NRC's FY 2000 annual fees have been determined by the percent change method based on FY 1999 annual fees. As a result, the FY 2000 annual fees for all licenses will increase by about 1.4 percent.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 2000 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the

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annual fees on materials licensees. About 20 percent of these licensees (approximately 1,200 licensees for FY 1999) have requested small entity certification in the past.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified.

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Since annual fees for materials licenses were first established, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives, in accordance with the RFA, in developing each of its fee rules since 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

Commenters on the FY 2000 proposed fee rule (65 FR 16250; March 27, 2000), indicated that the same impacts, or variants of these impacts, would occur as a result of the proposed rule, especially in relation to the NRC's proposed 25 percent increase in small entity fees. Commenters also suggested the same alternatives, or variants of these alternatives, to basing fees on the NRC size standards for small entities that have been previously suggested and considered by the NRC. For a complete discussion of the impacts and alternatives suggested by commenters in response to the FY 2000 proposed fee rule, please see Section III. C. 2 of the Supplementary Information section of this final rule.

The NRC has again reexamined its previous evaluations of these alternatives, particularly in light of the 25 percent increase in the maximum small entity fees. The NRC continues to believe that establishment of a maximum fee for small entities based on its size standards is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR Part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States: Washington, Texas, Illinois, Nebraska, New York, and Utah were used as benchmarks in the establishment of the maximum small entity annual fee in 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal, and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus, the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments, and renewal fees) for all categories to fall under the $3,800 ceiling.

In 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Between 1991 and 1999, changes in both the external and internal environment have impacted NRC costs and those of its licensees. The upper and lower tier maximum small entity annual fees did not change in those years. Increases in the NRC materials license fees, Agreement States' materials license fees, and the Consumer Price Index all indicate that the NRC small entity fee established in 1991 should be revised. In addition to these increases, the structure of the fees that NRC charges to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through Part 170 fees for services, are now included in the Part 171 annual fees assessed to materials licensees.

While the annual fees increased for most materials licensees as a result of these changes, the NRC's annual fees assessed to small entities have not been adjusted to include the additional costs. As a result, small entities are currently paying a smaller percentage of the total NRC regulatory costs related to them than they did in FY 1991 and FY 1992 when the small entity fees were established. The amount of the small entity subsidy paid by other licensees for these regulatory costs was $4.3 million in FY 1991. With the addition of the lower tier small entity fee in FY 1992, the small entity subsidy increased to $5.4 million, or about $2,700 for each of the 2000 small entities in FY 1992. Although the number of small entities had declined to approximately 1,200 by 1999, the FY 1999 small entity subsidy was $5.3 million, or about $4,400 for each small entity.

Based on the changes that have occurred since FY 1991, the NRC has reanalyzed its maximum small entity annual fee. As part of the reanalysis, the NRC considered the 1999 fees assessed by Agreement States, the NRC's FY 1999 fee structure, and the increase in the Consumer Price Index between FY 1991 and FY 1999. The reanalysis and alternatives considered by the NRC for revising the small entity annual fees are described below.

A. Analysis of Maximum Small Entity Annual Fee

The analysis included a review of the fee structures in Agreement States to determine what fees they currently assess small entities. To maintain consistency and to facilitate direct comparisons between 1991 and 1999, the analysis focused on the fee categories used in 1991 and included fees imposed by the six benchmark Agreement States used in 1991 and five other Agreement States with the highest number of licenses.

The eleven states selected were: California, Texas, New York, Florida, Illinois, Tennessee, Maryland, Georgia, Washington, Utah, and Nebraska. Seven NRC fee categories were selected for review based on the number of small entities present in the category and inclusion of the category in the 1991 review. The fee categories selected were: 3M—Research and Development, 3N—Services, 3O—Industrial Radiography, 3P—Gauges and Other Industrial Uses, 5A—Well Logging, 7A—Teletherapy, and 7C—Nuclear Medicine. Together these categories comprise 80 percent of NRC's small entity licensees for FY 1999.

Among the eleven Agreement States reviewed, the fee structures varied both in terms of the fee amounts and the services included in the fees. Of the eleven states, only Georgia and Washington provide a separate small entity fee for qualified licensees. The remaining nine states do not identify small entities in their fee structure and therefore assess the same fee to all licensees regardless of their size.

Increases in the materials license fees since 1991 for the eleven Agreement States selected ranged from 10 percent in New York to 218 percent in Utah (see Table 1). Of particular note are the increases in the States of Washington, Georgia, and Utah. Washington and Utah are two of the original states benchmarked in 1991. Georgia and Washington are the two Agreement States reviewed that have a separate annual fee for small entities.

The structure of the total fees per year in Georgia is similar to that used to determine the total fees paid by NRC small entity licensees in 1991. In Georgia, this fee increased by 64 percent from 1991 to 1999. The increase in Georgia is directly comparable to the NRC context since Georgia uses the same two-tier structure for its small entity annual fees.

Washington's maximum fee assessed to small entities increased by 25 percent, from approximately $3,800 in 1991 to approximately $4,700 in 1999. The $4,700 fee is charged for an Industrial Radiography license. Washington had the highest maximum fee in 1991 and it was this fee that provided the basis for the maximum fees assessed to NRC small entity licensees.

Utah had the lowest maximum fee of the six benchmark states in 1991. By 1999, Utah's maximum fee had increased by 218 percent, from $440 to $1,400. As in Washington, the maximum fee is charged for an Industrial Radiography license.

Table 1 shows the increases in the maximum total fees paid by small entities in the selected Agreement States from 1991 to 1999. Data is not presented in the Table for the State of California because California does not use fee categories that are directly mapped to NRC fee categories. California charges a base fee plus a fee based on the number of millicuries handled. In addition, because the FY 1991 fees for the State of Maryland were not available, only the maximum fee for FY 1999 is shown in the Table. The change in the maximum fee paid by NRC small entity licensees over the same period is included for purposes of comparison. This fee decreased by 47 percent while fees in the Agreement States were increasing. The reason for this decrease is discussed in B. below.

TABLE 1

Percentage change in the maximum total fee assessed to small entities annually

State	Maximum fee 1991	Maximum fee 1999	Percent change
Utah	$440	$1,400	218
Nebraska	1,456	2,925	101
Texas	2,100	4,230	101
Tennessee	2,000	4,000	100
Georgia	1,650	2,700	64
Florida	1,925	2,657	38
Illinois	2,000	2,733	37
Washington	3,760	4,699	25
New York	1,000	1,100	10
Maryland	(1)	1,350	(1)
NRC Small Entity	3,400	1,800	(−47)

[1] Not available.

The increases in the fees assessed to small entities in Agreement States between 1991 and 1999 suggest that the cost to support radioactive materials licensees has increased over time. Because small entities in Agreement States are currently paying the increased fees, it can be inferred that the fees do not have a significant impact on them.

B. Analysis of Changes in the NRC Small Entity Fee Structure

When NRC established its small entity annual fee in 1991, the fee was viewed as one component of the total annual costs that would be assessed to small entities. Table 2 presents the composition of the 1991 total annual cost for small entities.

TABLE 2

Total fees assessed to NRC small entities in 1991

Fees	Selected fee categories						
	Teletherapy 7A	Nuclear medicine 7C	Research & development 3M	Services 3N	Industrial radiography 3O	Gauges 3P	Well logging 5A
Annualized Inspection Fee [1]	$920	$420	$200	$140	$920	$180	$210
Amendment Fee [2]	340	340	630	320	390	300	430
Annualized Renewal Fee [3]	130	170	40				
Subtotal	1,390	930	870	590	1,590	560	960
Annual Fee for Small Entity	1,800	1,800	1,800	1,800	1,800	[4]1,500	1,800

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TABLE 2—Continued

Total fees assessed to NRC small entities in 1991

Fees	Selected fee categories						
	Teletherapy 7A	Nuclear medicine 7C	Research & development 3M	Services 3N	Industrial radiography 3O	Gauges 3P	Well logging 5A
Total Fees (Rounded)	3,200	2,700	2,700	2,400	3,400	2,100	2,800

[1] NRC charged a separate fee for inspections under Part 170. The inspection frequency, defined as years between inspections, varies with each category of license. To annualize the inspection fee, the fee charged per inspection was divided by the inspection frequency.
[2] NRC charged a fee for each amendment to a license. In determining the total annual cost, one amendment per year was assumed.
[3] In 1991 NRC issued materials licenses for a five-year period. At the end of this period each licensee paid a fee under Part 170 to renew the license. Because the licensee paid this fee once every five years, in calculating the total annual cost, the renewal fee was annualized by dividing by five.
[4] The FY 1991 annual fee of $1,500 for category 3P was less than the $1,800 small entity annual fee. Therefore, small entities in this category paid the $1,500 annual fee, not $1,800.

Since 1991, NRC's Part 170 inspection, renewal, and amendment fees for materials licenses have been eliminated and the costs of those services included in the annual fee. Although the annual fee now covers the costs for inspections, renewals, and amendments, the small entity fee itself remained unchanged. As a result, the maximum NRC fees paid by small entities has declined by 47 percent, from $3,400 in 1991 to $1,800 in 1999. This decrease occurred while the average total non-small entity annual fee for other NRC materials licenses increased by 25 percent and the average maximum annual fee for small entity licensees in Agreement States increased by 54 percent.

Table 3 compares the total fees (annual, inspection, renewal, and amendment) assessed to NRC materials licensees in 1991 with the total fees (annual) assessed to these licensees in 1999. In five of the seven categories the fee increases were over 20 percent. Of particular note are the increases in categories 7C—Nuclear Medicine, 3O—Industrial Radiography, and 3P—Gauges. These categories contain 67 percent of the small entity licenses invoiced for FY1999. The average fee increase for these three categories is 31 percent, compared to the 25 percent average for the seven categories reviewed.

TABLE 3

Comparison between total NRC annual fees for selected categories for 1991 and 1999

NRC fees	Teletherapy 7A	Nuclear Medicine 7C	Research & Development 3M	Services 3N	Industrial Radiography 3O	Gauges 3P	Well Logging 5A	Average
1991 Annual Fee	$9,700	$3,500	$4,000	$4,400	$9,300	$1,500	$7,000	$5,600
1991 Other Fees:								
Annualized Inspection Fee	920	420	200	140	920	180	200	
Amendment Fee	340	340	630	320	390	300	430	
Annualized Renewal Fee	130	170	40	130	280	80	320	
Total Other Fees	1,390	930	870	590	1,590	560	950	
Total Fee in 1991 (Rounded)	11,100	4,400	4,900	5,000	10,900	2,100	8,000	6,700
Total (Annual) Fee In 1999	15,300	5,800	5,000	5,200	14,700	2,600	9,900	8,400
Fee Increase from 1991 to 1999	38%	32%	2%	4%	35%	24%	24%	25%

Table 4 compares the 1991 fees for amendments and inspections with the cost to provide these services in 1999. The cost was determined by multiplying the average hours to complete amendments and inspections by the hourly rate. The 1999 cost for amendments is on average 60 percent higher than the amendment fee assessed in 1991; inspection costs are 260 percent higher. These services are provided to all licensees, both small entities and non-small entities. However, under the current fee structure these costs are recovered only from annual fees assessed to non-small entities. Because the small entity annual fee has remained static, it does not reflect any increases in NRC's costs since 1991.

TABLE 4

Comparison of NRC inspection and amendment costs in 1991 and 1999

	Amendments			Inspections		
	1991	1999	Increase (percent)	1991	1999	Increase (percent)
7A—Teletherapy	$340	$450	32	$920	$3,200	248
7C—Nuclear Medicine	340	520	53	830	3,100	273

TABLE 4—Continued

Comparison of NRC inspection and amendment costs in 1991 and 1999

	Amendments			Inspections		
	1991	1999	Increase (percent)	1991	1999	Increase (percent)
3M—Research & Development	630	710	13	800	2,300	188
3N—Services	320	690	116	550	2,700	391
3O—Industrial Radiography	390	780	100	920	3,300	259
3P—Gauges	300	390	30	920	2,200	139
5A—Well Logging	430	950	121	640	2,700	322
Average	400	640	60	800	2,900	263

Given NRC's 100 percent cost recovery requirement, the portion of annual fees not recovered from small entities is passed to other NRC licensees. The increasing disparity between the small entity fee and the cost of NRC services included in the annual fee calls for a more equitable distribution of the NRC costs to these licensees. An increase in the small entity fee would mitigate the cost differences and would permit small entities to assume a greater portion of NRC costs attributable to them. If everything else remains the same, an increase in the small entity fee would result in a decrease in the small entity subsidy paid by other licensees.

C. Analysis of Increases in the Consumer Price Index

On a national level the cost of goods and services increased between 1991 and 1999. According to the U.S. Department of Labor, Bureau of Labor Statistics, the Consumer Price Index (CPI) increased 28.8 points, from 136.2 in 1991 to 165.0 for the first half of 1999, an increase of 21 percent. This index is an accepted economic indicator of price changes in the US economy. The 21 percent increase in the CPI is evidence that costs in NRC's external environment have increased. Obviously, NRC's cost of providing services to its licensees will be impacted by these increases.

D. Alternatives for Revising the Maximum Annual Fee

1. Increase Small Entity Fees Using the 1991 Methodology

Following the reasoning used in the 1991 process, the maximum annual fee for small entities could be revised to reflect the current maximum fees charged by Agreement States and the changes in the NRC fee structure since 1991. The maximum Agreement State fee assessed to small entities in 1999 is $4,700. Therefore, the maximum value for NRC's small entity fee could be set at $4,700.

This method would allow the NRC to recover from small entities 48 percent of the total amount of the small entity annual fee invoices. Although this method is defensible, because it is based on sound reasoning used in the original establishment of the small entity fees that have been in place since 1991, it is based on an external fee that is outside NRC's direct control.

2. Increase the Small Entity Fee Using the Average Increase in NRC Materials License Fees From 1991 to 1999

From 1991 to 1999 total NRC fees for materials licenses increased, on average, by 25 percent. This percentage could be applied to the existing small entity fee to give a new small entity fee of $2,300.

This method is a simple and obvious means of applying the rates of increase in NRC fees since FY 1991 to the small entity fees. This method does not consider the changes to the total fees paid by small entities since FY 1991 and does not incorporate changes in the composition of the total fees assessed to small entities per year by Agreement States. However, it does rely on the increases to the total fees paid by other NRC materials licensees since FY 1991. This method could also provide a sustainable and simple means of determining whether NRC's small entity fees should be revised in the future.

3. Add the 1991 Amendment, Renewal, and Inspection Costs to the Existing Small Entity Fee and Increase the Sum by the Average Increase in NRC Materials License Fees From 1991 to 1999

The small entity fee could be increased by loading the existing small entity annual fee of $1,800 with the amendment, renewal, and inspection costs used in 1991 and increasing the total by 25 percent. This method not only incorporates the average increase in NRC fees but it bases the increase on the total annual costs that were assessed to small entities in 1991.

To revise the small entity fee using this method, a category must be selected as the 1991 base. The total annual cost for this category, as presented in Table 3, will then be increased by the NRC average of 25 percent. Five possible approaches to selecting the 1991 base were explored.

Method 3A—Maximum Fee Category in the Benchmark States

Method 3A uses the Industrial Radiography category as the base. This category had the maximum fee in the Agreement States benchmarked in 1991. The total NRC fee assessed to the Industrial Radiography category in 1991 was $3,400. Increasing this fee by 25 percent gives a new small entity fee of $4,300.

Method 3B—Highest Number of Small Entities Present

Method 3B uses the fee category with the highest number of small entities. In FY 1999, Category 3P, Gauges and Other Industrial Uses, had 30 percent of all NRC small entity licensees. This was the highest number of small entities present in a single category. In 1991, the total fees for Category 3P was $2,100. A 25 percent increase in this fee would set the small entity fee at $2,600.

Method 3C—Highest Number of Upper Tier Small Entities Present

Method 3C uses Category 7C, Nuclear Medicine as the base. This category has the highest number of upper tier small entities and is considered a viable base because the small entity annual fee originally established in FY 1991 was the upper tier fee. In 1991, Category 7C had a total fee of $2,700; this base would give a new small entity fee of $3,400.

Method 3A yields a 45 percent recovery of the invoiced amounts from small entities, the highest recovery rate under Method 3. However, the Industrial Radiography category contains only 7 percent of all NRC small entity licensees in 1999 and arguably does not affect a significant number of the small entities. Method 3B addresses this issue and uses Category 3P, the category with the highest number of small entities. However, the 3P Category also has the lowest 1991 total cost and results in a recovery rate of 34 percent from small entities, the lowest under Method 3. Method 3C uses Category 7C, Nuclear Medicine, and is preferable to both Methods 3A and 3B in that it yields a 37 percent recovery rate from small entities and contains 30 percent of the small entity licensees.

Methods 3A, 3B and 3C are all based on the selection of a single fee category as the 1991 base. Using the fee from a specific fee category as the base fee can implicitly make the category a benchmark. This increases the risk of challenges to the fee if significant changes occur in the benchmark category.

Method 3D—Weighted Average of the Total Fees in the Seven Categories

Method 3D uses the number of upper tier small entities in each category to weight the total fee assessed to each category in 1991. The weighted-average of $2,700 is then used as the base. This gives a new small entity fee of $3,400.

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Method 3E—Average of the Total Fees for the Seven Categories

Method 3E uses the average total fee for the categories reviewed as the base fee. The average total fee of $2,800 is then increased by 25 percent to give a new small entity fee of $3,500.

Both Methods 3D and 3E use averages to determine the base fee and this reduces the risks associated with Methods 3A, 3B and 3C. Both methods yield the same recovery rate of 37 percent and can be considered equally acceptable from a monetary perspective.

Because Method 3D uses a weighted average, the number of small entities in each of the seven categories are factored into the selection process while smoothing the impact of the highest and lowest fee categories.

While Methods 3D and 3E would consider the total fees paid by small entities in FY 1991 and would increase the amounts recovered from small entities thereby reducing the small entity subsidy paid by other licensees, the percentage increase under either of these methods would be larger than the average percentage increase in the total fees assessed to other NRC materials licensees since FY 1991.

IV. Conclusion

Based on the results of the reanalysis, the NRC is increasing the maximum small entity annual fee by 25 percent, based on the percentage increase since FY 1991 in the average total fees paid per year by other NRC materials licensees. As a result, the maximum small entity annual fee increases from $1,800 to $2,300. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, the NRC is continuing to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts. The lower-tier small entity fee also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. The NRC is increasing the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase results in the lower tier small entity fee increasing from $400 to $500.

In the future, the NRC plans to re-examine the small entity fees each year that annual fees are rebaselined. As part of the re-examination, the NRC will consider the percentage increase in fees paid by other NRC materials licensees since the last rebaselining to determine if the maximum small entity annual fees should be revised.

Please see Section III, C, 2 of the Supplementary Information section of this final rule for a discussion of the comments received on the increase in small entity fees, including the suggestion that the NRC establish addition tiers or levels of fees.

The NRC continues to believe that the 10 CFR Part 170 application fees, or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities.

V. Summary

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA.

Attachment 1 to Appendix A

U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 2000

Contents

Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires the NRC to collect approximately 100 percent of its budget authority each year through fees. This rule is considered a "major" rule under this law. This compliance guide has been prepared to assist NRC material licensees comply with the FY 2000 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2000 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 to qualify for the reduced annual fee. This form accompanies each annual fee invoice mailed to materials licensees. The completed form, the appropriate small entity fee, and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file a small entity certification in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. Small business—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. Manufacturing industry—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. Small organization—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. Small governmental jurisdiction—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. Small educational institution—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.[1]

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The NRC is increasing these fees by 25 percent. The FY 2000 small entity fees are as follows:

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

	Maximum annual fee per licensed category
Small business not engaged in manufacturing and small not-for profit organizations (gross annual receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small governmental jurisdictions (including publicly supported educational institutions) (population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or publicly supported, and have 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the fee invoice, to certify that it meets NRC's size standards for a small entity. Failure to file NRC Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code should be entered if it is known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(1) The size standards apply to the licensee, not the individual authorized users listed in the license.

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

(3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either $2,300 or $500 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1150 or $250 for each fee category billed instead of the full small entity annual fee of $2,300 or $500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees for that fiscal year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form must be completed and returned for the fee to be reduced to the small entity fee. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy " of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions about the NRC's annual fees, please call the license fee staff at 301–415–7554, e-mail the fee staff at fees@nrc.gov, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* NRC's implementing regulations are found at 10 CFR Part 13.

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 25
Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2000–7471; Notice No. 00–04]

RIN 2120–AG94

Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes to establish a new requirement for fire protection of powerplant installations. This proposal would require that components within a designated fire zone must be fireproof if, when exposed to or damaged by fire, they could pose a hazard to the airplane. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Send your comments on or before August 11, 2000.

ADDRESSES: Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–7471 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2000–7471." We will date-stamp the postcard and mail it back to you.

You also may submit comments electronically to the following Internet address: *http://dms.dot.gov*.

You may review the public docket containing comments to this proposed regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. In addition, you may review the public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael K. McRae, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone (425) 227–2133; facsimile (425) 227–1320; e-mail: mike.mcrae@faa.gov.

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to this NPRM?

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

How Can I Obtain a Copy of This NPRM?

You may download an electronic copy of this document using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339); the Government Printing Office (GPO)'s electronic bulletin board service (telephone: 202–512–1661); or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may access recently published rulemaking documents at the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the GPO's web page at *http://www.access.gpo.gov/nara*.

You may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591; or by calling 202–267–9680. Communications must identify the docket number of this NPRM.

Any person interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular 11–2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedure.

Background

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14 Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is "Harmonization" and How Did It Start?

Although part 25 and JAR–25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial additional costs to manufacturers and operators. These additional costs, however, frequently do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to "harmonize" their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

Both the FAA and the JAA consider "harmonization" of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that following the traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language "recommended" by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry [including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)] proposed an accelerated process to reach harmonization. These representatives recommended that the FAA and JAA harmonize differences between part 25 and JAR–25 standards by accepting the more "stringent" of the two standards. "Stringent," in this case, indicates the relative higher level of safety, or greater applicability to modern technology, between a part 25 standard and the parallel JAR–25 standard.

Aviation industry groups further refined their proposed process by suggesting that the 42 part 25 standards that already have been tasked to ARAC for harmonization be divided into three categories:

Category 1: Envelope—For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would be "enveloped" into the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

Category 2: Completed or near complete—For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize—For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be "enveloped" (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JAA, with a consistent means of compliance.

What Is the "Fast Track Harmonization Program"?

In light of the general agreement among the affected industries and authorities to expedite the harmonization program, and a willingness to consider "enveloping" of parallel standards, the FAA and JAA in March 1999 agreed upon a method to achieve these goals. This method, which the FAA has titled "The Fast Track Harmonization Program," is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522), by re-tasking ARAC to accomplish the following:

- Review a list of part 25/JAR–25 standards (approximately 120 parallel pairs) identified by industry, FAA, and JAA as having differences that should be harmonized in order to establish one single set of standards that represent the highest level of safety.
- Identify changes necessary to the standards to harmonize part 25 and JAR–25.
- Submit to the FAA a technical report on each standard and recommend what the requirements of the harmonized standard should be.

The FAA then considers the recommendations submitted by ARAC and initiates rulemaking action, as appropriate, based on those recommendations.

As implemented, the Fast Track program achieves its aims by:

- Considering the fundamentals of the industry proposals,

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- Defining a process for expeditiously adopting the harmonized requirements,
- Maintaining an emphasis on using ARAC in making a group decision on the harmonization proposal, and
- Incorporating an improved ARAC rulemaking process that does not overburden the FAA and industry due to additional workload.

Discussion of the Proposal

How Does This Proposed Regulation Relate to "Fast Track"?

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. (It was submitted as a Category 2 item.) In this notice, the FAA proposes to amend 14 CFR § 25.1183 ("Flammable fluid-carrying components") to establish a new requirement for fire protection of powerplant installations.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1183(a) is:

"(a) Except as provided in paragraph (b) of this section, each line, fitting, and other component carrying flammable fluid in any area subject to engine fire conditions, and each component which conveys or contains flammable fluid in a designated fire zone must be fire resistant, except that flammable fluid tanks and supports in a designated fire zone must be fireproof or be enclosed by a fireproof shield unless damage by fire to any non-fireproof part will not cause leakage or spillage of flammable fluid. Components must be shielded or located to safeguard against the ignition of leaking flammable fluid. An integral oil sump of less than 25-quart capacity on a reciprocating engine need not be fireproof nor be enclosed by a fireproof shield.

(b) Paragraph (a) of this section does not apply to—

(1) Lines, fittings, and components which are already approved as part of a type certificated engine; and

(2) Vent and drain lines, and their fittings, whose failure will not result in, or add to, a fire hazard."

The current text of JAR–25.1183 is identical to § 25.1183, but contains an additional paragraph 25.1183(c) that states:

"(c) All components, including ducts, within a designated fire zone must be fireproof if, when exposed to or damaged by fire, they could—

(1) Result in fire spreading to other regions of the airplane; or

(2) Cause unintentional operation of, or inability to operate, essential services or equipment."

What Is the Proposed Action?

The FAA proposes to add a new § 25.1183(c), which would require that all components (including ducts) within a designated fire zone be fireproof if, when exposed to or damaged by fire, they could:

- Result in fire spreading to other regions of the airplane, or
- Cause unintentional operation of, or inability to operate, essential services or equipment.

The FAA considers that the addition of this paragraph to part 25 is necessary in order to harmonize the actual wording of part 25 with the JAR on this particular issue, and to clarify the intent of the part 25 regulation. The addition of § 25.1183(c) in part 25 will align the U.S. regulations with their European counterparts, and the wording of both airworthiness standards would be exactly parallel in this aspect.

Furthermore, the addition of § 25.1183(c) will provide some additional assurance that all "components" that need to be fireproof will be identified and qualified during certification. Adoption of this proposal is intended to benefit the public interest by standardizing the requirements, concepts, and procedures contained in the U.S. and European airworthiness standards without reducing the current level of safety.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The FAA acknowledges that this proposed requirement might be considered redundant to other existing part 25 sections, including the following:

1. *Section 25.1181 ("Designated fire zones; regions included"):* This section identifies which areas of the powerplant installation are considered "fire zones," including the engine power section, the engine accessory section, the auxiliary power unit (APU) compartment, etc. It also requires that each of these fire zones meet the fire protection requirements of:
   - Section 25.867 (pertaining to components of the nacelles); and
   - Section 25.1185 through § 25.1203 (pertaining to flammable fluids, drainage/ventilation of fire zones, means of fuel shutoff, fire extinguishing systems and agents, fire detection systems, etc.).
2. *Section 25.1191 ("Firewalls"):* This section requires that each engine, APU, fuel-burning heater, and other components and areas of the (turbine) engine be isolated from the rest of the airplane by firewalls or other equivalent means. Additionally, it requires that each firewall be fireproof, "leakproof" (so that no hazardous quantity of air, fluid, or flame can pass from the compartment), sealed (so that all openings are sealed with close fitting fireproof fasteners), and protected against corrosion.
3. *Section 25.901(c) ("Powerplant, General—Installation"):* This section requires that each powerplant and APU installation be designed so that no single failure, malfunction, or combination of failures will jeopardize the safe operation of the airplane. (It also specifies that the failure of structural elements need not be considered if the probability of such failure is determined to be extremely remote.)

While these regulations may seem redundant *in effect* to the proposed new paragraph 25.1183(c), the FAA considers it beneficial to clarify the objective of these rules by the addition of the new paragraph.

Further, the only difference between these current sections and the proposed new § 25.1183(c) is that the new paragraph would address fire protection specifically at the "component level," whereas the other requirements, listed above, address fire protection at the "zone level" or the "installation level."

In order to actually meet the "zone level" or "installation level" objectives currently within part 25, the components of the installation must be sufficiently fireproof to comply with the proposed § 25.1183(c). Hence, the FAA considers that the proposed "component level" requirement is met inherently by meeting the current, more general "zone level" requirements of § 25.1181 and § 25.1191, and the "installation level" requirements of § 25.901(c). For example, to comply with either the proposed § 25.1183(c) or the existing § 25.901(c), even when a duct is completely contained within a fire zone, if the duct is not fireproof, any airflow that would result from burnthrough of that duct must be considered when establishing the "critical airflow conditions" for compliance with § 25.1195(b). The fire detection, flammable fluid shutoff, and fire extinguishing means for the affected fire zone are some of the "essential services or equipment" of particular interest when showing compliance with the proposed § 25.1183(c)."

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

The proposed amendment would neither add any new or different objective to the current regulations, nor change the way that any current certification practice is applied. Instead, the intent of the new paragraph is to clarify and codify the way that the FAA traditionally has applied the related rules. Specifying the fire protection requirement at all three levels—zone, installation, and component—in the regulations will help to ensure that, by looking at the same problem in numerous ways, an applicant will not overlook anything during design development and certification.

What Other Options Have Been Considered and Why Were They Not Selected?

The only alternative to this proposed action that the ARAC (Working Group) considered was to delete JAR 25.1183(c). However, ARAC did not recommend this for the following reasons:

First, as noted above, the current § 25.1181 and § 25.1191 concern requirements for protecting *zones* in the airplane against fire, while the current § 25.901(c) concerns requirements for protecting the *installation* of each powerplant and auxiliary power unit against fire. On the other hand, the proposed § 25.1183(c) specifies requirements for protecting *components* on the airplane against fire. ARAC recognized that compliance with the proposed "component-level" requirement is met, in effect, by complying with the "zone-level" requirements of § 25.1181 and § 25.1191 and the "installation-level" requirements of § 25.901(c). However, ARAC considered (and the FAA agrees) that specifying in 14 CFR the fire protection requirement at all three levels—component, zone, and installation—will help to clarify (and codify) the intent of the current regulations, and ensure that nothing gets overlooked during design development.

Second, adopting § 25.1183(c) would have no significant additional impact on the cost of type certification, since it is consistent with standard design practices currently used to meet other part 25 regulations relevant to powerplant installation fire protection. In other words, the requirements of proposed § 25.1183(c) essentially are met already when an applicant properly demonstrates compliance with § 25.1181, § 25.1191, § 25.901(c), and other part 25 [subpart E ("Powerplant")] regulations. Adopting the proposal would neither reduce nor increase the requirements beyond those that exist in the currently published regulations.

Finally, adopting the proposal would eliminate an identified Significant Regulatory Difference (SRD) between the wording of part 25 and JAR–25, without affecting currently accepted industry design practices. The benefits of eliminating an SRD such as this are that more consistent interpretations of the rules can be expected, and the relations between regulatory authorities may be improved.

Is Existing FAA Advisory Material Adequate?

There currently is no formal advisory material specifically concerning § 25.1183. FAA Advisory Circular 20–135, "Powerplant Installation and Propulsion System Component Fire Protection Test Methods, Standards, and Criteria," does reference § 25.1183 in some of its guidance. At this time, however, the FAA does not consider that further guidance material is needed.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this proposed rule has benefits, but no costs, and that the rule is not a "significant regulatory action" as defined in the Executive Order nor "significant" as defined in DOT's Regulatory Policies and Procedures. Further, this proposed rule would not have a significant economic impact on a substantial number of small entities, would reduce barriers to international trade, and would not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

(DOT) Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposed rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. Accordingly, the FAA has determined that the expected impact of this proposed rule is so minimal that the proposed rule does not warrant a full evaluation. The FAA provides the basis for this minimal impact determination below.

Currently, airplane manufacturers must satisfy both the 14 CFR and the European JAR standards to certificate transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. These efforts are referred to as harmonization. This proposed rule results from the FAA's acceptance of an ARAC harmonization working group's recommendation. Members of the ARAC working group agreed that this proposed rule would impose no additional cost to U.S. manufacturers of part 25 aircraft.

Specifically, this proposal would add JAR–25.1183 (c) to 14 CFR § 25.1183. As discussed in the preamble, the FAA has concluded that the only difference between the current sections and the proposed § 25.1183(c) is that the new paragraph would address fire protection specifically at the "component level," whereas the existing requirements address fire protection at the "zone level" or the "installation level." The FAA believes that adopting this proposal would neither reduce nor increase the requirements beyond those that exist in the current FAA published regulations.

As this proposal neither increases nor decreases certification requirements beyond those already in existence, the FAA believes there would be no cost associated with this proposal to part 25 manufacturers. The FAA has not attempted to quantify the benefits of this proposal beyond identifying the expected harmonization benefit. The

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adoption of this proposal would eliminate an identified SRD between the wording of the FAR and the JAR. The elimination of the SRD may provide for a more consistent interpretation of the rules and, thus, is an element of the potentially large cost savings of harmonization.

The FAA requests that current or potential part 25 manufacturers who believe that the rule would result in a cost increase to provide the basis of such information to the docket.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) of 1980, as amended, establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this proposed rule would not have a significant economic impact on a substantial number of small entities for two reasons:

First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule requires that new transport category aircraft manufacturers meet just the "more stringent" European certification requirement, rather than both the United States and European standards. Airplane manufacturers already meet or expect to meet this standard as well as the existing FAR requirement.

Second, all United States transport-aircraft category manufacturers exceed the Small Business Administration small entity criteria of 1,500 employees for aircraft manufacturers. United States part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

Given that this proposed rule is only minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of the proposed rule and has determined that it supports the Administration's free trade policy because this rule would use European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act) (2 U.S.C. 1532–1538), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3507(d)], the FAA has determined there are no requirements for information collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposal has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that the proposal is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Powerplant fire protection, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. Amend § 25.1183 by adding a new paragraph (c) to read as follows:

§ 25.1183 Flammable fluid-carrying components.

* * * * *

(c) All components, including ducts, within a designated fire zone must be fireproof if, when exposed to or damaged by fire, they could—

(1) Result in fire spreading to other regions of the airplane; or

(2) Cause unintentional operation of, or inability to operate, essential services or equipment.

Issued in Renton, Washington, on June 1, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14483 Filed 6–9–00; 8:45 am]

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Monday,
June 12, 2000

Part V

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 474
Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Petroleum-Equivalent Fuel Economy Calculation; Final Rule

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 474

[Docket No. EE–RM–99–PEF]

RIN 1904–AA40

Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Petroleum-Equivalent Fuel Economy Calculation

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is revising its regulations on electric vehicles to provide a petroleum-equivalency factor (PEF) and procedures for calculating the petroleum-equivalent fuel economy of electric vehicles. The petroleum-equivalent fuel economy values of an automobile manufacturer's electric vehicles may be included in the calculation of that manufacturer's corporate average fuel economy (CAFE), according to regulations prescribed by the Environmental Protection Agency and the Department of Transportation.

EFFECTIVE DATE: This final rule is effective July 12, 2000.

ADDRESSES: Written comments received in response to the notice of proposed rulemaking, a transcript of oral comments presented at the public hearing on August 17, 1999, and supporting technical information described in the notice of proposed rulemaking are filed at the DOE Freedom of Information Reading Room under docket number EE–RM–99–PEF. You may read and copy any of this docket material at: DOE Freedom of Information Reading Room, Room 1E–190, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142. Hours: 9 a.m.–4 p.m., Monday through Friday except Federal holidays.

Additional background materials are also available at the DOE Freedom of Information Reading Room. Copies of the hearing transcript and written comments received regarding the withdrawn February 4, 1994, proposed rule are filed under Docket No. EE–RM–94–101. Earlier materials related to the calculation of the PEF are contained in Docket No. EE–RM–93–301.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Mr. Rogelio Sullivan, U.S. Department of Energy, Office of Transportation Technologies, EE–32, Rm 5G–046, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–8042.

Legal Information: Mr. Eugene Margolis, U.S. Department of Energy, Office of General Counsel, GC–72, Rm 6B–256, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9526.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
A. Requirements of the Motor Vehicle Information and Cost Savings Act, as amended
B. PEF Development Process
C. PEF Calculation Procedures
1. General Form of the PEF Equation
2. Gasoline-Equivalent Energy Content of Electricity Factor
3. "Fuel Content" Factor
4. Petroleum-Powered Accessory Factor
5. Driving Pattern Factor
6. Use of the PEF
7. Sample Calculations
III. Public Comments Received on the Notice of Proposed Rulemaking and DOE's Responses
IV. Procedural Requirements

I. Background

In 1975, Congress mandated fuel economy standards for automobiles produced in or imported into the United States in an effort to conserve energy through improvements in the efficiency of motor vehicles. The new law required that every manufacturer or importer of automobiles in the United States meet a corporate average fuel economy standard for the fleet of vehicles produced or imported in any model year. Although certain classes of electric vehicles qualify as "automobiles" under the law, they do not consume "fuel" as defined in the law. Therefore, inclusion of electric vehicles in a manufacturer's corporate average fuel economy is impossible without a method for expressing the electrical energy consumption rate as an equivalent consumption rate of gasoline. Congress directed the Secretary of Energy to establish a method for determining the petroleum-equivalent fuel economy of electric vehicles.

Congress anticipated that allowing manufacturers to include the expected high equivalent "fuel economy" of electric vehicles in corporate average fuel economy calculations would provide an incentive for vehicle manufacturers to produce and sell electric vehicles. Congress anticipated that the existence of such an incentive would help to accelerate the commercialization of electric vehicles.

DOE published a notice of proposed rulemaking (NOPR) on July 14, 1999 (64 FR 37905), describing a revised petroleum-equivalency factor (PEF) and supporting rationale. DOE solicited public comments on the proposed rule and received comments from five organizations representing a cross section of stakeholders. DOE considered these comments carefully before preparing today's final rule. A summary of the comments and DOE's responses are provided in section III of this document. DOE believes that the final rule presented today is responsive to Congressional intent, addresses stakeholder comments and concerns with the proposed rule, is consistent with the regulatory treatment of other types of alternative fuel vehicles, and is straightforward to understand and implement.

Administrative responsibilities for the corporate average fuel economy program are assigned to the Department of Transportation and the Environmental Protection Agency under the Motor Vehicle Information and Cost Savings Act (49 U.S.C., Subtitle VI, Part C). The Secretary of Transportation is responsible for prescribing the corporate average fuel economy standard and enforcing the penalties for failure to meet these standards. The Administrator of the Environmental Protection Agency is responsible for establishing test procedures, for testing the efficiency of vehicles subject to corporate average fuel economy standards, and for calculating a manufacturer's corporate average fuel economy value. DOE is responsible for developing and promulgating the petroleum-equivalency factor, the key component in the calculation of petroleum-equivalent fuel economy values for electric vehicles.

II. Discussion

A. Requirements of the Motor Vehicle Information and Cost Savings Act, as Amended

Section 503(a)(3) of the Motor Vehicle Information and Cost Savings Act (49 U.S.C. 32904(a)(2)) requires DOE to determine the petroleum-equivalent fuel economy values for electric vehicles, taking into account the following parameters:

(i) The approximate electric energy efficiency of the vehicles considering the vehicle type, mission, and weight;

(ii) The national average electricity generation and transmission efficiencies;

(iii) The need of the Nation to conserve all forms of energy, and the relative scarcity and value to the Nation of all fuel used to generate electricity; and

(iv) The specific driving patterns of electric vehicles as compared with those of petroleum-fueled vehicles.

Section 503(a)(3) also provides for revision of such values if necessary.

B. PEF Development Process

The development process of the PEF and the rationale were presented in detail in the notice of proposed rulemaking, and are not repeated in full here. Section C provides a brief description of each of the terms in the PEF equation. Section III also provides an abbreviated discussion of several of the key issues underlying DOE's rationale.

C. PEF Calculation Procedures

The PEF is based on the existing regulatory approach at 49 U.S.C. 32905 for determining the petroleum-equivalent fuel economy of alternative fueled vehicles. The calculation procedure converts the measured electrical energy consumption of an electric vehicle into a raw gasoline-equivalent fuel economy value, and then divides this value by 0.15 to arrive at a final petroleum-equivalent fuel economy value which may then be included in the calculation of the manufacturer's corporate average fuel economy. Two additional factors are present in the equation, but these will usually have a value of unity and thus will not influence the value of the PEF. The terms comprising the PEF and the procedure for applying the PEF are described in greater detail below.

1. General Form of the PEF Equation

The general form of the PEF equation is:

$PEF = E_g * 1/0.15 * AF * DPF$

where:

E_g = Gasoline-equivalent energy content of electricity factor
1/0.15 = "Fuel content" factor
AF = Petroleum-fueled accessory factor
DPF = Driving pattern factor

The development of these factors is described below.

2. Gasoline-Equivalent Energy Content of Electricity Factor

When comparing gasoline vehicles with electric vehicles, it is essential to consider the efficiency of the respective "upstream" processes in the two fuel cycles. A full description of the differences in the processes is beyond the scope of this rulemaking, but the critical difference is that a gasoline vehicle burns its fuel on-board the vehicle, and an electric vehicle burns its fuel (the majority of electricity in the U.S. is generated at fossil fuel burning powerplants) off-board the vehicle. In both cases, the burning of fuels to produce work is the least efficient step of the respective energy cycles.

Therefore, the PEF includes a term for expressing the relative energy efficiency of the full energy cycles of gasoline and electricity. This term, the gasoline-equivalent energy content of electricity factor, abbreviated as E_g, is defined as:

E_g = gasoline-equivalent energy content of electricity = $(T_g * T_t * C) T_p$

where:

T_g = U.S. average fossil-fuel electricity generation efficiency = 0.328
T_t = U.S. average electricity transmission efficiency = 0.924
T_p = Petroleum refining and distribution efficiency = 0.830
C = Watt-hours of energy per gallon of gasoline conversion factor = 33,705 Wh/gal

$E_g = (0.328 * 0.924 * 33705)/0.830 =$ 12,307 Wh/gal

The derivation of these values is straightforward but lengthy and is therefore not discussed in this notice. Details on the assumptions, calculations, and data sources used to derive these values are described in materials contained in Docket No. EE–RM–99–PEF, which may be reviewed at the DOE Freedom of Information Reading Room, at the address and times stated above.

3. "Fuel Content" Factor

The fuel content factor has a value of 1/0.15 and is included in the PEF for the reasons described in the notice of proposed rulemaking and the responses to comments section of this notice. Briefly, these reasons are:

(i) Consistency with existing regulatory and statutory procedures;

(ii) Provision of similar treatment to manufacturers of all types of alternative fuel vehicles; and

(iii) Simplicity and ease of use.

The fuel content factor value of 1/0.15 is equivalent to a multiple of 6.67.

4. Petroleum-Powered Accessory Factor

A minority of electric vehicles, primarily those that may be operated in colder climates, may be equipped with auxiliary petroleum-powered accessories, such as cabin heater/defroster systems. DOE addresses the possible use of such petroleum-powered accessories in the PEF calculations by incorporating an Accessory Factor (AF). This factor reduces the PEF by ten percent when an electric vehicle is equipped with any petroleum-powered accessories. This results in two possible accessory factor values:

Petroleum-powered accessories installed?	Accessory factor (AF) value
No	1.00
Yes	0.90

DOE recognizes that there are many variables affecting the actual energy efficiency penalty of petroleum-powered accessories, but believes that the ten percent penalty is a reasonable representative value. DOE has prepared a supporting technical analysis of the magnitude of the actual energy efficiency penalty of petroleum-powered accessories, and placed this analysis in the docket. Because this approach penalizes electric vehicles equipped with petroleum-powered accessories, it provides an incentive for manufacturers to develop vehicles with electrically-powered accessories.

5. Driving Pattern Factor

Congress required that DOE consider the potential that electric vehicles may be used differently than gasoline vehicles, primarily due to its shorter range and longer "refueling" times. However, to meet the definition of an "automobile" at 40 CFR part 600 and be eligible for inclusion in the calculation of a manufacturer's corporate average fuel economy, a vehicle must be "manufactured primarily for use on public streets, roads, or highways." Thus, DOE believes that electric vehicles eligible for inclusion in CAFE will offer capabilities (perhaps excepting driving range) similar to those of conventional vehicles. For these reasons, DOE is setting the value of the Driving Pattern Factor (DPF) at unity (1.00).

6. Use of the PEF

The value of the PEF is equal to the product of the values of the gasoline-equivalent energy content of electricity (E_g), the fuel content factor of 1/0.15, the petroleum-fueled accessory factor (AF), and the driving pattern factor (DPF):

$PEF = E_g * 1/0.15 * AF * DPF$

substituting values,

$PEF = (12{,}307$ Wh/gal$)*(1/0.15)*(1.00$ *or* $0.90)*(1.00)$

or,

PEF = 82,049 Wh/gal (if no petroleum-powered accessories are installed)
PEF = 73,844 Wh/gal (if any petroleum-powered accessories are installed)

Dividing the PEF by the combined (city and highway) energy consumption of an electric vehicle yields the petroleum-equivalent fuel economy of that electric vehicle in miles per gallon:

mpg = PEF (Wh/gal) ÷ combined [electrical] energy consumption (Wh/mile)

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7. Sample Calculations

Sample calculations of the petroleum-equivalent fuel economy of hypothetical electric vehicles are presented in the Appendix of the rule.

III. Public Comments Received on the Notice of Proposed Rulemaking and DOE's Responses

The Department encouraged public participation in this rulemaking. DOE, in the NOPR, urged individual vehicle manufacturers, fuel producers and providers, trade associations, vehicle owners and operators, States or other governmental entities, and other affected or interested parties to submit written comments on the proposal and/or to testify at a hearing held on August 17, 1999, in Washington, DC.

You may review the written comments and the hearing transcript, as well as other docket material in the DOE Freedom of Information Reading Room at the address shown at the beginning of this rulemaking. The materials are filed under docket number EE–RM–99–PEF.

DOE received written comments on the proposed rule from five organizations:

1. Alliance of Automobile Manufacturers (AAM—representing BMW, DaimlerChrysler, Fiat, Ford, General Motors, Isuzu, Mazda, Nissan, Toyota, Volkswagen, and Volvo);
2. California Air Resources Board (CARB);
3. Electric Vehicle Association of the Americas (EVAA);
4. Georgia Power; and
5. Virginia Power

EVAA also testified at the public hearing. The common thread through most of the comments was the strong desire to have the final rule in place as soon as possible. Commentors also suggested that DOE only consider changes to the proposed rule if such changes would not delay issuance of the final rule.

Following are summaries of the comments received and DOE's responses. In most cases, similar comments have been grouped together and given a single response. Additional supporting analyses may be found in the docket.

Comment 1: EVAA, Georgia Power, and Virginia Power generally support DOE's revised approach. The PEF value of 81,407 Wh/gal [in the proposed rule] is acceptable, with the modifications described in the provided comments. EVAA specifically believes that the proposed PEF aligns EVs with other alternative fuel vehicles for fuel economy purposes. (EVAA, Georgia Power, Virginia Power)

Response: DOE acknowledges the general support for the revised approach and consistent treatment of Alternative Fuel Vehicles. DOE values the opinions of these informed stakeholders. The suggested modifications are discussed below.

Comment 2: Publishing a final rule should be the top priority—don't delay publication of the final rule.

- The Alliance supports the proposal as is and urges that it be finalized at the earliest possible time. (AAM)
- DOE should make the simple corrections suggested before publication of the final rule. (EVAA, Georgia Power, Virginia Power)
- DOE should attempt to address the larger issues (such as explicitly quantifying the relative scarcity of fuels), but only if it will not delay the publication of a final rule. (EVAA, Georgia Power, Virginia Power)

Response: DOE agrees that under present conditions, timely publication of a final rule is a higher priority than technical hair splitting. DOE will still make several adjustments to the final rule, as described below.

Comment 3: Publish the final rule rapidly; fine-tune it later. DOE should establish a schedule in the final rule for addressing items that could not be quickly resolved at this time. (Georgia Power, Virginia Power)

Response: The NOPR explicitly states (§ 474.5) that DOE will perform a review five years after publication of the final rule to determine whether any updates and/or revisions are necessary. DOE anticipates that better data on many aspects of EV use will be available by that time.

Comment 4: Incorporate a scarcity factor in the equation as required by law. DOE's own analysis shows scarcity and energy security advantages for electricity and that fuels used to produce electricity are abundant, and that reserves of nuclear and renewables are essentially unlimited. By not including a scarcity factor, DOE is not being responsive to this requirement of the Act and is failing to credit electricity for use of these abundant resources. (EVAA, Georgia Power, Virginia Power)

Response: The final rule is based on the relevant factors in Section 503 (a)(3) of the Motor Vehicle Information and Cost Saving Act, including the relevant scarcity of fuel used to generate electricity. As described in the NOPR, DOE performed a careful and thorough analysis of the present and projected availability of energy resources. This analysis showed that fuels (raw resources) used to produce electricity are abundant, as are the raw resources used to produce gasoline and diesel fuel (in fact, "proved reserves" of all of these energy resources tend to increase over time as new resources are discovered and better recovery techniques are developed). Since all of these fuels are abundant, the concept of "relative scarcity" is difficult to quantify objectively, and in DOE's judgement, should not be an appropriate guiding factor in the rulemaking at this time.

The commentors' claim that electricity is the only vehicle fuel that can be produced from nuclear or renewable sources is incorrect. For example, both hydrogen and ethanol can be produced totally from nuclear and/or renewable sources.

The 1/0.15 factor used in the equation is not intended to be a scarcity factor *per se*, but it does result in a very substantial adjustment to the raw calculated energy efficiency of electric vehicles. It is included to reward electric vehicles' benefits to the Nation relative to petroleum-fueled vehicles, in a manner consistent with the regulatory treatment of other types of alternative fueled vehicles and the authorizing legislation.

Comment 5: Georgia Power and Virginia Power support the use of the 1/0.15 factor in simplifying the calculation, but DOE should provide a technical basis for its application to EVs, or else modify the factor accordingly. (Georgia Power, Virginia Power)

Response: DOE agrees that the replacement of the previously proposed "scarcity factor" with the 1/0.15 factor does make the calculation considerably simpler, but this was not the only reason DOE replaced the scarcity factor with the 1/0.15 factor approach.

In the NOPR, DOE describes its assessment of the technical basis for the application of a factor of 1/0.15 to the measured fuel economy of liquid-alternative fueled vehicles (e.g., M85 fueled vehicles) under existing law (64 F.R. 37907). The NOPR also observes that the law applies the same 1/0.15 factor to gaseous-alternative fueled vehicles, even though there is not an obvious technical basis for doing so.

DOE determined that the most equitable and viable approach would be to apply the same 1/0.15 factor to electric vehicles in order to maintain consistency with the existing regulatory treatment of other types of alternative fueled vehicles.

All alternative fuels offer the intrinsic benefit of being substitutes for petroleum, on which nearly 100 percent of the Nation's transportation depends. In other words, any alternative fuel helps the Nation avoid having all of its transportation "eggs" in the petroleum

"basket." Each mile driven in an alternative fuel vehicle offsets approximately one mile driven in a petroleum-fueled vehicle.

Comment 6: Assigning one fuel content factor (1/0.15) to all alternative fuel vehicles is inappropriate since "the fuel efficiency benefits of electric vehicles far exceed those of other alternative fuel vehicles." DOE should use a fuel content factor that more accurately represents electric vehicle benefits in comparison to other alternative fuels. (CARB)

Response: The efficiency of EVs varies widely as a function of motor and drivetrain efficiency, driving cycle, and the round-trip efficiency of the battery. The energy source which offers the greatest benefits depends on many factors, and the energy source that offers the greatest benefit to one set of users may not be the most beneficial for a different set of users or the general public. These benefits may vary by geography, fuel and generating method.

As noted in the NOPR, DOE invested considerable time and effort in attempting to develop a method that could rigorously account for the advantages to the Nation offered by electric vehicles compared to conventional vehicles, but was unable to identify a method that was sufficiently objective, robust, and consistent with established policy directions.

Thus, DOE stands by its proposal to provide electric vehicles the same reported-fuel-efficiency incentive (the 1/0.15 factor) that other alternative fuel vehicles currently enjoy.

Although electric vehicles and other alternative fuel vehicles will have its energy-equivalent fuel economy adjusted by the same incentive factor, electric vehicles will still enjoy favorable regulatory treatment under DOE's proposal. This is because EVs are specifically exempt from caps on the amount that alternative fuel vehicles are allowed to contribute to raising a manufacturer's overall CAFE (49 U.S.C. 32906(a)).

Comment 7: The U.S. Average Electricity Generation factor ($T_g = 0.328$) is based only on fossil fuel generation, and does not account for the efficiencies of nuclear or renewable energy generation. Counting the efficiency of these sources relative to fossil fuel generation as 100 percent, the E_g factor should be equal to about 0.53. (EVAA says 0.40 to 0.53 depending on treatment of the nuclear component). (EVAA, Georgia Power, Virginia Power)

Response: DOE reminds the commentors that the E_g factor represents relative efficiency, *not* resource abundance. There are two reasons why DOE chose to use conversion efficiencies for electricity that reflect the typical efficiencies of fossil fuel-fired powerplants. First, existing nuclear and hydroelectric plants are now operated at essentially full capacity. Since no significant additions to U.S. nuclear or hydro-electric capacity are planned, any increase in electricity demand that results from expanded production and use of electric vehicles is very likely to be met by fossil fuel-fired powerplants. Second, although the fuel supply for nuclear, hydro, and renewable generated electricity is plentiful, the process for converting the raw fuel or physical energy to electricity is, in most cases, less efficient than fossil fuel plants. Further, no energy conversion process is 100 percent efficient.

Since several comments were provided on this issue, DOE took a closer look at the relative efficiency of nuclear vs. fossil fuel generation. Nuclear power plants generate steam at lower temperatures than fossil power plants, reducing their relative thermodynamic efficiency. Typically, nuclear plants generate steam at a maximum cycle temperature of about 575 Kelvin (~575 °F), while fossil plants generate steam at temperatures of about 825 Kelvin (~1025 °F). Thus, assuming both cycles reject heat to the surroundings at 294 Kelvin (70 °F), their respective theoretical limiting Carnot efficiencies ($1—(T_L/T_H)$) is 49 percent for nuclear and 64 percent fossil. The E_g factor uses the actual average fossil fuel-to-electricity conversion efficiency, which is 32.8 percent. Scaling the nuclear Carnot efficiency by the same ratio suggests that nuclear plants achieve conversion efficiencies on the order of 25 percent. While this is a very crude analysis, it is likely that a more rigorous analysis would yield qualitatively similar results.

Therefore, including the nuclear component in the calculation of the E_g factor would likely cause the factor to change *downward*, not upward as suggested by the commentors.

Data on the "efficiency" of hydroelectric generation are somewhat difficult to obtain, though hydroelectric generation efficiency may be higher than typical fossil fuel-fired powerplants. This is because hydroelectric power generation is based on principles of momentum and/or pressure transfer and not combustion and heat transfer. Without suitable data, and without taking a significant amount of additional time for detailed analysis, DOE notes that the relatively small amount of relatively high-efficiency hydroelectric generation tends to offset the larger amount of relatively less-efficient nuclear power generation. Thus, the two trends tend to cancel each other and the efficiency of fossil generation would continue to dominate.

Therefore, DOE has continued to use the value of $E_g = 0.328$ in light of: (1) the commentors' clear desire to place a higher priority on timely publication of a final rule, than on performing additional technical analyses; and (2) since the fossil generation component will dominate the marginal electrical generation efficiency for many years.

Comment 8: The U.S. Average Electricity Transmission and Distribution Efficiency factor T_t places a unique and unfair additional penalty on electric vehicles since fuel distribution efficiency is not included in the mileage calculations for any other vehicle energy source. DOE should assign a value of unity to the T_t factor. (Georgia Power, Virginia Power)

Response: As the commentors note, the T_t factor is required by the authorizing legislation. DOE is aware of the potential for such a factor to unfairly penalize EVs; this is the reason why DOE added the U.S. Petroleum Refining and Distribution factor T_p (= 0.830) in the denominator of the E_g factor equation to offset the T_t (= 0.924) factor in the numerator.

Note that T_p includes refining as well as distribution in order to include most of the corresponding steps in the energy chain—just as the equation attempts to do with the electric energy chain. Note that raw resource extraction (mining, drilling, etc.) is not counted. Data that can be used to measure the "efficiency" of these processes is difficult to obtain, and varies widely depending on the characteristics of the individual site. DOE believes that the relative difference in "efficiency" of resource extraction (i.e., energy expended in recovery relative to the energy content of the resource recovered) between *individual* sites of one type (e.g., coal mines) is probably greater than the difference in the *average* efficiency of different extraction processes (e.g., mining vs. pumping).

Together, the ratio of the factor's T_t / T_p (= 1.113) *increases* the assigned petroleum-equivalent fuel economy of EVs. Therefore, the T_t factor is not an "unfair penalty" on EVs, but is in fact a benefit for EVs.

Comment 9: The energy content of a gasoline factor, C = 33,440 Wh/gal, is inconsistent with the "accepted actual value" ["physical constant" in EVAA's oral comments] used by other DOE programs. DOE should use the value of 33,705 Wh/gal (115,000 Btu/gal ÷ 3.412 Btu/Wh) that is reported by the

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Alternative Fuels Data Center. (EVAA, Georgia Power, Virginia Power)

Response: DOE disagrees that a single "actual" value for the energy content of gasoline exists. Gasoline is a varying blend of hundreds of components, and thus the energy content of individual batches of gasoline varies by several percentage points from grade-to-grade and from brand-to-brand. The energy content also varies regionally, seasonally, and over the long-term in response to changes in available feedstock, regulatory requirements, and economic pressures.

DOE agrees, however, that a consistent "average" value should be used across government programs. Since the PEF is attempting to compare the energy efficiency of electric vehicles to the fuel economy of conventional vehicles as measured by the EPA, the energy content of gasoline value used in the PEF should match the energy content of the gasoline used by EPA in testing the fuel economy of gasoline vehicles.

However, EPA has not provided a value for the energy content of its testing gasolines. Therefore, DOE will use the value of 33,705 Wh/gal, obtained by dividing the 115,000 Btu/gal value reported by the Alternative Fuel Data Center, by the (rounded) conversion factor of 3.412 Btu/Wh.

Comment 10: Develop a technical basis for the accessory factors used when the vehicle has petroleum-fueled accessories installed. (CARB, Georgia Power, Virginia Power)

Response: On the basis of the comments received and DOE's additional analysis of the impact of petroleum-fueled accessories, DOE has decided to replace the two accessory factors with a single accessory factor that would be applied if an electric vehicle includes any petroleum-powered accessories. The value of this single accessory factor will be 0.9, i.e., a 10 percent penalty.

A technical analysis of the magnitude of this penalty is now included in the docket. DOE notes that many variables affect the actual energy efficiency impact of petroleum-powered accessories on EVs, including accessory sizing (e.g., heater capacity) and the efficiency of both the vehicle and the accessory. To be truly accurate, it would be necessary to measure the actual consumption of the accessories installed in each vehicle and project this consumption over a suitable duty cycle for the vehicle. This process would add significant complexity, would place a substantial burden on automobile manufacturers and the EPA, and would provide few policy benefits not obtainable with the fixed accessory factor.

DOE expects that very few electric vehicles will be equipped with petroleum-powered accessories, as such accessories contradict many of the motivations and attractions that lead customers to purchase electric vehicles.

Comment 11: DOE should encourage the Environmental Protection Agency (EPA) to rely on the test procedures established by CARB for the testing and certification of EVs (these procedures are based on SAE J1634). The CARB procedures are consistent with current industry practice. (AAM, EVAA)

Response: As the comments suggest, EPA rather than DOE is responsible for selecting and implementing the EV test procedures. DOE suggests that EVAA and AAM offer their recommendations on test procedures directly to EPA.

Comment 12: The 55 percent urban and 45 percent highway weighting factors proposed do not represent the way that electric vehicles are used, particularly, those EVs that are designed for non-highway and/or neighborhood use. (CARB)

Response: There are actually two issues raised by this comment. The first is that the weightings do not reflect the usage patterns of at least a portion of EVs. The second issue, which is not stated but is implied, is that DOE should adjust the factors to accommodate limited performance EVs.

DOE agrees that there are some EVs that perform differently and will be used differently from conventional automobiles. DOE also anticipates that a limited number of customers with suitable "mission requirements" will purchase and operate limited performance EVs as replacements for conventional automobiles. However, DOE notes that to be included in CAFE calculations, a vehicle must meet the definition of an automobile at 40 CFR part 600, which states that such a vehicle must be "manufactured primarily for use on public streets, roads, or highways." Limited performance EVs (such as neighborhood electric vehicles) that cannot keep up with highway traffic clearly do not meet this requirement and are categorically ineligible for inclusion in CAFE unless 40 CFR part 600 is appropriately amended.

DOE believes that Congress intended the PEF to be an incentive for manufacturers to produce roadworthy electric vehicles that provide an alternative to conventional petroleum-powered automobiles.

As for the weightings themselves, EPA defines these weightings. DOE used the 55 percent urban and 45 percent highway weighting factors in the sample calculations because these are the factors used by EPA for conventional vehicles. The paragraph in the NOPR that describes the "city" and "highway" test procedures and the 55/45 percent apportioning of energy consumption values is intended only as an example of how to apply the PEF to determine the petroleum-equivalent fuel economy of an electric vehicle. The 55/45 percent weightings could change if EPA's CAFE calculation procedures are changed in the future.

DOE also notes that the preceding arguments provide a compelling justification for setting the value of the Driving Pattern Factor in the PEF to unity (1.00).

Comment 13: Review how changes in EV driving range and infrastructure availability might affect driving patterns of EVs in the future. (CARB)

Response: As noted in the preceding response, electric vehicles eligible for inclusion in a manufacturer's CAFE calculation must be competitive with conventional vehicles. This strongly suggests that the Driving Pattern Factor should be equal to unity.

DOE intends to monitor developments related to EVs and their use closely. Consideration of modifications to the Driving Pattern Factor and/or the PEF, in general, will be made at the 5-year review specified in the § 474.5.

IV. Procedural Requirements

A. Environmental Protection Agency Review

Pursuant to section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 766(a)), DOE submitted a copy of this rulemaking to the Administrator of the Environmental Protection Agency for the Administrator's concurrence. The Administrator has concurred.

B. National Environmental Policy Act Review

This rulemaking has been reviewed in accordance with the requirements of the DOE National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), and the DOE regulations in 10 CFR part 1021. This rulemaking amends 10 CFR part 474 so that electric vehicles receive similar treatment to what Congress has required for other alternative fuel vehicles under 49 U.S.C. 32905. The Department has determined that this rule is covered by Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021 (rulemaking, interpreting or amending an existing regulation, no change in environmental effect). Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Review

Today's final rule has been determined not to be a "significant regulatory action," as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs in the Office of Management and Budget.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the final rule is published. This requirement (which appears in section 603) does not apply if the agency certifies that the rule will not, if promulgated, have a "significant economic impact on a substantial number of small entities."

DOE certifies that this action will not have a significant economic impact on a substantial number of small entities. It is directed at vehicle manufacturers that will be concerned with a mix of petroleum and electric fueled vehicles in their annual production. None of these manufacturers is a small entity.

E. Federalism Review

Executive Order 13132 (64 FR 43255, August 4, 1999) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 13132 requires agencies to engage in intergovernmental consultation and take other steps before promulgating such a regulation or rule. This action and 10 CFR part 474 serve only to provide a method of interpreting 40 CFR part 600 (Fuel Economy of Motor Vehicles) for electric vehicles. The action does not involve any substantial direct effects on States or other considerations stated in Executive Order 13132.

F. "Takings" Assessment Review

It has been determined that pursuant to Executive Order 12630 (52 FR 8859, March 18, 1988) this final rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting a clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The final rule published today does not contain any Federal mandate, so these requirements do not apply.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Congressional Notification

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note the Office of Management and Budget's determination that this rule does not constitute a "major rule" under that Act 5 U.S.C. 801, 804.

K. Review under the Paperwork Reduction Act

DOE has determined that this rule does not contain any new or amended record keeping, reporting, or other type of collection of information subject to clearance by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 10 CFR Part 474

Corporate average fuel economy, Electric (motor) vehicle, Electric power, Energy conservation, Fuel Economy, Motor vehicles, Research.

Issued in Washington, DC, on May 25, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE revises Part 474 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below:

PART 474—ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM; PETROLEUM-EQUIVALENT FUEL ECONOMY CALCULATION

Sec.

474.1 Purpose and scope.
474.2 Definitions.
474.3 Petroleum-equivalent fuel economy calculation.
474.4 Test procedures.
474.5 Review and update.
Appendix to Part 474—Sample Petroleum-Equivalent Fuel Economy Calculations

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Authority: 49 U.S.C. 32901 *et seq.*

§ 474.1 Purpose and Scope.

This part contains procedures for calculating a value for the petroleum-equivalent fuel economy of electric vehicles, as required by 49 U.S.C. 32904(a)(2). The petroleum-equivalent fuel economy value is intended to be used by the Environmental Protection Agency in calculating corporate average fuel economy values pursuant to regulations at 40 CFR Part 600—Fuel Economy of Motor Vehicles.

§ 474.2 Definitions.

For the purposes of this part, the term:

Combined energy consumption value means the weighted average of the Urban Dynamometer Driving Schedule and the Highway Fuel Economy Driving Schedule energy consumption values (weighted 55/45 percent, respectively), as determined by the Environmental Protection Agency in accordance with 40 CFR parts 86 and 600.

Electric vehicle means a vehicle that is powered by an electric motor drawing current from rechargeable storage batteries or other portable electrical energy storage devices, provided that:

(1) Recharge energy must be drawn from a source off the vehicle, such as residential electric service; and

(2) The vehicle must comply with all provisions of the Zero Emission Vehicle definition found in 40 CFR 88.104–94(g).

Highway Fuel Economy Driving Schedule energy consumption value means the average number of watt-hours of electrical energy required for an electric vehicle to travel one mile of the Highway Fuel Economy Driving Schedule, as determined by the Environmental Protection Agency.

Petroleum equivalency factor means the value specified in § 474.3(b) of this part, which incorporates the parameters listed in 49 U.S.C. 32904(a)(2)(B) and is used to calculate petroleum-equivalent fuel economy.

Petroleum-equivalent fuel economy means the value, expressed in miles per gallon, that is calculated for an electric vehicle in accordance with § 474.3(a) of this part, and reported to the Administrator of the Environmental Protection Agency for use in determining the vehicle manufacturer's corporate average fuel economy.

Petroleum-powered accessory means a vehicle accessory (e.g., a cabin heater, defroster, and/or air conditioner) that:

(1) Uses gasoline or diesel fuel as its primary energy source; and

(2) Meets the requirements for fuel, operation, and emissions in 40 CFR part 88.104–94(g).

Urban Dynamometer Driving Schedule energy consumption value means the average number of Watt-hours of electrical energy required for an electric vehicle to travel one mile of the Urban Dynamometer Driving Schedule, as determined by the Environmental Protection Agency.

§ 474.3 Petroleum-equivalent fuel economy calculation.

(a) The petroleum-equivalent fuel economy for an electric vehicle is calculated as follows:

(1) Determine the electric vehicle's Urban Dynamometer Driving Schedule energy consumption value and the Highway Fuel Economy Driving Schedule energy consumption value in units of Watt-hours per mile;

(2) Determine the combined energy consumption value by averaging the Urban Dynamometer Driving Schedule energy consumption value and the Highway Fuel Economy Driving Schedule energy consumption value using a weighting of 55 percent urban/45 percent highway; and

(3) Calculate the petroleum-equivalent fuel economy by dividing the appropriate petroleum-equivalency factor (depending on whether any petroleum-powered accessories are installed; see paragraph (b) of this section) by the combined energy consumption value, and round to the nearest 0.01 miles per gallon.

(b) The petroleum-equivalency factors for electric vehicles are as follows:

(1) If the electric vehicle does not have any petroleum-powered accessories installed, the value of the petroleum equivalency factor is 82,049 Watt-hours per gallon.

(2) If the electric vehicle has any petroleum-powered accessories installed, the value of the petroleum-equivalency factor is 73,844 Watt-hours per gallon.

§ 474.4 Test procedures.

(a) The electric vehicle energy consumption values used in the calculation of petroleum-equivalent fuel economy under § 474.3 of this part will be determined by the Environmental Protection Agency using the Highway Fuel Economy Driving Schedule and Urban Dynamometer Driving Schedule test cycles at 40 CFR parts 86 and 600.

(b) The "Special Test Procedures" provisions of 40 CFR 86.090–27 may be used to accommodate any special test procedures required for testing the energy consumption of electric vehicles.

§ 474.5 Review and Update

The Department will review Part 474 five years after the date of publication as a final rule to determine whether any updates and/or revisions are necessary. DOE will publish a notice in the **Federal Register** soliciting stakeholder input in this review. The Department will publish the findings of the review and any resulting adjustments to Part 474 in the **Federal Register**.

Appendix to Part 474—Sample Petroleum-Equivalent Fuel Economy Calculations

Example 1: An electric vehicle is tested in accordance with Environmental Protection Agency procedures and is found to have an Urban Dynamometer Driving Schedule energy consumption value of 265 Watt-hours per mile and a Highway Fuel Economy Driving Schedule energy consumption value of 220 Watt-hours per mile. The vehicle is not equipped with any petroleum-powered accessories. The combined electrical energy consumption value is determined by averaging the Urban Dynamometer Driving Schedule energy consumption value and the Highway Fuel Economy Driving Schedule energy consumption value using weighting factors of 55 percent urban, and 45 percent highway:

combined electrical energy consumption value = (0.55 * urban) + (0.45 * highway) = (0.55 * 265) + (0.45 * 220) = 244.75 Wh/mile

Since the vehicle does not have any petroleum-powered accessories installed, the value of the petroleum equivalency factor is 82,049 Watt-hours per gallon, and the petroleum-equivalent fuel economy is:

(82,049 Wh/gal) (244.75 Wh/mile) = 335.24 mpg

Example 2: The vehicle from Example 1 is equipped with an optional diesel-fired cabin heater/defroster. For the purposes of this example, it is assumed that the electrical efficiency of the vehicle is unaffected.

Since the vehicle has a petroleum-powered accessory installed, the value of the petroleum equivalency factor is 73,844 Watt-hours per gallon, and the petroleum-equivalent fuel economy is:

(73,844 Wh/gal) (244.75 Wh/mile) = 301.71 mpg

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June 12, 2000

Part VI

Environmental Protection Agency

Federal Agency Hazardous Waste Compliance Docket; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6713–9]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of twelfth update of the Federal Agency Hazardous Waste Compliance Docket, pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket. The docket is to contain certain information about Federal facilities that manage hazardous waste or from which hazardous substances have been or may be released. (As defined by CERCLA section 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every six months, as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in this twelfth update of the docket and includes facilities not previously listed on the docket and reported to EPA since the last update of the docket, 63 FR 64806, November 23, 1998, which was current as of February 1, 1998. SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Such site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the list of additions to the docket, this notice includes a section that comprises revisions (that is, corrections and deletions) of the previous docket list. This update contains 39 additions and 16 deletions since the previous update, as well as numerous other corrections to the docket list. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 2,205.

DATES: This list is current as of December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the docket may be obtained at http://www.epa.gov/oeca/fedfac/oversight/oversight.html.

SUPPLEMENTARY INFORMATION:

Table of Contents

1.0 Introduction
2.0 Revisions of the Previous Docket
3.0 Process for Compiling the Updated Docket
4.0 Facilities Not Included
5.0 Information Contained on Docket Listing

1.0 Introduction

Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 United States Code (U.S.C.) 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), required the establishment of the Federal Agency Hazardous Waste Compliance Docket. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency (EPA) under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators and transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires that the National Response Center (NRC) be notified of a release. CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated, or disposed of and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the docket was published on February 12, 1988 (53 FR 4280). Updates of the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); June 27, 1997 (62 FR 34779); and November 23, 1998 (63 FR 64806). This notice constitutes the twelfth update of the docket.

Today's notice is divided into three sections: (1) Additions, (2) deletions, and (3) corrections. The additions section lists newly identified facilities that have been reported to EPA since the last update and that now are being included on the docket. The deletions section lists facilities that EPA is deleting from the docket. The corrections section lists changes in information about facilities already listed on the docket.

The information submitted to EPA on each Federal facility is maintained in the docket repository located in the EPA Regional office of the Region in which the facility is located (see 53 FR 4280 (February 12, 1988) for a description of the information required under those provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. Contact the following docket coordinators for information on Regional docket repositories:

Gerado Millan-Ramos (HBS),US EPA Region 1,#1 Congress St., Suite 1100,Boston, MA 02114–2023,(617) 918–1377
Helen Shannon (ERRD),US EPA Region 2,290 Broadway, 18th Floor,New York, NY 10007–1866,(212) 637–4260
Alida Karas (ERRD),US EPA Region 2,290 Broadway,New York, NY 10007–1866,(212) 637–4276
Todd Richardson (3HS50),US EPA Region 3,841 Chestnut Bg.,Philadelphia, PA 19107,(215) 814–5264
Ann Cole (4WD–FFB),US EPA Region 4,61 Forsyth St., SW,Atlanta, GA 30303,(404) 562–9638
Alan Gebien (SE–5J),US EPA Region 5,77 W. Jackson Blvd.,Chicago, IL 60604,(312) 886–1304
Philip Ofosu (6SF–RA),US EPA Region 6,1445 Ross Avenue,Dallas, TX 75202–2733,(214) 665–3178
D. Karla Asberry (FFSC),US EPA Region 7,726 Minnesota Avenue,Kansas City, KS 66101,(913) 551–7595
Stan Zawistowski (EPR–F),US EPA Region 8,999 18th Street, Suite 500,Denver, CO 80202–2466,(303) 312–6255
Avonda East (SFD–8–2),US EPA Region 9,75 Hawthorne Street,San Francisco, CA 94105,(415) 744–2468
Mark Ader (ECL–115),US EPA Region 10,1200 Sixth Avenue,Seattle, WA 98101,(206) 553–1808
Monica Lindeman (ECL, SACU2),US EPA Region 10,1200 Sixth Avenue,Seattle, WA 98101,(206) 553–5113

2.0 Revisions of the Previous Docket

Following is a discussion of the revisions of the previous docket, including additions, deletions, and corrections.

2.1 Additions

Today, 39 facilities are being added to the docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule.

Of the 39 facilities being added to the docket, 0 are facilities that have reported to the NRC the release of a reportable quantity (RQ) of a hazardous substance. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Reports of releases received by the NRC, the U.S. Coast Guard (USCG), and EPA are transmitted electronically to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket for which an ERNS report has been filed are identified by the notation "103(a)" in the "Reporting Mechanism" column.

It is EPA's policy generally not to list on the docket facilities that are small-quantity generators (SQG) and that have never generated more than 1,000 kilograms (kg) of hazardous waste in any single month. If a facility has generated more than 1,000 kg of hazardous waste in any single month (that is, if the facility is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs, but that have reported releases under CERCLA section 103 or hazardous waste activities pursuant to RCRA section 3016 will be listed on the docket and will undergo site evaluation activities, such as a PA and, when appropriate, an SI. All such facilities will be listed on the docket, whether or not they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is adding to the docket today are SQGs that had not been listed on the docket but that have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted PA reports, SI reports, Department of Defense (DOD) Installation Restoration Program (IRP) reports, or reports under another Federal agency environmental restoration program, but do not appear to have notified EPA under CERCLA section 103. Section 120(c)(3) of CERCLA requires that EPA include on the docket, among other things, information submitted under section 103. In general, section 103 requires persons in charge of a facility to provide notice of certain releases of hazardous substances. The reports under various Federal agency environmental restoration programs may contain information regarding releases of hazardous substances similar to that provided pursuant to section 103. EPA believes that CERCLA section 120(c) authorizes the agency to include on the docket a facility that has provided information to EPA through documents such as a report under a Federal agency environmental restoration program, regardless of the absence of section 103 reporting. Therefore, some of the facilities that EPA is adding today are being placed on the docket because they have submitted the documents described above that contain reports of releases of hazardous substances.

EPA also includes privately owned, government-operated (POGO) facilities on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016 and CERCLA section 103, all of which impose duties on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities "owned or operated" by an agency or other instrumentality of the Federal government. That terminology clearly includes facilities that are operated by the Federal government, even if they are not owned by it. Specifically, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility has been listed on the NPL, refers to the Federal agency that "owns or operates" the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required when a facility is listed on the docket, is Executive Order 12580, which assigns that responsibility to the Federal agency having "jurisdiction, custody, or control" over a facility. An operator may be deemed to have jurisdiction, custody, or control over a facility.

2.2 Deletions

Today, 16 facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous waste activity, change in ownership, and exemption as an SQG under RCRA (40 Code of Federal Regulations [CFR] Part 262.44). Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d).

2.3 Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. The changes needed varied from simple changes in addresses or spelling to corrections of the recorded name and ownership of a facility. In addition, some changes in the names of facilities were made to establish consistency in the docket. Many new entries are simply corrections of typographical errors. For each facility for which a correction has been entered, the original entry (designated by an "O"), as it appeared in the February 12, 1988 notice or subsequent updates, is shown directly below the corrected entry (designated by a "C") for easy comparison.

3.0 Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRIS), and the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

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Extensive computer checks compared the current docket list with the information obtained from the databases identified above to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, state-owned or privately owned facilities that are not operated by the Federal government may have been included. Such problems are caused by procedures historically used to report and track data on Federal facilities; EPA is working to resolve them. Representatives of Federal agencies are asked to write to EPA's docket coordinator at the following address if revisions of this update information are necessary: Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Enforcement Office (Mail Code 2261A), U.S. Environmental Protection Agency 401 M Street, S.W., Washington, D.C. 20460.

4.0 Facilities Not Included

As explained in the preamble to the original docket (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, when appropriate, be listed on the NPL):

- Facilities formerly owned by a Federal agency and now privately owned will not be listed on the docket. However, facilities that are now owned by another Federal agency will remain on the docket and the responsibility for conducting PAs and SIs will rest with the current owner.
- SQGs that have never produced more than 1,000 kg of hazardous waste in any single month and that have not reported releases under CERCLA section 103 or hazardous waste activities under RCRA section 3016 will not be listed on the docket.
- Facilities that are solely transporters, as reported under RCRA section 3010, will not be listed on the docket.

5.0 Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities that are being deleted from the docket. The third section comprises corrections of information included on the docket. Each facility listed for the update has been assigned a code(s) that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Therefore, all facilities on the additions list to this twelfth docket update must submit a PA and, if warranted, an SI to EPA. The PA must include existing information about a site and its surrounding environment, including a thorough examination of human, food-chain, and environmental targets, potential waste sources, and migration pathways. From information in the PA or other information coming to EPA's attention, EPA will determine whether a follow-up SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that are used to determine whether further action or investigation is appropriate. This policy includes any facility for which there is a change in the identity of the responsible Federal agency. The reports should be submitted to the Federal facilities coordinator in the appropriate EPA Regional office.

The facilities listed in each section are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and the correction code(s).

The statutory provisions under which a facility reported are listed in a column titled "Reporting Mechanism." Applicable mechanisms are listed for each facility: for example 3010, 3016, and 103(c).

The complete list of Federal facilities that now make up the docket and the list of facilities classified as no further remedial action planned (NFRAP) are not being published today. However, the lists are available to interested parties and can be obtained by calling the HQ Docket Coordinator at (202) 564–2468. As of today, the total number of Federal facilities that appear on the docket is 2,205.

Dated: June 5, 2000.

Craig E. Hooks,

Director, Federal Facilities Enforcement Office.

Docket Revisions

Categories of Revisions for Docket Update by Correction Code

Categories for Deletion of Facilities

(1) Small-Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This correction code is no longer used.)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/Entries Combined
(8) Does Not Fit Facility Definition
(9) (This correction code is no longer used.)
(10) (This correction code is no longer used.)
(11) (This correction code is no longer used.)
(12) (This correction code is no longer used.)
(13) (This correction code is no longer used.)
(14) (This correction code is no longer used.)

Categories for Addition of Facilities

(15) Small-Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split Into Two/Federal Agency Responsibility Being Split
(17) New Information Obtained Showing That Facility Should Be Included
(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility
(19) Sites Were Combined Into One Facility
(19A) New Facility

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/Address Change
(21) Changing Responsible Federal Agency (New Responsible Federal Agency Has 18 Months to Submit PA)
(22) Changing Responsible Federal Agency and Facility Name (New Responsible Federal Agency Has 18 Months to Submit PA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined to Be Not Applicable After Review of Regional Files

Note: Further information on definitions of categories can be obtained by calling the HQ Docket Coordinator at (202) 564–2468.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #12 ADDITIONS

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
FS-TONGASS NF: BOHEMIA BASIN EXPLORATION CAMPS.	E SIDE YAKOBY ISLAND, N END LISLANSKY STRAIT.	HOONAH	AK	99829	AGRICULTURE	103c	19A
BLM-SOURDOUGH LITTLE BEAR CAMP.	RICHARDSON HWY 35 MI N OF GLENNALLEN.	GLENNALLEN	AK	99588	INTERIOR	103c	19A
FWS-ALASKA MARITIME NWR: TIGALDA ISLAND AWS.	30 MI E OF KUTAN 54°04'48" N, 165°03'27" W.	AKUTAN	AK	99553	INTERIOR	103c	19A
NPS-CAPE KRUSENSTERN NM: MULGRAVE AFS.	30 MI NW OF KOTZEBUE 67°35'00" N, 163°59'00" W 188 NORTHWEST ARCTIC.	KOTZEBUE	AK	99752	INTERIOR	103c	19A
NPS-KATMAI NP: BROOKS CAMP.	30 MI W OF CY, NAKNEK LAKE.	KING SALMON	AK		INTERIOR		19A
NPS-NOATAK NP&P: BURIAL LAKE MILITARY CAMP 7 LANDFILL.	T12S R31 W NORTH BOUNDARY, UMIAT MERIDIAN (IN NORTH SLOPE BOROUGH) 68°26'00" N, 159°10'00" W 188 NORTHWEST ARCTIC.	NOATAK	AK	99761	INTERIOR	103c	19A
NPS-NOATAK NP&P: DESPERATION LAKE MILITARY CAMP AND LANDFILL.	T34N R1W&R1E ON SEC LINE, KATEEL RIVER MERIDIAN 68°19'40" N, 158°44'53" W 188 NORTHWEST ARCTIC.	NOATAK	AK	99761	INTERIOR	103c	19A
NPS-NOATAK NP&P: FENIAK LAKE MILITARY CAMP & LANDFILL.	T33N R2E&R3E ON SEC LINE, KATEEL RIVER MERIDIAN (IN NORTH SLOPE BOROUGH) 68°15'07" N, 158°18'38" W 188 NORTHWEST ARCTIC.	NOATAK	AK	99761	INTERIOR	103c	19A
FDA NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH.	3900 NCTR RD	JEFFERSON	AR	72079	HEALTH AND HUMAN SERVICES	3010	19A
EL DORADO NATIONAL FOREST.	R14–T14N R10E–T13N R19E–T9N.	EL DORADO	CA	95623	AGRICULTURE	103c	19A
LOS ANGELES AIR FORCE BASE.	2400 E EL SEGUNDO BLVD.	EL SEGUNDO	CA	90245	AIR FORCE	3010	19A
LOS ANGELES AIR FORCE BASE.	2400 PACIFIC AVE	SAN PEDRO	CA	90731	AIR FORCE	3010	19A
US BORDER PATROL STATION.	225 KENNEY	EL CAJON	CA	92020	JUSTICE	103c	19A
FORT LOGAN NATIONAL CEMETERY.	SHERIDAN AND HAMPDEN AVENUE.	DENVER	CO	80236	VETERANS AFFAIRS	103c	19A
US COAST GUARD ACADEMY.	MOHEGAN AVE	NEW LONDON	CT	06320	TRANSPORTATION	3005, 3010	19A
FS-NATIONAL TREE SEED LAB.	RIGGINS MILL RD	DRY BRANCH	GA	31020	AGRICULTURE	3010	19A
VA MEDICAL CENTER	1 FREEDOM WAY	AUGUSTA	GA	30904	VETERANS AFFAIRS	3010	19A
US COAST GUARD COMMUNICATIONS CENTER.	900 FERRY STREET	MARSHFIELD	MA	02050	TRANSPORTATION	103c	19A
US COAST GUARD SUPPORT CENTER.	427 COMMERCIAL ST	BOSTON	MA	02109	TRANSPORTATION	3010	19A
US EPA REGION 3 CHEMICAL METALS SITE.	2001 & 2103 ANNAPOLIS RD.	BALTIMORE	MD	21230	EPA	3010	19A
NIH ANIMAL CENTER	ELMER SCHOOL ROAD	POOLESVILLE	MD	20837	HEALTH AND HUMAN SERVICES	3010	19A
FS-BALDWIN ADMIN SITE.	650 N MICHIGAN AVE	BALDWIN	MI	49304	AGRICULTURE	3010	19A
DEFENSE REUTILIZATION & MARKETING SERVICES.	74 N WASHINGTON	BATTLE CREEK	MI	49017	DEFENSE	3010	19A
172ND AIRLIFT WING	141 MILITARY DRIVE	JACKSON	MS	39208	AIR FORCE	3010	19A
BIA BRANCH OF ROADS CHEU.	371 HWY BLK 6 SHOP 7 MI S.	FARMINGTON	NN	87499	INTERIOR	3010	19A
BIA CHINLE BOARDING SCHOOL.	HWY 191 15 MI N OF CHINLE.	MANY FARMS	NN	86538	INTERIOR	3010	19A
BIA TUBA CITY INDIAN MEDICAL CENTER.	T C 167 N MAIN ST	TUBA CITY	NN	86045	INTERIOR	3010	19A

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FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #12 ADDITIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
FRANKLIN D ROOSEVELT LIBRARY.	511 ALBANY POST RD	HYDE PARK	NY	12538	GENERAL SERVICES ADMINISTRATION.	3010	19A
PBS DLA DNSC VOORHEESVILLE DEPOT.	5850 DEPOT RD	ALTAMONT	NY	12009	GENERAL SERVICES ADMINISTRATION.	3010	19A
LTA, MARION ENGR. DEPOT EAST.	½ MILE EAST OF PATTON PIKE	MARION	OH	43302	ARMY	103c, 3010	19A
FORMER LORDSTOWN ORDNANCE DEPOT.	5232 TOD SW NO 11	WARREN	OH	44481	GENERAL SERVICES ADMINISTRATION.	3010	19A
BRADFORD ISLAND LANDFILL.	T2N R7E S22 S22 SW¼, WILLAMETTE MERIDIAN.	CASCADE LOCKS	OR	97014	CORPS OF ENGINEERS, CIVIL.	103c	19A
FORMER BADLANDS BOMBING RANGE (IMPACT AREA).	15 MILES NORTH OF KYLE	KYLE	SD	57752	AIR FORCE	103c	19A
FORMER BLACK HILLS ARMY DEPOT.	IGLOO	IGLOO	SD	57735	AGRICULTURE	103c	19A
US COAST GUARD SHORE SIDE DETACHMENT PAR.	700 COAST GUARD RD	BUCHANAN	TN	38222	TRANSPORTATION	3010	19A
DEPARTMENT OF COMMERCE.	PO BOX 6–F16	ARLINGTON	VA	22202	COMMERCE	103c	19A
GODDARD SPACE FLIGHT CENTER WALLOPS FLIGHT FACILITY–ISLAND.	ROUTE 803	WALLOPS ISLAND	VA	23337	NASA	3010, 103a, 103c, 3016	16
FLAMINGO BAY ARMY TEST AREAS FORMER FT. SEGARRA.	WATER ISLAND	ST. THOMAS	VI		INTERIOR	103c	19A
SUNDANCE PM–1 SITE	7 MILES NORTH OF SUNDANCE	SUNDANCE	WY	82729	AIR FORCE	103c	19A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #12 CORRECTIONS

	Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C	DEWLINE SITE LIZ-2 POINT LAY LLRS.	KASEGALIK LAGOON CHUKCHI SEA.	POINT LAY	AK +	99579	AIR FORCE	3010, 103c, 3016	20A
O	DEWLINE SITE LIZ-2.	KASEGALIK LAGOON-CHUKCHI SEA.	POINT LAY	AK	99766	AIR FORCE	3010, 103c, 3016	
C	FWS-ALASKA MARITIME NWR GREAT SITKIN ISLAND	51° 59' 05" N, 176° 06' 26" W, 25 MI NE OF ADAK.	ADAK	AK	98546	INTERIOR	103c	20A
O	FWS-ALASKA MARITIME NWR GREAT SITKIN ISLAND	25 MI NE OF ADAK	ADAK	AK	99500	INTERIOR	103c	
C	BLM-RED DEVIL MINE WASTE POND	S6 MI DOWN KUSKOKWIM RVR FR SLEETMUTE T19N R44W S6, 61° 45' 50" N, 157° 17' 26" W	RED DEVIL	AK	99656	INTERIOR	3016, 103c	20A
O	BLM-RED DEVIL MINE WASTE PONDS	T19N R44W S6 SE, 61° 10' 12" N, 149° 56' 40" W	BETHEL	AK	99559	INTERIOR	3016, 103c	
C	FORMER NAVAL ARCTIC RESEARCH LABORATORY BARROW	MAIN ST, 4 MI N OF CY, 71° 19' 42" N, 156° 40' 18" W	BARROW	AK	99723	NAVY	103c, 3010	20A
O	BARROW NAVAL ARCTIC RESEARCH LABORATORY	MAIN ST, 4 MI N OF CY	BARROW	AK	99723	NAVY	103c, 3010	
C	REDSTONE ARSENAL	USAMICOM DRSMI-KL	REDSTONE ARSENALAL		35898	ARMY	3005, 3010, 3016, 103c, 103a.	20A
O	REDSTONE ARSENAL MISSILE COMMAND	CMDR USAMICOM DRSMI-K.	HUNTSVILLE	AL	35898	ARMY3005, 3010, 3016, 103c, 103a.		
C	OUTLYING LANDING FIELD BARIN	2 MILES EAST OF CITY	FOLEY	AL	36535	NAVY	103c	20A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #12 CORRECTIONS—Continued

	Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
O	BARIN OUTLYING LANDING FIELD.		FOLEY	AL		NAVY	103c	
C	USAG FORT HUACHUCA.	ATZS EHB	FORT HUACHUCA	AZ	85613	ARMY	3010, 3016, 103c, 103a, 3005.	20A
O	FORT HUACHUCA	RCRA UNITS	FORT HUACHUCA	AZ	85613	ARMY	3010, 3016, 103c, 103a, 3005.	
C	STANFORD #2	W/2W/2SW/4 SECTION 31.	YUMA	AZ	86322	INTERIOR	103c	20A
O	STANFORD #2	YAVAPAI COUNTY	YUMA	AZ	86322	INTERIOR	103c	
C	AIR FORCE PLANT 42.	20TH ST E & AVES O & M.	PALMDALE	CA	93550	AIR FORCE	3005, 3010, 3016, 103c.	20A
O	PLANT #42 (ROCKWELL INTERNATIONAL).	2501 E AVE. P	PALMDALE	CA	93550–0678	AIR FORCE	3005, 3010, 3016, 103c.	
C	BLM-KERN VALLEY SANITARY LANDFILL.	T25S, R33E, N½ SW¼ SEC 35, MDM.	KERNVILLE	CA	93238	INTERIOR	103c, 3016	20A
O	BLM-KERN VALLEY LANDFILL.	T25S, R33E, SEC 35, N½ SW¼ MDM.	KERN COUNTY	CA		INTERIOR	103c, 3016.	
C	NAVAL WEAPONS STATION SEAL BEACH DETACHMENT FALLBROOK.	700 AMMUNITION RD.	FALLBROOK	CA	92028	NAVY	103c, 3016, 103a	20A
O	FALLBROOK ANNEX, NAVAL WEAPONS STATION SEAL BEACH.	AMMUNITION RD	FALLBROOK	CA	92058	NAVY	103c, 3016, 103a.	
C	NAVAL POSTGRADUATE SCHOOL.	1 UNIVERSITY CIR	MONTEREY	CA	93943	NAVY	3010, 3016, 103a, 103c.	20A
O	MONTEREY NAVAL POSTGRADUATE SCHOOL.	DEL MONTE AVE	MONTEREY	CA	93943	NAVY	3010, 3016, 103a, 103c.	
C	U.S. CAPITOL COMPLEX.	U.S. CAPITOL BUILDING.	WASHINGTON	DC	20515	ARCHITECT OF THE CAPITOL	3010	21
O	U.S. CAPITOL COMPLEX.	U.S. CAPITOL BUILDING.	WASHINGTON	DC	20515	INTERIOR	3010.	
C	CENTRAL INTELLIGENCE AGENCY HQ.	ROUTE 123	WASHINGTON	DC	20505	CIA	3010	20, 20A
O	CENTRAL INTELLIGENCE AGENCY HEADQUARTERS.	ROUTE 123	LANGLEY	VA	22043	CIA	3010, 103c.	
C	DOVER AIR FORCE BASE.	436 SPTG/CEVR 600 CHEVRON AVENUE.	DOVER	DE	19902	AIR FORCE	3005, 3010, 3016, 103c, 103a.	20A
O	DOVER AIR FORCE BASE.	436 SUG/CC	DOVER AFB	DE	19902	AIR FORCE	3005, 3010, 3016, 103c, 103a.	
C	FORMER ORLANDO NAVAL TRAINING CENTER-CSO.	2850 SEABEE STREET.	ORLANDO	FL	32803	NAVY	103c	20A
O	ORLANDO NAVAL TRAINING CENTER.	8 STREET/NTC	ORLANDO	FL	30213	NAVY	103C, 3010, 103a.	
C	NAVAL AIR STATION KEY WEST.	BLDG A827; BOCA CHICA KEY.	KEY WEST	FL	33040	NAVY	3005, 3010, 3016, 103c, 103a.	20A
O	KEY WEST NAVAL AIR STATION-BOCA CHICA.	NAVAL AIR STATION.	KEY WEST	FL	33042	NAVY	3005, 3010, 3016, 103c, 103a.	
C	DOBBINS AIR RESERVE BASE.	94 SPTG/CEV	DOBBINS AIR FORCE BASE.	GA	30069	AIR FORCE	3016, 103c, 3010	20A
O	DOBBINS AIR FORCE BASE.	94 CSG/DE	MARIETTA	GA	30069	AIR FORCE	3016, 103c, 3010.	
C	USA FORT GORDON & HQ USA SIGNAL CENTER.	HQ U.S. ARMY SIGNAL CENTER.	FORT GORDON	GA	30905	ARMY	3005, 3010, 3016, 103c, 103a.	20A
O	FORT GORDON AND NATIONAL SIGNAL CENTER.	ATZHFE EC	FORT GORDON	GA	30905	ARMY	3005, 3010, 3016, 103c, 103a.	
C	BLM-BLUE DOME UNAUTHORIZED DUMP.	HWY 28, T10N R30E S30.	BLUE DOME	ID	83464	INTERIOR	103c, 3016	20A
O	BLM-BLUE DOME UNAUTHORIZED DUMP.	T10NR30ESEC30	BLUE DOME	ID	83464	INTERIOR	103c, 3016.	

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FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #12 CORRECTIONS—Continued

	Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C	BLM-REEDER FLYING SERVICE AIRSTRIP #2	T9S R12E S13 W½ SE ¼	BUHL	ID	83316	INTERIOR	103c	20A
O	BLM-REEDER FLYING SERVICE AIRSTRIP#2	T9SR12ESEC13	BUHL	ID	83316	INTERIOR	103c	
C	BLM-GRACE ILLEGAL DUMP	T10S R39E S24 NE SE NE	GRACE	ID	83241	INTERIOR	103c	20A
O	BLM-GRACE ILLEGAL DUMP	T10S,R39E,SEC24	GRACE	ID	83241	INTERIOR	103c	
C	BLM-HAMMETT DUMP	T5S R9E S28 SE NE	HAMMETT	ID	83627	INTERIOR	103c	20A
O	BLM-HAMMETT DUMP	T5S,R9E,SEC28	HAMMETT	ID	83627	INTERIOR	103c	
C	BLM-PESTCIDE DUMP REYNOLDS	T2S R3W S31	REYNOLDS	ID	83650	INTERIOR	103c	20A
O	BLM-PESTICIDE DUMP SITE, REYNOLDS	T2SR3W SEC31	REYNOLDS	ID	83650	INTERIOR	103c	
C	FERMI NATIONAL ACCELERATOR LABORATORY	KIRK RD & PINE ST PO BOX 500	BATAVIA	IL	60510	ENERGY	3005, 3010, 3016, 103c	20A
O	FERMI NATIONAL ACCELERATOR LABORATORY	ROUTE 16 & 59 KANE COUNTY	BATAVIA	IL	60510	ENERGY	3005, 3010, 3016, 103c	
C	FORMER NAVAL AIR STATION GLENVIEW	FORMER NAVAL AIR STATION GLENVIEW	GLENVIEW	IL	60026	NAVY	3005, 3010, 3016, 103c	20A
O	GLENVIEW NAVAL AIR STATION	NAVAL AIR STATION	GLENVIEW	IL	60025	NAVY	3005, 3010, 3016, 103c	
C	NAVAL TRAINING CENTER GREAT LAKES	2601 PAUL JONES STREET	GREAT LAKES	IL	60088	NAVY	3005, 3010, 3016, 103c	20A
O	GREAT LAKES NAVAL TRAINING CENTER	PUBLIC WORKS CENTER NTC SCE. BLDG 1A	GREAT LAKES	IL	60008	NAVY	3005, 3010, 3016, 103c	
C	GRISSOM AIR RESERVE BASE	434 SPTG/CEV	GRISSOM AFB	IN	46971	AIR FORCE	3005, 3010, 3016, 103c, 103a	20A
O	GRISSOM AIR FORCE BASE	305TH CSG/DE	GRISSOM AFB	IN	46971	AIR FORCE	3005, 3010, 3016, 103c, 103a	
C	INDIANA ARMY AMMUNITION PLANT	11452 HWY 62	CHARLESTOWN	IN	47111	ARMY	3005, 3010, 3016, 103c	20A
O	INDIANA ARMY AMMUNITION PLANT	HIGHWAY 62 CLARK COUNTY	CHARLESTOWN	IN	47111	ARMY	3005, 3010, 3016, 103c	
C	NAVAL SURFACE WARFARE CENTER CRANE DIVISION	300 HWY 361 BLDG 3260 CODE 095	CRANE	IN	47522	NAVY	3005, 3010, 3016, 103c, 103a	20A
O	CRANE NAVAL WEAPONS SUPPORT CENTER	BLDG 2516 CODE 092V MARTIN COUNTY	CRANE	IN	47522	NAVY	3005, 3010, 3016, 103c, 103a	
C	MCCONNELL AIR FORCE BASE	2801 S ROCK RD	WICHITA	KS	67210	AIR FORCE	3005, 3010, 3016, 103c	20A
O	MCCONNELL AIR FORCE BASE	384 CSG/DE	WICHITA	KS	67221	AIR FORCE	3005, 3010, 3016, 103c	
C	FORT RILEY 1ST INFANTRY DIV (M)	BLDG 330 DICKMAN AVENUE	FORT RILEY	KS	66442	ARMY	3005, 3010, 3016, 103c, 103a	20A
O	FORT RILEY 1ST INFANTRY DIV (M)	BLDG 330	FORT RILEY	KS	66442	ARMY	3005, 3010, 3016, 103c, 103a	
C	HQ,101ST AIRBORNE DIV (AASLT) FT CAMPBELL	ATTN AFZB–DPW–E–P	FORT CAMPBELL	KY	42223	ARMY	3005, 3010, 3016, 103c	20A
O	FORT CAMPBELL	AFZB–FE–ECE	FORT CAMPBELL	KY	42223	ARMY	3005, 3010, 3016, 103c	
C	USAARMC & FORT KNOX	US HWY 32 WEST	FORT KNOX	KY	40121	ARMY	3005, 3010, 3016, 103a, 103c	20A
O	ARMOR SCHOOL AND CENTER AT FORT KNOX	HWY 31 W	FORT KNOX	KY	40121	ARMY	3005, 3010, 3016, 103a, 103c	
C	FORMER NAVAL ORDNANCE STATION LOUISVILLE	118 ROCHESTER DR	LOUISVILLE	KY	40214	NAVY	3005, 3010, 3016, 103c	20A
O	LOUISVILLE NAVAL ORDNANCE STATION	SOUTHSIDE DR MDS 42	LOUISVILLE	KY	40214	NAVY	3005, 3010, 3016, 103c	

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C	HANSCOM FIELD/ HANSCOM AIR FORCE BASE	3245 ABG/CC ENVIRONMENTAL SITE 66CES4/ CEVR 12TH GRENIER STREET	HANSCOM AFB	MA	01731	AIR FORCE	3005, 3010, 3016, 103c, 103a	20A
O	HANSCOM AIR FORCE BASE	3245 ABG/DEEV	BEDFORD	MA	01731	AIR FORCE	3005, 3010, 3016, 103c, 103a	
C	BELTSVILLE AGRICULTURAL RESEARCH CENTER	BUILDING 003 BARC–WEST 10300 BALTIMORE AVENUE	BELTSVILLE	MD	20705	AGRICULTURE	3010, 3016, 103c, 103a.	20A
O	BELTSVILLE AGRICULTURAL RESEARCH CENTER	BLDING 003 BARC–WEST	BELTSVILLE	MD	20705	AGRICULTURE	3010, 3016, 103c, 103a.	
C	ANDREWS AIR FORCE BASE	PERIMETER RD	ANDREWS AFB	MD	20762	AIR FORCE	3005, 3010, 3016, 103c.	20A
O	ANDREWS AIR FORCE BASE	1776 ABW/CC	ANDREWS AFB	MD	20331	AIR FORCE	3005, 3010, 3016, 103c.	
C	ABERDEEN PROVING GROUND (EDGEWOOD AREA)	STEPA–SH–ER	ABERDEEN	MD	21010	ARMY	3005, 3010, 3016, 103c, 103a	20A
O	ABERDEEN PROVING GROUND	ATTN STEAP–FE–M	ABERDEEN	MD	21005	ARMY	3005, 3010, 3016, 103c, 103a	
C	NAVAL SECURITY GROUP ACTIVITY WINTER HARBOR.	10 FABBRI GREEN STE 10.	WINTER HARBOR	ME	04693	NAVY	3010, 103c	20A
O	WINTER HARBOR NAVAL SECURITY GROUP ACTIVITY.	RT 186	WINTER HARBOR	ME	04693	NAVY	3010, 103c.	
C	K.I. SAWYER AIR FORCE BASE.	410 CES DEEV	GWINN	MI	49843	AIR FORCE	3005, 3010, 3016, 103c.	20A
O	K.I. SAWYER AIR FORCE BASE.	410 CSG/DE	GWINN	MI	49843	AIR FORCE	3005, 3010, 3016, 103c.	
C	NAVAL AND MARINE CORPS RESERVE CENTER BRIDGETON.	10810 LAMBERT INTERNATIONAL BLVD.	BRIDGETON	MO	63044	NAVY	3010	20, 20A
O	BRIDGETON MARINE CORPS.	10810 NATURAL BRIDGE RD.	BRIDGETON	MO	63044	NAVY	3010, 103c.	
C	COLUMBUS AIR FORCE BASE.	US HWY 45 NORTH	COLUMBUS	MS	39701	AIR FORCE	3005, 3010, 3016, 103c.	20A
O	COLUMBUS AIR FORCE BASE.	14 ABG/DE	COLUMBUS AFB	MS	39701	AIR FORCE	3005, 3010, 3016, 103.	
C	KEESLER AIR FORCE BASE.	508 L STREET, 81ST CES/CEVC.	KEELSER AFB	MS	39534	AIR FORCE	3005, 3010, 3016, 103c.	20A
O	KEESLER AIR FORCE BASE.	508 L ST	KEESLER AFB	MS	39534	AIR FORCE	3005, 3010, 3016, 103c.	
C	CONSTRUCTION BATTALION CENTER GULFPORT.	5200 CBC 2ND STREET.	GULFPORT	MS	39501	NAVY	3010, 103c, 103a	20A
O	GULFPORT NAVAL CONSTRUCTION BATTALION CENTER.	33RD AVE	GULFPORT	MS	39501	NAVY	3010, 103c, 103a.	
C	POPE AIR FORCE BASE.	43 CES/CEV 560 INTERCEPTOR RD.	POPE AIR FORCE BASE.	NC	28308	AIR FORCE	3005, 3010, 103c, 3016.	20A
O	POPE AIR FORCE BASE.	560 INTERCEPTOR RD.	POPE AFB	NC	28308	AIR FORCE	3005, 3010, 103c, 3016.	
C	FORT BRAGG XVIII AIRBORNE CORPS.	BLDG J 1737 KNOX ST.	FORT BRAGG	NC	28307	ARMY	3010, 3016, 103c, 103a, 3005.	20A
O	FORT BRAGG	AFZA–DE–D	FORT BRAGG	NC	28307	ARMY	3010, 3016, 103c, 103a, 3005.	
C	MARINE CORPS AIR STATION CHERRY POINT.	US HWY 101 & US HWY 70.	CHERRY POINT	NC	28533	NAVY	3005, 3010, 3016, 103c.	20A
O	CHERRY POINT MARINE CORPS AIR STATION.	NC HWY 101	CHERRY POINT	NC	28533	NAVY	3005, 3010, 3016, 103c.	
C	CONCRETE MISSILE EARLY WARNING STATION.	DET 1 57 AD/DE	CONCRETE	ND	58221	AIR FORCE	103c, 3010, 3005	21
O	CONCRETE MISSILE EARLY WARNING STATION.	DET 1 57 AD/DE	CONCRETE	ND	58221	ARMY	103c, 3010, 3005.	

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C	OFFUTT AIR FORCE BASE (EX).	3902 ABW/DEEV	OFFUTT AFB	NE	68113	AIR FORCE	3005, 3010, 3016, 103c, 103a.	20A
O	OFFUTT AIR FORCE BASE.	55 CS6/DEEV	OFFUTT AFB	NE	68113–5000	AIR FORCE	3005, 3010, 3016, 103c, 103a.	
C	CANNON AIR FORCE BASE.	BLDG 1—275 CSG/DE.	CANNON AFB	NM	88103	AIR FORCE	3005, 3010, 3016, 103c.	20A
O	CANNON AIR FORCE BASE.	27 CSG/DE	CANNON AFB	NM	88103	AIR FORCE	3005, 3010, 3016, 103c.	
C	HOLLOMAN AIR FORCE BASE.	49 CSC/CC	HOLLOMAN AFB	NM	88330	AIR FORCE	3005, 3010, 3016, 103c, 103a.	20A
O	HOLLOMAN AIR FORCE BASE.	833 CSG/DE	HOLLOMAN AFB	NM	88330	AIR FORCE	3005, 3010, 3016, 103c, 103a.	
C	SANDIA NATIONAL LABORATORIES.	1515 EUBANK SE	ALBUQUERQUE	NM	87123	ENERGY	3005, 3010, 3016, 103c, 103a.	20A
O	SANDIA NATIONAL LABORATORIES.	KIRKLAND AFB EAST.	ALBUQUERQUE	NM	87116	ENERGY	3005, 3010, 3016, 103c, 103a.	
C	BLM-CARLSBAD LANDFILL.	T21S,R27E,S27, W 5, SE¼, SW¼	CARLSBAD	NM	88220	INTERIOR	103c, 3016	20A
O	BLM-CARLSBAD LANDFILL.	T21SR27ES EC27NMPH.	CARLSBAD	NM		INTERIOR	103c, 3016.	
C	NELLIS AIR FORCE BASE.	4370 N WASHINGTON BLVD STE 117.	NELLIS AFB	NV	89191	AIR FORCE	3005, 3010, 3016, 103c, 103a.	20A
O	NELLIS AIR FORCE BASE.	554 OSW/DE	NELLIS AFB	NV	89191	AIR FORCE	3005, 3010, 3016, 103c, 103a.	
C	SENECA ARMY DEPOT.	5786 STATE ROUTE 96.	ROMULUS	NY	14541	ARMY	3005, 3010, 3016, 103c.	20A
O	SENECA ARMY DEPOT.	RT 96	ROMULUS	NY	14541	ARMY	3005, 3010, 3016, 103c.	
C	NIAGARA FALLS STORAGE SITE.	1397 PLETCHER ROAD.	LEWISTON	NY	14092	ENERGY	3016, 103c	20A
O	NIAGARA FALLS STORAGE SITE.	EAST OF ROUTE 18, NORTH OF PLETCHER.	LEWISTOWN	NY	14092	ENERGY	3016, 103c.	
C	KNOLLS ATOMIC POWER LABORATORY.	2401 RIVER RD	NISKAYUNA	NY	12309	ENERGY	3005, 3010, 3016, 103c.	20A
O	KNOLLS ATOMIC POWER LABORATORY-KNOLLS SITE.	RIVER RD	NISKAYUNA	NY	12301–1072	ENERGY	3005, 3010, 3016, 103c.	
C	BROOKHAVEN NATIONAL LABORATORY.	53 BELL AVE BLDG 464.	UPTON	NY	11973	ENERGY	3005, 3010, 3016, 103a, 103c.	20A
O	BROOKHAVEN NATIONAL LABORATORY.	53 BELL AVE.	UPTON	NY	11973	ENERGY	3005, 3010, 3016, 103a, 103c.	
C	NAVAL WEAPONS INDUSTRIAL RESERVE PLANT CALVERTON.	GRUMMAN BLVD	CALVERTON	NY	11933	NAVY	103c, 3016, 3010	20A, 23
O	CALVERTON NAVAL WEAPONS INDUSTRIAL RESERVE PLANT	WADING RIVER—MANOR RD	CALVERTON	NY	11933	NAVY	103c, 3016	
C	GLENN RESEARCH CENTER PLUM BROOK STATION	6100 COLUMBUS AVE	SANDUSKY	OH	44870	NASA	3010, 3016, 103c, 103a, 3005.	20A
O	PLUM BROOK STATION.	TAYLOR & COLUMBUS ROADS, ERIE COUNTY	SANDUSKY	OH	44870	NASA	3005, 3010, 3016, 103c, 103a.	
C	FIELD ARTILLERY TNG CT.	2930 CURRIE RD ATTN ATZR–B	FORT SILL	OK	73503	ARMY	3005, 3010, 3016, 103c.	20A
O	FORT SILL FIELD ARTILLERY.	BLDG 1950	FORT SILL	OK	73503	ARMY	3005, 3010, 3016, 103c.	
C	NORTH SMITHFIELD NIKE CONTROL AREA.	274 OLD OXFORD ROAD.	NORTH SMITHFIELD	RI	02876	AIR FORCE	103c	20A
O	NORTH SMITHFIELD NIKE CONTROL AREA.	OLD OXFORD ROAD	NORTH SMITHFIELD	RI	02876	AIR FORCE	103c	
C	CHARLESTON AIR FORCE BASE	437 CSG/DEEV	CHARLESTON	SC	29404	AIR FORCE	3005, 3010, 3016, 103c.	20A
O	CHARLESTON AIR FORCE BASE	437 ABG/CC	CHARLESTON AFB	SC	29404	AIR FORCE	3005, 3010, 3016, 103c.	
C	SHAW AIR FORCE BASE	345 CULLEN ST	SHAW AFB	SC	29152	AIR FORCE	3005, 3010, 3016, 103c.	20A
O	SHAW AIR FORCE BASE.	363 CSG/DE	SHAW AFB	SC	29152	AIR FORCE	3005, 3010, 3016, 103c.	

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C	USATC & FORT JACKSON.	BLDG 1916 OFF EWELL RD.	FORT JACKSON	SC	29207	ARMY	3005, 3010, 3016, 103c.	20A
O	FORT JACKSON AND TRAINING CENTER.	JACKSON BLVD.	FORT JACKSON	SC	29207	ARMY	3005, 3010, 3016, 103c.	
C	MARINE CORPS AIR STATION BEAUFORT.	HWY 21 BLDG 601	BEAUFORT	SC	29904	NAVY	3005, 3010, 3016, 103c, 103a.	20A
O	BEAUFORT MARINE CORPS AIR STATION.	LAFRENE ROAD	BEAUFORT	SC	29904	NAVY	3005, 3010, 3016, 103c, 103a.	
C	ELLSWORTH AIR FORCE BASE.	44CSC/DE	ELLSWORTH AFB	SD	57706	AIR FORCE	3005, 3010, 3016, 103c, 103a.	20A
O	ELLSWORTH AIR FORCE BASE.	44 CSG/CC	ELLSWORTH AFB.	SD	57706	AIR FORCE	3005, 3010, 3016, 103c, 103a.	
C	FORT BLISS AIR DEFENSE CENTER.	ENVIRON MGMT OFC BLDG 1105 W.	FORT BLISS	TX	79916	ARMY	3005, 3010, 3016, 103c, 103a.	20A
O	FORT BLISS AIR DEFENSE CENTER.	PERSHING DRIVE	FORT BLISS	TX	79916	ARMY	3005, 3010, 3016, 103c, 103a.	
C	NAVAL AIR STATION KINGSVILLE.	554 MCCAIN STREET STE 310.	KINGSVILLE	TX	78363	NAVY	3010, 103c,103a, 3005.	20A
O	KINGSVILLE NAVAL AIR STATION.	MILITARY HIGHWAY.	KINGSVILLE	TX	78363	NAVY	3010, 103c,103a, 3005.	
C	FORT LEE	BLDG 6205 SHOP RD.	FORT LEE	VA	23875	ARMY	3005, 3010,3016, 103c.	20A
O	FORT LEE	FORT LEE	FORT LEE	VA	23801	ARMY	3005, 3010,3016, 103c.	
C	GODDARD SPACE FLIGHT CENTER WALLOPS FLIGHT FACILITY-MAIN.	ROUTE 175	WALLOPS ISLAND	VA	23337	NASA	3005, 3010,3016, 103a, 103c.	20A, 16
O	WALLOPS FLIGHT FACILITY.	ROUTE 175	WALLOPS ISLAND	VA	23337	NASA	3005, 3010,3016, 103a, 103c.	
C	FS–OKANOGAN NF: ALDER CRK.	T33N R21E S24 WM NE¼ SW¼.	TWISP	WA	98856	AGRICULTURE	103c	20A
O	OKANOGAN NF: ALDER CREEK.	T33N R21E S24 QS SE WM.	TWISP	WA	98856	AGRICULTURE	103c.	
C	NAVAL RADIO STATION T JIM CREEK.	21027 JIM CREEK RD; 4 MI E OF HWY 530 AT OSO.	OSO	WA	98223	NAVY	103c, 3010	20A
O	JIM CREEK NAVAL RADIO STATION T.	4 MILES EAST OF STATE HIGHWAY 530 AT OSO.	OSO	WA	98223	NAVY	103c, 3010.	

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BLM-CYPRUS SIERRITA CORP.	T18SR12ESEC1–22	SAHURITA	AZ	85640	INTERIOR	103c	2
CONNECTICUT ARMY NATIONAL GUARD GROTON BASE.	SOUTH RD	GROTON	CT	06340	ARMY	103c	2
AUGUSTA NATIONAL GUARD ARMORY.	88 MILLEDGE RD	AUGUSTA	GA	30904	ARMY	3010	2
CEDARTOWN NATIONAL GUARD ARMORY.	HWY 27 S	CEDARTOWN	GA	30125	ARMY	3010	2
HOMEWOOD	RIEGAL & 187TH STREET.	HOMEWOOD	IL	60430	ARMY	3016	4
BLM-ROLLA RESEARCH CENTER.	900 W 14TH ST	ROLLA	MO	65401	INTERIOR	3010	4
BLM-ROLLA RESEARCH CENTER.	1300 BISHOP AVE	ROLLA	MO	65401	INTERIOR	3010	4
COMPONENT DEVELOPMENT AND INTEGRATION FACILITY.	INDUSTRIAL PARK	BUTTE	MT	59702	ENERGY	3016 3010 103c	2
BLM-ERMONT MILL TAILINGS.	T6SR11WSEC35	ARGENTA	MT	59725	INTERIOR	103c	2
BLM-HIGH ORE MINE	T6NR4WSEC36		MT		INTERIOR	103c	2
PARKER RAILCAR SERVICE CO.	300 S FULTON AVE	FALLS CITY	NE	68355	SMALL BUSINESS ADMINISTRATION.	3010	4
CLIFFSIDE PARK POST OFFICE.	289 GORGE ROAD	CLIFFSIDE PARK	NJ	07010	POSTAL SERVICE	3010	4

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PALMER SQUARE STATION	20 PALMER SQUARE E	PRINCETON	NJ	08542	POSTAL SERVICE	3010	1
BLM-KERR MCGEE LAGUNA TOSTON SITE	LEE COUNTY	HOBBS	NM	88240	INTERIOR	103c 3016	2
NANSEMOND ORDNANCE DEPOT	RT 135	SUFFOLK	VA	23434	AGRICULTURE	103c	3
OFFCE OF INSULAR AFFAIRS	WATER ISLAND CATCHMENT BAY	ST THOMAS	VI	00802	INTERIOR	3010	2

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S.J. Res. 44/P.L. 106–205
Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)

H.R. 154/P.L. 106–206
To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)

H.R. 371/P.L. 106–207
Hmong Veterans' Naturalization Act of 2000 (May 26, 2000; 114 Stat. 316)

H.R. 834/P.L. 106–208
National Historic Preservation Act Amendments of 2000 (May 26, 2000; 114 Stat. 318)

H.R. 1377/P.L. 106–209
To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the "John J. Buchanan Post Office Building". (May 26, 2000; 114 Stat. 320)

H.R. 1832/P.L. 106–210
Muhammad Ali Boxing Reform Act (May 26, 2000; 114 Stat. 321)

H.R. 3629/P.L. 106–211
To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)

H.R. 3707/P.L. 106–212
American Institute in Taiwan Facilities Enhancement Act (May 26, 2000; 114 Stat. 332)

S. 1836/P.L. 106–213
To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Rules and Regulations

Federal Register
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Tuesday, June 13, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–075–4]

Mexican Fruit Fly Regulations; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations to remove the regulated portion of San Diego and Riverside Counties, CA, from the list of areas regulated because of the Mexican fruit fly, and to remove California from the list of States quarantined because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from California and that restrictions on the interstate movement of regulated articles from California are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

DATES: This interim rule was effective June 7, 2000. We invite you to comment on this docket we will consider all comments that we receive by August 14, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–075–4, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–075–4.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Wilmer E. Snell, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas. The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), quarantine infested States, designate regulated areas, and restrict the interstate movement of specified fruits and other regulated articles from regulated areas in order to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. Regulated areas are listed in § 301.64–3(c).

In an interim rule effective September 22, 1999, and published in the **Federal Register** on September 28, 1999 (64 FR 52211–52212, Docket No. 99–075–1), we quarantined the State of California and designated a portion of San Bernardino and Riverside Counties as a regulated area because that area had been found to be infested with the Mexican fruit fly. In a second interim rule, effective December 14, 1999, and published in the **Federal Register** on December 21, 1999 (64 FR 71267–71270, Docket No. 99–075–2), we amended the Mexican fruit fly regulations by adding a portion of San Diego and Riverside Counties, CA, to the list of areas regulated because of the Mexican fruit fly. In a third interim rule, effective April 12, 2000, and published in the **Federal Register** on April 18, 2000 (65 FR 20705–20706, Docket No. 99–075–3), we amended the Mexican fruit fly regulations by removing the regulated portion of San Bernardino and Riverside Counties, CA, from the list of areas regulated because of the Mexican fruit fly.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from San Diego and Riverside Counties, CA. The last finding of Mexican fruit fly thought to be associated with the infestation in this area was made on October 28, 1999.

Since then, no evidence of Mexican fruit fly infestations has been found in this area, and we have determined that the Mexican fruit fly no longer exists in San Diego and Riverside Counties. Therefore, we are removing this area from the list of areas in § 301.64–3(c) regulated because of the Mexican fruit fly. Because we have determined that the Mexican fruit fly no longer exists in California, we are removing California from the list of States quarantined because of the Mexican fruit fly.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the public. The area in California affected by this document was regulated due to the possibility that the Mexican fruit fly could be spread to noninfested areas of the United States. Since this situation no longer exists, the continued regulated status of this area would impose unnecessary restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are

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making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations to remove the regulated portion of San Diego and Riverside Counties, CA, from the list of areas regulated because of the Mexican fruit fly, and to remove California from the list of States quarantined because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from California and that restrictions on the interstate movement of regulated articles from California are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64–3 [Amended]

2. In § 301.64–3, paragraph (c) is amended by removing the entry for "California" and the description of the regulated area for San Diego and Riverside Counties, CA.

Done in Washington, DC, this 7th day of June 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–14845 Filed 6–12–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE159; Special Conditions No. 23–103–SC]

Special Conditions: Cessna Models; Diamond Model; Mooney Models; Piper Models; Raytheon Models; Airplanes Modified by Installation of Teledyne Continental Motors Full Authority Digital Engine Control (FADEC) System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes. These airplanes as modified by Teledyne Continental Motors will have a novel or unusual design feature associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Randy Griffith, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri 64106; 816–329–4126, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 2000, Teledyne Continental Motors applied for supplemental type certificates for the installation of engines that use an electronic engine control system in place of the hydromechanical control system for the Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R,320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes. Affected airplane models are currently approved under the following Type Certificate Numbers:

Model	Type certificate No.
Cessna Models 172/K/L/M/N/P	3A12
Cessna Models 177/A/B	A13CE
Cessna Model 177RG	A20CE
Cessna Models 180/E/F/G/H/J/K	5A6
Cessna Models 182/E/F/G/H/J/K/L/M/N/P/Q/R.	3A13
Cessna Models 185/A/C/D/E/F	3A24
Cessna Models 188/A/B/C	A9CE
Cessna Models P206/A/B/C/D/E, U206A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E.	A4CE

Model	Type certificate No.
Cessna Models 207/A, T207/A	A16CE
Cessna Models 210/K/L/M/N/R, T210/K/L/M/N/R.	3A21
Cessna Model 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R.	3A10
Cessna Models 320/A/B/C/D/E/F/–1, 340/A.	3A25
Cessna Model 337/A/B/C/D/E/F/G/H.	A6CE
Cessna Models 401/A/B, 411/A, 414/A, 421/A/B/C.	A7CE
Diamond Model DA20–C1	TA4CH
Mooney Models M20/C/D/E/F/J/K/R	2A3
Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T.	2A13
Piper Model PA–34–200/–200T/–220T.	A7SO
Piper Model PA–46–310P/–350P	A25SO
Raytheon Models F33, V35, A36	3A15
Raytheon Models 58, 95–C55, D55, E55.	3A16
Raytheon Model 58P	A23CE

All the airplanes are small, normal category airplanes powered with either single or dual reciprocating engines. The modification to the airplanes involves replacement of the engine with a new engine model that incorporates an electronic engine control system with full engine authority capability. The new engine model is accomplished with either an amended type certificate to the engine if the engine is a Teledyne Continental engine or a supplemental type certificate to the engine if the engine is a Lycoming engine. The airframe systems will also be modified as necessary to accommodate the engine's new control system.

Type Certification Basis

Under the provisions of § 21.101, Teledyne Continental Motors must show that affected airplane models, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Numbers 3A12, A13CE, A20CE, 5A6, 3A13, 3A24, A9CE, A4CE, A16CE, 3A21, 3A10, 3A25, A6CE, A7CE, TA4CH, 2A3, 2A13, A7SO, A25SO, 3A15, 3A16, A23CE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis" and can be found in the Type Certificates.

If the Administrator finds that the applicable airworthiness regulations (14 CFR part 23) do not contain adequate or appropriate safety standards for affected airplane models because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R,*320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes will incorporate an engine that includes an electronic control system with full engine authority capability. The airframe systems will also be modified as necessary to accommodate the engine's new control system.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system developed by Teledyne Continental Motors will perform functions in which a failure may cause an unsafe condition, provisions for protection from the effects of HIRF fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though each control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (for example, radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (*e.g.*, automated cockpit powerplant controls such as mixture setting) Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes modified by Teledyne Continental Motors by installation of an electronic engine control system to

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provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–41.

Discussion of Comments

On April 4, 2000 (65 FR 17613), the FAA published notice of proposed special conditions No. 23–00–01–SC for Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes. No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes as modified by Teledyne Continental Motors. Should Teledyne Continental Motors apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate Numbers 3A12, A13CE, A20CE, 5A6, 3A13, 3A24, A9CE, A4CE, A16CE, 3A21, 3A10, 3A25, A6CE, A7CE, TA4CH, 2A3, 2A13, A7SO, A25SO, 3A15, 3A16, A23CE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes. It is not a rule of general applicability. It is only applicable to airplanes being modified by Teledyne Continental Motors to include this engine system.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 49.

The Special Conditions

1. High Intensity Radiated Fields (HIRF), Protection. In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs functions in which a failure may cause an unsafe condition to the airplane, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform functions in which a failure may cause an unsafe condition.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform functions in which a failure may cause an unsafe condition are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency	Peak	Average
Field strength (volts per meter)		
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform functions in which a failure may cause an unsafe condition can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

2. Electronic Engine Control System. The installation items that affect the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–41.

Issued in Kansas City, Missouri on May 25, 2000.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14860 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–32–AD; Amendment 39–11760; AD 2000–11–12]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45/50 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company CF6–45/50 series turbofan engines. This AD requires initial and repetitive inspections for cracks in the stage 14 high pressure compressor (HPC) disk lock slots, and removal from service of certain disks, at the first piece-part level or HPC rotor disassembly level exposure, after 6,000 cycles since new (CSN). This amendment is prompted by reports of stage 14 HPC disk lock slot cracks discovered during shop fluorescent penetrant inspections. The actions specified by this AD are intended to prevent stage 14 HPC disk failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective date August 14, 2000.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 14, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7742, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company CF6–45/50 series turbofan engines was published in the **Federal Register** on October 26, 1999 (64 FR 57606). That action proposed to require initial and repetitive inspections for cracks in the stage 14 high pressure compressor (HPC) disk lock slots, and removal from service of certain disks, at the first piece-part level or HPC rotor disassembly level exposure, after 6,000 cycles since new (CSN).

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Cost Impact

Two comments suggest that the financial impact is not representative of the replacement cost of the disk since the disk is no longer in production or stocked and the replacement cost of the stage 11–14 spool shaft is more than $250,000. The FAA does not agree. Over the course of the inspection program, the availabilty of HPC rear shafts, and not the availability of stage 14 disks, is expected to be the limiting factor, requiring the installation of the stage 11–14 spool shaft. In addition, the estimate of economic impact was based on the lost life of the stage 14 disk only.

Reporting Period

One comment suggests that the time limit for reporting the results of inspections that equal or exceed the reject criteria be increased from within five days of the inspection to within ten days of the inspection. The FAA does not agree. Based on the potential criticality of a reject finding, five days is considered reasonable and is consistent with reporting requirements in ADs dealing with other critical rotating parts. Carriers can make arrangements with inspection facilities to report reject findings directly to the FAA if reporting to the carrier first would cause a delay in reporting to the FAA. Reports can be made to the FAA by fax on weekends and holidays. The FAA has included the telephone and fax numbers for the ECO in paragraph (h) of the Compliance Section.

Consistent Wording

One comment asks that the FAA use consistent wording with regard to the term "rotor module level exposure." The FAA agrees. The term "rotor module level exposure" has been changed to "rotor disassembly level exposure" in the Summary and in paragraphs (f) and (i) (1) of the Compliance Section.

Replacement of the Fan Forward Case

One comment requests that the FAA add a provision for the definition of an engine shop visit to paragraph (i) for "Introduction of an engine into a shop solely for replacement of the fan forward case." The FAA agrees. To be consistent with AD 99–24–15, the 3–9 spool AD, paragraph (i)(3)(iv), "Introduction of an engine into a shop solely for replacement of the fan forward case," has been inserted into the compliance section of this AD and the paragraph previously numbered (I) (3) (iv) has been renumbered (i)(3)(v).

Effective Date

One comment notes that the effective date should be changed so that it is consistent with the schedule provided by the service bulletin. The FAA does not agree. The rulemaking process is a formal legal course of action that does not include provisions for coordinating effective dates with manufacturers' service bulletins.

Support of the AD as Written

Three comments support the AD as written.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 1,538 engines of the affected design in the worldwide fleet. The FAA estimates that 460 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 22 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,600 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,263,200.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the

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FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–12 General Electric Company: Amendment 39–11760. Docket 98–ANE–32–AD.

Applicability: General Electric Company (GE) Model CF6–45/50 series turbofan engines, installed on but not limited to Airbus Industrie A300 series, Boeing Company 747 series, and McDonnell Douglas Corporation DC–10 series airplanes

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a stage 14 high pressure compressor (HPC) disk failure, which could result in uncontained engine failure and damage to the aircraft, accomplish the following:

Inspections

(a) Perform initial inspections of HPC stage 14 disks, part numbers (P/N's) 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04, with serial number (SN) prefixes GWN, MPO, RRY, and SNL, and disk SN's SNE00001 through SNE00017, and disk SN's SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) Inspect disks with 6,500 cycles since new (CSN) or less on the effective date of this AD before accumulating 9,800 CSN.

(2) Inspect disks with more than 6,500 CSN on the effective date of this AD no later than the next engine shop visit (ESV) after the effective date of this AD or before accumulating an additional 3,300 cycles-in-service (CIS) after the effective date of this AD, whichever occurs first.

(b) Perform repetitive inspections of HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04, with SN prefixes GWN, MPO, RRY, and SNL, and disk SN's SNE00001 through SNE00017, and disk SN's SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) For disks with less than 9,800 CSN at the time of the last inspection, perform repetitive inspections no later than 9,800 CSN or before accumulating 3,300 cycles since last inspection (CSLI), whichever occurs later.

(2) For disks with 9,800 CSN or greater at the time of the last inspection, perform repetitive inspections no later than 3,300 CSLI.

(c) Perform initial inspections of HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04 with SN prefixes SNG and SNE, except disk SN's SNE00001 through SNE00017 and SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) Inspect disks with 4,200 CSN or less on the effective date of this AD before accumulating 7,500 CSN.

(2) Inspect disks with more than 4,200 CSN but less than 9,000 CSN on the effective date of this AD at the next ESV after the effective date of this AD, before accumulating an additional 3,300 CIS after the effective date of this AD, or before accumulating 11,000 CSN, whichever occurs first.

(3) Inspect disks with 9,000 CSN or greater on the effective date of this AD, at the next ESV after the effective date of this AD, or before accumulating an additional 2,000 CIS after the effective date of this AD, whichever occurs first.

(d) Perform repetitive inspections of HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04 with SN prefixes SNG and SNE, except disk SN's SNE00001 through SNE00017 and SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) For disks with less than 7,500 CSN at the time of the last inspection, perform repetitive inspections no later than 7,500 CSN or before accumulating 3,300 CSLI, whichever occurs later.

(2) For disks with 7,500 CSN or greater at the time of the last inspection, perform repetitive inspections no later than 3300 CSLI.

Removal From Service

(e) Remove from service prior to further flight stage 14 HPC disks that equal or exceed the reject criteria established by GE CF6–50 ASB 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999.

(f) Remove from service, HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04 with SN prefixes SNG and SNE, except disk SN's SNE00001 through SNE00017 and SNE01101 through SNE01110, with greater than 6,000 CSN after the effective date of this AD, at the next piece-part level exposure or at the next HPC rotor disassembly level exposure after the effective date of this AD.

Terminating Action

(g) Replacement of the stage 14 HPC disk, P/N's 9080M34P03, 9080M34P04, 9080M34P05, 9349M91P04, with a stage 11–14 spool shaft is terminating action for the inspection requirements of this AD.

Reporting Requirements

(h) Report the results of inspections that equal or exceed the reject criteria within five days of the inspection to: Manager, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone, (781) 238–7141, fax, (781) 238–7199. The following information must be included in the report:

(1) HPC Stage 14 rotor disk P/N,
(2) HPC Stage 14 rotor disk SN,
(3) HPC Stage 14 rotor disk CSN,
(4) HPC Stage 14 rotor disk CSLI, and
(5) Date and location of inspection.

Reporting requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 2120–0056.

Definitions

(i) For the purpose of this AD, the following definitions apply:

(1) HPC Rotor disassembly occurs if any of the HPC Rotor bolted flange joints are separated, such as the Stage 2 joint to accomplish the Stage 3–9 Spool inspection.

(2) Piece-part exposure is defined as disassembly and removal of the stage 14 disk from the HPC rotor structure, regardless of any blades, locking lugs, bolts or balance weights assembled to the disk.

(3) An engine shop visit is defined as the introduction of an engine into a shop when a major engine flange is separated. The following maintenance actions are not considered engine shop visits for the purpose of this AD:

(i) Introduction of an engine into a shop solely for removal or replacement of the Stage 1 Fan Disk;

(ii) Introduction of an engine into a shop solely for replacement of the Turbine Rear Frame;

(iii) Introduction of an engine into a shop solely for replacement of the Accessory Gearbox or Transfer Gearboxes;

(iv) Introduction of an engine into a shop solely for replacement of the Fan Forward Case.

(v) Introduction of an engine into a shop for any combination of exceptions specified in paragraphs (i)(3)(i) through (i)(3)(iv);

Alternative Methods of Compliance

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Incorporation by Reference

(k) The inspections shall be done in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC.

Special Flight Permit

(l) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Effective Date of This AD

(m) This amendment becomes effective on August 14, 2000.

Issued in Burlington, Massachusetts, on May 25, 2000.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–14017 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–138–AD; Amendment 39–11770; AD 2000–10–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2000–10–51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 767 series airplanes by individual notices. This AD requires a one-time inspection to determine whether certain bolts are installed in the side load underwing fittings on both struts, and various follow-on actions, if necessary. This action is prompted by a report that two fractured bolts and one cracked bolt were found in the side load underwing fittings. The actions specified by this AD are intended to detect and correct cracking or fracturing of the tension bolts on the side load underwing fittings on the strut, which would eventually result in loss of the strut.

DATES: Effective June 19, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–10–51, issued May 18, 2000, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 19, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–138–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On May 18, 2000, the FAA issued emergency AD 2000–10–51, which is applicable to certain Boeing Model 767 series airplanes.

On May 15, 2000, the FAA received a report indicating that an operator found two fractured bolts and one cracked bolt in the side load underwing fittings of a Model 767–200 series airplane. On the affected airplane, both tension bolts on the outboard side load underwing fitting were completely fractured, and one bolt on the inboard side load underwing fitting was cracked. The affected airplane had accumulated 65,759 total flight hours and 17,021 total flight cycles. The cracking and fracturing of the tension bolts is due to stress corrosion. The tension bolts are made of H–11 steel material, which service history has shown to be susceptible to stress corrosion. Fracture of the tension bolts in the side load underwing fittings, if not corrected, would eventually result in loss of the strut.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–57A0074, dated May 17, 2000, and Revision 1, dated May 18, 2000, which describes procedures for a one-time inspection to determine whether H–11 steel tension bolts are installed in the side load underwing fittings on both struts. If any H–11 bolts are found, or if the type of bolt cannot be determined, the alert service bulletin also describes procedures for repetitive ultrasonic inspections to detect cracking or fracturing of the tension bolts in the side load underwing fittings on both struts, and corrective action, if necessary. Corrective action involves replacement of both tension bolts in the affected side load underwing fitting with new, improved bolts. The new, improved

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bolts are made of Inconel, which is more resistant to stress corrosion cracking than H–11 steel. Replacement of all H–11 steel tension bolts in the side load underwing fittings with new, improved bolts, as described in the alert service bulletin, eliminates the need for the repetitive inspections.

Explanation of Applicability

This AD applies to Model 767 series airplanes having line numbers 1 through 230 inclusive. The airplane manufacturer's records show that airplanes having line numbers 1 through 162 inclusive are likely to have H–11 steel tension bolts installed in the side load underwing fittings on the struts. However, the FAA has determined that it is possible that airplanes with line numbers 163 through 230 inclusive also have H–11 steel bolts installed. Therefore, this AD requires a one-time inspection on all Model 767 series airplanes with line numbers 1 through 230 inclusive to determine whether H–11 steel tension bolts are installed. For airplanes having line numbers 1 through 162 inclusive, this AD requires the initial inspection within 5 days. For airplanes having line numbers 163 through 230 inclusive, this AD requires the initial inspection within 10 days. Also, for airplanes having line numbers 163 through 230 inclusive on which H–11 steel bolts are found to be installed, this AD requires that operators report this fact to the FAA.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2000–10–51 to require a one-time inspection to determine whether H–11 steel tension bolts are installed in the side load underwing fittings on both struts. If an H–11 steel tension bolt is installed, or if the type of bolt cannot be determined, this AD requires repetitive ultrasonic inspections to detect cracking or fracturing of the tension bolts in the side load underwing fittings on both struts, and corrective action, if necessary. For certain airplanes, this AD also requires additional inspections to detect discrepancies of adjacent structure. For certain other airplanes, as described previously, this AD requires that operators report results of inspection findings to the FAA. This AD also provides an optional terminating action for the repetitive inspections described previously. The actions are required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Difference Between Alert Service Bulletin and This AD

Operators should note that the alert service bulletin recommends that the one-time inspection to determine whether H–11 steel tension bolts are installed be performed within 5 days after receipt of the alert service bulletin. However, as described previously, this AD requires that the inspection be accomplished within 5 days after the effective date of this AD only on airplanes having line numbers 1 through 162 inclusive. On airplanes having line numbers 163 through 230 inclusive, this AD requires that this inspection be accomplished within 10 days.

Operators also should note that the alert service bulletin specifies that, if both tension bolts on one fitting are found cracked or fractured, the manufacturer must be contacted for additional inspection requirements to detect discrepancies of adjacent structure. This AD requires such additional inspection requirements to be accomplished in accordance with a method approved by the FAA.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring the replacement of all H–11 steel tension bolts in the side load underwing fittings with new, improved bolts, which would constitute terminating action for the repetitive inspections required by this AD. However, the planned compliance time for the replacement would be sufficiently long so that notice and opportunity for prior public comment would be practicable.

Determination of Rule's Effective Date

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on May 18, 2000, to all known U.S. owners and operators of Boeing Model 767 series airplanes having line numbers 1 through 230 inclusive. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–138–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–10–51 Boeing: Amendment 39–11770. Docket 2000–NM–138–AD.

Applicability: Model 767 series airplanes, line numbers (L/N) 1 through 230 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking or fracturing of the tension bolts on the side load underwing fittings on the strut, which would eventually result in loss of the strut, accomplish the following:

One-Time Inspection

(a) At the applicable time specified in paragraph (a)(1) or (a)(2) of this AD, perform a one-time inspection of the tension bolts in the side load underwing fittings on both struts to determine whether tension bolts made of H–11 steel are installed, in accordance with Boeing Alert Service Bulletin 767–57A0074, dated May 17, 2000, or Revision 1, dated May 18, 2000. If the inspection shows conclusively that no H–11 steel bolt is installed, no further action is required by this AD.

(1) For airplanes having L/N 1 through 162 inclusive: Inspect within 5 days after the effective date of this AD.

(2) For airplanes having L/N 163 through 230 inclusive: Inspect within 10 days after the effective date of this AD.

Repetitive Inspections

(b) If any H–11 steel bolt is found during the inspection required by paragraph (a) of this AD, or if the type of bolt cannot be determined: Prior to further flight, perform an ultrasonic inspection to detect cracking or fracturing of the tension bolts in the side load underwing fittings on both struts, in accordance with Boeing Alert Service Bulletin 767–57A0074, dated May 17, 2000, or Revision 1, dated May 18, 2000. Repeat the inspection thereafter at intervals not to exceed 500 flight hours or 300 flight cycles, whichever occurs later.

Replacement

(c) If any cracked or fractured bolt is found during any inspection required by paragraph (b) of this AD, prior to further flight, replace both tension bolts in the affected side load underwing fitting with new, improved bolts, in accordance with Boeing Alert Service Bulletin 767–57A0074, dated May 17, 2000, or Revision 1, dated May 18, 2000.

Additional Inspection Requirements

(d) If both tension bolts in one side load underwing fitting are found cracked or fractured during any inspection required by paragraph (b) of this AD, prior to further flight, perform inspections to detect discrepancies of adjacent structure in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. For an inspection method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Reporting Requirement

(e) For airplanes having L/N 163 through 230 inclusive on which an H–11 bolt is found installed, or on which the type of bolt cannot be determined during the inspection required by paragraph (a) of this AD: Within 48 hours after performing the inspection required by paragraph (b) of this AD, submit a report of findings to the Manager, Seattle ACO, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. The report must include the type of bolt found and the airplane serial number. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and have been assigned OMB Control Number 2120–0056.

Optional Terminating Action

(f) Replacement of all H–11 steel tension bolts in the side load underwing fittings on both struts with new, improved bolts, in accordance with Boeing Alert Service Bulletin 767–57A0074, dated May 17, 2000, or Revision 1, dated May 18, 2000, constitutes terminating action for this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–57A0074, dated May 17, 2000, or Boeing Alert Service Bulletin 767–57A0074, Revision 1, dated May 18, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on June 19, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–10–51, issued on May 18, 2000, which contained the requirements of this amendment.

Issued in Renton, Washington, on June 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14314 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–380–AD; Amendment 39–11768; AD 2000–11–20]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100 and –300 series airplanes, that requires revising the Aircraft Log Book to correct the airplane Production Modification List; performing an inspection to determine which bonded skin panels on the airplane require bonding integrity inspections (BII); and revising the Airworthiness Limitations List of the Approved Maintenance Plan to include the BII requirements. This amendment also requires, for certain airplanes, repetitive ultrasonic bond inspections to detect disbonding of airplane skin panels, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent damage to bonded skin panels to go undetected, which could result in failure of the bonded skin panels, and consequent loss of controllability of the airplane.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100 and –300 series airplanes was published in the **Federal Register** on March 31, 2000 (65 FR 17206). That action proposed to require revising the Aircraft Log Book to correct the airplane Production Modification List; performing an inspection to determine which bonded skin panels on the airplane require bonding integrity inspections (BII); and revising the Airworthiness Limitations List of the Approved Maintenance Plan to include the BII requirements. That action also proposed to require, for certain airplanes, repetitive ultrasonic bond inspections to detect disbonding of airplane skin panels, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 41 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required revisions to the Aircraft Log Book, Approved Maintenance Plan, and inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the actions required by this AD on U.S. operators is estimated to be $2,460, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–20 Bombardier Inc. (Formerly de Havilland, Inc.): Amendment 39–11768. Docket 98–NM–380–AD.

Applicability: Model DHC–8–100 and –300 series airplanes, serial numbers 215 through 341 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to bonded skin panels to go undetected, which could result in failure of the bonded skin panels, and consequent loss of controllability of the airplane, accomplish the following:

Revision to Aircraft Log Book and Airworthiness Limitations List

(a) Within 30 days after the effective date of this AD, perform the actions required by paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Revise the Aircraft Log Book to correct the airplane Production Modification List in accordance with the Accomplishment Instructions in Part A of Section III of Bombardier Service Bulletin S.B. 8–51–2, Revision 'A,' dated September 19, 1998.

(2) Perform an inspection to determine which bonded skin panels on the airplane require bonding integrity inspections (BII) in accordance with the Accomplishment Instructions in Part B of Section III of Bombardier Service Bulletin S.B. 8–51–2, Revision 'A,' dated September 19, 1998.

(3) Revise the Airworthiness Limitations List of the Approved Maintenance Plan by inserting the bonding integrity inspections identified as de Havilland Maintenance Task 5500/01 and de Havilland Maintenance Task 5700/01 into the Airworthiness Limitations List. Except as provided by paragraph (e) of this AD: After the actions specified in paragraph (a)(3) of this AD have been accomplished, no alternative replacement times or structural inspection intervals may be approved for the bonded panels of the empennage and wings specified in de Havilland Maintenance Task 5500/01 and de Havilland Maintenance Task 5700/01.

On-Condition Repetitive Inspections

(b) For airplanes on which the bonded skin panels require BII's, as determined in paragraph (a)(2) of this AD: At the next required maintenance visit, but no later than 12 months after the effective date of this AD, perform an initial ultrasonic bond inspection to detect disbonding of the skin panels, in accordance with Part 5, sections 55–00–01 and/or 57–30–01, of Bombardier Production Support Manual (PSM) 1–8–7A, dated December 15, 1998 (for Model DHC–8–100 series airplanes); or Part 5, sections 55–00–01 and 57–30–01 of Bombardier PSM 1–83–7A, dated April 30, 1999 (for Model DHC–8–300 series airplanes); as applicable. Thereafter, repeat the ultrasonic inspection at the interval specified in the applicable PSM.

On-Condition Repair

(c) Except as provided by paragraph (d) of this AD, if any disbonding is detected during any inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with Part 5, sections 55–00–01 and 57–30–01 of Bombardier PSM 1–8–7A, dated December 15, 1998 (for Model DHC–8–100 series airplanes); or Part 5, sections 55–00–01 and 57–30–01 of Bombardier PSM 1–83–7A, dated April 30, 1999 (for Model DHC–8–300 series airplanes); as applicable.

(d) If any disbonding is detected during any inspection required by paragraph (b) of this AD; and the applicable service information specifies to contact Bombardier for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. For a repair method to be approved by the Manager, New York ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The Aircraft Log Book revision required by paragraph (a)(1) and the inspection required by paragraph (a)(2) of this AD shall be done in accordance with Bombardier Service Bulletin S.B. 8–51–2, Revision 'A,' dated September 19, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–98–31, dated September 1, 1998.

(h) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14313 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–313–AD; Amendment 39–11767; AD 2000–11–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200 and –300 series airplanes, that requires repetitive inspections to detect wear or damage of the door latches and disconnect housings in the off-wing escape slide compartments, and replacement of any discrepant component with a new component. This amendment is prompted by reports of worn and damaged door latches and disconnect housings in the off-wing escape slide compartments. The actions specified by this AD are intended to ensure deployment of an escape slide during an emergency evacuation. Non-deployment of an escape slide during an emergency could slow down the evacuation of the airplane and result in injury to passengers or flightcrew. The actions specified by this AD are also intended to detect damaged disconnect housings in the off-wing escape slide compartments, which could result in unexpected deployment of an escape slide during maintenance, and consequent injury to maintenance personnel.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA),

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Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Cashdollar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2785; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767–200 and –300 series airplanes was published in the **Federal Register** on December 29, 1999 (64 FR 72967). That action proposed to require repetitive inspections to detect wear or damage of the door latches and disconnect housings in the off-wing escape slide compartments. If wear or damage is found, the action proposed to require replacement of these discrepant components with new components.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed Rule

Two commenters support the proposed rule and indicate that they are accomplishing the requirements of this AD on their airplanes. A third commenter offers no comment on the proposed rule.

Request To Revise Wording in Proposed Rule

One commenter requests that the FAA revise certain wording in the preamble and body of the proposed rule. The commenter's suggestions and rationale are as follows:

1. Revise statement of unsafe condition throughout the AD to state that the actions specified by this AD are intended to "ensure deployment of an escape slide during an emergency evacuation and[,] additionally[,] in the case of the disconnect housing, to ensure the safety of mechanics during maintenance." The commenter states that a broken disconnect housing could result in unexpected inflation of an off-wing slide during maintenance.

2. Revise the "Discussion" section of the proposed rule to incorporate more details about the events that prompted this AD. Specifically, state that "Worn or broken latches and broken disconnect housings have also been discovered during maintenance."

3. Revise the "Differences Between Proposed Rule and Alert Service Bulletin" section to reference specific part numbers acceptable for installation.

4. Revise description of subject parts throughout the AD from "worn and damaged door latches and disconnect housings of the off-wing escape slide compartments" to "worn and damaged door latches and broken disconnect housings in the off-wing escape slide compartments." The commenter states that, "To date, there are no reports of 'worn' disconnect housings, only 'broken' ones."

The FAA partially concurs with the commenter's requests. The FAA concurs with the commenter's suggested changes to the statement of unsafe condition described above in item 1. Accordingly, the FAA has revised the statement of unsafe condition in the "Summary" section of this final rule.

The FAA also concurs that the commenter's suggested changes described above in items 2. and 3. are accurate; however, these sections are not restated in the final rule; thus, no change to the final rule is necessary in this regard.

The FAA does not concur that any change is necessary to the description of subject parts, as described above in item 4. The FAA considers "damage" of the disconnect housings to include broken disconnect housings. However, the FAA does concur with the commenter's suggestion to revise the words "of the off-wing escape slide compartments" to "in the off-wing escape slide compartments." This change has been made throughout this final rule.

Request To Reference Forthcoming Terminating Action

One commenter requests that the FAA revise the proposed rule to reference a terminating action. The commenter states that the airplane manufacturer will release a new service bulletin that describes procedures for replacing disconnect housings with new, improved disconnect housings. The commenter states that such replacement is intended to eliminate the need for the repetitive inspections of the disconnect housings that would be required by the proposed AD. (However, repetitive inspections of the latches would still be necessary.) The commenter also suggests changes to the cost impact information related to adding the terminating action.

The FAA does not concur with the commenter's request. To date, the FAA has not reviewed or approved the service bulletin referenced by the commenter. Considering the degree of urgency associated with addressing the subject unsafe condition, the FAA finds that it would be inappropriate to delay issuance of this final rule until the service bulletin has been approved. However, once the service bulletin and improved parts referenced by the commenter are available, the commenter may request approval of an alternative method of compliance, in accordance with paragraph (c) of this AD. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 634 Model 767–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 241 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $43,380, or $180 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–19 Boeing: Amendment 39–11767. Docket 98–NM–313–AD.

Applicability: Model 767–200 and –300 series airplanes, as listed in Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998; certificated in any category; except Model 767 series airplanes that have undergone conversion to freighter configurations, and on which the off-wing escape system has been removed or deactivated.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent non-deployment of an escape slide during an emergency evacuation, which could slow down the evacuation of the airplane and result in injury to passengers or flightcrew; and to detect damaged disconnect housings in the off-wing escape slide compartments, which could result in unexpected deployment of an escape slide during maintenance, and consequent injury to maintenance personnel; accomplish the following:

Inspections

(a) Prior to the accumulation of 6,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect wear or damage of the door latches and disconnect housings in the off-wing escape slide compartments, in accordance with Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998. Repeat the inspection thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

Note 2: Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998, allows repetitive inspections of a door latch having part number H2052–11 or H2052–115, provided that the latch is not worn or damaged. However, replacement of any latch having part number H2052–11 or H2052–115 with a new latch having part number H2052–13 is described as part of a modification of the escape slide compartment door latching mechanism that is specified in Boeing Alert Service Bulletin 767–25A0174, dated August 15, 1991. Accomplishment of that modification is required by AD 92–16–17, amendment 39–8327, and AD 95–08–11, amendment 39–9200. Therefore, operators should note that any latch having part number H2052–11 or H2052–115 found during an inspection required by paragraph (a) of this AD is already required to be replaced in accordance with AD 92–16–17 or AD 95–08–11, as applicable.

Note 3: Inspections and corrective actions accomplished prior to the effective date of this AD in accordance with the Validation Copy of Boeing Alert Service Bulletin 767–25A0260, dated April 28, 1998, are considered acceptable for compliance with the applicable action specified in this AD.

Replacement

(b) If any part is found to be worn or damaged during the inspections performed in accordance with paragraph (a) of this AD, prior to further flight, replace the worn or damaged part with a new part, and perform an adjustment of the off-wing escape slide system, in accordance with Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14312 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–331–AD; Amendment 39–11769; AD 2000–11–21]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires a one-time general visual inspection to determine the part number and serial number of the spoiler servocontrol, and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the spoiler servocontrol piston rod, which could result in reduced controllability of the airplane.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

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of the Federal Register as of July 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on December 22, 1999 (64 FR 71696). That action proposed to require a one-time general visual inspection to determine the part number and serial number of the spoiler servocontrol, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of two of its members, states that both members support the intent of the proposed AD. One member is already accomplishing the relevant service bulletin. The other member is carrying out the one-time inspection of the affected aircraft to ensure the correct spoiler servocontrols are installed on their aircraft.

Request to Revise the Compliance Time for the Corrective Actions

One commenter requests that the proposed AD be revised to allow more flexibility in accomplishing the corrective actions specified in the proposal. The commenter states that there will be times when replacement spoiler servos are unavailable due to the large number of spoiler servocontrol units that are affected in the Airbus fleet. With this in mind, the commenter suggests revising paragraph (a) of the proposed AD to read as follows:

"At the time specified in paragraph (a)(1) or (a)(2), accomplish the inspection and corrective action per SB A320–27–1127 or A320–27–1126 as applicable."

The FAA does not concur. Discussions with the manufacturer have not identified a supply problem with the spoiler servocontrols. Additionally, sufficient time has elapsed since the issuance of the service bulletins and notice of proposed rulemaking (NPRM) for operators to make the necessary planning and logistical supply arrangements in advance in order to comply with this amendment. Therefore, no change has been made to the final rule.

Request to Revise the Compliance Time for the Inspection

One commenter requests that the proposed AD be revised to require the one-time general visual inspection to determine the part number and serial number of the spoiler servocontrol to be accomplished within 18 months for Airbus Model A319 series airplanes. The commenter states that, the proposed AD specifies a fourteen times differential in the required compliance threshold (i.e., 2 months versus 28 months) between Airbus Model A320 and A319 series airplanes. The commenter questions this differential because Model A320 series airplanes have been in service longer with an accumulated average of 17,306 total flight hours than the Model A319 series airplanes, which have an accumulated average of approximately 4,014 total flight hours. Furthermore, the commenter states that there are approximately 2.3 times more Model A320 series airplanes in service as Model A319 and A321 series airplanes.

The FAA does not concur. Data provided by the manufacturer indicates that an autoland failure of a servocontrol on a Model A319 or A321 series airplane would result in a greater maximum transient deviation from the runway centerline and maximum transient bank angle without triggering the excessive deviation warning. Considering this factor, the FAA has determined that the compliance times specified in paragraphs (a)(1) and (a)(2) of the proposed AD represent the maximum time in which the affected airplanes could continue to operate without compromising safety. Therefore, no change has been made to the final rule.

Explanation of Change to the Proposal

The FAA notes that it is necessary to clarify that the general visual inspection required by paragraphs (a) and (b) of this AD may be accomplished in accordance with Airbus Service Bulletin A320–27–1126, dated April 26, 1999, or Revision 01, dated October 6, 1999. This clarification provides credit for those operators that may have previously accomplished the required action in accordance with that service bulletin.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 210 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $25,200, or $120 per airplane.

Should an operator be required to accomplish the modification, it will take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. The cost of required parts would be free of charge. Based on these figures, the cost impact of the modification is estimated to be $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–21 Airbus Industrie: Amendment 39–11769. Docket 99–NM–331–AD.

Applicability: The following models, certificated in any category, excluding those on which Airbus Service Bulletin A320–27–1126, dated April 26, 1999 (for Model A319 and 321 series airplanes); or A320–27–1127, dated April 26, 1999, or Revision 01, dated October 6, 1999 (for Model A320 series airplanes); has been accomplished:

- Model A319 series airplanes, serial numbers (S/N) 0546 through 0972 inclusive;
- Model A320 series airplanes, S/N 0002 through 0842 inclusive, 0846 through 0859 inclusive, 0865, 0866, and 0872 through 0960 inclusive; and
- Model A321 series airplanes, S/N 0364 through 0974 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the servocontrol piston rod, which could result in reduced controllability of the airplane, accomplish the following:

Inspection

(a) At the applicable time specified by paragraph (a)(1) or (a)(2) of this AD: Perform a general visual inspection to determine the part number and serial number for the spoiler servocontrols, in accordance with Airbus Service Bulletin A320–27–1126, April 26, 1999, or Revision 01, dated October 6, 1999 (for Model A319 and A321 series airplanes); or Airbus Service Bulletin A320–27–1127, dated April 26, 1999, or Revision 01, dated October 6, 1999 (for Model A320 series airplanes); as applicable. If the part number and serial number are identified in paragraph 2.B.(1)(b) of the Accomplishment Instructions of the applicable service bulletin, prior to further flight, perform applicable corrective actions (including removal, reidentification of the servocontrol, and replacement of the servocontrol with a modified part) as specified in the applicable service bulletin.

(1) For Model A319 and A321 series airplanes: Inspect within 2 months after the effective date of this AD.

(2) For Model A320 series airplanes: Inspect within 28 months after the effective date of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Spares

(b) As of the effective date of this AD, no person shall install on any airplane a spoiler servocontrol having part number 31077–050, 31077–060, or 31077–110; and S/N 0001 to 3499, except those serial numbers excluded in paragraph 2.B.(1)(b)1 of the Accomplishment Instructions in Airbus Service Bulletin A320–27–1126, dated April 26, 1999, or Revision 01, dated October 6, 1999; unless that servocontrol has been inspected, and corrective actions have been performed, in accordance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A320–27–1126, including Appendices 01 and 02, dated April 26, 1999; Airbus Service Bulletin A320–27–1126, Revision 01 including Appendices 01 and 02, dated October 6, 1999; Airbus Service Bulletin A320–27–1127, including Appendices 01 and 02, dated April 26, 1999; or Airbus Service Bulletin A320–27–1127, Revision 01 including Appendices 01 and 02, dated October 6, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–362–139(B), dated September 8, 1999.

(f) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14311 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–128–AD; Amendment 39–11772; AD 2000–11–23]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300, A310, and A300–600 series airplanes, that requires an inspection to detect damage of the electrical bonding leads in specified locations of the fuel tanks, and replacement of any damaged

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electrical bonding leads with serviceable electrical bonding leads. For certain airplanes, this amendment also requires modifying the fuel pipe couplings in specified locations of the fuel tank. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent electrical arcing/discharge in the fuel tank due to damaged electrical bonding leads or inadequate electrical bonding of the fuel pipe couplings, which could result in fuel ignition and consequent uncontained rupture of the fuel tank.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes was published in the **Federal Register** on March 27, 2000 (65 FR 16151). That action proposed to require an inspection to detect damage of the electrical bonding leads in specified locations of the fuel tanks, and replacement of any damaged electrical bonding leads with serviceable electrical bonding leads. For certain airplanes, that action also proposed to require modifying the fuel pipe couplings in specified locations of the fuel tank.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 116 airplanes of U.S. registry will be affected by this AD.

It will take between 70 and 80 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be between $487,200 and $556,800, or between $4,200 and $4,800 per airplane.

It will take between 77 and 103 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $104 per airplane. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be between $547,984 and $728,944, or between $4,724 and $6,284 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–23 Airbus Industrie: Amendment 39–11772. Docket 99–NM–128–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing/discharge in the fuel tank due to damaged electrical bonding leads or inadequate electrical bonding of the fuel pipe couplings, which could result in fuel ignition and consequent uncontained rupture of the fuel tank, accomplish the following:

Inspection

(a) Within 36 months after the effective date of this AD, perform a one-time inspection to detect damage (i.e., breakage, fraying, abrasion damage, looseness of the outer metal braid protection in the end crimp, looseness of the outer metal braid protection on the bonding lead inner core, corrosion, or missing leads) of the electrical bonding leads in specified locations of the fuel tanks, in accordance with the Accomplishment Instructions of Airbus Service Bulletins A300–28–0072, Revision 01, dated October 01, 1998, including Appendix 1, dated October 01, 1998, and Appendix 2, dated February 20, 1998 (for Model A300 series airplanes); A310–28–2128, Revision 01, dated October 01, 1998, including Appendix 1, dated October 01, 1998, and Appendix 2, dated February 20, 1998 (for Model A310 series airplanes); or A300–28–6057, Revision 01, dated October 01, 1998, including Appendix 1, dated October 01, 1998, and Appendix 2, dated February 20, 1998 (for Model A300–600 series airplanes); as applicable.

Note 2: Inspection of the area specified in paragraph (a) of this AD accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletins A300–28–0072, A310–28–2128, or A300–28–6057; all dated February 20, 1998; as applicable; is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

Replacement

(b) If any electrical bonding lead is damaged, prior to further flight, replace the bonding lead with a serviceable bonding lead in accordance with the applicable service bulletin specified in paragraph (a) of this AD.

Modification

(c) For airplanes on which Airbus Industrie Modification 11847 (for Model A310 series airplanes) or 11848 (for Model A300/A300–600 series airplanes) has not been accomplished, within 36 months after the effective date of this AD, modify the fuel pipe couplings in the specified locations of the fuel tank in accordance with the Accomplishment Instructions of Airbus Service Bulletins A300–28–0073, Revision 01, dated October 01, 1998 (for Model A300 series airplanes); A310–28–2130, Revision 01, dated October 01, 1998 (for Model A310 series airplanes); or A300–28–6058, Revision 01, dated October 01, 1998 (for Model A300–600 series airplanes); as applicable.

Note 3: Modification of the fuel pipe couplings accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletins A300–28–0073, A310–28–2130, or A300–28–6058; all dated February 20, 1998; as applicable; is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with the following Airbus service bulletins, as applicable:

Service bulletin No.	Page No.	Revision level shown on page	Date shown on page
A300–28–0072, Revision 01, October 01, 1998	1–14	01	Oct. 01, 1998.
Appendix 1			
	1–21, 23–25, 27, 29–36, 38–84, 88–95, 97–166	Original	Feb. 20, 1998.
	22, 26, 28, 37, 85–87, 96	01	Oct. 01, 1998.
Appendix 2			
	1–54	Original	Feb. 20, 1998.
A310–28–2128, Revision 01, October 01, 1998	1–14	01	Oct. 01, 1998.
Appendix 1			
	1–30, 32–83, 85–87, 89–95, 97–221, 223–226	Original	Feb. 20, 1998.
	31, 84, 88, 96, 222	01	Oct. 01, 1998.
Appendix 2			
	1–56	Original	Feb. 20, 1998
A300–28–6057, Revision 01, October 01, 1998	1–14	01	Oct. 01, 1998.
Appendix 1			
	1–18, 21–25, 27–29, 31, 33, 34, 36, 38, 40, 42, 44–78, 81–85, 87–89, 91, 93, 94, 96, 98–100, 102, 104–229, 231–234.	Original	Feb. 20, 1998.
	19, 20, 26, 30, 32, 35, 37, 39, 41, 43, 79, 80, 86, 90, 92, 95, 97, 101, 103, 230.	01	Oct. 01, 1998.
Appendix 2			
	1–54	Original	Feb. 20, 1998.
A300–28–0073, Revision 01, October 01, 1998	1–67	01	Oct. 01, 1998.
A310–28–2130, Revision 01, October 01, 1998	1–91	01	Oct. 01, 1998.
A300–28–6058, Revision 01, October 01, 1998	1–67	01	Oct. 01, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the

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Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 98–174–248(B), dated April 22, 1998.

(g) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14437 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–208–AD; Amendment 39–11777; AD 2000–11–28]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and 767–200 and –300 Series Airplanes Powered by Pratt & Whitney Model PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 and 767–200 and –300 series airplanes, that requires repetitive inspections to detect damage and wear of the auxiliary track assembly of the thrust reverser, and corrective actions, if necessary. This amendment also requires eventual repair of the auxiliary track assembly, or replacement of the slider and liner or the entire assembly, with new, improved parts, which, when accomplished, would terminate the repetitive inspections. This amendment is prompted by reports of damage and wear to the auxiliary track assembly. The actions specified by this AD are intended to prevent a slider disengaging from the auxiliary track assembly, which could lead to separation of a portion of the thrust reverser from the airplane during flight, possible impact of separated portions on airplane structure, and consequent possible rapid decompression of the airplane, reduced controllability of the airplane, or reduced structural integrity of the fuselage.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 and 767–200 and –300 series airplanes was published in the **Federal Register** on October 19, 1999 (64 FR 56276). That action proposed to require repetitive inspections to detect damage and wear of the auxiliary track assembly of the thrust reverser, and corrective actions, if necessary. That action also proposed to require eventual replacement of the liner and slider, or the entire assembly, with new, improved parts, which, when accomplished, would terminate the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Request To Revise Certain Requirements in the Proposed AD

Several commenters indicate that they disagree with the proposed replacement of the auxiliary track beam assembly, including installation of a new slider and liner, regardless of the amount of wear and/or damage to the track beam. The commenters request that repair of the track beam be allowed when the damage is within the allowable limits specified in the referenced service information. One commenter states that replacement of the track beam fitting is required only when the wear or damage is beyond repairable limits, as specified in Boeing Service Bulletin 747–78A2164, Revision 2, and Boeing Service Bulletin 767–78A0079, Revision 2. The commenter notes that replacement of the track beam fitting in and of itself does nothing to address the root cause of the excessive wear; however, the new design slider fitting and track liner do address and correct the root cause. A second commenter states that the service bulletins specify replacement of the track beam assembly if the track beam has any discrepancy AND the measurement of the gap is greater than 0.45 inch. If the track beam has any discrepancy and the gap measurement is less than 0.45 inch, only the slider and liner should be replaced. Another commenter states that replacement of the track beam assembly is necessary only when damage cannot be repaired by means of replacement of the liner, slider, and/or retainer bar.

The FAA concurs with the commenters' requests. The FAA has coordinated this issue with the manufacturer, and has determined that if the damage to the track beam assembly is not beyond the repairable limits specified in the referenced service bulletins, a repair that involves replacement of the slider and liner and installation of a retainer bar, in lieu of replacement of the track beam assembly, is acceptable. Therefore, paragraphs (a) and (c) of this AD have been revised to specify measuring the auxiliary track beam dimensions in accordance with the Accomplishment Instructions of the referenced service bulletins, and to allow repair if the measurement is within the allowable limits.

Request To Revise Cost Impact Information

One commenter states that the total number of U.S.-registered Model 747–400 series airplanes affected by the proposed AD should be higher than the 12 airplanes shown in the cost impact section. The commenter indicates that it has 10 affected airplanes in its fleet and assumes that other operators also have Model 747–400 series airplanes that are affected by the proposal.

The FAA concurs. The referenced service bulletin specifies a total of 36 Model 747–400 series airplanes of U.S.-registry that are powered by Pratt & Whitney PW4000 series engines. In light of this information, the FAA has revised the cost impact information, below, to specify that 36 Model 747–400 series airplanes of U.S. registry will be affected by this AD.

Request for Credit for Previously Accomplished Work

One commenter requests credit for prior accomplishment of work done in accordance with Boeing Service Bulletin 747–78A2164, dated June 19, 1997, including Revision 1, dated February 5, 1998; and 767–78A0079, dated June 19, 1997, including Revision 1, dated February 5, 1998; which were previously issued revisions of the service bulletins referenced in the proposed rule as the appropriate sources of service information for accomplishment of the actions in the proposal. The commenter states that it incorporated the inspection and terminating actions described in the above service bulletins on two-thirds of its fleet beginning in June 1997. Additionally, the commenter states that the proposed rule requires different terminating action than the original and Revision 1 of the service bulletins specify.

The FAA partially concurs with the commenter's request. The FAA has determined that there are significant differences between Revision 2 of the service bulletins and the original issue. The accomplishment instructions in Revision 2 provide more detailed information about how to perform the inspections, and are more specific regarding the extent of damage permitted before accomplishing repair work. Therefore, the FAA cannot give credit for work accomplished in accordance with the original issue of the service bulletin. However, for any procedure which an operator has accomplished previously, the operator may request approval of an alternative method of compliance in accordance with the provisions of paragraph (d) of this AD.

Revision 1 of the service bulletin is essentially identical to Revision 2, which was cited in the proposed AD as the appropriate source of service information for accomplishment of the required actions. Revision 2 simply changes the recommended repetitive inspection interval for detection of no wear or damage. Therefore, this final rule has been revised to add a new NOTE 4 to include Revision 1 of the referenced service bulletins as an additional source of service information for accomplishment of the actions.

Request To Extend Compliance Time and Revise Proposed Inspection

One commenter states that the results of a survey of operators of Model 747 and 767 series airplanes powered by Pratt & Whitney PW4000 series engines, which was conducted by the manufacturer in January 1998, revealed that the most significant wear occurs on the lower auxiliary track assembly. The commenter recommends that the inspection only pertain to that assembly. The commenter also requests that the FAA extend the grace period for inspection of the upper and lower auxiliary track assemblies from 90 days to 18 months for the reason stated previously.

The FAA does not concur with the commenter's requests. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but accomplishment of the required inspection within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. However, under the provisions of paragraph (d) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

In addition, the inspection required by paragraph (a) of the final rule is required to be accomplished in accordance with the inspection procedures specified in Boeing Service Bulletin 747–78A2164, Revision 2, dated December 3, 1998; or Boeing Service Bulletin 767–78A0079, Revision 2, dated December 3, 1998; as applicable. Inspection of only the lower auxiliary track assembly is inadequate, in light of the fact that service experience accumulated over time has shown that excessive wear and damage are present in both the upper and lower auxiliary track assemblies. Therefore, no change to the final rule is necessary in this regard.

Other Related Service Information

One commenter recommends that the FAA include the actions specified in Boeing Service Bulletins 767–78–0005, 767–78–0037, and 767–78–0039 in the proposed rule as additional requirements. These service bulletins describe the replacement of the aluminum auxiliary slider fittings of the original design with new design steel fittings, on Model 767 series airplanes powered by General Electric CF6–80A and Pratt & Whitney JT9D–7R4D series engines. The commenter states that cracking of the aluminum fittings due to fatigue loading could result in breakage of the slider and subsequent separation of a portion of the thrust reverser from the airplane, which could lead to an unsafe condition similar to that addressed in the proposed AD.

The FAA does not concur with the commenter's recommendation. The FAA has determined that since the suggested changes would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. However, the FAA will discuss this issue with the manufacturer at a later date; therefore, no change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 254 airplanes of the affected design in the worldwide fleet. The FAA estimates that 36 Model 747–400 series airplanes and 46 Model 767–200 and –300 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per engine to accomplish the required repetitive inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators of Model 747–400 series airplanes (4 engines per airplane) is estimated to be $34,560, or $960 per airplane, per inspection cycle. The cost impact of the AD on U.S. operators of Model 767 series airplanes (2 engines per airplane) is estimated to be $22,080, or $480 per airplane, per inspection cycle.

Should an operator be required to accomplish the replacement of the auxiliary track assembly, it would take approximately 220 work hours per auxiliary track assembly to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $30,090. Based on these figures, the cost impact of this replacement is estimated to be $43,290 per assembly. There are four auxiliary track assemblies per engine.

Should an operator be required to accomplish the replacement of the liner and slider, it would take approximately 8 work hours per auxiliary track assembly to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this replacement is estimated to be $480 per assembly. There are four auxiliary track assemblies per engine.

The cost impact figures discussed above are based on assumptions that no

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operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–28 Boeing: Amendment 39–11777. Docket 99–NM–208–AD.

Applicability: Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines, line numbers 696 through 1100 inclusive; and Model 767–200 and –300 series airplanes powered by Pratt & Whitney PW4000 series engines, line numbers 1 through 646 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a slider disengaging from the auxiliary track assembly, which could lead to separation of a portion of the thrust reverser from the airplane during flight, possible impact of separated portions on airplane structure, and consequent possible rapid decompression of the airplane, reduced controllability of the airplane, or reduced structural integrity of the fuselage, accomplish the following:

Initial Inspection

(a) Prior to the accumulation of 3,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the upper and lower auxiliary track assemblies on each thrust reverser half of each engine to detect missing segments of the track lip; to detect signs that the slider has disengaged from the track; to detect cracks, gouges, and wear of the liner; and measure the auxiliary track beam dimensions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78A2164, Revision 2, dated December 3, 1998 (for Model 747–400 series airplanes); or Boeing Service Bulletin 767–78A0079, Revision 2, dated December 3, 1998 (for Model 767 series airplanes); as applicable.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Inspections/Corrective Actions

(1) If no discrepancy is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 3,000 flight cycles or 7,000 flight hours, whichever occurs earlier, until paragraph (b) or (c), as applicable, has been accomplished.

(2) If the auxiliary track lip has a missing segment of 3 inches or longer, or longitudinal cracks at the base of the lip, or other indications that the slider has disengaged from the track in the forward 4 inches, prior to further flight, repair in accordance with Part A of the Accomplishment Instructions of the applicable service bulletin. Repeat the detailed visual inspection thereafter at the applicable intervals specified in Part A of the Accomplishment Instructions of the applicable service bulletin, until paragraph (c) of this AD has been accomplished.

(3) If the auxiliary track lip has a missing segment of 3 inches or longer, or longitudinal cracks at the base of the lip, or other indications that the slider has disengaged from the track AFT of the forward four inches, accomplish paragraphs (a)(3)(i) or (a)(3)(ii) of this AD.

(i) Prior to further flight, repair in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin. Repeat the detailed visual inspection thereafter at the applicable intervals specified in Part B of the Accomplishment Instructions of the applicable service bulletin, until paragraph (c) of this AD has been accomplished.

(ii) Accomplish both paragraphs (a)(3)(ii)(A) and (a)(3)(ii)(B) of this AD:

(A) Prior to further flight, deactivate the associated thrust reverser in accordance with Section 78–2 of Boeing Document D6U10151, "Boeing 747–400 Dispatch Deviations Guide," Revision 11, dated March 31, 1998 (for Model 747–400 series airplanes); or Section 78–2 of Boeing Document D630T002, "Boeing 767 Dispatch Deviations Guide," Revision 19, dated May 14, 1999 (for Model 767 series airplanes); as applicable. No more than one thrust reverser on any airplane may be deactivated under the provisions of the paragraph.

Note 3: The airplane may be operated for up to 30 days in accordance with the provisions and limitations specified in the operator's FAA-approved Master Minimum Equipment List, provided that no more than one thrust reverser on the airplane is inoperative.

(B) Within 30 days after deactivation of any thrust reverser in accordance with paragraph (a)(3)(ii)(A) of this AD, the thrust reverser must be repaired in accordance with the Accomplishment Instructions of the applicable service bulletin; once this is accomplished, the thrust reverser may then be reactivated. Repeat the detailed visual inspection thereafter at the applicable intervals specified in the Accomplishment Instructions of the applicable service bulletin, until paragraph (c) of this AD has been accomplished.

Terminating Action

(b) For any auxiliary track assembly on which no discrepancy is detected during any detailed visual inspection required by paragraph (a) of this AD: Replace the liner and slider of the auxiliary track assembly with a new, improved liner and slider, in accordance with Part A of the Accomplishment Instructions of Boeing Service Bulletin 747–78A2164, Revision 2, dated December 3, 1998 (for Model 747–400 series airplanes); or Boeing Service Bulletin 767–78A0079, Revision 2, dated December 3, 1998 (for Model 767 series airplanes); as applicable; at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD. Such action constitutes terminating action for the requirements of this AD for that assembly.

(1) Within 6,000 flight cycles, 14,000 flight hours, or 5 years after the date of the first inspection, whichever occurs earliest; or

(2) Within 4 years after the effective date of this AD.

(c) For any auxiliary track assembly on which any discrepancy is detected during any detailed visual inspection required by paragraph (a) of this AD: Repair the auxiliary track assembly (replace the slider and liner and install a retainer bar), or replace with a new, improved assembly (including a new liner and slider), as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78A2164, Revision 2, dated December 3, 1998 (for Model 747–400 series airplanes); or Boeing Service Bulletin 767–78A0079, Revision 2, dated December 3, 1998 (for Model 767 series airplanes); as applicable; at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD. Such action constitutes terminating action for the requirements of this AD for that assembly.

(1) Within 4,500 flight cycles, 10,000 flight hours, or 3 years after the date of the first repair, whichever occurs earliest; or

(2) Within 2 years after the effective date of this AD.

Note 4: Inspections and repairs accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–78A2164, Revision 1, or Boeing Service Bulletin 767–78A0079, Revision 1, both dated February 5, 1998; are considered acceptable for compliance with the applicable actions specified in this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (a)(3)(ii)(A) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–78A2164, Revision 2, dated December 3, 1998; or Boeing Service Bulletin 767–78A0079, Revision 2, dated December 3, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14436 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–230–AD; Amendment 39–11773; AD 2000–11–24]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires repetitive inspections to detect discrepancies of the downlock support assembly and attachment of the nose landing gear (NLG), and of the bulkhead and adjacent structure in the NLG bay; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct damage of the NLG downlock support, which could result in collapse of the NLG and consequent injury to passengers or flightcrew.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on April 7, 2000 (65 FR 18260). That action proposed to require repetitive inspections to detect discrepancies of the downlock support assembly and attachment of the nose landing gear (NLG), and of the bulkhead and adjacent structure in the NLG bay; and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,400, or $240 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under

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Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–24 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11773. Docket 99-NM–230-AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage of the nose landing gear (NLG) downlock support, which could result in collapse of the NLG, and consequent injury to passengers or flightcrew, accomplish the following:

Repetitive Inspections and Corrective Action

(a) Within 6 months or 750 flight cycles after the effective date of this AD, whichever occurs first, perform a general visual inspection to detect discrepancies (e.g., damage, or loose nuts or bolts) of the NLG downlock support assembly, bulkhead, attachment locations, and adjacent structure in the NLG bay; in accordance with British Aerospace Service Bulletin ATP–53–36, Revision 1, dated February 21, 2000. Thereafter, repeat the inspection at intervals not to exceed 2 years or 3,000 flight cycles, whichever occurs first.

(1) If any damage is found during any inspection in accordance with paragraph (a) of this AD, prior to further flight, repair in accordance with the service bulletin.

(2) If any loose nut or bolt is found during any inspection in accordance with paragraph (a) of this AD, prior to further flight, torque the affected nut or bolt to the limits specified in the service bulletin, in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Inspections and corrective actions accomplished prior to the effective date of this AD in accordance with British Aerospace Service Bulletin ATP–53–36, dated June 9, 1999, are considered acceptable for compliance with the applicable actions specified in this amendment.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with British Aerospace Service Bulletin ATP–53–36, Revision 1, dated February 21, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in British airworthiness directive 006–06–99.

(e) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14435 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–22–AD; Amendment 39–11774; AD 2000–11–25]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–232 and –233 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–232 and –233 series airplanes, that requires replacement of the fuel metering units (FMU) of each engine with modified FMU's. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent an inadvertent increase in thrust, which could result in reduced controllability of the airplane during final approach.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320–232 and –233 series airplanes was published in the **Federal Register** on March 27, 2000 (65 FR 16157). That action proposed to require replacement of the fuel metering units (FMU) of each engine with new FMU's.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Extension of Compliance Threshold

One commenter, an operator, requests that the compliance threshold in the proposed AD be revised to allow the FMU replacements to be completed by December 31, 2001, as recommended in the related Airbus service bulletin. The commenter states that the FMU manufacturer has indicated that its capacity for modification of existing units and manufacture of new units will not be sufficient to meet the 12-month deadline that was specified in the proposed AD.

The FAA concurs with this request. Based on information received since issuance of the proposed AD, the available supply of FMU's will be inadequate to meet the replacement requirements of the AD in the time proposed. In light of this situation, the FAA has determined that extending the compliance time to "18 months after the effective date of this AD" will accommodate the time necessary for affected operators to obtain replacement parts without adversely affecting safety. The FAA considers that this extension will be approximately equivalent to the calendar date suggested by the commenter. The final rule has been revised accordingly.

Reference to FMU Replacement Parts

The same commenter suggests that the proposed AD be revised to refer to replacement of FMU's with "upgraded" or "modified" FMU's. The commenter states that, although the proposed AD requires replacement of the FMU's with "new" FMU's, the existing (old) configuration FMU's also can be modified, reidentified, and reinstalled. The commenter states that rewording the AD will avoid the possible misinterpretation that only new (zero total time) FMU's are acceptable as replacement parts.

The FAA acknowledges that clarification of the requirements is necessary. The FAA's intent in the proposal was to require replacement of the FMU's with FMU's having a different part number, as specified in Airbus Service Bulletin A320–73–1067, dated August 11, 1999. That service bulletin is referenced in the proposed AD as the appropriate source of service information. Although the term "new" could be construed as installing a new unit of the same part number, the FAA notes that replacement with the same part number is not specified in the service bulletin. To avoid confusion, the FAA has revised the final rule to specify that FMU's are to be replaced with "modified" FMU's.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 77 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane (7 work hours per engine) to accomplish the required replacements, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer or vendor at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $64,680, or $840 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–25 Airbus Industrie: Amendment 39–11774. Docket 2000–NM–22–AD.

Applicability: Model A320–232 and –233 series airplanes, certificated in any category, except those airplanes on which Airbus Modification 27146 or 28006 has been installed, or on which Airbus Service Bulletin A320–73–1067 has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified,

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altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an inadvertent increase in thrust, which could result in reduced controllability of the airplane during final approach, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, replace the fuel metering units (FMU) of each engine with modified FMU's, in accordance with Airbus Service Bulletin A320–73–1067, dated August 11, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with Airbus Service Bulletin A320–73–1067, dated August 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–005–143(B), dated January 12, 2000.

(e) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14434 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–53–AD; Amendment 39–11775; AD 2000–11–26]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A330 and A340 series airplanes, that requires repetitive ultrasonic inspections to detect corrosion of the retraction links of the main landing gear (MLG), and replacement of the retraction link with a new retraction link, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct corrosion of the retraction link of the MLG, which could result in reduced structural integrity and possible collapse of the MLG.

DATES: Effective July 18, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on April 7, 2000 (65 FR 18258). That action proposed to require repetitive ultrasonic inspections to detect corrosion of the retraction links of the main landing gear (MLG), and replacement of the retraction link with a new retraction link, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicablity of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane, per inspection cycle.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: (49 U.S.C. 106(g), 40113, 44701.)

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–26 Airbus Industrie: Amendment 39–11775. Docket 2000–NM–53–AD.

Applicability: All Model A330 and A340 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the retraction links of the main landing gear (MLG), which could result in reduced structural integrity and possible collapse of the MLG, accomplish the following:

Repetitive Ultrasonic Inspections

(a) Within 36 months time-in-service on any new retraction link, or within 2 months after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect corrosion of the retraction links left- and right-hand of the MLG, in accordance with Airbus Service Bulletin A330–32–3105, Revision 01, dated December 14, 1999 (for Model A330 series airplanes), or Airbus Service Bulletin A340–32–4148, Revision 01, dated December 14, 1999 (for Model A340 series airplanes), as applicable.

(1) If no corrosion is detected, or if corrosion is detected that is within the limits specified in the applicable service bulletin, repeat the inspection thereafter at intervals not to exceed 6 months.

(2) If any corrosion is detected that is outside the limits specified in the applicable service bulletin, replace the affected retraction link with a new retraction link at the time specified and in accordance with the procedures specified in the applicable service bulletin. Thereafter, repeat the inspection specified in paragraph (a) on any new retraction links, at the time specified in paragraph (a) of this AD.

Note 2: The Airbus service bulletins reference Messier-Dowty Service Bulletins A33/34–32–151, Revision 3, including Appendix A, and A33/34–32–152, Revision 3, including Appendix A, each dated January 11, 2000, as additional sources of service information for accomplishing the repetitive inspections.

Note 3: Although the inspection schedule of this AD applies to both left-and right-hand retraction links of the MLG, replacement of a retraction link, prior to scheduled replacement, would result in subsequent staggered inspections for the remainder of the retraction links.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A330–32–3105, Revision 01, dated December 14, 1999; or Airbus Service Bulletin A340–32–4148, Revision 01, dated December 14, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directives 2000–013–107(B) R1, dated February 9, 2000, and 2000–015–132(B), dated January 12, 2000.

(e) This amendment becomes effective on July 18, 2000.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14433 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–139–AD; Amendment 39–11776; AD 2000–11–27]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This action requires a one-time ultrasonic inspection to detect disbonding of the skin attachments at the stringers and spars of the vertical stabilizer, and repair, if necessary. This action is necessary to detect and correct disbonding of the vertical stabilizer structure, which could result in reduced structural integrity of the spar boxes of the vertical stabilizer.

DATES: Effective June 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 2000.

Comments for inclusion in the Rules Docket must be received on or before July 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this

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location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–139–AD" in the subject line and need not be submitted in triplicate.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Geúneúrale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that localized disbonding has been detected on the skin attachments at the stringers and spars of the spar boxes of the vertical stabilizer. During the manufacturing process, pre-cured parts (attachments of the stringers, spars, and ribs) are installed on the skin panel before the final curing process. A peel ply is used to protect the contact surfaces of the attachment angles of the skin panels of the vertical stabilizer until the pre-cured parts are ready for installation. Investigation revealed that, after the peel ply was removed from the attachment angles, a residue of polymer finish contaminated the contact surfaces of some pre-cured parts. This contamination reduced the adhesive strength of the bond and, in some cases, caused debonding (disbonding) of the skin attachments. This condition, if not detected and corrected, could result in reduced structural integrity of the spar boxes of the vertical stabilizer.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletin A320–55A1027, dated May 12, 2000, which describes procedures for a one-time ultrasonic inspection to detect disbonding of the skin attachments at the stringers and spars of the vertical stabilizer, left-and right-hand sides, and repair, if necessary. If any disbonding (damage) is detected and the area of damage is greater than 300 square millimeters (mm2), or if multiple damage is detected on one specific component (stringer-spar attachment), the repair involves installing additional fasteners in the affected areas. The amount of damage determines the number of additional fasteners to be installed in the affected area.

Additionally, Airbus Service Bulletin A320–55A1027 references Airbus Service Bulletin A320–55–1026, Revision 01, dated May 20, 1999, which, for certain airplanes, describes procedures for prior or concurrent modification of the vertical stabilizer to ensure proper reinforcement of the structure-skin attachments.

The DGAC classified Airbus Service Bulletin A320–55–A1027 as mandatory and issued French airworthiness directive T2000–208–148(B) R1, dated May 17, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct disbonding of the vertical stabilizer structure, which could result in reduced structural integrity of the spar boxes of the vertical stabilizer. This AD requires a one-time ultrasonic inspection to detect disbonding of the skin attachments at the stringers and spars of the vertical stabilizer, and repair, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

Interim Action

This is considered interim action. The manufacturer has advised that it is currently developing a repetitive inspection program to positively address the unsafe condition addressed by this AD. Once this repetitive inspection program is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–139–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–11–27 Airbus Industrie: Amendment 39–11776. Docket 2000–NM–139–AD.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A320–55A1027, dated May 12, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct disbonding of the vertical stabilizer structure, which could result in reduced structural integrity of the spar boxes of the vertical stabilizer, accomplish the following:

Ultrasonic Inspection

(a) Within 60 days after the effective date of this AD, perform a one-time ultrasonic inspection to detect disbonding (damage) of the skin attachments at the stringers and spars of the vertical stabilizer, left-and right-hand sides, in accordance with Airbus Service Bulletin A320–55A1027, dated May 12, 2000.

(1) If no damage is detected or if a single area of damage is less than or equal to an area of 300 square millimeters (mm2), no further action is required by this AD.

(2) If any damage is detected and the area of damage is greater than 300 mm2, or if multiple damage is detected on one specific component (stringer/spar attachment), prior to further flight, accomplish applicable repairs in accordance with the service bulletin.

Modification (for Certain Airplanes)

(b) For airplanes with manufacturer's serial numbers listed in paragraph B of the Planning Information of Airbus Service Bulletin A320–55A1027, dated May 12, 2000: Prior to or concurrent with the ultrasonic inspection required by paragraph (a) of this AD, modify the vertical stabilizer to ensure proper reinforcement of the structure/skin attachments, in accordance with Airbus Service Bulletin A320–55–1026, Revision 01, dated May 20, 1999.

Note 2: Accomplishment of the modification required by paragraph (b) of this AD, prior to the effective date of this AD, in accordance with Airbus Service Bulletin A320–55–1026 dated March 29, 1999, is considered acceptable for compliance with the applicable requirement of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A320–55A1027, dated May 12, 2000, and Airbus Service Bulletin A320–55–1026, Revision 01, dated May 20, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive T2000–208–148(B) R1, dated May 17, 2000.

(f) This amendment becomes effective on June 28, 2000.

Issued in Renton, Washington, on June 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14432 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–38–AD; Amendment 39–11779; AD 2000–12–01]

RIN 2120–AA64

Airworthiness Directives; Airworthiness Directives; CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5B, –5C, and –7B Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain CFM International (CFMI) CFM56 series turbofan engines,

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that requires revisions to the Airworthiness Limitations Section of applicable Engine Shop Manuals (ESMs). These revisions incorporate required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This amendment requires the addition of CFM56 engine models to the applicability section of the AD, and the introduction of additional inspections. This amendment is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date December 11, 2000.

ADDRESSES: The Rules Docket may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Robert Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–08–16, Amendment 39–11122 (64 FR 17962, April 13, 1999), applicable to CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines, was published in the **Federal Register** on October 7, 1999 (64 FR 54589). That action proposed to require the addition of CFM56 engine models to the applicability section of the AD and the introduction of additional inspections.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Effective Date

Several commenters request that the effective date of the AD be set to allow for sufficient time for publication of the procedures, procurement of the equipment, and training.

The FAA agrees. The effective date for the final rule will be set at 180 days after publication in the **Federal Register**.

Extend Notice of Proposed Rulemaking (NPRM) Comment Period

Two commenters request that the NPRM comment period be extended until after the proposed inspections are published, to allow time for the operators to review the specific inspections that will be required.

The FAA does not agree. The nature and scope of the added inspections are not significantly different from existing inspections. Additionally, the effective date of this AD has been set to 180 days after publication of the AD, to allow time for the specific procedures to be published. Operators may submit comments to the docket file on the specific procedures, once they are published; the FAA will then consider an extension of the effective date or additional rulemaking, as necessary. The FAA does not believe that this final rule should be delayed pending the publication of the inspection procedures.

NPRM Preamble

One commenter notes that the preamble for the NPRM supersedure does not exactly track the preamble for the NPRM for the current AD. Specifically, the commenter notes that the supersedure preamble does not contain the explanation as to when the enhanced disk inspections are required; the commenter is concerned that the inspection program is being changed from the current AD. The commenter requests that the FAA change the preamble for the NPRM supersedure to reflect the content of the NPRM published for the current AD.

The FAA does not agree. The inspection program established by the current AD remains unchanged. This proposal does not change how air carriers must manage the inspection program. As stated in the NPRM for the current AD, future ADs may be issued to introduce additional intervention strategies in order to further reduce uncontained engine failures. This could include ADs that add new parts to the list of parts inspected. The inspection program established by the current AD, however, will remain in place unless specifically altered in a future proposal.

Unsafe Condition

One commenter objects to the language in the preamble of the NPRM supersedure for the second phase of enhanced inspections, which includes a finding of an "unsafe condition." The commenter requests that the term "unsafe condition" be deleted and replaced with the justification language from the original NPRM.

The FAA does not agree. This commenter does not disagree with the proposed rule itself, but with the term "unsafe condition" contained in the preamble to the NPRM. It is not the intent of the FAA to completely change the enhanced disk inspection program established by the current AD, which evolved as a cooperative effort between the FAA and industry. This intervention strategy was designed to reduce the number of uncontained engine failures by mandating enhanced nondestructive inspections of critical components that could most likely result in a hazard to the airplane in the event of a disk failure. Since the engine maintenance manuals did not mandate these enhanced inspections, the current AD was necessary to establish the inspection program as an airworthiness limitation. Regardless of the fact that it was not stated explicitly in the original NPRM, the FAA determined that an "unsafe condition" existed because the engine maintenance manuals did not contain enhanced inspections as an airworthiness limitation. The intent was not to imply any defect in the actual engine hardware, but simply to state that the maintenance manuals, which form part of the approved engine design, must be revised to mandate the enhanced inspections. The supersedure repeats that finding with respect to the additional parts being added to the enhanced inspection program. Because a finding of an "unsafe condition" is a requirement for the issuance of an AD, future NPRMs to add parts to the program will also include that finding.

Cycles in Service

One commenter requests that the FAA change the cycles in service in paragraph (2)(ii) of the mandatory inspections language contained in paragraph (a) from 100 cycles to 300 cycles. The commenter believes that a 300 cycle interval is more representative of its A-check interval.

The FAA does not agree. The FAA is aware that although cracks can be missed during part inspections, the probability of detecting a crack increases each time a part is processed through an inspection line. Commonly used on-condition maintenance plans make it likely that a given part could be returned to service for thousands of cycles without the need for additional focused inspection. The FAA established the 100 cycle threshold in recognition of the two opposing aspects of part removal and inspection, i.e., a need for a brief exemption period following the performance of mandatory inspections and the benefits of increased frequency of inspection. The time between A-check intervals or crack growth time was not a factor in the determination of the threshold for exempting parts from focused inspection. The threshold is based strictly on keeping the frequency of mandatory inspection as high as practical, to increase the probability of crack detection while providing a brief window of exemption from mandatory inspection if certain conditions are met. The FAA will not revise paragraph (2)(ii) of the mandatory inspections language in paragraph (a) of the final rule.

Estimated Annual Cost

One commenter suggests that the total estimated annual cost of $870 per engine for the proposed inspections is not accurate. The commenter suggests that a total annual cost of $2,271 per engine is more accurate, based on its estimation of piece-part exposure rate.

The FAA does not agree. The total estimated annual cost per engine noted in the economic analysis of the NPRM is representative of the piece-part exposure rate of all affected U.S. operators, not one specific operator. The FAA will not revise the economic analysis of the final rule.

Addition to Applicability Section

One commenter suggests adding the Airbus Industrie A318 and Boeing C–135 (military) series airplanes to the applicability section of the final rule.

The FAA partially agrees. Currently, no A318 aircraft are powered by CFM56 engines; this series will not be added to the final rule. The applicability section of the final rule will be revised to add the Boeing C–135 (military) series airplanes; the Boeing KE–3 (military) and RC–135 (military) series airplanes will also be added, to be complete.

Clarification of Paragraph (e)

One commenter requests that the FAA delete the phrase "of this chapter" from the first sentence of paragraph (e) of the compliance section, to improve the clarity of this paragraph.

The FAA agrees. The words "of this chapter" have been deleted from paragraph (e).

"Time Limits Section"

One commenter recommends replacing references to the "Time Limits Section" with references to the more general "Airworthiness Limitations Section," since Chapter 5 now contains two subsets, 05–11–00 for life limits and 05–21–00 for mandatory inspections. The commenter also recommends replacing the references to "chapter 05–11–00" with "chapter 05–00–00."

Another commenter recommends replacing references to the "Time Limits Section" with "Life Limits Section," to eliminate confusion. The commenter also recommends replacing references to "chapter 05–11–00" with "chapter 05–21–00," because Chapter 5 now contains a new section, 05–21–00, for the mandatory inspections.

The FAA partially agrees. The references to the "Time Limits Section" have been changed in the final rule to the more general "Airworthiness Limitations Section." The references to "chapter 05–11–00" have been changed in the final rule to "chapter 05–00–00."

Revisions to the Table

Three commenters suggest revising the table in paragraph (1) of the mandatory inspections language contained in paragraph (a) of the proposed AD to correct minor typographical errors to eliminate confusion. The suggested revisions are as follows:

- Replace "Bold" with "Bolt" in the Inspection column for the CFM56–2/–2A/–2B/–3/–3B/–3C HPT Disk;
- Replace "Bold" with "Rim Bolt" in the Inspection column for the CFM56–2/–2A/–2B/–3/–3B/–3C HPT Disk; and
- Replace "Disk" with "Seal" in the Inspection column for the HPT Front Rotating Air Seal.

The FAA agrees. The FAA has corrected the typographical errors and has also made the following corrections:

- Replaced "–B" with "–2B" in the Engine models column for the HPT Disk; and
- Capitalized the word "rotating" in the Part name column for the CFM56–5/–5B/–5C/–7B.

Adoption of the Rule as Proposed

Three commenters support the adoption of the rule as proposed.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 6,953 engines of the affected design in the worldwide fleet. The FAA estimates that 2,453 engines installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per engine for the fan disk inspection, 13 work hours for the HPT disk inspection, and 13 work hours for the HPT front rotating air seal inspection. The average labor rate is $60 per work hour. Using average shop visitation rates, 554 fan disks, 891 HPT disks, and 563 HPT front rotating air seals are expected to be affected per year. The total estimated annual cost of the AD on U.S. operators is approximately $2,131,320, or $870 per engine.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11122 (64 FR 17962, April 13, 1999) and by adding a new airworthiness directive,

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Amendment 39–11779, to read as follows:

2000–12–01 CFM International: Amendment 39–11779. Docket No. 98–ANE–38–AD. Supersedes AD 99–08–16, Amendment 39–11122.

Applicability: CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5B, –5C, and –7B series turbofan engines, installed on but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, Airbus Industrie A319, A320, A321, and A340 series, as well as Boeing C–135, E–3, E–6, KC–135, KE–3, and RC–135 (military) series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (chapter 05–00–00) of Engine Shop Manual (ESM) CFMI–TP.SM.4 for CFM56–2 series engines, ESM CFMI–TP.SM.6 for CFM56–2A/–2B series engines, ESM CFMI–TP.SM.5 for CFM56–3/–3B/–3C series engines, ESM CFMI–TP.SM.7 for CFM56–5 series engines, ESM CFMI–TP.SM.9 for CFM56–5B series engines, ESM CFMI–TP.SM.8 for CFM56–5C series engines, and ESM CFMI–TP.SM.10 for CFM56–7B series engines, and for air carrier operations, revise the approved continuous airworthiness maintenance program, by adding the following:

"MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the Inspection/Check section instructions provided in the applicable manual sections listed below:

Engine models	Part name	Engine manual section	Inspection
All	Fan Disk (All Part Number (P/N))	72–21–03	Disk Fluorescent Penetrant Inspection (FPI) and Disk Bore and Dovetail Eddy Current Inspection (ECI).
CFM56–2/–2A/–2B/–3/–3B/–3C	High Pressure Turbine (HPT) Disk (All P/N).	72–52–02	Disk FPI and Disk Bore and Rim Bolt Hole(s) ECI.
CFM56–5/–5B/–5C/–7B	HPT Disk (All P/N)	72–52–02	Disk FPI and Disk Bore ECI.
CFM56–2A/–2B/–3/–3B/–3C	HPT Front Rotating Air Seal (All P/N)	72–52–03	Seal FPI and Seal Bore and Bolt Hole(s) ECI.
CFM56–5/–5B/–5C/–7B	HPT Front Rotating Air Seal (All P/N)	72–52–03	Seal FPI and Seal Bore ECI and Seal Bolt Hole(s) Focused FPI.
CFM56–2	HPT Front Rotating Air Seal (All P/N)	72–52–03	Seal FPI and Seal Bore ECI and Seal Bolt Hole(s) ECI *or* focused FPI as applicable.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Airworthiness Limitations Section of the manufacturer's ESM.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with § § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) must maintain records of the mandatory inspections that result from revising the Airworthiness Limitations Section of the applicable ESM and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the ESM changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the applicable ESM.

Effective Date

(f) This amendment becomes effective on December 11, 2000.

Issued in Burlington, Massachusetts, on June 5, 2000.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–14788 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–24]

Establishment of Class E Airspace; Yukon-Kuskokwim Delta, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace over the Yukon-Kuskokwim (Y–K) Delta area in southwest Alaska in support of the Capstone Research and Development (R&D) project. Specifically, this action establishes controlled airspace extending from 1,200 feet above ground level (AGL) upwards to the base of the existing Class E airspace of 14,500 feet above mean sea level (MSL) within an area bounded by lat. 58°25′36″ N long. 158°00′W, to lat. 57°50′ N long. 158°00′ W, to lat. 57°50′ N long. 156°00′ W, to lat. 64°00′ N long. 156°00′ W, to lat. 64°00′ N long. 161°41′ 24″ W, then via the 12 nautical mile limit to the point of beginning. This rule will (1) provide adequate controlled airspace for commercial air carriers conducting Instrument Flight Rules (IFR) operations over southwest Alaska and (2) validate new operational procedures and equipment in the IFR environment.

EFFECTIVE DATE: 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at.

SUPPLEMENTARY INFORMATION:

History

On February 24, 2000, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace over the Yukon-Kuskokwim Delta area in southwest Alaska was published in the **Federal Register** (65 FR 9227). The purpose of this rule is to create adequate controlled airspace and infrastructure for IFR operations in the Yukon-Kushkokwim Delta area where uncontrolled airspace currently exists. This controlled airspace is needed to validate new operational procedures and equipment in the IFR environment in support of the Capstone R&D project. Additionally, this rule will enhance flight safety, reduce the potential for midair collisions, improve operational efficiencies, and better manage air traffic operations.

The establishment of Class E airspace in this rule will impact on pilots' flight visibility and cloud avoidance requirements while flying under Visual Flight Rules (VFR), during the day above 1,200 feet AGL and below 10,000 feet MSL. The pilot's flight visibility requirement increases to three (3) statute miles. VFR weather minimums are shown in the following table extracted from 14 CFR 91.155 Basic VFR weather minimums:

BASIC VFR WEATHER MINIMUMS

	Flight visibility (statute mile(s))	Distance from clouds
Class G (uncontrolled):		
1,200 feet or less AGL, Day	1	Clear of clouds.
1,200 feet or less AGL, Night	3	500 feet below. 1,000 feet above. 2,000 feet horizontal.
1,200 feet or more and less than 10,000 feet MSL, Day	1	500 feet below. 1,000 feet above. 2,000 feet horizontal.
1,200 feet or more and less than 10,000 feet MSL, Night	3	500 feet below. 1,000 feet above. 2,000 feet horizontal.
More than 1,200 feet AGL and at or above 10,000 feet MSL	5	1,000 feet below. 1,000 feet above. 1 statute mile horizontal.
Class E (controlled):		
Less than 10,000 MSL	3	500 feet below. 1,000 feet above. 2,000 feet horizontal.
At or above 10,000 MSL	5	1,000 feet below. 1,000 feet above. 1 statute mile horizontal.

Environmental Review

On February 25, 1999, the FAA initiated an environmental review, 99–AAL–024–NR, seeking public comment on the proposal to establish Class E airspace to encompass the Capstone Demonstration Area. In the environmental review solicitation, the FAA stated the desire to design and establish Class E airspace that will facilitate the development of the Capstone Demonstration and the transition to the future National Airspace System (NAS) Architecture with minimal impact on the environment. Significant environmental issues were not identified during the scoping process. Thus, this activity falls within a category of actions normally categorically excluded from documentation in an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

On April 7, 1999, the FAA conducted a Preliminary Environmental Review. This review was conducted in accordance with policies and procedures in Department of Transportation Order 5610.1C, Procedures for Considering Environmental Impacts, Order 1050.1, and is in compliance with the National Environmental Policy Act of 1969 and in accordance with the regulations promulgated by the Council on Environmental Quality, 40 CFR 1500 *et seq.* Thus, on April 13, 1999, the FAA signed the Categorical Exclusion Declaration. This review enabled the

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FAA to exclude this proposed action from further environmental documentation according to Order 1050.1, Policies and Procedures for Considering Environmental Impacts.

Comments Received on the Proposal

Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the FAA. The State of Alaska, Department of Fish and Game, Habitat and Restoration Division along with Larry's Flying Service wrote letters in support of the proposal. Larry's Flying Service requested clarification on some issues which the FAA deemed beneficial to address in the final rule.

(1) What is the intended meaning and understanding of "validate new operational procedures and equipment in the IFR environment?" Initially the Anchorage Air Route Traffic Control Center (ARTCC) controllers will provide "radar like" services to Capstone equipped aircraft. The controllers will use five (5) mile radar separation criteria with Automatic Dependent Surveillance—Broadcast (ADS–B) position reports. Initial evaluation of ADS data integrity indicates that smaller distance criteria may be attainable, however it is desirable to gain more experience with this technology before developing new procedures in this application. The ADS reports will be used to augment radar reports where radar coverage exists, and to supplement radar beyond and below existing radar coverage.

Validating new operational procedures and equipment includes the active participation by air carriers using the new equipment in their aircraft. Each air carrier, participating in the Capstone project, will work with the FAA to develop and incorporate new procedures into their general operations manuals and training programs. Each procedure developed will help validate whether the new equipment performs in a manner consistent with the manufacturers operating and performance specifications and safety. Adherence to newly developed procedures and providing feedback are vital elements of the validation process. Examples include evaluation of ADS–B generated traffic information as a collision avoidance tool in the instrument flight environment. Another example is the validation of ADS–B for "radar like" traffic management. Pilots and controllers alike will gain knowledge of ADS–B and learn how each group plans to use the information generated in order to integrate this technology as an effective element of the NAS.

(2) What is the view of the FAA at this time with respect to "new GPS non-precision instrument approaches" as pertaining to VFR Capstone equipped aircraft? Most Capstone equipped aircraft are not capable of operating IFR under part 121 or part 135 due to manufacturing or regulatory limitations, or equipment installed not meeting IFR requirements. The GPS installed with the Capstone avionics package is manufactured under TSO–129, and therefore fully capable of being operated in the IFR environment. It was the intention of the Capstone project to have the greatest positive impact on safety as possible by providing equipment to owner's that could be easily incorporated into VFR or IFR aircraft alike. Those carriers who wished to self equip their aircraft to meet IFR requirements could use Capstone GPS as a part of the required IFR equipment. The new GPS approaches and co-located AWOS sites, parts of the Capstone project, support safety and expand the IFR infrastructure in Alaska.

(3) How can an operator elect to support new operational procedures and new equipment for IFR operation if the procedures and equipment are not made known to the operator? IFR operations using the Capstone avionics will be supported by achieving Level C certification (needed for IFR operations). The ARTCC Air Traffic Control (ATC) automation system is being upgraded to provide aircraft position information to controllers to enable them to provide navigation assistance and separation from other radar and ADS identified aircraft after level C certification is achieved. The FAA will coordinate all new operational procedures before being implemented. All new equipment was coordinated with industry representatives in Alaska before final selection was made. Information on new equipment and procedures will be posted on the Capstone website (http://www.faa.gov/capstone) to aid in distribution.

(4) What is the rationale for the FAA's determination that this rule is a not a significant regulatory action and not a significant rule? The Department of Transportation (DOT) Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations (May 22, 1980), requires a regulatory analysis for each proposed regulation that will (1) result in an effect on the economy of $100 million or more; (2) result in a major effect on the general economy in terms of costs, consumer prices, or production; (3) result in a major increase in costs or prices for individual industries, levels of government, or geographic regions; (4) have a substantial impact on the U.S. balance of trade; or (5) be the result of the secretary or head of the initiating office determining a need for such analysis. In addition to the requirement in DOT Order 2100.5, Executive Order 12866 requires a regulatory analysis for significant proposed regulations that have an annual effect on the economy of $100 million or more or adversely effect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Any regulation or other action that does not meet the above criteria and any regulation that is routine, frequent, or procedural may be issued by the FAA Administrator without review or approval by the DOT Secretary. The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires the FAA to consider the special needs and concerns of small entities. The FAA is required to prepare and publish an initial regulatory flexibility analysis describing the effect of a proposed rule on small entities for those proposed regulations that would have a significant economic impact on a substantial number of small entities. Where appropriate, the FAA must consider alternatives the would achieve its goals while minimizing the burdon on small entities. If the FAA determines that the proposed regulation would not have a significant economic impact, a factual basis for the determination must be provided.

(5) What operational changes does an operator in this environment need to apply for as pertaining to the Operators Operations Specifications as approved and issued the Operator by the FAA? Operators intending to use ADS–B operationally will need to seek guidance from the FAA Certificate holding district office that's assigned. Active procedural use of cockpit displays of traffic information (requiring pilots to use targets generated on cockpit displays) for visual acquisition, in trail maneuvers; station keeping; enhanced see and avoid; reduced separation standards; long range conflict management; or conflict detection and avoidance may require operations specification issuance.

(6) Does the FAA propose additional training and if so what type of training and testing? Controllers have received training in the new ATC ADS target display capability. FAA technicians will receive training in ground equipment theory and function to enable them to ensure proper equipment operation and performance. Training programs have been developed and given to carriers participating in the Capstone project.

Carriers should adapt the training material provided to meet their individual needs and requirements, and coordinate with their assigned FAA inspector.

(7) Will this "new operational procedures under IFR" apply to all IFR operators and pilots under FAA supervision? When will these new operational procedures be implemented? New operational procedures will apply to those aircraft equipped to utilized these procedures. Government acceptance testing of the new ATC functional enhancements has been completed. Anchorage ARTCC will be able to begin Initial Operations Capability evaluation on June 15, 2000. At this point controllers will begin to provide VFR advisories and traffic alerts to participating aircraft on a limited basis to validate their ability to conduct these operations. In August 2000, the ARTCC will go to Operational Readiness Demonstration, during which time the controllers will have the new ADS functional capabilities available on a full time basis. This is a higher level of validation leading to commissioning. It is expected that full IFR services, the final commissioning step, will be accomplished when the avionics achieves level C certification in November 2000. Eleven new stand alone GPS approaches are presently found in government and industry publications. Eight more GPS approaches are scheduled to be published by the end of August 2000. Each airport upgrading from VFR to IFR status is being provided with an Automated Weather Observing System (AWOS) in support of the Part 121 and Part 135 operating rules regarding weather reporting.

Comments were received urging the proposal be withdrawn for the following rationale: (1) Increased visibility and distance from clouds requirement above 1,200 feet AGL will hinder aircraft movement. Pilots would drop below 1,200 feet AGL, congesting this airspace and risk controlled flight into terrain or a mid-air collision, rather than request an IFR clearance and mess with positive control. (2) Radio communications via Remote Communications Air/Ground (RCAG) is limited in this area even incorporating Remote Communications Outlets (RCO). Pilots may not be able to contact an Air Traffic Control facility. (3) The workload on controllers at Automated Flight Service Station (AFSS) facilities will increase via relaying IFR and Special VFR clearances and other services. AFSS are not staffed to handle the increased radio communications. (4) Since only commercial aircraft will be equipped with the Capstone avionics and general aviation (GA) will be unable or unwilling to obtain clearances, there will be a combination of IFR and VFR aircraft operating within the same airspace during IFR conditions. Capstone participants cannot be assured separation from VFR and IFR traffic. (5) Poor pilot judgment in weather conditions below minimums does not warrant establishing a procedure that is extremely restrictive and alienates the small engine, GA pilot over such a large area of Alaska. (6) Capstone is doomed to failure because the FAA does not have the budget to allow compliance by all, nor maintain the data link infrastructure necessary for consistent reliability and future upgrades.

FAA Response to Comments

The FAA disagrees with the comments for withdrawal of the proposal for the following reasons:

(1) The visibility requirement above 1200 feet AGL will increase from one (1) statue mile in Class G airspace to three (3) statue miles in Class E airspace, however, cloud clearance requirements above 1200 feet AGL remain unaffected. These visibility increases provide a safety buffer needed when IFR and VFR flights operate in the same airspace. Capstone is a joint FAA/industry project initiated to reduce the current Alaskan air taxi accident rate which is six (6) times the national average. The airports receiving new instrument procedures were selected by a group of industry representatives comprising a broad spectrum of both GA and commercial interests. The required airspace actions, with the resulting increase in visibility requirements, are a result of joint planning and coordinating with these industry groups.

(2) RCAG/RCO coverage—ADS–B "radar-like" services are being implemented in a manner to utilize known air to ground radio coverage capabilities. Where it becomes known, in the implementation of this service, that additional voice communications coverage is needed, projects will be initiated to accommodate that need.

(3) The installation of Capstone equipment into an aircraft does not change the Federal Aviation Regulations (FARs) under which the aircraft must be operated. Those aircraft properly equipped to conduct flight in instrument conditions with a rated crew may be expected to file for IFR services at any time the weather deteriorates below VFR minima. There will not be any waivers granted to Capstone equipped aircraft to operate VFR in IFR conditions as this would be a violation of the governing FARs. Capstone is a safety initiative. By introducing moving map terrain, NOTAM, and weather information to aircraft in flight, it is anticipated that accident rates may be reduced. Because aircraft will have increased access to information normally provided by flight service specialists through voice transmission, specialist workload may actually decrease in some areas.

(4) One of the Capstone program objectives in support of the RTCA Free Flight Steering Committee is to provide participating aircraft the capability of "enhanced see and avoid" commonly referred to as Traffic Information Services (TIS). Initially, Capstone equipped aircraft will be able to display other similarly equipped aircraft, and in the foreseeable future radar tracked aircraft information will be uplinked to Capstone equipped aircraft as well. This information will be available to Capstone aircraft at all times, IFR or VFR, as long as they are within the service volume of a Capstone Ground Broadcast Transceiver. This should assist the pilot in performing their primary responsibility of "seeing and avoiding" other aircraft.

(5) The Capstone project cannot overcome all NAS infrastructure deficiencies and that is not the project's intent. Capstone project is a safety initiative implemented to demonstrate the advantages inherent in emerging technology and afford those benefits to Alaskans on a geographically expanding basis.

(6) The Capstone program is fully funded under the FAA's "Facilities and Equipment" budget process. The program is presently funded for three years with planning under way for at least two additional years. Current program projections are to expand the program to serve the entire State of Alaska. Capstone infrastructure enhancements include weather reporting stations and new GPS based approach development as well as increasing service to the public by providing "radar like services" using ADS–B. Capstone is a fully funded project designed to allow a real world validation of a mixture of equipment to improve safety. Newly installed AWOS sites fill the weather needs at previously unserved airports and close gaps in the present weather reporting areas allowing for better weather forecasting and real time weather dissemination to working flight crews. Ground based equipment installed in the field will be certified and maintained to appropriate NAS standards.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83.

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The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be revised and published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 (part 71) establishes Class E airspace within the Yukon-Kushkokwim Delta area in southwest Alaska. The intended effect of this rule is to create adequate controlled airspace and infrastructure for IFR operations within the in the Yukon-Kushkokwim Delta area where uncontrolled airspace currently exists. This controlled airspace is needed to validate new operational procedures and equipment in the IFR environment in support of the Capstone R&D project. Additionally, this rule will enhance flight safety, reduce the potential for midair collisions, improve operational efficiencies, and better manage air traffic operations.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Yukon-Kuskokwim Delta, AK [New]

That airspace extending upward from 1,200 feet above the surface within the area bounded by lat. 58° 25′ 36″ N long. 158° 00′ W, to lat. 57° 50′ N long. 158° 00′ W, to lat. 57° 50′ N long. 156° 00′ W, to lat. 64° 00′ N long. 156° 00′ W, to lat. 64° 00′ N long. 161° 41′ 24″ W, then via the 12 nautical mile limit to the point of beginning.

* * * * *

Issued in Anchorage, AK, on June 6, 2000.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 00–14861 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 00–ASO–8]

RIN 2120–AA66

Amendment to Time of Designation for Restricted Area R–7104 (R–7104), Vieques Island, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the time of designation for Restricted Area R–7104 (R–7104), Vieques Island, PR., from "Intermittent, 0600–2300 local time, daily; other times by NOTAM 24 hours in advance" to "As activated by NOTAM 24 hours in advance." The FAA is taking this action in response to a request from the United States Navy (USN) and the FAA Southern Regional Air Traffic Division.

EFFECTIVE DATE: 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of a review of restricted area operations, the USN and the FAA Southern Regional Air Traffic Division requested to change the requirements for the activation of R–7104, Vieques Island, PR. This action will simplify the Times of Designation portion of FAA Order 7400.8.

The Rule

This amendment to 14 CFR part 73 changes the time of designation for R–7104, Vieques Island, PR, by removing the words "Intermittent, 0600–2300 local time, daily; other times by NOTAM 24 hours in advance," and inserting the words "As activated by NOTAM 24 hours in advance."

Since this is an administrative change and does not affect the boundaries, designated altitudes, or activities conducted therein; I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Section 73.71 of part 73 was republished in FAA Order 7400.8G, dated September 1, 1999.

The FAA has determined that this action only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

In accordance with FAA Order 1050.1D, "Polices and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969, this action is not subject to environmental assessments and procedures.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.71 [Amended]

2. § 73.71 is amended as follows:

* * * * *

R–7104 Vieques Island, PR [Amended]

By removing the words "Intermittent, 0600–2300 local time, daily; other times by NOTAM 24 hours in advance" and inserting the words "As activated by NOTAM 24 hours in advance."

* * * * *

Issued in Washington, DC, June 5, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–14859 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 990701179–0167–03]

RIN 0694–AB90

Expansion of License Exception CIV Eligibility for "Microprocessors" Controlled by ECCN 3A001 and Graphics Accelerators Controlled by ECCN 4A003

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export licensing requirements. Consistent with technological changes, this interim rule adjusts the License Exception CIV eligibility level for microprocessors controlled by Export Control Classification Number (ECCN) 3A001 from a composite theoretical performance (CTP) of equal to or less than 3500 million theoretical operations per second (MTOPS) to a CTP of equal to or less than 4500 MTOPS. This rule also adjusts the License Exception CIV eligibility level for graphics accelerators controlled by Export Control Classification Number (ECCN) 4A003 from 75 million vectors per second to 100 million vectors per second. License Exception CIV authorizes exports and reexports to civil end-users for civil end-uses in Country Group D:1. CIV may not be used for exports or reexports to military end-users or end-uses.

To avoid unwarranted burdens on industry and keep the export control levels for commodity microprocessors at controllable levels, the Administration is committed to reviewing the CIV level on an ongoing basis. Based on industry projections, substantially more powerful commodity microprocessors will be released later this year. In light of this information, the Administration will continue to monitor the microprocessor market, and as circumstances warrant, we anticipate raising the CIV eligibility levels from 4500 MTOPS to a level somewhere between 5500 and 7000 MTOPS to account for the more powerful microprocessors entering mass production.

The exponential advance of microprocessor technology directly affects High Performance Computer (HPC) technology. Accordingly, the Administration is also committed to reviewing HPC control levels regularly. This summer, we will once again assess the HPC market to determine at what level computers are no longer controllable due to wide commercial production and dissemination of the computers and their components. Additionally, we will determine if the individual licensing levels for computers exported to Tier 2 and Tier 3 countries require adjustment. Finally, we will continue to examine whether CTP remains a viable metric for determining HPC export controls.

DATES: This rule is effective June 13, 2000. Comments on this rule must be received on or July 13, 2000.

ADDRESSES: Written comments should be sent to Hillary Hess, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: James Lewis, Director, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101, August 13, 1999).

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations.

Accordingly, the Department encourages interested persons who wish

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to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close on July 13, 2000. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6883, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from the Bureau of Export Administration Freedom of Information Officer at the above address or by calling (202) 482–0500.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730 through 799) is amended as follows:

1. The authority citation for part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999 (3 CFR, 1999 Comp. 302 (2000)).

PART 774—AMENDED

Supplement No. 1 to Part 774—Amended

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended by revising the License Exceptions section to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

* * * * *

License Exceptions

LVS: N/A for MT
$1500: 3A001.c
$3000: 3A001.b.1, b.2, b.3, .d, .e and .f
$5000: 3A001.a, and .b.4 to b.7
GBS: Yes, except 3A001.a.1.a, b.1, b.3 to b.7, .c to .f
CIV: Yes, except 3A001.a.1, a.2, a.3.a (for processors with a CTP greater than 4500 Mtops), a.5, a.6, a.9, a.10, and a.12, .b, .c, .d, .e, and .f

* * * * *

3. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A003 is amended by revising the License Exceptions section to read as follows:

4A003 "Digital computers", "electronic assemblies", and related equipment therefor, and specially designed components therefor.

* * * * *

License Exceptions

LVS: $5000; N/A for MT and "digital" computers controlled by 4A003.b and having a CTP exceeding 10,000 MTOPS; or "electronic assemblies" controlled by 4A003.c and capable of enhancing performance by aggregation of "computing elements" so that the CTP of the aggregation exceeds 10,000 MTOPS.
GBS: Yes, for 4A003.d, .e, and .g and specially designed components therefor, exported separately or as part of a system.
CTP: Yes, for computers controlled by 4A003.a, .b and .c, to the exclusion of other technical parameters, with the exception of parameters specified as controlled for Missile Technology (MT) concerns and 4A003.e (equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits of 3A001.a.5.a). See § 740.7 of the EAR.
CIV: Yes, for 4A003.d (having a 3–D vector rate less than or equal to 100 M vectors/sec), .e, and .g.

* * * * *

Dated: June 8, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–14903 Filed 6–12–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 92F–0443]

Indirect Food Additives: Adhesives and Components of Coatings; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its food additives regulations to correct two typographical errors in the Chemical Abstracts Service (CAS) registry number. This document corrects those errors.

DATES: This rule is effective June 13, 2000.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 11, 2000 (65 FR 6889), the agency amended the food additive regulations to provide for the safe use of: (1) 1,2-dibromo-2,4-dicyanobutane, and (2) a mixture of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one, optionally containing magnesium nitrate, as antimicrobial agents in emulsion-based silicone coating formulations. The CAS registry number for 2-methyl-4-isothiazol-3-one was incorrectly published. The agency is amending both 21 CFR 175.300 and 175.320 to correct those errors.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 175.300 [Amended]

2. Section 175.300 *Resinous and polymeric coatings* is amended in paragraph (b)(3)(xxxiii), under the entry "5-Chloro-2-methyl * * *", by removing "(CAS Reg. No. 2628–20–4)" and adding in its place "(CAS Reg. No. 2682–20–4)".

3. Section 175.320 is amended in the table in paragraph (b)(3) by revising the entry under item (iii) for "5–Chloro-2-methyl-4-isothiazolin-3-one" under the headings "List of substances" and "Limitations" to read as follows:

§ 175.320 Resinous and polymeric coatings for polyolefin films.

* * * * *

(b) * * *
(3) * * *

List of substances	Limitations
• • • • • • •	
(iii) Adjuvants (release agents, waxes, and dispersants):	
• • • • • • •	
5-Chloro-2-methyl-4-isothiazolin-3-one (CAS Reg. No. 26172–55–4) and 2-methyl-4-isothiazolin-3-one (CAS Reg. No. 2682–20–4) mixture, at a ratio of 3 parts to 1 part, respectively, manufactured from methyl-3-mercaptopropionate (CAS Reg. No. 2935–90–2) and optionally containing magnesium nitrate (CAS Reg. No. 10377–60–3) at a concentration equivalent to the isothiazolone active ingredients (weight/weight).	For use only as an antimicrobial agent in emulsion-based silicone coatings at a level not to exceed 50 milligrams per kilogram (based on isothiazolone active ingredient) in the coating formulation.
• • • • • • •	

* * * * *

Dated: June 7, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–14905 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 99N–2099]

General Hospital and Personal Use Devices; Classification of the Subcutaneous, Implanted, Intravascular Infusion Port and Catheter and the Percutaneous, Implanted, Long-term Intravascular Catheter

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the subcutaneous, implanted, intravascular (IV) infusion port and catheter, and the percutaneous, implanted, long-term IV catheter intended for repeated vascular access into class II (special controls). This action is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of these devices.

DATES: This rule is effective July 13, 2000.

FOR FURTHER INFORMATION CONTACT: M. Patricia Cricenti, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et. seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105-115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act

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(21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Consistent with the act and the regulations, FDA consulted with the General Hospital and Personal Use Devices Panel (the Panel), an FDA advisory committee, regarding the classification of these devices.

II. Regulatory History of the Devices

In the **Federal Register** of October 1, 1999 (64 FR 53294), FDA issued a proposed rule to classify the subcutaneous, implanted, IV infusion port and catheter, and the percutaneous, implanted, long-term IV catheter intended for repeated vascular access into class II. Interested persons were given until December 30, 1999, to comment on the proposed regulation.

In 1980, when other general hospital and personal use devices were classified (45 FR 69678, October 21, 1980), FDA was not aware that these two vascular access devices (the subcutaneous, implanted, IV infusion port and catheter and the percutaneous, implanted, long-term IV catheter) intended for repeated vascular access were preamendments devices, and inadvertently omitted classifying them.

FDA received one comment from a manufacturer who concurred with the proposed rule to classify the devices into class II. FDA agrees with the comment.

III. Summary of Final Rule

Based on the Panel's recommendation (Ref. 1), FDA is classifying the subcutaneous, implanted, IV infusion port and catheter and the percutaneous, implanted, long-term IV catheter intended for repeated vascular access into class II. FDA has determined that existing premarket notification FDA guidance documents, "Guidance on 510(k) Submissions for Implanted Infusion Ports" (Ref. 2) and "Guidance on Premarket Notification [510(k)] Submission for Short-Term and Long-Term Intravascular Catheters" (Ref. 3) are adequate special controls capable of providing reasonable assurance of safety and effectiveness with regard to the identified risks to health of these devices. The Panel also recommended including the prescription statement (§ 801.109 (21 CFR 801.109)) as a special control. Because this prescription statement is already required by § 801.109, FDA believes it is unnecessary to list prescription labeling as a special control for these devices.

IV. Summary of the Reasons for the Recommendations

Therefore, under section 513 of the act, FDA is adopting the summary of reasons for the Panel's recommendation and the summary of data upon which the Panel's recommendation is based (Ref. 1), and it is also adopting the assessment of the risks to public health stated in the proposed rule published on October 1, 1999. Furthermore, FDA is issuing this final rule which classifies the generic types of devices, the subcutaneous, implanted, IV infusion port and catheter, and the percutaneous, implanted, long-term IV catheter intended for repeated vascular access into class II.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. As unclassified devices, these devices are already subject to premarket notification and the general labeling provisions of the act. FDA, therefore, believes that classification in class II with premarket notification guidances as special controls will impose no significant economic impact on any small entities. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VIII. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. These references may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. General Hospital and Personal Use Devices Panel, thirtieth meeting, transcript, March 11, 1996.

2. "Guidance on 510(k) Submissions for Implanted Infusion Ports," FDA, October 1990.

3. "Guidance on Premarket Notification [510(k)] Submission for Short-Term and Long-Term Intravascular Catheters," FDA, March 1995.

List of Subjects in 21 CFR Part 880

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 880 is amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 880.5965 is added to subpart F to read as follows:

§ 880.5965 Subcutaneous, implanted, intravascular infusion port and catheter.

(a) *Identification.* A subcutaneous, implanted, intravascular infusion port and catheter is a device that consists of a subcutaneous, implanted reservoir that connects to a long-term intravascular catheter. The device allows for repeated access to the vascular system for the infusion of fluids and medications and the sampling of blood. The device consists of a portal body with a resealable septum and outlet made of metal, plastic, or combination of these materials and a long-term intravascular catheter is either preattached to the port or attached to the port at the time of device placement. The device is available in various profiles and sizes and can be of a single or multiple lumen design.

(b) *Classification.* Class II (special controls) Guidance Document: "Guidance on 510(k) Submissions for Implanted Infusion Ports," FDA October 1990.

3. Section 880.5970 is added to subpart F to read as follows:

§ 880.5970 Percutaneous, implanted, long-term intravascular catheter.

(a) *Identification.* A percutaneous, implanted, long-term intravascular catheter is a device that consists of a slender tube and any necessary connecting fittings, such as luer hubs, and accessories that facilitate the placement of the device. The device allows for repeated access to the vascular system for long-term use of 30 days or more, and it is intended for administration of fluids, medications, and nutrients; the sampling of blood; and monitoring blood pressure and temperature. The device may be constructed of metal, rubber, plastic, composite materials, or any combination of these materials and may be of single or multiple lumen design.

(b) *Classification.* Class II (special controls) Guidance Document: "Guidance on Premarket Notification [510(k)] Submission for Short-Term and Long-Term Intravascular Catheters."

Dated: May 23, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–14698 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Approved Publications and Tables for Use in Applying Revised Royalty Valuation Regulations for Federal Oil

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of approved publications.

SUMMARY: As required by revised Federal oil valuation regulations, the Minerals Management Service (MMS) has approved three spot price publications that royalty payors should use to value oil produced from Federal leases not sold at arm's length.

EFFECTIVE DATE: June 1, 2000.

ADDRESSES: See **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: David Domagala, Royalty Valuation Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, Mail Stop 3151, Denver, Colorado 80225, telephone number (303) 275–7255 or fax number (303) 275–7227.

SUPPLEMENTARY INFORMATION: MMS published its revised regulations establishing oil value for royalty due on Federal leases in the **Federal Register** on March 15, 2000 (65 FR 14022), effective June 1, 2000. The primary changes in the revised regulations affect Federal lessees who value oil not sold at arm's length. The rule provides that the primary means of valuing crude oil not sold at arm's length is an adjusted spot price, except in the Rocky Mountain Region, where use of an adjusted spot price for valuation purposes is the third valuation benchmark (30 CFR 206.103(b)(4))(65 FR 14091). The applicable spot price is the one for the oil most closely representing the lease production in terms of physical proximity and quality parameters. The lessee may select the spot price from any MMS-approved publication; however, once the lessee selects a publication for a geographical area (California/Alaska, the Rocky Mountain Region, or the rest of the country), it must continue to use that same publication for 2 years in that area.

In § 206.104 of the final rule (65 FR 14092) for establishing oil value for royalty due on Federal leases, MMS explained that "approved publications" must be:

(1) Publications buyers and sellers frequently use;

(2) Publications frequently mentioned in purchase or sales contracts;

(3) Publications that use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of Alaska North Slope (ANS) and other crude oil; and

(4) Publications independent from MMS, other lessors, and lessees.

Additionally, MMS established that:

(1) Any publication may petition MMS to be added to the published list of acceptable publications.

(2) MMS will reference the tables a lessee must use in the approved publications to determine the associated index prices.

(3) MMS may revoke its approval of a particular publication if it determines that the prices published in the publication do not accurately represent spot market values.

MMS has verified that the publications listed below meet approval criteria based on input from staff of the publication itself, as well as information from marketers, auditors and industry consultants. MMS also examined and compared historical published spot prices from all three of the approved publications to ensure comparability and consistency. The approved publications and applicable tables are as follows:

- *Platt's Oilgram Price Report* (The same spot prices appear in *Platt's Global Alert, Platt's Crude Oil Marketwire,* and the soon-to-be-published *Platt's U.S. Crudewire.*) Use the spot prices found in the "Crude Price Assessments" section.
- *Petroleum Argus Americas Crude* (The same spot prices appear in *Argus Crude, Argus Americas Crude Datafile, Argus Crude Datafile.*) Use the spot prices found in the "WTI Cushing," "US Gulf Coast," "US Midcontinent," and "US West Coast" sections.
- *Bloomberg Oil Buyers Guide Petroleum Price Supplement* (The same spot prices appear on the *Bloomberg Energy Web Site,* and in *Bloomberg Professional.*) Use the spot prices found in the "Worldwide Crude Price Snapshot" section.

If any of these entities use identical spot price quotes in other of their publications or distributions (such as electronic bulletin boards, newsletters, etc.), they are also approved. MMS will

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monitor these three publications to ensure that they continue to meet the approval criteria.

Representatives of any other publication who wish to obtain MMS approval of their publication may contact MMS at the address shown above in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: June 6, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–14778 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–00–016]

RIN 2115–AA97

Safety Zone; Chickahominy River, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Two Rivers Yacht Club fireworks display to be held at Barret's Point at the mouth of the Chickahominy River, Williamsburg, Virginia. This action will restrict vessel traffic on the Chickahominy River within a 500-foot radius of the fireworks display, which will be fired from shore. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

DATES: This rule is effective from 8 p.m. until 11:30 p.m. on July 4, 2000.

ADDRESSES: You may mail comments and related material to USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, VA, or deliver them to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. USCG Marine Safety Office Hampton Roads maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Roddy Corr, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3290.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number (CGD05–00–016), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. We were not notified of the event with sufficient time to publish an NPRM, allow for comments, and publish a final rule in sufficient time to allow notice to the public for the fireworks display. In previous years, this event and similar ones have been held without incident and without comment from the public regarding the Coast Guard's establishment of limited safety zones around fireworks displays.

Background and Purpose

The Coast Guard is establishing a temporary safety zone for the Two Rivers Yacht Club fireworks display to be held at Barret's Point, at the mouth of the Chickahominy River, Williamsburg, Virginia. The safety zone will restrict vessel traffic on the Chickahominy River within a 500-foot radius of the fireworks display, which will be fired from shore, in approximate position 37° 14.51′ N, 076° 52.10′ W. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

The safety zone is effective from 8 p.m. until 11:30 p.m. on July 4, 2000. Additional public notifications will be made prior to the event via marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This temporary final rule only affects a limited area for three and a half hours, alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the restricted area. The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Chickahominy River within 500 feet of a shoreside fireworks display at Barret's Point, located at the mouth of the Chickahominy River in approximate position 37° 14.51′ N, 076° 52.10′ W.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This temporary final rule only affects a limited area for three and a half hours, alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the restricted area.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This regulation will have no impact on the environment.

List of Subjects

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T05–016 to read as follows:

165.T05–013 Safety Zone; Chickahominy River, Virginia.

(a) *Location.* The following area is a safety zone: All waters of the Chickahominy River, within a 500-foot radius of a shoreside fireworks display in approximate position 37°14.51′ N, 076°52.10′ W.

(b) *Captain of the Port.* Captain of the Port means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his behalf.

(c) *Regulations:* (1) All persons are required to comply with the general regulations governing safety zones found in section 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through this safety zone must first request authorization from the Captain of the Port. The Coast Guard representative enforcing the safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (757) 484–8192.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by marine information broadcast on VHF marine band radio, channel 22 (157.1 MHz).

(d) *Effective Date:* This section is in effect from 8 p.m. until 11:30 p.m. on July 4, 2000.

Dated: June 5, 2000.

J.E. Schrinner,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 00–14858 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 685

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On November 1, 1999 amendments to regulations governing the William D. Ford Federal Direct Loan Program were published in the **Federal Register** (64 FR 59016). This document corrects the designation of the section amended in item 24 and adds a word inadvertently dropped from § 685.306(a) as amended in item 26 on page 59044. The change made in item 24 should have been made to § 685.216, rather than to § 685.215, because § 685.215 was previously redesignated as § 685.216 in separate amendments published in the same issue of the **Federal Register** (64 FR 58969).

DATES: These regulations, as corrected, are effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Nicki Meolo, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–28315, published in the **Federal Register** on November 1, 1999 (64 FR 59016), in item 24 on page 59044, the reference to "Section 685.215" is corrected to read "Section 685.216" and the number and heading of the amended section are corrected to read "§ 685.216 *Consolidation.*" In item 26 on page 59044, in the amended text of § 685.306(a), in the third column, first line, add the word "portion" after the word "that" and before the word "of."

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number: 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

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Dated: June 7, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–14823 Filed 6–12–00, 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[WV—6013a; FRL–6714–2]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; West Virginia; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the West Virginia hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan (the "plan") submitted on August 18, 1999 by the West Virginia Division of Environmental Protection (WV DEP), and the subsequent plan amendment of April 19, 2000. The plan establishes emission limitations and other requirements for existing HMIWIs, and provides for the implementation and enforcement of those limitations and requirements.

DATES: This final rule is effective July 28, 2000 unless by July 13, 2000 adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and the West Virginia Division of Environmental Protection, Office of Air Quality, 7012 MacCorkle Avenue, South East, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION: This document is divided into Sections I through V and answers the questions posed below.

I. General Provisions
What is EPA approving?
What is a State/local 111(d)/129 plan?
What pollutant(s) will this action control?
What are the expected environmental and public health benefits from controlling HMIWI emissions?
II. Federal Requirements the WV HMIWI 111(d)/129 Plan Must Meet for Approval
What general EPA requirements must the WV DEP meet in order to receive approval of its HMIWI 111(d)/129 plan?
What does the WV plan contain?
Does the WV plan meet all EPA requirements for approval?
III. Requirements for Affected HMIWI Owners/Operators
How do I determine if my HMIWI is subject to the WV 111(d)/129 plan?
What general requirements must I meet under the approved EPA 111(d)/129 plan?
What emissions limits must I meet, and in what time frame?
Are there any operational requirements for my HMIWI and air pollution control system?
What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?
Is there a requirement for obtaining a Title V permit?
IV. Final EPA Action
V. Administrative Requirements

I. General Provisions

Q. What is EPA approving?

A. EPA is approving the WV 111(d)/129 plan (the "plan") for the control of air pollution emissions from hospital/medical/infectious waste incinerators (HMIWIs). The plan was developed by the WV DEP. On August 18, 1999 the WV DEP submitted its plan to EPA; and on April 19, 2000 submitted a plan amendment. EPA is publishing this approval action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments.

Q. What is a State/local 111(d)/129 plan?

A. Section 111(d) of the Clean Air Act (CAA) requires that "designated" pollutants, controlled under standards of performance for new stationary sources by Section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an emission guidelines (EG) document. Section 129 of the CAA specifically addresses solid waste combustion and emissions controls based on what is commonly referred to as maximum achievable control technology (MACT). Section 129 requires EPA to promulgate a MACT-based EG document, and then requires states to develop 111(d)/129 plans that implement and enforce the EG requirements. The HMIWI EG at 40 CFR part 60, subpart Ce, establish the MACT requirements under the authority of both Sections 111(d) and 129 of the CAA. These requirements must be incorporated into a State/local 111(d)/129 plan that is "at least as protective" as the EG, and is Federally enforceable upon approval by EPA.

The procedures for adoption and submittal of State 111(d)/129 plans are codified in 40 CFR part 60, subpart B. Additional information on the submittal of State plans is provided in the EPA document, "Hospital/Medical/Infectious Waste Incinerator Emission Guidelines: Summary of the Requirements for Section 111(d)/129 State Plans, EPA–456/R–97–007, November, 1997."

Q. What pollutant(s) will this action control?

A. The September 15, 1997 promulgated EG, Subpart Ce, are applicable to all existing HMIWIs (*i.e.*, the designated facilities) that emit organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury, particulate matter), opacity, and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). This action establishes emission limitations for each of these pollutants.

Q. What are the expected environmental and public health benefits from controlling HMIWI emissions?

A. HMIWI emissions can have adverse effects on both public health and the environment. Dioxin, lead, and mercury can bioaccumulate in the environment. Exposure to dioxins/furans has been linked to reproductive and developmental effects, changes in hormone levels, and chloracne. Respiratory and other effects are associated with exposure to particulate matter, sulfur dioxide, cadmium, hydrogen chloride, and mercury. Health effects associated with exposure to cadmium, and lead include probable carcinogenic effects. Acid gases contribute to the acid rain that lowers the pH of surface waters and watersheds, harms forests, and damages buildings.

II. Federal Requirements the West Virginia HMIWI 111(d)/129 Plan Must Meet for Approval

Q. What general requirements must the WV DEP meet to receive approval of its WV 111(d)/129 plan?

A. The plan must meet the requirements of both 40 CFR part 60, subparts B, and Ce. Subpart B specifies detailed procedures for the adoption and submittal of State plans for

designated pollutants and facilities. The EG, Subpart Ce, and the related new source performance (NSPS), Subpart Ec, contain the requirements for the control of designated pollutants, as listed above, in accordance with Sections 111(d) and 129 of the CAA. In general, the applicable provisions of Subpart Ec relate to compliance and performance testing, monitoring, reporting, and recordkeeping. More specifically, the WV plan must meet the requirements of (1) 40 CFR part 60, subpart Ce, Sections 60.30e through 60.39c, and the related Subpart Ec provisions; and (2) 40 CFR part 60, subpart B, sections 60.23 through 26.

Q. What does the WV plan contain?

A. Consistent with the requirements of Subparts B, Ce and Ec, the WV plan contains the following elements:

1. A demonstration of West Virginia's legal authority to implement the plan;
2. Identification of the West Virginia enforceable mechanism, rule 45CSR24 "To Prevent and Control Emissions from Hospital/Medical/Infectious Waste Incinerators";
3. Source and emission inventories, as required;
4. Emission limitation requirements that are no less stringent than those in Subpart Ce;
5. A source compliance schedule, including increments of progress, as required;
6. Source testing, monitoring, recordkeeping, and reporting requirements;
7. HMIWI operator training and qualification requirements;
8. Requirements for development of a Waste Management Plan;
9. Records of the public hearing on the WV plan;
10. Provision for the WV DEP submittal to EPA of annual reports on progress in plan enforcement; and
11. A Title V permit application due date.

On August 3, 1998, the WV DEP filed 45CSR24, "To Prevent and Control Emissions from Hospital/Medical/Infectious Waste Incinerators" with the Legislative Rulemaking Review Committee (LRMC) for its recommendation and approval to the 1999 Legislature. Legislative approval was received and the regulation became effective on June 1, 1999. Subsequent regulation amendments, which correct typographical errors and clarify the final compliance date, were also approved and became effective on May 1, 2000. The regulation applies to existing HMIWIs and incorporates by reference (IBR) related and applicable new source performance standards, Subpart Ec.

Q. Does the WV 111(d)/129 plan meet all EPA requirements for approval?

A. Yes. The WV DEP has submitted a plan that conforms to all EPA Subpart B and Ce requirements. Each of the above listed plan elements is approvable. Details regarding the approvability of the plan elements are included in the technical support document (TSD) associated with this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Requirements Affected HMIWI Owners/Operators Must Meet

Q. How do I determine if my HMIWI is a designated facility subject to the WV 111(d)/129 plan?

A. If construction commenced on your HMIWI on or before June 20, 1996, your HMIWI is classified as an existing or designated facility that may be subject the plan. The plan contains no lower applicability threshold based on incinerator capacity. However, there are designated facility exemptions. Those exemptions include incinerators that burn only pathological, low level radioactive, and/or chemotherapeutic waste; co-fired combustors; incinerators permitted under Section 3005 of the Solid Waste Disposal Act; municipal waste combustors (MWC) subject to EPA's municipal waste combustor rule; pyrolysis units; and cement kilns.

Details regarding applicability and exemptions provisions are stipulated in WV regulation 45SCR24 § 3.

Q. As an affected HMIWI owner/operator, what general requirements must I meet under the approved EPA 111(d)/129 plan?

A. In general, the West Virginia HMIWI regulation establishes the following requirements:

- Emission limitations for particulate matter (PM), opacity, carbon monoxide (CO), dioxins/furans (CDD/CDF), hydrogen chloride (HCl), sulfur dioxide (SO_2), nitrogen oxides (NO_X), lead (Pb), cadmium (Cd), and mercury (Hg)
- Compliance and performance testing
- Operating parameter monitoring
- Operator training and qualification
- Development of a waste management plan
- Source testing, recordkeeping and reporting
- A Title V permit

A full and comprehensive statement of the above requirements is incorporated in the WV DEP regulation 45CSR24.

Q. What emissions limits must I meet, and in what time frame?

A. You must install an emissions controls system capable of meeting the MACT emission limitations for the pollutants identified above. The pollutant emission limitations are stipulated in Table 1 of 45CSR24 §§ 4.3.a. and g.; and §§ 4.4.a, and i.. Compliance is required within one year after the effective date of EPA approval of the WV 111(d)/129 plan. With adequate justification, you may petition the WV DEP for a compliance schedule extension that does not extend beyond September 15, 2002. Petitions must be submitted no later than nine months after the effective date of EPA plan approval. Petitions must include documentation of your analysis undertaken to support the need for an extension, and your evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis. Also, your extension petition must include increments of progress that are no less stringent than those specified in the plan and regulation, 45CSR24 § 7.2.

Q. Are there any operational requirements for my HMIWI and emissions control system?

A. Yes, there are operational requirements. In summary, the operational requirements relate to: (1) The HMIWI and air pollution control devices (APCD) operating within certain established parameter limits, determined during the initial performance test; (2) the use of a trained and qualified HMIWI operator; and (3) the completion of an annual update of operation and maintenance information, and its review by the HMIWI operators.

Failure to operate the HMIWI or APCD within certain established operating parameter limits constitutes an emissions violation for the controlled air pollutants. However, as a HMIWI owner/operator, you are provided an opportunity to establish revised operating limits, and demonstrate that your facility is meeting the required emission limitations, providing a repeat performance test is conducted in a timely manner.

A fully trained and qualified operator must be available at your facility during the operation of the HMIWI, or the operator must be readily available to the facility within one hour. In order to be classified as a qualified operator, you must complete an appropriate HMIWI operator training course that meets the Subpart Ec criteria referenced in 45CSR24 §§ 4.3.b and 4.4.b. Compliance must be achieved within one year of the effective date of EPA approval of the plan. Also, as a HMIWI owner/operator, you are required to develop and update

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annually site-specific information regarding your facility's operations. Each of your HMIWI operators is required on an annual basis to review the updated operational and maintenance information.

The WV regulation IBR the applicable operational requirements of the EG and the related NSPS. See 40 CFR subpart Ec, §§ 60.56c, 60.53c, and 60.58c for details regarding these operational requirements.

Q. What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?

A. Testing, monitoring, recordkeeping, and reporting requirements are summarized below: You are required to conduct an initial stack test to determine compliance with the emission limitations for PM, opacity, CO, CDD/CDF, HCl, Pb, Cd, and Hg. As noted above, operating parameter limits are monitored and established during the initial performance test. Monitored HMIWI operating parameters include, for example, waste charge rate, secondary chamber and bypass stack temperatures. APCD operating parameters include, for example, CDD/CDF and Hg sorbent (e.g., carbon) flow rate, hydrogen chloride sorbent (e.g., lime) flow rate, PM control device inlet temperature, pressure drop across the control system, and liquid flow rate, including pH. After the initial stack test, compliance testing is then required annually to determine compliance with the emission limitations for PM, CO, and HCl.

Recordkeeping and reporting are required in order to document (1) the results of the initial and annual performance tests, (2) the monitoring of site-specific operating parameters, (3) compliance with the operator training and qualification requirements, and (4) the development of the waste management plan. Records must be maintained for at least five years.

The WV regulation IBR the applicable testing, monitoring, recordkeeping, and reporting requirements of the EG and related NSPS. See 40 CFR subpart Ec, §§ 60.56c, 60.57c, and 60.58c, respectively for details regarding these requirements.

Q. Is there a requirement for obtaining a Title V permit?

A. Yes, affected facilities are required to submit a complete Title V application to the WV DEP no later than September 15, 2000.

IV. Final EPA Action

The WV 111(d)/129 plan for controlling HMIWI emissions is approvable. This approval does not include provisions, such as siting and fugitive emission requirements, that relate solely to facilities subject to the NSPS, and are not referenced in the EG.

Based upon the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving the WV 111(d)/129 plan for the control of HMIWI emissions from designated facilities. As provided by 40 CFR § 60.28(c), any revisions to the WV plan or associated regulations will not be considered part of the applicable plan until submitted by the WV DEP in accordance with 40 CFR § 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective July 28, 2000 without further notice unless the Agency receives relevant adverse comments by July 13, 2000. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 28, 2000 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the West Virginia 111(d)/129 plan for HMIWI may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 1, 2000.

Bradley M. Campbell,

Regional Administrator, EPA Region III.

40 CFR part 62, subpart XX, is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart XX—West Virginia

2. A new center heading and §§ 62.12150, 62.12151, and 62.12152 are added to Subpart XX to read as follows:

Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWIs)—SECTION 111(d)/129 Plan

§ 62.12150 Identification of plan.

Section 111(d)/129 plan for HMIWIs and the associated West Virginia (WV) Department of Environmental Protection regulations, as submitted on August 18, 1999, and as amended on April 19, 2000.

§ 62.12151 Identification of sources.

The plan applies to all existing WV HMIWI for which construction was commenced on or before June 20, 1996.

§ 62.12152 Effective date.

The effective date of the plan is July 28, 2000.

[FR Doc. 00–14766 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MT–001a; FRL–6714–4]

Clean Air Act Full Approval of Operating Permit Program; State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating full approval of the operating permit program submitted by the State of Montana. Montana's operating permit program was submitted for the purpose of meeting the federal Clean Air Act (Act) directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction.

DATES: This direct final rule is effective on August 14, 2000 without further notice, unless EPA receives adverse comment by July 13, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mail Code 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, Air and Radiation Program, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466 and are also available during normal business hours at the Montana Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Patricia Reisbeck, 8P–AR, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Denver, Colorado 80202–2466, (303) 312–6435.

SUPPLEMENTARY INFORMATION:

I. Background

As required under Title V of the Clean Air Act ("the Act") as amended (42 U.S.C. 7401 *et seq.*), EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V directs states to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act directs states to develop and submit operating permit programs to EPA by November 15, 1993, and requires that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act (42 U.S.C. § 7661a) and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval. If EPA has not fully approved a program by two years after the November 15, 1993 date, or before the expiration of an interim program approval, it must establish and implement a federal program. The State of Montana was granted final interim approval of its program on May 11, 1995 (see 60 FR 25143) and the program became effective on June 12, 1995. Interim approval of the Montana program expires on December 1, 2001.

II. Analysis of State Submission

The Governor of Montana submitted an administratively complete Title V operating permit program for the State of Montana on March 29, 1994. This program, including the operating permit regulations (Title 16, Chapter 8, Sub-Chapter 20, Sections 16.8.2001 through 16.8.2025, inclusive, of the

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Administrative Rules of Montana (ARM)), substantially met the requirements of part 70. EPA deemed the program administratively complete in a letter to the Governor dated May 12, 1994. The program submittal included a legal opinion from the Attorney General of Montana stating that the laws of the State provide adequate legal authority to carry out all aspects of the program, and a description of how the State would implement the program. The submittal additionally contained evidence of proper adoption of the program regulations, application and permit forms, and a permit fee demonstration.

EPA's comments noting deficiencies in the Montana program were sent to the State in a letter dated October 3, 1994. The deficiencies were segregated into those that would require corrective action prior to interim program approval, and those that would require corrective action prior to full program approval. The State committed to address the program deficiencies that would require corrective action prior to interim program approval in a letter dated October 20, 1994. The State submitted these corrective actions with letters dated March 30, and April 5, 1995. EPA reviewed these corrective actions and determined them to be adequate for interim program approval.

On January 15, 1998, Montana amended its operating permit program to make the corrections identified as necessary in the May 11, 1995 **Federal Register** notice of final interim approval. These program amendments, recodified at Title 17, Chapter 8, Sub-Chapter 12, Sections 1201, 1210, and 1213, ARM, were approved and adopted by the Montana Board of Environmental Review on January 15, 1998. The revised program regulations adequately addressed the problems identified in the May 11, 1995 **Federal Register** notice as requiring corrective action prior to full program approval. The State also submitted evidence of proper adoption of the revisions to its program regulations and a revised Attorney General's opinion dated July 31, 1998. The revised program and a request for full approval were submitted to EPA in a letter from the Governor of Montana dated February 4, 1999. EPA notified Montana, in a letter to the Department of Environmental Quality (DEQ) dated April 1, 1999, of two additional changes required for final approval. The DEQ revised the administrative rules to implement the two requested changes at Title 17, Chapter 8, Sub-Chapter 12, ARM. These amendments to Sub-Chapter 12 were approved and adopted by the Board on March 17, 2000. On April 12, 2000, the Governor of Montana submitted the revised program, with proof of proper adoption, and requested full approval of its operating permit program.

Areas in the Montana program that were identified by EPA as deficient and the State's corrective actions for full program approval consist of the following:

(1) The definition of administrative permit amendment allowed the department to exercise discretion in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements. This did not satisfy the criteria for an administrative permit amendment listed in 40 CFR 70.7(d)(1)(iii), which require that only requirements for more frequent monitoring or reporting may be processed through an administrative permit amendment. Correction: The State deleted the problematic section of the administrative permit amendment definition, Section 17.8.1201(1)(d), ARM.

(2) The definition of administrative permit amendment allowed the State to determine if other types of permit changes not listed in the definition of administrative permit amendment could be incorporated into a permit through the administrative permit amendment process. This did not meet requirements of 40 CFR 70.7(d)(1)(vi). Correction: The State modified Section 17.8.1201(1), ARM, part of the administrative permit amendment definition, to state: "(e) incorporates any other type of change which the department and EPA have determined to be similar to those revisions set forth in (a) through (d) above."

(3) The definition of "insignificant emissions unit" included an emission threshold of 15 tons per year of any pollutant other than a hazardous air pollutant. EPA did not consider this to be a reasonable level at which to exempt emissions units from title V operating permit requirements. Correction: The State lowered the trigger level of 15 tons per year to 5 tons per year in the definition of "insignificant emissions units" to assure that the term will not encompass activities that are subject to applicable requirements (see Section 17.8.1201(22)(a)(i), ARM).

(4) The State was required to revise or delete Section 17.8.1201(24)(a)(ii), ARM, so that rules and requirements imposed under the State Implementation Plan (SIP) would not be included in the definition of "non-federally enforceable." Correction: The State originally revised Section 17.8.1201(24)(a)(ii) to exclude only regulations that are not federally enforceable (not in the SIP). The State adopted an additional correction to this section on March 17, 2000, which is explained below.

(5) The State was required to include a severability clause in Sub-Chapter 12 consistent with 40 CFR 70.6(a)(5) of the federal permitting regulation. Correction: The State revised Section 70.8.1210(2)(l), ARM, to include a severability clause, which states "If any provision of a permit is found to be invalid, all valid parts that are severable from the invalid part remain in effect. If a provision of a permit is invalid in 1 or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid applications."

(6) The State was required to provide an Attorney General's opinion verifying Montana's authority to use any monitoring data to determine compliance and for direct enforcement or to revise the State's SIP-approved regulations to provide authority to use any monitoring data to determine compliance and for direct enforcement. Correction: The Attorney General's opinion and Section 17.8.1213(2) were amended to clarify Montana's authority. The revised opinion was submitted with the Governor's letter, dated February 4, 1999.

(7) The Attorney General's opinion was not clear regarding the State's authority to terminate permits. The State was required to provide an Attorney General's interpretation that Montana's statutory authority extends to "terminating" permits. Correction: This was clarified in the revised Attorney General's opinion.

(8) The State was required to demonstrate to EPA that it had the ability to make case-by-case MACT determinations pursuant to section 112(j) of the Act. Correction: This was adequately addressed in the revised Attorney General's opinion.

(9) The State was required to certify its ability to require annual certifications from part 70 sources regarding proper implementation of their risk management plans (RMP) and to provide a compliance schedule for sources that fail to submit the required RMP. Correction: The State will include a statement listing 40 CFR 68.215(a) as an applicable requirement in all Title V operating permits.

(10) The State was required to clarify that it has the authority to terminate or revoke and reissue permits in all circumstances in which cause to do so exists or amend Section 17.8.1210(2)(a) to eliminate any provisions that may be construed to limit "cause" in an unacceptable manner. Correction: Section 17.8.1210(2)(a) has been revised to include: "Permits may be terminated or revoked and reissued for cause. Appropriate 'cause' for permit termination is noncompliance with permit terms or conditions that is continuing or substantial in nature and scope."

Two additional corrections, requested in the April 1, 1999 letter from EPA to the DEQ, are as follows:

(1) The revised definition of "non-federally enforceable requirements" in Section 17.8.1201(24)(a), ARM, included "(ii) any term, condition or other requirement contained in any air quality preconstruction permit issued by the department under this chapter that is not contained in the Montana State implementation plan approved or promulgated by the administrator through rulemaking under title I of the FCAA." This was required to be changed or deleted as it implied that the terms and conditions of a preconstruction permit are not federally enforceable, unless they are contained in the Montana SIP or EPA regulation. In fact, every permit issued under a SIP-approved permit program is federally enforceable, and every term and condition of the permit is federally enforceable. Correction: The State has revised Section 17.8.1201(24) to delete this language in the definition of the phrase "non-federally enforceable requirements."

(2) Section 17.8.1225(4), ARM, incorrectly applied the permit shield to all administrative permit amendments. The permit shield provided by 40 CFR Part 70 applies only to permit actions that have gone through public review. Therefore, Section 17.8.1225(4) was required to be revised to say that the permit shield does not extend to administrative permit amendments except as allowed by 40 CFR 70.7(d)(4). Correction: The State revised Section 17.8.1225(4) to state that the permit shield does not apply to administrative permit amendments.

III. Final Action

In this document, EPA is granting full approval of the Montana part 70 operating permits program for all areas within the State except the following: any sources of air pollution located in "Indian Country" as defined in 18 U.S.C. 1151, including the following Indian reservations in the State: Northern Cheyenne, Rocky Boys, Blackfeet, Crow, Flathead, Fort Belknap, and Fort Peck Indian Reservations, or any other sources of air pollution over which an Indian Tribe has jurisdiction. See section 301(d)(2)(B) of the Act; see also 63 FR 7254 (February 12, 1998).

The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the Act; see also 58 FR 54364 (Oct. 21, 1993).

The EPA is publishing this rule without prior proposal because the State is currently implementing its part 70 program and the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full approval of the operating permit program submitted by the State of Montana should adverse comments be filed. This rule will be effective August 14, 2000 without further notice unless the Agency receives adverse comments by July 13, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule must do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not establish a further health or risk-based standard because it approves state rules which implement a previously promulgated health or safety-based standard.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal

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governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: June 2, 2000.

Rebecca W. Hanmer,

Acting Regional Administrator, Region VIII.

40 CFR part 70, is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In appendix A to part 70 the entry for Montana is amended by adding paragraph (b) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Montana

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(b) The Montana Department of Environmental Quality submitted an operating permits program on March 29, 1994; effective on June 12, 1995; revised January 15, 1998, and March 17, 2000; full approval effective on August 14, 2000.

* * * * *

[FR Doc. 00–14768 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6715–4]

Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) and Revisions to State Primacy Requirements to Implement the Safe Drinking Water Act (SDWA) Amendments.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: Because we received adverse comments, EPA is withdrawing the direct final rule regarding the Interim Enhanced Surface Water Treatment Rule, the Stage 1 Disinfectant and Disinfection Byproducts Rule, and the Primacy Rule that published on April 14, 2000 (65 FR 20304).

In the direct final rule, we stated that if we received adverse comments by May 15, 2000, we would publish a timely withdrawal in the **Federal Register**. EPA subsequently received adverse comments. We will address those comments in a final rule based upon the proposed rule also published on April 14, 2000 (65 FR 20314).

Because of the degree of public interest in the rule, we are reopening the comment period on the proposed rule. For additional information, see the document that reopens the comment period, which is published in the "Proposed Rules" section of this issue of the **Federal Register**.

DATES: The direct final rule amending 40 CFR parts 141 and 142, published on April 14, 2000 (65 FR 20304), is withdrawn as of June 13, 2000.

FOR FURTHER INFORMATION CONTACT: Jennifer Melch, Implementation and Assistance Division, Office of Ground Water and Drinking Water (MC–4606), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7035. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. EST.

Dated: June 8, 2000.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 00–14886 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 87]

RIN 3090–AH18

Federal Travel Regulation; Maximum Per Diem Rates and Other Travel Allowances; Correction

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects entries listed in the prescribed maximum per diem rates for locations within the continental United States (CONUS) contained in a final rule appearing in part III of the **Federal Register** of Thursday, December 2, 1999 (64 FR 67670). The rule, among other things, increased/decreased the maximum lodging amounts in certain existing per diem localities, added new per diem localities, and removed a number of previously designated per diem localities. A correction published on Friday, May 19, 2000 (65 FR 31823), corrected the seasonal dates and lodging rates for Aspen, Colorado but failed to show changes this caused in the amounts of the maximum per diem rates.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Office of Governmentwide Policy (MTT), Washington, DC 20405; telephone 202–501–4857.

SUPPLEMENTARY INFORMATION: In rule document 00–12340 beginning on page 31823 in the issue of Friday, May 19, 2000 make the following corrections:

Appendix A to Chapter 301 [Corrected]

On page 31825, under the State of Colorado, city of Aspen, the maximum per diem rates in column five are corrected as follows:

1. For the entry "April 1–May 31," correct "186" to read "114".

2. For the entry "June 1–December 31," correct "114" to read "186".

Page 31825, as corrected, reads as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

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Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
(October 1-May 31)		69		38		107
San Mateo/Redwood City	San Mateo	99		42		141
Santa Barbara	Santa Barbara	99		38		137
Santa Cruz	Santa Cruz					
(June 1-September 30)		99		42		141
(October 1-May 31)		68		42		110
Santa Rosa	Sonoma	65		42		107
Santa Monica	City limits of Santa Monica (see Los Angeles)					
(June 1-September 30)		110		38		148
(October 1-May 31)		99		38		137
South Lake Tahoe	El Dorado (see also Stateline, NV)	108		42		150
Sunnyvale/Palo Alto/San Jose	Santa Clara	125		46		171
Tahoe City	Placer	128		42		170
Truckee	Nevada	69		42		111
Visalia	Tulare	58		38		96
West Sacramento	Yolo	64		30		94
Yosemite National Park	Mariposa					
(May 1-October 31)		100		46		146
(November 1-April 30)		76		46		122
COLORADO						
Aspen	Pitkin					
(January 1-March 31)		163		46		209
(April 1-May 31)		68		46		114
(June 1 December 31)		140		46		186
Boulder	Boulder					
(May 1-October 15)		90		42		132
(October 16-April 30)		79		42		121
Colorado Springs	El Paso					
(May 15-September 14)		73		38		111
(September 15-May 14)		59		38		97
Cortez	Montezuma	64		34		98
Crested Butte	City limits of Crested Butte (see Gunnison)	95		42		137
Denver	Denver, Adams, and Arapahoe	83		42		125
Durango	La Plata					
(June 1-October 31)		95		38		133
(November 1-May 31)		61		38		99
Fort Collins	Larimer (except Loveland)	59		34		93
Gunnison	Gunnison (except Crested Butte)					
(June 15-September 30)		69		34		103
(October 1-June 14)		60		34		94
Jefferson County	Jefferson County	69		34		103
Loveland	City limits of Loveland (see Larimer County)	69		30		99
Montrose	Montrose	59		34		93
Pueblo	Pueblo					
(June 1-September 30)		75		34		109
(October 1-May 31)		58		34		92
Silverthorne/Keystone	Summit					
(December 1-April 1)		170		38		208
(April 2-November 30)		130		38		168

Dated: June 7, 2000.

James L. Harte,

Travel Team Leader, Travel Management Policy Division.

[FR Doc. 00–14796 Filed 6–12–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket No. 96–148; GN Docket No. 96–113; FCC 00–141]

Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the Commission's rules governing Cellular Radiotelephone Service (cellular service) to permit spectrum disaggregation by cellular licensees. In addition, the Commission maintains its existing geographic partitioning rules for initial cellular licensees, and extends partitioning rules to unserved area licensees. This document also resolves several related issues relevant to cellular partitioning and disaggregation.

DATES: Effective July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Jeffrey Steinberg, Wireless Telecommunications Bureau, Commercial Wireless Division, at (202) 418–0896.

SUPPLEMENTARY INFORMATION: *Synopsis of the Second Report and Order.*

"Partitioning" is the assignment of geographic portions of a radio license along geopolitical or other boundaries. "Disaggregation" is the assignment of discrete portions or "blocks" of spectrum licensed to a geographic licensee or other qualifying entity. The Commission has previously examined partitioning and disaggregation for many Commercial Mobile Radio Services (CMRS) on a service-by-service basis, and has adopted geographic partitioning and spectrum disaggregation rules for several services. In the *Further Notice of Proposed Rulemaking* in this proceeding, 62 FR 696 (January 6, 1997), the Commission tentatively concluded that it is now appropriate to consider permitting full partitioning and disaggregation in the cellular service.

2. The Commission concludes that modifying its cellular rules to allow disaggregation will promote competition and further regulatory symmetry between cellular and other CMRS licensees. Extending flexible disaggregation rules to cellular will increase carriers' flexibility to tailor their service offerings to meet market demands, thus increasing competition and enhancing the efficient use of spectrum. The Commission further finds that there are no technical or other constraints unique to the cellular service that would make disaggregation either impractical or administratively burdensome. The Commission therefore modifies its rules to permit cellular licensees to disaggregate portions of their spectrum to other eligible entities. In addition, the Commission declines to adopt minimum standards regarding the amount of spectrum that cellular licensees may disaggregate.

3. With regard to partitioning, the Commission decides to retain its existing partitioning rules for initial cellular licensees, and to provide for partitioning by unserved area licensees. The Commission recognizes that the current cellular partitioning rules are different from the rules for geographically licensed services because the rules restrict cellular partitioning outside the licensee's Cellular Geographic Service Area (CGSA) after the initial five-year buildout period. However, this restriction ensures that the cellular partitioning rules do not conflict with the unserved area rules, and the Commission finds that the rules are sufficiently flexible so as not to place cellular licensees at a competitive disadvantage compared to other CMRS. The Commission also believes that cellular unserved area licensees should have the ability to partition their service areas. As in the case of initial cellular licensees, the Commission will allow cellular unserved area licensees to partition within their designated licensing areas during the initial buildout period of the license. After the expiration of the 12-month buildout period, an unserved area licensee may not partition outside of the licensing area established as a result of the buildout process.

4. The Commission retains its existing cellular construction rules as they apply to partitioning. These rules provide sufficient flexibility for cellular licensees to build out their markets and to respond to demands for service. Thus, where a cellular licensee partitions its license prior to the expiration of the relevant buildout period, each partitionee will be responsible for completing the buildout in its partitioned area within the remainder of the original buildout period. Any area that remains unbuilt at the conclusion of the buildout period will revert to the Commission and be available for unserved area licensing. With respect to disaggregation, the parties will be required to certify in their disaggregation application which party will be responsible for building out the licensed area.

5. The Commission adopts its proposal to permit combined partitioning and disaggregation for cellular. The Commission also determines that the license terms for partitioned and disaggregated cellular licenses will be limited to the remaining term of the underlying licenses, and that partitionees and disaggregatees may obtain renewal expectancy on the same basis as initial cellular licensees and other CMRS licensees. Finally, the Commission declines to change its current procedures for reviewing and licensing cellular partitioning transactions, and adopts these procedures for reviewing and licensing disaggregation transactions.

Final Regulatory Flexibility Analysis

6. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking (Further Notice) in WT Docket No. 96–148.[1] The Commission sought written public comment on the proposals in the Further Notice, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Second Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.[2]

A. Need for and Purpose of This Action

7. In this document, we modify our rules for the Cellular Radiotelephone Service (cellular) to permit partitioning and disaggregation for all licensees in these services. The rules adopted herein also implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. 309(j)(4)(D) and reduce entry barriers for small businesses in accordance with 47 U.S.C. 257. With flexible partitioning and disaggregation, additional entities, including small businesses, may participate in the

[1] Geographic Partitioning and Spectrum Disaggregation by Commericial Mobile Radio Services Licensees, WT Docket No. 96–148, FCC 96–287, Notice of Proposed Rulemaking, 11 FCC Rcd. 10187 (1996).

[2] Public Law 104–121, 110 Stat. 847 (1996) (CWAA, Subtitle II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) codified at 5 U.S.C. 601, *et seq.*)

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provision of cellular service without needing to acquire wholesale an existing license (with all of the bundle of rights currently associated with the existing license). Acquiring "less" than the current license will presumably be a flexible and less expensive alternative for entities desiring to provide these services.

B. Description and Number of Small Entities Involved

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules.[3] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[5] Nationwide, there are 275,801 small organizations.[6] In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act.[7] Under the Small Business Act, a "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[8]

9. The rules adopted in this document will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding cellular licenses who choose to partition and/or disaggregate, and small businesses that may acquire licenses through partitioning and/or disaggregation. We have not developed a definition of small entities applicable to cellular licensees.

Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[9] The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.[10]

10. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.[11] Therefore, even if all twelve of these large firms were cellular telephone companies, nearly all of the cellular carriers were small businesses under the SBA's definition. We assume, for purposes of this FRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data that we publish annually in our Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Services (PCS) licensees in one group. According to the data released in November 1997, there are 804 companies reporting that they engage in cellular or PCS service.[12] It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, we are unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition. For purposes of this FRFA, we estimate that there are fewer than 804 small cellular service carriers.

C. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

11. The rules adopted in this document will impose reporting and recordkeeping requirements on small businesses seeking licenses through partitioning and disaggregation. The information requirements will be used to determine whether the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. Any applicant requesting such a license, will provide this information in a one-time filing. The applicant will submit this information on a FCC Form 490 Application for Assignment of Authorization or Consent to Transfer of Control of License. The applicant will also submit an FCC Form 430 Licensee Qualification Report if one is not already on file with us, and an FCC Form 600 Application for Mobile Radio Service Authorization. These forms are currently in use and have already received Office of Management and Budget clearance. We estimate that the average burden on the applicant is three hours for the information necessary to complete these forms. We further estimate that seventy-five percent of the respondents (which may include small businesses) will contract out the burden of responding. Finally, we estimate that it will take approximately thirty minutes to coordinate information with those contractors. The remaining twenty-five percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information.

D. Steps Taken To Minimize Burdens on Small Entities

12. The rules adopted in this document are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services and are consistent with the Communications Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services.

13. Allowing non-restricted partitioning of licenses will facilitate market entry by parties who may lack the financial resources for participation in auctions, including small businesses. Some small businesses may have been unable to obtain cellular licenses through sale due to high asking prices. By eliminating this restriction and allowing flexible partitioning, small businesses will be able to obtain partitioned licenses for smaller service areas at presumably reduced costs, thereby providing a method for small businesses to enter the cellular marketplace.

14. Similarly, allowing immediate disaggregation of cellular licenses will facilitate the entry of new competitors to the provision of these services, many of whom will be small businesses seeking to acquire a smaller amount of spectrum at a reduced cost. Additionally, allowing disaggregation of spectrum in any amount will also promote participation by small businesses who may seek to acquire a smaller amount of cellular spectrum tailored to meet the needs of their proposed service.

E. Significant Alternatives Considered and Rejected

15. We considered and rejected several alternative proposals concerning partitioning and disaggregation:

- We considered and rejected the option of continuing to disallow disaggregation of cellular spectrum. We concluded that permitting disaggregation would promote competition and further regulatory symmetry, and that there were no technical or other constraints that would make cellular disaggregation either impractical or administratively burdensome.
- We declined to establish any minimum amount of spectrum that can be disaggregated. We concluded that allowing flexibility in disaggregation would promote more efficient use of spectrum and permit deployment of a wider array of services.
- We declined to allow additional flexibility in our cellular partitioning rules. We concluded that our existing rules are sufficiently flexible so as not to place cellular licensees at a competitive disadvantage compared to other CMRS, and that additional flexibility would be inconsistent with our cellular unserved area rules.
- We declined to apply a new license term to partitioned license areas or disaggregated spectrum. We found that allowing parties to "re-start" their license term would effectively allow a licensee to extend its license term and could lead to circumvention of our license term rules.

F. Report to Congress

16. We shall include a copy of this Final Regulatory Flexibility Analysis, along with this Second Report and Order, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Final Regulatory Flexibility Analysis will also be published in the **Federal Register**.

G. Ordering Clauses

17. Accordingly, pursuant to the authority of sections 4(i), 257, 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(g), 303(r), and 332(a), part 22 of the Commission's Rules, 47 CFR 22.1, *et seq.*, *Is Amended* as set forth in the rule changes.

18. The rules adopted herein will become effective July 13, 2000. This action is taken pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j).

List of Subjects in 47 CFR Part 22

Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR part 22 as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Add § 22.948 to read as follows:

§ 22.948 Partitioning and Disaggregation.

(a) *Eligibility.* (1) *Generally.* Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 1.948 of this chapter. Cellular licensees may partition or disaggregate their spectrum to other qualified entities.

(2) *Partitioning.* During the five year build-out period, as defined in § 22.947, cellular licensees may partition any portion of their cellular market to other qualified entities. After the five year build-out period, cellular licensees and unserved area licensees may partition any portion of their Cellular Geographic Service Area (CGSA), as defined by § 22.911, to other qualified entities but may not partition unserved portions of their cellular market.

(3) *Disaggregation.* After the five year build-out period, as defined in § 22.947, parties obtaining disaggregated spectrum may only use such spectrum in that portion of the cellular market encompassed by the original licensee's CGSA and may not use such spectrum to provide service to unserved portions of the cellular market.

(b) *Disaggregation.* Cellular licensees and unserved area licensees may disaggregate spectrum in any amount.

(c) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of cellular licenses that propose combinations of partitioning and disaggregation.

(d) *License Term.* The license term for the partitioned license area and for disaggregated spectrum shall be the remainder of the original cellular licensee's or the unserved area licensee's license term provided for in § 22.144(a).

[FR Doc. 00–14872 Filed 6–12–00; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852

Risk Management

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule changes the NASA FAR Supplement (NFS) to emphasize considerations of risk management, including safety, security (including information technology security), health, export control, and damage to the environment, within the acquisition process. The interim rule addresses risk management within the context of acquisition planning, selecting sources, choosing contract type, structuring award fee incentives, administering contracts, and conducting contractor surveillance. Also, this interim rule provides that contractors not be paid award fee for any evaluation period in which there is a major breach of safety or security.

DATES: *Effective Date:* This rule is effective July 13, 2000.

Applicability Date: This rule applies to solicitations issued on or after July 13, 2000.

Comment Date: Comments should be submitted to NASA at the address below on or before August 14, 2000.

ADDRESSES: Interested parties should submit written comments to James H. Dolvin, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to jdolvin1@mail.hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: James H. Dolvin, (202) 358–1279.

SUPPLEMENTARY INFORMATION:

A. Background

It is critically important for NASA to achieve mission success without

[3] 5 U.S.C. 603(b)(3), 604(a)(3).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(4).

[6] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632).

[8] 15 U.S.C. 632.

[9] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[10] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[11] Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

[12] FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997).

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compromising safety. However, given that many of NASA's activities involve advanced research, aeronautics, and space flight, NASA cannot completely avoid risk. Therefore, risk must be managed, *i.e.*, comprehensively identified, analyzed, planned, tracked, controlled, communicated, and documented. While risk management is not a new acquisition concept, NASA has initiated a risk-based acquisition management initiative to re-focus on risk as a core acquisition concern. That initiative will be implemented by providing training to NASA and contractor personnel, consultation to NASA projects and programs, and updated policy and guidance through revisions to several of NASA's internal processes and guidelines. This interim rule implements that part of the initiative pertaining directly to the procurement process. Since NASA's activities often include contractor efforts, NASA's focus on safety and mission success must be conveyed in NASA contracts.

A proposed rule was published in the **Federal Register** at 64 FR 38880–84 on June 20, 1999. Comments were received from the Council of Defense and Space Industry Associations, the United Space Alliance, and the Jet Propulsion Laboratory. All comments were considered in the development of the interim rule. After reviewing the public comments, revisions were made to sections 1807.105, 1812.301, 1815.203–72, 1815.304.70, 1815.305, 1816.405–274, 1823.7001, 1852.223–73, and 1852.223–76. Proposed section 1852.223–75 was deleted. The most important of these revisions were (1) changes in requirements for written acquisition plans, (2) elimination of the requirement for a separate risk management plan in proposals, (3) changes in award fee evaluation factors, and (4) revisions to requirements for the Safety and Health Plan.

B. Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because this rule simply focuses attention on risk management, an existing business practice, and does not impose any significant new requirements which might have an economic impact.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 41 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

In accordance with 41 U.S.C. 418(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule. The basis of this determination is that many ongoing NASA activities involve significant risk factors, and that immediate implementation of the procedures described in this interim rule is necessary for identification and management of these risks. Also, the substance of this material was previously published for public comment in the **Federal Register** (64 FR 38880–84) on June 29, 1999. Public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1807, 1811, 1812, 1815, 1816, 1823, 1842, 1846, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1807—ACQUISITION PLANNING

2. Add section 1807.104 to read as follows:

1807.104 General procedures. (NASA supplements paragraph (a)).

(a) The acquisition planning team shall obtain input from the center offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, and security. Their presence on the team shall help to ensure that all NASA acquisitions are structured in accordance with NASA safety, occupational health, environmental, export control, and security policy. As part of this process, the team shall recommend any appropriate solicitation or contract requirements for implementation of safety, occupational health, environmental, information technology, export control, and security concerns (See NPG 8715.3, NASA Safety Manual; NPG 7120.5, NASA Program and Project Management Processes and Requirements; NPG 2810.1, Security of Information Technology, and NPG 1620.1, Security Procedures and Guidelines, all available at www.nodis.hq.nasa.gov).

3. In section 1807.105, add paragraph (a)(7) to read as follows:

1807.105 Contents of written acquisition plans.

* * * * *

(a) * * *

(7) Discuss project/program risks (see NPG 7120.5, NASA Program and Project Management Processes and Requirements). In addition to technical, schedule, and cost risks, the discussion shall include such considerations as: safety and security (including personnel, information technology, and facilities/property); the need to involve foreign sources (contractor and/or governmental), and risks of unauthorized technology transfer (see NPG 2190, NASA Export Control Program); and resource risk, including the necessary level and expertise of NASA personnel resources available to manage the project/program. For each area of risk identified, the discussion shall include a quantification of the relative magnitude (*e.g.*, high, medium, low) together with the specific actions taken to structure the acquisition approach to manage the risks throughout the acquisition process. For example, this discussion would identify those areas that have safety risk, discuss how safety is addressed in contract requirements and evaluated in the source selection, and how it will be managed and incentivized during contract performance. Decisions to accept, mitigate, track, and/or research risk factors shall be identified and documented as part of acquisition planning.

* * * * *

PART 1811—DESCRIBING AGENCY NEEDS

4. Add section 1811.101 to read as follows:

1811.101 Order of precedence for requirements documents. (NASA supplements paragraph (b))

(b) When establishing product descriptions in either a solicitation or contract, contracting officers shall include safeguards, as applicable, to ensure safety, security, and environmental protection.

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

5. In section 1812.301, redesignate paragraph (f)(i)(F) as (G); redesignate paragraphs (f)(i)(G) through (J) as (f)(i)(J) through (M), add new paragraphs (f)(i)(F), (H), and (I), and redesignate paragraph (f)(i)(F) as (G) to read as follows:

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) * * *

(F) 1852.223–70, Safety and Health.

* * * * *

(H) 1852.223–73, Safety and Health Plan.

(I) 1852.223–75, Major Breach of Safety and Security.

* * * * *

PART 1815—CONTRACTING BY NEGOTIATION

6. In section 1815.201, amend paragraph (c)(6)(A) by adding the following sentence immediately before the last sentence to read as follows:

1815.201 Exchanges with industry before receipt of proposals.

(c)(6)(A) * * * Comments should also be requested on any perceived safety, occupational health, security (including information technology security), environmental, export control, and/or other programmatic risk issues associated with performance of the work. * * *

* * * * *

7. Add section 1815.203–72 to read as follows:

1815.203–72 Risk Management.

In all RFPs for supplies or services for which a technical proposal is required, proposal instructions shall require offerors to identify and discuss risk factors and issues throughout the proposal where they are relevant, and describe their approach to managing these risks.

8. In section 1815.304–70, paragraphs (b)(4) and (d)(4) are added to read as follows:

1815.304–70 NASA evaluation factors.

* * * * *

(b) * * *

(4) If the solicitation requires the submission of a Safety and Health Plan (see 1823.7001(c) and NPG 8715.3, NASA Safety Manual, Appendix H), safety and health must be a consideration in the evaluation. For acquisitions valued at $10 million or more, or $25 million or more for commercial items, then the Mission Suitability factor, if used, shall include a subfactor for safety and health. Otherwise, use of that subfactor is optional.

* * * * *

(d) * * *

(4) The contracting officer shall evaluate the offeror's past performance in occupational health, security, safety, and mission success (*e.g.*, mishap rates and problems in delivered hardware and software that resulted in mishaps or failures) when these areas are germane to the requirement.

9. In section 1815.305, revise paragraph (a)(vi) to read as follows:

1815.305 Proposal evaluation.

(a) * * *

(vi) Any programmatic risk to mission success, *e.g.*, technical, schedule, cost, safety, occupational health, security, export control, or environmental. Risks may result from the offeror's technical approach, manufacturing plan, selection of materials, processes, equipment, or as a result of the cost, schedule, and performance impacts associated with its approach. Risk evaluations must consider the probability of the risk occurring, the impact and severity of the risk, the timeframe when the risk should be addressed, and the alternatives available to meet the requirements. Risk assessments shall be considered in determining Mission Suitability strengths, weaknesses, deficiencies, and numerical or adjectival ratings. Identified risks and the potential for cost impact shall be considered in the cost or price evaluation.

* * * * *

10. In section 1815.406–170, delete the "and" at the end of paragraph (c)(5); remove the period at the end of paragraph (c)(6) and add "; and" in its place; and add paragraph (c)(7) to read as follows:

1815.406–170 Content of the prenegotiation position memorandum.

* * * * *

(c) * * *

(7) Any risk management issues, *e.g.*, mission success, safety, occupational health, information technology, export control, security, and environmental risks.

* * * * *

PART 1816—TYPES OF CONTRACTS

11. In section 1816.405–274, paragraphs (c) through (h) are redesignated as paragraphs (d) through (i), and a new paragraph (c) is added to read as follows:

1816.405–274 Award fee evaluation factors.

* * * * *

(c)(1) The technical factor, if used, must include consideration of risk management (including mission success, safety, security, health, export control, and damage to the environment, as appropriate) unless waived at a level above the contracting officer, with the concurrence of the project manager. The rationale for any waiver shall be documented in the contract file. When safety, export control, or security are considered under the technical factor, the award fee plan shall allow the following fee determinations, regardless of contractor performance in other evaluation factors, when there is a major breach of safety or security.

(i) For evaluation of service contracts under 1816.405–273(a), an overall fee determination of zero for any evaluation period in which there is a major breach of safety or security.

(ii) For evaluation of end item contracts under 1816.405–273(b), an overall fee determination of zero for any interim evaluation period in which there is a major breach of safety or security. To ensure that the final award fee evaluation at contract completion reflects any major breach of safety or security, in an interim period, the overall award fee pool shall be reduced by the amount of the fee available for the period in which the major breach occurred if a zero fee determination was made because of a major breach of safety or security.

(2) A major breach of safety consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any "willful" or "repeat" violation cited by the Occupational Health and Safety Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(3) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than $250,000 to the Government; or theft.

* * * * *

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

12. Revise section 1823.7001 to read as follows:

1823.7001 NASA solicitation provisions and contract clauses.

(a) Except as provided in paragraph (b) of this section, the clause at 1852.223–70, Safety and Health, shall be included in all solicitations and contracts for—

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(1) Negotiated acquisitions of $1,000,000 or more;

(2) Construction, repair, or alteration in excess of the simplified acquisition threshold;

(3) Acquisitions having, within their total requirement, construction, repair, or alteration tasks in excess of the simplified acquisition threshold; and

(4) Acquisitions regardless of dollar amount when—

(i) Any deliverable contract end item is of a hazardous nature; or

(ii) It can reasonably be expected that hazards will be generated and controlled within the operational environment during the life of the contract and the contracting officer determines that they warrant inclusion of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded—

(1) From any contract subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6) or the Service Contract Act of 1965 (see FAR Subpart 22.10) in which the application of either act and its implementing regulations constitute adequate safety and occupational health protection; or

(2) When the contracting officer, with the concurrence of the installation official(s) responsible for matters of safety and occupational health, makes a written determination that the clause is not necessary under the circumstances of the acquisition.

(c) The contracting officer shall insert the provision at 1852.223–73, Safety and Health Plan, in solicitations containing the clause at 1852.223–70. This clause may be modified to identify specific information that is to be included in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract.

(d) The contracting officer shall insert the clause at 1852.223–75, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of $500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety, and occupational health. For other contracts, use of the clause is optional.

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

13. In section 1842.503, revise paragraph (1)(iv) to read as follows:

1842.503 Postaward conferences.

(1) * * *

(iv) Complex contract management issues are expected, particularly risk management areas identified during program and acquisition planning, e.g., significant or unusual mission success, technical, cost, schedule, safety, security, occupational health, environmental protection, and export control risks.

* * * * *

PART 1846—QUALITY ASSURANCE

14. Add section 1846.000 to read as follows:

1846.000 Scope of part.

The Government has a duty to assure that appropriated funds are spent wisely. That duty is fulfilled in part through surveillance. Surveillance may be conducted through "insight" (*i.e.*, monitoring of selected metrics and/or milestones) or "oversight" (i.e., Government review and concurrence with contractor decisions). The decision to use insight or oversight is based on an assessment of the risk inherent in the activity being surveilled. Surveillance must be conducted whether or not the contract effort has been structured as performance-based.

15. Add section 1846.401 to read as follows:

1846.401 General. (NASA supplements paragraph (a))

(a) The quality assurance surveillance plan (QASP) which the project office prepares in conjunction with the statement of work is preliminary. It reflects the Government's surveillance approach relative to the perceived programmatic risk, and is written at a general rather than specific level because the risks will not be completely identified at that time. After contract award, contracting officers shall ensure that the QASP is revised to reflect the risks associated with the successful proposal. This final QASP shall not be included in the contract, but should be periodically reviewed to ensure its currency.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. The clause in section 1852.223–70 is revised to read as follows:

1852.223–70 Safety and Health.

* * * * *

Safety and Health (July 2000)

(a) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(b) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule; or property loss of $25,000 or more, or Close Call (a situation or occurrence with no injury, no damage, or only minor damage (less than $1,000) but possesses the potential to cause any category of mishap, or any injury, damage, or negative mission impact) that may be of immediate interest to NASA, arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

(d) The Contractor shall investigate all work-related incidents, accidents, and Close Calls, to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(e)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (e)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(f) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (f) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that—

(1) Amount to $1,000,000 or more (unless the Contracting Officer makes a written determination, after consultation with installation safety and health representatives, that this is not required);

(2) Require construction, repair, or alteration in excess of $25,000; or

(3) Regardless of dollar amount, involve the use of hazardous materials or operations.

(g) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and occupational health measures under this clause.

(h) The contractor shall continually update the safety and health plan when necessary. In particular, the Contractor shall furnish a list of all hazardous operations to be performed, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence—

(1) Written hazardous operating procedures for all hazardous operations; and/or

(2) Qualification standards for personnel involved in hazardous operations.

(End of clause)

17. In section 1852.223–73, remove Alternate I and revise the clause to read as follows:

1852.223–73 Safety and health plan.

* * * * *

Safety and Health Plan (July 2000)

The offeror shall submit a detailed safety and occupational health plan as part of its proposal (see NPG 8715.3, NASA Safety Manual, Appendix H). The plan must include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of contractor employees and to ensure the safety of all working conditions throughout the performance of the contract. The plan must similarly address safety and occupational health for subcontractor employees for any proposed subcontract whose value is expected to exceed $500,000, including commercial services and services provided in support of a commercial item. Also, when applicable, the plan must address the policies, procedures, and techniques that will be used to ensure the safety and occupational health of NASA employees and the public. This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

18. Add section 1852.223–75 to read as follows:

1852.223–75 Major breach of safety or security.

As prescribed in 1823.7001(d), insert the following clause:

Major Breach of Safety or Security (July 2000)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the contractor that consists of an accident, incident, or exposure resulting in a fatality; or in damage to equipment or property equal to or greater than $1 million; or in any "willful" or "repeat" violation cited by the Occupational Health and Safety Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than $250,000 to the Government; or theft.

(c) In the event of a major breach of safety or security, the Contractor shall report the breach to the Contracting Officer. If directed by the Contracting Officer, the Contractor shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

(End of clause)

[FR Doc. 00–14752 Filed 6–12–00; 8:45 am]

BILLING CODE 7501–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1811 and 1852

Packaging, Handling, and Transportation

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to add guidance for packaging, handling, and transportation of certain kinds of aeronautical and space equipment. A NASA policy directive containing these policies already exists, and the new NFS material adds a contract clause which directs the contractor to perform packaging and handling as provided in the policy directive.

EFFECTIVE DATE: June 13, 2000.

FOR FURTHER INFORMATION CONTACT: James H. Dolvin, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), (202) 358–1279, email: jdolvin1@mail.hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Some NASA programs require the development of aeronautical and space equipment which, when transported from one place to another, require the use of special kinds of packaging, handling methods, and transportation procedures. At present, there is a NASA policy directive which has instructions for these procedures, but there is no contract clause in the NFS to require the contractor to perform packaging and handling as provided in the directive. This final rule adds such a clause to the NFS.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), because it only applies in those instances when a small business entity is providing either Class I , II, or III items.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1811 and 1852

Government Procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Acccordingly, 48 CFR Parts 1811 and 1852 is amended as follows:

1. The authority citation for 48 CFR Parts 1811 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1811—DESCRIBING AGENCY NEEDS

2. Amend paragraph (b) of section 1811.002 by removing the word "shall" and adding "must" in its place.

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1811.002 [Amended]

3. Amend paragraph (a)(3) of section 1811.403 by removing the word "shall" and adding "must" in its place.

4. Add section 1811.403–70 to read as follows:

1811.403–70 Packaging, handling, and transportation.

(a) NPG 6000.1E, "Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components" provides guidance for shipment of certain NASA items.

(b) Contracting officers, with the advice of the requiring activity and the Center Transportation Officer, must include a designation of each deliverable item, or groupings of deliverable items, as Class I, II, III, or IV for purposes of contractor compliance with the NPG.

1811.404 [Amended]

5. Amend paragraphs (a)(2) and (a)(3) of section 1811.404 by removing the word "shall" and adding "must" in its place.

6. Add section 1811.404–70 to read as follows:

1811.404–70 NASA contract clauses.

The clause at 1852.211–70, Packaging, Handling, and Transportation, must be included in solicitations and contracts for deliverable items, including software, designated as Class I (mission essential), Class II (delicate or sensitive), or Class III (requires special handling or monitoring).

1811.502 [Amended]

7. Amend paragraph (d) of section 1811.502 by removing the word "shall" and adding "must" in its place.

1811.602 [Amended]

8. Amend paragraph (c) of section 1811.602 by removing the word "shall" and adding "must" in its place.

1811.603 [Amended]

9. Amend paragraph (e)(iii) of section 1811.603 by removing the word "shall" and adding "must" in its place.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Add section 1852.211–70 to read as follows:

1852.211–70 Packaging, handling, and transportation.

As prescribed in 1811.404–70, insert the following clause:

Packaging, Handling, and Transportation—June 2000

(a) The Contractor shall shall comply with NPG 6000.1E, "Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components", dated April 26, 1999, as may be supplemented by the statement of work or specifications of this contract, for all items designated as Class I, II, or III.

(b) The Contractor's packaging, handling, and transportation procedures may be used, in whole or in part, subject to the written approval of the Contracting Officer, provided (1) the Contractor's procedures are not in conflict with any requirements of this contract, and (2) the requirements of this contract shall take precedence in the event of any conflict with the Contractor's procedures.

(c) The Contractor must place the requirements of this clause in all subcontracts for items that will become components of deliverable Class I, II, or III items.

(End of clause)

[FR Doc. 00–14753 Filed 6–12–00; 8:45 am]

BILLING CODE 7510–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AF88

Importation or Shipment of Injurious Wildlife: Zebra Mussel (*Dreissena polymorpha*)

AGENCY: Fish and Wildlife Services, Interior.

ACTION: Final rule, correction.

SUMMARY: The U.S. Fish and Wildlife Service (we) corrects 50 CFR 16.13 by adding the zebra mussel (*Dreissena polymorpha*), a small bivalve mollusk native to Europe, to the list of injurious fish, mollusks, and crustaceans, which are subject to restrictions under the Lacey Act (18 U.S.C. 42). On November 7, 1991 (56 CFR 56942), we added the zebra mussel to the list of injurious wildlife, but it was inadvertently omitted in a subsequent amendment to 50 CFR Part 16 (58 FR 58979, Nov. 5, 1993). This rulemaking corrects the omission and continues the prohibition on the importation, acquisition, or transportation of live zebra mussels, veligers, or viable eggs thereof into or between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

DATES: This action is effective June 13, 2000.

ADDRESSES: Chief, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 840, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Hannibal Bolton, Chief, Division of Fish and Wildlife Management Assistance, telephone (703) 358–1718.

SUPPLEMENTARY INFORMATION: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761) was passed by Congress on October 27, 1990, and signed by President Bush. Section 1208 of that law contains a provision that amends the Lacey Act (18 U.S.C. 42) by adding the zebra mussel to the list of injurious animals contained therein. This provision required addition of the zebra mussel to implementing regulations in 50 CFR 16.13. On November 7, 1991, we added zebra mussels to 50 CFR part 16 (56 FR 56942). In a subsequent final rule affecting part 16, we inadvertently omitted the zebra mussel.

Background

The regulations contained in 50 CFR part 16 implement the Lacey Act as amended. Under the terms of the law, the importation of certain named wildlife is prohibited, with exceptions. Additionally, the Secretary of the Interior is authorized to prescribe by regulations other nonindigenous wild animals, or viable eggs thereof, which are deemed to be injurious or potentially injurious to the health and welfare of human beings; to the interests of agriculture, Forestry, and horticulture; or to the welfare and survival of wildlife or wildlife resources of the United States. The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 added the zebra mussel to the statutory list. We amended 50 CFR 16.13 to reflect the present list of prohibited wildlife. By adding the zebra mussel to the list of injurious fish, mollusks, and crustaceans in 18 U.S.C 42 and in 50 CFR 16.13, their acquisition, importation into, or transportation between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited except by permit for zoological, educational, medical, or scientific purposes, or by Federal agencies without a permit solely for their own use upon filing a written declaration with the District Director of Customs at the port of entry. In addition, no live zebra mussel, viable eggs, or progeny thereof acquired under permit may be sold, donated, traded, loaned, or transferred to any other person unless such person has a permit issued by the director of the Service.

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, 50 CFR part 16 is amended as described below:

PART 16—INJURIOUS WILDLIFE

1. The authority citation for part 16 continues to read as follows:

Authority: 18 U.S.C. 42.

2. Section 1613(a)(2) is revised to read as follows:

§ 16.13 Importation of live or dead fish, mollusks, and crustaceans, or their progeny or eggs.

(a) * * *

(2) The importation, transportation, or acquisition of any live fish or viable eggs of the walking catfish, family Clariidae; live mitten crabs, genus *Eriochei*, or their viable eggs; and live mollusks, veligers, or viable eggs of zebra mussels, genus *Dreissena*, are proibited except as provided under the terms and conditions set forth in § 16.22.

* * * * *

Dated: May 5, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–14804 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 99122347–9347–01; I.D. 060600C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Temporary Closure for the Shore-based Whiting Sector

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces a temporary closure of the primary season for Pacific whiting (whiting) south of 42° N. lat. at noon June 8, 2000, and reimposition of "per trip" limits for whiting until 0001 hours June 15, 2000, at which time the primary season south of 42° N. lat. will resume. This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. This action is intended to keep the harvest of whiting at the 2000 allocation levels.

DATES: Effective from noon local time (l.t.) June 8, 2000, until 2400 hours June 14, 2000. Comments will be accepted through June 28, 2000.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King at 206–526–6145 or Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: The regulations at 50 CFR 660.323(a) (3) and (4) established separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery, and authorized separate starting dates for each sector's primary season. The primary season for the shore-based sector is the period(s) when the large-scale target fishery is conducted, and thus when "per trip" limits are not in effect. The regulations further divide the shore-based allocation so that no more than 5-percent of the shore-based allocation for whiting may be taken and retained south of 42° N. lat. before the primary season begins north of 42° N. lat. The primary season for the shore-based sector south of 42° N. lat. began on April 1, 2000, earlier than the northern season which begins on June 15, 2000, because whiting migrate from south to north during the fishing year. (The first large whiting landing south of 42° N. lat. occurred on April 20, 2000, although the fishery could have started on April 1, 1999.) The 5-percent cap is intended to discourage effort shifts to the south area early in the year. The shore-based whiting allocation for 2000 is 83,790 metric tons (mt) and the 5-percent cap on early fishing south of 42° N. lat. is 4,190 mt. When the 5-percent cap is reached, the 20,000-lb (9,072 kg) trip limit that was in place before the start of the southern primary season is reimposed and remains in effect until the start of the northern primary season on June 15, 2000. However, the 20,000-lb (9,072 kg) trip limit only applies if a vessel does not fish inside of 100 fm (183 m) in the Eureka area during the fishing trip. A different trip limit of 10,000-lb (4,536 kg) of whiting is in effect year-round (unless landings of whiting are prohibited) if a vessel fishes inside of 100 fm (183 m) at any time during a fishing trip in the Eureka area. This smaller limit is intended to minimize incidental catch of chinook salmon which are more likely to be caught shallower than 100 fm (183 m) in the Eureka area.

The best available information on June 5, 2000, indicates that 2,797 mt of whiting have been taken by the shore-based fishery south of 42° N. lat. through May 27, 2000, and that 4,190 mt are projected to be taken by noon June 8, 2000. Therefore, the 20,000-lb (9,072 kg) "per trip" limits announced in the 2000 annual management measures (65 FR 221, January 4, 2000) will resume until the primary season begins north of 42° N. lat.

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4)(i)(B) and (iii)(D), NMFS revises paragraph B. of Section IV. of the 2000 annual management measures (65 FR 221, as amended), by adding a new sub-paragraph B. (3)(b)(iv) as follows:

IV. NMFS Actions

B. * * *
(3) * * *
(b) * * *

(iv) *Closure of shore-based sector south of 42° N. lat.* Effective noon June 8, 2000, to 2400 hours (12 midnight) June 14, 2000 l.t., no more than 20,000-lb (9,072 kg) may be taken and retained, possessed or landed south of 42° N. lat. If a vessel fishes shoreward of the 100 fm (183 m) contour in the Eureka area (43°–40° 30′ N. lat.), the 10,000-lb (4,536 kg) trip limit applies, as announced in the annual management measures at paragraph IV, B (3)(c)(ii).

* * * * *

Classification

This action is authorized by the regulations implementing the FMP. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(i)(B) and (iii)(D), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

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Dated: June 7, 2000.

Bruce Morehead,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14855 Filed 6–8–00; 2:59 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 65, No. 114

Tuesday, June 13, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The NCUA Board is proposing amendments to its chartering and field of membership manual to update chartering policies and further streamline the select group application process. These proposed amendments result from NCUA's experience addressing field of membership issues and concerns that surfaced after the adoption of the current chartering and field of membership policies.

DATES: Comments must be postmarked or received by August 14, 2000.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-Mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Chairman, Field of Membership Task Force, 4807 Spicewood Springs Road, Suite 5200, Austin, Texas 78759 or telephone (512) 231–7900; Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540; Lynn K. McLaughlin, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION: In 1998, Congress updated the laws on field of membership with the passage of the Credit Union Membership Access Act ("CUMAA"). On August 31, 1998, the NCUA Board issued a proposed rule that revised and updated NCUA's chartering and field of membership policies. 62 FR 49164 (September 14, 1998). On December 17, 1998, the NCUA Board issued a final rule with an effective date of January 1, 1999. When the NCUA Board issued its final rule it instructed the Field of Membership Taskforce to coordinate and monitor implementation of the new chartering policies and make necessary recommendations for policy clarifications and amendments to IRPS 99–1.

Shortly after the effective date of the rule, the American Bankers Association (American Bankers) sought a preliminary injunction from the United States District Court for the District of Columbia (the Court) against NCUA to enjoin the final rule. On March 10, 2000, the Court denied the American Bankers' motion. After the Court denied the American Bankers' motion for a preliminary injunction, the American Bankers along with the Independent Community Bankers of America (Community Bankers), filed an amended complaint consisting of seventeen counts. On March 30, 2000, the Court dismissed all of the challenges by the American Bankers and Community Bankers to IRPS 99–1.

Over the past eighteen months, NCUA's Field of Membership Taskforce has monitored and reviewed the implementation of IRPS 99–1 in an effort to improve consistency and provide a basis, if necessary, for further clarifications and modifications. In response to this continued oversight, the Field of Membership Taskforce provided a report to the Board this year. The findings and recommendations are in response to issues that either arose during the past eighteen months or were identified by the NCUA Board as issues that needed clarification.

A. Proposed Amendments

1. Occupational Common Bond

Independent Contractors. Chapter 2, Section II.A of the Chartering Manual states:

> So that NCUA may monitor any potential field of membership overlaps, each group to be served (*e.g.*, employees of subsidiaries, franchisees, and contractors) must be separately listed in Section 5 of the charter.

63 FR 73022 (December 30, 1998). It was the NCUA Board's intent that companies with a strong dependency relationship should be specifically named in the credit union's charter in order to monitor overlaps. However, in some cases, such as when the group possessing the dependency relationship is comprised of numerous sole proprietors or independent contractors, it would be burdensome to list each contractor, and any overlap would be immaterial. For example, there may be hundreds of independent drivers for any particular cab company. Therefore, the NCUA Board is proposing to amend the language in the section on occupational common bonds so that in situations where multiple contractors, who qualify based on a strong dependency relationship, are sole proprietors, the regional director may determine that more generalized wording is acceptable.

2. Associational Common Bond

Students Groups. Under IRPS 99–1, students are considered occupational groups. This permits single occupational common bond credit unions to serve persons employed or attending the same school. However, it does not allow single associational charters, such as faith-based groups that operate schools, to include students in their charters. While a single common bond church credit union can serve the church's employees, including faculty and staff, it cannot serve the students unless the credit union changes its charter type to multiple common bond. This policy restriction is confusing and causes undue problems for some credit unions. To remedy this situation, the NCUA Board believes that student groups should be considered as either associational or occupational, depending on the circumstances.

Given the history of student groups, there is a basis and precedent for re-defining this common bond to allow greater flexibility. For example, over the years, student groups have been treated differently.

As early as 1967, students could be included in the field of membership of a federal credit union chartered primarily to serve faculty and other employees of a college or university. That policy re-stated the earlier position that it did not appear economically advisable to charter a credit union with

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a field of membership limited to students.

In IRPS 89–1 as well as IRPS 94–1, it was determined that student groups could constitute a valid associational common bond and could qualify for a charter. In IRPS 99–1, however, students again became part of an occupational common bond. This change addressed the problem of adding students to occupational school based credit unions, but it created an unanticipated problem with associational based faith credit unions. For example, many churches sponsor and operate schools. The resulting issue with this change was whether students at church schools could be added without changing the common bond type of the credit union (faith based credit unions have an associational common bond).

There is no question that the students of church schools share a common bond with the church, but by policy, the students could not be added without going through the expansion procedures and changing the nature of the credit union. The NCUA Board does not believe this is desired or equitable. The NCUA Board believes that students are a unique group that can be considered either occupational or associational depending on the circumstances. That is, a student group, by itself or when combined with school employees, can be or constitute part of an occupational common bond. When part of a church group, the student group can be treated as part of an associational common bond. Therefore the NCUA Board is proposing to amend Chapter 2, Section III A.1. of IRPS 99–1 to reflect this view.

While not requiring a policy change, several other issues involving students have arisen in the last eighteen months that require clarification. NCUA, by policy, will not consider a student group below the elementary level, in and of itself, as constituting a valid group (employees and students of an elementary school would still be a valid group). Additionally, students of martial arts, sports camps, and other similar social/recreational training programs do not constitute a valid associational group simply because they are enrolled in the program. It is the intent of IRPS 99–1 and these amendments that students must be tied to some academic endeavor or occupational based training program (*i.e.*, college, trade school). Finally, student associational groups must also provide evidence of a valid organization. This can be in the form of bylaws, charter or other equivalent documentation. It is important that the existence of a valid association be determined.

Tiered Voting. In determining whether a group qualifies as an associational group, one of the criteria NCUA considers is whether the members of the group have voting rights. While NCUA will evaluate the totality of circumstances in reaching its decision, a member's ability to vote is a significant factor, especially when differentiating between bona fide associations and client-customer relationships.

Questions have arisen whether this criterion requires each member of the group to vote directly for an official of the association. NCUA has found that some large associations have adopted voting procedures where members vote for delegates who, in turn, cast their votes for officials. This voting structure constructively meets the intent of the field of membership policy. Examples of this may include churches where the lay persons elect delegates who attend the regional or national meetings to elect the national officers and labor unions that may be similarly structured. Therefore, where such voting structures exist, the association will be considered to have met the voting requirement criterion.

Documentation Requirements

Generally, IRPS 99–1 requires that an association provide documentation that it is a valid association. In addressing this issue in IRPS 99–1, language was included that indicated that the best method to demonstrate an organization was a valid association was through a charter or bylaws, or other equivalent documentation. The NCUA Board has found that in some cases, particularly at the local level, some faith based associations may not possess bylaws or a charter. In those cases, it is not necessary to have a copy of a charter or bylaws, but it is necessary to be able to document in some way, *i.e.*, other equivalent documentation, that it is a valid association. For example, a church may not have bylaws or a charter, but it should be able to obtain some other documentation demonstrating it is a legally constituted church. Often, this can come from the presiding official of the church.

3. Multiple Common Bond Credit Unions

Expedited Process for Groups of 500 or Less

In the chartering process, as well as the addition of select groups to a multiple common bond credit union, economic advisability is critically important. NCUA has long taken the position that no charter should be granted unless a determination is made that the credit union "will be viable and that it will provide needed services to its members," and will have a "reasonable opportunity to succeed." To ignore these basic, yet very important, chartering requirements would create unnecessary and undue risks to the National Credit Union Share Insurance Fund (NCUSIF). Equally important is the fact that members of a credit union that has no reasonable chance of success are needlessly harmed. Therefore, it is the responsibility of NCUA to assure that if a credit union is chartered, it has, at a minimum, a reasonable opportunity to succeed in today's financial marketplace. This issue was thoroughly discussed in the preamble to IRPS 99–1.

The addition of groups to a multiple common bond credit union also takes into consideration economic advisability, as well as other criteria. CUMAA requires that before the addition of any group is approved, the NCUA Board must determine, in writing, that:

(1) The applicant credit union has not engaged in any material unsafe or unsound practices within the preceding 1-year period;

(2) The applicant credit union is adequately capitalized (this definition is legally different from the definition in Prompt Corrective Action);

(3) The applicant credit union has the administrative capability to serve the proposed membership;

(4) The benefit to the members outweighs any potential harm the expansion may have on another credit union; and

(5) The applicant credit union has met such additional requirements as the Board may prescribe.

An administrative process must be established to address these issues, particularly since the statute requires that the determination must be in writing.

The economic advisability of a group forming a separate credit union is also an essential element of consideration before a group can be added to a multiple common bond credit union. The statute clearly sets forth this standard. It states:

> [T]he Board shall—(A) encourage the formation of separately chartered credit unions instead of approving an application to include an additional group within the field of membership of an existing credit union whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union. * * *

12 U.S.C.1759 (f)(1)(A). Consequently, NCUA must determine in writing not only that the five statutory criteria are met, but it must also make the determination that the group is not economically advisable for the group to form a separate credit union. The burden, as it should be, is on NCUA to make this determination. This assessment is essentially the same assessment that NCUA would make if the group requested a separate charter, *i.e.*, does it have a reasonable chance of survival? That is, regardless of the size of the group, NCUA must determine if the group could stand on its own as a separate credit union. If the group could safely form its own credit union, then the statute requires that the group be encouraged to form its own credit union.

As set forth in the preamble to IRPS 99–1, it remains the intent of the Board that every group being added to a multiple common bond credit union should be analyzed to determine whether it has the capability and desire to support an independent operation. This requirement, however, must be balanced with operational feasibility. To overlook the complexities of providing financial services will only lead to future supervisory problems. The regulatory approach, therefore, should consider known economic factors and the likelihood of success in establishing and managing a new credit union in today's marketplace. To restate what was discussed in IRPS 99–1, it is the intent that a group desiring a separate charter should have every reasonable opportunity to form a new credit union, but this desire must be balanced against known economic hurdles and start-up operational requirements. Similarly, a larger group lacking the interest to charter and operate a separate credit union should be closely analyzed since desire and initiative are critical to its overall success.

In addressing these requirements in relation to the historical data related to chartering new credit unions, the NCUA Board established an expedited process in IRPS 99–1 for groups of 200 or less primary potential members. Although a written determination regarding the various statutory criteria is still required, the expedited process allowed for the streamlined processing of groups of 200 or less since the Board found that a group of 200 or less, in almost all cases, would not be economically advisable. Thus, this past year, applicant credit unions applying to add a group of 200 or less simply had to complete the Form 4015–EZ. Additionally, no overlap analysis was required for these small groups.

A review of the empirical data of the last eighteen months has convinced the NCUA Board that the expedited processing number should be raised. The data indicates that a substantial majority of the multiple group expansions approved, 91.3 percent, were groups of 200 or less. Further, 96.7 percent of the approved expansions constituted groups of 500 or less. Overall, only 2 percent of all applications for multiple group expansions were denied. In every case involving a group of 500 or less, NCUA found that the group could not reasonably establish an economically viable stand-alone credit union. In fact, the smallest federal credit union chartered in 1999 had a primary potential membership of 2,000. The smallest state credit union chartered in 1999 had a primary potential membership of 1,651.

The NCUA Board believes that based on the historical experience of 1999 and early 2000, plus other chartering data since 1990, that the expedited processing number for adding groups should be raised to 500. [1] In conjunction with this proposal, the NCUA Board is also proposing that the overlap analysis required of groups of 200 or more should be raised to 500.

Adequate Capitalization for Multiple Common Bond Credit Union Expansions

In the preamble to the proposed rule and the preamble to IRPS 99–1 the NCUA Board addressed the issue of defining the statutory term "adequate capitalization" for the addition of select groups to multiple common bond credit unions. It was noted in the more extended discussion in the preamble to the final rule that a reason for the policy change in 1982 allowing select group expansions was to assist credit unions in diversifying their fields of membership for safety and soundness reasons. Since that rationale is also applicable today, the NCUA Board specifically included in the final rule for single common bond and community credit unions the possibility that an expansion could be approved notwithstanding the credit union's financial or operational problems. One of the statutory requirements for the addition of select groups for a multiple common bond credit union, however, is that the credit union be adequately capitalized. However, adequate capitalization was not defined by the statute. Consequently, the Board provided its rationale in the preamble to IRPS 99–1 why 6 percent capitalization for a credit union in existence more than 10 years should be considered adequate for field of membership purposes. In particular, the Board stated:

> [A] 6 percent capitalization for field of membership expansions for multiple common bond credit unions chartered more than 10 years is reasonable and establishes a standard that, while not meeting the average capitalization level of federal credit unions, is indicative of a credit union that generally is managed in a safe and sound manner.

63 FR 72009 (December 30, 1998). In addition to the exception for credit unions chartered less than 10 years, low-income credit unions were also provided flexibility in meeting the capitalization requirement. Low-income credit unions or credit unions chartered less than ten years will be considered adequately capitalized for field of membership purposes provided they are making reasonable progress toward meeting the 6 percent net worth requirement.

In further addressing this issue, the Board stated that:

> [A] restoration capitalization plan, which was a basis for the 1982 policy and which remains operationally desirable, is not consistent with the statutory requirement in CUMAA that, before an expansion can be granted, the credit union must be adequately capitalized. A capitalization restoration plan, while operationally desirable, could essentially render the statutory requirement that the credit union be adequately capitalized meaningless. A ten-year window to obtain a capitalization level of 6 percent is reasonable, obtainable and consistent with prudent safety and soundness goals.

63 FR 72009 (December 30, 1998). The NCUA Board continues to support this view. That is, under normal circumstances, credit unions should be able to achieve a 6 percent capitalization level within 10 years. However, the NCUA Board also believes that for reasons totally outside the control of the credit union, such as sponsor problems, temporary asset fluctuations or economic downturns, a credit union may temporarily drop below or not be able to achieve or sustain a 6 percent capitalization level. These situations need to be addressed in view of the statutory adequate capitalization requirement. Since the addition of select groups is one way to reverse adverse economic trends, the NCUA Board believes that the exception provided newly chartered or low-income designated credit unions should also apply if the credit union is otherwise operationally sound and has the administrative capability to add and

[1] Since 1990, 5 credit unions with 500 or less primary potential members were chartered. Of those 5, 3 remain active. Since 1990, 11 credit unions with primary potential members of 501–1000 were chartered. Of those 11, 8 remain active. Of the 119 federal and state credit unions chartered since 1990, 16 had primary potential members of 1000 or less.

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serve new groups effectively. Accordingly, the regional director should be given the latitude to make a determination that any credit union with less than 6 percent net worth is adequately capitalized for field of membership purposes if the credit union is making reasonable progress toward meeting the requirement. An element of consideration is whether the addition of a select group would facilitate improvement in the capitalization level. For example, if a reasonable plan is in place, and the addition of a select group would not adversely affect the credit union's capitalization goal, then the lower than 6 percent capital level should not be a reason for denying the addition of the group. Therefore, the NCUA Board is proposing to amend Chapter 2, Section IV.B.2 of the Chartering Manual to provide the regional director with this discretionary authority.

Reasonable Proximity for Select Group Expansions

In addressing the issue of reasonable proximity and the addition of a select group, the question was raised how NCUA would respond if a select group was located a considerable distance from the credit union, but no other credit unions are within closer proximity that could or are willing to serve the group. In this situation, the nonavailability of other credit unions is a factor that should be considered in determining whether the group is within reasonable proximity. This interpretation does not require a change in the chartering manual.

A second issue was also raised regarding the policies affecting the addition of groups that are within reasonable proximity of a service facility (this term includes a service center, branch or shared branch or any offsite credit union location that meets the definition of a service facility). This issue is particularly important in view of the networking system of state and national shared service centers, most of which technically meet NCUA's service facility definition. These shared service centers permit participation by credit unions without requiring, in many cases, an ownership interest. The identical or near identical nature of the shared service centers in the state and national networking system with the definition of a service facility in IRPS 99–1 has created confusion and, therefore, must be clarified.

Although IRPS 99–1 states that a credit union can expand around a shared service facility, it was never the intent that a credit union that was simply part of a service center networking system should be permitted to add groups around any of the numerous shared service center locations without an ownership interest. Consequently, the current policy guidance has been that expansions around shared service facilities would not be permitted unless the shared service facility was locally owned by a credit union. The rationale for this position is statutory.

CUMAA requires that NCUA shall first encourage the formation of separately chartered credit unions. If the formation of a separate credit union is not practicable or consistent with the standards set forth in the statute, then a select group can be included in the "field of membership of a credit union that is within reasonable proximity to the location of the group." 12 USC 1759 (f)(1)(B). The statute then delineates a number of approval criteria that must be satisfied before a select group can be added.

In defining reasonable proximity, the Board stated that the group to be added must be within the "service area" of a "service facility" of the credit union. Service facility was defined to mean a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

While not entirely clear in the preamble to IRPS 99–1 or in the policy itself, it was the Board's intent that expansions would be limited to select groups that were within reasonable proximity to a credit union, as it was ultimately defined.

The state and national networking service center system, if used to allow the addition of groups, generally would not conform to the statutory requirements. For example, a credit union in Texas could add groups within reasonable proximity to a service center in Georgia or the hundreds of other service centers located in the United States, even though there was no ownership interest in the service centers, by virtue of its membership or participation in the service center network.

The issue is, can credit unions that are linked to service centers through a state or national network use that linkage, without ownership, to expand their fields of membership by adding select groups located within the service area of those service centers? It is the Board's belief that to allow a credit union to expand around any service center not local to or not having an ownership interest by that credit union would be inconsistent with the statute. However, it is the Board's view that the current policy is overly restrictive and that the threshold for allowing the addition of groups around a shared service facility should be modified.

The Board is amending Chapter 2, Section 4.A.1 of the Chartering Manual to permit the addition of groups around shared service facilities if the credit union either (1) owns directly or through a CUSO or similar organization, at least a 5 percent interest in the service facility or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

Multiple Common Bond Documentation Requirements

During 1999, there were a number of questions and issues related to the documentation requirements that must be satisfied to add select groups. The most questioned requirement related to what information the groups needed to provide relative to why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. While this information is found on Form 4015, IRPS 99–1 did not specifically delineate that the letter from the group must include information on its ability to form a separate credit union. To clarify this issue, the NCUA Board is proposing additional clarifying language be added to Chapter II, IV.B.3 as follows:

Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. Some of the areas the credit union may consider include:

- Member location—whether the membership is widely dispersed or concentrated in a central location.
- Demographics—the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.
- Market competition—the availability of other financial services.
- Desired services and products—the type of services the group desires in comparison to the type of services a new credit union could offer.
- Sponsor subsidies—the availability of operating subsidies.
- Employee interest—the extent of the employees' interest in obtaining a credit union charter.
- Evidence of past failure—whether the group previously had its own credit union or previously filed for a credit union charter.
- Administrative capacity to provide services—will the group have the management expertise to provide the services requested.

A credit union need not address every item on this list, simply those issues that are relevant to its particular request. As stated in the proposed language, a credit union is responsible for obtaining from groups over 500 primary potential members information regarding the factors NCUA will evaluate to determine whether a group can form its own credit union. NCUA reserves the right to contact the groups directly to discuss economic advisability criteria. Direct contact often expedites the process.

Voluntary Mergers

Consistent with current policy, two single common bond credit unions that share the same common bond (same field of membership) can voluntarily merge. For example, corporation A is nationally based. As a result of being nationally based, it has several credit unions that are not geographically restricted serving its employees. These single common bond credit unions share the same common bond and field of membership. Accordingly, by policy, no analysis of the groups are required to determine if they can stand on their own and the credit unions can voluntarily merge.

Similarly, if corporation A is served by a single common bond credit union and corporation B is served by a single common bond credit union, the two single common bond credit unions can merge if one corporation is acquired by the other. In other words, if corporation A purchases corporation B, then the two single common bond credit unions share the same common bond and there is no restriction on the two credit unions voluntarily merging. Again, no analysis is required, other than to determine they share the same common bond.

The two situations described above have not presented a problem this past year. However, if in the examples provided above, one of the credit unions is a healthy multiple common bond credit union, the result can be entirely different. In some cases this places an undue burden on the credit unions and often presents potential long term supervisory concerns. For example, if in the second example the credit union serving corporation B is a multiple common bond credit union, and corporation A purchases corporation B, under current policy, if the primary field of membership in corporation B's credit union has more than 3,000 primary potential members and every other group is less than 3,000 primary potential members, then NCUA still must analyze each group of 3,000 or more potential members to determine whether the formation of a separate credit union is practical. This is a harsh result when both credit unions essentially share the same common bond.

The NCUA Board believes that if there is an intervening event, such as a corporate acquisition or restructuring, and the two credit unions have a substantial overlap of their fields of membership (in other words, the field of membership of both credit unions that results from the restructuring corporations), then the two credit unions should be allowed to voluntarily merge without analyzing that group's ability to form its own credit union.

Using the examples above, if corporation A, served by a single common bond credit union, purchases corporation B, served by a multiple common bond credit union, then employees of B can join credit union A if credit union A's field of membership already includes all employees of A. That is, corporation B employees are now corporation A employees and therefore are a part of credit union A's common bond. Further, even if credit union A were a multiple common bond credit union, policy would permit the addition of the employees of corporation B. It would be treated as an expansion, but processed as a housekeeping amendment. The only restriction is that credit union A cannot serve the other groups in credit union B without satisfying the select group expansion requirements. In many cases, the end result is almost a total overlap of the field of membership of both credit unions.

The almost total overlap is critical to this issue since, in reality, no new select groups that do not already have credit union service are being added. The criteria for multiple common bond expansions includes the statutory guidance that the NCUA Board must encourage the formation of separately chartered credit unions. This language assumes that the group does not already have credit union service available to it, and before adding the select group to another credit union, the agency must first encourage, if reasonable, a separate charter, and then make the determination whether the group can stand on its own as a separate entity. This analysis is relevant to new unaffiliated groups, not groups already included in the field of membership.

In addressing this issue, some credit unions decide to voluntarily merge since they essentially share the same field of membership. In other words, what was once two separate groups being served by two separate credit unions is now one group being served by two separate credit unions. In this situation, particularly if they apply to voluntarily merge, there is no interest in sustaining two credit unions. Consequently, merger is often the best alternative.

If the remaining groups are less than 3,000 primary potential members, they are incidental to the field of membership and should not be the basis for jeopardizing what otherwise is a sound business decision in the interests of the members and the NCUSIF.

Finally, in some instances, the acquiring corporation wants only one credit union serving its employees—not two. How does a healthy credit union dissolve? Obviously, it can voluntarily liquidate, but that is hardly the logical alternative. Allowing a merger in this situation is appropriate and supportable.

Therefore, in light of the reasons stated above, the NCUA Board is proposing a modification to its merger policy to permit the voluntary merger of credit unions with fields of membership that substantially overlap. That is, if the two credit unions share the same primary field of membership, and each of the remaining select groups have primary potential members less than 3,000, then the remaining groups will be considered incidental and the credit unions should be allowed to merge. However, non-primary groups greater than 3,000 would not be considered incidental.

Supervisory Mergers

When safety and soundness concerns are present, NCUA may approve the merger of any federally insured credit union. The NCUA Board is proposing to amend Chapter II, Section IV.D.2 of the Chartering Manual to clarify that abandonment by the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances are examples that may constitute grounds for merging a credit union due to supervisory concerns. This amendment is consistent with the guidance provided this past year in evaluating whether a merger was voluntary or supervisory.

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Common Bond Charter Conversions

Chapter 2 Section IV.F of the Chartering Manual states that:

> Once a multiple common bond credit union converts to a single occupational or assocational credit union, it cannot convert back to a multiple common bond credit union for a period of three years, unless there are safety and soundness concerns.

Although this section is rather straightforward it can have unintended consequences. This past year a multiple common bond credit union divested itself of its select groups so that it could expand its primary potential membership strictly in conformance with single common bond policies. Shortly after converting to a single common bond, the sponsor restructured and sold what had been a major part of the potential single common bond. While the credit union can continue to serve the members of record from this group, it cannot take in new members from the group without converting back to a multiple common bond. Present field of membership policy does not allow for this unless there are safety and soundness concerns.

As has been previously noted, corporate reorganizations and restructuring have increased dramatically this past year, and it is expected that the pace of last year will continue. This type of problem was not anticipated. The intent of the restrictive language in current policy is to prevent credit unions from circumventing the statute by dropping its select groups, becoming a single common bond credit union and adding other single common bond groups (a single common bond credit union can add groups within its common bond without regard to location or size), and then converting back by adding new groups or the groups it dropped when it became a single common bond credit union.

In the situation described above, circumstances beyond the credit union's control entirely altered the primary reason the credit union converted to a single common bond credit union. To eliminate this deleterious result from unexpected corporate reorganizations/restructuring, the NCUA Board is proposing to permit a credit union to continue to serve any group included in or added to its single common bond field of membership at the time of conversion to a single common bond credit union for a period of three years from the date of conversion, even if the group is later sold, spun-off or otherwise divested as a result of a corporate reorganization/restructuring. If the credit union elects to continue to serve any sold, spun-off or otherwise divested group, then it must convert back to a multiple common bond credit union on the third anniversary of the date of conversion. During this three-year period, it will continue to be treated as a single common bond credit union.

Conversions of Multiple Common Bond Credit Unions

The NCUA Board is proposing that Chapter IV, Section II. be amended to clarify that a state chartered multiple common bond credit union that converts to a federal charter may retain in its field of membership any group that it was serving at the time of conversion. Any subsequent additions or amendments to the field of membership must comply with federal field of membership policies. Additionally, the NCUA Board is clarifying that if any state chartered credit union that was considered under state law to be a single common bond credit union, but under federal rules would be classified a multiple common bond credit union, converts to a federal charter, the charter type must be changed to reflect federal policy.

The NCUA Board is also proposing an amendment to Chapter IV, Section III.A of the Chartering Manual to clarify that a federal credit union converting to state charter remains responsible for the operating fee for the year in which it converts. Currently, this fee is not pro rated.

4. Corporate Restructuring for Occupational Common Bond Credit Unions and Multiple Common Bond Credit Unions

This past year, the most challenging and complex field of membership issues involved the loss or dilution of a field of membership as a result of corporate reorganization or restructuring. This issue was addressed in IRPS 99–1, however, the current policy does not completely set forth the resolution of various, and sometime numerous, consequences of a corporate restructuring/reorganization, particularly when the credit unions involved are reluctant, and in some cases refuse, to mutually address the problem.

Corporate restructuring, under previous field of membership policies, could be more easily resolved since those policies allowed greater flexibility when a credit union added a new group, or continued service to a group that no longer was in its field of membership.

CUMAA, however, placed new restrictions on the addition of new groups relative to size and reasonable proximity. What was previously a relatively simple process became more problematic because of the requirement to determine if the change could be handled as a housekeeping amendment, or whether it required the credit union to apply for an expansion. If it was considered an expansion, then all the requirements relative to adding a new group applied. To illustrate this problem, consider the following example:

> Credit union A serves occupational group A and credit union B serves occupational group B. Occupational group A buys occupational group B. Can credit union A now serve occupational group B? What happens to credit union B? Can it continue to serve its old field of membership, or has it lost its field of membership and now must convert to another type of credit union or voluntarily liquidate or merge? If credit union B continues to operate, can it also serve occupational group A? What happens if in the acquisition both groups are totally integrated and they are no longer separately identifiable? What happens if it is a merger and the credit unions cannot reasonably determine if the new field of membership can easily be divided?

Often, one of the credit unions is significantly smaller than the other. In this instance, should credit union A, if it is the smaller of the two, receive a field of membership windfall and credit union B be left without a viable field of membership. In other words, should either credit union A or B be advantaged or adversely impacted by a corporate restructuring/reorganization over which they have no control. Lastly, what happens if the new corporation chooses to only allow one credit union to serve its employees? What is NCUA's responsibility in trying to determine who should serve whom?

This example, while relatively simple factually, is occurring with greater frequency, and there are no simple answers. It is further complicated if one of the credit unions is a multiple common bond charter. In fact, experience has demonstrated that the variations on this example are endless. Most often, the corporate change results in a significant hardship for one or the credit unions. It is anticipated that the number of corporate reorganizations and acquisitions will continue to climb thus impacting a larger number of credit unions.

Current written policy is not clear on how to resolve these type of issues. Further, in the development of current policy, all the ramifications of the problems resulting from corporate restructuring and acquisitions were not fully considered. Consequently, after considerable review of this issue, the NCUA Board believes that the current policy must be clarified in order to provide credit unions affected by this common occurrence, and over which they have no control, more equitable treatment. The NCUA Board does not believe that Congress intended that credit unions should be forced to liquidate because of a corporate reorganization/restructuring. Consequently, the NCUA Board is of the view that in a corporate restructuring situation, greater flexibility must be allowed so that both credit unions can serve the same field of membership.

For single common bond credit unions, the NCUA Board is proposing an amendment to clarify actual practice that if the group comprising the single common bond of a credit union merges with, or is acquired by, another group, the credit unions originally serving both groups can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment. In other words, it will be permissible for both credit unions to serve the same single common bond group. However, the credit unions may agree to divide the field of membership in some way. To clarify this practice, additional language is proposed to state that unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership.

For multiple common bond credit unions, the NCUA Board is proposing a clarifying amendment to reflect that when two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions by a housekeeping amendment to its charter. As with single common bond credit unions, both credit unions will be allowed to serve the new group resulting from the merger, buyout or acquisition, and the credit unions can mutually divide the new field of membership. If they do not agree to a division of the field of membership, then a total overlap will be permitted. The NCUA Board believes this to be in the best interests of the credit unions and the members and the safety and soundness concerns that evolve when a credit union loses its field of membership.

Finally, it is important to note that the NCUA Board does not believe this policy clarification is in violation of CUMAA or its intent since new unaffiliated groups are not being added. Rather, the same potential membership, in terms of numbers, have the ability to choose to join one or both credit unions.

These changes do no alter the current policy that a multiple common bond credit union can, by a housekeeping amendment, continue to maintain in its field of membership groups that have been sold, spun-off, or merged.

5. Commmunity Charters

Chapter 2, Section V.A.2 of the Chartering Manual states that an "ethnic neighborhood, a rural area, a city, and a county with 300,000 or less residents will generally have sufficient interaction and/or common interests to meet community charter requirements." Chapter 2, Section V.A.2 of the Chartering Manual further states that:

> In most cases, the "well-defined local community, neighborhood, or rural district" requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, *i.e.*, a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or (2) the area to be served is in multiple contiguous political jurisdictions, *i.e.*, a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these this criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests.

The NCUA Board included this statement in the final rule to define those situations based on historical data that generally meet the community requirements. As a consequence of the historical data, which is further supported by NCUA's experience in 1999 for presumptive community charters, NCUA only requires a letter describing how the particular area meets the standards for community interaction or common interests. This was not intended to suggest that geographical areas with populations larger than 300,000, for example, would not qualify for a community charter. There is no negative presumption for larger geographical areas. Simply, more detailed documentation will be necessary to support that the proposed area is a well-defined community. In fact, the NCUA Board has approved six community charters with a population in excess of 300,000 under IRPS 99–1.

Community Action Plan (CAP)

Currently, credit unions are required to submit both a business and marketing plan with any proposed, converting or expanding community charter application. A business and marketing plan is also critical in evaluating the application for a newly chartered community credit union. It is anticipated that the marketing plan for either an expansion, conversion or chartering of a community charter will address how the credit union intends to serve the entire community.

However, very often, this aspect of the marketing plan may be very general and not specific to low-income or underserved areas.

The development of the marketing plan is solely within the purview of the credit union and is important in that it provides the strategy to achieve the objectives set forth in the business plan. NCUA has not previously required that the marketing plan be specific as to any one issue, but IRPS 99–1 does require that it address how the entire community will be served.

One of the goals of the Federal Credit Union Act is to make credit available to people of small means. Therefore, the NCUA Board is proposing that the chartering manual be revised to require that any type of application related to expanding, converting or chartering a community credit union include not only the required business and marketing plan, but also a community action plan (CAP) that will be periodically updated by the board of directors of the credit union and reviewed periodically by NCUA. There is no evidence to support that community credit unions have failed to fulfill their responsibility to serve the entire community. However, since service to the entire community is an essential consideration for community charters, it is appropriate that NCUA set forth its regulatory expectations in this regard. Existing community credit unions will also be expected to review their business and marketing plans and develop a CAP, which if approved in a final rule, should be in place no later than December 31, 2001.

The business plan would continue to address the documentation requirements set forth in Chapter 1 of the Chartering and Field of Membership Manual; however, the CAP would supplement the marketing plan by specifically addressing the credit union's plan to market its services to the entire community, including underserved or low-income areas (if applicable). This may include current or future delivery systems, such as ATMs, 24 hour voice response system, internet web sites, current or future customized programs to assist community residents such as credit counseling and budgeting, and current or future service facility locations. An important component of CAP is that it will specifically focus on providing services to the entire community consistent with sound business principles, and in

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particular less advantaged economic groups or groups with historically less access to financial services within its community field of membership.

Internal guidelines to examiners would require them to periodically review a community credit union's CAP and its overall effectiveness in meeting the goals outlined in the plan. In the event a community credit union failed to reasonably follow its CAP, the regional director would have discretion to pursue appropriate supervisory actions.

6. Underserved Areas

The addition of underserved areas, as defined in Chapter 3 of IRPS 99–1, to the field of memberships of operating credit unions has been identified as a priority by the Board. Additionally, some credit unions have pointed out that the requirements for adding an underserved area are difficult to document. Consequently, the Board believes that the current policies on adding underserved areas should be modified in order to more easily achieve the statutory intent of providing service to the greatest number of people of small means.

Three criteria must be met before an underserved area can be added to any federal credit union's field of membership. First, the area must be a local community. Second, the area must also be classified as an investment area as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703 (16)) and meet any additional requirements the Board may impose (the Board has not imposed any additional requirements). Third, the credit union adding the underserved area must establish and maintain an office or facility in the local community, neighborhood, or rural district.

After reviewing the statutory intent of service to underserved areas and the overall goal of improving credit union service to these areas, the NCUA Board proposes to modify the current polices relating to each of the three criteria in order to encourage further development of credit union activities in underserved areas and thereby improve financial services to those most in need.

IRPS 99–1 articulates a presumption policy for communities within a single political jurisdiction if the population does not exceed 300,000, or, if within multiple contiguous political jurisdictions, the population does not exceed 200,000. Under IRPS 99–1, however, interaction or common interests still must be demonstrated. The NCUA Board believes an impediment to facilitating service to underserved areas is the current policy requiring the applicant credit union to establish that there is interaction or common interests in the underserved area.

In previous policies, the NCUA Board has determined that an area where a majority of residents meeting NCUA's definition of low-income could in and of itself be the basis for a common bond. Similarly, the NCUA Board believes that in certain cases, if an area otherwise meets the requirements of an underserved area, then additional documentation will not be necessary to establish that it is a local community where the residents have common interests or interact.

Accordingly, if the area meets the requirements for an investment area, and the size of the investment area, whether contained wholly or in part of a single political jurisdiction or multiple political jurisdictions, meets the presumptive criteria established in IRPS 99–1, then the credit union will not have to demonstrate common interests or interaction among the residents. Accordingly, Chapter III, Section III, should be amended to state that the "well-defined local community, neighborhood, or rural district" requirement will be met if:

(1) The underserved area to be served is in a recognized single political jurisdiction, *i.e.*, a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or

(2) The underserved area to be served is in multiple contiguous political jurisdictions, *i.e.*, a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000.

However, should the underserved area exceed these limits, the credit union must document the area meets the local community criteria outlined in Chapter 2, Section V.A.2, Documentation Requirements of IRPS 99–1.

The statute further requires that the local community, neighborhood, or rural district must be an investment area that is underserved. The Community Development Banking and Financial Institutions Act of 1994 delineates seven criteria, any one of which is sufficient to establish an area as an investment area. In six of those criteria, there is the requirement that there must be "significant unmet needs for loans or equity investments." The Board has the authority to determine what constitutes significant unmet needs for loans or equity investments. In this instance, if the proposed area meets the poverty, median family income, unemployment, distressed housing, or population loss criteria as set forth in the Community Development Banking and Financial Institutions Act of 1994, then the Board will presume that there are significant unmet needs for loans or equity investments.

Finally, the third potential problem area in providing service to an underserved area is the statutory requirement that the "credit union establishes and maintains an office or facility in the local community, neighborhood, or rural district at which credit union services are available." NCUA has determined that this statutory test will be met if one of two requirements is met.

First, at the time the underserved area is added to the credit union's field of membership, a plan must be in place to establish and maintain an office or facility within two years. In addition to a permanent office or facility, this requirement may also be satisfied through periodic service to the underserved area through the use of a mobile office, an office open at select times each week, a service facility or shared branches or shared service facilities. A credit union that has multiple underserved areas in its field of membership must meet the statutory requirement for each underserved area unless the underserved areas are contiguous.

Second, if a credit union has a preexisting office within close proximity to the underserved area(s), then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

In addition to the amendments discussed above, the Board desires to provide incentives to further encourage the addition of underserved areas. In this regard, the NCUA Board is considering one or more incentives for credit unions adding underserved communities if the underserved community is a minimum population size. Comments are specifically requested on what the population size of the underserved area should be in order for the credit union to qualify for one or more of the following incentives:

- The asset base used to compute the credit union's operating fee will be frozen for a two-year period.
- The operating fee will be reduced by ten percent or more per year until the total reduction equals $20,000 over a maximum five-year period.
- The assets of the underserved area will not be included in the calculation of the credit union's operating fee for 5 years.
- Fixed assets in the underserved area will not be counted toward the fixed asset limitation of § 701.35 of NCUA's Rules and Regulations. In addition, the credit union would be exempt from the charitable donation regulation, § 701.25 and would be allowed to increase the dollar threshold from $100,000 to $250,000 when an appraisal is required, § 722.3(a)(1).

It is the Board's intent that the final amendments include some form of incentives. The NCUA Board is requesting comments on these proposed incentives and any others that would increase service to underserved areas.

7. Miscellaneous Issues

Single Common Bond Status

There has been a lingering question relative to the status of single common bond credit unions as of the date of enactment of CUMAA if the corporate sponsor subsequently reorganizes/restructures. For example, if corporation A is served by a single common bond credit union as of the date of enactment of CUMAA, but subsequent to the date of enactment corporation A restructures and spins off a division, can the single common bond credit union continue to serve the spun off division (no longer a part of corporation A) without converting to a multiple common bond credit union?

The position consistently followed by NCUA was that the credit union would have to convert to a multiple common bond credit union in order to continue to serve the spun off group. This was consistent with the statute because members of the group could still be served, even though they may not have been members of the credit union at the time of CUMAA's enactment.

This position has created unnecessary hardships for several credit unions. As a result, the NCUA Board has revisited this issue and believes that the previous position should be modified. The rationale for this modification is two-fold. First, the statute states:

> (ii) a member of any group whose members constituted a portion of the membership of any Federal credit union as of that date of enactment shall continue to be eligible to become a member of that credit union, by virtue of membership in that group, after that date of enactment.

12 U.S.C 1759(c)(1)(A)(ii). Clearly, the credit union can continue to serve any member of the group that was part of the field of membership as of the date of enactment. Second, the successor language in CUMAA states:

> If the common bond of any group referred to in subparagraph (A) is defined by any particular organization or business entity, subparagraph (A) shall continue to apply with respect to any successor to the organization or entity.

12 U.S.C. 1759(c)(1)(B). In other words, if the group was included in the field of membership of a credit union, that group can remain in the field of membership regardless of a change in that group's corporate status. For example, name change, move to a different location, acquisition of new subsidiaries, *etc.*

The above statutory provisions make it clear that groups within a credit union's field of membership as of the date of enactment can continue to be served. The only question is, must the status of the credit union change in light of the statutory definition of the types of credit unions? Upon further review, the NCUA Board is modifying its position on this issue since no new non single common bond groups are being added. Therefore, the NCUA Board is classifying any credit union that was a single common bond credit union as of the date of enactment of the statute as a single common bond credit union provided it does not add any new groups to its field of membership after the date of enactment. That is, to remain a single common bond credit union, it can only serve those groups that constituted part of the single common bond at the time CUMAA was enacted.

Low-Income Communities Added Under IRPS 94–1

IRPS 94–1 permitted any credit union to include in its field of membership, without regard to location, communities and associational groups satisfying the low-income definition.[2] The purpose of this policy was to facilitate the making of credit union service available to persons in low-income communities. The only other requirement for the addition of a low-income community was that the area so designated in fact met community standards. Although the courts did not address this particular issue or overturn any polices related to service to low-income communities, CUMAA affirmatively provided authority for federal credit unions to add any person within a local community, neighborhood, or rural district if the local community, neighborhood or rural district is (1) an investment area that is underserved and (2) the credit union establishes and maintains an office or facility in the designated investment or underserved area. 12 U.S.C. 1759(c)(2).

There are seven tests for an underserved investment area, any one of which will satisfy the requirement. The authority granted in CUMAA for federal credit unions is a broader standard than the low-income requirement definition in IRPS 94–1 in that it encompasses a significantly larger low-income base. One of the tests for an underserved investment area is that the "median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income; and the area has significant unmet needs for loans or equity investments."[3] In many instances, this one test can be less stringent than the previous requirement under IRPS 94–1.

As has been repeatedly noted and even referenced in CUMAA, credit unions have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means. This is reflected in the statutory authority to serve underserved investment areas. Throughout IRPS 99–1, the Board took note of this statutory mandate and adopted policies that encourage and promote credit union services to low-income groups and communities. This continues to be the NCUA Board's approach.

This discussion is necessary in light of the fact IRPS 99–1 does not directly address the status of low-income communities added under IRPS 94–1 since that term was essentially subsumed in the definition of an underserved area in IRPS 99–1. In other words, if the low-income community added under IRPS 94–1 meets the definition of an underserved investment area, and the credit union maintains an office in the low-income community, then it meets the requirements of IRPS 99–1.

The problem that has arisen relates to the continued service to the low-income community added under IRPS 94–1, which is no longer recognized under IRPS 99–1, if the credit union converts to a different charter type.[4] Current policy is that the grandfather provision no longer applies once the charter type

[2] Majority of the residents fall at or below 80 percent of the median household income of the nation or who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics.

[3] Chartering and Field of Membership Manual, Chapter III, Section III.

[4] If the credit union does not convert its charter type, it can continue to serve the low-income community added under IRPS 94–1 pursuant to the grandfather provision in CUMAA.

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is converted. However, this policy, as it relates to low-income communities and underserved investment areas, is overly restrictive in view of the broad mandate of the statute to provide credit union services to people of modest means.

Based on the authority provided by CUMAA, the ability to serve people of modest means was expanded, not restricted. As previously mentioned, any number of other criteria were provided to broaden the "modest means" base. The primary limiting factor was the establishment and maintenance of an office in the area to be served. The NCUA Board has determined that any low-income community added under IRPS 94–1 will qualify as an underserved investment area. If, however, the credit union does not maintain an office in the low-income community, before it can expand that portion of its field of membership, it must come into compliance with IRPS 99–1.

Express Chartering

For many groups, obtaining NCUA's approval for a federal credit union charter is a time-consuming process that generally takes many months, sometimes as long as two years. It has been NCUA's experience that organizers have encountered difficulties in developing comprehensive business plans, operating policies and reasonable financial projections. To help achieve the agency's goals of encouraging the formation of credit unions and to make quality credit union service available to all eligible persons, the chartering procedures were reviewed by staff to determine if the application process could be modified to:

(1) Expedite the chartering process, and

(2) Achieve the agency's goal, as set forth in the Strategic Plan, of facilitating the formation of new credit unions.

After review of the current policy and procedures (IRPS 99–1), and considering the overall fail/success ratio of new charters,[5] the NCUA Board has determined that the chartering process can be streamlined without creating any undue risks to the National Credit Union Share Insurance Fund provided reasonable safeguards are implemented. To accomplish this goal, Express Chartering Procedures (ECP) are being implemented. To implement ECP, it is not necessary to amend IRPS 99–1. As faster approval of charter applications will result from standardized policies and business plans, and documentation of member and sponsor support. While the level of service of a new charter will initially be limited under ECP, credit union officials can enhance business plans and policies to increase services as they gain experience operating the credit union. Furthermore, with the addition of Economic Development Specialists in each region, more direct assistance, in conjunction with other organizations, can be provided to newly chartered credit unions. This assistance should provide increased opportunities to expand credit unions services in newly chartered credit unions.

In order to charter a federal credit union, a group must possess:

(1) An appropriate common bond or be a well-defined local community, neighborhood, or rural district;

(2) The subscribers must be of good character and fit to represent the credit union; and

(3) The establishment of the credit union must be economically advisable.

Each of these legal requirements were examined by NCUA to determine where changes could be made to expedite the chartering process. The NCUA Board's analysis of each requirement is addressed below:

Common Bond/Community

The inability of the charter applicant to establish the existence of an acceptable common bond type or community often contributes to the length of time it takes to process a new charter application. This basic requirement in the chartering process is statutory and must be satisfied. For single and multiple common bond credit unions, the existence of an association or employer generally satisfies the field of membership requirement, and, therefore, is not problematic. Conversely, a community charter applicant is more likely to encounter delay in its effort to establish that the proposed geographic boundaries constitute a "local community." With the implementation of IRPS 99–1, and its streamlined procedures for certain communities, it is believed that this particular problem has been adequately addressed; therefore, the NCUA Board is not making any changes to this requirement.

Fitness of Management and Officials

In order to determine management's fitness to serve, NCUA performs both background criminal and credit checks on the proposed credit union's prospective officials and subscribers. (12 U.S.C. 1790a and 12 CFR 701.14) It often takes up to two months before receiving the results of background criminal investigations. However, rarely is adverse information uncovered during this process. Furthermore, the regions can and will approve a charter subject to receipt of the background review information. If adverse information is uncovered, the officials are charged with finding a suitable replacement. If the charter has already been granted, it is not suspended or canceled.

In some cases, the applicant group will be required to replace one or more of the proposed officials because of adverse credit checks. This also can result in a processing delay, but, generally, the delay is not extended. Additionally, and most importantly, due to safety and soundness concerns, it is important that credit checks be performed.

Because of the importance of background checks and NCUA's overall statutory responsibility to ensure the fitness of officials, the NCUA Board is not making any changes to this requirement.

Economic Advisability

To determine whether a proposed credit union would be economically viable, the group must submit a detailed business plan, as outlined in IRPS 99–1. The plan must contain a number of elements, including evidence of member support, proposed policies, evidence of subsidies, and pro forma financial projections.

Most often, delays in chartering a new credit union result from deficiencies in the group's business plan. For example, projections may not be reasonable, or policies may be incomplete or unacceptable. For new subscribers this is a particularly burdensome process and often requires the assistance of consultants and/or NCUA staff. It is also the one area that procedural modifications can be made without undermining the overall goal of obtaining an acceptable business plan.

It is during the development of the business plan that many groups decide that they do not have the expertise to run a credit union. In other words, the development of a business plan acts as a check and balance for those who mistakenly believe that chartering and running a credit union is an easy task. This accounts for the low percentage of groups that actually complete the chartering process. Although this has some safety and soundness benefits, the NCUA Board believes that if procedures can be put in place that allow applicant groups to maintain their initial momentum, more credit unions will be chartered and the entire process of developing a meaningful business plan will be better understood and

[5] Between 1990–1999, 119 credit unions were chartered. Of those chartered, 95 remain active for an overall 80% active status.

appreciated. Accordingly, the NCUA Board believes that those requirements relating to the development of a business plan can be modified to allow for expeditious charter approval, but restrict services offered until the credit union completes a more thorough business plan. The more thorough business plan is now required before the charter can be approved.

Express Chartering Program

The NCUA Board has given the Office of Examination and Insurance the responsibility to implement ECP. The ECP procedures will utilize standardized forms, NCUA on-site assistance, and certain restrictions on the initial services that may be offered. The ECP will be reviewed on an annual basis, by the Office of Examination and Insurance, to determine whether it is achieving its intended purpose without creating additional risks to the National Credit Unions Share Insurance Fund.

The ECP will use, to the greatest extent possible, standardized forms to facilitate the issuance of a charter early during the chartering process. They include:

- Standard business plan for limited services;
- Standard member survey format—this will include all applicable data needed to analyze the group's initial financial projections (initial pledge, systematic savings, *etc.*);
- Standard policies (shares, lending, investments, *etc.*); and
- Standard forms for sponsor support, grants, and nonmember deposits (where applicable). Often, letters of support are inconclusive or the terms are unclear. Standard forms should help to eliminate this problem.

Initially, credit unions using ECP will only be able to offer regular shares and signature loans not exceeding predetermined amounts. This will enable the officials to familiarize themselves with basic credit union operations and cash management skills. The Letter of Understanding and Agreement (LUA) that always accompanies a new charter will include this restriction. An applicant credit union can elect not to use ECP.

Once a credit union demonstrates it can manage these limited responsibilities, the officials can submit a new credit union prepared business plan to expand services (*e.g.*, share drafts, credit cards, *etc.*). This further refinement of the business plan can be accomplished in stages with increased responsibilities and services offered commensurate with the approved business plan.

The advantage of the early ECP is that once the credit union is chartered, some services can be offered, and the officials will gain experience and knowledge in the operation of a credit union as they prepare a more detailed business plan. It is also believed that the importance of a business plan will be better appreciated if the officials are actually engaged in operating the credit union.

While NCUA's resources are limited, judicious use of NCUA staff to work with qualifying groups would be beneficial. The ECP will make use of the regional EDSs to guide the group through the application process. Once the group is chartered, the EDS and examiner will work with the credit union, as they do now.

Internet Expansion Requests

The NCUA Board has given the Field of Membership Taskforce the oversight responsibility for the development of an Internet select group expansion process. This process would allow credit unions to submit requests for occupational groups of 500 or less online with an expedited approval by NCUA. When these proposed amendments are finalized the Board will provide more details.

8. Technical Amendment on the Title of the Section Regarding Immediate Family Members

The Board is proposing to change the titles of Chapter 2, Section II.H, Chapter II, Section III.H. and Chapter II, Section IV. H. to "Other Person's Eligible for Credit Union Membership." This proposed technical amendment is appropriate to accurately conform the title to the policy contained in that section.

B. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed amendments will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that the proposed community action plan requirements in IRPS 00–1 are covered under the Paperwork Reduction Act. NCUA is submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for its review.

The proposed amendment would require community federal credit unions to develop a community action plan to serve their members, including low-income members and low-income areas. The NCUA Board estimates that it will take an average of two hours for a federal credit union to comply with this community action plan requirement. The NCUA Board also estimates that 625 credit unions will have to develop this plan so the cumulative total annual paperwork burden is estimated to be approximately 1250 hours.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on: (1) Whether the paperwork requirements is necessary; (2) the accuracy of NCUA's estimate of the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements. Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, D.C. 20503; Attention: Alex T. Hunt, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. These proposed amendments make no significant changes with respect to state credit unions and therefore, will not materially affect state interests.

C. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed amendments are understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and record keeping requirements.

By the National Credit Union Administration Board on June 6, 2000.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

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PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

Section 701.6 is also authorized by 15 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 3601-3610.

Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 99–1, Chartering and Field of Membership Policy (IRPS 99–1), as amended by IRPS 00–1. Copies may be obtained by contacting NCUA at the address found in 792.2(g)(1) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133–0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 99–1) does not, and the following amendments will not, appear in the Code of Federal Regulations.

3. In IRPS 99–1, Chapter 2, Section II.A is revised to read as follows:

A single occupational common bond federal credit union may include in its field of membership all persons and entities who share that common bond. NCUA permits a person's membership eligibility in a single occupational common bond group to be established in four ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of an single occupational common bond;
- Employment in a corporation or other legal entity with a controlling ownership interest (which shall not be less than 10 percent) in or by another legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of a single occupational common bond; or
- Employment or attendance at a school makes that person part of a single occupational common bond (see Chapter 2, III.A.1).

A geographic limitation is not a requirement for a single occupational common bond. However, for purposes of describing the field of membership, the geographic areas being served will be included in the charter. For example:

- Employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation or the subsidiaries listed below;
- Employees of ABC Corporation who are paid from * * *;
- Employees of ABC Corporation who are supervised from * * *;
- Employees of ABC Corporation who are headquartered in * * *; and/or
- Employees of ABC Corporation who work in the United States.

So that NCUA may monitor any potential field of membership overlaps, each group to be served (*e.g.*, employees of subsidiaries, franchisees, and contractors) must be separately listed in Section 5 of the charter. However, in situations where multiple contractors, who qualify based on a strong dependency relationship, are sole proprietors, the regional director may determine that more generalized wording is acceptable (*e.g.*, "non-incorporated owner-operators who work regularly under contract to AJM Industries, Inc. in Glenville, New York").

The corporate or other legal entity (*i.e.*, the employer) may also be included in the common bond—*e.g.*, "ABC Corporation." The corporation or legal entity will be defined in the last clause in Section 5 of the credit union's charter.

A charter applicant must provide documentation to establish that the single occupational common bond requirement has been met.

Some examples of a single occupational common bond are:

- Employees of the Hunt Manufacturing Company who work in West Chester, Pennsylvania. (common bond—same employer with geographic definition);
- Employees of the Buffalo Manufacturing Company who work in the United States. (common bond—same employer with geographic definition);
- Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond—same employer with geographic definition);
- Employees of Johnson Soap Company and its majority owned subsidiary, Johnson Toothpaste Company, who work in, are paid from, are supervised from, or are headquartered in Augusta and Portland, Maine. (common bond—parent and subsidiary company with geographic definition);
- Employees of MMLLJS contractor who work regularly at the U.S. Naval Shipyard in Bremerton, Washington. (common bond—employees of contractors with geographic definition);
- Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from the Newport Beach Medical Center, Newport Beach, California. (single corporation with geographic definition);
- Employees of JLS, Incorporated and MJM, Incorporated working for the LKM Joint Venture Company in Catalina Island, California. (common bond—same employer—ongoing dependent relationship);
- Employees of and students attending Georgetown University. (common bond—same occupation); or
- Employees of all the schools supervised by the Timbrook Board of Education in Timbrook, Georgia. (common bond—same employer).

Some examples of insufficiently defined single occupational common bonds are:

- Employees of manufacturing firms in Seattle, Washington. (no defined occupational sponsor);
- Persons employed or working in Chicago, Illinois. (no occupational common bond);
- Employees of all colleges and universities in the State of Texas. (not a single occupational common bond); or
- Employees of Timbrook School District and Swanbrook School District, in Burns, Georgia. (not a single occupational common bond).

4. In IRPS 99–1, Chapter 2, Section III.A.1 is revised to read as follows:

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Separately chartered associational groups can establish a single common bond relationship if they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);

- Non-natural person members of the association;
- Employees of the association (for example, employees of the labor union or employees of the church); and
- The association.

Generally, a single associational common bond does not include a geographic definition. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds will include a definition of the group that may be served based on the effective date of the association's charter, bylaws, and any other equivalent documentation. If the associational charter crosses NCUA regional boundaries, each of the affected regional directors must be consulted prior to NCUA action on the charter.

Qualifying associational groups must hold meetings open to all members, must sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association, and must have an authoritative definition of who is eligible for membership. Usually, this will be found in the association's charter and bylaws.

The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a group satisfies associational common bond requirements for a federal credit union charter, NCUA will consider the totality of the circumstances, such as:

- Whether members pay dues;
- Whether members participate in the furtherance of the goals of the association;
- Whether the members have voting rights. To meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;
- Whether the association maintains a membership list;
- The association's membership eligibility requirements; and
- The frequency of meetings.

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Individuals or honorary members who only make donations to the association are not eligible to join the credit union. Other classes of membership that do not meet to accomplish the goals of the association would not qualify.

Educational groups—for example, parent-teacher organizations, alumni associations, and student organizations in any school—and church groups constitute associational common bonds and may qualify for a federal credit union charter.

Student groups (*e.g.*, students enrolled at a public, private, or parochial school) may constitute either an associational or occupational common bond. For example, students enrolled at a church sponsored school could share a single associational common bond with the members of that church and may qualify for a federal credit union charter. Similarly, students enrolled at a university, as a group by itself, or in conjunction with the faculty and employees of the school, could share a single occupational common bond and may qualify for a federal credit union charter (see Charter 2, II.A).

Homeowner associations, tenant groups, co-ops, consumer groups, and other groups of persons having an "interest in" a particular cause and certain consumer cooperatives may also qualify as an association.

The terminology "Alumni of Jacksonville State University" is insufficient to demonstrate an associational common bond. To qualify as an association, the alumni association must meet the requirements for an associational common bond. The alumni of a school must first join the alumni association, and not merely be alumni of the school to be eligible for membership.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. However, having an incidental client-customer relationship does not preclude an associational charter as long as the associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a condition of membership, may qualify as a valid associational common bond.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of the regional director, a copy of the association's charter, bylaws, or other equivalent documentation, including any legal documents required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership—*e.g.*, "Sprocket Association"—and will be shown in the last clause of the field of membership.

5. In IRPS 99–1, Chapter 2, Section II.B.4 is revised to read as follows:

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015), to the appropriate NCUA regional director. If a credit union is adding a group of 500 or less primary potential members, then the NCUA 4015–EZ should be used. The request must be signed by an authorized credit union representative.

The NCUA 4015 (for groups in excess of 500 primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's occupational common bond;
—That the group wants to be added to the applicant federal credit union's field of membership;
—Whether the group presently has other credit union service available; and
—The number of persons currently included within the group to be added and their locations.

- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section II.E of this Chapter.

The NCUA 4015–EZ (for groups of 500 or less primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's occupational common bond;
—That the group wants to be added to the applicant federal credit union's field of membership; and
—The number of persons currently included within the group to be added and their locations.

6. In IRPS 99–1, Chapter 2, Section III.B.4 is revised to read as follows:

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015), to the appropriate NCUA regional director. If a credit union is adding a group of 500 or less primary potential members, then the NCUA 4015–EZ should be used. The request must be signed by an authorized credit union representative.

NCUA 4015 (for groups in excess of 500 primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's associational common bond;
—That the group wants to be added to the applicant federal credit union's field of membership;
—Whether the group presently has other credit union service available; and
—The number of persons currently included within the group to be added and their locations.

- The most recent copy of the group's charter and bylaws or equivalent documentation.
- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section III.E of this Chapter.

The NCUA 4015–EZ (for groups of 500 or less primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added.

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Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's associational common bond;
—That the group wants to be added to the applicant federal credit union's field of membership;
—The number of persons currently included within the group to be added and their locations; and

• The most recent copy of the group's charter and bylaws or equivalent documentation.

7. In IRPS 99–1, Chapter 2, Section IV.B.3 is revised to read as follows:

A multiple common bond credit union requesting a select group expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015) to the appropriate NCUA regional director. If a credit union is adding a group of 500 or less primary potential members, then the NCUA 4015–EZ should be used. The request must be signed by an authorized credit union representative.

The NCUA 4015 (for groups in excess of 500 primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—The group's occupational or associational common bond;
—That the group wants to be added to the federal credit union's field of membership;
—Whether the group presently has other credit union service available;
—The number of persons currently included within the group to be added and their locations;
—The group's proximity to credit union's nearest service facility, and
—Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards, and provide comments on as many of the following factors that are applicable:

• Member location—whether the membership is widely dispersed or concentrated in a central location.

• Demographics—the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.

• Market competition—the availability of other financial services.

• Desired services and products—the type of services the group desires in comparison to the type of services a new credit union could offer.

• Sponsor subsidies—the availability of operating subsidies.

• Employee interest—the extent of the employees' interest in obtaining a credit union charter.

• Evidence of past failure—whether the group previously had its own credit union or previously filed for a credit union charter.

• Administrative capacity to provide services—will the group have the management expertise to provide the services requested.

• If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section IV.E of this Chapter; and

• The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

The NCUA 4015–EZ (for groups of 500 or less primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

—How the group shares the credit union's occupational or associational common bond;
—That the group wants to be added to the applicant federal credit union's field of membership;
—The number of persons currently included within the group to be added and their locations; and
—The group's proximity to credit union's nearest service facility.

• The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

8. In IRPS 99–1, Chapter 2, Section II.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single occupational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. However, when two or more credit unions are attempting to serve the same occupational group, an overlap can be permitted.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the affected credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

• The group has 500 or less primary potential members or the overlap is otherwise incidental in nature—*i.e.*, the group of persons in question is so small as to have no material effect on the original credit union;

• The overlapped credit union does not object to the overlap; or

• There is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time.

In reviewing the overlap, the regional director will consider:

• The nature of the issue;
• Efforts made to resolve the matter;
• Financial effect on the overlapped credit union;
• The desires of the group(s);
• Whether the original credit union fails to provide requested service;
• The desire of the sponsor organization; and
• The best interests of the affected group and the credit union members involved.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every single occupational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union except a community charter. This notification requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit single occupational federal credit unions to overlap community charters without performing an overlap analysis.

9. In IRPS 99–1, Chapter 2, Section II.E.1 is revised to read as follows:

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

• Employees of Lucky Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

10. In IRPS 99–1, Chapter 2, Section III.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single associational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. However, when two or more credit unions are attempting to serve the same associational group, an overlap can be permitted.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

• The group has 500 or less primary potential members or the overlap is otherwise incidental in nature—*i.e.*, the group of persons in question is so small as to have no material effect on the original credit union;

• The overlapped credit union does not object to the overlap;

• There is limited participation by members of the group in the original credit union after the expiration of a reasonable period of time; or

• The field of membership is broadly stated, such as a national association.

In reviewing the overlap, the regional director will consider:

• The nature of the issue;
• Efforts made to resolve the matter;
• Financial effect on the overlapped credit union;
• The desires of the group(s);
• Whether the original credit union fails to provide requested service;
• The desire of the sponsor organization; and
• The best interests of the affected group and the credit union members involved.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every single associational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union except a community charter. This notification requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit single associational federal credit unions to overlap community charters without performing an overlap analysis.

11. In IRPS 99–1, Chapter 2, Section III.E.2 is revised to read as follows:

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership.

12. In IRPS 99–1, Chapter 2, Section IV.E.2 is revised to read as follows:

A federal credit union's field of membership will always be governed by the field of membership descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of any select group listed in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership.

Overlaps may occur as a result of restructuring or merger of the parent organization. When such overlaps occur, each credit union must request a field of membership amendment to reflect the new groups each wishes to serve. The credit union can continue to serve any current group in its field of membership that is acquiring a new group or has been acquired by a new group. The new group cannot be served by the credit union until the field of membership amendment is approved by NCUA.

Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership. When two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions. This can be accomplished through a housekeeping amendment.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

• Employees of MHS Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

13. In IRPS 99–1, Chapter 2, Section IV.A.1 is revised to read as follows:

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service

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area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot expand using single common bond criteria.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch if the credit union either (1) owns directly or through a CUSO or similar organization at least a 5 percent interest in the service facility, or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition does not include an ATM.

The select group as a whole will be considered to be within a credit union's service area when:

- A majority of the persons in a select group live, work, or gather regularly within the service area;
- The group's headquarters is located within the service area; or
- The group's "paid from" or "supervised from" location is within the service area.

14. In IRPS 99–1, Chapter 2, Section IV.B.2 is revised to read as follows:

An existing multiple common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the multiple common bond requirements have been met. All amendments to a multiple common bond credit union's field of membership must be approved by the regional director.

NCUA will approve groups to a credit union's field of membership, if the agency determines in writing that the following criteria are met:

- The credit union has not engaged in any unsafe or unsound practice, as determined by the regional director, which is material during the one year period preceding the filing to add the group;
- The credit union is "adequately capitalized." NCUA defines adequately capitalized to mean the credit union has a net worth ratio of not less than 6 percent. For low-income credit unions or credit unions chartered less than ten years, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement. For any other credit union, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level.
- The credit union has the administrative capability to serve the proposed group and the financial resources to meet the need for additional staff and assets to serve the new group;
- Any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.E of this Chapter are also applicable; and
- If the formation of a separate credit union by such group is not practical and consistent with reasonable standards for the safe and sound operation of a credit union.

A more detailed analysis is required for groups of 3,000 or more primary potential members requesting to be added to a multiple common bond credit union; however, only groups over 500 must address why they cannot form their own credit union. It is incumbent upon the credit union to demonstrate that the formation of a separate credit union by such a group is not practical. The group must provide evidence that it lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisability criteria outlined in Chapter 1. If this can be demonstrated, the group may be added to a multiple common bond credit union's field of membership.

15. In IRPS 99–1, Chapter 2, Section IV.E.1 is revised to read as follows:

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 500 primary potential members. An overlap analysis is not required for groups with 500 or less primary potential members.

When an overlap situation requiring analysis does arise, officials of the expanding credit union must ascertain the views of the overlapped credit union. If the overlapped credit union does not object, the applicant must submit a letter or other documentation to that effect. If the overlapped credit union does not respond, the expanding credit union must notify NCUA in writing of its attempt to obtain the overlapped credit union's comments.

NCUA will generally not approve an overlap unless the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in field of membership clearly outweighs any adverse effect on the overlapped credit union.

In reviewing the overlap, the regional director will consider:

- The view of the overlapped credit union(s);
- Whether the overlap is incidental in nature—the group of persons in question is so small as to have no material effect on the original credit union;
- Whether there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time;
- Whether the original credit union fails to provide requested service;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Generally, if the overlapped credit union does not object, and NCUA determines that there is no safety and soundness problem, the overlap will be permitted.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every select group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union. This requirement is not applicable to groups with 500 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit multiple common bond federal credit unions to overlap community charters without performing an overlap analysis.

16. In IRPS 99–1, Chapter 2, Section IV.D.1 is revised to read as follows:

a. All select groups in the merging credit union's field of membership have less than 3,000 primary potential members.

A voluntary merger of two or more federal credit unions is permissible as long as each select group in the merging credit union's field of membership has less than 3,000 primary potential members. While the merger requirements outlined in Section 205 of the Federal Credit Union Act must still be met, the requirements of Chapter 2, Section IV.B.2 of this manual are not applicable.

b. One or more select groups in the merging credit union's field of membership has 3,000 or more primary potential members.

If the merging credit unions serve the same group, and the group consists of 3,000 or more primary potential members, then the ability to form analysis is not required for that group. If the merging credit union has any other groups consisting of 3,000 or more primary potential members, special requirements apply. NCUA will analyze each group of 3,000 or more primary potential members, except as noted above, to determine whether the formation of a separate credit union by such a group is practical. If the formation of a separate credit union by such a group is not practical because the group lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisable criteria outlined in Chapter 1, the group may be merged into a multiple common bond credit union. If the formation of a separate credit union is practical, the group must be spun-off before the merger can be approved.

c. Merger of a single common bond credit union into a multiple common bond credit union.

A financially healthy single common bond credit union with a primary potential membership in excess of 3,000 primary potential members cannot merge into a multiple common bond credit union, absent supervisory reasons.

d. Merger approval.

If the merger is approved, the qualifying groups within the merging credit union's field of membership will be transferred intact to the continuing credit union and can continue to be served.

Where the merging credit union is state-chartered, the field of membership rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

17. In IRPS 99–1, Chapter 2, Section IV.D.2 is revised to read as follows:

The NCUA may approve the merger of any federally insured credit union when safety and soundness concerns are present without regard to the 3,000 numerical limitation. The credit union need not be insolvent or in danger of insolvency for NCUA to use this statutory authority. Examples constituting appropriate reasons for using this authority are: abandonment of the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances.

18. In IRPS 99–1, Chapter 2, Section IV.F is revised to read as follows:

A multiple common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 1, Section IV.D.

A multiple common bond federal credit union may apply to convert to a single occupational or associational common bond charter provided the field of membership requirements of the new charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. However, a credit union can continue to serve any group included in, or added to, its single common bond field of membership at the time of conversion to a single common bond credit union for a period of three years from the date of conversion if the group is later sold, spun-off or otherwise divested as a result of a corporate reorganization/restructuring. If the credit union elects to continue to serve any sold, spun-off or otherwise divested group after three years from the date of conversion, then it must convert back to a multiple common bond credit union. During this three-year period, it will continue to be treated as a single common bond credit union.

Once a multiple common bond credit union converts to a single occupational or assocational credit union, it cannot convert back to a multiple common bond credit union for a period of three years, unless there are safety and soundness concerns.

19. In IRPS 99–1, Chapter 2, Section II.B.2 is revised to read as follows:

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union's field of membership. NCUA will not permit a single common bond credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or if the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

20. In IRPS 99–1, Chapter 2, Section III.B.2 is revised to read as follows:

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union's field of membership. NCUA may not permit a single associational credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

21. In IRPS 99–1, Chapter 2, Section IV.F is revised to read as follows:

If a select group within a federal credit union's field of membership undergoes a substantial restructuring, a change to the credit union's field of membership may be required if the credit union is to continue to provide service to the select group. NCUA permits a multiple common bond credit union to maintain in its field of membership a sold, spun-off, or merged select group to which it has been providing service. This type of amendment to the credit union's charter is not considered an expansion; therefore the criteria relating to adding new groups are not applicable.

When two groups merge and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged group, subject to any existing geographic limitation and without regard to any overlap provisions. However, the credit unions cannot serve the other multiple groups that may be in the field of membership of the other credit union.

22. In IRPS 99–1, Chapter 2, Section V.A.2 is revised to read as follows:

In addition to the documentation requirements set forth in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

A community credit union is unique in that it must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

"Well-defined" means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly identifiable neighborhood. Although congressional districts or other political boundaries which are subject to occasional change, and state boundaries are well-defined areas, they do not meet the second requirement that the proposed area be a local community, neighborhood, or rural district.

The meaning of local community, neighborhood, or rural district includes a variety of factors. Most prominent is the requirement that the residents of the proposed community area interact or have common interests. In determining interaction and/or common interests, a number of factors become relevant. For example, the existence of a single major trade area, shared governmental or civic facilities, or area newspaper is significant evidence of community interaction and/or common interests. Conversely, numerous trade areas, multiple taxing authorities, and multiple political jurisdictions, tend to diminish the characteristics of a local area.

Population and geographic size are also significant factors in determining whether

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the area is local in nature. A large population in a small geographic area or a small population in a large geographic area may meet NCUA community chartering requirements. For example, an ethnic neighborhood, a rural area, a city, and a county with 300,000 or less residents will generally have sufficient interaction and/or common interests to meet community charter requirements. While this may most often be true, it does not preclude community charters consisting of multiple counties or local areas with populations of any size from meeting community charter requirements.

Conversely, a larger population in a large geographic area may not meet NCUA community chartering requirements. It is more difficult for a major metropolitan city, a densely populated county, or an area covering multiple counties with significant population to have sufficient interaction and/or common interests, and to therefore demonstrate that these areas meet the requirement of being "local." In such cases, documentation supporting the interaction and/or common interests will be greater than the evidence necessary for a smaller and less densely populated area.

In most cases, the "well-defined local community, neighborhood, or rural district" requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, *i.e.*, a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or (2) the area to be served is in multiple contiguous political jurisdictions, *i.e.*, a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests.

If NCUA does not find sufficient evidence of community interaction or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined community. The credit union must also provide evidence of the political jurisdiction(s) and population. Evidence of the political jurisdiction(s) should include maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas.

If the area to be served does not meet the political jurisdiction(s) and population requirements of the preceding paragraph, or if required by NCUA, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district. It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates interaction or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community, neighborhood, or rural district.

Examples of acceptable documentation may include:

- The defined political jurisdictions;
- Major trade areas (shopping patterns and traffic flows);
- Shared/common facilities (for example, educational, medical, police and fire protection, school district, water, *etc.*);
- Organizations and clubs within the community area;
- Newspapers or other periodicals published for and about the area;
- Maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas;
- Common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, *etc.*); or
- Other documentation that demonstrates that the area is a community where individuals have common interests or interact.

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a detailed and practical business and marketing plan for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the unique financial and operational factors of a community charter.

In addition, proposed and existing community credit unions must develop a community action plan (CAP). The CAP supplements the credit union's marketing plan by specifically addressing how the credit union plans to market its services to the entire community, including any underserved or low-income areas, if applicable. This may include current or future delivery systems, such as ATMs, 24 hour voice response system, internet web sites, current or future customized programs to assist community residents such as credit counseling and budgeting, and current or future service facility locations.

Community credit unions boards will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and/or business plan submitted with their application. The boards of community credit unions will also be expected to periodically review and update the CAP to determine if all segments of the community are being served. If a credit union fails to make reasonable efforts to follow its community action plan, NCUA may initiate appropriate supervisory action.

23. In IRPS 99–1, Chapter 3, Section III is revised to read as follows:

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition for serving underserved areas in the Federal Credit Union Act. More than one federal credit union can serve the same underserved area. The Federal Credit Union Act defines an underserved area as a local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

The "well-defined local community, neighborhood, or rural district" requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, *i.e.*, a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000 or (2) the area to be served is in multiple contiguous political jurisdictions, *i.e.*, a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria and meets the definition of an investment area that is underserved, then it is presumed to be a local community, neighborhood, or rural district.

An investment area includes any of the following:

- An area encompassed or located in an Empowerment Zone or Enterprise Community designated under section 1391 or the Internal Revenue Code of 1996 (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;
- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;
- An area where the unemployment rate is at least 1.5 times the national average;
- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;
- An area located outside of a Metropolitan Area with a county population loss between 1980 and 1990 of at least 10 percent;

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

If a credit union has a preexisting office within close proximity to the underserved area, then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a federal credit union adding such a community will not change and therefore the credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan, to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the underserved area are being met as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

24. In IRPS 99–1, Chapter 4, Section II is revised to read as follows:

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so it must:

- Comply with state law regarding conversion;
- File proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate, and other documents with NCUA;
- Comply with the requirements of the Federal Credit Union Act, e.g., chartering and reserve requirements; and
- Be granted federal share insurance by NCUA.

Conversions are treated the same as any initial application for a federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current financial condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter applicant.

A converting state credit union's field of membership must conform to NCUA's chartering policy. The field of membership will be phrased in accordance with NCUA chartering policy. Subsequent changes must conform to NCUA chartering policy in effect at that time. The converting credit union may continue to serve members of record.

If the converting credit union is a multiple group charter and the new federal charter is a multiple group, then the new federal charter may retain in its field of membership any group that the state credit union was serving at the time of conversion. Any subsequent additions or amendments to the credit union's field of membership must comply with federal field of membership policies.

If the converting credit union is a community charter and the new federal charter is community-based, it must meet the community field of membership requirements set forth in Chapter 2, Section V. If the state chartered credit union's community boundary is more expansive than the approved federal boundary, only members of record outside of the new community boundary may continue to be served.

25. In IRPS 99–1, Chapter 4, Section III.A is revised to read as follows:

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

- Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;
- Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and
- Comply with applicable state law and the requirements of the state regulator.

It is important that the credit union provide an accurate disclosure of the reasons for the conversion. These reasons should be stated in specific terms, not as generalities. The federal credit union converting to a state charter remains responsible for the entire operating fee for the year in which it converts.

26. In IRPS 99–1, Chapter 2, the title of Sections II.H, III.H, and IV.F is revised to read as "Other Person's Eligible for Credit Union Membership."

27. In IRPS 99–1, Appendix D, Form 4015EZ is revised to read as follows:

Application for Field of Membership Amendment NCUA Form 4015–EZ

Use Only for Expansions Covering Groups of 500 Persons or Less

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union:

_____

_____

_____

2. Name and address of group:

_____

_____

_____

(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording: _____

_____

_____

4. How many primary potential members (excluding immediate family and household members) are in the group: _____

_____

5. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

☐ How the group shares the occupational or associational common bond (for single common bond additions only);

☐ That the group wants to be added to the federal credit union's field of membership;

☐ The number of persons to be added and the group's location(s); and

☐ The group's proximity to the credit union's nearest service facility (for multiple common bond additions only).

Name and title of credit union board-authorized representative (*e.g.*, President/CEO):

_____

(Typed/Printed Name)

_____

(Signature)

_____

(Date)

28. In IRPS 99–1, Appendix D, Form 4015 is revised to read as follows:

Application for Field of Membership Amendment NCUA Form 4015

Use Only for Expansions Covering Groups of More Than 500 Persons

For expansions covering groups of 500 or less persons—use the *short form application, NCUA 4015–EZ.*

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union:

_____

_____

_____

2. Name and address of the group:

_____

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(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording. Use the example wording found in NCUA's Chartering and Field of Membership Manual, Chapter 2:

☐ Section II.A for single occupational common bond groups;

☐ Section III.A for single associational common bond groups; or

☐ Section IV.A for multiple common bond fields of membership.

4. How many primary potential members (excluding immediate family and household members) are in the group: _____

5. (a) For multiple common bond expansions, what is the distance between the group's location and your credit union's nearest service facility [6] to which the group has access (Reference Chapter 2, Section IV.A.1):

_____

_____

(b) What is the address of this service facility:

_____

_____

_____

(c) Describe the service area [7] primarily served by the above service facility:

_____

_____

_____

6. Is the group in the field of membership of *any* other credit union? Yes____ No____ If yes, and the overlapped credit union is not a community credit union or a non-federally insured credit union, please address the following:

☐ Provide the name and location of the other servicing credit union:

_____

_____

☐ Include a letter from the overlapped credit union indicating whether it concurs or objects to the overlap. If the overlapped credit union objects or fails to respond, document attempts to resolve the issue:

_____

_____

☐ Explain how the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union:

_____

_____

7. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

☐ How the group shares the occupational or associational common bond (for single common bond additions only);

☐ That the group wants to be added to the federal credit union's field of membership;

☐ Whether the group presently has other credit union service available;

☐ The number of persons currently included within the group to be added and the group's location(s);

☐ The group's proximity to the credit union's nearest service facility (for multiple common bond additions only); and

☐ Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards (for multiple common bond additions only). The formation of a separate credit union may not be practical if the group lacks sufficient volunteers or resources to support the operation of a credit union or does not meet the economic advisability criteria outlined in Chapter 1 of NCUA's Chartering and Field of Membership Manual.

8. Other comments:

_____

_____

_____

_____

_____

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____

(Typed/Printed Name)

_____

(Signature)

_____

(Date)

[FR Doc. 00–14782 Filed 6–12–00; 8:45 am]

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[6] A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed.

[7] A federal credit union's service area is the area that can reasonably be served by the service facility accessible to the groups within the field of membership. It will most often coincide with that geographic area primarily served by the service facility.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–96–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 and A300–600 series airplanes. This proposal would require repetitive inspections to detect chafing and the existence of repairs of the harness of the high-level sensor of the fuel surge tanks, and to detect chafe marks on the support canisters of the magnetic level indicators; and follow-on corrective actions, if necessary. This proposal also would require modification of the harness for the high-level sensor of the outer wing fuel tanks, which would terminate certain repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent chafing of the harness of the high-level sensor, which could result in a short circuit and consequent fuel ignition source inside the outer wing fuel tanks.

DATES: Comments must be received by July 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–96–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 and A300–600 series airplanes. The DGAC advises that maintenance personnel found a chafed harness (cable) in the outer wing fuel tank. The harness is routed to the surge tank high-level sensor. Investigation revealed that clipping and routing of the cable (wiring) coupled with excessive slack of the cable between the "P" clips allows the cable to chafe against the support canister for the magnetic level indicator. Such chafing, if not corrected, could result in a short circuit and consequent fuel ignition source inside the outer wing fuel tank.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletins A300–28–0077 (for Model A300 series airplanes), and A300–28–6062 (for Model A300–600 series airplanes), each dated July 19, 1999. These service bulletins describe procedures for repetitive inspections to detect chafing and the existence of repairs of the harness of the high-level sensor of the fuel surge tanks, and to detect chafe marks on the support canisters of the magnetic level indicators; and follow-on corrective actions, if necessary. The follow-on corrective actions involve removing original repairs, if necessary, and accomplishing a splice repair and installing sleeves to the inner and outer cable coverings. The service bulletins categorize the repairs as either temporary or permanent depending upon the location of the repair and whether certain previous repairs were accomplished. In addition, the follow-on corrective actions include a repetitive visual inspection of the harness to ensure the integrity of the repair. This inspection would be performed if certain conditions (*e.g.*, any temporary repairs) exist.

The manufacturer also has issued Airbus Service Bulletins A300–28–0058, Revision 02 (for Model A300 series airplanes), and A300–28–6020, Revision 01 (for Model A300–600 series airplanes), each dated September 28, 1999. These service bulletins describe procedures for modification of the harness for the high-level sensor in the outer wing fuel tanks. The modification involves re-routing the cables and installing longer cleats and reversing the "P" clips that support the cables. This modification will prevent the cables from sagging and ensure adequate clearance between the cables and the support canisters of the magnetic level indicators. Accomplishment of the modification eliminates the need for certain repetitive inspections of the harness of the high-level sensor of the fuel surge tanks. However, the modification does not eliminate the need for the 10,000-flight-hour detailed visual inspections specified in the follow-on corrective actions, following the accomplishment of any temporary repairs.

The DGAC classified Airbus Service Bulletins A300–28–0077 and A300–28–6062 as mandatory and issued French airworthiness directive 1999–404–293(B), dated October 6, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections to detect chafing and the existence of repairs of the wire harnesses of the high-level sensors; and to detect chafe marks on the support canisters of the magnetic level indicators; and follow-on corrective actions, if necessary. This proposal also would require modification of the harness for the high-level sensor of the outer wing fuel tanks, which would terminate certain repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Difference Between Proposed AD and Related Service Information

Operators should note that this AD proposes to mandate, within 18 months, the modification of the harness of the high-level sensor of the outer wing fuel tanks described in Airbus Service Bulletin A300–28–0058, Revision 02, or A300–28–6020, as terminating action for certain repetitive inspections. [Incorporation of the terminating action is optional in French airworthiness directive 1999–404–293(B).]

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not provide the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is consistent with these conditions.

Cost Impact

The FAA estimates that 37 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed repetitive detailed visual inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,220, or $60 per airplane, per inspection cycle.

It would take approximately 1 work hour per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,220, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of

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the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–96–AD.

Applicability: Model A300 and A300–600 series airplanes, certificated in any category; except those airplanes on which Airbus Modification 04489 has been installed during production.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wire harnesses of the high-level sensors, which could result in a short circuit and consequent fuel ignition source inside the outer wing fuel tanks, accomplish the following:

Detailed Visual Inspection

(a) Within 500 flight hours after the effective date of this AD, perform a detailed visual inspection to detect chafing and the existence of repairs of the harness (cable) of the high-level sensor of the fuel surge tanks, and to detect chafe marks on the support canisters of the magnetic level indicators; in accordance with Airbus Service Bulletin A300–28–0077 (for Model A300 series airplanes), or A300–28–6062 (for Model A300–600 series airplanes), each dated July 19, 1999, as applicable.

(1) For airplanes on which modification of the harness in accordance the Airbus Service Bulletin A300–28–0058 (for Model A300 series airplanes), or A300–28–6020 (for Model A300–600 series airplanes), as applicable; has NOT been accomplished: Accomplish the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Repeat the detailed visual inspection thereafter at intervals not to exceed 500 flight hours until the requirements of paragraph (a)(1)(ii) of this AD are accomplished. If any wire chafing, chafe mark, or existing repair is detected during any inspection, prior to further flight, determine the appropriate repair and/or condition of repair as specified in Inspection Table 1 of the Accomplishment Instructions of Airbus Service Bulletin A300–28–0077 or A300–28–6062, as applicable. At the times specified in Inspection Table 1, accomplish corrective actions (*e.g.*, temporary or permanent repairs and follow-on inspections and repairs), in accordance with the applicable service bulletin. If any discrepancy is found during any follow-on inspection, prior to further flight, repair the discrepancy in accordance with the applicable service bulletin.

(ii) Within 18 months after the effective date of this AD, modify the harness of the high-level sensor in the outer wing fuel tanks, in accordance with Airbus Service Bulletin A300–28–0058, Revision 02 (for Model A300 series airplanes), or A300–28–6020, Revision 01 (for Model A300–600 series airplanes); each dated September 28, 1999. Accomplishment of the modification terminates the 500-flight-hour repetitive inspection required by paragraph (a)(1) of this AD. However, if a temporary repair is installed, the 10,000-flight-hour detailed visual inspection specified in the follow-on corrective actions of Table 1 continues to be required by this AD.

(2) For airplanes on which modification of the harness in accordance with Airbus Service Bulletin A300–28–0058 (for Model A300 series airplanes), or A300–28–6020 (for Model A300–600 series airplanes); as applicable; HAS been accomplished: Accomplish the requirements of paragraph (a)(2)(i) or (a)(2)(ii), as applicable.

(i) If no wire chafing, chafe marks, or existing repairs are detected, no further action is required by this AD.

(ii) If any wire chafing, chafe mark, or existing repair is detected, prior to further flight, determine the appropriate repair and/or condition of repair as specified in Inspection Table 2 of the Accomplishment Instructions of Airbus Service Bulletin A300–28–0077 or A300–28–6062, as applicable. At the times specified in Inspection Table 2, accomplish corrective actions (*e.g.*, temporary or permanent repairs and follow-on inspections), in accordance with the applicable service bulletin. If any discrepancy is found during any follow-on inspection, prior to further flight, repair the discrepancy in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Modification accomplished prior to the effective date of this AD, in accordance with Airbus Service Bulletin A300–28–0058, dated December 15, 1988, Revision 01, dated October 1, 1991 (for Model A300 series airplanes), or A300–28–6020, dated December 15, 1988 (for Model A300–600 series airplanes), is considered acceptable for compliance with the action specified in paragraph (a)(1)(ii) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–404–293(B), dated October 6, 1999.

Issued in Renton, Washington, on June 7, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14884 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–354–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B and SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Saab Model SAAB 340B and SAAB 2000 series airplanes, that would have superseded an existing AD. That AD currently requires various inspections of fluorescent lamps and lampholders in the cabin area for discrepancies; corrections, if necessary; and reinspection of the lamps to ensure correct installation after replacement or reinstallation of the lamps or lampholders. The proposed AD would have added a requirement for replacement of the electronic light ballasts with improved ballasts, which would terminate the reinspections, and would have expanded the applicability of the existing AD. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule to require a certain modification in accordance with revised procedures. The actions specified by this new proposed AD are intended to prevent electrical arcing between the fluorescent tube pins and the lampholders, which could burn the surrounding area and lead to smoke and fumes in the passenger compartment or lavatory area.

DATES: Comments must be received by July 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–354–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 99–NM–354–AD" in the subject line and need not be submitted in triplicate.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–354–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–354–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Saab Model SAAB 340B and SAAB 2000 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 27, 2000 (65 FR 16154). That NPRM proposed to supersede AD 97–13–06, amendment 39–10052 (62 FR 33545, June 20, 1997), which is applicable to certain Saab Model SAAB 340B and SAAB 2000 series airplanes. That NPRM would have continued to require the actions specified in AD 97–13–06. That NPRM would have added a requirement for replacement of the electronic light ballasts with improved ballasts, which would terminate the requirement for reinspections of the lamps. That NPRM would also have expanded the applicability of the existing AD to include additional Model SAAB 340B and SAAB 2000 series airplanes that are also subject to the identified unsafe condition. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority, advising that a terminating modification is available, and that additional airplanes may be subject to fluorescent lampholder charring due to the incorrect installation of the lamps in their holders. That condition, if not corrected, could burn the surrounding area and lead to smoke and fumes in the passenger compartment or lavatory area.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has been advised that Saab has issued Service Bulletin 340–33–049, Revision 01, dated November 15, 1999, and Revision 02, dated February 2, 2000. The original issue of this service

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bulletin, dated January 21, 1999, was referenced as an appropriate source of service information in paragraph (d)(1) of the proposed AD, and describes procedures for modification of the ballasts to ensure sufficient clearance between the ballast and Passenger Service Unit (PSU) transistors. Revision 01 and Revision 02 of the service bulletin describe similar modification procedures, but include additional procedures for replacement of certain PSU circuit boards with different PSU circuit boards. The manufacturer advises that replacement of these PSU circuit boards is necessary in order to obtain adequate clearance between the ballast and transistors.

The FAA has determined that modification of the ballasts must be accomplished in accordance with Revision 02 of the service bulletin, and has revised paragraph (d)(1) of the AD accordingly. Additionally, a "NOTE 3" has been added to the proposed AD to give credit to operators that may have previously accomplished the modification in accordance with Revision 01 of the service bulletin, dated November 15, 1999.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 78 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 97–13–06 take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $420 per airplane.

The new actions that are proposed in this AD action would take as much as 9 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided free of charge by the manufacturer. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be as much as $42,120, or $540 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10052 (62 FR 33545, June 20, 1997), and by adding a new airworthiness directive (AD), to read as follows:

SAAB Aircraft AB: Docket 99–NM–354–AD. Supersedes AD 97–13–06, Amendment 39–10052.

Applicability: This AD applies to the following airplanes:

Model SAAB 340B series airplanes having serial numbers –342 and –359 through –460 inclusive, certificated in any category; except those on which Saab Service Bulletin 340–33–048, Revision 01, dated January 21, 1999 (Saab Modification No. 2936), has been incorporated; and Model SAAB 2000 series airplanes having serial numbers –004 through –063 inclusive, certificated in any category; except those on which Saab Service Bulletin 2000–33–015, dated January 29, 1999 (Saab Modification No. 6148), has been incorporated.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing between the fluorescent tube pins and the lampholders, which could burn the surrounding area and lead to smoke and fumes in the passenger compartment or lavatory area, accomplish the following:

Restatement of Requirements of AD 97–13–06

Inspections

(a) For Model SAAB 340B series airplanes having serial numbers -342 and -359 through -439 inclusive; and Model SAAB 2000 series airplanes having serial numbers -004 through -059 inclusive: Within 30 days after July 7, 1997 (the effective date of AD 97–13–06, amendment 39–10052), accomplish the actions required by paragraphs (a)(1), (a)(2), and (a)(3), as applicable.

(1) For all airplanes: Inspect the fluorescent lamps installed in the ceiling/window of the lavatory and passenger compartment to ensure correct installation; and inspect the lampholders for discrepancies such as discoloration, evidence of electrical arcing at the light tube pins, charring or melting, or insecure back covers; in accordance with Saab Service Bulletin 340–33–047, dated May 16, 1997 (for Model SAAB 340B series airplanes); or Saab Service Bulletin 2000–33–014, dated May 16, 1997 (for Model SAAB 2000 series airplanes); as applicable.

(i) If any lamp is installed incorrectly, prior to further flight, install the lamp correctly in accordance with the applicable service bulletin.

(ii) If any discrepancy is found, prior to further flight, replace the lampholder with a new lampholder in accordance with the applicable service bulletin.

(2) For Model SAAB 340B series airplanes on which a Page Aerospace lampholder having part number (P/N) D756–02–001 is installed: Install a retaining clip in accordance with Saab Service Bulletin 340–33–040, Revision 02, dated February 20, 1997.

Note 2: Installation of retaining clips on Page Aerospace lampholders that was accomplished prior to July 7, 1997, in accordance with Saab Service Bulletin 340–33–040, Revision 01, dated January 31, 1997, also is considered acceptable for compliance with the requirement of paragraph (a)(2) of this AD.

(3) For Model SAAB 2000 series airplanes on which a Page Aerospace lampholder having P/N C756–10–001 is installed: Install a retaining clip in accordance with Saab Service Bulletin 2000–33–009, dated June 19, 1996.

Reinspections Following Replacement or Reinstallation

(b) Following the accomplishment of the requirements of paragraph (a) or paragraph (c) of this AD: If any fluorescent lamp or lampholder is replaced or reinstalled, within 7 days after accomplishing such replacement or reinstallation, reinspect the lamp to ensure it is still in the correct position, in accordance with Saab Service Bulletin 340–33–047, dated May 16, 1997, or Revision 01, dated June 26, 1998 (for Model SAAB 340B series airplanes); or Saab Service Bulletin 2000–33–014, dated May 16, 1997 (for Model SAAB 2000 series airplanes); as applicable. If any lamp is installed incorrectly, prior to further flight, make corrections to ensure correct installation in accordance with the applicable service bulletin.

New Requirements of This AD

Inspections for Additional Airplanes

(c) For airplanes other than those specified in paragraph (a) of this AD: Within 30 days after the effective date of this AD, accomplish the requirements of paragraph (a) of this AD, and thereafter accomplish the requirements of paragraph (b) of this AD.

Terminating Modification

(d) For all airplanes: Within 18 months after the effective date of this AD, accomplish the requirements of paragraph (d)(1) or (d)(2) of this AD, as applicable. Accomplishment of the actions required by the applicable paragraph constitutes terminating action for the requirements of this AD.

(1) For Model SAAB 340B series airplanes: Replace the electronic light ballasts with improved ballasts, in accordance with Saab Service Bulletin 340–33–048, Revision 01, dated January 21, 1999. Concurrent with the replacement, modify the ballasts to ensure sufficient clearance between the ballast and certain transistors, in accordance with Saab Service Bulletin 340–33–049, Revision 02, dated February 2, 2000.

(2) For Model SAAB 2000 series airplanes: Replace the electronic light ballasts with improved ballasts, in accordance with Saab Service Bulletin 2000–33–015, dated January 29, 1999.

Note 3: Modification of the ballasts for sufficient clearance in accordance with Saab Service Bulletin 340–33–049, Revision 01, dated November 15, 1999, is acceptable for compliance with the modification requirement of paragraph (d)(1) of the AD.

Spares

(e) As of the effective date of this AD, no person shall install a fluorescent lampholder having Page Aerospace P/N D756–02–001 or Page Aerospace P/N C756–10–001 on any Model SAAB 340B or SAAB 2000 series airplane, unless the lampholder has been modified in accordance with the requirements of paragraph (a)(2) or (a)(3) of this AD, as applicable.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–13–06, amendment 39–10052, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Swedish airworthiness directives 1–113R1 and 1–114R1, both dated September 8, 1998.

Issued in Renton, Washington, on June 7, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14883 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–4]

Proposed Revision of Class E Airspace; Ambler, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Ambler, AK. The establishment of a Global Positioning System (GPS) instrument approach to runway (RWY) 36 at Ambler, AK, has made this action necessary. Adoption of this proposal would result in the provision of adequate controlled airspace for Instrument Flight Rules (IFR) operations at Ambler, AK.

DATES: Comments must be received on or before July 28, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 00–AAL–4, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AAL–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation

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Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the Federal Register's web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Ambler, AK, due to the establishment of a new GPS instrument approach procedure to RWY 36. The intended effect of this proposal is to provide additional controlled airspace for IFR operations at Ambler, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Ambler, AK [Revised]

Ambler Airport, AK
(Lat. 67°06'22" N, long. 157°51'13" N)
Ambler NDB
(Lat. 67°06'24" N, long. 157°51'29" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Ambler Airport and within 3.5 miles each side of the 193° bearing of the Ambler NDB extending from the 6.3-mile radius to 7.2 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within 4 miles west and 8 miles east of the Ambler NDB 193° bearing extending from the NDB to 20 miles southwest of the NDB, and 4 miles either side of a line from lat. 66°20'57" N, long., 158°54'51" W to lat. 66°56'52" N, long. 158°01'13" W and 4 miles either side of a line from lat. 66°51'40" N, long. 158°55'07" W to lat. 66°56'52" N, long. 158°01'13" W.

* * * * *

Issued in Anchorage, AK, on June 6, 2000.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 00–14862 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1880–AA02

Direct Grant Programs

AGENCY: Office of the Chief Financial Officer, Department of Education.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document reopens the comment period for the proposed amendments to part 75 of the Education Department General Administrative Regulations (EDGAR) that would implement new options for the Department of Education's application review process for discretionary grants. On April 17, 2000 we published in the **Federal Register** (65 FR 20698) a notice of proposed rulemaking proposing amendments to part 75 of EDGAR. The deadline for comments on the proposed regulations was June 1, 2000. We are reopening the original 45-day comment period for the proposed regulations until June 30, 2000, because we have received requests to give stakeholders more time to comment on the proposed changes.

DATES: We must receive your comments on or before June 30, 2000.

ADDRESSES: All comments concerning the proposed regulations should be addressed to: Valerie A. Sinkovits, U.S. Department of Education, 400 Maryland Avenue, SW., room 3652, ROB–3, Washington, DC 20202–4838. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov. You must include the term "Redesign" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Valerie Sinkovits, Telephone: (202) 708–7568. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at any of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: June 6, 2000.

Thomas P. Skelly,

Acting Chief Financial Officer.

[FR Doc. 00–14755 Filed 6–12–00; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[WV–6013b; FRL–6714–3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; West Virginia; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the West Virginia hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan submitted on August 18, 1999 by the West Virginia Division of Environmental Protection (WV DEP), and the subsequent plan amendment of April 19, 2000. The plan establishes emission limitations for existing HMIWIs, and provides for the implementation and enforcement of those limitations. In the final rules section of today's **Federal Register**, EPA is approving the plan. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by July 13, 2000.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule, of the same title, which is located in the rules section of the **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 1, 2000.

Bradley M. Campbell,

Regional Administrator, EPA Region III.

[FR Doc. 00–14767 Filed 6–12–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MT–001b; FRL–6714–5]

Clean Air Act Proposed Full Approval of Operating Permit Program; State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is preparing to approve the operating permit program submitted by the State of Montana. Montana's program was submitted for the purpose of meeting the Federal Clean Air Act directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction. In the "Rules and Regulations" section of this **Federal Register**, the EPA is promulgating full approval of the Montana program as a direct final rule without prior proposal because the State is currently running the program and the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If no adverse comments are received in response to that rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

DATES: Comments must be received in writing on or before July 13, 2000.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business at the above address. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Patricia Reisbeck, EPA, Region VIII, (303) 312–6435.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule of the same title which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401, *et seq.*

Dated: June 2, 2000.

Rebecca W. Hanmer,

Acting Regional Administrator.

[FR Doc. 00–14769 Filed 6–12–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6715–3]

Reopening of Comment Period on Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) and Revisions to State Primacy Requirements to Implement the Safe Drinking Water Act (SDWA) Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, notice of reopening of comment period.

SUMMARY: EPA is reopening the comment period for the proposed rule revising the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectant and Disinfection Byproducts Rule (Stage 1 DBPR), and the Primacy Rule which was published in the **Federal Register** April 14, 2000 (65 FR 20314). The reopening of the comment period will allow all interested parties to submit written comments on the proposal.

DATES: Written comments must be received by July 13, 2000.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–99–11, Water Docket (MC 4101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The record for this proposed rule is established under docket number W–99–11. The record is available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, US EPA, 401 M Street, SW., Washington DC. For access to docket materials, please call 202–260–3027 to schedule an appointment. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street SW., East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to *ow-docket@epamail.epa.gov*. No facsimiles (faxes) will be accepted. See **SUPPLEMENTARY INFORMATION** section for further details about comment submission.

FOR FURTHER INFORMATION CONTACT: Jennifer Melch, Implementation and Assistance Division, Office of Ground Water and Drinking Water (MC–4606), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, (202) 260–7035. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. EST.

SUPPLEMENTARY INFORMATION: The reopened comment period for the proposed rulemaking now ends July 13, 2000. All comments submitted in accordance with the instructions in the Notice of Proposed Rulemaking will be considered and incorporated into the Record.

Additional Information for Commenters

Please submit an original and three copies of your comments and enclosures (including references). Comments must be received by July 13, 2000.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. Electronic comments must be submitted as a WP5/6/7/8 file or an ASCII File, avoiding the use of special characters and form and encryption. Electronic comments must be identified by the docket number W–99–11.

Dated: June 8, 2000.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 00–14885 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[WT Docket No. 97–82; FCC 00–197]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: In this document the Federal Communications Commission (Commission) tentatively concludes that it is in the public interest to modify certain aspects of its rules for the upcoming C and F block auction. The Commission seeks public comment on various issues, including proposals to reconfigure the size of C block spectrum licenses; to modify the entrepreneur eligibility restrictions for certain licenses in both large and small markets; and to retain the spectrum cap.

DATES: Comments are due on or before June 22, 2000 and reply comments are due on or before June 30, 2000. Final *ex parte* presentations are due on July 12, 2000.

ADDRESSES: All comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Further Notice of Proposed Rule Making (*Further Notice*) adopted on May 31, 2000, and released on June 7, 2000. The complete text of this *Further Notice*, including attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov/wtb/auctions.

Synopsis of the Further Notice of Proposed Rule Making

I. Introduction and Overview

1. On January 12, 2000, the Wireless Telecommunications Bureau ("Bureau") announced that a broadband Personal Communications Services ("PCS") C and F block auction—Auction No. 35—would begin on July 26, 2000. Under the Commission's current rules, applicants for C and F block auctions must meet specified financial size requirements to qualify as "entrepreneurs" and to be eligible to compete in the auction. Following the announcement of Auction No. 35, the Commission received several formal requests to waive, modify, or eliminate the C and F block auction and service rules. These requests seek, among other things, modification of the various C and F block eligibility requirements for the upcoming auction, reconfiguration of available 30 MHz C block licenses, and adoption of an alternative bidding plan.

2. As justification for the proposed changes, the petitioners point to the relatively small percentage of C and F block licensees that have begun providing service in the years since the initial entrepreneurs' block auctions were held. They also note the increasing trend in the wireless marketplace toward nationwide service, their need for additional spectrum in order to ease spectrum capacity constraints, and their financial readiness to construct and operate C and F block systems should they win licenses in the upcoming auction. Numerous parties have filed opposing and supportive pleadings in response to these petitions. Opponents argue that businesses that qualify as "entrepreneurs" under our rules are more likely than larger companies to provide innovative and niche services and to serve rural areas; that the Commission's previous C and F block installment payment program was largely responsible for the dearth of build-out among C and F block licensees; and that changing the eligibility criteria at this juncture would be detrimental to the existing business plans of current C and F block "entrepreneur" licensees developed based upon these rules, and to the ability of small businesses to secure needed financing to provide valuable wireless services.

3. Several parties have also asked that we consider whether we should revise, waive, or forbear from applying the Commercial Mobile Radio Service ("CMRS") spectrum cap for Auction 35. In support of these requests, the petitioners assert that the demand for CMRS services has significantly increased and created substantial spectrum constraints over the last few years. Further, petitioners contend that lifting the spectrum cap would better enable them to roll out Third Generation ("3G") and other advanced services, as well as otherwise help ensure the rapid and efficient development of the C and F block spectrum. Those opposing these requests claim that the current spectrum cap allows sufficient spectrum in local geographic markets to roll out 3G services in the foreseeable future and that petitioners failed to establish any basis for waiving the spectrum cap.

4. Upon consideration of the petitions and responsive pleadings received to date, we have tentatively concluded that it is in the public interest to revise certain aspects of the C and F block rules. Accordingly, we seek comment in this Further Notice on the following specific proposals to:

- *Reconfigure C Block Spectrum License Size*

We tentatively conclude that we will reconfigure each 30 MHz C block license available in future broadband PCS auctions into three 10 MHz C block licenses.

- *Apply a Tiered Approach to Basic Trading Areas (BTAs)*

We tentatively conclude that we will divide BTAs into two tiers according to the population size of the BTA. Under this proposal, "Tier 1" would comprise BTAs at and above a 2.5 million population threshold; and "Tier 2" would comprise BTAs below that population threshold.

- *Eliminate Eligibility Restrictions For Certain Licenses In Tiers*

We further propose to remove the auction eligibility restrictions for certain of the newly reconfigured 10 MHz C block licenses, thereby establishing "open" bidding for these licenses. We tentatively conclude that we will allow "open" bidding (*i.e.*, remove the eligibility restrictions) for two of the three 10 MHz C Block licenses in Tier 1, and one of the three 10 MHz C Block licenses in Tier 2. We also invite comment on whether to allow "open" bidding for all three of the 10 MHz C Block licenses in Tier 1, and two of the three 10 MHz C Block licenses in Tier 2.

We tentatively conclude that we will allow "open" bidding for all available 15 MHz C block licenses, which have previously been auctioned but not sold.

We seek comment on whether to allow "open" bidding for all available F block licenses. We also seek comment on whether, instead, to adopt a tiered approach to eligibility for F block licenses or to retain existing F block eligibility requirements.

- *Retain Our Current License Grouping for Bidding in the Auction*

We tentatively conclude that we will retain BTA service areas and a license-by-license bidding design for Auction No. 35.

- *Clarify the Grandfather Exception*

We invite comment in this proceeding on a number of issues raised by parties seeking reconsideration of the grandfather exception to the eligibility rules, which is provided in § 24.709(b)(9)(i) of the Commission's rules. On the issue of how the exception applies in a merger situation, we tentatively conclude that when each of the merging entities is eligible for the "grandfather" exception, the exception extends to the resulting entity, but that when one (or more) of the merging entities is not eligible for the "grandfather" exception, the exception does not extend to the resulting entity.

- *Revise the Bidding Credits Available for Auction No. 35*

We seek comment on whether to retain existing small and very small business bidding credits (15 percent and 25 percent, respectively) for licenses subject to "open" bidding or whether to increase them to 25 percent and 40 percent, respectively. We also seek comment on whether we should change the bidding credits for licenses subject to "closed" bidding, *i.e.*, bidding where eligibility restrictions apply.

- *Alter the Transfer Requirements for Certain Licenses*

Licenses Won in "Open" Bidding: We tentatively conclude that we will eliminate the § 24.839 eligibility requirements for the assignment or transfer of control of C and F block licenses won in Auction No. 35 "open" bidding.

Licenses Won in "Closed" Bidding: We seek comment on allowing a licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed under our rules.

Licenses Held by Incumbent Licensees: We seek comment on allowing an incumbent licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed under our rules. We also seek comment on whether we should allow some flexibility for incumbent licensees to transfer certain licenses where the carrier can demonstrate "substantial service" throughout its system, rather than on a market-by-market basis.

- *Eliminate the License Cap*

We tentatively conclude that we will eliminate the § 24.710 cap on the number of C and F block licenses a single entity may win at auction.

- *Retain the Spectrum Cap*

We tentatively conclude that we will retain the current spectrum cap.

II. Background

5. In the Omnibus Budget Reconciliation Act of 1993, Congress authorized the Commission to use systems of competitive bidding to award licenses for rights to use the radio spectrum. This authorization is codified as section 309(j) of the Communications Act. Section 309(j)(3) directs the Commission to "seek to promote" a number of objectives, including:

- The development and rapid deployment of new services for the benefit of the public, including those residing in rural areas;
- Promoting economic opportunity and competition and ensuring that new and innovating technologies are readily accessible to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, *i.e.*, "designated entities;"

- Recovery for the public of a portion of the value of the public spectrum resource made available for commercial use;
- Avoidance of unjust enrichment through the methods employed to award uses of that resource; and
- Efficient and intensive use of the electromagnetic spectrum.

6. Section 309(j)(4) directs the Commission, in prescribing regulations to implement the objectives of section 309(j)(3), to, *inter alia*, (i) establish performance requirements to ensure prompt delivery of service to rural areas and prevent warehousing of spectrum by licensees; (ii) prescribe area designations and bandwidth assignments that promote an equitable geographic distribution of licenses and services, economic opportunity for a wide variety of applicants, including designated entities, and rapid deployment of services; and (iii) ensure that designated entities are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider using bidding preferences and other procedures.

7. The Commission outlined the original framework for C and F block auctions in 1994, establishing the C and F blocks as "set-aside" blocks for "entrepreneurs" in which eligibility would be restricted to entities below a specified financial threshold. The Commission concluded that if it was to meet the Congressional goals of promoting economic opportunity and competition by dissemination of licenses among a wide variety of providers, it should take certain affirmative steps to mitigate barriers to entry faced by smaller businesses. The Commission also stated its intention to take steps to assure that designated entities that win licenses have the opportunity to become strong competitors in providing service. Thus, in attempting to address the imbalance between small businesses' and large businesses' relative abilities to access capital, the Commission established two set-aside blocks (C and F) in which large companies (those over the financial thresholds) would be prohibited from bidding or holding licenses for a period of time.

8. The initial C block licenses were awarded through two auctions, Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which concluded on July 16, 1996. Auction No. 11, the initial F block auction, ended on January 14, 1997, and also included D and E block licenses. Auction No. 22, which concluded on April 15, 1999, made available C and F block licenses that had been returned to, or reclaimed by, the Commission. Since the establishment of C and F block rules in 1994, no auctions, other than the C and F block auctions, have been conducted on a closed basis due to eligibility restrictions. Instead, in the other 23 auctions held by the Commission, we have typically provided opportunities for small businesses through bidding credits without a set-aside.

9. Since adoption of the original rules for auctions of C and F block licenses, these rules have steadily evolved in response to legislative changes, judicial decisions, the needs of licensees striving to succeed in a rapidly developing wireless market, and the demand of the public for greater access to wireless services. Two-and-a-half years ago, in this docket, the Commission responded to requests from some C block auction winners to revise the auction rules and procedures for the C and F blocks. In the 1997 *C Block Second Report and Order*, as modified by the 1998 *C Block Reconsideration Order*, the Commission created a package of financial restructuring options to be offered to C block licensees experiencing financial difficulties in the wake of Auctions No. 5 and No. 10. *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses Second Report and Order, *(C Block Second Report and Order)* 62 FR 55348 (October 24, 1997) and *(C Block Reconsideration Order)* 63 FR 17111 (April 8, 1998). The Commission also decided in the *C Block Second Report and Order*, as modified by the 1998 *C Block Fourth Report and Order*, to allow, for a period of two years from the beginning of the first post-restructuring C block auction (Auction No. 22), participation in bidding for C block licenses by entities that had participated in Auctions No. 5 and 10, even if such entities had since become too large to qualify as entrepreneurs under the Commission's rules. *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses Fourth Report and Order, *(C Block Fourth Report and Order)*, 65 FR 14213 (March 16, 2000).

10. Prior to the start of Auction No. 22, three C block licensees filed for bankruptcy protection. Other C block licensees defaulted on payments owed for their licenses. Bankruptcy filings and payment defaults by other C block licensees followed the auction; and, to date, a total of 232 C and F block licenses, covering a population ("pops") of approximately 191 million, have been involved in bankruptcy proceedings and/or defaulted on license payments. It appears that the vast majority of the defaulted licenses have never been placed into service.

11. The Bureau, pursuant to its delegated authority, announced that we would be holding a C and F block auction on July 26, 2000. The current inventory for this auction includes 93 30-MHz C block licenses, 21 15-MHz C block licenses and 40 10-MHz F block licenses for operation on frequencies for which previous licenses have automatically cancelled, *see* 47 CFR 1.2110(f)(4)(iii) and (iv) or have been returned to the Commission. The announcement of Auction No. 35 prompted petitions from SBC Communications Inc. ("SBC"), Nextel Communications, Inc. ("Nextel"), and other parties asking that we waive, modify, or eliminate our entrepreneur eligibility requirements for participation in the auction. In response to those filings, a number of parties also proposed that we make other modifications to our C and F block rules. Additionally, US WEST Wireless, LLC ("US West") and Sprint Spectrum L.P. dba Sprint PCS ("Sprint") filed a joint petition for reconsideration of our, Order on Reconsideration of the Fourth Report and Order in WT Docket No. 97–82. The *C Block Fourth Report and Order* addressed certain of the rules governing auctions of C block licenses. Sprint and US West request that the Commission eliminate its eligibility restrictions for participation in the upcoming auction as well as modify other C block rules. In addition, Verizon Wireless ("Verizon") petitioned the Commission for clarification or reconsideration of our two-year C block auction eligibility "grandfather" rule, § 24.709(b)(9)(i). The SBC, Nextel, and US West/Sprint petitions were placed on public notice, prompting more than 210 comments and other pleadings in response. A number of parties argue that all, or at least some portion, of the C and F block spectrum should be open to all participants in order to satisfy the Commission's obligations under section 309(j)(4). Other parties oppose these arguments.

12. We have also received petitions from three parties that, under our proposed revisions to the C block rules, would become eligible to bid for licenses in the upcoming C and F block auction. These parties request that the Commission waive, or forbear from applying, the CMRS spectrum cap with regard to the spectrum available in Auction No. 35. We placed these petitions on public notice and received comments from 23 parties and reply comments from 14 parties.

13. Based upon the extensive record before us, and our continuing obligation to weigh important spectrum policy management considerations in addressing the public interest, we have tentatively concluded that we will revise our rules for C and F block spectrum. We set forth our proposals and tentative conclusions concerning possible revisions in the rules in this *Further Notice*.

III. Discussion

A. Reconfiguration of C Block Spectrum License Size

14. *Background.* In 1994, the Commission established a band plan for broadband PCS that provides for 30 MHz "C block" licenses and 10 MHz "F block" licenses. Each C and F block license covers a specific geographic service area known a Basic Trading Area ("BTA"). BTAs fall within still larger geographic service areas known as Major Trading Areas ("MTAs"). BTA and MTA service areas are based on the Rand McNally 1992 Commercial Atlas Marketing Guide. As noted, in 1997 the Commission created a package of financial restructuring options designed to provide limited relief to C block licensees experiencing financial difficulties in the wake of Auction No. 5. Under one of the available options, licensees were allowed to disaggregate 15 MHz of each of their 30 MHz C block licenses in an MTA. In disaggregating a 30 MHz C block license, a licensee would retain a 15 MHz C block license and would return the remaining 15 MHz of C block spectrum to the Commission for inclusion in the next C block auction, Auction No. 22. Because several of the available 15 MHz C block licenses were not won in Auction No. 22, the license inventory for Auction No. 35 includes both 15 and 30 MHz C block licenses, as well as 10 MHz F block licenses.

15. A number of parties have suggested various proposals to alter the Commission's current band plan. Several parties propose that we subdivide each available 30 MHz C block license into three 10 MHz licenses. Others suggest that we subdivide each available 30 MHz C block license into a 20 MHz and a 10 MHz license. Other parties argue against subdividing the C block license spectrum size.

16. *Discussion.* We tentatively conclude that each 30 MHz C block license available in Auction No. 35 should be reconfigured into three 10 MHz C block licenses. We believe that by increasing the number of available licenses through this reconfiguration, taken together with our proposals to lift certain of our eligibility requirements, we will promote wider auction participation and license distribution in accordance with the goals of section 309(j) of the Communications Act. Small bidders should find bidding for 10 MHz licenses more affordable, while large bidders should enjoy greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap. We further tentatively conclude that a 10 MHz C block license is a viable minimum size for voice and some data services including Internet access and provides an appropriate building block for bidders that wish to acquire a larger amount of spectrum. Accordingly, we propose to permit bidders to aggregate the 10 MHz C block licenses, subject only to the overall 45 MHz CMRS spectrum cap, and the relevant remaining eligibility restrictions for these licenses. We seek comment on this proposal and our tentative conclusions. We also seek comment on whether a different configuration, including adoption of blocks of 20 MHz where possible, would be more appropriate to provide meaningful opportunities for potential bidders, including new entrants into particular geographic markets.

17. Finally, with respect to aggregation of 10 MHz licenses, we note that the Wireless Telecommunications Bureau recently sought comment on procedures for implementing a combinatorial ("package") bidding design for the auction of licenses in the 700 MHz bands, which would facilitate aggregations of complementary licenses into larger blocks. *See* Auction of Licensees in the 747–762 and 777–792 MHz Bands Scheduled for September 6, 2000; Comment Sought on Modifying the Simultaneous Multiple Round Auction Design to Allow Combinatorial (Package) Bidding, 65 FR 35636 (June 5, 2000). While given the much larger number of licenses in this auction, true combinatorial bidding would be more complex and perhaps impractical to implement in the near term, we invite parties to suggest ways in which bidders could efficiently aggregate licenses in the auction process.

B. Eliminate Eligibility Restrictions for Certain Licenses Under a Tiered Approach

18. *Background.* Under the Commission's current rules, only qualified "entrepreneurs" are permitted to participate in auctions of C and F block licenses. To be considered an entrepreneur eligible for C and F block auction participation, an applicant (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues of less than $125 million in each of the last two years and must have total assets of less than $500 million. *See* 47 CFR 24.709.

19. We seek comment on proposals to lift the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions. Our proposals take into account the contention of many entrepreneurs and their representatives that argue that fairness requires the Commission to continue to maintain the present eligibility requirements. These parties contend that entrepreneurs developed business plans in the expectation that the C and F block licenses would remain set aside for them and that any auctions of reclaimed C and F block licenses would be subject to the same eligibility restrictions that applied in the original auctions of those licenses. These parties also point out that successful entrepreneurs have achieved substantial public interest benefits by providing types of services and service packages not offered by larger providers, and extending service to rural markets. These parties also argue that the continuation of the eligibility restrictions will better serve their ability to expand their service area as a competing carrier and to enter roaming relationships with other regional carriers.

20. Our proposals also take into account some of the arguments of several CMRS providers seeking to participate in the upcoming auction that currently do not qualify for entrepreneur eligibility. Such providers argue that opening up the entire auction to all bidders would be pro-competitive because it would allow them to acquire additional spectrum to meet capacity concerns, provide advanced services, and increase the size of their subscriber "footprints." They contend that they, unlike many entrepreneurs, possess the operational expertise and substantial resources necessary to construct and successfully operate PCS systems in already highly competitive markets. These commenters also point to evidence that suggests that the set-aside of C and F Block spectrum has not been successful in encouraging entrepreneurs to participate in the provision of spectrum-based services, particularly in large markets.

21. We note that, in apparent recognition of the Commission's obligation to balance a number of spectrum policy considerations, many parties have offered compromise

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suggestions as alternatives to the current C block rules should the Commission choose not to adopt their preferred approaches. Some commenters, including a number of entrepreneurs, have suggested compromise alternatives that would eliminate the set-aside (in whole or in part) for markets with populations in excess of certain specified amounts ranging from 700,000 to five million. According to these commenters, such compromise alternatives to the current C block rules would provide companies with greater financial resources access to licenses for markets with larger populations, without foreclosing the opportunity for entrepreneurs to bid for those licenses. The suggested alternatives would also maintain the eligibility restrictions in markets where entrepreneurs might have a reasonable chance of success.

22. Some commenters suggest compromises that would not use tiers, but would disaggregate the 30 MHz C block licenses into three 10 MHz blocks and would open up the bidding on one or two of the three 10 MHz licenses in all markets.

23. While most of the commenters have focused on the Commission's treatment of the C block spectrum, as a general matter, current entrepreneurs argue in favor of keeping the 10 MHz F block licenses as restricted. On the other hand, companies currently ineligible to participate in Auction 35 argue in favor of open eligibility for those licenses.

24. *Discussion.* As the expert agency charged with the management of the nation's radio spectrum, the Commission must continually evaluate the provision of service to the American public, weigh a variety of public interest considerations, and assess the changing needs of the industry. In doing so, we must always remain cognizant of our statutory obligations. These obligations often require that we balance a number of different, and at times competing, spectrum policy goals. In discharging these responsibilities, we seek to provide meaningful opportunities to small businesses, to speed the deployment and development of new services to the public to encourage the efficient use of spectrum, and to recover for the public a portion of the value of spectrum.

25. When we adopted the original rules for C and F block spectrum in 1994, PCS was in its infancy. Since 1994, circumstances in the industry have changed. In light of significant technology developments and increased demand for spectrum, it is appropriate for the Commission to consider reassessing the proper balance of its spectrum policies including whether its current C and F block rules continue to serve the public interest in all respects. In crafting rules for the upcoming auction, we recognize that we cannot overlook the difficulties that followed the original C block spectrum auction and our commitment, to promote opportunities for designated entities. We maintain our commitment to provide meaningful opportunities for entrepreneurs, including those that participated in our most recent auction of C block spectrum. We also recognize that some qualifying entrepreneurs have been successful innovators, providing service to rural markets and niche services in other markets. Our desire to promote the continued success of such entities, as they seek to fill in gaps in their service areas or otherwise strive to expand their service offerings, also factor into our decision regarding the extent to which we should revise our current rules.

26. Thus, we believe that entrepreneurs raise legitimate issues about preserving the eligibility restrictions on at least a portion of the spectrum that will be awarded in the upcoming auction. However, based on the demand for spectrum to satisfy congestion, new technology and competitive needs, we tentatively conclude that it would serve the public interest to make some additional spectrum available to all interested bidders. In balancing these factors, we believe parties on both sides of this debate have suggested a number of possible compromises that better advance the public interest than either maintaining the status quo or, conversely, eliminating the eligibility restrictions entirely. In particular, we think the parties suggesting tiering approaches have proposed creative solutions to balancing the competing interests by recognizing both that the need for additional unrestricted spectrum is greatest in the larger markets and that the track record for success for smaller entities is strongest in mid-sized and smaller markets.

27. With these factors in mind, we seek comment on the following proposals to lift the entrepreneur eligibility requirements for some of the licenses available in Auction No. 35 and future auctions. Consistent with several of the recommendations we have received, these proposals vary in the amount of spectrum that would remain set-aside according to the size of both the available licenses and the markets.

28. *Available 30 MHz C block licenses:* For markets with available 30 MHz C block licenses, we seek comment on a proposal based on our tentative conclusion to reconfigure these licenses into three 10 MHz licenses. Our proposal is further based on dividing the available BTAs into two tiers: "Tier 1" would comprise BTAs with populations at or above a certain threshold, and "Tier 2" would comprise BTAs below that population threshold. We tentatively conclude that we should allow "open" bidding (i.e. remove eligibility requirements) for two of the three 10 MHz C block licenses in Tier 1, and one of the three 10 MHz C block licenses in Tier 2. We seek comment on this tentative conclusion.

29. We recognize that in balancing the interests served by preserving meaningful opportunities for designated entities and those served by opening up the spectrum to bidding by all entities, there may be other proposals we should consider. Thus, we also seek comment on whether we should allow "open" bidding for all three of the 10 MHz C block licenses in Tier 1, and two of the three 10 MHz C block licenses in Tier 2.

30. *Tiers:* We also seek comment on what population threshold we should use to divide the Tier 1 and Tier 2 BTAs. As discussed, the record provides some indication that designated entities have had greater success in markets with smaller populations, particularly below the top twenty markets. Markets with larger populations inevitably require more capital to build out and provide service. Moreover, as noted by commenters, there is evidence that spectrum is needed by incumbents to provide new generation wireless services and to alleviate congestion or by new entrants to fill out service footprints. Accordingly, we tentatively conclude that a population of 2.5 million or greater is the proper cut-off for Tier 1 BTAs (the 17 largest markets); however, we also seek comment on establishing the threshold for Tier 1 at those BTAs with populations at or greater than either 2 million (the 23 largest markets) or 1.5 million (the 32 largest markets). We recognize that other alternatives might also make sense. For example, we might also create a "Tier 3" for BTAs with populations below 700,000, the demarcation line that SBC recommends, establishing in this tier a larger set-aside for entrepreneurs. We also might instead decline to adopt a tiered approach at all, instead applying changes in eligibility restrictions to all BTAs, regardless of size. We seek comment on these alternatives, as well as on other possible tier divisions and other options for opening the bidding for some of the available C block licenses.

31. *Available F block licenses:* We seek comment on eliminating the eligibility requirements for all of the 10 MHz F block licenses available in Auction No. 35. We note that from a historical perspective, F block did not face the same types of problems and difficulties as C block. This difference is evidenced by the fact that the Commission did not see the need to allow F block licensees to restructure their spectrum holdings, nor did it provide for the grandfathering of eligibility for entrepreneur entities in future F block auctions. Thus, we have consistently treated the F block spectrum differently than C block in recognition of the fact that the history of these spectrum blocks evolved in divergent manners. Accordingly, we may not be faced with the same equity considerations in maintaining a set-aside of F block spectrum as we are for C block. Moreover, we note that in virtually all markets where there is an available F block license, there is a 30 MHz license held by a current C block entrepreneur. Thus, there is already significant set-aside spectrum in each of these markets. Further, despite the lack of historical controversy regarding the F block spectrum, build out of these licenses has not progressed as quickly as we may have anticipated, especially in larger markets. Allowing open eligibility for all 10 MHz F block licenses might lead to more expeditious provision of service to American consumers. Alternatively, we recognize that we could adopt a tiered approach similar to the proposals for C block licenses discussed, or we could retain the existing F block eligibility requirements. We seek comment on these alternatives.

32. *15 MHz C block licenses:* Finally, we propose, and seek comment on, eliminating the eligibility requirements for all 15 MHz C block licenses that will be available in Auction No. 35 and in future C block auctions. As noted previously, all of the 15 MHz licenses available in Auction No. 35 were available in restricted Auction No. 22, yet remained unsold. Accordingly, we believe that it is appropriate to make these licenses, located principally in rural markets, immediately available to any interested bidder.

33. *Unsold C and F block licenses:* We also seek comment on whether we should establish a rule that lifts eligibility restrictions on any C or F block licenses that remain unsold after Auction No. 35 or in other future auctions. Such licenses could then promptly be put up for auction under open bidding.

C. License Grouping for Bids

34. *Background.* In past C and F block auctions (as well as D and E block auctions), participants have bid separately for each license. Nextel proposes that all available 30 MHz licenses be reconfigured into 20 MHz and 10 MHz licenses and that the newly created 20 MHz C block licenses and the available 15 MHz C block licenses be offered together on a "bulk bid" (*i.e.*, winner take all) basis in an expedited auction.

35. *Discussion.* We tentatively conclude that we will take bids separately on each license in Auction No. 35 on a simultaneous multiple round basis as we have done in the past. We are persuaded by commenters that the massive scale of Nextel's bulk bid proposal (or something similar based upon a 10 MHz C block license configuration) would exclude all but a very few competitors. Small entities would be hard pressed to obtain the financing necessary to win and pay for the licenses and construct the systems included in the bulk bid proposal. Many other carriers would be constrained from participating by the CMRS spectrum cap. While we agree with Nextel that bidding for individual licenses will make it somewhat more challenging for it to win the very broad aggregation of licenses it seeks to acquire, we do not think this requires us to resort to its bulk bid proposal. Experience in our auctions to date demonstrates that significant aggregations of licenses through the auction process are feasible. For this reason, we believe that bidding for each license separately is unlikely to preclude carriers from aggregating licenses on a nationwide or regional basis, and at the same time provides carriers who have intense spectrum needs in a particular market the opportunity to compete for licenses as well.

D. Grandfather Exception

36. *Background:* In the *C Block Second Report and Order*, the Commission established in § 24.709(b)(9)(i) a "grandfather" exception to the entrepreneur eligibility requirement for participation in C block auctions. Under that exception, all entities that had been eligible for and had participated in Auction No. 5 or Auction No. 10 would be eligible to bid on C block licenses in Auction No. 22, regardless of their financial size at the time of the auction. We declined to apply the "grandfather" exception to bidding on F block licenses, based on our belief that F block licensees did not have the same need for financial relief. In the *C Block Fourth Report and Order*, we decided, in fairness to other future bidders, to limit the grandfather exception to a two-year period beginning on the start date of Auction No. 22, *i.e.*, through March 23, 2001. In the *C Block Fourth Report and Order*, we denied a petition by Omnipoint asking that we extend the grandfather exception indefinitely.

37. *Discussion:* In a petition for reconsideration or clarification of the *C Block Fourth Report and Order*, Verizon asks us to reexamine the grandfather exception and limit resulting eligibility to those Auction No. 5 and 10 participants that won licenses in the auctions and then returned spectrum pursuant to the Commission's C block restructuring options. We seek comment on the issues raised in the Verizon petition and, more generally, on whether the grandfather exception should be revised or clarified in light of current circumstances.

38. We note that Nextel makes arguments similar to Verizon's in response to the US West/Sprint petition and also objects to the fact that the grandfather exception in that it does not extend to Auction No. 11 and Auction No. 22 participants. We have received notice that currently "grandfathered" companies intend to combine with other carriers, some of which are also eligible for the grandfather exception. We believe that the eligibility of successor entities for participation in "closed" bidding is a subject that may also be ripe for clarification in our upcoming order. Accordingly, we seek comment on our tentative conclusion that upon the merger of two entities, each of which is eligible for the "grandfather" exception, the exception extends to the resulting entity, but that, upon the merger of two entities, only one of which is eligible for the "grandfather" exception, the exception does not extend to the resulting entity. We recognize that our tentative conclusion is based upon simplified examples, and we encourage comment on how to determine C and F block eligibility when faced with more complex transactions.

E. Bidding Credits

39. Under current rules, a winning C or F block bidder that qualifies as a small business (*i.e.*, a business that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has had average annual gross revenues that are not more than $40 million for the preceding three years) or a small business consortium may use a bidding credit of 15 percent. *See* 47 CFR 24.712(a); 24.717(a); *id.*, 1.2110(e)(2)(iii). A winning bidder that qualifies as a very small business (*i.e.*,

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a business that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has had average annual gross revenues that are not more than $15 million for the preceding three years) or a very small business consortium may use a bidding credit of 25 percent. *See* 47 CFR 24.712(b); 24.717(b); *id.*, 1.2110(e)(2)(ii).

40. Since the Commission first established the entrepreneurs' block set-aside and C and F block bidding credits, its experience has demonstrated that bidding credits without a set-aside enable small businesses to compete effectively in open auctions, even auctions of broadband PCS licenses.

41. *Discussion.* A number of entrepreneurial firms have argued that if we open eligibility for some portion of the C block spectrum, we should increase the bidding credits applicable to those licenses. We seek comment on whether we should retain existing small and very small business bidding credits (15 percent and 25 percent, respectively) for licenses subject to "open" bidding or whether we should increase them to 25 percent and 40 percent, respectively.

42. We also seek comment on whether we should change the bidding credits for licenses subject to "closed" bidding, *i.e.*, bidding where eligibility restrictions apply. For example, we could increase the bidding credits for these licenses, or we could keep them at their current level since the rationale for increasing the credits in open auctions—to provide additional assistance for small companies bidding against major wireless providers—does not apply to restricted auctions. Finally, we could eliminate bidding credits altogether on the ground that they are unnecessary and perhaps even counterproductive in ensuring opportunities for small business in the set-aside auctions. In this regard, we recognize that among those eligible to participate in the closed, entrepreneurs' auctions, some well capitalized new entities with small gross revenues qualify for bidding credits, while some older companies with small total assets and net revenues but high gross revenues do not. We seek comment on these various proposals.

F. Transfer Requirements

43. To ensure that C and F block licensees did not take advantage of the eligibility set-aside by immediately assigning or transferring control of their licenses to entities that do not meet the eligibility requirements, the Commission established a holding rule for these licenses as well as unjust enrichment provisions. Under the current holding rule, C and F block licensees may, for the first five years from the date of their initial license grant, assign or transfer control of their C and F block licenses only to entities that meet the eligibility requirements or to other C and F block licensees that obtained their licenses while meeting the requirements. *See* 47 CFR 24.839. The Commission set the current holding period at five years to guarantee that a C or F block licensee would hold and build out the license until the first construction benchmark, which currently occurs five years after the date of licensing.

44. *Discussion.* We propose to modify our transfer requirements to correspond to our proposed changes in the eligibility requirements and to encourage rapid construction of C and F block systems. Specifically, we tentatively conclude that C and F block licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum, would not be subject to a transfer holding rule. For licenses won in closed bidding in any C or F block auction, past or future, we seek comment on tying the holding period to completion of build-out requirements. Under this proposal, a licensee would be able to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by our rules. In this way, we can continue to minimize the trafficking of C and F block licenses won pursuant to closed bidding, while enhancing the likelihood of early build-out. We seek comment on these proposals.

45. Additionally, we seek comment on whether to allow some further flexibility for incumbent licensees that may not have fully satisfied their construction requirements for all their licenses. We wish to examine whether we should, under certain circumstances, evaluate a licensee's compliance with construction requirements on a system-wide basis. For example, we seek comment on whether we should allow a carrier to exchange and transfer licenses if the carrier can demonstrate "substantial service" throughout its system, rather than in that particular market. We also seek comment on any other modifications to our transfer restrictions that would provide incumbent licensees with the flexibility to restructure their business plans without decreasing their incentive to rapidly construct systems and place them in operation.

G. License Cap

46. *Background.* Section 24.710 of the Commission's rules prohibits an auction applicant from winning more than 98 C and F block licenses. The rule requires an applicant that is the high bidder for more than 98 C and F block licenses to withdraw its bids for a sufficient number of licenses to comply with the 98-license limit. The limit applies only to licenses won at auction, not to the total number of licenses that may be obtained post auction. When established in 1994, the license cap was intended to facilitate a fair distribution of licenses within the two blocks by preventing an entity from winning more than approximately 10 percent of the then-total of 986 C and F block licenses.

47. *Discussion.* We tentatively conclude that we will remove § 24.710 from the Commission's rules. In 1994, when the rule was implemented, the Commission anticipated holding only one C block and one F block auction. To date, however, four C and F block auctions have been held, with the fifth, Auction No. 35, scheduled and one or more additional auctions anticipated. Many different entrepreneurs have won C and F block licenses at auction, and substantial diversity among C and F block licensees continues to exist. The Commission has achieved its initial objective of a fair distribution C and F block licenses. Moreover, our proposal to reconfigure available 30 MHz C block licenses, if implemented, would create an additional 186 C block licenses, while adoption of our proposal to eliminate the eligibility restrictions for many of the available C and F block licenses would significantly enhance the likelihood that these licenses would be won by a variety of entities. Accordingly, we seek comment on this tentative conclusion.

H. Spectrum Cap

48. *Background.* The CMRS spectrum cap, set forth in § 20.6 of the Commission's rules, limits the amount of cellular, broadband PCS, and digital Specialized Mobile Radio ("SMR") spectrum in which any entity may have an attributable interest in any geographic area. As discussed, we received petitions from three parties that request that the Commission waive, or forbear from applying, the CMRS spectrum cap with regard to any spectrum awarded in the upcoming C and F blocks auction.

49. *Discussion.* We tentatively conclude that we should not grant the petitions seeking waiver of or forbearance from, the CMRS spectrum cap rules and, accordingly, we will apply the cap to licenses of PCS C and F block spectrum to be auctioned in Auction No. 35. In September 1999, after extensive analysis of spectrum allocation and competitive market conditions, we determined in our *Biennial CMRS Spectrum Cap Order* that the CMRS spectrum cap, with some modification, continued to be a necessary and efficient means to promote competition and protect the public interest. Specifically, we concluded that a cap on this spectrum serves the public interest by promoting competition, preventing excessive concentration of licenses, providing incentives for licensees to make more efficient use of their spectrum, encouraging innovation, and promoting dissemination of licenses to a wide variety of applicants. We also concluded that the "bright-line" test afforded by the CMRS spectrum cap rule efficiently promoted regulatory certainty and regulatory efficiency. For any carrier with a demonstrable need for additional spectrum in a particular geographic area, we established and clarified a process by which it could obtain a waiver of the spectrum cap rule.

50. On the basis of the petitions and the record filed in response, we propose not to revise the CMRS spectrum cap in light of the upcoming auction and our proposed rule changes described herein. Since its inception in 1994, the cap on the 180 MHz of CMRS spectrum (*i.e.*, cellular A and B blocks, PCS A through F blocks, and digital SMR) has limited the amount of spectrum any carrier could aggregate from any part of the CMRS spectrum, including spectrum in the PCS C and F blocks, so as to ensure the many benefits of competition. The pleadings filed in connection with the upcoming auction contain no new material information regarding the costs and benefits of the spectrum cap and do not purport to make a waiver showing under the standard set forth in the *Biennial CMRS Spectrum Cap Order*. *See* 1998 Biennial Regulatory Review, Report and Order 64 FR 54564 (October 7, 1999). Our proposal to revise the rules pertaining to the PCS C and F block spectrum helps ease the impact of the cap in this auction, and thereby renders cap relief unnecessary. By proposing to divide the 30 MHz blocks of C block spectrum into 10 MHz blocks in the upcoming auction, we would better enable carriers to obtain additional spectrum without the need to exceed the CMRS spectrum cap. Carriers currently have accumulated spectrum up to the CMRS spectrum cap limits, either the general 45 MHz cap or the 55 MHz cap that applies to rural areas, in only a few locations. With regard to the C and F block spectrum to be auctioned, in every market almost all carriers could obtain additional spectrum in blocks of 10 MHz (or 15 MHz where applicable) and still comply with the spectrum cap without any need for disaggregation. As discussed, for those carriers that require more than 45 MHz of spectrum in the near term, we have established a process for granting waiver of the spectrum cap. We stated that we would consider granting a waiver of the spectrum cap in a particular geographic area to the extent a carrier could credibly demonstrate that the spectrum cap was having a significantly adverse effect on its ability to provide 3G or other advanced services. We also note that our year 2000 biennial review of the spectrum cap rule commences later this year. This proceeding will provide us another opportunity to revisit, in a more comprehensive manner than the pleadings before us, issues pertaining to the CMRS spectrum cap and whether it should be retained, modified, or eliminated. We seek comment on our tentative conclusion to retain the CMRS spectrum cap on the PCS C and F block spectrum scheduled for auction.

IV. Conclusion

51. Based on the foregoing, we seek comment on overall changes to the C and F block rules that take into account our competing statutory objectives to manage spectrum in the public interest. We conclude that this *Further Notice* will provide us with an opportunity to develop a record on the specific proposals to open eligibility for this spectrum and otherwise revise the C and F block rules for the benefit of consumers and the economy.

V. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

52. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206.

B. Regulatory Flexibility Act Analysis

53. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals and tentative conclusions set forth in the *Further Notice* in WT Docket No. 97–82. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice*. In accordance with the RFA, the Commission will send a copy of this *Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act Analysis

54. This *Further Notice* contains neither a new nor a modified information collection.

D. Comment Dates

55. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before June 22, 2000, and reply comments on or before June 30, 2000. 47 CFR 1.415, 1.419. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

56. Comments filed through ECFS may be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Comments filed through the ECFS may be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed; however, if multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. When completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal

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Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. A courtesy copy should be delivered to Audrey Bashkin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4A–665, Washington, DC 20554. Parties should reference WT Docket No. 97–82 in their comments. Pursuant to § 1.1200(a) of the Commission's rules, presentations on issues in this proceeding will be prohibited after 7 p.m., July 12, 2000, until release of the Commission's order dealing with those issues. 47 CFR 1.1200(a) and 1.1202(a). All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center of the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

E. Ordering Clauses

58. Authority for issuance of this *Further Notice* is contained in sections 4(i), 309(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

Initial Regulatory Flexibility Analysis

59. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on small entities of the rules proposed in this *Further Notice* in WT Docket No. 97–82. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

A. Need for, and Objectives, of the Proposed Rules

60. Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. To date, the Commission has received numerous requests to waive, modify, or eliminate certain of the C and F block auction and service rules for C and F block broadband Personal Communications Services ("PCS") licenses. As discussed more fully in section E of this IRFA, *infra*, these requests seek, among other things, modification of the C and F block entrepreneur eligibility requirements for the upcoming C and F block auction, reconfiguration of available 30 MHz C block licenses, and adoption of an alternative bidding plan. Upon consideration of these numerous requests, the Commission has tentatively concluded that it is in the public interest to revise certain aspects of the C and F block rules. This *Further Notice* sets forth the Commission's proposals and tentative conclusions concerning possible revisions to the rules governing the C and F block spectrum. The Commission believes that this *Further Notice* will provide the Commission with an opportunity to develop a record on the specific proposals to open eligibility for this spectrum and otherwise revise the C and F block rules for the benefit of consumers and the economy. In addition, the Commission believes that the tentative conclusions and proposals set forth in this *Further Notice* help meet the goals and objectives of section 309(j), and promote competition while maintaining the fair and efficient implementation of the auctions program. Accordingly, the Commission seeks comment on all proposals, alternatives, tentative conclusions, and other issues described in the *Further Notice;* and the impact that such proposals, alternatives, tentative conclusions, and other issues may have on small entities.

B. Legal Basis

61. This action is authorized under sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

62. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. Generally, the RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a "small business concern" is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) meets any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations." "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 local governments in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

63. The possible rule changes described in the *Further Notice* affect all small entities that choose to participate in the upcoming auction of C and F block spectrum and other future auctions of C and F block spectrum, including small businesses currently holding C and F block licenses and other small businesses that may acquire licenses through the auction. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has auctioned licenses in each block. Frequency blocks C and F have been designated by the Commission as "entrepreneurs' blocks," and participation in auctions of C and F block licenses is limited to entities qualifying under the Commission's rules as entrepreneurs. The Commission's rules define an entrepreneur as an entity, together with its affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application is filed. For blocks C and F, the Commission has defined "small business" as a firm, together with its affiliates, that had average gross revenues of not more than $40 million in the three previous calendar years, and "very small business" has been defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These definitions have been approved by the SBA.

64. On May 6, 1996, the Commission concluded the first broadband PCS C block auction. On July 16, 1996, the second C block auction closed. On January 14, 1997, the broadband PCS D, E, and F block auction closed. Ninety bidders (prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses, placing high bids in these C and F block auctions were eligible for bidding credits and installment payment plans. On April 15, 1999, Auction No. 22, which included 347 C and F block licenses, closed. On January 12, 2000, the Wireless Telecommunications Bureau announced the Commission's intention to auction C and F block PCS licenses on July 26, 2000. The auction is currently scheduled to include ninety-three 30 MHz C block licenses, twenty-one 15 MHz C block licenses, and forty 10 MHz F block licenses. For purposes of our evaluations and conclusions in this IRFA, we assume that all of the original 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this *Further Notice*, are small entities. In addition to the 178 original small business licensees that may participate in the auction of the C block licenses, a number of additional small business entities may seek to acquire licenses through auction; thus, these business entities would be affected by these rules.

D. Reporting, Recordkeeping, and Other Compliance Requirements

65. At this time, the Commission does not anticipate the imposition of new reporting, recordkeeping, or other compliance requirements as a result of this Notice. We seek comment on this tentative conclusion. Auction participants will need to follow the standard procedural rules used for broadband PCS spectrum auctions, including application and payment rules.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

66. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603.

67. The Commission tentatively concludes that it is in the public interest to revise certain aspects of the C and F block rules to encourage participation by small businesses while at the same time helping to ensure the best use of spectrum through the competitive bidding process.

68. *Reconfigure C Block Spectrum Size:* The Commission tentatively concludes it will reconfigure each 30 MHz C block license available in future broadband PCS auctions into three 10 MHz C block licenses. The Commission believes that by increasing the number of available licenses through this reconfiguration, taken together with the Commission's proposals to lift certain of our eligibility requirements, the Commission will promote wider auction participation and license distribution in accordance with the goals of section 309(j) of the Communications Act. Small bidders should find bidding for 10 MHz licenses more affordable, while large bidders should enjoy greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap. The Commission also seeks comment on whether a different configuration would be more appropriate to provide meaningful opportunities for potential bidders, including new entrants into particular markets.

69. *Eliminate Eligibility Restrictions for Certain Licenses in Tiers:* The Commission proposes to remove the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions. Based on the demand for spectrum to satisfy congestion, new technology and competitive needs, the Commission tentatively concludes that it would serve the public interest to make some additional spectrum available to all interested bidders. In light of the Commission's commitment to providing meaningful opportunities for entrepreneurs, the Commission seeks comment on proposals to lift the entrepreneur eligibility requirements for some of the licenses available in Auction No. 35 and future auctions, which vary in the amount of spectrum that would remain set-aside according to the size of both the available licenses and the markets. The Commission tentatively concludes that it will divide BTAs into two tiers according to population size of the BTA. "Tier 1" would comprise BTAs at and above a 2.5 million population threshold; "Tier 2" would comprise BTAs below that population threshold. For available 30 MHz C block licenses, the Commission tentatively concludes to allow "open" bidding for two of the three 10 MHz C block licenses in Tier 1, and one of the three 10 MHz C block licenses in Tier 2. The Commission also seeks comment on whether there should be "open" bidding for all three of the 10 MHz licenses in Tier 1, and two of the three in Tier 2. With respect to available F block licenses, the Commission seeks comment on eliminating the eligibility requirements, or, alternatively, applying a tiered approach or retaining the existing eligibility rules. Finally, the Commission also tentatively concludes it will allow "open" bidding for all available 15 MHz C block licenses, which have previously been auctioned but not sold. These alternatives would affect the configuration and set-aside of spectrum. We seek comment on the impact of these alternatives on small businesses.

70. *Retain Current License Grouping for Bidding in Auction:* The Commission tentatively concludes to take bids on each license separately in Auction No. 35 on a simultaneous multiple round basis as the Commission has previously done in the past. The Commission believes that bidding for each license separately is unlikely to preclude carriers from aggregating licenses on a nationwide or regional basis, and at the same time will provide carriers that have intense spectrum needs in a particular market the opportunity to compete for licenses as well.

71. *Grandfather Exception:* The Commission seeks comment on whether the grandfather eligibility exception should be revised or clarified. The Commission also tentatively concludes that upon the merger of two entities, each of which is eligible for the "grandfather" exception, the exception extends to the resulting entity; but that, upon the merger of two entities, only one of which is eligible for the "grandfather" exception, the exception does not extend to the resulting entity.

72. *Revise the Bidding Credits Available for Auction No. 35:* For those licenses that are not subject to eligibility restrictions, the Commission seeks comment on whether to increase bidding credits for small and very small businesses, and consortia thereof, to 25 and 40 percent, respectively, or to retain existing bidding credit levels. We expect that this departure from previous

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procedure will provide small businesses with a meaningful opportunity to compete in an open auction.

73. *Alter the Transfer Requirements for Certain Licenses:* The Commission proposes to modify the Commission's transfer requirements to correspond to the Commission's proposed changes in the eligibility requirements, and to encourage rapid construction of C and F block systems. Specifically, the Commission tentatively concludes that C and F block licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum, would not be subject to a transfer holding rule. For licenses won in closed bidding in any C or F block auction, the Commission seeks comment on a proposal that will allow a licensee to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by the rules. The Commission also seeks comment on whether it should evaluate a licensee's compliance with construction requirements on a system-wide basis.

74. *Eliminate the License Cap:* The Commission proposes to remove § 24.710 from the Commission's rules which prohibits an auction applicant from winning more than 98 C and F block licenses. When this rule was established, the license cap was intended to facilitate a fair distribution of licenses within the C and F blocks. The Commission has achieved this objective; moreover, the Commission's proposal to reconfigure the available 30 MHz C block licenses would create additional C block licenses, while the Commission's proposal to eliminate the eligibility restrictions would increase the chances of C and F block licenses being won by a variety of entities.

75. *Retain the Spectrum Cap:* The Commission tentatively concludes that it should not grant the petitions seeking waiver of, or forbearance from, the CMRS spectrum cap rules and, accordingly, it would apply the spectrum cap to licenses of PCS C and F block spectrum to be auctioned in Auction 35. The Commission's proposal to revise the rules pertaining to the PCS C and F block spectrum helps ease the impact of the cap in this auction, and thereby renders cap relief unnecessary.

76. Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. The Commission believes that the proposals, alternatives, and tentative conclusions described in this Notice promote these goals while maintaining the fair and efficient execution of the auctions program. The Commission, therefore, seeks comment on all issues, proposals, tentative conclusions, and alternatives described in the Notice, and the impact they may have on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

77. None.

List of Subjects in 47 CFR Part 24

Communications common carriers, Personal communications services, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–14881 Filed 6–12–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter IV

[Docket: 000214043–0043–01]

RIN 1018–AF55, 0648–AL91

Announcement of Draft Policy for Evaluation of Conservation Efforts When Making Listing Decisions

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of draft policy.

SUMMARY: We, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (Services), announce a draft policy for the evaluation of conservation efforts when making listing decisions under the Endangered Species Act of 1973, as amended (Act). While the Act requires us to consider all conservation efforts being made to protect a species, the policy identifies criteria we will use in determining whether formalized conservation efforts contribute to making listing a species as threatened or endangered unnecessary. The policy applies to conservation efforts identified in conservation agreements, conservation plans, management plans, or similar documents developed by Federal agencies, State and local governments, Tribal governments, businesses, organizations, and individuals.

DATES: Send your comments on the draft policy to us (see **ADDRESSES** section) by August 14, 2000.

ADDRESSES: Send your comments on the draft policy to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., (MS–420 ARLSQ), Washington, DC 20240, or to FW9_FWE_DTEFR@fws.gov. You may examine the comments we receive by appointment during normal business hours in Room 420, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service at the above address, telephone 703/358–2171 or facsimile 703/358–1735, or Wanda Cain, Chief, Endangered Species Division, National Marine Fisheries Service, 1315 East-West Highway, 13th Floor, Silver Spring, Maryland 20910, telephone 301/713–1401 or facsimile 301/713–0376.

SUPPLEMENTARY INFORMATION:

Draft Policy

Policy Purpose

We have proposed this policy in order to ensure consistent and adequate evaluation of formalized conservation efforts (conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents) when making listing decisions under the Act. We have also proposed this policy to facilitate the development of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

Policy Scope

This policy applies to our evaluation of all formalized conservation efforts when making listing decisions for species not listed, including findings on petitions to list species and decisions on whether to assign candidate status, to remove candidate status, to issue proposed listing rules, and to finalize or withdraw proposed listing rules. This policy applies to formal conservation efforts developed with or without a specific intent to influence a listing decision and with or without the involvement of the Services. This policy identifies criteria we will use to evaluate the certainty of implementation and effectiveness of formalized conservation efforts that have not yet been implemented or have been recently implemented and have not yet demonstrated effectiveness at the time of a listing decision. The criteria will be used to determine whether a formalized conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered.

In many cases, conservation efforts affecting a particular species will have been implemented and will have shown results well before the time of a listing decision. In those cases, development of an agreement or plan, and an evaluation of its certainty of implementation and effectiveness, would not be necessary, because the results of the implemented conservation efforts will be considered when we make a listing decision.

The policy does not provide guidance for determining the level of conservation or the types of conservation efforts needed to make listing unnecessary. Also, the policy does not provide guidance for determining when parties should enter into agreements or when a conservation effort should be included in an agreement or plan. The policy provides guidance only for evaluating the certainty of implementation and effectiveness of formalized conservation efforts. Although the certainty of implementation and effectiveness of a conservation effort may be considered in determining the appropriateness of including the effort in an agreement or plan, no particular level of certainty must be provided in order to include the effort in an agreement or plan.

Definitions

"Adaptive management is the process of monitoring the results of implemented conservation efforts, then adjusting those efforts according to what was learned.

"Agreements and plans" include conservation agreements, conservation plans, management plans, or similar documents approved by Federal agencies, State and local governments, Tribal governments, businesses, organizations, or individuals.

"Candidate species," as defined by regulations at 50 CFR 424.02(b), means any species being considered for listing as an endangered or a threatened species, but not yet the subject of a proposed rule. However, the FWS includes as candidate species those species for which the FWS has sufficient information on file relative to status and threats to support issuance of proposed listing rules. The NMFS includes as candidate species those species for which it has information indicating that listing may be warranted but for which sufficient information to support actual proposed listing rules may be lacking. The term "candidate species" used in this policy refers to those species designated as candidates by either of the Services.

"Conservation efforts," for the purpose of this policy, are specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species. Conservation efforts may involve restoration, enhancement, maintenance, or protection of habitat; reduction of mortality or injury; or other beneficial actions.

"Formalized conservation efforts" are conservation efforts identified in a conservation agreement, conservation plan, management plan, or similar document.

Authority

Section 4(a)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533(a)(1)), states that we must determine whether a species is threatened or endangered because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; and

(E) Other natural or manmade factors affecting its continued existence.

Although this language focuses on impacts negatively affecting a species, section 4(b)(1)(A) requires us also to "tak[e] into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas." Read together, sections 4(a)(1) and 4(b)(1)(A) and our regulations at 50 CFR section 424.11(f) require us to consider any State or local laws, regulations, ordinances, programs, or other specific conservation measures that either positively or negatively affect a species' status (*i.e.*, efforts that create, exacerbate, reduce, or remove threats identified through the section 4(a)(1) analysis). The manner in which the section 4(a)(1) factors are framed supports this conclusion. Factor (D) for example—"the inadequacy of existing regulatory mechanisms"—indicates that we might find existing regulatory mechanisms adequate to justify a determination not to list a species.

In addition, we construe the analysis required under section 4(a)(1), in conjunction with the directive in section 4(b)(1)(A), to authorize and require us to consider whether the actions of any other entity, in addition to actions of State governments, create, exacerbate, reduce, or remove threats to the species. Factor (E) in particular —any "manmade factors affecting [the species'] continued existence"—requires us to consider the pertinent laws, regulations, programs, and other specific actions of any entity that either positively or negatively affect the species. Thus, the analysis outlined in section 4 requires us to consider any conservation efforts by State or local governments, Tribal governments, Federal agencies, businesses, organizations, or individuals that positively affect the species' status.

Conservation efforts are often informal, such as when a property owner implements conservation measures for a species simply because of concern for the species or interest in protecting its habitat, and without any specific intent to affect a listing decision. Conservation efforts are also often formalized in conservation agreements, conservation plans, management plans, or similar documents. The development and implementation of such agreements and plans have been an effective mechanism for conserving declining species and have, in some instances, made listing unnecessary. These efforts are consistent with the Act's finding that "encouraging the States and other interested parties * * * to develop and maintain conservation programs. * * * is a key * * * to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants' (16 U.S.C. 1531 (a)(5)).

In some situations, the listing process may be under way, and formalized conservation efforts have yet to be implemented. We may determine that a formalized conservation effort that has not yet been implemented reduces or removes a threat to a species when we have sufficient certainty that it will be implemented and effective.

Deciding or determining whether a species meets the definition of threatened or endangered requires us to make a prediction about the future persistence of a species. Central to this concept is a prediction of future

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conditions, including consideration of future negative effects of anticipated human actions. We cannot protect species without taking into account future threats that have a high likelihood of affecting a species. The Act does not require that, and species conservation would be compromised if, we wait until a threat is actually harming individuals before we list the species as threatened or endangered. Similarly, the magnitude and/or severity of a threat may be reduced as a result of future positive human actions. Common to the consideration of both the effects of future negative human actions and the effects of future positive human actions is a determination of the certainty that the actions will occur and that their effects on the species will be realized. We therefore consider both future negative and future positive human impacts when assessing the status of the species.

For example, if a State recently instituted a program to eliminate collection of a reptile being considered for listing, we must assess the predicted consequences of this program on the status of the species. For those parts of the program recently instituted, a record to determine the effect on the species may not yet exist. Therefore, we must base an assessment of the adequacy of the program on predicted compliance and effects. Such an assessment would reasonably include an evaluation of the State's ability to enforce new regulations, educate the public, monitor compliance, and monitor the effects of the program on the species. We would determine that the program reduces the threat of overutilization of the species through collecting if we found sufficient certainty that the program would be implemented and effective.

The language of the Act supports this approach. The definitions for both "endangered species" and "threatened species" connote future status, which indicates that consideration of whether a species should be listed depends in part on identification and evaluation of future actions that will reduce or remove, as well as create or exacerbate, threats to the species. In addition, the first factor in section 4(a)(1)—the present or threatened destruction, modification, or curtailment of [the species'] habitat or range—explicitly requires us to analyze both current actions affecting a species' habitat or range and those actions that are sufficiently certain to occur in the future and affect a species' habitat or range. However, future actions by Federal agencies, States, Tribes, and private entities that create, exacerbate, reduce, or remove threats are not limited to actions affecting a species' habitat or range. Congress did not intend for us to consider current and future actions affecting a species' habitat or range, yet ignore future actions that will influence overutilization, disease, predation, regulatory mechanisms, or other natural or manmade factors. Therefore, we construe Congress' intent, as reflected by the language of the Act, to require us to consider both current actions that are affecting a species' status and sufficiently certain future actions—either positive or negative—that will affect habitat, range, overutilization, disease, predation, regulatory mechanisms, or other natural or manmade factors.

The consideration of both positive and negative effects of human actions in making a prediction about the future persistence of a species also requires consideration of voluntary human actions. The threats to species that lead to listing as threatened or endangered are often the result of voluntary human actions. For example, decisions to develop property, harvest timber, or otherwise use or manage land or other natural resources in ways that pose a threat to a species are typically voluntary, as opposed to mandatory, actions. We must factor the effects of these voluntary detrimental actions into our assessment. Similarly, decisions to forego development or other changes in land use or management that would pose a threat to a species, as well as decisions to initiate conservation efforts that will have a positive effect on the species, are often voluntary, as opposed to mandatory, actions. Voluntary beneficial actions, whether initiated independently or through participation in a formalized conservation effort, must also be factored into our assessment.

For example, a State could have a voluntary incentive program for protection and restoration of riparian habitat that includes providing technical and financial assistance for fencing to exclude livestock. To assess the effectiveness of this voluntary program, we would evaluate the level of participation (*e.g.*, number of participating landowners or number of stream-miles fenced), the length of the commitment by landowners, and effects of the program on the species. We would determine that the program reduces the threat of habitat loss and degradation if we find sufficient certainty that the program is effective.

Evaluation Criteria

Conservation agreements, conservation plans, management plans, and similar documents generally identify numerous conservation efforts (*i.e.*, actions, activities, or programs) to benefit the species. In determining whether a formalized conservation effort contributes to making listing a species as threatened or endangered unnecessary or contributes to forming a basis for listing as threatened rather than endangered, we must evaluate whether the conservation effort affects the status of the species. Two factors are key in that evaluation: (1) For those efforts yet to be implemented, the certainty that the conservation effort will be implemented and (2) the certainty that the conservation effort will be effective. Because the certainty of implementation and effectiveness of formalized conservation efforts may vary, we will evaluate each effort individually. In order for us to determine that a formalized conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered, the conservation effort must meet the following criteria.

A. The certainty that the conservation effort will be implemented:

1. The conservation effort; the party(ies) to the agreement or plan that will implement the effort; and the staffing, funding level, funding source, and other resources necessary to implement the effort are identified.

2. The authority of the party(ies) to the agreement or plan to implement the conservation effort and the legal procedural requirements necessary to implement the effort are described.

3. Authorizations (*e.g.*, permits, landowner permission) necessary to implement the conservation effort are identified, and a high level of certainty that the party(ies) to the agreement or plan that will implement the effort will obtain these authorizations is provided.

4. The level of voluntary participation (*e.g.*, by private landowners) necessary to implement the conservation effort is identified, and a high level of certainty that the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation is provided (*e.g.*, an explanation of why incentives to be provided are expected to result in the necessary level of voluntary participation).

5. All regulatory mechanisms (*e.g.*, laws, regulations, ordinances) necessary to implement the conservation effort are in place.

6. A high level of certainty that the party(ies) to the agreement or plan that will implement the conservation effort will obtain the necessary funding is provided.

7. An implementation schedule (including completion dates) for the conservation effort is provided.

8. The conservation agreement or plan that includes the conservation effort is approved by all parties to the agreement or plan.

B. The certainty that the conservation effort will be effective:

1. The nature and extent of threats being addressed by the conservation effort are described.

2. Explicit objectives for the conservation effort and dates for achieving them are stated.

3. The steps necessary to implement the conservation effort are identified.

4. Quantifiable, scientifically valid parameters that will demonstrate achievement of objectives, and standards for these parameters by which progress will be measured, are identified.

5. Provisions for monitoring and reporting progress on implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort are provided.

6. Principles of adaptive management are incorporated.

These criteria should not be considered comprehensive evaluation criteria. The certainty of implementation and effectiveness of a formalized conservation effort may also depend on species-specific, habitat-specific, location-specific, and action-specific factors. We will consider all appropriate factors in evaluating formalized conservation efforts. The specific circumstances will also determine the amount of information necessary to satisfy these criteria.

In addition, we will consider the estimated length of time that it will take for a formalized conservation effort to remove or reduce threats to the species. In some cases, the nature, severity, and/or imminence of threats to a species may be such that a conservation effort cannot be expected to remove or reduce threats quickly enough to make listing unnecessary.

An agreement or plan may contain numerous conservation efforts, not all of which are sufficiently certain to be implemented and effective. Those conservation efforts that are not sufficiently certain to be implemented and effective cannot contribute to a determination that listing is unnecessary or a determination to list as threatened rather than endangered. To determine that a formalized conservation effort contributes to making listing a species as threatened or endangered unnecessary, or contributes to forming a basis for listing as threatened rather than endangered, we must find that the conservation effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of one or more threats to the species identified through the section 4(a)(1) analysis. The elimination or adequate reduction of section 4(a)(1) threats may lead to a determination that the species does not meet the definition of threatened or endangered, or is threatened rather than endangered.

Additional Considerations

Federal agencies, State and local governments, Tribal governments, businesses, organizations, or individuals contemplating development of an agreement or plan should be aware that, because the Act mandates specific timeframes for making listing decisions, we cannot delay the listing process to allow additional time to complete the development of an agreement or plan. Nevertheless, we encourage the development of agreements and plans even if they will not be completed prior to a final listing decision. Such an agreement or plan could serve as the foundation for a special rule under section 4(d) of the Act, which would establish only those prohibitions necessary for the conservation of a threatened species, or for a recovery plan, and could lead to earlier recovery and delisting.

In addition, we encourage the development of agreements or plans even if they do not meet the criteria listed in this policy. We hope that efforts contained in such plans would be implemented by the time we must make a listing decision. If efforts have been, or will be, implemented by the time we must make a listing decision, there is no need to provide certainty of implementation. However, prior to making a listing decision, we would evaluate the certainty of effectiveness of any newly implemented efforts.

If we make a decision not to list a species or to list the species as threatened rather than endangered based in part on the contributions of a formalized conservation effort, we will monitor the status of the species and the progress in implementation of the conservation effort. If there is (1) A failure to implement the conservation effort in accordance with the implementation schedule; (2) a failure to achieve objectives; or (3) a failure to modify the conservation effort to adequately address an increase in the severity of a threat, we will reevaluate the status of the species and consider whether initiating the listing process is necessary. Initiating the listing process may consist of designating the species as a candidate species and assigning a listing priority, issuing a proposed rule to list, issuing a proposed rule to reclassify, or issuing an emergency listing rule.

Public Comments Solicited

We request comments on four aspects of this notice: (1) The content of the draft policy; (2) other related issues; (3) the clarity of this notice; and (4) the collection of information from the public expected to be associated with preparation and submission of conservation agreements and plans and with monitoring and reporting the implementation progress and effectiveness of conservation efforts, which requires Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

Comments on the Content of the Draft Policy

We solicit your comments on the content of this draft policy. We are especially interested in your comments on the criteria that we will use to evaluate the certainty that a formalized conservation effort will be implemented. For example, must all regulatory mechanisms (*e.g.*, laws, regulations, ordinances) necessary to implement a conservation effort actually be in place in order for us to determine that the effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered? Or is it sufficient that the conservation effort include a high level of certainty that the regulatory mechanisms will be adopted by a specified date? Similarly, should funding, authorizations, and voluntary participation be in place at the time a conservation effort is evaluated, or is it sufficient that the conservation effort include a high level of certainty that they be in place by a specified date? In addition, how might an entity demonstrate a high level of certainty of implementation of a conservation effort? In determining a final action on this draft policy, we will take into consideration all comments we receive during the comment period.

Comments on Other Related Issues

Also, we are interested in your comments on the timing of the development of conservation agreements or plans. We encourage early development of conservation agreements or plans, prior to the need to propose a species for listing, such as at or before the time a species is placed

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on the candidate list. However, agreements or plans often have been initiated or accelerated when one of the Services has proposed to list a species. Listing proposals generally provide a 60-day comment period. At the latest, we should receive conservation agreements or plans before the end of the comment period in order to be considered in a final listing decision. Beginning development of a conservation agreement or plan after the species is proposed for listing generally does not allow much time for implementation of any new conservation efforts identified as necessary in an agreement or plan. In that case, we must rely on our analysis of the certainty of implementation and effectiveness of those proposed efforts when making a listing decision. We hope that, by identifying specific criteria for evaluation of conservation efforts, this policy will encourage earlier development of conservation efforts such that many of the identified conservation efforts will be implemented by the time a final listing decision is made. Are there other ways to encourage earlier development of conservation efforts?

Clarity of the Policy

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this policy easier to understand, including answers to the following questions: (1) Is the discussion in the "Supplementary Information" section of the preamble helpful in understanding the policy? (2) Does the policy contain technical language or jargon that interferes with its clarity? (3) Does the format of the policy (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) What else could we do to make the policy easier to understand?

Send your comments concerning the content or clarity of this draft policy to the FWS (see **ADDRESSES** section).

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3501 *et seq.*) requires Federal agencies to obtain OMB approval for certain collections of information from the public. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Simultaneous to publication of this notice, we are requesting OMB approval for information collection associated with this draft policy. The OMB regulations implementing provisions of the Paperwork Reduction Act require agencies to provide interested members of the public and other affected agencies an opportunity to comment on agency information collection and recordkeeping activities (see 5 CFR 1320.11). Our request for approval from OMB for a collection of information from the public must include an estimate of the information collection and recordkeeping burden that would result from our draft policy if made final.

The development of a conservation agreement, conservation plan, management plan, or similar document by a State or other entity is completely voluntary. While this policy applies to formal conservation efforts developed with or without a specific intent to influence a listing decision and with or without the involvement of the Services, only those agreements or plans developed to influence a listing decision, with the involvement of the Service, constitute a new information collection requiring OMB approval under the Paperwork Reduction Act. In addition, when a State or other entity develops such an agreement or plan with the specific intent of making listing of a species unnecessary, the criteria identified in our draft policy can be construed as requirements placed on the development of the agreement or plan. In other words, a State or other entity must satisfy these criteria in order to obtain and retain the benefit they are seeking, which is making listing of a species as threatened or endangered unnecessary.

In addition, one of the criteria identified in our draft policy is that a provision must be included that provides for monitoring and reporting the progress and results of implementation of a conservation effort. Conservation professionals have long considered monitoring and reporting to be an essential component of scientifically sound agreements and plans and routinely incorporate monitoring and reporting into these agreements and plans. We included a monitoring and reporting criterion in this policy to ensure consistency with sound biological and conservation principles and for completeness. Although monitoring and reporting provisions are already generally included in agreements and plans, this criterion also constitutes a new information collection requiring OMB approval under the Paperwork Reduction Act.

Estimating the amount of work associated with developing a conservation agreement or plan with the intent of making listing unnecessary and with monitoring and reporting the progress and results of implementation of conservation efforts is difficult because: (1) The development (and associated monitoring) of conservation efforts is completely voluntary, and we cannot predict who will decide to develop these efforts; (2) we cannot predict which species will become the subjects of conservation efforts and, therefore, cannot predict the nature and extent of conservation efforts and monitoring included in agreements and plans; and (3) many plans, such as agency land management plans, are developed to satisfy requirements of other laws or for other purposes, and we cannot predict whether, or the extent to which, some of these plans may be expanded to attempt to make listing unnecessary. For these reasons, we must base our estimate of the amount of work associated with developing conservation agreements or plans and monitoring and reporting of conservation efforts on information from conservation agreements developed in the past.

A. Fish and Wildlife Service

Since 1994, the FWS has entered into approximately 60 conservation agreements. About 14 of these agreements contributed to making listing the covered species as threatened or endangered unnecessary. Based on this information, we have entered into an average of about 15 agreements per year, 3 or 4 of which have made listing unnecessary. We expect that these averages will remain stable or increase. We will estimate that annually six agreements will be developed with the intent of making listing unnecessary, that four of these will be successful in making listing unnecessary, and, therefore, in four cases, the States or other entities who develop these agreements will carry through with their monitoring commitments in order to keep the covered species from being listed.

We estimate that each agreement developed with the intent of making listing unnecessary will require an average of 320 person-hours to complete. This estimate is a one-time burden for each plan developed. The burden to six States or other entities who choose to develop an agreement in a given year totals approximately 1,920 hours.

We estimate that, for each conservation effort, the State or other entity will spend annually an average of 160 person-hours to conduct the monitoring and 40 person-hours to prepare a report. Therefore, the annual burden to four States or other entities to complete monitoring and reporting totals approximately 800 hours.

B. National Marine Fisheries Service

Since 1997, NMFS has entered into three conservation agreements, all of which we determined at the time contributed to making it unnecessary to list the covered species as threatened or endangered. We are assuming that at least one agreement will be developed annually with the intent of making listing unnecessary, and that about half of these will be successful in making listing unnecessary. We estimate that each agreement developed with the intent of making listing unnecessary will require an average of 320 person-hours to complete. This is a one-time burden for each plan developed. Therefore, the burden to one State or another entity that chooses to develop an agreement in a given year totals about 320 hours.

For each conservation effort, the State or other entity will spend an average of 160 hours to conduct the monitoring and 40 hours to prepare a report. Therefore, the annual burden to a State or another entity to complete monitoring and reporting totals about 200 hours. Over the next 3 to 5 years, we anticipate that two States or entities will have agreements in place that will require monitoring and reporting. Therefore, the monitoring and reporting requirement will total about 400 hours each year.

The Services will submit a request to OMB for approval of this collection of information concurrent with the proposed rulemaking action. We are also soliciting comments on this information collection approval request. We invite comments on: (1) Whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the information collection burden; (3) ways to enhance the quality, utility, and clarity of the information we would collect; and (4) ways to minimize the burden of the information collection on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send your comments on specific information collection requirements to the Desk Officer for the Interior Department and Commerce Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure consideration, you should submit your comments concerning information collection to OMB at the above address by July 13, 2000.

Economic Analysis

This draft policy will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This draft policy will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This draft policy will not raise novel legal or policy issues.

The Departments of the Interior and Commerce certify that this draft policy will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Services expect that this draft policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts.

This policy identifies criteria that a conservation effort must satisfy to ensure certainty of implementation and effectiveness and for the Services to determine that the conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered. The Services developed this draft policy to ensure consistent and adequate evaluation of agreements and plans when making listing decisions and to help States and other entities develop agreements and plans that will be adequate to make listing species unnecessary.

The criteria in this policy primarily describe elements that are already included in conservation efforts and that constitute sound conservation planning. For example, the criteria requiring identification of responsible parties, obtaining required authorizations, establishment of objectives, and inclusion of an implementation schedule and monitoring provisions are essential for directing the implementation and affirming the effectiveness of conservation efforts. These kinds of "planning" requirements are generally already included in conservation efforts and do not establish any new implementation burdens. Rather, these requirements will help to ensure that conservation efforts are well planned and, therefore, increase the likelihood that conservation efforts will ultimately be successful in making listing species unnecessary.

The development of an agreement or plan by a State or other entity is completely voluntary. However, when a State or other entity voluntarily decides to develop an agreement or plan with the specific intent of making listing a species unnecessary, the criteria identified in this policy can be construed as requirements placed on the development of such agreements or plans; the State or other entity must satisfy these criteria in order to obtain and retain the benefit they are seeking, which is making listing of a species as threatened or endangered unnecessary.

Other criteria require demonstrating certainty of implementation and effectiveness of conservation efforts. We have always considered the certainty of implementation and effectiveness of conservation efforts when making listing decisions. Although we have not had explicit evaluation criteria in the past, we believe the criteria in this policy are consistent with the requirements of the Endangered Species Act. Therefore, we believe that no economic effects on States and other entities will result from compliance with the criteria in this policy.

Furthermore, publication of this policy will have positive effects by informing States and other entities of the criteria we will use in evaluating formalized conservation efforts when making listing decisions, and thereby helping States and other entities develop voluntary formalized conservation efforts that will be successful in making listing unnecessary. Therefore, we believe that informational benefits will result from issuing this policy. We believe these benefits, although important, will be insignificant economically.

Required Determinations

Unfunded Mandates Reform Act. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. The Services certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The Services expect that this draft policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts (see Discussion above).

b. This draft policy will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings. In accordance with Executive Order 12630, this draft policy does not have significant takings implications. While State or local

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governments may choose to directly or indirectly implement actions that may have property implications, they would do so as a result of their own decisions, not as a result of this policy. This policy has no provision that would take private property rights.

Federalism. In accordance with Executive Order 13132, this draft policy does not have significant Federalism effects.

Civil Justice Reform. In accordance with Executive Order 12988, this draft policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. With the guidance provided in the draft policy, requirements under section 4 of the Endangered Species Act will be clarified to entities that voluntarily develop formalized conservation efforts.

National Environmental Policy Act. We have analyzed this draft policy in accordance with the criteria of the National Environmental Policy Act (NEPA) and the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)). This draft policy does not constitute a major Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the draft policy is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1. The National Oceanic and Atmospheric Administration (NOAA) has determined that the issuance of this policy qualifies for a categorical exclusion as defined by NOAA 216–6 Administrative Order, Environmental Review Procedure.

Section 7 Consultation. The Service has determined that issuance of this draft policy will not affect species listed as threatened or endangered under the Endangered Species Act, and, therefore, a section 7 consultation on this draft policy is not required.

Government-to-Government Relationship With Tribes. In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, this draft policy does not directly affect Tribal resources. The effect of this draft policy on Native American Tribes would be determined on a case-by-case basis with individual evaluations of formalized conservation efforts. Under Secretarial Order 3206, the Service will, at a minimum, share with the entity that developed the formalized conservation effort any information provided by the Tribes, through the public comment period or formal submissions, and advocate the incorporation of conservation efforts that will restore or enhance Tribal trust resources. After consultation with the Tribes and the entity that developed the formalized conservation effort and after careful consideration of the Tribe's concerns, the Service must clearly state the rationale for the recommended final decision and explain how the decision relates to the Service's trust responsibility. Accordingly:

a. We have not yet consulted with the affected Tribe(s). This requirement will be addressed with individual evaluations of formalized conservation efforts.

b. We have not yet treated Tribes on a government-to-government basis. This requirement will be addressed with individual evaluations of formalized conservation efforts.

c. We will consider Tribal views in individual evaluations of formalized conservation efforts.

d. We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this draft policy on Tribes. This requirement will be addressed with individual evaluations of formalized conservation efforts.

Dated: April 9, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

Dated: May 19, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14731 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for Petitions To List *Horkelia hendersonii* (Henderson's horkelia) and *Lupinus aridus* ssp. *ashlandensis* (Ashland lupine) as Threatened or Endangered and Commencement of Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 90-day finding on two petitions to list *Horkelia hendersonii* (Henderson's horkelia) and *Lupinus aridus* ssp. *ashlandensis* (Ashland lupine) as endangered or threatened species throughout their ranges under the Endangered Species Act of 1973, as amended (Act). We find that the petitions presented substantial information indicating that listing of both species may be warranted. We are initiating a status review to determine if listing of either or both species is warranted.

DATES: The finding announced in this document was made May 31, 2000. To be considered in the 12-month finding for this petition, information and comments should be submitted to us by September 11, 2000.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the State Supervisor, Oregon State Office, U.S. Fish and Wildlife Service, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266. The petition finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew F. Robinson, Jr. (see **ADDRESSES** section) (telephone 503/231–6179).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and we are to publish the finding promptly in the **Federal Register**. If the finding is that substantial information was presented, we are also required to promptly commence a review of the status of the involved species and to disclose its findings within 12 months (12-month finding).

We received two separate formal petitions from the Rogue Group Sierra Club of Ashland, Oregon, both dated September 9, 1999, to list *Horkelia hendersonii*-(Henderson's horkelia) and *Lupinus ariduse ssp. ashlandensis* (Ashland lupine) as endangered or threatened throughout their ranges, and to designate critical habitat. Accompanying the petitions was supporting information relating to taxonomy, ecology, threats, and past and present distribution of *H. hendersonii* and *L. aridus* ssp. *ashlandensis*.

The processing of the petitions conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of this petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.

Horkelia hendersonii, a member of the rose family, is a perennial, mat-forming, rhizomatous herb with several stems arising from a branching, woody crown, approximately 10–15 centimeters (cm) (3.9–5.9 inches (in.)) high. Leaves are silky, 4–6 cm (1.6–3.3 in.) long with 11–19 leaflets arranged pinnately. Flowers are white to pink with petals 4 millimeters (mm) (0.16 in.) long in a somewhat clustered terminal inflorescence. The species occurs in alpine areas between 1,829–2,286 meters (m) (6,000 to 7,500 feet (ft)) elevation, in habitat that includes open granitic gravels, alpine forblands, and dwarf shrublands.

Lupinus aridus ssp. *ashlandensis* is an erect perennial herb forming clumps 15–20 cm (5.9–7.9 in.) in diameter and 7–12 cm (2.8–4.7 in.) tall. The leaves are palmately compound with 5 to 7 leaflets that are up to 3 cm (1.2 in.) long. Leaves are numerous and crowded from the basal crown, with pubescent (downy) undersurfaces and glabrous (smooth) upper sides. Flowers are blue with petals 10–12 mm (0.39–0.47 in.) long. The banner is glabrous and the keel ciliate (fringed with hairlike processes) on the margin. *L. a.* ssp. *ashlandensis* grows on gravelly, granitic soils on the south to southwest slopes near the summit at elevations from 2,100 m (6,900 ft) to 2,280 m (7,480 ft). The lupine will not grow in dense brush.

Federal action on *Lupinus aridus* ssp. *ashlandensis* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and included *L. aridus* ssp. *ashlandensis* as threatened. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act, and our intention to review the status of the reported plant species.

Both *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis* were included as category 2 candidates in a Notice of Review (NOR) published on December 15, 1980 (45 FR 82510). Category 2 formerly included species for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. The plant NOR was again revised on September 27, 1985 (50 FR 39526). In this notice, *Horkelia hendersonii* and *L. aridus* ssp. *ashlandensis* remained category 2 candidates. Another revision of the plant notice was published on February 21, 1990 (55 FR 6184), which again included *H. hendersonii* as a category 2 candidate. However, *L. aridus* ssp. *ashlandensis* was upgraded to category 1 status. Category 1 candidates were formerly defined as species for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals, but issuance of proposed rules was precluded by other listing activities of higher priority. On February 28, 1996, we published an NOR in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates. In response to the decision to discontinue the category 2 designation, *H. hendersonii* and other former category 2 candidates were not retained as candidates. In addition, *L. aridus* ssp. *ashlandensis* was dropped from the candidate list based on our interpretation of data supplied by the U.S. Forest Service (USFS) (Rolle 1993).

The petitions contained substantial amounts of information relating to the distribution of and threats to *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis*. Both species occur within about 1.6 kilometers (1 mile) of the summit on the western slope of Mt. Ashland, Oregon, on the Rogue River and Klamath National Forests. In addition, *H. hendersonii* is found in both National Forests, along the Siskiyou Crest in the Dutchman Peak-Jackson Gap area, at Observation Peak, and on and near McDonald Peak in Oregon, and at Dry Lake Lookout in the Klamath National Forest in California. *L. aridus* ssp. *ashlandensis* occurs as a single population on the top and western ridge of Mount Ashland. Time-series monitoring studies were started by the Forest Service in 1995, but the results are not available to us at this time (Kagan 1995). *Horkelia hendersonii* has been found in 16 habitat patches, but population trends are not known.

The petitions provided information regarding effects of habitat alteration and development activities on *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis*. According to the petitions, the Mount Ashland populations of both species are threatened by the expansion of the ski facilities, the communication facilities, and parking lot, road widening, and maintenance; development of a cross-country ski corridor; and erosion, compaction, and invasion of roadside weeds caused by off-road vehicle activities. The Mount Ashland Bowl patch of *H. hendersonii*, with 15 plants, is located on a proposed ski area expansion site (U.S. Department of Agriculture 1991). A proposed cross-country ski corridor would cut through a large portion of the eastern edge of the Mount Ashland habitat patch and could affect up to 5,000 individual *H. hendersonii* and up to 4,500 individual *L. aridus* ssp. *ashlandensis* (Kagan and Zika 1987a,b). In addition to the proposed ski area expansion, 8 individual *H. hendersonii* and 13 individual *L. aridus* ssp. *ashlandensis* are growing in areas of potential disturbance for the expansion of the U.S. Weather Bureau Radar Station (SRI International 1994, 1995). An existing four-wheel drive track, leading west from the summit access road at the first switchback, provides an avenue for the introduction of roadside weeds into the meadow and flat area that supports a sizeable population (4,900 plants) of *H. hendersonii* and a small population (350 plants) of *L. aridus* ssp. *ashlandensis* (Kagan and Zika 1987a,b; Zika 1987; Kagan 1995).

Although both species occur in open gravelly soils, including the gravelly margins of the access road, neither will colonize the compacted soils of existing roads (even if vehicle use was reduced or eliminated). Neither *H. hendersonii* nor *L. aridus* ssp. *ashlandensis* was found on the gravelly fill around the ski area lift towers or building, and both are apparently restricted to natural undisturbed substrates (Kagan and Zika 1987a,b; Zika 1987).

In the Dutchman Peak-Jackson Gap area, road maintenance and construction and widening of firebreaks threaten three of the habitat patches that support *Horkelia hendersonii*. Construction of firebreaks could also involve disturbance of the loose,

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granitic gravels on the ridges where *H. hendersonii* grows.

Livestock grazing has been observed in *Horkelia hendersonii* habitat at Observation Peak, south of McDonald Peak, and at Dry Lake. Cattle cause damage by trampling, and, although we have no direct evidence that cattle find *H. hendersonii* particularly palatable, some damage from foraging has been seen (Kagan and Zika 1987a). On the most northern habitat patch on McDonald Peak, 100 *H. hendersonii* plants were found in 1985, but only 22 in 1987 (Kagan and Zika 1987a). No cause was presented for the reduction in numbers.

In 1963, the passage of the Oregon Wildflower Law (ORS 564.010–564.040) established protection for Oregon's natural botanical resources. The law was designed to protect showy plants, such as lilies, shooting stars, orchids, and rhododendrons, from collection by horticulturists interested in these species' domestication. The law prohibits the collection of wildflowers from within 61 meters (200 feet) of a State highway. Although protective in spirit, the Oregon Wildflower Law carries minimal penalties and is rarely enforced. In addition, since there are no *Horkelia hendersonii* or *Lupinus aridus* ssp. *ashlandensis* populations close to State highways, this law provided very little protection for these species.

In 1987, Oregon Senate Bill 533 (ORS 564.100) was passed to augment the legislative actions available for the protection of the State's threatened and endangered species, both plant and animal. That bill, known as the Oregon Endangered Species Act (OESA), mandated responsibility for threatened and endangered plant species in Oregon to the Oregon Department of Agriculture (ODA). The OESA directs the ODA to maintain a strong program to conserve and protect native plant species threatened or endangered with extinction. Although the ODA is able to regulate the import, export, or trafficking of State-listed plant species (under ORS 564.120), their ability to protect plant populations is limited to State-owned or State-leased lands. *Lupinus aridus* ssp. *ashlandensis* is State-listed as endangered, receiving protection under OESA on State-managed lands. *Horkelia hendersonii* is a candidate for listing under OESA, but currently receives no protection on State-owned or State-leased lands. Currently, both species are considered sensitive species by the USFS, and may be afforded some protection during USFS project planning processes and implementation.

It is possible that *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis* could be negatively affected by the expansion of brushfields and the establishment of trees onto open alpine on Mount Ashland due to fire suppression. The two species are not seen in dense herbaceous vegetation, brush, or the full shade of conifers (Zika 1987). The boundary of both populations on the southwest side of Mount Ashland corresponds closely to the brushfield boundary (Rolle 1993). Continued fragmentation of the populations by construction and widening of roads and other development can reduce genetic exchange between patches, reducing the viability of the populations.

Currently, we are working with the USFS to develop a conservation agreement for both species on Mount Ashland. The process was initiated in 1995 through a cooperative agreement with the Oregon Natural Heritage Program to develop conservation agreements for selected high-priority candidate species. On July 26, 1999, we provided a draft conservation agreement to the Klamath National Forest and Rogue River National Forest. The Rogue River National Forest is currently revising the draft conservation agreement to cover only Mount Ashland populations, but we have not received that draft for evaluation. If that draft conservation agreement is signed by all parties and implemented, it may remove some or all of the threats faced by *H. hendersonii* and *L. aridus* ssp. *ashlandensis* on Mount Ashland, but may not reduce threats faced by smaller, more isolated populations of *H. hendersonii* on McDonald Peak, an unnamed peak south of McDonald Peak, Dutchman's Peak, Observation Peak, and at Dry Lake Lookout.

We have reviewed the petitions, as well as other available information, including published and unpublished studies and reports, and agency files. Based on that information, we find that substantial information exists to indicate that listing of *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis* as threatened or endangered throughout all of their ranges may be warranted. The petitions also requested designation of critical habitat for both species. However, designation of critical habitat is not petitionable under the Act. If the 12-month finding determines that listing *H. hendersonii* and *L. aridus* ssp. *ashlandensis* is warranted, then the designation of critical habitat would be addressed in the subsequent proposed rule.

Information Solicited

When we make a positive 90-day finding, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial data, we are soliciting information on *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis* concerning the following: (1) Historic and current distribution; (2) conditions in each habitat patch; (3) basic biology including age-frequency distribution of the population(s) in each habitat patch; (4) ongoing efforts to protect *H. hendersonii* and *L. aridus* ssp. *ashlandensis* and their habitat; and (5) threats to either species and their respective habitats in each occupied habitat patch. Section 4(b)(3)(B) of the Act requires that we make a finding within 1 year from the date the petitions were received as to whether listing *H. hendersonii* and *L. aridus* ssp. *ashlandensis* as threatened or endangered is warranted (12-month finding).

References Cited

Kagan, J. 1995. Monitoring of *Lupinus aridus* ssp. *ashlandensis*—general monitoring protocol and 1995 data. Unpublished report. 24 pp.

Kagan, J. and P. Zika. 1987a. Species management guide for *Horkelia hendersonii*. Unpublished report, Oregon Natural Heritage Data Base. 18 pp.

Kagan, J. and P. Zika. 1987b. Species management guide for *Lupinus aridus* ssp. *ashlandensis*. Unpublished report. Oregon Natural Heritage Data Base. 13 pp.

Rolle, W. 1993. Documentation, results, and population estimates for *Lupinus aridus* ssp. *ashlandensis*, based on a partial census in August and September 1991. Unpublished report. 6 pp.

SRI International. 1994. Mt. Ashland weather radar rare plant reassessment. Unpublished report. 5 pp.

SRI International. 1995. NEXRAD in-depth site survey report for the Medford, Oregon, area (existing site). Unpublished report. 5 pp.

United States Department of Agriculture. 1991. Final environmental impact statement, Mount Ashland Ski Area. Ashland Ranger District, Rogue River National Forest. 15 pp.

Zika, P. F. 1987. *Lupinus aridus ashlandensis* and *Horkelia hendersonii* field survey. Unpublished report. 13 pp. + maps.

Author: The primary author of this document is Dr. Andrew F. Robinson, Jr. (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 31, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–14497 Filed 6–12–00; 8:45 am]

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Notices

Federal Register
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Tuesday, June 13, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and Farm Service Agency (FSA), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named Agencies to request an extension for a currently approved information collection in support of debt settlement of Community and Business Programs Loans.

DATES: Comments on this notice must be received by August 14, 2000, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: For inquiries on the Information Collection Package, contact Tracy Gillin, Regulations and Paperwork Management Branch, (202) 692–0039. For program content, contact Joseph Ben-Israel, Senior Loan Specialist, Community Programs, RHS, USDA, 1400 Independence Ave. SW, Mail Stop 0787, Washington, DC 20250–0787, Telephone (202) 720–1490, E-mail *jbenisra@rdmail.rural.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 1956, subpart C Debt Settlement-Community and Business Programs.

OMB Number: 0575–0124.

Expiration Date of Approval: August 31, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The following Community and Business Programs loans and grants are debt settled by this currently approved docket (0575–0124). The Community Facilities loan and grant program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of essential community facilities primarily serving rural residents.

The Economic Opportunity Act of 1964, title 3 (Pub. L. 88–452), authorizes Economic Opportunity Cooperative loans to assist incorporated and unincorporated associations to provide low-income rural families essential processing, purchasing, or marketing services, supplies, or facilities.

The Food Security Act of 1985, section 1323 (Pub. L. 99–198), authorizes loan guarantees and grants to Nonprofit National Corporations to provide technical and financial assistance to for-profit or nonprofit local businesses in rural areas.

The Business and Industry program is authorized by section 310 B (7 U.S.C. 1932) (Pub. L. 92–419, August 30, 1972) of the Consolidated Farm and Rural Development Act to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control.

The Consolidated Farm and Rural Development Act, section 310 B(c) (7 U.S.C. 1932(c)), authorizes Rural Business Enterprise Grants to public bodies and nonprofit corporations to facilitate the development of private businesses in rural areas.

The Consolidated Farm and Rural Development Act, section 310 B(f)(i) (7 U.S.C. 1932(c)), authorized Rural Cooperative Development Grants to nonprofit institutions for the purpose of enabling such institutions to establish and operate centers for rural cooperative development.

The Farm Service Agency (FSA) is authorized by 25 U.S.C. sections 488–494, to make loans through its Indian tribal land loan program to individuals, tribes, or tribal corporations within tribal reservations and Alaskan communities. The authority for FSA to make loans for grazing, irrigation and drainage, and farm ownership recreation loans is provided by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 sections 330–381).

The purpose of the debt settlement function for the above programs is to provide the delinquent client with an equitable tool for the compromise, adjustment, cancellation, or charge-off of a debt owed to the Agency. The information collected is similar to that required by a commercial lender in similar circumstances.

Information will be collected by the field offices from applicants, borrowers, consultants, lenders, and attorneys.

Failure to collect information could result in improper servicing of these loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8.08 hours per response.

Respondents: Public bodies and nonprofit organizations.

Estimated Number of Respondents: 14.

Estimated Number of Responses per Respondent: 5.5.

Estimated Total Annual Burden on Respondents: 622 hours.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 24, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

Dated: May 10, 2000.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

Dated: May 23, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–14844 Filed 6–12–00; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1100]

Grant of Authority for Subzone Status; Imation Corporation (Data Storage Products); Tucson, Arizona

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of Tucson, grantee of Foreign-Trade Zone 174, has made application to the Board for authority to establish a special-purpose subzone at the data storage manufacturing and warehousing facilities of the Imation Corporation, located in Tucson, Arizona (FTZ Docket 62–99, filed 11/24/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 67843, 12/3/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the data storage manufacturing and warehousing facilities of the Imation Corporation, located in Tucson, Arizona (Subzone 174A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of June 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14899 Filed 6–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–2000]

Foreign-Trade Zone 50, Long Beach, California Area, Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach, grantee of FTZ 50, requesting authority to expand its zone in the Long Beach, California area, within the Los Angeles/Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 5, 2000.

FTZ 50 was approved on September 14, 1979 (Board Order 147, 44 FR 55919, 9/28/79) and expanded 4 times (Board Orders 298, 341, 494 and 833). The zone project currently consists of the following sites in the Los Angeles/Long Beach Customs port of entry area: Site 1: Parcel 1–A (4 acres), 1500 West Dominguez Street, Long Beach; Parcel 1–B (96,354 sq. ft.), 909 East Colon Street, Wilmington; Parcel 1–C (2 acres), 1241 Watson Center Road, Carson; and Parcel 1–D (4 acres), 22941 South Wilmington Avenue, Carson; Site 2 (1,844 acres)—California Commerce Center, Ontario; Site 3 (92 acres)—parcels within the Inter-City Commuter Station Redevelopment area in Santa Ana and two warehouse facilities (17 acres, 324,000 sq. ft. total) at 3000/3100 Segerstrom Avenue, and 2900/2930 South Fairview Street, within the South Harbor Development area, Santa Ana; Site 4 (175 acres)—within the 2,300-acre San Bernardino International Airport and Trade Center complex (formerly Norton Air Force Base) in San Bernardino; and, Temporary Site 5 (11 acres, two parcels)—1101 W. McKinley Avenue (6 acres, Bldgs. 4–8) within the 487-acre Fairplex Center, Pomona; and, 10501–10509 E. Valley Blvd. (5 acres) at Pacific Place/San Gabriel Valley Business and Trade Center, El Monte, CA.

The applicant is now requesting authority to expand the general-purpose zone to include on a permanent basis the area within Temporary Site 5 (expires 9/1/01) and to include two new sites in the San Gabriel Valley area: Proposed Site 6: (50 acres)—former General Dynamics/Hughes site, north of Mission Boulevard between Humane Way and Dudley Street, Pomona; and, Proposed Site 7 (3 acres—2 sites)—San Gabriel sites, extending along San Marino Avenue and bounded on the north and south by Broadway and Clary Avenues (1 acre) and a site (2 acres) at Santa Anita and Junipero Serra Streets, San Gabriel. Proposed Site 6 is owned by the Pomona Redevelopment Agency and two private owners and Proposed Site 7 has multiple owners. The San Gabriel Valley Economic Partnership will serve as operator of the proposed sites. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 14, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 28, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 350 S. Figueroa Street, Suite 509, Los Angeles, CA 90071.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: June 6, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14895 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1101]

Grant of Authority for Subzone Status; Imation Corporation (Data Storage Products); Camarillo, CA

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Oxnard Harbor District, grantee of Foreign-Trade Zone 205, has made application to the Board for authority to establish a special-purpose subzone at the data storage manufacturing and warehousing facilities of the Imation Corporation, located in Camarillo, California (FTZ Docket 63–99, filed 11/24/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 67844, 12/3/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the data storage manufacturing and warehousing facilities of the Imation Corporation, located in Camarillo, California (Subzone 205A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of June 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14900 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–2000]

Foreign-Trade Zone 93—Raleigh/Durham, NC; Application for Subzone Status, Pergo, Inc., Plant (Laminate—Particle Board Flooring); Garner, North Carolina

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the laminate-particle board flooring manufacturing plant of Pergo, Inc. (a subsidiary of Perstorp AB, of Sweden), located in Garner, North Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 5, 2000.

The Pergo plant (102 acres/130,000 sq. ft.) is located within the Greenfield Industrial Park at 2000 Perstorp Parkway, Garner (Wake County), North Carolina, some 20 miles southeast of Raleigh. The facility (275 employees) is used to produce laminate-particle board flooring (HTSUS# 4410.19.0020), and to distribute foreign-made laminate flooring products with a particle board, paperboard, plastic, or other inorganic core for export and the U.S. market. The production process involves combining decorative plastic laminate and backing paper to particle board, which is then milled into tiles or planks. The completed flooring is then combined with moldings, glue and installation accessories to be shipped as a completed flooring system. The application indicates that additional laminate floor covering products may be produced with tileboard, paperboard, and/or polyurethane sheet in the future. Foreign-origin components used in manufacturing (currently 100%) include: sealants/adhesives/glue, fiberboard, particle board, decorative plastic laminate; and, backing paper and laminate. Additional foreign-sourced materials and components to be distributed with the completed laminate flooring include: Glues/sealants/caulking, installation kits, hand tools, cleaning kits; and, molding and trim of plastic, fiberboard and aluminum (duty rate range: free—6.0%).

FTZ procedures would exempt Pergo from Customs duty payments on the foreign materials and components used in export production. On its domestic sales of the manufactured flooring, the company would be able to choose the duty rate that applies to finished laminate-particle board flooring (duty free as particle board under 4410.19.0020) for the decorative plastic laminate raw material noted above. Pergo would be able to defer Customs duty payments on the foreign-origin finished flooring products and related materials that would be admitted to the proposed subzone for U.S. distribution. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 14, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 28, 2000).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service—Raleigh/Durham, Suite 500, 120 South Center Court, Morrisville, NC 27560

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th Street & Constitution Avenue, NW., Washington, DC 20230–0002

Dated: June 5, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14896 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1099]

Grant of Authority for Subzone Status Imation Corporation (Data Storage Products); Wahpeton, North Dakota

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Grand Forks Regional Airport Authority, grantee of Foreign-Trade Zone 103, has made application to the Board for authority to establish a special-purpose subzone at the data storage manufacturing and warehousing facilities of the Imation Corporation, located in Wahpeton, North Dakota (FTZ Docket 61–99, filed 11/24/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 67845, 12/3/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the data storage manufacturing and warehousing facilities of the Imation Corporation, located in Wahpeton, North Dakota (Subzone 103A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of June 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14898 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1098]

Grant of Authority for Subzone Status; Imation Enterprises Corporation (Data Storage Products); Weatherford, Oklahoma

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port Authority of the Greater Oklahoma City Area, grantee of Foreign-Trade Zone 106, has made application to the Board for authority to establish a special-purpose subzone at the data storage manufacturing and warehousing facilities of the Imation Enterprises Corporation, located in Weatherford, Oklahoma (FTZ Docket 60–99, filed 11/24/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 67845, 12/3/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the data storage manufacturing and warehousing facilities of the Imation Enterprises Corporation, located in Weatherford, Oklahoma (Subzone 106C), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of June 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14897 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–602; C–508–605]

Revocation of Antidumping Duty Order: Industrial Phosphoric Acid From Belgium; and Revocation Countervailing Duty Order: Industrial Phosphoric Acid From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order: industrial phosphoric acid from Belgium; and revocation countervailing duty order: industrial phosphoric acid from Israel.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the antidumping and countervailing duty orders on industrial phosphoric acid from Belgium and Israel is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 35395 (June 2, 2000)). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department of Commerce ("the Department") is revoking the antidumping and countervailing duty orders on industrial phosphoric acid from Belgium and Israel. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), the effective date of revocation is January 1, 2000.

DATES: Effective Date: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or James Meader, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW,

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Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3330, respectively.

Background

March 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 9970 and 64 FR 10017, respectively) of the antidumping and countervailing duty orders on industrial phosphoric acid from Belgium and Israel, pursuant to section 751(c) of the Act. As a result of the reviews, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked. [1] In addition, the Department determined that revocation of the countervailing duty order would likely lead to continuation or recurrence of countervailable subsidies and notified the Commission of the net countervailable subsidies likely to prevail were the order revoked. [2]

On May 22, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping and countervailing duty orders on industrial phosphoric acid from Belgium and Israel would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. (See USITC Publication 3302, Investigations Nos. 701–TA–286 (Review) and 731–TA–365 (Review) (May 2000) and Industrial Phosphoric Acid from Israel and Belgium, 65 FR 35395 (June 2, 2000).)

Scope of the Orders

The merchandise subject to this antidumping duty order is industrial phosphoric acid ("IPA") from Belgium and Israel. IPA is currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

Determination

As a result of the determination by the Commission that revocation of these antidumping and countervailing duty orders is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), is revoking the antidumping and countervailing duty orders on industrial phosphoric acid from Belgium and Israel. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), this revocation is effective on January 1, 2000.

The Department will instruct the U.S. Customs Service to discontinue the suspension of liquidation and collection of cash deposits rate and to refund with interest any cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: June 7, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14893 Filed 6–12–00; 8:45 am]

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[1] See Final Results of Full Sunset Review: Industrial Phosphoric Acid From Belgium, 65 FR 3661 (January 24, 2000).

[2] See Final Results of Full Sunset Review Industrial Phosphoric Acid From Israel, 65 FR 6163 (February 8, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube From Turkey: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 8, 2000, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. This review covers one producer/exporter, the Borusan Group, during the period May 1, 1998, through April 30, 1999.

Based on our analysis of comments received, we have made changes in the margin calculations. Although the exact weighted-average dumping margin in the final results has changed, it remains *de minimis* as in the preliminary results. *See* the section entitled "Final Results of the Review."

EFFECTIVE DATE: June 13, 2000.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or David Layton at (202) 482–0371, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 1999).

Background

On February 8, 2000, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. *Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 65 FR 6159 (*Preliminary Results*). We invited parties to comment on the Preliminary Results. The Borusan Group (Borusan), the sole respondent in this review, submitted a case brief on March 9, 2000. No other party filed a case brief or rebuttal brief. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review include circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications.

Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe application. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this review, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

Borusan made only two comments regarding the Preliminary Results. As stated above no other party commented on the decision. In its first comment, Borusan points out that the wrong exchange rates were used in the preliminary results margin calculation. We discuss this below in the "Changes Since the Preliminary Results" section. In its second comment, Borusan asked that the Department indicate in the final results and the subsequent cash deposit instructions issued to Customs that two pipe producers, Mannesmann Boru and Kartal Boru, are part of the Borusan Group. The Department notes that these affiliations are well established by the record of the review and have never been disputed by the Department or any interested party. We will ensure that Customs is notified accordingly in the cash deposit instructions. Because these issues do not require extensive discussion, we have not issued a separate decision memorandum to accompany these final results of the review.

Sales Below Cost in the Home Market

The Department disregarded Borusan's home-market below-cost sales which failed the cost test in these final results of review.

Changes Since the Preliminary Results

In its case brief, Borusan pointed out a clerical error resulting in the use of the wrong set of Turkish lira exchange rates in the margin calculation for the preliminary results. We agree with Borusan. For these final results, we have applied the exchange rates which we had stated we would use in the preliminary results.

Final Results of Review

As a result of our correction of the clerical error, we determine a final weighted-average margin of 0.38 percent for Borusan for the period May 1, 1998, through April 30, 1999.

The Customs Service will assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. We have calculated an exporter/customer-specific assessment value for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity sold.

Cash-Deposit Requirements

The following deposit requirement shall be effective upon publication of this notice of final results of review for all shipments of certain welded carbon steel pipe and tube from Turkey, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the Borusan Group is zero based on a weighted-average margin rate for Borusan of 0.38 percent, which is de minimis within the meaning of 19 CFR 351.106(c); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 14.74 percent, the "all others" rate established in the LTFV investigation.

The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 7, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14892 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 00–012. *Applicant:* Washington University, Department of Anesthesiology Research Unit, 660 S. Euclid, Campus Box 8054, St. Louis, MO 63110. *Instrument:* XY Shifting Table, Model 240 with Accessories. *Manufacturer:* Luigs and Neuman, Germany. *Intended Use:* The instrument is intended to be used to search neurons and synapses to determine the electrical properties of a synapse in the auditory system in the rat. *Application accepted by Commissioner of Customs:* April 21, 2000.

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Docket Number: 00–014. *Applicant:* Washington University, Department of Anesthesiology Research Unit, 660 S. Euclid, Campus Box 8054, St. Louis, MO 63110. *Instrument:* XY Shifting Table, Model 240 with Accessories. *Manufacturer:* Luigs and Neuman, Germany. *Intended Use:* The instrument is intended to be used to search neurons and synapses to determine the electrical properties of a synapse in the auditory system in the rat. *Application accepted by Commissioner of Customs:* May 15, 2000.

Docket Number: 00–015. *Applicant:* University of California, San Diego, Department of Neurosciences, 9500 Gilman Drive, La Jolla, CA 92093–0608. *Instrument:* Electron Microscope, Model JEM–3100. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used for electron microscopic studies of cells and tissues from a variety of biological specimens used in biomedical and basic biology experiments. Specifically, the instrument will be used to determine 3D structure of cells and tissues in relatively thick sections using the technique of energy filtering microscopy and electron tomography. In addition, the instrument will be used for educational purposes in the course "Introduction to Light and Electron Microscopy." *Application accepted by Commissioner of Customs:* March 19, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–14894 Filed 6–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000531162–0168–02; I.D. 040400B]

RIN 0648–AN49

New England Fishery Management Council; Notice and Request for Sea Scallop Research Proposals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: NMFS issues this document to describe how you, the researcher, may be selected to perform sea scallop research projects funded by a 1-percent set aside of the scallop total allowable catch (TAC) under Framework Adjustment 13 to the New England Fishery Management Council's (Council's) Atlantic Sea Scallop Fishery Management Plan (FMP) and Framework Adjustment 34 to the Council's Northeast Multispecies FMP (Frameworks 13/34) and how NOAA and the Council will determine whether to select your proposal. Framework 13/34 proposes to allow scallop vessels temporary access to the groundfish closed areas on Georges Bank and Nantucket Shoals to harvest sea scallops and will allow selected vessels to land scallops in excess of the trip limit or take additional trips and use the proceeds of the catch or additional trips to offset the costs of the research proposals submitted in response to this notification. Pending approval by NOAA, certain scallop vessels during the 2000 scallop fishing year will be allowed in Closed Area II, the Nantucket Lightship Area, and Closed Area I for periods of time to be specified in the final rule implementing the framework action. Frameworks 13 and 34, if approved by NOAA, would allow for three trips per vessel in Closed Area II, one trip per vessel in the Nantucket Lightship Area, and two trips per vessel in Closed Area I, unless modified by action taken by the Regional Administrator, Northeast Region, NMFS (Regional Administrator).

In anticipation of final approval of these framework adjustments, NOAA, in cooperation with the Council, is soliciting proposals for sea scallop research activities. Vessels participating in an approved project and fishing in the closed areas would be authorized by the Regional Administrator to take additional trips into the closed areas and/or to land scallops in excess of the 10,000-lb (4,536-kg) trip limit allowed for all closed area trips.

DATES: All research proposals to be conducted with TAC set aside funds from Closed Area II must be received between June 13, 2000 and no later than 5:00 p.m., local time, on June 28, 2000, in the office listed in the **ADDRESSES** section of this document. Postmarks will not be sufficient. Facsimile applications will not be accepted.

For further information related to the timeframe for review and selection of proposals to be conducted with TAC set aside funds from Closed Area II and for information related to the TAC set aside for research proposals for Closed Area I and the Nantucket Lightship Closed Area, see Section A, Background, under **SUPPLEMENTARY INFORMATION** of this document.

ADDRESSES: Proposals must be submitted to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Marked "Attention—Sea Scallop Research Proposals."

FOR FURTHER INFORMATION CONTACT: Patricia M. Fiorelli, New England Fishery Management Council, (978) 465–0492 or David Gouveia, National Marine Fisheries Service, (978) 281–9280.

SUPPLEMENTARY INFORMATION:

A. Background

All research proposals to be conducted with TAC set aside funds from Closed Area II must be received during the period identified in the DATES section of this document. Prior to selection, applications may be reviewed and evaluated by the Council at the request of NOAA and become subject to public review as part of an open public comment process at the Council meeting. If it is determined that the Council should evaluate the proposals in a public meeting, the Council anticipates that the review will occur on or about June 30, 2000. Subsequently, the Council will provide its recommendations to NOAA no later than July 7, 2000. Researchers may submit proposals for sea scallop research to be conducted with TAC set-aside funds from the Nantucket Lightship Closed Area and Closed Area I during the June 13, 2000 to June 28, 2000 submission period; however, a second Request for Proposal will be published in the **Federal Register** concerning the harvest of research set aside scallops from these areas at a later date. All proposals received for TAC set-aside funds from the Nantucket Lightship Closed Area and Closed Area I will be kept on file and reviewed against other proposals received as a result of a future notice. Researchers may amend proposals submitted under this notice for TAC set-aside funds from the Nantucket Lightship Closed Area and Closed Area I during the request for proposal period specified in a future notice.

The TAC set-aside for sea scallop research would total 191,000 lb (86,637.6 kg) of scallops and have an estimated value of $955,000. The TAC for the sea scallop research by area would be as follows: Closed Area II, 66,000 lb (29,937.6 kg); the Nantucket Lightship Area, 55,000 lb (24,948 kg); and Closed Area I, 70,000 lb (31,752 kg).

B. Authority

Issuing grants is consistent with §§ 402(e), 303(b)(11), 304(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act.

C. Catalog of Federal Domestic Assistance (CFDA)

11.454, Unallied Management Projects

D. Funding Instrument and Project Period

We will award a grant through the NOAA grant award process to successful applicants. The project period for sea scallop research is June 15, 2000, through June 15, 2001.

E. Funding Availability

No Federal funds are provided for sea scallop research under this notification. The Federal Government's contribution to the project will be a Letter of Authorization that will provide special fishing privileges in response to sea scallop research proposals selected to participate in this program. The Federal Government shall not be liable for any costs incurred in the conduct of the project. The funds generated from the additional landings authorized in the Letter of Authorization shall be used to cover the cost of the sea scallop research, including vessel costs, and to compensate vessel owners for expenses incurred. Therefore, the owner of each fishing vessel selected to land scallops in excess of the trip limit or from additional authorized trips must use the proceeds of the sale of the excess catch to compensate the researcher for costs associated with the research activities and use of the vessel. Any additional funds above the cost of the research activities (or excess program income) shall be retained by the vessel owner as compensation for the use of his/her vessel.

F. Scope of Sea Scallop Research

Projects funded under the sea scallop TAC set aside program should enhance understanding of the scallop resource or contribute to the body of information on which management decisions are made. Sea scallop research may be conducted in or outside of a closed area, within or outside of the Sea Scallop Exemption Program timeframe, and onboard a fishing or other type of vessel. Sea scallop research conducted with these TAC set-aside funds also may or may not involve the harvest of scallops.

Funds generated from the set-aside landings shall be used to cover the cost of the research activities, including vessel costs, and to compensate boats for expenses incurred during the collection of set-aside scallops. For example, they could be used to pay for gear modifications, monitoring equipment, additional provisions (e.g., fuel, ice, food for scientists) or the salaries of research personnel. The Federal Government is not liable for any costs incurred by the researcher or vessel owner should the sale of the excess catch not fully reimburse the researcher or vessel owner for their expenses.

G. Eligibility Criteria

All for-profit and non-profit institutions; state, local or tribal governments; educational institutions; institutions of higher education; and individuals are eligible to apply provided that all proposal requirements are satisfied and the proposal is received by the date specified in this notice.

Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission and goals are to achieve full participation by Minority Serving Institutions (MSIs) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

H. Proposal Requirements

Proposals must be submitted to NOAA and must identify the sea scallop research to be conducted and the total amount of scallops requested for the project, including their approximate cash value. Additionally, each proposal must identify the requirements for the participating vessel(s) that would make a closed area trip to collect the scallop set aside. The vessel selected by the applicant should be listed in the proposal, if possible, or specifically identified prior to final approval by NOAA. Proposals may request that the scallop set-aside be collected separately from the sea scallop research trip or other related research trip. The separate sea scallop research compensation trips do not necessarily have to be conducted by the same vessel. The Council or NMFS contact person may provide assistance to researchers who are seeking vessels to participate in the collection of set aside scallops or directly in research projects. The Council or NMFS may publish a list of those vessel owners willing to participate through their respective homepages.

The researcher's proposal must state the amount of funds required to support the research project, as well as the amount required to compensate the vessel owner either for the collection of set aside scallops or for participation in the research project, or both. The proposal must also include the agreement between the vessel owner and researcher that shows exactly how the research activity is to be paid for, if possible, or provided prior to final approval by NOAA.

I. Project Evaluation and Approval

As stated earlier, applications may be reviewed and evaluated by the Council at the request of NOAA and become subject to public review as part of an open public comment process at the Council meeting. In the event that an application contains information or data which the applicant does not want disclosed prior to award for purposes other than the evaluation of the application, the applicant should mark each page containing such information or data with the words

"Privileged Information/Confidential/Commercial or Financial Information—Limited Use" at the top of the page to assist NOAA in making disclosure determinations when submitting information to the Council for review. DOC regulations implementing the Freedom of Information Act (FOIA) are found at 15 CFR Part 4, "Public Information," which sets forth rules for DOC to make requested materials, information, and records publicly available under the FOIA. To the extent permitted under the FOIA, the contents of applications and proposals submitted by successful applicants may be released in response to FOIA requests.

J. Project Funding Priorities

Sea scallop research projects that identify and evaluate gear to reduce groundfish bycatch and habitat impacts and that provide improved information concerning scallop abundance estimates are considered high priority by the Council. Sea scallop research that involves evaluating the distribution, size composition, and density of scallops in the closed areas prior to the open periods also will be considered high priority. Other research needs are described in this section (not listed in order of priority) and also will be considered by the Council and NOAA.

1. Evaluation of ways to control predation on scallops;

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2. Sea scallop research to actively manage spat collection and seeding;
3. Social and economic impacts and consequences of closing areas to enhance productivity and improve yield for scallops and other species;
4. High resolution surveys that include distribution, recruitment, mortality and growth rate information;
5. Estimation of factors affecting fishing power for each limited access vessel;
6. Demonstration projects to identify ways to reduce discard mortality, increase efficiency without increasing fishing power (e.g., decreasing processing time with sorters) and improve safety;
7. Sea scallop research to identify scallop habitat and ecological relationships that affect reproduction, recruitment mortality and growth, including those enhanced/impeded by area closures;
8. Quantification of fishing costs related to fishing in specific areas (e.g., fishing gear modification, steaming time, and opportunity cost);
9. Experimental designs with control areas using alternative management strategies, such as area licensing and rotational closures (projects should include an analysis of yield improvement, habitat impacts and social impacts, including conflict resolution across fisheries);
10. Identification of fishermen's perceptions about area-based management and alternative strategies;
11. Processing and analyzing of data that will be collected or that have already been collected;
12. Broader investigations of variability in dredging efficiency across habitats (substrates, current velocities, etc.) times, areas, and gear designs; and
13. Sea scallop research that provides more detailed scallop life history information (especially on age-and-area specific natural mortality and growth) and to identify stock-recruitment relationships.

K. Evaluation Criteria

Independent technical experts may be asked to participate in the evaluation process. Proposals will be evaluated based on the assigned score for each of the following criteria:
1. A clear definition of the problem, need, issue or hypothesis to be addressed (10 points);
2. A clear definition of the approach to be used, including theoretical studies, laboratory analyses, and/or field work (15 points);
3. Adequate justification as to how the project is likely to achieve its stated objectives (20 points);
4. Identification of anticipated benefits, potential users and methods of disseminating results (10 points);
5. Relevance of the project to the research needs identified by the Council (20 points);
6. Demonstration of support, cooperation and/or collaboration with the fishing industry (15 points); and
7. Cost-effectiveness of the project (10 points).

L. Selection Procedures

If the Council participates in the selection process, the Council's Research Steering Committee will evaluate each research proposal based on the criteria identified in this notification and make recommendations for selection to the Council. The Council will then make its recommendations to the Regional Administrator based on the Research Steering Committee recommendations. NOAA must then consider the Council's recommendations, provide final approval of the projects and authorize selected vessel(s) to exceed the possession limit, take additional trips or be exempt from other regulations specified in the Sea Scallop FMP through written notification to the applicant. Because NOAA will take into account program policy factors such as time of year the research activities are to be conducted, administrative functions including evaluations of proposals through the Experimental Fishery Procedures contained in 50 CFR 600.745 and 648.12, and logistic concerns, projects may not be selected in the order recommended by the Council.

If the Council does not participate in the evaluation of the proposals, NOAA will convene a review panel to evaluate the proposals using the same criteria and scoring process. Based on the recommendation of the members of this panel and program policy factors identified in this notification, NOAA would provide final approval and authorize vessels to participate in the sea scallop research projects. All sea scallop research must be conducted in accordance with provisions approved by NOAA and provided in a Letter of Authorization issued by NMFS.

M. Proposal Format

Proposals should be limited to 6 pages, excluding item 5. The format may vary but must include:
1. A project summary;
2. A narrative project description to include: (a) Project goals and objectives; (b) the relationship of the proposed project to management needs or priorities identified by the New England Fishery Management Council; (c) a statement of work (project design and management—who is responsible, expected products, participants other than applicant); and (d) a summary of the existing state of knowledge related to project and contribution and relevance of the proposed work;
3. A description of all funding sources (including revenues derived from the sale of scallops harvested under the research TAC set aside) and funding needs; this element of the proposal must include the amount of scallop TAC set aside requested and the expected funds to be generated by the sale of those scallops; also the expected percentage of funds to be allocated to the researcher and any involved fishing vessel;
4. A budget that includes a breakdown of costs (permit costs, equipment, supplies, overhead); applicants must submit a Standard Form 424 "Application for Federal Assistance" including a detailed budget using Standard Form 424A, "Budget Information— Non-Construction Programs," Standard Form 424B, "Assurances—Non-Construction Programs," and Commerce Department Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters: Drug Free Workplace Requirements and Lobbying." Copies of these Standard Forms may be found on the Internet in a PDF (Portable Document Format) version at http://www.whitehouse.gov/OMB/grants/index.html under the title "Grants Management Forms," or by contacting the New England Fishery Management Council office; and
5. Supporting documents (resumes, cooperative research agreements, contracts, etc.).

N. Final Reports

NOAA or the Council will require project researchers to submit an interim and/or final report describing their research project results, or other acceptable deliverable(s), in a timeframe that is specific to the type of research conducted. The format of the final report may vary, but must contain:
1. A brief summary of the final report;
2. A description of the issue/problem that was addressed;
3. A detailed description of methods of data collection and analyses;
4. A discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; this should include benefits and/or contributions to management decision-making;
5. A list of entities, firms or organizations that actually performed the work and a description of how that was accomplished; and
6. A detailed final accounting of all funds used to conduct sea scallop research, and including those provided through the research set-aside. The financial information must be submitted on Office of Management and Budget Standard Form-269. Copies of this Standard Form may be found on the Internet in a PDF (Portable Document Format) version at http://www.whitehouse.gov/OMB/grants/index.html under the title AGrants Management Forms,@ or by contacting the New England Fishery Management Council office.

O. Other Requirements

Evaluations of the impacts of sea scallop research, which involve exemptions to the current fishing regulations, other than those stated in Sea Scallop FMP, will be made by NMFS. Vessels conducting certain types of sea scallop research requiring relief from fishery regulations may be required to obtain an Exempted Fishing Permit (EFP). To apply for an EFP, interested parties must submit an application to NMFS at least 60 days before the effective date of the EFP. Additional time could be necessary for NMFS to make a determination about the need for an Environmental Assessment. If required, preparation of this document may be the responsibility of the researcher.

P. Other Requirements of Recipients

1. Federal Policies and Procedures

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

2. Past Performance

Unsatisfactory performance under prior Federal awards may result in a proposal not being selected.

3. Delinquent Federal Debt

A proposal submitted by an applicant who has an outstanding delinquent Federal debt is not eligible for selection until either:
i. The delinquent account is paid in full,
ii. A negotiated repayment schedule is established and at least one payment is received, or
iii. Other arrangements satisfactory to DOC are made.

4. Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

5. Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:
i. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;
ii. Drug-Free Workplace. Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;
iii. Anti-Lobbying. Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000; and
iv. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

6. Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

7. False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

8. Preaward Activities

If you incur any costs prior to receiving an award agreement signed by an authorized NOAA official, you do so solely at your own risk of these costs not being included under the award. Notwithstanding any verbal or written assurance that you may have received, preaward costs are not allowed under the award unless the grants officer approves them in accordance with 15 CFR 14.28.

9. Future Awards

If we select your application to perform sea scallop research to be conducted with the scallop TAC set aside, we have no obligation to provide any additional TAC set-aside obligations in connection with that award.

Classification

Prior notice and opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts.

Because a general notice of proposed rulemaking as specified in 5 U.S.C. 533, or any other law, was not required for this action, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

This document contains collection of information requirements subject to the Paperwork Reduction Act (PRA). The standard application forms have been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043 and 0348–0044. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the PRA, unless that collection displays a currently valid OMB control number.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

This action has been determined to be not significant for purposes of E.O. 12866.

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Dated: June 7, 2000.

William Fox,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–14856 Filed 6–8–00; 2:59 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0132]

Submission for OMB Review; Comment Request Entitled Contractors' Purchasing Systems Reviews

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0132).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractors' Purchasing Systems Reviews. A request for public comments was published at 65 FR 17490, April 3, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before July 13, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of a contractor purchasing system review (CPSR), as discussed in Part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

B. Annual Reporting Burden

Number of Respondents: 1,580.
Responses Per Respondent: 1.
Total Responses: 1,580.
Average Burden Per Response: 17.
Total Burden Hours: 26,860.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 208–5997. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: June 8, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–14877 Filed 6–12–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of Navy.

U.S. Patent Application Serial No. 09/563,740 entitled, "ELECTRONIC DEVICES WITH DIFFUSION BARRIER AND PROCESS FOR MAKING SAME," filing date: May 3, 2000, Navy Case No. 82111.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, and must include the Navy Case number. Interested parties will be required to sign a Confidentiality, Non-Disclosure and Non-Use Agreement before receiving copies of requested patent applications.

FOR FURTHER INFORMATION CONTACT: James B. Bechtel, Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgre, VA 22448–5100, telephone (540) 653–8016.

Authority: 35 U.S.C. 207, 37 CFR Part 404

Dated: May 31, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–14811 Filed 6–12–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 14, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 7, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.
Title: New American High Schools Study—Phase I Activities.
Frequency: Annually.
Affected Public: Businesses or other for-profit.
Reporting and Recordkeeping Hour Burden: Responses: 32; Burden Hours: 144.

Abstract: The New American High Schools (NAHS) Study is a longitudinal research project. The overall goal of this effort is to document the practices and outcomes of a group of high schools engaged in whole-school improvement efforts in order to inform both policy debate and improve secondary education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–14826 Filed 6–12–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 14, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 7, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.
Title: New American High Schools Study—Phase I Activities.
Frequency: Annually.
Affected Public: Businesses or other for-profit.
Reporting and Recordkeeping Hour Burden: Responses: 32; Burden Hours: 144.

Abstract: The New American High Schools (NAHS) Study is a longitudinal research project. The overall goal of this effort is to document the practices and outcomes of a group of high schools engaged in whole-school improvement efforts in order to inform both policy debate and improve secondary education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–14827 Filed 6–12–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

The purpose of this notice is to invite written comments on accrediting agencies whose applications to the

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Secretary for initial or renewed recognition will be reviewed at the Advisory Committee meeting to be held on December 11–13, 2000. The notice also invites written comments on agencies submitting interim reports that will be reviewed at the December meeting.

Where Should I Submit My Comments?

Please submit your written comments by July 28, 2000 to Karen Kershenstein, Director, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, 1990 K Street, NW, 7th Floor, Room 7105, Washington, DC 20006–8509, telephone: (202) 219–7011. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity to Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, a subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer a second opportunity to submit written comment.

What Happens to the Comments That I Submit?

We will review your comments, in response to this notice, as part of our evaluation of the agencies' compliance with the Secretary's Criteria for Recognition of Accrediting Agencies. The Criteria are regulations found in 34 CFR Part 602 (for accrediting agencies) and in 34 CFR Part 603 (for State approval agencies).

We will also include your comments in the staff analyses we present to the Advisory Committee at its December 2000 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by July 28, 2000. In all instances, your comments about agencies seeking initial or continued recognition must relate to the Criteria for the Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter that requested the interim report.

What Happens to Comments Received After the Deadline?

We will review any comments received after the deadline as complaints. If such comments, upon investigation, reveal that the accrediting agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate. We will also notify the commentors of the disposition of those comments.

What Agencies Are on the Agenda for the Meeting?

The Secretary of Education recognizes accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education if the Secretary determines that they meet the Criteria for Recognition. Recognition means that the Secretary considers the agency to be a reliable authority as to the quality of education offered by institutions or programs that are encompassed within the scope of recognition he grants to the agency. The following agencies will be reviewed during the December 2000 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. Midwifery Education Accreditation Commission (Requested scope of recognition: the accreditation and preaccreditation of direct-entry (non-nurse) midwifery certificate and undergraduate and graduate degree educational programs and institutions offering those types of programs)

2. Teacher Education Accreditation Council (Requested scope of recognition: the accreditation of professional education programs in institutions offering baccalaureate and graduate degrees for the preparation of teachers and other professional personnel for elementary and secondary schools)

Petitions for Renewal of Recognition

1. American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education (Current scope of recognition: the accreditation of clinical training programs in marriage and family therapy at the master's, doctoral, and postgraduate levels. Requested scope of recognition: the current scope of recognition plus the preaccreditation of clinical training programs in marriage and family therapy at the master's, doctoral, and postgraduate levels ["Candidacy"] of programs)

2. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar (Requested scope of recognition: the accreditation of programs in legal education that lead to the first professional degree in law, as well as freestanding law schools offering such programs)

3. Accreditation Commission for Acupuncture and Oriental Medicine (Requested scope of recognition: the accreditation of first-professional master's degree and professional master's level certificate and diploma programs in acupuncture and Oriental medicine)

4. Accrediting Commission on Education for Health Services Administration (Requested scope of recognition: the accreditation of graduate programs in health services administration)

5. American Osteopathic Association, Bureau of Professional Education (Requested scope of recognition: the accreditation and preaccreditation ["Provisional Accreditation"] of freestanding institutions of osteopathic medicine and programs leading to the degree of Doctor of Osteopathy or Doctor of Osteopathic Medicine)

6. American Podiatric Medical Association, Council on Podiatric Medical Education (Requested scope of recognition: the accreditation and preaccreditation ["Candidate Status"] of freestanding colleges of podiatric medicine and programs of podiatric medicine, including first professional programs leading to the degree of Doctor of Podiatric Medicine)

7. Council on Occupational Education (Requested scope of recognition: the accreditation and preaccreditation ["Candidate for Accreditation"] of non-degree granting postsecondary occupational/vocational institutions and those postsecondary occupational/vocational education institutions that grant the applied associate degree in specific vocational/occupational fields)

8. National Council for Accreditation of Teacher Education (Requested scope of recognition: the accreditation of professional education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools)

9. New York State Board of Regents (Current scope of recognition: the accreditation [registration] of collegiate degree-granting programs or curricula offered by institutions of higher education located in the State of New York and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education located in the State of New York. Requested scope of recognition: the preaccreditation and accreditation of those degree-granting institutions in New York State that designate the Board of Regents as their sole nationally recognized accrediting agency or as their primary nationally recognized accrediting agency for purposes of establishing eligibility for HEA Title IV funds)

10. North Central Association of Colleges and Schools, Executive Board of the Commission on Schools (Requested scope of recognition: the accreditation and preaccreditation ["Candidate for Accreditation"] of schools offering non-degree, postsecondary education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, Wyoming, and the Navajo Nation.

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. Accreditation Board for Engineering and Technology, Inc.

2. Accrediting Council for Continuing Education and Training

3. Accreditation Commission of Career Schools and Colleges of Technology

4. Association for Clinical Pastoral Education, Inc.

5. Association of Theological Schools in the United States and Canada, Commission on Accrediting

6. Montessori Accreditation Council for Teacher Education, Commission on Accreditation

7. North Central Association of Colleges and Schools, Commission on Institutions of Higher Education

8. New England Association of Schools and Colleges, Commission on Institutions of Higher Education

9. Northwest Association of Schools and Colleges, Commission on Colleges

10. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges

11. Western Association of Schools and Colleges, Accrediting Commission for Schools

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition

1. Oklahoma State Regents for Higher Education

Interim Report

1. Missouri State Board of Education

State Agencies Recognized for the Approval of Nurse Education

Interim Report

1. Missouri State Board of Nursing
2. New Hampshire Board of Nursing

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection and copying at the U.S. Department of Education, 1990 K Street, NW, 7th Floor, Room 7105, Washington, DC 20006–8509, telephone (202) 219–7011 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, until November 17, 2000. They will be available again after the December 11–13 Advisory Committee meeting. It is preferred that an appointment be made in advance of such inspection or copying.

Authority: 5 U.S.C. Appendix 2.

Dated: June 8, 2000.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–14876 Filed 6–12–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board's Laboratory Operations Board (LOB). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

NAME: Secretary of Energy Advisory Board—Laboratory Operations Board.

DATES: Wednesday, June 21, 2000, 8:30 A.M.—3:15 P.M., Eastern Daylight Time.

ADDRESSES: Spallation Neutron Source Project Building, Room 101A, 701 Scarboro Road, Oak Ridge National Laboratory, Oak Ridge National Laboratory, Oak Ridge, Tennessee 37831.

FOR FURTHER INFORMATION CONTACT: Betsy Mullins, Executive Director, or Laurie Keaton, LOB Staff Director, Office of Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–7162 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide independent external advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Wednesday, June 21, 2000

8:30 a.m.–8:45 a.m. Co-Chairs Opening Remarks
8:45 a.m.–9:15 a.m. Legislative Update
9:15 a.m.–9:45 a.m. Summary of Lab Director's Meeting
9:45 a.m.–10 a.m. Lab Responses to NIF Interim Report
10 a.m.–10:15 a.m. Break
10:15 a.m.–11:15 a.m. Update on Foreign Visits and Assignments Program
11:15 a.m.–11:30 a.m. LOB Terms of Reference
11:30 a.m.–12 a.m. LOB Work Plan
12 p.m.–1 p.m. Lunch
1 p.m.–2 p.m. Lab Stories: Performance-Based Management
2 p.m.–3 p.m. Management Initiatives at the Department of Energy Headquarters
3 p.m.–3:15 p.m. Public Comment Period
3:15 p.m. Adjourn

This tentative agenda is subject to change.

Public Participation: In keeping with procedures, members of the public are welcome to monitor the business of the Laboratory Operations Board and to submit written comments or comment during the scheduled public comment period. The meeting will be conducted in a fashion that will, in the Co-Chairs' judgment, facilitate the orderly conduct of business. During its open meeting, the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written

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comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9 A.M. and 4 P.M., Monday through Friday except Federal holidays. Further information on the Laboratory Operations Board is available at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on June 7, 2000.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 00–14865 Filed 6–12–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–3760–000; EC96–19–000 and ER96–1663–000]

California Independent System Operator Corporation and California Independent System Operator Corporation (Not Consolidated); Notice of Filing

June 7, 2000.

Take notice that on May 26, 2000, the California Independent System Operator Corporation (ISO) tendered and Answer in the above-captioned docket. The Answer includes ISO Tariff sheets correcting several errors in the Tariff sheets submitted by the ISO as part of its Compliance Filing made in the above-captioned docket on April 20, 2000.

The ISO states that this filing has been serve upon all parties on the restricted service list compiled by the Secretary in the above-captioned proceedings.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions and protests should be files on or before June 16, 2000. Protests will be considered by the Commission to determine the appropriated action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.)

David P. Boergers,

Secretary.

[FR Doc. 00–14821 Filed 6–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal energy Regulatory Commission

[Docket No. CP00–372–000]

TCP Gathering Company; Notice of Application

June 7, 2000.

Take notice that on May 31, 2000, TCP Gathering Company (TCP Gathering), 555 Seventeenth Street, Denver, Colorado 80202–3918, filed in Docket No. CP00–372–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), and Section 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations for permission and approval to abandon interstate transportation service, and certain natural gas facilities located in San Juan County, Utah and San Miguel County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Call (202)208–2222 for assistance.

TCP Gathering explains that, upon receipt of abandonment authorization, it would reconfigure its facilities, consisting of approximately 28 miles of 8-inch and 4-inch pipeline, to connect them to an existing gathering system owned and operated by TCP Gathering's new owner Tom Brown, Inc. (Tom Brown) and would operate the facilities as gathering facilities exempt from the Commission's regulation pursuant to Section 1(b) of the NGA.

Currently, TCP Gathering has only one shipper, with whom it has an interruptible transportation contract. The shipper's gas transported from the shipper's well in the Little Valley field in San Juan County, Utah for delivery to Rocky Mountain Natural Gas company. TCP Gathering's previous owner, in San Miguel County, Colorado. TCP Gathering states that, upon obtaining the requested abandonment authority, it will construct an interconnection with Tom Brown's Lisbon Field gathering system in San Juan County, Utah, and plans to gather gas from wells along the length of TCP Gathering's system in Utah and Colorado for delivery to the Lisbon Field where the gas will be processed in the Lisbon Plant.

If there are any further questions regarding this proposal, the following individual may be contacted: Bruce R. DeBoer, TCP Gathering company, 555 Seventeenth Street, Suite 1850, Denver, Colorado 80202–3918, at (303) 260–5000.

Any person desiring to be heard or to make any protest with reference to said application should, on or before June 28, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, a protest or motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations Under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this document if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for TCP Gathering to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–14822 Filed 6–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–159–000, et al.]

Front Range Power Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

June 7, 2000.

Take notice that the following filings have been made with the Commission:

1. Front Range Power Company, LLC,

[Docket No. EG00–159–000]

Take notice that on June 5, 2000, Front Range Power Company, LLC, 6647 Generation Drive, Fountain, Colorado 80817, filed with the Federal Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Front Range Power Company, LLC is a Colorado limited liability company formed by Coastal Power Company (Coastal), a Delaware corporation and wholly owned affiliate of The Coastal Corporation and Colorado Springs Utilities (CSU), an enterprise of the City of Colorado Springs, Colorado, to develop, design, construct, own, operate and maintain a natural gas-fired combined-cycle electric generation plant with a maximum capacity of approximately 480 MW, located on a 23-acre parcel of land approximately 17 miles south of Colorado Springs, Colorado.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Southaven Power, LLC

[Docket No. EL00–81–000]

Take notice that on June 1, 2000, Southaven Power, LLC (Southaven) filed a request for waiver of requirements under Order Nos. 888 and 889, with respect to certain interconnection facilities associated with Southaven's generating facility to be located near Southaven, Mississippi.

Comment date: July 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1666–000]

Take notice that on June 1, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed a notification as directed by the Commission's Order in Docket No. ER00–1666–000 on May 8, 2000 at 91 FERC ¶ 61,122, that it had adopted the revised North American Electric Reliability Council Transmission Loading Relief Procedures accepted for filing by that Order.

Copies of the filing have been provided to jurisdictional customers, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER00–2671–000]

Take notice that on June 1, 2000, Virginia Electric and Power Company (Virginia Power) tendered for filing the Service Agreement between Virginia Electric and Power Company and Associated Electric Cooperative, Inc. Under the Service Agreement, Virginia Power will provide services to Associated Electric Cooperative, Inc. under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of June 1, 2000, the date of filing of the Service Agreement.

Copies of the filing were served upon Associated Electric Cooperative, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool

[Docket No. ER00–2672–000]

Take notice that on June 1, 2000, the New England Power Pool (NEPOOL) Participants Committee filed a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's regulations.

Acceptance of this Service Agreement will recognize the provision of Long-Term Firm Out Service to Williams Energy Marketing &Trading Company, in conjunction with Regional Network Service, in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented.

An effective date of July 1, 2000 for commencement of transmission service has been requested.

Copies of this filing were sent to all NEPOOL members, the New England public utility commissioners and all parties to the transaction.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Pool

[Docket No. ER00–2673–000]

Take notice that on June 1, 2000, the New England Power Pool (NEPOOL) Participants Committee filed a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to PG&E Energy Trading—Power LP, in conjunction with Regional Network Service, in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented.

An effective date of June 1, 2000 for commencement of transmission service has been requested.

Copies of this filing were sent to all NEPOOL members, the New England public utility commissioners and all parties to the transaction.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER00–2674–000]

Take notice that on June 1, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Mead Oxford Corporation (Mead Oxford). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of

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Mead Oxford's signature page would permit NEPOOL to expand its membership to include Mead Oxford. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Mead Oxford a member in NEPOOL.

The Participants Committee requests an effective date of August 1, 2000, for commencement of participation in NEPOOL by Mead Oxford.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool

[Docket No. ER00–2675–000]

Take notice that on June 1, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by the Energy Council of Rhode Island (TEC–RI). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of TEC–RI's signature page would permit NEPOOL to expand its membership to include TEC–RI. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make TEC–RI a member in NEPOOL.

The Participants Committee requests an effective date of June 1, 2000, for commencement of participation in NEPOOL by TEC–RI.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Panda Perkiomen Power, L.P.

[Docket No. ER00–2676–000]

Take notice that on June 1, 2000, Panda Perkiomen Power, L.P. (Panda Perkiomen), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, and for the purpose of permitting Panda Perkiomen to assign transmission capacity and to resell Firm Transmission Rights, to be effective no later than sixty (60) days from the date of its filing.

Panda Perkiomen intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Panda Perkiomen sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Panda Perkiomen nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. American Ref-Fuel Company of Delaware Valley, L.P.

[Docket No. ER00–2677–000]

Take notice that on June 1, 2000, American Ref-Fuel Company of Delaware Valley, L.P. (ARC), submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations (18 CFR Part 35), a Petition for authorization to make sales of electric capacity and energy at market-based rates and for related waivers and blanket authorizations.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Indianapolis Power & Light Company

[Docket No. ER00–2678–000]

Take notice that on June 1, 2000, Indianapolis Power & Light Company (IPL) tendered for filing blanket service agreements under IPL's Wholesale Power Sales Tariff. The Tariff was accepted for filing effective April 29, 2000 and has been designated as IPL's FERC Electric Tariff Revised Volume 2.

IPL is requesting waiver of notice to permit the service agreements to be made effective May 17, 2000.

A copy of the filing was served upon the parties to the service agreements.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Indianapolis Power & Light Company

[Docket No. ER00–2680–000]

Take notice that on June 1, 2000, Indianapolis Power & Light Company (IPL) tendered for filing unexecuted service agreements for service under IPL's Wholesale Power Sales Tariff. The Tariff was accepted for filing effective April 29, 2000 and has been designated as IPL's FERC Electric Tariff Revised Volume 2.

IPL is requesting waiver of notice to permit the service agreements to be made effective June 1, 2000.

A copy of the filing was served upon the parties to the service agreements.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Ameren Services Company

[Docket No. ER00–2681–000]

Take notice that on June 1, 2000, Ameren Services Company (AMS) tendered for filing an Interconnection Agreement between AMS and Reliant Energy Shelby County, LP (Reliant). AMS asserts that the purpose of the Agreement is to, among other things, establish the rights and obligations of Reliant, the point of interconnection and Corporate Guaranty.

Comment date: June 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–14842 Filed 6–12–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6715–2]

Notification of Episodic Releases of Oil and Hazardous Substances; Request for Comment on Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Notification of Episodic Releases of Oil and Hazardous Substances (EPA ICR No. 1049.09, OMB No. 2050–0046). This is a request to renew an existing ICR that is currently approved. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the collection.

DATES: Comments must be submitted on or before August 14, 2000.

ADDRESSES: Comments submitted by regular U.S. Postal Service mail should be sent to: Docket Coordinator, Superfund Docket Office, Mail Code 5201G, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. To ensure proper receipt by EPA, it is imperative that you identify docket control number 102RQ–ER2 in the subject line on the first page of your comment. Comments may also be submitted electronically or in person. Please follow the detailed instructions for these submission methods as provided in unit III of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov. Comments should not be submitted to this contact person.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be affected by this notice if you are the person in charge of a facility or vessel that releases hazardous substances into the environment or discharges oil into U.S. waters as specified in section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, and section 311 of the Clean Water Act (CWA), as amended. To determine if the facility or vessel you are in charge of is affected by this action, you should carefully examine the applicability provisions at 40 CFR parts 110, 117, and 302.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. By Phone, Fax, or E-Mail

If you have any questions or need additional information about this notice or the information collection request (ICR) referenced, please contact Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

B. In Person

The official record for this notice, including the public version, and the referenced ICR have been established under docket control number 102RQ–ER2 (including comments and data submitted electronically, as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), and the referenced ICR are available for inspection in the U.S. Environmental Protection Agency Superfund Docket Office, Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Superfund Docket is open from 9 am to 4 pm, Monday through Friday, excluding legal holidays. The telephone number of the Superfund Docket is (703) 603–9232.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the docket control number 102RQ–ER2 in your correspondence.

1. By mail. Submit written comments to: Docket Coordinator, Superfund Docket Office, Mail Code 5201G, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

2. In person or by courier. Deliver written comments to: U.S. Environmental Protection Agency Superfund Docket Office, Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. Telephone: (703) 603–9232.

3. Electronically. Submit your comments and/or data electronically by e-mail to: superfund.docket@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect 6/7/8 or ASCII file format. All comments and data in electronic form must be identified by the docket control number 102RQ–ER2. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit to EPA?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

C. What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(a) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of EPA, including whether the information will have practical utility.

2. Evaluate the accuracy of EPA's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

EPA invites you to provide your views on the various options EPA proposes, new approaches EPA hasn't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like EPA to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide technical information and/or data to support your views.

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- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (*e.g.*, as part of the "Subject" heading), be sure to properly identify the document on which you are commenting. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA ICR or the Office of Management and Budget (OMB) control number.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR:

Title: Notification of Episodic Releases of Oil and Hazardous Substances.

ICR numbers: EPA ICR No. 1049.09 OMB No. 2050–0046.

ICR status: This ICR is currently scheduled to expire on June 30, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Section 103(a) of CERCLA, as amended, requires the person in charge of a facility or vessel to immediately notify the National Response Center (NRC) of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's reportable quantity (RQ) limit. The RQ of every hazardous substance can be found in Table 302.4 of 40 CFR 302.4.

Section 311 of the CWA, as amended, requires the person in charge of a vessel to immediately notify the NRC of an oil spill into U.S. navigable waters if the spill causes a sheen, violates applicable water quality standards, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

The reporting of a hazardous substance release that is above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment. Likewise, the reporting of oil spills allows the Federal government to determine whether cleaning up the oil spill is necessary to mitigate or prevent damage to public health or welfare or the environment.

The hazardous substance and oil release information collected under CERCLA section 103(a) and CWA section 311 also is available to EPA program offices and other Federal agencies who use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. Release notification information, which is stored in the national Emergency Response Notification System (ERNS) data base, is available to State and local government authorities as well as the general public. State and local government authorities and the regulated community use release information for purposes of local emergency response planning. Members of the general public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any, are being taken to protect public health and welfare and the environment. ERNS fact sheets, which provide summary and statistical information about hazardous substance and oil release notifications, also are available to the public.

V. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection, it includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 4.1 hours per reportable hazardous substance release or oil spill. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are facilities or vessels that manufacture, process, transport, or otherwise use certain specified hazardous substances and oil.

Estimated total number of reportable releases of hazardous substances and oil per year: 29,204.

Frequency of response: When a reportable release occurs.

Estimated total annual burden hours: 119,737 hours.

Estimated total annual burden costs: $3,411,000.

VI. Are There Changes in the Estimates from the Last Approval?

In the renewal ICR, EPA will review the current burden and cost statement and adjust it accordingly. EPA does not expect the burden and cost statement in the renewal ICR to differ significantly from the burden and cost statement in the current ICR.

VII. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

List of Subjects

Environmental protection, Information collection requests, Reporting and record keeping requirements.

Dated: June 1, 2000.

Stephen D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 00–14868 Filed 6–12–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6715–1]

Continuous Release Reporting Regulations (CRRR) Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA); Request for Comment on Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Continuous Release Reporting Regulations (CRRR) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (EPA ICR No. 1445.05, OMB No. 2050–0086). This is a request to renew an existing ICR that is currently approved. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the collection.

DATES: Comments must be submitted on or before August 14, 2000.

ADDRESSES: Comments submitted by regular U.S. Postal Service mail should be sent to: Docket Coordinator, Superfund Docket Office, Mail Code 5201G, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. To ensure proper receipt by EPA, it is imperative that you identify docket control number 102RQ–CR2 in the subject line on the first page of your comment. Comments may also be submitted electronically or in person. Please follow the detailed instructions for these submission methods as provided in unit III of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov. Comments should not be submitted to this contact person.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be affected by this notice if you are in charge of a facility that releases hazardous substances into the environment as specified in section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. According to section 103(a) of CERCLA, if the facility you are in charge of releases a hazardous substance that equals or exceeds its reportable quantity (RQ) and the release is not Federally permitted, you are required to notify the National Response Center (NRC) of the release immediately. However, according to section 103(f)(2) of CERCLA, if the release at the facility you are in charge of is "continuous," and "stable in quantity and rate," you may be exempted from the per-occurrence notification requirements of section 103(a) of CERCLA. To determine if the facility you are in charge of is affected by this action, you should carefully examine the applicability provisions in the Continuing Release Reporting Regulations (CRRR) (40 CFR part 302.8).

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. By Phone, Fax, or E-Mail

If you have any questions or need additional information about this notice or the information collection request (ICR) referenced, please contact Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

B. In Person

The official record for this notice, including the public version, and the referenced ICR have been established under docket control number 102RQ–CR2 (including comments and data submitted electronically, as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), and the referenced ICR are available for inspection in the U.S. Environmental Protection Agency Superfund Docket Office, Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Superfund Docket is open from 9 AM to 4 PM, Monday through Friday, excluding legal holidays. The telephone number of the Superfund Docket is (703) 603–9232.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the docket control number 102RQ–CR2 on any correspondence.

1. By mail. Submit written comments to: Docket Coordinator, Superfund Docket Office, Mail Code 5201G, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

2. In person or by courier. Deliver written comments to: U.S. Environmental Protection Agency Superfund Docket Office, Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. Telephone: (703) 603–9232.

3. Electronically. Submit your comments and/or data electronically by e-mail to: superfund.docket@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect 6/7/8 or ASCII file format. All comments and data in electronic form must be identified by the docket control number 102RQ–CR2. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit To EPA?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

C. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(a) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of EPA, including whether the information will have practical utility.

2. Evaluate the accuracy of EPA's estimates of the burdens of the proposed collections of information.

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3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

EPA invites you to provide your views on the various options EPA proposes, new approaches EPA hasn't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like EPA to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (*e.g.*, as part of the "Subject" heading), be sure to properly identify the document on which you are commenting. You can do this by providing the docket control number assigned to this notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA ICR or the Office of Management and Budget (OMB) control number.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR:

Title: Continuous Release Reporting Regulations (CRRR) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

ICR numbers: EPA ICR No. 1445.05, OMB No. 2050–0086.

ICR status: This ICR is currently scheduled to expire on September 30, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Section 103(a) of CERCLA, as amended, requires the person in charge of a facility to immediately notify the NRC of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's RQ. The RQ of every hazardous substance can be found in Table 302.4 of 40 CFR part 302.4. Section 103(f)(2) of CERCLA provides facilities relief from this per-occurrence notification requirement if the hazardous substance release above the RQ is continuous, and stable in quantity and rate. Under the CRRR, a continuous release of a hazardous substance above the RQ requires an initial telephone call to the NRC, an initial written report to the EPA Region, and, if the source and chemical composition of the continuous release does not change and the level of the continuous release does not significantly increase, a follow-up written report to the EPA Region one year after submission of the initial written report. If the source or chemical composition of the previously reported continuous release changes, notifying the NRC and EPA Region of a change in the source or composition of the release is required. Further, a significant increase in the level of the previously reported continuous release must be reported immediately to the NRC according to section 103(a) of CERCLA. Finally, any change in information submitted in support of a continuous release notification must be reported to the EPA Region.

The reporting of a hazardous substance release that is above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment.

The continuous release of hazardous substance information collected under CERCLA section 103(f)(2) is also available to EPA program offices and other Federal agencies who use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. Release notification information, which is stored in the national Continuous Release-Emergency Response Notification System (CR–ERNS) data base, is available to State and local government authorities as well as the general public. State and local government authorities and facilities subject to the CRRR use release information for purposes of local emergency response planning. Members of the general public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any, are being taken to protect public health and welfare and the environment. CR-ERNS fact sheets, which provide summary and statistical information about hazardous substance release notifications, also are available to the public.

V. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection, it includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 77 hours per affected facility. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are facilities that manufacture, process, or otherwise use certain specified hazardous substances.

Estimated total number of facilities that will have to report continuous hazardous substance releases per year: 2,342.

Frequency of response: After reporting the continuous release to the NRC and EPA Region initially, only an annual report to the EPA Region is necessary unless there is a change in the source of the continuous release, a change in the chemical composition of the continuous release, or a significant increase in the level of the continuous release. In these cases the person in charge of the facility has to notify the NRC and/or the EPA Region of the change in the continuous release.

Estimated total annual burden hours: 24,732 hours.

Estimated total annual burden costs: $725,000.

VI. Are There Changes in the Estimates From the Last Approval?

In the renewal ICR, EPA will review the current burden and cost statement and adjust it accordingly. EPA does not expect the burden and cost statement in the renewal ICR to be any greater than the burden and cost statement in the current ICR.

VII. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epa.gov.

List of Subjects

Environmental protection, Information collection requests, Reporting and record keeping requirements.

Dated: June 1, 2000.

Stephen D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 00–14869 Filed 6–12–00; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Final Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC) has submitted a request for clearance of the information collection described below to the Office of Management and Budget (OMB). A notice that the EEOC would be submitting this request was published in the **Federal Register** on March 1, 2000, allowing for a 60-day public comment period. No public comments were received.

DATES: Written comments on this final notice must be submitted on or before July 13, 2000.

ADDRESSES: Comments on this final notice should be submitted to the Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Desk Officer for the U.S. Equal Employment Opportunity Commission, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to SSHAPIRO@OMB.EOP.GOV. Requests for copies of the proposed information collection request should be addressed to Mr. Neckere at the address below.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507, (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION:

Collection Title: State and Local Government Information (EEO–4).

OMB Number: 3046–0008.

Frequency of Report: Biennial.

Type of Respondent: State and local government jurisdictions with 100 or more full-time employees.

Description of Affected Public: State and local governments excluding elementary and secondary public school districts.

Number of Responses: 10,000.

Reporting Hours: 40,000.

Number of Forms: 1.

Federal Cost: $47,000.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirements for various kinds of employers. State and local governments with 100 or more full-time employees have been required to submit EEO–4 reports since 1973 (biennially in odd-numbered years since 1993). The individual reports are confidential.

EEO–4 data are used by the EEOC to investigate charges of discrimination against state and local governments. In addition, the data are used to support EEOC decisions and conciliations, and for research. The data are shared with several other Federal government agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–4 data are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs). Aggregated data are also used by researchers and the general public.

Burden Statement: The estimated number of respondents included in the EEO–4 survey is 5,000 state and local governments. The estimated number of responses per respondent is approximately 2 EEO–4 reports and the reporting burden averages between 1 and 5 hours per response, including the time needed to review instructions, search existing data sources, gather and maintain the data, and complete and review the collection of information. The total number of responses is thus 10,000 reports while the total burden is estimated to be 40,000 hours, including recordkeeping burden. In order to help reduce burden, respondents are encouraged to report data on electronic media such as magnetic tapes and diskettes.

Dated: June 7, 2000.

For the Commission.

Ida L. Castro,

Chairwoman.

[FR Doc. 00–14889 Filed 6–12–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

June 7, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a)

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whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 14, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0341.

Title: Section 73.1680 Emergency antennas.

Form Number: None.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit.

Number of Respondents: 142.

Estimated time per response: 1.5 hours (0.5 hours respondent; 1.0 hour contract attorney).

Frequency of response: reporting, on occasion.

Total annual burden: 71 hours.

Total annual costs: $28,400.

Needs and Uses: Section 73.1680 requires that licensees of AM, FM or TV stations submit an informal request to the FCC (within 24 hours of commencement of use) to continue operation with an emergency antenna. An emergency antenna is one that is erected for temporary use after the authorized main and auxiliary antennas are damaged and cannot be used. The data is used by FCC staff to ensure that interference is not caused to other existing stations.

OMB Control Number: 3060–0340.

Title: Section 73.51 Determining operating power.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,867.

Estimated time per response: 0.25 hours per notation/3 hours per efficiency factor determination.

Frequency of response: Recordkeeping.

Total annual burden: 1,448 hours.

Total annual costs: $0.

Needs and Uses: When it is not possible to use the direct method of power determination due to technical reasons, the indirect method of determining antenna input power may be used on a temporary basis. Section 73.51(d) requires that a notation be made in the station log indicating the dates of commencement and termination of measurement using the indirect method of power determination. Section 73.51(e) requires that AM stations determining the antenna input power by the indirect method must determine the value F (efficiency factor) applicable to each mode of operation and must maintain a record thereof with a notation of its derivation. This recordkeeping requirement is used by FCC staff in field investigations to monitor licensees' compliance with the FCC's technical rules and to ensure that licensee is operating in accordance with its station authorization. The value F (efficiency factor) is used by station personnel in the event that measurement by the indirect method of power is necessary.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–14873 Filed 6–12–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 7, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 14, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0607.

Title: Rates for Basic Service Tiers and Cable Programming Tiers–Section 76.922.

Form Number: n/a.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, Local or Tribal Government.

Number of Respondents: 2,275.

Estimated Time Per Response: Varies.

Total Annual Burden: 9,150 hours.

Total Annual Costs: $500.

Needs and Uses: The information is used by Commission staff to ensure that qualified small systems have additional incentives to add channels and that small systems are able to recover costs for headend upgrades when doing so.

OMB Control Number: 3060–0561.

Title: Assumption of Jurisdiction by the Commission.

Form Number: n/a.

Type of Review: Extension of a currently approved collection.

Respondents: State, Local or Tribal Government.

Number of Respondents: 50.

Estimated Time Per Response: 8 hours.

Total Annual Burden: 400 hours.

Total Annual Costs: $1,000.

Needs and Uses: The information collection requirements reported under this control number are used by Commission staff to identify situations where it should exercise jurisdiction over basic service and equipment rates in place of a local franchising authority.

OMB Control Number: 3060–0700.

Title: Open Video Systems Provisions

Form Number: FCC 1275.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, Local or Tribal Government.

Number of Respondents: 708.

Estimated Time Per Response: Varies.

Total Annual Burden: 3,910 hours.

Total Annual Costs: $9,000.

Needs and Uses: Section 302 of the Telecommunications Act of 1996 provides for specific entry options for entities wishing to enter the video programming marketplace, one option being to provide cable service over an "Open Video System" ("OVS"). On April 15, 1997, the Commission released a Fourth Report and Order, FCC 97–130, which clarified various OVS rules and modified certain OVS filing procedures.

OMB Control Number: 3060–0565.

Title: Commission Review of Franchising Authority Decisions on Rates for the Basic Service Tier and Associated Equipment—Section 76.944.

Form Number: n/a.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, Local or Tribal Government.

Number of Respondents: 300.

Estimated Time Per Response: Varies.

Total Annual Burden: 5,400 hours.

Total Annual Costs: $340,500.

Needs and Uses: The information collected is reviewed by the Commission to ensure that franchising authority decisions regarding cable rates are consistent with the provisions of the Cable Television Consumer Protection and Competition Act of 1992 and the Commission's rules regarding cable rate regulation. Commission review of appeals is necessary to ensure uniformity of interpretation of federal guidelines.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–14875 Filed 6–12–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 27, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *Thomas W. Healy,* Olympia, Washington; Ned D. Williams, Gig Harbor, Washington; Ronald W. Pemberton, Lakewood, Washington; James D. Marchetti, Gig Harbor, Washington; Charles H. Kester, Bellevue, Washinton; Robert H. Pearson, Gig Harbor, Washington; Carole J. Axtell, Puyallup, Washington; Timothy A. Williams, Tacoma, Washington; to acquire voting shares of Pierce County Bancorp, Tacoma, Washington, and thereby indirectly acquire voting shares of Pierce Commercial Bank, Tacoma, Washington.

Board of Governors of the Federal Reserve System, June 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14848 Filed 6–12–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Peoples Financial Group, Inc.,* Iva, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples Bank, Iva, South Carolina.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. *Regions Financial Corporation,* Birmingham, Alabama; to merge with First National Bancshares of Louisiana, Inc., Alexandria, Louisiana, and thereby indirectly acquire Security First National Bank, Alexandria, Louisiana.

2. *Regions Financial Corporation,* Birmingham, Alabama; to merge with East Coast Bank Corporation, Ormond Beach, Florida, and thereby indirectly acquire Bank at Ormond By-the-Sea, Ormond Beach, Florida.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *IBT Bancorp, Inc.,* Mt. Pleasant, Michigan; to merge with FSB Bancorp, Inc, Breckenridge Michigan, and thereby indirectly acquire Farmers State Bank of Breckenridge, Breckenridge, Michigan.

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin

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Avenue, Minneapolis, Minnesota 55480–0291:

1. *Inter-Mountain Bancorp., Inc.*, Bozeman, Montana; to merge with Three Forks Bancorporation, Three Forks, Montana; and thereby indirectly acquire Security Bank of Three Forks, Three Forks, Montana.

Board of Governors of the Federal Reserve System, June 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14846 Filed 6–12–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 2000.

A. **Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *Pierce County Bancorp*, Tacoma, Washington; to acquire Olympic Equities Corporation, Puyallup, Washington, and thereby engage in making residential and construction loans and other related activities related to the extension of credit, pursuant to §§ 225.28(b)(1) and (b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, June 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–14847 Filed 6–12–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), all authorities vested in the Secretary of Health and Human Services under Part D, Title III of the PHS Act, Subpart IX—Support of Graduate Medical Education Programs, as amended. This delegation excludes the authority to issue regulations and to submit reports to Congress This authority may be redelegated.

In addition, I hereby ratify any actions taken by the Administrator or other HRSA officials which involved exercise of this authority prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: June 2, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–14802 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science, and National Institutes of Health, Office of the Director; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary (OS) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS), Chapter AC, Office of Public Health and Science (OPHS), the Immediate Office (ACA) as last amended at 62 FR 5009–10, dated February 3, 1997; and Part N, the National Institutes of Health, Office of the Director (NA), Office of Extramural Research (NA3), Office for Protection from Research Risks, as last amended at 65 FR 11792, March 6, 2000, are being amended to reflect the transfer of the human research protection functions from the NIH to the newly established Office for Human Research Protections (OHRP), OPHS, within the OS. The OHRP will be headed by a Director who will report to the Assistant Secretary for Health.

The changes are as follows:

I. Under Part N, National institutes of Health, Chapter NA, Office of Director, Office of Extramural Research (NA3), make the following changes:

A. Delete the "Office of Extramural Research (NA3)" in its entirety and replace with the following:

Office of Extramural Research (NA3)—(1) Acts on behalf of the NIH Director to provide guidance to the research institutes on the development and management of extramural (grant and cooperative agreement) research and training programs; (2) advises the NIH Director and staff on issues relating to extramural research activities; and (3) oversees the proper care and use of laboratory animals on behalf of the entire U.S. Public Health Service.

B. Delete the "Office for Protection from Research Risks (NA33)" in its entirety.

II. Under Part A, Chapter AC, Office of Public Health and Science, make the following changes:

A. Delete Section AC.10 Organization in its entirety and replace with the following:

Section AC.10 Organization. The Office of Public Health and Science (AC) is under the direction of the Assistant Secretary for Health and consists of the following components:

A. Immediate Office (ACA)
B. Office on Women's Health (ACB)
C. Office of Minority Health (ACC)
D. Office of the President's Council on Physical Fitness and Sports (ACE)
E. Office of Research Integrity (ACF)
F. Office of Population Affairs (ACG)
G. Office of International and Refugee Health (ACH)
H. Office of HIV/AIDS Policy (ACJ)
I. Office of Emergency Preparedness (ACK)
J. Office of Disease Prevention and Health Promotion (ACL)
K. Office of the Surgeon General (ACM)
L. Office for Human Research Protections (ACN)

B. Amend Chapter AC.20 Functions, paragraph A, "Office of Public Health and Science," paragraph titled, "The Immediate Office (ACA)" by adding the following new clause:

(m) Responsible for overseeing human research subjects protections functions and related functions where research involves the use of human subjects.

C. Under Section AC.20 Functions, add paragraph "L. Office for Human Research Protections (ACN)," to read as follows:

L. Office for Human Research Protections (ACN)—The Office for Human Research Protections (OHRP) fulfills responsibilities set forth in the Public Health Service Act. These include: (1) Developing and monitoring as well as exercising compliance oversight relative to HHS Regulations for the protection of human subjects in research conducted or supported by any component of the Department of Health and Human Services; (2) coordinating appropriate HHS regulations, policies, and procedures both within HHS and in coordination with other Departments and Agencies in the Federal Government; (3) establishing criteria for and negotiation of Assurances of Compliance with institutions engaged in HHS-conducted or—supported research involving human subjects; (4) conducting programs of clarification and guidance for both the Federal and non-Federal sectors with respect to the involvement of humans in research; and directing the development and implementation of educational and instructural programs and generating educational resource materials; (5) evaluating the effectiveness of HHS policies and programs for the protection of human subjects; (6) serving as liaison to Presidential, Departmental, Congressional, interagency, and non-governmental commissions and boards established to examine ethical issues in medicine and research and exercises leadership in identifying and addressing such ethical issues; and (7) promoting the development of approaches to enhance and improve methods to avoid unwarranted risks to humans participating as subjects in research covered by applicable statutes and regulations.

1. Office of the Director (ACN1)—The Office of the Director reports to the Assistant Secretary for Health, supervises and manages the development and promulgation of policies, procedures, and plans for meeting the responsibilities set forth above. Additionally, staff of this office advise the Secretary, Assistant Secretary for Health and other HHS officials on ethnical issues pertaining to medicine and biomedical and behavioral research, including all issues relative to the implementation of HHS Regulations for the Protection of Human Subjects. Directs the development, implementation, and compliance oversight activities for HHS Regulations and for the Protection of Human Subjects; exercises oversight and negotiates Assurances of Compliance in all areas of human subject research; maintains liaison and coordinates policy implementation with components throughout HHS that conduct or support research involving human subjects; and directs the development and implement of educational and instructional programs and generates resource materials relating to the responsibilities of the research community for the protection of human subjects.

2. Division of Policy and Assurance (ACN 2)—(1) Negotiates Assurances of Compliance with research entities; (2) provides liaison, guidance, and regulatory interpretation to research entities, investigators, Federal officials, and the public; (3) maintains existing assurance mechanisms; and (4) develops and implements new procedures to ensure that HHS human subjects protection regulations are appropriately and effectively applied to the changing needs of the research community.

3. Division of Compliance Oversight (ACN 3)—(1) Conducts inquiries and investigations into alleged noncompliance with HHS Regulations for Protection of Human Subjects; (2) prepares inquiry and investigative reports; (3) recommends remedial or corrective action as necessary to agency or Department officials as appropriate; and (4) conducts a program of oversight of awardee institution implementation of HHS Regulations for the Protection of Human Subjects.

4. Division of Education and Development (ACN 4)—(1) Produces and coordinates conferences and workshops focusing on issues in human subjects protection; (2) promotes cooperative education and development efforts among external groups and consortia to improve human subjects protections and related processes; (3) promptly responds to requests for clarification and guidance regarding ethnical issues in biomedical and behavioral research involving human subjects; (4) provides technical assistance to institutions engaged in HHS-conducted or -sponsored research involving human subjects; and, (5) maintains, promulgates, and updates educational and institutional review guidance materials.

D. Continuation of Policy: Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the National Institutes of Health and the Office of the Secretary heretofore issued and in effect prior to this reorganization are continued in full force and effect.

E. Delegation of Authority: All delegations and redelegations of authority made officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

F. Funds, Personnel, and Equipment: Transfer or organizations and functions affected by this reorganization shall be accompanied by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

G. Effective Date: The effective date of this reorganization is June 18, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–14803 Filed 6–12–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry

[Program Announcement 00075]

Announcement of a Cooperative Agreement WAith the Association of American Medical Colleges (AAMC) To Strengthen the Collaboration Between the Disciplines of Medicine and Public Health; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the availability of fiscal year (FY) 2000 funds for a cooperative agreement with the Association of American Medical Colleges (AAMC). CDC and ATSDR (hereinafter referred to as CDC) are committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to all "Healthy People 2010" focus areas.

The purpose of the program is to help strengthen the collaborations between the disciplines of medicine and public health. Medicine and public health are two interdependent disciplines that diverged in practice and training during the last century; however, new efforts have been initiated to increase and to improve their collaborative activities in the new century. In light of the changing health care system and the evolving challenges to public health, future physicians need a better understanding of public health. This program will

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strive to train the medical community on the needs of public health issues.

B. Eligible Applicant

Assistance will be provided only to the Association of American Medical Colleges (AAMC). No other applications are solicited. AAMC is uniquely qualified to be the recipient organization for the following reasons:

1. The AAMC's mission is to improve the health of the public by enhancing the effectiveness of academic medicine through educating the physician and medical scientist workforce, discovering new medical knowledge, developing innovative technologies for prevention, diagnosis and treatment of disease, and providing health care services in an academic setting. AAMC's principal purpose is to promote and improve the education and training of professional medical practitioners. AAMC has the requisite institutional knowledge of the needs of the schools of medicine. AAMC conducts periodic assessments of the status and needs of their member organizations, including medical schools and academic medical centers.

2. AAMC, a non-profit association, represents all the 125 schools of allopathic medicine in the United States that are accredited by the Liaison Committee on Medical Education. These schools represent the primary educational system that provides the Nation's physicians with their undergraduate medical education.

3. With the active participation of the deans of the medical schools, the AAMC is the only organization that can comprehensively affect the development and implementation of improved disease prevention and health promotion curricula in all accredited schools of medicine, and provide opportunities for students, faculty, and researchers to incorporate the perspectives of public health, and disease prevention and health promotion.

4. AAMC provides leadership both nationally and internationally in an effort to achieve excellence in undergraduate medical education. Through its Divisions of Biomedical and Health Sciences Research, Community and Minority programs, and Medical Education, as well as its participation in the Liaison Committee on Graduate Medical Education, AAMC is well positioned to address and resolve issues that promote and support implementation of training strategies.

5. AAMC has attained a prominent position among national health professional associations. AAMC currently sponsors national meetings designed specifically for the faculty of medical schools and academic medical centers, to address contemporary issues in medical education and research.

6. AAMC member organizations also include academic medical centers (that house the majority of the medical residency programs—graduate medical education), academic and professional societies (representing 75,000 faculty members), medical student representatives, and resident representatives.

7. AAMC provides unique opportunities for medical and public health academicians, practitioners, and researchers to share their experience and expertise; to facilitate incorporation of the theoretical and practical perspectives of public health into curricula for teaching prevention, health promotion, and preventive medicine; and to stimulate participation by medical institutions in prevention research.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form of financial assistance.

C. Availability of Funds

Approximately $300,000 is available in FY 2000 to fund this award. It is anticipated that the award will begin on or before September 30, 2000, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where To Obtain Additional Information

For business management assistance, contact: Juanita D. Crowder, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone: (770) 488–2734, E-mail address: jdd2@cdc.gov.

For you assistance with forms, please refer to the following Internet site: The CDC Internet home page is http://www.cdc.gov.

For a program technical assistance, contact: Rika Maeshiro, Senior Preventive Medicine Advisor, Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention, 4770 Buford Hwy. (K–38), Atlanta, Georgia 30341–3724, Telephone: (770) 488–2508, E-mail address: rmaeshiro@cdc.gov.

Henry S. Cassell, III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14833 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00079]

Association of State and Territorial Directors of Health Promotion and Public Health Education (ASTDHPPHE); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement with the Association of State and Territorial Directors of Health Promotion and Public Health Education (ASTDHPPHE), an affiliate of the Association of State and Territorial Health Officials (ASTHO).

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010" a national activity to reduce morbidity and mortality and improve the quality of life. For the conference copy of "Healthy People 2010," reset the internet site: <HTTP://www.health.gov/healthy people>.

This announcement is related to the focus areas of Physical Activity and Fitness, Nutrition, Tobacco Use, Education and Community-Based Programs, Oral Health, Arthritis, Cancer, Diabetes, Disability Conditions, and Heart Disease and Stroke.

The purpose of this cooperative agreement is to address the training, research, and program implementation needs required to build health promotion and public health education capacity at the State and territorial level.

This will include strategic planning for the Association to strengthen the infrastructure for assessment of constituent needs to build health education capacity at the state and territorial level; coordinating the annual National Conference on Health Education and Health Promotion; strengthening collaborations with national and international level partners; developing practice to research demonstration activities; developing continuing education and distance-based training; and developing leadership and training opportunities.

B. Eligible Applicant

Assistance will be provided only to ASTDHPPHE. No other applications will be solicited. ASTDHPPHE is the only appropriate and qualified agency that can provide the services specified under this announcement.

Eligibility is limited to ASTDHPPHE because of its unique relationship with the Association of State and Territorial Health Officials (ASTHO) and other ASTHO affiliates. ASTDHPPHE is the only national, nonprofit health education organization of which program directors and staff representing all States and territories are members. As such, it is uniquely capable, and organized specifically to serve as a leader and a conferee of activities relative to State Health education programs. ASTHO represents the chief public health official of each State and territory. Through its own membership, ASTHO has developed unique knowledge and understanding of the needs and operations of State Health agencies.

ASTDHPPHE is the only affiliate whose primary mission is to promote health education and health promotion as core disciplines of public health practice and to advocate for quality health education and health promotion programs and strategies to address the nation's leading health problems. ASTDHPPHE has served as a health education and health promotion policy development and capacity building organization since 1946, and over the years it has strengthened public health education goals and objectives. The membership is uniquely diverse and its members, who provide major leadership to State and Territorial categorical health areas, have strengthened health education and health promotion programs nationwide. ASTDHPPHE also provides consultation and technical assistance to numerous agencies and has liaison relationships with many national organizations. In this way, the Association is deeply involved in health education and health promotion program development and evaluation efforts that are conducted nationally.

In collaboration with other national organizations, the association accomplishes its mission by disseminating information on state-of-the-art health education and health promotion policies and strategies. The association has the established relationships and expertise necessary to carry-out this cooperative agreement. The unique information exchange among the ASTDHPPHE members and expert program knowledge provide it with special credibility with national, private, and voluntary agencies. In addition, for the last 16 years ASTDHPPHE has worked with National Center for Chronic Disease Prevention and Health Promotion in co-sponsoring the annual Health education and Health promotion conference. Although other organizations may possess some of these abilities and/or perform some of these roles, no other organization has ASTDHPPHE's unique characteristics. ASTDPPHE is comprised of State health promotion/health education program directors, who are necessary to effectively carry out the activities entailed in this program.

Note: Public Law 104–65 states that an organization described in selection 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $735,000 is available in FY 2000 to fund this award. It is expected that the award will begin on or about September 30, 2000, and will be for a 12-month budget period within a project period of up to five years. This funding estimate may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and availability of funds.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page internet address: http://www.cdc.gov. If you have questions business management technical assistance may be obtained from:

Barry Copeland, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 300, 2920 Brandywine Road, Atlanta, Georgia 30341, Telephone: 770/488–2762, E-mail address: bjc8@CDC.gov

For technical assistance, contact:

John M. Korn, Public Health Advisor, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE, Mailstop K–30, Atlanta, GA 30341–3717, Telephone: 770/488–5427, E-mail address: jmk3@cdc.gov

Dated: June 6, 2000.

Henry S. Cassel, III,

Deputy Director, Procurement and Grants Office,, Center for Disease Control and Prevention (CDC).

[FR Doc. 00–14828 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00010]

Asthma Surveillance and Interventions in Hospital Emergency Departments; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for asthma surveillance and interventions in hospital emergency departments. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Environmental Health and Respiratory Diseases. For the conference copy of "Healthy People 2010," visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of this program is to implement and evaluate a sentinel surveillance system designed to monitor trends in and identify reasons for receiving asthma care in hospital emergency departments; and to develop and implement interventions to improve asthma care and to use the surveillance data to evaluate these interventions.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations; that is, universities, colleges and medical schools affiliated with non-profit hospitals. No other applications are solicited. Universities affiliated with nonprofit hospitals are targeted because they have research expertise and can coordinate with several hospitals emergency departments which will identify asthma patients, enroll them in interventions, and collect and analyze data. Universities are likely to have existing relationships with departments of health and can coordinate surveillance and intervention activities.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of

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the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2000 to fund approximately two awards. It is expected that the average award will be up to $250,000 per year for a three-year period. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

The budget should include a request for travel funds for appropriate key staff to participate in the recipient planning meeting in Atlanta.

D. Program Requirements

In conducting activities to achieve the purpose of this cooperative agreement, the recipient will be responsible for the activities under 1. (Recipient Activities) and CDC will be responsible for the activities under 2. (CDC Activities).

1. Recipient Activities

a. Collaborate with the State health department and a total of three to four emergency departments (EDs) in locations serving diverse populations (*e.g.*, rural, urban and suburban) to plan and implement surveillance and model interventions for asthma.

b. Participate in a recipient meeting to coordinate surveillance and intervention activities across sites.

c. Develop and pilot test all data collection instruments.

d. Develop model interventions to reduce severe asthma exacerbations by improving care for asthma.

e. Analyze the data and report surveillance findings to collaborating EDs, the State health department and CDC, make presentations and prepare written manuscripts for publications.

f. Evaluate the surveillance system and the effectiveness of the interventions to reduce severe asthma exacerbations.

2. CDC Activities

a. Provide technical assistance in all stages of the project.

b. Facilitate communication/coordination among recipients to improve efficiency of activities, quality of surveillance data, and effectiveness of interventions.

c. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should not exceed 30 double-spaced pages, printed on one side, with one inch margins, and unreduced font. The applications must be submitted unstapled and unbound.

Applications for the cooperative agreements should include:

1. Background and Need

a. Description of the number of asthma cases, hospitalizations, deaths and/or prevalence in the State.

b. Description of how hospital emergency department surveillance will be used to develop model interventions to improve medical and environmental management of asthma which can result in decreased asthma exacerbations.

c. Description of the applicant's collaborations with other hospitals, hospital emergency departments, health departments and organizations in conducting research or surveillance or developing interventions to reduce morbidity or mortality.

d. Description of collaborating hospital emergency departments' experience in public health initiatives, surveillance projects, research and multi-center studies, including interventions.

e. Description of the health department's experience working with hospital emergency departments or hospitals and relevant asthma prevention surveillance and prevention activities.

2. Goals and Objectives

Description of specific, measurable and time-framed goals and objectives that are consistent with the proposed theme, purpose and objectives.

3. Methods

a. Description of proposed activities to meet the stated goals and objectives. For example, describe how interventions will be developed to meet the needs of the population served.

b. Description of timeline to measure progress in meeting stated goals and objectives.

c. Description of the type of hospital (*e.g.*, private, public, etc.) and the basis for selection of collaborating hospitals (*e.g.*, inner city, urban, suburban and rural) for each participating ED.

d. Description of the experience of principal investigators, collaborating ED contacts, and health department contacts in:

(1) designing, implementing, administering and evaluating surveillance and interventions,

(2) prior publications, and

(3) specific authority to carry out the proposed surveillance and interventions.

e. Include letters of support for each collaborating ED and the health department.

f. Description of the roles of all staff involved in the project for each participating ED and the health department regardless of their funding source. Include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

g. Description of the logistics and personnel involved in data collection, reporting, analysis, evaluation, dissemination of results and publication.

h. Description of how applicant will meet the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the surveillance and interventions. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the surveillance and interventions is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

i. Description of how surveillance findings will be shared to reduce the burden of asthma. EDs may use the findings to develop hospital policies, and health departments may develop community interventions.

j. Description of the planned interventions and how their effectiveness will be evaluated.

4. Evaluation

a. Description of a detailed plan to document progress, effectiveness, impact and outcome.

b. Description of the ability of staff to perform the evaluation.

c. Description of how evaluation findings will be used to improve the surveillance and interventions.

5. Budget Justification

Description of first year budget with future annual projections.

6. Human Subjects

Description of how human subjects will be involved and how they will be protected.

F. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should include a brief description of surveillance and interventions planned, the populations served by the participating hospital emergency departments, and State health department asthma prevention and surveillance activities.

The letter of intent must be submitted on or before July 10, 2000 to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001). Forms are in the application kit. On or before August 10, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (20 Points)

a. The extent to which the applicant presents data justifying the need for asthma surveillance and interventions in terms of magnitude of the asthma problem in their area.

b. The extent to which applicant describes how hospital emergency-based surveillance for asthma will be used to develop and evaluate interventions in EDs serving different populations (*e.g.*, inner city, urban, suburban, rural).

c. The extent to which the applicant describes current and previous experiences conducting surveillance, research and/or interventions in hospital emergency departments.

d. The extent to which applicant describes collaborating EDs' past experiences working with the State health department and past surveillance, research and/or intervention activities.

e. The extent to which applicant describes the State health department's experience collaborating with hospitals and hospital emergency departments as well as asthma surveillance and prevention activities.

2. Goals and Objectives (15 Points)

The extent to which the applicant has included goals which are relevant to the purpose of the application and feasible to be accomplished during the project period, and the extent to which these are specific and measurable.

3. Methods (50 Points)

a. The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals including designation of responsibility for each action undertaken.

b. The extent to which applicant provides a reasonable and complete schedule for implementing all activities.

c. The extent to which applicant describes the different populations served by collaborating hospital EDs and demonstrates support from a contact person within each collaborating ED who will serve as coordinator for the project.

d. The extent to which position descriptions, resumes and lines of command are appropriate for accomplishment of program goals and objectives.

e. The extent to which concurrence with the applicant's plans by all other involved parties is specific and documented, especially with regard to data collection, analysis, dissemination, development; implementation of interventions; and evaluation of surveillance and interventions.

f. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed activities. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

g. The extent to which applicant describes how surveillance findings will be shared and used to develop interventions and policies to reduce the burden of acute asthma exacerbations.

h. The extent to which applicant describes the types of interventions, including provisions for continuity of medical care, tailoring interventions to different populations, and the evaluation.

i. The extent to which applicant demonstrates a willingness to collaborate with other recipients.

4. Evaluation (15 points)

a. The extent to which the proposed evaluation system is detailed and will document program progress, effectiveness, impact and outcome.

b. The extent to which applicant documents staff availability, expertise and capacity to perform the evaluation.

c. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

5. Budget and Justification (not scored)

The extent to which the budget is reasonable, adequately justified and consistent with the intended use of grant funds.

6. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management

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Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1—Human Subjects Requirements

AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–9—Paperwork Reduction Act Requirements

AR–10—Smoke-Free Workplace Requirements

AR–11—Healthy People 2010

AR–12—Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 of the Public Health Service Act, [42 U.S.C. section 241], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet at: http://www.cdc.gov. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the program announcement number (00010).

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Sonia Rowell, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00010, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2724, email address: svp1@cdc.gov

For program technical assistance, contact: Pamela Meyer, Epidemiologist, Air Pollution and Respiratory Health Branch, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop E–17, Atlanta GA 30333, telephone: (404) 639–2545, email address: pmeyer@cdc.gov

Dated: June 7, 2000.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14830 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00097]

Uniform Population-Based Approach to Case Ascertainment, Typology, Surveillance, and Research on Childhood Diabetes; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to develop a multi-center and uniform population-based approach to case ascertainment, typology, surveillance, and research on childhood diabetes (diagnosis before the age of 20 years). This program addresses the "Healthy People 2010" focus area of Diabetes. For the conference copy of "Healthy People 2010," visit the internet site: <http://www.healthypeople>. In view of the importance of racial and ethnic health disparity issues, the purpose of the program is to use a uniform multi-center approach in diverse populations for multiple purposes:

1. Using existing data of known prevalent cases of childhood diabetes, develop a uniform typology of the prevalent cases, obtain type-specific prevalence estimates, and describe characteristics of the different types of childhood diabetes;

2. Based on the extensive collection of new cases of childhood diabetes, develop a uniform typology of the incident cases, obtain accurate and precise population-based estimates of the type-specific incidence and secular trends of new cases, and describe the characteristics of the different types of childhood diabetes;

3. Develop a uniform approach to follow incident cases of childhood diabetes to ascertain changes in typology, characteristics and outcomes, and to maintain a "pool" of incident cases of childhood diabetes.

Characterization of types of childhood diabetes should include a description of potential risk factors (including family history, maternal diabetes, race/ethnicity, sex, weight and height, birth-weight, etc), other characteristics (including presence of acanthosis nigricans, symptoms and circumstances at or preceding diagnosis, treatment and response to treatment, HbA1c, lipids, and blood pressure levels, etc), potential laboratory measurements (C-peptide and insulin levels, immunological markers, etc), potential complications (including microalbuminuria, hypertension, retinopathy, neuropathy, infections, etc), and quality of medical care (including screening frequencies for HbA1c, lipid profiles, microalbuminuria, retinal and foot examinations, blood pressure checks, nutrition counseling, rates of hospitalization for complications, etc).

This collaborative program will consist of two phases. Phase I (12 months)—Planning, developing networks of care providers and other partnerships, and collaboration on the development of the protocol and Institutional Review Board clearances. Phase II (48 months)—Data collection, monitoring, analyzes, and collaborative reporting of the results, on a yearly basis.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2000 to fund approximately 2 to 3 awards. It is expected that the average award will be $200,000 ranging from $150,000 to $250,000. It is anticipated that additional funds may be available in FY 2001–2004 to increase the average award to approximately $500,000 in Years 2–5, ranging from $400,000 to $600,000. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 5 years.

Funding Estimates May Change

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds are awarded for a specifically defined purpose and must be targeted for implementation and management of the project. Funds can support personnel, activities directly related to the project, and the purchase of software for data collection, analysis, and project management and evaluation purposes.

Prohibited Uses: Cooperative agreement funds under this program announcement cannot be used for (1) construction, (2) renovation, (3) the purchase or lease of passenger vehicles or vans, (4) to supplant non-federal funds that would otherwise be made available for this purpose, or (5) cost of regular patient care.

Funding Priority

In making awards, priority consideration will be given as follows. Due to the high prevalence of type 2 diabetes in American Indian children, funding priority will be given to at least one center which will have access to American Indian populations. In addition, approved applications may also be ranked and funded based on populations with racial/ethnic and socio-economic diversity to achieve geographic, socio-economic and racial/ethnic representation of the U.S. population, and a minimum mix of the different types of childhood diabetes (at least 20% type 2).

Minimum Requirement

Applications for the development of a multi-center and uniform population-based approach to case ascertainment, typology, surveillance, and research on childhood diabetes in diverse populations require access to information on large numbers of children with diabetes (minimum of 50 incident cases per year) and their referent populations (minimum of 300,000 children under the age of 20) with racial/ethnic and socio-economic diversity, including under-insured.

Institutions may apply as a single entity or in collaborative partnership or network(s). However, only one institution will be named as the recipient of funds in a partnership/network.

Eligibility characteristics for review must be clearly specified with appropriate documentation in the Application Requirements section of your application (see Application Content).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Establish and sustain networks or partnerships with health care providers and health care systems who have access to information on cases of childhood diabetes. Collaborate with other health organizations, community groups, State Health Department, Diabetes Control Programs etc., as necessary to accomplish program activities.

b. Establish a Steering Committee that will be the primary governing body of the study and will be comprised of each of the Principal Investigators from each center. The Steering Committee will have primary responsibility for developing manual(s) of operations and common study protocols, submitting the protocols for CDC and other Institutional Review Boards, and coordinating resolution of Institutional Review Board issues, facilitating the conduct of the study and on-going data collection, analyses, and reporting of study results.

c. Participate in the methodology and protocol development, on-going data collection and follow-up, quality control, data analysis and interpretation, the preparation of peer-reviewed publications, and presentation of findings.

d. Work cooperatively with the other Centers, and agree to follow the common protocol(s) and manual(s) of operations developed in Phase I of the study by the Steering Committee.

e. Maintain an effective and adequate management and staffing plan. Staff should have the education, background, and experience to successfully conduct the activities proposed in this application. As a part of the application, the existing staff and all proposed positions should to be included.

2. CDC Activities

a. Support the recipients' activities by collaborating and providing scientific and public health consultation and assistance in the development of activities related to the cooperative agreement and coordination sharing.

b. Assist in facilitating communication among recipients development of common multi-center protocol(s), quality control, interim data monitoring, data analysis, interpretation, reporting, and coordination.

c. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project, including CDC IRB.

d. Serve as a consultant to the Steering Committee.

E. Application Content

Competing Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections of the announcement and the Errata Sheet in the application to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The outcome of this program should provide reliable estimates of the prevalence, incidence and secular trends of the different types of childhood diabetes, and should enable the development of case definition and characterization at diagnosis and follow-up of the different types of childhood diabetes. More specifically, the following questions should be answered:

1. Using existing data of known prevalent cases of childhood diabetes, how could prevalent cases be classified, and what are the type-specific prevalence estimates and the characteristics (including medical care received) of the different types of childhood diabetes?

2. Based on the extensive collection of new data, how could incident cases of childhood diabetes be classified, and what are the accurate and precise population-based estimates of the type-specific incidence and secular trends, and the characteristics (including medical care received) of the different types of diabetes.

3. How could incident cases of childhood diabetes be followed in a uniform approach, and what are their characteristics, outcomes and quality of care at follow-up? How could a "pool" of incident cases be maintained for studying secular trends in incidence and factors associated with causation?

Emphasis should be on rigorous scientific approaches and methodologies that should yield access to populations of diverse ethnicity, socioeconomic status and insurance coverage, produce reliable population-based estimates that should adequately address ascertainment biases, and should assure sustainability to provide data for secular trend assessment and follow-up for the different types of childhood diabetes.

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Each applicant must describe the proposed populations, the methodology and study designs that best address the objectives of this program, as well as the networks and partnerships that should help achieve these objectives. Applications should propose a uniform and multi-center approach, which considers the problem of racial/ethnic health disparities.

Collaborative protocol(s) to study the above questions should be developed by a Steering Committee composed of the recipients. The collaborative study protocol(s) should move into the implementation stage with the concurrence of the Steering Committee. It is not the intent of this Program Announcement to solicit elaborately detailed research plans for the above proposed collaborative project because the final protocol(s) should be collaboratively developed by the investigators during the planning phase (Phase I).

Eligibility characteristics must be clearly specified with appropriate documentation in the Application Requirements section of your application.

The application narrative must include the following sections in the order presented below:

a. Description and rationale of (a) the population source (including size, age, ethnicity, medical insurance status, socio-economic status, geographic), and

b. The partnership/network(s) which will provide access to information on the cases within this population source (not to exceed 5 pages).

(1) When describing the population source, indicate the degree to which racial and ethnic minority and socio-economically disadvantaged populations are included, and how the population is sufficiently typical of children with diabetes around the country or accurately represents special groups of children with the disease.

(2) When describing the partnership/network(s), detail the various types of providers which are included.

(3) Describe why and to what extent different types of childhood diabetes will be captured, and detail all (hospital and non hospital) data sources that will be used.

(4) Discuss how the population size (denominator) will be ascertained for estimation of incidence and secular trends over the 5 years of study.

(5) Discuss how the population-based estimates will be tested.

(6) Discuss how the networks/partnerships will be sustained over a long term to allow for trend estimates, follow-up, and maintenance of a "pool" of incident cases. Describe potential provider or patient incentives that may be used to assure sustainability and follow-up.

(7) Include a discussion of the rationale, benefits and problems that may be faced in relation to the selected population source and partnership/network(s) developed, and describe the extent to which the choice of the population source and the networks/partnerships is scientifically sound, realistic, and likely to provide reliable population-based estimates and secular trends for childhood diabetes.

c. Methodology: Case ascertainment, typology characterization, and follow-up of (a) the prevalent cases, and (b) the incident cases (not to exceed 5 pages).

(1) Describe why and how the previously collected data on prevalent cases of childhood diabetes will be available, and include a description of the case characteristics (including number, age, sex, ethnicity, medical insurance status or socio-economic status, geographic).

(2) Describe why and how information on a large number of incident cases of childhood diabetes (≥50 a year) will be available for each year of the study, and will approach complete ascertainment of diagnosed childhood diabetes in the population source. Describe various strategies to:

(3) Ascertain the prevalent and incident cases.

(4) Collect information to type and characterize the different prevalent and incident types of childhood diabetes.

(5) Follow the incident cases for characterization and maintenance of a "pool" of incident cases.

(6) Address potential for mis-classifications at baseline for prevalent and incident cases, and changes at follow-up for the incident cases, and other biases.

Note that characterization for (a) and (b) should include health care received, potential outcomes, and risk factor levels, and should use low-cost and realistic methods. Note that all proposed approaches should discuss cost implications (cost per case identified and cost per case maintained).

Also, note that emphasis should be on accurate estimation of incidence (to approach complete ascertainment of newly diagnosed childhood diabetes), as opposed to estimation of prevalence, which is based on previously collected information. It is not anticipated in this announcement that screening programs will be initiated to approach complete ascertainment of incidence, but if such screening programs are independently implemented, they may constitute a valuable addition to the present study.

d. Standardization across sites (not to exceed 1 page):

(1) Discuss how methods for identification and classification of childhood diabetes cases could be standardized across sites and over the study period;

(2) Discuss how the design and the standardization will ensure that maximum and wide use of the system will be made and sustained.

e. Background and experience of the principal investigator, co-investigators, and the applying institution, organization, or agency (not to exceed 3 pages).

(1) Describe the educational and professional background of the principal investigator.

(2) Document the relevant experience of the principal investigator and qualifications of the applying institution, organization, or agency for carrying out epidemiological or surveillance research in chronic disease (including access to computerized data systems and other relevant resources) and collaborative, multi-center research projects.

(3) Describe existing partnership/network(s) with other agencies/organizations/institutions or others (specifically, involvement in existing or past registries of type 1 diabetes or other similar systems designed for disease monitoring), and with supportive State Health Departments, Diabetes Control Programs, or other relevant organizations, for the purpose of relevant medical research.

(4) Attach evidence of collaborations and partnerships, specifying the commitment of the parties involved in partnership/networking(s), and provide details, including the terms of access to data and to populations and any specified limits to collaboration.

(5) Provide a brief description of how the project will be organized, and indicate the proposed staffing plan and expertise, and the time-line.

f. Human Subjects. Address the requirements of Title 45 CFR 46 for the protection of human subjects, and detail the degree to which CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research are met. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. Budget and budget justification (not to exceed 5 pages).

Provide a detailed, line-item budget with justification that demonstrates the request is consistent with the purpose and objectives of this program. The budget for Phase I of the study should be clearly delineated. Budgets should allow for approximately three persons, including the principal investigator, to attend Steering Committee and Subcommittee meetings. The detailed budget for Phase I should be planned and developed to assure that the project protocol may be written within the first nine months utilizing Steering Committee meetings and teleconference calls by the Steering.

Typing and Mailing

All pages must be clearly numbered and a complete index to the application and its appendixes must be included. Do not bind, staple, or paper clip any pages of any copy of the application, including appendixes. Do not include any bound documents (*e.g.*, pamphlets or other publications) in the appendixes. Do not include cardboard, plastic, or other page separators between the sections. The entire application must be typewritten, single-spaced, and in unreduced type (12-point fonts) on 8½" x 11" white paper, with at least 1" margins, including headers and footers, and printed on one side only.

F. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should include the following information: The name and address of the applying institution, telephone number of the contact person, and the program announcement number.

The letter of intent must be submitted on or before, June 30, 2000,to the Grants Management Specialist, as identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of form PHS 398. Forms are available at the following Internet address: http://www.cdc.gov/od/pgo/forminfo.htm or in the application kit. Submit the application on or before July 21,2000, to the Grants Management Specialist identified in the section "Where to Obtain Additional Information."

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria (Total 100 Points)

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Description and rationale for the population and partnership/network(s) (25 points):

a. The extent to which (1) the population is described, (2) the rationale, benefits and problems that may be faced in relation to the population are discussed, and (3) the approach selected is scientifically sound, realistic, and likely to provide reliable population-based estimates and characterization of the different types of childhood diabetes. In particular, the extent to which data sources other than hospitalization data will be available.

b. The extent to which (1) the partnership/network(s) is described, (2) the rationale, benefits and problems that may be faced in relation to the partnership/network(s) are discussed, and (3) the network/partnership(s) selected are scientifically sound, realistic, and likely to provide reliable population-based estimates and characterization of the different types of childhood diabetes. In particular, the extent to which different types and sources of providers are available.

c. The degree to which (1) racial/ethnic minority and socio-economically disadvantaged populations and both sexes are included, (2) the population is sufficiently typical of children with diabetes around the country or accurately represents special groups of children with the disease, and (3) different types of childhood diabetes will be captured.

d. The extent to which the ascertainment of the population source and testing of the population-based estimates are scientifically sound, realistic, and likely to provide reliable and accurate population-based estimates and secular trends for childhood diabetes.

e. The extent to which the population and partnership/network(s) will be sustained over the study duration, and will allow for secular trends assessment, follow-up of incident cases, and maintenance of a "pool" of incident cases.

2. Rational for case ascertainment, typology, and characterization of prevalent cases (15 points):

a. The extent to which previously collected data on prevalent cases of childhood diabetes are described, and the size, characteristics, quality, and accessibility of this information.

b. The extent to which various strategies are described, and are sound, realistic, and feasible for case ascertainment.

c. The extent to which various strategies are described, and are sound, realistic, and feasible for collection of information to type and characterize the different types of childhood diabetes, and the extent to which characterization includes health care received, potential outcomes, and risk factor levels.

d. The extent to which various strategies are described, and are sound, realistic, and feasible for assessment of potential misclassifications, and other biases.

e. The extent to which low-cost and realistic methods are used, and cost implications are discussed (cost per case identified).

3. Rationale for the methodology, case ascertainment, typology, characterization, and follow-up of incident cases (25 points).

a. The extent to which information on a large number of incident cases of childhood diabetes (≥50 a year) is available and described, and will approach complete ascertainment of diagnosed childhood diabetes in the population source.

b. The extent to which various strategies are described and are realistic, feasible, and sustainable over 5 years for ascertainment of incident cases.

c. The extent to which (1) various strategies are described and are realistic, feasible, and sustainable over 5 years for collection of information to type and characterize the difference types of childhood diabetes, (2) characterization includes health care received, potential outcomes, and risk factor levels, and (3) potential mis-classifications at baseline, and changes at follow-up, and other biases are assessed.

d. The extent to which various strategies are described and are realistic, feasible, and sustainable over 5 years for follow-up of incident cases for

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characterization, typology and maintenance of a "pool" of incident cases.

e. The extent to which low-cost and realistic methods are used, and cost implications (cost per case identified and cost per maintained) are discussed.

4. Standardization across sites (15 points):

a. The extent to which the proposed approach to childhood diabetes research is specific, realistic, time-phased, and suitable for development into a collaborative, multi-center study protocol.

b. The extent to which the applicant presents a detailed operational plan for initiating and conducting the project that clearly and appropriately addresses all Recipient Activities.

c. The extent to which applicant describes collaborations with other sites during the various phases of the project, and shows commitment to implement a standardized, multi-center, collaborative approach.

5. Background and Experience of the Principal Investigator and of the Applying Institution, Organization, or Agency (20 points):

a. The educational and professional background of the principal investigator, and the relevant experience of the principal investigator and qualifications of the applying institution, organization, or agency for carrying on epidemiological or surveillance research in chronic diseases (including access to computerized data systems and other relevant resources) or multi-center research projects.

b. Existence of partnership/network(s) with other agencies/organizations/institutions or others (specifically, involvement in existing or past registries of type 1 diabetes or other similar systems designed for disease monitoring), and with supportive State Health Departments, Diabetes Control Programs, or other relevant organizations, for the purpose of relevant medical research. Evidence that commitment of the parties involved in partnership/networking for this specific project is provided, including the terms of access to data and to populations, and any specified limits to collaboration for the purposes of this project.

c. The extent to which a brief description is provided on how the project will be organized, what the time line and the proposed staffing plan will be, and the extent to which the applicant clearly identifies specific assigned responsibilities and time commitment of all key professional personnel.

6. Human subjects (Not scored) Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted, (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

7. Budget and Budget Justification (Not scored): The extent to which the budget is reasonable and consistent with the purpose and objectives of this program; and specification and discussion of cost per case identified, cost per case maintained, and cost per case type-classified.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of the following:

1. Progress reports (semiannual);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2) [42 U.S.C. 241(a) and 247b(k)(2)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.988.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave you name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Barry L. Copeland, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement #00097, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number (770) 488–2762, Email address bjc8@cdc.gov.

This and other CDC announcements can be found on the CDC homepage internet address: http://www.cdc.gov See Attachment II for background on the program. For program technical assistance, contact: Anne Fagot-Campagna, Division of Diabetes Translation, Centers for Disease Control and Prevention, 4770 Buford HWY, NE, Mailstop K–68, Atlanta GA, 30341, telephone number (770) 488–1053 (or –1069), Email address adf8@cdc.gov.

Dated: June 6, 2000.

Henry S. Cassel, III,

Deputy Director, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).

[FR Doc. 00–14829 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00069]

Initiatives to Develop and Implement Programs to Enhance Epilepsy Public Awareness and Partnership, Education, and Communication; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program with a national health organization to develop and implement programs to enhance epilepsy public awareness and partnership, education, and communication. Focus on these program areas stems from the results of Living Well with Epilepsy, the first national conference on public health and epilepsy, convened in September, 1997. Close collaboration among the public health, clinical, and advocacy communities represented at the conference resulted in the identification of priority epilepsy concerns including education, communication and improved public awareness.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010" a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Disability and Secondary Conditions. For the conference copy of "Healthy People 2010," visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of this program is to conduct epilepsy programs to promote public awareness and partnerships, to provide epilepsy education for the general public and for health care providers; and to develop and enhance communication channels to allow for improved interaction and information sharing among those with epilepsy and their families, as well as those who advocate for persons with epilepsy and those who provide care and services for persons with epilepsy, researchers, public health specialists, and the general public.

B. Eligible Applicants

Assistance will be provided only to a private, non-profit 501(c)(3) organization that is a national voluntary health organization dedicated to assisting persons with epilepsy. Eligible applicants must have established working relationships with affiliate chapters and other agencies and organizations concerned with epilepsy on a national basis in order to expand epilepsy public awareness and public and provider education about epilepsy. Eligibility status must be documented in the Executive Summary section of the application. Applications which are determined to be ineligible will not be reviewed and will be returned to the applicant.

Limited competition is justified under this program announcement because of the need to encourage and enhance public health initiatives in the field of epilepsy as directed by the Congressional appropriation committees for FY 2000. Specifically, the Conference Report accompanying Public Law 106–113 (H.R. 3194), Consolidated Appropriations Act 2000, found at H.R. Rep. No. 106–479, at 599 (1999) directed CDC to expand epilepsy surveillance, public awareness activities, and public and provider education. Furthermore, the Senate and House Appropriations Committees encouraged CDC to partner with a National voluntary health organization dedicated to assisting persons with epilepsy in implementing public health initiatives related to epilepsy.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $200,000.00 is available in FY 2000 to fund this award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. The funding estimate may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preference

A funding preference will be given to a national voluntary health organization having a nationwide network of affiliates covering all Department of Health and Human Services (DHHS) regions including the Commonwealth of Puerto Rico in order to provide broad geographical coverage for the dissemination of epilepsy programs.

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

The applicant must propose activities in one or more of the following three priority areas listed below. If research activities are proposed, the applicant should discuss the potential involvement of human subjects and document how CDC human subject requirements will be met.

a. Partnership Building

(1) Develop mechanisms to provide financial and personnel support to epilepsy affiliates/chapters to facilitate building collaborative public health partnerships with state and local health departments.

(2) Develop mechanisms to provide financial and personnel support to health related organizations (other than epilepsy affiliates/chapters) to facilitate building collaborative partnerships.

(3) Develop ongoing communication vehicles (i.e., listservs, web sites, newsletters, conference calls, meetings) to facilitate problem solving and idea sharing among organizations involved in collaborative activities to implement programs to promote public awareness of epilepsy, provide education for those with epilepsy, the general public and for health care providers, and enhance communication channels.

b. Create Awareness/Improve Health Communications

(1) Implement a sustained multifaceted media relations outreach program.

(2) Develop, implement and evaluate strategies to broaden dissemination of existing educational materials, particularly those that focus on teens with epilepsy, to those with epilepsy who are under served.

c. Consumer and Provider Education

(1) Develop or adapt, evaluate, and disseminate low-literacy epilepsy education materials; and/or educational materials for large minority groups (e.g., Hispanic, Asian, American Natives, African American).

(2) Develop, evaluate, and disseminate epilepsy self-management materials delivered through traditional and/or alternative delivery mechanisms (i.e., Internet-based, CD ROM, other).

(3) Develop appropriate training on selected epilepsy interventions with demonstrated cost-effectiveness with appropriate experts including international organizations.

(4) Develop, evaluate, and disseminate continuing medical education (CME) or CME and continuing education units (CEU) granting self study professional education through alternative delivery mechanisms (i.e., Internet based, CD-ROM).

2. CDC Activities

a. Collaborate in planning, implementing, and evaluating strategies and programs.

b. Assist in the analysis and interpretation of the evaluation phase of projects or programs.

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c. Provide programmatic consultation and guidance in support of the program.

d. Assist in the planning and implementation of linkages with local, national, or international epilepsy organizations or agencies.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Applicant is required to submit an original and two copies of the application. The application, excluding appendices, should not exceed 30 pages. Pages should be clearly numbered and a complete index to the application and any appendices should be included. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type on 8–1/2" by 11" paper, with at least 1" margins, headers and footers, and printed on one side only. The application should be organized in the following sections.

1. Executive Summary

Provide a clear, concise, and objectively written statement of the major objectives and components of proposed activities, proposed time frame, and evaluation plan. Document your organization's national network by providing a list of your affiliate locations. Also, include proof of your non-profit status.

2. Existing Resources and Needs Assessment

Describe the documented need for the proposed activities and current activities that provide relevant experience and expertise to perform the proposed activities.

3. Collaborative Relationships

Describe collaborative relationships with other agencies and organizations that will be involved in the proposed activities.

4. Operational and Evaluation Plan

Describe the specific outcome and process objectives for each proposed project with deliverables clearly identified, the major steps required to achieve the objectives, and a projected timetable for completion that displays dates for the accomplishment of specific proposed activities. Describe how achievement of outcome and process objectives, and program effectiveness will be evaluated.

5. Management and Staffing Plan

Describe how the program will be effectively managed including:

(a) Management structure including the lines of authority and plans for fiscal control.

(b) The staff positions responsible for implementation of the program.

(c) Qualifications and experience of the designated staff.

6. Budget and Justification

Provide a detailed budget request and line-item justification of all proposed operating expenses.

F. Submission and Deadline

Submit the original and two copies of PHS–5161–1 (OMB Number 0937–0189) to the Grants Management Specialist identified in the Section J., "Where to Obtain Additional Information." The application deadline date is July 7, 2000.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private, metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria (100 Points)

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Resources and Needs Assessment: (25 points)

The relevance of the needs assessment and extent to which the applicant demonstrates that current activities provide experience and expertise for the proposed projects.

2. Collaboration: (15 points)

The extent to which the applicant provides evidence of collaborative relationships with other agencies and organizations relevant to successful completion of the proposed projects. The extent to which the applicant documents their nationwide affiliate network.

3. Proposed Operational and Evaluation Plan: (35 points)

The extent to which the applicant clearly identifies the specific outcome and process objectives for the proposed projects, deliverables, and the major steps required to meet the objectives; provides a realistic plan for involving others in the project; and proposes an evaluation plan that is likely to provide meaningful information about the achievement of the projects.

4. Proposed Implementation Schedule: (10 points)

The extent to which the projected timetable for completion of tasks and for meeting objectives is reasonable and realistic.

5. Project Management and Staffing Plan: (15 points)

The extent to which the applicant demonstrates management structure and staff positions with clear lines of authority and plans for fiscal control, and that designated staff have appropriate qualifications and experience. If applicable, the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

6. Budget: (Not Scored)

The extent to which the applicant provides a detailed budget and justification consistent with the proposed program objectives and activities.

7. Human Subjects Research (Not Scored)

If applicable, does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements:

Provide CDC with an original plus two copies of:

1. semiannual progress reports;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in Section J., "Where to Obtain Additional Information."

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR 1 Human Subjects Requirements
AR 2 Requirements for Inclusion of Women and Racial and Ethic Minorities in Research
AR 10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the sections 301(a) and 317(k)(2) the Public Health Service Act, [42 U.S.C. 241(a) and 247b(k)(2)], as amended. The Catalogue of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Barry Copeland, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Announcement 00069, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone (770) 488–2762, E-mail: bjc8@cdc.gov.

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on Funding then click on Grants and Cooperative Agreements.

For program technical assistance, contact: Mike Waller, Centers for Disease Control and Prevention, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway NE, Atlanta, GA, 30341–3717, Telephone: (770) 488–5264, E-mail: mnw1@cdc.gov.

Dated: June 6, 2000.

Henry S. Cassel III,

Deputy Director, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).

[FR Doc. 00–14832 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00062]

Postdoctoral Fellowship Training Program in Infectious Diseases; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2000 funds for a cooperative agreement program for Postdoctoral Fellowship Training Programs in Infectious Diseases was published in the **Federal Register** on June 7, 2000, [Vol. 65, No. 110, Pages 36145–36148]. The notice is amended as follows:

On page 36147, Second Column, Under Section F. Submission and Deadline, Letter of Intent (LOI), change to read the "In order to assist CDC in planning the evaluation of applications submitted under this Program Announcement, all parties intending to submit an application are requested to submit an LOI to inform CDC of their intention to do so on or before June 23, 2000. Also, on page 36147, Second Column, Under Section F. Submission and Deadline, Application, change to read: On or before Friday, July 7, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Dated: June 7, 2000.

Henry S. Cassell, III,

Acting Director, Procurement and Grants Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14834 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01007]

Grants for Injury Control Research Centers; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for Injury Control Research Center (ICRC) grants. This program addresses the "Healthy People 2010" priority areas of Injury Prevention, Unintentional Injury Prevention, and Violence and Abuse Prevention. For the conference copy of "Healthy People 2010," visit the Internet site: http://www.health.gov/healthypeople.

The purposes of this program are:

1. To support injury prevention and control research on priority issues as delineated in: Healthy People 2010; Injury Control in the 1990's: A National Plan for Action; Reducing the Burden of Injury: Advancing Prevention and Treatment; Injury in America; Injury Prevention: Meeting the Challenge; Cost of Injury: A Report to the Congress; and any list of research priorities published by the National Center for Injury Prevention and Control (NCIPC);

2. To integrate, in the context of a national program, the disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, and behavioral and social sciences in order to prevent and control injuries more effectively;

3. To support the identification and description of injury problems, to identify risk and protective factors that can be used to design and test injury prevention and control strategies, to evaluate current and new interventions for the prevention and control of injuries, and to support the implementation of effective prevention and control strategies in the public and private sector; and

4. To provide technical assistance to injury prevention and control programs within a geographic region.

B. Eligible Applicants

This announcement will provide funding for applicants in regions which do not have funded Injury Control Research Centers (ICRCs) and for applicants in regions which have funded centers which must re-compete for funding.

Eligible applicants include all nonprofit and for-profit organizations in

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Regions 1, 2, 5, 6, 7, 8, and 9. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments, and small, minority and/or women-owned businesses are eligible for these grants. Non-academic applicant institutions should provide evidence of a collaborative relationship with an academic institution.

Eligible applicants are limited to organizations in Region 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), Region 2 (New Jersey, New York, Puerto Rico, and Virgin Islands), Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin), Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas), Region 7 (Iowa, Kansas, Missouri, and Nebraska), Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming), and Region 9 (Arizona, California, Hawaii, Nevada, American Samoa, Guam, Mariana Islands, Marshall Islands, Micronesia, and Palau).

Note: ICRC grant awards are made to the applicant institution/organization, not the Principal Investigator.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $3,622,000 is expected to be available in FY 2001 to fund approximately four awards. It is expected that the average award will be $905,500 (total of direct and indirect costs). It is expected that the awards will begin on or around September 1, 2001, and will be made for a 12 month budget period within a project period of up to five years. Applications that exceed the funding cap of $905,500 will be excluded from the competition and returned to the applicant. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Center funding is to be designated for two types of activities. One type of activity is considered "Core" and includes administration, management, general support services (e.g. statistical, library, media relations, and advocacy) as well as activities associated with research development, technical assistance, and education (e.g. seed projects, training activities, and collaborative and technical assistance activities with other groups). Funds may be allocated for trainee stipends, tuition remission, and trainee travel, in accordance with the current rates for the Public Health agencies. Indirect costs for these trainee-related activities are limited to 8.0 percent. Defined research projects constitute the second type of activity, and ICRCs are encouraged to work toward addressing the breadth of the field. Core activities and defined research projects may each constitute between 25 percent–75 percent of the operating budget and should be balanced in such a way that the ICRC demonstrates productivity in research as well as teaching and service. Applicants with less demonstrated expertise in research are encouraged to devote a larger percentage of funds to defined research projects in order to establish their capability as research centers of excellence.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

Funding Preferences

Funding preference will be given to re-competing ICRCs. These centers represent a long term investment for NCIPC and an established resource for Injury Control related issues for their States and regions.

D. Program Requirements

The following are applicant requirements:

1. Applicants must demonstrate expertise and conduct research projects in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) and are encouraged to be comprehensive.

2. Applicants must document ongoing injury-related research projects or control activities currently supported by other sources of funding.

3. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, e.g., dean of a school, vice president of a university, or commissioner of health. The director must have no less than 30 percent effort devoted solely to this project with an anticipated range of 30 percent—50 percent.

4. Applicants must demonstrate experience in successfully conducting, evaluating, and publishing injury research and/or designing, implementing, and evaluating injury control programs.

5. Applicants must provide evidence of working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.

6. Applicants must provide evidence of involvement of specialists or experts in medicine, engineering, epidemiology, law and criminal justice, behavioral and social sciences, biostatistics, and/or public health as needed to complete the plans of the center. These are considered the disciplines and fields for ICRCs. An ICRC is encouraged to involve biomechanicists in its research. This, again, may be achieved through collaborative relationships as it is not a requirement that all ICRCs have biomechanical engineering expertise.

7. Applicants must have established curricula and graduate training programs in disciplines relevant to injury control (e.g., epidemiology, biomechanics, safety engineering, traffic safety, behavioral sciences, or economics).

8. Applicants must demonstrate the ability to disseminate injury control research findings, translate them into interventions, and evaluate their effectiveness.

9. Applicants must have an established relationship, demonstrated by letters of agreement, with injury prevention and control programs or injury surveillance programs being carried out in the region in which the ICRC is located. Cooperation with private-sector programs, e.g. "Safe USA" partnerships, is encouraged.

10. Applicants should have an established or documented planned relationship with organizations or individual leaders in communities where injuries occur at high rates, e.g., minority communities.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications should include the following information:

1. Face page
2. Description (abstract) and personnel

3. Table of contents
4. Detailed budget for the initial budget period: The budget should reflect the composite figures for the grant. In addition, separate budgets (direct and indirect costs) and justifications should be provided for the following categories of activities:

a. Core activities, including management and administrative functions, other non-research activities (e.g. education/training, consultation, technical assistance, translation/dissemination, program and policy development and evaluation, advocacy, and media activities, etc.), and small seed projects of less than $15,000 for a one year period or less.

b. Research Studies:

(1) Small studies of $15,000–75,000 for each, of one to three years duration. These projects might be expansions of seed projects, either further developing methods or hypotheses in preparation for a larger investigation leading to the submission of an RO1 level proposal, or may be stand-alone investigations sufficient to yield results worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(2) Larger scale studies with annual budgets exceeding $75,000 and lasting up to five years. These projects typically will test hypotheses and employ more sophisticated methodologies and/or larger sample sizes than small studies.

For seed projects, only modest descriptions are required within the application and/or clear definition of procedures used to select the projects. More detailed descriptions, commensurate with costs, are required for both small studies and larger scale projects.

5. Budget for entire proposed project period including budgets pertaining to consortium/contractual arrangements.
6. Biographical sketches of key personnel, consultants, and collaborators, beginning with the Principal Investigator and core faculty.
7. Other support: This listing should include all other funds or resources pending or currently available. For each grant or contract include source of funds, amount of funding (indicate whether pending or current), date of funding (initiation and termination), and relationship to the proposed program.
8. Resources and environment.
9. Research plan:

a. ICRCs are to develop a range of research and other non-research activities that are designed to advance the field of injury control through development of new scientific or surveillance methods, creation of new knowledge, and translation of knowledge into training, program and policy development and evaluation activities or other applications that will ultimately reduce injuries or their effects. ICRC applications should articulate how the activities of their program are integrated with each other so as to demonstrate the whole of the ICRCs activities and their potential impact.

b. A detailed research plan (design and methods) including hypothesis and expected outcome, value to field, and specific, measurable, and time-framed objectives consistent with the activities for each project within the proposed grant.

(1) Seed projects require a short write up describing the injury control context of the study, the objective, the design, the setting and participants, the intervention being addressed, main outcome measurements, expected results, time lines, cost (direct and indirect), and plans for translation/dissemination, and/or clear definition of procedures used to select the projects.

(2) Small research projects require a 10–15 page write up describing the accomplishment of all the steps, including the development and testing of methods, the instruments, and the collection of preliminary data, needed to take an innovative approach and develop it to the level of a larger investigation leading to the submission of an RO1 level proposal or a stand-alone investigation sufficient to yield results worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(3) Large research projects require an RO1 level write up as described in the PHS 398 (Rev. 4/98) guidelines and should be included as appendices of the application.

(4) A detailed evaluation plan which should address outcome and cost-effectiveness evaluations as well as formative, efficacy, and process evaluation.

Include in the narrative for each small research project and large project in the research plan section of the application:

(1) Title of Project
(2) Project Director/Lead Investigator
(3) Institution(s)
(4) Categorization as to "Prevention, Acute Care, Rehabilitation, or Biomechanics"
(5) Categorization as to "Seed Project, Small Project, or Large Project"
(6) Categorization as to "New or Ongoing Project"
(7) Cost/Year (Direct and Indirect)
(8) Research Training? Names, Degrees of Persons Trained or in Training
(9) Key Words
(10) Brief Summary of Project including Intended Application of Finding (Abstract)

c. A description of the core faculty and its role in implementing and evaluating the proposed programs. The applicant should clearly specify how disciplines will be integrated to achieve the ICRCs objectives.

d. Charts showing the proposed organizational structure of the ICRC and its relationship to the broader institution of which it is a part, and, where applicable, to affiliate institutions or collaborating organizations. These charts should clearly detail the lines of authority as they relate to the center or the project, both structurally and operationally. ICRC directors should report to an appropriate organizational level (e.g. dean of a school, vice president of a university, or commissioner of health), demonstrating strong institution-wide support of ICRC activities and ensuring oversight of the process of interdisciplinary activity.

e. Documentation of the involved public health agencies and other public and private sector entities to be involved in the proposed program, including letters that detail commitments of support and a clear statement of the role, activities, and participating personnel of each agency or entity.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Submit the original and five copies of PHS 398 (OMB Number 0925–0001)and adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit.

On or before November 1, 2000, submit the application to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

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Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late Applications: Applications which do not meet the criteria in (1.) or (2.) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading Program Requirements. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by the Injury Research Grant Review Committee (IRGRC) to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Awards will be made based on priority scores assigned to applications by the IRGRC, programmatic priorities and needs determined by a secondary review committee (the Advisory Committee for Injury Prevention and Control), and the availability of funds.

1. Review by the Injury Research Grants Review Committee (IRGRC)

Initial peer review of ICRC grant applications will be conducted by the IRGRC, which will recommend the application for further consideration or not for further consideration. For those applications recommended for further consideration, a team of peer reviewers, including members of the IRGRC, will conduct on-site visits at each applicant institution, generate summary statements for the visits, and report its assessment to the IRGRC.

Factors to be considered by the IRGRC include:

a. The specific aims of the application, e.g., the long-term objectives and intended accomplishments. Approval of research projects (including new research projects proposed during the five year funding cycle) is subject to peer review.

(1) Seed projects will be evaluated collectively on the mechanism for solicitation of projects, on the technical/scientific merit review, and on the selection and monitoring of projects.

(2) Small projects will be evaluated individually on the innovative approach and proposed methods for achieving an investigation sufficient to support a submission of an RO1 level proposal and/or worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(3) Large projects will be evaluated individually according to existing RO1 level project standards as described in the PHS 398 (Rev. 4/98) guidelines. An application must have a minimum of three large research projects approved in order to be recommended for further consideration.

b. The scientific and technical merit of the overall application, including the significance and originality (e.g., new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.

c. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated application objectives.

d. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

e. The soundness of the proposed budget in terms of adequacy of resources and their allocation.

f. In addition to conducting defined research projects, ICRCs are expected to devote substantial attention to activities directed at advancing the field through other activities that are designed to improve research capabilities and translate research into practice. Examples of such activities include consultation and technical assistance that are responsive to regional and state priorities, professional training for researchers and practitioners, program development, and evaluation endeavors. The degree of effort devoted to these aspects of an ICRCs program should be clearly stated in the justification and the budget. The degree of effort may be varied and should reflect the specific focus and goals of the ICRC.

g. Details of progress in the most recent funding period should be provided in the application if the applicant is submitting a re-competing application. Documented examples of success include: development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; ongoing provision of consultation and technical assistance; integration of disciplines; translation of research into implementation; impact on injury control outcomes including legislation, regulation, treatment, and behavior modification interventions.

h. Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

i. Does the applicant meet the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research?

j. Does the application adequately address the requirements of the "PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions?'

2. Review by the CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Secondary review of ICRC grant applications will be conducted by the Science and Program Review Work Group (SPRWG) of the ACIPC. The SPRWG consists of ACIPC members, Federal ex officio participants, and organizational liaisons. The Federal ex officio participants will be responsible for identifying proposals in overlapping areas of research interest so that unwarranted duplication in federally-funded research can be avoided. The NCIPC Division Associate Directors for Science (ADS) or their designees will address the SPRWG to assure that research priorities of the announcement are understood and to provide background regarding current research activities. These recommendations will be presented to the entire ACIPC in the form of a report by the Chairman of the SPRWG. The ACIPC will vote to approve, disapprove, or modify these recommendations for funding consideration.

These recommendations, based on the results of the review by the IRGRC, the relevance and balance of the proposed research relative to the NCIPC programs and priorities, and the assurance of no duplication of federally-funded research, are presented to the Director, NCIPC, for funding decisions.

Factors to be considered by the ACIPC include:

a. The results of the peer review.

b. The significance of the proposed activities as they relate to national program priorities, geographic balance, and the achievement of national objectives.

c. The overall balance of the ICRC program in addressing the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including racial/ethnic minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control (such as biomechanics, epidemiology, and behavioral science).

d. Budgetary considerations. The ACIPC will recommend annual funding levels as detailed under the heading, Availability of Funds.

3. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly work plans are being met;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The methods described will clearly lead to achievement of these objectives;

d. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan; and

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. progress report annually;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each see Addendum 1 in the application kit.

AR–1 Human Subjects Certification

AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research

AR–3 Animal Subjects Requirements

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirement

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities

AR–20 Conference Activities within Grants/Cooperative Agreements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301, 391, 392, 393, and 394 of the Public Health Service Act, [42 U.S.C. 241, 280b, 280b–1, 280b–1a, and 280b–2] as amended. Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

For this announcement and other CDC announcements, see the CDC home page on the Internet: http://www.cdc.gov.

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. A complete program description and information on application procedures are contained in the application package.

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Colgate Building, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone 770–488–2717, Internet address: jcw6@cdc.gov

Programmatic assistance may be obtained from: Tom Voglesonger, Program Manager, Office of Research Grants, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., (K58), Atlanta, GA 30341–3724, Telephone 770–488–4265, Internet address: tdv1@cdc.gov.

Please refer to Announcement 01007 when requesting information and submitting an application.

Dated: June 7, 2000.

Henry S. Cassell, III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–14831 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following conference call meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research (ACERER), Subcommittee for Management Review of the Chernobyl Studies (SMRCS).

Time and Date: 1 p.m.–1:30 p.m., June 26, 2000.

Place: The conference call will originate at the National Center for Environmental Health (NCEH), CDC, in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: This subcommittee is charged with providing guidance to the scientific reviewers and staff, and reporting back to the full ACERER on the charge from the Department and Congress to assess the management, goals, and objectives of the National Cancer Institute Chernobyl studies.

Matters To Be Discussed: The conference call agenda is to reach consensus on the review and report submitted by the SRMCS.

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 1 p.m., Eastern Time. To participate in the conference call, please dial 1–877–322–9654 and enter conference code 970943. You will then be automatically connected to the call.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Sage, Executive Secretary, ACERER, and Acting Deputy Director, NCEH, CDC, 4770 Buford Highway, NE, (F–28), Atlanta, Georgia 30341–3724, telephone 770/488–7002, fax 770/488–7015.

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The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 8, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–14945 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 a.m.–6:30 p.m., June 21, 2000. 8 a.m.–4:30 p.m., June 22, 2000.

Place: Four Points Hotel by Sheraton, 1850 Cotillion Drive, Atlanta, Georgia 30338.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. § 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include a discussion on the ACIP policies and procedures; ACIP recommendations for the pneumococcal conjugate vaccine: vaccine additive; aluminum update; vaccine additive: thimerosal; vaccines and autism; bioterrorism working group; general recommendations; anaphylaxis after MMR due to gelatin; progress report on vaccine identification standards initiative; status of high-speed needle-free jet injectors for mass vaccination campaigns; update on Geneva meeting on rotavirus vaccination; Vaccines for Children program update; adult working group: pneumococcal polysaccharide update; CDC/FDA report on two dose schedule for hepatitis B for adolescent; update on influenza vaccine supply; Global Alliance for Vaccines and Immunization; progress in supporting global immunization programs and introduction of new vaccines; Nabi an update from the Food and Drug Administration; update from the National Center for Infectious Diseases; update from the National Immunization Program; update from the Vaccine Injury Compensation Program; update from the National Vaccine Program. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Program Analyst, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, m/s E61, Atlanta, Georgia 30333. Telephone 404/639–8096.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 8, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–14944 Filed 6–12–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N–0412]

Rajaram K. Matkari; Conviction Reversal; Final Order Terminating Debarment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order, under the Federal Food, Drug, and Cosmetic Act (the act), terminating the debarment of Rajaram K. Matkari, 1304 Riverglen Way, Berthoud, CO 80513. FDA is issuing this order because the U.S. District Court for the District of Maryland issued a Writ of Error Coram Nobis, reversing Mr. Matkari's conviction and Mr. Matkari applied for termination of his debarment on this basis.

EFFECTIVE DATE: June 13, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 20, 1993 (58 FR 54156), Rajaram K. Matkari was permanently debarred from providing services in any capacity to a person with an approved or pending drug product application (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(dd))). The debarment was based on FDA's finding that Mr. Matkari was convicted of a felony under Federal law for conduct relating to the development or approval of a drug product, or otherwise relating to the regulation of a drug product (section 306(a)(2)(A) and (a)(2)(B) of the act). Mr. Matkari, the former Vice President for Regulatory Affairs and Product Development of Pharmaceutical Basics, Inc. (PBI), pled guilty to and was sentenced on July 28, 1989, for giving an unlawful gratuity, a felony offense under 18 U.S.C. 201(c)(1)(A). The basis for this conviction was Mr. Matkari's payment of approximately $2,000 to an FDA chemistry review branch chief who was responsible for supervising the chemists who reviewed PBI's applications to determine whether those applications met certain statutory standards for approval.

On February 22, 2000, the U.S. District Court for the District of Maryland issued an order granting Mr. Matkari's petition for a Writ of Error Coram Nobis in his criminal case. A copy of the court's order is available in Docket No. 92N–0412. By this order, the court reversed Mr. Matkari's conviction. On April 18, 2000, Mr. Matkari petitioned for termination of debarment under section 306(d)(3)(B)(i) of the act, as amended by the Generic Drug Enforcement Act. Section 306(d)(3)(B)(i) of the act states that "If the conviction which served as the basis for the debarment of an individual under subsection (a)(2) * * * is reversed, the Secretary shall withdraw the order of debarment."

Accordingly, the Senior Associate Commissioner for Policy, Planning, and Legislation, under section 306(d)(3)(B)(i) of the act and under authority delegated to him (21 CFR 5.20), is issuing this order withdrawing the order of permanent debarment of Rajaram K. Matkari, thereby allowing him to provide services in any capacity to a person with an approved or pending drug product application. Rajaram K. Matkari's debarment is terminated effective June 13, 2000, (section 306(d)(3)(B)(i) of the act).

Dated: June 6, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–14806 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–1332]

Ecolab, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ecolab, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of peroxyacetic acid, octanoic acid, acetic acid, hydrogen peroxide, peroxyoctanoic acid, and 1-hydroxyethylidene-1,1-diphosphonic acid as an antimicrobial agent on red meat carcasses.

DATES: Submit written comments on the petitioner's environmental assessment by July 13, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0A4720) has been filed by Ecolab, Inc., Ecolab Center, 370 Wabasha St., St. Paul, MN 55102. The petition proposes to amend the food additive regulations in 21 CFR part 173 (21 CFR part 173) to provide for the safe use of a mixture of peroxyacetic acid, octanoic acid, acetic acid, hydrogen peroxide, peroxyoctanoic acid, and 1-hydroxyethylidene-1,1-diphosphonic acid as an antimicrobial agent on red meat carcasses.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may submit to the Dockets Management Branch written comments by July 13, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: May 30, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–14906 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 26 and 27, 2000, 8:30 a.m. to 5:30 p.m.

Location: Marriott Washington Center, Ballrooms A through E, 9751 Washington Blvd., Gaithersburg, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6758, e-mail at PerezT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12538. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 26, 2000, the committee will discuss new drug application (NDA) 21–200, Zelmac™ (tegaserod), Novartis Pharmaceuticals Corp., for the treatment of abdominal pain and discomfort, bloating and altered bowel function in patients with irritable bowel syndrome who have predominant symptoms of pain, discomfort, and constipation. On June 27, 2000, the committee will discuss risk management of post-marketing adverse events associated with NDA 21–107, Lotronex™ (alosetron) Glaxo Wellcome.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 19, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 19, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the June 26 and 27, 2000, Gastrointestinal Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Gastrointestinal Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

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Dated: June 5, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–14805 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

White House Initiative on Asian Americans and Pacific Islanders President's Advisory Commission; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to conduct a public meeting by videoconference during the month June 2000.

Name: President's Advisory Commission on Asian Americans and Pacific Islanders (AAPIs).

Date and Time: June 26, 2000; 4:00 p.m.–6:00 p.m. EST.

The meeting is open to the public.

The President's Advisory Commission on AAPIs will conduct a public meeting by videoconference on June 26, from 4:00 p.m. to 6:00 p.m. EST inclusive. The meeting is open to the public; however, teleconference lines are limited. Please call Mr. Tyson Nakashima at (301) 443–2492, if you are interested in participating in the call and to obtain the dial-in number. Agenda items will include, but will not be limited to: Approval of May Commission Meeting minutes; reports from subcommittees; administrative tasks; deadlines; and the upcoming Town Hall and Commission meetings.

The purpose of the Commission is to advise the President on the issues facing Asian Americans and Pacific Islanders (AAPIs). The President's Advisory Commission on AAPIs will be seated through June 7, 2001.

Requests to address the Commission should be made in writing and should include the name, address, telephone number and business or professional affiliation of the interested party. Individuals or groups addressing similar issues are encouraged to combine comments and present through a single representative. The allocation of time for remarks may be adjusted to accommodate the level of expressed interest. Written requests should be faxed to (301) 443–0259. Anyone who has interest in joining any portion of the meeting or who requires additional information about the Commission should contact: Mr. Tyson Nakashima, Office of the White House Initiative on AAPIs, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, MD, 20857. Telephone (301) 443–2492. Anyone who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Nakashima no later than June 19, 2000.

Dated: June 6, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–14807 Filed 6–12–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General; Program Exclusions: May 2000

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of May 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
AKIN, CHARLES PHILIP, RAFTWOOD, TX	06/20/00
AKOPYAN, GEVORK, LOS ANGELES, CA	06/20/00
AKOPYAN, DANIEL, SAN DIEGO, CA	06/20/00
BRIKER, RUSLAN, BROOKLYN, NY	06/20/00
BRITTAIN, RICHARD E JR, MANCHESTER, KY	06/20/00
CARABELLA, ROBERT, MANCHESTER, KY	06/20/00
CHARLES, JOSEPH N, BROOKLYN, NY	06/20/00
CHASSEREAU, DANIEL, EHRHARDT, SC	06/20/00
COLLIER, JORDYCE A, MEDFORD, OR	06/20/00
CORN, JOANN, DENVER, CO	02/14/99
CROW, DONNA M, SHENANDOAH, IA	06/20/00
DINE, THEODORE SR, N SYRACUSE, NY	06/20/00
DISHON, LORI A, BALTIMORE, MD	06/20/00
DOBY, KIMBERLY M, DENVER, CO	06/20/00
DOVALINA, ELSA, EAGLE PASS, TX	06/20/00
DURAND, DEVIN, ENCINITAS, CA	06/20/00
DURANONA, RAFAEL ECHAVARRIA, MIAMI, FL	06/20/00
EKIZYAN, OGANES, LOS ANGELES, CA	06/20/00
ELIZALDE, MARIA ROSA, MIAMI, FL	06/20/00
EMBRIANO, PETER J, SOMERS, CT	07/28/98
GARNER, WILMA J, BALTIMORE, MD	06/20/00
GODZHOYAN, ARPINE, LOS ANGELES, CA	06/20/00
GONZALEZ, WILFREDO, MIAMI, FL	06/20/00
GOODBODY, JOHN P, WEBSTER, NY	06/20/00
HERAVI, BIJAN, LOS ANGELES, CA	06/20/00
HERNDON, PATRICIA SUE, ENID, OK	06/20/00
ILYAS, ZAHID, EDISON, NJ	06/20/00
KIDS CHARIOT, INC, COLORADO SPRNGS, CO	06/20/00

Subject, city, state	Effective date
KIESTLER, TED JAMES, SPANAWAY, WA	06/20/00
LAYMON, ELIZABETH CAROLINE, MIAMI, OK	06/20/00
LLOYD, BRUCE, MARLBOROUGH, MA	12/08/98
MALOFF, HAROLD, ROSLYN, NY	06/20/00
MARRAZZO, DEAN A, JESSUP, PA	06/20/00
MARTINEZ, MELCHOR, WHITEHALL, PA	06/20/00
MASTERSON, MARK, SANTA ROSA, CA	12/02/99
MENDEZ-CANTU, BLANCA, EAGLE PASS, TX	06/20/00
MIZNER, JAMES J JR, STANTON, VA	06/20/00
MOHAMEDOLWAN, TAMGID TAWFIK, FISHKILL, NY	06/20/00
NAKASHIMA, MELVIN K, EL MONTE, CA	06/20/00
PALEZYAN, RICHARD, BURBANK, CA	06/20/00
PARIKH, PRADIPKUMAR, N WOODMERE, NY	06/20/00
PERGLER, RICHARD R, CRYSTAL LAKE, IL	06/20/00
PICKLES, HOMER LEE JR, GRAND PRAIRIE, TX	06/20/00
POETOEHENA, MARCEL RUDOLF J II, LONG BEACH, CA	06/20/00
RESNICK, LIONEL, MIAMI BEACH, FL	06/20/00
RHYNES, RUSHANDRA C, EMERSON, AR	06/20/00
ROBERTS, LESLIE M, NEEDHAM, MA	06/20/00
ROLLINS, CLEN, WINNSBORO, LA	06/20/00
ROSENBERG, JEROME, GREAT NECK, NY	06/20/00
SAPO, IGOR, EL MONTE, CA	06/20/00
SEIBS, BRENDA K, PINE BLUFF, AR	06/20/00
SHARMA, YOGENDRA, ROBBINSVILLE, NJ	06/20/00
SHERANI, TAHIR, S ORANGE, NJ	06/20/00
SPENCER, DENIS EDWIN, TUSTIN, CA	09/28/99
SPRUILL, TRACIE LEE, WESTBURY, NY	06/20/00
STEINHOUSE, NATAWADEE, DANBURY, CT	06/20/00
STIMPSON, JERRY LINWOOD, IDAHO SPRINGS, CO	06/20/00
TASLAGIAN, MOVSES, RESEDA, CA	06/20/00
THORNTON, RAYMOND LEIGH, COLORADO SPRNGS, CO	06/20/00
TOKADJIAN, STEPHAN, LOS ANGELES, CA	06/20/00
VAZQUEZ, MARIA DEL CARMEN, N MIAMI, FL	06/20/00
VAZQUEZ, JAKELINE, HIALEAH, FL	06/20/00
VUONG, VU DINH, LOMPAC, CA	06/20/00
WADDELL, CHARLES M, MARIETTA, GA	06/20/00
WELLS, GREGORY D, ASHLAND, KY	06/20/00
WILLIAMS, PAUL W JR, GRAND COTEAU, LA	06/20/00
WONGUS, ROSALIE, BALTIMORE, MD	06/20/00
WOODS, GENE MICHAEL, ELKTON, OH	06/20/00
ZANDER, PAUL D, LOS ANGELES, CA	11/03/99
FELONY CONVICTION FOR HEALTH CARE FRAUD	
FRIDAY, DAVID, WAYNE, PA	06/20/00
GETHNER, STUART MICHAEL, PARADISE VALLEY, AZ	06/20/00
KEHRIG, TIMOTHY, ST CLAIRE, MI	06/20/00
KERAK, JOEL, DOYLESTOWN, PA	06/20/00
ROACH, SHEILA ANN, PHILADELPHIA, PA	06/20/00
SOBEL, PATRICIA M, PHILADELPHIA, PA	06/20/00
VANDERMUELLEN, RONALD, PHILADELPHIA, PA	06/20/00
FELONY CONTROL SUBSTANCE CONVICTION	
BOYD, KIMBERLY S, PIQUA, OH	06/20/00
BRAKE, TERESA A, CLEVELAND, OH	06/20/00
ESTRELLA, DAVID, BROOKLYN, NY	06/20/00
SLOVER, ROBERTA HARTMAN, REHOBOTH BEACH, DE	06/20/00
TIMMONS, LYNETTE DAWN, SAN DIEGO, CA	06/20/00
PATIENT ABUSE/NEGLECT CONVICTIONS	
ANGELES, ROMEO TAYAG, SAN DIEGO, CA	06/20/00
ANGRISANO, LISA, BLASDELL, NY	06/20/00
BETTGER, ROBIN D, NEWARK, OH	06/20/00
BLASER, EILEEN M, HUDSON, IA	06/20/00
BRINKLEY, RACHEL ELIZABETH, GAINESVILLE, TX	06/20/00
BROWN, JEFFREY D, ST CHARLES, MN	06/20/00
CARDENAS, RAMON ALBERTO, CANOGA PARK, CA	06/20/00
CARDILLO, JO-ANN, COVENTRY, RI	06/20/00
CAREY, HELEN N, COLUMBUS, OH	06/20/00
CLARK, TREVOR DALE, STRATFORD, OK	06/20/00
CRAWFORD, CAROLYN, PICKENS, MS	06/20/00

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Subject, city, state	Effective date
CROSS, RICHARD D, HARVEY, IL	06/20/00
DECKER, ROBERT E, ROME, NY	06/20/00
DENNIS, MARIE, LAS VEGAS, NV	06/20/00
EALY, OLA M, CONWAY, AR	06/20/00
ELANZO, ELANZO, ENID, OK	06/20/00
FIELD, JOYCE MARIE, REDDING, CA	06/20/00
FOREE, BONNIE F, FRUITA, CO	06/20/00
GILLEYLEN, ELIZABETH, ABERDEEN, MS	06/20/00
GLASCO, ALFONZA, BOYDTON, VA	06/20/00
GRIFFITH, NICOLE A, MAGEE, MS	06/20/00
GUEVARA, SARAH M, MIAMISBURG, OH	06/20/00
HARNEY, DUANE A, PERKINS, OK	06/20/00
HARRIS, PATRICIA ANN, MALVERN, AR	06/20/00
HAYGOOD, ASHLEY BRENT, OKLAHOMA CITY, OK	06/20/00
HOLLOWAY, JANICE, LONG BEACH, MS	06/20/00
HOWLAND, NATHAN HENRY III, TENNESSEE COLONY, TX	06/20/00
HUNTER, TRACY, CANTON, MS	06/20/00
JACOBS, RODERICK DEWAYNE, BUNKIE, LA	06/20/00
JEFFERSON, PATRICIA R, DAYTON, OH	06/20/00
JOHNSON, LEANIER MONTEZ, COLUMBIA, SC	06/20/00
KIM, SUN CHOONG, MAHANOY CITY, PA	06/20/00
KING, GREGORY BRUCE, POTEAU, OK	06/20/00
KROMRIE, BRENDA SUE, FARNHAMVILLE, IA	06/20/00
KURBAN, HAKAN, RUTHERFORD, NJ	06/20/00
LEE, RANDOLPH DERAL, SHREVEPORT, LA	06/20/00
LEWIS, DONNIE SR, MALVERN, AR	06/20/00
MARTIN, KEITH D, LITTLE ROCK, AR	06/20/00
MAY, DEBORAH L, GALESBURG, IL	06/20/00
MCNEILL, MELODIE, LOMPOC, CA	06/20/00
MILLER, PATRICIA, PEKIN, IL	06/20/00
MOLHO, DAVID, SCARSDALE, NY	06/20/00
OCAMPO, GEORGE, SYLMAR, CA	06/20/00
ODOM, JACQUELINE, BATON ROUGE, LA	06/20/00
OLAH, SANDOR L, HAMILTON, MI	06/20/00
ORANO, LOURDES V, STERLING HGTS, MI	06/20/00
PENN, MICHAEL ADAM, ADDISON, TX	06/20/00
POWELL, CELESTINE, KEWANEE, IL	06/20/00
REED, PAMELA A, DECATUR, IL	06/20/00
RUDOLPH, JANE M GUNSELMAN, FLORENCE, AL	06/20/00
SANTIAGO, TEOFILA C, CANOGA PARK, CA	06/20/00
SCHEIBE, MELISSA LYNN, BALTIMORE, MD	06/20/00
SEAL, SHIRLEY ANN, OKLAHOMA CITY, OK	06/20/00
SEALS, SANDRA LYNN, CANTON, MS	06/20/00
SHARMA, RAGENDRA C, KALAMAZOO, MI	06/20/00
SHEPHERD, STORMY, WESTMINISTER, CO	06/20/00
SIMON, CAROLYN SUE, ENID, OK	06/20/00
SMITH, KIMBERLY A, LACKAWANNA, NY	06/20/00
SMITH, ERIC J, BELLVUE, IL	06/20/00
VARGAS, MICHELLE, SCHAUMBURG, IL	06/20/00
WARRIOR, GAYNELL, CHECOTAH, OK	06/20/00
WRIGHT, JANICE MARIE, PITTSBURGH, PA	06/20/00
CONVICTION FOR HEALTH CARE FRAUD	
DAVIS, ROBERT LEE, KEITHVILLE, LA	06/20/00
HARLEY, JOHN HINTON, PUEBLO, CO	06/20/00
HUSAIN, ABDUL, E MEADOW, NY	06/20/00
ROYER, MARY ANN, DENVER, CO	06/20/00
STRUBLE, ENRIQUE E, KINGMAN, KS	06/20/00
WASHINGTON, RENEE M, SUMTER, SC	06/20/00
LICENSE REVOCATION/SUSPENSION/SURRENDERED	
ACOFF, CINDY LUE, TUSCALOOSA, AL	06/20/00
ALDRICH, RONALD DEAN, PLANO, TX	06/20/00
ALEXANDER, DERWIN, CHICAGO, IL	06/20/00
ALI, HAARIS, LOMBARD, IL	06/20/00
ALLEN, HENRY F, RUTLAND, VT	06/20/00
ASHLEY, KIMBERLY, CHICAGO, IL	06/20/00
AUSTIN, MILTON F, KEOKUK, IA	06/20/00
BAEDER, MARGARET S, AMBLER, PA	06/20/00
BARROS, JANET K, JAMAICA PLAIN, MA	06/20/00
BARTON, KIM DEWIT, CORPUS CHRISTI, TX	06/20/00

Subject, city, state	Effective date
BEEBE, JASON A, MASON CITY, IL	06/20/00
BERANEK, RICHARD N, COLUMBUS, OH	06/20/00
BERGEN, JOELLIE D, CHEYENNE, WY	06/20/00
BERGERSON, BERT CECIL, ODESSA, TX	06/20/00
BLACK, HOLLIE KIM, VISTA, CA	06/20/00
BLACKBURN, TOYA J, HAZELCREST, IL	06/20/00
BLADES, WILLIAM CLYDE, HERRIN, IL	06/20/00
BOSTICK, LINDA KAY, FAYETTE, AL	06/20/00
BOSWELL, JULIE LEIGH, TRINITY, TX	06/20/00
BOULAND, PAUL D, DES MOINES, IA	06/20/00
BRANDON, LISA ANN, FORT WORTH, TX	06/20/00
BRANHAM, TIMOTHY L, COLUMBUS, OH	06/20/00
BRAUN, BENNETT G, SKOKIE, IL	06/20/00
BRICKNER, JAN MARIE, E PEORIA, IL	06/20/00
BROCK, LAWRENCE S, CLEARFIELD, IA	06/20/00
BROWN, GAIL D, GREGORY, MI	06/20/00
BURRAGE, BERNADETTE, DOLTON, IL	06/20/00
BUTLER, DENISE L, CHICAGO, IL	06/20/00
CALAMON, PAUL JONATHAN, SAN ANTONIO, TX	06/20/00
CARLSON, STEVEN A, BURNSVILLE, MN	06/20/00
CARLTON, CONSTANCE S, CENTERVILLE, OH	06/20/00
CHABOT, JACQUELINE D, SANTEE, CA	06/20/00
CILURSO, JUNE EVA, CORTE MADERA, CA	06/20/00
COLBERT, CRISTIN M, PROSPECT PARK, PA	06/20/00
COLEMAN, CORNELL, CHICAGO, IL	06/20/00
COMPANY, CHRISTOPHER LAVERN, DALLAS, TX	06/20/00
COPPAGE, BRENDA A, WALTON, KY	06/20/00
COX, JOELENA A, EDGEWOOD, IL	06/20/00
CRENSHAW, RODERICK K, COLUMUS, OH	06/20/00
CRONIN, BARBARA, ORELAND, PA	06/20/00
DAIGLE, DONALD E, N ANDOVER, MA	06/20/00
DANTZLER, JOHN ALVIN, BREWTON, AL	06/20/00
DAVIES, BRIAN W, AKRON, OH	06/20/00
DEUTSCH, TIEASE D, SALISBURY, NC	06/20/00
DICKENS, JAMES C, LAKEWOOD, OH	06/20/00
DRIVER, MARY A, BELLWOOD, IL	06/20/00
ELLER, ELVIRA, HUTTO, TX	06/20/00
ELLISON, THOMAS M, NORTHLAKE, IL	06/20/00
FEREBEE-ECHOLS, DEBORAH YVONNE, CHESAPEAKE, VA	06/20/00
FLOYD, KATHY L, LANCASTER, TX	06/20/00
FORESMAN, ROBERT P, CASEY, IL	06/20/00
FOX, WILLIAM JR, WOODBRIDGE, VA	06/20/00
FRAZIER, SHARON LAVETTE, BIRMINGHAM, AL	06/20/00
FREW, JAMES R JR, BIG RAPIDS, MI	06/20/00
GILL, JEFFREY J, MANHAWKIN, NJ	06/20/00
GLICK, RONALD EVERETT, MAPLE GLEN, PA	06/20/00
GORSKI, CARLEIGH M, TUCSON, AZ	06/20/00
GRANT, JOANNE NEWSOM, GEORGIANA, AL	06/20/00
GREEN, ARVINIA, BOWLING GREEN, KY	06/20/00
GREEN, RICHARD GORDON, HUNTINGTON, NY	06/20/00
GRIFFITH, JULLIAN DRU, FULTON, TX	06/20/00
GROSS, MARY H, N WASHINGTON, PA	06/20/00
HARMON, JENNETTA JOYCE, ENTERPRISE, AL	06/20/00
HARRIS, JANET MABEL DEAN, MOBILE, AL	06/20/00
HARRIS, PAMELA E, MARKHAM, IL	06/20/00
HINDMAN, RONALD E, HARWICH, MA	06/20/00
HOLE, BARBARA A, WASHINGTON, IA	06/20/00
HORNE, JAMES THOMAS, BRONXVILLE, NY	06/20/00
HUGGINS, CARMEN YADIRA, DAPHNE, AL	06/20/00
HUIZINGA, RAMONA C, LOCKPORT, IL	06/20/00
HUTCHINSON, ARCHIBALD W, AURORA, IL	06/20/00
IVERSON, ROGER G, EAGLE RIVER, WI	06/20/00
JEFFERSON, MILDRED DIANNE, JASPER, AL	06/20/00
JENSEN, BERNARD, ARGYLE, NY	06/20/00
JOHNSON, RANDALL O, LAKE FOREST, IL	06/20/00
KENT, KATHRYN AMY, TUPELO, MS	06/20/00
KETCHUM, CAROLL COLLEEN, OKLAHOMA CITY, OK	06/20/00
KIM, DONG I, HOLLAND, MI	06/20/00
KINNAIRD, WILLIAM S, NOVELTY, OH	06/20/00
KOEPFER, DAWN M, SCOTTSDALE, AZ	06/20/00
LAMER, LORI LYNN, IOWA PARK, TX	06/20/00
LAND, CASSANDRA NELL, MOBILE, AL	06/20/00
LAVENDER, JANIS HORNER, VOORHEES, NJ	06/20/00

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LEFLER, TINA L, COELLO, IL	06/20/00
LEHRMAN, ROBIN ANN, READING, PA	06/20/00
LELKO, BETHANY JO, CARNEGIE, PA	06/20/00
LIPSIUS, PETER, LIBERTY, NY	06/20/00
LOCKE, DEANNA CHRISTINE, SALADO, TX	06/20/00
LOWERY, SAMUEL R, FOSTORIA, OH	06/20/00
MADDUX, TEDDY RAYE, SACRAMENTO, CA	06/20/00
MADISON, KIMBERLEY J, STANDISH, ME	06/20/00
MARTINEZ, KRISTEN NOELLE, KATY, TX	06/20/00
MATHER, BARBARA ANN, EL CAJON, CA	06/20/00
MAYS, JEREMY VINCENT, HOUSTON, TX	06/20/00
MCCALLUM, MARK FRANKLIN ARCHIE, WYOMING ONTARIO, CN	06/20/00
MCELYNN, MARIANN, FREEPORT, NY	06/20/00
MCLAUGHLIN, DEBRA A, HASTINGS, MI	06/20/00
MILLER, JOAN C, VERNON, TX	06/20/00
MISTYSYN, CHRISTINE J, FREDERICK, MD	06/20/00
MOORE, SUSAN R, MADISONVILLE, KY	06/20/00
MORROW, SUSAN K, CHAMPAIGN, IL	06/20/00
MUNDY, JOANN C, INDEPENDENCE, VA	06/20/00
MUNN, ERIN K, FRANKFORT, KY	06/20/00
NELSON, JONI L, ST PAUL, MN	06/20/00
NEMETH, IRWIN, CORONADO, CA	06/20/00
NORGART, MELISSA BLAKE, SANFORD, FL	06/20/00
NORTON, WYMAN H, LAGRANGE, GA	06/20/00
O'REILLY, LINDA K, WILLIAMSBURG, VA	06/20/00
PAYNE, MARGARET A RHODEN, GAINESVILLE, FL	06/20/00
PEPIN, LAURIER A, LEWISTON, ME	06/20/00
PEPPMEIER, ROBERT E, SPRINGFIELD, MO	06/20/00
PERRY, TERESA A, FLORAL CITY, FL	06/20/00
PHARR, DONNA M, BONHAM, TX	06/20/00
PINZON, MANUEL, BAYSIDE, NY	06/20/00
PIRRIE, RICHARD MICHAEL, INDIAN ROCKS BCH, FL	06/20/00
POWELL, GREGORY V, LOVELAND, OH	06/20/00
POWERS, MELVA J, LANSING, MI	06/20/00
PROVO, IAN V, ROCKFORD, IL	06/20/00
PURIFOY, SERETA M, CLEVELAND, OH	06/20/00
PURKSON, LORRIA DENISE, BIRMINGHAM, AL	06/20/00
RAINEY, CYNTHIA E, LAWRENCEVILLE, VA	06/20/00
RASNAKE, VICKIE, LEBANON, VA	06/20/00
RAWLINSON, SANDRA DIANE, ATMORE, AL	06/20/00
REMET, JUDITH B, KINGSTON, NY	06/20/00
RIVERA, LINEA, ALHAMBRA, CA	06/20/00
ROHR, KIMBERLY TALARIGO, PORTAGE, PA	06/20/00
RUNNELS, DOROTHY FAYE, TYLER, TX	06/20/00
SANDERS, DONALD E JR, CAMPTON, KY	06/20/00
SANSHU, TROY EDWARD, SAN DIEGO, CA	06/20/00
SANTIAGO, PARRY ANTONIO, SONOMA, CA	06/20/00
SCOON, MALCOLM E, MALONE, NY	06/20/00
SEMPKOWSKI, LEON C, TUCSON, AZ	06/20/00
SHIPLEY, RAY L, SALINAS, CA	06/20/00
SICILIANI, KRISTYN RAE, CARROLLTON, TX	06/20/00
SIDEMAN, CASEY H, HOMERVILLE, GA	06/20/00
SILVA, SHARON L, BRISTOL, CT	06/20/00
SMITH, ROBIN MICHELLE, HUEYTOWN, AL	06/20/00
SOHN, YOUNG S, UPPER SADDLE RIVER, NJ	06/20/00
SPENCE, CINDY LEE, MARSHALL, TX	06/20/00
STALHEIM, ALAN J, CARPINTERIA, CA	06/20/00
STEINBERG, TORI L, WASHINGTON, IA	06/20/00
STEVENS, KATHERINE LOUISE SMITH, JELLICO, TN	06/20/00
STEWART, MARY DARLENE, SUMITON, AL	06/20/00
STRICKLAND, ROBIN J, CHARLESTOWN, NH	06/20/00
SUZUKI, ANTHONY, LONG BEACH, CA	06/20/00
TARNACKI, ANNE M, ALLEN PARK, MI	06/20/00
TAYLOR, ROBERT M, NEW MILFORD, CT	06/20/00
TEKLUVE, JOHN P, CINCINNATI, OH	06/20/00
TOMPKINS, WANDA NELL, PORT RICHEY, FL	06/20/00
TOMPKINS, CAROLE ANN, YULEE, FL	06/20/00
TREVINO, MARY ROSE, CORPUS CHRISTI, TX	06/20/00
VIEDER, MARK D, FARMINGTON HILLS, MI	06/20/00
VILLARREAL, GLORIA G, HOUSTON, TX	06/20/00
WADE, JAMES OLIVER, ASHDOWN, AR	06/20/00
WARE, ALTON T, CLEVELAND, OH	06/20/00
WEBER, WARREN SIDNEY, SMITHTOWN, NY	06/20/00

Subject, city, state	Effective date
WHITE, CHRISTOPHER PAUL, MOULTON, AL	06/20/00
WHITE, PATRICIA LOUISE, TEMPLE, TX	06/20/00
WILCOX, SUSAN ALEEN, N PLATT, NE	06/20/00
WILLETT, JOHN E, MUSKEGON, MI	06/20/00
WINGO, WANDA JEAN, DEATSVILLE, AL	06/20/00
WRIGHT, SUSAN J, COMSTOCK PARK, MI	06/20/00
WYATT, MIAXIE, LOUISVILLE, KY	06/20/00
YATES, GERALD ALEX, SHELBY, AL	06/20/00
YNOSTROSA, RICARDO RAMOS, SAN ANTONIO, TX	06/20/00
ZARKIN, ALLAN, NEW YORK, NY	06/20/00
ZAWADZKI, KATHY J, WAUKEGAN, IL	06/20/00
FEDERAL/STATE EXCLUSION/SUSPENSION	
MASON MEDICAL SUPPLY, CHATSWORTH, CA	06/20/00
FRAUD/KICKBACKS	
LLOYD, SUZANNE MARLBOROUGH, CT	12/08/98
LLOYD GROUP LTD MARLBOROUGH, CT	12/08/98
NEW AGE PULMONARY DIAGNOSTICS, WALNUT, CA	03/12/99
PETER J EMBRIANO, M D, P C, SOMERS, CT	07/28/98
SAYERS, AARON, WALNUT, CA	03/12/99
TLG ELDERCARE INC, MARLBOROUGH, CT	12/08/98
ADVANCED MEDICAL SOLUTIONS, DENVER, CO	02/14/99
BARNO CHIROPRACTIC, ORANGEVALE, CA	06/20/00
CHIROPRACTIC HEALTH & HEALTH, KELLER, TX	06/20/00
CONTINUING HEALTH CARE ED, INC, DENVER CO	02/14/99
DME OF CASTLE ROCK, INC, DENVER, CO	02/14/99
DME OF LONGMONT, INC, DENVER, CO	02/14/99
DR ABY KAHN, INC, SAN JOSE, CA	06/20/00
DURABLE MEDICAL EQUIPMENT, INC, DENVER, CO	02/14/99
E MARK WATERMAN, D C CHIRO, CLAREMONT, CA	06/20/00
EHRHARDT PHARMACY, INC, EHRHARDT, SC	06/20/00
HEALTH CARE RESOURCES GROUP, DENVER, CO	02/14/99
HOME HEALTH CARE RESOURCES, DENVER, CO	02/14/99
JAVARONE CHIROPRACTIC, P C, OAKDALE, PA	06/20/00
KRISON MEDICAL EQUIP, INC, HIALEAH, FL	06/20/00
NC DIAGNOSTIC AND BILLING, INC, STATEN ISLAND, NY	06/20/00
OCEAN HILLS CHIROPRACTIC, PLAYA DEL REY, CA	06/20/00
P M R, INC, DENVER, CO	02/14/99
PARKWOOD DENTAL OFFICE, INC, MIAMI, FL	06/20/00
PORTILLO CHIROPRACTIC, CAMPBELL, CA	06/20/00
PROF MED RESOURCES OF OREGON, DENVER, CO	02/14/99
PROFESSIONAL HEALTH RESOURCES, DENVER, CO	02/14/99
PROFESSIONAL MEDICAL RESOURCES, DENVER, CO	02/14/99
REYES CHIROPRACTIC CENTER, VISALIA, CA	06/20/00
TOTAL CARE HEALTH SERVICES, DENVER, CO	02/14/99
DEFAULT ON HEAL LOAN	
ANDERSON, SHARON R, FULLERTON, CA	05/01/00
BETTS, ROBERT E, JACKSON, MI	06/20/00
CHOCHLA, THOMAS N, WALESKA, GA	06/20/00
COOK, IAN K, AMITYVILLE, NY	06/20/00
CORNELY, MICHAEL P, MERCHANTVILLE, NJ	04/26/00
CURTIS, DIANE B, NEWPORT BEACH, CA	06/20/00
DAVALOS, STEVEN M, CARMEL VALLEY, CA	06/20/00
ELDER, TERRY M, LOMBARD, IL	06/20/00
FOSTER, GRADY JR, SILVER SPRING, MD	06/20/00
FUCIGNA, ROBERT J, STAMFORD, CT	06/20/00
HANES, KATHY JANE, SAN DIEGO, CA	06/20/00
HENDERSON, CHARLES A, ATLANTA, GA	06/20/00
HOWARD, MICHAEL S, DALLAS, TX	06/20/00
HUDSON, SCOTT C, VICTORVILLE, CA	06/20/00
HUTCHINGS, LYLE W, UPLAND, CA	06/20/00
ISRAELSEN, JOHN A, LOGAN, UT	05/10/00
JOYCE, KARLA A, SHOREVIEW, MN	06/20/00
KELLY, KEVIN M, RANCHO CORDOVA, CA	06/20/00
KOONTZ, ROBIN M, FT LAUDERDALE, FL	06/20/00
LEWIS, GEORGE M, SUISUN, CA	02/09/00
LICHTMAN, SUSAN L, BROOKLYN, NY	06/20/00
LINEHAN, BRUCE M, PUYALLUP, WA	06/20/00

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Subject, city, state	Effective date
MAJOR, MICHAEL J, MT DORA, FL	06/20/00
MARTINEZ, THEODORE J, FRESNO, CA	06/20/00
MASSO, JOHN G, NASHVILLE, TN	06/20/00
MEREDITH, MARGARET L, BLACKSBURG, VA	06/20/00
MITCHIE, DALE P, ESSEXVILLE, MI	06/20/00
MURPHY, MICHAEL A, ASBURY PARK, NJ	04/24/00
NICHOLS, MARCUS F, CULVER CITY, CA	05/01/00
NOWRY, REMOND, N HOLLYWOOD, CA	06/20/00
PARCHMENT, LESLIE D, CLEVELAND, OH	06/20/00
RISING SUN, ZANE C, BISMARCK, ND	06/20/00
ROBINETTE, TERRY A, SANDY, UT	04/05/00
SCHILLER, CHISTINE M, FOUNTAIN VALLEY, CA	06/20/00
SNOPARSKY, HARRIS J, BENNINGTON, VT	06/20/00
SPATES, CHRISTA Y, CHICAGO, IL	06/20/00
ST JUSTE, DOMINIQUE, BROOKLYN, NY	06/20/00
STINE, SUSAN M, GROSSE POINTE PK, MI	06/20/00
TARKI, FARHAD, DALLAS, TX	06/20/00
VAISHVILA, GAIL A, SANTA MONICA, CA	06/20/00
WARD, LARRY A, LAPORTE, TX	06/20/00

Dated: June 5, 2000.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 00–14812 Filed 6–12–00; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–35]

Notice of Submission of Proposed Information Collection to OMB; Section 8 Management Assessment Program (SEMAP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 13, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0215) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be submitted from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submissions including number of respondents, frequency of response, and hours or response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: Section 8 Management Assessment Program (SEMAP).

OMB Approval Number: 2577–0215.

Form Numbers: HUD–42648.

Description of the Need for the Information and its Proposed Use: HUD will use public housing agency annual SEMAP certificates to rate and assess PHA management capabilities and deficiencies in key program areas. PHAs designated as troubled must implement plans for improvements.

Respondents: State, Local, or Tribal Governments.

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	2565		1		13.5		34,720

Total Estimated Burden Hours: 34,720.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 5, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–14867 Filed 6–12–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act; Notice of Availability of the Finding of No Significant Impact on the Final Environmental Assessment for the Diamond Fork System Proposed Action Modifications Documenting the Department of the Interior's Approval for the Central Utah Water Conservancy District to Proceed With the Construction of the Diamond Fork System Proposed Action Modifications

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of availability of the Finding of No Significant Impact on the Final Environmental Assessment for the Diamond Fork System Proposed Action Modifications.

SUMMARY: On June 15, 2000, Ronald Johnston, Program Director, Central Utah Project Completion Act, Department of the Interior (Interior), signed the Finding of No Significant Impact (FONSI) which documents the selection of the Proposed Action Modifications as presented in the Final Environmental Assessment for the Diamond Fork System Proposed Action Modifications (Modifications EA). Interior has determined that implementing the modifications to the Proposed Action Alternative described in the Modifications EA will not have a significant impact on the quality of the human environment and that an environmental impact statement is not required. The Proposed Action Alternative was described in the July 1999 Diamond Fork System Final Supplement to the Final Environmental Impact Statement (FES 99–25) (FS–FEIS).

The FONSI also approves the Central Utah Water Conservancy District (CUWCD) proceeding with construction of the Diamond Fork System, in accordance with statutory and contractual obligations. The following features will be constructed as part of the modifications to the Proposed Action: (1) Sixth Water Connection to Upper Diamond Fork Shaft, (2) Sixth Water Shaft, (3) Upper Diamond Fork Flow Control Structure, (4) Upper Diamond Fork Tunnel, (5) Monks Hollow Overflow Structure, (6) Diamond Fork Creek Outlet, (7) Diamond Fork Pipeline Extension, (8) Connection to Diamond Fork Pipeline, and (9) Access Road and Road Reconstruction.

The Proposed Action Modifications will be operated on an interim basis the same as described in the FS–FEIS, including the quantity and timing of minimum streamflows and the flexibility to other operational scenarios, except for the discharge location of the minimum streamflows into Diamond Fork Creek. The potential for generating hydroelectric power would remain the same as described in the FS–FEIS.

A Notice of Availability of the Draft Modiciations EA was published in the March 20, 2000, **Federal Register** (Volume 65, Number 54, Page 14998–14999), and a copy of the Draft Modifications EA was sent to all the agencies, groups, and individuals who received a copy of the FS–FEIS on March 24, 2000. Comments on the Draft Modifications EA were due on April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1237, E-mail rmurray@uc.usbr.gov

Dated: June 1, 2000.

Ronald Johnston,

Program Director, Department of the Interior.

[FR Doc. 00–14813 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Torres Martinez-Calpine Power Generating Facility, Riverside County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs, with the cooperation of the Torres Martinez Desert Cahuilla Indians and Calpine Corporation, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for the proposed Torres Martinez-Calpine Power Generating Facility that Calpine would construct and operate on a 40-acre parcel within the Torres Martinez Indian Reservation, Riverside County, California. The purpose of the proposed action is to help Calpine Corporation meet the electrical power needs of southern California. Details on the project location, proposed action and initial areas of environmental concern to be addressed in the EIS follow as supplementary information. This notice also announces a public scoping meeting for the content of the EIS.

DATES: Comments on the scope and implementation of this proposal must arrive by July 14, 2000. The public scoping meeting will be held on June 28, 2000, from 7 p.m. to 10 p.m.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand carry written comments to Ronald M. Jaeger, Regional Director, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California, 95825–1846. You may also comment via the Internet to billallan@bia.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. If you do not receive confirmation from the system that your Internet message was received, contact us directly at (916) 978–6043.

Comments, including names and home addresses of respondents, will be available for public review at the above address during regular business hours, 8 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The public scoping meeting will be held at the Tribal Hall, Torres Martinez Indian Reservation, 66–725 Martinez Road, Thermal, California.

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FOR FURTHER INFORMATION CONTACT: William Allan, (916) 978–6043, or Bobbi Fletcher, (760) 397–9850.

SUPPLEMENTARY INFORMATION: Calpine Corporation, through an agreement with the Torres Martinez Desert Cahuilla Indians, plans to construct, own and operate a 600 megawatt natural gas-fired power plant on a 40-acre parcel of tribal trust land in Riverside County, California, northeast of the town of Mecca. The parcel is located along 62nd Avenue, east of Johnson Street in proximity to the Coachella Canal.

Natural gas is proposed to be supplied to the plant by a new 10 to 12 mile gas line extending northward to a connection point north of the I–10 Freeway. Electricity produced by the plant would be routed through an on-site substation to nearby electrical transmission lines. Improvements to several miles of off-site transmission lines may also be required. Cooling water for the plant is proposed to be obtained from on-site wells. The water would be cycled, then possibly discharged for beneficial re-use at fish farms and/or vineyards on nearby Torres Martinez tribal lands.

The areas of environmental concern so far identified include air quality, biological and botanical resources, aesthetics, water resources and cultural resources. This range of issues may be expanded based on comments received during the scoping process.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: June 5, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–14888 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before MA June, 3, 2000. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by June 28, 2000.

Carol D. Shull,

Keeper of the National Register.

COLORADO

Moffat County

Bromide Charcoal Kilns, Off Cty. Rd. 10, Greystone, 00000740

Park County

Como School, (Rural School Buildings in Colorado MPS) Spruce St., Como, 00000739

GEORGIA

Fulton County Martin Luther King, Jr. Historic District (Boundary Increase), Roughly bounded by Freedom Pkwy., John Wesley Dobbs Ave., Decatur St., Southern RR tracks, and I–75/85, Atlanta, 00000741

IDAHO

Fremont County Crabtree, Glen and Addie, Cabin, 3939 Cowan Rd., Island Park, 00000742

MARYLAND

Baltimore Independent City Cecil Apartments, 1123 N. Eutaw St., Baltimore, 00000743

One Charles Center, 100 N. Charles St., Baltimore, 00000745

Stieff Silver Company Factory, 800 Wyman Park Dr., Baltimore, 00000744

NEW YORK

Jefferson County

Trinity Episcopal Church and Parish House, (Historic Churches of the Episcopal Diocese of Central New York MPS) 227 Sherman St., Watertown, 00000747

Orange County

Old Town Cemetery and Palatine Church Site, Grand St., Newburgh, 00000746

Otsego County

Beardslee Farm, NY 80 at Cty Rd 18, Pittsfield, 00000748

OHIO

Clark County Main Street Buildings, 6–14 E. Main St., Springfield, 00000749

Cuyahoga County

Lerner Building, 322–324 Euclid Ave., Cleveland, 00000750

TEXAS

Harris County

Link—Lee House, 3800 Montrose, Houston, 00000751

[FR Doc. 00–14815 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning Records Management

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is converting and update its current system of internal instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, this information is being made available for public review and comment. Draft Director's Order #19 establishes a comprehensive policy to guide the NPS records management program.

DATES: Written comments will be accepted until July 13, 2000.

ADDRESSES: Draft Director's Order #19 is available . Requests for copies and written comments should be sent to Michael Grimes, National Park Service, Washington Administrative Program Center, 1849 C Street, NW, MS 3316, Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: Michael Grimes, (202) 208–4333.

SUPPLEMENTARY INFORMATION: The NPS is revising the policies and procedures that direct the management of its records. To accomplish this, the records management policies in NPS–19, Records Management are rescinded. The new policies and procedures will be issued in Director's Order #19, in conformance with the new system of NPS internal guidance documents.

Dated May 30, 2000.

Michael A. Grimes,

Service-wide Records Officer.

[FR Doc. 00–14679 Filed 6–12–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 12, 2000 at 2:00 p.m.

PLACE: Room 101, 500 E Street, S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

AGENDA ITEM TO BE REMOVED: 5. Inv. Nos. 701–TA–253 and 731–TA–132, 252, 271, 276–277, 296, 409–410, 532–534, and 536–537 (Review) (Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 26, 2000).

In accordance with 19 CFR § 201.35(d)(2), interested parties are hereby notified that the Commission has determined that Commission business requires removal of the above agenda item from the meeting of Monday, June 12, 2000 at 2:00 p.m. No earlier announcement of such change was possible.

Issued: June 9, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14996 Filed 6–9–00; 2:10 pm]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Office of Justice Programs; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; (reinstatement, without change, of a previously approved collection for which approval has expired) Juvenile Residential Facility Census.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 14, 2000.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Joseph Moone, 202–616–3634, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, DC 20531. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Juvenile Residential Facility Census Bravery.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–15, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal public juvenile justice facilities, private juvenile facilities. *Other:* none.

This collection will gather information necessary to routinely monitor the types of facilities into which the juvenile justice system places young persons and the services available in these facilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will complete a 2-hour questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the questionnaire is 7,000 annual burden hours. The survey will be conducted biennially.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania, NW, Washington, D.C..

Dated: June 7, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–14816 Filed 6–12–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–30; Exemption Application No. D–10188, et al.

Grant of Individual Exemptions; Barclays Bank PLC and Its Affiliates (Collectively, Barclays)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

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Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Barclays Bank PLC and its Affiliates (Collectively, Barclays), Located in London, England;

[Prohibited Transaction Exemption 2000–30; Application No. D–10188]

Exemption

Section I—Retroactive Exemption for the Acquisition, Holding and Disposition of Barclays PLC Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of December 31, 1995 until June 13, 2000, to the acquisition, holding and disposition of the common stock of Barclays PLC (the Barclays PLC Stock) by Index and Model-Driven Funds managed by Barclays, provided that the following conditions and the general conditions in Section III are met:

(a) The acquisition or disposition of the Barclays PLC Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays PLC Stock which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) All aggregate daily purchases of Barclays PLC Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Barclays PLC Stock occurring on the applicable exchange and automated trading system (as described in paragraph (c) below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Barclays PLC Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date.

(c) All purchases and sales of Barclays PLC Stock occur either (i) on the London Stock Exchange, a recognized securities exchange as defined in Section IV(k) below, (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is subject to regulation and supervision by the Securities and Futures Authority of the United Kingdom (pursuant to the applicable securities laws) that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arms-length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the Securities Exchange Act of 1934 (the "34 Act), and thereby subject to regulation by the U.S. Securities and Exchange Commission (SEC), or subject to regulation and supervision by the Securities and Futures Authority of the United Kingdom (UK).

(d) No transactions by a Fund involve purchases from, or sales to, Barclays (including officers, directors, or employees thereof); or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(e) No more than five (5) percent of the total amount of Barclays PLC Stock issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by Barclays.

(f) Barclays PLC Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(g) A plan fiduciary independent of Barclays authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays PLC Stock, pursuant to the procedures described in the notice of proposed exemption published on March 14, 2000 [1] (see Paragraph 11 of the Summary of Facts and Representations regarding portfolio management services provided for particular plans), other than in the case of an employee benefit plan sponsored or maintained by Barclays PLC and/or an Affiliate for its own employees (a Barclays Plan).

(h) A fiduciary independent of Barclays directs the voting of the Barclays PLC Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays PLC Stock are required or permitted to vote.

(i) No more than ten (10) percent of the assets of any Fund that acquires and holds Barclays PLC Stock is comprised of assets of any Barclays Plan(s) for which Barclays exercises investment discretion.

Section II—Prospective Exemption for the Acquisition, Holding and Disposition of Barclays Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of Barclays PLC Stock or the common stock of an Affiliate of Barclays PLC (Barclays PLC Affiliate Stock) by Index and Model-Driven Funds managed by Barclays, provided that the following conditions and the general conditions in Section III are met:

(a) The acquisition or disposition of Barclays PLC Stock or Barclays PLC Affiliate Stock (collectively, Barclays Stock) is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays Stock which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) Whenever Barclays Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of Barclays Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

[1] See 65 FR 13836.

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of Barclays Stock occur either (i) on a recognized securities exchange (as defined in Section IV(k) below), (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the Securities and Futures Authority of the UK or another applicable regulatory authority, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(j) below) that is operated by a recognized securities exchange (as defined in Section IV(k) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Barclays Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Barclays Stock, Barclays appoints a fiduciary which is independent of Barclays to design acquisition procedures and monitor Barclays' compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of Barclays Stock to its specified weighting in the index or model pursuant to the restrictions described in paragraph (b) above, all aggregate daily purchases of Barclays Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Barclays Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Barclays Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in Barclays Stock not otherwise described in paragraph (b) above are either: (i) Entered into on a principal basis in a direct, arms-length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the Securities and Futures Authority of the UK (SFA–UK) or another applicable regulatory authority, (ii) effected on an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is subject to regulation by either the SEC, SFA–UK, or another applicable regulatory authority, or an automated trading system operated by a recognized securities exchange (as defined in Section IV(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined in Section IV(k) below) so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than five (5) percent of the total amount of either Barclays PLC Stock or any Barclays PLC Affiliate Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Barclays.

(g) Barclays Stock constitutes no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A plan fiduciary independent of Barclays authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays Stock, pursuant to the procedures described in the notice of proposed exemption published on March 14, 2000 (see Paragraph 11 of the Summary of Facts and Representations regarding portfolio management services provided for particular plans), other than in the case of a Barclays Plan.

(i) A fiduciary independent of Barclays directs the voting of the Barclays Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays Stock are required or permitted to vote.

(j) No more than ten (10) percent of the assets of any Fund that acquires and holds Barclays Stock is comprised of assets of any Barclays Plan(s) for which Barclays exercises investment discretion.

Section III—General Conditions

(a) Barclays maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Barclays, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Barclays shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

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(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of Barclays or commercial or financial information which is considered confidential.

Section IV—Definitions

(a) The term "Index Fund" means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Barclays, in which one or more investors invest, and—

(1) which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) for which Barclays does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) that contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and,

(4) that involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) The term "Model-Driven Fund" means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Barclays, in which one or more investors invest, and—

(1) which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of Barclays, to transform an independently maintained Index, as described in Section IV(c) below;

(2) which contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and

(3) that involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit Barclays or any party in which Barclays may have an interest.

(c) The term "Index" means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) the organization creating and maintaining the index is—

(A) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers; and,

(2) the index is created and maintained by an organization independent of Barclays; and,

(3) the index is a generally accepted standardized index of securities which is not specifically tailored for the use of Barclays.

(d) The term "opening date" means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term "Buy-up" means an acquisition of Barclays Stock by an Index or Model-Driven Fund in connection with the initial addition of such Stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such Stock.

(f) The term "Barclays" refers to Barclays PLC and its Affiliates, as defined below in paragraph (g), including Barclays Global Investors, N.A. (BGI), Barclays Global Fund Advisors, Barclays Global Investors Services, Barclays Global Investors International, Inc., Barclays Global Investors Asset Risk Management Limited, Barclays Bank PLC (London), Barclays Bank of Canada, Barclays Bank Zimbabwe, Barclays Bank of Kenya, and Barclays Bank of Botswana, Ltd.

(g) The term "Affiliate" means, with respect to Barclays PLC, an entity which, directly or indirectly, through one or more intermediaries, is controlled by Barclays PLC;

(h) An "affiliate" of Barclays includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(i) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(j) The term "automated trading system" means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an "alternative trading system" within the meaning of the SEC's Reg. ATS [17 CFR part 242.300], as such definition may be amended from time to time, or an "automated quotation system" as described in Section 3(a)(51)(A)(ii) of the '34 Act [15 USC 78c(a)(51)(A)(ii)].

(k) The term "recognized securities exchange" means a U.S. securities exchange that is registered as a "national securities exchange" under Section 6 of the '34 Act (15 USC 78f), or a designated offshore securities market, as defined in Regulation S of the SEC [17 CFR part 230.902(b)], as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (*e.g.*, 17 CFR part 240.3b–16).

EFFECTIVE DATE: This exemption is effective as of December 31, 1995, for those transactions described in Section I above, and as of the date the exemption is published in the **Federal Register** for those transactions described in Section II above.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 14, 2000, at 65 FR 13836.

Written Comments:

The applicant (*i.e.*, Barclays) submitted written comments with respect to the notice of proposed exemption (the Proposal). These comments, and the Department's responses thereto, are summarized below.

1. Volume Limitations. With respect to the percentage limitations on the volume of trading that aggregate daily purchases of Barclays Stock by the Funds may represent, sections I(b), II(b)(5), and II(c) of the Proposal state that such purchases may not exceed 15 percent of the average daily trading volume "* * * occurring on the applicable exchange or automated trading system." The Applicant stated that the volume limitation should refer to the aggregate trading volume in Barclays Stock, rather than the trading volume on a particular trading system on which the Barclays Stock may have been traded. Barclays noted that the language of the Proposal may prove overly restrictive and present difficulties in gathering the required daily volume data for a particular automated trading system. Therefore, Barclays requested that the conditions relating to the volume limitation be modified to state that aggregate daily purchases not exceed 15% of the total trading volume of the Barclays Stock (regardless of where it is traded).

In consideration of this comment, the Department has revised the language of sections I(b)(1) and (2), II(b)(5), and II(c)(1) and (2) of the exemption by deleting the word "or" and substituting the word "and" in its place, so that the operative phrase in each of the subsections now reads "* * * occurring on the applicable exchange and automated trading system." [emphasis added]

2. Investments by Affiliated Plans. The applicant represented that certain employee benefit plans established or maintained by an Affiliate of Barclays PLC for its own employees (*i.e.*, a Barclays Plan) have invested, and may continue to invest, in Index Funds or Model-Driven Funds that invest in Barclays Stock. Since December 31, 1995, and currently, three of these Barclays Plans have invested in a Fund which held or holds Barclays PLC Stock. These three Barclays Plans are: (i) The Barclays Global Investors 401(k) Savings Plan; (ii) the Barclays Global Investors Retirement Plan; and (iii) the Barclays Bank PLC USA Pension Trust. The applicant stated that at all times since December 31, 1995, the holdings of these three Barclays Plans together have comprised less than ten (10) percent of the assets of the Fund. In this regard, Barclays stated that a Barclays Plan should not be required to have an independent fiduciary authorize the investment of such a Plan's assets in an Index or Model-Driven Fund that includes Barclays Stock in its portfolio, especially since such Stock may only represent a small portion of the index on which the investments of the Fund are based. Therefore, the applicant requested that the requirements contained in section I(g) and II(h) of the Proposal be modified accordingly.

In consideration of the applicant's comment, the Department has modified sections I(g) and II(h) herein by inserting the phrases "* * * other than in the case of an employee benefit plan sponsored or maintained by Barclays PLC and/or an Affiliate for its own employees (a Barclays Plan)" and "* * * other than in the case of a Barclays Plan" respectively at the end of those subsections.

In addition, with the applicant's consent, the Department has added a condition (see sections I(i) and II(j) above) which requires that no more than ten (10) percent of the assets of any Fund that acquires and holds Barclays Stock shall be comprised of assets of any Barclays Plan(s) for which Barclays exercises investment discretion.

3. Changes in Names and Status of Certain Entities. The Applicant noted that in section III(f) of the Proposal, and in Paragraph 1 of the Summary of Facts and Representations in the Proposal (the Summary), reference is made to several entities whose name has changed since the date the exemption application was filed. In this regard, the Applicant represented the following: BZW Barclays Global Investors, N.A., is now Barclays Global Investors, N.A.; BZW Barclays Global Fund Advisors is now Barclays Global Fund Advisors; BZW Barclays Global Investors Services is now Barclays Global Investors Services; BZW Investment Management, Inc. is now Barclays Global Investors International Inc.; and BZW Asset Risk Management Limited is now Barclays Global Investors Asset Risk Management Limited. The Applicant noted further that Barclays Global Investors Asset Risk Management Limited is no longer registered as an investment adviser under the Investment Advisers Act of 1940.

Therefore, the Department has modified the information contained in the definition of the term "Barclays" in section IV(f) of the exemption to refer to these entities as stated above.

4. Exclusion of Barclays Stock from Certain Funds. The Applicant noted that in Paragraph 5 of the Summary, reference is made to the exclusion of Barclays Stock, since December 31, 1995, from the portfolios of any new Index or Model-Driven Funds established by Barclays, even though such Stock is included in indexes upon which such Funds are based. Barclays wished to clarify that there have been Index and Model-Driven Funds established since December 31, 1995, that have purchased Barclays Stock. However, Barclays represented that these Funds were not subject to the fiduciary responsibility provisions of the Act at the time the "buy-up" of Barclays Stock by the Funds occurred.

The Department acknowledges the applicant's clarification to the information contained in Paragraph 5 of the Summary.

5. Weight of Barclays PLC Stock in Certain Indexes. The applicant noted that in Paragraph 10 of the Summary, reference is made to the weight of Barclays PLC Stock in certain indexes. In this regard, Barclays represented that as of April 25, 2000, Barclays PLC Stock represented 2.05% of the MSCI UK Index and 1.75% of the FTSE 100 Index.

The Department acknowledges the applicant's additional information and notes that the data provided is consistent with the requirements of the exemption (see section I(f) above).

6. Transactions with Parties in Interest. The applicant noted that in Sections I(d) and II(e) of the Proposal, Barclays Stock cannot be acquired from, or sold to, a Barclays entity (including officers, directors or employees thereof) or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund. With respect to the latter portion of these restrictions, the applicant requested that the Department clarify that principal transactions by a Fund with such parties in interest should be permitted, if such transactions would otherwise be subject to an applicable exemption.

In such transactions, Barclays Stock would be acquired or sold by the Fund along with a "basket" of other securities. The Fund would enter into a principal transaction with a party in interest that is a broker-dealer that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA–UK or another applicable regulatory authority (see Section II(d)(i) of the exemption). The applicant stated that such a transaction could be exempt under another exemption, if the applicable conditions of that exemption were met. For example, Prohibited Transaction Exemption (PTE) 91–38, 56 FR 31966 (July 12, 1991) permits bank collective investment funds, in which employee benefit plans have an interest, to engage in certain transactions with parties in interest (including fiduciaries of investing plans), provided that the specified conditions required therein are met. However, Section I(a) of PTE 91–38 does not provide an exemption for any violations of section 406(b)(1) of the Act which may occur as a result of such transactions. Section 406(b)(1) states, in pertinent part, that a fiduciary for a plan shall not deal with the assets of the plan in his own interest or for his own account.

In consideration of these comments, the Department has modified the language of Sections I(d) and II(e) of the exemption by adding the following parenthetical phrase at the end of those subsections:

"* * * (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption)."

In this regard, the Department is providing no opinion as to whether such principal transactions would be covered by any existing exemptions.

Finally, the applicant stated that there is a pending merger of the London Stock Exchange and the German Bourse, a recognized securities exchange as defined in Section IV(k) above. Therefore, the applicant requested that Section II(b)(6) and II(d)(i) and (ii) be amended to refer to applicable foreign regulatory authorities other than the SFA–UK.

In response to this comment, the Department has modified Section II(b)(6) and II(d)(i) and (ii) by adding the phrase "* * * or another applicable regulatory authority" following the reference to the SFA–UK in those subsections.

No other comments, and no requests for a hearing, were received by the Department. Accordingly, the Department has determined to grant the exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

H. Ray McPhail (Mr. McPhail) and the H. Ray McPhail Profit Sharing Plan (the Plan), Located in Atlanta, Georgia

[Prohibited Transaction Exemption 2000–31; Exemption Application No. D–10678]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of four parcels of unimproved real property (the Property) and loan (the Loan) from the Plan to Mr. McPhail,[2] a disqualified person with respect to the Plan, provided that the following conditions are met:

(1) With respect to the Sale:

(A) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(B) The Sale will occur at a price (the Sale Price) which includes the greater of $270,000 or the Property's fair market value as established by a qualified, independent appraiser;

(C) In addition, the Sale Price will include a premium of $30,000 (the Assemblage Value) due to Mr. McPhail's ownership of unimproved real property located adjacent to the Property;

(D) The Plan will pay no fees or commissions with respect to the Sale; and

(E) Mr. McPhail will pay $60,000 or 20% of the Sale Price in cash with the balance paid for by the Loan; and

(2) With Respect to the Loan:

(A) The interest rate on the Loan (the Interest Rate) will be 7%, a rate set by the Macon Bank for a real estate loan having terms similar to the Loan;

(B) The Loan terms are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(C) The Loan is secured by a first security interest on certain real property, which has been appraised by a qualified, independent appraiser to have a fair market value not less than 150% of the principal amount of the Loan;

(D) The outstanding balance of the Loan will never exceed 20% of the assets of the Plan throughout the duration of the Loan; and

(E) The fair market value of the collateral remains at least equal to 150% of the outstanding principal balance plus accrued but not unpaid interest, throughout the duration of the Loan; and

(3) Should any employee of the Plan Sponsor become eligible for Plan participation, the new participant will be enrolled in another qualified retirement plan or the Loan will be immediately repaid.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 7, 2000 at 65 FR 18354.

FOR FURTHER INFORMATION CONTACT: Mr. J. Martin Jara of the Department, telephone (202) 219–8883 (this is not a toll free number).

Triumph Capital Group, Inc., Located in Boston, MA;

[Prohibited Transaction Exemption 2000–32; Exemption Application No. D–10708]

Exemption

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective July 22, 1997, to the making, by an employee benefit plan subject to the Act (the Plan), of capital contributions to any private equity fund (the Triumph Fund) that is organized, sponsored and/or managed by Triumph Capital Group, Inc. and/or any of its affiliates (collectively, Triumph) pursuant to a contractual obligation by a Plan having an interest in the Triumph Fund.[3]

This exemption is subject to the following conditions:

a. At the time the Plan undertakes the obligation to make such capital contributions (the Determination Date), the Triumph Fund is not a party in interest with respect to the Plan.

b. The decision to make a capital contribution to a Triumph Fund is made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to Triumph and the portfolio company whose interest is acquired by the Triumph Fund.

c. Triumph does not otherwise provide investment advice as a fiduciary to the Plan, within the meaning of the Department's regulations at 29 CFR 2510.3–21(c), with respect to such Plan's assets that are invested in the Triumph Fund.

d. At the Determination Date, the Plan has aggregate assets that are in excess of $50 million; provided, however, that in the case of:

(1) Two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are invested in a Triumph Fund through a group trust, an insurance company pooled separate account or any other form of entity the assets of which are "plan assets" under the Department's regulations at 29 CFR 2510.3–101 (the Plan Asset Regulation), the foregoing $50 million requirement shall be satisfied if such trust, separate account, or other entity has aggregate assets which are in excess of $50 million, provided further that the fiduciary responsible for making the investment decision on behalf of such group trust, insurance company pooled separate account, or other entity has—

i. Full investment responsibility[4] with respect to the plan assets invested therein; and

ii. Total assets under its management and control, exclusive of the assets invested in the Triumph Fund, which are in excess of $100 million, for Triumph Funds established after April 7, 2000 (*i.e.*, the date the notice of proposed exemption was published in the **Federal Register**).

(2) Two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are invested in a Triumph Fund through a master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation, the $50 million requirement shall in any event be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million, provided, further, that, in the case of a Triumph Fund established after the date the notice granting the exemption is published in the **Federal Register**, in addition to the $50 million requirement, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, then such fiduciary has total assets under its management and control, exclusive of the assets invested in the Triumph Fund, which are in excess of $100 million.

e. The Triumph Fund is a party in interest with respect to the Plan solely by reason of a relationship to a portfolio company which is a service provider to a Plan, as described in Section 3(14)(H) or (I) of the Act, including a fiduciary with respect to such Plan.

f. The capital commitment of the Plan (together with the capital commitments of any other Plans maintained by the same employer, controlled group of corporations or employee organization) with respect to the Triumph Fund, does not exceed 15 percent of the total capital commitments made by all investors with respect to such Triumph Fund, determined at the later of (i) the Determination Date or (ii) the date on which the Triumph Fund first becomes a party in interest with respect to such Plan.

g. At the Determination Date, the percentage of the Plan's assets committed to be invested in the Triumph Fund does not exceed 5 percent of the Plan's total assets.

h. At the Determination Date, a Plan's aggregate capital commitment to all Triumph Funds does not exceed 25 percent of the Plan's total assets.

i. The Plan receives the following initial and ongoing disclosures with respect to the Triumph Fund:

(1) A copy of the private placement memorandum applicable to the Triumph Fund or another comparable document containing substantially the same information;

(2) A copy of the limited partnership or other agreement establishing the Triumph Fund;

(3) A copy of the subscription agreement applicable to the Triumph Fund, if any;

(4) Copies of the proposed and final exemption, once such documents are published in the **Federal Register**; and

(5) Periodic, but no less frequently than annually, reports relating to the overall financial position and operational results of the Triumph Fund, including copies of the Triumph Fund's annual financial statements.

j. With respect to capital contributions made to a Triumph Fund by a Plan after the date this exemption is published in the **Federal Register**, Triumph maintains or causes to be maintained, for a period of six (6) years from the date of the transaction, the records necessary to enable the persons described in paragraph (k) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of Triumph, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than Triumph, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (k).

k. (1) Except as provided in paragraph (k)(2) and notwithstanding any provisions of subsection (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (j) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan which has an interest in the Triumph Fund and has the authority to acquire or dispose of the interest of the Plan in the Triumph Fund, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of any Plan which has an interest in the Triumph Fund, or duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraph (k)(1)(B) and (k)(1)(C) shall be authorized to examine trade secrets of Triumph or commercial or financial information which is privileged or confidential.

Effective Date: This exemption is effective as of July 22, 1997.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 7, 2000, at 65 FR 18356.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

McDonald Investments Inc. (McDonald), Located in Cleveland, Ohio

[Prohibited Transaction Exemption 2000–33; Exemption Application No. D–10857]

Exemption

I. Transactions

A. Effective January 4, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[5]

B. Effective January 4, 2000, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan

[2] Since Mr. McPhail is the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[3] Triumph Funds are generally expected to be organized as venture capital operating companies that are managed by Triumph.

[4] For purposes of this exemption, the term "full investment responsibility" means that the fiduciary responsible for making the investment decision has and exercises discretionary management authority over all of the assets of the group trust or other plan assets entity.

[5] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

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when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[6] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective January 4, 2000, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[7]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective January 4, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a Rating Agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a Rating Agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the Rating Agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code; and

(b) that is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which McDonald or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) are credited to a capitalized interest account (as defined in section III.X.); and

(iii) are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term "permitted investments" means investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and

[6] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[7] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which certificates are offered to investors.

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servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) McDonald;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with McDonald; or

(3) Any member of an underwriting syndicate or selling group of which McDonald or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services obligations contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services obligations contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) the trust owns or holds a security interest in the lease;

(2) the trust owns or holds a security interest in the leased motor vehicle; and

(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. "Rating Agency" means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D&P) or Fitch IBCA, Inc. (Fitch) or their successors;

X. "Capitalized Interest Account" means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. "Closing Date" means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. "Pre-Funding Account" means a trust account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. "Pre-Funding Period" means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. "McDonald" means McDonald Investments Inc. and its affiliates.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at (see 60 FR 35932).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 7, 2000 at 65 FR 18365.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of June, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–14809 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10758, et al.]

Proposed Exemptions; Goldman, Sachs & Co.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638,

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200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Goldman, Sachs & Co., Located in New York, New York

[Application No. D–10758]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities between certain affiliates of Goldman, Sachs & Co. (Goldman) which are foreign broker-dealers or banks (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, Goldman, or a Foreign Affiliate, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

(2) The terms of any transaction are at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

(3) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, and the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the Foreign Affiliate shall not be deemed to be a fiduciary with respect to a Plan solely by reason of providing securities custodial services for a Plan.

B. The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to the Plan assets involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with such extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder, if the 1934 Act, rules, or regulations were applicable.

C. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(2) The Plan receives from the Foreign Affiliate (by physical delivery, by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same);

(4) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party;

(5) In return for lending securities, the Plan either (a) receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party;

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of applicable tax withholdings)[1] had it remained the record owner of such securities;

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change;

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively, such period as permitted by Prohibited Transaction Class Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded;[2]

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities, or the equivalent thereof, within the time described in paragraph 9, the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement, and does pay, to the Plan the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(11) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1. However, in the event that the independent Plan fiduciary does not maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of Section 404(b) of the Act, the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code.

If the Foreign Affiliate fails to comply with any condition of the exemption in the course of engaging in a securities lending transaction, the Plan fiduciary who caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Foreign Affiliate's failure to comply with the conditions of the exemption.

Section II—General Conditions

A. The Foreign Affiliate is a registered broker-dealer or bank subject to the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

regulation by a governmental agency, as described in Section III.B, and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

C. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions;

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E. to determine whether the conditions of the exemption have been met, except that—

(1) a party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph E; and

(2) a prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the Foreign Affiliate's control, such records are lost or destroyed prior to the end of the six year period; and

E. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Foreign Affiliate makes the records referred to in paragraph D. unconditionally available during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) the Department, the Internal Revenue Service, or the SEC; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in (2) through (5) of this subsection are authorized to examine the trade secrets of the Foreign Affiliate or commercial or financial information which is privileged or confidential.

[1] The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not loaned the securities.

[2] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of

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Section III—Definitions

A. The term "affiliate" of another person shall include: (1) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (3) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

B. The term "Foreign Affiliate" shall mean an affiliate of Goldman, Sachs & Co. that is subject to regulation as a broker-dealer or bank by (1) the Ontario Securities Commission and the Investment Dealers Association in Canada; (2) the Securities and Futures Authority in the United Kingdom; (3) the Deutsche Bundesbank and the Federal Banking Supervisory Authority, *i.e.*, der Bundesaufsichtsamt fuer das Kreditwesen (the BAK) in Germany; (4) the Ministry of Finance and the Tokyo Stock Exchange in Japan; (5) the Australian Securities & Investments Commission (the ASIC) in Australia; or (6) the Swiss Federal Banking Commission in Switzerland.

C. The term "security" shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term "security" does not include swap agreements or other notional principal contracts.

Effective Date: This proposed exemption, if granted, will be effective as of April 15, 1999.

Summary of Facts and Representations

1. Goldman, Sachs & Co. (*i.e.*, Goldman), a New York limited partnership, is a wholly owned subsidiary and the principal operating subsidiary of The Goldman Sachs Group, Inc. (the GS Group), a Delaware corporation. Goldman, one of the largest full-line investment services firms in the United States, is registered with and regulated by the SEC as a broker-dealer and as an investment adviser, is registered with and regulated by the Commodity Futures Trading Commission (the CFTC) as a futures commission merchant, is a member of the New York Stock Exchange (the NYSE) and other principal securities exchanges in the United States, and is also a member of the National Association of Securities Dealers, Inc. (the NASD). As of August 27, 1999, the GS Group had $236.3 billion in assets and $8.6 billion in equity.

Goldman has several foreign affiliates which are broker-dealers or banks. Those covered by the proposed exemption (*i.e.*, the Foreign Affiliates), and their respective regulating entities, are as follows:

(a) Goldman Sachs Canada, located in Toronto, is subject to regulation in Canada by the Ontario Securities Commission, as well as the Investment Dealers Association, a self-regulatory organization;

(b) Goldman Sachs International and Goldman Sachs Equity Securities (U.K.), both located in London, are subject to regulation in the United Kingdom by the Securities and Futures Authority;

(c) Goldman, Sachs & Co. oHG, located in Frankfurt, is subject to regulation in Germany by the Deutsche Bundesbank and the Bundesaufsichtsamt fuer das Kreditwesen (*i.e.*, the BAK);

(d) Goldman Sachs (Japan) Ltd., located in Tokyo, is subject to regulation in Japan by the Ministry of Finance and the Tokyo Stock Exchange;

(e) Goldman Sachs Australia, LLC (GS Australia), located in Sydney, is subject to regulation in Australia by the Australian Securities & Investments Commission (*i.e.*, the ASIC); and

(f) Goldman, Sachs & Co. Bank, located in Zurich, is subject to regulation by the Swiss Federal Banking Commission.

Goldman requests an individual exemption to permit the Foreign Affiliates identified above, as well as those others who, in the future, may be subject to governmental regulation in Canada, the United Kingdom, Germany, Japan, Australia, or Switzerland, to engage in the securities transactions described below with employee benefit plans (i.e., the Plans). The proposed exemption is necessary because the Foreign Affiliates may be parties in interest with respect to the Plans under the Act, by virtue of being a fiduciary (for assets of the Plans other than those involved in the transactions) or a service provider to such Plans, or by virtue of a relationship to such fiduciary or service provider.

2. Goldman represents that the Foreign Affiliates are subject to regulation by a governmental agency in the foreign country in which they are located. Goldman further represents that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those concerns addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: the protection of the investor by the regulation of securities markets.

With respect to Canada, the United Kingdom, Japan, and Australia, all these countries have comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls, and records relating to counterparties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system for the violation of such rules.

With respect to Germany, the BAK, an independent federal institution with ultimate responsibility to the Ministry of Finance, in cooperation with the Deutsche Bundesbank, the central bank of the German banking system, provides extensive regulation of the banking sector. The BAK insures that Goldman, Sachs & Co. oHG has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards, such as requirements regarding adequate internal controls, oversight, administration and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits, *e.g.*, on specific sections of the Banking Act, as ordered by the BAK and the respective State Central Bank auditors. The BAK obtains information on the condition of Goldman, Sachs & Co. oHG by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The BAK also receives information regarding capital adequacy, country risk exposure, and foreign exchange exposure from Goldman, Sachs & Co. oHG. German banking law mandates penalties to insure correct reporting to the BAK. The auditors face penalties for gross violation of their duties in auditing, for reporting misleading information, omitting essential information from the audit report, failing to request pertinent information, or failing to report to the BAK.

With respect to Switzerland, the powers of the Swiss Federal Banking Commission include licensing banks, issuing directives to address violations by or irregularities involving banks, requiring information from a bank or its auditor regarding supervisory matters and revoking bank licenses. The Swiss Federal Banking Commission exercises oversight over Swiss banks, such as Goldman, Sachs & Co. Bank, through independent auditors known as "Recognized Auditors," which act on behalf of the Commission under detailed statutory provisions. Each Swiss bank, including Goldman, Sachs & Co. Bank, must appoint a recognized Auditor and notify the Swiss Federal Banking Commission of an intent to change its auditor. The Recognized Auditor may take action within a bank as deemed necessary or as instructed by the Swiss Federal Banking Commission and must inform the Commission of supervisory matters. The Swiss Federal Banking Commission insures that Goldman, Sachs & Co. Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration, and financial resources. The Swiss Federal Banking Commission reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the Recognized Auditor.

The Swiss Federal Banking Commission obtains information on the condition of Goldman, Sachs & Co. Bank and its foreign offices and subsidiaries by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the Recognized Auditor. The Swiss Federal Banking Commission also receives information regarding capital adequacy, country risk exposure, and foreign exchange exposures from Goldman, Sachs & Co. Bank.

Swiss banking law mandates penalties to insure correct reporting to the Swiss Federal Banking Commission. Recognized Auditors face penalties for gross violations of their duties in auditing, or reporting misleading information, omitting essential information from the audit report, failing to request pertinent information or failing to report to the Swiss Federal Banking Commission.

With respect to Australia, GS Australia is subject to regulation primarily by the ASIC, and upon being recognized as a participating organization, by the Australian Securities Exchange Limited (the ASX). Until being recognized as a participating organization by the ASX, GS Australia will be subject to ASX regulation by the ASIC. The rules of the ASX require each firm that employs registered representatives or registered traders to have a positive tangible net worth and be able to meet its obligations as they may fall due. In addition, the rules of the ASX set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the rules of the ASX impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting, and recordkeeping requirements, to the effect that required records must be produced at the request of the ASIC. Finally, the rules and regulations of the ASX and the ASIC impose potential fines and penalties on broker-dealers, establishing a comprehensive disciplinary system.

Goldman represents that, in connection with the transactions covered by this proposed exemption, the Foreign Affiliates' compliance with any applicable requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act (as discussed further in Paragraph 6, below), and SEC interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.

Principal Transactions

3. Goldman represents that the Foreign Affiliates operate as traders in dealers' markets wherein they customarily purchase and sell securities for their own account in the ordinary course of their business as broker-dealers or banks and engage in purchases and sales of securities, including options on securities, with their clients. Such trades are referred to as principal transactions. Goldman represents that the role of a broker-dealer in a principal transaction in the subject foreign countries is virtually identical to that of a broker-dealer in a principal transaction in the United States.

Goldman requests an individual exemption to permit the Foreign Affiliates to engage in principal transactions with the Plans under terms and conditions equivalent to those required in Prohibited Transaction Class Exemption 75–1 (PTE 75–1, 40 FR 50845, October 31, 1975), Part II.[3]

[3] The Department notes that the proposed principal transactions are subject to the general fiduciary responsibility provisions of Part 4 of Title I of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently and solely in the interest of the plan and its participants and beneficiaries, when making investment decisions on behalf of the plan.

Goldman states that because PTE 75–1 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the principal transactions at issue would fall outside the scope of relief provided by PTE 75–1.[4]

4. Goldman represents that like the U.S. dealer markets, international equity and debt markets, including the options markets, are no less dependent on a willingness of dealers to trade as principals. Over the past decade, Plans have increasingly invested in foreign equity and debt securities, including debt securities issued by foreign governments. Thus, Plans seeking to enter into such investments may wish to increase the number of trading partners available to them by trading with the Foreign Affiliates.

5. Under the conditions of this proposed exemption, as in PTE 75–1, Part II, the Foreign Affiliate must customarily purchase and sell securities for its own account in the ordinary course of its business as a broker-dealer or bank. The terms of any principal transaction will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. Neither the Foreign Affiliate nor an affiliate thereof will have discretionary authority or control with respect to the investment of the Plan assets involved in the principal transaction, or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. In addition, the Foreign Affiliate will be a party in interest or disqualified person with respect to the Plan assets involved in the principal transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code (*i.e.*, a service provider to the Plan), or by reason of a relationship to such a person as described in such sections.

6. Goldman represents that Rule 15a–6 of the 1934 Act provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among other things, enters into these principal

[4] PTE 75–1, Part II, provides an exemption, under certain conditions, from section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code, for principal transactions between employee benefit plans and U.S. registered broker-dealers or U.S. banks that are parties in interest with respect to such plans.

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transactions through a U.S. registered broker or dealer intermediary.

The term "U.S. institutional investor," as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if:

(a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or

(b) the employee benefit plan has total assets in excess of $5 million, or

(c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors," as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended.

The term "major U.S. institutional investor," as defined in Rule 15a–6(b)(4), includes a U.S. institutional investor that has total assets in excess of $100 million.[5] Goldman represents that the intermediation of the U.S. registered broker or dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

Goldman represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a–6 must, among other things:

(a) provide written consent to service of process for any civil action brought by or proceeding before the SEC or a self-regulatory organization;

(b) provide the SEC with any information or documents within its possession, custody or control, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) rely on the U.S. registered broker or dealer through which the principal transactions with the U.S. institutional and major U.S. institutional investors are effected, among other things, for:

(1) effecting the transactions, other than negotiating their terms;

(2) issuing all required confirmations and statements;

(3) as between the foreign broker-dealer and the U.S. registered broker or dealer, extending or arranging for the extension of any credit in connection with the transactions;

(4) maintaining required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;[6]

(5) receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 (Customer Protection—Reserves and Custody of Securities) of the 1934 Act;[7] and

(6) Participating in all oral communications (*e.g.*, telephone calls) between the foreign associated person and the U.S. institutional investor, other than a major U.S. institutional investor. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (See April 9, 1997 No-Action Letter.)

Extensions of Credit

7. Goldman represents that a normal part of the execution of securities transactions by broker-dealers on behalf of clients, including employee benefit plans, is the extension of credit to clients so as to permit the settlement of transactions in the customary three-day settlement period. Such extensions of credit are also customary in connection with the writing of option contracts.

Goldman requests that the proposed exemption include relief for extensions of credit to the Plans by the Foreign Affiliates in the ordinary course of their purchases or sales of securities, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts. In this regard, an exemption for such extensions of credit is provided under PTE 75–1, Part V, only for transactions between plans and U.S. registered brokers or dealers.[8]

8. Under the conditions of this proposed exemption, as in PTE 75–1, Part V, the Foreign Affiliate may not be a fiduciary with respect to the Plan assets involved in the transaction. However, an exception to such condition would be provided herein, as in PTE 75–1, if no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with any such extension of credit. In addition, the extension of credit must be lawful under the 1934 Act and any rules or regulations thereunder, if the 1934 Act rules or regulations were applicable. If the 1934 Act would not be applicable, the extension of credit must still be lawful under applicable foreign law, in the country where the particular Foreign Affiliate is domiciled.

Securities Lending

9. The Foreign Affiliates, acting as principals, actively engage in the borrowing and lending of securities, typically foreign securities, from various institutional investors, including employee benefit plans.

Goldman requests an exemption for securities lending transactions between the Foreign Affiliates and the Plans under terms and conditions equivalent to those required in PTE 81–6 (*see* Footnote 2). Because PTE 81–6 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the securities lending transactions at issue would fall outside the scope of relief provided by PTE 81–6.

10. The Foreign Affiliates utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. As described in the Federal Reserve Board's Regulation T, borrowed securities are often used to meet delivery obligations in the case of short sales or the failure to receive securities that a broker-dealer is required to deliver. Goldman represents that foreign broker-dealers are those broker-dealers most likely to seek to borrow foreign securities. Thus, the requested exemption will increase the lending demand for such securities, providing the Plans with increased securities lending opportunities, which will earn such Plans additional rates of return on the borrowed securities (as discussed below).

11. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities, (*e.g.*, from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash, irrevocable bank letters of credit, or high quality liquid securities, such as U.S. Government or Federal Agency obligations.

12. With respect to the subject securities lending transactions, neither the Foreign Affiliate nor an affiliate of the Foreign Affiliate will have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

13. By the close of business on the day the loaned securities are delivered, the Plan will receive from the Foreign Affiliate (by physical delivery, book entry in a securities depository, wire transfer, or similar means) collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral will be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and will be held in the United States. The collateral will have, as of the close of business on the business day preceding the day it is posted by the Foreign Affiliate, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same).

14. The loan will be made pursuant to a written Loan Agreement, which may be in the form of a master agreement covering a series of securities lending transactions between the Plan and the Foreign Affiliate. The terms of the Loan Agreement will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. The Loan Agreement will also contain a requirement that the Foreign Affiliate pay all transfer fees and transfer taxes relating to the securities loans.

15. In return for lending securities, the Plan will either (a) receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) have the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party.

Earnings generated by non-cash collateral will be returned to the Foreign Affiliate. The Plan will be entitled to at least the equivalent of all distributions on the borrowed securities made during the term of the loan. Such distributions will include cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of any applicable tax withholdings) had it remained the record owner of such securities.

16. If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate will deliver additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent.

17. Before entering into a Loan Agreement, the Foreign Affiliate will furnish to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change.

18. The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively, such period as permitted by PTE 81–6, as it may be amended or superseded. In the event that the Foreign Affiliate fails to return the securities, or the equivalent thereof, within the designated time, the Plan will have certain rights under the Loan Agreement to realize upon the collateral. The Plan may purchase securities identical to the borrowed securities, or the equivalent thereof, and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with replacing the borrowed securities. The Foreign Affiliate is obligated to pay to the Plan the amount of any remaining obligations and expenses not covered by the collateral (the value of which shall be determined as of the date the borrowed securities should have been returned to the Plan), plus interest at a reasonable rate as determined in accordance with an independent market source. If replacement securities are not available, the Foreign Affiliate will pay the Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Plan, plus (b) all the accrued financial benefits derived from the beneficial ownership of such borrowed securities as of such date, plus (c) interest at a reasonable rate determined in accordance with an independent market source from such date to the date of payment. The amounts paid shall be reduced by the amount or value of the collateral determined as of the date the borrowed securities should have been returned to the Plan. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary.

19. The independent Plan fiduciary will maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act[9] and the

[5] Note that the categories of entities that qualify as "major U.S. institutional investors" has been expanded by an SEC No-Action letter. See No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (the April 9, 1997 No-Action Letter).

[6] Goldman represents that all such requirements relating to record-keeping of principal transactions would be applicable in respect of any Foreign Affiliate in a transaction that would be covered by this proposed exemption.

[7] Under certain circumstances described in the April 9, 1997 No-Action Letter (*e.g.*, clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and a Foreign Affiliate. Please note that in such situations (as in the other situations covered by Rule 15a–6), the U.S. broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

[8] PTE 75–1, Part V, provides an exemption, under certain conditions, from section 406 of the Act and section 4975(c)(1) of the Code, for extensions of credit, in connection with the purchase or sale of securities, between employee benefit plans and U.S. registered brokers or dealers that are parties in interest with respect to such plans.

[9] Section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor.

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regulations promulgated under 29 CFR 2550.404(b)–1.

20. In summary, the applicant represents that the subject transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) With respect to the principal transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize the same benefits of efficiency and convenience which such Plans could derive from principal transactions with U.S. registered broker-dealers or U.S. banks, pursuant to PTE 75–1, Part II;

(b) With respect to extensions of credit in connection with purchases or sales of securities, the proposed exemption will enable the Foreign Affiliates and the Plans to extend credit in the ordinary course of the Foreign Affiliate's business to effect agency or principal transactions within the customary three-day settlement period, or in connection with the writing of option contracts, for transactions between plans and U.S. registered brokers or dealers, pursuant to PTE 75–1, Part V;

(c) With respect to securities lending transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize a low-risk return on securities that otherwise would remain idle, as in securities lending transactions between plans and U.S. registered broker-dealers or U.S. banks, pursuant to PTE 81–6; and

(d) The proposed exemption will provide the Plans with virtually the same protections as those provided by PTE 75–1 and PTE 81–6.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Washington County Hospital Association Employees' Cash Balance Plan (the Plan), Located in Hagerstown, Maryland;

[Application No. D–10839]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past contribution by Washington County Hospital Association (the Hospital) to the Plan of certain publicly-traded securities (the Securities), provided: (a) the contribution was a one-time transaction; (b) the Securities were valued at their fair market value as of the date of the contribution, as determined by an independent broker; (c) no commissions were paid in connection with the transaction; and (d) the Securities represented less than 5% of the assets of the Plan at the time of the contribution.

Effective Date: If the proposed exemption is granted, the exemption will be effective June 18, 1998.

Summary of Facts and Representations

1. The Hospital is a tax-exempt hospital described in section 501(c)(3) of the Code. The Plan, which is established and maintained by the Hospital, is a defined benefit plan that currently has 1,951 participants and had assets of $27,896,007 as of July 31, 1999. The Plan's assets are held by Hagerstown Trust Company, a Maryland Banking Corporation, as custodian.

2. Marshfield Associates (Marshfield) is one of four investment managers that invest assets of the Plan. Marshfield also manages a fund known as the Washington County Hospital Pension Restricted Fund (the Fund). The Fund is a non-trusteed, non-qualified corporate internal fund of the Hospital and was established by the Hospital's Board of Trustees for the purpose of holding future contributions to the Plan. The assets in both the Plan and the Fund that are managed by Marshfield are subject to the same investment guidelines and principles. The applicant represents that at no time have any assets of the Fund been applied by the Hospital for any purpose other than funding ERISA-qualified pension benefits for the Hospital's employees. Marshfield represents that the fees it collected from the accounts it manages for the Hospital for the second quarter of 1998 through the second quarter of 2000 represent, in the aggregate, less than one percent of the total fee revenues collected by Marshfield for that same period.

3. On June 9, 1998, the Hospital sent a letter to Marshfield directing them to transfer $821,087 from the Fund's account to the Plan's account. The Hospital had requested the transfer in order to satisfy its required minimum funding contribution to the Plan for the fiscal year ending June 30, 1998. Accordingly, on June 18, 1998, Marshfield transferred Securities valued at approximately $745,100 from the Fund to the Plan, and on June 23, 1998, transferred $75,987 of cash from the Fund to the Plan. The total value of assets transferred to the Plan was $821,087. The Securities consisted of fixed income securities, *e.g.*, corporate bonds and notes, valued as of June 18, 1998 at approximately $328,000, and publicly-traded equity securities valued as of June 18, 1998 at approximately $417,100. The Securities represent less than 3% of the total assets of the Plan.

4. The Securities consisted of a BankAmerica Corporate Subordinated Note, paying interest at 9.20%, due May 15, 2003, with a market value of $112,740, as of June 18, 1998; a Honeywell, Inc. Bond paying 8.625%, due April 15, 2006, with a market value of $115,100, as of June 18, 1998; and MCI Communications Corporation Notes, paying 6.25%, due March 23, 1999, with a market value of $100,160, as of June 18, 1998. In addition, the Securities included 1,200 shares of Gannett, Inc., valued at $79,725, as of June 18, 1998; 4,000 shares of Pepsico, Inc., valued at $167,500, as of June 18, 1998; and 3,600 shares of Student Loan Corporation, valued at $169,875, as of June 18, 1998. For purposes of ascertaining the values of the Securities on June 18, 1998, Marshfield represents that Susan Neuwirth, its assistant portfolio manager for the Hospital accounts, consulted Bloomberg, L.P., an independent pricing service.

5. Ms. Elise Hoffman (Ms. Hoffman), a Principal of Marshfield, has represented that the Hospital contacted Marshfield on June 9, 1998, to make the transfer from the Fund to the Plan. Ms. Hoffman represents that she consulted with Mr. Steven Barnhart, an Executive of the Hospital, in order to determine whether the Hospital had a preference as to whether cash or securities should be transferred. Mr. Barnhart informed Ms. Hoffman that the Hospital was indifferent as to which was transferred to satisfy the contribution amount. Ms. Hoffman represents that it was Marshfield's view that transferring the Securities would be financially better for the Plan than first converting them into cash. Each of the equity and debt instruments had been identified by Marshfield's research department as high quality holdings with potential for future appreciation and/or attractive long-term returns. But for the need to transfer assets out of the Fund, Marshfield would have continued to hold the Securities in the Fund as of the date of the transfer. In addition, transferring the Securities rather than the cash proceeds of any sale of such Securities would provide the Plan with immediate investment in the financial markets and result in savings in transaction costs associated with a reacquisition of the same or equivalent securities. Thus, Ms. Hoffman represents that Marshfield believed it would be a prudent course for the Plan to receive the Securities from the Fund directly and to continue to hold them.

6. PricewaterhouseCoopers LLP (PWC) in Baltimore, Maryland, represents that PWC is the certified public accounting firm for the Plan. Mr. William L. Stulginsky, a Partner with PWC, represents that in the process of preparing the Plan's audit for 1998, it came to PWC's attention that the Employer had contributed the Securities to the Plan. PWC informed the Hospital that an in-kind contribution of the Securities to the Plan would constitute a prohibited transaction. The Hospital had believed, based upon conversations with Marshfield as described in rep. 5, above, that the transfer of the Securities to the Plan was permitted. To resolve this apparent contradiction, the Hospital contacted its attorneys, Venable, Baetjer and Howard, LLP (Venable). Venable reviewed the transaction and informed the Hospital that the contribution constituted a prohibited transaction under section 406 of the Act.[10] The Hospital thereupon established procedures to prevent future in-kind contributions to the Plan, and Venable followed up with the Hospital in resolving this issue by filing a request for the exemption proposed herein.

7. In summary, the applicant represents that the subject transaction satisfied the criteria contained in section 408(a) of the Act because: (a) The contribution was a one-time transaction; (b) no commissions were paid by the Plan in connection with the transfer of the Securities; (c) the Plan's independent investment manager, Marshfield, determined that the transaction was appropriate for and in the best interests of the Plan; (d) Marshfield consulted Bloomberg, L.P., an independent pricing service for purposes of ascertaining the values of the Securities on June 18, 1998, the date of transaction; and (e) when the prohibited transaction was discovered by the Plan's independent C.P.A. firm, the applicant requested the exemption proposed herein.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[10] The Department directs interested persons to ERISA Advisory Opinion 81–69A (dated July 28, 1981) for the principle that contributions in-kind that relieve an employer of an obligation to make cash contributions to a plan are prohibited exchanges (unless otherwise exempt).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of June, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–14808 Filed 6–12–00; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL COUNCIL ON DISABILITY

International Watch Advisory Committee; Notice of Meeting

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

INTERNATIONAL WATCH: The purpose of NCD's International Watch is to share information on international disability issuers and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

DATES: June 23, 2000, 11 a.m. EDT.

For International Watch Information, Contact: Kathleen A. Blank, Attorney/Program Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), kblank@ncd.gov (e-mail).

Agency Mission: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature or severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

Open Meeting/Conference Call: This advisory committee meeting/conference call of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above. Records will be kept of all International Watch meetings/conference calls and will be

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available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on June 7, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–14835 Filed 6–12–00; 8:45 am]

BILLING CODE 8820–MA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel.

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Visual Arts Section (Creativity & Organizational Capacity categories)—July 10–13, 2000, Room 716. A portion of this meeting, from 2 p.m. to 3 p.m. on July 12th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 7 p.m. on July 10th, from 9 a.m. to 6 p.m. on July 11th, from 9 a.m. to 2 p.m. and 3 p.m. to 6 p.m. on July 12th, and from 9 a.m. to 5 p.m. on July 13th will be closed.

Literature section (Creativity & Organizational Capacity categories)—July 17–19, 2000, in Room 708. A portion of this meeting, from 11 a.m. to 1 p.m. on July 19th, will be open to the public for discussion of policy, guidelines, and needs of the field. The remaining portions of this meeting, from 9 a.m. to 7 p.m. on July 17th and 18th and from 9 a.m. to 11 a.m. and 1 p.m. to 5 p.m. on July 19th will be closed.

Music section A (Creativity & Organizational Capacity categories)—July 17–20, 2000 in room 716. A portion of this meeting, from 10 a.m. to 12 p.m. on July 20th, will be open to the public for discussion of field needs, leadership initiatives, and guidelines. The remaining portions of this meeting, from 9 a.m. to 5 p.m. on July 17th through 19th and from 9 a.m. to 10 a.m. on July 20th, will be closed.

Music section B (Creativity category)—July 31–August 3, 2000 in Room 716. A portion of this meeting, from 4 p.m. to 5:30 p.m. on August 2nd, will be open to the public for discussion of field needs, leadership initiatives, and guidelines. The remaining portions of this meeting, from 9 a.m. to 5 p.m. on July 31st and August 1st, from 9 a.m. to 4 p.m. on August 2nd, and from 9 a.m. to 12 p.m. on August 3, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 7, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–14825 Filed 6–12–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Fellowship Advisory Panel, Music Section (American Jazz Masters category) to the National Council on the Arts will be held on June 20, 2000. The panel will meet by teleconference from 12 p.m. to 2 p.m. in Room 703 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: June 8, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–14935 Filed 6–12–00; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22–ISFSI; ASLBP No. 97–732–02–ISFSI]

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation); Notice (Revised Notice of Hearing and of Opportunity To Make Oral or Written Limited Appearance Statements)

June 7, 2000.

The Atomic Safety and Licensing Board hereby provides a revised notice that it will convene an evidentiary hearing to receive testimony and exhibits and allow the cross-examination of witnesses relating to certain matters at issue in this proceeding regarding the June 1997 application of Private Fuel Storage, L.L.C., (PFS) for a license under 10 CFR Part 72 to construct and operate an independent spent fuel storage installation (ISFSI) on the reservation of the Skull Valley Band of Goshute Indians (Skull Valley Band) in Skull Valley, Utah. In addition, the Board gives notice that, in accordance with 10 CFR 2.715(a), it will entertain oral limited appearance statements from members of the public in connection with this proceeding.

A. Revised Information Regarding Location of Evidentiary Hearing

As previously noted in its April 19, 2000 notice (65 FR 24,230 (Apr. 25, 2000)), the Board will conduct an evidentiary hearing on certain issues relating to this proceeding, currently scheduled to include contentions Utah E/Confederated Tribes F, Financial Assurance; Utah H, Inadequate Thermal Design;[1] Utah R, Emergency Plan; and Utah S, Decommissioning, beginning at 9:30 a.m., on Monday, June 19, 2000. Although the physical location of the hearings remains the same as previously announced—Wasatch Room, Mezzanine Level, 150 West 500 South, Salt Lake City, Utah—the Board has been advised, and the public is hereby notified, that this location is now operated as the Sheraton City Centre Hotel Salt Lake City. With the exception of those days in which the Board is hearing oral limited appearance statements in accordance with section B below or otherwise adjourns the hearing to accommodate scheduling or other administrative purposes, the hearing on these issues shall continue from day-to-day until concluded.

The public is further advised that, in accordance with 10 CFR 2.790(b)(6), all or part of the sessions regarding contentions Utah H, Utah E/Confederated Tribes F, and Utah S may be closed to the public because the matters at issue may involve the discussion of confidential proprietary information.

B. Revised Information Regarding Oral Limited Appearance Statement Sessions

In its April 19, 2000 notice, the Board provided a proposed schedule for conducting oral limited appearance statement sessions and urged those members of the public who were interested in making oral limited appearances to preregister by May 31, 2000. Based on the interest shown in those preregistrations, the Board has decided to postpone the sessions previously scheduled for June 30 and July 1 at Tooele, Utah, to a later date. The Board anticipates that during the course of this proceeding it will be in Utah for additional evidentiary or other proceedings and intends to reschedule the oral limited appearance statements in the Tooele area for that time.

Accordingly, the Board revises its April 19, 2000 notice to advise the public that the Board will entertain oral limited appearance statements at the times and locations specified below:

1. *Date: Friday, June 23, 2000.*
Times:
Afternoon Session—1 p.m. to 4 p.m. Mountain Daylight Time (MDT)
Evening Session—7 p.m. to 9:30 p.m. MDT
Location: Sheraton City Centre Hotel Salt Lake City (Note name change), Wasatch Room—Mezzanine Level, 150 West 500 South, Salt Lake City, Utah.
2. *Date: Saturday, June 24, 2000.*
Times: Afternoon Session—1 p.m. to 4 p.m. MDT.
Location: Same as Session 1 above.

[1] This date, the Board received notice by e-mail transmission from counsel for intervenor State of Utah (State) that the State has decided not to pursue litigation of the contention and will be filing a notice of withdrawal of the contention shortly. Assuming this comes to pass, this issue would not be litigated during this evidentiary hearing.

C. Participation Guidelines for Oral Limited Appearance Statements

Any person not a party to, or seeking party status in, the proceeding will be permitted to make an oral statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board and/or the parties in their deliberations in connection with the issues to be considered in this proceeding.

Oral limited appearance statements will be entertained during the hours specified above, or such lesser time as may be necessary to accommodate the speakers who are present. If, however, all scheduled and unscheduled speakers present at a session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending times listed in section B above.

The time allotted for each statement normally will be no more than five minutes, but may be further limited depending on the number of written requests to make an oral statement that are submitted in accordance with section D below and/or the number of persons present at the designated times.

D. Submitting a Request To Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. The Board will continue to accept written requests to make an oral statement, which must be mailed, faxed, or sent by e-mail so as to be received by close of business (4:30 p.m. EDT) on Monday, June 19, 2000. The request must specify the date—June 23 or June 24—and, for the June 23 session, the time on that day—afternoon or evening—during which the requester wishes to make an oral statement. Thereafter, all oral statement requests will be handled by registration on-location at the limited appearance sessions, on a first-come, first-served basis as the scheduled time allows. And in this regard, the Board notes that requests by the same individual to make an oral statement at more than one of the sessions will be entertained at subsequent sessions after the Board has heard from those individuals who have not yet provided the Board with an oral statement.

Written requests to make an oral statement should be submitted to:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Fax: (301) 415–1101 (verification (301) 415–1966)

E-mail: hearingdocket@nrc.gov

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Fax: (301) 415–5599 (verification (301) 415–7550)

E-mail: gpb@nrc.gov

E. Submitting Written Limited Appearance Statements and Availability of Documentary Materials

As the Board has noted previously, a written limited appearance statement can be submitted at any time. Such statements should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Licensing Board Chairman.

Documents relating to the PFS license application at issue in this proceeding currently are on file at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20003–1527, and at the University of Utah, Marriott Library, Documents Division, 295 S. 1500 East, Salt Lake City, Utah 84112–0860. Additionally, documents submitted in this proceeding after November 1, 1999, are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through the NRC's Internet Web site Public Electronic Reading Room Link at <http://www.nrc.gov./NRC/ADAMS/index.html>.

For the Atomic Safety and Licensing Board.[2]

[2] Copies of this notice were sent this date by Internet e-mail transmission to counsel for (1) applicant PFS; (2) intervenors Skull Valley Band, Ohngo Gaudadeh Devia, Confederated Tribes of the Goshute Reservation, Southern Utah Wilderness Alliance, and the State; (3) petitioner William D. Peterson; and (4) the NRC staff.

Dated: Rockville, Maryland, June 7, 2000.
G. Paul Bollwerk, III,
Administrative Judge.
[FR Doc. 00–14887 Filed 6–12–00; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Use of Screening Values to Demonstrate Compliance With the Final Rule on Radiological Criteria for License Termination

Purpose: This notice provides supplemental information to clarify the criteria for using screening values to demonstrate compliance with the Nuclear Regulatory Commission's (NRC) Final Rule on Radiological Criteria for License Termination (License Termination Rule (LTR)) which was issued on July 21, 1997, (62 FR 39058).

Background: Acceptable license termination screening values of common radionuclides for building surface contamination were published in the **Federal Register** on November 18, 1998 (63 FR 64132). Screening values of common radionuclides for surface soil contamination were published in the **Federal Register** on December 7, 1999 (64 FR 68395). As discussed in these notices, NRC's DandD computer code provides a method for calculating screening values for radionuclides in soil, and screening values for contamination on building surfaces. NRC used the DandD methodology to derive the building surface contamination screening values in Table 1 of the November 18, 1998, notice and the surface soil contamination screening values in Table 3 of the December 7, 1999, notice. These screening values correspond to levels of radionuclide contamination that would be deemed in compliance with the unrestricted use dose limit in 10 CFR 20.1402 (*i.e.*, 0.25 milliSievert/year, (25 millirem/year)). The values correspond to screening "derived concentration guidelines" (DCGLs) for each specific radionuclide based on the methodology described in NRC's draft Regulatory Guide "Demonstrating Compliance with the Radiological Criteria for License Termination" (DG–4006). After these screening values were published, several questions arose concerning conditions or criteria under which the screening values would apply. Criteria for determining the applicability of these screening values is provided in the following section.

SUPPLEMENTARY INFORMATION: Sites with surface soil contamination levels below those listed in Table 3 of the December 7, 1999, notice will be deemed acceptable for release for unrestricted use provided that:

1. Residual radioactivity has been reduced to levels that are "as low as is reasonably achievable" (ALARA);
2. The residual radioactivity is contained in the top layer of the surface soil (i.e., a thickness of approximately 15 centimeters);
3. The unsaturated zone and the groundwater are initially free of radiological contamination; and
4. The vertical saturated hydraulic conductivity at the specific site is greater than the infiltration rate. (Refer to NUREG/CR–5512, Vol. 1, "Residual Radioactive Contamination from Decommissioning, Technical Basis for Translating Contamination Levels to Annual Total Effective Dose Equivalent, Final Report, October 1992" for additional information.) Buildings with surface contamination levels below those listed in Table 1 of the November 18, 1998, notice will be deemed acceptable for release for unrestricted use provided that:

1. Residual radioactivity has been reduced to levels that are ALARA;
2. The residual radioactivity is contained in the top layer of the building surface (*i.e.*, there is no volumetric contamination);
3. The fraction of removable surface contamination does not exceed 0.1. (For cases when the fraction of removable contamination is undetermined or higher than 0.1, users may assume, for screening purposes, that 100 percent of the surface contamination is removable, and therefore the screening values should be decreased by a factor of 10.)

For radionuclides not listed in the Tables 1 and 3, the latest version of the DandD code may be used, without modification of the default values, to derive screening values. However, because the current version of DandD (*i.e.*, version 1) is overly conservative, and DandD version 2 is under development, NUREG/CR–5512, Vol. 3, "Residual Radioactive Contamination From Decommissioning, Parameter Analysis, Draft Report for Comment, October 1999," may be used to determine acceptable screening values. Specifically, Table 5.19 (using a P_{crit} = 0.90) may be used for building surface contamination screening values and Table 6.91 (using a P_{crit} = 0.10) may be used for surface soil screening values.

For site-specific analyses, licensees may use models other than DandD to demonstrate compliance with the LTR provided they can demonstrate that the model and parameters used in that model are appropriate for the site.

For mixtures of radionuclides in soil or on building surfaces, the "sum of fractions" rule applies (see 10 CFR Part 20, Appendix B, Note 4).

The NRC staff intends to include Tables 1 and 3 and these criteria governing their use in the Standard Review Plan for decommissioning. Comments on this approach may be submitted within 30 days from the date of this notice to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For further information: Contact Dr. Rateb (Boby) Abu-Eid, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–5811; fax: (301) 415–5398; or email: *bae@nrc.gov*.

Dated at Rockville, Maryland, this 7th day of June 2000.

For the Nuclear Regulatory Commission.
Robert A. Nelson,
Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material, Safety and Safeguards.
[FR Doc. 00–14839 Filed 6–12–00; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Office of Nuclear Material Safety and Safeguards Spent Fuel Project Office; Notice of Issuance and Availability of NUREG/CR–6672 Reexamination of Spent Fuel Shipment Risk Estimates

The United States Nuclear Regulatory Commission (NRC) has issued the final report "Reexamination of Spent Fuel Shipment Risk Estimates," NUREG/CR–6672, SAND2000–0234.

The Reexamination evaluates the risks associated with anticipated truck and rail transport of spent fuel under both routine and accident conditions, and concludes that these risks are small. The report was prepared for the Spent Fuel Project Office (SFPO) by Sandia National Laboratories (SNL).

NUREG/CR–6672 is intended for use by risk analysts, scientists, and engineers. A peer review of NUREG/CR–6672 was conducted by Lawrence Livermore National Laboratories, and is available for public review in NRC Agencywide Documents Access and Management System by searching Accession Number ML003720331.

NUREG/CR–6672 is available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001. Copies of NUREG/CR–6672 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328, telephone no. 1–202–512–1800, or the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone no. 1–800–553–6847. Volume 1, Main Report, has been printed in hard copy. Due to color duplication costs, Volume 2, Appendices, is being distributed only on compact disk (CD). The CD also contains Volume 1. Both volumes are available at the NRC web site, *http://www.nrc.gov*. See the link under "Technical Reports in the NUREG Series" on the "Reference Library Page."

Dated at Rockville, Maryland, this 2nd day of June, 2000.

For the Nuclear Regulatory Commission.
Susan F. Shankman,
Deputy Director, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.
[FR Doc. 00–14838 Filed 6–12–00; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension:
Rule 19b–4 and Form 19b–4, SEC File No. 270–38, OMB Control No. 3235–0045.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 19(b) of the Securities Exchange Act of 1934 ("Act") (15 U.S.C. 78s(b)) requires each self-regulatory organization ("SRO") to file with the Commission copies of any proposed rule, or any proposed change in, addition to, or deletion from the rules of such SRO. Rule 19b–4 (17 CFR 240.19b–4) implements the requirements of Section 19(b) by requiring the SROs to file their proposed rule changes on Form 19b–4 and by clarifying which actions taken by SROs are deemed proposed rule changes and so must be filed pursuant to Section 19(b).

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Act, whether the proposed rule change is consistent with the Act and the rules thereunder. The information is used to determine if the proposed rule change should be approved or if proceedings should be instituted to determine whether the proposed rule change should be disapproved.

The respondents to the collection of information are self-regulatory organizations (as defined by the Act), including national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board.

Twenty-four respondents file an average total of 500 responses per year, which corresponds to an estimated annual response burden of 17,500 hours. At an average cost per response of $2,175, the resultant total related cost of compliance for these respondents is $1,087,500 per year (500 responses × $2,175/response=$1,087,500).

Compliance with Rule 19b–4 is mandatory. Information received in response to Rule 19b–4 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (b) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: June 6, 2000.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 00–14817 Filed 6–12–00; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27181]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

June 6, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 27, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 27, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–9677)

Allegheny Energy, Inc. ("Allegheny"), a registered holding company, its subsidiary service company, Allegheny Energy Service Corporation ("Service"), one of its electric utility subsidiary companies, The Potomac Edison Company, and a nonutility subsidiary company, Allegheny Ventures, Inc., all located at 10435 Downsville Pike, Hagerstown, Maryland 21740, and Allegheny's other utility subsidiary companies, West Penn Power Company, 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, Monongahela Power Company, 1310 Fairmont Avenue, Fairmont, West Virginia 26554 and Allegheny Energy Supply Company, LLC ("Supply") (together, "Applicants"), R.R. 12, P.O. Box 1000, Roseytown, Pennsylvania 15601 have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(f)

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of the Act and rules 45 and 54 under the Act.

By prior Commission orders dated January 29, 1992, February 28, 1992, July 14, 1992, November 5, 1993, November 28, 1995, April 18, 1996, December 23, 1997, May 19, 1999 and October 8, 1999 (HCAR Nos. 25462, 25481, 25581, 25919, 26418, 26506, 26804, 27030 and 27084) ("Money Pool Orders"), among other things, Allegheny and its subsidiary companies were authorized to establish and participate in a system money pool ("Money Pool") to be administered by Service. By order dated November 12, 1999 (HCAR No. 27101) ("Financing Order"), among other things, the Commission authorized, through July 31, 2005, Supply to effect short-term borrowings in aggregate outstanding amounts of $300 million, consisting of the issuance of up to $100 million of notes ("Notes") to Allegheny and up to $200 million of commercial paper ("Paper") to dealers and Allegheny to enter into credit and counterparty support agreements ("Support Agreements") for the benefit of Supply in amounts of up to $150 million.

The Applicants state that competitive pressures in the industry have required that the system expand its generating capacity to a level that will allow it to serve a larger customer base. In order to meet the additional capital requirements associated with the expansion, the Applicants request that the Commission modify the authority granted in the Money Pool Orders to include Supply in the Money Pool Additionally, it is requested that the authority granted in the Financing Order be modified to allow for additional financing authority.

In particular, Allegheny proposes to: (1) issue and sell up to $135 million of long-term unsecured notes to banks or other institutions,[1] and (2) enter into Support Agreements for the benefit of Supply in amounts increased from $150 million to $250 million. Supply proposes to: (1) issue and sell up to $400 million of secured and unsecured long-term debt,[2] and (2) issue and sell Notes and Paper and borrow from the Money Pool,[3] each in aggregate outstanding amounts of up to $300 million, provided that its aggregate outstanding short-term debt does not exceed $300 million.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14818 Filed 6–12–00; 8:45 am]

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[1] *See Southern Co.*, HCAR No. 27134 (February 9, 2000) (authorizing electric utility holding company to issue unsecured debt and preferred securities).

[2] The record notes that the interest rates, fees and expenses associated with the long-term debt issued by Allegheny and Supply will be comparable to those obtainable by similar utilities issuing comparable securities containing the same or similar terms and maturities.

[3] Supply proposes to lend to and borrow up to $300 million from the Money Pool on the same terms and under the same conditions that are available to current Money Pool members.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24490; 812–12050]

American General Series Portfolio Company 2, et al., Notice of Application

June 7, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit certain series of the North American Funds ("NAF") to acquire all of the assets and liabilities of certain series of the American General Series Portfolio Company 2 ("AGSPC2"). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: AGSPC2, NAF, The Variable Annuity Life Insurance Company ("VALIC"), and American General Corporation ("American General").

Filing Dates: The application was filed on March 24, 2000. Applicants agree to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: AGSPC2, VALIC, and American General 2929 Allen Parkway, Houston, Texas 77019; NAF, 286 Congress Street, Boston, Massachusetts, 02210.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regeulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. AGSPC2, a Delaware business trust, is registered under the Act as an open-end management investment company and is comprised of twenty-four series, twenty-two of which are involved in the proposed transactions (the "Acquired Series"). NAF, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is comprised of twenty-five series, twenty of which are involved in the proposed transactions (The "Acquiring Series"). Ten of the Acquiring Series are newly organized for purposes of the proposed transactions.[1] The Acquiring Series and the Acquired Series are collectively referred to as the "Series."

2. VALIC serves as investment adviser to the Acquired Series and is registered under the Investment Advisers Act of 1940 ("Advisers Act"). VALIC has delegated responsibility for the day-to-day management of five of the Acquired Series to American General Investment Management, L.P. ("AGIM"), an investment adviser registered under the Advisers Act. American General Asset Management Corp. ("AGAM") is the investment adviser for NAF and is registered under the Advisers Act. VALIC, AGIM, and AGAM are wholly-owned subsidiaries of American General.

3. Currently, VALIC and American General's employee pension plan, the American General Retirement Plan (the "Affiliated Plan"), each hold of record in excess of 5% (in some cases, more

Allegheny Energy, Inc., Holding Co. Act Release No. 25481 (February 28, 1992).

[1] A post-effective amendment to the registration statement for the ten newly created Acquiring Series was filed with the Commission on March 17, 2000, and became effective on May 31, 2000.

than 25%) of the outstanding voting securities of certain of the Acquired Series. VALIC holds its shares for its own account and, thus, may be deemed to have an economic interest in the shares. The Affiliated Plan holds its shares in a fiduciary capacity and does not have an economic interest in these shares.

4. On February 27, 2000, and March 2, 2000, respectively, the board of trustees of each of NAF (the "NAF Board") and AGSPC2 (the "AGSPC Board," and together with the NAF Board, the "Boards"), including in each case a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), approved plans of reorganization between the Acquiring Funds and the Acquired Funds (the "Plans," and the transactions, the "Fund Reorganizations").[2] The Fund Reorganizations are expected to occur on June 30, 2000 (the "Closing Date"). Under the Plans, the Acquiring Series will acquire substantially all of the assets, subject to the liabilities, of the Acquired Series in exchange for shares of designated classes of the corresponding Acquiring Series having an aggregate net asset value ("NAV") equal to the aggregate NAV of the corresponding Acquired Series' shares, determined as of 4 p.m. Eastern Time on the Closing Date. The aggregate NAV of the Series' shares will be computed in the manner set forth in the Acquiring Series' prospectuses and statements of additional information. Upon consummation of the proposed transactions, each Acquired Series will distribute its full fractional shares of the Acquiring Series *pro rata* to its shareholders of record, determined as of the Closing Date, and the Acquired Series will be liquidated.

5. Applicants state that the investment objective of each Acquired Series and its corresponding Acquiring Series are similar. Applicants also state that the investment restrictions and limitations of each Acquired Series and its corresponding Acquiring Series generally are similar, but in some cases involve differences that reflect the differences in the general investment strategies used by the Series.

6. The Series offer four classes of shares: Class A, Class B, Institutional Class I, and Institutional Class II. The various expenses of each class of shares of the Acquired and Acquiring Series are as follows:

a. *Class A:* Class A shares of both the Acquired Series and the Acquiring Series have a front-end sales load of up to 5.75% (4.75% for the fixed income Acquired Series), but no contingent deferred sales charge ("CDSC"). The Acquired Series and the Acquiring Series generally are subject to a 12b–1 fee of up to 0.25% and 0.35%, respectively (0.15% for the NAF Municipal Bond Fund). Class A shares of the AGSPC2 Growth Lifestyle Fund, the AGSPC2 Moderate Growth Lifestyle Fund, and the AGSPC2 Conservative Growth Lifestyle Fund (collectively, the "American General Lifestyle Funds") are not subject to a rule 12b–1 fee, but Class A shares of the corresponding Acquiring Series will be subject to a rule 12b–1 fee of up to 0.35%. Class A shares of the NAF Money Market Fund are not subject to a front-end sales charge or a rule 12b–1 fee.

b. *Class B:* Class B shares of each Acquired and Acquiring Series have no front-end sales load. Class B shares of the Acquired Series have a maximum CDSC of 5%, which decreases by one percentage point each year until the fifth year, when the fee is 1% and zero thereafter. Class B shares of the Acquiring Series have a maximum CDSC of 5% in the first two years, which decreases by one percentage point each year until the sixth year, when the fee is 1% and zero thereafter. For purposes of calculating the CDSC on Class B shares, shareholders of the Acquired Series will be deemed to have held Class B shares of the Acquiring Series since the date the shareholders initially purchased the shares of the Acquired Series. Class B shares of each Acquired and Acquiring Series have a rule 12b–1 fee of up to 1%, except for Class B shares of the American General Lifestyle Funds and the NAF Money Market Fund, which do not have a rule 12b–1 fee. Class B shares of the Acquiring Series and the Acquired Series convert to Class A shares eight and six years, respectively, after purchase. After the Fund Reorganizations, Class B shares will convert to Class A shares six years after purchase.

c. *Institutional Class I:* Institutional Class I shares of the Acquired Series have no front-end sales load, CDSC, or 12b–1 fee, but are subject to a 0.25% administrative services fee. Institutional Class I shares of the corresponding Acquired Series, will have the same characteristics as the corresponding Acquiring Series, except for the corresponding Acquiring Series of the American General Lifestyle Funds, which will not be subject to the 0.25% administrative services fee. All of the Acquired Series have Institutional Class I Shares, except for AGSPC2 Stock Index Fund, AGSPC2 Small Cap Index Fund, AGSPC2 Municipal Money Market Fund, and AGSPC2 Municipal Bond Fund, Institutional Class I Shares will be offered by all of the Acquiring Series, except for NAF Municipal Money Market Fund and NAF Municipal Bond Fund.

d. *Institutional Class II:* Currently, on AGSPC2 High Yield Bond Fund and AGSPC2 Core Bond Fund have Institutional Class II shareholders. The Institutional Class II shares of these Acquired Series have no front-end sales load, CDSC, or rule 12b–1 fee. The Institutional Class II shares of the corresponding Acquiring Series will have the same characteristics as the two corresponding Acquired Series. Shareholders of the Acquired Series will not incur any sales charges in connection with the Fund Reorganizations. American General will pay the expenses of the Fund Reorganizations.

7. The Boards of AGSPC2 and NAF, including in each case a majority of the Independent Trustees, found that participation in the Fund Reorganizations is in the best interests of the shareholders of each of the Acquired and Acquiring Series and that the interests of existing shareholders will not be diluted as a result of the Fund Reorganizations. In approving the Fund Reorganizations, the Boards of AGSPC2 and NAF considered, among other things: (a) The terms and conditions of each Fund Reorganization; (b) the expense ratios of the Acquired Series and the Acquiring Series before the Fund Reorganization and the estimated expense ratios of the

[2] The Acquired Series and Acquiring Series will combine as follows: (1) AGSPC2 Large Cap Growth Fund into NAF Large Cap Growth Fund; (2) AGSPC2 International Growth Fund and AGSPC2 International Value Fund into NAF International Equity Fund; (3) AGSPC2 Large Cap Value Fund into NAF Growth & Income Fund; (4) AGSPC2 Balanced Fund into NAF Balanced Fund; (5) ASPC2 Mid Cap Growth Fund into NAF Mid Cap Growth Fund; (6) AGSPC2 Small Cap Growth Fund into NAF Small Cap Growth Fund; (7) AGSPC2 Strategic Bond Fund into NAF Strategic Income Fund; (8) AGSPC2 Municipal Bond Fund into NAF Municipal Bond Fund; (9) AGSPC2 Money Market Fund into NAF Money Market Fund; (10) AGSPC2 Core Bond Fund and AGSPC2 Domestic Bond Fund into NAF Core Bond Fund; (11) AGSPC2 Mid Cap Value Fund into NAF Mid Cap Value Fund; (12) AGSPC2 Stock Index Fund into NAF Stock Index Fund; (13) AGSPC2 Small Cap Index Fund into NAF Small Cap Index Fund; (14) AGSPC2 Socially Responsible Fund into NAF Socially Responsible Fund; (15) AGSPC2 High Yield Bond Fund into NAF High Yield Bond Fund; (16) AGSPC2 Growth Lifestyle Fund into NAF Aggressive Growth Lifestyle Fund; (17) AGSPC2 Moderate Growth Lifestyle Fund into NAF Moderate Growth Lifestyle Fund; (18) AGSPC2 Conservative Growth Lifestyle Fund into NAF Conservative Growth Lifestyle Fund; (19) AGSPC2 Municipal Money Market Fund into NAF Municipal Money Market Fund; and (20) AGSPC2 Science & Technology Fund into NAF Science & Technology Fund.

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Acquiring Series after the Fund Reorganizations; (c) the fact that the costs estimated to be incurred by the Series as a result of the Fund Reorganizations will not be borne by the Series, but by American General; and (d) the tax-free nature of the Fund Reorganizations.

8. The Plans are subject to a number of conditions precedent, including that: (a) the Plans will have been approved by the Boards of each of the Acquired Series and the Acquiring Series and by the shareholders of each of the Acquired Series; (b) each Acquired Series will solicit proxies from its shareholders pursuant to definitive proxy materials filed with the Commission; (c) the applicants will have received an opinion of counsel concerning the federal income tax aspects of the Fund Reorganizations; and (d) applicants will have received from the Commission exemptive relief from section 17(a) of the Act for the Fund Reorganizations. Each Plan may be terminated by mutual agreement of the Boards at any time prior to the Closing Date. Applicants agree not to make any material changes to the Plans that affect the application without prior SEC approval.

9. Definitive proxy materials have been filed with the Commission and were mailed to shareholders of each Acquired Series on or about June 1, 2000. A special meeting of the shareholders of each Acquired Series is scheduled to be held on or about June 22, 2000.

Applicant's Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Series may be deemed affiliated persons and, thus, the Fund Reorganizations may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchasers or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Fund Reorganizations because certain Series may be deemed to be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by VALIC and the Affiliated Plan of more than 5% (in some cases, more than 25%) of the outstanding voting securities of certain of the Acquired Series, each Acquired Series may be deemed an affiliated person of an affiliated person of the corresponding Acquiring Series.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Fund Reorganizations. Applicants submit that the Fund Reorganizations satisfy the standards of section 17(b) of the Act. Applicants submit that the Fund Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that the Boards of AGSPC2 and NAF, including in each case a majority of their Independent Trustees, found that participating in the Fund Reorganizations is in the best interests of the shareholders of each of the Series, and that the interests of the shareholders will not be diluted as a result of the Fund Reorganizations. Applicants also note that the exchange of the Acquired Series' assets for shares of the Acquiring Series will be based on the Series' relative NAVs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14849 Filed 6–12–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42872; File No. SR–Amex–00–18]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of Proposed Rule Change to Raise Equity Options Transaction Fees for Non-Member Broker-Dealers

May 31, 2000.

I. Introduction

On April 7, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change was published for comment in the **Federal Register** on May 10, 2000.[3] The Commission received no comments on the proposal. This order grants accelerated approval of the proposal.

II. Description of the Proposal

The Amex proposes to increase equity options transaction fees for non-member broker-dealer orders. The Amex currently imposes a transaction charge on options trades executed on the Exchange. The charges vary depending on whether the transaction involves an equity or index option and whether the transaction is executed for a specialist or market maker account, a member firm's proprietary account, a non-member broker-dealer, or a customer account. The Amex also imposes a charge for clearance of options trades and an options floor brokerage charge, which also depends upon the type of account for which the trade is executed. In addition, all three types of charges—transactions, options clearance, and options floor brokerage—are subject to caps on the number of options contracts subject to the charges on a given day.[4]

Recently, the Amex eliminated all options transaction, clearance, and floor brokeage fees for customer equity options orders.[5] To offset the elimination of these fees for customer equity options orders, the Exchange raised the equity options transaction fee from $0.07 to $0.19 per contract side for member firm proprietary orders and from $0.08 to $0.17 per contract side for specialist and market maker orders. To further offset the elimination of options transaction, clearance and brokerage fees for customer equity option orders, the Exchange proposes to increase the equity options transaction fee for non-member broker-dealer orders from $0.07 to $0.19 per contract side. This revised fee will also apply to both LEAPS[6] and FLEX[7] options. Equity options clearance and floor brokerage fees for non-member broker-dealers will remain unchanged at $0.04 and $0.03 per contract side, respectively.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act, which requires a registered national securities exchange to promulgate rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.[9] The Commission believes that the proposed increase in the equity options transaction fee for non-member broker-dealer orders is not unreasonable and should not discriminate unfairly among market participants. In addition, the Commission notes that member firm proprietary orders are charged the same options transaction fee as is proposed for non-member proprietary orders.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Approval of the proposal will enable the Exchange to offset the recent elimination of options transaction, clearance, and floor brokerage fees for customer equity options orders in an expeditious manner. The Commission notes that the Exchange recently raised the equity options transaction fee for member firm proprietary orders to help offset the elimination of options transaction, clearance, and floor brokerage fees for customer equity options orders, and no comments were received on that proposal.[10] Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.[11]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–00–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 42752 (May 3, 2000), 65 FR 30154.

[4] The current caps are set at 2,000 contracts for customer trades and 3,000 contracts for member firm proprietary, non-member broker-dealer, specialist, and market maker trades.

[5] See Securities Exchange Act Release No. 42675, (April 13, 2000), 65 FR 21223 (April 20, 2000).

[6] LEAPS are Long Term Equity Anticipation Securities or options with durations of up to 36 months. See Amex Rule 903c.

[7] FLEX options are customized options with individually specified terms such as strike price, expiration date, and exercise style. See Amex Rule 900G.

[8] 15 U.S.C. 78f. In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] See Securities Exchange Act Release No. 42675, (April 13, 2000), 65 FR 21223 (April 20, 2000) (approving SR–Amex–00–15).

[11] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42870; File No. SR–CBOE–97–37]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, 3, 4 and 5 to the Proposed Rule Change Relating to Eligibility Requirements for Participation on the RAES System

May 31, 2000.

I. Introduction

On August 6, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Retail Automatic Execution System ("RAES") eligibility requirements for market makers. The proposed rule change was published in the **Federal Register** on August 20, 1997.[3] The Commission received three comment letters on the proposed rule change.[4]

On July 23, 1998, the CBOE submitted Amendment No. 1 to the proposed rule change.[5] On September 28, 1999, the CBOE submitted Amendment No. 2 to the proposed rule change.[6] On December 8, 1999, the CBOE submitted Amendment No. 3 to the proposed rule change.[7] On March 22, 2000, the CBOE submitted Amendment No. 4 to the proposed rule change.[8] Finally, on May 19, 2000, the CBOE submitted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 38928 (August 12, 1997), 62 FR 44296.

[4] Letters from James I. Gelbort to the Commissioners, SEC, dated September 7, 1997 ("Gelbort Letter"); Scott Kilrea, President, Letco, Lee E. Tenzer Trading Company, to Jonathan G. Katz, Secretary, SEC, dated February 20, 1998 ("Letco Letter No. 1"); and Scott Kilrea, President Letco, Lee E. Tenzer Trading Company, et al, to Heather Seidal, Division of Market Regulation ("Division"), SEC, dated August 7, 1998 ("Letco Letter No. 2").

[5] Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Heather Seidel, Division, SEC, dated July 22, 1998 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposal by establishing a floor percentage that may be set by the Market Performance Committee ("MPC") that limits a market maker's total transactions and contract volume executed on RAES. The CBOE also proposed that the market maker percentages should be established and calculated on a quarterly basis. Amendment No. 1 contained guidelines to be used by the MPC when determining whether to exempt market maker activity on one or more trading days during the applicable calendar quarter and guidelines for the exercise of discretion by the MPC pursuant to Interpretation .01 of the proposed rule change, which permits the MPC to apply the eligibility requirements to fewer than all classes traded at a particular trading station. Finally, the CBOE responded to issues raised in Letco Letter No. 1 (*see supra* note 4).

[6] Letter from Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Division, SEC, dated September 23, 1999 ("Amendment No. 2"). In Amendment No. 2, the CBOE amended the proposal to limit its application to those options classes identified by the Exchange as having market makers that trade an inordinate percentage of their transactions on RAES. The Exchange also reiterated its belief that the proposed rule language afforded protections against potential discrimination by the MPC when it determines which trading days to exempt from the percentage calculations because the MPC will not know the identity of market makers from the data it reviews. Finally, the Exchange responded to issues raised in Letco Letter No. 2 (*see supra* note 4).

[7] Letter from Stephanie C. Mullins, Attorney, CBOE, to Kelly Riley, Division, SEC, dated December 7, 1999 ("Amendment No. 3"). In Amendment No. 3, the CBOE amended the proposed rule change to provide an exemption from the proposed RAES percentage requirements for designated primary market makers ("DPMs") and their designees, when acting in the capacity as a DPM in an option class.

[8] Letter from Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Kelly Riley, Division, SEC, dated March 21, 2000 ("Amendment No. 4"). In Amendment No. 4, the CBOE corrected rule language submitted in Amendment No. 3, which failed to reflect the revisions proposed in Amendment No. 2.

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Amendment No. 5 to the proposed rule change.[9]

This order approves the proposed rule change, as amended. The Commission is also soliciting comment on Amendment Nos. 1, 2, 3, 4 and 5 to the proposed rule change from interested persons.

II. Description of the Proposal

The CBOE proposes to establish two additional eligibility requirements that market makers must satisfy to be eligible to participate in the RAES system.[10] The Exchange also proposes to clarify that CBOE Rule 8.16 applies to RAES eligibility in all CBOE options except options on the Standard & Poor's 100 Stock index ("OEX"), options on the Standard & Poor's 500 Stock Index ("SPX") and options on the Dow Jones Industrial Average ("DJX"), which have separate RAES rules.

The Exchange proposes to implement a limit on the percentage of a market maker's overall trades, both in terms of total transactions and contract volume, that a market maker may transact on RAES during a quarterly period. The proposed eligibility requirements, however, will not apply to DPMs.[11] The eligibility requirements have two distinct parts, both of which must be satisfied. First, a market maker's RAES transactions may not exceed a maximum percentage of his or her total transactions for a calendar quarter. Second, a market maker's contract volume resulting from his or her RAES transactions must not exceed a maximum percentage of his or her overall contract volume during a calendar quarter.

These percentages will be determined by the MPC. The MPC's authority to determine the applicable percentages, however, will be limited so that neither of the percentages may be set at less than fifteen percent. In other words, the MPC may not establish a maximum RAES transaction or contact volume percentage under fifteen percent.

Further, the MPC will only implement these eligibility requirements on those options classes that have been identified as having market makers that are not actively fulfilling their market making obligations.[12] If the MPC determines to implement the eligibility requirements on an options class, a regulatory circular will be issued setting forth the applicable percentages and the effective date for the application of the percentages before the beginning of the quarterly period.

The MPC will have the authority to implement the eligibility requirements on those options classes that it identifies as having market makers that are not actively fulfilling their market making obligations on the floor of the Exchange. The factors to be considered by the MPC when determining whether to apply the percentage requirements include complaints from floor brokers or other market makers; the results of routine market performance surveys; data concerning the percentage of RAES trades performed by a particular market maker or market maker trading crowd; or any other factor that the MPC deems relevant.[13]

At the end of each quarter, the market maker transaction and volume percentages will be calculated. The MPC will have the authority to exempt from the percentage tabulations certain trading days. When determining which days to exempt, however, the MPC will not be privy to individual market maker identities. It will consider whether a particular day experienced an unusually high percentage of RAES trades compared to normal trading days and any other relevant factors. Generally, the MPC will exempt market maker activity for any option class on days where the percentage of RAES trades out of total trades exceeds the requirement set for the class by the MPC.

If a market maker is found to be in violation of the eligibility requirements, he or she may be determined ineligible to participate on RAES. In addition, a market maker may be subject to disciplinary or other remedial action by the MPC under paragraph (d) of Rule 8.16. Market makers, pursuant to Chapters XIX and XVII, as applicable, may appeal such actions taken by the MPC.[14]

III. Summary of Comments

The Commission received three comment letters from two commenters on the proposed rule change.[15] One commenter stated that he believed that the proposed rule change was unnecessary.[16] The other commenter, while generally supporting the underlying motivation of the proposed rule change, questioned its application on DPMs [17] and requested that approval of the proposal be postponed until the ramifications on DPMs could be resolved.[18] The Exchange submitted to the Commission a letter in response to the issues raised by one commenter.[19] In addition, the Exchange addressed the issues raised in the comment letters in Amendment Nos. 1, 2, and 3. The following discussion summarizes the issues raised by the commenters and the Exchange's response.

1. Gelbort Letter

In his comment letter, Mr. Gelbort questioned the appropriateness of the proposed rule change and suggested that current Exchange rules should be able to sufficiently address the concerns described by the Exchange relating to market makers who fail to adequately fulfill their market making obligations. Specifically, Mr. Gelbort suggested that by filing the proposal the Exchange implied that it had been unable to enforce the provisions of CBOE Rule 8.7.[20] Mr. Gelbort stated that he believed that other current Exchange rules, if employed effectively, could adequately address the problems identified by the Exchange. For example, according to Mr. Gelbort, CBOE Rule 8.2(a) provides the Exchange with the authority to deny market maker registration for insufficient ability. In addition, according to Mr. Gelbort, CBOE Rule 8.2(b) permits the MPC to suspend or terminate market maker registrations for incompetence. Further, Mr. Gelbort stated, CBOE Rule 8.3 permits the MPC to suspend or terminate market maker appointments when the interests of a fair and orderly market are served. Finally, Mr. Gelbort described the authority granted to the MPC in CBOE 8.60 to hold informal meetings or hearings that may result in remedial actions against market makers and the disciplinary proceedings that the Exchange may institute under Chapter XVII of its rules.

Mr. Gelbort also suggested that the proposed rule change might create inequities associated with its administration. Specifically, Mr. Gelbort raised concerns about the broad authority sought by the Exchange and questioned the apparent lack of numerical limits. Mr. Gelbort pointed out that the broad authority could result in the proposed rule being applied to exclude certain market makers in an arbitrary manner. He also questioned whether the proposed rule could be applied differently to market makers and DPMs.[21] In addition, Mr. Gelbort suggested that because the Exchange has the authority to compel market maker participation on RAES whenever a market maker is present in the crowd during an expiration cycle after the market maker has signed on to RAES once,[22] that market makers would not be able to self-regulate his or her own RAES trading percentage. Further, Mr. Gelbort stated that the proposed rule would not encourage compliance with the marekt making obligations of CBOE Rule 8.7 in all classes allocated to a crowd.

Mr. Gelbort also questioned the effect of changing the phrase from "in that trading crowd" to "at the trading station" in proposed Rule 8.16(a)(iv). Mr. Gelbort expressed concern that his change in language could allow a future MPC to interpret the phrase as prohibiting market makers standing in one part of the crowd from trading or participating on RAES in all classes allocated to the crowd. According to Mr. Gelbort, some DPMs arrange their stations to make it difficult for all market makers to trade in all of the classes allocated to the station and he questioned the significance of the language change.

Finally, Mr. Gelbort stated that he believed that the proposed rule change is anticompetitive because he believes it condones disregard for the affirmative market making obligations and because it arbitrarily restricts the number of market makers who may choose to interact with RAES-eligible orders. Further, he believed that the Exchange should clarify the problems sought to be addressed by the proposal and to determine whether current Exchange rules adequately address these problems. If, however, the Exchange finds that the proposal is the best gauge for market maker performance, Mr. Gelbort believes that persistent non-compliance should be met with sanctions stronger than exclusion from RAES.

The Exchange responded to Mr. Gelbort's comments in its Response Letter.[23] The following summarizes the Response Letter.

The Exchange expressed its strong disagreement with Mr. Gelbort's suggestion that is proposal was an indication of its inability to enforce CBOE Rule 8.7. According to the Exchange, the proposal should not be read to suggest that it lacks the ability to enforce compliance with CBOE Rule 8.7, but should be considered as an additional incentive for market makers to meet their market making obligations. The Exchange explained that it utilizes a number of current rules to ensure compliance by its market makers. For example, the Exchange stated that it conducts semi-annual crowd evaluations pursuant to CBOE Rule 8.60 during which the MPC speaks to each member of a trading crowd to explain the obligations of market makers. These reviews have led to some trading crowds being restricted in new product allocations and have led to referrals to the Department of Market Regulation for appropriate action when it appears that individual market makers are performing below standard.

The Exchange also stated that it evaluates the performance of individual market makers. The Exchange reviews, on a quarterly basis, whether a market maker is complying with the trading volume requirements of Interpretation .03 of CBOE Rule 8.7.[24] The Exchange stated that the MPC takes progressive remedial actions against market makers for violations of these provisions. In conjunction with the MPC's review, the Department of Market Regulation reviews the 80 percent in-person requirement.[25] According to the Exchange, these reviews seek to ensure that market makers trade in the appointed options. If a market maker is not performing, remedial actions may be taken.

Moreover, according to the Exchange, applications of potential market makers are reviewed. The Exchange's Membership Committee reviews all market maker applications, pursuant to CBOE Rule 8.2(a) and Chapter III of the Exchange's rules. All market maker applicants must successfully complete an examination that measures competence and qualifications. Further, all applicants must attend educational training.

In response to Mr. Gelbort's assertion that the proposal may be inequitably administered because of the broad authority of the MPC to set applicable percentages, the Exchange stated that this flexibility was necessary because the MPC does not yet have experience with setting such limitations. Further, the Exchange believes that the flexibility will enable the MPC to apply appropriate to each class and to exempt trading days as necessary. The Exchange stated that the administration of the rule would not be arbitrary because the same percentages for a particular class will apply to all market makers. Moreover, members economically aggrieved by any MPC decision will be able to appeal such decision pursuant to Chapter XIX of the Exchange's rules.

The Exchange disagreed with Mr. Gelbort's assertion that market makers will be unable to effectively regulate their percentage of RAES trades. While it is true that a market maker is obligated to log on to RAES in specified circumstances, which prevents the market maker from regulating the number of his or her RAES trades, the Exchange believes that a market maker can regulate the number of non-RAES trades by making competitive markets and aggressively competing for order flow. Thus, the Exchange believes that market makers can regulate the percentage of his or her RAES trades by monitoring his or her non-RAES trades. Moreover, the Exchange states that the MPC's authority to exempt certain

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[9] Letter from Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE to Kelly Riley, Division, SEC, dated May 18, 2000 ("Amendment No. 5"). In Amendment No. 5, the CBOE amended the proposed language of Interpretation .01 of Rule 8.16. Specifically, Interpretation .01 is proposed to contain factors to be considered by the MPC when it determines whether to impose the percentage requirements on a particular options class. Further, the Exchange deleted factors proposed in Amendment No. 1, which were to be used by the MPC to determine whether to exempt an options class from the percentage requirements. However, because the proposal, as amended in Amendment No. 2, is no longer proposed to be implemented floor wide but only applied to specific options classes that have been identified by the MPC as having market makers that are not actively fulfilling their market making obligations, the deleted factors were no longer necessary.

[10] RAES is the Exchange's automatic execution system for small (generally less than 50 contracts) public customer market or marketable limit orders. When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry into the system. A buy order will pay the offer; a sell order will sell at the bid. An eligible market maker who is signed onto RAES at the time the order is received will be designated to trade with the public customer at the assigned price.

[11] *See* Amendment No. 3.

[12] *See* Amendment No. 2.

[13] *See* Amendment No. 5.

[14] The Exchange also noted that the MPC might determine to require an ineligible market maker to participate in RAES if there is inadequate participation in a particular options class. *See* CBOE Rule 8.16(c).

[15] *See supra* note 4.

[16] *See* Gelbort Letter.

[17] *See* Letco Letter No. 1.

[18] *See* Letco Letter No. 2.

[19] Letter from Charles J. Henry, President and Chief Operating Officer, CBOE to Jonathan G. Katz, Secretary, SEC, dated October 31, 1997 ("Response Letter"). The Response Letter addressed the issues raised in the Gelbort Letter.

[20] CBOE Rule 8.7 sets forth the obligations of market makers. Pursuant to CBOE Rule 8.7, market makers are required, among other things, to execute transactions that constitute a course of dealings that are reasonably calculated to contribute to the maintenance of a fair and orderly market. Specifically, market makers are required, among other things, to compete with other market makers to improve markets, to make markets, to update market quotations in response to changed market conditions and to price options contracts fairly.

[21] As discussed above, DPMs have been specifically exempted from operation of the rule. *See* Amendment No. 3.

[22] *See* CBOE Rule 8.16(b).

[23] *See supra* note 19.

[24] Interpretation .03A of CBOE Rule 8.7 requires a market maker to transact 75 percent of his or her total contract volume in options classes to which he or she has been appointed. Interpretation .03B of CBOE Rule 8.7 requires a market maker to execute at least 25 percent of his or her total transactions in person, and not through the use of orders, provided, however, that for any calendar quarter in which a market maker receives market maker treatment of off-floor orders, the market maker must execute in person, and not through the use of orders, 80 percent of his or her total transactions.

[25] *Id.*

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trading days should prevent market makers from failing to satisfy the tests due to unusual market conditions.

In response to Mr. Gelbort's assertion that the proposal would not encourage compliance with the obligation imposed on market makers to make markets in all series of options classes at the trading station, the Exchange states the proposal was not intended for such a purpose. According to the Exchange, the proposed rule change was not meant to encourage compliance with this market maker obligation and that other Exchange rule serve this purpose.

Regarding the proposed change in language from "in the trading crowd" to "at the trading station," the Exchange states the terms "station" and "trading crowd" are synonymous, pursuant to Interpretation .01 to CBOE Rule 8.8. Thus, a future MPC could not change this Interpretation without first submitting a proposed rule change to the Commission for approval.

The Exchange believes that the proposal should provide market makers with an incentive to compete when they are signed onto RAES because failure to actively fulfill their market obligations under CBOE Rule 8.7 could lead to sanctions. The Exchange believes that the proposal complements the other objectives tests to ensure that a market maker fulfills his Rule 8.7 obligations. Further, the Exchange does not believe that the proposal will limit the number of market makers who will be able to actively engage in making markets in their appointed classes. Rather, the Exchange believes that the proposal encourages compliance with CBOE Rule 8.7 and promotes active competition among market makers.

Finally, the Exchange agrees with Mr. Gelbort's observation that persistent non-compliance with the proposal should be met with a stronger sanction than expulsion from RAES. According to the Exchange, suspension from RAES is only one of the alternative sanctions that may be imposed pursuant to proposed paragraph (d) of CBOE Rule 8.16. Specifically, if a member repeatedly violates the proposed rule, the MPC may refer the violations to the Department of Market Regulation for an investigation of the market maker's compliance with CBOE Rule 8.7 generally.

2. Letco Letters

Letco submitted two letters to the Commission in response to the proposed rule change.[26] In both letters, Letco expressed concern about some of the administrative applications of the proposal. Specifically, the commenter questioned the application of the proposal with respect to DPMs. As discussed above, subsequent to these comment letters, the Exchange amended the proposal to exempt DPMs from the proposal rule.[27] Thus, the commenter's concerns regarding DPMs are moot.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[28] In particular, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5)[29] of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Currently, CBOE Rule 8.16 does not contain any eligibility requirements for participating on RAES that is related to a market maker's trading activity. The Exchange stated that it had learned that some market makers on the floor have relied on their RAES participation to derive a large percentage of their profits and have not been affirmatively fulfilling their market making obligations as set forth in CBOE Rule 8.7. The Exchange explained that RAES was never intended to be a substitute to the normal operation of a traditional market making business. However, it became apparent to the Exchange that participation on RAES had led some market makers to cease to perform their obligations under CBOE 8.7.

To address these problems, the Exchange developed the proposed eligibility requirements. With these requirements, the Exchange seeks to ensure that market makers affirmatively make markets in their allocated classes. The proposal seeks to prevent market makers from relying on order flow from RAES without actively seeking order flow on the floor of the Exchange.

Pursuant to CBOE Rule 8.7, market makers have specified obligations that must be fulfilled. Generally, market makers are required to enter into transactions that constitute a course of dealings "reasonably calculated to contribute to the maintenance of a fair and orderly market." Further, market makers are obligated to continuously engage in dealing for their own accounts when a lack of price continuity exists or when there is a temporary disparity between supply and demand for a particular contract, or when a temporary distortion of the price relationships exists between options contracts of the same class. In addition, market makers are specifically required to: (i) complete with other market makers to improve markets; (ii) make markets, which will be honored to a reasonable number of contracts in all series of options classes at the trading post; (iii) update market quotations in response to changed market conditions; and (iv) price options contracts fairly, within certain perimeters.

As described above, market makers have many important obligations that create a viable marketplace for options contracts, and perform functions that contribute to fair and orderly markets, as well as to liquidity. If market makers are not actively performing these obligations, the integrity of the marketplace is compromised. Customers expect that when they send an order to the CBOE floor that it will be treated in a manner consistent with the requirements of the CBOE rules, and when market makers fail to fulfill their obligations, customers can be negatively impacted.

If market makers are failing to fulfill their obligations as the Exchange described, the market for those securities can be adversely affected because there is not competition from all of the market makers in the trading crowd. This lack of total involvement by the crowd could lead to inferior pricing of customer orders, and could affect liquidity. Moreover, customer orders may be executed in a less timely manner.

Thus, the Commission is satisfied that the proposal addresses these concerns in a manner that is consistent with the Act. Under the proposal, in a particular calendar quarter market makers will be limited in the proportion of RAES transactions that may make up their total transactions and total contract volume. As proposed, the MPC may determine for a particular options class to limit each market maker's transactions and contract volume attributed to trades on RAES to a maximum percentage of each market maker's total transactions and contract volume. The MPC will determine two percentages, one will establish a maximum percentage of a market maker's total transactions for the quarter that may be derived from RAES transactions; the other will establish the maximum contract volume that may be derived from a market maker's RAES transactions. Neither of these percentages may be less than 15 percent.

The Commission believes that these percentages should encourage market makers to actively fulfill their market making obligations. A market maker allocated options that are subject to these percentages requirements is more likely to participate in the floor market because its passive participation by signing onto RAES will be limited based on the market maker's non-RAES transactions. In this way, the proposed rule should act as an incentive to market makers to fulfill their obligations because those who fail to keep their RAES percentage within the maximum percentages will be subject to sanctions, including suspension of RAES participation.

The Commission is satisfied with the 15 percent floor that has been established in the rule. This provision limits the discretion of the MPC by preventing the MPC from establishing percentages that may be too low, and recognizes the importance of technology in Exchange operations. Today, a large amount of orders are routed to RAES for automatic execution.[30] Thus, an unduly restrictive percentage may have unintended consequences that compromise order flow and trading operations. This floor percentage is intended to strike a balance between establishing reasonable percentages to encourage market-makers to fulfill their obligations on the floor while also recognizing the amount of order flow that is routed to the RAES system for execution. The Commission expects that the Exchange will monitor the percentages established by the MPC to ensure that this balance is preserved.

The proposal will only be implemented in those options classes that the Exchange has identified as having market makers that are not actively fulfilling their market making obligations. The Commission believes that this limitation is appropriate and consistent with the Act. There would not be any reason to impose such limitations on market makers who are already actively making markets in their allocated options classes. This proposal provides the MPC with a remedial measure that can be imposed when a problem is identified.

The MPC will have the authority to determine the options classes in which market makers will be subject to the percentage limitations. In determining whether to impose the percentage requirements on a particular options classes, the MPC will consider factors such as complaints from floor brokers or other market makers that certain market makers performance surveys, data concerning the percentage of RAES trades performed by particular market makers, and other relevant factors. The Commission believes that these factors provide the MPC with the appropriate amount of discretion. Because the MPC will consider only relevant data, the limitations on the proportion of RAES trades to a market maker's total trades should only be applied to those options classes that are experiencing market maker problems. The Commission believes that this discretion should provide the MPC with flexibility to implement the eligibility requirements where needed, while also preventing the implementation of these requirements in classes that do not have such a need.

The MPC, at the end of each quarter, will have the authority to exclude from the percentage calculations trading days that may have experienced an unusually high percentage of RAES transactions when compared to normal trading days. In making this decision, the MPC, however, will not be able to identify individual market makers. Thus, the MPC will not be able to make these decisions based on any market maker's identity or volume. This anonymity should help to ensure that the process of excluding days is fair.

As described above, the Commission received three comment letters from two commenters regarding the proposal. The Commission believes that the Exchange adequately addressed the commenters concerns. Specifically, the Commission believes that the proposal does not reflect upon the Exchange's ability to enforce its market making obligations. Rather, the Commission believes that the proposal should enhance the existing regulatory structure of the Exchange. In addition, the Commission is satisfied with the Exchange's assertion that its rules already specifically define the terms "in that trading crowd" and "at the trading station" as synonymous, and the Commission further agrees that such definitions could only be amended by a rule change approved by the Commission.

The Commission disagrees with Mr. Gelbort's assertion that the proposal is anticompetitive because it condones disregard for affirmative market making obligations and because it arbitrarily restricts the number of market makers that may interact with RAES–eligible orders. On the contrary, the Commission believes that the proposal should encourage market makers to vigorously make markets in their appointed classes. Moreover, the Commission does not believe that the proposal arbitrarily restricts the number of RAES-eligible market makers that may interact with RAES transactions because all market makers will be able to continue to interact with RAES orders so long as their businesses do not place an over-reliance on RAES transactions to the detriment of the business on the floor. Market makers that fulfill their market making obligations on the floor, as well as in RAES, should not be prevented from participating in either trading forum.

Finally, as discussed above both commenters expressed concerns about how the proposal would apply to DPMs. The Exchange has addressed these concerns by exempting DPMs from operation of the rule. DPMs have additional responsibilities along with making markets, such as maintaining the book, participating at all times in automated execution and order handling systems, and responding to competitive developments in areas of market quality and customer service.[31] Thus, a DPM is unable to rely primarily on RAES trades to operate profitably. Therefore, imposing the eligibility requirements on DPMs would be unwarranted.

The Commission finds good cause to accelerate approval of Amendment Nos. 1, 2, 3, 4 and 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

In Amendment No. 1, the Exchange proposed to prohibit the MPC from requiring that market makers' transaction or contract volume from RAES executions be less than 15 percent of their total transaction or contract volume. By placing a floor on the percentage of a market maker's total transaction and contract volume that it must execute otherwise than on RAES, the Commission believes that the changes proposed in Amendment No. 1 preclude the MPC from establishing eligibility requirements that could actually harm the operations of the floor and the business of the market makers. The Exchange also proposed to apply these market makers eligibility requirements on a quarterly basis. Finally, the Exchange proposed two sets of guidelines for the MPC. The first set of guidelines will be used by the MPC to determine which days to exclude from the eligibility calculations. The Commission believes that these proposed guidelines strengthen the proposal by preventing the MPC from

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[26] *See* Letco Letter Nos. 1 and 2, *supra* note 4.

[27] See Amendment No. 3.

[28] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78f(b)(5).

[30] According to the Exchange, approximately 34% of its order executions take place in RAES.

[31] *See* CBOE Rules 8.80 and 8.81.

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considering inappropriate information that could lead to uneven or potentially discriminatory application of the eligibility requirements. The second set of guidelines set forth the factors to be considered by the MPC, pursuant to Interpretation .01, in determining whether to apply the eligibility requirements to fewer than all the option classes traded at a trading station. The second set of guidelines was eliminated by the CBOE in a subsequent amendment.[12]

The Commission believes that the proposals in Amendment No. 1 enhance the proposed rule change. For these reasons the Commission believes that good cause exists, consistent with Section 6(b)(5)[13] and Section 19(b)[14] of the Act, to accelerate approval of Amendment No. 1 to the proposed rule change.

In Amendment No. 2, the Exchange proposed to limit the application of the proposed rule to options classes identified as having market makers that trade an inordinate percentage of their trades on RAES. The Commission believes that allowing the Exchange to limit application of the proposal to only certain options classes will reduce the potential for undue burdens to be placed on those options classes that are trading without problems and that have market makers that are actively fulfilling their market making obligations. In addition, the Exchange further explained why it believes that its proposal sufficiently protects against the MPC discriminating against or in favor of any parties when exercising its discretion to exclude certain days from the percentage calculations. The Commission is satisfied that the proposal prevents the MPC from applying the eligibility requirements in a discriminatory fashion. In particular, the Commission believes that, because the data upon which the MPC will base its decision to exclude certain days from the calculation of the eligibility requirement will not identify individual market makers, the MPC will not be able to make such decisions based upon the businesses of the individual market makers on those days. For these reasons, the Commission believes that Amendment No. 2 is consistent with the Act and that good cause exists to accelerate its approval.

The Commission believes that good cause exists, pursuant to Section 6(b)(5)[15] and Section 19(b)[16] of the Act, to accelerate approval of Amendment No. 3 to the proposed rule change. In Amendment No. 3, the Exchange proposed to exempt DPMs from the eligibility requirements. The Commission believes that in light of the additional responsibilities that DPMs must fulfill and due to the fact that these additional responsibilities are required by specific CBOE rules, that it is reasonable to exempt DPMs from the eligibility requirements.

The Commission believes that good cause exists, pursuant to Section 6(b)(5)[17] and Section 19(b)[18] of the Act, to accelerate approval of Amendment No. 4 to the proposed rule change. Amendment No. 4 was technical in nature and only sought to correct the proposed rule language submitted in Amendment No. 3 to make it consistent with the proposed rule language submitted in Amendment No. 2.

Finally, in Amendment No. 5, the Exchange deleted proposed factors that were no longer applicable after the submission of Amendment No. 2. Specifically, in Amendment No. 2, the Exchange proposed to only apply the percentage requirements to those options classes that had a demonstrated need for the limitations. The factors the Exchange proposes to delete in Amendment No. 5 were to be used by the MPC to determine if options classes should be exempt from the percentage requirements. Because the proposal now only applies the percentage requirements to those options classes with a demonstrated need, these factors are no longer appropriate. In addition, the Exchange proposed to add factors to be used by the MPC to determine which options classes should be subject to the percentage requirements. The Commission believes that the factors, as described above, provide the Exchange with appropriate discretion to determine which options should be subject to the limitations. Therefore, the Commission believes that good cause exists, pursuant to Section 6(b)(5)[19] and Section 19(b)[20] of the Act, to accelerate approval of Amendment No. 5.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, 3, 4, and 5, including whether Amendment Nos. 1, 2, 3, 4 and 5 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–37 and should be submitted by July 5, 2000.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the amended proposed rule change (SR–CBOE–97–37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

Margaret H. McFarland,

Deputy Secretary.

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[12] See Amendment No.5
[13] 15 U.S.C. 78f(b)(5).
[14] 15 U.S.C. 78s(b).
[15] 15 U.S.C. 78f(b)(5).
[16] 15 U.S.C. 78S(b).
[17] 15 U.S.C 78f(b)(5).
[18] 15 U.S.C. 78s.
[19] 15 U.S.C. 78f(b)(5).
[20] 15 U.S.C. 78s(b).
[41] 15 U.S.C. 78s(b)(2)
[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42900; File No. SR–OCC–00–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend OCC's By-Laws Relating to Clearing Member Representatives

June 5, 2000.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 6, 2000, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change eliminates a requirement in OCC's By-Laws that requires clearing members to designate a specific individual (a "designee") as eligible for service as a member director or a member of the nominating committee. Instead, the amended By-Laws will provide that a member director or a member of the nominating committee must be a "representative" of a clearing member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to eliminate an OCC By-Law requirement that clearing members must designate a specific individual (a "designee") to be eligible for service as a member director or a member of the nominating committee. Instead, OCC believes that it would be more administratively efficient to require that a member director or a member of the nominating committee must be a "representative" of a clearing member. A "representative" is defined as a director, senior officer, principal or general partner of a clearing member. The term "designee" is being deleted from Article I, Section 1 of OCC's by-laws and conforming changes are being made to Section 2, 4, and 5 of Article II of OCC's By-Laws.

In addition, the term "elected members" as used with respect to the nominating committee is being deleted since all nominating committee members are elected. The term "members" is being used instead. This change is being made to Section 4, 5, and 12 of Article III and Section 3 of Article VII and to Sections 1, 2, and 3 of the Stockholders Agreement.

OCC also proposed to make other additional technical and non-substantive changes. Section 4 of Article III is being amended to provide that the terms of Class I of the nominating committee expire in odd numbered years and that the terms of Class II expire in even number years. Section 5 of Article III is also being amended to provide that OCC may transmit rather than mail the list of nominees to clearing members to accommodate other means of distribution.

OCC believes that the proposed rule change is consistent with Section 17a of the Act because the rule change eliminates administrative inefficiencies with no adverse impact to clearing member representation on OCC's Board of Directors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iv)[3] of the Act and pursuant to Rule 19b–4(f)(4)[4] promulgated thereunder because the proposal effects a change in an existing service of an OCC service that does not adversely affect the safeguarding of securities or funds in OCC's custody or control and does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[5]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–00–03 and should be submitted by July 5, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14819 Filed 6–12–00; 8:45 am]

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[2] The Commission has modified the text of the summaries prepared by OCC.
[3] 15 U.S.C. 78s(b)(3)(A)(iv).
[4] 17 CFR 240.19b–4(f)(4).
[5] 15 U.S.C. 78s(b)(3)(C).
[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending May 26, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7405
Date Filed: May 23, 2000
Parties: Members of the International Air Transport Association
Subject:
CTC COMP 0280 dated 23 May 2000
Expedited Composite Resolution 506
Special Surcharge Resolution from Japan
(Except USA/US Territories)
Intended effective date: 1 July 2000

Docket Number: OST–2000–7406
Date Filed: May 23, 2000
Parties: Members of the International Air Transport Association
Subject:
CTC COMP 0281 dated 23 May 2000

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Expedited Composite Resolution 506
Special Surcharge Resolution from Japan
(USA/US Territories)
Intended effective date: 1 July 2000

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–14880 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 00–06–C–00–CRW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yeager Airport, Charleston, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 13, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA Eastern Region, AEA–610, 1 Aviation Plaza, Jamaica, NY 11434–4809.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tim Murnahan, Assistant Director of The Central West Virginia Regional Airport Authority at the following address: 100 Airport Road, Suite 175, Charleston, WV 25311–1080.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Central West Virginia Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Kenneth Kroll, AIP/PFC Team Leader, FAA Eastern Region, (AEA–610), 1 Aviation Plaza, Jamaica, NY 11434–4809, (718) 553–3357. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 2, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Central West Virginia Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 30, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–0C–CRW.
Level of the proposed PFC: $3.00.
Proposed charge effective date: January 1, 2001.
Proposed charge expiration date: August 1, 2002.
Total estimated PFC revenue: $1,107,054.
Brief description of proposed projects(s):

—Acquire two snow plows
—Benefit cost Analysis
—Main Terminal Apron Expansion
—Acquire Snow Broom
—Environmental Assessment—Runway Safety Areas
—Emergency Generator connections
—Expand Main Terminal Building
—Two Loading bridges
—Passenger Access Tunnel

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

Under FAR Part 135—Charter Operators for hire to the general public
Under FAR Part 121—Charter Operators for hire to the general public

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York, 11434–04809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central West Virginia Regional Airport Authority.

Issued in New York City, NY on June 2, 2000.

Thomas Felix,

Manager, Planning and Programming, Eastern Region.

[FR Doc. 00–14864 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number ACE–00–23.613–01]

Proposed Issuance of Policy Memorandum, Material Qualification and Equivalency for Polymer Matrix Composite Material Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement; request for comments.

SUMMARY: This document announces an FAA proposed general statement of policy applicable to the type certification of normal, utility, acrobatic, and commuter category airplanes. This document advises the public, in particular manufacturers of normal, utility, acrobatic, and commuter category airplanes, of additional information related to material qualification and equivalency for polymer matrix composite material systems. This notice is necessary to advise the public of FAA policy and give all interested persons an opportunity to present their views on the policy statement.

DATES: Comments submitted must be received no later than July 13, 2000.

ADDRESSES: Send all comments on this policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT** at Federal Aviation Administration, Small Airplane Directorate, ACE–111, Room 301, 901 Locust, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Lester Cheng, Federal Aviation Administration, Small Airplane Directorate, ACE–111, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone (816) 329–4120; fax 816–329–4090; e-mail: lester.cheng@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this proposed policy statement, ACE–00–23.613–01, by submitting such written data, views, or arguments as they desire. Comment should be marked, "Comments to policy statement ACE–00–23.613–01," and be submitted in duplicate to the above address. The Manager, Small Airplane Directorate, will consider all communications received on or before the closing date for comments.

Background

This notice announces the availability of the following proposed policy memorandum, ACE–00–23.613–01, for review and comment. The purpose of this memorandum is to address certification projects initiated after the final date of the memorandum. Certification projects already in work do not necessarily need to comply.

Effect of General Statement of Policy

The FAA is presenting this information as a set of guidelines appropriate for use. However, this document is not intended to establish a binding norm; it does not constitute a new regulation and the FAA would not apply or rely upon it as a regulation. The FAA Aircraft Certification Offices (ACO's) that certify normal, utility, acrobatic, and commuter category airplanes should generally attempt to follow this policy when appropriate. Applicants should expect that the certificating officials would consider this information when making findings of compliance relevant to new certificate actions.

Also, as with all advisory material, this statement of policy identifies one means, but not the only means, of compliance.

Because this proposed general statement of policy only announces what the FAA seeks to establish as policy, the FAA considers it to be an issue for which public comment is appropriate. Therefore, the FAA requests comment on the following proposed general statement of policy relevant to compliance with 14 CFR part 23, § 23.613, and other related regulations.

General Statement of Policy

1.1 General

In the decades since the introduction of advanced composite materials for use in aircraft, the material qualification has been a costly burden to the airframe manufacturer. For each manufacturer, extensive qualification testing has often been performed to develop the base material properties and allowables at operating environmental conditions, which are used as part of an aircraft's design data, regardless of whether this material system had been previously certificated by other manufacturers. In addition to the use of such data in design, qualification also provides a population basis (*e.g.*, in mean and variability statistics) to continuously ensure stable material production practices by the material supplier. The practice of qualification when performed by each manufacturer for an identical material system represents a massive duplication of effort.

In recent years, NASA, Industry, and the FAA have worked together to develop a cost-effective method of qualifying composite material systems by the sharing of a central material qualification database. This method is built on the existing sections of MIL–HDBK–17–1E, and allows credit for FAA witnessed materials testing performed by third parties such as material vendors or industry consortia. During the development process, the Small Airplane Directorate worked closely with members of the NASA Advanced General Aviation Transport Experiment (AGATE) research consortium to ensure the acceptability of this method of compliance to the applicable airworthiness regulations. Furthermore, the FAA and AGATE have maintained a good communication with the appropriate MIL–HBDK–17 Working Groups by participating in their regular meetings. Valuable thoughts have been shared for the development of this method.

This effort creates a new way of conducting business with airframe manufacturers and material suppliers. It enables composite material suppliers to work with the FAA to qualify their composite material system and receive approval (*i.e.*, material qualification). An airframe manufacturer can then select this approved composite material system to fabricate aircraft parts and perform a smaller subset of testing to substantiate their control of material and fabrication processes tailored to a specific application. The terms "material equivalency" will be used in the current context to describe the sampling process for a subset of testing used to confirm equivalent mechanical, physical and chemical properties for a particular material or one undergoing minor changes. For purposes of example, a minor change would be a new material production line, which uses identical raw materials, processes and equipment. Another example of a minor change is the substitution of a new supplier for the same chemical constituent used to fabricate a given fiber or matrix type. A major change would involve more significant differences in the fiber type, matrix resin, and pre-impregnated fabrication process. It is anticipated, significant cost saving can be realized for both the industry and the FAA by sharing the approved central database and standardizing engineering protocol to demonstrate material equivalency.

As a precursor, efforts to establish protocol for shared material databases were documented in a letter, which was disseminated by the Small Airplane Directorate to both FAA certification field offices and industry in 1998. In that letter, the essential concepts of this method have been outlined both in terms of regulatory and technical considerations. As a follow-up, the current memorandum is intended to serve as a policy and guidance for the implementation of this newly developed methodology of qualifying the material systems. It is noted that currently this method pertains only to part 23 aircraft.

1.2 Substantiation of Composite Structures

It has been well recognized that analysis and base material data alone is generally not adequate for substantiation of composite structural designs. The "building-block approach" of testing, in concert with analysis, is typically used to fulfill the certification requirement. As outlined in Section 2.1 of MIL–HDBK–17–1E for Polymer Matrix Composites, the building-block approach consists of several levels of activities from both the "structural complexity" and "data application" considerations. The structural complexity is geometry or form-based, and may include levels of "constituent," "lamina," "laminate," "structural element," and "structural sub-component." On the other hand, the data application is a specific activity performed within the design development and certification process. The specific levels of structural complexity required depend on the distinct purpose of the data application. For example, structural substantiation may use tests and analysis at many different levels of structural complexity, whereas material acceptance may only rely on the lowest levels (*i.e.*, base material properties).

The material qualification and equivalency method discussed in this memorandum is a data application intended to be at the lower-levels of the structural complexity consideration. It includes testing to get mechanical and physical properties at the lamina level. Such tests are performed using laminates with simple ply stacking sequences to characterize the response of the composite material. At this level, the key properties represent un-notched and un-damaged base material strength allowables for loading in tension, compression, and shear. Other important results are the lamina moduli for these load cases. This material qualification testing provides quantitative assessment of the variability of key base material properties, leading to various statistics that are used to establish material acceptance, equivalence, quality control, and design basis.

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For clarification purposes, tests at higher levels (*i.e.*, structural laminate, element and sub-component) are typically needed to fulfill the remaining parts of the structural substantiation requirement. As the design moves closer to application specific, the testing program proceeds to a higher level.

Additional structural laminate specimen and element testing is intended to evaluate the ability of the material to tolerate common discontinuities. Key properties include open/filled hole tensile/compression strengths, cutouts, joint bearing and bearing/bypass strengths, bonded joint element and attachments strengths, and impact-damaged element strengths. These strength tests are used to derive the design values of the notched, bolted, bonded, and damaged features. These design values, in general, would be lower than that of the base material strength allowables established via the material qualification testing program. However, as the test element size and complexity increases, it is more costly to generate variability data. As a result, conservative engineering practices are typically applied to utilize statistics collected at the lower (specimen) level of tests.

Furthermore, the structural sub-component (or full scale) testing is typically required to confirm load paths (*i.e.*, validate analyses) and evaluate the behavior and failure mode of increasingly more complex structural assemblies that are considered application specific. At this scale, it is unreasonable to think of shared databases due to unique features in the design of a given product.

2.0 Related Regulatory and Guidance Materials

2.1 Federal Regulations

This new method for material qualification and equivalency has been developed as a means of showing compliance with 14 CFR part 23 requirements for the field of application defined. The regulations that are directly related to this method include:

Section 23.601 General
Section 23.603 Materials and workmanship
Section 23.605 Fabrication and methods
Section 23.613 Material strength properties and design values

Section 23.613 contains specific requirements for material strength properties and design values. Presented below are the requirements that, in particular, are tied to this method:

- "Material strength properties must be based on enough tests of material meeting specifications to establish design values on a statistical basis." [§ 23.613(a)]
- "Design values must be chosen to minimize the probability of structural failure due to material variability." [§ 23.613(b)]. Section 23.613(b) requires that the design values selected to ensure structural integrity need to be characterized by the probability depending on the design configurations. That is, A-Basis for single-load-path design and B-Basis for multiple-load-path.
- "The effect of temperature on allowable stresses used for design in an essential component or structure must be considered where thermal effects are significant under normal operating conditions." [§ 23.613(c)]. Similarly, § 23.603(a)(3) requires "Take into account the effects of environmental conditions such as temperature and humidity, expected in service."

As discussed in Section 1.2, the database from the qualification program includes the base material strength allowables, which represent the design basis at the lamina level at appropriate environmental conditions. Design values utilized for any specific application still need to be established via some combination of additional testing programs, rationale engineering assumptions, and validated analyses. Nevertheless, the qualification database serves as a foundation upon which the material can be controlled and design values for higher-level application are derived. For certification purposes, the base material allowable is a subset of the aircraft's type design data.

2.2 Advisory Circulars

The following two FAA advisory circulars (AC's) present recommendations for showing compliance with FAA regulations associated with composite materials:

AC 20–107A—Composite Aircraft Structure
AC 21–26—Quality Control for the Manufacture of Composite Structures

AC 20–107A sets forth an acceptable, but not the only, means of showing compliance with the provisions of 14 CFR parts 23, 25, 27, and 29 regarding airworthiness type certification requirements for composite aircraft structures. Guidance information is also presented on associated quality control and repair aspects.

AC 21–26 provides information and guidance pertaining to an acceptable, but not the only, means of demonstrating compliance with the requirements of 14 CFR part 21 regarding quality control systems for the manufacture of composite structures. This AC also provides guidance regarding the essential features of quality control systems for composites as mentioned in AC 20–107A.

2.3 MIL–HDBK–17

The MIL–HDBK–17 has been developed and is maintained as a joint effort of the Department of Defense (DOD) and the Federal Aviation Administration (FAA). This handbook provides guidance in the development of base material properties (allowables) and design values acceptable to the FAA. This new methodology is derived based on the MIL–HDBK–17–1E (Polymer Matrix Composites Volume 1: Guidance). The sections that are closely related to this method include:

Section 2.3.2 Material qualification test matrices
Section 2.3.3 Material acceptance test matrices
Section 2.3.4 Alternate material equivalence test matrices
Section 8.4.3 Alternate material statistical procedures

For the simplicity of this memorandum, the MIL–HDBK–17–1E can also serve as a reference for most of the terminology used in this document.

For standardization purposes, guidance for material database presentation, both in terms of format and content, has been well outlined in MIL–HDBK–17–2E (Polymer Matrix Composites Volume 2: Materials Properties). Presentation of material data per the guidance set forth in the MIL–HDBK–17 is highly recommended.

2.4 AGATE Document (DOT/FAA Technical Report)

The specific methodology outlined in this memorandum has been developed through the effort of Work Package 3 (Integrated Design and Manufacturing Tasks) of the AGATE program. Technical works have been conducted mainly at the National Institute for Aviation Research (NIAR) facility affiliated with Wichita State University at Wichita, Kansas. Throughout the process, close coordination between the FAA [the Small Airplane Directorate, Technical Center and National Resource Specialist (NRS)] and the NIAR has been maintained to ensure this method is in compliance with the applicable airworthiness regulations.

Application of this method has been demonstrated for the epoxy-based pre-impregnated carbon or fiberglass material systems cured at 250 °F with low-pressure curing/processing cycles. This effort has resulted in an AGATE technical document entitled "Material Qualification and Equivalency for Polymer Matrix Composite Material Systems" where details of this methodology are presented. To enhance the accessibility of this document to the industry in general, an effort is underway by the FAA Technical Center to edit and publish it as a DOT/FAA Report.

3.0 Material Qualification

3.1 Field of Application

The developed material qualification methodology is intended, in general, for polymer matrix material systems. The purposes of this method include:

- To solidify and finalize material and process (M&P) specifications, including specific acceptance criteria for sampling relative to the qualification database
- To quantify base material variability
- To provide a central database with stabilized material processes

Application of this method has been conducted/demonstrated via the effort of the AGATE program. The AGATE program has applied this method to material systems that are characterized by the following specifics:

- Epoxy-based pre-impregnated carbon or fiberglass
- Unidirectional tape or woven fabric
- Cure temperature at 240 °F or higher
- Low-pressure curing/processing cycles (*i.e.*, autoclave and vacuum bagging)

Testing requirements and data reduction procedures needed to certify the composite material system for complying with airworthiness regulations are presented in the AGATE document. The testing defined in the AGATE document represents the minimum requirement. In some cases, unique characteristics of a material system or its application may require testing beyond that defined by this method (*i.e.*, more rigorous procedures and larger qualification databases). In these situations, Aircraft Certification Offices (ACO's) may require additional testing to demonstrate compliance with the applicable airworthiness regulations.

3.2 Qualification Approval Procedures

Material qualification bears the objective of establishing the FAA approved base material properties of an "original" material system. Test materials are fabricated using "original" process specifications. This effort may be part of ongoing certification programs and can be managed by the appropriate project ACO. In some cases, such as a consortium crossing geographic boundaries, the Small Airplane Directorate may manage this effort.

All specimen shall be fabricated according to the appropriate process specification to the geometry described in the AGATE document. Prior to testing, conformity of the test specimen must be performed by Manufacturing District Inspection Office (MIDO) inspectors at the request of ACO engineers. The MIDO inspector may elect to delegate this responsibility to a Designated Manufacturing Inspection Representative (DMIR) or Designated Airworthiness Representative (DAR).

Testing must be witnessed by the FAA. Witnessing can be performed by ACO engineers, or they may delegate this responsibility to a Designated Engineering Representative (DER) or MIDO inspector.

3.3 Environmental Conditions

In order to substantiate the environmental effects with respect to the material properties, several environmental conditions are defined to represent extreme cases of exposure. The selection of these conditions shall be based on the nature of the material system and its intended application as well.

To illustrate, the conditions defined as extreme cases for the AGATE program are as follows:

- Cold Temperature Dry (CTD) ..... – 65° F (±5 °F) with an "as fabricated" moisture content.
- Room Temperature Dry (RTD) ..... ambient laboratory conditions with an "as fabricated" moisture content.
- Elevated Temperature Dry (ETD) ..... 180° F (±5°F) with an "as fabricated" moisture content.
- Elevated Temperature Wet (ETW) ..... 180° F (±5° F) with an equilibrium moisture weight gain in a 85% relative humidity (±5% R.H.) environment.

Properties for less extreme temperature conditions are determined through documented interpolation procedures.

3.4 Material Quality Control

As part of material qualification, physical and chemical property tests are recommended for each batch of material received from the material vendor. These tests should be traceable to each referenced test. Prior to a significant investment in material qualification testing, the quality control procedures of the material vendor should be reviewed to ensure that quality control programs are in place for the fiber and neat resin, as well as pre-impregnation of the material form (*e.g.*, tape or fabric). The recommended testing items (*e.g.*, resin content, fiber areal weight, and gel time), along with the test methods, are presented in the AGATE document.

In order to support the maximum operational temperature (MOT) limit of the material system and the specific data to be used in the statistical design allowable generation, cured lamina physical property tests (*e.g.*, glass transition temperature, fiber/resin volume, and void content) are also required. These tests, along with the test methods, are defined in the AGATE document.

3.5 Batch-to-Batch Variability

For a composite material system base properties (allowables), several batches of material must be characterized to establish the statistically-based material property for each of the material systems. For this qualification method, a minimum of three (3) batches of material are required to establish a B-basis design allowable. For an A-basis design allowable, three (3) batches may also be used, but five (5) batches of material are highly recommended to establish more statistically stable properties. It is noted that the minimum number of batches used in AGATE methodology is less than that recommended in MIL–HDBK–17–1E.

In order to account for processing and panel-to-panel variability, the material system being qualified must also be representative of multiple processing cycles. For this qualification method, each batch of material must be represented by a minimum of two independent processing/curing cycles (*e.g.*, low-pressure autoclave and vacuum bagging). One engineering observation, which led to this AGATE methodology, was that the variation from composite panel processing can be as important as batch-to-batch material variability.

3.6 Property Testing Requirement

The required material property tests are specified in the AGATE document, along with the recommended test method and the required number of batches/replicates per environmental condition (*i.e.*, CTD, RTD, ETW and ETD). In the AGATE document, a format

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has been defined to represent the required number of batches and replicates per batch. The format reads: #×#, where the first # represents the required number of batches and the second # represents the required number of replicates per batch. For example, "3×6" refers to three batches of material and six specimen per batch for a total requirement of 18 specimen.

To illustrate, the tests required by the AGATE document for qualification at the environmental condition of "Room Temperature Dry (RTD)" are listed as follows:

No.	Test	Specimen (RTD)
1.	0° (warp) Tensile Strength	3×4
2.	0° (warp) Tensile Modulus, Strength and Poisson's Ratio.	3×2
3.	90° (fill) Tensile Strength	3×4
4.	90° (fill) Tensile Modulus and Strength.	3×2
5.	0° (warp) Compressive Strength.	3×6
6.	0° (warp) Compressive Modulus.	3×2
7.	90° (fill) Compressive Strength.	3×6
8.	90° (fill) Compressive Modulus.	3×2
9.	In-Plane Shear Strength	3×4
10.	In-Plane Shear Modulus and Strength.	3×2
11.	Short Beam Shear	3×6

3.7 Base Material Allowable Generation

Upon completion of the property testing, the statistical base material allowable can be generated for each mechanical strength property per the data reduction procedure described in the AGATE document. Software for the data reduction procedure has been made available in the form of a disk-file as an attachment to the AGATE document. Raw test values are normalized to a specified fiber volume as the fibers are the primary load-carrying component of the composite material. This provides a consistent basis for property comparisons and generally reduces variability in fiber-dominated properties. The procedure used for this is consistent with that recommended by MIL–HDBK–17–1E.

Proper consideration of the inherent material property variability in composite materials needs to be addressed in assigning design basis value to each mechanical property. Although the statistical procedures presented in the AGATE document may account for most common types of variability, these procedures may not account for all sources of variability.

B-basis and A-basis material allowables are determined for each strength property using the statistical procedures outlined in the AGATE document. The specific procedures used assume a normal distribution for the population and take advantage of pooling of data between environments in calculating statistical variations. The latter is dependent on the assumptions that the failure mode for a given type of test does not vary significantly between environments and that the material variability across environments is comparable. The AGATE document describes the additional statistical tests and engineering data analysis needed to ensure all assumptions are not violated for a given material system. If evidence of deviations from the assumptions exists, more general procedures in MIL–HDBK–17–1E should be followed. For the moduli and Poisson's ratio, the average value of all corresponding tests for each environmental condition is used.

If maximum strain material allowables are required, simple one-dimensional linear stress-strain relationships may be employed. The linear assumption works well for tensile and compressive strain behavior but may produce rather conservative strain values in shear due to nonlinear behavior. More realistic engineering guidelines to derive shear strain allowables are given in MIL–HDBK–17–1E (Section 5.7.6).

3.8 Material Performance Envelope

Referring back to the discussions in Sections 1.2, 2.1, and 3.1, base material strength allowables and elastic moduli generated by the procedures given in the AGATE document serve a purpose in stable composite material control within the industry and certification of specific aircraft products. Standard test methods and accepted statistical data treatment facilitate their use for the former, where a wide segment of the material supplier and aircraft manufacturing industry can share in the cost of generating the database. When it comes to the use of this data for the development and certification of structure for a specific aircraft, complementary test data and analysis is needed to account for the effects of design detail, structural scale, and damage.

Using the statistical allowables, a base material performance envelope can be generated for a material system by plotting these values as a function of temperature. Each specific aircraft application of the qualified material may have a different maximum operational temperature (MOT) limit than those tested for the material qualification. Some applications may require a reduced MOT. For these cases, interpolation may be used to obtain the corresponding basis values at the new application MOT.

Interpolation schemes and examples are presented in the AGATE document. The schemes provided in the document are practical for materials obeying typical mechanical behavior. In most cases, some minimal amount of testing may also be required to verify the interpolated values.

Since unforeseen material property drop-offs with respect to temperature and environment can occur, extrapolation to a higher MOT should not be attempted without additional testing and verification.

4.0 Material Equivalency

For clarification purposes, the terms "material equivalency" used in the current memorandum refer to the process of substantiating material properties for purposes of sharing a composite material qualification database and/or demonstrating that minor changes in material production processes have a negligible effect. This is achieved by test sampling and passing the acceptance criteria, which were derived from a larger population of material data.

4.1 Field of Application

Composite material equivalence testing, which constitutes reduced data sampling (*e.g.*, a single batch), may be performed by a manufacturer to establish a link with the original qualification database and associated specifications. Depending on the manufacturer's use of the qualification database, specifications for processing a particular product and the associated design data may even change significantly after establishing the link. For example, if the only intent of a link with the qualification database is to establish a population from which acceptance criteria are derived for standard tests performed in base material control, then significant changes in processing for a particular product may be allowed. On the other hand, if the base material qualification database has greater use in design (*e.g.*, applied in deriving design values), then additional testing may be needed to show equivalency with the process variations. In short, the role of material equivalency testing in certification will depend on details of the particular project.

For example, consider the use of a given material in sandwich construction, which may have process variations (*e.g.*, lower autoclave pressures) and changes in laminate characteristics resulting from the sandwich panel design configuration (*e.g.*, dimpling of the face-sheets on honeycomb cells). In such a case, standard tests for base material properties in the AGATE approach use flat laminates, which may yield different properties than occur in sandwich panels. If the manufacturer's intended use of the qualification database is limited to control of the base material as purchased, the manufacturer may elect to demonstrate equivalency using original specifications. On the other hand, if the qualification database will have greater use in design, then equivalency testing should expand to consider the effects of product process and design variations on the base material properties. Alternatively, subsequent tests within the building block approach used for certification may also be defined to account for such differences. Again, the role of material equivalency testing in certification will depend on details of the particular project.

The material equivalence testing may also be used to assess the effects of minor changes in constituent(s), the constituent manufacturing process, and/or the resin pre-impregnation process, for the purpose of utilizing the existing material qualification database. This testing evaluates the key properties for test populations large enough to provide a definitive conclusion but small enough to provide significant cost savings as compared to establishing a new database.

Note that MIL–HDBK–17–1E goes beyond the discussions in this memorandum to describe methods for demonstrating alternate material acceptance. The discussion can be found in Section 2.3.4. Although the term equivalence is used in this section of MIL–HDBK–17–1E, the test matrices presented are much more extensive, highlighting additional issues for the problems being addressed (*i.e.*, changes in fiber type, fiber tow size, resin, and pre-impregnated manufacturer). Table 2.3.4.1.3 of this volume covers a wide variety of changes to a material system and highlights the fact that the performance of a material system is determined by both the materials and processes used in its manufacture.

The AGATE methodology of demonstrating material equivalency is derived from MIL–HDBK–17–1E. This methodology only applies to situations with minor changes to the "original" material system in terms of material constituents and/or manufacturing processes. These situations may include:

- Identical materials, processed by same manufacturer using identical fabrication process at different locations;
- Identical materials, processed by different manufacturer using a "follow-on" process that is equivalent to the "original" fabrication process;
- Identical materials, processed by different manufacturer using a "follow-on" process that is slightly different to the "original" fabrication process;
- Minor changes in constituent(s) and/or constituent manufacturing process, processed by same/different manufacturer using a "follow-on" process that is slightly different to the "original" fabrication process;
- Combinations of the above.

In summary, the purposes of this equivalency method include:

- To share and make use of the central database by a new user (*i.e.*, original material qualification);
- To continue surveillance of material and process (*e.g.*, Section 5.0 as applied in material quality control);
- To show that minor changes to material and processes do not affect base material properties;
- To make final adjustment on material and process specifications for specific application and demonstrate that it has little affect on base material properties.

4.2 Equivalency Approval Procedures

For the "follow-on" applicants to use the database, they need to develop their own material and process specifications based on the "original" material and process specifications. The applicants submit these specifications along with the necessary test plans to their geographically responsible ACO for review. In all cases of material equivalency, an "original" should exist that contains base material mechanical properties and strength allowables, as well as the chemical and physical properties, for the initially qualified material system.

As is the procedure on any certification program, the ACO reviews the test plans and the updated material/process specifications prior to the initiation of testing. The review of the applicants' specifications should determine if they meet the application limitations outlined in Section 4.1, and are, therefore, candidates for material equivalency testing. Since the basis properties of a composite material system are sensitive to both its material constituents and manufacturing process, vigilant engineering judgement must be exercised during the evaluation process. The fabrication methods of the applicants' structure must meet the applicable airworthiness regulations including, but not limited to, §§ 23.603 and 23.605.

Testing is required to qualify the "follow-on" material system by demonstrating material equivalency to the "original" material system. Testing must be witnessed by the FAA. Testing requirements, data reduction procedures, and material equivalency criteria/guidance are presented in the AGATE document.

In addition to the base material level coupon testing, certification programs may require some element or sub-component testing in demonstrating equivalency for minor changes in the material production processes over time, which are suspected to have some effect on part manufacturing processes. These requirements will depend on the degree of change as well as on the application (*e.g.*, complexity of the components or parts to be manufactured).

4.3 Equivalency Testing Requirement

As described in Section 4.1, the AGATE material equivalency methodology is derived based on the most compatible situations existing, as discussed in MIL–HDBK–17–1E (*i.e.*, an identical material is used or changes in the material are minor). Based upon the batch-to-batch variability established in the original qualification database, material equivalency testing should be conducted to investigate the processing or panel-to-panel variability inherent in the follow-on manufacturer or location. As a minimum requirement to initiate such an exercise, the material and process controls used to generate the initial database must be known (*i.e.*, the "original" material and process specifications or "pedigree" must be known). This issue has come up relative to some of the data that has been published in MIL–HDBK–17–2E, and a plan has been initiated to ensure such information is available for data utilization.

The equivalency tests required are presented in the AGATE document along with the recommended test methods and the required number of batches/replicates per environmental condition (*i.e.*, RTD and ETW). One (1) batch of material is the minimum required for this testing program. As with material qualification, two separately processed panels are used in obtaining specimen for strength tests.

To illustrate, the tests required by the AGATE document to demonstrate equivalency under the environmental condition of "Room Temperature Dry (RTD)" are listed as follows:

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No.	Test	Specimen (RTD)
1.	0° (warp) Tensile Strength	8
2.	0° (warp) Tensile Modulus and Poisson's Ratio	4
3.	90° (fill) Tensile Strength	8
4.	90° (fill) Tensile Modulus	4
5.	0° (warp) Compressive Strength	8
6.	0° (warp) Compressive Modulus	4
7.	90° (fill) Compressive Strength	8
8.	90° (fill) Compressive Modulus	4
9.	In-Plane Shear Strength	8
10.	In-Plane Shear Modulus	4
11.	Short Beam Shear	8

4.4 Success Criteria for Equivalency

Results derived from the equivalency testing are compared with the original qualification database. The statistical procedures and the success criteria for equivalency are presented in the AGATE document. As with qualification, the acceptance criteria adopted by AGATE to demonstrate equivalency assumes a normal distribution. If a normal distribution was not confirmed by checks performed as part of the "original" material qualification, the acceptance criteria will need to change to reflect the statistical distribution that was adopted for the population. In such a case, the more general procedures in MIL–HDBK–17–1E should be followed.

First, the qualification database shall present the property of interest in terms of "mean" and "standard deviation." For base material strength properties, the qualification database also provides B-basis and/or A-basis values, which can be used for purposes of comparison in establishing specific acceptance criteria. In addition, two statistical parameters for sampling need to be defined, and they are: "α" (probability of rejecting a good material) and "n" (number of specimen to be tested for the property of interest).

A selection of $\alpha = 0.01$, for example, represents 1% of the chance of wrongly rejecting a good material. A higher "α" value represents a more conservative criteria, yet at the expense of a higher chance of rejecting a good material. Also, as the number of specimen increases, the chance for the mean of the specimen (tests sample) to appear different from the original qualification data decreases. Statistically, the two parameters reflect the Type I errors in test on either means or minimum individual values. The Type I error refers to the situation of rejecting the null hypothesis when it is true. The B-basis and A-basis values, which were derived in population testing, have limited statistical meaning when assessing the equivalency from a small sample size. However, they may have some engineering value in setting the α for a particular application.

For strength properties, material equivalency is established by using both the means and the minimum individual values as the acceptance criteria. The material equivalence is not acceptable when either one of the two comparisons fails. The "α" represents the probability of failing either one of the two, or both, comparisons.

Based on a limited "round robin" testing program, the AGATE method currently recommends an "n" value of "8", and an "α" value of "0.05" for material equivalency tests to link with the complete material qualification database. As the exposure and experience increase through time, the values for these two parameters may be revised from lessons learned. Also, considering the intrinsic difference both in terms of the nature of material system and the specific of application, the certification offices (ACO's) may adjust this set of values reflecting their unique circumstances.

Although specific criteria are not given, strength properties from equivalency testing should also not be excessively higher than those obtained for the original qualification database. Engineering judgement should be used to detect such increases in base strength, which may affect structural failure modes or reductions in untested strength properties. For example, unnotched (or small notch) tensile strength properties have been found to be inversely related to the tensile residual strength of composite structure with larger flaws.

For modulus, a simple comparison of means is used. The criterion is not satisfied when either the test sample mean is too high or too low in reference to the original maximum/minimum mean of the qualification database.

There are also statistical tests that interrogate the new samples as to their equivalency to the baseline sample qualification database. These can be used as an alternative to the test on means and minimum individual values described above. MIL–HDBK–17–1E recommends the k-sample Anderson-Darling (A–D) statistical test (Section 8.3.2.2) or the ANOVA (analysis of variance) method described in Section 8.4.3.1. The k-sample A–D test can be used for unequal sample sizes that will be encountered when comparing the baseline data to the new data. Discussion on the use of a significance level of ($\alpha = 0.05$ is given in MIL–HDBK–17. The value chosen should be agreed upon by the particular application and should be the same if the ANOVA method is used.

Other alternate tests (if normal distribution is assumed) are to use the F-test to show equivalency of the means (Section 8.3.5.2.2) and Levene's test to show equivalency of the variances (Section 8.3.5.2.1). An "α" value for these tests must also be selected.

Successful completion of the equivalency testing allows the applicant to use the properties contained in the original qualification database. In the case when the testing of the first batch fails, a second opportunity using a different batch of material can be allowed for this equivalency testing. In order to limit the undesirable, statistically termed as the Type II error, only permission of retest to the 2nd batch is recommended. The Type II error refers to the situation of accepting the null hypothesis when it is false.

Should the applicant fail criteria for equivalency testing of the second batch, the original base material allowable database can no longer be used, and a new base material allowable database needs to be established per material qualification procedures. Such a scenario requires engineering to identify material and/or processing differences, which led to changes in the base material properties, and the associated update to specifications (*i.e.*, a new material qualification). In addition, careful planning of material procurement, panel fabrication and testing may be considered at the start of a material equivalency exercise to ensure that equivalency testing of a first and second batch can be expanded to be part of a new qualification if required. For example, the material order and panel sizes fabricated for a particular batch of material may be sufficiently large enough to yield additional specimens, as needed for the larger test matrix in a qualification effort.

5.0 Continuous Quality Control

Material supplier and purchaser tests performed as part of a continuous quality control process may be considered a special case of material equivalency testing. In this case, the sample size is typically smaller than recommended for the material equivalence exercise described in Section 4.0. Nevertheless, the tests are typically performed on a per batch basis and a link with the qualification database can be developed using the same statistical methods (Section 4.4).

For purposes of continuous quality control, a recommended "α" value of 0.01 (*i.e.*, 1% probability of rejecting "good" material) and an "n" value of 3 to 5 are appropriate. Note the less stringent requirement here than for obtaining access to the "original" qualification database discussed in Section 4.4. In the latter case, all future batches of material are being admitted while in the former case only one batch is under scrutiny. As the exposure and experience along this line increase through time, a new set of values for these two parameters may be provided. Also, considering the intrinsic difference both in terms of the nature of the material system and the specifics of application, the certification offices (ACO's) may adjust this set of values reflecting their unique circumstances.

If quality control testing fails, engineering evaluation can be performed to justify a retest of the same batch of material. As part of this effort, engineers should search for other reasons to believe the material is "bad" or identify a problem in specimen fabrication and/or testing. The number of "retests" should be limited to one which, from a purely statistical perspective, yields a probability of rejecting good material in two sets of receiving inspection tests for the same batch is only 0.01% for the recommended "α".

Issued in Kansas City, Missouri, on May 30, 2000.

Marvin Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14482 Filed 6–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub-No. 3)]

Railroad Cost of Capital—1999

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On June 12, 2000 the Board served a decision to update its computation of the railroad industry's cost of capital for 1999. The composite after-tax cost of capital rate for 1999 is found to be 10.8%, based on a current cost of debt of 7.2%; a cost of common equity capital of 12.9%; a cost of preferred equity capital of 6.3%; and a capital structure mix comprised of 35.5% debt, 62.7% common equity, and 1.8% preferred equity. The cost of capital finding made in this proceeding will be used in a variety of Board proceedings.

EFFECTIVE DATE: This action is effective June 12, 2000.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The cost of capital finding in this decision shall be used for a variety of regulatory purposes. To obtain a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Office Solutions., Room 405, 1925 K Street, NW., Washington, DC 20423. Telephone: (202) 466–5530. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.] The decision is also available on the Board's internet site at www.stb.dot.gov.

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of this action are to update the annual railroad industry cost of capital finding by the Board. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Authority: 49 U.S.C. 10704(a).

Decided: June 6, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–14879 Filed 6–12–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. 42052]

Union Pacific Railroad Company—Petition for Declaratory Order—Imposed Interchange Charges

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: The Board is instituting a proceeding under 5 U.S.C. 554(e) to resolve questions concerning the right of a rail carrier to impose charges unilaterally against other carriers for events that may occur when cars are interchanged.

DATES: Comments by or on behalf of all interested parties are due July 12, 2000. Replies are due August 1, 2000.

ADDRESSES: The original and 10 copies of comments referring to STB Docket No. 42052 must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001, ATTN: STB Docket No. 42052.

In addition, send one copy of comments to: (1) Union Pacific Railroad Company, Robert T. Opal, General Commerce Counsel, 1416 Dodge Street, Room 830, Omaha, Nebraska 68179; (2) Iowa Interstate Railroad, Ltd., Edward J. Krug, Krug & Beckelman, P.L.C., 401 First Street S.E., Suite 330, P.O. Box 186, Cedar Rapids, IA 52406–0186; (3) City of Tacoma Public Utilities, d/b/a Tacoma Rail, Mark Bubenik, Chief Assistant City Attorney, P.O. Box 11007, Tacoma, WA 98411–0007; (4) Roger A. Serpe, General Counsel, Indiana Harbor Belt Railroad Company, 111 West Jackson Boulevard, Suite 1128, Chicago, Illinois 60604–3502; and (5) William C. Sippel, Thomas J. Litwiler, Fletcher & Sippel LLC, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago, Illinois 60601–6710.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On February 14, 2000, Union Pacific Railroad Company (UP or petitioner) filed a petition seeking a declaratory order to resolve a dispute over the right of a rail carrier to impose charges unilaterally against other carriers for events that may occur when cars are interchanged. Replies to the petition have been filed by respondents Indiana Harbor Belt Railroad Company (Indiana Harbor Belt), Iowa Interstate Railroad, Ltd. (Iowa Interstate), and City of Tacoma, Tacoma Public Utilities, d/b/a Tacoma Rail and Tacoma Beltline Railroad (Tacoma Beltline) (collectively, respondents).

Specifically, UP seeks a declaration that, under 49 U.S.C. 11121, a rail carrier may not unilaterally impose charges on another carrier for interchange of cars, either by "tariff" or otherwise, and that interchange-related charges imposed by one carrier on another must be either permitted by agreement of the carriers involved or specifically authorized by the Board. The controversy arises as a consequence of "tariff" provisions issued by respondents, pursuant to which charges may be imposed when cars are not pulled from interchange within

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specified times. UP asserts that such interchange matters are subject to the Association of American Railroads' (AAR) Car Service and Car Hire Agreement (Car Hire Agreement), unless the rail carriers enter into agreements that differ from the Car Hire Agreement.

Respondents concur that a declaratory order is warranted, though they disagree with UP as to the substance of such an order. Indiana Harbor Belt assails UP's allegedly "delinquent interchange practices in the Chicago Switching District." Iowa Interstate defends its charges as necessary to protect short line railroads against arbitrary and unfair interchange practices of Class I railroads. Tacoma Beltline asserts that UP's position constitutes anti-competitive conduct in complete disregard of business operations.[1] Iowa Interstate and Tacoma Beltline rely on the decision of the court in *Cincinnati, N.O. & T.P. Ry. Co.* v. *Chesapeake & O. Ry. Co.*, 441 F.2d 483 (4th Cir. 1971), for the proposition that AAR's car service rules do not prevent a carrier from acting individually through a "tariff" charge to avoid costs related to another railroad's malfeasance.

Under 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The Board and its predecessor, the Interstate Commerce Commission (ICC), have exercised broad authority in handling such requests. In determining whether to entertain such petitions, the agency considers a number of factors, including the significance to the industry, the ripeness of the controversy, and whether a proceeding is necessary to terminate an active controversy.

The issues presented raise questions that would appear to have broad and current applicability within the railroad industry, involving significant interpretations of the statutory framework within which that industry operates since enactment of the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803. These significant questions deserve resolution on a full record, including the comments of all interested persons, not just the parties already of record.

Accordingly, a declaratory order proceeding is instituted to consider the issues raised in UP's petition and respondents' replies, based on the comments of all interested parties. This proceeding will be handled on the basis of written statements submitted by the parties.

Written comments (an original and 10 copies) by or on behalf of all interested parties (including petitioner and respondents) must be filed with the Board no later than July 12, 2000. Replies (an original and 10 copies) by petitioner and respondents must be filed no later than August 1, 2000.[2] Comments must state the basis for the party's position and must contain the name and address of the commenting party. Petitioner and respondents must be served concurrently with a copy of each comment (and reply); other commenters must be served concurrently with a copy of each reply.

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This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: June 7, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–15000 Filed 6–12–00; 8:45 am]

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[1] Tacoma Beltline requested that the Board delay any ruling until its lawsuit seeking interchange charges is resolved in *City of Tacoma, Tacoma Public Utilities* v. *Union Pacific Railroad Company*, Case No. C00–5054SFDB, (W.D. Wash.) This request is moot, because in an order dated April 20, 2000, the court dismissed the case without prejudice, citing the Board's exclusive jurisdiction.

[2] Replies may also be submitted by other commenting parties, if desired, by the same date. Petitioner's and respondents' representatives are directed to assist in providing an appropriate mailing list to other interested parties, upon request.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 577X)]

CSX Transportation, Inc.—Abandonment Exemption—in Wayne County, IN

On May 22, 2000, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board, Washington, DC 20423, a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its line of railroad known as its Richmond Subdivision, extending from railroad Milepost CI–61.90 to railroad Milepost CI–63.21 at the end of track, a distance of 1.31 miles, in Richmond, Wayne County, Indiana. The line traverses United States Postal Service ZIP Code 47374 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the labor protective conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pusuant to 49 U.S.C. 10502(b). A final decision will be issued by September 8, 2000.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which is currently set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 3, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 577X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before July 10, 2000.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired in available at 1–800–877–8339].

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

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Dated: Decided: June 7, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–14878 Filed 6–12–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; International Monetary Fund Advisory Committee

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 610 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the Secretary of the Treasury is required to establish an International Monetary Fund Advisory Committee (the "Committee") to advise the Secretary of IMF policy.

DATES: The fourth meeting of the Committee will be held on Friday, June 16, 2000, beginning at 1 p.m. in the Diplomatic Room located on the third floor of the main Department of the Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 444, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory. Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The IMF Advisory Committee will discuss the legislated mandates directed at the IMF, with a focus on questions related to good governance, combating corruption, and transparency.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. If you wish to attend please FAX your full name, birthday, and social security number to the Designated Federal Official no later than 4 p.m., June 12th, for clearance into the Treasury building. Members of the public who have provided such information, must enter the main Treasury building at the entrance on 15th Street between F and G Streets, and must provide a photo ID at the entrance to be admitted into the building.

Members of the public may submit written comments. If you wish to furnish such comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Committee in advance of the third meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than June 7th.

Dated: May 16, 2000.

William J. McFadden,

Designated Federal Official.

[FR Doc. 00–14814 Filed 6–12–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 899]

The Gang Resistance Education and Training Program: Availability of Financial Assistance, Criteria and Application Procedures

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of availability of funds for financial assistance to State and local law enforcement agencies providing or desiring to provide the Gang Resistance Education and Training Program, intended funding priorities, and application procedures.

SUMMARY: Subject to the availability of appropriations, the Bureau of Alcohol, Tobacco and Firearms (ATF) intends to enter into cooperative agreements with State and local law enforcement agencies to assist them in providing the Gang Resistance Education and Training (G.R.E.A.T.) Program. This notice also sets forth the intended funding priorities and the criteria and application procedures that ATF will use to select and award State and local law enforcement agencies Federal funds to provide the G.R.E.A.T. Program.

DATES: Applications must be received on or before August 10, 2000.

ADDRESSES: Send applications to G.R.E.A.T. Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50418; Washington, DC 20091–0418; Attn: Notice No. 899.

FOR FURTHER INFORMATION CONTACT: James Scott, G.R.E.A.T. Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50418, Washington, DC 20091–0418 (1–800–726–7070); or by sending electronic mail (E-mail) to: Great@atfhq.atf.treas.gov, or visit the G.R.E.A.T. website at www.atf.treas.gov/great/great.htm.

SUPPLEMENTARY INFORMATION:

Background

G.R.E.A.T. is a gang prevention program designed to educate the youth about the dangers associated with joining street gangs and participating in violent crime. It functions as a cooperative program that utilizes the skills of ATF, Federal, State and local law enforcement personnel, as well as individuals from the community and civic groups. The G.R.E.A.T. Program trains police officers to provide instruction to grade and middle school aged children in gang prevention and anti-violence techniques. Training may be provided to any Federal, State, or local law enforcement agency, to the extent allocated funds allow. G.R.E.A.T. consists of three major components:

Component I: School-Based Education

Component II: After School/Summer Education/Booster Classes

Component III: Parent Involvement

Although the primary focus of the G.R.E.A.T. Program is Component I, applicants who are selected for financial assistance will be required to develop programs tailored to their respective communities for Components II and III.

Application Procedures

Application for financial assistance shall be made on ATF Form 6410.1 (Gang Resistance Education and Training Funding Application). Application forms may be obtained by contacting James Scott, G.R.E.A.T. Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50418, Washington, DC 20091–0418 (1–800–726–7070). E-mail address: Great@atfhq.atf.treas.gov or visit the G.R.E.A.T. website at www.atf.treas.gov/great/great.htm.

Funding Categories and Funding Distributions

In order to provide funding to a range of community sizes and locations, the applicants will be divided into five categories based on population. These categories will consist of populations: (A) 1,000,000 and over; (B) 500,000–999,999; (C) 100,000–499,999; (D) 25,000–99,999; (E) 24,999 or less. Each applicant will be required to report its population figures by using the Bureau of Census State Population Report for its entire service area. The population figures may be obtained from the Census

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Bureau's website: www.census.gov/population/www/estimates or contacting the Census Bureau at 301–457–2422.

Criteria and Points

Each application will be evaluated and scored on the basis of the following criteria: (1) Juvenile crime statistics—(40%); (2) Percentage of middle school students proposed to be taught and have been taught—(25%); (3) Presence of curriculum reinforcement programs (Elementary, middle and high school life-skills programs, as well as summer, family and after school programs. Community partnerships will also be reviewed.)—(25%); (4) Support of National G.R.E.A.T. Program training—(10%).

Criterion 1. This criterion is designed to measure the magnitude of an applicant's youth crime problem. This criterion will utilize the Uniform Crime Reports (UCR) for the United States that are published annually by the Federal Bureau of Investigation (FBI). The total juvenile crime figures that will be used are the Part I and II offenses reported in the most recent UCR. The Part I and II offenses that are reported in the UCR are enumerated and defined in Appendix II of the UCR. In the event that an applicant does not provide annual data to the FBI for purposes of the UCR, the applicant should contact the G.R.E.A.T. Branch to determine how it can best submit information to measure its youth crime statistics. ATF will obtain the juvenile crime figures directly from the FBI. An applicant must indicate which service area (*i.e.*, city, county, *etc.*) ATF should use to obtain their juvenile crime figures. An applicant will receive a score based on its per capita juvenile crime figures, as computed using the most recent UCR.

Criterion 2. This criterion will measure middle school participation and consists of two sections, Section A and Section B.

Section A. An applicant will receive points based on the percentage of middle school students proposed to be taught G.R.E.A.T. compared to the total population of middle school students in the jurisdiction.

Section B. An applicant will receive points based on the percentage of middle school students that were taught G.R.E.A.T. in the last school year compared to last year's total population of middle school students.

Criterion 3. This criterion is used to identify applicants who currently have life skills programs in place that reinforce the effectiveness of the G.R.E.A.T. middle school core curriculum. Applicants will be asked to identify elementary, middle and high school programs that they have, as well as other summer, parent/family and after school programs. Applicants will need to include a narrative describing their programs and identify which life skills are being taught. This criterion will also identify applicants who have fostered community partnerships in order to enhance their local programs.

Criterion 4. This criterion will measure the applicant's commitment to their local G.R.E.A.T. Program and to the administration of the National G.R.E.A.T. Program. This criterion will consist of Sections A and B.

Section A. This section will compare the total officer staff-hours currently spent teaching the G.R.E.A.T. Program (to include classroom time, preparation, parent programs, and the summer component) in relation to the applicant's total full-time, officer staff.

Section B. This section will recognize applicants who regularly participate in G.R.E.A.T. sponsored committees, workshops, seminars, and/or have supplied National Training Team members for G.R.E.A.T. officer training.

Catalog of Federal Domestic Assistance (CFDA)

For the purpose of tracking Federal funds used in grants and cooperative agreements, the G.R.E.A.T. Program has been assigned the CFDA # 21.053.

Paperwork Reduction Act

The collection of information contained in this notice has been approved by the Office of Management and Budget (0MB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1512–0548.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid 0MB control number.

Authority and Issuance

This notice is issued pursuant to Office of Management and Budget Circular No. A–102 (Grants and Cooperative Agreements with State and Local Governments).

Approved: May 31, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–14824 Filed 6–12–00; 8:45 am]

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Federal Register

Tuesday,
June 13, 2000

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 604

Birth and Adoption Unemployment Compensation; Final Rule

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 604

RIN 1205–AB21

Birth and Adoption Unemployment Compensation

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (Department) is issuing this Final Rule to create an opportunity for State agencies that administer the Unemployment Compensation (UC) program to provide partial wage replacement, on a voluntary, experimental basis, to parents who take approved leave or who otherwise leave employment following the birth or placement for adoption of a child. This regulation permits interested States to experiment with methods for allowing the use of the UC program for this purpose.

EFFECTIVE DATE: This Final Rule is effective August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Office of Workforce Security, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–4231, Washington, DC 20210. Telephone: (202) 219–5200 ext. 391 (this is not a toll-free number); facsimile: (202) 219–8506; e-mail: ghildebrand@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Overview

On December 3, 1999, we published for comment in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) proposing to add new part 604 to 20 CFR. Part 604 will permit the State agencies that administer the UC program to provide partial wage replacement, on a voluntary, experimental basis, to parents who take approved leave or who otherwise leave employment following the birth or placement for adoption of a child.

The preamble in the NPRM contained a detailed explanation, by subpart, of each proposed section. Much of the material in the NPRM is repeated in this document to adequately respond to comments and to eliminate the need for readers to refer to the NPRM for context. Where substantive changes to the proposed rule are made, the changes are discussed in the relevant preamble section of this Final Rule. Technical revisions, however, are not discussed in this preamble. Unless otherwise mentioned, references in this preamble to changes are comparisons between the NPRM and Final Rule.

The NPRM was published with two appendices: Model State Legislation (Appendix A), which is optional draft legislation that States may use as a guide in developing legislation, and a Commentary (Appendix B) in question-and-answer format that provides information on the Model State Legislation and will aid States in making policy decisions. Comments received regarding these appendices are discussed in this preamble. The appendices are attached to this notice in the form of an Unemployment Insurance Program Letter (UIPL). The appendices will not appear in the CFR.

The NPRM invited the public to comment over a 45-day period. We believed this period was ample because of the simple nature of the experiment and the relatively short length of the proposed rule, although we did receive a number of requests for additional time. To accommodate the holiday season, we extended the comment period 15 days, through February 2, 2000. Comments were accepted by mail and electronic media. All comments submitted by this date, including correspondence received prior to publication of the proposed rule, were considered in developing this Final Rule.

B. Background

Based on findings from a 1996 study conducted by the Commission on Family and Medical Leave, which indicated that parents were not able to take needed leave because they could not afford it, and in response to the legislative efforts by some States to provide UC to parents, the President directed the Secretary of Labor on May 23, 1999, to propose regulations allowing unemployment fund moneys to be used to provide partial wage replacement to mothers and fathers on leave following the birth or adoption of a child. The President elaborated on this Birth and Adoption UC (BAA–UC) proposal in a May 24, 1999, memorandum to the heads of executive departments stating that "the Department of Labor is to evaluate the effectiveness of using the system for these or related purposes."

Through the BAA–UC experiment, States will be able to provide partial wage replacement to enable some parents, who otherwise would not have taken any leave, to do so. Others, who took leave but were compelled to return to work prematurely because they could not afford to be off work, may be able to take longer leave periods. We believe this increase in both the incidence and duration of leave-taking will benefit these parents and their children by allowing more time for parent-child bonding and for arranging stable child care. The BAA–UC experiment will test whether enabling these parents to have this time to be with their newborns and newly-adopted children by providing them with partial wage replacement will promote their long-term attachment to the workforce.

C. The Federal-State UC Program

The Federal-State UC program is administered as a partnership of the Federal government and the States. States collect State UC taxes used to pay compensation while the Federal government collects taxes, used for grants for State UC administration, under the Federal Unemployment Tax Act (FUTA). (The FUTA is codified at 26 U.S.C. 3301–3311.) The Department has broad oversight responsibility for the Federal-State UC program, including determining whether a State's law conforms and its practices substantially comply with the requirements of Federal UC law. If a State's law conforms and its practices substantially comply with the requirements of the FUTA, then the Secretary of Labor issues certifications enabling employers in the State to receive credit against the Federal unemployment tax, as provided under section 3302, FUTA. If a State and its law are certified under the FUTA, and the State's law conforms and its practices substantially comply with the requirements of Title III of the Social Security Act (SSA), then the State receives grants for the administration of its UC program. (Title III of the SSA is codified at 42 U.S.C. 501–504.) The Department enforces Federal UC law requirements through the FUTA credit and grant certification processes.

D. Ability To Work and Availability for Work

The Department has the authority and responsibility to interpret the provisions of Federal UC law such as the requirements that individuals must be "able to work and available for work" (known as the A&A requirements) to be eligible for UC. Although no explicit A&A requirements are stated in Federal law, the Department and its predecessors (the Social Security Board and the Federal Security Agency) interpreted Federal UC law as requiring participating States to have A&A requirements.

In response to practical economic and societal concerns, we have, on several prior occasions, exercised our authority to interpret Federal UC statutes regarding the A&A requirements to address several specific areas: approved training, illness, jury duty and temporary layoffs.

(1) Approved Training

Prior to incorporating the training provision into the Federal laws, we encouraged States to treat individuals in training approved by the State agency as meeting the A&A requirements since such training represents the most effective step available to the individual to return to work. We cautioned that State agencies should only approve short-term training that would make individuals job ready. In 1970, Congress, recognizing the importance of training in remedying unemployment, made this training provision mandatory for all States. (Section 3304(a)(8), FUTA.)

(2) Illness

Eleven States allow an individual who initially meets the A&A requirements, but then becomes ill, to receive UC payments without interruption, provided that no suitable work is offered and refused. We approve such State laws in an effort to deter disqualification for UC where a claimant was not able and available for perhaps one day, or even one hour, out of a week. Two States, Alaska and Massachusetts, cap the number of weeks ill claimants can collect UC at six weeks and three weeks, respectively; the other States have no statutory limitations. The Federal A&A requirements are preserved because claimants must initially demonstrate their ability to and availability for work before the illness and must be held ineligible if they refuse an offer of suitable work.

Similarly, under the Federal-State Extended Unemployment Compensation Act of 1970 (EB) (26 U.S.C. 3304, note), an ill individual may receive UC only if no suitable work is rejected. The EB program provides additional weeks of compensation to individuals who have exhausted their rights to regular compensation during times of high unemployment and contains a specific "work search" requirement. This work search requirement is suspended for EB claimants who are hospitalized for an emergency or life-threatening condition (20 CFR 615.8(g)(3)(i)(B)). This suspension is permitted only if the State law contains a similar provision to those explained above, which must be consistent with the Federal A&A requirements.

(3) Jury Duty

We accept that States may pay UC to individuals serving on jury duty consistent with the Federal availability requirement. This is reasonable because individuals are compelled under the threat of contempt of court by the judicial branch of the government to go on jury duty, and attendance at jury duty may be taken as evidence that the employee would otherwise be available for work. It would be inconsistent for the State to compel jury service and at the same time disqualify unemployed persons from UC for complying. Most employment is not considered an excuse for avoiding jury duty, and unemployment would also likely not be an excuse from jury duty. Indeed, EB claimants are exempt from the work search provision while on jury duty (20 CFR 615.8(g)(3)(i)(A)).

(4) Temporary Layoffs

In a temporary layoff, the employer is unable to provide work for a short period of time, but both the employer and the employee have the expectation that the employee will return to work on a specific date. When the employer recalls the employee, the employee must accept or be denied UC. In these cases, the availability requirement is essentially limited to the employer who laid off the employee. This recognizes that such employees are frequently career employees who would likely quit a new job to return to their former employer when the layoff ends; therefore, other employers would not likely hire such employees.

E. The BAA–UC Experiment

Under its authority to interpret Federal UC law and consistent with its broad oversight responsibility, we interpret the Federal A&A requirements to include this voluntary experiment for examining the use of the UC program to provide partial wage replacement to employees who take approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. This experiment will allow parents of newborns and newly-adopted children to strengthen their availability for work by providing them with the time and financial support to address several vital needs that accompany the introduction of a new child into the family. The experiment will test whether this opportunity for parents to provide the initial care that the child will need, to form a strong emotional bond with the child, and to establish a secure system of child care, will promote the parents' long-term attachment to the workforce.

II. Comment Overview

A. Pre-NPRM Publication Correspondence

Approximately 500 pieces of correspondence were received before the NPRM was published in the **Federal Register**. These comments came largely from employers, both for-profit and not-for-profit, and employer associations. We also received comments from members of Congress, State legislators, and private citizens.

The bulk of the pre-NPRM publication correspondence addressed compensation to individuals on leave under the Family and Medical Leave Act (FMLA) without regard to the differences between the FMLA and the Birth and Adoption UC (BAA–UC) experiment. Because the majority of the comments stated opinions regarding compensating employees on leave under the FMLA and because the correspondence preceded publication of the NPRM, we cannot discern specifically many writers' opinions concerning BAA–UC. (For example, concerns about the costs of wage replacement for employees on leave under the FMLA do not necessarily translate into concerns about the costs of BAA–UC which apply to a different, though partially overlapping, universe of potential recipients.) However, the specific issues (i.e., the reasons that support the opinions) noted in the pre-NPRM publication correspondence are included, as appropriate, with the post-NPRM publication comments.

B. Post-NPRM Publication Comments

Approximately 3,800 pieces of correspondence were submitted by the close of the comment period. Of those expressing an opinion, the post-NPRM publication correspondence indicated almost equal levels of support for and against BAA–UC. As with the pre-NPRM publication correspondence, the respondents included employers and employer associations, members of Congress, State legislators, State Employment Security Agencies (SESAs), and private citizens. As with the pre-NPRM publication correspondence, much of the post-NPRM correspondence solely addressed the FMLA without distinguishing the FMLA from the BAA–UC experiment. All the timely comments were considered and all correspondence is included in the rulemaking record.

We also received comments that were beyond the realm of both the BAA–UC regulation and the UC program (*e.g.*, prison reform, income tax reform, Federally-mandated vacations, availability of compensatory time in lieu

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of overtime pay under the Fair Labor Standards Act, eligibility of BAA–UC recipients for employer-paid benefits). Because these comments exceed the parameters of the UC program and this regulation, they are not addressed herein.

We appreciate the time and attention that respondents gave to reviewing the NPRM. Although some respondents requested that we contact them individually about their comments, the large volume of comments prevented us from doing that and we believe this document adequately responds to their comments.

III. The Issues

A. General Overview

Generally, proponents of BAA–UC commented that BAA–UC is a logical extension of the UC program that would help new parents balance work and family responsibilities, would keep people off welfare, and could be easily and inexpensively administered. Many proponents referred to studies that discussed the positive effects on the workforce attachment of individuals who receive paid parental leave. Conversely, those opposing the rule urged that we withdraw the rule because the costs would be too great, child care and rearing are the personal responsibility of parents and beyond the scope of government, and the BAA–UC initiative runs counter to the intent of both the UC program and the FMLA. Some respondents consider the idea of partial wage replacement for new parents who are not working commendable, but they think that the UC program is the incorrect vehicle for such a benefit.

B. Misconceptions About the Rule

Analysis of the comments revealed two significant misconceptions regarding BAA–UC: (1) that BAA–UC is for leave under the FMLA, and (2) that BAA–UC is a new program, separate and apart from the regular UC program.

(1) Relationship Between BAA–UC and the FMLA

Many respondents referred to BAA–UC as "paid FMLA" leave or "paid family leave." It was also apparent from the many comments expressing concerns about the potential for employee abuse, personal illness, and time away from work to care for family members, as well as the administrative burdens on employers in regard to the FMLA, that respondents viewed BAA–UC as tied to FMLA leave. The misconception that BAA–UC is for leave taken under the FMLA is understandable, as an impetus for BAA–UC was the finding in the 1996 study conducted by the Commission on Family and Medical Leave, *A Workable Balance: Report to Congress on Family and Medical Leave Policies* (April 30, 1996) (hereinafter called the "FMLA study"), that new parents were not taking available unpaid leave because they could not afford it. Although there may be many cases where parents of newborns and newly-adopted children will be simultaneously eligible for BAA–UC and leave under the FMLA, the two are legally unrelated to each other. For example, the FMLA applies to employers with 50 or more employees and provides eligible employees with up to 12 weeks of unpaid, job-protected leave for their own or a family member's serious health condition, or to care for a newborn or newly-adopted child. The BAA–UC initiative, on the other hand, is voluntary on the part of the States, may not be made contingent on employer size, is limited to parents of newborns and newly-adopted children, does not guarantee leave, and has no job protection component.

(2) BAA–UC Is Not a "New" Program

Some respondents commented that BAA–UC is a new program, separate and apart from the regular UC program. Some comments included administrative questions regarding the relationship between "the new benefit program" and the UC program. Other respondents referred to BAA–UC as "a new and disparate benefit unrelated to legitimate" UC and stated that development of BAA–UC was beyond our authority. Concerns were also expressed that this "entirely different benefit" would artificially inflate the unemployment rates that trigger the extended benefit program. Based on the idea that BAA–UC is a separate program, many respondents contended that the unemployment funds that would be used to finance BAA–UC should be refunded to the employers.

BAA–UC is not a new program. Rather, it creates a new basis for eligibility under the "regular" UC program. BAA–UC is an experimental opportunity that is based on an expanded interpretation of the Federal requirements that UC recipients be able to work and available for work. As discussed, interpretation of Federal UC requirements is our responsibility and within our authority.

The comments regarding the NPRM fell into broad categories and are discussed, by category, in the following section.

C. The Comments

(1) Legal Authority For BAA–UC

(a) Presidential Directive

We received comments arguing that Congress should act on this proposal through legislation and that the President's directive to the Department to use the UC program to pay benefits in this manner is unconstitutional and violates the Administrative Procedure Act (APA). As the agency overseeing the Federal-State UC program, the Department has the authority to interpret the Federal UC laws, and we are exercising this authority through notice-and-comment rulemaking. The President's directive in no way limits the Secretary's discretion to consider comments in developing a final BAA–UC rule. Nor does this rulemaking usurp Congress's legislative authority; this rule represents the Department's interpretation of existing Federal UC law requirements.

(b) Federal Authority

We received comments regarding the Federal government's authority under the Federal UC laws to authorize the payment of BAA–UC. Several respondents suggested that no Federal A&A requirements exist and that States do not need a regulation to permit BAA–UC and can provide even broader coverage regarding eligibility beyond the payment of BAA–UC. Some respondents argued that Federal law sets a floor, but not a ceiling or cap, on UC coverage so that the States may pay benefits to whomever they wish (*e.g.*, even those on leave to care for a parent). Other respondents argued that the Federal UC laws necessarily prohibit the payment of BAA–UC and others suggested that the BAA–UC proposal is inconsistent with the Federal A&A requirements, as they have been interpreted in the past, as part of the Federal-State UC program.

The Department and its predecessors (the Social Security Board and the Federal Security Agency) have interpreted and enforced Federal A&A requirements since the inception of the Federal-State UC program. Several respondents noted that the A&A requirements are not clearly stated in the Federal UC statutes. Although no explicit A&A requirements are stated in Federal law, the Department and its predecessors interpreted four provisions of Federal UC law, contained in the Social Security Act (SSA) and Federal Unemployment Tax Act (FUTA), as requiring that UC claimants be able to and available for work. Two of these provisions, at section 3304(a)(4), FUTA, and section 303(a)(5), SSA, limit withdrawals, with specific exceptions, from a State's unemployment fund to the payment of "compensation." Section 3306(h), FUTA, defines "compensation" as "cash benefits payable to individuals with respect to their unemployment." The A&A requirements provide a test of an individual's "unemployment." The other two provisions, found in section 3304(a)(1), FUTA, and section 303(a)(2), SSA, require that compensation "be paid through public employment offices." The requirement that UC be paid through the public employment system (the purpose of which is to find people jobs) ties the payment of UC to an individual's ability to work and availability for work. These A&A requirements serve, in effect, to "cap" UC eligibility.

Some respondents noted that we could authorize the payment by States of BAA–UC simply by issuing a UIPL rather than issuing a regulation. Other respondents encouraged notice-and-comment rulemaking, rather than issuing a UIPL. Because permitting States to pay UC for birth and adoption represents a change in interpretation and in order to permit public input into the decision-making process, we engaged in notice-and-comment rulemaking.

In addition to interpreting Federal UC laws to include A&A requirements, we have previously interpreted the A&A requirements in some specific areas: approved training, temporary layoffs, illness, and jury duty. We received some comments suggesting that existing interpretations of the A&A requirements, such as those regarding approved training and temporary layoffs, are not comparable to the payment of BAA–UC because they are directed toward re-employment. However, the goal of the BAA–UC experiment is to test the proposition that providing UC to new parents can enhance and strengthen their attachment to the workforce through the provision of benefits during a time when they are faced with the added responsibilities of a newborn or newly-adopted child so that they will remain in the workforce.

While paying BAA–UC is a departure from past interpretations, it is a permissible departure which we see as a natural progression evolving from our prior interpretations. At the inception of the Federal-State UC program, the A&A requirements were narrowly interpreted, but the realities of working life have, over the years, led us to revise our interpretation. We have gone from a strict interpretation of the A&A requirements to a more flexible one. While the A&A requirements are a test of unemployment measuring an individual's attachment to the workforce, our interpretation recognizes that people can still be attached to the workforce even though there are situations and circumstances affecting their lives, like illness, jury duty, approved training, or temporary layoffs that affect their ability to meet the stricter interpretation of the A&A requirements.

Each of our four prior interpretations of the Federal A&A requirements recognize situations in which the classic definitions of A&A should not apply for reasons of practicality or economic reality. The illness interpretation recognizes that it is unreasonable to penalize an individual who has already established that s/he is available for work simply because s/he becomes ill for a short time. The jury duty interpretation recognizes that it is unreasonable to hold an individual unavailable for work when the State has compelled his or her attendance in court for jury service. Both of these interpretations derive from a flexible application of the A&A requirements because we want a practicable, sound, workable system. The purpose of UC is to provide partial wage replacement during temporary spells of unemployment. Terminating or denying UC to someone for serving on a jury or because the individual has a short illness undermines this purpose by leaving the individual without financial support for no good reason. It would deprive the individual of UC support without regard to the realities of working life, that is, that no one can be constantly available for work. The approved training interpretation recognizes the economic reality that, in some cases, making oneself unavailable for immediate work opportunities produces a greater benefit to an individual's ability to obtain good work and strengthens his or her attachment to the workforce. The temporary layoff interpretation recognizes the economic reality that when an individual already has a job to which s/he will return, it does not make sense to compel him or her to be able and available for other work. All of these interpretations recognize the reality that attachment to the workforce—the ultimate aim of the A&A requirements—can be demonstrated in other ways than by a continuous availability for any job. While none of these interpretations precisely parallels the payment of BAA–UC, they do operate on the same premises: that situations exist in which it is important to allow a flexible demonstration of availability and in which attachment to the workforce can be demonstrated, and indeed strengthened, without requiring a current demonstration of availability.

Thus, in response to practical economic and societal concerns, we have revised our interpretation of the A&A requirements for the limited purposes of the BAA–UC experiment to include parents of newborns and newly-adopted children. States may wish to experiment by providing UC to these individuals to measure whether such payments will increase these individuals' attachment to the workforce.

We acknowledge that this is a reversal of our position taken in 1997, denying the State of Vermont's proposal to use UC in this manner to pay individuals on family and medical leave. The subsequent interest shown by several States, by various members of Congress, and by private organizations in using the UC program in this manner led us to analyze and re-evaluate our policy on this subject. While the interpretation that supports this rule is a change from the interpretation we expressed in our 1997 letter to Vermont, we believe that the change is supported by studies showing the benefits of providing cash benefits to those seeking to take parental leave. As demonstrated above, our new interpretation is part of an evolving interpretation of the Federal A&A requirements that recognizes practical and economic realities.

Several studies potentially relevant to BAA–UC were mentioned in the comments submitted by BAA–UC proponents. A few of these studies examined United States (U.S.) parental leave practices, while others studied European or other parental leave systems. A few studies examined paid leave, while others studied unpaid leave; at least three studies examined both, to some extent. The studies also examined differing time periods, controlled for different factors, and used differing statistical methodologies. Nonetheless, these studies collectively contained the following potentially relevant findings: (1) Family leave coverage increased the likelihood that a woman will return to her employer after childbirth in the U.S., Britain, and Japan (Waldfogel, Jane, et al. "Family Leave Policies and Women's Retention After Childbirth: Evidence from the United States, Britain, and Japan." J. Popul. Econ. (1999) 12:523–545); (2) U.S. women with fully-paid leave worked later into their pregnancies than women with partially paid leave or women with no leave (O'Connell, Martin. "Maternity

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Leave Arrangements: 1961–85." Work and Family Patterns of American Women. U.S. Bureau of the Census, Current Population Reports, Special Studies Series P–23, No. 165. (March 1990), 17–20); (3) U.S. women with paid leave started back to work sooner than women with unpaid leave once their infants were at least two months old (Joesch, Jutta M. "Paid Leave and Timing of Women's Employment Before and After Birth." J. Marriage & Fam. (November 1997). Vol. 59, No. 4, 1008–1022); (4) women, as opposed to men, account for almost all parental leave taken, and rights to paid leave were found to raise the percentage of women employed in nine European countries (Ruhm, Christopher J. "The Economic Consequences of Parental Leave Mandates: Lessons From Europe." Q. J. Econ. (February 1998). Vol. CX 113, Issue 1, 285–317); (5) extending paid maternal leave programs was shown to raise rates of labor force participation for women in the prime child-bearing years in 17 industrialized countries (Winegarden, C.R. and Bracy, Paula M. "Demographic Consequences of Maternal-Leave Programs in Industrial Countries: Evidence from Fixed-Effects Models." S. Econ. J. (April 1995). Vol. 61, No. 4, 1020–1035); and (6) U.S. women, who stayed at their existing jobs instead of quitting or changing jobs, were those with the longest maternity leaves and highest levels of "workplace social support" (Glass, Jennifer L. and Riley, Lisa. "Family Responsive Policies and Employee Retention Following Childbirth." Social Forces (June 1998). 76(4):1401–35.).

As discussed below, while we do not find these studies definitive, they do appear to support the premise of the BAA–UC experiment, that BAA–UC will strengthen workforce attachment.

(2) Funding Issues

(a) Costs

A number of respondents viewed the proposal's costs as minimal, while others believed that the costs would be quite high. Comments also indicated that the use of abundant State unemployment funds for this purpose is beneficial and would have the long-term effect of keeping individuals off welfare. Many respondents mentioned that high State unemployment fund balances have allowed employers in a number of States to receive contribution rate reductions. Some of these respondents also believed that the costs of administration would be limited because systems for providing UC are already well established.

Some respondents raised general concerns regarding costs. Some also disagreed with our BAA–UC cost estimates. While some stated that our estimate was too high and costs would be minimal, others felt the estimate was too low, suggesting figures in excess of $36 billion per year. Some respondents presented alternative methodologies which did not account for some important factors that would significantly reduce the cost of BAA–UC.

For example, several respondents assumed that all States would provide 12 weeks of BAA–UC and that all leave-takers would take all 12 weeks. UC data collected by the Department as well as independent research suggest duration would be lower than 12 weeks. Our estimate combines data on distribution of leave duration from the FMLA study, with an assumed increase in duration, based on several independent UC duration studies, due to the availability of BAA–UC. This results is an estimated BAA–UC average duration of about 6 weeks (including any waiting week) for unpaid leave-takers.

Another cause for overestimation was the assumption of a 100% take-up rate for both States and individuals. Several respondents assumed all States would provide BAA–UC, and all parents would receive benefits. As explained below, we do not think all States will adopt BAA–UC. Also, not all new parents are employed or covered by UC, either because they are self-employed or they do not have a sufficient work history to be eligible. Of those who are eligible, some will receive some form of income support from their employers such as paid annual leave. These individuals either would not apply for BAA–UC or would receive BAA–UC for a shorter duration. Even among those who are not paid by their employer, not all leave-takers would apply for BAA–UC. Based on studies on UC take-up rates, about 65% of eligible workers actually applied for UC before phone claims were available. The introduction of phone claims is estimated to increase take-up rates by about 10 percentage points.

Several respondents provided alternative methodologies for estimating the cost of BAA–UC. For example, one respondent suggested starting with the overall employment-population ratio and adjusting it to the participation rates for women ages 16 to 44, assuming that the majority of women taking leave for a child under one year old would be under 44. This methodology gives a less precise estimate of the relevant employment-population ratio than the data we relied on from the Current Population Survey, published in the Bureau of Labor Statistics publication, "Employment Characteristics of Families in 1998." This publication provides the employment-population ratio for mothers with a child under one year old (54%). This same respondent also pointed out that parents adopting children from foreign countries should be included in the estimate. These parents were excluded from the original estimate; however, based on the number of immigrant visas issued to orphans by the State Department, foreign adoptions represent only 0.4 percent of the number of women with children under one year old. (For the number of immigrant visas issued to orphans, see the State Department website at <http://travel.state.gov/orphan_numbers.*html*.>) Although the effect of foreign adoptions is small, we have now included these adoptions in our cost estimate.

Another respondent cited problems with using data from the FMLA study. Although we did use some of the percentages gathered in this study, the findings were adjusted for the differences between the FMLA and BAA–UC. On one hand, the BAA–UC proposal has a broader scope, in some respects, because those who work for companies with fewer than 50 employees will be able to receive BAA–UC while they would be ineligible for FMLA leave. Therefore, the percentages of men and women taking leave are found by weighting the average percentages of both FMLA-covered and non-covered leave-takers. On the other hand, BAA–UC is more limited than FMLA-covered leave because it covers only those taking leave to care for a newborn or newly-adopted child. The respondent was concerned that the FMLA study did not account for incentives and changes in leave-taking patterns since the FMLA was enacted, thus representing a "premature look at the FMLA." The FMLA study provided some categorized data showing that, in fact, 98% of women needing leave for newborn care actually took some leave. There is, therefore, only a small margin for an increase in leave-taking by women because of incentives under either the FMLA or BAA–UC. Even so, we increased the percentage of women leave-takers by 1 percentage point to account for these potential incentives and increased the percentage of men by 5 percentage points, from 63% to 68%, for the same reason. According to the study, 91% of all women and men needing leave for birth or adoption took some leave; however, many felt compelled to cut short their leave because they could not afford to be off work.

In the NPRM, we estimated that the BAA–UC costs would range from zero to approximately $68 million per year. This figure was based on the "expressed interest" of a small number of States as measured by whether BAA–UC legislation was introduced in a State. A respondent suggested that the four States specifically cited would not enact BAA–UC legislation; other respondents indicated more States would enact BAA–UC legislation.

Since the publication of the NPRM, a significant number of additional States have introduced BAA–UC legislation indicating that potentially more States than were included in our original estimate may enact BAA–UC. We do not know at this time which States will enact BAA–UC legislation; consequently, as described below, we revised the method of selecting States for inclusion in the cost estimate. This revised methodology and minor revisions in various estimating factors have changed the possible annual aggregate BAA–UC cost to an estimated range from zero to approximately $196 million.

In our revised methodology, we relied on past enactment of UC benefit expansions as an indicator of possible State participation in the BAA–UC experiment. We think this history of benefit expansions is a better indicator than introduced legislation because: (1) Additional States will likely introduce legislation in the future, and (2) it is extremely difficult to predict whether a particular State will actually enact legislation. Thus, to determine the number of States that may enact BAA–UC legislation, we grouped the States based on population as large, medium, and small. We then found the average number of States, by population group, that had enacted certain UC benefit expansions. Based on these findings, we estimated that 3 large states, 6 medium states and 4 small states may enact BAA–UC legislation. We then assigned to each State the average cost for its group. We assumed that States would gradually enact BAA–UC legislation over a 5-year period. We assumed that two States would enact BAA–UC legislation in the first year after the rule becomes effective, two more in the second year, and three more in each of the subsequent three years. The resulting year-by-year costs were then converted to their present value and averaged over the five-year period. The resulting average annual cost, $196 million, is the upper limit of our cost range. More detail on the cost calculation can be found in the Regulatory Impact Analysis which is part of the rulemaking record and available to the public.

Costs beyond the cost specific to BAA–UC were also discussed in the comments. For example, some respondents believe that the costs to government would be reduced because BAA–UC would increase individuals' workforce attachments and keep them off welfare. We expect to have more information in this area as a result of the BAA–UC experiment.

Other respondents, however, expressed concern about additional costs, citing lost productivity as a key problem of paying BAA–UC. However, the FMLA study found that most employers found no effect of the FMLA itself on productivity, and if they did report an effect, it was "as likely to be positive as negative on business productivity and growth" (p. xviii). Another study of nearly 300 employers in November 1993 also found that mandated leave policies can improve morale, public relations, and supervisory relationships, as well as decrease the level of absenteeism. (William M. Mercer et al. "Survey Results: Family and Medical Leave Act" (January 1994); see Final Rule for Family and Medical Leave Act, 60 FR 2237 (January 6, 1995).) Another concern was the loss of income taxes as a result of increased leave-taking. However, those receiving BAA–UC benefits would be required to pay taxes on their benefits. Therefore, although some individuals will pay income taxes on reduced income, some individuals who would have taken unpaid leave will pay more taxes than otherwise. Also, many employers use temporary employees to perform the duties of a person taking leave to care for a new baby. Thus, we believe there would be a minimal loss in income taxes collected.

(b) Experience Rating

Several respondents expressed concerns regarding the effect of BAA–UC on State experience rating systems and employer contribution rates. They argued that contribution rates will go up as a result of replacement employees being laid off; that charging employer accounts for BAA–UC payments conflicts with Section 3303(a)(1), FUTA; that noncharging will shift the costs from one group of employers to another; and that employers who reimburse States for payments of UC (*e.g.*, local governments and non-profit organizations, such as hospitals, school districts, and health care organizations) would have no relief from charges in some States. A respondent also suggested that contributing employers would be subsidizing reimbursing employers.

Concerning the statements that contribution rates will go up as a result of replacement employees being laid off, we believe that, because many employers already respond to leave-taking by using temporary employees or shifting the duties of current employees, the effect on contribution rates is likely to be small.

Regarding the comment that charging employers for BAA–UC would conflict with Section 3303(a)(1), FUTA, we see no cause for concern. Section 3303(a)(1), FUTA provides that "no reduced rate" of unemployment insurance taxes may be assigned except on the basis of an employer's "experience with respect to unemployment or other factors bearing a direct relation to unemployment risk." The objections to charging employers for BAA–UC costs are apparently premised on the fact that the employer may exercise little or no control over an employee's taking of leave. While this may be true, it is well established that employers may be charged for situations where they did not create the unemployment; section 3303(a)(1), FUTA, permits a State to charge an employer so that the employer possibly pays a higher tax rate. For example, we do not require a State to "noncharge" (i.e., spread the costs among all employers) an employer when an employee quits for good cause not attributable to the employer; however, a State may choose to noncharge these costs.

Concerning the statements that noncharging employer accounts for BAA–UC costs would shift costs from one group of employers to other employers, effectively creating a situation where BAA–UC payments attributable to employers whose employees receive BAA–UC are being subsidized by employers whose employees may not receive BAA–UC, we note that this is not an issue specific to BAA–UC. States currently noncharge employers in specific situations, especially when the separation is beyond an employer's control. Just as States currently consider the effects of noncharging, we expect States to consider the effects of noncharging BAA–UC payments on the overall contribution system. Recognizing the arguments on both sides, we think that spreading BAA–UC costs among all employers is the most equitable means of financing this experiment. Consequently, our Model State Legislation provides for noncharging, and we encourage States to include such a provision in their legislation.

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As with experience-rated employers, States may noncharge reimbursing employers. Specifically, in situations where the State determines that the UC paid is not attributable to service in the employ of the reimbursing employer, States may choose not to require reimbursement. As the commentary in Appendix B of the NPRM pointed out (64 FR 67979 (December 3, 1999)), reimbursing employers may be noncharged for BAA–UC payments just as the accounts of contributing employers may be noncharged. A respondent suggested that we make noncharging options for reimbursable employers more clear; however, the BAA–UC regulation makes no changes to the experience rating or reimbursement requirements and we see no reason to single out this one facet of the UC program for elaboration. For more information regarding the noncharging of reimbursable employers, interested individuals are referred to UIPL No. 21–80 and UIPL No. 44–93 (58 FR 52790, 52792 (April 12, 1993)).

(c) Other Funding Methods

Some respondents suggested that benefits like BAA-UC could be funded in ways other than the current method of financing benefits through employer contributions to State UC programs. Suggested funding methods for BAA–UC included using Federal unemployment tax revenues, using Social Security funds, allowing tax-free withdrawals from retirement plans, and creating Federal loan programs similar to student loans. Suggestions for State funding included the introduction of an employee-paid tax, such as currently exists for temporary disability insurance in some States. There was also a suggestion that individuals obtain private insurance.

Federal law governs how Federal unemployment tax revenues may be used. Nothing in Federal law authorizes the Department to use these revenues for purposes such as the BAA–UC experiment. The other suggested Federal funding mechanisms are beyond the Department's jurisdiction. As for the suggested State funding mechanisms, States are (and always have been) free to develop means outside the UC program to provide income support for new parents who are not working. Also, if a State elects to use a funding source outside the UC program, the State's program would not be subject to the requirements of the BAA–UC regulation.

(d) Potential Loss of Administrative Funding and Employer Tax Credits

We also received some comments expressing concern about the loss of Federal unemployment tax credits and UC administrative funding if, after a State enacts BAA–UC, a Federal court were to strike down our regulation authorizing it. We are the only agency authorized to institute conformity and compliance proceedings against States which could result in the loss of these tax credits to employers. We will not withhold certification for administrative funding and employer credits for States participating in an effort that we have sanctioned. While we do not believe a court would strike down this rule, prior to any conformity and compliance proceeding, we would follow the normal procedures outlined in 20 CFR 601.5(b) to permit the State a reasonable time to change its laws in order to come into compliance.

(e) Unemployment Fund Solvency

Some respondents expressed concern that BAA–UC would jeopardize the financial solvency of the UC program, in particular the program's ability to handle future recessions. Others thought we should require States that enact BAA–UC to meet and maintain an unemployment fund solvency requirement of a 1.00 average high cost multiple (AHCM) or another measure that reflects a reasonable index of fund solvency. Some respondents recalled that we have expressed concern over many States' insufficient unemployment fund balances and pointed out that the Federal Government has had to "rescue" State unemployment funds in the past.

We have never interpreted Federal law to require "solvency." While we will continue to encourage all States to meet and maintain an AHCM of 1.00, we do not think we should tie BAA–UC specifically to fund solvency. A State in a weak solvency position should not conduct a BAA–UC experiment without also creating a means of financing it. Just as States currently assess the costs to their unemployment funds whenever coverage, benefit expansions, or tax changes are considered, we expect States to consider the costs of BAA–UC before enactment. We will provide technical assistance to States needing assistance in determining their solvency positions and, if requested, will work with States to determine financing options.

(3) Fundamental Program Changes

(a) The FMLA Program

As stated above, we received many comments that relate the BAA–UC proposal to the FMLA. The respondents see the payment of BAA–UC as an attempt to require paid leave under the FMLA, which contains no such requirement. They contended that this proposal violates and/or amends the FMLA by converting unpaid leave under the FMLA into paid leave under the Federal-State UC program and runs counter to the notion that the FMLA would never require paid leave. Other respondents questioned whether BAA–UC requires the employer to hold the job for a BAA–UC claimant.

The FMLA is a distinct and entirely different statute from the SSA and FUTA which established the Federal-State UC program. The FMLA guarantees certain eligible employees unpaid, job-protected leave for up to 12 weeks for their own or a family member's serious health condition, or to care for a newborn or newly-adopted child. While the FMLA in no way mandates paid leave, it does not prohibit employers from providing paid leave to employees exercising their right to leave under the FMLA. Furthermore, the FMLA provides that nothing in it should be construed to supersede State or local laws that offer benefits greater than those contained in the FMLA. Consequently, neither the BAA–UC regulation nor the implementation of BAA–UC in the States would violate the FMLA. This regulation does not impose paid leave or address employment rights. Rather, it permits the States, through the UC program, to pay partial wage replacement to employees who choose to take time off for the very narrow purpose of being with a new child. The provision of BAA–UC is voluntary for States, and this regulation does not amend or change the FMLA. Thus, while nothing in BAA–UC changes the basic understanding that the FMLA does not require paid leave, States are free to enact BAA–UC as part of an effort to provide benefits greater than those contained in the FMLA. Indeed, we are not interpreting the FMLA, but the Federal UC laws.

(b) The UC program

Based on the premise that Federal UC law requires recipients to be involuntarily unemployed and actively seeking work, many respondents view BAA–UC as a fundamental change to the UC program. We received many comments suggesting that the group covered under this experiment constitutes persons not entitled to UC because they presumably would be voluntarily leaving their employment to be with their newborns or newly-adopted children. However, we have never interpreted Federal UC law to require that an individual's separation from employment be "involuntary" as a condition of entitlement to benefits.

Indeed, in those situations where a job relocation forces a spouse to quit his/her job to follow the other, some States allow the payment of UC without disqualification.

We also received many comments alleging that the group of employees covered by the proposed regulations are not truly "unemployed" as that term has been understood in common usage. The comments focused on the fact that these new parents would not, for the most part, be laid off by their employers but would be leaving a job the employer would continue to allow them to have. These comments appear to assume that there is a requirement in the UC program that in order to be considered unemployed, the employment relationship must be severed. This is not the case as illustrated by the payment of UC to individuals on recall. Whether an individual is unemployed within the meaning of Federal law depends on whether the individual has experienced an actual reduction in hours worked. (See UIPL 08–98, 63 FR 6774, 6776 (February 10, 1998)). (Most States define "unemployment" as a reduction in hours worked. See also 20 CFR 625.2(w)(1).) Persons receiving BAA–UC would come under this definition since they would have suffered a loss of work. Moreover, an individual need not completely sever his or her connection to his or her employment to qualify for UC as Federal law also permits payments to individuals for partial unemployment.

We also received comments expressing concern that the regulation does not require BAA–UC recipients to demonstrate, prior to the end of the leave period, that they intend to go back to work. There was a similar concern that individuals who otherwise leave employment, but do not intend to return to the workforce, will receive BAA–UC. Still other respondents were concerned that BAA–UC recipients are not required to actively seek work and that the regulation will eliminate the "refusal of suitable work" disqualification. Respondents also noted that BAA–UC would conflict with existing eligibility requirements under State UC laws.

The BAA–UC regulation defines "approved leave" as "a specific period of time, agreed to by both the employee and employer or as required by law or employment contract (including collective bargaining agreements), during which an employee is temporarily separated from employment and after which the employee will return to work for that employer." Therefore, by definition, BAA–UC recipients on approved leave from their employers have demonstrated their intent to return to work by agreement or by contract. States may establish BAA–UC overpayments if individuals on approved leave choose not to return to work. As for individuals who otherwise leave employment, the BAA–UC experiment will also test whether their workforce attachment is strengthened.

As for work search requirements and the "refusal of suitable work" disqualification, these are not generally applicable Federal UC requirements but are permissible restrictions contained in various State UC laws. Except for the extended benefits program, there is no Federal requirement that States ensure that UC recipients be actively seeking work. While the BAA–UC experiment neither specifically mandates nor eliminates these State-imposed requirements, States would need to amend their State UC laws with regard to these requirements to the extent they interfere with the payment of BAA–UC should they wish to implement BAA–UC.

(4) Scope

Several respondents stated that BAA–UC should be extended to all adults who fulfill parental responsibilities, such as foster parents, step-parents, domestic partners, or any individual who stands in loco parentis to a child. Still others think that experimental BAA–UC should be expanded to other types of medical and family leave, such as leave during pregnancy, for personal illness, and to care for ill family members. There was also a suggestion that we clarify that States may provide "supplemental" BAA–UC.

No decisions regarding expanding the potential universe of recipients will be made until we have evaluated BAA–UC. Because BAA–UC is an experimental effort, there must be limitations, as with any experiment. Consequently, we have limited BAA–UC to the parents of newborns and newly-adopted children. This small, easily-defined group can be used to test whether compensating absences from employment will assist individuals to maintain, or even improve upon, their connection to the workforce. Changing the definition of parents to include all parents as defined under the FMLA or to extend UC to all FMLA leave will not enhance the experiment.

As for "supplemental BAA–UC," States currently have the authority to provide supplemental (commonly known as additional) UC. For example, some States provide supplemental UC to "displaced" workers or to workers in State-approved training. BAA–UC is no different. While the regulation does not prohibit supplemental BAA–UC, we had not contemplated its provision when developing the experiment.

(5) Eligibility

A number of respondents noted with approval that the States would have the opportunity to determine eligibility criteria (work history requirements) and benefit amounts and durations, as is currently done. Others indicated that the BAA–UC regulations should be more prescriptive in terms of eligibility and benefits for BAA–UC. A few respondents felt the UC program would discriminate against the poorest workers by tying benefit levels to past wages. Others said that BAA–UC claimants should receive the same benefit levels as regular UC claimants.

(a) Breadth of Eligibility

We received comments characterizing the potential eligible population as overly broad. The stated concerns included:

- No limitations on the number of times parents may claim BAA–UC, allowing parents to take extensive periods of leave multiple times (for example, BAA–UC eligibility is not restricted to a specific number of births or adoptions);
- No limitation on the number of parents per child who may make a claim for BAA–UC, thereby allowing both the biological and adoptive parents of a child to claim benefits;
- No requirement that the child actually live with the parents or be cared for by the parents; and
- Silence in the regulations regarding continuing eligibility in cases where an adoptive parent ceases to be the parent or in cases where the child dies.

States have broad latitude regarding UC eligibility requirements. Consequently, we designed the regulation in a manner, consistent with the general structure of the UC program, that is not overly prescriptive. By so doing, the States have the flexibility necessary to best meet the needs of their respective populations. States are free to consider these kinds of issues in developing eligibility rules for their BAA–UC experiments.

Although State flexibility and innovation are key elements of BAA–UC, all Federal UC law requirements must be maintained, such as making payments when due (which also means not making payments that are not due) as required by section 303(a)(1), SSA, and not introducing eligibility factors unrelated to the fact or cause of an individual's unemployment. For example, restricting BAA–UC eligibility based on the number of births or

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adoptions for which an individual has previously received BAA–UC is unrelated to the fact or cause of the individual's unemployment, and, therefore, would be inconsistent with Federal law.

(b) Length of Eligibility Period

One respondent felt that the availability of BAA–UC any time within the year following the birth or placement for adoption of a child was longer than needed for parent/child bonding. Several respondents advocated a period of at least one year because they believed it would encourage breast-feeding for the health and well-being of the child, while shorter periods may encourage premature weaning. Another respondent stated that, as long as benefits began within the first year, States should be allowed to extend the eligibility period beyond the first year. Some respondents advocated that BAA–UC be provided intermittently throughout the eligibility period, in some cases in time frames as short as one-half hour.

Research suggests that parental leave is beneficial for early childhood development. In terms of the eligibility period, we selected one year as the eligibility period because it correlates the needs related to introducing a new child into a family with the current benefit year under the UC program: States could establish a shorter eligibility period. Our Model State Legislation provides for a 12-week benefit period within a one-year eligibility period, and we encourage States to include such a provision in their legislation.

The BAA–UC regulation does not require that BAA–UC be paid only for consecutive weeks; therefore, as part of the regular UC program, BAA–UC may be provided intermittently throughout the benefit year. Partial BAA–UC may also be claimed for weeks in which an individual is partially unemployed; however, BAA–UC may be reduced under State law by wages earned during a week of partial unemployment. Typically, wages earned during one-half week or more exceed the available UC; therefore, very short time frames of unemployment (such as one hour per day) would not be compensable.

(c) Employer-Provided Benefits

Some respondents expressed the opinions that employers should be able to require employees to take employer-paid leave before being eligible for BAA–UC, and that employers who provide paid leave or disability coverage should be excepted from BAA–UC coverage. Other respondents suggested that employers who currently provide paid leave will reduce or eliminate those benefits to avoid paying twice.

BAA–UC is part of the UC program and applies to all employers covered by State UC law. Therefore, just as there is no basis for excepting employers who provide private unemployment insurance to their employees, there is no basis for excepting employers from BAA–UC based on employer-provided benefits. As stated earlier, the introduction of factors unrelated to the fact or cause of an individual's unemployment would be inconsistent with Federal law. Consequently, even though employers may require employees to take employer-paid leave before taking unpaid leave under the FMLA, States may not make BAA–UC eligibility contingent upon the exhaustion of employer-paid leave. States may, however, reduce BAA–UC by the amounts of the employer-paid benefits and wages. Generally, States and employers could have lower costs if employers continue to provide benefits. Our Model State Legislation provides for employer-provided wages and benefits to be deducted from BAA–UC, and we encourage States to include such a provision in their legislation.

(d) BAA–UC Exhaustions

A few respondents requested clarification as to what happens after BAA–UC is exhausted. These respondents questioned whether States could pay UC where conventional A&A requirements apply upon exhaustion and whether States could demand repayment of BAA–UC if an individual failed to return to work.

BAA–UC is a part of the States' regular UC programs. States are, therefore, free to determine BAA–UC's relationship to UC where the conventional A&A requirements apply. Thus, a State could pay an individual conventional UC after BAA–UC is exhausted if the individual meets all conventional UC eligibility requirements. Whether BAA–UC counts toward the maximum number of weeks of conventional UC in this case is also a State decision. Our Model State Legislation provides for counting BAA–UC weeks toward the maximum UC entitlement, and we encourage States to include such a provision in their legislation.

Concerning overpayments, the questions and answers that accompanied the NPRM indicated that a State may declare an overpayment of BAA–UC when the individual did not return to work after receiving BAA–UC. We note, however, that there may be cases where the individual is unable to return to work. For example, the employer may have had a general layoff. In cases such as this, a more equitable approach is to determine whether the individual meets all other State UC requirements, including actively seeking work. For these and operational reasons, our Model State Legislation does not provide for recoupment of overpayments.

(6) Experimental Nature of BAA–UC

(a) Experiment Versus Non-Experiment

We received numerous comments concerning the experimental nature of BAA–UC. Some respondents argued that we do not have the authority to conduct an experiment. Some respondents stated that there was no need to experiment because other studies have already proven the benefits of compensated parental leave. Noting that the Department did not require a period of experimentation in other areas, such as allowing payment of UC to individuals in approved training programs or to ill individuals, some respondents asked why experimentation was necessary for BAA–UC. A respondent suggested that if we intended to conduct a test we should fully fund a pilot involving a few States.

Other respondents questioned whether BAA–UC really is an experiment. Among the comments were claims that it would be difficult and politically unpopular to stop once started, and that the purpose of the experiment (that is to test whether the provision of BAA–UC would promote a continued connection to the workforce) "is an unmeasurable, wholly subjective concept." Other respondents suggested that BAA–UC was not truly experimental because the proposed regulation did not include specific measures and lacked definitive beginning and ending periods. Still other respondents saw BAA–UC as the first phase of an inevitable, continued expansion of the UC program.

Some respondents approved of our approach. They likened the BAA–UC experiment to the UC program design and quoted President Franklin Roosevelt in his message to Congress encouraging enactment of the SSA: "[T]he Federal act should require high administrative standards, but should leave wide latitude to the States in other respects, as we deem varied experience necessary within particular provisions in unemployment compensations laws in order to conclude what types are most practicable in the country." 79 Cong. Rec. 546 (1935).

BAA–UC is indeed an experiment. We have the authority to interpret Federal UC law, and we chose an experimental approach to test whether BAA–UC promotes parents' continued connection to the workforce. Thus, through voluntary State participation, the BAA–UC experiment will allow us to gather the necessary facts on whether a positive correlation exists between the provision of UC to parents of newborns and newly-adopted children and a demonstrated connection to the workforce by these parents. The fact-finding in this experiment is critical in assisting us to fulfill our authority and responsibility to assure that the States' UC programs conform to Federal UC law.

As stated in the NPRM, this experiment recognizes the impact of women in the workforce and responds to the societal and economic changes resulting from the large number of families where both parents work. We intend to gather information and evaluate the impact of the provision of partial wage replacement on employees, employers, and States' unemployment funds. We have chosen to adopt an experimental approach because the introduction of BAA–UC represents a significant shift in our view of the Federal UC requirements. We think the impact on not only employees, but also on employers and State unemployment funds should be studied. Consequently, rather than developing a pilot that might be less flexible, we chose an experimental approach that is designed to promote State innovation.

Several respondents suggested that the U.S. lags behind other developed countries in providing paid family and medical leave and pointed to studies that discussed the positive effects of paid leave in other countries. However, the benefits programs of other countries are dissimilar to the UC program in the U.S. Other respondents pointed to existing studies in this country that indicated positive effects on workforce attachment from paid parental leave. While these studies support our initiative, we believe it advisable to independently study the effects of partial wage replacement for parents of newborns and newly-adopted children on the States' UC programs, since no study was specific to the UC program. Therefore, we see experimentation with BAA–UC as a logical step.

Statistics reported for the regular UC program will include all data related to BAA–UC. Additional administrative data will be collected, using an existing data collection mechanism, from participating States as soon as they implement experimental BAA–UC. Several respondents proposed specific elements that should be evaluated. While the specifics have yet to be determined, we anticipate that the administrative data will include, among other items, initial claims, weeks claimed, weeks compensated, and benefits paid. As States gain experience with BAA–UC, we will evaluate the effect of BAA–UC on each implementing State's UC program as part of an ongoing evaluation.

Some respondents criticized the regulations for not placing any formal sunset or termination provisions or time frame for the study. Because of the flexible nature of the BAA–UC regulations and the potentially different enactment dates, we have set a target that would trigger a comprehensive evaluation of BAA–UC when at least four States have implemented legislation and operated BAA–UC for a minimum of three years, as noted in section I. B. (4) of the preamble to the NPRM (64 FR 67974).

We believe an evaluation based on this target will provide reliable information that takes into account the variations among the States' BAA–UC experiments and allows us to ascertain the impact of BAA–UC on States' unemployment funds, employees, and employers' contribution rates, in addition to determining the workforce connections of BAA–UC recipients. While all these factors are important, we note that many respondents were interested in the impact of BAA–UC on State unemployment funds. Therefore, even though we are not establishing a solvency requirement, we will thoroughly evaluate how States determined their solvency positions and the impact of BAA–UC on State unemployment funds.

BAA–UC legislation introduced in States prior to the issuance of the NPRM varied substantially—an early indication that BAA–UC experiments among the States could differ greatly. In addition, regardless of whether States enact vastly different BAA–UC legislation or enact similar legislation, demographics, take-up rates, benefit levels, and benefit charging methodologies could vary substantially among the States. A comprehensive evaluation, therefore, will be conducted when at least four States have operated BAA–UC for at least three years. We are committed to completing a comprehensive evaluation, and this evaluation will serve to determine whether to make BAA–UC permanent, to expand it, or to end it entirely. If four States do not enact BAA–UC legislation, we will then consider how best to comprehensively evaluate the experiment given the limited data.

(b) Impact of Experimental BAA–UC on Employees, Employers, and Families

Employees. Numerous respondents commented on the potential negative impact of BAA–UC on employees. Some speculated that, because of costs associated with BAA–UC, employers would be discouraged from providing employer-paid benefits to employees or from hiring individuals of childbearing age. Others asked about the effects of BAA–UC on an individual's eligibility for various employer-paid benefits and on Federally-mandated benefits, such as private health insurance benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Health Insurance Portability and Accountability Act of 1996. Others expressed concern that employers would move jobs out of the country, causing employees to lose jobs. Some, noting that the work of absentee employees would likely be spread among co-workers, predicted "negative effect[s] on co-workers and their families." Among claims that BAA–UC discriminates against employees who do not meet the eligibility requirements, there was speculation that implementation of BAA–UC would pit childless employees against employees with children in addition to pitting employees unemployed as a result of economic downturns against BAA–UC recipients vying for benefits from diminishing unemployment funds.

There were also numerous comments focusing on the positive impact of BAA–UC on employees. Respondents suggested that providing BAA–UC would decrease worker anxiety and reduce employee turnover, resulting in greater productivity.

Employers. As with employees, we received many comments about the impact of BAA–UC on employers. Many speculated that employer costs and administrative burdens would be excessive, that litigation would increase, and that worker shortages would be exacerbated because employees would be more able to take off work. Some employers worried that their global competitiveness would suffer, and some small employers were concerned that they would be subsidizing leave taken by employees of FMLA-covered businesses. Many employers urged a tax cut for businesses instead of expanding UC. A few respondents suggested that, as increased employer State UC taxes are passed on, employees and consumers will suffer. Others suggested that employer costs would be minimal and employers would benefit from a more stable workforce resulting in lower employee turnover and greater

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productivity. Respondents also referred to studies that indicate that women who have paid maternity benefits take less time from work and are less likely to quit their jobs than women with access to unpaid leave or women who have no leave available. Others suggested different ways of reporting FMLA leave on UC forms as an alternative to providing BAA–UC.

Families. There seems to be general agreement in the comments that families would benefit from parents and children having the opportunity to bond. Many respondents commented that quality day care is expensive and scarce. However, as noted above, some respondents think that there will be a negative impact on the families of the co-workers of BAA–UC recipients due to increased workloads and overtime required to cover for persons on leave. There were also comments that BAA–UC would be bad for families because it would encourage both spouses to work and promote parental attachment to the workforce instead of the family. Some respondents criticized us for encouraging population growth, and others stated that income tax cuts or child tax credits would be more beneficial than BAA–UC in helping families with children.

Although the effects of BAA–UC on employers, employees, and families have not yet been documented, these effects concern us, and we expect that States will consider potential effects prior to enacting BAA–UC. As part of our study of the BAA–UC experiment, we will compile the necessary information needed to evaluate the effects of BAA–UC on employees and employers.

As stated in the NPRM, we believe that providing BAA–UC will have a positive impact on families because it will allow more parents to take leave to be with their newborns or newly-adopted children. Although studies suggest a positive impact on the workforce from compensated maternity and family leave, this is the first test of the effects on employers and employees of using the UC program to provide partial wage replacement for parents following the birth or adoption of a child. Because our cost estimates for the BAA–UC experiment are relatively low as a percentage of overall UC costs, we do not believe that BAA–UC will move jobs out of the country, impair U.S. global competitiveness, or otherwise adversely affect employers. For that same reason, we do not believe that litigation or employer administrative burdens would significantly increase.

Regarding size-of-employer concerns, BAA–UC applies to employees of both small and large employers. Small employers not subject to the FMLA may well approve leave without the compulsion of the FMLA. Also, States are free to offer BAA–UC to individuals who otherwise leave their employment as a result of being ineligible for leave under the FMLA. The effect that the receipt of BAA–UC might have on either employer-paid benefits or non-UC Federally-mandated benefits would be determined by those programs and/or applicable statutes. But these effects are among the things we will review when evaluating the BAA–UC experiment. Finally, we have no data to suggest that providing partial wage replacement promotes higher birth rates, discriminates against individuals of childbearing age, or creates worker shortages; and, as we noted earlier, other options to help families, such as tax cuts or credits, are outside our purview.

(7) Voluntary Effort

Some respondents referred to BAA–UC as a mandate by the Administration. There were also some comments maintaining that the experiment is not really voluntary in that all States will be impacted because of interstate and combined-wage claims. (In an interstate claim, the individual has worked in one State, but files a claim in another. In a combined-wage claim, an individual has worked in more than one State and combines the work into one State for purposes of qualifying for UC or for receiving higher benefit amounts or longer duration. (See 20 CFR Part 616.)) Noting that each State participating in the Interstate Arrangement for Combining Employment and Wages must act as an agent for other participating States, one respondent held that it would be "impossible for one [S]tate to have an experimental program without impacting other [S]tates."

BAA–UC is a State option, not a mandate. States currently have wide latitude in determining most eligibility criteria. Indeed, with a few exceptions, States determine most aspects of their UC programs, such as earnings requirements, "good cause" for voluntary quit occurrences, disqualifications, benefits amounts and durations, and continuing eligibility requirements. In this regard, there are substantial variations among the State UC programs. As a result, there are situations where benefits are paid in one State that would not be paid in another, and this is reflected in combined-wage claims. We agree that, just as there now is some financial impact on States resulting from combined-wage claims, there will be some impact on non-BAA–UC States resulting from combined-wage claims which are also BAA–UC claims. That impact is the result of State participation in the Federal-State UC program.

(8) Administration

Some respondents, particularly SESAs, submitted a broad range of administrative questions. The scope of the questions included how to count BAA–UC claims on Federal reporting forms, required documentation for eligibility determinations, and confidentiality of information.

We will issue specific reporting and other administrative guidance on these issues and others to SESAs in a directive separate from this rule. States will be required to report specific BAA–UC claims data. When States implement BAA–UC, statistics reported for the regular UC program will include all data related to BAA–UC. To identify only BAA–UC activity, we will use the "Quick Response Report" (the report used when collections involve fewer than 10 States, assuming that fewer than 10 States implement BAA–UC) under the standard reporting requirement authority in section 303(a)(6), SSA. This report provides for the collection of up to 12 items of information. It is anticipated that data collected will include, among other items, initial claims, weeks claimed, weeks compensated, and benefits paid. If 10 or more States enact BAA–UC, reporting requirements will be issued in a separate information collection request in accordance with the Paperwork Reduction Act.

Concerning administrative methods, States are required under section 303(a)(1), SSA, to have "methods of administration * * * reasonably calculated to insure the full payment of unemployment compensation when due." For BAA–UC, this means that, as is the case for all types of UC, States must have reasonable administrative methods to assure that an individual is eligible. States are expected to obtain the requisite documentation, for example, that an individual is on approved leave or has left his or her employment, that the individual has a newborn child under one year old, or that a child has been placed for adoption. States must have reasonable methods to assure that the individual is eligible for each week claimed and methods for detecting and collecting overpayments. Each State already has all of these methods in place for the regular UC program; States need only modify them as appropriate to accommodate BAA–UC requirements. If we identify a need for further guidance on any "methods of administration," we will issue guidance as appropriate. Concerning confidentiality of information, States must treat BAA–UC claims information in the same manner as claims information for the regular UC program. Guidance on confidentiality is found in UIPL No. 34–97 (62 FR 40118, 40119 (July 25, 1999)).

(9) Inconsistency With Welfare to Work (WtW) and Workforce Investment Act (WIA) Initiatives

Some respondents contended that experimental BAA–UC is inconsistent with the WtW and WIA initiatives. As they pointed out, these programs are designed to help and encourage individuals to join the workforce. Comparing BAA–UC to the pre-1996 welfare program, one respondent asserted that BAA–UC was counter to the WtW and WIA initiatives in that it would "create a disincentive for individuals to access WIA training and child care programs, and encourage them not to enter or stay in the workforce." Respondents also were concerned that BAA–UC would discourage personal responsibility.

We view BAA–UC and the WtW and WIA initiatives as compatible efforts. Just as the WtW and WIA initiatives help individuals enter into the workforce, BAA–UC may help them maintain a connection to the workforce. As with all UC recipients, experimental BAA–UC recipients must have a sufficient work history, as determined by each State, to be eligible for benefits. Consequently, implementation of BAA–UC provides no inducement to avoid entering into the workforce. Indeed, the whole premise of BAA–UC is that individuals who receive these benefits will be more attached to the workforce. Because, as with all UC programs, experimental BAA–UC will provide only short-term, partial wage replacement, we see no disincentive to individuals to remain in the workforce.

(10) Fraud and Abuse

Some respondents expressed concern about the potential for fraud and abuse, noting that the regulation does not condition receipt of BAA–UC on any evidence of parent-child bonding efforts, on the parent(s) and child sharing a residence, or on whether the parent(s) support and/or actually spend time with the child. Some respondents surmised that BAA–UC would be "a paid vacation plan."

The purpose of the regulation is to test whether compensating absences from employment will help parents of newborns or newly-adopted children maintain or improve their connection to the workplace; it is not designed to test whether the parents and children actually bond. We do not presume that any specific parental activity or circumstance is more (or less) appropriate for promoting bonding between parents and children. The regulation, therefore, does not impose upon States the burden of verifying specific bonding activities. As is the current practice, methods of fraud detection and overpayment collection will be developed as deemed appropriate by the SESAs.

(11) UC Program Reform

We received several recommendations that BAA–UC should be aligned with other State UC program reform efforts and that we should track and measure all reform efforts of States that implement BAA–UC. We believe that UC reform is of the utmost importance and have been diligently working to promote UC reform through the legislative process and have tracked and evaluated such efforts. Although we would like to see broad reform of the UC program, such reform is beyond the scope of this rule.

(12) Comment Period

Under the Administrative Procedure Act (APA), an agency is required only to provide a 30-day comment period and public hearings are not required by the APA for notice-and-comment rulemaking. We received several hundred responses from interested parties requesting that we extend the initial 45-day comment period ending on January 18, 2000, and/or that public hearings be held in venues around the country. Given the simple nature of the experiment and the relatively short length of the proposed rule, we thought that a 45-day comment period was adequate and that hearings were unnecessary. Some of the initial comments noted that the comment period fell during the holiday season, so we decided to extend the comment period 15 days through February 2, 2000, for a total 60-day comment period.

A few respondents requested in their timely submissions that we permit them to submit additional comments after February 2, 2000. However, the sheer volume of comments, as well as the extensive detail of some of the comments received, including the timely comments from the respondents asking to submit additional comments, convinced us that sufficient time was allotted for comments and that additional time was not necessary.

(13) Rulemaking Requirements

We received comments that this rule is subject to the Regulatory Flexibility Act requirements because it will have a significant economic impact on a substantial number of small entities, and it violates the Unfunded Mandates Reform Act of 1995.

Respondents challenging our conclusion that BAA–UC is not subject to the Regulatory Flexibility Act requirements suggested that the experiment will undoubtedly have a significant economic impact on a substantial number of small entities since the experiment will result in a potentially higher payment of UC due to the expansion of coverage to include new parents, thus requiring a regulatory flexibility analysis. However, the BAA–UC regulations impose no regulations upon small entities (*American Trucking Association* v. *EPA*, 175 F.3d 1027, 1044 (D.C. Cir. 1999)), rather, we are regulating the States that choose to experiment with BAA–UC. Furthermore, the Unfunded Mandates Reform Act of 1995 (UMRA) is not applicable to this regulation since this is not a "Federal intergovernmental mandate" as defined in section 421(5) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 658), as amended by section 101(a)(2) of the UMRA. Indeed, we are not mandating that a State, local or tribal government, or the private sector implement BAA–UC.

(14) Model State Legislation

We received some comments about the Model State Legislation that was appended to the proposed rule in the NPRM. Some comments indicated that respondents interpreted the Model State Legislation to be required legislative language. Others suggested that the Model State Legislation be restructured with affirmative language to guarantee payment of BAA–UC and suggested that the Model State Legislation be changed to read "compensation shall be provided" rather than stating that compensation "shall not be denied" as published in the NPRM.

The Model State Legislation is provided only as a guide to aid the States that enact BAA–UC in developing State legislation: States are not required to use it. The Model State Legislation is written in the style that States typically use in their statutes. We think there is no substantive difference between the suggested language style and the style used in the Model State Legislation; therefore, no stylistic changes were made. States that elect to follow the

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Model State Legislation must adapt it to their State UC laws.

IV. Explanation of Final Rule and Changes to Proposed Rule by Section

There is little difference between the proposed rule and the Final Rule. An explanation is provided where differences occur. Technical changes are not discussed.

Subpart A—General Provisions

Subpart A of rule discusses the purpose of the rule, the scope of the rule and critical definitions. The definitions of "approved leave," "newly-adopted child," "placement," and "parents" warranted amendment and are discussed below. All other aspects of Subpart A remain unchanged from the proposed rule.

Definition of "Approved Leave"

Respondents raised two concerns about "approved leave" as it is described in the NPRM—one that it would make individuals eligible for benefits while still employed and the other that it would inhibit eligibility by forcing legally permissible leave to pass an employer approval test.

In the preamble to the NPRM, "approved leave" was described as "an approved, temporary separation from a specific employer." Pointing to the phrase "specific employer," concerns were expressed that this would permit employees who work for multiple employers to be eligible for BAA–UC based on a separation from one employer while continuing to work for other employers and that the individual's UC would be charged to the other employers. We also received comments about whether individuals could receive partial BAA–UC while working a reduced number of hours for the same employer.

The Federal-State UC program already is designed to accommodate situations where an individual separates from one job while continuing another and where individuals are continuing to work at reduced hours. We expect States to handle these types of BAA–UC situations just as they currently handle similar situations. For example, an individual continuing to hold a job will have earnings; these earnings will affect the individual's eligibility, including the amount payable, under BAA–UC.

Other respondents expressed concern that the "approved leave" definition limits the availability of BAA–UC; some respondents suggested that the definition of "approved leave" be amended to include "required" leave. The concern was that some employees are granted leave under law or contract, regardless of whether the employer "approves" the leave. The respondents were concerned that, under the definition of "approved leave" in the NPRM, these employees would not be eligible for BAA–UC.

We do not intend to exclude from BAA–UC eligibility employees who are provided leave by law or contract. To assure that this group of employees is not unintentionally excluded from BAA–UC, the definition of "approved leave" is amended to read "a specific period of time, agreed to by both the employee and employer or as required by law or employment contract (including collective bargaining agreements), during which an employee is temporarily separated from employment and after which the employee will return to work for that employer."

The other concerns about the definition of "approved leave" stemmed from the notion that only employers covered by the FMLA would approve leave and that, as a result, employees of smaller businesses would not be eligible for BAA–UC. As a result, some respondents thought there was conflicting information within the NPRM regarding eligibility because employees of smaller businesses would not be eligible for BAA–UC if eligibility is conditioned on approved leave. Some respondents suggested as a remedy that the State option to limit BAA–UC to individuals on approved leave be eliminated. We expect States to evaluate whether employees of small businesses would be unable to obtain approved leave and to determine whether to cover these individuals under 20 CFR 604.10, which applies to employees who otherwise leave their employment.

Definition of "Newly-Adopted Child"

In an effort to afford States maximum flexibility and in acknowledgment that adopted children may be more than one year old, the definition of "newly-adopted child" in the NPRM included no limitation on the age of an adopted child. We received comments stating that, without an age limitation on adopted children for purposes of BAA–UC, there was potential for adults who adopted adults to be eligible for BAA–UC.

The BAA–UC experiment is clearly designed for the parents of young children and will test whether providing those parents with BAA–UC during the first year of a child's life or placement for adoption will help maintain or even promote their connection to the workforce by allowing them time to bond with their children and develop stable child care systems while adjusting to the accompanying changes in lifestyle before returning to work. To help assure that BAA–UC is used for this purpose, we are establishing an age limitation of 18 years old or less within the definition of "newly-adopted children." This age limitation is within the commonly accepted age range of a "child" and also acknowledges that adopted children may be more than one year old. The definition of "newly-adopted children" is amended to read "means children, age 18 years old or less, who have been placed within the previous 12 calendar months with an adoptive parent(s)."

Definition of "Placement"

Respondents also raised concerns about the definition of "placement." *Placement* was defined in the NPRM as "the time a parent becomes legally responsible for a child pending adoption." Comments indicated a concern that individuals in the process of adopting a child and who have actually received the child would be precluded from receipt of BAA–UC because adoption agencies may retain legal responsibility for a child until the adoption is complete. Therefore, to assure that these parents are not excluded on a technicality, the word "legally" has been deleted from the definition. Generally, foster parents are excluded from BAA–UC; however, this change may, in some situations, permit some foster parents in the adoption process to be eligible for BAA–UC. "Placement" is defined in this rule as: "the time a parent becomes responsible for a child pending adoption." A minor change was made to the definition of "parents" to make it more compatible with the definition of "placement."

Subpart B—Federal UC Requirements

No changes were made to this section; therefore, Subpart B of the Final Rule is the same as Subpart B in the NPRM.

Subpart C—BAA–UC Eligibility

A review of Subpart C resulted in two changes. First, the subpart title was changed to "Subpart C—Coverage and Eligibility" to better reflect the subpart's content. Second, the review revealed that § 604.22 was unnecessary because it did not regulate State actions. Consequently, § 604.22 is not included in the Final Rule.

Executive Order 12866

This rule is a "significant regulatory action" within the meaning of Executive Order 12866 because it meets the criteria of Section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It is also "economically significant" within the meaning of Section 3(f)(1) of that Executive Order because it may have an annual effect on the economy of $100 million or more. Specifically, the estimated costs range from zero to $196 million. Accordingly, this rule was submitted to, and reviewed by, the Office of Management and Budget. As directed by Section 6(a)(3)(C) of Executive Order 12866, we have prepared a Regulatory Impact Analysis that assesses the costs, benefits, and alternatives associated with this regulation. The Regulatory Impact Analysis is available to the public as part of the rulemaking record.

We have evaluated the rule and find it consistent with the regulatory philosophy and principles set forth in Executive Order 12866, which governs agency rulemaking. Although the rule will impact States and State agencies, it will not adversely affect them in a material way. The rule would permit States to voluntarily participate in an experiment to determine the effectiveness of using the UC program to support parents taking leave from their employment to be with their newborns or newly-adopted children; it would not impose any new requirements on States.

Paperwork Reduction Act

We have determined that this rule contains no information collection requirements. If the evaluation of this experiment requires information collections covered under the Paperwork Reduction Act, we will seek OMB approval at that time.

Executive Order 13132

This regulation has been reviewed in accordance with Executive Order 13132 regarding federalism. The order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions which would restrict States' policy options, and take such action only when there is clear constitutional authority and the presence of a problem of national scope. We do not believe that Executive Order 13132 applies. In the interest of consultation, however, we invited major intergovernmental associations to a meeting at which we briefed the associations on the proposed rule.

Executive Order 12988

This rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The rule has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Unfunded Mandates Reform Act of 1995

This rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*). We have determined that this rule does not include any Federal mandate. States have full discretion to decide whether or not to enact BAA–UC.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. The rule affects States and State agencies, which are not within the definition of "small entity" under 5 U.S.C. 601(6). Moreover, States have complete discretion in deciding whether or not they will enact BAA–UC under this regulation. Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Effect on Family Life

We certify that this rule has been assessed in accordance with section 654 of Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. We conclude that the rule will not adversely affect the well-being of the nation's families. Rather, it should have a positive effect on family well-being by permitting States to enable more parents to take leave from their employment to be with their newborns or newly-adopted children.

Congressional Review Act

Consistent with the Congressional Review Act, 5 U.S.C. 801, *et seq.*, we will submit to Congress and the Comptroller General of the United States, a report regarding the issuance of this Final Rule prior to the effective date set forth at the outset of this document.

OMB has determined that this rule is a "major rule" as defined in the Congressional Review Act. The rule is likely to result in an annual effect on the economy of $100 million or more. The cost estimate is discussed in Section III.C.(2)(a) of the "Supplementary Information," above. The effective date of this rule has been adjusted in accordance with the requirements of the Congressional Review Act.

Catalogue of Federal Domestic Assistance Number

This experiment is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

List of Subjects in 20 CFR Part 604

Unemployment compensation.

Signed at Washington, DC on June 7, 2000.

Alexis M. Herman,

Secretary of Labor.

Words of Issuance

For the reasons set forth in this preamble and in the NPRM, Chapter V of Title 20, Code of Federal Regulations, is amended by adding new part 604 to read as follows:

PART 604—REGULATIONS FOR BIRTH AND ADOPTION UNEMPLOYMENT COMPENSATION

Subpart A—General Provisions

Sec.
604.1 What is the purpose of this regulation?
604.2 What is the scope of this regulation?
604.3 What definitions apply to this regulation?

Subpart B—Federal Unemployment Compensation Program Requirements

604.10 Beyond the interpretation of the able and available requirements for Birth and Adoption unemployment compensation, does this regulation change the Federal requirements for the unemployment compensation program?

Subpart C—Coverage and Eligibility

604.20 Who is covered by Birth and Adoption unemployment compensation?
604.21 When does eligibility for Birth and Adoption unemployment compensation commence?

Authority: 42 U.S.C. 503 (a)(2) and (5) and 1302(a); 26 U.S.C. 3304(a)(1) and (4) and 3306(h); Secretary's Order No. 4–75 (40 FR 18515); and Secretary's Order No. 14–75 (November 12, 1975).

Subpart A—General Provisions

§ 604.1 What is the purpose of this regulation?

The regulation in this part allows the States to develop and experiment with innovative methods for paying unemployment compensation to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. States' experiences with Birth and Adoption unemployment compensation will enable the Department of Labor to test whether its interpretation of the Federal "able and available" requirements promotes a continued

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connection to the workforce in parents who receive such payments.

§ 604.2 What is the scope of this regulation?

The regulation in this part applies to and permits all State unemployment compensation programs to provide benefits to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. A State's participation is voluntary.

§ 604.3 What definitions apply to this regulation?

The following definitions apply to the regulation in this part:

(a) *Approved leave* means a specific period of time, agreed to by both the employee and employer or as required by law or employment contract (including collective bargaining agreements), during which an employee is temporarily separated from employment and after which the employee will return to work for that employer.

(b) *Birth and Adoption unemployment compensation* means unemployment compensation paid only to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children.

(c) *Department* means the United States Department of Labor.

(d) *Newborns* means children up to one year old.

(e) *Newly-adopted children* means children, age 18 years old or less, who have been placed within the previous 12 calendar months with an adoptive parent(s).

(f) *Parents* means mothers and fathers (biological, legal, or who have custody of a child pending their adoption of that child).

(g) *Placement* means the time a parent becomes responsible for a child pending adoption.

(h) *State(s)* means one of the States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

Subpart B—Federal Unemployment Compensation Program Requirements

§ 604.10 Beyond the interpretation of the able and available requirement for Birth and Adoption unemployment compensation, does this regulation change the Federal requirements for the unemployment compensation program?

No, the regulation in this part does not change the Federal unemployment compensation requirements. Under its authority to interpret Federal unemployment compensation law, the Department interprets the Federal able and available requirements to include experimental Birth and Adoption unemployment compensation. The regulation in this part applies only to parents who take approved leave or otherwise leave employment to be with their newborns or newly-adopted children.

Subpart C—Coverage and Eligibility

§ 604.20 Who is covered by Birth and Adoption unemployment compensation?

If a State chooses to provide Birth and Adoption unemployment compensation, all individuals covered by the State's unemployment compensation law must also be covered for Birth and Adoption unemployment compensation. Just as with current unemployment compensation programs, individuals may not be denied experimental Birth and Adoption unemployment compensation based on facts or causes unrelated to the individual's unemployment, such as industry, employer size or the unemployment status of a family member. The introduction of such facts or causes would be inconsistent with Federal unemployment compensation law.

§ 604.21 When does eligibility for Birth and Adoption unemployment compensation commence?

Parents may be eligible for Birth and Adoption unemployment compensation during the one-year period commencing with the week in which their child is born or placed with them for adoption. Weeks preceding the week of the birth or placement and weeks following the end of the one-year period are not compensable.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to the Preamble—Unemployment Insurance Program Letter No. 26–00

U.S. Department of Labor

Employment and Training Administration, Washington, D.C. 20210

CLASSIFICATION: UI

CORRESPONDENCE SYMBOL: TEUL

DATE: May 31, 2000

DIRECTIVE: Unemployment Insurance Program Letter No. 26–00.

TO: All State Employment Security Agencies.

FROM: Grace A. Kilbane, Administrator, Office of Workforce Security.

SUBJECT: Model State Legislation and Commentary to aid States implementing Birth and Adoption Unemployment Compensation Unemployment Compensation (BAA–UC).

Rescissions: None.

Expiration Date: Continuing.

1. *Purpose.* To provide Model State Legislation and Commentary for States implementing BAA–UC. The Model State Legislation is offered as a guide for States that need to amend their current UC laws, it is not required. The Commentary provides information on the Model State Legislation and will aid States in making policy decisions.

2. *References.* 20 Code of Federal Regulations (CFR) parts 604, 615, and 625; sections 303(a)(1) and (8), Social Security Act (SSA); Unemployment Insurance Program Letters (UIPLs) No. 21–80 and No. 44–93; Family and Medical Leave Act, Pub. Law 103–3; the *Manual of Employment Security Legislation* (rev. 1950); UIPL No.787 transmitting the Secretary of Labor's Decision of September 25,1964, *In the Matter of the Hearing to the South Dakota Department of Employment Security Pursuant to Section 3304(a) of the Internal Revenue Code of 1954;* and *Jenkins* v. *Bowling*, 691 F.2d 1225 (7th Cir. 1982).

3. *Background.* The Department of Labor (Department) created, by regulation, an opportunity for State agencies that administer the UC program to pay, as part of a voluntary, experimental effort, UC to parents who take time off from employment after the birth or placement for adoption of a child. (20 CFR Part 604.) This regulation allows States the opportunity to develop innovative ways of using UC to support parents taking approved leave or who otherwise leave their employment to be with their newborns or newly-adopted children and will permit us to evaluate the effectiveness of using the UC program for these or related purposes.

4. *Model State Legislation.* The attached Model State Legislation is offered as an optional aid for States that choose to enact BAA–UC. The Model State Legislation assumes that States will provide BAA–UC based on the same earnings and employment criteria that apply to other individuals. It also assumes that States will provide BAA–UC for no more than 12 weeks, that BAA–UC payments will count toward the maximum number of weeks of UC, and that employers will not be charged for BAA–UC. Further, the Model State Legislation provides for the deduction of other income from BAA–UC. The Model State Legislation conforms to the regulations at 20 CFR Part 604; however, States have wide latitude in creating their BAA–UC provisions within the parameters of those regulations.

5. *Commentary.* A Commentary in question-and-answer format is also attached (Attachment II) as an aid for States. The Commentary discusses policy approaches taken in the Model State Legislation and also discusses other matters.

6. *Action.* We suggest that States consider developing a BAA-UC experiment to provide partial wage replacement to parents on approved leave or who otherwise leave employment to be with their newborns and newly-adopted children. We expect that States will take into consideration the impact of such an effort on their unemployment funds prior to enactment. Appropriate staff should be provided with this UIPL.

7. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

Attachments

Attachment I—Model State Legislation

Attachment II—Commentary

Attachment I—Model State Legislation

Section____. Birth and Adoption Unemployment Compensation

(a) A parent on a leave of absence from his/her employer or who left employment to be with his/her child during the first year of life, or during the first year following placement of a child age 18 or less with the individual for adoption, shall not be denied compensation under Section ____for voluntarily leaving employment, Section____relating to availability for work, Section____relating to inability to work, or Section____for failure to actively seek work.

(b) For purposes of this section, the following definitions apply:

(1) *Parent* means a mother or father (biological, legal, or who has custody of a child pending her or his adoption of that child); and

(2) *Placement* means the time a parent becomes responsible for a child pending adoption in accordance with [cite State adoption law].

(c) Section____, concerning the reduction of the amount of compensation due to receipt of disqualifying income, shall apply to payments under this section. In addition, the following payments shall cause a reduction in the compensation amount:

(1) Any payment from the employer resulting from a birth or adoption described in subsection (a); and

(2) Any payment resulting from a birth or adoption described in subsection (a) from a disability insurance plan contributed to by an employer, in proportion to the employer's contribution to such plan.

(d) Compensation is payable to an individual under this section for a maximum of 12 weeks with respect to any birth or placement for adoption.

(e) Each employer shall post at each site operated by the employer, in a conspicuous place, accessible to all employees, information relating to the availability of Birth and Adoption unemployment compensation.

(f) Any compensation paid under this section shall not be charged to the account of the individual employer.

(g) Two years following the effective date of this legislation, the commissioner shall issue a report to the governor and the legislature evaluating the effectiveness of Birth and Adoption unemployment compensation.

(h) This section shall be applied consistent with regulations issued by the U.S. Department of Labor.

Attachment II—Commentary

General

1. Must States implement Birth and Adoption unemployment compensation (BAA–UC)?

No. This effort is voluntary for the States. However, implementation of BAA–UC will require some legislation on the part of every State seeking to adopt it. The Model State Legislation is provided for the convenience of States that wish to implement BAA–UC.

2. Does the BAA–UC regulation enable a State to pay UC for other types of family or medical leave?

No. This regulation enables States to pay UC, on an experimental basis, to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. The experiment will test whether providing UC to individuals within this group will strengthen their workforce attachment and will provide data on the impact of BAA–UC on employees, employers, and States' unemployment funds. Permitting payment of UC for other types of family leave or care would be inconsistent with this experimental effort.

3. Must all employer-paid leave be exhausted before BAA–UC is available?

No. BAA–UC is designed to provide partial wage replacement to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. The Model State Legislation assumes that any wages paid for the period of employer-provided leave will be deducted. However, States need not deduct these wages from BAA–UC.

4. Does the BAA–UC regulation impose any solvency requirements upon the States before they enact BAA–UC?

No. The Department expects that a State will not enact changes without assessing the effect on the solvency of its unemployment fund. A State in a weak solvency position should not conduct a BAA–UC experiment without creating a means of financing it. Each State has the responsibility to assess the cost to the State's unemployment fund whenever coverage, benefit expansions, or tax changes are considered within the State's UC program. We will provide technical assistance to States needing assistance in determining their solvency positions.

Monetary Qualifications and Benefits

5. What are the earnings and employment requirements for BAA–UC?

States may establish their own requirements. The Model State Legislation assumes that States will use the same earnings and employment criteria that apply to all other individuals.

6. What is the weekly benefit amount for individuals eligible for BAA–UC?

States may establish their own weekly benefit amounts. The Model State Legislation assumes that individuals eligible for BAA–UC will receive the same weekly benefit amount as other individuals eligible for UC.

7. How does the receipt of other income effect payment of BAA–UC?

States will determine whether BAA–UC will be reduced by other income. Under the Model State Legislation, the amount of BAA–UC will be reduced in the same manner as any other payment of UC as provided under State law. The Model State Legislation also provides for the deduction of any payment from the employer as a result of the birth or placement for adoption, and for the deduction of any disability insurance payment received as a result of the birth or placement for adoption in proportion to the employer's contribution to the disability insurance plan. This provision, which is limited to payments triggered by the same event which triggers BAA–UC, reflects the view that the unemployment fund should not be held responsible when wage replacement is available from other sources, particularly when both payments are financed by the employer. States should examine their laws to determine if all types of appropriate income are, or should be, deductible. For example, some leave payments which are not normally deductible under State law may cover costs of birth and adoption leave.

8. How does the BAA–UC entitlement relate to UC payments where conventional able and available requirements apply?

States are free to determine this. The Model Legislation assumes that BAA–UC counts toward the maximum number of weeks of conventional UC.

Period of Eligibility

9. When may BAA–UC benefits begin?

Under 20 CFR 604.21, parents may receive BAA–UC only during the one-year period commencing with the week in which the child is born or placed for adoption. For example, an individual taking leave in the 51st week following birth or placement for adoption, would be eligible for BAA–UC only for weeks 51 and 52. Periods preceding the week of birth or placement for adoption are not compensable. States are free to reduce the one-year period.

10. How many weeks of BAA–UC may individuals receive?

States are free to determine this. The Model State Legislation provides a maximum duration of 12 weeks per individual with respect to any one birth or adoption. States may also relate the duration of leave to the individual's weekly amount of UC. For example, for each birth or adoption, an individual may receive an amount equal to 12 times the individual's weekly UC amount.

To prevent confusion between the FMLA and BAA–UC, States should inform potential BAA–UC beneficiaries of the dissimilarities between BAA–UC and leave under the FMLA (for example, BAA–UC does not guarantee job retention).

11. If a child is born in the middle of the week or the placement occurs in the middle of the week, is BAA–UC payable for this week?

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Under the Model State Legislation, BAA–UC would be payable for this week, assuming all applicable eligibility conditions, such as the deductible income provisions, are met. States may provide the full weekly compensation amount for this week or prorate the weekly amount to reflect only periods following birth or adoption. If the amount is prorated, the State may pay the remaining balance for the last partial week if the individual is still on leave.

12. Must the individual serve a waiting period?

No. Nothing in Federal law requires States to have a waiting week for conventional UC or BAA–UC. However, not having a waiting week would eliminate the 50 percent Federal share for the first week of all Extended Benefits claims. Under 20 CFR 615.14(c)(3), a State is not entitled to a Federal share for the first week of Extended Benefits if the State's law provides "at any time or under any circumstances" for the payment of UC for the first week of unemployment.

13. When is a child considered "placed" for adoption?

Under 20 CFR 604.3(g), placement occurs at the time a parent becomes responsible for a child pending adoption. State UC agencies should consult the adoption laws of their States to determine precisely when placement occurs.

Other Eligibility Issues

14. May both parents receive BAA–UC? If so, may they both receive such compensation at the same time?

The answer to both questions is "yes." States implementing BAA–UC must allow both parents, if otherwise eligible, to receive BAA–UC concurrently or consecutively. A State may not prohibit payment of BAA–UC simply because the other parent is taking leave for the same purpose. A State law which does so is inconsistent with Federal law because the eligibility of one parent will be determined based on whether the other parent is receiving UC. Specifically, in a 1964 conformity decision involving the State of South Dakota, the Secretary of Labor held that Federal law prohibits the introduction of any eligibility test unrelated to the fact or cause of the individual's unemployment. (See Secretary of Labor's Decision of September 25, 1964, *In the Matter of the Hearing to the South Dakota Department of Employment Security Pursuant to Section 3304(a) of the Internal Revenue Code of 1954*, transmitted by Unemployment Insurance Program Letter No. 787, October 2, 1964.) The recipient status of the other parent is unrelated to the fact or cause of an individual's unemployment. Thus, both parents may receive BAA–UC, whether concurrently or consecutively. Similarly, States may not limit use of BAA–UC to the "primary" parent.

15. Must BAA–UC apply to individuals employed by all employers subject to State UI law?

Yes. As explained in the previous answer, States may not impose eligibility conditions not related to the fact or cause of the individual's unemployment. Assuming the services are taxable for UC, States may not, for example, limit BAA–UC based on employer size.

16. May States provide BAA–UC to individuals who otherwise leave employment (not on approved leave) to be with their newborns or newly-adopted children?

Yes. While States are free to determine their own requirements, there are compelling reasons for providing BAA–UC to individuals who otherwise leave employment. Although many employers may grant leave, others may not. The Department believes that all parents should be treated identically for UC purposes when they take time away from employment to be with their newborn or newly-adopted child. As such, their eligibility for BAA–UC should not be based on whether an employer grants the leave, but on the parent's reason for wanting to take the leave.

17. May eligibility be conditioned on whether the individual gave notice to the employer?

Yes. Although the Model State Legislation does not provide for such a condition because it may result in denials due to the technicality of when the individual requested leave, States may impose it. The basis of such a requirement is that employers should be given sufficient time to accommodate the leaving/absence of the individual. If such a provision is included, the Department recommends that the notice be required to be given no more than 30 days prior to birth or placement, but only where practicable.

18. Must States declare an overpayment of benefits if the individual does not return to work?

No, although a State may choose to declare an overpayment of benefits if the individual fails to return to work. However, States may not delay payment until after the individual returns to work. Section 303(a)(1), SSA, requires the full payment of benefits when due, precluding States from delaying payment while awaiting the individual's return to work. See *Jenkins* v. *Bowling*, 691 F.2d 1225 (7th Cir. 1982).

19. May an individual be paid BAA–UC under the Federal-State extended benefit program or any of the federally funded unemployment programs?

It depends on the program. Benefits under the UC for Federal Employees (UCFE) and UC for Ex-Servicemembers (UCX) programs are, by Federal law, required to be paid on the same terms and subject to the same conditions as State benefits (with exceptions not relevant here). Therefore, BAA–UC will be paid to individuals under these programs to the same extent as under State law.

Individuals may only receive Disaster Unemployment Assistance (DUA) when their unemployment is caused by a disaster as provided in 20 CFR Part 625. However, if they meet their State's Birth and Adoption UC provisions, then they will satisfy the availability requirement at § 625.4(g), and so may continue to qualify for DUA. For example, an individual who is unemployed due to a major disaster may later give birth. If this individual satisfies the BAA–UC requirements in the State's law, she may receive DUA.

Extended Benefit claimants may not receive Birth and Adoption UC since they cannot meet the systematic and sustained work search requirements in 20 CFR 615.8(g).

Individuals claiming trade readjustment allowances (cash benefits) under the Trade Adjustment Assistance and the North American Free Trade Act Transitional Adjustment Assistance programs will be ineligible since such individuals are required to either be in full-time training or conduct the systematic and sustained work search required for the Extended Benefit program.

Financing Costs of BAA–UC

20. May BAA–UC costs be spread among employers?

Yes. States are free to spread the costs—commonly called "noncharging"—of BAA–UC. We think that spreading BAA–UC costs among all employers is the most equitable means of financing this experiment; therefore, the Model State Legislation provides for this. This position applies to both contributory and reimbursing employers.

Noncharging contributory employers is common in most States; however, some States do not noncharge reimbursing employers. States interested in noncharging reimbursing employers for BAA–UC are referred to UIPLs No. 21–80 and No. 44–93 (58 FR 52790, 52792 (April 12, 1993)) for general information about noncharging reimbursing employers.

21. May BAA–UC costs be paid from a State fund other than the State's unemployment fund, for example, a State's temporary disability insurance (TDI) fund?

Yes. Nothing in Federal UC law governs the treatment of moneys in these funds because they are financed by a separate tax and held separately from the State's unemployment fund. For example, a State with a TDI program may enact a special disability insurance tax on employers and deposit the proceeds in a disability fund. If the State chooses to use one of these funds (or create such a fund) to pay birth and adoption leave benefits, the requirements of the Department's BAA–UC regulation will not apply.

Administrative Costs

22. May States use UC administrative grants received from the Federal government to pay for the administration of BAA–UC?

Provided that all the requirements of the BAA–UC regulation are met, the use of UC administrative grants is permissible, including for purposes of studying and evaluating BAA–UC. However, if the regulation's requirements are not met, the expenditures of grant funds are not for the proper and efficient administration of the State's law as required by section 303(a)(8), SSA.

Reporting

23. Will States need to amend their laws to address any Federal reporting requirements concerning BAA–UC?

Although this is a matter for States to determine, the Department anticipates that few, if any, States will need to amend their laws since most State laws already contain language concerning reporting. Many of these laws are based on the language on page 95 of *The Manual of Employment Security Legislation*, as revised September 1950, which requires that the agency "make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports."

24. What are the reporting requirements?

The Department has not yet finalized a methodology for evaluating BAA–UC. When that methodology is completed, State reporting requirements will be issued in a separate information collection request and, if subject to the Paperwork Reduction Act, published for public comment in the **Federal Register**.

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Federal Register

Tuesday,
June 13, 2000

Part III

Department of Education

Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center; Inviting Applications for One New Award for FY 2000 and Final Priority; Notices

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DEPARTMENT OF EDUCATION

CFDA No. 84.206R

Office of Educational Research and Improvement; Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center; Notice Inviting Applications for One New Award for Fiscal Year (FY) 2000.

Purpose of Program: To support a national research and development center to conduct research on methods and techniques for identifying and teaching gifted and talented students and for using gifted and talented programs and methods to serve all students; and to conduct program evaluations, surveys, and the collection, analysis, and development of information on gifted and talented education. Emphasis is given to the identification and services for students not traditionally included in gifted and talented education, (including individuals of limited-English proficiency, economically disadvantaged individuals, and individuals with disabilities).

For fiscal year (FY) 2000 the competition for a new award focuses on projects designed to meet the priority we describe in the notice of final priority published elsewhere in this issue of the **Federal Register**.

Eligible Applicants: Institutions of higher education, State educational agencies, or a combination or consortium of these entities.

Applications Available: June 16, 2000.

Deadline for Transmittal of Applications: August 1, 2000.

Estimated Available Funds: This center will be awarded as a cooperative agreement. In fiscal year 2000, $1.75 million is available for the first year of funding for a national research and development center to study the education of gifted and talented students. The funding levels for years 2 through 5 are estimated at $1.75 million for each fiscal year. Future funding will depend upon the availability of funds and needs as reflected in the approved application.

Maximum Award: We will reject any application that proposes a budget exceeding $1.75 million for a single budget period of 12 months.

Estimated Number of Awards: One.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Page limit: the application must include: title page form, abstract, research narrative, management plan, biographical sketches for principal investigators and other key personnel, budget summary form with budget narrative, and statement of equitable access (GEPA 427). The abstract is limited to one page, the research narrative is limited to 200 pages, the management plan is limited to 10 pages, and biographical sketches are limited to 3 pages each for the principal investigator and other key personnel. Use 8½ x 11 inch paper with printing on only one side. Appendix materials will not be read and should not be submitted. Pages in excess of these limitations will be removed unread. We strongly encourage applicants to use double-spacing, a 12-point font, and 1-inch margins. Reviewers are able to conduct the highest quality review when applications are concise and easy to read, with pages consecutively numbered.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 84, 86 (Part 86 applies only to Institutions of Higher Education), 97, 98, and 99; and (b) 34 CFR part 700.

Priority: This competition focuses on projects designed to meet the priority in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Under 34 CFR 75.105(c)(3) we consider only applications that meet the absolute priority.

For Applications or Information Contact: Beverly E. Coleman, U.S. Department of Education, 555 New Jersey Avenue, NW, room 611A, Washington, DC 20208–5521. Telephone: (202) 219–2280; E-mail: beverly_coleman@ed.gov. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Applications or Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 8034(c).

Dated: June 8, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–14890 Filed 6–12–00; 8:45 am]

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DEPARTMENT OF EDUCATION

Jacob K. Javits Gifted and Talented Education Program: National Research and Development Center

AGENCY: Office of Educational Research and Improvement, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for the Office of Educational Research and Improvement (OERI) announces a final priority under the Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center (Center). The Assistant Secretary will use this priority for the Center competition in fiscal year (FY) 2000. This priority focuses on research to obtain a better understanding of the reasons for the under-representation of students from some minority groups among top performing students, and on analyzing national data sets to better understand the educational status of and opportunities for gifted and talented, high-achieving or high ability students in the United States.

EFFECTIVE DATE: This priority is effective July 13, 2000.

FOR FURTHER INFORMATION CONTACT: Beverly Coleman, U.S. Department of Education, 555 New Jersey Avenue, NW., room 611A, Washington, DC 20202–5521. Telephone: (202) 219–2280. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: OERI administers the Jacob K. Javits Gifted and Talented Students Education Act of 1994 (Javits Act), which is authorized under Part B of Title X of the Elementary and Secondary Education Act (ESEA) (20 U.S.C 8031 *et seq.*). The purposes of the Javits Act are (1) to support a coordinated program of research, demonstration projects, personnel training, and similar activities designed to build a nationwide capability in elementary and secondary schools to meet the special educational needs of gifted and talented students; (2) to encourage rich and challenging curricula for all students through the appropriate application and adaptation of materials and instructional methods used with gifted and talented students; and (3) to supplement and make more effective the expenditure of State and local funds devoted to gifted and talented students.

The Secretary is authorized, under the Javits Act, to create a national research center to carry out: (1) Research on methods and techniques for identifying and teaching gifted and talented students, and for using gifted and talented education programs and methods to serve all students; and (2) program evaluations, surveys, and the collection, analysis, and development of information needed to accomplish the purposes of the Act.

The Javits Act gives the highest priority to: (1) Identifying and serving gifted and talented students who may not be identified and served through traditional assessment methods (including economically disadvantaged, individuals of limited-English proficiency, and individuals with disabilities); and (2) programs and projects designed to develop or improve the capability of schools in an entire State or region of the Nation through the cooperative efforts of State and local educational agencies, institutions of higher education, and other public and private agencies.

There continues to be significant under-representation of some minority groups among top-performing students across the nation. In one national sample, only ten percent of top performing students are African-American, Latino, or Native American, even though they make up about 30 percent of the population. More research is needed to better understand the reasons for these gaps in achievement among top-performing students, and on methods for overcoming these gaps.

In addition, important information on gifted and talented high-ability and high achieving students is contained in a number of national and international studies. These include the National Education Longitudinal Study (NELS), the Early Childhood Longitudinal Study, and the National Assessment of Educational Progress (NAEP), and the Third International Mathematics and Science Study (TIMSS), among others. In most cases, secondary analyses of these studies have not been conducted to examine the status of educational opportunities for gifted and talented, high-ability, and high-achieving students in the United States.

The Assistant Secretary for the Office of Educational Research and Improvement published a notice of proposed priority for this program in the **Federal Register** on March 27, 2000 (65 FR 16290). There are no differences between the notice of proposed priority and this notice of final priority.

Analysis of Comments and Changes

In response to the Assistant Secretary's invitation in the notice of proposed priority, four parties submitted comments on the proposed priority. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows:

Comment: Three commenters said that this priority was too narrow and limited and did not address the major unmet needs now facing the field of educating gifted students. They suggested other areas such as curriculum development, cognitive processes, the role of families in talent development, personnel preparation, program evaluation, gifted students with disabilities, gifted girls and women, and early recognition and cultivation of talent.

Discussion: We agree that there are many areas in gifted and talented education that would benefit from more research knowledge. The resources available under this program, however, are not sufficient to address all those needs adequately. In light of these circumstances, we have concluded that targeting the available resources on a few issues that are high priorities for the nation is the best way to create a body of work that will move the field forward. A central mission of the Javits Program is to increase the participation of under-represented groups in advanced educational opportunities. This issue is of the highest national interest.

Changes: None.

Comment: Three commenters questioned the use of national and international databases to provide substantive information on gifted and talented student populations.

Discussion: We agree that national data collections cannot provide all of the answers concerning the educational needs of gifted and talented students. However, the field of gifted and talented education lacks some very basic information that these national and international studies can provide. For example, how many students are served in gifted and talented program nationwide? What is the ethnic and racial composition of the students in gifted and talented programs? What happens to children who start school two or more years ahead of their peers in reading or mathematics? What opportunities optimize their educational achievement? What preschool experiences and parental styles contribute to fully developing the talents of students? Why are there achievement differences between top performing students in this country and in others?

The authorizing statute for the Javits program states that the Center carries out research and evaluation activities funded by this program. Therefore, we believe that some portion of the work done by the Center should be directed to analyzing existing national studies so that we have better information on the educational needs of gifted and talented students.

Changes: None.

Comment: One commenter said that a priority is to put into practice knowledge of exemplary practices, through a technical assistance center.

Discussion: We agree that it is important to translate knowledge of exemplary strategies into practice and to provide technical assistance in this area. As such, we are considering pursuing this goal in the future with funds from another part of that Javits Program. We believe that the funds available for the research center are limited and should remain focused on basic and applied research and evaluation in gifted and talented education.

Changes: None.

Comment: One commenter wrote in full support of the priority. The commenter reiterated the importance of focusing the research agenda on the educational needs of the growing number of underrepresented low-income and minority students with great potential.

Changes: None.

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Note: This notice does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only one application that meets this absolute priority.

Priority—Research on Gifted and Talented Students

The Secretary will only fund a Center application that proposes to carry out the following activities—

(a) Conducts a coherent and sustained program of research that:

(1) Investigates the causes for disparities in achievement at the highest levels of performance among various racial and ethnic groups;

(2) Studies models for increasing the proportion of underrepresented students performing at the highest levels; and

(3) Generates findings and applications that build the capacity of teachers and schools to improve the performance of under-represented students.

(b) Informs the research carried out under paragraph (a) by conducting analyses of existing national and international databases to determine what is known about the opportunities available to, and educational outcomes of gifted and talented, high achieving or high ability students from these studies. Special attention would be given to studies that provide analyses that:

(1) Lead to a better understanding of what contributes to the educational achievement of these students, disaggregated by socio-economic status and race;

(2) Frame questions not yet being asked that will guide future discussion and inquiry;

(3) Propose new approaches to enduring problems; and

(4) Influence discussion of subsequent research, practice, and policy activities.

(c) Reserves five percent of each budget period's funds to support activities that fall within the Center's priority area, are designed and mutually agreed to by the Center and OERI, and enhance OERI's ability to carry out its mission. These activities may include developing research agenda, conducting research projects collaborating with other federally-supported entities, and engaging in research agenda setting and dissemination activities.

(d) Prepares, at the end of the award period, a report that synthesizes the findings and advances in knowledge that resulted from the Center's program of work and that describes the potential impact on the improvement of American education, including any observable impact to date.

Applicable Program Regulations: 34 CFR Part 700.

Program Authority: 20 U.S.C. 8034(c)

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(Catalog of Federal Domestic Assistance Number: 84.206R Jacob K. Javits National Research and Development Center for Gifted and Talented Education Program)

Dated: June 8, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–14891 Filed 6–12–00; 8:45 am]

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Federal Register

Tuesday,
June 13, 2000

Part IV

Office of Personnel Management

5 CFR Part 630
Sick Leave for Family Care Purposes; Final Rule

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AI76

Sick Leave for Family Care Purposes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to expand the use of sick leave for family care purposes. Under the final regulations, an employee may use a total of up to 12 weeks of accrued sick leave each year to care for a family member with a serious health condition. This benefit broadens the options available for employees to meet their family responsibilities.

EFFECTIVE DATE: June 20, 2000.

FOR FURTHER INFORMATION CONTACT: Sharon Herzberg, (202) 606–2858, FAX (202) 606–0824, or email to *payleave@opm.gov*.

SUPPLEMENTARY INFORMATION: On May 24, 1999, President Clinton issued a memorandum directing the Office of Personnel Management (OPM) to expand the use of paid sick leave for family care purposes. On February 9, 2000, OPM issued proposed regulations consistent with the President's goal of eliminating "a significant barrier to caring for a family member with a serious health condition." The regulations proposed to permit full-time employees to use a total of up to 12 administrative workweeks of accrued sick leave each leave year to care for a family member with a serious health condition. The definition of "family member" includes the following relatives of the employee: (a) Spouse and parents thereof; (b) children, including adopted children, and spouses thereof; (c) parents; (d) brothers and sisters, and spouses thereof; and (e) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. "Serious health condition" has the same meaning as found in OPM?s regulations at 5 CFR 630.1202 for administering the Family and Medical Leave Act of 1993 (FMLA).

The 45-day comment period ended on March 27, 2000. OPM received 151 comments, 134 from individuals, 14 from agencies, 2 from employee associations, and 1 from a labor organization. The comments were overwhelmingly positive. The labor organization stated that these changes were long awaited and quite welcome. Many of the commenters who supported the adoption of the new regulations mentioned a previous experience dealing with a family member with a long-term or terminal illness and expressed gratitude that other employees would now have an opportunity to use their accrued sick leave in similar situations. Others mentioned current family medical situations that have caused them to exhaust their annual leave and the currently available 13 days of sick leave for family care. One commenter stated that if the employee were the one who was sick or injured, using up to 12 weeks of sick leave would be a non-issue and that the use of sick leave should remain a non-issue when an employee's family member requires the employee's care for an extended period.

One commenter stated that the proposed change would reassure employees that efforts to conserve sick leave are beneficial. Another individual noted that employees with sufficient amounts of sick leave to make use of the new program obviously have not been abusing their sick leave and are dedicated employees. One commenter pointed out that since family health crises occur only a few times in our lives, this time off would not adversely affect an agency's long-term goals. An employee association commented that employees and family members stationed overseas often must be evacuated for medical conditions and that the new regulations would allow an employee to accompany a family member for what may turn out to be a protracted course of treatment.

Nine commenters opposed the concept of allowing Federal employees to use additional sick leave for family care purposes. Two agencies expressed concern that the regulations as proposed would give employees more flexibility in the use of sick leave than a literal reading of the President's memorandum of May 24, 1999, would indicate.

The President intended to make the expanded use of sick leave available to employees to use to care for all family members with a serious health condition. Limiting this benefit to caring for a spouse, son or daughter, or parent with a serious health condition would impose a significant hardship on employees who need to care for additional, but equally important, loved ones in their time of need. For example, the expanded use of sick leave would permit an employee to care for a grandchild who is suffering from leukemia or to care for an adult child receiving kidney dialysis or in the final stages of a terminal disease.

Seven agencies were concerned that the proposed regulations would permit an employee to use 12 weeks of sick leave each year to care for a family member with a serious health condition and then use an additional 12 weeks of leave without pay under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition. The agencies stated that 24 weeks of leave would be a tremendous hardship on a manager's ability to manage the work of the organization. One agency expressed the belief that the current sick leave provisions and FMLA entitlements provide sufficient flexibility to employees. Another agency concluded that while being able to meet the mission of the agency while balancing work and family needs of employees is of utmost importance, managers have expressed concern that this expanded entitlement to time off may diminish an organization's ability to efficiently and effectively accomplish the mission of the agency.

OPM believes only a small number of employees would have a need and/or be able to use significant amounts of paid and unpaid leave to care for a family member with a serious health condition. Based on our experience with the current sick leave program, we believe less than 0.5 percent of the Federal workforce with 5 or more years of Federal service would actually use the maximum 12 weeks of sick leave. Federal employees accrue 13 days of sick leave each year. Although it is possible for an employee not to use any sick leave for 5 years so that he or she would accumulate 65 days (more than 12 weeks) of sick leave to use for family care purposes, this is highly unlikely. It is possible that an employee could be entitled to a maximum of 12 weeks of sick leave for family care and 12 weeks of unpaid leave under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition. However, we believe it is highly unlikely that many employees would take more than 12 weeks off for family care purposes. In OPM's June 1997 "Report to Congress on the Family Friendly Leave Act," we found that less than one-half of one percent of the Federal workforce used even the full 13 days of sick leave that was available for family care purposes at that time. In addition, the purpose for which the sick leave may be used—*i.e.*, a serious health condition—will limit the circumstances in which employees can use sick leave under the new policy. We believe this expanded entitlement will provide the greatest benefit to employees who would otherwise be forced to use leave without pay under the FMLA to care for their family members. The expanded use of sick leave will permit these and other employees facing similar situations to maintain an income for part or all of the time they must be absent from work.

In addition, the expanded use of sick leave for family care purposes will provide many benefits. Agencies will retain valuable employees and benefit from reduced costs (including training costs) to replace employees forced to separate from Federal service because of family responsibilities. Employees will have greater incentive to conserve their sick leave, which will be available for future personal and family medical needs. There will be less need for employees to obtain donated leave through the voluntary leave transfer and leave bank programs, since a potential leave recipient faced with a family medical emergency will be required to use up to 12 weeks of his or her own sick leave before receiving any donated annual leave from other Federal employees.

Entitlement to Sick Leave

Two commenters questioned whether the granting of sick leave to care for a family member with a serious health condition would be done at the discretion of the agency. An employee is entitled to sick leave for family care, just as he or she is entitled to sick leave for his or her own incapacitation. If the employee complies with the agency's notification and medical evidence/certification requirements, the agency must grant sick leave.

The labor organization requested clarification of an employee's appeal rights if his or her request for sick leave is denied. If an employee believes he or she has been unjustly denied the use of sick leave for family care purposes, he or she may file a grievance under applicable agency administrative procedures or negotiated grievance procedures. Agency personnel offices can provide information to employees concerning the administration of the grievance procedures. In addition, OPM has authority to settle claims involving Federal employees' compensation and leave. OPM's regulations at 5 CFR part 178 provide procedures for filing written claims. However, 5 CFR 178.101(b) states that OPM's authority does not apply to claims concerning matters that are subject to negotiated grievance procedures under collective bargaining agreements.

One commenter was concerned that part-time employees might not be included in this new initiative. However, the regulations make clear that both part-time employees and employees on uncommon tours of duty are entitled to pro-rated amounts of sick leave for family care purposes based on the number of hours in their regularly scheduled workweek. A Federal firefighter questioned whether leave accrual and use was truly proportional for employees on uncommon tours. Employees on uncommon tours earn and use leave in direct proportion to the leave-earning rate of a full-time employee who accrues and uses leave on the basis of an 80-hour biweekly tour of duty. An agency must charge one hour (or appropriate fraction thereof) of leave for each hour (or appropriate fraction thereof) of absence from the uncommon tour of duty.

Another individual questioned whether an employee is entitled to sick leave when "caring" for a family member who is hospitalized. OPM has always maintained that care of a family member includes psychological comfort as well as physical care, including being with the family member during a hospital stay or while being examined in a doctor's office. In response to this comment and frequent questions we have received on this subject, we are revising § 630.401 of the final regulations to make clear that an employee may use sick leave to attend to a family member who is receiving medical, dental, or optical examination or treatment. In addition, we have added a new paragraph (c) to § 630.403 to permit agencies to require a statement from an employee concerning a family member's need for psychological comfort and/or physical care. The statement from the health care provider must certify that (1) the family member requires psychological comfort and/or physical care, (2) the family member would benefit from the employee's care or presence, and (3) the employee is needed to care for the family member for a specified period of time.

Three commenters felt that 12 weeks was too long a time for employees to be away from their jobs. In contrast, one commenter felt that 12 weeks was not enough time and that an employee should be entitled to use all of his or her sick leave for family care purposes. We do not believe allowing employees to use more than 13 days of their own sick leave each year for family care purposes will greatly increase absenteeism. Many employees who must care for family members currently do so by using leave without pay under the FMLA. The final regulations will allow these employees to maintain an income and better balance their work and family responsibilities. We also believe the entitlement to use 12 weeks of sick leave to care for a family member with a serious health condition will meet the needs of most employees.

Definition of "Family Member"

Several commenters were pleased that the regulations use the same definition of "family member" that is used in the current regulations on sick leave for family care purposes. However, some individuals requested that OPM be more specific as to who is covered by the phrase "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." Three commenters specifically questioned whether grandparents are covered by the definition, and another requested that stepchildren also be included. The intent of the regulation is to be family-friendly and to provide a benefit that goes beyond the traditional nuclear family. We believe a grandparent or a stepchild clearly is covered by the definition of "family member." An agency is responsible for interpreting the definition to ensure that all employees are treated fairly and consistently.

Definition of "Serious Health Condition"

Most individuals and agencies supported the use of the definition of "serious health condition" that is found in the FMLA regulations at § 630.1202. However, one agency expressed the belief that the term "catastrophic illness" implies a level of devastation to health and finances that would warrant the provisions included in the proposed regulations, while the term "serious health condition" does not. One commenter expressed appreciation for the regulations and hoped they would assist parents of "special needs" children in meeting their responsibilities. If the child's condition qualifies as a "serious health condition" under the definition at § 630.1202, a parent would be entitled to use sick leave on an intermittent basis to care for the child when other services are not available. However, this new entitlement does not permit an employee to use sick leave for routine childcare or to care for children with minor childhood ailments. The definition of "serious health condition" at § 630.1202 includes a list of what is *not* considered a serious health condition. An agency may require certification from a healthcare provider that the child has a qualifying medical condition before granting sick leave.

An individual urged OPM to include severe mental illness, including schizophrenia, bi-polar disorder (manic

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depression), and other traumatic mental conditions requiring hospitalization or constant care as a "serious health condition." The definition of "serious health condition" at § 630.1202 includes a "mental condition" that requires inpatient care or continuing treatment by a health care provider. All of the conditions enumerated by the commentor are covered by this definition.

Several commenters questioned whether childbirth and its recuperation would qualify as a "serious health condition" under § 630.1202. Some commenters interpreted the reference to pregnancy and childbirth in § 630.401(3)(i) to mean that the amount of sick leave that can be used to care for a family member during and after childbirth is limited to 13 days. An individual requested that we consider deleting the reference to childbirth at § 630.401(3)(i) and specifically include childbirth and recovery in the definition of "serious health condition" in § 630.1202. We agree that such a change would make clear that childbirth and recovery are considered serious health conditions, since they generally result in a period of incapacitation that exceeds 13 days. Therefore, we have removed the specific reference to pregnancy and childbirth from § 630.401(a)(3)(i). The final regulations provide that an agency must grant sick leave to an employee who provides care for a family member who is incapacitated by a medical or mental condition or who receives medical, dental, or optical examination or treatment. In addition, we have amended the definition of "serious health condition" in § 630.1202(1)(ii)(B) of the FMLA regulations to include childbirth as a serious health condition.

Commenters questioned how much sick leave a new mother would be able to use and whether family members such as her husband or parent would be entitled to use sick leave to care for her. A new mother will continue to be entitled to use sick leave for the period of incapacitation certified by the health care provider following the birth—generally about 6 weeks. Her husband or parent would be entitled to use sick leave to care for her during that entire period of incapacitation. In the case of both the new mother and her caregiver, the entitlement to use sick leave is limited to the period of incapacitation of the new mother. We encourage agencies to request documentation as to the period of incapacitation for any serious health condition.

Bonding With a Child

We received many comments from individuals who mistakenly believe new mothers and fathers will be able to use 12 weeks of sick leave following childbirth for bonding with the newborn child. Other commenters requested that OPM change the regulations to permit this. Care for a family member with a "serious health condition" does not include care for a healthy newborn child. Once the new mother's period of incapacitation ends, there is no further entitlement to use sick leave to "care for a family member with a serious health condition."

Both parents would continue to be entitled to use up to 13 days of sick leave each year to care for the child when he or she is ill or to take the child to medical appointments.

Two commenters objected that the regulations do not allow adoptive parents at least 6 weeks of sick leave for bonding purposes, pointing to the 6 weeks of sick leave that birth parents will be able to use. Adoptive parents may request sick leave for adoption-related purposes, including, but not limited to, appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and for any periods during which an adoptive parent is ordered or required by the adoption agency or by a court to be absent from work to care for the adopted child. There is no limitation on the amount of sick leave that may be used for these purposes. Agencies may require employees to provide evidence that is administratively acceptable to the agency in support of a request for sick leave for adoption-related purposes. In addition, adoptive parents are entitled to use up to 13 days of sick leave each year to care for the child when he or she is ill or to take the child to medical appointments.

As stated above, sick leave is granted to birth parents only for the period of the mother's incapacitation. The birth parents must use annual leave and/or leave without pay for absences from work beyond the mother's period of incapacitation—*e.g.*, for care of the newborn, bonding with the child, and other child care responsibilities. There is no provision in law or regulation that permits the use of sick leave by birth parents or adoptive parents who voluntarily choose to be absent from work to bond with a birth or adopted child.

Interaction With Current Use of Sick Leave for Family Care Purposes

Several commenters asked how the new entitlement to 480 hours of sick leave to care for a family member with a serious health condition interacts with the current entitlement to use 13 days of sick leave each year for general family care and bereavement purposes. One agency urged OPM to consider making these two separate entitlements and permitting employees to use both 13 days of sick leave for general family care and bereavement purposes and 12 weeks (480 hours) of sick leave to care for a family member with a serious health condition each year. The agency felt this approach would simplify administration and reduce confusion about the two entitlements. The agency also felt that tracking sick leave in more than one category is burdensome to the manager and confusing to the employee. Similarly, an individual suggested that there be two entitlements, but that the use of sick leave to care for a family member with a serious health condition be limited to 10 weeks. Another agency recommended that OPM extend the amount of sick leave an employee may use for all family care purposes, instead of introducing a new entitlement.

The intent of the expanded sick leave regulations is to permit employees who are faced with caring for a family member with a serious health condition to use more than 13 days of sick leave. If an employee has previously used 13 days of sick leave in a leave year for family care purposes, the 13 days must be subtracted from the 12-week entitlement. If an employee has previously used 12 weeks of sick leave in a leave year to care for a family member with a serous health condition, he or she would not be entitled to an additional 13 days of sick leave for family care or bereavement purposes. We have revised § 630.401 to make clear that an employee is entitled to a maximum of 12 weeks of sick leave for all family care purposes.

Interaction With Family and Medical Leave

Several commenters questioned how the broadened use of sick leave for family care purposes would work with the use of leave without pay under the Family and Medical Leave Act (FMLA). One commenter expressed the belief that an employee already has an entitlement to use 12 weeks of sick leave under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition. An individual was concerned that 12 weeks of sick leave for family care plus 12 weeks of leave without pay under the FMLA would result in an employee being absent from work for up to 6 months.

The FMLA provides most employees with an entitlement to use a total of up to 12 weeks of leave without pay during any 12-month period for certain family and medical needs. An employee may choose to substitute sick leave for FMLA leave without pay consistent with current law and regulations for using sick leave. (See § 630.1205(b)(1).) Until now, employees who invoked their entitlement to FMLA leave were limited to substituting up to 13 days of sick leave for FMLA leave without pay each year to care for a spouse, son or daughter, or parent with a serious health condition. Under the final regulations, an employee is entitled to substitute up to 12 weeks of sick leave each year for FMLA leave without pay if he or she is caring for a spouse, son or daughter, or parent with a serious health condition. Or, an employee may use up to 12 weeks of sick leave each year to care for a family member with a serious health condition and then invoke his or her entitlement to 12 weeks of FMLA leave without pay to care for his or her spouse, son or daughter, or parent with a serious health condition.

Another individual suggested that the regulations limit an employee to 12 weeks of sick leave in any 12-month period, similar to the requirements under the FMLA. However, the new entitlement is a broadening of the current regulations, not a change in the entitlements under the FMLA. Limiting the use of sick leave for family care by leave year is consistent with the current sick leave regulations and will provide for simpler administration of the current sick leave program.

Interaction With the Leave Transfer and Leave Bank Programs

One commenter asked how the expanded use of sick leave for family care will affect an employee's opportunity to receive donated annual leave from the agency's leave transfer and/or leave bank program. The commenter expressed the belief that an employee who has a substantial sick leave balance, but has used all the sick leave he or she is entitled to use for family care purposes, would be disqualified from the leave transfer program because he or she still had available paid sick leave. An employee may receive donated annual leave from other Federal employees if he or she is affected by a personal or family medical emergency and has exhausted his or her available paid annual and sick leave. Once an employee has exhausted his or her entitlement to 12 weeks of sick leave for family care purposes, the employee has exhausted all of his or her available paid sick leave.

We believe the expanded use of sick leave for family care purposes will reduce the need for obtaining donated annual leave through the leave transfer and leave bank programs. Currently, an employee who is caring for a family member with a medical emergency may have significant amounts of accumulated sick leave that he or she cannot use because the employee has already used his or her entitlement to 13 days of sick leave for family care purposes. As a result, such employees are using other employees' annual leave even though they have substantial amounts of sick leave available in their own sick leave accounts. We believe it makes sense to require employees to use their own annual and sick leave before receiving donated annual leave. In addition, we revised § 630.405(c) to require an employee who is using donated annual leave on the effective date of these regulations to use the sick leave available under § 630.401(a)(3) for family care purposes before he or she can continue to use donated annual leave.

Requirement To Maintain a Balance of 80 Hours of Sick Leave

Two commenters questioned the need to require employees to maintain an 80-hour sick leave balance when using more than 5 days of sick leave for any family care purpose. Another individual expressed the belief that the amount of sick leave that must be held in reserve should increase as the number of hours used for family care purposes increases—*e.g.*, for each 30-day increment above the basic 13-day entitlement, an employee should have to maintain an additional 20 hours of sick leave (above the 80-hour requirement).

The original intent of the 80-hour requirement was to ensure that Federal employees would have sufficient leave for their own medical needs at the end of a family member's medical emergency. With the possibility that an employee will be caring for a family member for an extended period, it is even more important that he or she have a reserve of sick leave for his or her own use to cover absences due to a personal illness. OPM believes 80 hours of sick leave is a sufficient reserve and that to require larger reserve balances from employees who seek to use greater amounts of sick leave for family care purposes would not be equitable.

A commenter was under the mistaken impression that an agency could advance sick leave if an employee's sick leave balance falls below the 80-hour threshold. Advancing more than the first 5 days (40 hours) of sick leave circumvents the intent of the regulation. We have had many questions about the 80-hour required balance and the restriction on the advance of more than 5 days of sick leave for family care purposes. We are taking this opportunity to revise § 630.401 to clarify the requirement for an 80-hour balance and the restriction on advancing sick leave for family care purposes.

Medical Certification

An agency recommended that the medical certification required by the FMLA to care for a spouse, son or daughter, or parent with a serious health condition also be required when an employee requests sick leave to care for a family member with a serious health condition. One individual urged that OPM write the regulations so that this entitlement cannot be used for anything less than a serious health condition. Another believes that requiring administratively acceptable evidence of a serious health condition or a doctor's confirmation will ensure that requests for sick leave are legitimate. A third commenter warns that unless medical certification is required, the expanded amounts of sick leave will be used for minor illnesses. Another asked OPM to make clear that an agency may request medical documentation as to the incapacitation of the family member, while another commenter felt that OPM should establish specific amounts of sick leave that may be used for specific types of serious health conditions. In contrast, however, one individual expressed the belief that "administratively acceptable evidence" is too broad a term and questioned who will determine what constitutes acceptable documentation. Another suggests that a doctor's statement should be required only after 5 days of absence from work and that a receipt for a doctor's visit should be sufficient medical documentation.

We urge each agency to request medical certification to document that a serious health condition exists. In addition, obtaining medical documentation will ensure that the appropriate amount of sick leave is granted. We do not believe Governmentwide guidelines can be established assigning specified amounts of sick leave for certain health conditions. Individual circumstances differ, and individuals will require varying amounts of time off for treatment and recuperation. A certification from the health care provider will determine the length of the incapacitation for each individual and, therefore, the duration of the serious health condition. Agencies may

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wish to modify the Department of Labor's Family and Medical Leave medical certification form to document the existence and probable duration of a serious health condition, or they may wish to establish their own medical certification form. Each agency has the authority to determine what constitutes "administratively acceptable evidence" for any use of sick leave and to request such documentation whenever it feels necessary.

One agency approved of OPM's proposal to permit agencies to limit the amount of time given to an employee to produce acceptable documentation, feeling it would help to ensure that the new entitlement is used only as intended. We agree and are adopting as final the revisions at § 630.403(b). We believe agencies should establish time limits for employees to provide required documentation of a medical or mental condition. This will ensure that sick leave is being used properly and will guarantee that all employees receive equal treatment.

Reporting Requirements

Two individuals questioned what new reporting requirements might be involved in the administration of this new entitlement. One agency recommended that OPM require agencies to report back in 1 year on the extent to which the new sick leave provisions are being used. When OPM published the original regulations on sick leave for family care purposes in December 1994, we added § 630.408 to require agencies to maintain records to provide data to us on the use of sick leave for family care purposes. We requested the data for OPM's June 1997 "Report to Congress on the 'Federal Employees Family Friendly Leave Act,' Public Law 103–388." We no longer believe the reporting requirements are necessary and plan to propose removal of them from the regulations later this year. Nevertheless, our regulations continue to require that agencies maintain internal records on the amount of sick leave used each leave year for family care or bereavement purposes to ensure that employees do not exceed the limitations in 5 CFR 630.401(b) and (c).

Additional Use of Sick Leave

Three individuals suggested that OPM establish programs to pay employees for unused sick leave. They felt this would encourage employees to conserve their sick leave, particularly in the case of employees covered by the Federal Employees Retirement System (FERS), since they do not receive credit at retirement for unused sick leave. This proposal would require legislative action. In addition, OPM believes the ability to use up to 12 weeks of sick leave for family care purposes will be an additional incentive for employees to conserve their sick leave for future needs. Since the Government has no short-term disability insurance program, it is important that employees conserve sick leave to cover their own periods of illness, as well as their family care needs.

An individual suggested broadening the leave transfer program to allow employees to donate their unused sick leave to other employees. Section 6334(a) of title 5, United States Code, permits Federal employees to donate or contribute annual leave, but not sick leave, to another employee who has a personal or family medical emergency. Therefore, this proposal would require legislative action. In addition, the ability of employees to use larger amounts of sick leave for family care purposes should ease the demand for donated leave, making greater amounts of donated annual leave available to those employees who have exhausted other available paid leave.

Other Comments

A commenter expressed concern that agencies would look upon employees who use large amounts of sick leave to care for a family member as "leave abusers." We believe agencies are aware that the use of approved sick leave is not leave abuse and is not a basis for an adverse action. An agency may request medical certification for the use of sick leave, but if proper certification is provided, the leave must be approved.

Another commenter argued that the availability of 12 weeks of paid leave for Federal employees will place the entire burden of family care on the shoulders of Federal employees. The commenter felt the Government should pressure private industry to expand its family leave policies to relieve the burden on Federal employees who are caretakers. OPM hopes this program will become a model for non-Federal employers by demonstrating ways to help employees balance their work and family responsibilities.

A number of agencies and individuals requested that OPM publish a table or matrix of leave programs that provides a basic overview of when and under what circumstances employees are entitled to leave under each of the various leave programs. The labor organization recommended that a special effort be made to provide training and resources to help agency personnel offices answer managers' and employees' questions concerning these regulations and their interactions with various family-friendly leave programs in the Government. OPM currently offers leave workshops to assist agencies and employees in understanding and administering the Government's family-friendly leave programs. Dates for future workshops are available on OPM's website at *www.opm.gov* In addition, we have developed, and will continue to develop, fact sheets and matrix tables on the various Federal leave programs. These materials are available on OPM's website at *www.opm.gov/oca/leave*. In the near future, we will issue additional guidance and a series of examples on how to apply the different leave provisions.

Two commenters thought the Government should grant new mothers paid maternity leave in addition to their accrued sick leave. They pointed to companies in the private sector that offer this type of paid leave benefit. Many private sector companies provide employees with a limited amount of sick leave each year (which may or may not accumulate for use in succeeding years) and short-term disability insurance that may be used for maternity purposes. Generally, short-term disability insurance programs replace only a portion—typically 60 to 70 percent—of an employee's income while disabled and provide coverage for a maximum of 6 months. Like some of the other ideas raised by other commenters, legislative action would be required to establish such a program. We believe the Government's generous sick leave and annual leave system, in conjunction with advanced sick and annual leave, the leave transfer and leave bank programs, flexible work schedules, flexiplace, unpaid leave under the Family and Medical Leave Act of 1993, and compensatory time off enable the vast majority of Federal employees to meet their personal and family medical needs.

One agency commented that the leave provisions alone are confusing in themselves and that the variations and interworkings of these programs have become even more complicated and cumbersome. Several agencies recommended that OPM take the initiative to review Federal leave programs and combine and streamline where possible, including pursuing legislative change if necessary. In an effort to provide agencies with more flexibility in the way employees are compensated and to simplify compensation administration, OPM has embarked on a strategic compensation initiative. The goal of the initiative is to develop legislation to improve the Federal compensation system. This initiative will include recommendations for improving and simplifying paid time off programs.

Effective Date of Regulations

Three commenters requested that OPM make the final regulations effective retroactively—on the date of President Clinton's memorandum (May 24, 1999), at the beginning of this fiscal year (October 1, 1999), or at the beginning of this calendar year (January 1, 2000). The labor organization recommended that every effort be made to ensure the changes are implemented immediately, since employees continue to suffer under the current limitation of 13 days of sick leave each year for family care purposes. However, an agency requested delaying the effective date of the final regulations to permit additional time for reprogramming its payroll and accounting system to accommodate the expanded use of sick leave for family care purposes.

Because the implementation of a new sick leave policy requires changes in OPM's Governmentwide sick leave regulations, we must follow the procedural requirements of the Administrative Procedure Act (APA). The APA generally calls for a 30-day delay in the effective date of any regulatory change following the publication of final regulations. The issuance of retroactive regulations is neither the preferred nor usual method for rulemaking. Retroactivity in rulemaking is permissible where Congress has expressly authorized it in law, but that is not the case here. To enable employees to use this expanded benefit immediately, we are modifying the requirement to delay the effective date of the final regulations so that they can become effective 7 days after the date of publication in the **Federal Register**.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this rule effective in less than 30 days. We continue to receive inquiries from employees, agency officials, and other interested parties who are experiencing a family medical emergency and need additional paid time off. To accommodate the pressing need for this benefit, we are making these regulations effective 7 days after the date of publication.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

Family Assessment Certification

I certify that these regulations would strengthen the stability of the family, help families meet their responsibilities, and increase the disposable income of families in accordance with section 654 of the Treasury and General Government Appropriations Act, 1999, as contained in section 101(h) of Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

2. In § 630.201(b), a new definition of *serious health condition* is added in alphabetical order to read as follows:

§ 630.201 Definitions.

* * * * *

Serious health condition has the meaning given that term in § 630.1202.

* * * * *

Subpart D—Sick Leave

3. In § 630.401, the introductory text of paragraph (a) and paragraphs (a)(3) and (b) are revised; paragraphs (c) through (e) are redesignated as paragraphs (e) through (g), respectively; in newly redesignated paragraph (f), "(c)" is removed and "(d)" is added in its place wherever it appears; and new paragraphs (c) and (d) are added to read as follows:

§ 630.401 Grant of sick leave.

(a) Subject to paragraphs (b) through (f) of this section, an agency must grant sick leave to an employee when the employee—

* * * * *

(3)(i) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment; or

(ii) Provides care for a family member with a serious health condition.

* * * * *

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(i) and (4) of this section may not exceed a total of 104 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave normally accrued by that employee during a leave year).

(c)(1) An employee who is caring for a family member with a serious health condition under paragraph (a)(3)(ii) of this section may use not more than a total of up to 480 hours of sick leave (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week) during a leave year, subject to the limitation found in paragraph (c)(2) of this section.

(2) If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (c)(1) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, the agency must subtract that amount from the maximum number of hours authorized under paragraph (c)(1) of this section to determine the total amount of sick leave that may be used during the remainder of the leave year to care for a family member with a serious health condition. If the employee previously has used the maximum amount of sick leave permitted under paragraph (c)(1) of this section in a leave year, he or she is not entitled to use additional sick leave under paragraph (b).

(3) A full-time employee may use not more than a total of 480 hours of sick

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leave (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week) for all family care purposes under paragraphs (a)(3) and (4) of this section.

(d) For family care purposes as described in paragraphs (a)(3) and (4) of this section—

(1) A full-time employee may use a total of up to 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in his or her regularly scheduled administrative workweek) of accrued and accumulated sick leave without further regard to his or her sick leave balance.

(2) A full-time employee may use more than 40 hours of his or her accrued and accumulated sick leave up to the maximum provided by paragraphs (b) and (c)(1) of this section only if he or she maintains a sick leave balance of at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, two times the average number of hours in his or her regularly scheduled administrative workweek). An employee must maintain this balance during any period of time during which the employee is using more than his or her basic entitlement to sick leave under paragraph (d)(1) of this section.

(3) An agency may advance only the initial 40 hours of sick leave under paragraph (d)(1) of this section, or a proportional amount for an employee with a part-time or uncommon tour of duty. An agency may not advance sick leave for the purpose of meeting the requirement to retain a minimum sick leave balance under paragraph (d)(2) of this section or, if the employee has the required minimum sick leave balance, for using additional sick leave as provided in paragraphs (b) and (c) of this section.

* * * * *

4. Section § 630.403 is revised to read as follows:

§ 630.403 Supporting Evidence.

(a) An agency may grant sick leave only when supported by administratively acceptable evidence. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his or her absence as administratively acceptable evidence. For an absence in excess of 3 workdays, or for a lesser period when determined necessary, the agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a).

(b) An agency may establish a uniformly applied policy that requires employees to provide administratively acceptable evidence or medical certification for a request for sick leave within a specified time period. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.

(c) An agency may require an employee requesting sick leave to care for a family member under § 630.401(a)(3)(ii) to provide an additional written statement from the health care provider concerning the family member's need for psychological comfort and/or physical care. The statement must certify that—

(1) The family member requires psychological comfort and/or physical care;

(2) The family member would benefit from the employee's care or presence; and

(3) The employee is needed to care for the family member for a specified period of time.

§ 630.405 Use of sick leave during annual leave or to become eligible for donated leave.

5. In § 630.405, paragraph (a) is amended by removing "(e)" and adding in its place "(f)," by removing the last sentence in paragraph (b), and by revising paragraph (c) to read as follows:

* * * * *

(c) In the case of an employee already in a shared leave status (*i.e.*, using donated annual leave) on June 20, 2000 under the voluntary leave transfer or leave bank programs established under subchapters III and IV of chapter 63 of title 5, United States Code, any sick leave available to care for a family member under § 630.401 must be used before continuing to use transferred annual leave or annual leave withdrawn from a leave bank.

Subpart L—Family and Medical Leave

§ 630.1202 Definitions.

6. In § 630.1202, paragraph (1)(ii)(B) of the definition of *serious health condition is* revised to read as follows:

* * * * *

Serious health condition. (1) * * *

(ii) * * *

(B) Any period of incapacity due to pregnancy or childbirth, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity, does not last more than 3 consecutive calendar days.

* * * * *

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Federal Register

Tuesday,
June 13, 2000

Part V

The President

Proclamation 7317—Establishment of the Canyons of the Ancients National Monument

Proclamation 7318—Establishment of the Cascade-Siskiyou National Monument

Proclamation 7319—Establishment of the Hanford Reach National Monument

Proclamation 7320—Establishment of the Ironwood Forest National Monument

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Federal Register
Vol. 65, No. 114
Tuesday, June 13, 2000

Presidential Documents

Title 3—

The President

Proclamation 7317 of June 9, 2000

Establishment of the Canyons of the Ancients National Monument

By the President of the United States of America

A Proclamation

Containing the highest known density of archaeological sites in the Nation, the Canyons of the Ancients National Monument holds evidence of cultures and traditions spanning thousands of years. This area, with its intertwined natural and cultural resources, is a rugged landscape, a quality that greatly contributes to the protection of its scientific and historic objects. The monument offers an unparalleled opportunity to observe, study, and experience how cultures lived and adapted over time in the American Southwest.

The complex landscape and remarkable cultural resources of the Canyons of the Ancients National Monument have been a focal point for archaeological interest for over 125 years. Archaeological and historic objects such as cliff dwellings, villages, great kivas, shrines, sacred springs, agricultural fields, check dams, reservoirs, rock art sites, and sweat lodges are spread across the landscape. More than five thousand of these archaeologically important sites have been recorded, and thousands more await documentation and study. The Mockingbird Mesa area has over forty sites per square mile, and several canyons in that area hold more than three hundred sites per square mile.

People have lived and labored to survive among these canyons and mesas for thousands of years, from the earliest known hunters crossing the area 10,000 years ago or more, through Ancestral Puebloan farmers, to the Ute, Navajo, and European settlers whose descendants still call this area home. There is scattered evidence that Paleo-Indians used the region on a sporadic basis for hunting and gathering until around 7500 B.C. During the Archaic period, generally covering the next six thousand years, occupation of the Four Corners area was dominated by hunters and gatherers.

By about 1500 B.C., the more sedentary Basketmakers spread over the landscape. As Ancestral Northern Puebloan people occupied the area around 750 A.D., farming began to blossom, and continued through about 1300 A.D., as the area became part of a much larger prehistoric cultural region that included Mesa Verde to the southeast. Year-round villages were established, originally consisting of pit house dwellings, and later evolving to well-recognized cliff-dwellings. Many archaeologists now believe that throughout this time span, the Ancestral Northern Puebloan people periodically aggregated into larger communities and dispersed into smaller community units. Specifically, during Pueblo I (about 700–900 A.D.) the occupation and site density in the monument area increased. Dwellings tended to be small, with three or four rooms. Then, during Pueblo II (about 900–1150 A.D.), settlements were diminished and highly dispersed. Late in Pueblo II and in early Pueblo III, around 1150 A.D., the size and number of settlements again increased and residential clustering began. Later pueblos were larger multi-storied masonry dwellings with forty to fifty rooms. For the remainder of Pueblo III (1150–1300 A.D.), major aggregation occurred in the monument, typically at large sites at the heads of canyons. One of these sites includes remains of about 420 rooms, 90 kivas, a great kiva, and a plaza, covering more than ten acres in all. These villages were wrapped

around the upper reaches of canyons and spread down onto talus slopes, enclosed year-round springs and reservoirs, and included low, defensive walls. The changes in architecture and site planning reflected a shift from independent households to a more communal lifestyle.

Farming during the Puebloan period was affected by population growth and changing climate and precipitation patterns. As the population grew, the Ancestral Puebloans expanded into increasingly marginal areas. Natural resources were compromised and poor soil and growing conditions made survival increasingly difficult. When dry conditions persisted, Pueblo communities moved to the south, southwest, and southeast, where descendants of these Ancestral Puebloan peoples live today.

Soon after the Ancestral Puebloans left the monument area, the nomadic Ute and Navajo took advantage of the natural diversity found in the variable topography by moving to lower areas, including the monument's mesas and canyons, during the cooler seasons. A small number of forked stick hogans, brush shelters, and wickiups are the most obvious remnants of this period of occupation.

The natural resources and spectacular land forms of the monument help explain why past and present cultures have chosen to live in the area. The geology of the monument evokes the very essence of the American Southwest. Structurally part of the Paradox Basin, from a distance the landscape looks deceptively benign. From the McElmo Dome in the southern part of the monument, the land slopes gently to the north, giving no indication of its true character. Once inside the area, however, the geology becomes more rugged and dissected. Rising sharply to the north of McElmo Creek, the McElmo Dome itself is buttressed by sheer sandstone cliffs, with mesa tops rimmed by caprock, and deeply incised canyons.

The monument is home to a wide variety of wildlife species, including unique herpetological resources. Crucial habitat for the Mesa Verde nightsnake, long-nosed leopard lizard, and twin-spotted spiny lizard can be found within the monument in the area north of Yellow Jacket Canyon. Peregrine falcons have been observed in the area, as have golden eagles, American kestrels, red-tailed hawks, and northern harriers. Game birds like Gambel's quail and mourning dove are found throughout the monument both in dry, upland habitats, and in lush riparian habitat along the canyon bottoms.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Canyons of the Ancients National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Canyons of the Ancients National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled "Canyons of the Ancients National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 164,000 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral leasing, other than by exchange that furthers the protective purposes of the monument, and except for oil and gas leasing as prescribed herein.

For the purpose of protecting the objects identified above, the Secretary of the Interior shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

Because most of the Federal lands have already been leased for oil and gas, which includes carbon dioxide, and development is already occurring, the monument shall remain open to oil and gas leasing and development; provided, the Secretary of the Interior shall manage the development, subject to valid existing rights, so as not to create any new impacts that interfere with the proper care and management of the objects protected by this proclamation; and provided further, the Secretary may issue new leases only for the purpose of promoting conservation of oil and gas resources in any common reservoir now being produced under existing leases, or to protect against drainage.

The Secretary of the Interior shall prepare a transportation plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities, to implement the purposes of this proclamation.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Colorado with respect to fish and wildlife management.

This proclamation does not reserve water as a matter of Federal law. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation. The Bureau of Land Management shall work with appropriate State authorities to ensure that any water resources needed for monument purposes are available.

Nothing in this proclamation shall be deemed to enlarge or diminish the rights of any Indian tribe.

Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.

Nothing in this proclamation shall be deemed to affect the management of Hovenweep National Monument by the National Park Service (Proclamation 1654 of March 2, 1923, Proclamation 2924 of May 1, 1951, and Proclamation 2998 of November 26, 1952).

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

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IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J Clinton

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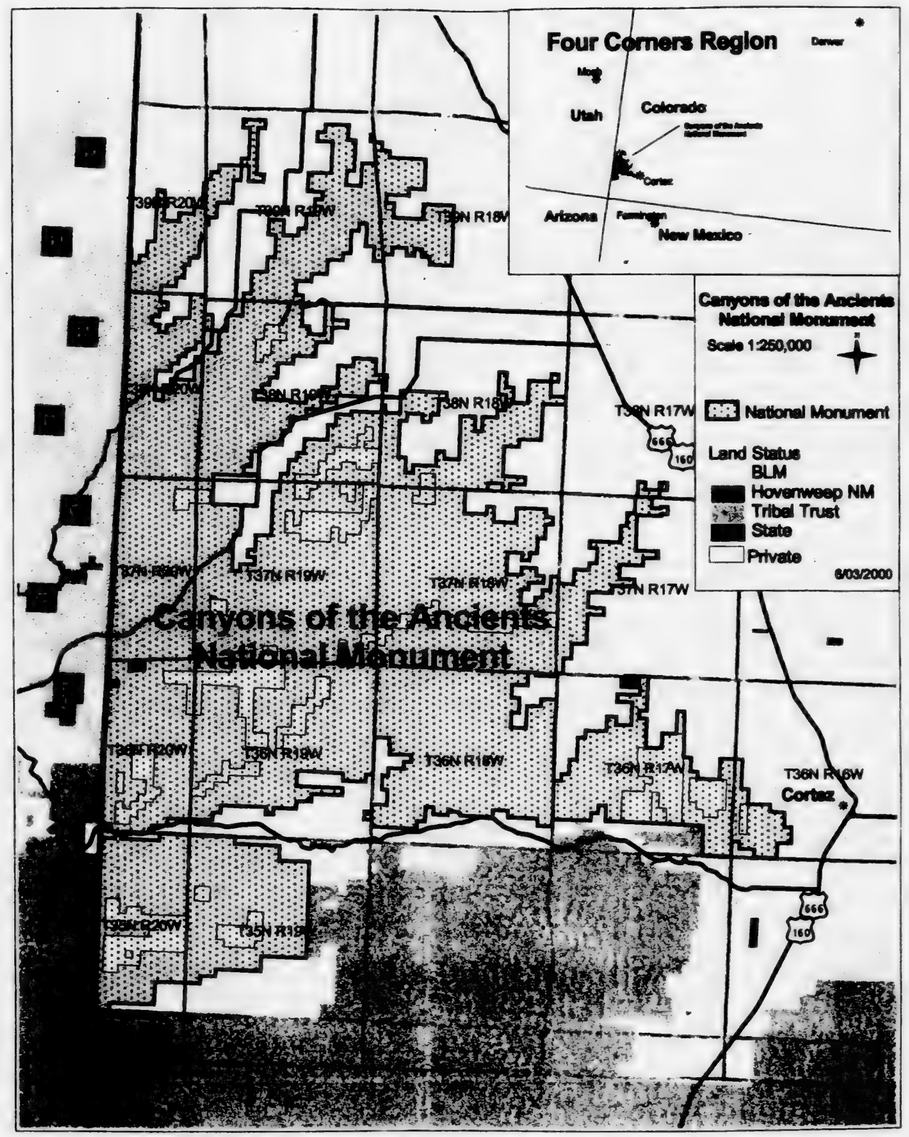

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Presidential Documents

Proclamation 7318 of June 9, 2000

Establishment of the Cascade-Siskiyou National Monument

By the President of the United States of America

A Proclamation

With towering fir forests, sunlit oak groves, wildflower-strewn meadows, and steep canyons, the Cascade-Siskiyou National Monument is an ecological wonder, with biological diversity unmatched in the Cascade Range. This rich enclave of natural resources is a biological crossroads—the interface of the Cascade, Klamath, and Siskiyou ecoregions, in an area of unique geology, biology, climate, and topography.

The monument is home to a spectacular variety of rare and beautiful species of plants and animals, whose survival in this region depends upon its continued ecological integrity. Plant communities present a rich mosaic of grass and shrublands, Garry and California black oak woodlands, juniper scablands, mixed conifer and white fir forests, and wet meadows. Stream bottoms support broad-leaf deciduous riparian trees and shrubs. Special plant communities include rosaceous chaparral and oak-juniper woodlands. The monument also contains many rare and endemic plants, such as Greene's Mariposa lily, Gentner's fritillary, and Bellinger's meadowfoam.

The monument supports an exceptional range of fauna, including one of the highest diversities of butterfly species in the United States. The Jenny Creek portion of the monument is a significant center of fresh water snail diversity, and is home to three endemic fish species, including a long-isolated stock of redband trout. The monument contains important populations of small mammals, reptile and amphibian species, and ungulates, including important winter habitat for deer. It also contains old growth habitat crucial to the threatened Northern spotted owl and numerous other bird species such as the western bluebird, the western meadowlark, the pileated woodpecker, the flammulated owl, and the pygmy nuthatch.

The monument's geology contributes substantially to its spectacular biological diversity. The majority of the monument is within the Cascade Mountain Range. The western edge of the monument lies within the older Klamath Mountain geologic province. The dynamic plate tectonics of the area, and the mixing of igneous, metamorphic, and sedimentary geological formations, have resulted in diverse lithologies and soils. Along with periods of geological isolation and a range of environmental conditions, the complex geologic history of the area has been instrumental in producing the diverse vegetative and biological richness seen today.

One of the most striking features of the Western Cascades in this area is Pilot Rock, located near the southern boundary of the monument. The rock is a volcanic plug, a remnant of a feeder vent left after a volcano eroded away, leaving an outstanding example of the inside of a volcano. Pilot Rock has sheer, vertical basalt faces up to 400 feet above the talus slope at its base, with classic columnar jointing created by the cooling of its andesite composition.

The Siskiyou Pass in the southwest corner of the monument contains portions of the Oregon/California Trail, the region's main north/south travel route first established by Native Americans in prehistoric times, and used by Peter Skene Ogden in his 1827 exploration for the Hudson's Bay Company.

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Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Cascade-Siskiyou National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Cascade-Siskiyou National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled "Cascade-Siskiyou National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 52,000 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument.

There is hereby reserved, as of the date of this proclamation and subject to valid existing rights, a quantity of water sufficient to fulfill the purposes for which this monument is established. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation.

The commercial harvest of timber or other vegetative material is prohibited, except when part of an authorized science-based ecological restoration project aimed at meeting protection and old growth enhancement objectives. Any such project must be consistent with the purposes of this proclamation. No portion of the monument shall be considered to be suited for timber production, and no part of the monument shall be used in a calculation or provision of a sustained yield of timber. Removal of trees from within the monument area may take place only if clearly needed for ecological restoration and maintenance or public safety.

For the purpose of protecting the objects identified above, the Secretary of the Interior shall prohibit all motorized and mechanized vehicle use off road and shall close the Schoheim Road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities (including, where applicable, the Act of August 28, 1937, as amended (43 U.S.C. 1181a-1181j)), to implement the purposes of this proclamation.

The Secretary of the Interior shall prepare, within 3 years of this date, a management plan for this monument, and shall promulgate such regulations for its management as he deems appropriate. The management plan shall include appropriate transportation planning that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

The Secretary of the Interior shall study the impacts of livestock grazing on the objects of biological interest in the monument with specific attention to sustaining the natural ecosystem dynamics. Existing authorized permits or leases may continue with appropriate terms and conditions under existing laws and regulations. Should grazing be found incompatible with protecting the objects of biological interest, the Secretary shall retire the grazing allotments pursuant to the processes of applicable law. Should grazing permits or leases be relinquished by existing holders, the Secretary shall not reallocate the forage available under such permits or for livestock grazing purposes unless the Secretary specifically finds, pending the outcome of the study, that such reallocation will advance the purposes of the proclamation.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Oregon with respect to fish and wildlife management.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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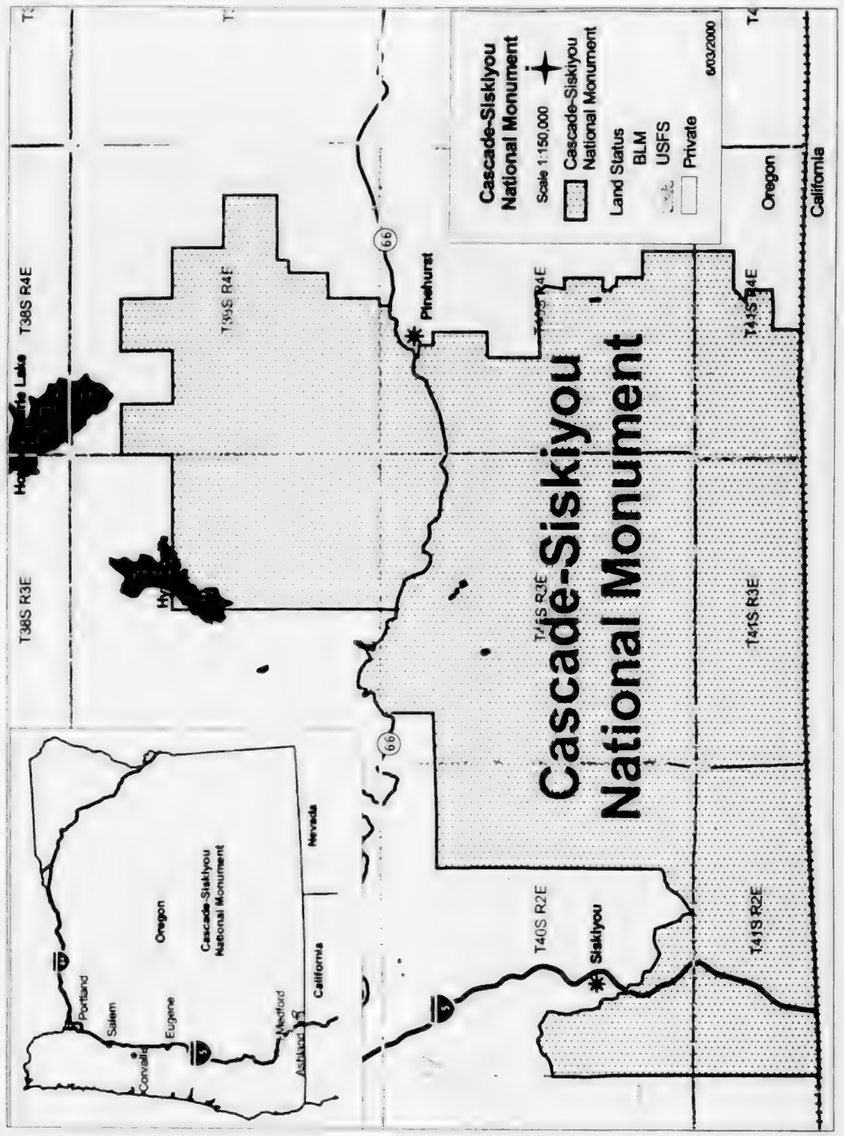

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Presidential Documents

Proclamation 7319 of June 9, 2000

Establishment of the Hanford Reach National Monument

By the President of the United States of America

A Proclamation

The Hanford Reach National Monument is a unique and biologically diverse landscape, encompassing an array of scientific and historic objects. This magnificent area contains an irreplaceable natural and historic legacy, preserved by unusual circumstances. Maintained as a buffer area in a Federal reservation conducting nuclear weapons development and, more recently, environmental cleanup activities, with limits on development and human use for the past 50 years, the monument is now a haven for important and increasingly scarce objects of scientific and historic interest. Bisected by the stunning Hanford Reach of the Columbia River, the monument contains the largest remnant of the shrub-steppe ecosystem that once blanketed the Columbia River Basin. The monument is also one of the few remaining archaeologically rich areas in the western Columbia Plateau, containing well-preserved remnants of human history spanning more than 10,000 years. The monument is equally rich in geologic history, with dramatic landscapes that reveal the creative forces of tectonic, volcanic, and erosive power.

The monument is a biological treasure, embracing important riparian, aquatic, and upland shrub-steppe habitats that are rare or in decline in other areas. Within its mosaic of habitats, the monument supports a wealth of increasingly uncommon native plant and animal species, the size and diversity of which is unmatched in the Columbia Basin. Migrating salmon, birds, and hundreds of other native plant and animal species rely on its natural ecosystems.

The monument includes the 51-mile long "Hanford Reach," the last free-flowing, nontidal stretch of the Columbia River. The Reach contains islands, riffles, gravel bars, oxbow ponds, and backwater sloughs that support some of the most productive spawning areas in the Northwest, where approximately 80 percent of the upper Columbia Basin's fall chinook salmon spawn. It also supports healthy runs of naturally-spawning sturgeon and other highly-valued fish species. The loss of other spawning grounds on the Columbia and its tributaries has increased the importance of the Hanford Reach for fisheries.

The monument contains one of the last remaining large blocks of shrub-steppe ecosystems in the Columbia River Basin, supporting an unusually high diversity of native plant and animal species. A large number of rare and sensitive plant species are found dispersed throughout the monument. A recent inventory resulted in the discovery of two plant species new to science, the Umtanum desert buckwheat and the White Bluffs bladderpod. Fragile microbiotic crusts, themselves of biological interest, are well developed in the monument and play an important role in stabilizing soils and providing nutrients to plants.

The monument contains significant breeding populations of nearly all steppe and shrub-steppe dependent birds, including the loggerhead shrike, the sage sparrow, the sage thrasher, and the ferruginous hawk. The Hanford Reach and surrounding wetlands provide important stop-over habitat for migratory birds, as well as habitat for many resident species. The area is important wintering habitat for bald eagles, white pelicans, and many species of waterfowl such as mallards, green-winged teal, pintails, goldeneye, gadwall, and

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buffleheads. The monument's bluff habitats provide valuable nesting sites for several bird species, including prairie falcons, and important perch sites for raptors such as peregrine falcons.

Many species of mammals are also found within the monument, including elk, beaver, badgers, and bobcats. Insect populations, though less conspicuous, include species that have been lost elsewhere due to habitat conversion, fragmentation, and application of pesticides. A recent biological inventory uncovered 41 species and 2 subspecies of insects new to science and many species not before identified in the State of Washington. Such rich and diverse insect populations are important to supporting the fauna in the monument.

In addition to its vital biological resources, the monument contains significant geological and paleontological objects. The late-Miocene to late-Pliocene Ringold Formation, known as the White Bluffs, was formed from river and lake sediments deposited by the ancestral Columbia River and its tributaries. These striking cliffs form the eastern bank of the Columbia for nearly half of the length of the Reach, and are significant for the mammalian fossils that they contain. Fossil remains from rhinoceros, camel, and mastodon, among others, have been found within these bluffs.

The Hanford Dune Field, located on the western shore of the Columbia in the southeastern part of the monument, is also of geologic significance. This active area of migrating barchan dunes and partially stabilized transverse dunes rises 10 to 16 feet above the ground, creating sandy habitats ranging from 2 to several hundred acres in size.

The monument also contains important archaeological and historic information. More than 10,000 years of human activity in this largely arid environment have left extensive archaeological deposits. Areas upland from the river show evidence of concentrated human activity, and recent surveys indicate extensive use of arid lowlands for hunting. Hundreds of prehistoric archaeological sites have been recorded, including the remains of pithouses, graves, spirit quest monuments, hunting camps, game drive complexes, quarries, and hunting and kill sites. A number of Native American groups still have cultural ties to the monument. The monument also contains some historic structures and other remains from more recent human activities, including homesteads from small towns established along the riverbanks in the early 20th century.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Hanford Reach National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Hanford Reach National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled "Hanford Reach National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 195,000 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument.

For the purpose of protecting the objects identified above, the Secretary of the Interior and the Secretary of Energy shall prohibit all motorized and mechanized vehicle use off road, except for emergency or other federally authorized purposes, including remediation purposes. There is hereby reserved, as of the date of this proclamation and subject to valid existing rights, a quantity of water in the Columbia River sufficient to fulfill the purposes for which this monument is established. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation.

For the purpose of protecting the objects identified above, the Secretary of the Interior shall prohibit livestock grazing.

The monument shall be managed by the U.S. Fish and Wildlife Service under existing agreements with the Department of Energy, except that the Department of Energy shall manage the lands within the monument that are not subject to management agreements with the Service, and in developing any management plans and rules and regulations governing the portions of the monument for which the Department of Energy has management responsibility, the Secretary of Energy shall consult with the Secretary of the Interior.

As the Department of Energy and the U.S. Fish and Wildlife Service determine that lands within the monument managed by the Department of Energy become suitable for management by the U.S. Fish and Wildlife Service, the U.S. Fish and Wildlife Service will assume management by agreement with the Department of Energy. All agreements between the U.S. Fish and Wildlife Service and the Department of Energy shall be consistent with the provisions of this proclamation.

Nothing in this proclamation shall affect the responsibility of the Department of Energy under environmental laws, including the remediation of hazardous substances or the restoration of natural resources at the Hanford facility; nor affect the Department of Energy's statutory authority to control public access or statutory responsibility to take other measures for environmental remediation, monitoring, security, safety, or emergency preparedness purposes; nor affect any Department of Energy activities on lands not included within the monument.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Washington with respect to fish and wildlife management.

Nothing in this proclamation shall enlarge or diminish the rights of any Indian tribe.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall interfere with the operation and maintenance of existing facilities of the Columbia Basin Reclamation Project, the Federal Columbia River Transmission System, or other existing utility services that are located within the monument. Existing Federal Columbia River Transmission System facilities located within the monument may be replaced, modified and expanded, and new facilities constructed within the monument, as authorized by other applicable law. Such replacement, modification, expansion, or construction of new facilities shall be carried out in a manner consistent with proper care and management of the objects of this proclamation, to be determined in accordance with the management arrangements previously set out in this proclamation.

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Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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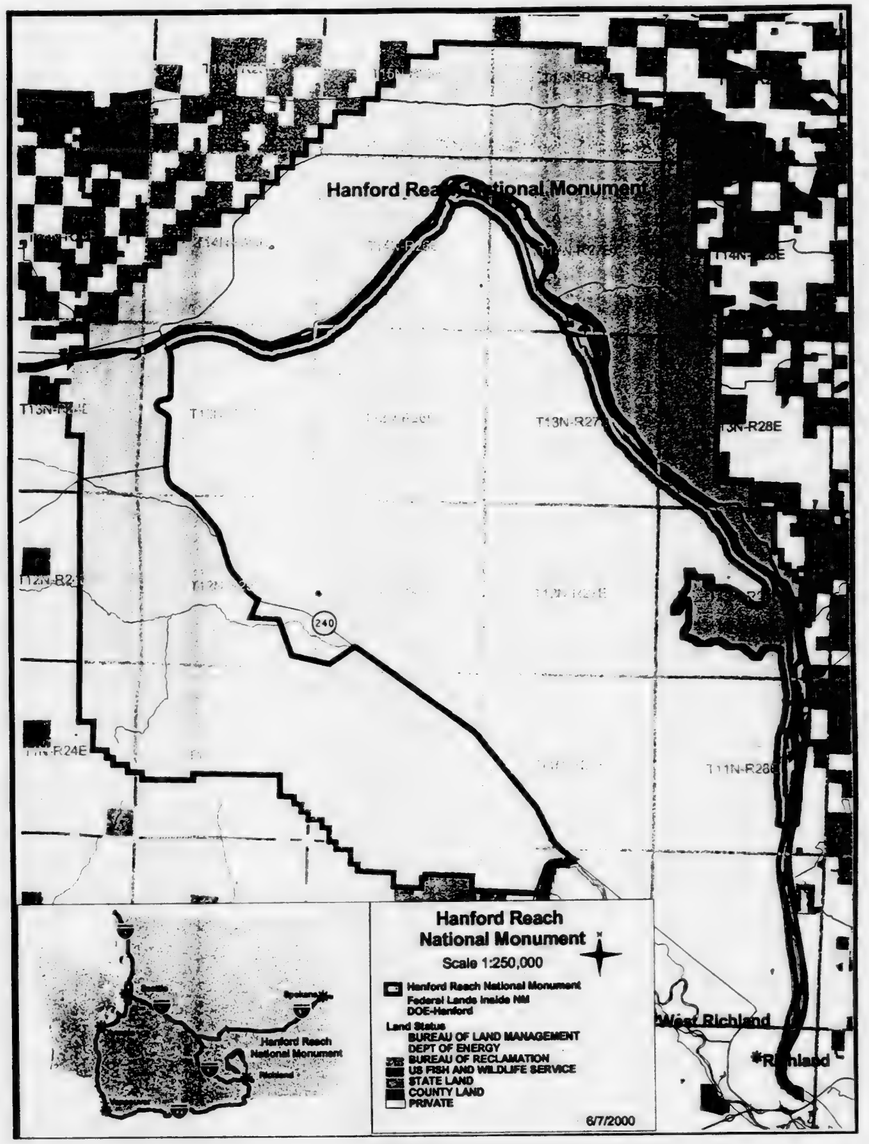

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Presidential Documents

Proclamation 7320 of June 9, 2000

Establishment of the Ironwood Forest National Monument

By the President of the United States of America

A Proclamation

The landscape of the Ironwood Forest National Monument is swathed with the rich, drought-adapted vegetation of the Sonoran Desert. The monument contains objects of scientific interest throughout its desert environment. Stands of ironwood, palo verde, and saguaro blanket the monument floor beneath the rugged mountain ranges, including the Silver Bell Mountains. Ragged Top Mountain is a biological and geological crown jewel amid the depositional plains in the monument.

The monument presents a quintessential view of the Sonoran Desert with ancient legume and cactus forests. The geologic and topographic variability of the monument contributes to the area's high biological diversity. Ironwoods, which can live in excess of 800 years, generate a chain of influences on associated understory plants, affecting their dispersal, germination, establishment, and rates of growth. Ironwood is the dominant nurse plant in this region, and the Silver Bell Mountains support the highest density of ironwood trees recorded in the Sonoran Desert. Ironwood trees provide, among other things, roosting sites for hawks and owls, forage for desert bighorn sheep, protection for saguaro against freezing, burrows for tortoises, flowers for native bees, dense canopy for nesting of white-winged doves and other birds, and protection against sunburn for night blooming cereus.

The ironwood-bursage habitat in the Silver Bell Mountains is associated with more than 674 species, including 64 mammalian and 57 bird species. Within the Sonoran Desert, Ragged Top Mountain contains the greatest richness of species. The monument is home to species federally listed as threatened or endangered, including the Nichols turk's head cactus and the lesser long-nosed bat, and contains historic and potential habitat for the cactus ferruginous pygmy-owl. The desert bighorn sheep in the monument may be the last viable population indigenous to the Tucson basin.

In addition to the biological and geological resources, the area holds abundant rock art sites and other archeological objects of scientific interest. Humans have inhabited the area for more than 5,000 years. More than 200 sites from the prehistoric Hohokam period (600 A.D. to 1450 A.D.) have been recorded in the area. Two areas within the monument have been listed on the National Register of Historic Places, the Los Robles Archeological District and the Cocoraque Butte Archeological District. The archeological artifacts include rhyolite and brown chert chipped stone, plain and decorated ceramics, and worked shell from the Gulf of California. The area also contains the remnants of the Mission Santa Ana, the last mission constructed in Pimeria Alta.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all

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cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Ironwood Forest National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Ironwood Forest National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled "Ironwood Forest National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 128,917 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument.

For the purpose of protecting the objects identified above, the Secretary of the Interior shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities, to implement the purposes of this proclamation.

The Secretary of the Interior shall prepare a transportation plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Arizona with respect to fish and wildlife management.

This proclamation does not reserve water as a matter of Federal law. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation. The Bureau of Land Management shall work with appropriate State authorities to ensure that any water resources needed for monument purposes are available.

Nothing in this proclamation shall be deemed to enlarge or diminish the rights of any Indian tribe.

Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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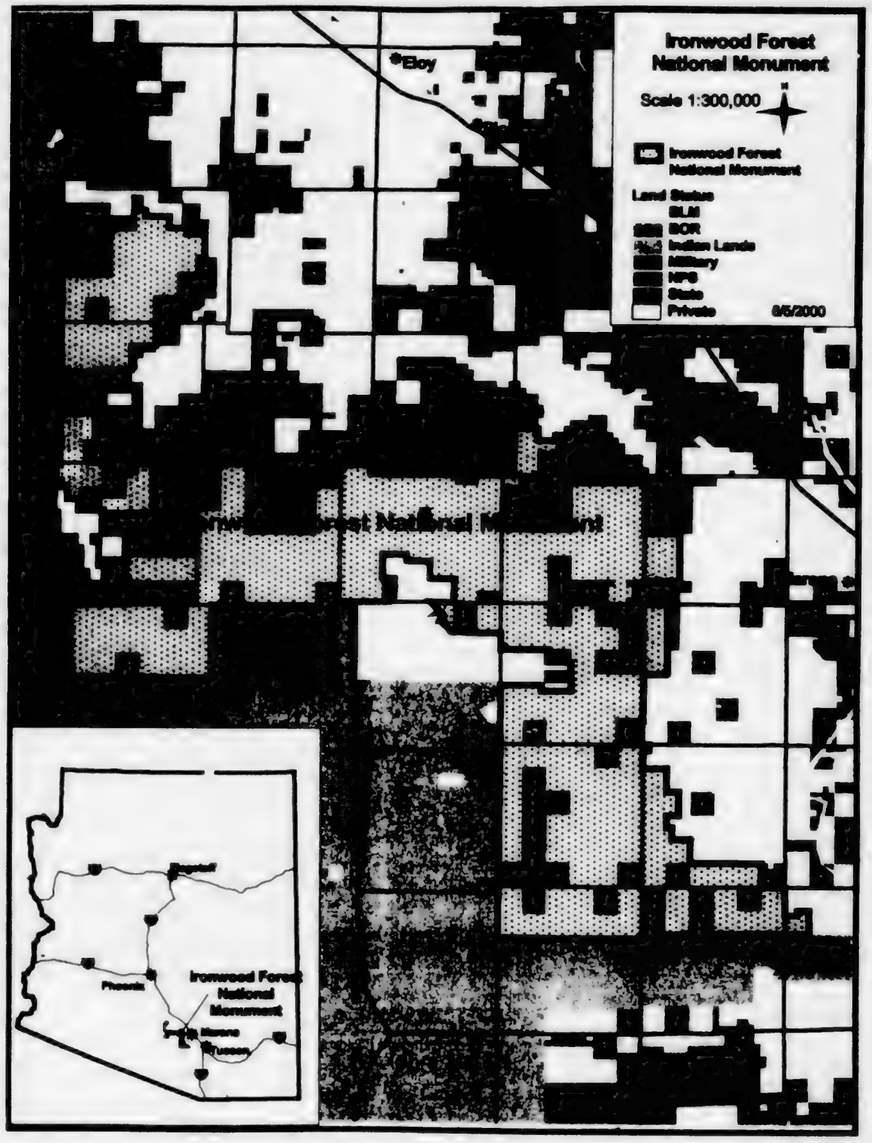

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Pipeline integrity management in high consequence areas; comments due by 6-20-00; published 4-24-00
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Cafeteria plans; tax treatment; comments due by 6-21-00; published 3-23-00
Lifetime charitable lead trusts; comments due by 6-23-00; published 4-5-00
VETERANS AFFAIRS DEPARTMENT
Outer burial receptacles; monetary allowances; comments due by 6-19-00; published 4-18-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S.J. Res. 44/P.L. 106–205
Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)

H.R. 154/P.L. 106–206
To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)

H.R. 371/P.L. 106–207
Hmong Veterans' Naturalization Act of 2000 (May 26, 2000; 114 Stat. 316)

H.R. 834/P.L. 106–208
National Historic Preservation Act Amendments of 2000 (May 26, 2000; 114 Stat. 318)

H.R. 1377/P.L. 106–209
To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the "John J. Buchanan Post Office Building". (May 26, 2000; 114 Stat. 320)

H.R. 1832/P.L. 106–210
Muhammad Ali Boxing Reform Act (May 26, 2000; 114 Stat. 321)

H.R. 3629/P.L. 106–211
To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)

H.R. 3707/P.L. 106–212
American Institute in Taiwan Facilities Enhancement Act (May 26, 2000; 114 Stat. 332)

S. 1836/P.L. 106–213
To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)

Last List May 25, 2000

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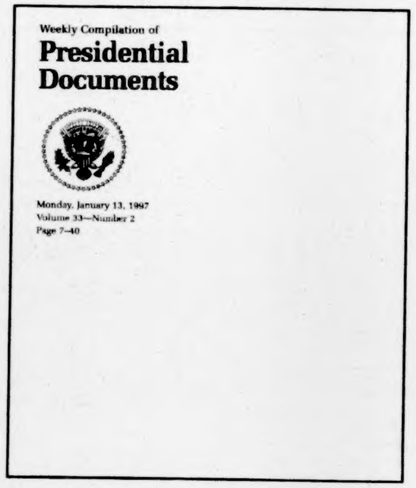

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